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S.C. Supreme Court

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

Anthony Mann, 242498,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

VOLUME III OF IV

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1 if she was in a cool environment and changes were slowed
2 down, including the change for the vitreous. And then
3 when we did on the autopsy on the 14th, of course she
4 had been in the refrigerator for a while, too, which
5 definitely would have slowed down the changes.

6 Q So that's really what I'm getting at. If you back
7 out to the 14th when you did the autopsy to the top end
8 of this estimate, we're at Tuesday, January 8th. And my
9 question to you is, do you have an opinion as to whether
10 Beverly Blake could have been killed on Monday, January
11 7th? Could she have?

12 MS. SHEALY: I would object to that question,
13 your Honor. Could we approach?

14 THE COURT: Yes.

15 (A bench conference was held with the judge and
16 attorneys in the presence of the jury but out of the
17 hearing of the jury.)

18 BY MS. WILSON:

19 Q Again, Dr. Presnell, using the dates, you performed
20 the autopsy on January 14th, and if you backed out six
21 days from the autopsy to January 8th, based on your
22 looking at the formulas, running the formulas, the rigor,
23 the livor, and the condition of the body, could Ms. Blake
24 have died on Monday, January 7th?

25 A Yes, she could have.

1 Q Could she have died on Sunday, January 6th?

2 A Possibly.

3 MS. WILSON: Beg the Court's indulgence.

4 BY MS. WILSON:

5 Q Just one other issue. If you could just look at,
6 these have been already been introduced as State's 13, 11,
7 ten, nine, eight and 12. Can you tell the jury what those
8 are?

9 A These appear to be projectiles that were recovered
10 from the decedent at the time of autopsy. They have our
11 autopsy label on it and my handwriting as far as labeling
12 which bullet and with which number.

13 Q And you collected those projectiles from the autopsy
14 of Ms. Blake?

15 A Yes.

16 Q And why is it that you collect those?

17 A Excuse me?

18 Q Why is it that you collect those?

19 A They like to use them in ballistics as evidence that
20 we transfer over to crime scene.

21 MS. WILSON: Thank you, your Honor. I don't
22 have any further questions.

23 MS. SHEALY: May it please the Court.

24 THE COURT: Yes, ma'am.

25 CROSS-EXAMINATION

1 BY MS. SHEALY:

2 Q Dr. Presnell, as I understand your testimony then,
3 methods to prove PMI are approximations at best; is that
4 correct?

5 A At least, yes.

6 Q And I think in the earlier hearing you had testified
7 that they're fraught with difficulty?

8 A Yes, they are.

9 Q Now, you explained that this is a coroner state I
10 think is how you referred to it?

11 A Uh-huh. We have a coroner system except for
12 Greenville County.

13 Q Now, did you have the opportunity to go out to the
14 scene on the night that Beverly Blake's body was found?

15 A No, we don't -- the forensic pathologists do not
16 respond to scenes.

17 Q Was that a different practice sometime in the past
18 within your office, that you all would in fact go to the
19 scene?

20 A Well, previously Charleston County used to be a
21 medical examiner/coroner system where the forensic
22 pathologist and the coroner responded together, but that
23 was disbanded and now there's the coroner system only.

24 Q Would you agree that you would probably have a better
25 understanding of exactly what the conditions of the body

1 were if you had been able to go out to scene on that
2 evening?

3 A I was thinking about this, and yes, I know there was
4 some questions about certain things that appeared at the
5 scene, and all certainly it's a lot easier to discuss
6 things if you're there in person than trying to assess
7 them later, and plus I would have been able to assess
8 rigor changes as well.

9 Now, one thing, though, about going to the
10 scenes, there definitely can be mistakes made in the dark
11 as far as assessment, and there is a lot of thinking out
12 loud that goes on. Ms. Beverly Blake was dark-skinned, so
13 I don't know if they would have been able to see where the
14 livor was in that setting or not, but certainly, yes,
15 certainly if I had gone out to the scene I would have had
16 more information earlier anyhow.

17 Q Because the information that you received regarding
18 the conditions of the scene and other information in the
19 case came from either the coroner's office or law
20 enforcement; is that correct?

21 A Yes, correct.

22 Q So part of your opinion is based on information that
23 you received from law enforcement and from the coroner's
24 office; is that fair to say?

25 A Actually the three main factors I'm looking at now

1 are the factors that I obtained from autopsy. As far as
2 the conditions at the scene, I guess there was
3 verbal-related information given to me about the canopy of
4 trees and the protected environment, and then I did get a
5 list of temperatures of the previous week from the autopsy
6 to look at. So there's information from a number of
7 different sources.

8 The three things I was using from autopsy was
9 the information that I got that morning that I did the
10 autopsy that I obtained myself.

11 Q You would agree, though, would you not, that your
12 opinion and your report certainly does reference the scene
13 in which you were told about the shadedness of that area?

14 A Yes, exactly, and then just as important as the rest
15 of the factors that we're looking at.

16 Q You have then as you told us were never able to go
17 out during the day to see whether or not in fact it was
18 shaded because you said that evening it was dark when the
19 officers were out there; is that correct?

20 A That's correct.

21 Q Now, regarding Dante Tobias' autopsy, as a part of
22 the autopsy procedure, does someone take off all of the
23 clothes off of the deceased and preserve those?

24 A Yes. Although in Dante's case, he arrived to us
25 unclothed.

1 Q He was already completely undressed?

2 A Right, because that's most likely from EMS
3 transporting him.

4 Q Now, your husband works for the sheriff's department;
5 is that correct?

6 A Yes, he does.

7 Q And part of his role is to come to the site of the
8 autopsy and gain materials to take back to log into the
9 evidence room; is that correct?

10 A Yes.

11 Q Do you recall as it related to Dante Tobias that
12 there was a holster that was taken back?

13 A I have to see. I have a list of things that I
14 transferred directly and one of them was described as a
15 black holster.

