

VOLUME TWO OF THREE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Oconee County

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

MAY 16 2013

S.C. Supreme Court

JAMES RANDOLPH FRADY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2012-207126

APPENDIX

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1 Q And where was that van located once you found it?

2 A I was taken to the impound lot at the sheriff's
3 office here in Oconee County.

4 Q And was that after you had done these two crime
5 scenes?

6 A Yes, ma'am.

7 Q And approximately how long were you at these two
8 crime scenes about?

9 A We got the call at 9:00, roughly. So I left
10 Columbia. And I think it was about 11:25, 11:30 when we
11 got to Westminster. I believe I left there at 5:00 or
12 5:30. Then we went to Zion Road and collected the shotgun
13 shells. We went to Yohlanda Drive. I want to say it was
14 10:00, 11:00 at night when I got to the van. So we had
15 been in Oconee County -- or I had left early. So it was
16 about a 14-hour day at that point.

17 Q Let me show you State's Exhibit Nos. 6-A through 6-E
18 and -- let me back up. I don't know how this one got --
19 let me show you State's Exhibit No. 6-A, and take you back
20 to Yohlanda Drive. There was a bundle of evidence you
21 collected at that scene?

22 A There was. This is a picture of the washing machine
23 in the mobile home there.

24 Q And before you go any further, does that accurately
25 depict the washing machine you found at Yohlanda Drive?

1 A Yes, ma'am. I don't recall if the top was up or not.
2 But when we come in to do a search warrant, we look
3 through everything, depending on what kind of evidence
4 we're looking for.

5 MS. HERVEY: And, Your Honor, at this time, I'm
6 moving State's Exhibit No. 6-A into evidence without
7 objection.

8 THE COURT: Any objection?

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

10 THE COURT: Ladies and gentlemen of the jury, State's
11 Exhibit No. 6-A will be admitted into evidence without
12 objection. State's Exhibit No. 6-A in evidence.

13 You may publish.

14 (WHEREUPON, State's Exhibit No. 6-A was admitted into
15 evidence.)

16 BY MS. HERVEY:

17 Q And the items in the washing machine, in what
18 condition were they found? Were they dry? Were they --

19 A They were still wet. They had been washed and not
20 moved to the dryer. So I collected everything out of the
21 washing machine and put it in a big plastic bag.

22 Q And you sent them to SLED as well?

23 A I brought them back. And they would have gone to our
24 evidence processing to see if they could find -- if there
25 was any blood on any of the clothing or anything like

1 that, potential DNA evidence.

2 Q And that was something you collected from Yohlanda
3 Drive. But you didn't take those out and do the same
4 field-testing that you did on the bed sheets?

5 A No, ma'am. They were all wet. So they had all been
6 together. And there were a lot of them. So we just put
7 them in the plastic bag. And we have a department that
8 will go through and separate evidence like that looking
9 for bodily fluid, blood and stuff, potential DNA evidence
10 on any number of items.

11 Q And is Cecil Bradstreet one of those individuals that
12 would have done something like that?

13 A Yes, ma'am.

14 Q And they have more sophisticated techniques than out
15 in the field that you have that they could have performed
16 on the bed sheet; is that correct?

17 A Well, they're in a laboratory setting. So they've
18 got the ability to take things, spread them out, separate
19 them, and keep them from contaminating each other,
20 chemicals. I think they use the same chemicals to do a
21 presumptive test. But they're able to do a much more
22 thorough job than I can out at somebody's home looking at
23 stuff like that.

24 Q Let me go back to State's Exhibit Nos. 6-B through
25 6-E, and ask you if these relate to that van you went to

1 after Yohlanda Drive?

2 I apologize for the confusion.

3 A Yes, ma'am. These are pictures of the van at the
4 impound lot.

5 Q And did you document those with photographs before
6 you went through the processing of the van itself?

7 A Yes, ma'am, I did.

8 MS. HERVEY: And, Your Honor, at this time, we would
9 move State's Exhibit Nos. 6-B through 6-E into evidence.

10 THE COURT: Any objection?

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

12 THE COURT: Ladies and gentlemen of the jury, State's
13 Exhibit Nos. 6-B through 6-E will be admitted into
14 evidence without objection. State's Exhibit Nos. 6-B
15 through 6-E in evidence.

16 You may publish.

17 (WHEREUPON, State's Exhibit Nos. 6-B, 6-C, 6-D, and
18 6-E were admitted into evidence.)

19 BY MS. HERVEY:

20 Q And when you first got to the van, you said it was at
21 the impound lot when you found it there?

22 A Yes, ma'am.

23 Q Did you notice anything about just the general
24 condition of the van and its appearance? Did you detect
25 any strange odors or anything else about the van?

1 A Well, it was a work van, so there was a lot of things
2 in it. And you could smell gasoline when you opened the
3 doors.

4 Q Was it wet in any way? Did you ever see any wet
5 gasoline?

6 A No, ma'am. I don't recall seeing anything like that.
7 When you opened the door, you could get a heavy odor of
8 gasoline from the interior.

9 Q And let me show you State's Exhibit No. 6-E.

10 MS. HERVEY: Well, I've lost my lucky charm again,
11 Your Honor.

12 BY MS. HERVEY:

13 Q Let me show you State's Exhibit No. 6-D, and ask you
14 what is depicted in that particular photograph?

15 A This is a photograph taken from outside the driver's
16 door with the door open, just trying to show the interior
17 of the vehicle.

18 Q Is there any damage to what is depicted in that
19 photograph?

20 A Well, the driver's seat looks like it has been cut
21 up, or the vinyl has been torn on the driver's seat.

22 Q And is that what you were documenting in that
23 photograph?

24 A Well, that and just showing what was in there and the
25 condition. That was just showing how we found it before

1 we did anything or moved anything in there.

2 Q And did you attempt to fingerprint items anywhere
3 inside this van?

4 A Yes, ma'am. We dusted the doors and the windows and
5 looked through the inside. We probably did the rearview
6 mirror. The dash and steering wheel aren't really
7 conducive surfaces. But we looked through to see if there
8 was anything that might be of potential to get latent
9 prints off of.

10 (WHEREUPON, State's Exhibit No. 6-F was marked for
11 identification only.)

12 BY MS. HERVEY:

13 Q And let me show you State's Exhibit No. 6-F -- well,
14 I thought there was one in here of the van, the driver's
15 side of the van.

16 Is that the condition of that same van we've been
17 talking about?

18 A Yes, ma'am, it is.

19 MS. HERVEY: I'm moving State's Exhibit No. 6-F into
20 evidence, Your Honor.

21 THE COURT: Any objection?

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

23 THE COURT: Ladies and gentlemen of the jury, State's
24 Exhibit No. 6-F in evidence without objection.

25 You may publish.

1 (WHEREUPON, State's Exhibit No. 6-F was admitted into
2 evidence.)

3 BY MS. HERVEY:

4 Q Were you able to get any lifts anywhere out of this
5 van?

6 A Yes, ma'am. I recovered a latent impression off the
7 hood of the van, exterior, and off the interior passenger
8 door window.

9 Q And were you able to match those to any known prints
10 of either of the victims or the Defendant, Randy Frady?

11 A No, ma'am. I was not able to identify those prints
12 to either the victims or the Defendant in this case.

13 Q But, again, these fingerprints, similar to the ones
14 in the house, it was unclear as to how long those prints
15 had been there and those type of things?

16 A Yes, ma'am. I have no idea how long they had been
17 there.

18 Q And you didn't obtain known fingerprints from any
19 member of Mike Harper's family or anything?

20 MR. ALLEN: Objection to leading.

21 THE COURT: Sustained.

22 Direct examination, Counsel.

23 BY MS. HERVEY:

24 Q Were you ever submitted any known fingerprints of
25 Mr. Harper's family or anything like that?

1 A No, ma'am, I was not.

2 Q And that would be the individual to whom you know
3 owned the van or was represented to you as owning the van?

4 A Yes, ma'am.

5 MS. HERVEY: Your Honor, at this time, we would just
6 ask to publish State's Exhibit Nos. 6-B, 6-C, 6-D, 6-E,
7 and 6-F to the jury and handing it to --

8 THE COURT: B through F of what number?

9 MS. HERVEY: State's Exhibit No. 6, Your Honor.

10 THE COURT: Already in evidence?

11 MS. HERVEY: Yes, already in evidence.

12 THE COURT: Before we proceed any further, Madam
13 Foreperson, you handed me a note, which I conferred with
14 Counsel. I believe it was in reference to earlier when
15 our equipment was not working and we had passed to the
16 jury --

17 At that time, I believe, Counsel, it was State's
18 Exhibit Nos. 5-A through 5-H.

19 And the note read, "Are these the pictures from
20 Yohlanda Drive?"

21 I ask you now, Madam Foreperson, has your question
22 been answered sufficiently?

23 THE FOREPERSON: Yes, sir.

24 THE COURT: Very well.

25 Without objection, my understanding is I will make

1 the note Court's Exhibit No. 2.

2 Is that correct from the Defendant?

3 MR. ALLEN: Yes, Your Honor.

4 THE COURT: Is that correct from the State?

5 MS. HERVEY: Yes, Your Honor.

6 THE COURT: Very well.

7 Court's Exhibit No. 2 without objection.

8 You may proceed, Counsel.

9 (WHEREUPON, Court's Exhibit No. 2 was marked for
10 identification and admitted into evidence.)

11 MS. HERVEY: Your Honor, if they could just have the
12 opportunity to view those photographs without being
13 distracted.

14 THE COURT: In light of the fact that we're passing
15 material, at this point, ladies and gentlemen of the jury,
16 I'm going to give the jury a break at this point. I'm
17 going to ask you not to discuss the case during the break.

18 I will allow you, if you would like to do so, during
19 your break -- as long as I get all my exhibits back in the
20 courtroom, I'll allow you to take the exhibits. And you
21 may view the exhibits so we can utilize this time during
22 the break.

23 You can stretch your legs, use the restroom. We'll
24 take about ten minutes.

25 Mr. Curtis, you understand you're still in the middle

1 of your examination. So I'm going to ask you not to
2 discuss your testimony.

3 Ladies and gentlemen, if you'll retire to the jury
4 room.

5 Please bring all my exhibits back. I believe you've
6 got State's Exhibit Nos. 5-A -- I mean, State's Exhibit
7 Nos. 6-A through 6-F.

8 MS. HERVEY: State's Exhibit Nos. 6-B through 6-F.

9 THE COURT: All right. State's Exhibit Nos. 6-B
10 through 6-F.

11 (WHEREUPON, the jury was excused from open court at
12 approximately 10:23 a.m.)

13 THE COURT: All right. We'll take ten minutes.

14 And you can step down and use the restroom.

15 (WHEREUPON, a break was taken.)

16 THE COURT: Is the State ready to proceed?

17 MS. HERVEY: Yes, Your Honor.

18 THE COURT: Is the Defendant ready to proceed?

19 MR. ALLEN: Yes, Your Honor.

20 THE COURT: Bring the jury in.

21 (WHEREUPON, the jury came into open court at
22 approximately 10:38 a.m.)

23 THE COURT: Madam Foreperson, if the jury has the
24 photographs, give them back to the bailiff.

25 Each of you have had an opportunity now to view them

1 during the break?

2 THE FOREPERSON: Yes, sir.

3 THE COURT: Very well. If you will hand them back to
4 the Solicitor.

5 Solicitor, your witness, you may proceed.

6 MS. HERVEY: Thank you, Your Honor.

7 BY MS. HERVEY:

8 Q And just to kind of bring the jury back. We
9 processed the van; correct?

10 A Yes, ma'am.

11 Q You found those two -- and, again, they were unknown?

12 A Yes, ma'am.

13 Q And other than that, no other evidence was taken out
14 of the van and no other samples were taken out of this
15 van?

16 A No, ma'am. I didn't find anything that I thought
17 would be useable inside the van, other than those latent
18 lifts.

19 Q Okay. I'm going to draw your attention back to those
20 shotgun shells that we talked about that you found in the
21 closet at the residence at Yohlanda Drive. Again, taking
22 you back, are these the ones spread out on the bed in
23 State's Exhibit No. 5-A?

24 A Yes, they are.

25 MS. HERVEY: And, Your Honor, if I could just show

1 this as I walk down. They've already seen it on the
2 monitor.

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

5 BY MS. HERVEY:

6 Q Let me show you what's been marked for identification
7 purposes as State's Exhibit No. 17, and ask you, again, if
8 this package bears marks by you to show how State's
9 Exhibit No. 17 relates to the shotgun shells in State's
10 Exhibit No. 5-A?

11 A Yes, ma'am. That's going to be the package that's
12 got my initials and the date that I sealed the back of the
13 envelope on it.

14 Q And, again, if you could -- are the scissors still up
15 there?

16 A Yes, ma'am.

17 Q If you could, just open that and confirm that those
18 shotgun shells are contained within State's Exhibit No. 17
19 without removing them.

20 A Yes, ma'am, they do.

21 Q And these have been similarly sealed by you and
22 submitted to SLED for further analysis?

23 A Yes, ma'am. I would put the box and all the shells I
24 collected inside an envelope and seal it. And it would
25 have been sent to firearms.

1 Q And you stated there wasn't fingerprints done on
2 these shells because they were just there in the closet,
3 not appearing they had been touched recently. And it was
4 more for a ballistic sample that you collected these
5 shells; is that correct?

6 A Yes, ma'am. That was the idea behind that.

7 MS. HERVEY: Nothing further from this witness, Your
8 Honor.

9 THE COURT: Cross-examination?

10 MR. ALLEN: May it please the Court?

11 THE COURT: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. ALLEN:

14 Q Mr. Curtis, I want to ask you if you would refer to
15 your reports. One is dated August the 4th of 2006, and
16 one is dated October the 26th of 2004, please, sir.

17 A Yes, sir.

18 Q Before I do that, though, let me ask you just in
19 general about a 12-gauge shotgun. To your knowledge,
20 that's a very, very common shotgun, is it not?

21 A To my knowledge, it is, yes, sir.

22 Q There's probably hundreds of those things in this
23 county, wouldn't you agree with that?

24 A I would think there would be a lot.

25 Q Hundreds? Thousands?

1 A Possibly.

2 Q And a Remington shell, a Remington shotgun shell is
3 very, very common, is it not?

4 A To my knowledge, that's a common brand of shotgun
5 shell, yes, sir.

6 Q In fact, isn't it the most common shotgun shell?

7 A I couldn't tell you that. I'm not a hunter. But I
8 am familiar with Remington manufacturing ammunition and
9 shotgun shells.

10 Q In your opinion, in a county this size, wouldn't
11 there probably --

12 MS. HERVEY: Your Honor, I'm going to object as to
13 his opinion "in a county this size." He's been qualified
14 as a crime scene collection --

15 THE COURT: Sustained.

16 MR. ALLEN: Well, he can say --

17 THE COURT: Rephrase the question, Counsel. This is
18 cross-examination. You understand the limits for which
19 the witness was qualified.

20 MR. ALLEN: Okay.

21 THE COURT: The objection is sustained on that basis.

22 MR. ALLEN: I understand.

23 THE COURT: Proceed.

24 MR. ALLEN: And if he doesn't know, that's an
25 acceptable answer. And I'll just leave it at.

1 BY MR. ALLEN:

2 Q Remington shells are very, very, very common?

3 A To my knowledge, yes, sir.

4 Q Let me ask you about -- if you would, first of all,
5 please, sir, refer to the October 26th, 2004, report.

6 A Yes, sir.

7 Q And I'm going to try to do this somewhat swiftly
8 here. Just to review -- your testimony was somewhat
9 lengthy. Just to review, there were no fingerprint
10 matches from the smoke detector in the living room; is
11 that correct --

12 A Yes, sir.

13 Q -- to Randy Frady?

14 And when I say a fingerprint match, I'm referring to
15 Randy Frady.

16 A Yes, sir.

17 Q There was no fingerprint match from the smoke
18 detector in the hallway to Randy Frady?

19 A No, sir.

20 Q There was no fingerprint match to Randy Frady from
21 the lighter from the poolroom?

22 A No, sir.

23 Q Okay. And I'm going to skip Item #4 for right now.

24 Okay. And we'll come back to that. Because I think that
25 was in your supplemental report. And I'm going to skip

1 Item #5 and 6. Let's go to Item #18.

2 A Yes, sir.

3 Q The gas can, there was no positive fingerprint match
4 to Randy Frady on the gas can, was there?

5 A No, sir.

6 Q Okay. And, in fact, on the -- what kind of shotgun
7 was that?

8 A J.C. Higgins.

9 Q Do you have any knowledge who J.C. Higgins was?

10 A No, sir, I don't.

11 Q And the 12-gauge shotgun, there was no fingerprints
12 matched to Randy Frady; is that correct?

13 A Correct.

14 Q Now, there was, however, a positive -- you had a
15 print you could work from the poolroom door in the Jim and
16 Barry Frady residence, did you not?

17 A I had three cards that I lifted prints off the
18 poolroom door. Two of them had prints that I could
19 compare to known individuals.

20 Q And those two that you could compare, again, came
21 from the poolroom. I think it was the sliding glass door
22 in the home of Jim and Barry Frady; isn't that correct?

23 A It was the door between the bedroom and the poolroom,
24 and that was from their residence, yes, sir.

25 Q Okay. I beg your pardon. That door -- but those

1 fingerprints that you could use from that door inside Jim
2 and Barry Frady's room did not match Jim Frady; correct?

3 A Correct.

4 Q Did not match Barry Frady; correct?

5 A Yes, sir.

6 Q And did not match Randy Frady?

7 A That is correct.

8 Q So it matched apparently someone unknown to us at
9 this time?

10 A That is correct. I was not able to identify anybody
11 to those prints.

12 Q That you were aware -- or made aware of?

13 A All the cards that I had that I compared, I couldn't
14 identify them. And item -- well, I didn't run either one
15 of those through the AFIS computer. They were not of a
16 quality to be run. So I don't know whose prints those
17 are.

18 Q And we still don't know?

19 A No, sir, I do not.

20 Q As far as you know?

21 A Yes, sir.

22 Q All right. In terms of the van. Now, did you
23 personally know that the van was the subject of an alleged
24 grand larceny at one time?

25 A Lieutenant Reed had told me that the van had been

1 stolen sometime around the incident. And that's why they
2 were at that point thinking it may have been used and
3 wanted me to process it.

4 Q Did you understand as well that the van was turned
5 back over to Michael Harper, who owned the van?

6 A I don't recall if I knew that. I knew by the time I
7 had gotten there -- and they told me they wanted it
8 processed. They had it at the impound lot is where I went
9 and processed it. So I don't know where it was during the
10 interim. I don't recall if they told me they had turned
11 it back over to the owner or not.

12 Q If that van was used in this crime -- alleged crime
13 and it was not preserved and it was turned back over to
14 the supposed owner immediately after, say, nine hours
15 before you looked at it, wouldn't that disturb you as an
16 expert that that had been contaminated to some degree?

17 A Well, the chain had been broken and the custody of
18 the sheriff's office has been lost. So I can't attest to,
19 you know, any evidence that would have been taken out of
20 there. Because it was out of their control. So it would
21 concern me, yes, sir.

22 Q And it would have been very helpful to you, as an
23 expert, had you had the van -- had the chain not been
24 broken and the van gone from law enforcement to impound so
25 that you could have inspected it?

1 A That's the ideal situation, yes, sir. That's what
2 people want.

3 Q However, with the van itself, you did -- as you
4 testified, you did attempt to process it when it was
5 impounded at a later time; is that correct?

6 A Yes, sir, I did.

7 Q That's when you drove up from Columbia to Walhalla
8 and you got here, you said, about 9:30?

9 A No, sir. I was notified about 9:15 or so in the
10 morning. We got here about 11:30 and did the Westminster
11 scene. It was late in the evening when we got to the van.

12 Q That's right. Okay. And, in spite of the situation
13 with the van, you were able to get a couple of latent
14 impressions that you could work with; isn't that true?

15 A Yes, sir.

16 Q Okay. Now, I understand -- you correct me if I'm
17 wrong -- you got one from the hood of the van; is that
18 correct?

19 A Yes, sir, I did.

20 Q And you got one from an interior window of the van?

21 A Yes, sir, the passenger door window, interior
22 passenger door window.

23 Q So it was inside the van?

24 A Yes, sir.

25 Q You got one on the outside and one on the inside; is

1 that right?

2 A That's correct.

3 Q Let's start with the one on the hood of the van.

4 That fingerprint did not match Jim Frady, did it?

5 A No, sir.

6 Q It did not match Barry Frady, did it?

7 A No, sir.

8 Q And it did not match Randy Frady, did it?

9 A No, sir, it did not.

10 Q The fingerprint impression on the inside of the

11 window there did not match Randy Frady, did it?

12 A No, sir, it didn't.

13 Q And so those two prints, the one that you had -- the
14 impression you had to work with on the hood of the van, in
15 your opinion, belongs to a third party that we don't -- we
16 can't identify?

17 A That's correct.

18 Q And the fingerprint on the inside of the Michael
19 Harper van belongs to a third party that we cannot now
20 identify?

21 A That is correct.

22 Q Now, as far as the shotgun shells and fingerprints,
23 let me ask you about that just for clarification. You
24 didn't test, or SLED, whomever, didn't test the shells
25 that were found out on the roadway or by the roadway

1 because of concern with DNA or something to that effect?

2 A Yes, sir. In looking at a piece of evidence like
3 that, in my experience, it's extremely difficult to get
4 latent prints off of expended cartridges. So in thinking
5 that these cartridges had been removed from the
6 Westminster scene and carried to Zion Road, a person
7 probably would have held them in their hand, at least, for
8 a period of time.

9 So, in my opinion, the chances of getting DNA was
10 greater than me getting a useable fingerprint. And if I
11 process something -- a shotgun shell, I'm going to fume it
12 with super glue and black powder. And that may destroy
13 the DNA that potentially could be on there. So I had to
14 weigh one versus the other. And I thought potentially the
15 DNA would have been there, as opposed to fingerprints.

16 Q So that's why that was not done?

17 A Yes, sir.

18 Q However, that did not apply to the one shell that was
19 found in the bedroom at the Frady residence, did it?

20 A No, sir. And, again, based upon my experience,
21 expended cartridges, the chances of getting usable
22 fingerprints on them are very slim.

23 Q But it can be done?

24 A It is possible.

25 Q And it has been done a number of times, to your

1 knowledge, has it not?

2 A It is possible, yes, sir.

3 Q It is a fact that it can be done?

4 A Yes, sir, it is possible.

5 Q Okay. And that shell, apparently, as far as we know,
6 went from the chamber to the floor to a carpeted floor
7 surface?

8 A Yes, sir.

9 Q And most probably it would not have been touched by
10 anyone else?

11 A Most probably.

12 Q Okay. But that one shell was not tested?

13 A No, sir.

14 Q For fingerprints?

15 A Not for fingerprints. I sent it for DNA, but not for
16 fingerprints.

17 Q All right. And as far as blood and garments and
18 such, soap and water will not remove blood from a garment,
19 will it?

20 A No, sir. It's my understanding if something is
21 washed, there is potential that blood and DNA could still
22 be present.

23 Q It's very, very -- isn't it impossible to remove
24 blood with simple soap and water?

25 MS. HERVEY: Your Honor, I'm going to object at this

1 point. He's not a qualified DNA expert. He's not
2 qualified in attempting to extract things from these
3 items. He can testify as to collecting it. But I think
4 we're going beyond the scope of his expert opinion.

5 THE COURT: Sustained.

6 MR. ALLEN: I'll move on.

7 BY MR. ALLEN:

8 Q And in terms of blood, the shotgun was not checked
9 for blood, or was it?

10 A Yes, sir. I checked the barrel. I did an
11 examination. And then prior to processing it for
12 fingerprints, I swabbed the interior of the barrel and did
13 a field test for blood, which was negative.

14 Q Did you check anything other than the interior of the
15 barrel?

16 A I did a visual exam. And in swabbing, I would have
17 swabbed just outside the end of the barrel and in the
18 interior. Sometimes when a firearm is shot, there's a
19 blow back of blood. And it could have spattered back onto
20 the weapon. That's what I was looking for.

21 Q And, certainly, in this case, as you understand it
22 the way with what you found as far as the facts and the
23 circumstances, there would have been blow back?

24 A There's a possibility, yes, sir.

25 Q I mean, there could have been substantial blow back?

1 A That is possible.

2 MR. ALLEN: Just one moment, Your Honor.

3 (Pause.)

4 BY MR. ALLEN:

5 Q And as far as -- just a general question. As far as
6 fingerprinting standards, I think you testified that there
7 is no universally recognized standards as far as
8 identifying characteristics as far as ridges, arches, and
9 so on, there's no universal standards?

10 A There's no set number of points of identification
11 that once you reach that threshold that's an
12 identification.

13 Q But there's no authority that's recognized by experts
14 and professionals that establishes universal standards for
15 everyone to comply with?

16 A No, sir, there's not.

17 MR. ALLEN: Thank you.

18 That's all the questions I have of this witness, Your
19 Honor.

20 THE COURT: Redirect?

21 MS. HERVEY: Just briefly, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. HERVEY:

24 Q Mr. Allen asked you some questions about blow back
25 and swabbing the interior of the barrel area of the gun.

1 You testified earlier about the condition of the gun being
2 oily and those type of things. How would the condition of
3 the gun -- the oil condition of the gun, how would that
4 effect, in your opinion, your ability to retrieve blood or
5 blow back blood from the barrel of that gun?

6 A Well, the oil, if it was present on there, wouldn't
7 effect the blood if it spattered on it. However, if the
8 gun had been used and then cleaned afterwards, which, you
9 know, it appeared it had been cleaned recently, that would
10 have wiped away any of the blood and anything on there as
11 far as blow back goes.

12 I can't say, you know, how long it had been since it
13 had been cleaned. It appeared to have been recently.
14 That would have effected blood present on the weapon.

15 Q And you can't offer any opinion as to the probability
16 of blow back blood from the victims reaching this shotgun.
17 You don't know anything about range or those type of
18 things in this particular case?

19 A No. You're talking about having to conduct
20 experiments, shooting something that's got blood in it,
21 and that kind of thing, I mean, trying to get conditions
22 almost exact to the way they were inside the crime scene.
23 I can't say a certain distance or certain amount or
24 certain caliber of a weapon creates so much blow back or
25 whatever.

1 I do know if you shoot a living thing with a weapon,
2 there is going to be some amount of blood that shoots back
3 towards the source of force.

4 Q But, again, cleaning or oiling would have impaired
5 your ability to retrieve that blood?

6 A Yes, ma'am. You wipe it down and everything, you're
7 wiping away any blood or anything that may have been on
8 it.

9 Q Mr. Allen talked to you about the van being turned
10 over to Mike Harper and then being submitted to you for
11 processing. You stated you were able to get prints out of
12 there; correct?

13 A Yes, ma'am.

14 Q Was there anything that indicated that Mr. Harper had
15 wiped it clean or those type things while in his
16 possession?

17 A I didn't see anything like that to indicate that, no,
18 ma'am.

19 Q So that's what you would have been concerned about,
20 that if we turned it over to a third party that they would
21 in some way clean, or change, or alter the condition of
22 the van, thereby impairing your ability to retrieve those
23 fingerprints, is it not?

24 A Yes, ma'am. I mean, you want as pristine condition
25 as you can get. If it's out of police custody, then

1 they're not in control of it. That's what we're looking
2 for. And I didn't see any indication of that.

3 Q So that concern that Mr. Allen raised with you, you
4 didn't have it in this case, based on your examination of
5 the van as you found it that night?

6 A I didn't see anything that indicated that. So it
7 didn't seem to be an issue with me.

8 MS. HERVEY: Nothing further.

9 Thank you.

10 THE COURT: Recross limited to redirect?

11 RE CROSS-EXAMINATION

12 BY MR. ALLEN:

13 Q And, regardless of that procedure, the only
14 fingerprints you found inside or outside the van belonged
15 to a third party that we don't know who it is at this
16 time?

17 A That is correct, sir.

18 MR. ALLEN: Thank you, sir.

19 MS. HERVEY: May he be excused?

20 THE COURT: Any objection?

21 MR. ALLEN: No, sir.

22 THE COURT: Mr. Curtis, you may step down. And you
23 are excused.

24 Call your next witness.

25 MS. HERVEY: The State calls Wendy Bell.

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

3 WHEREUPON,

4 WENDY BELL,
5 after first having been duly sworn, testified as follows:

6 THE CLERK: Please be seated.

7 THE COURT: If you'll use that microphone for me. It
8 will amplify your voice.

9 And if you'll begin, if you would, please, by stating
10 your full name and spelling your last name for the court
11 reporter.

12 THE WITNESS: It's Wendy Bell, B-E-L-L.

13 THE COURT: Your witness, Counsel.

14 MS. HERVEY: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MS. HERVEY:

17 Q You work for SLED as well?

18 A I do.

19 Q And in what capacity are you employed with SLED?

20 A I'm a forensic toxicologist for SLED.

21 Q And what is forensic toxicology?

22 A We, basically, analyze body fluids, such as blood,
23 urine, sometimes tissues. And we're examining them for
24 the presence or absence of alcohol, commonly ethanol,
25 drugs, or poisons.

1 Q And is that for the most part the focus of your work
2 with SLED?

3 A It is.

4 Q And prior to and during your tenure with SLED, have
5 you ever had any type of training or education in forensic
6 toxicology?

7 A Yes. Well, I graduated with a BS in Chemistry from
8 Furman University. And I have a Ph.D in Analytic
9 Chemistry from the University of South Carolina. I came
10 straight from getting my Ph.D to SLED. It's been my first
11 employment.

12 And I was trained -- training there takes about a
13 year in toxicology. During that time, I'm under constant
14 supervision of another toxicologist who's certified. And
15 I perform testing. We have to run up to 1,000 blood
16 alcohols and revalidate results that were previously
17 acquired. We also do over 100 drug tests. And we work
18 side by side until they feel that I'm competent.

19 At that point, I take a proficiency test to show that
20 I am able to perform the work. Once we become certified,
21 we are also proficiency tested by an outside agency every
22 six months to show we are performing to the upmost
23 standards of forensic toxicology.

24 MS. HERVEY: Your Honor, at this time, we would
25 submit Ms. Bell as an expert in forensic toxicology.

1 THE COURT: Any objection as to qualifications,
2 Counsel?

3 MR. ALLEN: No, sir.

4 BY MS. HERVEY:

5 Q And, Ms. Bell, did you have the opportunity to
6 examine the blood samples from Barry Frady and Jimmy Frady
7 obtained from their autopsy?

8 A I did.

9 Q And as to Jimmy Frady, if we could focus on him
10 first. What fluids did you examine? What bodily fluids
11 did you examine and what were the results of that
12 examination?

13 A I received from Mr. James Frady blood, urine, and
14 ocular fluid. And I performed analysis on all of those.
15 On the blood -- the first thing we always run is the blood
16 alcohol analysis. And this is, basically, run to give us
17 what level of alcohol is present. A lot of our tests are
18 negative. We're looking to just see if it's there or not.
19 And it also gives us a quantitative level, a very precise
20 amount.

21 Do you want me to give the results of that?

22 Q Yes. What was Mr. Frady's alcohol level, if any?

23 A I found .155 percent ethanol in his blood.

24 Ethanol is the common alcohol found in beverages,
25 such as beer, wine, or liquor. Many people are familiar

1 with breath alcohol analysis. The blood is, actually --
2 what we test and it's, actually, the most accurate. It,
3 actually, gives you the level that's circulating in the
4 body at the time of death or at the time the blood is
5 drawn. And it gives you what is, actually, reaching the
6 brain and effecting at that time.

7 Q Do people continue to metabolize alcohol or do their
8 levels raise once they expire or stop breathing or living,
9 so to speak?

10 A Metabolism stops once an individual dies. So the
11 level that's found in a blood sample is the level that was
12 in their blood at the time of death.

13 Q It's a fairly scientific reasonably certain degree?

14 A Yes. There can be slight changes. It depends on --
15 if a body decomposes for a long amount of time or is
16 exposed to the elements, sometimes you can get bacterial
17 contamination and can get some generation post mortem.
18 But, typically, if a body is sampled fairly short to the
19 death and preserved, you know, and not exposed to those
20 type of elements, then that does not take place.

21 Q And being an expert in forensic toxicology, are you
22 not only familiar with testing blood alcohol and those
23 results, but also what those results mean in terms of that
24 person's level of impairment or condition and those type
25 things at the time that that blood sample was taken?

1 A That's true. We constantly -- that's part of my
2 training. During that first year, especially, we have a
3 very intensive course where we study literature and are
4 trained in interpretation of pharmacology, ethanal, and
5 other drugs. We also attend seminars and conferences
6 throughout the country where we speak with experts in the
7 field. And we also have participated in some observations
8 where people are dosed under scientific conditions. And
9 we observe the effects that alcohol, especially, has on
10 those individuals.

11 Q So this level of .155, I believe, what would you
12 state as to what that represented in terms of Mr. James
13 Frady's level of impairment, if any, as it relates to the
14 presence of alcohol in his system?

15 A He was significantly impaired with a .155. Many of
16 you are probably familiar with legal limits and alcohol's
17 ability to affect your ability to drive. .08 is,
18 typically, known as a cutoff. But alcohol and ethanol,
19 particularly, begins to impair a body as low as a .05.

20 And ethanol is one compound, which as the levels in
21 the body rise, it's a very well documented continual of
22 effects as to what you see in an individual. It's a
23 central nervous system depressant. So it begins by
24 immediately effecting the brain. It slows your brain. It
25 slows your ability to process thoughts. It definitely

1 controls your judgment.

2 Q How does it effect your reaction time?

3 A It slows your reaction time. If you see a stimulus
4 or you're effected by something, your ability to react to
5 that will take you longer when you're under the effects of
6 ethanol. Of course, it can change your vision. It can
7 change your perception, your ability to walk, speak.
8 It's, basically, slowing your brain. So everything that
9 the brain controls is slowed.

10 Q And you stated that it's a depressant of a kind.
11 Does it render people -- does it, in essence, put them to
12 sleep, so to speak?

13 A It does eventually. Being a depressant, it can
14 eventually come to the point where it slows your
15 respiratory system, which slows your breathing, and slows
16 the amount of oxygen getting to the brain. That makes you
17 very sleepy. A lot of times people pass out around a .25
18 to 0.3 alcohol. And, usually, around a .4, people are
19 dead. So it, actually, stops the respiratory system.

20 Q All right. And other than ethanol, was there any
21 other substances found in James Frady's blood?

22 A I performed a standard drug screen on his blood. In
23 this case, it was a six-panel drug screen. All those came
24 back negative.

25 Because there had been a fire involved -- I was

1 informed that there had been a fire involved. So I also
2 performed a test for carbon monoxide. That's, actually,
3 the gas which is released when you have incomplete
4 combustion. And many of you have heard of carbon monoxide
5 detectors that people have in their homes. They're,
6 actually, looking for that gas being present when there's
7 a fire. That's, actually, what binds your hemoglobin in
8 the blood and prevents oxygen from getting up to your
9 brain. And it also will kill you if you reach certain
10 levels of carboxy hemoglobin. And we can tell if an
11 individual has been exposed to smoke by detecting whether
12 or not there's carboxy hemoglobin present in the their
13 blood.

14 Q And was there in Mr. Frady, Mr. James Frady?

15 A His carboxy hemoglobins were negative, less than ten
16 percent.

17 Q And what does that indicate to you as his
18 respirating, or breathing, or inhaling, or those type
19 things once the fire had been set or smoke was present?

20 A He was not breathing at that point. He did not
21 inhale smoke.

22 Q And did you perform the similar type testing on Barry
23 Frady?

24 A I did.

25 Q And what did you find as to his blood alcohol level?

1 A Mr. Barry Frady had a .294 percent ethanol found in
2 the blood. I also performed drug tests on Mr. Barry Frady
3 and he screened positive for cannabinoid. Cannabinoid is
4 a large class that includes the active component in
5 marijuana. And any time we get a positive screen, we
6 just -- we do not report simply screens, we have to report
7 and find the exact ingredients that caused that screen to
8 make sure we're not getting a false positive.

9 So I did that confirmation test. And in Mr. Frady, I
10 found 11 hydroxy tetrahydrocannabinol, which is an active
11 metabolite of THC.

12 Q And what does that mean, "an active metabolite"?

13 A Tetrahydrocannabinol, actually, is the active
14 component. Just for clarification, I'm going to call it
15 THC. That's the active component in marijuana.

16 Any time anything is ingested in the body, it
17 immediately starts breaking it down. And we call those
18 metabolites. The body is changing them to try to
19 eliminate them out of the body. Some metabolites are
20 active, some are not. 11 hydroxy is, actually, a
21 metabolite. It, actually, causes impairment in the body.

22 Q And does that indicate anything as to how long ago
23 those -- that substance or those substances were ingested?

24 A It does. Because, again, once the body detects that
25 there's something foreign inside it, it starts trying to

1 eliminate that. And every compound has kind of a time
2 period. It's called a half life in the body. That's the
3 time it takes for half of a compound to be eliminated.
4 And most things have been tested by scientists and
5 averages have been determined for how long it takes an
6 average individual to eliminate half of a substance in the
7 body.

8 Marijuana is actually -- or cannabinoids are,
9 actually, very short. The active component, THC, and this
10 11 hydroxy, they're not in the body for very long. So the
11 fact that we see 11 hydroxy shows it was probably within
12 the last three to six hours that he had been exposed to
13 tetrahydrocannabinol.

14 Q And what is your opinion as to the level of
15 impairment of Barry Frady or his condition, including
16 consciousness, at the time the blood sample was taken.

17 A Well, .294 is a very high blood alcohol level. And
18 an inexperienced drinker or maybe an individual who just
19 drinks frequently, like maybe even only on the weekends, I
20 would expect that type of individual to be near comatose
21 at a .3. That's very well documented in literature that
22 people begin passing out and have a very difficult time
23 functioning if they're inexperienced at a .3. They would
24 not be able to operate a vehicle and should have a very
25 difficult time walking.

1 I'm not familiar with the drinking patterns of this
2 individual. So if he was a more experienced drinker, he
3 could still be alive. We have seen alcoholics who have
4 blood alcohol levels as high as 0.5's.

5 Q You stated "a lot," do you mean conscious or --

6 A Conscious.

7 Q Right.

8 A But not very well. Again, it's just difficult to
9 determine. Again, I have very few cases where they're
10 ambulatory people at a .294. And without being familiar
11 with someone's drinking experiences, it's difficult to
12 know at this level what might have been going on.

13 Q All right. So when you stated earlier that .4 is
14 when you usually see alcohol-induced death?

15 A It is.

16 Q That's higher than what you saw here?

17 A This is very high. And regardless of whether he was
18 passed out, he was extremely impaired.

19 Q And did you do that similar type of carbon monoxide
20 testing on Mr. Barry Frady?

21 A I did. And his carboxy hemoglobin was also negative.

22 Q Again, indicating that he was not breathing or
23 respirating when the fire was set?

24 A That's correct.

25 Q Or immediately thereafter, once the smoke had been

1 produced?

2 A That's correct.

3 MS. HERVEY: Nothing further of this witness.

4 THE COURT: Cross-examination?

5 MR. ALLEN: May it please the Court?

6 Just a couple of questions just for clarification
7 mainly.

8 CROSS-EXAMINATION

9 BY MR. ALLEN:

10 Q You tested in your report the body fluids of Jimmy
11 Frady and Barry Frady; correct?

12 A That's correct.

13 Q And just for quick review, Jimmy Frady's blood
14 alcohol was a 0.155?

15 A That's correct.

16 Q And that was done by blood and other methods as well
17 or simply by blood?

18 A We do blood testing. But we also test the urine and
19 ocular fluid when we receive it. Those are important
20 mainly in situations to show the consistency between the
21 samples.

22 Q Yeah. And I wanted to ask you, just generally, why
23 is there a variation typically between the blood and the
24 urine on the alcohol content?

25 A Well, urine, there's a lot of reasons why you have

1 variations. A person's state of hydration can effect
2 that. If you drink a lot of water and you're well
3 hydrated, whenever the ethanol gets to the urine, it's,
4 actually, diluted some and can be less in the urine.

5 If a person, on the other hand, is not very well
6 hydrated, it can be more concentrated. It also depends on
7 how frequently they go to the restroom and how long it has
8 to pool in the bladder.

9 Q And then Barry Frady's blood alcohol level was a
10 .294?

11 A That's correct.

12 Q And you said that was highly -- would it be fair to
13 say highly intoxicated?

14 A It was very highly intoxicated.

15 MR. ALLEN: All right. Thank you so much.

16 That's all the questions of this witness.

17 THE COURT: Redirect?

18 MS. HERVEY: None.

19 She may be excused, Your Honor.

20 THE COURT: Any objection?

21 MR. ALLEN: No, Your Honor.

22 THE COURT: Call your next witness.

23 MS. HERVEY: The State calls Alex Layton.

24 THE CLERK: Sir, if you'll raise your right hand and
25 place your left on the Bible.

1 WHEREUPON,

2 GRADY ALEX LAYTON,

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

4 THE CLERK: Please be seated.

5 THE COURT: Make yourself comfortable. And use that
6 microphone for me.

7 And begin by stating your full name for the record
8 and spelling your last name for the court reporter.

9 THE WITNESS: It's Grady Alexander Layton, L-A-Y-T-O-N.

10 DIRECT EXAMINATION

11 BY MS. HERVEY:

12 Q Mr. Layton, you're also employed by SLED?

13 A That's correct.

14 Q And what is your current position with SLED?

15 A I'm a lieutenant in the trace laboratory at SLED.

16 Q And what is a lieutenant in the trace laboratory at
17 SLED? What does that mean? What are your duties and
18 responsibilities, Mr. Layton?

19 A Right now, currently, I do the arson part of the
20 trace laboratory. The trace laboratory has many different
21 subdisciplines that we work on, glass, fibers, hairs,
22 explosives. And arson is one of the subdisciplines. I'm
23 doing the arson accelerant detection in bringing fire
24 debris and liquids from different fire scenes and
25 identifying them.

1 Q All right. And what are your qualifications to be a
2 lieutenant over the trace evidence department?

3 A I received a BS degree in Chemistry from Clemson in
4 1971. I was hired and worked in the chemistry laboratory
5 originally. And for about 14 years, we were just
6 generalists. We did a lot of -- I did toxicology. I did
7 serology and also drug analysis.

8 And then in about 1985, I became lieutenant over the
9 drug laboratory at SLED. And after 1991, I became the
10 lieutenant in charge of the arson laboratory at SLED.
11 Arson was not a part of the trace laboratory in the
12 beginning. But later on, around 2000, I moved under the
13 trace laboratory itself. So I've been doing fire debris
14 analysis since 1991.

15 Q What kind of special training and education do you
16 have in fire analysis and fire science?

17 A Okay. I received training at the arson accelerant
18 detection put on by the Bureau of Alcohol, Tobacco, and
19 Firearms, the ATF, in Boulder, Colorado in 1991. That was
20 in the spring. And then that same summer, I went to the
21 FBI doing laboratory examination of fire debris. And that
22 was a course -- both of these are one-week courses. I
23 attended them. And we did some actual fire burning of a
24 scene there at the FBI and collecting the evidence and
25 then analyzing the evidence for accelerants.

1 The next was advanced an arson accelerant detection
2 course put on by the Midwestern Association of Forensic
3 Scientists. That was done in Cincinnati, Ohio in 1994.
4 That was a one-week course, also. That dealt with
5 mainly -- the instrument I use in the laboratory most of
6 the time is the gas chromatograph mass spectrometer. It
7 dealt with using that instrument to, actually, analyze the
8 fire debris and detect fire debris at a much lower level
9 than we normally can.

10 Q All right. And as part of your training -- and you
11 talked about this, is what for the most part your
12 department does in arson, you're looking for the presence
13 of accelerants; is that correct?

14 A That's correct.

15 Q And your training focuses around using these
16 instruments to do that?

17 A Yes, ma'am.

18 Q But beyond that, do you have training in just general
19 fire science, how a fire burns, those type things so you
20 can interpret those results?

21 A Yes, ma'am. That was part of the earlier course, the
22 one in Boulder, Colorado, and the one at the FBI. It
23 was -- part of the training to be an -- in arson
24 accelerant detection are flammable liquids or ignitable
25 liquids detection. That is -- you have to identify and

1 understand how fire, actually, works,

2 The three things you need for a fire, one is fuel,
3 the other is oxygen, and the next is an ignition source or
4 some energy -- some sort of energy. If you have all three
5 of those, you have the fire triangle. You have the
6 potential for fire.

7 And what happens in most of the fire debris I deal
8 with -- I don't, actually, go to the scenes. We have
9 approximately 20 arson -- full-time arson investigators in
10 the State that are assigned to up-country, midlands, and
11 the low country, and Pee Dee region. They go out to the
12 scene, collect the evidence, bring the evidence in, burned
13 clothing, couches, flooring, sometimes vehicle fires,
14 occasionally, we do that. They'll bring anything that's
15 burned. And I'll -- they collect it, and preserve it, and
16 bring it to me to be looked at to see if there's a liquid
17 accelerant present in the fire debris itself.

18 Q You talked about those arson investigators, they go
19 to those municipalities that don't have their own. And do
20 they similarly go to just any fire, or is there some type
21 of damage quota that they have set?

22 A I'm sorry. Repeat that?

23 Q The arson investigators that you talked about that
24 you work alongside, do they go to just any fire? Are they
25 there assisting local municipalities that don't have their

1 own sources? And do they have any type of damage quota
2 that has to be met before they'll go out and investigate
3 one?

4 A Actually, it's gotten -- over the years, it's gotten
5 to where there's been so many more calls. And we haven't
6 been able to hire quite as many people as they need. They
7 have set a \$10,000 damage value that if the fire has
8 created \$10,000 worth of damage, usually, they will go, or
9 if it's a high profile murder case, usually they will go
10 to that, sometimes they won't, depending on the amount of
11 damage.

12 We assist the agencies -- our fire investigators go
13 to the scene. They read the scene and they collect the
14 evidence. They assist the local people that don't have
15 the expertise to be able to read a fire scene properly and
16 collect the evidence properly.

17 Q And do you do any type of special training or
18 education for other people who work in your field or in
19 the general area of arson investigation and detection?

20 A Yes. I teach the fire investigators at the South
21 Carolina Fire Academy there in Columbia. I teach them the
22 evidence collection portion of their course work. It's a
23 two-week course. I teach about an hour and a half of
24 that.

25 Q And have you trained any prosecutors in prosecuting

1 arson cases?

2 A Yes, I have.

3 MS. HERVEY: Your Honor, at this time, we would
4 proffer Mr. Alex Layton as an expert both in the detection
5 of accelerants used in fires and fire science.

6 THE COURT: Any objection as to qualifications?

7 MR. ALLEN: No objection, Your Honor.

8 THE COURT: Neither field?

9 MR. ALLEN: No, sir.

10 THE COURT: So qualified.

11 You may proceed, Counsel, without objection.

12 MS. HERVEY: Thank you.

13 BY MS. HERVEY:

14 Q Let's start first with the items that you examined in
15 this particular case and the items that were submitted to
16 you by Steven Curtis. Let me show you what's been
17 previously marked as State's Exhibit No. 3 for
18 identification purposes only. I just ask you to look into
19 that box and determine whether or not its contents contain
20 items tested by you as part of your examination in this
21 particular case?

22 A No, ma'am. I don't recognize any of these items in
23 this box.

24 Q It might be the wrong number. I'm sorry. Let me get
25 the right number. I'm sorry.

1 It's State's Exhibit No. 15.

2 THE COURT: What's the exhibit number for the record?

3 MS. HERVEY: State's Exhibit No. 15, Your Honor.

4 BY MS. HERVEY:

5 Q Look in that box. Maybe we'll get lucky this time.

6 A Yes, ma'am. I recognize both of these items as
7 State's Exhibit No. 15. They have my initials, the date,
8 and the item numbers.

9 Q And, just briefly, before we take those items out and
10 examine them, if you could, educate the jury about what
11 gas -- you said that big mouthful of a word, gas
12 chromatograph whatever, and just explain what you do and
13 how you do it.

14 A Okay. Essentially, once evidence is brought in in a
15 properly sealed container to the laboratory, I open the
16 box that the evidence comes in. And we usually receive
17 evidence mostly through a sealed box system so that the
18 fire investigator or whoever is bringing it -- it may be
19 just a new guy on the force bringing the evidence up --
20 they seal the evidence up in a box, put their initials,
21 and tape across it so that no matter how many people
22 handle that box, as long as when I open the box, if the
23 evidence seal has not been broken, then I know that the
24 evidence is still safe and secure.

25 Q And if that seal has been broken, would you then test

1 that evidence?

2 A I would first make a note of it on my SLED worksheet.
3 Then I would also go down to the evidence log and find out
4 why it was not sealed when it came in.

5 Q In this particular case, was it sealed when you
6 received it?

7 A Actually, one item was sealed -- one of these items
8 was sealed in this box when I received it.

9 Q You tested another item and we'll get to that later.
10 But this initial item was in a sealed container when
11 you got it?

12 A Yes.

13 Q And once you get the sealed container, what do you do
14 after you open it up and find out what's in it?

15 A All right. Then I take -- whether it's a can, bag,
16 or jar, in this particular case, it was two metal
17 paint-type cans. I punch a hole in the top of the paint
18 can. And I also put a label on it with my initials, date,
19 time, and what item number it is in this particular case.
20 And I put an activated charcoal strip, which is -- what I
21 do is absorb -- activated charcoal was found to be able to
22 absorb compounds, much like a sticky note, it just barely
23 sticks to a substance. Activated charcoal allows
24 molecules to absorb on the surface of it.

25 And then what I do is take that C strip and that

1 container, place it in an oven at 60 degrees centigrade
2 for 16 hours. What that allows is if there's any
3 ignitable liquids present in that fire debris, they will
4 go from a liquid to a gas state. Then they will interact
5 with that C strip and be absorbed onto it.

6 Then I take that C strip out after 16 hours, which is
7 overnight, come in the next day, pull the cans out, bags
8 or jars, place the C strip in a small tube, and wash the
9 tube with carbon disulfate. And that's just a solvent
10 that pulls everything off that's been absorbed onto that
11 carbon strip. I take that and filter it and put it into a
12 little small vial. And I need it in a small vial because
13 I'm going to inject a small amount of that liquid. We're
14 talking less than a half millimeter of liquid, which is a
15 very small amount.

16 I inject one microliter of that liquid into a gas
17 chromatograph. Now, a gas chromatograph is a big word,
18 but I'll break it down for you. It's an instrument that
19 allows me to separate mixtures into pure components. And
20 I can identify those mixtures by pattern matching, first,
21 if I can recognize the pattern just from my experience in
22 the laboratory.

23 But the next -- we also have another instrument
24 called a gas chromatograph mass spectrometer. And the
25 mass spectrometer, all it does is identify individual

1 compounds. It can tell you if it's saline, if it's
2 benzine, if it's etymemazine, methylbenzene, whatever. It
3 can give you its unique structure. So it's kind of like a
4 fingerprint. And you can then find these compounds that
5 are present in accelerants. Most accelerants are
6 multicomponents. There's many components in accelerants.

7 So upwards -- gasoline can have up to 300 components
8 in it. Most of them are tiny. And I only look at about
9 anywhere less than 20. But I get the pattern and
10 recognize most of them over time.

11 So I do two tests. I do a gas chromatograph test and
12 a mass spectrometer test on the same sample. One is done
13 first, the second -- the mass spectrometer test is done
14 secondly to identify.

15 In this particular test, I did notice that after -- I
16 washed the solvent off the C strip. I placed it in the
17 gas chromatograph, ran the instrument, and got it graphed.
18 I noticed there was something in the beginning on my item
19 listed as #17. There was a lot of peaks coming at the
20 beginning. That told me there was probably a very
21 volatile set of compounds present in there.

22 I was able to further look at the pattern and
23 recognize it as something like what we call a light
24 petroleum product. When crude oil comes out of the
25 ground, they take that crude oil and they heat it up. And

1 the volatile components, the ones that vaporize real easy,
2 they are easily distilled over. They're trapped first.
3 Then you get the medium components, which are a little bit
4 heavier, a little bit longer molecules, a little bit
5 harder to evaporate. Then you get the heavy petroleum
6 products which come out. They are separated. They go
7 from medium to heavy as far as their range is concerned.
8 So we have three different ways.

9 Now, gasoline comes out a little differently. It's a
10 whole different process. And it comes out as a mixture of
11 compounds. And sometimes they have to add compounds back
12 into it to get the octane level up. And the octane level
13 is what you're familiar with gas. You have the choices
14 there when you go to choose. So the refinery sets all
15 those parameters and they ship it out.

16 In this particular case, Item #18 on my list --

17 Q Let's go back to Item #17 and start with that.

18 A Okay.

19 Q And you were going over that you saw a lot of heavy
20 volatile compounds there --

21 A No. I'm sorry. A lot of light volatiles.

22 Q I'm sorry. And if you could, what were you able to
23 discern about the nature of Item #17 -- and first, before
24 we go there, you said you took the sample. When you get
25 it, what's the physical condition? What's inside the can

1 or bag submitted to you in terms of Item #17?

2 A Okay. Item #17 was listed as one metal can
3 containing a corkscrew and a small metal can from pool
4 table.

5 Q And did you physically examine those items?

6 A Yeah. I looked at them after the analysis. I opened
7 them afterwards.

8 Q So do you put the charcoal strip in there with these
9 things in the can then?

10 A That's right.

11 Q And you try to just pull anything within there?

12 A Right. If there's any volatile compound inside,
13 either on the corkscrew or in that metal-type can, small
14 meta- type can. It's a very small can inside this quart
15 can. And I was able to pull off some light petroleum
16 products, which turned out to be some sort of lighter
17 fluid similar to Gulf lighter fluid or -- let's see --
18 Zippo lighter fluid, Rite-Aid lighter fluid, and possibly
19 Oops. It was most similar to those patterns.

20 Q And when you say that, do you go to the store and buy
21 Gulf lighter fluid and test that so you have that known
22 comparison? Is that how you make that comparison?

23 A Yes, ma'am. I have a reference collection of
24 approximately 200 -- probably closer to 300 ignitable
25 liquids -- known ignitable liquids.

1 Q And you perform the same type of analysis, but you
2 know going in there that this is what they sell at the
3 store?

4 A Exactly. Yes, ma'am.

5 Q So you stated that more than likely, Item #17
6 contained some type of lighter fluid, any number of these
7 three it could have been?

8 A That's correct.

9 Q All right. And then you were submitted Item #18?

10 A Yes, ma'am.

11 Q Was that submitted -- and let me show you -- and I
12 tried to keep the same numbers. State's Exhibit No. 16,
13 did you, actually, get this item to retrieve a sample from
14 it?

15 A Yes, ma'am. This is the item that was brought to me.
16 Actually, inside here, it has my initials, date, and the
17 laboratory file number. This is what I removed from this
18 red metal gasoline-type can to analyze.

19 Q And, obviously, you can't just bait the gasoline can,
20 that's not appropriate. So just explain if there was a
21 different procedure by which you went through in achieving
22 this sample.

23 A Well, in this particular case, there was some liquid
24 in there. And I usually remove the liquid before latent
25 prints does any -- because they don't want to mess with

1 any ignitable liquids in their laboratory.

2 So I removed the ignitable liquid, which was --
3 smelled like gasoline, made a note that it was positive to
4 me like gasoline. There was 210 milliliters of gasoline
5 in this particular container. I placed it in a quart -- a
6 small amount in a quart can and placed the rest in a glass
7 jar. And then I placed that quart can in the oven, heated
8 it just like I did Item #17, which was the metal can and
9 the corkscrew. And the compounds were absorbed on the
10 activated charcoal strip, then wash with carbon disulfide,
11 then injected into the gas chromatograph first, and then
12 the gas chromatograph mass spectrometer and identified the
13 components to be gasoline. It matched perfectly to my
14 standard, 50 percent, of gasoline.

15 Q You didn't go through any process to try to say
16 Citgo, BP, or any of that type of stuff?

17 A No. The FBI has done some studies on it and they had
18 very limited success. Because what happens is sometimes a
19 tank or truck load will have -- in the old days, back in
20 the '90's and stuff like that, they used to have extra gas
21 and they would take it and dump it into Exxon's pump. And
22 if Exxon had extra, they would sell it to Hess. And Hess
23 would -- they would sell it back and forth. And there's
24 really no way to know exactly which brand is which, but
25 just identify it just as gasoline.

1 MS. HERVEY: Your Honor, at this time, we would move
2 State's Exhibit Nos. 15 and 16 into evidence.

3 THE COURT: Any objection?

4 MR. ALLEN: No objection.

5 THE COURT: Ladies and gentlemen of the jury, State's
6 Exhibit Nos. 15 and 16 are admitted into evidence without
7 objection. State's Exhibit Nos. 15 and 16 in evidence.

8 You may publish.

9 (WHEREUPON, State's Exhibit Nos. 15 and 16 were was
10 admitted into evidence.)

11 BY MS. HERVEY:

12 Q Now that we've identified those items, I want to just
13 talk to you briefly about the accelerant potential of both
14 lighter fluid and gasoline, and how they affect a fire in
15 a fire proceeding given various fuel loads and those type
16 of things. And I ask that you explain those terms as we
17 go along. We talked about them initially, but let's just
18 put them in context for the jury.

19 Lighter fluid, is it a good accelerant? Is it a bad
20 accelerant? What does it do to a fire, those type things,
21 both in terms of initial ignition and duration?

22 A Well, all I can say is about the lighter fluid that I
23 found is an extremely volatile compound. In other words,
24 it's going to go from a -- liquids don't burn. Liquids
25 have to mix with oxygen. Remember that fire triangle

1 where you've got oxygen, fuel, and ignition source. So
2 what happens is the liquid has to go from a liquid to a
3 gas and then burn, mix with oxygen, and then burn much
4 like your automobile vehicle.

5 And what happens is the lighter -- the most light
6 compounds are the ones that are going to go from liquid to
7 gas first. And then as the heat energy is put into it,
8 everything will eventually get up into the gas phase and
9 burn extremely rapidly. And you have the great potential
10 for explosions with light petroleum products, such as
11 cigarette lighter fluid.

12 There's some copier -- used to be old -- the old
13 copiers used to use cleaning solvents for cleaning them.
14 So there -- and there's Oops and Goof Off and different
15 compounds now that are extremely volatile and have extreme
16 explosive potential. So you have to be very careful with
17 light petroleum products. And they're going to burn very
18 rapidly and very hot initially. And, you know, they're
19 going to really evaporate and burn real quickly and
20 rapidly.

21 Q So big flash, big boom?

22 A Exactly.

23 Q Well, what about once they ignite and continuing to
24 fuel that fire?

25 A Well, once they ignite, once all the fuel is burned

1 up, then unless you get the ordinary combustible -- and
2 that's the whole purpose of using an ignitable liquid in a
3 fire is to get the ordinary room combustible, such as
4 carpet, wood, furniture up to their ignition temperature,
5 also. You have to convert a solid to a gas. And that's
6 what the fire does. It, actually, burns the wood and
7 creates more compounds from that wood to burn itself.

8 So once they get up going and all the ignitable
9 liquid is gone, it's going to lose a lot of its potential
10 unless you get a lot of the ordinary combustibles that are
11 present up to their ignition temperature.

12 Q And, normally, is it typical when you do arson
13 investigation and collect that evidence to have the can
14 still there where you're testing that?

15 A Yes, it is.

16 Q And when you don't have that, then what do you do?
17 What do you look for?

18 A Well, I look for patterns in the compounds that are
19 present in the chromatograph that I get from the GC and
20 the mass spectrometer. And I can usually tell what the
21 components are from the mass spectrometer. And most of
22 the time, I can identify it as an ignitable liquid. If I
23 can't, I have to send it out negative or inconclusive.

24 Q And focusing more on you being familiar with
25 collecting evidence at an arson scene, are you able from

1 the debris that remains there -- able also at times to
2 detect accelerants?

3 A Oh, yes. Sometimes I can find it, depending on what
4 the material is. It has to be a material that's protected
5 and absorbent at the same time. And those are pretty much
6 wood, paper, cloth, material like that. And it also has
7 to be protected.

8 Usually, we find accelerants up under protected
9 areas, such as furniture, up under beds sometimes, the
10 edges of walls, concrete surfaces where they meet, up
11 under tile, vinyl flooring. You can find the accelerant
12 present under there, too.

13 Q But what about lighter fluid, in particular, is that
14 easy to find, the presence of that in the remnants of fire
15 debris?

16 A It depends on -- again, the factors are how much was
17 poured initially, how long it burned, and what the
18 material was that it was poured on. If it was poured on a
19 solid surface like this, I wouldn't expect it to last long
20 at all. If it was poured on the carpet, I would expect to
21 find some residue of it.

22 Q If it was poured on a vinyl pool table cover, would
23 you expect to find the residue there?

24 A If it's vinyl, it's not going to absorb it. So it
25 would probably, eventually, burn up with the vinyl itself

1 and not be present with any kind of fire debris.

2 Q And is the burning -- what it burns?

3 A Right.

4 Q If it burns vinyl, or wood, or carpet, in particular,
5 can those things in any way contaminate the sample in any
6 way to make it harder to detect the presence of
7 accelerants?

8 A Sometimes they can, yes, depending on how much
9 accelerant is left. Sometimes it can interfere. We can
10 get interferences, but we do run comparisons. We burn
11 carpet, we burn plastics, we burn couch material, chair
12 material just to be sure -- so we know exactly what -- no
13 accelerant present on them, just take a hot torch and burn
14 them and put them in the can, put a C strip in there with
15 them, and then run the analysis so that we know what
16 background to look for.

17 Q Does lighter fluid -- what is its propensity to leave
18 that signature in the fire debris versus heavier petroleum
19 products like diesel fuel or gasoline?

20 A Oh, I would expect to find kerosene or diesel fuel
21 given everything being equal. More than likely, I would
22 find it because it would have the propensity -- because it
23 has much heavier molecules. And they can survive longer
24 in a fire. But, again, it would depend on how much was
25 there and what the surface was that it was poured on.

1 Q Let me show you what's been previously marked and
2 admitted as State's Exhibit Nos. 34-D, 34-E, and 34-F, and
3 just ask you to look at these pictures of the crime scene
4 in this particular case and if you can -- and also State's
5 Exhibit No. 34-N also admitted. And in those pictures of
6 the fire scene, are you able to detect any fire damage to
7 that particular room and area?

8 A Yes, ma'am. I notice that the fire damage is on
9 this, what looks to be like a table, a game table of some
10 sort, possibly a pool table. It has a cover on it, it
11 looks like, and some other kind of clothing material on
12 there, also.

13 Q And is there any -- does that fire -- so it appears
14 that the pool table has been burned?

15 A Yes, ma'am.

16 Q Did the damage extend anywhere else to the structure,
17 the discoloration to the ceiling or surrounding walls, or
18 anywhere else?

