VOL I OF IV

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

George C. James, Circuit Court Judge

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S.C. SUPREME COURT

NATHANIEL BRADLEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-001121

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) 2007-GS-43-390

STATE OF SC,)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
NATHANIEL N BRADLEY,)
DEFENDANT)

January 14-18, 2008
Sumter, South Carolina

B E F O R E:

THE HONORABLE R FERRELL COTHRAN, JR., JUDGE; and a jury.

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

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Attorney for the Plaintiff

ERNEST FINNEY, PUBLIC DEFENDER
Attorney for the Defendant

Kathleen Richardson, RPR, CRR
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THE COURT: Madam Solicitor, you can call your first case.

MS. FANT: May it please the Court. Your Honor, this is State of South Carolina versus Nathaniel Noel Bradley, indictment number 2007-390.

Mr. Bradley has been indicted by the Grand Jury of Sumter County for the offenses of murder and possession of a firearm during the commission of a violent crime. I also have a witness list to hand up.

THE COURT: Okay.

(Both parties approached the Court.)

THE COURT: Ladies and gentlemen of the jury, if you will give me your attention. The State has called the case of the State versus Nathaniel Noel Bradley.

I need to know if there are any member of the jury panel who is connected by blood or marriage or close personal friends to the defendant in this case, Mr. Bradley. If so, please stand.

Are there any members of the jury panel connected by blood or marriage or close personal friends with the alleged victim in this case, Ernest James; if so, please stand. All right.

I'm going to read you a list of witnesses which

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is rather lengthy. And so you're going to have to try to remember because what I need to know is whether you're connected by blood or marriage or close personal friends or social relations with any of the potential witnesses in this case.

Benny Barfield, Lubertha Bradley, Chonda Bradley, Matt Bramlett, Betty Choice, Calvin Davis, Tracy Drayton, Investigator Wesley Gardner, Bobby Lee Hughes, Latonya Johnson, Wayne Johnson, Terrell Johnston, Darrell Koenig -- probably butchered that -- Joe Leatherman, Claude Lloyd, Walter Lundberg, Sergeant Ray Mackessey, Josephine McCray, Leonard McCray, William McCray, Robin McCutchen, Donna Hall McDuffie, Sergeant Clarence McMillan, Bernice Nixon -- Nickens, I'm sorry -- Gloria -- yes, sir.

JUROR: One of the witnesses was -- one of the witnesses is a family member.

THE COURT: All right. What's your name and number, please sir?

JUROR: Juror number 57, Cedrick Gibson.

THE COURT: All right. Number -- which one of the witnesses that I just read out that you say you're connected to?

JUROR: McMillan.

THE COURT: Sorry. Couldn't hear you. Say that...

JUROR: McMillan.

THE COURT: McMillan? Donna Hall -- I'm sorry -- Clarence McMillan?

JUROR: Yes, sir.

THE COURT: Okay. Seated right there at the table?

JUROR: Yes, sir.

THE COURT: And how are you connected with Sergeant McMillan?

JUROR: Family member.

THE COURT: And what's your name and number?

JUROR: Cedrick Gibson, juror number 57.

THE COURT: And you say he's a family member. How close is he?

JUROR: Cousin.

THE COURT: Okay. The fact that he's your cousin, would that affect your ability to give both the State and this defendant a fair and impartial trial?

JUROR: No.

THE COURT: It won't?

JUROR: No, sir.

THE COURT: Okay. What degree of cousin is he?

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Do you know? Are you...

JUROR: First, second, I ain't sure.

THE COURT: How often do you see him?

JUROR: Not often.

THE COURT: Okay. All right, sir. Thank you, sir. Gloria Portee -- yes, ma'am. I'm sorry.

JUROR: You said know like two of the witnesses.

THE COURT: All right. And give me your name and number.

JUROR: Eileen Wactor, 143.

THE COURT: All right. And you know some of the witnesses I read out? And I haven't read all the list, and I probably should have got y'all to stand at the end of the list, but that's okay. Tell me, since you're up, who do you know?

JUROR: Lubertha Bradley and Chonda Bradley.

THE COURT: Okay. And the fact that you know the Bradleys, would that affect your ability to give both the State and this defendant a fair and impartial trial?

JUROR: No, sir.

THE COURT: Okay. Thank you, ma'am. Yes, ma'am?

JUROR: I know some of the Bradleys and Officer Clarence McMillan, Ray Mackessey, and a Drayton

witness.

THE COURT: And what's your name and number, please ma'am?

JUROR: Sandra Brailsford.

THE CLERK: Number 22, Your Honor.

THE COURT: Number 22? All right. The fact that you know some of these witnesses, would that affect your ability to give both the State and this defendant a fair and impartial trial?

JUROR: No, sir, I don't think so.

THE COURT: Thank you, ma'am. I am going to read the rest of this witness list which consists probably of another 20 names and then I'll ask all of you that know any of these people or are connected by blood or marriage or close personal friends to stand up and let me know.

Martha Ann Ransom, Samuel Reighley, Jerry Rooks, Dr. Joel Sexton, Major Daniel Simmons -- Simon, I'm sorry -- Eloise Sinkler, Gene Spann, Tracy Thrower, Captain Jamie Turner, and Doretha White -- all right -- Tanisha Williams -- I asked them about -- Josephine McCray, Paul Bradley, Calvin Davis, Donna McDuffy, Rick -- Lieutenant Rick Nelson, Deputy Robert Jones, Cody Rembert, Tracy Drayton, Martha Ransom.

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I think I have already covered her on the other one. Donnie Hawkins, Barbara Jean Williams, Verna Moore, Dr. Samuel Corbin, Tina Leon, Marie Spann.

Any member of the jury panel connected by blood or marriage, close personal friends, or social relations with any of the witnesses, potential witnesses in this trial, if so, please stand -- outside of those three unless you know other people on this list. Anybody else? Yes, ma'am.

JUROR: I'm related to Cody Rembert.

THE COURT: You're related to which one?

JUROR: Cody Rembert.

THE COURT: Okay. And how are you related to Cody Rembert?

JUROR: Second cousin.

THE COURT: And how often do you see...

JUROR: Hardly ever.

THE COURT: The fact that you're related to Cody Rembert, would that affect your ability to give both the State and the defense a fair and impartial trial?

JUROR: No.

THE COURT: All right. And your number again was...

JUROR: 143.

THE COURT: 143? Yes, ma'am.

JUROR: There are several witnesses I realize that I know and several officers.

THE COURT: The fact that you know these potential witnesses, would that affect your ability to give both the State and the defense a fair and impartial trial?

JUROR: Given the facts of the trial, I don't think so, but I just want to make sure that, that...

THE COURT: You could listen to the evidence that come from this witness stand and consider that evidence and give both the State and defense a fair and impartial trial?

THE DEFENDANT: Yes, sir.

THE COURT: All right. Thank you. The attorneys in this case are Catherine Fant with the Solicitor's office and Ernest Chip Finney, the defense attorney.

Are any members of the jury panel connected by blood or marriage, close personal friends, social relations, or having been represented or involved in any type litigation with either one of these attorneys; if so, please stand. Yes, ma'am.

JUROR: I'm Pam Rankin, 114. I sold -- realtors--

THE COURT: I'm sorry. I couldn't hear you.

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Tell me that -- I heard that you're 114, but I couldn't hear anything else.

JUROR: Pamela Rankin.

THE COURT: Okay. Mrs. Rankin.

JUROR: Ms. Fant bought a house several years ago. I was her realtor.

THE COURT: On -- for Ms. Fant?

JUROR: Uh-huh.

THE COURT: Okay. And you -- you are a realtor involved in her -- sell of her home?

JUROR: She bought a home through me.

THE COURT: Oh, I got ya. Would that affect your ability to give both the State and the defense a fair and impartial trial?

JUROR: No, sir.

THE COURT: Thank you, ma'am. Yes, ma'am.

JUROR: Yes. I'm Lorette Robinson. I'm juror number 122. And Attorney Finney and I have had some correspondence. He's representing my brother, the estate of my father.

THE COURT: Okay. Is that -- is that lawsuit ongoing?

JUROR: It's not a lawsuit, it was just -- stay -- letter that was sent by attorney Finney to me.

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THE COURT: Okay.

MR. FINNEY: At this point, Your Honor, the matter is still open. It hasn't been completely resolved. She's been represented by Mr. Weinberg.

JUROR: That's correct.

MR. FINNEY: And I received letters from Mr. Weinberg on her behalf.

THE COURT: Well, since there's an ongoing matter that's pending against the two of y'all, as an abundance of precaution I'm going to excuse you from service on this particular trial.

JUROR: Okay.

THE COURT: Thank you, ma'am.

JUROR: You're welcome.

THE COURT: Anybody else? Is there any member of the jury panel formed or expressed an opinion about any of the issues or matters involved in this case; if so, please stand.

Is there any member of the jury panel have any bias or prejudice either toward the State of South Carolina or this defendant; if so, please stand.

Any member of the jury panel served on the Grand Jury for Sumter County that heard any matters involved in this case; if so, please stand.

Any member of the jury panel due to your

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religious convictions are unable to judge anyone; if so, please stand.

Any member of the jury panel know any reason whatsoever that they can't give both the State and this defendant a fair and impartial trial; if so, please stand. Are there any further questions concerning the State?

MS. FANT: Your Honor, there was a witness that was not in here when you were just asking that, one of our witnesses who is a family member, and we would just ask that he stand at this time to make sure no one knows him. Bobby Lee Hughes?

THE COURT: Okay. Mr. Hughes? Does any member of the jury panel know Mr. Hughes, connected by blood or marriage or close personal friends; if so, please stand. If you'd raise your hand again, please sir. Okay. Anything else from the State?

MS. FANT: No, Your Honor.

THE COURT: From the defense?

MR. FINNEY: No, Your Honor.

THE COURT: All right. Mr. Clerk, you can give us a jury.

THE CLERK: Thank you. Five and 10. We are going to select two alternates?

BAILIFF: Yes, sir.

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THE COURT: And one and two on each alternate.

BAILIFF: Ladies and gentlemen, when your name is called, come through the double gates here in the center or the single gate on this side, whichever is convenient.

Bring your personal belongings with you. Come up here to the rail, turn around and face the back of the courtroom.

Juror number 18, Jeanette Bolden Tucker (black female). Right in the middle, please ma'am. What says the State?

MS. FANT: Please present the witness (sic).

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the witness.

BAILIFF: Have a seat over here in the jury box to my left.

MR. FINNEY: Juror.

MS. FANT: Thank you.

BAILIFF: Juror number 57, Cedrick Gibson (black male). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please excuse the juror from this trial.

BAILIFF: Have a seat back in the jury panel.

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You have been excused from this jury trial, please sir. Juror number 12, Jackie Bennett (black female). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 104, Samuel Parks (black male) Stand in the middle, would you, please sir. Thank you. What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Swear the juror.

BAILIFF: Have a seat in the jury box, please sir. Juror number five, Sean Ardis (white male). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please sir. Juror number 78, David Kirven (white male). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please excuse the juror from this

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trial.

BAILIFF: Have a seat back in the jury panel. You have been excused from this trial, please sir. Juror number 55, Gwendolyn Gaymon (black female). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 150, Cynthia Wolff (white female). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 19, Mark Bordeaux (white male). What says the State?

MS. FANT: Please present the witness -- the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please sir. Juror number 95, James Mcfedden (black male). What says the State?

MS. FANT: Please present the juror.

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BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please sir. Juror number 125, Mark Satterthwaite (white male). What says the State?

MS. FANT: Please present the juror

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please sir. Juror number six, Steven Arscott (white male). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please sir. Juror number 134, Michelle Sturms (white female). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please excuse the juror from this trial.

BAILIFF: Have a seat back in the jury panel. You have been excused from this trial, please ma'am. Juror number 132, Mary Stewart (white female). What says the State?

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MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please excuse the juror from this trial.

BAILIFF: Have a seat back in the jury panel. You have been excused from this trial, please ma'am. Juror number 109, Lorae Pressley (black female). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 10, William Bellinger (white male). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Swear the juror.

BAILIFF: Have a seat in the jury box, please sir. Alternate juror, juror number 144, Ernest Wactor (black male). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please sir. Juror number 91, Clarissa McClellan (black

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female). What says the State?

MS. FANT: Please present the juror.

BAILIFF: What says the defendant?

MR. FINNEY: Please swear the juror.

BAILIFF: Have a seat in the jury box, please ma'am.

THE COURT: Are there any matters of law concerning the selection of the jury on behalf of the State?

MS. FANT: Nothing from the State, Your Honor.

THE COURT: Behalf of the defense?

MR. FINNEY: No, Your Honor.

THE COURT: Okay. Mr. Solicitor, you want me to send the panel to the other courtroom?

MS. FANT: Please, Your Honor.

THE COURT: Ladies and gentlemen of the jury panel who were not selected to serve on this case, I am -- send you down to the small courtroom...

(Whereupon there was a pause.)

THE COURT: Ladies and gentlemen of the jury, I have been informed by the attorneys that we have certain matters of law that I have to deal with before we actually start taking testimony in this case.

So instead of having y'all go back -- and I

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don't have any idea how long that will take. So instead of y'all having to go back and sit in the jury room while we deal with those matters I'm going to send you to lunch and ask you to be back in the jury room at 3:00.

And we will deal with hopefully all the matters that we need to deal with and start the testimony at 3. But let me give you an idea about planning the rest of your week.

Normally we are going to start court about 9:30 every morning. We'll take a mid-morning break, we usually break about 1:00, come back about 2:30 and go till five or 5:15 or 5:30.

I'll do everything I can to try to break at 5:00. Sometimes we're in the middle of testimony, it's just not conducive, we can stop right at 5:00, so we may run a little later than 5:00.

If any of you have issues that you need to phone home or whatever, we will certainly accommodate you on that matter, but I don't anticipate staying real late at least until we give you the case to deliberate.

If any time during the testimony in this trial you need a break, like I say, I'll try to break every hour, hour and half, but sometimes it doesn't work

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out that way, just simply raise your hand because it's very important for you to listen to the testimony.

Your job in this case is to decide the facts, decide the true facts. My job is to decide the law and what you can and can't hear, but your job is to decide what the true facts are.

So it's important for you to be listening. And if you're uncomfortable and you need a break, you can't pay attention. So if you'll just get -- raise your hand and get my attention, I'll stop, send you out for a break, we'll come back and then resume the testimony.

And I'm going to tell you throughout this trial you can't discuss this case, and I'll go into more detail when you get back after lunch, but you can't discuss this case with anybody else, you can't read anything in the newspaper, you can't listen to anything on the radio or TV because you have got to decide this case based on what you hear on this witness stand.

So you can't talk about it when you go home in the evening. Your family members will want to know what you're doing. They're going to all have an opinion as to what you should do. Well, they're not

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here.

You're the only ones here, so you have got to decide this case based on what you hear on this witness stand. I'm also not going to let you talk about this case in the jury room.

And I know a lot of times you say, well, why can't we go back on a break, we can't discuss the testimony we just heard? And the reason you can't do that is because you may say something to your -- you may form an opinion and tell your fellow jurors about that opinion.

Well, later when you do hear all the evidence, you're going to want to defend the opinion you had early on in the case. So I don't want you forming an opinion or telling eachother what your opinion is till you heard all of the evidence because it would only -- that's only time properly that you can start forming your opinion.

You hear both sides of the story, all of the evidence, then it would be proper for you to form an opinion. So that's why I'm going to tell you, don't talk about the case when you go to the jury room.

And I know many jurors say, why can't we talk about it? That's the reason why. Because you may come up with a theory early on in the case which may

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not be true, and I don't want you to be sharing that with each other until you've heard all of the evidence from the witness stand as well as the law that I charge you on.

And then -- and then and only then can you start discussing this case and start forming an opinion as to what the true facts are. So that's why I'm going to tell you early on and I will remind you throughout this trial.

Because it's very important to the State of South Carolina and this defendant that you sit here with an open mind and you listen to the evidence and you listen to the law and you do what's right. And that's all that we ask you to do.

Having said that, have a nice lunch. Come straight back to the jury room at 3:00 and we'll -- I will hopefully be in a position at that time to bring you in and start the testimony in this case. Thank you.

(Jury left the courtroom at 12:00 pm.)

THE COURT: Okay. I understand we have some pretrial motions?

MR. FINNEY: Yes, Your Honor. Your Honor, if I may, I will hand up a copy of a motion that was filed on November the second, 2007. It's entitled notice

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of motion and motion to quash the indictment.

The -- the defendant, Mr. Bradley, Your Honor, would move that the information in the indictment and the information that we have gathered through the process of discovery leads us to believe that there is a inability in the evidence to show that the crime of murder that has been charged was actually occasioned in the county of Sumter.

There are no witnesses to this unlawful killing. There are no determination as to what day it took place on. There's no determination from the evidence that we have been given as to what county it occurred in.

And based on that it has been difficult for the defense to post an alibi, get an alibi ready because we don't know what day, what time, what place we're supposed to be alibiing for.

But moreover, and over and above that, the State has the burden of showing with competent evidence that the crime occurred in Sumter County on a particular day, and there have been an allegation in the indictment of that, but there is no evidence to support that, and we would ask the Court to conduct a hearing on that and to rule in our favor on the motion to quash the indictment.

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THE COURT: And your motion to quash is based on venue or jurisdiction or -- or...

MR. FINNEY: It's a venue argument, Your Honor.

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

MS. FANT: First of all, Your Honor, I believe that the motion would be more appropriately couched as a directed verdict motion that would be made at the end of the State's case if we did not prove it. Typically the case law, that's the way they -- they have raised the issue.

In any event, I do believe that the cases on venue support the State's position in this case. The bottom line is is that frequently murder is committed and defendants try to hide it. And there may be two or more than two counties involved.

But the law on it is that it's the State's burden to show any evidence. Even slight evidence is sufficient if no contrary evidence is available that shows the crime committed here in Sumter is sufficient.

State v Brisbon, State v Williams, State v Brisbon was 323 Se 324 474 SE 2nd, 433, a 1996 Supreme Court case where they specifically said under the low threshold there is the sufficient evidence

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where someone who worked in Lexington, there was some blood found there and there was palm print found there, that that was sufficient.

And also in State v Williams 321 SE 327, 468 SE 2nd, 626, a 1996 opinion from the Court was a case that actually crossed state lines where the victim was abducted from Georgia, but the victim -- there were two -- abducted from Georgia, I believe Augusta, and the bodies were found in South Carolina.

And the Court found that based on the fact that the bodies were found there, that without sufficient evidence that the evidence -- and the van was burned -- bodies were found in a van that was burned in Edgefield County, that that was sufficient to establish venue.

Basically venue is not jurisdictional. So this is not a jurisdiction issue, it's just a question of which would be the appropriate county.

Frankly if there is evidence in both counties, it can be tried in either county. And in this case we have the defendant last being seen in Lee County, but we have the body being discovered in Sumter County, and we have the vehicle that the victim was driving in Lee County, but we have the defendant seen in the vehicle driving on the morning of the Sunday

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within the indictment. And we -- that was in Sumter County actually here where the body was recovered.

So under those -- that evidence, we would believe there is sufficient evidence, although I would -- I believe this motion is really more appropriately addressed after we present our case.

THE COURT: All right. Anything further, Mr. Finney?

MR. FINNEY: No, Your Honor.

THE COURT: Okay. And I think based on State v Owens as well as State v Brisbon that at least at this point venue in a criminal case need not be affirmatively proved if there is sufficient evidence which can be inferred.

I haven't heard any evidence in this case. But -- but that is the standard. And so until I hear the evidence, I probably won't be in a position to determine whether there's sufficient evidence, that venue could be reasonably inferred.

And so it -- at the end of the State's case, if you renew the motion, I don't know, but at this point I -- the State seems to understand what its burden is in that -- and that I think the State v Mcleod as well as the other cases, there's a number of cases on this point, that the State can elect.

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In many of the cases the victim was last seen in one county, the body was found in another county, and if there's, you know, sufficient evidence to show that -- that a jury may infer which county has venue, it can go forward.

So after I hear evidence -- and assuming that there will be some evidence presented -- then I will rule on that at the directed verdict stage.

MR. FINNEY: Thank you, Your Honor. Your Honor, the next matter would be something we discussed pretrial. It was about prior record testimony. I have been put on notice of their -- the State's intention to introduce evidence of prior convictions.

I understand now that that is only going to be done if there is a rebuttal or -- offered or -- offered in rebuttal to the defendant's testimony.

So I can -- I can -- I have a position on the matter and I can put the position on the record at a later time. Don't have to do that now. I did want the Court to be aware of the fact that we would object to any introduction.

Apparently my client has a prior arson charge from I think 1986. 1983.

THE COURT: Okay.

MR. FINNEY: And we would object to any -- any

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introduction of any evidence related to that charge on several grounds.

THE COURT: And we can either argue them now or we can argue them at -- it's my understanding that it would be admissible unless your client in fact takes the stand.

And he'd be -- if I allow it in, he'd be subject to being impeached and cross-examined on his prior record. Obviously he's -- under the rules he's subject to being impeached and cross-examined on the record that follows the rules. IE, that carries more than a year and not deals with... honesty or whatever. And just as you pointed out, everything within the last 10 years.

Now, if the State gives you notice that their intention to use a criminal record that would otherwise qualify but it's over 10 years old, and the Court would weigh its, you know, prejudicial value over its probative effect at that time.

But if you -- if your client intends to take the stand, we certainly can deal with that at that point in the trial.

MR. FINNEY: Thank you, Your Honor.

THE COURT: But again, he needs to understand that since they did file notice on you, there's a

possibility that that would come out against him in his decision as to whether or not he wants to take the stand.

MR. FINNEY: Yes, sir.

THE COURT: All right, sir.

MR. FINNEY: Your Honor, the last matter I believe we have this morning is the issue of some oral statements.

I would state for the record that we had a November 2nd hearing in front of Judge Milling and supplemental rule five information was given to me as a result of that hearing.

This supplemental information came as a two page report, not dated and not signed, which purports to be a summary of the recollections of a witness -- I believe Investigator McMillan -- as to things that were asked of Mr. Bradley during investigating conversation prior to Mr. Bradley being arrested.

He was not in custody. He had voluntarily gone down to the law enforcement center on two occasions to talk with the officers about the death of Mr. James and about Mr. Bradley's recollection of his whereabouts.

That statement now has been supplemented as of Friday, two days ago, by an additional supplemental

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rule five disclosure which is a two page document which purports to again summarize conversations and recollections by Investigator McMillan about events, questions, and things that were said on the day or two day investigation preceding the finding of Mr. James' body.

I am officially objecting to both documents in terms of their timeliness in being presented to me because at the time the first one was given to me the case was about two years old, the next one is given to me about three days ago, the case is two and a half years old.

And these documents -- these purported reports or recollections were not given to me initially when rule five was sent and they apparently weren't even prepared here.

And that I would object to them as being untimely and being of such a nature in that they're not reports that were made at the time of the investigation and then turned over to me later.

They were actually reports that were made within the last three months after two years of the case sitting on the shelf waiting for it to come to the -- to the Court.

We would object to any testimony being elicited

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by Investigator McMillan or other police officers regarding questions that were given to Mr. Bradley or responses by Mr. Bradley that took place in May of 2005 as a result of the investigation into the death of Mr. James.

THE COURT: Okay. What says the State?

MS. FANT: Well, I guess my first response would be I take by what Mr. Finney has said that he is not objecting to the voluntariness of these statements, so we really don't need a Jackson v Deno, he -- if he agrees that the -- the statements where he was not in custody, he voluntarily came in and he gave them.

THE COURT: That's what he told me, so I assume that's correct.

MR. FINNEY: Well, Your Honor, I -- I can't say that completely because the last paragraph of the document that I just received on Friday says that on Friday, May 27th, Bradley was taken into custody and placed under arrest for the murder of Ernest James.

Then it goes on to talk about some things that Bradley said. So those would obviously be under Jackson versus Deno.

MS. FANT: I can address that quite quickly, Your Honor. We are not going to call that witness. We have actually been unable to locate her. So

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the -- well, last or third paragraph about Friday is completely out.

MR. FINNEY: All right. So...

THE COURT: So in -- well, his objection at this point to me is a timely objection in that he was not provided this rule five information I assume within the timeframe allowed by the rules.

Now, part of what he told me was he received a supplemental report as a result of the hearing on November the second in front of Judge Milling.

Now that report I assume you -- is timely because it was given to you 10 days before trial; right?

MR. FINNEY: Yes, sir.

THE COURT: So your only timely objection is the one that was given to you Friday.

MR. FINNEY: Right. And the overall objection on both of them is that the material that is sought to be introduced is unreliable and not of a nature that should be allowed because it's information that apparently the officer got two years ago, but he only wrote down either a week ago or three months ago and was only given to me shortly thereafter, after it was written down.

THE COURT: Okay. What says the State?

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MS. FANT: The first thing, Your Honor, is that clearly in Sumter County we're still in a learning process about what needs to be turned over to the prosecution in order to turn it over.

I didn't know about these oral statements for quite a while. And I know that I am charged with knowing everything that the law enforcement has.

But that's why we have the motion in front of Judge Milling, and at that time he denied Mr. Finney's motion that they were untimely as long as they prepared them at that time and got them to him forthwith, which we did.

At that time Investigator McMillan, Investigator Gardner, Investigator David Florence, and Sheriff Anthony Dennis were present for a hearing that we held before Judge Milling and told them exactly -- told the Judge what had happened.

Basically what happened was Sheriff Dennis knows the defendant, knows his family. When some of the things began to point that way, he called someone in Mr. Bradley's family and asked him if he would be willing to come up to the law enforcement center. He did do that.

At that time it was Investigator Wesley Gardner, Lieutenant -- now Lieutenant David Florence, now

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Sergeant McMillan and the Sheriff met with him and just talked about some things.

During that time it became apparent that he made some statements that they did not believe were true and they followed up afterward.

Everything that is in both the initial disclosure of these oral statements and the supplement that we gave Mr. Finney is -- is in either notes or they -- they -- they recollected it at the time. This was not something they sat around and made up afterward.

But what had happened was because they were oral statements and because they were not either voice recorded on an audio system or video recorded, the only way they have to record them was to have them set forth what he had said, and that's what they did, and they all were in agreement on that, that on that day that's what he said. And we did turn those over then.

As to the last one, which is the last two, those came up in the course of investigation when Investigator Gardner and Sergeant McMillan had just overlooked it when they were making the initial one, and it came up and I asked about it, and it was apparent to me last Friday, which is when I found out

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about the other two -- two statements, about one of them having to do with an injury to the defendant's eye and one of them having to do about a -- or claimed alibi -- that when Mr. Finney provided us with the alibi notice, that the second one, then became apparent that we needed to -- to deal with that because he had said something during that interview that he had.

Your Honor, the State's position would be that there is under rule five a continuous duty to disclose. There were certainly no intent on the prosecution to hide this evidence.

In addition, I mean, these are statements from the defendant that he himself made. And he certainly would have known that he made these statements at the time.

We did provide them to Mr. Finney in as timely a fashion as we could, and as I learned about it and we got together and got ready for trial.

And as far as what they disclosed, I think the only real issue goes to timeliness of whether or not they have been properly provided because as to the reliability of the statements or the credibility or whatever, that is an issue for the jury to decide.

The witnesses will be on the stand. They will

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relate what he said to them at the time, and Mr. Finney can certainly cross-examine them on that point.

So I don't think the fact that it is oral statements reduced to writing is a credibility or a reliability issue because frankly that is the only way to give them notice of what the oral statements were when there's not a recording or a video.

And just as to the timeliness issue, we believe that under the first one he's had several -- at least a couple of months to look at that. And the last one being two short statements, it's not exactly a long statement or anything like that.

They take less than half a page of the criminal supplement. And because of that and because we don't believe that either one of the statements is prejudicial to the defendant, we would ask that they be allowed to be admitted.

THE COURT: Mr. -- what -- so I assume, Mr. Finney, that as we talked about earlier, you're not objecting to the timeliness of the statements as a result of the November 2nd hearing in front of Judge Milling.

MR. FINNEY: Well Judge, I mean, on the record I am objecting because obviously in November after two

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years we feel like it's unreliable and it was -- it's not been given to us in discovery for a long period of time.

I'm not going -- the case was two years old in November. We hadn't had discovery that long. We only got discovery probably in June or July of 2007. I believe that's correct because Mr. Bradley was actually re-indicted by the Grand Jury for the same charge for some reason.

His case was sitting for a long time and -- but he got indicted, then he got re-indicted. And I think that's when we got the discovery. So I mean, the objection is, yes, sir, that they both -- both of the supplementals that were given were untimely in the sense that they should have been information -- she's saying now that the officers had notes and other things that they relied upon to make these records.

Well, they should have given us those notes. They shouldn't have been in a -- it should have been in an official incident report or summary from May of 2005 instead of from an undated, unsigned summary given to us in November, 2007, and it's January 2008.

So the objection is that they were untimely on both occasions although we have had notice of one for

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the last three months, we still feel like it's unfair and unreliable to let that information go to the jury because -- because he wasn't in custody, because they didn't mirandize him, because he didn't have a right to counsel, we have no way to show that the statements were made other than him getting on the stand and saying I didn't make them.

And it puts us at a loss because now we have to defend information that's not in any report, that wasn't witnessed by anybody like, you know, his mom or daddy or whatever, and didn't have a lawyer present, didn't have a right to have a lawyer present because he wasn't under arrest.

THE COURT: Well, and I understand. But as far as -- I mean, either the statement is an incustodial interrogation, it's voluntary or not voluntary or it's not an incustodial interrogation.

You told me in the beginning that this was not an incustodial interrogation. He was not in custody. He was not under arrest. He voluntarily came to the Sheriff's Department and discussed something with officers.

And then after the hearing on November the second it's my understanding that at that time the State provided you with a report that was a summary

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of their recollection of what your client told them at that particular time. Certainly that's allowable under the rules.

Now, you can argue that goes to the weight of the testimony, and you certainly can argue to the jury as to what, if any, weight they want to give that statement for the reasons you just pointed out to the Court, but not necessarily the admissibility of it.

Now, I don't know what -- and certainly you've had three months to deal with whatever is in that statement that was given as a result of the November 2nd hearing.

Now, the information you got Friday I assume based on what the State tells me comes from the alibi motion that I heard last week as well as whatever conversation that you had with the State.

Now, I don't know what the statement you got Friday says. How -- how is it prejudicial as far as how is your client prejudiced?

MR. FINNEY: Well again, Your Honor, the two paragraphs that I was given on Friday relate back to the two days in May when Mr. Bradley voluntarily went down to the police station to talk to the police.

Neither one of these statements that was given

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to me last week was referred to or mentioned in this statement that was given to me in November.

THE COURT: I understand that. But the test that I have at this point is, she's explained that -- and I don't know what the statements say, but that information didn't become important or whatever in this case until Friday after their conversation with you.

The test that I have is first whether it's admissible under the rule. It is a statement of your client that is normally admissible under our rule.

The next question is, how was your client prejudiced by getting it late versus if you'd have gotten it back in November or in May, how is he prejudiced because you only got it Friday versus any prior time?

MR. FINNEY: He's prejudiced, Your Honor, because we feel that this is an example of how the State would intend to show some facts which are unreliable.

And here's why we think it's unreliable. The first paragraph talks about talking to -- Mr. Bradley talking to Investigator McMillan. One of them noticed that Bradley had an injury to his eye and asked him about it.

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Bradley stated he had been painting and a limb or branch caught him in the eye. That had nothing to do with information that we turned over to them about alibi.

THE COURT: Okay.

MR. FINNEY: It's information that they obviously knew in May of 2005 and didn't turn over to us in November of 2007 when we got the first supplemental, and it wasn't included in anything when we got our regular discovery package probably in June of 2007.

And so what we're saying is, here is a situation where we didn't tell them about some -- like he went to the hospital or he was wearing a patch or something like that.

We didn't say anything like that in the alibi. They have now added it on top of information which apparently they had all the time, and it wasn't disclosed on a previous occasion.

THE COURT: Okay.

MR. FINNEY: The second paragraph talks about events on Wednesday, May 24th, which is the second day of the investigating, and it talks about him not answering questions the same way or having inconsistencies and changing his -- his -- his story.

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THE COURT: And what about that, Ms. Fant?

MR. FINNEY: And let me just finish.

THE COURT: Oh, I'm sorry.

MR. FINNEY: I believe -- I was just going to try to relate it back to the November package that I received. Because in the November package that I received, on the second page it says that Bradley was asked why he, you know, in other words, he had a story he had given the officers, the officers had checked it out and found it not to be true, and so Bradley changed his mind or made some different statements.

So they were aware, according to them, in May that he had made inconsistent statements. January the 13th, which was Friday -- I believe that was Friday -- is the first time we were aware that he made inconsistent statements on that first occasion being interviewed, and yet they have this information in November, didn't turn it over to us.

They had it apparently during the first discovery package and didn't turn it over to us then. So we think these new things are -- are in evidence of how unreliable the statements are and how they shouldn't be allowed to introduce them at this point because they had an opportunity to do that in

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November. They didn't do it then.

And nothing has changed as far as our notifying them of alibi that would allow it to come in as new information.

THE COURT: Is that -- what says the State?

MS. FANT: Your Honor, again, I think the -- the reliability and the credibility issue goes to -- is an issue for the jury, and he is entitled to cross-examine the witnesses on that, why didn't he write it down earlier, why didn't you write it down at the time, you know, and they will have to explain that.

But as far as it goes, the -- he had, as he admits -- well, one part of it, at least two to three months. The one that I gave him Friday there are exactly two issues that came up.

One is one sentence. On the second one is two sentences. In the first one it was that both of them happened when he came for voluntary interviews. No question about that.

And this came up when we began to talk with some other witnesses who indicated the eye injury, and that jogged their memory, and they said, oh yeah, he had it, we asked him about that, and that is what he said.

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The statement would be a one -- one line sentence that he stated he had been painting and a limb or branch caught him in the eye.

Certainly that was not something I actually knew about, although I know that I am charged with knowing what the law enforcement knows, because I never saw Mr. Bradley until that injury had healed, but certainly he was aware of it and the witnesses, in fact, that he has put on his witness list were aware of it. So we're talking about one -- one statement, a one sentence statement.

The second one is in response -- it is in response to the second alibi notice. The first alibi notice that Mr. Finney gave us, as I believe we discussed the other day, was just a list of people. It didn't say where the defendant was, who could testify where he was or anything.

Last week the defendant -- it was actually a week ago Friday -- after hours I got a -- it apparently came in over the fax on Friday evening that he had fleshed out the alibi.

And even then as you know because we had a hearing last week on him, we didn't even have all the information, but we had a general idea, and one of those things was that he was claiming to have been in

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an abandoned house that he had been painting and that's where he had gone during a certain particular period of time.

Again that then puts into play part of the conversation that he had originally said where he was confronted about his second statement that he gave was untrue when he said that he had stayed in this house, he didn't tell them specifically what it was.

We still have had to investigate that and find out. The only thing there would be that when asked if he could -- the only thing different that is not what he wants to say -- because he wants to get it in his alibi -- is that he left just before dawn and a man was out watering his grass and possibly saw him.

That would be the only thing that the defense would not be aware of. He would certainly -- Mr. Finney would certainly be aware that he said he stayed in a house that he had been painting and that he had gone there Sunday morning and stayed because that was part of his alibi notice that he gave us.

That's when I became aware of it. So what we're talking about here is that when asked about that, he said he saw a man watering his grass. That would be the real substance of that.

And I think that out of these two basically one

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line oral statements from the defendant, that he has had good sense last Friday, certainly has had a time and an opportunity to discuss this with the defendant, and we feel that he's not prejudiced in any way and would ask that they be allowed.

THE COURT: Okay. You got a response to that, Mr. Finney?

MR. FINNEY: No, Your Honor.

THE COURT: Well, the question that concerns the Court is, at this point in the criteria, were you prejudiced, was the defendant prejudiced in any way by the delay in, you know, or the timely fashion which the State provided you with this statement.

Now, my understanding is he had an injury to his eye which I assume was somewhere else that somebody had observed that prior, and his explanation to the injury is a limb hit him in the eye while he was painting.

Your argument is, well, that's not reliable because they didn't write it down in their recollection. And you know, the weight or the reliability of the evidence is something the jury should consider versus the admissibility of it.

So if it -- the -- not be admissible, I need to find that in fact -- it's normally admissible

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evidence because your client made the statement, but the fact that you didn't get that information till last Friday somehow prejudices versus you'd have gotten it two months ago.

So what -- my question to you is, how is he prejudiced by -- by them recalling that he claimed he had an injury to his eye as a result of a limb hitting him in the eye while he was painting is the first of the two issues.

The second issue -- I'm still not real clear on what the second issue is they are trying to introduce.

MR. FINNEY: Well, it kind of boils down now, Judge, to apparently they may have a witness who knows the injury which wasn't documented in any of the discovery.

THE COURT: But I don't know that that -- that's something they have to provide you with. I mean, the fact that the witness says he had an injury, if there's -- then that's not something they normally have to provide you with. That is an observation of a witness and not a statement of your client.

MR. FINNEY: Well, it -- it all draws out of the fact that nothing was done officially in my opinion to record the information of the investigation in May

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of 2005.

There's nothing about talking to Bradley about injury. There's nothing about any inconsistencies except that -- that part I did tell you about, the inconsistencies about whether he had been to Ms. McDuffy's house or not. That's a different issue. I was only on notice of that in November.

THE COURT: Right.

MR. FINNEY: Now I am on notice of two new issues that they have had to know about in November because nothing has changed since November except that I gave them alibi time and dates and places and people he was with.

But none of these -- so what I'm concerned about is being prejudiced about is that there may be witnesses out there who are going to testify about things that weren't in the original discovery, weren't in the first supplemental, and they are not even listed in the second supplemental.

This information is McMillan's information to the State. So it's not even a full report of who may have seen his eye, what comments they -- if Bradley told one person--

THE COURT: Not discoverable.

MR. FINNEY: If Bradley told one person he was

in a car wreck and then told McMillan that he hurt it painting, his eye, then that's something I should be able to know about to prepare for.

THE COURT: I understand that. But -- but my understanding of the rule five is they're not required to tell you what it -- any statements he made to private witnesses, simply those he made to law enforcement, unless they have a written statement of a witness, and they only have to provide you that written statement once the witness takes the stand, that they don't have to give you statements of their witnesses.

They only have to give statements of your client and any reports or photographs or whatever that they intend to introduce. So...

MR. FINNEY: But they do have to give me investigative summaries, scientific reports, and things of that nature, and none of these items that we are talking about were put into any investigation -- I got the summaries.

There's nothing about any of this matter in any of the summaries. That's why they have given it to me as supplemental.

THE COURT: I understand that. And for whatever reason the police did not feel at the time was

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important. But now that's why you've got these supplements, that they have recalled or at least put in -- given you notice that your client said these things as a result of a November 2nd hearing.

Now, as far as the timeliness, you know, I think that you have had adequate time as a result of Judge Milling's hearing and that your client is not prejudiced on a time factor.

The question before me today is, is your client prejudiced because he only got this information Friday. Obviously the information is somewhat prejudice or it wouldn't be offered.

But I have -- the question I have is if you had gotten this in November or last May versus Friday, what's the difference in the prejudice factor?

MR. FINNEY: Well, the prejudice factor would be, based on my getting it -- if I'd gotten it three months ago, my motion would be on the unreliability of it and how it is unsubstantiated because this is the second go-around and it should have been given to me at least by the first go-around which was in November.

THE COURT: I understand that. But as far as the reliability issue, that doesn't -- that's -- determination of the weight the jury gives it.

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You're arguing that it's not reliable because they didn't make -- they didn't -- it's not in any report, therefore they -- the jury shouldn't consider it.

But the question is whether it's admissible in -- any statement that your client made to law enforcement is admissible normally. Your issue as well should be admissible because it wasn't timely given.

And the question goes to that point. Okay, if I find that you were prejudiced because it wasn't timely given it to you, then it doesn't come in.

But if it was given to you Friday or two months ago or three months ago or six months ago, what I'm asking you is how are you prejudiced because you only got it Friday if you got it two months ago versus Friday.

MR. FINNEY: Let me just say this. I'm not sure whether or not there are other witnesses tied into this new information that came to me Friday. And they intend only to call Investigator McMillan to say what's in the report, that will be one thing. I don't agree with it, but that will be one thing.

But if they intend to call other people to corroborate or say things about the information that's in this report, then I have to have time to

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talk to them.

THE COURT: But you would not -- but they don't have to tell you who their witnesses are and they don't have to tell you what those other people are going to say in anywhere under rule five unless it's exculpatory under Brady.

So my understanding of the rules, they don't have to tell you all their witnesses and what their witnesses are going to say unless their witnesses have given a formal statement to law enforcement.

And then at that point, they -- they have to provide you with that statement when that witness takes the stand where you can cross-examine the witness on a statement they have given to law enforcement.

From a practical matter most judges require them to give that to you early where we won't stop a trial and give you time to review that written statement that they have given to law enforcement.

So I assume that there is no witness out there who has given their written statement to law enforcement.

MR. FINNEY: I would have thought that, too, until Friday when I got this new information.

THE COURT: Is there?

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MS. FANT: No, Your Honor.

THE COURT: So if she's telling me there is no written statements of some third party witness -- now, they can bring in a third party witness at any time in this trial and testify as to what they know about these issues and you would never know about that witness till they get on the stand if -- because it's nothing under rule five requires them to give you a list of their witnesses unless they have a witness that they know of who is going to be exculpatory and who has given a statement to them that tends to prove that your client -- or offer information that your client was not guilty or not involved in this crime.

So if -- if you're telling me that your client is not prejudiced by going and getting this information Friday, then it's admissible.

Your argument about the weight and the credibility is something the jury has to determine. You certainly can cross-examine whoever or whatever the law enforcement officer, the officers, is the fact that it wasn't written down, that they didn't deem important and it's been two years or whatever the timeframe and therefore their memory may be not as clear and that the jury should not give it very

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much weight. You've always got that argument.

But unless you can show me that you were prejudiced by only getting it Friday versus two months ago, it appears that it -- that it's admissible.

And you haven't -- you haven't told me that you're any more prejudiced by getting it Friday versus two months ago or 10 months ago. Is that correct?

MR. FINNEY: I tried to tell you how I was prejudiced.

THE COURT: You were prejudiced because the statement itself--

MR. FINNEY: Because the statement itself in my opinion --

THE COURT: Is not reliable.

MR. FINNEY: -- is not reliable.

THE COURT: But that opinion would have been the same no matter when you got the statement; right? If you had gotten that statement in November or last May or whatever, you still would have had that same issue. It's kind of like you had -- if you got information--

MR. FINNEY: The further in time away from the original discovery -- when they turned over the

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original discovery, said, here's what we have got, the further in time from that date that additional stuff comes in that's not related to any new witness coming forward or whatever, it -- it gets more unreliable.

And when it comes in two days before trial and relates back to the original incident two years ago, yes, sir, I believe that's when you should -- I believe the Court then has the duty to say, I don't believe Mr. Finney should have to deal with stuff two days before trial that was in the possession of the State which they could have offered two years ago.

THE COURT: I understand that. And if you were prejudiced, I would rule that way, if you were prejudiced in the timeframe.

It seems to be -- and the other issue is it's not like he's saying two days ago they've given you a statement and he's confessed to this whole time.

The most of what I have heard -- at least on one is -- is -- it helps your client. He's explained an injury that he did it with a stick while he's painting and in no way hurts him -- at least from what I can see as prejudicial toward him.

And it may be -- and obviously if it doesn't come in, you can't argue on the reliability of it.

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The -- the second statement -- since I haven't seen the statements, I don't understand what it says.

But if you can show that you're prejudiced by it, IE, you did not have time to investigate it, you would have had a witness to counter it if you had known about it earlier, then that's a whole different ball game.

MR. FINNEY: I understand, Your Honor, and please let my argument--

THE COURT: And I will. And it may be at the time it's being offered after I hear all of it, it may be some other rule that it's not admissible under and -- but it -- if you're not prejudiced by the time factor, then it -- then it seems to me it's admissible.

If you were prejudiced by the time factor, they only gave you Friday, then I probably wouldn't let it in.

MR. FINNEY: All right, sir. Thank you, Your Honor.

THE COURT: All right? Anything else?

MR. FINNEY: I don't think so, Your Honor.

THE COURT: Anything else from the State?

MS. FANT: Yes, Your Honor. There are a couple of matters that I wanted to bring up. The first is

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an issue that I was discussing with Mr. Finney earlier today.

In this case the vehicle was burned and left in Lee County on May the 22nd, 2005. On that day -- excuse me -- not actually -- not on that day, but on May the 25th, 2005, Special Agent Bruce Gantt with the State Law Enforcement Division came to Sumter at the request of law enforcement and actually went to Lee County to process the burned Volvo that the victim was last seen driving and the defendant was actually seen in on Sunday morning, and the blue Barretta which belonged to the defendant's girlfriend that he had been driving around.

Basically what has happened is that Mr. Gantt is deceased. He died last year. And there was -- contrary to normal SLED procedure, no one else was with him when he processed the vehicles.

The sole evidence that we have written is this little report, and I think -- did you hand it up to him?

THE COURT: Yes, sir.

MS. FANT: You can see. And so the question was in how to deal with that. There was some photographs taken, and in fact those are being developed -- they were developed this weekend and a law enforcement

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officer is picking them up from SLED today, and we will be able to look at them with Mr. Finney this afternoon.

And I don't even know -- he didn't know what they were on -- excuse me -- what was on the film, negatives, because Mr. Gantt is dead and he didn't know that.

So we were all going to find just out what is on those photos. But as far as anything else, my proposal was just to stipulate that there was a SLED special agent or whatever now deceased who processed both vehicles, he can't be called, but there was no -- nothing of evidentiary value that was found in either vehicle and leave it like that.

I don't think we can get into specifics because frankly we don't know other than what this statement says that no physical evidence suitable for scientific analysis was collected.

To discuss anything in specifics would be way beyond what we could even prove as the State or the defense given that Mr. Gantt is deceased.

I will say certainly on the State's behalf there's nothing that we can introduce that came from any of that, save for this picture which Mr. Finney and I will discuss after we get them back. But other

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than that, there is no -- there is no evidence.

So I was just trying to come up with a -- a possible solution to deal with that problem. I have one other motion. I don't you in you want to deal with this one first.

THE COURT: Okay. What do you say about that, Mr. Finney?

MR. FINNEY: Judge, I would certainly like the jury to know that SLED investigated the case, inspected the vehicles and found nothing in either car that was--

THE COURT: So do you have any objection to her proposal to simply informing the jury that the SLED agent who processed this scene is deceased and introducing this report or reading it or however -- basically says that no physical evidence suitable for scientific analysis was recovered.

MR. FINNEY: No, sir, I wouldn't object to that.

THE COURT: Okay.

MS. FANT: I will actually prepare a stipulation at lunch. We can talk -- so that's suitable to him to use.

THE COURT: Okay.

MS. FANT: The motion actually is a motion in limine, Your Honor, for -- to prevent the defendant

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in opening statement from referring to in particular two things, alibi and the coroner's request for autopsy that Verna Moore did unless he plans to call those witnesses who can testify to that.

We had a problem in a recent case that Mr. Finney and I tried where he made some statements during opening that were never backed up by any evidence.

And then when he rested without calling any witnesses, I was of course barred from even commenting on the fact that he didn't produce the evidence that he mentioned in opening.

The problem for us is that once that cat is out of the bag, we are unable to contradict it or mention anything without violating obviously his right to remain silent.

The reason I mentioned in particular my -- in my opinion that would refer to anything that is going to be evidence that we're not producing that he intends to claim as evidence that he's not going to actually produce into evidence.

In particular on the alibi, Your Honor, the only way we believe that he can even submit an alibi and get an alibi charge is if he presents his testimony and his own witnesses.

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And if he's not going to do that, we do not believe it is proper for him to be saying that the defendant had an alibi or that there will be alibi witnesses.

And secondly, the issue of the coroner's request for autopsy. As I'm sure Your Honor is familiar, there's a little form that's filled out by the coroner of each county that basically they send to the pathologist who is conducting the autopsy and it says, you know, we are granting you the right to conduct the autopsy or something like that. I can't remember specifics.

But in this particular case Verna Moore, who is the coroner in Sumter, filled it out, sent it to Dr. Sexton who is our autopsy pathologist, and then the next day Verna says -- Mrs. Moore says that someone called her from law enforcement and said, change the date from the 23rd to the 22nd.

And the 23rd was put on there because that was the date the body was found. We do not know nor do we intend to prove when Mr. James was killed. We have a theory and we will argue that theory, but we have no actual proof, and I don't believe the defense does either, as to when he actually was killed.

And so the problem with mentioning that is it

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makes it sound like that we -- there is -- there was a change in a decision, that a decision was made that he died on the 23rd and then we changed it to the 22nd when in reality -- first of all, that is not the case. And secondly, we don't plan to present Mrs. Moore as a witness.

And so if the defendant isn't planning on calling her himself, it's hearsay. I don't think the report would come in in any event. She would have to testify to it -- and that it would prejudice the State by making it sound like there's evidence that we are trying to hide from the jury.

And for those reasons we would ask that nothing be mentioned in opening that Mr. Finney does not intend to prove at trial.

THE COURT: What do you say, Mr. Finney?

MR. FINNEY: I will abide by the request of the State, Your Honor, and stay away from matters in opening that -- that might be subject to change as the case unfolds because obviously on the record I'm telling the Court now we do intend to call the defendant, we do have alibi witnesses, we do have Mrs. Moore on our witness list, and -- but we would very much hope that at the stage of the directed verdict we would be at a point where we wouldn't have

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to worry about putting up a case or cross-examining people or calling anybody as a direct witness.

So I will -- I will keep my comments to general matters of opening statement and we will see how the trial unfolds, Your Honor.

Obviously I -- I am prepared to call alibi witnesses and I am prepared to call Mrs. Verna Moore on the issue of this changing the date.

THE COURT: Okay. All right. Any -- and you understand the rules and you told me that you will abide by that and that's the understanding that if you do make statements in opening statements, then you can just -- and you -- whether this case gets by the directed verdict stage or not, I don't know. I have no idea what the evidence will be produced.

But if it does, then it may be that the State will be able to argue in closing argument certain things that would -- normally they would not be able to argue, but if you brought them out on your opening statement and did not back them up, then I may let the State, based on what it was, argue or explain to the jury those issues.

MR. FINNEY: I understand.

THE COURT: You understand the rules and I assume we will follow them. I will -- we will go

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forward on that.

MS. FANT: That should be fine, Your Honor.

THE COURT: Anything else?