16 Q Okay. Now, also there was blood taken from Dante
17 Tobias; is that correct?

18 A Yes.

19 Q Was there hair taken from Dante Tobias?

20 A Yes, there was.

21 Q Would that have been both pubic hair and head hair?

22 A No, I think it was just -- well, I know. It's just
23 pulled head hair.

24 Q And at the time of autopsy, do you take these samples
25 so that if they need to be compared with something else

1 and sent to SLED they have been preserved properly; is
2 that correct?

3 A So that the sample exists and they have a standard to
4 compare unknown samples to.

5 Q Now, Ms. Wilson asked you about the toxicology report
6 on Ms. Blake. You were also asked for one of Mr. Tobias;
7 is that correct?

8 A Yes, we did.

9 Q And the results of the toxicology on Mr. Tobias
10 reflected that he had had some cocaine in his system; is
11 that correct?

12 A He has a thousand nanograms or milliliter of
13 benzoylecgonine, which is a cocaine metabolite, meaning
14 that he had been exposed to cocaine in the past.

15 Q And also marijuana; is that correct?

16 A And they did a cannabinoid screen, which is a
17 presumptive screen, and in this case it did not do
18 confirmatory testing, but the screen was positive for THC.

19 Q Which is marijuana?

20 A Marijuana, correct.

21 Q And also alcohol, he had had some alcohol in his
22 system that evening?

23 A Yes.

24 And looking at this a little bit closer, at the
25 toxicology report, because that came in subsequent to the

1 final autopsy report being signed. What they're testing
2 is urine. So it's not reflecting what's actually in the
3 blood system at the time of his death, but in the urine
4 there is alcohol, cocaine metabolite, and a positive
5 screen for marijuana.

6 Q Okay. Now, in asking you about Ms. Blake, I think
7 Ms. Wilson asked you this, but you also took hair clipping
8 from her and then the samples from her mouth and vaginal
9 area and rectal area; is that correct?

10 A Yes.

11 Q And you indicated to us that you looked under the
12 microscope at the swabs that you had done that day; is
13 that correct?

14 A Yes.

15 Q But then they are taken to SLED at some point; is
16 that correct?

17 A We look at the slides that were prepared from the
18 swabs, and then the swabs themselves after we roll them
19 onto the swab are air dried, and we transfer them over and
20 then they get taken to SLED.

21 Q And I think your testimony was that when you looked
22 at the swabs you did not see sperm; is that correct?

23 A We didn't see any intact sperm.

24 Q That does not mean that semen was not present,
25 however; is that correct?

1 A No, that's not. Sperm could not be generated, but
2 there could still be evidence of other substances that are
3 in semen present.

4 Q Now, as I understand your testimony regarding the
5 washer woman area, that was just at the ankle area near
6 the shoes; is that correct?

7 A Yes. I'm sorry about that. In looking at the last
8 line of the external exam of the autopsy report, we have
9 the washer woman change distal to the ankles, which means
10 the feet, so, like I said, in the sock area is where the
11 changes are.

12 Q And also when you initially saw her body, her pants
13 were unzipped?

14 A Yes, which is why we had done the swabs.

15 Q Looking to see whether or not there had a sexual
16 assault; is that fair to say?

17 A Yes.

18 Q Okay. And you also described that her panties were
19 rolled up; is that correct?

20 A Uh-huh.

21 Q Now, what does the term slipping of the skin mean?

22 A As the body starts to decompose, not only does it
23 start to get gaseous but the epidermis and the dermis,
24 which is two layers of skin, will start to separate, and
25 you can actually get slipping of the skin or where the

1 epidermis just kind of slides away from the underlying
2 dermis. So the upper superficial layer of skin will slide
3 away, and that is part of the decomposition process, and
4 it's called skin slipping.

5 Q When you saw Ms. Blake, you did not see any evidence
6 of skin slipping; is that correct?

7 A No, she was very well preserved.

8 Q And I recognize all of this is distasteful, but let
9 me ask you this as well. When you're looking at a
10 deceased body, do you also look to determine whether or
11 not there's been any animal activity with it?

12 A Yes. We'll check and we do our best to document any
13 and all types of changes.

14 Q And there was no evidence of any type of animal
15 activity with her body?

16 A Well, it just depends if you qualify fly eggs as
17 animals. She did have some fly eggs in her eyelid area
18 when we got her, but that is the only animal activity we
19 recorded.

20 Q I was going to ask you about the fly eggs. Could you
21 explain to the jury why it is that's significant, to look
22 to see whether or not there's any type of fly eggs in the
23 eye area?

24 A Well, again, this kind of goes along with trying to
25 substantiate postmortem interval.

1 After death, flies, and blow flies are the most
2 common, will deposit eggs, and they like to do them in
3 kind of moist, soft areas, the eyes being a particularly
4 favorite place, but it usually develops they deposit the
5 eggs as soon as they can during the daylight. They don't
6 like to do it during nighttime. Anyhow, the fly eggs will
7 grow and they'll hatch and they become maggots and the
8 process continues.

9 Now, there is a life cycle that is associated
10 with that and there is general estimates, that it will
11 take about a day for the eggs to hatch, about a week to
12 ten days for the maggots to finish their eating process,
13 then another week to ten days for the maggots to pupate
14 after that to hatch into flies.

15 Again, depending on the species of the type of
16 flies, they're also hugely dependent on the weather. Most
17 flies won't lay eggs less than 50 to 60 degrees Farenheit.
18 So in a temperature less than that you wouldn't expect a
19 whole lot of fly activity to develop.

20 In her case, all she had were fly eggs, so she
21 was still at the beginning process of any type of fly or
22 maggot activity.

23 Q And would you agree with me that in evaluating a
24 deceased's body that looking at slipping of the skin or
25 animal activity or insect activity, all of these are also

1 tools that you use in assessing the condition of the body;
2 is that fair to say?