19 A It appears to have some soot damage all around the
20 interior top of the wall in the pictures here. And the
21 ceiling, it is hard to tell. It has sort of a black
22 material hanging down from it or something. And there's
23 soot damage on this, State's Exhibit No. 34-N, some soot
24 damage on it. So something burned real hot and fast right
25 there and left soot damage, which is incomplete

1 combustion.

2 Q And when you say hot and fast, is that consistent or
3 inconsistent with lighter fluid being used as an
4 accelerant?

5 A That would be consistent with lighter fluid, yes,
6 ma'am.

7 Q So taking the hypothesis that we put this lighter
8 fluid on this pool table and set it on fire in that
9 particular room, what would you expect in terms of the
10 nature of the fire that progresses?

11 A I would expect it to be very hot, very rapid flash,
12 burn. And once the accelerant that's -- if it's on the
13 plastic cover and doesn't penetrate through the -- and
14 doesn't absorb into the material below it, it's going to
15 burn up pretty quickly and go out.

16 Q And let me draw your attention -- I need to get you
17 another picture. Hold on.

18 I'm showing you State's Exhibit No. 34-C previously
19 admitted into evidence. And I just ask you, looking at
20 the fire damage, in particular as to the floor of this
21 area, what, based on your knowledge of fire science,
22 occurred there?

23 A Just looking at this particular photograph, which is
24 State's Exhibit No. 34-C, it appears that there was some
25 melting and burning on the edge of the pool table. And it

1 spilled over and just landed and continued to burn a while
2 on the floor, but never got -- that's probably -- it's
3 hard to tell if that's ceramic tile or whatever. But it
4 didn't burn. It charred and left charred material there.

5 Q Ceramic tile is not really a good fuel source?

6 A No.

7 Q It doesn't burn?

8 A It doesn't burn.

9 Q So if that clothing had caught on fire and then
10 dropped over, it would have burned to the extent that it
11 had the energy, and the oxygen, and the fuel to do it.
12 But once that happened, it would self-extinguish?

13 A That's correct.

14 Q And is that the same thing that would have happened
15 on that pool table?

16 A Yes, ma'am.

17 Q And you stated that after you examined the items in
18 your, I believe, Item #17 --

19 A Yes.

20 Q -- you opened the can just to see what more
21 particular was inside it?

22 A Yes.

23 Q And showing you State's Exhibit No. 34-L, does that
24 picture depict items found within that can?

25 A Yes, it does. It's a small little can that looks

1 like what I'm familiar with lighter fluid coming in. But
2 it could have been, like I say, Oops or Goof Off or
3 something similar to that. And there's a metal -- it
4 looked like some sort of opener with a corkscrew on it.
5 It looks like a knife or some sort of blade thing.

6 Q All right. So do you have an opinion as to -- if the
7 hypothesis is taken that the lighter fluid was used to
8 ignite the fire on the pool table with it being found
9 there and lighter fluid being found it in, setting that
10 pool table on fire, based on those pictures, once it
11 ignites, why does it not spread beyond soot and smoke-type
12 damage to the surrounding structure?

13 A Because there was not enough ordinary combustibile
14 there that got hot. You just burn the vinyl, burn the
15 clothing, and that wasn't enough to generate enough heat
16 to burn the pool table.

17 Q But is it creating enough smoke or heat or those type
18 things? Is that spreading beyond the pool table and
19 affecting the surrounding structure?

20 A Oh, yes. You'll get some radiant heat or radiant
21 energy from the fire itself and you'll get some soot
22 damage. You can tell where the fire goes up and out. So
23 the fire would go straight up and the heat would go
24 straight up, hit the ceiling and come down the walls.

25 Q And it would have spread, if it was sufficient

1 enough --

2 A If it spread --

3 Q -- throughout the entire structure?

4 A Right.

5 Q Moving you now to Item #18, which you've previously
6 stated gasoline was your finding in that particular gas
7 can, is part of your experience in fire science also
8 looking at the burning of cars or those particular things?
9 Have you done those, controlled burns with vehicles?

10 A I've been a part of one. I've never done one as far
11 as the laboratory itself. But I've been a part of one at
12 the fire school. We did, actually, fire debris and they
13 collected the samples. And I analyzed them and presented
14 the results the next day in class.

15 Q When you light gasoline, do you have the same instant
16 big heat and flash that you talked about with lighter
17 fluid?

18 A Yes, you will. You will have it extremely. Because
19 gasoline is in the light range and also into the variance
20 of medium. So you're going to have that immediate initial
21 flash, too.

22 Q To rush up and those type things?

23 A Yes.

24 Q And if you lit a fire on the ground next to a car, is
25 there any reason why it would not spread into the car,

1 even if there was gasoline in that car?

2 A The only way I could think of is that if it didn't
3 get enough -- again, you've got to have your fire
4 triangle. You've got to have the oxygen, fuel, and
5 ignition source.

6 So, apparently, there was not enough heat to come up
7 and get in the car. You've got to get it in the car,
8 light it in the car somewhere. Apparently, it didn't get
9 lit in the car or the vehicle.

10 Q And if the doors are closed or the windows are
11 closed, is it going to invade that car?

12 A It should not, no, ma'am.

13 MS. HERVEY: Nothing further of this witness.

14 THE COURT: Cross-examination?

15 MR. ALLEN: I don't have any questions of this
16 witness, Your Honor.

17 THE COURT: As to this witness, Solicitor?

18 MS. HERVEY: He may be excused.

19 THE COURT: Any objection?

20 MR. ALLEN: No, sir.

21 THE COURT: You may step down. And you're excused.
22 Call your next witness.

23 MS. HERVEY: Ila Simmons, Your Honor.

24 THE CLERK: Place your left hand on the Bible and
25 raise your right.

1 WHEREUPON,

2 ILA SIMMONS,

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

4 THE CLERK: Please be seated.

5 THE COURT: Use that microphone for me.

6 And state your full name and spell your last name for
7 the court reporter.

8 THE WITNESS: My name is Ila Simmons, last name,
9 S-I-M-M-O-N-S.

10 THE COURT: Your witness, Counsel.

11 DIRECT EXAMINATION

12 BY MS. HERVEY:

13 Q Ms. Simmons, you're also employed with SLED?

14 A I am.

15 Q And do you work under Alex Layton?

16 A Yes, I do.

17 Q In the trace department at SLED?

18 A Yes.

19 Q Not conducting the same type of examination as he
20 does?

21 A I do analyze arson evidence, as well as other trace
22 evidence disciplines.

23 Q What other trace evidence disciplines do you focus
24 on?

25 A I analyze gunshot residue, which helps us to

1 determine whether someone's hands have been in the
2 vicinity of a weapon or firing a weapon. We analyze
3 explosive residues. We do paint and fiber comparisons, as
4 well as fire debris.

5 Q And prior to and during your tenure at SLED and
6 working under Alex Layton, what type of special training
7 and education have you received in the field of trace
8 evidence analysis?

9 A I began with a Bachelor of Science degree in
10 Chemistry. I came straight from college into SLED. It
11 was my first employment. I underwent an in-house training
12 program that took about three years in all areas of trace
13 evidence in all the ones I mentioned before.

14 I've also gone to numerous schools taught by
15 different scientific affiliations, the FBI, the ATF. And
16 I'm a member of the gunshot residue analysis symposium
17 that's hosted by the FBI where the FBI goes out and
18 invites analyst of gunshot residue in to discuss protocols
19 and standards for gunshot residue analysis.

20 MS. HERVEY: Your Honor, at this time, we would
21 proffer Ila Simmons as an expert in gunshot residue kit
22 examination and analysis.

23 THE COURT: Any objection to qualifications?

24 MR. ALLEN: No objection.

25 THE COURT: So qualified without objection.

1 You may so proceed, Counsel.

2 Ladies and gentlemen, you recall my earlier
3 instruction to you concerning expert testimony.

4 MS. HERVEY: Thank you, Your Honor.

5 BY MS. HERVEY:

6 Q I'm going to show you what's been previously marked
7 as State's Exhibit No. 9, and ask you if that bears any of
8 your markings -- or its interior does and how they relate
9 to the examination that you conducted in this particular
10 case?

11 A Yes. These were the two gunshot residue kits I
12 analyzed in this case. They're marked with our laboratory
13 identification number, an item number, and my initials.

14 Q And that's so later on, you can confirm those are the
15 actual kits that you examined?

16 A Correct.

17 Q And let's start with your Item #9 contained within
18 State's Exhibit No. 9. And if you could, take that out --
19 and before we do that, your State's Exhibit No. 10, I
20 believe, is a GSR kit from Barry Frady; is that correct?

21 A Yes. We have two GSR kits here. We have one from
22 Jim Frady and one from Barry Frady, all of them in State's
23 Exhibit No. 9.

24 (WHEREUPON, State's Exhibit No. 10 was marked for
25 identification only.)

1 BY MS. HERVEY:

2 Q If you can, take State's Exhibit No. 10, and mark it
3 on the one for Barry Frady.

4 A Okay.

5 Q And just briefly, before we get into what you did in
6 this particular case, what is a GSR kit? What are we
7 looking for? What's inside of it? And how to you analyze
8 it?

9 A Gunshot residue is a mixture of chemicals that come
10 out of the gun when it's fired. They come from within the
11 cartridge or what's also known -- commonly called a
12 bullet. It's a mixture of lead, barium, and antimony.
13 When a gun is fired, this comes out and can get on
14 anything in close proximity to the weapon when it's fired.
15 That includes the person shooting the weapon or anything
16 within about five feet of a handgun, or extended out to
17 maybe 20 feet with a long rifle or a shotgun.

18 When we analyze these kits, they come in and they
19 have particle lifts first. It's one part of the
20 examination. It's, basically, double-sided tape with a
21 handle. And they take this double-sided tape and they dab
22 it over the different areas of the hands. You get a
23 sample collected from the back of the right hand, the palm
24 of the right hand, a sample from the back of the left
25 hand, and the palm of the left hand. And we're looking

1 for the three elements that I mentioned in a certain
2 concentration with one another.

3 Q And are there swabbings of any kind in a GSR?

4 A Yes. There is also swabbings as well.

5 Q And what is the difference between the swabbings and
6 the double-taped tabs you're using?

7 A The swabbing helps us get a concentration of how
8 much -- of each element present on the swabs. And the
9 particle lifts or double-sided sticky tape would help us,
10 actually, look at the particles and see what the particles
11 look like and what elements are present.

12 Q And why is it important that you -- the location of
13 the gunshot residue and a concentration of it, why are
14 those factors important in interpreting the results of the
15 GSR kit?

16 A Because the concentration helps us determine,
17 perhaps, how the hands were positioned during the
18 shooting. The particle lifts help us to determine that it
19 is truly verified as gunshot residue.

20 Q And what is the significance of looking and making
21 sure that we have a sample from the palm versus the back
22 of a hand?

23 A So that we can determine the position of the hands
24 when a gun is fired. If I were to just fire a gun using
25 one hand, there would be nothing on my left hand. If I

1 were being fired upon, if I were to throw both of my palms
2 up like this, you would get large amounts of gunshot
3 residue just on the palms, but not necessarily the backs
4 of the hands.

5 Q Describe a weapon we would expect to see it on the
6 back and not the palm of the hands?

7 A When firing a gun, you can also get it on the palms
8 of the hands, but it will be decreased amounts. You would
9 find more on the backs of the hand than the palms of the
10 hand.

11 Q And the positioning of the hands being in front of
12 the gun, why is that important? Because you said about
13 your hands being up. But if your hands are just laying
14 down or by your side or some other way, would you find it
15 present elsewhere?

16 A You can. It is a possibility.

17 Q And focusing now on Item #9, which is the GSR kit
18 from James Frady. What did you find as to the results of
19 that kit after you analyzed it?

20 A I found that gunshot residue was found on the palm
21 and back of the right hand. And slightly less amounts of
22 gunshot residue were found on the palm and back of the
23 left hand.

24 Q And is that consistent with an individual firing a
25 weapon or being in front of a weapon when it was fired?

1 A Either one could apply. However, the levels are
2 slightly elevated more so than what we usually find on
3 someone firing a gun.

4 If we're looking at concentrations, we're looking at
5 about ten counts of antimony and maybe 200 counts of lead.
6 In this particular gunshot residue kit, we found like
7 4,000 counts of lead. So it's much more elevated, which
8 is more consistent with having been on the muzzle end of
9 the gun or where the bullet comes out than being behind
10 the gun firing a gun.

11 Q And let's back up briefly. Assuming we're talking
12 about a shotgun being used as a weapon in this case. Is
13 there any particular thing that you look at that's a
14 telltale sign that a shotgun is being used from a GSR kit?
15 Does high presence of lead indicate a weapon of that
16 nature versus a revolver or something like that?

17 A As you increase the caliber of the weapon or the
18 weapon gets technically larger, there's going to be more
19 gunshot residue exposed from that.

20 Q And the levels that you detected in the GSR kit from
21 James Frady, are they consistent or inconsistent with
22 being in front of a shotgun blast?

23 A They are consistent, yes.

24 Q So you stated 4,000 more being in front. Having shot
25 a shotgun, you would expect that to be in the ten range?

1 A Maybe around 200 to 500 counts, as opposed to 4,000.

2 Q All right. And you also examined a GSR kit, #10,
3 from Barry Frady?

4 A Yes.

5 Q And what did you find with Barry Frady's GSR kit?

6 A I found that gunshot residue was present on all
7 areas.

8 Q The back of the hands and the front of the hands?

9 A Correct.

10 Q And, again, as to the concentration levels, what did
11 that tell you as to whether or not being in front of a gun
12 or shooting a weapon?

13 A On the left hand, it's very high. The amounts that
14 we found are like 5,000 counts of lead. Therefore, that
15 was an indication that it would be more so in front of the
16 gun, in the muzzle area of the gun instead of shooting a
17 weapon.

18 Q So it's more consistent with being in front of a
19 shotgun?

20 A Yes.

21 Q And does the number of shots fired at this particular
22 individual also effect the amount of lead that you were
23 able to detect?

24 A Yes. As you shoot more times, the more gunshot
25 residue is going to be expelled and the more it's going to

1 contaminate the hands.

2 Q And you stated these levels are also more closely
3 associated with a shotgun than a small caliber handgun?

4 A Yes, if you were on the muzzle end of this weapon.

5 MS. HERVEY: All right. Nothing further from this
6 witness.

7 Oh, one more thing, Your Honor.

8 At this time, we would move State's Exhibit Nos. 9
9 and 10 into evidence.

10 THE COURT: Counsel, because you're referring to item
11 numbers, ask the witness to identify them for the record,
12 if you would, so it is clear for the record as to what is
13 State's Exhibit Nos. 9 and 10 for identification.

14 BY MS. HERVEY:

15 Q And if you could do that.

16 A State's Exhibit No. 10 is the GSR kit from Barry
17 Frady. And State's Exhibit No. 9 is from Jim Frady, Jr.

18 THE COURT: Any objection as to State's Exhibit
19 Nos. 9 and 10?

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

21 THE COURT: Ladies and gentlemen of the jury, State's
22 Exhibit Nos. 9 and 10 will be admitted into evidence
23 without objection.

24 (WHEREUPON, State's Exhibit Nos. 9 and 10 were
25 admitted into evidence.)

1 THE COURT: You may publish, if you so desire.
2 Cross-examination?
3 MR. ALLEN: No questions of this witness, Your Honor.
4 THE COURT: As to this witness, Solicitor?
5 MS. HERVEY: She may be excused.
6 THE COURT: Any objection?
7 MR. ALLEN: No objection.
8 THE COURT: Ms. Simmons, you may step down. And you
9 are excused.
10 Thank you very much.
11 MS. HERVEY: May we approach?
12 THE COURT: Counsel, approach.
13 (WHEREUPON, a bench conference was held.)
14 THE COURT: Call your next witness.
15 MS. HERVEY: The State calls Dr. Brett Woodard to the
16 stand.
17 THE CLERK: Place your left hand on the Bible and
18 raise your right.
19 WHEREUPON,
20 BRETT WOODARD, M.D.,
21 after first having been duly sworn, testified as follows:
22 THE CLERK: Please be seated.
23 THE COURT: Good afternoon, Dr. Woodard.
24 Make yourself comfortable. That chair won't slide
25 up. It will turn. And you can raise the microphone up

1 and down.

2 I would like for you to begin, if you would, by
3 stating your full name and spelling your last for the
4 court reporter.

5 THE WITNESS: Brett Otin [phonetic] Woodard,
6 W-O-O-D-A-R-D.

7 THE COURT: Your witness, Counsel.

8 DIRECT EXAMINATION

9 BY MS. HERVEY:

10 Q Dr. Woodard, with whom are you currently employed?

11 A Piedmont Pathology Associates.

12 Q Do you have any other duties and responsibilities?

13 A No.

14 Q And your work with Piedmont Pathology, what are your
15 duties and responsibilities with that practice.

16 A I do forensic autopsies as a portion of my work. And
17 then I do general pathology as other portions of my work.

18 Q And the forensic autopsies that you conduct, for
19 which counties or particular locations do you do those?

20 A Anderson, Oconee, Abbeville, Greenwood, and Laurens
21 County.

22 Q And how long have you been so employed -- or
23 conducting forensic autopsies?

24 A Since 1982.

25 Q And approximately during that tenure, how many

1 autopsies have you performed, if you can say?

2 A 150 to 200 per year during that time period.

3 Q So in the tens of thousands, that type range, at
4 least?

5 A That's correct.

6 Q And prior to and during your tenure with Piedmont
7 Pathology, what type of special training and education
8 have you received in the field of forensic pathology?

9 A I trained at the North Carolina Medical Examiners
10 Office in Chapel Hill, North Carolina. I also received
11 training from the FBI and the Armed Forces Institute of
12 Pathology.

13 Q And what is just your general educational background
14 prior to that specialized training?

15 A I received a Bachelors Degree from the University of
16 Pittsburgh. I attended medical school at Tulane
17 University. I did an internship at Charity Hospital of
18 New Orleans. And I did a residence of pathology at Duke
19 University Medical School.

20 Q And have you previously been qualified as an expert
21 in the field of forensic pathology in courts in this
22 state?

23 A Yes, I have.

24 Q And have you ever testified outside of this state?

25 A Yes, I have.

1 MS. HERVEY: Your Honor, at this time, we would
2 proffer Dr. Brett Woodard as an expert in the field of
3 forensic pathology.

4 THE COURT: Any objection?

5 MR. ALLEN: No objection.

6 THE COURT: So qualified without objection.

7 You may proceed, Counsel.

8 BY MS. HERVEY:

9 Q If you could, just, please, explain the term
10 "forensic pathology" to the jury, what it means, and how
11 it relates to what you do for a living.

12 A Forensic pathology is the study of injury to the
13 human body. An injury may be by gunshot. It may be by
14 mechanical means, sharp injuries such as knives or other
15 sharp objects. It may be what we refer to as blunt
16 injury, meaning that a force is applied to the body which
17 produces a crushing or breaking type injury to the body.
18 It is to determine the causation of those injuries and
19 what effect those injuries would have on the functional
20 nature of the individual.

21 It also includes the field of toxicology, what the
22 chemicals are in the body, what kind of effect or
23 limitations or altering they may have produced in the way
24 the injury presented itself or caused limitations to the
25 individual.

1 Q And as part of that forensic pathology or autopsies
2 that you conduct, do you also do things such as retrieving
3 evidence from inside the body as it may relate to the
4 cause of death or other forensic value?

5 A Yes, we do.

6 Q And, if you could, just briefly, generally, in
7 general terms, talk to the jury about what is the
8 procedure by which you go through in completing an autopsy
9 or conducting one.

10 A We will receive the body from the coroner's office of
11 a given county, usually with a summary narrative prepared
12 by the coroner or verbally given to us by the coroner.
13 We'll examine the body as we receive it in the clothing
14 that it's received and photograph the exterior of the body
15 in the condition we receive the body.

16 We then will remove the clothing and any materials
17 that may have been on the exterior of the body. We'll
18 remove and collect and identify those. Then we'll examine
19 the body for any kind of exterior signs of injury or
20 trauma.

21 And then we will follow those injuries or trauma into
22 the body to see what additional trauma was produced below
23 the surface of the skin in the body, collecting any
24 evidence of that trauma as we go, be it photographically,
25 in the case of blunt trauma, or in the case of a

1 projectile, we retrieve the projectile or parts of the
2 projectile, identify those, and place them into evidence.

3 We also collect body fluids so that it can be
4 analyzed and examined at later times for evidence of
5 chemical interactions with the body such as medications,
6 drugs, alcohol, or combustion products.

7 Q All right. And in this particular -- as a result of
8 that, did Karl Addis, the coroner of Oconee County, ask
9 you to perform an autopsy on Barry Frady?

10 A Yes, he did.

11 Q And just, generally, if you could, describe the
12 general condition that you observed from the exterior of
13 Barry Frady?

14 A Barry Frady had two shotgun wounds to the body. And
15 there was evidence of soot on the exposed skin of the
16 body.

17 Q And that soot, is that necessarily something you
18 associate from the shotgun or from some other source such
19 as a fire?

20 A No. This is a fire or the incomplete carbonaceous
21 materials of a fire.

22 Q And the soot, did that, actually, cause damage to his
23 body or was this just a powder-type coating?

24 A It's just a thin coating that landed on the surface
25 of the body and adhered to it.

1 Q Did you ever observe any burning, charring, pinking,
2 or other heat or fire damage to Barry Frady, other than
3 the sooting?

4 A Just the soot.

5 Q And you stated that it appeared that he had two
6 shotgun wounds just from your exterior examination?

7 A That's correct.

8 Q And where were those shotgun wounds?

9 A One shotgun wound was on the right side of the neck,
10 passed in an upward direction and then struck the bones in
11 the back of the neck tearing the spinal cord. On its
12 passage, it resulted in the tears to the carotid artery
13 and to the juggler vein on the right side of the neck.

14 Q Did it exit the other side of his neck or the back of
15 his neck in any way?

16 A No. The pellets came into the back portion of the
17 muscles of the neck and skin and stopped.

18 Q And where was the other shotgun wound to Barry Frady?

19 A The second shotgun wound was to the abdomen below
20 where the breast plate stops in the upper central portion
21 of the abdomen, just a little bit right of the midline.
22 And it passed backwards to the left into the chest cavity.
23 And the projectiles then -- a portion passed out the back
24 of the chest cavity, but a portion remained within the
25 body.

1 Q And you stated there were shotgun wounds. What about
2 the particular nature of these wounds lead you to believe,
3 in your opinion, that they were shotgun wounds?

4 A I retrieved from the left upper wound a series of
5 birdshot, fine small pellets that are used in a shotgun.
6 Plus. The plastic cup that these are held on -- in when
7 they're loaded by the shotgun maker, you know, as well as
8 the size, the physical size of the entry hole told me that
9 it was a shotgun wound.

10 The second wound on the surface of the shirt was a
11 fine white plastic particulate matter. Inside the body
12 was a plastic -- green plastic cup, again, that held the
13 shot that had a #26 written on the cup. And then I
14 received buckshot or larger metal fragments that are
15 associated with the buckshot type of shotgun shells, plus
16 the large size of the wound and the dispersed nature of
17 the wound tracks as they entered the body.

18 Q And, just briefly, to provide a comparison to the
19 jury, how does a shotgun differ from just a singular
20 projectile that might come out of a revolver or handgun?

21 A The single projectile, when it leaves the gun, it
22 carries with it some powder and metal materials, as you
23 heard previously. Those travel a certain distance and
24 then fall away because of their lighter size. But the
25 larger projectile carries forward and it produces a hole

1 in the individual. The shape of that hole can vary as the
2 projectile strikes the skin, either perpendicular to the
3 skin or at various angles front perpendicular. It then
4 passes with a single path of route through the body
5 producing a single large core diameter injury through the
6 body and very frequently exits the opposite side of the
7 body if it's not found within the body.

8 Shotgun wounds, on the other hand, produce one large
9 entry wound. Buckshot, specifically, has next to the
10 buckshot inside the plastic piston to make them more of a
11 solid quality to them because of their large size and
12 vacant spaces that would be between them some fine white
13 plastic material that will go a certain distance. This
14 plastic filler then falls away because it is plastic and
15 light. But it will be carried a unique distance related
16 to the length of the barrel of the shotgun and the
17 particular ammunition that the shotgun used. The plastic
18 cup begins to fall behind the pellets and then the pellets
19 begin -- instead of going as a single mass when the cup
20 falls behind, it begins to open wider and wider. And,
21 eventually, we would see individual holes associated with
22 each of the pellets.

23 If the pellets reach in mass -- if the shotgun is
24 shot close enough to the individual, once the pellets hit
25 the body or the clothing on the surface of the body, they

1 will begin to separate. Because the front pellets begin
2 to slow quicker than the back pellets. And the front
3 pellets begin to bump into the back pellets or the back
4 pellets bump into the front pellets. And we get a
5 billiard ball effect of the projectile so that the
6 projectiles begin to radiate further and further apart
7 producing a very large area of tissue damage compared to
8 that single pathway of the bullet.

9 Q Let's go back to the wound in the neck. Did you,
10 actually, extract some of that shot -- or those
11 projectiles from the shotgun from the neck of Barry Frady?

12 A Yes, I did.

13 Q And you stated they were birdshot. Is part of your
14 training in forensic pathology -- you've given this
15 testimony about the particular nature of shotgun shells --
16 to be familiar with those type of projectiles and weapons
17 typically used in committing these types of crimes?

18 A Yes, it is.

19 Q And would -- in terms of the neck, was there a single
20 entrance wound or was there the more splattered pattern of
21 injury?

22 A No. It was a single groove-like pattern running up
23 the neck, running along the edge of the big muscle in the
24 neck, and then entering into the body.

25 Q And is also your training to look at these wounds and

1 the particular nature, not only of them, but how they
2 affect the body and to offer an opinion as to how far away
3 the gun would have been fired at this particular
4 individual?

5 A Yes, it would be.

6 Q And do you have an opinion in this case, as to the
7 neck wound of Barry Frady, the approximate distance of the
8 gun from him when it was shot at his neck?

9 A The approximate distance would be in the range of
10 three feet, no more than four.

11 Q And why do you say three to four feet? What about
12 the particular nature of the wound or what you found that
13 leads you to that conclusion?

14 A Again, depending on the ammunition and the shotgun
15 that's involved. As one fires from further away, the
16 plastic cup falls away and doesn't reach the wound. The
17 second thing is the plastic cup. Because of its plastic
18 nature and lack of weight to it, it begins to fall away
19 and the pellets begin to open up.

20 So this central large wound becomes smaller. And we
21 begin to see pellets around the periphery or what we call
22 fliers until, ultimately, all we see is a perforating type
23 of wound like a colander where all the individual pellets
24 went into the tissue.

25 Q And is -- that first initial shotgun wound to the

1 neck of Barry Frady, in your opinion, was that a fatal
2 wound?

3 A Yes. Its damage to the cervical spinal cord and the
4 cervical bodies would produce death.

5 Q Even if medical attention was immediately offered to
6 him?

7 A Even if medical attention was immediately offered,
8 it's fatal.

9 Q And let's go, in particular, to the shotgun wound to
10 the upper abdomen that you mentioned. Again, do you have
11 an opinion as to the distance away from the gun this
12 individual was when that shot was fired at him?

13 A Again, the -- because of the white particulate
14 material which is only carried a certain distance and the
15 fact that the plastic cup was present inside the wound and
16 the wound entry, it was three feet or less.

17 Q All right. And, again, you stated that this goes
18 into his abdomen. What damage does it cause there?

19 A It produces a massive fracture of his sternum, his
20 breast plate, and it separates the ribs along the lower
21 edge of the sternum from the breast plate. It then passes
22 into the left lung. It tears the liver and the spleen.
23 And the pellets fracture multiple ribs in the back portion
24 of the left chest cavity.

25 Q And, again, in your opinion, would that be

1 potentially a fatal wound?

2 A Yes, it would.

3 Q And did you have an opportunity to examine any
4 toxicology results as they related to Barry Frady?

5 A No, I did not.

6 Q Do you have any opinion whether toxicology or
7 anything else in any way contributed to his death?

8 A Except for today's court time, I was unaware of the
9 toxicology.

10 Q All right. But based on your autopsy, did you have
11 any concern that toxicology in any way contributed to the
12 death of Barry Frady?

13 A No.

14 Q Did you feel that you needed those results in order
15 to offer an opinion as to the cause of death of Barry
16 Frady?

17 A No.

18 Q You stated you were here and present for Ms. Bell's
19 testimony; is that correct?

20 A That's correct.

21 Q And her results, knowing them now, taking them from
22 her, how do they effect your overall opinion as to the
23 cause of death of Barry Frady?

24 A Well, they confirm that no toxicology was involved.
25 And they confirm that while incomplete combustion was

1 occurring with the fire that left soot on the body, he was
2 not breathing at the time any carbon monoxide that would
3 be produced at that fire.

4 Q You saw nothing for you to believe that the
5 concentration of alcohol in any way contributed, at least,
6 medically to his death?

7 A That's correct.

8 Q And you stated that you received -- you retrieved
9 some birdshot, I believe, from his neck?

10 A That's correct.

11 Q And were you able to -- some of what you call
12 exemplar filler material, those white spacer plastic
13 things from the abdomen --

14 A From the shirt of the abdomen.

15 Q From the shirt of the abdomen?

16 A That's correct.

17 Q And did you retrieve anything internally from the
18 shotgun wound to the stomach?

19 A Yes. There was a plastic cup that had #26 on it. It
20 was a green plastic cup. Then there was felt or cardboard
21 wadding material that was also present. And then we also
22 retrieved buckshot.

23 Q And are you able to render an opinion or anything as
24 to the gauge of the shotgun used in this particular case
25 or anything of that nature?

1 A From the plastic cups such a determination could be
2 made. I personally cannot make one.

3 Q That's not within your purview of information?

4 A That's correct.

5 Q Sometimes you can do that from other different type
6 projectiles, but the nature of the shotgun includes that
7 conclusion on your part?

8 A That's correct.

9 Q Was there anything else about the examination of
10 Mr. Frady that tells you about his condition or position
11 at the time of death?

12 A No.

13 Q Anything that supports that he was either standing or
14 seated at the time of death?

15 A Not from the body itself.

16 Q And other than these two shotgun wounds to Barry
17 Frady, there were no other either potentially fatal, or
18 fatal, or major injuries to him at that time?

19 A No. He had no other significant injuries.

20 Q And would his death be fairly instant or would that
21 be something that would have taken a while to occur?

22 A It would be very quickly.

23 Q And the shotgun wound to his neck, would that have
24 paralyzed him as well?

25 A Yes, it would.

1 Q So even if that didn't occur immediately, he, after
2 that wound was received, would not have been able to move?

3 A That's correct.

4 Q Let's draw your attention to the autopsy of James
5 Cleveland Frady that you did. Just, initially, this is
6 the older gentleman that you examined?

7 A Yes.

8 Q And just generally, what was his physical stature and
9 size?

10 A He was 6'2" and weighed about 330 pounds.

11 Q A big guy?

12 A Big guy.

13 Q And just generally also tell the jury what your
14 external examination of James -- or Jimmy Frady revealed
15 to you.

16 A He was received in a pair of gym shorts. And his
17 skin demonstrated soot exposure, again, without any
18 evidence of burning. He had two distinct shotgun wounds
19 to his body.

20 Q And where were his wounds?

21 A One shotgun wound was into the right lateral chest in
22 the armpit area. And it was associated with some of the
23 fine white particulate material that I described before.
24 It entered the chest and produced massive tears in the
25 right lung. And then the projectiles passed into the back

1 portion of the neck where I retrieved multiple buckshot
2 pellets from this area.

3 Q And where was the other shotgun wound?

4 A The second one was in the right lower abdomen. It
5 passed toward the left and upward. It produced multiple
6 tears in the liver, in the heart, and then into the left
7 lobe of the lung.

8 And, again, I removed multiple buckshots from this
9 area. I also removed a green plastic cup with wadding.
10 And this plastic cup had, at least, the #1 and there may
11 have been a possible second number we couldn't make out on
12 the cup. Then he had some nonspecific bruises along the
13 edges of his right and left wrists, and on his left elbow,
14 and on the lateral aspect of his left elbow and left hand.

15 Q And could you tell whether or not those wounds --
16 that bruising was contemporaneous to the shotgun?

17 A I could not.

18 Q Is it difficult to date bruises?

19 A Unless the bruising is shown at a clear color change.
20 Bruises start out as a reddish-purple color. Once they
21 take on a greenish-yellow hue to them, then we know
22 they're 12 to 18 hours old. But each individual changes
23 the color of their bruises at slightly different paces.

24 Q And as to -- so you can state to a reasonable degree
25 of medical certainty that these two wounds to James Frady

1 are shotgun wounds as well?

2 A That's correct.

3 Q And based on the projectiles or shot that you
4 retrieved from the chest and abdomen of James Frady, you
5 stated that, in your opinion, that was buckshot?

6 A That's correct.

7 Q And you stated you also found some of that filler or
8 wadding in James Frady. What does that tell you, again,
9 about the proximity of the gun to James Frady when he was
10 shot?

11 A That the wound to his right arm -- under his right
12 arm area, the right axilla area was three feet away from
13 him, the end of the barrel, at the time. The wound to the
14 abdomen, however, was slightly closer. It could have been
15 as close as two feet to him.

16 Beneath the abdominal wound was what we refer to as
17 stippling. Stippling is caused by other particulate
18 matter that come down the gun barrel and are pushed out
19 when that piston is carrying the buckshot out of the
20 shotgun barrel. And it strikes the skin and produces a
21 little tiny injury on the skin. So we know that the gun
22 was slightly closer to him at the time of the abdominal
23 shot.

24 Q Is there anything to indicate that either of the
25 injuries to Barry Frady or Jimmy Frady were contact

1 wounds?

2 A No, none of them were contact.

3 Q And what is a contact wound? How were you able to
4 rule that out?

5 A A contact wound would be when the end of the barrel
6 was touching the individual. Not only do the projectiles
7 go forth into the wound, but also the gases that are
8 produced with the explosion and the shell go forth into
9 the wound. And then there's massive destruction caused by
10 the gases in the individual.

11 In the case of the wound to Mr. James Frady that had
12 the white particulate matter, the white particulate matter
13 would have been carried with the shotgun mass into his
14 body and would not have been on the surface. This would
15 also be true for Mr. Barry Frady.

16 Q So because this white -- and are they just little
17 beads of some type?

18 A They're very fine white plastic particles that are
19 placed in between the spaces that are left when they pack
20 the buckshot.

21 Q Because if they were just on the surface versus going
22 deeper into the body, that tells you --

23 A And the lack of this secondary injury caused by the
24 gas that would also be caused by an explosion of a shotgun
25 shell.

1 Q We move it some distance away, two to three feet,
2 depending on the wound. But it would not be much more
3 beyond four feet, would that be fair to say?

4 A That's correct.

5 Q And the wound under -- is it under the arm of James
6 Frady?

7 A Yeah. It's in the line of the axilla or where the
8 seam would be on a man's shirt, running down the arm
9 through the axilla in the lateral aspect of the upper
10 chest on the right side.

11 Q And does the position of that wound, in addition to
12 its tracking, tell you anything about the position of
13 Mr. James Frady when the shot was fired?

14 A It tells me that the shotgun shooter was to his side
15 and that Mr. Frady was in a semi-reclined or completely
16 reclined position.

17 Q Can you tell whether or not his arm was up in any
18 way?

19 A Well, it had to be up because of where the wound is.
20 If the arm was in a down position, the arm would have
21 blocked the shotgun pellets as they entered the body and
22 there would have been injury to the arm itself.

23 So the arm had to be out of the way. So it had to be
24 elevated to, at least, a level that removed it from the
25 pathway as to -- as high as it could reach.

1 Q And is that raised arm consistent -- not necessarily
2 dispositive, but consistent with a defensive posture on
3 the part of Mr. Frady?

4 A Yes, it would be.

5 Q And what is that defensive posture? What are you
6 looking for?

7 A You look for a posture that signifies that there may
8 have been recognition that this violence was going to be
9 committed, and that leaves a signature to that
10 recognition. In this case, a gesture that somebody would
11 make would be to throw the palm of the hand up and stretch
12 the arm out toward the person that was going to cause them
13 harm. That gets the arm out of the way and preserves it
14 from injury and would, subsequently, give the residue
15 information that's been previously described.

16 Q So raising that arm, either to block a shot or to
17 cover himself, that's what we're talking about in terms of
18 defense posture?

19 A That's correct. It's some sort of gesture that one
20 would maybe not reasonably think would protect them, but
21 would offer them some degree of protection.

22 Q And is that more or less an involuntary response?

23 A Pretty involuntary.

24 Q And were you able to render an opinion as to the
25 cause of death of James C. Frady, Jimmy Frady?

1 A Yes. Again, either of these two shotgun wounds would
2 have been sufficient to produce death.

3 Q And, again, was that somewhat quick and instant or,
4 again, would he have lingered for some time?

5 A No. It would have been very quick. Either the wound
6 to the abdomen or the wound that pretty well destroyed the
7 right lung would have produced sufficient injury that he
8 would have been almost instantly incapacitated.

9 Q And, again, you had no concerns that toxicology in
10 any way may have played a part in Mr. James Frady's death?

11 A No.

12 MS. HERVEY: The Court's indulgence one moment, Your
13 Honor.

14 (Pause.)

15 BY MS. HERVEY:

16 Q Let me show you what's been marked as State's Exhibit
17 No. 19 for identification purposes only, and ask you,
18 without removing these items in the view of the jury, if
19 looking at them, if you can tell if those are some of the
20 items you retrieved both from the body of Barry Frady and
21 from James Frady?

22 A Yes. These represent various items that I testified
23 to that I removed at the time of autopsy and placed them
24 in small enclosed plastic tubes. I identified the
25 individual tubes and placed all the tubes in a separate

1 tamper-proof sealable envelope.

2 Q And would you have turned them over to a member of
3 the Oconee County Sheriff's Office?

4 A That's correct.

5 Q You don't, specifically, remember who, but one of
6 them was generally present during your autopsy for the
7 purpose of receiving that type of evidence?

8 A That's correct.

9 Q And those are the containers you placed those items
10 in?

11 A That's correct.

12 MS. HERVEY: Your Honor, at this time, we would move
13 the items in State's Exhibit No. 19 into evidence.

14 THE COURT: Any objection as to State's Exhibit No.
15 19?

16 MR. ALLEN: No objection, Your Honor.

17 THE COURT: Ladies and gentlemen of the jury, State's
18 Exhibit No. 19 will be submitted into evidence without
19 objection. State's Exhibit No. 19 in evidence.

20 You may publish.

21 (WHEREUPON, State's Exhibit No. 19 was admitted into
22 evidence.)

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

25 (Pause.)

1 MS. HERVEY: We have nothing further from this
2 witness at this time.

3 THE COURT: Cross-examination?

4 MR. ALLEN: May it please the Court?

5 THE COURT: Yes, sir.

6 MR. ALLEN: Just a few questions for Dr. Woodard.

7 CROSS-EXAMINATION

8 BY MR. ALLEN:

9 Q Dr. Woodard, the cause of death of Barry Frady, would
10 it be correct to say were the projectiles you described
11 that entered the body?

12 A That's correct.

13 Q And those projectiles with Barry Frady were birdshot;
14 is that correct?

15 A Birdshot into the neck and buckshot into the abdomen.

16 Q So birdshot and buckshot?

17 A That's correct.

18 Q And there was some wadding also in Barry Frady that
19 you removed?

20 A Yes. From the neck wound, I removed the plastic cup.
21 And from the abdomen wound, I removed a green plastic cup
22 with #26 on it as well as some felt wadding materials.

23 Q But, again, the projectiles entering the body in
24 those particular places were what caused the fatal
25 wounds?

1 A That's correct.

2 Q Do you have any opinion as to which wound occurred
3 first?

4 A I would have no way to know.

5 Q Okay. And then referring you to James Cleveland
6 Frady. The cause of death of James Cleveland Frady would
7 have also been the projectiles that entered the body?

8 A That's correct.

9 Q And what projectiles entered James Cleveland Frady's
10 body?

11 A Both sites had buckshot that entered the body.
12 Within the abdomen, we found a plastic cup that had #1 and
13 a second number next to it, as well as some cardboard or
14 felt wadding material that was associated with that.

15 Q You found no birdshot?

16 A No birdshot, buckshot.

17 Q Okay. And then, lastly, let me ask you, all of the
18 wounds that you've described for each individual were no
19 less than, in your opinion, two feet away and no more than
20 four feet away?

21 A That's correct.

22 Q So that's a close -- that's close, obviously?

23 A Yes, it is.

24 Q And a wound and the projectiles traveling that close
25 of a distance would have produced a massive amount of blow

1 back, would that be a true statement in your opinion?

2 A In the case of Mr. Barry Frady, he was wearing a
3 shirt and that would have precluded blow back. The shirt
4 would have acted as an absorbent. So the blow back would
5 be caught on the shirt.

6 Q And that was Barry that you mentioned?

7 A That was Barry.

8 But in the case of James Frady, he was not shot
9 through any clothing, so there would have been an element
10 of blow back, yes, sir.

11 Q And there could have potentially been a lot of blow
12 back?

13 A There could have been a lot of blow back.

14 Q And back to Barry, would not the wound to the neck
15 area have produced a lot of blow back?

16 A Yes, it could have.

17 Q Substantial amounts of blow back? And blow back
18 being blood --

19 A Or tissue particles.

20 Q Blood and/or tissue?

21 A Uh-huh.

22 MR. ALLEN: Thank you.

23 That's all the questions I have of this witness, Your
24 Honor.

25 THE COURT: Redirect?

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Q Just to clarify. With Barry Frady, you retrieved birdshot from his neck?

Q And buckshot from his abdomen?

Q You never saw any mixing of the shot to either wound?

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

I just wanted to clarify that.

THE COURT: Recross limited to redirect?

MR. ALLEN: No, sir, Your Honor.

THE COURT: As to this witness?

MS. HERVEY: He may be excused.

THE COURT: Any objection?

MR. ALLEN: No objection.

THE COURT: Dr. Woodard, you may step down. And you are excused.

Counsel, approach.

(WHEREUPON, a bench conference was held.)

THE COURT: Ladies and gentlemen, we're going to take just a little bit more testimony before we adjourn for lunch. If you all will bear with me for one moment, I'm

1 going to give both sides an opportunity to brief their
2 respective clients.

3 MS. HERVEY: The State calls Kevin Davis.

4 THE COURT: Come around, please.

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

7 WHEREUPON,

8 KEVIN DAVIS,
9 after first having been duly sworn, testified as follows:

10 THE CLERK: Please be seated.

11 THE COURT: Good afternoon.

12 If you'll adjust that microphone and speak in it so
13 that the last two jurors down there can hear you. Make
14 sure you use it for me. And, of course, everybody wants
15 to pull that chair up, but that chair won't slide up. You
16 can move from side to side, but it won't go up.

17 If you would, begin by stating your full name and
18 spelling your last name for the court reporter.

19 THE WITNESS: Kevin Davis, D-A-V-I-S.

20 DIRECT EXAMINATION

21 BY MS. HERVEY:

22 Q Are you a sergeant?

23 A Yes. I'm currently first shift sergeant with the
24 sheriff's department.

25 Q How long have you been with the Oconee County

1 Sheriff's Office?

2 A It's been well over ten years.

3 Q And is that your full career in law enforcement or do
4 you have anything before that?

5 A I worked a couple years with the Walhalla Police
6 Department.

7 Q And sergeant over first shift, are we talking about
8 road patrol, uniform patrol?

9 A Yes, ma'am.

10 Q And were you similarly employed back in June of 2004?

11 A Yes, I was.

12 Q And back in June of 2004, did you have the occasion
13 to respond to a call at Westminster Highway?

14 A Yes, I did.

15 Q And back in September 2004 or later on, did you go
16 back to that residence as it relates to these murders?
17 Were you there?

18 A Yes, I did.

19 Q And is that the same house that you responded to on
20 June 11th, 2004?

21 A Yes, it is.

22 Q And when you went there on June 11th of 2004, what
23 two individuals, or others, did you find there?

24 A When I went there in June, I spoke to Mr. James C.
25 Frady, which is the father of the Defendant, and Barry

1 Frady, which is the stepbrother of the Defendant, at that
2 residence.

3 Q I'm sorry. Did you say the brother of the Defendant?

4 A Stepbrother.

5 Q The stepbrother of the Defendant. And based on your
6 talking with them and your investigation there at the
7 scene, did you and is it part of your duty to go seek an
8 arrest warrant?

9 A Yes, I did. After talking to James Frady and Barry
10 Frady, I -- through the course of the investigation, I did
11 obtain two arrest warrants.

12 Q And were those for the offense of assault?

13 A Yes, they were. They were for the offense of
14 assault. One count of assault on Mr. James C. Frady and
15 one count of assault on Mr. Randy [sic] Frady.

16 Q And let me back you up. One count of assault on
17 James C. Frady and one -- you said on "Randy," that would
18 be the Defendant. Do you mean someone else?

19 A I'm sorry. Barry Frady.

20 Q So both arrest warrants were assault warrants to
21 arrest, just arrest, but it was just a warrant for the
22 Defendant, Randy Frady, with the complainants being James
23 Frady and Barry Frady?

24 A That's correct. The arrest warrants were for the
25 Defendant.

1 Q And "assault" meaning an offer to do bodily harm?

2 A That's correct.

3 Q And were you ever able to serve those warrants?

4 A I -- once an officer in my department obtains a
5 warrant, I cannot serve it per se. So I have to turn it
6 over to other officers to, actually, serve the warrant.

7 Q Did you turn those over to Mary Seger?

8 A Yes, I did.

9 Q And is she someone who operates for the Oconee County
10 Sheriff's Office under your command?

11 A Yes, she is.

12 Q And did -- that pretty much all occurred within the
13 span of that day, did it not?

14 A Yes, it did.

15 Q Maybe the arrest warrants went in to the next day or
16 something like that, but your investigation and your
17 talking with them happened that day?

18 A That's correct.

19 Q And were you also present on September 23rd of 2004
20 when Mr. Frady was arrested?

21 A Yes, I was.

22 Q And did you Mirandize him?

23 A Yes. I was on the scene when he was arrested. And I
24 did read him his Miranda rights.

25 Q And, if you could, just tell the jury, they've

1 probably heard it on TV, but what are the Miranda warnings
2 you give individuals?

3 A I always have a card that I read them off of. So if
4 I testify in Court, I can always advise that I read the
5 same thing over and over. And it is simply, I tell them,
6 I'm going to read you your Miranda warning. I say, You
7 have the right to remain silent. Anything you say can and
8 will be used against you in a court of law. You have a
9 right to talk to a lawyer and have him present with you
10 while you're being questioned. If you cannot afford to
11 hire a lawyer, one will be appointed to represent you
12 before any questioning, if you wish. And you can decide
13 at any time to exercise these rights and not answer any
14 questions or make any statements.

15 Q And is part of your training and education with law
16 enforcement and your experience with them just to assess
17 whether or not the person you're Mirandizing appears to
18 understand what you're telling them?

19 A Yes.

20 Q And, in your opinion, Randy Frady on that day,
21 September 23rd, did he understand you as you Mirandized
22 him?

23 A Yes, he did.

24 MS. HERVEY: I have no further questions of this
25 witness, Your Honor.

1 THE COURT: Cross-examination?

2 MR. ALLEN: No questions for this witness, Your
3 Honor.

4 THE COURT: As to this witness, Solicitor?

5 MS. HERVEY: He may be excused, Your Honor.

6 And this may be the point to break. I believe the
7 next witness will be more lengthy.

8 THE COURT: Very well.

9 Sergeant, you may step down and you are excused.

10 Ladies and gentlemen of the jury, now I'm going to
11 give you a lunch break. I want you to have the
12 opportunity to get something good to eat.

13 And, please, over the break, as I've discussed with
14 you throughout the trial, please, do not discuss the case
15 with anyone or even amongst yourselves. You have not
16 heard all the arguments or evidence in the case, the
17 arguments of the attorneys, or my charge to you on the
18 law. And as I've instructed you throughout the trial, if
19 somebody wants to talk to you, just tell them you're on
20 the jury and you cannot discuss it. And if they persist,
21 you let me know.

22 I hope you have a pleasant lunch. Please be back in
23 your jury room, if you can, by 2:00. I'd like to start
24 back as quickly after 2:00 as we possibly can.

25 You may retire at this time.

1 (WHEREUPON, the jury was excused from open court at
2 approximately 12:47 p.m.)

3 THE COURT: Anything on the record from the State
4 before we adjourn for lunch outside the presence of the
5 jury?

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

7 THE COURT: From the Defendant?

8 MR. ALLEN: No, sir, nothing from the Defendant.

9 THE COURT: Very well. This Court stands adjourned
10 until 2:00 this afternoon for lunch.

11 I point out to Counsel that I would expect any
12 request to charge in this case to be handed up to the
13 Court by the end of today.

14 Thank you very much.

15 We stand adjourned until 2:00.

16 MS. HERVEY: Your Honor, will you give us a copy of
17 your current charge?

18 THE COURT: I will. Before y'all argue, you will
19 have a complete copy of my charge. But I need to see your
20 requests first.

21 MS. HERVEY: Yes. I understand. I usually pretty
22 much stay with your standard charge and that type thing.

23 THE COURT: I'll let you look at the entire thing. I
24 would be happy to.

25 (WHEREUPON, a lunch break was taken.)

1 THE COURT: Is the State ready to proceed, Solicitor?

2 MS. HERVEY: Your Honor, may we approach?

3 THE COURT: Counsel, approach.

4 (WHEREUPON a bench conference was held.)

5 THE COURT: Is the State ready to proceed, Solicitor.

6 MS. HERVEY: Yes, Your Honor, we are.

7 THE COURT: Is the Defendant ready to proceed?

8 MR. ALLEN: Yes, sir, Your Honor.

9 THE COURT: Bring the jury in, please.

10 (WHEREUPON, the jury came into open court at
11 approximately 2:27 p.m.)

12 THE COURT: Madam Foreperson, and, ladies and
13 gentlemen, I had to take up a couple of matters of law.
14 So I wanted you to know we were out here working.

15 We'll now continue with the testimony of the trial in
16 this case.

17 You may call your next witness.

18 MR. WAGNER: The State calls Kevin Comer.

19 THE COURT: Mr. Comer, if you'll come around and be
20 sworn by the clerk.

21 THE CLERK: Place your left hand on the Bible and
22 raise your right.

23 WHEREUPON,

24 CHARLES KEVIN COMER,
25 after first having been duly sworn, testified as follows:

1 THE CLERK: Please go around and have a seat.

2 THE COURT: Have a seat and makes yourself
3 comfortable. Speak into the microphone. The chair won't
4 pull up, but the microphone will raise up and down.

5 Start by stating your name and spell your last name
6 for the court reporter. And speak into that microphone so
7 the last two jurors can hear you.

8 THE WITNESS: Charles Kevin Comer, C-O-M-E-R.

9 THE COURT: Your witness, Counsel.

10 DIRECT EXAMINATION

11 BY MR. WAGNER:

12 Q Mr. Comer, what do you do for a living?

13 A I'm a tire salesman for C & S Tire.

14 Q Okay. And do you work there currently?

15 A Yes, sir.

16 Q Were you working today before you got called on your
17 subpoena to come up here?

18 A Yes, sir.

19 Q Do you know the Defendant, Randy Frady?

20 A Yes, sir.

21 Q And have y'all been friends in the past?

22 A Yes, sir, before.

23 Q Did you have a conversation with him in the
24 summertime of 2004?

25 A Yes, sir.

1 Q Do you remember the exact date?

2 A No, sir.

3 Q Do you remember what you talked about?

4 A Yes, sir.

5 Q And what was that? What was your conversation with
6 him about?

7 A We had just been talking just different stuff. The
8 usage of LSD got brought up. And several of us was
9 talking about, you know, it's nontraceable, this, that,
10 and the other. And he started asking me how much would it
11 take to either kill somebody or, basically, put them to
12 where they're insane.

13 Q Did he mention a specific person in regards to that?

14 A Well, he talked about him and his dad's relationship.
15 And he talked about if his dad was out of the way, he'd
16 have the house and this, that, and the other, and just
17 different things of that nature.

18 Q Okay. And was this in regards to just his daddy?

19 A Pretty much, yeah. That's who he talked about the
20 most malice with. There was something there that wasn't
21 comfortable.

22 Q And what, if anything, did he tell you he wanted to
23 do with his dad?

24 A From what I got from the conversation, he pretty much
25 wanted to get rid of his dad. He either wanted his dad

1 dead, or in a nut house, or something.

2 Q Did he ever mention his brother?

3 A He mentioned his brother, but not to a great extent.

4 Q Okay. Now, Mr. Comer, have you been in trouble with
5 the law in the past?

6 A Yes, sir.

7 Q And, basically, what for?

8 A Misdemeanors. I've had some bad checks, driving,
9 traffic charges, you know. I'm on probation currently in
10 the State of Georgia for burglary.

11 Q Okay. Do you also have a failure to stop for blue
12 light?

13 A Yes, sir.

14 Q And when you say traffic charges, you got charged
15 with running into something, hit and run with property
16 damage and leaving the scene?

17 A Yes, sir.

18 Q Okay. Other than that and those things you've
19 mentioned here, have you got any other convictions like
20 that on your record?

21 A No, sir.

22 Q Do you still consider yourself friends with the
23 Defendant?

24 A Yes, sir, as far as I know.

25 Q Okay. And when he said this stuff to you, did any

1 bells go off in your head, as far as were you concerned?

2 A Not really. I just took it as I took a lot of other
3 people when they talk to me, just talking, shooting their
4 mouth off.

5 Q Okay. When you heard about the murders in this case,
6 what, if anything, did you do?

7 A I told Mark Lyles and a couple other law enforcement
8 officers about the conversation I had with him. And they
9 were asking what all was said between me and him and this,
10 that, and the other. And I told them exactly what I told
11 y'all.

12 Q Did the Defendant say anything about what he would do
13 if he killed his father?

14 A He always talked to me about Costa Rico, friends he
15 had in Florida, and about how easy it was to go there and
16 back without papers or anything.

17 Q Essentially, skip the country?

18 A Yes, sir.

19 MR. WAGNER: No further questions.

20 THE COURT: Cross-examination?

21 MR. ALLEN: May it please the Court?

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. ALLEN:

25 Q Now, your name is "Cromer" or "Comer"?

1 A Comer.

2 Q Comer?

3 A Yes, sir.

4 Q Do you have an alias where you've used "Cromer"
5 before?

6 A No, sir.

7 Q Have you ever been known as "Kevin Cromer"?

8 A No, sir. People will mistakenly put the "R" in front
9 of the -- after the "C" because of the common name around
10 here of Cromer.

11 Q Well, let me ask it this way. Are any of your
12 records, criminal records, listed as Kevin Cromer, to your
13 knowledge?

14 A No, sir.

15 Q And you have been convicted of burglary; is that
16 right?

17 A Yes, sir.

18 Q That was in the State of Georgia?

19 A Yes, sir.

20 Q That was stealing?

21 A Yes, sir.

22 Q And what degree was it, if you can tell us? Do you
23 know what I mean?

24 A (There was no response.)

25 Q Sometimes there's different levels of burglary and

1 stealing. What level was it?

2 A To be honest with you, I'm not sure. It was a plea
3 bargain.

4 Q Well, did you plead guilty or were you tried?

5 A I pled no contest.

6 Q And how long are you on probation?

7 A Ten years.

8 Q For ten years?

9 A Yes, sir.

10 Q Ten years from now, or ten years from last year, or
11 ten years from when?

12 A Ten years from May.

13 Q Ten years from May?

14 A This past May, yes, sir.

15 Q So that just recently occurred, May of '06?

16 A Yes, sir.

17 Q And how old are you?

18 A I'm 32.

19 Q Now, you also -- did you plead guilty or were you
20 tried and convicted of obtaining goods under false
21 pretenses?

22 A Of obtaining goods under false pretenses?

23 Q Yeah.

24 A I've never been tried or convicted of that, never.

25 I've never been arrested for obtaining goods under false

1 pretenses.

2 Q Well, let's go -- how about your failure to stop for
3 a blue light? Now, that was running from the police, is
4 that what that means?

5 A Yes.

6 THE COURT: Just a moment.

7 MS. HERVEY: Just an objection, Your Honor. He asked
8 that question and, he's denied it. I would move that the
9 question and answer be stricken from the record and the
10 jury told not to consider that. There's no factual basis
11 for it.

12 THE COURT: Ladies and gentlemen of the jury, in
13 response to the last question, I ask you to disregard that
14 and not consider that in any way in your deliberations in
15 connection with this case.

16 Counsel, you may proceed with cross-examination.

17 MR. ALLEN: Yes, sir.

18 May it please the Court?

19 BY MR. ALLEN:

20 Q I was asking you about the failure to stop for a blue
21 light. What county was that in?

22 A Oconee County.

23 Q When was that? What year was that?

24 A About 2003, 2004.

25 Q Okay. And that was running from the police?

1 A Yes, sir.

2 Q Okay. Was anybody injured in that situation?

3 A To my knowledge, no one was injured.

4 Q And then you've also had a -- have you had a number
5 of fraudulent checks?

6 A Yes, sir.

7 MS. HERVEY: Your Honor, I'm going to object at this
8 point.

9 THE COURT: Counsel, approach.

10 (WHEREUPON, a bench conference was held.)

11 BY MR. ALLEN:

12 Q And you also had a conviction for a driving offense,
13 driving under suspension third offense?

14 A Yes, sir.

15 Q And when was that and what county was that in?

16 A It was in Oconee County. It's been a few years back.
17 It was dropped down for DUS third to DUS first. And I
18 paid a fine for that.

19 Q And you claim that the conversation was about Randy's
20 inheritance or something to that effect, is that what
21 you're saying?

22 A No, sir. I didn't say anything about inheritance at
23 all, sir.

24 Q Well, about him getting the house or something?

25 A He mentioned something about the house. I really

1 didn't pay much attention to the details to that part of
2 it. Because I really wasn't interested in it.

3 Q And it was about LSD, too, you claim; right?

4 A Yes, sir. We had been in a conversation talking
5 about drugs. And when it come up that LSD was
6 nontraceable in most toxicology reports, he twinkled. And
7 he asked me several questions about it.

8 Q And what you were trying to do with this thing is you
9 were trying -- is because of your own multiple problems
10 that you've had legally, you're trying to curry favor with
11 law enforcement to get some kind of situation worked out;
12 isn't that true?

13 A No, sir.

14 Q Are you sure about that?

15 A Yes, sir.

16 MR. ALLEN: That's all the questions I have of this
17 witness, Your Honor.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. WAGNER:

21 Q When you called and talked to Mark Lyles from the
22 Sheriff's Office about what the Defendant had told you --

23 A Yes, sir.

24 Q -- were you trying to curry any favor with them on
25 any matter?

1 A No, sir. I was not in trouble for anything at that
2 time.

3 Q Did you have any other charges against you that you
4 asked for help on?

5 A No, sir.

6 Q Did anybody ever promise you anything to testify
7 today?

8 A No, sir.

9 Q Did anybody promise you anything to give a statement
10 at that time?

11 A No, sir.

12 MR. WAGNER: Thank you.

13 THE COURT: Recross limited to redirect?

14 MR. ALLEN: Nothing further.

15 THE COURT: As to this witness, Solicitor?

16 MS. HERVEY: Nothing as to this witness, Your Honor.
17 He may be excused, yes, Your Honor.

18 THE COURT: Any objection?

19 MR. ALLEN: No objection.

20 THE COURT: You may step down and you are excused.
21 Call your next witness.

22 MS. HERVEY: Can we approach just briefly?

23 THE COURT: Yes.

24 (WHEREUPON, a bench conference was held.)

25 THE COURT: Madam Foreperson, and, ladies and

1 gentlemen of the jury, I need to take up a matter of law.

2 I'm going to ask you to step to your room. Please
3 don't discuss the case. I'll be back with you as soon as
4 I can.

5 Thank you.

6 (WHEREUPON, the jury was excused from open court at
7 approximately 2:44 p.m.)

8 THE COURT: All right. Counsel, it's my
9 understanding -- and I need to put this on the record. In
10 the pre-trial conference, I was advised by Counsel for the
11 Defendant that he wished to bring up an issue on
12 cross-examination with one of the State's witnesses. I
13 asked that we take up that matter outside the presence of
14 the jury when we reached that point in the trial. And we
15 have now reached that point in the trial.

16 It's my understanding, after a discussion at the
17 bench, that Counsel is going to outlay for me exactly what
18 areas they want to go into so I can rule on the matter
19 outside the presence of the jury before we, actually,
20 begin the testimony of this witness.

21 Have I accurately stated the agreement as far as the
22 Solicitor is concerned?

23 MS. HERVEY: Yes, sir, Your Honor.

24 THE COURT: As far as the Defendant is concerned?

25 MR. ALLEN: Yes, sir, Your Honor.

1 THE COURT: Would you call the witness, Solicitor, to
2 the stand?

3 MS. HERVEY: Your Honor, the State calls Mike Harper
4 to the stand.

5 And just for the proffer, I'll turn him over to
6 Mr. Allen. I don't have anything to proffer from him.

7 THE CLERK: Come up here.

8 Raise your right hand and place your left on the
9 Bible.

10 WHEREUPON,

11 MICHAEL HAROLD HARPER,
12 after first having been duly sworn, testified as follows:

13 THE CLERK: Have a seat.

14 THE COURT: State your full name for the record and
15 spell your last. We'll go through this again.

16 THE WITNESS: Michael Harold Harper. Last name,
17 H-A-R-P-E-R.

18 THE COURT: Mr. Allen.

19 MR. ALLEN: May it please the Court?

20 THE COURT: Yes, sir.

21 DIRECT EXAMINATION

22 BY MR. ALLEN:

23 Q Mr. Harper, you are aware of the -- strike that. Let
24 me rephrase.

25 The incident we've been discussing here in court that

1 you're aware of involved a van that was owned by you?

2 A That's correct.

3 Q And what kind of van was that?

4 A A 1991 Chevy Astro.

5 Q And was it titled to you exclusively or was it
6 jointly titled?

7 A Well, it started out being my dad's. When he
8 retired, he turned it over to me. And I had it in my
9 wife's name.

10 Q Okay. But you --

11 A I was the sole driver of it.

12 Q And you considered yourself the owner, despite the
13 title?

14 A Yes, sir.

15 Q All right. In September of 2004, where did you live?

16 A Road.

17 Q All right. And you also -- well, you've known Randy
18 Frady a long time; is that right?

19 A Since the age of four.

20 Q How old are you?

21 A I'm 42.

22 Q So you've known him almost 40 years?

23 A That's correct.

24 Q And your parents live over on Westminster Highway; is
25 that right?

1 A Yes, sir, Westminster Highway.

2 Q Now, where is that in relation to Westminster
3 Highway?

4 A It's diagonally across the street.

5 Q Okay. Is that where you grew up?

6 A Yes, sir, since I was two years old.

7 Q All right. And you don't disagree that in this
8 incident or this situation, apparently, your van was
9 involved and used as the vehicle to transport to and from
10 Westminster Highway?

