

VOLUME
I of V

THE STATE OF SOUTH CAROLINA
In The Supreme Court

CERTIORARI TO RICHLAND COUNTY
Court of Common Pleas
The Honorable Brooks P. Goldsmith, Circuit Court Judge

Appellate Case No. 2018-001540
Lower Court Case No. 2017-CP-40-2220

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S.C. SUPREME COURT

LESLIE TODD PARVIN,

RESPONDENT,

v.

STATE OF SOUTH CAROLINA

PETITIONER.

APPENDIX

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STATE OF SOUTH CAROLINA

) GENERAL SESSIONS

County of Richland

) 11-GS-40-897

) 11-GS-40-898

)
)
) THE STATE,

)
)
) vs.

) TRANSCRIPT OF RECORD

)
) LESLIE PARVIN,

)
) DEFENDANT.
)

November 29, 2011
Columbia, South Carolina

BEFORE:

THE HONORABLE CLIFTON NEWMAN, JUDGE.

APPEARANCES:

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Attorney for the State

JENNIFER DAVIS, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

KAREN AMBROZIAK
Official Court Reporter

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1 MS. CAMPBELL: May it please the Court. This is
2 Mr. Leslie Parvin. We're here today for purposes of a
3 Schmerber motion a handwriting sample.

4 I do have investigator Brian Gwyn from the Richland
5 County Sheriff's Department ready to testify as to
6 probable cause and the reasons the State requests a
7 handwriting sample.

8 I have handed up to the Court a copy of letters that
9 were retrieved in a search warrant of the defendant's home
10 after he had been arrested on these charges, Your Honor.
11 For the record for the court reporter, Your Honor, he is
12 charged with two counts of murder in docket numbers
13 2011-GS-40-0897 and 0898.

14 When you find it appropriate, Your Honor, I would
15 call Investigator Gwyn to the stand.

16 THE COURT: All right. What is the defense's
17 position?

18 MS. DAVIS: Your Honor, he is not consenting at this
19 time.

20 THE COURT: All right. You may proceed.

21 MS. CAMPBELL: May it please the Court, Your Honor.
22 May I also hand up case law?

23 THE COURT: Sure.

24 MS. CAMPBELL: These cases, Your Honor, I believe,
25 are going to be State vs. Frazier, State vs. Bakis and

1 State vs. Register.

2 THE COURT: Okay.

3 BRIAN GWYN, after being duly sworn,
4 testified as follows:

5 THE CLERK: State your name for the record.

6 THE WITNESS: Brian Gwyn.

7 DIRECT EXAMINATION:

8 BY MS. CAMPBELL:

9 Q Investigator Gwyn, where are you employed?

10 A Richland County Sheriff's Department.

11 Q What do you do there, sir?

12 A I'm a narcotics agent.

13 Q And were you involved in the investigation of a
14 double homicide that occurred in July, I believe, it's
15 2010.

16 A I was.

17 Q And where did that actually occur, sir?

18 A The homicide occurred at [REDACTED] [REDACTED] [REDACTED] here in
19 Richland County.

20 Q Can you get a littler closer to that microphone? I'm
21 sorry. What did you say?

22 A It occurred at [REDACTED] [REDACTED] [REDACTED] in Richland
23 County.

24 Q And can you -- would you give the judge a factual
25 background for purposes of this hearing?

1 A I can. On July 30th, 2010, deputies responded to a
2 -- two individuals that were shot at [REDACTED]
3 in Richland County.

4 Upon arrival, we had found two Hispanic males with
5 gunshots wounds lying in the yard at [REDACTED].
6 One was identified as Edgar Lopez. He was laying face up
7 with one gunshot wound to his face and one to the abdomen.
8 The other one was identified as Pablo Guzman Gutierrez.

9 He was lying facedown next to a tree with
10 approximately three gunshot wounds to the back. Crime
11 scene processed the scene. They found several .45 caliber
12 shell casings in and around the yard at [REDACTED]
13 [REDACTED].

14 There were also numerous beer cans, Modelo beer cans
15 and a chair that the suspect was believed to be seen in
16 that yard. They were collected for evidence.

17 We interviewed several witnesses who witnessed the
18 defendant at the residence who -- one of which who
19 actually witnessed the shooting.

20 One of the witnesses, Alfredo Videl was able to give
21 us a good description that fit the rest of the
22 descriptions given by the witness, a white male with dark
23 hair, wire-rimmed glasses and earrings in his ears that
24 would cause your earlobes to start to stretch causing a
25 hole in your ear, as well as several tattoos.

1 One of significance was a large tattoo that covered
2 his whole back of a naked woman with long hair that had
3 some type of animal -- he described it as a puma -- laying
4 at her feet.

5 The defendant had described this individual on the
6 back as his wife or possibly girlfriend. He also
7 identified a van which was a two colored -- two-tone
8 colored Kia van with a Louisiana tag of MGN and then a 69.
9 He was not sure of the first number in that series.

10 As he was talking with the defendant, the defendant
11 engaged in a conversation, and when he asked Alfredo where
12 he lived, he described where he had lived, and the
13 defendant made the comment, "Well, I live on Windsor Lake
14 in a big curve."

15 This proved to be significant later on in the
16 investigation when we found out where the defendant lived.
17 His house actually sit -- sat on a curve on Bay Springs
18 Road facing Windsor Lake.

19 He did a composite drawing or sketch for SLED which
20 was given out as a possible suspect in the shooting.
21 There was another witness who actually observed a verbal
22 argument between the two victims and the defendant, at
23 which time one of the victims, Edgar, they were kind of
24 arguing in English. The victim couldn't really understand
25 what was being said.

1 He saw Edgar throw his hands up, at which time the
2 defendant produced a pistol from the backside of his pants
3 and back waistband and shot the victim, Edgar, two to
4 three times, ended up being two times. I believe he shot
5 at him three times. At which time, Pablo was trying to
6 walk away, and he was shot several times in the back.

7 Every witness that we interviewed that was at the
8 scene that had observed the defendant there gave the same
9 physical description of tattoos, hair, earrings, wire-rim
10 glasses, as well as a pistol being tucked in the backside
11 of his waistband.

12 During the investigation, we found that the defendant
13 had been drinking beer with the victims and several other
14 individuals, witnesses, at this location.

15 At some point, they ran out of beer. Edgar and the
16 defendant went to a gas station, a Shell gas station, at
17 East Boundary and Percival Road, to purchase more beer.

18 The victim went inside. He ran into two individuals,
19 a husband and wife that he knew at this gas station. He
20 talked to one inside and one outside.

21 Both gave statements stating that Edgar informed him
22 that he was with a American -- a white American who had
23 given him \$200 for some type of sex.

24 Both of them advised him that it was not a good idea.
25 He said, you know, he was going to just drink his beer and

1 not have sex with the male.

2 At that time, they went back to the residence at 1901
3 Woodfield Drive where the incident occurred, the shooting
4 had happened.

5 We interviewed several people, possible witnesses and
6 suspects, throughout several weekends after the homicide.
7 We had requested a list of possible Kia vans that were
8 registered in Louisiana.

9 We received a list of tags registered in Louisiana
10 for Kia vans. We found one that was very similar in
11 nature to the partial tag we got. It was MGB 869. The
12 eight replaced the missing number that was provided as a
13 partial tag.

14 As we began to look into the registered owner, we
15 came to find out it was registered to a Leslie Parvin from
16 Fort Polk, Louisiana.

17 We conducted a search in Accurant which found that
18 Mr. Parvin lived at Bay Springs Road in the Windsor Lake
19 community.

20 Doing a research on him about Fort Jackson, we found
21 that he had several weapons registered to him on Fort
22 Jackson, one included a Norinco .45.

23 Our witness's report listed the Norinco as being one
24 of the possible murder weapons in the ballistics report.
25 There were several .45s that were listed, and the Norinco

1 was one of the possible matches.

2 We requested a driver's license photo from Texas and
3 upon receiving that, we noticed that the photo of
4 Mr. Parvin fit close to the description given by the
5 witnesses in the composite sketch.

6 We had the Department of Public Safety from Texas
7 conduct a -- or put together a photo lineup of Mr. Parvin
8 and several other individuals from Texas.

9 We took it to one of the witnesses, Alfredo, and he
10 was able to immediately individual Mr. Parvin as being the
11 individual that was at [REDACTED] [REDACTED] [REDACTED] the day of the
12 shooting.

13 We obtained murder warrants for Mr. Parvin, as well
14 as a search warrant for the house. We found that
15 Mr. Parvin's wife, Shawna Parvin, worked at Windsor Lake
16 Elementary School.

17 Investigators went there and picked her up,
18 interviewed her to find out where Mr. Parvin could be.
19 She actually lied during that interview and stated that
20 her husband was in Texas.

21 In lieu of doing damage to the home making entry into
22 the house, we drove her back to the home, at which time
23 she unlocked the door, and we found Mr. Parvin in the
24 living room of the house where he was taken into custody.

25 He fit the physical description. He had cut his

1 hair. He still had holes, significant holes from where
2 those earrings had been located. The tattoos fit what we
3 were given as described by the witnesses. He was advised
4 of his rights at which time he invoked.

5 The search warrant was executed, at which time we
6 found several long guns that were placed on the beds in
7 the front bedrooms, as well as other -- other weapons,
8 firearms that were strategically placed throughout the
9 house, which was indicative for what we thought may have
10 been in preparation for a standoff.

11 We found a .45 caliber Judge pistol; .45 caliber ammo
12 and paperwork for a Kia van, which all were missing from
13 the house. We also recovered some marijuana inside the
14 home.

15 We interviewed Shawna Parvin more extensively at
16 headquarters. She admitted that the night of this
17 incident, she came home later, found that her husband was
18 parked, was hiding in the Kia van in the backyard trying
19 to keep it from the sight of the roadway.

20 He told her that he had done something that she
21 would -- that she would not approve of. He told her that
22 she needed to go stay at a hotel that night. We were able
23 to confirm that she did actually stay at a hotel on Two
24 Notch Road.

25 The following morning, she returned home to find that

1 her husband was packing his belongings and was going to
2 leave town.

3 She denied any type of further knowledge of what
4 occurred at [REDACTED] [REDACTED] [REDACTED]. We interviewed
5 Mr. Parvin's father. He also provided a sworn statement
6 that once he -- once his son left town and he watched the
7 news and saw the composite, he put two and two together
8 and figured out what had occurred.

9 He also received a phone call from his son and went
10 to Louisiana and picked him up and took him to a V.A.
11 hospital in Texas.

12 During this timeframe, the defendant actually told
13 his father that he had shot and killed the two Mexicans
14 because they had threatened him.

15 We are able to show photo lineups to the rest of the
16 individuals. All but one were able to positively identify
17 Mr. Parvin as being the individual at [REDACTED] [REDACTED]
18 [REDACTED], as well as the shooter.

19 During the -- during the processing of the evidence
20 that was obtained at [REDACTED] [REDACTED] [REDACTED], we since
21 matched latent prints to several of the beer cans
22 recovered at the scene, as well as DNA matched to several
23 of the beer cans, as well the gate leading to and from the
24 backyard.

25 We had never recovered a Norinco .45 which was

1 registered to the defendant, nor his van. They were still
2 outstanding.

3 In the summer of 2011, which is, I believe, going to
4 be July 2011, narcotics agent Randy James conducted a
5 trash pull at the address on Bay Springs, found that there
6 was evidence to obtain a search warrant for narcotics at
7 that address.

8 The search warrant was executed. There was marijuana
9 found throughout the house, at which time I believe all
10 but maybe one of the individuals living there were charged
11 with some type of marijuana charge.

12 During -- during this process, we're going through
13 paperwork and found letters that were from the defendant
14 to his wife from jail.

15 At that point, I backed off. I obtained a arrest
16 search warrant for those letters, at which time those were
17 taken into evidence.

18 The letters consisted of, you know, possible claims
19 of self-defense. He talked about his ability to control
20 his mental and emotional state, and that there's times
21 when he sees Hispanic males at the jail during visits
22 and -- inside the jail, and it kind of stirs up some
23 emotions about him. He was possibly going to use a -- you
24 know, a defense of PTSD.

25 Q And that search warrant, the original search warrant

1 was for the house, while Mr. Parvin was already
2 incarcerated; is that correct?

3 A Yes, ma'am; that's correct.

4 Q And that was in the summer of 2011?

5 A Yes, ma'am.

6 Q And at that point, when you realized that the letters
7 may be from him about his case, you backed off and got a
8 separate search warrant.

9 A That's correct.

10 Q And that's when you came into possession of what's
11 been handed up in State's Exhibit -- or a copy of what's
12 been handed up?

13 A Yes, ma'am.

14 Q The reason the handwriting sample would be necessary
15 is to confirm the handwriting in the letters that you
16 recovered in that second search warrant.

17 A I'm sorry. Was that a question?

18 Q Yeah.

19 A Yes, ma'am.

20 MS. CAMPBELL: Thank you.

21 THE COURT: All right. Ms. Davis?

22 MS. CAMPBELL: Thank you.

23 MS. DAVIS: Thank you, Your Honor. May it please the
24 Court.

25 THE COURT: Yes.

CROSS-EXAMINATION:

BY MS. DAVIS:

Q Just a few questions, Investigator Gwyn. I'm just going to stick to why we're here in terms of the second search warrant.

At what point were you notified that they were going to get a search warrant for Mr. Parvin's house?

A I believe -- I'm not sure of the day that the search warrant was actually executed, but we have a Monday morning briefing, and I believe it may have been put out at that point.

Q Okay. The search warrant was executed August 17th, 2011 but the trash pull was done August 8th.

A Ma'am, I'm not sure. It wasn't mine. As a matter of fact, I believe I was actually late to that search warrant, so I'm not 100 percent sure --

Q Okay.

A About when it was obtained.

Q Okay. So you --

A That was Agent James.

Q Sorry. You were notified the morning of the 8th when they were going to execute the warrant.

A I couldn't give you that exact day. I know -- I believe, I was told when -- during our Monday morning briefing when it was put out, but I couldn't give you a

1 date.

2 Q Okay. But up until that point, you had not had any
3 knowledge that Agent -- or Officer James was planning to
4 do a trash pull or search that location.

5 A No, ma'am. When it was put out that there was a
6 search warrant obtained, that was the first I had
7 knowledge of it.

8 Q Okay. And you're not on the narcotics team?

9 A I am.

10 Q You are now?

11 A Yes, ma'am.

12 Q Okay. So they notify you of every time they're going
13 to execute a search warrant for narcotics.

14 A That's the plan, yes, ma'am.

15 Q Okay. Are you present when they execute every search
16 warrant?

17 A Mostly. Like I said, I was late for this one. I had
18 some issues I had to take care of that morning, so I
19 arrived late.

20 Q Okay. So in general, you're at nearly every
21 execution for a search warrant for narcotics in Richland
22 County.

23 A When we're available, yes.

24 Q And I think you just testified that you -- the
25 initial search warrant y'all served was August 2010,

1 almost one year to the date that my client was arrested,
2 right?

3 A Oh, you're talking about when he was arrested for the
4 murder?

5 Q Right, right.

6 A Right.

7 Q So a year later, that's when the second search
8 warrant was done of his house?

9 A I suppose so, yes.

10 Q Okay. And you just said that at this point, the
11 second search warrant -- I'm sorry, the first search
12 warrant, that in lieu of doing damage to the house, you
13 got Ms. Parvin to come get a key so you wouldn't have to
14 do any damage.

15 A Right. Investigators were already interviewing her.
16 Obviously, she has got a key. Instead of breaking the
17 door causing damage to the house, we had her come unlock
18 the door.

19 Q Sure. Now, the second search warrant, which is what
20 we're here for today, y'all busted in the door and had
21 guns, right?

22 A Again, I was late. I did not make entry into the
23 home. I don't know how they did it.

24 Q Okay. So when you got to the scene, you didn't
25 notice the door was busted in?

- 1 A I don't know if I paid attention.
- 2 Q Okay. So you weren't aware that the kids were all
- 3 sleeping in the house when they busted in the house door?
- 4 A Again, I was late. I couldn't tell you what happened
- 5 before then.
- 6 Q In terms of the letters that Ms. Campbell is
- 7 referring to, I have them somewhere. Where exactly -- do
- 8 you know who found those letters? Who were searching that
- 9 actually recovered them?
- 10 A I believe -- I believe myself and Investigator Todd
- 11 White were in that room, which would have been
- 12 Mr. Parvin's room.
- 13 Q Okay. So you and Investigator White?
- 14 A I believe so, yes, ma'am.
- 15 Q Okay. Did you search other places in the house, as
- 16 well?
- 17 A I believe I assisted in the living room and possibly
- 18 the older son's room. I believe his name is Josh.
- 19 Q And -- but you're the one that actually found the
- 20 letters and, took them and collected them?
- 21 A Correct.
- 22 Q And where exactly were the letters in the house?
- 23 A I believe maybe a drawer. I couldn't be 100 percent
- 24 sure, I know.
- 25 Q Did you write it down anywhere of where you --

- 1 A I believe it would have been on the return.
- 2 Q Of where they were found?
- 3 A I believe so.
- 4 Q Okay. And do you remember how they were -- not
- 5 packaged but I mean were they folded up in the letter, in
- 6 the envelope or do you remember?
- 7 A I think some were folded in an envelope. I believe
- 8 some were just out.
- 9 Q Were they all in one place?
- 10 A I'm not 100 percent sure right now. I couldn't
- 11 answer that. I know they were in the same room.
- 12 Q Okay. So they're in the same room, but you don't
- 13 know if they were all in one place or not or how exactly
- 14 they were found.
- 15 A When you say how they were found...
- 16 Q I mean, in terms of was it folded up in an envelope
- 17 or were they laying straight out?
- 18 A I just told you. There were some that were folded up
- 19 in an envelope. I believe they were all together, for the
- 20 most part. Some were folded in an envelope, some were
- 21 not.
- 22 Q And the letters, do you have a copy of them?
- 23 A Of the letters?
- 24 Q Yeah.
- 25 A With me?

1 Q Yes.

2 A No, ma'am, I do not.

3 Q These are the copies that we received.

4 A Okay.

5 Q Those are the letters that we're referring to today,
6 19 letters?

7 A I believe so, yes, ma'am.

8 Q And can you tell me, from those letters, what is
9 relevant in those letters to the case regarding the murder
10 charges?

11 A Can I tell you what's in here that's in reference to
12 the murder charges?

13 Q Right. What's relevant?

14 A How is it relevant? Well, there's several letters in
15 here where are -- if these are the same letters that were
16 recovered, where he talks about -- it's important to look
17 at the police-related shootings, where they were hit in
18 the rear of the body.

19 There's portions of the letters where he talks in
20 reference to being at the scene and observing, I believe
21 it would have been Pablo who was shot in the back. He
22 wasn't able to see him clearly and stated he wasn't sure
23 if he had anything or not. So we collected those letters
24 in reference to the homicide.

25 Q So does each of the 19 letters have something in

1 there that you -- that is relevant to the charges of
2 murder?

3 A Without actually sitting here reading all 19 letters
4 word for word, I would believe so. I believe the ones
5 that were collected were in relation to the shootings and
6 in homicide, and there was a letter that was actually
7 collected in reference to Mr. Parvin to Shawna in
8 reference to his son, wanting marijuana to be legalized
9 and so forth. That was the initial point of the search
10 and the paperwork was in relation to narcotics.

11 Q Right.

12 A And when we realized that it referenced the homicide,
13 we stopped.

14 Q And do you remember how many letters you read before
15 you got to what you thought would be relevant?

16 A No, ma'am. I mean, it was -- it was more along the
17 lines of looking at the paperwork, realizing okay, back
18 off, get a search warrant and obtain the rest of the
19 paperwork.

20 Q I assume you've read all of the letters?

21 A At the scene, yes, ma'am.

22 Q Okay. Was that before you got the search warrant or
23 afterwards?

24 A No, ma'am. That would have been afterwards.

25 Q Okay.

1 A That would have been how we went through and
2 collected the letters.

3 Q After you got the search warrant?

4 A Yes, ma'am.

5 Q Was there anything else that you collected? Are
6 those letters the only paperwork that you collected that
7 had anything to do with anything Mr. Parvin wrote to his
8 wife?

9 A As far as paperwork? I'm not sure I'm understanding
10 your question.

11 Q The 19 letters that I gave you a copy of.

12 A Okay.

13 Q Is that the only paperwork that you collected that
14 day, other than I know the Kia, that stuff was from the
15 search warrant. Is that the only paperwork that you
16 collected that day?

17 A That I can recall, that I physically -- me, myself
18 collected, I believe so. There may have been additional
19 paperwork collected. I'm not -- I cannot testify to what
20 other agents collected, because again, this was not my
21 case. I assisted after I arrived, so I'm not 100 percent
22 sure of all the evidence that was collected.

23 Q Is there anything else you collected, paperwork wise,
24 that were letters from my client that you felt was
25 relevant to this case or in any way mentioned --

1 A I believe what you have is what I collected, which is
2 what we felt was relevant.

3 MS. DAVIS: Okay. I don't have anything further,
4 Your Honor.

5 THE COURT: All right. From the State?

6 MS. CAMPBELL: Just a couple.

7 REDIRECT EXAMINATION:

8 BY MS. CAMPBELL:

9 Q She has asked you about specifics in the letters.
10 Without going through every one of them that you said,
11 just the highlighted part, and one of them is signed by
12 Mr. Parvin.

13 A Would you like me to read it?

14 Q The highlighted part.

15 A "I wanted you to read the one about Mexican cartels.
16 That is another topic for my trial, whether those men were
17 in organized crime or not. I had to consider the
18 possibility."

19 Q Another letter dated the 10th September, 2010, the
20 highlighted part.

21 A "I agree with everything you said, and I know that my
22 PTSD will be a major part of the case. Ms. Davis will
23 explore it thoroughly and will hire a specialized psych to
24 interview me and others."

25 Q And these are just two of the references. You've

1 mentioned others.

2 A Yes, ma'am.

3 MS. CAMPBELL: Thank you. I don't have anything
4 further.

5 THE COURT: Anything further?

6 MS. DAVIS: No, sir, Your Honor.

7 THE COURT: All right. Thank you. You may step
8 down.

9 Any further witnesses by the State?

10 MS. CAMPBELL: No further witnesses, Your Honor.

11 THE COURT: By the defense?

12 MS. DAVIS: No, sir, Your Honor.

13 THE COURT: All right. Any argument?

14 MS. CAMPBELL: Your Honor, I think we met our -- did
15 you want to hear from me first?

16 THE COURT: Yes.

17 MS. CAMPBELL: I'm sorry, Your Honor. I think under
18 Bakis, Register and then under Frazier, Your Honor, we
19 have met our -- what we need to prove in order to get the
20 court order for the handwriting sample.

21 We basically have to show the seriousness of the
22 crime in the course of the evidence, if there is a less
23 intrusive need.

24 I think, Your Honor, when they're talking in Register
25 and Bakis about that, they're specifically talking about

1 the gathering of blood and things of that nature.

2 In handwriting examples as outlined in State vs.
3 Antoine Frazier, Your Honor. It talks about how it is not
4 self-incrimination in order to require the defendant to
5 turn over a handwriting sample if it could be material as
6 to any aspect of the case.

7 Your Honor, in these letters, we just highlighted a
8 couple of references he has made to his upcoming trial and
9 things of that nature, and we are anticipating -- we don't
10 know if it would be actually in our case in chief, but it
11 could become an issue in cross-examination or in some part
12 of that, or it could be our case in chief, and therefore,
13 we have made the showing that it was relevant. We would
14 respectfully request the handwriting sample be ordered.

15 THE COURT: All right.

16 MS. CAMPBELL: Of course, Your Honor, we didn't put
17 up any testimony that it wouldn't be intrusive like
18 medically, like you would like for getting blood, but of
19 course, in the manner in which it would be obtained, I
20 don't think would be intrusive in my manner.

21 THE COURT: By the defense?

22 MS. DAVIS: Your Honor, I have no argument in that
23 regard.

24 I would like to address in general the general
25 discovery issue is that we had the hearing before you on

1 the 18th in which I was told that we had everything that
2 the State had; that they had turned over everything.

3 We since received 150 pages of discovery that has --
4 that's been turned over to us since that motion. Now
5 we're having this hearing which is, you know, just days
6 away from the trial.

7 I would just ask, again, that if there is anything
8 else outstanding, anything else that we don't have that I
9 get that immediately so that we have everything we need
10 before trial. My understanding is it's still being called
11 on the 12th.

12 MS. CAMPBELL: Your Honor, what we turned over to
13 them is at their request. We reviewed the evidence and
14 tried to set it up the week before Thanksgiving.

15 There was some miscommunication, something in their
16 office, where they didn't get their e-mails or their voice
17 mail.

18 We then made copies of -- there were some items taken
19 from the victim's residence that they requested that they
20 have inspected as part of the evidence when they requested
21 copies of those. Of course, we complied with that
22 yesterday and turned it over.

23 MS. DAVIS: Your Honor, what she is referring to is
24 accurate. We reviewed the evidence yesterday. There
25 were, I think, 46 pages turned over where they had done a

1 search of one of the victim's rooms.

2 What I'm referring to is the discovery we received 20
3 minutes after our motion to compel on the 18th, which is
4 in no way stuff that we knew existed, one of which is the
5 lead investigator's 20-page report of what he did in this
6 case and the summaries that he wrote, plus all the other
7 stuff that was in this, which was new to us.

8 I'm not referring -- I understand that we asked for
9 the stuff that was in evidence yesterday that the State
10 didn't have and that we didn't have.

11 What I'm referring to is the stuff we were given
12 right after the motion to compel when we were told we had
13 everything. I just want to make sure we have everything
14 at this point.

15 MS. CAMPBELL: I don't know when they viewed the
16 things that were turned over to them, but again, I'm not
17 aware of anything that needs to be turned over to them.

18 I'll be glad to go over it with them again. We have
19 offered to meet them again. I don't know what else to do.

20 MS. DAVIS: Your Honor, it was -- it was an e-mail by
21 Ms. Outen that we received 20 minutes after the motion to
22 compel. It's new information. I just want to make sure
23 we have everything. That's all.

24 THE COURT: All right. Well, I find that the State
25 has met the burden of demonstrating to the Court -- to

1 this Court that probable cause exists to permit the State
2 to receive handwriting exemplars from the defendant in
3 that the State has established probable cause to prove
4 that the defendant did commit the alleged offenses.

5 There has been testimony showing that the material
6 may be relevant and material to the prosecution of the
7 case. The motion is appropriate and is justified pursuant
8 to State v. Frazier, Snyder and Register and find that the
9 handwriting samples, taking handwriting samples from the
10 defendant, does not violate the defendant's fifth
11 amendment right against self-incrimination, nor his fourth
12 amendment right to be free of unwarranted searches and
13 seizures in that these handwriting exemplars are merely
14 non-testimonial evidence as reflected by the order and
15 opinion in Schmerber v. California, South Carolina code
16 section 17-13-140 as amended, and the Richland County
17 Sheriff's Department, other law enforcement officers, are
18 authorized to get these handwriting exemplars.

19 It's ordered that the defendant shall immediately
20 provide at least 15 handwriting exemplars to law
21 enforcement.

22 MS. CAMPBELL: Thank you, Your Honor. We're prepared
23 to do that.

24 THE COURT: All right.

25 MS. CAMPBELL: May I have approach with an order

1 they've had an opportunity to review, with the Court's
2 approval?

3 (Pause).

4 THE COURT: And the order is further supplemented by
5 the written order that I just signed.

6 MS. CAMPBELL: Thank you, sir.

7 MS. DAVIS: Thank you, Your Honor.

8 (Whereupon, the proceedings were concluded.)
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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

I, Karen Ambroziak, Official Court Reporter for the
5th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of General Sessions for
Richland County, South Carolina, on the 29 day of
November, 2011.

March 29, 2012

Karen Ambroziak

Karen Ambroziak, Court Reporter

My Commission Expires: 04/01/14

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6) 2011-GS-40-0897
7) 2011-GS-40-0898
8) DECEMBER 12, 2011
9) COLUMBIA, SOUTH CAROLINA
10

11 (VOLUME I)

12 B E F O R E:

13 THE HONORABLE CLIFTON NEWMAN, JUDGE. ; And a Jury.
14

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

16 KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
17 NICOLE M. SIMPSON, ASSISTANT SOLICITOR
18 MEGHAN WALKER, ASSISTANT SOLICITOR
19 ATTORNEYS FOR THE STATE

20 FIELDING PRINGLE, ASSISTANT PUBLIC DEFENDER
21 LUKE SHEALEY, ASSISTANT PUBLIC DEFENDER
22 JENNIFER DAVIS, ASSISTANT PUBLIC DEFENDER
23 ATTORNEYS FOR THE DEFENDANT

24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

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5	S-72	PHOTOGRAPH		538
6	S-73	PHOTOGRAPH		538
7	S-74	PHOTOGRAPH		538
8	S-75	PHOTOGRAPH		538
9	S-76	PHOTOGRAPH		538
10	S-77	PHOTOGRAPH		538
11	S-78	PHOTOGRAPH		521
12	S-79	PHOTOGRAPH		521
13	S-80	PHOTOGRAPH		521
14	S-81	PHOTOGRAPH		521
15	S-82	PHOTOGRAPH		521
16	S-83	PHOTOGRAPH		523
17	S-84	PHOTOGRAPH		523
18	S-85	PHOTOGRAPH		523
19	S-86	PHOTOGRAPH		523
20	S-87	PHOTOGRAPH		577
21	S-88	PHOTOGRAPH		577
22	S-89	PHOTOGRAPH		577
23	S-90	PHOTOGRAPH		577
24	S-91	PHOTOGRAPH		578
25	S-92	PHOTOGRAPH		578

1		EXHIBITS		
2	NO.	DESCRIPTION	ID.	EV.
3	S-93	PHOTOGRAPH		578
4	S-94	PHOTOGRAPH		578
5	S-95	PHOTOGRAPH	445	
6	S-96	PHOTOGRAPH	445	
7	S-97	PHOTOGRAPH	445	
8	S-98	PHOTOGRAPH		589
9	S-99	PHOTOGRAPH		589
10	S-100	PHOTOGRAPH		589
11	S-101	PHOTOGRAPH		589
12	S-102	PHOTOGRAPH		589
13	S-103	PHOTOGRAPH		589
14	S-104	PHOTOGRAPH		589
15	S-105	PHOTOGRAPH		589
16	S-106	PHOTOGRAPH		578
17	S-107	PHOTOGRAPH	446	
18	S-108	PHOTOGRAPH	446	
19	S-109	PHOTOGRAPH	446	
20	S-110	PHOTOGRAPH		581
21	S-111	PHOTOGRAPH		581
22	S-112	PHOTOGRAPH		581
23	S-113	PHOTOGRAPH		581
24	S-114	PHOTOGRAPH		581
25	S-115	PHOTOGRAPH		581

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-116	PHOTOGRAPH	446	
4	S-117	PHOTOGRAPH	446	
5	S-118	PHOTOGRAPH	446	
6	S-119	PHOTOGRAPH	446	
7	S-120	PHOTOGRAPH	447	
8	S-121	PHOTOGRAPH	447	
9	S-122	BLOWUP	447	
10	S-123	BLOWUP OF DIAGRAM		543
11	S-124	CELL PHONE CHARGER		
12	S-125	GSR KIT		
13	S-126	BUCCAL SWAB		792
14	S-127	CELL PHONES		540
15	S-128	BUDWEISER BOX		581
16	S-129	GREEN SHIRT, RED HAT, BLUE HAT		567
17	S-130	NAIL SCRAPINGS		
18	S-131	EDGAR LOPEZ CLOTHES		571
19	S-132	SWABS		792
20	S-133	PROJECTILE		489
21	S-134	SWAB		792
22	S-135	CARTRIDGE CASING		842
23	S-136	PRINT CARDS		595
24	S-137	PABLO GUZMAN-GUTIERREZ CLOTHES		571
25	S-138	SWABS		792

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-139	PROJECTILE		841
4	S-140	BOX OF BEER CANS		565
5	S-141	SWAB OF DEFENDANT		724
6	S-142	LATENT PRINT CARD		636
7	S-143	LATENT PRINT CARD		636
8	S-144	LATENT PRINT CARD		594
9	S-145	PHOTOGRAPH	449	
10	S-146	PHOTOGRAPH	449	
11	S-147	PHOTOGRAPH	449	
12	S-148	PHOTOGRAPH	449	
13	S-149	PHOTOGRAPH	449	
14	S-150	PHOTOGRAPH	449	
15	S-151	PHOTOGRAPH	449	
16	S-152	PHOTOGRAPH	449	
17	S-153	PHOTOGRAPH	449	
18	S-154	PHOTOGRAPH	449	
19	S-155	PHOTOGRAPH		596
20	S-156	PHOTOGRAPH		596
21	S-157	PHOTOGRAPH		596
22	S-158	PHOTOGRAPH		596
23	S-159	PHOTOGRAPH		596
24	S-160	PHOTOGRAPH		596
25	S-161	PHOTOGRAPH		596

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-161	PHOTOGRAPH		596
4	S-162	PHOTOGRAPH		596
5	S-163	PHOTOGRAPH		596
6	S-164	PHOTOGRAPH		596
7	S-165	PHOTOGRAPH		596
8	S-166	PHOTOGRAPH		596
9	S-167	PHOTOGRAPH		613
10	S-168	PHOTOGRAPH		613
11	S-169	3 PAGES OF FINGERPRINT CARDS		658
12	S-170	BUSINESS RECORDS FROM LOUISIANA		665
13	S-171	BUSINESS RECORDS FROM LOUISIANA		665
14	S-172	CHART	451	
15	S-173	CHART	451	
16	S-174	BUSINESS RECORDS - JAMESON INN		683
17	S-175	BUSINESS RECORDS - JAMESON INN		683
18	S-176	PHOTOGRAPH		746
19	S-177	PHOTOGRAPH		746
20	S-178	PHOTOGRAPH		746
21	S-179	PHOTOGRAPH		746
22	S-180	PHOTOGRAPH		746
23	S-181	PHOTOGRAPH		746
24	S-182	PHOTOGRAPH		746
25	S-183	PHOTOGRAPH		746

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-184	PHOTOGRAPH		746
4	S-185	PHOTOGRAPH		746
5	S-186	PHOTOGRAPH		746
6	S-187	PHOTOGRAPH		746
7	S-188	PHOTOGRAPH		746
8	S-189	PHOTOGRAPH		746
9	S-190	PHOTOGRAPH		746
10	S-191	PHOTOGRAPH		746
11	S-192	PHOTOGRAPH		746
12	S-193	PHOTOGRAPH		746
13	S-194	BLOWUP PHOTOGRAPH		728
14	S-195	BLOWUP	453	
15	S-196	BLOWUP	453	
16	S-197	BUCCAL SWAB		792
17	S-198	BLOWUP		
18	S-199	BLOWUP		880
19	S-200	BLOWUP		880
20	S-201	SWAB		792
21	S-202	SWAB		792
22	S-203	SWAB		792
23	S-204	SWAB		792
24	S-205	SUMMARY	453	
25	S-S06	SUMMARY	453	

	EXHIBITS			
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-207	SUMMARY	454	
4	S-208	ROSSI GUN	454	
5	S-209	TAURUS GUN	454	
6	S-210	BOX OF MISCELLANEOUS AMMUNITION	454	
7	S-211	PAPERWORK FOR KIA VAN		866
8	S-212	BLOWUP MAP		1471
9	S-213	GUN	454	
10	S-214	GUN	454	
11	S-215	GUN	454	
12	S-216	GUN	454	
13	S-217	BONG		1463
14	S-218	PHOTOGRAPH		1466
15	S-219	GLASS PIPE		1463
16	S-220	PHOTOGRAPH	455	
17	S-221	PHOTOGRAPH	455	
18	S-222	PHOTOGRAPH	455	
19	S-223	PHOTOGRAPH		1463
20	S-224	PHOTOGRAPH		1457
21	S-225	PHOTOGRAPH		1465
22	S-226	PHOTOGRAPH		1465
23	S-227	PHOTOGRAPH		1465
24	S-228	PHOTOGRAPH		1465
25	S-229	PHOTOGRAPH		1465

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-230	PHOTOGRAPH		1465
4				
5	D-1	PHOTOGRAPH		600
6	D-2	PHOTOGRAPH		600
7	D-3	DOCUMENT FROM JAMESON INN		685
8	D-4	1 PAGE DOCUMENT		937
9	D-5-A	PURCHASE ORDER DOCUMENT		1645
10	D-5-B	RECEIPT DOCUMENT		1645
11	D-5-C	DRIVER'S LICENSE DOCUMENT		1645
12	D-6-A	PURCHASE ORDER DOCUMENT		1645
13	D-6-B	DRIVER'S LICENSE DOCUMENT		1645
14	D-7-A	PURCHASE ORDER DOCUMENT		1645
15	D-7-B	RECEIPT DOCUMENT		1645
16	D-8-A	PURCHASE ORDER DOCUMENT		1645
17	D-8-B	RECEIPT DOCUMENT		1645
18	D-9	PURCHASE ORDER		1645
19	D-10-A	PURCHASE ORDER		1645
20	D-10-B	RECEIPT DOCUMENT		1645
21	D-10-C	DRIVER'S LICENSE DOCUMENT		1645
22	D-11-A	PURCHASE ORDER		1645
23	D-11-B	RECEIPT		1645
24	D-11-C	DRIVER'S LICENSE DOCUMENT		1645
25	D-12-A			1645

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	D-12-B			1645
4	D-13-A			1645
5	D-13-B			1645
6	D-13-C			1645
7	D-14	PHOTOGRAPH	1050	
8	D-15	PHOTOGRAPH	1050	
9	D-16	PHOTOGRAPH	1050	
10	D-17	PHOTOGRAPH	1050	
11	D-18	PHOTOGRAPH	1051	
12	D-19	PHOTOGRAPH	1051	
13	D-20	PHOTOGRAPH	1051	
14	D-21	PHOTOGRAPH	1051	
15	D-22	PHOTOGRAPH	1051	
16	D-23	PHOTOGRAPH	1051	
17	D-24	PHOTOGRAPH	1051	
18	D-25	PHOTOGRAPH	1051	
19	D-26	PHOTOGRAPH	1051	
20	D-27	PHOTOGRAPH	1051	
21	D-28	PHOTOGRAPH	1051	
22	D-29	PHOTOGRAPH	1051	
23	D-30	PHOTOGRAPH	1052	
24	D-31	PHOTOGRAPH	1052	
25	D-32	PHOTOGRAPH	1052	

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	D-33	PHOTOGRAPH	1052	
4	D-34	1 PAGE POEM	1052	
5	D-35	1 PAGE POEM	1052	
6	D-36	1 PAGE POEM	1052	
7	D-37	PHOTOGRAPH	1052	
8	D-38	PHOTOGRAPH	1052	
9	D-39	PHOTOGRAPH	1052	
10	D-40	AWARD DOCUMENT		1352
11	D-41	AWARD DOCUMENT		1078
12	D-42	AWARD DOCUMENT	1052	
13	D-43	AWARD DOCUMENT		1078
14	D-44	AWARD DOCUMENT	1053	
15	D-45	AWARD DOCUMENT		1078
16	D-46	AWARD DOCUMENT		1078
17	D-47	AWARD DOCUMENT		1078
18	D-48	AWARD DOCUMENT		1078
19	D-49	AWARD DOCUMENT		1078
20	D-50	AWARD DOCUMENT		1078
21	D-51	AWARD DOCUMENT		1078
22	D-52	AWARD DOCUMENT		1078
23	D-53	AWARD DOCUMENT		1078
24	D-54	MULTIPLE DOCUMENTS		1226
25				

1		EXHIBITS		
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	MULTIPLE DOCUMENTS	178	
4	CT-2	COLORED PHOTOGRAPH	1013	
5	CT-3	PHOTOGRAPH	1013	
6	CT-4	PHOTOGRAPH	1013	
7	CT-5	PHOTOGRAPH	1013	
8	CT-6	PHOTOGRAPH	1013	
9	CT-7	PHOTOGRAPH	1013	
10	CT-8	PHOTOGRAPH	1013	
11	CT-9	PHOTOGRAPH	1013	
12	CT-10	PHOTOGRAPH	1014	
13	CT-11	PHOTOGRAPH	1014	
14	CT-12	PHOTOGRAPH	1014	
15	CT-13	COLORED PHOTOGRAPH	1014	
16	CT-14	BRIEF DOCUMENT	1339	
17	CT-15	JUROR NOTE	1701	
18	CT-16	JUROR NOTE	1701	
19	CT-17	JUROR NOTE	1701	
20	CT-18	JUROR NOTE	1751	
21	CT-19	JUROR NOTE	1751	
22	CT-20	JUROR NOTE	1751	
23	CT-21	JUROR NOTE	1751	
24	CT-22	JUROR NOTE	1751	
25				

1 (PROCEEDINGS, DECEMBER 12, 2011)

2 THE COURT: All right, the State would call your
3 case, please.

4 MS. SIMPSON: The State versus Leslie Todd Parvin.
5 He is charged with two counts of murder; indictment numbers
6 2011-GS-40-0897 and 0898.

7 THE COURT: All right, ladies and gentlemen, the
8 State has called for trial the case of the State versus
9 Leslie Todd Parvin.

10 This case comes into court as a result of an
11 indictment returned by the Grand Jury of Richland County
12 charging Mr. Parvin with two counts of murder.

13 He has pled not guilty to these two charges.

14 He's presumed to be not guilty of the charges. He
15 cannot be found guilty of the charges, unless the State
16 presents evidence which convinces the jury of his guilt
17 beyond a reasonable doubt. And that's the purpose of the
18 trial and the purpose of which you all have been sent up for
19 jury selection and the trial with regard to this case.

20 Mr. Parvin, if you would stand and face the jury
21 panel, along with counsel.

22 And, counsel, if you will introduce yourselves.

23 MS. DAVIS: Jennifer Davis of the Public
24 Defender's office.

25 MS. PRINGLE: Fielding Pringle with the Public

1 Defender's office.

2 MR. SHEALEY: Luke Shealey of the Public
3 Defender's office.

4 THE COURT: All right. Thank you.

5 And the State is represented through the Fifth
6 Circuit solicitor's office. We will let you introduce
7 yourselves, as well as anyone else you would like to.

8 MS. CAMPBELL: I'm Luck Campbell. I'm with the
9 Fifth Circuit solicitor's office.

10 MS. WALKER: Meghan Walker with the circuit
11 solicitor's office.

12 MS. SIMPSON: I'm Nicole Simpson. I'm with the
13 Fifth Circuit solicitor's office.

14 THE COURT: All right. And, ladies and gentlemen,
15 we are here for jury selection.

16 I want to tell you at the outset that as part of
17 the jury selection process it's necessary that I ask you a
18 number of questions. I want you to remember that you are
19 under oath to give complete and truthful responses to all
20 questions that you are asked. It is absolutely essential
21 that you disclose any relevant information so that the
22 lawyers will have the benefit of that information in
23 selecting this jury.

24 Before proceeding with the questions I want to
25 confer with the lawyers here at the side bar.

1 (Whereupon, the lawyers approached the bench for
2 an off-the-record discussion)

3 THE COURT: Ladies and gentlemen, this trial may
4 well extend beyond Friday of this week. I need to let you
5 know that so that -- of course, we do not plan to be here on
6 Christmas or Christmas eve. It's impossible for me to know
7 exactly how long a case will take to be tried, because there
8 are a number of witnesses and there is quite a bit of
9 evidence and testimony that will be presented to you for
10 your consideration. So at some point along the way if that
11 might make you unavailable to serve, I need to have the
12 benefit of that information.

13 Has any member of the jury panel or any member of
14 your immediate family ever been a victim of a crime of
15 violence? And crimes of violence are generally referred to
16 as rape, robbery, murder, assault.

17 If you or any member of your immediate family has
18 ever been the victim of a crime of violence, please let us
19 know about it.

20 When you stand, tell us your juror number and then
21 tell us the basis for your standing.

22 Yes, ma'am.

23 JUROR NUMBER 274: My name is Tina Walker. My
24 number is 274. My sister-in-law and her boyfriend were
25 brutally murdered in Lexington three years ago.

1 THE COURT: All right. And Ms. Walker, do you
2 believe that would prevent you from being a fair and
3 impartial juror in a case where a person is accused of
4 murder?

5 JUROR NUMBER 274: Yes.

6 THE COURT: All right. And --

7 JUROR NUMBER 274: And the reasons behind that are
8 --

9 THE COURT: You don't need to tell me the reasons
10 behind it, but if you do not believe that you could be fair
11 and impartial, that's all I need to know.

12 You do not believe that you could be and
13 impartial?

14 JUROR NUMBER 274: No.

15 THE COURT: All right, Ms. Walker will not be
16 considered for selection.

17 Thank you, but stay with us.

18 Yes, sir.

19 JUROR NUMBER 307: My name is Doug Harder. I'm
20 juror number 307.

21 The last time I was in the courtroom it was for
22 murder testimony that I gave. One of my employees was shot
23 and killed. I witnessed the murder. He was later convicted
24 of the murder.

25 THE COURT: All right. And, Mr. Harder, would

1 that prevent you from being a fair and impartial juror if
2 you were selected to serve in this case?

3 JUROR NUMBER 307: Yes, I think it would.

4 THE COURT: All right. And you could not be fair
5 and impartial?

6 JUROR NUMBER 307: I don't believe so.

7 THE COURT: All right. Mr. Harder will not be
8 considered for service.

9 Yes, 'ma'am.

10 JUROR NUMBER 311: My name is Charlotte
11 Seaman-Huynh. I'm juror number 311.

12 THE COURT: Yes, ma'am.

13 JUROR NUMBER 311: I was raped in college and I
14 never had my trial -- or never had my case went to trial,
15 but if the case was called for either sexual assault or
16 rape, I don't think I could be impartial.

17 THE COURT: And the -- as I had you to stand based
18 on the question being have you ever been the victim of a
19 crime of violence.

20 JUROR NUMBER 311: It was tried through the
21 college.

22 THE COURT: All right. And the last part of what
23 you said something about if this case involved what?

24 JUROR NUMBER 311: Any sort of sexual assault or
25 rape.

1 THE COURT: All right. And this question does not
2 apply only to this juror, but to all the jurors, and that
3 is, is that an allegation may be made in this case regarding
4 some allegation of homosexuality or sex for money -- and/or
5 sex for money. And would this allegation prevent any juror
6 from being fair and impartial?

7 And specifically now as relates to you, based on
8 your prior experience, would that prevent you from being a
9 fair and impartial juror?

10 JUROR NUMBER 311: I believe that it would.

11 THE COURT: All right. Thank you. I will not
12 consider this juror for service.

13 JUROR NUMBER 16: Juror Number 16, Esther Blount.
14 My boss' wife was killed by her son.

15 THE COURT: Would that prevent you from being a
16 fair and impartial juror in this case?

17 JUROR NUMBER 16: I'm really not sure. It's going
18 to depend on what the circumstances are, but I got a feeling
19 it might be.

20 THE COURT: All right. We will ask you some more
21 questions later.

22 Yes, ma'am.

23 JUROR NUMBER 137: Juror number 137.

24 My home was burglarized two years ago.

25 THE COURT: All right. And do believe the fact

1 that your home was burglarized two years ago would prevent
2 you from being a fair and impartial juror in this case?

3 JUROR NUMBER 137: No.

4 THE COURT: Thank you. Juror number 237?

5 JUROR NUMBER 137: 137.

6 THE COURT: 137. Thank you.

7 If any member of the jury panel or any member of
8 your immediate family has ever been accused, or charged, or
9 convicted of committing a crime of violence. If so, please
10 stand.

11 If any juror or any member of your immediate
12 family has ever been convicted of, accused of, or charged
13 with committing a crime of violence. If so, please stand.

14 Remembering that it's not optional to you whether
15 or not you disclose this information, based on your oath as
16 a juror, any question that applies to you, you must disclose
17 the information. If so, please stand.

18 Yes, ma'am.

19 JUROR NUMBER 93: My uncle -- my juror number is
20 93. My uncles were accused but they weren't convicted.

21 THE COURT: They were accused but not convicted?

22 JUROR NUMBER 93: Yes, sir.

23 THE COURT: All right. Would that prevent you
24 from you being fair and impartial in this case?

25 JUROR NUMBER 93: No, sir.

1 THE COURT: All right. Thank you.

2 Now, ladies and gentlemen, I certainly understand
3 that it's a natural tendency of anyone to hesitate to stand
4 and give personal information, but that's the nature of the
5 beast at this point. You are on jury duty and you must
6 disclose any information that under your oath you are
7 required to give, and that is to answer all these questions
8 that's being asked truthfully.

9 Is any member of the jury panel or any member of
10 your immediate family related to any of the lawyers involved
11 in this case? That's either Ms. Pringle, Ms. Davis, Mr.
12 Shealey, or anyone who works in the Public Defender's
13 office; or Ms. Campbell, Ms. Simpson, Ms. Walker, or anyone
14 who works under Dan Johnson in the Fifth Circuit solicitor's
15 office? If so, please stand if you are a friend, relative,
16 associate, or if you know any of them, please stand.

17 Yes, sir.

18 JUROR NUMBER 293: I used to be good friends with
19 Luck Campbell back in college.

20 THE COURT: All right. And your juror number is?

21 JUROR NUMBER 293: 293.

22 THE COURT: 293.

23 Still friends, or used to be?

24 JUROR NUMBER 293: I haven't seen her in a long
25 time.

1 THE COURT: All right. And would that fact affect
2 your ability to be fair and impartial?

3 JUROR NUMBER 293: Judge, it really may.

4 THE COURT: All right. The fact that you know Ms.
5 Campbell and she's involved in the prosecution of this case
6 might affect your ability to be fair and impartial?

7 JUROR NUMBER 293: I would have to believe it
8 would.

9 THE COURT: All right. And your juror number?

10 JUROR NUMBER 293: 293.

11 THE COURT: Juror number 293.

12 Juror number 293 will not be considered.

13 Yes, sir.

14 JUROR NUMBER 305: 305, John Wilkins.

15 About ten years ago I worked in the Public
16 Defender's office with Ms. Pringle, and I believe Ms.
17 Campbell was at the solicitor's office at the time.

18 THE COURT: All right. And Mr. Wilkins, would
19 that fact affect your ability to be fair and impartial?

20 JUROR NUMBER 305: Not at all.

21 THE COURT: Thank you very much.

22 Does any member of the jury panel or any member of
23 your immediate family belong to or contribute to any
24 organization that supports prisoners rights or victims
25 rights, and that would include MADD, SADD, CAVE, The

1 Innocence Project, or any such organization that supports
2 victims rights or prisoners rights? If so please stand.

3 No one standing.

4 If any member of the jury panel or any member of
5 your immediate family has ever been diagnosed with
6 Post-Traumatic Stress Syndrome. If any of you or any member
7 of your immediate family has ever been diagnosed with that
8 medical condition, please stand.

9 All right. Ma'am, I think we disqualified you, so
10 you don't need to stand. Thank you.

11 JUROR NUMBER 148: Number 148.

12 THE COURT: Yes, ma'am.

13 JUROR NUMBER 148: My brother-in-law went to Viet
14 Nam and was diagnosed with Post-Traumatic Syndrome.

15 THE COURT: All right. Number 148. Thank you
16 very much.

17 If you have ever served as a member of any branch
18 of the U.S. Army -- any branch of the U.S. military, please
19 stand, if you have ever served in the military.

20 If you will tell us where you served. I mean not
21 where you served, but what branch that you served in.

22 Starting here. Yes, sir, juror number?

23 JUROR NUMBER 225: 225. United States Army.

24 THE COURT: All right.

25 JUROR NUMBER 245: 245, U.S. Navy.

1 JUROR NUMBER 282: 282, United States Navy.

2 JUROR NUMBER 119: 119, United States Air Force.

3 JUROR NUMBER 305: 305, United States Navy.

4 JUROR NUMBER 13: 13, U.S. Army.

5 JUROR NUMBER 170: 170, U.S. Army.

6 THE COURT: Thank you.

7 If any member of the jury panel has -- if you have
8 a close friend, or acquaintance, or family member who works
9 in law enforcement, who works in the prosecution of any
10 sort, please stand. If you have any friends, close friends,
11 close family members who work in law enforcement or involved
12 in the prosecution, please stand.

13 Yes, ma'am.

14 JUROR NUMBER 62: Juror number 62, and my
15 brother-in-law is an officer with SLED.

16 THE COURT: Thank you.

17 JUROR NUMBER 156: Kimberly McManus, 156. My
18 husband is with the Attorney General's office, Internet
19 prosecution.

20 THE COURT: Thank you.

21 JUROR NUMBER 146: 146. My husband is a captain
22 with the City of Columbia Police Department.

23 THE COURT: Thank you.

24 JUROR NUMBER 261: 261. My cousins are sheriffs
25 and police officers.

1 THE COURT: Thank you.
2 JUROR NUMBER 304: 304. I work in a law firm.
3 THE COURT: Your juror number is?
4 JUROR NUMBER 304: 304.
5 THE COURT: 304.
6 Which law firm?
7 JUROR NUMBER 304: Robinson, Padgett.
8 THE COURT: Thank you.
9 Yes, ma'am.
10 JUROR NUMBER 137: 137. My parents are U.S.
11 capitol police.
12 THE COURT: Thank you.
13 JUROR NUMBER 40: Juror 40. My husband is at
14 SCDC, division of security.
15 THE COURT: All right.
16 JUROR NUMBER 13: Number 13. I work with Eric
17 Bland and Ronnie Richards, lawyers.
18 THE COURT: All right.
19 JUROR NUMBER 211: 211. A friend of mine is a
20 solicitor in Myrtle Beach.
21 THE COURT: Thank you.
22 JUROR NUMBER 110: 110. One of my friends is a
23 police officer.
24 THE COURT: Thank you.
25 Yes, sir.

1 JUROR NUMBER 170: 170. My spouse works for the
2 Department of Public Safety.

3 THE COURT: Thank you.

4 JUROR NUMBER 148: 148. I have a close friend
5 that works in the Richland County sheriff's department.

6 THE COURT: Thank you.

7 JUROR NUMBER 193: 193. My cousin works for DNR.

8 THE COURT: All right. Thank you, sir.

9 If any member of the jury panel, your immediate
10 family, or close personal friend has ever -- if you have
11 been deployed overseas while serving in the military. You
12 or a close family member, friend, close friend ever been
13 deployed overseas while serving in the military. If so,
14 tell us about it.