MS. FANT: Nothing from the State, Your Honor.

MR. FINNEY: Judge, we had talked about a Jackson hearing, but I think we just resolved that.

THE COURT: Well, I -- we resolved it in that my understanding that there will be no in-custodial interrogation offered during this trial, that you --

MS. FANT: That's correct.

THE COURT: -- you agree that your client was not in custody at any time that any statements were given so that for the record -- now, if there were any statements that were given in custody, then we would have to -- to have a Jackson v Deno hearing.

But my understanding based on what y'all both telling me, there were no in-custodial interrogations done. Is that correct?

MS. FANT: Well, the only statement was that off-hand comment he made that we don't intend to introduce because we can't find the witness. And that was right as he was being read his rights, but we don't -- we're not going there.

THE COURT: Okay. So there's nothing going to be introduced in this trial as a result of any -- and

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you agree, Mr. Finney, that anything that they have given you was not done in custody.

MR. FINNEY: That's correct.

THE COURT: And miranda would not apply. All right, sir. Then anything else?

MS. FANT: Nothing from the State, Your Honor.

THE COURT: Okay.

MS. FANT: I would like to get Mr. Finney's idea on this, that maybe if he and I came back around 2:30, 2:40 we could look at the pictures and decide on any evidence that might be admissible without having to go through everything.

THE COURT: And that would be good. And you could pre-mark anything and try to make it go as smooth as we can.

MR. FINNEY: 2:30, Your Honor?

THE COURT: That a problem, Kathy?

MS. FANT: Oh, that Kathy.

THE COURT: Yeah. She has to be back for y'all to pre-mark them. She's -- but if -- y'all probably need a few minutes to agree before you need her. All right.

MS. FANT: Thank you, Your Honor.

THE COURT: Anything else we need to deal with before lunch then?

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MR. FINNEY: No, Your Honor.

THE COURT: We'll be in recess until 3:00 because that's what I told the jury, but I will probably be back early in case there's any other matters.

MS. FANT: Thank you.

THE COURT: Thank you.

(Court in recess for lunch.)

MS. FANT: We have the photos, and Mr. Finney has objected to some of them. Would you rather have us settle the -- that issue now or do it one by one as we...

THE COURT: Well, that depends on -- now, that it's five after three and I got a jury sitting back there. How long is it going to take y'all to settle it? I mean, maybe you can put in those that you've agreed on, and then those you haven't agreed on, I guess...

MS. FANT: It's the same witness is the problem. Ray Mackessey was -- who took them.

THE COURT: All right. Tell me about your objections.

MR. FINNEY: They have 20 photographs of the pond and the body in the pond. Some of the photographs are of the body as it -- the police have

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pulled it out of the pond which is not the state that, you know, it was found in, and so I object to those.

They have multiple photographs of the same item, so I -- most cases I have given them one of each, but I just didn't think multiple photographs of the same thing was necessary.

So we have got maybe 10 we agree on and 10 that I think are cumulative or not relevant or not technically evidence because the body wasn't in that location when the police got there.

The police moved it to the location out on the bank of the pond and took photographs.

THE COURT: Okay.

MR. FINNEY: And some of those I'm objecting to.

THE COURT: On the -- on the grounds that the police moved the body?

MR. FINNEY: Well, it wasn't -- they--

THE COURT: I understand. But I don't -- I don't know what they're trying to show. If they are trying to show a gunshot wound to the body, then--

MR. FINNEY: I gave them that. I gave them that. I gave them each gunshot wound.

THE COURT: I will let her tell me what she's trying to prove if anything with her photographs and

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her response.

MS. FANT: Your Honor, the pictures in the State's opinion are not particularly grapnic. I would like to hand them up for you to look at them. These -- let me make sure I got these right. These are the ones that you did object to; right?

MR. FINNEY: That's correct.

THE COURT: And my understanding he's not objecting to the fact that they are too graphic. He says they are cumulative on some circumstances and the body has been moved on the other one.

MS. FANT: Okay. Well, on the fact that they're cumulative, Your Honor, I think the State is entitled to present a full picture of its case. No two picture is identical, and I will hand those up and let you look at them.

And so we do believe they are different angles that are being shown and that we are entitled to show that evidence of the -- of the body.

In addition, as far as the body being moved, I mean, that's what they do. We're not claiming that these photos are taken when they right there. This is how you actually get the body close enough to document what had happened to it. So I don't think that's really a relevant issue.

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And they're not -- certainly would not testify that the body was -- I mean, Captain Turner, who is our witness who recovered the body, is certainly going to testify that he got in the water and brought the body to shore and how, you know, what happened.

I'd like to hand these up so you can take a look at them.

THE COURT: Okay.

MS. FANT: I'm trying to get them back in order so we do not have an issue with continuity.

MR. FINNEY: Well please, Judge, while you're look at them, look at the ones that we agree on first and then look at the ones we don't agree because I think you will then find the ones we don't agree are aren't adding anything to the case except graphic display of --

THE COURT: Okay.

MR. FINNEY: -- images that are upsetting.

THE COURT: Well, she -- okay. I will look at them.

(Pause while Solicitor showed the Court photos.)

THE COURT: And the ones that have handed to me that are number four, seven, eight, nine, 11, 12, 13, 14, 15, 16, 17, 19 and 22 are the ones that you object to. Of course, none of them that I see are

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the same picture.

They are all different angles of different aspects of what the State's I assume trying to prove, but I don't know that they're -- that they're necessarily cumulative.

I don't know what the testimony of the witnesses is going to be. If there's a different angle of different shots, I guess how the body was tied to a concrete block in different angles and respectively that and injuries.

So I don't know other than deal with them on a one by one basis when she offers to introduce them unless -- but if your objection is they are cumulative, they are all -- they are different.

Every one is different and it shows different angles. And you know, it's a close-up of a foot and a concrete block, then it shows the relation to what foot and the relationship to the whole body, so I'm not sure what they're...

MR. FINNEY: Well, Judge, if you don't mind, let me just... I mean, as I said, I tried to be as fair as possible. The ones that...

THE COURT: Well--

MR. FINNEY: For example, what I'm saying is the one that's been presented as photograph number nine,

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there is one in that stack that I --

THE COURT: Okay.

MR. FINNEY: -- there is one in the stack that's taken from 3 feet away that shows more detail, and that's the one I didn't object to.

THE COURT: This one?

MR. FINNEY: That's correct.

THE COURT: I understand, but that is a close-up of number 10.

MR. FINNEY: It is.

THE COURT: And I'm not sure what the witness is going to testify as to what that picture shows, that you get a better view of what that picture shows versus what this picture shows.

MR. FINNEY: Then I'd like to have the testimony taken en camera because otherwise a -- two things are going to happen.

Number one is I'm going to be objecting in front of the jury over and over and over and they're going to think I'm trying to hide something from them, and I don't want them to get that impression.

And number two, that anything that's being asked about, you know, the -- the facts in number 10 -- I mean, there's not anything different about number nine except it's closer view. It's more in detail in

number 10 than it is number nine.

THE COURT: Well, and I -- you say that. It shows more things in 10, but number nine is a closer view of the actual wire. Whether that's important in this case or not, I don't know.

MR. FINNEY: All right.

THE COURT: But if they--

MR. FINNEY: I will just have to object one by one, I guess, Your Honor, if you're going to make me do that. I just didn't want to do that.

THE COURT: You're objecting that they are cumulative. The State's position is that they're not cumulative and that they have a right to prove their case.

And they're not -- in that they're not pictures of the same -- they are not the same angle, same photograph. There's a different angle in every one of those pictures. They are not two pictures that are the same they see in any of this stack.

MR. FINNEY: All right. And so my objection is going to have to be, Your Honor, that we're going to need to take the testimony of the person who is going to talk about the pictures because, for example, in number 22, there's no detail of any injuries. It's just a picture of his back.

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THE COURT: And I understand that. Their testimony is that he wasn't hurt on the back. I don't know. The fact that there are no injuries on the back, it may be important in the testimony that the fact that he wasn't shot in the back. I don't know what -- you know, you are asking me to speculate.

MR. FINNEY: I don't want you to speculate, but I do want you to understand that each of these pictures carry some weight with it, and it's important for me to have pictures that talk about the evidence that we're here for and not things that are just basically emotional images.

THE COURT: I understand that. And -- but I assume -- until I hear the testimony, I don't know whether it's offered simply to prejudice the jury from an emotional standpoint or whether there's evidentiary values in these pictures, but they are not necessarily cumulative because they are not two pictures of the same thing.

MR. FINNEY: All right. And then -- so I would -- I would base it on the fact that my objection is going to be that on the pictures that we have objected to, most of -- all of the pictures of the body out of the water that we have objected to

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are not proper photographs because it does not show the position of the body as it was found when the investigators got there.

THE COURT: Okay.

MR. FINNEY: And in addition to the other pictures, the other pictures are cumulative to the pictures that I have already asked the Court to approve, and that they show no additional significant information.

THE COURT: Okay. And on your first objection then, I will overrule that in that -- and I don't say this is cumulative either. This is a different picture of a different angle, a different element.

I don't know what the State is offering as far as evidentiary, but they have a right to at least prove their case and put evidence. And the fact that the body was taken out of the water doesn't prohibit the picture from coming in.

Many times just like an autopsy, the body is taken out away from the scene and taken to a hospital somewhere. That doesn't prohibit certain evidence coming in from the autopsy.

The fact that the body was removed from the water, they obviously couldn't photograph him when he was under the water that they -- that the body was

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brought to the bank where certain injuries could be photographed as well as the -- how the body was tied to a concrete block.

So I overrule your objection on the first, the fact that it was taken out of water makes it unadmissible (sic).

Now, I don't find that they're cumulative based on what I have seen. Now based on the testimony, it may be cumulative. But certainly they have a right to some degree to get cumulative evidence as long as it, you know, the prejudicial value doesn't outweigh the probative value.

And in -- during the actual testimony, if you think that the prejudicial value outweighs the probative, you make an objection and I will rule at that time.

MR. FINNEY: All right. Well, Your Honor, for the basis of this motion now I would like it to run throughout the testimony so that I will not have to get up and stop the court proceedings --

THE COURT: I understand.

MR. FINNEY: -- but there may be some times when I will make a special objection. I will just refer back to the objection that's being made at this time.

THE COURT: All right, sir. Fine. Now...

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MS. FANT: I was just going to ask you, from that, does that mean that they're in over his objection so I don't need to go through the whole process for each photo or...

THE COURT: They are -- these are in without objection I assume, the first group.

MR. FINNEY: That's correct.

THE COURT: These are at least in based on the objection he has raised at this point. I do not find the fact the body's been removed from the water keeps this evidence out.

And I do not find based on what I see at this point that they're cumulative because they are different pictures. There's not a duplicate picture.

Now, so I assume at this point he doesn't have any objection. He may object to something and I will deal with it at that point. But right now these are in without objection and these are in subject to his objection.

MR. FINNEY: And I would like for them to be -- I don't know if the Court Reporter has got those marked, the ones that I object to, as far as the numbers on the front. We have a number -- can I just put it on the record?

THE COURT: Certainly. I read it out, but I

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will be glad for you--

MR. FINNEY: I just wanted the record to be clear.

THE COURT: Okay. The ones that you have objected to that I have ruled on is State's Exhibit number four -- and I'm using this number on the front. Now, it's no sticker on the back.

State's exhibit number four, number seven, number eight, number nine, number 10, number 12, number 13, 14, 15, 16, 17, skip 18, number 19 is the next one, and the next one is 22.

And y'all -- either one of y'all be glad to check behind me, but those are the ones you have objected to and I've allowed in subject to the two objections you have made at this point. Okay.

MS. FANT: And the ones that are in, Your Honor--

THE COURT: Are in without objection. And these are in, too, subject to his objection.

MS. FANT: What I might suggest at this point -- we had -- we had marked the concrete block and the hanger as State's one and two, just to change those, make the photos State's one through -- what is it, 24? Is that the last photo number?

THE COURT: Yes. And I can do it -- I know I

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got a 25, 26, 27, 28, 29. They're not...

MR. FINNEY: Twenty-nine is the last one on your sheet, Ms. Fant.

MS. FANT: Okay. So what we would have her do is one through -- let her go ahead and mark them and the State's exhibits one through 29, and I will bring this over and have her change the two that we have already marked as State's 30 and 31 probably be the same.

THE COURT: Is that satisfactory to you, Kathy? Is that...

COURT REPORTER: Sure. Just give me a second...

THE COURT: Sure.

(WHEREUPON, State's Exhibits 1-29, 30, 31 were admitted into evidence.)

THE COURT: Anything else from the State?

MS. FANT: No, Your Honor.

THE COURT: Anything else from the defense?

MR. FINNEY: No, Your Honor.

THE COURT: All right. Bring us the jury. Any reason we should not swear this jury?

MR. FINNEY: No, Your Honor.

(Whereupon the jury entered the courtroom at 3:20 pm.)

THE COURT: Thank you, sir. You may swear the

jury.

(Whereupon the jury was sworn.)

THE COURT: Thank you, ladies and gentlemen. We're about to begin the trial and the testimony in the State versus Nathaniel Noel Bradley.

And by this indictment he has been charged by the State of South Carolina with the offense of murder and possession of a weapon during a violent crime.

And I will explain to you in great detail at the end of this case what murder is and what possession of a weapon during a violent crime is.

But to these charges and to this indictment he has entered a plea of not guilty. Therefore it's -- the burden becomes on the State of South Carolina to prove each and every element of this indictment beyond a reasonable doubt.

Mr. Bradley has not -- does not have to prove anything. He comes into this court presumed innocent. And therefore it's the burden upon the State to prove the allegation in this indictment beyond a reasonable doubt.

Now, I tell you that this indictment is not evidence in this case. It's simply a piece of paper that brings the formal charges into this court.

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The evidence that you will hear will be -- will come from sworn testimony from this witness stand as well as any exhibits that are introduced in this trial as well as any stipulations made by the attorneys.

Soon as I finish talking to you, the attorneys are going to get up and do what we call opening statements which simply means that the prosecutor goes first since they have the burden of proof.

The Solicitor's office will get up and Ms. Fant will tell you what she -- what she thinks the evidence will take you in this case and basically give you a roadmap of where the evidence will take you over the next day or two in this case.

And after that, Mr. Finney has a right to get up and make an opening statement to you as well as to what he thinks the evidence shows or does not show you.

He's not required to make an opening statement because he doesn't have to prove anything. The State has the burden of proving this as I told you beyond a reasonable doubt, but in most times he probably will give you an opening statement.

After the opening statements you will hear the evidence from the witnesses from this witness stand.

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At the end of the case you will hear closing arguments from the attorneys, which is simply that, they are arguments where the attorneys will get up and argue to you what they think the evidence reveals in this case.

After both sides have given their arguments to you, I will then charge you on the law as to what's applicable in this case.

And as I will tell you then, if you have an idea of what you think the law is and what the law ought to be and it does not agree with what I tell you the law is, under your oath you have the duty to accept the law as I give it to you and apply the facts that you determine to be true in this case to reach a verdict that speaks the truth.

It's very important throughout this trial that you pay close attention because you -- your job is to decide what the true facts are based on the evidence.

If you make a mistake it's very hard to correct that mistake. If I make a mistake in the law, and some other place and some other time that will be reviewed and it may be corrected.

So it's important for you to listen and pay close attention throughout this trial because you're to determine what the facts are. The law does not

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allow me having an opinion about the facts.

And throughout this trial I can tell you right now I don't have an opinion. My job is simply to rule on the admissibility of the evidence and tell you what the law is.

So don't try to infer that anything I say during my rulings or in conducting this trial that I have an opinion. Don't try to read what I say. It doesn't matter what I think.

What's important is you make a determination as to what you think the true facts are based on the evidence that you hear from this witness stand and reach a verdict that speaks the truth.

And when you do that, the system works like it's supposed to and our criminal justice system works as it's supposed to do.

So I ask you, just like I told you earlier, if you need a break and I haven't taken one yet, please raise your hand and let me know.

If for any reason you can't hear -- and I need all 14 of you to be able to hear -- raise your hand. We need to have the witness speak up, we need to move the microphone around. It's very important that you hear the evidence that comes in this trial where you can make a true determination as to what the facts

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are. Madam Solicitor?

MS. FANT: Thank you, Your Honor. May it please the Court.

THE COURT: Yes, ma'am.

MS. FANT: Mr. Finney.

OPENING STATEMENT

MS. FANT: Ladies and gentlemen of the jury. On May the 23rd, 2005, Walter Lundberg, a resident here in Sumter, was fishing in Boyle's Pond with his family, out for a nice day.

And as they came to the bridge on St. Paul Church Road that crosses over Boyle's Pond, he made a horrifying discovery, and that was that he saw, along with his family, the body of Ernest James, the victim in this case, floating, obviously dead, in the pond.

It's a horrible crime. And I apologize to you in advance. Because you're going to have to listen to some pretty bad things. You're going to have to look at some photos that are evidence that are not pretty.

But what happened that day cries out for justice and I ask you to pay attention closely to what we are going to present as our evidence. Mr. Lundberg, obviously horrified, immediately called law enforcement on that day. They came.

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They were able to retrive the body. And when they pulled it out, they found that the body -- or the perpetrators -- had attempted to anchor the body down with a concrete block tied to Mr. James ankle with a hanger, just a regular old wire coat hanger, and a cement block like you would build a house or wall.

What they didn't know is that that part of the pond is not particularly deep. And with the flow of water and the fact that the pond wasn't that deep, the body was able to surface much, much sooner than the defendant expected. And that's what Mr. Lundberg found.

And he will tell you he called law enforcement, they retrieved the body. You will hear from Investigator Mackessy with the Sheriff's Office. He took some photos, mapped out the scene.

And after that, they were able to determine the victim's identity by looking through his belongings. His wallet was in his pocket, had his ID in it, and they began to investigate this case.

Now, where the case led them and what you will hear as evidence from that witness stand is that on Saturday, May the 21st, around 5:30 in the afternoon, that man, Nathaniel Bradley, the defendant, along

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with another person who remains unknown to this day were the last people seen with Ernest James when he was alive.

He was at home. They came by. He left with them. And he was never seen again.

Now, one of the things that the defense will anticipate is -- or that we anticipate is the indictment in this case. We don't know when the defendant or when the victim died and we're not going to try to pretend that we do.

And the State's not required to prove that. And I'm going to go over in a minute what the elements of murder are and what he is charged with.

But on that particular day we know for a fact that Ernest James was alive on Saturday afternoon around 5:30, May 21st, 2005. And the only other fact that we know about his life and when it ended is that he was found on Monday, May 23rd, about 1:45 in the afternoon.

Murder, which the Judge will instruct you on -- I think everybody knows what this is. It's not a crime where y'all try to figure out how -- did they commit it, what does it mean.

It's the unlawful killing or taking of another's life with malice aforethought either express or

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implied. And the Judge will tell you that you can infer malice from the fact that a gun or firearm was used in this case.

And the victim had three gunshot wounds, which will be described to you by Dr. Sexton, the pathologist, when he comes to testify. He was shot in the arm, he was shot in the left side, and he was shot in the back of the head execution style. And you will hear all of that.

But time is not an element of murder. We have to prove that someone killed Mr. James and that it was with malice, and that is it. We don't have to prove when it was done.

And I'm not telling you to ignore all that. I'm just saying as you listen to this evidence that we'll produce, filter through and just keep that in mind, is he dead, how did he die, was it malice, and did the defendant do it, and we think the evidence will show you that.

The second crime he's charged with is the possession of a firearm during the commission of a violent crime.

Murder by statute is a violent crime in South Carolina. The Judge will instruct you on that. And when you use a gun or a knife in committing such a

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crime, there is an automatic charge that is also -- goes along with it, and that is possession of a firearm or a knife during the commission of a violent crime, and he is also charged with that.

Another thing is that -- and we're going to be upfront about this, because there's no reason not to. We didn't -- we don't have a witness who is going to stand up here and say that they saw him shoot the victim because most of these crimes are done in secret.

And this was one that was very secretive. But what our witnesses will tell you is compelling circumstantial evidence that when taken altogether will lead you to the conclusion that this defendant did this.

And I ask you to listen to each fact. And it's -- unfortunately the State has probably 30, 35 witnesses. The defense may have additional witnesses.

I don't expect any of them to take a long, long time, but it will be time consuming and you need to listen carefully to every witness. And we ask you to do that because we wouldn't be putting them up there if they didn't have at least one important thing to say.

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And think of this as a puzzle and how it all fits together and that each person who gets up there will give -- be giving you one little piece of that puzzle until it is complete.

We know the defendant had help in this case, and unfortunately sometimes you don't get all the guilty parties.

We never found out who that person was that was with the defendant the day he picked up or went to Mr. James' house and they all left together. No one had come forward to let us know who that person is.

But we do know that the victim didn't know him. The victim's family didn't know him. And no one could figure out who he was.

But we know that he had help because Ernest James was a fairly healthy size man. And to lift that dead weight and throw it over that railing in Boyle's Pond took more than one person. Of that we're fairly confident.

But we don't have to prove that either. All we have to show is that that man participated in this crime. In that regard I ask you to listen very carefully because the defendant's own words are going to convict him in this case.

And it's funny that I say that because it's not

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a confession. He didn't sit down and say that. But what he said to law enforcement, to the family, to witnesses, all of it contradicts either what we know happened or what he told someone else happened.

And I want you to listen very carefully for those contradictions. In this case there's too much lying and too much covering up and frankly too many things that happened that -- to be coincidences.

Once twice, 10, 20, 30 times, that's not a coincidence any more. And you know that and I ask you to listen to that.

Overall the State just asks that you listen, that you use your common sense, and that -- excuse me -- that in the end you will return a fair and just verdict. Thank you.

THE COURT: Mr. Finney?

MR. FINNEY: May it please the Court.

OPENING STATEMENT

MR. FINNEY: Ms. Fant. Ladies and gentlemen, I am Chip Finney and I practice law here in Sumter. I have for over 26 years. I think this is the beginning of my 27th year practicing in this courtroom.

I have had the pleasure of trying cases in front of a number of judges and I have the pleasure today

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of representing Mr. Bradley, Nathaniel Bradley who is 55 years of age.

Although he spent some time in Jersey when he was a younger man, he's pretty much been a resident of Sumter all his life.

Mr. James, Ernest James, was 39 years of age. And although you didn't hear it from the State, I will tell you that Mr. James and Mr. Bradley were friends and co-workers. They painted houses and other structures around Sumter for years before Mr. James' death. They knew each other well.

You're not going to hear anybody say in my opinion I think that there was any problem between my client and Mr. James.

Why is that important? Because he was well known to Mr. Bradley, was a friend of his. And the State didn't say that to you at all in their opening.

There's going to be a lot of information given to you over the next few days that is going to be the same way, things that the State didn't tell you, things that the State can't tell you.

Unfortunately for all the family, for Mr. James' family who is here today, they want to know the same thing that we want to know, that Mr. Bradley wants to know, who took the life of this young man, Mr. James,

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because it wasn't him.

There is no evidence outside of what Ms. Fant just told you that this man harmed anybody, especially Mr. James, his friend. What did Ms. Fant tell you?

The reason they charged him because he was one of the last people to see Mr. James alive. No fingerprints. No witnesses. No evidence. Just the theory that because they were last seen together in Ernest James' driveway with Ernest James going one way in one car and my client going somewhere in his car.

They don't know what happened. So something happened. Sheriff's Department has investigated since May of 2005. That man has been waiting for today for almost three years so that he could get his good name back.

The only evidence they have is that he was at the driveway of Ernest James' house on Saturday in May. Saturday night, Sunday morning, Sunday night, Monday morning, they don't know where Mr. James was. They don't know what happened to him.

Monday afternoon they find him in Boyle's Pond with a gunshot wound. That's the case.

I'm glad Ms. Fant told you something about

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listening to everybody and listening to the pieces of the puzzle because when we get to the end of this case, there are going to be some pieces missing, a lot of them. A lot of them.

The law requires that you listen to the judge. He's going to give you several things to work with. As I said a moment ago, I'm sure that maybe on this morning when you left the house you weren't intending on being called as a juror in a murder case.

The good news is that the law provides you with some tools that's going to make your job very easy. One of the tools is the burden of proof.

The State must prove every element of the crime beyond a reasonable doubt. Those are not just legal words the judge is going to tell you.

That's an important safeguard that we have in our system because people like Mr. Bradley don't have to come to court and prove their innocence. The State has to prove with the burden of proof their guilt.

Mr. Bradley had to have knowledge and intent to harm and take the life of Mr. James. Without that proof there is no crime, there is no conviction. That's your job. Use the tool. Make them prove this case with the burden of proof.

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If there are missing pieces of the puzzle, you don't have to sweat it. You can just say, I did my job as a juror, I weighed the evidence, I looked at it, there was evidence missing, there was things that didn't fit, I couldn't convict a man on that kind of evidence.

Second tool. Reasonable doubt. You heard this on TV. Reasonable doubt is where you have a missing piece of the puzzle.

Ladies and gentlemen, they don't know when Ernest James got killed. They don't know. Ladies and gentlemen, there is not a single piece of evidence in this case as to what county he got killed in, what time of day it was, who was there.

Ms. Fant is going to tell you now they are going to bring circumstances before you and they're going to hope that the circumstances line up so that you feel convinced beyond a reasonable doubt.

Well, you may have a suspicion. But a suspicion is not -- not going to meet the legal test. Beyond a reasonable doubt is the tool that the judge is going to give you under the law that you must use in this case.

The last one is -- I talked to you about -- is beyond a reasonable doubt. That's a high standard.

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That's not suspicion. That's not, I think it might have happened that way. That's, she proved it to me, I can go home and sleep tonight and not have a problem. That's beyond a reasonable doubt.

Because if you hesitate, if you are not sure, if you think there's something missing, the Judge is going to instruct you you have a duty under your oath to find him not guilty.

You are going to have some help in this case from some other things. There is some evidence in this case of some cellphones. Listen carefully.

The cellphone records are things that we didn't know we were going to have, but the police officers went and got the cellphone records from Mr. Bradley and also from Mr. James.

It's going to be critical information because the technology in this case that we usually have, fingerprint, gunshot residue, things that we usually use in these type cases, they are not in this case. We don't have them.

But the cellphone records are going to help show where Mr. Bradley was and what he was doing.

Ladies and gentlemen, listen carefully. This is not a scary case. This is not a case that you're going to be sorry you were involved in.

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You're going to learn a lot about our system and you're going to learn a lot about how people can get charged with serious crimes based on theory.

And you're going to learn why this courthouse is the most important building in town because this is where we come when we work together and we get to the truth. And the truth is Nathaniel Bradley is not guilty. Thank you.

THE COURT: Madam Solicitor, you may call your first witness.

MS. FANT: At this time the State would call Walter Lunberg.

WALTER LUNBERG, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Good morning or good afternoon I should say. Mr. Lunberg, can you tell us, are you from Sumter?

A No, not originally. I'm from Fayetville, North Carolina.

Q How long have you lived in Sumter?

A About 18 years though.

Q What do you do?

A I'm stationed at Shaw, on base.

Q Excuse me. Are you actually active duty or are you a

civilian?

A I'm active duty.

Q What do you do in the military?

A I worked on support equipment for the aircraft.

Q And I guess is fishing one of your recreational hobbies?

A Yes, ma'am.

Q On Monday, May 23rd of 2005, were you and your family fishing on Boyle's Pond here in Sumter?

A Yes, ma'am, my son and daughter were.

Q Can you tell us what happened that day?

A Well, it was a day that -- beautiful day it seemed, a little windy, but my son and daughter, I took them fishing out there to Boyle's Pond. As I headed towards the bridge where we normally like to fish a little bit, as I was approaching the water area there I could see something floating in the water.

Didn't know what it was until I, you know, got closer, and what it was -- by the time I knew what it was with my kids and everything, I, you know, I immediately told them, you know, I think I said out loud to them -- which I don't know why I said, it's a body, and they kind of, you know, were scared.

But I just turned around, took them back quick to the car and came back up there and called 911.

Q How old are your children?
A At the time I guess the -- my boy would have been six and my daughter would have been nine.
Q And were you actually in a boat at the time or were you outside when you spotted them?
A No, we were just leaving. We just -- we actually hadn't even fished yet. We just parked off the side of the road and walked on the side towards the bridge and -- and never really even fished actually that day. We were... that ended it right there.
Q I will show you what's been marked as State's Exhibit number three. And can you tell me if you recognize that photo or if you recognize what it depicts?
A Yes. That's -- that's it. That's how I -- when I got -- when I first took my kids back to the car and came back, you know, to take -- confirm what I saw and everything, and then I got up on top of the bridge to look down and make sure, and that's -- that's it.
Q Now, after you saw this, you indicated that you called 911?
A Yes, ma'am.
Q And what did you do after that?
A Well, after I called, I just -- I stood there and waited for the police to show up and answered their questions they had.

Q And did you touch the body or move the body in any way?
A No, ma'am.
Q And does that photo that I just showed you reflect the position that it was in the last time you saw Mr. James' body?
A Yes, ma'am.
Q Please answer any questions Mr. Finney may have.
A Okay.

THE COURT: Mr. Finney?

CROSS-EXAMINATION

BY MR. FINNEY:

Q Good afternoon, sir.
A Good afternoon.
Q Mr. Lunberg, do you know what day May 21st was?
A No, not -- not really, not -- not sure.
Q So if you don't know what day of the week it was back then when you got up to the bridge?
A Well, I -- I don't remember if it was a weekend or not. I know I had my -- kids weren't in school that day, but...
Q The kids were?
A Were not. I took them fishing.
Q Were not. And what time did you say?
A It was just some time in the afternoon.

Q Some time in the afternoon?
A I don't know the exact times or not.
Q All right.
A Don't remember.
Q Tell me about -- you had been there before to that bridge to fish?
A Yes, sir.
Q And tell me about the road there. What is the name of the road that crosses the pond?
A That's St. Paul Church Road.
Q St. Paul Church Road. Tell the jury about the traffic on that road right there at the pond. Is it two lanes or four lanes?
A It's two.
Q Two lanes. Got one lane going north?
A Right.
Q One going south. Something like that?
A That's -- direction I don't know.
Q What kind of traffic is there?
A It's pretty -- sometimes busy, sometimes not I guess I can say.
Q All right. Steady, traffic usually run?
A Yeah.
Q All right. You were there in the daylight hours?
A Right.

Q And normally you fished at the daylight or do you fish in the early morning or the evening?
A It differs. Sometimes in the morning. Never after dark though.
Q All right. How long did you have to wait there before the law enforcement got there?
A I was -- probably 10 or 15 minutes maybe, somewhere around there.
Q All right.
A Not too long.
Q Thank you, sir.
A All right.
Q Nothing further.

THE COURT: Anything further from the State?

MS. FANT: No, Your Honor. May Mr. Lunberg be excused?

MR. FINNEY: No objection.

THE COURT: Thank you, sir. You can step down and be excused.

(Witness left the stand.)

MS. FANT: Your Honor, at this time the State would call Captain James Turner.

JAMES TURNER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:
Q Captain Turner, can you tell us where you work?
A Sumter County Sheriff's Office.
Q And how long have you worked there?
A Seventeen and a half years.
Q What do you do at the Sheriff's Office?
A I'm presently the commander of the Criminal Investigations Division.
Q And what is exactly the Criminal Investigations Division?
A We handle -- primarily we handle all investigations from the point -- if we get a report, unknown suspect or just follow-up investigations to be done, we do that in our division.
Q Do you recall being notified in May of 2005 about a body that had been found in Boyle's Pond?
A I was.
Q And is that in Sumter County?
A It is.
Q How did you find out about what had happened?
A I heard -- overheard over the radio.
Q Do you recall what day it was?
A I believe it was a Monday.
Q And -- excuse me -- approximately what time?
A I know it was afternoon. I believe it was shortly

after lunch probably. I had just finished eating, so it would have been 1:30, 2:00.

Q And what did you do when you heard that call over the radio?

A When I heard what it was, being a diver, I immediately went back to my residence to retrieve my diving equipment because I knew there would probably be a body recovery.

So I immediately went to my home and got my diving equipment and then responded to the scene.

Q Tell us a little bit about that. Are you a certified diver?

A I am. I -- I have certified through PADI which is Professional Association of Diver Instructors. It's a worldwide organization located in California. I am -- hold the classification of a dive master which is a supervisor of divers.

Most of the time you see those persons on boats and actually the ones that go in and make sure divers get in and out of the water. I also hold certification as a master scuba diver and 19 specialty certifications.

Q And what happened after you went and retrieved your diving equipment?

A I responded to the scene and actually first--

Q Where exactly was the scene?

A It's a location called Boyle's Pond, South St. Paul Church Road crosses the pond, actually splits the pond in two. It's on the western side of the county towards -- if you're going towards Wedgefield and goes to Spann's Market which is located at the intersection St. Pauls and Wedgefield Road, you make a left turn and continue south until you -- and you'll actually cross the bridge at -- it's approximately a half mile long crossing this pond.

Q What did you do when you arrived there?

A First thing I do is I just go up to the scene and see exactly what's going on and then make a determination on what kind of dive was -- I'm going to have to have a boat or can I do a shore dive to make the recovery.

Q What did you observe as you arrived?

A I observed a black male appeared to be vertical in the water meaning he was in an upright position which kind of indicated to me that it's possibility this person was somehow tied or -- normally a body floats horizontal.

In this case it was vertical. So I had suspicion that possibly there was something tied to this person's feet. I could observe the head leaning to the side out the water.

Q And could you reach the body from the land or did you have to get into the water?

A I had to get into the water.

Q And had anyone else actually been in the water at that point?

A Not to my knowledge.

Q What did you do after you geared up in your diving equipment? Take us through how you recovered the body.

A All right. What I do is once I enter the water at a point that I can put my fins on, I do what they call hover diving. And it's a type of diving used primarily in caves so you don't silt up the water because it's fine dirt.

Just like dust, it will silt up and clog your vision. So hover diving is where I'm actually vertical, and I use -- I just kick my feet. I don't actually use my legs to fin over to the body, so I hover dive.

I go over to the body on top of the water and I -- at this point I just look under the water. It's only -- by a gauge, it was only a little over 6-foot deep and I could -- I could observe the bottom and I could observe a brick or what looked to be a concrete block at the feet of the body.

At that time using control dissent, I BCU -- boyce (sic) control device, I allow air to go out of -- actually go under the water and I get to a point, couple of feet, and I just observe, you know, the surrounding area around the body and the feet, make sure that I'm not coming down on some item or something else.

Everything was clear except the concrete block, and I could observe what appeared to be a clothes hanger, a wire attached to the feet and went through the block. At that time I immediately done -- called circle search which is just approximately 5-foot from the body which would be a 10-foot radius checking for any items of evidence that might be there.

At that point I didn't observe nothing, so I resurfaced, told Sergeant Mackessy and others on the bank what I'd had and what I observed, and then we proceeded into recovering the body.

Q Who assisted you with recovering the body?

A Sergeant Mackessy was there, Investigator Bennie Barfield and the Coroner, but primarily Sergeant Mackessy and Investigator Barfield.

Q And once you were able to retrieve the body, what did you do?

A Well, what I did is I attached the -- to show how we recovered this body, attached the rope, affixed the rope to the brick. I didn't remove anything. It was -- it was removed from the water as I found it.

And they, using a rope and me guiding it, we moved the body over to the edge of the bank, and at that point I done a very brief check to make sure there was nothing left, then we made a decision to actually do a dive on

another date to try to search for any other evidence.

Q And did you subsequently conduct that dive?

A I -- we did.

Q Did you ever find any other evidence other than the body and what was attached to the body?

A Not in this case, no.

Q Now after the body of Mr. James was brought to the bank, did you continue to assist in processing the scene or did someone else do that?

A I actually changed back out. It was -- Sergeant Mackessy was primarily responsible for processing the scene. I did stay around and observe some marks on the bridge and what we believed to be a spot of blood on the bridge itself, but that was about the extent of what I did at that scene.

Q When -- you said that you thought there were some marks on the bridge. Why did you think that was significant?

A Well, there was in close proximity to -- it was what appeared to be a spot of blood on the concrete guard rail, and then there was a -- a mark, which would be four or 5 feet away in the same location that appeared that something struck it going, you know, like if something was going across the bridge and it was in the same area where the body was located below. It appeared to me that

something was thrown from the bridge.
Q Captain Turner, I will show you what's been entered as State's Exhibit 25 and 26. You recognize those photographs?
A Yes, I do.
Q And how do you recognize them?
A This is the concrete guard rail and one in which has the mark that I'm talking about. The mark primarily goes almost across the top of that rail.
Q Did you also check the body of Mr. James for any injuries?
A I did not.
Q Was it apparent to you, though, that Mr. James was deceased?
A Yes.
Q Captain Turner, I will -- you can see here -- I would pick it up and hand it to you if it weren't so cumbersome -- what has been entered as State's Exhibit number 30. Do you recognize that?
A I do.
Q And how do you recognize it?
A It appears to be the same concrete block that I saw attached to the feet of Mr. James.
Q And State's 31 which has also been entered into evidence, I will hand that up to you. Do you recognize

that?
A Yes, I do.
Q And how do you recognize that?
A It's the -- it's a wire coat hanger and -- that I observed tied between the block, the concrete block there and the feet of Mr. James.
Q Following this, who became the lead investigator in this case?
A Sergeant McMillan.
Q And did you actually have any further dealings with the case or do any more evidentiary things?
A Not -- no, ma'am, other than maybe advisory.
Q Please answer any questions Mr. Finney may have.

THE COURT: Mr. Finney?

MR. FINNEY: May it please the Court.

CROSS-EXAMINATION

BY MR. FINNEY:
Q Mr. Turner, did you say that you thought the day in May was Monday? Have you been able to verify it was Monday, May 23rd?
A I believe it was a Monday afternoon.
Q All right. I have a little chart here that we put together. You haven't filed any reports as a result of this case where you wrote something down like what you just testified to that you wrote that down on a report?

A No, sir.
Q All right. If May, 2005, starting with Saturday -- I know that's not usually the first day of the week, but starting Saturday the 21st, you found Mr. James Monday the 23rd? Would have been a Monday afternoon?
A I know it was in the afternoon. I believe it was on a Monday. I know I was working.
Q And you think the body was found about what time?
A It was after lunch, and I -- I was either -- I was on the road. I believe I was going maybe to some other call. I usually eat lunch around 12:00, so it was around one or two. One, 1:30, 2:00 I heard the call come on the radio.
Q 1:30 to 2:00 in the afternoon body found on Monday afternoon at Boyle's Pond. And that's the pond you went in?
A Yes, sir.
Q All right. Did you take any like processing of the blood spot that you say you found at the blood -- I mean at the bridge?
A That would have been done by Sergeant Mackessy.
Q Mackessy?
A Uh-huh.
Q And the brick was checked for blood on the brick to see if there was any blood on it?
A Well, being in the water, it would probably had

washed off. I can't answer that.
Q You don't know. Mackessey would have--
A He would have done that.
Q All right. And there were a lot of officers. By the time the call went out, there were a lot of officers present in this area?
A There were several on the bridge, yes, sir.
Q And traffic had to be controlled on that bridge? Is that a pretty well used area of St. Paul Church Road?
A Actually we shut the bridge down. We cut -- we stopped all traffic off the bridge.
Q So somebody had to re-route traffic all the way around?
A Yes, sir.
Q Okay. That caused -- I mean, that's a well-used bridge in Sumter County back in May of 2005?
A Yes, sir.
Q Pretty steady?
A Yes, sir.
Q All right, sir. You can -- you didn't find any evidence in the pond itself related to this case?
A No, sir.
Q When you say you went back in the water later after the body was recovered to search --
A Yes.

Q -- was that hours later or days later?
A It was the following Thursday.
Q So days later?
A Yes, sir.
Q Thank you, sir.
A All right.

THE COURT: Anything?

MR. FINNEY: Nothing further.

MS. FANT: Nothing further from the State, Your Honor.

THE COURT: Thank you, sir. You may step down.

(Witness left the stand.)

MS. FANT: Your Honor, may he be excused, Captain Turner?

THE COURT: Any objection?

MR. FINNEY: No objection.

THE COURT: You can be excused. Thank you. You may call your next witness.

MS. FANT: The State calls Sergeant Ray Mackessey.

RAY MACKESSY, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Sergeant Mackessy, can you tell us where you work,

please?
A Sumter County Sheriff's Office.
Q And how long have you worked there?
A Twenty-two years.
Q What do you do while you're at the Sheriff's Office?
A I'm in charge of the Crime Scene Investigation Unit.
Q And what type of duties do you have as part of that?
A We process all crime scenes that we're asked to respond to, doing various types of processing, latent fingerprint processing, photography, collection of evidence.
Q For those members of our jury who might not be CSI addicts, can you tell us what processing evidence means.
A Processing evidence would be if we have an item of evidence that we want to see if fingerprints is on it, we have to either develop the fingerprint with powder, with various chemicals, with superglue, and then we lift those fingerprints off of that object.

Also we photograph the crime scene as we find it when we get there. And those photographs are made part of the file. There's also a -- other evidence that may be at the crime scene such as blood, hair, fibers. We collect those and submit those to the SLED lab.

If there's any measurements that need to be taken, we take the measurements and do a sketch of the scene.

Q What type of training in forensics have you had that qualifies you to do this sort of thing?
A I started out with the Baltimore Police Department. I was with Baltimore Police for 15 years before I moved here. My training started with the Baltimore Police Department who I received training from. Also the FBI trained me in Baltimore.

After moving here to South Carolina, I received training from the Criminal Justice Academy in various types of crime scene processing, also from the State Law Enforcement Agency commonly known as SLED, and also I received additional training from the FBI and other private forensic firms.
Q Now, do you sometimes have cases that you would investigate or that you were doing the crime scene on where there just is nothing to process?
A Yes, there's scenes that I do have where the only thing to do is just take photographs that document what the scene looked like.
Q And how often does that happen?
A Not quite often, no. It's rare.
Q But if there is nothing there, is there anything else for you to do?
A Other than taking photographs and maybe drawing a diagram of the scene so far as measurements, that's --

that'd be about the only thing I could do.
Q Were you working with the Sheriff's Department in this capacity on Monday, May 23rd, 2005?
A Yes, ma'am.
Q And did you have an occasion to participate in the crime scene processing of this case?
A Yes, ma'am.
Q Where did you go to do that?
A I went on St. Pauls Church Road, the 1600 block of St. Paul Church Road which is a bridge that crosses the Boyle's Pond there.
Q And why did you go there?
A To take photographs of that scene and to process for any evidence.
Q And when you arrived there, what did you find?
A I found the victim, Ernest James. He was in the water in an upright position and it appeared that something was holding him down, and he was just kind of stationary in the water.
Q When you got to that area on St. Paul Church Road where the bridge is, is that in Sumter County?
A Yes, ma'am.
Q And what did you do as part of your crime scene processing?
A I took photographs of the victim in the water. I

then assisted Captain Turner in getting the victim out of the water when he got him up onto the shoreline there. I then took photographs of the victim and the bullet wounds that were in the body.

And I also took photographs of a cinder block which -- which could have been a mark of a cinder block on the top of the bridge and some debris that was on top of the bridge that could have been left by a cinder block.

Q And what is the purpose of taking these photographs?

A The purpose of taking these photographs is not only for investigative purposes but it assists in the investigation not only by the State but by the -- to give the defense an idea and the jurors and the Court an idea of what the scene looked like as we found it and what evidence was present there.

Q And sort of how do you go about doing it? Is there a particular way that you sort of go or a procedure that you follow in doing this?

A A procedure in crime scene is -- generally the first thing I do is I photograph the scene as I find it. It's the first thing I do when I get to a scene. I will then look around for any items of evidence that may be at the scene and continue to photograph if I find them.

Once all that is photographed, then I will do a sketch or a measuring of where the evidence is located at

that scene. And after that is sketched and measured, I then stop and I think about what I have, I will look around a little bit more.

If I don't find anything further, then I will go ahead and collect any evidence that may be at the scene and transport that back and place it in the evidence room.

Q And is that what you did in this case?

A Yes, ma'am.

Q Sergeant Mackessy, I'm going to hand up what has been entered as State's 1 through 29. Do you recognize this set of photographs?

A Yes, ma'am.

Q And how do you recognize them?

A Each of these photographs bears my initial, my initials and case number that I wrote on the back of each of the photographs.

Q So those are the photographs you took when you responded that day?

A These are photographs of the scene as I found it.

Q Well, what I'd like you to do at this time is starting with number one, can you tell us what that photograph depicts and why it was important to take that photograph.

A Photograph number one is a photograph of the -- what I call photo ID form which bears the case number, date and

time I started photographing the location, what sort of crime it is, and I put my name on that ID card.

Q And why do you do that? Why do you do that at the first photograph?

A We do that because at the time we would take 35-millimeter film, and any time we take the ID shot, then we look on the negatives, everything after that ID shot, we know that that's photographs in this case.

If I see another ID shot, then that's a separate thing and -- and everything after that ID shot is in -- is in reference to that case.

Q So in other words, you wouldn't say use part of a roll of film and just throw it away or just develop it. You would use it all on another case but divide it by using those markers?

A Well, film costs a lot of money. And if we can -- we will use part of the roll. Normally in cases like this I will take the photographs, and if I use up one roll, then I use up one roll. If I have to start another one, I will use that.

And I may use just part of the second roll and -- but what I will do if I have frames left because it's what we consider a serious case, I will just roll that film up.

But on standard cases such as I respond like burglaries and breaking and entering automobiles and other

such cases like that, I would take -- I might use 10 photographs on a burglary and the rest of the photographs could maybe be one or two other cases and then that's why I take the ID shot, so when I cut up these negatives, I will know what -- what these cases are all about.

Q But in this case, a serious case, you would have just done the one -- one shot of the same roll of film or on -- not taking --

A Yes.

Q -- any other case shot?

A No, I wouldn't take no other case shots on a -- on a crime of this magnitude, no.

Q And are these 29 photos the total of the photographs that you took that day?

A Yes, ma'am.

MS. FANT: Your Honor, I would ask permission to publish these as we go through them rather than asking each time if that's all right.

THE COURT: Okay.

MR. FINNEY: Your Honor, please let my objection, my previous objection, run throughout this testimony.

THE COURT: Okay.

BY MS. FANT:

Q If you would just go to the second photograph and

tell us what that is.
A This is a view of the bridge that passes over Boyle's Pond. We're looking south on St. Paul Church Road in photograph number two. Photograph number three is a view of the victim in the water as he was found by me when I got there. That's what he looked like when I took the photograph.
Q Let's back up just a second. Why did you take the shot of the view of the bridge?
A It gives a relationship of -- of the entire area there that we found the victim.
Q And was this shot number three your first view of the victim's body in this case?
A Yes, it was.
Q Photograph number four.
A Photograph number four is a closer view of the victim. You will notice in photograph three where I have the victim -- and I believe I have a -- the bridge in that photograph also -- and this is the next step.
I'm coming in onto the victim with the photograph, so that's with the closer view of what the victim's position looked like.
Q Number five, I believe.
A Number five is a view of the victim in relationship to the bridge. This is looking north on St. Paul Church

Road. In the lower half of the photograph is the shoreline. When we removed the victim from the water we put the victim up onto the shoreline.

Q Number six.

A This is a view, closer view of the victim. This is looking -- I'm standing on the shoreline and I'm looking towards the victim on the bank there, and I'm looking towards the victim and took this photograph.

Q And photograph number seven.

A This is a view of the victim as we were getting him out of the water. It shows the cinder block tied to his leg with the -- the coat hanger.

Q And number eight.

A Number eight is a view of the victim as we got him entirely out of the water and -- or mostly out of the water showing the cinder block tied to his leg.

Q Photograph number nine.

A Photograph number nine is a close-up view of the wire itself that's tied around the -- the left ankle of the victim, the -- you can see a little bit of the cinder block in there. But it's showing a close-up view with -- what I was mainly trying to show in this photograph would be the -- the coat hanger.

Q And the next one?

A Number 10 is an overall view of the coat hanger

attached to the cinder block and its relationship to being tied around the victim's ankle.

Q Let me stop you for just a minute. You obviously took several photographs of not exactly the same thing but perhaps different shots of the cinder block and the victim. Why do you take them from different angles?

A You might be able to see one thing in one photograph and not in another, so I take various angles because we may be able to pick up on something in one photograph or two photographs and not the third photograph, so I take it at different angles for that reason.

Q Photograph number 11.

A Photograph number 11 is just a view of the victim's face.

Q And number 12?

A Number 12 is a view of the victim's left arm, and you can see a bullet hole there just below the -- in the forearm just below the elbow area on the inner side of the arm.

Q Was it obvious to you that the victim had been shot?

A When I saw the hole, yes, yes, I knew it was a bullet hole. I have seen too many of them over my years.

Q And the next photograph?

A The next photograph is a view of the victim's right arm.

Q And is there any injury to his right arm?
A I don't see any in this photograph.
Q Photograph 14.
A Photograph 14 is the upper half of the victim, upper half of the body of the victim, head and upper torso.
Q And 15?
A Fifteen is a photograph of the upper torso. I lifted the shirt to see if there was any bullet wounds in the chest or abdomen area. I don't see any on this photograph.
Q And also 16.
A Sixteen is the lower half of the victim, both legs and feet. Partial -- you can see where the coat hangers are tied around his left leg and also attached to the cinder block.
Q And the next photograph?
A Seventeen is a photograph of a gunshot wound in the left side of the head.
Q And 18?
A Eighteen is a view of the gunshot wound in the left side of the victim. I'm thinking this one was made after the bullet passed through the left arm. You passed the -- entered the left arm, exited the left arm, and then entered the left side of the victim.
Q So there were several bullet holes, but apparently

only two shots?
A Yes. Yes. There was entrance and exit wounds.
Q And number 19?
A Number 19 is a gunshot wound on the left forearm. This is where I -- what I believe to be the exit wound. It came out there and then went into the left side of the victim it looked like.
Q And numbers 20 and 21 if you would.
A Twenty and 21 are gunshot wound -- number 20 is a gunshot wound in the left forearm which is a closer view of that wound. And number 21 is also the -- a gunshot wound in the left arm which I felt was an entrance wound.
Q Photographs number 22 and 23.
A Twenty-two is a view of the back of the victim and 23 is the view of the back of the victim's head.
Q Number 24.
A Number 24 is a view of the bridge looking north. It's showing -- what I'm trying to show is the distance from the -- the edge of the bridge to the mark which had been left by the cinder block.

