

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Kristi L. Harrington, Circuit Court Judge

Case No. 2008-CP-10-0057

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MAY 17 2013

S.C. Supreme Court

Anthony Mann, 242498,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

VOLUME I OF IV

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1 STATE OF SOUTH CAROLINA
 2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS

ORIGINAL

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 5 STATE OF SOUTH CAROLINA,)
 6 PLAINTIFF,)
 7 VS.)
 8)
 9 ANTHONY LEE MANN,)
 10 DEFENDANT.)

TRANSCRIPT OF RECORD
 02-GS-10-4410
 THROUGH
 02-GS-10-4415

May 12, 2003
 Charleston, SC

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 13
 14
 15
 16 B E F O R E:

17 THE HONORABLE DANIEL F. PIEPER; Judge.

18
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>

(See Exhibit Record and Receipt Form)

1 (Whereupon, the following requested
2 portion of the proceedings being transcribed were
3 held before the court on May 12, 2003, outside the
4 presence of the jury.)

5 THE COURT: What do you have first?

6 MR. BUTLER: We are trying to get the
7 case file. It is a few boxes. We are trying to get
8 it brought up here.

9 THE COURT: So you are waiting on some
10 boxes?

11 MR. BUTLER: Yes, sir.

12 THE COURT: I will just go ahead and put
13 on the record about the request to join the offenses
14 together for trial purposes.

15 Just for the record purposes, I had
16 indicated that I contacted counsel last week and
17 notified them of the decision that they would be
18 tried together just so they would be able to prepare
19 accordingly. And everyone agreed that I could state
20 any additional reasoning on the record at this time.
21 Is that correct, state?

22 MISS WILSON: Yes, sir.

23 THE COURT: Defense?

24 MRS. SHEALY: I apologize, Your Honor. I
25 was answering a question of my client. What was your

1 question?

2 THE COURT: I was putting on the record
3 that I contacted you-all --

4 MRS. SHEALY: Yes, sir.

5 THE COURT: -- and notified you of the
6 decision and you-all agreed that I could put any
7 reasoning on the record at this point.

8 MRS. SHEALY: Yes, sir, that's correct.

9 THE COURT: But having read the various
10 cases, I do think that at this preliminary stage the
11 state has met the burden it would have to show that
12 they could be tried together and that they are
13 interconnected for purposes of joinder juris
14 prudence.

15 I also feel that the state has shown no
16 substantial rights of the defendant would be
17 prejudiced due in part to the fact that the
18 introduction of each incident would be possible under
19 one or more evidentiary theories regardless of the
20 order in which the cases might be tried.

21 I have looked at State versus Middleton.
22 Well, I have looked at numerous cases, but I'm just
23 pointing out some of the cases. State versus
24 Middleton, 339 SE.2d 692. There he was tried for two
25 counts of murder and several other charges and the

1 Supreme Court held that the charges against Middleton
2 did not arise out of the same transaction,
3 consolidations and proffer.

4 In Middleton the defendant raped and
5 murdered one victim on one day and the other the
6 next. The victims were both asphyxiated and the
7 bodies mutilated. The Supreme Court held that the
8 crimes did not arise out of a single chain of
9 circumstances and required different evidence of
10 proof.

11 Unlike in Middleton where they alleged
12 that the crimes were part of a crime spree, the state
13 in this case argues that the alleged murder of victim
14 number one, Dante Tobias, establishes motive for the
15 alleged murder of victim number two, Beverly Blake.

16 The victims in the present case were
17 allegedly murdered hours apart. And the state argues
18 one murder was a cover-up for the other.

19 In State versus Simmons, the defendant
20 argued that the trial judge -- that was cited at
21 573 SE.2d 856. The defendant argued that the trial
22 judge erred in failing to sever two burglary
23 charges. The Court of Appeals held that the joinder
24 was proper. The break-in at one victim's house was
25 close in time in proximity to the attempted break-in

1 of the second victim's house and both victims
2 described the suspect as wearing dark clothing.

3 The court held that the instances arose
4 out of a single chain of events, were of the same
5 nature and proved by the same evidence and witnesses.

6 They also held that the evidence of the
7 first burglary was necessary for a full presentation
8 of the second burglary case and would be admissible
9 as part of the res gestae.

10 Similarly in the present case the
11 allegations are that victim number one lived with
12 victim number two. Victim number two and the
13 defendant conspired to rob victim number one. Victim
14 number two heard a shot while the defendant was the
15 only person with victim number two and the defendant
16 shot victim number two.

17 The allegations have both murders taking
18 place on the afternoon of January 7th. So similar
19 witnesses will be used to prove the cases and
20 evidence -- the court finds the evidence for the
21 murder of victim number one, Dante Tobias, is
22 necessary for a full presentation of the case
23 charging the defendant of murder of victim number
24 two, Beverly Blake.

25 In State versus Lopez -- it's a Utah

1 case -- 789 P.2d 39, Utah Court of Appeals, 1990.
2 The defendant was charge with the murder of one
3 victim in child abuse of the second victim only
4 minutes later. And the court in that case found that
5 the only evidence the state could bring forward to
6 shed light on the defendant's conduct in the charged
7 circumstances was the testimony of the second victim
8 both as the murder victim witness and as a subsequent
9 assault victim. I realize that is different in this
10 case because you can't do that because the second
11 assault victim is also deceased.

12 But while I note that they are not able
13 to testify, the state uses -- the evidence that the
14 state uses to prove the murder of victim number one,
15 Dante Tobias, will most likely be admissible to show
16 that the defendant's alleged motive for murdering
17 victim number two, Beverly Blake, that's under the
18 theory the state advances. Of course, in a
19 preliminary determination pretrial if that turns out
20 to not be the case, I will have to take up any
21 appropriate remedies at that time.

22 Furthermore, evidence of the murder of
23 victim number two is probative of the defendant's
24 alleged intent to cover up the responsibility for the
25 murder of victim number one.

1 The Supreme Court in Utah dealt with a
2 similar issue in State versus Schroyer,
3 S-C-H-R-O-Y-E-R, 44 P.3d 730, Utah 2002. In that
4 case, the defendant was charged with murder and
5 attempted murder. The state argued that the intent
6 to murder the second victim was to prevent him from
7 being able to testify about the murder of the first
8 victim thus linking the two crimes in one criminal
9 episode.

10 The trial court found that the second
11 victim did witness the murder of the first victim.
12 The second victim could identify the defendant's face
13 and that the defendant ran from the crime scene and
14 hid his gun. Evidence in conduct, which is also
15 consistent with the witness elimination.

16 Again, I recognize the facts are not
17 exactly on point because of the status of the victim
18 but the concept is the allegation of witness
19 elimination and their analysis that suggested they
20 could be linked for that purpose.

21 So, therefore, based on the cases that I
22 have read in this state and in other states, I think
23 that they are -- these are interconnected offenses
24 that would be appropriate to try for the purposes of
25 joinder.

1 Moreover, since the evidence of one
2 alleged murder would likely be admissible in the
3 other murder case under either a 404B or res gestae
4 analysis, I don't believe any rights of the defendant
5 will be prejudiced. Of course, the court will give
6 the jury a limiting instruction they are to consider
7 each charge separately and distinctly based on what
8 is presented as to each charge.

9 So for purposes of the preliminary stage,
10 I think the state has met its burden to show that
11 they may be properly joined for trial. Again, as I
12 indicated, if things don't turn out the way that it's
13 been alleged, you have to seek whatever appropriate
14 remedy may be necessary.

15 Are you ready for your motions?

16 MR. BUTLER: Your Honor, could I just put
17 our objection on the record?

18 THE COURT: Your objection is noted for
19 the record. I believe we've already heard all of
20 your arguments at the prior motion hearing.

21 MR. BUTLER: Yes, sir.

22 THE COURT: I'm not going to hear any
23 further arguments. Pardon?

24 MR. BUTLER: I would incorporate all of
25 those in the motion now.

1 THE COURT: Yes.

2 MR. BUTLER: And object to the finding
3 being made about a full hearing. I understood it was
4 contemplated at the last hearing with live testimony
5 from the witnesses. Thank you.

6 THE COURT: I don't think that was
7 ordered. I said that was a possibility.

8 MR. BUTLER: Yes, sir.

9 THE COURT: I don't think we ordered
10 that.

11 MR. BUTLER: Yes, sir.

12 THE COURT: Are you ready for your first
13 motion?

14 MISS WILSON: Your Honor, are you
15 prepared to talk about the polygraph stuff? We can
16 get into that.

17 THE COURT: Whatever order that you want
18 to go in will be fine.

19 MISS WILSON: Judge, I filed this morning
20 a Motion in Limine regarding the paragraph in the
21 plea agreements of the codefendants regarding their
22 willingness and the state's ability to ask them for
23 Mr. Mann to take a polygraph.

24 In discussions over the weekend and last
25 week in preparing, I had discussions with defense

1 attorneys and their position was that they should be
2 able to get into the fact that part of the plea
3 agreement was that the codefendants take a polygraph
4 but yet they were not ever given polygraphs.

5 And I really think that this is a road
6 that if we go down as far as witnesses being asked
7 questions about that that it is going to be a trial
8 within a trial. And we are going to have to get into
9 the whole strategy of when polygraphs are given and
10 when they are not given. Then we will be in a
11 situation where we may seek to give polygraphs during
12 the trial. And then that evidence I think would only
13 be fair if it were admissible at that point. And I
14 just think we could get into a whole lot of
15 unnecessary and misleading information for the jury.

16 I think even if under a Counsel or Jones
17 analysis, even if it were admissible, I think under a
18 403 analysis it is going to be very confusing and
19 very misleading to the jury.

20 I don't know if you want to hear anymore
21 on that.

22 THE COURT: No. Let me hear from the
23 defendant.

24 MR. BUTLER: It is not an issue whether
25 or not under Jones or Counsel analysis it would be

1 admissible. There are no results. Nobody is arguing
2 that the results of any polygraph should come in.

3 What we are arguing is that the state and
4 the codefendants entered into an agreement. A
5 condition of the agreement was stated in the state's
6 memo is defendant further agrees that his failure to
7 pass any such polygraph examination to the state's
8 satisfaction will result at state's sole discretion
9 and the obligations of the attorneys for the state
10 within the agreement becoming null and void.

11 So, in other words, they are saying if at
12 some point we decide that you're lying based upon a
13 polygraph all bets are off. And by way of
14 background, I think this will be shown throughout the
15 course of the trial for testimony, the codefendants
16 in this case gave multiple statements. Some of them
17 were memorialized. Some of them were not. I don't
18 think it is at all in dispute that some of them
19 changed their statements. One final version of one
20 codefendant was video taped but others were not.

21 And the argument that we would present is
22 that they ultimately were not asked to give
23 polygraphs. They were given deals, to us sweet deals
24 in exchange for their testimony. They were told and
25 you better be telling us the truth because we're

1 going to polygraph you. And, if you're not, the deal
2 is off.

3 THE COURT: Well, why can't you still get
4 the deal in?

5 MR. BUTLER: And this portion of the
6 deal.

7 THE COURT: Why is that so sweet?

8 MR. BUTLER: Because what it says is that
9 when the state got the version that they wanted, they
10 didn't want to know whether or not they had passed
11 the polygraph. They got the version that they wanted
12 out of all of the different ones that were coming
13 together.

14 THE COURT: Is that speculation?

15 MR. BUTLER: I think that the testimony
16 would bear that out. As I said, different witnesses

17 gave different versions. Some of that is not in
18 dispute. Eric Zack, for example, gave one version
19 and then gave another.

20 THE COURT: But you would still be able
21 to have that conflicting testimony anyway.

22 MR. BUTLER: Well, and that would
23 definitely be brought out, but this takes it a step
24 further. It says that the state did not want to
25 really know whether -- did not really want to be able

1 to corroborate these statements.

2 The codefendants changed their statements
3 until they get ones they like. And this is the exact
4 thing that you would think that they would want to
5 polygraph them for. They give different versions.
6 They don't jive with one another, the codefendants
7 don't. And they say you better make sure that we can
8 corroborate these statements because we're going to
9 polygraph you and they never do.

10 THE COURT: But the plea agreement
11 doesn't require a polygraph. That may be requested
12 by the government.

13 MR. BUTLER: That's right. But the fact
14 that that condition was set out there and never
15 enforced -- and I understand that it was an
16 optional. But it's the fact that they never even
17 asked them to take the polygraph.

18 THE COURT: So the fact that it is
19 optional doesn't mean they did anything to suggest
20 they have this other purpose than just going with the
21 evidence that is presented. They don't have to give
22 a polygraph in every case, and they don't give a
23 polygraph in every case.

24 MR. BUTLER: And I'm not suggesting that
25 this is a contract that should be enforced. I'm

1 saying that that --

2 THE COURT: What I'm trying to ascertain
3 is why would that go to bias on the part of the
4 witness for purposes of cross-examination. That is
5 what I'm trying to find out.

6 MR. BUTLER: It doesn't so much go to the
7 bias of the witness, although in part it does. It
8 shows how sweet the deal really was.

9 THE COURT: The deal is not sweet by that
10 standard language.

11 MR. BUTLER: The deal becomes sweet
12 because what happened was they weren't ever held in
13 check. This deal is sweet because they say tell us
14 the truth but then they don't hold them to it, so
15 they can lie all they want because they weren't asked
16 to take a polygraph.

17 You know, let me give you another example
18 that's less problematic if it's not a polygraph. For
19 example, they say you better be telling us the truth
20 because we're going to take DNA tests to make sure
21 that, in fact, you're telling us the truth and they
22 never do that. Or if they say you better be telling
23 us the truth because we have all of these other
24 witnesses and your statement better be corroborated
25 by theirs and then they never do that.

1 The only difference is this is a
2 polygraph which throws up a huge red flag, which I
3 agree should be a red flag but only because the
4 results are unreliable. If they gave them the
5 polygraph, it wouldn't be an issue.

6 THE COURT: Well, I think your argument
7 would be better if the plea agreement required a
8 polygraph. I don't think it is the polygraph that is
9 throwing up as much of a red flag, in my opinion, as
10 what the agreement itself does. You want me to draw
11 an inference because they did not polygraph them.
12 They thought that they would receive a different
13 answer than what they would have received had they
14 polygraphed them.

15 MR. BUTLER: And that's why it is
16 optional. I think it cuts my way too. If they say
17 you are definitely going to have to take a polygraph
18 and then -- then they are forced to give them the
19 polygraph. So what they do is they hedge. The state
20 says you may be required to take a polygraph. And if
21 you fail, the deal is yanked. So this allows them
22 not to give them the polygraph once they gave the
23 version that they want. And then they don't
24 polygraph them and they are not held to that. I
25 think again --

1 THE COURT: Again, the only way it is
2 probative, from your perspective, is if you can argue
3 that theory in good faith.

4 MR. BUTLER: Which theory?

5 THE COURT: That the state knew that they
6 were going to testify differently and that's why they
7 didn't give them the polygraph.

8 MR. BUTLER: It will be born out by
9 testimony.

10 THE COURT: Conflicting testimony does
11 not mean that is why they did not give the
12 polygraph. What is going to show that?

13 MR. BUTLER: Well, I guess my question
14 would be when else would they give them a polygraph.
15 If they are getting different versions from different
16 witnesses or different codefendants and the
17 codefendants change their stories and then they don't
18 polygraph them, when will they ever polygraph them?
19 I will tell you when they would is when they gave
20 them a version that they didn't like and they stuck
21 to it.

22 When they got a version that they liked,
23 they didn't want to polygraph them because if they
24 fail the polygraph the deal would be gone and they
25 couldn't use it.

1 So it is not just to the bias of the
2 witness. That is part of it, but it goes to the
3 integrity of the investigation and the prosecution as
4 a whole in the same way that if you told them we are
5 going to take DNA samples and you better be telling
6 us the truth and then they never did it.

7 THE COURT: Do you want to respond?

8 MISS WILSON: There is a huge difference
9 as Mr. Butler said in a DNA situation and a polygraph
10 situation. I think what the defense would be trying
11 to do by offering up or cross-examining on this issue
12 would be to show some sort of bias in the prosecutor
13 which means we are then witnesses which means we have
14 to get up and explain why we polygraph sometimes and
15 why we didn't. I think Mr. Butler is taking an
16 extremely simplistic view about when polygraphs are
17 used.

18 I think it's also assuming that they
19 won't be polygraphed, although I don't have any
20 intentions at this moment of doing that. But what
21 would be the problem if Mr. Zack, for example, gets
22 on the stand and testifies -- he is hammered about
23 the polygraph provision. And we say you know what,
24 you're right, let's go polygraph him right now. Then
25 the next day we bring him in because he's opened the

1 door with his questions about the plea agreement,
2 have him polygraphed, and then we get into the
3 results.

4 I don't think you can look at this in a
5 vacuum and not consider what would happen if these
6 people were polygraphed and also understand that that
7 is something that we have to look at when making the
8 decision to use those resources to do that.

9 I don't think you can just take the
10 simplistic view of they like the story so they stop.
11 I think it is agreed that there will be some
12 difference in testimony among the witnesses. And I
13 think the point of that is the defense has the
14 argument they want. They have the argument they want
15 about what the investigators were looking for and
16 what they were trying to find and things like that.
17 They will have enough in the record to make that
18 argument without the muddled view that the jury will
19 get from the polygraph information. That is the
20 concern that we have.

21 I think the prejudicial effect of getting
22 into the polygraph provision and then what I believe
23 will lead us straight to polygraph results I think
24 under a 403 analysis it is really not worth it. It
25 is not that -- you're not taking away a defense

1 argument by ruling in Limine that they can't
2 cross-examine on that issue. And I think as the
3 court has seized upon it it's really not an issue as
4 to the witnesses. Because as far as the witnesses
5 know, they might be polygraphed just before
6 sentencing. It is really an issue as to what the
7 prosecutors are thinking. And I just don't think we
8 need to go down that path. I think they have enough
9 fodder for the investigation to make the argument
10 they want to make. Their hands won't be tied as to
11 that argument.

12 THE COURT: All right.

13 MR. BUTLER: May I respond briefly?

14 THE COURT: Yes, sir.

15 MR. BUTLER: The fact that we have fodder
16 for that argument supports my position. The fact
17 that we have enough to support me asking to get in
18 this other evidence doesn't mean that we should then
19 be limited. This is going to further support it. I
20 want to defend my client not sort of okay. I want to
21 do it as best I can, and this adds to it. So that
22 argument supports my position.

23 And it wouldn't lead to the results
24 because what they have been given the offer for is
25 for their testimony. By the time they have

1 testified, they should have been given a polygraph if
2 they thought they were lying.

3 So what would happen? Let's say they
4 testified and I asked about that and then they
5 polygraph him and he fails. What happens then? I
6 mean, he's already testified. At sentencing and he
7 fails, what happens then? He has already testified
8 and the client may or may not already be found
9 guilty. So up until the time they testify, it serves
10 no purpose to speculate about what the results of the
11 polygraph would be.

12 Now, if they want to give them to them
13 today, that's fine. Then we know what happens and
14 then we don't ask the question because they complied
15 with it. It's not the results, pass or fail. The
16 problem is they were threatened with the potential
17 for a polygraph to make sure they were telling the
18 truth and then that threat was never enforced.

19 THE COURT: See my thought is one step
20 removed from yours. I agree with you that it is not
21 the result that would be dispositive. But instead it
22 is whether or not the individual did something in
23 violation of the agreement, in my opinion. And the
24 fact that it is optional leads me to conclude that
25 there is nothing that would go to the question of

1 bias in this case.

2 MR. BUTLER: But it is at the option of
3 the state. I don't mean to interrupt. It's at the
4 option of the state. It's not his option. If he
5 wants the deal and they want him to do it, they have
6 to -- he has to or the deal is gone. That is exactly
7 what it said in the proffer agreement.

8 THE COURT: He doesn't have to deal. He
9 doesn't have to deal with them period.

10 MR. BUTLER: But at the time he testifies
11 he is dealing. I mean, that's what the agreement
12 is: I will cooperate. At the time that he is
13 cooperating, he is performing. I hate to get into
14 these contract terms because I don't have a contract
15 argument. But, at the time that he cooperates, he is
16 involved in a deal. He is receiving the benefit of
17 the deal. ~~They have already pled to reduced charges.~~

18 THE COURT: And you can get that in.

19 MR. BUTLER: I know I can get all of that
20 in, but that doesn't mean that I want to not get in
21 this other stuff that I think is good.

22 THE COURT: But there is nothing that is
23 probative as to the issue of bias. You acknowledge
24 that.

25 MR. BUTLER: No. If I did, I misstated.

1 It is probative for bias to the witness, but that's
2 only half of it and maybe even only one-fourth of
3 it.

4 THE COURT: How is it probative for bias
5 of the witness? You did state that.

6 MR. BUTLER: Well, I thought you were
7 just telling me I agreed that it was not probative of
8 bias.

9 THE COURT: You said it went more to the
10 nature of their investigation, not to the bias of the
11 witness.

12 MR. BUTLER: Yeah, I think it goes more
13 to that. I think it goes to both. I think it goes
14 more to the integrity of the investigation and the
15 prosecution.

16 THE COURT: How does it go to the bias of
17 ~~the witness when the witness had an agreement, did~~
18 everything under the agreement? I mean, it is not --
19 it doesn't make the deal better that it is optional.

20 MR. BUTLER: Here is why. Because at the
21 time that he testifies, he is happy that they haven't
22 made him take a polygraph. He was worried at the
23 time. But at the time that he testifies, he is
24 wiping the sweat off his brow because, you know what,
25 they never put me on the box so now I'm really going

1 to make sure I help them. I going to make sure that
2 I help them as best I can because they didn't hold me
3 in check like they threatened.

4 THE COURT: Where does that come from?

5 MR. BUTLER: Because they didn't ask him
6 to take the polygraph.

7 MISS WILSON: We can ask him at any
8 point.

9 THE COURT: Is that an automatic
10 presumption? I mean, are you speculating again?

11 MR. BUTLER: About what?

12 THE COURT: About the witness.

13 MR. BUTLER: Well, I have to to some
14 extent, yeah.

15 THE COURT: Are you -- am I suppose to
16 infer that the witness is sweating it out about

17 whether or not he's going to take a polygraph test?

18 Where does that come from? There has to be facts.

19 MR. BUTLER: If a person has charges
20 pending with the solicitor's office, I'm speculating
21 as to whether or not they are bias. All bias, to
22 some degree, is speculation. He may be telling
23 exactly what he would say whether he had charges or
24 not. But I still get to ask the question.

25 THE COURT: But if he is standing up

1 saying I pleaded guilt to this offense, I acknowledge
2 this and I have a deal with the state, I just still
3 don't see what more that the optional polygraph is
4 going to change or add to it from a probative
5 perspective.

6 MR. BUTLER: I don't know what else to
7 say other than --

8 THE COURT: I understand. I deny the
9 reference to that. You-all redact that information.

10 Next motion.

11 MR. BUTLER: Just objection based on the
12 right to confront witnesses, state and federal
13 constitution.

14 THE COURT: Yes, sir.

15 MISS WILSON: Your Honor, one other
16 housekeeping matter. We had asked that we have the

17 two co-case agents present in the courtroom. That
18 would be Detective Denise Schwerin and Detective
19 Walker, and I believe they had some objection to
20 that.

21 THE COURT: Yes.

22 MR. BUTLER: Yes. Our objection is the
23 state doesn't get both -- all of the benefits of
24 joining these trials together. I mean, we didn't get
25 twenty strikes. We don't get to get two openings and

1 two closings. He doesn't get to testify twice if he
2 wants to. I don't get to cross-examine the witnesses
3 twice if I want to. You know, if they decide to join
4 these trials together and try them together, some
5 things they have got to suck up. They get one lead
6 investigator at the table.

7 THE COURT: Actually the law does not
8 give the one, but if you are agreeable to one I
9 think --

10 MISS WILSON: I think it is within your
11 discretion as to --

12 THE COURT: It is totally in my
13 discretion as to whether anybody stays. But I will
14 go along with that. One person only.

15 MISS WILSON: And, judge, the plea
16 agreements are already in evidence in each of the
17 ~~codefendant's cases. And I guess since we were~~
18 offering them in evidence they will be a part of this
19 record as well. I just want to make sure we are
20 straight on all of that.

21 MR. BUTLER: As long as I get -- now the
22 polygraph information is redacted.

23 THE COURT: Well, I guess you would want
24 the whole agreement for purposes of this hearing in
25 there, right?

1 MR. BUTLER: Sure.

2 THE COURT: It would have the polygraph
3 information.

4 MR. BUTLER: Yes.

5 MISS WILSON: And also it would be our
6 position, just for the record, that the polygraph
7 provision is they are subject to a polygraph at any
8 time. And if at any time, even after this, if they
9 were to fail a polygraph our obligations would be
10 void so I understand how that -- Mr. Butler's
11 argument.

12 THE COURT: Well, I agree. I mean, they
13 could get into that too if they wanted to. They
14 could still take it and have some action taken
15 against them. But go ahead and mark the whole
16 agreement for Court's ID purposes and then put a
17 redacted version in for the evidence. Is that okay?

18 MR. BUTLER: Yes, sir.

19 MISS WILSON: And I suppose the same will
20 be true with the proffer agreements. It's the same
21 type language.

22 MR. BUTLER: Can I speak with her?

23 THE COURT: Sure.

24 (Counsel confer off the record.)

25 THE COURT: Next.

1 MISS WILSON: I think we are ready for
2 the Jackson V Denno now.

3 THE COURT: Call your witness. How many
4 witnesses do you have?

5 MRS. BURNEY: Just one.

6 THE COURT: How long will that take?

7 MRS. BURNEY: It will take awhile.

8 THE COURT: Let's go ahead and break for
9 lunch.

10 MISS WILSON: There is one other issue,
11 Your Honor, that I think we can take up just if we
12 want to kill a little bit of time.

13 THE COURT: All right.

14 MISS WILSON: Your Honor, your clerk
15 asked us in the pretrial meeting about Lyle and 404B.

16 THE COURT: Right.

17 MISS WILSON: And I was trying to search
18 my mind about that. I do not consider the
19 defendant's drug use and drug sales -- or not sales
20 but involvement in drug activity to be 404B or
21 Lyle-type evidence in this case.

22 I do consider it a part of the res gestae
23 of the case because one of the witnesses, Eric Zack,
24 testified that he and the defendant were riding
25 around the afternoon of the murders and that the

1 defendant was making arrangements to either sell some
2 drugs or pick up some drugs, something to that
3 nature.

4 In addition, after the first murder,
5 there would be some testimony that marijuana was
6 smoked at Peter Davies' house. I don't believe there
7 is any testimony that the defendant himself smoked
8 marijuana but certainly it would have been in his
9 presence. And there also would be evidence that in
10 the robbery at Dante Tobias' house some drugs were
11 stolen and that would come in through some of the
12 parties involved and also through some of the
13 witnesses that the defendant confessed to later in
14 jail.

15 In addition, Your Honor, one witness who
16 had some interaction with the defendant a few days
17 after the murder would testify basically to the
18 effect that he saw the defendant at a club. The
19 defendant approached him to try to purchase some
20 cocaine. I believe it was powder cocaine for the
21 defendant to sell. The witness did not have any --
22 enough for that type of a thing. They went into the
23 bathroom and the two of them snorted some cocaine
24 together. And during that incident of the snorting
25 of the cocaine, the defendant confessed to his

1 killing Dante Tobias and Beverley Blake.

2 Again, for the witness to tell his
3 version of what happened, he is going to have to
4 explain why they were together, what they were doing
5 in the bathroom, that sort of thing. So I think it
6 is part and parcel of the testimony.

7 As I tried to articulate to the defense
8 attorneys, I don't intend to offer this evidence to
9 show, at least with regards to the witness at the
10 club and the use, as to show any kind of motive or
11 intent or anything like that. It's just part of what
12 was going on and why they became involved in this
13 conversation. And I think it is important for that
14 to -- for the witness to be able to tell a truthful
15 version as to what happened.

16 And then with regards to the defendant
17 robbing Dante Tobias, I think it is important to show
18 one of the reasons he wanted to rob Mr. Tobias is not
19 only he believed there were drugs and money but that
20 he believed there was some cocaine there. And I
21 believe the testimony also would be that some
22 marijuana was taken and then a small bag of marijuana
23 was recovered from Ms. Blake.

24 THE COURT: Well, then that would go to
25 motive; wouldn't it?

1 MISS WILSON: That part would go to
2 motive, yes, sir.

3 MR. BUTLER: I don't want to interrupt
4 you, but we don't have any problem with that. If
5 that makes it easier.

6 MISS WILSON: Okay. So the --

7 THE COURT: You don't have any problem
8 with the robbery?

9 MR. BUTLER: I don't have any problem
10 with the drugs that are alleged to have been taken in
11 the robbery. I don't have any problem with the
12 allegation that marijuana was smoked after the
13 robbery.

14 The problem that I have is with the
15 allegation that drugs were being dealt earlier in the
16 day prior to the robbery and that some days later
17 ~~when the witness says he hears this statement that~~
18 cocaine was being used. Those are the two that I
19 object to.

20 MISS WILSON: I think it is going to be
21 again part and parcel of the testimony because it's
22 going to be a little curious to the jury and awkward
23 for the witness that these two men are in the
24 bathroom having this conversation for this amount of
25 time. It just is going to seem phony that two guys

1 that age are going to go to the bathroom and hang out
2 together and have a conversation.

3 I think it sets the context of why this
4 came up. It also shows their relationship and the
5 defendant's willingness to trust the witness.

6 I think the jury could also have a
7 question about that why is he just going to tell this
8 Bozo at a bar about this. Well, he is telling him
9 because they have a relationship of trust and that is
10 around drugs. It surrounds drugs.

11 MR. BUTLER: I think they can explore the
12 trust relationship all they want. I guess I would
13 beg to differ about the relationships that people
14 have in the drug dealing business as to whether they
15 are trusting. But I guess that's a separate issue.
16 I can tell you I have conversations in bathrooms all

17 of the time and I've never done cocaine once in my
18 life. And I don't think that I'm the exception. I
19 don't think there needs to be any explanation as to
20 why they are in the bathroom talking. People at
21 clubs run into people they haven't seen in a while in
22 bathrooms all the time and have discussions.

23 THE COURT: Well, your only objection is
24 to the drug issue earlier in the day?

25 MR. BUTLER: No, and that one, the one

1 that she just -- that is after the crime has taken
2 place. I mean, that's days after the crime is
3 suppose to have happened. So it certainly can't be
4 res gestae or anything else.

5 THE COURT: Why would that be necessary
6 to present the full case if it is days afterwards?

7 MISS WILSON: Your Honor, I think it is
8 necessary to present the full context of the
9 confession, the confession that the defendant made.

10 You know, he approaches this witness
11 looking for some cocaine to sell. The witness
12 doesn't have enough, you know, any kind of amount
13 that would be worthy for sell so they go into the
14 bathroom and commence to snort. And during that
15 conversation, the defendant confesses.

16 Again, people were banging on the door.

17 I think the testimony from several witnesses will be
18 that people were banging on the door to get in while
19 this defendant and the witness are in there.

20 THE COURT: He confessed while he was
21 doing drugs?

22 MISS WILSON: Uh-huh.

23 THE COURT: Are you attacking any
24 confession in this case?

25 MR. BUTLER: We dispute whether or not

1 there is a confession. When she says confession, she
2 doesn't mean to law enforcement.

3 THE COURT: Okay.

4 MR. BUTLER: It's the statement they are
5 saying he said to a guy in a bathroom.

6 MISS WILSON: That's correct, Your
7 Honor. This occurs -- we allege that the murder
8 happened on a Monday evening and this happened I
9 believe the following Friday.

10 THE COURT: Are you going to require any
11 testimony on that?

12 MR. BUTLER: With respect to what?

13 THE COURT: About the facts or anything
14 for purposes of this hearing?

15 MR. BUTLER: Well, we dispute whether or
16 not the statement was made, but I don't know whether
17 or not that makes a difference. And I think even
18 assuming -- if we can assume that that is what
19 happened, I don't think it comes in. And if you want
20 me to after lunch I can have cases. There are tons
21 of cases dealing with Lyle and res gestae and drugs.

22 If it provides the incentive for the
23 crime itself, I mean that's the classic example when
24 it comes in and that's why the drugs --

25 MISS WILSON: Right.

1 MR. BUTLER: -- that are in the safe I
2 don't have any problem with. But five days later the
3 fact that the state says he was using drugs when he
4 makes a statement, you know, I don't see how that
5 makes the statement any more credible with that
6 evidence in in that context.

7 THE COURT: I will think about that
8 during lunch.

9 MISS WILSON: I don't think that will
10 come up for a few days.

11 MR. BUTLER: What about the drug dealing
12 on the day of? Do you want to take that up as well?

13 THE COURT: The drug dealing the day of?

14 MR. BUTLER: The day of. The allegation
15 is that -- I believe the position of the state is
16 that they were driving around that day before the
17 robbery looking to sell drugs.

18 MISS WILSON: I'm not sure if he was
19 looking to sell or looking to buy, and I don't think
20 the witness is sure exactly what he was doing with
21 regards to some Ecstasy. But they road all over the
22 countryside and basically left a note on a door at
23 one place. And it was the witness' understanding
24 that based on what the defendant said it was drug
25 related. In the midst of this, they get the call

1 from Beverly Blake.

2 THE COURT: That the purpose for the
3 robbery was they thought he had drugs?

4 MISS WILSON: Yes, sir. But I think we
5 have it divided into two issues. I think the defense
6 does not take issue with the fact that one of the
7 reasons -- or at least our evidence would be that one
8 of the reasons the defendant participated in this
9 armed robbery was because he believed that there were
10 drugs in the safe.

11 What Mr. Butler takes issue with is
12 before they get the call that says hey there are
13 drugs, money, guns in the safe, they are scooting
14 around town involved in drug activity. And I think
15 that is the part he has an issue with.

16 MR. BUTLER: If he were going to look to
17 ~~buy cocaine, I don't object. But I don't think that~~
18 is what the testimony is. Their exact statement is
19 that they were driving around looking to sell
20 Ecstasy. And if the position was that the victim was
21 looking to buy Ecstasy and that is why the call was
22 made, then I would agree too. But if he is looking
23 to sell Ecstasy and she says come over you can steal
24 this cocaine, I don't see that they are connected at
25 all.

1 THE COURT: I'm inclined to agree with
2 that. I'm not so sure why that falls within part of
3 the context of the crime for purposes of res gestae.

4 MISS WILSON: Okay. So you want us to
5 stay away from that?

6 THE COURT: Yes.

7 MISS WILSON: And in addition, Your
8 Honor, Mrs. Burney just reminded me that Peter
9 Davies' testimony will be -- and I have forgotten
10 about this as well -- that when later in the evening
11 while Ms. Blake is still alive that the defendant
12 when they are going down the road out near
13 Lincolnville the defendant says that he needs to drop
14 off some cocaine. Well, they don't do that. They go
15 in the woods and Ms. Blake is shot. But that is what
16 he says to Peter Davies and that is where Peter
17 Davies thinks they are going.

18 THE COURT: What about that?

19 MR. BUTLER: May I ask is that in Peter's
20 statement because I don't recall it?

21 MISS WILSON: No, it is not.

22 MR. BUTLER: He is going to say that
23 now?

24 MISS WILSON: Uh-huh.

25 MR. BUTLER: The fact that he doesn't do

1 that removes it from any res gestae or Lyle
2 situation. And other bad acts can be offered to
3 explain and provide context. I mean, if he had gone
4 somewhere where there was a place to buy cocaine and
5 that is where the victim ends up, then it would come
6 in.

7 MISS WILSON: But I guess it's not
8 another bad act. It is just something that the
9 defendant said and Peter Davies believed that's what
10 they were doing. And then he ends up on the side of
11 the road where the second victim gets killed.

12 THE COURT: Well, I mean, the fact that
13 he believed that was the thing doesn't mean that it
14 was a bad act.

15 MR. BUTLER: No, it may not be a prior
16 bad --

17 THE COURT: It may be something that
18 would be analyzed in that term. He just thought he
19 was under a different --

20 MR. BUTLER: Sure.

21 MISS WILSON: I think --

22 MR. BUTLER: It may not be a prior bad,
23 but it's character -- it's propensity evidence,
24 character evidence. And if he doesn't say to him,
25 well, since when did you start dealing cocaine, then

1 the obvious inference is that he is a cocaine
2 dealer. So it may not be a prior bad act but it's
3 still propensity evidence and character evidence
4 which falls under 404B as well -- 404A.

5 MISS WILSON: I think it is clearly part
6 of the res gestae because Peter Davies is with the
7 defendant and with the second victim and he is
8 telling a narration of what he believes is happening
9 and what no doubt the victim believes is happening.
10 You know for them to end up in this remote area of
11 the woods where the defendant supposedly gets lost
12 going to make this delivery, which was a sham. I
13 don't think we have any evidence that the defendant
14 set out to deliver some cocaine that night.

15 THE COURT: Yes. I'm going to allow
16 that. All right.

17 MISS WILSON: I think that's all, Your
18 Honor.

19 MR. BUTLER: That's just one more new
20 fact from the person who wasn't polygraphed and they
21 are going to come out. And I would like to renew my
22 motion at the appropriate time.

23 THE COURT: All right. We will go ahead
24 and break for lunch.

25 MISS WILSON: Judge, I believe that is

1 all that we have. I had made a motion regarding
2 third party guilt but I talked with defense
3 attorneys. I think we can take that up as we --
4 probably as we get to it.

5 THE COURT: You mean I let this jury go
6 for nothing?

7 MISS WILSON: No, we have Jackson V.
8 Denno afterwards.

9 THE COURT: Okay.

10 MISS WILSON: And then we are going to
11 mark numerous -- a voluminous amount of exhibits.

12 THE COURT: All right. Do you have
13 stipulations?

14 MISS WILSON: We will have those this
15 afternoon.

16 THE COURT: What time -- how may
17 witnesses? You have one witness for Jackson versus
18 Denno. Are they here?

19 MRS. BURNEY: Yes.

20 THE COURT: All right.

21 MISS WILSON: If we could take up the
22 Jackson V. Denno hearing, then I think we would be
23 free to have a working afternoon kind of with Holly.

24 THE COURT: I don't want to do that now.
25 It is already going on...

1 I don't mind coming back earlier. If
2 you-all will be back at 2:15, we will pick up with
3 that.

4 (A lunch recess transpired.)

5 THE COURT: All right. Are you-all ready
6 to proceed?

7 MRS. BURNEY: Yes, Your Honor.

8 THE COURT: Is the defense ready to
9 proceed?

10 MR. BUTLER: Yes, sir.

11 MISS WILSON: I believe there were some
12 matters that you were going to put on the record.

13 THE COURT: Let's get to the Jackson
14 versus Denno while people are waiting.

15 MRS. BURNEY: We call Sergeant Walker.

16 MISS WILSON: I'm talking about the issue
17 with Mrs. Shealy.

18 THE COURT: Oh, yes, I wanted to put that
19 on the record. Mrs. Shealy is not here. Cocounsel
20 is here. But that was with the permission of the
21 defendant or approval of the defendant; is that
22 correct?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Let the record
25 reflect she had to go to the doctor and the defendant

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1 wished to proceed with his cocounsel just for the
2 motion process here today; is that correct?

3 MR. BUTLER: Yes, sir.

4 THE COURT: All right.

5 MRS. BURNEY: The state calls Sergeant
6 Walker.

7 ROBERT L. WALKER

8 being first duly sworn, testified as follows:

9 THE CLERK: Please state your full name
10 to the court and spell your last.

11 THE WITNESS: Robert L. Walker,
12 W-A-L-K-E-R.

13 DIRECT EXAMINATION BY MRS. BURNEY:

14 Q. Sergeant Walker, where are you employed?

15 A. With the Charleston County Sheriff's
16 Office.

17 Q. And are you assigned to the case
18 involving the defendant?

19 A. Yes, ma'am, I am.

20 Q. What is your involvement with that case?

21 A. I was a person's crime detective at the
22 time with the Charleston County Sheriff's Office and
23 I was designated the case agent for this particular
24 case.

25 Q. Did you have an occasion to talk with the

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1 defendant?

2 A. Yes, ma'am, I did.

3 Q. All right. Did you advise him of his
4 constitutional rights?

5 A. Yes, ma'am, I did.

6 Q. Did you use anything to assist you in
7 that?

8 A. Yes, ma'am. We have -- the Charleston
9 County has a form with is called the Charleston
10 County Sheriff's Office Advisement of Rights Form.
11 And it has the individual's personal rights on it,
12 and at the bottom the waiver of the rights if they
13 chose to waive their rights and speak with us
14 involving a criminal matter.

15 Q. Did you use that form?

16 A. Yes, ma'am. I used that particular form
17 when I spoke to Mr. Mann when he was taken into
18 custody in reference to another case.

19 Q. What was that other case?

20 A. Mr. Mann was developed as a suspect in an
21 unrelated armed robbery of some individuals. On the
22 15th of January, he was taken into custody by my
23 agency. He was brought back to the sheriff's office.
24 He was advised of his Miranda warnings. And after
25 waving the same, he gave a statement in reference to

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1 an unrelated crime in addition to the case that we
2 are here for today.

3 Q. Did you advise him of his rights when you
4 talked to him about that unrelated case?

5 A. Yes, ma'am. I spoke with him in
6 reference to the unrelated case prior to this case.
7 There was a separate advisement of rights form done.

8 At that time, Mr. Mann gave a signed
9 written statement confessing to an unrelated crime.

10 Q. All right. What is the manner in which
11 you advised him of his rights using that advisement
12 of rights form?

13 A. What we do is we fill out the top of the
14 form with all of the pertinent information, the
15 individual's name, address, employment, social and so
16 forth. In the middle of the form, it has his actual
17 constitutional rights. I read every individual right
18 to the person. I pause, ask them if they understand
19 it. I draw a little line beside each one and have
20 them initial it if they fully understand each right.
21 I did so with all five of Mr. Mann's rights.

22 At the end, it asks if he fully
23 understands each of these rights which have been
24 explained to him. He signed that that he did. I
25 witnessed it and Detective Garland, who was in the

R. WALKER - DIRECT EX. BY MRS. BURNEY

1 interview with me, witnessed it.

2 And then we go down to the waiver of the
3 rights. Once it is sustained that he understands his
4 rights, we go down and we say if you fully understand
5 your rights do you wish to waiver (sic) them and
6 speak to me about a particular crime, and we note the
7 crime. And he also signed that he waived his
8 rights and he would speak with us.

9 Q. And during this time, did you observe
10 that the defendant was under the influence of alcohol
11 or drugs or anything?

12 A. No, ma'am.

13 Q. Did he appear to understand your
14 questions and advisement of rights as you were
15 reading them to him?

16 A. He understood fully.

17 Q. Did you -- and are those markings, those
18 notations that you mentioned on those forms, the
19 advisement of rights forms?

20 A. Yes, ma'am.

21 Q. Did the defendant appear to understand
22 his rights?

23 A. Yes, ma'am, he did fully.

24 Q. Did he speak to you coherently so that
25 you knew that he was coherent and understood you?

R. WALKER - DIRECT EX. BY MRS. BURNEY

1 A. Yes, ma'am.

2 Q. Did he tell you that he wanted an
3 attorney present?

4 A. No, ma'am.

5 Q. Did he invoke his right to remain silent?

6 A. No, ma'am. Not at the initial interview,
7 no.

8 Q. Did he agree to answer questions at that
9 time without an attorney present?

10 A. Yes, he did.

11 Q. Did you promise him anything in return
12 for making his statement?

13 A. No, ma'am.

14 Q. Did you coerce him into making his
15 statement with verbal or physical threats?

16 A. No, ma'am.

17 Q. Was he allowed sufficient time for the
18 creature comforts, break, bathroom breaks, et cetera?

19 A. Yes, ma'am. During the interview process
20 several times he requested a cigarette break. We
21 allowed that. Any time that he said he was thirsty,
22 we gave him a refreshment, a drink. We also provided
23 a meal for him. We took him to Burger King during
24 the interview and got a meal for him when he said he
25 wanted something to eat.

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1 Q. And did he, in fact, give you a
2 statement?

3 A. Yes, ma'am. He gave me two statements.
4 The first statement he was advised -- he gave me a
5 statement, like I said previously, admitting to his
6 involvement in an unrelated armed robbery.

7 During that interview, Mr. Mann asked me
8 several times -- he made utterances. He kept asking
9 me was that all I'm here for, was that all I'm here
10 for. And I advised him to take it easy, relax. I
11 said we'll get through this and we'll talk about
12 everything I promise you before we leave. And he
13 kept -- he asked me several times, at least four or
14 five times, is that all I'm here for.

15 Once I completed the interview involving
16 the unrelated armed robbery, we gave him another
17 break, gave him a cigarette. He wrote that initial
18 statement himself.

19 Once we gave him a break, we came back.
20 I said okay, now, this is what I want to talk to you
21 about. I advised him again of his rights before I
22 asked any questions. He advised -- he signed and
23 agreed to it and he waived his rights and agreed to
24 talk to me. And I mentioned to him that it was about
25 a murder and an armed robbery.

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1 I asked Mr. Mann if he could write a
2 statement. He said that he couldn't that he was too
3 nervous. And I notated on the statement if he could
4 write it. And he wrote his response was, no, that he
5 was too shaky to write it.

6 The next question was do he wish for me
7 to write the statement for him and he said the answer
8 was yes. And I had him sign that he agreed that I
9 wrote the statement for him.

10 At that time, I wrote the start time
11 which was 12:20 a.m. on the 16th of January.
12 Mr. Mann proceeded to give me a signed written
13 confession to participating in the armed robbery and
14 murder of the victim.

15 Q. Which victim?

16 A. Mr. Tobias.

17 Q. Did he make any other statements to you
18 that were not written?

19 A. Yes, ma'am, he did. On the 22nd of
20 January, myself and Detective Watson who was also
21 employed with the Charleston County Sheriff's Office
22 and was a person's detective at that time took
23 Mr. Mann to the Charleston County Hospital. We had a
24 search warrant for a suspect evidence kit which
25 consists of hair, saliva and blood samples to be sent

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1 off for analysis to SLED.

2 Sometime during our trip down to the
3 hospital we were in the triage area and we were
4 explaining the process to Mr. Mann. I believe in
5 explaining everything to these gentlemen or anyone
6 that I deal with so they understand. He made the
7 utterance that -- he quoted: I told you that her
8 hair would be on me because I hugged her that night.

9 And, at that time, it raised -- obviously
10 raised the antennas with me and I asked him what
11 night. And he realized what he had said. And I
12 asked him if he had anything to tell me. I said do
13 you have anything that you need to tell us. I said,
14 well, if you do, let's wait until we get back to the
15 office. I said this is not the time or place to
16 discuss anything. He said he wanted to talk to us
17 about the Beverly Blake case, murder.

18 I got back after we got done with the
19 evidence collection. We went back to the Charleston
20 County Sheriff's Office. I filled out another
21 advisement of rights form, went through the same
22 process that I went through previously.

23 Mr. Mann, at that time, invoked his right
24 to counsel. I immediately ceased all questions. We
25 contacted his attorney who was Ashley Pennington at

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1 is questions and answers that were actually taken on
2 the 16th with the first statement, the first
3 confession statement.

4 Q. All right. Now, to the best of your
5 knowledge, were his written statements freely and
6 voluntarily given?

7 A. Yes, ma'am, they were.

8 Q. I'm going to ask you about the oral
9 statement as well. Was that in response to any
10 questioning the statement that he -- when he asked
11 you is that the only reason that I'm here for, is
12 that all that you want to ask me about?

13 A. No, ma'am. No, ma'am. Initially all I
14 spoke to him about was the armed robbery. I wanted
15 to get through that because that is what we had
16 obtained the arrest warrants for. And I told him
17 that I had some other things that I wanted to discuss
18 with him, but we would take care of it in due time.

19 Q. And how about the other oral statement I
20 told you that my hair -- her hair would be all over
21 me because I was hugging her? Was that freely and
22 voluntarily given in response to any questioning from
23 you or law enforcement?

24 A. It was given voluntarily and freely,
25 ma'am. He made that excited utterance during the

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1 process of me, like I said, explaining to him what
2 was entailed during the evidence collection because I
3 like to explain to people what it is that is going to
4 happen to them and that is what I was in the process
5 of doing when he made the statement.

6 MRS. BURNEY: Please answer Mr. Butler's
7 questions.

8 THE WITNESS: Yes, ma'am.

9 CROSS-EXAMINATION BY MR. BUTLER:

10 Q. Good afternoon, investigator. How are
11 you?

12 A. Yes, sir, good afternoon.

13 Q. You go by detective or investigator?

14 A. Detective is fine.

15 Q. Detective?

16 A. Yes, sir.

17 Q. When you take statements from suspects,
18 potential defendants, do you try to follow the same
19 procedure every time, as best you can?

20 A. As best I can, yes, sir.

21 Q. And that helps you because that allows
22 you to make sure that you do everything that you are
23 suppose to do every time. You get into a pattern, a
24 routine, a habit.

25 A. Well, you just try to develop a

R. WALKER - CROSS-EX. BY MR. BUTLER

1 consistent pattern when you are doing things as a
2 detective so you can pay attention to all detail.

3 Q. And that is so you don't forget anything?

4 A. Correct.

5 Q. Because you have to advise the person of
6 each and every one of their rights, right?

7 A. Yes, sir.

8 Q. And you have to make sure that they
9 understand each and every one of their constitutional
10 rights?

11 A. Yes, sir.

12 Q. And you have to make sure that they have
13 knowingly and intelligently waived each and every one
14 of their constitutional rights, correct?

15 A. Yes, ma'am.

16 Q. So if you develop a pattern, that helps
17 you to make sure that you do all of these things,

18 right?

19 A. Yes, sir.

20 Q. And if you get them to fill out an advise
21 of right form and sign it, that helps you to prove in
22 court that the person did just exactly what you say
23 they did, namely they were read their rights, they
24 waived them, they understood them, correct?

25 A. I think it lets the court know that I did

R. WALKER - CROSS-EX. BY MR. BUTLER

1 advise them of their rights and that they understood,
2 yes, sir.

3 Q. Do you have those exhibits?

4 A. Yes, sir.

5 MR. BUTLER: Beg the court's indulgence
6 for one moment.

7 THE COURT: Yes, sir.

8 BY MR. BUTLER:

9 Q. So you read him his rights and had him
10 sign the advise of rights form before you took the
11 first statement on the unrelated armed robbery?

12 A. That's correct.

13 Q. And then you did the exact same thing
14 before you started taking a statement with respect to
15 these incidents that we are here for today?

16 A. That's correct.

17 Q. And then you did it again when he made
18 the voluntary statement when you were taking the hair
19 samples?

20 A. Correct.

21 Q. Okay. I got you. I think earlier you
22 said that he was arrested around 11:00 on the 15th.

23 A. That was an approximate time, sir. It
24 may have been earlier.

25 Q. Okay. Do you have anything in front of

R. WALKER - CROSS-EX. BY MR. BUTLER

1 you that indicates if it was earlier?

2 A. No, sir. It just has the date and that
3 he was taken into custody. It doesn't have a time on
4 my note.

5 Q. I'm going to show you this document and
6 ask if you recognize it.

7 A. Yes, sir.

8 Q. What is that?

9 A. This is an advisement of rights form that
10 was taken on the 15th.

11 Q. Would that be the advise of rights form
12 for the unrelated robbery, the first one that you
13 read to him?

14 A. Yes, it is.

15 Q. And in the top corner, is there a
16 notation that you made indicating the time of arrest?

17 A. No, this is the time that the interview
18 had started.

19 Q. Can I hold it please?

20 A. Sure.

21 Q. Okay. So if the interview started at
22 8:57 p.m. -- am I reading that correctly?

23 A. Yes.

24 Q. He obviously had to be arrested before
25 8:57 p.m.?

R. WALKER - CROSS-EX. BY MR. BUTLER

1 A. Yes, sir.

2 Q. And 8:57 p.m. is two hours and three
3 minutes before 11:00 p.m.?

4 A. Correct.

5 Q. Right. So he couldn't have been arrested
6 at 11:00 p.m., right?

7 A. No, sir.

8 Q. Okay. So, based on that, can you give
9 me -- and I'm not trying to trick you. I'm just
10 trying to establish a chronology, if I could.

11 A. I understand.

12 Q. Can you give me an estimate on the time
13 that he would have been arrested if you started this
14 interview at 9:00 p.m.?

15 A. Okay. Like I said, I gave you an
16 approximate time because I wasn't sure. But it had
17 to be before 8:57 p.m.

18 Q. I got you. Can you estimate as to how
19 much longer?

20 A. No, sir, I can't.

21 Q. Can you tell me -- 8:57 p.m. is the time
22 that you started the interview with him, correct?

23 A. Yes, sir.

24 Q. What time was the statement taken?

25 A. That's the start time from the time that

R. WALKER - CROSS-EX. BY MR. BUTLER

1 he is advised of his Miranda warning until the finish
2 time that is on there. That's from the advisement
3 through the statement and the ending time of the
4 actual statement being taken.

5 Q. I'm going to ask you how this process
6 works because I'm not exactly clear. But the way I'm
7 assuming it happens is that you interview him first.
8 You talk to him for a while. And then at the end of
9 the process you have him write a statement. Is that
10 not right?

11 A. No, sir, that is incorrect.

12 Q. Tell me how it works then, please.

13 A. What we do is we bring them in. We ask
14 them if they need anything, if they are comfortable,
15 if we can provide anything for them to make them
16 comfortable. Let them know that we have a situation
17 that we need to talk to them about. But before we go
18 any further we need to advise you of your rights. And
19 then that's when we advise them of their rights. If
20 they choose to waive their rights, then that is when
21 we start questioning. We don't ask any questions
22 prior to them being advised of their Miranda warning.

23 Q. At what point do you have them actually
24 write the statement?

25 A. After they are advised of their Miranda

R. WALKER - CROSS-EX. BY MR. BUTLER

1 warning and they have a full understanding of what
2 their rights are, then we speak to them and interview
3 them. We talk to them about the situation. There is
4 always two detectives in an interview. There is
5 never one detective in an interview.

6 Once they waive their right, we talk to
7 them about the situation. We make little notes. We
8 go over their verbal statement again, clarify
9 anything that is unclear. Once we have a clear
10 understanding of what it is that they are trying to
11 relay to us, we give them the opportunity to write
12 the statement themselves or then we write it, which
13 in this case Mr. Mann chose to write his first
14 statement on his own.

15 Q. I got you. But you don't just give
16 them -- you don't just sit down with them and say do
17 you have anything to say, here write it out? You
18 interview them first and then you have them write it
19 out?

20 A. After they are advised of the rights and
21 we interview them, yes, sir.

22 Q. Okay. Because, I mean, look at this
23 again. If the times are correct, you started the
24 interview at 8:57, right?

25 A. Correct.

R. WALKER - CROSS-EX. BY MR. BUTLER

1 Q. And then at 9:45, he takes a break?

2 A. Correct.

3 Q. And then at 10:00 p.m. you take him to
4 Burger King?

5 A. He remained at the sheriff's office. We
6 sent out for some food for him, yes, sir.

7 Q. Okay. And what is the last entry?

8 A. 10:45.

9 Q. 10:45 completed?

10 A. Right.

11 Q. All right. So from 9:00 to 10:45, what
12 I'm trying to figure out is when was the statement
13 written?

14 A. After he got done eating, I remember that
15 Mr. Mann he didn't really have a big appetite. He
16 was writing his statement as he was nibbling on the
17 food.