15 Yes, sir.

16 JUROR NUMBER 245: 245, U.S. Navy, Viet Nam.

17 THE COURT: All right.

18 JUROR NUMBER 53: 53. I have a nephew that served
19 in Desert Storm.

20 THE COURT: Thank you.

21 JUROR NUMBER 226: Juror 226. I have a close
22 friend that served two tours in Iraq.

23 THE COURT: All right. Thank you.

24 Yes, ma'am.

25 JUROR NUMBER 156: I'm juror 156. My uncle, my

1 cousin and my best friend are both officers in Iraq.

2 THE COURT: Thank you.

3 Yes, ma'am.

4 JUROR NUMBER 79: 79. My husband served in Navy.

5 THE COURT: All right. Yes, ma'am.

6 JUROR NUMBER 161: 161. I have two friends that
7 served in Iraq.

8 THE COURT: All right.

9 Yes, ma'am.

10 JUROR NUMBER 46: My husband served in Iraq and
11 Kosovo.

12 THE COURT: Juror number, please?

13 JUROR NUMBER 46: 46.

14 THE COURT: Thank you.

15 JUROR NUMBER 128: 128. I have had several close
16 friends serve in Iraq, as well as Afghanistan. My cousin
17 has done two terms there.

18 THE COURT: All right. Thank you.

19 JUROR NUMBER 157: My husband served in Viet Nam.

20 THE COURT: Your juror number?

21 JUROR NUMBER 157: 157.

22 THE COURT: All right.

23 JUROR NUMBER 13: 13. My wife is retired Army and
24 she was deployed or served overseas in Germany and England.
25 I served in Alaska and they considered it overseas. I also

1 have -- we attend services, church services, for many
2 friends who are in the service.

3 THE COURT: All right.

4 Yes, ma'am.

5 JUROR NUMBER 310: Juror number 310. My brother
6 is in Germany.

7 THE COURT: Thank you.

8 JUROR NUMBER 305: 305. I was in Desert Shield
9 and Desert Storm.

10 THE COURT: All right.

11 Yes, sir.

12 JUROR NUMBER 211: 211. I have had several close
13 friends serve in Afghanistan and Iraq.

14 THE COURT: Thank you.

15 JUROR NUMBER 110: 110. My husband has done three
16 tours in Afghanistan and Iraq.

17 THE COURT: Thank you.

18 Yes, sir.

19 JUROR NUMBER 170: 170, two tours in Iraq.

20 THE COURT: Thank you.

21 Yes, sir.

22 JUROR NUMBER 78: 78. I have two friends who
23 served in Afghanistan and Iraq, and my nephew is going to be
24 deployed early next year.

25 THE COURT: Thank you, sir.

1 Has any juror or a member of your immediate family
2 or a close personal friend ever been a member of the
3 National Rifle Association? If so, please stand.

4 All right. Yes, sir.

5 JUROR NUMBER 78: 78. I'm a lifetime member.

6 THE COURT: All right.

7 Yes, ma'am.

8 JUROR NUMBER 110: 110. My husband is a member.

9 THE COURT: All right.

10 Yes, sir.

11 JUROR NUMBER 13: 13. My father is a member.

12 THE COURT: All right.

13 Yes, ma'am.

14 JUROR NUMBER 274: 274. Half of my siblings are
15 members.

16 THE COURT: All right.

17 Yes, sir.

18 JUROR NUMBER 50: 50. My father is a member.

19 THE COURT: All right.

20 Yes, sir.

21 JUROR NUMBER 282: 282. I'm a member.

22 THE COURT: All right.

23 JUROR NUMBER 225: 225. I'm a life member.

24 THE COURT: All right. Thank you, sir.

25 As I stated earlier, there may be allegations of

1 homosexuality or homosexual sex for money in this case. And
2 if this allegation would prevent you from being a fair and
3 impartial juror, please stand.

4 No one is standing.

5 Ladies and gentlemen, the following people may be
6 witnesses in this case. And if any of these folks are here,
7 I need you to stand so the jury can see you. And I'll ask
8 the jury after you have stood or at the end of the questions
9 whether they know you.

10 The possible witnesses in this case include the
11 following, if you will stand.

12 Lagunes Dimas Fernandez. Fernandez.

13 Not here.

14 Richland County Sheriff Department, the following
15 folks who may be seated up here.

16 Chauncey Smith.

17 Misty Lewis.

18 Jen O'Donnell.

19 Malgorzata Zalewska.

20 Investigator Brien Gwyn.

21 Investigator Willie Gonzales.

22 Deputy Raul Ortiz.

23 Lieutenant Rafael Gonzales.

24 Roberto Marlin Gonzales.

25 Dario Hernandez.

1	Esau Hernandez Monroy.
2	Jose Luis Hernandez Monroy.
3	Investigator Taima Jordan.
4	Alfredo Vidal.
5	Sidario Marinex.
6	Sergeant Shawn McDaniels.
7	Andrea Thompson.
8	Major Stan Smith. Here.
9	Sergeant Kevin Isenhoward.
10	Adan Soto.
11	Marvin Santos.
12	Sammi Garcia.
13	Marlin Aracely Avila-Chigua.
14	Katia Medina.
15	Antonio Lopez.
16	Lieutenant Scott McDonald.
17	Debbie Goff.
18	Telodoro Guzman-Gutierrez.
19	Audrey Linfert.
20	Lyn Lesage from LA Fusion Center.
21	Chief Hill from Fort Jackson.
22	Shanna Parvin. Standing over there.
23	Leslie Maurice Parvin.
24	Josh Parvin. Over there.
25	Investigator Brian Godfrey.

1 Investigator Kevin Hinson.
2 The manager of Jameson Inn, located where?
3 Jameson Inn manager.
4 MS. SIMPSON: On Two Notch Road near the Home
5 Depot.
6 THE COURT: Two Notch at Home Depot.
7 Investigator Wendell Harris.
8 A custodian of records from AT&T and Verizon.
9 Senior deputy Bernadette Atencio.
10 Investigator Michael Beeler.
11 Harold Bouknight.
12 Trevor Holt.
13 Robert Oates.
14 Kristen Polis.
15 Stan Richards.
16 Yvonne Woods.
17 An EMT, John Isle.
18 Andrew Fowler.
19 County Coroner, Gary Watts.
20 Ann Neeley from the coroner's office.
21 Dr. Clay Nichols.
22 From SLED, Doris Yarborough.
23 Leonard Bradley.
24 Terri Gleason.
25 Sheriff's Department, Stephen Griffey.

1 Patricia Weed.
2 John Barron.
3 Thomas Darnell.
4 Also from sheriff's department Investigator Kerry
5 Johnson.
6 Also from the sheriff's department Trisha Odom.
7 Tena Goff.
8 Curtis Burnett.
9 Christine Barrickman.
10 911 custodian of records.
11 From SLED, Brandon Landrum.
12 John G.D. Roberts.
13 Dr. Richard Frierson.
14 Louisiana Department of Motor Vehicles, Jill Gyro.
15 Dr. Bradley Marcus.
16 Custodian of records from Alvin S. Glenn.
17 From SLED, Demi Garvin.
18 Gail Heath.
19 Chief Roland Hill from Fort Jackson.
20 Cambo Streeter.
21 Sheriff's Department, Diane Bodie.
22 Ben Moore.
23 Cheryl Taylor.
24 From SLED, Kimberly Mears.
25 Rose Wessinger.

1 Selena Kinard.
2 Hazella Baylor.
3 Lisa Waannanen.
4 Nikki Perry Hughes.
5 Amy Stephens.
6 Brandon J. Williams.
7 Patricia H. Crooks.
8 And from the South Carolina Army National Guard,
9 Corporal Ronnie Taylor.
10 There are some witnesses, other witnesses, and
11 some of them, these names I might have called already.
12 John Parvin.
13 James Parvin, who is standing over there.
14 Edwin Ahl, A-H-L.
15 Terry Austin.
16 Charles Bailey.
17 Carleton Birch.
18 General Gregory Bissey, B-I-S-S-E-Y.
19 Michael Cavalier.
20 Michael Dugal.
21 Daniel Smith.
22 Charles Hire.
23 Shelby Ingram.
24 Eric Kramer.
25 Eugene Loveless.

1	Tommy Marrero Cartenga.
2	Daniel Pecaro.
3	Donald Rutherford.
4	Arturo Scott.
5	Michael Weiss.
6	James White.
7	Phillip Wright.
8	Eugene Zehner.
9	Timothy Walls.
10	Sammi Garcia.
11	Esdras Hernandez.
12	Dario Hernandez.
13	Captain Brian Redmond.
14	Lee Jarmon.
15	Daytona Jarmon.
16	Adrianne Coleman.
17	Barbara Toole.
18	Paula Podewil.
19	Susan Swatsworth.
20	Bozhena Tabakman.
21	Rodney Villanueva.
22	Gary Yon.
23	Robert Tressel.
24	Bushan Agharkar.
25	Mark Cunningham.

1 Sandra Conradi.

2 Steven Chaney.

3 Amanda Koon.

4 Lisa Marrin.

5 Chris Marrin.

6 Any additional prospective witnesses by the State
7 or the defense?

8 MS. CAMPBELL: None by the State, Your Honor.

9 MS. PRINGLE: No, sir, Your Honor.

10 THE COURT: All right. Ladies and gentlemen,
11 those folks may testify as witnesses in this case. If you
12 believe or think that you know any of them, friend,
13 relative, or acquaintance of any of them, please stand.

14 Yes, ma'am.

15 JUROR NUMBER 62: Officer Rafael Gonzales is a
16 good friend of mine and my husband's.

17 THE COURT: And the fact that if he should testify
18 in this case, would that affect your ability to be fair and
19 impartial?

20 JUROR NUMBER 62: If he was directly related to
21 the crime or investigation in the crime, then yes.

22 THE COURT: Your juror number is?

23 JUROR NUMBER 62: I'm sorry, 62.

24 THE COURT: Now, he's listed as a prospective
25 witness. Now, what he will testify about I have no clue.

1 JUROR NUMBER 62: Then no.

2 THE COURT: No what?

3 JUROR NUMBER 62: No, that it will not affect my
4 ability to serve on the jury.

5 THE COURT: All right. Thank you.

6 Yes, ma'am.

7 JUROR NUMBER 146: Juror 146. I'm friends with
8 John Roberts from SLED and his wife, and my husband and him
9 are friends.

10 THE COURT: All right. Would that affect your
11 ability to be fair and impartial?

12 JUROR NUMBER 146: No.

13 THE COURT: All right. Thank you.

14 Yes, ma'am.

15 JUROR NUMBER 148: 148. Bozhena Tabakman. She
16 was my doctor at one time.

17 THE COURT: Did I pronounce the name right?

18 JUROR NUMBER 148: Yes.

19 THE COURT: She was your doctor at one time?

20 JUROR NUMBER 148: Yes.

21 THE COURT: All right. And would that fact affect
22 your ability to be fair and impartial?

23 JUROR NUMBER 148: No.

24 THE COURT: Thank you.

25 And, ladies and gentlemen, this alleged offense

1 occurred on or about -- these alleged offenses occurred on
2 or about July 30th, 2010 --

3 In what area of Richland County, solicitor?

4 MS. CAMPBELL: Your Honor, this happened in the
5 northeast area of Richland County.

6 THE COURT: All right.

7 MS. CAMPBELL: Near the Two Notch Road area out
8 there.

9 THE COURT: All right. And, ladies and gentlemen,
10 if any of you know anything about this case, or have heard
11 anything about this case, or have read anything about this
12 case, please stand.

13 (No response)

14 THE COURT: All right. Ladies and gentlemen, as I
15 mentioned at the outset, there's no way of knowing how long
16 this case may last. Typically cases of this nature last
17 about six or seven days with testimony and arguments and all
18 and jury deliberations.

19 Of course, I have no way of knowing how long this
20 is going to actually last, but if there is anything about
21 the length of this prospective case that would prevent you
22 from serving on this jury, please stand.

23 All right. If you all will come forward, please.

24 (Whereupon the following were bench conferences
25 taking place in the presence of all counsel and outside the

1 presence of the jury venire hearing)

2 THE CLERK: Your Honor, number 226.

3 THE COURT: All right.

4 JUROR NUMBER 226: All right. So I -- I have -- I
5 teach at the USC and I have a term of classes to prepare
6 for. I can certainly take time off this week, but next week
7 will become much more difficult.

8 THE COURT: All right. We -- we think that --
9 just speculation, we think that the case may go probably
10 through next Tuesday or so.

11 JUROR NUMBER 226: I have -- I -- I also have a
12 small time commitment on Monday morning that would require
13 me to be a little late. It would be a problem.

14 THE COURT: All right. Juror number -- your juror
15 number again?

16 JUROR NUMBER 226: 226.

17 THE COURT: 226. Okay. Thank you.

18 JUROR NUMBER 226: Okay.

19 (Whereupon, Juror Number 226 returned to the jury
20 venire panel)

21 (Whereupon, Juror Number 13 approached the bench)

22 THE CLERK: 13.

23 JUROR NUMBER 13: How are you doing?

24 THE COURT: Yes, sir.

25 JUROR NUMBER 13: My only concern is the --

1 running my own business, I do technology support and
2 litigation support. And --

3 THE COURT: Is that Larry Richter?

4 JUROR NUMBER 13: No, no. It's Ronnie Richter.

5 THE COURT: All right. Larry's in Charleston.

6 JUROR NUMBER 13: Larry's his nephew. Yeah.

7 Ronnie's in --

8 THE COURT: Right.

9 JUROR NUMBER 13: But because of this week, I
10 pushed off all the projects that I had for the Christmas
11 weeks, and the concern is when -- when you said, you know,
12 it might go into Christmas --

13 THE COURT: Well, it -- it -- you know, we don't
14 know. We called out a lot of names, so it may --

15 JUROR NUMBER 13: Yeah.

16 THE COURT: -- go into next Tuesday. Might even
17 be Wednesday.

18 JUROR NUMBER 13: The concern for me is -- more
19 for you guys -- is that if it goes into next week, I'm going
20 to be having to put a full day at work in after I leave
21 here, just because I got --

22 THE COURT: Okay.

23 JUROR NUMBER 13: -- I got to follow through with
24 the things that the client told me to do. So that -- that
25 was the other concern.

1 THE COURT: Okay. I think you'd be a good juror,
2 though.

3 JUROR NUMBER 13: Okay.

4 THE COURT: Stay with us.

5 (Whereupon, Juror Number 13 returned to the jury
6 venire panel)

7 (Whereupon, Juror number 195 approached the bench)

8 THE CLERK: 195.

9 JUROR NUMBER 195: My concern is that I have -- my
10 family is in the northeast, so I'm flying to New York
11 next -- on the 22nd. I'm happy to serve as long as I can
12 get out of here by the 22nd.

13 THE COURT: When is the 22nd? Next Monday? Oh,
14 we'll be through by then.

15 JUROR NUMBER 195: Monday's the 19th.

16 MR. SHEALEY: Thursday.

17 THE COURT: Oh, we'll be through by then.

18 JUROR NUMBER 195: Okay.

19 THE COURT: You're good, man.

20 JUROR NUMBER 195: Okay.

21 THE COURT: Okay. Stay with us.

22 (Whereupon, Juror Number 195 returned to the jury
23 venire panel)

24 (Whereupon, Juror Number 78 approach the bench)

25 THE CLERK: 78.

1 THE COURT: Yes, sir. Number 78, how are you
2 doing?

3 JUROR NUMBER 78: Yeah. Good. I'm a loss
4 prevention manager for Sears.

5 THE COURT: Uh-huh.

6 JUROR NUMBER 78: And 40 percent of our shrink
7 occurs during November and December.

8 THE COURT: Yeah. So you're a loss prevention.
9 So you --

10 JUROR NUMBER 78: I'm actually in charge of --
11 yeah -- catching, apprehending both internal and external.

12 THE COURT: Okay. I guess 30 percent is internal.

13 JUROR NUMBER 78: It varies, but yeah, probably.

14 THE COURT: All right. But other than that,
15 you're good to go?

16 JUROR NUMBER 78: Yeah.

17 THE COURT: Other than the inconvenience of --

18 JUROR NUMBER 78: Yeah. My boss is breathing down
19 my neck.

20 THE COURT: Okay. All right. Thank you.

21 (Whereupon, Juror Number 78 returned to the jury
22 venire panel)

23 (Whereupon, Juror Number 106 approached the bench)

24 THE CLERK: 106.

25 JUROR NUMBER 106: Several years ago I had an aunt

1 that was brutally murdered by her husband, and I sort of
2 feel like all the trauma that took place during that trial
3 in Berkeley, Charleston, I would not be able to --

4 THE COURT: Be fair?

5 JUROR NUMBER 106: -- be fair.

6 THE COURT: Okay. Your juror number is?

7 JUROR NUMBER 106: 106.

8 THE COURT: 106, okay.

9 (Whereupon, Juror Number 106 returned to the jury
10 venire panel)

11 THE COURT: Strike Number 106.

12 (Whereupon, Juror Number 193 approached the bench)

13 THE CLERK: 193.

14 JUROR NUMBER 193: Yes, sir.

15 THE COURT: Yes, sir.

16 JUROR NUMBER 193: Self-employed, and it would be
17 hard to be away for a week or more from my business.

18 THE COURT: Okay. What kind of work is it?

19 JUROR NUMBER 193: It's a landscape/maintenance
20 company.

21 THE COURT: Landscaping. Okay. You are not doing
22 anything this week, though, are you?

23 JUROR NUMBER 193: Well, I have a lot of
24 commercial --

25 THE COURT: Christmas time.

1 JUROR NUMBER 193: -- commercial accounts. We do
2 a lot of work for Blue Cross Blue Shield, Richland Memorial,
3 Providence Hospital. High-end commercial accounts that I
4 have to visit every week --

5 THE COURT: Uh-huh.

6 JUROR NUMBER 193: -- personally. And I hate --
7 you know, if I don't show up, a lot of things could happen
8 and contacts missed.

9 THE COURT: All right. All right. Thank you,
10 sir.

11 JUROR NUMBER 193: Uh-huh.

12 (Whereupon, Juror Number 193 returned to the jury
13 venire panel)

14 (Whereupon, Juror Number 16 approached the bench)

15 THE CLERK: 16.

16 JUROR NUMBER 16: I have a doctor's appointment on
17 that Tuesday, where I'm having an eye -- eye injection.

18 THE COURT: Next Tuesday?

19 JUROR NUMBER 16: And it's a trial study that
20 they're doing and I'll be light-sensitive completely for the
21 whole day.

22 THE COURT: Next Tuesday?

23 JUROR NUMBER 16: Uh-huh.

24 THE COURT: We'll be able to keep you until then,
25 huh?

1 JUROR NUMBER 16: Yeah. You can keep me until
2 then.

3 THE COURT: All right. Okay. Thank you.

4 (Whereupon, Juror Number 16 returned to the jury
5 venire panel)

6 (Whereupon, Juror Number 93 approached the bench)

7 THE CLERK: 93.

8 THE COURT: Hey there.

9 JUROR NUMBER 93: I just -- I don't think I have
10 enough experience and wisdom --

11 COURT REPORTER: I'm sorry, ma'am. You are going
12 to have to speak a little louder. Just a little bit.

13 JUROR NUMBER 93: I'm sorry. I don't think I have
14 enough experience and wisdom and emotion and strength to be
15 a jury member in a murder.

16 THE COURT: Sometimes you never know what you are
17 made of until you're thrown into a situation. How old are
18 you?

19 JUROR NUMBER 93: I've had -- 22.

20 THE COURT: 22. You're grown now. You're old
21 enough. You just have to be 18 to be on jury duty. What do
22 you do for a living?

23 JUROR NUMBER 93: I'm in pharmacy school.

24 THE COURT: Oh. You're a student? Oh, yeah. You
25 study medicine and all that stuff. No, you will be fine.

1 Yeah.

2 JUROR NUMBER 93: Are you sure?

3 THE COURT: You'll be fine.

4 JUROR NUMBER 93: Okay.

5 (Whereupon, Juror Number 93 returned to the jury

6 venire panel)

7 (Whereupon, Juror Number 304 approach the bench)

8 THE CLERK: 304.

9 THE COURT: Yes, sir.

10 JUROR NUMBER 304: I got transferred to this week

11 and one of the issues was that -- this is the last week of

12 court before holidays.

13 THE COURT: This is the last term of court before

14 the holidays.

15 JUROR NUMBER 304: Oh. So we could -- so we

16 wouldn't have to take -- if it did go to this week, I

17 wouldn't -- it wouldn't start over in the new year? We'd

18 finish it up before Christmas?

19 THE COURT: Oh, yeah.

20 JUROR NUMBER 304: Okay. That's all. I thought I

21 was going to have to come back in January.

22 THE COURT: No, no, no, no. What's your number

23 again?

24 JUROR NUMBER 304: 304.

25 THE COURT: 34?

1 JUROR NUMBER 304: 304.

2 THE COURT: You work for Rogers-Townsend?

3 JUROR NUMBER 304: Robinson-McFadden.

4 THE COURT: Robinson-McFadden?

5 JUROR NUMBER 304: Yes, sir.

6 THE COURT: Okay. All right. Good deal. Thanks.

7 (Whereupon, Juror Number 304 returned to the jury
8 venire panel)

9 THE COURT: Okay. Hold up.

10 (Court addressing law clerk)

11 THE COURT: So concerning all these people and
12 their reasons, what the first one?

13 LAW CLERK: Number 226 has a term of classes to
14 prepare for next week.

15 THE COURT: That's the teacher. Any thoughts as
16 to whether we should keep him or let him go?

17 MR. SHEALEY: Seems like a good reason to me.

18 COURT REPORTER: What did you say, Mr. Shealey?

19 MR. SHEALEY: I just said it seems like a good
20 reason to me.

21 THE COURT: All right.

22 MS. PRINGLE: My only concern is that I think
23 there is a really good chance it go beyond Tuesday. So
24 people -- I'm just concerned that we have jurors that are
25 just here and want to pay attention and will stay.

1 THE COURT: Okay. We have enough people and he --
2 yeah. I'll cut him loose. Excuse him. All right.
3 What's the next one court?
4 LAW CLERK: 13 works in technology and he has a
5 lot of work to do.
6 MS. CAMPBELL: He's the litigation.
7 THE COURT: Eric Bland --
8 MS. CAMPBELL: Yeah.
9 THE COURT: Litigation support guy. And -- any
10 issues of whether he's qualified to stay based on that?
11 MS. CAMPBELL: The law firm should understand if
12 he's stuck here.
13 THE COURT: We'll keep him. I think he's
14 qualified.
15 All right. Next one. Flying to New York on --
16 LAW CLERK: Thursday.
17 THE COURT: -- Thursday. We'll keep him.
18 MS. CAMPBELL: We're fine by him --
19 THE COURT: The loss prevention man from Sears?
20 MS. CAMPBELL: Keep him.
21 THE COURT: Yeah, Luke wants to strike him. Keep
22 him.
23 Who else?
24 LAW CLERK: 193.
25 THE COURT: Landscape/maintenance guy. Blue Cross

1 Blue Shield and all that. HE -- he's self employed. I
2 think he's entitled to --

3 MS. CAMPBELL: Let go? Okay.

4 THE COURT: -- let him go.

5 The person with the next -- doctor's appointment,
6 the eye study next Tuesday. Just not going to be -- that's
7 no point in taking a spot with her.

8 MS. CAMPBELL: Let her go.

9 THE COURT: Let her go.

10 MS. CAMPBELL: 16.

11 THE COURT: Number 16.

12 93.

13 MS. CAMPBELL: I've got concerned about 93. She
14 basically said -- got up here and said she couldn't be --

15 THE COURT: Uh-huh.

16 MS. PRINGLE: She was young.

17 MS. CAMPBELL: Yeah, and they typically play after
18 a day anyway.

19 COURT REPORTER: I'm sorry?

20 MS. CAMPBELL: They typically -- don't put "play".

21 But anyway --

22 THE COURT: She's old enough. She's 22.

23 MS. CAMPBELL: Okay.

24 THE COURT: Pharmacy student. She said it was
25 kind of heavy for her.

1 MS. CAMPBELL: I'm sure she panicked.

2 THE COURT: Well, she -- all of y'all are -- I've
3 had lawyers cry.

4 MS. CAMPBELL: 304.

5 THE COURT: Yeah. I'm going to keep her. She'll
6 be all right.

7 MS. CAMPBELL: You're going to keep her?

8 THE COURT: Yes. She's.

9 MS. PRINGLE: My only concern is she acted as if
10 she couldn't be --

11 THE COURT: All right. Let me call her back up
12 here again.

13 Number 93, if you will come back again, please.

14 93.

15 (Whereupon, Juror Number 93 approached the bench)

16 THE BAILIFF: 93?

17 THE COURT: Yeah. Our student.

18 THE COURT: All right. Let me -- let me hear you
19 out one more time.

20 JUROR NUMBER 93: I feel that -- that I don't know
21 if I had, like, enough experience and emotional strength to
22 be a jury member on a murder trial.

23 THE COURT: Okay. I'm not worrying about the
24 knowledge. I'm not worrying about the wisdom. The -- the
25 question is about the emotional strength.

1 JUROR NUMBER 93: Like a very -- like in -- I
2 didn't know if that would affect -- by his kind of -- that
3 was may concern.

4 THE COURT: Because you're -- you're emotional?

5 JUROR NUMBER 93: Yes.

6 THE COURT: Very sensitive? I mean, do you -- you
7 don't take any medication for it?

8 JUROR NUMBER 93: Medication? No.

9 THE COURT: Or do you?

10 JUROR NUMBER 93: No.

11 THE COURT: You've never had any -- you're just
12 saying that you cry real easy or --

13 JUROR NUMBER 93: (No response)

14 COURT REPORTER: Is that a yes?

15 JUROR NUMBER 93: Yes.

16 THE COURT: Well, is that -- I mean -- based on
17 what kind of situations?

18 JUROR NUMBER 93: Just anything. Like it doesn't
19 have to be me in the situation and it will make me, like, so
20 emotional about it. I don't know if that would affect
21 anything, but it -- that was my concern.

22 THE COURT: Yeah. All right.

23 Anything else anyone else wants me to ask her?

24 (No response)

25 JUROR NUMBER 93: Sir?

1 THE COURT: I was asking the lawyers if anyone
2 else wanted me to ask her any questions about anything.

3 Now, you go to school at --

4 JUROR NUMBER 93: Presbyterian College.

5 THE COURT: And you're -- which year are you in?

6 JUROR NUMBER 93: My first year of pharmacy
7 school.

8 THE COURT: You've been through --

9 JUROR NUMBER 93: I graduated USC in May.

10 THE COURT: You did four years at USC? You
11 majored in --

12 JUROR NUMBER 93: Public health.

13 THE COURT: Public health. Oh, goodness. And now
14 you're in pharmacy? You'll be prescribing medication to
15 cancer victims, AIDS victims. It's natural that you'd be
16 emotional. That's your profession.

17 JUROR NUMBER 93: Yes.

18 THE COURT: All right. Thank you.

19 JUROR NUMBER 93: Okay. Is that all you need?

20 THE COURT: Yes.

21 (Whereupon, Juror Number 93 returned to the jury
22 venire panel)

23 THE COURT: Anything else?

24 MS. CAMPBELL: She just -- I mean, we'll -- we'll
25 keep her, but she says that she would be biased because of

1 the emotions.

2 THE COURT: She doesn't know which way, though.
3 She didn't say for any side or the other. She -- she's just
4 emotional.

5 I think she's qualified. I mean, everyone -- just
6 the nature of the beast. It's emotional -- emotional thing,
7 somebody --

8 Any other questions of -- for cause of any other
9 juror?

10 (Off the record)

11 (Back on the record)

12 MS. CAMPBELL: We didn't talk about 304.

13 LAW CLERK: The judge said he was going to --
14 because he was just --

15 MS. CAMPBELL: Okay. Okay.

16 THE COURT: Yeah. He'll -- we'll be through --

17 MS. CAMPBELL: Okay.

18 THE COURT: -- by the time he gets --

19 MS. PRINGLE: Your Honor, we had a concern about
20 juror number 62 who knew Investigator Gonzalez. And said if
21 he was involved in a case. That would affect her --

22 THE COURT: All right.

23 MS. PRINGLE: -- ability to be impartial.

24 THE COURT: All right.

25 MS. PRINGLE: He's one of the main investigators

1 in the case.

2 MS. CAMPBELL: Really?

3 MS. PRINGLE: He's on the --

4 THE COURT: Okay. Well, I can bring her up and
5 see what she's talking about.

6 MS. CAMPBELL: We don't anticipate at this point
7 testifying to anything.

8 MS. SIMPSON: And, Your Honor, we both know --
9 Hutchison. He didn't stand up and say that he knew us, the
10 dean of admissions.

11 THE COURT: All right.

12 MS. SIMPSON: From working on the --

13 THE COURT: Okay. He's the -- he's the guy
14 that --

15 MS. SIMPSON: The dean of USC.

16 THE COURT: He doesn't --

17 MS. SIMPSON: Thanks.

18 THE COURT: Number 63. Juror number 63 -- 62.
19 The lady, yeah.

20 (Whereupon, Juror Number 62 approached the bench)

21 THE COURT: Yes, ma'am. Tell me about your --
22 what you were saying.

23 JUROR NUMBER 62: About our relationship with the
24 officer or --

25 THE COURT: Yes, ma'am.

1 JUROR NUMBER 62: Oh. He's just a good friend of
2 ours. He went to high school with my husband, and he comes
3 to our house frequently if he's monitoring the neighborhood
4 that I live in, which is where this crime happened.

5 THE COURT: He's a close friend of yours?

6 JUROR NUMBER 62: Yes.

7 THE COURT: Okay. And you think that if he is a
8 witness to some of the events, that would affect your --

9 JUROR NUMBER 62: If it -- if he's not directly
10 related to it, like if he wasn't assaulted or anything, I
11 don't think it would be --

12 THE COURT: He's not the victim. He's the --

13 JUROR NUMBER 62: Well, then --

14 THE COURT: -- he's a police officer.

15 JUROR NUMBER 62: Yes, absolutely. Then no.

16 THE COURT: It would not affect your ability to
17 be --

18 JUROR NUMBER 62: Uh-uh.

19 THE COURT: -- fair and impartial?

20 JUROR NUMBER 62: Uh-uh.

21 THE COURT: Okay.

22 JUROR NUMBER 62: No.

23 THE COURT: All right.

24 JUROR NUMBER 62: That it.

25 THE COURT: Any other questions anyone want me to

1 ask her about --

2 So you know him and --

3 JUROR NUMBER 62: Very well.

4 THE COURT: And the fact that he might be a
5 witness will not affect your ability to be fair and
6 impartial --

7 JUROR NUMBER 62: No.

8 THE COURT: -- if he's not the victim?

9 JUROR NUMBER 62: No.

10 THE COURT: Or course, if he's the victim, he
11 wouldn't be here. That's another case.

12 JUROR NUMBER 62: Well, not a -- I meant if he
13 wasn't -- never -- no, it won't. I don't know how to
14 explain what item saying, but no.

15 THE COURT: Well, take your time.

16 JUROR NUMBER 62: I don't -- I don't think it
17 would.

18 THE COURT: You don't think it would?

19 JUROR NUMBER 62: He doesn't discuss cases with
20 us. So I don't know -- if he's up on the stand and he's
21 telling his account of what happened that night, then I -- I
22 would still go by my judgment of what everyone else is
23 saying.

24 THE COURT: You think you would still be a fair
25 and impartial --

1 JUROR NUMBER 62: That's what I'm trying to say.

2 THE COURT: -- juror?

3 JUROR NUMBER 62: Absolutely.

4 THE COURT: All right. You can believe or not
5 believe what he says?

6 JUROR NUMBER 62: Right.

7 THE COURT: Okay. All right. Thank you.

8 (Whereupon, Juror Number 62 returned to the jury
9 venire panel)

10 THE COURT: Anything else from anyone else?

11 (No response)

12 THE COURT: I'm going to give them all one more
13 chance to come forward.

14 (Whereupon, the bench conferences were concluded)

15 THE COURT: All right, ladies and gentlemen, I
16 know I have asked you all any number of questions and the
17 fact that we have moved beyond the question doesn't cause
18 your brain to shut down as to what the question was, so if
19 there are any questions that you did not respond to that you
20 think you should respond to, here is your opportunity to
21 stand up and respond at this time, based on any
22 afterthoughts, hesitation. Any question that you did not
23 respond to that you think you should respond to, please
24 stand and give us those answers at this time.

25 Yes, ma'am.

1 JUROR NUMBER 270: Thelma Tucker, 270. I have a
2 son doing fed time.

3 THE COURT:: He is doing what?

4 JUROR NUMBER 270: Fed time.

5 THE COURT: He is doing time now?

6 JUROR 270: Yeah.

7 THE COURT: All right. He is doing time. You
8 have a son doing time?

9 JUROR NUMBER 270: Yes, sir..

10 THE COURT: For what?

11 JUROR NUMBER 270: Crack cocaine.

12 THE COURT: A cocaine charge.

13 And would that affect your ability to be fair and
14 impartial?

15 JUROR NUMBER 270: No, sir.

16 THE COURT: All right. And your juror number is
17 what?

18 JUROR NUMBER 270: 270.

19 THE COURT: 270. Thank you.

20 All right. Yes, ma'am?

21 JUROR NUMBER 76: I'm juror number 76.

22 THE COURT: Juror number 76.

23 Yes, ma'am.

24 JUROR NUMBER 76: When I was at my mom's I -- I
25 think it would mess up my -- Yeah, I remember it, but she

1 told me about kind of what it --

2 THE COURT: Do you believe that would affect your
3 ability to be a fair and impartial juror?

4 JUROR NUMBER 76: Yes, sir.

5 THE COURT: Do you think you would bias for one
6 side or the other based on that?

7 JUROR NUMBER 76: Yes.

8 THE COURT: All right. We will not consider juror
9 number 76.

10 If you know of any other reason, any other reason,
11 why you should not be selected to be a juror in the trial of
12 this case, please let me know by standing at this time. Not
13 after you get on the jury and everyone else has been
14 released, but let me know at this time if you know of any
15 other reason why you should not be selected to be a juror in
16 this case.

17 Yes, sir.

18 UNKNOWN JUROR: I have strong opinions about the
19 death penalty.

20 THE COURT: All right. Well, this is not a
21 capital murder case where the -- it's not a -- this is not a
22 death penalty case. Thank you.

23 All right. Anyone else?

24 (No response).

25 THE COURT: All right. Let us have our jury. If

1 you all will give the clerk your attention.

2 (Off the record)

3 (Back on the record)

4 THE CLERK: Ladies and gentlemen of the jury
5 panel, when I call your juror number, come to this
6 microphone at the center of the room. Bring your personal
7 belongings with you. Repeat your juror number and state
8 your occupation, please.

9 Number 74.

10 JUROR NUMBER 74: I'm number 74 and I'm a computer
11 analyst.

12 THE CLERK: What says the State?

13 MS. CAMPBELL: Please present the juror.

14 THE CLERK: What says the defense?

15 MS. DAVIS: Please present this juror.

16 THE CLERK: Have a seat in the jury box, please.

17 266.

18 JUROR NUMBER 266: 266.

19 THE CLERK: What the says the State?

20 MS. CAMPBELL: Please excuse the juror.

21 THE CLERK: Have a seat in the back of the
22 courtroom, please.

23 17.

24 JUROR NUMBER 17: 17. I'm a USC student and I
25 work at a restaurant.

1 THE CLERK: What says the State?
2 MS. CAMPBELL: Please excuse the juror.
3 THE CLERK: Have a seat back in the back of the
4 courtroom.
5 93.
6 JUROR NUMBER 93: 93. Pharmacy student.
7 THE CLERK: What says the State?
8 MS. CAMPBELL: Please present the juror.
9 THE CLERK: What says defense?
10 MS. DAVIS: Please excuse this juror.
11 THE CLERK: Have a seat in the back of the
12 courtroom.
13 137.
14 JUROR NUMBER 137: Shandel Leonard, customer
15 service, Verizon Wireless.
16 THE CLERK: What says the State?
17 MS. CAMPBELL: Please present the juror.
18 THE CLERK: What says defense?
19 MS. DAVIS: Plus excuse this juror.
20 THE CLERK: Have a seat in the back of the
21 courtroom.
22 225.
23 JUROR NUMBER 225: 225, Anthony Saxon, truck
24 driver.
25 THE CLERK: What says the State?

1 MS. CAMPBELL: Please present the juror.
2 THE CLERK: What says the defense?
3 MS. DAVIS: Please seat this juror.
4 THE CLERK: Have a seat in the jury box, please.
5 53.
6 JUROR NUMBER 53: Montez Creed, Department of
7 Defense, program manager.
8 THE COURT: What says the State?
9 MS. CAMPBELL: Please present the juror.
10 THE CLERK: What says defense?
11 MS. DAVIS: Please seat this juror.
12 THE CLERK: Have a seat in the jury box, please.
13 62.
14 JUROR NUMBER 62: 62. I'm a pediatric nurse.
15 THE CLERK: What says the State?
16 MS. CAMPBELL: Please present the juror.
17 THE CLERK: What says the defense?
18 MS. DAVIS: Please excuse this juror.
19 THE CLERK: Have a seat in the back of the
20 courtroom.
21 245.
22 JUROR NUMBER 245: 245, retired civil engineer.
23 THE CLERK: What says the State?
24 MS. CAMPBELL: Please present the juror.
25 THE CLERK: What says the defense?

1 MS. DAVIS: Please seat this juror.
2 THE CLERK: Have a seat in the jury box, please.
3 310.
4 JUROR NUMBER 310: Joanna Hoskins. A student and
5 part-time job at Walgreen.
6 THE CLERK: What says the State?
7 MS. CAMPBELL: Please present the juror.
8 THE CLERK: What says the defense?
9 MS. DAVIS: Please excuse this juror.
10 THE CLERK: Have a seat in the back of the
11 courtroom.
12 290.
13 JUROR NUMBER 290: 290. Unemployed.
14 THE CLERK: What says the State?
15 MS. CAMPBELL: Please present the juror.
16 THE CLERK: What says the defense?
17 MS. DAVIS: Please seat this juror.
18 THE CLERK: Have a seat in the jury box, please.
19 68.
20 JUROR NUMBER 68: 68.
21 THE CLERK: What says the State?
22 MS. CAMPBELL: Please present the juror.
23 THE CLERK: What says the defense?
24 MS. DAVIS: Please excuse this juror.
25 THE CLERK: Have a seat in the back of the

1 courtroom.
2 146.
3 JUROR NUMBER 146: Juror 146, insurance agent.
4 THE CLERK: What says the State?
5 MS. CAMPBELL: Please present the juror.
6 THE CLERK: What says the defense?
7 MS. DAVIS: Please excuse this juror.
8 THE CLERK: Have a seat in the back of the
9 courtroom, please.
10 79.
11 JUROR NUMBER 79: 79, Gwendolyn Fulton, nurse
12 manager.
13 THE CLERK: What says the State?
14 MS. CAMPBELL: Please present the juror.
15 THE CLERK: What says the defense?
16 MS. DAVIS: Please seat this juror.
17 THE CLERK: Have a seat in the jury box.
18 50.
19 JUROR NUMBER 50: Number 50, software developer.
20 THE CLERK: What says the State?
21 MS. CAMPBELL: Please present the juror.
22 THE CLERK: What says the defense?
23 MS. DAVIS: Please seat this juror.
24 THE CLERK: Have a seat in the jury box.
25 156.

1 JUROR NUMBER 156: 156, nursing student and a
2 teacher.
3 THE CLERK: What says the State?
4 MS. CAMPBELL: Please present the juror.
5 THE CLERK: What says the defense?
6 MS. DAVIS: Please excuse this juror.
7 THE CLERK: Have a seat in the back of the
8 courtroom.
9 282.
10 JUROR NUMBER 282: Juror number 282, Wal-Mart
11 truck driver.
12 THE CLERK: What says the State?
13 MS. CAMPBELL: Please present the juror.
14 THE CLERK: What says the defense?
15 MS. DAVIS: Please seat this juror.
16 THE CLERK: Have a seat in the jury box.
17 119.
18 JUROR NUMBER 119: 119, assistant dean for
19 admissions at the University of South Carolina Law School.
20 THE CLERK: What says the State?
21 MS. CAMPBELL: Present the juror?
22 THE CLERK: What says the defense?
23 MS. DAVIS: Please seat this juror.
24 THE CLERK: Have a seat in the jury box, please.
25 182.

1 JUROR 182: 182, software developer.

2 THE CLERK: What says the State?

3 MS. CAMPBELL: Please present the juror.

4 THE CLERK: What says the defense?

5 MS. DAVIS: Please seat this juror.

6 THE CLERK: Have a seat in the jury box.

7 35.

8 JUROR NUMBER 35: 35. P&L Health.

9 THE CLERK: What says the State?

10 MS. CAMPBELL: Please present the juror.

11 THE CLERK: What says the defense?

12 MS. DAVIS: Please seat this juror.

13 THE CLERK: Have a seat in the jury box.

14 178.

15 JUROR NUMBER 178: 178, insurance benefits

16 counselor with the State of South Carolina.

17 THE CLERK: What says the State?

18 MS. CAMPBELL: Please present the juror.

19 THE CLERK: What says the defense?

20 MS. DAVIS: Please excuse this juror.

21 THE CLERK: Have a seat in the back of the

22 courtroom.

23 261.

24 JUROR NUMBER 261: 261. EMT with a private

25 ambulance.

1 THE CLERK: What says the State?
2 MS. CAMPBELL: Please present the juror.
3 THE CLERK: What says the defense?
4 MS. DAVIS: Please excuse this juror.
5 THE CLERK: Have a seat in the back of the
6 courtroom.
7 304.
8 JUROR NUMBER 304: 304, skiing and part-time
9 runner at a law firm.
10 THE CLERK: What says the State?
11 MS. CAMPBELL: Please excuse the juror.
12 THE CLERK: Have a seat in the back of the
13 courtroom.
14 46.
15 JUROR NUMBER 46: 46, Ruth Cornell.
16 THE CLERK: What says the State?
17 MS. CAMPBELL: Please present the juror.
18 THE CLERK: What says the defense?
19 MS. DAVIS: Please present this juror.
20 THE CLERK: Have a seat in the jury box.
21 127.
22 THE COURT: Select two alternates.
23 JUROR NUMBER 127: 127.
24 THE CLERK: What says the State?
25 MS. CAMPBELL: Please present the juror.

1 THE CLERK: What says the defense?
2 MS. DAVIS: Please excuse this juror.
3 THE COURT: Have a seat in the back of the
4 courtroom.
5 110.
6 JUROR NUMBER 110: 110. Unemployed.
7 THE CLERK: What says the State?
8 MS. CAMPBELL: Please present the juror.
9 THE CLERK: What says the defense?
10 MS. DAVIS: Please present this juror.
11 THE CLERK: Have a seat in the jury box.
12 211.
13 JUROR NUMBER 211: 211. Civil engineer.
14 THE CLERK: What says the State?
15 MS. CAMPBELL: Please present the juror.
16 THE CLERK: What says the defense?
17 MS. DAVIS: Please present this juror.
18 THE CLERK: Have a seat in the jury box.
19 THE COURT: Are there any matters involving the
20 jury panel?
21 MS. CAMPBELL: Beg the court's indulgence.
22 (Off the record)
23 (Back on the record)
24 MS. CAMPBELL: Nothing from the State, Your Honor.
25 MS. PRINGLE: Nothing from the defense, Your

1 Honor.

2 THE COURT: All right. Ladies and gentlemen, you
3 all have been selected by the State and the defense to be
4 the jury in the trial of this case.

5 Ladies and gentlemen, those of you who have not
6 been selected -- solicitor, what do you want them to do?

7 (Off the record)

8 (Back on the record)

9 THE COURT: I'm going to give you all until three
10 o'clock to take lunch and if you all would be downstairs in
11 the jury assembly room at three o'clock.

12 (Whereupon, the jury venire panel left the
13 courtroom)

14 THE COURT: Scheduling-wise with this jury, we are
15 going to take lunch ourselves for about an hour. I'll push
16 it up to three o'clock. I'm going to have some preliminary
17 matters.

18 Will we be ready for the jury this afternoon, or
19 the first thing in the morning?

20 We will have you all go to the jury for just a few
21 moments while we discuss the scheduling. Do not the discuss
22 the case while you are there.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: Yes, ma'am.

1 MS. CAMPBELL: May it please the court, Your
2 Honor, based on my review of the motions, talking with
3 defense counsel, it looks like this would take at least the
4 majority of the afternoon. I'm sorry I'm didn't see this
5 earlier, but it looks like it will require some argument.

6 THE COURT: All right. And then with this --
7 motions in the morning that you mentioned?

8 MS. CAMPBELL: Yes, sir, we could do those either
9 before or just as the witnesses come up, either way. I will
10 have everyone here at nine o'clock in the morning, just if
11 we could go through quickly.

12 THE COURT: Is that one of the motions that you
13 have, something relating to -- what is it, did you say?

14 MS. CAMPBELL: It's a Biggers motion, Your Honor.
15 It is listed on their list and I'm just trying to anticipate
16 the defense, but I would -- not thinking that I.D. would be
17 an issue in this case, but apparently they want to preserve
18 the record.

19 THE COURT: All right. Mr. Shealey.

20 MR. SHEALEY: Yes, sir. Standard Bigger issues.
21 There are four or five from the stand witnesses of Mr.
22 Parvin with a photo array. That is certainly something we
23 would like to take up and probably take it up the first
24 thing would be the easiest tomorrow morning before openings
25 to suppress all identification. It would probably affect

1 how we do our openings, so it would probably make sense to
2 do it right when --

3 THE COURT: Well, it ultimately will not affect
4 the prosecution's case, will it, whatever ruling this court
5 makes?

6 MS. CAMPBELL: No, sir, I don't think it's --

7 THE COURT: It's not dispositive of the case
8 itself?

9 MS. CAMPBELL: The case has fingerprints and DNA
10 and other evidence, as well as statements the defendant made
11 to family members.

12 I didn't anticipate this being a huge issue, based
13 on what little I know about the case, Your Honor, but, you
14 know, if it's going to be highly contested, I guess we
15 should take it up out of the abundance of caution the first
16 thing in the morning.

17 MR. SHEALEY: Can we treat it like a Biggers
18 Hearing? I have done one in front of Your Honor recently,
19 address the issues that would --

20 MS. SIMPSON: I'm sorry, just the issues of what?

21 Is it on the photo lineup array, how it was
22 presented, that issue that you just want to put on the
23 record, or do you contest it in itself?

24 THE COURT: Do we want the jury tomorrow morning,
25 tomorrow afternoon, Wednesday morning, Wednesday afternoon,

1 Thursday? When do you want them?

2 MR. SHEALEY: I think we could take care of that.
3 I was going to argue the argument that we -- I think we can
4 get it done in the morning. We -- I don't think it's going
5 to be too big or anything crazy like that, but there is four
6 or five of them that picked out Mr. Parvin in the photo
7 arrays, so I imagine that they will go through the motion of
8 putting up the investigator who allowed them to talk to them
9 in Spanish and ask if they could identify Mr. Parvin, so we
10 have then the standard Biggers Motion. Do it on that -- try
11 to address all the legal issues.

12 MS. CAMPBELL: I apologize, Your Honor, I didn't
13 anticipate this being a huge issue in this case.

14 THE COURT: Well, if the -- we will have the jury
15 come in at eleven tomorrow morning.

16 If you will have the jury come back.

17 THE BAILIFF: Yes, sir.

18 (The following takes place in the presence of the
19 jury panel)

20 THE BAILIFF: Your Honor, the jury is present.

21 THE COURT: All right. Ladies and gentlemen, once
22 you have been selected on a jury and once you sit on a jury
23 in a case, you are to decide the case solely based on
24 evidence presented in court in that case. That means that
25 you are not to engage in any form of independent research.

1 You are not to become private eyes and you are not to become
2 exposed to information concerning the case, other than what
3 you see in the courtroom. That means that you are not to
4 engage in any form of Internet research concerning
5 particulars of what someone else wrote about the case. You
6 are not to read any news articles concerning what anyone
7 else might write about the case, because you are to base
8 your decision solely on what you hear in the courtroom and
9 what you discuss during deliberations with your fellow
10 jurors. I want to give you that cautionary instruction up
11 front, because something may appear at some point in time in
12 the media concerning this case. That would include
13 television and newspaper.

14 Additionally, you are to decide this case solely
15 based on your deliberations with your fellow jurors and not
16 based on your discussions with folks who are not on the
17 jury. That means that you are not to go home and talk with
18 family members about the case to get their opinions and all
19 that. You are to discuss the case solely with the other
20 members of the jury.

21 And, thirdly, you are only to do that after you
22 have heard all of the evidence in the case. So you are not
23 to engage in any form of premature discussions about the
24 case with your fellow jurors. The system that we operate
25 under is that you listen to the entire case. You then

1 receive the instructions of law that you are to apply to the
2 case from me. Then you deliberate and decide the case. I
3 will give you more information about that when you get into
4 the case, but I want to give you that instruction up front
5 so that you don't violate it even before we get started.

6 With that having been said, we have some amount of
7 preliminary matters to take up concerning this case, which
8 means that rather than keep you -- I know you all are so
9 hungry right now, but we are going to let you all go for the
10 day, rather than let you stay a little longer to figure out
11 a time on the schedule. We are going to let you all go for
12 the remainder of the day and we don't need you back until
13 eleven tomorrow morning. At that time hopefully we will
14 clear out all the preliminary issues and be ready to press
15 on with the opening statements and the testimony in the
16 case.

17 So you all are free to go. Please remember the
18 admonition that I gave you, and we will see you back
19 tomorrow, at what time?

20 THE JURY PANEL: (Collective said eleven).

21 THE COURT: Eleven o'clock in the morning. You
22 will be in the jury room at that time. Thank you very much.

23 Let me say this as well. When you come and go,
24 you should avoid at all times coming through the courtroom.
25 Always take back -- the entrance that the bailiffs tell you

1 about. You should also avoid doing any congregating around
2 anyone who might have anything to do with this case, so you
3 will come into the jury room at the designated time and you
4 will leave and not mill around at any time. Thank you very
5 much.

6 (The following takes place outside the presence of
7 the jury panel)

8 THE COURT: Well, it's two o'clock, a little bit
9 after. We are going to take one hour and then we will
10 reconvene at three o'clock.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: All right. Now, I have a motion list
14 with fourteen motions listed and a separate motion -- a
15 separate order allowing the defendant to shave and shower.

16 All right, what say the State?

17 MS. CAMPBELL: May it please the court, Your
18 Honor?

19 THE COURT: Yes.

20 MS. CAMPBELL: The State is prepared to go forward
21 I believe on everything except the Neil v. Biggers, which
22 will be heard in the morning.

23 THE COURT: Wherever you want to start.

24 MS. CAMPBELL: Number one, we have met with the
25 defense on numerous occasions to try to make sure that

1 everything possible has been turned over to them.

2 I did mention to them in the last hearing with
3 Your Honor that we were getting some medical records and we
4 turned those over I believe last Monday. In addition to
5 that -- I believe everything else has been done.

6 Additionally to that, I did ask defense to come up
7 and to review our notebooks on Thursday -- Thursday or
8 Friday. She had the opportunity to make sure that
9 everything has been turned over. I'm not aware of anything
10 that they don't have. If they are aware of anything, please
11 let me know. We have had a number of motions that you are
12 aware of, Your Honor, in front of you to ensure that we have
13 complied with the requests.

14 THE COURT: All right, what say the defense?

15 MS. DAVIS: Yes, sir, Your Honor.

16 Since our renewal to Rule 5 and the Brady Motions,
17 Ms. Campbell is accurate. I believe that we do have
18 everything. I did come up there to look at her notebooks,
19 but I'm not aware of anything in particular at this moment
20 that is outstanding. Just -- you know, she's indicating
21 that there is something that they have come into possession
22 since last time we spoke, we are just making it clear that
23 we are renewing that.

24 THE COURT: All right. Number one.

25 MS. CAMPBELL: Your Honor, on that same vein, if

1 we could, we have also filed a reciprocal Rule Five in this
2 case. Friday afternoon at 4:30 we did receive several
3 documents from a recycling plant here, or -- I don't know
4 what you call them, recycling center here in town. I don't
5 know, it's a number of pages. That is the extent of what
6 has been turned over to us.

7 I would be requesting at this point if they have
8 any statements or if they have any CV's of any experts, in
9 order to just expedite the trial just a little bit that we
10 might be able to, if they could go ahead and turn that over
11 to the State. I think we would be entitled to those things,
12 and we have received nothing. I did ask for this again last
13 week I think on at least one or two occasions, at which time
14 they told me they hadn't decided what it was.

15 THE COURT: Defense?

16 MR. SHEALEY: Just under Rule Five we have turned
17 over everything that we anticipate using in our case in
18 chief. That's all. We don't think there is anything else
19 that applies under the rules. We don't have anything else
20 that would be required under the rule.

21 MS. CAMPBELL: My understanding is they have sent
22 the private investigator out to talk with a number of the
23 witnesses. It's my opinion that at least on one occasion,
24 or more, they tried to produce something into writing. This
25 is somewhat difficult, Your Honor, since some of them don't

1 speak English. However, we would be specifically
2 requesting, and I think we are entitled to, just as we give
3 them all the statements, even though the rule just says we
4 have to give it to them before cross-examination, we are
5 requesting at this point that you order them to turn over
6 any statements that they may have on witnesses, as well as
7 any CV's of any experts, just so that we might expedite this
8 trial a little bit.

9 MR. SHEALEY: And just in response to that, Your
10 Honor, we will try to comply with the rules. We tried to
11 comply with your pretrial court rules, and under Rule Five
12 there is nothing that we are entering in our case in chief
13 that they do not have.

14 We do have an investigator. We have an
15 investigator who works on lots of cases. He's talked to
16 many witnesses. We do have our case, but there is nothing
17 that we are going to turn over that we would be using in our
18 case in chief, because we don't have anything that we are
19 using in our case in chief that we are planning on entering,
20 so we think we are in strict compliance with the rule.

21 THE COURT: How about statements of defense
22 witnesses?

23 MR. SHEALEY: We don't have any statements of our
24 defense witnesses, Your Honor.

25 MS. CAMPBELL: Your Honor, the State would be

1 reminded on the same rule that we have to follow in Rule
2 Five, as far as turning over any prior statements prior to
3 the cross-examination, I think they are held by that same
4 standard. I understand they are trying to get around it by
5 citing that they are going to enter it in their case in
6 chief. However, Your Honor, I think if you could inquire
7 whether they have any statements they intend to use in the
8 case, that they may have those, and that they are not
9 turning those over because they are quote, unquote, strict
10 reliance on the rule, we are asking under the same rule and
11 the same spirit of the rule, and would respectfully ask the
12 court to inquire as specifically to that that they ask to be
13 turned over. I believe this came -- the same issue did come
14 up before Your Honor in another case and they did at that
15 point, were gracious enough to give us the statements that
16 their private investigator made.