There's a marker one in that photograph, and that was the mark which could have been left by a cinder block, and I'm showing from the edge of that bridge up to number -- marker number one.
Q And can you tell by looking at this photograph what

relation the mark was to where the body was found?
A I can't tell in this photograph because I'm not showing the victim in this photograph.
Q Okay.
A I can't say. It wasn't far, but I can't say exactly how far.
Q And photograph number 25?
A Twenty-five is a scaled view of the marks which could have been left by cinder block.
Q And 26.
A Twenty-six is some debris that was on the -- the ledge of the bridge. It may or may not have come by -- come from the cinder block. I don't know. But I saw it there and I photographed it.
Q Photograph number 27.
A Photograph 27 is possible blood on the bridge. It's got a marker two there. It's a very small, tiny amount of blood. You can't even see it in this photograph.
Q And you referred to it as blood. Do you actually know it was blood?
A No, I don't know it was blood. It was something that looked like it, but it was very small, very small piece -- mark there.
Q And why did you photograph it?
A It was -- it was there. They had pointed it out to

me, so I photographed it.
Q And number 28?
A Twenty-eight is actually showing the marker number two which is possibly blood and its relationship to the south edge of the bridge. That south edge of the bridge, that's where I went over there to -- and went down that slope there to the shore line where we -- we brought the victim out.
Q And finally with photograph number 29.
A Twenty-nine is a close-up scaled view of what possibly could be blood on that wall there. That's the same thing as -- I did say marker two. Yeah, that's designated marker two. That's that real tiny spot of what could be blood.
Q And when you refer to marker two on photograph 27 in particular, what is the purpose of putting the marker there as you photograph?
A So when I take a distant shot I can tell where the -- what piece of evidence may be on that bridge. In this case would be the possible blood that could be there.
Q And in the photo -- I believe there's one of the photos that indicates there is a measurement beside it.
A Yes. In photo 29 it's a close-up. I put a 2-inch photo scale in there.
Q So the -- the -- what looks to be a ruler is in fact

2 inches long?

A It is 2 inches long, yes.

Q What did you do once you had finished taking the photographs to document the scene?

A Once I finished -- well, it actually came in stages really. I photographed the victim first, and then after the -- after the victim was brought out of the water. And then the victim was taken away by EMS.

And the second stage was the other evidence that may be up, you know, that was on the bridge, marker two, being the possible blood, and marker one being the concrete -- what could be a concrete scrape on the top portion of the bridge.

But once all the photography was completed, that was my end of the -- so far as the crime scene was concerned. There just really wasn't nothing there.

Q Did you actually take items 30 and 31 of the State's evidence into evidence from the scene?

A Yes. I took that with me, yes.

Q And what did you do with it?

A It was placed in the evidence room.

Q And is -- is the concrete block that is labeled State's Exhibit 30 and the hanger labeled State's Exhibit 31 items you recovered from the victim's foot that day?

A Well, the concrete block -- I might correct myself.

The concrete block was taken and placed in the evidence room. The wire itself that was connected around the left ankle of the victim was left intact until it went to autopsy in Newberry.

Q And was that ultimately returned to the Sheriff's Office after the autopsy?

A Yes, it was.

Q Did you prepare a -- a diagram of the scene as part of your crime scene analysis?

A Yes, I prepared a diagram with -- of markers one and two.

Q Do you have that with you today?

A Yes.

(WHEREUPON, State's Exhibit No. 32 was marked for identification only.)

BY MS. FANT:

Q Sergeant Mackessy, I will show you what's been marked for identification purposes as State's Exhibit 32. Do you recognize that?

A Yes, ma'am.

Q And how do you recognize it?

A It's a sketch that I drew of the bridge wall.

Q And how did you go about doing that? What is your procedure for doing your crime scene sketch like that?

A I will take and -- take my measurements of various

evidence, in this case marker one which was the -- the -- what could have been a cinder block, scrape of the cinder block on top of the wall. I indicated marker one on the sketch. Marker two was the small area of suspected blood.

The measurements then I place in here are showing it's -- the relationships of marker one and two to the south end of the bridge. I'm also showing how tall the bridge is.

Q And how tall does your diagram reflect?

A 33 inches.

Q So almost as much as a yard stick would be?

A Yes. Yes.

Q And when you say tall, are you referring to the height of the...

A The height, yes.

Q Is there anything else of significance on the diagram?

A No, ma'am.

Q And so the purpose of it was just to show the distances and the height and so forth of the actual bridge?

A Show the height, and also with the photographs to be able to -- to show where were they located on that bridge wall, how far were they from something, and that's why the sketch was drawn.

Q Is the sketch drawn to scale?
A No, ma'am, it's not drawn to scale.
Q And what actually is meant by when something is drawn to scale?
A Drawn to scale is -- is exact measurements. And this is not exact. It's -- it's an approximate measurement. It's not exact measurements.
Q Does that diagram, though, accurately reflect the relationship of the objects you depict as how they're related to each other?
A Yes, it does. It doesn't show to each other. It shows in relationship to the south end of the bridge, the bridge wall.
Q And is the diagram in the same condition as when you originally prepared it?
A Yes, it is.

MS. FANT: Your Honor, at this time we would offer State's 32 into evidence.

THE COURT: What says the defense?

MR. FINNEY: No objection.

THE COURT: State's 32 is in without objection.

(WHEREUPON, State's Exhibit 32 was admitted into evidence.)

MS. FANT: Permission to publish, Your Honor?

THE COURT: Yes, ma'am.

(Whereupon, exhibit was handed to jury by the Solicitor.)

BY MS. FANT:

Q Following your documentation with the photographs and retrieval of the evidence in this case, what did you do? Did you have any further part in this investigation?

A Other than attending the autopsy in Newberry.

Q So did you actually accompany the victim's body to Newberry?

A No, I didn't accompany the body. It was taken by the Coroner's office to Newberry, and I believe it arrived sometime after I did.

Q Was there any other officer that went with you to the autopsy?

A No.

Q And who performed the autopsy in this case?

A I don't have the autopsy report with me. Let me see. I will look. I believe it was Dr. Joel Sexton and Dr. Janice Ross were the two pathologists listed on the -- the inventory form that I received from them.

Q And are they with the Newberry Pathology Associates of Newberry, South Carolina?

A Yes, ma'am.

Q Please answer any questions that Mr. Finney may have.

THE COURT: Mr. Finney?

MR. FINNEY: May it please the Court.

CROSS-EXAMINATION

BY MR. FINNEY:

Q Mr. Mackessy, let me start with the last stuff you talked about. On this sketch -- I just have a copy so the jury can keep theirs. On this sketch, as you're looking at this diagram that you drew, the spot of blood would be on top of the wall?

A No, be on the side of the wall, number two right here.

Q All right. So we're looking down?

A Looking straight on.

Q Looking straight on. So the spot of blood would have actually been on the side --

A Side wall.

Q -- of a wall that was much like this one --

A Yes.

Q -- wall here in the courtroom?

A Yes.

Q So the scrape mark was on top where you think the cinder block went across the top of the wall?

A Yes, sir.

Q And the spot of blood was on the road side not the water side?

A Right, the road -- roadside of the wall.

Q Of the wall.
A Yes.
Q Okay. And it was about 15 inches from the roadway?
A From the -- right.
Q From the roadway up, about 15 inches?
A 15 inches up the wall.
Q Okay. Now, the spot of blood was collected?
A Yes, sir.
Q By you?
A Yes, sir.
Q And where was it sent?
A It wasn't sent. It was in -- it was taken to the evidence room.
Q Well, what do you mean it wasn't sent? Y'all tested the blood to see whose blood it was; didn't you?
A No, sir. It doesn't indicate on the evidence card that it went to SLED.
Q Well, can't you get DNA markings from blood?
A Yes, sir.
Q So in effect you have got evidence sitting in the -- in the evidence room right now that hasn't been tested?
A Yes, sir.
Q And therefore that if the man who killed Ernest James dropped that blood, we could find out who it was.
MS. FANT: Objection, Your Honor. Sergeant

Mackessy has testified that it was suspected blood. There is no evidence that it is in fact blood.

THE COURT: I think it's a proper question for cross-examination. I will overrule your objection. Go ahead.

BY MR. FINNEY:

Q If the spot on this evidence -- exhibit is blood, could it have been tested for DNA?

A Yes, sir.

Q And if it was tested for DNA, we could determine whose blood it was.

A We could compare it to the victim's blood, yes, sir.

Q And we could tell if it was his blood.

A Yes, sir, because he was bleeding, yes, sir.

Q And if it wasn't his blood, we could tell that it was -- belonged to somebody else?

A We could test it to see, one, if it was human or animal because they could be fish blood for all we know. They fish off the bridge. Or we could tell -- once we determine human or animal, then the SLED lab could compare it to the victim's blood to see if it was the victim's.

Q So for two and a half years it's never been tested?

A I have an indication here that it didn't go to SLED.

Q All right. You talked about the fact that there could have been hair or fibers. Was -- were there any

hairs or fibers taken from Mr. James' body or clothing that were tested?

A No, sir.

Q Well, tell the ladies and gentlemen of the jury where Mr. James was killed.

A I don't know where Mr. James -- I know where he was found, but I don't know where he was killed.

Q And there was no evidence at the St. Paul Church bridge that he was killed there?

A No, sir.

Q Did you find any evidence on the 29 photographs that you took, the brick or the wire, of anything that pointed to Mr. Bradley being involved with this killing?

A No, sir, no evidence, physical evidence in that regard, no, sir.

Q Now, I have seen from time to time that bullet holes can be examined to tell where the shooter was in relationship to the person who got shot. Was there any testing done on the bullet holes, Mr. James, to determine how far the gun was away, what angle was the gun at, what position Mr. James' body might have been in?

A If there were angles, trajectories you're talking about, they would have been done by Dr. Sexton.

Q All right. And so the pathologist is the one who determines whether or not it's a close range or distant

shot, whether the -- the shooter was above, below, or those kinds of things?
A Yes, sir, pathologist determines that.
Q And you as a process -- scene processor don't do those kind of things?
A No, sir, I don't.
Q You said that you believed based on your experience as a investigator, crime scene investigator, that Mr. James was shot in his left arm on the outside, that the bullet went through the arm and then traveled into his left side?
A Yes, sir, that's what it appeared to me, yes, sir.
Q And that would have accompanied -- that would have accounted for the photographs where you have one, two, three bullet holes but it's all made by one bullet?
A Yes, sir, just one bullet.
Q And there was also a shot to the left side of Mr. James' head?
A Yes, sir.
Q All right. One shot.
A One shot.
Q To your knowledge was there any other injuries notated on the body of Mr. James?
A Not that I notated.
Q Is there any evidence that Mr. James was shot

execution style?
A Execution style? He was not shot in the back of the head which I -- most people would assume would be execution style.
Q And there's no evidence that he was bound and gagged or taped or restrained when he was killed?
A Not that I saw at the scene. I don't know what they -- I don't remember what they found at autopsy. Dr. Sexton would have to testify to that.
Q All right. You don't have any footprints at the scene that you have been able to gather and put into evidence?
A No, sir, none was found.
Q No fingerprints?
A No, sir.
Q No fibers?
A No, sir.
Q No hair?
A No, sir.
Q And no tests on the blood spot?
A No, sir.
Q Do you know what kind of blood type Mr. James was?
A No, sir.
Q Nothing further. Thank you.
THE COURT: Anything further from the State?

MS. FANT: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. FANT:

Q Just to clarify. There's no indication whatsoever that this mark that was found there was in fact blood, is there, that you have personally?

A No, I don't know personally whether it was blood or not, no.

Q And the body itself was found where?

A The body was found in the water in an upright position about 4 feet from the east side of the bridge and 19 feet north of the south shore line.

Q And what effect on your ability to collect evidence does the fact that the body was found in the water have in terms of looking for fibers?

A Yes, they -- the water would destroy a lot of forms of evidence such as fiber and hair. I don't know how long the body was in the water. I know that we did recover on the 23rd, but the water would pretty much destroy any kind of fiber or hair evidence that may have been on the body.

Q Do you recall whether or not it was windy on the day that y'all were out there?

A Yes, it was. It was rather windy. In fact, I think the photographs may show little ripples in the water.

Q In particular I will show you photograph number 27

and number three which have been entered into State's evidence. What can you tell by looking at the photograph about the condition of the water?

A The -- in photograph 27 in particular looking out over the entire pond you can see the ripples in the water which were caused by the wind that day. It was rather windy.

In picture number three it's showing water, some ripples in the water, but I believe some of that is coming from actually the water hitting the bridge, the base of the bridge and coming out.

Q But even that rippling effect at the base would be problematic in terms of retrieving evidence?

A Yes, the current and all. Not only the current washing away evidence, but if there was anything located there, the value of that evidence wouldn't be very good so far as DNA and things of that nature.

Q In other than the -- the scrape which -- which might be where the block went over, is there any way to indicate or that you were able to determine where in fact the body was picked up and thrown over the bridge?

A I can only surmise it was that point where I saw that -- what looked like a scrape from the cinder block. It had kind of a straight line to it.

Q The -- while I have you looking at it, let me let you

look at the photos again on the -- the concrete that show the side of the bridge from -- I believe it's 28, 27 -- I will hand up State's two, five, 27 and 28. If you can review those. Are those all pictures of the side of the bridge itself?

A The bridge wall, yes, ma'am.

Q And is there anything else anywhere along there that indicates that there was the presence of blood or anything like that?

A No, ma'am. There was no blood on that bridge other than that one tiny little spot right there.

Q Which -- which may or may not have been blood?

A Right.

Q So even though when the body was retrieved, was there a lot of blood present when the body was on the side or after it had been pulled out of the water?

A After it had been pulled out of the water there was some seepage of blood, yes.

Q But none of that blood that you could tell was over the bridge splattered in any way or spattered in any way?

A No, I didn't find any on the bridge wall, either the roadside or the pond side I didn't see any blood -- other than what could be suspected blood is marker two, but there wasn't no other blood present.

Q And how tiny was that spot?

A Well, it was -- it was rather small, probably maybe a quarter of an inch in diameter. It was very small.
Q And where did you suspect that that spot might have come from? What -- what was responsible for putting that spot there?
A I really don't know. They fish off that bridge a lot. It could have been from either a fisherman up there or could be from a fish. It -- it could be from the victim. I mean, I don't know.
Q But would it be fair to say that there's no evidence of a struggle on the bridge?
A I didn't see any evidence of a struggle, no.
Q And one of the things that Mr. Finney asked you was whether or not out of all the things you collected, it didn't -- it did not point directly to the defendant, Nathaniel Bradley?
A Nothing I collected pointed to the defendant, that's true.
Q Did it point to anyone else?
A No, it didn't point to anyone else either.
Q And also, he indicated that in your experience and your examination of the scene that there was no evidence of the victim, Ernest James, being restrained or having been in restraints?
A I didn't see any, no.

Q And in your experience if a victim is not restrained, what does that indicate?
A If he's not restrained, it -- it may indicate that there was no struggle, that he...
Q Um...
A That he was -- he was dead or unconscious at the time let's say that wire was placed around his leg.
Q And the lack of evidence of a struggle between two people who know each other in your experience, what could that mean?
A Could you repeat that? I don't quite understand that question.
Q I confused myself there.

MR. FINNEY: I think I'm going to have to object. It's speculative at best. She can ask him what they found, but she can't ask what his opinion is of two people who know each other.

THE COURT: Well...

MS. FANT: I will rephrase.

THE COURT: She can -- let her rephrase the question then we'll try again.

BY MS. FANT:
Q You did not find any evidence that there had been a struggle there --
A That's correct.

Q -- or that the victim had been restrained in any way?
A I found no other evidence of the victim being restrained, no.
Q Nothing further.

RECROSS-EXAMINATION

BY MR. FINNEY:
Q Mr. Mackessy, as far as the evidence of the blood, as an investigator it's your job to collect the evidence. What you did when you took a picture that's marked as State's Exhibit 29 --
A Yes, sir.
Q -- you -- you found that blood near the crime scene, thought it might have been blood, thought it might have been connected to the crime.
A Yes, sir.
Q You took a picture of it. And did you collect the sample itself?
A I swabbed it.
Q You swabbed it so that any kind of seminal fluid or DNA material might be collected and analyzed?
A Yes, sir.
Q Whose call was it to send it to SLED to be analyzed or not to be sent to SLED? Was it your call or the investigator's call?
A Normally the investigator would -- when I submit the

evidence card and tell him what the -- him or her what the evidence is in the case, and then it's usually their responsibility to let me know what he wants sent to SLED.

Q All right. So you let the investigator know that you had this piece of blood that you didn't know what it was, could have been fish, could have been victim, could have been the man who killed Mr. James?

A Yes, sir. I let the -- I -- I make out an evidence card, submit it to the investigator letting them know what evidence was collected. There is also a crime scene report which you have seen that indicates what I collected.

Q And in two and a half years it's never been tested.

A There's no indication on my evidence forms that this piece of evidence was sent to SLED. I --

Q Which means --

A -- don't know what --

Q -- still in the evidence room across the street?

A -- still in the evidence room at the lab.

Q Thank you, sir.

A Yes, sir.

THE COURT: Anything further from the State?

MS. FANT: No, Your Honor.

THE COURT: All right. We got three minutes to five. You got somebody you can put up, put down in

three minutes?

MS. FANT: No, Your Honor.

THE COURT: Is it a -- I mean, is it a good time to break for the day? You got somebody you really need to get up and down?

MS. FANT: Let me just check real quick, Your Honor.

THE COURT: Okay.

MS. FANT: Your Honor, I'm sorry. The -- we do have a witness that has indicated that he does need to get back. He's living in Horry County and does not have a ride, has caught a ride up here.

I don't expect it to be a long witness. And we just would beg the Court's indulgence in letting us go past five to get him up. She just went -- apparently he stepped out to the restroom.

THE COURT: Okay.

MS. FANT: He's coming back in. Your Honor, may Sergeant Mackessy be excused?

THE COURT: Any objection?

MR. FINNEY: No objection.

THE COURT: Yes, ma'am.

MS. FANT: At this time, Your Honor, the State would call Leonard McCray.

LEONARD MCCRAY, after being duly

sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Mr. McCray, where do you live?

A [redacted] Spring Hill Road.

Q And is that in Sumter County?

A Yes, ma'am.

Q Are you currently staying in Horry County?

A Now I do.

Q But 57 -- I'm sorry 67--

A [redacted] Spring Hill Road.

Q Is that your family home?

A Yes, ma'am.

Q And is that in Rembert?

A Yes, ma'am.

Q The family home in Rembert, who else lives there when they're there?

A At this time?

Q Yeah.

A My sister, Mr. James, and my two brothers and myself.

Q And when you said, at this time, were you referring to May of 2005?

A Yes, ma'am.

Q Who is your sister?

A Martha Branson.

Q And -- excuse me. And your brothers that also live there?
A Yes, ma'am.
Q And the victim in this case, Ernest James?
A Yes, ma'am.
Q How did you know Mr. James?
A Well, I meet him through my sister about 2004, the beginning of 2004.
Q And was there a relationship between Mr. James and your sister?
A Yes, ma'am.
Q Did you also know the defendant in this case, Nathaniel Bradley?
A I also meet him through Mr. Ernest James, too, also.
Q And what name did you know him by?
A Nate.
Q And how did you meet Nate Bradley?
A Well, during the time that my mother's in the -- in the hospital, they came up to see my mother. That was the first time I meet him. I meet him several other occasions like on the job site and we went out to the job site a few times with Ernie--
Q What was the relationship between Nate and Ernest?
A At the time I thought they were very close friends because they worked together for a long time, you know.

From what Mr -- Mr. James was telling me, they was working together for about nine years.

Q And around the time that this happened in May before Ernest went missing, did there begin to develop some problems in their relationship?

A Yeah. They had some problems before. It was something relating to a van that they say they bought together and then they was having some other problems about a friend that Nate -- that he feel was cheating on him or something. He had some arguments about that, too.

Q Did you witness these arguments?

A Well, I was -- I didn't exact hear everything. I only know what Ernest told me.

MR. FINNEY: I'm going to object to anything the witness has to say about this, Your Honor.

MS. FANT: Hasn't said anything.

BY MS. FANT:

Q The van that you're referring to, was that -- what kind of van was that? Did you ever see it?

A I don't know. It's a small minivan, but I don't know the exact what -- what it was.

Q Okay. And on the day in question, which is Saturday the 21st of May, 2005, were you in Rembert at that time?

A Yes, ma'am.

Q Where were you?

A I was at the little club right up from us about two blocks up, maybe 200 feets away from us, and...
Q Now, when you say away from us, what do you mean by us?
A Away from the family house.
Q Okay. And that's the one on Spring Hill?
A Yes, ma'am.
Q Okay. And what was the name of the club?
A It's called the Kirkland's place.
Q Okay. And what were you doing there?
A They had a -- a softball tournament and a horse shoe tournament on that day.
Q And were you participating in those or just watching?
A Just watching.
Q And while you were at Mr. Kirkland's place, did you see the defendant, Nate Bradley?
A Yes, I did.
Q Tell us what happened when you saw him.
A Well, when I seen him, he came and approached me, he asked me was Ernest at our house, and I told him yes. And I -- was another guy with him, and I shake his hand. I shake the other guy hand, but he never give a name or state a name, but Nate stated that the guy was his friend.
Q So the person that was with Mr. Bradley, the defendant, said, this is my friend, but didn't give you a

name?
A Yes, ma'am.
Q And you shook his hand but you did not get introduced?
A No, ma'am, not by name.
Q And was Ernest in fact at the house at that time?
A Yes, ma'am.
Q And where did -- how long did Nate and this friend of his stay there?
A Well, about five minutes, then Nate asked me whether Ernest was at the house and I told him yes, him and my brother and my sister was there.
Q And what happened after they left Kirkland's place?
A Well, Nate and the other guy, they got in their little blue car and they went down to our house.
Q They -- is it the same car that they drove up in?
A Yes, ma'am.
Q Do you know what kind of car it was?
A I think it's a Baretta or something like that.
Q So you think it was a Chevrolet Baretta?
A Yes, ma'am.
Q But it was a blue car.
A Yes, ma'am.
Q Who was driving?
A Nate was driving.

Q And where was the other person?
A Sitting in the front seat on the passenger side.
Q Did you actually see them arrive at Kirkland's place?
A Well, I didn't actually see them pull up together, but I see them got in the car together and leave and went to our house.
Q And where did they go when they left?
A They went to our family house.
Q And how could you tell that was where they went?
A Because from where the -- where the club is only about 200 feets to our turn, less than a football -- size of a football field.
Q And where did you see the vehicle go?
A Down to our house.
Q Excuse me. Had you seen Ernest earlier that day?
A Yes. That morning around 9:30, 10:00 me and Ernest had went to McDonald's on 521 in the Camden area.
Q And -- and after the defendant and his friend left Kirkland's Place, did you ever see Ernest alive again?
A No, ma'am.
Q Did there also come a time around this time when you witnessed the defendant and Ernest get into an argument?
A Yes, ma'am. This was Thursday, should have been the 19th, two days before that Saturday that Nate and another friend came to the house and he called Ernest out.

And I was sitting right by the door because the car just right outside the door, and the door was open, and Ernest got in the car and they was having some words. I couldn't exact hear what they were saying, but you know, it was -- it -- motion like they was arguing with each other.

And the other guy got out the car and stand up while he was talking. But at the time when Ernest came back in the house, he came to me, said Leonard--

MR. FINNEY: I'm -- no, Your Honor. He's getting ready to tell you what the dead man said. I believe that's not proper.

MS. FANT: Exception to hearsay, Your Honor. I believe it's -- it's not offered for the truth of the matter asserted but for the effect that it had on Mr. McCray, the listener.

THE COURT: Y'all better approach.

(Whereupon a bench conference was held.)

JUROR: Excuse me, Your Honor. I'm sorry to say that. But as you mentioned earlier, may I please have a brief recess?

THE COURT: Certainly. We'll -- we'll take five minutes. Need a little bit longer, whatever y'all -- if the whole jury panel needs to go, y'all can just all go to the jury room and I will get you back out

in just a minute.

(Jury left the courtroom at 5:05 p.m.)

THE COURT: Y'all want to put any of what we just did on the record?

MS. FANT: That will be fine, Your Honor. Your Honor, we had argued a hearsay exception, mental, emotional or physical condition of the declarant, and obviously Your Honor ruled against us.

Other than that we're prepared to go forward with his description of Mr. James rather than what he said.

THE COURT: And I -- and I assume not knowing his absent -- but it appeared that it's somehow the State was trying to establish some bad blood between the victim and the defendant by an argument that they had had, and the fact that if he was going to say what the victim came in and told him, I don't think that falls under that exception.

Now, he certainly can describe the victim's demeanor, whether he was emotionally upset or what his -- but it doesn't appear that -- it seems to me it would be offered to prove the truth of the matter asserted that in fact there was an argument or some bad blood and not the declarant's state of mind.

Now he -- you know, he can -- he may can say

what he said based on that, but I don't think it comes under--

MS. FANT: Well, and that's where -- it does lead to that and I guess we might as well hear that out while we're out. The defendant after the -- the statement from the defendant was going to be that he threatened him.

He will describe how Ernest came in, was worried, looking down, appeared visibly shaken, and that he then said that, hey, I need you to get my back if -- if they jump me, that sort of thing.

And I do think that that one actually -- the statements of the victim in this case do go to his then existing mental, emotional, or physical condition in that he was quite upset and worried that something was going to happen to him and asked Mr. McCray to kind of watch his back and keep a lookout for him.

THE COURT: Okay. What do you say about that?

MR. FINNEY: I think it's for the truth of the matter asserted. That doesn't have anything to do with the emotional state. I think the rule is limited to what he says he can -- he saw.

I don't think he can testify as to what the man felt or what the man said about how he felt.

MS. FANT: Your Honor, I also think it would be admissible under 8031, present sense impression, where the statement explaining his concern about that was made immediately after the events which was the threat from the defendant, Mr. Bradley.

MR. FINNEY: He can't testify that it was a threat. He can only testify they were in the car and had a conversation.

MS. FANT: Correct, but he can testify that the victim then came in and said, hey, I need you to get my back. I can take a--

MR. FINNEY: I don't think he can testify to that, Judge. I mean, that's the problem.

THE COURT: Well, present sense impression is where the declarant was perceiving an event.

MS. FANT: And the event was the threat.

THE COURT: I know, but he -- but he -- the problem is if he'd have said it while he was out in the argument, but the event was over with by the time he came back in the house.

MS. FANT: But it's said or immediately thereafter, and when we are talking within seconds, not -- maybe not even five seconds. He literally got out of the car, came right in, and talked to Mr. McCray who was at the door.

MR. FINNEY: And Mr. McCray just testified he saw him go out and sit in the car, and he doesn't know what was said. He saw them moving their hands around gesturing is what he testified to.

Now, for him to come in and say he -- he assumed that there was a threat or an argument, that wouldn't be fair.

THE COURT: How about -- what we need to go through briefly is proffer this evidence, ask him the questions, let him give me the answers, and then we'll see where it goes.

BY MS. FANT:

Q Mr. McCray, on the Thursday before Ernest went missing, which would be the 19th, I believe of May, 2005, you indicated you had observed the defendant Nathaniel Bradley and the victim Ernest James in what appeared to be an argument.

A Yes, ma'am.

Q And why did you believe that they were having an argument?

A Because the conversation -- I mean, I couldn't hear the conversation, but the hand movement and the movement of the head, I know something was going on that wasn't right.

Q Even though you couldn't understand what they were

saying, could you hear their voices being raised?
A Yeah, it was a lot, but I didn't exactly understand what it was being said at the time.
Q And did the victim Ernest James at some point get out of Mr. Bradley's vehicle?
A Yes, ma'am.
Q And what did he do next?
A Came straight to the door where I was and stated that -- that he had threatened him.
Q And about how far was the vehicle from the door of your house?
A All the way up to the step which is about 5 feet from the door.
Q So when he got out of the vehicle to the time he got to the steps, you'd say it was about 5 feet away?
A Yes, ma'am.
Q And about how long did it take him to get from the vehicle into the house?
A Two to three seconds.
Q And how did Mr. James or Ernest appear when he came in? What was his demeanor?
A He was emotionally upset about -- I guess about the conversation.
Q And how could you tell that?
A Because when he sat on the carch (sic) he had his

head hanging down looking toward the floor, and that's when he told me that Mr. Bradley had threatened him, say if he didn't get the van by the weekend, he was going to do something to him, but...

Q And as a result of what the defendant Nate Bradley had said to him, what did Ernest say to you?

A He told me to promise him one thing, if Nate and his friends, they came after him, just promise him that we won't let him double team him. Said he could handle Nate by himself, but he know Nate travel with a gang of people when he come to do things.

MS. FANT: That will be it, Your Honor.

THE COURT: Okay. So when he came back in, he said he threatened him. I mean, that was his first response to you. And then -- and then he said he's -- (pause) you have any case law on that?

MS. FANT: No, Your Honor.

THE COURT: Okay. And I think this one is close. What I'd like to do simply I'd like to read -- this is -- this is going further than I thought you were when you first brought all this up.

MS. FANT: Me too, Your Honor.

THE COURT: So what -- and I know you want to get this witness, but I mean, I can -- I can rule off the cuff or I can go read these cases and do some

research whether this fits this exception or not because the first statement is one thing, but then he says that he threatened him and told him if they didn't have the van by the weekend, he was going to do something to him, and he asked him to watch his back side, or he could handle one -- this is going a whole lot further than I first thought. I thought was a one-line answer.

MS. FANT: Your Honor, may I ask the witness a question that's not related to the case about his timing?

THE COURT: Yes, ma'am.

MS. FANT: Is it possible for you to be here tomorrow or do you need to leave today?

THE WITNESS: Well, my girlfriend have to go back to work tomorrow. If -- only way I can get back if I had to catch the bus tonight and come back because I live in Horry County, in Conway.

MS. FANT: If you were to stay overnight and we were to provide a bus ticket, would you be able to go home tomorrow?

THE WITNESS: Yes.

MS. FANT: Would that be suitable to you? Would that be something you could do?

THE WITNESS: Yes.

THE COURT: And I -- you know, I don't know how important this testimony is to you. At least it -- at this point.

MS. FANT: It's not crucial, Your Honor, and part of me is leaning towards just going ahead and having him finish his testimony without -- without referring to what either the victim or the defendant said but how he reacted to it, which I do believe is--

THE COURT: That's certainly -- you certainly can do that and we won't have this issue, but -- but...

MS. FANT: I guess if Mr. Finney anticipates a long cross-examination, that would weigh into that.

MR. FINNEY: The more she puts up, the more I got to deal with.

THE COURT: Right. And if he's going to -- my first is to ask him about his demeanor and the fact that he was upset. Now, if you're going to get into what the deceased told him, then it's got to fit under one of the hearsay rules.

Whether the present sense impressions goes that far or not, I don't know. It's -- I need to read a couple of these cases to get...

MS. FANT: Well, I guess the question will be

if -- if we thought we could finish up today, I would be willing to go forward and not elicit any testimony about what either the defendant or the victim said, but just how his demeanor was and what Mr. McCray did in response to that.

THE COURT: Okay. And we certainly can try. And if something happens and we get bogged down, we can certainly revisit this. I mean, this is...

MS. FANT: I guess my concern is that we would -- I would forego that in order to try to get him home today and then it would drag out any way and he'd have to still be here.

THE COURT: I understand that. And certainly if it does drag out, we can go there if you want to. You know, I don't know the facts, how important this is. If you deem it's important enough, I will go research these cases. But if you are not going to go there, we will press on.

MS. FANT: I'd like to go forward then, Your Honor.

THE COURT: Okay. If the jury is ready, bring us the jury.

(Jury entered the courtroom at 5:20 pm.)

BAILIFF: Mr. Wactor, you always sit in that seat. Okay? You two have assigned seats, this lady

here and you. That's your seat. Okay. Thank you.

THE COURT: Madam Solicitor?

BY MS. FANT:

Q Mr. McCray, to continue where we were just briefly, you had indicated that -- what did you observe in the vehicle between the defendant and Ernest?

A Well, conversation they had was some deep conversation. And like I said, when he got out, he was emotionally upset.

Q And what did you -- you indicated -- how did you know they were arguing, in other words?

A About hand movement and movement of the head and the expression on the face.

Q And even though you couldn't hear what was being said, could you actually hear their voices?

A A little, but not enough to understand what they were saying.

Q Were their voices in fact raised above the normal speaking conversation?

A Well, it was loud, but I couldn't make out what it was saying.

Q And when Ernest got out of the defendant's car, about how long did it take him to get into the house?

A Two to three seconds.

Q How far was he from the front of the house at that

point?
A About 5 feets from the front door.
Q And when -- when Ernest came in, how did he appear to you?
A Emotionally upset.
Q And how could you tell that?
A Like I say he -- he say that--
Q Not--
MR. FINNEY: Not what he said.
BY MS. FANT:
Q Without saying what he said, just how do you know he was upset?
A Okay. Because when he sat down, he dropped his head and take a deep breath.
Q And had you known Ernest for a long time?
A About a year and a half.
Q Were y'all pretty close?
A Yeah, we had became real close.
Q And do you think you could -- could read his moods pretty good from spending time with him?
A Yeah, we always talk about a lot.
Q And in your opinion he was upset?
A Yes, he was.
Q And without saying what either the defendant said or what Ernest said, what did you say to Ernest in response

to his apparent upset emotional state?
A I just told him I had his back, anything goes on at the house I got to be a part of it, I got to protect my family house.
Q Answer any questions, please, that Mr. Finney may have.
THE COURT: Mr. Finney?

CROSS-EXAMINATION

BY MR. FINNEY:
Q Mr. McCray, who is Martha Ransom? Who is she?
A My sister.
Q And what did your sister have to do with Mr. Ernest James?
A They was friends.
Q They were going together?
A Yes.
Q They were living together?
A Yes.
Q How long had Mr. James been living at Spring Hill Road with Ms. Martha?
A Maybe about two months.
Q So you knew him a year, but they weren't living together that whole year. They'd only been living together a couple months.
A Well, at the family house a couple months, but they

stay other places.
Q All right. Did you know Martha Ransom gave a statement to the police officers--
MS. FANT: Objection, Your Honor --
BY MR. FINNEY:
Q -- on May 25th, 2005.
MS. FANT: He cannot -- objection. He cannot question one witness about a statement that another witness gave.
MR. FINNEY: Just asking the question. Did he know his sister gave a statement.
THE COURT: He can answer that question. He can't go in--
THE WITNESS: No, sir.
BY MR. FINNEY:
Q You didn't know that?
A No, sir.
Q Who is William McCray?
A My brother.
Q Is he here today?
A Yes, sir.
Q Point him out to me.
A (complied.)
Q That gentleman right there is your brother?
A Yes, sir.

Q William McCray. Do you know if he gave a statement to the police officers on May 25th, 2005?
A I don't know if it was May 25th, but I know he did give them a statement.
Q What day did you give a statement to the police?
A Me?
Q You.
A I didn't give a statement until...
Q Until today. Today is the first day anybody has heard from you about something that happened to Ernest; isn't that right?
A Well, one of the -- any of the officers, yes, uh-huh.
Q You didn't talk to the officers when you found out that your sister's boyfriend had been killed.
A And if I may explain the reason why.
Q I'm -- ask the question. Did you --
A No.
Q -- in May --
A No, sir.
Q -- of 2005 give a statement to the police officers?
A No, sir.
Q But you are going to tell the jury today that you love Mr. James and you were concerned and you had his back. Isn't that what you've come to say today?
A Yes, sir.

Q But you didn't help the week that he got killed. And you haven't talked to a police officer in two and a half years. Isn't that right?

A Yes, sir.

Q And you come up here and tell the jury about a story about you heard Nate Bradley arguing with your brother two days before he went missing.

A I came up to tell the jury the truth. That's what I came.

Q Why didn't you tell the police the truth?

A Because I had a warrant on me at the time if you must know.

Q All right.

A Thank you.

Q So you were ducking the police because you had trouble?

A Not exactly ducking. Staying out of their way.

Q But you got out of the trouble and now you're here to testify.

A That's right, yes, sir.

Q Okay. That's good. Did you go to jail with Mr. James over in Camden?

A No, sir.

Q Did you know he was arrested?

A Yes, sir.

Q How long did he stay in jail?
A Two or three days.
Q You didn't go get him out?
A No, sir.
Q You didn't have his back then either?
A I didn't have money to get him out at the time.
Q You say that you saw Ernest -- excuse me -- Nate Bradley at Henry Kirkland's club --
A On the 21st of May.
Q -- on May 21st. What day of the week is May 21st?
A On a Saturday.
Q What time on Saturday did you see Nate Bradley?
A It was late in the afternoon.
Q What time?
A Between five and six maybe.
Q On Saturday the 21st between five and six in the afternoon?
A Yes, sir.
Q Mr. Clerk, could I have a marker? Red if you got it. Thank you, sir. Did you tell the police that after they found Mr. James dead?
A I stated I didn't talk to the police because I had a warrant on me. Thank you.
Q So you didn't tell the police that -- even though you were wanted -- that the man had been killed, shot in the

head and put in the lake--
A I told my family that. They told the police that.
Q They told the police what you said you saw.
A That's right.
Q You saw Nate Bradley at Henry Kirkland's place.
A Yes, sir. Not only did I saw him, I shake his hand and the other guy that was with him.
Q Now, you saw them and you saw this other guy. Have you given a description of this other guy to police?
A No, sir. My brother did.
Q Did your brother -- was he standing there with you?
A No. My brother was at the house when they came--
Q So you were standing there at Henry Kirkland's place. You saw Nate Bradley and you saw this unknown man, and for two and a half years, even including today, you haven't told the cops what the man looks like, what he had on, or what he said.
A I -- I told Wesley Gardner.
Q When?
A About two months later that I seen the same guy that was with Mr. Bradley at the club, 521 club.
Q So two months after the death of Mr. James you saw this unknown man at a club?
A That's right.
Q And you told Wesley Gardner?

A That's right.
Q Did he write it down?
A I talked to him on the phone. I can't answer that question.
Q All right. Didn't you say that this man, unknown man, got in Nate Bradley's car and they went over to the house --
A Yes.
Q -- to see Mr. James?
A Mr. James, yes, sir.
Q But you stayed at Henry Kirkland's place?
A Yes, sir.
Q And that was the last time you saw your -- your girlfriend -- your sister's boyfriend alive?
A Yes, sir.
Q Until today when they asked you to come and be a witness.
A Yes, sir.
Q And is that all you know?
A That's all I know.
Q Nothing further.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. FANT:
Q Because he didn't give you a chance, let me give you

a chance to explain why you didn't give a statement to law enforcement when this happened in May. Why did you not go to law enforcement and tell them what you knew?

A Because at the time I had a warrant on me for missing General Session Court.

Q And were you ultimately convicted of any offense?

A I plead guilty to it later.

Q And what -- he had indicated or you told him that you were with Ernest when the -- when he got arrested in Camden?

A Yes, ma'am.

Q What vehicle were y'all in?

A In the same van that got impounded that he say they bought together.

Q And what happened to that van after Ernest was arrested?

A They impound the van, and Ernest went to try to get some paperwork so he can get something straight for the van.

Q Did you ever hear the defendant, Nate Bradley, make any comments about the van?

A No, ma'am.

Q But to your knowledge when Ernest was killed -- or excuse me -- when he went missing on Saturday and you -- no one saw him again, did -- was the van still in fact

impounded in Camden at that time?
A Yes.
Q And the person that you saw the defendant with at Henry Kirkland's place, did you know him?
A No, ma'am.
Q Did Mr. Bradley make any attempt to introduce you to him?
A Only thing he say, it was his friend. Never gave -- state a name.
Q So other than seeing them there, did you really know anything else to tell law enforcement?
A No, ma'am.
Q Thank you.

THE COURT: Anything further from this witness?

MR. FINNEY: No, Your Honor.

THE COURT: Thank you, sir. You can step down. Any reason he can't be excused?

MS. FANT: No. Please so, Your Honor.

THE COURT: Mr. Finney?

(Whereupon the witness left the stand.)

MR. FINNEY: No.

THE COURT: Ladies and gentlemen, we are going to quit for today, and I'm sorry we ran over. I reminded you earlier, you can't talk about this case yet. You can't talk about it among yourselves. And

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when you get home, you can't talk about it with your family.

And I'm sure they're going to want to know what you have been doing all day and you're going to want to tell them. But then they're going to have an opinion as to what you ought to do.

So you just -- when this case is over with I will let you talk with anybody you want to about it, but right now it's very important y'all decide it based on what you hear from this witness stand.

So -- and you may have some coverage in the newspaper. If it is, please do not read it because you got to decide this case based on what you hear.

You have been sitting there and you have heard everything deemed admissible in this case and you've got to decide it based on that. Have a good evening. I will see you back in the jury room at 9:30 in the morning. Everybody remain seated while the jury leaves.

(Jury left the courtroom at 5:33 pm.)

THE COURT: Anything further from the State?

MS. FANT: No, Your Honor.

THE COURT: From the defense?

MR. FINNEY: No, Your Honor.

THE COURT: We will be in recess until 9:30 in

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the morning.

(Court in recess for evening.)

***** Tuesday, January 15th, 2008 *****

THE COURT: State ready?

MS. FANT: Yes, Your Honor.

THE COURT: The defense ready?

MR. FINNEY: Yes.

THE COURT: Bring us the jury, please.

(Jury entered the courtroom at 9:55 am.)

THE COURT: Thank you, sir. Madam Solicitor, you may call your next witness.

MS. FANT: Your Honor, at this time the State would call William McCray.

WILLIAM MCCRAY, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Mr. McCray, where do you live?

A Rembert, South Carolina.

Q How long have you lived there?

A Practically all my life, 30 years.

Q What road do you live on in Rembert?

A Spring Hill Road, [redacted].

Q Did you live at [redacted] Spring Hill in May of 2005?

A Yes, ma'am.

Q Who else lived there with you?
A My sister Martha during the time, my brother Leonard, my brother -- sister Josephine, brother Thomas.
Q So there were two of your brothers, Leonard and Thomas, your sister, Josephine, and your sister Martha Ann?
A Yes, ma'am.
Q Did the victim in this case Ernest James live there?
A Yes, from time to time he would stay there.
Q How did you know Ernest?
A I meet him through by my sister.
Q And which sister was that?
A Martha.
Q And what was the relationship between Martha and Ernest?
A They's friends.
Q Was it a romantic relationship, girlfriend, boyfriend?
A Yes, ma'am.
Q And how long had they been seeing each other, do you know?
A Not really. Far as I know it was like three or four months.
Q Did you get to know Ernest?
A Yes, ma'am.

Q On Saturday, May 21st of 2005, did you go to the softball game at Henry Kickland's place?
A No, ma'am, I was not there.
Q Were you at the house when the defendant arrived there?
A No, ma'am. I came afterwards.
Q About what time was that when you got there?
A Like between five and 5:30.
Q And what did you see when you got to the house?
A When I got there it was Nate and another guy in the car with him, so I spoke to them and I replied him...
Q How did you know the defendant?
A We had worked together few time through by Ernest painting.
Q So Ernest and he did some painting together?
A Yes, ma'am.
Q And you -- had you helped them at some point with that?
A Yeah, I helped one time with Nate with their...
Q And when you got there and saw him, what -- where was he?
A He was sitting in the car.
Q And what car was that?
A I think it was a Chevrolet Baretta or whatever, blue.

(WHEREUPON, State's Exhibit No. 33 was marked for identification only.)

BY MS. FANT:

Q Do you recognize the photo in this Exhibit, State's 33?

A Yes, ma'am, that's the car.

Q Now, you indicated there was someone else with Nate?

A Yes, ma'am, was another guy in there with him.

Q And who was that?

A I don't know. I asked Nate who it was because I stated that he looked like someone I knew, went to school with, but Nate said he was not from down here, from New York or New Jersey, one of his partners, so I just leave it as that.

Q Had you ever seen that man before?

A No, ma'am.

Q But clearly the defendant knew who he was?

A To me say his partner -- evidently, yeah, that what he told me, his partner.

Q That he's his partner?

A Yeah, that what he replied to me.

Q After you talked to the defendant about that, did Ernest come out of the house at some point?

A Yeah, shortly after that.

Q And what did you see him and Nate do?

A Well, Nate got out the car and -- and he said he needed to talk to Ernest in private, so I left and I went in the house.
Q Now without saying what Ernest told you, don't say what Ernest said, but did he come inside the house after a few minutes?
A After he conversate, yeah, he came in the house.
Q And did he leave right after that?
A Yeah, shortly after that.
Q And what vehicle was he driving?
A My sister car.
Q What kind of car was that?
A I think it was a -- like a Jaguar or whatever. I'm not familiar.
Q Could it have been a Volvo maybe?
A Volvo, yeah, a blue Volvo.
Q Was it a new car?
A It was in the--
Q Like new, brand new?
A No, ma'am.
Q And when -- when Ernest left, he was driving that car?
A Yes, ma'am.
Q Who was in the car with him?
A No one when he leave out the yard.

Q And what -- where did Nate and his partner go?
A They had pull out ahead of Ernest, then Ernest went behind them.
Q And did you ever see Ernest alive after that?
A No, ma'am.
Q Please answer any questions Mr. Finney may have for you.
A Okay.

MR. FINNEY: Thank you, Your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. FINNEY:

Q Good morning, Mr. McCray.
A Good morning.
Q Mr. McCray, you said that you were coming into the house between five and 5:30 on this Saturday afternoon?
A Yes, sir.
Q Where were you coming from?
A My sister house down the street.
Q What's her name?
A Laura Nestle.
Q And you had been at Laura's house and you were walking to Martha's house?
A To the family house, our family house, yes, sir.
Q Now, did people live at the family house back during

that time in May of 2005?
A Said did people live there?
Q Yes.
A We lived there.
Q You lived there?
A Yes, sir.
Q Were the lights on at that time?
A Yes, sir.
Q And the water and everything was on?
A Yes, sir.
Q You sure about that?
A I know that--

MS. FANT: Objection, Your Honor. Relevance.

MR. FINNEY: Testing the witness's recollection, Your Honor.

THE COURT: Okay. I'll -- go ahead.

THE WITNESS: The lights was on, yeah.

BY MR. FINNEY:
Q Water was on?
A I can't remember.
Q How about the cable?
A No, we never had cable.
Q All right. And you and Josephine and Leonard and Thomas and Ernest James all lived there?
A Ernest lived there from time to time.

Q From time to time?
A Yes, sir.
Q Where -- where did you work in May of 2005?
A May of 2005?
Q When this -- when you lost your friend, Ernest James in May of 2005, where were you working?
A We was working together really when come up, me and Ernest, from time to time painting.
Q All right. Did you paint for Nate Bradley regular?
A One -- one time.
Q One time?
A Yes, sir.
Q And so you're saying that you and Ernest got other jobs and painted on your own?
A Yes, sir.
Q And sometimes Ernest would paint with Nate?
A Yes, sir.
Q Now, did they have a van, Ernest and Nate? Did they have a van that they painted out of?
A As far as I -- I saw the van maybe one or two time, but I don't know what's going on with the van.
Q Well, didn't -- tell the jury about y'all going over to Camden in the van, you and Ernest and Leonard.
A I -- I wasn't in there.
Q You weren't in the van?

A No, sir.
Q You didn't go to Camden with them on May the 15th?
A No, sir.
Q All right. So you've only seen the van once or twice?
A Yes, sir.
Q You don't know if Ernest put money in the van or whether Nate put money in the van? You don't know anything about that?
A I don't know anything about it.
Q All right. Now, on this day in May that you say that you had this meeting with Nate and this other guy in the yard, you didn't know this other guy?
A No, sir.
Q So you asked Nate who he was?
A Yes, sir.
Q And was -- was the other guy standing right there when you were talking to Nate?
A No, he was sitting in the car. Both of us sitting in the car while I was talking till Ernest came up.
Q You were talking to Nate while he was sitting in the blue car?
A Both Nate and the other guy was sitting in the car.
Q And you were asking Nate who the other guy was.
A Yes, sir.

Q The other guy was listening to you.
A Yes, sir.
Q And Nate said what?
A That he's one of his partner.
Q Now, those words is not what you told the police in your statement; is it?
A Yes, it is.
Q All right. Did you give a statement to the police about three days later? Is that a copy of the statement that you gave?
A Yeah, it's a copy of the statement.
Q Did you write the statement?
A No, I did not write it.
Q Can you write?
A Yes, I can write.
Q Can you read?
A Yes, I can read.
Q Would you please read that statement to yourself right now.
A On May 21st--
Q No, sir. Read it to yourself.
A Oh. (Complied.)
Q Did you read it?
A Yes, sir.
Q Is it -- and did you give that statement to

Investigator Gardner on May the 25th, 2005?
A Yes, sir.
Q Four days after you say you saw Nate and Ernest James and this unknown man, four days --
A Yes, sir.
Q -- gave the police a statement?
A Yes, sir.
Q Did you say in this statement that Nate told you that he was his partner, this unknown man?
A Yes, sir.
Q Read it. Tell me where it says -- what line is it on that it says he was his partner.
A (Complied.) The bottom line -- of last line.
Q The bottom line says that you were talking to Ernest, and Ernest told you the man was one of Nate's partners?
A Yes, sir.
Q Nate never said that. You told the police four days after this incident that Ernest told you it was Nate's partner. Isn't that what you told the police?
A Yes, sir.
Q Isn't that what you signed on May 25th?
A It didn't said --
Q May 25th?
A -- the guy was up from up north. That what he told me. That what Nate replied.

Q Nate said he thought the guy was up from north.
A That what he replied.
Q That's what you told the police?
A Yes, sir.
Q But Ernest told you it was one of Nate's partners, not Nate; right?
A Yes, sir.
Q Now Mr. McCray, was your mind clearer on the facts four days after the incident or two and a half years after the incident today?
A It was clear four days after the fact and today, and two and a half year.
Q You haven't gotten anything mixed up or jumbled up or forgotten anything?
A No, sir.
Q That statement was your first statement to the police officers.
A Yes, sir.
Q Was it true and correct?
A Yes, sir.
Q Nate never told you that he knew the guy or it was his partner. Ernest told you that. And that's what you told the cops on May 25th; is that right?
A Yes, sir.
Q All right. Now, you told the police officers what

you remembered in this statement. Did the police officers ask you what the other man looked like?
A Yes, sir.
Q Is it in your statement?
A No, sir.
Q Why not?
A Because I -- the statement I give, it was on a different occasion by the description.
Q What do you mean? On May 25th weren't you at the police station talking to the officers?
A I -- yeah. That when I give the statement.
Q And you didn't tell them in the statement what the other man looked like?
A No, it's not in the statement.
Q Tell the jury today what the other man looked like.
A All I know is tall, dark skinned, about five-six, male, black male.
Q Five-six?
A Five-eight, five-nine, seem to me because I couldn't tell because he was sitting down.
Q You couldn't tell how tall he was?
A No, sir.
Q What clothes did he have on?
A Black sweatsuit as I can remember.
Q Did you tell the police that?