18 Q. Okay.

19 A. Okay.

20 Q. So he started writing his statement then
21 after 10:00?

22 A. After 9:45.

23 Q. So what happened from 9:00 to 9:45?

24 A. That is when we were doing the interview
25 process. Like I said, once he is advised, we talk to

R. WALKER - CROSS-EX. BY MR. BUTLER

1 him. While we were talking to him, he said I need --
2 he said I need a cigarette and I need something to
3 drink. Fine, we stopped. Got him a cigarette. We
4 got him something to drink. He said, well, I'm
5 hungry and that is when we sent for the food.

6 But from 8:57 until sometime around 9:00
7 is when we were talking to him about the situation.

8 Q. From 9:45?

9 A. Correct.

10 Q. Okay. And was the same investigator a
11 witness to both statements?

12 A. Yes, sir, he was.

13 Q. And that is Investigator Garland?

14 A. Correct, sir.

15 Q. And on State's 1 is that Investigator
16 Garland's signature under yours?

17 A. Yes, it is.

18 Q. And I haven't asked this to be marked for
19 ID, but the statement from the initial advise of
20 rights in the unrelated robbery is that Investigator
21 Garland's statement as well?

22 A. No, sir. That's detective Jacobik who I
23 believe was with me when I transported Mr. Mann to
24 the Charleston County Sheriff's Office from Goose
25 Creek where we picked him up.

R. WALKER - CROSS-EX. BY MR. BUTLER

1 Q. Okay. All right. I got you. He was the
2 witness to the advise of rights but Garland was the
3 witness to the statement?

4 A. Correct.

5 Q. Okay. Thank you. At the time after you
6 take the first statement and before you start taking
7 the second statement, what time do you start taking
8 the second statement? I will show you State's 1.

9 A. Start time says 0020 which is 12:20.

10 Q. Okay. So from 10:45 the completion of
11 the first statement until 12:20, an hour and 35
12 minutes, what was going on?

13 A. Mr. Mann was upset about the situation.
14 We gave him a break. We let him -- actually he sat
15 outside for a number of minutes and smoked
16 cigarettes. I sat out -- we have like a little

17 breezeway at the sheriff's office. And we took him
18 outside and let him get some fresh air and smoke a
19 cigarette, brought him back in, got him something
20 else to drink. He was readvised and then we went
21 into the interview.

22 Q. The start 0020 means that is the start of
23 the interview or the start of taking the statement?

24 A. Again, the start of the interview, sir,
25 that is the time from the time I start reading the

R. WALKER - CROSS-EX. BY MR. BUTLER

1 advisement of rights is at 12:20.

2 Q. What was he upset about? You said he was
3 upset for that hour and 35 minutes.

4 A. He was just upset. He was -- I have no
5 idea why he was upset, but he was upset.

6 Q. At this point, this is all at the
7 sheriffs's department?

8 A. Yes, sir.

9 Q. There is another interview that is taking
10 place in a separate part of the sheriff's department
11 of two other witnesses?

12 A. I don't recall. I was -- the interview
13 rooms within the CID are on two separate ends of the
14 building. There is one building with an interview
15 room in it. You go across the hall and there is a
16 separate building, part of a building that has

17 another interview room at the far end of it. I have
18 no idea.

19 Q. Do you remember if you participated at
20 all in the interviews of Nicky and Lisa O'Connell?

21 A. I don't believe I did.

22 Q. Okay. Did you have any contact with any
23 other law enforcement who would have been
24 interrogating or interviewing the O'Connells?

25 A. Not to my -- I don't remember, no.

R. WALKER - CROSS-EX. BY MR. BUTLER

1 Q. But you're familiar with that -- you know
2 from your own case jacket those two people were
3 interviewed with respect to this case?

4 A. Correct.

5 Q. Okay. But you didn't participate in it
6 as far as you know?

7 A. No, I didn't.

8 Q. And you say that you had to write the
9 second statement for him because he was too shaken,
10 or he asked you to or you offered to and he accepted?

11 A. I asked him on the first page of his --
12 the statement in reference to the murder, armed
13 robbery of the victim it says I asked him the
14 question do you wish to write your statement. His
15 answer was I'm too shaky right now. And I said okay.
16 Signed it. And my second question is do you wish for
17 Detective R. Walker, myself, to write the statement
18 based on the information you provide. His answer was
19 yes, and I had him sign that.

20 Q. Why did you ask him the first question do
21 you want me to write your statement?

22 A. Because he wanted to talk to us, but he
23 was upset. He was shaking.

24 Q. You didn't ask him that in the first one?

25 A. Because he wasn't visibly upset at that

R. WALKER - CROSS-EX. BY MR. BUTLER

1 time.

2 Q. So because he was visibly upset, you
3 thought that you needed to ask him if it was okay for
4 you to write it instead of him?

5 A. Yes, sir, I did.

6 Q. Okay. At any time during the time that
7 you were with him, did you ever tell him information
8 that either you knew to be false or didn't know it
9 was true to try to get him to talk? Let me give you
10 an example, not necessarily with this case but just
11 any case.

12 A. Okay.

13 Q. We know that such and such happened
14 because we talked to this person and they tell us
15 this?

16 A. No, sir. At this point in the
17 investigation, we had -- to be honest, we had very
18 little knowledge of any other people involved other
19 than Mr. Mann. So I didn't have any information to
20 do that.

21 Q. Well, if you had very little information
22 at that point why wouldn't that be more reason -- and
23 you understand I'm not accusing you of anything
24 wrong. You understand that you're allowed to do that
25 and I'm just curious if you did.

R. WALKER - CROSS-EX. BY MR. BUTLER

1 If, in fact, you had very little
2 information at this point, why wouldn't that be all
3 of the more reason for you to engage in that practice
4 at this point?

5 A. Let me rephrase that. We had one person
6 who gave us some information in reference to the
7 unrelated case which led to Mr. Mann's arrest. His
8 name came up several times. His name and only his
9 name came up several times at that point so that is
10 why he was questioned in reference to this case.

11 Q. Crumb's name hadn't come up yet?

12 A. No, sir.

13 Q. Zack's name hadn't come up yet?

14 A. Mr. Zack was interviewed. His name came
15 up in relation to the armed robbery, and he was
16 interviewed on his own. I believe it was on the

17 16th. His name wasn't mentioned prior to that.

18 Q. And Peter Davies' name hadn't come up
19 prior to that?

20 A. No.

21 Q. And just so I'm clear, none of those --
22 there were no statements like we know this because we
23 have talked to this other person so you better tell
24 us, nothing like that?

25 A. No.

R. WALKER - CROSS-EX. BY MR. BUTLER

1 MR. BUTLER: Beg the Court's indulgence
2 one moment please.

3 THE COURT: Yes, sir.

4 (Mr. Butler confers with the defendant
5 off the record.)

6 BY MR. BUTLER:

7 Q. A few more questions. When Anthony was
8 arrested, the girl he was riding with was arrested
9 too, right?

10 A. I don't believe she was --

11 Q. Taken into custody?

12 A. She was secured until we took Mr. Mann
13 into custody.

14 Q. Secured where?

15 A. She was just removed from the vehicle.

16 Q. She wasn't taken down to the sheriff's
17 department?

18 A. I don't recall if she was or not.
19 Because once we removed Mr. Mann out of the vehicle,
20 I immediately put him in another vehicle and myself,
21 he and Detective Jacobik left the scene.

22 Q. So you didn't participate in any
23 interview of her either that night?

24 A. No.

25 MR. BUTLER: Beg the Court's indulgence.

R. WALKER - REDIRECT EX. BY MRS. BURNEY

1 I think I'm finished.

2 I have no further questions. Thank you.

3 THE COURT: Anything else from the state?

4 MRS. BURNEY: Just a couple.

5 REDIRECT EXAMINATION BY MRS. BURNEY:

6 Q. Sergeant Walker, Mr. Butler asked you
7 about the time that the first statement started,
8 which was the unrelated armed robbery case?

9 A. Right.

10 Q. What was the defendant's demeanor during
11 that case when you were talking to him about that
12 case and getting that statement from him?

13 A. He was very nonchalant. He didn't seem
14 too concerned.

15 Q. And is that during that time when he
16 asked you the oral statement is that all I'm here
17 for, how do you recall he gave you that statement?

18 A. We were talking about the armed -- he
19 seemed relieved that that's all -- he thought that's
20 all I wanted to talk to him about at the time. He
21 seemed relieved. That's my opinion. And he kept
22 saying is that all I'm here for, is that all you want
23 to talk to me about. And I said we will get to
24 that. I said take your time, slow down, let's get
25 through this and we will talk about other things when

R. WALKER - REDIRECT EX. BY MRS. BURNEY

1 the time was right.

2 But he seemed very nonchalant and
3 relieved that that's all I had to talk to him about
4 at that particular time.

5 Q. And on the advisement of rights form, I
6 believe it's State's Exhibit 1 which has something
7 after midnight on January 16th?

8 A. Yes, ma'am.

9 Q. The start time?

10 A. Yes.

11 Q. What case were you talking about all
12 before that?

13 A. The case before this advisement was the
14 armed robbery of two individuals off of Ashley
15 Phosphate Road.

16 Q. And that is an unrelated robbery?

17 A. Totally unrelated, yes.

18 Q. And what was his demeanor once he started
19 talking about this murder case and the murder
20 investigation?

21 A. He started to become nervous, moved a
22 lot, fidgety. He started sweating. I think at one
23 time he even looked like he was going to weep. He
24 didn't weep. He just got really nervous when I told
25 him that I wanted to speak to him about a murder and

R. WALKER - REDIRECT EX. BY MRS. BURNEY

1 an armed robbery and that is why on the waiver of his
2 rights we stipulate, you know, what it is that we
3 want to talk to him about so he has a clear
4 understanding before I start asking him questions.
5 He became really nervous.

6 Q. And Mr. Butler asked you about him being
7 upset. Was it during this time that he was upset
8 when you were talking about the murder investigation?

9 A. Yes.

10 Q. And during this time, did he write his
11 statement or did you write his statement?

12 A. I wrote it because he was nervous and
13 fidgety, visibly upset. I offered to write the
14 statement for him.

15 Q. And did he -- did he want you to write
16 the statement for him?

17 A. Yes. That is why I asked the two
18 questions. And after each question I had him sign
19 his full signature that he wanted me to write the
20 statement for him.

21 Q. And just so that I understand, I think I
22 may have gotten this wrong. The second page of
23 State's Exhibit 2 has what date on it?

24 A. The 16th of January.

25 Q. And you -- I think you told me earlier

R. WALKER - REDIRECT EX. BY MRS. BURNEY

1 this is actually a part of State's Exhibit 1?

2 A. Correct. After we finished the initial
3 statement, there was some questions that we needed to
4 get cleared up, and I asked these additional
5 questions along with this original statement.

6 Q. And is there any written statement or
7 oral statement that goes along with or any written
8 statement that goes along with Page 1 of State's
9 Exhibit 2 dated January 22?

10 A. No. Page 1 of State's Exhibit 2 is the
11 advisement that I filled out when we came back from
12 the evidence collection when he made the utterance
13 that he knew Beverly Blake's hair would be on him.
14 And I told him to wait until we got back.

15 When we got back, I immediately readvised
16 him of his rights and that's when he invoked his
17 right to counsel and we stopped the interview so no
18 statement was taken.

19 MRS. BURNEY: Your Honor, before I would
20 move these into evidence, I do need to as a
21 housekeeping matter change this one page. It is my
22 error. I have got it correct on my copy. But when I
23 stapled it up here, I transposed one page.

24 THE COURT: Any problem with that?

25 MR. BUTLER: Are they going into evidence

1 or into the record?

2 MRS. BURNEY: I don't know if you want to
3 have it as a court's exhibit or not.

4 MR. BUTLER: If they are just part of the
5 record, that is fine.

6 THE COURT: All right. Go ahead and make
7 them part of the record.

8 THE COURT REPORTER: Do you want me to
9 remark them as court's exhibits?

10 THE COURT: Yes, that's fine.

11 (CT. EXH. 1, Advisement of rights, marked
12 for identification.)

13 (CT. EXH. 2, Advisement of rights, marked
14 for identification.)

15 THE COURT: Anything else?

16 MR. BUTLER: No, Your Honor.

17 MRS. BURNEY: No, sir.

18 THE COURT: You may step down.

19 THE WITNESS: Thank you, Your Honor.

20 THE COURT: Call your witness.

21 MR. BUTLER: We leave it in the court's
22 discretion, Your Honor.

23 THE COURT: Yes.

24 MRS. BURNEY: I think it is explanatory.

25 I think it is freely and voluntarily given each

1 statement that we have identified. The written
2 statements had the companion advisement of rights
3 form and the other utterances were not in response to
4 any questioning.

5 The one statement is this all I'm here
6 for was made after an advisement of rights form had
7 been signed by the defendant.

8 The other statement was a spontaneous
9 utterance on January 22nd, Your Honor.

10 THE COURT: The one that was after the
11 statement are you planning on using that in any way,
12 after the written waiver?

13 MRS. BURNEY: The one on January 22nd?

14 THE COURT: Uh-huh.

15 MRS. BURNEY: Yes, sir, where he says I
16 told you her hair would be all over me because I was
17 hugging her?

18 THE COURT: Uh-huh.

19 MRS. BURNEY: Yes, sir. That was not in
20 response to any questioning.

21 THE COURT: I see.

22 MRS. BURNEY: It was a spontaneous
23 statement.

24 THE COURT: All right. I find that for
25 purposes of this preliminary determination having

1 considered the totality of the circumstances that the
2 defendant's statements were freely and voluntarily
3 and knowingly made and they were not made under
4 duress, coercion or undue influence.

5 I find that the defendant was given his
6 rights. He freely and voluntarily waived those
7 rights under the Fifth and Sixth Amendments of the
8 Constitution.

9 Next matter.

10 MISS WILSON: Judge, I believe that is
11 it. We were going to seek to go through the boxes
12 now and mark the evidence.

13 THE COURT: How many exhibits do you
14 have?

15 MISS WILSON: I haven't counted them up
16 but it is going to be a lot.

17 THE COURT: Do they have any objection to
18 the exhibits?

19 MISS WILSON: Most of them there are
20 not.

21 MR. BUTLER: I can't say for sure that
22 there won't be some to a lot of them. I don't know.
23 I think we have discussed most of them, but I don't
24 want to say sure all seven boxes are coming in
25 without looking at them.

1 THE COURT: Well, as you go through them,
2 let my law clerk know if there's going to be an
3 objection.

4 MR. BUTLER: Sure.

5 THE COURT: If there is no objection, I
6 want to go ahead and mark them.

7 MISS WILSON: We would like to -- or what
8 I would suggest is that we go through them now over
9 the next hour or so with the court reporter and then
10 if the court is still here come back on the record,
11 do that so that they are in evidence and that --

12 THE COURT: I will stay here as you-all
13 go through them.

14 MISS WILSON: I think that will help.

15 THE COURT: It will expedite it if I'm in
16 here.

17 MISS WILSON: Excuse me?

18 THE COURT: Go ahead and start.

19 MR. BUTLER: Can we go over one other
20 brief matter?

21 THE COURT: Uh-huh.

22 MR. BUTLER: With respect to Mr. Mann's
23 housing, he has been transported from -- he was
24 originally at Lieber, which is close by. They
25 transported him to Broad River. For the trial, they

1 brought him back to Charleston County.

2 He has been unable to shower. He has
3 been unable to have toiletries. And he has spoken to
4 me and Mrs. Shealy about it, and we want to see if
5 there is any way we can have him transported to
6 Lieber and kept at Lieber so he can take a shower and
7 have his toiletries.

8 Beg the court's indulgence one moment.

9 (Mr. Butler confers off the record with
10 Mr. Mann.)

11 THE COURT: Why would that be here? Once
12 they transport him here, don't they --

13 MISS WILSON: Our witnesses have had
14 similar problems.

15 SHERIFF'S DEPUTY: I can get somebody who
16 deals with the detention center up here to talk to
17 you about it.

18 MR. BUTLER: And I guess I should say he
19 corrected me. He is not suppose to be at Lieber
20 anymore because I guess there are other people there
21 that he's had problems with. He was stabbed so they
22 separated them.

23 THE COURT: I would rather keep him here
24 in Charleston. They need to make arrangements for
25 him to shower and all.

1 MR. BUTLER: Our second position we would
2 ask the court to order that they allow him to do and
3 have the amenities that he needs.

4 THE COURT: I don't have a problem with
5 that. Tell them to make it happen.

6 MR. BUTLER: Thank you.

7 THE COURT: I don't know about being
8 transported to other places.

9 MR. BUTLER: Do I need to specify what
10 that entails? He said he had trouble getting a
11 razor, shampoo, soap. Do I need to draw up an order
12 and make a list?

13 THE COURT: If you want, you can.

14 MR. BUTLER: It might be safe. I will
15 get that to you before you leave today.

16 THE COURT: All right. Do you have all
17 of your exhibits here? Start those now.

18 (Counsel confer off the record.)

19 THE COURT: I would rather take them up
20 as you go. We will do them as you go.

21 MISS WILSON: Judge, I thought that --
22 well, okay.

23 I think the ones that we don't agree on
24 we are going to have to go through the witness. I
25 don't think the court could make a ruling on them.

1 THE COURT: It just depends on the
2 objection.

3 MR. BUTLER: So we are going to do them
4 one at a time now?

5 THE COURT: Well, as long as you don't
6 need me, you don't have to involve me. As long as
7 you-all agree on them.

8 MR. BUTLER: I thought you said you were
9 going to sit here while we go through them.

10 THE COURT: I am. If you have an
11 objection to one, you are going to tell me about it
12 so I know.

13 MR. BUTLER: Okay.

14 THE COURT: I would have rather you-all
15 done this ahead of time.

16 (Counsel confer off the record.)

17 THE COURT: The issue we left open is the
18 drug sell, the trying to make a drug sale that day,
19 right?

20 MR. BUTLER: I thought you ruled on that.

21 THE COURT: I did not rule on the sale
22 part. I said I would think about that during lunch;
23 didn't I?

24 MR. BUTLER: Which sale, that they were
25 looking to sell drugs during the day?

1 THE COURT: Yes. I thought I said --

2 MR. BUTLER: I though you ruled on that.

3 THE COURT: And then the use of the drugs
4 several days later, right?

5 MISS WILSON: During what we call the
6 confession to, you know, a friend.

7 MR. BUTLER: I thought you ruled on both
8 of those.

9 THE COURT: I said I was going to think
10 about it during lunch.

11 MISS WILSON: I thought for sure I was
12 clear that you were going to rule later on the friend
13 confession --

14 THE COURT: Yes.

15 MISS WILSON: -- because I said we
16 wouldn't get into that for a couple of days, for a
17 few days.

18 THE COURT: Yes, I said I would think
19 about that. I thought the use of the drugs in
20 between you said you didn't have a problem with.

21 MR. BUTLER: Right.

22 THE COURT: That left whether or not they
23 were trying to arrange some sale that day. You said
24 that didn't have any connection.

25 MR. BUTLER: Yes, sir.

1 THE COURT: Those were the two that I
2 thought were open still.

3 Well, what is the drug sale part of it?
4 Why is that necessary for the context of the crime to
5 put the pieces together in any kind of way?

6 MISS WILSON: It just explains what Eric
7 Zack and he were doing leading up to this event.

8 THE COURT: But there is nothing to link
9 that event with --

10 MISS WILSON: That's correct.

11 THE COURT: -- the event that took
12 place?

13 MISS WILSON: That's correct.

14 THE COURT: I'm not prepared to allow in
15 the drug sale.

16 MISS WILSON: Okay.

17 THE COURT: And then that leaves the
18 drugs several days later.

19 MISS WILSON: That they are exchanging
20 and snorting during the time where the defendant is
21 making these statements. I think that supplies the
22 context for that.

23 THE COURT: Is he going to -- is there
24 some denial -- it is kind hard to ask this question,
25 I guess.

1 Are you-all going to contest that
2 statement?

3 MR. BUTLER: Judge, you just said it
4 right. I don't know how to answer that question
5 without -- I can just say this. I can tell you this
6 that all allegations by virtue of us being here are
7 challenged. But I really thought we discussed this
8 and --

9 THE COURT: I didn't rule on that. I
10 know for a fact I said I was going to think about it
11 during lunch. You might not have heard me.

12 Well, don't raise that issue until you
13 approach me again about that.

14 MISS WILSON: That will be a few days
15 away.

16 THE COURT: I will see what the testimony
17 says at that point.

18 (Counsel review exhibits.)

19 MISS WILSON: Judge, we have marked what
20 I perceive is all of the exhibits for right now with
21 the exception of we are still working out our
22 stipulations which we needed the exhibit numbers from
23 and I needed to cleanup some copies, but that is
24 something that will be fairly simple that we can
25 do --

1 THE COURT: Okay. As long as you-all
2 know that you have agreed on the stipulation and
3 there's not going to be any issues about what the
4 wording is.

5 MISS WILSON: When we introduce them, we
6 will be at that point. I think we're there now, but
7 I want to get the finals typed up after I fill in
8 everything and clean the records so that they can
9 look and staple the stipulation with the records they
10 go to and that sort of thing.

11 I would like to just first thing before
12 we take testimony add those to what we have done.

13 THE COURT: Okay. Is that fine?

14 MR. BUTLER: Yes, sir.

15 MISS WILSON: Do we need to go through
16 the list and move them in, or how do you want us to
17 do that?

18 THE COURT: No, everybody agrees -- have
19 you-all looked at those lists?

20 MR. BUTLER: She has been creating it as
21 we have been going along.

22 THE COURT: What we will do is -- is it
23 finalized right here?

24 THE COURT REPORTER: I have ID by what is
25 marked for ID.

1 THE COURT: So State's 3A and 3B through
2 15 are in without objection. 16, 17, 19, 20, 21, 22,
3 23, 24 and 25 are ID'd. Am I reading this wrong? 18
4 looks like it is in.

5 Well, all of you have looked at this
6 list. That will be fine with me. I can put the
7 numbers on anytime.

8 (Counsel review exhibit lists.)

9 THE COURT: Is it fine?

10 MR. BUTLER: It's fine.

11 THE COURT: Fine with the state?

12 MISS WILSON: Yes, sir.

13 THE COURT: All right. Keep me posted
14 tomorrow please.

15 MRS. BURNEY: Judge, I have got one other
16 thing I wanted to ask you about. With regard to the
17 Jackson V. Denno hearing that we had, we talked about
18 another unrelated robbery case. I think Detective
19 Walker is prepared to talk about an unrelated matter,
20 characterize it as an unrelated matter. But I think
21 that in his testimony he will need to at least refer
22 to it because that is the reason that they initially
23 had the defendant in custody under arrest for that.
24 They talked to him about that and then they talked to
25 him about the investigation of these murders.

1 THE COURT: Well, I mean he can't -- he's
2 not going to refer to some pending robbery charge or
3 something; is he?

4 MRS. BURNEY: He would refer to an
5 unrelated case that they just simply talked to him
6 about an unrelated case.

7 MISS WILSON: Or unrelated matter.

8 THE COURT: What is your position on
9 that?

10 MRS. BURNEY: I think he's prepared to
11 characterize it that way.

12 MR. BUTLER: As long as it is in the
13 context of an unrelated matter and not that the
14 defendant in this case was a suspect in other matter.

15 THE COURT: Is he here?

16 MISS WILSON: He is right here.

17 THE COURT: Did you hear that?

18 DETECTIVE WALKER: Yes, sir.

19 THE COURT: Unrelated matter, not a
20 suspect.

21 DETECTIVE WALKER: Yes, sir, Your Honor,
22 I understand.

23 THE COURT: All right.

24 MISS WILSON: And not as a case, a
25 matter.

1 THE COURT: Not as a case. Just say in
2 an unrelated matter.

3 DETECTIVE WALKER: Yes, sir.

4 THE COURT: All right. Thank you.

5 ---END OF TRANSCRIPT OF RECORD---

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1 I, the undersigned, Holly Hiott O'Quinn, Official
2 Court Reporter for the Ninth Judicial Circuit of the
3 State of South Carolina, do hereby certify that the
4 foregoing is a true, accurate and complete Transcript
5 of Record of all the proceedings had and evidence
6 introduced in the trial of the captioned case,
7 relative to appeal, in the Circuit Court for
8 Charleston County, South Carolina, on the 12th day of
9 May, 2003.

10 I do further certify that I am neither of kin,
11 counsel nor interest to any party hereto.

12

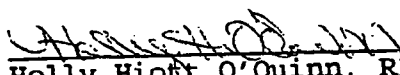
13

September 15, 2003

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Holly Hiott O'Quinn, RPR
Circuit Court Reporter
My Commission Expires
January 2006

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

COURT OF GENERAL SESSION

2002-GS-10-4413

2002-GS-10-4414

2002-GS-10-4415

STATE OF SOUTH CAROLINA)

vs.)

ANTHONY L. MANN)

DEFENDANT)

TRANSCRIPT OF RECORD
VOLUME 1

September 15, 2003
Charleston, South Carolina

B E F O R E:

THE HONORABLE DANIEL F. PIEPER, JUDGE; and a jury.

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

SCARLETT WILSON, CHIEF DEPUTY SOLICITOR
JENNIFER BURNEY, ASSISTANT SOLICITOR
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JENNIFER KNEECE SHEALY, PUBLIC DEFENDER
BEATTY BUTLER, ESQ.
Attorneys for the Defendant

CAROL M. THUEME
Official Court Reporter

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Recross-exam by

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Recross-exam by

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Continued Direct exam by

Cross-exam by

Redirect exam by

Recross-exam by

RAE WOOTEN

Direct exam by

Cross-exam by

Redirect exam by

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CHARLES JONES

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	80	Photo	71
20	81	Photo	71
	82	Photo	71
21	83	Photo	71
	84	Photo	71
22	85	Photo	71
	86	Photo	71
23	87	Safe	71
	88	Door	71
24	89	Safe	71
	90	Door	71
25	Defendant's		
	1	Photo	72

1	2	Photo	72	
	3	Photo	72	
2	4	Photo	72	
	5	Photo	72	
3	6	Photo	72	
	7	Photo	72	
4	8	Photo	72	
	9	Photo	72	
5	10	Photo	72	
	11	Photo	72	
6	12	Photo	72	
	13	Photo	72	
7	14	Photo	72	
	15	Photo	72	
8	16	Photo	72	
	State's			
9	91	Photo	72	116
	92	Home Depot receipt	72	
10	Defendant's			
	17	Tape of crime scene	72	
11	18	Business license	107	
	19	Handwritten documents	108	
12	State's			
	93	Photo	118	118
13	94	Gun	150	
	95	Cell bill	150	
14	96	Bell South bill	150	
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1 THE COURT: We're ready to call the charges out
2 for the first case, ladies and gentlemen.

3 The arraignment is waived; is that correct?

4 MS. SHEALY: That's correct.

5 THE COURT: All right. Madame Solicitor, please
6 call the indictment numbers and the charge.

7 MS. WILSON: Thank you, your Honor. This is the
8 State versus Anthony Mann, Indictment 2002-GS-10-4413 for
9 armed robbery; State versus Anthony Mann, Indictment
10 2002-GS-10-4414 for murder; State versus Anthony Mann,
11 2002-GS-10-4415 for murder.

12 THE COURT: All right. Ladies and gentlemen, we
13 have the charges called out for you so you know what the
14 State is alleging in this case, and those are the
15 allegations on the part of the State that are in this
16 document.

17 At this time I'm going to ask you some
18 questions. Should any of these questions be applicable to
19 you, if you'll please stand and identify yourself by name
20 and number.

21 If the defendant would please stand and face the
22 panel.

23 Are any of you related by blood, connected by
24 marriage, or have any social, business, or professional
25 relationship with Mr. Anthony Mann? If so, please stand.

1 (No response.)

2 THE COURT: Thank you. If Defense counsel would
3 please introduce yourself to the panel.

4 MS. SHEALY: Good morning. My name is Jennifer
5 Kneece Shealy. I'm executive director of the Public
6 Defender's office.

7 MR. BUTLER: Good morning. My name is Beatty
8 Butler. I'm a lawyer in the Public Defender's office.

9 THE COURT: Are any of you related by blood,
10 connected by marriage, or have any social, business, or
11 professional dealings with Ms. Shealy or Mr. Butler or any
12 dealings in connection with their office? If so, please
13 stand.

14 (No response.)

15 THE COURT: Thank you. Please be seated.

16 Prosecuting the case on behalf of the State is
17 the Solicitor's office. If you'd please introduce
18 yourself to the panel.

19 MS. WILSON: Thank you, your Honor. My name is
20 Scarlett Wilson. I'm the Chief Deputy Solicitor here in
21 the Ninth Circuit.

22 This is Jennifer Burney. She's a prosecutor
23 also in our office. And this is Detective Robert Walker
24 with the Charleston County Sheriff's Department.

25 THE COURT: Are any of you related by blood,

1 connected by marriage, have any social, business, or
2 professional relationship with Ms. Wilson or Ms. Burney or
3 any dealings or connection whatsoever with the Solicitor's
4 office? If so, please stand.

5 (No response.)

6 THE COURT: Thank you. Ladies and gentlemen,
7 I'm going to call out a list of names of individuals who
8 may or may not testify in the case. If any of you are
9 related by blood, connected by marriage, or have any
10 social, business, or professional relationship with any of
11 these individuals, please stand.

12 James Ciali, Kathy Dolloff, Donna Kann, Dante
13 Tobias, Sr., Danielle Batista, Kristy Lee Bunch, James
14 Elsworth, Terrance William Hudson, Dustin Ryan James,
15 Maria Jacques, Shannon Keyes, Paula Stone, Kristy
16 MacBride, Tabitha Leigh Kylander, Krystal Lackey.

17 As I call out names, if you'll stand and remain
18 standing. Thank you.

19 Krystal Lackey, Tiffany Mercado, Lisa O'Connell,
20 Nicole O'Connell, David Stein, Thao Caylor, Anthony Floyd,
21 Marcus Cheatom, James Steven Wolf, Richie Meeks, Travis
22 Wadham, Tonya Garrett, Angel Riley, Stephanie Minica,
23 Michael Grasso, Larry Caulder, Daniel Cavey, Pierre
24 Matthews, Mervin Meniar, Eric Zack, Michael Crumb, Peter
25 Davies, Ervin Frasier, B.J. Thomas Frasier.

1 Lieutenant T.L. Smith of the Charleston
2 Sheriff's office, Deputy Jason Waters of that office,
3 Deputy Buddy Bedsaul of that office, Detective Harry Long
4 of that office, Officer Michael Ringley of that office,
5 Officer Willoughby of that office, Detective Denise
6 Whisenant Schwerin, Sergeant Dulan of that office,
7 Detective Larry Rice of that office, Sergeant Ricky
8 Presnell of that office, Detective Rob Jacobik of that
9 office, Detective W.S. Orr of that office, Detective
10 Dennis Wenger of that office.

11 Agent Matthew Fitts of SLED, Lieutenant Joseph
12 Powell of SLED, Agent Kenneth Whitler of SLED, Agent Bruce
13 Gantt of SLED, Agent Lisa Kiser of SLED.

14 Dr. S.E. Presnell of MUSC, Dr. Ronald Russell,
15 Rae Wooten of the Coroner's office, Tim Kulp, Bill
16 Nettles, John Burnett of the Solicitor's office, Keith
17 Hair of the Solicitor's office, Naomi Nation of the
18 Solicitor's office.

19 Cynthia Schandl, Deputy Lance, Deputy Ali,
20 Raymond Edwards, Danielle Bryan, Jamie Cumbee.

21 The custodian of records, does anyone have their
22 names?

23 MS. SHEALY: No.

24 THE COURT: Elsa Mercado, Ira Jeffcoat, Chuck
25 Jones, Leah Leary, Christine Magee, Christina Mitchell,

1 April Mook, Robert MacBride, Detective Robert Walker of
2 the Sheriff's office, Christopher Reed, Bobby Russell,
3 Clint Daniels, James Bevins, James Wagner, Earl Asbell,
4 T.K. Zayak, Eugene Magwood, David Broome, Mark Akmen, Rene
5 Evans, Joshua Hill, Ervin Frasier, Barbara Mitchell, David
6 Barr, Robin Barr, William Woodson, Russell Hines, Wes
7 Tyler, George Nicholson, Detective J. Brunson. Is that
8 with the sheriff's office?

9 MS. SHEALY: I believe so, your Honor.

10 THE COURT: Of the sheriff's office, Detective
11 M. Anderson. Is that with the sheriff's office?

12 MS. SHEALY: Yes, sir.

13 THE COURT: With the sheriff's office, W.V.
14 Crews, Casey Secor, Geoffrey Morgan.

15 Does anyone have any connection to any of those
16 individuals, whether by blood, marriage, or any social,
17 business or professional dealings with any of these
18 individuals in any way whatsoever?

19 Yes, sir, your name and number.

20 THE JUROR: James Drum. I believe it's 211.

21 I'm friends with all of Rae Wooten's children.
22 I visit over her house all the time.

23 THE COURT: Would that in any way affect your
24 ability to give everyone in this case a fair and impartial
25 trial?

1 THE JUROR: I don't think so.

2 THE COURT: Yes or no?

3 THE JUROR: I don't think so, no.

4 THE COURT: Pardon?

5 THE JUROR: I don't think so.

6 THE COURT: I need to know yes or no.

7 THE JUROR: No.

8 THE COURT: All right. Thank you.

9 Yes, ma'am.

10 THE JUROR: I'm friends with Kristy MacBride.
11 I'm Juror 190, Tina White.

12 THE COURT: Would the fact that she might
13 testify in this case in any way affect your ability to
14 give everyone in this case a fair and impartial trial?

15 THE JUROR: I guess.

16 THE COURT: "I guess" is not acceptable. If
17 that's a possibility, I don't want to seat you on this
18 case.

19 What I need to know is if that person testifies,
20 will you still be able to hear all the facts in this case
21 and make a fair and impartial determination of those facts
22 in order to reach a fair and impartial decision in the
23 trial?

24 THE JUROR: Yes.

25 THE COURT: All right. Thank you.

1 Yes, sir.

2 THE JUROR: I used to work for SCDC where he's
3 at.

4 THE CLERK: 125, Raymond Monroe.

5 THE COURT: All right. Approach the bench, sir.

6 (WHEREUPON, a bench conference was held with
7 Judge and Counsel in the presence of the jury but out
8 of the hearing of the jury.)

9 THE COURT: Yes, sir, your name and number.

10 THE JUROR: Raymond Monroe, 125.

11 THE COURT: And you used to work for?

12 THE JUROR: I used to work for Lieber
13 Correctional Institute.

14 THE COURT: Yes.

15 THE JUROR: And I don't work there no more. I
16 work for MUSC, but I know the person.

17 THE COURT: Would that affect your ability to
18 give him a fair and impartial trial?

19 THE JUROR: No, sir.

20 THE COURT: All right. Anything further from
21 Counsel?

22 MS. WILSON: Not from the State.

23 MS. SHEALY: We have nothing further to ask of
24 this juror.

25 THE COURT: Thank you, sir.

1 MS. SHEALY: Of course, just in front of
2 everybody he said he knows him when he was at SCDC.

3 MS. WILSON: I just heard him say, I work at
4 SCDC.

5 MS. SHEALY: He said, I know him from when he
6 was there.

7 THE COURT: I know. I'd be happy to say that
8 someone might be detained if you want me to.

9 MS. SHEALY: I know, but I don't want to bring
10 it to the attention of the jurors.

11 THE COURT: Okay.

12 Yes, ma'am, your name and number.

13 THE JUROR: Susan Watson, 185.

14 THE COURT: And who is it that you know?

15 THE JUROR: Tim Kulp.

16 THE COURT: Yes, ma'am.

17 THE JUROR: I have business dealings with him.

18 THE COURT: Would that in any way affect your
19 ability to give everyone a fair and impartial trial?

20 THE JUROR: No.

21 THE COURT: Thank you, ma'am.

22 Anyone else?

23 Were any of you a member of the grand jury which
24 returned any of the indictments in this case?

25 (No response.)

1 THE COURT: Does anyone on the panel have family
2 members connected with law enforcement either presently or
3 formerly?

4 Yes, ma'am. I need your name and number again
5 for the record.

6 THE JUROR: 185, Susan Watson.

7 My husband that I'm presently separated from
8 held a federal commission at one time as a game warden in
9 the state of Tennessee.

10 THE COURT: Would that in any way affect your
11 ability to give everyone a fair and impartial trial?

12 THE JUROR: No.

13 THE COURT: Thank you. Anyone else ever had any
14 connection with law enforcement presently or formerly or
15 through your families?

16 Yes, sir.

17 THE JUROR: Robert Parker, 136. My stepfather
18 is retired with the City of Augusta Police Department.

19 THE COURT: What's your number?

20 THE JUROR: 136.

21 THE COURT: Would that in any way affect your
22 ability to give everyone a fair and impartial trial?

23 THE JUROR: No, sir.

24 THE COURT: All right. Thank you.

25 THE JUROR: Juror 137, Sheryl Patterson. My

1 brother-in-law is a detective.

2 THE COURT: Would that in any way affect your
3 ability to give everybody a fair and impartial trial?

4 THE JUROR: No, it wouldn't.

5 THE COURT: Thank you. That was your
6 father-in-law?

7 THE JUROR: Brother-in-law.

8 THE COURT: Your brother. I'm sorry.

9 Anyone else?

10 (No response.)

11 THE COURT: Is there anyone on the panel or your
12 family members who have been the victim of a crime? If
13 so, please stand.

14 Yes, sir, your name and number.

15 THE JUROR: Travis McCaskill, 216.

16 THE COURT: Was it you or a family member?

17 THE JUROR: It was my brother-in-law's father
18 was murdered.

19 THE COURT: Would that in any way affect your
20 ability to give everyone in this case a fair and impartial
21 trial?

22 THE JUROR: No, sir.

23 THE COURT: All right. Thank you.

24 Yes, ma'am.

25 THE JUROR: I'm Esther Ferguson. I was raped.

1 THE COURT: All right. Would that in any way
2 affect your ability to give everyone in this case a fair
3 and impartial trial?

4 THE JUROR: No.

5 THE COURT: Thank you, ma'am. Is there anyone
6 else?

7 (No response.)

8 THE COURT: Has anyone on the panel or your
9 family members ever participated or been a witness in any
10 type of criminal case? If so, please stand.

11 And, again, ladies and gentlemen, as I indicated
12 during qualification, in response to any of my questions
13 you would rather approach the bench, you may do so.

14 Anyone?

15 (No response.)

16 THE COURT: Does anyone have any particular
17 feelings or opinions about the offenses that have been
18 alleged in this case that would affect your ability to
19 give everyone here a fair and impartial trial?

20 (No response.)

21 THE COURT: Is anyone on the panel connected or
22 contribute to any kind of victim's rights organization or
23 an organization connected with law enforcement or
24 something like Citizens Against Violent Crime, People
25 Against Rape, Mothers Against Drunk Driving, any kind of

1 community watch program, anything similar to that, ladies
2 and gentlemen, participate or contribute to anything?

3 Anyone?

4 THE JUROR: Could you repeat that one more time,
5 sir?

6 THE COURT: Just trying to find out if anyone
7 has any connection whether through participation or
8 contribution or money to an organization, like a victim's
9 rights organization or Mothers Against Drunk Driving,
10 People Against Rape, some community watch program,
11 something similar to that, anything like that?

12 Yes, ma'am, your name and number.

13 THE JUROR: 209, Esther Ferguson, and I
14 contribute.

15 THE COURT: To?

16 THE JUROR: Women Against Rape.

17 THE COURT: Would that in any way affect your
18 ability to give everyone a fair and impartial trial?

19 THE JUROR: No.

20 THE COURT: Thank you, ma'am.

21 Anyone else?

22 (No response.)

23 THE COURT: I'm just going to cite out to you,
24 ladies and gentlemen, to find out if anyone has heard any
25 publicity about this case or read anything in this case.

1 Based on the allegations that have been made in
2 this case, it involves two separate homicides. On January
3 7th, 2002, Dante Craig Tobias was killed at 36 Magnolia
4 Road in the West Ashley area. On January 13th, 2002, the
5 body of Beverly Blake, also known as Brownie, was found
6 off of Lincolnville Road near Von Oshen Road in
7 Lincolnville.

8 Does anyone recall any kind of television or
9 newspaper coverage that you have been exposed to in anyway
10 about this case or through anyone else that may have
11 talked to you about the case, radio or anything? If so,
12 please stand, and then I'll need you to approach the
13 bench.

14 Counsel.

15 (WHEREUPON, a bench conference with the Judge
16 and Counsel was held in the presence of the jury but
17 out of the hearing of the jury.)

18 THE BAILIFF: Number 76.

19 THE COURT: Seventy-six. Yes, ma'am.

20 THE JUROR: Not knowing anything personal about
21 the case, but then when you mentioned about the other
22 death in Lincolnville that was a female, just seeing that
23 on television about the case.

24 THE COURT: Do you remember anything else about
25 what you saw?

1 THE JUROR: No, nothing in detail or anything,
2 just a female, that she was missing in Lincolnville and
3 they were trying to connect the two. That's it.

4 THE COURT: Would that fact in any way affect
5 your ability to give everyone in this case a fair and
6 impartial trial?

7 THE JUROR: No, sir.

8 THE COURT: Okay. Thank you.

9 Anyone else?

10 (No response.)

11 THE COURT: Does anyone live or have family
12 members -- does anyone on the panel or any family members
13 or any of your friends live in or near the Magnolia Road
14 area in West Ashley or Lincolnville Road, Von Oshen Road
15 in Lincolnville presently or at the time of January 2002?
16 Anyone?

17 Yes, ma'am, your name and number?

18 THE JUROR: Nancy Robertson, 149. I live in
19 West Ashley on Woodland Road.

20 THE COURT: Would that in any way affect your
21 ability to give everyone in the case a fair and impartial
22 trial?

23 THE JUROR: No, sir.

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

25 THE JUROR: Carol Murphy MacEachern, 219. One

1 of the attorneys in my office does live off of Magnolia
2 Road and our office is off of Magnolia Road.

3 THE COURT: Would that in any way affect your
4 ability to give everyone in this case a fair and impartial
5 trial?

6 THE JUROR: No, it wouldn't.

7 THE COURT: Thank you. Yes, sir.

8 THE JUROR: 156. I live on Ashley Rule Road.

9 THE COURT: Would that in any way affect your
10 ability to give everyone a fair and impartial trial?

11 THE JUROR: No.

12 THE COURT: Thank you. Yes, sir.

13 THE JUROR: 161. I live on 823 Castle Avenue,
14 West Ashley.

15 THE COURT: Would that in any way affect your
16 ability to give everyone a fair and impartial trial?

17 THE JUROR: No, sir.

18 THE COURT: Thank you. Anyone else?

19 (No response.)

20 THE COURT: Has any member of the panel
21 expressed or formed any opinion about this case or as to
22 the guilt or innocence of this defendant? Any opinions
23 whatsoever?

24 (No response.)

25 THE COURT: Does any member of the jury have any

1 bias or prejudice in connection with this case or any of
2 the individuals involved herein?

3 (No response.)

4 THE COURT: Does any member of the panel know of
5 any reason why you could not give everyone in this case a
6 fair and impartial trial, whether it's some group you
7 belong to, some position that you hold or philosophy or
8 views? Anything that you need to bring to my attention
9 that would affect your ability to hear everything that's
10 presented in this case and to give everyone a fair and
11 impartial trial? I need to know about it now if there's
12 something floating around.

13 (No response.)

14 THE COURT: All right. Anything further from
15 the State?

16 MS. WILSON: Nothing from the State, your Honor.

17 THE COURT: From the defense?

18 MS. SHEALY: No, sir.

19 THE COURT: Any objection to the clerk drawing
20 the jury?

21 MS. WILSON: No, sir.

22 MS. SHEALY: No, sir.

23 THE COURT: Mr. Clerk, give us a jury, please.
24 Strikes are ten and five.

25 THE CLERK: Ladies and gentlemen, when I call

1 your name and juror number, will you please bring your
2 personal belongings and come forward and stand in front of
3 the podium and face the audience.

4 Juror number 211, Brian Hicks. (white male)

5 What say you for the State?

6 MS. WILSON: Please excuse Mr. Hicks.

7 THE CLERK: Sir, you have been excused from the
8 trial of this case. Please have a seat back in the
9 audience.

10 Juror number 168, Kenneth Swing, Jr. (white
11 male)

12 What say you for the State?

13 MS. WILSON: Please present Mr. Swing.

14 THE CLERK: What say you for the defendant?

15 MS. SHEALY: Please excuse this juror.

16 THE CLERK: Sir, you are excused from the trial
17 of this case. Please have a seat back in the audience.

18 Juror number 185, Susan Watson. (white female)

19 What say you for the State?

20 MS. WILSON: Please present Ms. Watson.

21 THE CLERK: What say you for the defendant?

22 MS. SHEALY: Please excuse the juror.

23 THE CLERK: Ma'am, you have been excused from
24 the trial of this case. Please have a seat back in the
25 audience.

1 Juror number 212, Eric Hines. (white male)

2 What say you for the State?

3 MS. WILSON: Please present Mr. Hines.

4 THE CLERK: What say you for the defendant?

5 MS. SHEALY: Please excuse the juror.

6 THE CLERK: Sir, you have been excused from the
7 trial of this case. Please have a seat back in the
8 audience.

9 Juror number 192, Mary Williams. (white female)

10 What say you for the State?

11 MS. WILSON: Please present Ms. Williams.

12 THE CLERK: What say you for the defendant?

13 MS. SHEALY: Please seat the juror.

14 THE CLERK: Ma'am, you have been selected for
15 the trial of this case. Please have a seat in the jury
16 box.

17 THE CLERK: Juror number 36, Velia Deantonio.
18 (white female)

19 What say you for the State?

20 MS. WILSON: Please present Ms. Deantonio.

21 THE CLERK: What say you for the defendant?

22 MS. SHEALY: Please swear the juror.

23 THE CLERK: Ma'am, you have been selected for
24 the trial of this case. Please have a seat in the jury
25 box.

1 Juror number 139, Debra Petrak. (white female)

2 What say you for the State?

3 MS. WILSON: Please present Ms. Petrak.

4 THE CLERK: What say you for the defendant?

5 MS. SHEALY: Please excuse the juror.

6 THE CLERK: Ma'am, you have been excused from
7 the trial of this case. Please have a seat back in the
8 audience.

9 Juror number 53, James Allen Gadson. (black
10 male)

11 What say you for the State?

12 MS. WILSON: Please present Mr. Gadson.

13 THE CLERK: What say you for the defendant?

14 MS. SHEALY: Please swear the juror.

15 THE CLERK: Sir, you have been selected for the
16 trial of this case. Please have a seat in the jury box.

17 THE CLERK: Juror number 149, Nancy Robertson.
18 (white female)

19 What say you for the State?

20 MS. WILSON: Please present Ms. Robertson.

21 THE CLERK: What say you for the defendant?

22 MS. SHEALY: Please swear the juror.

23 THE CLERK: Ma'am, you have been selected for
24 the trial of this case. Please have a seat in the jury
25 box.

1 Juror number 182, William Ward. (white male)
2 What say you for the State?
3 MS. WILSON: Please present Mr. Ward.
4 THE CLERK: What say you for the defendant?
5 MS. SHEALY: Please swear the juror.
6 THE CLERK: Sir, you have been selected for the
7 trial of this case. Please have a seat in the jury box.
8 Juror number 24, Janice Bush. (white female)
9 What say you for the State?
10 MS. WILSON: Please present Ms. Bush.
11 THE CLERK: What say you for the defendant?
12 MS. SHEALY: Please swear the juror.
13 THE CLERK: Ma'am, you have been selected for
14 the trial of this case. Please have a seat in the jury
15 box.
16 Juror number 143, Marie Psaras. (white female)
17 What say you for the State?
18 MS. WILSON: Please excuse the juror.
19 THE CLERK: Ma'am, you have been excused from
20 the trial of this case. Please have a seat back in the
21 audience.
22 Juror number 95, Julie Anne Kahler. (white
23 female)
24 What say you for the State?
25 MS. WILSON: Please present Ms. Kahler.

1 THE CLERK: What say you for the defendant?

2 MS. SHEALY: Please swear the juror.

3 THE CLERK: Ma'am, you have been selected for
4 the trial of this case. Please have seat in the jury box.

5 Juror 57, Kim Goodwater. (black female)

6 What say you for the State?

7 MS. WILSON: Please present Ms. Goodwater.

8 THE CLERK: What say you for the defendant?

9 MS. SHEALY: Please excuse the juror.

10 THE CLERK: Ma'am, you have been excused from
11 the trial of this case. Please have a seat in the
12 audience.

13 Juror number 44, Christy Edwards. (white
14 female)

15 What say you for the State?

16 MS. WILSON: Please present Ms. Edwards.

17 THE CLERK: What say you for the defendant?

18 MS. SHEALY: Please swear the juror.

19 THE CLERK: Ma'am, you have been selected for
20 the trial of this case. Please have a seat in the jury
21 box.

22 Juror number 136, Robert Parker. (white male)

23 What say you for the State?

24 MS. WILSON: Please present Mr. Parker.

25 THE CLERK: What say you for the defendant?

1 MS. SHEALY: Please swear the juror.

2 THE CLERK: Sir, you have been selected for the
3 trial of this case. Please have a seat in the jury box.

4 Juror number 79, Laura Hooten. (white female)
5 What say you for the State?

6 MS. WILSON: Please present Ms. Hooten.

7 THE CLERK: What say you for the defendant?

8 MS. SHEALY: Please excuse the juror.

9 THE CLERK: Ma'am, you have been excused from
10 the trial of this case. Please have a seat back in the
11 audience.

12 Juror number 90, Deborah Jenkins. (black
13 female)

14 What say you for the State?

15 MS. WILSON: Please present Ms. Jenkins.

16 THE CLERK: What say you for the defendant?

17 MS. SHEALY: Please swear the juror.

18 THE CLERK: Ma'am, you have been selected for
19 the trial of this case. Please have a seat in the jury
20 box.

21 Juror 107, Karen Laskowski. (white female)

22 What say you for the State?

23 MS. WILSON: I apologize. What was the juror's
24 number?

25 THE CLERK: 107.

1 MS. WILSON: Thank you.

2 THE CLERK: What say you for the State?

3 MS. WILSON: Please present Ms. Laskowski.

4 THE CLERK: What say you for the defendant?

5 MS. SHEALY: Please excuse the juror.

6 THE CLERK: Ma'am, you have been excused from
7 the trial of this case. Please have a seat back in the
8 audience.

9 Juror number 220, Nathan Olasou. (white male)

10 MS. SHEALY: Can I get that number again?

11 THE CLERK: 220.

12 What say you for the State?

13 MS. WILSON: Please present the juror.

14 THE CLERK: What say you for the defendant?

15 MS. SHEALY: Please excuse this juror.

16 THE CLERK: Sir, you have been excused from the
17 trial of this case. Please have a seat back in the
18 audience.

19 Juror number 176, Frank Tripp. (black male)

20 What say you for the State?

21 MS. WILSON: Please present Mr. Tripp.

22 THE CLERK: What say you for the defendant?

23 MS. SHEALY: Please swear the juror.

24 THE CLERK: Sir, you have been selected for the
25 trial of this case. Please have a seat in the jury box.

1 Juror number 210, Franco Ferrara. (white male)

2 What say you for the State?

3 MS. WILSON: Please present Mr. Ferrara.

4 THE CLERK: What say you for the defendant?

5 MS. SHEALY: Please swear the juror.

6 THE CLERK: Sir, you have been selected for the
7 trial of this case. Please have a seat in the jury box.

8 I'm going to draw the jury strike for
9 alternates.

10 THE COURT: Three alternates.

11 THE CLERK: Juror number 130, Laquan Murphy.

12 (black female)

13 What say you for the State?

14 MS. WILSON: Please present Ms. Murphy.

15 THE CLERK: What say you for the defendant?

16 MS. SHEALY: Please excuse the juror.

17 THE CLERK: Ma'am, you're excused from the trial
18 of this case. Please have a seat back in the audience.

19 Juror number 224, Catherine Riley. (white
20 female)

21 What say you for the State?

22 MS. WILSON: Please present Ms. Riley.

23 THE CLERK: What say you for the defendant?

24 MS. SHEALY: Your Honor, may we approach for a
25 moment?

1 THE COURT: Yes.

2 MS. SHEALY: I want to be sure I understand your
3 system for striking alternates. Do I just have one more
4 strike for this first alternate slot?

5 THE COURT: Two for each alternate.

6 MS. SHEALY: So I have one more strike for this
7 alternate slot, is that how you do it?

8 THE COURT: Two and one; two for you and one for
9 the State.

10 MS. SHEALY: In other words, if I were to use a
11 strike now, then the next person called is on?

12 THE COURT: Then you get two new ones.

13 MR. BUTLER: Two more after this.

14 THE COURT: Two per person. Once that person is
15 seated, then you start all over with the two strikes.

16 MR. BUTLER: If you were going to seat three
17 alternates --

18 THE COURT: Two for each one.

19 MR. BUTLER: We've seated two?

20 THE COURT: We haven't seated any.

21 MS. SHEALY: That's what I'm saying, two strikes
22 per alternate?

23 THE COURT: Right.

24 MS. SHEALY: So if I exercise my remaining
25 strike right now, the next person is on?

1 THE COURT: How many have you struck so far?

2 MS. SHEALY: One.

3 THE COURT: If you do it now, then they will be
4 seated and then you start with two more.

5 MS. SHEALY: Okay.

6 THE COURT: Similarly, if you don't use them --

7 MS. SHEALY: Okay. Please excuse this juror.

8 THE CLERK: Ma'am, you have been excused from
9 the trial of this case. Please have a seat back in the
10 audience.

11 Juror number 162, Joanne Smith. (white female)

12 What say you for the State?

13 MS. WILSON: Please present Ms. Smith.

14 THE CLERK: Any challenge from the defendant?

15 MS. SHEALY: Please swear the juror.

16 THE CLERK: Ma'am, you have been selected for
17 the trial in this case. Please have a seat in the jury
18 box.

19 THE COURT: Now it starts back over.

20 THE CLERK: Juror 137, Sheryl Patterson. (black
21 female)

22 What say you for the State?

23 MS. WILSON: Please present Ms. Patterson.

24 THE CLERK: What say you for the defendant?

25 MS. SHEALY: Please excuse the juror.

1 THE CLERK: Ma'am, you have been excused from
2 the trial of this case. Please have a seat back in the
3 audience.

4 Juror 208, Linda Elksnin. (white female)
5 What say you from the State?

6 MS. WILSON: Please excuse Ms. Elksnin.

7 THE CLERK: Ma'am, you have been excused from
8 the trial of this case. Please have a seat back in the
9 audience.

10 Juror number 35, Gail Dallalio. (white female)
11 Any challenge from the State?

12 MS. WILSON: No, sir.

13 THE CLERK: What say you for the defendant?

14 MS. SHEALY: Please swear the juror.

15 THE CLERK: Ma'am, you have been selected for
16 the trial of this case. Please have a seat in the jury
17 box.

18 Juror number 166, Linda Stonebraker. (white
19 female)

20 What say you for the State?

21 MS. WILSON: Please present Ms. Stonebraker.

22 THE CLERK: What say you for the defendant?

23 MS. SHEALY: Please excuse the juror.

24 THE CLERK: Ma'am, you have been excused from
25 the trial of this case. Please have a seat back in the

1 audience.

2 Juror number 156, Gerhard Shanks. (white male)

3 What say you for the State?

4 MS. WILSON: Please excuse Mr. Shanks.

5 THE CLERK: Sir, you have been excused from the
6 trial of this case. Please have a seat back in the
7 audience.

8 Juror number 161, Anthony Smith. (white male)

9 Any challenge from the State?

10 MS. WILSON: No, sir.

11 THE CLERK: What say you for the defendant?

12 MS. SHEALY: Please excuse this juror.

13 THE CLERK: Sir, you have been excused from the
14 trial of this case. Please have a seat back in the
15 audience.

16 Juror number 209, Esther Ferguson. (white
17 female)

18 Any challenge from the State?

19 MS. WILSON: No, sir.

20 THE CLERK: Any challenge from the defense?

21 MS. SHEALY: Please swear the juror.

22 THE CLERK: Ma'am, you have been selected for
23 the trial of this case. Please have a seat in the jury
24 box.

25 Your Honor, the jury has been selected.

1 (The jury was impaneled at 12:17 p.m.)