17 MR. SHEALEY: Well, Your Honor, the rule isn't the
18 same for disclosure of evidence by the defendant as it is
19 for the prosecution.

20 As an officer of this court, we don't have
21 anything to turn over that we can use in our case in chief.
22 We don't have anything we are going to be using that we can
23 either give them. This case may be -- we don't know whether
24 we are going to have a case in chief. We are strictly
25 complying with this rule. It isn't the same for the defense

1 as it is for the prosecution.

2 THE COURT: They have statements, but they don't
3 want to turn them over, so what's authority do I have --
4 what precedent, case precedent, do I have towards them to
5 turn them over?

6 MS. CAMPBELL: Your Honor, I think in the spirit
7 of the same way we turn our things over ahead of time, and
8 we are required to, we would respectfully ask the court to
9 hold them to the same standard. We are here. The trial has
10 started. This is not something -- rather than for us to be
11 having to ask for a continuance, or something of that nature
12 at some point, because we haven't seen anything which they
13 are going to come up with at the last minute.

14 MR. SHEALEY: And respectfully, we're not -- we
15 don't have the same standards. We don't have to prove
16 anything. They have the burden of proof in this case. The
17 rules are written differently. We are in compliance with
18 the rule. We are beating a dead horse.

19 THE COURT: All right, the court requires for the
20 defendant to turn over statements taken by defense's
21 experts.

22 MS. CAMPBELL: And then, Your Honor, just prior to
23 any attempt to impeach them on any -- they didn't provide
24 any of the witnesses any copies of any of their statements
25 that they took. We would ask to be heard on whether or not

1 that they could be properly impeached on those at that time.

2 THE COURT: All right.

3 MS. CAMPBELL: Thank you.

4 THE COURT: The CV's of defense experts.

5 MR. SHEALEY: Your Honor, in the same way, we
6 don't know that how the case without determining what
7 potential defense expert we might call, so I think we will
8 certainly get them any CV's prior to calling any of those
9 witnesses, but at this time I feel like it's a little
10 premature. We won't know whether we potentially even need
11 or go that route. We just think that's a little premature,
12 but we certainly will follow the rule if we intend to call
13 any expert witness.

14 THE COURT: All right, the court orders the
15 defense to turn over the CV's today and the defense
16 witnesses whose names were provided in voir dire.

17 MR. SHEALEY: Yes, sir.

18 MS. CAMPBELL: Thank you.

19 THE COURT: If you listed them as a witness in the
20 voir dire, then you turn over the CV's.

21 All right, what's next?

22 MS. CAMPBELL: The next, the Riddle motion.

23 Specifically I think their concern is whether or
24 not any of the witnesses that we have interviewed have
25 changed their story in any way. I actually have not

1 interviewed any of my witnesses. And, of course, our
2 experts, you have the reports and everything, the same in
3 those.

4 As far as any of the lay witnesses, Your Honor,
5 Investigator Gonzales with the Richland County Sheriff's
6 Department has spoken to them. I specifically told him to
7 make sure that if there were any changes from what they had
8 given in their written statements to advise me of those
9 changes. I have not personally spoken with these witnesses
10 myself. And he indicates to me there were no changes, as
11 far as the substance of those statements. So I don't know
12 of any real information to be turned over by us.

13 THE COURT: All right.

14 MS. DAVIS: Yes, sir, Your Honor.

15 And in the same vein, renewing Rule Five and Brady
16 Motions, just making sure. I understand she says she hasn't
17 interviewed any of them personally. Certainly Rule Five is
18 as to anything that's within the law enforcement's control
19 or that they are aware of as well. Outside the fact, you
20 know, be sure that any of the investigators who talked with
21 any of these witnesses since I think August 13th or 19th was
22 the last time they have been interviewed, from what we can
23 tell from discovery. If there is anything that has changed
24 of any -- if they are taken to the scene to allow anything
25 there, if any of that would change, or new information that

1 they have gained since August 19th of 2010, essentially that
2 we be told by it, as well as if there is any enhanced value
3 of their videos that the State has that they plan to
4 introduce, that we also get copies of those.

5 THE COURT: Anything further?

6 MS. CAMPBELL: No, sir.

7 THE COURT: The next one.

8 MS. CAMPBELL: Your Honor, number three, we would
9 be -- and I can give you a brief factual background. How
10 much do you want to know of this?

11 MR. SHEALEY: This is a defense motion, Your
12 Honor. I would love to argue it. It's a defense motion.

13 THE COURT: All right.

14 I recognize the State and whether or not there is
15 an objection, their position, or anything, but go ahead.

16 MR. SHEALEY: Thank you, Your Honor.

17 May it please the court, this is one of the
18 motions that we passed up, the motion in limine to exclude
19 reference to other crimes, wrongs, acts; specifically any
20 reference to the defendant being at the incident location
21 for gay or homosexual sex.

22 A little background on this. This allegation is
23 that part of the State's evidence that they will probably be
24 presenting is that Mr. Parvin encountered these Hispanic
25 victims at their home; that at some point Mr. Parvin would

1 drive one of the alleged victims, Mr. Edgar Lopez, to a
2 Shell gas station. Mr. Lopez -- Mr. Parvin stayed in the
3 car while Mr. Lopez was talking to acquaintances, two
4 witnesses in particular, Mr. Adan Soto and a Marlin Avila,
5 people that give statements in this case. They stated when
6 they encountered Mr. Edgar Lopez that day at the Shell gas
7 station on Percival Road, that he said that "the American
8 has offered me \$200 to have sex with him," and that he was
9 not going to do this, but was just going to basically take
10 the money and send him on his way, once they got to the
11 house. That is one of the statements to both those
12 witnesses that this motion would concern.

13 The other is back at the home of where the
14 incident location is, while the group of individuals were
15 drinking, including the two alleged victims, with Mr.
16 Parvin, another alleged witness named Jose Monroy overhears
17 Edgar Lopez, one of the alleged victims, say to the other
18 alleged victim, Mr. Pablo Gutierrez, that he is gay, that
19 Mr. Parvin is gay.

20 And there is several reasons that I would like to
21 address with the court as to why I think these statements
22 and these references to these statements should be excluded
23 under our rules.

24 THE COURT: Well, let me just -- you filed a voir
25 dire request and you asked to introduce it to the jury. And

1 then you are arguing that what you asked me to inquire
2 concerning the jury is that it should not be presented to
3 them. Why would you ask -- why would you submit a voir dire
4 request of something that you are seeking to have excluded?

5 MS. DAVIS: Well, because I can't -- I don't have
6 no way of knowing whether you are actually going to exclude
7 this from trial or not. And if it does come in, I would
8 like to know of a juror that would be orally opposed to a
9 gay -- anything gay, if that does come into evidence.

10 But the reason why I think it shouldn't come into
11 evidence is Rule 404(b). That's the first argument, that
12 it's just simply bad character. This is -- this is a twenty
13 year career army man. He spent his entire career, as you
14 heard earlier. This is his wife right behind us. He's had
15 many promotions, many accolades. There is no evidence in
16 any of his military career or any of his home life to
17 suggest that he would be gay, or bisexual, or anything of
18 the kind. And I think what the State was doing is -- they
19 are trying to figure out what a possible motive would be,
20 and they hear this statement --

21 THE COURT: You don't think they should hear it as
22 evidence as a motive?

23 MR. SHEALEY: I think they can if they can meet
24 their burden. And what they have to establish is that this
25 is clear and convincing evidence that Mr. Edgar Lopez said

1 this, meant this.

2 Mr. Edgar Lopez at the time of his death,
3 according to the autopsy report, had a blood alcohol level
4 of .379. So -- and he's on the video at the Shell gas
5 station being drunk, dropping a case of beer, and this is
6 when he's telling these witnesses that "Mr. Parvin has paid
7 me \$200 to have sex with him." I don't think that gets past
8 clear and convincing evidence, which is the standard when
9 dealing with 404(b). And under the notes to the rule in
10 State v. Smith it says that that is what the standard has to
11 be to prove even a bad act. Should it be an acceptable
12 motive for the State, the court has to decide if something
13 is done with clear and convincing evidence.

14 So what we have is a guy who is making an
15 allegation with a .379 blood level content. And the case
16 law on that would be in State v. Smith regarding clear and
17 convincing evidence under rule Rule 404(b) notes.

18 That's probably a close hurdle, Your Honor, which
19 I don't think the State could meet.

20 Secondly, the other inflammatory aspect was the
21 other conversation, which would be Edgar and Pablo, the two
22 alleged victims, later at this location saying "he is gay,"
23 which is overheard by a state witness Jose Monroy. Even
24 that statement, you know, wouldn't go to an alleged motive.

25 The State is going to allege on that, this fight,

1 whatever happened before it breaks up is some kind of sexual
2 arrangement that went awry. That's in the evidence. That's
3 in the investigative notes. But simply stating I have a
4 witness over here, one victim to another, "you are gay,"
5 that doesn't talk about, I don't think, any sexual
6 arrangement that could even possibly go to a motive. It's
7 just slandering a twenty year career military veteran. So I
8 think as well you have to meet the clear and convincing
9 evidence.

10 THE COURT: I don't think there is any presumption
11 that the court has to make that based on him being a twenty
12 year military veteran that he's not gay.

13 MR. SHEALEY: Yes, sir, and that's me talking,
14 because when you are that closely supervised and you live in
15 a tent with men for a year under deployment, there is going
16 to be talk that he was gay. There would be evidence that
17 would be in his military record, which the State has, and
18 there is none. So that's why I say that. There is nothing
19 to indicate in his life that any part of this investigation,
20 other than the words of a man with a .379 of blood alcohol
21 content. I think what it does is it prejudices him. It's
22 more prejudicial than probative.

23 I'm not sure what it's probative of. That's
24 another analysis that is in keeping with this Rule 403. I
25 don't think it meets that. I don't think it passes that

1 test. Even the eyewitness to the alleged shooting is the
2 neighbor across the street, a man named Mr. Marlin --
3 Roberto Marlin Gonzales. He's a neighbor who hears
4 shootings. He turns and sees what it is he sees. No one
5 can tell us what the argument is about. Discovery, he sees
6 hands extended. Potentially I think the inference is that's
7 it's something to do with money, but no one can say it's
8 money involving some kind of alleged homosexual arrangement.
9 No witnesses can say anything to that. Mr. Marlin doesn't
10 hear that. Nobody else hears that. So why they get to say
11 that it is because of a gay sexual arrangement from a man
12 who has never had anything like that involved in his life,
13 based on the words of a man with a .379 blood alcohol I
14 think is bad character evidence. I think it's more
15 prejudicial than probative, and I don't think it has been
16 met by the clear and convincing standard that they have
17 proven is a trustworthy source.

18 And if you decide to let it in past those
19 arguments, it's hearsay as well. You have got a man, Edgar
20 Lopez, talking at this gas station, Shell gas station,
21 saying something to other men, and under the hearsay rules
22 that would be hearsay. Mr. Lopez is dead.

23 THE COURT: Well, if it's hearsay, why would I
24 have to figure out all these other things that you are
25 talking about?

1 MR. SHEALEY: Well, if you ruled that it's hearsay
2 and shouldn't come in, then I don't think that you have to
3 address the other things. But for right now in anticipation
4 that, I don't know how Your Honor may rule, I think that the
5 other arguments do come into play.

6 THE COURT: All right. What says the State?

7 MS. CAMPBELL: Your Honor, in State v. Simpson and
8 State v. Adams the court deemed are res gestae or present
9 sense impression exception to the hearsay rule. We aren't
10 trying to enter anything under 404(b).

11 The parts he left out about the time line we are
12 talking about is basically the defendant goes over to the
13 victims house. They are sitting out in the yard drinking
14 beer. At some point at that point there is a reference to
15 how the defendant is going to spend the night with Edgar and
16 is going to sleep in the room, so Pablo has to be outside.
17 It's that reference at that point that he's homosexual.
18 They then, Edgar and Lopez, the victim and the defendant get
19 into the defendant's car. They then go to the gas station
20 where the second exchange occurs, which two different
21 witnesses there, who is somewhat clear and convincing, hear
22 Mr. Lopez talking about his present sense impression that
23 the American has given him \$200 in exchange for sex and
24 whether or not he's going to go through with it. Then what
25 happens is they immediately go back and start drinking beer

1 again and within just a short time period, Your Honor, at
2 that point there is loud voices heard. They can't hear
3 exactly what's being said, but you then see, and it comes
4 from the fact that Lopez says he's not going to have sex
5 with him, he's just going to drink his beer. At that point
6 a different witness sees him pull into his -- the victim
7 pull into his pocket and hand what appears to be money to
8 the defendant. At that point there is some more arguing
9 going on, at which point the defendant then pulls out a gun
10 and shoots them.

11 Your Honor, you know the law better than I do
12 about motive and our right to go into it. The whole motive
13 for this is basically that the defendant -- and we aren't
14 trying to impune his character by going into the fact that
15 in his army record he was, you know, having sex with
16 anybody. That's not the purpose here at all. All we are
17 trying to show is the motive for this murder, which was
18 pretty cold-blooded murder, Your Honor, in the victims front
19 yard at close range when the defendant became enraged. We
20 don't have to prove that he's been gay, and we did not
21 dispute his twenty year career in the army at all. All we
22 are talking about are the events that happened right that
23 day and that's why it would come in under Adams, State v.
24 Adams, and it's quoted this more recent case, as Your Honor
25 has outlined, and then the State v. Simpson under a present

1 sense impression exception, Your Honor.

2 This is an ongoing chain of events that occur and
3 lead up to the actual murder itself. We aren't talking
4 about things that happened even hours before the murder, or
5 even an hour before the murder, or days before the murder.
6 We are talking about close in time. Under State v. George
7 Adams, Your Honor, we do feel like that would come in under
8 the res gestae theory and being an integral part of the
9 crime itself. And if I might approach, I could hand up
10 those two cases. And there is more cases, Your Honor.

11 And I'll hand those to defense.

12 Your Honor, the only other thing I would say is
13 you did inquire prior to voir dire if there was anything for
14 you to take up prior to picking the jury and they said no,
15 and then we did go into the fact and the jury is now aware
16 that there are allegations involving sex of this nature.

17 THE COURT: Mr. Shealey?

18 MR. SHEALEY: And I understand the doctrine of res
19 gestae, but it doesn't override or take out of play the
20 Rules of Evidence, so 404(b) certainly applies and res
21 gestae of 404(b) certainly sometime run into each other, but
22 I think the rules are pretty clear here that when -- you
23 know, I think the State is simply stretching for a motive,
24 stretching for some way to tell their story and the only
25 thing they have is a gay sexual arrangement.

1 And I did address it with the jury, contemplating
2 that perhaps the judge, Your Honor, might not rule in my
3 favor, that you might allow the State to go into this, so I
4 wanted to know if anybody had a problem if people were gay,
5 or even a solicitation of sex, or something like that. So I
6 think that was perfect voir dire for a double murder case,
7 but then Ms. Campbell says she also thinks it's not hearsay
8 because it's present sense impression. And under Rule 803
9 that's described as a statement describing or explaining an
10 event or condition made while the declarant was perceiving
11 the event or condition, or immediately thereafter. And we
12 think about something exciting happening or something -- a
13 shooting, or something like that and we talk about that.
14 This is just guys with .379 blood alcohol making allegations
15 about somebody being gay or someone having sex and it's in
16 Spanish. Two other Spanish speakers --

17 MS. CAMPBELL: Is he saying Spanish people aren't
18 competent witnesses?

19 MR. SHEALEY: I'm not saying that, but there is
20 obviously a language barrier that is throughout this case by
21 interpreters coming for the Neil v. Biggers motion tomorrow,
22 so I don't think that Ms. Campbell's hearsay exception is
23 really what we are talking about here, but I'll leave that
24 to Your Honor, but I still think it is essentially an
25 allegation coming from left field that they are going to

1 inflame this jury against this man, and I don't think it's
2 met by the clear and convincing evidence standard.

3 MS. CAMPBELL: Your Honor, it also falls under
4 803(3), I believe, then existing mental, emotional, or
5 physical condition. A declarant's then existing state of
6 mind, emotion, sensation, mental feeling, pain. I think
7 under either of those exceptions.

8 THE COURT: All right. Well, you all have had the
9 benefit of time to research and file motions and cite cases
10 and have given copies and I'll take the benefit of time to
11 think about it before ruling.

12 What's next?

13 MS. PRINGLE: Your Honor, the next motion regards
14 a diagnosis of -- Mr. Parvin has been diagnosed with Post
15 Traumatic Stress Disorder. I don't know that the State
16 intends to go into this at all, but it's -- I'll limit my
17 argument on the front end of the case is completely
18 unnecessary, but Mr. Parvin was indeed diagnosed with Post
19 Traumatic Stress Disorder in 2007. He's been treated by
20 doctors with the military since 2007.

21 The State has in the discovery process handed over
22 to us copies of medical records from Fort Jackson. They
23 have also given us medical records from Alvin S. Glenn
24 Detention Center. The investigator's notes indicate that
25 investigators questioned his family members at length about

1 the diagnosis. There is also a statement by Todd's father
2 to investigators that after this event he went to Texas,
3 Abilene, Texas, to seek treatment for PTSD. We would object
4 to any mention of that. I don't know that maybe going into
5 it -- I can't imagine that they would, but if they are and
6 that's something that they intend to bring up in opening
7 statements, then we would object to that now. We would ask
8 that that be taken up as we proceed through the trial, once
9 you have had a chance to sort of hear all the testimony and
10 know where things are coming from, but at least initially we
11 would object to it being mentioned in opening statements.

12 THE COURT: Ms. Campbell?

13 MS. CAMPBELL: Beg the court's indulgence.

14 (Off the record)

15 (Back on the record)

16 MS. CAMPBELL: Yeah, we don't have a problem, Your
17 Honor, not going into that in opening statement, as long as
18 they are precluded from going into it in opening statement.
19 The only reason we would do it is in anticipation of what
20 they would do in opening statement. It may become, however,
21 and, again, I'm anticipating their defense, relevant down
22 the road.

23 THE COURT: All right. So you are making a motion
24 that the State and the defense be precluded from going into
25 Post Traumatic Stress, or just the State going into it?

1 MS. PRINGLE: I'm in agreement with what Ms.
2 Campbell just said. I'm in agreement.

3 THE COURT: Which is what?

4 MS. PRINGLE: We don't intend to go into it in
5 opening statements.

6 You know, we don't -- we don't know how they are
7 going to proceed or what the allegations. There are
8 different ways I think the State could perceive in this
9 matter, so we can't commit us to not mentioning it, but I
10 can tell you we will not mention it in opening statements,
11 and I'm in agreement with what she just said.

12 THE COURT: Okay.

13 MS. CAMPBELL: Wow.

14 THE COURT: All right.

15 Ms. Davis?

16 MS. DAVIS: Yes, sir, Your Honor.

17 Number five is a motion for us, or our request to
18 exclude any reference to guns found at Mr. Parvin's home
19 during the search warrant being served the day of his arrest
20 on August 19th. I think during the execution of that search
21 warrant they found multiple weapons throughout the house
22 from different bedrooms, closets. Our motion is to exclude
23 that as it's irrelevant and should not be admissible for
24 that reason, but it's also highly prejudicial more than
25 probative.

1 And, again, it's the same as the prior argument.
2 I don't know that that's what they intend to go into or try
3 to elicit how many guns they found in the home. Perhaps we
4 are in agreement. If not, we would object to any mention of
5 the weapons found at the house during this.

6 THE COURT: Response?

7 MS. CAMPBELL: May it please the court, Your
8 Honor, I think five and six you could pretty much put in
9 together. Basically the police were able to identify the
10 defendant at approximately, two, two and a half weeks after
11 this occurred. At that point they did get the search
12 warrant for the home and also an arrest warrant for Mr.
13 Parvin. When they went in to execute the search warrant,
14 they entered the house. Luckily they were able to find Mr.
15 Parvin in there in an open area in the front -- I believe
16 the front of the house -- the back of the house, excuse me,
17 Your Honor. However, when they did execute the search
18 warrant there at the house, they found that the defendant
19 allegedly had set up guns on all the beds pointed out the
20 front windows in all the bedrooms, the children's bedrooms,
21 as well as the other bedrooms across the front of the house
22 that would lend itself to an interpretation much as flight
23 lends itself to evidence of guilt. We would be offering
24 that just to show evidence that the defendant was aware that
25 he had done something wrong and was prepared to -- I don't

1 think the word barricade is right, but prepared to resist
2 any lawful interference with his freedom and had set up the
3 house in this manner, and that would be evidence of guilt
4 would be the only reason we would be going into it.

5 We don't need to go into the actual number. There
6 were multiple, I believe ten or twelve guns set up that way,
7 Your Honor. We could just go into basically that he had set
8 it up, and we would be using that only for purposes of
9 evidence, the same as in flight, of evidence of guilt.

10 THE COURT: Are there cases where evidence of a
11 standoff with the police is admissible to showing evidence
12 of guilt?

13 MS. CAMPBELL: I can look at that, Your Honor.
14 I'm sorry, I just got done listening, but I'll be glad to
15 look into that as far as any specific cases on that. I know
16 there are cases on evidence of flight.

17 MS. DAVIS: Yes, sir, Your Honor.

18 And just in response, again, first of all, there
19 is mischaracterization of the evidence. The guns were not
20 found pointing out windows, or whatever. They were found
21 throughout the house; a closet, in corners of the room, in
22 each of the boys bedrooms. I mean, just everywhere in the
23 house. There is no indication of a barricade or a standoff.
24 In fact, the investigators note in statement that Todd was
25 not surprised when they came in and was -- knew that they

1 had been outside. So we would be objecting down the road if
2 that's their intent, because that's, first of all, pure
3 speculation.

4 But getting back to just the guns at hand, in
5 order for the guns to come in, or for them to reference
6 that, they have to meet the element that it's relevant in
7 the first place.

8 401, Your Honor, dictates that it's relevant if
9 there is a tendency to make any existence of fact more
10 probable or not. I have no idea what the fact is that they
11 found guns in this house makes it more or less likely that
12 he committed a murder on July 30th.

13 It's not the same as flight evidence, Your Honor.
14 There is no connection between them.

15 THE COURT: I have no idea what the evidence will
16 show and I think it's premature to ask me to rule on a
17 motion such as this without hearing any of the evidence in
18 the case.

19 MS. CAMPBELL: Thank you, Your Honor.

20 MS. DAVIS: Yes, sir.

21 THE COURT: All right, number seven.

22 MS. CAMPBELL: We have no problem with that, Your
23 Honor. We will not mention the bong.

24 THE COURT: All right. Number eight.

25 MS. CAMPBELL: Your Honor, on number eight we

1 would be glad to give you a background. About a year after
2 he was arrested on this murder case, there was an
3 independent investigation into the Parvin's home for the
4 presence of drugs. There was a lawful search warrant and at
5 this point Mr. Parvin has been incarcerated for a year, so
6 it's just his family members that are living there. There
7 was a lawful search warrant executed at the family home and
8 at that point they were searching for marijuana, of which
9 they found an extensive amount throughout the house, but
10 there is no allegations that any of that had anything to do
11 with Mr. Parvin. But during the course of that search, the
12 investigator, Brien Gwyn, who is actually the case officer
13 in this case, had been transferred to the narcotics
14 department. At that point he was assisting in the search
15 warrant when he came upon some letters in I believe the
16 bedroom, which he, upon just looking at them quickly figured
17 out that they had something to do with this case, the
18 homicide case, not the drug case.

19 The only thing we would be making reference to is
20 if there is any reference to any those letters or if they
21 come in, we would just say that there was an incident -- we
22 would just refer to it as -- I mean, it would have to be a
23 lawful search warrant on an unrelated matter. We will not
24 refer to it as a search warrant for drugs or anything like
25 that. Then they did go and get another search warrant --

1 THE COURT: Is that to motion number nine about
2 communication between --

3 MS. CAMPBELL: I think that's when I call her as a
4 witness.

5 THE COURT: -- Shanna Parvin and the defendant?

6 MS. CAMPBELL: That would be under Section
7 19-11-30, I believe, competency of a husband and wife as a
8 party as a witness. That's a separate issue.

9 THE COURT: All right. What --

10 MS. CAMPBELL: I think they --

11 THE COURT: Motion number eight refers to
12 reference to marijuana.

13 MS. CAMPBELL: Down in the second search warrant,
14 when the defendant wasn't there, the entire Parvin family
15 was subsequent to that search warrant charged with marijuana
16 charges. I don't think we get to get into any of those. We
17 don't intend on it. We don't intend to go into the fact
18 when they were doing the lawful search warrant, that they
19 found a bunch of marijuana. We would just say they were
20 executing a separate and unrelated search warrant, lawful
21 search warrant, at the home when the letters were found.
22 And we would not intend to try to -- because we don't
23 think -- we agree with them, we shouldn't be able to get
24 into the fact that the second search --

25 THE COURT: It's unrelated to marijuana.

1 MS. CAMPBELL: Thank you. Sorry, judge.

2 THE COURT: All right. How about number nine?

3 MS. CAMPBELL: Number nine, Your Honor, should we,
4 in fact, call Ms. Parvin to the stand, we understand we are
5 not allowed to elicit any of the communications between the
6 two. The most we would be eliciting is what she observed
7 the defendant do right after the murder occurred.

8 THE COURT: All right.

9 MS. DAVIS: Your Honor, I think again that's an
10 issue we would certainly take up when Ms. Parvin is called,
11 to make sure we are all on the same page to what is
12 elicited.

13 THE COURT: All right.

14 MS. CAMPBELL: So we understand our restrictions
15 there, judge.

16 THE COURT: All right. Number 10.

17 MS. CAMPBELL: Your Honor, I think would be
18 premature at this point.

19 MS. DAVIS: Yes, sir, Your Honor, I agree. We can
20 take that up as the --

21 THE COURT: All right. Number 11.

22 MS. CAMPBELL: Your Honor, we would think that
23 would also be premature. It may become something that may
24 be an issue down the road, but I'm not aware of anything yet
25 that would make viewing the crime scene helpful to the jury,

1 so it may be something they want to take up later.

2 THE COURT: I'll hear from the defense.

3 MS. DAVIS: Your Honor, that is a motion that we
4 are going forward on and we would like the opportunity to
5 have the jury view the scene. I have handed up my motion, I
6 believe.

7 MS. CAMPBELL: I didn't get a copy of it.

8 MS. DAVIS: I apologize, Your Honor.

9 MS. CAMPBELL: Thank you.

10 THE COURT: All right.

11 MS. DAVIS: Your Honor, I agree it's not something
12 that necessarily has to be ruled on at this minute, but it
13 is something we would like Your Honor to take under
14 advisement. We can argue it further, if Your Honor would
15 like, at a later time.

16 THE COURT: What's unique about this, the facts of
17 this case?

18 MS. DAVIS: Well, Your Honor, I think what's
19 interesting in this case is there are multiple, multiple
20 pictures of this crime scene, and we have been out to view
21 the crime scene multiple times as well, but the photos do
22 not accurately reflect or do not show the actual distance
23 and the confinement of this area. When you are looking at
24 the photographs you are not getting the same illustration or
25 idea of where the landmarks are, and I think the landmarks

1 are going to be important in this case in terms of the
2 State's theory of what happened. There is a house, a shed,
3 a garage, a tree, and the gate that surrounds this, a chain
4 link fence, Your Honor. I think all those things are going
5 to become very important. It's not something that we would
6 replicate in here.

7 THE COURT: What would you want the jury to do?

8 MS. DAVIS: I would like them to have the
9 opportunity to go out and just view the scene and see where
10 this took place.

11 THE COURT: To get out and walk through the yard,
12 or get out and kind of a narrated tour, or what do you --
13 what do you anticipate -- what do you want them to do?

14 MS. DAVIS: No, sir, Your Honor, certainly not a
15 narrated tour.

16 My understanding is that in the past when this has
17 been done, and it's been done in a case -- I think the one
18 case, State v. Mouson, where they were allowed to go and
19 view the neighborhood. I certainly didn't do an extensive
20 look or all the time that it's been allowed, but it
21 is something that the court can allow. The court can set --
22 if Your Honor finds that it's at either request of either
23 party that the jurors can be taken to either place or
24 perhaps is in question, and that's all we are asking, Your
25 Honor. It's not -- the attorneys wouldn't be present. They

1 are assisted with bailiffs, or whoever, so they can view the
2 scene. It's not something that we plan on -- it's not
3 something considered, you know, presenting as evidence under
4 State v. Mouson. It's not --

5 THE COURT: There is a picture of a house and the
6 yard and the shed?

7 MS. DAVIS: Well, the location itself, Your Honor?

8 THE COURT: Right.

9 MS. DAVIS: I mean, yes, sir, it's -- there is a
10 house, there is a garage, there is a smaller shed, there is
11 a tree.

12 The issue is that it's the confinement of the
13 area, and the size of it is not something that is going to
14 be illustrated. It does not come through on the photographs
15 when you look at them, so I don't think the jury would get
16 an accurate view or sense about what happened and how it
17 transpired. And it also would go to helping -- or helping
18 them understand the credibility of what witnesses may be
19 saying, because they would know exactly where everything is
20 at and the distance between a -- you know, just the incident
21 location itself.

22 THE COURT: All right. What says the State?

23 MS. CAMPBELL: May it please the court, Your
24 Honor, I believe this is discretionary within your
25 discretion. At this point I don't know how that would be

1 helpful and I think that it is premature.

2 But in addition to that, Your Honor, we are also
3 concerned. It's been a year and a half since this happened,
4 as far as things changing out in the yard and things of that
5 nature. There were extensive crime scene investigation in
6 this case. There were measurements taken. There were crime
7 scene diagrams done. All that will be introduced, but maybe
8 perhaps at a later time when we have the opportunity to view
9 all that.

10 THE COURT: Whose house is it?

11 MS. CAMPBELL: The victims.

12 THE COURT: Who lives there now?

13 MS. CAMPBELL: I do not know.

14 MS. DAVIS: No one, Your Honor.

15 And the location where Mr. Lopez lived on isn't
16 that location.

17 THE COURT: All right. We will revisit that.

18 Motion to prevent shackling. What do you want
19 then?

20 MS. DAVIS: Your Honor, my main concern is just
21 that when he's testifying, that he be allowed to -- if he
22 testifies and we call him, that he be allowed to walk, you
23 know, up to the stand like any other witness and not have
24 the shackles on. I understand he's not shackled right now,
25 his hands.

1 THE COURT: All right.

2 MS. DAVIS: We just ask Your Honor to allow him to
3 not be shackled throughout the trial, but most importantly
4 if he's called to testify.

5 THE COURT: What kind of security -- he's been in
6 jail, so what kind of security do you propose?

7 MS. DAVIS: Your Honor, it's a request we are
8 making. I understand Your Honor can disagree. You know, of
9 course, leave it to deputies. They are in charge of the
10 security of the defendant.

11 THE COURT: What's the current situation?

12 COURTROOM DEPUTY: We generally leave them on.

13 THE COURT: What does he have on?

14 COURTROOM DEPUTY: He has leg chains on.

15 THE COURT: Ankle chains?

16 MS. DAVIS: And, Your Honor, just for Your Honor's
17 information, he has been incarcerated since the day of his
18 arrest, about sixteen months. He's had no disciplinary
19 issues, no write-ups since he's been in jail. That is
20 something that Your Honor can --

21 THE COURT: Well, the procedure here, as I
22 understand it, the defendant is not brought into court
23 unless the jurors are all in the jury room. He's not
24 observed. He's -- the defendant is seated when the jury
25 comes in, so he's not seen by the jury. He's not going

1 anywhere while the jury is in. When he leaves, the jury is
2 gone or locked in the -- they are in the jury room.

3 I think it's a non-issue, except when he
4 testifies. And so you want the jury to see him walk from
5 here to there, or if he -- the defendant is positioned there
6 when the jury is brought in. So do you want to change that
7 so they can have them see him walking from there to here?
8 Is that what you are seeking?

9 MS. DAVIS: Yes, Your Honor, basically is if we
10 decide to call him and if decided he's going to testify, I
11 would just like that he be allowed to be called to the stand
12 and testify like any other witness, so that the jury can
13 see. He's not already in the box when the jury would come
14 in, if he does testify.

15 THE COURT: He's already in the box when they come
16 in, then that's prejudicial --

17 MS. DAVIS: Your Honor, I think --

18 THE COURT: -- or inconvenient, or just --

19 MS. DAVIS: I think it could be something that the
20 jury could be curious about or take under consideration
21 while they are -- it's just, you know --

22 THE COURT: Don't you have statements from the
23 jail or some -- some of the witnesses you all have listed,
24 Alvin S. Glenn. I'm not sure if they are read in as a
25 witness. Is that Captain Redmond on your witness list?

1 MS. DAVIS: Yes, sir, he is.

2 THE COURT: Is that going to be a mystery to the
3 jury that he's in jail or been in jail?

4 MS. DAVIS: Not necessarily, Your Honor. The
5 request that we have is so that the jury, when he's called,
6 if he's called, that he could, you know, approach the
7 witness stand like anybody else that's called to the stand.

8 THE COURT: All right. We will see how that goes.
9 It's down the road as well.

10 MS. DAVIS: Yes, sir.

11 THE COURT: All right. What else? Motion for
12 sequestration. Who do you want sequestered?

13 MS. DAVIS: Your Honor, I think just in general we
14 would ask that the -- I understand that the lead
15 investigator can probably remain in here. We just ask that
16 any lay witnesses or fact witnesses be sequestered, so that
17 if they are -- the testimony, of course, is going to be
18 coming from hopefully lay witnesses that were at the scene
19 that day. We would just like them to be sequestered
20 throughout the trial.

21 THE COURT: All right. What says the State?

22 MS. CAMPBELL: Your Honor, they have been provided
23 statements from all the witnesses that we plan on calling to
24 testify, as far as any problems with any prior inconsistent.
25 And, in fact, as they had submitted earlier, they sent their

1 investigator out to talk with those witnesses as well. I
2 don't know of any need for sequestration in this case. Of
3 course, it's within your discretion, Your Honor, but since
4 there were statements taken in the very beginning, and
5 apparently they followed up on them, I don't know of any
6 need to sequester anyone in this case.

7 If there are any witnesses we plan on calling that
8 don't have statements, of course, we will be happy to
9 sequester them.

10 THE COURT: Have all the lay witnesses given
11 statements, written statements?

12 MS. CAMPBELL: All the ones we intend on calling,
13 yes, sir.

14 THE COURT: And they have been provided to the
15 defense?

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: All right.

18 MS. CAMPBELL: And, of course, if any haven't
19 given statements, I'll make sure that they are sequestered,
20 but I'm not aware of any. If she can tell me who they are,
21 I'll be glad to take care of them.

22 MS. DAVIS: Your Honor, I think that's fine. If
23 there are witnesses that she intends to call that have not
24 given statements, that would be --

25 MS. CAMPBELL: And we will make sure of that.

1 MS. DAVIS: Thank you.

2 THE COURT: All right. I'll deny the motion to
3 sequester, except for witnesses who have not given
4 statements that is in writing.

5 MS. CAMPBELL: Thank you.

6 Judge, the only other thing that we would have is
7 we did provide a copy of the jury charges, which we
8 transmitted to you this morning. We would just request
9 that -- we have given those to the defense. We would just
10 request a copy of theirs and they refuse to give it to us,
11 just their requests to charge.

12 THE COURT: Mr. Shealey?

13 MR. SHEALEY: Thank you, Your Honor.

14 May it please it court, on this issue we don't
15 feel there is any body or rule that we should give our jury
16 charges to the State prior to the trial even beginning. We
17 do necessarily comply with your rules that you have given
18 me, which I have posted to my wall about pretrial
19 submission. You want the voir dire, you want our jury
20 charges, you know, things like that. And I imagine -- I
21 don't want to speak that I necessarily know, but it helps
22 you understand where the case might be going so that you can
23 be better prepared with the case law and all that and to be
24 more efficient and expedient process, but I certainly don't
25 think there is anything in any rule that requires me to

1 forecast our defense, you know, the jury charges when we
2 don't even know what's going to be in evidence here yet.
3 Even the things that we have given to you ex-parte are
4 only -- are simply ideas about where the case may go based
5 on the rulings or what's to say and they have nothing to do
6 with the case, so I think it's premature. We are certainly
7 happy to give them to the State as we argue about the
8 charges at the end of the case, but to do that right now
9 would be premature and I think would disservice our client
10 and potentially be malpractice for us, so we don't think
11 it's appropriate. We certainly want to follow your rule and
12 give them to you, but there is nothing in the rules that
13 says that we will give those to the State.

14 THE COURT: All right. Anything else?

15 MS. CAMPBELL: No, sir.

16 THE COURT: I'm not going to require the defense
17 to serve copies of the requests to charge. The requests to
18 charge are for the court's benefit and not discovery.

19 MS. CAMPBELL: Your Honor, one other matter is on
20 the sequestration issue, they do have a number of witnesses
21 as well that are not on our list and on their list. If any
22 of those are they planning on calling that haven't given
23 statements, we would just ask that they comply with the same
24 rule we are complying with.

25 MS. DAVIS: Your Honor, I think any witnesses that

1 we would potentially call would not be fact witnesses and
2 there is nothing that they would gain or lose from being in
3 trial or listening to any testimony that could sway what
4 they would be testifying to. In fact, I don't even know who
5 all would be here throughout the trial, if any of them. We
6 would ask if they are here, that they be allowed to --

7 MS. CAMPBELL: Just that the same rule that
8 applies to all witnesses that doesn't have a statement, or
9 if you want to give us an assessment of what they are going
10 to say, I don't have to problem with that, but we don't have
11 any notice. We just ask them to comply with the same rule
12 that we are.

13 MS. DAVIS: Your Honor, again, most of the
14 witnesses that we may call would be character witnesses.
15 They wouldn't speak to any facts or anything else that would
16 be a change from them sitting in trial.

17 THE COURT: All right. We are not going to
18 sequester character witnesses. They have traveled from long
19 distances to be here, so they could -- they don't know
20 whether he did it or didn't do it.

21 MS. CAMPBELL: We hope not.

22 MS. PRINGLE: There is one final matter, Your
23 Honor, if I may.

24 THE COURT: Yes, ma'am.

25 MS. PRINGLE: We, and I apologize, did not caption

1 number eight completely. We actually -- and I do believe
2 that it's proper to take this up in limine at this time.

3 THE COURT: All right.

4 MS. PRINGLE: We object to -- there are several
5 instances in which marijuana comes into play in this case.
6 I think Ms. Campbell has spoken to two of them that I'm
7 concerned about.

8 My understanding is that they don't intend to
9 introduce any marijuana found during the search warrants on
10 August 19th, 2010, or in August of 2011.

11 With that being said, there is one final instance
12 involving marijuana that involves testimony from one of the
13 lay witnesses at the scene, and that testimony would be
14 offered by Jose Monroy. Mr. Monroy told the police officers
15 and investigators at the scene that he overheard an exchange
16 between my client and one of the decedents by the name of
17 Edgar Lopez. And what Mr. Monroy says is that the white
18 male was talking to Mr. Lopez about finding some low top
19 marijuana. Then Mr. Monroy says that Mr. Lopez tried to
20 call for some marijuana. The white male showed \$60 to Mr.
21 Lopez, and this all took place before the incident.

22 And basically what we have is three people, four
23 people standing around drinking beer and talking. During
24 this time, it's about ninety minutes to two hours drinking
25 time, it is alleged that this exchange about marijuana takes

1 place. Mr. Monroy says that at one point that he -- that
2 Mr. Lopez and the white male leave at one point and go to
3 the convenience store. Mr. Monroy's statement tends to
4 indicate that he believes they were going to get marijuana,
5 but I don't think he really knows. Maybe just is
6 speculation. We object to any mention of that. And, Your
7 Honor, even if it were true, it has absolutely nothing to do
8 with the case. They don't allege it as part of -- I don't
9 believe that they will allege that there is any motive
10 involved in marijuana, and they could have been talking
11 about any number of things.

12 Your Honor, the biggest -- I anticipate that the
13 State will say that this is res gestae as part of the story,
14 that anything that they were talking about would be part of
15 their story and it would deprive their case not to be able
16 to go into it. I just -- I think that's totally without any
17 basis or foundation. It really has nothing to do with what
18 took place. Their allegation is that the decedents were
19 going to basically rob him for money, that he had
20 propositioned them, and that they were going to rob him of
21 his money and not give him some sexual acts that he's asking
22 for. That's the allegation as to motive. It has nothing to
23 do with marijuana at all, so we would object. I submit to
24 you that it does not fall under res gestae.

25 We also object under 404(b). It just doesn't

1 satisfy any exception to 404(b), and I suspect that she's
2 going to go into 404(b).

3 I call the court's attention to -- there are
4 numerous cases involving drug use in homicide cases. I
5 actually argued this before Your Honor I believe in our last
6 trial together.

7 I would turn the court's attention to State v.
8 Bolden, which is 398 S.E. 2d 494. In that case there is use
9 of crack cocaine prior to -- the evening prior to robbing
10 the hotel clerk the next morning. The court said no
11 relevant connection, it doesn't come in.

12 State v. Holman, 389 S.E. 2d 659.

13 THE COURT: You said the night before?

14 MS. PRINGLE: Yes, sir. Yes, sir.

15 In State v. Holman, evidence that the defendant
16 was a social user of cocaine shouldn't have been allowed in,
17 but the only evidence was that the defendant was wired
18 during the incident. And in that case the court refers to
19 that kind of evidence of bad character and social
20 irresponsibility. I think it's exactly what they are
21 looking at here.

22 State v. Hough, 480 S.E. 2d 77. It's a 1997 case.
23 Evidence that the defendant previously used, or stole money,
24 or abused, they said you couldn't introduce that. No
25 indication that it was a motive in that case. We have a

1 similar situation here.

2 I can go on and on, Your Honor. I think there is
3 numerous cases and I would be happy to provide the court
4 with copies of those cases, but we would just submit to you
5 that the marijuana has no link or connection to the ultimate
6 shooting of these two decedents and shouldn't be admitted at
7 this trial, Your Honor.

8 THE COURT: What says the State?

9 MS. CAMPBELL: May it please the court, Your
10 Honor, and I think she's did a good job at distinguishing
11 those cases from what we are talking about here, and we
12 agree with any prior use of marijuana or subsequent use of
13 marijuana by this defendant should not come in.

14 The only thing at issue is what happened in those
15 hours surrounding this murder that day and we are limited
16 and understand that. We are not even offering this really
17 necessarily for the truth of the matter asserted. We are
18 offering it to show possible motives in this case and we
19 have the right to be able to show that. This is integral,
20 just as the other one we have already argued, and I think we
21 are arguing the same thing. It's basically same time frame,
22 the same people, the same witnesses. As he's talking about
23 the sex, he makes a reference to buying marijuana as well,
24 so the time frame is right there in and about the murder.

25 Just as we have handed up State v. Adams, Your

1 Honor, we feel like it is integral that we have a right
2 under the case law to be able to present our case in such a
3 way that it's not fragmented or so kind of not being able to
4 understand, unless you get to the picture of the matters and
5 I rely on those same arguments we made before.

6 THE COURT: All right.

7 Ms. Pringle?

8 MS. PRINGLE: Honestly I don't even know. I
9 couldn't articulate if I tried, but motive would be relating
10 to marijuana. She said that they need to prove whatever
11 possible motives there might be, but there is absolutely no
12 connection between any motive and what took place by
13 anyone's testimony. This to me --> I was thinking about
14 other examples, thinking they are talking about beating
15 woman or torturing animals, that wouldn't be admissible in
16 this trial. It's just not connected. It has nothing to do
17 with what took place. I don't think it's the substance of
18 any conversation, or every single word that they said would
19 be relevant in this trial, and that would fall under the
20 same purview, Your Honor. The problem is it is bad
21 character evidence and it is falling under 404(b).

22 And the witnesses just don't know. I mean, there
23 is no -- there is no way to say that this marijuana
24 discussion had anything to do with what happened.

25 THE COURT: Well, don't you think the jury would

1 be entitled to have an idea as to what was going on between
2 these people prior to them leading up to the shooting?

3 MS. PRINGLE: I do. I think they will have a very
4 full and very detailed picture of what took place from the
5 witnesses that will testify about, you know, who came there
6 when, what they were drinking, who was drinking what when.
7 I don't object to any of that.

8 I object to what I think is excludable under
9 404(b). Nothing else that she's going to introduce, other
10 than the issue that Mr. Shealey has argued, which really
11 both fall under the same category to what I object to.
12 There will be hours of testimony I suspect about the details
13 of the picture of the events surrounding what took place
14 prior to.

15 THE COURT: Who said what is not -- shouldn't
16 be -- the jury should not hear testimony what was said by
17 the defendant to various people?

18 MS. PRINGLE: It depends upon what was said.

19 THE COURT: Well, if he said "I'll give you money
20 for sex or I'll give you money to get marijuana."

21 MS. PRINGLE: That's the same argument. I don't
22 think either one of those things are admissible. I think
23 that -- I think that 404(b) would exclude it. They simply
24 have no evidence that those two things form the foundation
25 for motive, intent, any of the exceptions under 404(b). I

1 think that's the problem. Certainly things he said and
2 things that the witnesses observed will come into evidence,
3 but those two things are problematic.

4 THE COURT: All right. Well, in this case of
5 State v. Simpson, where the court allowed testimony
6 concerning a nine year old son becoming hysterical after Mr.
7 Scott was shot. And counsel -- defense counsel argued the
8 testimony would be extremely prejudicial. The court ruled
9 the statement would be a present sense impression that
10 conveys the nature of the events that transpired at that
11 time. So, their phrase, "the nature of events that
12 transpired at that time," what do you take that to mean or
13 not to mean, Ms. Pringle?

14 MS. PRINGLE: Well, I think that's dealing with
15 something completely different. As to me, and even when I
16 read that part of that case, you know, he is talking about
17 something as it's happening, like something that you are
18 perceiving, not -- and this is -- not something that you
19 hear, necessarily. That's dealing with -- maybe I'm
20 confused, but that's dealing with hearsay. We are talking
21 about a 404(b) issue. I'm not objecting to it on the
22 grounds of hearsay. I'm objecting to it under 404(b).

23 THE COURT: Well, Mr. Shealey objected on hearsay
24 and 404(b).

25 MS. PRINGLE: Yes, sir.

1 THE COURT: You are not objecting on hearsay. He
2 is.

3 MS. PRINGLE: Yes, sir. Perhaps I should --

4 THE COURT: All right, Mr. Shealey, I'll hear you.
5 Anything else you want to say about that?

6 MR. SHEALEY: Regarding present sense impression?

7 THE COURT: Present sense impression. As an
8 exception to the hearsay rule, present sense impression,
9 excited utterance.

10 MR. SHEALEY: I'm just now reading this case, but
11 I -- these things are usually through the document an
12 excited utterance, or something that would be drawn to your
13 attention, or perceiving a startling event, things like that
14 that deal with emotion. And some event transpiring are the
15 words right here.

16 We are talking about things that are said in a
17 very common place, a conversation between gentlemen drinking
18 beer, but one may relay to a jury -- it shouldn't pass
19 404(b).

20 The hearsay is really -- I don't think -- I do
21 think it's hearsay. To make it not hearsay, I don't think
22 that's what people generally talk about when they talk about
23 excited utterance, like, "help, my house is on fire," or,
24 you know, things like that. I think it is just something
25 highly prejudicial, highly inflammatory which is being said

1 amongst men having normal conversations. There was a
2 content, not the way it's being said, which I think the main
3 part of it is. I just -- I don't think it falls under that
4 hearsay exception.

5 Our strongest objection is that in 404(b) that it
6 can't be established by clear and convincing evidence when
7 the speaker has a .379 blood alcohol level. I think that
8 detracts from whether --

9 THE COURT: He had a .37 at the time that he made
10 the statement, or after he got through drinking a beer?

11 MR. SHEALEY: It was after, because moments later
12 the speaker is going to be deceased. And they test him and
13 they have their scientific methods of testing the blood
14 alcohol at the time of death. So I think that weighs
15 heavily as to whether this has met the burden of being clear
16 and convincing evidence.

17 THE COURT: Anything else about that, Ms.
18 Campbell?

19 MS. CAMPBELL: Your Honor, he did bring up another
20 possible way to get it in under the excited utterance that I
21 hadn't considered before. Under 803(2) he just
22 distinguished that this was an excited utterance. We aren't
23 alleging it is. We are going under 803(1) or 803(3). We've
24 handed up the case law on this point.

25 They keep arguing back under a 404(b) argument.

1 On clear and convincing, Your Honor, I believe any excited
2 utterance. It's not offered necessarily for the truth of
3 the matter asserted, but to offer the reasons that people
4 acted or the motives and what was involved here. Under the
5 rules I believe and under the case law that we have handed
6 up to Your Honor, and you know the case law better than I
7 do, that it would be admissible under the rule.

8 But, Your Honor, we do agree we are limited in not
9 going any further into any of the drug use, or any other
10 acts of sex towards other people, or anything like that. We
11 are limited to just, and we are only asking for just what
12 happened right at the time of the murders.

13 THE COURT: The person who is seen talking to at
14 the gas station, is that the person who is to be a witness?

15 MS. CAMPBELL: Yes, sir. There are two people at
16 the gas station that have a conversation to this fact, and
17 then there is one person that who is back at the house where
18 this murder ultimately occurred that also heard references
19 to -- the marijuana we are specifically talking about. The
20 people at the gas station doesn't know anything about
21 marijuana. They just know about sex.

22 What happens is they were all drinking at the
23 house, judge. Then they leave. Mr. Lopez and the defendant
24 leave in the defendant's van. They go to the convenience
25 store, the gas station, to get more beer, and that's when

1 those conversations take place, and they returned back to
2 where they had been drinking beer before and then the
3 murders occurred, all within a very short amount of time.

4 THE COURT: If it's not offered for the truth, but
5 it's offered for what?

6 MS. CAMPBELL: To show motive what was going on at
7 the time. I believe under State v. Edwards and State
8 versus -- what is the name of that? Simpson and then under
9 State v. Adams argument, Your Honor, we would be allowed to
10 get into that.

11 MR. SHEALEY: I can't help but notice they are
12 saying that they are not offered for the truth, but if it's
13 not offered for the truth, then it's not motive. They are
14 saying it's not offered for the truth, then it cannot be
15 motive. And if it's not motive, then it does not fall
16 within the 404(b) exception. There is a substantial
17 difficulty with this analysis in trying to get this stuff
18 in. 404(b) and 403 are the main things we are arguing with.

19 As to the hearsay evidence -- I haven't had a
20 chance to read her case, but the Simpson case we are talking
21 about present sense impression. Here the testimony was a
22 nine year old becoming hysterical after witnessing a
23 shooting. And what was said after that was the present
24 sense impression.

25 Again, this is a guy that was drinking beer, a

1 casual conversation at a Shell gas station. It's not the
2 type of thing that falls within the present sense
3 impression. I don't think the court should say it's a
4 hearsay analysis. I think it should be excluded under
5 404(b) and 403. They clearly are not present sense
6 impression.

7 And if it's not for the truth of the matter
8 asserted, it cannot be motive.

9 THE COURT: Well, do you have any other cases
10 where a statement -- where the decedent has been allowed to
11 have a res gestae statement or -- have a statement by the
12 defendant -- a statement by the decedent -- it causes me
13 some pause.

14 MS. CAMPBELL: Thank you, Your Honor.

15 State v. Blackburn and State v. Davis refers to
16 where the decedent or victim's statement was omitted. And I
17 believe in those cases, judge, it says it would have been
18 admissible if it was contemporaneous, but it wasn't in those
19 those cases because of the time period.

20 THE COURT: All right. Well, let's cancel this
21 for a moment and talk about this order to shave and shower.
22 What's the purpose of this motion?

23 MR. SHEALEY: Yes, sir. That wasn't something we
24 didn't plan on arguing a motion. That's something that we
25 passed up, just in order to be better prepare a complete and

1 full defense of our client. We have allegations of gay sex
2 and there is slandering of his character. We just want him
3 to basically be clean shaven, clean, not smell, and have the
4 ability to shave every day while he's in trial for a week
5 and a half for a double homicide. It's something that we
6 frequently do and I have been in it every case I have ever
7 tried. We got it to you a little late. It came up to you
8 in the middle of the motions and that's something that we
9 standardly request and always ask for.

10 THE COURT: Is that something that's physically a
11 problem or not a problem?

12 MR. SHEALEY: No, sir. You sign it, I fax it down
13 and they take care of it and he's allowed to shave every
14 day. We just would like the opportunity to have him shaved
15 every day in front of the jury. Certainly not shaving,
16 though, definitely lets the jury know he's incarcerated.
17 It makes him look even dirty.

18 THE COURT: All right.

19 MS. CAMPBELL: Your Honor, the case I needed to
20 approach is State v. Griffin.

21 MS. DAVIS: State versus what?

22 MS. CAMPBELL: Griffin.

23 THE COURT: State v. Griffin. It's a case out of
24 Anderson County in front of Judge Henry Floyd. He was
25 charged with murder and convicted. Let me see what it says.

1 He was convicted of two counts of murder and other
2 things. He appealed on the grounds of hearsay was
3 submitted. I believe the witness testified that he and the
4 appellant just planned to rob and kill Tony Green, a known
5 drug dealer and meet them at a house in a rural area.
6 Someone called Torrie and the drug dealer to arrange a
7 meeting. They drove to the designated where they were
8 supposed to meet, talked, then shot him in the back of the
9 head, then took two bags of marijuana from him. And the
10 passengers in the car corroborated -- the passengers -- two
11 other people corroborated what happened. They weren't
12 passengers. The defendant testified that he didn't leave
13 his house that night.

14 The State moved to limit the testimony of his
15 cousin that the drug dealer had planned to meet them the
16 night of the murders already. So the State moved in limine
17 to admit the testimony about the planned meeting arguing
18 that it was admissible under the present sense impression,
19 or 803(3), state of mind or is a statement of a
20 co-conspirator. The judge ruled it admissible, present
21 sense impression as the co-conspirator's statement and a
22 statement against interests.

23 The appellate court said the testimony was
24 admissible, a statement of then existing state of mind.

25 "While this court did not specifically address the

1 issues, several state courts have found the statement by a
2 victim that he or she planned to meet with the defendant is
3 admissible under 803(3) as evidence of the declarant's then
4 existing state of mind. We conclude appellant cannot show
5 prejudice from the admission of his testimony. They planned
6 to meet was cumulative is properly admitted evidence. In
7 any event, the evidence is admissible as evidence of the
8 declarant, who is the decedent, then state of mind."