A No, sir, they didn't ask me that.
Q They didn't ask you that. Let me ask you something else. What did Mr. Ernest James have on that day?
A I can't remember.
Q So Mr. James came out of the house, talked with Mr. Bradley. You say there was another fellow there. And then a few minutes later you saw Ernest James driving Martha's Volvo down the lane following behind Nate Bradley's blue car?
A Yes, sir. I say he leave behind from the house.
Q So Nate Bradley's car pulled out first?
A Yes, sir.
Q Ernest following in the Volvo?
A Yes, sir.
Q What happened to the cars when they got out to the main road?
A I can't see. From my house we cannot see to the main road.
Q You can't see to the main road?
A No, sir.
Q Let me ask you this. Do you know where Henry Kirkland's place is?
A Yes, sir.
Q How far is that from Martha's house?
A I'm -- I'm not sure. More than baseball, football

field.
Q Can you see Henry Kirkland's place from Martha's house?
A A portion of it.
Q A portion of it?
A Yes, sir.
Q So if you and I were sitting at Henry Kirkland's place talking, we could look out and see down the road, but could we see Martha's place -- I mean -- yeah, Martha's place?
A A portion.
Q A portion of it?
A Yes, sir.
Q You were in a position at Martha's house to see the cars leave, but you don't know what happened to the cars when they got to the highway?
A No, sir, I don't.
Q So one could have gone left and one could have gone right?
A It's possible. I don't know. I can't see --
Q But what you do know --
A -- from where I were.
Q -- is that Bradley left in his car and Ernest James left in the Volvo?
A Yes, sir.

Q And that was the last time you saw Ernest James alive?
A Yes, sir.
Q Now, you have talked to the police over the last two years. Is that right?
A Over the last two years.
Q Yes. After the death of Mr. James you started talking to the police. They talked to you four days later.
A When I gave the statement, not since that.
Q You didn't talk to the police after the four days after the -- May 25th?
A No, sir.
Q Did they ever show you any pictures of Mr. James' body?
A No, sir.
Q So you don't know what kind of clothes Mr. James had on when they pulled him out the pond?
A No, sir.
Q And you don't know if those are the clothes he had on when you last saw him because you don't remember the clothes he had on?
A No, sir, I don't -- didn't.
Q So he could have changed clothes after he left Martha's house that day driving the Volvo and you wouldn't

know?
A No, sir. How would I know?
Q The investigators would have asked you. Did they come and ask you?
A I can't remember.
Q They never showed you a picture of the clothes he had on to say, are these the clothes had on --
A No, sir.
Q -- when he left that day?
A No, sir.
Q Thank you, sir. That's all I have.

THE COURT: Anything further from the State?

MS. FANT: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. FANT:
Q Just to get -- make this very clear, in whose car -- whose car was the guy that you didn't know when you got there, whose car was he sitting in?
A Nate.
Q And this was -- did Nate ever introduce this guy to you, tell you his name?
A No, sir -- no, ma'am.
Q Did -- when you were there and you're right by the car, did the guy tell you who he was?
A No, ma'am. He ain't never said anything.

Q Didn't say a word?
A No, ma'am.
Q And did he ever get out of the vehicle?
A Not -- not to the house, no, ma'am.
Q And when they left in the Baretta or when the Baretta left and Ernest left, in whose car was this unknown guy?
A Nate.
Q So Ernest was by himself leaving?
A Yes, ma'am.
Q Thank you.

MR. FINNEY: Nothing further.

THE COURT: Thank you, sir. You can step down.

MS. FANT: Your Honor, may this witness be excused?

THE COURT: Any objection?

MR. FINNEY: No objection.

THE COURT: Yes, ma'am, he can be excused.

(Witness left the stand.)

MS. FANT: Your Honor, the State now calls Martha Ann Ransom.

MARTHA RANSOM, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Good morning.

A Good morning.
Q Ms. Ransom, how did you know Ernest James, the victim in this case?
A He was my boyfriend at the time.
Q And how long had you known him?
A A little over a year.
Q And where were y'all living in May of 2005?
A Well, we stayed at [redacted] Spring Hill Road for a while, we stayed in motels for a while, different places.
Q So y'all didn't have a permanent home together?
A Not -- no, ma'am.
Q And whose house is the [redacted] Spring Hill Road?
A It's a family-owned home.
Q And who else was staying there at the time?
A My sister, Josephine, my brother Leonard, William, me and Ernest at the time.
Q Were any of those people other than you and William and Ernest there the day that the defendant came over there?
A Josephine was there.
Q And how long did -- let me take that back. How do you actually know the defendant in this case?
A Through Ernest. I met him through Ernest.
Q And how long have you known him?
A Shortly after I met Ernest, Ernest introduced me to

Nate right after I met Ernest just about. About the same length of time.

Q And what was the relationship between the two of them?

A It was friends and working partners.

Q And did it -- but toward the end of Ernest's life as it got into May of 2005, did they start to have some problems?

A Well, from what I see that last week before he was killed, it seem like Ernest was, you know, kind of nervous and agitated. And I asked him, you know, what was the matter. He just said, nothing.

Q So was that -- was that typically how Ernest was? Did he tell you a lot of things that were deep inside?

A Not really. Some things he would open up, and some, you know, not a lot.

Q But you thought there was something wrong?

A Yes, ma'am.

Q And tell us about what you know about the van, the van that they used to paint with.

A Just that they bought it to do painting, that they bought it together to do painting as far as I know.

Q Did they keep their supplies in it and that sort of thing?

A They did -- the van, they didn't have it that long

that I know of, so what was in it, I guess, yes, supplies was in it.

(Whereupon there was a pause - commotion in the courtroom from defense side of courtroom.)

MR. FINNEY: Move for a recess, Your Honor.

THE COURT: Ladies and gentlemen, if y'all will go to the jury room, I will get you back out just as soon as I can.

(Jury left the courtroom at 10:20 am.)

MR. FINNEY: Your Honor, a security belt has been attached to my client for security purposes, and it just went off and it gave him a tremendous electrical shock.

I need to take five minutes to calm him down. I'm going to ask the Court to take this belt off of him so that this won't happen again throughout this proceeding.

THE COURT: All right. We -- we will certainly take the five minutes. I need to talk to whoever is in charge of security and see what's going on and what their security concerns are. Do they have one of those locking belts or something besides the security belt?

OFFICER: We got some other devices.

THE COURT: Okay. And if y'all can determine

that -- whether somebody pushed a button, set off the button. All right. Thank you.

(Whereupon a brief recess was taken.)

MS. FANT: Your Honor, may I have one minute before the Court brings the jury in to ask Mr. Finney a question?

THE COURT: Yes.

(Ms. Fant and Mr. Finney conferring.)

MS. FANT: Just agreeing on --

(Ms. Fant and Mr. Finney continued conferring.)

THE COURT: Okay. Anything?

MS. FANT: We are ready to go. You can leave. Thank you for coming.

MR. FINNEY: Your Honor, I would respectfully request that the Court inform the jury that in General Sessions Court, because of heightened security, we require all defendants to wear a security belt and that Mr. Bradley had on a security belt that malfunctioned and that it caused him to receive a shock, and that's why we took the break, and that that's what caused the disruption, that the matter has been taken care of and that the trial will continue.

THE COURT: Okay. And what does the State say?

MS. FANT: Your Honor, it really is not --

doesn't make any difference to us. However, it is not true that all defendants are required to wear the belt.

MR. FINNEY: Well, that's what I want this jury to believe when they leave here.

MS. FANT: Then I would -- I would wholeheartedly object because you would be telling them a lie, and I wouldn't think that's appropriate.

THE COURT: Well, the problem I have, you know, one of the big concerns that the Court has is to single out this defendant. That's why whatever security devices, you know, they're not in jail because he's in street clothes and security devices are hidden from the jury where the jury will not infer in some way that this defendant is -- perception from the State or anyone else that he is a dangerous felon simply because he's charged with a crime and that they won't give him some prejudice as a result of that.

So -- and this situation has presented a problem in the Court. The -- I have to figure out a way not to single him out that to infer -- the jury infer somehow that -- that the Court or security or somebody feels it, that he's a danger or a risk at this point. My other option is declaring a mistrial.

MS. FANT: Well, I guess, I mean, first of all Mr. Finney hasn't asked for one.

THE COURT: I understand that. But he's asked -- he's asked for -- and that was one of the things I was going to ask him and y'all is now that we have had this situation arise in the Court, how do we cure it.

And you know, it's three options. Either I don't say anything to the jury, I try to explain to the jury what happened, or we declare a mistrial. What other options do we have?

MR. FINNEY: None. And Your Honor, quite frankly if -- if the curative instruction does not meet a level that the defense requests, then I'm going to ask for a mistrial.

But I was hoping that we would get a curative instruction that wouldn't single him out and that would allow the jury to understand what happened and that we could keep on going.

THE COURT: Well, could I use the terminology that the defendants in this court are required, and not all defendants, but it's also not singling him out to the ladies and gentlemen.

Either I can say, many times, or defendants in this court are required for security reasons to wear

security belts, that Mr. Bradley had on such a belt, it malfunctioned and gave him an electrical shock, we have cured that problem and are ready to proceed. What about--

MS. FANT: We're not opposed to a general statement. What I would object to is a statement that is not true and that would be that every defendant, you know, that goes to trial wears a belt because people are going to know that's not true and that it's -- it would be a misstatement to the jury.

But in general -- if you can phrase it in any general way, we'd have no objection.

MR. FINNEY: Your Honor, we would accept that language that the defendants in this court...

THE COURT: Are required to wear a security belt, and in this particular situation the security belt malfunctioned, the defendant received a shock, we have cured that problem and are ready to proceed. Okay?

MS. FANT: That's fine with the State.

THE COURT: Anything else before I bring the jury in?

MS. FANT: No, Your Honor, not from the State.

THE COURT: All right. Bring us the jury.

(Jury entered the courtroom at 10:50 am.)

THE COURT: Thank you. Thank you, ladies and gentlemen. I apologize about the delay. I need to explain to you that the defendants in this court are required to wear a security belt.

The security belt in this case malfunctioned and the defendant received an electrical shock. We have cured that problem and we're ready to proceed with the trial. Yes, ma'am.

BY MS. FANT:

Q Ms. Ransom, we were talking about the fact that you lived in Rembert or lived at this time at -- on Spring Hill with the victim, Ernest James, and that you knew the defendant as a business worker with the victim.

Did you know -- what did you know him by? What was the name that you called the defendant?

A Nate.

Q And tell us about what you know about the van that they had.

A It -- just that it was using it as a work van.

Q Did -- was there an incident in Camden that caused that van to be impounded --

A Yes, ma'am.

Q -- at the police?

A Yes, ma'am.

Q And did Ernest actually try to get the van out after

it had been impounded?
A Yeah. He didn't have the money. He had to have some money, but he didn't have the money to get it out.
Q Was he concerned about getting it out?
A Very much so, yes, ma'am.
Q Now, on this day before the day of -- the defendant and this unknown man arrived, had Ernest been drinking?
A The day? No, ma'am, not that -- not in front of me he wasn't.
Q And that would have been Saturday, May the 21st, 2005, the last day that you saw him?
A Yes, ma'am.
Q And where was Ernest in fact when the defendant came to the house?
A He was in the bed asleep.
Q And what happened that day when he got there?
A Well, he blowed the horn and I went to the door. He asked -- Nate asked whether Ernest was there. And I said, yeah, and I went back to the room and got -- wake Ernest up and told him Nate was out there, and he got up and went out and talked to Nate.
Q What -- was the defendant in a vehicle when he came there?
A Yes, ma'am.
Q What kind of car was it?

A It was a blue Chevrolet I guess, small blue car.
Q I'll show you State's Exhibit 33. Do you recognize that car?
A Yes, ma'am.
Q How do you recognize it?
A That's the car that Nate was in when he came that day.
Q And who was with him when he came to your house?
A It was another guy in the car. I don't know who he was because I didn't even go out. I just poked my head out, and Nate asked whether Ernest was there. That's when I went and got him.
Q Was it a black guy, white guy?
A Black guy.
Q And did you recognize him?
A No, ma'am.
Q And so you woke Ernest up and he went outside?
A Yes, ma'am.
Q Did he talk to the guy that you didn't know, the stranger?
A I'm not sure because when he -- Ernest went outside, I just went back in and sat down.
Q Okay. Do you know how long they were outside?
A Maybe about 10 minutes.
Q And when Ernest came back inside, without saying

anything that he actually said, what did he do?
A Well, he got the keys to the -- my Volvo, and he left in the Volvo.
Q Who owned the Volvo?
A I did.
(WHEREUPON, State's Exhibit 34 was admitted into evidence.)
BY MS. FANT:
Q Ms. Ransom, I will show you what's marked as State's 34. Do you recognize that?
A Yes, ma'am. This -- it's form I signed when I bought the car.
Q So that's just the paperwork filed with the --
A Yes, ma'am.
Q -- the Department of Motor Vehicles? And did you ever learn what happened to your vehicle?
A Yes, it was burned.
Q And did you ever get it back?
A No, ma'am.
Q Did you actually watch as Ernest left the house?
A Yes, ma'am.
Q What did you see?
A I was in the doorway when he left, and I just saw him drove off in the car following Nate.
Q And who was in the car with Nate?

A Nate and the guy that came up with him.
Q And was anybody in the car with Ernest in the Volvo?
A No, ma'am.
Q Did you ever see Ernest alive again after that?
A No, ma'am.
Q Did you ever talk to the defendant, Nate, after that?
A Yes, ma'am, I went -- Ernest didn't come home that night, came back to the house that night. I called Nate the next morning and asked him, you know, if he knew because where -- did he know where Nate -- Ernest was.

And he said that he didn't see Ernest any more. Said at the end of the -- our road, said the guy that was in the car with him got out the car and got in the car with Ernest and they left, and he said he hadn't -- didn't see Ernest any more.

Q Now, when you called Nate on that Sunday morning, whose phone were you using?
A I was using Ernest's phone because we had it at my sister house on charge and I thought Ernest went by and get it, but he didn't go get his phone. So when I went to my sister house to use the phone, that's when I realize Ernest's phone was still there.
Q So when Ernest left on that Saturday he didn't have his phone with him?
A No, ma'am.

Q Were you concerned when Ernest didn't come home Saturday night?
A Yes, ma'am.
Q Why was that?
A Because he usually come back, you know. Even if he going -- not going to come back, he would, you know, let me know something, he's not coming back or -- but I didn't hear -- hear anything from him.
Q And did that worry you?
A Yes, ma'am.
Q And was that not like Ernest to do that?
A It wasn't like him.
Q Please answer any questions Mr. Finney may have for you.

MR. FINNEY: May it please the Court.

THE COURT: Yes, sir.

CROSS-EXAMINATION

BY MR. FINNEY:
Q Good afternoon, Ms. Ransom.
A Good afternoon.
Q Ms. Ransom, have you ever spoken with me before?
A Not that I know of.
Q Yes, ma'am. You knew that Ernest James sometimes left the house and didn't come back home the same night; didn't he?

A He would let me know he's not coming back, yes, sir.
Q Okay. And that's -- so that happened before, that he would go out and not come back?
A Yes, but I would know more -- every time he left and didn't -- wasn't coming back I knew.
Q All right. And everything that you knew about this case you gave to the police officers in a statement on May the 25th. Isn't that right?
A Yes, sir.
Q Do you read and write well?
A Yes, sir.
Q All right. And you -- did you write this statement?
A I -- no, I gave the statement. I didn't...
Q You gave the statement?
A Yes, sir.
Q To Wesley Gardner?
A Yes, sir.
Q And he wrote it down?
A Yes, sir.
Q And you were sitting there talking to him?
A Yes, sir.
Q And was he asking you questions?
A Yes, sir.
Q And you would give the answers back and they would ask you things like, what did Nate say, what did Ernest

say, what did Ernest do, and you would tell them and he would write it down?
A Pretty much, yes.
Q Did you read the statement before you signed it?
A Yes.
Q All right. So everything in there is what you said --
A Yes.
Q -- to the police officers. Now, that statement was given on May the 25th, four days after Nate left the house or after Ernest James left the house.
A Yes.
Q So was your mind clearer then or is it clearer now, two years later?
A Then.
Q All right. Now, that -- that day when Ernest left the house, what did he have on?
A If I'm not mistaken he had on his -- a green jersey and I think he had on khaki shorts.
Q Khaki shorts and a green jersey?
A Yes, sir.
Q Was it like a football jersey or...
A Yeah. It had a number -- I think the one that he wore had number 23 or something on it.
Q Like a Michael Jordan?

A I'm -- it was a jersey. I don't...
Q Did he have a hat on?
A No, it was like a jersey with the holes in it or appear -- something like that.
Q And khaki pants?
A I'm not exactly sure about the pants, but I think he had that green jersey on.
Q Did you ever see any pictures of Mr. James after he was -- passed away?
A No, sir.
Q Okay. Now, investigators never came and showed you to ask you if those were the clothes he had on when he left the house?
A No, sir.
Q Okay. Now, you say that Nate came in the blue car in the afternoon. That would have been Saturday afternoon.
A Yes, sir.
Q Was that unusual for Nate to come over there?
A No.
Q Now, isn't it a fact that you had seen Nate earlier in the week after Mr. James had been arrested and --
A Yes.
Q -- put in jail?
A Yes, sir.
Q Who told you that Mr. James was in jail?

A I--
Q How did you find out?
A My brother I think told--
Q Which brother?
A Leonard.
Q Leonard? That was the one that testified yesterday, the one that lives in Horry County?
A Yes, sir.
Q All right. Was he with Mr. James when Mr. James got arrested?
A I don't think he was with him when he got arrested, but he said something about he saw the police talking to him or saw --
Q Okay.
A -- the guy from Piggly Wiggly talking to him.
Q Okay. Mr. James got arrested in Camden, South Carolina --
A Yes, sir.
Q -- a week before he went missing.
A Yes, sir.
Q So do you know what day he got arrested?
A If I'm not mistaken it was either that Saturday or Sunday.
Q Saturday or Sunday. And he told you he was going someplace and he'd be back.

A Yeah.
Q And he took the van.
A Yes.
Q And he didn't come back.
A No.
Q How -- when did you find out where he was? Did he --
A Later on that night.
Q -- did he call you from the jail?
A No, because I didn't have--
Q So you found out from your brother.
A That he could have been in jail, yes.
Q Okay. Your brother didn't know for sure.
A No, sir.
Q All right. Did you ask Nate the next day to go and find out if he was in jail?
A No.
Q You didn't ask Nate?
A No.
Q Did you go to Camden to see him in jail?
A No, I didn't.
Q Did you get him out of jail?
A No, I didn't.
Q When did he get out of jail?
A I think he stayed in jail over two -- it -- it was two days at the most or overnight. I know when Ernest

came, he came home walking.
Q All right. Isn't it a fact, Ms. Martha, that you were staying with Mr. Ernest at the hotel when he went to the jail when he got arrested?
A No, we was at the hotel the week before, and we left the hotel that day and went out to my sister house.
Q All right. And so you were at your sister's house waiting on him to come back?
A Yes.
Q And you didn't tell Nate to go to the jail to check on him to see what had happened to him?
A No.
Q When you -- when he came home, he came home in the first part of the week, Monday or Tuesday.
A Uh-huh.
Q All right. And you all stayed that whole week at this Spring Hill house that your family owned?
A Yes, far as I can remember, yes.
Q And so when you told the Solicitor earlier that he wasn't -- thought there was something wrong, you thought there was something wrong with Ernest, that something wrong could have been that he just got out of jail after spending three or four days in jail?
A Well, it could have been, but...
Q And he was upset that the van that he was using was

impounded in Camden.
A Yes.
Q Now, did you ever find out how much it cost to get the van out?
A No.
Q Nobody ever told you?
A No.
Q You never talked to Nate about it?
A No.
Q Nate never told you?
A No.
Q So Saturday Nate comes to the house to talk to Ernest.
A Yes.
Q You go back inside. You don't know what they talked about.
A No.
Q After a few minutes of being at the house, Nate says he's going to get the keys from you -- excuse me -- James says -- Mr. Ernest James gets the keys for the Volvo and he leaves --
A Uh-huh.
Q -- following behind Mr. Nate.
A Yes.
Q Mr. Nate's in the blue car.

A Yes.
Q Mr. James is in the Volvo.
A Yes.
Q You say there's another man in the car with Nate.
A Yes.
Q You didn't describe him.
A I don't -- I don't know what he looked like.
Q Think he's a black man.
A Yes.
Q That's all you know.
A Yes.
Q You told the police that that day?
A Did I tell the police that that--
Q When they talked to you on the 25th.
A I told them there was another black male in the car with...
Q Did they ask you what he had on?
A No.
Q Or--
A If he did -- they did, I couldn't answer them--
Q Couldn't answer any questions about him. Now, you told the Solicitor when she asked you later on after Nate didn't come home, you called--
A After Ernest didn't--
Q I'm sorry. I keep mixing up the name. After Ernest

didn't come home, you called Nate.
A Yes.
Q Did you call Nate the Saturday night?
A No.
Q Why not?
A Sunday morning.
Q Why didn't you call Saturday night?
A Because I kept -- I mean, I -- I fell asleep waiting on Ernest to come home.
Q And he didn't come home?
A No.
Q And you didn't wake up and get worried then. You got worried the next morning when you woke up and saw he wasn't home.
A Yes.
Q All right. So Sunday morning you called Nate.
A Yes.
Q Now, you called Nate on Ernest's cellphone.
A Yes.
Q Is it true that you called Nate at 10:52 Sunday morning?
A It could have been around that time.
Q Was your number 236-6215?
A I don't remember the--
Q Excuse me. I'm sorry. Was your number 236-4695?

Was that Ernest's number?
A I don't remember the number.
Q You don't remember?
A No, sir.
Q But you made -- if I told you you made six calls that day, do you remember talking -- making calls to Nate to see if he had seen Ernest or if he had heard from Ernest?
A They probably -- I might have. We might have talked six times off and on that day.
Q All right. And did he say that he had seen him at all?
A He said he -- he was calling people and nobody seen him.
Q All right. When did you hear from Nate? When did he tell you that when they left the house Saturday and got to the end of the road this other man got out of the car that you say you saw in Nate's car -- in the blue car -- and got in the car -- with -- the Volvo with Ernest?
A At--
Q When did Nate tell you that?
A It was during the first phonecall.
Q During the first phonecall --
A Yes.
Q -- on Sunday morning.
A Uh-huh.

Q So he says he hasn't seen Ernest since they drove away from your house, stopped at the main road, and this other guy got in the car with Ernest.
A Yes, sir.
Q That's what he told you?
A Yes, sir.
Q And that's what you told the police --
A Yes, sir.
Q -- four days later.
A Yes, sir.
Q When Ernest told you that -- excuse me. I'm sorry. When Nate told you that this guy had gotten in the car with Ernest --
A Uh-huh.
Q -- did you ask any questions about that like, who was the guy, what's the guy's name, where does he live? Did you ask any questions --
A No.
Q -- of Nate?
A No.
Q You just said, okay, well, we'll keep watching for him?
A Pretty much.
Q All right. And Sunday went through, all day Sunday. What did you do all day Sunday?

A Well, I made some more calls to people.
Q Using Ernest's cellphone?
A Yeah.
Q And you were asking people had they seen him?
A Yes.
Q And you made some more calls during the day. Course of the day you made calls to Nathaniel.
A Yeah.
Q Okay. Sunday night came. You still hadn't seen Ernest?
A No.
Q Did you call the police?
A No.
Q Why not?
A Because, I mean, I -- I just didn't.
Q All right. Monday morning. Did you get some calls from Nathaniel Monday morning saying, is he back yet, it's time to go paint?
A Yes.
Q Did Nathaniel tell you that he was looking for Ernest because they got a job to go do?
A Yes. We had that conversation.
Q And you told him, I ain't seen Ernest yet.
A Yes.
Q So Monday morning did you call the police?

A No.
Q Monday afternoon at 3:30 a fisherman found Ernest. You hadn't called the police at -- by that time.
A No.
Q So you got a call from who telling you they had found Ernest?
A Jean, Ernest's friend.
Q Jean is a lady who lives...
A In...
Q In Rembert?
A She live in Hillcrest Trailer Park.
Q Okay. Jean called because she knew Ernest.
A Yes.
Q And she had heard that Ernest had been killed?
A They -- she said they called her because Ernest had her address...um...
Q In his wallet?
A Yes.
Q And she called you?
A Yes.
Q And that was 3:30 Monday afternoon.
A I'm not sure of the time, but it was Monday afternoon.
Q All right. And you still hadn't called anybody to ask for assistance at that point?

A No.
Q And there wasn't any reason for you to feel that Ernest was in any danger because nobody -- you hadn't heard that or seen that or nobody had told you that?
A No, I was worried about him, but I didn't call the police.
Q All right. Do you have a brother named Leonard McCray?
A Yes, sir.
Q Leonard McCray -- did Leonard McCray ever tell you that this unknown man that was seen at your house--
MS. FANT: Objection, Your Honor. Hearsay.
THE COURT: Sustained.
BY MR. FINNEY:
Q Did you ever see this man that you say was with Nate that day, did you ever see him after the brother had been found -- I mean your boyfriend had been found missing?
A No.
Q So you have never seen the man again?
A No.
Q Are you aware that anybody in your family had seen him before?
MS. FANT: Objection, Your Honor. That would call for a hearsay response.
MR. FINNEY: If she's aware.

MS. FANT: She would have had to have been there and she would have seen them, too.

BY MR. FINNEY:

Q Let me ask you this. Were you with Leonard at a club when this other man was present?

A No, sir.

Q All right. Thank you. Nothing further.

THE COURT: Anything further from the State?

MS. FANT: Yes, Your Honor.

REDIRECT EXAMINATION

BY MS. FANT:

Q Ms. Ransom, I wanted to clarify about when he was asking about the day that Ernest went to Camden in the van and got locked up. You indicated that you thought that might be Saturday or Sunday?

A Yes.

Q Just to be clear, that -- was that the week before Ernest was found dead or the day before Ernest was found dead?

A The weekend before.

Q So there was a whole other week that passed?

A Yeah.

Q And did Ernest ever tell you why he was upset about the van being impounded?

A Not really, but I know him and Nate had had some

conversations on the phone. I couldn't hear what Nate was saying, but Ernest seem upset about the conversations they was having on the phone.

Q And those conversations concerned the van?

A Yes, or what I understood.

Q When Nate called you on Monday morning, did he ask about your brother coming to work for him?

A Yes. When we talked, he talked about William coming to go with him to work.

Q And is he also known as Slugger?

A Yes, ma'am.

Q And before he even asked about Slugger, did Nate ask you if -- if Ernest was home?

A I think he did ask whether Ernest got back yet. And then he said he -- they had a job to do, and he asked whether Slugger was there.

Q Did he seem concerned about Ernest being missing?

A A little bit because he said, Ernest know we got a job to do. He did make that statement.

Q So he was concerned that he needed somebody to paint?

A Yeah.

Q So he called and asked about Slugger helping out?

A Yeah.

Q Did your brother actually go and help him paint?

A No.

Q Thank you.

MR. FINNEY: Nothing further.

THE COURT: I'm sorry. I was...

MS. FANT: We're done. May she be excused, Your Honor?

THE COURT: Yes, ma'am. You can be excused.

(Witness left the stand.)

MS. FANT: Your Honor, at this time the State would call Donna McDuffie.

DONNA MCDUFFIE, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Good morning.

A Good morning.

Q Could you tell us where you live?

A I live in Bishopville, [redacted]Spann Road in Bishopville.

Q And how long have you lived there?

A Twenty-seven years.

Q And have you lived at that address for 27 years?

A Yes.

Q And where do you work?

A At Marmack in Mcbee.

Q How long have you worked there?

A Five years.

Q And what type of work do you do?
A I'm a seamstress.
Q Did you know the defendant, Nate Bradley?
A Yes, I knew him.
Q How did you know him?
A I met him through his brother, Jerry.
Q His brother Jerry Bradley?
A Yes.
Q Why did his brother Jerry introduce you to him?
A Because I wanted him to do some painting for me.
Q And what -- what name did you know the defendant by?
A Nate.
Q How long had you known Jerry?
A He lives in the neighborhood, and I knew him for a while.
Q Did you know the victim, Ernest James?
A Yes, I knew Ernest.
Q How did you know Ernest?
A I met him through one girl that went to my church. Her sister went with him.
Q About how long had you known Ernest?
A About five or six years I knew Ernest James.
Q You remember when you first met the defendant?
A Yes.
Q When was that?

A 2005.
Q And what was the purpose of that meeting?
A He was going to do some painting for me, and I had to go get the little book that he had for me to pick out my paint color.
Q And do you recall when that was in 2005?
A No.
Q Was it around the time of -- that Ernest went missing?
A No, before that.
Q About how much time previous to that was it?
A About six months.
Q And do you know who helped the defendant paint your house?
A Ernest. Him and Ernest did.
Q And did you -- did you pay both of them or did you just pay the defendant?
A I paid Nate.
Q Did he and Ernest appear to be friends?
A Yes, good friends.
Q Were you present when they were at your house painting?
A Sometime I did and sometime I wasn't.
Q If you weren't there, where would you have been?
A At work.

Q How did they get into the house if you weren't there?
A I left a key out for them to go in.
Q And where did you leave that spare key?
A In a little bird nest on my ceiling in the outside of my porch.
Q Was it a birds nest or a bird house?
A A little bird house.
(WHEREUPON, State's Exhibit 35 was admitted into evidence.)
BY MS. FANT:
Q Ms. McDuffie, I'm going to show you what's been marked as State's Exhibit 35. Do you recognize that photo?
A Yes.
Q How do you recognize it?
A That's my -- front of my house.
Q And does that picture, photograph accurately reflect the front of your house as it looked in May of 2005?
A Uh-huh.
Q And is there in fact the -- can you spot the bird house in the photograph?
A Yes, I see it.
Q Where does it show up in that photograph?
A Showing up right here.
MS. FANT: Your Honor, at this time I would

offer that photograph into evidence.

THE COURT: What says the defense?

MR. FINNEY: No objection.

THE COURT: Okay. State's Exhibit 35 is in without objection.

(WHEREUPON, State's Exhibit 35 was admitted into evidence.)

MS. FANT: Permission to publish, Your Honor?

THE COURT: Granted.

BY MS. FANT:

Q Why did you leave the spare key for them?

A So they could get in.

Q But I mean, did you trust them?

A Yes, I did, because I knew Ernest.

Q Excuse me. Did you get to know the defendant Nate a little bit during this time?

A Yeah.

Q About how long would you say it took them to paint your house?

A About -- he did it like off and on, so it maybe took about two months or longer.

Q And were you ever the defendant's girlfriend?

A No, we was friends.

Q And were you ever intimate with the defendant?

A No.

Q You never had a physical relationship with him?
A No.
Q And did the defendant ever spend the night with you at your house?
A Well, he said he did.
Q But I'm asking you. Did he ever spend the night with you?
A No.
Q Did the defendant and Ernest ever finish painting your house?
A Yes, they did.
Q And when was that?
A In -- some time in 2005.
Q Now, after they had -- that he finished initially, was there a period of time in which the house wasn't finished but they weren't working on it?
A Just my doors. They didn't finish the doors, but Nate came on his own and did it.
Q Okay. And when was that?
A That was in May. It was in May of 2005.
Q And had you talked to him prior to that since they had finished the other paint work?
A No, because it was like away for like six months and I hadn't heard from him.
Q And do you remember when he called you?

A Not really.
Q Okay. Was it the week before -- would it be correct to say it was the week before Ernest was killed?
A Yeah, I talked to him that week.
Q And did you expect him to call or did he just call you out of the blue?
A He just called out of the blue.
Q And what did he want when he called you?
A He wanted to finish, go ahead and put up my doors, and I told him it was okay.
Q And did you leave the spare key for him that time?
A Uh-huh.
Q Did he in fact come over and actually do the work?
A Yes, he did.
Q What did Nate tell you about the van that he had?
A He said that he had a van, and Ernest took the van. And like I told him, I said, well, since y'all was buddies, maybe you just let him drove it, you know, because that's what he--
Q Did he use the word, Ernest took the van, or did he actually say something else?
A Well, he said that -- I guess he said Ernest took it. I can't remember right off.
Q Do you recall a conversation with the Sergeant McMillan recently when he spoke with you?

A Talking about I had to come downtown to...
Q No, no, no. This would have been very recently. This would have been Saturday, just this past Saturday. Do you recall talking to Sergeant McMillan?
A Oh, yes.
Q And at that time did you tell him that Nate said that Ernest had stolen his van?
A Well, yes, he did.
Q Did you believe that Ernest had stolen his van?
A Not really because they was real good friends. I thought maybe he was just letting him use it.
Q And what did the defendant tell you about trying to get the van out of impound, that it had been impounded in Camden?
A Well, he said it was locked up and he wanted to get it. So I asked him how much did it cost to get it and he told me. So I said, well, if I give you half of the money would you come up with the rest? And he said yes.
Q And what did he tell you about Ernest in reference to the van?
A He just said that he was going to get Ernest which like he -- I asked him, I said, well, if you're going to get him, don't do nothing stupid, you know, to...
Q Now, did you later see the defendant at a Penny's in Sumter?

A Yes, I did.
Q And when was this?
A That was that Thursday after I talked to him that Monday and Tuesday, the week before.
Q Would it be correct to say that that was Thursday, May the 19th of 2005?
A Yes.
Q It was -- was it before Ernest was killed?
A Uh-huh.
Q And why did you go to Penny's at that time?
A I went to buy something. But then I told him I would give him half of the money for to get the van out of the pound, and -- and he said okay. So I told him I had to go to Penny's, to meet me at Penny's, and he did.
Q Was he alone when he came to Penny's?
A Well, he was alone in the store, but I saw another guy like further off.
Q Did he introduce you to this person?
A No.
Q Was it a -- a male or a female?
A It was a man.
Q Black or white?
A He was black.
Q Had you ever met him before?
A No.

Q And did -- so he didn't -- you didn't actually talk to this person at that time?
A No.
Q And you didn't recognize him?
A (no response).
Q Now did you subsequently have a phone conversation with the defendant on Friday, May the 20th?
A Yes, I did.
Q Tell us about that.
A Well, like I said, I was sleeping, and I overslept for church, and so Nate happened to call me. And I was asking him, I said, well, where you at? He said he was like yet -- he said he had to go clean his mama grave box. So he said he was like at the woods cleaning the yard and, you know, the grave site.
Q Did that seem strange to you?
A By being first dark, yes, it was.
Q And what time did church start? What time does church start?
A My church start at 7:00.
Q So it would have had to have been after seven since you had overslept?
A Yeah.
Q And as you were talking with him, was it dark outside?

A Yes.
Q And did -- what did he tell you about Ernest?
A That day?
Q Yeah. In -- during that conversation.
A I don't remember talking to -- nothing about Ernest that particular day.
Q Okay. Do you remember after Ernest was found that law enforcement came to talk to you?
A After Ernest died?
Q Yeah.
A Well, I had met them in Bishopville at the police station to talk to them that Friday.
Q And that was the Friday after Ernest's body was found on Monday?
A Monday.
Q And do you remember giving a statement to Investigator McMillan?
A Yes.
Q I want to show you that. Do you recognize that?
A Yes, I do.
Q What in fact is that?
A It's a statement that I gave him and he wrote it down as I was saying it.
Q Okay. Could you take a minute to read it to refresh your memory?

A (Complied).

MR. FINNEY: Your Honor, please, could we have a side bar?

THE COURT: Yes.

(Whereupon a bench conference was held.)

BY MS. FANT:

Q Did you have an opportunity to --

A Uh-huh.

Q -- to read that? Does it refresh your memory about that conversation?

A Yeah.

Q Can you tell us what the defendant said about Ernest that night?

A Which night?

Q That would be Friday, Friday the 20th of May.

A Friday. Talking about the Friday -- that Friday night that I talked to him when I -- before I went to church?

Q Correct, the Friday after the Thursday that you met the defendant at Penny's.

A Oh. When he called and I was just asking him where he was, and he said he was in the woods with -- which he didn't really talk about nothing about Ernest that Friday.

Q Are you denying that Nate said that he was -- that -- that Nate was talking crazy-talk about--

A That was on Tuesday when I talked to him. That was the week before Ernest got killed.

(WHEREUPON, State's Exhibit No. 36 was marked for identification only.)

BY MS. FANT:

Q Ms. McDuffie, I will show you what's been marked as State's Exhibit number 36 for identification purposes. The part that is highlighted there, did you read that a minute ago when I asked you to read the statement?

A Okay. This the statement that I gave the police on this particular day, but he told me that on a Monday or Tuesday when he came by to do my doors when I talked to him.

Q Did Investigator McMillan after -- as he was taking this statement, did he give you an opportunity to read it over?

A Yes.

Q And did you tell him what was in it was correct?

A Yeah, but then that Friday -- he didn't tell me this that Friday because I didn't talk to him this Friday because he was locked up. I didn't get a chance to talk to him that Friday. He was...

Q We are talking about the weekend, the Friday before Ernest James was found dead on a Monday. You met the defendant at Penny's on Thursday. He clearly was not

locked up because Ernest James wasn't dead.
A Okay. I got ya. I got ya. I got ya. Okay. Yes, he said that he was going to get Ernest. And I told him, I said, you need to stop talking that crazy-talk because you and Ernest are friends and you probably let him drove the van, you know, like how we would be friends and I just let you drive my van even though I know you didn't have no license, and I would let you drive my van.
Q Did -- did he say anything about hurting --
A No.
Q -- Ernest? Did you tell Sergeant McMillan that he said he was going to hurt Ernest?
A No.
Q After he said the -- or talked what you referred to as crazy-talk --
A Uh-huh.
Q -- what did you tell him?
A I said, don't do nothing stupid.
Q And what did he say in response?
A He didn't really say anything.
Q Once again I'd ask you to read your statement and refresh your memory, please.
A Okay. He said he was tired of Ernest doing what he was doing, okay.
Q And then what did he say?

A He said he'll take care of whatever it was.
Q What did you understand him to mean by that?
A I guess talking to him, I guess. I didn't -- never know nobody would kill nobody. I wouldn't ever -- I didn't never look at it like that.
Q Do you recall talking to Sergeant McMillan this past Saturday, that would be Saturday the 12th of January, 2008, do you recall telling him that it concerned you, that you were worried he was going to do something to Ernest?
A But then I didn't say somebody would -- nothing about killing him, you know.
Q But he -- you -- you did indicate that you understood he was making some sort of a threat?
A Not really, but just like he said, he going to get him. I don't know what -- I really don't know what that mean.
Q Okay.
A You know, you can get somebody in so many different ways.
Q So after you told him not to do anything stupid, what did the defendant tell you?
A He'd take care of it.
Q And did he also tell you something else after that?
A No more than if he get in trouble to call his sister

at a certain number.
Q And what number did he say?
A He said 803-408-2355.
Q And how did you know that that was the number that he told you?
A I wrote it down.
Q And what did he tell you his sister's name was?
A Betty.
Q And what did he tell you about her husband?
A He was a bond man (sic).
Q A bail bondsman?
A Bail bondsman.
Q Now, when he indicated that he was calling from the woods, did he mention something about trying to find his car?
A Yeah. He said he was lost. And I said, ain't no way you could be lost in the woods.
Q And is this the same conversation where he told you that he was cleaning his mother's grave site off?
A Yes.
Q And did he tell you who else was there with him?
A No.
Q Did you hear him actually say something to someone else in the background?
A No.

Q I'll ask you to look at your statement again, please.
A Well, I didn't hear him talking to nobody, but all I -- like I said, he was just -- say he was in the woods, and when he got to the end of where he had -- where he was, he said, oh, I see my ride, and that was it. I didn't say he -- I didn't never say nothing about he said anything to somebody.
Q May I hold that, please? Could you read please for us the part of your statement that is highlighted on the second part there.
A Okay. He said that he was in -- he was lost in the woods and trying to find his car, and said that he was at the end of the road and now I said give me a ride. I don't know who he was talking to.
Q Thank you.
A Okay.
Q And that was your words. You didn't know who he was talking to when he said, give me a ride.
A Yeah.
Q Now, did the defendant call you again the next day?
A That Saturday morning, yeah.
Q And that would be Saturday, May the 21st, 2005?
A Yes.
Q And that's the day that Ernest was last seen at the Spring Hill Road house?

A I guess.
Q What did the defendant tell you when he called that Saturday morning?
A He just wanted to get that paint that was under my house to do somebody else's house.
Q And what did you tell him?
A I tell him it was okay, he can get it.
Q At that time could you hear anyone in the background?
A Yeah. I could hear somebody back in the background cursing.
Q And it was a male or a female?
A A female.
Q A female? And they were actually cursing?
A Uh-huh.
Q Did -- what did he say after that?
A He said, I was coming by to get it, and I told--
Q Did he tell you he'd call you back?
A Yeah.
Q Did -- did he in fact call you back later?
A Yes, he did.
Q And about what time was that?
A It was around about one, something along in there.
Q And what did he tell you when he called that time?
A He said he was coming to get the paint. And I told him I would leaving -- it would be under the house, he can

come by and get it, but I wasn't going to be there.
Q And did he also tell you that he needed to talk to you?
A Yes, he did.
Q When you told him you weren't going to be home, why did you tell him that you weren't going to be there?
A Because I was going to pick up my cousin from Jersey -- well, at my aunt house from Jersey.
Q So your cousin was visiting you?
A Yes, she was.
Q And -- excuse me -- after that conversation, when did you next talk to him?
A He called Sunday morning, but I -- he left a message on my answering machine.
Q And what did that message say?
A He wanted me to leave him some money out for him.
Q And what did you do?
A I left it out under the pot where I usually leave it.
Q So you left some money out on the flower pot on the porch for him?
A Yes, I did.
Q And what did you do after that?
A I went to church.
Q And about what time did you get home?
A About six.

Q And that would be six in the evening on Sunday?
A Yes.
Q And that's Sunday, May 22nd of 2005?
A Yes.
Q Was the money still there when you got back?
A No.
Q After that, did you talk to the defendant again?
A No.
Q You never talked to him again?
A Huh-uh. No -- that Monday.
COURT REPORTER: I'm sorry?
THE WITNESS: That Monday.
BY MS. FANT:
Q I wasn't asking if you talked to him again on Sunday. Did you ever talk to him again on the phone after that Sunday?
A Oh, yes.
Q Okay. And when was that?
A Monday.
Q About what time?
A He came around about -- it was like first dark, maybe like 7:30, 8:00, 8:30, somewhere around there.
Q Would it be correct to say in your statement you indicated it was around 9:00?
A Nine that night. Monday?

Q Pardon?
A Monday? Yeah.
Q And he came to see you in person?
A Yes, he did.
Q Did he mention Ernest?
A Yes, after I asked the question.
Q What did he say?
A He asked me did I hear what happened to Ernest? I tell him, no, I didn't hear what happened to Ernest.
Q And what did he tell you?
A He said Ernest was killed.
Q Did you ask him what happened to Ernest?
A Yes, I did.
Q And what did he respond?
A He didn't never say. He just said Ernest was killed, did I hear it.
Q I'll ask you to read your statement again. Refresh your memory, please.
A (Complied.) Okay.
Q Do you remember now?
A When he came by Monday?
Q Yeah. What he said when you asked him about what happened to Ernest.
A I asked him did -- he didn't have anything to do with it. And he said no.

Q May I hold the statement again, please?
A Uh-huh.
Q Once again, could you read the highlighted part, please.
A Okay. He came by my house to talk with me. He act like he was upset or scared. Okay. And he had -- he said that something happened to Ernest. He said that Ernest was killed.

And I asked him what happened to Ernest. And he said that he couldn't talk to me. He said that he wasn't going to get me in any trouble, and he left and told me to call -- he was going to call me later.
Q And did he call you later?
A Yes, about 10, somewhere along in there.
Q Now, when he indicated to you that -- or when he was there and you said that he was upset, how upset was he?
A Like he was crying.
Q Did you believe he was genuinely upset?
A I guess, because that was his friend, I guess, he's crying.
Q Do you recall talking to Sergeant McMillan again this past Saturday --
A Uh-huh.
Q -- May -- excuse me -- January the 12th, 2008, and do you recall telling Sergeant McMillan that you thought he

was faking it, that he was pretending to be crying?
A Not really. But like I said, you can always tell when somebody is hurt worse than others.
Q Do you or do you not deny that this past Saturday you told Sergeant McMillan that you did not believe he was genuinely upset, that you thought he was pretending?
A Not really.
Q When he was there that Monday night, did you notice an injury to the defendant's eye?
A Yes.
Q What was wrong with his eye that you could tell?
A It look like it was like bloodshot.
Q But it was clear to you that something was wrong with it?
A Yes.
Q What did he tell you had happened to his eye?
A He said he hit it on the cabinet.
Q And--

MR. FINNEY: Excuse me. I couldn't hear the witness.

THE WITNESS: He said he hit it on a cabinet.

BY MS. FANT:
Q And after he left, did you talk to him again that night on Monday?
A That Monday night? Yes, he called back.

Q And what did he say at that time?
A He said he wanted me to come out so he could talk to me. And like I told him, I wasn't coming out.
Q And why did he tell you he wanted you to come out?
A He didn't say why. He just said he wanted to talk to me.
Q Beginning with -- it says Monday night about 10 pm, could you please read what you told Sergeant McMillan when you gave that statement?
A Okay. Okay. And that he needed to talk to me in person. He said that the phone might be tap and asked me could I come out, but I told him I couldn't, so he hung up.
Q Okay. Excuse me. Now, did you subsequently meet with Sergeant McMillan and Major Daniel Simon from the Lee County Sheriff's Office?
A Yes, I did.
Q Do you remember when that was?
A That Friday. Can't recall the date.
Q And that was the Friday after Ernest was found dead?
A Yes.
Q That would be Friday, May 27th, 2005?
A Uh-huh.
MR. FINNEY: Your Honor, please. At this point I would ask the Court for a opportunity to have a

side bar or a break with the jury retiring from the courtroom.

THE COURT: All right. Well, let's' -- let's have a side bar first.

(Whereupon a bench conference was held.)

THE COURT: Ladies and gentlemen, I need you to go to the jury room for a few minutes while I take up a matter of law, and I will bring you back out just as quick as I can. Please do not discuss this case yet.

(Jury left the courtroom at 11:58 am.)

THE COURT: Okay. Yes, sir.

MR. FINNEY: Your Honor, at this point I'm asking for an en camera hearing as far as it concerns testimony of this witness relative to a handgun that she owned that she reported missing to the police officers on Thursday, which I believe is the 25th of May.

After she reported the handgun missing she gave a statement to law enforcement concerning the missing handgun, and I believe that the State is going to try to introduce evidence of the report of the missing handgun and try to in some way tie it into this case in Sumter County.

Ms. McDuffie lives in Bishopville. The gun was

stolen in Bishopville and -- from her house she says -- and she didn't realize it for a day or two after it was last seen.

It has no relevancy to this case except that by speculation my client knows Ms. McDuffie and my client had been to Ms. McDuffie's house.

Now, they haven't charged my client with breaking in her house. They haven't charged my client with stealing her property. They want to speculate that because she reported a gun missing that the gun is somewhat tied into a -- this case because the victim died from a handgun.

But here's my basic problem. The State of South Carolina in this case has failed to tell this Court what day the man, Mr. James, died because they don't know.

Now they're trying to say that a gun was taken from a lady's house, used to kill Mr. James, put back in the lady's house. Mr. James' body was found. The person who used the gun then decided that it would be dangerous to keep the gun in Ms. McDuffie's house, went back again and stole it sometimes after the body of Mr. James was found on Monday.

There's no basis in foundation in fact in that. They can't tell you when Mr. James was dead, killed.

They can't tell you what county he was killed in. They can't tell you who was standing there when it happened. They can't tell you what gun was used.

But now they're going to try to bring into this case another gun from another county that was in fact in the lady's possession Monday night when she went to bed, which was five or six hours after they got Mr. James out of the pond.

And I think it's -- it's -- it's -- not only is it prejudicial, but it's irrelevant and it calls for this jury to speculate too much when there's no basis in fact for any connection between the Bishopville case and the Sumter case.

THE COURT: Okay. Yes, ma'am.

MS. FANT: Your Honor, obviously we disagree. It's not speculation that we're asking them -- what we're asking them to do. We're asking them to draw reasonable inferences from the evidence.

This is a circumstantial case. We have never even attempted to say it was anything else. We have by her own testimony the defendant lying about certain things, acting very strangely, doesn't call her for six months after he had been working on the house, all of a sudden the week before the victim dies he wants to come over and put the doors up.

She leaves the key out for him. He was never charged with burglary because he had a -- he knew where the key was. And she admits that he was allowed to come in. Says he came by on Saturday to pick up some paint that was left there. Also came by on Sunday to pick up some money under the flower pot.

And I don't think you can separate this from the fact that the victim was found in Boyle's Pond with a concrete block tied to his foot.

Obviously the defendant thought when he threw him over there that he was going to sink and that no one would find him forever or for at least a period of time.

So putting the gun back meant that Ms. McDuffie didn't discover that a gun was missing and that -- that we wouldn't be able to show anything.

But what happens is the body shockingly is found -- to him -- and he then -- that's why -- and I think her testimony was that he wanted her to come out and meet him at 10:00 on Monday night, a work night, not can I talk to you on the phone, not can I come over there, I want you to come out of the house and meet me. Why?

I think it's a reasonable inference because he wanted to get back into the house the week after --

that he knew where the key was, it was still out there, she went to work, and then lo and behold she realizes the gun is missing on Thursday the 26th and reports it on Friday the 27th.

During that time the crucial thing was that on the 24th the defendant found out that they knew who she was and that there was some inconsistencies in his stories, and on the 25th they knew he was an out-and-out liar and that they were going to talk to Ms. McDuffie to find out.

And he knew at that point that there would be a possibility -- I think it's a reasonable inference -- that there would be a possibility that she would hand over the gun in her house to them given that he had access to it and could possibly link it to the murder.

And I think that's entirely within the jury's perview to be able to draw that from the evidence. There's circumstances -- and it certainly will be up to the jury to determine it.

But they are things that don't otherwise make sense. And the bottom line is, you know, it's -- it's for them to consider. I -- I think it's incredibly relevant.

And the fact is that the ammunition, it was --

the bullets were .38 caliber, and that is the gun that was -- was missing. And our firearms expert will testify that the bullet was a 38 and it could have come from the make and model of gun that she had that then disappeared forever.