2 THE COURT: Any matters or motions pertaining to
3 the jury selection process or the selected jury from the
4 State?

5 MS. WILSON: None from the State, your Honor.

6 MS. SHEALY: None from the defense.

7 THE COURT: Swear the jury, Mr. Clerk.

8 THE CLERK: Yes, your Honor.

9 THE COURT: Hold on a second. Counsel approach.

10 (WHEREUPON, a bench conference with the Judge
11 and Counsel was held in the presence of the jury but
12 out of the hearing of the jury.)

13 THE COURT: All right. Ladies and gentlemen, at
14 this point I'm going to go ahead and excuse the rest of
15 you from the panel. We're running a little behind today.
16 As I indicated, we delayed the selection process by 45
17 minutes or so because there was an accident on the bridge.
18 So I appreciate you bearing with us.

19 If you'd please make sure you have that number
20 to call, and call back after 6 p.m. for any instructions
21 about tomorrow. We may not need you tomorrow, so please
22 call that number after 6 p.m.

23 Thank you very much and have a good day.

24 (The jury venire was excused at 12:20 p.m.)

25 THE COURT: Counsel approach, please.

1 (WHEREUPON, a bench conference with the Judge
2 and Counsel was held in the presence of the jury but
3 out of the hearing of the jury.)

4 THE COURT: Ms. Bush, I'm going to designate you
5 as the foreperson. So when you all come back in, just sit
6 in that same seat. Thank you very much.

7 Ladies and gentlemen, we have various house
8 keeping matters that need to be taken care of. So
9 everyone has requested that I not start you back until
10 2:30. So if you would please go with the bailiff. The
11 bailiff will show you where you need to report.

12 When you're back there they'll give you a note
13 pad and a pen or pencil. If you'll just put your number
14 on that pad so we can keep up with it if there are any
15 overnight breaks.

16 Also, do not discuss this case in any way
17 whatsoever with anyone, including amongst yourselves.
18 Don't talk about the case at all.

19 Thank you very much. I hope you enjoy your
20 lunch. Thank you.

21 (WHEREUPON, the jury was excused from open court
22 at approximately 12:21 p.m.)

23 THE COURT: Thank you. Please be seated.

24 All right. What matters do we need to take care
25 of?

1 Mr. Stokes, what are you here for?

2 MR. STOKES: Your Honor, I'm here on behalf of
3 Berkeley County Sheriff's Department. Lieutenant Kutcher
4 received a subpoena in this matter from the Public
5 Defender's office.

6 THE COURT: In this case?

7 MR. STOKES: In this case, and I filed a motion
8 to squash, and I would like your Honor to take that up. I
9 think we could resolve it.

10 THE COURT: Have you tried to discuss it with
11 them?

12 MR. STOKES: No, I haven't. I haven't had an
13 opportunity to do that. I just got the information prior
14 to this.

15 THE COURT: What is the issue about quashing it?

16 MS. SHEALY: May I -- I apologize, your Honor.
17 I think this would be a matter that would be appropriately
18 conducted ex parte, your Honor. I don't think the State
19 has the right to be present for this hearing.

20 THE COURT: Why is that?

21 MS. SHEALY: Because it's something that we were
22 doing as part of our investigation, what we subpoenaed, so
23 they're a party to the subpoena.

24 THE COURT: Are you moving to quash some
25 information or just his appearance completely?

1 MR. STOKES: Basically the subpoena was duces
2 tecum.

3 THE COURT: All right. Without getting into
4 detail, let me see the subpoena.

5 MS. WILSON: Judge, I know about the subpoena,
6 and I know what they subpoenaed.

7 THE COURT: So why does that need to be --

8 MS. SHEALY: I didn't know until she said that
9 that she did.

10 THE COURT: So we can go ahead and take it up?

11 MS. SHEALY: I still think it would be
12 appropriate since it may involve some discussion of our
13 defense that it be conducted with the Solicitor's absence.

14 THE COURT: Well, let's not discuss any defense.
15 Certainly he can tell me what part they object to, right,
16 since she already has that subpoena?

17 MS. SHEALY: I still think the cautious way to
18 proceed would be for her to be absent.

19 THE COURT: What's your position on that?

20 MS. WILSON: I don't think that's necessary,
21 your Honor. If in your inquiry you get to a point where
22 you need to know what their defense is, that's one thing,
23 but it's my understanding that what has been subpoenaed is
24 an investigative file regarding a case in which Peter
25 Davies, who is a State's witness, he is a subject of that

1 investigation, and he is a witness in this case.

2 THE COURT: Without hearing your side, why can't
3 I hear their side about why they think that's something
4 they can squash?

5 MS. SHEALY: I just don't know why the
6 Solicitor's office needs to be present for it since it
7 deals with matters that are pertaining to the defense of
8 my client.

9 THE COURT: But I'm not going to ask you to
10 respond to it. I don't know why on the record I can't
11 hear what their position is. As a matter of law, they
12 might have a right to quash it.

13 MS. SHEALY: It's my position, your Honor, in
14 that it deals with -- in that it deals with a subpoena
15 that was generated by the defense, that there would be no
16 reason for the Solicitor to be present.

17 THE COURT: Do you have any objection to me
18 doing it that way?

19 MS. WILSON: Which way, ex parte?

20 THE COURT: In chambers.

21 MS. WILSON: Yes, sir.

22 THE COURT: What is your -- well, without
23 getting into anything from the defense, let me hear what
24 your legal objection is.

25 MR. STOKES: Thank you, your Honor.

1 The subpoena is for the complete file of a
2 pending ongoing investigation of a homicide in Berkley
3 County. They subpoenaed the file containing sensitive
4 information, some statements from some witnesses, some FBI
5 reports. We would submit to the Court that that
6 information is protected and privileged in an ongoing
7 investigation and ask the Court to do one of two things:
8 The first would be to quash the subpoena based upon the
9 sensitive nature contained in the file. Secondly, your
10 Honor, for your Honor to take the file and review it in
11 camera and then make a determination as to what, if
12 anything, could be released pursuant to the subpoena.

13 THE COURT: Well, if the Solicitor's office has
14 made a decision to call a case here, that could in part
15 bring out information in another case. Don't they have
16 the right to assume that responsibility?

17 MR. STOKES: To assume responsibility?

18 THE COURT: For where it may fall. If they
19 decide to call this one first and there was a need to
20 bring out something in another one, don't they assume that
21 management responsibility?

22 MR. STOKES: They absolutely assume that
23 management responsibility. But the distinction here, your
24 Honor, I think is that the sheriff, Berkeley County
25 Sheriff's office file is for a pending ongoing

1 investigation and there's no charges in that homicide as
2 yet to be filed, and that's the difference in the matters.

3 THE COURT: Well, is there any legal basis to do
4 that?

5 MR. STOKES: Your Honor, the basis would be the
6 fact that it is an ongoing information and it contains
7 sensitive information.

8 THE COURT: Would that trump any rights of the
9 defendant in this case?

10 MR. STOKES: Well, it could in the event that
11 the information that might be revealed through the
12 subpoena risks the safety of other individuals.

13 THE COURT: Is there an allegation that that's
14 the case?

15 MR. STOKES: I'm not going to make that
16 allegation, but according to my client it could upon
17 information and belief to be the case.

18 THE COURT: All right. What is your legal basis
19 for saying that it should be done ex parte?

20 MS. SHEALY: Because in order for me to
21 articulate the reasons I think that I think it would be
22 appropriate for me to have access to those, I would
23 necessarily have to discuss our defense.

24 THE COURT: Well, do you have anything to say on
25 this matter one way or the other? It seems like this is

1 between them and Berkeley County at this point.

2 MS. WILSON: I do think it's between them and
3 Berkeley County, but because Berkeley County is part of
4 the ninth circuit, I'm concerned about pending
5 investigations being turned over to defendants and them
6 knowing information about leads and about the ins-and-outs
7 and sensitive information regarding a case. That causes
8 me great concern that any time a witness happens to have
9 their name come up in an investigation or even be the
10 target of an investigation, that a whole investigative
11 file is going to be turned over to one of his
12 co-defendants? That causes me great concern.

13 THE COURT: Yes, ma'am.

14 MS. SHEALY: Well, again I think it should be
15 done in the absence of the Solicitor, but I would indicate
16 that she is offering Peter Davies as a witness. There is
17 a proffer agreement with Peter Davies, there is a plea
18 agreement with Peter Davies, and Peter Davies is supposed
19 to come in and talk to them about everything, federal
20 stuff, state stuff, it's open. And it's my understanding
21 there is an investigation -- in fact, Ms. Wilson alerted
22 me at one point that there was an investigation where
23 Peter Davies had been a suspect.

24 THE COURT: And so just to the question of
25 possible bias?

1 MS. SHEALY: Or it could contain other things as
2 well, your Honor. Without my being able to look at the
3 file, I really cannot answer that because I'm operating in
4 the absence of the information that I feel like I need.

5 THE COURT: Well, it seems to me that since you
6 don't have that information, that there's not really any
7 need for you to say that it should be done ex parte. If I
8 do it ex parte depends on what you can find out from that
9 file --

10 MS. SHEALY: But I do have things that I have
11 gained by other means regarding that investigation, and
12 that's what led me to the fact that there in fact is still
13 an open investigation.

14 We had been told initially that the
15 investigation was closed. I believe this gentleman has
16 indicated that it's an ongoing investigation.

17 MS. WILSON: Told by whom?

18 THE COURT: Mr. Stokes, his motion based on it
19 being an ongoing investigation.

20 Well, let me just hear her reasons first before
21 I make that decision about whether it can be done ex parte
22 or not, I'll put it on the record, and if I decide that
23 that's not a basis, then I'm going to have it disclosed.

24 MS. WILSON: Well, regardless if the Court does
25 decide to turn it over, I think that the appropriate

1 method would be for the Court to screen it first.

2 THE COURT: I agree with that, but first I want
3 to hear what her legal defense, hear any arguments she has
4 that could implicate the defense of the defendant, then I
5 will make a decision on whether it should be in a closed
6 proceeding or not, and then depending on that decision, I
7 will hear the Berkeley County office and their motion back
8 in here.

9 All right. I'm only going in chambers to only
10 hear how it could implicate your case, then we'll come
11 back in here and argue the law.

12 Madam Court Reporter, you need to set up in the
13 conference room, please.

14 (An in camera conference was held. Transcript
15 is provided under sealed cover.)
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1 (Proceedings continued in the courtroom.)

2 MS. WILSON: Your Honor, we were just discussing
3 with the court reporter how to go about getting her up to
4 speed with where we were from the first trial, and I think
5 that's the only thing that we need to get done.

6 THE COURT: After we're done I hope you'll give
7 the court reporter the exhibits.

8 It's my understanding that everyone has agreed
9 to incorporate the pretrial rulings from the last case; is
10 that correct?

11 MS. WILSON: That's correct.

12 THE COURT: Now, I'm showing there's an issue
13 about third party guilt, and I believe someone said that
14 was taken care of.

15 MS. SHEALY: I think that what we decided, your
16 Honor, and, Ms. Wilson, correct me if I'm incorrect, that
17 that will be taken up if it becomes an issue during the
18 trial.

19 THE COURT: Yes. I think there was a motion in
20 limine regarding polygraph reports. I ruled in the
21 State's favor. You want to revisit that issue?

22 MS. SHEALY: We may want to revisit that at the
23 time, your Honor, that the co-defendants testify.

24 THE COURT: All right.

25 MS. WILSON: Which probably will be this

1 afternoon.

2 THE COURT: Okay. We held a Jackson v Denno
3 hearing, and we held a motion to sever and a motion to
4 sequester. Everyone agrees on sequestration for each
5 side; is that correct?

6 MS. SHEALY: Yes, sir..

7 MS. WILSON: Except for the investigative
8 employee of each office. We've agreed that they can be in
9 and out and continue to assist. Obviously they can't
10 discuss their testimony or anything bearing on their
11 testimony.

12 THE COURT: Is that agreed?

13 MS. SHEALY: That's correct.

14 THE COURT: All right. And we took up the Lyle
15 matters. There was testimony regarding drugs being dealt
16 earlier in the day, drugs being bought and sold; is that
17 correct?

18 MS. SHEALY: The way I think we both remember
19 your ruling is that the drug dealing earlier in the day is
20 excluded and that you would then rule on whether or not
21 any alleged drug use back in the bar could come in at the
22 time of that proffer.

23 THE COURT: All right. Then there was an
24 alleged threat from the defendant to Dustin Ryan James in
25 a letter?

1 MS. SHEALY: I'm sorry, say that again?

2 THE COURT: There was an alleged threat to
3 Dustin Ryan James in a letter?

4 MS. WILSON: It wasn't in a letter. It was when
5 they were housed briefly together in Berkeley County.

6 THE COURT: Okay.

7 MS. WILSON: Your Honor, there was also --

8 THE COURT: What came of that?

9 MS. WILSON: I believe we -- I thought the
10 threat came in. I thought that we had to discuss before
11 Mr. James testified, we had to take up again the issue
12 regarding drug use in the bathroom, that the defendant
13 made some incriminating statements.

14 THE COURT: Okay. Is that your recollection?

15 MS. WILSON: That you wanted to hear the witness
16 and what he had to say.

17 MS. SHEALY: I truly have no recollection
18 regarding that threat. Do you remember that, Mr. Butler?

19 MR. BUTLER: I don't remember that.

20 THE COURT: I have that in the notes.

21 MS. SHEALY: Could I ask her to articulate,
22 please, the circumstances around this threat again?

23 MS. WILSON: The threat occurred when Mr. James
24 was housed at the Berkeley County Detention Center and
25 Anthony Mann was brought there for some reason, I don't

1 recall exactly what the reasons were, and they passed each
2 other in some area or there was an area where the
3 defendant could see Mr. James and he made threatening
4 gestures.

5 THE COURT: It just dawned on me, I have my
6 realtime from that last proceeding. Mine has been
7 eliminated, but it would be on Rad's computer. They
8 re-did my computer and took everything off, but I hope it
9 will be. It should be.

10 MS. WILSON: Okay.

11 THE COURT: He found it. So I can verify all
12 these pretrial rulings and review them myself.

13 There's another issue about a robbery occurring
14 in December. Did we leave that that the door was open to
15 that or something?

16 MS. SHEALY: I believe so.

17 MS. WILSON: On the robbery in December?

18 THE COURT: Yes.

19 MS. WILSON: If they've opened the door it can
20 come in.

21 THE COURT: Right.

22 MS. WILSON: And we will address that with the
23 Court.

24 THE COURT: Right. Just before you do that, you
25 approach the Court.

1 MS. SHEALY: Yes, sir.

2 THE COURT: Then there was State versus Council.
3 We'll just do that at the time of the expert. Is that
4 what we agreed?

5 MS. SHEALY: That's correct, your Honor.

6 THE COURT: I'm not showing any other motions.
7 Are there any others?

8 MS. SHEALY: Not that I recall.

9 THE COURT: All right.

10 MS. SHEALY: Your Honor, may I hand up and have
11 marked as a Court's exhibit my requested voir dire?

12 THE COURT: Yes, ma'am.

13 (WHEREUPON, Court's Exhibit No. 1 was marked for
14 identification only.)

15 THE COURT: Any other matters we need to take up
16 before the jury comes back at 2? It's about 1 now.

17 MS. WILSON: Did we bring them back at 2?

18 THE COURT: 2:30, I'm sorry.

19 MS. SHEALY: Your Honor, in an abundance of
20 caution, I'd like to make sure that the record reflects
21 that we are renewing all the opening motions that we did
22 argue in the previous case.

23 THE COURT: Yes, ma'am.

24 MS. SHEALY: And that those were final rulings
25 as I understand from your Honor except for the ones we

1 MS. BURNEY: Beverly Blake's nickname was
2 Brownie, and she was just 17 years old when she was
3 murdered. When you hear about her life, you might think
4 to yourself that from the very beginning she stood no
5 chance.

6 She was born here in Charleston, sent to live
7 with relatives in New York, and in recent years had
8 returned back to Charleston. She lived in foster care,
9 had friends that she flopped with from time to time.
10 Everything she owned fit in a couple of trash bags.

11 Dante Tobias was only 28 years old when he was
12 murdered. And after you hear about his life, you might
13 think to yourself that it's a fluke that he even knew
14 Brownie or crossed paths with her. He was very close to
15 his family. You'll hear that he worked, he paid rent, he
16 lived on his own. He befriended Brownie; he opened his
17 home to her, cared for her. And you'll hear that Brownie
18 took advantage of that. And you'll hear about her life
19 and her death and the armed robbery and murder of Dante
20 Tobias.

21 On January 7th, 2002, just last year, Brownie
22 had been staying at 36 Magnolia Street, which was the home
23 of Dante Tobias and Anthony Floyd. She had been there for
24 a few weeks. And on that day she called her friend,
25 Tiffany Mercado, who has the nickname Star. There are a

1 lot of nicknames throughout this case. And she asked her
2 for a ride. And Star didn't have a ride for her. She
3 didn't have a car. She didn't have a way to get her to
4 where Star was. And she told her, Brownie told her that
5 there was a gun and some cash and some drugs, and they
6 could steal these from Dante if they wanted to, if she
7 wanted to. Star didn't want any part of that, and she
8 told her to call someone else. And Brownie did call
9 someone else. She called the defendant.

10 On January 7, 2002, she called Anthony Mann,
11 paged him and asked him for a ride. And she told him that
12 there was some drugs and some guns and some money, and
13 they could steal that from Dante Tobias, and he told her
14 he was on his way, he would be there to pick her up.

15 And on that day, Anthony Mann and a couple of
16 other fellows by the name of Eric Zack and Michael Crumb
17 were driving around and they stopped off at another
18 fellow's house by the name of Peter Davies and they picked
19 up a gun. And on the way to 36 Magnolia Road, they
20 stopped off and test fired that gun, and then they went to
21 36 Magnolia Road.

22 And on January 7th, 2002, Anthony Mann, Michael
23 Crumb and Brownie robbed Dante Tobias. They went through
24 his things, they took some money from him, took some other
25 things, and they gathered up Brownie's belongings, and

1 Michael Crumb and Brownie took Brownie's things to the car
2 while Eric Zack waited as the getaway driver.

3 When they got to the car, they heard a shot, and
4 Anthony Mann came out of that house with the gun. They
5 asked him what happened, and he said he shot Dante in the
6 leg and took off.

7 And after that they regrouped back at Peter
8 Davies' house, and they sort of split up from there.
9 Michael Crumb and Eric Zack went one way, Anthony Mann
10 Peter Davies and Brownie went another way and headed for
11 the north area.

12 They stopped off at the home of Lisa and Nicky
13 O'Connell where they changed clothes as you'll hear. And
14 after that, they left and Anthony Mann drove to a wooded
15 area, started spinning his tires, told Brownie he needed
16 some help getting something out from under the car, and
17 asked her to get out of the car. And you'll hear that
18 when she got out of the car and looked under to try to
19 remove whatever was down there, he fired five bullets into
20 her.

21 Then you'll hear that Anthony Mann and Peter
22 Davies left, picked up a couple of girls and partied until
23 the sun came up. That is January 7th, 2002. One night,
24 two murders and an armed robbery.

25 Now back at 36 Magnolia Road, by this time the

1 police had been called. A neighbor had seen a man leaving
2 that residence after she heard what she thought was a
3 shot; saw someone leaving that residence with a gun and
4 get in a car and drive away, so the police had been
5 called. And this is literally -- you heard your Honor
6 talk to you about fitting pieces of the puzzle together,
7 this is almost literally one of those cases where you
8 initially have pieces of a puzzle that you try to put
9 together, but through time and effort the police were able
10 to figure that out; they were able to put the pieces
11 together, and they were able to figure out that Anthony
12 Mann, along with these other guys, robbed and killed Dante
13 Tobias. And the phrase "the hand of one is the hand of
14 all," is something that's important to you. You think
15 about that while you hear the evidence in this case.

16 Brownie's body was discovered January 13th,
17 about a week later. You'll hear about what the police
18 were doing during that one-week period of time to find out
19 who the killer was, and you'll hear from other people
20 about what Anthony Mann was doing during that time, who he
21 talked to, where he went, things he did, things he said.
22 And I ask you to pay keen attention to that.

23 Some of these people that you'll hear from,
24 because the scope of this case is so broad, will be people
25 that live a lifestyle that might be very different from

1 what you're used to. I'll tell you right now that some of
2 them have been to prison, some of them have done drugs,
3 some of them sell drugs, some of them dance in strip
4 clubs. You'll hear all of that. Some of them will have a
5 small piece of the puzzle to share with you; some of them
6 will have larger pieces. But in the end, they'll all fit
7 together and they'll all prove to you that this defendant
8 is guilty of the murder of Beverly Blake and the murder
9 and armed robbery of Dante Tobias.

10 Thank you.

11 THE COURT: Thank you, ma'am.

12 MS. SHEALY: Good afternoon. I was introduced
13 to you earlier. I'm Jennifer Shealy. I along with Beatty
14 Butler who is seated at the counsel table, represent
15 Anthony Mann, and also seated at our table is Gail Davis,
16 an investigator who has helped us with this case.

17 This is a case of a 17-year-old, a 17-year-old
18 girl who was a runaway, a stripper, and a drug user. And
19 her life was pitiful, and her death was pitiful, but
20 Anthony Mann did not kill her.

21 And this is the story of the case of Dante
22 Tobias, a drug dealer, a young man starting an escort
23 business. He had plans in his head and a holster on his
24 waist.

25 He was shot and he was killed in his home. And

1 in his home there was a safe, there were guns, mean
2 looking guns, and there were drugs. And back in January
3 of 2002, Beverly Blake, Brownie, was living with Dante.
4 His dreams didn't match hers. She'd had enough. Beverly
5 Blake killed Dante Tobias. And because she was the last
6 person known to be with Dante Tobias, the hunt for Beverly
7 Blake began.

8 The police were looking for Beverly Blake. Six
9 days later, six days later she's found in Lincolnville.
10 She's found with her pants unzipped, her panties rolled
11 up, semen in her mouth and in her vaginal area and her
12 rectal area six days later.

13 Now, Judge Pieper has already told you the State
14 has the burden of proving to each of you beyond a
15 reasonable doubt that Anthony Mann shot Dante Tobias and
16 that Anthony Mann shot Beverly Blake.

17 This trial will be lengthy. There will be a
18 parade of witnesses. But this is a court of law. This is
19 not trash TV. You will face making one of the biggest
20 decisions you've ever made because you sit in judgment of
21 Anthony Mann.

22 What we ask of you is that you pay close
23 attention to all of the facts. We don't shy away from any
24 of the facts. Please listen to them carefully. Please
25 evaluate them. You are the only people who can judge the

1 credibility of the witnesses, how believable are they.

2 What do they have to gain? What do they have to lose?

3 Many of them will be young. Many of them will be scared.

4 Many of them will have not lived a very clean life.

5 I'd like for you to look to the course of the
6 investigation as you listen to the witnesses testify.

7 Please note the course of the investigation, what happened
8 when, who came in when, who talked to the police when.

9 Please pay careful attention to that. And also look at
10 who changes their stories and why.

11 Of crucial importance is the time of death for
12 Beverly Blake. Because as we indicated, Dante Tobias is
13 shot and killed on January 7th. She is not found until
14 January 13th. When she is found, the investigators go
15 out to the spot where she's located. The coroner who
16 deals with death every day goes out to the scene where
17 she's located. They videotape her and the scene that
18 evening. Please listen to all the evidence regarding
19 that.

20 And a pathologist, an MUSC doctor performs the
21 autopsy of Beverly Blake. Now, I invite you to pay very
22 careful attention to what both the pathologist and the
23 coroner believe is the time of death initially. Pay close
24 attention to that. These are people who are trained and
25 who deal in death. And then ask yourself what happens in

1 the interim before they ultimately make a conclusion as to
2 the estimated time of death.

3 When Beverly Blake, Brownie, is found in
4 Lincolnville, as I indicated to you about her clothing,
5 the pants unzipped, the panties rolled up, her body had
6 not decomposed. This is January 13th, early morning
7 hours of January 14th. Her body had not decomposed.
8 Hard rigor was present. And you'll understand why that is
9 significant after you hear the doctor testify. And there
10 were fly eggs in her eye. All of these things are
11 important in evaluating the time of death for Beverly
12 Blake. She hadn't been dead long.

13 Brownie's being recently dead on January 13th,
14 it doesn't fit with the State's evidence. It doesn't fit.
15 They have one witness as to the death of Brownie: Peter
16 Davies. Peter Davies. Scrutinize him. Test his
17 credibility, his believability. Ask yourself, any other
18 day of the week, any other hour of the day would you
19 believe what he has to say?

20 This is a case that had to get closed. One man
21 was dead. The police were all over looking for Beverly,
22 all over. And then she's found dead. It's a case that
23 had to get closed.

24 In evaluating the evidence in this case, notice
25 the force of the investigation, notice the time of death

1 of Beverly, notice and please evaluate the believability
2 of the State's witnesses. And after evaluating everything
3 and listening to everything, you'll conclude that Anthony
4 Mann is not guilty of murder. Anthony Mann is not guilty
5 of murder. Anthony Mann is not guilty of armed robbery.

6 Thank you.

7 THE COURT: Call your first witness, please.

8 MS. WILSON: The State calls Dante Tobias, Sr.

9 THE CLERK: Come forward, please, sir.

10 Sir, place your left hand on the Bible and raise
11 your right hand.

12 DANTE CRAIG TOBIAS, after being duly sworn,
13 testified as follows:

14 THE WITNESS: Dante Craig Tobias, T-O-B-I-A-S.

15 DIRECT EXAMINATION

16 BY MS. BURNEY:

17 Q Mr. Tobias, what is your occupation?

18 A I'm a Seventh Day Adventist preacher.

19 Q And where do you live, sir?

20 A I presently live at -- I minister in Atlanta,
21 Georgia. My church is in Atlanta.

22 Q Do you live there as well?

23 A I'm in the process of moving, in transition.

24 Q Are you married?

25 A Yes, I am.

1 Q Do you have any children?

2 A Yes, I do.

3 Q Who are your children?

4 A My daughter is there sitting next to her mother,
5 Andrea Tobias.

6 Q And Dante Tobias was your son as well?

7 A That's right.

8 Q How old was he when he died?

9 A Twenty-eight.

10 Q And where was he living?

11 A He was living in West Ashley.

12 Q Here in Charleston?

13 A Yes.

14 Q Had you ever been to see him there?

15 A I visited him quite frequently in Charleston because
16 I used to pastor a church in Charleston. And he used to
17 live with me in Charleston and I came back to visit him
18 from time to time when he was living on James Island,
19 Fowler Beach, and when he also lived on Magnolia.

20 Q What kind of work did Dante do?

21 A He worked for a tank cleaning company where he would
22 clean tanks that would be hauled by 18 wheelers.

23 Q Did he support himself?

24 A Yes, he did. He always worked.

25 Q Did you know who Beverly Blake is?

1 A I did meet her that one time there at the house on
2 Magnolia.

3 Q And do you remember about when that was?

4 A It was probably in December sometime.

5 Q That is December of 2001?

6 A Yes, ma'am.

7 Q When was the last time you spoke with your son Dante?
8 And you called him Craig?

9 A I called him Craig, yes.

10 Q When was the last time you spoke with Craig?

11 A I spoke with Craig probably that same day that he was
12 killed. As a matter of fact, I was supposed to visit him
13 that evening, but I had responsibilities that kept me from
14 coming to the city of Charleston that day.

15 Q And so you were talking about coming to visit with
16 him?

17 A Yes. I had intended to be here that Monday.

18 Q Okay. Do you recall about what time you talked with
19 him on that day?

20 A I don't recall the time. We talked frequently. Just
21 like my daughter and I, we may talk two or three times a
22 day. Sometimes three or four days a week we may talk.

23 Q Do you remember what he was doing when you talked to
24 him?

25 A I don't recall what he was doing. But we did have a

1 conversation that I was going to come into town.

2 Q And when did you find out that your son had been
3 killed?

4 A I found out probably after 6 o'clock that next
5 morning.

6 Q January 8th?

7 A Tuesday morning, yes.

8 MS. BURNEY: Mr. Tobias, if you'd please answer
9 any defense questions.

10 CROSS-EXAMINATION

11 BY MS. SHEALY:

12 Q Mr. Tobias.

13 A Yes.

14 Q You indicated that your son was cleaning tanks to
15 support himself?

16 A Yes, ma'am. He worked at a number of tank companies,
17 one off of King Street and the other was over there in
18 North Charleston. So he did work at tank companies.

19 Q Have you been advised since the death of your son
20 that in fact he was also dealing drugs?

21 A Advised? What do you mean "advised"?

22 Q If someone told that, that their investigation showed
23 he was dealing drugs.

24 A I can't say that that's what I was told, but from
25 somewhere in the paper it was mentioned that there were

1 drugs.

2 Q Were you familiar with a business that he had started
3 called Silhouettes?

4 A No, I was not.

5 Q Have you since his death learned that he in fact had
6 started a business called Silhouettes?

7 A No, I have not.

8 Q Do you know your son's handwriting? Are you familiar
9 with your son's handwriting?

10 A Possibly.

11 Q Let me ask you, I'm going to show you some documents
12 and ask you whether or not you can identify them as being
13 your son's handwriting.

14 A It could be. I can't say for sure. We did not
15 correspond by writing.

16 Q You did not correspond by writing?

17 A We're not letter writers. We talked on the phone.

18 Q You indicated that you all were so close, but is it
19 fair to say that since his death you've learned some
20 things about him that you were unaware of?

21 A I've heard accusations.

22 Q Let me ask you this: Anthony Floyd, that was your
23 son's roommate; is that correct?

24 A Yes.

25 Q And have you and Mr. Floyd had the opportunity to

1 talk about the business called Silhouettes?

2 A He did not mention anything about a business called
3 Silhouettes, no.

4 Q You told us that you had intended to go by and see
5 Tobias, Mr. Tobias; is that correct?

6 A I had intended to come to Charleston on that Monday
7 to visit with my son and other friends, yes.

8 Q And how frequently had you gone to that Magnolia Road
9 residence?

10 A I had been there a number of times. I can't count
11 them. Whenever I came to Charleston I would see my son.

12 Q When you would see your son, would he be wearing a
13 holster with a gun?

14 A No, ma'am. I never seen him wearing a holster and a
15 gun.

16 Q Did you see any of the guns that he possessed?

17 A No, I did not.

18 Q Did you ever see a Malsburg shotgun?

19 A No, I did not.

20 Q And when you would go and visit your son, did you see
21 marijuana in his house?

22 A No, I never saw him with marijuana.

23 Q Cocaine?

24 A No, ma'am.

25 Q Would you see boxes of cash?

1 A No.

2 MS. SHEALY: I beg the Court's indulgence just
3 one moment.

4 Thank you very much. I have no further
5 questions.

6 THE COURT: Anything else?

7 MS. BURNEY: Nothing, your Honor. We'd ask that
8 Mr. Tobias be excused.

9 THE COURT: Any objection?

10 MS. SHEALY: Subject to recall, your Honor.

11 THE COURT: You will be subject to recall, sir.
12 Thank you.

13 MS. WILSON: Judge, may we approach?

14 THE COURT: Yes, ma'am.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury but out of the hearing of the
17 jury.)

18 THE COURT: All witnesses need to -- sir, did
19 you say -- approach the bench.

20 (WHEREUPON, a bench conference was held in the
21 presence of the jury but out of the hearing of the
22 jury.)

23 THE COURT: All witnesses have been sequestered?

24 MS. WILSON: Yes.

25 THE COURT: All right. Good.

1 MS. WILSON: Anthony Floyd.

2 THE CLERK: Sir, come forward, please. Please
3 walk around the partition and be sworn. Place your left
4 hand on the Bible and raise your right hand.

5 ANTHONY FLOYD, after being duly sworn, testified
6 as follows:

7 THE CLERK: Please state your full name for the
8 Court and spell your last name.

9 THE WITNESS: Anthony C. Floyd, F-L-O-Y-D.

10 DIRECT EXAMINATION

11 BY MS. WILSON:

12 Q Mr. Floyd, how old are you?

13 A Thirty-eight now.

14 Q And what kind of work do you do?

15 A United States Merchant Seaman.

16 Q And where do you do that work?

17 A Up and down the east coast, to and from foreign every
18 now and then. Right now I'm working out of Boston,
19 Massachusetts.

20 Q Are you just here on a break?

21 A Yes, ma'am.

22 Q You were subpoenaed to be here?

23 A Yes, ma'am.

24 Q Where do you live, Mr. Floyd?

25 A 36 Magnolia Road.

- 1 Q How long have you lived there?
- 2 A A little over three years.
- 3 Q And during the time that you've lived there, have you
- 4 had roommates?
- 5 A Yes.
- 6 Q Do you recall having a roommate named Dante Craig
- 7 Tobias?
- 8 A Yes, ma'am.
- 9 Q And what did you call him, what name?
- 10 A Dante.
- 11 Q And how about Beverly Blake?
- 12 A Yes. She stayed there here and there.
- 13 Q I'm going to show you what's already been introduced
- 14 as State's Exhibits 43, 44, 45 and 46. I will show you
- 15 these and ask you if you recognize them.
- 16 A Yes, ma'am. Yes, ma'am.
- 17 Q Are those all photographs of your house from
- 18 different angles?
- 19 A Yes, ma'am, except the last one.
- 20 Q Okay. So in State's Exhibit 43, which is on the
- 21 screen now, is that a more recent photo of your house?
- 22 A Pretty much, ma'am. Yes, ma'am.
- 23 Q Is 43, is it the house with the van in the front?
- 24 A Yes, ma'am.
- 25 Q State's Exhibit 44, is that another shot of the

1 house?

2 A Yes, ma'am.

3 Q In the house in the background, the bluish or grayish
4 color house, do you know who lived there or lives there?

5 A Yes, but I don't know her name by her name.

6 Q And State's Exhibit 45, what is that a view of?

7 A The side street of my house.

8 Q And what is the name of that street that is shown in
9 that photograph?

10 A It's Maylen.

11 Q And this picture was taken from what angle, what
12 vantage point?

13 A That would be the right side.

14 Q Your neighbor's house?

15 A Neighbor's house.

16 Q State's Exhibit 46, is that your house there in the
17 background again from your neighbor's?

18 A Yes, ma'am, from the neighbor's porch.

19 Q Okay. Do you recall January 7th, Monday,
20 January 7th of 2002, the evening that Dante was killed?

21 A Pretty much, ma'am.

22 Q Okay. What had you been doing earlier that day?

23 A Earlier that day we was -- when I say "we," it was my
24 work crew who was downtown Charleston working on a house
25 and that consisted of about five of us.

1 Q Five of you?

2 A Yes, ma'am.

3 Q All right. And did you all work downtown all day?

4 A No, ma'am. We got there between 2 and 3 we got to my
5 house and that's when we had like lunch.

6 Q Before you left to go to work that day, did you see
7 Dante or Beverly?

8 A No, ma'am.

9 Q Do you know where they were?

10 A Dante's car was outside and I guess he was in the
11 room sleeping.

12 Q Did you see him in the room?

13 A No, ma'am.

14 Q When you came home for lunch, I believe you said you
15 came home for lunch; is that right?

16 A Well, like we was done for the day.

17 Q Did you see Dante and Beverly at that point?

18 A Yes, ma'am.

19 Q Where were they at that point?

20 A They had came out Dante's room.

21 Q They both were in there?

22 A Yes, ma'am.

23 Q And did they have on their pajamas or sleep clothes
24 at that point?

25 A Yes, ma'am, sleep clothes.

1 Q You say they both had been in Dante's room?

2 A Correct.

3 Q Where did they normally sleep, Dante and Beverly?

4 A Well, actually she was staying with Dante.

5 Q In his room?

6 A Yes, ma'am. And like the days that she was there
7 during the day and he's, you know, there sleeping, you
8 know, she probably stayed in a little other room probably
9 listening to music or something.

10 Q How is that house or is that house divided?

11 A It's divided as a three bedroom, one bath on one side
12 and it has two bedrooms and one bath on the other side.

13 Q Did they have separate entrances or how did that
14 work?

15 A Yeah, it had separate entrances.

16 Q Did you rent out -- how many of the bedrooms did you
17 rent out?

18 A It was just Dante's room that I rented to him and
19 then I had a room.

20 Q Was there another section in the house?

21 A The back section was vacant at the time. The guys
22 had just moved out about two weeks before this incident
23 happened.

24 Q All right. So you said when you got home from work
25 it was about what time?

1 A It was around 2, 3 o'clock in the afternoon.

2 Q Did you stay home the rest of the afternoon?

3 A No, ma'am. I left around 5, 5:30.

4 Q What were Dante and Beverly doing during this time?

5 A Just before I left, you know, I came up and was
6 cooking, frying some meat, and he said --

7 Q You were or he was?

8 A I was. And we ate all the food. So he said that he
9 was pretty much hungry, he needed to borrow my car to go
10 get something before I left. So at that time he went in
11 the room and got dressed and then he went to the Food
12 Lion.

13 Q What was going on with his car? Why did he need
14 yours?

15 A His car wasn't running right, and he didn't really
16 depend on it to go to the Food Lion and back.

17 Q During that time period, were Dante and Beverly
18 fighting at all?

19 A No, ma'am. They seemed to be pretty well. There
20 wasn't no loud talking among the two, and you could hear.
21 Right where we was at, the kitchen was right where the
22 bedroom was located.

23 MS. SHEALY: Your Honor, can I ask him to speak
24 up just a little bit.

25 THE COURT: Can you speak up a little, sir,

1 please?

2 THE WITNESS: Okay.

3 BY MS. WILSON:

4 Q Now, you said you had fried some meat and eaten
5 pretty much all the food, so he borrowed your car to go to
6 the store?

7 A Correct.

8 Q And what happened after he got back from the store?

9 A After he got back from the store, my friend, his
10 family that was there with me, we kind of got all
11 dispersed. My mom and my brother and another friend, they
12 left in one car, and I had another friend, he left and he
13 drove his own car, and he left his car at my house that
14 day, so he drove his own car. And I left and went to Home
15 Depot.

16 Q You said your friends and your family. Was your
17 momma there?

18 A Yes, ma'am.

19 Q Did she leave at the same time you did?

20 A Yes. All of us, we all walked outside, everybody got
21 in the car and went to different places.

22 Q You went to Home Depot?

23 A That's correct.

24 Q I show you what's been agreed upon and introduced as
25 State's Exhibit 92. Do you recognize that Home Depot

1 receipt as yours from that night?

2 A Yes, ma'am.

3 Q And what is the time of that receipt?

4 A Time of that receipt is 6:21 p.m.

5 Q And that's on January 7th, 2002?

6 A Correct.

7 Q All right. Does that sound about right as far as the
8 time you were at Home Depot?

9 A Correct. But it took me time to arrange those items
10 in my basket.

11 Q And where did you go from Home Depot?

12 A I went to see my little kids in Hollywood.

13 Q How long did you stay in Hollywood?

14 A I stayed out there, I think, I want to say might have
15 been about 9, 10, something around there.

16 Q Why did you leave?

17 A I got a call on my pager, and it was my little
18 brother, he was paging me, and he kept paging me 911, 911,
19 so I finally called him to see what's going on, and he
20 told me that Dante had got shot. So he said the detective
21 wanted to talk to you. So I came on down.

22 Q Did you talk with the detectives?

23 A Yes.

24 Q Did you tell them about what you had seen that day?

25 A That's correct.

1 Q Did they ask you about whether or not you knew of any
2 enemies that Dante had?

3 A Yes, ma'am. I told them as far as I know I didn't
4 ever knew anybody.

5 Q And did you know anything about Beverly and who her
6 friends were?

7 A No. I only met one of her friends. Her name -- I
8 guess they call her Star, and that was it.

9 Q And can you describe what Star looks like?

10 A She was about five seven, and I want to think she was
11 Puerto Rican. I'm not sure.

12 Q Okay. And did you get to go into the house when you
13 first got home?

14 A No, ma'am.

15 Q Eventually did you get to go back in?

16 A No, ma'am. Not that night.

17 Q Not that night. When you finally did go back in, did
18 you see Beverly's things?

19 A No, ma'am.

20 Q Had she had things at your house before that night?

21 A Well, she had a plastic black garbage bag that she
22 kept a little few clothes in.

23 Q And that was gone?

24 A That's correct.

25 Q Did you know whether or not Dante owned a gun?

- 1 A No, ma'am, not at that time.
- 2 Q No, ma'am what?
- 3 A I didn't know that he owned a gun.
- 4 Q You never saw him with a gun?
- 5 A No, ma'am. He talked about it, but I never seen him
6 got one.
- 7 Q When you say he talked about it, what do you mean?
8 He talked about buying one or he talked about one that he
9 had?
- 10 A Well, he was talking about buying one.
- 11 Q Mr. Floyd, do you know someone named Eric Zack?
- 12 A No, ma'am.
- 13 Q Michael Crumb?
- 14 A No, ma'am.
- 15 Q Peter Davies?
- 16 A No, ma'am.
- 17 Q Anthony Mann?
- 18 A No, ma'am.
- 19 Q You don't know those guys?
- 20 A No, ma'am.
- 21 Q Was your phone number at 36 Magnolia 556-4742?
- 22 A That's correct.
- 23 Q At that time. And was that a mobile phone that you
24 all used there or was that a land line?
- 25 A That was a land line.

1 MS. WILSON: Beg the Court's indulgence.

2 BY MS. WILSON:

3 Q Mr. Floyd, did you give a written statement to the

4 police that night?

5 A Yes, ma'am.

6 Q And did they ask you to describe Beverly Blake? Do

7 you recall?

8 A Yes, ma'am.

9 Q And did they ask you to describe what she was wearing

10 the last time you saw her?

11 A Yes, ma'am.

12 Q And do you recall what you told them?

13 A Yes, ma'am.

14 Q What did you tell them or what was she wearing?

15 A Well, I told her that when I saw her in the house,

16 that she had on some plaid shorts with a white T-shirt.

17 And then I said what she usually wears is blue flare leg

18 pants, because she didn't have a whole bunch of clothes

19 there.

20 Q When you left, was she wearing the plaid boxer

21 shorts?

22 A Yes, ma'am.

23 Q Do you know if those were hers or if those were

24 Dante's?

25 A They probably were Dante's.

1 MS. WILSON: That's all I have.

2 MS. SHEALY: May it please the Court.

3 THE COURT: Yes.

4 CROSS-EXAMINATION

5 BY MS. SHEALY:

6 Q Mr. Floyd, tell me again where you said you worked?

7 A I'm a United States Merchant Seaman. I work for a
8 company called Seaboard Turner.

9 Q I'm sorry, tell me the name of the company again?

10 A It's called Seaboard Turner.

11 Q And you had known Dante for how long?

12 A Right about ten months.

13 Q And you all had lived together. You said you moved
14 out two weeks before this happened; is that correct?

15 A No, ma'am.

16 Q Oh, I'm sorry. Tell me.

17 A I said that the tenants in the other part of the
18 house had moved out probably about two weeks before the
19 incident.

20 Q Okay. So how long did you actually live with Dante?

21 A About a whole ten months.

22 Q A whole ten months, okay.

23 How old are you?

24 A Thirty-eight.

25 Q And Dante is 28?

1 A That's correct.

2 Q Did you and Dante often have 17-year-old girls that
3 were living with you all?

4 A No, ma'am.

5 Q Is she the first 17-year-old that you all had there?

6 A Yes, ma'am.

7 Q Now, you and Dante had engaged in a business effort;
8 is the correct? You all were going to open up
9 Silhouettes?

10 A That's correct.

11 Q In fact, you got a business license?

12 A That's correct.

13 Q Your address was 36 Magnolia Road?

14 A That's correct.

15 Q Let me show you this and ask if you can identify it.

16 A That's correct.

17 Q And if you would, please, tell the jury what that is.

18 A That's a business license for a business named
19 Silhouettes.

20 MS. SHEALY: Your Honor, I'd offer this at this
21 time.

22 THE COURT: Any objection?

23 MS. WILSON: May we approach?

24 THE COURT: Yes.

25

1 (WHEREUPON, a bench conference was held in the
2 presence of the jury but out of the hearing of the
3 jury.)

4 (WHEREUPON, Defendant's Exhibit No. 18 was
5 marked for identification only.)

6 THE COURT: Objection withdrawn.

7 BY MS. SHEALY:

8 Q Mr. Floyd, what type of business was Silhouettes?

9 A Sort of like entertainment for weddings, birthdays.

10 Q And you all also put an ad in the paper about
11 Silhouettes; is that correct?

12 A Yes, Dante did.

13 Q Okay. And that was advertising it as adult
14 entertainment, private dancers; is that correct?

15 A Correct.

16 Q And when you say adult entertainment, private
17 dancers, is that strippers?

18 A Pretty much.

19 Q And was Beverly Blake one of your strippers?

20 A No, ma'am.

21 Q She was not one of your strippers?

22 A No, ma'am.

23 Q How many girls did you say you all had working for
24 you?

25 A The business never really got started.

1 Q It hadn't got started yet?

2 A No, ma'am.

3 Q Are you familiar -- let me ask you this. Is this
4 your handwriting?

5 A No, ma'am.

6 Q If you would take the time to look at the several
7 different sheets and tell me whether any of those sheets
8 are your handwriting.

9 A No, ma'am.

10 Q Do you recognize those as being Dante's handwriting?

11 A Pretty much.

12 Q If you'll hand those back to me.

13 When you say pretty much, is that Dante's
14 handwriting?

15 A Looks like it.

16 MS. SHEALY: I would like to have these marked
17 for I.D. right now, your Honor.

18 THE COURT: All right.

19 MS. WILSON: If I could take a look at those.

20 (WHEREUPON, Defendant's Exhibit No. 19 was
21 marked for identification only.)

22 BY MS. SHEALY:

23 Q Mr. Floyd, so this relationship, was it a romantic
24 relationship or a business relationship from what you saw?

25 A I would say it might have been more of a romantic.

1 Q Romantic?

2 A Correct.

3 Q And for that time period then that you were living
4 with Dante, Brownie lived there you said for how long?

5 A Well, she would come and stay, and her longest stay
6 might have been four straight days.

7 Q So she was in and out?

8 A She was in and out.

9 Q Okay. Now, in describing the way that she and Dante
10 were getting along, would he ask her to do dances for him,
11 for some of his friends?

12 A He might have. I imagine so.

13 Q Were you ever present when some of the dancing was
14 going on?

15 A No, ma'am.

16 Q Were you ever present when Star was over there
17 dancing?

18 A No, ma'am.

19 Q You had been asked whether or not you were aware that
20 Dante had some guns, and you're telling us you were not
21 aware of that?

22 A That's correct.

23 Q Were you aware that there was ammunition in the
24 house?

25 A No, ma'am.

1 Q No? So you were not familiar, then, with
2 9-millimeter bullets being in the house?

3 A Not that I can recall. I know I owned a 9-millimeter
4 gun.

5 Q Well, you're hesitating. Do you remember seeing some
6 ammunition there at some point?

7 A I can't recall.

8 Q You can't recall? What about 32 automatic bullets?

9 A I can't recall seeing any type of ammunition.

10 Q You don't recall seeing any of that ammunition?

11 A That's correct.

12 Q You told us at some point that evening you were
13 contacted by your brother; is that correct?

14 A Right, late that evening.

15 Q Is your brother Terry Grant?

16 A That's correct.

17 Q And the police were real interested in Terry that
18 evening, weren't they?

19 A I'm not sure. When I got there they was talking to
20 me.

21 Q They were talking to you?

22 A Right.

23 Q Did they take one of Terry's guns in to look at?

24 A It was my gun that Terry had.

25 Q It was your gun that Terry had?

- 1 A That's correct.
- 2 Q And what type of gun was that?
- 3 A A 9-millimeter.
- 4 Q So the police got that gun at some point during this
5 investigation; is that correct?
- 6 A That's correct.
- 7 Q Were you aware that Dante kept a safe in the house?
- 8 A No, ma'am, I didn't know he had a safe.
- 9 Q You didn't know he had a safe. Did you know he had a
10 holster?
- 11 A No, ma'am.
- 12 Q You never saw the holster?
- 13 A No, ma'am.
- 14 Q Did you ever see any green leafy substance in the
15 house, marijuana?
- 16 A No, ma'am.
- 17 Q Okay. So Dante, if those items were found -- were
18 you there when the search warrant was being executed on
19 your house?
- 20 A They kept me outside the whole time.
- 21 Q Were you given a copy of the search warrant return?
- 22 A No, ma'am.
- 23 Q So if there were guns in the house, you didn't know
24 about them?
- 25 A That's correct.

1 Q And if there was ammunition in the house you didn't
2 know about it?

3 A That's correct.

4 Q And if there was a holster on Dante you didn't know
5 about it, correct?

6 A I didn't see one when I was there.

7 Q You didn't see one what?

8 A I didn't see Dante have a holster on when I was there
9 before we left.

10 Q Okay. Had you seen him in a holster some other time?

11 A No, ma'am.

12 Q And if there's marijuana in the house, you don't know
13 about it; is that correct?

14 A That's correct.

15 Q Thirty-eight rounds, 9-millimeter rounds, you don't
16 know about it?

17 A That's correct, ma'am.

18 Q What about a pipe that people use to smoke drugs?

19 A I didn't notice that around.

20 Q You didn't know that was there?

21 A No, ma'am.

22 Q Did you know that Dante kept cash around the house in
23 various locations?

24 A No, ma'am.

25 Q Didn't know that.

1 Now, that evening when you were being talked to
2 and your brother and your mother was talked to as well; is
3 that correct?

4 A I believe so, ma'am.

5 Q And is it fair to state that the police were
6 interested in knowing whether Dante had any enemies that
7 night?

8 A I believe so.

9 Q Were you aware that Dante was selling drugs?

10 A No, ma'am.

11 Q You didn't know that?

12 A No, ma'am.

13 MS. WILSON: Your Honor, I would object to that
14 line as assuming facts not in evidence.

15 THE COURT: Counsel?

16 MS. SHEALY: I think I can ask whether or not he
17 has aware that Dante Tobias was selling drugs.

18 MS. WILSON: But that presumes that he was.
19 There is no evidence of that.

20 THE COURT: Approach.

21 (WHEREUPON, a bench conference was held in the
22 presence of the jury but out of the hearing of the
23 jury.)

24 BY MS. SHEALY:

25 Q Mr. Floyd, let me ask you the question this way. Do

1 you know whether Dante was selling drugs?

2 A No, ma'am, I don't know.

3 Q Now, Ms. Wilson asked you about being interviewed by
4 the police. You recall doing that; is that correct?

5 A That's correct.

6 Q In fact, they asked you to describe Beverly, and
7 Ms. Wilson asked you about that; is that correct?

8 A Correct.

9 Q Do you recall telling them that she had a dark knit
10 hat?

11 A I'm not recalling that.

12 Q I'm sorry, what?

13 A I'm not recalling now.

14 Q Okay. Let me show you this and ask if you can
15 identify it. Do you recognize that document?

16 A Yes, I recognize it.

17 Q Is that a copy of the statement that you gave the
18 police officers that evening?

19 A Yes, ma'am.

20 MS. SHEALY: May I approach the witness, your
21 Honor?

22 THE COURT: Yes, ma'am.

23 BY MS. SHEALY:

24 Q In looking on page two, and you can take a moment to
25 refresh your memory, could you tell the jury whether or

1 not you described her as having on a dark knit hat?

2 A Yes, ma'am.

3 Q Now, after that evening, you had been the one who
4 told police the last person you saw Dante with was
5 Beverly; is that correct?

6 A That's correct.

7 Q Do you recall this case getting a lot of media
8 attention? Do you know what I mean by that? It was on
9 the news?

10 A Yes, it was on the news.

11 Q Do you recall them putting a picture of Brownie on
12 the news saying that they were looking for her?

13 A Yes, ma'am.

14 Q Would you describe Brownie as being slightly
15 tomboyish, kind of boyish?

16 A I don't know, the way she dressed like boys type.

17 Q Boyish type?

18 A (Witness nodding.)

19 MS. SHEALY: I beg the Court's indulgence.

20 I have no further questions. Thank you.

21 REDIRECT EXAMINATION

22 BY MS. WILSON:

23 Q Mr. Floyd, I'm going to show you what has been marked
24 State's Exhibit 91 for I.D. Do you recognize who is in
25 that photograph?

1 A Yes, ma'am.

2 Q And is that a fair and accurate depiction of those
3 people as you knew them?

4 A That's correct, ma'am.

5 Q And the dark hat that you talked about in your
6 statement, is this the hat that you were describing?

7 A Probably was a knit hat, one of those for the cold
8 weather type knit hat.

9 Q And can you give some more description of that?

10 A It was one of those knit hats that you pulled over
11 your head.

12 Q What else did Brownie wear on her head?

13 A Like a Texas-style scarf there.

14 Q Okay. A bandana or a scarf like I have on?

15 A Well, a bandana.

16 MS. WILSON: Your Honor, at this time we would
17 offer State's Exhibit 91.

18 THE COURT: Any objection?

19 MS. SHEALY: Without objection, your Honor.

20 THE COURT: It's in evidence without objection.

21 (WHEREUPON, State's Exhibit No. 91 was admitted
22 into evidence.)

23 BY MS. WILSON:

24 Q The people who are depicted in State's Exhibit 91,
25 who were they?

1 A One girl was Beverly and the other girl was Star.

2 MS. WILSON: Your Honor, request permission to
3 publish State's 91 to have them pass around.

4 THE COURT: You can hold it up and walk it down.

5 You can hold it up and walk it down, please. I
6 don't like there to be testimony while you're showing it
7 to the jury.

8 MS. WILSON: I don't have any other questions.

9 THE COURT: All right. You can't ask any
10 questions, ladies and gentlemen. She's just showing you
11 the picture. It will be with you in the jury room.

12 BY MS. WILSON:

13 Q Mr. Floyd, in State's Exhibit 91, there is a black
14 female and a white or Hispanic female. Which is which as
15 far as Brownie and Star?

16 A Brownie is the black female.

17 MS. WILSON: That's all I have for this witness,
18 your Honor.

19 MS. SHEALY: I have nothing further.

20 THE COURT: You may step down, sir.

21 MS. WILSON: Your Honor, may the witness be
22 excused?

23 THE COURT: Any objection?

24 MS. SHEALY: No objection.

25 THE COURT: You may be excused, sir.

1 MS. WILSON: The State calls Donna Kann.

2 THE CLERK: Please walk around the partition and
3 be sworn. Place your left hand on the Bible and raise
4 your right hand.

5 DONNA KANN, after being duly sworn, testified as
6 follows:

7 THE CLERK: Please state your full name for the
8 Court and spell your last.

9 THE WITNESS: Donna Madeline Kann, K-A-N-N.

10 MS. WILSON: Your Honor, at this time we'd offer
11 State's Exhibit 93 I believe without objection.

12 MS. SHEALY: That's correct, your Honor.

13 THE COURT: 93 in evidence without objection.

14 (WHEREUPON, State's Exhibit No. 93 was marked
15 for identification and received into evidence.)