3 A Right. We use as much information as we can possibly
4 obtain.

5 Q And along those lines, do you also look for any
6 marbling?

7 A Uh-huh. Yes, marbling is -- it's kind of a whole
8 continuum. It's not just, you know, little windows, but
9 as the body starts to decompose, then the bacteria in the
10 intestinal area starts to proliferate because your immune
11 system is not working anymore and they start to spread.
12 Now, they make gas which start to cause the body to bloat.
13 They also spread out along the vasculature. And as they
14 follow the vessels, they come out with the red cell
15 breakdown product and cause kind of a purple coloration
16 along the vessles and it looks like a purple fern on
17 somebody's skin and that's called marbling. And we didn't
18 appreciate any of that in her either.

19 Q You did not see any in her?

20 A No.

21 Q And you just mentioned the bloating as well. There
22 was no bloating?

23 A No. The only -- as far along the decomposition
24 process that she had gotten was that her rigor was almost
25 gone and her livor was fixed.

1 Q Okay. Now, you mentioned to us the fly eggs that
2 were found in her eyes. Did you make an effort to extract
3 those so they could be looked at further?

4 A No, we did not save those.

5 Q Now, you are not an entomologist; is that correct?

6 A No, I'm not.

7 Q Would you describe for the jury what an entomologist
8 is?

9 A An entomologist would be the person that's involved
10 in the study of bugs. And I'm sure there are
11 subspecialties in the entomology area as well, but
12 certainly that are groups that study insect activity after
13 death.

14 Q And did you have any contact with Ed Gardner in this
15 case?

16 A I spoke with Ed Gardner, who belonged to Charleston
17 City Police at the time, discussing temperature changes.
18 I think he's the one that got me the temperature listings
19 for the previous week.

20 Q And did you and he have a discussion about trying to
21 find out more about the insect activity?

22 A Yes. What we ended up doing is kind of having a
23 verbal consultation over the phone with a group that I
24 think came from Iowa or Nebraska that's a big entomology
25 group.

1 Q And again, it would have been important to have
2 collected the fly eggs for anyone to give you much of an
3 opinion on how long the fly eggs had been?

4 A Right. Well, what an entomologist will do is -- yes,
5 it would have been, to get the most information, better to
6 have collected the fly eggs.

7 What an entomologist is going to do is -- what
8 they need is a preserved sample like at the scene or at
9 autopsy so that you can stop the bug in its growth at that
10 point so the entomologist is going to know, you know, how
11 far along the bug is at the time of discovery. And then
12 you're going to have some live specimens that need to be
13 shipped so they can actually raise them so they can
14 identify the species. And then by doing that, they will
15 put together what are the most likely characteristics for
16 this particular insect, when will it lay eggs, you know,
17 how long does it take for them to hatch for this
18 particular species. So that's what they would have done
19 had the eggs been collected.

20 Q Okay. So as I understand your testimony, I think you
21 had mentioned on direct examination that initially you
22 didn't think the PMI was important in this case, is that
23 correct, or an issue?

24 A Right. The PMI when she came to autopsy wasn't the
25 issue. The gunshot wounds were.

1 Q And when you first saw her body, you've explained to
2 us -- was there any decomposition?

3 A The extent of her decomposition was that the rigor
4 was leaving and the lividity, the livor was fixed, and
5 then she had the fly eggs, and other than that, she looked
6 really well preserved.

7 Q And you may have mentioned this in connection with
8 one of the other things I asked whether you looked at, but
9 she also did not have a green abdomen; is that correct?
10 Is that the phrase that you all use?

11 A A green discoloration to the abdomen, it's part of
12 that process that I was talking about that the bacteria
13 will start to proliferate and they do it in the
14 intestines, so their breakdown products start to turn the
15 abdomen green first before the rest of the body starts to
16 bloat and turn green as well. And no, she doesn't have
17 any of those further changes.

18 Q Now, explain this to us if you would. You've
19 mentioned that you had contact with the coroner and also
20 with law enforcement regarding Ms. Blake; is that correct?

21 A Yes, we would have to.

22 Q And is it also fair to say that law enforcement began
23 calling you and asking you what your opinion as to the
24 PMI?

25 A Yes, they did.

1 A No. We have a resident, a fellow that trains under
2 us, and they will take calls at night. So this is one of
3 our medical examiner residents who had this form and when
4 they take the call they jot down information, the
5 coroner's information.

6 Q That was in fact generated by your office; is that
7 correct?

8 A Yes.

9 Q And based on the information that you receive from
10 the coroner's office, it gives you information from the
11 scene that you use in making decisions regarding the case;
12 is that correct?

13 A It gives us and helps guide or helps look for things
14 in particular, yes.

15 MS. SHEALY: Your Honor, I would offer it into
16 evidence.

17 THE COURT: Any objection?

18 MS. WILSON: No objection.

19 THE COURT: All right. In evidence without
20 objection.

21 MS. SHEALY: Let me get that marked. That is
22 Defendant's Exhibit 29.

23 (WHEREUPON, Defendant's Exhibit No. 29 was
24 marked for identification and received into
25 evidence.)

1 A Usually it will start to show up in about two hours,
2 so you'll get some mild stiffening. Then it's maximum at
3 about 12 hours, and then it's hard to actually move the
4 body and the body is going to stay in that position, stay
5 like that 12 hours, and then it starts to give way over
6 the next 12, so that's the 36-hour process in temperate
7 conditions.

8 Q And once the rigor has been broken, does that affect
9 how the rigor then appears once it's been broken? Do you
10 understand my question?

11 A Yeah. If the body is stiff and you unbreak it, if
12 you move the arm, say it's stiff like this and you move
13 the arm like that, then you've basically broken some of
14 that rigor. If the rigor is not fully at the end of its
15 cycle, it can reform in a new position, but towards the
16 end of the cycle the muscles are decomposing so it's not
17 going to really reform at that time.