11 A I'm fully aware of that fact, yes.

12 Q And what time did you get home from work on September
13 the 22nd, 2004, approximately?

14 A I would say approximately somewhere between 6:30,
15 7:00.

16 Q And your claim to law enforcement was that your van
17 was stolen later that evening; right?

18 A That's correct.

19 Q And also when you came home that evening from work,
20 now, your claim or statement to law enforcement was that
21 the van was running out of gas?

22 A Yes, sir. It was spitting and sputtering. And the
23 engine, actually, went dead. And I coasted up into my
24 driveway.

25 Q Okay.

1 A I'm sure it would have probably started back up, but
2 it wouldn't have stayed running long. It was in the first
3 stages of being out of gas.

4 Q And you understood that as well; right?

5 A Absolutely.

6 Q And then later, you reported that your van was
7 stolen; is that right?

8 A That's correct.

9 Q And you also reported and claimed that you had found
10 it there at Cemetery Road; is that right?

11 A That is correct.

12 Q Now, at some point, you had had an ongoing
13 relationship, business relationship, we'll call it, with
14 James and Barry Frady?

15 A I don't know if I would call it necessarily a
16 business relationship. It was more along the lines of a
17 friendship.

18 Q Okay. And your friendship kind of went awry or you
19 became estranged with both James -- or Jim and Barry
20 Frady, did you not?

21 A I had stopped going to their house, yes.

22 Q In fact, you fell out with them, didn't you?

23 A In a sense, yes, but --

24 Q Had you been barred or banned from going over there
25 to Westminster Highway?

1 A I had been told that I was not welcome there any
2 more, yes.

3 Q And you had stopped going there because you
4 understood you weren't welcome there any more; isn't that
5 right?

6 A That would be correct, yes.

7 Q And how far prior to September the 22nd did you come
8 to the understanding that you were no longer welcome at
9 James and Barry Frady's home?

10 A Well, I had been back a couple of times since that
11 notification. But I would say -- I can't pinpoint it
12 exactly, but I would say a few months.

13 Q Several months prior to September the 22nd, 2004, you
14 came to the understanding that you weren't welcome at
15 Westminster Highway?

16 A That would be correct.

17 Q And, in fact, did you ever understand that you had
18 been put on trespass notice with the appropriate law
19 enforcement authority that you were not to go back there?

20 A No, sir.

21 Q You didn't understand that?

22 A I'm not aware of that.

23 Q Did you understand that, because of you, Jim and
24 Barry Frady had placed no trespassing signs on the
25 property?

1 A I had seen no trespassing signs. But they -- it was
2 not notified to me that they were because of me.

3 Q Okay. Also, now, during that time and, I guess,
4 prior to the several months before that that you
5 understood you weren't to go back over there, you had had
6 transactions with them that involved some type of mopeds
7 or scooters; isn't that right?

8 A A 1955 Cushman Eagle scooter and a 1959 Super Eagle.

9 Q And you and Jim and Barry had some type of -- at that
10 point in time, you had some type of joint venture, I'll
11 call it, about refinishing the mopeds or the scooters and
12 selling them at some point; is that right?

13 A That's correct.

14 Q And, at some point, that transaction or that deal
15 went awry; is that right?

16 A That would be correct.

17 Q And, at some point, you claimed that you were owed by
18 them about \$1,000?

19 A \$950, yes, sir.

20 Q \$950?

21 A \$950.

22 Q What kind of demands did you make to collect?

23 A I just asked them to pay me the \$950 and to get --
24 can I go back and explain briefly?

25 THE COURT: You may explain your answer.

1 THE WITNESS: Okay. I had a 1958 Cushman Eagle
2 scooter that I was in the process of restoring. My father
3 had bought the '55 and the '59 for miscellaneous parts,
4 fenders, what have you that we would need in the
5 restoration of the one we were working on.

6 Barry and Jim came by my locksmith shop -- my dad's
7 locksmith shop at the time and looked at my scooter and
8 saw the other two leaned against the wall in the shop.
9 They got excited about it and wanted to take those and get
10 them running and ride with me.

11 BY MR. ALLEN:

12 Q And when was this? Excuse me.

13 A This was several years ago.

14 Q Okay.

15 A And so I spoke with my dad about it and --

16 THE COURT: Let me make sure, sir, there's no jury
17 here. When you say "several years ago," are you talking
18 several years ago from today or several years prior to
19 2004?

20 THE WITNESS: Several years prior to 2004. I'm
21 sorry.

22 THE COURT: Go ahead.

23 THE WITNESS: And they were going to fix them up and
24 they said, We'll ride them with you, you know, for a few
25 summers or what have you, you know, until we get tired of

1 them. And then you can have them back. They'll still be
2 in your name.

3 Well, they ended up spending -- they thought they
4 could get them going for about \$1,000 apiece. They ended
5 up spending \$5,000 apiece on them. Because they bought a
6 lot of extras, fancy stuff for them. So me, being the
7 friend and being mindful of the fact that they had spent
8 more money than they, actually, expected to, I allowed
9 both the names, my name and James Frady's, to be on the
10 titles to the scooters.

11 So they rode them for several years. And I told them
12 that I just as soon let them keep the scooters and them
13 reimburse my dad the \$950 that he paid when he bought
14 those two scooters. And that's pretty much the story in
15 detail up to the point of trespassing.

16 BY MR. ALLEN:

17 Q Okay. And you became really angry about that, didn't
18 you?

19 A I was a little upset over the fact that Barry told me
20 over the telephone that he had forged my name on the title
21 and sold them in Florida. And I called the sheriff's
22 department. And I talked to a police officer on several
23 occasions about it and was having them to run a paper
24 trail to see into the forgery.

25 Q And this became an ongoing dispute back and forth,

1 you owe me the money, no, we don't, forgery, you're
2 claiming forgery. It was an ongoing dispute that went on
3 several months, was it not?

4 A No, no, it was not.

5 Q I beg your pardon?

6 A It was not, no.

7 Q Well, how long was it? It was an ongoing dispute,
8 you admit that, don't you?

9 A Well, I admit I was giving them time to decide what
10 they wanted to do about giving my dad back the \$950, and
11 them just get my name off the scooters and let it go at
12 that. And when the scooters disappeared, I called Barry
13 and asked him about them. And he said that they were
14 sold -- or he said one was sold and that the other one
15 disappeared.

16 Q About when was that, please, sir?

17 A I would say probably sometime in June.

18 Q Is your father living?

19 A Yes. He's very sick with emphysema. He pretty much
20 can't leave the house.

21 Q Was he sick then?

22 A He got sick shortly after they obtained the scooters.

23 Q And so that last date you referred to, you said that
24 was June of 2004?

25 A Yes.

1 Q Okay. But, again, it was an ongoing dispute and you
2 became really angry about it, did you not?

3 A No, no, I didn't become really angry. I was more
4 disappointed in the fact that we've had such an ongoing
5 friendship for years. No, I would not say I was mad or
6 irate. I would say I was more disappointed in the fact
7 that our friendship --

8 Q Well, didn't you have words with them during the
9 period of the dispute? Didn't you have cross words with
10 them where you had a heated conversation where you would
11 say they owed you \$950, and they would say, no, they didn't?

12 A They --

13 Q You --

14 THE COURT: Just a moment. Ask one question at a
15 time. I know there's not a jury, Counsel.

16 MR. ALLEN: Yes, sir.

17 THE COURT: One question at a time. Rephrase your
18 question.

19 MR. ALLEN: Yes, sir.

20 BY MR. ALLEN:

21 Q You had heated conversations with them during an
22 ongoing dispute, did you not?

23 A We had had conversations, yes.

24 Q Heated?

25 A I don't know that I would imply "heated." We did

1 have conversations about the money. And, yes, sir, there
2 was some disagreement. I would not say it was heated.

3 Q And also, this may -- you may want to hear this, you
4 may not. Also, you couldn't account for your whereabouts
5 on the night in question, on September the 22nd between
6 9:00 and 11:40? You can't account for your whereabouts,
7 can you?

8 A Yes, I can.

9 Q And how could you do that?

10 A Well, I left my house and went to the grocery store
11 and got gas to pour in my van so I could drive it back to
12 Toccoa the next morning to go to work. I stopped by a
13 friend's house. I left that friend's house at roughly
14 between 10:30 and 11:00 and went to my house.

15 My van was not in my yard. I was driving my wife's
16 car. It was a loaner from Bobby Woods Chevrolet. I had
17 my plastic five-gallon gas can full of gas. The gas can
18 that was found at my van was a smaller metal gas can --

19 Q Let me ask you -- excuse me.

20 THE COURT: Hold on.

21 Are you finished with the answer?

22 THE WITNESS: Yeah.

23 BY MR. ALLEN:

24 Q You went to Circle K, according to what you're
25 saying?

1 A That's correct.

2 Q Did anybody ever come forward, to your knowledge, to
3 account that you had been there?

4 A No. I didn't encounter anybody at the store that
5 would be able to say that on that particular day at that
6 time I was at that store.

7 Q And you claim you went to Ed Towe's, too; right?

8 A That is correct, yes, sir.

9 Q And he won't come forward and account for that, will
10 he?

11 A Well, I suspect if he needed to or was asked to that
12 that would probably be in this realm of possibility.

13 Q And one other place you went to?

14 A To the grocery store.

15 MR. ALLEN: That's all the questions I have, Your
16 Honor.

17 THE COURT: I'll be happy to hear from you now,
18 Solicitor.

19 I understand you object to some portion of this
20 cross-examination. I need to know exactly what it is
21 you're objecting to now. I mean, we defined it into
22 different areas. There's scooter testimony. There's
23 testimony that I'll call testimony concerning a
24 relationship between this witness and the victims,
25 duration, the type of relationship. And then there was

1 testimony elicited by Counsel concerning this witness'
2 whereabouts on the night of this alleged incident.

3 I'll be happy to hear from you.

4 MS. HERVEY: Well, Your Honor, I mean, as to the --
5 well, we'll start with the last one, which is as to his
6 whereabouts. My objection to it is his characterization
7 of, you can't account for this and people haven't come
8 forward. That presumes those people were asked to do that
9 and if they never have been, I do think --

10 THE COURT: Well, let's put it in another way.

11 Does Counsel have the right in cross-examination to
12 ask him where he was on the night in question?

13 And then my answer to you, Solicitor, is absolutely,
14 yes.

15 MS. HERVEY: Oh, and I don't --

16 THE COURT: But he does not have the right to ask him
17 whether or not he has to produce proof since he's not on
18 trial.

19 So to the extent that you're asking me that, that
20 objection is sustained. I'm not going to allow him to do
21 it. He doesn't have to prove that. He's not on trial.

22 MS. HERVEY: Right. And that's just -- and the
23 phrasing about people coming forward and those type of
24 things, that would be the limit to the State's objection.

25 As to his general relationship with Jim and Barry and

1 Randy Frady, you know, that's fine. You know, I just
2 think we start getting into specifics. We start
3 triggering a whole bunch of things down that road. I
4 think, certainly, their relationship at the time and those
5 type of things -- but I think when you go into some type
6 of debt that is owed and those type of things, which have
7 been going on for years and which the Defense attorney can
8 in no way tie to this particular incident or things that
9 happened recently that retriggered this dispute, I think
10 he has gone beyond the scope of relevance and into the
11 realm of speculation and conjecture and those type things.

12 So I think the scooter testimony as it goes to those
13 particular things, I think does go beyond that. I mean,
14 these people have had a 40-year history with each other.
15 At some point, we can go to every fight they had at
16 Christmas, Thanksgiving, and on vacation. But I think
17 we're going to be here a lot longer than anybody wants to.
18 And I think we do go beyond the scope of relevance.

19 MR. ALLEN: Could I respond to that, Your Honor?

20 THE COURT: You, certainly, can. I'll be happy to
21 hear from you.

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

23 There was admittedly an ongoing disharmonious
24 relationship that resulted in some anger.

25 THE COURT: Well, I'm listening to what the witness

1 said. I realize those are your words, Mr. Allen. He says
2 there wasn't anger, but there was a disagreement. He says
3 it occurred -- and I wrote it down -- several years prior
4 to 2004. There was a disagreement. And it's my
5 understanding that you told me -- and I want to make sure
6 I understand this. You think this matter comes up to show
7 that this witness had some motive in connection with the
8 decedents?

9 MR. ALLEN: The van goes to opportunity.

10 THE COURT: This is classic -- a situation involving
11 what you tend to do on cross-examination to proffer to
12 this jury evidence showing that someone else allegedly
13 could commit the crime for which your client is charged or
14 put another way, third party guilt?

15 MR. ALLEN: Yes, sir.

16 THE COURT: And while --

17 MR. ALLEN: Could I.

18 THE COURT: I'll let you argue. I just want to make
19 sure I understand the basis for the testimony.

20 MR. ALLEN: Yes, sir.

21 THE COURT: You go ahead.

22 MR. ALLEN: Yes, sir.

23 The third party guilt issue -- and this is a little
24 different, the Court is aware of the Holmes v. South
25 Carolina case. The most recent U.S. Supreme Court case

1 that came out -- I forget the citation to it. It came out
2 this past May --

3 THE COURT: It was May of 2006. And the citation is
4 126 Supreme Court 1727.

5 MR. ALLEN: And I would submit that the rules were
6 substantially loose on third party guilt based on Judge
7 Alito's opinion in Holmes v. South Carolina.

8 Furthermore, I would submit to the Court that this is
9 not a classic or typical third party guilt situation where
10 the Defendant is producing witnesses. What I would submit
11 may be independent witnesses to allege the guilt of a
12 third party. What we're doing here is simply attempting
13 to cross-examine a chief witness for the Prosecution along
14 the lines of third party guilt.

15 And I do think that when you do that, you couple the
16 third party guilt issue, the standard type of issue, with
17 the Sixth Amendment right to cross-examine and confront
18 those witnesses against you. And I would submit that that
19 would move us into another category that would lighten the
20 burden even more. I mean, Holmes lightens the burden.
21 And the fact that this is cross-examination and we have
22 wide latitude for cross-examination and liberal rules on
23 cross-examination that we're in another category.

24 I would submit to the Court to not be allowed to ask
25 that question would deprive the Defendant of his Sixth

1 Amendment right to confront and cross-examine and have --
2 and for that matter, to have a fair defense.

3 THE COURT: Thank you, Mr. Allen.

4 And I, certainly, understand your objection. You
5 know, the Constitution, for both our state and the federal
6 Constitution, doesn't prohibit the exclusion of defense
7 evidence under certain circumstances. You know that and I
8 know that. I'm not sure that it makes a difference.

9 Mr. Allen, you haven't pointed me to any case. You
10 have asked me to review and I have reviewed in its
11 entirety Holmes v. South Carolina. And you are correct.
12 The rule in South Carolina did change according to the
13 United States Supreme Court. And in making any ruling on
14 this matter, I'm not looking at the evidence against your
15 client. Because, frankly, I think the United States
16 Supreme Court told us it was improper to do so to the
17 extent prior cases in South Carolina might have suggested
18 it.

19 Although, the Constitution might prohibit the
20 exclusion of defense evidence under rules that serve no
21 legitimate purpose and that are disproportionate to the
22 ends that they are asserted to promote. It is clear that
23 every state, including the federal government, has rules
24 of evidence to permit a trial judge to exclude evidence if
25 its probative value is outweighed by prejudicial effect

1 and certain other matters. Not only unfair prejudice, but
2 things such as confusion of the issues or potential to
3 mislead the jury.

4 With that -- with the fact that we have such rules,
5 an application of that principle is clearly in the area
6 that you've raised here, and that's third party guilt.
7 I'm having to balance your client's Sixth Amendment right
8 to confrontation against that, rules regulating the
9 admission of evidence, whether it be on cross-examination
10 or you affirmatively offer evidence that is proper by you
11 to show that someone else committed the crime of which
12 your client was charged.

13 Frequently, as you well know, courts have noted that
14 such evidence is so remote and lacks such a connection
15 with the crime that they are excluded. Such evidence, it
16 has been held, can be excluded where it does not
17 sufficiently connect the other person to the crime as, for
18 example, where the evidence is speculative, whether it's
19 remote or does not tend to prove or disprove a material
20 fact in issue at trial.

21 Having said that, what I have heard on the scooter
22 evidence is, according to this witness -- who because you
23 asked me to, and I wanted you to have the opportunity for
24 an appellate court to see clearly to protect the interest
25 of your client what this testimony would be before I got

1 into -- before having to rule -- this witness says that
2 this scooter incident happened several years ago, that it
3 was not a business venture, as I first believed -- and
4 that was the Judge believing that -- that this was a
5 relationship out of friendship that involved scooters and
6 that there was a debt of \$950.

7 There was clearly a demand for payment. You brought
8 that out. There was clearly a disagreement as to whether
9 or not the money was owed. The witness says there was no
10 anger involved. The evidence that you offer, whether by
11 cross-examination or through affirmative evidence as to
12 the commission of a crime by another person, should be
13 limited, I believe, to some type of evidence which is
14 inconsistent with the Defendant's guilt. And your
15 co-counsel has pointed out to me that she believes such
16 evidence is inconsistent with guilt. If the theory were
17 that broad, then any evidence which is inconsistent with
18 the State's theory would be admissible.

19 At best, this evidence that you want to cross-examine
20 on establishes that someone else may have had a motive to
21 commit the offenses with which your client is charged. A
22 motive is not an element or any requirement of the State's
23 case, nor would it be if your client or if this individual
24 is charged. Therefore, merely indicating that another
25 person had a reason to commit one of the offenses charged

1 would not necessarily exculpate your client, Mr. Allen.

2 And, therefore, I find that this evidence that you
3 want to get into, as I will call the scooter evidence, and
4 where you have proffered it outside the presence of the
5 jury is so remote and disconnected with the offense
6 charged that I find, in my discretion, it should be
7 excluded.

8 I, certainly, believe that you have the absolute
9 right on cross-examination for your client to ask this
10 witness about his relationship with the decedent. The
11 Solicitor says she doesn't object anyway. But if she did,
12 I would overrule it.

13 MR. ALLEN: Yes, sir.

14 THE COURT: I feel like you get to explore that. But
15 I feel like raising this in this fashion, I believe is so
16 remote and so speculative to raise just suspicion and,
17 therefore, under my power to do so and in my discretion, I
18 sustain the objection as to the scooter evidence.

19 And I think we've made a sufficient record on it so
20 the Court can clearly review my ruling and know the basis
21 for it.

22 MR. ALLEN: Yes, sir.

23 THE COURT: All right. I'm going to ask you if you
24 would, sir -- she's going to need to recall you to the
25 witness stand.

1 But since I'm only going to take one break this
2 afternoon and I'm going to work straight through -- and I
3 gave the Defendant a break. I didn't give the lawyers
4 one. I'll give each one of you one bathroom break and
5 then proceed and bring my jury back. And let's work
6 through the conclusion of the afternoon.

7 Yes, ma'am.

8 MS. HERVEY: And, Judge, in the presence of the
9 Court, while he's still on the stand, I want to make it
10 known what I've instructed him as to what we are not going
11 into as to the background between the two.

12 Because I understand you're going to ask about --
13 it's absolute fair game --

14 THE COURT: It's absolute fair game for him to ask
15 you about your relationship with the individuals who are
16 the alleged victims in this case.

17 All right. And it's absolutely fine. But I'm not
18 allowing any testimony -- if she objects, I'm not allowing
19 you to go into the scooter evidence.

20 THE WITNESS: Thank you.

21 MS. HERVEY: And I wanted to get a little bit beyond
22 that. We've gone and made known to you in chambers that
23 this Defendant has some record. This witness, being his
24 friend for 45 years, is familiar with that record. I have
25 instructed him not to go into any prior crimes on the part

1 of the Defendant, whether he --

2 THE COURT: I don't think Mr. Allen, nor you, intend
3 to elicit from this witness anything about the Defendant's
4 record.

5 MS. HERVEY: No, no. I want to make it clear what
6 I've instructed him so we're all operating under the same
7 guidelines.

8 THE COURT: You understand you're not to mention the
9 Defendant's record. That is not admissible. The
10 Defendant has the absolute right not to testify, in which
11 case his record would not be admissible. And even if he
12 did testify, it would only be for the purposes of his
13 credibility, depending on what he was convicted of.
14 That's a matter for the Court to take up with him and you
15 are not to mention it whatsoever in your testimony --

16 THE WITNESS: I understand that.

17 THE COURT: -- even if a question you think calls for
18 that answer.

19 THE WITNESS: I understand.

20 MS. HERVEY: And they also had some difficulties
21 between the two of them, which I think will be elicited at
22 some point. That --

23 THE COURT: That's absolutely proper
24 cross-examination for Mr. Allen to go into any difficulty
25 between this witness and his client.

1 MS. HERVEY: Oh, I'm going there myself.

2 But I've instructed him to exclude away his
3 allegation that the Defendant set fire to the house, his
4 allegation that the Defendant --

5 THE COURT: Your opinion as to who did what is not
6 admissible in this courtroom. What's on trial here --

7 THE WITNESS: I understand.

8 THE COURT: -- is Mr. Frady for these offenses. And
9 we're not trying the case involving your opinion.

10 MS. HERVEY: And I just -- I've instructed him that
11 he's to testify as to what he knows from his own personal
12 knowledge. And we're going to describe that they've had
13 difficulties and they had had difficulties in the recent
14 past and leave it at that is how I'm going to proceed, at
15 least, through direct.

16 THE COURT: And I'm not trying to limit Mr. Allen. I
17 understand what you're going to do. I can only rule on
18 what I've heard during this proffer. And I've ruled on
19 that.

20 Now, you're asking me now --

21 MS. HERVEY: No, no, no. I'm not asking you.

22 THE COURT: Well, that's all I've ruled on.

23 MS. HERVEY: No, no. I know that. I just wanted it
24 in the presence of the Court to make sure that what I've
25 instructed this witness was compensatory with the

1 discussions that we had had both in chambers and prior to
2 proceeding here today. That's all.

3 THE COURT: I recognize that you're now confirming on
4 the record what you told me in chambers in the presence of
5 Mr. Allen as to what you've instructed this witness.

6 MS. HERVEY: And also in the presence of Mr. Harper,
7 just to make sure we're clear as to how we proceed.

8 MR. ALLEN: And, Judge, let me just be sure that I've
9 got it correct.

10 THE COURT: You want to make sure you understand my
11 ruling?

12 MR. ALLEN: Yes, sir.

13 The scooter incident, which I would understand would
14 entail the monetary amount, I, certainly, couldn't go into
15 that. I mean, that's the way I understand your ruling.

16 THE COURT: That's right.

17 MR. ALLEN: But the relationship otherwise is fair
18 game?

19 THE COURT: How close he was to the victims, okay.
20 What type of relationship, friendship. He's told you he
21 didn't have a business relationship with them. So you
22 already know that from the proffer. But his relationship,
23 that they were friends and had been for a long time, you
24 can go into that. The general relationship, I see no
25 reason --

1 THE WITNESS: And as far as I'm concerned, we were
2 still friends.

3 THE COURT: Well, I don't want you asking questions
4 now. I'm talking to the attorney.

5 MR. ALLEN: But the estrangement of the relationship?

6 THE COURT: Is there an objection to the fact that
7 there was an estrangement to the relationship?

8 MS. HERVEY: Well, you get into all -- it's how you
9 characterize it. He said, Don't come over here anymore.
10 He went back later and has been back --

11 THE COURT: Well, that's Mr. Allen's word, just like
12 he characterizes it. I understand he's being an advocate
13 for his client.

14 MS. HERVEY: And I understand that, too. But -- and
15 let's just -- you know, if he wants to call it an
16 estrangement, that's fine. But Mr. Harper is going to be
17 allowed to give his own characterization.

18 MR. ALLEN: Sure. Absolutely.

19 THE COURT: Mr. Harper can answer the questions. He
20 wants to know if he can elicit information without your
21 objection as to that relationship. And my understanding
22 is you had no objection to that.

23 MS. HERVEY: No. They had a falling out. That's
24 fine.

25 THE COURT: You understand the rules.

1 MR. ALLEN: I understand the rules.

2 THE COURT: All right. We'll take five minutes.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Is the State ready to proceed?

5 MS. HERVEY: Yes, Your Honor.

6 THE COURT: Is the Defendant ready to proceed?

7 MR. ALLEN: Yes, Your Honor.

8 THE COURT: Now, before I bring the jury in, I want
9 to make sure that both sides understand my ruling
10 concerning the admission of evidence.

11 Any questions about my ruling from the State?

12 MS. HERVEY: None from the State.

13 THE COURT: From the Defendant?

14 MR. ALLEN: I don't have any, Your Honor.

15 THE COURT: Very good. I want to make sure so you
16 know the parameters.

17 MR. ALLEN: Yes, sir.

18 THE COURT: All right. Bring the jury in, please,
19 sir.

20 (WHEREUPON, the jury came into open court at
21 approximately 3:28 p.m.)

22 THE COURT: We've got everybody. Very well.

23 All right. Ladies and gentlemen, we'll continue with
24 the testimony in the trial of this case.

25 Solicitor, you may call your next witness.

1 MS. HERVEY: The State calls Mike Harper to the
2 stand, Your Honor.

3 THE CLERK: Put your left hand on the Bible and raise
4 your right.

5 WHEREUPON,

6 MICHAEL HAROLD HARPER,
7 after first having been duly sworn, testified as follows:

8 THE CLERK: Okay. Please go and have a seat.

9 THE COURT: Have a seat, if you would. Make yourself
10 comfortable. Use that microphone for me.

11 And begin by stating your full name, spelling your
12 last name for the record and the jury.

13 THE WITNESS: Michael Harold Harper, H-A-R-P-E-R.

14 DIRECT EXAMINATION

15 BY MS. HERVEY:

16 Q Mr. Harper, I'm going to ask that you speak in that
17 microphone so these last jurors can hear you.

18 Mr. Bailiff is going to give you a cup of water. If
19 you need any more, just let him know.

20 What county do you currently live in?

21 A Oconee.

22 Q And how long have you lived here in Oconee County?

23 A All my life. I was born here.

24 Q And just, generally, we've heard a lot of testimony
25 about you having a van. Are you a locksmith?

1 A Yes.

2 Q How long have you been doing that?

3 A 27 years.

4 Q And what did your daddy do? Was he a locksmith?

5 A Yes, and my grandfather.

6 Q So it's a family business kind of passed on through
7 the generations?

8 A That's correct.

9 Q You grew up here in Oconee County. What high school
10 did you go to?

11 A Walhalla.

12 Q And how did you meet -- your wife, Tammy, she
13 testified previously; is that correct?

14 A Yes.

15 Q How did you meet her? Did you meet at school or just
16 through friends?

17 A Just through friends.

18 Q And your parents, what are their names?

19 A Harold and Jackie Harper.

20 Q And have they lived here pretty much all their lives
21 as well?

22 A Well, my mother is from Knoxville, Tennessee. And my
23 dad was from Salem.

24 Q And where do your parents live? Do they still live
25 here in Oconee County?

1 A Yes. They live at Westminster Highway.

2 Q And we've heard testimony about and . Where
3 is your parents residence in relation to the Frady houses?

4 A It's diagonally across the street.

5 MS. HERVEY: Your Honor, if he could just step down
6 and look at these two exhibits just briefly to familiarize
7 the jury.

8 THE COURT: You can step down.

9 Counsel, would you like to step around?

10 MR. ALLEN: Yes, sir.

11 Thank you, Your Honor.

12 BY MS. HERVEY:

13 Q I'm showing you what's been previously marked and
14 admitted as State's Exhibit No. 1 --

15 THE COURT: Just a moment.

16 Can you see?

17 MS. HERVEY: Let me bring it a little bit farther
18 forward.

19 THE COURT: Mr. Harper, I'm going to ask you to speak
20 up now so my court reporter and the people on the jury can
21 hear you.

22 So turn and face my jury, if you would, after you
23 look at the exhibit so they can hear you, rather than turn
24 away from them when you speak.

25 THE WITNESS: All right.

1 BY MS. HERVEY:

2 Q And, if you could, just point out to the jury where
3 the Frady's live, to the best of your knowledge, on this
4 map. This is Unity Road, this is Westminster Highway
5 here, Avalon Drive.

6 A This would be my mother and father's home.

7 MR. ALLEN: Hold on a minute.

8 Mindy, have him do that again.

9 BY MS. HERVEY:

10 Q If you could, just point.

11 A This is my mother and father's home. This is James
12 Cleveland Frady, Sr.'s, home. And this is James Cleveland
13 Frady, Jr.'s, home and the residence of Barry Frady.

14 Q So would it be fair to say that your parents
15 residence is here at the intersection of Avalon Drive and
16 Westminster Highway?

17 A That's correct.

18 Q And that was the diagonally across the street that
19 you were speaking of?

20 A Yes.

21 Q And stay there one quick second and we'll go ahead
22 and do both maps while you're down off the stand. I've
23 got to get it upside right or we'll be in trouble.

24 I'm showing you what's been marked as State's Exhibit
25 No. 2. And I know you probably never looked at this house

1 from up in the air or flying over. So if you want to take
2 a moment and look at the map --

3 A I've found it.

4 Q You've found it. All right.

5 A That's where I lived on Lake Jemiki Road.

6 Q And where does your landlord live?

7 A My landlord lived right here where the swimming pool
8 is.

9 Q And where, to the best of your knowledge, did Randy
10 Frady live?

11 A Right -- this backyard down the hill. The driveway
12 turned off of 28.

13 Q We'll skip ahead just a little bit. If you could
14 point out on this map where -- were you able to locate
15 your van that night?

16 A Yes. I found my van.

17 Q And where did you locate your van?

18 A Right here on Cemetery Road.

19 Q Almost where the words are printed with the street
20 name?

21 A Yeah.

22 Q And one other question. Is there a gas station of
23 any kind anywhere near -- on this road, on Westminster
24 Highway?

25 A There's Frazier's General Store.

1 Q And can you see that on this map? Are you able to
2 identify that?

3 A Right there.

4 Q With the red roof as well?

5 A That's correct.

6 Q All right. Thank you.

7 You may retake the stand.

8 And we'll talk about all those things in detail, but
9 I wanted to get everybody on the same page as we begin.

10 MS. HERVEY: The Court's indulgence one moment, Your
11 Honor.

12 (Pause.)

13 BY MS. HERVEY:

14 Q And that house on -- where did you state your mom and
15 dad's residence was at?

16 A Westminster Highway.

17 Q And did you more or less grow up in that house?

18 A From the age of two.

19 Q And they still live there today?

20 A That's correct.

21 Q All right. And did the Fradys, to the best of your
22 knowledge, live across the street from you more or less
23 all your life?

24 A James Cleveland Frady, Sr., and his wife, whom we
25 call Blacky, they lived in the brick house closest to my

1 parents. So I've known them all my life.

2 Q You've known Jim and Blacky all your life?

3 A Yeah.

4 Q And when you were little growing up, did you know
5 Randy and Barry Frady?

6 A Yes. They would come up every summer from Florida
7 when they were out for summer break. And they would stay
8 roughly a month or so every summer.

9 Q The new kids to play with across the street?

10 A Yeah. I used to look forward to them coming every
11 summer, yeah.

12 Q And, at some point, did Randy Frady start going to
13 school here in Oconee County?

14 A Yes.

15 Q And when he did that, was he living with his
16 grandfather, Jim, Sr.?

17 A Yes.

18 Q And during that time, did you develop a friendship
19 with Randy?

20 A Absolutely, from the age of four.

21 Q And how often, just growing up, would you see each
22 other when he was living up here?

23 A Every day.

24 Q And would you all go do things outside of school, and
25 play in that area surrounding those houses, and that type

1 of thing?

2 A Every day, yes.

3 Q And were there ever occasions that Randy would move
4 down to Florida and resume living with his family down
5 there or near his family down there when they were living
6 down there?

7 A Not while we were in school, no.

8 Q But once you grew up and started to become adults and
9 start working, does that happen?

10 A It's hard to say over that period of years. If he
11 did, it didn't -- it wasn't for very long.

12 Q All right. And when you say -- you said every day
13 when you were kids you would pretty much see each other.
14 But once you grew up and became adults and started working
15 your own jobs and that kind of thing, did you have more
16 sporadic contact with the Defendant?

17 A Yes. In later years, he moved back and forth a few
18 times to and from Florida, but not necessarily living with
19 his parents at the time. He was working a job and
20 having -- paying his -- renting his own place. And then
21 he would come back. But we stayed in constant contact
22 even over the telephone.

23 Q All right. So even when he would go back to Florida,
24 you would remain friends with him?

25 A Absolutely.

1 Q And would you say that you were closer to Randy or to
2 Barry Frady?

3 A I would say I was closer to Randy. Because Barry
4 never did live here until just a few years prior to 2004.

5 Q All right.

6 A And I didn't see Barry for quite a few years.

7 Q What is the age difference, if you know, between
8 Randy and Barry? How many years separate them?

9 A Roughly about six years, five or six years.

10 Q And are they brothers or are they stepbrothers?

11 A To my knowledge, they are blood brothers.

12 Q All right. And I want to draw your -- were you
13 ever -- did you ever come to know Randy and Barry's
14 father, Jimmy?

15 A Yes, absolutely.

16 Q And would he similarly come up with the boys or for
17 some portion thereof?

18 A They would come to bring the boys up from Florida.
19 And they would -- they usually didn't stay very long when
20 they would come to bring the boys. Their trip was usually
21 a short one.

22 And then they would leave and they would come back.
23 And sometimes they would come and pick them up and stay
24 for just a few hours and turn around and go back to
25 Florida. They've -- they never spent -- to my knowledge,

1 they never spent more than two days at a time when they
2 came themselves.

3 Q Did you ever know them to come back at Christmas, or
4 holidays, or those type things on occasion?

5 A Yes.

6 Q So during -- as a result of your friendship with
7 Randy Frady, would you say that you developed a
8 relationship with Jimmy Frady, his daddy?

9 A Oh, yes, early on.

10 Q And being that -- so is it fair to say you're also
11 older than Barry Frady as well?

12 A That's correct.

13 Q And do you know about how many years separate the two
14 of you?

15 A The same, five or six years. To give you an idea,
16 Randy is six -- roughly six months older than me. He
17 turns -- he'll turn 43 six months prior to me turning 43.

18 Q So he's about a half year older than you?

19 A That's correct.

20 Q And I want to draw your attention to around the year
21 2004 and then more, specifically, we'll talk about
22 September 2004. During 2004, where are Barry and Jimmy
23 Frady living that year? Have they returned from Florida?

24 A Yes. Well, Jim moved here first. And, like I had
25 said earlier, I hadn't seen Barry in quite a few years. I

1 would guesstimate 15 years since I had seen Barry. Jim
2 came back to take care of his mother and father after he
3 retired from Hydroconduit Corporation in Florida.

4 And sometime after he had moved here himself, Barry
5 came to visit his dad and grandparents and that was our
6 first meeting in, like I said, 15 years or so. And Barry
7 briefly went back -- he met a girl here what short time he
8 was here and he made a brief trip back to Florida and quit
9 his job and moved here and moved in with his dad and
10 started dating the girl that he had met. And he had been
11 here ever since.

12 Q So approximately how many years prior to September of
13 2004 would you say Barry had been living there?

14 A I want to say -- not knowing exactly, I want to say,
15 at least, four or five years.

16 Q And you said that Jim had moved back here. Are you
17 talking about their father, who we referred to as "Jimmy"
18 just to keep them straight?

19 A Jimmy, yes.

20 Q And when Jim moved back here after he retired, did he
21 ever work here locally at anything for any steady period
22 of time or was he, for the most part, retired?

23 A He was absolutely retired.

24 Q And did you ever know Barry to start working around
25 here?

1 A Yes. He did work at the Blue Herron in Clemson, a
2 restaurant and pub. He was a culinary chef. And he
3 worked at the Blue Herron. And there was one other
4 restaurant that he worked at. I can't recall the name
5 right offhand. But he didn't work at either one of those
6 but just a brief time.

7 Q And knowing Randy growing up and also knowing his
8 father, just generally, how would you describe Randy's
9 relationship with his father?

10 A Not a good one.

11 Q And, if you could, just why do you -- without going
12 into specifics, but just explain that a little bit more.
13 Why was it not a good relationship?

14 A The way it appeared to me, Jimmy --

15 MR. ALLEN: Objection, Your Honor, unless he can show
16 firsthand knowledge of this now.

17 THE COURT: I'll sustain that objection.

18 Rephrase your question so the witness understands the
19 parameters from which he can testify in light of my
20 ruling, Counsel.

21 BY MS. HERVEY:

22 Q Not based on anything that anybody may have told you
23 or Randy, but just what you were able to observe
24 personally, from your own firsthand knowledge, of Randy's
25 relationship with his father and things that you know

1 through that knowledge, are you able to explain in more
2 detail why you would say they did not have a good
3 relationship?

4 A They just didn't get along.

5 Q And would you ever see that lack of getting along, or
6 any altercations, or words between them?

7 A Yes.

8 Q And when seeing both of them together, how often
9 would you see that occur?

10 A More than it didn't.

11 Q And how would you describe, from your own firsthand
12 knowledge, Randy's relationship with Barry?

13 A Off and on.

14 Q Like some brothers, they would have good periods and
15 bad periods?

16 A Correct.

17 Q And back in 2004, how would you describe their
18 relationship in the months preceding Barry and Jim's
19 death?

20 A Not good.

21 Q And how -- when you say it was "not good," was it the
22 same not good that it had always been or had it gotten
23 worse or better?

24 A It was worse.

25 Q And in the summer -- or leading up into the summer of

1 2004, we've heard -- let's start here. In September of
2 2004, to the best of your knowledge, where was Randy Frady
3 living?

4 A Repeat the year.

5 Q I'm sorry. I don't mean to confuse you.

6 A That's okay.

7 Q September of 2004, when the murders occurred, where
8 was Randy living at that time?

9 A On Yohlanda Drive off of Highway 28, Highlands
10 Highway.

11 Q And did you all share the same landlord?

12 A Yes, we did.

13 Q And how did Randy come to start living at that
14 trailer?

15 A I was already living on Lake Jemiki Road renting from
16 Douglas Pay. And the mobile home on Yohlanda Drive became
17 open. And, at the time, Randy was staying with -- renting
18 a -- I almost said an apartment, renting a bedroom from
19 some Mexicans further out Westminster Highway past his
20 grandparents and where his father lived. He had been
21 there for a couple of weeks and was needing somewhere to
22 go.

23 So I talked to my landlord. And I helped my landlord
24 and Randy helped, too, do a little painting inside the
25 trailer. And Randy rented the trailer from my landlord.

1 Q And prior to that period -- for that two weeks he's
2 just renting that bedroom, prior to that, where was he
3 staying, to the best of your knowledge?

4 A He was staying with his grandparents.

5 Q So he was living next door at 2209 with Jim, Sr.?

6 A Correct.

7 Q And had he done that off and on throughout his life?

8 A That's correct.

9 Q And, at some point, during that summer of 2004, after
10 Randy moves into the trailer, do you remain friends during
11 that period up until the time that the murders are
12 committed or do you two have some difficulties?

13 A We had some difficulty.

14 Q And at some period during that summer leading up to
15 September, do you stop talking to him for any period of
16 time or do you maintain contact?

17 A No. I had cut all ties completely.

18 Q And prior to that, though, when Randy was still
19 friends with you, we've heard a lot of talk about you, do
20 you have a van that you use in your locksmithing business?

21 A Yes, I do.

22 Q And let me show you just initially at this point
23 State's Exhibit Nos. 6-B, 6-C, 6-D, and 6-E, and ask you
24 if you recognize what's contained in those photographs?

25 A Yes, I do.

1 Q And what is the vehicle that's pictured in those
2 photographs?

3 A That would be my 1991 Chevy Astro locksmith van.

4 Q I was looking for this one. It slid under a box.

5 Let me show you State's Exhibit No. 6-F, is that also
6 your van?

7 A That is correct.

8 Q And was it a reliable van? Did it run well?

9 A Yes.

10 Q And did it have any particular peculiar problems with
11 it?

12 A Yes, it did. It has a full cage in it for the
13 purpose of work and keeping work tools from, in an
14 accident, coming up into the cab with the driver or the
15 passenger.

16 And the only way to obtain entry to the front section
17 of the driving section of the van, you had to literally
18 reach inside the hole where the handles used to be --
19 because the handles broke off. And I never did replace
20 them. So, therefore, I didn't really have to lock my
21 doors because there's only three people that knew how to
22 get it open.

23 Q And who are those three people?

24 A Myself, my son --

25 MR. ALLEN: Objection, Your Honor.

1 THE COURT: Counsel, approach.

2 (WHEREUPON, a bench conference was held.)

3 BY MS. HERVEY:

4 Q From your own personal knowledge, what three people
5 had you ever been able to see -- because you said only
6 three people, is that because you had only ever seen three
7 people be able to get in your van?

8 A There has been other people attempt to open my van.

9 Q Including your wife?

10 A Absolutely. And there was only three people that I
11 knew firsthand that knew how to get my van open.

12 Q And had you, actually, seen them be able to stick
13 their finger down in there and operate that mechanism?

14 A Yes.

15 Q All right. My equipment appears to be working for
16 now and I'm going to take advantage of it. Well, now it's
17 not.

18 MS. HERVEY: Can we approach briefly?

19 (WHEREUPON, a bench conference was held.)

20 MS. HERVEY: I'll let him work on it. I'll ask some
21 more questions.

22 THE COURT: Proceed.

23 BY MS. HERVEY:

24 Q And you stated that you had seen Mr. Frady operate
25 and be able to get in and out of that door?

1 A Yes. I have on numerous occasions being the fact
2 that he rode with me in my van a lot of times. Anybody
3 else, other than my son, including my daughter and my
4 wife, I had to open the passenger door for them to get in.
5 Randy or my son, they could do it themselves.

6 Q And was it stuck way down in there? Was it something
7 maybe that you required a little bit longer finger to
8 operate and knowing how to do it?

9 A Well, on one side -- well, on my side, in particular,
10 you had to pull the little thing out of the door and pull
11 it down out kind of at an angle outside the hole. On the
12 passenger side, you could stick your finger in and just
13 push it down without pulling it out of the door.

14 Q Typical, the cobblers kids don't have shoes, a
15 locksmith doesn't have a door?

16 A Yes.

17 Q Other than that, was it pretty much a running van if
18 it had gas in it?

19 A Yes.

20 Q And I want to draw your attention to the events of
21 September 22nd and September 23rd of 2004. Do you
22 remember those days?

23 A Absolutely.

24 Q And on September 22nd, 2004, from that day back, if
25 you can say, about how long had it been since you had had

1 any contact with Randy Frady?

2 A I would say there was about a two-month period there
3 that I had not so much as even seen him, bumped into him
4 at a store, had any conversation, phone or otherwise. For
5 about two months, there was no contact whatsoever.

6 Q And also how long had it been since you had seen
7 Jimmy or Barry Frady?

8 A I would say just a few days.

9 Q And why had you seen them more recently?

10 A Well, like I said, I had cut all ties with the
11 Defendant. And I was still in contact with Jim and Barry.

12 Q And when you say "contact," had you gone over there
13 or spoken to them on the phone?

14 A I had been over there, yes. I spoke with them on the
15 phone numerous times.

16 Q And you stated that you had a falling out with Randy
17 a few months prior to the murders. Was there any period
18 where you had any bad relationships or altercations with
19 Jimmy or Barry Frady?

20 A No, none whatsoever.

21 Q And was there ever a period of time in that summer
22 preceding the murders where you had stopped going over to
23 their house?

24 A It had slowed down a little, yeah. I had slowed down
25 on going, but I had not stopped going.

1 Q And when you would go over there, you stated that
2 your mother -- how often would you go see your mother
3 across the street?

4 A Pretty much on a daily basis.

5 Q And is your father in good health?

6 A No. He's terminally ill with emphysema.

7 Q And would you go over there to check on him as well?

8 A That is correct, yes.

9 Q And when you would stop over there at Jimmy and
10 Barry's house, would you stop in to see them or hang out
11 with them for a while, or what was the purpose of going
12 over there in the late summer of 2004?

13 A Just to hang out. They had a nice little shop built
14 in the warehouse building that used to be where furniture
15 was stored when they had a moving service. And they had a
16 TV up there. We'd watch the Grand Prix races and have a
17 cold beer, just be friends hanging out.

18 Q And did you ever similarly do that -- have that same
19 type of casual friendship with Jim, Sr.?

20 A He was frequently around. James, Sr., did not drink,
21 but he was there quiet regularly.

22 Q Let me ask you to turn around real quick. I'm
23 showing you State's Exhibit No. 6-F. And I have no idea
24 why it's green. Obviously, your van is not that green.

25 A No.

1 Q All right. I'm trying to zoom in on where -- this
2 kind of dent in the door. What are we looking at there?
3 Even though it's green and it's not really green.

4 A Well, there's supposed to be a black handle right
5 above the door lock where you see the indentation.
6 There's supposed to be a vertical black handle there.

7 Q And let me hand you this yardstick and ask you if you
8 can point to it on your now green van.

9 A The handle should be right there.

10 Q And you stated there was a hole that you would stick
11 your finger into. Where is that hole at?

12 A It's not visible here because of the angle of the
13 indentation. But the hole is back on this side right
14 there. And the door itself, because of the way the
15 indentation is, it's got the hole -- you can't see it.

16 Q All right. You can take your seat back.

17 Thank you.

18 I apologize for jumping around.

19 You said that Mr. Jim wouldn't be over there as much
20 because he didn't drink?

21 A Well, he loved to come up and get in on
22 conversations. And he liked to tinker a lot. If it was
23 broke, he would make a piece for it. He just loved
24 hanging up there in the conversation with us.

25 So yes, he was quite frequently at the warehouse when

1 we would be just standing around piddling on stuff,
2 watching Grand Prix races or what have you.

3 Q And you talked about Randy not having a good
4 relationship with his father and an on and off again
5 relationship with his brother. How would you describe
6 Randy's relationship with his grandfather?

7 A Well, his grandfather would get a little keyed up
8 about certain issues that would tear his nerves up. And
9 he would have a little tantrum.

10 Q Would you say that he had a better relationship with
11 his grandfather or a worse relationship than he did with
12 his father?

13 A I'd -- better.

14 Q Much better?

15 A Much, much better, yes.

16 Q And you stated that throughout his life, on occasion,
17 Randy would live with his grandfather?

18 A Yeah. They've -- they pretty much almost raised him
19 from a teenager.

20 Q And how did Randy's father and Barry get along, from
21 what you were able to observe, from your own firsthand
22 knowledge?

23 A No conflict. They got along very well.

24 Q And did you ever know them to take trips together and
25 do those kind of things?

1 A Yeah. As a matter of fact, I went on a trip with
2 them. They took me with them to Key West with them for
3 five days. Yeah. They've traveled all over the world.
4 They've been to Fiji, Sweden, Amsterdam. They've been all
5 over the world, New Zealand.

6 Q And this is just based on that they would tell you
7 they were going on these things?

8 A Oh, yeah. Well, they would bring me back souvenirs.
9 I've got T-shirts. I did have a Zippo lighter from New
10 Zealand. It was the friendship -- the Irish --

11 MR. ALLEN: Objection to relevance.

12 MS. HERVEY: It just goes as to his knowledge of
13 their relationship, Your Honor.

14 THE COURT: Counsel, approach.

15 MS. HERVEY: I'll move on.

16 THE COURT: Withdrawn.

17 Proceed.

18 THE WITNESS: But anyway, yes, I knew firsthand.
19 They'd talk about it before they would leave and they
20 would be gone and they would come back --

21 MR. ALLEN: Objection to hearsay.

22 And, Your Honor --

23 THE COURT: Sustained.

24 Rephrase your question.

25 MS. HERVEY: That's fine.

1 BY MS. HERVEY:

2 Q Did you ever know Randy to go on these trips with
3 them?

4 A When we went to Key West, Randy had called my house.
5 He -- I'm thinking he was working at the time at Marathon
6 Key, which is just up from Key West. And he found out
7 that I was on a trip to Key West with his brother and his
8 dad. And we just barely did get our room rented and
9 walked back down on the street, and we came back in to
10 take a break from the heat and Randy was already in Key
11 West and had --

12 Q Did he stay with you during that vacation?

13 A Yeah.

14 Q And was that the only trip or were there others that
15 you knew that he --

16 A He went to Mexico with his dad on a trip one time.

17 Q But the majority of the trips were between the father
18 and Barry?

19 A Absolutely.

20 Q Let me draw your attention back to the night of
21 September 22nd, 2004. Back in that period, that month,
22 September 2004, where were you working? Were you just
23 doing the locksmithing or did you do something else?

24 A No. I had closed the business. My dad got sick with
25 emphysema. And I was trying to run a 36-year-old business

1 by myself. And I had to close it.

2 So I was doing a little locksmithing on the side for
3 people that had known me for years as a locksmith and only
4 wanted me to work on their locks. But for the most part,
5 my paycheck was coming from Seminole Civil Construction in
6 Toccoa, Georgia.

7 Q And would you go to Toccoa and work or would they
8 send you out at job sites and other places?

9 A I had to report to the office in Toccoa and figure
10 out what job site all the crew members were going to be
11 assigned to. And then we would get in company vehicles
12 and go to whatever construction site we were ordered to go
13 to.

14 Q And do you remember working that day and driving home
15 that night -- that day?

16 A Yes, I do.

17 Q And do you remember about approximately what time you
18 would have gotten off that day or gotten home?

19 A Well, we were working in Seneca. I forgot what they
20 call that, the new park we were working at, but it's right
21 next to the Christian Academy School. They built a new
22 Village there. It's kind of an office complex.

23 At the time, what we did was go in and dig drain
24 ditches and stuff. We would cultivate the ground and get
25 it ready to be paved and built on.

1 Q And what -- about what hours were you working around
2 that time? Were you working pretty much 8:00 to 5:00 or
3 7:00 to 6:00?

4 A Yeah. We got off that day, roughly, around 5:30, I
5 would say. And then I had to go in the company vehicle
6 back to Toccoa from Seneca to get my van. And then I had
7 to drive myself back home within a couple of miles of
8 where I was working.

9 Q And would that take you about an hour, hour and a
10 half?

11 A I would say about an hour, give or take a few
12 minutes.

13 Q And when you got home that day, was there anything in
14 particular about your van that was working or not working,
15 or were you having any problems?

16 A It was acting up a little bit because it was so low
17 on gas. It spit and sputtered a few times when I would
18 take off. Because it would push the gas, what little was
19 in it, away from the pickup in the tank. And when I
20 was --

21 Q Is there a reason why you didn't stop and get gas
22 that night on the way home?

23 A I had run out of money. And I didn't have my
24 paycheck yet.

25 Q And was your -- we've heard from your wife and that

1 she runs a beauty shop. When you got home that day, was
2 she home when you got home?

3 A No. She had quite a few customers come in before she
4 closed her doors. And as long as you make it in before
5 she puts up her closed sign, she'll stay until she gets
6 through. So she had to work over to get rid of her -- go
7 through all the haircuts.

8 So I had -- when my van cut off and I coasted into my
9 driveway, I immediately went in the house and took a
10 shower and was waiting on her to get home with the car so
11 I could go get some gas for my van.

12 Q And do you remember when you got home that day, was
13 either your son or your daughter there, if you recall?

14 A No.

15 Q Did anybody else come over that day?

16 A Yes, they did. I had just gotten out of the shower
17 and a couple of friends walked up from the trailer park at
18 the end of Lake Jemiki Road. And I was sitting out on the
19 back porch swing having a cold beer while I was waiting on
20 my wife to come with the car.

21 Q And did you discuss with them that you had run out of
22 gas and that that was what you were doing?

23 A Yeah. We were kind of laughing about the fact that I
24 had ran out of gas and I was waiting on my wife to get
25 home before I could go do anything about it.

1 Q And do you recall approximately what time she got
2 home?

3 A I would say somewhere in the neighborhood of 7:30,
4 8:00, somewhere right along there.

5 Q It was some period of time after you got home, but
6 not hours?

7 A Right. I had had time after I got home to get a
8 shower and speak with my friends, roughly, about ten
9 minutes before she pulled in the yard.

10 Q And when she got home, did you immediately leave to
11 go get gas or did you wait for a while?

12 A No. I sat around with my friends for a little bit
13 longer on the porch and discussed my wife's day at work
14 and my -- how my day went and the fact that I ran out of
15 gas and was going to have to take my lawn mower can,
16 just -- I didn't get in no real big rush. I had until the
17 next morning to make sure I had gas.

18 Q And, at some point, do you leave to go get gas?

19 A Yes, I did.

20 Q And were you going anywhere else when you left that
21 night?

22 A I was going to the grocery store. But before I did
23 all that, I went by a friend's house for a little while.

24 Q And who is your friend?

25 A Ed Towe.

1 Q And did you hang out with him for a while?

2 A Yes, I did.

3 Q And then, at some point, did you leave his house?

4 A Yes.

5 Q And did you --

6 A I went to the grocery store. And I had my plastic
7 five-gallon lawn mower gas can. And I went and got some
8 gas to pour in my van.

9 Q This whole trip that you're doing that, are you in
10 your wife's car or in your van?

11 A In my wife's car.

12 Q And you pointed out Frazier's store on that map.
13 That late at night, was Frazier's store still open?

14 A No, it was not. As a matter of fact, he was already
15 closed, if I'm not mistaken, before I even made it home
16 from work.

17 Q All right. And when you -- so you go to get gas, not
18 right there, but at some other location?

19 A I got the gas at Circle K on Main Street.

20 Q And do you recall approximately what time you got
21 home that night?

22 A I got home somewhere between 11:30 and 11:45.

23 Q And when you get home, is there anything unusual
24 about your house that draws your attention immediately?

25 A Absolutely. My van was not in the yard where I

1 parked it.

2 Q And did you think for any reason that -- do you go in
3 and discuss that with your wife?

4 A Well, my first thought was -- well, I wondered how
5 she would have got in it any way because she's never been
6 able to open my doors. But my first thought was that
7 she's evidently needed to go somewhere before I got back.
8 And I ran in the house to see if she was there or if she
9 had, in fact, took my van and tried to go somewhere in my
10 van.

11 Q And was your wife there?

12 A She was in the house.

13 Q And did she know the whereabouts of your van?

14 A No, she did not. She asked me --

15 Q And without going into what she said or anything --

16 A Right.

17 Q But do you all begin to discuss where your van might
18 be?

19 A Yeah. I asked her where was my van when I saw she
20 was at home and she had not, in fact, tried to go anywhere
21 in it.

22 Q And then as a result of that conversation with your
23 wife, do you make any decisions on whether or not to
24 contact law enforcement?

25 A I left pretty much immediately and drove straight to

1 the nearest store that had a pay phone. Because at the
2 time, we didn't have a cell phone and we didn't have a
3 home phone.

4 Q And what store did you go to?

5 A I went to Little General right beside the new car
6 wash on Main Street.

7 Q And did you call 911?

8 A Yes, I did. And I explained to them that my van had
9 been stolen from Road and to, please,
10 send out an officer immediately.

11 Q And on the way back to your house, do you
12 subsequently locate your van?

13 A Yes, I did. I was going by Cemetery Road and
14 directly across from Rocky Knoll Church, for whatever
15 reason, I glanced over. And my van is sitting parked
16 facing Highway 28, parked on the wrong side of the road.
17 It was parked on the -- if I would have made a left off of
18 28, the van was facing me parked on the right closest to
19 the cemetery with the driver's door standing open.

20 Q And was there anything else, other than the door
21 being open, unusual about the condition of your van and
22 the surrounding area?

23 A Well, when I noticed that my van was there -- the
24 officer was already at my house by the time I could get
25 off the phone.

1 Q Right. When you first find your van, is there
2 anything about the surrounding area, other than the door
3 being open, that's unusual about the condition of your
4 van? Is there anything right there around it?

5 A There was a red gas can sitting on the ground just
6 under the stoop -- the step going -- getting up into the
7 driver's side. There were -- there was a spot of grass
8 beside the gas can about the size of a half dollar that
9 was burning, that was on fire.

10 And the driver's -- the glove box was open. The
11 driver's seat had been sliced all to pieces with a knife
12 and -- to expose the foam rubber in the seat so that it
13 would soak up the gas from the can that was poured in the
14 seat.

15 Q And you say to "soak" that up, could you smell
16 gasoline inside the van?

17 A Oh, absolutely. The whole inside of my van in the
18 front compartment reeked of gas.

19 Q And the fire, the small fire that you said was near
20 the gas can, what did you do with that?

21 A I immediately put my foot on it and put it out.

22 Q So you were able to just stomp it out?

23 A Yeah. It was just, like I said, about a half dollar
24 size flame.

25 Q And do you stay there with your van or do you go back

1 to your house?

2 A Well, my first thought was that no more grass than
3 was on fire, whoever had taken my van had to still be
4 close by because --

5 Q Right. Do you go back to the house?

6 A I jumped in my car and I pulled up into the cemetery.

7 Q Why do you pull up in the cemetery?

8 A To shine my lights around to see if I seen any
9 movement --

10 Q And --

11 A -- because I did see where the bank was tore up where
12 whoever had parked my van there went up a muddy bank right
13 beside the concrete steps.

14 Q And did you see anybody?

15 A I saw nothing at that time. And then I pulled to my
16 house. I pulled into my driveway blowing my horn, waving
17 my hands, and flashing my lights at the deputy who was
18 talking to my wife at the time. And I put my car in
19 reverse and took off back toward my van and the patrolman
20 followed me.

21 Q And do you then go back to where your van was
22 located?

23 A Yes.

24 Q And the gas can that was on the ground, is that a gas
25 can that you owned or recognized?

1 A No.

2 Q And was it a newer gas can or older gas can?

3 A It was an old gas can, but it was in extremely good
4 shape for its age.

5 Q But that was nothing you had ever seen before of that
6 kind?

7 A No.

8 Q You had never owned a gas can like that?

9 A No.

10 Q And was it something you had seen recently in a store
11 to buy or anything like that?

12 A I had seen some similar to it. But, no, this -- the
13 gas can was a very old gas can. And it was a metal gas
14 can. And the only gas cans I've ever owned were the
15 plastic containers.

16 Q All right. And subsequent to you going back there
17 with the officer, do you take the gas can home with you or
18 do the officers take that?

19 A They sat it in my van. And I drove to my house and
20 they -- to release my van to me, I drove my van to my
21 house. The officer followed me and opened -- he got the
22 door open, the sliding door where the gas can had been
23 set. And he got it and put it along with a glove, like a
24 Spandex-type, mechanic-type glove that we found. Just as
25 you crest the hill from my van into the cemetery, there

1 was a black glove laying there in the path of the
2 direction they went up the bank.

3 Q All right. And so he took those items, but returned
4 the van back to you?

5 A That's correct, yes.

6 Q And, at that time, do you have any knowledge about
7 anything going on over on Westminster Highway?

8 A No.

9 Q You just -- the van is returned to you in that
10 condition?

11 A Right. I didn't -- I found out what had happened on
12 Westminster Highway when I went -- was on my way to my
13 mother and father's house that next morning.

14 Q And that night, do you ever see the Defendant out
15 anywhere?

16 A No.

17 Q You just go back to your house and the officers tell
18 you somebody will be in contact with you the next day or
19 something to that effect?

20 A Well, I had them to go and look at a particular
21 person's shoes for mud.

22 Q You told them the other two individuals you
23 believed --

24 A Who I believed had taken my van, yes.

25 Q And do you know where your son was that night?

1 A No, I do not.

2 Q Did you ever have any -- come to any knowledge that
3 he in any way borrowed your van that night?

4 A Absolutely not.

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

7 (Pause.)

8 MS. HERVEY: Nothing further from this witness at
9 this time, Your Honor.

10 THE COURT: Cross-examination?

11 MR. ALLEN: May it please the Court?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. ALLEN:

15 Q Mr. Harper, now, you've talked about some
16 relationships in your testimony. And I'm not really
17 necessarily interested in 10, 15, or 20 years ago. But
18 isn't it true that at the time in question that you had a
19 strained relationship with James and Barry Frady? Isn't
20 that true?

21 A Yes.

22 Q And, in fact, it was such a strained relationship
23 between you, James Frady, and Barry Frady that you came to
24 the understanding prior to September the 22nd that you
25 were not to be on their property; isn't that true?

1 A That's correct.

2 Q It was so strained that you weren't even to go over
3 there?

4 A I was asked not to for a period of time, yes.

5 Q And the night in question, you were drinking alcohol,
6 were you not?

7 A I had had a few beers, yes.

8 Q You drank a lot of beer that night, didn't you?

9 A No. I wouldn't say I drank a lot.

10 Q What kind of beer were you drinking?

11 A I was drinking Budweiser.

12 Q Budweiser in a can or bottle?

13 A Can.

14 Q What size --

15 MS. HERVEY: Your Honor, I'm going to object to the
16 relevance. He stated --

17 THE COURT: Just a moment.

18 Counsel, approach.

19 (WHEREUPON, a bench conference was held.)

20 THE COURT: Objection sustained.

21 BY MR. ALLEN:

22 Q So you were drinking beer; is that right?

23 A Yes, sir. I had had a few beers.

24 Q We're -- are we talking about four, five, six,
25 twelve? What are you --

1 A I'd say probably four or five. Less than a six-pack.

2 Q In a short period of time there, too, as I
3 understand?

4 A I'd say within probably a four-hour period.

5 Q A four-hour period?

6 A Yeah.

7 Q So you drank after you left your home?

8 A I had a couple of beers on my back porch waiting on
9 my wife on the night in question. And after I left my
10 home, yes, I had a couple more beers before I came back
11 home.

12 Q And your van, as you've testified, was out of gas?

13 A That is correct.

14 Q Okay. And that van sputtered into the driveway and
15 you realized it was out of gas?

16 A Yeah.

17 Q And it would not operate until someone put gas in it
18 at some later time?

19 A Well, I'm sure they might have been able to crank it
20 and get it a short distance from my house.

21 Q Well, you don't really know that, do you?

22 A Yeah. Because I've run out of --

23 MS. HERVEY: Your Honor, I'm going to object.

24 THE WITNESS: -- gas in that van several times --

25 THE COURT: Just a moment.

1 MS. HERVEY: He asked him his opinion and then tells
2 him he doesn't have an opinion. He's stuck with his
3 opinion or -- but he asked him, Do you think anybody would
4 be able --

5 THE COURT: Let me hear the question, Counsel, so I
6 can start to hear the response.

7 Rephrase the question, Counsel.

8 MR. ALLEN: Okay.

9 BY MR. ALLEN:

10 Q I had asked you if the van was out of gas?

11 A Yes.

12 Q And, therefore, someone would have had to put gas in
13 it at a later time to operate it?

14 A To get very far, yes.

15 Q All right. And then the next day, you didn't go to
16 work, did you?

17 A No, I did not.

18 Q Okay. And you were supposed to go to work the next
19 day; isn't that right?

20 A I'm not aware of exactly what day of the week the
21 22nd and the 23rd had fell on.

22 Q Okay. Well, let's think about it a little bit. The
23 22nd of September of 2004, I understand, was a Wednesday.
24 So you were supposed to go to work the following Thursday
25 morning; isn't that true?