16 DIRECT EXAMINATION

17 BY MS. WILSON:

18 Q Where are you employed?

19 A Charleston County EMS.

20 Q How long have you been with EMS?

21 A Twenty-nine years.

22 Q What do you do for them?

23 A I'm Assistant Director of Administration.

24 Q Does that mean that you now or at one time went out
25 on emergency calls?

1 A I did several years ago. I haven't done that for
2 awhile now.

3 Q Several. How many is that?

4 A Probably 15.

5 Q Okay. And now what types of things do you do for
6 them?

7 A I work with scheduling, administrative support,
8 payroll.

9 Q Where do you live?

10 A 34 Magnolia Road.

11 Q Where is that in relation to 36 Magnolia Road?

12 A It's right across the street.

13 Q And why don't we -- well, let me ask you this. Do
14 you remember January 7th of 2002?

15 A Yes, ma'am, I do.

16 Q And had you worked that day?

17 A Yes.

18 Q And what happened when you came home from work?

19 A As I pulled up into the side of my carport, I was
20 getting out of the truck. I had to go to the van. It was
21 about 6:40 in the evening. As I was getting out of the
22 van, I heard a gunshot and a man cry out.

23 Q When you say a man cry out, can you be more specific?

24 A I just heard an "AHHH".

25 Q And you recognized that to be a male voice you

1 thought?

2 A Correct.

3 Q Okay. Was there anything else in your garage or your
4 carport at that time?

5 A Yes, my personal vehicle and -- well, actually two
6 personal vehicles that were underneath the carport and I
7 was parked beside.

8 Q What was the lighting like outside at 6:40?

9 A It was not good at all. Actually it was pretty much
10 dark. There was no lights. I had no lights on in my
11 residence.

12 Q And you heard this sound. Did you recognize it to be
13 a gunshot?

14 A I did, yes.

15 Q After you heard that, what did you do?

16 A After I heard the gunshot and a male cry out, while I
17 wasn't sure exactly where it came from, I turned and
18 looked towards 36 Magnolia and there was a male standing
19 on the side of the road with a gun in his hand.

20 Q Were you concerned at that point?

21 A Absolutely.

22 Q What your first concern at that point?

23 A To shut my van door because I was illuminated by the
24 dome light in my truck.

25 Q How did you go about shutting that van door?

1 A Very carefully, quietly. I just shut it and stood
2 behind a pole as best I could.

3 Q Did you think you were hiding behind this pole?

4 A I did. I did.

5 Q Did you watch what happened across the street?

6 A I mostly just tried to hide myself the best I could
7 while I tried to keep an eye on the man with the gun. He
8 was -- had his back towards Magnolia Road looking down
9 Maylen, and in just a matter of a few minutes maybe a car
10 rolled up, picked him up, and then they took off.

11 Q Did you see where the man got in the car?

12 A No, I really don't -- I don't really remember.

13 Q Now, you describe this person as a man. Did you tell
14 the police what you had seen? I know we're jumping ahead.
15 But at some point did you tell the police what you had
16 seen?

17 A Yes, I did.

18 Q Okay. And then some days later you were
19 re-interviewed by the police. You were interviewed that
20 night, correct?

21 A Right.

22 Q And then a few days later you were interviewed?

23 A Right.

24 Q Okay.

25 A They came to my place of work and we talked. They

1 wanted to know if I remembered anything else.

2 Q Was there any other concern as far as news coverage
3 and things of that nature in the intervening three days?

4 A Yes. The young lady that had been missing and they
5 were trying to contact or try to find the young lady and
6 thought she might have had some information, that
7 supposedly she was seen with him last is what I got out of
8 it. And at that point, you know, I was asked if the
9 person I saw could have been a woman, and I said I guess
10 it could have been as well as I could see, you know.

11 Q But that night what did you tell the police?

12 A I was pretty definite that it was a white male.

13 Q All right. So let's go back to your carport.

14 You're trying to hide behind this pole, right?

15 A Right.

16 Q You see the man get in a car and speed away. Did you
17 get a license plate?

18 A No. I did try, but I was just kind of scared to get
19 out and show myself much more than I did.

20 Q What did you do next after they pulled away?

21 A After they pulled away, I got on my cell phone and
22 called my EMS dispatcher.

23 Q That is different than calling 911; is that right?

24 A Yes.

25 Q Okay. What's the difference between if I were to

1 just call 911 versus you calling your dispatcher?

2 A If I had called 911, the jurisdictional police
3 department would have answered and I would have told them
4 what was wrong. But I didn't make that choice. I called
5 my dispatcher. Because in the past I have had some issues
6 that I had to call and had some jurisdictional
7 differences, so it's just easier for me to call my
8 dispatcher because they knew where I lived and they could
9 get there.

10 Q When you say "jurisdictional issues," do you mean the
11 city doesn't know if it's in the city or the county or the
12 county thinks it's in the city?

13 A Right. We're right there on the line, and it's
14 always been an issue trying to figure out who's who, and I
15 just wanted somebody with me there pretty quick.

16 Q Whose jurisdiction is it?

17 A Charleston County.

18 Q So your house is in Charleston County and so is 36
19 Magnolia?

20 A Right.

21 Q So you call your dispatcher from your cell phone?

22 A Right.

23 Q Were you inside or outside at this point?

24 A I'm still outside.

25 Q Did you run across the street and see what happened?

1 A No, I did not.

2 Q Why not?

3 A I was not sure what was going on over there and I
4 wasn't going to put myself in that jeopardy.

5 Q And what happened next? Who arrived?

6 A A medic unit, medic three from West Ashley arrived.

7 A few minutes later a quick response vehicle arrived, and
8 five minutes later I guess the sheriff's office arrived.

9 Q And at that point when just the medics were there,
10 did all of you all go in there at that point?

11 A No. It's standard operating procedure that we wait
12 until the situation is cleared by the police to make sure
13 it's safe for us to go inside.

14 Q After the police arrived, did they go over?

15 A Right.

16 Q Did you go over as well?

17 A After he cleared it and called us over, yes.

18 Q Was the victim there still when you were over there,
19 the shooting victim?

20 A The one that was shot?

21 Q Yes.

22 A Yes. He was lying face down on the floor.

23 Q Did you recognize him at all? Did you ever see his
24 face?

25 A Yes. When we rolled him over, yes, I recognized him.

1 Q At that point did you recognize him?

2 A Uh-huh.

3 Q Now, you mentioned that the police arrived next and
4 at some point after that you talked to them and told them
5 what you had seen?

6 A Right.

7 Q And did you tell them about the car that you saw?

8 A No. They asked me if I had a description. I told
9 them that the best I could make out it was a dark, maybe
10 burgundy red two-door hatchback, older model.

11 Q What made you think it was an older model?

12 A It didn't look new.

13 Q Did you notice anything about how the car traveled
14 down the road?

15 A It didn't seem to -- it didn't seem to have too much
16 get up and go. When they rounded the corner, it seemed
17 like they were trying to make a hastier exit than the car
18 would allow them to.

19 Q I'm going to show you, or actually have you go over
20 with the jury some exhibits that have already been
21 introduced. Let's start with State's 43.

22 While we're getting that up, you mentioned that
23 the man you saw had something in his hand?

24 A It's what I believed to be a gun, yes.

25 Q Could you tell any detail about what kind of gun it

1 was?

2 A No. I don't know much about guns. I thought it was
3 either silver or black. That's really all I could tell.

4 Q Did you see anything else he had in his hands beside
5 that?

6 A No. That was pretty much my focus.

7 Q Ms. Kann, in this photograph, would your house be in
8 this area here?

9 A Yes, ma'am.

10 Q And that's 36 Magnolia across, the yellow house?

11 A Yes, ma'am.

12 Q If we could have State's 45.

13 Can you tell where this photograph was taken
14 from?

15 A Where I usually parked my vehicle, yes.

16 Q And State's 46. What is that a view of?

17 A That is the back door to my residence looking towards
18 36 Magnolia.

19 Q I believe State's Exhibit 93, which is not on the
20 screen.

21 MS. WILSON: If we could have the witness step
22 down, your Honor?

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

24 BY MS. WILSON:

25 Q I'm going to hold this up.

1 If you could, State's Exhibit 93, if you could
2 tell what this car is, the white car?

3 A It's a white BMW that I had parked underneath the
4 carport.

5 Q Okay. And where that night on January 7th, where
6 were you parked in relation to this car?

7 A I was sitting on the outside, the outside perimeter
8 of the carport.

9 Q And you testified earlier that you were having to
10 look behind a pole. What pole?

11 A That would be this pole.

12 Q And so you were trying to take cover?

13 A Yes.

14 Q And then in the background, that's the house?

15 A That is 36 Magnolia.

16 MS. WILSON: Your Honor, that's all I have of
17 this witness.

18 MR. BUTLER: May it please the Court.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. BUTLER:

22 Q Good afternoon, Ms. Kann. How are you?

23 A Fine.

24 Q At the time of this incident you were employed as an
25 emergency medical technician?

1 A At the time of this incident?

2 Q Yes, ma'am.

3 A No.

4 Q Okay.

5 A Assistant Director of Administration.

6 Q But you work for EMS?

7 A I do.

8 Q And how long have you worked in the emergency medical
9 field?

10 A I've worked for EMS for 29 years.

11 Q And in your work you know the importance of
12 responding to critical situations?

13 A I do.

14 Q And one of the critical situations that EMS has to
15 respond to is when people are victims of criminal activity
16 like in this case?

17 A Right.

18 Q So you know the importance of documenting information
19 and receiving information at the scene of the crime,
20 correct?

21 A Uh-huh.

22 Q And this time you were on the other end of that,
23 right?

24 A Yes.

25 Q Has that ever happened to you before?

1 A No.

2 Q So you're a witness this time.

3 A Uh-huh.

4 Q But at the time you're a witness, you know how
5 important it is to give the people who are investigating
6 the crime all the accurate information you can, correct?

7 A Correct.

8 Q And you, more so than most of us, because of your
9 line of work; fair to say?

10 A Right.

11 Q Now, you testified on direct examination that you
12 gave two statements to police officers; is that right?

13 A Yes.

14 Q Was it two written statements?

15 A I wrote one. The other, the police officers wrote
16 it.

17 Q As they wrote it they allowed you to review it?

18 A Right.

19 Q And make any additions or corrections?

20 A Yes.

21 MS. WILSON: Your Honor, if she could speak into
22 the microphone. We can't hear.

23 THE COURT: Can you scoot up closer to that
24 microphone?

25 THE WITNESS: Yes, I can.

1 THE COURT: Thank you.

2 BY MR. BUTLER:

3 Q The officer allowed you to make any corrections or
4 additions or deletions?

5 A Yes.

6 Q You read it over to make sure it was accurate?

7 A Yes.

8 Q And you made sure it was complete, that you told them
9 everything?

10 A Yes.

11 Q And then you signed it, right?

12 A Yes, sir.

13 MR. BUTLER: And may I approach the witness?

14 THE COURT: Yes, sir.

15 BY MR. BUTLER:

16 Q Do you recognize that statement that you gave on the
17 day of the 7th?

18 A The entire statement, yes, I do.

19 Q And you signed that on every page, three pages,
20 correct?

21 A Yes.

22 Q Now, on direct examination do you recall testifying
23 that your initial impression was that the man with the gun
24 was a white male?

25 A I do.

1 Q I want you to please review that statement, review it
2 carefully, and tell me if in fact you did use the
3 description white male.

4 A No, I guess I didn't.

5 Q May I hold it, please?

6 A Uh-huh.

7 Q So this is within a few hours or minutes of the
8 incident?

9 A Uh-huh.

10 Q And you want to tell them everything that you could
11 possibly remember, right?

12 A Right.

13 Q But you didn't say white male, did you?

14 A No, I didn't.

15 Q And they asked you for a description and you said
16 male with a knit cap, right?

17 A Uh-huh.

18 Q You remember the knit cap, right?

19 A I do, yes.

20 Q And when asked for an exact description --

21 MR. BUTLER: May I approach the witness?

22 THE COURT: Yes, sir.

23 BY MR. BUTLER:

24 Q The bottom of the page, please. The officer followed
25 up and said can you please give me an exact description;

1 isn't that right?

2 A Uh-huh.

3 Q And what did you say?

4 A That I couldn't see anything else because it was
5 dark.

6 Q Okay. Then go on. I'm sorry.

7 A Oh, the knit hat.

8 Q When he asked for an exact description, you just said
9 it was a knit hat and you couldn't see anything else
10 because it was dark?

11 A Yes.

12 Q So that would be a likely explanation for why you
13 didn't see the person's race, it was dark?

14 A Yes.

15 Q But you saw the knit cap?

16 A But I further explained that it was not a black
17 individual.

18 Q Yes. Are you talking about this statement or the
19 subsequent statement?

20 A I think to the officer when we were --

21 Q But you were certain about the knit cap so much so
22 that you mentioned it twice in your statement, correct?

23 A Yes.

24 Q And you say that the officers came back and talked to
25 you three days later, on the 10th, right?

1 A Right.

2 Q Now, you didn't mean to suggest that because of the
3 attention that the story had gotten, that officers
4 suggested to you that it might have been a female, do you?

5 A It was spoke about the first night, and I believe we
6 talked about it again during the second time that we
7 talked, that could it have been a woman, and I said it
8 could have been.

9 Q You wouldn't let someone put words in your mouth,
10 would you?

11 A No.

12 Q And you wouldn't let somebody convince you that you
13 had perceived something other than how you had perceived
14 it, would you?

15 A No, because my first impression was really what I
16 really thought I saw that night.

17 Q Three days later. And this happened in your
18 neighborhood, right?

19 A Right.

20 Q Right across the street from you?

21 A Yes.

22 Q So literally closer to home than the rest of the
23 things that you have to deal with in your work?

24 A Right.

25 Q You were concerned about it, so you possibly thought

1 about it, didn't you?

2 A Sure.

3 Q And when they asked you do you remember anything
4 else, now that I have been thinking about it, the person
5 really could have been a woman, right?

6 A Right.

7 Q That's what you told them?

8 A Right.

9 Q And you saw that person that really could have been a
10 woman right after the gunshot, right?

11 A Right.

12 Q After I heard the gunshot I turned around and saw the
13 individual almost immediately, the person in the knit cap
14 that could have been a woman?

15 A (Witness nodding.)

16 Q And there was a lot of media coverage of this story,
17 wasn't there?

18 A Yes, there was.

19 Q And you paid attention to it because it happened
20 right across the street?

21 A Yes.

22 Q And the media coverage is we're looking for this
23 girl, Beverly Blake?

24 A Right.

25 Q Because we think she might know something about the

1 crime?

2 A Right.

3 Q And they showed her picture on the news and her
4 picture in the paper?

5 A Right.

6 Q And that was daily?

7 A Pretty much.

8 Q Living right across the street from the incident
9 location, you're familiar with more or less the traffic
10 flow in and out of that residence?

11 A Otherwise I guess.

12 Q Safe to say that around this time there were people
13 coming and going at all hours?

14 A There were.

15 Q Would you agree with that description?

16 A Generally there were. That night there were not.

17 Q But before then and that time, people were coming and
18 going at all hours of the day or night?

19 A (Witness nodding.)

20 MR. BUTLER: Beg the Court's indulgence one
21 moment, please.

22 THE COURT: Yes, sir.

23 BY MR. BUTLER:

24 Q You followed the story after this initial night,
25 correct?

1 A I did.

2 Q So you know subsequently there were arrests made?

3 MS. WILSON: Objection.

4 MR. BUTLER: I'll withdraw it.

5 THE COURT: All right.

6 BY MR. BUTLER:

7 Q You were never asked to identify anybody from a photo
8 lineup, were you?

9 A No.

10 MR. BUTLER: Beg the Court's indulgence.

11 BY MR. BUTLER:

12 Q The gun you saw the person with, you said that was a
13 square gun?

14 A A handgun.

15 Q It was a handgun. It was something that they held in
16 their hand, something larger than that?

17 A As far as I could tell.

18 MR. BUTLER: That's all I have. Thank you.

19 REDIRECT EXAMINATION

20 BY MS. WILSON:

21 Q Ms. Kann, at the scene that night, do you remember
22 how many officers there were there?

23 A I really only remember the first officer that arrived
24 and --

25 Q Was that Buddy Bedsaul?

1 A I believe. I'm not sure.

2 Q Do you know Buddy?

3 A No, not really.

4 Q Was the officer that arrived in uniform?

5 A Yes.

6 Q Okay. And then later did you speak with detectives
7 who were not in uniform?

8 A Yes, I did.

9 Q And the officer who arrived on the scene, he was on
10 the scene in a matter of minutes from when you heard the
11 gunshot; is that right?

12 A I think it was -- I think it was probably about 13,
13 14 minutes by the time I --

14 Q But it was minutes?

15 A Right.

16 Q I think you testified that while all that happened
17 you were scared?

18 A Absolutely.

19 Q Were you glad to see him?

20 A I was.

21 Q Happy to tell him what happened?

22 A I was.

23 MS. WILSON: That's all I have.

24 THE COURT: Anything else?

25 MR. BUTLER: Beg the Court's indulgence one

1 moment, please.

2 RE CROSS-EXAMINATION

3 BY MR. BUTLER:

4 Q Do you remember the basis of what you may have told
5 the officers at the scene as to why you thought the person
6 was a certain way?

7 A Why I would say -- explain it.

8 Q Let me ask this. Do you remember saying the person
9 didn't walk or carry himself like a black person and
10 that's why I thought he was white?

11 A Right.

12 Q It wasn't the appearance of the person's face because
13 it was dark?

14 A It was the mannerisms.

15 Q The mannerisms didn't look like a black person so you
16 thought it might have been a white person?

17 A Right.

18 Q Wasn't the color of the person's skin?

19 A Right.

20 MR. BUTLER: That's all I have.

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

22 MS. WILSON: Your Honor, may she be excused?

23 THE COURT: Any objection?

24 MR. BUTLER: No, sir.

25 THE COURT: You may be excused.

1 MS. WILSON: The State calls Buddy Bedsaul.

2 BUDDY BEDSAUL, after being duly sworn, testified
3 as follows:

4 THE CLERK: Please be seated. Please state your
5 full name for the Court and spell your last.

6 THE WITNESS: Buddy Tom Bedsaul, B-E-D-S-A-U-L.

7 DIRECT EXAMINATION

8 BY MS. BURNEY:

9 Q Deputy Bedsaul, what agency are you employed with?

10 A Charleston County Sheriff's Office.

11 Q How long have you been with the sheriff's office?

12 A In February it's 19 years.

13 Q Were you dispatched to 36 Magnolia Road on January
14 7th last year?

15 A I was.

16 Q Would you tell the jury what you did when you got
17 that dispatch call?

18 A I responded to the address. When I first got there I
19 made sure the area was safe, and I walked up to the left
20 side of the porch. And when I got to the left side, I
21 looked inside of the porch and saw a body to the front
22 right corner of the porch, and that's when the other
23 deputies arrived. And they was sort of clearing the
24 house, and I sort of backed out of that and talked to the
25 complainant that had called.

1 Q When you arrived was EMS on the scene?

2 A They was standing by. They arrived just before me or
3 shortly after me.

4 Q And did you clear the house for EMS?

5 A Other deputies cleared the house. I didn't go in the
6 house. I stayed in the front part of house.

7 Q And when you initially testified, you said something
8 about you went in and I thought you said cleared the
9 house. Is that so EMS could come over and treat the
10 victim?

11 A I didn't clear the actual house. I didn't go in the
12 house. The scene out front, I thought it was important to
13 make sure it was safe, the front part of the house.

14 Q Do you recall what time you went over there or what
15 time you got that dispatch call?

16 A I would have to refer back to it.

17 Q Did you do a supplemental report?

18 A I done a report.

19 Q Would it refresh your recollection to have a look at
20 that?

21 A Yes. I'm showing I got dispatched at 18:46.

22 Q What time of day is that for us that don't know
23 military time?

24 A 6:46.

25 Q That is p.m.?

1 A P.m. And I arrived at 6:54.

2 Q Did you have any type of description of the suspect
3 at that time?

4 A I don't recall at that time, no. I don't recall. If
5 I did, it was before I got there.

6 Q Would it refresh your recollection to take a look at
7 your report?

8 A No, it don't state whether I knew before then or not.

9 MS. SHEALY: Your Honor, I think he said that it
10 did not reflect that.

11 THE COURT: Approach.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury but out of the hearing of the
14 jury.)

15 THE COURT: I sustain that.

16 BY MS. BURNEY:

17 Q All right. You did say that you did do a
18 supplemental report that you turned in?

19 A I done the report.

20 Q Did you interview Ms. Kann at the scene?

21 A I did.

22 Q The witness at the scene?

23 A That's right.

24 Q Did you talk to her about what she saw that caused
25 her to make that call to EMS?

1 A I did.

2 Q And as a result of talking with her, did you have any
3 idea of what suspect that you needed to tell the other
4 detectives and deputies as they arrived to look for?

5 A Yes, I got what description she give me of what she
6 saw.

7 Q What was that description?

8 A White male, approximately 5-foot 10, 180 pounds,
9 between the ages of 28 and 31.

10 Q Did you have any description of whether that white
11 male was armed or unarmed?

12 A She did state she thought that he was carrying an
13 object what she thought might be a gun.

14 Q Did you have any description about whether that
15 suspect was on foot or in a vehicle or a motorcycle?

16 MS. SHEALY: Your Honor, I apologize. I'd
17 object at this time. May we approach?

18 THE COURT: Yes.

19 (WHEREUPON, a bench conference was held in the
20 presence of the jury but out of the hearing of the
21 jury.)

22 THE COURT: Is this something we can hear, your
23 objection?

24 MS. SHEALY: I can barely hear.

25 The objection is hearsay. She is asking him now

1 questions of what Kann said to him at the scene that they
2 did not ask of Kann, that Kann did not testify to, so it's
3 an objection to hearsay.

4 MS. WILSON: I don't believe she asked that.

5 THE COURT: How is it res gestae if you're not
6 bringing it in through the person that heard it?

7 MS. WILSON: Excited utterance. I'm sorry.

8 MS. SHEALY: They didn't ask it of Kann.

9 THE COURT: It would have to be the person that
10 heard that excited utterance.

11 MS. WILSON: He's the one.

12 THE COURT: Did he say he heard it?

13 MS. WILSON: Kann was telling him.

14 MS. SHEALY: They just put Kann up and didn't
15 ask Kann about it. They didn't ask if she was excited at
16 the scene.

17 MS. WILSON: I did ask if she was scared and she
18 said yes.

19 THE COURT: I will allow it.

20 BY MS. BURNEY:

21 Q Based on just the limited amount of investigation
22 that you did, did you determine whether the suspect was on
23 foot or in a vehicle or how was the suspect traveling?

24 A Only information I got from Ms. Kann is that another
25 vehicle had pulled up and the suspect entered it and they

1 drove off.

2 Q And did you ascertain the identity of the victim or
3 was that someone else, another deputy on the scene?

4 A I'm sorry, I did what?

5 Q Did you determine what the identity of the victim was
6 at that time?

7 A I did at that time.

8 Q And you determined that the victim was, do you recall
9 that name?

10 A Dante Tobias, I think.

11 MS. BURNEY: Please answer any defense
12 questions.

13 CROSS-EXAMINATION

14 BY MS. SHEALY:

15 Q Officer Bedsaul, you indicated you have worked with
16 law enforcement for 19 years; is that correct?

17 A It will be in February of '04.

18 Q It will be 19 years then?

19 A Yes, ma'am.

20 Q You interviewed Ms. Kann that evening.

21 A Uh-huh.

22 Q You indicated that she said the gentleman was white
23 that came out of the house; is that correct? It was a
24 white male?

25 A Thought it was a white male.

1 Q I'm sorry, what?

2 A She thought it was a white male.

3 Q That she saw; is that correct?

4 A Yes.

5 Q Did you have any discussion with her about why it was
6 that she thought he was white?

7 A No. She thought it was a white male.

8 Q Do you think you can tell someone's race by the way
9 they walk?

10 A Probably not always, no.

11 Q And so when you spoke to Ms. Kann that evening, you
12 didn't know that she was telling you it was a white male
13 based on the way somebody was walking; is that correct?

14 A No, I don't recall that.

15 Q Did you have occasion to talk to Ms. Kann later when
16 she said that it could have been a woman?

17 A I don't recall, ma'am.

18 Q You don't recall that?

19 A No.

20 MS. SHEALY: I beg the Court's indulgence for a
21 moment.

22 I have no further questions. Thank you.

23 THE COURT: Anything further?

24 MS. BURNEY: No redirect, your Honor.

25 THE COURT: You may step down, sir.

1 MS. BURNEY: We ask that Deputy Bedsaul be
2 excused.

3 MS. SHEALY: No objection.

4 THE COURT: You may be excused, sir.

5 MS. BURNEY: The State calls James Ciali.

6 JAMES P. CIALI, after being duly sworn,
7 testified as follows:

8 THE CLERK: Please be seated. Please state your
9 full name for the Court and spell your last.

10 THE WITNESS: James Ciali, C-I-A-L-I.

11 DIRECT EXAMINATION

12 BY MS. BURNEY:

13 Q Mr. Ciali, where are you employed?

14 A Charleston County EMS.

15 Q How long have you been with EMS?

16 A Ten years.

17 Q Were dispatched to 36 Magnolia Road January 7th last
18 year?

19 A Yes, I was.

20 Q Would you tell the jury what you did when you got
21 that dispatch?

22 A We responded to the scene and ended up being at our
23 Major Kann's house. She works for us also. When we got
24 there we stayed with her at her house until the police
25 arrived.

1 Q Why did you remain at her house?

2 A Because she had heard what she thought was shots
3 fired from a gun, and to be safe we didn't go in until the
4 scene was cleared by the police.

5 Q And once the police cleared the scene, what did you
6 do?

7 A We went out to the porch. The police officer said he
8 saw a victim laying on the porch. We went in and found
9 the victim.

10 Q What condition was he in?

11 A He was not breathing and he had no pulse.

12 Q What kind of assistance did you give to him?

13 A We did CPR. We ventilated him with a bag valve mask,
14 started an IV, intubated him, all the advanced life
15 support that we normally do on somebody that's not
16 breathing.

17 Q Where was the gunshot wound?

18 A He had two wounds, one was in the middle of his back
19 and one was at his sternum about this level. And I
20 believe the entrance wound was in his back and the exit
21 wound was in his sternum, but it's hard to say.

22 Q Did you have to move him at all?

23 A We did. He was initially was lying on his belly. We
24 rolled him over onto his back.

25 Q Did you notice anything when you were moving him at

1 all?

2 A When we rolled him, there was a bullet underneath
3 where he was laying, a casing of a bullet.

4 Q What did you do with that bullet?

5 A We noted it for the police officer and told him where
6 it was.

7 Q Did you bother that or touch that?

8 A We didn't touch it, no, ma'am.

9 Q How did you get to the hospital?

10 A In an ambulance.

11 Q When you went over there, did you drive over there?

12 A Are you asking if I drove the ambulance?

13 Q Right. Did you drive your ambulance to 36 Magnolia
14 Road?

15 A It may have been my partner. It was either myself or
16 my partner.

17 Q And your partner at that time was who?

18 A David Carter.

19 Q And when you provided this advanced life support,
20 does that require one person or two people?

21 A At least two people.

22 Q So the two of you are in the back of the ambulance?

23 A That's correct.

24 Q So who drove them back to the hospital?

25 A We had another person on the scene, Kathy Dolloff.

1 She's in our quick response, and she drove us to the
2 hospital.

3 Q Which hospital did you transport the victim to?

4 A MUSC.

5 Q Did the patient ever regain consciousness?

6 A No, he did not.

7 MS. WILSON: Please answer any questions from
8 defense.

9 MS. SHEALY: I have no questions. Thank you.

10 THE COURT: You may step down.

11 MS. WILSON: Your Honor, may he be excused?

12 THE COURT: Any objection?

13 MS. SHEALY: No objection.

14 THE COURT: You may be excused, sir.

15 (WHEREUPON, a bench conference was held in the
16 presence of the jury but out of the hearing of the
17 jury.)

18 THE COURT: We're going to take a short break.

19 Ladies and gentlemen, do not discuss this case
20 in any way. Thank you very much.

21 (WHEREUPON, the jury left open court at
22 approximately 4:25 P.M.)

23 THE COURT: Thank you. We'll go ahead and take
24 a short break.

25 (WHEREUPON, a short break was taken.)

1 (WHEREUPON, State's Exhibits Nos. 94, 95, 96
2 were marked for identification only.)

3 THE COURT: Yes, Mr. Butler.

4 MR. BUTLER: If it please the Court. The next
5 witness that I understand is going to be one of the
6 testifying co-defendants, and the issue of the plea
7 agreement and the conditions thereof we raised last time,
8 and I think I need to re-raise them in light of a couple
9 circumstances. One, it's my understanding we don't have
10 that transcript yet, and secondly, I think that the lapse
11 of time and some of the conditions may have added some
12 force to our argument.

13 THE COURT: What was that day? Is that the
14 first or second day?

15 MR. BUTLER: Second day.

16 THE COURT: What is the issue?

17 MR. BUTLER: That we seek to ask of the
18 witnesses, that part of their -- a condition of their plea
19 agreement was that they may have to submit to polygraph,
20 but they were never asked to do so. And our argument is
21 that the plea agreement is seen as both carrot and stick.
22 And by carrot I mean incentive, future incentive to
23 cooperate, we will give you a reduced sentence -- I mean a
24 reduced charge or a recommendation of sentence, something
25 like that. But the stick is, if you're not being straight

1 with us all deals are off, and we'll find out if you're
2 not being straight with us. So you have to -- as part of
3 your agreement promise us that you will be truthful, and
4 we may even ask you to take a polygraph.

5 The fact that they're told that condition but
6 it's never enforced goes to the weight of the agreement
7 itself. If, for example, the State had at their disposal
8 some other mechanism to determine the veracity of a
9 witness's account, for example, if DNA testing would make
10 a difference, and they said hey, you better tell us the
11 truth or we're going to get a DNA sample from you and
12 we'll know you're lying, and they never did that, that
13 would go to the weight of the agreement. And similarly
14 the fact that they were threatened with the possibility of
15 giving a polygraph -- now I'm assuming, maybe I don't
16 know, but last time the State's position was, well, we
17 don't know, we still may polygraph them, I'm assuming that
18 they still haven't four months later polygraphed them, but
19 I guess I should ask the State whether they have.

20 MS. WILSON: He has asked, and I've told him
21 that we haven't.

22 MR. BUTLER: I can think of no reason not to
23 polygraph them if you tell them that you may other than
24 the fact they're afraid they might fail them, and if the
25 State can come up with any other possible explanation, I

1 would like to hear it, but I can't think of one. And if
2 they come up with another one, maybe I'll withdraw my
3 motion. But it seems to me that the only possibility that
4 you would threaten with a polygraph but not give them one
5 is you're afraid that they might fail, and for that reason
6 we would seek to ask this witness as well as others of
7 that condition and the fact that that condition was never
8 imposed.

9 THE COURT: It sounds like you're trying to draw
10 an inference that the polygraph would have been
11 dispositive.

12 MR. BUTLER: No. I'm trying to draw the
13 inference that the agreement is, for lack of a better
14 word, a sham; that they say look, we know that we're going
15 to be able to figure out whether you're telling the truth.
16 For example, if they say look, we know there are all these
17 witnesses you told us that can account for your
18 whereabouts. If you're lying to us, we're going to talk
19 to them, and if you're lying to us all bets are off and
20 you won't be cooperating and we're going to prosecute you.
21 If they said that and then they didn't go talk to them --

22 THE COURT: What would be their motivation for
23 it being a scam. There's something that's somewhat
24 unethical about that allegation.

25 MR. BUTLER: Well, scam is too strong a word,

1 and if I had a bigger vocabulary I'd have thought of a
2 better one. But the better way to say it is it goes to
3 the weight of the agreement.

4 The other question is the opposite: Why not
5 polygraph them? Why not? Why wouldn't you want to know
6 if they were telling the truth? And the reason is because
7 they like the version that they've got, they like what
8 they're going to testify to, and they don't want to rock
9 the boat. Because if they rock the boat they're out a
10 witness and it damages their case. And maybe that's an
11 inference that the jury doesn't make, and maybe that's not
12 even the accurate reason. That's one reason. I've yet to
13 hear an alternative reason. But I think the fact that the
14 jury may draw that inference from that evidence allows us
15 to put it in. It goes to the bias of a witness and the it
16 goes to the weight and reliability of the agreement that
17 the State has entered into and will elicit through these
18 witnesses.

19 THE COURT: How can it go the bias of the
20 witnesses if the State declines to give the witness a
21 polygraph?

22 MR. BUTLER: Because if the -- the whole purpose
23 of the agreement was to get a version of events that suits
24 the State's theory of the case.

25 THE COURT: Well, then it sound like the

1 State -- you are suggesting that the State could be
2 careless about the truth. As long as they've got one
3 statement that supports their case, that's all they want
4 to hear.

5 MR. BUTLER: In some ways that is what I'm
6 saying.

7 THE COURT: That's an allegation of bad faith
8 conduct on the part of the government.

9 MR. BUTLER: What I'm saying is that that piece
10 of evidence allows for that inference. I'm not saying
11 whether it's true or not. I don't know. I come up with
12 one reason.

13 THE COURT: Unless you have a good faith
14 argument to suggest that's the case, why would it be
15 controlling?

16 MR. BUTLER: My argument is just the one that
17 I've given, that they threaten them with the possibility
18 of a polygraph and yet they never did it. I can't see how
19 it's any different except the fact that it's a polygraph.
20 Imagine if it were -- he says, I wasn't even there, and
21 there's blood at the scene and a cooperating witness says,
22 I wasn't even there. And then you say to them, you know
23 there's blood at the scene. If that blood comes back to
24 you, we know you're lying and all bets are off, but they
25 never test that blood or they never -- they test the blood

1 but they never get a DNA profile from the witness. Surely
2 you'd be able to get into that. The reason that we can't
3 here is because polygraph is taboo because the results are
4 unreliable. But I don't want to get into the results. If
5 there were results, we wouldn't be having this
6 conversation. If he fails, he wouldn't be testifying. If
7 he passes, we wouldn't be able to get into it. The fact
8 that he was offered it -- not offered it, I'm sorry --
9 threatened with the possibility of having to take one and
10 then never asked to do so --

11 THE COURT: But he's still faced with the
12 possibility that it's uncovered, that the agreement --
13 that he's lied on the stand, that he faces perjury.

14 MR. BUTLER: Well, I guess I don't know how
15 that's --

16 THE COURT: Why is that different than anything
17 else? You have that in every case.

18 MR. BUTLER: What remedy would we have if that
19 happened?

20 THE COURT: Perjury.

21 MR. BUTLER: What remedy would we have as
22 representing Anthony Mann if a witness takes the stand, we
23 know the possibility of a polygraph was threatened when
24 they got the version that they wanted, and weeks later,
25 months later after a hypothetical conviction they fail a

1 polygraph, what remedy does the defense have? I don't
2 think we have any.

3 THE COURT: If there has been newly-discovered
4 evidence that he committed perjury under oath, that fraud
5 was committed on the Court, I think you do have a remedy
6 if it were to change the outcome of the trial.

7 MR. BUTLER: I don't know, but I'm just
8 surprised if the results of a polygraph would be
9 admissible as newly-discovered evidence.

10 THE COURT: Well, all the cases you read about
11 every day in the paper about -- not every day, but on a
12 frequent basis about people coming back years after the
13 fact claiming that someone lied and the Court has a big
14 hearing about whether or not that could have possibly
15 changed the results of the hearing.

16 MR. BUTLER: That happens, but I don't know if
17 it happens on the sole basis of a polygraph. But again,
18 your Honor --

19 THE COURT: Not on the sole basis of a
20 polygraph, but your question to the Court was what remedy
21 do you have if someone committed perjury.

22 MR. BUTLER: I'm sorry. I phrased it improperly
23 then.

24 My question is, what remedy would we have if
25 somewhere down the line they decide to give Michael Crumb

1 a polygraph and he fails it. I don't think we have any
2 remedy. The remedy that we want is to cross him about the
3 fact that he was threatened with one but never given one.
4 And if he subsequently fails one, which I don't know why
5 he would, why they'd give him one later, and I don't think
6 that they will. Four or five months later they still
7 haven't given him a polygraph.

8 THE COURT: But as long as he is cooperating
9 under the terms of the agreement, under the terms of that
10 contract, it's not his fault if they do not conduct the
11 polygraph.

12 MR. BUTLER: That's right. But it still goes to
13 the credibility of his testimony, which he's giving now,
14 which will be the same that he gave them later, I mean
15 previously, under the possibility looming over his head of
16 having to be polygraphed, and it's still --

17 THE COURT: He still has the possibility of
18 perjury, too, does he not?

19 MR. BUTLER: He does. But if he's charged with
20 perjury later based on failing a polygraph, that doesn't
21 restore my right to cross-examine him today. The right
22 that I am asserting is the right to cross-examine the
23 witness about his agreement with the State which gives
24 rise to the testimony that he's prepared to give. If he
25 failed the polygraph somewhere down the line, I can't

1 restore the right to cross-examine.

2 THE COURT: But the whole point of the bias
3 analysis is that the witness that's got some deal with the
4 government to suggest that the witness is biased. I've
5 never seen any case that suggest that the possibility of
6 bias is enhanced because the State has failed to conduct a
7 polygraph. It's the agreement that's the quintessential
8 aspect of what causes the bias to develop potentially.

9 MR. BUTLER: Well, would the circumstances, the
10 examples that I gave earlier with potential witnesses or
11 DNA evidence, would that not be something that I wouldn't
12 be able to get into if they said --

13 THE COURT: I'm sorry. Repeat that.

14 MR. BUTLER: The hypothetical --

15 THE COURT: I need the question, so I'm going to
16 give you this time. Go ahead.

17 MR. BUTLER: I'll withdraw it if you'd like.

18 THE COURT: No, go ahead.

19 MR. BUTLER: The hypotheticals that I gave
20 earlier, for example, if the State routinely, and we used
21 the word bolster, but I don't mean improperly bolster,
22 bolsters the cooperating co-defendant's testimony by the
23 stick party agreement, there's a carrot and there's a
24 stick, and the stick is that we told you, didn't I tell
25 you you had to be honest with me, and if I found out you

1 weren't truthful with me that all bets were off? Yes,
2 ma'am, that's right. Yes, sir, that's right. Okay.
3 Well, the stick is an illusion if what they say is we're
4 going to polygraph you and they never do. And so if, for
5 example --

6 THE COURT: Why? Because that assumes that the
7 polygraph is dispositive. The term about the polygraph is
8 in there because the State utilizes it as an out-of-court
9 mechanism to possibly gauge the testimony of a witness if
10 they're willing to participate, if they're willing to sign
11 that agreement. And if they want, if they make those
12 evaluations outside based on that witness's agreement with
13 them --

14 MR. BUTLER: Well, for example, if one of the
15 hypothetical arguments that I presented, there was DNA
16 evidence that would corroborate or contradict the
17 testifying co-defendant's version of what happened, could
18 we not bring out the fact that the State had that evidence
19 at their disposal and did nothing with it and then make
20 the argument that they didn't want to know the truth, they
21 didn't want to know the answer?

22 THE COURT: Yes. Absolutely. There's a big
23 difference in the argument. DNA has been accepted by the
24 appellate courts of this state; polygraphs have not. That
25 is a big distinction.

1 MR. BUTLER: I agree that that's the
2 distinction. But I think when we're talking about not the
3 results but merely the threat, that that threat was made
4 and not followed up, the fact that it's a polygraph is no
5 different than anything else, because I'm not getting the
6 results. There is no question of scientific reliability
7 if there aren't any results. If we had results, we
8 wouldn't be having this discussion.

9 THE COURT: You're assuming that the results of
10 the polygraph are reliable. You open the door if you
11 think that it's admissible because the State did not
12 conduct a polygraph test that was at their option in
13 accordance with the terms of their contractual agreement,
14 then what do you do with the jury? Do you tell them that
15 polygraph tests are reliable, or they're not reliable,
16 they've not been accepted by the state? It adds a whole
17 new level of confusion to the jury. What will they do
18 with that statement? If you think it's probative of
19 something, does the test have to mean something under the
20 law?

21 MR. BUTLER: Yes, sir. Two things I'd say in
22 response. First, I'm not assuming they're reliable. The
23 State when they hold that out as the mechanism to
24 determine the truth of their cooperating witnesses,
25 they're presuming it's reliable.

1 THE COURT: But stop before you go on. They
2 don't hold that out as their only mechanism. There's
3 still perjury that's available. That is just a way for
4 them to deal with the situation. If they decide not to
5 use it, the person goes to trial, unless that agreement is
6 very specific as to what their rights are under that
7 agreement if they go to trial and the use of that
8 polygraph, then I see that their only remedy is perjury.
9 I don't know if they can come in after the fact unless the
10 agreement specifies that.

11 MR. BUTLER: Well, I --

12 THE COURT: It seems like they'd want to do all
13 their checking before trial.

14 MR. BUTLER: Well, that's my point. You'd think
15 they would, and they haven't.

16 THE COURT: But if they didn't, how does that
17 enhance the possible bias of this witness?

18 MR. BUTLER: Because they told him that there
19 was a strong possibility that the veracity of what they
20 told them would be gauged by this mechanism. Do you think
21 there were other mechanisms? This is the only mechanism
22 as far as I'm aware that's mentioned. They don't say, you
23 know, if we find out otherwise by virtue of X-Y-Z, all
24 bets are off. You may be asked to take a polygraph. And
25 if you don't or if you fail, then we're not going to give

1 you this deal. So the fact that they threatened to do
2 that and then don't allow the inference. And maybe it
3 only is just enough to allow the inference, but for us
4 that's enough, allows for the inference that the agreement
5 is of less weight. I'm trying not to disparage it anymore
6 than --

7 THE COURT: But you're bordering on disparaging
8 the State because you're suggesting -- I mean, everything
9 gets right back to that. You're suggesting that if the
10 State hears something they like, then that is the end of
11 their inquiry. If that is going on in the prosecution of
12 the case, it's wrong.

13 MR. BUTLER: If the State would give one other
14 reason, I will withdraw my motion and I won't breathe
15 another word about it.

16 THE COURT: One other reason for what?

17 MR. BUTLER: For not giving a polygraph.

18 THE COURT: I will ask them to give you a
19 reason, but I can just tell you from this Court's
20 experience both at the state and federal level, I don't
21 know if every single person that signs one of these
22 agreements that -- I don't know that every single person
23 has been given a polygraph test. I've just not seen that
24 in my experience, but State?

25 MS. WILSON: Judge, I'd object to being forced

1 to reveal the State's strategy in this hearing. We have
2 revisited this issue. I thought that the reason this was
3 being brought up is because they had some sort of new
4 argument. This is exactly what we discussed last time,
5 and the Court ruled. What the defense is trying to do is
6 not impeach the witness but impeach the prosecution. And
7 as I argued last time, what this does is make me a witness
8 and make me have to get on the stand and tell the jury why
9 we have done what we've done, the things that are involved
10 in that, and I'm happy to do that.

11 THE COURT: Well, do you give a polygraph in
12 every case?

13 MS. WILSON: Not in every case. I have
14 polygraphed defendants before and I've dismissed charges
15 based on polygraphs that were given. It's not that I'm
16 afraid of a polygraph. I think that according to the plea
17 agreement, the witness has to tell the truth. We don't
18 have any indication that this witness is not telling the
19 truth. That coupled with many other things that I don't
20 think I should be required to go into plays into that
21 decision-making process.

22 THE COURT: All right.

23 MS. WILSON: I also think that it does as the
24 Court mentioned opens the door to, he testifies, they
25 cross-examine him on a polygraph, and we polygraph him the

1 next day and he passes. He's coming right back in here
2 and we're going to get that out. And I just -- it becomes
3 a trial within a trial about polygraphs, and the courts
4 have made clear that the jury is the only polygraph
5 propounders.

6 THE COURT: What about that?

7 MR. BUTLER: I don't have --

8 THE COURT: Under that analysis it would be fair
9 for them to come in and say okay, we gave them a
10 polygraph.

11 MR. BUTLER: No, because then you would get into
12 the results, and it's the results that are problematic.

13 THE COURT: All right. Then why shouldn't the
14 inference be drawn from the lack of results? If the
15 results are problematic, why shouldn't the inference be
16 drawn from the lack of results?

17 MR. BUTLER: Because it's not the results that
18 give rise to the inference. It could be anything. It
19 could be something very reliable like DNA. It just
20 happens to be in this case the polygraph. It's not the
21 results that allow for the inference that they like the
22 version that they have or the problem that the results are
23 problematic. It's that they have a test that they hold
24 out as a stick and they say to them, you better be telling
25 us the truth, and then they never use it. So if a plea

1 agreement is both carrot and stick, these things are all
2 carrot. That's all they are.

3 THE COURT: But again, it seems that that
4 analysis does not impugn the integrity of the witness. It
5 impugns the integrity of the State. Unless there is
6 something that suggests that the witness is being anything
7 but forthright, then I don't see how the failure to take a
8 polygraph in and of itself when it has not been requested
9 of the witness under the agreement raises an inference
10 that the witness has even more reason to be biased.

11 MR. BUTLER: You can say exactly the same thing
12 that your Honor just said under this argument that I just
13 out that they weren't polygraphed. That's why I used
14 those. It's the exact same thing.

15 THE COURT: Again, though, I think it fair game
16 to raise inferences in so far as admissible evidence is
17 concerned.

18 MR. BUTLER: That's all I have. The only other
19 thing I want to put on the record is to inquire,
20 Ms. Wilson said if these witnesses, there is no indication
21 that they're not telling the truth. So I take that to
22 mean if there was an indication that they're not telling
23 the truth, then the State itself thought they were not
24 telling the truth, the result would be different.

25 THE COURT: Well, it would not necessarily be

1 different under an analysis about some inference from the
2 polygraph test. I would assume and I would expect that
3 the result would be different because an officer of this
4 court has an obligation to inform this court about any
5 knowledge that someone is not telling the truth when they
6 take the stand.

7 MS. WILSON: When I spoke, I spoke about this
8 witness in particular. I did not speak about witnesses in
9 general. And I don't think that the analysis would
10 necessarily change, because as I mentioned, there are a
11 host of reasons to polygraph or not to polygraph. There
12 is no question about that. I would point out that when
13 the Court spoke earlier, you said that it impugns the
14 State and the State's decision making. I think what is
15 also important here is it's not just the State, it's not
16 law enforcement. Detective Walker isn't making that
17 decision. His sergeants and lieutenants aren't making
18 that decision. Lawyers are making that decision. Lawyers
19 in our office. Lawyers who represent the defendant and
20 this office have negotiated. And I think if we go down
21 the path again, you get into a situation where the people
22 prosecuting the case are witnesses in the case.

23 THE COURT: All right. You've made all your
24 arguments for the record?

25 MR. BUTLER: Right to cross-examine and

1 confront.

2 THE COURT: All right.

3 MS. WILSON: Judge, it's now 20 after 5. I
4 think this is going to be a lengthy witness. I also was
5 under the impression that his attorney was going to have
6 him clothes. He has not. And I would just ask we take
7 him up first thing in the morning.

8 THE COURT: All right. Based on the arguments
9 made and based on the Court's previous ruling, I stand by
10 my decision which has been incorporated herein to these
11 proceedings, that that language about the polygraph be not
12 allowed.

13 All right. Let's bring the jury in, please.

14 (WHEREUPON, the jury came into open court at
15 approximately 5:20 p.m.)

16 THE BAILIFF: All jurors are seated.

17 THE COURT: All right. Ladies and gentlemen,
18 I'm sorry for the delay. I had to take up a matter, and
19 it has now taken us a little bit longer than expected. So
20 rather than keep you, I'm going to go ahead and release
21 you. If you'll please report back at 9:15 tomorrow
22 morning. There's a matter scheduled at 8:30 and 9, so if
23 you'll report at 9:15 tomorrow morning.

24 Thank you very much. Do not discuss this case
25 in any way. Make sure your numbers are on your pads, and

1 give them to the bailiff on your way out. Thank you.

2 (WHEREUPON, the jury was released for the day at
3 approximately 5:25 p.m.)

4 THE COURT: All right. Thank you. I guess
5 we'll take up that matter at 9 o'clock pertaining to the
6 personnel -- I mean the investigation.

7 MS. WILSON: Thank you, Judge.

8 (WHEREUPON, the proceedings were concluded for
9 the day and reconvened on September 16, 2003.)
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CERTIFICATE OF REPORTER

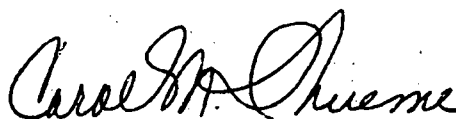
STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 8th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 15th day of September, 2003.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

March 30, 2004



CAROL M. THUEME, Court Reporter

My Commission Expires: 6-4-07

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHARLESTON) 2002-GS-10-4413
 2002-GS-10-4414
 2002-GS-10-4415

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
) VOLUME 2
 ANTHONY L. MANN)
 DEFENDANT)

September 16, 2003
Charleston, South Carolina

B E F O R E:

THE HONORABLE DANIEL F. PIEPER, JUDGE; and a jury.

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

SCARLETT WILSON, CHIEF DEPUTY SOLICITOR
JENNIFER BURNEY, ASSISTANT SOLICITOR
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JENNIFER KNEECE SHEALY, PUBLIC DEFENDER
BEATTY BUTLER, ESQ.
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CAROL M. THUEME
Official Court Reporter

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1 THE COURT: Are you ready for that hearing?

2 MS. SHEALY: Are you addressing me, your Honor?

3 THE COURT: Yes.

4 MS. SHEALY: Yes, I am.

5 THE COURT: All right. Now, just for the
6 record, I've already heard the reasons from a strategy
7 perspective and legal theory perspective.

8 Mr. Stokes, I thought it would be important for
9 the record that you need to address with your witness just
10 the nature of this information and why it would be
11 prejudicial, et cetera, why it would harm the ongoing
12 investigation.

13 MR. STOKES: Your Honor, I would suggest to the
14 Court that we do that in camera in the conference room.

15 THE COURT: All right. With all parties
16 participating?

17 MR. STOKES: I have no objection.

18 THE COURT: All right.

19 MS. SHEALY: And, your Honor, again my position
20 would be that I would be prejudiced and entitled to be
21 present for the hearing.

22 THE COURT: Well, I've already heard your
23 reasons. Anything else is going to be arguments of the
24 law. You were able to present to me ex parte how it
25 affects the case. If we have to do that again, we'll do

1 that..

2 MS. SHEALY: Yes, sir. Just so my position is
3 clear, it would be my position that in that it deals with
4 potential defense strategy, and I recognize I've already
5 made these representations to the Court, but the
6 Solicitor's office is not really a party to this hearing,
7 your Honor. This involves what I'm entitled to do in
8 preparing a defense.

9 THE COURT: But I have to hear everybody else on
10 this issue, too. If it turns, for example, as to whether
11 this is a Brady issue, they have a right to be heard on
12 that. You seem to think that you get to argue the whole
13 matter without anyone getting to say anything. I disagree
14 with that..

15 MS. SHEALY: As long as your Honor understands
16 my position that in that it's a subpoena that I generated
17 as a part of the defense, that it would be my position
18 that the Solicitor's office does not have a right to be
19 present for the hearing. It's between me and the person
20 that I subpoenaed.

21 MS. WILSON: Should I just issue a subpoena for
22 the file as well? I mean, I think that's being
23 hypertechnical..

24 THE COURT: I think it's being hypertechnical in
25 the sense that you filed a request, everyone has an

1 opportunity to respond to a request. As a matter of fact,
2 Berkeley County responded to the request, and they have a
3 right to be heard on that request. And I don't understand
4 how you are suggesting that I not hear what they have to
5 say about the matter.

6 MS. SHEALY: I'm not suggesting that you not
7 hear what Berkeley County has to say. I'm just suggesting
8 that the Solicitor's office should not be a party to that.

9 THE COURT: Well, what else is it that you would
10 add other than you had your opportunity yesterday to
11 express that? I mean, now we're just talking about the
12 legal argument.

13 MS. SHEALY: Well, it's my understanding that he
14 intends to call a witness; is that correct?

15 THE COURT: Well, I think he needs to just lay
16 this out on the record why this information should be
17 confidential and also how it would affect the ongoing
18 investigation. I think he has a right to do that, and I
19 think that I need to analyze that for purposes of the
20 Freedom of Information Act.

21 MS. SHEALY: I'm not questioning that, your
22 Honor. I think that's the way in which you intend to
23 proceed. The only thing I'm objecting to is that the
24 Solicitors be present for that.

25 THE COURT: I still don't see why -- is your

1 motion based on Rule 5, Brady or what?

2 MS. SHEALY: Is my motion, my present motion
3 based on that?

4 THE COURT: Yes.

5 MS. SHEALY: My present motion is based on the
6 fact that my client is entitled to an aggressive defense,
7 and that as part of that, I issued a subpoena to a party
8 that was not the Solicitor's office, and that they are
9 attempting to quash that subpoena, and that that is a
10 matter to be heard by your Honor between the party which
11 is attempting to quash my subpoena and me.

12 THE COURT: Well, are you saying that the County
13 doesn't get to participate in this hearing if we do it in
14 the back?

15 MS. SHEALY: I don't think the Solicitor's
16 office gets to. Obviously Mr. Stokes does.

17 THE COURT: All right. Has the Solicitor's
18 office -- why do we need to take a position on this if
19 you've not moved to quash?

20 MS. WILSON: I don't know that I have standing
21 to move to quash. My concern is in the bigger picture
22 because we are the prosecuting entity, that an ongoing
23 investigation is going to be revealed to a defendant and
24 two defense attorneys. That concerns me as a prosecutor
25 and as the chief deputy solicitor in this circuit.

1 THE COURT: Well, isn't that what the County is
2 arguing on behalf of the sheriff's office?

3 MS. WILSON: Yes, I think that is what they're
4 arguing. And that's my concern as well. You asked why
5 we're concerned, and that's why we're concerned.

6 In addition, I have asked that if that
7 information is turned over to the defense, that it be
8 turned over to us as well. Certainly I want to know what
9 the information is. I don't know now.

10 THE COURT: Let me ask you: So this is not an
11 issue pertaining to Rule 5 or Brady; is that correct?

12 MS. SHEALY: It's Brady, your Honor, potentially
13 Brady. And I think by cooperation with -- we don't know
14 what all is in the file obviously.

15 THE COURT: All right. But if this is a Brady
16 issue, the State has a right to be heard on that. Because
17 you're saying that they have not disclosed something that
18 they should have disclosed if you're claiming it's a Brady
19 violation, if it turns out there was information in that
20 file. Do you agree with that?

21 MS. SHEALY: Well, I think we need to do it one
22 step at a time and see what is in the file.

23 THE COURT: All right.

24 MS. SHEALY: And the only way that I can attempt
25 to find out what is in the file is to subpoena the file.

1 THE COURT: All right. So if it turns into a
2 situation where there is information in there, you would
3 agree that the State has a right to participate in that
4 hearing?

5 MS. SHEALY: If there's materials in that file
6 that should have been turned over to me?

7 THE COURT: Yes.

8 MS. SHEALY: That's potentially true, your
9 Honor, yes.

10 THE COURT: But if you argue there is a Brady
11 violation, period, they have a right to be heard.

12 MS. SHEALY: The whole basis of this is not a
13 Brady violation, though, as articulated yesterday.

14 MS. WILSON: And I think that just so that this
15 blurb is in this part of the record, I believe that
16 Ms. Shealy became aware of the investigation because I
17 told her that I understood that Peter Davies had been the
18 subject of an investigation in Berkeley County regarding a
19 murder case. So I don't have any of that file, but I made
20 her aware of that so that she knew to go look if she
21 wanted to look, and I think that's what she's done.