9 All right.

10 MR. SHEALEY: There is one other thing I wanted to
11 point out while we are going down the analysis, since we are
12 doing the analysis, that the hearsay that I'm talking about,
13 it's actually hearsay within hearsay. When you have a
14 statement from the alleged victim, Mr. Lopez, he is saying
15 that "Mr. Parvin told me he wants to have sex with me for
16 \$200." And then he's telling that to his State witness Adan
17 Soto. So that is hearsay tied to Mr. Lopez, and then from
18 Mr. Lopez to Mr. Soto. So in order for it to be admissible,
19 both have to be hearsay exceptions. So then that is an
20 additional as to this analysis that if -- that's what it
21 boils down to, it also needs to be fleshed out. I don't
22 think they can do that either.

23 MS. CAMPBELL: That's an interesting argument, but
24 any statement by the defendant is against his interests
25 would be admissible by the rules. So if his argument is

1 it's hearsay within hearsay including Mr. Parvin, that would
2 not be hearsay within hearsay.

3 MR. SHEALEY: Well, that's one problem that it's
4 within it. The other problem is with regard to -- I just
5 wanted to point that out.

6 THE COURT: All right. Well, I'll let you all
7 know in the morning about this particular issue.

8 What else do we have today?

9 MS. CAMPBELL: And, Your Honor, again, just for
10 the record, it's my understanding they are not going to
11 mention Post Traumatic Stress Disorder in opening statements
12 or the argument. I just want to be clear.

13 MS. DAVIS: That is correct.

14 THE COURT: All right. It's 4:30. Let's go start
15 the trial.

16 MS. CAMPBELL: And we agreed on some things,
17 judge.

18 THE COURT: All right. We will start back at 9:30
19 tomorrow morning on the Biggers hearing.

20 (Whereupon, proceedings were adjourned to December
21 13, 2011)

22

23

24

25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 LESLIE TODD PARVIN,) 2011-GS-40-0897
7 DEFENDANT.) 2011-GS-40-0898
8) DECEMBER 13, 2011
9) COLUMBIA, SOUTH CAROLINA

(VOLUME II)

10 B E F O R E:

11 THE HONORABLE CLIFTON NEWMAN, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

15 KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
16 NICOLE M. SIMPSON, ASSISTANT SOLICITOR
17 MEGHAN WALKER, ASSISTANT SOLICITOR
ATTORNEYS FOR THE STATE

18 FIELDING-PRINGLE, ASSISTANT PUBLIC DEFENDER
19 LUKE SHEALEY, ASSISTANT PUBLIC DEFENDER
JENNIFER DAVIS, ASSISTANT PUBLIC DEFENDER
20 ATTORNEYS FOR THE DEFENDANT

21
22 MICHAEL R. WATTS
CIRCUIT COURT REPORTER
23
24
25

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23	S-67	PHOTOGRAPH	442	
24	S-68	PHOTOGRAPH		538
25	S-69	PHOTOGRAPH		538

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-70	PHOTOGRAPH		538
4	S-71	PHOTOGRAPH		538
5	S-72	PHOTOGRAPH		538
6	S-73	PHOTOGRAPH		538
7	S-74	PHOTOGRAPH		538
8	S-75	PHOTOGRAPH		538
9	S-76	PHOTOGRAPH		538
10	S-77	PHOTOGRAPH		538
11	S-78	PHOTOGRAPH		521
12	S-79	PHOTOGRAPH		521
13	S-80	PHOTOGRAPH		521
14	S-81	PHOTOGRAPH		521
15	S-82	PHOTOGRAPH		521
16	S-83	PHOTOGRAPH		523
17	S-84	PHOTOGRAPH		523
18	S-85	PHOTOGRAPH		523
19	S-86	PHOTOGRAPH		523
20	S-87	PHOTOGRAPH		577
21	S-88	PHOTOGRAPH		577
22	S-89	PHOTOGRAPH		577
23	S-90	PHOTOGRAPH		577
24	S-91	PHOTOGRAPH		578
25	S-92	PHOTOGRAPH		578

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-93	PHOTOGRAPH		578
4	S-94	PHOTOGRAPH		578 -
5	S-95	PHOTOGRAPH	445	
6	S-96	PHOTOGRAPH	445	
7	S-97	PHOTOGRAPH	445	
8	S-98	PHOTOGRAPH		589
9	S-99	PHOTOGRAPH		589
10	S-100	PHOTOGRAPH		589
11	S-101	PHOTOGRAPH		589
12	S-102	PHOTOGRAPH		589
13	S-103	PHOTOGRAPH		589
14	S-104	PHOTOGRAPH		589
15	S-105	PHOTOGRAPH		589
16	S-106	PHOTOGRAPH		578
17	S-107	PHOTOGRAPH	446	
18	S-108	PHOTOGRAPH	446	
19	S-109	PHOTOGRAPH	446	
20	S-110	PHOTOGRAPH		581
21	S-111	PHOTOGRAPH		581
22	S-112	PHOTOGRAPH		581
23	S-113	PHOTOGRAPH		581
24	S-114	PHOTOGRAPH		581
25	S-115	PHOTOGRAPH		581

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-116	PHOTOGRAPH	446	
4	S-117	PHOTOGRAPH	446	
5	S-118	PHOTOGRAPH	446	
6	S-119	PHOTOGRAPH	446	
7	S-120	PHOTOGRAPH	447	
8	S-121	PHOTOGRAPH	447	
9	S-122	BLOWUP	447	
10	S-123	BLOWUP OF DIAGRAM		543
11	S-124	CELL PHONE CHARGER		
12	S-125	GSR KIT		
13	S-126	BUCCAL SWAB		792
14	S-127	CELL PHONES		540
15	S-128	BUDWEISER BOX		581
16	S-129	GREEN SHIRT, RED HAT, BLUE HAT		567
17	S-130	NAIL SCRAPINGS		
18	S-131	EDGAR LOPEZ CLOTHES		571
19	S-132	SWABS		792
20	S-133	PROJECTILE		489
21	S-134	SWAB		792
22	S-135	CARTRIDGE CASING		842
23	S-136	PRINT CARDS		595
24	S-137	PABLO GUZMAN-GUTIERREZ CLOTHES		571
25	S-138	SWABS		792

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1	S-139	PROJECTILE		841
2	S-140	BOX OF BEER CANS		565
3	S-141	SWAB OF DEFENDANT		724
4	S-142	LATENT PRINT CARD		636
5	S-143	LATENT PRINT CARD		636
6	S-144	LATENT PRINT CARD		594
7	S-145	PHOTOGRAPH	449	
8	S-146	PHOTOGRAPH	449	
9	S-147	PHOTOGRAPH	449	
10	S-148	PHOTOGRAPH	449	
11	S-149	PHOTOGRAPH	449	
12	S-150	PHOTOGRAPH	449	
13	S-151	PHOTOGRAPH	449	
14	S-152	PHOTOGRAPH	449	
15	S-153	PHOTOGRAPH	449	
16	S-154	PHOTOGRAPH	449	
17	S-155	PHOTOGRAPH		596
18	S-156	PHOTOGRAPH		596
19	S-157	PHOTOGRAPH		596
20	S-158	PHOTOGRAPH		596
21	S-159	PHOTOGRAPH		596
22	S-160	PHOTOGRAPH		596
23	S-161	PHOTOGRAPH		596

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-161	PHOTOGRAPH		596
4	S-162	PHOTOGRAPH		596
5	S-163	PHOTOGRAPH		596
6	S-164	PHOTOGRAPH		596
7	S-165	PHOTOGRAPH		596
8	S-166	PHOTOGRAPH		596
9	S-167	PHOTOGRAPH		613
10	S-168	PHOTOGRAPH		613
11	S-169	3 PAGES OF FINGERPRINT CARDS		658
12	S-170	BUSINESS RECORDS FROM LOUISIANA		665
13	S-171	BUSINESS RECORDS FROM LOUISIANA		665
14	S-172	CHART	451	
15	S-173	CHART	451	
16	S-174	BUSINESS RECORDS - JAMESON INN		683
17	S-175	BUSINESS RECORDS - JAMESON INN		683
18	S-176	PHOTOGRAPH		746
19	S-177	PHOTOGRAPH		746
20	S-178	PHOTOGRAPH		746
21	S-179	PHOTOGRAPH		746
22	S-180	PHOTOGRAPH		746
23	S-181	PHOTOGRAPH		746
24	S-182	PHOTOGRAPH		746
25	S-183	PHOTOGRAPH		746

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-184	PHOTOGRAPH		746
4	S-185	PHOTOGRAPH		746
5	S-186	PHOTOGRAPH		746
6	S-187	PHOTOGRAPH		746
7	S-188	PHOTOGRAPH		746
8	S-189	PHOTOGRAPH		746
9	S-190	PHOTOGRAPH		746
10	S-191	PHOTOGRAPH		746
11	S-192	PHOTOGRAPH		746
12	S-193	PHOTOGRAPH		746
13	S-194	BLOWUP PHOTOGRAPH		728
14	S-195	BLOWUP	453	
15	S-196	BLOWUP	453	
16	S-197	BUCCAL SWAB		792
17	S-198	BLOWUP		
18	S-199	BLOWUP		880
19	S-200	BLOWUP		880
20	S-201	SWAB		792
21	S-202	SWAB		792
22	S-203	SWAB		792
23	S-204	SWAB		792
24	S-205	SUMMARY	453	
25	S-S06	SUMMARY	453	

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-207	SUMMARY	454	
4	S-208	ROSSI GUN	454	
5	S-209	TAURUS GUN	454	
6	S-210	BOX OF MISCELLANEOUS AMMUNITION	454	
7	S-211	PAPERWORK FOR KIA VAN		866
8	S-212	BLOWUP MAP		1471
9	S-213	GUN	454	
10	S-214	GUN	454	
11	S-215	GUN	454	
12	S-216	GUN	454	
13	S-217	BONG		1463
14	S-218	PHOTOGRAPH		1466
15	S-219	GLASS PIPE		1463
16	S-220	PHOTOGRAPH	455	
17	S-221	PHOTOGRAPH	455	
18	S-222	PHOTOGRAPH	455	
19	S-223	PHOTOGRAPH		1463
20	S-224	PHOTOGRAPH		1457
21	S-225	PHOTOGRAPH		1465
22	S-226	PHOTOGRAPH		1465
23	S-227	PHOTOGRAPH		1465
24	S-228	PHOTOGRAPH		1465
25	S-229	PHOTOGRAPH		1465

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-230	PHOTOGRAPH		1465
4				
5	D-1	PHOTOGRAPH		600
6	D-2	PHOTOGRAPH		600
7	D-3	DOCUMENT FROM JAMESON INN		685
8	D-4	1 PAGE DOCUMENT		937
9	D-5-A	PURCHASE ORDER DOCUMENT		1645
10	D-5-B	RECEIPT DOCUMENT		1645
11	D-5-C	DRIVER'S LICENSE DOCUMENT		1645
12	D-6-A	PURCHASE ORDER DOCUMENT		1645
13	D-6-B	DRIVER'S LICENSE DOCUMENT		1645
14	D-7-A	PURCHASE ORDER DOCUMENT		1645
15	D-7-B	RECEIPT DOCUMENT		1645
16	D-8-A	PURCHASE ORDER DOCUMENT		1645
17	D-8-B	RECEIPT DOCUMENT		1645
18	D-9	PURCHASE ORDER		1645
19	D-10-A	PURCHASE ORDER		1645
20	D-10-B	RECEIPT DOCUMENT		1645
21	D-10-C	DRIVER'S LICENSE DOCUMENT		1645
22	D-11-A	PURCHASE ORDER		1645
23	D-11-B	RECEIPT		1645
24	D-11-C	DRIVER'S LICENSE DOCUMENT		1645
25	D-12-A			1645

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	D-12-B			1645
4	D-13-A			1645
5	D-13-B			1645
6	D-13-C			1645
7	D-14	PHOTOGRAPH	1050	
8	D-15	PHOTOGRAPH	1050	
9	D-16	PHOTOGRAPH	1050	
10	D-17	PHOTOGRAPH	1050	
11	D-18	PHOTOGRAPH	1051	
12	D-19	PHOTOGRAPH	1051	
13	D-20	PHOTOGRAPH	1051	
14	D-21	PHOTOGRAPH	1051	
15	D-22	PHOTOGRAPH	1051	
16	D-23	PHOTOGRAPH	1051	
17	D-24	PHOTOGRAPH	1051	
18	D-25	PHOTOGRAPH	1051	
19	D-26	PHOTOGRAPH	1051	
20	D-27	PHOTOGRAPH	1051	
21	D-28	PHOTOGRAPH	1051	
22	D-29	PHOTOGRAPH	1051	
23	D-30	PHOTOGRAPH	1052	
24	D-31	PHOTOGRAPH	1052	
25	D-32	PHOTOGRAPH	1052	

EXHIBITS				
	NO.	DESCRIPTION	ID.	EV.
1	D-33	PHOTOGRAPH	1052	
2	D-34	1 PAGE POEM	1052	
3	D-35	1 PAGE POEM	1052	
4	D-36	1 PAGE POEM	1052	
5	D-37	PHOTOGRAPH	1052	
6	D-38	PHOTOGRAPH	1052	
7	D-39	PHOTOGRAPH	1052	
8	D-40	AWARD DOCUMENT		1352
9	D-41	AWARD DOCUMENT		1078
10	D-42	AWARD DOCUMENT	1052	
11	D-43	AWARD DOCUMENT		1078
12	D-44	AWARD DOCUMENT	1053	
13	D-45	AWARD DOCUMENT		1078
14	D-46	AWARD DOCUMENT		1078
15	D-47	AWARD DOCUMENT		1078
16	D-48	AWARD DOCUMENT		1078
17	D-49	AWARD DOCUMENT		1078
18	D-50	AWARD DOCUMENT		1078
19	D-51	AWARD DOCUMENT		1078
20	D-52	AWARD DOCUMENT		1078
21	D-53	AWARD DOCUMENT		1078
22	D-54	MULTIPLE DOCUMENTS		1226
23				
24				
25				

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	MULTIPLE DOCUMENTS	178	
4	CT-2	COLORED PHOTOGRAPH	1013	
5	CT-3	PHOTOGRAPH	1013	
6	CT-4	PHOTOGRAPH	1013	
7	CT-5	PHOTOGRAPH	1013	
8	CT-6	PHOTOGRAPH	1013	
9	CT-7	PHOTOGRAPH	1013	
10	CT-8	PHOTOGRAPH	1013	
11	CT-9	PHOTOGRAPH	1013	
12	CT-10	PHOTOGRAPH	1014	
13	CT-11	PHOTOGRAPH	1014	
14	CT-12	PHOTOGRAPH	1014	
15	CT-13	COLORED PHOTOGRAPH	1014	
16	CT-14	BRIEF DOCUMENT	1339	
17	CT-15	JUROR NOTE	1701	
18	CT-16	JUROR NOTE	1701	
19	CT-17	JUROR NOTE	1701	
20	CT-18	JUROR NOTE	1751	
21	CT-19	JUROR NOTE	1751	
22	CT-20	JUROR NOTE	1751	
23	CT-21	JUROR NOTE	1751	
24	CT-22	JUROR NOTE	1751	
25				

1 (PROCEEDINGS, DECEMBER 13, 2011)

2 (Photo Lineup Array marked as State's Exhibit No.
3 1 for identification)

4 (Photo Lineup Array marked as State's Exhibit No.
5 2 for identification)

6 (Photo Lineup Array marked as State's Exhibit No.
7 3 for identification)

8 (Photo Lineup Array marked as State's Exhibit No.
9 4 for identification)

10 (Photo Lineup Array marked as State's Exhibit No.
11 5 for identification)

12 (Composite Drawing marked as State's Exhibit No. 6
13 for identification)

14 (Multiple Documents for Biggers Hearing marked as
15 Court's Exhibit No. 1 identification)

16 THE COURT: Good morning.

17 MS. CAMPBELL: Good morning, Your Honor.

18 MS. DAVIS: Good morning.

19 THE COURT: Yes, ma'am.

20 MS. CAMPBELL: We are ready to proceed.

21 THE COURT: Is there anything else on these issues
22 involving the conversation at the gas station and the
23 comment about marijuana? Anything else? Does anyone else
24 have any comment?

25 MS. CAMPBELL: No, sir.

1 MR. SHEALEY: I think we addressed it pretty
2 thoroughly yesterday.

3 THE COURT: Okay. Well, the way that I see it at
4 this point is pretty much a split decision on that. Mr.
5 Shealey loses and Ms. Pringle wins on the issue of the
6 conversation that is admissible as part of the res gestae
7 and as an exception to the hearsay rule and to explain the
8 nature of what's going on in relation to -- that could --
9 would be -- could be probative on the issue of motive.

10 And regarding the marijuana, that will not be
11 admissible, since drug use is not relevant to show motive or
12 intent, unless there is some additional evidence to show
13 that -- I think some of the cases says inextricably tied into
14 the commission of the offense.

15 So, of course, you all asked me to rule on things
16 without hearing and knowing any of the evidence. So based
17 on what I have heard thus far, that would be my ruling on
18 those two issues.

19 MS. CAMPBELL: Yes, sir. Just so -- before we put
20 the witness up in front of the jury, I just need to be able
21 to explain to him, with the interpreter, that he can't
22 mention that --

23 THE COURT: Well, you know --

24 MS. CAMPBELL: -- in front of the jury. That's
25 all.

1 THE COURT: In most instances we go through these
2 exercises and everything comes in any way, so -- through
3 some means or another, if there is some question, but --

4 Yes, sir.

5 MR. SHEALEY: Just for a clarification for myself,
6 I had the same argument as to a separate conversation back
7 at the incident location between the two alleged victims
8 that was overheard by a witness about the American -- "Todd,
9 the American, is gay." Is your ruling the same way for
10 that?

11 THE COURT: I don't know. I haven't heard any
12 arguments about that, so -- and I'm not inclined to hear the
13 entire piecemeal arguments trying to figure this out and
14 figure that out, who can say this and who can say that, in
15 advance of hearing any evidence in the case. That's why
16 these -- most of these motions are a waste of time, in my
17 experience.

18 All right, I'm ready, otherwise.

19 MS. CAMPBELL: Yes, sir.

20 THE COURT: Yes.

21 MS. CAMPBELL: The State would Alfredo Vidal.

22 THE CLERK: Let me swear the interpreter.

23 (WHEREUPON, the Interpreter, J. Britt Hunt, was
24 first duly sworn by the Clerk of Court.

25 THE CLERK: Do you solemnly swear that you will

1 accurately interpret the language requested in this
2 courtroom of the witness without addition thereto or
3 detractions therefrom, or any other amendments that are not
4 an interpretation, so help you God?

5 THE INTERPRETER: I do.

6 THE CLERK: Raise your right hand.

7 ALFREDO ZUNIJIA VIDAL, having been first duly
8 sworn, testified as follows:

9 THE WITNESS: Yes.

10 COURT REPORTER: I'm going to need him to spell
11 his name.

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

14 THE WITNESS: My name is Alfredo Zunija Vidal.

15 COURT REPORTER: Spell his name, please.

16 THE COURT: Please explain it's not a personal
17 conversation between the two of you, but he must speak where
18 everyone can hear.

19 THE WITNESS: It is Zunija, Z-U-N-I-J-A, Vidal,
20 V-I-D-A-L.

21 DIRECT EXAMINATION BY MS. CAMPBELL:

22 Q. Mr. Vidal, how old are you?

23 A. I'm forty years old.

24 Q. And where do you currently live?

25 A. I live at [REDACTED], Columbia, South

1 Carolina, 29223.

2 Q. How long have you been living in Columbia?

3 A. It's been about fourteen years.

4 Q. Do you work?

5 A. Yes.

6 Q. What do you do?

7 A. Landscaping.

8 Q. I want to turn your attention back to July of last
9 year. Do you remember seeing Edgar and Pablo on July the
10 30th?

11 A. Yes.

12 Q. Where did you see them?

13 A. I saw them at their house.

14 Q. And tell the court what you saw that day when you went
15 to their house.

16 A. I went there because Jose told me he needed a ride to
17 his house. I parked. I parked behind the van, a green van,
18 which was silver all around. Then I got out. I chatted for
19 awhile with Camagua Ackinell (phonetic) and Pablo Ackinell
20 (phonetic). And I asked them if they were working and they
21 said they were working, doing packing. So they were
22 drinking beer there. They were.

23 There was another, an American guy there speaking with
24 them. I spoke awhile with him. He told me his name, but I
25 don't remember his name.

1 So I was a little bit longer there, ten, fifteen
2 minutes. And after that they went to get some beer, Camagua
3 and the American. They came back and they brought back
4 twenty-four beers. It was Budweiser beer.

5 And then I asked Jose if he needed a ride and he said
6 yes, to take him to his house. And then Jose asked me to
7 take him to the store. And then we went to his house. I
8 talked a little bit with Jose and then we heard some shots.

9 And so we were there maybe ten or fifteen minutes on
10 the front porch or in the front yard with him and then he
11 got a call from his brother. Then he said that the American
12 who was drinking beer with them there had shot and had
13 killed them.

14 Q. Let me back up. The American that you saw --

15 Did you give a description -- did you meet with the
16 police about what you knew?

17 A. Yes.

18 Q. Did you give them a description of the American that
19 you saw out there drinking beer that day?

20 A. Yes.

21 Q. Do you remember what the description was that you gave
22 the police?

23 A. Yes.

24 Q. What was it?

25 A. Yes, the description I gave them was he was an

1 American, about 5'6" inches, pretty well built with a tattoo
2 on his right arm, had a tattoo on his left arm, and he had
3 brown hair and his eyes used glasses. He had earrings in
4 both sides, and he had a tattoo in the back on his back and
5 that it was a woman. The tattoo was a woman. I can't
6 remember if it was with a puma or a fox. And then Camagua
7 asked who it was and he said it was his wife.

8 Q. The tattoo was of his wife?

9 A. Yes.

10 Q. Did you also meet with the police and artist, the
11 police artist, and help do a drawing of the person that you
12 had seen that day?

13 A. Yes.

14 Q. I'll show you State's Exhibit No. 6.

15 A. Yes, this was the description that I did.

16 Q. Okay. And later on, on August the 15th, did you look
17 at some photographs?

18 A. Yes.

19 Q. I'm going to show you what's been marked as State's
20 Exhibit No. 1. Do you recognize those?

21 A. Yes, I recognize him.

22 Q. When they showed you those photographs, did you
23 recognize the person from the person that you saw that day?

24 A. Yes.

25 Q. And when you saw him that day when this happened, did

1 you get close enough to see his face?

2 A. Yes.

3 Q. Did anything block your view of his face that day?

4 A. No.

5 Q. And how close did you actually get to him to see his
6 face?

7 A. From here to a little closer, to there.

8 Q. So a little more than arm's length?

9 A. A little bit closer.

10 Q. Had you ever seen him before?

11 A. I had never seen him before in my life.

12 Q. But you looked at him for a period of I think you said
13 ten to fifteen, maybe more, minutes?

14 A. Yes. I was there between ten and fifteen minutes.

15 Q. When they showed you this, State's Exhibit 1, did
16 anyone tell you who to pick out?

17 A. No.

18 Q. And did you pick out the one that's been circled
19 because you recognized him from seeing him that day of the
20 shooting?

21 A. Yes.

22 Q. When they showed you State's Exhibit 1, was this
23 handwriting on it?

24 A. No.

25 Q. And did you pick out this one right here because you

1 recognized him from talking to him that day?

2 A. Yes.

3 Q. And whose handwriting are these initials?

4 A. That's mine.

5 Q. And this writing over here, who wrote that?

6 A. I wrote that.

7 Q. And what does it say?

8 A. I'm sure -- I'm sure that this is the person one
9 hundred percent.

10 Q. And that's what you told the sheriff's department when
11 they showed you those photos?

12 A. Yes.

13 Q. The American, when you were talking to him that day,
14 did he tell you anything about where he lived?

15 A. Yes.

16 Q. What did he tell you?

17 A. We had a little bit of conversation, as far as
18 understanding just a little bit between he and I and we
19 introduced ourselves. He told me his name. I forgot his
20 name, and he told me he lived for Wilson Boulevard, Lake
21 Boulevard, Wilson.

22 Q. That's what you think it was now?

23 A. Excuse me, can you say that again?

24 Q. You thought it was Lake Wilson is what you are saying?

25 A. I thought that, yes.

1 Q. And the person that he's referred to as Camagua, does
2 he also go by the name Edgar?

3 A. Edgar, yes, that's his name.

4 Q. And the person that you talked to that day, do you see
5 him here in the courtroom?

6 A. Yes.

7 Q. Can you point him out for the judge?

8 A. Yes, he's the second one from here to there.

9 Q. Can you describe what he's wearing now?

10 A. Yeah, short hair, a little bit chubby with a suit.

11 Q. Does he have anything on his face?

12 A. No.

13 Q. Is he wearing anything -- any eyewear?

14 A. He has glasses.

15 MS. CAMPBELL: Your Honor, may the record reflect
16 that he's identified the defendant?

17 THE COURT: It does.

18 MS. CAMPBELL: Nothing further.

19 THE COURT: Cross-examination.

20 MR. SHEALEY: If it please the court.

21 CROSS EXAMINATION BY MR. SHEALEY:

22 Q. Good morning.

23 A. Good morning.

24 Q. And you were there that day at Edgar's house because
25 Jose called you?

1 A. Yes.

2 Q. And he needed a ride?

3 A. Yes.

4 Q. And when talking to Ms. Campbell, you said that Edgar
5 and Pablo lived there.

6 A. No, Edgar lived there.

7 Q. No Pablo, right?

8 A. No. Pablo, no.

9 Q. And you mentioned the entire time that you were there
10 was about ten to fifteen minutes?

11 A. Yes.

12 Q. And this would also include a time of Edgar and the
13 American went to get beer, right?

14 A. Yes.

15 Q. And they went down to the gas station on Percival Road,
16 right?

17 A. I believe so, because that's the only gas station
18 around. It's the closest.

19 Q. And that would take five minutes, or more, to make that
20 trip, right?

21 A. I imagine.

22 Q. Now, you don't speak English very well, honestly,
23 right?

24 A. No.

25 Q. So when you are there talking to Edgar and Pablo and

1 the American, Edgar is doing the translating to the
2 American, right?

3 A. No, I don't speak very well English, but I speak a
4 little only.

5 Q. Okay. So your conversations with the American are
6 between you and him?

7 A. Yeah, we just spoke a little bit only. He told me his
8 name and everything.

9 Q. Okay. You mentioned that you saw his tattoos on his
10 back and his arms?

11 A. Yes.

12 Q. Okay. And you also mentioned that Edgar and Pablo were
13 drinking that day, right?

14 A. Yes, they were drinking.

15 Q. Were you drinking at all with them that day?

16 A. No.

17 Q. You weren't drinking at all?

18 A. I didn't drink anything.

19 Q. I want to talk to you about when Mr. Gonzalez shows you
20 that photo lineup.

21 When he showed you the lineup, he never told you that
22 you didn't have to pick out somebody, right?

23 A. No, I recognized him.

24 Q. And after -- and you also asked him if there were any
25 more photos other than that, right?

1 A. If he showed me more photos?

2 Q. I'm asking did you ask Mr. Gonzalez to show you any
3 more photos other than that?

4 A. No.

5 Q. And after you made your selection, Mr. Gonzalez thanked
6 you for your help?

7 A. No.

8 Q. Did you remember Mr. Gonzalez ever telling you that the
9 person may or may not be in there?

10 A. No, I don't remember.

11 Q. And Mr. Gonzalez never showed you any pictures of any
12 tattoos that would have been found on Mr. Parvin, the
13 American?

14 A. No.

15 Q. And as best as you can remember, you looked at those
16 photos about two, two and a half weeks after the incident?

17 A. More or less I remember two weeks, or something like
18 that.

19 Q. And it was normal for Edgar and Pablo to be drinking
20 out there with people, right?

21 A. Well, from time to time sometimes I would go visit them
22 and maybe have a beer with them or something.

23 Q. Okay. For the ten to fifteen minutes that you were
24 there, there wasn't anything startling while you were there
25 that would draw your attention, right?

1 A. No, they were just talking and everything okay.

2 Q. It was just three guys drinking?

3 A. Yes, there was one, two, three. There were four
4 including the American and my friend Jose.

5 MR. SHEALEY: Beg the court's indulgence.

6 (Off the record)

7 (Back on the record)

8 MR. SHEALEY: I don't have any further questions.

9 MS. CAMPBELL: Nothing further, Your Honor.

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

11 MS. CAMPBELL: The State calls Jose Monroy.

12 (Whereupon, the translator was used in conjunction
13 with this witness)

14 JOSE LUIS HERNANDEZ MONROY, having been first duly
15 sworn, testified as follows:

16 THE WITNESS: Yes.

17 THE CLERK: Have a seat in the witness box and
18 state your name for the record and spell your name, please.

19 THE COURT: When the jury comes in with the
20 interpreter interpreting, where do you plan to stand so as
21 not to block the jury's view?

22 THE INTERPRETER: Normally I would stand here, but
23 I can try to stand back further, Your Honor.

24 THE COURT: Because the jurors would need to hear
25 and see the witness.

1 THE INTERPRETER: Okay.

2 THE COURT: I don't know what kind of problems it
3 presents. Maybe you can start practicing so that you can
4 find a comfortable spot so it doesn't block the jury's view.

5 THE INTERPRETER: Thank you, sir.

6 THE COURT: You may proceed.

7 DIRECT EXAMINATION BY MS. CAMPBELL:

8 Q. What is your name?

9 A. My name is Jose Luis Monroy.

10 Q. Where do you live?

11 A. I live at 1401 Faraway, Columbia, South Carolina,
12 29223.

13 Q. And how long have you been living in Columbia?

14 A. Twenty-one years.

15 Q. Do you work?

16 A. Yes.

17 Q. What do you do?

18 A. Packaging. My -- the name of my company is Coberht.

19 COURT REPORTER: I'm sorry, can you spell it?

20 THE WITNESS: It's C-O-B-E-R-H-T.

21 BY MS. CAMPBELL:

22 Q. And what do you package?

23 A. It's a factory where we do these type of finish like
24 this. This type of wood.

25 Q. Wood?

1 A. Yes, wood.

2 Q. And I want to turn your attention back to July the 30th
3 of 2010.

4 A. Okay.

5 Q. Did you go over to see Edgar and Pablo that evening?

6 A. No, I didn't go. It was my brother Esau.

7 Q. Did you see them that week?

8 A. It was in the afternoon.

9 Q. In the afternoon.

10 And where did you see them that afternoon?

11 A. I was talking awhile to my friend and I saw Camagua and
12 Pablo were friends, and so I said I'm going to go talk to
13 them for a little bit.

14 Q. Was it out in the yard area?

15 A. Yes, in the yard area.

16 Q. And tell the judge what you saw when you got over
17 there.

18 A. Well, I went to talk with them. I was about an hour
19 there. And then the white guy offered me a Modelo beer and
20 I accepted it.

21 Q. And did you have any conversations with the white guy?

22 A. No, never, first time I saw him.

23 Q. That afternoon you said that you were there about an
24 hour?

25 A. Yes. No more than an hour.

1 Q. And while you were there, did anyone leave to go to the
2 store?

3 A. Yes, the white guy and Camagua went to the store. They
4 didn't take very long and they came back with twenty-four
5 Budweisers. I don't know which store they went to.

6 Q. When they came back, did you see the American or the
7 white guy again?

8 A. They came back together.

9 Q. And was everybody just drinking beer out there in the
10 yard?

11 A. No, just the three of them. And they gave me one and
12 they offered me another one, but I didn't accept it.

13 Q. Did you ever see any tattoos on the white guy?

14 A. I just saw the arms only. I don't know what type or
15 anything.

16 Q. Did you see any weapons that day?

17 A. Yes.

18 Q. Who had a weapon?

19 A. The white guy.

20 Q. At some point did you call to get a ride?

21 A. A friend of -- my friend. I had walked and I called
22 him and said I needed a ride home.

23 Q. And did Alfredo come over there?

24 A. Yes.

25 Q. And at some point did you leave with Alfredo?

1 A. Yeah, we were there. He was there about fifteen
2 minutes and we left, and he said he saw that white guy had a
3 pistol, didn't you, and I didn't even realize.

4 Q. And once you left, where did you go?

5 A. After that I went to the store to buy a Red Bull and
6 then I went back to my house.

7 Q. Later did the police come talk to you about what you
8 saw that day?

9 A. Not the same day.

10 Q. The next day, or in the next few days after this
11 happened, did they talk to you?

12 A. Yeah, it was sometime later they brought me some
13 photos, like five photos. I don't remember exactly how long
14 that was.

15 Q. Okay. Did you give a description of the American, the
16 white guy to the police, what he looked like?

17 A. Of course. Of course.

18 Q. And do you remember what the description was that you
19 gave?

20 A. Yes.

21 Q. What was it?

22 A. Well, he has glasses. He was -- he was five or six
23 feet tall, I can't remember exactly, and he had a green van
24 with Louisiana plates.

25 Q. And later, on August the 19th, did they show you some

1 photographs?

2 A. Of course.

3 Q. And I'm going to show you what's been marked as State's
4 Exhibit 2.

5 A. Yeah, this is the gentleman. I'm the one who wrote
6 this on top. That's my signature.

7 Q. When they showed you those photos, did they tell you
8 who to pick out?

9 A. No, no, no, they just gave me this and said, "do you
10 know the person who did that?"

11 Q. Did you recognize anyone out of those six photos?

12 A. Yes. Yeah, he showed me and I knew exactly who it was.
13 We were just from here to here to each other.

14 Q. When you say from here to here, how far?

15 A. About a meter, a meter and a half.

16 Q. Okay. And did you recognize him from seeing him that
17 day in the yard?

18 A. Yeah, from the one time I saw him I'll never forget
19 that face.

20 Q. Once you recognized him, are these your initials?

21 A. Of course.

22 Q. And you actually circled the one that you recognized?

23 A. Of course.

24 Q. And then they had you sign the document?

25 A. Yes, saying that that was the person that signed that.

1 Q. Thank you, sir.

2 MS. CAMPBELL: I don't have anything further, Your
3 Honor.

4 THE COURT: Cross-examination?

5 MS. DAVIS: Thank you.

6 CROSS EXAMINATION BY MS. DAVIS:

7 Q. Good morning.

8 A. Good morning.

9 Q. You just testified that you were at Edgar's house that
10 day?

11 A. Yes, I did. I was at my brother's and then I went to
12 talk to them.

13 Q. I'm sorry, and Edgar lives right next to your brother,
14 right?

15 A. Of course.

16 Q. So you went right next in the yard to talk with Edgar
17 and talk with --

18 A. Yes, that's right.

19 Q. And at that time the American, the white guy, was there
20 too?

21 A. Yes, three. It was him, Camagua and Pablo.

22 Q. And how long did you talk with them before they went to
23 get more beer?

24 A. Well, I was not talking to him, because I don't speak
25 English. I was talking to Camagua about the night before

1 and they went out drinking.

2 Q. So you didn't have any conversations with the American
3 because you didn't speak English?

4 A. I don't speak English, no.

5 Q. But you saw him there?

6 A. Yeah, I saw him. He offered me a beer. I had a beer.
7 And he offered me another one, but I didn't have another
8 one.

9 Q. When they went to get beer, how long did that take?

10 A. That didn't take very long, maybe ten minutes.

11 Q. And you were still there when they got back?

12 A. Yes, yes, I was. And they came back with twenty-four
13 Budweisers.

14 Q. And Pablo and Edgar, they were all drinking that
15 afternoon?

16 A. The three of them.

17 Q. And at some point the State came and -- or the police,
18 I'm sorry, came and showed you those pictures?

19 A. Yes, I don't remember how many days it was, but, yes,
20 they showed me those photos.

21 Q. It was about three weeks almost, do you think?

22 A. I don't remember exactly, but, yeah, it was a few days
23 until they showed me those photos.

24 Q. In between when you saw the white guy and the time they
25 showed you those pictures, did you talk with anybody else

1 about it?

2 A. No.

3 Q. So you never talked with Alfredo about the American
4 that was there that day?

5 A. No, we didn't talk.

6 Q. Y'all didn't talk about it at all between -- for those
7 three weeks?

8 A. No. We went to Two Notch Road and they showed us the
9 photos there. That's where I saw the photos, on Two Notch
10 Road.

11 Q. When they showed you the lineup, Jose, was it
12 Investigator Gonzalez that showed you those pictures?

13 A. No, there were other people there. I don't remember
14 exactly because it was in the office. It was in the
15 sheriff's department on Two Notch Road.

16 No, they just told me there was some investigators
17 there. They showed me some photos. They said, "do you
18 recognize anybody?" I said "no, no, no." Then they brought
19 some more and that's when I saw him.

20 Q. Okay. So the day that they showed you this lineup,
21 they showed you some pictures before this?

22 A. The other ones were different.

23 Q. Okay. And so do you remember about how many pictures
24 that you did see before you saw these pictures?

25 A. There were two pages. There was another one.

1 Q. Okay. And they showed you both of those pages that
2 same day?

3 A. No, that was a little later.

4 Q. Okay. So a time before this they showed you another
5 page with pictures on it?

6 A. That particular photograph wasn't there.

7 Q. Right. Right.

8 When they showed you this lineup, did the investigators
9 tell you that the suspect might be in there or he might not
10 be?

11 A. He didn't say anything. He just said, "I'm bringing
12 these photos to see if you recognize the person."

13 Q. And have you ever seen this drawing before?

14 A. Yeah, I believe maybe they showed me this photo, but I
15 don't remember if I have seen it or not.

16 Q. Okay. Do you remember -- did you ever see this on a
17 flyer or anything in your neighborhood?

18 A. No.

19 Q. But you might have seen this before? You are just not
20 sure?

21 A. No, I'm not sure.

22 No, before that, until they showed me that one group of
23 photos, I said, "this is the guy."

24 MS. DAVIS: Beg the court's indulgence.

25 (Off the record)

1 (Back on the record)

2 BY MS. DAVIS:

3 Q. Mr. Monroy, just one more question.

4 After they showed you this lineup, did they say
5 anything to you when you got done?

6 A. That -- yes, he was under arrest. That was later.
7 First they showed me the photos.

8 Then I didn't know if he was under arrest or not, but
9 after I picked him out, they had -- and I didn't know if he
10 was arrested or not, they told me that he was already
11 detained.

12 Q. Okay. So after you picked him out, then later they did
13 tell you that he had been arrested or detained?

14 A. Yeah, I recognized him and then they told me, yes, he's
15 arrested.

16 Q. Thank you.

17 THE COURT: Anything further from the State?

18 REDIRECT EXAMINATION BY MS. CAMPBELL:

19 Q. The person that you saw that day that you recognized in
20 the photos, do you see him here in the courtroom?

21 A. Of course. There he is.

22 Q. And can you point him out for the judge?

23 A. The second one from this side to that side.

24 MS. CAMPBELL: May the record reflect that the
25 witness has --

1 THE COURT: It does.

2 MS. CAMPBELL: Okay.

3 THE COURT: Anything further?

4 MS. CAMPBELL: No.

5 THE COURT: You may step down, sir.

6 Do you have any other witnesses who are not ID
7 witnesses? Any police witnesses on this issue?

8 MS. CAMPBELL: Yes, I just have -- I can put up
9 police witnesses, yes, sir.

10 THE COURT: Okay. Proceed with the police
11 witnesses, any other identification witnesses.

12 MS. CAMPBELL: Yes, sir.

13 THE COURT: Unless there is something unique that
14 relates to those witnesses, or unless the police -- you got
15 police officers who were not involved with -- any additional
16 witnesses. Unless the police officers who are going to
17 testify were not involved with the witnesses who have not
18 testified.

19 MS. CAMPBELL: No, they were both involved with
20 witnesses.

21 The State calls Brien Gwyn.

22 INVESTIGATOR BRIEN GWYN, having been first duly
23 sworn, testified as follows:

24 THE CLERK: Have a seat in the witness box and
25 state your name for the record, please, and spell your name.

1 THE WITNESS: Brien Gwyn, B-R-I-E-N G-W-Y-N.
2 DIRECT EXAMINATION BY MS. CAMPBELL:
3 Q. Investigator Gwyn, where are you employed?
4 A. The Richland County Sheriff's Department.
5 Q. What do you do there, sir?
6 A. I'm with the narcotics unit.
7 Q. And back in July, August of 2010, were you involved in
8 the investigation of a double homicide at Woodfield Park?
9 A. I was.
10 Q. And, in fact, were you the lead investigator in the
11 case?
12 A. Yes, ma'am.
13 Q. I want to turn your attention back to several --
14 through the course of your investigation, did it become
15 apparent that several eyewitnesses were at the scene, either
16 right before or during the time period, when the shooting
17 occurred?
18 A. That's correct.
19 Q. And did you show them some photo lineups?
20 A. We did.
21 Q. I'm going to show you what's been marked as State's
22 Exhibit No. 1, which is a lineup that was shown to Alfredo
23 Zuniga. Were you present when that photo lineup was shown?
24 A. I was.
25 Q. And I believe it was you and Investigator Gonzalez?

1 A. Yes, ma'am.

2 Q. And that was shown on August the 15th of 2010, is that

3 correct?

4 A. That's correct.

5 Q. And when you showed him that lineup, at that point had

6 you developed a suspect in the case?

7 A. We had.

8 Q. Prior to all this, in the weeks prior to this, had

9 there been other suspects in the case?

10 A. There was.

11 Q. But this was the first time that anyone was shown a

12 lineup I believe involving the defendant Leslie Parvin?

13 A. That is correct.

14 Q. And when you showed Mr. Vidal, Mr. Zuniya Vidal --

15 A. I believe so.

16 Q. -- the lineup, tell the judge how that process

17 happened.

18 A. Obviously, Your Honor, there is a language barrier, so

19 Investigator Gonzalez did the translation and spoke with

20 Alfredo, the witness; placed the lineup in front of him and

21 asked him if he recognized anybody in the photo lineup.

22 Q. And at that point did he indicate whether or not he

23 recognized anyone?

24 A. Immediately.

25 Q. And at that point did you have him memorialize that and

1 write on that actual State's Exhibit No. 1?

2 A. Investigator Gonzalez did, yes.

3 Q. And that was -- the writing on this State's Exhibit 1
4 is the writing he did and then you had him sign on the
5 second page memorializing his pick?

6 A. That is correct.

7 MS. CAMPBELL: Your Honor, may I approach?

8 THE COURT: Yes.

9 BY MS. CAMPBELL:

10 Q. I want to turn your attention to August the 20th, that
11 day, did y'all show two more lineups, one to a Dimas
12 Fernandez and one to a Roberto Gonzales?

13 A. Yes, ma'am.

14 Q. And were those people that also indicated that they had
15 seen the person in or around the time of the shooting?

16 A. That's correct.

17 Q. I'm going to show you what's been marked as State's
18 Exhibit No. 3, which is Dimas Fernandez' lineup. Where did
19 you all actually show the lineup that day, you and
20 Investigator Gonzalez?

21 A. At 2348 Shop Road, which would be his work location.

22 Q. And the date indicated on there is what?

23 A. August the 20th, 2010.

24 Q. And when you showed Mr. Dimas Fernandez the lineup, how
25 was it presented?

1 A. It was also handed to him and asked him if he
2 recognized anybody in the lineup.

3 Q. And at that point did he indicate whether or not he
4 recognized anyone?

5 A. He did.

6 Q. Which one did he recognize?

7 A. Photo number 3, the defendant.

8 Q. And did you have him memorialize that in any way?

9 A. We did, with his initials.

10 Q. And did he do that?

11 A. He did.

12 Q. And the page that's attached to it, did you also have
13 him memorialize them that way?

14 A. He did, with his signature.

15 Q. And at any point during any of the showing of these
16 lineups did you influence anyone, tell them who to pick, or
17 did anyone cause them to pick the defendant, other than them
18 recognizing him?

19 A. No, ma'am.

20 Q. I'm going to show you what's been marked as State's
21 Exhibit No. 5.

22 MS. CAMPBELL: Your Honor, may I approach on this
23 one?

24 BY MS. CAMPBELL:

25 Q. I believe that's also dated August the 20th?

1 A. Yes.

2 Q. And that would be a Roberto Gonzales?

3 A. Yes, ma'am.

4 Q. Where did you actually show that photo array to Mr.

5 Gonzales?

6 A. At [REDACTED], which I believe is his

7 residence.

8 Q. And did he -- was he also another eyewitness to the

9 case?

10 A. Yes, ma'am.

11 Q. And when you showed him that lineup, tell the judge how

12 you presented it.

13 A. Again, due to the language barrier, Investigator

14 Gonzalez presented the lineup and asked him if he recognized

15 anybody in the array of pictures.

16 Q. And at that point did he -- when he was shown the photo

17 lineup, did he recognize anyone?

18 A. He did.

19 Q. And did you have him memorialize that in any way?

20 A. We did.

21 Q. And how was that memorialized?

22 A. With his initials and he also indicated the 100 percent

23 above the photograph number 3.

24 Q. And when you were showing that lineup, as with all the

25 other others, did you or anyone else influence them, tell

1 them who to pick, or cause them to choose the defendant in
2 this case?

3 A. No, ma'am.

4 Q. I'm going to show you what's been marked as State's
5 Exhibit No. 4, which is dated I believe the 21st?

6 A. Yes, ma'am.

7 Q. And that would have been the day after you showed the
8 two lineups the day before, on the 21st?

9 A. That's correct.

10 Q. And who did you show the lineup to that day? Was it
11 Dario Hernandez?

12 A. Yes, ma'am.

13 Q. And where did that -- where did you show that photo
14 lineup that day?

15 A. At the sheriff's department headquarters on Two Notch
16 Road.

17 Q. And you were present when he was shown that lineup?

18 A. That is correct.

19 Q. And tell the judge how that lineup was presented to
20 Dario Hernandez?

21 A. I handed him the photo lineup and asked him if he
22 recognized anybody in the series of pictures.

23 Q. And when you handed him that photo lineup, did he
24 indicate whether or not he recognized anyone?

25 A. He did. He immediately indicated he recognized number

1 3.

2 Q. And did you have him memorialize that?

3 A. I did, with his initials.

4 Q. And did he also circle it?

5 A. He did.

6 Q. And then on the second page what's attached to State's
7 Exhibit No. 4, did you have him sign off on memorializing
8 it?

9 A. I did.

10 Q. At any time when he was shown the lineup, did anyone
11 influence him or cause him to pick the defendant in this
12 case?

13 A. No, ma'am.

14 Q. And with each of these lineups when you were present
15 when they were shown, were any of the other eyewitnesses
16 present, or were they shown individually?

17 A. Individually.

18 MS. CAMPBELL: Your Honor, may I approach?

19 THE COURT: Yes.

20 BY MS. CAMPBELL:

21 Q. And as far as State's Exhibit No. 2, which would be
22 Jose Monroy, you were not present for that one?

23 A. I don't believe so, no, ma'am.

24 MS. CAMPBELL: Your Honor, that's all I have.

25 THE COURT: Cross-examination.

1 MR. SHEALEY: May it please the court.
 2 CROSS EXAMINATION BY MR. SHEALEY:
 3 Q. So once y'all identified my client as a suspect, you
 4 got the actual photo array produced in Texas?
 5 A. I believe so. I believe Sergeant Ellis was handling
 6 that responsibility.
 7 Q. Okay. And you are the lead investigator in the case,
 8 right?
 9 A. That is correct.
 10 Q. And this comes from Texas driver's licenses?
 11 A. It looks like the Texas Department of Public Safety,
 12 correct.
 13 Q. And when that was produced to you, you knew who Todd
 14 Parvin was other than that?
 15 A. Yes.
 16 Q. And I want to go through these a little bit.
 17 Obviously with Alfredo Vidal, you mentioned that
 18 Investigator Gonzalez' was translation?
 19 A. Yes.
 20 Q. You don't speak Spanish, right?
 21 A. No.
 22 Q. Mr. Vidal didn't speak English?
 23 A. A little bit, but not enough to where I could hold a
 24 conversation with him, no.
 25 Q. And whatever Investigator Gonzalez was saying to Mr.

- 1 Vidal, you don't know what he was saying?
- 2 A. Correct.
- 3 Q. And as to Mr. Dimas Hernandez, I think that was done on
- 4 Shop Road on August the 20th. That as well was the
- 5 situation where he didn't speak English?
- 6 A. Correct.
- 7 Q. So Mr. Gonzalez was translating again?
- 8 A. Yes.
- 9 Q. You don't know what he is saying to him, to Mr.
- 10 Hernandez at that point?
- 11 A. Right.
- 12 Q.- The same goes for Roberto Gonzales, the neighbor at his
- 13 house, he didn't speak English, so Mr. Gonzalez again
- 14 presenting the witness the lineup and talking to him about
- 15 that?
- 16 A. That's correct.
- 17 Q. Okay. Dario Hernandez, does he speak English?
- 18 A. He does.
- 19 Q. So you actually presented that and discussed this with
- 20 him?
- 21 A. Presented him with the lineup, yes.
- 22 Q. And were able to instruct him on picking somebody,
- 23 right, in English?
- 24 A. I did ask him if he could identify somebody, yes.
- 25 Q. And you thanked him for his time afterwards?

1 A. I couldn't tell you the conversation we had afterwards.
 2 Q. Okay. And Jose Monroy we just heard from, you weren't
 3 involved with him, right?
 4 A. What do you mean?
 5 Q. You weren't involved --
 6 A. In the lineup?
 7 Q. -- with anything with the lineup?
 8 A. I don't believe so, no.
 9 Q. Do you know who was?
 10 A. I believe it would have been Investigator Jordan and
 11 Gonzalez.
 12 Q. Okay. Now, of all of these lineups, only two of them
 13 have any indication of how positive or sure they were of
 14 their pick. Those would be Mr. Roberto Gonzales and Alfredo
 15 Vidal, correct?
 16 A. I believe so.
 17 Q. The others don't list any percentage and they weren't
 18 asked to list any percentage, right?
 19 A. I don't believe so.
 20 Q. Okay. Now, this procedure is basically a six pack
 21 photo array, right?
 22 A. Yes, sir.
 23 Q. And this is something that Richland County has used for
 24 many, many years, correct?
 25 A. That's correct.

1 Q. Okay. And are you aware that the Department of Justice
2 says that this is a suggestive lineup procedure?

3 A. I'm not aware of that.

4 Q. Okay. Are you aware that other states have outlawed
5 this procedure?

6 MS. CAMPBELL: Objection, Your Honor. I believe
7 this is argument, not cross-examination for this witness.

8 MR. SHEALEY: I just want to know what the witness
9 knows.

10 THE COURT: I overrule the objection.

11 A. I'm sorry, say that again.

12 BY MR. SHEALEY:

13 Q. Are you aware that other states, including North
14 Carolina, Texas, Georgia, New Jersey, have outlawed this
15 procedure?

16 A. All I can tell you is what we do here.

17 Q. Okay.

18 MR. SHEALEY: Beg the court's indulgence.

19 (Off the record)

20 (Back on the record)

21 MR. SHEALEY: Just briefly.

22 BY MR. SHEALEY:

23 Q. As to the neighbor across the street, Roberto Marlin
24 Gonzales, as the lead investigator in this case, your
25 understanding is he was painting his house at the time of

1 this incident?

2 A. I believe he was doing some work on his porch.

3 Q. All right. And where Mr. Edgar Lopez lives is directly
4 kind of across the street from him?

5 A. I think it's directly across the street, correct.

6 Q. And he claims to be a witness to the actual alleged
7 shooting?

8 A. That's correct.

9 Q. Okay. Witnesses -- he's doing his work or painting his
10 house and then hears some commotion and that would be how
11 his attention gets turned?

12 A. I believe so, yes.

13 Q. And claims to see Mr. Parvin driving away?

14 A. I believe he indicated he saw the series of events that
15 led up to him driving away, yes.

16 Q. Okay. So the series of events and then him driving
17 away?

18 A. Yes.

19 Q. Okay.

20 MR. SHEALEY: Beg the court's indulgence.

21 (Off the record)

22 (Back on the record)

23 MR. SHEALEY: Nothing further, judge.

24 THE COURT: Anything further for this witness?

25 MS. CAMPBELL: No, sir.

1 THE COURT: All right. Thank you.

2 Any further witnesses?

3 MS. CAMPBELL: Just one, Your Honor, Investigator
4 Willie Gonzalez.

5 INVESTIGATOR WILLIAM GONZALEZ, having been first
6 duly sworn, testified as follows:

7 THE CLERK: Have a seat in the witness box and
8 state your name and spell your name, please.

9 THE WITNESS: William Gonzalez, G-O-N-Z-A-L-E-Z.

10 DIRECT EXAMINATION BY MS. CAMPBELL:

11 Q. Investigator Gonzalez, where are you employed?

12 A. Richland County Sheriff's Department.

13 Q. How long have you worked there, sir?

14 A. Work at the major crimes unit.

15 Q. How long have you worked there?

16 A. Oh, I'm sorry, about twelve years.

17 Q. And do you speak Spanish?

18 A. Correct.

19 Q. And are you fluent in Spanish?

20 A. That's correct.

21 Q. And have you always spoken Spanish?

22 A. Yes, ma'am.

23 Q. And as part of your duties at the major crimes unit,
24 are you also tasked with interpreting for people?

25 A. That's correct.

1 Q. And I would like to turn your attention to this case.
 2 Did you become involved in the investigation of this case?
 3 A. That's correct.
 4 Q. And ultimately in the showing of a number of photo
 5 lineups?
 6 A. I did.
 7 Q. And specifically were you present and interpreting, I
 8 believe, for four out of the five of these photo lineups, is
 9 that correct?
 10 A. That's correct.
 11 Q. I want to show you what's been marked as State Exhibit
 12 No. 2. Did you and Investigator Jordan on August the 19th
 13 show a photo lineup to one of the witnesses; Jose Monroy?
 14 A. That's correct.
 15 Q. And where did that lineup get shown?
 16 A. At the headquarters, Two Notch, 5623 Two Notch Road.
 17 Q. And was Mr. Monroy the only lay witness or eyewitness
 18 there when you were showing the lineup?
 19 A. Correct.
 20 Q. When you showed him the lineup, did you do the
 21 interpreting?
 22 A. Yes, ma'am.
 23 Q. And Investigator Jordan was with you that day, I
 24 believe?
 25 A. That's correct.