THE COURT: Okay. Anything else?

MR. FINNEY: Judge, let me just say, I didn't understand much of what was just said. But it appears to me she is trying to rely upon the statement of a witness, Ms. McDuffie, that on Monday night after finding out that his friend was killed, Mr. Bradley went up to her house and spoke to her for a while, then left.

And this was now -- this was Monday night -- left and called back at 10:00 to ask her to come out and meet him because he wanted to talk to her. She said no.

Now, right there is where I got lost because right there Ms. Fant is saying to you that it is logically relevant that she would have left her house, come out to meet my client, and somehow at the time that they were out on Monday night after the body has been discovered, the gun that my client used to kill the -- the deceased with, but he had already put it back in her house, was going to be taken out

of her house while he was with her away from the house.

So that means it's logically relevant that somebody else went back in the house and took the gun. Now, that's how the -- that's the basis of the logic in this case.

Now they have got to have another person -- while my client is at the Shoney's talking to Ms. McDuffie -- somebody else had to go to her house to take the gun out that had been used in the murder but had been put back in her house.

This is not logical at all. It's not reasonable at all. It's not relevant at all because they don't have anybody like that. If they had a witness who said, yes, I was working with Mr. Bradley and I -- and he told me to go back to the house, then they could bring this stuff up.

But they're making a -- you know, the word fairly tale has been in the paper all week. I've never seen anything like this in court. They don't have any proof at all.

And they're asking you to -- to float this story because they can take one piece from this witness and one piece from this witness and one piece from this witness and they're supposed to be logically and

consistent, and it's not.

None of this fits together, Judge. And this lady doesn't even agree with most of the stuff that's in his written statement because she didn't write it. The police officer wrote the statement. But we'll get into that in cross.

But please, sir, do not let this jury hear about information on another matter that they don't have any scientific or witness or any other corroboration.

The fact that it was a 38 is best a minimum connection. It is not proof that this gun committed this crime. There were I'm sure a million handguns in South Carolina that night that could have killed Ernest James, but there's got to be a connection between the gun and the death for it to be brought into this courtroom because speculation will not be allowed. And that's all this is. It's not logical. It's speculation.

THE COURT: Yes, ma'am.

MS. FANT: Well, Your Honor, if that's the case, we may as well quit now. I mean, when we have a case where someone has made an effort to commit a well thought-out, planned crime, that they cooperated with someone else -- and I think the jury can infer from the fact that Mr. James was a heavy man and he had a

cement block tied to his ankle and was thrown over a bridge, that more than one person did it.

We have a -- a man that is unknown that he refuses to identify to anyone else, refuses to introduce, that we still to this day do not know who he is, it is not that much of a link for them to think it possible.

They -- they can reject it. They don't have to agree that that's what happened. But I think it is -- it is logically relevant to the case that she had a gun, that he had access to it during the time both to get it and to put it back when she wasn't there and when he knew she wasn't there, that he could have gotten into her house without her knowing it, and that once he found out that, oh my God, the body that we threw in the pond with the concrete block that we thought would never be found has surfaced on Monday, I've got to get her out of the house because he's already been over there once.

And now he wants her to come out, and she doesn't do it. So I mean, it -- it's -- it's not -- and it's something that the jury can reject if they feel like it, obviously, but I do think it's a jury question.

MR. FINNEY: May I have one minute?

THE COURT: Yes, sir.

MR. FINNEY: Your Honor, if the State could prove the time that the body went into the water, it might flow from that that the people who put him in the water thought they had done their crime and covered their crime up.

But if, as the facts show, they believe that the body went in the water between nine and 11 on Sunday morning, bright daylight -- if they believe that, Sunday morning the body went in the pond, then the people who threw him in the pond would obviously know within two seconds that the body was not hid.

So why would they then feel like they'd have to spend all this time transporting the firearm up and down the road -- from Boyle's Pond to this lady's house in Bishopville is over 20 miles.

They spend all this time putting the gun back, going to get the gun out, and -- and they didn't spend five minutes to see if they had covered up the body? It doesn't -- it doesn't flow. They don't know any of these facts, Judge, and that's why it's -- it's speculation.

If they could show you -- if they could tell you when do they think the body was -- when the man was killed, they don't even have to know where he was

killed, just tell me when he was killed and when he was put in the lake, but -- because from that flows these other things.

THE COURT: I understand that. But it's -- the window is they last saw the victim alive Saturday morning.

MR. FINNEY: No, Saturday evening.

THE COURT: Or Saturday evening. Well, you got the window from Saturday afternoon till Monday morning. Sometime, you know...

MR. FINNEY: Sometime.

THE COURT: Sometime during that period of time he was killed.

MR. FINNEY: All right. And he might have been killed with Ms. McDuffie's gun which was in her house on Monday night --

THE COURT: Right.

MR. FINNEY: -- but could have been taken, could have been taken --

THE COURT: And replaced.

MR. FINNEY: -- and replaced. But now they--

THE COURT: That's their theory based on all this line of evidence that -- hid the key under the flower pot or the bird house and that your client had access to her house.

And of course, you are objecting under relevancy. And under the rule 401, relevant -- the definition of relevancy means evidence having any tendency to make the existence of any fact, and there's a consequence to determination of the action more probable or less probable than it would be without the evidence.

And the standard of relevancy is pretty broad. It's any connection is relevant.

MR. FINNEY: All right. May I just ask the Court to have an en camera hearing on the issue of whether Mr. Bradley had access to this lady's house between Saturday at 5:00 and Monday at 3:00 --

THE COURT: But--

MR. FINNEY: -- because if she was home during those hours or if her cousin was home during those hours--

THE COURT: How -- how -- how -- I mean, it appears that the timeframe is not whether he had access to her house Saturday to Monday, but whether he had access prior to when the last time she saw the gun.

I mean, if -- if obviously -- and I don't know what the last time she saw the gun in her house before the crime, then that's the relevant period of

time.

If it's in a bedside table drawer and she hadn't seen it till, you know, for a week or so, then the last time she looked -- I don't know what date that was -- the gun was there, and the next time she looked the gun was there.

I mean, I guess the State's theory is that the gun was in her house, that some time prior to the murder your client took the gun, committed the murder, and put the gun back, and then stole the gun again.

I assume that's what their theory of this is. And so I assume somehow through this -- their testimony that they are going to at least paint that picture to the jury. Whether they get over the burden of proof or not, I don't know. But...

MR. FINNEY: And my objection is if they don't get over the burden -- I mean, that the -- the insinuation harms the jury's factual -- that you -- if you give them an opportunity to bring these issues out...

THE COURT: But how can I stop them from bringing it out if it's admissible under the rules? I mean, I can't control -- you know, they have the burden, but if it's either admissible evidence or

it's not admissible evidence.

You have objected on the grounds that it's irrelevant. But the definition of relevancy is pretty broad. I mean, if there's any tendency to make the existence of a fact, then it's -- then it's relevant.

MR. FINNEY: And the fact that she had a 38 and the fact that it may have been a 38 that killed him, it -- makes it relevant? Even though there's no scientific or other connection?

THE COURT: Certainly. I mean, it makes it relevant. It doesn't have to be a scientific connection if that's in fact the murder weapon.

It's relevant if they're trying to prove that your client who is charged in this crime had access to a .38 caliber gun.

Now, they're somehow claiming that he had access -- based on her testimony -- that he had access to her house, that he could come and go in her house and he had a key. Therefore he could -- then if she had a .38 caliber pistol in her house.

And that after the police started investigating this crime, that .38 caliber pistol disappeared. And I assume based on what I have heard, there wasn't a break-in, that whoever took the pistol had access to

the house, that there was no evidence of, you know, forced entry.

So there seems to be some tendency that the jury may or may not find that relevant that -- because I think the definition in the standard of relevancy is pretty broad.

Now, what weight the jury gives that, I don't know because they're going to, you know, they got to make these determinations beyond a reasonable doubt.

Now, maybe -- I haven't heard this whole case. Maybe the totality it gets over that. But at least it says -- it appears to be relevant.

Now, whether the jury gives it enough weight to get over that hump, I don't know. But it -- at least it seems to show -- because the standard is having any tendency to make the existence of any fact.

So at this point in the trial the State has told me that that's their theory of why he's making all these phonecalls and why the gun was there and disappeared.

They've got to sell that to the jury. But at least it appears to be relevant at this point.

MR. FINNEY: Your Honor, I would take exception. I thank the Court for the time to make the argument, and I would ask the Court to hear this testimony en

camera before the jury does.

THE COURT: Okay. Well -- and I can do that because I'm making some assumptions that the State has told me, and see what the -- it may not be, you know, relevant.

If -- if the testimony is she saw that gun at or during that weekend when he didn't have access, then it's not relevant because it's no way that gun could have been the murder weapon. I don't know what the testimony is.

MR. FINNEY: And before you let the jury hear it, I think --

THE COURT: Okay. I will do that.

MR. FINNEY: -- let you hear it.

THE COURT: We will do that.

MS. FANT: Do you just want me to cover the part about the gun and not the whole rest of her testimony?

THE COURT: Well, whatever you think is relevant about the gun. Obviously it appears that this defendant's access to her house, the period of time he had access to her house makes the gun relevant because if he didn't have access between the last time she saw the gun and Monday, it's not relevant. Don't you agree?

MS. FANT: Yeah. Yeah. We do intend to ask that.

THE COURT: The timeframe of the gun is relevant. The timeframe he had access to her house and when -- when the gun was missing is relevant or potentially relevant.

MR. FINNEY: And Your Honor, I would like to ask some questions after the State, so do you believe that we should...

THE COURT: How long do you -- I mean, is this two questions and two answers or is this going to be a 15, 20, 30 minute deal?

MS. FANT: Oh, the -- of the gun? Five minutes maybe. I mean...

THE COURT: Let's see -- you know, if it looks like we're going to run long, I will dismiss the jury for lunch. But if we can do this in 15 minutes, I will go a little bit longer. Go ahead.

BY MS. FANT:

Q Ms. McDuffie, you had indicated that you met with Sergeant McMillan and Major Simon regarding this case on Friday, May 27th, 2005. And did -- where did you meet them?

A At the station in Bishopville.

Q And that would be the Lee County Sheriff's Office?

A Yes, sir -- ma'am.
Q And did you give a statement at that time?
A Yes.
Q And did you tell them something about a gun?
A Yes, I did.
Q What did you tell them?
A I was just telling them that my gun was missing, if -- like I said, if -- I knew the gun wasn't missing, I never would have reported it.
Q And what type of gun was it?
A It was a 38.
Q And where did you buy the gun?
A At the store in Bishopville. I don't know the name of that store.

(WHEREUPON, State's Exhibit No. 37 was marked for identification only.)

THE COURT: As far as this hearing, is the question of where she bought -- relevant?

MS. FANT: Not really. I can skip that. It does say on the form that it was a .38 caliber which is why I'm introducing it.

THE COURT: And I understand that and I think everybody agrees it's a 38. That's not an issue at least as far as this hearing is concerned.

MS. FANT: Okay, Your Honor.

BY MS. FANT:

Q And when did you discover that the gun was missing?

A That Tuesday night.

Q Tuesday. And what day would that be?

A I don't know exactly the date.

Q Okay.

A I'm...

Q And did you give a statement to law enforcement when you reported it missing?

A Yes, I went -- I went down there that Friday.

Q And when did you tell them that you discovered it missing?

A That Tuesday.

(WHEREUPON, State's Exhibit No. 38 was marked for identification only.)

BY MS. FANT:

Q Ms. McDuffie, do you recognize this document?

A Yes.

Q And what is it?

A It said it was missing that Monday.

Q Now, do -- do you recall that it was in fact -- now, I don't believe that's what it says actually. Could you read it again please to refresh your memory?

A (Complied.)

Q Does that help you to recall what you had told law

enforcement?
A Yes.
Q Okay. And what did you tell them?
A That it was missing that Thursday night, because, see, I took it down. I remember having it that Monday.
Q Right.
A And I took it down and laid it on my bed.
Q Uh-huh.
A So when I got back home, like I said, I usually take it down certain time because I -- and the next day I couldn't find it.
Q So the law enforcement report is wrong?
A I don't remember telling them. I don't remember telling them all this here.
Q So you noticed it when on the next day that it was missing?
A That Tuesday.
Q I know that Tuesday. What time on Tuesday?
A Well, when I go to bed. I go to bed like six or 7:00 in the evening.
Q So it would have been Tuesday night that you noticed it missing?
A Uh-huh, yeah.
Q You know you had it Monday and you were missing it on Tuesday?

A Yeah.
Q And it might be a mistake that they wrote down Thursday on that document?
A Maybe because I don't remember saying nothing about Thursday because I told them I wasn't talking to them unless I talked to Daniel. I told Daniel I was not going to talk to those people unless they was in my presence --
Q Okay.
A -- and that was that Friday.
Q And on Friday -- that was Friday the 27th when you actually reported the gun.
A Missing, yeah.
Q Okay. And when -- before the Monday -- you said you took it down. Did you keep it stored somewhere or did you keep it somewhere?
A Keep it right in my closet, in the top of my closet.
Q Okay. And who all knew that you had a gun there?
A Not too many people.
Q Did the defendant know?
A Yeah, they saw it.
Q And before Monday when you took it down from the closet, when was the last time you had seen it?
A See, I didn't look no more for it. After I took it down Monday, had it Monday, and I remember -- I can't remember whether I put it back in the closet or whether I

left it on the bed.
Q Okay.
A And that's the last time I saw it.
Q I'm asking you about before Monday.
A Before that Monday?
Q When you went to -- when you went to get the gun on Monday, you obviously got it from the closet.
A Uh-huh.
Q And it had been in the closet. When was the last time you actually saw the gun?
A That Monday when I had it.
Q Okay. I'm sorry. I didn't phrase that correctly. Before that Monday.
A When I seen it before that Monday?
Q Right.
A I hadn't seen it in a while because one day I miss and I shot it in my bed and I put it up.
Q Okay. Do you recall when that was?
A No.
Q Do you recall the meeting that you had with Sergeant McMillan on Saturday, January 12th, 2008, this past Saturday?
A Uh-huh.
Q Do you recall telling him that the last time that you saw the gun before Monday when you got it down from the

closet was the previous Thursday, Thursday, May the 19th, 2005?

A No, I can't remember.

Q You can't remember. But you do agree that you did talk to him?

A Uh-huh.

Q And you do agree you talked to him about the gun.

A But like I said, I saw the gun. The last time I had that gun was that Monday, and I hadn't seen it since.

Q Did you have the gun out and in your hands looking at it on Sunday, May 22nd?

A No.

Q Did you have it out and in your hands looking at it on Saturday, May 21st?

A Huh-uh.

Q Did you have it out in your hands looking at it Friday, May the 20th?

A (Shook head.)

Q So before Monday the 23rd you had not seen it in your hands and actually eye-balled your gun for at least three days?

A Like I said, I put the gun up. I hadn't seen the gun in a while until he came and told me Ernest got killed.

Q Okay.

A So I took it down just to be safe.

Q Because you were concerned.
A That's right. That's right.
Q Okay. Okay. And during the -- the Monday -- you saw the gun Monday night. Before you reported it to law enforcement on Friday, was there any evidence that somebody had broken into your house and taken that gun?
A No.
Q The door wasn't busted, the windows weren't broken?
A Huh-uh.

MS. FANT: Your Honor, that would -- that would be it.

THE COURT: Okay. yes, sir.

MR. FINNEY: May it please the Court. I want to ask some questions.

CROSS-EXAMINATION

BY MR. FINNEY:
Q Ms. McDuffie, let's go back a little bit in your testimony. You testified that after you met Mr. Bradley and he agreed to come and paint the house with Ernest, they started painting. And from time to time they would paint, you would leave them a key.
A I always left my key outside.
Q Your key was outside every night?
A Uh-huh. I never took it in.
Q Okay. And you showed Mr. Bradley where the key was

so if he needed to come in and paint, he could.
A Yes, sir.
Q All right. Now, they stopped painting. After a while they stopped painting.
A Yes, they did.
Q And they stopped coming to the house?
A Uh-huh.
Q And then you testified that shortly before Mr. James was found missing and killed, Mr. Bradley came back and finished the doors?
A Yes, he did.
Q Did he call you and tell you he was coming to do the doors?
A Yes.
Q Okay. And did he ask if you were going to be home?
A No, not really.
Q Were --
A Like I--
Q -- were you home when he did the doors?
A Yes, I was.
Q You were?
A Uh-huh.
Q And did he come alone --
A Yes.
Q -- or did he bring a helper?

A He was by himself.
Q All right. Did he do the doors?
A Yes.
Q Y'all talked?
A Uh-huh.
Q And he left?
A Yeah.
Q All right. Can you remember how long a period of time after he finished the doors until you heard Mr. James had been killed?
A A week.
Q You think it was a week?
A Uh-huh.
Q All right. Do you remember if Mr. Bradley did the doors on like a weekend, like a Friday night, Saturday night, Sunday?
A No, it was like on a Monday or Tuesday.
Q All right. And so--
A That was the week before --
Q The week before?
A -- Ernest got killed.
Q So he might have done the doors on a Monday --
A Uh-huh.
Q -- and the following Monday is when he told you that Mr --

A Yes.
Q -- James had been killed.
A Uh-huh.
Q All right. Now, during that week do you remember seeing the gun?
A No, because I didn't have no reason to look for it.
Q All right. And during that week did Mr. Bradley tell you he was coming to the house to get paint?
A That Saturday that I talked to him.
Q All right. But he didn't come; did he?
A No, he didn't.
Q All right. Did you get calls from him on Sunday?
A Just one call that Sunday morning. He called and left messages on my cellphone and I just returned the call, but I couldn't get him.
Q All right. So he left a message?
A Uh-huh.
Q Asked you to leave some money?
A Yeah.
Q And you left the money.
A Uh-huh.
Q Okay. And the key was still outside?
A Yeah, because the key stays outside in case I lock myself--
Q Key's outside right now?

A No, I took it in.
Q Okay. You told Ms. Fant just now that when you took the gun down Monday evening and put it under your pillow, that was the last time you saw the gun?
A Uh-huh.
Q And you can't remember where you put the gun back?
A No, I couldn't remember whether I left it on the bed or whether I stuck it in the closet. I can't remember.
Q All right.
A Just like I tell them, I don't have no reason to hide nothing in my house because there is nobody but me.
Q Would you know if somebody had come in your house when you weren't there?
A Not really.
Q Would you be able to tell?
A Huh-uh.
Q All right. If somebody came in your house looking for a gun after Tuesday morning, when you woke up and left Tuesday morning, if you didn't know where the gun was, then they didn't know where the gun was.
A No, sir.
Q Would you be able to tell if somebody had been in your house Tuesday morning, Wednesday morning, Thursday morning all the way to the time you talked to Daniel Simon?

A No, not really.
Q Okay. It says here in this incident report that Daniel Simon filled out that you came down there on Friday at about 1545 -- I'm thinking that's about three in the afternoon, about 4:00 in the afternoon -- and reported the gun missing on Friday the 27th?
A That Friday? I thought it was later than that. I thought it was like maybe five or somewhere along in there.
Q It says 1545. So if I'm not mistaken, that's 3:45 in the afternoon.
A Okay.
Q It says here that you went to get the gun Thursday night. You in his office on Friday. Went last night, Thursday night, to get the gun, it wasn't there.
A Yeah.
Q Now, you -- today you're saying Tuesday--
A But see, I looked for it Tuesday. Like I said, when he came to my house and told me that, I took it and I, you know...
Q That was Monday.
A Yeah.
Q You looked for it Tuesday?
A I looked for it Tuesday, I looked for it Wednesday, I looked for it Thursday, so I said I--

Q Reported on Friday?
A I reported it on Friday.
Q One more question. How do you know that Mr. Bradley knew about the gun?
A Because I left it -- one day I left home from work and I left it on the bed, and they might have saw it. I don't know.
Q You don't know?
A I don't really know.
Q You never talked to him about it?
A But they knew I had it.
Q Well, that's what I'm asking. How do you know? Tell the Judge how did Bradley know that you had a gun?
A Well, they might have saw it on the bed when I left it on the bed. I don't know.
Q But you -- you didn't talk to Bradley about the gun.
A No, I never talked to him.
Q You didn't tell him you had a gun.
A I let him know I had one.
Q You let him know you had a gun?
A Yeah, I let him know.
Q When was that?
A A while back when they first started working.
Q Why did it come up that you had a gun? Why was it brought up?

A Because I live alone. And like I said, I don't bother nobody. Don't nobody bother me.

Q So some time in a conversation --

A Uh-huh.

Q -- you remember telling Bradley that you had a gun?

A Yeah.

Q But you didn't tell him where it was?

A No.

Q And you don't know that he saw it or knew where it was.

A Huh-uh. No, sir.

MR. FINNEY: All right. That's all I have, Your Honor.

THE COURT: All right. I think based on the testimony I have heard that in fact it is relevant and I'm going to allow it.

MR. FINNEY: And I would respectfully object to the testimony coming in.

THE COURT: I understand that. And you -- your objection will be noted for the record.

MR. FINNEY: Thank you, Your Honor.

THE COURT: Okay. You think you can finish this witness by 1:00?

MS. FANT: Yes, Your Honor, I certainly--

MR. FINNEY: I don't think so, Judge, not if

she's going to ask more questions, then we are going to do cross.

THE COURT: We've either got to stop it now or stop it at one.

MR. FINNEY: I would ask to stop it now because it's going to be limited -- if we get into it now, it's going to be past one I believe when we finish with this witness.

THE COURT: Well, we ain't going to finish this witness is what I'm telling you. We ain't going to go past one. We either going to--

MR. FINNEY: That's fine. Go ahead and let her do her questioning. I can do mine after one then.

THE COURT: Okay. We are going to quit at 1:00.

MR. FINNEY: All right.

THE COURT: Or as close -- go over a few minutes to one if we can. Okay. Bring me the jury, please sir.

(Jury entered the courtroom at 12:35 pm.)

THE COURT: Thank you, sir. Madam Solicitor, you may continue your questioning.

BY MS. FANT:

Q Ms. McDuffie, did you at some time meet with law enforcement to discuss this case, the police?

A No.

Q The sheriff?
A Just them.
Q Would you consider Sergeant Clarence McMillan of the Sumter County Sheriff's Office a police officer?
A I don't know. He -- he the one came to talk to me.
Q Okay. Do you remember when that was?
A That Friday.
Q That's the Friday after Ernest is found dead; is that correct?
A Yes. Yes.
Q And where did you meet?
A Down at the Police Department in Bishopville.
Q Would that be the Lee County Sheriff's Office?
A Yes.
Q And who else was there?
A Him and Daniel, and it was another guy with him, but I don't know his name.
Q Okay. And when you refer to Daniel, is that Major Daniel Simon?
A Yes, sir.
Q And is he with the Lee County Sheriff's Office --
A Yes.
Q -- does he work there? And at the time that you talked to them, did you in fact give them a statement --
A Yes.

Q -- about what you knew and in response to questions that they asked you?
A Yes.
Q And at that time did you also tell them something about a gun?
A Yeah. I told them my gun was missing.
Q And what type of gun did you have?
A A 38.
Q And where had you bought that gun?
A From this store in Bishopville. I don't exactly know the name.
Q Ms. McDuffie, I will show you what's been entered as State's Exhibit 37. Do you recognize that document?
A Yes, I guess it's when I purchased it.
Q And so how do you recognize it? I'm sorry?
A Oh, this where I bought it from? I don't know.
Q Does that appear --
A Don't remember.
Q -- to be the gun that you purchased from Brooks Sales in Bishopville?
A Yes.
Q And does it indicate the date on which you purchased that gun?
A Yes.
Q What date is that?

A May the eighth, '98.
Q And up until May the 23rd of 2005, was that gun ever missing before?
A No.
Q Where did you normally keep your gun?
A In top of my closet.
Q And who knew that you had the gun?
A Well, they knew it was there. I must have left it on the bed one day, and I assume they knew. They saw it, but nobody bothered it.
Q Now, who is they?
A I guess Ernest and Nate.
Q And you in fact told them that you had a gun.
A Yeah.
Q And that other than -- than them, who else in Bishopville knew you had a gun?
A Well, the community know I had it.
Q So pretty much everybody knew you had a gun?
A Certain people, yeah.
Q Certain people. Well, that's not the community. Who knew you had a gun?
A Well, I guess by me living by myself, like I -- I don't really let nobody know I got it, but I had it.
Q Exactly.
A And if you--

Q What did you tell Sergeant McMillan on Saturday, January 12th, 2008 about who knew that you had that gun?
A Well, Nate knew I had it.
Q Who else knew?
A I can't recall.
Q You can't recall from -- from just a few days ago --
A Uh-huh.
Q -- you can't recall that? Okay. When -- excuse me. Did you actually report this gun missing to the police?
A Yeah, after I missed it. That particular day I missed it. I didn't -- I looked for it for a couple of days first, then after I say, well, I can't find it, I better report it as missing.
Q And when did you report it missing?
A That Friday.
Q That be Friday, May 27th, 2005?
A Yeah.
Q Now, when you were discussing the gun with Major Simon and Sergeant McMillan, when did you tell them that -- or when did you -- excuse me -- when did you tell them that you had last seen the gun?
A That Monday night. I took it down after Nate came by and told me what he said about Ernest, I took--
Q Why did you do that?
A Because I was kind of scared, you know.

Q Okay. So you took it down from where you normally kept the gun in the closet?
A Yes.
Q And you had it on Monday night, May 23rd?
A Yes.
Q And when did you discover the gun missing?
A That Tuesday, you know, when I -- I got ready for bed, I usually lay it on my bed by me. And I couldn't find it. So that's when I start searching my house looking for it and I couldn't find it.
Q And did you ever find the gun in your house?
A No, I didn't.
Q Now, before the gun went missing on that Monday the 23rd, when was the last time you had actually seen the gun?
A That's what I said. I don't really know because I missed and shot it in my bed, you know, like I was -- I had the lock on it, and I was taking it off, and it went off, and I just put it up, so I can't remember what I...
Q Would you say it was longer than a week?
A Yes, about three or four months before that.
Q Okay. So you did not actually see your gun on Monday during the day, the 23rd of May, 2005, until you got it down?
A Yeah.

Q And you did not see your gun at all on Sunday, May the 22nd, 2005? And you did not see your gun on Saturday, May the 21st, 2005?
A No, because after I put -- like I said, after I put it up -- after I shot it in bed, I almost shot myself, I just put that thing up.
Q Okay. And so you wouldn't have seen it Friday the 20th of May either?
A No.
Q It was earlier than that --
A No.
Q -- that you put it up?
A Uh-huh.
Q Excuse me. Now, when you -- between the time you noticed the gun missing and the time you reported it or at the time you noticed it missing on the 23rd and when you reported it, was there any evidence of a break-in at your house that somebody had forced their way in?
A No.
Q Was the door busted up?
A No.
Q Any broken windows?
A No, ma'am.
Q And -- excuse me -- and you never saw the gun again after that; is that correct?

A Huh-uh.
Q To your knowledge has law enforcement ever found the gun?
A No.
Q Now, you told us earlier that the defendant knew where you kept your spare key?
A Yes.
Q And where was it that you kept it again?
A In that little bird house up in my ceiling in my porch.
Q And did -- is that where you kept it all the time?
A Uh-huh, yes, ma'am.
Q And would it have been possible for the defendant to come into your house without your knowledge?
A Yes, I guess.
Q Well, in fact, you -- you know that for a fact; don't you?
A Well, if he called and say he's going to come by and do something, then I always -- like I said, that key is there, so...
Q Did the defendant ever tell you that he had been to the house before when you weren't there, that you didn't know he was coming?
A Yes.
Q Okay. And what did he tell you?

A He said he just went in and was going to do some work.
Q Did he tell you anything else?
A I can't remember right now.
Q Did the defendant ever tell you that he went in when you weren't there and spent the night?
A Oh, yes. He said that.
Q And you didn't know it -- that it had happened; did you?
A No.
Q Now -- when the--

MS. FANT: Your Honor, I was looking for the evidence from yesterday.

BY MS. FANT:
Q Now Ms. McDuffie, I will show you what's been entered as State's Exhibit 30 into evidence. Do you recognize what that is?
A A block.
Q Is it a cement block?
A Yes, it is.
Q And did you have some cement blocks like that in your yard?
A Uh-huh.
Q And that would be your yard at your house at [redacted] Spann Road?

A Yes, ma'am.
Q Where were they located?
A I had them in between me and my neighbor and at my mailbox.
Q And why did you -- why did you put them between you and your neighbor in the yard?
A Separate my land from his because I was upset with him one day.
Q And when you met with Major Simon and Sergeant McMillan in Bishopville on May the 27th, did they ask you if you were missing any cement blocks?
A Yes, they did, after they came out there and they saw the blocks. Because like I said, I didn't know what was going on. I didn't know.
Q But they did ask you about it?
A Yeah.
Q And after that meeting at the law enforcement -- at the Sheriff's Office, the Lee County Sheriff's Office, did they come to your house?
A Yes, they did.
Q And what did y'all discover at the house?
A That one of the blocks was missing.
Q And did Sergeant McMillan take some photographs?
A Yes, I guess. I don't know. I wasn't at the...

(WHEREUPON, State's Exhibits Nos. 39, 40 were marked for identification only.)

BY MS. FANT:

Q I will show you first what's been marked as State's exhibit 40. Do you recognize that photograph or do you recognize the picture?

A Yes.

Q How do you recognize those?

A That's the side of my house between me and my neighbor.

Q And was that the side where the blocks were?

A Yes.

Q And does that in fact show where the blocks were?

A Yes.

Q I will also show you State's Exhibit 39. I'm sorry.

A I got it.

Q Do you also recognize that photograph?

A Yes.

Q And how do you recognize that?

A That's where it still between me and my neighbor, one of the blocks was missing.

MS. FANT: Your Honor, I offer this photograph into evidence at this time.

MR. FINNEY: No objection.

THE COURT: Number 39?

MS. FANT: Yes. Well, 39.

THE COURT: Okay. State's Exhibit 39 is in without objection.

(WHEREUPON, State's Exhibit 39 was admitted into evidence.)

MS. FANT: May we publish it, Your Honor?

THE COURT: Yes, ma'am.

MS. FANT: At this time, Your Honor, I would also offer in State's Exhibit 40 and 35 which are the other picture we just referred to and the picture of Ms. McDuffie's house.

THE COURT: What says the defense?

MR. FINNEY: No objection.

MS. FANT: And I would like to publish these, Your Honor.

THE COURT: Exhibits 35 and 40 are in without objection.

(WHEREUPON, State's Exhibits 35, 40 were admitted into evidence.)

BY MS. FANT:

Q After the defendant was charged with this crime, did you ever visit him?

A Yes, I did.

Q And why did you do that?

A I went to see him, maybe thought maybe he could tell

me something what was going on, but he said he didn't do anything, so...

Q Okay.

MR. FINNEY: I'm sorry. I couldn't hear the witness.

THE WITNESS: I said maybe he would tell me -- I would go and ask him what went on. I wanted to know really what happened, but he never did -- like he said, he didn't do it, so ain't nothing I could say.

MR. FINNEY: He said what?

THE WITNESS: He didn't do anything.

BY MS. FANT:

Q What did he tell you about what he had told you during the conversation that y'all had on that Friday night when he told you about wood and the cemetery and his sister Betty?

A What, about calling her?

Q Yeah. When you went to visit him and saw him in person after he had been arrested, did you ask him about the conversation that y'all had that Friday night?

A I talked to him about it.

Q Okay. And what did he say?

A Let's see. I asked him -- I was just asking him about, you know, did he do it. And he said, no, he didn't do it, he didn't have anything to do with it.

Q I know. We have been through that.
A Okay.
Q What did you ask him about the conversation about being in the cemetery on Friday night?
A He said he was out there doing his mama grave. That's all he told me.
Q Do you recall talking to Sergeant McMillan last Saturday, January the 12th, 2008?
A Uh-huh.
Q And at that time do you recall telling him that when you visited the defendant, he told you he was just joking about being out in the woods?
A Well, yes, that's what he said.
Q He said he was just joking, that's not true, I was just joking?
A Yes.
Q And did he tell you he was just joking about the cemetery?
A No. He said he was out there in his -- cleaning his mama grave. I don't know. Like I said...
Q So when you were there talking to him, he was still insisting that he was out cleaning his mama's grave in the dark?
A Well, like I said, it was first dark. It really wasn't dark dark, but it was dark -- too dark to be out

in, you know.
Q But do you recall telling Sergeant McMillan on this past Saturday, January the 12th, that he in fact said he was joking about that conversation on Friday about the cemetery as well?
A Yes.
Q And what did he tell you about Betty?
A He just said that was his sister, and if he get in any trouble, to call it. But then I realize his sister was not named Betty.
Q But when you went to talk to him in person after he had been arrested, what did he tell you about the conversation about Betty?
A Nothing because we didn't really talk about Betty.
Q You recall the conversation that you had with Sergeant McMillan on Saturday --
A Uh-huh.
Q -- this past Saturday. Do you recall what you said to him about what the defendant told you about Betty?
A Well, see Betty was supposed to be his sister I thought, but then I found out her name was not Betty.
Q Right. But when you asked him about that -- because that's why you went to see him, wasn't it? You wanted to know why he had told you these things?
A Yes, I did.

Q And you asked him about Betty. And what did he say?
A I can't remember what he said about Betty. I can't remember what I told you he said about Betty, what he said about Betty.
Q Do you recall telling Sergeant McMillan that he told you, oh, he was just lying about that?
A No, not really. I didn't say he was lying about who was Betty because Betty -- I found out Betty was not his sister, so he had to tell a lie to say if her name was Betty.
Q When law enforcement was asking you in general about this and they asked you -- did they ask you if the defendant had ever spent the night with you?
A Yes.
Q And what did you say?
A No.
Q And that particular weekend did they ask you if he had spent the night with you Saturday the 21st of May?
A That was that -- that Saturday he called me?
Q The Saturday morning he called you about coming to get the paint.
A Well, yes, they did.
Q Okay. And what did you tell them?
A He could'nt have spent the night with me. My cousin was with me from Jersey. She was at my house, so he

didn't get a chance to come by.
Q When you were talking to him at that time, did he try to insist to you that he had in fact come by your house Saturday?
A No.
Q Again, do you recall the conversation that you had with Sergeant McMillan on Saturday, January the 12th, 2008?
A But like I said, if he was coming -- if he came by, I wasn't there. I told him I wasn't going to be there, but he did--
Q During the day?
A He didn't come by.
Q Okay. How do you know? You weren't there.
A Because what he was coming at -- it was still at the house, so he didn't come. Far as I -- as of me knowing.
Q Yeah. Do you know for a fact that he was not in your house on Saturday?
A No, I can't -- I can't. No, I can't recall. I can't recall that.
Q You can't recall it?
A That Saturday?
Q Where were you Saturday, May 21st, 2005?
A Oh, that Saturday he came to fill my -- my doors?
Q No. That would be the Saturday that he came to get

the alleged paint that he was going to use.
A Okay. See, I wasn't home. I left.
Q Exactly.
A Uh-huh.
Q So you don't know if he came to your house.
A No, I don't. I just said I didn't know because like I said, I was left -- I told him I wasn't going to be there.
Q But did he in fact get the paint that day?
A No. The paint was still under the house.
Q But he might have been to your house any way--
A Well, he might have. Like I said, he might have. I don't know.
Q Are you denying that when you went to talk to him and you visited him in person after he was arrested that he tried to tell you that he was by -- he had come by on Saturday night?
A Say again.
Q When you were talking to the defendant in person after he was arrested --
A Uh-huh.
Q -- and you wanted to know why he had said some certain things --
A Yeah.
Q -- and he -- at that time he tried to tell you that

he had come by or he in fact was coming by your house on that Saturday, that he had been by there; didn't he?
A Yes.
Q And how did you know that that wasn't true?
A Because I was home.
Q And in addition, what did you tell him?
A Don't be lying because, like I said, I was home and my cousin was there, so he wasn't there.
Q And did you ask him to describe your cousin to you?
A No, I didn't.
Q Do you recall telling Sergeant McMillan on Saturday that you did and that's how you knew he hadn't been by there?
A No.
Q Now, do you recall specifically at some point telling Sergeant McMillan about a statement that you had made to the defendant and the victim, Ernest, about the gun -- that when you left it on the bed that day?
A Well, I assume when they was in there painting, they -- they had to see it, so...
Q Do you deny that you know for a fact that they saw it or that they knew it was there?
A Well, they knew I had one, okay.
Q Do you recall telling Sergeant McMillan this past Saturday something about that and how you knew that he

knew that you had a gun?
A Well, he knew I had it. They knowed I had the gun. But not -- like I said, who -- where did it go? Honey, I don't even know.
Q Did you -- telling Sergeant McMillan that when you left the gun out on the bed that day you told them, the gun is there when I'm leaving and it better be here when I get back?
A Yeah, I might have told him that.
Q Now, at some point after this time did Mr. Finney and a private investigator come to your house to talk to you about this case?
A Yes.
Q And when was that?
A Oh, about a month ago I think. Couple weeks ago.
Q Couple weeks ago?
A Uh-huh.
Q Did they also come last fall in the end of October or -- or early November?
A I don't know. I just -- I don't know. Like I said, I usually write everything down on a calendar when somebody come to my house and talk to me, but my calendar got missing, so I don't even -- you throwing dates at me, I don't even know.
Q Exactly. Tell us about this calendar that you kept.

A Well, like I said, if I'm having somebody do work for me, I always have a calendar that I puts -- if you say you coming today, I put it down, the date you come or the date you don't come.
Q And what kind of calendar are you talking about?
A Just a regular calendar you hang on a wall.
Q Okay. And were you very -- very regular did you put things in your calendar?
A All the time.
Q And were you keeping that calendar back in May of 2005?
A Yes, I was.
Q And did you in fact have that calendar from May, 2005 in 2007?
A Uh-huh.
Q And did you in fact show that calendar to Mr. Finney and the investigator?
A Well, I -- they -- I had it out when they came by.
Q Okay. Did you talk to them about what was in there?
A Well, you know, asked me certain dates and I look at my calendar and I get it and I let them know what's what.
Q So you were able to tell them by looking at your calendar what date things had occurred on from 2005 --
A Uh-huh.
Q -- because you had it with you?

A Yes, I did.
Q And did you bring that calendar report -- to court with you today?
A No, ma'am, because two weeks ago or three weeks ago somebody broke in my house and just took all my very important papers. I don't -- I don't recall anything else.
Q They took this calendar?
A Evidently. I can't find it. I don't know where it's at.
Q Okay. And was it valuable? Was this a valuable calendar?
A Well, it kept all my information on it. So like I said, if somebody throw something at me, you can't tell me you was at my house a particular day when I got it on my calendar.
Q And so it was valuable to you?
A Yes, it was.
Q Would you say it would be valuable for somebody to sell on the street or to pawn?
A No.
Q When this break-in occurred, did they take other things in the house, they take your television?
A No, no TVs, just....
Q Anything else of real value?

A My little safety deposit box and that's it.
Q And that had your papers in it?
A All my important papers.
Q Did you report this break-in to law enforcement?
A Yes, I did.
Q Do you remember when that was?
A Like I said, about a month ago now.
(WHEREUPON, State's Exhibit No. 41 was marked for identification only.)
BY MS. FANT:
Q Ms. McDuffie, I will show you what's marked for identification as State's Exhibit 41. Do you recognize that document?
A Yes.
Q And how do you recognize it?
A This is statement that I gave that -- when somebody broke in my house this particular day.
Q And what day does it indicate that somebody broke into your house?
A The eleventh, the 19th, '07.
Q So that would be November 19th of 2007?
A Yes.
Q And was that after Mr. Finney and his investigator came to talk to you?
A Yes.

Q And was there actual forcible entry into the house at that time?
A Yes.
Q Where had they broken in?
A In the front door.
Q And in fact, is your home still damaged?
A Yes.
Q Where were you when someone broke in and stole the calendar and your papers?
A I was at work.
Q So it was during the day?
A My neighbors say it happened about like 5:30. I hadn't get home.
Q Did they actually see who broke in?
A No, ma'am.
Q What had they seen that caused them to be concerned?
A The front door was left open.
Q And did law enforcement in Bishopville ever find out -- did they ever find out who broke into your house?
A No.
Q And you indicated that you had lived in that house in Bishopville for 27 years?
A Yes, ma'am.
Q Had anyone ever broken into your house before?
A No, ma'am.

Q Please answer any questions Mr. Finney may have -- or I guess, Your Honor...

THE COURT: Yeah. Since I don't want to limit Mr. Finney's cross-examination and since it's time to eat lunch, we're going to take a break and go to lunch. So I will let you go to lunch.

I need you to be back in the jury room by 2:30. And I will remind you again, please do not discuss this case with anyone. Don't allow anyone to talk to you about this case.

Don't read anything in the newspaper or listen to anything on the radio between now and 2:30. You have a nice lunch and I will see you back at 2:30.

(Jury left the courtroom at 1:04 pm.)

MS. FANT: Your Honor, could you please instruct the witness on communication with any party during the break?

THE COURT: She... Ms. McDuffie, you are still a witness on the witness stand, so during the lunch break you cannot discuss your testimony with anyone. Do you understand that?

THE WITNESS: Yes.

THE COURT: Okay. So if you will be back here a little before 2:30. When you come back you'll be on the witness stand. Okay? Anything further from the

State?

MS. FANT: No, Your Honor.

THE COURT: Anything further from the defense?

MR. FINNEY: No, Your Honor.

THE COURT: We will be in recess until 2:30.

(Court in recess for lunch.)

THE COURT: State ready to proceed?

MS. FANT: Yes, Your Honor.

THE COURT: Defense ready?

MR. FINNEY: Yes, Your Honor. Your Honor, can the witness get on the stand first?

THE COURT: Yes. Come on up, please, Ms. McDuffie.

(Witness resumed the stand.)

(Jury entered the courtroom at 2:45 pm.)

THE COURT: Thank you, sir. Ladies and gentlemen, I hope y'all had a good lunch and we're now ready to proceed with the testimony in this trial. Mr. Finney?

MR. FINNEY: Thank you, Your Honor. May it please the Court.

CROSS-EXAMINATION

BY MR. FINNEY:

Q Ms. McDuffie, I don't know where to start. Let me start at this point. On Friday, May 27th, 2005, you went

to the Bishopville Police Department. And you'll have to just kind of work with me here.

But Saturday was the 21st of May, 2005. Sunday was the 22nd. Monday was the 23rd. Tuesday was the 24th. I got Wednesday on the back of this thing which was the 25th. Thursday was the 26th. Friday was the 27th.

You went to the Bishopville Police Department on Friday the 27th of May and you reported that somebody had stolen your gun. According to this report you would have gotten there to make the report about 3:45 in the afternoon. Do you remember that?

A Yes.

Q Does that sound correct to you, that it was Friday and it was about 3:45 in the afternoon?

A Yes, sir.

Q At that time when you were driving to the police station to report your .38 caliber gun missing, did you know that Sumter County Sheriff deputies were looking to talk with you?

A Yes.

Q Had you already called Daniel Simon, who is a sheriff's deputy in Lee County, to tell him that you wouldn't talk to Sumter County without him being there?

A Yes, sir.

Q All right.

MS. FANT: Your Honor, if I may, could we have this exhibit placed somewhere up near there so I can see and still be able to talk to my investigator here?

MR. FINNEY: Let me see if I can back it up this way a little bit.

MS. FANT: That's fine. Thank you.

BY MR. FINNEY:

Q When did you first get the news that Sumter County people were looking to talk with you?

A That Monday.

Q Monday?

A Uh-huh.

Q Monday was the day that they found the body at between 1:30 and 2:00?

A Yes, they called me.

Q What -- who called you?

A Evidently they did.

Q Sumter County people called you?

A Yes, sir.

Q What time would they have called you?

A Right after I got off work, maybe about between four and 4:30.

Q Okay. And what did they -- what -- did they talk to you or left a message on the phone or what?

A They left a message, then they called back. If I can remember, they called me back or I called them, and then they asked me did I know Mr. Bradley.
Q Okay. That was Monday --
A Uh-huh.
Q -- evening?
A Yes.
Q Okay. And did you talk to anybody from the Sumter Sheriff's Department Monday evening?
A Well, they was asking me questions.
Q So just on the phone talking back and forth?
A Yes.
Q Did you know Mr. Bradley, when the last time you seen Mr. Bradley, things like that?
A Yes, sir.
Q All right. When you got off the phone with them, did you call Mr. Bradley and say, the cops just called me and --
A No, sir.
Q -- what's going on?
A No.
Q So you talked to the police officers. You were aware at five or 6:00 in the evening that Ernest had been killed?
A Yes. Not really, but they -- they the one told me.

I don't -- I just don't -- I don't recall that.
Q You don't know?
A They called me and they wanted to talk to me about him.
Q All right. Well, let me ask you another question. You testified earlier today --
A Uh-huh.
Q -- that Mr. Bradley called your house at about 9:00 Monday evening or came to your house at 9:00 Monday evening --
A Uh-huh.
Q -- and told you that Ernest had been killed?
A Yes.
Q Was that the first person who ever told you?
A Yes, yeah, he was.
Q That's who told you Ernest was killed?
A Yes.
Q Okay. So, Monday the 23rd is when they found the body?
A Uh-huh.
Q Do you believe that you talked to the police officers that day, that evening, or was it another Monday?
A I'm kind of thinking it was another day. I don't know.
Q You don't know?

A I can't really recall.
Q All right. When you went to Bishopville -- which is not on this week, now, it would be on the next week which is the 27th -- Friday the 27th, you went to report that the gun was missing, and you -- you did that with Daniel Simon, you reported the gun missing before you talked to McMillan and gave him a statement?
A No.
Q Okay. This is State's Exhibit 36. Is that your statement that you gave McMillan?
A Yes, this is.
Q And what time does it have written on it at the bottom that you gave it?
A At 5:40.
Q At 5:40 on Friday afternoon.
A Yes.
Q Which you just told us that you reported the gun missing at 3:45 to Daniel Simon. That was an hour and a half before you talked to McMillan.
A But see, I called Daniel myself and talked to Daniel.
Q But you didn't go and fill out the report until 3:45.
A This time...
Q To the gun now. I'm talking about the gun. The same date you got in the car, you went to Daniel's office.
A Uh-huh.

Q Daniel wrote out a report. The gun was reported an hour and a half before you talked to McMillan. Isn't that true?
A Yes, sir.
Q But you knew that when you got to Daniel's office that Friday afternoon to report your gun, you knew that you were going to stick around long enough to talk to Sumter County deputies because you had set it up?
A Yes.
Q You wouldn't talk to them until Daniel was there.
A Yes, sir.
Q So you had all that set up?
A Uh-huh.
Q And by then -- this is Friday now -- you knew that Ernest had been killed and you knew that Nate had been arrested.
A Yes.
Q So then you sit down at 5:40 in the afternoon and you give this statement to Mr. McMillan. And the first thing you did was you said that you weren't writing the statement, McMillan was writing the statement. So you were sitting there talking and he was writing?
A Yes, sir.
Q And all day today, every time you said something different, they asked you to go back to the statement and

tell what you wrote that day; didn't they?
A Yes, sir.
Q But you didn't write this. These are not the words that came out of your hand, your ink pen. These were McMillan's words?
A Yes, sir.
Q Did that cause you a problem today when you testified because what you remembered saying was not on this paper?
A No.
Q Well, you had a difficult time, Ms. McDuffie, in my opinion explaining what you remembered and what you said when Ms. Fant was asking you questions, when she kept asking you to go back and read what you said to McMillan.
And I want to know why did you have such a difficult time this morning answering Ms. Fant's questions.
A Well, I knew what I wrote, but then like I said, they tried to just--
Q But you didn't write it?
A No, I didn't write it.
Q So you knew what you said.
A I knew what I said.
Q But you don't know if they wrote what you said.
A Well, I kind of glanced over it and read over it.
Q And when Ms. Fant would ask you a question and you would say something that she didn't agree with, she would

show you the statement.
A Uh-huh.
Q You testified today that you asked Nate at some point -- I think it was -- it was after -- it was Monday night when he came to the house to tell you that Mr. James had been killed, you said something to Ms. Fant today -- and I wrote it down, let me look at it -- it says, I asked him if he had anything to do with it.
A Uh-huh.
Q You didn't tell Mr. McMillan that you asked Nate that; did you?
A Yes.
Q But it's not in the statement.
A Well, they didn't write it down, but I said--
Q He didn't write it down. You testified to Ms. Fant earlier today that investigators asked you whether you had a gun and whether it was missing. Is that right?
A Yes.
Q And that came about after an hour and a half after you had reported the gun to Daniel Simon; right?
A No, they didn't ask me at first did I have a gun.
Q But you had already told Daniel that the gun was missing.
A But see, I went down there to tell Daniel the gun was missing.

Q That's right.
A Yeah.
Q But you knew when you went down there to tell Daniel that, the gun had been missing for three days.
A Yes.
Q And you knew that Nate had been arrested and you knew that you were going to meet with Sumter County people while you were down there meeting with Daniel.
A Yes.
Q All right. You testified this morning that Nate told you that he was clearing his mama's grave out. That's not anywhere in this statement; is it? Look at it.
A It's not -- they didn't write it.
Q They didn't write it?
A No, they didn't.
Q And so is it possible -- well, let me ask you this. Are you telling me that you remember having a conversation with Nate a few days before you talked to the police, and you told the police about that?
A Talking about the -- about the grave?
Q The -- that he called you and said he was cleaning his mama's grave off?
A Well, I told him that and he said he was in the woods. But then, like I said, they didn't write everything down--

Q But being in the woods -- this statement says that he told you he was in the woods looking for his car.
A Uh-huh.
Q That's a lot different than in a graveyard cleaning off a grave, his mama's grave. My next question to you is this. Is it possible that my client, Mr. Bradley, might have said something to you at some point before May about being in the -- in the -- in the graveyard cleaning off his grave?
A Well, he mentioned that he was going to clean his mama grave off, so...
Q Yeah, but was that the same week? That's what I'm asking.
A That Friday.
Q It was that, that Friday?
A Uh-huh, the last Friday I talked to him.
Q The last Friday you talked to him?
A Uh-huh.
Q Well now, you talked to him -- you were telling -- you said in your statement Friday the 20th. The 20th is the date before Saturday.
A Well, that Saturday I talked to him. I wish I had my calendar and I would know.
Q I know.
A But then somebody took it, so I ain't know.