18 Q Now, we had talked about how it was odd that she look
19 well preserved yet the witness statement has said that she
20 had been killed back on the 8th. You then in an effort to
21 gain some information from your colleagues entered it on
22 your list serve your work; is that correct?

23 A Yes. We have a medical examiner list serve and
24 sometimes you can put in -- if you want to you can put in
25 a scenario to try and get some feedback.

1 Q Do you do that on all your autopsies?

2 A Oh, definitely not. It's just ones that are creating
3 questions.

4 Q So would you agree then that it was because this case
5 was unusual you felt like you wanted to get feedback from
6 your colleagues; is that fair to say?

7 A Yes, I mean, because a number of people were not, did
8 not think that the body could have possibly been down for
9 that long.

10 MS. SHEALY: Okay. Now, I beg the Court's
11 indulgence just one moment.

12 BY MS. SHEALY:

13 Q Okay. And in assisting you in evaluating the
14 situation or getting some information from your
15 colleagues, did you explain to them that law enforcement
16 didn't think she had been dead over one or two hours, I
17 mean one or two days?

18 A I think that the coroner had thought that. I can't
19 remember exactly, but you had said they had difficulty
20 believing that.

21 Q Let me ask you in this way. There was some confusion
22 about what had occurred, is that fair to say, not only
23 with you but also law enforcement and the coroner's
24 office; is that fair?

25 A There was a question as to how long the postmortem

1 interval was, yes.

2 Q Well, Dr. Presnell, I'm asking you, did law
3 enforcement -- is it fair to say they were hoping that
4 your results would match what the witness statement said?

5 A I'm sure they did.

6 Q They made that clear to you, did they not, that they
7 had a witness saying this?

8 A They wanted to know if my estimate or my assessment
9 of postmortem interval was supportive of their witness
10 statements or not.

11 Q But there was some anxiety?

12 A They were concerned about it, yes.

13 Q And do you recall this case getting a lot of
14 publicity?

15 A You mean like in the newspaper?

16 Q Yes, and television.

17 A I don't because I don't really see it that much.

18 Q Okay. So you don't recall that being an issue with
19 their anxiety regarding getting a time back?

20 A Now, I did hear some material on the radio, and yes,
21 that was part of their anxiety.

22 Q And what do you recall they're being anxious about?

23 A The concern was that a missing report had been or a
24 plea I guess on radio for her whereabouts because she had
25 seen something might have led to a subsequent, you know,

1 killing versus a killing at a previous time prior to the
2 announcement on the radio that they were looking for her.

3 Q Okay. So, in other words, it was expressed to you
4 that they were catching some heat that maybe their putting
5 her name out had caused her to get killed; is that
6 correct?

7 A I can't remember. I'm not sure if it's the coroner
8 that expressed that or not. Most of my discussions with
9 law enforcement were directed about, you know, could it be
10 this long an interval or not.

11 And actually a lot of the initial conversation
12 with postmortem interval in this case back then came with
13 Ashley Pennington, who at the time was the public
14 defender, and through him and his sergeant as to why we
15 went further with the vitreous testing.

16 Q Okay. Let me ask you this question. Sergeant Tittle
17 was also calling you about this; is that correct?

18 A Sergeant Tittle was someone that I remember speaking
19 about trying to help substantiate postmortem interval.

20 Q Now, you had told us that as part of the process that
21 you collect items of clothing at the time of autopsy; is
22 that correct?

23 A We catalogue them. We have to take them off to
24 autopsy and then we catalogue them, and in homicide cases
25 in particular, we transfer them to the crime scene unit.

1 Q And in this case she had had layers of clothing on;
2 is that correct?

3 A Yes, she did.

4 Q Do you recall how many layers of tops she had on?

5 A Let's see. A black tee shirt, green sweatshirt, gray
6 hooded sweatshirt. So at least three.

7 Q It appeared that she was dressed to keep warm; is
8 that correct?

9 A Yes.

10 Q Now, would having that much clothing on also affect
11 the temperature of her body at all while --

12 A That much clothing might slow down the rate of
13 cooling in normal conditions. Now, if it gets down way,
14 way cold, I don't know how much protection it will offer.
15 But I also interpreted the amount of, you know, she had
16 the hood over her head, and that is also protective
17 against the animal activity.

18 Q Okay. Now, regarding her face, did she have some dry
19 blood on her face that you call?

20 A I don't remember.

21 Q Okay.

22 A I mean, a lot of times when we receive a person at
23 autopsy and they send the body bag and things have been
24 smeared and all, so as far as we'll document if there
25 looks like some type of pattern, but other than that.

1 Q You don't recall that?

2 A No.

3 Q Now, I'm asking you now about the vitreous. You
4 collect that then from the eye area; is what you explained
5 to us?

6 A Right, from the inner eye.

7 Q And you minimized for us the value of it. I mean,
8 certainly solely you don't make a decision based on the
9 vitreous fluid results; is that correct?

10 A That's correct.

11 Q And I think you also told you that amongst
12 professionals, there is great debate as to which formula
13 you should use; is that correct?

14 A Yes. It appears that more literature, that
15 literature needs to come out that might improve upon the
16 formula.

17 Q I think you testified that no one is in agreement as
18 to which formula to use?

19 A Well, if I did, then that's what I said.

20 Q You said --

21 A I don't think there's ever been done any consensus on
22 which formula is the best. I mean, it appears that new
23 literature seems to be coming out every year on new and
24 improved techniques.

25 Q And you told us about one formula that you've just

1 recently plugged in and it gave you a longer time period?

2 A Well, that was -- the longer time period was the old
3 formula using old analytical techniques. The newer
4 techniques, since they're more sensitive, you almost
5 expect it to make the old formula results come in a longer
6 time.

7 Q Okay. Let me ask you this. The older formula put
8 the time of death at a greater distance away from autopsy;
9 is that correct?