1 Q. And when you showed him the lineup, did he indicate
2 whether or not he recognized anyone?

3 A. Yes.

4 Q. And did he recognize one of the six photographs that
5 were presented to him that day?

6 A. Yes, he pointed out to the subject that he recognized.

7 Q. And did you have him memorialize that, once he
8 recognized someone?

9 A. That's correct.

10 Q. And I believe date it at the top, as well as put his
11 initials?

12 A. And circled it, correct.

13 Q. And then the second page you also had him sign off
14 indicating that's who he recognized?

15 A. Yes, ma'am.

16 MS. CAMPBELL: Your Honor, may I approach?

17 THE COURT: Yes.

18 BY MS. CAMPBELL:

19 Q. Four days earlier were you also present when Alfredo
20 Vidal was shown a lineup, the 15th?

21 A. Yes, ma'am.

22 Q. And I believe Investigator Gwyn was also present for
23 that?

24 A. Right.

25 Q. And when y'all showed him that lineup, did he also

1 indicate whether or not he recognized anyone?

2 A. Yes.

3 Q. And was that more or less in the same manner?

4 A. Yes, ma'am.

5 Q. And I believe on the 20th you showed a lineup to a
6 Dimas Fernandez?

7 A. Correct.

8 Q. And did he also indicate whether or not he recognized
9 anyone?

10 A. Yes, ma'am.

11 Q. And, finally, on the 20th did you also show a lineup to
12 a Roberto Gonzales?

13 A. Correct.

14 Q. And did he also indicate whether or not he recognized
15 anyone?

16 A. Yes.

17 Q. And was he able to pick out a picture?

18 A. Yes, ma'am.

19 Q. In any of the lineups, at the four lineups that you
20 were present for, did anyone influence their pick or cause
21 them to pick anyone out of the lineup?

22 A. Absolutely not.

23 Q. They all recognized the person?

24 A. That's correct.

25 Q. And when they were presented with the six photos, each

1 one of them recognized him?

2 A. Immediately.

3 Q. And on each photo it was memorialized and they actually
4 initialed the picture they recognized?

5 A. That's correct, they did.

6 Q. And in each one of the lineups when you were present,
7 the person they recognized was the person that you know as
8 the defendant?

9 A. That's correct.

10 MS. CAMPBELL: I don't have anything further, Your
11 Honor.

12 THE COURT: Cross examination.

13 MR. SHEALEY: May it please the court.

14 CROSS EXAMINATION BY MR. SHEALEY:

15 Q. Now, just like Investigator Gwyn, when you got these
16 lineups made from the Texas Department of Public Safety, you
17 knew who Todd Parvin was in the lineup, right?

18 A. Well, I didn't make the lineup. It was already made.

19 Q. What I'm saying is you knew who the suspect was who
20 y'all were looking for?

21 A. I had an idea, yes, sir.

22 Q. In the lineup itself?

23 A. Yes.

24 Q. A guy from Texas, and you knew who Todd Parvin was
25 and --

- 1 A. Yes, sir.
- 2 Q. -- to do your witness in the lineups?
- 3 A. Yes, sir.
- 4 Q. Now, as to Jose Monroy, who was shown the lineup at Two
- 5 Notch Road, after he made his pick and you were listening to
- 6 him just testify, he was told that, you know, after you
- 7 pick, "well, that man has been arrested. He's in custody,"
- 8 right?
- 9 A. I believe Jose was the last person we showed him,
- 10 that's correct.
- 11 Q. And you heard him just say that, right?
- 12 A. That's correct.
- 13 Q. Okay. And of these five lineups that were done, you
- 14 will agree that only two of them ever memorialized what
- 15 percentage of sureness they had about it, correct?
- 16 A. That's correct.
- 17 Q. That would be Alfredo Vidal and also Roberto Gonzales?
- 18 A. That's correct.
- 19 Q. Those are the only two out of the five?
- 20 A. That's correct.
- 21 Q. None of the others indicated any kind of percentage of
- 22 accuracy or sureness in their own minds about their
- 23 selection?
- 24 A. Other than they picked the guy, yeah.
- 25 Q. Yeah, but they didn't actually --

1 A. That's correct.

2 Q. And Alfredo -- I want to talk to you about Alfredo a
3 little bit.

4 Do you have a copy of your investigative report with
5 you?

6 A. I have my notes.

7 Q. Right.

8 You can read it, but once he was actually shown his
9 lineup, he actually asked you if you had any more pictures
10 to look at and you told him no, right?

11 A. Yes, that's correct.

12 Q. Okay. And after -- after you were talking to these
13 guys and making the selections --

14 A. Well, let me make a little slight correction on that.

15 Q. Okay.

16 A. It wasn't like -- when we showed him the photo lineup,
17 he looked at it and he asked me, "are there any other
18 pictures," and we told him no.

19 Q. All right. And so if your report reads, "I laid the
20 lineup on the table and as he was looking at it, he asked me
21 if I had any more pictures and I told him no"?

22 A. That's correct.

23 Q. Would that be correct?

24 A. That's correct.

25 Q. And you thanked him the first time after a selection?

1 A. I was a courtesy, said thank you.

2 Q. All right. And you are aware of this composite sketch

3 that was sent to Ms. Garvin at SLED? Are you aware of that

4 being involved in the case?

5 A. Correct.

6 Q. And that was sent out in the community to help assist

7 in the search for the suspect?

8 A. That's correct.

9 Q. And it would have been in the community where the

10 incident happened, as well as broader reaches?

11 A. That's correct.

12 Q. Okay.

13 MR. SHEALEY: Beg the court's diligence.

14 (Off the record)

15 (Back on the record)

16 MR. SHEALEY: Nothing further, judge.

17 MS. CAMPBELL: One question, Your Honor.

18 REDIRECT EXAMINATION BY MS. CAMPBELL:

19 Q. He asked you about the percentages. Were each one sure

20 about the pick?

21 A. Yes.

22 Q. Did they indicate that to you?

23 A. Absolutely.

24 Q. And on two of them, they actually memorialized on a

25 piece of paper?

1 A. That's correct.

2 Q. Thank you, sir.

3 MS. CAMPBELL: I have nothing further.

4 THE COURT: All right, you may step down.

5 Any additional witnesses?

6 MS. CAMPBELL: Did you want me to put up the rest
7 of the lay witnesses?

8 THE COURT: No.

9 MS. CAMPBELL: Thank you, sir.

10 THE COURT: Not at this time.

11 Any argument?

12 MS. DAVIS: Your Honor, Mr. Shealey is handling
13 the argument.

14 I would just ask that prior to Roberto Marlin
15 Gonzales, that we do argue that at the Biggers hearing, he
16 is not at the location, like the other witnesses that we
17 heard from. His testimony would be different. He lives
18 across the street.

19 THE COURT: That goes without saying.

20 MS. DAVIS: Yes, sir. Thank you.

21 THE COURT: Are there any defense witnesses?

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

23 THE COURT: All right. Any argument?

24 MR. SHEALEY: Yes, sir.

25 Under our case law, I do know when we conduct a

1 Neil v. Biggers hearing, and which is based on the Supreme
2 Court case of Manson v. Brathwaite, traditionally we have to
3 say, number one, first prong, was the ID procedure unduly
4 suggestive. And only once you get past that prong do you
5 ever get to a second prong of, well, if so, under the
6 totality of the circumstances was it reliable anyway based
7 on five factors.

8 I'd like to address the first prong. And I passed
9 up some research and some cases which I have discussed
10 before with the court, and I have given that to the
11 solicitor's office.

12 Your Honor, what I would like to argue here is
13 that we do get past the first threshold, and this being a
14 suggestive procedure, for a couple of reasons. And, namely,
15 number one, that the modern science, and, you know, and
16 research by notable scientists, such as Wells, that I passed
17 up, such as the Department of Justice, such as other states
18 have said -- all the procedure says that the six pack photo
19 array itself is a suggestive procedure by itself. And what
20 they say and what the Department of Justice practices says,
21 and what other states are saying now, including North
22 Carolina, Massachusetts, Rhode Island, Texas, Georgia, New
23 Jersey, is that the most -- the best practice and the least
24 suggestive way of doing this is for law enforcement to do a
25 double blind sequential lineup procedure, in which the law

1 enforcement, being double blind, doesn't know who the
2 suspect is; in which the witness, obviously, doesn't know
3 who the suspect is. You have a series of ten to fifteen
4 folders with possible suspects and you have one photo in one
5 folder. The law enforcement administrator doesn't know the
6 order and they are passed to a witness, one at a time, at a
7 time, until the witness says, yes, this is the person.

8 And the reason behind that is that the science
9 says that by doing the traditional antiquated six pack photo
10 array, that what you are forcing a witness to make is a
11 relative judgment process.

12 THE COURT: What science is in evidence in this
13 case?

14 MR. SHEALEY: Just simply the case law that I have
15 passed up and made part of the record. The research -- I
16 don't have an expert here, Your Honor. I don't have any
17 expert testifying, but it's almost at a point with our
18 sister state, North Carolina, all those other states. The
19 Supreme Court of New Jersey recently in the Henderson case
20 saying exactly this, that the Neil v. Biggers type prong,
21 which was their Madison case, was Austins from Braithwaite,
22 is the suggestive procedure and that steps need to be taken
23 in the form of jury charges and a full set of hearings, such
24 as this, potentially with experts to address this problem,
25 because lineups --

1 THE COURT: Are you saying they are using the word
2 suggestive sometimes and unduly suggestive sometimes? Which
3 one is it?

4 MR. SHEALEY: Well, this is -- the procedure is
5 suggestive. And what our Neil v. Biggers says is unduly
6 suggestive, but I think we are mincing words here. The
7 procedure itself is a suggestive thing. And if we get to
8 prong two, it could only be cured under our state law, which
9 is not at odds with the scientific community and with what
10 the other states are tending to do these days, we are not at
11 odds there, but that we have in our antiquated system five
12 factors, which in New Jersey v. Henderson says they don't
13 cure anything. They don't save it.

14 And also I would like to point out just on the
15 common sense non-science related argument that the six pack
16 photo array, if you look at it, I would argue that Mr.
17 Parvin's photo, which is at the top right, is actually
18 bigger than any other photos. That's not exactly a
19 scientific argument, but it is --

20 THE COURT: That would be your testifying.

21 MR. SHEALEY: That's my argument to the court and
22 ask the court to take judicial notice of that.

23 THE COURT: Well --

24 MR. SHEALEY: Also the court may not agree with
25 me.

1 But in terms of what we are really talking about,
2 prong one, is this procedure unduly suggestive? Yes, both
3 investigators have said that they knew exactly who the
4 suspect was in the lineup. They are not double blind. And
5 it's that very problem that creates -- it's not an overt
6 process by any of these men to be suggestive, but science
7 says that it is the subconscious suggestiveness that when
8 you as a police officer know who your man is and are
9 presenting it to a witness, that it creates a
10 suggestiveness, even if you are not trying to, even if you
11 are purposely trying not to.

12 Another thing, which was done here, is I want to
13 follow that, such as thanking a witness. It's listed as the
14 most problematic event, because you are affirming this
15 witness' selection so that that identification is forever
16 thought to be a good one in their mind, but the time they
17 come to court, regardless of the procedure that was used,
18 they are sure that they have picked the right man, whether
19 they have or not, and they feel pretty good about talking to
20 law enforcement, being thanked.

21 Mr. Monroy testified, and Investigator Gonzalez
22 agreed, that he was told after his selection that, "you
23 know, hey, this guy is in custody," you know, which is an
24 extreme affirmation of Mr. Monroy's selection. Mr. Monroy
25 doesn't know -- he in his heart knows he's picked the right

1 man, but that's one of the things that is prohibited
2 against, because even more suggestive though than being told
3 that you have done a good job, we got the guy. That is
4 extremely frowned upon and just adds to the suggestiveness
5 of this entire procedure.

6 One of the things as well that the Best Practices
7 Manual that the Department of Justice suggests, as well as
8 having your double blind sequential lineup, is to have law
9 enforcement write a percentage of how accurate the witness
10 thinks their pick is. And here of the five selections, only
11 two of them -- it was only done twice. So three of those
12 have not been done.

13 You know, I just think that, as I thought before,
14 I think that the law in South Carolina, you know,
15 potentially is at odds with the science. Our law is based
16 on fifty year old case law. All the states are changing,
17 specifically New Jersey. In New Jersey v. Henderson just a
18 couple of months ago has come out and said that the type of
19 lineup we do and the type of pretrial procedures that we
20 have to discuss it are antiquated and need to be revamped,
21 reformed. So that's why I think -- even though there is no
22 case in South Carolina that will say your six pack photo
23 array is suggestive by itself, I think with the science and
24 what the rest of the world is doing in the Department of
25 Justice, for one, being a leader in law enforcement, I think

1 that we do get past the first prong that these six pack
2 photo arrays just by the procedure used itself creates an
3 unduly suggestive procedure for the witness to view.

4 THE COURT: What says the State?

5 MS. CAMPBELL: Your Honor, I think this argument,
6 it's been brought before you. We respectfully ask the court
7 to just follow the State law as it is in South Carolina. We
8 do think that based on the testimony that's before you, that
9 these are not unduly suggestive and that each witness did,
10 as indicated, recognize the person and was competent in
11 their recognition. Thank you.

12 THE COURT: All right. I think that there is a
13 distinction between the use of the word suggestive and
14 unduly suggestive.

15 I agree with the defense's argument that the
16 status of scientific evidence indicates that the traditional
17 methods used are antiquated and suggestive. However, I do
18 not believe that they are necessarily unduly suggestive,
19 and, therefore, there must be -- that's the purpose of
20 listening to testimony, to determine whether or not the
21 means used to make the identification is unduly suggestive.
22 The prosecution has the burden of offering proof that the
23 identification evidence they seek to introduce against the
24 defendant is reliable.

25 Based on the testimony of the witnesses that I

1 have heard, they have an independent basis for identifying
2 the defendant as being the person there that day, and that
3 that is not -- that basis is not based on anything suggested
4 by law enforcement, or based on their own observation of the
5 defendant as being there, that hasn't been tainted by any
6 police conduct in using a six pack lineup. The defendant --
7 after the State shows that these witnesses observed the
8 defendant, despite using a six pack lineup, there is no
9 other evidence of suggestibility to make it unduly
10 suggestive, other than the one instance that Mr. Shealey
11 argues that after the fact, after identification is made,
12 the witness was told that the person had been arrested. Of
13 course, that doesn't go to the previous identification. It
14 goes to whether or not his memory has been later reinforced
15 or his ability to testify at this time has been reinforced
16 based on the reinforcement of the identification by the
17 officer at that time. The defense hasn't offered no
18 witnesses in this instance, has not shown any substantial
19 probability of mistaken identification.

20 I think that at some point this entire issue
21 within the State has to be clearly litigated. The judges
22 don't sit as scientists, and there must be evidence
23 presented. Although there have been a lot of scientific
24 findings included in many of the cases, we still sit and we
25 judge based on what we hear on the witness stand, not based

1 on testimony by counsel. It ultimately ends up being a jury
2 issue.

3 The issues presented considering the
4 suggestibility apparent with a six pack lineup, the
5 testimony of the witnesses, which would otherwise be
6 reliable, the close identification, reinforcement in some
7 instances by law enforcement, all of that should be captured
8 in a jury instruction that allows the jury to make the
9 ultimate determination on the issue, as the jury is required
10 to determine in each and every case the identity of the
11 defendant as being the person who committed the offense.

12 So I deny the motion to suppress the
13 identification testimony of the witnesses who have
14 testified.

15 MS. CAMPBELL: Thank you, Your Honor.

16 MR. SHEALEY: Thank you, Your Honor.

17 THE COURT: Anything else before we recess?

18 MS. CAMPBELL: Just one quick matter, Your Honor.

19 They did turn over the CD's of their experts
20 yesterday. They indicated that they do have found an expert
21 who is a forensic psychologist and forensic psychiatrist.
22 We had anticipated this possibly becoming an issue in the
23 case. We have consulted with a forensic psychiatrist our
24 self. We haven't met -- I haven't met with them yet, but --

25 THE COURT: What do they do, forensic

1 psychiatrists?

2 MS. CAMPBELL: I don't know.

3 The part -- he asking to make the request of the
4 court to allow him to have access to the defendant. This
5 will go -- if and when post-traumatic stress disorder ever
6 becomes an issue in this case, we would request that of the
7 defense, and I indicated this to them this morning, that we
8 would be requesting this. And, of course, it would be up to
9 you, judge, or them, as to whether or not you would allow us
10 access.

11 THE COURT: All right.

12 Any response, Ms. Davis?

13 MS. DAVIS: Your Honor, there is absolutely no
14 authority to grant any kind of evaluation, mental
15 evaluation, of this party. We have not pled it, and now we
16 are not pleading it, and we are not putting the State on
17 notice of any such pleading. We don't believe that his
18 mental health diagnosis plays any role in this trial. We
19 don't intend to introduce it, and there is no authority to
20 evaluation.

21 THE COURT: All right. We will deal with that
22 later along the way.

23 MS. CAMPBELL: Thank you.

24 THE COURT: All right. We will take about five
25 minutes and jump into opening statements.

1 (Whereupon, proceedings were recessed)

2 (Whereupon, proceedings were reconvened)

3 THE COURT: All right, bring the jury.

4 MS. CAMPBELL: Your Honor, could we approach just
5 briefly?

6 THE COURT: Yes.

7 (Whereupon, the lawyers approached the bench for
8 an off-the-record bench discussion)

9 (The following takes place in the presence of the
10 jury panel)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: Good morning.

13 JURY PANEL: (Jury collectively said good morning)

14 THE COURT: Welcome back, ladies and gentlemen.

15 If you all will stand at this time and be sworn.

16 THE CLERK: Upon completion, if you accept the
17 oath, respond I do.

18 Do you swear or affirm that you shall well and
19 truly try, in true deliverance make between the State of
20 South Carolina and the defendant at bar, whom you shall have
21 in charge and a true verdict give, according to the law and
22 the evidence, so help you God?

23 JURY PANEL: (Jury collectively said I do)

24 THE CLERK: Thank you. You may take your seat.

25 THE COURT: All right, ladies and gentlemen,

1 welcome back.

2 We have now gone through the -- you have gone
3 through the jury selection process and both sides have
4 selected you to be the jury in the trial of this case. You
5 have just taken an oath to well and duly try this case and
6 render a true verdict according to the law and according to
7 the evidence, so help you God. And I look forward to
8 working with you and look forward to you following the oath
9 that you just took, to be a fair and impartial jury in the
10 trial of this case and to render a verdict which speaks the
11 truth of this matter.

12 The defendant in this case, Mr. Leslie Todd
13 Parvin, has been indicted by the Grand Jury of Richland
14 County and charged with two counts of murder. He's charged
15 with killing Edgar Lopez and with killing Pablo Guzman
16 Gutierrez with malice aforethought by shooting the victims.

17 He has pled not guilty to these two charges, and
18 he's presumed to be not guilty of these charges. He cannot
19 be found guilty of these charges, unless the State presents
20 evidence which convinces a jury of his guilt beyond a
21 reasonable doubt. And that is the purpose of a trial, to
22 determine whether the State can meet that burden or proof.

23 The indictment is simply the charge made against
24 the defendant. It is not evidence in any manner. The
25 defendant's plea of not guilty places the burden of proof on

1 the State to prove guilt beyond a reasonable doubt.

2 And your purpose as jurors would be to find and to
3 determine the facts of this case. Out of all those folks
4 who were summoned for jury duty, out of all the people who
5 showed up in here yesterday, out of all the people who are
6 in this courtroom today, only the twelve of you will
7 deliberate, can decide the facts of this case. You are the
8 sole judges of the facts of this case. You play, perhaps,
9 the most important role with regard to this case, because in
10 the end you will be asked to deliberate and to determine the
11 facts of this case.

12 Now, just as only you can determine the facts of
13 this case, as the presiding judge, I am the sole judge of
14 the law of this case, and you must accept as correct the law
15 as I state it to you at this time, during the trial, and in
16 greater detail at the end of the trial. You will be asked
17 to determine the facts of this case from the evidence
18 introduced during the course of the trial. And the evidence
19 will consists primarily of testimony from the witness stand,
20 but it may also consist of exhibits, including photographs,
21 drawings, and other things that may be introduced throughout
22 the course of the trial.

23 It is important that you perform your duty of
24 determining the facts of this case diligently and
25 conscientiously, in accordance with the oath that you just

1 took, because ordinarily there is no way to correct any
2 erroneous determination of the facts by a jury.

3 I look forward to working with you during the
4 course of this trial. We will do all that we can to keep
5 the case moving and not to waste time. We want you to be as
6 comfortable as possible. So that if at any point in time we
7 don't take a break soon enough and you need one, get my
8 attention and we will take a break, because it is -- I know
9 that you all probably are not accustomed to being -- for
10 sitting and observing and not being able to talk. We don't
11 want to wear you out sitting too long for periods of time.
12 I can get pretty impatient myself sitting a long period of
13 time, so you may stand and stretch and we'll take a break
14 and we will keep things moving as best as we can.

15 As I said to you yesterday, it is important that
16 you not discuss this case, depending on including family, or
17 friends, or your fellow jurors, or anyone involved in this
18 case, or who are not involved in this case. That includes
19 face-to-face discussion, telephone, e-mail, texts, blogs, or
20 any other form of communication. You are also to refrain
21 from reading, listening to, or observing anything through
22 the media that might pertain or include information
23 pertaining to this case.

24 Later in the process I will appoint one of you to
25 serve as the foreperson of the jury and that person will

1 have responsibility of being the spokesperson for the jury.
2 That person will also have the responsibility of presiding
3 over the jury deliberation and of completing the verdict
4 form representing the unanimous verdict of the jury at the
5 end of the trial.

6 Now, it is your solemn responsibility to determine
7 the guilt or the innocence of the defendant, and your
8 verdict must be solely based on the evidence that is
9 presented during the course of this trial, applying the law
10 as I state it to you.

11 In just a moment the solicitor will make an
12 opening statement in which she will outline what she thinks
13 the case is about, what the evidence will prove and what the
14 verdict should be, after which the defendant will have that
15 same opportunity. The defendant, however, is not required
16 to make an opening statement or present any evidence,
17 because the defendant has no burden of proof. The burden of
18 proof is on the State.

19 I'm critical to your responsibilities in
20 determining the facts of this case be evaluating the
21 credibility, that is the believability of witnesses who
22 testify. You will need to focus on those witnesses.
23 Evaluate the witnesses and their testimony to be able to
24 determine whether the testimony should be believed; whether
25 the witness should be considered; whether a witness has any

1 bias or prejudice regarding what they are testifying to; the
2 opportunity that the witness might have to know or to assume
3 the things that the witness may testify concerning. You
4 have the right to consider anything that might help you in
5 assessing credibility of witnesses, first of which is
6 applying your own common sense that you brought with you to
7 jury duty.

8 We will now receive the opening statements, from
9 the State?

10 MS. SIMPSON: Thank you.

11 May it please the court?

12 THE COURT: Ms. Simpson.

13 MS. SIMPSON: Two men are dead - Edgar Lopez and
14 Pablo Guzman Gutterez. Their families have lost a son, a
15 brother, a cousin, and a friend. Both men were unarmed when
16 they were shot, brutally murdered, I submit executed at the
17 hands of the defendant Leslie Parvin.

18 Edgar was shot first; once to the right side of
19 his face and once to the abdomen. He would take his final
20 breath choking on his own blood, lying face up, arms
21 outstretched.

22 Pablo would be next. As he turned and tried to
23 get away to take cover, he would be shot once in the upper
24 back, once in the mid back, and once in the lower back. A
25 total of three times in the back, and his body was found

1 lying face down on the ground.

2 Pablo and Edgar died almost instantly.

3 And the bottom line, as members of the jury, we
4 shouldn't be here today, that this didn't have to happen,
5 but the defendant made a series of choices and decisions.
6 He was the architect of the circumstances that have brought
7 us here today.

8 Now, Pablo and Edgar had gotten off work on July
9 30th, 2010, and they began drinking that afternoon at a tree
10 outside in front, -- on Edgar's yard. It was what some might
11 call a hangout spot, because they often hung out at the
12 tree, neighbors, friends of Edgar's, and would drink. This
13 day was no different. And absent Pablo and Edgar's bodies,
14 lifeless, penetrated by bullets and the shell casings on the
15 ground, there was no sign of a struggle. The cooler, the
16 numerous beer cans, and the empty chairs might have
17 suggested that there had been nothing more than perhaps a
18 party, a gathering, drinking going on, a good time. And
19 that might have been the case had Edgar and Pablo not met
20 the defendant Leslie Parvin.

21 Now, the defendant, Leslie Parvin, sits before you
22 today, I submit, as a man who led a double life; the Leslie
23 Parvin, the face that he presented to the world; the Leslie
24 Parvin who has a family, who is a veteran, who served our
25 country honorably for many years as a chaplain's assistant

1 in the military. And for his actions in that capacity, he
2 should be commended. The military life is one marked, among
3 other things, by honor, structure, discipline and
4 accountability. And while his service is to be commended,
5 it did not give him a license to kill, because that
6 accountability, it transcends to all the choices and actions
7 in Leslie Parvin's life; even that other side of Leslie
8 Parvin, the one that he hid from the world, and probably
9 even his own family. But Leslie Parvin, who armed himself
10 with a gun earlier that day, who drove to the Woodfield Park
11 neighborhood, where he didn't live, where I submit he didn't
12 really know anyone; the Leslie Parvin, who picked up some
13 Modelo - Mexican beer - and drove and encountered Edgar and
14 Pablo, who were sitting in the yard by the tree drinking;
15 the Leslie Parvin who got out, he spoke with them and drank
16 with them; the Leslie Parvin who propositioned Edgar for
17 sex, I submit gave him money for sex, and even bought him
18 beer and continued to drink; the Leslie Parvin, though, who
19 after they drank a few, but denied him the sex that he
20 thought he was going to get; the Leslie Parvin who perhaps
21 felt that he had been played for a fool, pulled out his gun
22 from his waistband and shot two unarmed men. (That is why we
23 are here, because he must be held accountable for those
24 actions and those decisions.

25 Now, there is a quote in this courthouse on the

1 third floor, the back hall next to a jury room. I must
2 admit I never truly paid it attention, because I'm not back
3 there, it's where Family Court is, but in the past few weeks
4 I happened to be back there and I noticed it on the wall.
5 It's very small in a frame. It's a quote by President
6 Theodore Roosevelt. And I submit that perhaps it should be
7 on the front doors of this courthouse, because it says that
8 "No man is above the law and no man is below: Nor do we ask
9 any man's permission when we require him to obey it." That
10 quote embodies the essence of this case and why we are here,
11 and I ask that you remember it throughout this case.

12 So what happened on July the 30th, 2010, at [REDACTED]
13 [REDACTED], in the front yard of Edgar's home?

14 Well, you are going to hear from several
15 witnesses; some who lived at the main house on the property
16 coming and going and saw the victims in this case, as well
17 as the defendant.

18 You are going to hear from some witnesses who were
19 actually there and hung out with Edgar and Pablo and the
20 defendant.

21 You are going to hear from an eyewitness who saw
22 the shooting.

23 You are going to hear from a number of witnesses.

24 So what happened?

25 Well, as I told you earlier, Edgar and Pablo had

1 gotten off work and at some point began drinking in the
2 afternoon. It was Friday afternoon. They sat around
3 drinking and sometime around five o'clock the defendant
4 drove up in his green Kia mini van, and he pulled up to the
5 fence by the gate. It's a chain link fence, and you will
6 have pictures before you, photographs. And he pulled up by
7 the gate and parked. Edgar and Pablo were sitting outside.

8 Now, we'll never know the conversation that took
9 place, because neither Pablo nor Edgar are here to tell us
10 about it, but subsequent to that the defendant ended up
11 drinking with them. But prior to that he had armed himself
12 with a 45-caliber handgun, loaded. Not in his glove
13 compartment, but in his waistband. When he got out and went
14 to this neighborhood, where he didn't know anyone, and he
15 spoke with them and drank with them; even offered them some
16 Modelo beer that was in his van.

17 Another person would arrive, Jose Monroy, who you
18 are going to hear from today, and he sat around and he drank
19 with Edgar and Pablo and the defendant.

20 Now, Edgar is the only one who spoke English very
21 well. Everyone else spoke Spanish. And so the defendant,
22 most of his interactions were with Edgar, the man he had
23 solicited for sex at some point during this time period.

24 And when Jose arrived, he hung out. He drank.
25 The defendant even offered him a beer from his van, and he

1 went and he got it. So they are drinking, sitting around,
2 conversations. And there's a conversation in which Edgar
3 began speaking in Spanish and he starts calling the
4 defendant a homosexual. Pablo tells him to be quiet,
5 though, because he doesn't know that. And they continue
6 talking about other things. Edgar has mentioned that Pablo
7 will have to sleep outside because the defendant will be
8 staying in his room. And the defendant actually asked Edgar
9 "what are y'all saying?" And Edgar told him exactly what he
10 said, but the defendant doesn't get upset. They continued
11 drinking and at some point Alfredo arrives, because Jose
12 called him.

13 And then the defendant and Edgar leave and go to
14 the gas station to get more beer, because they ran out. And
15 the gas station is a Shell gas station, which is down the
16 street from the home. Probably the closest one there. And
17 when they get out, the defendant drives his van, and that's
18 how other witnesses there at the scene know that it's his
19 van, because he drives Edgar to the store. The defendant
20 stays in the van, but Edgar sees one of his friends, Adan
21 Soto, who you will hear from. And they talked at the gas
22 station and then Adan gets into a conversation, "what are
23 you doing?"

24 It's like, "well, I'm with this white American.
25 We're drinking and we're getting more beer. He gave me \$200

1 for beer and sex."

2 Well, Adan will admit that Edgar was pretty drunk,
3 and so he advised Edgar, "I don't think that's a good idea.
4 I don't think you should do that."

5 And then at that point Edgar told him, "well, I'm
6 just going to drink his beer. And then when we're finished
7 drinking I'm going to tell him to go home."

8 So then Edgar goes inside to get the beer. Well,
9 he runs into Aracely Avila, who you will hear from today as
10 well. She is Adan's wife, and they know each other, and he
11 talks to her. They have general conversations, and at some
12 point she asked him, you know, "where are you working, how
13 are you doing," and, you know, "who are you here with,
14 what's going on?"

15 And he points, he's like, "I'm here with the white
16 American. I'm getting some beer and he offered to pay me
17 money for sex."

18 Again, Aracely noticed that he's been drinking, "I
19 don't think that's a good idea. Just make sure you get
20 home." And she's even said that she'll see him tomorrow,
21 because she was coming by the house. And you are going to
22 hear from them.

23 So Edgar left with the defendant and they came
24 back, where Jose, Alfredo and Pablo were. They were all
25 hanging out.

1 During the course of this time the defendant ends
2 up showing off his tattoos, which will become very important
3 in this case, because they are distinctive and the witnesses
4 remember them, recall them very well. He has one on each of
5 his arms and then a large tattoo, a color of a naked woman,
6 who is his wife, and a puma or a fox, as witnesses recalled.

7 Now, when he showed them that tattoo, Jose
8 actually saw the gun. He became a little nervous, and a
9 short time later he ends up leaving with Alfredo. But prior
10 to them leaving Alfredo has a very limited conversation with
11 the defendant. As I said, he doesn't speak English very
12 well, but he talks to him and the defendant asked him where
13 he lives and he tells him and says -- the defendant responds
14 that he lives on Windsor Lake Boulevard. That too will
15 become important in this case.

16 So they're talking and Alfredo also recalls,
17 because he drove to pick up Jose. He parks behind the
18 defendant's van and he remembers that it had a Louisiana
19 tag, and even recalls the partial tag number and is able to
20 give that tab number to law enforcement, which again will
21 become very important in this case. So.

22 They are chatting, the conversation continues.
23 Jose and Alfredo -- and this is a pretty brief period of
24 time, but they leave. They go home, leaving Edgar, Pablo
25 and the defendant - Leslie Parvin - still drinking.

1 We are going to hear from some other witnesses,
2 specifically Dimas Fernandez, who lived in the main house at
3 the location. He happened to hear some arguing and he
4 looked out and saw that the defendant was yelling at Edgar.
5 He couldn't really hear the conversation that well. He
6 could hear parts of it, but it was over some money, and he
7 saw Edgar pull out the money. And the defendant, angry,
8 threw down his beer, took the money and walked out the gate.

9 Now, Dimas is going to a friend's house and he
10 thought, he was like maybe they were just going to get more
11 beer. So he went to his friend's house, which is on Omega
12 Drive, which you will be able to see on the map, and it's
13 not very far from his home, because it would be a short time
14 later that he would actually hear the gunshots and see the
15 defendant's van driving by him.

16 We're not quite there yet, because the defendant
17 didn't go get beer. He did walk out that gate, and Roberto
18 Gonzales, who you will hear from today as well, is a
19 neighbor who lives directly across the street, not very far
20 at all from Edgar. He was on his porch working on it after
21 work and he saw the defendant. He heard the arguing, the
22 yelling. The defendant walked out the gate, almost as if he
23 was going to his van, which was parked right there by the
24 gate. He could have just left. Remember that. But rather
25 than leave, he turned around to Edgar. He turned as if he

1 was going to run. The defendant pointed the gun and said
2 something and shot two times; once to the face and once to
3 the chest.

4 He then pulled out the gun and turned to Pablo,
5 who was running, turning away for cover, and he said
6 something and he shot three times in the back.

7 Let me remind you, the defendant was outside of
8 the gate when he shot Edgar and when he shot Pablo three
9 times in the back. And he turned around. He didn't run.
10 That's not what the witnesses will tell you. He looked
11 around, walks calmly to his van and drove away.

12 Now, the witnesses called 911.

13 And you will also hear from Esau Hernandez, who
14 heard the shots, got up and thought maybe it was his brother
15 who had been shot, and he went and checked. It wasn't his
16 brother. It was Pablo and Edgar, who was choking, choking
17 sounds, but they would die, and EMS would pronounce them
18 dead on arrival.

19 Now, the officers responded, secured the scene.
20 And, of course, they began looking for the van, the white
21 male that witnesses described.

22 Crime scene was called out, the investigators, to
23 collect evidence, process the scene, look for things that
24 can later be tested for fingerprints, DNA, and there would
25 be fingerprints and there would be DNA, and you will get to

1 them.

2 And the investigators were called out in this case
3 to investigate thoroughly. I submit they followed up
4 numerous leads, ruled out numerous suspects, and really
5 continued -- this is a case with good police work, very good
6 police work. And they did their investigation, but Leslie
7 Parvin wasn't caught the next day, or even the day after
8 that.

9 It would be nearly two and a half weeks, because
10 as officers were responding and 911 was called out, the
11 defendant fled to his home on Windsor Lake Boulevard, pulled
12 his van to the side, and he had his family stay in a hotel.
13 And then at some point he would go to Louisiana, where he
14 would take the van, drive the van, and submit it to a
15 salvage yard so that it could be crushed. He was getting
16 rid of evidence. And that gun, that 45-caliber gun, I
17 submit he disposed of that along the way as well, destroying
18 evidence. And that flight you can consider as evidence of
19 his guilt. Then he went to Texas to stay with his wife's
20 family for a period of time.

21 And so finally he called his father, who would
22 come and get him and bring him home, but I submit that he
23 only returned home because he thought he had gotten away
24 with murder. But remember that tag that I told you about?
25 Law enforcement worked and they were actually able to find

1 that that tag was registered to one Leslie Todd Parvin, who
2 lived on Windsor Lake Boulevard. And they got a
3 description. They figured out who he was, where he lived,
4 and they talked to witnesses again and showed them pictures
5 and they were able to identify the defendant as being the
6 person they saw that day with Edgar and Pablo, the person
7 that they saw shoot Edgar and Pablo. And as I said, you are
8 going to hear about the course of that investigation. And
9 the police did go to the defendant's home. And even though
10 his family said that he wasn't inside, they were able to
11 apprehend him there.

12 Members of the jury, that in a nutshell is why we
13 are here today. And I want thank you for your service in
14 this case, because it is an important case. It is important
15 to the State, it is important to the defense, and it is
16 important to the victims' family in this case, and so we
17 thank you, because while this system of justice could do
18 without the lawyers, could do without the judges, it cannot
19 do without you. So on behalf of all of us, I want to thank
20 you here today.

21 Now, my name is Nicole Simpson, and I, along with
22 my co-counsel, senior assistant solicitor Luke Campbell and
23 assistant solicitor Meghan Walker, together we represent the
24 State of South Carolina, the citizens of Richland County and
25 the victims in this case.

1 Now, as a result of his actions on July 30th,
2 2010, the defendant has been charged with two counts of
3 murder.

4 Now, in every criminal case the defendant is
5 presumed innocent until proven guilty, and that is as it
6 should be, because a defendant should never be required to
7 prove himself innocent. And as the State, we bear the
8 burden of proof in this case, just as we do in the
9 prosecution of every criminal case. And what that means is
10 that we must prove to you beyond a reasonable doubt each
11 element of the crimes for which the defendant has been
12 charged. I can tell you that we welcome that burden here
13 today.

14 Now, in South Carolina murder is one of our most
15 serious offenses, probably the most serious, and yet it has
16 perhaps the shortest definition. A person is guilty of
17 murder if he kills another with malice aforethought. Well,
18 members of the jury, I submit the defendant killed Edgar and
19 Pablo, and this case reeks of malice. As I said, we must
20 prove to you each element beyond a reasonable doubt.

21 So what exactly is proof beyond a reasonable
22 doubt? Well, I can tell you that it is proof that leaves
23 you firmly convinced of the defendant's guilt.

24 Now, there are very few things that we know in
25 this world with absolute certainty, and the law does not

1 require the State to produce proof that overcomes all doubt,
2 or every possible doubt; only that doubt which is
3 reasonable.

4 Now, the Honorable Judge Newman is the judge of
5 the law in this case and he will instruct you on the law as
6 you are to apply it to the facts of this case. And if ever
7 there is a discrepancy between what his honor says and what
8 any of the attorneys in this case may say, you are to follow
9 his instructions and his rulings to you.

10 Now, with that said, members of the jury, each one
11 of you here today is wearing a black robe, because
12 individually and collectively you must decide, and only you
13 can decide, if the defendant is guilty. You are the sole
14 judges of fact in this case.

15 This isn't Houdini and this isn't a mystery, and
16 the State doesn't expect you to solve a mystery. That's not
17 what you are here to do. It is our job to give you all the
18 tools that you need to do your jobs and to make a
19 determination in this case, and we plan to do just that
20 through the evidence and testimony produced during this
21 trial.

22 Now, some of that evidence is going to be, as the
23 judge told you, photographs, diagrams. You will have the
24 shell casings, things that you can see, that you can touch;
25 videos, things that you can hear; but much of that evidence

1 is going to come from right here on this witness stand.

2 And this case is going to be somewhat unique,
3 because several of the witnesses, many of the witnesses in
4 this case are Hispanic and speak limited English, or English
5 is their second language. And this case is far too
6 important for any facts about what happened, any information
7 that you need to be lost because of the inability to
8 communicate because of a second language. For that reason
9 there will be a translator for those witnesses. And we ask
10 that while you listen to what the translator says, you still
11 judge that witness on the stand just as you do every witness
12 in this case.

13 You are going to hear from a number of witnesses
14 throughout this week, including the responding officer, one
15 of them who responded to the scene.

16 You are going to hear from the crime scene
17 investigators that I spoke of who collected the evidence.

18 You are going to hear from the investigators in
19 this case who investigated the case and spoke with
20 witnesses, followed up leads and finally apprehended the
21 defendant.

22 And you are going to hear from some expert
23 witnesses, including one in gunshot residue, DNA,
24 fingerprints. And through the DNA and fingerprints you are
25 actually going to learn that the defendant's fingerprints

1 and DNA were found on several items at the scene, putting
2 him there that day.

3 Through these witnesses, members of the jury, I
4 submit that you will learn what you need to know. I submit
5 that you will learn about facts and information that will
6 ultimately lead you to the defendant's guilt, but that is
7 your determination, and your determination alone. And while
8 it is up to you to judge the credibility of this witness,
9 you can believe some of what a witness says, all of what a
10 witness says, or nothing that a witness says. That is
11 solely up to you individually.

12 Now, in doing so, though, we ask that you consider
13 a few things. What was that witness' demeanor on the stand?
14 Was that witness hesitant or forthright when testifying? Is
15 that witness' testimony consistent with other testimony or
16 corroborated by other evidence in this case? And perhaps
17 most importantly, members of the jury, did that witness have
18 any reason to be biased or prejudiced in this case?

19 Now, the law that's pledged that persons will do
20 justice to one another. It is said that precepts of the law
21 are these: To live honorably, to injure no other man, and
22 to render each man his due. And the best measure of the
23 quality of a society is the quality of its justice. And the
24 mother of justice is truth, and that is your job. That is
25 your duty here today, to find the truth and to seek justice.

1 And I submit to you that after you have heard all
2 the evidence in this case, there will be only one just
3 verdict. And my co-counsel, Ms. Campbell, is going to come
4 before you and ask you for a verdict that the evidence will
5 support and that justice will demand. She's going to ask
6 that you find the defendant guilty of two counts of murder.
7 Thank you.

8 THE COURT: For the defense? Mr. Shealey?

9 MR. SHEALEY: May it please the court?

10 THE COURT: Yes, sir.

11 MR. SHEALEY: God, country, and the love of his
12 woman.

13 I'm going to tell you an incredible story of Todd
14 Parvin, who by the age of eighteen knew exactly what he
15 wanted in life; God, country, and the love of his woman.

16 When I was eighteen I was a freshman at Wofford
17 College. I was immature. I had no direction. I had no
18 focus. I was drinking beer and chasing girls. When Todd
19 was eighteen he had just completed basic training and was
20 serving our country's interests abroad, walking a line
21 somewhere.

22 I want to tell you the incredible story of Todd
23 Parvin's life. A man for the past sixteen months who has
24 been a prisoner at the Alvin S. Glenn Detention Center here
25 in Columbia, South Carolina, charged with two counts of the

1 crime of murder, a crime he did not commit.

2 Todd Parvin had grew up in Abilene, Texas, a small
3 town, rural. At aged eighteen he had graduated high school.
4 He had his high school sweetheart, Shanna Parvin, who sits
5 before us in the gallery, and he went into basic training to
6 leave her behind, and he embarked on a glittering twenty
7 year career in the military, the U.S. Army.

8 Todd Parvin had a calling. He wanted to be a
9 chaplain's assistant, and he did that with great success.

10 I want to tell you what a chaplain's assistant is,
11 and you will hear about that in this case. The chaplain is
12 the man of God in combat. He's a man who provides a list of
13 services to those troops in the field, to administer last
14 rights, to counsel, to make sure that those men and women in
15 our armed forces get the dignity and respect they need while
16 in combat. He is the only man who is unarmed in the
17 military.

18 Now, the chaplain's assistant, which is what Todd
19 was, he is the bodyguard for the man of God. He is chosen
20 to assist the chaplain, to protect him. His judgment has to
21 be impeccable. He has to know when to use force, when to
22 not use force. His training to be the best of the best in
23 how to diffuse the situation in conflict as he protects the
24 chaplain, who is an unarmed man, the man of God in the
25 field, and Todd was very good at this.

1 Todd was no weekend warrior. Todd had five
2 deployments. Todd was in South Asia. Todd was in the first
3 Gulf War, Desert Storm and Desert Shield. Todd served later
4 in the second Gulf War and three operations, three
5 deployments, including Operation Anaconda. Todd was a
6 career military man and he was the best.

7 He received numerous accolades, numerous awards
8 for merit, for valor. Todd was a recipient of the Bronze
9 Star, and eventually at the end of his career he was awarded
10 the Legion of Merit, which is the only medal you can wear
11 around your neck, but for the Medal of Honor.

12 Todd has impeccable judgment and you will hear
13 about this in this case. His judgment was so good that he
14 was asked to train other soldiers in self-defense, when to
15 use force, when not to use force. He was also trained -- he
16 trained law enforcement, the people who will be sitting here
17 pointing their finger at Todd. He trained them in how to
18 use force and when to not use force. His judgment you will
19 hear was impeccable and unquestionable and is going to play
20 a big role in this case as you hear the evidence.

21 As Todd was deployed each five times he had to
22 leave his family that he loved so much. He's a family man
23 first and foremost. God, country, the woman that he loved,
24 and he left her behind every time. He is a proud husband of
25 her. You will hear that she's a teacher's assistant here in

1 Columbia. He has three children - John, Joshua and James.
2 John just came back from Princeton on a full ride to be here
3 for this trial after his first semester. Joshua is enrolled
4 in Midlands Technical College here, and James is still in
5 high school at Columbia, at Richland Northeast. He also has
6 his father here, who is retired and lives with the family.
7 He would do anything to protect them. They would do
8 anything, you will hear, to protect him. That's how close
9 he is to this family. These are the ones that he loves and
10 missed as he was protecting and defending our country.

11 I want to talk to you about this case. The
12 State's theory, as Ms. Simpson had just got up here and told
13 you, is that Todd engaged in a sexual arrangement with a
14 Hispanic gentleman by the name of Edgar and another Spanish
15 gentleman by the name of Pablo. And their theory is that
16 this somehow went awry, that he led a double life, and that
17 due to them not wanting to perform the end of this sexual
18 arrangement he killed them.

19 You will be insulted as you hear this testimony.
20 In his twenty year career there is nothing that would
21 suggest this any double life was led in the military. There
22 is nothing to suggest that any double life was led through
23 his close family. You should be insulted and you will be
24 insulted by this. This is nothing more than the State
25 overreaching, slandering a war hero, so that you will

1 convict him.

2 God, country, and the love of his woman. He loved
3 God so much that on his right arm -- they mentioned tattoos.
4 You will see and hear about he had a tattoo of a Centaur,
5 which is a half man and half horse holding a chaplain's
6 shield which is representing God to him. Inscribed in
7 Latin, God and country are the words inscribed in that
8 shield.

9 You are going to hear more about tattoos. On the
10 entire length of Todd's back, a full tattoo is the nude and
11 risque stylings of his wife Shanna, nude, because he loved
12 her and was so hot for her that he always wanted her with
13 him while he was deployed. And they want to tell you that
14 he wanted to have some elicited homosexual for money
15 arrangement with two Hispanic gentlemen who just got off
16 work loading 1,500 bales of pine straw in the middle of
17 summer? That's the State's theory of the case. Be
18 insulted. That did not happen and you will be convinced of
19 that by the end of this evidence.

20 I want to tell you about what did happen that day,
21 because Todd is going to tell you himself. He doesn't have
22 to prove anything, but he's going to sit here in this
23 witness box and tell you what happened.

24 Todd's last assignment before retiring was to be
25 here at Fort Jackson at the chaplain's school teaching. In

1 2000 he retired, teaching chaplain's assistants. And after
2 retiring he lived here with his family.

3 Now, through the years and wear and tear and
4 serving in the army his back was shot. He had degenerative
5 disc disease. His joints were not good. He had
6 degenerative disease in his elbow, but he still had a hobby,
7 which was collecting scrap metal, and he did this with his
8 youngest son James, something they did together to clean up
9 the environment, you will hear, and as well earn a little
10 money, trading in the scrap metal for cash. He was doing
11 that the day of this incident. He had gone out in his van
12 and, yes, he kept his gun you will hear in the van and for a
13 twenty year military man it's as natural to keep that gun
14 there as it is for me, a lawyer, to have a pen in my pocket.
15 It was nothing sinister. That's what he had when he was out
16 in areas looking for scrap metal.

17 You are going to hear from Todd that he had a
18 pretty unsuccessful run at the scrap metal. He didn't find
19 anything. He had gone to the store, picked up a twelve pack
20 of beer and was on his way to the house and passed the
21 incident location, which is very close to his house, less
22 than a mile away. So as he drives by he sees two Hispanic
23 gentlemen in the yard. In his mind he will tell you he was
24 thinking well, I have struck out so far on my own, but I
25 think that these gentlemen, from my experience in Texas and

1 living here in South Carolina, may be working construction,
2 may be working in those manual labor industries and they
3 might have in-roads with their employers to help me get some
4 scrap metal. He slows, he gets out, and they invite him in
5 and they sit and have a few beers. He tells them his name.
6 And the solicitor is right. Only one of them spoke English.
7 The others didn't speak much English. He tells them his
8 name, Todd Parvin. He tells them where he lived, right
9 around the corner. He showed them his tattoos to make
10 friends as one of the -- as Edgar had a tattoo as well.
11 These are not the actions of a man who is planning on
12 murdering anybody by giving them every identifiable
13 description that he could possibly have on his body,
14 including the giant tattoo of his wife. These are not the
15 actions of a man that's thinking about doing anything that
16 day, other than making friends.

17 You are going to hear from Todd that Edgar wanted
18 to have Todd take him to the store to get some more beer.
19 You are going to hear that Todd hesitated, but he was trying
20 to butter these guys up to see if their employers have any
21 scrap metal and maybe have some connection there.

22 You are going to hear they take Edgar to the store
23 and that Edgar then turns to him and says, "well, I don't
24 have any money. Give me the money to buy the beer." Again
25 Todd hesitates. He gives him some money.

1 You are going to see on the video Edgar in the
2 shell gas station on Percival Road buying the twenty-four
3 pack of Budweiser beer. He drops the beer.

4 He meets two other Hispanic acquaintances that he
5 knows. You are going to hear from them that he told them,
6 "I have got a fucking American in the car. This fucking
7 American gave me money for beer. This fucking American gave
8 me \$200 to have sex with him, but I'm not going to do it."
9 These are the words of a man that the State is resting their
10 theory of their case upon. At the time of his death he had
11 a .379 blood alcohol level, which is over four times the
12 legal limit. This is the sole evidence that you are going
13 to hear in the case they are hinging their allegation, their
14 slanderous allegation, against Todd and his family that he
15 lives a double life, that he wanted to have gay sex with
16 Edgar, who just gotten off work in the middle of a hot July
17 summer in South Carolina, loading 1,500 bales of pine straw,
18 who had a .379 alcohol level. They want -- they are asking
19 you to believe this that is the man who wants to have sex
20 with for money, and that his wife that he has a nude picture
21 of that he loved so much is just sitting at home. Be
22 insulted, ladies and gentlemen.

23 He takes Edgar back to the house. He meets some
24 more Hispanic gentlemen. He talks to them and tells them
25 who he is, tells them where he lives. He's still trying to

1 make friends, and eventually it's just Edgar and Todd
2 sitting next to the shed where Edgar lives. And Todd is
3 going to tell you it was getting late, that he wanted to go
4 home. You are going to hear from him that he tells Edgar
5 "it's time to leave. I'm going to get to my family," and
6 Edgar says "no, you are not going to leave." He seems to
7 try to get more money and things out of Todd.

8 You are going to hear from Todd that he says
9 "well, while we are talking about money, can you please give
10 me the change that you never gave me for the Budweiser that
11 I had bought for you?" At this point Edgar gets mad. He is
12 extremely intoxicated, as is Pablo. Edgar curses. He
13 yells. Todd is starting to get very scared.

14 I'm going to let Todd tell you this story and I
15 want you to judge his credibility. We welcome that. He's
16 going to look you in the eye and tell you exactly what
17 happened.

18 I will tell you that Todd knew it was two on one.
19 He had severe physical limitations and he had to make a
20 break for it as quickly as he could, which wasn't very
21 quick. And at that point he was attacked. His family was
22 threatened. They told him "we know where you live." You
23 are gong to hear they told him "it's pointless. You are not
24 going anywhere," and he did what he had to do to survive
25 that day.

1 This is a case about self-defense, your right to
2 survive. And if it weren't for his training, that he would
3 not be here today. It's not a case about homosexual
4 prostitution, ladies and gentlemen. You will be insulted by
5 that.

6 Bad things happen to good people. You know that
7 when you turn your TV on every day, and bad things happened
8 to Todd that day. Did he make mistakes? Did he do things
9 that were human? Yeah, he did. This incident shocked him
10 to his core. He's going to tell you that in all his years
11 of being in the military, he was so good at diffusing
12 situations, yes, he drew his weapon many times, but he never
13 even had to fire it. And now he's forced to take two lives
14 that he never planned on. It rocked him to his core.

15 He didn't call police. He is going to tell you
16 that. He wish he could change that. He wish he could take
17 it all back. He went to Texas where his family is from and
18 talked to them, to seek comfort, but he came back and was
19 here for several days before being arrested in the family
20 home without incident and is on trial for murder.

21 Ladies and gentlemen, the State has told you they
22 have the burden of proof in this case, and that is
23 absolutely true. In order for you to find Todd Parvin
24 guilty of anything, they would have to convince each and
25 every one of you to unanimously think he's guilty of murder

1 without a doubt. That is the standard. They will not be
2 able to meet that.

3 Additionally, this case will be about
4 self-defense. Self-defense is a complete defense to the
5 crime of murder. When evidence is presented of
6 self-defense, the judge will tell you that the State has
7 then the additional burden under our law. To find him
8 guilty, they have to disprove every element of self-defense,
9 which the judge will describe to you; additional burden. We
10 are allowed to defend our lives in this country and in this
11 state. This is an absolute justification. That is what
12 happened.

13 Now, my grandfather's name was Lieutenant Percy
14 Rudolph Shealy and he served in World War II, and he died
15 when I was a child. I didn't get to know him that well. He
16 was a military man.

17 My dad, Brian Shealy, was in the National Guard
18 and did it part-time, and did not live the life of a
19 soldier.

20 Me, myself, I chose the path of school, law, and
21 I'd like to think that I am a soldier for the Constitution,
22 that I defend it, and I said that many times to the jury,
23 just like yourself. Theoretically proud of the fact that
24 I'm defending something, and I have told juries that I think
25 that we have the best judicial system in the world, which we

1 do, and it took a lot of blood and sweat and tears to
2 develop it, and then I met Todd. He's the actual guy that
3 brings it to perspective of what I'm talking about when I
4 talk our judicial system. He's out there fighting, and
5 other men who have served in Viet Nam, in the Gulf Wars and
6 in Korea, they are the guys who are fighting and made our
7 system what it is. They allow us to breath this free air,
8 enjoy this. And it hit me as I got to know Todd, because I
9 never -- I'm a privileged kid. I grew up without any real
10 needs or desires. I wasn't being baited by anybody. I
11 actually didn't understand military service, really, until I
12 met Todd and it brought it all home to me what it means.

13 God, country, and the love of his woman. That is
14 Todd Parvin. He is not a murderer, and I'm going to ask you
15 to defend him as he has been defending you for over twenty
16 years. He's not guilty. I want you to send him home.

17 THE COURT: The first witness, please.

18 MS. WALKER: Thank you, Your Honor.

19 The State calls Chauncey Smith.

20 OFFICER CHANCEY SMITH, having been first duly
21 sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box and
23 state your name for the record and spell your name, please.