Q What I'm saying to you is, is it possible that Mr. Nate talked to you a week before or two weeks before about cleaning off his mama's grave and you just got it kind of mixed up in all this because this all happened in just... Ernest was missing, Ernest is dead, Nate's in jail?
A Well, it was that week before.
Q You think it was a week before?
A Uh-huh.
Q All right. So that would mean that it wasn't on the 20th, it was on the week before the 20th?
A But see, when he called me that Friday, we was talking about that because I asked him where were he.
Q Now--
A But then see, we talked that Monday and that Tuesday before.
Q All right. Isn't it true that you and Nate in May and April of 2005, during that whole period, talked a lot on the phone, every week?
A Probably did, I don't know. I don't...
Q If I got the cellphone records and I counted the number of calls between you, your phone and him and his phone, and I told you it was 88 phonecalls just in this period right here in May, 88 phonecalls, would you say that's true or not?

A It probably would, when he was trying to get me to finish my house.
Q After he painted the house --
A Uh-huh.
Q -- you said that he stopped painting for several weeks.
A Yes.
Q Did he leave paint there under the house?
A Yes.
Q How much paint?
A It was a bucket, a big bucket, maybe about half.
Q A big bucket?
A Uh-huh.
Q And there was paint in the bucket?
A Yes.
Q Did he leave brushes and rollers and other things?
A I guess. I don't look up under the house.
Q All right. And all of that stuff was under the house?
A Uh-huh.
Q And he didn't have to come in the house to go under the house to get his supplies?
A (Shook head).
Q All right. So you talked to him a lot. Even when you didn't see him during the week, you would have talked

to him on the phone a lot?
A Yes, he called.
Q And at one point you said that there was a time -- which I think you said was on Friday the 19th or Saturday -- or actually the 19th would have been two days before Saturday, so you're talking about Thursday you went to JC Penny's and met him there?
A Yes, I did.
Q And did you give him $20 at that time?
A Don't know how much I gave him. I gave him some money toward to get the truck out of the pound and whatever it was.
Q Okay. How much was the truck to get out of the pound?
A He told me it was 240.
Q $240?
A Uh-huh.
Q And you agreed to help him get the truck out the pound?
A Yes, because he said he needed his stuff to work with.
Q Okay. And so on the 19th you met with him and gave him a little money.
A Uh-huh.
Q And then on the 20th you said in your statement

that's when he called and said -- you said the words, he was talking crazy about Ernest because he was mad I guess that the truck had been impounded?

A That was earlier that week.

Q And--

A Maybe like Monday or Tuesday when he called.

Q Monday or Tuesday?

A Uh-huh.

Q So it wasn't on the 20th, the day before Saturday the 21st. Okay. And so if they wrote it down wrong, it's not that you--

THE COURT: Hold on just a minute. Be sure to answer because she's taking down everything you say.

THE WITNESS: Okay. Okay. I got ya.

THE COURT: Thank you.

BY MR. FINNEY:

Q It's not that you are confused about what you said, but what you're confused about is because when you wrote -- read your statement, things in the statement aren't written down right.

Did you say to the investigator on Friday, May the 20th, I spoke with Nate by telephone, he was talking crazy talk?

A Yes, sir.

Q Did you say that -- you did that on the 20th?

A When I went down and talked to him, yeah, that Friday.
Q You talked to the investigator on Friday?
A Uh-huh.
Q But you told the investigator you talked to Nate on Friday the 20 -- the 20th, the previous Friday, you talked to Nate.
A Uh-huh.
Q Is that right?
A Yes, sir.
Q Okay. Do you know what time you talked to Nate? You said you talked to Nate -- and let me look at it. It says you talked to him on the phone and then he called back again -- we spoke again Friday night, he stated he was lost in the woods.
A Like first dark, you know, like the time change and it get dark --
Q Okay.
A -- maybe like seven.
Q This is May now. It doesn't get dark till late, right?
A Uh-huh.
Q So if I told you the cellphone records said that you made three calls to Nate that day, you all -- you all talked three times, would you agree?

A What day that was?
Q Friday the 20th. Nate called you at 4:52. You called Nate at 4:59--
MS. FANT: Objection, Your Honor.
MR. FINNEY: I'm asking the witness if she has a recollection.
MS. FANT: You weren't asking. You were telling.
THE COURT: You need to ask.
BY MR. FINNEY:
Q Do you have a recollection of speaking to Nate at 4:52?
A This was that Friday?
Q Friday.
A I -- when he called me coming home from work I assume, yeah.
Q All right. And then you called him. Did you remember calling him back at 4:59?
A I might have. I don't know.
Q And then you got another call at 5:03 from Nate. So like right there within a five or 10 minute period of time there were a couple of calls back and forth. That was Friday.
THE COURT: Got to answer for me.
THE WITNESS: Yes, sir.

BY MR. FINNEY:
Q And then the last call between y'all that day, do you remember it being about 8:04 in the evening?
A Something -- something like that.
Q And after 8:04 Friday you didn't talk to him no more?
A No.
Q Now, they have spent some time asking you about an injury to Nate's eye. Did the investigators ask you about Nate's eye?
A No, they didn't.
Q How is it that it came up that you talked to the investigators and said something about his eye?
A When I made the report, I told them that he had a -- a thing to his eye.
Q What kind of thing? Tell the jury what it--
A I guess it was -- looked like it was either bloodshot because I asked him what happened, and he said he hit it on a cabinets, and it was red.
Q So the eye was red on the inside?
A Yes, sir.
Q Was there any bruise or scratching on --
A No, sir.
Q -- blood on the outside of the eye?
A I didn't see it.
Q And when you saw him and you had seen his eye, that

was Monday night when he came up to tell you that Ernest had been killed?

A Yes, sir.

Q Okay. And he had -- did you say he was upset, looked like he had been crying?

A Yes, sir.

Q Okay. And he told you that night that if -- when was the last time you talked to Ernest -- excuse me -- Nate face to face?

A That Monday.

Q Which would have been the 20... third?

A Yes.

Q At your house?

A At my house.

Q How long were you all together?

A About 30 minutes or 45 minutes.

Q Okay. Then he left and called back on the cellphone?

A Yes, sir.

Q Okay. That's when he asked you to come out?

A Yes.

Q Okay. And you didn't come out?

A No, sir.

Q And because of the news of Ernest's being killed, you went to bed that night, you put the gun under your pillow?

A I laid it beside me. I never put it under the

pillow.
Q On the nightstand?
A On my bed beside me.
Q Okay. When you bought that gun in 1998, you bought it new? Was it a new gun?
A Yes.
Q Did you buy any bullets?
A Yes.
Q Did you buy a box of bullets?
A Yes, I did.
Q So do you have the box of bullets at your house?
A Yes.
Q You have them now?
A Uh-huh.
Q And did the investigators ever come to look at them?
A Yes, I gave them one.
Q You gave them a bullet?
A Out the box.
Q Who did you give it to?
A One of the men that came to my house. I don't know which one. One of them.
Q You don't know which one came to the house?
A Well, it was this one and another guy. I don't see him, so I don't know.
Q They were together?

A They were together.
Q You gave them one of the bullets?
A Yes, I did.
Q All right. And your testimony is that Nate knew about the gun being in the house?
A Well, yeah, they knew it was there.
Q Okay. Now, I'm going to ask you clearly. Tell the jury how did Nate know that it was in the house.
A I left it on the bed one day, and maybe they might have saw it.
Q Okay. But then you said maybe, so I'm asking--
A But then I lay -- I told -- they know it was there.
Q Okay. You left it on the bed?
A Yes.
Q They were there --
A Yeah.
Q -- painting?
A Yes.
Q And you told them, don't mess with the gun?
A Well, yeah, and I put it back up in the closet where I keeps it.
Q And these fellows going to be in your house painting, you just left the gun on the bed?
A Well, I forgot and left it up there when I went to work that morning because I usually puts it up.

Q Well, were they there when you got -- when you left, were they there painting --
A No, huh-uh.
Q -- when you left?
A Because I leave home at 5:00 in the morning to go to work.
Q So they weren't there?
A No.
Q And you left the gun on the bed?
A Yes, I did.
Q And that's how you were telling this jury that Nate knew you had a gun?
A Well, they know -- I ain't know I had--
Q Is there any other time y'all talked about it or you showed --
A No.
Q -- it to him and he showed you how to work it?
A No, he didn't.
Q Okay.
A No.
Q So your recollection is one day he came to the house to paint and the gun was left on the bed?
A Yes, sir.
Q And this is the same gun you recollect putting on the nightstand Monday night?

A Putting on my bed.
Q Putting on your bed--
A I don't know where the nightstand came from, but I puts it on my bed.
Q And you don't know what you did with it Tuesday morning?
A No because, see, I thought I put it back up in the -- up in the thing where I puts it.
Q You think you did, but you're not sure?
A I'm not sure.
Q Might have put it somewhere else?
A Might have did.
Q You looked for it Tuesday?
A Yes, I did.
Q Couldn't find it?
A No, sir.
Q Didn't call the cops?
A No.
Q Wednesday.
A Couldn't find it.
Q Did you call Nate and say, did you take my gun?
A He was locked up. Couldn't call him.
Q He didn't get locked up till Thursday. Excuse me.
A Well, Friday. He got locked up Friday. No because they had his phone I assume. These people had his phone.

They told me they had the phone.
Q The phone?
A His phone.
Q Oh, and you couldn't call him because he didn't have a phone?
A Uh-huh.
Q You got most -- you talked to Nate on his cellphone. That was the main way of talking to him.
A Yes, sir.
Q All right. So the gun was in your house Monday night, but it wasn't there Tuesday at some point.
A Yes.
Q And that's -- that's all you know?
A That's it.
Q Okay. Now, when you talked to the officers in Bishopville and you told them that the gun had been missing, did you also tell them that day that the brick was missing?
A The investigators from Sumter that I talked to, yes, I did.
Q That day?
A That Friday when I talked to them.
Q There's nothing in your statement about any brick being missing.
A Well, I told them. Whether they wrote it down, like

I said--
Q You don't know if they wrote it down. All right. Now, let's -- to your knowledge, did this brick come out of your yard? Can you identify this brick as being a brick out of your yard?
A Not to my knowledge, no.
Q Okay. So somebody came to your yard to look and see what you had out there?
A Uh-huh.
Q When was that?
A That was that same Friday.
Q Same Friday?
A Yes, sir.
Q Y'all left Daniel's office?
A Yes.
Q You had signed your statement.
A Yes, I did.
Q Got in your car and drove back to your house?
A Yes, sir.
Q And the officers came and they took some pictures, state's Exhibit 39 and 40.
A Uh-huh.
Q Now, how many bricks did you have in your back yard to begin with?
A Honey, I don't know.

Q You don't know? And how long had they been there?
A Oh, about a year or two.
Q Okay. And you don't know how many you -- did you put them down? Did you have somebody put the bricks down?
A I put them down.
Q So you put -- but you don't know how many?
A Huh-uh.
Q And up until the time the investigator stepped in your back yard, you didn't know if there was anything there or missing or not?
A No.
Q You had not missed anything?
A Because I don't go outside to be checking because like I said...
Q Okay. So where in -- where in these pictures -- I'm going to let you look at State's Exhibit number 39. Is that your house in Exhibit 39 or is that the neighbor?
A That's my neighbor's house.
Q That's your neighbor's house. This picture would have been taken from the back yard of your neighbor's house --
A No.
Q -- looking forward to the street that is called Spann Road, is that -- is that what you see in that picture?
A Yes. Well, see, my house is here.

Q Your house is on the bottom side of the picture?
A Right across from here, like this way. And I assume they took that picture that way. I don't know. I wasn't out there when they took the picture.
Q But -- how many -- where do you see a block missing in this picture?
A Evidently it was here.
Q Evidently it was there in the middle of the picture?
A Yes, sir.
Q Between the block that's on the far right and the block that's in the middle?
A Yes.
Q You think there was a block missing there.
A Yes.
Q Now, it appears from these two pictures, if you look at them, somebody's cutting the grass.
A Talking about cut right here?
Q Yes, ma'am. Because somebody cut the grass around these blocks.
A Well, the guy that cuts my grass, he cuts around them, sometime he don't cut around them.
Q Sometimes he has to move them to cut them; doesn't he?
A Nah, they don't move them.
Q You never moved them? So the whole summer the grass

just grows right on up there and you just look at it all summer?
A Well, it don't grow all the way up, but he'll go through there sometime.
Q You see the grass looks pretty tall in that picture in your hand which is number 40.
A But see, he don't go that close to it. He'll go like this.
Q All right. Let me ask you this. In picture number 39 do you see any tall grass growing around the spot where the brick is missing?
A No. Evidently the block was gone and I didn't recognize the block was gone and he cut the grass.
Q The block could have been gone for a long time?
A A long time, yes.
Q Did anybody from Sumter County come and do any measurements on these bricks or look at this brick according to the bricks in your yard to see if they came from the same company, they were made with the same style, anything like that?
A Well, I assume that's what he said they was going to do. That's the purpose of taking the block. The block -- this block was tied to Ernest?
Q Yes, ma'am.
A It was?

Q Yes, ma'am.
A Okay. They got a block. Now, what did they do with it...
Q They took a block out your yard.
A Yes, they did.
Q Okay. Do you know where they took it from on that picture?
A Probably out the front of my -- I got more blocks in the front of my house, so...
Q Did you ever tell Mr. Bradley that somebody had brought a block to your house and put it in the front yard?
A Yes, I did.
Q When was that block brought to your house?
A A week after or two weeks after.
Q Do you think it's the block that the police took away from--
A I don't know. See, I don't know.
Q Is it -- the block just -- it was just a block just like that?
A Yes.
Q And it was just in your front yard one day.
A Yes.
Q The man who cut the grass, could he have put it there?

A They don't move them. They don't move them when they cut it.
Q Now, I think the last thing you might have testified about was that you have had a break-in at your house on Spann Road in November shortly after myself and the investigator met with you.
A Yes, sir.
Q The calendar that you were talking about earlier, was it in your safety deposit box?
A No.
Q Where was it?
A In the meeting room under the mattress.
Q In the what?
A In my bedroom under the mattress.
Q Okay. And so whoever broke in the house looked under the mattress and got the calendar?
A They tore both my mattresses up in my room -- bedroom, each bedroom.
Q Tore them up?
A Well, you know, trung (sic) them up. --
Q They didn't cut them; did they?
A No, just flipped them up.
Q Okay. So they were looking for stuff. And they looked under there and saw something and took it?
A I guess. I don't know.

Q And do you believe Mr. Bradley did that crime?
A No.
Q How do you know that?
A I don't think he had nothing to do with it.
Q Why not?
A Because we got little people in the neighborhood, they breaking in each other houses, so...
Q All right. Have you had to take any safety steps since that break-in to make your house safe?
A No, not really. I just...
Q No extra lights, no extra locks? All right. You got the neighbors looking out for you?
A Yes, sir.
Q You ever had any problems since then?
A No.
Q Was -- was Nate Bradley upset with Ernest because Ernest was costing him money on jobs that didn't get done?
A No, not to me he wasn't.
Q Why was Nate Bradley upset with Ernest? You testified that he was talking crazy, he was--
A I guess because he took -- like I said, I don't think he took the truck. I think he let him drove the truck to the store or wherever they went and did what they did and his truck got impounded, so...
Q Did he say anything at all about harming Mr. James?

A No, sir.
Q He only told you that he would...
A Get him.
Q Get him?
A That's what...
Q And what did you take that to mean?
A Fuss with him, I guess, just fuss at him.
Q Did you think that it means that maybe he would stop working with him, not invite him to do jobs any more?
A Well, I guess. I -- I don't know. I really don't know.
Q The first person that told you that Ernest James had been -- was killed was Mr. Bradley?
A Yes, sir.
Q And when he told you that, he was upset and had been crying?
A Yes.

MR. FINNEY: Beg the Court's indulgence.

THE COURT: Yes, sir.

(Mr. Finney conferring with defendant.)

BY MR. FINNEY:
Q Ms. McDuffie, thank you for answering my questions.
A Okay.
Q That's all I have.

THE COURT: Yes, ma'am.

REDIRECT EXAMINATION

BY MS. FANT:

Q Ms. McDuffie, just to clarify a few things that you just talked with Mr. Finney about. The day that the Sumter County Sheriff's Office contacted you and said they wanted to talk to you, could that have been a Tuesday rather than a Monday?

A No, I don't think so.

Q Why would they have called you on Monday when they didn't know who you were?

A Well, they said they was calling everybody that -- what he had phone number in his phone to -- that's what they told me.

Q Correct. And when did they get the phone from the defendant?

A I assume whatever day they picked him up for the first question. I don't know. I...

Q That wasn't on Monday, though; was it?

A I really don't know.

Q Well, you know it wasn't Monday because he would have told you about that. He came to see you Monday night, didn't he, to your house; is that correct?

A Yes, he did.

Q Okay. And did he tell you, hey, law enforcement has been talking to me, I have been down to the law

enforcement center?
A No.
Q Okay. He just told you that someone had killed Ernest, that Ernest was dead.
A Yes.
Q When you did go in fact and agree to talk to Sergeant McMillan, you went and talked to him at the Lee County Sheriff's Office?
A Yes, ma'am.
Q And that was in addition to -- I mean at that time Major Simon was there as well.
A Yes.
Q So both of them were present when you talked to them?
A Both of the guys was, but Mr. Simon wasn't.
Q Both of the guys?
A Together the -- the investigators here. It was another investigator. I don't see him.
Q Okay.
A I talked to two guys, yeah.
Q There were two investigators there?
A Uh-huh.
Q Did you ask Sergeant McMillan to write your statement?
A Yes.
Q Okay. And did you read it after he wrote it?

A Yes, I did.
Q And did you tell him it was okay, that that was your statement?
A Yes.
Q Now, when you indicated to Mr. Finney -- you're talking about the cemetery, when Nate told you he was cleaning off his mama's grave -- is that the same Friday that you had the conversation about him being out in the woods?
A Yes.
Q And is that the same Friday that he was talking crazy about Ernest?
A Yes. No. That was on a Monday. See, I talked to Nate earlier that week.
Q Okay. But you agree it was the day that he said he was out in the woods.
A Yes.
Q And that it was dark at that time.
A Yes.
Q And then you went the -- the -- after you -- excuse me -- no, excuse me -- before you had found out that Ernest was dead, I believe you said the Thursday before the 19th you went to meet the defendant at JC Penny's or you were going to Penny's and he met you there --
A Yes.

Q -- is that correct? And at that time didn't you give him $100?
A Well, I think I gave him half of the money that he said and -- what the bill was for the truck.
Q And if he had said it was over $200, would you agree with that?
A Yes.
Q And do you recall telling Sergeant McMillan on Saturday, January the 12th of 2008 that you gave him $100 at the JC Penny?
A Well, like I said, I gave him half of the money that he said.
Q When he came to your house the Monday, the Monday that they discovered Ernest's body, you indicated that you noticed that one of his eyes was -- was red?
A Yes.
Q Or bloodshot.
A Yes, ma'am.
Q Were both of his eyes red?
A No.
Q So just one?
A I just saw that one.
Q And the photos that Mr. Finney showed you, State's 39 and 40, did you in fact tell them on Friday the 27th that there was in fact a block missing from your yard?

A I told them. But like I said, who moved it and when it was moved, I don't know.
Q I didn't ask you that. I said, did you tell them that that space that's shown in between those --
A Had a block.
Q -- that there was a block there?
A Yes, it was.
Q Now, you indicated that when they came there also that somebody just took a second block, they just took it from your house. Who was that?
A Took a block?
Q When you were talking to Mr. Finney you said that the day that they came, that that -- that is not the block from your house.
A Yeah.
Q We know that --
A All right.
Q -- on that day because that was the block that was tied to Mr. James. It's been entered in evidence. It was recovered off of his foot, attached to his foot.
A Okay.
Q But there was a block missing when they went there that day.
A Yes.
Q You just said that.

A Yes.
Q Now, you told Mr. Finney that when the officers were there, they also took a block that was at your house and they took it away.
A Yes.
Q Who took that block?
A One of the investigators took it. I don't -- I wasn't paying no attention, but I--
Q Well, how do you know they took it?
A Because I was outside when they took it, and I asked them what was they going to do, was they going to try to make it match the blocks that they said that was on Ernest.
Q And is that what they told you they were going to do?
A Uh-huh. That's what they said, they going to try to see did it match because see it's an old block.
Q But you don't recall who would have told you that?
A I don't know which one, no.
(WHEREUPON, State's Exhibit No. 42 was marked for identification only.)
BY MS. FANT:
Q I will show you, Ms. McDuffie, what's been marked for identification as State's Exhibit 42. Do you recognize that document?
A Yes.

Q And is that in fact your signature at the bottom of that document?
A Yes, it is.
Q And what -- what is that document that I just handed you?
A A statement that I gave to them.
Q Is that the statement that Sergeant McMillan wrote for you that you told him --
A Yes.
Q -- about.
A Yes, ma'am.

MS. FANT: Your Honor, at this time I would offer this statement into evidence.

THE COURT: What says the defense?

MR. FINNEY: I don't have an objection, but she's already marked one, it's number 36.

MS. FANT: It's not entered, Your Honor. This is the original statement which would be the appropriate document to enter.

THE COURT: Okay. You have any objection, counsel?

MR. FINNEY: Let me just look at it, Judge.

THE COURT: Okay. And it's Exhibit 47?

MS. FANT: 42.

THE COURT: 42. I'm sorry.

MR. FINNEY: No objection.

THE COURT: Okay. Then it's in evidence without objection.

(WHEREUPON, State's Exhibit 42 was admitted into evidence.)

MS. FANT: Nothing further, Your Honor.

THE COURT: Anything further?

MR. FINNEY: Nothing, Your Honor.

THE COURT: Okay. Ms. McDuffie, you can step down. Ladies and gentlemen, it's probably a good time to take our afternoon break because I don't know how long the next witness will be.

So we will take about a 10 or 15 minute break, give you a chance to stretch your legs. Go to the jury room. We'll try to run around five, 5:15 for today.

(Jury left the courtroom at 3:28 pm.)

THE COURT: Court will be in recess for 15 minutes.

(Whereupon a recess was had.)

THE COURT: Is the State ready?

MS. FANT: Yes, Your Honor.

THE COURT: The defense ready?

MR. FINNEY: Yes, Your Honor.

THE COURT: Bring us the jury, Mr. Charlie.

(Jury entered the courtroom at 3:51 pm.)

THE COURT: Thank you, sir. You may call your next witness.

MS. FANT: Your Honor, the State calls Thomas McCutchen.

THOMAS MCCUTCHEN, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Mr. McCutchen, where do you live?

A Bishopville, [redacted] St. Charles Road in Bishopville.

Q And what do you? What kind of work do you do?

A I am technically called field representative, but I do insurance inspections or property loss control inspection for insurance companies.

Q And are you familiar with Broad Branch Cemetery --

A Yes, I am.

Q -- in Bishopville?

A Yes, I am.

Q And how are you familiar with that?

A That's in the heart of the family property where I have lived for over 40 years, and it's -- I live on the adjacent side of Broad Branch from the cemetery.

Q How close would you say the cemetery is to your house?

A That's, I mean, quarter of a mile max.
Q On May 22nd, 2005, were you out and about on your property?
A I'm assuming May 22nd is that Sunday?
Q Yeah, that's a Sunday.
A Yes, I was out. Had the golf cart. Riding around on the golf cart.
Q And did you run across something unusual?
A Yes, I did.
Q And what was that?
A A car that had been burned.
Q And was the car still burning when you got there?
A No, it was not.
Q Did you actually touch the vehicle?
A I do not think I touched the vehicle at all, no.
Q And did you otherwise disturb anything where the car was located?
A No, we...

(WHEREUPON, State's Exhibit No. 43 was marked for identification only.)

BY MS. FANT:
Q Mr. McCutchen, I will show you what's been marked as State's 43. Do you recognize that photo?
A That appears to be the car that we found in the woods or in...

Q Does it -- does the photo fairly and accurately depict the way the car was when you saw it in the woods?
A Yes, it does.
MS. FANT: Your Honor, at this time I would offer the photo into evidence.
THE COURT: What says the defense?
MR. FINNEY: No objection.
THE COURT: What say the defense?
MS. FANT: Permission to publish.
THE COURT: It's Exhibit 43? It's in without objection.
(WHEREUPON, State's Exhibit 43 was admitted into evidence.)
BY MS. FANT:
Q Was anyone else with you when you discovered the vehicle?
A There was a neighbor that was actually riding with me, and approximately the same time my wife who generally walks just -- every day was coming down the other side of the road, and we -- we met about the same place the car was over in the woods or off the side of the road, however you want to say it, there.
Q Okay. And what did you do after you found this vehicle?
A Called the police.

Q And did someone come out and respond to your call?
A They did.
Q And did you have anything to do with this case after that?
A No, I...
Q Please answer any questions Mr. Finney may have.

CROSS-EXAMINATION

BY MR. FINNEY:
Q Mr. McCutchen, I'd just like to -- I have got this little chart over here and I'd like to just -- can you tell me what time on Sunday you discovered the car?
A Without looking at the report, no, I can't tell you exactly what time. It was after church. It was after lunch.
Q So in the neighborhood of...
A I would guess -- I don't remember without looking at the report, 2:30, three, maybe even later in the afternoon.
Q Sunday afternoon?
A It was Sunday afternoon definitely.
Q All right, sir. 2:30, 3:00?
A Like I say, I don't remember exactly what time, but it was in the afternoon. It was after church, after lunch.
Q That's the car discovered. Now, would you tell the

jury -- tell the jury a little bit about the car when you first saw it. You were riding a golf cart. Were you on a paved road?

A At the time I was on the paved road, yes, and there -- the...

Q The car was how far from the paved road?

A I would guess that's probably -- without looking at it I'd say 30, 40 maybe even 50 yards.

Q All right. So further than from where you are now to the back door of the courtroom?

A I would say it's further than that, yes.

Q Further?

A Right.

Q And so when you saw the car, what brought your attention to it?

A I knew that car had not been there prior.

Q All right.

A Like I say, that very -- that's -- it was a cut down, timber recently been cut out. Right there all the time. It's springtime. My wife walks the -- that -- what we call that triangle, that square so-to-speak, on pretty much daily basis, so the car has not been there --

Q All right.

A -- you know, prior to the day before.

Q From the roadway where you were riding your golf

cart, could you see the whole car or just parts of the car or...
A Soon as I saw it I could see, you know, you could see the car was there.
Q Was there any smoke?
A No.
Q Fire?
A Don't remember any smoke or fire at the time.
Q Hot ashes, anything like that?
A You could tell it was recently burned, but I mean, like I say, I didn't touch it. It was not smoking.
Q Okay. And if you found it at 2:30 in the afternoon on Sunday and you don't think it had been there long, then if it had been burned in that -- did it appear that it had been burned in that location?
A Yes.
Q Okay. In your opinion--
MS. FANT: Objection, Your Honor. Believe it--
MR. FINNEY: Well, let me ask the question first.
BY MR. FINNEY:
Q In your opinion from looking at the car do you think it had been burned that Sunday morning?
MS. FANT: Objection, Your Honor.
BY MR. FINNEY:

Q Or afternoon, that Sunday?

THE COURT: I sustain the objection. He's -- he's not qualified to give an opinion on that. He hadn't been qualified as an expert.

MR. FINNEY: All right.

THE COURT: And it's...

MR. FINNEY: I will just ask another question.

BY MR. FINNEY:

Q Did you see -- do you know if you had been in that area on that part of that road on Monday, the day before -- excuse me -- Saturday, the day before?

A I -- when we all met there, again, like I telling earlier, my wife and I met there. My wife walks that road daily. First thing we said was -- and I remember her saying, you know, I walked it yesterday and I remember us talking, that wasn't there yesterday, it couldn't have been. But whether, you know, what I did that Saturday I can't tell you honestly.

Q Do you have a picture of the car? Thank you. Did the car look like it was completely burned inside and out?

A Yes.

Q Do you believe that if the car had been burned there in that spot that it would -- it would have been seen -- it could have been seen burning from the roadway?

A Yes. I mean, it -- it could have been seen.

Q All right. So if the car was on fire --
A Right.
Q -- you could have seen it on fire from the roadway?
A Yes.
Q All right.
A Without a doubt.
Q Now, would it have been hard, for example, if it had been on fire and smoke was going up, would people driving down the road been able to see the smoke?
A Yes.
Q All right. Nothing further. Thank you, sir.

THE COURT: Anything further?

REDIRECT EXAMINATION

BY MS. FANT:

Q Mr. McCutchen, just a quick question. The road that he's talking about, the paved road, is that a heavily traveled road, bumper to bumper traffic?
A It's -- it's not a major highway. I mean, it's -- pretty busy road.
Q What about in the -- excuse me -- in the afternoons, is it necessarily that busy or would it just depend on day to day?
A I would guess I'd have to say day to day. I mean, whether call busy or unbusy.
Q It wouldn't be bumper to bumper traffic every day?

A No.
Q That's all.
MR. FINNEY: Nothing further.
THE COURT: Thank you, sir. You can step down.
(Witness left the stand.)
MS. FANT: Your Honor, at this time the State calls Robin McCutchen.

ROBIN MCCUTCHEN, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:
Q Mrs. McCutchen, do you know Thomas McCutchen?
A He's my husband.
Q And do you also live I assume in Bishopville?
A I do.
Q And what type of work do you do?
A I'm a nurse at the Lee County Health Department.
Q Are you familiar with the area that we're talking about where Broad Branch Cemetery is?
A Yes.
Q And how are you familiar with that area?
A That -- I have lived there -- we have built our house in 1999, so I have lived there that long.
Q Now, when you were -- saw the vehicle, this would have been on Sunday, May the 22nd?

A Sunday afternoon.
Q And that's in 2005?
A Yes.
Q And how did you -- how did you come across it?
A I have been walking that triangle that we live on for -- since we have lived there, and I walked it on Saturday and I walked it again on Sunday afternoon, and I saw it when I was walking.
Q Now, when you say that triangle, just what exactly are you referring to?
A The three roads that go around our house, just -- they form a triangle. So I walked that area. It's about 2 miles, so I walk it.
Q Okay. And did you actually walk that, that triangle on May the 21st, that Saturday?
A Saturday afternoon, yes.
Q And was the vehicle there at that time?
A No.
Q And -- excuse me -- did -- when you saw the vehicle, did you touch the vehicle at that time?
A No.
Q Did you disturb anything else about the vehicle site?
A No, we just called the police.
Q Okay. I'll just show you State's Exhibit 43. And do you also recognize that?

A Yes. That's the car we found.

Q Okay. Thank you. Please answer any questions Mr. Finney may have.

CROSS-EXAMINATION

BY MR. FINNEY:

Q Mrs. McCutchen, two questions, please. What time Saturday afternoon you think you walked?

A I don't know exactly what time. It would have been in the late afternoon.

Q After 2:00?

A Probably so.

Q And would you have walked for about an hour?

A No. It takes me about 25 minutes to walk that triangle.

Q All right. From your house -- you left the house to walk the triangle, came back to your house.

A Right.

Q From the house, if that car had been burning, would you have been able to see smoke and flames from your house?

A From my yard? Maybe not because we live in a -- a wooded -- there's trees all the way around our house and I may not have, you know, without going out to the highway.

Q Thank you, ma'am. Nothing further.

MS. FANT: Nothing further, Your Honor. May

Mr. and Mrs. McCutchen be excused?

THE COURT: Yes, ma'am.

MR. FINNEY: No objection.

(Witness left the stand.)

MS. FANT: At this time the State calls Claude Lloyd, junior.

CLAUDE LLOYD, JR., after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Mr. Lloyd, where do you live?

A Inside of Lee County on -- approximately six, 7 miles west of Bishopville.

Q And where do you work?

A Currently Nuclear Security Progress Energy.

Q And before you went to Progress Energy where did you work?

A Lee County Sheriff's Office.

Q And how long had you worked there?

A Approximately two years.

Q Did you have any other law enforcement experience?

A Yes, ma'am, I did. I worked with Hartsville City Police Department, Town of Society Hill Police Department, and with the State Department of Corrections.

Q Okay. And what would you estimate your --

approximately total years in law enforcement were?
A Approximately 10 years.
Q Were you on patrol as a deputy with Lee County on May the 22nd, 2005?
A Yes, ma'am.
Q Do you recall receiving a report of a burning vehicle?
A I do.
Q And what did you do in response to that report?
A It's approximately around 3:35 in the afternoon, Sunday, May 22nd that I received the call, so I responded to the location off of St. Charles Road at the Broadway (sic) Cemetery.

And upon -- soon as I got there, I saw the McCutchens just up here and, you know, they said -- pretty much stated that while out riding on the golf cart, you know, that's what they found, the car was burned.

And I got out and observed, walked around, looked at the car. It was pretty much burnt to a crisp inside and out. Made an initial burnt vehicle report and had it towed.
Q Now, when you responded to Broad Branch Cemetery, can you tell us where the cemetery is actually located?
A It's right off of St. Charles Road approximately -- it's roughly maybe 40 to 60 yards off of the paved road,

St. Charles Road.
Q Did you actually touch the vehicle?
A No, ma'am, I did not actually touch it.
Q Was there still heat coming off of the vehicle?
A I do not recall exactly if there was or wasn't. You could tell -- I could tell it was -- it was -- looked -- appeared to be recently burned.
Q And why did you believe that that was the case?
A I felt that it was recently burnt because you could tell -- you could tell by the scents, the smell. I mean, it was very strong still. And I -- that's why I felt like it was.
Q So the -- sort of odor of the burning --
A Right.
Q -- was still in the air?
A Right.
Q Was -- were you able to determine what type of vehicle that it was that had been burned?
A It appeared to be a mid 80's model Volvo.
Q A Volvo?
A Right.
Q Do you recall what model it was?
A To the best I can make out it would appear to be a 240, 280DL or SL, I think DL.
Q And Mr. Lloyd, first I will show you what's been

entered into evidence as State's Exhibit 43. Do you recognize that?

A I believe that was the vehicle.

Q And is that the same condition it was in when you observed it that day in the cemetery?

A It--

Q In general looking--

A It is. Yes, right. Right. It is. It is.

(WHEREUPON, State's Exhibit No. 44 was marked for identification only.)

BY MS. FANT:

Q I show you what's been marked for identification as State's Exhibit -- Exhibit 4. Do you recognize that -- what's depicted in the photo?

A I do.

Q And how do you recognize it?

A That was the rear of the car that I found that -- back at Broad Branch Cemetery.

Q Is it in the same condition as you found it? Does it depict the vehicle in the same condition?

A It is.

MS. FANT: Your Honor, I would offer State's 44 into evidence.

THE COURT: What says the defense?

MR. FINNEY: No objection.

THE COURT: State's 44 is in without objection.

(WHEREUPON, State's Exhibit 44 was admitted into evidence.)

BY MS. FANT:

Q And can you indicate or do you see the model number on the back of the vehicle?

A Appears to be 240DL.

Q Okay.

MS. FANT: Your Honor, I'd like to publish this.

THE COURT: Okay.

BY MS. FANT:

Q Were you able to recover a vin number from this vehicle?

A Only a partial vin.

Q And what is a vin number?

A It's the vehicle identification number. It's what each vehicle manufacturer puts on each specific car to identify that individual car.

Q Would every vehicle in this country have a different vin number?

A Yes, ma'am.

Q And did you record the number that you were able to see?

A I recorded the partial number. Due to the fire damage and the car was so badly burned there was actually

a gap in between from the beginning to the end of the vin number, and a couple or several numbers could possibly have fit in that burned-out area.

Q But you recorded the numbers that you in fact saw?

A I did.

Q Do you recall what they were?

A Not off the top of my head. I do -- I -- it's on the police report, but I do not remember every number.

(WHEREUPON, State's Exhibit No. 45 was marked for identification only.)

BY MS. FANT:

Q Mr. Lloyd, I will show you what's been marked for identification as State's Exhibit 45. Do you recognize that document?

A I do.

Q And how do you recognize it?

A This is the actual police report that I completed, date of incident.

Q And would the number on there that indicates a vin number for that vehicle be on -- written on your report?

A It would.

Q And looking at it, does that refresh your memory as to what that number was?

A It does.

Q Can you tell us what the vin number on that vehicle

was?
A Well, partial vin obtained on this vehicle above date and time was GYVJA884. There was a space from a -- from being burned, and it picked back up with 1417010.
Q Now, you indicated that the vin number began with a G that you recorded. If you were told that actually no Volvo that year began with the vin number or letter G, would you agree that that just could have been a mistake due to the fire damage, just the first letter of that?
A Could you please repeat yourself? Clarify.
Q That was a difficult question. You recorded what you saw.
A Right.
Q And you saw what appeared to be a G at the beginning --
A Right.
Q -- of the number. Is it possible that it in fact was not a G and that you just had seen that due to the burned damage?
A It is very possible.
Q And what condition was the vehicle in when you arrived?
A It was burnt completely up. I mean, inside and out. You could not -- I mean, even the tires were burnt off of it. It was pretty much just the -- just the metal frame

along with the body. But all the interior was completely burned, dash burned, everything was burned away.

(WHEREUPON, State's Exhibits NOS. 46-49 were marked for identification only.)

BY MS. FANT:

Q Mr. Lloyd, I will show you what's been marked for identification as State's Exhibits 46, 47, 48 and 49. Do you recognize these photographs?

A These are photographs of the vehicle that was burned, Broad Branch Cemetery.

Q And do those photographs fairly and accurately depict the vehicle as you saw it the day when you found it?

A They do.

MS. FANT: Your Honor, I'd offer those photographs into evidence at this time.

THE COURT: What says the defense?

MR. FINNEY: No objection.

THE COURT: Those are 46, 47, 48 and 49. Okay.

(WHEREUPON, State's Exhibits 46-49 were admitted into evidence.)

THE COURT: They are in without objection.

MS. FANT: I'd like to publish these, Your Honor.

THE COURT: Okay.

BY MS. FANT:

Q Mr. Lloyd, did you process this vehicle for any forensic evidence?
A I did not.
Q What did you do after you completed the report?
A I advised our next towing service on the county's rotation, which was Slater's Towing, they came to the said location and removed the vehicle.
Q And after that, did you actually have anything further or further involvement with this case?
A No, ma'am.
Q Please answer any questions Mr. Finney may have for you.

MR. FINNEY: May it please the Court.

CROSS-EXAMINATION

BY MR. FINNEY:

Q Deputy Lloyd, have you ever worked this kind of situation before where you have had burned on -- vehicle burns?
A I have.
Q All right. Did you -- can you tell the jury a little bit about how much damage this -- was entailed to this car? Was it completely engulfed by fire?
A It was.
Q You said the tires had burned off. Do burning tires cause smoke?

A Burning tires do cause some smoke.
Q All right. And four burning tires would cause a lot of smoke?
A It would cause smoke.
Q All right. How long would it take something like this to burn completely up starting, you know, if it got put on fire--

MS. FANT: Objection. Same as before. He hasn't been qualified as an expert.

MR. FINNEY: He's a law enforcement agent with 10 years experience.

MS. FANT: Not in arson, Your Honor.

THE COURT: How could he be qualified--

MR. FINNEY: I thought he could give an answer. You're saying he can't even give an answer?

THE COURT: Well, I mean, he can't give an opinion about something--

MR. FINNEY: I'm not asking -- let me rephrase the question.

THE COURT: Okay.

MR. FINNEY: I will rephrase the question.

BY MR. FINNEY:
Q Would a car in State's Exhibit 43 be consumed by fire, all four tires burned up and the inside burned completely out in the matter of a few minutes?

MS. FANT: Objection, Your Honor. Same objection.

THE COURT: I think he can answer that question if he knows it.

BY MR. FINNEY:

Q State's Exhibit 43, that's a picture of the car.

A Okay. I would say that it would take a few minutes or more, more than a few minutes for it to burn to that -- to that exact.

Q Would it be pretty hot?

A It would be very hot.

Q And when you saw it -- it was not -- you said you could smell it, but it wasn't hot. You didn't see any smoke?

A I did not see any smoke to my recollection.

Q Okay. You wrote a report?

A I did.

Q You would have put it in the report if you had seen hot coals, burning tires, smoking. It's not in the report?

A Right.

Q Thank you, sir.

THE COURT: Anything further?

MS. FANT: Just one question.

REDIRECT EXAMINATION

BY MS. FANT:

Q Mr. Lloyd, you're not an expert in arson or fires?

A No, ma'am.

Q Are you?

A No, ma'am.

Q Thank you.

MS. FANT: May this witness be excused, Your Honor?

THE COURT: Any objection, Mr. Finney?

MR. FINNEY: No, Your Honor.

THE COURT: Yes, sir. You can be excused. Thank you, sir.

(Witness left the stand.)

MS. FANT: At this time the State would call Gloria Portee.

GLORIA PORTEE, after being duly sworn, testified as follows:

THE COURT: Before you -- we -- I need to take a brief recess. Judge James needs a quick word with me and he needs it right now. So if y'all just hold tight, I will be right back.

(Whereupon there was a pause.)

THE COURT: Thank y'all. Madam Solicitor, you may ask your first question.

DIRECT EXAMINATION

BY MS. FANT:

Q Good afternoon, Gloria. Are you from Sumter?

A I'm from Rembert. Rembert.

Q How long have you lived here?

A Thirty-eight years.

Q And -- excuse me -- do you know the defendant in this case?

A Yes.

Q How do you know him?

A I used to date him.

Q And what name did you know him by?

A Nate.

Q Did he also go by Luke sometimes?

A Yes.

Q And do you -- did you know the victim, Ernest James?

A Yes.

Q How did you know Ernest?

A He was -- Ernest dated my friend.

Q About how long had you known Ernest?

A Not that long.

Q Okay. Now, how long had you known the defendant before you began seeing each other or dating?

A How long?

Q Yes.

A I didn't know him until I -- Ernest introduced us

together.
Q Okay. And what was their relationship to each other?
A Friends.
Q Did they work together?
A Yes.
Q And how long would you say that you and the defendant were together?
A We was on and off.
Q For about how long?
A About a year.
Q Did you ever live in the same house?
A I stayed the night with him and his brother.
Q But you didn't have a home together?
A No.
Q Now, you had said that the relationship between Ernest and the defendant was -- that they were friends. Were there some times when they didn't seem so friendly?
A No.
Q Do you know about the situation with the van that was impounded in Camden?
A No.
Q Excuse me. So you never heard anyone say anything about the van?
A No. I didn't hear it until Nate told me.
Q Okay. And when he told you about it, what did he

tell you?
A He told me that as much as he do for Ernest, he was tired of Ernest fucking him around, if Ernest don't have his van back by Monday, he was going to kill Ernest.
Q Okay. And when was this? When was it you were talking to him?
A May the 20th.
Q And how do you recall that day?
A We stayed together that -- May the 19th. We stayed together that night. And that Friday morning he brought me back home, we sit in the yard and talked.
Q Okay. Where did you stay Thursday night the 19th?
A At the motel on 76.
Q The Sharolyn motel?
A Yes.
Q And he was -- whose car did you take over to the motel?
A Mines. Mines.
Q Okay. And how did he arrive at your house? Did he have a vehicle he was driving?
A Yes, he had a burgundy Baretta.
Q I'm sorry?
A He had a burgundy Baretta.
Q His car was burgundy or was it--
A Yes.

Q It wasn't a blue car?

MR. FINNEY: Objection, Your Honor.

THE WITNESS: No, it was burgundy--

MR. FINNEY: Leading the witness.

THE COURT: All right. Don't lead the witness, please ma'am. Ask the question, let her answer.

BY MS. FANT:

Q Who did the vehicle belong to that he normally drove?

A I don't know. He said it was his.

Q I'll show you what's been marked for identification as State's 33. Is that the vehicle that he was driving?

A No, it's burgundy.

Q Okay. And you don't know whose vehicle that was?

A No.

Q When -- after y'all got back from the motel, that was -- did you say that was Friday morning?

A Yes.

Q And where were you at that time?

A That Friday we were sitting in my yard talking, sitting in the yard talking about getting back together.

Q Were you outside or inside?

A Sitting in the car.

Q Okay. You were sitting in the car. Why didn't you go inside?

A He -- we just came -- he just brought me home that

morning and we was sitting in the yard talking.
Q Okay. And what kind of things were you talking about?
A Getting back together. I don't know if I asked him how was -- how Ernest doing or what. I don't know how the conversation came up about Ernest.
Q And did that become a topic of conversation that you were discussing?
A After we talked about getting back together I told Nate, I said, you know how you is, just like that. And I asked him -- I think I asked him about how was -- how Ernest doing or whatever.
Q And what did he say?
A He says, much as he do for Ernest, he was tired of Ernest fucking him around, if Ernest didn't have his van back by Monday he was going to kill Ernest.
Q Did you think he was serious?
A I look at him and I turned my head.
Q Was he angry when he said it?
A He was mad.
Q Over the year that you saw the defendant, did -- to your knowledge did he own a gun?
A No.
Q And after that morning in the vehicle after he said that, did you ever see him again?

A No.
Q Did he in fact try to call you?
A Yes.
Q And what happened when he would call you?
A I refused his call.
Q Okay. Do you know whether the defendant has a sister named Dorothy Nelson?
A I have never met his sister.
Q Okay. Do you know who Betty Choice is?
A Yes.
Q Who is Betty?
A My friend.
Q And did Betty know Nate?
A Yes.
Q How did she know him?
A Ernest and Nate was friends and we was dating both -- Betty was dating Ernest and I was dating Nate, so we all hang together.
Q Was -- was Nate at times with Betty as well?
A No, not if I'm there. We all be together.
Q No, I meant -- I guess when you weren't there.
A No.
Q Did you not ever hear anything that they were seeing each other?
A No.

Q Now, you never talked to the defendant or saw him again after that Friday?
A No.
Q But in fact you -- you did hear from him?
A Yes, I did.
Q And how did you -- how did you hear from him?
A I got a letter from him. I got phonecalls from him.
Q Okay.
(WHEREUPON, State's Exhibits Nos. 50, 51 were marked for identification only.)
BY MS. FANT:
Q Ms. Portee, I will show you what's been marked for identification as State's Exhibit 50. Do you recognize that?
A Yes.
Q How do you recognize it?
A A letter from Nate.
Q And who was that letter sent to?
A Me, Ms. Gloria Portee.
Q And did you in fact open that letter?
A Yes, I did.
MS. FANT: Your Honor, at this time I would offer the letter from the defendant to Ms. Portee into evidence.
THE COURT: What's--

MR. FINNEY: No objection.

THE COURT: It is in without objection.

(WHEREUPON, State's Exhibit 50 was admitted into evidence.)

BY MS. FANT:

Q Could you open that up, please.

A (Complied).

Q The -- since it's in evidence, could you read that letter for us, please?

A March the first, 2006. Well, hello Ms. Portee. How are you doing? Fine. I truly hope for -- I truly hope from me I'm doing as good as I can do, I can be expected to do what going on in my life.

At this time first thing Gloria, I did not kill Ernest and I did not told you that I was going to kill Ernest. I love Ernest just like one of my brothers. And you of all people know this. You and Betty know how close Ernest and I was.

So how could you tell that investigator that I told you that I was going to kill Ernest. You are wrong for lying to -- to that investigator on me. Something -- some things like this is all about those few dollars that you let me and -- that you let me have and -- and idea you think that I still involved with Barbara.

But let me take a few minutes to tell you a few thing

about Barbara and myself. Barbara has a boyfriend. I was seeing a young lady by the name of Earline -- young lady Earl Lewis from New York. She was with me that night at Felix and Doris had that party.

I know when you saw me I leave. When you came I saw it was time to go. I wanted to stay until Felix got home from work, but I see it -- it's -- but I said to myself you would start drinking and would be all up in my -- up in those man face trying to make me jealous.

I didn't know how would -- I would -- I didn't know how to handle it because I was still in love with you and I still in love with you until this day.

I can't -- I just can't deal with you with your attitude. If you only would change it a little -- even every time I make up my mind that I was going to get close to you, nasty -- your nasty attitude get between us and drinking, but -- and drive that -- drive back to me.

You can't be one of the lovely woman in the world. Sometime I know you act like that because you want -- because you want and need someone to love and not just make love to you.

I love you, Gloria, and I have made it up in my mind to make this relationship work, but this -- this -- this shit happen, but it will be over soon. This shit happened. It will be over soon. And when it do, I would

use -- I would use to be together. I want us to be together forever.

Yes Gloria, I love you just like -- just that much. I have time to really look back over my life and see -- and some of the things that you has said to me and you was so right about so many things.

My relationship with Barbara was just too windy to see, and I am sorry for that and for hurting you. It makes me mad. With you -- when that investigator said that you told him that I told you that I was going to kill Ernest, I know that you was only trying to hurt me back for hurting you and bet -- and baby girl I'm truly sorry for not... in your -- and your love for me.

I want to take a few minutes and take a few minutes and take back to where the first time we met. It was beautiful. You remember that weekend we went to the beach and I got you to smoke that thing with me, and you started seeing the spiders on the wall. I love you.

I was fooling -- I fell the first time I had to -- into my life, but I want to take this time around. Whoever you are talking with I don't care because I know deep down in my heart that it may be truly true love.

I know that it may be -- you want to be your step -- your son stepfather, Gloria, about to ask you a question. And I need to know your answer. Marry me. This is all

over. Marry me when this is all over which will be soon.

Now changing to subject for a few minutes. You won't -- you once told me how much you love me. I'm just that hard to believe if you love me for me or what's truly -- truly like you say it was then would know me, you would know that I did not kill my best friend.

And I hurt -- and it hurt me for these people to have to make -- have me lock up like this for that. All Ernest friends are my friends and all my friends was his friends. It hurt me to have -- it hurt me to hear this.

And it's costing me a lot of money that I really don't have, but -- but I have to do what it takes to clear my name for this mess. I have to -- to hire a private investigator to -- for -- to represent that I didn't kill Ernest, and it -- and it doing a -- and it doing a damn good job. I will be home in a few weeks if not before.

Now changing the subject one more time. Gloria, I know it's been a while since we last seen each other or talk, and I'm truly sorry it took so long for me to build up the courage to write you.

I couldn't have wrote Paul. I couldn't -- I had couldn't -- I couldn't have wrote Paul and asked him to give you the letter, but I need to do this and do -- I need to do a little searching.

Now I just want you to know that I really do miss you

and I still love you with all my heart and even through whenever I have out -- our ups and downs, it's in life. I believe deep down just as well as you do that we can still have encourage that fire -- that courage, that fire we once had.

Not a day go by that you are not in my mind. For me to explain how I feel for you on this paper is something I will have to do by seeing you. I have -- I know that I have brought a lot of pain and hurt and sadness in your heart, so let me be the one to care -- take care it for you.