10 A Yes, it did.

11 Q The newer formula that you used made it more recent
12 to the time of autopsy; is that correct?

13 A Yes, four to six days, yes.

14 Q And you're telling us that they are constantly
15 improving the formula to make it more sensitive?

16 A Constantly trying to improve and account for
17 variables, and in a scientific setting, control for
18 temperature and all. It doesn't exactly reproduce what
19 happens out in a real environment, so they're trying to
20 take into account some of that and come out with new
21 publications with different equations to use with our
22 formulas.

23 Q Let me ask you this then. When you were evaluating
24 the vitreous fluid and plugging it into a formula, it's
25 fair to say, is it not, that you were not attempting to

1 pinpoint the time of death? It was not going to give you
2 that answer; is that correct?

3 A That's correct.

4 Q Okay. And it's not even exact enough to be able to
5 tell you between two days what day it may have been; is
6 that correct?

7 A That's correct.

8 Q And you continue to tell us about plus or minus.
9 You're just talking about a range purely from the vitreous
10 fluid; is that fair to say?

11 A I'm talking about a range of the vitreous fluids
12 indicating even that has to be taken in context with the
13 rest of the entire scene and the entire autopsy findings.

14 Q And in order to do this vitreous fluid formula, you
15 had to first have the fluid sent out to come up with that
16 level; is that correct?

17 A Yes. At the time of this autopsy we would transfer
18 vitreous fluid to a global toxicologist who would perform
19 the analysis.

20 Q And that local toxicologist was Roger Russell?

21 A Yes, that is Roger Russell.

22 Q And you did not have a very pleasant experience with
23 that experience; is that correct?

24 A Well, yes, Dr. Russell is sometimes hard for me to
25 communicate with.

1 MS. WILSON: Your Honor, I object to relevance
2 to all this.

3 MS. SHEALY: I can certainly develop that, your
4 Honor.

5 THE COURT: Go ahead.

6 BY MS. SHEALY:

7 Q Dr. Presnell, you all sent the vitreous fluid to
8 Roger Russell for him to perform the test; is that
9 correct?

10 A Yes, we did.

11 Q And did you get it back in a timely fashion?

12 A No. It took, and I looked to find out how long it
13 took, but it took a long time to get the results back.

14 Q Is it fair to say that both you and the coroner were
15 very frustrated by Dr. Russell's not returning it to you?

16 A Yes, we were hoping for the results a little bit
17 sooner and had to keep calling to request them.

18 Q Despite your calls to request to get the results, he
19 still did not respond until being subpoenaed by the
20 coroner; is that correct?

21 A Yes.

22 Q In fact, you sent the fluids out on January 31st;
23 is that correct?

24 A That sounds reasonable? I have to look.

25 Yes, January 31st.

1 Q Okay. And on February 20th, is that when you all
2 subpoenaed him?

3 A Wait, wait, wait. Hold on. What I was looking at as
4 far as chain of possession, it's documented the 31st.

5 Now, I'm sorry what?

6 Q Is it correct, then, that you sent it out on the
7 31st of January?

8 A Yes. From the chain of possession slip that's what
9 it's dated.

10 MS. SHEALY: And I beg the Court's indulgence
11 one moment.

12 THE COURT: Approach, please.

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 THE COURT: Ladies and gentlemen, I'm sending
17 you on break. Do not discuss the case in any way. Thank
18 you very much.

19 Ma'am, you may step down during the break. Do
20 not discuss testimony with anyone.

21 THE WITNESS: Just leave my stuff here?

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

23 (The jury left open court at approximately 10:42
24 a.m.)

25 (A short break was taken.)

1 MS. WILSON: Your Honor, Lieutenant Powell from
2 SLED is here. I've asked defense counsel if they have a
3 problem with him sitting in. He's our next witness. They
4 don't have an objection to that.

5 THE COURT: All right. Is that correct?

6 MS. SHEALY: Yes, sir.

7 THE COURT: All right. Bring the jury in,
8 please.

9 (The jury came into open court at approximately
10 11:02 a.m.)

11 THE BAILIFF: The jury is all present, your
12 Honor.

13 THE COURT: Thank you. Please be seated. Go
14 ahead.

15 MS. SHEALY: Thank you.

16 BY MS. SHEALY:

17 Q Dr. Presnell, we were talking about you had indicated
18 to us that you extracted the vitreous fluid out of Beverly
19 Blake's eyes; is that correct?

20 A Yes. And I found her paperwork here. Roger Russell
21 picked up the vitreous fluid on the 31st of January.

22 Q Let me ask you one question real quick. When was it
23 that you actually extracted the fluid from the eyes?

24 A At the time of autopsy.

25 Q Give me that date again.

1 A January 14th.

2 Q Okay. And then Roger Russell picked it up on the
3 31st of January?

4 A Yes.

5 Q And we were talking about how you all became
6 frustrated because you didn't get the test results back;
7 is that correct?

8 A Yes.

9 Q Did you in fact prepare a summary to remind you of
10 what all happened regarding the Roger Russell incident?

11 A Yes. Someone asked me to summarize it, so I typed up
12 a little thing to remember all the particulars that
13 happened in trying to get the results from the vitreous
14 fluid.

15 Q Do you have a copy of that or I have it?

16 A Yes.

17 Q So again then, you extracted on the 14th, he picks
18 it up on the 31st of January; is that correct?

19 A Yes.

20 Q And when you say someone had asked you to summarize
21 the difficulties with Dr. Russell, who was that?

22 A That would have been the coroner.

23 Q And during the week of February 11th, that would
24 have been about two weeks after he had gotten it, did you
25 continually call asking what the status of the analysis

1 was?

2 A Yes, I did.

3 Q And during the week then, the following week, which
4 would have been February 18th, did you learn that he was
5 refusing to perform the analysis?

6 A He was saying that he was not going to be able to do
7 it, and at that point I contacted MUSC directly because
8 that is where I think -- I believe that's where he had his
9 testing does and he was just the intermediary, so they
10 agreed they would do it for me, so at that point we
11 requested that he return the vitreous sample fluid.