1 A That would be true, yes, sir.

2 Q And you didn't do that, did you?

3 A No, I did not.

4 Q And, in fact, by 10:00 or 11:00 the next morning, you
5 were taking some kind of nerve pills, weren't you?

6 A (There was no response.)

7 Q Isn't that true?

8 A Taking nerve pills?

9 Q Yeah. Taking Valium.

10 A Yeah. I had taken a five milligram Valium --

11 Q You had --

12 A Yes, I did.

13 Q Excuse me for talking over you.

14 You took that after you didn't go to work the next
15 morning, you took a Valium?

16 A I took that after I had come upon the circumstances
17 across the road from my parents house. Because I had just
18 found out that two close friends of mine were deceased.

19 Q Okay. But you admit you took Valium?

20 A I did take one five milligram Valium, yes, I did. My
21 mother gave it to me.

22 Q And your claim is that when you left your house on
23 the evening in question that you went to these other
24 places, you went to Circle K, maybe, was that one place
25 you claim you went?

1 A That's one place I went, yeah.

2 Q And you went to the grocery store maybe?

3 A I did, yes.

4 Q Okay. And some other friend's place?

5 A I went by to see a friend of mine, Ed Towe.

6 Q To your knowledge, would either of those people
7 testify that you --

8 MS. HERVEY: Your Honor --

9 THE COURT: Sustained.

10 BY MR. ALLEN:

11 Q Otherwise, can you account for your whereabouts from
12 9:00 to 11:35? You can't, can you?

13 MS. HERVEY: Your Honor, I'm going to object. He's
14 just accounted for his whereabouts.

15 If Mr. Allen would like to point out a gap in there,
16 that's one thing. But casting that excursion on it is
17 improper and without a factual foundation.

18 THE COURT: Overruled.

19 I'll allow him to answer that question.

20 THE WITNESS: Could you ask the question again,
21 please?

22 THE COURT: Rephrase your question, Counsel.

23 BY MR. ALLEN:

24 Q Well, the question was, you can't account for your
25 whereabouts from 9:00 until 11:41 p.m.?

1 A Well, as far as me going by my friend's house. Now,
2 as far as me going to the gas station and stopping at the
3 grocery store for a brief period, no, I don't know of
4 anybody that I could point out that could say, yes, at
5 this particular time, Mike Harper was here getting gas
6 and, at this particular time, Mike Harper was in the
7 grocery store.

8 But the time I was at my friend's house, yes, there
9 is more than one person that can account for me being
10 there up until the point that I left there and went to my
11 house around 11:30 or 11:45. That could be done, yes.

12 Q And, at the time in question, again, you had a
13 strained relationship with James and Barry Frady and you
14 also had a strained relationship with Randy Frady; isn't
15 that right?

16 A That's correct. But I was still associating with Jim
17 and Barry, I just wasn't with Randy.

18 MR. ALLEN: Thank you, sir.

19 That's all the questions I have of this witness.

20 MS. HERVEY: Just briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. HERVEY:

23 Q Mr. Allen asked you about at that time about whether
24 or not you were welcome at Jim and Barry's house. Do you
25 have any firsthand knowledge that at or around that same

1 time whether or not Randy Frady was welcome at that house?

2 MR. ALLEN: Objection, without a foundation being
3 laid.

4 MS. HERVEY: I asked him --

5 THE COURT: She asked if it was firsthand knowledge.
6 Objection is overruled.

7 You can answer the question if you know of your own
8 knowledge.

9 THE WITNESS: Yes.

10 BY MS. HERVEY:

11 Q You have knowledge?

12 A I have knowledge, yes.

13 Q And based on your firsthand knowledge, do you know
14 whether or not he was welcome at that house either?

15 A He was not.

16 Q And you stated that you had moved -- helped him move
17 into that trailer at Yohlanda Drive?

18 A Well, he didn't really have anything to move except
19 for a 13-inch color TV and the clothes he had. All the
20 furniture and everything else was mine. But, yes, I did
21 help him move into the Yohlanda Drive residence, yes.

22 Q And was that move in any way related to him not being
23 welcome at Jim and Barry's house?

24 A That would be correct, yes.

25 MS. HERVEY: Nothing further.

1 THE COURT: Recross limited to redirect?

2 MR. ALLEN: Nothing further.

3 THE COURT: As to this witness?

4 MS. HERVEY: He may be excused.

5 THE COURT: Any objection?

6 (There was no response.)

7 THE COURT: Counsel, approach.

8 MS. HERVEY: I mean, if he wants to keep him under
9 subpoena, I have no --

10 THE COURT: Come up here.

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: You may step down and you are excused.

13 THE WITNESS: Thank you, sir.

14 Here is your picture.

15 MS. HERVEY: Thank you.

16 Just leave it on the stand, please.

17 THE COURT: Ladies and gentlemen, I told you at the
18 outset of the trial that you must base your decision
19 solely upon evidence during the trial of the case. And I
20 defined for you that there are three types of evidence.
21 We define it in different ways. But for purposes of my
22 opening remarks to you, I told you it would be -- that
23 testimony from the witness stand would be evidence.
24 You've heard me also refer to exhibits, which have been
25 introduced as evidence. The third source of evidence is

1 what the law calls a stipulation.

2 As the name implies, a stipulation is, basically, an
3 agreement between the parties. That is between the
4 parties before the Court, the State and the Defendant, as
5 to the existence of a certain fact so that it will not be
6 necessary to put up testimony in light of the stipulation.
7 You would be required, ladies and gentlemen, as to any
8 stipulation to accept that stipulation as conclusively
9 determined as a fact for purposes of this trial without
10 the necessity of any additional evidence.

11 All right. Ladies and gentlemen, now, I understand
12 there will be a stipulation, I'm advised by Counsel, which
13 will be published to you at this time.

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

15 THE COURT: Yes, ma'am.

16 MS. HERVEY: The stipulation is signed by Mr. Allen
17 and myself in this case as to DNA evidence and
18 examination. The following items were examined by
19 Cecil -- Special Agent Cecil Bradstreet and evaluated
20 whether samples were appropriate for examination by the
21 DNA forensic analyst. Swabs of SLED Items 13, 14, 15, and
22 16 were examined and sent to the DNA lab for further
23 examination and testing. Item 22, a bag containing 22.1,
24 a pair of khaki shorts; 22.2, a cap; 22.3, a pair of
25 jeans; 22.5, a T-shirt; 22.6, a T-shirt; 22.7, a towel;

1 22.8, a towel; 22.9, a towel; 22.10, a towel; 22.11, a
2 sweatshirt; 22.12, a pair of socks; 22.13, a sock; 22.14,
3 a sock; and Item 28, a pair of gloves were examined and no
4 blood was detected, nor any other sample detected that
5 would be appropriate for DNA analysis.

6 The following items were tested by Senior Agent
7 Manuel J. Ortuno with the follow results: Item 11, swab
8 from living room matches a known sample from the victim,
9 Barry Frady. The probability of selecting an unrelated
10 individual at random having the same DNA profile matching
11 this item is one in 210 million. Item 12, a swab from the
12 bed beside victim matches a known blood sample from
13 victim, James Frady. The probability of selecting an
14 unrelated individual at random having a DNA sample of this
15 nature is approximately one in 25 million. Item 21,
16 sufficient DNA could not be extracted from cuttings from
17 the bed sheet from the Defendant's residence to make a
18 scientifically reliable identification. Items 13, 14, 15,
19 and 16 were determined to be inappropriate for DNA
20 analysis and no analysis was performed.

21 Thank you, Your Honor.

22 Do you want to make this an exhibit?

23 THE COURT: Any objection, Counsel?

24 MR. ALLEN: No, sir. That's the stipulation as
25 agreed upon.

1 THE COURT: No objection to making it an exhibit?

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

3 THE COURT: State's Exhibit No. 35 in evidence
4 without objection.

5 (WHEREUPON, State's Exhibit No. 35 was marked for
6 identification and admitted into evidence.)

7 MS. HERVEY: The State calls Ira Parnell, Your Honor.

8 THE CLERK: Raise your right hand and place your left
9 hand on the Bible.

10 WHEREUPON,

11 IRA BYRD PARNELL,
12 after first having been duly sworn, testified as follows:

13 THE CLERK: Please go around and have a seat.

14 THE COURT: Have a seat and slide forward. You can
15 pull the microphone up and down. He'll get you a cup of
16 water, if you need it.

17 Start by stating your full name and spell your last
18 name for the court reporter.

19 THE WITNESS: My name is Ira Byrd Parnell,
20 P-A-R-N-E-L-L.

21 THE COURT: Your witness, Counsel.

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

23 DIRECT EXAMINATION

24 BY MS. HERVEY:

25 Q Mr. Parnell, with whom are you employed?

1 A I'm employed by the South Carolina Law Enforcement
2 Division, also known as SLED.

3 Q And what do you do for SLED?

4 A I'm a supervisor of the firearm and tool mark
5 identification laboratory at SLED headquarters in
6 Columbia, South Carolina.

7 Q How long have you been so employed?

8 A I've been employed with SLED for 34 years and
9 assigned to the firearms department for 33.

10 Q And other than doing that for the SLED forensic
11 laboratory, do you have any other duties and
12 responsibilities with SLED?

13 A Basically, I'm assigned to the firearms department
14 where I supervise nine examiners and also examine evidence
15 myself and do case work.

16 Q And are you in any way associated with the SWAT team
17 or the snipers that work for SLED?

18 A Yes, ma'am, I am.

19 Q And how are you associated with them?

20 A I'm the supervisor of the SLED sniper team.

21 Q So guns are your specialty?

22 A Yes, ma'am.

23 Q And they have been your specialty for 30 some odd
24 years?

25 A Yes, ma'am. That's correct.

1 Q And during your tenure with SLED and prior to that,
2 what type of special training and education have you
3 received as it relates to firearms and firearms
4 identification?

5 A I did an intensive three-year internship program
6 under three court-qualified firearms examiners. At that
7 time, there was no college degree program or advanced
8 study program available other than learning from another
9 examiner. So, at the time, we had three court-qualified
10 examiners who trained me.

11 Q And, just briefly, during your tenure, have you
12 continued to go through other schools and updates as
13 science has developed over those 30 some odd years?

14 A Yes, ma'am. I'm a member of the Association of
15 Firearm and Tool Mark Examiners, which is an international
16 organization of examiners who meet once a year for a week
17 to discuss the latest developments in firearm and tool
18 mark identification. I graduated from the FBI National
19 Academy, our State Academy, and numerous other advanced
20 courses at the FBI Academy in Quantico, Virginia. I
21 frequently have lectured at our State Academy and the
22 district attorneys college in Columbia on firearms and
23 firearms-related evidence.

24 Q And you use the term "tool mark identification," what
25 does that term mean to you?

1 A Firearms identification is the subset of actual tool
2 marks. The firearm being the tool and the fired bullets
3 or cartridge casings been the objects on which tool marks
4 are left.

5 Q All right. And in your analysis of firearms, just
6 briefly, what does your training and experience permit you
7 to do in examining fire marks and doing that tool mark
8 identification, just generally in your field?

9 A Generally, the results that can be reached by
10 examining firearms and fired components are a positive
11 conclusion, which is fired by or associated with a
12 particular gun, not fired by, differences noted.

13 Inconclusive, which is maybe some similarities noted,
14 but due to damage or inconsistencies noted on a firearm,
15 you just can't tell whether a particular component was or
16 was not associated. Or unsuitable, which is too badly
17 damaged.

18 Q And have you testified in courts in this state before
19 regarding firearm examination and tool mark
20 identification?

21 A Yes, ma'am, approximately 550 times, as well as
22 federal court and North Carolina state court.

23 MS. HERVEY: Your Honor, at this time, we would
24 proffer Ira Parnell as an expert in firearm examination
25 and tool mark identification.

1 THE COURT: Any objection?

2 MR. ALLEN: No objection.

3 THE COURT: So qualified without objection.

4 Ladies and gentlemen of the jury, remembering my
5 earlier instruction to you concerning expert testimony.

6 Counsel, you may proceed. The witness is qualified
7 without objection.

8 BY MS. HERVEY:

9 Q And just briefly, a little bit more, you state you're
10 the supervisor over the snipers or the SWAT team. Have
11 you ever been a sniper with SLED?

12 A Yes, ma'am, for 32 years.

13 Q So not only are you an expert on examining and
14 analyzing them, you're pretty much an expert on firing
15 them as well, would that be fair to say?

16 A Yes, ma'am.

17 Q And as it relates to this case, were several items
18 submitted to you for identification?

19 A Yes, they were.

20 Q Let me show you -- and we put the sticker on the bag
21 so it's been previously marked and admitted as State's
22 Exhibit No. 18. And, first, I ask you to look at just the
23 packaging here. Does it bear any identifying marks that
24 indicate you would have repackaged that weapon in that
25 bag?

1 A Yes, ma'am, it does. The evidence tape has my
2 writing on it with my initials and the date of sealing, as
3 well as other markings on the package that indicate that I
4 did seal this package up.

5 Q With that gun in it?

6 A Yes, ma'am.

7 Q And how do you know that's the gun you put in that
8 bag? Do you mark on the gun?

9 A Yes, ma'am. My initials, case number, and specimen
10 number are scribed on the firearm in the area just above
11 the trigger guard.

12 Q And just for the purposes of clarification -- we
13 tried to get Special Agent Curtis to do it earlier and,
14 finally, got Mr. Wagner to contribute to this case -- has
15 that item been -- or has that weapon been secured in some
16 way to prevent it from being fired?

17 A Yes, ma'am. The slide is locked back.

18 Q And that isn't how it was presented to you
19 originally?

20 A No, ma'am.

21 Q What kind of gun is it? What are we looking at?

22 A We're looking at a J.C. Higgins Model 20,
23 twelve-gauge two and three-quarter inch shotgun.

24 Q Was does the J.C. Higgins model tell you? What kind
25 of gun is that? I've never heard of that before.

1 A J.C. Higgins is associated with Sears. And it's
2 possibly a Mossburg manufacture.

3 Q Mossburg would have manufactured it for Sears under
4 that different name?

5 A For Sears for J.C. Higgins.

6 Q Are you able to say how old that gun is?

7 A There's no serial number on this firearm, so it's
8 potentially prior to 1968. I don't know.

9 Q And why do you say "prior to 1968" if it doesn't have
10 a serial number?

11 A Because they're required to have a serial number
12 after 1968.

13 Q But nothing on that gun indicates to you that those
14 serial numbers have been removed or anything to that
15 effect?

16 A No, ma'am.

17 Q What kind of condition is it in?

18 A It's in very good condition. It's used, but in good
19 condition.

20 Q And by "good condition," do you mean well maintained,
21 or rarely used, or what?

22 A It has been well used based on the lack of bluing in
23 certain areas. But there's no rust. It functions very
24 smoothly without the cable guard in it and has been
25 apparently well maintained.

1 Q All right. You said it's a J.C. Higgins Model 20,
2 that's just the model number. As with different models of
3 cars, you have different models of guns, is that fair to
4 say?

5 A Yes, ma'am.

6 Q A pump shotgun. Describe to the jury, who might not
7 be familiar with shotguns, if you could, using a shotgun
8 what pump -- what does pump action mean?

9 A It's hard to demonstrate with the slide lock back.
10 However, basically, pump action can be called slide
11 action. Those of you who have fired shotguns before are
12 familiar with a slide action. For maybe some of you
13 ladies who have not, once the shell is introduced into the
14 chamber, either by singly loading or putting one in the
15 magazine, pumping the fore end backwards to pick up the
16 shell out of the magazine and forward it and load it into
17 the chamber.

18 Once the gun is loaded and the trigger is pulled, the
19 gun does nothing by itself after that point. The shooter
20 has to manually pump or pull the fore end back to extract
21 the fired shell casing from the barrel.

22 At that time, a fresh round is brought down out of
23 the magazine over to the lifter and the fore end goes
24 forward. It picks that new shell up and loads it into
25 that chamber. It's, basically, a manually operated

1 shotgun. It's not like a semi-auto or another type of
2 action -- bolt action. This is a slide action or a pump
3 where the fore end is used to slide back and forward to
4 make the gun function.

5 Q And that pipe, for lack of a better word, because I
6 don't want to call it a barrel. But that black tubular
7 thing that slides up and down, does that serve some other
8 purpose? Is that also the magazine?

9 A It is. It's the magazine tube. And in this
10 particular firearm, it will hold five unfired shells in
11 the magazine with one in the barrel, the total capacity of
12 six shells.

13 Q And so if you put a shell in there and chamber back
14 into the actual firing chamber going down the barrel, you
15 could get six actual shells in there before you would have
16 to reload?

17 A You could fire six times without reloading, yes,
18 ma'am.

19 Q You stated it was a 12-gauge two and three-quarter
20 inch chamber. What does that mean?

21 A It means the maximum length of shells that will
22 safely fire -- what's the State's Exhibit number of this
23 one?

24 Q State's Exhibit No. 18. I'm sorry.

25 A State's Exhibit No. 18, the maximum length of a shell

1 that will safely fire in State's Exhibit 1No. 8 is two and
2 three-quarter inches. And that's simply a length
3 designation that is put on ammunition by the manufacturer
4 so that an individual will know what size shells to buy
5 for their shotgun. This is strictly two and three-quarter
6 inches. Others shoot three-inch shells. Still others
7 shoot three and a half inch shells. This particular one
8 is two and three-quarter inch and are the shortest
9 12-gauge shells.

10 Q So "12-gauge" meaning the width or the diameter of
11 the shell. Would that be fair to say?

12 A What we're talking about here, that's correct. But,
13 actually, a 12-gauge, actually, means that there's 12 lead
14 balls in the diameter of the bore of this weapon to make a
15 pound. It's an old English designation for gauge. But,
16 yes, that's, basically, what we're talking about here is
17 the diameter of the barrel.

18 Q All right. So you examined that gun -- for what
19 purpose do you oil a gun?

20 A To preserve it, to keep it from rusting, and to make
21 it operate smoothly.

22 Q When you examined this gun from that sealed bag,
23 could you detect the presence of any oil on the gun?

24 A Yes, I did. It had, apparently, been wiped with an
25 oily rag, or a silicone cloth, or some mechanism to

1 maintain it so it wouldn't rust.

2 Q Had the bore been cleaned out?

3 A I could not tell if the bore had been cleaned since
4 it was last fired. There was some light residue present.
5 So the bore had not been swabbed out with a patch or
6 anything.

7 Q It had not, at least, been thoroughly cleaned, you
8 could say that?

9 A It had been wiped off, apparently, is what it looked
10 like to me.

11 Q And the bore, itself, you said hadn't been thoroughly
12 cleaned because there was still a light residue there?

13 A That's correct.

14 Q Were you able to quantify that amount of residue to
15 say how many shots or anything had been recently fired out
16 of that bore?

17 A No, ma'am.

18 Q Other than that, did you do anything else just in the
19 general examination and identification of this particular
20 weapon?

21 A Nothing other than to determine that it was safe to
22 shoot. And I test fired similar shells of those that were
23 submitted for comparison.

24 Q Before I start dropping stuff, let's look at State's
25 Exhibit No. 17. And I ask you to look at the exterior

1 packaging of this item and whether or not the items
2 contained therein were examined by you as part of your
3 ballistic examination?

4 A Yes, ma'am. State's Exhibit No. 17, the packaging
5 exhibits the date that I sealed it, and my initials, and
6 other indications of how many packages were to be returned
7 at this same time.

8 Q And, just generally, what is contained within State's
9 Exhibit No. 17? Without removing it, just can you look in
10 there and tell, generally, or from your own labeling and
11 using SLED items?

12 A It's a partial box of unfired 12-gauge shotgun
13 ammunition and three fired shotgun shell cases that I
14 fired for tests in State's Exhibit No. 18.

15 Q And does that relate originally to your SLED Item #19?

16 A Yes, ma'am.

17 Q And did you take those shells out and examine them
18 and were they part of your comparison purposes?

19 A Yes, ma'am.

20 MS. HERVEY: Your Honor, at this time, we would
21 move -- I'm getting my numbers confused.

22 What number was that bag?

23 THE WITNESS: State's Exhibit No. 17.

24 MS. HERVEY: I move State's Exhibit No. 17 into
25 evidence.

1 THE COURT: As to State's Exhibit No. 17, Counsel?

2 MR. ALLEN: No objection.

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

6 (WHEREUPON, State's Exhibit No. 17 was admitted into
7 evidence.)

8 BY MS. HERVEY:

9 Q If you could, just remove those items now that
10 they've been entered into evidence. And go into a little
11 bit more detail as to what's contained in that bag.

12 A State's Exhibit No. 17, collectively, contains a
13 Remington express long range 12-gauge shotgun shell box,
14 which had mixed ammunition in it, all two and
15 three-quarter inch 12-gauge size. There was one federal
16 brand #6 birdshot low brass shell in it. There were 20, I
17 believe, #6 high brass two and three-quarter inch
18 Remington shells in it. And the rest were buckshot, all
19 of Remington variety. The only difference was the federal
20 brand shell.

21 And State's Exhibit -- now, the three fired shotgun
22 shells that I fired for test in State's Exhibit No. 18 out
23 of this shotgun are here as well as one of the unfired
24 shells from the original box that I just cut open to view
25 the components that were inside of the shell, the pellets,

1 the powder, the wadding column, and the shell casing
2 itself.

3 Q And before we go any further, did you repackage those
4 components separately?

5 A I did. I repackaged these for accountability
6 purposes to go with the original box.

7 Q Would you give me that component bag? I'm going to
8 cross my fingers and hope that this thing works for a
9 little while longer.

10 You sealed this bag back up?

11 A I probably did.

12 Q Did I leave you some scissors?

13 A I've got something to cut it with.

14 Q I'm sure you do.

15 A Do you need for me to open them for you?

16 Q Yes, please.

17 Because I would like to show the jury those
18 components before we go further with your testimony so
19 they understand those component parts as we go through the
20 testimony.

21 Thank you, Mr. Parnell.

22 A Yes, ma'am.

23 Q What are we looking at here, this breakdown of
24 State's Exhibit No. 18?

25 A We're looking at the unfired shell casing, the

1 plastic part of the outside of the shotgun shell that I
2 cut open to review the internal components.

3 Q And that -- this metal lettering, what is that there?

4 A That's my item number, initials, and case number in
5 my handwriting that I wrote on there when I did it.

6 Q And this black marking, is that more along the lines
7 of things put there by the manufacturer?

8 A Yes, ma'am. That indicates the loading of the shell
9 as it was manufactured. And so three and three-quarter
10 drams of powder, which is a powder designation or a power
11 destination by the manufacturer, an ounce and a quarter of
12 pellets in #6 is the size of the shot pellets that are
13 loaded into the shell.

14 Q #6 pellets are what size? Buckshot? Birdshot? What
15 are we talking about?

16 A Medium large birdshot.

17 Q All right. I'm going to kind of turn it on its end a
18 little. What are we looking at looking from this end of
19 the shell casing, the empty shell casing?

20 A You're looking into the unfired shell casing body.
21 In the very bottom, if you turn to the right just right,
22 you can see the primer, which is -- actually, initiates
23 the ignition when it's struck by the firing pin. It makes
24 the powder burn, which, in turn, creates gas and blows the
25 powder and the wadding out of the barrel.

1 Q And is that -- look there. Do you see that now, the
2 gold item that appears to be showing at the bottom?

3 A Yes, ma'am. That's the primer.

4 Q And you would have just cut this cap part off here?

5 A Yes, ma'am. I carefully cut through the plastic and
6 slid the components out.

7 Q All right. I'm going to flip it on its other end or,
8 at least, try to.

9 What are we looking at?

10 A We're looking at the case head. The primer is the
11 smaller circle in the middle with the copper-colored
12 circle around it. It's showing you the head stamp, which
13 is the writing on it, which tells you it's a Remington
14 brand and the gauge is 12. The primer has not been
15 struck, which indicates it's still got priming compound
16 that's available to be used if it's struck properly.

17 Q And let me show you what's in --I've got -- hold on.
18 Let me show you this item here. And it may be necessary
19 that I turn it on its side, at least, initially.

20 What are we looking at here? How does that relate to
21 the exterior shell casing that we just saw?

22 A That is what we call a wad column. Its purpose is to
23 hold the pellets in the right hand end as we're viewing
24 it. And the lower portion, which has the elongated holes
25 in it, is designed to cushion the effect of the firing

1 mechanism. When a gun is fired, there's immediate recoil
2 to the shooter, as well as push to the shot charge. This
3 wad column is designed to cushion the pellets so that they
4 will remain round and stay together.

5 And y'all that hunt know that the further away and
6 have a tighter pattern, the more effective your load is
7 going to be. And that's what that's for.

8 And, ladies, that's so that the pellets don't deform,
9 that they stay rounder, and they will go farther and
10 straighter. It's meant to cushion. It's a one piece.
11 It's known as a power piston. That's Remington's
12 designation of that wad type. It's very characteristic of
13 shells that were manufactured by Remington.

14 Q This clear plastic one, that would have slipped back
15 down into the exterior green plastic casing?

16 A Yes, ma'am. With the powder going in first and then
17 that component going in on top of the powder and the
18 pellets being loaded into the slotted portion on the
19 right-hand end as we were looking at it before the crimp
20 was, actually, applied.

21 Q I don't necessarily want to remove them from this bag
22 and have them go everywhere. But, if you can, did this
23 also come from the same shell casing as you were breaking
24 it down? And what is the jury looking at here?

25 A I believe that's the flake powder that came out of

1 the shell.

2 Q And what would that flake powder do? How would that
3 attribute to the execution of that shell?

4 A That's what makes it, actually, shoot the wadding and
5 the shot out of the barrel. The primer ignites by the
6 firing pin hitting it, which, in turn, makes the powder
7 burn. It's designed to burn at a specific burning rate,
8 which keeps the pressure at a manageable level. And all
9 of that combined pushes the shot out of the barrel
10 surrounded by the wadding until the wadding reaches a
11 certain point away from the barrel, at which time, it
12 peels away and the shot carries on down range.

13 Q And, finally, I believe this is the last component
14 part, at least, of this shell casing. What are we looking
15 at here?

16 A Those are the actual pellets. Those are what you
17 would call the projectiles that, actually, come out of the
18 barrel. These are #6 size pellets, which is a size and
19 weight designation that's used to differentiate this size
20 pellets from larger pellets, say, buck size pellets, which
21 are very large, and then smaller birdshot pellets, which
22 are, actually, smaller than these.

23 Q All right. Let me see one of the test fired shell
24 casings that you have. Just so -- the jury doesn't
25 necessarily know what you do, you just don't go out in the

1 woods and shoot one of these things, do you?

2 A Ma'am?

3 Q You don't just shoot one of these into the woods and
4 hope that you find it, do you?

5 A Shoot what?

6 Q The shell casing. Do you shoot it under a more
7 controlled environment?

8 A Me?

9 Q Yes, you.

10 A Oh, I test fire it in a very controlled environment.
11 I have a tunnel that we fire it into that it can't get out
12 of.

13 Q And is that something that is maintained by SLED and
14 you all use to test fire weapons?

15 A Yes, ma'am.

16 Q And is that tunnel also used so that once it comes
17 out the other end of that gun or is ejected from that
18 shotgun, it's not damaged or altered in any way beyond the
19 firing?

20 A Yes, ma'am. We pump -- a pump action shotgun such as
21 State's Exhibit No. 18, it's quite easy not to damage or
22 lose a fired shot shell casing because it's -- until I
23 pump the fore end, it stays in the barrel. And I can just
24 pump it right into my hand and put it in my pocket.

25 Q And you handed me one of the ones that you test fired

1 under that controlled environment?

2 A Yes, ma'am.

3 Q If you could, do you have one of the unfired bullets?

4 Let me see if I can get that back while you're
5 opening that up. I want to put these side by side so you
6 can explain to the jury the difference in appearance from
7 a fired shell casing and an unfired shell casing.

8 And, if you could, there's a yardstick there. We're
9 very sophisticated here in Oconee County, up here. Use
10 that to explain to the jury the difference between the
11 appearance of an unfired and fired shell casing.

12 THE COURT: Speak up, you haven't got a microphone,
13 so they can hear you down on the end of the jury box.

14 THE WITNESS: All right, sir.

15 The primer on the right has, obviously, been hit by
16 something. It's got a firing pin impression. It looks
17 like a big dimple from here. That causes the material
18 that's inside the primer initially to explode. It
19 ignites, which sets the powder that we saw up here on
20 fire, which, in turn, pushes out the shot and the pellets.
21 This one on the right has been fired. It has the dimple
22 of the firing pin impression and is roughly in the center.
23 That's unfired and does have the dimple.

24 BY MS. HERVEY:

25 Q And that firing pin, how does that effect or

1 contribute to your tool mark identification?

2 A The firing pin is one of the areas that can be
3 examined and, potentially, identified on a fired shell
4 casing. There are five general areas: Firing pin, breach
5 space, the extractor, the ejector, and chamber marks. The
6 firing pin is only one. But it really initiates the whole
7 firing process and causes the rest of the marks to be
8 made.

9 Q And that firing pin, that mark it leaves as it
10 strikes the primer, are you able to say that that is
11 peculiar to any particular gun or type of gun?

12 A It can be, yes, ma'am.

13 Q Some may appear similar, but some may be in
14 particular; is that correct?

15 A That's correct.

16 Q And this gun, did it strike that primer in any
17 particular way that would lead to and/or contribute to
18 your identification in this case?

19 A As I recall, the firing pin on State's Exhibit No. 18
20 was relatively smooth. And I think my identifications or
21 my examinations were limited mainly to the breach face
22 area or --

23 THE WITNESS: If I may, Your Honor?

24 (There was no response.)

25 BY MS. HERVEY:

1 Q Please explain to the jury what "breach face" means,
2 what we're looking at in terms of the shell casing?

3 A The breach on State's Exhibit No. 18 --

4 May I approach?

5 -- is the area around where the firing pin comes out.
6 I don't want to point that at anybody. But there's a
7 silver circle in the circle here and a little hole in the
8 middle. That's where the firing pin comes out. And when
9 this gun is fired, any of you who have seen or fired a gun
10 know that the recoil against your shoulder is noticeable.
11 And when that recoil happens, right here in the center of
12 this bolt that's down inside to hold the middle of the
13 firing pin, and in the area around where the firing pin
14 comes out is, actually, what I'm referring to as the
15 breach space area. And the circle down here, the hole in
16 the middle, is where the firing pin comes from.

17 THE COURT: Mr. Parnell, if you would, show it to
18 Defense Counsel, please.

19 MR. ALLEN: Yes, sir.

20 THE WITNESS: The firing pin comes out of the hole in
21 the middle and the area around is the breech space.

22 BY MS. HERVEY:

23 Q And does that breach space leave any telltale
24 markings on any particular area of the shell casing when
25 it's fired?

1 A Yes, ma'am, it does. The area around the firing pin
2 impression is marked by the breach space. In recoil, when
3 the gun fires and it kicks into the shooter's shoulder,
4 the impression of the breach of the firearm that's being
5 shot is impressed onto the primer area of the shell that's
6 being fired. Marks are microscopic in nature. And they
7 are identifiable to a specific firearm in certain
8 circumstances.

9 Q And no matter how much I zoom in, I'm not going to
10 see those markings; is that correct?

11 A No, ma'am. They're microscopic.

12 Q You've got to have an actual microscope with a little
13 bit more zoom power than mine? This has been very faulty
14 equipment so far in this trial.

15 A Yes, ma'am.

16 Q And is the marks limited to there where that firing
17 pin hits the primer cap or are there any other marks there
18 on that end of the projectile, perhaps, where it says
19 "Remington" and "12GA"?

20 A In certain circumstances, there can be extraneous
21 marks outside of the primer area. Marks anywhere on the
22 case head can be associated with a particular firearm if
23 the gun repeats and marks each one in the same way.

24 Q And when firing this weapon and after examining those
25 test fired rounds, those three test fired rounds that you

1 did, were you able to determine whether or not this gun
2 left a telltale marking on the breach face of the shell
3 casings fired by it?

4 A Yes, ma'am, I was.

5 Q And, if you could, just describe to the jury that
6 type of pattern. You have heard fingerprints have rings,
7 and whirls, and those types things. Breach face markings,
8 what do we, typically, see -- or what are we seeing in
9 this particular gun?

10 A In State's Exhibit No. 18, the breach face pattern is
11 what we call parallel markings. In other words, they go
12 across the primer. And they're roughly lines that run
13 parallel to each other across the face of the breach.
14 These marks are left, actually, in State's Exhibit No.
15 18 -- or were left in State's Exhibit No. 18 by a process
16 at the manufacturer.

17 It was not intentional by the manufacturer to leave
18 these markings. It was not something they controlled or
19 did on purpose. They're totally random. And they will be
20 different from one shotgun to the next. You could have
21 the gun that was fired -- or made right behind State's
22 Exhibit No. 18 and the one that was made right before it
23 and the chances are very great that the breach face
24 markings in each of those shotguns would be unique enough
25 to where a trained examiner could differentiate between

1 the three guns even made that close together.

2 Q And did you see those same type of breach face
3 markings in all three of your test fired shell casings?

4 A Yes, ma'am, I did, and others, too.

5 Q And just going back to that box of shotgun shells
6 that you used, you stated that there was various types of
7 shotgun shells within that box; correct?

8 A Yes, ma'am.

9 Q And, if you could, just briefly explain to the
10 jury -- you talked about the 20 -- the example one that we
11 saw, that birdshot type one.

12 A Yes, ma'am.

13 Q What other types of shell casings were in that box?

14 A There were five two and three-quarter inch Magnum .00
15 size buckshot shells also included in the box from State's
16 Exhibit No. 17.

17 Q Before you go any further, let me stop you right
18 there. What is Magnum .00 buckshot? What does that mean?

19 A Buckshot is a much larger lead pellet. And in the
20 shells that I'm telling you about, the five two and
21 three-quarter inch Magnum buckshot pellets, there are 12
22 pellets. In the #6's, there are a couple hundred. So
23 these pellets are much larger.

24 As the name implies, they're used to hunt deer or to
25 shoot bucks. They're big pellets. And in the Magnum

1 designation, there are 12 pellets within that shell. In a
2 non-magnum shell, to differentiate, there are nine
3 pellets. So this has an extra three pellets over and
4 above the standard nine-pellet load.

5 Q All right. And you stated that there was kind of one
6 random shell, one red-headed stepchild of the box. What
7 was it?

8 A One random federal #6 birdshot, which was not a high
9 brass load, but a low brass load. All the other shells in
10 the box were green. This one was red. It was just
11 different. I had no other evidence that was federal brand
12 or anything to examine.

13 MR. ALLEN: Your Honor, could we approach?

14 THE COURT: Counsel, approach.

15 (WHEREUPON, a bench conference was held.)

16 THE COURT: Proceed.

17 BY MS. HERVEY:

18 Q I'll show you State's Exhibit Nos. 12 and 11, and ask
19 you whether or not these items similarly were examined by
20 you in this particular case?

21 A Yes, ma'am. State's Exhibit No. 11 bears my case
22 number, specimen number, initials, and date of sealing.
23 And I examined -- in fact, it's still sealed, I believe.
24 At least, I sealed these items. And State's Exhibit No.
25 12 also bears my writing, sealing date, case number,

1 specimen number, and initials on the side of the box here.

2 Q And do State's Exhibit Nos. 11 and 12 relate to
3 SLED's #13, #14, #15, and #16?

4 A Yes, ma'am. State's Exhibit No. 12 is marked Item
5 #14, #15, and #16. And State's Exhibit No. 11 is marked
6 Item #13. This is my designation for my examination
7 purposes.

8 Q And your Item #13 was labeled as shell casing and
9 wadding from the back bedroom floor; is that correct?
10 That's how that was submitted as being labeled?

11 A That's correct, yes, ma'am.

12 MS. HERVEY: Your Honor, at this time, we would move
13 State's Exhibit Nos. 13, 14, 15, and 16 into evidence to
14 allow Mr. Parnell to testify as to results of examination
15 of those items.

16 THE COURT: Any objection?

17 MR. ALLEN: No objection.

18 THE COURT: Ladies and gentlemen of the jury, State's
19 Exhibit Nos. 13, 14, 15, and 16 will be admitted into
20 evidence without objection.

21 MS. HERVEY: I apologize, Your Honor. State's
22 Exhibit Nos. 11 and 12, that would be his Item #13, #14,
23 #15, and #16. And I confused you. I apologize for that,
24 Your Honor.

25 THE COURT: Hold on, Counsel. Give me the exhibit

1 numbers again.

2 MS. HERVEY: State's Exhibit Nos. 11 and 12.

3 THE COURT: Come approach, Counsel.

4 (WHEREUPON, a bench conference was held.)

5 THE COURT: Any objection to State's Exhibit Nos. 11
6 and 12 from the Defendant?

7 MR. ALLEN: No, Your Honor.

8 THE COURT: Ladies and gentlemen of the jury, State's
9 Exhibit Nos. 11 and 12 will be admitted into evidence
10 without objection. State's Exhibit Nos. 11 and 12 in
11 evidence.

12 You may publish to the jury and proceed, Counsel.

13 (WHEREUPON, State's Exhibit Nos. 11 and 12 were
14 admitted into evidence.)

15 BY MS. HERVEY:

16 Q Let's start first with State's Exhibit No. 11, which,
17 I believe, is your SLED Item #13. What was in SLED item
18 #13 when you opened the sealed package? What did you find
19 contained there?

20 A I found one fired 12-gauge two and three-quarter inch
21 shell casing, an empty shell casing, and one green
22 Remington-style over-powder wad.

23 Q What's the difference between an over-powder wad and
24 an under-powder wad? Is there an under-powder wad? I may
25 be showing my gender here.

1 A No. There's no under-powder wad. But the
2 over-powder wad is consistent with a buckshot style shell
3 loading. The power piston that we saw on the big screen,
4 the one piece clear plastic, is more typical of the
5 numerous small pellets. And buckshot is typically loaded
6 with a green over-powder wad, which sits on top of the
7 powder to seal it off so when it's fired that gas does not
8 escape around it. It, actually, seals the barrel and
9 keeps all that pressure behind the shot so that they
10 achieve their maximum velocity.

11 In addition to the over-powder wad, there are
12 typically cardboard wads that sit between the over-powder
13 and the buckshot pellets themselves. It's just a
14 difference in the style of loading, different purposes for
15 different shells.

16 Q The wad that you got, the green over-powder wad, can
17 you offer an opinion as to whether or not that came from
18 or is consistent with the spent shell, which also is part
19 of Item #13?

20 A It, certainly, could have came out of the shell that
21 was received in the same package. It's a Remington-style
22 wad and it's a Remington fired shell casing. But there's
23 no way to microscopically say that this wad came out of
24 this shell and no other shell. I can't say that.

25 Q But it's consistent with it, both in type and how

1 they manufacture that, that type wadding is found in that
2 type shell casing?

3 A Absolutely.

4 Q All right. Let's move you on to -- did you examine
5 the breach space of Item #13?

6 A Yes, ma'am, I did.

7 Q And did you compare it to those test fired rounds
8 that you have?

9 A I did.

10 Q And were you able to offer an opinion as to whether
11 or not Item #13 was shot out of that J.C. Higgins model
12 shotgun?

13 A Yes, ma'am, I was.

14 Q And what was your opinion as to that?

15 A Based on microscopic comparisons that I conducted on
16 the fired shell casing from State's Exhibit No. 11 and the
17 test that I fired out of State's Exhibit No. 18, this
18 shotgun -- it is my opinion that the fired shell casing
19 from State's Exhibit No. 11, my Item #13, was fired in
20 this shotgun, State's Exhibit No. 18, and in no other gun.

21 Q So that shell casing labeled to you as being found
22 from the bedroom floor was fired out of that gun?

23 A In my opinion, yes, ma'am.

24 Q You cannot offer an opinion as to when it was fired,
25 but you just know at some point it came out of there?

1 A That's correct.

2 Q And moving to State's Exhibit Nos. 14, 15 [sic], and
3 16 [sic], which was submitted and labeled as being Zion
4 Road at Highway 28, were they different in any substantial
5 way from Item #13?

6 A They were different in that they were designated as
7 having been loaded with buckshot pellets. And the writing
8 that we saw on the shell that we looked at earlier, the
9 three and three-quarter, one and a quarter #6's that the
10 manufacturer puts on to let you know what kind of shot and
11 everything is in the shell that you're buying, on the
12 shells that came from State's Exhibit No. 12, my items
13 #14, #15, and #16, they were designated as being buckshot
14 and double zero size, which indicates they weigh
15 approximately 53 to 54 grains each. And that's just a
16 size designation, the double 0 part of it.

17 Q So Item #13, was that buckshot as well?

18 A No, ma'am. Item #13 was designated by the
19 manufacturer as having been loaded with #6 birdshot.

20 Q So the three from the road, though, they were
21 buckshot?

22 A That's what was written on them, yes, ma'am.

23 Q And were those type of ammunition -- those type of
24 shell casings, were they found in the box of shell casings
25 that was submitted to you that you used as part of your

1 test firing?

2 A The one from Item #11 [sic], my Item #13, the #6 was
3 the exact same loading and same appearance and same
4 writing and everything as 20 of the shells from State's
5 Exhibit No. 17, the box here. In fact, I fired three of
6 those same ones for test. The ones from State's Exhibit
7 No. 12 from Zion Road, I marked as having been recovered
8 from Zion Road, were .00 buckshot, not Magnum .00
9 buckshot, but just plain .00 buckshot, which indicates by
10 the manufacturer, it's own designation, it was a
11 nine-pellet load instead of a 12-pellet load like the
12 Magnum was that was in State's Exhibit No. 17.

13 Q So you didn't find any of those just general .00 buck
14 nine-pellet loads in that box of mixed ammunition you used
15 as a comparison?

16 A That's correct, I did not.

17 Q All right. Well, tell us, did you -- nonetheless,
18 were you able to compare that -- them even though that's a
19 different ammunition -- we're not talking about
20 birdshot -- does the fact that we talk about a different
21 type of shell casing, bird versus buck or Magnum, is the
22 markings on the breach face, the primer, of all these
23 three types of ammunition, is that the same?

24 A Yes, ma'am. The shell casing itself, if it had no
25 writing on it, I couldn't tell the difference between the

1 two. The only difference in the appearance of the fired
2 shell casing from State's Exhibit No. 11, my Item #13, and
3 the other three from Zion Road was the writing on them.
4 They're -- all four of them are high brass, two and
5 three-quarter Remington fired shot shells. That means
6 that the approximate powder loading is going to be roughly
7 the same. The recoil is going to be about the same and
8 the breach face markings are going to be about the same.

9 So for intent purposes, the markings are going to be
10 the same. The only difference is that the ones from Item
11 #12 -- or State's Exhibit No. 12, rather, are marked as
12 being buckshot and the one from Item -- State's Exhibit
13 No. 11 is marked as being a birdshot pellet uploaded.

14 Q Were you able to render an opinion, as to a
15 reasonable degree of scientific certainty, whether your
16 Items #14, #15, and #16 contained within State's Exhibit
17 No. 12 was similarly fired from that J.C. Higgins model
18 shotgun?

19 A Yes, ma'am. Based on my microscopic comparisons and
20 the tests that I conducted on State's Exhibit No. 18, this
21 shotgun right here, it would be my opinion that the three
22 fired 12-gauge shell casings marked as having been
23 recovered on Zion Road and contained in State's Exhibit
24 No. 12 were all fired from State's Exhibit No. 18, this
25 shotgun, and by no other gun.

1 Q Let me see all that. You can leave that there.

2 Let me show what's been marked as State's Exhibit No.
3 25, and ask you if you can similarly identify these items,
4 which have been previously testified as items removed from
5 the two victims at the autopsy?

6 A Yes, ma'am. The envelope contained in State's
7 Exhibit No. 25 also has my writing, my case number, my
8 specimen number, and my initials as sealing it on the
9 outside of it.

10 Q And are you generally -- just generally, can you
11 tell -- can you match shot, bird, buck, whatever to a
12 particular gun? And if so, why or why not?

13 A Generally, no.

14 Q Why is that?

15 A The reason being is that when you have a single
16 projectile such as a bullet going down a rifle barrel, it
17 only has one projectile going down one rifle barrel. And
18 it fills up the barrel and it acquires all the
19 characteristics of the inside of the barrel. When you've
20 got multiple pellets, they're rolling down the barrel
21 under high pressure and moving around. They're not
22 staying straight together. I mean, they're moving around
23 and bumping into each other and there's nothing on the
24 inside of a smooth bore shotgun barrel to leave any
25 striking markings on a pellet. So to answer your

1 question, no.

2 Q So the buckshot and birdshot that was retrieved from
3 the two victims, you're not able to say to a reasonable
4 degree of scientific certainty whether they came out or
5 were shot out of that gun?

6 A That's correct.

7 Q However, were you able to examine them just in terms
8 of their physical characteristics and determine whether or
9 not they're consistent with the type of ammunition found
10 at Zion Road and found in the back bedroom floor?

11 A Yes, ma'am. The buckshot pellets are consistent with
12 shells such as the ones in State's Exhibit No. 12, the
13 ones from Zion Road. Buckshot pellets are buckshot
14 pellets. And they could have, certainly, been fired from
15 those shells or other shells like them. The #6 pellets
16 that were submitted could have been fired out of the shell
17 contained in State's Exhibit No. 11, my Item #13, or from
18 another similar shell. There's no way to determine if the
19 actual pellets themselves were fired from a particular
20 gun.

21 THE COURT: Just a moment, Counsel.

22 Ladies and gentlemen, I'm going to let you go to your
23 jury room briefly. I received a note from one of my
24 jurors that you need to take a break.

25 Madam Foreperson, while in the jury room -- I

1 anticipate that we would like to go ahead and finish this
2 witness today. So make sure the jury -- that there's no
3 problem with that if we stayed a little longer just to
4 complete this, which would shorten the time tomorrow. And
5 let me know when you come back.

6 We'll take five minutes.

7 Please do not discuss the case.

8 You may retire to your jury room.

9 (WHEREUPON, the jury was excused from open court at
10 approximately 5:27 p.m.)

11 THE COURT: Counsel, approach.

12 (WHEREUPON, a bench conference was held.)

13 THE COURT: Any objection to making the juror's note
14 a Court's exhibit from the State?

15 MS. HERVEY: No, Your Honor.

16 THE COURT: From the Defendant?

17 MR. ALLEN: No, sir, not at all.

18 THE COURT: It will be Court's Exhibit No. 3.

19 We'll take five minutes.

20 Ira, you're in the middle of your testimony, please,
21 don't discuss it. Feel free to walk around the courtroom
22 and use the restroom.

23 (WHEREUPON, a break was taken.)

24 (WHEREUPON, Court's Exhibit No. 3 was marked for
25 identification and admitted into evidence.)

1 THE COURT: Bring the jury in, please.

2 (WHEREUPON, the jury came into open court at
3 approximately 5:37 p.m.)

4 THE COURT: Would Counsel approach?

5 (WHEREUPON, a bench conference was held.)

6 BY MS. HERVEY:

7 Q I know we moved on to a new exhibit. Let's go back
8 and just clarify the record.

9 Those three shotgun shells, which are your #14, #15,
10 and #16, State's Exhibit No. 12 --

11 A Yes, ma'am.

12 Q -- can you state to a reasonable degree of scientific
13 certainty if those shotgun shells from Zion Road were
14 fired from that gun?

15 A Yes, ma'am. In my opinion, those three fired shell
16 casings contained in State's Exhibit No. 12, my Item #14,
17 #15, and #16, were all fired from this shotgun, State's
18 Exhibit 18.

19 Q And moving to State's Exhibit No. 25, were those
20 component parts taken from the bodies at the autopsy?

21 A Yes, ma'am.

22 Q You were explaining to the jury that those pellets,
23 those type things, you can't make a similar type -- known
24 that they were fired from that gun conclusion about the
25 shot itself?

1 A That's correct.

2 Q However, are you able to offer an opinion -- and
3 let's start with your Item #29 contained within that
4 greater State's Exhibit No. 25 that you had labeled as two
5 pieces of plastic shot shell wadding from Barry Frady's
6 neck. Is that wadding consistent with the ammunition you
7 examined from that box of shells and the spent shell
8 casings that you examined and were collected?

9 A Yes, ma'am. The two sections of opaque or clear
10 plastic wadding material is consistent with power piston
11 style wad components manufactured by Remington.

12 Q And that shotgun shell that you broke down, did you
13 retrieve a similar type opaque wadding from it?

14 A Yes, ma'am, I did.

15 Q And, if you could, just show that to the jury. Is
16 that similar to the wadding pulled from Barry's neck?

17 A The only difference between the one from Mr. Frady's
18 body was that it was in two pieces. This one is still in
19 one piece. In other words, the other one was split right
20 between the open section at the bottom and this shot cut
21 portion at the top.

22 Q And would that type of damage to that wadding occur
23 if that wadding is encountering any foreign object once it
24 leaves the barrel of the gun?

25 A Yes, ma'am. It's very likely and most consistent

1 with it having hit something after being fired. It
2 doesn't normally occur just by firing.

3 Q SLED #30, which is contained within State's Exhibit
4 No. 25, is two pieces of shot wad material, one cardboard
5 and one plastic from the chest cavity of Barry Frady. So
6 now we have not only that opaque plastic wadding that you
7 were talking about, but we're also now talking about a
8 different type of wadding?

9 A That's correct. The opaque broken in half piece of
10 wadding that we talked about just a moment ago all from
11 State's Exhibit No. 25 is more consistent with a birdshot
12 load. The cardboard and plastic wadding material in my
13 Item #30, which is also contained in State's Exhibit No.
14 25, is more consistent with the wad styles that are loaded
15 into the buckshot shells.

16 Q And, if you could, just explain to the jury why they
17 use different wadding with birdshot versus buckshot.

18 A The one piece shot column here, typically, utilized
19 in birdshot is used to hold all of those small pellets
20 together. They don't run around loose inside the shell.
21 They're kind of contained in the wadding itself. And
22 whenever it's fired, after a short distance, this wadding
23 will, actually, peel away from the shot charged, leaving
24 only the lead pellets going forward and the wad simply
25 falling to the ground.

1 In the buckshot shells, we've got the over-powder
2 wad, which is a one piece plastic wad, then the cardboard
3 wad, which kind of cushions those pellets. And, here
4 again, this is a manufacturing ploy that the people who
5 make shells research and figure out that if they use a
6 certain style of wads that it allows their pellets to stay
7 round longer and better and go farther and straighter than
8 anybody else. But it's, basically, to cushion -- the
9 cardboard wad cushions the buckshot pellets. And since
10 they're so much bigger, they require a little more
11 cushion.

12 In addition to the cardboard, there's very frequently
13 white granular buffering material which further keeps the
14 pellets from rubbing into each other or getting flat spots
15 which causes them to veer off course.

16 Q And is that what was found in Item #32 that was
17 submitted to you as white particles taken from Barry Frady
18 at his autopsy?

19 A Yes, ma'am. These -- the granules in my Item #32,
20 State's Exhibit No. 25, were consistent in appearance and
21 in all physical characteristics to this type of packing or
22 cushioning material.

23 Q That you would find with buckshot?

24 A Yes, ma'am.

25 Q All right. And that is consistent also with how you

1 know Remington to package their buckshot?

2 A Yes. Remington and other people do, too. But
3 Remington, particularly, does.

4 Q And the presence of these white particles in the
5 body, what does that indicate to you as to the range of
6 the weapon when it was fired in proximity to the body?

7 A Based on the lightness, the physical light weight of
8 these white particles, normally, they don't follow the
9 shot charge but just a very short distance. So it would
10 indicate a closer range than farther.

11 Q Moving you to Item #34 labeled as three lead buckshot
12 pellets from Barry Frady's left back. Again, although you
13 can't make a comparison that the buckshot was fired out of
14 that gun, are you able to offer an opinion, again, as to
15 whether this is consistent or inconsistent with the box of
16 shotgun shells retrieved from the Defendant's bedroom?

17 A The size of the pellets in my Item #34 from State's
18 Exhibit 25 are consistent with .00 size buckshot pellets
19 just like the other buckshot pellets in here, and five of
20 the shells from that box were marked .00 buck as were the
21 ones from State's Exhibit No. 12, my Item #14, #15, and
22 #16.

23 Q Moving you to your Item #35 contained within State's
24 Exhibit No. 25, which is listed as eight pieces of shot
25 shell wad material from James Frady's abdomen. This

1 wadding material, is this similar to what was found in
2 Barry as far as the cardboard and the plastic?

3 A Yes, ma'am. According to my notes, I'm indicating
4 one plastic over-powder and seven pieces of cardboard
5 wadding. These are not seven rounds of pretty pieces of
6 wadding. They're seven fragments of wadding, which could
7 have at one time been one or two pieces of wadding
8 initially. But there were seven fragments in one plastic
9 over-powder received in this package.

10 Q Over-powder what?

11 A Over-powder wad.

12 Q All right. And moving you to Item #36 and #37, two
13 lead buckshot pellets from James Frady back and other
14 areas. Again, is -- this buckshot in Item #36 and #37,
15 which is contained within State's Exhibit No. 25, is that
16 consistent, again, with the type of ammunition you found
17 in that box or just generally there?

18 A Yes, ma'am. It was a .00 size buckshot pellets.

19 Q And you only found the premier -- or the Magnum load.
20 But a regular buckshot casing would have been similar in
21 size and characteristics as to that?

22 A Yes. I couldn't differentiate between the physical
23 characteristics of a .00 size pellet that came from a
24 standard load or from a Magnum load. They're all
25 physically the same individual pellet-wise.

1 Q So it's consistent with those fired shell casings
2 from the bedroom -- or from Zion Road? The buckshot shell
3 casings were found at -- were labeled Zion Church Road; is
4 that correct?

5 A That's correct.

6 Q So the buckshot found in James Frady is consistent
7 with those shell casings?

8 A In size, yes, ma'am.

9 Q You found no reason to believe that they weren't
10 fired out of there. However, you can't state to a
11 reasonable degree of scientific certainty that they
12 were?

13 A I can't make any determination as to what they were
14 fired from. They were just simply .00 buckshot pellets
15 consistent in size with what the shells from Zion Road
16 were marked in State's Exhibit No. 12.

17 Q And you stated as to that white filament being found
18 in Barry Frady that that indicated to you, as well as with
19 the wadding, that those were both close-range shots; is
20 that correct?

21 A Closer than farther. And I hedge that by saying that
22 the -- in the absence of a crosswind or any distance at
23 all, that little white powder material weighs absolutely
24 nothing. I mean, it's very, very light weight. And any
25 ambient wind or any atmospheric influence is going to make

1 that little buffering material blow completely out of the
2 pellets real quick. So, normally, that's not seen
3 unless it's a close-range wound -- or close-range shot,
4 rather.

5 Q If it was in a house, you, again, would not expect
6 those atmospheric disturbances?

7 A Correct.

8 Q And I may be oversimplifying it. But the buckshot,
9 the birdshot, and the wadding found in State's Exhibit No.
10 25 -- and you had that broken down to individual SLED
11 numbers -- those are consistent with the spent shell
12 casings found at Zion Church Road and the one found in the
13 bedroom? You can't say they came from there, but they are
14 consistent?

15 A That's correct.

16 Q That is very popular ammunition. But you found no
17 reason to believe they didn't come from those spent shell
18 casings?

19 A That's correct, too.

20 Q However, you can say that the three spent casings
21 found on Zion Road and the one on the bedroom floor --

22 MR. ALLEN: Objection. That's been asked and
23 answered several times.

24 THE COURT: Overruled.

25 I'll let her summarize.

1 MS. HERVEY: Thank you, Your Honor.

2 BY MS. HERVEY:

3 Q Those three spent shell casings at Zion Road and the
4 one found in the bedroom, you can state to a reasonable
5 degree of scientific certainty that those were fired out
6 of that gun?

7 A That's correct.

8 Q And that, again, is based on that microscopic
9 examination of that primer head?

10 A Based on my experience and training and the
11 microscopic comparison of the tests from State's Exhibit
12 No. 18 and the fire shell casings from the scene, I was
13 able to conclude that they were all fired from this gun
14 and no other gun.

15 MS. HERVEY: Thank you.

16 Thank you, Your Honor.

17 Nothing else.

18 MR. ALLEN: May it please the Court?

19 THE COURT: Cross-examination?

20 MR. ALLEN: Mr. Parnell, bear with me.

21 I'm going to do a little bit of review, Your Honor,
22 not to be unduly repetitive, but just to --

23 THE COURT: Proceed.

24 MR. ALLEN: -- clarify that we're all on the same
25 page, so to speak.

CROSS-EXAMINATION

BY MR. ALLEN:

Q Mr. Parnell, this is a 12-gauge Model 20 J.C. Higgins two and three-quarter inch shotgun; is that right?

A Correct, yes, sir.

Q That's a very common gun, 12-gauge shotgun; right?

A Yes, sir, it is.

Q Very common?

A Lots of them made.

Q Lots of them possessed in these parts, to your knowledge?

A Very likely.

Q And that was most probably made before 1968 because it has no serial number?

A Very likely.

Q In 1968, the Congress required -- or after 1968, the Congress required that serial numbers be put on shotguns; is that right?

A Yes, sir.

Q And who was J.C. Higgins?

A I have no clue who J.C. Higgins was.

Q Wasn't J.C. Higgins a gun sold by Sears and Roebuck; right?

A That's correct.

Q Wasn't J.C. Higgins a fellow that worked for Sears

1 and Roebuck a long time and they named that gun after him?

2 MS. HERVEY: Your Honor, I'm going to object. He
3 just said he didn't know. Counsel is trying to testify --

4 MR. ALLEN: Your Honor, I --

5 THE COURT: Just a moment, Counsel. We don't need
6 any argument on that.

7 Objection sustained.

8 Let's move along.

9 MS. HERVEY: Your Honor --

10 THE COURT: I've ruled.

11 Sit down, Counsel.

12 Move along.

13 MR. ALLEN: Yes, sir.

14 BY MR. ALLEN:

15 Q And Remington shells -- 12-gauge Remington shells are
16 very common, too; right?

17 A Yes, sir.

18 Q In fact, Remington is -- is Remington the lead
19 manufacturer of shotgun shells?

20 A I don't know whether they're still in the lead or
21 not, but they're at the top of the manufacturer's scale.

22 Q So, again, that's a very common shotgun shell itself?

23 A Yes, sir.

24 Q And I'm going to ask you to refer to your March 14th,
25 2005, report, please, sir.

1 A Okay.

2 Q And let's go to Page 2. And the second paragraph --
3 excuse me, after "Results of Examination," do you see that
4 about halfway down?

5 A I do.

6 Q And the second paragraph there -- did you generate
7 this report? Let me ask you that.

8 A I did.

9 Q Okay. Would you read the second paragraph there
10 below your results of the examination?

11 A It says, The fired plastic wad -- excuse me -- In
12 Item #13, the two pieces of wadding in Item #29, plastic
13 wad in Item #30, and the plastic wad in #35 were all most
14 consistent with 12-gauge Remington Petersband wad
15 components. None of these wad components were suitable
16 for identification with a particular shotgun barrel.

17 Q Okay. So that couldn't be identified with this
18 particular shotgun?

19 A That's correct.

20 Q Okay. Would you read the next paragraph, please,
21 sir?

22 A Cardboard wadding materials received in Item #30 and
23 #35 were fragmented and a gauge or particular manufacturer
24 could not be determined. They could not be identified
25 with a particular shotgun barrel.

1 Q And, thus, could not be identified with this shotgun?

2 A Correct.

3 Q Or by this shotgun -- I mean, the shotgun that's been
4 identified and put in evidence?

5 A State's Exhibit No. 18.

6 Q Yes, sir.

7 Thank you.

8 Next paragraph, please, sir.

9 A Seven birdshot pellets in Item #31 were most
10 consistent with #6 lead birdshot pellets. There were no
11 markings on these pellets to associate them with a
12 particular shotgun barrel.

13 Q So they couldn't be associated with State's Exhibit
14 No. 18?

15 A Correct.

16 Q Okay. Next paragraph, please, sir.

17 A The buckshot pellets in Item #33, #34, #36, and #37
18 were all most consistent with .00 buckshot pellets and
19 exhibited no markings to associate them with a particular
20 shotgun barrel.

21 Q And, thus, could not be identified to State's Exhibit
22 No. 18?

23 A Correct.

24 Q Is that correct?

25 A Yes, sir.

1 Q Next paragraph, please, sir.

2 A The white particles in Item #32 were physically
3 consistent with granulated plastic shot buffer found
4 loaded in some shotgun shells. These particles could not
5 be associated with a particular shell or shotgun.

6 Q Thus, they could not be associated or identified to
7 State's Exhibit No. 18?

8 A Correct.

9 Q All right. If you would, please, sir, go to your
10 second page.

11 A I'm on the second page.

12 Q Excuse me, third page. I beg your pardon. Page 3.

13 A Got you.

14 Q And read your second paragraph there, please, sir.

15 A #6 birdshot pellets from Item #31 and the wad
16 components from Item #29 could have been fired from Item
17 #13, from a similarly loaded shell or from different
18 shells of similar manufacturing construction.

19 Q So it could not be particularly identified with
20 State's Exhibit No. 18?

21 A That's correct, the pellets themselves.

22 Q And let me ask you a little bit about birdshot and
23 buckshot.

24 MS. HERVEY: Your Honor, could we approach at this
25 time?

1 THE COURT: Yes, ma'am.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: Let's proceed.

4 MR. ALLEN: May it please the Court?

5 BY MR. ALLEN:

6 Q I think I was asking you, Mr. Parnell, about birdshot
7 and -- I hadn't asked you about buckshot. But birdshot,
8 these shells were number -- as I understand, were #6
9 birdshot?

10 A Yes, most consistent with #6 birdshot.

11 Q And Remington makes various sizes of birdshot; is
12 that correct?

13 A That is correct, yes, sir.

14 Q But out of the various birdshots that they make, #6
15 birdshot is the most common birdshot you would see -- or
16 let me rephrase. It's a common birdshot?