22 THE COURT: All right. Well, I don't see what
23 would stop the State from subpoenaing the information
24 also.

25 MS. SHEALY: But they didn't, your Honor.

1 THE COURT: I understand that.

2 Let's go ahead and have the hearing. We'll
3 exclude the State at this point with just the County
4 arguing just the motion to quash since the State doesn't
5 have standing at this point.

6 I'm not making a final determination on that
7 issue, but at this point we'll hear you out.

8 MS. WILSON: We're going to be excluded to hear
9 what the County has in their file?

10 THE COURT: No. You're going to be excluded
11 from hearing them arguing that motion.

12 MS. WILSON: Because?

13 THE COURT: Because you're not a party to that
14 motion.

15 MS. WILSON: Isn't it prejudicial for us to know
16 what is going on?

17 THE COURT: Well, I don't know, but there is no
18 absolute right in that motion. You acknowledge you don't
19 have standing to argue the motion to quash.

20 MS. WILSON: I understand that. But if it's not
21 prejudicial to anyone, I think it would be beneficial for
22 us to know what's going on with the file.

23 THE COURT: Well, I think it has to do with
24 their request that this confidential information not be
25 disclosed any further. I'm not going to get to the merits

1 of the file. They're going to lay their foundation about
2 why they need it secured, and then I'll ultimately, I
3 think, have to look at the file myself.

4 MR. STOKES: Your Honor, I don't have any
5 objection to the Solicitor being there as the prosecuting
6 officer, because if the charges are brought from this
7 file, they're going to be bringing the case in. I don't
8 have any objection to them being present.

9 THE COURT: Well, do you have any objection to
10 them being present and then excluded when you get to argue
11 what you feel impacts on the case?

12 MS. SHEALY: I do.

13 THE COURT: What would that be?

14 MS. SHEALY: Because again, your Honor, I issued
15 the subpoena and they responded to my subpoena. That I
16 don't think it has anything to do with the Solicitor's
17 involvement.

18 THE COURT: Do you have any cases on that?

19 MS. SHEALY: No, sir.

20 THE COURT: All right. I will go with what I
21 just said. We'll just do the argument about the motion
22 itself and then I'll come back in.

23 (An in camera conference was held in the
24 conference room. Transcript is provided under sealed
25 cover.)

1 * * *

2 (Proceedings resume in the courtroom.)

3 THE COURT: All right. Just for the record,
4 that hearing was solely for the purpose of hearing the
5 County's request to quash the subpoena, which I indicated
6 that I didn't think the State had a role in that
7 particular aspect of it.

8 In order to preserve the State's request that
9 they have some concern about disclosure of information in
10 another case insofar as law enforcement investigations, no
11 information has been turned over. The Court decided that
12 it would look at the information itself and decide whether
13 or not it could be used for any purpose other than the one
14 articulated in court as a legal basis yesterday, that
15 being bias. So if it does turn into something that I
16 think has to be disclosed, then I will get back with each
17 side and let you know that.

18 MS. WILSON: So the Court has the file?

19 THE COURT: I have the file.

20 And secondly, I don't know that you would be
21 prohibited. Obviously the State has the ability to
22 consult with people on pending investigations, so I don't
23 know that I could prohibit them from doing that.

24 MS. SHEALY: Your Honor, I have one other matter
25 we need to take up.

1 We had addressed this in one of our previous
2 motion hearings. Under the State constitution and Federal
3 constitution, my client's right to effective
4 cross-examination, we would ask that the Solicitor advise
5 us of any inconsistencies that their next witness, Michael
6 Crumb, may have indicated to them. In other words, if he
7 has maintained one thing and then changed it, we would
8 like to be alerted to the fact that he's changed his
9 story.

10 THE COURT: Were you given any statements of
11 this witness?

12 MS. SHEALY: There have been oral interviews of
13 this witness, but we do not have any written
14 documentation. I have his statement and that he has been
15 interviewed with his attorney present by the Solicitor's
16 office and subsequently also interviewed by the
17 Solicitor's office in preparation. All I'm asking is if
18 there is anything inconsistent.

19 THE COURT: With his written statement?

20 MS. SHEALY: Well, I'm not sure how he's going
21 to testify today. If he's ever said anything inconsistent
22 with what he's saying today, I would like to be advised of
23 it, or if they know currently that he's maintained
24 different things to different parts to this point in this
25 investigation, I would like to be advised of it.

1 THE COURT: What is your position on that?

2 MS. WILSON: I don't recall any material
3 inconsistencies in his statements when we interviewed him.
4 If he were to testify differently today than he has when
5 we interviewed him, I would certainly let them know.

6 THE COURT: All right. I think you have an
7 opportunity to ask has he taken any inconsistent position
8 on any other occasions.

9 MS. SHEALY: Yes, but if she is aware of it, I'd
10 like to know ahead of time, and I'd also like to know it
11 after it occurs.

12 THE COURT: I thought I just heard her saying
13 that she's not aware of any right now, and if she does,
14 she'll let you know. Is that what you just told me?

15 MS. WILSON: Yes.

16 THE COURT: I thought that's what she just said.

17 MS. SHEALY: She also used the word "material."
18 And I mean any inconsistencies that are made.

19 MS. WILSON: I used "material" because I don't
20 recall any inconsistencies.

21 THE COURT: Okay.

22 MS. WILSON: Now, I need to give myself an out.
23 If he were inconsistent about something that, you know,
24 had no bearing on this or was just something that I
25 thought was not material, it may be something that I don't

1 remember, but certainly he has not wavered about any of
2 the facts of this incident. I don't know of any
3 inconsistencies.

4 MS. SHEALY: I would just ask, your Honor, that
5 her last thing she said is she does not know of any
6 inconsistencies. If that's correct, I understand that,
7 but the way she began that sentence was things that she
8 did not think were significant that were inconsistent she
9 may not have noticed, but if there are inconsistencies, I
10 would like to know whether she deems them important or
11 not.

12 THE COURT: Do you know of any?

13 MS. WILSON: I can't think of any, your Honor.
14 I'm looking at my notes.

15 THE COURT: She said she would tell you if she
16 heard something.

17 MS. SHEALY: Yes, sir. And your Honor, also I
18 would like that motion to be based on the case of Kyle
19 versus Whitley.

20 THE COURT: All right. You all ready to
21 proceed?

22 MS. SHEALY: Yes, sir.

23 THE COURT: State ready?

24 MS. WILSON: Yes, sir.

25 THE COURT: All right. Bring the jury in,

1 please.

2 MS. WILSON: May we approach?

3 THE COURT: Yes.

4 (A bench conference was held with the judge and
5 attorneys in the presence of the jury but out of the
6 hearing of the jury.)

7 (WHEREUPON, the jury came into open court at
8 approximately 10:05 a.m.)

9 THE BAILIFF: Jury is all present, your Honor.

10 THE COURT: Good morning, ladies and gentlemen.
11 Sorry to keep you waiting. We had matters that had to be
12 taken care of that took longer than we expected.

13 We're ready to proceed at this point. Call your
14 next witness, please.

15 MS. WILSON: State calls Michael Crumb.

16 MICHAEL CRUMB, after being duly sworn, testified
17 as follows:

18 THE CLERK: Please state your full name for the
19 Court and spell your last.

20 THE WITNESS: Crumb, C-R-U-M-B, Michael Wayne.

21 DIRECT EXAMINATION

22 BY MS. WILSON:

23 Q Mr. Crumb, how old are you?

24 A Twenty-five.

25 Q How far did you go in school?

- 1 A Trident Tech.
- 2 Q Where did you go to high school?
- 3 A Fort Dorchester.
- 4 Q Have you lived in this area all your life?
- 5 A I lived in California for a little while.
- 6 Q When did you live in California?
- 7 A From when I was young until I was like 12.
- 8 Q Okay. And the family moved here when you were 12?
- 9 A Yes, ma'am, but I was born here.
- 10 Q Mr. Crumb, do you know a guy by the name of Eric
- 11 Zack?
- 12 A Yes, ma'am.
- 13 Q How did you meet Eric?
- 14 A Through my sister.
- 15 Q Is your sister older or younger?
- 16 A Younger.
- 17 Q Is Eric older or younger than you?
- 18 A Younger.
- 19 Q When was it that you met Eric Zack?
- 20 A Maybe four months before the incident happened, five
- 21 months.
- 22 Q Do you know a guy by the name of Anthony Mann?
- 23 A Yes, ma'am.
- 24 Q And did he have a nickname or street name?
- 25 A Amp.

1 Q Do you see Amp here today?

2 A Yes, ma'am.

3 Q Where is he?

4 A Right over there.

5 Q What does he have on?

6 A A yellow shirt.

7 MS. WILSON: Your Honor, please let the record
8 reflect he's identified the defendant.

9 THE COURT: The witness's comments are noted for
10 the record.

11 BY MS. WILSON:

12 Q Mr. Crumb, how did you meet Anthony Mann?

13 A Through Eric Zack.

14 Q How long before this incident as you call it did you
15 meet Amp?

16 A I met him about a month before this incident
17 happened.

18 Q How about a guy by the name of Peter Davies?

19 A I met him that day.

20 Q You hadn't met him before?

21 A (Witness shaking head.)

22 Q Did you know a guy by the name of Dante Craig Tobias?

23 A No, ma'am.

24 Q Didn't know him before that date?

25 A No, ma'am.

1 Q How about a girl named Beverly Blake or Brownie, did
2 you know her?

3 A No, ma'am.

4 Q Ever met her before this day?

5 A (Witness shaking head.)

6 Q Do you remember on Monday, January 7th, 2002, your
7 involvement in the armed robbery of Dante Craig Tobias?

8 A Yes, ma'am.

9 Q And have you entered a plea agreement with the State
10 regarding your involvement in that case?

11 A Yes, ma'am.

12 MS. WILSON: Your Honor, may I approach?

13 THE COURT: Yes, ma'am.

14 (WHEREUPON, State's Exhibit No. 97 was marked
15 for identification only.)

16 BY MS. WILSON:

17 Q I'm going to show you what's been marked State's
18 Exhibit 97 and ask you to look at this.

19 A That's the one.

20 Q Except for the redacted paragraph three; is that
21 correct?

22 A Yes, ma'am.

23 Q This is a copy except for that redaction?

24 A Yes, ma'am.

25 MS. WILSON: Your Honor, at this time we'd offer

1 State's Exhibit 97.

2 MS. SHEALY: Subject to our earlier objection,
3 your Honor.

4 THE COURT: All right. State's 97 in evidence.

5 (WHEREUPON, State's Exhibit No. 97 was admitted
6 into evidence.)

7 BY MS. WILSON:

8 Q Mr. Crumb, you pled guilty regarding your actions in
9 this case?

10 A Yes, ma'am.

11 Q Tell the jury what you pled guilty to.

12 A Voluntary manslaughter and armed robbery.

13 Q Did you shoot Craig Tobias?

14 A No, ma'am.

15 Q Are you sure about that?

16 A Yes, ma'am.

17 Q Let's go to January 7th, Mr. Crumb, and tell the jury
18 what you had planned for that day.

19 A To go to Johns Island.

20 Q Who were you going to John's Island with?

21 A Eric Zack, to see my cousin.

22 Q What cousin is that?

23 A Lauren Cook.

24 Q Okay. And how were you and Eric talking with each
25 other that day about your plans?

1 A To go to John's Island.

2 Q Were you talking on the telephone?

3 A Oh, yes, ma'am.

4 Q What phones were you using to talk with each other
5 that day?

6 A I don't remember. I might have been using the house
7 phone and letting my cell phone charge, but I might have
8 used the cell phone. I can't recall.

9 Q You have a home phone?

10 A Yes, ma'am.

11 Q And whose phone was that?

12 A My mother's.

13 Q And what is her name?

14 A Patricia Severenson.

15 Q Does she have a husband?

16 A Yes, ma'am.

17 Q What was his name or is his name?

18 A William Severenson.

19 Q Is that 101 Nightengale in Charleston Heights?

20 A Yes, ma'am.

21 Q You mentioned you had a cell phone.

22 A Yes, ma'am.

23 Q Is that 224-8820?

24 A Yes, ma'am.

25 MS. WILSON: Your Honor, at this time we'd offer

1 State's 92 and 95, I believe without objection.

2 MS. SHEALY: Actually, your Honor, we do have an
3 objection.

4 THE COURT: Approach.

5 (WHEREUPON, a bench conference was held in the
6 presence of the jury but out of the hearing of the
7 jury.)

8 MS. SHEALY: Just to state for the record, my
9 objection is to the introduction of these phone records in
10 that she queried the witness as to whether or not he knew
11 which phone he was using that day and he says he did not
12 know.

13 THE COURT: Didn't he say that he knew it was
14 his?

15 MS. WILSON: Yes.

16 MS. SHEALY: How can she even try to suggest
17 those are phone calls placed by him?

18 MS. WILSON: If I clear up that the phone was in
19 his possession and the records show that calls were made
20 between these people, then I think they're relevant. I
21 think your objection is relevant.

22 MS. SHEALY: Yes.

23 THE COURT: What now?

24 MS. SHEALY: I don't think they should go into
25 this if he can't say which phone he was using, and these

1 records --

2 THE COURT: Weren't they in by agreement?

3 MS. SHEALY: She asked me if I was going to
4 require her to have the custodian here. I thought the guy
5 was going to come in here and say, These are the phone
6 calls I made, these are the phones I used.

7 MS. WILSON: This is one of those
8 inconsistencies you're talking about. And my position is
9 that since we don't have an issue as to whether or not
10 these are valid or not, he's testified these are his two
11 phones, he doesn't remember which one he was using, that
12 those records are relevant because they do show calls, and
13 we'll link those up later.

14 THE COURT: But he acknowledged that this is his
15 phone?

16 MS. WILSON: Yes. And he says he didn't know
17 whether he was using his home phone or his cell phone, but
18 they were talking back and forth on the phone.

19 MS. SHEALY: But what she's connected together
20 is to show that certain phone calls occurred because of
21 these records. Well, if he can't tell us which phone he
22 used, we don't know who was using the phone at the time.

23 MS. WILSON: If I ask him if he had custody of
24 his phone.

25 MS. SHEALY: I'm sorry?

1 MS. WILSON: If he had custody of his phone and
2 was using his phone that afternoon, nobody else was using
3 it, then he was using that phone.

4 THE COURT: And you're going to ask if this is
5 his phone number?

6 MS. WILSON: I have, and he said yes.

7 THE COURT: What if she asks was the phone in
8 his possession on these dates?

9 MS. SHEALY: She hasn't asked that.

10 THE COURT: But if she does, wouldn't that
11 satisfy it?

12 MS. SHEALY: It might.

13 THE COURT: All right.

14 BY MS. WILSON:

15 Q Mr. Crumb, I believe you testified that number,
16 224-8820, was your cell phone number?

17 A Yes, ma'am.

18 Q And on January 7th, 2002, the day that Dante, you
19 were involved in the armed robbery and murder of Dante
20 Tobias, were you in possession of that phone, that cell
21 phone?

22 A Yes, ma'am.

23 Q Before Eric Zack picked you up, were you the only one
24 in possession of that phone?

25 A Yes, ma'am.

1 MS. WILSON: Your Honor, at this time we offer
2 State's 95.

3 THE COURT: Any objection?

4 MS. SHEALY: I beg the Court's indulgence just a
5 moment.

6 Without objection, your Honor.

7 MS. WILSON: State's 95.

8 THE COURT: 95 is in evidence without objection.

9 (WHEREUPON, State's Exhibit No. 95 was marked
10 for identification and admitted into evidence.)

11 BY MS. WILSON:

12 Q Now, as to the phone at your momma's house at 101
13 Nightengale, did you ever call Eric Zack from that
14 telephone number during the month of January and the time
15 surrounding this incident?

16 A Possibility.

17 Q Okay. And did you have access and make use of that
18 phone during that time period?

19 A Well --

20 Q You used that phone during that time period?

21 A Yes, ma'am. When my cell phone isn't and I'm letting
22 it charge, I use the house phone to call.

23 Q Do you know of any connection that your mother has or
24 your stepfather has or your sister has to Anthony Mann?

25 A My sister knows of Anthony Mann.

1 Q Were they friends and hanging out?

2 A No, ma'am.

3 Q How about Peter Davies?

4 A No, ma'am.

5 Q And I believe you said that your sister introduced
6 you to Eric Zack?

7 A Yes, ma'am.

8 Q Now, you mentioned that on January 7th of 2002, you
9 and Eric had planned to go see your cousin; is that right?

10 A Yes, ma'am.

11 Q How is it that you all were going to get from your
12 house to John's Island?

13 A Eric's car.

14 Q And where was your house located on Nightengale?

15 A On Archdale off Dorchester Road by Bosch.

16 Q All right. And about what time was it that you
17 started to try and get in touch with Eric to go to John's
18 Island?

19 A Maybe 3:50, 4 o'clock.

20 Q And were you in any kind of a hurry?

21 A I wanted to leave before my dad got home.

22 Q Why was that?

23 A Because we weren't really getting along that well.

24 Q Did you want anything else that afternoon?

25 A Cigarettes.

- 1 Q You didn't have any cigarettes?
- 2 A No, ma'am, I didn't.
- 3 Q At some point did Eric arrive to pick you up?
- 4 A Yes, ma'am.
- 5 Q And who was with him when he came?
- 6 A Anthony Mann.
- 7 Q Do you remember what car they were in?
- 8 A Eric's.
- 9 Q And who was driving?
- 10 A Eric was. Eric was.
- 11 Q After you got in the car with them, where did you all
- 12 go, what areas of town?
- 13 A To Monck's Corner.
- 14 Q Did you all stay in Monck's Corner very long?
- 15 A No, ma'am.
- 16 Q Just drop by the house and left?
- 17 A Yes, ma'am.
- 18 Q Do you know whose house it was you all went by?
- 19 A Someone that Anthony knew.
- 20 Q Did you get out and go in?
- 21 A No. Anthony Mann left a note on the door.
- 22 Q During the time that you were in the car with Anthony
- 23 Mann and Eric Zack, were they using a cell phone?
- 24 A Yes, ma'am, Eric's.
- 25 Q And do you recall what his cell phone number was?

1 Is there anyone else?

2 (No response.)

3 THE COURT: All right. Thank you. The bailiffs
4 will try to monitor that, too.

5 Go ahead.

6 MS. WILSON: Beg the Court's indulgence.

7 BY MS. WILSON:

8 Q All right. Mr. Crumb, we're at the point now that
9 you said Anthony Mann has called Peter Davies and asked
10 for a favor, and do you go to Peter Davies' place?

11 A Yes, ma'am.

12 Q Do you remember where that was?

13 A West Ashley off Savannah Highway.

14 Q Do you know the name of the apartment complex or
15 anything like that?

16 A It was Melrose something.

17 Q Had you ever been there before?

18 A No, ma'am.

19 Q What happened when you all got to this place where
20 Peter Davies was staying?

21 A Went inside the house and Amp told me and Eric to sit
22 on the couch and Anthony and Peter went in the kitchen.

23 Q Did you at any point go in the kitchen and see what
24 was happening?

25 A No, ma'am. I was looking at the snake that was in

1 the living room.

2 Q What kind of snake was in the living room?

3 A A redbtail boa.

4 Q Was it in a cage or something?

5 A Yes, ma'am.

6 Q Were there other people over there as well?

7 A Yes, ma'am.

8 Q Do you remember who else was there?

9 A A girl and two other guys.

10 Q Did you know them?

11 A No, ma'am, I didn't.

12 Q How long would you say it was that you all stayed at
13 Peter Davies' apartment?

14 A Five minutes.

15 Q And when you got ready to go, did you know where you
16 were going from there?

17 A No, ma'am.

18 Q Why didn't you just stay at the apartment?

19 A Because I didn't want to get stuck somewhere.

20 Q What do you mean? Did you have an option to stay or
21 to go?

22 A Yes, Anthony told me to stay, and I said no.

23 Q At that point did you know where you were headed?

24 A No, ma'am. I just didn't want to get stuck at
25 someone's house.

1 Q But at this point you have heard Anthony talking with
2 Brownie on the phone?

3 A Yes, ma'am.

4 Q And what was he telling Brownie?

5 A He said he would be there in a minute.

6 Q After you all got in the car from Peter Davies'
7 apartment, where did you all go?

8 A It was behind a Piggly Wiggly. Anthony got out and
9 fired a gun.

10 Q Was that a surprise to you?

11 A Yeah.

12 Q I mean, what were you thinking? What do you say to
13 him at this point?

14 A I asked what he's doing with a gun.

15 Q What did he tell you?

16 A He said he was going to help Brownie get out of the
17 house. I said, What do you need a gun for? And he said,
18 If he acts up I'm going to take his crap, too.

19 Q Did you know who "he" was?

20 A I didn't know his name until I learned of his death.

21 Q So you're behind the Piggly Wiggly. Do you know
22 which Piggly Wiggly this is or if it's even a Piggly
23 Wiggly?

24 A I'm pretty sure it's a Piggly Wiggly. It's close by.

25 Q This is still West Ashley; is that right?

1 A Yes, ma'am.

2 Q At that point did you say you weren't up for it or
3 what did you do?

4 A I kind of looked at Eric. And then we just -- Amp
5 got in the car and took off.

6 Q Amp was driving at that point?

7 A Yes, ma'am. Amp started driving when we left Peter's
8 house.

9 Q Where were you sitting when you all left Piggly
10 Wiggly?

11 A In the back seat.

12 Q And where was Eric?

13 A In the front passenger seat.

14 Q Amp was driving.

15 How did you know or do you know how Anthony knew
16 where to go?

17 A I don't.

18 Q Did he get any instructions over the telephone or did
19 he just know?

20 A I don't remember.

21 Q You don't remember that part?

22 A (Witness shaking head.)

23 Q Where did you all go?

24 A To Magnolia. I didn't know at the time where it was,
25 but afterwards I found out it was Magnolia.

1 Q Was that also West Ashley?

2 A Yes, ma'am.

3 Q Describe what happened when you got to this area of
4 West Ashley, you now know as Magnolia.

5 A Anthony pulled in front of the house and went inside.

6 Q What did you do?

7 A Sat in the car and smoked a cigarette.

8 Q How long did you sit in the car?

9 A Couple minutes.

10 Q Did you stay in the car?

11 A No, ma'am, I didn't.

12 Q Why not?

13 A I just wanted to make sure Anthony was all right.

14 Q Why were you worried about Anthony?

15 A Actually I wasn't at first, but then Eric brought it
16 up, you know, you better go make sure Anthony's all right
17 in there.

18 Q Why can't Eric go see what's up with Anthony?

19 A You'd have to ask him that question.

20 Q Why didn't you think, Eric, you go on in?

21 A Because he's kind of -- kind of wuzzy.

22 Q All right. Did you think you'd be more help than
23 Eric would if there was a problem?

24 A Yes, ma'am.

25 Q So what did you do?

1 A I walked around I guess it's the back door and peaked
2 my head in and yelled Anthony's name, and he said to come
3 inside.

4 Q Were you armed in any way?

5 A No, ma'am.

6 Q All right. What happened next?

7 A Walked inside, and I seen Anthony with a gun to
8 Dante's head.

9 Q Okay. You called him Dante. Did you know him then?

10 A No, ma'am.

11 Q Have you gotten certain papers and statements and
12 reports in your discovery?

13 A (Witness shaking head.)

14 Q Is that how you knew his name?

15 A Yes, in the news or the paper.

16 Q So he had a gun to his head. Do you remember which
17 part of the house they were in?

18 A The main -- the living room, I think.

19 Q And what part of his head -- where was he holding the
20 gun?

21 A Back of his head.

22 Q What was Dante doing?

23 A Anthony was saying something about Dante trying to
24 prostitute Brownie, and Dante said he was lying.

25 MS. SHEALY: I object to hearsay, your Honor.

1 THE COURT: Sustain the objection.

2 MS. WILSON: Judge, may we approach?

3 THE COURT: Yes.

4 (A bench conference was held with the judge and
5 attorneys in the presence of the jury but out of the
6 hearing of the jury.)

7 MS. WILSON: If I could have the witness step
8 down, please.

9 BY MS. WILSON:

10 Q I'm going to give you this, put that in your hand.

11 Show me, if I'm Dante Tobias, show me where
12 Anthony Mann had the gun.

13 A He turned around like this and had his hand --

14 Q Let's stand so the jury can see it.

15 A Like this. He had his hand on his shoulder like stay
16 still.

17 Q What was Dante doing while he had this gun at his
18 neck?

19 A Hands up in the air.

20 Q He had his hands up in the air? Okay. Where were
21 you standing? If they're standing like this, where were
22 you?

23 A Over here somewhere.

24 Q Okay. Could you hear Dante's voice?

25 You can have a seat.

1 Could you hear his voice?

2 A Yes, ma'am.

3 Q Can you describe to the jury how his voice sounded?

4 A He was just telling Anthony to take whatever and that
5 Brownie was lying.

6 MS. SHEALY: Your Honor, I'd renew my objection
7 to hearsay.

8 THE COURT: All right.

9 MS. SHEALY: Actually this is an additional
10 objection to hearsay.

11 THE COURT: Approach.

12 (WHEREUPON, a bench conference was held in the
13 presence of the jury but out of the hearing of the
14 jury.)

15 MS. WILSON: I will withdraw that. That wasn't
16 really in response.

17 THE COURT: Disregard that statement, ladies and
18 gentlemen.

19 BY MS. WILSON:

20 Q I'm asking you how his voice sounded, not what he
21 said. How did he sound when he was talking with Anthony
22 Mann?

23 A He -- just regular, I guess.

24 Q Was he happy?

25 A No, he wasn't happy, he wasn't crying.

1 THE COURT: Hold on a second.

2 THE WITNESS: He was just like, Man, take
3 everything, take anything, you know. She's lying, she's
4 lying.

5 MS. SHEALY: Objection.

6 THE COURT: Hold on.

7 MS. SHEALY: May we approach?

8 THE COURT: Approach.

9 (A bench conference was held with the judge and
10 attorneys in the presence of the jury but out of the
11 hearing of the jury.)

12 BY MS. WILSON:

13 Q Without getting into anything that Dante said, I need
14 you to describe to the jury what the scene was like, what
15 Dante was like.

16 A He wasn't scared.

17 Q He was not scared?

18 A No, ma'am.

19 Q Okay. He had a gun to the back of his head?

20 A Yes, ma'am.

21 MS. SHEALY: Objection, leading.

22 THE COURT: Okay. Don't lead, Counsel.

23 BY MS. WILSON:

24 Q What made you think he was not scared?

25 A He wasn't crying or saying -- you know, he wasn't

1 like, please don't.

2 Q Did he struggle at all?

3 A Yes, ma'am.

4 Q Tell me about the struggle.

5 A When Brownie was looking for her sweatshirt or
6 something like that, he started to struggle, and I heard
7 it in the room, and I come around and looked, and Amp was
8 pushing him on the bed.

9 Q And did Anthony eventually push him on the bed?

10 A Yes, ma'am.

11 Q Okay. And how was he on the bed?

12 A He gave up at that point.

13 Q Okay. When you say "he gave up." Could you tell or
14 see what his demeanor was like at that point?

15 A He scooted back up on the bed.

16 Q Okay.

17 A He wasn't just on the end after that. He scooted
18 back up on the bed like --

19 Q Did he saying anything to Anthony at that point?

20 A No.

21 Q Did you ever hear anything else that he said to
22 Anthony?

23 A Yes, ma'am.

24 MS. SHEALY: Objection, your Honor.

25 MS. WILSON: May we approach?

1 THE COURT: Yes.

2 (WHEREUPON, a bench conference was held in the
3 presence of the jury but out of the hearing of the
4 jury.)

5 THE COURT: Ladies and gentlemen, I need to send
6 you to your jury room. Do not discuss the case in any
7 way. Thank you very much.

8 (The jury left open court at approximately 10:50
9 a.m.)

10 THE COURT: All right. Now again, you're trying
11 to lay a foundation for excited utterance, and yes, ma'am.

12 MS. SHEALY: I was just going to ask that the
13 witness be present to elicit things from him but not be
14 present for argument.

15 THE COURT: All right. Go ahead and ask your
16 questions, Counsel.

17 MS. WILSON: Beg the Court's indulgence one
18 second, your Honor.

19 THE COURT: To be admissible it needs to be a
20 startling event or condition. It must be made while the
21 declarant was under the stress of that condition.

22 MS. SHEALY: Judge, I apologize, but could we
23 have the witness removed for this discussion?

24 THE COURT: Well, I'll still allow the
25 discussion. Go ahead, Counsel.

1 MS. WILSON: Your Honor, if I could, I will just
2 start back where we were before we had the first objection
3 so that the witness can go through his testimony and you
4 can hear it in full.

5 THE COURT: All right.

6 **IN CAMERA DIRECT EXAMINATION**

7 BY MS. WILSON:

8 Q Mr. Crumb, when you walked into the house, what did
9 you see?

10 A Anthony holding a gun to Tobias' head, Dante's head.

11 Q All right. And they were in the living room area I
12 believe you testified?

13 A Yes, ma'am, right outside the room that he pushed him
14 in.

15 Q Okay. And could you see what Dante was doing with
16 his hands?

17 A He had them in the air.

18 Q And based on what you saw, who was in control of what
19 was happening there?

20 A Anthony.

21 Q And could you hear the things that Anthony was saying
22 to Dante?

23 A Why are you trying to prostitute Brownie.

24 Q And could you hear the responses that Dante was
25 giving?

1 A Yes, ma'am.

2 Q What tone of voice was Dante using when he made the
3 responses?

4 A She's lying, man, she's lying.

5 Q And when he --

6 A Like trying to convince him that she was lying.

7 Q Okay. And I believe you testified he was not crying
8 at that point?

9 A No, ma'am.

10 Q At this point when Dante said she's lying, she's
11 lying, man, had Amp and Dante gotten into any sort of
12 struggle?

13 A Yes, ma'am.

14 Q Okay.

15 A And during the struggle he pushed him up against the
16 wall to the closet door.

17 Q Who pushed whom against the wall?

18 A Amp.

19 Q Amp pushed --

20 A Pushed Dante.

21 Q Was there any conversation during that?

22 A Just the same stuff. I mean, I believe he was
23 telling him to, you know, quit fighting.

24 Q You've got to be real specific about who "he" is,
25 whether it's Anthony, Dante. Tell me that again. Who was

1 pushing who against the wall?

2 A Anthony was pushing Dante against the wall.

3 Q And what was Anthony saying to Dante?

4 A Quit fighting back.

5 Q And where was that in relation to the conversation
6 about prostituting Brownie?

7 A It's all in a 7-foot span right there from the living
8 room, living room's right here, here's the inside room.
9 They're right outside the door.

10 Q When was that in relation to the conversation about
11 prostituting Brownie, was it before or after?

12 A Before or after what?

13 Q When Amp pushed him into the wall, did that happen
14 before or after?

15 A This is before.

16 Q Okay. So at the time --

17 A When I come in the house he had the gun to the back
18 of his head. He said, Why are you trying to prostitute
19 Brownie.

20 Q What kind of voice was Amp using?

21 A Why you trying to prostitute Brownie? Then Brownie
22 was running around. She was like, yeah, yeah.

23 Q And again, Dante reacted how, in what manner?

24 A He said, Man, she's lying.

25 Q What tone of voice was he using?

1 A That exact voice.

2 MS. SHEALY: I'm sorry, I didn't hear that.

3 THE COURT: Repeat that.

4 THE WITNESS: Pretty much that exact voice.

5 BY MS. WILSON:

6 Q The one that you just used?

7 A Yes, ma'am.

8 Q Could you tell or not anything or what was your
9 impression based on what you saw about Dante's reaction to
10 having the gun to the back of his head?

11 A He was just trying to -- I guess the same kind of
12 voice someone would use if you come in and robbed a bank,
13 the same kind of voice a lady would use, you know, here,
14 just take it, take it. See what I'm trying to --

15 Q He used that tone of voice?

16 A Just take anything, she's lying, man. He was doing
17 anything to speak him way out of it.

18 Q To speak him way out of it.

19 A To speak his way out of it.

20 MS. WILSON: Judge, I believe that's all we need
21 to cover.

22 THE COURT: All right.

23 MS. SHEALY: I just have one question.

24 CROSS-EXAMINATION

25 BY MS. SHEALY:

1 Q Mr. Crumb, when Ms. Wilson was asking you what was
2 said inside, at that point I think you indicated that you
3 did not remember the exact words; is that correct?

4 A Pretty much.

5 Q Okay. So when you're --

6 A But I do remember him saying that -- Anthony and
7 Anthony saying, Why are you trying to prostitute Brownie?
8 And Brownie was also saying, Yeah, why were you trying to
9 prostitute me? Why you going to make me do this? And he
10 was saying, no, you're lying, she's lying, she's lying.

11 Q And those are the exact words that you remember; is
12 that correct?

13 A Yes.

14 Q Now, were other things that were said then, you don't
15 remember exactly what was said; is that fair to say?

16 A Yes, ma'am.

17 Q Okay. And earlier you had answered, she had asked
18 you how did he sound and you said regular; is that
19 correct?

20 A He sounded just like I told you.

21 MS. SHEALY: I have no further questions.

22 THE COURT: All right. Step down, please, sir.

23 Okay. Yes, ma'am. I will hear from you.

24 MS. SHEALY: I apologize, your Honor.

25 THE COURT: I will hear you on your objection.

1 MS. SHEALY: I beg the Court's indulgence just a
2 moment.

3 Your Honor, it would be our position as
4 articulated at the bench that that would be inappropriate
5 hearsay. I believe that the Solicitor indicates that she
6 believes it's admissible under 803(2). It would be our
7 position that this witness has not -- that she has not
8 laid the proper foundation with this witness to allow the
9 admission of that statement.

10 THE COURT: State?

11 MS. WILSON: Your Honor, I think without
12 question it falls under 803(2). I think it's clear based
13 on this witness's testimony that the victim in this case
14 was under the control of Anthony Mann. There have been
15 cases after cases that show that when a person is a victim
16 of a violent crime, that qualifies as a startling event.
17 I think that based on his clarification, I think when he
18 testified that he sounded regular, his further explanation
19 is it sounds like a lady would sound during a bank
20 robbery, just trying to make it clear itself up and go
21 away.

22 I think it's clear that this was made under the
23 influence of a startling event. I think we have laid the
24 foundation, and I think it's admissible under 803(2).

25 MS. SHEALY: Your Honor, just to respond briefly

1 to Ms. Wilson's argument, I believe that the witness
2 testified that it was akin to someone who was being robbed
3 in a bank, and when he was giving testimony of what
4 occurred a little bit later, that he does not remember the
5 exact words for it.

6 THE COURT: All right. Well, the factors are
7 that it's a startling event or condition that was made
8 while the declarant was under that stress, and that it
9 relates to the startling event or condition.

10 There is a case, State versus Sims where there
11 is an indication, I'll read part of it, While the son was
12 not crying or acting excited in the sense of being
13 animated when he made that statement, his demeanor can be
14 characteristic of someone who is under the stress of
15 excitement.

16 And I think that considering the nature of the
17 circumstances, the totality of the circumstances, the
18 nature of the specific circumstances, the severity of that
19 event, that the statement was made simultaneous while the
20 gun was being pointed to the person's head. In
21 consideration of the testimony about demeanor as well as
22 the age, I think that it can fall under the rules and I'm
23 going to allow it.

24 MS. SHEALY: Your Honor, if I may, my client
25 needs to take a restroom break.

1 THE COURT: All right. Go ahead.

2 (WHEREUPON, a short break was taken.)

3 THE COURT: I meant to say earlier, too, in
4 regard to that issue, I'm not reopening it, just in
5 response to something that was mentioned up here at the
6 bench about it being the circumstances of spontaneity
7 suggests the reliability. I think that theory is
8 supported by State versus McCullough, if it is in a
9 spontaneous situation, that therefore suggests the
10 reliability or trustworthiness. I don't think it
11 separately has to be determined, but I think it's the
12 spontaneity of the situation that did suggest the
13 reliability under the circumstances that I cited, and also
14 failed to cite, too, that I think the statement that was
15 made suggests the state of mind, and I think that that can
16 also go to the calculation or the analysis.

17 Are you all ready to proceed?

18 MS. SHEALY: Your Honor, in that what I had
19 maintained at the bench is on the record, may I state how
20 I'd respond to those issues?

21 THE COURT: Yes, ma'am.

22 MS. SHEALY: In that the testimony from the
23 witness asserts that there was a gun to Tobias' head and
24 he was asked why are you prostituting Brownie, his
25 response that "I'm lying" to me was an answer to an

1 accusation and did not have the necessary reliability.

2 And I apologize, your Honor, what was the second
3 thing that you had said just now? I just lost my train of
4 thought.

5 THE COURT: I said that the statements
6 themselves, the statement itself suggests the state of
7 mind, and I think you can consider that.

8 MS. SHEALY: Similarly, at the bench I
9 articulated that our concern about not being able to delve
10 into his state of mind on that part was another part that
11 we found troublesome about the statements. It was just as
12 likely that he was responding to an accusation as what is
13 stated as something truthful.

14 THE COURT: All right. Ready to proceed?

15 MS. WILSON: Yes, sir.

16 MS. SHEALY: Yes, sir.

17 THE COURT: All right. Bring the jury back.

18 (WHEREUPON, the jury came into open court at
19 approximately 11:17 a.m.)

20 THE BAILIFF: Jury is all present, your Honor.

21 THE COURT: Thank you. Please be seated.

22 Ready to proceed? Go ahead.

23 CONTINUED DIRECT EXAMINATION

24 BY MS. WILSON:

25 Q Okay, Mr. Crumb. Let's start now again from the

1 point of you going in the house. Tell the jury what you
2 see and what you hear.

3 A When I came to the back door, I yelled Amp's name.
4 Amp said come inside. I came inside, I went to the back
5 room into the living room and I saw Anthony Mann with a
6 gun to Tobias' head telling him, asking him why he was
7 trying to prostitute Beverly.

8 Q How was Tobias responding to that?

9 A She's lying, man, she's lying.

10 Q Where was Brownie during this interchange between the
11 two of them?

12 A Standing right there.

13 Q What was Brownie doing?

14 A Saying yeah, why you trying to do this.

15 Q Now, at this point the four of you are in the living
16 area; is that right?

17 A Yes, ma'am, right outside the room that he pushed him
18 into.

19 Q Be careful saying "he". Right outside of which room?
20 The room that who pushed whom into?

21 A The room outside that Anthony pushed Dante.

22 Q So at some point they leave the living area?

23 A Yes, ma'am.

24 Q Okay. And what happened when they went into the
25 other room?

1 A I was looking for -- I was helping Brownie look for
2 her sweatshirt and bandana and I heard a commotion. When
3 I looked in there, Anthony Mann was pushing Dante up
4 against the closet door, and that's what was making the
5 noise. And then he took him and he pushed him on the bed,
6 and Dante sat on the end of the bed and then Dante scooted
7 back more like he was trying to say like he was neutral,
8 he wasn't putting up a fight or anything.

9 Q And did Dante say anything to Anthony about what to
10 take or what not to take or anything like?

11 MS. SHEALY: Your Honor, if you'll note my
12 objection.

13 THE COURT: Yes, ma'am. Overruled.

14 A Anthony said something about a safe. He said where's
15 the safe at? Brownie said, The safe is right here in that
16 closet. Then Anthony asked Dante what the number was and
17 Dante said the numbers.

18 BY MS. WILSON:

19 Q Is that the combination number?

20 A Yes. Brownie tried pushing in the numbers while
21 Anthony had a gun to Dante and couldn't push them in.
22 Anthony yelled at me and said, Push them numbers. I
23 pushed them in once and then I told Anthony that we need
24 to leave.

25 Q When you pushed the numbers, did the safe open up?

1 A No, it did not. I told him it didn't work.

2 Q Let me ask you this. Did you have anything on your
3 hands?

4 A No, ma'am.

5 Q So you're touching this safe with no gloves?

6 A Yes, ma'am. I pushed like four numbers. I don't
7 even think I pushed the whole -- I was just trying to
8 hurry up.

9 Q While we're talking about what you had on or didn't
10 have on, what did Anthony have on?

11 A He had on gloves.

12 Q What about the rest of him, what did he have on; do
13 you remember.

14 A I believe jeans and like a FUBU jersey.

15 Q What else?

16 A And a stocking cap.

17 Q Do you remember what the jersey looked like? I don't
18 know what you mean when you say --

19 A Blue, white borders I guess you would say around the
20 sleeves.

21 Q What did the stocking cap look like?

22 A FUBU on it. It was a blue stocking cap.

23 Q Now, after you punched in the numbers, what did you
24 do next?

25 A I told Brownie we need to leave and I told Anthony we

1 need to leave.

2 Q You mentioned helping her look for a sweatshirt and a
3 bandana. Where did you look for those things?

4 A She went into another room real quick and came back
5 out and she's where's my bandana. The kitchen is like
6 right there next to the living room and I saw bandana in
7 the kitchen and I grabbed that and said, Here.

8 Q And gave that to her?

9 A Right. And while that's going on I hear the
10 commotion and everything, and Anthony's got Dante against
11 the closet door, and that's when I looked in there and
12 he's pushing him on the bed.

13 Q When you told Anthony it was time for you all to
14 leave, what did you get to leave with? Did you take
15 anything out?

16 A Yes, I helped Brownie carry two bags out.

17 Q Could you tell what was in those bags?

18 A No, I could not. A bunch of clothes. I mean, the
19 bags were like this big.

20 Q What kind of bags were they?

21 A Garbage bags, black ones.

22 Q Did Brownie have anything?

23 A She carried one, I carried one.

24 THE COURT: Can you get closer to that
25 microphone, please, sir? Thank you.

1 BY MS. WILSON:

2 Q Okay. Where did you and Brownie go?

3 A To the car.

4 Q What was the last thing you saw of Amp and Tobias?

5 A When I looked back in the room, Anthony Mann had the
6 safe open, and that's when I said, Brownie, let's come on.

7 Q Could you see what was in the safe?

8 A No, ma'am.

9 Q So you and Brownie leave. Where do you all go?

10 A To the car.

11 Q Where was the car?

12 A I'm not sure if it was in the front or the side of
13 the house, but it was by the house.

14 Q When you say you're not sure if it was the front or
15 side. What's the problem with that?

16 A I'm just not sure. I remember it was kind of like
17 the front of the porch.

18 Q Okay. All right. So what happens when you get to
19 the car?

20 A We get in the back seat with the bags, and that's
21 when we heard the gunshot and Dante scream.

22 Q You say you heard Dante scream. What kind of noise
23 did he make?

24 A A loud scream.

25 Q At that time did you know who it was screaming?

1 A No, I did not. But I figured it out when Anthony
2 come running to the car. But after I heard the scream and
3 gunshot, I told Eric to crank up the car and leave.

4 Q Did he do that?

5 A He started to crank up the car and then Anthony come
6 running to the car. He ran around the front of the car
7 and Eric opened up the passenger side.

8 Q What happened next?

9 A Anthony got in the car and we left. And I asked
10 Anthony what he did and he said, I just shot him in the
11 leg, I just shot him in the leg.

12 Q Did he tell you why?

13 A No.

14 Q Did you all ask him any other questions?

15 A He wasn't really in an answering mood. After that
16 happened he wasn't -- he was upset.

17 Q Could you see if Anthony had anything in his hands
18 when he got in the car?

19 A A gun.

20 Q The gun?

21 A A black gun.

22 Q The same gun that he had gotten from Peter or, another
23 gun or what?

24 A Yes, ma'am. Same gun.

25 Q The same gun?

1 A Yes, ma'am.

2 Q Where did you all go from there?

3 A Peter Davies' house..

4 Q Who's driving?

5 A Eric is driving this time.

6 Q About how long did it take you all to get from
7 Dante's house to where Peter Davies lived?

8 A Not more than ten minutes.

9 Q What happened when you got to Peter Davies'?

10 A We went in and Anthony told me and Eric and Brownie
11 to sit on the couch.

12 Q Did you all do that?

13 A Yes, ma'am.

14 Q Where did Anthony go?

15 A In the kitchen with Peter.

16 Q Did you see if he brought anything in with him?

17 A One of the bags.

18 When we were on the way to Peter's, Anthony told
19 me to put the bags in the trunk through the folddown seat.
20 I put one in the trunk and Brownie wanted to hold the
21 other one.

22 Q When you say bags, what bags were you putting in the
23 trunk?

24 A The trash bags.

25 Q The same trash bags that you'd brought out?

1 A Yes, ma'am.

2 Q Could you see or tell if Anthony got any money?

3 A When we were at Peter's house, he was counting out
4 change.

5 Q Describe that. What was the change in and how much
6 change?

7 A It was like a fabric bag.

8 Q How many bags did he have?

9 A Just one that I saw.

10 Q Did you guess how much change it was?

11 A No.

12 Q Was it a dollar in quarters or \$10 in quarters?

13 A No, it was more than that. It was fifty bucks.

14 Q Where did he go with the change?

15 A He sat on Peter's dining room floor and counted it
16 out.

17 Q Who was in there with him?

18 A Peter and this other girl.

19 Q Who was the other girl?

20 A I'm not sure.

21 Q The same girl that had been there earlier?

22 A Yes, ma'am.

23 Q Did you stay in the kitchen with Peter and Amp and
24 the girl?

25 A I was sitting in the living room. There's a dining

1 room and a living room.

2 Q Did you try to check on what Amp was doing?

3 A One time I got up and acted like I was looking at the
4 snake and I looked in the kitchen and they were breaking
5 down a gun.

6 Q Did you have any conversation with Peter?

7 A No. I asked him what kind of shotgun that was
8 because he had a big bullet and he said a 70-millimeter or
9 something like that.

10 Q Okay. What kind of shotgun are you talking about?

11 A A big black one.

12 Q Where did it come from?

13 A Out of that bag, out of one of the bags that Brownie
14 had in the back seat with her.

15 Q When was the first time you saw the shotgun?

16 A When I was in Peter's house.

17 Q And how did you know it came from one of the bags?

18 A Because I asked Amp.

19 Q Tell me about that. Tell the jury about that.

20 A I said he's breaking down the gun and whatnot.

21 Q Which gun was he breaking down?

22 A The gun that he shot Dante with, supposedly did. And
23 he had the shotgun out and the change, and I asked if he
24 got that stuff from that dude's house, and he said yeah,
25 and he told me to go sit back down on the couch.

1 Q And describe again what the shotgun looked like.

2 A It was black.

3 Q How big was it?

4 A The size of a shotgun.

5 Q A regular old shotgun?

6 A Yes, ma'am. But I think it had a pistol grip on it.

7 Q How was -- where was Brownie during all this?

8 A She was sitting in the living room, too.

9 Q At any point did Peter Davies have conversation with
10 you all as you sat on the couch?

11 A He said if we opened our mouth he was going to kill
12 us and our families. But that's not what he said. He
13 said, If you all open you all's mouth, I'm not talking
14 about killing you all, I'm talking about killing families.

15 Q Peter Davies told you that?

16 A Yes, ma'am.

17 Q Who all did Peter tell that to?

18 A Me, Brownie, Eric.

19 Q Where was Anthony when Peter told you that?

20 A Sitting in the dining room counting out change.

21 Q Do you have any idea how long you all were at Peter's
22 house this second time?

23 A Not really. Half hour.

24 Q Why was it that you waited around there at all?

25 A Because Eric was kind of -- Eric does what Anthony

1 says.

2 Q Do you do what Anthony says?

3 A No, but I guess I should have walked out of the
4 house, yes, you're right.

5 Q So you just hung out there?

6 A Well, Anthony was waiting on a guy named Terrance to
7 come pick them up. And then Anthony was like, well, when
8 Terrance comes here, you all are going to follow me to
9 North Charleston.

10 Q Whose car were you all going to use to do that?

11 A Eric's car.

12 Q So you said you think you all are there, you don't
13 know how long, you guess 30 minutes, 45 minutes?

14 A Yes, ma'am.

15 Q Okay. What happened when you finally left? How did
16 that all shake out?

17 A Eric started to follow Anthony, and I pulled on the
18 steering wheel.

19 Q Back up. Who comes?

20 A Terrance comes. They carry the bags. Anthony
21 carries that one bag to Terrance's car. Eric grabs the
22 other bag out of his trunk and gives it to Anthony.
23 Anthony puts that in the car with him.

24 Q Did you know Terrance?

25 A No, ma'am.

- 1 Q Do you know where Terrance came from?
- 2 A No, ma'am.
- 3 Q Do you know what kind of car he was driving?
- 4 A It was a goldish Honda.
- 5 Q So Amp has the bags. Where is Brownie, and where's
- 6 Peter?
- 7 A Getting in the car.
- 8 Q Whose car?
- 9 A Terrance's.
- 10 Q All right. All of the bags that you saw come out of
- 11 the house, where did they go?
- 12 A Into Terrance's car.
- 13 Q What bags did you and Eric have left in his car?
- 14 A None.
- 15 Q What does Amp tell you all to do?
- 16 A To follow him to North Charleston.
- 17 Q And what happened after that?
- 18 A Eric went to go follow Anthony and I pulled on the
- 19 steering wheel and pulled him into the turning lane. I
- 20 told him to go the other way.
- 21 Q Why did you do that?
- 22 A Because I didn't want to follow Anthony.
- 23 Q Did you or Eric get anything out of the robbery?
- 24 A Eric got a Dillinger.
- 25 Q What is a Dillinger?

- 1 A A little pistol, two-shot pistol.
- 2 Q What about any money?
- 3 A No.
- 4 Q Did you see anything else that was stolen as far as
- 5 drugs or anything like that?
- 6 A No, ma'am.
- 7 Q No?
- 8 A No, ma'am.
- 9 Q So Eric got a two-shot pistol?
- 10 A Yes, ma'am.
- 11 Q And you got what?
- 12 A Nothing. A headache.
- 13 Q Where did you and Eric go from there?
- 14 A To John's Island. Well, we stopped by the gas
- 15 station first.
- 16 Q You got gas?
- 17 A Yes, ma'am.
- 18 Q Where did you go after that?
- 19 A To John's Island.
- 20 Q What happened at John's Island?
- 21 A I drank some beer. Oh, we went to my cousin's first
- 22 house -- house first.
- 23 Q And who is your cousin?
- 24 A Lauren Cook.
- 25 Q Did you tell him what happened?

1 A Yes, ma'am.

2 Q And what did you do with the gun that you and Eric
3 had?

4 A Gave it to him.

5 Q Now, at some point you were interviewed by the police
6 after you were arrested, right?

7 A Yes, ma'am.

8 Q Did you tell them the truth about what happened with
9 that gun?

10 A No, ma'am.

11 Q What did you first tell them happened to the gun?

12 A That I threw it in the river.

13 Q Why did you tell them that?

14 A Because I didn't want to get my cousin in any
15 trouble.

16 Q That was the cousin that you gave the gun to?

17 A Yes, ma'am.

18 Q Do you know what he did with the gun? Did you see
19 what he did with it?

20 A When I was on the way to Florida.

21 Q We'll get to that.

22 All right. So you go to your cousin's house.
23 Do you talk to Anthony Mann any more that night after
24 Dante's been killed?

25 A I'm not sure if it was that night or the next day,

1 but I remember him calling me and saying, Why didn't you
2 follow us. Matter of fact, I believe he called me that
3 night and said, Why didn't you follow us. And I said,
4 well, I just was planning to go to the island anyway, so
5 that's what I did. He said, Yeah, I figured you wouldn't
6 follow me. And I also remember him calling me up and
7 telling me that Dante was killed.

8 Q Was that how you first knew that Dante had died?

9 A Yes, ma'am.

10 Q When Amp called you and told you that, what did you
11 say to him?

12 A I said, Oh, yeah? He didn't really say much. He
13 just called to tell me that.

14 Q Did you all have any discussion about what to do
15 about that?

16 A He told me to keep my mouth shut.

17 Q Did you have any other conversations after that with
18 Peter Davies?

19 A No, ma'am.

20 Q Did you see Eric Zack over that next week or so?

21 A Yes, ma'am.

22 Q Did you all talk about what had happened?

23 A Yes, ma'am, a little bit.

24 Q When was it that you finally were arrested for your
25 involvement in the murder and armed robbery of Dante

1 Tobias?

2 A February 27th.

3 Q Between January 7th, the night that Dante was
4 killed, and your arrest on February 27th, did you stay
5 here in Charleston?

6 A No, I went -- a little bit back and forth from there
7 and Florida.

8 Q Do you recall when Eric Zack and Anthony Mann were
9 arrested?

10 A Yes, ma'am.

11 Q After they were arrested, did you have any contact
12 with them?

13 A Anthony Mann called me and Eric called me.

14 Q What did they tell you?

15 A Eric really didn't say too much. He just asked how I
16 was doing.

17 Q Did you all have any discussion about when you were
18 going to be arrested?

19 A Eric said he wasn't going to bring my name up.

20 Q How about Anthony Mann? What did he say about
21 bringing up your name?

22 A He called three way.

23 Q Do you know who three-wayed you?

24 A Kristy.

25 Q And that's him calling from the jail; is that right?

1 A Yes, ma'am.

2 Q What did he tell you about your being arrested or the
3 police finding out about you?

4 A I can't remember word for word, but pretty much just
5 to keep my mouth shut, and he hinted to say that Brownie
6 was the one that shot Dante.

7 Q When you say "he hinted to say," what do you mean?

8 A I mean, he can't really -- it's like he wasn't trying
9 to say too much on the phone because they might be
10 recording it.

11 Q Okay. And he hinted at what to you?

12 A To tell them if I get arrested that Brownie shot
13 Dante.

14 Q Is that what happened?

15 A No, ma'am.

16 Q Now, you were in Charleston for awhile. When was it
17 that you decided you needed to head on to Florida?

18 A Well, when they got arrested, I figured that
19 eventually I would have police coming to my house.

20 Q What are you thinking about that safe that you
21 touched?

22 A It's going to get me in some trouble.

23 Q Did you have anything that you were planning to do in
24 February or March, anywhere you were planning to go
25 besides Florida?

1 A The Army.

2 Q When were you supposed to go in the Army?

3 A I had two weeks left. I was on unsupervised
4 probation for a trespassing charge for walking through s
5 neighborhood right next to my neighborhood that I had been
6 walking through for ten years, and they gave me
7 unsupervised probation. I had like two weeks left. I had
8 already taken my physical, passed my drug test.

9 MS. SHEALY: I object to the relevancy of this.

10 THE COURT: You all approach.

11 (WHEREUPON, a bench conference was held in the
12 presence of the jury but out of the hearing of the
13 jury.)

14 THE COURT: Move on, Counsel.

15 MS. WILSON: All right.

16 BY MS. WILSON:

17 Q So you had planned to go in the Army and at some
18 point you decided to go to Florida instead?

19 A Yes, ma'am.

20 Q Did you miss your Army thing?

21 A Yes, ma'am.

22 Q Okay. Why was it that you decided to go to Florida?

23 A Well, I don't know which day it was, but Detective
24 Walker come by my house.

25 Q Is that this detective right here?

1 A Yes, ma'am. And I already knew who he was because he
2 gave me --

3 Q Let's not go into that.

4 You knew who Detective Walker was?

5 A Yes, ma'am.

6 Q Okay. What happened?

7 A Well, I seen him around the corner.

8 Well, first they called the house and asked to
9 speak to Michael Crumb, and I told them that Michael
10 wasn't home and that I was his father, and they said, No,
11 you sound kind of young. I said, No, this is him. Can I
12 ask what's wrong? They said, We need to speak to
13 Mr. Crumb. And I said, Well, as soon as he gets home I'll
14 let him know. And they wouldn't tell me. I said, Well,
15 what's he in trouble for? And they wouldn't tell me. And
16 then I was packing up my stuff to go out the back door.