12 Q Well, Dr. Presnell, then focusing on that week of
13 February 18th, doesn't your summary indicate that you
14 were informed by Roger Russell the week of 2/18 that the
15 analysis would not be performed at that time due to Roger
16 Russell losing his contract with the lab performing the
17 analysis?

18 A Yes, that's what he told me, that he wasn't going to
19 be able to do it because he wasn't going to be able to
20 have it done where he usually did it.

21 Q Then you continued to have problems with Dr. Russell;
22 is that correct?

23 A After that we requested the vitreous fluid sample be
24 returned so we could have it done at our own laboratory.

25 Q Did Dr. Russell fulfill that request?

1 A No, he didn't until the coroner prepared a subpoena
2 for the specimen, and at that point the subpoena was for
3 February 20th, and the next day we received the results
4 for the vitreous fluid analysis on the fax machine.

5 Q So you received the results back on the 21st, is
6 that correct, of February?

7 A Yes. We had faxed him on the 20th, but we didn't get
8 them until the morning when we came in.

9 Q So again, the fluid had been extracted on the
10 14th and you got the results back on the 21st or the
11 20th potentially?

12 A Extracted on the 14th of January; finally got
13 results on February 22nd.

14 Q And from January 31st until February 22nd, the
15 specimen -- I guess the sample was with Dr. Russell; is
16 that correct?

17 A I'm sorry. Can you repeat that, please?

18 Q Yes. I think you indicated that he picked up the
19 sample on the 31st of January?

20 A Yes.

21 Q Then he returns it on the 22nd of February; is that
22 correct?

23 A Yes, that's correct.

24 Q So during that time period Roger Russell is the
25 person who has the sample?

1 A Yes.

2 Q Now, again, it took a subpoena from the coroner's
3 office to get him to turn it back over to you; is that
4 correct?

5 A Yes, one was prepared, yes.

6 Q And isn't it true that he had to remove some type of
7 interfering substances out of the sample?

8 A What happened sometimes, especially as the body
9 starts to decompose, as some of the cells in the eye might
10 be sucked up in the fluid tubes. The fluid is usually
11 acellular, doesn't have cells in it. So when he gets the
12 specimens, sometimes he will centrifuge it or filter it to
13 try to clean out any kind of things floating around it in.

14 Q And that's what is referred to as interfering
15 substances?

16 A Yes.

17 Q And you're aware that Dr. Russell made an effort to
18 try to get rid of some interfering substances?

19 A I believe that was what was in the initial report
20 that that was one of the reasons for his delay.

21 Q Now, you have told us that there are different
22 formulas regarding what to do with this vitreous level or
23 the potassium level once you receive it; is that correct?

24 A There are multiple formulas, yes.

25 Q When we're talking about formulas, we're literally

1 talking about a math problem; is that fair to say?

2 A Yes.

3 Q So when you say that there are different formulas or
4 revised formulas that come out, they change what you
5 multiply the potassium level by; is that correct?

6 A Yes.

7 Q And that is a process that will be continuing, new
8 formulas will be coming out; is that correct?

9 A Correct.

10 Q And I think you told us that the formula you used was
11 the one that was in the book that you used while you were
12 in school, the Spitz book?

13 A Right, Spitz and Fisher Medicolegal Death
14 Investigation.

15 Q And as a part of your role as a pathologist, you keep
16 abreast of new formulas and new developments in all the
17 areas that you deal with; is that fair to say?

18 A I try to, yes. If there's a development that comes
19 up and that needs some more research, we do a literature
20 search.

21 Q And just to describe to the jury, when you say a
22 literature search, there are different publications that
23 come out that report new findings; is that fair to say?

24 A Yes, there are different journals, different fields.
25 There are different fields of medicine, and some of the

1 latest research is published in those.

2 Q Is it fair to say that that's how pathologists stay
3 abreast of what are new developments, that that's how you
4 learn of them?

5 A Yes, that's one of the ways. Of course, the other
6 ways are meetings, annual meetings where they have
7 educational sessions and certain consultation-type and
8 consulting experts.

9 Q Like seminars where you'll go and listen to people
10 speak?

11 A Right.

12 Q Now, one of the journals then that, and tell me
13 whether this is a well-received journal, The Journal of
14 Forensic Sciences?

15 A Yes, that is the journal of the American Academy of
16 Forensic Sciences, yes.

17 Q Is that a well-respected journal?

18 A Yes, it is.

19 Q And the name of what you call the formula you used in
20 this case is the Medea formula?

21 A Right.

22 Q And the one that Ms. Wilson had asked you about, she
23 asked you to plug in, was the Sturner formula?

24 A Right.

25 Q Now, let me show you an article from the Journal of

1 Forensic Sciences and ask you whether you have had an
2 opportunity to read it or if you've consulted with it.

3 Not consulted with it, but evaluated it.

4 A I've got it. I ended up having it handed to me this
5 morning and I quickly reviewed it.

6 Q Is it fair to say that this article addresses yet a
7 new formula for evaluating postmortem interval?

8 A Yes, it does.

9 Q And did you in fact plug your figures into this
10 formula?

11 A I did that this morning and put in the potassium
12 level and it came out to a level of 3.88 days.

13 Q 3.88 days?

14 A Yes.

15 Q And again, this is a respected article and a
16 respected journal; is that correct?

17 A It is.

18 Q And so now you're telling us that the formula that
19 this one suggests as being the appropriate one to use
20 comes up with even less number of days; is that correct?

21 A Yes. This suggests a lesser postmortem interval.

22 Q And in fact it's critical of the previous formulas
23 and explains why that should be the one that is adopted;
24 is that correct?

25 A It addresses some of the problems and is trying to

1 accommodate some of the variables with the older formulas.

2 Q So as I understand your testimony, there's no
3 question that this case was a bit unusual for you?

4 A It pushed the postmortem interval estimation to an
5 extreme.

6 Q Okay. And there were phone calls from the police and
7 phone calls from the coroner's office regarding this; is
8 that correct?