17 A It's a common birdshot, yes, sir.

18 Q And in regard to the buckshot, the buckshot was .00
19 buckshot?

20 A Yes, sir.

21 Q And that's very common buckshot?

22 A It is.

23 Q And suffice it to say, I was asking you about your
24 report earlier and I think you've been asked and answered
25 this, but I'm going to ask you again just for

1 clarification. Isn't it true that no projectile that was
2 recovered from the scene -- I'm talking about
3 projectile -- that was recovered from the scene that
4 caused the death of the two victims, none of those
5 projectiles could be identified with State's Exhibit No.
6 18?

7 A Correct.

8 Q Because shotguns are unlike, say, a rifle, for
9 example, that when that rifle fires a bullet, if the
10 bullet can be located and found and analyzed, it can be
11 identified directly to that particular rifle?

12 A If it's in good enough condition, that's a true
13 statement.

14 Q But you cannot do that with shotguns?

15 A That's correct.

16 Q And, in fact, a handgun, the same is true as with a
17 rifle, that if you can recover the bullet in relatively
18 good condition, you can identify the bullet to the
19 particular handgun?

20 A That is correct, yes, sir.

21 Q And, again, that cannot be done with a shotgun?

22 A That's correct.

23 Q And along the lines of a shotgun shell, there can be
24 no determination, as far as your opinion or an expert's
25 opinion -- but your opinion, as to how long a shotgun

1 shell had been in the place it was retrieved from?

2 A The only thing I can comment on would be if it had
3 been weathered, or tarnished, or rusted, or, obviously,
4 exposed to weather. Without those determining factors,
5 then it's very difficult to determine how long an item has
6 been exposed to the weather.

7 Q So, in other words, again, that question, you can't
8 ascertain how long a shell casing has been in a particular
9 location?

10 A In the absence of other circumstances, no, sir.

11 Q And in terms of a shotgun shell -- okay. A shotgun
12 shell is expended from the chamber on a pump model like
13 this?

14 A Yes, sir.

15 Q And I think you said earlier that the firing process
16 is the firing pin goes forward into the primer?

17 A Correct.

18 Q And when it hits the primer, that starts the process
19 and it eventually fires?

20 A Yes, sir.

21 Q It ignites the compounds within the shell itself?

22 A And pushes the shot and pellets out, yes, sir.

23 Q And there are no -- to your knowledge, there are no
24 universal standards as to how many identifying
25 characteristics there has to be to make a positive

1 identification of a shotgun shell, is there?

2 A Not to my knowledge.

3 Q There's no source or authority that says you've got
4 to find this, this, and this to form an opinion as to
5 whether shotgun casings match one another?

6 A That's correct. It's based on the experience and
7 training of the examiner and the consistency of the gun
8 being examined.

9 Q It's strictly an opinion, number one?

10 A Based on tests, yes, sir.

11 Q And it's strictly the opinion of the examiner?

12 A In our laboratory, we have 100 percent peer review,
13 so it's, actually, two examiners. But, yes, based on the
14 examiner's opinion.

15 Q And characteristics -- identifying characteristics of
16 a shotgun shell, there's firing pin indentions or
17 impressions?

18 A Yes, sir.

19 Q There's extractor marks?

20 A Yes, sir.

21 Q There's ejector marks?

22 A Correct.

23 Q There's chamber marks?

24 A Right.

25 Q And there's one other one?

1 A Breach face.

2 Q Breach face. And isn't it true that every time a
3 shotgun such as this discharges a shell, there's
4 differences in every shell?

5 A There could be some slight differences, but the
6 overall appearance is not going to change that much.

7 Q Well, but, in fact, there's always differences?

8 A You're not going to find them to be identical on
9 anything.

10 Q So there's always differences?

11 A Exactly. However, based on my experience and
12 training, the amount of similarity is what the conclusion
13 is based on.

14 Q Did you take photographs of what -- of the
15 comparisons you did?

16 A I did.

17 Q Do you have that in your file?

18 A I do.

19 Q Could you tell me how many photographs you have?

20 A Totally or photo micrographs?

21 Q I'm sorry?

22 A I have some documentation photos which are just of
23 the evidence specimens that we've been looking at.

24 Q Of the actual comparisons. Do you have six, maybe?

25 A At least, six. A lot of them are of the same

1 comparison with just a little different lighting or
2 whatever. I have eight here.

3 Q You have eight of the comparisons?

4 A I have eight individual photos here.

5 Q And back to the characteristics now. There's --
6 again, there's no set rule out there that you have to find
7 this, this, and this on a breached face, this on a firing
8 pin indentation or impression, this from a chamber mark,
9 this on the extractor marks, ejector marks, there's no
10 rule out there that says to find this, this, and this to
11 form that opinion, is there?

12 A No, sir.

13 Q So that varies -- to your understanding, that can
14 vary from examiner to examiner?

15 A There could be some variance in the examiner's
16 opinions. However, I wouldn't expect there to be a
17 difference between a positive and a negative. There may
18 be some differences in two examiners. One might like
19 these marks better than the others. And then there may be
20 some slight difference of opinion. But, normally, you're
21 not going to have two examiners that totally disagree with
22 each other.

23 Q But there's differences of opinion?

24 A To a degree.

25 Q From examiner to examiner?

1 A To a degree.

2 Q And probably from jurisdiction to jurisdiction?

3 A I would hope not.

4 Q And you did no analysis of the firing pin impression;
5 is that correct?

6 A I looked at the firing pin.

7 Q But you did no microscopic comparison; is that
8 correct?

9 A Sure, I did.

10 Q But you didn't reach conclusions on that -- or did
11 you?

12 A It was smooth to the point to where I saw nothing
13 unique in it. And I went on to the next area, which was
14 breach face.

15 Q So you formed no opinion based on the firing pin
16 impression?

17 A It was consistent in that there were no marks there.

18 Q There were no extraction marks?

19 A To be honest with you, when I matched the breach face
20 marks, I went no farther.

21 Q So that is an identifying characteristic, extractor
22 mark?

23 A It could be, yes, sir.

24 Q I mean, that's recognized?

25 A Uh-huh. It's one of the five areas.

1 Q That was not done in this case?

2 A I didn't need to, but, no.

3 Q Well, that's a matter of opinion; correct? And then
4 ejector marks --

5 MS. HERVEY: Your Honor --

6 THE COURT: Yes, ma'am.

7 MS. HERVEY: He just asked an opinion. "That's a
8 matter of opinion; correct?"

9 I would like for Mr. Parnell to answer the question
10 whether or not that's a matter of opinion or not, to
11 explain his answer.

12 THE COURT: You may answer the question.

13 THE WITNESS: Basically, I have a certain protocol
14 that I follow in making comparisons. In cartridge cases
15 such as the ones we're looking at here in State's Exhibit
16 Nos. 11 and 12, I go first to firing pin, then to breach
17 face. And if I don't find similarities in the firing pin,
18 then I go to the breach face. If I don't find
19 similarities in the breach face or the gun is not marking
20 consistently, then I will go to the extractor, the
21 ejector, or chamber. But there's no need to double
22 identify past the breach face here.

23 BY MR. ALLEN:

24 Q So it's correct to say, in this case and in this
25 analysis, two of the five identifying characteristics were

1 used; isn't that a correct statement?

2 A I looked at the firing pin and I looked at the breach
3 face. And they were the two areas that I did examine.

4 Q The question is --

5 A To use your words, yes.

6 Q Excuse me?

7 A To use your words, yes, I used two areas of
8 comparison.

9 Q Of the five?

10 A Of the potential five, yes.

11 MR. ALLEN: Could I approach the witness, Your Honor?

12 THE COURT: Yes, you may.

13 BY MR. ALLEN:

14 Q Could I see your photographs on the comparisons?
15 There were eight that you mentioned.

16 A As long as I can have them back.

17 Q I beg your pardon?

18 A As long as I can have them back.

19 MR. ALLEN: Can we approach?

20 THE COURT: Counsel, approach.

21 (WHEREUPON, a bench conference was held.)

22 THE COURT: All right. Counsel, let's move along.

23 MR. ALLEN: That's all the questions I have of this
24 witness, Your Honor.

25 THE COURT: Redirect?

1 MS. HERVEY: Just briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MS. HERVEY:

4 Q Mr. Allen asked you to read several paragraphs from
5 your report focusing on buckshot, birdshot, and the
6 wadding retrieved from the bodies that you couldn't tie to
7 that gun; is that correct?

8 A That's correct.

9 Q Were you able to say whether or not it's consistent
10 or inconsistent with ammunition used in that weapon?

11 A It would be consistent in gauge and in size with the
12 evidence that was found and submitted. The items from
13 Item #17, I believe it is, the box here, are consistent in
14 brand and style with the wads and pellets and other
15 components that were found.

16 Q And could you read the first paragraph under the
17 "Results of Examination" that Mr. Allen skipped over?

18 A Item #20 was examined, test fired, and found to be in
19 working order. Test shot shells fired by Item #20, which
20 would be State's Exhibit No. 18, were microscopically
21 compared with Item #13, #14, #15, and #16. Matching
22 individual identifying characteristics were found and it
23 was concluded that the fired shot shells in my Item #13,
24 #14, #15, and #16 were fired by Item #20, State's Exhibit
25 18, this shotgun.

1 Q State's Exhibit Nos. 11 and 12 came out of that
2 shotgun?

3 A Correct.

4 Q You've been doing this for 30 some odd years; is that
5 correct?

6 A Yes, ma'am.

7 Q How many firearm examinations and tool mark
8 identifications have you done in your tenure --

9 MR. ALLEN: Objection. That's part of his
10 qualifications, Your Honor.

11 MS. HERVEY: He's called into question his
12 credibility, Your Honor.

13 THE COURT: Counsel, approach.

14 (WHEREUPON, a bench conference was held.)

15 BY MS. HERVEY:

16 Q How many of these type examinations have you done?

17 A Many thousands. I would be hard pressed to give you
18 an accurate approximation.

19 Q And Mr. Allen stated that just going into the -- you
20 first looked at the firing pin, and then you looked at the
21 breach face, and then you would have moved on. Is there a
22 reason why people go in that order in your field?

23 A It's normally the quickest and the ones that are most
24 impacted by the firing of the gun itself. You can have
25 extractor injector marks without the shell being fired in

1 the gun. It would simply be cycled through. The firing
2 of the shell itself is caused by the firing pin and the
3 resulting recoils that gives you breach face marks.
4 That's why I hesitate to go to those first.

5 Q Would it be fair to say that those, the firing pin
6 marks and the breach face marks, are the more reliable
7 marks used in that five span?

8 MR. ALLEN: Objection, leading.

9 THE COURT: Sustained.

10 Rephrase your question, Counsel.

11 BY MS. HERVEY:

12 Q Are they more reliable or less reliable than the
13 other three?

14 A All the marks are reliable. My results would have to
15 be could have fired in when we were talking about
16 extractor and injector unless the gun does not leave
17 marks, like on my test, unless it's fired. If that's
18 clear.

19 The firing pin and the breach face always occur
20 during firing and always are associated with firing. The
21 extractor, ejector, and sometimes chamber are more
22 associated with loaded into and fired from -- or ejected
23 from. Sometimes can mean firing, sometimes can just mean
24 loaded through.

25 Q So the firing pin and breach face are the only way to

1 talk about, actually, being fired from that gun --

2 MR. ALLEN: Objection, leading.

3 THE COURT: Sustained.

4 Rephrase your question, Counsel.

5 It's redirect examination. Let's move along.

6 BY MS. HERVEY:

7 Q The firing pin and the breach face marks, are they
8 the only ones which you can then state that shell was
9 fired from that gun?

10 A Unless the other marks only occur during firing. And
11 I won't know that until I test the gun. But, normally,
12 what -- your statement is true, the firing pin and the
13 breach face are the most reliable ways of determining
14 fired by status of a shell casing.

15 Q And that stopping at the firing pin and the breach
16 face that you testified to, is that done across the nation
17 in your field?

18 A Just about all examiners that I talk to in my travels
19 around do a similar type of exam. I mean, I don't know
20 that it's universal, but it's just commonly done.

21 Q And it meets your protocols that you use through
22 SLED?

23 A Yes, ma'am.

24 Q And you stated that someone else did it, another --
25 you had peer review, one other firearms examiner went over

1 your results to verify them?

2 A Yes, ma'am.

3 Q The shells you examined, #13, #14, #15, and #16, your
4 numbers, State's Exhibit No. 12, did they appear to be
5 weathered in any way?

6 A The only damage -- to answer your question, they
7 didn't appear to be weathered.

8 Q All right.

9 A My definition of weathering is tarnished and
10 dirty-looking, spotted worn. One of them had some dents
11 in it like it may have been stepped on or run over. But
12 as far as weathering, I wouldn't characterize their
13 condition as looking weathered.

14 MS. HERVEY: Nothing further from this witness.

15 THE COURT: Recross limited to redirect?

16 RE CROSS-EXAMINATION

17 BY MR. ALLEN:

18 Q Well, of course, Item #13 in your report, you
19 wouldn't expect something to be weathered that was inside
20 the home, would you?

21 A No, sir, I would not.

22 Q Okay. So you couldn't conclude anything on Item #13
23 from the fact that it wasn't weathered because it was
24 inside as far as the age of the casing?

25 A True.

1 Q And all of this, no matter what standards are used,
2 whether you use breach face markings, extractor marks,
3 ejector marks, chamber marks, or firing pin impression,
4 all that varies from examiner to examiner; isn't that
5 correct?

6 A It can, yes, sir.

7 Q And all of it, no matter what it is, whether it's a
8 casing, the birdshot, the buckshot, the wadding, all of
9 that is an opinion, is it not?

10 A Yes.

11 Q And an opinion, your opinion, could be mistaken?

12 A I haven't been wrong yet. And it's an opinion based
13 on scientific experimentation that's been peer reviewed at
14 our laboratory.

15 MR. ALLEN: Thank you, sir.

16 That's all the questions I have of this witness, Your
17 Honor.

18 THE COURT: As to this witness?

19 MS. HERVEY: Nothing. He can be excused.

20 THE COURT: Any objection?

21 MR. ALLEN: No objection.

22 THE COURT: Mr. Parnell, you may step down and you
23 are excused.

24 If you would, put the exhibits back and give them to
25 the court reporter.

1 Counsel, approach.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: Madam Foreperson, and, ladies and
4 gentlemen of the jury, thank you for your patience tonight
5 in staying a little later. I feel, from conferring with
6 Counsel, that we can probably complete the trial possibly
7 tomorrow. So I'm going to give you a little extra time.
8 I know I've been getting you to come in a little early
9 because I wanted to make sure I utilized the time
10 effectively. I appreciate your patience and your
11 willingness to listen.

12 We'll start in the morning at 9:30 a.m. So I'm going
13 to let you have an extra 30 minutes. Please be here --
14 report to your jury room at 9:15 a.m.

15 As I've instructed you throughout this trial, I don't
16 know if there will be anything on television, radio, in
17 the newspaper, but, please, do not read such. Please do
18 not watch such. Please do not listen to such. Please do
19 not discuss this case amongst yourselves or with anyone
20 else.

21 And, as I've told you throughout the trial, if
22 somebody wants to talk -- I know people are naturally
23 curious and they may know that you're on the jury. Just
24 tell them, I'm on the jury and the Judge said I can't talk
25 about it. And, as I've told you throughout this trial, if

1 they persist because they're naturally curious, you let me
2 handle that problem for you. You just get their name.
3 I'll take care of it for you.

4 I hope all of you have a pleasant evening. And I'll
5 look forward to seeing you in your jury room by 9:15 in
6 the morning. You may leave at this time.

7 Thank you very much.

8 (WHEREUPON, the jury was excused from open court at
9 approximately 6:21 p.m.)

10 THE COURT: Anything on the record outside the
11 presence of the jury from the State of South Carolina
12 before we adjourn for the evening?

13 MS. HERVEY: Your Honor, it's come to our attention
14 that Item #25 is not in evidence. We can move it into --

15 THE COURT: Not Item #25, proposed State's Exhibit
16 No. 25. Y'all have interchanged those numbers this
17 afternoon to the point that I'm scared that the record is
18 a little bit confusing. And I know it's hard when you're
19 dealing with item numbers from SLED.

20 But you're referring to a proposed State's Exhibit;
21 right.

22 MS. HERVEY: Yes, Your Honor.

23 THE COURT: And does the Defense have any objection
24 as to moving it into evidence or do we need to recall the
25 witness?

1 It's my understanding that Mr. Allen doesn't need you
2 to recall the witness in order to formally introduce it.
3 But it hasn't been entered into evidence in my record and
4 I made both of you aware of that at the bench.

5 Do you have any objection?

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

7 THE COURT: These were the things that were -- as I
8 understand, Counsel, State's Exhibit No. 25 includes the
9 pellets that were retrieved from the body of the two
10 decedents?

11 MS. HERVEY: The body and the wadding, yes, sir.

12 MR. ALLEN: No objection.

13 (WHEREUPON, State's Exhibit No. 25 was admitted into
14 evidence.)

15 THE COURT: If you will, tomorrow, so that it is in
16 the presence of the jury since State's Exhibit No. 25 has
17 not been entered into evidence, make yourself a note and
18 we'll formally do it in the presence of the jury in the
19 morning at 9:30.

20 Anything else on the record from the State?

21 MS. HERVEY: Just to clarify, we had this bench
22 conference about them putting an exhibit up there, which
23 at the bench conference, he said he was moving into
24 evidence, which never, actually, happened. Probably
25 because Your Honor pointed it out to him, but --

1 THE COURT: I'll point out that you called it to my
2 attention, which you should have. I recognize that an
3 employee in Counsel's office in an attempt to assist
4 Counsel went to the easel located on the wall on the other
5 side of the courtroom and in front of the jury placed an
6 8 X 10 type size Xerox copy photograph on the easel.

7 I could not tell what was on the photograph. But
8 then, I wear glasses. And I'm not going to base what the
9 jury could see on what the Judge could see, but I'm closer
10 than what the jury would be. You came to the bench to
11 remind me that had been done. Counsel said he was
12 considering the introduction of the exhibit. We had the
13 employee of his office turn the easel around so it
14 couldn't be viewed by the jury. And it was, ultimately,
15 not placed into evidence. And it is my opinion, for the
16 record, that the jury could not see that document from the
17 jury box sufficient to cause any prejudice to either party
18 in this case.

19 Do you disagree, Ms. Hervey?

20 MS. HERVEY: No, Your Honor.

21 I just wanted to make sure there would be no further
22 reference to that item.

23 THE COURT: It is not in evidence and there's not
24 going to be any reference to it in closing argument.

25 MR. ALLEN: Could I --

1 THE COURT: Anything else from the State on the
2 record before we adjourn for the evening?

3 MS. HERVEY: Nothing from the State.

4 THE COURT: I'm going to need your request to charge.
5 Yes, sir, Mr. Allen.

6 Anything on the record from the Defendant before we
7 adjourn for the evening outside the presence of the jury?

8 MR. ALLEN: Yes, sir. May it please the Court?

9 I apologize to the Court and to opposing Counsel.
10 And I take responsibility for that. I'm in charge of this
11 operation here. And it happened over here at my side of
12 the --

13 THE COURT: Well, I was -- and I'll also say, on the
14 record, in fairness to you, Mr. Allen, that you had your
15 back to your employee when that was done on the easel.
16 And I don't know that you, actually, knew what was going
17 on. But Ms. Hervey could see at Counsel table that it was
18 going on. And she rightfully brought it to the Court's
19 attention. And it's been corrected now. And I don't
20 believe there's any prejudice to either party from that.

21 We'll call that, at this point, if y'all will agree,
22 harmless error.

23 MS. HERVEY: And, Your Honor, I didn't ascribe any
24 impropriety on his part. I knew that it was that way. I
25 just wanted to correct it before it went any further.

1 THE COURT: I appreciate both of you treating each
2 other with such courtesy.

3 Anything else for the record from the Defendant?

4 MR. ALLEN: No, sir.

5 THE COURT: All right. I need you both to hand up
6 your request for charge. And I need you for two minutes.

7 This Court stands adjourned until 9:30 tomorrow morning.

8 (WHEREUPON, the proceedings were concluded at
9 approximately 6:25 p.m., to be reconvened on
10 Thursday, August 31, 2006.)

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1 THURSDAY, AUGUST 31, 2006

2
3 THE COURT: All right. Counsel, do you want to check
4 on -- my understanding from the court reporter and I want
5 to make sure, Mr. Allen, with you and Ms. Waldrep so you
6 can advise your client -- my understanding from the court
7 reporter, she advises me that State's Exhibit No. 19 is in
8 evidence. My notes had reflected that it was marked first
9 for identification. And the Solicitor agrees State's
10 Exhibit No. 19, it was put in according to the testimony,
11 I believe, according to the court reporter, of Dr. Woodard

12 Is that right?

13 THE COURT REPORTER: I didn't mark who the witness
14 was.

15 THE COURT: State's Exhibit No. 3, which was lighter
16 fluid, is not in evidence. And State's Exhibit --

17 State's Exhibit No. 30 what, Hollie?

18 THE COURT REPORTER: State's Exhibit No. 33.

19 THE COURT: State's Exhibit No. 33, which was a
20 diagram used early on in the trial to orient a location,
21 is also not in evidence.

22 So State's Exhibit Nos. 3 and 33 are not in evidence.
23 My understanding is you've conferred. And when I bring
24 the jury back this morning, it is my understanding from
25 yesterday that the State is going to offer State's Exhibit

1 No. 25 into evidence without objection.

2 Is that right, Mr. Allen?

3 MR. ALLEN: That's correct, Your Honor.

4 THE COURT: All right. My further understanding from
5 meeting with Counsel is the Defendant has advised me --
6 and I will advise the Defendant that, at this time, the
7 Defendant believes he may not be presenting any testimony
8 and the State, after putting in that exhibit, intends to
9 rest.

10 Is that correct, Ms. Hervey?

11 MS. HERVEY: Yes, Your Honor.

12 THE COURT: I've just been advised by the bailiff
13 that the juror that I advised you about that called the
14 Clerk this morning on the way to the hospital is not here.

15 So it is my intention to use the first alternate
16 juror --

17 MR. ALLEN: Could we get a name and number on him or
18 her, Your Honor?

19 THE COURT: Yes. I'll get it for you right now.

20 THE CLERK: The juror that called in sick is #24,
21 Joanna Collins. And alternate #1 will be Richard A. Cox,
22 #27.

23 MR. ALLEN: Thank you.

24 THE COURT: The first alternate juror is Mr. Cox.
25 The juror who has called in ill on the way to the hospital

1 is #24, Ms. Collins. Mr. Cox will be taking Ms. Collins'
2 place on the jury.

3 Anything further from the State before I bring the
4 jury in?

5 MS. HERVEY: Pardon me. I'm sorry. Mr. Reed was
6 talking to me.

7 THE COURT: I understand.

8 Anything further from the State before I bring in the
9 jury?

10 MS. HERVEY: No, Your Honor.

11 THE COURT: Anything further from the Defendant
12 before I bring in the jury?

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

14 THE COURT: Bring the jury in.

15 (WHEREUPON, the jury came into open court at
16 approximately 10:03 a.m.)

17 THE COURT: Madam Foreperson, and, ladies and
18 gentlemen of the jury, I was advised this morning -- and I
19 know you're probably not aware of it, but one of my
20 jurors, Ms. Collins, has become ill. She's en route for
21 medical assistance and called the Clerk's Office, which is
22 exactly what I want you to do.

23 Therefore, Mr. Cox, you are my first alternate juror.
24 You will take her place on the jury. You are now on the
25 jury as the first alternate.

1 And thank you for being on time this morning.

2 Ladies and gentlemen, we'll now continue with the
3 testimony in the trial of this case.

4 You may call your next witness, Solicitor.

5 MS. HERVEY: Your Honor, at this time, the State
6 would move State's Exhibit No. 25 into evidence, I
7 believe, without objection from Defense Counsel.

8 MR. ALLEN: That's correct. There's no objection,
9 Your Honor.

10 THE COURT: Do you want to identify what it is, since
11 there's no objection, for the record?

12 MS. HERVEY: Your Honor, State's Exhibit No. 25 would
13 be the buckshot and other materials removed from the body
14 of James Frady in comparison to State's Exhibit No. 19,
15 which would be that from Barry. So State's Exhibit No. 25
16 is from James, State's Exhibit No. 19 would be from Barry.

17 THE COURT: Without objection; is that correct,
18 Mr. Allen?

19 MR. ALLEN: That's correct, Your Honor.

20 THE COURT: Ladies and gentlemen of the jury, State's
21 Exhibit No. 25 will be admitted into evidence without
22 objection. State's Exhibit No. 25 in evidence.

23 You will have all of the exhibits available to you
24 for your consideration in your jury room once
25 deliberations begin.

1 (WHEREUPON, State's Exhibit No. 25 was admitted into
2 evidence.)

3 THE COURT: Call your next witness, Solicitor.

4 MS. HERVEY: Your Honor, at this time, the State
5 rests.

6 THE COURT: All right. Ladies and gentlemen of the
7 jury, you've heard the evidence from the State of South
8 Carolina. There's some matters of law that I must take up
9 at this time. So I'm going to ask you if you would,
10 please, retire to the jury room. I will not be long. We
11 will come back and conclude the trial in just a few
12 moments.

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

14 (WHEREUPON, the jury was excused from open court at
15 approximately 10:05 a.m.)

16 THE COURT: All right. Mr. Allen, before I inquire
17 of your client, are there any matters of law at the close
18 of the State's case that you would like to take up with
19 the Court at this time?

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

21 THE COURT: Yes, sir.

22 MOTIONS

23 MR. ALLEN: At this time, the Defense would move for
24 a directed verdict on all counts due to the fact that the
25 record is completely absent of any substantial

1 circumstantial evidence. This is entirely a
2 circumstantial evidence case. There is no substantial --
3 after cross-examination of all the witnesses, there is no
4 substantial circumstantial evidence in the record at this
5 time.

6 In particular, with regard to the grand larceny
7 indictment, there is no circumstantial evidence. There's
8 no fingerprints. In fact, the fingerprints on the van
9 belonged to an unknown third party. There's no trace
10 evidence of any type. There was no witness putting
11 Mr. Frady inside the van at any time.

12 And I would submit, in particular, with regard to the
13 indictment for grand jury [sic], there is no evidence --

14 THE COURT: Do you mean grand larceny?

15 MR. ALLEN: Grand larceny, excuse me.

16 With regard to the grand larceny indictment, there is
17 no evidence. The record is void of any evidence of grand
18 larceny. I would particularly focus on that indictment,
19 but the motion itself goes to all indictments.

20 THE COURT: Solicitor, I'll be happy to hear from
21 you.

22 As I recall, the indictment for grand larceny alleges
23 the grand larceny of a 1990 Astro Chevy van; isn't that
24 correct.

25 MS. HERVEY: Yes, Your Honor.

1 THE COURT: Belonging to Mike Harper?

2 MS. HERVEY: Yes, Your Honor.

3 THE COURT: All right.

4 MS. HERVEY: Your Honor, just briefly, in response to
5 the motion for directed verdict, I call the Court's
6 attention to State v. Burns, which states when ruling on a
7 motion for directed verdict, the Court is concerned with
8 the existence of evidence and not it's weight.

9 So you do not go into how substantial it might be or
10 those type things, but whether or not there is any
11 evidence in which a jury could reasonably infer the
12 Defendant's guilt. And granted, it is a circumstantial
13 evidence case. However, there's an overwhelming amount of
14 circumstantial evidence in this case. And while you may
15 view one piece by itself and may not give you that same
16 factor, when all these pieces are viewed in its totality,
17 that gives you the existence of the Defendant's guilt.

18 As to the grand larceny, there's the statement that
19 Mr. Harper had not been speaking to him in several months,
20 had not given him permission to take that van, that he
21 took it without his permission, and that he set it on fire
22 intending to deprive that owner permanently. Now, he
23 wasn't successful in that regard, but that doesn't matter.
24 Certainly, that fire near and the gasoline contained
25 within are evidence of that intent to permanently deprive

1 the owner of that property.

2 On the other counts of murder, there's the other
3 ballistic evidence and other circumstantial evidence,
4 which puts the Defendant near the crime having prior
5 expressions of malice and designs to kill the victims
6 prior to this event. The State feels based on that, the
7 Defendant's motion for a directed verdict should be
8 denied.

9 THE COURT: I would also point out to you, Solicitor,
10 and, Mr. Allen, that I believe the testimony, if believed
11 by the jury, from Mr. Harper was that the Defendant was
12 one of only three people that knew how to enter the van.
13 And there's an inference from that when he says that the
14 van was stolen, if that testimony is to be believed. And
15 I have to take it, for the purposes of standard of
16 directed verdict, in the light most favorable to the
17 non-moving party, that he was one of the people that could
18 enter the van.

19 And, therefore, there is an inference that the jury
20 could draw, albeit circumstantial -- I don't think the
21 lack of fingerprint evidence, which, certainly, is
22 arguable by you to the jury as an advocate for your
23 client, is sufficient for me to grant your motion for
24 directed verdict. Therefore, your motion for directed
25 verdict is respectfully denied.

1 MR. ALLEN: Yes, Your Honor.

2 THE COURT: Mr. Allen, would you and your client come
3 around?

4 And, Madam Clerk, would you, please, swear Mr. Frady?

5 THE CLERK: Mr. Frady, come up here, please.

6 Put your left hand on the Bible and raise your right.

7 WHEREUPON,

8 JAMES RANDOLPH FRADY,
9 after first having been duly sworn, testified as follows:

10 MR. ALLEN: Is this okay right here, Your Honor?

11 THE COURT: That's fine.

12 Would you state your full name for the record,
13 please, sir?

14 DEFENDANT FRADY: James Randy Frady.

15 THE COURT: Mr. Frady, at this time, I'm going to
16 explain to you certain rights. If you do not understand
17 anything that I say, please, let me know. I want to make
18 sure you understand what I'm telling you.

19 DEFENDANT FRADY: Yes, sir.

20 THE COURT: If you want me to explain anything in
21 further detail, please, let me know.

22 Do you understand?

23 DEFENDANT FRADY: Yes, sir.

24 THE COURT: Very good.

25 We've now reached the stage of the trial, Mr. Frady,

1 where you may present your defense. You have the right,
2 Mr. Frady, to testify on your own behalf. However, no one
3 can make you testify. In the event you have any criminal
4 record for any conviction involving dishonesty, or false
5 statement, or for a crime punishable by imprisonment for
6 more than one year, and this Court, as a matter of law,
7 determines that the probative value of admitting this
8 evidence outweighs its prejudicial effect to you, the
9 Solicitor would be able to introduce your prior criminal
10 record for impeachment purposes. That is as to your
11 credibility or believability, to attack your credibility
12 or believability, if admitted into evidence.

13 If you elect not to take the witness stand,
14 Mr. Frady, I will charge the jury that they are not to
15 give the fact that you did not testify in this case any
16 consideration whatsoever. And there is to be absolutely
17 no prejudice to you because you did not testify.

18 Now, this decision as to whether or not you testify
19 will be left entirely up to you. I can't emphasize that
20 enough. It is your decision whether or not you testify.
21 You may, certainly, confer with your attorneys, you may
22 talk with them. But the ultimate decision will be left
23 entirely up to you.

24 Do you understand that?

25 DEFENDANT FRADY: Yes, sir.

1 THE COURT: Very well.

2 Do you need a moment, Mr. Allen, or are you ready?

3 Mr. Frady, are you ready to go forward and give me an
4 answer or would you like to talk with your attorneys?

5 MR. ALLEN: May I speak, Your Honor?

6 We have talked about it repeatedly on several
7 different occasions, and I think we're ready to respond.

8 THE COURT: Is that correct, Mr. Frady?

9 DEFENDANT FRADY: Yes, sir, Your Honor.

10 THE COURT: And is what you're about to tell me your
11 decision and not anyone else's?

12 DEFENDANT FRADY: It's my decision.

13 THE COURT: And you feel like you've had sufficient
14 time to talk with your lawyers?

15 DEFENDANT FRADY: Yes, sir, I have.

16 THE COURT: And your decision as to whether or not
17 you testify is what, Mr. Frady?

18 DEFENDANT FRADY: I do not wish to testify.

19 THE COURT: And that is your decision?

20 DEFENDANT FRADY: Respectfully, yes.

21 THE COURT: Very well. You may return to your seat.
22 Thank you very much.

23 All right. Mr. Allen, is it your intention when I
24 bring the jury back -- I'm assuming -- you've made the
25 motion for directed verdict at the close of the State's

1 case. Is it your intention -- in light of your client's
2 decision that he's just advised me under oath, is it your
3 decision to present any other evidence?

4 If not, I would allow you to renew your same motions
5 as if made at the conclusion of all the evidence at this
6 time.

7 MR. ALLEN: Yes, sir.

8 We will not be presenting other witnesses. And I
9 would renew that motion.

10 THE COURT: Very well. And for the same reasons I
11 earlier stated, your motions are respectfully denied. But
12 they're noted for the record.

13 Solicitor, it is my further understanding that since
14 they are not presenting any evidence, the Defendant will
15 have closing argument. You will argue first followed by
16 the Defendant. It's my understanding that you both feel
17 you can do it somewhere in the neighborhood of 30 to 45
18 minutes each.

19 Is that correct from the State?

20 MS. HERVEY: That's correct.

21 THE COURT: Is that correct, Mr. Allen?

22 MR. ALLEN: That's correct.

23 THE COURT: Very well. I would like the record to
24 also reflect that I have shown Counsel, in chambers, my
25 verdict forms.

1 I do not send the indictments into the jury, Madam
2 Clerk.

3 My law clerk's job will be to remind the Judge to get
4 the Foreperson of the Jury to sign the indictments.

5 They have approved the verdict forms; is that correct
6 from the State.

7 MS. HERVEY: Correct from the State.

8 THE COURT: Correct from the Defendant?

9 MR. ALLEN: That's correct.

10 THE COURT: As amended?

11 MR. ALLEN: Correct, Your Honor.

12 THE COURT: It is also my further understanding that
13 this morning Counsel for the Defendant, having looked at
14 matters that they wish the Court to charge, has reviewed
15 with me the case of State v. Cherry, which is found at 606
16 SE2d 475. It is a 2004 case. Counsel for the Defendant,
17 having read that case, has asked the Court to charge
18 language from Chief Justice Toal's dissent in the Cherry
19 case.

20 The specific language that is being requested that I
21 charge is as follows: "The traditional circumstantial
22 evidence charge provides that when the State relies on
23 circumstantial evidence to prove its case, a jury may not
24 convict a defendant unless every circumstance relied upon
25 by the State has been proven beyond a reasonable doubt and

1 all of the circumstances so proven are consistent with
2 each other and taken together point conclusively to the
3 guilt of the accused to the exclusion of every other
4 reasonable hypothesis." Now, that's a direct quote from
5 the second paragraph of Chief Justice's dissent in State
6 v. Cherry.

7 As I advised Counsel in chambers, the Cherry case
8 holds that the only charge, in my opinion, that is proper
9 for circumstantial evidence is the charge that the Court
10 approved in State v. Grippon.

11 I respectfully decline your request to charge the
12 language from the dissent in Cherry. But that issue is
13 preserved for review for the Court and you have made it.
14 So I wanted to put that also on the record.

15 MS. WALDREP: Thank you, Your Honor.

16 THE COURT: Anything further from the State before I
17 bring the jury back?

18 MS. HERVEY: I'm sorry, nothing, Your Honor.

19 THE COURT: Anything further from the Defendant
20 before I bring the jury back?

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

22 THE COURT: Very well. Would you bring us the jury
23 in, please, sir.

24 Please tell the jury -- I'm going to offer you the
25 opportunity to tell them you're not presenting any

1 evidence. And then we'll proceed to argue.

2 MR. ALLEN: Yes, sir.

3 (WHEREUPON, the jury came into open court at
4 approximately 10:17 a.m.)

5 THE COURT: Ladies and gentlemen of the jury, you
6 have heard the evidence from the State of South Carolina.
7 We will now hear from the Defendant.

8 Mr. Allen.

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

10 At this time, we wish to move to closing arguments.

11 THE COURT: The Defendant wishes not to present any
12 evidence; is that correct?

13 MR. ALLEN: Yes, sir. That's right.

14 THE COURT: Well, ladies and gentlemen of the jury,
15 you have now heard all the evidence in the case. We will
16 now hear the closing arguments of the attorneys followed
17 by my charge to you on the law. I ask you to give the
18 attorneys your careful consideration.

19 Solicitor.

20 CLOSING ARGUMENTS

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

22 Good morning, ladies and gentlemen of the jury.

23 I know that we've been through a difficult and
24 somewhat long few days here together. But I think now
25 that you've kind of been through this experience for the

1 first time, you understand exactly how important jury
2 service is and how integral your role is to the criminal
3 justice system.

4 I want to take this opportunity to thank you on
5 behalf of the State of South Carolina and on behalf of
6 Mr. Allen and the Defendant. Because I know they
7 appreciate it as well for your time, for your patience,
8 and for your service. Because we do appreciate that we
9 are taking you away from your families, and your jobs, and
10 your lives. And we realize that that is a sacrifice. But
11 it's only with you that this system works.

12 And we have been watching you as we went along and
13 making careful note that you were paying attention to
14 witnesses. And we know you probably can't remain glued
15 and riveted to them the entire time that you're here. But
16 you still have been a very conscientious jury. And we
17 appreciate that service here today.

18 We also realize that we are asking you to perform a
19 very extraordinary task. We are asking you to convict a
20 man of murder, and not just one, but two. And we know
21 that we are taking you out of your comfort zones, that
22 this isn't something you do every day. This isn't
23 something that you contemplate every day.

24 Most of you have now become much more intimately
25 aware of what is, actually, involved in a violent crime of

1 this nature and it occurring in your own county. And we
2 appreciate that. But the reason we have done that and
3 selected you in that regard is because we believe you are
4 a fair and impartial jury, that you have no friends to
5 reward and no enemies to punish.

6 We are about to get to your role. You guys have kind
7 of been sitting here the whole time and paying attention.
8 But the real bulk of your work begins after Mr. Allen and
9 I finish and the Judge charges you on the law. You'll be
10 asked to go back into your jury room and deliberate and to
11 reach a verdict, a unanimous one, about whether or not the
12 Defendant is guilty of the crimes for which he is charged.
13 And that is your role.

14 We ask that you be thorough, that you look at the
15 evidence, that you discuss it. You all have been a very
16 captive audience. Normally, when we watch TV, we might
17 turn to our husband or our children and go, what do you
18 think about that, or can you believe he did that. And I
19 can't believe I saw that. And you all, unfortunately,
20 have not had that opportunity.

21 So we realize you all will go back there and just
22 begin discussing and reviewing all the things that you
23 have seen and heard over the last few days. We ask that
24 you do that. And we know that you may be reluctant to do
25 this. We know that what we are asking you to do is maybe

1 not something you are wanting to do or excited about. We
2 know that asking you to perform this extraordinary task,
3 you may just have this gut reaction that this is an
4 extraordinary task put upon me.

5 But that hesitation to do that, that is not what they
6 talk about when they talk about a reasonable doubt being a
7 hesitation to act. That hesitation comes after
8 deliberations, after you've talked to everybody and
9 reviewed the evidence and still being thorough and
10 deliberate, that's when it comes. But you must deliberate
11 and you must go through that process. That's the oath
12 that you swore to do.

13 It is now time for closing arguments. And I will
14 speak to you first, and Mr. Allen will speak to you last.
15 I, being the one that has the burden of proof, I get to go
16 first. And they have to assign some sort of order of
17 things. And based on that, I will not be able, after
18 Mr. Allen speaks, to get back up here and tell you the
19 things that I don't agree with about what he says. But we
20 feel that for the most part after three days, y'all pretty
21 much know what's going on.

22 This is our opportunity to get up here and put all
23 the pieces of the puzzle together, or in Mr. Allen's
24 position, more than likely, to take all the pieces of the
25 puzzle apart. But, remember, I was not out there on

1 September 23rd, 2004, that night, and neither was
2 Mr. Allen. And we are not witnesses. And we do not know
3 what happened any more than the witnesses who, actually,
4 were involved.

5 The Judge will tell you that you must take the
6 evidence as it was put before you, as the witnesses told
7 you. And if someone asked a question and somebody said,
8 no, weren't you wearing a pink shirt that day, no, then
9 there's no evidence before you that somebody was. So
10 that's why you need to focus truly on what the witnesses
11 either affirmed or denied in your presence.

12 The Defendant is charged with six indictments. And
13 you will be asked to reach a unanimous verdict, all 12 of
14 you must agree, on each and every indictment. The first
15 indictment being grand larceny, that he stole Mike
16 Harper's van. The second being burglary first degree,
17 that he entered the Frady home, Jimmy and Barry's home,
18 without consent with the intent to commit a crime there.
19 Arson second degree, that he set fire to that house. And,
20 finally, murder of Jimmy and Barry Frady. And then the
21 possession of a weapon during the commission of a violent
22 crime.

23 The Judge will instruct you that for five of those
24 indictments, you can find the Defendant guilty on one,
25 guilty on two, guilty on three, four or five, that you

1 have the option of picking and choosing which ones you
2 think the State has met their burden on. The only one
3 that is different is possession of a weapon during the
4 commission of a violent crime. You, obviously, first have
5 to decide he committed a violent crime first.

6 So only once you determine whether the Defendant is
7 guilty of arson, burglary, or the two counts of murder --
8 those are all violent crimes, stealing a car is not --
9 once you've done that, then and only then can you consider
10 the possession of a weapon charge. But other than that,
11 everything else, you must individually decide on each
12 indictment.

13 We must prove the Defendant guilty beyond a
14 reasonable doubt. And I told you at the beginning that
15 that has been defined as a doubt that would give a
16 reasonable person a hesitation to act. But it is, again,
17 not beyond all doubt, beyond any shadow of a doubt, beyond
18 any doubt. It is beyond a reasonable doubt. So what you
19 have to look at is, do you truly have a reason, a thought
20 out logical conclusion to doubt the Defendant's guilt? It
21 must be a reasonable doubt. There are few things that you
22 will know beyond all doubt.

23 Even if we put a camera in a room hoping to catch
24 someone commit a crime, it's only going to be focused on
25 one part. And, inevitably, things might happen on the

1 side that we can't see. But the State does feel firmly
2 that if you look at the evidence and you put it -- the
3 puzzle pieces only go together one way. And that is that
4 the Defendant is guilty on all six indictments.

5 Mr. Allen and the Judge will both talk to you about
6 the difference between circumstantial evidence and direct
7 evidence. Direct evidence being eyewitnesses like
8 Mr. William Floyd White. He saw the van parked out there
9 at about 11:00 to 11:15 that night on his way home.
10 That's direct evidence. It doesn't necessarily say who
11 stole the van, or if anybody stole the van, or who
12 committed the murder. But that direct evidence, that
13 eyewitness testimony, that's what we're talking.

14 Circumstantial evidence is things more like
15 Mr. Harper saying that only three people knew how to get
16 into his van. And he knew where he and his son were that
17 night. And they weren't stealing it and setting it on
18 fire. He doesn't know -- he didn't see Randy Frady steal
19 his van. But knowing that those three people could only
20 get into the van or, perhaps, if there were only three
21 people that had keys and it had been hot wired, that's
22 more along the lines of circumstantial evidence.

23 The Judge is going to charge you, however, that there
24 is no difference between direct evidence and
25 circumstantial evidence. And circumstantial evidence

1 alone is sufficient to prove a defendant's guilt beyond a
2 reasonable doubt. And most cases involve circumstantial
3 evidence. Because, rarely, do we kill two people in front
4 of six witnesses. Rarely, do we commit a murder of this
5 nature with people standing there on the corner taking
6 notes. That's why circumstantial evidence is enough.
7 It's because we don't let criminals benefit from the fact
8 they commit crimes in the dark of night when no one can
9 see, and then try and cover their tracks. Circumstantial
10 evidence is enough. And there is substantial and
11 overwhelming circumstantial evidence in this case.

12 Now, if you look at each one piece in particular, you
13 might not feel that way. But I think as we go through it,
14 you'll see how it all interconnects and relates to one
15 another.

16 The Defense attorney when he got up here in closing
17 argument [sic] said, there's no DNA. There was. We
18 stipulated to it. Now, Randy Frady did not leave DNA at
19 the crime scene. That's true. But we did look for DNA.
20 They looked at the items in the washing machine. They
21 weren't able to extract DNA out of them. So there was DNA
22 examination. They just couldn't find anything.

23 Mr. Allen said, well, there's no boot prints. You
24 heard from the officers. They saw marks, but a shoe print
25 has got to be pretty dead on tread inflection. If you

1 slip or fall, it smudges, just like a fingerprint. If you
2 touch it, it leaves a print. If you swipe it, you smear
3 it. There's no blood. There was. It was the victims
4 blood. They had been shot. Randy Frady had not.

5 So all about what he told you there's not, there's
6 not, there's not, there's not -- do you remember Steven
7 Curtis testifying? He got here about 11:00 that day and
8 didn't leave until midnight that night. He was in Oconee
9 County for 12 hours processing crime scenes. If we didn't
10 find evidence, it wasn't for lack of trying. And you also
11 heard Steven Curtis say washing clothes could have removed
12 the DNA. It could still be there, but could have removed
13 it. The fire would have covered any fingerprints. The
14 soot, you can't lift them. So the only reason there's not
15 all of those things is because the Defendant covered his
16 tracks.

17 Let's back up and put the whole chronology together.
18 We know that on September 22nd, Randy Frady went to work.
19 Douglas Blackwell said they were at work that day. They
20 discussed they were going to the funeral home for Chris
21 Kelley's grandfather later on. Douglas Blackwell said, I
22 didn't take him home, but I did agree to pick him up and
23 take him to the funeral home. He said that he would have
24 done that about an hour and a half later. They went to
25 the funeral home that day. And he said he was home -- at

1 home, after dropping Randy off with a pint of liquor, by
2 dark. Around September, we're home before 9:00. We know
3 that pretty much to be true. Douglas Blackwell didn't
4 have any reason to come in here and lie.

5 We know that Mike Harper that same night goes to work
6 and gets home a little bit later than Randy Frady,
7 perhaps, even after he's already left with
8 Douglas Blackwell. We know that his car doesn't have gas
9 in it. He sits there with his friends and he hangs out
10 for a while until his wife comes home from the salon. He
11 gets money from her. Because she's working as a
12 hairdresser and bringing in cash every day, more than
13 likely, and that he leaves. And he goes to a friend's
14 house and he has a couple of beers. Then he goes to the
15 grocery store, the Ingles. And then he goes to the Circle
16 K to get gas in a plastic gas can to go put in his van.
17 And then he goes home.

18 We know that his wife, in the meantime, has heard the
19 van crank up and leave and just assumed it was her husband
20 coming home to get the van to go put gas in it. And you
21 know that when he gets home at about 11:30, the van is
22 gone. And they try and figure out where the van is and
23 can't understand why it's gone. And they know that the
24 son hasn't taken it. And he then drives back to the gas
25 station and calls 911 at 11:41. That on the way back --

1 And Tim Hunnicutt says he arrives at the Harper
2 residence about 11:45, 11:44. So in those four minutes of
3 driving back, he finds his van. He goes up to it. He
4 looks at it. He stomps out the fire. He looks around.
5 He realizes he can't see anybody. So he goes to get the
6 officer. His house is not that far way. You can look at
7 the map and the scale, the triangle between Mr. Harper's
8 house and Frady's house in that corner of that cemetery,
9 you're looking at maybe three or four-tenths of a mile one
10 way or the other. Then he goes back and he gets Deputy
11 Hunnicutt. They go back to the van. The backup is being
12 called.

13 Joe Hamilton, he testifies that sometime between
14 11:45 and midnight, he goes to Randy Frady's house. No
15 lights. No sound. He drives up and cuts off his car.
16 Nothing. Nobody there. No sign of movement. Nothing.
17 He goes and gets Tim Hunnicutt. And they decide to go
18 back to his house. This time when they go back, lights
19 are on, the washing machine is running. And Randy Frady
20 is taking a shower. They knock on the door. Where have
21 you been? He says, I just got out of the shower. I
22 haven't been home long. I went to the funeral home.
23 Douglas Blackwell says he's been home since 9:00, at
24 least. Where has he been in that two and half hours? Why
25 are we lying? What do we have to hide? And they see the

1 muddy boots. But he doesn't want them to take the boots.
2 They don't have enough to just grab them away from him at
3 that point. So they let him go and turn it over to the
4 investigators.

5 Mr. Harper, we've recovered your stolen van, we're
6 going to give it back to you. The investigators may talk
7 to you the next day. If we had found Randy Frady's prints
8 in the van, they would be telling you they were there when
9 he was there before. So the lack of presence of prints --
10 the presence of prints in and of itself doesn't really
11 help you decide or determine that.

12 But Mike Harper doesn't wipe it clean. It's still in
13 the crazy locksmith condition it was the night before when
14 Steven Curtis viewed it the next day at the impound lot.
15 And Tim Hunnicutt and Joe Hamilton then leave. We found
16 the car and we gave it back to the guy. Job well done.
17 They have no idea at that point that the van is in any way
18 related to a double homicide on the other side of
19 Walhalla.

20 The next day, Mr. Jim Frady gets up that morning and
21 goes and takes Randy Frady to work. He takes Randy Frady
22 to work. He takes him to work, drops him off. And then
23 he's feeling sick and he wants to go home. Douglas
24 Blackwell, who doesn't have enough gas in his car, says,
25 well, I'll take you home, but I don't have gas. They stop

1 at the Bountyland and get some gas. And then he says, I'm
2 going to go straight into Walhalla and pick up 28 to take
3 Randy home. But Randy doesn't want him to go home that
4 way. Because that would take him back to the crime scene,
5 that would take him back to the Frady house on Westminster
6 Highway.

7 Why wouldn't he want to go home the quickest way?
8 What are you trying to avoid? Because you know that his
9 grandfather has gone home. And by this time, the dog is
10 hungry. And the door is still open. And maybe your
11 grandfather or the neighbors have started to realize
12 something is not right. And that Mr. Frady goes over
13 there to tell them to put up the dog, to feed the dog, and
14 finds his grandson and his only son shot and killed.

15 He calls 911. And law enforcement arrives. Based on
16 the prior assault warrants where he's threatened to do
17 them harm, Randy Frady, they decide that he might be a
18 suspect. They go over there and they ask him -- they
19 arrest him just on the assault warrants and say, do you
20 got any guns, anybody else in the house, just for officer
21 safety. And he says there's a shotgun in the house.

22 They go into the house. They make sure that
23 everybody is -- there's nothing in there, there's nothing
24 wrong, that no one is in there that's a threat to the
25 officers. They come back outside and Mirandize him. And

1 they ask him, where did you get the shotgun? Got it two
2 or three weeks ago. And we know he's telling the truth on
3 that because Chris Kelly told you he sold it to him about
4 the first weekend in September. And he hasn't seen his
5 family in a few months.

6 That's what we know as to the chronology leading up
7 to it. Those are the facts. That's the evidence at hand.
8 What do you know about what happened that night at the
9 Frady house? You know that the van is parked out behind
10 the garage. We don't pull up in the driveway. We're not
11 there to visit. We park behind the garage. That we go
12 in. That the dog doesn't bark because the dog knows us.
13 Because up until two months ago, I lived next door. That
14 you go into the house. That Barry Frady is unconscious
15 from drinking, but, certainly, not a threat to anybody at
16 that point. He is shot once in the neck and once in the
17 gut. Both fatal wounds instantly incapacitating him.
18 That his father, asleep in the bedroom, also drinking,
19 slow to respond, either because of his drinking or because
20 he was 63 and getting up there in years. He is trying to
21 get out of bed and has one leg on the floor. And Randy,
22 in this small house, goes in there, shoots him once in the
23 gut and then in his arm, perhaps in a defensive measure,
24 and he gets shot in the chest again. That he then takes
25 lighter fluid and pours it on the pool table and sets it

1 on fire and leaves. Back in the van.

2 You know that the shots are fired at 11:30 that
3 night. Julia Ford, the little girl across the street, who
4 takes care of the dogs still, has no reason to lie. She
5 said, I heard something at 11:30 that night. And I looked
6 at my computer to see what time it was, how late it was
7 getting.

8 Annette Burney tells you about the same thing. She
9 tells you after midnight when she goes home, the door is
10 open still, the front door, the windows, all designed to
11 give the fire more oxygen and more fuel. He does this and
12 sets it on fire and disables the smoke detectors. These
13 houses aren't that far away. He doesn't want anybody
14 finding it. He let's the dog out so he doesn't bark about
15 seeing the flames, or getting scared, or getting into the
16 house. It's all designed to cover his tracks.

17 Well, he can't take the van back to Harper now
18 because he knows Harper is going to be mad. Harper has
19 been mad at him for a couple of months. So he ditches it.
20 But he's still got to get back to his house. If anybody
21 else stole that van, they would have ditched it a long way
22 away from where they stole it. If I steal a van, I'm not
23 going to joy ride around in it and you know what, I'll
24 bring it back. I can't bring it back to his house, but
25 I'll get close enough so he can find it. The only reason

1 that van goes back and gets ditched where it does on
2 Cemetery Road is because Randy Frady has got to get back
3 home.

4 So you have from 11:30, when shots are fired, a very
5 limited time frame for which Randy Frady has got to get
6 back and ditch that van after 11:41 when it's discovered
7 stolen or shortly thereafter when they find it coming back
8 from calling 911. You've got a very limited window of
9 opportunity.

10 Grand larceny. He stole the van with the intent to
11 permanently deprive the owner of the property. If you set
12 it on fire, you don't want them to get it back. You might
13 not be very good at it. You weren't very good at it at
14 the house either. But you, certainly, didn't want him to
15 get it back. There's only three people that knew how to
16 get in the van.

17 And it was out of gas. And I'm sure Mr. Allen will
18 suggest to you, well, because it was out of gas, it
19 couldn't have been stolen. Who would steal a van out of
20 gas? Let's see, probably not kids, they would move on to
21 the next car that did have gas. But maybe Randy Frady,
22 who knew how to get in and how to start it.

23 And based on what Mike Harper told you about the way
24 he lived -- and even Douglas Blackwell, they're not
25 filling their tank every time. They're putting \$5 and \$10

1 and however much cash they have in their car. And that's
2 fine.

3 So Randy Frady probably growing up with them knew
4 that Mike Harper never drove around with a full tank of
5 gas. Or maybe he had gone out there to steal it earlier
6 and heard him talking on the back porch. But he's got gas
7 because he's going to set everything on fire. So that's
8 really not a problem for Randy Frady, is it? He steals
9 the van.

10 Mr. Allen will say there's no Frady prints in the
11 car. There was a glove and they looked at that. They
12 couldn't get DNA off of it. There's no prints at the
13 house either. They couldn't get some of those because of
14 the sooting. But no fingerprints doesn't necessarily mean
15 nobody did it. It just means, perhaps, we're being smart
16 about how we're covering our tracks.

17 There was an unmatched print on the hood of the car.
18 But you know what? It's the hood of the car. Anybody
19 walking by the car might have leaned up against it and
20 left their palm print there, too. But you know what?
21 It's not wiped clean. Mr. Harper is not trying to destroy
22 evidence that night when they return it back to him. And
23 they try to get prints off of it. Steve Curtis tells you
24 about that. The seat inside of a car is not a very good
25 surface. And there was gasoline everywhere. And that

1 gasoline would have destroyed any fingerprints left
2 behind.

3 No one else would have stolen that van and taken it
4 and used it in such a peculiar pattern. Only the person
5 who killed Jim and Barry Frady stole that van. And the
6 only person that the evidence suggests did that is Randy
7 Frady.

8 Burglary first degree. He entered the house without
9 consent with the intent to commit a crime therein and then
10 harmed the people inside. You don't have to bust down the
11 door, you don't have to jimmy the lock, and you don't have
12 to break a window.

13 Without consent. If you're coming to kill me, you
14 don't have consent. And Mike Harper told you neither one
15 of them were supposed to be around there for the past two
16 months, not since the assault charges when he was over
17 there threatening to harm them. He's moved out to the
18 trailer on Yohlanda Drive. He doesn't have consent to go
19 into that house.

20 Intent to commit a crime therein. What's the intent
21 to commit a crime? We've gone over there with a gun.
22 We're going to kill somebody or, at lest, go hurt them
23 real bad. We're not going to steal anything, though.
24 It's not a theft burglary. We're not breaking into the
25 house to steal things and things go awry. There's a safe

1 you can easily carry away. There's a book of checks.
2 There's TV's. We don't steal anything in that house.
3 This isn't about theft. It's not about robbery. This is
4 about malice, meanness, evilness, people who are mad at
5 people.

6 He caused injury to the two of them. He killed them.
7 There are other circumstances of aggravation. Sometimes
8 you can do it armed with a deadly weapon, during the hours
9 of darkness, those two things. The thing before you that
10 makes it burglary first degree is that he caused injury to
11 a person inside.

12 Arson second degree. Willful, malicious, intentional
13 burning that causes damage to the structure. Damage
14 includes discoloration, sooting, those type of things. We
15 don't require that you're really good at the arson and
16 you, actually, burn the house down before we convict you
17 of it. You do a good enough job, the fire gets set,
18 damage gets done, smoke goes everywhere, we call that
19 enough. You wanted to burn that house down.

20 Who would have wanted to burn that house down? Who's
21 got to cover their tracks? The person that just killed
22 those bodies. Nobody else said, oh, you know, I think I
23 just heard some gunshots, I bet Jimmy and Barry are dead,
24 I'll bet I could go set their house on fire just for
25 kicks. The only person that set that house on fire is the

1 person who killed those two bodies. And the State's
2 evidence suggest that the only person that did that is
3 Randy Frady.

4 Let's talk about the real reason why you're here.
5 And that's murder. Murder. Because that's really why
6 we're here. The van, the arson, the burglary, it's all
7 part of the puzzle. But the real reason why we're here,
8 and the reason you're here, and we've taken two days out
9 of your life is because two people are dead. Two people
10 are dead. One guy, who worked his whole life and came
11 back to Walhalla to take care of his daddy. The other guy
12 was working at the Blue Herron. These two people, Jimmy
13 and Barry Frady, that night, not bothering anyone, asleep
14 in their own house were shot and killed. That's why we're
15 here. Two people's lives ended on September 23rd, 2004.

16 And what is murder? Murder is that you kill someone
17 with malice aforethought. And that's a big legal word
18 that lawyers like to use. But the Judge will define it
19 for you that it means meanness, evil, a heart bent on
20 mischief, a heart depraved of social duty, hatred. That's
21 what malice aforethought is. It's such meanness that you
22 can take a J.C. Higgins shotgun, go in there, load it with
23 ammunition, drive across town, walk into that house, see
24 your brother laying there in the chair, boom, boom. You
25 walk in there and kill your daddy and shoot him twice.

1 That's meanness. That's evil. And that's malice.

2 And the only person who had that much meanness and
3 evil and hatred in their heart is Randy Frady, the son
4 that they never got along with, so much so that they sent
5 him back to his granddaddy to go to school here. It's not
6 the son that we took on vacation all the time, not the son
7 we lived with and went out drinking with, not that son,
8 but the other son. The son jealous of his brother who got
9 all the attention. The son jealous of his brother who got
10 all the breaks. And the son who always was jealous that
11 the father gave the other one more attention, more love,
12 more money, more anything. It's that love turned wrong,
13 that jealousy turned back. That's what it takes in your
14 heart to take a shotgun and kill two people. This ain't a
15 we ain't getting along, so I reckon I'll just kill you.
16 No. This is meanness, the likes of which you only see in
17 murder.

18 And not only is shooting them enough, we're going to
19 burn them down. And then maybe any sign they were ever in
20 this world will go away. Guess what? That way I get
21 granddaddy's house. Because that's what he tells Kevin
22 Comer. Yeah, it's one thing to sit there and say, you
23 know what, my father, he's just frustrating me. I'm just
24 going to kill him. It's another to go, how much LSD do
25 you reckon it takes for it to do it before it becomes

1 traceable. I mean, that's a whole other level of
2 conversation.

3 Well, Kevin Comer, you know, he's got a bad record.
4 Well, you know, I don't think I'd be going to church and
5 talking with the deacon about how to kill my daddy. I
6 reckon if I wanted to do it, I'd try to figure out
7 somebody who might know how that's done. And that ain't
8 the deacon at the church. That's going to be somebody
9 else like you, somebody else with a heart depraved of
10 social duty that thinks they can take whatever they want
11 when they need it and they don't really care what that
12 does to other people, including lives.

13 You heard a lot of testimony yesterday afternoon
14 about a shotgun, wadding, filler, probably more about
15 shotguns than you ever wanted to know or ever will learn
16 again in your life. But it becomes important because it's
17 part of the evidence in this case. Because it is the
18 trail of evidence left behind.

19 You see, Randy Frady didn't just kill them in a fit
20 of rage. He was very calculated when he did it. Not only
21 in disabling the smoke detectors and setting the house on
22 fire, he picked up every shell, except one he couldn't
23 find behind some clothes. He shoots Barry Frady first,
24 the birdshot, the last shot. He walks in and kills dad.
25 He pulls it back, ejects the birdshot shell and shoots

1 daddy twice with buckshot. He finds those two shells and
2 finds the first one from Barry, but he can't find the
3 birdshot.

4 I'll refer now -- and Mr. Allen suggests it's only
5 his opinion. But this man has been testifying about guns
6 almost as long as I've been alive, 500 and some times,
7 10,000 examinations or more. And he's the lead sniper for
8 the SWAT team. If anybody knows guns in the State of
9 South Carolina, it's Ira Parnell. And if you're going to
10 rely on anybody's opinion about a gun, it's going to be
11 his. Those four shotgun shells, to a reasonable degree of
12 scientific certainty, were fired from Randy Frady's
13 shotgun. No doubt about it. That's his gun. Chris
14 Kelly, I sold it to him. Douglas Blackwell, it was there
15 the night before. Randy Frady, it's in the house. No
16 doubt about it. That's the shotgun that shot those three
17 shells.

18 He can't say, well, I was over there shooting it and
19 I just dropped the shell earlier. And that's just a
20 coincidence that you found one that I shot in that bedroom
21 with my daddy. I haven't been there for months and only
22 bought the gun two or three weeks ago.

23 You would have to believe that somebody broke into
24 that house, stole Randy Frady's gun, went over there,
25 killed them, came back, dumped the four shells in the

1 house, and planted the gun in his house. And that's just
2 not reasonable doubt. His gun, those four shells.

3 Now, Mr. Allen will say, well, buckshot can't be
4 compared. And because of that, you just don't know. But
5 not only are those four shells all from that gun, they're
6 all similar to a box of ammunition found in his bedroom.
7 Now, granted, it's Remington ammunition. Wal-Mart has
8 probably got cases of it. But that's quite a coincidence.
9 Because not only birdshot and buckshot, the shells used in
10 the murder, they're there, too. There's not just one type
11 of ammunition, we've got a little assortment of it. And
12 guess what? It's the same assortment used in the murders.
13 Now, that's just really an unfortunate coincidence.
14 Mr. Randy Frady is just an unlucky man.