24 THE WITNESS: My name is Chauncey Smith, spelled
25 C-H-A-U-N-C-E-Y, Smith.

1 DIRECT EXAMINATION BY MS. WALKER:

2 Q. Thank you, sir.

3 Where are you currently employed?

4 A. Richland County Sheriff's Department.

5 Q. And what did you do before you went to work for the
6 sheriff's department?

7 A. Before I worked for the sheriff's department I was in
8 the Army for about six years.

9 Q. How long did you serve this country in the United
10 States Army?

11 A. About six years.

12 Q. In what aspect did you serve?

13 A. I was an administrative assistant.

14 Q. Were you working with the sheriff's department back in
15 July of last year?

16 A. I was.

17 Q. And in what capacity?

18 A. The same thing I am now, a corporal. I'm in charge of
19 about five or six people. I do roadwork, much like the TV
20 shop Cops. It's kind of a grab bag of whatever comes across
21 the radio.

22 Q. And in July of last year, did you have the opportunity
23 to respond to a scene on Woodfield Drive?

24 A. I did.

25 Q. And what caused you to go to Woodfield Drive?

1 A. We were -- our shifts are from seven p.m. to seven
2 a.m., or seven a.m. to seven p.m.. It switches every
3 twenty-eight days. We were at the squad meeting. And
4 leaving out of the squad meeting at Columbia Mall and we got
5 a tone-out, which simply means there is a tone that comes
6 across the radio for high priority calls and it said that
7 there was a shooting with someone down at [REDACTED]
8 [REDACTED], and we responded from the Columbia Mall down Decker
9 Boulevard down into Woodfield Park Subdivision to that
10 location.

11 Q. And when you got to Woodfield Drive, sir, what did you
12 see?

13 A. I was driving down Woodfield Drive and it kind of --
14 there is about three -- two streets that kind of angle in
15 there together and it's kind of hard to locate exactly what
16 the address was until I saw two gentlemen lying on the
17 ground at that location, so I stopped and found that was the
18 incident location.

19 Q. And do you remember where you saw -- in relation to the
20 house that's at Woodfield Drive where you saw those
21 gentlemen?

22 A. I do. There is -- there is like a main house and then
23 there is what appeared to me like a type of like a work shed
24 sitting off, as I was looking at it, to the left of the
25 house.

1 And in front of that location there is a big tree. I
2 don't remember if it was an oak tree, or whatever. I'm not
3 very good with that sort of stuff, but there was a gentleman
4 laying in the small fence with a little gate about this
5 wide. There was a gentleman laying there to the left as I
6 we went in, and then another one laying to the right behind
7 the tree as I went -- as I went in.

8 Q. And they were both inside the fence?

9 A. Both inside the fence, yes.

10 Q. What did you do next, sir?

11 A. At that point I started -- there was actually -- I had
12 a -- another couple deputies at that time started showing
13 up, so I told them to secure the scene, don't let anybody
14 else come in there or anything else, or get out of there.

15 I started trying to find witnesses or who our
16 complainant was at the time, and they told us initially that
17 there was a --

18 I'm sorry, back up. From when we got initially
19 dispatched there was a -- they stated that there was a
20 greenish mini van that had left the area with Louisiana tags
21 and it was like a two tone they said van. It was kind of --
22 it was green on top and a grayish color on the bottom is
23 what we were told initially.

24 Q. With that information, did you set up a perimeter?

25 A. We do. It's called setting up a perimeter, meaning you

1 try to get as many people -- you kind of fence the area off
2 as best you can for the person who might be leaving, whether
3 it's a suspect, or witness, or who -- you know, who knows
4 what at that point. And at that point I started making
5 contact with the resident at the main house who told me that
6 he thought it was a white man who had gotten into the van
7 and had told me that he had big tattoos --

8 MS. PRINGLE: I would object to anything that was
9 told to him by the resident of the house. It's a hearsay
10 statement.

11 THE COURT: Objection sustained.

12 BY MS. SIMPSON:

13 Q. Were you able -- with the information that you had for
14 the shooter's description, were you able to locate a shooter
15 that night?

16 A. No, I was not.

17 Q. And the things that you did when you arrived at that
18 crime scene, is that in keeping with the standard
19 procedures?

20 A. Yeah, that's what we do at every crime scene, secure it
21 and make sure that nothing comes in or leaves out.

22 Q. And other than the two dead bodies inside of the gate,
23 did you see any other signs of a struggle that occurred?

24 A. Now, what I saw, there was a whole lot of beer cans
25 laying --

1 MS. PRINGLE: Objection, Your Honor. He's not
2 qualified to render any kind of opinion.

3 MS. WALKER: If I can lay the foundation, Your
4 Honor?

5 THE COURT: All right.

6 BY MS. WALKER:

7 Q. You have responded to numerous crime scenes --

8 A. Yes, ma'am.

9 Q. -- in your career?

10 Domestic disturbances?

11 A. Yes, ma'am, all kinds.

12 Q. When you go in, you view these crimes, are there times
13 when you can tell that a struggle has taken place?

14 A. A struggle appeared to take place, yes, ma'am.

15 Q. What kind of things at those scenes let you know that a
16 struggle took place?

17 A. Furniture knocked around, chairs knocked around.

18 A lot of times there would be -- if you -- if it's
19 outside, there would be marks in the ground looked like
20 people were taking stances and maybe kicked their feet
21 around and stuff like that.

22 Q. Did you see any of those things that night?

23 A. I did not.

24 Q. Thank you.

25 MS. WALKER: I have no further questions.

1 MS. PRINGLE: May it please the court.

2 CROSS EXAMINATION BY MS. PRINGLE:

3 Q. Good afternoon, Officer Smith.

4 A. Good afternoon.

5 Q. On this date I believe your incident report indicates
6 that you were actually dispatched at 7:30 --

7 A. That's correct.

8 Q. -- does that sound correct?

9 And you actually arrived at the scene at about 7:35
10 p.m.?

11 A. I would say that's about right.

12 Q. And you were actually -- you were the first person on
13 the scene?

14 A. Yes, ma'am.

15 Q. The first -- the first officer on the scene?

16 A. Yes, ma'am.

17 Q. It was at least five minutes between the time that you
18 were dispatched and when you arrived on the scene?

19 A. Yes, ma'am.

20 Q. And how long were you out there that day?

21 A. Awhile. A couple hours, maybe. Longer, I don't know.
22 It was quite awhile.

23 Q. And you remained actually at the scene for a couple of
24 hours?

25 A. I was there for quite awhile.

1 Q. So you are very familiar with the layout of the
2 structures of the homes and the entire scene?

3 A. The scene. Not so much -- I mean, I couldn't tell you
4 exactly what's inside the main house or anything like that,
5 but the scene outside, yes, ma'am.

6 Q. Okay. And so when you describe it being the main
7 house, this is actually a residential neighborhood, correct?

8 A. Yes, ma'am.

9 Q. Smaller homes, sort of ranch-style homes?

10 A. Yes, ma'am.

11 Q. And these homes are spaced mostly pretty close
12 together, is that right?

13 A. It's a neighborhood. I wouldn't say -- it's an older
14 neighborhood, so the houses are a little bit farther apart
15 than they are styled now, like they are sort of like right
16 next door to each other.

17 Q. But they are small little ranch-style houses, right?

18 A. Yes, ma'am.

19 Q. And it is a residential area?

20 A. Yes, ma'am.

21 Q. And this lot actually is a larger lot in that little
22 area?

23 A. Yes, ma'am.

24 Q. And on this lot you have the main house, which is where
25 Esau Hernandez lives, correct?

1 A. Yes, ma'am.

2 Q. And that's the individual that you made contact with
3 when you first got there?

4 A. Right.

5 Q. And that house is some distance -- I'm not going to ask
6 you to measure it out, but it's not attached to this garage,
7 the white building?

8 A. No, it's not attached.

9 Q. Right.

10 And the other two structures, you have a garage with a
11 white building, and then a smaller brown shed right in front
12 of it, right?

13 A. Yes, ma'am.

14 Q. And that is detached from that area and it's surrounded
15 by a chain linked fence, correct?

16 A. The whole area is surrounded by a chain linked fence.
17 I don't believe it was -- well, I can't remember exactly,
18 but --

19 Q. So the entire lot -- not just that area that I'm
20 describing, but the entire lot is surrounded by a fence?

21 A. Yes.

22 Q. And there were two gates in that fence, correct?

23 A. There was a -- as I recall, there was a small fence, a
24 break in the fence where I went through, and there was a
25 larger part over by the driveway area.

1 Q. So a gate that you could drive through versus a gate
2 that you could walk through, correct?

3 A. As I recall, yes, ma'am.

4 Q. And the gate that you could walk through, that is the
5 area to which Edgar Lopez was located on the left?

6 A. Yes, ma'am.

7 Q. And that area is very close to the smaller brown shed
8 and the white house?

9 A. Yes, ma'am, right in front.

10 Q. And that white house, that little white house that's --
11 it's all very close in right there, isn't it?

12 A. Yes, ma'am.

13 Q. It's a small space, isn't it?

14 A. Yes, ma'am.

15 Q. And that little white house is actually where Edgar
16 Lopez lived?

17 A. As I heard. I didn't ever go inside.

18 Q. Okay. In the area there were several chairs set up,
19 right?

20 A. There were a few chairs, yes, ma'am.

21 Q. Three -- three sitting there?

22 A. I would say no more than five. I don't know exactly
23 how many there were.

24 Q. And one of those chairs -- do you remember anything
25 distinguishing about those chairs?

1 A. I remember -- I think they were like white plastic
2 chairs, as I recall.

3 Q. Do you remember one was broken?

4 A. One looked like it had been turned over, maybe as
5 somebody fell or something.

6 Q. Okay. So that would be like a sign of a struggle
7 perhaps?

8 A. Or a sign that maybe he hit it as he was shot and had
9 fallen down. That's what I thought.

10 Q. Okay. So we have a broken chair on the scene.
11 That's -- that broken chair is nowhere near Mr. Lopez or
12 Pablo?

13 A. Right. Well, within a few feet. I wouldn't say it's
14 right beside.

15 Q. Too far to have fallen on it, right?

16 A. Perhaps.

17 Q. And also in that area there were beer cans all over the
18 ground?

19 A. There were a lot of beer cans.

20 Q. A cluttering of debris everywhere?

21 A. A lot of beer cans, and I believe there was some
22 garbage cans and whatnot like that.

23 Q. A garbage can actually filled -- a huge garbage can
24 filled to the top with beer cans, wasn't it?

25 A. Yes, ma'am.

1 Q. Foaming over the top, right?

2 A. I guess. If that impresses you, yes, ma'am.

3 Q. It was very full, right?

4 A. Yes, ma'am.

5 Q. All right. And there is an old cooler that was sitting
6 right there among these chairs too?

7 A. Yes, ma'am.

8 MS. PRINGLE: Beg the court's indulgence.

9 (Off the record)

10 (Back on the record)

11 BY MS. PRINGLE:

12 Q. And what you did when you got there immediately was to
13 secure that scene, right?

14 A. Yes, ma'am, as best I could. The scene was actually
15 bigger than I thought it was, but, yes, ma'am.

16 COURT REPORTER: I'm sorry, the scene was what?

17 A. It was a little bit larger than I thought it was
18 initially. I thought it was just a few feet, but then I
19 started seeing the shell casings moving out right there.

20 BY MS. PRINGLE:

21 Q. And that wasn't just your idea to secure the scene?
22 You are trained to do that, aren't you?

23 A. Right.

24 Q. And you have detailed training about how to do it,
25 don't you?

1 A. As far as putting up crime scene tape and keeping
2 people out, yes, ma'am.

3 Q. And you started -- you put up crime scene tape to keep
4 people out? You do everything that you can to keep it
5 secure and free from other people coming in, once you get
6 there, right?

7 A. Right.

8 Q. And you keep a crime scene log?

9 A. Yes, ma'am.

10 Q. And the crime scene log tells you everybody that comes
11 in and out?

12 A. As best as I can.

13 Q. And you do that so that you can preserve the scene
14 exactly the way that it was when you arrived?

15 A. Yes, ma'am.

16 MS. PRINGLE: No further questions.

17 THE COURT: Anything further?

18 MS. WALKER: Just briefly, Your Honor.

19 REDIRECT EXAMINATION BY MS. WALKER:

20 Q. The crime scene that you responded to, that's in
21 Richland County?

22 A. Yes, ma'am.

23 MS. WALKER: No further questions.

24 THE COURT: Ladies and gentlemen, I will have you
25 go to the jury room for just a few minutes. Please do not

1 discuss the case.

2 (The following takes place outside the presence of
3 the jury panel)

4 THE COURT: All right. You may stop down,
5 officer, and we will take about five.

6 (Whereupon, proceedings were recessed)

7 (Whereupon, proceedings were reconvened)

8 THE COURT: We plan to go to about 1:15 and then
9 break until 2:30. All right.

10 MR. SHEALEY: Could I bring something up while we
11 have a break?

12 THE COURT: Okay.

13 MR. SHEALEY: We received some wrap sheets on some
14 of the potential witnesses from the State. That was right
15 before opening. And I'm looking through one of them, which
16 is Alfredo Vidal, and, you know, I don't see anything in
17 South Carolina necessarily that's impeachable. There is a
18 CDV, but I do see that it says he's wanted right now
19 apparently for a bench warrant on a CDV, so I don't know how
20 the court wants to proceed, how law enforcement wants to
21 proceed on that, so I have that question. And then there is
22 also some things from Texas. I don't know. It's aggravated
23 assault causing serious bodily injury. It says that
24 disposition is held. I don't necessarily know what that
25 means, but I think it would be upon the State to prove that

1 that wasn't a conviction. I don't know whether we call
2 Texas or what, but --

3 MS. CAMPBELL: It's in 1995.

4 MR. SHEALEY: I don't know if he went to prison.
5 One popped up here and I don't know what it means.

6 THE COURT: He's your next witness?

7 MS. CAMPBELL: No, sir.

8 THE COURT: All right. Let's bring the jury in
9 and we will address all of that. It has to be addressed.

10 (Off the record)

11 (Back on the record)

12 THE COURT: Bring the jury in, please.

13 (The following takes place in the presence of the
14 jury panel)

15 THE COURT: Call your next witness, please.

16 MS. CAMPBELL: The State would call Jose Monroy.

17 THE COURT: Jose Monroy.

18 MS. CAMPBELL: Your Honor, this witness does
19 require a translator. I don't believe he's already been
20 sworn.

21 THE COURT: We will swear the translator again.

22 MS. CAMPBELL: Thank you.

23 THE COURT: First swear the translator.

24 THE CLERK: Thank you, Mr. Hunt.

25 Do you solemnly swear that you will accurately

1 interpret the language requested in this courtroom of the
2 witness without addition thereto, or detractions therefrom,
3 or any other amendments of your own interpretation, so help
4 you God?

5 THE INTERPRETER: I do.

6 THE CLERK: Thank you.

7 Raise your right hand.

8 JOSE L. MONROY, having been first duly sworn,
9 testified as follows:

10 THE WITNESS: Yes.

11 THE CLERK: Have a seat in the witness box and
12 state your name for the record and spell your name, please.

13 THE COURT: I request that he may speak loudly,
14 please.

15 THE WITNESS: Should I speak loudly or softly?

16 THE COURT: Loudly.

17 THE WITNESS: Okay.

18 My name is Jose L. Monroy.

19 DIRECT EXAMINATION BY MS. CAMPBELL:

20 Q. Sir, where do you live?

21 A. My address is 1401 Faraway, Columbia, South Carolina,
22 29223.

23 Q. How long have you been living in Columbia?

24 A. Twenty-one years.

25 Q. Do you work?

1 A. Yes.

2 Q. And what do you do for a living, sir?

3 A. In packing.

4 Q. And when you say packing, what kind of work does that
5 include?

6 A. It's paper and different types of decoration that they
7 use, like veneer to put on furniture.

8 Q. And do you actually own that business?

9 A. No, I work there.

10 Q. You work there.

11 And how long have you been working there?

12 A. Twelve years.

13 Q. I want to turn your attention back to July the 30th of
14 2010.

15 Did you see Edgar and Pablo that afternoon?

16 A. Yes.

17 Q. And what do you call Edgar?

18 A. Camagua.

19 Q. Camagua?

20 A. Yes.

21 Q. Where did you see them that day?

22 A. The day that that happened I was with my brother.

23 Q. Does your brother live near Edgar?

24 A. Yes.

25 Q. And where were Edgar and Pablo when you saw them that

1 day?

2 A. Where Camagua lived then.

3 Q. Was it in the yard area?

4 A. Yes.

5 Q. And who all was out there when you saw them that day?

6 A. There was a white gentleman.

7 Q. And Edgar and Pablo?

8 A. Yes.

9 Q. Tell the jury what happened when you went into the yard
10 that day, what you saw.

11 A. What I saw was the three of them, they were drinking
12 beer.

13 Q. Did you join them?

14 A. Yes, I had one beer. They invited me to have a Modelo
15 beer, and they offered me a second but I didn't want
16 another.

17 Q. Who actually offered you the beer that day?

18 A. The white gentleman had it in his van.

19 Q. Did you get a good look at his van that day?

20 A. Oh, yes.

21 Q. And do you remember what the van looked like?

22 A. It was green with Louisiana plates.

23 Q. Louisiana plates?

24 A. Yes.

25 Q. And how did you know it was his van?

1 A. They got into the van and they went to the store to buy
2 twenty-four beers and then they came back.

3 Q. Did you stay in the yard while they went to the store?

4 A. Yeah, until they came back.

5 Q. While you were there that day, did you overhear a
6 conversation with Edgar and Pablo about the white American?

7 A. No.

8 Q. Do you remember hearing Edgar talking about where Pablo
9 was going to sleep that night?

10 A. No.

11 Q. Do you remember Edgar telling Pablo anything about the
12 American?

13 A. No, because I don't understand English.

14 Q. Do you remember Edgar talking to Pablo in Spanish?

15 A. Yes.

16 Q. And do you remember talking to the police about the
17 conversation you overheard between Edgar and Pablo when they
18 came to talk to you?

19 A. Yeah, yeah, I told them what I saw. That's it.

20 Q. Okay. Do you remember telling them that Edgar tell
21 Pablo he was going to sleep outside tonight?

22 MS. DAVIS: Objection, Your Honor.

23 THE COURT: What's the basis for the objection?

24 MS. DAVIS: It was leading at that point, Your
25 Honor.

1 THE COURT: Any response?

2 MS. CAMPBELL: Your Honor, I don't think it's
3 leading. I'm trying to refresh his memory and I have to do
4 it through the translator, because I can't show him the
5 statement. That's the only limitation I have.

6 THE COURT: Response?

7 MS. DAVIS: Your Honor, I just ask that the
8 statement itself can be used to refresh his memory of that
9 statement.

10 THE COURT: Is the statement in English, Spanish,
11 or --

12 MS. CAMPBELL: English.

13 THE COURT: Okay.

14 MS. CAMPBELL: I can have the translator do it to
15 avoid any --

16 THE COURT: You can quote coming from the
17 translator.

18 A. (Witness reviewing document).

19 It's true that he did stay with me.

20 THE COURT: You may question him about his
21 statement.

22 BY MS. CAMPBELL:

23 Q. Do you remember telling the police about a conversation
24 that day?

25 A. Yes, I do remember that conversation that I heard at

1 that time and they were talking about where he would stay.

2 Q. Where who would stay that night?

3 A. Camagua.

4 Q. Camagua, who is Edgar?

5 A. Yes.

6 Q. And do you remember telling him why Pablo had to sleep
7 outside that night, because he was going to stay with Edgar?

8 A. Yeah, I did understand that conversation what Pablo was
9 saying because it was in Spanish.

10 Q. Okay. And what was the gist of the conversation? What
11 was said?

12 A. What it says there is Pablo was going to be outside and
13 they were going to be inside. That's it.

14 Q. Okay. Do you remember him telling anything to the
15 American about what he was saying?

16 A. No.

17 Q. Do you remember him telling Pablo that the dude was a
18 homosexual?

19 MS. DAVIS: Objection, Your Honor.

20 THE COURT: The basis for the objection?

21 MS. DAVIS: Your Honor, she's attempted to refresh
22 his memory and he's already done it and he's still
23 responding that he doesn't remember the conversation.

24 MS. CAMPBELL: That's a mis -- I'm sorry.

25 THE COURT: What?

1 MS. CAMPBELL: I believe it was a
2 mischaracterization of what she just said, Your Honor. At
3 this point I'm just asking about a specific part of the
4 statement that he just said he made. He did acknowledge it.

5 THE COURT: You can ask him whether or not he made
6 the statement. The answer is yes or no.

7 MS. CAMPBELL: Thank you.

8 BY MS. CAMPBELL:

9 Q. Does he remember that?

10 THE COURT: Restate the question, please.

11 BY MS. CAMPBELL:

12 Q. Do you remember him telling Pablo that the American was
13 a homosexual?

14 A. No, not really. The only thing I remember is that at
15 the end that he said that Pablo would be outside and those
16 two would be inside.

17 Q. And that would be the American and Edgar?

18 A. And Edgar, right.

19 Q. At some point while you were there that day did the
20 American and Edgar go somewhere?

21 A. Just to the store.

22 Q. Were they gone very long?

23 A. Maybe ten minutes or so.

24 Q. And when they came back, who was still in the yard?

25 A. Me and Alfredo.

1 Q. So then it was the four of you again?

2 A. It was me, Alfredo, Edgar and Pablo.

3 Q. During that afternoon while you were there, on the
4 American did you see any parts of his body, any tattoos?

5 A. Yeah, because he lifted his shirt up to show us.

6 Q. And what was he showing you? What did he show you?

7 A. Some tattoos, but I don't remember what.

8 Q. Do you remember where the tattoos were?

9 A. Here and here, and he took his shirt off like this.

10 Q. When he took his shirt off, did you see any kind of
11 weapon on the American?

12 A. Yes. Yes, a black pistol and he wore it back here, but
13 then when he came back from the store he wore it here.

14 Q. Where is -- where was he wearing it when he came back
15 from the store?

16 A. Here.

17 Q. At some point did you make a phone call to a friend to
18 get a ride?

19 A. Yeah, I was scared. That was when I called my friend
20 to come and get me, because I saw that that wasn't a good
21 thing.

22 Q. Who was the friend you called?

23 A. Alfredo.

24 Q. Did Alfredo come?

25 A. Yes.

1 Q. And was he there for a few minutes and then y'all left?

2 A. Yes, we went together back to the house.

3 At first we went to the store, and then we went to the
4 house, and five minutes after that, after we got back to the
5 house and we heard the shots.

6 Q. How far away was your house from Edgar's?

7 A. Where I live?

8 Q. I'm sorry?

9 A. Where I live?

10 Q. Yes.

11 A. Where I live, no more than five minutes.

12 Q. And it was after you got to the house that you heard
13 the shots?

14 A. Yes, I was sitting down at the house when I heard the
15 shots.

16 Q. When you left with Alfredo, who was left in the yard at
17 Edgar's?

18 A. Just the three of them.

19 Q. And who was the person that you saw with the gun that
20 day?

21 A. The white guy.

22 Q. Did the police or -- did the sheriff's department make
23 contact with you after this happened?

24 A. No.

25 Q. You didn't talk to anyone with the sheriff's

1 department?

2 A. Yeah, they called me afterwards for some information,
3 but not like directly from the neighbors.

4 Q. Okay. Not that night? Later?

5 A. Afterwards, yes.

6 Q. And did you give them a description of the guy that you
7 saw with the gun?

8 A. Yes.

9 Q. And what -- do you remember what description that you
10 gave them?

11 A. Yeah, they asked me what the person was like. I said
12 it was a white person. He used glasses.

13 Q. Did you describe his hair, or his height, or anything?

14 A. Yes, they asked me all that.

15 Q. And you gave them the information?

16 A. Yeah, his size. I said he was a little bit chubby, not
17 too tall.

18 Q. Later did they show you some photographs?

19 A. Yes.

20 Q. And on August the 19th --

21 I'll show you what's been marked as State's Exhibit 2.

22 Did they show you these photographs?

23 A. Yes, that's my handwriting.

24 Q. When they showed you these photographs, what, if
25 anything, did they say to you?

1 A. Well, when I got to the office, they said, you know,
2 "I'm going to show you some photos." They put those in
3 front of me.

4 Q. Did you recognize anyone when you looked at the six
5 photos?

6 A. Of course.

7 Q. And who did you recognize?

8 A. This gentleman.

9 Q. Why did you recognize him?

10 A. Yeah, I wouldn't have forgotten. We were so close. We
11 were just right there.

12 Q. Is that the person that you saw with the gun over at
13 Edgar's?

14 A. Yes.

15 Q. And did anyone tell you who to pick or influence you?

16 A. No, they just said "here are some photos. Do you
17 recognize anyone," and I said "yeah, yeah, this bad one."

18 Q. Okay. And then did you put your initials and circle
19 it?

20 A. Yes.

21 Q. And then they asked you to sign off on the second page?

22 A. Yeah, that was to be sure that that was that person.

23 Q. And you were sure?

24 A. I was more than sure.

25 MS. CAMPBELL: Your Honor, at this time I would

1 offer State Exhibit 2.

2 THE COURT: Any objection?

3 MS. DAVIS: No objection, Your Honor.

4 THE COURT: It's admitted.

5 BY MS. CAMPBELL:

6 Q. Did you also give the sheriff's department a statement
7 about what you remembered back then?

8 A. Yes, they asked me.

9 Q. And I believe they even had a translator for you, is
10 that correct?

11 A. The person who was with me spoke Spanish.

12 Q. The investigator?

13 A. Yes.

14 MS. CAMPBELL: Beg the court's indulgence.

15 (Off the record)

16 (Back on the record)

17 BY MS. CAMPBELL:

18 Q. Mr. Monroy, how old are you?

19 A. Right now sixty-one years old.

20 Q. Okay. The person that you saw that day, the person
21 with the gun, do you see him here in the courtroom?

22 A. Yes.

23 Q. Can you point him out for the jury?

24 A. The second one from here to there.

25 MS. CAMPBELL: Your Honor, may the record reflect

1 he's identified the defendant?

2 THE COURT: It may so reflect.

3 MS. CAMPBELL: Thank you. I have nothing further.

4 THE COURT: Cross-examination.

5 MS. DAVIS: Thank you, Your Honor.

6 May it please the court?

7 THE COURT: Yes.

8 CROSS EXAMINATION BY MS. DAVIS:

9 Q. Good afternoon?

10 A. Good afternoon.

11 Q. The day that we are talking about, you were at your
12 brother's house, right?

13 A. Yes.

14 Q. And your brother is Esau?

15 A. Yes.

16 Q. And he lives in the house at that location, correct?

17 A. Yes.

18 Q. And then to the left of his house there is actually a
19 garage, a white garage?

20 A. Yeah, a little house.

21 Q. Okay. And that's where Edgar Lopez lived?

22 A. Yes.

23 Q. And then in front of that was a little brown shed?

24 A. Exactly.

25 Q. And then there is the chain linked fence that went

1 around that whole property, right?

2 A. Yes.

3 Q. And that little area where Edgar, he lived in that
4 white -- the garage, that white house, right?

5 A. Yes.

6 Q. And so when they would hang out and drink, they would
7 be right in front of that, right?

8 A. Yeah, on the outside.

9 Q. Right, outside.

10 And you would go see your brother frequently?

11 A. Yeah, I see him often. If I'm off I go see him.

12 Q. And you knew who Edgar was and you knew who Pablo was?

13 A. Yes.

14 Q. And when you got there that day, they were drinking?

15 A. Yes.

16 Q. And that was kind of early afternoon, early evening?

17 A. It was in the afternoon, but I don't remember the exact
18 time.

19 Q. That wasn't unusual for them to be outside drinking?

20 That's where they kind of hang out, right?

21 A. No, no.

22 Q. But that was not unusual?

23 A. No, I mean, it was -- they were right by the fence. I
24 didn't -- they didn't seem like they were really drunk or
25 anything.

1 Q. And when you got there that day, you saw the green van?

2 A. Yeah. Yeah, I did and I thought it was strange. I had
3 never seen it before. I didn't know who that was. It was
4 outside with Louisiana plates.

5 Q. And it was right outside of the house, right?

6 A. Yes.

7 Q. And do you happen to remember which way the van was
8 parked when you first got there?

9 A. The first time it was parked next to the house.

10 Q. Okay. And do you remember which direction it was
11 facing, which way down the street?

12 A. When I first got there -- when I first got there, the
13 van was facing like up there. And then when I got back --
14 when they came back it was, it was parked differently.

15 Q. When they came back from the store the van was parked
16 in a different direction?

17 A. Well, I didn't really suspect anything, so I didn't
18 know what was going to happen, but, yeah, it was parked
19 differently.

20 Q. Okay. And you said that you did see the tattoos of the
21 white male that was there that day?

22 A. Yes.

23 Q. And he was out there showing everyone that was in the
24 yard with y'all?

25 A. No, it was just us that were there and he just lifted

1 it up.

2 Q. Right, and that's what I mean. He is just showing you
3 that were in the front yard with him, right?

4 A. Yeah, just those of us who were there, yes.

5 Q. And when you -- when you actually got there, the white
6 male offered you a beer?

7 A. Yes, a Modelo brand beer.

8 Q. And do you remember when you saw him, he had earrings
9 in?

10 A. Two, yes; one here, one here.

11 Q. Both pierced?

12 A. Uh-huh.

13 Q. And he had kind of longer hair?

14 A. No, short.

15 Q. It wasn't -- not shaved short, but just a shorter
16 haircut?

17 A. Yes, it was what we say in Spanish "coolno", not too
18 short.

19 Q. And, Jose, when you got there that day, you knew that
20 Edgar and Pablo had just gotten off work?

21 A. Yes, based on what we were talking about, they said
22 they had just finished packing some.

23 Q. And they had actually been baling pine straw that day?

24 A. They went to fix someplace.

25 Q. But they had been at work that day and were now home in

1 the evening, outside?

2 A. Yeah, they were there for awhile. Based on what they
3 told me, they said they were there about an hour or so.

4 Q. And Jose, Edgar, is he about your size?

5 A. Yes, more or less.

6 Q. And Pablo is a little bigger?

7 A. No, taller.

8 Q. Pablo is taller?

9 A. (Witness shaking head).

10 Q. He's pretty -- a lot taller, right?

11 A. Not a lot, but, yes, a little bit.

12 Q. He's bigger than you?

13 A. A little bit more.

14 Q. And you actually -- when you -- you called Alfredo for
15 a ride?

16 A. Yeah, I have a premonition that something was going to
17 happen, so I called him and he said "okay, I'll come by,"
18 after ten minutes he was there.

19 Q. So Alfredo got there in ten minutes and then he stayed
20 there for a little while, right?

21 A. Yeah, he stayed there for awhile, maybe ten, fifteen
22 minutes. No more than twenty-five minutes.

23 Q. Okay. So between ten and twenty-five minutes you guys
24 stayed there and talked a little bit longer?

25 A. Yeah, because they went to the store.

1 Yeah, when they got back from the store, maybe we were
2 there for five minutes and I saw the pistol in his hip and I
3 said "let's go ahead and go, I don't have a good feeling
4 about this."

5 Q. Okay. And Alfredo had gotten there while they had
6 actually been at the store, right?

7 A. No, he got there when they were still there. They
8 hadn't gone to the store yet.

9 MS. DAVIS: Beg the court's diligence.

10 (Off the record)

11 (Back on the record)

12 BY MS. DAVIS:

13 Q. Jose, when you left, you didn't see any argument
14 happening, right?

15 A. Nothing.

16 MS. DAVIS: Nothing further, Your Honor.

17 THE COURT: Redirect?

18 MS. CAMPBELL: Nothing further, Your Honor.

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

20 All right, ladies and gentlemen, we are going to
21 break for lunch and be back at 2:30. 2:30. Please do the
22 not discuss the case.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: All right. We have some bond hearings

1 at two o'clock and we will start back with this jury at
2 2:30. We will be in recess.

3 (Whereupon, proceedings were recessed)

4 (Whereupon, proceedings were reconvened)

5 THE COURT: All right. Are we ready for the jury
6 now.

7 MS. WALKER: The State is ready.

8 MR. SHEALEY: The defense would like to inquire if
9 now would be the appropriate time to take up that rap sheet
10 issue that I had, or if you would like to wait while the
11 jury is out to address that, but I believe they are planning
12 on calling Mr. Vidal.

13 MS. CAMPBELL: Whatever you want, judge.

14 THE COURT: All right. Well, even though the jury
15 is not out, it doesn't mean just to just keep them out.

16 MS. CAMPBELL: Yes, sir.

17 THE COURT: Unless it's something that may be
18 addressed in short order, but --

19 MS. CAMPBELL: I think it could be addressed in
20 short order.

21 MS. SHEALEY: I agree.

22 THE COURT: All right.

23 MS. CAMPBELL: Basically it shows an arrest from
24 Texas from 1993 and 1995. It doesn't show any type of
25 conviction. I don't know why he thinks he can get into it

1 as far as any type of impeachment.

2 In addition to that, this person has different
3 dates of birth than the witness in this case. And at best,
4 he can say that there is a CDV from 1999, conviction.

5 MR. SHEALEY: That's not really the issue I want
6 to address.

7 THE COURT: All right.

8 MR. SHEALEY: My concern is Mr. -- the witness we
9 know as Alfredo Vidal does have a conviction for CDV from
10 1999, that he's currently, according to this, an active
11 bench warrant for his arrest. And I don't think that under
12 the alias Julios Sabola.

13 COURT REPORTER: I'm sorry, Julios?

14 MR. SHEALEY: Sabola.

15 And this rap sheet is run using all of the
16 information that they, going through AFIS fingerprints on
17 file, but my contention is that I think when you present a
18 name that's not yourself, and he was also convicted this
19 year of a DUI, which I don't think is impeachment, but he
20 gave Alfredo Vidal for that name; that he's basically not
21 being truthful with law enforcement, that's essentially a
22 hit from this bench warrant for eleven years. And in
23 dealing with the police in this case, honestly he's not
24 telling him his, that he's never used an alias of Julios
25 Sabola. So I think the fact that he has used that alias and

1 has a pending bench warrant, under 608 (c), evidence of a
2 bias, that would be a bias or prejudice or a motive to
3 misrepresent that would be appropriate for impeachment.

4 THE COURT: All right.

5 MS. CAMPBELL: Your Honor, it shows that that CDV
6 he's referring to was a conviction, so I don't know how
7 there is an outstanding warrant. Sometimes these things
8 simply don't get withdrawn from the system. And if his
9 theory is correct, then he would have been picked up on the
10 bench warrant when he got arrested for the DUI this year
11 that he had claimed.

12 And in addition to that, Your Honor -- is that the
13 only thing that you are addressing is that he used a
14 different name, according to you? We don't know that
15 somebody else used his identity vice versa at this point.

16 MR. SHEALEY: Well, these things are done using
17 fingerprints. The one I mentioned is he purposely used a
18 different name to not be picked up on the CDV bench warrant,
19 and it's a conviction that I imagine the warrant is for
20 failure to appear for the rule to show cause. He didn't pay
21 his fine or he was tried in his absence, it looks like to
22 me.

23 THE COURT: All right. Well, I find that all of
24 that is irrelevant to these proceedings, that we are not
25 here to arrest anyone on any pending warrants. If he is

1 wanted, then that's a law enforcement matter. There is no
2 evidence of conviction, but I certainly expect the defense
3 to be jumping up if the State sought to impeach someone
4 based on an outstanding -- if the State sought to impeach a
5 defense witness based on an outstanding warrant, if one
6 existed. So I find that all of that is irrelevant to these
7 proceedings.

8 MR. SHEALEY: Yes, sir.

9 THE COURT: All right. Let's bring in the jury.

10 (The following takes place in the presence of the
11 jury panel)

12 THE COURT: Thank you very much. Welcome back.

13 The State's case, next witness.

14 MS. WALKER: The State calls Adan Soto.

15 THE COURT: Adan Soto. Come forward, please.

16 MS. WALKER: And, Your Honor, the translator would
17 be used for this witness.

18 (Whereupon the translator was used in conjunction
19 with this witness).

20 THE CLERK: Put your left hand on the Bible and
21 raise your right hand.

22 ADAN SOTO, having been first duly sworn, testified
23 as follows:

24 THE WITNESS: Yes.

25 THE CLERK: Have a seat in the witness box and

1 state your name and spell your name for us, please.

2 THE WITNESS: My name is Adan Soto. My address is
3 1082 Springfield, Columbia, South Carolina, 29223.

4 COURT REPORTER: And you can spell his name,
5 please?

6 THE WITNESS: Adan, A-D-A-N, S-O-T-O.

7 DIRECT EXAMINATION BY MS. WALKER:

8 Q. Good afternoon, Mr. Soto.

9 A. Good afternoon.

10 Q. How old are you?

11 A. Thirty-two years old.

12 Q. And are you married?

13 A. Yes.

14 Q. Who are you married to?

15 A. With Marlin Avila.

16 Q. And do you all have any children?

17 A. Yes.

18 Q. How many?

19 A. Two.

20 Q. And back on July 30th of 2010, were you living in
21 Columbia?

22 A. Yes.

23 Q. And how long have you lived in Columbia, South
24 Carolina?

25 A. It will be thirteen years.

1 Q. And I want to turn your attention to the last time you
2 saw Edgar Lopez.

3 A. It was Friday, 30th of July, around six in the
4 afternoon.

5 Q. And where did you see Edgar?

6 A. In the Shell gas station on Percival Road.

7 Q. And how do you know Edgar?

8 A. When I came to this country, I lived near where he
9 lived and we seen each other almost daily.

10 Q. And did you have a chance to speak with Edgar on that
11 day?

12 A. Yeah, I spoke to him the day that I saw him at the gas
13 station at that time.

14 Q. And can you tell us what you all talked about?

15 MR. SHEALEY: Your Honor, we would object at this
16 time. It's a pretrial objection.

17 THE COURT: The objection is overruled.

18 BY MS. WALKER:

19 Q. Can you tell the jury what you talked about?

20 A. I was parked in the parking lot at the gas station
21 because my wife had gone into the gas station to use the
22 bathroom with my son, because I was on my way to drop off a
23 friend who works with me at his house, and at that moment
24 Edgar came up to my car. I rolled the window down and we
25 started talking.

1 Q. And what did Edgar say to you?

2 A. Well, he said hello, as he normally does, asked him how
3 he was doing and asked him if he was coming from work and he
4 said yes.

5 Q. Do you know what kind of work Edgar did?

6 A. He did work packing pine straw.

7 Q. And what kind of work do you do?

8 A. I'm a painter.

9 Q. And while you were talking to Edgar, did he mention
10 what he was doing at the gas station?

11 A. Yeah, he told me he was going to buy a case of beer,
12 that he was with an American.

13 Q. Okay. And did he say anything else about the American
14 and the beer?

15 A. Yes, he said the American had given him \$200 to buy
16 beer because he wanted to have sex with him.

17 Q. And after -- let me back up.

18 How did Edgar appear to you?

19 A. He said -- he seemed to be really drunk and I told him
20 he should probably just go home and rest to his house.

21 Q. So you told him not to have --

22 MR. SHEALEY: Objection, leading.

23 MS. WALKER: I'll move on.

24 THE COURT: The motion is sustained.

25 BY MS. WALKER:

1 Q. Was that -- was that all you and Edgar talked about at
2 that time?

3 A. Yes, he told me that the American wanted to have sex
4 with him and I told him to not do it.

5 Q. Okay. And did you see the American guy that Pablo was
6 with or -- I apologize, Edgar?

7 A. No.

8 Q. And did you see the car that he was in?

9 A. No.

10 Q. And do you remember talking to police about what
11 happened?

12 A. What do you mean, I'm sorry?

13 Q. Did you give a statement to the police, the
14 investigators?

15 A. Yes, I told the officer the first time I talked to him
16 that I had seen Edgar a little before he passed away.

17 Q. Okay. And you told him about what happened?

18 A. Yes.

19 Q. But you didn't tell initially --

20 MS. DAVIS: Objection, leading.

21 BY MS. WALKER:

22 Q. Did you give a second statement to the police?

23 A. Yes.

24 Q. And what did you tell police in that statement?

25 MR. SHEALEY: Objection, Your Honor, asked and

1 answered.

2 THE COURT: The objection is overruled.

3 BY MS. WALKER:

4 Q. What did you tell police in your second statement?

5 A. That Edgar was hanging out with an American guy, that
6 he give him \$200 to buy beer and have sex with him.

7 Q. And why didn't you tell the police that in your first
8 statement?

9 A. Because I didn't have a chance, plus I was embarrassed
10 to say that.

11 MS. WALKER: Beg the court's indulgence.

12 (Off the record)

13 (Back on the record)

14 MS. WALKER: Thank you.

15 THE COURT: Mr. Shealey.

16 CROSS EXAMINATION BY MR. SHEALEY:

17 Q. Good afternoon.

18 A. Good afternoon.

19 Q. You remember talking to police in this case, right?

20 A. Yes.

21 Q. And you talked primarily to Investigator Gonzalez?

22 A. Not with him, with Rafael Gonzales.

23 Q. Okay. But you spoke to someone who spoke Spanish,
24 correct?

25 A. Yes, but with him I also spoke in English.

1 Q. Okay. And you actually spoke to police two times and
2 gave two different statements, correct?

3 A. Yeah, the first time I said what I had said, but the
4 second time I didn't want to say that because I was --
5 because of embarrassment.

6 Q. And you knew Edgar for eleven years, right?

7 A. Yes.

8 Q. And he was from Guatemala?

9 A. Yes.

10 Q. And where are you from, sir?

11 A. From Guatemala.

12 Q. And that you met him through your sister-in-law?

13 A. Yes.

14 Q. And she also lived at [REDACTED], correct?

15 A. Yes.

16 Q. And when you saw Edgar that day at the Shell station,
17 he was very drunk?

18 A. He was drunk, but not too much -- not too much.

19 Q. But you told police that you told Edgar that he needed
20 to go home and stay off the streets, right?

21 A. Yeah, I saw him and he had gotten off work. He had --
22 his clothes were dirty. He was drunk and looked tired, so I
23 told him he should go home.

24 Q. Because you were concerned that if he stayed on the
25 streets like he was, he might get in trouble?

1 A. Well, yes, yes, he could have problems normally.

2 Q. And knowing him as long as you did, you knew him to get
3 drunk like that before?

4 A. He drank normally, like everyone.

5 Q. Edgar drank like everyone?

6 A. No, Edgar drank like anyone who would drink after work
7 on Friday, like twelve beers or something.

8 Q. Like twelve beers?

9 A. Yeah, anyone who would drink some beers.

10 Q. And when you saw him at the Shell gas station, he was
11 actually holding a case of Budweiser, twenty-four beers,
12 correct?

13 A. No, he was going to buy it. He didn't have it in his
14 hands when I spoke with him.

15 Q. Okay. He just told you he was going to get it, get
16 more beer?

17 A. Yes.

18 Q. Okay. So he was looking to get more drunk?

19 A. Yes, he said he had more friends at his house.

20 Q. Okay. Now, he told you that the American gave him \$200
21 to have sex with him, but that he wasn't going to do it?
22 That's what you are saying?

23 A. Yes.

24 Q. And then he told you that he wasn't going to have sex,
25 he was just going to take the American's money?

1 A. He didn't tell me in that way. He said that he would
2 go back to the house and then tell him to go home.

3 Q. Okay. And this is something that you did not tell
4 police in your first statement?

5 A. Yes, the day after it happened, I spoke with an agent,
6 a Hispanic officer, and I told him what had happened.

7 Q. And you didn't tell them about the money for sex part
8 because you didn't want police to think Edgar was gay,
9 right?

10 A. Yes.

11 Q. Because he wasn't gay, as far as you knew, right?

12 A. No, he's not gay. He wasn't gay.

13 Q. But you did know him to like to drink, right?

14 A. Yes.

15 Q. And when you drink twelve beers on a Friday and you
16 tend to boast, brag little bit? You knew Edgar to do that?

17 A. Well, we hadn't really spoken very recently on many
18 occasions, so I didn't have -- we weren't very close
19 recently.

20 Q. Okay. But you would call him your friend, right?

21 A. Yes, friends.

22 Q. And if you really thought he was drunk and maybe going
23 to have sex with a stranger, you wouldn't let a friend do
24 that, if you thought it was going to happen?

25 A. Correct.

1 Q. In your mind that was just talk?

2 A. Well, he showed me the money. He had \$200 in his hand.

3 MR. SHEALEY: Beg the court's indulgence.

4 (Off the record)

5 (Back on the record)

6 BY MR. SHEALEY:

7 Q. And your statement, what you signed, you are aware that
8 nowhere in that statement does it say that you saw any money
9 from Edgar, correct?

10 A. I'm not sure I said that or not, but I did see it,
11 because I had told the police agent about the \$200.

12 MR. SHEALEY: I don't have anything further.

13 THE COURT: Any redirect?

14 MS. WALKER: No, Your Honor.

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

16 Next witness.

17 MS. WALKER: The State calls Aracely Avila.

18 THE COURT: All right.

19 (Whereupon, the interpreter was used in
20 conjunction with this witness)

21 MARLIN AVILA, having been first duly sworn,
22 testified as follows:

23 THE WITNESS: Yes.

24 THE CLERK: Have a seat in the witness box and
25 state your name for the record and spell your name, please.

1 THE WITNESS: My name is Marlin Avila,
2 M-A-R-L-I-N, A-V-I-L-A.

3 DIRECT EXAMINATION BY MS. WALKER:

4 Q. Ma'am, where do you live?

5 A. 1802 Springfield.

6 Q. And that's here in Columbia?

7 A. Yes.

8 Q. How long have you lived in Columbia?

9 A. Nineteen years.

10 Q. And do you work?

11 A. Yes.

12 Q. What do you do?

13 A. I work in painting.

14 Q. Are you married?

15 A. Yes.

16 Q. And what is your husband's name?

17 A. Adan Soto.

18 Q. That's the man we just saw up here?

19 A. Yes.

20 Q. And did you know Edgar Lopez before he was killed?

21 A. Of course I did.

22 Q. How did you know Edgar?

23 A. When I came to this country, he lived with my sister.

24 Q. And I want to go back to July 30th of last year. Did
25 you see Edgar that day?

1 A. Yes.

2 Q. Where did you see him?

3 A. I saw him in the gas station, the Shell on Percival
4 Road.

5 Q. And when you talked to Edgar, how did he appear to you?

6 A. He was drunk.

7 Q. Did you -- what did y'all talk about?

8 A. I sold perfumes and he asked me if I had some perfume,
9 that he needed some.

10 Q. Did you have any?

11 A. At that moment in the store I didn't, but at my house I
12 did, and at that moment he was playing with my son.

13 Q. Did Edgar tell you who he was at the gas station with?

14 A. Yes, I asked him who he was with.

15 Q. And what did he say?

16 A. He told me that he was with an American.

17 Q. Did you ever see the American?

18 A. No.

19 Q. What did Edgar tell you about what he was doing with
20 that American?

21 MS. DAVIS: Your Honor, we just renew our prior
22 objection.

23 THE COURT: All right.

24 A. He said that the American had taken him to buy beer and
25 he said the American had given him \$200 to have sex.

1 BY MS. WALKER:

2 Q. Did you speak with Edgar about anything else that day?

3 A. No.

4 Q. That was the last time that you saw Edgar alive?

5 A. Yes.

6 MS. WALKER: Beg the court's indulgence, judge.

7 (Off the record)

8 (Back on the record)

9 MS. WALKER: No further questions.

10 THE COURT: Cross-examination.

11 MS. DAVIS: Thank you, Your Honor.

12 CROSS EXAMINATION BY MS. DAVIS:

13 Q. Good afternoon.

14 A. Good afternoon.

15 Q. And you saw Edgar Lopez at the gas station, right?

16 A. Yes.

17 Q. Your husband was in the car?

18 A. Yes.

19 Q. And when y'all met, you were inside the gas station,
20 right?

21 A. We didn't meet each other there, but we knew each other
22 for many years before.

23 Q. I apologize. When you were talking to Edgar, you were
24 inside the gas station?

25 A. Yes.

- 1 Q. And you had your son with you?
- 2 A. Yes.
- 3 Q. And how old is he?
- 4 A. He was six years old.
- 5 Q. Six years old?
- 6 A. Yes.
- 7 Q. And when you came out, Edgar was actually talking to
- 8 your six year old?
- 9 A. Yes, he was playing around with him.
- 10 Q. And this is in the middle of the gas station?
- 11 A. Yes.
- 12 Q. Next to the door?
- 13 A. Yes, behind the door. Further back from the door.
- 14 Q. And when y'all were talking, you were just talking
- 15 normal, normal voices?
- 16 A. Yes, normal. He was very well educated. When he was
- 17 drinking he was very polite.
- 18 Q. And at the time when you were talking to him, you said
- 19 he was drunk?
- 20 A. Yes, he had been drinking.
- 21 Q. And he told you he was with an American white man?
- 22 A. Yes.
- 23 Q. And what he told you was he was with that "fucking
- 24 American"?
- 25 A. Yes, I don't remember him saying it like that. I just

1 remember him saying he was with an American.

2 Q. Okay. Do you remember meeting with the police about
3 this?

4 A. Yes.

5 Q. It would have been just a couple of days after you had
6 talked to Edgar, probably?

7 A. What? Excuse me?

8 Q. When you talked with police, it was just a day or two
9 after you had actually talked with Edgar?

10 A. Yes.

11 Q. And you met with two investigators, I believe?

12 A. Yes.

13 Q. One of them was speaking Spanish and translating for
14 you?

15 A. No, I spoke in Spanish with the person, the policeman
16 that speaks Spanish in the Two Notch office.

17 Q. And when you gave them that statement, you said that
18 Edgar told you he was with that "fucking American"?

19 A. The interpreter is a little confused. The interpreter
20 used one word.

21 THE INTERPRETER: She is saying that one word
22 doesn't mean what he said it meant.

23 BY MS. DAVIS:

24 Q. This conversation where Edgar tells you about that Todd
25 is going to give him money for sex, that happened inside the

1 gas station, though, right?

2 A. Yes, because I asked him who he was with.

3 Q. Right. And that was in front of your son?

4 A. No, because my son was in the bathroom.

5 Q. And when you -- Edgar ended up -- you all ended up
6 parting ways, right?

7 A. Yes.

8 Q. And after he told you that -- or, I'm sorry, when he
9 told you that and was talking to you, he was intoxicated at
10 that time?

11 A. Yes, he was actually buying beer. He was -- he had
12 been drinking.

13 Q. Did you see him buy more beer?

14 A. No. No, he stayed there in the store after we left.

15 Q. Okay. So when you left the store he was still inside?

16 A. Yes.

17 Q. So you left with your husband and the friend that you
18 were giving a ride home?

19 A. Yes.

20 MS. DAVIS: Beg the court's indulgence.

21 (Off the record)

22 (Back on the record)

23 BY MS. DAVIS:

24 Q. Just a couple more questions.

25 And I may have been confused. When Edgar first comes

1 in the store, you are in the bathroom at that time?

2 A. I was coming out of the bathroom.

3 Q. And Edgar at that time was talking to your son?

4 A. Yes.

5 Q. They were joking around?

6 A. Yes.

7 Q. And then that's when you came up and started the
8 conversation with Edgar?

9 A. Yes, I said hello. My son went into the bathroom and I
10 stayed talking with him.

11 Q. Okay. And then your son came back out of the bathroom
12 and you left?

13 A. Yes, and then we left and he stayed in the store.

14 MS. DAVIS: Nothing further, Your Honor.

15 THE COURT: Anything further?

16 MS. WALKER: No, judge.

17 THE COURT: You may step down.

18 You may proceed.

19 MS. SIMPSON: The State calls Alfredo Vidal.

20 (Whereupon, the interpreter was used in
21 conjunction with the witness)

22 ALFREDO VUNIJA VIDAL, having been first duly
23 sworn, testified as follows:

24 THE WITNESS: Yes.

25 THE CLERK: Have a seat in the witness box and

1 state your name for the record and spell your name, please.

2 THE WITNESS: Alfredo Zuniya Vidal.

3 COURT REPORTER: Spell it.

4 THE WITNESS: A-L-F-R-E-D-O, Z-U-N-I-J-A,
5 V-I-D-A-L.

6 DIRECT EXAMINATION BY MS. WALKER:

7 Q. Good afternoon, Mr. Vidal.

8 A. Good afternoon.

9 Q. How old are you?

10 A. Forty years old.

11 Q. And are you married?

12 A. I am with my woman, common law. Not really officially
13 married.

14 Q. And do you have any children?

15 A. Yes.

16 Q. How many?

17 A. I have three.

18 Q. And do you live in Columbia?

19 A. Yes.

20 Q. How long have you been living here?

21 A. About fourteen years.

22 Q. And are you working?

23 A. Yes.

24 Q. What kind of work do you do?

25 A. Landscaping.

1 Q. Thank you.

2 And do you know Edgar Lopez?

3 A. Yes.

4 Q. How do you know him?

5 A. Well, I knew him because he came over to Jose's house

6 and that's where I met him.

7 Q. Okay. And who is Jose?

8 A. Jose Monroy, the guy who was here, the other witness.

9 Q. Uh-huh.

10 And did you know Pablo Gutierrez?

11 A. Yes.

12 Q. How did you know Pablo?

13 A. I met him one time outside around eight p.m. one night

14 and he had gotten here from Arkansas and he was I believe

15 for his cousin. And he asked me if I knew where the address

16 was and I said "oh, I know him," and I told him he was a

17 friend of mine, and I took him to where he lived, and that's

18 where I saw him then.

19 Q. So you were friends with Pablo, Edgar, and Jose?

20 A. Yes.

21 Q. I want to turn your attention to July 30th of 2010, the

22 last time that you saw Edgar and Pablo. Do you remember

23 that day?

24 A. Yes.

25 Q. And can you tell us what happened? How did you go over

1 there?

2 A. I went over there because I received a phone call from

3 Jose.

4 Q. And where did you go?

5 A. I went to -- I don't remember the address. I don't

6 remember the address I went to. It was his brother's house.

7 Q. And whose brother?

8 A. Saul.

9 Q. And is Jose Saul's brother?

10 A. Yes.

11 Q. Do you remember about what time you would have gotten

12 there?

13 A. It would have been around 5:30 or 6:00, more or less.

14 Q. So late afternoon?

15 A. Yes, in the afternoon.

16 Q. Who was there when you got to where Jose was?

17 A. Pablo Gutierrez was there, Edgar was there, and Jose,

18 and the American.

19 Q. And the American.

20 Had you seen the American before?

21 A. No. I had never seen him in my life.

22 Q. And did you know Edgar had a nickname or was there

23 something else that you would call him?

24 A. Yes.

25 Q. What was it?

1 A. Camagua.

2 Q. And when you went over to see them, did you walk, did

3 you drive? How did you get there?

4 A. I arrived in my car.

5 Q. Do you remember where you parked?

6 A. Yes.

7 Q. Where did you park?

8 A. I parked next to the fence and in front there was a

9 green van.