9 A Yes.

10 Q There was the difficulty with getting the vitreous
11 number back from the person who was supposed to analyze
12 it?

13 A Yes.

14 Q And despite the fact that you have used now three
15 different formulas, they all come up with different
16 numbers of days; is that correct?

17 A Yes, ma'am.

18 Q And the one that has most recently been advocated
19 comes up with the least number of days?

20 A The one that's been most recently published. And it
21 depends on how it spans out the time as to which
22 particular span to apply it to, but yes, the most recently
23 published one came out with an interval of 3.88 days.

24 Q And your first glance at Beverly Blake when you saw
25 her in the autopsy room was that was a body that did not

1 have much decomposition at all; is that correct? It was
2 well preserved?

3 A Yes, she was well-preserved.

4 MS. SHEALY: I beg the Court's indulgence just
5 one moment.

6 I have no further questions. Thank you, Dr.
7 Presnell.

8 REDIRECT EXAMINATION

9 BY MS. WILSON:

10 Q That was your initial impression?

11 A Yes. Well, my initial impression was that she was
12 well-preserved, and she was.

13 Q Did you use the Accucount calculator this morning?

14 A No, I didn't.

15 Q All right. That was your initial impression. But
16 after that, you said that two people were pushing to find
17 out more about postmortem interval, mainly, a sergeant?

18 A The coroner's office and law enforcement, yes.

19 Q Who did you say was working with the sergeant, Ashley
20 Pennington?

21 A Yes, Ashley Pennington was a third factor.

22 Q And he was the public defender at the time?

23 A He was the public defender at the time.

24 Q Representing Anthony Mann?

25 A I guess that is who he was representing.

1 Q And he was pushing to find out --

2 MS. SHEALY: I object to the hearsay, your
3 Honor.

4 MS. WILSON: Your Honor --

5 THE COURT: Approach.

6 (A bench conference was held with the judge and
7 attorneys in the presence of the jury but out of the
8 hearing of the jury.)

9 BY MS. WILSON:

10 Q Okay. You have your initial impression just after
11 looking at the body?

12 A Yes, that she's well-preserved.

13 Q Then Ashley Pennington and a sergeant from the
14 sheriff's office asked you to look deeper into the
15 postmortem interval issue?

16 A Yes, they did.

17 Q Because initially people at the scene and your
18 initial impression was she was very well-preserved and
19 didn't look to have been in the woods for that long?

20 A Right.

21 Q But Mr. Pennington and the sergeant from the
22 sheriff's department wanted you to look and see if it
23 would be consistent that she could have been out there up
24 to a week?

25 A Yes, both of them wanted to know that.

1 Q Now, the system in South Carolina, you keep saying
2 it's a coroner system. What training or what
3 qualifications do coroners have to have?

4 A Well, in this state the coroner is required to have a
5 high-school degree and be elected, and they also receive
6 some training up at SLED if they're a newly-elected
7 coroner.

8 Our Charleston County coroner, the particular
9 ones that responded to this scene have nursing, they're
10 nurses so they have medical backgrounds as well as they
11 have attended a lot of investigative seminars, death
12 investigation seminars as well.

13 Q But they are not as qualified as you in forensic
14 pathology?

15 A Well, I'm board certified in forensic pathology, and
16 I don't believe that they are.

17 Q And there was a time when you and other medical
18 pathologists, forensic pathologists used to go out to
19 scenes?

20 A Yes, there was a time like that.

21 Q And due to politics or budgets or whatever that
22 stopped?

23 A Yes.

24 Q It's not that you all don't want to go to the scene
25 anymore?

1 A We just don't want to do it for free.

2 Q Okay. Has there been much squabble about that issue?

3 A Well, actually once the decision was made to not
4 attend scenes anymore, Charleston was in support of the
5 medical examiner component, then it wasn't -- I guess
6 after that decision was made there wasn't much of a
7 squabble.

8 Q When you all used to have to go out to the scene, how
9 often were you on call?

10 A There's two of us.

11 Q For the whole county?

12 A Right, for the whole county, me and Dr. Collins, and
13 it's changed a little bit sense then, but at that time
14 there was two of us.

15 Q So if there was a death in Charleston County back
16 when you used to have to go out to the scene, 24 hours a
17 day, 365 days a year one of the two of you would have to
18 be there?

19 A Right. We usually rotate one every other week.

20 Q Saturdays, Sundays, Christmas, whatever?

21 A Yes.

22 Q They wanted you to do that for free?

23 A Well, the autopsies are paid for, but they wanted
24 that extra and we needed money -- I'm not going to get
25 into that, but yes, we were getting a little tired.

1 Q All right. And you mentioned during
2 cross-examination something about Ms. Blake's panties
3 being rolled up?

4 A That is when she arrived in the autopsy room, the top
5 of them were rolled, kind of sticking up out of her pants.

6 Q Okay. But do you recall that she had on thong
7 underwear?

8 A I can't remember. We don't particularly describe
9 them.

10 Q Does this picture, Defendant's 7, show the autopsy
11 number and the clothes?

12 A Yes, and it shows that I think they're little pink
13 panties.

14 Q And do they look to be thong underwear?

15 A They look pretty scanty.

16 Q Pretty close to it. But the area that you were
17 talking about them being rolled was up?

18 A Up near her waist and they were kind of sticking out
19 of the pants band a little bit.

20 Q Now, in preparing your testimony here today, and in
21 completing your forensic autopsy, you have spoken with
22 experts in entomology; is that right?