I promise you and both -- I promise you and I will never part again. I love you, Gloria. I want you to come visit me when you get this letter. I talk to -- I talked to you a few minutes.

Gloria, visiting hours are nine to 11 and 2:30 to 4:30 Monday through Saturday. My sister -- my sister always come on Saturday because it's the only time -- only day that she have off.

I know -- I know you will get this letter Friday and it -- I write you are -- you are on a long weekend, if so, come see me Monday. I really want to see you. Tell Felix I'm sorry to hear about his brother.

Baby girl, if you don't love me enough to come, then I will understand and I will also know that we can't have

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a future together. PS, until this pen meet again, I'm out. Write back and write back and come, love you, Nate.

Q After you received that letter, what did you do?

A I let my sister read it.

Q Did you -- did you go to visit him?

A No.

Q Did you call him?

A No.

Q What did you think about the letter?

A Bull shit.

Q And what was the date of the letter?

A March -- March the first, 2006.

Q And when was the last time you had seen him?

A May the 20th. May the 20th, 2005.

Q And have you gotten any love letters in between that time?

A No.

Q I will also show you what's been marked as State's exhibit 51. Do you recognize that?

A Yes.

Q How do you recognize it?

A It's a letter from Nate to me.

Q And did that in fact come to -- to you at your home address?

A Yes.

MS. FANT: Your Honor, at this time I would offer State's Exhibit 51 into evidence.

MR. FINNEY: No objection.

THE COURT: Without objection?

(WHEREUPON, State's Exhibit 51 was admitted into evidence.)

BY MS. FANT:

Q Ms. Portee, would you please read for us that letter.

A Friday morning. Hello, Gloria. I need to tell you how much I do love you. Over these long and lonely miles. I know you may be shaking your head right now, but I need for you to have -- I need to -- I need you to hear this.

All my life I had heard people say when you meet the right person you know. You know it's right away -- it's right, and you -- and you won't have to ask yourself whether you are in love or not, and I think that is very true.

Well, I know it is. I know it is because that's how I felt. I fell in love with you. I'm not saying it was love at first sight because it was -- it wasn't. It didn't take -- it didn't -- it didn't took time -- sometimes that -- some things happened, but the day I fell in love with you.

You become beautiful every second of every minute of every hour. Just a pulse, not -- not -- knocks me out.

Beautiful things. There is no way that you could -- couldn't be as beautiful to any man than as you look to me because I am in love with you.

And when a man is in love as I am, only seeing the beautiful things that I will in. I have been gone from you for 10 months and a -- and great Ebony's -- empty -- empty inside of me.

I need to see you. I need to see you myself, and I only can do that by seeing your beautiful face. When I first got lock up, I thought I had lost everything. I mean, I didn't lose you. Why I say this is because you know that I was lock up. You know I was lock up.

It wouldn't have been impossible to have that life with you and I would have lost a chance to do whatever I was put here to do. Later all I could think of -- think of is you. I miss you. I miss you right now. I felt afraid and empty.

You know what I could -- could have done when I was around you. I couldn't have stand -- I couldn't have stand -- I couldn't have stand near you, didn't even be touch -- touch you -- touch you, and there was a special something that passed out up -- I up you into me, and it was something I need to keep in going.

I cannot -- what it was is that I could have felt it, no -- no weight it or one felt in a thing and I'm going to

stay into my soul. All you -- all you and down me to make me feel good. It's not even what you call a romance stand.

I tell you it's a down like nasty. I could go without it, I'm not sure. But I get -- I get out pretty soon. Right now I tell you that I love you until again. PS. Until this pen meet again, I love you for life. Nate.

Q Thank you. Would you agree with me that those are kind of romantic letters, he indicates his undying love for you?

A No.

Q You would agree with me that that's what the letters say, though.

A Yes.

Q And was that the type of person he was when y'all were together?

A We had us ups and down.

Q But was he -- did he typically write you romantic letters?

A No.

Q And did he ever write you another letter after you received that?

A No.

Q Okay. But what -- you had indicated earlier when we

were talking that y'all were in the car and y'all started discussing Ernest and what the defendant said to you. And then you indicated that he said if he didn't get his van back that he was going to kill him. And at that time did you indicate or was he angry and mad?

A He was -- he was mad.

Q And did you believe he was serious about it?

A I look at him and shake my head.

Q Do you recall giving a statement to law enforcement --

A Yes.

Q -- and investigator Clarence McMillan?

A Yes.

Q Did he in fact write this statement for you?

A Yes.

Q Did you read it over after he wrote it?

A Yes.

Q Could you just read over it and see if it refreshes your memory at the bottom there?

A (Complied.)

Q Does that refresh your memory about what he told?

A Yes.

Q And what in fact did you tell him?

A I told -- what I told Nate?

Q No, what you told Sergeant McMillan about the

conversation with Nate.

A I told him that I seen Nate for about one year, and it was the last -- last time we was together on the 19th through the 20th on May the fifth -- May the fifth. On Friday, May the 20th around 10, 10--10:00, 10:30 am me, and Nate was at my mother's house -- at my house talking--

Q Let me ask you a quick question. And I'm sorry to interrupt. But does it actually say that it was May the fifth?

A The last time I -- we was together on May the 19th.

Q 2005?

A Okay. Yes. Yes. The last time we was together May the 19th through the 20th of 2005 we was at my -- at my house talking in the car. Nate said that he was tired of Ernest fucking him around and it didn't -- it -- if Ernest didn't had his van back by Monday he was going to kill him.

He said that he had his gun in the blue Baretta. Nate said that when he left my house, he was going to Martha house to see if Ernest was there. When Nate made that statement about killing Ernest, he was mad and serious. He wasn't joking. The 20 of May I had talked to Nate -- Nate or seen him.

Q Now, in the -- the letter that you just read that he sent you, he -- he was writing and indicated that you had

made all this up because he owed you some money?
A What money?
Q Do you know what he was even talking about?
A No.
Q And did you in fact make up this story to tell law enforcement?
A No.
Q Did you want to come to court and testify today?
A Yes.
Q And were you issued a subpoena by the State?
A Yes.
Q And to this day are you actually scared of the defendant?
A Yes.
Q Please answer any questions that Mr. Finney may have.

CROSS-EXAMINATION

BY MR. FINNEY:
Q Good afternoon, Ms. Portee. You were really good friends with Mr. Ernest James; weren't you?
A I was really good friends?
Q Yes.
A I met Ernest when Ernest was talking to my friend Betty.
Q And through meeting Ernest --
A Ernest.

Q -- you met Nate?.
A Yes.
Q And so Ernest was somebody that was in your inner circle. He was a close friend?
A Yes.
Q And Ernest James' body was found on Monday, the 23rd of May. Did you hear about it that day?
A Yes, somebody called me that day.
Q And how did it make you feel?
A My heart dropped.
Q Your heart dropped. Why?
A Because Nate had told me that if Ernest didn't had his van back by Monday, he was going to kill Ernest.
Q And Ernest told you that?
A I didn't say Ernest. I said Nate.
Q Nate told you that on the 20th which was the date that this -- it's not on this map here.
A It's Friday.
Q Friday, which would have been --
A Friday.
Q -- one, two, three, four days later your friend Nate, your -- your friend Ernest is found dead, and four days before that Ernest said he was going to kill him?
A Ernest or Nate?
Q Excuse me. Nate. I'm sorry. Nate said he was going

to kill Ernest.
A Yes, he did.
Q He told you that on the 20th.
A He told me that on the 20th.
Q And on the 23rd you found out--
A I found out Ernest was dead. Somebody called me and told me that Ernest was dead. I was working graveyard.
Q And when you got the news --
A My heart drop.
Q -- you ran to the police to tell them what had happened?
A I didn't ran to the police and tell them what happened.
Q No, you didn't.
A I did not.
Q You didn't even go the next day --
A I did not. The next day I went to Paul yard and asked --
Q -- Paul --
A -- I went to--
Q -- who is Nate's brother?
A Yes, and I asked Paul where was Nate. And Paul -- I asked where was Nate. He said he -- Nate called him that Monday night and told him -- Nate called him and told him that somebody had killed Ernest, and he was crying.

Q Right.
A And Paul said he didn't -- he didn't -- he didn't see him -- he didn't talk to Nate.
Q To Nate. Monday you didn't talk to the police.
A No.
Q Tuesday you didn't talk to the police.
A No.
Q As a matter of fact, when did you talk to the police?
A When I talk to them?
Q Look at it. This is your statement.
A I talked to the police June the first.
Q June the first.
A Yes.
Q Where did you talk to the police at?
A They came to my house.
Q They came to your house?
A Uh-huh.
Q So you still, even on June the first, didn't pick up the phone to call the police to say, I know who killed Ernest James.
A No, because I was scared.
Q Okay. So the police came to your house and suddenly you weren't scared.
A They came--
Q You remembered all the details?

A When they came to my house they asked me did I know Nate. And I told the investigator that I used to date Nate.
Q Okay. And then you sat down and told them about going to the motel and about being together at 10 or 10:30 in the morning on Friday the 20th and what Nate said about if he don't get his van back.
A Yes.
Q Did Nate tell you how much it was going to cost to get the van back?
A No.
Q Okay. Did Nate say -- you told us today under your testimony when Ms. Fant was asking you questions all of these things that happened between you and Nate on the 20th.
A Uh-huh.
Q You told Ms. Fant that Nate was in a burgundy car. Is that true?
A Yes, I did.
Q But in his statement it says blue.
A But I thought it was burgundy.
Q Okay. And you didn't write this statement; did you?
A No, the investigator wrote the statement for me.
Q Okay. And you told Ms. Fant that you didn't know anything about Nate having a gun.

A I did -- Nate told me that he had a gun in the car.
Q That's what the statement says.
A Yeah, he told me he had a gun in the car.
Q When she asked you that today you didn't say anything -- she asked you, did Nate say anything about a gun and you--
A No, she said, did I ever seen Nate with a gun.
Q Okay.
A She said, did I ever seen Nate with a gun, and I told her no --
Q No.
A -- but Nate told me he had a gun in the car in his glove compartment.
Q That was the statement that you wrote.
A Yes, that's what he told me.
Q On June the first.
A Yes.
Q And you knew that Nate was seeing other people.
A Yes.
Q Okay. And that was all right with you?
A Yes.
Q Because you -- he could see other people, you could see other people.
A Yes.
Q All right. And then when he got arrested, he went to

jail.
A Yes.
Q But you didn't go see him.
A No.
Q All right.
A Because I was scared.
Q And 10 months later after he had been in jail, he wrote you these letters?
A Yes, he did.
Q And he asked you to come see him?
A Yes, he did, and I--
Q He asked you to -- he asked you to not tell those investigators that you made -- that this story -- not -- he was upset. He didn't ever tell -- did he say anything in these letters about you going back to talk to the police --
A He--
Q -- to change your -- let me finish the question. In these letters that are in evidence --
A Uh-huh.
Q -- did he ask you to go back and tell the police that you had told a lie?
A No, he asked -- Nate wrote that letter and said, why did I told the police a lie about he telling me that he killed Ernest.

Q And he said in the letter that it hurt him to his heart that you told that story on him.
A I bet so.
Q Did he say that?
A Yes.
Q Did you get these letters at the same time? Both of them came in February?
A No. One came -- that -- one came March.
Q One came February, one came March?
A Yes.
Q All right. And in the first letter he asked you to come see him?
A Yes.
Q And you never did.
A No.
Q And in the second letter he didn't say anything at all about changing, about being upset with you, about -- he didn't say anything at all about this case in the second letter.
A No.
Q He just asked you to come see him.
A No, the second letter he said he was in love, but he didn't -- he asked me to come see him, but I didn't and he was calling--
Q And he didn't write any more letters?

A No, because I had asked that -- I had went to Wesley Gardner house and I asked Wesley Gardner to stop Nate Bradley for calling my house and stop writing me.

Q Because that's the man you were scared of?

A Yeah.

Q Thank you, Ms. Portee.

REDIRECT EXAMINATION

BY MS. FANT:

Q Just a couple of questions, Gloria. Do you know why Sergeant McMillan came to your house on June the first?

A He -- no, not -- not really.

Q And had you ever talked to Sergeant McMillan before that day?

A No.

Q Thank you.

THE COURT: Anything further? Thank you, ma'am. You can step down.

(Witness left the stand.)

THE COURT: Madam Solicitor, it's 5:00. Any reason we can't stop for the day?

MS. FANT: No, Your Honor. In fact, we need to address an issue about witnesses afterwards, so...

THE COURT: Okay. Any reason we can't start back at 9:30 in the morning then?

MS. FANT: No, Your Honor.

THE COURT: Okay. Ladies and gentlemen, you have heard all the testimony you are going to hear today. We'll start back at 9:30 in the morning. I remind you again please do not discuss the case with anyone.

When you get home, don't read anything in the newspaper about it. You can't discuss it with yourselves yet.

After you hear all of the evidence that you -- that will come from this witness stand as well as my charge on the law, then I will let you deliberate. But until then, can't discuss it. Talk about anything else but this. Have a good evening.

(Jury left the courtroom at 5:04 pm.)

THE COURT: Okay. Any -- any issues we need to take up?

MS. FANT: Yeah, Your Honor. The question that I had -- I just want to call some names out in the courtroom and see if these people are here. Tracy Braden, Jean Spann, Berniece Mickens King, Wade Anthony Johnson, and Lubertha Bradley.

Your Honor, Mr. -- Mrs. Drayton has been subpoenaed by the State. She was subpoenaed on January the 14th of 2008. She has so far failed to follow the instructions and call in to check in with

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our office.

We would ask for her and for Mr. Johnson who left a message for me saying that he just couldn't make it today and he would try to get here tomorrow, that we have some law enforcement assistance. Both of these witnesses have been subpoenaed by the State.

We do need them as witnesses and we would request some help in having their presence be assured tomorrow.

THE COURT: Okay. And what time tomorrow do you think you're going to need them?

MS. FANT: Probably around noon. Dr. Sexton is scheduled to testify first off in the morning, and then we will have a couple of other witnesses, and then probably transition to that.

That group of witnesses that I just called their names out are kind of the same line of questioning.

THE COURT: And where do these potential witnesses live? What jurisdiction would be? Sumter County Sheriff's Department be the proper agency to--

MS. FANT: The Sumter County Sheriff's Office is responsible for all processing in this area.

THE COURT: Yeah. I just wanted to be sure they were in Sumter County, though. Okay.

MS. FANT: Oh, yes. I'm sorry. Yes. All live

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in Sumter County.

THE COURT: See if they can't have those witnesses available in the morning or tomorrow between 11:30 and 12.

MS. FANT: Thank you, Your Honor.

THE COURT: Thank you. Is somebody's going to get that word to the Sheriff or somebody from -- Roosevelt? Y'all will take care of that? All right. Anything else before we break for the day? Anything from you, Mr. Finney?

MR. FINNEY: No, Your Honor.

THE COURT: Anything else?

MS. FANT: No, Your Honor.

THE COURT: All right. We will be in recess until 9:30 in the morning.

(Court in recess for the evening.)

***** January 16, 2008 *****

THE COURT: State ready to proceed?

MS. FANT: Yes, Your Honor.

THE COURT: The defense ready?

MR. FINNEY: Yes, Your Honor.

THE COURT: All right. Bring us the jury.

(Jury entered the courtroom at 9:41 am.)

THE COURT: Thank you, sir. Madam Solicitor, you may call your next witness.

MS. FANT: Your Honor, the State calls Dr. Joel F. Sexton.

DR. JOEL SEXTON, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Good morning, Dr. Sexton. Could you tell us a little bit about your background? Or first, where do you work?

A I work in Newberry, South Carolina. We are consultants for about 25 of the county coroners in this State doing forensic pathology for them. I'm also the Director of Pathology for the Newberry Pathology -- I'm sorry, the Newberry County Memorial Hospital.

So in that capacity I function to do microscopics on people's organs or tissues that are removed to help your surgeon understand more about whether you have an illness or disease and to what extent it has developed in your body, supervising the laboratories to make sure that the various tests on urine, blood and spinal fluid are done accurately, and to help your physician interpret those results, see whether you have a given illness or disease or whether you're getting better or worse.

In that capacity I also will do autopsies on persons dying in the hospital setting with the permission of the family and at the request of the physician to learn more

about that given illness or disease.

The forensic pathology we do deals with autopsying people that are referred to us by individual coroners to determine not only the cause of death, which may be obvious if it's a violent death, but also the circumstances surrounding that death.

Q So obviously Newberry Pathology Associates, that's based in Newberry, South Carolina?

A Yes, that's correct.

Q And is that in fact where you conduct the work that you do?

A Yes, that is correct.

Q Could you tell us about your educational background?

A I graduated from the University of Virginia in 1958 and served three years in the Navy as a line officer since I was on a naval scholarship. I then attended the Medical College of South Carolina and received a Master's Degree in Chemistry from the Analytical Chemistry Department.

I then attended the Medical University graduating in 1968 with an MD degree and became licensed to practice in the state. And after that I then trained in the field of pathology doing a residency and internship there in Charleston at the Medical University, finishing in 1972 and becoming nationally board certified in anatomic pathology, clinical pathology and forensic pathology.

I then served as the Charleston County Medical Examiner and head of the forensic section in the Department of Pathology from actually '69 until I left in 1983 to move to Newberry.

Q And are you licensed to practice medicine?

A Yes, I am.

Q What states are you licensed in?

A South Carolina and Louisiana.

Q And are you a member of any professional boards or organizations?

A I am.

Q What would those be?

A I am a member of the American Academy of Forensic Science which is all the people that are involved in death investigations, attorneys, SLED personnel, crime scene investigators, pathologists, and question documents examiners, et cetera.

I'm also member of the National Association of Medical Examiners which is restricted primarily to the forensic pathologists and medical examiners that do the autopsies.

Also member of the College of American Pathologists which is an organization that tries to make sure that pathologists are up to date on the various types of illnesses and diseases that we detect under the

microscope. Everything continues to evolve.

When I first moved to Newberry in 1983 the cancers we saw were frequently the size of a baseball sometimes. Now we have to decide if there's many as three glands which fit on the head of a pin to determine if cancer is present, particularly in breast cancer, which means that we're detecting them much sooner and curing a lot more people. And so that organization tries to make sure that we are up to date on those new techniques.

I'm also a member of our South Carolina Medical Association and the National Medical Association as well as some other organizations such as the Toxicology Organization, and International Identification Organization.

Q How long have you been practicing in pathology?

A Thirty-five years.

Q And approximately how many autopsies have you done over that time?

A Personally over 10,000, and as a supervisor in Charleston at the Medical University, in the practice I have now, I have supervised probably the same number.

Q And approximately how many of those would you classify as forensic autopsies?

A 99 percent. We have very few hospital pathologists -- or I'm sorry -- hospital autopsies any

more, so most all that we do is forensic.

Q And once again, could you explain the difference between a forensic autopsy and one that would be done? Or what's the purpose of a forensic autopsy?

A Basically the forensic autopsy is to determine first the cause of death, which as I mentioned may be very obvious if it's a violent death, and then to determine as many facts as we can about the case by collecting any evidence that might be present, trying to correlate the scene findings and the history with the findings that we see on the body to understand a lot about the circumstances, how did this injury occur.

Is it at the hands of the individual themselves or is it suicide. Is it at the hands of another, meaning homicide, which doesn't imply intent, just that it took someone else to cause the individual's death.

Is it a natural disease, it just looks unusual. Is it an accidental death such as drowning or being struck by lightning. Or is it a death where we really can't determine the manner of death, such as a skeleton sometimes has no evidence on it to determine the cause or manner.

Q And have you testified in these matters in court before?

A Over 700 times.

Q Okay.

MS. FANT: Your Honor, at this time I would offer Dr. Sexton as an expert in forensic pathology.

THE COURT: What says the defense?

MR. FINNEY: No objection.

THE COURT: Okay. The Court so finds that Dr. Sexton is an expert in the field of forensic pathology.

BY MS. FANT:

Q Dr. Sexton, can you tell us how you become involved in -- in a case where forensic pathology is required?

A The Coroner or Deputy Coroner in that particular location of that county contacts us to give us some information about the case and to reserve the time so that we can expedite doing the case when they arrive with the body and then sending it right back without having to have two trips for the people transporting the body.

Q And what is the difference between a coroner and a medical examiner? We hear that term sometimes.

A It varies. In our state there currently is only one coroner who has a MD degree. Most of -- the coroner has to be 21, a voting member in that community, and has to have enough experience to feel like that he should be appointed or elected.

A medical examiner is a person who has an MD degree,

who has training in forensic pathology. And some states like Virginia, all of the people that do the death investigation are medical examiners who are trained to do that through medical training or they're investigators who are trained under them to do that.

And states like our state and some of the other states we have medical examiners in some counties, Greenville County and Columbia, Richland County, both have medical examiners that function alongside the coroners. But our 46 counties in this state have lay coroners that are doing coroner's work.

In some areas like in California and Los Angeles Dr. Lakshmanan is the medical examiner, Chief Medical Examiner, but he's also called the Coroner because that particular jurisdiction gives a double title.

In Ohio the Medical Examiner there is simply called a coroner. And they're elected, even though they have to be a forensic pathologist to be eligible to run for office. So it varies across the country.

Q Are coroners in South Carolina required to have any medical training?

A When they're elected and they are given a week's training which we have -- forensic pathologists and the people at SLED help conduct that, and then they have to get 16 hours a year to stay certified as a coroner.

Q But they're not required to have a medical degree?
A Correct.
Q Excuse me. In this particular case how did you become involved?
A The Coroner here, Verna Moore, called and asked if we could do the autopsy and gave us some information and scheduled a time.
Q Do you recall when that was?
A I did the autopsy on the 24th of May of 2005. We started the case around 9:30 in the morning.
Q And how do you typically receive the body?
A They're brought by someone from the Coroner's Office or a transport service in a body bag. And we ask if they bring it just as it is when it's found, although in some cases they remove some things. They look for personal effects to see if they can identify the individual.

And then we photograph that body externally and then remove any clothing that's there looking for evidence and appropriately bag that so it can be used by SLED to look for more evidence.

Then look at the external surface of the body after we have removed the clothing, photographing it, and if need be cleaning areas, and then photographing any injuries that are present.
Q On this particular day, the Tuesday the 24th, can you

just tell -- walk us through what you did, how you conducted this autopsy.

A Basically just as I mentioned, that we look at the external surface, we photograph that, we remove clothing, we re-photograph the body. In this case after finishing cleaning the body, the body had been in water and so there was very little on the surface that we had to clean off.

And then doing a complete internal examination, retrieving any foreign material that might be present, looking at all the organs to see what condition they're in, see if the person had any disease or illness, collecting fluids and tissues that can be used by SLED for toxicology and DNA, and then re-filing a written report for the Coroner.

We also, when we do cases like this, generally do body diagrams and to do tables and charts to help us document what we found there.

Q Could you tell us what the victim's body was wearing when you received it?

A Had on what looked like a basketball jersey, a sleeveless-like jersey that was orange, blue, and white, had New York number 21 -- or number 20 on the front, a pair of khaki shorts, a black undershorts and white socks.

Q And did you actually preserve those items?

A We did.

Q And were they handed over to the officers with Sumter County Sheriff's Office?

A My recollection it was Ray Mackessy. It was.

Q Excuse me. Did you take a -- any samples -- I always can't say this word -- toxicological samples? What would one be and why would you take one?

A We take any fluids that are present as well as some tissue. The brain tissue and liver tissue is very helpful in cases where we are concerned about any sort of drugs that might have caused a person's death to determine if they are there on a long-term basis from chronic use or if it's an acute overdose.

In this case we did collect brain, some liver, some blood was present, some urine, and we sent all this to SLED along with the bullets that we recovered.

Q And is that the standard procedure in a case like this to do?

A It is.

Q The -- were these items that you just mentioned listed on the evidence transfer form that you completed?

A Yes, they were.

Q And why do you use that form?

A To keep track of what we do transfer.

Q And who does it indicate you transferred the items to?

A To Ray Mackessy.
Q Does the evidence transfer form also include these items, and that would be State's 31 and State's 30, which is a wire coat hanger and a concrete cement block?
A It was.
Q Excuse me. Now, taking us through the injuries that -- or your examination of the body, what were your general -- what did the general examination reveal?
A That the body had some early decomposition -- I mentioned what the clothing was that he was wearing. There was a cinder block and a coat hanger around his ankles.

And looking at that area, there was no indication of any injury to the ankles to indicate this occurred during life.

There were also some other injuries that were most consistent with being after death including a scrape on the forehead and a scrape on the upper chest that were -- we refer to as linear scrapes meaning that when you look at them, the major component is in a linear fashion.

And then the other injuries -- the only injuries that we saw that were during life were three gunshot wounds. These occurred on the left side of the head, on the outer aspect of the left arm near the elbow with the bullet exiting the inner aspect of the elbow which we call the

antecubital fossa and then entering the left side of the body through an irregular wound and traveling just a short distance in the soft tissue of the front of the body that we call the panniculus which is the fat layer that's under everybody's skin between the skin and the abdominal cavity, and there was a bullet recovered at that location.

The one that entered the head exited the top back of the head on the right side. There was a third gunshot wound that entered the back fairly close to the middle of the back, actually went into the spinal canal.

Your back bone is a structure that has a round disk that has soft tissue between each disk so that you have the flexibility of moving in various directions.

And at the back of that is a protected cavity we call the spinal canal that our spinal cord travels through to give us impulses from our feet and elsewhere in the lower part of our body to the brain and carry impulses back so we can do whatever we need to do as far as moving or responding to some stimulus such as a hot flame or something of that sort.

The bullet actually entered that canal and traveled in the canal up to the base of the neck. So there were three gunshot wounds, one on the left side of the head and the temporal region that exited the right side of the head high on the right side near the back, one that entered the

outside of the left elbow, exited the inside and traveled just a short distance under the skin, and then the third one that entered the spine and passed up the spine which would have paralyzed him definitely from the waist down, perhaps even his arms, because it went up to -- near to the level where the nerves come off to the arms.

And of course, it could have caused a shock wave even further up to cause paralysis of the arms.

I mentioned those in a given order, but that's not the order that necessarily they occurred. I just arbitrarily numbered them one, two, three as I found them on the body.

I cannot say anything other than the fact that the one in the head -- after that one, he would not have been conscious or moving, so it's likely the other two came before the one in the head.

Q In particular, how would you make that conclusion that the head injury would have been the last or the final bullet that was fired?

A Well, the one that goes through the arm puts the arm at about this position so that it goes parallel across or horizontally across into the abdomen. It's possible that after being shot in the head he could have landed in that sort of position on the ground or wherever he was shot and another shot could have gone through there, but it's more

consistent with that occurring while he can move his arm.

The one in the back would have paralyzed him and put him down so that he could have then easily been shot in the head. So it's more likely. But again, I cannot say exactly which order they came in.

Q The injury to the arm, how would you -- how did you describe that in your conclusion?

A When you say the injury to the...

Q Well, I guess the bullet wound and the wound to the abdomen, were those fatal injuries?

A Okay. I see what you're asking. The bullet through the arm and the bullet in the soft tissue, the abdomen, would have been a non-fatal type of superficial injury. It would have probably have been painful.

On the other hand, we hear law enforcement people who wake up in the hospital and ask why they're there because they passed out from loss of blood from gunshot wounds that they didn't realize they had sustained.

So it's variable as to whether a person would even know that they had been shot depending upon the adrenaline and the circumstances, but it certainly would not have incapacitate the individual to have a shot go through the soft tissue in the arm without hitting the bone and go through the soft tissue of the abdomen, so we call that a non-fatal superficial wound.

The wound in the back would have been potentially fatal because it would have paralyzed him. And depending upon how much of a shock wave -- I don't know whether you have ever seen a bullet shot through a big gelatin block.

A little bitty bullet will go through, and this huge cavity occurs on high speed photography. So you can see the shock wave that it causes, then it contracts back down.

That type of shock wave, if it went far enough up the spine, the spinal cord by itself could have caused that. But it only went as far as the base of the neck. So all I can say for sure is that it would have certainly paralyzed him from the waist down, whereas the one in the head would definitely in my opinion within reasonable medical certainty be the cause of death because it did go through the vital areas of the brain.

(WHEREUPON, State's Exhibit No. 52 was marked for identification only.)

BY MS. FANT:

Q Dr. Sexton, I will show you what's been marked for identification as State's Exhibit 52. Do you recognize that?

A Yes, this is a copy of the body diagram that I made at the time of autopsy.

Q And that is a diagram that you yourself wrote on or

that -- is that your handwriting on it?

A Most of it is my handwriting. Some of it is some of the people that were helping. We have people that do the computer work so that we can, as we do the autopsy, put the information in the computer and put it right on our server, and sometimes they help with some of the information.

Also there's another pathologist, Dr. Janice Ross, and we often do these cases together. Most of this looks like Dr. Ross' handwriting except the direction of the bullets. My printing is around the individual paths of the bullets that are on this diagram.

Q When you and Dr. Ross conducted the autopsy together, are both of you present during it?

A Correct.

Q Okay. And is that an exact copy actually of the diagram that you drew?

A It is.

MS. FANT: All right. Thank you. Your Honor, at this time I would offer State's 52 into evidence.

THE COURT: What says the defense?

MR. FINNEY: No objection.

THE COURT: Exhibit number 52 is in without objection.

(WHEREUPON, State's Exhibit 52 was admitted into evidence.)

BY MS. FANT:

Q Dr. Sexton, I'd ask you to step down at this point so we can hopefully have this jury be able to see. And just hold it up and kind of describe for the jury where the injuries were and how you diagrammed them on that paper.

A As you see, I will show this half and the other half to the jury since it's a small outline. As you see, this is the front and the back of a body on the diagram, and you see that I -- if you look closely, it's the small circle here between his left eyebrow and his ear.

Here I've drawn it from the rear showing a little star where it exited on the upper right part of the back of the head, a dotted line to where I have got a dotted circle indicating that's on the other side of the head so that the bullet enters the left side of the head in the temporal region and exits out on the back of the head.

While we're looking at the back, you see the circle here indicating the bullet entered the mid-part of the back and goes up the spinal canal and stops there at the base of the neck.

The one in the arm I have drawn a dotted circle indicating it entered the outside of the arm. I have drawn a solid star indicating it exits the inside the arm,

the antecubital fossa, and then another circle here where it enters the left side of the abdomen, passes across, and it's found just under the skin on the right side of the abdomen. Those are the three wounds that I described to you earlier.

As I mentioned to the other side, here's a -- the dotted line indicating the path of the bullet in the head with the star -- solid star being the exit on the back of the head on the right side. The dotted circle indicates it enters on the left side of the head which you cannot see from that location.

Here is the circle indicating the entry in the mid-part of the back, the one that enters the back, goes up the spinal canal where it stops near the base of the neck.

The one in the arm, as you see here, enters the outside of the arm. I have drawn a dotted circle here to indicate that, and a solid star to indicate it exits on the inside of the arm, and then goes across entering the left side of the abdomen, goes across to the soft tissue that's found in the abdomen.

Notice how far down the arm it enters. So that means in order for this line to be straight, the arm had to be up and out to the side so as to make that path correspond to the path in the abdomen.

And that's why indicated that the arm was probably out to the side in the manner I'm showing you now at the time that shot came through the arm so it would then be high enough up here that it would come straight on into the abdomen.

Q Okay.

A This is the one entering the left side the head going out the back of the head on the right side -- the back, going up the spinal cord. This one entering the outside of the arm which I have drawn the body circle here -- and exiting on the inside -- that arm up and to the right so that this line would be at the same location as the path in the abdomen.

Q Is there anything else on that diagram that you feel you need to explain?

A The only other thing is it mentions the abrasion that I mentioned earlier here on the chest, there's an area of scraping on the right side of the chest and a faint area of scraping and bruising on the forehead and on the top of the right shoulder.

Because of decomposition, sometimes the lividity, the blood settling in the dependent part of the body will look like a bruise during life. So at the time of autopsy we weren't quite sure whether this was during life, after death.

The one of the chest, though, was definitely after death. There was no indication of it having any lividity or bruising.

The only other thing is the notation that we mentioned, there was no reaction to the wire around the ankles and there was some decomposition, there was some skin slippage, some discoloration, and some foul odor as well as a few fly eggs.

Of course, flies can lay eggs this time of year in minutes. Once -- this case, once the body comes out of the water, I'm sure there are flies laying eggs at that time which was apparently after death.

Q Thank you. Relate to what you were just describing about the scrapes and contusions. Could you tell us what the difference between a post-mortem and pre-mortem injuries are and why it's important to make that distinction?

A If a person is injured during life, if you have ever fallen on a tumbling mat or -- not sure people even tumble in high school now any more -- but any way, if you fall on a rough surface and skinned your knee, you'll see blood and it will be a red color if you wash it off.

The same is true when we look at the body that's been injured with a scrape, which we call an abrasion. It has a red base if it occurs during life, meaning the heart is

pumping and that the blood vessels in that area are leaking blood into the tissue around the blood vessels which cannot be washed away, and we call that a contusion.

So that a person that is injured during life will see bruising, which is blood that we can't wash off, and we'll see a red surface instead of the yellow fat that's under all of our skin.

So we can generally tell whether this occurred during life, meaning the heart is still pumping, or whether it's after death, where it has a yellow appearance instead of a -- a red or maroon appearance.

Q And in your opinion the -- the scrapes and contusions were post-mortem injuries in this case?

A Definitely on the chest because the chest showed no area of bruising or lividity. As I mentioned, the blood can settle in the undersurface of the body, meaning what position its in.

And the one on top of the shoulder and one on the forehead gave some appearance of either being lividity or bruising. We weren't completely sure which.

We considered it that it may have been during life, but it may have been after death because lividity can mimic bruising.

Q Would all of the injuries that you just described in terms of the non -- non-bullet wound injuries be

consistent with a body being dragged or picked up and potentially thrown over a bridge?

A Certainly being dragged over some surface so that there's a scrape here and a scrape here and a scrape here, and that's most consistent with what we see because these are scraping injuries rather than impact-type injuries, so scraping along any type surface could cause this injury after death most probably.

Q Now, you indicated there were three gunshot wounds that you found. How many bullets did you recover?

A We only recovered two because the one in the head went through the head. So we recovered the one in the spine and the one in the abdomen.

Q And when that happens, is it a -- how often would it be that you might have the body with multiple gunshot wounds but only have a few bullets or less than the number that actually entered?

A Depending on the caliber. When I started doing this 35 years ago most everything was .22 caliber, and it rarely went through the body.

The nine millmeter rounds frequently go through the body. In fact, we'll have a person shot five times that none of the bullets are in the body. Same with a .40 caliber.

Because we are seeing much more potent ammunition

being used today, so it's not uncommon for us to have one or more or maybe even all the rounds pass completely through the person.

(WHEREUPON, State's Exhibit No. 53 was marked for identification only.)

BY MS. FANT:

Q Dr. Sexton, I will show you what's been marked as State's Exhibit 33 (sic) for identification. Do you recognize that envelope or plastic bag?

A I do. This is a heat-sealed envelope with the date and my initials on it and our label. I'm going to open it so I can look at the inside. Can't bring knives in here, so we will have to make do.

What we do with the bullets is we put them in a plastic heat-sealed bag. I noticed they have been removed from that and put into a plastic zip-lock. We also put them in an individual plastic container to protect them. And this has the proper name and the proper number on it.

The bullets themselves are in separate containers here. What I do is I photograph -- I apologize. These are heat-sealed also, which just happens to be a zip-lock that was... that was heat-sealed. Get some assistance here. Go half-way. It's got a label on the top.

I take three photographs of the bullet from different directions. One of the bullets has a nice, flattened

surface on one side where it grazed the bone in the arm but did not fracture it.

It has the same appearance on the other side in the photographs and the same appearance on the base. Also it has my mark on the base. So this is the bullet number two that went through the arm and ended up in the abdomen from Mr. James.

And as I mentioned earlier, I indicated number two just arbitrarily as opposed to knowing what order they were fired in. I'm going to put back into this vial which is labeled number two as well. So that was bullet number two which was the superficial round that was non-fatal.

This bullet has a partially deformed nose which gives me a lot of characteristic to look at. It's just like looking at a fingerprint in a sense because you see different irregularities, and so -- and it also has my mark, and it's in a container labeled with the label that we put on it of bullet number three which entered the spine of Mr. James.

So this is the second bullet I removed from Mr. James that came from his spine in the neck region. It matches my photographs, bears my mark, is in a container with my label -- initials on it.

MS. FANT: At this time I would offer these items into evidence.

THE COURT: What says the defense?

MR. FINNEY: Did the doctor bring those with him this morning?

THE WITNESS: No, I did not.

MS. FANT: They were in -- I mean, they were in the evidence locker.

MR. FINNEY: Weren't they sent to SLED?

THE WITNESS: Yes, they were.

MS. FANT: Yeah, but they have to be in evidence for him to talk about them.

MR. FINNEY: All right. No objection.

THE COURT: Okay. State's Exhibit 33 is in without objection. Fifty-three.

(WHEREUPON, State's Exhibit 53 was admitted into evidence.)

BY MS. FANT:

Q Now, when you indicated that those bullets that you retrieved have your mark on them, what did you mean by that?

A I put a mark on the base of each one so that I can further identify them as -- in addition to the photographs which in this case clearly identify them because of the irregularities on the surface of the bullets.

Q And why did you send them to SLED?

A They used those for ballistics. In other words, they

can give an indication to the officers as to what type of gun might have fired that particular bullet based on the lands and grooves pattern.

If a gun is recovered, they can sometimes match it to the gun, not so much by the lands and grooves, but the stria, the tiny scratches inside those lands and grooves.

Because as a gun is produced, it's by cutting those lands and grooves in place with a cutting tool, and each time you cut with a cutting tool, that last cut leaves a pattern, a very fine pattern that can be seen microscopically that can be used to compare and match the bullet to the barrel of the gun, each barrel having a separate set of patterns.

Q Now, in your report that you prepared, you indicated that -- well, let me ask you this first. What is a stippling or a tattooing?

A When a gun fires, in addition to the bullet coming out -- if you have ever seen a gun fired at night, you will see a flame coming out. With a shotgun it's a very long flame. But with a 22 rifle it's a fairly short flame because it's less powder and a longer barrel for it to burn in.

In addition to the flames there's completely burn powder, and so you will see soot that will come out. The flames will only go a few inches with most handguns like

the type that this projectile may have been fired from, and so the gun has to be fairly close, a few inches away to get the flames close enough to char or actually singe the skin around the entrance hole.

Back about 8 inches, to that far you can get the soot deposited there which can be wiped off. On out to about a foot and a half, depending upon the particular gun, you can get powder particles that are burning, hit the skin, embed themselves in the skin and chemically bond with the skin causing a tattoo.

And those purple tattooes require surgery to be removed. And they can't be washed off. If the powder is not burning, because some of it in some cases doesn't -- I do a lot of shooting, and on the range we have to be careful about cleaning up in front of the firing light because there's enough powder there, if you aren't careful, it will burn.

So there's powder coming out that doesn't always burn and it can hit the skin, causing an indentation and fallout, and that little stippling pattern that we refer to it as requires healing to disappear. So it also can't be washed off.

So in this case none of that was present. There was nothing around the entrance wound in the left temple, nothing around the entrance wound in the bare left arm,

and nothing around the wound in the back.

Now, the back may have had a shirt over it at that time -- in fact, did have a shirt on, and so it could have protected it. But these wounds, these two, were at a great enough distance, at least a foot and a half or more, so that none of those particles got to the skin to indicate that the gun was that close.

So it was -- in these two cases -- at least a foot and a half or greater away.

Q So this is not what is referred to as a contact wound?

A Contact wounds have different characteristics depending on where they are. They would generally have charring of the edge of the skin if the muzzle is directly against the skin.

It's sometimes because of the blast effect, the expanding gases will force the skin against the muzzle, which is hot, and you will see an imprint of the muzzle, look like an impression as though you push it into clay. Sometimes you will have a little bit of soot.

And inside the wound you will have some carbon monoxide change from this burning material which makes the skin or the tissue underneath a bright red.

If the skin is very close to the bone, as it is in the head, sometimes you get splitting of the skin at the

point of entry, so it will look like an exit wound. None of these characteristics were present.

Q And based upon the lack of finding a contact wound or the lack of stippling, as you reported, what is the minimum distance that the shooter would have had to have been?

A It could have been as close as a foot depending upon the particular gun and the ammunition. But from my experience of seeing a lot of patterns that have been produced from various handguns, usually somewhere between a foot and a foot and a half is the closest it could be and not have anything reach the skin. But it could be certainly much further than that as well.

Q But no -- nothing that you found indicated that it was in fact further than that?

A I didn't find it was any closer than a foot.

Q Correct.

A It could have been any distance beyond that within reason. Handguns are not potentially lethal more than about 50 or 70 yards away.

Q But it -- it could have in fact been up to a foot away from the actual body or --

A It can be --

Q -- person?

A -- at least a foot away or further.

Q The -- let's see. You indicated also that you did a -- I guess a general body exam. Did you find any injuries on Mr. James' arms?

A None on the arms other than the gunshot wound. None on the hands -- pardon me.

Q I'm sorry.

A None on the hands as well.

Q Why would that be significant?

A Well, there's at least no evidence that he was in any sort of fist fight. Now, you can be wrestling with someone and still not get any potential injuries that would show up on the external surface. Might have a deep bruise or a strain or something of that sort, but we don't dissect inside the arms.

But there was no abrasion or obvious bruise on the hand -- hands or arms.

Q The examination that you conducted, you also revealed that there was some signs of decomposition. Can you explain a little bit about how a body decomposes?

A After death there are a number of things that occur. First of all the body becomes rigid in a sequence starting in the hands and the mouth and then going up the arms -- thank you -- to the wrist, the elbow and the shoulders, and then finally the abdominal cavity so that after about 12 hours if a body has been lying in bed and has been dead

in a room at about 70-degrees, you can pick them up by their ankles and the head and the body stays rigid.

In the interim between the hour after their death and that 12 hour period, you might only have a little bit of rigor in the hands, which is stiffness of the hands. It's like an egg in a frying pan becomes rigid instead of liquid, the body tends to coagulate from the acids released after death.

We're made up of protein as far as our musculature. That protein becomes coagulated and stiff. It doesn't necessarily contract, although sometimes the hands look like they're a little contracted.

So that's one thing that happens after death. The blood settles to the dependent part of the body, so we have lividity or a reddish purplish area in the dependent part of the body. If they are lying on their back, it's going to be in the back region.

Then with time, depending upon whether exposed to animals out in the woods, perhaps, to flies that can lay fly eggs and have maggots infest the body, all of these things can slowly remove tissue from the body.

But even if that doesn't occur, if they're in a room where it's isolated, there's no animals and no fly eggs, then you slowly start to decompose. The body itself, the bacteria that are in the body and the cells that are there

that start to disintegrate, release acids that start slowly decomposing the body.

And as a result, the body will change color, you will get bloating of the body, you will get some foul odor, the skin will sometimes start to slip off the outer layer of the skin, the hair will sometimes fall out or slip out, and all of these are signs that the body is undergoing a slow decomposition.

Many of us have probably seen a bird or some other animal out in the woods or maybe in our yard that has been dead for a few days. In the summertime it can almost become skeletonized within a week, but certainly it can start undergoing these changes, say a bird would lose the feathers and start to bloat and discolor.

In this case the person was in the water when they were found, and so there -- depending on the temperature of the water, these changes may be accelerated or slowed.

Q And did you find any internal signs of decomposition?

A Yes. Some of the organs were starting to tend to disintegrate. In other words, instead of being a certain firmness, they would be less firm because of the tissue starting to break down due to the release of the acids.

Q Typically would that happen at the same time say as the outer part of the body was decomposing or would it be concurrent with it or would the outer part decompose and

then the inner part?
A The outer part generally starts a little sooner in most environments. But if a person is overweight, which this individual was not, then the inner will start sooner because it takes longer for the inner core to cool down to the temperature in the environment.
This was in the summertime. I don't know the temperature that day, but it could have been warm enough that the outside could have started decomposing sooner.
Q And did you also find some external signs of decomposition on Mr. James?
A Usually what we see is external. On this case it was some internal. And it was the findings I mentioned earlier, the body was bloating some, the skin was starting to slip, and we saw some discoloration and had some foul odor.
Q You mentioned fly eggs or maggots before. Did you actually find any on Mr. James' body?
A Right, just the eggs.
Q And what did that tell you about how long this body had been decomposing?
A It's really not a useful tool because in this case it may have and most probably did occur when the body was brought out of the water because these look like they were fresh, didn't look like they had been in the water.

These were fresh fly eggs that were on the surface. And that occurs within minutes of being exposed to flies in the environment.

Q So given your training and experience, what time would you most likely think that those fly eggs were deposited?

A At the time he was found and brought up to the surface and was there before being brought to us.

Q Now, would any of those things that you mentioned, the bloating, the skin slippage, the odor, and the fly eggs, did that allow you to determine an exact cause of death?

A No. Unlike what we see on television with CSI, it's very difficult to pin down the exact time of death. It's even more difficult for us as pathologists in a community away from where the body is found.

For about 15 years when I was in Charleston, I came here and many other areas across the State to the scene of death, and -- when I was in training and later as I was the head of the forensic section so I could see the body and do examinations there at the scene, which gives me knowledge of what to look for.

But when a body is brought up -- in this case out of the water -- may have to break some of the rigor mortis to get the body into a body bag, the body is cooled in a

refrigerator overnight before bringing it to us, and so after all of those changes take place, not being at the scene, even when we're at the scene in a decomposed body, it's difficult to pin it down other than a range of time.

Sometimes between when the person was last seen alive and when they were found, and we try to decide whether it's closer to when they disappeared or closer to when they were found based on the decomposition.

But in this case all we can do is see if there's any discrepancy that we obviously see from looking at the body usually a day later from when it's found, and see if the coroners and the law enforcement's opinion should be modified.

In this case we could not see anything that would make us feel there was any -- any time different from what they gave as far as when they thought the person died.

Q Ultimately based on your experience and training and to a reasonable degree of medical certainty, what was the cause of death of Mr. James?

A In my opinion within reasonable medical certainty it was the gunshot wound of the left side of the head which lacerated the brain.

Q And what was the manner of death?

A In my opinion considering the circumstances, being weighted down in a body of water, having three gunshot

wounds, one of the back that was at a location where it would be very difficult for him to shoot himself, this was in our opinion a homicide, meaning death at the hands of some other person or persons.

Q Thank you. Please answer any questions Mr. Finney may have.

THE COURT: Mr. Finney?

CROSS-EXAMINATION

BY MR. FINNEY:

Q Good morning, Dr. Sexton.

A Good morning.

Q Dr. Sexton, your testimony this morning was very illuminative (sic), and I want to go back over just to make sure because you have been testifing a long time. You said based on your findings that there was no restraints on the body.

When the man, Mr. James was killed, you don't believe he was restrained. You believe one arm was probably up. The left arm was probably up away from the body. And there was no indication of any restraints on his feet or wrists?

A What I'm saying about the feet was there was no indication that the restraint that was on the ankles was there during life because there's no reaction to it, no injuries by the tightly wound wire, coat hanger around the

ankles, and that the arm, in order for it to parallel or be at the same plane as the one in the abdomen where it re-entered, would have to be up and to the left. That's correct.

Q All right. Would submersion in water for an extended period slow the process of rigor mortis?

A It depends. Depends on the temperature of the water. In the summertime often times the water deep in a body of water may be much cooler than the environment which could slow the progression of decomposition.

Q All right. In this case, Mr -- Dr. Sexton, you submitted a report to the Sumter County Coroner after you made your findings.

A Yes, that's correct.

Q And you did the autopsy on the 24th?

A Correct.

Q At 9:30 in the morning?

A Yes, that's correct.

Q And was that point on the 24th the first time you saw the body?

A Yes, that's correct.

Q And it arrived in Newberry that morning?

A Yes.

Q The information you received from Sumter County was that the body had been taken out of the water in the

afternoon of the 23rd.
A Yes, on the 23rd at 6:25 pm Verna Moore called and scheduled the autopsy for the next day.
Q All right. When did you actually talk to Mrs. Moore or did she talk --
A I did.
Q -- you did? What information did she give you at that time that would be relative to the condition of the body of the man that was on his way to Newberry?
A She simply stated that the decedent was found in a pond with a concrete block tied to his foot, and it was Boyle's Pond, he had last been seen on Saturday, and she indicated that at that time she wasn't sure where he had been killed, but he -- she and law enforcement felt it may have been on the 23rd of May in the morning.
Q She told you that on the 23rd?
A Correct.
Q Would you say that last part again? She thought that -- that the -- the last part, she said she thought that...
A That she gave me the indication when I asked her what she thought about the time of death was the 23rd at -- in the morning.
Q The 23rd in the morning?
A Correct.

Q All right. Now, you have issued after your examination a report that listed the date of death as the 23rd.
A Which report are you referring to?
Q The report that you signed on May 24th.
A All right. The report -- the report you're showing me is what we call a death certificate form that we make out at the time of autopsy to help the coroner know what to put on a death certificate which they generally fill out. And that was based on information she had given me verbally.
Q Well, you had talked to her on the 23rd in the evening --
A Correct, uh-huh.
Q -- and she told you that the man was last seen on the 21st --
A That's correct.
Q -- and that they thought that the man might have been killed on Monday morning, the 23rd.
A That's correct.
Q And so you did your autopsy with that information, you looked at the body.
A That's correct.
Q And based on what you saw in the body, you wrote a report -- I guess you call it a death certificate --

saying that the body -- the date of death on Mr. James was the 23rd?

A What you have said is true except for -- you're saying that was based on what we saw on the body. What we saw on the body was nothing to refute that, because it was warm weather.

We weren't told the temperature of the water or the temperature of the environment. And so we put down what we were told was their opinion from examining the body at the scene --

Q All right.

A -- and that was issued on the 24th.

Q On the 24th at the autopsy your report was issued saying that the death most likely occurred on the 23rd.

A No, we're not saying that. We're simply putting down the time given to us by the Coroner.

Q But--

A It's not our opinion. It's simply stating that the Coroner has told us this time, we have nothing to believe that it's different from that time.

Q But you have the body in front of you.

A That's correct.

Q And obviously if you didn't agree with the 23rd, you would call up the Coroner and say, I'm looking at the body and I don't agree that he died yesterday.

A You didn't hear what I said earlier about decomposition and the fact that it's very difficult to give a time interval. All we can do is say it's some time between the person was last seen alive and they were found based on the appearance of the body.

If the body is in a very warm environment, it can become very decomposed. A white person can look black in a matter of 12 to 24 hours because of the discoloration that can occur.