17 Q Where were you headed from the back door?

18 A To Florida.

19 Q You just made this plan in a matter of minutes?

20 A No, I already had it planned.

21 Q All right. So you get the phone call from Walker?

22 A Yes, ma'am. First they knock on the door and I don't
23 answer the door, then they called.

24 Q Then you head out the back door?

25 A Yes, ma'am.

- 1 Q Do you hook up with anybody?
- 2 A My cousin.
- 3 Q Which cousin is that?
- 4 A Lauren Cook.
- 5 Q What are you all driving?
- 6 A A car that I stole.
- 7 Q How did all that happen?
- 8 A I was asleep at my house one night.
- 9 Q Wait a minute. Wait a minute.
- 10 You're on the phone with Walker?
- 11 A No, this is before I stole the car, before they even
- 12 come to the house.
- 13 Q Okay.
- 14 A I already had it parked in the neighborhood.
- 15 Q So you had this stolen car hidden out somewhere in
- 16 your neighborhood?
- 17 A Yes, ma'am.
- 18 Q You're on the phone with Walker playing your dad and
- 19 you hang up with him?
- 20 A Yes, ma'am.
- 21 Q Where did you go when you run out the back door?
- 22 A To the stolen car.
- 23 Q Where do you go in the stolen car?
- 24 A To my cousin's house.
- 25 Q Lauren Cook?

1 A I meet him down the street from his house, yes,
2 ma'am.

3 Q Where were you planning to go in Florida?

4 A To Winter Park.

5 Q Did you know somebody down there?

6 A Yes, ma'am.

7 Q All right. Who did you know?

8 A My friend Justin.

9 Q Did you make it to Winter Park?

10 A Yes, ma'am.

11 Q How long were you down there?

12 A About a week. Four days. Four days.

13 Q How did you get back to South Carolina?

14 A My mother.

15 Q Tell the jury what happened with your momma.

16 A She came to pick up my cousin Lauren, and then Lauren
17 told her to drive to the back and I jumped in the van.

18 Q Did she come to pick you up or him?

19 A She came to pick up my cousin.

20 Q Did she know where you were?

21 A No. Lauren wasn't telling her where I was at.

22 When she got there, I jumped in the van, and we
23 came back here and talked to a lawyer.

24 Q At this point did your mom know that you were wanted?

25 A Wanted for questioning.

1 Q Did you tell your mom you were going to turn yourself
2 in?

3 A Yes, ma'am, kind of.

4 Q Okay. Do you think she believed you that you were
5 going to turn yourself in?

6 A Yes, ma'am. That's why she took me to a lawyer.

7 Q When you went to a lawyer after that, did you turn
8 yourself in?

9 A No, ma'am. I told her I wanted to see my son first.
10 And when we were pulling into Archdale I told her to stop
11 the van and I jumped out.

12 Q When you were pulling in where?

13 A Archdale, the front of my neighborhood.

14 Q You jumped out and ran.

15 Out of all this your mom gets arrested, too; is
16 that right?

17 A Yes, ma'am.

18 Q For trying to help you out?

19 A (Witness nodding.)

20 Q Was she trying to get you away from the police or to
21 the police?

22 A She was just trying to be a mom.

23 Q I'm going to show you some pictures that have already
24 been introduced. We'll go through them. I'd ask you to
25 look through these first. If you'll look through those.

1 I'm going to put on the board Defendant's (sic)
2 Exhibit 43.

3 If we could dim the lights a little bit, please.

4 All right. If you could with this pointer, it's
5 a little bit hard to see. Can you see it on there?

6 A Yes, ma'am.

7 Q If you'll use that pointer, and if you could first
8 tell the jury what you see in that picture.

9 A Dante's house.

10 Q Okay. And where you're pointing with that red
11 pointer, where were you?

12 A That's where we were parked. That's where I walked
13 in, right there.

14 Q Right back there?

15 A Yes, ma'am.

16 Q And if we could go to State's Exhibit 45.

17 THE JUROR: I couldn't see the pointer.

18 MS. WILSON: Okay. Let's try and see if it's
19 better on this.

20 THE COURT: Repeat that, please.

21 BY MS. WILSON:

22 Q Let's go back to 43, please.

23 What is that near in that photograph?

24 A It's like a garbage can.

25 Q Is there something behind the garbage can?

1 A A fence.

2 Q You said the car was parked around that area?

3 A Yes, ma'am.

4 Q Okay.

5 A And that's where -- around that fence right there,
6 how that fence comes around? It comes up behind that
7 house. That's where I went in.

8 Q Okay. And if we could see State's 45.

9 Can you show on that picture about where the car
10 was, if you can see it on there? See that garbage can?
11 Can you see the door in that picture that you went in?

12 A No, it's up here this way some.

13 Q Now, that area, this area here, what area of the
14 house was that?

15 A It looks like the porch.

16 Q When you came out of the house, how did you come out?

17 A The same door I went in.

18 Q Oh, you did? You came out the same door?

19 A (Witness shaking head.)

20 Q Now, if I could, I'll show you State's 89. Do you
21 recognize that safe?

22 A Yes, ma'am.

23 Q Okay. Now, I think State's 89 was taken at the
24 sheriff's office, but does that look like the safe?

25 A Yes, ma'am.

1 Q And the numbers on the front, are those the numbers
2 that you tried to press to open the safe?

3 A Yes, ma'am.

4 Q Let's go to State's 30. Can you see that safe in
5 that picture?

6 A Yes, ma'am.

7 Q Can you point that out for the jury?

8 A The safe's right here.

9 Q When you left that area, did the safe look like that?

10 A I don't remember everything being messy like that.

11 Q Okay. How about the safe door, was it open when you
12 left?

13 A Yes, ma'am.

14 Q Who had gotten it open?

15 A Anthony Mann.

16 Q In State's Exhibit 31?

17 THE COURT: Can you speak up, please, sir?

18 THE WITNESS: Sorry.

19 BY MS. WILSON:

20 Q State's 31, was the door open when you left?

21 A Yes, ma'am.

22 Q Who had opened the safe door?

23 A Anthony Mann.

24 Q What had happened when you tried to open that door?

25 A It didn't open.

1 Q All right. If I could go to State's 64. Do you
2 recognize that?

3 A Yes, ma'am.

4 Q What is that?

5 A Eric's car.

6 Q And was that the car you all were in that night?

7 A Yes, ma'am.

8 Q And you were sitting in what part of the car when you
9 all left?

10 A The back seat.

11 Q And where was Brownie sitting?

12 A In the back seat.

13 Q And you mentioned that you had bags that you and
14 Brownie had brought out. Where did you all put them when
15 you got into the car?

16 A We had them in the back seat with us, and then when
17 Anthony got in the car, he told us to put them in the
18 trunk.

19 Q How was it that you were able to put them in the
20 trunk from the back seat?

21 A It was a fold-down back seat.

22 MS. WILSON: Beg the Court's indulgence.

23 BY MS. WILSON:

24 Q I'm going to show you what is introduced already as
25 State's Exhibit 91. Do you know who that is in that

1 Q Mr. Crumb, tell me how old you are again.

2 A Twenty-five.

3 Q And so when this occurred you were how old?

4 A Twenty-three.

5 Q Now, let me try to explain something. Let me ask you
6 a question and see if this offers some explanation.

7 When you're charged with a crime, your lawyer
8 sends you copies of all the paperwork involved in it; is
9 that correct?

10 A Yes, ma'am.

11 Q That is referred to as your discovery; is that
12 correct?

13 A Yes, ma'am.

14 Q So in this case, for example, you've gotten a copy of
15 all the statements that have been taken from witnesses; is
16 that correct?

17 A Yes, ma'am.

18 Q And you've gotten a copy of any type of scientific
19 report that has occurred; is that correct?

20 A Actually, no. Most everything that's in the
21 discovery that I received is statements.

22 Q Okay. Your lawyer didn't send to you any scientific
23 stuff, things that have been sent to SLED?

24 A No. The only thing he sent me was the autopsy.

25 Q The autopsy?

1 A And a copy of my fingerprints.

2 Q Did you have the opportunity to see the videotape of
3 where Beverly was found?

4 A No, ma'am.

5 Q Did you see photographs of where Beverly was found?

6 A No, ma'am.

7 Q So you've just seen an incident report where the
8 officers have described the scene; is that correct?
9 You've read the police reports?

10 A The only statement that describes where she was found
11 was the two fellows that found the body when they were
12 going four-by-four.

13 Q Let me rephrase the question then.

14 Did your attorney send you copies of the police
15 reports, the incident reports that the police had filled
16 out?

17 A No, ma'am.

18 Q You did not get copies of those?

19 A No, ma'am.

20 Q Have you ever gone over those with the Solicitor's
21 office?

22 A I don't think so, no.

23 Q Have they shown you photographs that were taken in
24 the case, the solicitors?

25 A Yes, ma'am, one of the house and one of Beverly, and

1 that's it.

2 Q Okay. Very good.

3 Now, since this has happened, it's fair to say,
4 is it not, that you have spoken to several people about
5 your involvement in what occurred; is that fair to say?

6 A Not really. I keep my mouth shut.

7 Q You keep your mouth shut?

8 A Pretty much.

9 Q Did you talk to Christina Carter?

10 A No, ma'am, I didn't.

11 Q You didn't tell her that --

12 A She called me one time and I acted like my phone was
13 dead.

14 Q You acted like your phone was dead?

15 A Yes, ma'am.

16 Q So you never said anything to her about if anybody
17 had said what you had told her that you'd deny that?

18 A Yes, ma'am.

19 Q So, in other words, you deny that you in any way
20 threatened her or that your friends would hurt her if they
21 told what you had said?

22 A I -- yes, ma'am.

23 Now, I did get kind of flippy when I was at
24 Tommy and John's house. This is when I was getting ready
25 to leave on the run. I stopped by their house, I can't

1 remember for what, and I was trying to call my mom and
2 whatnot, and what I was saying was if these people bring
3 me into this crap I'm going to be highly pissed off, and I
4 was kind of acting irate, yes, ma'am.

5 Q So when you say "flippy," you mean you could have
6 made some threats?

7 A Not directed at any one person.

8 Q Just threats in general?

9 A Yeah, pretty much pulling my hair out saying, man,
10 I'm, you know, that kind of thing.

11 Q Okay. Now, what about Jamie Cumbee, did you talk to
12 her about this and generally make some general threats?

13 A No. But she was there when I was on the cell phone
14 with my mother.

15 Q So she wouldn't have heard you when you were flippy?

16 A Yes, ma'am.

17 Q What about Maria Jacques, do you remember talking to
18 her about this at all?

19 A She was friends of Anthony's, and Anthony was trying
20 to get me to come up with money to pay for a lawyer for
21 him or something like that.

22 Q Let me ask you this way. Do you recall telling her
23 that you would tell the police whatever you had to, to try
24 to get out of this?

25 A Yes, ma'am.

1 Q You remember telling her that?

2 A Yes, ma'am. And what that was was trying to just go
3 along with Amp pretty much, just like when he called my
4 house from the jail.

5 Q Okay. But you don't deny then telling Maria Jacques
6 that you would tell the police whatever you have to to try
7 and get out of this, correct?

8 A Well, no, not necessarily that. She was saying --
9 she was calling me telling me to tell them that Brownie
10 was the one, and I was like yeah, yeah, I'll say that,
11 I'll say that.

12 Q Did you tell her Brownie was the one?

13 A No.

14 Q You did not?

15 A No.

16 Q Now, when you were describing to your mother your
17 participation in this, did you tell her that the whole
18 time you had stayed in the car?

19 A No, ma'am, I didn't.

20 Q You did not?

21 A No.

22 Q And you know your mother gave a statement to the
23 police in this case?

24 A Yes, ma'am.

25 Q So you deny ever telling your mother that you stayed

1 in the car?

2 A She's my mom. I tell her things.

3 Q I'm asking you to answer a question.

4 A I told her I went in the house.

5 Q You told your mother you went in the house?

6 A Yes, ma'am.

7 Q So you deny ever telling her that you stayed in the
8 car?

9 A Yes, ma'am.

10 Are you going to try to get my mom in trouble?

11 Q Excuse me?

12 A Are you trying to get my mom in trouble?

13 Q No, I'm trying to ask you questions, Mr. Crumb.

14 A Yes, ma'am.

15 Q Can you handle that?

16 A Uh-huh.

17 Q What about Kristy Bunch, did you tell her that
18 Brownie shot Dante Tobias?

19 A No. She was trying to tell me to say that same
20 thing.

21 Q So you deny telling her that?

22 A Yes, ma'am.

23 Q Now, you have been housed down at the detention
24 center; is that correct, Charleston Detention Center?

25 A Yes, ma'am.

1 Q And while there a gentleman named William Woodson was
2 in the same area with you; is that correct?

3 A I don't know him.

4 Q Excuse me?

5 A I don't know him.

6 Q Well, let me ask you this. Do you recall telling
7 anyone at the jail that you'll do whatever it takes to get
8 out of this?

9 A No, ma'am.

10 Q You deny that?

11 A Yes, ma'am.

12 Q Let's talk a little bit about Lauren Cook.

13 A Okay.

14 Q That's your cousin?

15 A Yes, ma'am.

16 Q Now, this case had been previously scheduled; is that
17 correct, this trial?

18 A Yes.

19 Q In fact, I had surgery and it got postponed; is that
20 correct?

21 A Yes, ma'am.

22 Q Now, did you have access to a list of the defense
23 witnesses at the time that it was scheduled previously?

24 Anybody show you the list?

25 A No, ma'am.

1 Yes, a fellow came in there and asked me if I
2 knew some of the names that were highlighted.

3 Q And would that fellow have been from the Solicitor's
4 office?

5 A Yes, ma'am.

6 Q And did you learn when you saw that list that
7 Christopher Reed was a possible witness for the defense?

8 A No, ma'am.

9 Q You did not see that?

10 A I didn't look at it. I looked at the highlighted
11 names.

12 Q And that was not one of the names?

13 A No, ma'am.

14 Q When you went into the jail, Mr. Crumb, they asked
15 you, did they not, if you had any known enemies. Do you
16 recall that question being asked of you?

17 A Yes, ma'am.

18 Q Do you recall that you answered Peter Davies?

19 A I might have at the time, yes.

20 Q Does that sound right?

21 A Yes. That's 19 months ago. That's a long time, but
22 yeah.

23 Q You recall referring to Peter Davies as a known
24 enemy; is that fair to say?

25 A Yes, ma'am.

1 Q Now, have you had any type of medication before you
2 came today to court?

3 A No, ma'am.

4 Q Are you taking medication down at the jail?

5 A Yes, ma'am, diazepam for depression.

6 Q How long have you been taking that?

7 A For a year.

8 Q For a year.

9 Now, back when this occurred, you told us that
10 you had other plans. Were you working anywhere at the
11 time this occurred?

12 A I'd just quit roofing.

13 Q Who were you roofing for?

14 A Gary Judy.

15 Q How long did you work there?

16 A Almost five years.

17 Q Five years at a roofing job. But at this time you
18 were not working anywhere; is that correct?

19 A No, ma'am, I was ready to go in the military.

20 Q Okay. Now, the Solicitor asked you about a plea
21 agreement that you signed. You signed a plea agreement in
22 this case; is that correct?

23 A Yes, ma'am.

24 Q And prior to signing the plea agreement you also
25 signed a proffer agreement; is that correct?

1 A Yes, ma'am.

2 Q Now, you had an attorney?

3 A When I signed the proffer? Yes, ma'am.

4 Q Who is your attorney?

5 A Peter Shade.

6 Q When you signed the proffer agreement, that's when
7 you had agreed that you would come in and talk to the
8 Solicitor's office or to law enforcement; is that correct?

9 A Yes, ma'am.

10 Q And, in fact, you signed the proffer agreement;
11 January 22nd; is that correct?

12 A I believe so.

13 Q Is that what you recall?

14 A (Witness nodding.)

15 Q You agreed, did you not, to be fully truthful and
16 forthright with the Solicitor's office and any federal
17 officials; is that correct?

18 A Yes, ma'am.

19 Q And that you would tell them everything you knew
20 about unlawful activities; is that correct?

21 A Yes, ma'am.

22 Q And have you, in fact, shared with the Solicitor's
23 office information regarding everything that you know
24 about illegal activities?

25 A What do you mean by that?

1 Q Well, I mean, did they take advantage of your proffer
2 agreement and ask you about all that you knew that was
3 illegal?

4 A You mean like who used to sell me pot or something
5 like that?

6 Q No, I'm not asking you that. I'm just asking did you
7 answer all their questions regarding --

8 A The case, yes.

9 Q And let me --

10 MS. SHEALY: I beg the Court's indulgence just a
11 moment. May I approach?

12 THE COURT: Yes, ma'am.

13 (A bench conference was held with the judge and
14 attorneys in the presence of the jury but out of the
15 hearing of the jury.)

16 BY MS. SHEALY:

17 Q I'm going to show you a copy of the proffer
18 agreement, okay? I'm going to hand you this and ask you
19 to identify it.

20 MS. SHEALY: May I approach the witness?

21 THE COURT: Yes, ma'am.

22 BY MS. SHEALY:

23 Q Can you identify that?

24 A Yes, ma'am.

25 Q Is that a copy of your proffer agreement?

1 A Yes, ma'am.

2 Q Okay. And if you would, please, Mr. Crumb, look on
3 page two if you need to refresh your memory, but let me
4 ask you: Your proffer agreement states, does it not, that
5 further it's expressly agreed that if the obligations of
6 the State within this agreement become null and void due
7 to the lack of truthfulness on the client's part, the
8 State will file any and all charges known to the State.
9 Do you recall reading that?

10 A Yes.

11 Q So in other words, once you entered into this proffer
12 agreement with the State, you knew, did you not, that if
13 they believed that you were being untruthful, that you
14 could get charged even more severely; is that correct?

15 A Yes, ma'am.

16 Q And at the time that you entered this proffer
17 agreement, you had been charged with murder?

18 A Yes, ma'am.

19 Q Armed robbery?

20 A Yes, ma'am.

21 Q And then I believe possession of a stolen motor
22 vehicle?

23 A Yes, ma'am.

24 Q Now, when deciding whether or not to engage in this
25 proffer agreement and whether or not to testify, you knew,

1 did you not, that murder carried a minimum of 30 years and
2 the potential for the death penalty; is that correct?

3 A Yes, ma'am.

4 Q And with murder you knew that if you got 30 years it
5 meant 30 years?

6 MS. WILSON: Your Honor, may we approach?

7 THE COURT: Yes.

8 (A bench conference was held with the judge and
9 attorneys in the presence of the jury but out of the
10 hearing of the jury.)

11 BY MS. SHEALY:

12 Q Mr. Crumb, as I asked you, when you were charged with
13 murder, you understood that there was a penalty, a minimum
14 penalty of 30 years in jail; is that correct?

15 A Yes, ma'am.

16 Q And the possibility of the death penalty; is that
17 correct?

18 A Yes, ma'am.

19 Q And with your armed robbery charge you understood
20 that there was a minimum of ten years; is that correct?

21 A Yes, ma'am.

22 Q And a maximum of 30?

23 A Yes, ma'am.

24 Q Now, you have pled to voluntary manslaughter; is that
25 correct?

1 A Yes, ma'am.

2 Q And with voluntary manslaughter, you don't have to do
3 day for day for your sentence? If you get a 30-year
4 sentence it's not 30 years as is required by murder; is
5 that correct?

6 A Yes, ma'am.

7 Q So that was explained to you before you engaged in
8 this proffer agreement and later the plea agreement?

9 A Yes, ma'am.

10 Q Is it fair to say that as a young man you were scared
11 to death to be charged with murder?

12 A Yes, ma'am.

13 Q And the possibility that the death penalty could have
14 been sought, that scares you to death; is that correct?

15 A Yes, ma'am. But I didn't think they were seeking the
16 death penalty.

17 Q You did not think they were seeking the death
18 penalty, okay. But you knew it was 30 to life then if
19 they did not seek the death penalty; is that correct?

20 A Yes, ma'am.

21 Q Now, in the plea agreement, and I will show you what
22 has been previously marked.

23 MS. SHEALY: May I approach, your Honor?

24 THE COURT: Yes, ma'am.

25 BY MS. SHEALY:

1 Q State's 97, your plea agreement. And if you would
2 focus, please, your attention on the first page where it
3 says "in consideration." Do you see where I'm following?
4 It's the second paragraph.

5 A Yes, ma'am.

6 Q It says, In consideration of the mutual promises made
7 herein. So you and the Solicitor's office engaged in
8 mutual promises; is that fair to say?

9 A Yes, ma'am.

10 Q In other words, you would do something for them and
11 they would do something for you; is that fair to say?

12 A Yes, ma'am.

13 Q And you knew by the wording of this plea agreement,
14 did you not, that it is the Solicitor's office that
15 decides whether or not you're being truthful; is that
16 correct?

17 A Yes, ma'am.

18 Q If you would, please, turn to page two. And,
19 Mr. Crumb, if you start at the beginning of the page, the
20 sixth line down, your plea agreement reads, does it not,
21 that the failure of the defendant to be fully truthful and
22 forthright at any stage will, at the sole election of the
23 attorneys for the State, cause the obligations of the
24 attorneys for the State to make this agreement null and
25 void?

1 A Yes, ma'am.

2 Q So, in other words, you were told then that if they
3 didn't believe you or if you didn't say what they wanted
4 you - expected you to say?

5 MS. WILSON: Objection, your Honor. Objection.

6 THE COURT: Approach.

7 (A bench conference was held with the judge and
8 attorneys in the presence of the jury but out of the
9 hearing of the jury.)

10 MS. WILSON: She's asking the question that if
11 you don't say what they want you to say and things of that
12 nature, and that is not what the plea agreement says. I
13 think it's a misstatement.

14 MS. SHEALY: I think he can explain it. It's
15 cross-examination. If that's the way he understands it,
16 then that's important as to his testimony, to his
17 credibility. It doesn't mean that that's assumed by it.

18 MS. WILSON: She said the plea agreement says.

19 MS. SHEALY: I read directly what the plea
20 agreement said. Then I asked him the follow-up question,
21 in other words. He can answer.

22 THE COURT: In other words, are you asking did
23 he feel that way?

24 MS. SHEALY: I mean, I can phrase it that way if
25 you want me to, but that is what I intended.

1 THE COURT: Yes, that's how I want you to phrase
2 it.

3 BY MS. SHEALY:

4 Q Mr. Crumb, regarding the language that I was just
5 asking you then, and that being just to remind you, that
6 at the sole election of the attorneys for the State, that
7 they could make this agreement null and void, did you
8 believe then that you needed to tell them what they wanted
9 to hear?

10 A What the truth was.

11 Q That's your understanding?

12 A Yes, ma'am.

13 Q Now, who was the only party that was involved in this
14 agreement that makes that decision for you, the
15 Solicitor's office?

16 A What do you mean? Yes, ma'am.

17 Q And you'll also note, drop down just a little bit
18 further in that paragraph, that if they make this
19 agreement null and void, they could charge you with other
20 things that you have told them about; is that correct?

21 A Yes, ma'am.

22 Q So in testifying today, you certainly are interested,
23 are you not, in upholding your end of the plea agreement?

24 A Yes, ma'am.

25 Q If you'll look on page three, please, of your plea

1 agreement at number five, could you read that part to us,
2 please? Could you turn to page three and look at five.

3 A Provided the defendant Michael Crumb cooperates
4 pursuant to the provisions of this plea agreement and that
5 cooperation is deemed by attorneys for the State as
6 providing substantial assistance in the investigation or
7 prosecution of another person who has committed an
8 offense, the attorneys for the State agree to advise the
9 sentencing court of the extent and value of the
10 defendant's cooperation if called upon to do so by the
11 defendant Michael Crumb and to recommend concurrent
12 sentences.

13 The defendant, Michael Crumb, further
14 understands that should the Court sentence the defendant
15 to the maximum penalty prescribed by law, the defendant
16 will have no right to withdraw his plea.

17 Q So, in other words, Mr. Crumb, is it your
18 understanding, then, that based on how well you do in the
19 courtroom, they will tell your sentencing judge that; is
20 that correct?

21 A It doesn't say that word for word, but --

22 Q Is that your understanding?

23 A Yes.

24 Q Let me make sure the jury understands.

25 You have entered a guilty plea, you have pled

1 guilty to voluntary manslaughter and armed robbery; is
2 that correct?

3 A Yes, ma'am.

4 Q But you have not yet been sentenced; is that correct?

5 A Yes, ma'am.

6 Q And your understanding of the reason that you have
7 not been sentenced yet is it depends on what you do in
8 here today; is that correct?

9 A You mean like tell the truth? Yes, ma'am.

10 Q Okay. Now, let me ask you this question. Was there
11 any understanding between you and the State as to which
12 judge you could go in front of?

13 A Yes, ma'am.

14 Q And what was that understanding?

15 A Rawls.

16 Q Did you go in front of Judge Rawls?

17 A Yes, ma'am. That's the one I plead in front of.

18 Q But before you pled, you understood that you would be
19 allowed to plead in front of Judge Rawls; is that correct?

20 A Yes, ma'am.

21 Q Now, there's nothing about that within this plea
22 agreement, though, is there? Nothing that states you'll
23 be allowed to plead in front of Judge Rawls; is that
24 correct?

25 A No, ma'am.

1 Q So the mutual promises that are referenced earlier in
2 the plea agreement, they contain things that aren't even
3 actually in here; is that correct?

4 A Yes, ma'am.

5 Q And the reason you wanted to plead in front of Judge
6 Rawls is because he's considered lenient?

7 A I didn't know that. That's what my lawyer told me.

8 Q Okay.

9 A My lawyer recommended me to go in front of Rawls.

10 Q Your lawyer did?

11 A Yes, ma'am.

12 Q Your lawyer said you want to go in front of Judge
13 Rawls?

14 A Yes, ma'am.

15 Q And that was part of the agreement?

16 A Yes, ma'am. I told him a judge is a judge.

17 Q But your lawyer told you you want to go in front of
18 Rawls?

19 A Yes, ma'am.

20 Q Now, also part of your plea agreement is that you
21 absolutely abide by federal and state laws since the time
22 that you signed this plea agreement; is that correct?

23 A Yes, ma'am.

24 Q Have you broken any laws since you signed this plea
25 agreement?

1 A No.

2 Q Have you done anything unlawful at the jail?

3 A No.

4 Q Gotten into any trouble at the jail?

5 A This guy threw a punch at me one time and I didn't
6 swing back. I went to lock up. But the next day when I
7 went in front of the board they let me out.

8 Q Are you selling anything at the jail?

9 A No.

10 Q Selling nothing?

11 A No. Artwork.

12 Q Artwork.

13 Ms. Wilson asked you about your mother getting
14 arrested. When did she get arrested?

15 A I don't know the date.

16 Q Was it -- it was after you had run to Florida, right?

17 A Yes, ma'am.

18 Q And the way you were describing the Florida thing, as
19 I understand it then, you stole a car in preparation of
20 it?

21 A Yes, ma'am.

22 Q And were you enlisting the help of other people to
23 try to go with you or help to get there?

24 A Not really. But when it came down to it, I asked my
25 cousin to come along.

1 Q Lauren?

2 A Yes, ma'am.

3 Q Now, before you ran, you were hearing from Eric at
4 the jail; is that correct?

5 A Yes, ma'am.

6 Q Did he call you?

7 A Yes, ma'am.

8 Q So just to make sure the jury understands, when you
9 ran, Anthony Mann had been arrested; is that correct?

10 A Yes, ma'am.

11 Q And Eric Zack had been arrested?

12 A Yes, ma'am.

13 Q Peter Davies had been arrested?

14 A Yes, ma'am.

15 Q And you were the last to be arrested?

16 A Yes, ma'am.

17 Q Okay. And you fled to Florida?

18 A Yes, ma'am.

19 Q And pursuant to your plea agreement where you need to
20 tell them about unlawful activities, did you explain to
21 them all the ways that your mother and your cousin helped
22 you?

23 A Yes, ma'am.

24 Q Now, the car that you stole, was it Christopher
25 Reed's car?

1 Q And at the time that you gave your statement --

2 MS. SHEALY: I beg the Court's indulgence just a
3 moment.

4 THE COURT: Yes, ma'am.

5 BY MS. SHEALY:

6 Q Had you signed the proffer agreement at the time that
7 you gave your first statement?

8 A First statement? No, ma'am.

9 Q And your first statement, was that a written
10 statement or an oral statement?

11 A A written statement.

12 Q Okay. Now, let me ask you a little bit about the
13 environment when you gave your written statement. I'm
14 sorry, tell me again, did you have an attorney at that
15 time?

16 A No, ma'am. I did have an attorney, yes, ma'am.

17 Q You did have an attorney. Was your attorney present
18 when you were giving your statement?

19 A No, ma'am.

20 Q And did you expect your attorney to be present?

21 A My mom told me to wait on my lawyer, yes.

22 Q But you didn't?

23 A No, ma'am.

24 Q Now, tell me how many officers were involved when
25 you're taking your statement that day.

1 A Two.

2 Q And which two officers were those?

3 A Walker and another fellow. I don't know his name.

4 Q How long were you in there for your statement?

5 A I have no idea.

6 Q I mean, was it 30 minutes, was it an hour?

7 A I know I had to wait to see my son.

8 Q Did the officers let you see your son?

9 A Yes, ma'am.

10 Q So you get arrested and they let somebody bring you
11 your son to see?

12 A Yes, ma'am.

13 Q And in doing that, did they promise you anything
14 other than letting you see your son?

15 A No, ma'am. A cigarette.

16 Q A cigarette and to see your son.

17 Once you saw your son, how long did the
18 statement-taking process take?

19 A Not long.

20 Q Well, I mean, give me some idea. Thirty minutes, two
21 hours?

22 A Fifteen, 20 minutes.

23 Q Fifteen, 20 minutes. And did you write your
24 statement yourself?

25 A Yes, ma'am.

1 Q Okay. Now, it's fair to say obviously, is it not,
2 that you knew they had been looking for you, is that
3 correct, the police?

4 A Yes, ma'am.

5 Q And you had seen the news coverage on the news
6 stations and in the papers; is that correct?

7 A Yes, ma'am.

8 Q So when you went in there that day and you agreed to
9 give them a statement, you knew the details were important
10 to them; is that correct?

11 A I'd never been arrested like this before, but I
12 guess, yes.

13 Q Okay. And you took your time in trying to explain to
14 them what had happened?

15 A Yes, ma'am.

16 Q Now, in that first statement, you indicated that the
17 gun that had been received from Peter Davies jammed; is
18 that correct?

19 A Yes, ma'am.

20 Q And that Amp could not get it to work again; is that
21 correct?

22 A Yes, ma'am.

23 Q And you also indicated that Amp said he was going to
24 help out Brownie and help her get out of the house safely;
25 is that correct?

1 A Yes, ma'am.

2 Q And those were the words that you used, he was going
3 to help her get out of the house safely; is that fair to
4 say?

5 A Yes, ma'am.

6 Q So when there was conversation about the gun, it was
7 to use it to help her get out of the house safely?

8 A Yes, ma'am.

9 Q And that's what you said the first day that you were
10 interviewed by the police; is that correct?

11 A Yes, ma'am.

12 Q And, in fact, he was worried about her safety; is
13 that correct, Amp?

14 A Yes, ma'am, it seemed that way to me.

15 Q And then when you arrived at the scene, tell me
16 again, did you say that you smoked a cigarette in the car
17 when you all got to the scene?

18 A Yes, ma'am.

19 Q You did not smoke one outside of the car?

20 A No.

21 Q Then you, too, were concerned about Brownie and Amp;
22 is that correct?

23 A Well, I didn't know Brownie, but if something was
24 going on I was going to see, you know.

25 Q That's why you went in?

1 A Yes, ma'am.

2 Really, I walked up to the house and listened to
3 see if I could hear any commotion or whatnot.

4 Q And did you hear any commotion at that point?

5 A I walked up to the back door and listened for a
6 second and then I called Amp's name.

7 Q Okay. Now, tell me again, when you walked up to the
8 back door, what room did you walk into the house, what
9 room is that?

10 A It's a back room with a bed and TV, and I remember
11 like a motor or something holding the door open.

12 Q And you walk directly into that room from the
13 outside?

14 A Right. Took a left and then a sharp right and that's
15 where the living room is.

16 Q And did you go through any other rooms from that room
17 to the living room?

18 A No, ma'am.

19 Q Okay. And then the room where you later say Dante
20 was on the bed, is that that first room that you're
21 describing?

22 A No, ma'am.

23 Q Is that another room?

24 A Yes, ma'am.

25 Q How did you get from the living room to that room?

1 A It's right there.

2 Q Right next to it?

3 A Yeah. Say this is the living room. There's the room
4 right there.

5 Q Okay. Where's the kitchen?

6 A Right there, too. It's like the kitchen is open with
7 the living room.

8 Q It's open into the living room?

9 A Yes, ma'am.

10 Q When you gave that first statement, you also
11 indicated that Amp had called for you to help carry
12 Brownie's clothes out; is that correct?

13 A Yes, ma'am.

14 Q Now, prior to getting over there that night, were you
15 aware that Brownie was complaining that she was being
16 pimped out by Tobias?

17 A Yes, ma'am.

18 Q Okay. So your understanding was that you all were
19 going to retrieve Brownie; is that correct?

20 A Yes, ma'am.

21 Q And so when you hear Amp say, Come get Brownie's
22 clothes, you still think that's in an effort to get
23 Brownie out of that house; is that correct?

24 A Right.

25 Q Then you told us that you heard Amp saying, Why are

1. you prostituting Brownie; is that correct?

2. A Yes.

3. Q And Brownie similarly saying, Why you doing it to me,
4. why you doing it to me; is that correct?

5. A Yes, ma'am.

6. Q Now, are you saying then that you and Brownie left at
7. the same time, went outside that house?

8. A Yes, ma'am.

9. Q Brownie wasn't still in there?

10. A No, ma'am.

11. Q When you say that Amp runs out to the car, you don't
12. see a gun, do you?

13. A Yes, ma'am.

14. Q You see a gun on Amp at that time?

15. A When he got in the front seat.

16. Q You saw one as he was walking out of the house?

17. A When he got in the front seat of the car.

18. Q That's when you see one?

19. A Yes, ma'am.

20. Q Okay.

21. A It's the same one --

22. Q I'm sorry.

23. A It's the same one he got from Peter's house.

24. Q And you don't mention that in your first statement,
25. do you?

1 A No. My first statement wasn't that detailed.

2 Q It was not that detailed?

3 A No, but it pretty much told the truth.

4 Q Now, of course it is a nine-page statement; is that
5 correct?

6 A Yes, ma'am.

7 Q And you would agree with me, then, that at the time
8 you gave your first statement after those officers had let
9 you see your son, you did not mention that Amp walked out
10 with a gun; is that correct?

11 A No.

12 Q That is correct?

13 A Yes, ma'am.

14 Q Now, you told us -- let me ask you a little bit more
15 about Peter Davies.

16 When you went -- now you're saying Peter Davies
17 wasn't with you all at Tobias'; is that correct?

18 A Yes, ma'am, that's correct.

19 Q When you go back to Peter Davies' house, you told us
20 that he threatened you; is that correct?

21 A Yes, ma'am.

22 Q And he said not only is he going to kill you but your
23 family?

24 A Right.

25 Q Is it fair to say that Peter Davies is a pretty

1 intimidating guy?

2 A With a gun, yes.

3 Q And he had a gun?

4 A Yes, ma'am.

5 Q What type of gun was it?

6 A It was a silver revolver.

7 Q So when you get arrested after having run to Florida
8 knowing that Peter Davies is at the jail, when you're
9 asked who your enemies are, you say Peter Davies; is that
10 correct?

11 A I didn't want to be around the co-defendants.

12 Q You didn't mention Eric Zack, you didn't mention
13 Anthony Mann, but you mentioned Peter Davies, correct?

14 A I probably said Anthony, too.

15 Q Let me ask you if you can identify this.

16 You told us that when you go into the jail they
17 ask you some questions to try to figure out where to put
18 you in the jail; is that fair to say? Or just to find out
19 a little bit about you?

20 A Yes, ma'am.

21 Q Okay. And you were asked if you had any
22 co-defendants, and do you recall telling them Peter Davies
23 and Anthony Mann?

24 A Yes, ma'am.

25 Q And then they asked you if you had any known enemies,

1 and you indicated Peter Davies; is that correct?

2 Let me ask you if you can identify this.

3 A This right here? Who is this right here?

4 Q I can't answer you. I can't answer your question.

5 Let me ask you if you recognize the document.

6 A Yes, but that's not my writing.

7 MS. SHEALY: Okay. Thank you.

8 Your Honor, I would like to offer this into
9 evidence.

10 MS. WILSON: No objection.

11 THE COURT: All right. Defendant's 20 into
12 evidence without objection.

13 (WHEREUPON, Defendant's Exhibit No. 20 was
14 marked for identification and received into
15 evidence.)

16 BY MS. SHEALY:

17 Q Mr. Crumb, I'm showing you what's been marked as
18 Defendant's Exhibit No. 20. You recognize your signature
19 on the page?

20 A Yes, ma'am.

21 Q Okay. And you do recall the process of them asking
22 you those types of questions; is that correct?

23 A Huh?

24 Q You recall the jail asking you about enemies and
25 co-defendants; is that correct?

1 A Yes.

2 Q But you're saying that notation that says no by Peter
3 Davies, you didn't tell them that?

4 A Now that I recall, when she wrote Davies, I was in
5 1A, they took me to 1A because I was on the phone and I
6 was kind of upset with someone, and she asked me and I
7 said, He's one of them right there, and I pointed, you
8 know.

9 Q You pointed him out?

10 A Right. That's probably why she wrote that down.

11 Q Okay. Well, I'm asking you again, then, that evening
12 when Peter Davies had a gun in his hand and told you that
13 if anybody said anything you would be killed, your family
14 would be killed, it's fair to say that scared you; is that
15 correct?

16 A Yes. He had a gun.

17 Q Now, in talking about the guns that were at Peter
18 Davies that evening, did you see other guns laying around
19 the apartment other than the ones you all brought in?

20 A That's it.

21 Q And the black shotgun, you said it had what type of
22 grip?

23 A It didn't have a stock on it. It was like a deer
24 hunting, made for something you can tuck in.

25 MS. SHEALY: I beg the Court's indulgence just a

1 minute.

2 THE COURT: Repeat your answer, please, sir.

3 THE WITNESS: About the gun? It didn't have a
4 stock. It just had a grip on it from what I remember.

5 BY MS. SHEALY:

6 Q I am going to show you what's been marked previously
7 for ID purposes as State's 94. Did this look like the gun
8 you saw at that house that evening?

9 A Yes, ma'am.

10 Q This is the gun that came from Tobias' house; is that
11 correct?

12 A Yes, ma'am.

13 Q Was that the gun he was holding?

14 A Yes, ma'am.

15 Q That is the gun Peter Davies was holding?

16 A No, he was holding a silver revolver.

17 Q Okay. Now, your testimony is, then, that there was,
18 I think they're calling it a Dillinger or Derringer, a
19 small gun?

20 A Yes, ma'am.

21 Q And you're saying that's what Eric was given?

22 A Yes, ma'am.

23 Q And that's the gun then that you all left with?

24 A Yes, ma'am.

25 Q And as far as you know, then, neither you nor Eric

1 got anything else out of this?

2 A No, ma'am. I didn't know Eric had a gun until we
3 were halfway down the road.

4 Q Now, Ms. Wilson asked you about this. You did
5 indicate earlier, did you not, when you were interviewed
6 that you had taken the gun, you had stopped to use the
7 rest room, and that you had threw it over the Limehouse
8 Bridge?

9 A Yes, ma'am.

10 Q So when you said that, that was a lie?

11 A In my first statement?

12 Q Yes.

13 A Yes, ma'am. I didn't want to get my cousin in any
14 trouble.

15 Q So you agreed that you lied to the police?

16 A Yes, ma'am.

17 Q Did you also lie when you told them that your cousin
18 didn't know anything about what was going on?

19 A Yes, ma'am.

20 Q Then you were also interviewed after the time that
21 you gave your written statement, members from the
22 Solicitor's office and the law enforcement officers
23 interviewed you; is that correct?

24 A That's correct. About a year later or something like
25 that.

1 Q At that time were you asked to give a written
2 statement?

3 A What do you mean?

4 Q I mean, did you write a statement?

5 A No. They just interviewed me.

6 Q And that interview was not videotaped; is that
7 correct?

8 A No, ma'am.

9 Q Now, did you on that occasion tell them that you
10 tossed it into the Stoner river, did you tell them that?

11 A What?

12 Q That you tossed the gun into the Stoner river, did
13 you tell them that?

14 A I told them that my cousin told me that he tossed it
15 in the river.

16 Q You told him that your cousin said that he tossed it?

17 A Right.

18 Q I mean, do you know where that gun is?

19 A From what my cousin tells me, it's in the river.

20 Q When you say your cousin tells you it's in the river?

21 A But I never saw it get thrown in the river, no.

22 Q Okay. Do you know that there was some talk about it
23 being in a pond, your grandfather's pond or his
24 grandfather's pond?

25 A Yes, ma'am.

1 Q Well, who lied to the police about that?

2 A My cousin.

3 Q Your cousin lied?

4 A Yeah. He probably was writing a statement and didn't
5 know what to say.

6 Q So he lied?

7 A You'd have to ask him. I don't know. He could have
8 thrown it in the pond.

9 Q Let me ask you this. That interview took place in
10 January of this year; is that correct?

11 A Yes, ma'am.

12 Q And was your attorney present for that meeting?

13 A Yes, ma'am.

14 Q And, again, there was no written statement made by
15 you; you didn't write it out?

16 A No, they asked me questions.

17 Q And is it fair to say that of interest on that
18 occasion was the fact that your fingerprints might be on
19 the safe?

20 A Actually I pretty much knew my fingerprints wouldn't
21 be on that safe.

22 Q Would or would not?

23 A Would not.

24 Q How did you know that?

25 A Because I punched them with my nail.

1 Q Okay. Now, prior to this statement, you had had an
2 opportunity to see a videotaped statement of Eric Zack; is
3 that correct?

4 A Yes, ma'am.

5 Q But the solicitors didn't videotape your interview?

6 A No, ma'am.

7 Q And they didn't ask you to write it down?

8 A No.

9 Q And when you gave your statement, your nine-page
10 written statement earlier, you never mentioned anything
11 about going to the safe yourself, did you?

12 A No, ma'am.

13 Q You never told them that before?

14 A No, ma'am.

15 Q You knew, though, that they were going to be trying
16 to test fingerprints; is that correct? You had your
17 fingerprints taken obviously when you were booked in?

18 A Yes, ma'am.

19 Q Now, at some point did they ask you for hair samples,
20 blood samples?

21 A No, ma'am.

22 Q They never asked that of you?

23 A No.

24 Q You never had to go submit those items?

25 A No, ma'am.

1 Q Now, despite the fact that you had signed that
2 proffer agreement, you were still misleading people about
3 the gun; is that fair to say? You signed the proffer
4 agreement that you were going to be truthful with the
5 Solicitor's office even after that?

6 A I was truthful.

7 Q That's when you were truthful?

8 A Yes. I told them that my cousin told me he threw it
9 in the river.

10 Q Now, at the time of your first statement, and I've
11 asked you about this, you said that Anthony said to you, I
12 want to make sure she gets out of there safely, Brownie;
13 is that correct? And you agreed to that?

14 A Yes, ma'am.

15 Q When you go in for your second interview, that is
16 January of this year, then you try to say that he's taking
17 the gun in because he's going to take some of Tobias'
18 shit, he's not going to take that shit; is that correct?

19 A Yes, ma'am.

20 Q Was it fair to say that when you go back in to talk
21 to the solicitors, that you're giving them some details
22 that you never gave before?

23 A Yes, ma'am.

24 Q Are you trying to make things look worse for Anthony
25 when you go back in?

1 A No. The only thing I said different was the safe and
2 I became truthful about my cousin.

3 Q And what?

4 A My cousin having the gun. That is pretty much the
5 only thing different.

6 Q And you don't remember there being any discussion
7 about Tobias having drugs or money on the way over there?

8 A No, ma'am.

9 Q So you're in the car, Anthony's in the car and Eric
10 Zack is in the car?

11 A Right.

12 Q You believe you're going over there to take Brownie
13 out safely?

14 A Right.

15 Q And Dante Tobias is pimping her, prostituting her?

16 A Right.

17 Q There's no mention of money and there was no mention
18 of drugs?

19 A No, ma'am. He did at one time say if he acts up he
20 was going to take his stuff.

21 Q That's what you tell the solicitors in the second
22 interview, but you never mentioned that in the first; is
23 that correct?

24 A Right.

25 Q The only conversation was about getting Brownie out

1 of a bad situation?

2 A Right.

3 Q And you once meeting her and knew she was 17 years
4 old; is that correct?

5 A Yes, ma'am.

6 Q Now, today you were telling us that when you walked
7 in the house Anthony had a gun to Dante; is that correct?

8 A Yes, ma'am.

9 Q And you say that occurs where exactly, where in the
10 house?

11 A In the living room.

12 Q And you don't mention anything about Dante being on
13 the bed in your first statement, do you?

14 A I don't recall.

15 Q Would you like to take a look at it?

16 A No, you can tell me.

17 Q Well, I would like for you to look at it and tell me
18 whether or not you mentioned that Dante was on the bed.

19 MS. SHEALY: May I approach, your Honor?

20 THE COURT: Yes, ma'am.

21 A It appears not.

22 BY MS. SHEALY:

23 Q I'm sorry, it appears not, is that what you said?

24 A Right.

25 Q So today you're telling us, then, that at some point

1 Dante is on the bed; is that correct?

2 A Yes, ma'am.

3 Q Now, you were telling us earlier that the way that
4 you first were alerted that Detective Walker was I guess
5 onto you is when he called your house?

6 A Yes, ma'am.

7 Q And you pretended that you were your father on the
8 phone?

9 A Yes, ma'am.

10 Q And then you scooted?

11 A Yes, ma'am.

12 Q How did you hear again about Dante dying?

13 A Anthony Mann called me.

14 Q You didn't hear about it in a bar?

15 A No. That's when I heard about Beverly.

16 Q You didn't hear about Beverly in the paper?

17 A No, ma'am, I got that confused. I notified
18 Ms. Wilson about that.

19 Q That there was confusion about how you were alerted
20 to it?

21 A Yes, ma'am.

22 Q Tell me what your position today is, how did you
23 learn of it?

24 A Anthony called me the next day and said that you know
25 the dude died, and then that's when I watched the news and

1 Q You have told them that?

2 A Yes, I have.

3 Q But in your written statement you didn't mention any
4 gloves?

5 A My first statement?

6 Q Yes, your nine-page statement.

7 A No, ma'am, I didn't.

8 Q And you didn't mention a knit cap; is that correct?

9 A No, ma'am, I didn't. I guess I didn't.

10 Q And you never mentioned that Beverly was looking for
11 a bandana? You've never mentioned that, have you?

12 A No.

13 Q And, of course, you've seen the picture of where she
14 was found; is that correct?

15 A Yes, ma'am, after the proffer agreement.

16 Q And you've never mentioned that Mann was trying to
17 open the safe, have you?

18 A In the proffer agreement.

19 Q In the proffer agreement you did? You told them that
20 before?

21 A Yes, ma'am.

22 Q What about, you testified today that Anthony had said
23 that he was going to get rid of Brownie. You've never
24 mentioned that before, have you?

25 A In the proffer, yes, I did.

1 Q So this is -- this proffer agreement where you're
2 telling me these details, there is no videotape of that
3 interview; is that correct?

4 A No, ma'am.

5 Q And there is no written statement of that; is that
6 correct?

7 A I believe they wrote some notes.

8 Q Did you give a written statement?

9 A No.

10 Q And when you all arrived at Dante Tobias' that night,
11 you didn't see Anthony Mann take a gun in, did you?

12 A I knew he had one.

13 Q Did you see him take a gun in?

14 A No. But when I got in the house he had one in his
15 hand.

16 Q But did you see him take the gun into Dante's house?

17 A I can't remember.

18 Q Well, you never said you did; is that correct?

19 A Okay. Yes, ma'am.

20 Q And, in fact, the gun that he got from Peter Davies
21 had jammed; is that correct?

22 A Yes, ma'am.

23 My first statement, I was pretty stressed out.
24 I can see myself leaving a couple things out.

25 Q You would agree, though, would you not, that a gun is

1 Q Had you entered into any kind of agreement with the
2 State or anything like that?

3 A No, ma'am. I wanted to go ahead and get it over
4 with.

5 Q So you write out this statement?

6 A Right.

7 Q In this statement did you tell the police that you
8 knew a robbery was going to take place?

9 A No, ma'am, I didn't.

10 Q Who were you protecting in this statement?

11 A Me and my cousin.

12 Q When you say you were protecting yourself, what did
13 you do to protect yourself?

14 A I didn't let the police know about me having an
15 inclination that a robbery was going to happen.

16 Q Well, you used the word "inclination". You have a
17 problem with your involvement in this robbery, don't you?

18 A Yes, ma'am.

19 Q Okay. Tell the jury what your inclination was, what
20 it was based on.

21 A Anthony saying if this dude acts up, I'm going to rob
22 him.

23 Q Okay. And what did Anthony have in his hands when
24 he's talking about robbing the dude?

25 A A gun.

1 Q Okay. Now, so this is January 26th, 2002, upon your
2 arrest you're protecting yourself; is that right?

3 A Yes, ma'am.

4 Q Almost a year later?

5 A My first statement is pretty --

6 Q Except for what?

7 A Except for letting on about my cousin and the gun and
8 --

9 Q And letting them know that you knew a robbery was
10 going to happen?

11 A Yes, ma'am.

12 MS. SHEALY: Your Honor, I object to the
13 leading.

14 THE COURT: Sustained.

15 MS. SHEALY: Your Honor, that is subject to our
16 earlier objection.

17 THE COURT: All right. What is that?

18 MS. WILSON: This is the proffer. I'm going to
19 offer it. It doesn't have a number yet.

20 (WHEREUPON, State's Exhibit No. 98 was marked
21 for identification only.)

22 MS. WILSON: Your Honor, we offer State's
23 Exhibit 98 subject to their earlier objection.

24 THE COURT: I will allow it into evidence.

25

1 (WHEREUPON, State's Exhibit No. 98 was admitted
2 into evidence.)

3 BY MS. WILSON:

4 Q So then we go to January 6th of 2003. Is that when
5 you entered into the proffer agreement with the State?

6 A Yes, ma'am.

7 Q And who was your attorney for that?

8 A Peter Shade.

9 Q Okay. Now, pursuant to that agreement, did you
10 discuss the things that you discussed in your first
11 statement?

12 A Yes, ma'am.

13 Q Okay. What things did you change in this second
14 meeting with law enforcement and the State?

15 A I told them about the gun. I told them about my --
16 instead of me throwing it in the river, giving it to my
17 cousin, because in the first statement I wasn't trying to
18 bring his name up.

19 Q Trying to protect him?

20 A Right.

21 Q And the second one you told them about the gun?

22 A What do you mean the gun?

23 Q The gun that you gave him?

24 A Yes, ma'am.

25 Q Now, was that the same gun that was used to kill

1 Dante Tobias?

2 A I'm not sure.

3 Q Where did you get that gun from?

4 A Eric, which got it from Anthony Mann.

5 Q When?

6 A At Peter Davies' house.

7 Q All right. Now, what did you tell the police and the
8 State after this proffer about your knowledge about the
9 robbery, that it was going to happen or not?

10 A Yes, ma'am.

11 Q What did you tell them?

12 A I told them that I did know, yes.

13 Q And then sometime later on April 17th -- let me ask
14 you this. Before you gave your proffer, I believe
15 Ms. Shealy asked you, you got to watch and hear what Eric
16 Zack had to say; is that right?

17 A Yes, ma'am.

18 Q Before that as part of the discovery process you
19 mentioned that you had gotten statements in the case; is
20 that right?

21 A Yes, ma'am.

22 Q So you already had Eric Zack's statement?

23 A Yes, ma'am.

24 Q Given to you by your lawyer?

25 A Yes, ma'am.

1 Q And then you mentioned that you watched Eric Zack's
2 videotape interview. Who did you watch that with?

3 A My lawyer. And that was his second statement, yes.

4 Q So again during the discovery process you get to see
5 his statement?

6 A Yes, ma'am.

7 Q And then you sit down to talk with Detective Walker
8 and some other detectives; is that right?

9 A And you, yes, ma'am.

10 Q Right. Okay. In that interview, do you agree with
11 everything that you have just seen Eric Zack say?

12 A Pretty much.

13 Q Do you all agree with each other on how Brownie was
14 acting after the robbery?

15 A He said Brownie was kind of acting irate, but I don't
16 remember her. The only thing I remember is her saying
17 something about --

18 MS. SHEALY: Your Honor, I object to this.

19 MS. WILSON: It's not all --

20 THE COURT: Approach the bench.

21 (A bench conference was held with the judge and
22 attorneys in the presence of the jury but out of the
23 hearing of the jury.)

24 BY MS. WILSON:

25 Q So, Mr. Crumb, you watch the video and then you are

1 interviewed by a number of people; is that right?

2 A Yes, ma'am.

3 Q Okay. Did you shape the things that you told law
4 enforcement in that interview based on seeing Zack's
5 video?

6 A What do you mean did I shape it?

7 Q Shape it. Did you try to make your interview fit
8 with Zack's?

9 A No, because my statement, my second statement pretty
10 much matched my first one.

11 Q The first one that you gave before seeing the video?

12 A Right. The only thing that's different is I
13 mentioned giving the gun to my cousin.

14 Q In your second interview, the one after the proffer,
15 did you give more or less detail than your first?

16 A In my second one I gave a little bit more detail.

17 Q When you watched Zack's video and when you were
18 interviewed after that, did you disagree with Zack on some
19 things?

20 A Yes, ma'am.

21 Q Did you tell law enforcement that you disagreed with
22 him on some things?

23 A Yes, ma'am.

24 Q Now, then, on April 17th of 2003, some three months
25 later, you were allowed to plead guilty in front of Judge

1 Rawls; is that right?

2 A Yes, ma'am.

3 Q And in paragraph eight of this agreement, if you
4 would just read that.

5 A Where at?

6 Q Read it to yourself and then tell the jury when that
7 agreement went into effect.

8 A April 17th.

9 Q Was that the day you entered your plea?

10 A That is the date on it, so I believe so.

11 Q If you'll just read paragraph eight to yourself.

12 A Yes, ma'am.

13 Q Now, in that paragraph it says that this agreement is
14 not binding until you enter your guilty plea; is that
15 right?

16 A Right.

17 Q Okay. And that day that you went to court on
18 April 17th, you knew what judge you were going in front
19 of?

20 A Yes, ma'am.

21 Q And that was who?

22 A Judge Rawls.

23 Q And that had been decided sometime between here and
24 here, is that right, sometime between the proffer and when
25 you walked in there?

1 A Yes, ma'am.

2 Q Okay. Now, all of that to get to, do you have some
3 sort of side secret agreement with the State that you
4 haven't told them about?

5 A No, ma'am.

6 Q This is it?

7 A That's it right there.

8 Q Okay. Now, when you got locked up and charged in
9 this case, you were interviewed at some point in the jail,
10 and I believe Defendant's Exhibit 20 has been introduced.

11 A Yes, ma'am.

12 Q And apparently you were asked about enemies and you
13 said Davies was one of them?

14 A Yes.

15 Q And Doe?

16 A I don't know who Doe is.

17 Q You didn't write Doe down there?

18 A That's not my writing.

19 Q Now, at this point, at the time you were booked in,
20 what had you told Anthony Mann you would say about the
21 events that night?