10 Q. Do you remember what the van looked like?

11 A. Yes, I remember.

12 Q. Can you tell us what it looked like?

13 A. I remember it was a green van with silver all around it

14 and it had aluminum rims.

15 Q. And did you remember anything about the tag?

16 A. Yes.

17 Q. What did you remember?

18 A. When I saw the plate, it was a Louisiana plate.

19 Q. And at the time did you remember some of the letters

20 and numbers on the plate?

21 A. In that moment I did remember, but I have since

22 forgotten the numbers on the tag.

23 Q. And when you got there and parked, what did you do?

24 A. I got out of the car. I got out of the car. I said

25 hello to Pablo, Camagua and the American and asked them if

1 he was looking for people to work. At that time I was
2 needing some work.

3 Q. And did the American tell you his name?

4 A. Yes, I greeted all three of them and the American told
5 me his name, but I didn't remember it.

6 Q. And is that because you didn't speak English very well?

7 A. Exactly.

8 Q. And did the defendant ask you where you lived, the
9 white American?

10 A. Yes.

11 Q. And where were you living at the time?

12 A. I lived over by Alpine.

13 Q. Okay. And did he mention anything about where he
14 lived?

15 A. Yes.

16 Q. Do you remember what he said?

17 A. Yes.

18 Q. What did he say?

19 A. He said over by Wilson Lake, Wilson Boulevard.

20 Q. Okay. And did you actually hang out with Pablo, Edgar,
21 Jose and the white American for awhile?

22 A. No, I was there maybe ten or fifteen minutes. I was
23 kind of on my way out and I just went over there to pick up
24 Jose.

25 Q. Was anybody drinking when you got there?

- 1 A. Yes, they were drinking. Yes, they were drinking.
- 2 Q. And did the defendant, the white American, did he show
- 3 you anything? Did you see tattoos on him?
- 4 A. I saw one tattoo on each arm and one on his back.
- 5 Q. Okay. And when did you see that?
- 6 A. When I was leaving.
- 7 Q. And do you remember what the tattoos were?
- 8 A. Yes.
- 9 Q. Can you tell the jury what they were?
- 10 A. Yes, on one arm he had like a lightening bolt or a ray.
- 11 On the other one he had a horse, like a seahorse. And on
- 12 his back he had a nude woman with a puma or maybe a fox.
- 13 Q. And did you remember what the white American looked
- 14 like, his physical description?
- 15 A. Yes.
- 16 Q. And did you give that description to the police?
- 17 A. Yes.
- 18 Q. Do you remember what you told them?
- 19 A. Yes.
- 20 Q. Can you tell us what you told them?
- 21 A. Yes, they asked me what the person was like, what his
- 22 hair was like, and his eyes, and the mouth, lips, his
- 23 height, if he used glasses, and he was wearing earrings, and
- 24 the tattoos on each arm, as I mentioned.
- 25 Q. Okay. And that's when you talked to the sketch artist?

1 A. When I spoke to him?

2 Q. To the police and -- let me back up.

3 You told the police what --

4 MR. SHEALEY: Objection.

5 BY MS. SIMPSON:

6 Q. -- the white male looked like?

7 MR. SHEALEY: Leading.

8 THE COURT: Don't lead the witness.

9 MS. SIMPSON: My apologies.

10 BY MS. SIMPSON:

11 Q. Did you tell the police when they first talked to you
12 what the white male looked like?

13 A. Yes.

14 Q. Okay. And did you tell them what the van looked like?

15 A. Yes.

16 Q. And you gave them the tag number?

17 A. I gave them the plate number, but I don't remember the
18 number. The plates were from Louisiana.

19 Q. And you were only there with Edgar, Pablo --

20 MR. SHEALEY: Objection to the leading.

21 BY MS. SIMPSON:

22 Q. Tell us again how long you were there with Edgar,
23 Pablo, and the white American?

24 A. Approximately ten to fifteen minutes, because I was on
25 my way out.

1 Q. Okay. And so all you talked about was --

2 MR. SHEALEY: Objection to leading.

3 BY MS. SIMPSON:

4 Q. Did you talk about anything else?

5 A. No.

6 Q. Did you get a good look at the white American?

7 A. Yes, when I saw him up close and I hadn't been
8 drinking.

9 Q. Okay. And did you ever see a gun or anything?

10 A. He had a pocket knife in his pocket.

11 Q. But he didn't see a gun -- you didn't see a gun?

12 A. I didn't see anything he had, other than the knife --

13 Q. Okay.

14 A. -- in his pocket.

15 Q. Was that because of the way the white American was
16 standing?

17 MR. SHEALEY: Objection, leading, Your Honor.

18 THE COURT: Objection sustained.

19 MS. SIMPSON: I'll move on.

20 BY MS. SIMPSON:

21 Q. Who did you leave with? Who left with you?

22 A. Jose.

23 Q. And where did you and Jose go?

24 A. He asked me to take him to the store and after the
25 store to his house.

- 1 Q. Okay. And once you dropped Jose off, where did you go?
- 2 A. I went to my house.
- 3 Q. And so you didn't hear any gunshots?
- 4 A. I was with Jose and we were talking about five minutes
- 5 or so and, yes, I did hear them.
- 6 Q. Okay. And does Jose live pretty close to where you all
- 7 were?
- 8 A. More or less close.
- 9 Q. And I want to back up. While you were there, did the
- 10 white American leave with Edgar to go somewhere?
- 11 A. Did I go?
- 12 Q. No, did Edgar and the white American go?
- 13 A. They did go, yes, to the store. And, yes, they went to
- 14 the store. They came back with a case of Budweiser beer.
- 15 But when they came back, we were already going out.
- 16 Q. So you were leaving as they came back?
- 17 A. Yes.
- 18 Q. Now, did the police -- you talked to the police about
- 19 what happened, right?
- 20 A. Yes.
- 21 Q. And you gave them a statement?
- 22 MR. SHEALEY: Objection to the leading.
- 23 BY MS. SIMPSON:
- 24 Q. Did you give them a statement?
- 25 A. Yes.

1 Q. And did you tell them what you knew?

2 MR. SHEALEY: Objection to the leading.

3 THE COURT: Objection overruled.

4 A. Yes.

5 BY MS. SIMPSON:

6 Q. And did the police show you some pictures later on?

7 A. Yes, I remember that.

8 MS. SIMPSON: I'm showing the witness what has

9 been previously marked as State's Exhibit 1 for

10 identification.

11 BY MS. SIMPSON:

12 Q. Do you recognize that?

13 A. Yes.

14 Q. And is that the pictures -- are those the pictures that

15 the police showed you?

16 A. Yes, they showed these to me.

17 Q. And did you recognize anyone?

18 A. Yes.

19 Q. Who did you recognize?

20 A. The person who is there.

21 Q. Okay. And did the police tell you that you had to pick

22 someone?

23 A. No.

24 Q. Okay. And, again, who did you pick, what number?

25 A. Number 3.

1 Q. And did you mark that in some way?

2 A. Yes, that's my handwriting.

3 Q. Okay. And what did you write beside the number that
4 you circled?

5 A. It says "I am sure that this is the person one hundred
6 percent."

7 Q. All right. And the person that you picked is the white
8 American that you saw with Edgar and Pablo and Jose?

9 A. Yes.

10 Q. And do you see that person here in the courtroom here
11 today?

12 A. Yes.

13 MS. SIMPSON: And, Your Honor, at this time I
14 would seek to introduce State's Exhibit No. 1 into evidence.

15 THE COURT: Any objection on it?

16 MR. SHEALEY: Subject to the pretrial objection,
17 Your Honor.

18 THE COURT: It's admitted.

19 BY MS. SIMPSON:

20 Q. Let's back up. You said number 3, right?

21 A. Yes.

22 Q. One hundred percent sure?

23 A. Yes, I wrote that.

24 Q. And can you point out for the jury the white American
25 that you saw on that day?

1 A. Yes.

2 Q. Can you point him out?

3 A. It's the one over there, the second from that side.

4 Q. Okay.

5 MS. SIMPSON: Let the record reflect that the
6 witness had identified the defendant.

7 THE COURT: Second from which side?

8 BY MS. SIMPSON:

9 Q. Second from which side?

10 A. The first one over there and then there is the second.

11 MS. SIMPSON: Let the record reflect that the
12 witness has identified the defendant.

13 THE COURT: The first one over there and then
14 there is second.

15 BY MS. SIMPSON:

16 Q. What is the defendant wearing?

17 A. He has a blue shirt with a striped tie and glasses and
18 a suit, black it looks like.

19 MS. SIMPSON: Let the record reflect that he's
20 identified the defendant.

21 THE COURT: It does.

22 BY MS. SIMPSON:

23 Q. Now, I'm going to show you what has been marked as
24 State's Exhibit 6. Did you talk to someone and give them a
25 description of the defendant's face so that they could draw.

1 a picture?

2 A. Yes.

3 Q. I'm showing you State's Exhibit 6.

4 A. When I went there, I told them what the person was like
5 and this is the photo.

6 MS. SIMPSON: Your Honor, at this time the State
7 would seek to introduce State's Exhibit 6 into evidence.

8 THE COURT: What says the defense?

9 MR. SHEALEY: Without objection, judge.

10 COURT REPORTER: I'm sorry?

11 MR. SHEALEY: No objection.

12 THE COURT: It's admitted without objection.

13 MS. SIMPSON: Permission to publish?

14 THE COURT: You may publish.

15 BY MS. SIMPSON:

16 Q. And this is based on the description that you gave?

17 A. Yes.

18 MS. SIMPSON: Thank you.

19 THE COURT: Cross-examination.

20 MR. SHEALEY: Yes, sir.

21 May it please the court, Your Honor.

22 CROSS EXAMINATION BY MR. SHEALEY:

23 Q. Good afternoon.

24 A. Good afternoon.

25 Q. Do you remember talking to police in this case?

- 1 A. Yes.
- 2 Q. And you told them everything that you knew?
- 3 A. Yes.
- 4 Q. And they typed up what you knew and you signed your
5 statement, right?
- 6 A. Yes.
- 7 Q. And you were truthful to police, correct?
- 8 A. Yes.
- 9 Q. You told police that you were over at [REDACTED]
10 [REDACTED], right?
- 11 A. Yes.
- 12 Q. You had gotten a call from Jose that day, right?
- 13 A. Yes.
- 14 Q. You got there sometime in the evening, I think you said
15 five or six, something like that, right?
- 16 A. Yeah, five or six, something like that.
- 17 Q. And when you told police that when you got there, it
18 was Jose, Pablo, Edgar, and the American, right?
- 19 A. Yes.
- 20 Q. And you didn't know the American, right?
- 21 A. No, I had never seen him before.
- 22 Q. But you knew everybody else?
- 23 A. Yes.
- 24 Q. But you talked to the American, correct?
- 25 A. Some questions.

- 1 Q. Right.
- 2 And I know you don't speak English very well, but he
- 3 told you his name, right?
- 4 A. Yes, he told me his name.
- 5 Q. But most of the discussion from the American was going
- 6 through Edgar, because he spoke good English?
- 7 A. Yeah, I imagine so, because it wasn't very long and I
- 8 just remember talking about his name.
- 9 Q. Okay. And he told you where he lived?
- 10 A. Yes.
- 11 Q. He showed you his tattoos on his back?
- 12 A. Uh-huh.
- 13 Q. On his arms, the tattoos?
- 14 A. Yes.
- 15 Q. He complimented you on your boots?
- 16 A. Yes. I do remember about the boots, yes.
- 17 Q. He was very friendly?
- 18 A. When I got there, they were already talking amongst
- 19 themselves.
- 20 Q. And he was friendly acting to you, right?
- 21 A. With me, yes.
- 22 Q. Okay. And he had glasses, right?
- 23 A. Yes.
- 24 Q. He had not short but little shaggy hair?
- 25 A. Yeah, he had -- his hair was -- it was a little wavy.

1 Q. Okay. And he was a little chubby?

2 A. He was a little bit stocky.

3 Q. He had earrings in his ears, right?

4 A. Yes.

5 Q. Now, during your time there, you never heard him or
6 Edgar or Pablo talk about gay sex, did you?

7 A. I didn't hear anything about that.

8 Q. Okay. You never heard anything about the American
9 spending the night, did you?

10 A. No.

11 Q. And you never saw the American angry or raising his
12 voice at anybody?

13 A. No.

14 Q. Okay.

15 MR. SHEALEY: Beg the court's indulgence.

16 (Off the record)

17 (Back on the record)

18 BY MR. SHEALEY:

19 Q. One more question.

20 The American told you specifically where he lived,
21 right?

22 A. He told me it was on Lake Wilson Boulevard.

23 Q. And didn't he tell you it was on a curve of a specific
24 road?

25 A. I don't -- no.

1 Q. That's all I have.

2 MR. SHEALEY: Nothing further, judge.

3 THE COURT: Anything further?

4 MS. SIMPSON: No, Your Honor.

5 THE COURT: All right, sir, you may step down.

6 We will take a break now about fifteen minutes,
7 ladies and gentlemen. If you all will go to the jury room,
8 please, and do not talk about the case.

9 (The following takes place outside the presence of
10 the jury panel)

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: Ms. Pringle?

14 MS. PRINGLE: Thank you.

15 May it please the court, Your Honor, it came to my
16 attention over the break that a member of the solicitor's
17 office, assistant solicitor Carter Potts, has been
18 contacting at least one expert witness in our case, a
19 potential expert witness, a psychiatrist whose CV we turned
20 over to the prosecution yesterday at the court's direction.
21 The prosecution knows who he is. I would object to them
22 contacting him again, or contacting any of the experts whose
23 CV's were handed over to them yesterday, which would be Dr.
24 Sandra Conradi, Dr. Mark Cunningham, and I would object
25 under a violation of work product, attorney-client

1 privilege, Fifth Amendment, the Sixth Amendment to effective
2 assistance of counsel, cited State v. Jeffrey Jones, Your
3 Honor, and State v. Northcut.

4 THE COURT: What do they say?

5 MS. PRINGLE: The entire Jeffrey Jones opinion is
6 the dealing with a very unique situation where the State
7 sought to elicit testimony and subpoena a defense
8 consultative witness, expert witness, who was not going to
9 testify in the case, but who had unique skills or
10 specialization in the area of barefoot insole impressions.
11 You are probably aware of that.

12 THE COURT: Was that a summons, or subpoena, or
13 something?

14 MS. PRINGLE: They did subpoena him.

15 THE COURT: It wasn't a question of talking to
16 him. It was a question of whether the court should allow
17 the witness to testify?

18 MS. PRINGLE: Well, I believe they objected to
19 both, them communicating with him and then subpoenaing him
20 and putting him on the stand.

21 The reason the Jeffrey Jones case, the reason I'm
22 going to refer you to it is because it performs a very good
23 analysis of the underpinnings of the problems of why it's
24 problematic for the State and Government to contact defense
25 consultative witnesses, and it does support my proposition

1 that it is a violation of these privileges that I have just
2 cited, these amendments that I have just cited.

3 At this point in time we don't have any intention
4 of calling any of those witnesses. We don't -- those are
5 consultative witnesses at this time that are in possession
6 of privileged material, privileged communications from us,
7 work product from us, some of them potentially
8 communications with our client that the State would not be
9 entitled to. I think it's inappropriate for them to be
10 contacting them.

11 When you read the Jones opinion, also if those
12 individuals come to testify, what Jones basically says is
13 that Rule Five would compel us to hand over any reports or
14 documents or examinations that they have produced.

15 Now, Jones is very unique and what the court did
16 was the court said that that witness can testify solely to
17 the very unique specialization that he had. He's sort of
18 two people in the world and that the State would have been
19 totally hamstrung by that, but they did acknowledge that all
20 of those protections were still in place for everything that
21 took place between the defense attorneys, the client, and
22 the expert. And so I would submit that State v. Jeffrey
23 Jones one hundred percent supports that.

24 I don't think it's at all appropriate for the
25 Government to be contacting those witnesses.

1 THE COURT: All right. How about that, Ms.
2 Campbell?

3 MS. CAMPBELL: If she would give me a copy of
4 Jeffrey Jones, I could probably address that better, Your
5 Honor, but --

6 THE COURT: It's a death penalty case and where
7 the State subpoenaed this barefoot footprints expert.

8 "If the State seeks to compel a defendant's
9 non-testifying consultative expert to testify on his behalf,
10 the State must prove that it has substantial need for the
11 expert and its inability to compel the expert to testify and
12 would present undue hardship," which was one of the phrases
13 of the case.

14 MS. CAMPBELL: I don't know how that would be
15 equated to us just contacting the witness to see if he would
16 talk to us. But, I mean, I --

17 THE COURT: She said it also goes through a long
18 explanation or a thorough explanation about work product and
19 later on I will take a look at that.

20 MS. CAMPBELL: Yes, Your Honor, if I could have an
21 opportunity to look at it, too, I think I can address it.

22 I have now tied the defense expert and I believe
23 there is a law where, you know, if they want to talk to us,
24 they talk to us. If they don't want to talk us, they don't
25 have to, you know, whether we contact them, like when they

1 are coming to court in the courtroom. We have not
2 subpoenaed anybody. We do not intend on invading anything
3 of that nature. And, of course, if there is anything they
4 feel is confidential, they don't have to tell us about it.
5 We always have inquired in the past with experts as to
6 whether or not they are willing to talk to us and we are
7 then stuck with whether they were willing to or not.

8 THE COURT: I have never known of any side had a
9 possessory interest in any witness in a criminal case.
10 Certainly a defendant has a Constitutional Right to remain
11 silent and the protections of right to counsel and all that,
12 but I have never seen that extend to everyone who might have
13 some information in the case.

14 Of course, it's often the case that a person may
15 be advised to "not speak to someone," or "you don't have to
16 speak with them," or, "I urge you not to talk with them,"
17 but I am not aware of any rule that prohibits contacting a
18 witness concerning a matter, but I will read the case and
19 hear anything else that you have to say about it.

20 MS. CAMPBELL: And I'm glad to tell Mr. Potts to
21 hold off calling any other witnesses until you make a
22 ruling, if you will give me two seconds I can do that, just
23 out of an abundance of caution, Your Honor, but I agree with
24 you. In fact, my understanding is that we can't, and I know
25 ethically we can't even instruct a witness not to talk to

1 anyone. It's up to the witness to make that decision.

2 THE COURT: Well, I mean, I guess you learn about
3 not being able to tell a witness not to talk to someone, but
4 somehow or other they sometimes don't want to talk to the
5 other side.

6 I don't know of any possessory interest that
7 affects the right to counsel, work property, or anything of
8 that nature. Of course, part of the instructing the witness
9 whether they are required to or not required to.

10 Anything else, Ms. Pringle, at this moment?

11 MS. PRINGLE: No, sir. The only point I guess
12 would be that any information they have, if they are
13 attempting to elicit this information that we have provided
14 to them, either directly from us in preparing our defense or
15 from our client in preparing our defense, and we would argue
16 that that is protected, and I believe State v. Jones
17 protects that.

18 Frankly, I have never -- I have never ever had
19 them contact, that I can recall, an expert witness. I
20 understand them calling lay witnesses, but expert witnesses
21 work in conjunction with us I would always believe that was
22 protected by attorney-client work product and it would have
23 a severe effect on -- a significant effect on how we prepare
24 witnesses and conduct our defense of our case if we were not
25 permitted to do that privately and confidentially.

1 Now, once we produce the witness to testify, I
2 understand that's a different matter than that, but at this
3 point that would be my position.

4 THE COURT: Well, the -- of course, my order was
5 that you give CV's of all the witnesses that you have listed
6 as being witnesses who may testify. Of course, you said you
7 don't intend for them to testify, they are consultative
8 experts, so perhaps they should not have been listed as
9 witnesses that you expect were going to testify.

10 MS. PRINGLE: Let me be real clear, because I
11 don't want to misspeak. At this point we do not intend to
12 call them, but we don't know how things are going to
13 involve -- how things are going to evolve and how the case
14 goes on. It may be that we change our mind and that would
15 be something that we would deal with at that time, but at
16 this point a lot of times you consult a witness to assist
17 you in analyzing and understanding, as you know, as you well
18 know, Your Honor, evidence that we don't have the scientific
19 background and education to do it.

20 THE COURT: All right. Well, Judge Beatty wrote
21 this opinion decision. He meticulously writes his opinions
22 and I'm willing to read it closely and digest it and we will
23 talk about it later.

24 MS. CAMPBELL: Thank you, judge.

25 THE COURT: Okay. All right.

1 (Whereupon, the lawyers approached the bench for
2 an off-the-record discussion)

3 THE COURT: All right, let's bring them on.

4 (The following takes place in the presence of the
5 jury panel)

6 THE BAILIFF: They are now seated, Your Honor.

7 THE COURT: All right. Next witness, please.

8 MS. WALKER: Your Honor, the State calls Dimas
9 Fernandez.

10 THE COURT: Dimas Fernandez.

11 (Whereupon, the interpreter was used in
12 conjunction with this witness)

13 DIMAS FERNANDEZ, having been first duly sworn,
14 testified as follows:

15 THE WITNESS: Yes.

16 THE CLERK: Have a seat in the witness box and
17 state your name for the record and spell your name, please.

18 THE WITNESS: My name is Dimas Fernandez. I live
19 at [REDACTED], Columbia, South Carolina, 29223.

20 COURT REPORTER: Spell it.

21 THE WITNESS: It's Dimas Fernandez Lagunes.

22 DIRECT EXAMINATION BY MS. WALKER:

23 Q. Could you spell that for the court reporter, please?

24 A. The thing is I don't know English.

25 Q. You can spell it in Spanish.

1 A. D-I-M-A-S.

2 THE INTERPRETER: I was asking him if Fernandez is

3 with a Z or an S and he said it was with a Z.

4 A. F-E-R-N-A-N-D-E-Z.

5 BY MS. WALKER:

6 Q. You got your address as [REDACTED] [REDACTED] [REDACTED]?

7 A. Yes.

8 Q. And how long have you lived there?

9 A. Approximately ten years.

10 Q. And how long have you lived here in Columbia?

11 A. It's been thirteen.

12 Q. Do you work, sir?

13 A. Yes.

14 Q. What is it that you do?

15 A. I work in a boat factory.

16 Q. And I want to talk to you about July 30th of 2010.

17 A. Okay.

18 Q. Were you at home that day or were you working?

19 A. I was home. I arrived around 4:30, something like

20 that. I'm not sure.

21 Q. And when you arrived home, was anyone there?

22 A. The two of them were home, Edgar and Pablo.

23 Q. Did you speak with Edgar and Pablo?

24 A. Yes.

25 Q. And about how long did you carry on a conversation with

1 Edgar and Pablo?

2 A. About ten minutes.

3 Q. And what were they doing?

4 A. They were under the tree drinking some beers.

5 Q. So it was just the two of them?

6 A. Yes.

7 Q. After you spoke with them, what did you do?

8 A. I asked them about work, if they were going to work and

9 they said yes, both of them were going to work, and then I

10 went in the house.

11 Q. Did you stay there for the rest of the day?

12 A. No.

13 Q. What did you do?

14 A. I went in the house, took off my shirt. I ate a piece

15 of watermelon and watched TV.

16 Q. Did you ever leave your house that day?

17 A. Yes.

18 Q. Where did you go?

19 A. I went to the pawn shop.

20 Q. Do you remember what time that you went to the pawn

21 shop?

22 A. Around five.

23 Q. How long were you -- how long were you gone away from

24 your home?

25 A. Around fifteen minutes.

1 Q. Once you got back from the pawn shop, who all was at
2 your house?

3 A. When I got back -- well, before I went to the pawn shop
4 a green van arrived with a gray trim. It was a Kia.

5 Q. Had you seen this green and gray Kia before?

6 A. No. No, it was the first time.

7 Q. Who arrived in the green and gray Kia?

8 A. An American. When he got out of the van he had Modelo
9 beer in his hand.

10 Q. He got out of the van with the beer in his hand?

11 A. Yeah, he had it in his hand.

12 Q. Had you seen this man before?

13 THE INTERPRETER: Did you say van or man, I'm
14 sorry?

15 MS. WALKER: The man, having seen the man before.

16 A. No, never seen him before, but after he got out of the
17 van, he went back and got two more beers, one for Pablo and
18 for Edgar.

19 BY MS. WALKER:

20 Q. Did you ever talk to this man?

21 A. No.

22 Q. So he arrived and then you go to the pawn shop?

23 A. Yeah, he arrived right before I left, right when I was
24 leaving.

25 Q. Okay. When you got back from the pawn shop, was the

1 man still there?

2 A. Yes, and Jose was also there.

3 I arrived. I just said hello to them and then went in

4 the house.

5 Q. When you went back inside, what did you do then? What

6 were you doing then?

7 A. I watched TV for awhile. And then after that I went to

8 wire some money to Mexico.

9 Q. And the man was still there?

10 A. Yeah, he was there.

11 Q. Edgar still there?

12 A. Yes.

13 Q. Pablo still there?

14 A. Yeah, the three of them.

15 Q. When you were coming and going, did you get a good look

16 at the man?

17 A. Yes. Yeah, when I was greeting Jose I saw him.

18 Q. What did he look like?

19 A. He was white. His hair was a little bit long, and I

20 saw an earring.

21 Q. The man had an earring?

22 A. Yes.

23 Q. When you came back from wiring the money, did you go

24 back inside your home?

25 A. Yes.

1 Q. And did you stay there for the rest of the night?

2 A. No. When I came back from the money, Alfredo was
3 there, so there were four of them there.

4 Q. Okay. And you said that you did stay there for the
5 rest of the night?

6 A. When I -- I went back inside, watched TV for awhile,
7 and then went to a friend's house. When I was leaving
8 Alfredo and Jose weren't there any more. It was just the
9 three of them who were there.

10 Q. And when you were going to go to your friend's house,
11 what were the three of them doing?

12 A. When I was leaving, I saw the American guy, he threw
13 the chair down. He threw a beer down and he went outside
14 the fence.

15 Q. He went outside the fence?

16 A. Yes.

17 Q. What were Edgar and Pablo doing?

18 A. I got into the truck and Edgar put his hand in his
19 pocket and he took out some dollars and the American had his
20 hand out like this, doing like this.

21 Q. Doing like what?

22 A. Edgar and Pablo were inside and the American was
23 outside and he had his hand extended.

24 Q. Could you understand what the American was saying?

25 A. No, because I don't speak very much.

1 Q. But you saw him throw a thing and take a step?
 2 MR. SHEALEY: Objection, leading.
 3 BY MS. WALKER:
 4 Q. Did you see him thrown anything down?
 5 A. No, just the can.
 6 Q. The beer down?
 7 A. Just throwing that down and I thought maybe --
 8 THE INTERPRETER: The interpreter didn't
 9 understand and I asked him to repeat.
 10 A. With this hand Edgar was getting money.
 11 BY MS. WALKER:
 12 Q. Was Edgar angrily throwing things?
 13 A. Who?
 14 Q. I said was Edgar throwing anything?
 15 A. No, he had money in this hand and in the other hand he
 16 was looking for more money. He had black shorts on, no
 17 shirt, and flip flops.
 18 Q. What about Pablo? While they are doing that, what is
 19 Pablo doing?
 20 A. Pablo was in the back, like this.
 21 Q. Then you got in your car after that?
 22 A. Yeah, and they stayed there.
 23 Q. Where did you go?
 24 A. I went to a friend's house, which is about a block and
 25 a half, on Omega Drive.

1 Q. What happened when you got to your friend's house?

2 A. I had gotten out of the car, was talking to him, and
3 that's when I heard gunshots, which sounded like they were
4 coming from the house.

5 Q. When you heard the gunshots there, what did you do?

6 A. I went in the house, because I saw when he -- when I
7 was there, he lifted his shirt up and he was showing them
8 something. I could see the pistol there. And then that's
9 when I saw the van going.

10 THE INTERPRETER: I'm sorry, the interpreter needs
11 a clarification on one thing.

12 A. I remembered when I heard the shots that I had seen the
13 pistol that he had. That's when I saw the van going toward
14 Decker.

15 BY MS. WALKER:

16 Q. So after -- after the gunshots you saw the van leaving?

17 A. Yes, on Omega Drive.

18 Q. The same van that you had seen at your house?

19 A. The same color and everything.

20 Q. Did you go back home then?

21 A. Yeah, when I got the back and I got to the fence I saw
22 my friend Edgar and he was face up with blood all over his
23 face and his hands out.

24 Q. Did you see Pablo?

25 A. And Pablo was face down right next to the fence.

1 Q. And all this was in your front yard?

2 A. Exactly.

3 Q. And did Pablo or Edgar live on that piece of land as

4 well?

5 A. Just Edgar.

6 Q. Just Edgar.

7 A. Pablo arrived to visit him.

8 Q. Did you share this information with the police?

9 A. When they came to ask me, yes.

10 Q. Did you tell them about any tattoos that --

11 MR. SHEALEY: Objection, Your Honor. Anything

12 that she's being asked to share with the police I would

13 argue is bolstering.

14 THE COURT: Let me hear the question. I can't

15 rule on an objection until the question is asked.

16 BY MS. WALKER:

17 Q. Did you see the American with tattoos?

18 A. No, I was far away. I just saw that he pulled his

19 shirt up to show something.

20 Q. When you spoke with the police about this, did they

21 show you a series of pictures?

22 A. Yes.

23 Q. And do you recognize this?

24 A. Yes, that's the same one they brought to my workplace

25 to show.

1 Q. And when they showed this to you, was all this writing
2 on here?

3 A. No, it didn't have anything, just the photos.

4 Q. And did you make this circle?

5 A. Yes.

6 Q. And the initials?

7 A. Yeah, those are mine.

8 Q. Did anyone tell you who to pick?

9 A. No. No, from the moment I saw the photograph I
10 realized it was him.

11 THE COURT: Counsel, approach for a moment.

12 (Whereupon, the lawyers approached the bench for
13 an off-the-record discussion)

14 THE COURT: All right, ladies and gentlemen, I
15 need you to step to the jury room for a little bit. Please
16 do not discuss the case.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: All right, it became apparent that
20 this was another witness that might require a Biggers
21 Hearing. We sent the jury out so that you can take up that
22 issue.

23 MS. WALKER: Thank you, Your Honor.

24 (Whereupon, the following was a Neil v. Biggers
25 Hearing conducted outside the presence of the jury panel)

1 THE COURT: All right.

2 DIRECT EXAMINATION BY MS. WALKER:

3 Q. We were talking about this photo/ lineup?

4 A. Yes.

5 Q. You have already said that the police showed this to

6 you?

7 A. Yes.

8 Q. There was no writing on it when they showed it to you?

9 A. No.

10 Q. And you picked this man out because that's the man that

11 you saw that day?

12 A. Exactly.

13 Q. And when you saw him that day, you had an opportunity

14 to look at him?

15 A. Yes, I went to say hello to Jose and saw -- I had a

16 chance to look at his face very well.

17 Q. And was there anything blocking your view?

18 A. Just glasses.

19 Q. His glasses or your glasses?

20 A. His.

21 Q. His glasses?

22 A. He had glasses on.

23 MS. WALKER: The other -- his actual observation

24 he already testified to with the jury in the courtroom. Do

25 you want me to go back over that?

1 THE COURT: I think you should briefly.
2 BY MS. WALKER:
3 Q. The circumstances -- when you were observing -- when
4 you saw the defendant, what was he doing?
5 A. Where?
6 Q. When you saw him that day, what was he doing?
7 A. When I saw him, he came in, sat in the chair, and the
8 last I saw he was outside.
9 Q. And you saw him on more than one occasion that day?
10 A. Yes.
11 MS. WALKER: No further questions, judge.
12 THE COURT: Cross-examination.
13 And if you will instruct the witness to answer to
14 the person who asks the question, as opposed to answering to
15 you.
16 THE WITNESS: Okay.
17 CROSS EXAMINATION BY MR. SHEALEY:
18 Q. When you arrived back home that day, you saw Pablo and
19 Edgar, right?
20 A. Yeah, two.
21 Q. And you talked with them briefly about the work they
22 did?
23 A. Exactly.
24 Q. And the American wasn't there yet?
25 A. No, it was just the two of them by themselves.

1 Q. And that was the first time that you had ever met
2 Pablo, right?

3 MS. WALKER: Objection, Your Honor. If we could
4 just put this to the view of the defendant and other issues
5 pertaining to the actual Biggers Hearing?

6 THE COURT: All right. How about that, Mr.
7 Shealey. Whether or not they knew Pablo or when they knew
8 Pablo, how does that go to his identification issue?

9 MS. DAVIS: I'll try to narrow it.

10 THE COURT: All right.

11 BY MR. SHEALEY:

12 Q. And after then you went inside and had a slice of
13 watermelon and watched TV, right? Not looking what's going
14 on outside, right?

15 A. No.

16 Q. And you go to the pawn shop, right?

17 A. Yeah.

18 Q. And then you come back to the home?

19 A. Yes.

20 Q. Now this time the American had arrived, right?

21 A. Yeah, he arrived before I went to the pawn shop.

22 Q. You didn't talk to him, right?

23 A. No, people I don't know I don't talk to.

24 COURT REPORTER: I'm sorry, what?

25 THE INTERPRETER: No, people I don't know I don't

1 talk to.

2 A. I don't speak English either.

3 BY MS. SHEALEY:

4 Q. And when you got back from the pawn shop, you went

5 inside and watched some more TV?

6 A. No, Jose was there and I went to greet him and then I

7 went in the house.

8 Q. And then you realized you had to wire some money to

9 your aunt?

10 MS. WALKER: Objection, Your Honor. I thought we

11 were going to narrow this to his actual -- the actual

12 Biggers issues?

13 THE COURT: Well, the sequence matters from --

14 vary on the length of time for our position.

15 MR. SHEALEY: What I'm getting to, he's not

16 looking at the American when he's --

17 THE COURT: Overrule the objection.

18 BY MR. SHEALEY:

19 Q. And do you realize that you had to leave again to wire

20 money to your aunt in Mexico?

21 A. Exactly.

22 Q. Okay. And then you come back again and it's hot so you

23 change your shirt and you go inside, right?

24 A. Just one time I went and talked to them. After that I

25 didn't go and talk to them, with Jose.

1 Q. Right.

2 And Edgar being outside drinking isn't that unusual,
3 right?

4 MS. WALKER: Objection, Your Honor. Whether or
5 not Edgar was outside drinking being unusual is irrelevant
6 to the Biggers issue.

7 THE COURT: Sustained.

8 MR. SHEALEY: All right.

9 BY MR. SHEALEY:

10 Q. You are not really paying much attention outside while
11 you are inside, correct?

12 A. No, because I was watching TV.

13 Q. Right.

14 And then you started to go to your friend's house on
15 Omega Drive, right?

16 A. Yeah, the last time.

17 Q. Right.

18 And you get there by car?

19 A. Yeah, my truck.

20 Q. And where is your truck parked?

21 A. The truck was parked there in front of my friend's
22 house.

23 Q. It wasn't parked at your house?

24 A. Yes, the -- yes, my friend's house.

25 Q. Okay. And as you were leaving, you see Edgar and Pablo

1 and the American as you are on the way out, correct?

2 A. Yeah, the last time I left it was just three; Edgar,

3 Pablo, and the American, those three.

4 Q. As you were getting into your car?

5 A. Exactly.

6 Q. And you met with the investigator on this case,

7 correct?

8 A. Yeah, in the afternoon, in the evening, at night.

9 Q. Okay.

10 A. They took me to the office to give a statement.

11 Q. All right.

12 MR. SHEALEY: Where is the -- do you have it?

13 MS. WALKER: Yeah.

14 BY MR. SHEALEY:

15 Q. And they showed you this, right?

16 A. Yes.

17 Q. And they never told you that you didn't have to pick

18 out somebody, did they?

19 A. They put it down there and said one of those was the

20 person who was at the house.

21 Q. They told you that one of these was the person at the

22 house?

23 A. No, they said just look at this and tell me if one of

24 those persons was at the house.

25 Q. Okay. And after you picked, they thanked you for your

1 time?

2 A. Yes, and I put my initials there.

3 Q. Okay.

4 MR. SHEALEY: Nothing further, judge.

5 THE COURT: All right. Any additional witnesses?

6 MS. WALKER: No, Your Honor.

7 THE COURT: All right. The law enforcement
8 witnesses have already testified in relation to this?

9 MS. WALKER: Yes, Your Honor.

10 THE COURT: All right. Well, any -- anything else
11 then before the jury comes back?

12 MS. SIMPSON: Your Honor, briefly, just with
13 respect to scheduling matters, I know it's late, but we have
14 one short witness, and then one more witness that we would
15 need a translator for, so we just ask that we be able to --

16 THE COURT: When do you go off duty, Mr.
17 Translator?

18 THE INTERPRETER: I'm available until -- all
19 night.

20 THE COURT: Today?

21 THE INTERPRETER: I'm available all week, Your
22 Honor.

23 THE COURT: All week, all right.

24 He's available all week.

25 MS. SIMPSON: Thank you, judge.

1 THE COURT: I was thinking that we would finish
2 this witness and then do -- I mean, if you have some other
3 short witnesses, I have no problem with that, but the other
4 Biggers witnesses we could hear them after the jury leaves,
5 I would think.

6 MS. SIMPSON: Your Honor, if I may, briefly, with
7 respect to these lay witnesses, I know Roberto referred
8 to -- specifically his job is going to require him -- if we
9 could get through him today, that would be very good.

10 THE COURT: The next -- another person?

11 MS. SIMPSON: It is our last witness for the
12 translator, and due to the sequential order of the
13 witnesses -- yeah, he's one that we need to do today.

14 THE COURT: Do we need to do a Biggers Hearing on
15 Roberto?

16 MS. SIMPSON: Yes.

17 THE COURT: All right. So he can step down and we
18 can do that now.

19 MS. SIMPSON: Thank you, Your Honor.

20 THE COURT: You can step down, but do not discuss
21 his testimony.

22 (Whereupon, the interpreter was used in
23 conjunction with this witness)

24 ROBERTO GONZALES MERRIN, having been first duly
25 sworn, testified as follows:

1 THE WITNESS: I swear.

2 THE CLERK: Have a seat in the witness box and
3 state your name for the record and spell your name.

4 THE WITNESS: My name is Roberto Gonzales Merrin.

5 COURT REPORTER: I need him to spell his name,
6 please.

7 THE WITNESS: R-O-B-E-R-T-O. G-O-N-Z-A-L-E-Z.
8 M-E-R-R-I-N.

9 May I say something?

10 THE COURT: Sure.

11 THE WITNESS: Gonzalez and Merrin are last names.
12 They are both last names. My first name is Roberto.

13 MS. CAMPBELL: Got it.

14 DIRECT EXAMINATION BY MS. CAMPBELL:

15 Q. Sir, I want to turn your attention back to July the
16 30th of 2010. Where were you living then?

17 A. [REDACTED], Columbia, South Carolina. Zip
18 code 29223.

19 Q. On that evening were you home?

20 A. Yes.

21 Q. And did you have a -- from your front porch were you
22 able to see across the street into the yard across the road
23 from you?

24 A. Yes.

25 Q. That day did you observe some people in the yard

- 1- directly across the street from your porch?
- 2 A. That's correct.
- 3 Q. And who all did you see in the yard? Did you know
- 4 them?
- 5 A. Just one, Edgar.
- 6 Q. Edgar?
- 7 A. The other Mexican, that was a first time I had seen
- 8 him. And the American, that was the first time I had seen
- 9 him also.
- 10 Q. So there were a total of three people that you saw in
- 11 the yard across the street?
- 12 A. Three people, that's right.
- 13 Q. One you have described as an American?
- 14 A. That's right.
- 15 Q. And then Edgar and the other one were Hispanic?
- 16 A. Yes, Guatemala, and one from Mexico.
- 17 Q. Did you have a chance to see the American and even see
- 18 his face?
- 19 A. Yes, I saw it once from the front and once from the
- 20 side.
- 21 Q. And was there enough light out for you to be able to
- 22 see?
- 23 A. Yes, it was about six in the evening.
- 24 Q. And was anything blocking your view?
- 25 A. At that moment when they came out, no.

- 1 Q. So did you get a good look at his face?
- 2 A. Yes.
- 3 Q. And you mentioned that you got to see his face on at
- 4 least two occasions?
- 5 A. Once from the front and once a profile.
- 6 Q. That day, without going into any of the details, did
- 7 you actually see a shooting that occurred over in that yard?
- 8 A. Yes.
- 9 Q. And was the American one of the men involved in the
- 10 shooting?
- 11 A. Yeah, he's the one who was shooting.
- 12 Q. Did you actually see him during the shooting and then
- 13 afterwards as well?
- 14 A. Afterwards, when he got into his van and left.
- 15 Q. So you saw that too?
- 16 A. Yes.
- 17 Q. Did the police contact you about this case and what you
- 18 saw?
- 19 A. I didn't understand. Repeat.
- 20 Q. Did you talk to the investigators about what you saw?
- 21 A. Oh, yes.
- 22 Q. Were you able to give them a description of the
- 23 shooter?
- 24 A. Yes, I told them.
- 25 Q. And do you remember what you told them?

1 A. A little bit, yes.

2 Q. How did you describe the American?

3 A. He was built, kind of a full face with short hair. It
4 wasn't blond. It was like between dark and light, but it
5 wasn't blond.

6 Q. Did you give that description to the police -- or the
7 investigators, excuse me?

8 A. Yes.

9 Q. Later on, on August the 20th, did they come and show
10 you some photographs?

11 A. I don't remember the date, but, yes, two gentlemen
12 came, one American and one of Hispanic descent, to show me
13 some photos.

14 Q. I'm going to show you what's been marked as State's
15 Exhibit No. 5. Do you recognize that?

16 A. Yes, I recognized him immediately. And they said "are
17 you sure," and I said "yes." And they said "give me a
18 number between 1 and 10 on how sure you are." And I didn't
19 give him a number, I said "that's him."

20 Q. Okay. And did they tell you who to pick or anything
21 like that?

22 A. No. No.

23 Q. And once you recognized the person, why did you
24 recognize this person that circled here on State's Exhibit
25 5?

1 A. Here? I don't understand.

2 Q. Where had you seen this person before?

3 A. The place of the crime.

4 Q. At the shooting?

5 A. Yes.

6 Q. Okay. And that's why you recognized him?

7 A. That's why I recognized him, exactly.

8 Q. And then you circled it and initialed it?

9 A. Yes.

10 Q. And then you -- do you know who wrote a 100 percent?

11 A. I did.

12 Q. Okay. And then you signed the second page that's what
13 you meant?

14 A. Yes.

15 Q. And you are a hundred percent sure that's the person
16 that did the shooting that day?

17 A. May I ask the judge if I can make a comment?

18 THE COURT: Sure.

19 THE WITNESS: Well, right now -- I don't speak
20 English -- well, I don't speak that very much English, but I
21 was sitting there and I heard the defense saying it was
22 self-defense. And I have never seen such a horrible crime.
23 They didn't have any -- they didn't even have a stick or
24 anything, any type of weapon to defend.

25 On the second shooting the man held his hands up

1 and he shot him two or three times.

2 He's not a man -- he's not a man who looked like
3 he had committed two crimes. He calmly got into his van,
4 and I got into my house, grabbed the phone and called 911.

5 MS. CAMPBELL: Tell him he will be able to tell
6 the jury this.

7 THE WITNESS: Okay.

8 BY MS. CAMPBELL:

9 Q. All right. Good?

10 A. Yes.

11 MS. CAMPBELL: Thank you, Your Honor. That's all.

12 THE COURT: Ms. Davis.

13 MS. DAVIS: Thank you, Your Honor.

14 CROSS EXAMINATION BY MS. DAVIS:

15 Q. Now, I apologize. I'm going to try and draw up here
16 where you were and what you saw on a map, and this is not
17 going to be perfect.

18 All right. So what I have here is this is -- you lived
19 across the street at [REDACTED], right?

20 A. I still live there.

21 Q. And across the street here is where this happened?

22 A. Woodfield Drive is like this and this is Hardmore.
23 Hardmore, H-A-R-D-M-O-R-E.

24 Q. The street down here?

25 A. That's Woodfield Drive.

- 1 Q. Okay. And then when you are out here, you are on your
2 porch?
- 3 A. Yes.
- 4 Q. And the van is parked where?
- 5 A. Woodfield Drive is here.
6 Their house is here were the murder took place.
7 Omega you are putting up here there, but Omega goes
8 parallel with Woodfield Drive. Parallel.
- 9 Q. So Omega is over here?
10 Where is the van parked? If this is their house, where
11 is the van?
- 12 A. If that's their house, the van is -- there is a little
13 house right here where Edgar lived.
- 14 Q. Okay. So Edgar's house is down here further?
- 15 A. Here.
- 16 Q. Okay. And so the van is where?
- 17 A. Over here.
- 18 Q. Like right here?
- 19 A. On the outside.
- 20 Q. On the outside?
- 21 A. On Woodfield Drive.
- 22 Q. Okay. And it's on the left side of the road, though,
23 close to their house?
- 24 A. Yes.
- 25 Q. And then your house is across the street from Edgar?

- 1 A. Exactly, right, yes.
- 2 Q. And is the van parked so it would go this way, or this
3 way?
- 4 A. (Witness pointing).
- 5 Q. So it would be going this way?
- 6 A. Yeah. Then when he went out, he went out toward Omega.
7 That's why I was confused, because Omega here and there.
8 That's why I was confused, because if Omega Drive is up
9 there, Woodfield Drive would be down here, and the house
10 would be on the other side.
- 11 Q. Okay. Well, let's -- we will ignore this for now.
12 When he drives, does he go this way from your house?
13 If this is your house, does he go this way, or does he go
14 this way?
- 15 A. I don't understand.
- 16 Q. You saw him when he got in the van and left?
- 17 A. Uh-huh.
- 18 Q. And drove by you?
- 19 A. Uh-huh.
- 20 Q. When he drove by, you are out here, did he drive his
21 van this way, or did he drive his van this way?
- 22 A. I saw he went, took Hardmore Street toward Omega.
23 When I came out on the phone and I was talking to the
24 lady, I saw that he was going away and I saw he went toward
25 Omega, and I don't know if he went left or right on Omega.

1 Q. Okay. If you are standing here and he drives past you,
2 does he drive going to the left of you or to the right of
3 you?

4 A. If I'm sitting on my porch, on my porch there and
5 there, I see Woodfield Drive. On the side of my porch is
6 where the crime occurred.

7 The van was here and he was here. He arrived with
8 Edgar with a case of beer and then went in. And then they
9 come out again. They came out and --

10 COURT REPORTER: Sir, excuse me, you can't talk at
11 the same time.

12 A. When I came out he had already gotten on the outside of
13 the fence and he was leaning over the fence and they were
14 still inside.

15 BY MS. DAVIS:

16 Q. I understand that. All I'm trying to find out is when
17 you watched him drive past you, what direction did he drive?

18 A. He went to the right down Hardmore.

19 Q. Okay. So as you see him and he drove away, he drove to
20 the right of you?

21 A. Yeah, coming out of my house to there.

22 Q. And he does not do a U-turn to do that, right?

23 A. No.

24 Q. He just drives to the right?

25 A. He just comes out there and then turns there.

1 (Off the record)

2 (Back on the record)

3 THE COURT: Explain to me this dilemma for
4 tomorrow again regarding this witness, while y'all are
5 talking.

6 MS. CAMPBELL: Judge, he had to take the day off
7 from work. He's paid an hourly rate and it seems to be a
8 hardship with him. We thought we could get to him today.

9 THE COURT: Ask him what does he have to do
10 tomorrow.

11 THE WITNESS: Work. We are working out of town
12 and I work in construction and we are trying to finish up a
13 job and they are requiring to be able at the workplace.

14 THE COURT: Okay.

15 BY MS. DAVIS:

16 Q. I think I understand what our confusion is. Let me
17 make sure I got this right.

18 MS. CAMPBELL: Your Honor, I would object at this
19 point. There is no testimony that he observed him or was
20 able to see him during this time period describing it all.
21 That's not what the testimony has been, so it would be
22 outside of Biggers.

23 THE COURT: Aside from the geometry of where his
24 house is or what corner it's on, what direction the nearest
25 roads are running, is any of that in relation to

1 identification?

2 MS. DAVIS: Yes, sir, Your Honor, that's actually
3 my point. I'm trying to figure out at what point he saw
4 Mr. --

5 THE COURT: Can't you ask him a question rather
6 than trying to have him understand your map?

7 MS. DAVIS: Well, initially that's what I was
8 trying to do, Your Honor, but there is -- I'm not clear on
9 where he is saying he drove, but I think I got it clarified,
10 I think, but it goes to when he would have seen him and at
11 what the distance would have been.

12 THE COURT: All right.

13 BY MS. DAVIS:

14 Q. So Omega street is up here and comes down around?

15 A. It depends on which way you are going. If I'm coming
16 out one way, I go toward Decker, and the other way I go
17 toward Woodfield Drive.

18 Q. Okay. The bottom line is you are standing here, the
19 car goes this way past you?

20 A. No, if I'm in front coming out of my house, it goes
21 that way.

22 Q. To the right?

23 A. Yes, to the right.

24 Q. And he's driving on the right side of the road?

25 A. Yes.

1 Q. And on this day you were painting outside?

2 A. Yes, I'm painting the porch of my house.

3 Q. And when you first see the American, his back is to
4 you?

5 A. The first time, no.

6 Q. I'm sorry. When the shooting happened, his back was to
7 you?

8 A. Yes, he's outside with his back toward me talking to
9 them inside the fence.

10 THE COURT: Mr. Bailiff, if you will tell the
11 jurors that we have got to stay a little late today. In the
12 event some of them want to make some phone calls, they can
13 do that while they are waiting.

14 THE WITNESS: That's no problem, except I'm not
15 Mr. Avila. I'm Mr. Gonzales Merrin.

16 THE COURT: I was talking to the bailiff.

17 THE INTERPRETER: Interpreter error, Your Honor.
18 I'm sorry.

19 BY MS. DAVIS:

20 Q. So when you saw the white American drive by, that's
21 when you saw his face from the front?

22 A. No, when he passed by in the car, I didn't, because I
23 couldn't see in the car and see him.

24 Q. Okay. When he drove by you, you did not see him?

25 A. No.

1 Q. So when you did see his face, it was when he was coming
2 to the van?

3 A. When he got out of the van when they were bringing the
4 beer.

5 Q. And that's the one time that you saw the front of his
6 face?

7 A. Yes, but -- the front of his face, yes, but then after
8 he shot I saw the side of his face as he was getting into
9 the car.

10 Q. Did you ever see this sketch?

11 A. No.

12 Q. Did you ever see any fliers or pictures up around your
13 area?

14 A. One time a guy showed me one and I said it wasn't as
15 close as it is to what you just showed me.

16 Q. And when they did show you the lineup -- this is the
17 lineup that they showed you?

18 A. Yes, that's right.

19 Q. And when they showed you that lineup, did they tell you
20 that the person, the suspect, might be in there, he might
21 not be in there?

22 A. No, they didn't tell me that.

23 Q. And when you got down -- or when you circled the
24 person, did they tell you that you have got it right?

25 A. No. That I remember, no.

1 Q. Did they thank you for your time when you were done?

2 A. Yes.

3 Q. And when you did this lineup, it was about three weeks
4 after you had seen the incident?

5 A. Yes.

6 MS. DAVIS: I have nothing further, Your Honor.

7 THE COURT: Any redirect?

8 MS. CAMPBELL: No, sir.

9 THE COURT: All right, you may step down.

10 Any other witnesses by the State?

11 MS. CAMPBELL: No more witnesses, Your Honor.

12 THE COURT: Anything further by the defense?

13 MS. DAVIS: No, sir.

14 (Whereupon, the Neil v. Biggers Hearing was
15 concluded)

16 THE COURT: The court's ruling on the Biggers
17 issue is the same as to these witnesses as they -- as my
18 rulings were as to the witnesses who testified earlier.

19 MS. DAVIS: Your Honor, just to address one
20 Roberto Merrin Gonzalez, I know under Biggers, and allowing
21 him -- I know he gave his opinion. Certainly it's not
22 appropriate for him to elicit or for him to speak to what he
23 views as self-defense or his opinion on what -- or if it was
24 not self-defense. I just ask that the solicitor remind him
25 that he's not able to give any opinion testimony.

1 THE COURT: I'm not going to make any advanced
2 rulings on the testimony connected, hearing questions and
3 answers and objections.

4 Now, we have gone through these Biggers exercises.
5 And, of course, during opening statements counsel says the
6 defense is self-defense. They have acknowledged that the
7 defendant was the person there and did the shooting, so are
8 we just going through an academic exercise, or just publish
9 the record, or -- there seems to be a pattern of
10 inconsistency, but the reason I say that many of these
11 hearings are a waste of time. You know, you asked the
12 defendant to -- the jurors have no evidence that the
13 defendant is in jail, and in opening statement he says he's
14 been in jail for many months. You give a list of witnesses
15 that you said -- you spoke to witnesses, now they are not
16 witnesses, they are consultative witnesses. A Biggers
17 Hearing challenging the ability of these people to identify
18 the defendant because it's unduly suggestive and unreliable
19 identification, but then you tell the jury that the
20 defendant was there and did the shooting. What's the point
21 of it?

22 MR. SHEALEY: I can speak to the Biggers issues,
23 Your Honor. We try not to waive any possible defenses.
24 Obviously identification, should you have suppressed
25 identification as being an undue procedure, I have been

1 arguing for this entire year about the way Richland County
2 in Columbia that that would change completely how this case
3 worked. Identification --

4 THE COURT: It changed from self-defense --

5 MR. SHEALEY: Well, potentially.

6 THE COURT: -- to not doing the shooting?

7 MR. SHEALEY: I mean, the solicitor's office --

8 THE COURT: The integrity as an officer of the
9 court involved as well, you just can't create a defense
10 based on what a court ruled.

11 MR. SHEALEY: No, sir, but we don't waive defenses
12 either. We try to attack any issue that might be helpful
13 for our client, and identity of who did the murder is one.
14 A month ago the solicitor's office didn't establish identity
15 and I think the case was dismissed as a directed verdict.
16 So that's a key to any component. We are not trying to be
17 disingenuous or dishonest, but we attack every avenue that
18 we can and --

19 THE COURT: Well, that was a case I tried and I
20 wouldn't use it as a precedent.

21 MR. SHEALEY: Well, it's a rare thing, but it does
22 happen. And if you felt that these identifications were not
23 proper, you don't know until we hear it, and I don't know
24 either.