And we were not at the scene. We don't know the temperature. All we're looking at is a body and being told by the Coroner their opinion, their's and law enforcement, of when they thought the person died.

Q All right. So your report was issued at -- based on the Coroner's information -- that the man died on Monday the 23rd.

A The death certificate form indicated the time the Coroner told us, which was the 23rd.

Q All right. Now, if he died on the 23rd and he was found at 1:30 or 2:00 that afternoon, then he wouldn't have been dead long.

A That's correct.

Q All right. Now, did you then later, after you issued your report, receive a letter or a fax from the Sumter County Coroner requesting that you change your report and

instead change the date of death to May 22nd, 2005?
A Yes. This is the Coroner's authorization form which states just what you stated.
Q And the Coroner's authorization form is signed by the Coroner?
A That's correct.
Q And it's -- it requests you--

MS. FANT: Objection, Your Honor. I would object on hearsay grounds to any further discussion of what's contained in that document. He indicated he received it and what he did as a result, but I think that's all he can testify to.

THE COURT: And Mr. Finney, I don't know -- you certainly can ask him about a document he filled out and he created.

MR. FINNEY: Yes, sir.

THE COURT: But a document created by somebody else is not in evidence, you can't go there at this point in the trial.

BY MR. FINNEY:
Q You received information or a correspondence from the Sumter County Coroner--

MS. FANT: Same objection, Your Honor, other than if he -- if he intends to go into what he received, what that information was.

THE COURT: Okay. All right. I mean, he -- at -- that question is proper. You can go to the next one, then I will see...

BY MR. FINNEY:

Q As a result of the information or communication received from the Sumter County Coroner did you go back and change the date of the death on the death report?

A Not on the death report, on our final autopsy report.

Q On your final autopsy report.

A Correct.

Q And what date did you change it to?

A To the 22nd.

Q To the 22nd?

A Correct.

Q And did you make that change on any scientific evidence that was sent to you?

A I don't know whether the date given to me was found on the scientific evidence because I did not -- I was not at the scene, didn't talk to the people at the scene. Simply changed it based on the report sent to us by the Coroner.

Q Did the report sent to you by the Coroner contain any scientific information on which you based the change?

MS. FANT: Objection, Your Honor, to anything that the report contained. It's hearsay.

THE COURT: I think he can answer that question. I will allow it.

THE WITNESS: The authorization form that was sent to me -- let me get a copy of it here -- simply states, as mentioned earlier--

MS. FANT: Your Honor, if I may, if he could answer the question as to whether there's any scientific basis but not read the rest of the form.

THE COURT: Yes. And doctor, based on the objection she has made, that -- that document is not in evidence so you can't state anything that's in that document.

You can say what you did as a result of receiving that document. And if you can answer the question he's asked you without going into the document, what is told, then you can answer.

If you can't, then simply tell him you can't answer that.

THE WITNESS: There's no statement other than the statement mentioned earlier. There's no supporting information in this authorization form.

It's -- normally this is a form sent to us to allow us to do the autopsy and to state a few facts about how they found the body, and so that's what it does.

It doesn't try to support those facts with any observations made with the people at the scene.

BY MR. FINNEY:

Q Are you telling the jury then that you received an authorization for coroner's autopsy on the 23rd?

A Verbal authorization on the 23rd.

Q And is that normal procedure?

A It is.

Q So after you spoke with the Coroner Monday evening, you got verbal authorization to do it, you did the autopsy, then you got a written faxed authorization, and based on that faxed authorization you changed the date to the 22nd?

A Yes, that's correct.

Q Now, as a medical doctor and a scientist, how is it possible that you could change a date and add 24 hours to a period of death when you had looked at the body and determined that what you saw was consistent with death on the 23rd?

A Because it was also consistent with death on the 22nd, it was consistent with death on the 21st --

Q So --

A -- because I--

Q -- anywhere in here the gentleman could have been killed based on what you saw?

A Based on the body. But see, I'm not seeing the body at the time it comes out of the water. I don't know what environment it was left in. There are times when bodies are left out in the sun or a protracted period of time once they're found.

I don't know how long it was in the cooler. Don't know the temperature of the cooler. Don't know the temperature of the water. Don't know anything else that might have been done to that body, all of which can either shorten or lengthen the period of time because the temperature can greatly affect how quickly a body decomposes if it's hot, and if it's cool, how slowly.

We put bodies in the body cooler at our morgue, keep them a month or more and they don't change at all. And so if the environment had been hotter or warmer, it could have rapidly changed the body just causing decomposition much sooner. But if it had been cooled, it would have slowed it down.

So we have no way of knowing what the body's death -- time of death was because the decomposition we saw could have occurred any of those periods of time, either from the 21st or the 22nd or the 23rd depending upon the temperature.

Q All right. So now we have a broader picture.

A Correct.

Q All right. If he was last seen on the 21st, based on what you saw on the 24th, he could have been killed on the 21st.
A Correct.
Q All right. Is there a professional investigator that goes out to the scene and could make those determinations at the scene for the Sumter County Sheriff's Department?
When they come on a body that's in a pond with a brick tied to it, is there somebody they can call up at SLED to say, you need to come down here and be our expert on what's going on with this body, how long has it been in the water?
A I haven't been to a scene since 1983. Prior to that I went to scenes with SLED investigators and we examined bodies. I have no idea at this point in time whether SLED has personnel of that sort or whether the local Sumter County authority does. You'd have to ask each of those.
Q Thank you very much, doctor.
A You're welcome.
MR. FINNEY: No further questions.
THE COURT: Thank you, sir. Anything further from the State?
MS. FANT: Just briefly Your Honor.

REDIRECT EXAMINATION

BY MS. FANT:

Q Dr. Sexton, how long have you known Verna Moore?
A Since she became Coroner. I have been doing cases for Sumter since -- for 35 years. I was trying to remember the -- Parnell was the Coroner before Verna, did cases for him, and then have been doing cases for her since she started.
Q Would that be a period of a number of years?
A Probably over 20.
Q And have you worked with her often during that period?
A Yes.
Q And on the day or regarding the autopsy and the authorization to do the autopsy of Ernest James, did you speak with anyone else other than Verna Moore about the date of death?
A Not when she called. Ray Mackessy came with the body. I don't have a specific recollection since I was, you know, two years ago, or a little more than two years ago, of whether we discussed any indication of when -- what they thought the time of death was.

But I know that Verna was the only one that called about authorizing the case to be done on the 23rd that we did on the 24th.
Q And was she the person that called, and as a result of that call you changed the date to the 22nd on your

final report?
A It was not a call, simply a fax to -- the authorization sheet came to us the following day on the 25th.
Q Was it from Verna Moore?
A Yes, had her signature on it.
Q And are you aware of any experience or training that Mrs. Moore has that qualifies her to speak on the time of death or make a determination on the time of death?
A All the coroners have to take 16 hours of training, and that varies from things such as determining time of death to determining manner and cause of death. So I don't know what specifically her training is in that period of time. In over 20 years she certainly may have had training in that area.
Q And in your expert medical opinion, is that an area of forensics that is easy to -- to make those determinations?
A No. Let me re-emphasize the fact that many medical examiner systems where they have trained investigators that see hundreds or even thousands of cases rarely try to pinpoint the time of death.

Years ago we felt like that detecting the internal core temperature and plotting it -- or as checking the temperature internally, leaving the body in that

environment for an hour -- and this is by either cutting a hole and sticking a thermometer in the liver or putting it up through the anus into the rectum and leaving the body there for an hour in the same environment, there's -- as if the house was closed up, leave it closed up.

If the windows were open, leave them open. And checking other temperature and plot it on a line. And that line should come back in theory to the time that the death occurred.

But thousands of cases were done like that and no one felt like there was any consistency to that. The vitreous in the eye has been sampled, first in the right eye, then the left eye at the scene, again leaving in the same environment, and there are certainly characteristics that stay constant in the vitreous.

However, the potassium that leaks out of that part of the eye, the cells that line it, the retinal cells, tends to leak out rapidly in some cases and slowly in others, and they were checking the potassium level.

And again, instead of getting a straight line, it was just a lot of individual plotted points on each person, so there was no corresponding accuracy to that procedure.

They also over years have determined that it takes about eight hours for the settling of the blood to become fixed so when you press on that, it doesn't blanch. And

that was used for a period of time, but it's found that depending upon the temperature that can occur more rapidly.

I have seen people in bed dying of some disease that will have lividity for a few days because their heart is failing and so blood is settling there just because their heart is failing. So it's very difficult to use that.

The rigor mortis that I described earlier can be useful. But if a person has a seizure, they can go into complete rigor in the matter of an hour or so, sometimes minutes.

In combat, since that is determined by completely exhausting your Dennison Triphosphate, which is your energy source in the body. People in combat who are exhausted sometimes will be shooting at someone, be killed, and end up going to rigor mortis standing up.

There have been photographs of people standing like a wooden soldier who died and went to rigor mortise immediately.

So none of these methods are accurate enough to say anything more than an estimate based on the time the person was last seen alive, if you trust that person, and the time they were found dead, which should be fairly accurate, and trying to narrow that interval.

And the larger the interval, the more difficult it is

to narrow it down. The smaller the interval, still, as in this case, with the decomposition, it could be any of these three days.

And so there's nothing really scientifically available to be accurate to determine precisely a time of death. We can get sort of an estimate, but it's strictly an estimate.

Q Thank you.

THE COURT: Anything further, Mr. Finney?

MR. FINNEY: No, Your Honor.

MS. FANT: Can Dr. Sexton be excused, Your Honor?

THE COURT: Any objection?

MR. FINNEY: No objection, Your Honor.

THE COURT: Thank you, Dr. Sexton. You can be excused.

(Witness left the stand).

THE COURT: Ladies and gentlemen, it's a good time, let's take our morning break. So we will take a 15 minute break and come back and proceed with the testimony.

(Jury left the courtroom at 10:53 am.)

(Whereupon a recess was had.)

THE COURT: Thank you. Anything before we bring the jury in on behalf of the State?

MS. FANT: No, Your Honor.

THE COURT: From the defense? Ready for the jury?

MR. FINNEY: Yes, sir.

THE COURT: Bring us the jury please.

(Jury entered the courtroom at 11:22 am.)

THE COURT: Thank you, sir. Madam Solicitor, you may call your next witness.

MS. FANT: Your Honor, the State calls Matt Bramlett.

MATT BRAMLETT, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Mr. Bramlett, where are you from or where do you live?

A I live at [redacted] St. Charles Road in Bishopville, South Carolina.

Q And where do you work?

A I work at Laurinburg, North Carolina.

Q What type of work do you do?

A At Ag Chemical.

Q And are you familiar with Broad Branch Cemetery in Bishopville?

A Yes, ma'am.

Q How do you know where that is?
A It's directly across from my house.
Q And do you remember an incident that occurred the night of May 21st or early morning hours of May 22nd, 2005?
A Yes, ma'am.
Q Can you tell us about that?
A I was asleep, and my dog woke me up, and I laid in the bed probably 15, 20 minutes. The dog kept barking and barking and barking at one spot at the corner of my lot. I finally got up and called the dog to the back yard -- to the back porch, tried to make him stop.

Went back and laid back down and he went right back to the same spot and barked 25, 30 more minutes, same spot.

Q Now, tell us a little bit about your house. Does the front of your house face the road?
A Yes, ma'am.
Q And is that the part that's across from the cemetery?
A Yes.
Q And where do you keep your dog?
A He's -- stays out.
Q Outside?
A Yes, ma'am.
Q And do you have a fenced-in yard?

A No, ma'am.
Q Okay. Excuse me. The night that this happened, do you remember whether it was before or after midnight?
A It was after midnight.
Q And how do you remember that?
A Just -- I wake up all times during the night. But it was after midnight. Can't tell you what exact time it was, but it was after midnight.
Q So that actually would have been on the early morning hours of Sunday, May the 22nd?
A Yes, ma'am.
Q And how long do you think that your dog continued to bark?
A First time before I got up was at least 20 minutes, 25 minutes. I finally got up, called him to the back porch. Laid back down another 20, 25 -- probably 45 minutes, 50 minutes at the most.
Q Okay. And was that unusual?
A Yes, ma'am.
Q How long have you had your dog?
A Eight years.
Q Is it typical for him to bark at some things?
A Some things, yes.
Q And what about if an animal or something had been around him?

A He would have chased that animal off.
Q So in your experience it would have been rare that he would have barked for that long?
A Yes, ma'am.
Q Do you recall any other time that you have had him that he's actually barked for that long a period?
A No, ma'am, that's the first time.
Q Did you actually go out and investigate what was going on?
A No, ma'am.

(WHEREUPON, State's Exhibit No. 54 was marked for identification only.)

BY MS. FANT:
Q Now Mr. Bramlett, can I ask you to step down here? And I will show you what has been identified as State's Exhibit 54. Do you recognize what that is?
A It's an areal map of Lee County, South Carolina.
Q And are you able to look at that and determine where your house is?
A Yes, ma'am.
Q Could you point out, perhaps standing on this side so the jury can -- could still see where your home is?
A My house...
Q I think this is the -- yeah, the road might help you find it.

A On here.
Q Okay. Could you put a circle there around that and put a B beside it? Okay. And standing over here I guess again so they -- so the jury can see -- if this is your house right here -- thank you -- that being your house right there, where is Broad Branch Cemetery?
A Right directly across--

THE COURT: Mr. Bramlett, if you would please keep your voice up where my Court Reporter can get down everything you say.

THE WITNESS: Yes, sir. Directly across the road from my house. My house sits here. Directly across the road.

BY MS. FANT:
Q Okay. So this area right here is the cemetery?
A Yes, ma'am.
Q Okay. And the area where your dog was, obviously can't see it on here, but where would that have been in general?
A The corner of my left lot toward the cemetery.
Q And that would be roughly on your property about where?
A About right here down toward the road.
Q With the cemetery being right across the street?
A Yes, ma'am.

Q Thank you. Please answer any questions Mr. Finney may have.

CROSS-EXAMINATION

BY MR. FINNEY:

Q Good afternoon. Good morning, sir.

A Good morning.

Q Mr. Bramlett, let's get to the bottom line of this. May 21st, 2005, you know what day of the week that was?

A May -- would you...

Q 2005. May 21st, 2005.

A What day it was?

Q Isn't that why you are here testifying?

A Yes, sir.

Q That's why you went to sleep, and in the middle of the night your dog woke you up?

A Yes, sir.

Q We talking about May 21st, 2005?

A Yes, sir.

Q All right. What day of the week was it?

A It was -- way I can remember it is they found the car the next day, and that's the morning that the dog was barking.

Q Okay. The car was found when the sun came up?

A I think was found afternoon. Sunday afternoon the car was found.

Q Sunday afternoon you pretty sure?
A Yes, sir, pretty sure.
Q Okay. Let me just show you. We've been using this little sketch here. I apologize to the jury. I don't want to move around. Sunday was the 22nd of May.
A Yes, sir.
Q The car was found between 2:30 and 3:00 in the afternoon.
A Yes, sir.
Q So you're saying that you went to bed Saturday night after midnight. The dog started barking sometime early morning hours of Sunday.
A Yes, sir.
Q Okay. And can you give me a time range, after midnight? Was it 1:00 in the morning, 2:00 in the morning, 3:00 in the morning?
A It was between 12 and 1:30. It's -- like I say, I wake up several times during the night, but I can't give you a -- pinpoint the time it was.
Q All right. So I'm going to put midnight to 1:30 am. Barking dog. All right. Sunday, early morning hours. Now, after the dog barked, you went outside, you told him, be quiet, went back to bed, he was still barking. Did you go back outside, make him -- like put him in the garage or something?

A No, sir. I knew something was wrong so I didn't go back outside, and he just kept barking and barking.
Q Okay. And then Sunday morning when you got up and had your coffee, did you go out to see what the dog was barking at?
A No, sir. He was on the porch when I woke up and I did not go back out.
Q And he was quiet, no problem?
A No, sir.
Q And from your house on this map, can you see the cemetery real good?
A From my house?
Q Yeah.
A Half-way down the driveway you can see across, yes, sir, you can see the cemetery.
Q You see any smoke?
A No, sir.
Q You smell any smoke?
A No, sir.
Q Anything on fire that morning?
A No, sir.
Q Did you go over to the cemetery to see what he was barking at?
A No, sir.
Q All right. So when -- how did you get here today in

this courtroom? Who told you to come and talk about the barking dog?
A I guess my neighbors talked to the Sheriff's Department that morning -- I guess afternoon when they found the car, and I drove up, and that's when I told the sheriff's deputy, my neighbors, the dog was barking.
Q Okay.
A That's how I got here.
Q Did you give your name to the Sheriff's Department?
A They did not ask me for it, no, sir.
Q Okay. And so between 2005 and today have you talked to the Sheriff's Department since then?
A No, sir.
Q Well, when did they call you at your house, tell you to be in court today?
A When?
Q Yes.
A I -- I got a subpoena a month ago for the first trial, and it was canceled. I got one, what, two -- a week ago delivered to my home.
Q Tuesday a week ago to be here for this trial?
A Right, delivered to my home, yes, sir.
Q Okay. So after Sunday you walked down and saw the car.
A I didn't -- I drove by. My wife, we drove by and saw

the deputy there, my neighbors, we pulled in there.
Q All right. So you talked to the deputies?
A Yes, sir.
Q Your neighbor's name is McCutchen?
A Tommy and Robin McCutchen.
Q Who lives closer to the cemetery you, Mr. Bramlett, or Mr. McCutchen?
A I do.
Q You do. So you would have been closer to the cemetery?
A Yes, sir.
Q You and your wife rode down there, talked to the deputy, talked to Mr. McCutchen?
A Yes, sir.
Q You saw the car?
A Yes, sir.
Q Was it smoking?
A No, sir.
Q All right. Was there anything hot about the car?
A No, sir.
Q All right. Did you have any opportunity to be in that cemetery area or see the cemetery area on Saturday?
A I rode by a couple times, did not see it, no, sir.
Q Okay. Nothing unusual on Saturday?
A No, sir.

Q Now, you -- you didn't talk to the police officers any more after 3:00 on Sunday afternoon?
A No, sir.
Q You never came down and gave a report as to what you saw or -- or said anything official about the dog?
A No, sir.
Q Okay. Thank you, sir. Appreciate you coming.
A Thank you.

MS. FANT: Your Honor, may Mr. Bramlett be excused?

MR. FINNEY: No objection.

THE COURT: Yes. Yes, ma'am. Thank you, Mr. Bramlett. You can be excused.

(Witness left the stand.)

MS. FANT: Your Honor, at this time the State would call Tracy Thrower.

THE COURT: Okay.

TRACY THROWER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Mr. Thrower, where do you work?
A I'm employed by the South Carolina Law Enforcement division, also known as SLED, in the forensic services building in the firearms department.

Q How long have you worked there?
A Approximately nine years.
Q And what are your duties while you work at SLED?
A I examine firearms and firearm related evidence, toolmarks and toolmark related evidence. I perform general rifling characteristic examinations, serial number restorations, muzzle to target distance determinations for shot pellets.

I perform entry on the Integrated Ballistic Identification System and correlations. I am a -- congress member to the Federal Government on the Integrated Ballistic Identification System, limited crime scene response, and testify in a court of law.
Q And what is your educational background?
A I have a bachelor of science degree with a major in biology. I have completed the South Carolina Criminal Justice Academy. I have completed the SLED course of instruction on firearm and toolmark examination which was approximately a three year course of instruction that was supervised by court-qualified firearm examiners.

It was an apprenticeship-type of course. And during this course I had to take written and oral examinations, given practical problems, practical examinations. I had to perform extensive microscopic comparison. I had to assist examiners in the preparation of their cases, attend

various conferences and seminars.

Upon completing my -- and passing my final examination, I was allowed to work cases on my own. Since then I have also been to the course on specialized techniques in firearm identification which is taught by the Federal Bureau of Investigation.

I have completed a course in scientific defensible criteria for the identification of toolmarks which is taught by Murdock and Moran. I have completed the course on serial number restoration which is taught by the Bureau of Alcohol, Tobacco, and Firearms.

Q Have you previously testified as an expert in firearms identification?

A Yes, I have.

MS. FANT: Your Honor, at this time I would offer Mr. Thrower as an expert in firearms identification.

THE COURT: What says the defense?

MR. FINNEY: No objection.

THE COURT: I so find he's an expert in firearm identification.

BY MS. FANT:

Q Mr. Thrower, can you tell us what is the field of firearms identification?

A Firearms identification is a subdiscipline of

forensic science basically in which an examiner attempts to determine if a ammunition component such as a bullet or a cartridge case was fired by a particular firearm.

We also look at toolmarks to see if per say a crowbar was used to pry open a door. We can look at the marks that the crowbar leaves on the door frame. And there are other related examinations that are -- that are similar in nature.

Q Excuse me. Now, to -- in order for you to actually identify a firearm with a particular bullet, what do you have to have?

A I have to have a fired bullet and I have to have a firearm.

Q I will show you -- were you sent items from Dr. Joel Sexton, Newberry Pathologist, in May of 2005 regarding the case of a victim named Ernest James?

A Yes.

Q And when did you receive that evidence?

A I began work on this case on -- let's see -- 5-27-05.

Q And I will show you what's been entered into evidence as State's number 53. Do you recognize that?

A I do. This was item eight, or SLED item eight. It was one fired bullet. It bears my case number, item number, and initials. And this container contains another fired bullet which was SLED item number seven which also

bore my case number, item number, and initials.

Q And based upon your examination, what were you able to determine about these bullets?

A I examined their overall physical characteristics, and by that I mean their shape, their size, how much they weigh. I was able to determine that they were most consistent with lead bullets that are loaded into some 38 special or 357 magnum caliber cartridges.

And based on the markings that were on them -- well, I also was able to take measurements on them. On the inside of a barrel is what is known as rifling. It's the inside. It's a series of spiraling grooves that twist as they go down a barrel.

The purpose in rifling is that it causes the bullet to spin as it goes down the barrel and then as it continues out the barrel towards the target. The reason we want the bullet to spin is it gives the bullet stability and accuracy.

It's kind of like throwing a football. When you throw a football and it wobbles, goes end over end, it doesn't go real far and probably doesn't go where you're trying to throw it.

If you see these quartbacks that are in, you know, professional football, they throw that nice, tight spiral, they can throw it real accurate. It's the same principle

behind a bullet, have to have a spin to make it stable and accurate during flight.

When the firearm manufacturer places this rifling, which is made up of lands and grooves, in a barrel, they cause microscopic imperfections inside that barrel. Those microscopic imperfections show up as scratches on the outside of a bullet.

And by -- also in this rifling, the manufacturer chooses how many lands and how many grooves, how wide the lands are, how wide the grooves are, do they spiral clockwise or counter-clockwise direction.

There's a number of features that the firearm manufacturer determines prior to manufacture. We call the -- those things general rifling characteristics.

And by measuring those and taking notes on them, I can then take those general rifling characteristics, place them into a computer database that is given to us by the Federal Bureau of Investigation, and it will provide me with a list of firearms that could have fired those bullets.

Also by looking at the bullets I determine their suitability by looking at how damaged they are and what markings are on them, and to determine -- to try and determine if I had a gun, could I do, you know, could I possibly match these bullets to the gun.

Q In this case did you ever receive a gun to -- to correlate with the bullets?
A I did receive a firearm in this case, yes.
Q Are you sure?
A Yeah, but it was a firearm that I could not -- it was not matched -- the gun, it was a wrong firearm.
Q Based upon your examination of the bullets, which is what we brought today, did you determine and use the database to determine a range of makes that could have manufactured the gun that fired these bullets?
A Yes. As part of an investigative tool, the local Police Department and I did provide them with a list of firearms that could have fired the bullets in this case.
Q Excuse me. And based upon that, was a 38 Rossi part of the list or on the list and would that have been consistent -- could it have been consistent, I guess, with the bullets that you examined?
A Yes. As stated before, these bullets were consistent with having been with bullets that are loaded into 38 special or 357 magnum caliber cartridges. Based on the general rifling characteristics -- also Rossi was one of the brands within those calibers that contain those general rifling characteristics.
Q Thank you. Please answer any questions Mr. Finney may have.

CROSS-EXAMINATION

BY MR. FINNEY:

Q Good morning, Mr. Thrower.

A Good morning.

Q What kind of firearm did you test?

A I tested a highpoint.

Q A highpoint what, 357 or 38?

A It was a highpoint 9-millimeter Luger.

Q 9-millimeter luger. And you test-fired the gun and compared it to the two bullets that you have in front of you?

A I did test-fire the gun, but the rifling was different. It was a -- it had eight lands and grooves. The bullets I have here were consistent with having six lands and grooves. So it was a -- very easy to say that that gun did not fire those bullets.

Q All right. And where did you get that gun?

A It was submitted to me.

Q By who?

A By Sumter County Sheriff's Office.

Q What date did you get it in your lab, the gun, the Luger?

A It's hard to read on this paper because it's -- it's time stamped over some other wording, but it appears to be December 20th, maybe, of 2005.

Q All right. Now, if I'm not mistaken, I heard you say that you began work on the bullets on the 27th of May, 2005?
A Yes, sir.
Q All right. And you submitted a written report to Sumter County as a result of your examination?
A Yes, sir.
Q Is this a copy of your report?
A Yes, sir.
Q Why does it say the 26th of May on it?
A Let me correct myself. I began work on this on May 24th. I was looking on the wrong line. Our case note cover sheet, we no longer use this any more, and I -- I was looking at the wrong line on the sheet.
Q All right. So you received the bullets on the 24th and began your processing on the 24th?
A I opened this case on May 24th and I completed it on the 26th.
Q How did the bullets get to the SLED lab? Who brought them?
A That I do not know. I do not have a chain of custody in front of me.
Q All right. The bullets that are in front of you are -- are written up in your report as two fired lead bullets. Is lead the common material that's used to make

bullets?

A It's a lead alloy, but yes, these are -- you typically have either lead. You can also have copper jacketed bullets which typically have a lead core. They're the ones that have that -- they look like a penny on the outside.

You can have aluminum jacketed bullets which have a silver color on the outside with a lead core. You can have steel jacketed bullets with a lead core. You can have steel core bullets. But yes, a lead bullet is very common.

Q Those bullets are what caliber?

A They are a .38 caliber which can be -- consist of several other calibers such as within 38 -- 38 can cover 380 auto, 38 special, 357 magnum, 9-millimeter Luger. There's a number of calibers that can fall within the 38 family.

Based on their overall physical characteristics of their shape, their weight, their diameter, they are most consistent with 38 special or 357 magnum.

Q All right. These are most consistent with 38 special or 358 magnum?

A 357.

Q 357 magnum.

A Yes, sir.

Q Now, for the jury's information, the difference in those different types of bullets that you just mentioned would not be in the front end where the projectile is, but in the back end where the fire power is?
A Not -- no. The 380 is a smaller bullet. A 9-millimeter is typically bigger than a 380, but it's still smaller than a 357 or 38 special.
Q Okay.
A 380 typically weighs roughly 95 grains.
Q All right. Let me see. I'm getting confusing. I don't want to confuse the jury. These two bullets in front of you --
A Uh-huh.
Q -- are the same size and kind?
A They appear to be in their damaged form, yes, sir.
Q All right. And you said that these two bullets would appear to have been 38 specials or 357 magnum?
A Yes, sir.
Q And the difference between those two would be how much powder is it or size of the cartridge that they sit in?
A Between a 38 special and a 357 magnum?
Q Yes, sir.
A Yes, sir, it's--
Q That would be the typical--

A, Typically a 357 magnum has a longer cartridge case and has more power.

Q All right. But you can't tell because you don't have the cartridges they came out of.

A No, sir, I do not.

Q All right. Can you tell from those bullets whether they had jackets on them, copper, aluminum, lead?

A No, sir, they did not. They did not have jackets. Those were --

Q All right.

A -- lead bullets.

Q Okay. Now, did you make a list of all of the different kinds of firearm manufacturers that make 38 special guns and 357 magnum guns?

A I made a list based on those entry -- those guns that were in the database. It is not a complete database. There's always the possibility that there's some new firearm out that has not yet been found or entered into the FBI database.

So this -- this list is really -- it's considered to be an investigative tool to show the guns that are most common on the street to help local investigators narrow their search from looking for every gun out there to a much smaller number of guns.

Q All right. And how many names are on your list of

people that make the kinds of guns that could have fired those bullets?
A Approximately 27.
Q Twenty-seven different companies. And do you know whether those companies make both the 38 special and the 357?
A I'm sure some do. Most probably do, but whether they all make both, I do not know, sir.
Q All right. So you don't know, for example, if Rossi -- which is one of the 27 names on your list -- whether they make a 38 special and a 357 magnum?
A Yeah, Rossi does make a 38 special and a 357 magnum.
Q Okay.
A And also, 38 specials are commonly fired in 357 magnum guns. They just--
Q You're saying people put 38 special ammunition in 357 guns?
A Yes.
Q All right. And so those bullets could have been fired from a 357?
A Yes.
Q All right. Made by Rossi.
A Yes.
Q Okay. Now, can you tell the ladies and gentlemen of the jury, did you receive an unfired bullet from the

Sumter County Sheriff's Department?
A I did not.
Q If you had received an unfired bullet which purportedly came from the owner of the handgun that fired those bullets, would you have been able to compare the unfired bullet to the two fired bullets to make a comparison as to whether they were related?
A All I can say is looking at the bullet, the overall physical characteristics look the same. Yes, they -- they both look to be lead bullets. They have a same general shape. That's all I could say.
Q If the unfired bullet that I'm hypothetically speaking of had been a copper covered bullet, then you would have been able to tell the investigators that sent the unfired bullet to you that it was not a match to those bullets?
A Yeah, if -- if I had a jacketed bullet, I could say that the jacketed bullet is not the same construction as a plain lead bullet.
Q What happened to the 9-millimeter Luger that you tested?
A It was returned to the agency.
Q When?
A I do not have a chain of custody with me.
Q Thank you, officer. Appreciate your help.

REDIRECT EXAMINATION

BY MS. FANT:

Q Mr. Thrower, you had indicated that when you had -- if you were to have an unfired bullet, which you didn't have in this case, that you can't actually match it to a fired bullet.

Is that similar -- I mean, are you saying that in the same way that you -- you can match a bullet to a certain gun by looking at certain characteristics but you cannot do that with a unfired compared to the fired bullet?

A That's correct. If I have a gun, I -- I have, you know, I can look at the scratches that the gun places on bullets that I test fire, and through a comparison microscope I can compare, you know, the individual characteristics that are left on a fired test, you know, a test specimen that I create versus the striations that are left on an evidence bullet.

I have something to look at. With looking at just, you know, unfired ammunition, it's like being handed two oranges and say, did these came from -- come from the same tree. Yeah, they look alike, but I -- there's no test that I have that I can perform to tell me.

Q And in this case, Mr. Finney asked you about shell casings, and there were none that were sent to SLED. Is that correct? You didn't get any?

A I did not receive any, no.

Q Would you expect to find shell casings when the gun in question is a revolver?

A Typically no. Most people that shoot revolvers do not -- with a semiauto, every time you pull the trigger the gun expels a fired cartridge case. That's what you see left behind at crime scenes.

With a revolver, a revolver has a cylinder in which you place each of the cartridges. Each time you pull the trigger, the cylinder spins to line up the next chamber, the next cartridge to fire.

It fires, you pull the trigger again, it rotates again. The cartridges never come out of the gun until the person actually takes time to open the gun and physically remove them. So with revolvers, you typically do not find fired cartridge cases at the scene.

Q Thank you.

MR. FINNEY: I just have one or two follow-up.

RECROSS-EXAMINATION

BY MR. FINNEY:

Q The Luger, what kind of gun is the Luger that they sent you?

A It was a Highpoint.

Q No. No, what kind of gun? Was it a revolver?

A Semiautomatic pistol.

Q So it would have shot cartridges out?
A Correct.
Q All right. And would a 9-millimeter Luger be able to fire those types of bullets?
A There's possible you could have somebody who does reloading who could place -- that could potentially place a 38 special caliber bullet in a 9-millimeter case if it was seated very deeply, but that's a big bullet to put in a small case, but it's potential. It's not something you see very often.
Q So it's possible that a 9-millimeter could have fired it, but not the 9-millimeter that they sent you?
A Yeah. The 9-millimeter that they sent me could not be. The eight does not equal six.
Q All right. And it's possible that a 357 fired them and it's possible that a 38 fired them?
A Correct.
Q Thank you, sir.

THE COURT: Anything further?

MS. FANT: No, Your Honor, may Mr. Thrower be excused?

THE COURT: Any objection?

MR. FINNEY: No objection.

THE COURT: Thank you, sir. You may be excused.

(Witness left the stand.)

MS. FANT: At this time the State would call Samuel Reighley.

SAMUEL REIGHLEY, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q I apologize for that mispronunciation. Can you tell us where you work?

A I work for the South Carolina Law Enforcement Division commonly referred to as SLED.

Q And how long have you worked there?

A I have been with SLED just over nine years.

Q And what type of work do you do at SLED?

A Currently I am a supervisor with the counter terrorism unit. But prior to that I worked for the toxicology unit within the forensic section.

Q And what types of things does the toxicology unit at SLED do?

A The toxicology unit at SLED performs tests on body fluids such as blood, urine, also tissue samples such as brain and liver for the presence of drugs and alcohol.

Q Okay. And -- excuse me. Do you have -- did you receive any specialized training in order to conduct these tests?

A Yes. Once -- or start off, I had a -- I have a

Bachelor of Science degree in Biology from Western Carolina University. After graduating college I went to work in the environmental toxicology field for approximately six and a half years prior to coming to SLED where I received specific training in the instrumentation of conducting analysis on those types of samples.

Once arriving at SLED, I went through SLED's training program which consists about a year in length in the analysis of forensic toxicology evidence which consisted of oral and written exams along with practical testing and proficiency testing to go through the process of analyzing blood samples for the presence of alcohol, also tissue samples, any types of body fluids.

Along with that we had to perform approximately a thousand tests of blood alcohol tests along with drug sampling during that process and show our proficiency in it in order to be certified and signed off by the chief toxicologist at SLED.

Along with that, also attended a variety of conferences and schools on the analysis of these particular samples.

Q And over your career, approximately how many times have you conducted tests for blood alcohol concentration?

A During my tenure with the toxicology department I probably analyzed well over 10,000 blood alcohol samples.

Q And how about screens for narcotic drugs or other illegal drugs?

A Probably in that one approximately 5000 to 10,000 samples.

Q And have you ever testified in court regarding these tests that you have done?

A Yes, I have.

MS. FANT: Your Honor, at this point I would offer Mr. Reighley as an expert in the field of toxicology.

THE COURT: What say the defense?

MR. FINNEY: No objection, Your Honor.

THE COURT: Okay. I so find he's an expert in the field of toxicology.

BY MS. FANT:

Q Mr. Reighley, did you receive from the pathologist in this case, Dr. Joel Sexton, a blood specimen and tissue specimens from a victim named Ernest James?

A Yes, I did.

Q And when did you in fact receive that?

A I received a package on May 24th at approximately 11:37 in the morning from Raymond Mackessy -- delivered samples to the SLED laboratory.

Q And have you in fact brought that with you here today?

A I have a carbon copy of our original SLED laboratory forensic service request for that information on it.
Q And what did you do upon receiving the samples?
A With these particular -- well, I will go through the process of how I received it actually in our laboratory. Once the sample was received in our receiving area, the officer or the person bringing the evidence to our -- to that area will place it in a locked refrigerator.

At that point I would receive or take that sample from that locked refrigerator, and it's moved to a locked refrigerator within our laboratory. At that point I would take it and start my analysis on that sample.
Q Okay. And what type of test did you conduct?
A On this particular sample or group of samples I had item one which is a blood sample which was labeled Ernest James with FA05-341 labeled on the container. That particular sample I performed a blood alcohol analysis along with a -- a screen or series of drug screens.

I also received -- which was item number two -- a urine sample, which a alcohol test was performed on that sample. In addition to these, I also received an item three, which was a vial sample. Item four, which was gastric. Item five, which was brain tissue. And item six, which was liver. And those particular samples there was not any analysis performed.

Q And why did you not perform analysis on those samples?

A On those particular -- well, we're conducting a -- the test on the samples, we will do the testing if we have blood. That gives us the best information as far as at the time of death what drugs and alcohol were present in their system.

Q Okay. And based upon the test that you did, what was your conclusion about the alcohol concentration found in the victim's blood?

A I received a result of a 0.217 percent weight by volume ethanol found in the blood.

Q And how does that compare with say what the legal limit for driving is in South Carolina?

A The legal -- currently the legal limit in South Carolina for driving is a .08 percent weight by volume ethanol in the blood.

Q And so this would be more than twice but not quite three times as much?

A That's correct.

Q And in -- did you also find a result or come to a conclusion in terms of the alcohol concentration in Ernest James' urine?

A Yes. I received a result of a 0.245 percent weight by volume ethanol found in the urine.

Q And that would in fact be more than three times the legal limit?
A That's correct.
Q And finally on the drugs, could you take us through what drugs you tested for?
A In this particular case I tested for a variety of drugs. I'll go through the list of the particular classes of drugs that I analyzed for. The first I did a screen for amphetamine and methamphetamine, which was negative.
Also did a screen for barbiturates, which was negative. Benzodiazepines screen which was negative. It was a negative screen for cannabinoids, which is marijuana. Negative screen for cocaine for -- and or cocaine metabolites. And a negative screen for opiates.
Q And what would the opiates classification be?
A Those -- that particular classification there, it's a class of narcotic analgesics or pain relieving drugs. They include things such as morphine, hydrocodone, codeine, things as that.
Q So your analysis revealed no evidence of any of the drugs that are commonly abused --
A That's correct.
Q -- in our society?
A That's correct.
Q Thank you. Please answer any questions that Mr.

Finney may have.

THE COURT: Mr. Finney?

CROSS-EXAMINATION

BY MR. FINNEY:

Q Good afternoon, sir.

A Good afternoon.

Q Just a couple of questions, please sir. The alcohol level in the blood was .217?

A That's correct.

Q And the alcohol level in the urine is .245, higher number.

A That's correct.

Q Why -- why would it be higher in the liver -- excuse me -- in the urine than in the blood?

A The levels of the alcohol in different body fluids is based on the elimination rates and the absorption within a person's body. So depending upon what phase of absorption or elimination they are in, one body fluid may be higher than the other.

Q Okay. Now, tell us what the effect of death has on elimination or absorption. In other words, you would assume from this result that the man had been drinking heavily?

A That's correct.

Q Would the time that he had been dead make a

difference? If he had been dead two days, would the numbers have been consistent as opposed to him being only dead one day?

A The only thing that would effect the -- the alcohol level within the sample was if there was decomposition present there could possibly be an addition of alcohol. But as far as the alcohol breaking down in the system naturally, over that time, you have to have -- you have to be alive and your body has to actually metabolizing it out in order to get rid of the alcohol.

So the only thing that would have an effect on the alcohol level would be a decomposition possibly.

Q All right. And the decomposition might raise the number?

A It -- you will see typically with a decomposition, depending on the severity of it, you would see up to a level of possibly of a -- the highest we have seen in any studies is about a .15. So that -- that is a possibility, yes.

Q All right. And at .08, as the Solicitor said, this was almost three times the state limit for people who drive on the highways, .245 would have been over three times the state limit of intoxication.

A That's correct.

Q Thank you, sir.

THE COURT: Anything further from the State?

MS. FANT: No, Your Honor. May Mr. Reighley be excused?

THE COURT: Any objection?

MR. FINNEY: No objection.

THE COURT: Yes, ma'am. Thank you, sir.

(Witness left the stand.)

MS. FANT: Your Honor, the State would call Major Daniel Simon who it appears has walked out of the courtroom. May I have a minute?

THE COURT: Okay.

(Whereupon there was a pause.)

DANIEL SIMON, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. FANT:

Q Major Simon, where do you live?

A Bishopville.

Q And how long have you lived there?

A All my life.

Q Where do you work?

A Lee County Sheriff's Office.

Q And how long have you worked there?

A I been there since 1996. Between Bishopville City Police Department and the Sheriff's Office I have been in

law enforcement 20 years.
Q And what is your rank at the Lee County Sheriff's Office?
A Currently Major.
Q What types of things do you do at the Sheriff's Office there?
A I see the day to day operation of the Sheriff's Office. I also handles investigation, evidence custodian.
Q Do you know a resident of Bishopville named Donna McDuffie?
A Yes, ma'am.
Q How long have you known her?
A Between 10 and 15 years.
Q Did you take a report of a gun that had been reported by Donna as being stolen?
A Yes, ma'am.
Q How did that come about?
A On the -- I was called by the Sumter County Sheriff's Office. They wanted to talk with Ms. McDuffie in reference to something. And when we went there, she said that she had a gun that was missing.
The gun was there on the -- the night of the 23rd, and two days later when she went back, the gun was -- wasn't there, and she reported to me that it was missing.
Q And did she describe the gun to you?

A Yes, ma'am. She said it was a 38. And at that time on the report she did not have the serial number. And I asked her to go back to where she purchased the weapon. And she went back to Rooks on Main Street in Bishopville and got the information on the 31st of May of 2005.

Q And what did you do after you took the report?

A After I complete the incident report, I put this weapon in the NCIC, and National Crime Information Center, on June 2nd of 2005.

Q And what exactly is the NCIC?

A NCIC is the National Crime Information Computer that if, you know, if anything is stolen, if you run that, it will come back stolen to whichever jurisdiction that puts it in.

Q And so what would be the purposes of entering the serial number of her gun in that database?

A That it's a stolen weapon.

Q And what is law enforcement procedure upon finding a gun that you did not know who it belongs to or where it came from?

A It will come back to just actual -- this actual incident report. They would notify the Sheriff's Office of the -- or the jurisdiction that it's stolen from and we will get in contact with that local Sheriff's Office or city police officer and find out which state, whether it's

actually stolen or not.

They would have a 10 minute confirmation or an hour confirmation to see whether it's actually stolen or not.

Q Okay. And has the Lee County Sheriff's Office ever gotten a hit on the gun, Donna McDuffie's gun, through NCIC?

A No, ma'am.

Q And to your knowledge has the gun ever turned up anywhere?

A No, ma'am.

Q Now, when Donna reported this gun to you missing, did you ask her about her gun? I mean, was it your initiation of the questions?

A No, ma'am. She told me that the gun was missing.

Q And were y'all -- had she come down to the Sheriff's Office?

A She came to the Sheriff's Office to meet with Sumter County Sheriff's Office, and she -- whenever we spoke to her, I called her because she said that she wasn't familiar with the officers and she would feel a whole lot more comfortable if I would meet her there, and I did.

I did not go in the room when they interviewed her. I just merely just provided the room for them, and I stayed in the building while she was there.

Q And is that the same day that you reported the gun

missing?

A Yes, ma'am.

Q Did Ms. McDuffie seem concerned that her gun was missing?

A Yes, ma'am.

Q And when -- skipping to the vehicle in this case, were you employed in Lee County in your position in May of 2005?

A Yes, ma'am.

Q And were you made aware of a burned Volvo vehicle that was found in Lee County?

A Yes, ma'am. During the day to day operation with the Sheriff's Office I check all the reports that come in. This report was actually put in my door, a vehicle inventory sheet where the vehicle was recovered at Broad Branch Cemetery which is located off of Highway 154 in the county of Lee just about 5 miles outside the city limits of Bishopville.

Q And did you think that there was anything significant to having a report of the burned vehicle?

A Well, later on when I got home that evening I was reading The Item newspaper and Sheriff Dennis had some information in there about they was looking for a Volvo and it kind of like registered then that we recovered a burnt Volvo.

And what I did is I -- in return I went back to the office to check this -- this inventory sheet. And in return I called the Sheriff Dennis and told him that we recovered a Volvo in the cemetery, one of our officers recovered a Volvo on the -- Court indulgence -- on the 22nd of May he recovered.

It was reported by a family that lived close by. It was recovered in the cemetery.

Q Okay. And were you able to learn from Sheriff Dennis that the body of someone had been found on May 23rd in Sumter?

A Yes, ma'am, she -- he advised me of it and I also read it in the paper.

Q So would that have been the 24th when you actually read about this information?

A That sounds about right, the 24th.

Q And what did you do when you realized a possible link?

A I told him that the vehicle was at Slater's Garage which is located on Highway 15 in Bishopville about 3 miles outside the city limits of Bishopville and we could meet at Slater's Garage so that they can actually take a look at this vehicle.

Q And did officers from the Sumter County Sheriff's Office actually do that?

A They met me at Slater's Garage. I got in contact with Mr. Walter Slater, and we met at the garage and they processed the vehicle.

Q And you had indicated earlier that the -- when law enforcement came to Bishopville to interview Donna McDuffie, they came to the law enforcement center or the Sheriff's Office?

A Yes, ma'am.

Q And where -- after the interview, after they conducted the interview, what did y'all do?

A We left the law enforcement center and we went to Ms. McDuffie house at [redacted] Spann Road. That's still in the -- Bishopville will be in the Manville section of Lee County, and we went to her residence.

Q So you went with the officers?

A Yes, ma'am.

Q And tell us what happened when you got to Donna's house.

A When we got to Donna house, we walked around the -- Donna yard, the curtilage of it, and we noticed a -- a cement block was missing from out of the yard.

Q And how were you able to notice that?

A You could tell where the grass had been growed up and something was missing from there. It was recently done.

Q I will show you State's Exhibit number 39 which has

been entered into evidence. Do you recognize that photograph?
A Yes, ma'am.
Q And how do you recognize it?
A Recognize it as being where the -- the location of the residence and the curtilage of the yard. I have been in that area several times.
Q And does that photo depict the concrete blocks you were referring to?
A Yes, ma'am.
Q And is there a space there that indicates whether one was missing?
A Yes, ma'am. It's a space that sits between -- if you would looking from left to right, the third cement block between the fourth one.
Q And who else was with you when you went to Donna's house?
A Investigator Clarence McMillan and I'm thinking it's going to be Investigator Wesley Gardner.
Q And did you remove a separate concrete block from Donna's property?
A No, ma'am.
Q Did you see either Sergeant McMillan or Investigator Gardner remove one?
A No, ma'am.

Q Did you discuss with Ms. McDuffie the fact that y'all were going to try to match one of the blocks from the yard to the one found on the victim?
A I was just accommodating them. I wasn't nowhere involved with the investigation, no, ma'am.
Q Did you hear them discussing that with her?
A No, ma'am.
Q Did you ask Donna about bullets for the gun that she had?
A She showed us some bullets that go -- that actually would fit the gun. That's the only thing I know about some bullets.
Q Did you actually take any of those bullets?
A I didn't pick anything.
Q And did you see either Sergeant McMillan or Investigator Gardner take any of the bullets?
A No, ma'am.
Q During the time that you were there, did y'all look under the house, under Donna's house?
A Yes, ma'am. She said she had a propane cylinder that was located underneath the house. We look under there.
Q Okay. Did you find any painting supplies there?
A I didn't recall seeing any painting supplies.
Q I will show you an areal -- or excuse me -- what's been entered as -- what's been marked for identification I

should say as State's Exhibit 54. Just a moment, please. And I'm going to ask you to step down at this time, please.

A (Complied.)

Q Do you recognize what this is?

A This is a map of the area of Lee County on -- this would be portion of the Manville section and the area of 154, mainly the Manville station right here.

Q Okay. Where is downtown Bishopville?

A Downtown Bishopville? Let's see. This map is actually cut off. It don't show actually downtown Bishopville. The closest it shows to downtown Bishopville will be Interstate 20 which is located here.

Q So will be up there somewhere?

A Will be up north.

Q Okay. Are you familiar with the Broad Branch Cemetery?

A Yes, ma'am.

Q Could you show us where that is?

A This is Highway 154. It probably located about 7 miles outside the city limits of Bishopville. If you could travel Highway 154 to here, it's also known as St. Charles Road, Broad Branch Cemetery is located between the intersection of where Manville Wisacky Road, it turns into Coopers Mill Road, but it's in between Coopers Mill Road

and Big Joy's (sic) Road.

The cemetery is located in this little actually a Y right here. This is the second driveway. If you coming from Bishopville, that's the first driveway, and that's actually Broad Branch Cemetery.

Q And could you circle the entire cemetery for us?

A (Complied.)

Q And you referred there to two entrances to the cemetery. Could you just point those out again and tell us where they are.

A This will be the first entrance from the Coopers Mill intersection, also known as the McCutcheon Crossroad. It would be here, the first intersection, and this would be the second entrance that they normally use to go in --

Q Okay.

A -- for there.

Q Is it also possible to get into the cemetery from behind?

A Yes, ma'am. Also leads back over to Big Joy's Road which leads back into Coopers Mill Road, and it intersects back to St. Charles Highway, St. Charles Road which is also known as 154.

Q Okay. And are you familiar with Donna and -- excuse me -- Robin and Tommy McCutchen?

A Yes, ma'am.

Q Do you know where they live?
A Yes, ma'am. They live at the corner of the intersection of McCutcheon Crossroad in this residence right here.
Q Could you just mark that with an M, please?
A (Complied).
Q Okay. And do you know Mr. Bramlett, Mr. Matt Bramlett?
A Yes, ma'am.
Q And where does Mr. Bramlett live?
A Mr. Bramlett live in this location right along here, just probably a couple hundred yards up from the -- Robin McCutchen and Tommy McCutchen.
Q On the other side of the cemetery, or if you're there--
A It would be on the opposite side of the cemetery.
Q Okay. Okay. Now, the -- are you familiar with Ms. McCutchen's exercise habit, that she walks pretty regularly?
A Yes, ma'am.
Q And how do you know that?
A A lot of times -- I live -- I live -- if you go to the end of Coopers Mill Road, you hit the end of Coopers Mill Road, it turns into highway 527 and Highway 341. If you make a right turn, I live probably about a fourth of a

mile on the right down here.

A lot of times when I come home from work, I would come the back way. And some days I come down 341, some days I go the back way, 154. And a lot of times I would make a left turn on Coopers Mill Road.

Q And that is this road right here?

A It is this road here. And occasionally in the evening, esspecially the summertime, I normally see Mrs. Robin McCutchen walking that block. She would normally walk this route here.

Majority of time when I actually see her, I always see her in this little area here. Not -- the cemetery located here, actual McCutcheon cemetery. She would be walking through that area.

Q And when she referred to kind of walking her triangle, would that be this triangle here, those three roads that meet?

A Yes, ma'am.

Q Okay. And do you also know where Donna McDuffie lived at [redacted]Spann?

A Yes, ma'am.

Q Could you show us that, please?

A From the cemetery, if you would make a left turn on to Manville Wisacky road, go up here to cross over Mount Lisbon Road, go around this curve, you're going to pass