15 The buckshot with the bodies, the buckshot from the
16 bodies, the wadding from the bodies, the filler from the
17 bodies, it's all consistent with those four shells. Can
18 we say it came out of those four shells? No. But it's
19 all consistent. That's just an unlucky consistency for
20 Randy Frady, I guess. I mean, my goodness, why did they
21 have to pick his type of ammunition to kill his brother
22 and daddy? Because it's not just an unlucky consistency
23 and it's not just an unlucky coincidence. It is strong
24 circumstantial evidence. But we don't stop there.

25 I think it's most telling that we got four shots and

1 four shells. The one in the house and the three on the
2 side of the road. Now, I know Mr. Randy Frady just bought
3 the shotgun, and maybe he went out into the woods and shot
4 it. But did you stand there at the corner of the cemetery
5 and shoot the shotgun across the street from the church?
6 Is that just how it happened those three shells got to be
7 there? You ain't standing out on Highway 28 shooting
8 shotgun shells near the cemetery. Those are there. They
9 were left there by the murderer like a trail of bread that
10 comes back to his house. He's not unlucky. He's not just
11 unlucky that the birdshot or buckshot or the shells all
12 match and the numbers match and everything else. He's not
13 just the unluckiest individual to ever set foot in Oconee
14 County. He's guilty of the murders of two people.

15 Mr. Allen is going to talk to you about no DNA and
16 there's no shoes. I'm sure you're going to hear a song
17 and dance and say Kevin Comer is a thug and Mr. Harper was
18 out drinking that night and he don't know what he's
19 talking about.

20 And, you know, if you just looked at Mike Harper and
21 took what he said, maybe that's not enough, maybe that's
22 not beyond a reasonable doubt. If you just took Kevin
23 Comer, maybe that's not, maybe that's not reasonable
24 doubt. But you've got William Floyd White, he works at
25 the hospital. He's driving home that night. It's not

1 like he's going out of his way to find the van. Little
2 Julia Ford across the street, she takes care of their dog.
3 Do you think she liked coming in here and testifying about
4 that? Shotgun shells. Ira Parnell. Buckshot, birdshot,
5 everything. Who stole the van?

6 It's a very difficult puzzle, but the pieces only go
7 together one way. And there's not a lot of his whole DNA,
8 or blood and fingerprints, and whatnot. That's just
9 because Randy Frady is really trying to cover his tracks.
10 We set the house on fire, we wear gloves, we do all these
11 kind of things. We're trying to be smart about it. We're
12 just not very good at setting fires, otherwise we would
13 have been a lot smarter about it and wouldn't have dropped
14 the shotgun shells on the side of the road as we're
15 running back to our house.

16 Murder. And that's what you need to focus on, that
17 meanness and that malice and that evilness. And who had
18 threatened them so much that they called 911? Not
19 somebody going, I'm going to kill you. I mean, they
20 called 911. Your brother and your daddy call 911. They
21 called the police because you had threatened to kill them.
22 You threatened to harm them. You threatened to do some
23 type of injury to them --

24 MR. ALLEN: Objection, Your Honor.

25 THE COURT: Counsel, approach.

1 (WHEREUPON, a bench conference was held.)

2 THE COURT: Objection overruled.

3 Proceed.

4 MS. HERVEY: Who threatened them and who's talking to
5 Kevin Cromer about how to kill them in an untraceable way?
6 Who's got that much meanness in their heart? Because it
7 takes a certain level of meanness to kill your brother and
8 kill your daddy and still let granddaddy take you to work
9 the next morning. That takes a certain level of meanness.
10 And the only person with that much evil jealous hate in
11 his heart is Randy Frady. And he's the only one guilty of
12 these crimes.

13 He's not unlucky. And because of the lack of CSI
14 evidence, you do not let him benefit from his efforts to
15 cover his tracks. You do not let him benefit. And you
16 hold him accountable for the clues that escaped his
17 notice. And you convict him of the murder of James Frady,
18 his daddy, of Barry Frady, his brother, of going into that
19 house and shooting somebody in their own house in their
20 own bed, because that takes a certain level of meanness,
21 too. You're going to shoot your daddy dead asleep in his
22 bed. He don't have a fighting chance. He don't have a
23 fighting chance to defend himself. Murder of the both of
24 them, burglary, arson, setting the house on fire and
25 trying to cover your tracks and steal Mike Harper's van to

1 do it, you hold him accountable for his evil deeds.

2 Find him guilty of these crimes. Find him guilty of
3 murdering Jimmy and Barry Frady. That's what the evidence
4 proves beyond a reasonable doubt.

5 THE COURT: Mr. Allen.

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

7 THE COURT: Yes, sir.

8 MR. ALLEN: Could we approach before I begin?

9 THE COURT: Yes, sir.

10 (WHEREUPON, a bench conference was held.)

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

12 THE COURT: Yes, sir.

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

15 And we have come to, basically, the conclusion of
16 this trial. And before I start commenting on the case
17 itself, first of all, I want to say to you and talk to you
18 about several things. I want to say to you that this
19 puzzle has never fit together. It didn't fit together
20 from day one. And it still doesn't fit together. There's
21 been a lot of efforts to make this puzzle that doesn't fit
22 together fit together, but it still doesn't.

23 But I want to talk to you about some things that I
24 mentioned to you in my opening statement. One, this is a
25 criminal case. We all know that. The chief difference

1 between a criminal and civil case -- and I think the Judge
2 will tell you this in his charge -- is that the burden of
3 proof is different.

4 The burden of proof in a civil case is a little more
5 likely than not. That's all you have to do in a civil
6 case between two private parties. When there's a
7 prosecution in a criminal case, the burden of proof rises,
8 for good reason, and that was decided many, many years
9 ago, centuries ago. And the burden of proof when it's a
10 criminal case and it's a prosecuting authority, who is a
11 moving party, the burden of proof is beyond a reasonable
12 doubt as we hear and hear and hear. And you're going to
13 hear more of that, beyond a reasonable doubt.

14 Well, in years past, there was substantial, I would
15 submit to you, discussion and debate and differences
16 about, well, what is a reasonable doubt? What is a
17 reasonable doubt? Well, in this state, we got a
18 definition a few years ago, which I would submit to you
19 greatly simplified that issue. And I think the Court will
20 charge this to you and read this to you when he reads the
21 law. And it will say that a reasonable doubt is the kind
22 of doubt that would cause a reasonable person to hesitate
23 to act. I'm going to say that again because that's a
24 little bit wordy. That's the way legal stuff is
25 sometimes. A reasonable doubt is the kind of doubt that

1 would cause a reasonable person to hesitate to act.

2 Now, we know you're all reasonable people because you
3 showed up for jury duty. Not everyone showed up, you may
4 have noticed that. So that sets that aside. So we can
5 cut it down to one simple thing, hesitation. Is there
6 hesitation? Is there reservation? Do you hesitate with
7 what you heard from the witness stand after
8 cross-examination? Was the witness hesitant? But after
9 cross-examination and you consider all the testimony, is
10 there hesitation?

11 And, remember, just as the Judge told you in opening
12 statement -- and this is a criminal case of the most
13 serious kind. But every element of every charge in this
14 case must be proven beyond a reasonable doubt. There must
15 be no hesitation, none. Because when there is -- and I
16 submit to you, there's a lot in this puzzle that doesn't
17 fit together -- the appropriate thing, the correct thing
18 and what is required is an acquittal. That is the way our
19 system works.

20 Now, let me also reiterate to you -- and I, nor Randy
21 Frady, have anything to do with all these witnesses. I
22 don't know if there was 22 or 25. I told you in my
23 opening statement that they might call 10, they might call
24 20, they might call 50, they might call 80, but no
25 matter -- and they might testify for 30 minutes. They

1 might testify for an hour. It might be longer than that.
2 But never, through all of that, in almost four days, would
3 there be any DNA match. And it is what it is or it's not
4 what it's not. And whatever happened happened.

5 As far as the testing, and get this sample, and get
6 these clothes, and get that, there's no DNA match. That's
7 the bottom line. I told you that in my opening statement.
8 There's no fingerprint match. Well, we're done. There's
9 no fingerprint match, not at all. In fact, the
10 fingerprints that were usable both in the Frady's
11 residence, Jim and Barry Frady, belonged to an unknown
12 third party, an unknown third party inside the residence.

13 The only fingerprints, other than that, was one on
14 the front of the van which belonged to Mike Harper, which
15 no one has ever been able to put Randy Frady in the van as
16 far as evidence. But the fingerprints there on the top of
17 the van belonged to an unknown third party, who today, we
18 don't know who it is. And, furthermore, the fingerprints
19 inside the van belonged to an unknown third party. Not
20 Randy Frady, an unknown third party.

21 And about the van, while I'm on it, you know, it was
22 strange to me how someone could steal a van that's out of
23 gas unless they've got some kind of extra sensory
24 perception, which we know they don't, to come and bring
25 gas with them. I mean, how would somebody know that?

1 People don't steal vehicles that are out of gas.

2 Furthermore, there was never anything said -- there
3 was a lot about the handle on the driver's side. Nobody
4 ever said, well, were the keys in the van? How was it
5 started? It hasn't got any gas in it, number one. Was it
6 hot wired? Were there keys in it? And, you know what, if
7 there were keys in it, there would have been fingerprints
8 on those keys if the van hadn't been turned back over to
9 Michael Harper right in the middle of all this. Nobody
10 knew there was a homicide when Michael Harper claimed he
11 saw it, and found it, and claimed he went home earlier,
12 and then went back to Circle K or wherever and called
13 somebody.

14 There's no -- these are facts, now. You're the fact
15 finder. These are facts. There's no footprint match. I
16 mean, they talked a little bit about, well, there's
17 something on the side of that cemetery here, which
18 probably, I would submit to you, is probably closer to
19 Michael Harper's residence than Randy Frady's residence if
20 you look at that map. And you'll have it in the jury
21 room.

22 And, you know, they talked about mud and, you know,
23 well, there's mud -- it looked like there was mud on those
24 boots. Nobody said if it was raining that night. I guess
25 it was or I don't know. I wasn't there. Like the

1 skillful prosecutor pointed out, we weren't there. No
2 footprint match, that's a fact. And we're talking about
3 conviction beyond a reasonable doubt of double homicide.
4 We're not talking about some middle of the road garden
5 variety criminal offense. We're talking about the most
6 serious.

7 There's no blood type match. There's blood. There's
8 blow back, as Dr. Woodard testified. And they got -- and
9 the clothes were taken. And you can't wash blood out of
10 clothes with soap and water, you can't. There's no blood
11 match. There's no palm print match. That's -- no
12 evidence of that effect. No human hair match. I mean,
13 hair falls out of the human body all the time. No fiber
14 match. It comes off your clothes or something, you match
15 that up. None of that. That's a fact. Is there
16 hesitation? You better believe it. You better believe
17 there's a bunch of hesitation.

18 And here's something that really is peculiar to me,
19 just as a kind of side here. If this is some preplanned
20 scheme that you get a van out of gas, and nobody knows how
21 you start it, and you go over there and then you go to
22 this trouble, as the Solicitor argues, to cover the
23 tracks, I think was the language, well, why would you take
24 the shotgun? Why would you take the shotgun home and put
25 it in your bedroom and as soon as law enforcement asks you

1 about it, you say, yeah, I've got a shotgun in the house?
2 That defies all of it. That defies all of it.

3 And the evidence is -- the evidence is that Mike
4 Harper had a strained relationship with James and Barry
5 Frady. He didn't really want to talk about that. He
6 wanted to talk about 10, 20, 30 years ago about how good
7 it was. But at the time in question, it was so strained
8 that he had been made to understand that he wasn't to be
9 on that property anywhere, any time. That's a fact.
10 That's a fact.

11 And then there's -- of course, there's no
12 eyewitnesses. But in terms of the van -- and another
13 thing about the van, as I mentioned earlier, if the van --
14 if it was grand larceny of the van, why would you give it
15 back to Michael Harper? Maybe they questioned the claim
16 it was stolen. Is that why they did it? Maybe it wasn't
17 stolen. Because law enforcement sure gave it back to him.
18 And it was the subject matter of a crime. At least,
19 that's what he claimed. That's what he claimed.

20 And then as far as the 12-gauge shotgun -- and all
21 this, please, bear in mind, everything is viewed with the
22 idea that it must be proven beyond a reasonable doubt,
23 every element of every charge. Remington shells,
24 Remington 12-gauge shells, there's probably thousands of
25 those in Oconee County. I mean, thousands. Thousands.

1 #6 birdshot, just as the testimony was, is the most common
2 birdshot they make. There are probably thousands of those
3 shells. .00 buck by Remington, thousands, thousands of
4 them. Thousands of them.

5 And then the projectile -- and after all this effort,
6 then the last thing was an opinion. Now, let me submit to
7 you, you're the fact finder. But then it switched when it
8 went to the last witness from fact to opinion. It went
9 from fact to opinion. In fact, nobody, none of those
10 witnesses ever said -- from that witness stand under oath,
11 no witness ever said that for a fact they knew Randy Frady
12 committed the charged crimes. Nobody ever said that, not
13 a single one of them, not one of them. And then they had
14 a little -- some opinion here, some opinion there, and
15 then some opinion.

16 But they want a jury to say as a fact that something
17 happened that nobody from the witness stand can say for a
18 fact. That fails the burden of proof. That fails. That
19 totally fails. Total failure. When the -- not one of the
20 25 witnesses can say what this prosecuting authority is
21 asking a jury to say. Is that hesitation? Is that
22 reservation? And, you know, the burden of proof -- and
23 this is kind of a coincidental thing because there's a
24 hurricane on the coast.

25 But the burden of proof, there is to be no

1 hesitation. If you compared it to wind speed, it would
2 have the sustained winds of a hurricane. It wouldn't just
3 blow. It would be a gust of wind every now and then.
4 Like this thing kind of sputters and this kind of sputters
5 like this. But it would be sustained, sustained strong
6 wind. If it was a car engine, it would be high
7 revolution, sustained revolution. That's how strong it
8 would be for someone not to have a hesitation.

9 And then on these common shells, 12-gauge .00 buck,
10 12-gauge birdshot, number one, here's another thing no
11 witness could say, not even the last witness. No one
12 could say that the projectiles that caused the death of
13 James and Barry Frady -- as Dr. Woodard testified, not a
14 single witness could say those projectiles caused the
15 death of James and Barry Frady. Nobody could say that.
16 Not a single one. They couldn't even give an opinion on
17 that. In fact, we went through the whole list. It can't
18 be associated with State's Exhibit No -- I think it was
19 State's Exhibit No. 18. It can't be associated with
20 State's Exhibit No. 18. They couldn't do it. Time after
21 time after time, nobody ever said that.

22 And then on the shell, a shell is not like a rifle,
23 just like the testimony said. Bear in mind, you're
24 viewing everything in terms of beyond a reasonable doubt.
25 A rifle, you can identify it directly to the rifle and you

1 can identify it directly to a handgun. And so the intent
2 is have an opinion where this violence goes on in this
3 chamber and spits out the leftover. And then we're going
4 to have an opinion to say -- to try to put this puzzle
5 together that doesn't fit. We're going to finally put
6 that on top of it and try to make it work.

7 Well, let me submit something to you. It's just like
8 the other gentleman testified, there are recognized
9 standards. There's five identifying features that are
10 used by ballistics experts, extractor marks, ejector
11 marks, chamber marks, breach face marks, and firing pin
12 impression, five standards.

13 Now, if you want an opinion, at least, you want a
14 hard opinion. You would want five -- I would submit to
15 you that you would want five out of five. If we're
16 talking about murder, two counts of murder, you would want
17 five out of five. In fact, I would submit to you, I would
18 want the photographs put up there so everybody could look
19 at it. But we didn't have five out of five.

20 And also, reluctantly and hesitantly, that same
21 witness admitted that they always have differences, the
22 shells do. But there's five identifying features, two
23 were used. What's two out of five? If I calculate that
24 right, that's 40 percent. 40 percent fails. And on top
25 of that, it's an opinion. It's not a fact. 40 percent.

1 And that was the final effort to put a puzzle together
2 that's never fit. And it still doesn't fit. You can say
3 that without even considering the burden of proof.
4 Especially, when you consider that, you have to look at it
5 in a way that everything, every element of every charge
6 must be established beyond a reasonable doubt to the point
7 there's no hesitation. My goodness. We're talking about
8 taking a leap nobody -- none of those witnesses could say
9 from the stand for a fact that it happened. And then
10 let's try to put an opinion of 40 percent on top of it and
11 leap over and ask a jury to say what they can't say.
12 That's the bottom line, ladies and gentlemen. That's the
13 bottom line.

14 And I say to you, the rules and the process were
15 designed a long time ago. And that's the way we do it in
16 America. And let me tell you, the burden of proof and
17 reasonable doubt, it's not suspicion or guilt. I submit
18 to you, it's not a suspicion. It's not a likelihood.
19 It's not even a probability. It's beyond a reasonable
20 doubt where there's no hesitation. That's the way we
21 operate. That's the way we do it. And that's why we're
22 envied by a lot of systems that don't do it that way. And
23 we do it that way for good reason.

24 And I submit to you -- and I'll sit down. But I
25 submit to you, once again, that the case has failed from

1 the very start. And I don't suggest any improper
2 motivation on anybody's part. I've got the greatest
3 respect. But it never fit together. Particularly, when
4 you look at it from beyond a reasonable doubt. No
5 hesitation.

6 You cannot -- you just -- I submit to you, you cannot
7 come to these conclusions without great reservation and
8 great hesitation. And that happens sometimes. And I
9 submit to you when a case fails, when the evidence fails,
10 the noble thing to do is to acquit. It's noble. That's
11 the way we do it in this country. And that's the way we
12 do it in this case, as I said in my opening statement. It
13 will be done in the next case next week and the next case
14 next month. Those same rules apply. The next state over,
15 the states out west, midwest, that's the way we do it.
16 We're proud to do it that way. That's what makes it the
17 American system because we do it that way.

18 And, again, it's not suspicion, it's not likelihood,
19 it's not probabilities. Any hesitation must be an
20 acquittal, I submit to you. I appreciate your attention
21 this morning.

22 Good day to you.

23 Thank you, Your Honor.

24 THE COURT: Madam Foreperson, and, ladies and
25 gentlemen, I'm going to ask you to step to your jury room

1 before I charge you to give you your break so you can
2 stretch your legs and use the restroom.

3 Do not discuss this case. I'll be right with you.

4 You may retire to your jury room.

5 (WHEREUPON, the jury was excused from open court at
6 approximately 11:20 p.m.)

7 THE COURT: Let the record reflect that during the
8 closing arguments of the Solicitor, Counsel for the
9 Defendant approached the bench and told me they had an
10 objection to the argument by the Solicitor.

11 It's my understanding, Mr. Allen, that your objection
12 was based on the Solicitor's argument that Randy Frady,
13 your client, went to this dwelling of the victims with the
14 intent to kill; is that right?

15 MR. ALLEN: Threatened --

16 THE COURT: Did I summarize it?

17 MR. ALLEN: Threatened to kill.

18 THE COURT: Threatened --

19 MR. ALLEN: Yes, sir.

20 THE COURT: -- to kill?

21 I overruled the objection on the basis that an
22 element of murder is malice. There's been testimony in
23 this case that there was a disagreement between one of
24 the -- or both victims and the Defendant. The Solicitor
25 was arguing evil mind or maliciousness at the time. And I

1 felt it was proper argument. But I'll be happy to hear
2 argument from both of you.

3 Is there anything you want to say in addition as to
4 why you thought it was inappropriate, Mr. Allen, before I
5 hear from the Solicitor?

6 MR. ALLEN: Well, may it please the Court, Your
7 Honor?

8 And the motion, at this time, is for a mistrial. I
9 think you mentioned that.

10 Just the statement was that he had threatened to
11 kill. That was not in the record. What was in the record
12 was the definition. She asked the officer what the
13 definition of assault was. Was it the offer to do bodily
14 harm? And there has been much -- that has been kind of a
15 contentious issue. And that is not in the record. That's
16 outside the record. So I made the objection.

17 THE COURT: Do you not recall the Solicitor
18 arguing -- I can have the court reporter, if she's
19 taping --

20 You're taping, aren't you, Hollie?

21 THE COURT REPORTER: Yes, sir.

22 THE COURT: I can have her play it back. I don't
23 recall the Solicitor stating that another person testified
24 in this trial that your client threatened to kill. She
25 was arguing malice at the time and talking about the

1 threat to kill. With the intent to go there and kill is
2 what I understood the argument to be. But I'll be glad to
3 listen to it.

4 Do you believe you heard her say that there was
5 testimony in this case that Randy Frady threatened to
6 kill?

7 MR. ALLEN: Not testimony. That he had gone there
8 before and threatened to kill. Not gone there before
9 based on the warrant and offered to do bodily harm, but
10 had gone there and threatened to kill. And I do believe
11 that would be in the audio.

12 THE COURT: All right. Solicitor, I'll be happy to
13 hear from you.

14 MS. HERVEY: The assault was defined as an offer to
15 do bodily harm. There's no person on this jury that
16 believes Randy Frady went to that house and said, I offer
17 to do you bodily harm. They knew what assault was. That
18 was a reasonable inference from those facts. It could
19 have been a threat of harm of any kind, including that
20 threat.

21 So a reasonable deduction of that threat based on the
22 fact that contemporaneously, he is discussing how to kill
23 him with Kevin Comer. And the State feels that is a
24 reasonable inference based on those two facts put
25 together. And Kevin Davis never said that Randy Frady

1 offered -- stated, I offered to do you bodily harm. He
2 charged him with assault. And that's how it's define.
3 That's a reasonable inference from those facts. And I'm
4 allowed to argue it. It's no different than Mike Harper
5 saying his van was missing and I could argue it was
6 stolen.

7 THE COURT: What I'm asking you is, Solicitor, in
8 your argument -- because at the time it was made -- and I
9 overruled the objection. Did you state to the jury that
10 Randy Frady previous to this incident threatened to kill
11 the victims? Did you say that or do I need to listen to
12 it?

13 MS. HERVEY: No. I said that he -- I didn't say a
14 witness said that. But I said he had been over there
15 threatening to kill.

16 THE COURT: You said what now?

17 MS. HERVEY: That he had been over there threatening
18 to kill them and threatening to harm them.

19 THE COURT: Find me that point in her argument and
20 let me hear it.

21 THE COURT REPORTER: Yes, sir.

22 THE COURT: We'll take five minutes.

23 MS. HERVEY: Your Honor, can I put something on the
24 record, too?

25 THE COURT: Yes, ma'am.

1 MS. HERVEY: We had -- and I was very cordial about a
2 little hearing yesterday about his paralegal putting
3 photographs from Ira Parnell up on that thing. And it was
4 all, well, we're going to admit it later, so no harm, no
5 foul. And then ten minutes later, we don't admit it.

6 And, now, he's up there going, well, you never saw
7 those photographs, which would be one thing if the jury
8 had never seen them, but he put them up there. And I
9 think that that's improper.

10 Now, I didn't object because it isn't an argument
11 about the photographs. But I do think it creates a whole
12 different level of impropriety on the part of Defense
13 Counsel to put photographs up on a wall the jury can see
14 and then suggest that the Prosecution was somehow hiding
15 from them when that was their evidence. And it casts a
16 different light on it. Yesterday, that was fine. But
17 when you argue in closing argument, it puts a whole
18 different --

19 THE COURT: What relief are you asking this Court to
20 give you, Solicitor, by making this argument?

21 MS. HERVEY: Well, Your Honor --

22 THE COURT: You're objecting to it after the fact.
23 We discussed this yesterday.

24 Are you objecting that his argument was improper?

25 MS. HERVEY: No. I'm saying that his conduct

1 yesterday becomes improper when he argues that to the
2 jury.

3 THE COURT: I think that's fair argument. That
4 objection is overruled.

5 Anything further?

6 MS. HERVEY: Nothing, Your Honor.

7 THE COURT: I want to hear the part of the
8 Solicitor's argument.

9 We'll take five minutes.

10 (WHEREUPON, a break was taken.)

11 THE COURT: Let the record reflect that I have
12 listened now to the tape from the court reporter
13 concerning the arguments of the Solicitor.

14 My understanding of that tape -- and I played it for
15 both lawyers in chambers. My understanding is that the
16 Solicitor made an argument that there was a 911 call made
17 in which the Defendant -- or in which the victims -- or it
18 was inferable that the victim stated the Defendant had
19 threatened to kill them. And that was the reason for
20 Mr. Allen's objection. I understood the objection at the
21 time to be that the Solicitor was arguing just general
22 threat. I thought she was arguing it under maliciousness.

23 There is no evidence in this case of a 911 call.
24 And, specifically, I ruled in chambers during the course
25 of this trial that the substance of the assault warrants,

1 which contained -- the warrant itself contained a threat
2 to kill -- was not admissible as hearsay because the
3 people that provided the information to the officers are
4 deceased and not available for cross-examination. The
5 Counsel for Defendant has advised me in chambers that they
6 want to object on the basis that the Solicitor's argument
7 went outside the bound of evidence that was admitted to
8 the jury. I sustain that objection. I change my ruling
9 and sustain it.

10 I have offered Counsel for the Defendant a curative
11 instruction, which he consents to. And that instruction
12 being that I will bring the jury back before my charge and
13 tell the jury that to the extent that any argument
14 concerning a 911 call by the Solicitor is not in evidence
15 and they are to disregard that argument.

16 Previously, Counsel for the Defendant moved for a
17 mistrial on that basis. I denied that motion. And I
18 continue to deny the motion for a mistrial. And my reason
19 is that there is evidence from Mr. Comer of a previous
20 inference to do bodily harm to the victims in this case.
21 I think that's proper argument. I don't think it rises to
22 the level of prejudice that would require this Court to
23 grant a mistrial. I decline to grant a mistrial. But I
24 will give a curative instruction.

25 MR. ALLEN: Yes, sir.

1 THE COURT: Have I accurately set forth what we
2 discussed in chambers insofar as the State is concerned?

3 MS. HERVEY: Yes. And I thank you for not playing
4 the tape.

5 THE COURT: Pardon?

6 MS. HERVEY: I said, yes, and I thank you for not
7 playing the tape.

8 THE COURT: Have I accurately set forth what we
9 discussed in chambers from Counsel for the Defendant?

10 MR. ALLEN: You have, Your Honor.

11 THE COURT: Very well.

12 Sir, would you bring us the jury, please, sir?

13 (WHEREUPON, the jury came into open court at
14 approximately 11:53 a.m.)

15 CHARGE ON THE LAW

16 THE COURT: Madam Foreperson, and, ladies and
17 gentlemen of the jury, as I told you at the outset of the
18 trial, what the attorneys tell you in closing argument is
19 not evidence. They've worked real hard to prepare the
20 case for their respective clients and I, certainly, want
21 you to listen very carefully to them. But what the
22 attorneys tell you in closing argument or opening
23 statement is not evidence.

24 During the course of the argument, an objection was
25 made to an argument by the State being made outside the

1 scope of the evidence. To the extent that any argument by
2 the State concerning a 911 call was made by the State's
3 Counsel during closing argument, I instruct you not to --
4 to disregard that and not consider that in any way in your
5 deliberations in connection with this case.

6 Ladies and gentlemen of the jury, it is now my duty
7 to charge you on the law of this case. As you know, the
8 State has charged the Defendant, James Randolph Frady, on
9 six indictments with six different and specific crimes.
10 The indictments in this case charge the Defendant, James
11 Randolph Frady, with two counts of murder, one indictment
12 for first degree burglary, one for possession of a weapon
13 during the commission of a violent crime, grand larceny,
14 and arson in the second degree.

15 I remind you that the fact that the Defendant was
16 arrested, the fact that the Defendant was charged, the
17 fact that the Defendant was indicted in this case with
18 each of the six indictments is not evidence in this case,
19 nor does it create any presumption or inference of guilt.
20 The indictments, these documents, are simply the formal
21 written instruments which contain the charges made against
22 the Defendant. They are the formal documents by which the
23 case is brought into this Court.

24 To these six indictments, the Defendant has pled not
25 guilty. And that plea of not guilty puts the burden on

1 the State of South Carolina to prove the Defendant guilty
2 beyond a reasonable doubt. A person charged with
3 committing a criminal offense in South Carolina is never
4 required to prove himself or herself innocent. I charge
5 you, ladies and gentlemen of the jury, that it is an
6 important rule of the law that the Defendant in a criminal
7 trial, no matter what the seriousness of the charge may
8 be, will always be presumed to be innocent of the crime
9 for which the indictment was issued unless guilt has been
10 proven by evidence satisfying you of that guilt beyond a
11 reasonable doubt.

12 This presumption of innocence, ladies and gentlemen
13 of the jury, does not end when you begin your
14 deliberations. But it accompanies the Defendant
15 throughout the trial until you, as a jury, reach a verdict
16 of guilt based on evidence satisfying you of that guilt
17 beyond a reasonable doubt. The presumption of innocence
18 is not a mere legal theory. It is not just a legal
19 phrase. It is a substantial right to which every
20 defendant is entitled unless you, the jury, are satisfied
21 from the evidence of the Defendant's guilt beyond a
22 reasonable doubt.

23 What is a reasonable doubt in the law? A reasonable
24 doubt is the kind of doubt that would cause a reasonable
25 person to hesitate to act. The State has the burden of

1 proving the Defendant guilty beyond a reasonable doubt.
2 Some of you may have served as jurors in civil cases where
3 you were told that it is only, in a civil case, necessary
4 to prove that a fact is more likely true than not true.
5 Such as by what we call the greater weight of the evidence
6 or the preponderance of the evidence in a civil case. In
7 a criminal case, like this case, ladies and gentlemen, the
8 State's proof must be more than that. It must be beyond a
9 reasonable doubt.

10 I remind you that during this trial, you and I have
11 had certain duties to perform. As the trial judge, it has
12 been my responsibility to preside over the trial of this
13 case. And I also have the duty to rule on the
14 admissibility of the evidence offered during this trial.
15 You are to consider, ladies and gentlemen of the jury,
16 only the competent evidence before you. If there was any
17 testimony ordered stricken from the record or any argument
18 ordered stricken from the record during this trial, you
19 must disregard that testimony or argument. You are to
20 consider only the testimony which has been presented from
21 the witness stand, any exhibits which have been made a
22 part of the record in this case, and any stipulations of
23 Counsel which have been published to you during the trial
24 of this case.

25 I have the additional duty, ladies and gentlemen, to

1 charge you the law applicable to this case. As the
2 presiding judge, as I told you at the outset of the trial,
3 I'm the sole judge of the law of the case. And it is your
4 duty, as jurors, to accept and apply the law exactly as I
5 now state it to you. If any of you have any idea as to
6 what you think the law is or what you may feel the law
7 ought to be and it does not now agree with what I now tell
8 you the law is, you must abandon your preconceived ideas
9 or opinions. Because you are, as jurors, sworn under the
10 oath, which each of you took, to accept the law and apply
11 the law exactly as I now state it to you.

12 In every case tried in this courtroom before a jury,
13 the jury becomes the sole and the exclusive judge of the
14 facts in the case. A trial judge, such as myself, cannot
15 intimate, state, comment on, or make any comment or
16 statement to a trial jury, such as you, ladies and
17 gentlemen, about the facts in a case. Since you, the
18 jury, in this case are the sole judges of the facts in
19 this case, you are not to infer from what I've said during
20 the progress of this trial in ruling upon the
21 admissibility of evidence, or otherwise, or anything that
22 I say to you now during the course of this final charge to
23 you on the law that I have any opinion whatsoever about
24 the facts in this case. The law does not allow me to have
25 an opinion about the facts in this case. This is a matter

1 solely for you, the jury, to determine.

2 As jurors, ladies and gentlemen, it is your duty to
3 determine the effect, the value, the weight, and the truth
4 of any evidence offered during the trial of this case.
5 Because you and you alone are the sole judges of the facts
6 in this case. And no one else but you will be permitted
7 to weigh the evidence, to consider the evidence, and
8 render a verdict based solely upon the evidence which is
9 introduced during the trial of this case.

10 There are two types of evidence which are generally
11 presented during a trial. We have names for those types
12 of evidence, ladies and gentlemen. We call the types of
13 evidence direct evidence and circumstantial evidence.

14 Direct evidence is testimony of a person who claims
15 to have actual knowledge of a fact, such as an eyewitness.
16 Direct evidence is evidence which immediately establishes
17 the main fact to be proved.

18 Circumstantial evidence, as contrasted with direct
19 evidence, is proof of a chain of facts and circumstances
20 indicating the existence of a fact. Circumstantial
21 evidence is evidence which immediately establishes
22 collateral facts from which the main fact may or may not
23 be inferred. Circumstantial evidence is based on
24 inference and not on personal knowledge or personal
25 observation.

1 The law makes absolutely no distinction between the
2 weight or value to be given to either direct evidence or
3 circumstantial evidence. Nor is a greater degree of
4 certainty required of circumstantial evidence than of
5 direct evidence.

6 You should, as a jury, ladies and gentlemen, weigh
7 all the evidence in this case, consider all the evidence
8 in this case. After weighing and considering all the
9 evidence in this case, if you are not convinced of the
10 guilt of the Defendant beyond a reasonable doubt, you must
11 find the Defendant not guilty. On the other hand, after
12 weighing and considering all the evidence in this case, if
13 you're convinced of the guilt of the Defendant beyond a
14 reasonable doubt, you must find the Defendant guilty.

15 Necessarily, ladies and gentlemen, you must, as a
16 jury, determine the credibility or believability of the
17 witnesses who have testified during the trial of the case.
18 Credibility simply means believability, ladies and
19 gentlemen. It becomes your duty, as jurors, to analyze
20 and to evaluate the evidence and determine which evidence
21 convinces you of its truth.

22 In determining the believability of the witnesses who
23 have testified in this case, you may believe one witness
24 over several witnesses or you may believe several
25 witnesses over one witness. You may believe a part of the

1 testimony of a witness and reject the remaining part of
2 the testimony of that same witness. You may believe a
3 witness in its entirety. You may reject a witness'
4 testimony in its entirety. You may believe part and
5 reject the remaining part. You may consider, also in
6 determining the believability or credibility of the
7 witness, whether any witness has exhibited to you any
8 interest, any bias, any prejudice, or other motive in this
9 case. You may also even consider the appearance and
10 manner of the witness while the witness was on the witness
11 stand. We refer to that as the demeanor of the witness.

12 I charge you, ladies and gentlemen, that the rules of
13 evidence ordinarily do not permit witnesses to give
14 testimony as to opinions or conclusions. An exception to
15 our opinion rule exists for witnesses we call expert
16 witnesses.

17 A witness who by some education, training, or
18 experience has become an expert in some art, science,
19 profession, or calling, if qualified to do so by the
20 Court, may state an opinion as to relevant and material
21 matter in which the witness claims to be an expert and may
22 also state the reasons for his or her opinion, if
23 qualified as an exception to our opinion rule.

24 You should consider any expert opinion received in
25 evidence in this case, and like any other evidence, give

1 it the weight, ladies and gentlemen, you think it
2 deserves. If you decide that the opinion of an expert
3 witness is not based on sufficient education, training, or
4 experience, or if you conclude that the reasons given in
5 support of an expert's opinion are not sound or that the
6 opinion is outweighed by other evidence, you may disregard
7 the expert opinion entirely. An expert witness' testimony
8 is to be given no greater weight than that of other
9 witnesses simply because the witness is an expert. You're
10 not required to accept an expert's opinion even though it
11 is not contradicted.

12 I charge you, ladies and gentlemen, that a statement
13 alleged to have been made by the Defendant has been
14 admitted into evidence in this case. While the Court has
15 determined that a statement is admissible, as a matter of
16 law, I instruct you that you make the ultimate decision,
17 ladies and gentlemen of the jury, of whether or not the
18 Defendant made any statement. That is up to you based on
19 evidence introduced during the trial of the case.

20 If the Defendant did make a statement, you must
21 determine also whether the statement was made by the
22 Defendant voluntarily and of his own free will. This
23 means that the statement was not caused by pressure, or
24 force, or fear, or threats, or coercion, or intimidation,
25 or by hope or promise of leniency or reward of any kind.

1 In determining whether the statement was voluntary,
2 you should consider both the characteristics of the
3 Defendant and the details of the question. Some of the
4 factors that you may consider, if supported by evidence
5 introduced during the trial of this case, are the age of
6 the Defendant, the Defendant's education or lack of
7 education, the Defendant's mental ability or capacity, the
8 Defendant's intelligence, the Defendant's background and
9 environment, the place and length of detention, the nature
10 of the questioning, and the advice or lack thereof to the
11 Defendant of his Constitutional rights, including, but not
12 limited to, the right to remain silent, that any statement
13 could be used against him in a court of law, the right to
14 have a lawyer present, that if he could not afford a
15 lawyer, a lawyer would be appointed to represent him
16 without any cost and that he could stop making a statement
17 at any time.

18 You must carefully consider all of the surrounding
19 circumstances before you give any weight to any alleged
20 statement based on evidence introduced during the trial of
21 the case. The State has the burden of proving beyond a
22 reasonable doubt that the alleged statement was made and
23 was voluntary. If you determine it was, you may give the
24 statement any further consideration that you deem proper.
25 You must decide, as a jury, what weight, if any, should be

1 given to the alleged statement. If you determine that the
2 alleged statement having been made was not the free and
3 voluntary statement of the Defendant, you should not
4 consider the statement at all.

5 I instruct you, ladies and gentlemen of the jury, and
6 emphasize to you that the fact that the Defendant did not
7 testify in this case is not a factor to be considered by
8 you in any way in your deliberations and in your
9 consideration on the question of the guilt or innocence of
10 the Defendant. It must not be considered by you in any
11 manner whatsoever.

12 A Defendant has the Constitutional right to remain
13 silent. And the assertion of this right must not be
14 considered by you in your deliberations. I repeat, under
15 the oath which each of you took as jurors, you're to draw
16 no conclusion whatsoever from the fact that the Defendant
17 in this case did not testify. The fact that the Defendant
18 did not testify should not even be discussed in your jury
19 room. The burden of proof, as I've stated to you, is on
20 the State. The Defendant is not required to prove his or
21 her innocence. The burden of proof remains on the State
22 to prove guilt beyond a reasonable doubt.

23 Now, in order to establish criminal liability,
24 criminal intent is required. For example, the mental
25 state required to be proven by the State for a particular

1 crime might be, by way of example, purpose, or intent, or
2 knowledge, or recklessness, or malice, or even, by some
3 examples, what we call criminal negligence. Criminal
4 intent must be proven by the State beyond a reasonable
5 doubt. Criminal intent is always a matter that must be
6 determined by the jury from the circumstances surrounding
7 the situation based on evidence introduced during the
8 trial of a case.

9 There is no way, ladies and gentlemen of the jury, to
10 prove intent to a mathematical certainty. There is no way
11 medical science can dissect a person's brain and determine
12 what the person had in mind. So the law says that
13 criminal intent may be inferred from the circumstances
14 shown to have existed based on evidence introduced during
15 the trial of this case.

16 This is how, ladies and gentlemen of the jury, you
17 make a determination of whether or not any element in a
18 particular crime requiring intent was present. It is not
19 necessary, ladies and gentlemen, for you to establish or
20 for the State to establish intent by direct and positive
21 evidence. But intent may be established by inference in
22 the same way as any other fact by taking into
23 consideration the acts of the parties and all the facts
24 and circumstances of the case based on evidence introduced
25 during the trial of the case.

1 Criminal intent is a mental state, a conscious
2 wrongdoing. It is up to you, as a jury, from evidence
3 introduced during the trial of the case to determine what
4 the Defendant intended to do based on the circumstances
5 shown to have existed from evidence in the trial of the
6 case. Criminal intent can arise from an action or a
7 failure to act. It may arise from negligence,
8 recklessness, or an indifference to duty, or to
9 consequences that are considered, by the law, to be the
10 equivalent of criminal intent.

11 I charge you, ladies and gentlemen of the jury, that
12 the indictments in this case -- and there are six --
13 allege several different offenses against the Defendant.
14 The charges are indictment number one, arson second
15 degree; indictment number two, grand larceny; indictment
16 number three, the murder of James C. Frady, Jr.;
17 indictment number four, the murder of Barry Frady;
18 indictment number five, possession of a weapon during the
19 commission of a violent crime; and indictment number six,
20 burglary first degree.

21 You will be asked, ladies and gentlemen, by this
22 Court, as a jury, to write a separate verdict of guilty or
23 not guilty for each indictment. I charge you, however,
24 that in order to find the Defendant guilty of possession
25 of a weapon during the commission of a violent crime, you

1 must first find the Defendant guilty of committing a
2 violent crime. I charge you, ladies and gentlemen of the
3 jury, that murder, burglary in the first degree, and arson
4 in the second degree, are violent crimes under the laws of
5 the State of South Carolina.

6 As to the first indictment, arson second degree. In
7 order to prove second degree arson, the State must prove
8 beyond a reasonable doubt that the Defendant willfully and
9 maliciously caused an explosion, set fire to, burned,
10 caused to be burned, aided, counseled or procured the
11 burning that results in damage to a dwelling house.

12 Under this indictment, the word willfully means that
13 it was not done by accident, but was done knowingly or
14 intentionally. It must be shown that the burning was by
15 the willful act of some person and not as a result of a
16 natural or accidental cause.

17 Maliciously, for purposes of arson in the second
18 degree, means with hatred, ill will, or hostility towards
19 another person. A person who intentionally does a
20 wrongful act without legal justification or excuse does
21 the act maliciously. A malicious burning is an act done
22 with a condition of mind that shows a heart bent on
23 mischief, showing a design to do an intentional wrong act
24 toward another or toward the public without any legal
25 justification or without any legal excuse. This malice

1 that I'm talking about need not be expressed, but may be
2 implied. And I will define that for you in a moment.

3 For purposes of arson in the second degree, damage
4 means an application of fire or explosive that results in
5 burning, charring, blistering, scorching, smoking,
6 singeing, discoloring, or changing the fiber or
7 composition of a structure. Next for arson in the second
8 degree, the State must prove beyond a reasonable doubt
9 that the property which was burned was a dwelling house. .
10 I charge you that a dwelling house is a building in which
11 a person ordinarily sleeps.

12 Grand larceny. The Defendant is also charged in an
13 indictment for grand larceny. The State must prove beyond
14 a reasonable doubt that the Defendant took and carried
15 away the property of another against the will or without
16 the consent of the other person. Grand larceny is the
17 taking and carrying away of the property of another
18 against the will or without the consent of the other
19 person with the intent to permanently deprive the owner of
20 the property.

21 To be grand larceny, ladies and gentlemen of the
22 jury, the State must prove beyond a reasonable doubt that
23 the value of the property taken must have been \$1,000 or
24 more. The slightest removal of the property or the
25 complete possession of the property, even for an instant

1 by the Defendant, is enough to show a taking and carrying
2 away of the property. The State must prove beyond a
3 reasonable doubt that the Defendant intended to
4 permanently deprive the owner of the property. The State
5 must prove beyond a reasonable doubt that the value of the
6 thing taken was \$1,000 or more for purposes of the
7 indictment or offense for grand larceny.

8 First degree burglary. The Defendant is charged in
9 an indictment with first degree burglary. The State must
10 prove beyond a reasonable doubt that the Defendant entered
11 a dwelling without consent. A dwelling is any building or
12 portion of a building in which a person ordinarily sleeps.
13 A building constructed as a dwelling that has never been
14 occupied cannot be considered a dwelling for purposes of
15 burglary. But a building is a dwelling even if the
16 residents are temporarily absent from the building, or a
17 dwelling is a building in which a person ordinarily
18 sleeps.

19 In order to prove that the Defendant entered the
20 dwelling, the State does not have to show that Defendant's
21 entire body entered the dwelling. The smallest entry is
22 sufficient. It may be any part of the body, such as a
23 hand, or foot, or even an instrument. In addition, the
24 State does not have to prove that force was used to gain
25 entry for purposes of burglary. If a person enters a

1 building by using deception, or trick, or
2 misrepresentation to get consent to enter, this is an
3 entry without consent.

4 Next, for the offense of burglary, the State must
5 prove beyond a reasonable doubt that the Defendant
6 intended to commit a crime, either a felony or
7 misdemeanor, at the time of the entry. The mere entry
8 into a dwelling without consent is not burglary. If the
9 intent to commit a crime is formed after the entry, it is
10 not burglary.

11 On the other hand, if the Defendant intended to
12 commit a crime at the time of the entry, it is burglary,
13 even if the intent was abandoned after the entry. It does
14 not matter that the intended crime was not completed.
15 Intent may be shown, as I instructed you earlier, by the
16 acts and the conduct of the Defendant and other
17 circumstances from which you may naturally and reasonably
18 infer intent based on evidence introduced during the trial
19 of the case.

20 Finally, for burglary, the State must prove beyond a
21 reasonable doubt that when entering, while in the dwelling
22 or when fleeing, the Defendant caused physical injury to
23 anyone not participating in the crime of burglary.

24 Possession of a weapon during the commission of a
25 violent crime. The Defendant is charged in an indictment

1 with possession of a weapon during the commission of a
2 violent crime. For this offense, the State must prove
3 beyond a reasonable doubt that the Defendant was in
4 possession of a weapon during the commission of a violent
5 crime. A weapon would include any machine gun, rifle,
6 revolver, pistol, or any weapon which will or is designed
7 to or may be readily converted to expel a projectile.

8 In order to find the Defendant guilty of possession
9 of a weapon during the commission of a violent crime, you
10 must first find the Defendant guilty of committing a
11 violent crime. I charge you again, ladies and gentlemen
12 of the jury, that murder, second degree arson, and first
13 degree burglary are violent crimes under the laws of the
14 State of South Carolina.

15 Murder. The Defendant is charged in two indictments
16 in this case for the offense of murder. The State must
17 prove for the offense of murder beyond a reasonable doubt
18 that the Defendant killed another person with malice
19 aforethought. Malice is hatred, ill will, or hostility
20 towards another person. It is the intentional doing of a
21 wrongful act without just cause or excuse and with an
22 intent to inflict an injury or under circumstances that
23 the law will infer an evil intent.

24 Malice aforethought does not require that the malice
25 exist for any particular time before the act is committed.

1 But malice must exist in the mind of the Defendant just
2 before and at the time of the act. Therefore, there must
3 be a combination of the previous evil intent and the act.

4 Malice aforethought may be expressed or implied.
5 These terms expressed and implied do not mean different
6 kinds of malice, but merely the manner in which malice may
7 be shown to exist. That is either by direct evidence or
8 by an inference from the facts and circumstances which are
9 proved based on evidence introduced during the trial of
10 the case.

11 Expressed malice is shown when a person speaks words
12 which express hatred or ill will for another, or when the
13 person prepared beforehand to do the act which was later
14 accomplished. For example, lying in wait for a person or
15 any other acts of preparation going to show that the deed
16 was within the Defendant's mind would be expressed malice.
17 Malice may be inferred from conduct showing a total
18 disregard for human life. Inferred malice may arise when
19 the deed is done with a deadly weapon. A deadly weapon is
20 any article, instrument, or substance which is likely to
21 cause death or great bodily harm. Whether an instrument
22 has been used as a deadly weapon depends on the facts and
23 circumstances of each case.

24 Ladies and gentlemen of the jury, I have now charged
25 you on the law in order to help you and guide you to a

1 fair and a just result in this case. You are, ladies and
2 gentlemen, the judges of the facts in this case. And so
3 based on your determination of the facts in this case and
4 the law as I've explained it to you, you will soon begin
5 your deliberations.

6 You have been selected, ladies and gentlemen, as fair
7 and impartial jurors. You were sworn to fairly and
8 impartially try and determine the facts of this case. And
9 when you comply with your oath to do so, no one can
10 criticize your verdict. You are to decide this case
11 solely upon the evidence and testimony in this case that
12 you have heard, that is from the sworn witnesses who have
13 testified before you, along with all the other evidence,
14 exhibits that may have been presented to you, which you
15 will have with you, and any stipulations that were entered
16 into and nothing else.

17 You must decide the issues in this proceeding without
18 any bias and without any prejudice toward either party.
19 You cannot allow yourself to be governed by prejudice for
20 or against any person by public opinion or any other
21 arbitrary factor not found in the evidence. Both the
22 Defendant and the State of South Carolina have the right
23 to expect that each of you will carefully and impartially
24 consider all the evidence in this case, and that you will
25 follow the law as I've instructed it to you in reaching

1 your verdict in this case,

2 Now, Madam Foreperson, I told you I would give you
3 instructions about how to write the jury's verdict.

4 Pay absolutely no attention, ladies and gentlemen of
5 the jury, to the order in which I wrote the verdict on the
6 verdict forms. We, obviously, had to write one before the
7 other. And the order has no significance whatsoever.

8 I have six verdict forms for you, Madam Foreperson.
9 And I'll start with the first one because each one has a
10 similar title with a different case number.

11 At the top of each verdict form, you will see the
12 words "State of South Carolina, County of Oconee," then
13 you will see to the right "Court of General Sessions,"
14 which I told you means criminal court in South Carolina.
15 And underneath, it has an indictment number, which
16 identifies the indictment number. Then it has in the
17 caption at the top on each verdict form, "the State of
18 South Carolina v. James Randolph Frady, Defendant." And
19 to the right, it has the words "Verdict."

20 Underneath that caption, I have placed the words for
21 you, "We, the jury, by unanimous consent, find the
22 Defendant, James Randolph Frady," and the first form of
23 verdict on this indictment, which happens to be the
24 indictment number for arson in the second degree, it would
25 be "guilty of arson in the second degree." If that be

1 your form of verdict, Madam Foreperson, you would check on
2 the line beside "guilty of arson in the second degree."

3 Under the words, "We, the jury, by unanimous consent
4 find the Defendant, James Randolph Frady," the second form
5 of verdict on this indictment would be "not guilty of
6 arson in the second degree." If that be your form of
7 verdict, you would check, Madam Foreperson, on the line
8 beside "not guilty of arson in the second degree."

9 You must find one form of verdict or the other, you
10 cannot find both. When you have reached a verdict on that
11 indictment, you would check one line or the other, sign
12 your name on the line where it says "Foreperson" and fill
13 in today's date, which is the 31st of August. I missed
14 the date. You would put in the date in the blank and sign
15 your name.

16 Now, as to the indictment for grand larceny, same
17 caption, under the words, "We, the jury, by unanimous
18 consent find the Defendant, James Randolph Frady," the
19 first form of verdict would be "guilty of grand larceny."
20 The second form of verdict would be "not guilty of grand
21 larceny." You would check one form of verdict or the
22 other, sign your name on the verdict form where it says
23 "Foreperson" and fill in today's date being August 31st,
24 2006.

25 As to the verdict form for the murder of James C.

1 Frady, Jr., the verdict form under the words, "We, the
2 jury, by unanimous consent, find the Defendant, James
3 Randolph Frady," the forms of verdict would be guilty of
4 the murder of James C. Frady, Sr. or not guilty of the
5 murder of James C. Frady Jr. You would check one form of
6 the verdict or the other, not both. Sign your name where
7 it says "Foreperson" and fill in today's date.

8 As to the indictment for the murder of Barry Frady,
9 under the words, "We, the jury, by unanimous consent find
10 the Defendant, James Randolph Frady," the forms of verdict
11 would be either guilty of the murder of Barry Frady or not
12 guilty of the murder of Barry Frady. You must find one
13 verdict form or the other. You would check on the line
14 beside the form, sign your name as foreperson and fill in
15 the date.

16 As to the indictment for possession of a weapon
17 during the commission of a violent crime. I remind you of
18 my instructions earlier concerning this offense, you
19 cannot find the Defendant guilty of possession of a weapon
20 during the commission of a violent crime unless you have
21 found the Defendant guilty of committing a violent crime.
22 I charge you that murder, burglary first degree, and arson
23 second degree are violent crimes under the laws of the
24 State of South Carolina.

25 On this indictment for the offense of possession of a

1 weapon during the commission of a violent crime, under the
2 words, "We, the jury, by unanimous consent find the
3 Defendant, James Randolph Frady," are the two forms of
4 verdict, guilty of possession of a weapon during the
5 commission of a violent crime or not guilty of possession
6 of a weapon during the commission of a violent crime.
7 Bearing in mind, ladies and gentlemen, my earlier
8 instructions, you must find one form of verdict or the
9 other, not both. Sign your name, Madam Foreperson, and
10 date it.

11 Finally, for the indictment for burglary in the first
12 degree, same caption, different indictment number,
13 different offense, under the words, "We, the jury, by
14 unanimous consent find the Defendant, James Randolph
15 Frady," either guilty of burglary in the first degree or
16 not guilty of burglary in the first degree. You must find
17 one form of verdict or the other. You cannot find both on
18 each of these verdict forms. And you would check one or
19 the other, not both on the verdict form, sign your name
20 where it says "Foreperson" and fill in the date.

21 When you have reached a verdict, Madam Foreperson,
22 you will --after you have filled out the verdict form,
23 signed your name, dated it, and checked the appropriate
24 form of verdict, you will knock on the jury room door and
25 inform the bailiff you've reached a verdict. And we will

1 then receive you back into the courtroom in order to
2 publish your verdict.

3 Ladies and gentlemen of the jury, I charge you that
4 your verdict must be unanimous. That is, it must be the
5 verdict of each and every one of you.

6 Now, at this time, ladies and gentlemen, I'm going to
7 ask you to retire to your jury room. Please do not begin
8 your deliberations. It may be necessary for me to bring
9 you back in the courtroom for some brief additional
10 instructions.

11 When it is time for you to begin your deliberations,
12 I will send the verdict forms into you, Madam Foreperson,
13 with the bailiff, along with all the exhibits which have
14 been introduced into evidence during the trial of the case
15 and have the bailiff inform you that you may then commence
16 your deliberations. I ask you to retire to your jury room
17 at this time.

18 Would my two alternate jurors, please, remain in the
19 courtroom with me.

20 The rest of the jury may retire to the jury room.

21 (WHEREUPON, the jury was excused from open court at
22 approximately 12:36 p.m.)

23 THE COURT: First of all, on behalf of Oconee County,
24 I want to thank both of you. I watched you during the
25 trial. All a judge can ask of a juror is that you listen,

1 be patient, and listen carefully. Both of you did that.
2 No one else became ill. We did have one that had to go
3 get medical treatment this morning or for some reason
4 could not continue to serve in this case. So this
5 concludes your service in this case. And I am happy to
6 tell both of you, it also concludes your service for the
7 balance of the week. So, at this time, I get to excuse
8 you.

9 Do both of you have your belongings out of the jury
10 room?

11 (Both jurors indicated yes.)

12 THE COURT: Well, at this time, with my blessing and
13 thanks, I'm going to excuse you. If you listened
14 carefully, you now know you're both exempt, if you choose
15 to claim your exemption from jury service, for three
16 years. You're disqualified from serving. And you may
17 never be chosen again. But on behalf of this county and
18 this Court, I thank you for your service. Without you,
19 justice can't ever be accomplished. And I appreciate your
20 willingness to serve. You're excused.

21 I'd like to tell you that I have a check for you, but
22 I'm going to tell you the Clerk is going to tell you that
23 your check is in the mail. I know you've heard that
24 before. We'll be sending that to you at the address you
25 provided us. You may leave the courtroom. I ask that you

1 not go back in the jury room, but leave the courtroom at
2 this time.

3 Thank you very much.

4 (WHEREUPON, the alternate jurors were excused.)

5 THE COURT: Any exceptions our additions to the
6 charge from the State of South Carolina?

7 MS. HERVEY: None.

8 THE COURT: Any exceptions or additions to the charge
9 from the Defendant?

10 MR. ALLEN: No exceptions, Your Honor.

11 We just renew the previous requests.

12 THE COURT: I placed on the record earlier your
13 request to charge the dissent in State v. Cherry and that
14 request is respectfully denied. You've renewed it now at
15 the close of my charge and you're protected for the
16 record.

17 I'd ask that Counsel come forward, both of you, and
18 certify on the record you're satisfied that the court
19 reporter has all the exhibits, and you have no objection
20 to the bailiff taking the exhibits and the verdict forms
21 into the jury, and the bailiff informing the jury they may
22 now commence their deliberations.

23 Do you want to look at the verdict forms again,
24 Counsel, in light of your request that I amend them?

25 MS. WALDREP: No, sir.

1 THE COURT: Thank you so much.

2 Hold on one second. Just one minute, ma'am.

3 Solicitor, are you satisfied that the court reporter
4 has all the exhibits?

5 MS. HERVEY: Yes, Your Honor.

6 THE COURT: And you have no objection to the bailiff
7 taking the exhibits and verdict forms into the jury and
8 the bailiff telling the jury they may commence
9 deliberations?

10 MS. HERVEY: No. There's more left here and I'm sure
11 they'll be back for them.

12 THE COURT: Are you satisfied that the court reporter
13 has all the exhibits, Counsel for the Defendant?

14 MR. ALLEN: Yes, sir.

15 THE COURT: Do you have any objection to the bailiff
16 taking the exhibits in two trips, as well the verdict
17 forms, into the jury and telling the jury they may
18 commence their deliberations?

19 MR. ALLEN: No, sir. I don't have an objection.

20 THE COURT: Very well. Go ahead.

21 We'll be at ease while we await the jury's verdict.

22 (WHEREUPON, the proceedings were recessed at
23 approximately 12:42 p.m.)

24 THE COURT: I'm going to ask Counsel in the Frady
25 case to approach the bench.

1 It's my understanding the jury has reached a verdict.

2 (WHEREUPON, a bench conference was held.)

3 THE COURT: Ladies and gentlemen, I understand that
4 in the case we've been trying, which is the State v. James
5 Randolph Frady, that the jury has reached a verdict.

6 For those of you that are here, I ask that you,
7 please, don't permit any type of outburst of emotion. If
8 you do not think you can control your emotions at the
9 publishing of the verdict, I ask you to leave the
10 courtroom at this time. Because I won't tolerate any such
11 outbursts. And I would appreciate it if you would take
12 the time to get up and walk out of the courtroom if you
13 feel you cannot do so at this time.

14 Very well. Anything further from the State before we
15 publish the verdict?

16 MS. HERVEY: Nothing from the State.

17 THE COURT: From the Defendant?

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

19 THE COURT: Bring the jury in, please.

20 (WHEREUPON, the jury came into open court at
21 approximately 3:30 p.m.)

22 THE COURT: Madam Foreperson, has the jury reached a
23 verdict?

24 THE FOREPERSON: Yes, sir.

25 THE COURT: If you'll give it to my bailiff, please.

1 You may publish the verdict..

2 THE CLERK: 2004-GS-37 --

3 THE COURT: If the Defendant will, please, rise.

4 VERDICT

5 THE CLERK: 2004-GS-37-2071, the State of South
6 Carolina v. James Randolph Frady, we, the jury, by
7 unanimous consent find the Defendant, James Randolph
8 Frady, guilty of grand larceny.

9 In 2004-GS-37-2078, we, the jury, by unanimous
10 consent find the Defendant, James Randolph Frady, guilty
11 of burglary first degree.

12 2004-GS-37-2070, we, the jury, by unanimous consent,
13 find the Defendant guilty of arson second degree.

14 2004-GS-37-2072, we, the jury, by unanimous consent
15 find the Defendant, James Randolph Frady, guilty of the
16 murder of James C. Frady, Jr.

17 2004-GS-37-2073, we, the jury, by unanimous consent
18 find the Defendant, James Randolph Frady, guilty of the
19 murder of Barry Frady.

20 2004-GS-37-2074, we, the jury, find the Defendant,
21 James Randolph Frady, guilty of possession of a weapon
22 during the commission of a violent crime.

23 Ladies and gentlemen of the jury, if this was your
24 verdict and is still your verdict, please, signify by
25 raising your right hand.

1 (All jurors raised their right hand.)

2 THE CLERK: And the record will reflect that all 12
3 jurors raised their hand.

4 THE COURT: You may be seated.

5 Anything further from the State before I excuse the
6 jury?

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

8 THE COURT: Anything further from the Defendant
9 before I excuse the jury?

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

11 THE COURT: Madam Foreperson, would you come around
12 for me and take the witness stand?

13 Have a seat right there. I need you to sign your
14 name on the indictments before I excuse the jury.

15 Let me tell you what I want you to do. I'm going to
16 give you the pen and under each one, I want you to write
17 your verdict. And I want you to sign your name as
18 foreperson of the jury and date it just like you did on
19 each one of these.

20 THE FOREPERSON: Guilty right here?

21 THE COURT: We'll start with the first one, guilty of
22 arson, sign your name right here and date it.

23 THE FOREPERSON: Okay.

24 THE COURT: Ladies and gentlemen of the jury, so
25 you'll know what I'm doing, this is a housekeeping matter.

1 But I'm having the foreperson confirm the verdicts on the
2 face of the indictments that were published to us.

3 Ladies and gentlemen of the jury, first of all, on
4 behalf of Oconee County and this Court, I want to thank
5 you for your service in the trial of this case. Your
6 service as a juror for this week has now been concluded.

7 Let me tell you, first of all, that you have the
8 absolute right to either refuse to discuss the verdict
9 you've rendered or to discuss the verdict to the extent
10 you so desire. If you choose to discuss the verdict,
11 you're free to terminate such discussions at any point.
12 If the person with whom you're speaking continues to
13 pursue a discussion of the verdict after you have
14 communicated to that person the desire to terminate the
15 discussion, or if a person continues to harass you after
16 you have refused to discuss the verdict, you should report
17 that person to the Clerk of Court, who will contact me.
18 And, as I told you, ladies and gentlemen, I'll take care
19 of that matter for you. So you have the right to discuss
20 it or not as you deem fit. And I wanted you to know that
21 before I excuse you.

22 You know, all the Court can ask, ladies and
23 gentlemen, is that a jury listen. And, as I told my
24 alternate jurors before I excused them today, I watched
25 each of you during the trial and you paid close attention

1 to the evidence. Without you, ladies and gentlemen,
2 justice can never be accomplished in a courtroom.

3 On behalf of Oconee County and this Court, I thank
4 you for that service. This concludes your service for the
5 balance of the week. You're now excused from jury
6 service. And you may leave the courtroom at this time.

7 Thank you very much.

8 (WHEREUPON, the jury was dismissed at approximately
9 3:37 p.m.)

10 THE COURT: All right. Counsel, if you have the
11 sheets prepared, would the Defendant and Counsel, as well
12 as the Solicitor, come around for sentencing?

13 MS. HERVEY: Thank you, Your Honor.

14 Here are the sentencing sheets.

15 THE COURT: All right. Mr. Allen, I've heard the
16 evidence in this case. The jury has spoken. The verdict
17 has been returned. I'll be happy to hear from you.

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

19 Just briefly, Randy is 42 years old. Randy is a high
20 school graduate, Your Honor. He is single and he has no
21 children. The only family I know of that he has are his
22 grandparents, Jim and Irene Frady. And that would be it,
23 Your Honor.