25 THE COURT: All right.

1 MR. SHEALEY: So we are not trying to be
2 disingenuous.

3 And as to the, you know, shackling motion that we
4 had, it's mostly about him walking up without the chains,
5 judging a man by the way he walks, the way he holds himself,
6 and the chains hamper him. I mean, we weren't even trying
7 to hide he was in jail. Obviously that was --

8 THE COURT: You tell the jury he's in jail, then
9 you want him to appear as if he's not in jail.

10 MR. SHEALEY: We just want him to look like the
11 twenty year military guy, make him look good, but --

12 THE COURT: All right. I'm just venting a little
13 bit. It's after -- you know, we are getting ready to work
14 late, because we have to do these issues, so we possibly
15 could have been gone.

16 MS. CAMPBELL: Your Honor, we did speak with him.
17 I think he can come tomorrow, so we can finish up --

18 THE COURT: No, I just told the jury they are
19 going to stay late.

20 MS. CAMPBELL: That's fine.

21 THE COURT: We will take about a three minute
22 break, and we will see where we go from there.

23 MS. CAMPBELL: Thank you, sir.

24 (Whereupon, proceedings were recessed)

25 (Whereupon, proceedings were reconvened)

1 THE WITNESS: All right, let's bring them on.

2 (The following takes place in the presence of the
3 jury panel)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: All right. Ladies and gentlemen, from
6 time to time matters of law must be addressed and those
7 matters must be addressed outside of your presence. So when
8 I send you to the jury room, it's not that we are not taking
9 a break. In most instances we are still in the courtroom
10 dealing with matters of law that must be heard outside of
11 your presence.

12 We are ready to proceed now and you may continue.

13 MS. WALKER: Thank you, Your Honor.

14 CONT'D DIRECT EXAMINATION BY MS. WALKER:

15 Q. Mr. Fernandez, before the break we were talking about
16 this photo lineup and you said that this is the man that you
17 picked out?

18 A. Yes.

19 Q. And that these are your initials?

20 A. Yes, I put them there.

21 MS. WALKER: Your Honor, at this point the State
22 would admit State's Exhibit 3 into evidence.

23 THE COURT: What say the defense?

24 MR. SHEALEY: Subject to prior objection, Your
25 Honor.

1 THE COURT: It's admitted subject to prior
2 objection.

3 MS. WALKER: May we publish, Your Honor?

4 THE COURT: You may.

5 BY MS. WALKER:

6 Q. Mr. Fernandez, the man that was in your front yard that
7 day, the American man who was throwing down his beer and
8 chair, do you see him in the courtroom?

9 A. Yes.

10 Q. Where is he?

11 A. The second gentleman there with the glasses and the
12 white shirt and the tie.

13 MS. WALKER: Your Honor --

14 THE INTERPRETER: The blue shirt, I'm sorry,
15 interpreter error.

16 MS. WALKER: Your Honor, may the record reflect
17 that the witness has pointed out the defendant?

18 THE COURT: I does.

19 MS. WALKER: No further questions.

20 THE COURT: Mr. Shealey?

21 MR. SHEALEY: May it please the court.

22 CROSS EXAMINATION BY MR. SHEALEY:

23 Q. You live at [REDACTED], right?

24 A. Yes.

25 Q. You have lived there eleven years?

- 1 A. Between ten and eleven.
- 2 Q. Okay. And you live with Sau's family?
- 3 A. Yes.
- 4 Q. And Edgar lives in the shed next to the main house?
- 5 A. The main house is here and here is another smaller
- 6 house.
- 7 Q. Right. The white one?
- 8 A. Yeah, on this side. On the right side.
- 9 Q. All right. And where are you from?
- 10 A. Mexico.
- 11 Q. And you knew Edgar for several years?
- 12 A. Yeah, around eight, nine years.
- 13 Q. Okay. You are his friend?
- 14 A. Yes.
- 15 Q. And you worked that day?
- 16 A. Who?
- 17 Q. You.
- 18 A. Yes.
- 19 Q. And when you came home from work, you saw Edgar and
- 20 Pablo?
- 21 A. Yes.
- 22 Q. And they were out there drinking?
- 23 A. They were outside drinking beers under the tree.
- 24 Q. This was the first time that you had ever met Pablo,
- 25 right?

1 A. Yes. Yes.

2 Q. And you talked to Edgar about work, right?

3 A. Yes.

4 Q. Okay. He had gotten done working with pine straw?

5 A. Yes.

6 Q. Okay. Now, after saying hello you went inside,

7 correct?

8 A. The house next door, the large one.

9 Q. Right, where you live -- where you live with Sau?

10 A. Yes, with Sau.

11 Q. And you had a slice of watermelon and watched TV for

12 awhile, right?

13 A. Yes.

14 Q. Okay. And then you remembered that you -- or you

15 decided you wanted to go to the pawn shop, correct?

16 A. Yes, to get some microphones.

17 Q. That you had on layaway, correct?

18 A. Exactly.

19 Q. Okay. And then you come back to your house again,

20 right?

21 A. Yes.

22 Q. And at this time I think you said that the American was

23 there?

24 A. The American arrived when I was leaving to go to the

25 pawn shop.

- 1 Q. Okay. And so for you, the American and Pablo would be
2 both be strangers to you that day?
- 3 A. Yes.
- 4 Q. And it wasn't unusual for Edgar to be drinking outside
5 with friends, right?
- 6 A. Yeah, he drank with friends outside; inside his house
7 and outside.
- 8 Q. And you go back inside again and watched some more TV,
9 right?
- 10 A. Uh-huh, yeah.
- 11 Q. And then you remember you have to wire some money to
12 your aunt in Mexico, correct?
- 13 A. Yes.
- 14 Q. So you go to the store and leave and do that?
- 15 A. I sent money to Mexico.
- 16 Q. And then you drive back to your house again at
17 Woodfield Drive?
- 18 A. Yes.
- 19 Q. And you go back inside and it's hot and you want to
20 change your shirt, right?
- 21 A. No, I did that when I arrived from work.
- 22 Q. Okay. But you do go back inside, right?
- 23 A. Yes.
- 24 Q. Okay. And at some point you decided you wanted to go
25 to your friend's house on Omega Drive?

1 A. Yes.

2 Q. Okay. And you get in your truck -- you start to get in
3 your truck to do this, right?

4 A. Yes.

5 Q. And you saw what you described as an argument or
6 something between Edgar, Pablo, and the American?

7 A. No, they were just speaking, that's all, between the
8 American and Edgar.

9 Q. Okay. And you get in your truck and you go to your
10 friend's house?

11 A. Yes.

12 Q. Okay. And it took you a few minutes to get to your
13 friend's house, right?

14 A. It's close. It's only a block and a half.

15 Q. Okay. But after a few minutes is when you say that you
16 hear gunshots?

17 A. Yes. Yes.

18 MR. SHEALEY: Beg the court's indulgence.

19 (Off the record)

20 (Back on the record)

21 MR. SHEALEY: Nothing further, judge.

22 THE COURT: Anything further?

23 MS. WALKER: Yes, Your Honor.

24 REDIRECT EXAMINATION BY MS. WALKER:

25 Q. Sir, when you were leaving your house to go to Omega

1 Drive, what did you see them doing?

2 MR. SHEALEY: Objection, Your Honor. This calls
3 for testimony not even elicited under direct.

4 MS. WALKER: And, Your Honor, he's asked several
5 questions about that on cross-examination.

6 THE COURT: I overrule the objection.

7 Restate your question.

8 BY MS. WALKER:

9 Q. When you were leaving your house to go to Omega Drive,
10 what were the three of them doing?

11 A. Pablo was sitting down, Edgar was standing up, and the
12 American was outside.

13 Q. What was -- were they looking for money?

14 MR. SHEALEY: Objection again. That's what I was
15 talking about, it was asked and answered.

16 The objection to leading, Your Honor.

17 THE COURT: Objection is sustained as to leading.

18 BY MS. WALKER:

19 Q. What was Pablo doing?

20 A. He was sitting there in the chair.

21 Q. And Edgar, was he standing or sitting?

22 A. He was standing, looking for the money.

23 Q. And at that point had you already seen the American
24 throw the beer down?

25 A. Yeah, I saw when he stood up and threw the can down and

1 went outside the fence.

2 MS. WALKER: No further questions.

3 THE COURT: Anything further?

4 MR. SHEALEY: No, sir, judge.

5 THE COURT: All right. Thank you. You may step
6 down.

7 Next witness.

8 MS. CAMPBELL: Thank you, Your Honor.

9 The State calls Roberto Gonzalez Merrin.

10 (Whereupon the Interpreter was used in conjunction
11 with this witness)

12 ROBERTO GONZALEZ MERRIN, having been first duly
13 sworn, testified as follows:

14 THE WITNESS: I swear.

15 THE CLERK: Have a seat in the witness box and
16 state your name for the record, please.

17 THE WITNESS: My name is Roberto Gonzalez Merrin.

18 R-O-B-E-R-T-O, G-O-N-Z-A-L-E-Z, M-E-R-R-I-N.

19 DIRECT EXAMINATION BY MS. CAMPBELL:

20 Q. Sir, how old are you?

21 A. Fifty-seven years old.

22 Q. And where do you currently live?

23 A. [REDACTED], Columbia, South Carolina. Zip
24 code 29223.

25 Q. How long have you been living there?

- 1 A. Four years. About four years.
- 2 Q. And how long have you been living in the Columbia area?
- 3 A. Eleven years.
- 4 Q. Do you work?
- 5 A. I'm an electrician.
- 6 Q. And do you do jobs out of town sometimes?
- 7 A. Yes, always. Three years I have been working pretty
- 8 much out of town.
- 9 Q. I want to turn your attention back to July the 30th of
- 10 2010. Were you at your house that early evening?
- 11 A. Yes, that's right. I was painting the porch of my
- 12 house.
- 13 Q. Had you worked that day?
- 14 A. No, normally we work Monday through Thursday, forty
- 15 hours.
- 16 Q. Okay. And where is your house located in relation to
- 17 where Edgar lived?
- 18 A. In front of it.
- 19 Q. Is there a street in between?
- 20 A. Yes.
- 21 Q. And his house I believe is also on Woodfield?
- 22 A. Yes, and mine is on Woodfield and Hardmore.
- 23 Q. And the porch you were painting that day, does it face
- 24 across from where Edgar lived?
- 25 A. You could say so, because it's -- the porch is on the

1 front of the whole house.

2 Q. Of the whole house.

3 And that day while you were painting on your porch,
4 could you see into the yard near the tree across the street?

5 A. Yes.

6 Q. And when you first looked over there, who all did you
7 see over in the yard?

8 A. In the yard was Edgar and another Mexican. I didn't
9 know who he was. And there was an American gentleman there.

10 Q. And those were the three people that you observed?

11 A. Yes.

12 Q. Tell this jury, once you looked over there from your
13 porch, what all you saw that evening while you were out
14 there.

15 A. Edgar and the American went -- I wasn't sure where they
16 were going, but then I later realized when they came back
17 about ten or fifteen minutes later Edgar got out of the van
18 laughing with a case of beer. Edgar went into the yard and
19 then the gentleman went in and I continued painting.

20 I wasn't paying that much attention, because I was busy
21 painting my porch, but then later I heard someone raise
22 their voice. And I turned around toward the voice that I
23 heard that was getting louder and I heard the American
24 saying something to Edgar. I don't understand English and
25 also the distance. I couldn't understand. I did see that

1 he pulled a gun out from his back, point it at him. Edgar
2 put his hand like this and shot. And the other person who
3 was on the side was looking, he raised his hand up and he
4 did this. And if he said something, I didn't hear it, but
5 he raised his hands and then he shot him two or three times.

6 The guy finally got into his van. And when he was
7 getting into his van I ran inside, called 911, and told him
8 that someone was shot.

9 When I came out of my house -- and when I came out --
10 when I came out of my house I saw that he was getting in his
11 van and going down Hardmore towards Omega. And then after
12 that I wasn't paying much attention to the van because I saw
13 the guy who was face down, he was still convulsing, and I
14 told the lady on the phone "I don't want to talk to you any
15 longer, send an ambulance quick because there is somebody
16 here who is still alive," and they told me that help was on
17 the way.

18 I came out of my house. I went to the front. And then
19 when I came out I saw Dimas or either it was someone else.
20 And when I saw the Mexican that was there and I saw he was
21 moving and he was turning kind of gray. And I told Dimas'
22 friend like "I think this guy also has died."

23 And when I got to the porch of my house about four or
24 five patrol cars showed up and then the paramedics arrived,
25 but the guys had already died.

1 Q. Let me ask you this. When you looked over when you
2 heard the loud voices, where was everybody standing in the
3 yard? Could you tell?

4 A. Yes.

5 Q. And where were they standing?

6 A. Edgar was inside the fence and the gentleman was
7 outside the fence.

8 Q. When you say the gentleman was outside the fence, would
9 that be the American?

10 A. Yeah, he was outside the fence. He didn't kill him
11 inside. He was outside. The two Mexicans were inside. He
12 shot at them from outside. They didn't have anything to --
13 they didn't have anything to defend themselves with.

14 MS. DAVIS: Objection, Your Honor.

15 A. They have a beer. They didn't have any arms to defend
16 themselves.

17 THE COURT: Basis of the objection?

18 MS. DAVIS: It calls for improper speculation.
19 Also he's not responding to any questions at this point,
20 Your Honor.

21 THE COURT: All right. Ms. Campbell, any
22 response?

23 MS. CAMPBELL: He's responding to what he
24 observed. They were unarmed.

25 THE COURT: The question was what did he observe.

1 The objection is overruled.

2 MS. CAMPBELL: Thank you.

3 BY MS. CAMPBELL:

4 Q. I'm sorry.

5 A. That's what I saw.

6 Q. That's what you saw?

7 A. That's right.

8 Q. You also mentioned there was a van that you saw that
9 day?

10 A. Yeah, a green van. That's what he left in.

11 Q. And was it parked over near the house over there
12 somewhere?

13 A. In front of my house near where they were.

14 When he shot outside he was here and the door to the
15 van was here and he got into the van.

16 Yeah, he was on Woodfield. He went down Hardmore
17 toward Omega. And like I said before, that's when I was
18 more worried about the guys in the yard, of course.

19 Q. Could you tell what kind of gun it was? Was it a
20 handgun or a long gun? Could you tell?

21 A. It was a pistol. I'm not sure about guns, but he must
22 have got it ready because he just pulled it out and shot.

23 Q. And at that point the fence was in between them, is
24 that correct?

25 A. Yes.

1 Q. You stayed at the scene until the police came?

2 A. I just sat on the front porch of my house until
3 eventually a black officer came over with a white officer.
4 They came and -- they said that they were -- that they were
5 going to go continue with their investigation, but then a
6 Spanish speaking officer came. I'm thinking it was Rafael.
7 And then the gentleman investigator -- when I was there
8 Investigator Gonzalez came.

9 And then later on I went down to the police station
10 with him and that is when they put me to one side. Then
11 they told me that there was a van at a hotel called 6. And
12 then they took us -- they thought perhaps this was the
13 perpetrator, so they took me to the motel to look at the
14 van. I said "no, this van is newer and a little bit
15 larger." Then they said that, you know, this met the
16 characteristics of the van. So I went over there and the
17 owner of the van was a tall white American guy with long
18 hair, and I said, "no, that's not him."

19 Q. That night did you give them a statement and a
20 description of the person you saw do the murder?

21 A. Yes, I did. I wasn't a hundred percent sure, but more
22 or less.

23 Q. And that night when you saw the shooter, did you get a
24 look at his face?

25 A. Yes, but it wasn't at night.

1 Q. Sorry, it was still daylight?

2 A. It was a lot light.

3 Q. And you got to see his face on more than one occasion?

4 A. I said about two times. And also the profile when I
5 saw him getting into his van.

6 Q. So later on did the police come talk to you on August
7 the 20th and show some photographs?

8 A. I don't remember the exact date, but it was later on.
9 I would say it's been a week, two weeks afterwards.

10 Q. And at that point did they show you these photographs
11 that are in State's Exhibit No. 5?

12 A. That's right.

13 Q. And when you looked at those photos, did you recognize
14 any of the people in those photos?

15 A. That's right. And the agent asked me give a number
16 between 1 and 10. I said this was him.

17 Q. And the person that you identified you then circled and
18 initialed?

19 A. That's right.

20 Q. And that's the person that you saw doing the murdering?

21 A. That's right.

22 MS. CAMPBELL: Your Honor, at this time I would
23 offer State's Exhibit 5 into evidence.

24 THE COURT: Any objection?

25 MS. CAMPBELL: That's the same one you have seen.

1 MS. DAVIS: Subsequent to the previous objection,
2 Your Honor.

3 THE COURT: All right, it's admitted.

4 BY MS. CAMPBELL:

5 Q. What you witnessed that day, did it have an impact on
6 you?

7 MS. DAVIS: Objection, Your Honor.

8 THE COURT: The basis for the objection?

9 MS. DAVIS: Relevance.

10 THE COURT: What's the relevance?

11 MS. CAMPBELL: I can rephrase the question.

12 THE COURT: All right.

13 BY MS. CAMPBELL:

14 Q. Can you describe to the jury the events you saw that
15 day?

16 MS. DAVIS: Objection, Your Honor. Asked and
17 answered. He's already testified.

18 THE COURT: The objection is that it's been asked
19 already, can he describe the events of the day.

20 MS. CAMPBELL: I don't think I asked that specific
21 question, Your Honor.

22 THE COURT: I overrule the objection.

23 MS. CAMPBELL: Thank you.

24 BY MS. CAMPBELL:

25 Q. Go ahead.

1 A. What I said just now?

2 Q. Describe what you saw happen.

3 MS. DAVIS: Objection, Your Honor. He just said
4 it's the exact same thing he said already.

5 THE COURT: Overruled.

6 A. That day I went out to paint my porch. I saw this
7 person came.

8 THE COURT: All right, the objection is sustained
9 to the extent that he's going to repeat what he's already
10 testified to.

11 BY MS. CAMPBELL:

12 Q. Describe the shooting that you saw that day.

13 MS. DAVIS: Your Honor, it's the same objection.
14 It's the same testimony he's given.

15 THE COURT: Overruled.

16 A. I saw them be shot. He pulled out a pistol from his
17 side. He was going to shoot him and then he shoot the other
18 guy. They had no arms -- they had no arms in which to
19 defend themselves. They were just drinking and having fun.

20 Q. After the shooting how did the American appear as he
21 left?

22 A. It wasn't the kind of person who looked like he had
23 just killed two people. He didn't get into his van and take
24 off really quickly or anything like that.

25 I went inside and I called 911, got off the phone and

1 then started walking back out. When I came out he was still
2 just turning the corner.

3 Q. The person that you saw shoot Edgar and the other man
4 you didn't know that day, do you see him here in the
5 courtroom?

6 A. Yes.

7 Q. Can you point him out to the jury?

8 A. It's the gentleman with glasses who is sitting on the
9 right of the attorney.

10 MS. CAMPBELL: Let the record reflect?

11 THE COURT: It does.

12 MS. CAMPBELL: That's all I have, Your Honor.

13 THE COURT: Defense?

14 MS. DAVIS: Thank you, Your Honor.

15 CROSS EXAMINATION BY MS. DAVIS:

16 Q. You have said that you saw on that day. And everything
17 that you saw, he was outside the gate?

18 A. No, the first time -- the first time he entered was --
19 as far as I could point to my thinking, when he came out, he
20 already had the intentions to kill them.

21 Q. When you -- when the shooting started he was outside
22 the gate?

23 A. He was outside the gate.

24 Q. And you couldn't hear what the argument was about
25 because it was in English?

1 A. First because it was in English. Then -- but second it
2 was a good ways away for you to hear, so it was hard to
3 hear.

4 Q. Thank you.

5 MS. DAVIS: Nothing further.

6 THE COURT: Anything further?

7 MS. CAMPBELL: No, sir.

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

9 All right, ladies and gentlemen, that will do it
10 for today. Thank you very much. We will start back at 9:30
11 tomorrow morning. Have a good evening. Please do not
12 discuss the case, read the newspaper, etcetera. We'll see
13 you tomorrow at 9:30.

14 You can read the paper. Just don't read any
15 articles about the case.

16 (The following takes place outside the presence of
17 the jury panel)

18 THE COURT: All right. I'm going to discuss a
19 couple of issues.

20 The first thing, just regarding the ruling earlier
21 about the statements of the deceased at the gas station as
22 being part of the res gestae, of course, I excluded the
23 testimony regarding the marijuana and that that involved
24 other crimes. The res gestae did not involve other crimes,
25 but may have suggested some bad acts.

1 Not only that, as I stated, the law does not allow
2 res gestae evidence, or evidence of other -- of drug use to
3 form the basis of motive and/or intent, unless it's
4 intricately related to the crime. The intent to buy
5 marijuana does not fit that criteria.

6 I have considered the probative value versus the
7 prejudicial effect of allowing the evidence, the res gestae
8 evidence, and I find that the probative value outweighs any
9 prejudicial effect. So that supplements my ruling on that
10 issue.

11 Concerning the issue raised by the defense
12 concerning the questioning of defense expert witnesses, we
13 can talk about that a little more before we leave today.

14 I have had a chance to read this case. Traveling,
15 my good friend, Judge Jefferson over in Lexington County, a
16 death penalty case, where the Supreme Court reversed the
17 death penalty conviction. The second time the case was
18 tried and he was given the death penalty on both occasion,
19 and was reversed twice. The reversal in this case was based,
20 on the fact that the Supreme Court disagreed with Judge
21 Jefferson allowing barefoot in-sole impressions into
22 evidence as being scientifically reliable, and the court
23 just disagreed with her analysis and her allowing that in.

24 But on the question of whether there was any error
25 involved in the subpoenaing of this non-testifying

1 consultative expert, the court affirmed the decision under
2 the particular facts of this case, as Justice Beatty says,
3 "unique facts of this case," but then went on to set forth a
4 rather stringent criteria for the State in subpoenaing
5 witnesses who are hired by the defense. The court said that
6 it could lead to some subversive tactics to circumvent the
7 discovery rules.

8 There they found in that case that there was no
9 error by the court in allowing the State to call this
10 witness, who had originally been conferred by the State,
11 since there were only two experts in the world and there was
12 a substantial need shown to allow this person to testify.
13 The court found in talking about it all that the State did
14 not violate any rights of the defendant, in that the State
15 did not seek any inculpatory information, any confidential
16 communications, any -- any confidential communications that
17 just between the defendant and the lawyers; that the State
18 did not seek any confidential communications between the
19 expert and defense. In that case they didn't seek any
20 materials prepared by their expert for the defense, and that
21 they were not seeking any testimony.

22 Their case, though the law kind of outlined all
23 evidence, sort of went through this Rule 5 analysis as to
24 what the State is entitled to receive, once a reciprocal
25 Rule 5 discovery motion served on a defense. Some of all

1 that applies to this case and some of it doesn't, in that
2 we're not speaking about exactly the same issue, but I think
3 the language talked about any cases, helpful and instructive
4 when dealing with the extent to which the State should be
5 able to go in contacting the defense witnesses in this case
6 and the limits that should be placed on the State's efforts
7 to solicit information from witnesses who the defendant
8 conferred with because of the potential for having chilling
9 effects on the defendant's right to counsel, possible
10 infringement upon work product, and also attorney-client
11 information.

12 So what else do you all want to say about this
13 issue?

14 MS. CAMPBELL: Your Honor, I'm sorry, I was under
15 the impression they turned their CV's, they were turning
16 over their witnesses they intended to call, which would
17 distinguish it from this case. We were just going to
18 contact the witness to find out if, in fact, they would talk
19 to us about anything, and that was the extent of what we
20 were seeking. We were not seeking to violate any
21 attorney-client privilege or anything of that nature.

22 When those CV's were turned over, I think about
23 eight under that, that these would be witnesses that they
24 intended to call. I think I do have a right to at least
25 inquire whether or not a witness will talk to me prior to

1 taking the stand, and that was the extent of what we were
2 trying to do. And we aren't subpoenaing, of course,
3 anybody.

4 THE COURT: Uh-huh.

5 MS. DAVIS: Your Honor, just for that matter, we
6 certainly deny you know that we are intending to call any
7 witnesses. We turned the CV's over at the time we did
8 because Your Honor instructed us or ordered us to do it. So
9 as soon as we left this courtroom we turned those CV's over
10 to them. That's the reason that was done.

11 THE COURT: Yeah. Of course, under the -- in this
12 case the court made note of the fact that the witness was on
13 the defendant's witness list as well.

14 Let's see. Because the defense did not list this
15 guy as a trial witness, the State contends that the State
16 subpoenaed to call him as a witness. The defendant contends
17 that because it did not list him as a witness, the State
18 subpoenaed to call him violated the work-product doctrine
19 and the attorney-client privilege, and more importantly his
20 Sixth Amendment right to effective assistance of counsel.
21 And they based that on the fact that they did not list him
22 as a trial witness.

23 In this case this person has been listed as a
24 trial witness. The extent to which that creates a
25 distinction, you know, could be an interesting basis for

1 analysis.

2 My view of the law is that any witness is open for
3 anyone to talk to, but considering what's mentioned in this
4 case and the guidelines referencing this case, there has to
5 be some limits placed upon the State in seeking information
6 that would be privileged work product or seek to go as far
7 as to affect the defendant's right to the effective
8 assistance of counsel. So I'm not sure what the State is
9 trying to get from these people.

10 In this case let's see what the Justice said.
11 They say, "we caution, however, that our decision should not
12 be interpreted as establishing a general rule permitting the
13 State to compel the testimony of a non-testifying
14 consultative defense agent. Taken to its extreme we believe
15 such a rule could be used by the State as a subversive
16 tactic to circumvent discovery rules. In view of this
17 potential for abuse we limit this decision to the specific
18 facts of this case and now adopt a rule which we believe
19 will effectively balance the rights of the defendant and the
20 interests of the State in future criminal cases."

21 And then the test that they adopted is some form
22 of substantial need test for the testimony. Now, we're not
23 dealing with that, because the State is not seeking to
24 abridge the court's concern, and the concern that the court
25 expressed is that by saying this rule, it should alleviate

1 any concern that either side could potentially scoop up or
2 contract all available experts. So we don't have a scooping
3 up situation here either. But I am concerned about their --
4 there has to be some limits on what the State can seek by
5 contacting a defense expert.

6 MS. CAMPBELL: Yes, sir, and I understand what
7 you're saying, but in this case it would be what we are
8 informed from the list that is a testifying witness, it
9 would be distinguishable. In this case we are not trying to
10 subpoena anyone.

11 The reason we are contacting them is to see if
12 they would be willing to talk with us about any opinions
13 they may have. We don't go beyond that. We can, of course,
14 cannot force anyone to talk with us. We certainly aren't
15 trying to compel somebody to talk with us through the
16 subpoena power, as in that case.

17 THE COURT: All right, Ms. Pringle?

18 MS. PRINGLE: Well, Jones only says that if we
19 were not calling the witness, had no intention of calling
20 the witness, that they could do it if they have a
21 substantial need. And in Jones, that was one of two experts
22 in the entire world that could be used, and they didn't want
23 to hamstring the prosecution.

24 What I was relying on in Jones, and I direct you
25 specifically to page 544, the -- it was a very thorough

1 analysis. The court said that they -- they talk about the
2 Pennsylvania Rules of Criminal Procedure. They refer to
3 those. Below they then said, "we agree with there's still
4 possible underpinnings," in the Pennsylvania case.

5 And above it says, "the court recognizes the rules
6 generally protect work product of agents hired by defense
7 attorneys." And then they talk about how this specifically
8 is that situation there, but that doesn't address our
9 situation.

10 It said below, "we agree with the total possible
11 underpinnings." I'll just say that any work product they
12 couldn't ask about. So there is nothing that they could ask
13 them about, unless they wanted them to independently testify
14 and they had a substantial need and they could demonstrate
15 it and that they would ask them nothing about any
16 communications that we have had or what our intentions are.
17 Otherwise, they call it a work product.

18 And below that it says, "furthermore -- in this
19 case it says, "furthermore, given the State did not attempt
20 to elicit any confidential communication between the expert
21 and the defense, or any inculpatory information, if we find
22 that it fits within the rights who has not violated." There
23 is nothing that they can ask that would invade that
24 protected information. And that's our point, unless they
25 need to call them and they can demonstrate some substantial

1 need to call them independent of us, if we don't call them.
2 That's the entire situation.

3 THE COURT: All right.

4 MS. CAMPBELL: Your Honor, I think she's twisted
5 this whole thing and gone into some other parameters, which
6 we're not sure where she's going.

7 According to her analysis then that we have never
8 ever allowed to talk to a single witness on the list, and I
9 guess that is her position.

10 MS. PRINGLE: No, that's not an expert that we
11 hired, unless you have a unique situation to present any --
12 in Jones, there is a substantial need. And the standard
13 that applies in Jones --

14 THE COURT: Well, the State is prohibited from
15 talking with any or contacting any defense expert. Is that
16 what you are saying?

17 MS. PRINGLE: No, sir.

18 THE COURT: What are you saying?

19 MS. PRINGLE: Any expert that we have consulted.
20 I don't think that -- I can't prevent them from
21 contacting --

22 THE COURT: No, they said they wouldn't. They
23 said any expert witness.

24 MS. PRINGLE: Unless --

25 THE COURT: All right.

1 MS. PRINGLE: -- the very unique situation that
2 occurred in Jones first and they can demonstrate -- I can't
3 remember the words exactly.

4 THE COURT: But if the rule is as general as you
5 are stating, I mean, Jones is addressing the specific
6 situation that they had in Jones about calling a
7 consultative expert to testify. So if the rule goes beyond
8 that to say, well, whether they are going to testify or not,
9 once a defense hires an expert, the State is barred from
10 making any contact with that expert, it would assume to me
11 that there would be some other case somewhere in the annals
12 of South Carolina jurisprudence that would address that
13 situation. So we shouldn't have to find a unique situation
14 that's unrelated to what we have in this particular case.

15 MS. PRINGLE: The reason I referred to Jones is
16 because I do think that it supports what I'm saying, which
17 is that those communications are work product and those
18 communications are confidential attorney-client privileged
19 information. I think -- it is my opinion that is very clear
20 from Jones.

21 I'm not saying we're in the same situation, but I
22 just -- I cannot see how I can have experts retained on a
23 case with whom I have discussed matters of strategy, that
24 they can contact them and interview them. Now, that cannot
25 be right.

1 THE COURT: Well, I'm saying if you are correct,
2 and we should be able to find a case to show me that
3 supports your position, because this is this unique case
4 involving the State subpoenaing a consultative expert to
5 testify.

6 MS. PRINGLE: An additional case, State v. Clinton
7 Northcutt.

8 COURT REPORTER: What's that?

9 MS. PRINGLE: Northcutt, two T's. And look at it,
10 Your Honor, before we talk about it. At this late --

11 THE COURT: I understand.

12 MS. PRINGLE: In that case the court ordered that
13 the defense to turn over a report of that expert and was an
14 error. So I would -- I don't know that this kind of thing
15 has ever presented. I don't --

16 THE COURT: Well, it has to present itself in
17 every case. I mean, it's -- maybe that because I'm in
18 Richland County, you have this bevie of experts that you
19 just hire and talk to to help prepare a defense at state
20 expense, you know.

21 MS. PRINGLE: It's never happened to me before in
22 a case, but I just stated my position the best I can, Your
23 Honor.

24 THE COURT: Well, I don't know what the State is
25 seeking. I don't know what experts, what they are going to

1 talk about tomorrow. Certainly ordering that the defense
2 give a CV, a CV is not work product. That's just a CV.

3 MS. PRINGLE: I don't take exception to that, Your
4 Honor.

5 THE COURT: Okay. Well, I think that the -- I
6 don't know. We'll sleep on this one tonight.

7 I'm inclined to say that the State should not be
8 able to contact an expert consulted to by the defense
9 regarding communications. Certainly something that would be
10 in the category of work product, which would have to be, in
11 my mind, more toward confidential communications between
12 that expert and the defendant. But, you know, I don't
13 know -- I don't know how far this expert goes -- how far
14 it's covered by this umbrella of a defense. You know, you
15 can't get into conversations between the lawyer and the
16 defendant, but certainly any communications between any lay
17 people and the defense is not work product. Whether
18 communications between an expert, the defendant talks with
19 an expert, is that confidential? Is that work product?

20 If the defendant talks to an expert and confesses,
21 are you saying that expert can't testify that the defendant
22 has confessed me? I don't know. I think we need to spend
23 some more time studying it so that whatever ultimately is
24 held to be the case in this case is supported by some
25 authority other than State v. Jones here. So in the interim

1 if you have a little time, do not go to far with these
2 experts.

3 All right, we'll start back at 9:30.

4 MS. CAMPBELL: Thank you, Your Honor.

5 MS. PRINGLE: Thank you, Your Honor.

6 (Whereupon, proceedings were adjourned to December
7 14, 2011)

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS
3

4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6) 2011-GS-40-0897
7 LESLIE TODD PARVIN,) 2011-GS-40-0898
8) DECEMBER 14, 2011
9 DEFENDANT.) COLUMBIA, SOUTH CAROLINA

10 (VOLUME III)

11 B E F O R E:

12 THE HONORABLE CLIFTON NEWMAN, JUDGE. ; And a Jury.
13

14 A P P E A R A N C E S:
15

16 KATHRYN LUCK CAMPBELL, ASSISTANT SOLICITOR
17 NICOLE M. SIMPSON, ASSISTANT SOLICITOR
18 MEGHAN WALKER, ASSISTANT WALKER
19 ATTORNEYS FOR THE STATE

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23 ATTORNEYS FOR THE DEFENDANT

24 MICHAEL R. WATTS
25 CIRCUIT COURT REPORTER

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2	NO.	DESCRIPTION	ID.	EV.
3	CT-1	MULTIPLE DOCUMENTS	178	
4	CT-2	COLORED PHOTOGRAPH	1013	
5	CT-3	PHOTOGRAPH	1013	
6	CT-4	PHOTOGRAPH	1013	
7	CT-5	PHOTOGRAPH	1013	
8	CT-6	PHOTOGRAPH	1013	
9	CT-7	PHOTOGRAPH	1013	
10	CT-8	PHOTOGRAPH	1013	
11	CT-9	PHOTOGRAPH	1013	
12	CT-10	PHOTOGRAPH	1014	
13	CT-11	PHOTOGRAPH	1014	
14	CT-12	PHOTOGRAPH	1014	
15	CT-13	COLORED PHOTOGRAPH	1014	
16	CT-14	BRIEF DOCUMENT	1339	
17	CT-15	JUROR NOTE	1701	
18	CT-16	JUROR NOTE	1701	
19	CT-17	JUROR NOTE	1701	
20	CT-18	JUROR NOTE	1751	
21	CT-19	JUROR NOTE	1751	
22	CT-20	JUROR NOTE	1751	
23	CT-21	JUROR NOTE	1751	
24	CT-22	JUROR NOTE	1751	
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1 (PROCEEDINGS, DECEMBER 14, 2011)
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7 (Blow Up marked as State's Exhibit No. 122 for
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9 (Blow Up of Diagram marked as State's Exhibit No.
10 123 for identification)
11 (Cell Phone Charger marked as State's Exhibit No.
12 124 for identification)
13 (GSR Kit marked as State's Exhibit No. 125 for
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15 (Buccal Swab marked as State's Exhibit No. 126 for
16 identification)
17 (Cell Phones marked as State's Exhibit No. 127 for
18 identification)
19 (Budweiser Box marked as State's Exhibit No. 128
20 for identification)
21 (Green Shirt, Red Hat, Blue Hat marked as State's
22 Exhibit No. 129 for identification)
23 (Nail Scrapings marked as State's Exhibit No. 130
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25 (Edgar Lopez Clothes marked as State's Exhibit No.

1 131 for identification)
2 (Swabs marked as State's Exhibit No. 132 for
3 identification)
4 (Projectile marked as State's Exhibit No. 133 for
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6 (Swab marked as State's Exhibit No. 134 for
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8 (Cartridge Casing marked as State's Exhibit No.
9 135 for identification)
10 (Print Cards marked as State's Exhibit No. 136 for
11 identification)
12 (Pablo Gutierrez Clothes marked as State's Exhibit
13 No. 137 for identification)
14 (Swabs marked as State's Exhibit No. 138 for
15 identification)
16 (Projectile marked as State's Exhibit No. 139 for
17 identification)
18 (Box of Beer Cans marked as State's Exhibit No.
19 140 for identification)
20 (Swab of Defendnt marked as State's Exhibit No.
21 141 for identification)
22 (Latent Print Card marked as State's Exhibit No.
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24 (Photograph marked as State's Exhibit No. 168 for
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1 (3 Pages of Fingerprint Cards marked as State's
2 Exhibit No. 169 for identification)

3 (5 Pages of Business Documents from the State of
4 Louisiana marked as State's Exhibit No. 170 for
5 identification)

6 (Business Documents from the State of Louisiana
7 marked as State's Exhibit No. 171 for identification)

8 (Chart marked as State's Exhibit No. 172 for
9 identification)

10 (Chart marked as State's Exhibit No. 173 for
11 identification)

12 (Business Document from Jameson Inn marked as
13 State's Exhibit No. 174 for identification)

14 (Business Document from Jameson Inn marked as
15 State's Exhibit No. 175 for identification)

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24 (Summary marked as State's Exhibit No. 205 for
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5 (Gun, Rossi Make, marked as State's Exhibit No.
6 208 for identification)

7 (Gun, Taurus Make, marked as State's Exhibit No.
8 209 for identification)

9 (Box of Miscellaneous Ammunition marked as State's
10 Exhibit No. 210 for identification)

11 (Paperwork for Kia Van marked as State's Exhibit
12 No. 211 for identification)

13 (Blowup of Map marked as State's Exhibit No. 212
14 for identification)

15 (Gun marked as State's Exhibit No. 213 for
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21 (Gun marked as State's Exhibit No. 216 for
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1 THE COURT: Good morning.

2 Anything before the jury comes in?

3 MS. CAMPBELL: There is nothing.

4 THE COURT: All right, bring the jury, please.

5 THE BAILIFF: Yes, sir.

6 (The following takes place in the presence of the
7 jury panel)

8 THE BAILIFF: Your Honor, the jury is present.

9 THE COURT: Good morning.

10 JURY PANEL: (Collectively said good morning).

11 THE COURT: Welcome back to day number three.

12 The State's case and you may proceed.

13 MS. SIMPSON: The State calls John Belleisle.

14 JOHN BELLEISLE, having been first duly sworn,
15 testified as follows:

16 THE CLERK: Have a seat in the witness box and
17 state your name for the record and spell it, please.

18 THE WITNESS: John Belleisle. J-O-H-N. Last name
19 is B-E-L-L-E-I-S-L-E.

20 DIRECT EXAMINATION BY MS. SIMPSON:

21 Q. Good afternoon, Mr. Belleisle.

22 What do you do?

23 A. I'm a paramedic for Richland County EMS.

24 Q. Good morning, I'm sorry.

25 How long have you been with EMS?

1 A. I have been with Richland County since '99, minus about
2 a year and a half.

3 Q. And what do you do in your capacity there?

4 A. I'm a paramedic crew leader. I'm in charge of an
5 ambulance and the crew on it.

6 Q. And can you tell us a little bit about your training as
7 a first responder, paramedic?

8 A. To begin with EMT basic, when I went through it, it was
9 about six months, and I -- they had me spending time in the
10 hospital and on the street.

11 Paramedic school at the time was about nine months,
12 eight hours, two or three days a week, and we had several
13 hundreds hours clinical time on the street and in the
14 hospital.

15 We are required to maintain advanced cardiac life
16 support, pediatric advanced life support. We are trained in
17 the pre-hospital trauma life support and various other
18 disciplines; O.B., neonate kind of thing.

19 Q. And what exactly does a first responder do?

20 A. The term is used loosely in a lot of cases. The first
21 responder is the first people arriving on the scene to
22 provide care, or law enforcement, that kind of thing.

23 Generally when we refer to first responders in our
24 discipline, we refer to the fire department getting there
25 first before the ambulance does to initiate care, to put

1 somebody on oxygen or to stop bleeding, if they can. When
2 we get there we can provide more advanced treatment than
3 first responders can.

4 Q. And back on July 30th of 2010, were you working in your
5 present capacity?

6 A. Yes.

7 Q. And did you have occasion to become involved in this
8 case?

9 A. Apparently so.

10 Q. Okay. How many calls would you say that you responded
11 to in your time as a paramedic?

12 A. I couldn't begin to count. Anywhere from no calls
13 first shift to maybe fifteen to twenty over -- a little over
14 a decade, so --

15 Q. A lot?

16 A. Yeah.

17 Q. And do you all keep reports --

18 A. We do.

19 Q. -- on each incident that you respond to?

20 And are there generally separate reports for individual
21 victims in this case?

22 A. Each patient is generally given their own separate
23 report, with rare exception.

24 Q. And were reports generated in this case?

25 A. Yes.

1 Q. Do you have them with you?

2 A. I do not.

3 Q. Would it assist you in your testimony if you could have
4 copies of them?

5 A. Yes. It's been a year and a half.

6 Q. Can you tell us where and when you responded on July
7 30th of 2010, with respect to this case?

8 A. According to the run sheet, we responded to [REDACTED]
9 [REDACTED] in the northeast Park Acres part of town,
10 and the call was received at 7:29 p.m., dispatched at 7:30,
11 and we went on the ride at 7:31, and arrived on the scene at
12 7:37.

13 Q. So fairly quickly.

14 What did you observe when you arrived?

15 A. Law enforcement, I believe it was Richland County
16 sheriff's department, was there before we got there. They
17 already established a crime scene.

18 There were two individuals laying in the yard just
19 inside the fence line. A good bit of blood surrounding both
20 the victims.

21 Q. And there were two separate victims, correct?

22 A. Yes.

23 Q. And did you actually have any identifying information
24 at the time that you generated the report?

25 A. There is no information, other than they were Hispanic.

1 Q. And I would like to address each victim separately.

2 First with respect to victim 1, who was shot in the
3 face and abdomen, can you tell us a little bit about your
4 actions take with respect to that victim?

5 A. Let me see which one this is.

6 I believe this is the first one that I came to. I
7 arrived on the scene. Of course, I noted there was copious
8 amounts of blood surrounding the victim.

9 It being a crime scene, you try to disturb it as little
10 as possible.

11 I attached the heart monitor, observed that there was
12 pulseless activity. I mean, there was a beat. There was no
13 actual pulse associated with electrical activity in the
14 heart. Finished a cursory assessment and pronounced dead
15 upon arrival at 7:41.

16 Q. Okay. And what about the second victim?

17 A. The second victim, as I recall, was just a couple of
18 feet away from the original one, similar in situation. The
19 first patient was on his back. The second was on his
20 stomach.

21 I rolled the patient over, applied the monitor again,
22 similar -- this time they were in asystole, meaning no
23 electrical activity in the heart, this victim.

24 Same assessment. I looked over, appearing into the
25 body, that kind of thing, and again pronounced dead upon

1 arrival at 7:41.

2 Q. And did you actually observe the gunshot wounds at that
3 time?

4 A. Yes.

5 Q. And can you tell us how many wounds that you observed
6 in your assessment?

7 A. For the primary patient, or the initial patient I guess
8 I should say, two probable and a third possible. The
9 initial one --

10 Q. Did you observe the location of those?

11 A. Let's see. For the initial patient, the first gunshot
12 wound that I noted was in the abdomen, center, just above
13 the naval.

14 The second one that I noted was to the right cheek,
15 temple area.

16 And a possible third one to the neck, although I wasn't
17 able to determine if that was going to be an exit wound or
18 an entrance wound.

19 Q. And what about the second victim in this case?

20 A. The second patient, the center of the chest.

21 Q. And was that the only one that you observed?

22 A. On the second patient that's all that I observed that I
23 documented, yes.

24 Q. Okay. And as part of your capacity, once you learned
25 that there was no pulse and essentially pronounced them

1 deed, were you even responsible for the removal of the
2 bodies?

3 A. No, we did not.

4 Q. Who is responsible for that?

5 A. As I understand, the coroner's office has a contract
6 with a private company to deal with the bodies, but I'm not
7 entirely certain.

8 Q. All right. And is that the extent of your involvement
9 with respect to this case?

10 A. Yes.

11 MS. SIMPSON: Thank you.

12 THE COURT: Any questions by the defense?

13 MR. SHEALEY: Just one, Your Honor.

14 May it please the court.

15 CROSS EXAMINATION BY MR. SHEALEY:

16 Q. Just briefly. As part of your training as an EMT, I
17 think you mentioned to the solicitor that you tried the best
18 you can not to disturb a crime scene in any way possible,
19 right?

20 A. As minimal as possible, yes, sir. And we have to, of
21 course, walk into it, but we -- you know, our boots do
22 track, prints, that kind of thing.

23 Q. But you are aware of trying not to do that to help law
24 enforcement --

25 A. Yes, sir.

1 Q. -- to figure out what happened.

2 Thank you.

3 THE COURT: All right, you may step down.

4 MS. CAMPBELL: May it please the court?

5 THE COURT: Yes.

6 MS. CAMPBELL: The State would call Dr. Clay
7 Nichols.

8 DR. CLAY NICHOLS, having been first duly sworn,
9 testified as follows:

10 THE CLERK: Have a seat in the witness box and
11 state your name for the record and spell your last name,
12 please.

13 THE WITNESS: Clay Nichols, N-I-C-H-O-L-S.

14 Good morning, Judge Newman.

15 THE COURT: Good morning.

16 DIRECT EXAMINATION BY MS. CAMPBELL:

17 Q. Doctor, where are you currently employed?

18 A. I'm the deputy chief medical examiner for the State of
19 North Carolina at Chappel Hill.

20 Q. And prior to becoming the deputy chief medical examiner
21 for North Carolina, where did you work?

22 A. I was the chief medical examiner for Richland County.

23 Q. Can you tell us a little bit about your education, your
24 training in your field of forensic pathology?

25 A. I received my Bachelors of Science Degree in 1981 from

1 the University of Oklahoma.

2 I received my M.D. Degree also from Oklahoma in '85.

3 After that I entered a residency program in both
4 anatomic and forensic pathology in Charleston, at MUSC.

5 After that I was on the faculty at MUSC for ten years.

6 Following that I was in private practice here as a
7 forensic pathologist and the deputy chief medical examiner,
8 in Richland County.

9 And following that I'm now deputy chief medical
10 examiner for the entire State of North Carolina.

11 I'm board certified by the American Board of Pathology
12 in both anatomic and forensic pathology.

13 I have a clinical professorship at UNC Chappel Hill, and
14 I also have unrestricted licenses to practice medicine and
15 surgery in both South Carolina and North Carolina.

16 Q. You mentioned the word anatomic pathology versus
17 forensic pathology. Can you tell the jury the difference
18 between those two?

19 A. Anatomic pathology is basically what almost every
20 pathologist does. They look at tissues in order to look for
21 the presence or absence of disease.

22 During their training period they also receive training
23 in performing autopsies, which, of course, is the dissection
24 of a person after they are dead, obviously after they are
25 dead, but a forensic pathologist has another one to two

1 years of training after that to specifically train in people
2 who have died suspicious or unnatural deaths.

3 Q. And have you been qualified before in court in the
4 field of forensic pathology, in which you are board
5 certified?

6 A. Numerous times.

7 MS. CAMPBELL: Your Honor, at this time we would
8 offer him as an expert in forensic pathology.

9 MS. PRINGLE: Without objection.

10 THE COURT: He's so admitted.

11 Ladies and gentlemen, an expert witness, unlike
12 other witnesses, can offer opinions in this field of their
13 expertise, and he is so qualified as an expert in the field
14 as so stated.

15 MS. CAMPBELL: Thank you.

16 BY MS. CAMPBELL:

17 Q. Doctor, simply, how does a case come to your attention?
18 How are you first notified?

19 A. I'm first notified by a phone call that there is going
20 to be an autopsy for that day. Basic information is
21 exchanged at that time. The body at that time was
22 transported to Richland's morgue and we performed the
23 autopsy at Richland Hospital.

24 Q. So back in the end of July, the first of August of
25 2010, you actually worked at Richland Memorial Hospital?

1 A. Yes.

2 Q. And the morning of July the 31st were you asked to
3 perform two autopsies?

4 A. Yes.

5 Q. And I believe those were performed, one on Mr. Lopez at
6 seven a.m., and the second one at nine a.m. that morning?

7 A. Yes.

8 Q. Prior to doing an autopsy, is there a history you try
9 to get order to help you, as far as making sure that you
10 observe everything that you need to during the autopsy?

11 A. The history is usually provided during the phone call.
12 Oftentimes law enforcement will also be at the autopsy to
13 provide additional information, but yes.

14 Q. And you are also -- as well as law enforcement, you are
15 also in direct contact with the coroner's office?

16 A. That's correct.

17 Q. And that morning did you get a history prior to
18 performing the autopsies in this case?

19 A. Yes, I did.

20 Q. Specifically going to Edgar Lopez, who is the first
21 person that you performed an autopsy on that morning, tell
22 the jury generally what you do first and basically how you
23 proceed in doing an autopsy when there is a suspicious death
24 or a homicide.

25 A. Essentially the history we received on both these

1 individuals, both Mr. Lopez and Guzman-Gutierrez, they were
2 both victims of a homicidal shooting.

3 When we get an autopsy like that, the first thing we do
4 is look at the victim with their clothes on, with their
5 clothes off, and then x-rays are taken to see if we can find
6 any bullets to recover.

7 Following that the body is dissected looking for any
8 additional information that we can obtain.

9 The fatal injuries are documented, and at the end we
10 put it altogether in a report.

11 Q. And that was done in the case involving Edgar Lopez?

12 A. Yes.

13 Q. And in that when you initially came in contact with Mr.
14 Lopez, what were your observations, as far as the external
15 examination?

16 A. He was the victim of gunshot wounds.

17 Q. And specifically in this case were you able to observe
18 gunshot wounds to certain parts of his body?

19 A. Yes.

20 Q. And where were those gunshot wounds located?

21 A. Specifically gunshot wound number 1 is the close
22 perforating gunshot wound to the right cheek at a distance
23 of 6 inches from the top of the head and 1.5 inch to the
24 right of midline. The wound is circular with a 0.4 inch
25 diameter. A 0.2 inch abrasion border is present at the

1 eleven o'clock position. In addition --

2 MS. PRINGLE: Your Honor --

3 THE WITNESS: I'm sorry.

4 MS. PRINGLE: -- I would object to the reading of
5 the report. I understand he needs to refresh his
6 recollection. I don't think he needs to read from his
7 report. I ask that he testify.

8 THE COURT: Objection overruled.

9 THE WITNESS: Thank you, Your Honor.

10 A. Where did I --

11 COURT REPORTER: You were at the 0.4 --

12 A. Thank you.

13 Okay. There was a 0.2 inch abrasion border at the
14 eleven o'clock position.

15 In addition, an area of stippling is identified on the
16 right cheek from the seven to eleven o'clock position. The
17 stippling measures up to 1.4 inch from the actual center of
18 the gunshot wound hole. The bullet is found to enter the
19 face at this site, traveling roughly to the left 45 degrees,
20 backwards 10 degrees and downwards 45 degrees. The bullet
21 then exits from the left side of the back of the neck at a
22 distance of 9 inches from the top of the head and 3 inches
23 to the left of midline. The wound is roughly elliptical
24 measuring 0.6 X 0.3 inch. The edges are lacerated. Along
25 its course the bullet most likely traumatized the cervical

1. spinal cord. The bullet exits and is not recovered.

2. Gunshot wound number 2 is to the left abdomen at a
3. distance of 25 inches from the top of the head and 1 inch to
4. the left of midline. The wound is circular with a 0.35 inch
5. diameter. There is a 0.1 inch abrasion border roughly at
6. the seven o'clock position. No soot or powder stippling is
7. identified. The bullet is found to enter the body at this
8. site traveling to the left 20 degrees, backwards 30 degrees,
9. and upwards 60 degrees. Along its course the bullet
10. lacerates the liver and left lower lung lobe. There is an
11. associated hemathorax measuring approximately 300 CC's.
12. And a hemothorax is where blood is actually in the chest
13. cavities where the lungs are. In addition, in the abdominal
14. cavity where the liver is inside of your belly, that was
15. also lined by red liquid blood. The bullet exits and was
16. not recovered.

17. Q. Some of the terms that you used in there, you mentioned
18. that you were able to determine that there were two entrance
19. wounds to observe and two head wounds?

20. A. Yes.

21. Q. And that's what we call a through and through shooting?

22. MS. PRINGLE: Objection to the leading.

23. THE COURT: Objection overruled.

24. MS. CAMPBELL: Thank you.

25. BY MS. CAMPBELL:

1 Q. You are familiar with the term through and through?

2 A. Through and through are perforating gunshot wounds. It
3 actually goes through the body in and out.

4 Q. And in this case with Mr. Lopez, both -- there were two
5 entrance wounds and two exit wounds, I believe you
6 testified?

7 A. That's correct.

8 Q. And so both of those gunshot wounds to Mr. Lopez would
9 have been what we call through and through?

10 A. Yes.

11 Q. And how are you able to determine the difference
12 between an entrance wound and an exit wound? Do you have
13 specialized training in that area?

14 A. Yes, I do. An entrance wound is usually characterized
15 by the fact that when the bullet strikes the skin, it
16 doesn't actually poke a hole. It's actually turning and
17 drills its way through the skin. And by looking at the
18 physical characteristics of a hole, you can say that that's
19 an entrance wound.

20 Some people mistakenly say an entrance wound is smaller
21 than an exit wound. That's not always true. You look for
22 the physical characteristics of the entrance and exit wound
23 in order to determine which one is which. You can't always
24 tell it, but most of the time you can.

25 Q. And in this case you mentioned that there was what you

1 referred to as a close entrance wound to the face?

2 A. Yes.

3 Q. And you also mentioned some abrasion borders and I
4 believe some -- was it stippling or soot?

5 A. Stippling.

6 Q. Stippling.

7 How is that significant, as far as you began to tell,
8 that this shooter may have been, or gun at least, would have
9 been from the person where he was shot?

10 A. Once again, a gun is fired. If the gun is right up
11 against the skin, what you are going to see is not just a
12 hole that we talked about before, but you are going to see
13 the imprint of a muzzle, the tip of the gun actually
14 embedded on the skin.

15 You back up a fraction of an inch, you pull the trigger
16 this time, the bullet goes in. Any unburned gunpowder, any
17 heavy particles also enter the wound tract, but soot gets
18 deposited in a ring-like fashion around the wound.

19 Back up a couple inches more, you pull the trigger, the
20 bullet goes through the skin. Anything that's heavier will
21 also go through the skin. The unburned gunpowder, which is
22 now wider and gets caught up in the smoke will now be
23 deposited in the salt and pepper pattern around the wound.

24 And so by seeing gunpowder stippling, you know that the
25 gun was several inches away from the victim's face when the