22 A When he was calling me from the jail?

23 Q Yeah.

24 A He told me to say that it was Brownie.

25 Q What did you tell him you'd do?

1 A I said okay.

2 Q Was he threatening you at that point?

3 A No, but he was saying -- basically he didn't say it
4 in words because he was on the phone, you know, to be
5 recorded, but he was letting on that he wasn't going to
6 say my name or anything like that, so I was --

7 Q So you all were getting along good as far as he knew?

8 A As far as he knew, yes.

9 Q So did you have any reason to fear him at that point
10 when you went into the jail?

11 A Well --

12 Q I mean, was he an enemy?

13 A Pretty much, yeah.

14 Q Did you tell them he was an enemy?

15 A Probably, but it don't look like they wrote it down.
16 I can't remember. It's 19 months ago.

17 Q Right. What did you tell them about your
18 co-defendants? Who did you tell them your co-defendants
19 were?

20 A Looks like Peter Davies and Mann.

21 Q Okay. And what were you feelings about being housed
22 in the same jail cell or cell block as Mann and Davies?

23 A I don't think it would be smart.

24 Q Did you want to be in with them?

25 A (Witness shaking head.)

1 Q Yes or no?

2 A No, ma'am.

3 Q Okay. Did you tell them when they booked you in that
4 you didn't want to be with the co-defendants?

5 A No. What happened, when I was being booked in, I
6 acted kind of stupid and they took me to 1A.

7 Q What is 1A?

8 A A disciplinary lock-up type thing.

9 Q And?

10 A And when the lady come in there to ask me questions,
11 to let me out, she told me it wasn't smart to get put in
12 general population, and I said why, and she said --.

13 MS. SHEALY: I'll object to hearsay.

14 THE COURT: Do you wish to respond?

15 MS. WILSON: It's not offered for the truth.

16 THE COURT: I will allow that. Go ahead.

17 THE WITNESS: Go ahead?

18 BY MS. WILSON:

19 Q Yes.

20 A And she said I needed to sign that before they put me
21 in general population so that they wouldn't be held
22 accountable.

23 Q Accountable for what?

24 A If I get beat up, I guess.

25 Q Have you been housed with Anthony Mann or Peter

1 Davies?

2 A No, ma'am, except when I first come in he was in 1A,
3 too, but he was upstairs.

4 Q He who?

5 A Peter Davies. I'm sorry.

6 Q That's all right. It's just getting around lunch
7 time, that's all.

8 Now, let me ask you this. Ms. Shealy asked you
9 about where exactly Brownie was when you left the house,
10 Tobias' house?

11 A Yes, ma'am.

12 Q Was she in the house when you left or was she with
13 you?

14 A She was with me.

15 Q Who was in the house when you heard the gunshot?

16 A Anthony Mann.

17 Q You mentioned that when you went behind the Piggly
18 Wiggly, what happened back there?

19 A He test-fired the gun.

20 Q What happened to the gun?

21 A It jammed.

22 Q Do you know if the gun got unjammed?

23 A I heard a gunshot, but I did not see him shoot Dante.

24 So I don't know if he used that gun or any one of the
25 other guns, I don't know.

1 Q Where was Eric Zack when that gunshot was fired?

2 A In the car with me.

3 Q Where was Brownie?

4 A In the car with me.

5 MS. WILSON: That's all I have.

6 THE COURT: Anything else?

7 MS. SHEALY: May it please the Court.

8 RECROSS-EXAMINATION

9 BY MS. SHEALY:

10 Q Mr. Crumb, just a couple of follow-up questions.

11 You know that the gun jammed when it was fired;

12 is that correct?

13 A Yes, ma'am.

14 Q And as far as you knew it never was unjammed; is that
15 correct?

16 A Yes, ma'am.

17 Q Now, when you gave your written statement, your first
18 statement that you gave, the nine-page statement, you knew
19 that the officers expected you to be truthful; is that
20 correct?

21 A Yes, ma'am.

22 Q And you would agree, would you not, that you were not
23 totally truthful?

24 A Yes, ma'am.

25 Q Now, I had asked you how many times you met with

1 members of the Solicitor's office. How many times had you
2 met with Detective Walker?

3 A Just the first statement and the proffer agreement.

4 Q So two times with Detective Walker?

5 A Yes, ma'am.

6 Q And the videotape of Eric Zack, you saw that when?

7 A The proffer agreement.

8 Q On that occasion?

9 A Yes, ma'am.

10 Q So were you at the sheriff's office when you saw the
11 videotape?

12 A Yes, ma'am.

13 Q Who showed you the videotape?

14 A My lawyer.

15 Q Your lawyer. And you were at the sheriff's office
16 when you saw it?

17 A Yes, ma'am.

18 Q And the difference between what you told them that
19 day and what you had told them in your nine-page statement
20 differed regarding Dante being on the bed; is that
21 correct?

22 A Yes, ma'am.

23 Q The stocking hat that you say Anthony had on, is that
24 correct, that was not in your written statement?

25 A I guess, yes, ma'am.

1 Q And Brownie looking for her bandana; is that correct?

2 A Yes, ma'am.

3 My first statement, I was really worried about
4 seeing my son, and that was pretty much on my mind more
5 than writing a statement.

6 Q Maybe I misunderstood you earlier. Did they let you
7 see your son before you gave your statement or not until
8 after you gave your statement?

9 A It was -- I saw my son before.

10 Q So at the time that you gave your statement you had
11 already seen your son?

12 A Yes, ma'am, but he was still on my mind.

13 Q But again, asking you the differences between the
14 written statement and the day of the proffer, that's the
15 first time that you had said anything about Anthony
16 mentioning getting rid of Brownie; is that correct?

17 A Excuse me?

18 Q You did not mention anything in your written
19 statement about Anthony saying that he needed to get rid
20 of Brownie; is that correct?

21 A No, ma'am.

22 Q So you would agree then that after you saw Eric
23 Zack's statement, that was the first time that you said it
24 during your proffer agreement?

25 A If -- yes, ma'am. If they would have asked me, I

1 would have told them.

2 Q But you didn't say it during your nine-page
3 statement?

4 A No, ma'am.

5 Q And you also indicated that you later thought of that
6 statement differently than you had that night; is that
7 correct?

8 A Only implicating my cousin.

9 Q No, I'm sorry. I'm talking about the getting rid of
10 Brownie part. That evening when you heard it you thought
11 maybe they were taking Brownie somewhere; is that correct?

12 A Yes, ma'am.

13 Q When you heard about that evening, you thought she
14 was going to be dropped off somewhere; is that correct?

15 A Yes, ma'am.

16 MS. SHEALY: I beg the Court's indulgence, your
17 Honor.

18 I have no further questions. Thank you.

19 THE COURT: All right. Ladies and gentlemen, we
20 ran over a little bit. So I'm going to go ahead -- you
21 may step down, sir.

22 If you'll please report back at 2:45 we'll
23 resume the trial, ladies and gentlemen. Please do not
24 discuss this case in any way whatsoever.

25 Also, one thing I wanted to indicate to you, you

1 did hear some reference to the death penalty, and I just
2 want to let you know in case it came to your mind that
3 this is not a death penalty case.

4 Thank you very much. Enjoy your lunch.

5 (The jury left open court at approximately 1:18
6 p.m.)

7 MS. SHEALY: Just one matter. There are items
8 of evidence that we need to go through, that Mr. Butler
9 and I need an opportunity to go through that are in the
10 courtroom. I was wondering if it's possible for us to
11 come back into the courtroom at 2:20 to be able to do
12 that.

13 THE COURT: Yes, ma'am. You all open the
14 courtroom back up.

15 THE BAILIFF: Yes, sir.

16 THE COURT: Thank you.

17 MS. SHEALY: Your Honor, may Mr. Mann be present
18 for that process?

19 THE COURT: What do you plan on doing?

20 MS. SHEALY: We need to look through some of the
21 evidence.

22 THE COURT: All right. If you all will make him
23 available, please. Thank you.

24 (A lunch break was taken.)

25

1 (WHEREUPON, State's Exhibit No. 99 was marked
2 for identification only.)

3 THE COURT: Have the jury come in, please.

4 (The jury came into open court at approximately
5 2:47 p.m.)

6 THE COURT: All right. Ladies and gentlemen,
7 we're ready to proceed. Call your next witness.

8 MS. WILSON: Eric Zack.

9 ERIC ZACK, after being duly sworn, testified as
10 follows:

11 THE CLERK: Please be seated. State your full
12 name for the Court and spell your last.

13 THE WITNESS: Eric Stephen Zack, Z-A-C-K.

14 (WHEREUPON, State's Exhibit Nos. 100, 101 were
15 marked for identification only.)

16 DIRECT EXAMINATION

17 BY MS. WILSON:

18 Q Mr. Zack, how old are you?

19 A Nineteen years old.

20 Q How far did you go in school?

21 A Twelfth grade.

22 Q You weren't able to finish the twelfth grade?

23 A No, I was pulled out halfway through.

24 Q Why?

25 A I was arrested.

1 Q And are you represented by attorneys?

2 A Yes.

3 Q Are they here today?

4 A Yes.

5 Q Where are they?

6 A Right there.

7 Q And where did you go to high school?

8 A Fort Dorchester.

9 Q And do you know a guy by the name of Anthony Mann?

10 A Yes.

11 Q Does he have a nickname?

12 A Amp.

13 Q Do you see him here today?

14 A Yes.

15 Q Where is he?

16 A (Witness pointing.)

17 Q What color is his shirt?

18 A Yellow.

19 MS. WILSON: Your Honor, please let the record
20 reflect he's identified the defendant.

21 THE COURT: The witness's comments have been
22 noted for the record.

23 BY MS. WILSON:

24 Q Do you know a guy by the name of Peter Davies?

25 A I know him. I don't know him very well, but yes, I

1 know him.

2 Q How many times have you met him?

3 A Once.

4 Q Do you know a guy by the name of Michael Crumb?

5 A Yes.

6 Q How did you know Michael?

7 A I met him at someone's house one day.

8 Q Do you remember when it was that you met Michael?

9 A About two months before everything happened.

10 Q And how about someone named Dante Craig Tobias, did
11 you know him?

12 A No.

13 Q How about a girl named Beverly Blake or Brownie?

14 A Yes.

15 Q What did you know her as, what name?

16 A Brownie.

17 Q Do you remember Monday, January 7th, 2002, the day
18 you participated in the armed robbery of Dante Tobias?

19 A Yes.

20 Q And have you entered into a plea agreement with the
21 State regarding your involvement?

22 A Yes.

23 Q Before you entered that guilty plea on April 14th,
24 2003, did you also enter a proffer agreement with the
25 State?

1 A Yes.

2 Q I show you State's Exhibits 100 and 101, first 100
3 and ask you to look at that. Do you recognize that
4 document?

5 A Yes.

6 Q Is that the proffer agreement that you entered into
7 with the State?

8 A Yes, I believe so.

9 MS. WILSON: Your Honor, we would offer State's
10 Exhibit 100 subject to your earlier rulings.

11 THE COURT: All right.

12 MS. SHEALY: Subject to your ruling.

13 THE COURT: All right. I'll allow them into
14 evidence subject to that ruling.

15 (WHEREUPON, State's Exhibit No. 100 was admitted
16 into evidence.)

17 BY MS. WILSON:

18 Q Now, State's Exhibit 101, do you recognize that?

19 A Yes.

20 Q Now, except for the redaction made on page two,
21 paragraph three, is that a copy of your plea agreement
22 with the State?

23 A Yes.

24 MS. WILSON: Your Honor, we would offer this
25 subject to your earlier rulings as well.

1 THE COURT: Thank you. All right. I'll allow
2 that subject to those rulings.

3 (WHEREUPON, State's Exhibit No. 101 was admitted
4 into evidence.)

5 BY MS. WILSON:

6 Q Now, Mr. Zack, tell the jury what you pled guilty to
7 in regards to this case.

8 A Armed robbery and strong armed robbery and accessory
9 to murder after the fact.

10 Q How about, did you also enter into an agreement
11 whereby the State would dismiss the related charges in
12 this case?

13 A Yes.

14 Q Who did you plead guilty in front of?

15 A Judge Rawls.

16 Q Okay. And was that part of your agreement?

17 A Yes.

18 Q Okay. And I believe the plea agreement is filed on
19 April 14th; is that right?

20 A Yes, I think so, yes.

21 Q Do you recall that being when you pled guilty?

22 A Yes, I think so.

23 Q When you went into court that day, did you know that
24 that was the judge you were going to be appearing before?

25 A Yes.

1 Q Now, before that time, had you given statements to
2 law enforcement about your involvement in the case?

3 A Yes.

4 Q And when was it that you were first interviewed about
5 your involvement in the case?

6 A January 16th.

7 Q Of what year?

8 A 2002.

9 Q Was that when you were arrested?

10 A Yes.

11 Q At that point did you tell law enforcement everything
12 you knew about the case?

13 A Almost.

14 Q Did you tell them who went with you over to Dante
15 Tobias' house?

16 A I didn't tell them the right people, but yes.

17 Q Who did you tell them went over there?

18 A Me, Anthony Mann, and Peter Davies.

19 Q Who really went over there?

20 A Me, Anthony Mann, and Michael Crumb.

21 Q Let's go through and explain to the jury, if you
22 would, what happened on that day, January 7th, okay? At
23 that time were you working anywhere?

24 A I was working at Wendy's.

25 Q Did you work that day?

1 A No.

2 Q What had you done that day earlier in the day?

3 A I was just sitting at my house.

4 Q At some point did you leave your house?

5 A After Anthony came by. He came by in a white car.
6 He wanted me to ride around with him.

7 Q What kind of car did he have?

8 A It was a white Hyundai.

9 Q Do you know who it belonged to?

10 A I think it was a girl named Danielle.

11 Q Do you know Danielle's last name?

12 A No.

13 Q Okay. Anthony wanted you to ride around with him.
14 Did you agree to do that?

15 A Yes.

16 Q Whose car did you all leave in?

17 A We took both cars over to Player's Place.

18 Q And where is Player's Place?

19 A In Festival Center.

20 Q Where is Festival Center?

21 A On the corner of Ashley Phosphate and Dorchester.

22 Q And what happened at Player's Place?

23 A He dropped his car off and he got in my car.

24 Q Why did you all drop that car off?

25 A I think it was because there wasn't enough gas in it.

1 Q What did you and Anthony do after that?

2 A We rode around for a second, and then Michael Crumb
3 called me.

4 Q When you say for a second, what do you mean by that?

5 A Not very -- I mean we had gotten onto Ashley
6 Phosphate Road and then went cross county and then Michael
7 called.

8 Q Did you all go to Monck's Corner or anywhere else at
9 that point?

10 A No, not yet.

11 Q You said you got a call from Michael Crumb?

12 A Yes.

13 Q Is that right?

14 A Yes.

15 Q Did you have your cell phone with you?

16 A Yes.

17 Q Whose number is 709-6078?

18 A That is mine.

19 Q That was your cell phone number?

20 A Yes.

21 Q When Michael Crumb called you, what phone did he call
22 you on?

23 A On that phone, on my phone.

24 Q 709-6078?

25 A Yes.

1 MS. WILSON: Your Honor, we'd offer State's
2 Exhibit 99, I believe without objection.

3 MS. SHEALY: Yes.

4 THE COURT: State's 99 is in evidence without
5 objection.

6 (WHEREUPON, State's Exhibit No. 99 was admitted
7 into evidence.)

8 BY MS. WILSON:

9 Q Had you and Mr. Crumb made any plans for that day?

10 A Earlier that day we had talked that we was supposed
11 to get together.

12 Q What were you all going to do when you got together?

13 A Probably just go down to John's Island.

14 Q What's happening on John's Island?

15 A I mean, just go to someone's house over there and
16 just chill out for a little while.

17 Q Did you agree to go pick up Michael Crumb?

18 A Yes.

19 Q So who all went and picked him up?

20 A Me and Anthony Mann were going to go pick up Michael.

21 Q Before you all picked up Michael, had you all had any
22 conversations on your telephone with anybody else besides
23 Michael?

24 A I don't know. Nothing pertaining to what happened.

25 Q At some point did you all speak with Brownie?

1 A After we had gone to Monck's Corner.

2 Q So you had not spoken with Brownie at all before you
3 picked up Michael Crumb?

4 A Not that I know of.

5 Q Are you unclear about exactly when the first time you
6 spoke with Brownie was?

7 A The first time that I know of that we spoke to
8 Brownie was coming back from Monck's Corner.

9 Q All right. So you all pick up Michael Crumb and head
10 out where?

11 A We went to Monck's Corner.

12 Q All right. Did you all go to someone's house there?

13 A Yes.

14 Q Did you go inside that house?

15 A No. No one was home.

16 Q After you all went to that house, where did you go?

17 A We started heading back towards 26.

18 Q Where had you planned to go?

19 A We hadn't made any plans. We were just riding
20 around.

21 Q Did you all get any telephone calls or make any
22 telephone calls at that point?

23 A Yes. They were both making phone calls to various
24 people throughout the day.

25 Q At some point do you know if they talked with

1 Brownie?

2 A Yes, eventually Anthony talked to Brownie.

3 Q How did that take place?

4 A I think that she paged him at one point and then he
5 called her back.

6 Q Why do you think that?

7 A Because he had a pager with him and he kept getting
8 pages from different people.

9 Q Did he have a cell phone with him?

10 A No.

11 Q Did you let him use your cell phone?

12 A Yes.

13 Q Did you let him use your cell phone?

14 A Yes.

15 Q Did you hear his end of the conversation?

16 A I heard some of it.

17 Q During the telephone calls that you believe were with
18 Brownie, what was Anthony Mann's end of the conversation?

19 A That he just had found out that the guy was trying to
20 pimp Brownie out and make her have sex with him and she
21 wouldn't do it and he was going to kick her out of the
22 house.

23 Q If she would not have sex with the guy he was going
24 to kick her out?

25 A Yes.

1 Q Okay. How did Anthony Mann react to that initially,
2 at first?

3 A He didn't seem to like it too much, but I'm not
4 really sure.

5 Q Did he agree to go pick her up first off, first
6 telephone call?

7 A I don't think so, no.

8 Q How long was it after the first call that Anthony
9 Mann agreed to go pick her up?

10 A I know that when she called back again, I think he
11 said I will be there in a minute.

12 Q What changed between the first call and the second
13 call according to Anthony Mann?

14 A I'm not exactly sure, but the only thing I know about
15 it is that the second call she told him that he had a safe
16 with some money and some dope.

17 Q And how did Anthony Mann react to that news?

18 A He seemed to like that also.

19 Q And what sort of plan developed after that?

20 A He was telling her to try to get ahold of it so when
21 he came by he could get it.

22 Q Get ahold of what?

23 A Get ahold of the man's guns and money if he could, if
24 she could.

25 Q And he was going to try to get ahold of it. How was

1 he going to do that?

2 A She was.

3 Q At that point after the drugs and money was
4 discussed, did Anthony Mann agree to pick up Brownie?

5 A Yes.

6 Q What happened after that? Did you all go anywhere
7 else or make any other calls?

8 A We went to Peter Davies' house.

9 Q Did you know that you all were going to be going to
10 Peter's?

11 A I started giving me directions to West Ashley. I
12 didn't know whose house we were going to at the time.

13 Q Do you recall any phone calls from Peter?

14 A Yes.

15 Q Who called Peter?

16 A Anthony.

17 Q Do you remember what Anthony said when he talked with
18 Peter?

19 A I'm not sure. The only thing I know he was getting
20 directions over there. I'm not -- I wasn't sure at the
21 time why he was going over there.

22 Q Okay. What happened -- you said you were going to
23 West Ashley somewhere?

24 A Yes.

25 Q Do you remember exactly where it was that you all

1 went?

2 A Peter's apartment.

3 Q Uh-huh.

4 A I was -- I think it was Magnolia Gardens.

5 Q And whereabouts was that located? I know you said
6 West Ashley, but do you recall what part of West Ashley?

7 A I think it was on -- after you get off 26, 526 on 17,
8 if you make a right, it's down there a little ways. I'm
9 not exactly sure where.

10 Q Who was driving at this point?

11 A We was switching back and forth. I think I was
12 driving at the time, but I'm not really sure.

13 Q Where had you all done all this switching back and
14 forth with drivers?

15 A When we stopped at a gas station to put gas in the
16 car we switched.

17 Q All right. What happened when you got to Peter's
18 house or apartment?

19 A We went inside for a second.

20 Q Had you ever been there before?

21 A No.

22 Q Had you ever met Peter before?

23 A No.

24 Q Who all went inside Peter's place?

25 A Me, Anthony, and Michael.

1 Q What happened inside there?

2 A Anthony went to the other room with Peter, and me and
3 Michael sat in a different room, and when we came back out
4 and got back in the car Anthony had a gun.

5 Q Did you know where he got the gun from? Did you see
6 him get it?

7 A He said he got it from Peter.

8 Q Did you ask him why he needed a gun?

9 A Yes. He said he had to scare him.

10 Q Scare who?

11 A Dante Tobias. He said Brownie was supposed to have
12 his other gun, that he had to scare him.

13 Q Where did you all go from Peter Davies' apartment?

14 A To behind the Piggly Wiggly.

15 Q Do you know which Piggly Wiggly it was?

16 A It was one of the ones in West Ashley.

17 Q What happened when you all got to the Piggly Wiggly?

18 A He fired one shot and the gun jammed.

19 Q Be careful about saying he, okay?

20 A Anthony fired off one shot and the gun jammed.

21 Q Why did you all do that? Why did he do that, did he
22 tell you?

23 A He said -- well, Michael saw it. Michael said that
24 he knew this guy that had a gun like that before and that
25 it backfired on him, but Anthony said no, it works well,

1 and he went off and test fired it.

2 Q Did it work?

3 A Yes. He fired one shot and it jammed.

4 Q What happened after it jammed?

5 A He went around the front and he messed with it a
6 little bit.

7 Q Do you know if he got it unjammed?

8 A I believe so.

9 Q Where did you all go from there?

10 A He got back on the phone with Brownie, and he gave me
11 directions to get to her house.

12 Q So you're driving at this point?

13 A Yes.

14 Q And you're being told where to go by whom?

15 A Anthony.

16 Q And he's getting directions how?

17 A From Brownie on the phone.

18 Q And do you recall where it was that you all went?

19 A Yes.

20 Q Where was it?

21 A To her house.

22 Q And was that also West Ashley?

23 A Yes.

24 Q Had you ever been to that house before?

25 A I had been there one other time.

1 Q When was the other time that you went?

2 A It was in December to drop her off one day.

3 Q How many times had you met Brownie before that night?

4 A I had met her a few times.

5 Q Were you all friends?

6 A Yes.

7 Q Did she call you to ask you to come pick her up?

8 A No.

9 Q What happened when you all got to Brownie's house?

10 A I pulled up, Anthony told me pull up next it to --
11 there's a tree on the side of the yard. I pulled up next
12 to that and Brownie was standing outside waiting.

13 Q What happened then?

14 A After we pulled up Anthony got out of the car and
15 went up there with her and Michael got out pretty much
16 right after him and went up there with him.

17 Q Where did they go?

18 A They went into I think it was the back door.

19 Q Could you see everything that was happening?

20 A No.

21 Q Why not?

22 A Because there were trees in the way.

23 Q And what happened next?

24 A They sat there inside for a little while and Brownie
25 came out with a big bag of clothes.

1 Q What did she do with the bag of clothes?

2 A She threw it in the back seat of the car and she
3 started going back in.

4 Q What happened then?

5 A I tried to ask her if she's going back in what was
6 happening but she kind of blew me off and went back inside
7 the house, and then a little while after that, Michael and
8 Brownie both came out with a smaller bag and put them in
9 the car also.

10 Q Michael Crumb and Brownie?

11 A Yes.

12 Q All right. And what did they do after they came back
13 with the smaller bags?

14 A They were getting in the back seat of the car, they
15 were getting in and we were waiting on Anthony to come
16 back out and there was a gun shot.

17 Q Did you hear that shot?

18 A Yes.

19 Q Did you hear anything else?

20 A I heard a scream.

21 Q Could you tell whether it was a man or a woman's
22 voice that you heard?

23 A It sounded like a man's.

24 Q Did you know at that point who had been shot?

25 A I was not sure. I assumed it was Dante Tobias,

1 though.

2 Q Did you know him as Dante Tobias at that point?

3 A I didn't know him as anything. I didn't know him.

4 Q You knew that Brownie had a male roommate?

5 A I just knew him as Brownie's roommate.

6 Q All right. Where was Anthony Mann when you heard
7 that gunshot?

8 A I think he was on the porch.

9 Q He was not in the car with you?

10 A No.

11 Q What happened after you heard the gunshot and the
12 scream?

13 A He came -- I started to pull off. I mean, I let go
14 of the brake and started the car going forward, and he
15 came running around the side and got in.

16 Q What were you and Michael or Brownie saying when you
17 all heard that gunshot inside the car? Was anybody
18 talking?

19 A We were trying to figure out what was going on and
20 see what's going on.

21 Q You said Amp came running?

22 A Yes.

23 Q Where did he get? Where did he go?

24 A At the passenger's side door.

25 Q What did you do then?

- 1 A Drove off.
- 2 Q Did you ask him about what had happened?
- 3 A Yes.
- 4 Q What did he tell you?
- 5 A He said he shot him in the leg.
- 6 Q Did he tell you why?
- 7 A He said he had -- he was trying to fight him and take
8 the gun from him.
- 9 Q He shot him in the leg?
- 10 A Yes.
- 11 Q What did you all do after that?
- 12 A We went back to Peter's house.
- 13 Q Do you remember about how long of a trip it was
14 between Dante's house and Peter's apartment?
- 15 A I think it was around ten minutes. I'm not really
16 sure, though.
- 17 Q What did you all talk about that ten minutes?
- 18 A I mean, just they were trying to find out exactly
19 what happened, and Anthony was telling Brownie that -- she
20 was planning on going back to New York, and he was telling
21 her lay low, you know, until she'd get back to New York,
22 and he was telling me and Michael just to, you know, chill
23 out and don't talk about anything that happened.
- 24 Q At that point did you know that Dante had died?
- 25 A No.

1 Q How long was it before you found that out?

2 A The next day.

3 Q You said you all went from Dante's house back to
4 Peter's, right?

5 A Yes.

6 Q Tell the jury what happened when you all got to
7 Peter's place.

8 A We went in there and Anthony went off into the other
9 room where the stuff that they had got, and Peter was in
10 there with him, and me and Michael and Brownie sat on the
11 couch and watched TV.

12 MS. WILSON: Beg the Court's indulgence.

13 BY MS. WILSON:

14 Q Do you recall who else was at the apartment?

15 A There was a couple other people there, but I didn't
16 know who they was.

17 Q And had they been there when you all were there
18 earlier?

19 A I think so. I'm not real sure, though.

20 Q You and Brownie and Michael sat on the sofa?

21 A Most of the time, yeah.

22 Q And you said that Amp took what into the other room,
23 into the kitchen?

24 A A couple of bags of stuff that he had gotten.

25 Q What kind of stuff did you see that Anthony had

1 gotten?

2 A All I seen was a bunch of change and a big black
3 shotgun.

4 Q When you say "change" and "a bunch of change," can
5 you give me an idea of how big the piles were or how big
6 the bags were or anything like that?

7 A I didn't see the piles or anything, but the bag, it
8 was quarters, like a sock full of quarters.

9 Q As big as a softball or a football?

10 A About as big as a baseball. And I didn't see any of
11 the bags -- and some pennies. I don't know what I could
12 compare it to, just like a bag full of pennies about like
13 that.

14 Q Are you saying pennies?

15 A Pennies, yes.

16 Q Okay. What did Anthony, did you ever go in the
17 kitchen to see what was happening in there?

18 A I tried to one time, but he told me, Anthony told me
19 to go back and sit in the other room.

20 Q What was going on in that other room besides watching
21 TV?

22 A Eventually somebody rolled up some weed and smoked a
23 blunt.

24 Q Who rolled it up?

25 A I don't remember who did it.

1 Q Did you smoke it?

2 A No.

3 Q Did Brownie smoke it?

4 A Yes.

5 Q Did Crumb smoke it?

6 A Yes.

7 Q How long did this weed smoking go on?

8 A Not long, just for the one blunt and then they put it
9 out.

10 Q At any point while you were at Peter's house did you
11 have any conversations with him?

12 A He came in the room one side and said if anybody said
13 anything he was going to kill us and our families.

14 (WHEREUPON, State's Exhibit No. 102 was marked
15 for identification only.)

16 MS. WILSON: Your Honor, may I approach?

17 THE COURT: Yes.

18 BY MS. WILSON:

19 Q I'm going to show you State's Exhibit 102 for
20 identification only, and I'm going to ask if you recognize
21 that.

22 A Yes.

23 Q What is that?

24 A A statement I gave.

25 Q How many pages is that statement?

1 A Seven.

2 Q And you said you gave this statement when you were
3 arrested on January 16th of 2002; is that right?

4 A Yes.

5 Q That was before you had a proffer agreement?

6 A Yes.

7 Q And before you had a plea agreement?

8 A Yes.

9 Q Now, when you gave that statement, you told the
10 police that who went over Tobias', you?

11 A Anthony and Peter.

12 Q Peter Davies?

13 A Yes.

14 Q You just told the jury that Peter Davies came out and
15 threatened you and Michael and Brownie; is that right?

16 A Yes.

17 Q Did he have anything on him when he threatened you?

18 A Yes, a big revolver.

19 Q What did it look like?

20 A I'm not really sure. It might have been like 357 or
21 something.

22 Q Do you know what color it was?

23 A It was chrome.

24 Q Are you sure that Peter Davies was not with you all
25 over at Dante Tobias'?

- 1 A Yes.
- 2 Q You're positive?
- 3 A Yes.
- 4 Q Even though you told the police that?
- 5 A Yes. He not there.
- 6 Q At that point when Peter Davies walked out and told
7 you if you said anything about it that he would kill you
8 and your family, did you know why he had such an interest
9 in it?
- 10 A I just assume because him and Anthony were good
11 friends.
- 12 Q Okay. Did you know at that point who had given
13 Anthony a gun?
- 14 A Yes.
- 15 Q Who was it?
- 16 A Peter.
- 17 Q How long did you all stay at Peter's apartment, if
18 you know?
- 19 A It was about -- I think it was around 30 to 45
20 minutes.
- 21 Q And why was it that you hung around that long after
22 knowing that Anthony had just shot somebody?
- 23 A I mean, I guess we were just waiting for Anthony to
24 tell us, you know.
- 25 Q Why were you waiting on Anthony?

1 A Because he was the one that was usually in charge.

2 Q Okay. But you had a car?

3 A He said wait.

4 Q Did you have a car?

5 A Yes.

6 Q You had keys to the car?

7 A Yes.

8 Q Why not just leave?

9 A I don't know. I mean, because we were -- because I
10 thought he had to ride back with us to go to North
11 Charleston also, so we were waiting around for him.

12 Q Did he eventually leave with you?

13 A No.

14 Q Tell the jury how it came about that you all left
15 Peter Davies.

16 A He called me in the other room and was like, I want
17 you to go back to North Charleston.

18 Q Did you know why?

19 A I just assumed that he was done doing whatever he was
20 doing and, you know, was ready to go. He said he got --
21 he got his own ride and that me and Michael could go back
22 to North Charleston, that he's going to go back with Peter
23 and they was going to get rid of Brownie, which I assumed
24 he was talking the whole day about her going to New York
25 and he was going to hide her so she could go back to New

1 York. That's what I thought he was talking about.

2 Q The phrase he used was what?

3 A He said he was going to get rid of Brownie.

4 Q At some point did his ride come?

5 A Yes.

6 Q Do you remember who it was and what they were
7 driving?

8 A I believe it was Terrance Hudson. I'm not sure what
9 kind of car it was.

10 Q What happened when he arrived, Terrance Hudson?

11 A He asked them what was going on. Peter was like, I
12 don't want to get you involved because you're my cousin
13 and you don't want to be involved in this, and they moved
14 Brownie's stuff into his car.

15 Q From where?

16 A From my car.

17 Q Who got in the car with Terrance?

18 A It was Terrance, Peter, Anthony, and Brownie.

19 Q Who got in the car with you?

20 A Me and Michael.

21 Q After you all left -- let me ask you this first.

22 Did you know Terrance Hudson?

23 A I had met him two times. I didn't really know him.

24 I had met him once before. I didn't really know him.

25 Q After all of the -- Peter, Anthony, and Brownie and

1 Terrance got into that car, you and Michael got into your
2 car?

3 A Yes.

4 Q What happened next? Where did you all go?

5 A We went to the gas station to put some gas in the
6 car, and then we went to John's Island.

7 Q Why didn't you go to north Charleston?

8 A We just decided to go out to John's Island and sit
9 over there for a little while. I don't know.

10 Q Did you have any concern at this point?

11 A I mean, we was still trying to figure out what was
12 really going on and what we was going to do. Not so much
13 Anthony because he said he didn't shoot him, he said he
14 shot him in the leg, and we weren't really concerned about
15 him dying and everything. We didn't think that was a
16 factor.

17 Q But you knew he had been shot?

18 A Yes.

19 Q You all went over to John's Island. Who did you all
20 see over there?

21 A He went to his cousin Lauren's house.

22 Q Before you all left Peter's, did you all get anything
23 that had been taken from Dante in the robbery?

24 A He gave Michael a little chrome Derringer, a little
25 two-shot Derringer, and he gave me a bag full of change,

1 pennies.

2 Q Do you know how much change it was?

3 A It was around \$25 in pennies.

4 Q Did you get anything else from the robbery?

5 A No.

6 Q What happened when you all got over to John's Island?
7 What happened with the gun? What happened with the
8 change?

9 A We went to Lauren's house. When he was at Lauren's
10 house he gave Lauren the little Derringer and Lauren was
11 supposed to get rid of it.

12 Q Did you see what Lauren did with the gun?

13 A Lauren told me a couple days later he threw it in the
14 pond.

15 Q Did you see him throw it in the pond?

16 A No.

17 Q Do you know for sure what he did with it?

18 A No, not for sure.

19 Q After you all gave the gun to Lauren, where did you
20 all go and what did you all do?

21 A I believe we went to Tommy Johns house, a trailer
22 over on John's Island for a little while, and then we went
23 back to North Charleston.

24 Q Did you all have any conversation with Anthony Mann
25 after this?

1 A I don't remember if we did or not.

2 Q How about in the following week, did you have any
3 conversation with Anthony?

4 A Yeah. Anthony called me like the next day, that
5 night, and said the guy I shot died, and I didn't really
6 talk too much the rest of the time.

7 Q Did you continue to talk with Michael Crumb?

8 A Yes.

9 Q Did you all discuss the guy dying or anything like
10 that?

11 A Yeah. When we found out about it, you know, we were
12 worried for a reason, you know, but we said if we didn't
13 tell anybody about it, it would be all right, you know, it
14 would be all right.

15 Q During this week or so afterwards, did you see
16 Brownie again?

17 A No.

18 Q Talk to her again?

19 A No.

20 Q What did you do for the rest of the week after that
21 night? Did you go to school?

22 A Yes, went to school and went to work.

23 Q You worked after school at Wendy's?

24 A Yes.

25 Q Didn't hang out with Anthony Mann?

1 A No.

2 Q Did you continue to go out any?

3 A Yes.

4 Q What nights, if you recall, did you go out?

5 A I don't remember. But, I mean, I went out a few
6 times. I don't remember what nights they were.

7 Q What clubs did you go to?

8 A I didn't go to any clubs.

9 Q Where did you go out?

10 A I usually went over someone's house.

11 Q How about ODC, did you go there any?

12 A No.

13 Q When was it that you were finally arrested?

14 A January 16th.

15 Q So that would have been like the Wednesday a week
16 later?

17 A I think so, yes.

18 Q This happened on Monday, the 7th?

19 A Yes.

20 Q The 16th would have been a Wednesday a week?

21 A Yes, I think so.

22 Q And I believe you already testified that you gave a
23 statement to police upon being arrested?

24 A Yes.

25 Q And after you got arrested, did you continue to talk

1 with Michael Crumb?

2 A Yes.

3 Q He was not in jail?

4 A No.

5 Q When you talked with Michael, what did you tell him?

6 A I told him I was trying to keep him out of it.

7 Q Why were you trying to keep him out of it?

8 A Because he had a young son that he needed to raise.

9 Q Do you know if Peter had any children?

10 A No.

11 Q Do you know what Michael had been planning to do?

12 A Go into the Army.

13 Q And so you told Michael you were going to try to keep
14 him out of it?

15 A Yes.

16 Q Is that what you tried to do?

17 A Yes.

18 MS. WILSON: Beg the Court's indulgence.

19 THE COURT: Yes, ma'am.

20 BY MS. WILSON:

21 Q Mr. Zack, I'm going to ask you first to take a look,
22 and I'll put it on the screen, what has been marked as
23 State's Exhibit 43.

24 Looking at State's Exhibit 43 -- if we could dim
25 the lights just a little bit, please, Mr. Woodson. If you

1 could show the jury on that exhibit where you were parked,
2 the general area where you were parked that night.

3 A Right there.

4 Q Back in there?

5 A Yes.

6 Q Okay. And you said that from that area you couldn't
7 see where they entered?

8 A It looked like they were running around to the back..

9 Q If you could just demonstrate on there where it
10 looked like they went.

11 A Back in there.

12 Q Back in there?

13 A Yes.

14 Q All right. If we could see the next exhibit. I
15 believe this is State's Exhibit 45.

16 In that picture can you see where your car was
17 parked?

18 A I don't think so, no.

19 Q Let me ask you this. After you heard the gunshot,
20 and Anthony came back to the car, what direction did you
21 leave?

22 A Like that, like that way.

23 Q So you -- starting from left to right?

24 A Yes. I was parked facing that way.

25 Q And that is the way you drove away?

1 A Yes.

2 Q Now, this is going to be State's Exhibit 63. Do you
3 recognize that car?

4 A Yes.

5 Q And whose car is that?

6 A Mine.

7 Q Is that the car that you were driving that night?

8 A Yes.

9 Q You mentioned that somebody put some of the items
10 that were brought from Dante's house into the car, into
11 the trunk. How did they get back into the trunk?

12 A From -- I believe after we had left, like in the back
13 seat, you can fold down the back seat and get into the
14 trunk, and Brownie and Michael folded down the back seat
15 and put a couple things in the trunk.

16 Q Is that also a picture of your car?

17 A Yes.

18 Q Is that a picture of your car as well?

19 A Yes.

20 Q Now, you mentioned that Anthony was driving another
21 car?

22 A Yes.

23 Q And I will show on the screen State's Exhibit 70. Do
24 you recognize that car?

25 A I believe that was the car Anthony was driving.

1 Q And you mentioned a girl Danielle. Do you know, had
2 you ever met Danielle before?

3 A I don't think so, no.

4 Q How did you know that was Danielle's car?

5 A Because somebody told me.

6 Q Did Anthony tell you whose car he was driving?

7 A I think he said it was Danielle's car, but I'm not
8 sure who told me, but I just remember somebody did.

9 Q That car did not go to Magnolia?

10 A No.

11 Q Your car went to Magnolia?

12 A Yes.

13 Q When Anthony came out of the house, do you know how
14 many guns he had?

15 A I only saw one.

16 Q And the gun that Peter had in his hand when he
17 threatened you and Brownie and Michael, do you know where
18 that had come from?

19 A No.

20 Q Do you know anything about a shotgun that was taken?

21 A The shotgun was in his hand when he came out the
22 house.

23 Q Do you know if that was what was used to shoot Dante?

24 A I don't think so, no.

25 Q What happened to the other gun then?

1 A I have no idea.

2 Q Do you know where -- you don't know where it was
3 after the shooting?

4 A No.

5 Q When Anthony got into your car, did you see a gun
6 other than the shotgun?

7 A No.

8 Q Now, when you gave your statement back in January of
9 2002, do you remember telling the police anything about
10 going to ODC that week?

11 A I had told them I had seen him maybe that weekend at
12 ODC, but it was the weekend before that that I was
13 thinking of.

14 Q So you were confused as to the weekends?

15 A Yes.

16 Q After this Monday, January 7th, you didn't see
17 Anthony Mann again?

18 A No.

19 Q Did you try to get in touch with him again?

20 A I tried a few times.

21 Q You said that you all talked at least once, right?

22 A Yes. We talked a few times, but we didn't really
23 talk. It was just small talk.

24 Q Did he ever give you any instructions about what to
25 say about what happened that night?

1 A No.

2 Q Did you ever talk with him after he was arrested?

3 A No.

4 MS. WILSON: That's all I have, your Honor.

5 MS. SHEALY: May we approach just a moment, your
6 Honor?

7 THE COURT: Yes.

8 (A bench conference was held with the judge and
9 attorneys in the presence of the jury but out of the
10 hearing of the jury.)

11 MS. SHEALY: If you'll just note my objection to
12 not being able to go into the polygraph.

13 CROSS-EXAMINATION

14 BY MS. SHEALY:

15 Q Eric, how many times have you met with Ms. Wilson to
16 prepare for today?

17 A A few times.

18 Q When you say "a few times," how many times do you
19 mean?

20 A About around three.

21 Q Three times?

22 A Yes.

23 Q And would that include the time that you were
24 videotaped or is that in addition to the time that you
25 were videotaped?

1 A I think including all those times, I think four.

2 Q Four?

3 A Yes.

4 Q And when you met with Ms. Wilson, how long had you
5 all met, do you recall?

6 A It varied from between, you know, 10, 15 minutes to
7 like when I went and was videotaped, it was an hour or so.

8 Q An hour or so?

9 A Yes.

10 Q Now, you have indicated that you entered both into a
11 proffer agreement and a plea agreement in this case; is
12 that correct?

13 A Yes.

14 Q And when you were originally arrested, you in fact
15 were arrested for murder; is that correct?

16 A Armed robbery. I don't know if they had a murder
17 charge already yet, but it was for armed robbery.

18 Q You don't know whether or not you were arrested for
19 murder?

20 A I believe so. I'm not real sure. I don't think so.

21 Q Okay. Well, let me ask you this. You were at work
22 when you were arrested; is that correct?

23 A Yes.

24 Q And is it fair to say that you were very scared by
25 the fact the police were coming to your workplace?

1 A Yes.

2 Q And did they pick you up there and take you down to
3 the police station?

4 A Yes.

5 Q How long would you say that you were in with the
6 officers that day?

7 A Probably around three hours.

8 Q Three hours?

9 A Two or three hours.

10 Q If you would, describe to me how the officers were
11 treating you that day.

12 A At some point they would get up in my face, you know,
13 and yell at me, but, you know, then they gave me, you
14 know, some food.

15 Q So at some points they would be up in your face and
16 other points they were doing nice things for you?

17 A Yes.

18 Q When they were up in your face, were they telling you
19 that you were going to get in big trouble?

20 A Yes.

21 Q Did they tell you you were looking at a murder
22 charge?

23 A Yes.

24 Q Did they tell you a murder charge could carry the
25 death penalty?

1 A Yes.

2 Q Is it fair to say this was scaring you to death?

3 A Yes.

4 Q When you say they were in your face, were they just
5 asking and asking questions?

6 A Yes.

7 Q The way that they handled that that day, did you get
8 a feeling about how they wanted you to answer the
9 questions?

10 A Yes.

11 Q Excuse me?

12 A Yes.

13 Q Okay. Is it fair to say that you told them what you
14 thought they wanted to hear?

15 A Yes.

16 Q So when the police officers were talking to you that
17 day and you were giving a written statement, you told them
18 what you thought they wanted to hear?

19 A To a point, yes.

20 Q Okay. And that's the occasion, then, that you
21 indicated that you and Peter Davies and Anthony went over
22 to Dante Tobias' house; is that correct?

23 A Yes.

24 Q And in that statement --

25 MS. SHEALY: And, Ms. Wilson, do you still have

1 that there handy?

2 MS. SHEALY: Let me get it for you.

3 May I approach the witness?

4 THE COURT: Yes, sir.

5 BY MS. SHEALY:

6 Q I'm showing you what's been marked as State's Exhibit
7 102.

8 There are numerous references to Peter Davies
9 that day; is that correct?

10 A Yes.

11 Q Now, if you would, Eric, turn to the last page of the
12 statement. You can see your signature at the end of the
13 page?

14 A Yes.

15 Q Above your signature, if you would, please, it
16 states, does it not, That I have read the foregoing
17 statement which has been freely and voluntarily made by
18 me, and that it is true and correct to the best of my
19 knowledge, and then you signed underneath; is that
20 correct?

21 A Yes.

22 Q So that day you gave this written statement and you
23 signed that it was the truth; is that correct?

24 A Yes.

25 Q And, in fact, when you look back over your statement,

1 you signed each page accordingly; is that correct?

2 A Yes.

3 Q And each page has that language, that in fact this
4 statement is truthful; is that correct?

5 A Yes.

6 Q Now, as I understand your testimony today, then, are
7 you telling this jury that you lied that day to the
8 police?

9 A Yes.

10 Q And you lied because you thought that's what they
11 wanted to hear?

12 A And also because Michael was a good friend of mine
13 and I didn't want to see him go to jail.

14 Q Okay. So there were two reasons for lying that day?

15 A Yes.

16 Q And if you would, I would tell you to look at that
17 statement. You indicated, did you not, on that day that
18 Brownie had called Anthony and was telling him that the
19 guy she was living with was trying to pimp her out and
20 told her if she didn't he was going to kick her out; is
21 that correct?

22 A Yes.

23 Q Now, as I understand your testimony today that part
24 is true?

25 A Yes.

1 Q So when you and Anthony were in the car that day
2 along with Michael Crumb, you believed that the reason you
3 all were going over there was to get Brownie out of a bad
4 situation?

5 A And eventually it came up that he wanted to rob the
6 guy also.

7 Q You haven't used the word "rob" before. You
8 indicated that Brownie mentioned that there was some money
9 in the house; is that correct?

10 A Yes.

11 Q So are you telling the jury then that you discussed
12 robbing him?

13 A There wasn't really much of a discussion, but that
14 was pretty much the general, you know, thing that he was
15 planning after having, you know, just one-side phone
16 calls.

17 Q Okay. Let me ask you more about that then. It's
18 clear that what you gathered by what you heard in the car
19 was that Brownie was in a bad situation; is that correct?

20 A Yes.

21 Q And Anthony was concerned about Brownie; is that
22 correct?

23 A Yes.

24 Q And based on that, he was going over to take her out
25 of that bad situation; is that correct?

1 A Yes.

2 Q And now you're telling us also that when he mentioned
3 that she said there was some guns, some money in the house
4 and some drugs in the house, you're telling the jury now
5 that you believed that means he was going to rob him?

6 A Yes, that's what I believe.

7 Q But there was no discussion like that in the car, was
8 there?

9 A I heard him say on the phone when he was on the phone
10 with Brownie that he was going to rob him.

11 Q You heard him say that he was going to rob him?

12 A Yeah. Like he was trying to tell her, get what you
13 could, and that he was going to try to take it.

14 Q That he was going to do what?

15 A Try to take it.

16 Q Try to take it?

17 A Take it.

18 Q Well, let's look at your statement a little bit more,
19 then.

20 At the end of that page that we were just
21 looking at, the last three lines, you indicate that me and
22 Pete and Anthony went over to the house in West Ashley.
23 You see where I'm referring?

24 MS. WILSON: What page is that?

25 MS. SHEALY: It's page two of the statement

1 towards the bottom, the last three lines.

2 BY MS. SHEALY:

3 Q Do you see that, Eric?

4 A Yes.

5 Q So when you said me, Pete, and Anthony went over to
6 the house, you were telling a lie about Pete; is that
7 correct?

8 A Yes.

9 Q Looking at page three then, if you would look down
10 from the top of the page to the fourth line, you indicate
11 in your statement on that day that Anthony and Pete
12 followed her into the house; is that correct?

13 A Yes.

14 Q And so now you're telling us that when you said that
15 that was also a lie?

16 A Yes. It was Michael with me.

17 Q It was Michael. And just a little further down you
18 indicate, Anthony told me he only had the gun to scare
19 him.

20 A Yes.

21 Q And that Brownie got his other gun and he wouldn't
22 shoot unless he somehow threatened his life; is that
23 correct?

24 A Yes.

25 Q So that referencing earlier than going to Peter

1 Davies' house to get the gun; is that correct?

2 A That was after he had gotten the gun from Peter.

3 Q After he's already gotten the gun?

4 A Yes.

5 Q And Anthony tells you he's not going to use the gun
6 unless his life was threatened; is that correct?

7 A Yes, he said he just had it to scare him.

8 Q That he just wanted to scare him?

9 A Yes.

10 Q Okay. And what did you know about Dante Tobias from
11 what you'd heard in the car? Did you know of his
12 involvement in drugs?

13 A I just heard that Brownie said that he had a big bag
14 of cocaine and some money.

15 Q And also when you have a big bag of cocaine, there is
16 a gun somewhere nearby; isn't that true?

17 A Yes.

18 Q Okay. You also indicate just a bit further down on
19 that page that she came back out a second later and Peter
20 was following her with a couple more bags; is that
21 correct?

22 A Yes.

23 Q So again on that day when you say that Brownie is
24 walking out of the house and Peter was following behind
25 her, it was a lie?

1 A Yes. It was Michael.

2 Q It was Michael.

3 Now, beginning at the very bottom of that page,
4 you indicate that you all went back and you were watching
5 television over at Peter Davies' house; is that correct?

6 A Yes.

7 Q And that Anthony then said he was going to get rid of
8 Brownie; is that correct?

9 A Yes.

10 Q Now, Eric, that was in fact said with Brownie there,
11 right?

12 A It wasn't done in front of Brownie.

13 Q She was right there in the house; is that correct?

14 A Yes.

15 Q When you heard Anthony say that as you indicated
16 earlier, you thought that meant he was going to go hide
17 her; is that correct?

18 A Yes.

19 Q And it was your understanding that Brownie was going
20 to be leaving to go to New York?

21 A Yes.

22 Q But that she needed someplace to hide before then?

23 A Yes.

24 Q He was getting her out of one bad place; is that
25 correct?

1 A Yes.

2 Q Did you know that she was a runaway?

3 A No.

4 Q Did you know her to be a stripper?

5 A No.

6 Q A dancer?

7 A No.

8 Q No, you did not know that?

9 A No.

10 Q And on page five then of that statement that you gave
11 that day, looking down at line six, Investigator Garland
12 was asking what Pete's last name and you said you didn't
13 know, and what is the name of the apartment that Pete
14 resides in, you never made an effort to correct that Mike
15 Crumb was involved that day; is that correct?

16 A No.

17 Q Now, pursuant to this whole incident, your family's
18 home got searched, did it not?

19 A Yes.

20 Q And your car got searched?

21 A Yes.

22 Q And in fact did you have to submit to a search of
23 your hair and your saliva and your blood; is that correct?

24 A Yes.

25 Q Would you agree with me, Eric, when I say that your

1 statement has been evolving; that you say one thing and
2 then it becomes a little something different and then
3 something different?

4 A Well, you know, from this one I just pretty much took
5 Peter out and put Michael in because I was trying to keep
6 Michael out of it, but it was impossible.

7 Q Let me ask you a couple of things about what you have
8 said today.

9 Today you told us that after Anthony indicated
10 that he had shot Dante in the leg, that he said to you
11 that he and Dante had struggled over the gun?

12 A Yes.

13 Q And you've never said that before, have you?

14 A I mean, I really -- I don't remember if I have or
15 not.

16 Q Well, you gave a written statement; is that correct?

17 A Yes.

18 Q Then you gave a statement meeting with your officer,
19 your lawyer and some officers and the solicitor; is that
20 correct?

21 A Yes.

22 Q And then you gave another statement that was
23 videotaped; is that correct?

24 A Yes.

25 Q That one in the middle when you were talking with

1 your lawyers and the officers and members of the
2 solicitor's office, that was neither written down nor
3 videotaped; is that correct?

4 A No.

5 Q So you would not disagree with me, then, if I said
6 that you never mentioned struggling -- Amp's having said
7 that there was a struggle over the gun with Dante until
8 today?

9 A I don't remember if I have or not, no.

10 Q Tell me a little bit about what Brownie's demeanor
11 was like that night when you all got back to Peter Davies'
12 house. How would you describe her demeanor?

13 A She seemed happy. She was happy to be out of there.
14 She was talking about he got what he deserved, and this
15 and that.

16 Q That's what Brownie said?

17 A That's what Brownie said.

18 Q That he got what he deserved?

19 A Yes.

20 Q Okay. And is it fair to describe her as having her
21 adrenaline pumped up?

22 A Yes.

23 Q So that's how Brownie is behaving?

24 A Yes.

25 Q When you and Michael Crumb go your separate ways, you

1 all go and drink over at somebody's house later on that
2 evening?

3 A Yeah. I'm not sure what exactly we did over there,
4 but I remember going over there.

5 Q That was Tommy's house; is that correct?

6 A Yes.

7 Q When you went in for that statement that we have been
8 talking about, did the officers at all tell you what
9 Anthony may have said to them?

10 A I gathered so much that Anthony had said Peter went
11 with him by the questions they were asking.

12 Q By the questions that the officers were asking?

13 A Yes.

14 Q Is it fair to describe that as they were suggesting
15 to you what the story was that Anthony had told them?

16 A Yes.

17 Q And did you feel like they wanted you to match that
18 story?

19 A Yes.

20 Q So they had told you then that Anthony had said that
21 Peter Davies went into that house with them?

22 A They didn't say it in so many words, but it was kind
23 of implied.

24 Q Like wasn't Peter there?

25 A Yes.

1 Q Something to that extent?

2 A Yes.

3 Q Were they kind of hammering you with that?

4 A Yes.

5 Q Did they seem interested in Peter Davies?

6 A Yes.

7 Q Did they seem very interested in Peter Davies?

8 A Yes.

9 Q Did they know Peter Davies already?

10 A I don't know.

11 Q So you didn't have a lot of reluctance in putting
12 somebody there that hadn't been there when you were giving
13 your statement?

14 A I was nervous and scared. I just said what they
15 wanted me to say to let me go home.

16 Q Okay. Now, you told us how they were kind of
17 hammering at you, and then also say they got you something
18 to eat; is that correct?

19 A Yes.

20 Q And, in fact, I think maybe when you first got there
21 they gave you a Pepsi?

22 A Yes.

23 Q And then 30 minutes later or an hour later they give
24 you an Arby sandwich?

25 A Yes.

1 Q And then they give you a little time to break and
2 then they start talking to you again?

3 A I didn't really get much of a break at any point
4 besides when the food came.

5 Q Other than having time to eat?

6 A Yes.

7 Q Okay. Did you get the feeling that you weren't
8 going -- they weren't going to be finished with you until
9 they got a statement?

10 A Yes.

11 Q And again, that whole statement process took a couple
12 of hours, is that what you're saying?

13 A Yes.

14 Q Were you crying?

15 A Yes.

16 Q Were you upset?

17 A Yes.

18 Q Did they have you handcuffed or do you recall?

19 A I don't recall.

20 Q Had you talked to your mother or your father?

21 A No.

22 Q So you were in a room with two officers, is that what
23 you told me? Or how many were there?

24 A There was just one, but another one used to come in
25 from time to time to check on what was going on.

1 Q Okay. And from the way that procedure took place,
2 you got the feeling that they had talked to Amp and that
3 he had said Peter Davies was there; is that correct?

4 A Yes.

5 Q Okay. Then you engage in your proffer agreement, is
6 that correct, in February?

7 A Yes.

8 Q And by then you had already gotten your attorneys?

9 A Yes.

10 Q And they had counseled with you?

11 A Yes.

12 Q Did they give you copies of anybody's statements
13 before you engaged in that proffer agreement?

14 A No.

15 Q Had you read anything yet?

16 A No.

17 Q And did they bring you over to the courthouse that
18 used to be located on Melbourne?

19 A No.

20 Q Where did that interview take place?

21 A Which interview?

22 Q After you had signed --

23 A The proffer?

24 Q Yes.

25 A I'm not sure where it was at. I think it was the

1 courthouse. I'm not really sure.