24 And he's -- excuse me. He has been in custody since
25 September the 23rd of 2004.

1 THE COURT: Well, Solicitor, before I turn to you.

2 Mr. Frady, is there anything you would like to tell
3 me before sentencing?

4 DEFENDANT FRADY: No, sir.

5 THE COURT: Solicitor, any prior record?

6 MS. HERVEY: Yes, Your Honor.

7 He does have a prior record that dates back to 1983.

8 A lot of it is for magistrate level assaults and things
9 you heard about during the trial, those type things, but
10 he was, actually, convicted of those.

11 He's also been convicted of criminal mischief, of
12 eluding officers, of obstructing justice, Your Honor. He
13 has some traffic, a possession of drug paraphernalia, Your
14 Honor. And I apologize, but it's not all South Carolina,
15 Your Honor. His record is also from Florida.

16 He has a conviction for shooting at or within or into
17 a building in 2003 in Florida. He has that simple assault
18 here in Oconee County as well; a malicious damage to
19 personal property, carrying a pistol, driving under the
20 influence, an open container. And he had a 2004 driving
21 under the influence, unlawful turning, and possession of
22 marijuana. And he was convicted of those in early 2004,
23 Your Honor, as to his prior record.

24 And if I could be heard just briefly before
25 sentencing. Your Honor, this is a double homicide. This

1 tore apart a family that's been a member of the Oconee
2 County community. As Mr. Frady told you, he's lived here
3 all of his life. That's about some 90 odd years. This
4 individual killed his son and took his other grandson.
5 And he did this, not only as an insult to those people,
6 but an insult to the grandfather who had taken care of him
7 most of his life.

8 And, Your Honor, this is a horrible crime that left
9 this community turned on end. We feel that the maximum
10 sentence ought to be imposed on each count.

11 THE COURT: Anything further from the Defendant,
12 Mr. Allen?

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

14 THE COURT: Anything further the State?

15 MS. HERVEY: Nothing, Your Honor.

16 SENTENCING

17 THE COURT: On indictment 2004-GS-37-2072, the State
18 v. James Randolph Frady, indictment for murder, the
19 sentence of this Court is the Defendant is committed to
20 the State Department of Corrections for a term of life
21 imprisonment.

22 On indictment 2004-GS-37-2073, the State v. James
23 Randolph Frady, the sentence of this Court is the
24 Defendant is committed to the State Department of
25 Corrections for a term of life imprisonment.

1 On indictment 2004-GS-37-2070, arson second degree,
2 the sentence of this Court is the Defendant is committed
3 to the State Department of Corrections for a term of 25
4 years.

5 On indictment 2004-GS-37-2071, the State v. James
6 Randolph Frady, grand larceny. The sentence of this Court
7 is the Defendant is committed to the State Department of
8 Corrections for a term of five years.

9 On indictment 2004-GS-37-2074, the State v. James
10 Randolph Frady, possession of a weapon during the
11 commission of a violent crime, the sentence of this Court
12 is the Defendant is committed to the State Department of
13 Corrections for a term of five years.

14 Finally, on indictment 2004-GS-37-2078, the State v.
15 James Randolph Frady, indictment for burglary first
16 degree, the sentence of this Court is the Defendant is
17 committed to the State Department of Corrections for a
18 term of 30 years.

19 Those sentences will run concurrent to each other.

20 This Court stands adjourned as to this case.

21 *****END OF TRANSCRIPT OF RECORD*****

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Oconee County, South Carolina, on the 29th, 30th, and 31st days of August, 2006.

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

February 5, 2007

Hollie M. Jenkins

Hollie M. Jenkins, Court Reporter

My Commission Expires: 11-17-10

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES RANDOLPH FRADY,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial judge committed reversible error by precluding the defense from introducing evidence of, and arguing, third-party guilt, as his ruling violated both *Holmes v. South Carolina*, 547 U.S. 319 (2006), and *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941).

STATEMENT OF FACTS

On August 28 through 31, 2006, James Randolph Frady stood trial in Oconee County, before Judge Perry M. Buckner and a jury, on indictments charging him with two counts of murder, first-degree burglary, grand larceny, second-degree arson and possession of a weapon during the commission of a violent crime. The victims were Frady's father and brother, who were both killed with a shotgun that belonged to Frady. ROA p. 497, lines 19-22; ROA p. 728, lines 10-23; ROA p. 731, lines 14-25. The judge prevented Frady from pursuing a defense of third-party guilt. (That error forms the basis of this appeal.) Frady himself did not testify. The jury found him guilty as charged, and the judge sentenced him to concurrent terms of life imprisonment for murder, thirty years for burglary, twenty-five years for arson and five years for both grand larceny and possession of a weapon during the commission of a violent crime.

ARGUMENT

The trial judge committed reversible error by precluding the defense from introducing evidence of, and arguing, third-party guilt, as his ruling violated both *Holmes v. South Carolina*, 547 U.S. 319 (2006), and *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941).

The judge granted the Assistant Solicitor's motion to preclude the defense from introducing evidence of, and arguing, third-party guilt. ROA p. 638, line 17 – p. 646, line 7. Specifically, the defense would have argued that an individual named Michael Harper was the likely perpetrator of the crimes for which Frady was on trial. After all, Harper's van was seen near the victim's residence about the time the fatal shots were fired. ROA p. 254, lines 8-13; ROA p. 265, line 11 – p. 266, line 24. Harper reported it stolen shortly thereafter, but told the officer who responded minutes later that he found it on his own. ROA p. 270, line 15 – p. 272, line 4.

The judge prevented the defense from introducing evidence that Harper had a financial motive for wishing the victims ill and had been barred from their property. ROA p. 630, line 12 – p. 637, line 2. The judge ruled that this evidence raised only a suspicion that Harper was the perpetrator. ROA p. 646, lines 14-18. He also held that defense counsel had sufficiently preserved the record for appellate review. ROA p. 646, lines 19-21.

The leading case on third-party guilt in South Carolina remains *State v. Gregory*, 198 S.C. 98, 16 S.E.2d 532 (1941). There, the Supreme Court articulated:

[E]vidence which can have [no] other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another is not admissible [B]efore such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other

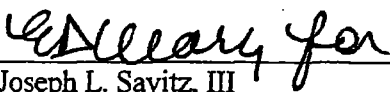
person is the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proof for such a purpose. An orderly and unbiased judicial inquiry as to the guilt or innocence of a defendant on trial does not contemplate that such defendant be permitted, by way of defense, to indulge in conjectural inferences that some other person might have committed the offense for which he is on trial, or by fanciful analogy to say to the jury that someone other than he is more probably guilty.

16 S.E.2d at 534-35. In *Holmes v. South Carolina*, 547 U.S. 319, 330 (2006), the United States Supreme Court rejected "the following logic: Where (1) it is clear that only one person was involved in the commission of a particular crime and (2) there is strong evidence that the defendant was the perpetrator, it follows that evidence of third-party guilt must be weak." See, also, *State v. Rice*, S.C. Ct. App. Opinion No. 4300, filed October 5, 2007.

Harper had both the motive and the opportunity to murder the victims. The fact that Frady owned the shotgun – the method – that most likely caused their deaths was not a sufficient ground to exclude evidence and argument that Harper was the guilty party. *Holmes v. South Carolina*.

For this reason, the Court should reverse Randy Frady's convictions and remand for a new trial.

Respectfully submitted,



 Joseph L. Savitz, III
 Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of November, 2007.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County
Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES RANDOLPH FRADY,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for James Randolph Frady states:

1. He is Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge Perry M. Buckner, which was held on 8-28 - 31-06, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for James Randolph Frady.

Respectfully submitted,


Joseph L. Savitz, III
Chief Appellate Defender

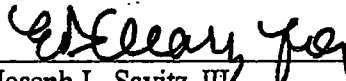
ATTORNEY FOR APPELLANT

This 29th day of November, 2007.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

November 29, 2007


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Post Office Box 11589
Columbia, SC 29211-1589
803) 734-1343
Attorney for Appellant

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Perry M. Buckner, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES RANDOLPH FRADY,

APPELLANT

CERTIFICATE OF SERVICE

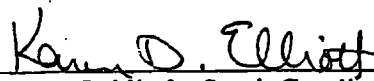
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of November, 2007. A copy of the brief and record on appeal have also been served on James Randolph Frady, #317328 at Broad River Correctional Institution, 4460 Broad River Rd., Columbia, SC 29210, this 29th day of November, 2007.



Joseph L. Savitz, III
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of November, 2007.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: March 19, 2017

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

James Randolph Frady, Appellant.

Appeal From Oconee County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2008-UP-634
Submitted November 3, 2008 – Filed November 12, 2008

APPEAL DISMISSED

Chief Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,

and Assistant Deputy Attorney General Donald J. Zelenka, all of Columbia; and Solicitor Christina T. Adams, of Anderson, for Respondent.

PER CURIAM: Frady appeals his convictions for grand larceny, first-degree burglary, arson, possession of a weapon during the commission of a violent crime, and two counts of murder, arguing the trial court erred by precluding Frady from introducing evidence of third party guilt. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss¹ Frady's appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

ANDERSON, HUFF, and THOMAS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

06-5172



ATTORNEY GENERAL'S OFFICE ⁸⁷³
RECEIVED 12-3-08
21X208
LEND
ADE

The South Carolina Court of Appeals

KENNETH A. RICHSTAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMMIT STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1839
www.sccourts.org

December 3, 2008

REMITTITUR

The Honorable Sallie C. Smith
205 W Main St
PO Box 678
Walhalla, SC 29691-0678

Re: The State v. Frady, James Randolph
2004-GS-37-02071 2004-GS-37-02072 2004-GS-37-02073
2004-GS-37-02074 2004-GS-37-02075 2004-GS-37-02076
2004-GS-37-02077 2004-GS-37-02078

Dear Ms. Smith:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

A handwritten signature in cursive script, reading "Renee S. Johnson".

Renee S. Johnson
Administrative Specialist

VK
KAR/rj

cc: Chief Attorney Joseph L. Savitz, III
James Randolph Frady #317328
Assistant Deputy Attorney General Donald J. Zelenka
Christina Theos Adams, Esquire

original

STATE OF SOUTH CAROLINA)

County of Oconee)James R. Frady, #317328,)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2009.CP.37-451

APPLICATION FOR

POST-CONVICTION RELIEF

2009 APR 13 12:30:09

FILED OCONEE, SC
BEVERLY H. WHITEFIELD
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Inst., 4460 Broad River Road,
Columbia, SC 29210
2. Name and location of Court which imposed sentence General Sessions Court,
Oconee County, South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) See Page 1 (A), attached.
 - (b) _____

copy to Attorney
& Frady

ENTERED
COMPUTER

4. The indictment number or numbers (if Known) upon which and the offenses for which sentence was imposed:
- (a) 2004-GS-37-2070; Arson, second degree.
 - (b) 2004-GS-37-2071; Grand larceny.
 - (c) 2004-GS-37-2072; Murder.
 - (d) 2004-GS-37-2073; Murder.
 - (e) 2004-GS-37-2074; Possession of weapon during violent crime.
 - (f) 2004-GS-37-2078; Burglary, first degree.

- (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) See Page 2 (A), attached
 (b) _____
 (c) _____
6. Check whether a finding of guilty was made:
 (a) after a plea of guilty _____
 (b) after a plea of not guilty X
 (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
 (a) the name of each Court to which you appealed:
 i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 (b) the result in each such Court to which you appealed:
 i. Conviction affirmed, appeal dismissed.
 ii. _____
 iii. _____
 (c) the date of each such result:
 i. November 12, 2008
 ii. _____
 iii. _____
 (d) if known, citations of any written opinion or orders entered pursuant to such results:
 i. State v. Frady, Unpublished Opinion No.: 2008-LP-634
 ii. _____
 iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
 (a) N/A

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) August 31, 2006; 25 years imprisonment.
- (b) August 31, 2006; 5 years imprisonment.
- (c) August 31, 2006; Life without parole.
- (d) August 31, 2006; Life without parole.
- (e) August 31, 2006; 5 years imprisonment.
- (f) August 31, 2006; 30 years imprisonment.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) See Page 3 (A)
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Pages 3(A), 3(B), 3(C), and 3(D), attached.
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) The applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution.
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
 - (a) The applicant was provided with deficient representation by his attorney in that the conduct of his attorney was objectively unreasonable under the circumstances of Applicant's case. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of Applicant's proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense Counsel was ineffective based on one or more of the following:
 1. Defense counsel failed to conscientiously discharge his professional responsibilities while handling Applicant's case.
 2. Defense counsel failed to effectively challenge the arrest and seizure of Applicant.
 3. Defense counsel failed to act as Applicant's diligent, conscientious advocate.
 4. Defense counsel failed to properly prepare and investigate Applicant's case prior to the trial of the case.
 5. Defense counsel failed to do the necessary legal research to

adequately argue a Miranda violation in the applicant's case.

6. Defense counsel failed to pursue plea negotiations that may have proven advantageous to the applicant.
7. Defense counsel failed to properly consult with the applicant or keep the applicant informed about the status of the case.
8. Defense counsel failed to explain to the applicant or discuss with him any kind of defense strategy.
9. Defense counsel failed to explain to Applicant or discuss with him any of the tactical choices that were available or that counsel was planning on using.
10. Defense counsel, knowing that Applicant was uninformed in legal matters, dictated to the applicant exactly how the case was going to be handled, offered no alternative options, and convinced Applicant to relinquish his right to testify on his own behalf.
11. Defense counsel failed to properly acquaint themselves with the law and facts surrounding Applicant's case, and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
12. Defense counsel failed to put forward any argument at all for a minimum sentence at Applicant's sentencing.
13. Defense counsel failed to adequately challenge a statement made by state's witness Harper on the basis that the statement was sheer speculation. At trial, witness Harper

testified that due to a defect in the door handles of his van, he, his son, and the applicant were the only people who knew how to open the doors to get inside. The statement left the jury with the clear impression that the applicant more likely than not stole the van, which was in turn connected to the murders.

14. Defense counsel failed to challenge the admission of evidence in the case that had been withheld from the applicant in violation of Rule 5 and Brady v. Maryland.
15. Defense counsel failed to adequately investigate and pursue fingerprint evidence that indicated someone other than the applicant stole the van and committed the murders.
16. Defense counsel failed to challenge the admission of evidence at trial on the basis that the chain of custody had been broken, and that he had not been given an opportunity to examine the evidence.
17. Defense counsel failed to adequately object and press for a better curative instruction from the judge when the solicitor argued during closing arguments that Applicant had threatened to kill the victims prior to their actual murders.
18. Defense counsel failed to do the necessary legal research to adequately argue for a change of venue in Applicant's case.
19. Defense counsel failed to do legal research necessary for him to adequately argue for the suppression of evidence, and withdrew a potentially meritorious Motion to Suppress.
20. Defense counsel failed to call alibi witnesses that would have proven Applicant's innocence.

For the foregoing reasons, Applicant asserts that defense counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny. A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Strickland v. Washington, supra. Applicant asserts he was deprived of a fair trial because of counsel's ineffectiveness.

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) None of the grounds in this application have been presented to
 - (b) any other court because post-conviction relief application is
 - (c) the proper forum for claim of ineffective assistance of counsel.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Donald Allen, Esq. P.O. Box 2861, Anderson, South Carolina
 - C. Elizabeth Waldrep, Esq., Address unknown.
 - ii. Joseph Savitz, III, Esq., P.O. Box 11589, Columbia, South Carolina
 - iii. _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - Trial
 - ii. Direct Appeal
 - iii. _____

19. State clearly the relief you seek in filing this application:

Reverse, remand, or vacate sentence. Any other or further relief the
Court deems just.

20. Are you now under sentence from any other court that you have not challenged?

No.

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, James R. Frady, #317328, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James R. Frady

SWORN to and subscribed before me this 27
 day of March, 2009.

Barbara L. King (L.S.)
 Notary Public

My Commission Expires: Oct 1, 2018

FILED O'CONNOR, SG
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 2009 APR 13 PM 3:09

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, James R. Frady, #317328, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James R Frady
Applicant

SWORN or affirmed to and subscribed before me this

27 day of March, 2009.

Barbara B. King
Notary Public

My Commission Expires: Oct 1, 2018

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 APR 13 P 3:09

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS

James R. Frady	)	C/A No: 2009-CP-37-451
Petitioner,	)	
	)	
-VS-	)	MOTION TO AMEND P.C.R.
	)	
State Of South Carolina	)	
Respondent.	)	
	)	

COMES NOW the Petitioner, pursuant to the S.C.R.C.P. and the Statutory Laws of this state hereby moves before this Honorable Court to make an amendment of his application for post-conviction relief, to include the grounds of Prosecutorial Misconduct by Assistant Solicitor Ms. Mindy Hervey Lipinski.

In determining whether certain offensive comments made by the Prosecutor and directed toward the defendant during the course of the trial, rendered the trial fundamentally unfair, the relevant question "is whether the comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.." Darden v. Wainwright, 477 U.S. 168, 106 S.Ct. 2464 (1986).

The appropriate standard of review for a claim that prejudicial comments made by the prosecutor during the trial denied the defendant of a fair trial, "is the narrow standard of due process."

In the Petitioner's case, the prosecutor repeatedly made offensive remarks directed toward the Petitioner which certainly infected the jury with prejudice feelings toward him. This misconduct rendered the proceedings unfair and denied the Petitioner his right to a fair trial.

A prosecutor's remarks which include both inflammatory comments and erroneous statement of law, amount to misconduct and render the proceedings fundamentally unfair. Floyd v. Meachum, 907 F.2d 347 (2nd Cir.1990).

The standard that must be applied when analyzing claims of prosecutorial misconduct is whether the conduct was so egregious as to render the entire trial fundamentally unfair, denying the defendant due process. Draughn v. Jabe, 803 F.Supp. 70 (E.D.Mich.1992).

"To find prosecutorial misconduct, a two-pronged test must be met: (1) the remarks must be improper, and (2) the remarks must prejudicially affect the substantial rights of the defendant. U.S. v. Eyster, 948 F.2d 1196 (11th Cir.1991).

s/ James R. Frady

Date: 7-26, 2010

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
	)	2009-CP-37-0451
	)	
James Randolph Frady, #317328	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the Application for Post-Conviction Relief filed April 13, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. The Applicant was indicted at the December 2004 term of the Oconee County Grand Jury for one (1) count of Arson, Second Degree (04-GS-37-2070), one (1) count of Grand Larceny (04-GS-37-2071), two (2) counts of murder (04-GS-37-2072, 2073), one (1) count of Possession of A Weapon During Commission of a Violent Crime (04-GS-37-2074), and one (1) count of Burglary, First Degree (04-GS-37-2078). The Applicant was represented at trial by Donald Allen, Esquire. On August 29, 2006, the Applicant proceeded to trial and was found guilty and sentenced on August 31, 2006. The Honorable Perry M. Buckner sentenced the Applicant to confinement for a period of five (5) years for Grand Larceny (04-GS-37-2071), five (5) years for Possession of a Weapon During Commission of a Violent Crime (06-GS-37-2074), twenty five (25) years for

890

Arson, Second Degree (04-GS-37-2070), thirty (30) years for Burglary First Degree (06-GS-37-2078), and for a term of life for each murder (06-GS-37-2073, 20720), all to be served concurrently. The Applicant then filed a timely notice of appeal.

The South Carolina Court of Appeals dismissed his appeal by written order filed November 12, 2008. State v. Frady, Op. No. 2008-UP-634 (S.C. Ct. App. Filed November 12, 2008). The case was returned to the lower court by Remittitur dated December 3, 2008.

Attached herewith and incorporated herein by reference are the records of the Oconee County Clerk of Court regarding the subject conviction(s), the Applicant's records from the Department of Corrections, the Applicant's trial transcript, and documents concerning the Applicant's Direct Appeal.

II.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

- I. "Ineffective Assistance of Counsel"
 - a. "Defense counsel failed to conscientiously discharge his professional responsibilities while handling Applicant's case;"
 - b. "Defense counsel failed to effectively challenge the arrest and seizure of Applicant;"
 - c. "Defense counsel failed to act as Applicant's diligent, conscientious advocate;"
 - d. "Defense counsel failed to properly prepare and investigate Applicant's case prior to the trial of the case;"
 - e. "Defense counsel failed to do the necessary legal research to adequately argue a Miranda violation in the Applicant's case;"

- f. "Defense counsel failed to pursue plea negotiations that may have proven advantageous to the applicant;"
- g. "Defense Counsel failed to properly consult with the applicant or keep the applicant informed about the status of the case;"
- h. "Defense counsel failed to explain to the applicant or discuss with him any kind of defense strategy;"
- i. "Defense counsel failed to explain to Applicant or discuss with him any of the tactical choices that were available or that counsel was planning on using;"
- j. "Defense counsel, knowing that Applicant was uninformed in legal matters, dictated to the applicant exactly how the case was going to be handled, offered no alternative options, and convinced Applicant to relinquish his right to testify on his own behalf;"
- k. "Defense counsel failed to properly acquaint themselves with the law and facts surrounding Applicant's case, and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts;"
- l. "Defense counsel failed to put forward any argument at all for a minimum sentence at Applicant's sentencing;"
- m. "Defense counsel failed to adequately challenge a statement made by state's witness on the basis that the statement was sheer speculation;"
- n. "Defense counsel failed to challenge the admission of evidence in the case that had been withheld from the applicant in violation of Rule 5;"
- o. "Defense counsel failed to adequately investigate and pursue fingerprint evidence that indicated someone other than the applicant stole the van and committed the murders;"
- p. "Defense counsel failed to challenge the admission of evidence at trial on the

basis that the chain of custody had been broken, and that he had not been given an opportunity to examine the evidence;"

- q. "Defense counsel failed to adequately object and press for a better curative instruction from the judge when the solicitor argued during closing arguments that Applicant had threatened to kill the victims prior to their actual murders;"
- r. "Defense counsel failed to do the necessary legal research to adequately argue for a change of venue in Applicant's case;"
- s. "Defense counsel failed to do legal research necessary for him to adequately argue for the suppression of evidence, and withdrew a potentially meritorious Motion to Suppress;"
- t. "Defense Counsel failed to call alibi witnesses that would have proven Applicant's innocence."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in

the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

STATE OF SOUTH CAROLINA)

COUNTY OF OCONEE)

James Frady #317328,)

Applicant,)

vs)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2009-CP-37-00451

PROOF OF SERVICE BY MAIL

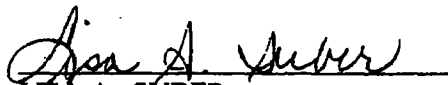
STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Lisa A. Suber, who being first duly sworn, states:

1. That I am an employee of the Office of the Attorney General.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. That I have this day served a copy of the State's Return of the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Kirby Mitchell, Esquire
701 S. Main Street
Greenville, South Carolina 29601

DATED this 19th day of October, 2009


LISA A. SUBER

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	TENTH JUDICIAL CIRCUIT
	)	
	)	2009-CP-37-0451
	)	
James Randolph Frady, #317328	)	
	)	
Applicant,	)	
	)	AMENDED
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Amended Return to the Application for Post-Conviction Relief filed April 13, 2009, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. The Applicant was indicted at the December 2004 term of the Oconee County Grand Jury for one (1) count of Arson, Second Degree (04-GS-37-2070), one (1) count of Grand Larceny (04-GS-37-2071), two (2) counts of murder (04-GS-37-2072, 2073), one (1) count of Possession of A Weapon During Commission of a Violent Crime (04-GS-37-2074), and one (1) count of Burglary, First Degree (04-GS-37-2078). The Applicant was represented at trial by Donald Allen, Esquire. On August 29, 2006, the Applicant proceeded to trial and was found guilty and sentenced on August 31, 2006. The Honorable Perry M. Buckner sentenced the Applicant to confinement for a period of five (5) years for Grand Larceny (04-GS-37-2071), five (5) years for Possession of a Weapon During Commission of a Violent Crime (04-GS-37-2074), twenty five (25) years for

Arson, Second Degree (04-GS-37-2070), thirty (30) years for Burglary First Degree (04-GS-37-2078), and for a term of life for each murder (04-GS-37-2073, 20720), all to be served concurrently. The Applicant then filed a timely notice of appeal.

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II.

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 - c. "Defense counsel failed to act as Applicant's diligent, conscientious advocate;"
 - d. "Defense counsel failed to properly prepare and investigate Applicant's case prior to the trial of the case;"
 - e. "Defense counsel failed to do the necessary legal research to adequately argue a Miranda violation in the Applicant's case;"

- f. "Defense counsel failed to pursue plea negotiations that may have proven advantageous to the applicant;"
- g. "Defense Counsel failed to properly consult with the applicant or keep the applicant informed about the status of the case;"
- h. "Defense counsel failed to explain to the applicant or discuss with him any kind of defense strategy;"
- i. "Defense counsel failed to explain to Applicant or discuss with him any of the tactical choices that were available or that counsel was planning on using;"
- j. "Defense counsel, knowing that Applicant was uninformed in legal matters, dictated to the applicant exactly how the case was going to be handled, offered no alternative options, and convinced Applicant to relinquish his right to testify on his own behalf;"
- k. "Defense counsel failed to properly acquaint themselves with the law and facts surrounding Applicant's case, and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts;"
- l. "Defense counsel failed to put forward any argument at all for a minimum sentence at Applicant's sentencing;"
- m. "Defense counsel failed to adequately challenge a statement made by state's witness on the basis that the statement was sheer speculation;"
- n. "Defense counsel failed to challenge the admission of evidence in the case that had been withheld from the applicant in violation of Rule 5;"
- o. "Defense counsel failed to adequately investigate and pursue fingerprint evidence that indicated someone other than the applicant stole the van and committed the murders;"
- p. "Defense counsel failed to challenge the admission of evidence at trial on the

basis that the chain of custody had been broken, and that he had not been given an opportunity to examine the evidence;"

- q. "Defense counsel failed to adequately object and press for a better curative instruction from the judge when the solicitor argued during closing arguments that Applicant had threatened to kill the victims prior to their actual murders;"
- r. "Defense counsel failed to do the necessary legal research to adequately argue for a change of venue in Applicant's case;"
- s. "Defense counsel failed to do legal research necessary for him to adequately argue for the suppression of evidence, and withdrew a potentially meritorious Motion to Suppress;"
- t. "Defense Counsel failed to call alibi witnesses that would have proven Applicant's innocence."

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in

the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Amended Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: Kaelon E. May
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

June 13, 2011.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE	)	
	)	
	)	2009-CP-37-0451
	)	
JAMES RANDOLPH FRADY, #317328	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Amended Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Joseph Bruce Schumpert, Jr., Esquire
431 Coneross Ave.
Seneca, SC 29678

DATED this 13th Day of June, 2011



 Lena Pelishenko, Legal Assistant
 For Respondent

State of South Carolina

County of Oconee

In the Court of Common Pleas

James Randolph Frady,

Applicant,

-vs-

State of South Carolina,

Respondent.

2009-CP-37-0451

October 3, 2011

Transcript of Record

BEFORE:

The Honorable J. Cordell Maddox, Jr., Judge

APPEARANCES:

Rodney W. Richey, Esquire
Attorney for the Applicant

Kaelon E. May, Esquire
Attorney the State

Renee H. Tollison
Circuit Court Reporter

James Randolph Frady v. State of South Carolina 2009-CP-04-0451
PCR Hearing October 3, 2011

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WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
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Richey				
Tammy Harper				
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May				
D. Chuck Allen				
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Elizabeth Waldrep				
May	5			
Richey			8	
James Randolph Frady				
Richey	10			

<< -- >>

Certificate of Reporter

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EXHIBITS

No	DESCRIPTION	ID	EV
	<i>No exhibits were presented during the hearing</i>		

1 (WHEREUPON, court convened with all parties present
2 and the following proceedings were had commencing at
3 approximately 10:36 a.m.)

4 (Due to equipment malfunction, the record of the
5 first 44 minutes of this hearing were not
6 preserved.)

7 **CHUCK ALLEN,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 CROSS-EXAMINATION

10 BY MS. MAY:

11 A. Page 50?

12 Q. Yes.

13 A. Okay.

14 Q. Just do you recall challenging the arrest and
15 seizure of Mr. Frady in those pages?

16 A. I don't see an objection. You can refer my
17 attention to it maybe.

18 Q. I'll refer you to page 59.

19 A. 59?

20 Q. Yes. It's at the very bottom, line 23 and onwards.

21 A. Okay. I see.

22 Q. I just wanted to refresh your recollection. So you
23 recall challenging the arrest and seizure of Mr. Frady?

24 A. Yeah. I see one objection here to maybe something
25 he said when they were -- seems like that was maybe when

James Randolph Frady v. State of South Carolina 2009-CP-04-0451
Chuck Allen - Redirect by Mr. Richey

4

1 they restrained him when they went to his home and did
2 the search. Maybe that was it. I'm not absolutely
3 certain. But yeah, I see an objection there on the Fifth
4 Amendment, yes. That he had not been Mirandized, yeah, I
5 see that.

6 MS. MAY: Beg the Court's indulgence, Your
7 Honor.

8 (Pause)

9 MS. MAY: Those are all the questions I have.

10 MR. RICHEY: Just a couple more.

11 REDIRECT EXAMINATION

12 BY MR. RICHEY:

13 Q. Mr. Allen, do you recall if there was DNA found on
14 that shells? Do you recall any DNA evidence?

15 A. I recall the absence of DNA as far as the
16 investigation. That's what I'm saying. The only
17 forensics was the -- that one shell.

18 Q. And on the night that the murder was supposed to
19 have happened, do you recall that Mr. Harvey was not at
20 home, that he found out the car -- the van was stolen
21 when he got back home? Do you remember that being the
22 case?

23 A. Yeah, but I'd be willing to have my recollection
24 refreshed. But yeah, they had been somewhere and then
25 they came home. Maybe so, maybe so.

1 Q. Thank you.

2 THE COURT: Thank you, sir. You can step down.

3 MR. RICHEY: No other witnesses.

4 Ms. MAY: Your Honor, the State would like to
5 call Ms. Waldrep.

6 THE COURT: Okay.

7 THE WITNESS: My name is Caroline Elizabeth
8 Waldrep.

9 Ms. MAY: May it please the Court.

10 **CAROLINE ELIZABETH WALDREP,**

11 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

12 DIRECT EXAMINATION

13 BY MS. MAY:

14 Q. Ms. Waldrep, do you recall when you became involved
15 with Mr. Frady's case?

16 A. Yes. Shortly after Mr. Allen was appointed, he was
17 running into problems that I think so many defense
18 attorneys have in trying to get a case together. You
19 know, the defendant is so seriously disadvantaged by the
20 resources that the State has at its disposal. And so Mr.
21 Allen knew that I had previously for a brief period of
22 time worked for Indigent Defense in Columbia and asked me
23 if I could help him with putting this case together. He
24 knew it was going to trial, and he asked me if I could
25 help him secure an investigator and experts that would be

James Randolph Frady v. State of South Carolina 2009-CP-04-0451
Caroline Elizabeth Waldrep - Direct Examination by Ms. May

6

1 necessary for the trial of this case. And that's when I
2 became involved and began preparing motions for the judge
3 to approve and for Indigent Defense to approve because
4 that's an arduous process in and of itself trying to get
5 any money out of Indigent Defense.

6 Q. And were you successful in getting money?

7 A. Yes, we were successful. I believe that the money
8 that we requested was cut somewhat, but we were
9 successful in getting money for Jody McCurley to go out
10 and interview witnesses, to go to the crime scene, to do
11 background checks, to run phone records, and also to hire
12 Kelly Fike from Atlanta to do a ballistics evaluation of
13 the shotgun shell that was recovered from the crime
14 scene.

15 Q. Okay. And did you help -- did you conduct any
16 research, any case law research, for the case?

17 A. Yes, I did. There was -- we did some research, and
18 we also -- I helped Chuck with some motions. That was
19 one of the things that we were very concerned about the
20 venue, the change of venue. And I know that Randy was
21 very concerned about that as well because, you know, we
22 did believe that this case had received a fair amount of
23 publicity up here. And Judge Buckner went through one-
24 by-one and interviewed the witness -- pardon me -- the
25 potential jurors and asked them very specifically about

1 what they had read or heard about this case.

2 Q. And did you have a chance to meet with Mr. Frady?

3 A. Yes, on several occasions. He was always very
4 helpful, very involved in the case and very forthcoming,
5 I believed, you know, about his wishes and how it was to
6 be tried. And we talked to people that he wanted us to
7 talk to, and he was always very pleasant to deal with.

8 Q. And do you recall at the meetings that you were
9 present for, what was discussed or what the meetings were
10 about?

11 A. The meetings were largely about, you know, trial
12 strategy and going over with Randy the people that we
13 knew were going to testify. For instance, I knew that
14 the issue of the van and the recovery of the van and the
15 possibility that the evidence had been tainted in some
16 way because it was returned to Mr. and Mrs. Harper was a
17 very big issue for Randy, and we were concerned about
18 that. We were concerned about the whole case since it
19 was circumstantial, but we talked about that. And that's
20 why Chuck and Jody actually went out to the -- you know,
21 to talk to the Harpers. And also the time line was
22 something that was discussed a lot about when the van was
23 recovered, when the van burned and that we had put up
24 basically the case that he would not have had time to go
25 on foot, you know, home when -- it was basically a time

James Randolph Frady v. State of South Carolina 2009-CP-04-0451
Caroline Elizabeth Waldrep - Cross-examination by Mr. Richey

8

1 line issue that we discussed a lot.

2 Q. And did -- during those discussions, did Mr. Frady
3 understand, seem to understand, or was he engaged in
4 those discussions?

5 A. Yes, he was. We were very, you know -- it was a
6 circumstantial case, and I understand that the jury did
7 its job. But you know, we had -- you know, I know that
8 he believed -- it was my opinion that he believed that
9 there was just not enough evidence to convict him. In
10 fact, I believe the State was concerned about that as
11 well because Mindy Hervey, who was the assistant
12 solicitor who prosecuted the case for Chrissy Adams -- I
13 believe in her opening statement she went through the
14 speech that so many prosecutors give at this time about
15 this is not CSI, they're -- you know, we're -- there's --
16 you know, it's not on videotape. There's not, you know,
17 the blood experts. And I believe they were concerned
18 about that as well as the lack of anything other than
19 circumstantial evidence.

20 Q. No further questions. Please answer any questions
21 Mr. Richey has.

22 CROSS-EXAMINATION

23 BY MR. RICHEY:

24 Q. Ms. Waldrep, were you there during the time where
25 the discussion was made whether he was going to testify

1 or not?

2 A. There were several discussions about that, Mr.
3 Richey. I believe that -- like I said, I believe that he
4 was concerned about cross-examination, and he didn't, I
5 don't believe, want to say anything wrong that would make
6 him look bad to the jury. And you know, it was -- I can
7 tell you with absolute certainty that there was never any
8 sort of discussion where he was saying, I want to
9 testify, and Mr. Allen was saying, no, please don't.
10 That never -- or no, you're not going to. It's going to
11 hurt you. It's in your -- you know, I do not recall that
12 at all. I do not recall a time at which he ever said
13 wanted to testify.

14 Q. So your testimony is in direct conflict with Mr.
15 Frady's? You understand Mr. Frady testified ---

16 A. Yes, sir, I'm afraid so.

17 Q. Okay. So it's your testimony that you all -- he
18 basically said, I don't want to testify?

19 A. That is what I recall.

20 Q. No more questions.

21 THE COURT: Thank you, ma'am.

22 Anything in rebuttal?

23 MR. RICHEY: We want to recall one witness real
24 brief, Mr. Frady, for one or two questions.

25 THE COURT: All right.

James Randolph Frady v. State of South Carolina 2009-CP-04-0451
James Randolph Frady - Direct Examination by Mr. Richey

10

1 Come around. Mr. Frady, you're still under oath.

2 **JAMES RANDOLPH FRADY,**

3 BEING PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 BY MR. RICHEY:

6 Q. Mr. Frady, you've been in the courtroom and you've
7 heard the testimony surrounding your testifying at trial
8 where Ms. Waldrep has said that you emphatically did not
9 want to testify. Do you understand? I mean ...

10 A. I understand. The only reason I didn't testify is
11 because they asked me not to.

12 Q. You did not emphatically tell them you did not want
13 to testify?

14 A. No.

15 Q. Did you say anything to make them believe you didn't
16 want to testify?

17 A. Not to my knowledge, no.

18 Q. Okay. Do you have any reason why they would come in
19 here to say that, I mean, at all?

20 A. That's the way I was instructed to conduct myself at
21 this time.

22 Q. Okay. Thank you, sir.

23 THE COURT: All right. Thank you, sir. You
24 can step down.

25 (WHEREUPON, the witness stepped down from the

James Randolph Frady v. State of South Carolina 2009-CP-04-0451
James Randolph Frady - Direct Examination by Mr. Richey

11

1 witness stand.)

2 THE COURT: Nothing else?

3 MR. RICHEY: Yes, sir.

4 THE COURT: All right. I'll take it under
5 advisement and let you know next week.

6 MR. RICHEY: Thank you, sir.

7 (WHEREUPON, the hearing ended at approximately 11:32
8 a.m.)

9 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

James Randolph Frady v. State of South Carolina 2009-CP-37-0451
PCR Hearing October 3, 2011

12

1 CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the
7 trial/hearing of the captioned case, relative to appeal,
8 in the Circuit Court for Oconee County, South Carolina,
9 on the 3rd day of October 2011.

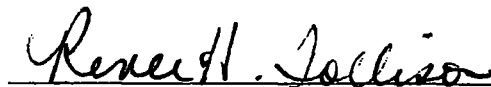
10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

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

14 March 13, 2012

15

16



17

Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

2009-CP-37-0451

James Randolph Frady, #317328

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 15 PM 2 57

COPY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 13, 2009. Respondent made its Return and Amended Return on October 19, 2009 and June 13, 2011, respectively. An evidentiary hearing into the matter was convened on October 3, 2011 at the Oconee County Courthouse. The Applicant was present at the hearing and was represented by Rodney Richey, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, Applicant offered the testimony of Michael Harper (Mr. Harper) and Tammy Harper (Ms. Harper). The State offered the testimony of Donald Allen, Esquire (Mr. Allen) and Elizabeth Waldrep, Esquire (Ms. Waldrep), Applicant's trial counsels. This Court also had before it the records of the Oconee County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior appeal proceeding.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. The Applicant was indicted at the December 2004 term of the Oconee County Grand Jury for one (1) count of Arson, Second Degree (04-GS-37-2070), one (1) count of Grand Larceny (04-GS-37-2071), two (2) counts of murder (04-GS-37-2072, 2073), one (1) count of Possession of A Weapon During Commission of a Violent Crime (04-GS-37-2074), and one (1) count of Burglary, First Degree (04-GS-37-2078). The Applicant was represented at trial by Donald Allen, Esquire. On August 29, 2006, the Applicant proceeded to trial and was found guilty and sentenced on August 31, 2006. The Honorable Perry M. Buckner sentenced the Applicant to confinement for a period of five (5) years for Grand Larceny (04-GS-37-2071), five (5) years for Possession of a Weapon During Commission of a Violent Crime (04-GS-37-2074), twenty five (25) years for Arson, Second Degree (04-GS-37-2070), thirty (30) years for Burglary First Degree (04-GS-37-2078), and for a term of life for each murder (04-GS-37-2073, 20720), all to be served concurrently. The Applicant then filed a timely notice of appeal.

The South Carolina Court of Appeals dismissed his appeal by written order filed November 12, 2008. State v. Frady, Op. No. 2008-UP-634 (S.C. Ct. App. Filed November 12, 2008). The case was returned to the lower court by Remittitur dated December 3, 2008.

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

- a. "Defense counsel failed to conscientiously discharge his professional responsibilities while handling Applicant's case;"
- b. "Defense counsel failed to effectively challenge the arrest and seizure of Applicant;"
- c. "Defense counsel failed to act as Applicant's diligent, conscientious advocate;"
- d. "Defense counsel failed to properly prepare and investigate Applicant's case prior to the trial of the case;"
- e. "Defense counsel failed to do the necessary legal research to adequately argue a Miranda violation in the Applicant's case;"
- f. "Defense counsel failed to pursue plea negotiations that may have proven advantageous to the applicant;"
- g. "Defense Counsel failed to properly consult with the applicant or keep the applicant informed about the status of the case;"
- h. "Defense counsel failed to explain to the applicant or discuss with him any kind of defense strategy;"
- i. "Defense counsel failed to explain to Applicant or discuss with him any of the tactical choices that were available or that counsel was planning on using;"
- j. "Defense counsel, knowing that Applicant was uninformed in legal matters, dictated to the applicant exactly how the case was going to be handled, offered no alternative options, and convinced Applicant to relinquish his right to testify on his own behalf;"
- k. "Defense counsel failed to properly acquaint themselves with the law and facts surrounding Applicant's case, and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts;"
- l. "Defense counsel failed to put forward any argument at all for a minimum sentence at Applicant's sentencing;"
- m. "Defense counsel failed to adequately challenge a statement made by state's witness on the basis that the statement was sheer speculation;"
- n. "Defense counsel failed to challenge the admission of evidence in the case that had been withheld from the applicant in violation of Rule 5;"
- o. "Defense counsel failed to adequately investigate and pursue fingerprint evidence that indicated someone other than the applicant stole the van and committed the murders;"
- p. "Defense counsel failed to challenge the admission of evidence at trial on the basis that the chain of custody had been broken, and that he had not been given an opportunity to examine the evidence;"
- q. "Defense counsel failed to adequately object and press for a better curative instruction from the judge when the solicitor argued during closing arguments that Applicant had threatened to kill the victims prior to their actual murders;"
- r. "Defense counsel failed to do the necessary legal research to adequately argue for a change of venue in Applicant's case;"

- s. "Defense counsel failed to do legal research necessary for him to adequately argue for the suppression of evidence, and withdrew a potentially meritorious Motion to Suppress;"
- t. "Defense Counsel failed to call alibi witnesses that would have proven Applicant's innocence."
- 2. Prosecutorial Misconduct
 - a. "Prosecutor's remarks which include both inflammatory comments and erroneous statements of law, amount to misconduct and the proceedings fundamentally unfair."

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Mr. Harper's Testimony

At the PCR hearing Mr. Harper testified that he testified at the Applicant's trial and that he was the owner of the vehicle that was used as evidence at the Applicant's trial. Mr. Harper testified that he found out about the murder on September 23, 2004 and that the police seized Mr. Harper's van thereafter. Mr. Harper testified that he drove the van to work prior to the police seizing the vehicle and that he did not miss any time from work.

Ms. Harper's Testimony

At the PCR hearing Ms. Harper testified that she is married to Michael Harper (Mr. Harper) and that she recalled the van that her husband owned being part of the Applicant's case. Ms. Harper testified that the van was stolen out of the Harper's yard and that they reported the van stolen on the night of September 22, 2004, which was the night the murders were committed. Ms. Harper testified that the van was found later the night of September 22, 2004 and that a gas can was found with the van. Ms. Harper testified that the police had Mr. Harper drive the van home the night of September 22,

2004, after finding the van. Ms. Harper testified that the police took the van into custody for about one week.

Applicant's Testimony

At the PCR hearing Applicant testified that there were pre-trial investigation issues, that he was aware an investigator was hired to work on his case, but that the investigator only ran phone records. Applicant testified that the investigator did not review any of the evidence that was eventually presented at trial, that there were unidentified fingerprints found at the scene but that Applicant's trial counsel did not investigate the fingerprints nor discuss the fingerprints with Applicant. Applicant testified that his counsel prepared a motion to change venue but that the motion was never heard and that Applicant's trial counsel informed Applicant that counsel could beat the case in Oconee County just as well as anywhere else in the state. Applicant testified that Oconee County is small, that everyone knows what is going on, and that there was no way a jury could be selected with persons who had not been subjected to the publicity that surrounded the case.

Applicant testified that the ballistics involved in the case were not tested by trial counsel, that Applicant knew about the shotgun shell, and that Applicant's counsel did hire Kelly Fite to test the ballistics but that Applicant never received a report from Kelly Fite's testing. Applicant testified that he did not know about Mr. Fite's investigation until the trial. Applicant testified that there was a plea offer of thirty (30) years for the murder charges. Applicant testified that his grandfather is a victim because it was his son and grandson that were killed. Applicant testified that he spoke with his grandfather during the trial and that his grandfather did not testify at Applicant's trial. Applicant testified

that he did not put up any evidence at trial in order to have the last argument and that Applicant did not know what to think and trusted his attorney's advice. Applicant testified that he wanted to testify at trial in his own defense because Applicant could refute the testimony presented during the trial. Applicant testified that his attorney should have refuted Kelly Cromer's testimony that Applicant asked how much LSD it would take to kill someone, because more than one person would have heard this conversation.

Applicant testified that prior to trial he was not informed of any discovery and what testimony might be presented at trial. Applicant testified that his trial counsel advised Applicant not to testify and that Applicant recalled the trial judge questioning Applicant about his right to testify and not testify. Applicant testified that he never informed counsel or Ms. Waldrep that he did not want to testify, and that Applicant was instructed not to testify by counsel. Applicant testified that counsel should have investigated the fingerprint evidence, that counsel should have presented the pre-trial motion concerning the search and seizure and change of venue issues. Applicant testified that his trial should not have been held in Oconee County. Applicant testified that he was not waiving any grounds in his Application and that if Applicant's counsel had represented Applicant properly that the outcome of Applicant's trial would have been different.

Mr. Allen's Testimony

At the PCR hearing counsel testified that he has been practicing law since 1987 and that approximately one-third to eighty percent of his practice is in criminal law. Counsel testified that he was the third attorney appointed to represent Applicant and that his representation began in August 2006. Counsel testified that Applicant's previous

attorneys provided counsel with all materials pertinent to Applicant's case. Counsel testified that he filed a pre-trial motion regarding the publicity surrounding the case and that counsel discussed the motion with Applicant. Counsel testified that the trial judge examined each juror about the extent of pre-trial publicity they had been exposed to and reached the conclusion that the pre-trial publicity would not hinder Applicant's right to a fair trial. Counsel testified that he did not move forward with the motion regarding pre-trial media because of the judge's findings and that counsel discussed this decision with Applicant.

Counsel testified that he hired a private investigator, Jody McCurley, and that Elizabeth Waldrep (Ms. Waldrep) worked as an associate on the Applicant's case. Counsel testified that the investigation revealed that the van used in the incident had fingerprints of a third-party, that this was a circumstantial case, and that there were no forensics except for one shotgun shell. Counsel testified that he informed the jury that there were no fingerprints, no footprints, no hair, and no blood evidence in Applicant's case. Counsel testified that the third-party fingerprints found in the van could go toward third-party liability for the crimes. Counsel testified that he visited the Harper's home and investigated the theft the van and that counsel hired Kelly Fite to test and/or review the ballistics evidence and to refute that state's evidence. Counsel testified that Kelly Fite's conclusion was consistent with the state's experts. Counsel testified that he met with Applicant approximately six to seven times and that counsel discussed Kelly Fite's analysis with Applicant.

Counsel testified that by the time he began representing Applicant, Applicant did not want to plead guilty and that the case qualified for the death penalty. Counsel testified

that he met with Applicant's grandfather three times and that Applicant always maintained his innocence. Counsel testified that the police returned Mr. Harper's van to Mr. Harper within a matter of days, maybe within one week. Counsel testified that the Sheriff took custody of the van but that the chain of custody for the van was not properly preserved. Counsel testified that he investigated the 'jail-house' snitch and cross-examined the 'jail-house' snitch at trial.

Counsel testified that he filed a discovery motion and received the discovery materials from the state, which included but was not limited to police reports, warrants, and investigator notes. Counsel testified that he reviewed the discovery materials with Applicant and that the only forensics in the case was a single shotgun shell. Counsel testified that he reviewed the results from his and Jody McCurley's investigation and that there was not anything tangible. Counsel testified that he had tried murder cases prior to Applicant's trial and was familiar with the legal issues involved in murder cases. Counsel testified that he asked Ms. Waldrep to assist him with Applicant's case. Counsel testified that he discussed the state's evidence with Applicant prior to trial. Counsel testified that he discussed possible defenses with Applicant but that Applicant did not present counsel with any defenses.

Counsel testified that as the shotgun shell testimony and evidence developed at trial, Applicant's testimony became critically important. Counsel testified that he discussed the shotgun shell testimony with Applicant and that Applicant did not want to testify at trial. Counsel testified that the trial strategy developed with Applicant consisted of a lack of evidence, Applicant's from at the scene, and poking holes in the state's case. Counsel testified that Applicant agreed with the trial strategy that counsel and Applicant

developed. Counsel testified that he discussed Applicant's right to testify and not testify as a part of the trial strategy. Counsel testified that Applicant made the decision not to testify. Counsel testified that when it came time for Applicant to make the decision to testify or not testify during the trial, that counsel and Applicant again discussed Applicant's right to testify or not testify. Counsel testified that Applicant ultimately decided not to testify.

Counsel testified that he was sufficiently able to confer with Applicant before and during the trial. Counsel testified that he had ample time to prepare for Applicant's trial and conduct the necessary research.

Ms. Waldrep's Testimony

At the PCR hearing Ms. Waldrep testified that she became involved in the Applicant's case shortly after Mr. Allen was appointed to represent Applicant. Ms. Waldrep testified that prior to Applicant's trial she was employed by the Office of Indigent Defense in Columbia and that at Indigent Defense she prepared motions and was familiar with the procedures for obtaining money from Indigent Defense to assist with investigations. Ms. Waldrep testified that she was able to obtain money for Applicant's case and investigation, including background checks, prior records, and expert analysis. Ms. Waldrep testified that she conducted case law research for the various pre-trial and trial motions, including the motion for change of venue. Ms. Waldrep testified that the trial judge questioned each juror regarding the amount of publicity they had been exposed to.

Ms. Waldrep testified that she met with Applicant on several occasions, that Applicant was very forthcoming and helpful with his case, and that Applicant provided

Ms. Waldrep and counsel with the names of witnesses. Ms. Waldrep testified that she spoke with the people whom Applicant informed her and counsel of. Ms. Waldrep testified that she and counsel discussed trial strategy with Applicant and reviewed testimony with Applicant. Ms. Waldrep testified that there was an issue with the van and that the defense could argue the evidence had been tainted. Ms. Waldrep testified that investigator McCurley and counsel spoke with the Harpers and that the timeline was an important issue because Applicant would not have had the time to commit the crimes if Applicant was on foot. Ms. Waldrep testified that Applicant was very engaged in all their discussions and that the state was concerned with the lack of evidence. Ms. Waldrep testified that she was present during counsel's discussion with Applicant concerning Applicant's right to testify or not testify, and that Applicant was concerned about cross-examination, that Applicant did not want to say anything wrong and look bad for the jury. Ms. Waldrep testified that Applicant never informed counsel that Applicant wanted to testify and that counsel never told Applicant he could not testify.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

Ineffective Assistance of Counsel

1. Failure to Adequately Represent Applicant

The Applicant asserts that trial counsel was ineffective for failing to discharge his professional responsibilities while handling Applicant's case; failing to act as Applicant's advocate; failing to pursue plea negotiations that may have proven advantageous to Applicant; failing to properly consult with Applicant and keep Applicant informed of the status of his case; failing to discuss any kind of defense strategy with Applicant; and for failing to explain or discuss with Applicant the tactical choices that were available or that counsel planned on using. This Court finds that these allegations are without merit. This Court finds Applicant's testimony is not credible. Thus Court further finds counsel and Ms. Waldrep to be credible. Counsel testified that he met with Applicant six to seven times and that counsel and Applicant extensively discussed Applicant's case. Counsel testified that he met with Applicant to discuss the state's evidence, Applicant's version of events, the results of Kelly Fite's ballistics investigation, the results of Jody McCurley's investigation, possible defenses, and trial strategy. Ms. Waldrep also testified that she met with Applicant several times to discuss the case as well as Applicant's right to testify or not testify and that Applicant was very informative and helpful in forming his defense. Counsel testified that when he was appointed to represent the Applicant, Applicant did not want to plead guilty and wanted to proceed to trial.

The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must show specific prejudice resulting from

counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990). Here, the Applicant could not point to any specific matters counsel failed to discover or discuss with Applicant which would have likely caused the outcome of Applicant's trial to be different. This Court finds that counsel and Ms. Waldrep met with Applicant multiple times and kept Applicant informed of the status of his and that Applicant was actively involved in preparing his defense. This Court finds that prior to counsel's representation there may have a plea offer on the table, however when counsel began to represent Applicant, Applicant had made the decision to proceed trial and did not want to plead guilty. This Court finds that Applicant has failed to show that counsel's representation was deficient and any resulting prejudice; therefore, this Court finds that these allegations are denied and dismissed.

2. Failure to Investigate

The Applicant alleges that trial counsel was ineffective for failing to prepare and investigate Applicant's case prior to trial; failing to conduct legal research regarding Miranda violations, suppression motion, and motion for change of venue; and for failing to adequately investigate and pursue fingerprint evidence. This Court finds that these allegations are without merit. At the PCR counsel testified that he hired a private investigator, Jody McCurley, to assist with Applicant's case. Counsel testified that he obtained funds for Kelly Fite to review the ballistics in Applicant's case. The results of both investigations were discussed with Applicant by counsel and Ms. Waldrep. Ms. Waldrep testified that she conducted legal research concerning the motion to change venue and counsel testified that he filed a written motion to change venue. Counsel explained that he decided to withdraw the motion to change venue after the trial judge

questioned each individual juror concerning pre-trial publicity. Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). See also Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). The record reflects that the trial judge extensively questioned each juror about the amount of pre-trial publicity they had been exposed to. The trial judge found that the jurors selected could put aside the media and decide the case solely upon the evidence presented at trial. It was after the trial judge's finding that counsel withdrew his motion to change venue. This Court finds that counsel articulated valid strategic reasons for withdrawing the motion. Additionally, this Court finds that even if counsel proceeded with his motion, the motion would have been denied based on the trial judge's findings in the record. Moreover, the record reflects that Applicant agreed with the decision to withdraw the motion. The Applicant has not shown counsel was deficient in that choice of tactics. This Court also finds that Ms. Waldrep adequately researched change of venue. Applicant has not shown counsel's performance was deficient and any resulting prejudice. This Court finds that this allegation is denied and dismissed.

With regard to Applicant's allegation that trial counsel failed to research and argue the motion to suppress based on a Miranda violation, Applicant has failed to meet his burden of proof. Ms. Waldrep testified that she conducted legal research regarding the motion presented at the pre-trial hearing. The record reflects counsel presented the motion to suppress and argued the motion at the pre-trial hearing. Counsel presented case

law in support of his argument; however the trial court overruled counsel's objections and denied the motion to suppress. The Applicant did not present any evidence or testimony concerning a more adequate argument for the motion to suppress, nor did Applicant present any case law to support his allegation. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds and the record reflects that counsel articulated valid strategic reasons for his strategy in arguing the motion to suppress. The Applicant has not shown counsel was deficient in that choice of tactics. This Court finds the necessary legal research was done and the motion properly presented and argued at trial. The Applicant failed to show any resulting prejudice; therefore this allegation is denied and dismissed.

As to Applicant's claim that counsel failed to investigate the fingerprint evidence, Counsel testified that the prints found on the van did not belong to the Applicant. Counsel testified that the absence of Applicant's fingerprints and the presence of a third-party's fingerprints was something that counsel brought out during trial. The record reflects that counsel cross-examined Mr. Steven Curtis regarding the fact that the Applicant's fingerprints were not found and that the van had evidence of someone else's fingerprints. "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998). Applicant did not present a fingerprint analysis or any type of evidence concerning the lack of a fingerprint

investigation at the PCR hearing. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore this allegation is denied and dismissed.

3. Failure to Properly Advise of Right to Testify and Not Testify

Applicant asserts that trial counsel was ineffective for failing to properly advise Applicant of his right to testify or not testify and coerced Applicant to relinquish his right to testify on his own behalf. This Court finds that this allegation is without merit. Counsel testified that he and Applicant discussed Applicant's right to testify or not testify prior to trial and during trial. Counsel testified that he wanted Applicant to testify at trial in order to refute the state's evidence and testimony. Counsel testified that Applicant made the decision not to testify. Ms. Waldrep testified as well that Applicant never informed counsel that he wanted to testify and counsel never told Applicant he could not testify. Ms. Waldrep testified that Applicant was concerned about being cross-examined and did not want to look bad for the jury. The record reflects the trial judge discussed Applicant's right to testify or not testify and the Applicant indicated that he understood his rights. (Tr. p.585). The trial judge asked Applicant if the decision was Applicant's and not anyone else's, and the Applicant indicated that it was his decision alone. (Tr. p.585, lines10-12). Applicant informed the trial court that it was his decision not to testify. (Tr. p.585, lines16-20). This Court finds that Applicant was adequately advised of his right to testify or not testify by both counsel and Ms. Waldrep as well as by the trial judge on the record. Applicant testified under oath that it was his decision not to testify at trial. This Court finds that Applicant has failed to show that counsel's performance was deficient or that counsel coerced Applicant into not testifying. This Court finds that Applicant cannot

show any resulting prejudice as he informed the trial judge that he did not want to testify; therefore, this allegation is denied and dismissed.

4. Failure to Effectively Challenge the State's Case

The Applicant asserts that trial counsel was ineffective for failing to effectively challenge the search and seizure issue; failing to adequately challenge a statement made by a witness for the state; failing to challenge the admission of evidence that had been withheld from the defense in violation of Rule 5; and for failing to challenge the admission of evidence based on a broken chain of custody. This Court finds that these allegations are without merit. This Court has already found that trial counsel was not ineffective in researching and arguing the motion to suppress based on a Miranda violation. The record reflects that counsel filed a motion to suppress the search warrant based on a violation of S.C. Code §17-13-140. (Aug. 28, 2006 Tr. p.24, lines5-13). The record reflects that counsel filed this motion out of an abundance of caution and that counsel discussed this issue with Applicant. (Id. p.31, lines16-22). The record further reflects that counsel explained his reasons for withdrawing the motion to suppress. (Id. p.31, line23 – p. 32, line25).

Our courts are understandably wary of second-guessing defense counsel's trial tactics. Where counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992). *See also* Dempsey v. State, 363 S.C. 365, 610 S.E.2d 812 (2005) and McLaughlin v. State, 352 S.C. 476, 575 S.E.2d 841 (2003). This Court finds that counsel articulated valid strategic reasons for withdrawing the motion to suppress the search warrants. Applicant did not provide an alternative argument that

counsel should have argued in the motion to suppress, nor did Applicant provide any additional support that counsel failed to present in the motion. This Court finds that Applicant has not shown counsel was deficient in that choice of tactics. This Court also finds that Applicant has not shown resulting prejudice from counsel's alleged deficiency; therefore this allegation is denied and dismissed.

Applicant alleges that trial counsel was ineffective for failing to challenge Mr. Harper's testimony at trial that was sheer speculation. Applicant directs this Court's attention to Mr. Harper's testimony "that due to a defect in the door handle of the van, that he, his son, and Applicant were the only people who knew how to open the doors to get in the van." (Tr. p.473-475). A review of the record reflects that counsel objected to the testimony and a bench conference was held. (Tr. p.473, line25 – p. 474, line3). Additionally, Mr. Harper's testimony at the PCR hearing did not differ from Mr. Harper's testimony at trial. The nature and scope of cross-examination is inherently a matter of trial tactics. United States v. Nersesian, 824 F.2d 1294, 1321 (2nd Cir. 1987). "[A] defendant has a 'burden of supplying sufficiently precise information,' of the evidence that would have been obtained had his counsel undertaken the desired investigation, and of showing 'whether such information . . . would have produced a different result.'" United States v. Rodriguez, 53 F.3d 1439, 1449 (7th Cir. 1995). The Applicant did not proffer any questions counsel allegedly failed to ask, and did not present any testimony showing the witnesses' answers at trial would have been different. Accordingly, the Applicant has not shown that a different approach to cross-examination would have been beneficial to the defense. This Court finds that Applicant failed to show counsel's

performance was deficient and any resulting prejudice; therefore this allegation is denied and dismissed.

Next, Applicant alleges trial counsel was ineffective for failing to challenge admission of evidence that was withheld from the defense in violation of Rule 5. At the PCR hearing counsel testified that he filed a discovery motion and received the discovery materials from the state. Applicant does not point any specific evidence that was withheld. Applicant did not present any testimony or introduce into evidence at the PCR hearing the alleged evidence that had been withheld. This Court notes and the record reflects that counsel made a motion to produce certain photographs at the pre-trial motion hearing and that the defense was provided with the photographs. (Aug. 28, 2006 Tr. p.34-36). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268. This Court finds that Applicant failed to show that any evidence was suppressed. Applicant is unable to show that counsel's performance was deficient and any resulting prejudice. This Court finds that this allegation is denied and dismissed.

As to Applicant's allegation that trial counsel was ineffective for failing to challenge the admission of evidence based on a broken chain of custody, this Court finds

Applicant has failed to meet his burden of proof. Applicant generally asserts counsel failed to make a challenge to the evidence on the basis that the chain of custody was broken. Applicant does not specify what evidence counsel should have directed his objection at, nor does Applicant provide this Court with arguments that counsel should have made. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore this allegation is denied and dismissed.

5. Failure to Adequately Defend

Applicant alleges that trial counsel was ineffective for failing to put forth any argument for a minimum sentence at Applicant's sentencing; failing to adequately object and request a better curative instruction when the solicitor stated in closing argument that Applicant had threatened to kill the victims prior to the actual murders; and for failing to call alibi witnesses that would have proven Applicant's innocence. This Court finds that these allegations are without merit. As to Applicant's claim that trial counsel failed to argue for the minimum sentence, this Court finds that Applicant has not met his burden of proof. This Court notes that Applicant was found guilty of multiple violent and most serious crimes. The record reflects that the trial judge gave Applicant the opportunity to speak during sentencing and the Applicant declined to address the court. (Tr. p.668, lines 1-4). The Applicant has failed to show what argument counsel should have made for a minimum sentence. This Court finds that when given the opportunity, Applicant did not request and/or argue for a minimum sentence on his own behalf. This Court finds that Applicant failed to show counsel's performance was deficient and any resulting prejudice; therefore, this allegation is denied and dismissed.

Applicant alleges that trial counsel was ineffective for failing to object and request a better curative instruction when the solicitor stated in closing argument that Applicant had threatened to kill the victims prior to the actual murders. The record reflects counsel made an objection to the solicitor's comment regarding a prior threat made by Applicant towards the victims. (Tr. p.614, line24 – p.615, line2; p.628-635). Counsel's objection was sustained by the trial court. (Tr. p.634, lines4-9). The record further reflects that the trial court gave the jury a curative instruction. (Tr. p.635, line16 – p.636, line5). This Court finds that contrary to Applicant's assertion, counsel did object to the solicitor's comment and that this objection was sustained by the trial court. Additionally, this Court finds that Applicant failed to show how the curative instruction was insufficient and what instruction counsel should have requested. Applicant has failed to show counsel's performance was deficient and any resulting prejudice. This Court finds that this allegation is denied and dismissed.