2 Q You may not know where the old courthouse was. It
3 was located over in North Charleston?

4 A I think so.

5 Q Did you go into the Solicitor's office?

6 A I think that's where it was, yes.

7 Q At the Solicitor's office?

8 A I think so.

9 Q So present during that interview then was Ms. Wilson?

10 A Yes.

11 Q And Mr. Churchill, your attorney?

12 A Yes.

13 Q Who is seated in the courtroom?

14 A Yes.

15 Q Detective Garland and Detective Walker?

16 A Yes.

17 Q Now, they were the two gentleman that were involved
18 in your earlier statement?

19 A Yes.

20 Q And then Detective Crews and John Burnett from the
21 Solicitor's office; does that sound right?

22 A I think so. I don't know the names. I think so.

23 Q And prior to having that meeting, you in fact had had
24 discussions with your attorney about what you would say
25 during that meeting; is that correct?

1 A Yes.

2 Q And you obviously wanted to get out from under that
3 murder wrap; is that fair to say?

4 A Yes.

5 Q And your attorneys advised you as to how to conduct
6 yourself during that meeting?

7 A Yes.

8 Q And during that meeting you made some changes, didn't
9 you?

10 A Yes.

11 Q You made some changes to that earlier statement; is
12 that correct?

13 A Yes.

14 Q You made changes to the earlier statement that you
15 had signed was truthful?

16 A Yes.

17 Q The one that you initialed each page and signed; is
18 that correct?

19 A Yes.

20 Q And during that conversation then you say that Davies
21 was not there when you go over to Dante's?

22 A Yes.

23 Q And that Crumb was there?

24 A Yes.

25 Q And this is when you say that Mann said that he shot

1 Dante in the leg? You had not said that before; is that
2 correct?

3 A Yes. There was -- I mean, it was just a silly little
4 detail I missed. I think I told the officers that I just
5 forgot to write it down.

6 Q That you had forgot that part?

7 A Forgot to write it down, yes.

8 Q And it's also the first time that you say that
9 Brownie had got some marijuana; is that correct?

10 A Yes.

11 Q And I think Ms. Wilson asked you about this, but when
12 you all get back to Peter Davies' house, you all were all
13 smoking pot?

14 A Michael and Brownie were and somebody else at the
15 house that I'm not sure.

16 Q And you were or you were not?

17 A I did not.

18 Q You did not?

19 A No.

20 Q So Mike and Brownie were; is that correct?

21 A Yes.

22 Q Now, tell this jury, what did Michael Crumb get when
23 you went over to Peter Davies' house, what did he get?

24 A A little two-shot Derringer.

25 Q And there's no question about that?

1 A No.

2 Q It wasn't given to you?

3 A No.

4 Q It was given to Michael Crumb?

5 A Yes.

6 Q And he was also given some money?

7 A No.

8 Q He was not given money?

9 A No.

10 Q Were you given some money?

11 A A bag full of pennies.

12 Q Okay. Let me ask you a little bit about that bag
13 full of pennies.

14 You say that when they leave that house that
15 evening there are black trash bags, is that correct,
16 removed from Dante's house?

17 A Yes.

18 Q And in those trash bags are what you believe Brownie
19 has stuffed in the bags; is that correct?

20 A I know Brownie had a big full-sized garbage bag
21 filled up with what I believe is her clothes and her
22 personal belongings, and then there's some smaller bags
23 later which I assume were change. I'm not real sure what
24 was in them.

25 Q That the change actually came out of?

1 A Yes.

2 Q Now, was all of that, though, in the black bags?

3 A I don't know.

4 Q Let me ask it this way. Did you see anyone get in
5 the car with separate little bags?

6 A When they came up, you know, when Michael and Brownie
7 come out the house later, I'm pretty sure they had smaller
8 bags in their hands.

9 Q That Michael and Brownie do?

10 A Yes.

11 Q Now, let me ask you a little bit more about the
12 threat that Peter Davies made to you.

13 There's no question, is there, that even from
14 your beginning statement that when you saw Anthony Mann
15 leave Dante Tobias' house, he had a shotgun in his hand;
16 is that correct?

17 A Yes.

18 Q And you told us that you went by and got a gun on the
19 way over there and that it jammed; is that correct?

20 A Yes.

21 Q You don't know whether he got it unjammed; is that
22 correct? You're assuming that?

23 A I'm pretty sure he got it unjammed, but I can't be a
24 hundred percent sure.

25 Q Okay. What you do know is that it jammed?

1 A Yes.

2 Q And what you told this jury is that Michael Crumb
3 said watch out for those kinds of guns because they can
4 backfire; is that correct?

5 A Yes.

6 Q So in other words Crumb says those type of guns
7 backfire and then the gun jams?

8 A Yes..

9 Q Those are the things you know about that gun?

10 A Yes.

11 Q You do not see Anthony Mann get out of that car with
12 that gun; is that correct?

13 A To go into the house?

14 Q Yes.

15 A I'm pretty sure he had it on him.

16 Q Well, but you didn't see the gun leave the car, did
17 you?

18 A Our car?

19 Q Whatever type of gun it was that came from Peter
20 Davies.

21 A I don't recall really what happened with it. I don't
22 remember that.

23 Q Okay. So the answer to my question is that you
24 cannot testify that you saw that gun leave the car when
25 you all get to Dante Tobias'; is that correct?

1 A No, I'm pretty sure he had it with him, but I don't
2 know.

3 Q But you don't know that?

4 A I don't know.

5 Q And Ms. Wilson asked you when you see Anthony leave
6 the house, the only type of gun that you do see is the
7 shotgun; is that correct?

8 A That's all that I saw.

9 Q And the shotgun, have you described that as a riot
10 gun?

11 A That's what someone told me it was.

12 Q That it's a riot gun?

13 A Yes.

14 Q It was a black gun?

15 A Yeah, a big black shotgun.

16 Q I'm showing you what's been marked as State's Exhibit
17 No. 94. Does this look like the gun that you saw leave
18 the house that evening?

19 A I didn't see the gun very well, but that looks like
20 it.

21 Q It does look like it?

22 A Yes.

23 Q And you didn't see anybody get out of your car with
24 it and take it into Dante Tobias'; is that correct?

25 A No.

1 Q You just saw it leave Dante Tobias'; is that correct?

2 A Yes.

3 Q So back to Peter Davies. Tell me again, what kind of
4 gun did he have in his hand when he threatened you?

5 A A big revolver, a chrome revolver.

6 Q And that was a gun that you had not seen earlier?

7 A No, I had not seen it.

8 Q So as far as you know, that is another gun that Peter
9 Davies keeps in his house; is that correct?

10 A Yes.

11 Q Did you see any other guns laying around Peter
12 Davies' house?

13 A No.

14 Q Tell me again what he said to you.

15 A He said that if we said anything that he was going to
16 kill us and our families.

17 Q Did that scare you?

18 A Yes.

19 Q Did it scare you for your family?

20 A Yes.

21 Q Was he intimidating?

22 A Yes.

23 Q Is he scary?

24 A Yes.

25 Q Do you know anything about his reputation for being

1 truthful?

2 A No.

3 MS. WILSON: Objection, your Honor.

4 THE COURT: I sustain that objection. Go ahead.

5 BY MS. SHEALY:

6 Q Mr. Zack, let me ask you again, when he said that to
7 you that evening, it did scare you?

8 A Yes.

9 Q And was there something about his presence that was
10 intimidating?

11 A He was a big guy, so yeah.

12 Q Did Michael Crumb seem to be scared of him, too?

13 A Yes.

14 Q Now, again when we were talking about that meeting
15 that took place over at the Solicitor's office, you
16 weren't asked to write a statement that day; is that
17 correct?

18 A No.

19 Q And no one videotaped that statement; is that
20 correct?

21 A No.

22 Q Did you learn that Peter had already given a
23 statement?

24 A My lawyers had told me that beforehand, but I wasn't
25 sure what he said.

1 Q Let me ask you this. Did your lawyers send you
2 copies of your discovery materials while you were in jail?

3 A Yes.

4 Q So you had the benefit of reading the statements in
5 this case; is that correct?

6 A Yes.

7 Q It's fair to say, is it not, that there were many,
8 many statements in this case; is that correct?

9 A Yes.

10 Q And some things were sent off to SLED and you were
11 provided with copies of those reports?

12 A I believe so, yes.

13 Q And you got a copy of the autopsy report?

14 A Yes.

15 Q Were you shown copies of photographs?

16 A No.

17 Q Did you see the photographs?

18 A No.

19 Q Did you see the videotapes of the crime scene?

20 A No.

21 Q So they gave you copies of the paperwork but no
22 photographs or videotapes; is that fair to say?

23 A Yes.

24 Q And when you would get those things at the jail,
25 would you keep them in the cell with you?

1 A Yes.

2 Q Was it sort of a struggle to make sure nobody else
3 got ahold of them?

4 A Well, I have my own cell.

5 Q But if you were in there with other people you would
6 have been somewhat protective of those materials, would
7 you not?

8 A Yes.

9 Q Would you be concerned that somebody else would look
10 at them?

11 A Yes.

12 Q But you didn't have to worry about that?

13 A Right.

14 Q Now, November 20th, then, you were asked to give
15 another statement; is that correct?

16 A Yes.

17 Q And that would have been your third statement?

18 A Yes.

19 Q Did you get any statements in the interim that I
20 don't know about or haven't asked you about?

21 A No.

22 Q And during that statement, I believe, you were at the
23 sheriff's department. Was it near Thanksgiving time?

24 A I believe so, yes.

25 Q And on that occasion your attorneys were present?

1 A Yes.

2 Q Ms. Wilson was present?

3 A Yes.

4 Q John Burnett from her office was present?

5 A Yes.

6 Q Detective Walker, Whisenant were all present; is that
7 correct?

8 A Yes.

9 Q Now, at that point you signed your proffer agreement
10 but had not yet signed your plea agreement; is that fair
11 to say?

12 A Yes.

13 Q And you knew that satisfying the Solicitor's office
14 was important; is that fair to say?

15 A Yes.

16 Q Because again you wanted to get from underneath that
17 murder charge; is that correct?

18 A Yes.

19 Q You didn't want to be looking at a 30-year or life
20 sentence; is that correct?

21 A Yes.

22 Q You didn't want to proceed; is that correct?

23 A No.

24 Q And on that occasion they had you with chains around
25 your ankles and a waist chain and you were asked to give

1 another statement; is that correct?

2 A Yes.

3 Q If you can, just answer for me instead of nodding.
4 just so she can take that down.

5 How many times would you say you had to talk
6 about what you were going to tell the Solicitor's office
7 on that occasion with your lawyers? Is that something the
8 came and met with you about?

9 A We talked on the phone about it, but it was the same
10 statement I gave the second time.

11 Q Were you told why they wanted to bring you back in
12 and videotape it?

13 A Because they said that they didn't take notes on the
14 first one and that they wanted me to tape it and have me
15 write a written statement so everyone else could see it.

16 Q Okay. So you did not also write the written
17 statement, it was just the videotape; is that correct?

18 A It was just the videotape.

19 Q So on the occasion where they were uncertain as to
20 what you were going to say, they didn't take notes and you
21 didn't write a statement?

22 A Yes.

23 Q And on this occasion when they had heard what you
24 were going to say, they wanted to memorialize it, they
25 wanted to videotape it; is that correct?

1 A Yes.

2 Q So, Eric, if I understand your testimony, on the
3 first occasion when you gave a statement you wanted to
4 please the police, you wanted to tell them what they
5 wanted to hear; is that correct?

6 A Yes.

7 Q And then on these other two statements, you certainly
8 wanted to please the Solicitor's office; is that correct?

9 A Yes. I had time to get my thoughts together and, you
10 know, talk to my lawyers and decide what's the best course
11 of action.

12 Q What was the best course of action?

13 A Tell the truth.

14 Q And when you and your attorneys decided what the best
15 course of action was, that was in an effort to please the
16 Solicitor's office; is that correct?

17 A It was an effort to tell them the truth. That's what
18 would please them.

19 Q Well, you understood under your proffer agreement and
20 your plea agreement that for you to get a benefit they had
21 to believe you were being cooperative; is that correct?

22 A Yes.

23 MS. WILSON: Objection, your Honor.

24 THE COURT: Approach.

25

1 (A bench conference was held with the judge and
2 attorneys in the presence of the jury but out of the
3 hearing of the jury.)

4 BY MS. SHEALY:

5 Q Let me ask it this way. At the time you went for the
6 videotaped statement you had signed the proffer agreement;
7 is that correct?

8 A Yes.

9 Q Was it your understanding, though, that the proffer
10 agreement, that they had to believe whatever you had to
11 say was valuable enough to give you something out of it?

12 A It was my understanding they had to believe it was
13 truthful.

14 Q Okay. And on that day, then, that you gave the
15 videotaped statement, did you try to include everything
16 that you could think of on that occasion that was
17 important?

18 A Everything that came to mind at the time.

19 Q Excuse me?

20 A Everything I could think of at the time, yes.

21 Q Okay. Now, tell me again which way you say that
22 Anthony Mann entered Dante Tobias' house.

23 A I think it was the back door.

24 Q That was behind that fenced area?

25 A Yes.

1 Q And you do not recall what Brownie had on that
2 evening as I understand; is that correct?

3 A Yes.

4 Q You do not recall?

5 A I do not recall.

6 Q And did Mike, in fact, offer to go in?

7 A Anthony told him to come in with him.

8 Q And Mike --

9 A Michael.

10 Q -- was willing to go in there?

11 A Yes.

12 Q They didn't go in at the same time as I understand or
13 did they?

14 A Well, Anthony went and Michael followed pretty much
15 right behind him.

16 Q Pretty much followed right behind him?

17 A Yes.

18 Q Are you testifying that Brownie came out more than
19 one time from that residence or one time?

20 A She came out twice.

21 Q She came out twice?

22 A Yes.

23 Q You indicated to us that you knew Brownie prior to
24 that evening; is that correct?

25 A Yes.

1 Q Is it fair to say that she was slightly tomboyish in
2 the way that she carried herself?

3 A Yes.

4 Q All of this is happening pretty quickly that evening;
5 is that fair to say?

6 A Yes.

7 Q You were sitting in the car, things were going on
8 inside, it all happened very hurriedly; is that fair to
9 say?

10 A Yes.

11 Q So as I understand your testimony, Anthony had said
12 to Brownie earlier to hide Tobias' guns; is that correct?

13 A Yes, to hide them, to take them.

14 Q To do what?

15 A To hide them, to get ahold of them, to take them.

16 Q And you thought that was to make sure nothing
17 unexpected happened; is that correct?

18 A Yes.

19 Q When you heard Anthony say to Brownie "hide his
20 guns," it was because you thought that meant he didn't
21 want anything unexpected to happen; is that correct?

22 A Yes.

23 Q And originally Anthony had said he was getting a gun,
24 just that he would not shoot unless he was threatened; is
25 that correct?

1 A Yes.

2 Q And then the gun jammed?

3 A Yes.

4 Q And you didn't see the gun go in?

5 A No, I didn't see -- I mean, I pretty much assumed he
6 had it in his waist band.

7 Q But I'm asking you not to assume right now for the
8 purpose of my question, okay?

9 You hear from Anthony that he is taking a gun
10 just to make sure that nothing unexpected happens; is that
11 correct?

12 A Yes.

13 Q The gun jams?

14 A Yes.

15 Q You don't see the gun go in the residence?

16 A Yes.

17 Q You see the shotgun come out?

18 A Yes.

19 Q And you've indicated to the jury then that Anthony
20 never gave you any instructions as to what to say?

21 A No.

22 Q Who was asked that evening about how they felt about
23 what had happened, Brownie?

24 A I don't remember anyone being asked that.

25 Q Tell us again what you remember her saying about his

1 deserving it, Dante.

2 A We were sitting in the room watching TV. She had her
3 pajamas on. She said that she felt like he got what he
4 deserved, he got what he deserved.

5 Q Did she also say she had no regrets about what had
6 happened?

7 A It did not seem at the time that she had any regrets.

8 Q Do you remember her being asked that?

9 A No.

10 Q You don't remember her being asked if she had any
11 regrets?

12 A I don't remember her being asked that.

13 Q Who was the only person that Amp that night thought
14 that he need to hide, Brownie?

15 A Brownie.

16 Q Who had been pressured to prostitute for Dante?

17 A Brownie.

18 MS. SHEALY: I beg the Court's indulgence just a
19 moment.

20 THE COURT: Yes, ma'am.

21 BY MS. SHEALY:

22 Q Do you recall what Anthony had on that evening?

23 A No.

24 Q Do you recall what type of shirt he had on?

25 A No.

1 Q Is it fair to say that Anthony usually tried to dress
2 nice?

3 A Yes.

4 Q Keep his hair nice?

5 A Yes.

6 Q And look nice?

7 A Yes.

8 MS. SHEALY: I have no further questions.

9 MS. WILSON: Beg the Court's indulgence.

10 THE COURT: Yes, ma'am.

11 MS. SHEALY: Your Honor, I apologize. I do have
12 one further question.

13 BY MS. SHEALY:

14 Q You never saw Anthony Mann with a knit hat on that
15 evening; did you?

16 A No.

17 Q He usually always was vain about the way his hair
18 looked; is that correct?

19 A Yes.

20 MS. SHEALY: Thank you.

21 MS. WILSON: Your Honor, may I approach?

22 THE COURT: Yes, ma'am.

23 REDIRECT EXAMINATION

24 BY MS. WILSON:

25 Q When you were asked questions by Ms. Shealy about

1 State's Exhibit 102, you said that you were scared?

2 A Yes.

3 Q Upset?

4 A Yes.

5 MS. WILSON: Your Honor, at this time we offer
6 State's Exhibit 102.

7 MS. SHEALY: Beg the Court's indulgence just a
8 moment.

9 Your Honor, may we approach?

10 THE COURT: Yes, ma'am.

11 (A bench conference was held with the judge and
12 attorneys in the presence of the jury but out of the
13 hearing of the jury.)

14 THE COURT: Ladies and gentlemen, we'll go ahead
15 and send you on your afternoon break. Do not discuss this
16 case in any way. Thank you very much.

17 (The jury left open court at approximately 4:08
18 p.m.)

19 THE COURT: All right.

20 MS. SHEALY: Your Honor, we would object to her
21 admitting the statement into evidence. I think the
22 appropriate way for her to handle it, she can question him
23 about it, but it's hearsay. It's not appropriate for her
24 to put her witness to put this statement up.

25 THE COURT: Yes, ma'am.

1 MS. WILSON: It's not hearsay because we aren't
2 offering it for the truth. In this statement he says that
3 Peter Davies is the one who went in. We don't think that
4 that's what happened. We're offering it to show what he
5 said at the time, not the truth of it, but what he said
6 when he was arrested when he was scared.

7 MS. SHEALY: Well, I think she can ask him
8 questions regarding that, but the written document doesn't
9 come in. I mean, if she's saying it's not truthful, then
10 how dangerous is it for the jury to have access to
11 something which is not truthful.

12 MS. WILSON: I wouldn't think it would be
13 dangerous at all. I mean, it explains it.

14 THE COURT: Well, you don't dispute that that
15 was his statement, do you?

16 MS. SHEALY: I don't dispute that this is his
17 statement, but I think it's inappropriate for the jury to
18 have access to the entire written document. I mean, we
19 don't have the benefit of any notes from the Solicitor's
20 office or this gentleman or his second statement to maybe
21 draw a comparison with.

22 MS. WILSON: They've got the video --

23 MS. SHEALY: That's the third statement.

24 MS. WILSON: -- of his third interview which he
25 said incorporated what he said in the second interview.

1 They have the whole video.

2 Your Honor, I think it goes to show, and when I
3 do redirect on him, what he was thinking at that time and
4 why he was saying what he's saying. I think they painted
5 a picture of him being untrue, and I want to go through
6 that with the jury so that they can see what he was saying
7 and when he substituted Peter Davies' name.

8 MS. SHEALY: I think she can ask that of him,
9 but she doesn't need the statement in. She can just query
10 him accordingly.

11 THE COURT: Well, the statement is back there,
12 and he's indicated that he's changed his statement. So
13 won't it lead to confusion to have that back there without
14 the rest of it in context of what he testified to?

15 MS. WILSON: I think he's going to put it in
16 context.

17 MS. SHEALY: I just don't see why that can't be
18 accomplished on redirect of him rather than submitting a
19 written statement that apparently is not truthful.

20 THE COURT: What is it that you can't accomplish
21 through questions?

22 MS. WILSON: I'm not saying I can't accomplish
23 it through questions. I'm saying it's not hearsay because
24 we're not offering it for its truth. That's what hearsay
25 is.

1 MS. SHEALY: I think that anything that is
2 relevant about the discrepancies in the statement can be
3 elicited from him on redirect, and that the potential
4 prejudice in sending back an incorrect statement to the
5 jury is very dangerous, and it frankly serves no purpose
6 if she can elicit it from him.

7 THE COURT: It does seem to place undue emphasis
8 on what is alleged to be an incorrect statement as opposed
9 to his incorrect testimony. I'm going to sustain that,
10 not on a hearsay basis, but on the grounds of it's
11 confusing to the jury when it's overemphasizing one part
12 of his statement over his formal testimony.

13 We'll go ahead and take a break.

14 MS. WILSON: Thank you, your Honor.

15 (A short break was taken.)

16 (The jury came into open court at approximately
17 5:03 p.m.)

18 THE BAILIFF: Jury is seated, your Honor.

19 THE COURT: Thank you. Please be seated.

20 We're ready to proceed, ladies and gentlemen.

21 MS. WILSON: All right. May I approach the
22 witness, your Honor?

23 THE COURT: Yes, ma'am.

24 MS. WILSON: Your Honor, we have offered this.
25 I believe this is not coming in?

1 THE COURT: Right.

2 BY MS. WILSON:

3 Q When you gave this statement, you said that you felt
4 intimidated?

5 A Yes.

6 Q And scared?

7 A Yes.

8 Q And you felt like you needed to say whatever the cops
9 wanted you to say?

10 A Yes.

11 Q Did they tell you the whole story about what had
12 happened that night?

13 A No.

14 Q So some of it was your own?

15 A Yes.

16 Q And then within a month you had your two attorneys
17 who are here today; is that right?

18 A Yes.

19 Q Did you tell them about what you had done in this
20 first statement?

21 A Yes.

22 Q You told them that you had not told the truth?

23 A Yes.

24 Q I believe you used the term that you all came up with
25 a course of action?

1 A Yes.

2 Q Tell this jury what that course of action was.

3 A That the best course that would be would be to get in
4 there and tell the truth because eventually it would come
5 to light that Michael Crumb was there and then I would be
6 in more trouble than I was to begin with.

7 Q So you wanted to tell the truth?

8 A Yes.

9 Q You wanted to sit down again with law enforcement and
10 with our office?

11 A Yes.

12 Q And that brought about State's Exhibit 100, the
13 proffer?

14 A Yes.

15 Q And in this proffer agreement, anywhere in this
16 agreement, what does it say about your having to testify
17 or to give a statement against Peter Davies?

18 A Nothing. It says it's not a cooperation agreement.

19 Q What does it ask you to do?

20 A Tell the truth.

21 Q Okay. At any point in there does it say talk about
22 Peter Davies?

23 A No.

24 Q Rat on him?

25 A No.

1 Q Does it say talk about Michael Crumb, rat on him?

2 A No.

3 Q What does it ask you for?

4 A Tell the truth.

5 Q And when you met with law enforcement and with our
6 office, what did you think we wanted to hear?

7 A The truth.

8 Q What do you think these people want to hear?

9 A The truth.

10 Q Do you think they care about who shot who as long as
11 it's the truth?

12 A No.

13 Q Do you think they want to hear the truth?

14 A Yes.

15 Q All right. How do you know who shot Dante Tobias?

16 A Because Anthony was the last one to come out of the
17 house.

18 Q Where was everybody else?

19 A In the car.

20 Q Okay. And Ms. Shealy asked you over and over about
21 what kind of gun you saw Anthony come out with, and you
22 saw him come out with one like this?

23 A Yes.

24 Q Okay. While he was gone, while Michael Crumb was
25 gone, who was in that car with you?

1 A No one.

2 Q Where were you sitting?

3 A In the driver's seat.

4 Q Did you see any kind of gun lying around at that
5 point?

6 A No.

7 Q Okay. And I believe you mentioned you knew what kind
8 of gun it was, right?

9 A Yes.

10 Q What kind was it?

11 A High point.

12 Q What caliber?

13 A 9-millimeter.

14 Q Okay. And you testified that you saw it jam?

15 A Yes.

16 Q And you believed it was unjammed?

17 A Yes.

18 Q What made you believe that?

19 A Because when we stopped he messed with it a little
20 bit and drove off, so, I mean, I assumed that it was
21 unjammed after that.

22 Q All right. And then when you got to the house and
23 Michael and Anthony went in, you didn't see that gun
24 again?

25 A No.

1 Q And then when Brownie gets back in the car, when
2 Anthony Mann -- I mean when Michael Crumb gets back in the
3 car, you hear a gunshot?

4 A Yes.

5 Q You hear a man scream?

6 A Yes.

7 Q At that split second, did you know who had been shot?

8 A Not immediately, no.

9 Q What were the options? Who do you think it could
10 have been? Who did you think?

11 A Anthony Mann and Dante Tobias.

12 Q All right. How did you find out who it was?

13 A Because when Anthony came running out of the house.

14 Q Any question about that?

15 A No.

16 Q When you signed this plea agreement, you agreed to
17 cooperate and testify truthfully; is that right?

18 A Yes.

19 Q At any place in this plea agreement does it say that
20 you'll be rewarded for some kind of conviction of Anthony
21 Mann or any other defendant?

22 A No.

23 Q What does that plea agreement ask you to do?

24 A To tell the truth.

25 Q And is that what you have done?

1 A Yes.

2 Q When you gave your first statement, did you give as
3 many details as you gave later in your proffer and in the
4 videotape interview?

5 A No.

6 Q When were you more comfortable talking with the
7 police and with our office?

8 A When I gave the second and third statement.

9 Q Okay. You had your lawyers with you, didn't you?

10 A Yes.

11 Q What were they encouraging you to do?

12 A Tell the truth.

13 Q No matter what?

14 A Yes.

15 MS. WILSON: That's all I have, your Honor.

16 MS. SHEALY: I beg the Court's indulgence.

17 THE COURT: Yes, ma'am.

18 RE CROSS-EXAMINATION

19 BY MS. SHEALY:

20 Q Mr. Zack, one quick question.

21 Ms. Wilson asked you about your attorneys and
22 you getting, having a course of action; is that correct?

23 A Yes.

24 Q And when she asked you that, you had indicated to her
25 that they advised you for you to save yourself more

1 trouble that you need to come clean about Michael Crumb;
2 is that correct?

3 A Yes.

4 MS. SHEALY: I have no further questions. Thank
5 you.

6 THE COURT: You may step down, sir.
7 Call your next witness.

8 MS. WILSON: Terrance Hudson.

9 TERRANCE HUDSON, after being duly sworn,
10 testified as follows:

11 THE CLERK: Please be seated. Please state your
12 full name for the Court and spell your last.

13 THE WITNESS: Terrance William Hudson,
14 H-U-D-S-O-N.

15 DIRECT EXAMINATION

16 BY MS. WILSON:

17 Q Mr. Hudson, where are you from?

18 A Summerville.

19 Q Have you lived there all your life?

20 A Yes.

21 Q Where do you live now?

22 A I live in Lexington.

23 Q Are you working?

24 A Yes.

25 Q What kind of work do you do?

- 1 A I run a business and I work for Comtech
2 Communications Technicians.
- 3 Q What is Comtech Communications?
- 4 A Cable dish net satellite.
- 5 Q You said you run a business as well?
- 6 A Yes.
- 7 Q What kind of business is that?
- 8 A An advertising, direct advertising.
- 9 Q How long have you been working for Comtech?
- 10 A About six months.
- 11 Q And how about your other business, direct
12 advertising?
- 13 A Eight months.
- 14 Q How old are you?
- 15 A Twenty-one.
- 16 Q And how far did you go in school?
- 17 A I graduated.
- 18 Q Where did you go to high school?
- 19 A Summerville High.
- 20 Q Do you know a guy by the name of Peter Davies?
- 21 A Yes, ma'am.
- 22 Q How long have you known Peter Davies?
- 23 A Six years.
- 24 Q Are you related to him?
- 25 A No, ma'am.

1 Q Do sometimes people think you're related or you tell
2 people you're related?

3 A Yes, ma'am.

4 Q Were you and Peter pretty close?

5 A Yes.

6 Q Close now?

7 A Yes, ma'am.

8 Q You're still close with him?

9 A No.

10 Q Back in 2002 and 2001, had you been close with him?

11 A Yes.

12 Q Now, do you know a guy by the name of Anthony Mann?

13 A Yes.

14 Q How long have you known him?

15 A Six months. I knew him then for about six months,
16 probably a little less than that.

17 Q Do you remember how you met him?

18 A Yes.

19 Q Where did you meet him?

20 A I met him at a friend's house.

21 Q Did you know a girl who went by the name of Brownie?

22 A No.

23 Q Did you meet at some point in January of 2002 a girl
24 named Brownie?

25 A Yes, ma'am, I did.

1 Q How many times did you meet her?

2 A Probably just twice.

3 Q The last time you met her or saw her, where was it?

4 A At Lisa O'Connell's house.

5 Q Was that the same night you gave her a ride?

6 A Yes, ma'am.

7 Q Well, let me ask you this. When was the last time
8 you spoke with Anthony Mann?

9 A Probably I spoke with him at Lisa's house, and
10 actually after that I spoke with him on a cell phone once.

11 Q Since that time, since he was arrested you haven't
12 spoken to him?

13 A No, ma'am, I haven't.

14 Q Have you spoken with Peter Davies since he was
15 arrested?

16 A No, ma'am, I haven't.

17 Q Now, on the Monday evening of January 7th, 2002, did
18 Peter Davies call and ask you for a favor?

19 A Yes, ma'am.

20 Q And what was that favor?

21 A A ride.

22 Q And back then did you have a cell phone?

23 A Yes, ma'am.

24 Q Did he have a cell phone?

25 A Yes, ma'am.

- 1 Q And whose number was 442-6074?
- 2 A That's probably his cell phone number.
- 3 Q Did you call that number, 442-6074?
- 4 A Yes, ma'am. After he called me and asked me for a
5 ride, I told him I'd call him back and let him know. I'm
6 pretty sure it was that number.
- 7 Q Okay. And he called you for a ride on your cell?
- 8 A Yes, ma'am.
- 9 Q What was your cell phone number at the time?
- 10 A I can't remember.
- 11 Q Now, he asked you for a ride. Where were you when he
12 called for that ride?
- 13 A I was at my house in Summerville.
- 14 Q Where did Peter, where was he staying?
- 15 A At that time he lived in a trailer park.
- 16 Q Where did he ask you for a ride from?
- 17 A West Ashley.
- 18 Q Did you know where in West Ashley you were going to
19 be going?
- 20 A No, ma'am.
- 21 Q How did you figure out how to get there to give him a
22 ride?
- 23 A I was on the cell phone with him a couple of times
24 for directions on the way there.
- 25 Q What happened when you got there?

1 A When I got there, he said that me and the female and
2 Amp needed a ride, and I said cool, it's no problem, and
3 they loaded some stuff up in the trunk and then we got in
4 the car and left.

5 Q When you saw the stuff, can you describe to the jury
6 what it was they loaded in your trunk?

7 A Two trash bags.

8 Q Could you tell what was in them or what it looked
9 like was in them?

10 A No, ma'am. They were dark trash bags.

11 Q Okay. And did you see anybody else there besides
12 Peter, Anthony and the girls?

13 A I actually walked inside for a few minutes. There
14 was a crowd of people. I didn't know anybody else.

15 Q Did you see anybody else in another car leave that
16 area?

17 A I can't remember. I'm not sure.

18 Q Do you remember where the items that were loaded into
19 your car, where they came from?

20 A No.

21 Q Okay. You just don't remember that part?

22 A I don't know where they came from.

23 Q Okay.

24 A I mean, I saw what was being put in my automobile.

25 Q Okay. Did those items come from Peter Davies'

1 apartment or from another car or on the road or what?

2 A They came from the apartment that I picked them up
3 from. I'm not sure whose apartment it was.

4 Q When you got in the car who was driving?

5 A Me.

6 Q Where was Anthony Mann sitting?

7 A In the back seat.

8 Q Where was Brownie sitting?

9 A Behind me in the back seat.

10 Q Where was Peter Davies sitting?

11 A In the front seat on the right of me.

12 Q At that point did you know whether or not any of them
13 were armed?

14 A I seen a gun. I'm not sure if it was a gun or not,
15 but it was a weapon in Anthony Mann's pants. It was just
16 a brown handle, but I'm not sure. I mean, more than
17 likely it was a gun, it looked like one, but from the
18 handle --

19 Q Mr. Hudson, what made you think it looked like a gun?

20 A The brown handle.

21 Q What kind of handle?

22 A A brown handle out of his pants, a firearm, weapon,
23 handgun.

24 Q So the handle looked like a weapon?

25 A Yes.

1 Q You didn't see the whole barrel?

2 A No, ma'am, I didn't.

3 Q Where in his pants was it? If you'd stand up and
4 just kind of show the jury how it was.

5 A Right here in his pants.

6 Q Were you alarmed by that?

7 A No.

8 Q Didn't bother you?

9 A No.

10 Q Where was it that you were asked to take Brownie and
11 Peter and Amp?

12 A To a car at Player's Place off Ashley Phosphate.

13 Q Do you know where Planter's Crossing or Crossroads
14 is?

15 A No, ma'am.

16 Q Were you asked to go there at any point?

17 A No, ma'am.

18 Q You just went straight to the Player's Place?

19 A Yes, ma'am.

20 Q What happened when you all got to Player's Place?

21 A They just -- I took the bags out of the trunk and put
22 them in the other vehicle and we left.

23 Q Who left with you?

24 A Nobody.

25 Q Did you have any ideas about where Anthony Mann was

1 going?

2 A No, ma'am.

3 Q Did you see him again?

4 A Yes.

5 Q Tell the jury how that unfolded.

6 A Well, I left Player's, and on my way to go home
7 there's a place by Lisa's house. I saw the vehicle that
8 he got in there so I stopped by to say hey. And I went in
9 there and I was there about five minutes. Pete was in the
10 shower, Brownie was -- she was sitting on the bed I'm
11 pretty sure, and I spoke to Lisa, I talked to Amp for a
12 couple of minutes and I left.

13 Q Do you remember anything about what Anthony Mann had
14 on that night when you saw him, giving him a ride?

15 A Yes.

16 Q Okay. What did he have on?

17 A Black leather coat, black gloves, black pants, black
18 boots, black shirt.

19 Q And when you got to Lisa's house, did he have that
20 same outfit on?

21 A Yes, ma'am.

22 Q And describe to the jury where Lisa and Nicky live.
23 Did you say Nicky also?

24 A I think she might. It was probably another room.
25 More than likely she was there. I'm not sure.

1 She lives off of -- actually I'm not sure of the
2 road, but I know where she lives. She lives in a trailer
3 off of --

4 Q Is it in downtown Charleston?

5 A No, Summerville. Oakbrook area actually. Ladson,
6 Ladson Road.

7 Q So Lisa lived on Ladson Road?

8 A Uh-huh.

9 Q And was that near where you had planned to go that
10 night?

11 A I live off Miles Road. It's probably five miles, six
12 miles from Lisa's house.

13 Q And what happened when you drove by the house, what
14 did you see?

15 A When I stopped?

16 Q Yeah. What made you stop?

17 A I saw the car there. And usually I stop by Lisa's
18 and hang out there sometimes.

19 Q You saw which car?

20 A A white car.

21 Q Did it look like the same car that Amp had driven off
22 from Player's Place?

23 A Yes, ma'am. I'm not sure who drove off from Player's
24 Place.

25 Q Okay. Did it look like the car they were unloading?

- 1 A Yes, ma'am.
- 2 Q Now, when you got there again tell us who was there?
- 3 A Lisa, me, Brownie, Amp, Pete. Like I said, I'm not
4 quite sure if Nicky was there, but she might have been.
- 5 Q And where was Pete during your time there?
- 6 A When I first got there he was getting in the shower.
- 7 Q At any point at that time was there any discussion
8 about a dog at that point?
- 9 A Well, me and Amp argued about it. It was supposed to
10 be at my house for a short period, but it was there a
11 little bit longer than it was supposed to be.
- 12 Q Okay. Tell the jury about that. You were keeping
13 some kind of dog for Amp?
- 14 A A pit bull.
- 15 Q How long had you had Amp's dog?
- 16 A A couple weeks.
- 17 Q Were you glad to have it for a couple of weeks?
- 18 A The first couple of weeks it was all right. After
19 that it got a little messed up for my roommate. It's
20 really her house, and she didn't dig him that much. There
21 was an accident with the dog.
- 22 Q Did he eat something?
- 23 A Yes, he ate Stephanie's bird.
- 24 Q She was not happy about that?
- 25 A No.

1 Q That's your roommate?

2 A It was my roommate, yes, ma'am.

3 Q After leaving Lisa and Nicky's trailer on Ladson
4 Road, where did you go?

5 A Went back to my house.

6 Q When you're at your house, did you have any
7 discussions about the dog with regards to Anthony Mann?

8 A Stephanie was tripping about it, and my buddy Ryan
9 stopped by and Crystal was there, and Ryan was like he
10 wanted to buy the dog, so I called Amp and Pete up on the
11 cell phone and they were like, yeah, we'll sell it.

12 Q And so you talked with Amp on the phone about selling
13 it?

14 A Yes. I made the agreement with him about the dog,
15 and after that I spoke with Peter about it.

16 Q Do you remember what time of night it was that you
17 picked up Amp and Peter and Brownie to start with?

18 A Probably about 6.

19 Q And do you remember about what time it was when you
20 saw them over at Lisa and Nicky's?

21 A Probably about 7 o'clock, a little bit after 7.

22 Q So it was early in the evening?

23 A Yes, ma'am, it was early.

24 Q And when you went home, do you know about how many
25 hours you were at home?

1 A Probably an hour, a couple of hours.

2 Q All right. So your buddy decides he wants to buy
3 Amp's dog; is that right?

4 A Yes.

5 Q How do you all go about arranging for payment for the
6 dog?

7 A Cash, \$100.

8 Q How were you going to get the \$100 to Amp?

9 A I was going to take it to him.

10 Q Where were you going to take it to him?

11 A Tackle shop off of 78.

12 Q What happens at the tackle shop? What kind of place
13 is that?

14 A It's just a local bar.

15 I got on the phone with Pete to find out what
16 was up, and he said that a friend of ours name Beth was
17 going to come out and get the money.

18 Q Do you remember how late in the evening that was?

19 A No, ma'am. It was pretty late in the evening. It's
20 probably about 10 o'clock at night by that time, probably
21 a little bit later.

22 Q When you all were going out during that time period,
23 tell the jury about how your days and nights worked when
24 you were going out during that time period. When you say
25 "late," how late did you stay out?

- 1 A Me?
- 2 Q Yes. Generally.
- 3 A I'd stay out late, 3 or 4 o'clock in the morning.
- 4 Q About 5 o'clock, 6 o'clock?
- 5 A Sometimes. Depends on if the party was big or not,
- 6 you know.
- 7 Q Were you working at that time?
- 8 A Yes, ma'am.
- 9 Q And where were you working during that time?
- 10 A Actually it was on and off for building fence, but it
- 11 wasn't a steady thing.
- 12 Q Now, when you made arrangements to drop off this
- 13 money at the tackle shop?
- 14 A Yes.
- 15 Q Did you see Anthony Mann?
- 16 A No, ma'am.
- 17 Q How did the arrangements get made between you and
- 18 Anthony? Who set that up?
- 19 A I guess I talked to Amp about it, it was his dog. He
- 20 said, Cool, it's done, go ahead and handle it.
- 21 Q Do you know whose phone Anthony was using to talk to
- 22 you?
- 23 A Pete.
- 24 Q And when you went to the tackle shop, who did you
- 25 understand was going to pick up the money?

1 A I didn't really understand. I probably was going to
2 go in, but I didn't go in. You know, Pete said -- I
3 talked to him on the phone about it and he said Beth was
4 going to come out and get the money and he'll see me
5 later.

6 Q Is that what happened?

7 A Yes.

8 MS. WILSON: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 (WHEREUPON, State's Exhibit No. 103 was marked
11 for identification only.)

12 BY MS. WILSON:

13 Q Mr. Hudson, I'll show you State's 103 for
14 identification and ask you to look at that and see if you
15 recognize that.

16 You don't have to read the whole thing, just if
17 you recognize the statement.

18 A Yes.

19 Q At some point were you interviewed by the sheriff's
20 department regarding the night that you picked up Peter
21 and Amp and Brownie?

22 A Williams, Detective Williams.

23 Q He interviewed you?

24 A Yes. It was quite sometime after that night I gave
25 them a ride.

1 Q The statement I believe is dated February 4, 2002.
2 Does that sound right as far as when the statement was
3 given?

4 A Yes, ma'am.

5 Q Okay. And do you recall when you were interviewed by
6 Detective Williams telling him what your cell phone number
7 was?

8 A No, ma'am, I don't.

9 Q Would it refresh your recollection if you saw the
10 statement as to if you gave the number and what it was?

11 A Sure, yes.

12 Yes, ma'am.

13 Q Okay. Do you remember your number after seeing it?
14 Does that help you remember what your number was?

15 A Yes.

16 Q What was your cell phone number?

17 A 437-8797.

18 Q Do you also remember when you gave that statement to
19 Detective Williams telling them what number you used to
20 reach Peter Davies? Do you remember if in that five pages
21 you told them?

22 A I'm not sure.

23 Q Would it refresh your recollection to look at that
24 statement to see if you did?

25 A Sure.

1 Q If you would just look through that, please.

2 A Yes.

3 Q You did tell them what Peter Davies' number was?

4 A Yes.

5 Q What number was that?

6 A 442-6074.

7 Q And is the detective who interviewed you, is he here?

8 A Yes, ma'am.

9 Q Is that him seated at our table?

10 A Yes, ma'am.

11 Q Could it be Detective Walker instead of Williams?

12 You don't remember?

13 A It's been quite sometime.

14 MS. WILSON: Beg the Court's indulgence.

15 BY MS. WILSON:

16 Q Let me ask one more thing.

17 I'm not sure if I asked you, what kind of car
18 were you driving the night that you gave Peter and Amp and
19 Brownie a ride?

20 A A '93 Honda Accord, tan, brown color.

21 Q And the last place you saw Brownie was on Ladson
22 Road?

23 A Lisa O'Connell's house.

24 Q Also when you talked with police, you told them what
25 the black female was wearing, do you recall that?

1 A I remember at that time I remembered and I told them
2 what I saw. At this time I don't.

3 Q Okay. Would it refresh your recollection to see what
4 you told them as far as what she was wearing?

5 A Sure.

6 Q Do you remember now?

7 A Yes.

8 Q What was she wearing?

9 A A pair of jeans and a dark shirt.

10 Q What kind of shirt?

11 A I'm not sure.

12 Q Did you tell them it was a tee shirt?

13 A Yes.

14 MS. WILSON: Your Honor, at this time we offer
15 State's Exhibit 104, the telephone records for the phone
16 number 442-6074, I believe without objection.

17 MR. BUTLER: That's fine.

18 THE COURT: All right. It's admitted without
19 objection.

20 (WHEREUPON, State's Exhibit No. 104 was marked
21 for identification and received into evidence.)

22 MS. WILSON: That's all the questions I have for
23 this witness, your Honor.

24 MR. BUTLER: May it please the Court.

25 THE COURT: Yes, sir.

CROSS-EXAMINATION

1
2 BY MR. BUTLER:

3 Q Terrance, this thing that you say you saw in
4 Anthony's waist band, you're not sure what it was exactly?

5 A I'm sure.

6 Q Did you not testify it looked like a weapon, you
7 thought it was a weapon, it might have been a weapon?

8 A That's what I said.

9 Q You said that it looked wooden and brown?

10 A Yes.

11 Q And if it was the handle to a weapon and it was
12 wooden and brown, kind of like an old timey gun maybe?

13 A Uh-huh.

14 Q Okay. So it wouldn't be a 9-millimeter firearm,
15 would it?

16 A No, it wouldn't. They didn't make it like that.

17 Q And you remember what Anthony was wearing both times
18 you saw him that night, you testified earlier, right?

19 A Yes.

20 Q And he wasn't wearing a hat?

21 A No.

22 Q And he was not wearing a knit cap?

23 A No.

24 Q Okay. Anthony didn't wear knit caps, did he?

25 A No.

1 THE COURT: Could you sit up closer to that
2 mike, please, sir.

3 BY MR. BUTLER:

4 Q You know Peter Davies really well?

5 A Yes.

6 Q You know him for a long time?

7 A Yes.

8 Q He's your cousin?

9 A No.

10 Q He's not your cousin?

11 A No.

12 Q You just know him for a long -- people think you're
13 related?

14 A No. He just says short term like, hey, cousin,
15 what's up, how you doing.

16 Q And you're no longer tight with him; is that right?

17 A You mean friends?

18 Q Right.

19 A No.

20 Q Why is that?

21 A We were actually kind of arguing when he called me
22 for a favor, and we were supposed to talk about the
23 argument that we were in or our disagreement or something.

24 Q He stole from you?

25 A Yes, he did.

1 MR. BUTLER: Beg the Court's indulgence one
2 moment, please.

3 May we approach?

4 THE COURT: Yes.

5 (A bench conference was held with the judge and
6 attorneys in the presence of the jury but out of the
7 hearing of the jury.)

8 MR. BUTLER: Beg the Court's indulgence one
9 moment.

10 That's all I have. Thank you.

11 REDIRECT EXAMINATION

12 BY MS. WILSON:

13 Q Mr. Hudson, did you get a subpoena to be here today?

14 A Uh-huh, yes. Yes, ma'am.

15 Q You didn't want to be here?

16 A No.

17 Q And you mentioned that you and Peter don't get along
18 anymore?

19 A No, I don't like him.

20 Q You're not happy he stole from you?

21 A No.

22 MS. WILSON: That's all I have, your Honor. We
23 would ask this witness remain under subpoena.

24 THE COURT: All right. You will remain under
25 subpoena, sir. You may step down.

1 All right. Ladies and gentlemen, we'll stop at
2 this point because I have to take up certain matters.
3 Please do not discuss this case in any way whatsoever. If
4 you'll report tomorrow at 9:00 a.m.

5 Again, have a good night. See you tomorrow at
6 9. Give your pads to the bailiff on the way out.

7 (The jury left open court at approximately 5:08
8 p.m.)

9 THE COURT: Thank you. Please be seated.

10 All right. I may just momentarily go over this
11 issue about the investigative file. If you all can just
12 hold on, please. I have a couple of questions. If I
13 don't resolve it now, I'll have to resolve it.

14 Are you saying that in light of what you said a
15 minute ago, it just dawned on me if what you just
16 indicated was correct, did I just go through this in
17 camera review for not?

18 MR. BUTLER: We don't need to resolve that issue
19 I guess if he doesn't testify, so until he decides if he's
20 going to testify I guess we don't need to decide it. I'm
21 sceptical as to whether or not he's going to testify, but
22 if he's not, we don't need to resolve it.

23 MS. WILSON: I don't know whether you needed to
24 go through it or not. If it's Brady, then I suppose they
25 need it regardless of whether he testifies. I do think

1 the Court should resolve the issue, that's the bottom
2 line.

3 THE COURT: What is that?

4 MS. WILSON: It's our view, what limited view we
5 have, based on our limited involvement is that the issue
6 should be resolved one way or the other by the Court.

7 THE COURT: If you'll step back, please.

8 (A bench conference was held with the judge and
9 attorneys.)

10 (The proceedings were concluded for the day to
11 be reconvened on September 17, 2003.)

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CERTIFICATE OF REPORTER

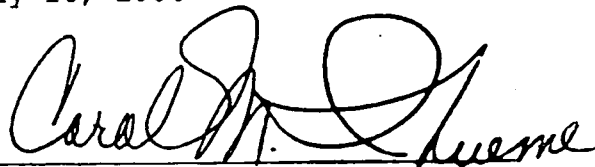
STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

I, CAROL M. THUEME, RPR, Official Court Reporter for the 8th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 16th day of September, 2003.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

May 16, 2004



CAROL M. THUEME, RPR, Court Reporter

My Commission Expires: 06-04-2007

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSION
COUNTY OF CHARLESTON) 2002-GS-10-4413
) 2002-GS-10-4414
) 2002-GS-10-4415

STATE OF SOUTH CAROLINA)
)
) vs.) TRANSCRIPT OF RECORD
)) VOLUME 3
ANTHONY L. MANN)
 DEFENDANT)

September 17, 2003
Charleston, South Carolina

B E F O R E:

THE HONORABLE DANIEL F. PIEPER, JUDGE; and a jury.

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

SCARLETT WILSON, CHIEF DEPUTY SOLICITOR
JENNIFER BURNEY, ASSISTANT SOLICITOR
Attorneys for the State

JENNIFER KNEECE SHEALY, PUBLIC DEFENDER
BEATTY BUTLER, ESQ.
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CAROL M. THUEME
Official Court Reporter

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3B	Casing from porch		479
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5	First Cellular pager		479
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106	Bag with notepad	474	479
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1 THE COURT: Are you ready?

2 MS. SHEALY: Just one moment, please.

3 MS. WILSON: Your Honor, it's my understanding
4 that the defendant intends to introduce evidence seized in
5 the search at 36 Magnolia, which is where Dante Tobias was
6 killed. I don't know which particular items they intend
7 on introducing, and we've certainly worked out agreements
8 as to chain and things like that, so I'm not challenging
9 that these things were found there.

10 What I am challenging, however, is the
11 introduction of items I assume that they say were written
12 by Dante Tobias. I think they're hearsay. And even if
13 they weren't hearsay, I don't think that they are
14 relevant, and we would object to testimony regarding those
15 items being elicited.

16 THE COURT: Yes, sir.

17 MR. BUTLER: Beg the Court's indulgence, one
18 moment, please.

19 May it please the Court.

20 THE COURT: Yes, sir.

21 MR. BUTLER: The items that we seek to introduce
22 that were taken from Mr. Tobias' residence, in our
23 opinion, lay out his business plan for his business,
24 Silhouettes, and lay out prices and percentages for girls
25 that would be working for him, including Beverly Blake.

1 There's a written memo in his -- a notepad that says,
2 Beverly gets a certain percentage of owner's gross from
3 all successful calls. She takes ten employees at three
4 calls a day for three days. He's doing math to figure out
5 how much money this project will make. And at another
6 point he's got a notation that Amber will make \$180 an
7 hour and \$100 per head.

8 It's our contention that the documents taken
9 from his house lay out his business, that is an escort
10 business, and that is in response to testimony elicited by
11 the State over our strenuous objection from Michael Crumb
12 that when the defendant supposedly was holding a gun to
13 Dante Tobias' head and saying, Why are you prostituting
14 Brownie? Dante Tobias responded, She's lying. We
15 objected to that as hearsay, and it came in over our
16 objection.

17 The obvious indication of the testimony is that,
18 I wasn't prostituting Brownie, and we think this evidence
19 is in response to that. And under Rule 806, When a
20 hearsay statement or an exception to a hearsay statement
21 comes into evidence, anything that could be asked of that
22 declarant or that person or witness, in this case Tobias,
23 if Tobias testified and said -- if Tobias were able to
24 testify, She's lying, I wasn't prostituting her, we would
25 be able to impeach him with these documents found at this

1 house.

2 THE COURT: Are those his documents?

3 MR. BUTLER: They were found in his house.

4 THE COURT: Do you have someone who can identify
5 his handwriting?

6 MR. BUTLER: Beg the Court's indulgence one
7 moment.

8 THE COURT: I don't think that just because
9 they're found at his house that means they're his
10 documents.

11 MR. BUTLER: Well, we know that there is a
12 business license in evidence that shows that his business
13 will be Silhouettes. The name Silhouettes is on the
14 document. His name is on the business license.

15 MS. WILSON: There was also testimony that
16 Anthony Floyd was going to be a partner in that business.

17 THE COURT: I was about to ask you if there were
18 other people involved in that business.

19 MR. BUTLER: Well, Anthony Floyd is part of the
20 business.

21 Beg the Court's indulgence.

22 Anthony Floyd is part of that business, as well,
23 but --

24 THE COURT: Could you have asked him? Could we
25 avoid all that?

1 MR. BUTLER: I think we did. I think he said it
2 was not an escort service, it was an adult
3 entertainment -- not adult entertainment. It is not an
4 escort service. It was for birthdays and celebrations.

5 THE COURT: Couldn't you have asked him about
6 those notes? That's what I was asking.

7 MR. BUTLER: We did not have them at that time.
8 That's why we had all the evidence brought up here because
9 we suspected we had seen it, but we didn't have it in our
10 stuff.

11 THE COURT: Can we recall him? Can he identify
12 this?

13 MR. BUTLER: Well, I don't know if he can or
14 not. Our position is we don't have to enter it through
15 him. This is found in the house that they shared. It
16 either goes to impeach Tobias' hearsay statement that came
17 in through Michael Crumb or impeaches Floyd; it doesn't
18 matter to us which one. I think these bear out that
19 they're his notes.

20 And there's another method that we could do
21 this. We could look at -- which would just require
22 removing some more documents from the house. It's a
23 personal journal of Tobias' that shows his handwriting.

24 Beg the Court's indulgence just one moment.

25 MS. WILSON: Judge, while they're looking at

1 that, I just take issue with the statement that they
2 didn't have these things. Certainly they have been
3 available for months, and I believe that they even made
4 copies of these things when they asked that all the
5 evidence be brought over. When we marked the evidence to
6 start with, we thought we had everything both sides
7 needed. If they asked that it be brought over, we brought
8 it over.

9 MR. BUTLER: I'm not saying we didn't have
10 access to it. I saw these documents in the sheriff's
11 department's evidence room months and months ago. We made
12 copies of everything. For some reason I couldn't locate
13 these particular things, but I knew that they were there.
14 That's why I asked they bring them. I didn't say they
15 didn't give them to us.

16 THE COURT: I still wonder if you have anyone
17 who can identify those are his notes.

18 MR. BUTLER: I think the fact that it comes from
19 his house makes it admissible. The fact that someone else
20 may have written them would go to the weight of the
21 evidence, not its admissibility.

22 Silhouettes -- the testimony has been that
23 Silhouettes was his business. There's been a
24 characterization of that business as one thing; there are
25 documents to show that the business was something beyond

1 that. And whether he wrote it or not is, in large part,
2 irrelevant. It's in his house. It lays out the --

3 THE COURT: But if you're using it to try to
4 establish that fact, they don't have the ability to verify
5 the content of the notes that you seek to introduce
6 without knowing who wrote those notes.

7 MR. BUTLER: I think Dante Tobias wrote them. I
8 think the writing is irrelevant.

9 Let's assume that he didn't write them. Let's
10 assume that all we know is that somebody that lives in
11 that house wrote them.

12 THE COURT: Do we know that?

13 MR. BUTLER: They're found in the house.

14 THE COURT: And if someone comes into my house
15 and leaves something, I'm responsible for it?

16 MR. BUTLER: Well, who else -- what other
17 testimony is there that anybody beyond Dante Tobias and
18 Anthony Floyd are running a business called Silhouettes?
19 I mean, the only testimony we have is that Tobias and
20 Floyd had a business called Silhouettes. The title of
21 these documents is --

22 THE COURT: That's what I say, it might be very
23 appropriate to use Mr. Floyd to bring that information in.

24 MR. BUTLER: Beg the Court's indulgence one
25 moment.