The Applicant further alleges counsel was ineffective for failing to call alibi witnesses that would have proven Applicant's innocence. At the PCR hearing Ms. Waldrep testified that Applicant provided the names of witnesses for his defense and that those witnesses were contacted. This Court finds that Applicant did not present any alibi witnesses at the PCR hearing. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness'

failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Accordingly, Applicant has failed to show resulting prejudice and cannot meet his burden of proof that trial counsel was ineffective. This Court finds that this allegation is denied and dismissed.

Prosecutorial Misconduct

Applicant alleges that the prosecutor's closing remarks to the jury were both inflammatory and erroneous statements of law, and that this amounted to misconduct rendering the proceedings fundamentally unfair. The State's closing arguments must be confined to evidence in the record and the reasonable inferences that may be drawn from the evidence. State v. Copeland, 321 S.C. 318, 468 S.E.2d 620 (1996). Furthermore, the solicitor's closing argument must not appeal to the personal biases of the jurors. Id. To be entitled to a new trial for improper closing arguments, the test is whether "the Solicitor's comments so infected the trial with unfairness as to make the resulting conviction a denial of due process." State v. Hamilton, 344 S.C. 344, 362, 543 S.E.2d 586, 596 (2001). After reviewing the entire record, this Court does not find any comments by the solicitor so infected the trial that a new trial is warranted. This Court is not convinced that the solicitor's arguments even reach the level of being improper, but certainly there is no evidence that Applicant was prejudiced. This Court finds that Applicant has failed to meet his burden of proof; therefore, this allegation is denied and dismissed.

V. CONCLUSION

Based on all the forgoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this Court

to grant his application for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve notice of appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

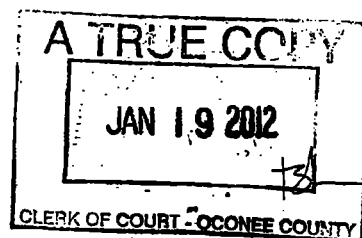
1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. Applicant must be remanded to the custody of Respondent

AND IT IS SO ORDERED this 4th day of January, 2012


J. Cordell Maddox, Jr.
Presiding Judge
Tenth Judicial Circuit

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 19 PM 2 57

Anderson, South Carolina



WITNESSES
OCSD/REED

Mila Canlow

ARREST WARRANT NO. H-652426

ACTION OF GRAND JURY

Julie Bell
12-14-4

[Signature]
Foreman of Grand Jury

Indictment

VERDICT

guilty

Angela N. Branne *08-31-06*
Foreman of Petit Jury Date:

DOCKET NO. 2004-GS-31-2072

The State of South Carolina,

County of OCONEE

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

SSR THE STATE

vs.

JAMES RANDOLPH FRADY

Indictment for

MURDER

16-03-0010

[0116]

SUSAN REESE, ASSISTANT SOLICITOR

FORM 32 (12/87)

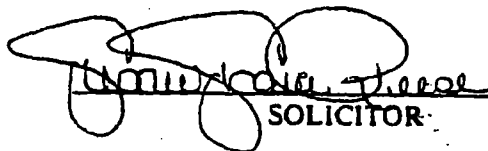
STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

INDICTMENT FOR
MURDER
16-03-0010 [116]

At a Court of General Sessions, convened on DECEMBER 14, 2004,
the Grand Jurors of OCONEE County present upon their oath:

THAT JAMES RANDOLPH FRADY DID IN OCONEE COUNTY ON OR ABOUT SEPTEMBER 22, 2004, FELONIOUSLY, WILLFULLY AND WITH MALICE AFORETHOUGHT, KILL ONE JAMES C. FRADY, JR. BY SHOOTING THE VICTIM WITH A SHOTGUN AND THAT SAID VICTIM DIED AS A PROXIMATE RESULT THEREOF.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

STATE v JAMES RANDOLPH FRADY

AKA:

Race/Sex: W M Age: 42

DOB: SSN:

Address:

City, State, Zip WALHALLA SC 29691

DL# SID: SC00403344

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

939

20 04 -GS-37-2072

A/W#: H652426

Date of Offense: 09/22/04

S.C Code: 16-03-0010 CDR Code #: 116

CASE RESTORED ☐

SENTENCED ☒ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Murder

in violation of 16.3.10 (16.3.10) of the S.C. Code of Laws, bearing CDR Code #: 011116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Wendy J. Jervis
Solicitor

James Randolph Frady
Defendant

Donald Allen
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections,
☐ County Detention Center, for a determinate term of LIFE IN AL days/months/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject to South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-32-2023; 2070; 2071;
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied 2074; 20
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine.....	\$	_____
14-1-206 - Assessments (107.5%)	\$	_____
14-1-211 (A)(1) Conv. Surcharge	\$100	\$ <u>100.00</u>
14-1-211 (A)(2) DUI Surcharge	\$100	\$ _____
56-5-2995 (DUI Assessment)	\$12	\$ _____
35.13 (Public Def/Prob)	\$500	\$ _____
73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
33.7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% County(if paid in Installments)	\$	\$ _____
TOTAL	\$	\$ <u>125.00</u>

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-40
_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other:

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 011221

Sentence Date 8/31/06

Court Reporter Hellie Jenkins Code #: _____

Copied
Defendant
Solicitor

WITNESSES
OCSD/REED

Mike Canlow

VUE STATE

ARREST WARRANT NO. H-652427

ACTION OF GRAND JURY

John Bell
12-14-4

[Signature]
Foreman of Grand Jury

Indictment for

VERDICT

guilty

940: *Angela N. Broome 08-31-06*
Foreman of Petit Jury Date:

DOCKET NO. 2004-0001-0010

The State of South Carolina,
OCONEE

County of _____

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

SSR

THE STATE

vs.

JAMES RANDOLPH FRADY

Indictment for

MURDER

16-03-0010

[0116]

SUSAN REESE, ASSISTANT SOLICITOR

BW

FORM 32 (12/87)

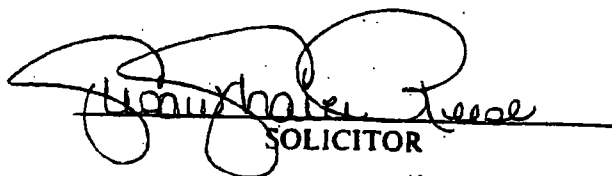
STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

INDICTMENT FOR
MURDER
16-03-0010 [116]

At a Court of General Sessions, convened on DECEMBER 14, 2004,
the Grand Jurors of OCONEE County present upon their oath:

THAT JAMES RANDOLPH FRADY DID IN OCONEE COUNTY ON OR ABOUT SEPTEMBER 22, 2004, FELONIOUSLY, WILLFULLY AND WITH MALICE AFORETHOUGHT, KILL ONE BARRY FRADY BY SHOOTING THE VICTIM WITH A SHOTGUN AND THAT SAID VICTIM DIED AS A PROXIMATE RESULT THEREOF.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

STATE v JAMES RANDOLPH FRADY

AKA:

Race/Sex: W M Age: 42

DOB

SSN:

Address: 1

City, State, Zip WALHALLA SC 29691

DL#

SID: SC00403344

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #

2004-GS-37-2073

) A/W#: H652427

) Date of Offense: 09/22/04

) S.C Code: 16-03-0010 CDR Code #: 116

) CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Murder

in violation of 16-3-10 of the S.C. Code of Laws, bearing CDR Code #: 01116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Walter Harvey
Solicitor

James Randolph Frady
Defendant

Donald Allen
Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections
☐ County Detention Center, for a determinate term of LIFE IMPRISONMENT days/months/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-37-2070; 2071; 2074;
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied 2078; 20
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$	_____
14-1-206 - Assessments (107.5%)	\$	_____
14-1-211 (A)(1) Conv. Surcharge	\$100 \$	<u>100.00</u>
14-1-211 (A)(2) DUI Surcharge	\$100 \$	_____
56-5-2995 (DUI Assessment)	\$12 \$	_____
35.13 (Public Def/Prob)	\$500 \$	_____
73.3, 1B TP (Law Enforce. Funding)	\$25 \$	<u>25.00</u>
33.7, 1B TP (Drug Court Surcharge)	\$100 \$	_____
50-21-114 (BUI Breath Test Fee)	\$50 \$	_____
56-5-2942(J) (Vehicle Assessment)	\$40/ea \$	_____
3% County (if paid in Installments)	\$	_____
TOTAL	\$	<u>125.00</u>

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-40
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Judge Code: 011221

Sentence Date 8/31/06

Court Reporter Hollie Jenkins Code #: _____

*Copy to
Solicitor
Detention*

WITNESSES
OCSD/REED

Mike Canlow

ARREST WARRANT NO. H-652429

ACTION OF GRAND JURY

12-14-4

True Bill

[Signature]
Foreman of Grand Jury

Indictment for

VERDICT

guilty

Angela N. Brown 08-31-04
Foreman of Petit Jury Date:

COUNT NO. 2010
The State of South Carolina,
OCONEE

County of _____

COURT OF GENERAL SESSIONS
DECEMBER TERM 2004

SSR THE STATE

vs.

JAMES RANDOLPH FRADY

Indictment for

BURGLARY - 1ST DEGREE

16-11-0311

[0079]

SUSAN REESE, ASSISTANT SOLICITOR

[Signature]

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
 OCONEE)
COUNTY OF _____)

INDICTMENT FOR
BURGLARY - FIRST DEGREE
16-11-0311 [0079]

At a Court of General Sessions, convened on DECEMBER 14, 2004
 OCONEE
the Grand Jurors of _____ County present upon their oath:

THAT JAMES RANDOLPH FRADY DID IN OCONEE COUNTY ON OR ABOUT SEPTEMBER 22,
2004 ENTER THE DWELLING OF JAMES C. FRADY, JR. AND BARRY FRADY WITHOUT CONSENT AND
WITH THE INTENT TO COMMIT A CRIME THEREIN AND THAT THE DEFENDANT, WHILE EFFECTING
ENTRY AND/OR WHILE IN THE DWELLING AND/OR IN IMMEDIATE FLIGHT, DID SHOOT AND KILL
BOTH JAMES C. FRADY, JR. AND BARRY FRADY.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

STATE v JAMES RANDOLPH FRADY

AKA:

Race/Sex: W M Age: 42

DOB:

SSN:

Address:

R

City, State, Zip WALHALLA SC 29691

DL:

SID: SC00403344

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #

2004-GS-37-2078

) A/W#: H652429

) Date of Offense: 09/22/04

) S.C Code: 16-11-0311 CDR Code #: 79

) CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Burglary 1st Degree

in violation of 16-11-311 of the S.C. Code of Laws, bearing CDR Code #: 0079

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mindy Harvey
Solicitor

Defendant

Attorney for Defendant Donald
Alk

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections,

☐ County Detention Center, for a determinate term of 30 days/month/years or

☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____

provided that upon the service of _____ days/months/years and/or payment of \$ _____

plus costs and assessments as applicable*, the balance is suspended with probation

for _____ months/years and subject of South Carolina Department of Probation.

Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-37-2074; 2073; 2071; 2070

☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

PTUP _____ time served pursuant to S.C. Code 24-13-4

_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab, or Job Corps

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

*Fine..... \$

14-1-206 - Assessments (107.5%) \$

14-1-211 (A)(1) Conv. Surcharge \$100 \$ 100.00

14-1-211 (A)(2) DUI Surcharge \$100 \$

56-5-2995 (DUI Assessment) \$12 \$

35.13 (Public Def/Prob) \$500 \$

73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

33.7, 1B TP (Drug Court Surcharge) \$100 \$

50-21-114 (BUI Breath Test Fee) \$50 \$

56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% County(if paid in Installments) \$

TOTAL \$ 125.00

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

☐ Appointed PD or other counsel, 35.13 TP

Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 0112121

Sentence Date 8/31/06

Court Reporter Hillic Jenkins Code #: 1111

WITNESSES
OCSD/REED

Mike Cochran

ARREST WARRANT NO. H-652432

ACTION OF GRAND JURY

Jim Bell
12-14-4

Don J.
Foreman of Grand Jury

VERDICT

guilty

Angela W. Broome 08-31-06

Foreman of Petit Jury

Date:

DOCKET NO. 2010

The State of South Carolina,
OCONEE

County of _____

COURT OF GENERAL SESSIONS
DECEMBER TERM 2004

SSR THE STATE
vs.
JAMES RANDOLPH FRADY

Indictment for

ARSON
2ND DEGREE

16-11-0110(B) [2551]

SUSAN REESE, ASSISTANT SOLICITOR

3W

FORM 32 (12/87)

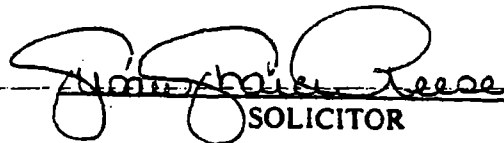
STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

INDICTMENT FOR
ARSON, 2ND DEGREE
16-11-0110(B) [2551]

At a Court of General Sessions, convened on DECEMBER 14, 2004,
the Grand Jurors of OCONEE County present upon their oath:

THAT JAMES RANDOLPH FRADY DID IN OCONEE COUNTY ON OR ABOUT SEPTEMBER 22, 2004, WILFULLY, MALICIOUSLY, FELONIOUSLY AND INTENTIONALLY, SET FIRE TO OR CAUSED TO BE BURNED, A DWELLING HOUSE, TO WIT: THE RESIDENCE OF JAMES C. FRADY, JR. AND BARRY FRADY.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
STATE V JAMES RANDOLPH FRADY

AKA: _____
Race/Sex: **W M** Age: **42**

DOB: _____ SSN: _____

Address: _____
City, State, Zip **WALHALLA SC 29691**

DLA _____ SID: **SC00403344**

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #

2004-GS-372070

) A/W#: **H652432**

) Date of Offense: **09/22/04**

) S.C. Code: **16-11-0110** CDR Code #: **2551**

) CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Arson 2nd Degree

in violation of **16-11-110(B)** of the S.C. Code of Laws, bearing CDR Code #: **2551**

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections,
☐ County Detention Center, for a determinate term of **25** days/month/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject to South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: **2004-GS-37-2071; 2074; 2078; 2079**
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied **2073**
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$	_____
14-1-206 - Assessments (107.5%)	\$	_____
14-1-211 (A)(1) Conv. Surcharge	\$100	\$ 100.00
14-1-211 (A)(2) DUI Surcharge	\$100	\$ _____
56-5-2995 (DUI Assessment)	\$12	\$ _____
35.13 (Public Def/Prob)	\$500	\$ _____
73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
33.7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% County(if paid in installments)	\$	_____
TOTAL	\$	125.00

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-40 to
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

[Signature]
Presiding Judge

Judge Code: **912121**

Sentence Date **8/31/06**

Court Reporter **Hollie Jenkins** Code #: **1111**

[Handwritten initials]
C.O.x

WITNESSES

OCSD/REED

Mike Cochran

ARREST WARRANT NO. H-652431

ACTION OF GRAND JURY

Donna J.
Foreman of Grand Jury

VERDICT

*guilty**Angela N. Brooke* 08-31-06
Foreman of Petit Jury Date:

DOCKET NO. 2004-GS-37-2011

The State of South Carolina,

County of OCONEE

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

SSR

THE STATE

vs.

JAMES RANDOLPH FRADY

Indictment for

GRAND LARCENY

16-13-0030(B)(2)

[0479]

SUSAN REESE, ASSISTANT SOLICITOR

BE

FORM 32 (12/87)

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

INDICTMENT FOR

GRAND LARCENY
16-13-0030(B)(2) [0479]

At a Court of General Sessions, convened on DECEMBER 14, 2004,
the Grand Jurors of OCONEE County present upon their oath:

THAT JAMES RANDOLPH FRADY DID IN OCONEE COUNTY ON OR ABOUT SEPTEMBER 22, 2004 FELONIOUSLY TAKE AND CARRY AWAY THE PROPERTY OF MIKE HARPER OF WALHALLA, SOUTH CAROLINA, TO WIT: A 1990 CHEVY ASTRO VAN VALUED AT MORE THAN ONE THOUSAND DOLLARS BUT LESS THAN FIVE THOUSAND DOLLARS, WITH INTENT TO DEPRIVE THE OWNER PERMANENTLY OF THE PROPERTY. ALL IN VIOLATION OF 16-13-30, CODE OF LAWS OF SOUTH CAROLINA (1976), AS AMENDED.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
STATE v JAMES RANDOLPH FRADY

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #

AKA: _____
Race/Sex: W M Age: 42

) 20 04 -GS-37- 2071

DOB: _____ SSN: _____

) AW#: H652431
) Date of Offense: 09/22/04

Address: _____
City, State, Zip WALHALLA SC 29691

) S.C Code: 16-13-0030 CDR Code #: 479

DL _____ SID: SC00403344

) CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Grand Larceny > \$1,000 < \$5,000

in violation of 16-13-30(B)(2) of the S.C. Code of Laws, bearing CDR Code #: 01479

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: _____

Mindy Hensley
Solicitor

Defendant

Attorney for Defendant Donald Allen

WHEREFORE, the Defendant is committed to the State Department of Corrections,
☐ County Detention Center, for a determinate term of 5 days/month/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject to South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-37-2073; 2074; 2078
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied 2072; 2071
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

PTUP _____ time served pursuant to S.C. Code 24-13-40 to
_____ days/hours Public Service Employment

Obtain GED _____
Attend Voc Rehab, or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund.
Other: _____

Recipient: _____

*Fine.....	\$	_____
14-1-206 - Assessments (107.5%)	\$	_____
14-1-211 (A)(1) Conv. Surcharge	\$100	\$ <u>100.00</u>
14-1-211 (A)(2) DUI Surcharge	\$100	\$ _____
56-5-2995 (DUI Assessment)	\$12	\$ _____
35.13 (Public Det/Prob)	\$500	\$ _____
73.3, 18 TP (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
33.7, 18 TP (Drug Court Surcharge)	\$100	\$ _____
50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% County (if paid in Installments)	\$	\$ _____
TOTAL	\$	\$ <u>125.00</u>

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge _____ Judge Code: 01122

Sentence Date 8/31/06

Court Reporter Hollie Jenkins Code #: _____

C. O. Dent

WITNESSES
OCSD/REED

M. Canahan

ARREST WARRANT NO. H-652430

ACTION OF GRAND JURY

True Bill
12-14-4

[Signature]
Foreman of Grand Jury

VERDICT

guilty

Angela N. Broome *08-31-06*
Foreman of Petit Jury Date:

DOCKET NO. 2004-GJ-31-2074

The State of South Carolina,

County of OCONEE

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

SSR THE STATE

vs.

JAMES RANDOLPH FRADY

Indictment for

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

16-23-0490

[0549]

SUSAN REESE, ASSISTANT SOLICITOR

[Handwritten mark]

FORM 32 (12/87)

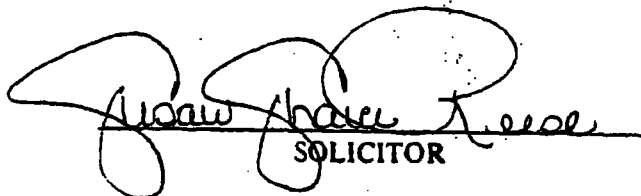
STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

INDICTMENT FOR
POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME
16-23-0490 [0549]

At a Court of General Sessions, convened on DECEMBER 14, 2004,
the Grand Jurors of OCONEE County present upon their oath:

THAT JAMES RANDOLPH FRADY DID IN OCONEE COUNTY ON OR ABOUT SEPTEMBER
22, 2004 DISPLAY AND/OR POSSESS A WEAPON DURING THE COMMISSION OF A VIOLENT
CRIME, TO WIT: THE DEFENDANT DID POSSESS A SHOTGUN WHILE COMMITTING THE CRIME
OF MURDER.

Against the peace and dignity of the State, and contrary to the statute in such case made and
provided.


SOLICITOR

954

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
STATE v JAMES RANDOLPH FRADY
AKA _____

Race/Sex: W M Age: 42

DOE _____ SSN _____

Add res: _____ JR _____

City, State, Zip WALHALLA SC 29691

DL# _____ SID: SC00403344

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

2004-GS-37-2074

A/W#: H652430

Date of Offense: 09/22/04

S.C Code: 16-23-0490 CDR Code #: 549

CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Possession of a Weapon During Commission of Violent

in violation of 16.23.490 of the S.C. Code of Laws, bearing CDR Code #: 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mirry Harvey
Solicitor

Defendant

Attorney for Defendant Donal Allen

WHEREFORE, the Defendant is committed to the State Department of Corrections,
☐ County Detention Center, for a determinate term of 5 days/month/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-37-2078; 2073; 207
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied 2072; 20;

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine.....	\$	_____
14-1-206 - Assessments (107.5%)	\$	_____
14-1-211 (A)(1) Conv. Surcharge	\$100	\$ 100.00
14-1-211 (A)(2) DUI Surcharge	\$100	\$ _____
56-5-2995 (DUI Assessment)	\$12	\$ _____
35.13 (Public Def/Prob)	\$500	\$ _____
73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
33.7, 1B TP (Drug Court Surcharge)	\$100	\$ _____
50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
3% County (if paid in Installments)	\$	_____
TOTAL	\$	125.00

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-40
_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 01122

Sentence Date

8/31/06

Court Reporter Hollie Jenkins Code #: _____

C. D. V.

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Oconee County

J. Cordell Maddox, Jr., Circuit Court Judge

JAMES RANDOLPH FRADY,

PETITIONER,

V.

THE STATE,

RESPONDENT.

MOTION TO REMAND
FOR RECORD RECONSTRUCTION

Petitioner James R. Frady respectfully moves this Court for an Order remanding this case to the Oconee County Court of Common Pleas for a reconstruction hearing of the October 3, 2011, post-conviction relief hearing in this matter, and for appointment of counsel to represent Petitioner for the reconstruction hearing. In support of this motion, Petitioner alleges the following:

- (1) That on August 31, 2006, Petitioner was convicted of possession of a weapon during the commission of a violent crime, grand larceny, second-degree arson, first-degree burglary, and two counts of murder. The trial court imposed concurrent sentences of life imprisonment without possibility of parole for each count of murder, thirty years for first-degree

burglary, twenty-five years for second-degree arson, five years for grand larceny, and five years for possession of a weapon during the commission of a violent crime. See Exhibit A (Indictments and Sentence Sheets).

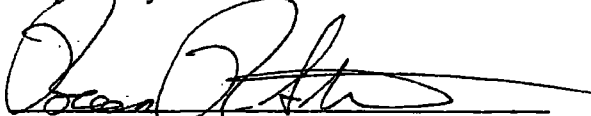
- (2) That Petitioner appealed his convictions, which were subsequently dismissed by the South Carolina Court of Appeals on November 12, 2008, in State v. Frady, Op. No. 2008-UP-634 (SC Ct. App. filed Nov. 12, 2008) pursuant to Anders v. California, 386 U.S. 738 (1967). He was represented on direct appeal by Joseph L. Savitz, III. The case was remitted on December 3, 2008. See Exhibit B (Opinion and Remittitur).
- (3) That Petitioner filed his application for post-conviction relief (PCR) (case number 2009-CP-37-0451) on April 13, 2009, asserting multiple grounds of ineffective assistance of counsel, as well as prosecutorial misconduct. See Exhibit C (PCR Application). An evidentiary hearing was held before the Honorable J. Cordell Maddox, Jr., on October 3, 2011. Petitioner was represented by Rodney W. Richey, while the State was represented by Kaelon E. May. The PCR court filed the Order of Dismissal on January 19, 2012. See Exhibit D (Order of Dismissal).
- (4) That the certified court reporter, Ms. Renee H. Tollison, experienced malfunctions in her primary recording system such that it was inaudible, and her backup software only began to function in the middle of the hearing. See Exhibit E (Letter from Renee H. Tollison, 03/13/2012). The index of the partial transcript produced Ms. Tollison indicates testimony from three of six witnesses is completely missing, as well as the direct

testimony of a fourth witness. See Exhibit F (Partial Transcript of October 3, 2011 Hearing).

- (5) That this Court has the authority to remand a case for a reconstruction hearing where a transcript has been lost or destroyed. Whitehead v. State, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002); China v. Parrott, 251 S.C. 329, 162 S.E.2d 276 (1968). Remand for record reconstruction is appropriate in instances where “a reconstructed record on appeal would allow for meaningful appellate review.” State v. Ladson, 373 S.C. 320, 325, 644 S.E.2d 271, 274 (Ct. App. 2007) (internal quotations omitted).
- (6) That a full and complete transcript of the October 3, 2011 PCR hearing is necessary in Petitioner’s case to allow for meaningful appellate review.

Accordingly, in order to allow meaningful appellate review, Petitioner respectfully requests that this Court remand his case to the Oconee County Court of Common Pleas for reconstruction of the October 3, 2011, post-conviction relief evidentiary hearing, and that counsel be appointed to represent Petitioner for the reconstruction hearing.

Respectfully submitted,



Breen R. Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

July 12, 2012

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Oconee County

J. Cordell Maddox, Jr., Circuit Court Judge

JAMES RANDOLPH FRADY,

PETITIONER,

V.

THE STATE,

RESPONDENT.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Motion to Remand for Record Reconstruction in the above case has been served upon Kaelon E. May, Esquire, this 12th day of July, 2012.


Breen R. Stevens
Appellate Defender

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 12th day
of July, 2012.

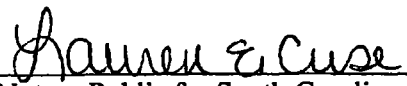
 (L.S.)
Notary Public for South Carolina
My Commission Expires: August 23, 2014

Exhibit A

WITNESSES
OCSD/REED

Mike Canale

ARREST WARRANT NO. H-652426

ACTION OF GRAND JURY

Joe Bell
12-14-11

[Signature]
Foreman of Grand Jury

VERDICT

guilty

Angela N. Branne *08-31-06*
Foreman of Petit Jury Date:

100-2012
The State of South Carolina,

County of OCONEE

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

SSR THE STATE

vs.

JAMES RANDOLPH FRADY

Indictment for

MURDER

16-03-0010

[0116]

SUSAN REESE, ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

STATE v JAMES RANDOLPH FRADY

AKA:

Race/Sex: W M Age: 42

DOB: SSN:

Address: DR

City, State, Zip WALHALLA SC 29691

DL# SID

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

961

20 04 -GS-37-2072

A/W#: H652426

Date of Offense: 09/22/04

S.C. Code: 16-03-0010 CDR Code #: 116

CASE RESTORED

SENTENCE PLEA TRIAL

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO:

Murder

in violation of 16-03-10 (16-3-10) of the S.C. Code of Laws, bearing CDR Code #: 011116

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS 17-25-45

Charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
Plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

Mindy Helver

Solicitor

Defendant

Attorney for Defendant Donald Allen

WHEREFORE, the Defendant is committed to the State Department of Corrections,
County Detention Center, for a determinate term of LIFE 10/21/04 days/months/years or
under the Youthful Offender Act not to exceed years and/or pay a fine of \$
provided that upon the service of days/months/years and/or payment of \$
plus costs and assessments as applicable*, the balance is suspended with probation
for months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentences on: 2004-GS-37-2021; 2070; 207
The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied 2074; 2

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered
Total: \$ plus 20% fee \$
Payment Terms:
set by SCDPPPS

Recipient:

PTUP time served pursuant to S.C. Code 24-13-40
days/hours Public Service Employment
Obtain GED
Attend Voc Rehab, or Job Corps
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol Testing
Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ beginning
\$ paid to Public Defender Fund.
Other:

Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge Judge Code: 011222

Sentence Date 8/31/06

Court Reporter Hollie Jenkins Code #: 1111

*Fine..... \$
14-1-206 - Assessments (107.5%) \$
14-1-211 (A)(1) Conv. Surcharge \$100 \$ 100.00
14-1-211 (A)(2) DUI Surcharge \$100 \$
56-5-2995 (DUI Assessment) \$12 \$
35.13 (Public Def/Prob) \$500 \$
73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00
33.7, 1B TP (Drug Court Surcharge) \$100 \$
50-21-114 (BUI Breath Test Fee) \$50 \$
56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% County(if paid in installments) \$
TOTAL \$ 125.00

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

Copy to
Detention
Solicitor

WITNESSES
OCSD/REED

Mike Canales

ARREST WARRANT NO. H-652427

ACTION OF GRAND JURY

John Bill
12-14-4

Foreman of Grand Jury

Indictment for

VERDICT

guilty

Angela N. Brone 08-31-06

Foreman of Petit Jury

Date:

DOCKET NO.

The State of South Carolina,
OCONEE

County of

COURT OF GENERAL SESSIONS

DECEMBER

TERM

2004

SSR

THE STATE

vs.

JAMES RANDOLPH FRADY

Indictment for

MURDER

16-03-0010

[0116]

SUSAN REESE, ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

STATE v JAMES RANDOLPH FRADY

AKA:

Race/Sex: W M Age: 42

DOB: 1 SSN

Address: 1

City, State, Zip WALHALLA SC 29691

DL# SID: SC00403344

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

2004-GS-37-2073

A/W#: H652427

Date of Offense: 09/22/04

S.C. Code: 16-03-0010 CDR Code #: 116

CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Murder

in violation of 16-3-10 of the S.C. Code of Laws, bearing CDR Code #: 01116

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mindy Harvey
Solicitor

Defendant

Attorney for Defendant Donald Allen

WHEREFORE, the Defendant is committed to the State Department of Corrections
☐ County Detention Center, for a determinate term of LIFE IMPRISONMENT days/months/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject to South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-37-2070; 2071; 2074;
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied 2078; 20
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$	_____
14-1-206 - Assessments (107.5%)	\$	_____
14-1-211 (A)(1) Conv. Surcharge	\$100	<u>100.00</u>
14-1-211 (A)(2) DUI Surcharge	\$100	_____
56-5-2995 (DUI Assessment)	\$12	_____
35.13 (Public Def/Prob)	\$500	_____
73.3, 1B TP (Law Enforce. Funding)	\$25	<u>25.00</u>
33.7, 1B TP (Drug Court Surcharge)	\$100	_____
50-21-114 (BUI Breath Test Fee)	\$50	_____
56-5-2942(J) (Vehicle Assessment)	\$40/ea	_____
3% County(if paid in Installments)	\$	_____
TOTAL	\$	<u>125.00</u>

Sallie C. Smith

Clerk of Court/Deputy Clerk

SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-40
_____ days/hours Public Service Employment

Obtain GED

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 011221

Sentence Date 8/31/06

Court Reporter Hellie Jenkins Code #: _____

*Copy to
Solicitor
Defendant*

WITNESSES
OCSD/REED

Mike Cochran

ARREST WARRANT NO. H-652429

ACTION OF GRAND JURY

12-14-4

True Bill

[Signature]
Foreman of Grand Jury

VERDICT

guilty

Angela N. Brooks *08-31-06*
Foreman of Petit Jury Date:

The State of South Carolina,
OCONEE

County of _____

COURT OF GENERAL SESSIONS
DECEMBER TERM 2004

SSR THE STATE

vs.
JAMES RANDOLPH FRADY

Indictment for

BURGLARY - 1ST DEGREE

16-11-0311 [0079]

SUSAN REESE, ASSISTANT SOLICITOR

BW

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

STATE v JAMES RANDOLPH FRADY

AKA: _____

Race/Sex: W M Age: 42

DOB _____ SSN: _____

Address: _____

City, State, Zip WALHALLA SC 29691

DL# _____ SID: SC00403344

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

2004-GS-372078

A/W#: H652429

Date of Offense: 09/22/04

S.C. Code: 16-11-0311 CDR Code #: 79

CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Burglary 1st Degree

in violation of 16-11-311 of the S.C. Code of Laws, bearing CDR Code #: 010719

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mindy Harvey

Solicitor

Defendant

Attorney for Defendant Donald Alk

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections,

☐ County Detention Center, for a determinate term of 30 days/months/years or

☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____

provided that upon the service of _____ days/months/years and/or payment of \$ _____

plus costs and assessments as applicable*, the balance is suspended with probation

for _____ months/years and subject to South Carolina Department of Probation.

Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-37-2074; 2073; 2071;

☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied 2070 by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$	_____
14-1-208 - Assessments (107.5%)	\$	_____
14-1-211 (A)(1) Conv. Surcharge	\$100	<u>100.00</u>
14-1-211 (A)(2) DUI Surcharge	\$100	_____
56-5-2995 (DUI Assessment)	\$12	_____
35.13 (Public Def/Prob)	\$500	_____
73.3, 1B TP (Law Enforce. Funding)	\$25	<u>25.00</u>
33.7, 1B TP (Drug Court Surcharge)	\$100	_____
50-21-114 (BUI Breath Test Fee)	\$50	_____
56-5-2942(J) (Vehicle Assessment)	\$40/ea	_____
3% County (if paid in Installments)	\$	_____
TOTAL	\$	<u>125.00</u>

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-4
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500.00 paid to Clerk during probation.

Presiding Judge _____

Judge Code: 0112121

Sentence Date 8/31/06

Court Reporter Hollie Jenkins Code #: _____

WITNESSES
OCSD/REED

Mike Carlow

ARREST WARRANT NO. H-652432

ACTION OF GRAND JURY

Julie Bell
12-14-4

[Signature]
Foreman of Grand Jury

VERDICT

guilty

Angela W. Broom *08-31-06*
Foreman of Petit Jury Date:

The State of South Carolina,
OCONEE

County of _____

COURT OF GENERAL SESSIONS
DECEMBER TERM 2004

SSR THE STATE
vs.
JAMES RANDOLPH FRADY

Indictment for

ARSON
2ND DEGREE

16-11-0110(B) [2551]

SUSAN REESE, ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

STATE v JAMES RANDOLPH FRADY

AKA: _____

Race/Sex: W M Age: 42

DOB _____

SSN: _____

Address: _____

City, State, Zip WALHALLA SC 29691

DL _____

SID: SC00403344

) IN THE COURT OF GENERAL SESSIONS
) INDICTMENT/CASE #

2004-GS-372070

) A/W#: H652432

) Date of Offense: 09/22/04

) S.C Code: 16-11-0110 CDR Code #: 2551

) CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Arson 2nd Degree

in violation of 16-11-110(B) of the S.C. Code of Laws, bearing CDR Code #: 2551

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant Donald Allen

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections,

☐ County Detention Center, for a determinate term of 25 days/month/years or

☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____

provided that upon the service of _____ days/months/years and/or payment of \$ _____

plus costs and assessments as applicable*, the balance is suspended with probation

for _____ months/years and subject to South Carolina Department of Probation.

Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-37-2071; 2074; 2078; 2073
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$	
14-1-206 - Assessments (107.5%)	\$	
14-1-211 (A)(1) Conv. Surcharge	\$100	<u>100.00</u>
14-1-211 (A)(2) DUI Surcharge	\$100	
56-5-2995 (DUI Assessment)	\$12	
35.13 (Public Def/Prob)	\$500	
73.3, 1B TP (Law Enforce. Funding)	\$25	<u>25.00</u>
33.7, 1B TP (Drug Court Surcharge)	\$100	
50-21-114 (BUI Breath Test Fee)	\$50	
56-5-2942(J) (Vehicle Assessment)	\$40/ea	
3% County(if paid in installments)	\$	
TOTAL	\$	<u>125.00</u>

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-40
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

[Signature]
Presiding Judge

Judge Code: 011212

Sentence Date 8/31/06

Court Reporter Hollie Jenkins Code #: _____

[Signature]

WITNESSES

OCSD/REED

Mike Cochran

ARREST WARRANT NO. H-652431

ACTION OF GRAND JURY

12-14-04

[Signature]
Foreman of Grand Jury

VERDICT

guilty

Angela N. Brown *08-31-06*
Foreman of Petit Jury

Date:

NO. 2004-0030-B(2)
The State of South Carolina,

County of OCONEE

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

THE STATE

SSR

vs.

JAMES RANDOLPH FRADY

Indictment for

GRAND LARCENY

16-13-0030(B)(2)

[0479]

SUSAN REESE, ASSISTANT SOLICITOR

EW

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE
STATE V JAMES RANDOLPH FRADY

AKA: _____
Race/Sex: W M Age: 42

DOB: _____ SSN: _____
Address: _____
City, State, Zip WALHALLA SC 29691
DLA _____ SID: SC00403344

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

20 04 -GS-37- 2071
A/W#: H652431
Date of Offense: 09/22/04
S.C Code: 16-13-0030 CDR Code #: 479
CASE RESTORED ☐

SENTENCE ☐ PLEA ☒ TRIAL

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:

Grand Larceny > \$1,000 < \$5,000

in violation of 16-13-30(B)(2) of the S.C. Code of Laws, bearing CDR Code #: 014719

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

Charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

Plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Mindy Henry
Solicitor

Defendant

Attorney for Defendant Donald Allen

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections,
☐ County Detention Center, for a determinate term of 5 days/months/years or
☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____
provided that upon the service of _____ days/months/years and/or payment of \$ _____
plus costs and assessments as applicable*, the balance is suspended with probation
for _____ months/years and subject of South Carolina Department of Probation.
Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-37-2073; 2074; 2078
☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied 2072; 207
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$	
14-1-206 - Assessments (107.5%)	\$	
14-1-211 (A)(1) Conv. Surcharge	\$100	<u>100.00</u>
14-1-211 (A)(2) DUI Surcharge	\$100	\$
56-5-2995 (DUI Assessment)	\$12	\$
35.13 (Public Def/Prob)	\$500	\$
73.3, 1B TP (Law Enforce. Funding)	\$25	<u>25.00</u>
33.7, 1B TP (Drug Court Surcharge)	\$100	\$
50-21-114 (BUI Breath Test Fee)	\$50	\$
56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% County(if paid in Installments)	\$	
TOTAL	\$	<u>125.00</u>

Sallie C. Smith

Clerk of Court/Deputy Clerk
SCCA/217(7/2003)

PTUP _____ time served pursuant to S.C. Code 24-13-40
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab, or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund.
Other. _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge _____ Judge Code: 011221

Sentence Date 8/31/06

Court Reporter Hollie Jenkins Code #: 111

C. D.

WITNESSES
OCSD/REED

Mike Conner

ARREST WARRANT NO. H-652430

ACTION OF GRAND JURY

W. Bill
12-14-4

[Signature]
Foreman of Grand Jury

VERDICT

guilty

Angela N. Broome 08-31-06
Foreman of Petit Jury Date:

970

SECRET NO. 2014

The State of South Carolina,

County of OCONEE

COURT OF GENERAL SESSIONS

DECEMBER TERM 2004

SSR THE STATE

vs.

JAMES RANDOLPH FRADY

Indictment for

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

16-23-0490

[0549]

SUSAN REESE, ASSISTANT SOLICITOR

[Signature]

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

STATE V JAMES RANDOLPH FRADY

AKA _____

Race/Sex: W M Age: 42

DOB: _____

SSN: _____

Address: _____

City, State, Zip WALHALLA SC 29691

DL# _____

SID: SC00403344

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE #

2004-GS-37-2074

A/W#: H652430

Date of Offense: 09/22/04

S.C. Code: 16-23-0490

CDR Code #: 549

CASE RESTORED ☐SENTENCE ☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO:Possession of a Weapon During Communion Violationin violation of 16.23.490 of the S.C. Code of Laws, bearing CDR Code #: 0549☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45Charge is: ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury.Plea is: ☐ Without Negotiations or Recommendation ☐ Negotiated Sentence ☐ Recommendation by the State.

ATTEST:

Mindy Harvey
SolicitorDefendantAttorney for Defendant
Donal Allen

WHEREFORE, the Defendant is committed to the State Department of Corrections,

☐ County Detention Center, for a determinate term of 5 days/months/years or☐ under the Youthful Offender Act not to exceed _____ years and/or pay a fine of \$ _____

provided that upon the service of _____ days/months/years and/or payment of \$ _____

plus costs and assessments as applicable*, the balance is suspended with probation

for _____ months/years and subject to South Carolina Department of Probation.

Pardon & Parole Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentences on: 2004-GS-37-2078; 2073; 207☐ The Defendant is given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied 2072; 20;
by the State Department of Corrections

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine.....	\$	_____
14-1-206 - Assessments (107.5%)	\$	_____
14-1-211 (A)(1) Conv. Surcharge	\$100 \$	<u>100.00</u>
14-1-211 (A)(2) DUI Surcharge	\$100 \$	_____
56-5-2995 (DUI Assessment)	\$12 \$	_____
35.13 (Public Def/Prob)	\$500 \$	_____
73.3, 18 TP (Law Enforce. Funding)	\$25 \$	<u>25.00</u>
33.7, 18 TP (Drug Court Surcharge)	\$100 \$	_____
50-21-114 (BUI Breath Test Fee)	\$50 \$	_____
56-5-2942(J) (Vehicle Assessment)	\$40/ea \$	_____
3% County (if paid in installments)	\$	_____
TOTAL	\$	<u>125.00</u>

Sallie C. SmithClerk of Court/Deputy Clerk
SCCA/217(7/2003)PTUP _____ time served pursuant to S.C. Code 24-13-41
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab, or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be paid in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

☐ Appointed PD or other counsel, 35.13 TP
Requires \$500 be paid to Clerk during probation.

Presiding Judge _____

Judge Code: 01122Sentence Date 3/31/06Court Reporter Hollie Jenkins Code #: 1111

Exhibit B

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

James Randolph Frady,

Appellant.

Appeal From Oconee County
Perry M. Buckner, Circuit Court Judge

Unpublished Opinion No. 2008-UP-634
Submitted November 3, 2008 – Filed November 12, 2008

APPEAL DISMISSED

Chief Appellate Defender Joseph L. Savitz, III, of
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,



ATTORNEY GENERAL'S OFFICE
RECEIVED 12-3-08

31K405

LEEN
ADIE

The South Carolina Court of Appeals

KENNETH A. RICHESLAD
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1029
COLUMBIA, SOUTH CAROLINA 29211
115 SUMMIT STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1890
FAX (803) 734-1777
WWW.SCCOURTS.ORG

Close

December 3, 2008

REMITTITUR

The Honorable Sallie C. Smith
205 W Main St
PO Box 678
Walhalla, SC 29691-0678

Re: The State v. Frady, James Randolph
2004-GS-37-02071 2004-GS-37-02072 2004-GS-37-02073
2004-GS-37-02074 2004-GS-37-02075 2004-GS-37-02076
2004-GS-37-02077 2004-GS-37-02078

Dear Ms. Smith:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

Renee S. Johnson
Administrative Specialist

VK
KAR/rj

cc: Chief Attorney Joseph L. Savitz, III
James Randolph Frady #317328
Assistant Deputy Attorney General Donald J. Zelenka
Christina Theos Adams, Esquire

Exhibit C

STATE OF SOUTH CAROLINA)

County of Oconee)James R. Frady, #317328,)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2009-CP-37-451

APPLICATION FOR

POST-CONVICTION RELIEF

2001 APR 13 P 3:09

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Inst., 4460 Broad River Road,
Columbia, SC 29210
2. Name and location of Court which imposed sentence General Sessions Court,
Oconee County, South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) See Page 1 (A), attached.
 - (b) _____

copy to Attorney
& Frady

4. The indictment number or numbers (if Known) upon which and the offenses for which sentence was imposed:
- (a) 2004-GS-37-2070; Arson, second degree.
 - (b) 2004-GS-37-2071; Grand larceny.
 - (c) 2004-GS-37-2072; Murder.
 - (d) 2004-GS-37-2073; Murder.
 - (e) 2004-GS-37-2074; Possession of weapon during violent crime.
 - (f) 2004-GS-37-2078; Burglary, first degree.

- (b) _____
- (c) _____
- 5.. The date upon which sentence was imposed and the terms of the sentence:
- (a) See Page 2 (A), attached
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction affirmed, appeal dismissed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. November 12, 2008
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Frady, Unpublished Opinion No.: 2008-UP-634
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 31, 2006; 25 years imprisonment.
 - (b) August 31, 2006; 5 years imprisonment.
 - (c) August 31, 2006; Life without parole.
 - (d) August 31, 2006; Life without parole.
 - (e) August 31, 2006; 5 years imprisonment.
 - (f) August 31, 2006; 30 years imprisonment.

- (b) _____
 (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 (a) See Page 3 (A)
 (b) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 (a) See Pages 3(A), 3(B), 3(C), and 3(D), attached.
 (b) _____
 (c) _____
12. Prior to this application have you filed with respect to this conviction:
 (a) any petition in a State Court under South Carolina Law? No.
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
 (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
 (a) the specific nature thereof:
 i. N/A
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. N/A
 ii. _____
 iii. _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) The applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of the South Carolina Constitution.
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
 - (a) The applicant was provided with deficient representation by his attorney in that the conduct of his attorney was objectively unreasonable under the circumstances of Applicant's case. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of Applicant's proceeding was prejudiced and it is reasonably probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense Counsel was ineffective based on one or more of the following:
 1. Defense counsel failed to conscientiously discharge his professional responsibilities while handling Applicant's case.
 2. Defense counsel failed to effectively challenge the arrest and seizure of Applicant.
 3. Defense counsel failed to act as Applicant's diligent, conscientious advocate.
 4. Defense counsel failed to properly prepare and investigate Applicant's case prior to the trial of the case.
 5. Defense counsel failed to do the necessary legal research to

adequately argue a Miranda violation in the applicant's case.

6. Defense counsel failed to pursue plea negotiations that may have proven advantageous to the applicant.
7. Defense counsel failed to properly consult with the applicant or keep the applicant informed about the status of the case.
8. Defense counsel failed to explain to the applicant or discuss with him any kind of defense strategy.
9. Defense counsel failed to explain to Applicant or discuss with him any of the tactical choices that were available or that counsel was planning on using.
10. Defense counsel, knowing that Applicant was uninformed in legal matters, dictated to the applicant exactly how the case was going to be handled, offered no alternative options, and convinced Applicant to relinquish his right to testify on his own behalf.
11. Defense counsel failed to properly acquaint themselves with the law and facts surrounding Applicant's case, and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
12. Defense counsel failed to put forward any argument at all for a minimum sentence at Applicant's sentencing.
13. Defense counsel failed to adequately challenge a statement made by state's witness Harper on the basis that the statement was sheer speculation. At trial, witness Harper

testified that due to a defect in the door handles of his van, he, his son, and the applicant were the only people who knew how to open the doors to get inside. The statement left the jury with the clear impression that the applicant more likely than not stole the van, which was in turn connected to the murders.

14. Defense counsel failed to challenge the admission of evidence in the case that had been withheld from the applicant in violation of Rule 5 and Brady v. Maryland.
15. Defense counsel failed to adequately investigate and pursue fingerprint evidence that indicated someone other than the applicant stole the van and committed the murders.
16. Defense counsel failed to challenge the admission of evidence at trial on the basis that the chain of custody had been broken, and that he had not been given an opportunity to examine the evidence.
17. Defense counsel failed to adequately object and press for a better curative instruction from the judge when the solicitor argued during closing arguments that Applicant had threatened to kill the victims prior to their actual murders.
18. Defense counsel failed to do the necessary legal research to adequately argue for a change of venue in Applicant's case.
19. Defense counsel failed to do legal research necessary for him to adequately argue for the suppression of evidence, and withdrew a potentially meritorious Motion to Suppress.
20. Defense counsel failed to call alibi witnesses that would have proven Applicant's innocence.

For the foregoing reasons, Applicant asserts that defense counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny. A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Strickland v. Washington, supra. Applicant asserts he was deprived of a fair trial because of counsel's ineffectiveness.

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) None of the grounds in this application have been presented to
 - (b) any other court because post-conviction relief application is
 - (c) the proper forum for claim of ineffective assistance of counsel.
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? Yes
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
 - i. Donald Allen, Esq. P.O. Box 2861, Anderson, South Carolina
 - C. Elizabeth Waldrep, Esq., Address unknown.
 - ii. Joseph Savitz, III, Esq., P.O. Box 11589, Columbia, South Carolina
 - _____
 - iii. _____
 - _____
 - (b) the proceedings at which each such attorney represented you:
 - i. Trial
 - Trial
 - ii. Direct Appeal
 - _____
 - _____
 - iii. _____
 - _____

19. State clearly the relief you seek in filing this application:
Reverse, remand, or vacate sentence. Any other or further relief the
Court deems just.
20. Are you now under sentence from any other court that you have not challenged?
No.

Revised 3/2003

STATE OF SOUTH CAROLINA)
)
 County of Richland)

VERIFICATION

I, James R. Frady, #317328, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

James R. Frady

SWORN to and subscribed before me this 27
 day of March, 2009.

Barbara L. King (L.S.)
 Notary Public

My Commission Expires: Oct 1, 2018

FILED O'CONNOR, SC
 BEVERLY H. WHITEFIELD
 CLERK OF COURT
 2009 APR 13 PM 3:09

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, James R. Frady, #317328, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

James R Frady
Applicant

SWORN or affirmed to and subscribed before me this

27 day of March, 2009.

Carolyn B. King
Notary Public

My Commission Expires: Oct 1, 2018

FILED O'CONNOR, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2009 APR 13 PM 3:09

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

James Randolph Frady, #317328

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

2009-CP-37-0451

ORDER OF DISMISSAL

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2012 JAN 13 PM 2 57

COPY

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed April 13, 2009. Respondent made its Return and Amended Return on October 19, 2009 and June 13, 2011, respectively. An evidentiary hearing into the matter was convened on October 3, 2011 at the Oconee County Courthouse. The Applicant was present at the hearing and was represented by Rodney Richey, Esquire. The Respondent was represented by Kaelon E. May of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, Applicant offered the testimony of Michael Harper (Mr. Harper) and Tammy Harper (Ms. Harper). The State offered the testimony of Donald Allen, Esquire (Mr. Allen) and Elizabeth Waldrep, Esquire (Ms. Waldrep), Applicant's trial counsels. This Court also had before it the records of the Oconee County Clerk of Court, the transcript of the proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the records from Applicant's prior appeal proceeding.

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Oconee County. The Applicant was indicted at the December 2004 term of the Oconee County Grand Jury for one (1) count of Arson, Second Degree (04-GS-37-2070), one (1) count of Grand Larceny (04-GS-37-2071), two (2) counts of murder (04-GS-37-2072, 2073), one (1) count of Possession of A Weapon During Commission of a Violent Crime (04-GS-37-2074), and one (1) count of Burglary, First Degree (04-GS-37-2078). The Applicant was represented at trial by Donald Allen, Esquire. On August 29, 2006, the Applicant proceeded to trial and was found guilty and sentenced on August 31, 2006. The Honorable Perry M. Buckner sentenced the Applicant to confinement for a period of five (5) years for Grand Larceny (04-GS-37-2071), five (5) years for Possession of a Weapon During Commission of a Violent Crime (04-GS-37-2074), twenty five (25) years for Arson, Second Degree (04-GS-37-2070), thirty (30) years for Burglary First Degree (04-GS-37-2078), and for a term of life for each murder (04-GS-37-2073, 20720), all to be served concurrently. The Applicant then filed a timely notice of appeal.

The South Carolina Court of Appeals dismissed his appeal by written order filed November 12, 2008. State v. Frady, Op. No. 2008-UP-634 (S.C. Ct. App. Filed November 12, 2008). The case was returned to the lower court by Remittitur dated December 3, 2008

In his Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"

- a. "Defense counsel failed to conscientiously discharge his professional responsibilities while handling Applicant's case;"
- b. "Defense counsel failed to effectively challenge the arrest and seizure of Applicant;"
- c. "Defense counsel failed to act as Applicant's diligent, conscientious advocate;"
- d. "Defense counsel failed to properly prepare and investigate Applicant's case prior to the trial of the case;"
- e. "Defense counsel failed to do the necessary legal research to adequately argue a Miranda violation in the Applicant's case;"
- f. "Defense counsel failed to pursue plea negotiations that may have proven advantageous to the applicant;"
- g. "Defense Counsel failed to properly consult with the applicant or keep the applicant informed about the status of the case;"
- h. "Defense counsel failed to explain to the applicant or discuss with him any kind of defense strategy;"
- i. "Defense counsel failed to explain to Applicant or discuss with him any of the tactical choices that were available or that counsel was planning on using;"
- j. "Defense counsel, knowing that Applicant was uninformed in legal matters, dictated to the applicant exactly how the case was going to be handled, offered no alternative options, and convinced Applicant to relinquish his right to testify on his own behalf;"
- k. "Defense counsel failed to properly acquaint themselves with the law and facts surrounding Applicant's case, and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts;"
- l. "Defense counsel failed to put forward any argument at all for a minimum sentence at Applicant's sentencing;"
- m. "Defense counsel failed to adequately challenge a statement made by state's witness on the basis that the statement was sheer speculation;"
- n. "Defense counsel failed to challenge the admission of evidence in the case that had been withheld from the applicant in violation of Rule 5;"
- o. "Defense counsel failed to adequately investigate and pursue fingerprint evidence that indicated someone other than the applicant stole the van and committed the murders;"
- p. "Defense counsel failed to challenge the admission of evidence at trial on the basis that the chain of custody had been broken, and that he had not been given an opportunity to examine the evidence;"
- q. "Defense counsel failed to adequately object and press for a better curative instruction from the judge when the solicitor argued during closing arguments that Applicant had threatened to kill the victims prior to their actual murders;"
- r. "Defense counsel failed to do the necessary legal research to adequately argue for a change of venue in Applicant's case;"

- s. "Defense counsel failed to do legal research necessary for him to adequately argue for the suppression of evidence, and withdrew a potentially meritorious Motion to Suppress;"
- t. "Defense Counsel failed to call alibi witnesses that would have proven Applicant's innocence."
- 2. Prosecutorial Misconduct
 - a. "Prosecutor's remarks which include both inflammatory comments and erroneous statements of law, amount to misconduct and the proceedings fundamentally unfair."

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR EVIDENTIARY HEARING

Mr. Harper's Testimony

At the PCR hearing Mr. Harper testified that he testified at the Applicant's trial and that he was the owner of the vehicle that was used as evidence at the Applicant's trial. Mr. Harper testified that he found out about the murder on September 23, 2004 and that the police seized Mr. Harper's van thereafter. Mr. Harper testified that he drove the van to work prior to the police seizing the vehicle and that he did not miss any time from work.

Ms. Harper's Testimony

At the PCR hearing Ms. Harper testified that she is married to Michael Harper (Mr. Harper) and that she recalled the van that her husband owned being part of the Applicant's case. Ms. Harper testified that the van was stolen out of the Harper's yard and that they reported the van stolen on the night of September 22, 2004, which was the night the murders were committed. Ms. Harper testified that the van was found later the night of September 22, 2004 and that a gas can was found with the van. Ms. Harper testified that the police had Mr. Harper drive the van home the night of September 22,

2004, after finding the van. Ms. Harper testified that the police took the van into custody for about one week.

Applicant's Testimony

At the PCR hearing Applicant testified that there were pre-trial investigation issues, that he was aware an investigator was hired to work on his case, but that the investigator only ran phone records. Applicant testified that the investigator did not review any of the evidence that was eventually presented at trial, that there were unidentified fingerprints found at the scene but that Applicant's trial counsel did not investigate the fingerprints nor discuss the fingerprints with Applicant. Applicant testified that his counsel prepared a motion to change venue but that the motion was never heard and that Applicant's trial counsel informed Applicant that counsel could beat the case in Oconee County just as well as anywhere else in the state. Applicant testified that Oconee County is small, that everyone knows what is going on, and that there was no way a jury could be selected with persons who had not been subjected to the publicity that surrounded the case.

Applicant testified that the ballistics involved in the case were not tested by trial counsel, that Applicant knew about the shotgun shell, and that Applicant's counsel did hire Kelly Fite to test the ballistics but that Applicant never received a report from Kelly Fite's testing. Applicant testified that he did not know about Mr. Fite's investigation until the trial. Applicant testified that there was a plea offer of thirty (30) years for the murder charges. Applicant testified that his grandfather is a victim because it was his son and grandson that were killed. Applicant testified that he spoke with his grandfather during the trial and that his grandfather did not testify at Applicant's trial. Applicant testified

that he did not put up any evidence at trial in order to have the last argument and that Applicant did not know what to think and trusted his attorney's advice. Applicant testified that he wanted to testify at trial in his own defense because Applicant could refute the testimony presented during the trial. Applicant testified that his attorney should have refuted Kelly Cromer's testimony that Applicant asked how much LSD it would take to kill someone, because more than one person would have heard this conversation.

Applicant testified that prior to trial he was not informed of any discovery and what testimony might be presented at trial. Applicant testified that his trial counsel advised Applicant not to testify and that Applicant recalled the trial judge questioning Applicant about his right to testify and not testify. Applicant testified that he never informed counsel or Ms. Waldrep that he did not want to testify, and that Applicant was instructed not to testify by counsel. Applicant testified that counsel should have investigated the fingerprint evidence, that counsel should have presented the pre-trial motion concerning the search and seizure and change of venue issues. Applicant testified that his trial should not have been held in Oconee County. Applicant testified that he was not waiving any grounds in his Application and that if Applicant's counsel had represented Applicant properly that the outcome of Applicant's trial would have been different.

Mr. Allen's Testimony

At the PCR hearing counsel testified that he has been practicing law since 1987 and that approximately one-third to eighty percent of his practice is in criminal law. Counsel testified that he was the third attorney appointed to represent Applicant and that his representation began in August 2006. Counsel testified that Applicant's previous

attorneys provided counsel with all materials pertinent to Applicant's case. Counsel testified that he filed a pre-trial motion regarding the publicity surrounding the case and that counsel discussed the motion with Applicant. Counsel testified that the trial judge examined each juror about the extent of pre-trial publicity they had been exposed to and reached the conclusion that the pre-trial publicity would not hinder Applicant's right to a fair trial. Counsel testified that he did not move forward with the motion regarding pre-trial media because of the judge's findings and that counsel discussed this decision with Applicant.

Counsel testified that he hired a private investigator, Jody McCurley, and that Elizabeth Waldrep (Ms. Waldrep) worked as an associate on the Applicant's case. Counsel testified that the investigation revealed that the van used in the incident had fingerprints of a third-party, that this was a circumstantial case, and that there were no forensics except for one shotgun shell. Counsel testified that he informed the jury that there were no fingerprints, no footprints, no hair, and no blood evidence in Applicant's case. Counsel testified that the third-party fingerprints found in the van could go toward third-party liability for the crimes. Counsel testified that he visited the Harper's home and investigated the theft the van and that counsel hired Kelly Fite to test and/or review the ballistics evidence and to refute that state's evidence. Counsel testified that Kelly Fite's conclusion was consistent with the state's experts. Counsel testified that he met with Applicant approximately six to seven times and that counsel discussed Kelly Fite's analysis with Applicant.

Counsel testified that by the time he began representing Applicant, Applicant did not want to plead guilty and that the case qualified for the death penalty. Counsel testified

that he met with Applicant's grandfather three times and that Applicant always maintained his innocence. Counsel testified that the police returned Mr. Harper's van to Mr. Harper within a matter of days, maybe within one week. Counsel testified that the Sheriff took custody of the van but that the chain of custody for the van was not properly preserved. Counsel testified that he investigated the 'jail-house' snitch and cross-examined the 'jail-house' snitch at trial.

Counsel testified that he filed a discovery motion and received the discovery materials from the state, which included but was not limited to police reports, warrants, and investigator notes. Counsel testified that he reviewed the discovery materials with Applicant and that the only forensics in the case was a single shotgun shell. Counsel testified that he reviewed the results from his and Jody McCurley's investigation and that there was not anything tangible. Counsel testified that he had tried murder cases prior to Applicant's trial and was familiar with the legal issues involved in murder cases. Counsel testified that he asked Ms. Waldrep to assist him with Applicant's case. Counsel testified that he discussed the state's evidence with Applicant prior to trial. Counsel testified that he discussed possible defenses with Applicant but that Applicant did not present counsel with any defenses.

Counsel testified that as the shotgun shell testimony and evidence developed at trial, Applicant's testimony became critically important. Counsel testified that he discussed the shotgun shell testimony with Applicant and that Applicant did not want to testify at trial. Counsel testified that the trial strategy developed with Applicant consisted of a lack of evidence, Applicant's from at the scene, and poking holes in the state's case. Counsel testified that Applicant agreed with the trial strategy that counsel and Applicant

developed. Counsel testified that he discussed Applicant's right to testify and not testify as a part of the trial strategy. Counsel testified that Applicant made the decision not to testify. Counsel testified that when it came time for Applicant to make the decision to testify or not testify during the trial, that counsel and Applicant again discussed Applicant's right to testify or not testify. Counsel testified that Applicant ultimately decided not to testify.

Counsel testified that he was sufficiently able to confer with Applicant before and during the trial. Counsel testified that he had ample time to prepare for Applicant's trial and conduct the necessary research.

Ms. Waldrep's Testimony

At the PCR hearing Ms. Waldrep testified that she became involved in the Applicant's case shortly after Mr. Allen was appointed to represent Applicant. Ms. Waldrep testified that prior to Applicant's trial she was employed by the Office of Indigent Defense in Columbia and that at Indigent Defense she prepared motions and was familiar with the procedures for obtaining money from Indigent Defense to assist with investigations. Ms. Waldrep testified that she was able to obtain money for Applicant's case and investigation, including background checks, prior records, and expert analysis. Ms. Waldrep testified that she conducted case law research for the various pre-trial and trial motions, including the motion for change of venue. Ms. Waldrep testified that the trial judge questioned each juror regarding the amount of publicity they had been exposed to.

Ms. Waldrep testified that she met with Applicant on several occasions, that Applicant was very forthcoming and helpful with his case, and that Applicant provided

Ms. Waldrep and counsel with the names of witnesses. Ms. Waldrep testified that she spoke with the people whom Applicant informed her and counsel of. Ms. Waldrep testified that she and counsel discussed trial strategy with Applicant and reviewed testimony with Applicant. Ms. Waldrep testified that there was an issue with the van and that the defense could argue the evidence had been tainted. Ms. Waldrep testified that investigator McCurley and counsel spoke with the Harpers and that the timeline was an important issue because Applicant would not have had the time to commit the crimes if Applicant was on foot. Ms. Waldrep testified that Applicant was very engaged in all their discussions and that the state was concerned with the lack of evidence. Ms. Waldrep testified that she was present during counsel's discussion with Applicant concerning Applicant's right to testify or not testify, and that Applicant was concerned about cross-examination, that Applicant did not want to say anything wrong and look bad for the jury. Ms. Waldrep testified that Applicant never informed counsel that Applicant wanted to testify and that counsel never told Applicant he could not testify.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.