23 A A verbally unofficial consultation.

24 Q And you have also spoken with the assistant coroner
25 who was out at the scene that night?

1 A Yes, Rae Wooten.

2 Q And you have viewed the crime scene video, viewed and
3 listened to the crime scene video?

4 A Yes, I have.

5 Q And considered all those things before you testified?

6 A All of those things are taken into consideration.

7 Q And is your opinion as a forensic pathologist still
8 that Beverly Blake could have died on January 7th?

9 A My opinion, yes, that she could have died on January
10 7th. Again, I would like to reiterate that our findings
11 are more of a which scenario is more likely supported. My
12 findings support the longer postmortem interval, whether
13 it's four days, 3.8 days, 6.2 days, versus the one to two
14 days. And not just based on vitreous but on the whole
15 external exam, too. Comparatively it's more likely to be
16 the longer than the lesser.

17 MS. WILSON: Beg the Court's indulgence.

18 THE COURT: All right.

19 MS. WILSON: That's all I have, your Honor.

20 RECROSS-EXAMINATION

21 BY MS. SHEALY:

22 Q Dr. Presnell, as I understand it then, you are
23 telling the jury then she could have been dead for five
24 days, four days, or 3.8 days; is that correct?

25 A Yes.

1 Q You're just unwilling to say one or two days; is that
2 how I understand it?

3 A I'm not excluding one to two days.

4 Q You're not excluding one to two days?

5 A I'm not excluding one to two days. I'm saying that
6 it's unlikely that it was a one-day period for all those
7 changes, forgetting vitreous, for all those changes to
8 have developed in these cool temperatures, but -- and it's
9 unlikely that happened. It's more likely that it was
10 longer.

11 MS. SHEALY: Thank you.

12 THE COURT: Anything else?

13 REDIRECT EXAMINATION

14 BY MS. WILSON:

15 Q You said excluding vitreous?

16 A I was just saying that you don't even consider
17 vitreous. You look at the livor and the rigor, et cetera.
18 So for it to have proceeded that far in the period of one
19 to two days in that cool of temperatures would be
20 unlikely.

21 MS. WILSON: That's all I have, your Honor.

22 MS. SHEALY: Just one follow-up.

23 RECROSS-EXAMINATION

24 BY MS. SHEALY:

25 Q Dr. Presnell, then you are saying that 3.8 could be

1 the number of days she was dead; is that correct?

2 A Yes.

3 Q Four days could be?

4 A Yes.

5 MS. SHEALY: That's it.

6 THE COURT: You may step down. Thank you,
7 ma'am.

8 MS. WILSON: Your Honor, the State and defense
9 have entered into a stipulation regarding testimony at
10 this time. We'd offer that stipulation as an exhibit and
11 seek to publish that to the jury.

12 THE COURT: All right.

13 (WHEREUPON, State's Exhibit No. 126 was marked
14 for identification and received into evidence.)

15 THE COURT: Ladies and gentlemen, as I indicated
16 to you earlier, a stipulation, if you'll accept that from
17 the State to be true. Go ahead.

18 MS. WILSON: Thank you, your Honor. For
19 purposes of publishing the stipulation, I won't read the
20 caption and all that information.

21 "The attorneys for the government and defense
22 counsel do hereby agree and stipulate that if Senior Agent
23 Matthew Fitts of the State Law Enforcement Division, SLED,
24 were called to testify, he would state the following:
25 One, he is an expert in the field of forensic serology and

1 DNA analysis.

2 Two, upon examining the following items, he
3 obtained the following results: A, three cuttings from
4 the sweatshirt of Beverly Blake; results, human blood was
5 identified and no DNA profile other than the victim's was
6 present. B, left hand fingernail scrapings from Beverly
7 Blake, item seven; results, human blood was identified
8 with no DNA profile other the victim's present. C,
9 cuttings from the panties of Beverly Blake were examined.
10 No semen was identified. D, three swabs of Beverly
11 Blake's oral, anal, and vaginal areas, items 3, 4, and 5,
12 the swabs were tested for a protein found in semen;
13 results: Semen was identified but no DNA profile was
14 present. This means there were no sperm cells to produce
15 a DNA profile, and therefore SLED could not attempt to
16 match the semen to its male donor."

17 THE COURT: All right.

18 MS. WILSON: Your Honor, the State calls
19 Lieutenant Joe Powell.

20 JOSEPH D. POWELL, after being duly sworn,
21 testified as follows:

22 THE CLERK: Please be seated. Please state your
23 full name for the Court and spell your last.

24 THE WITNESS: My name is Joseph D. Powell,
25 P-O-W-E-L-L.

DIRECT EXAMINATION

BY MS. WILSON:

Q Lieutenant Powell, where are you employed?

A I'm currently employed as a supervisor of the trace evidence section at the South Carolina Law Enforcement Division commonly known as SLED.

Q How long have you been working at SLED?

A Going on 21 years.

Q And in your capacity at SLED, do you perform work on gunshot residue kits?

A Yes, ma'am, I do.

Q Can you tell the jury what your training is that qualifies you to look at and analyze gunshot residue kits?

A Yes, ma'am. I originally received my bachelor of science degree in chemistry from the University of Southern Mississippi. After leaving there, I became employed at SLED.

After going through an extensive in-house training in the area of both drug analysis and trace evidence analysis, I was given the project to be able to develop the gunshot residue method that we're currently using today. I began working on the research, working with instrumentation, and began to develop the protocols that are being used.

Over the past 21 years I have instructed every

1 person who has performed this test, they work underneath
2 me, I'm the supervisor and they're my employees, but I'm
3 totally involved in all aspects of research, method
4 development, and also their case work.

5 Q Do you keep yourself abreast to issues regarding
6 gunshot residue and testing of that substance?

7 A Yes, ma'am. I have attended several symposiums which
8 have been put together by the FBI for various experts
9 around the world to get together to discuss the aspects of
10 gunshot residue, testimony, what the new technology is
11 people are doing, so yes, I'm involved with many aspects
12 of this research.

13 Q Have you testified as an expert in the area of trace
14 analysis and gunshot residue?

15 A Yes, ma'am. I have testified over 600 times in total
16 in both drugs as well as trace evidence. Within the trace
17 evidence area, it's been about 350 times, and of that the
18 majority of those would be gunshot residue.

19 MS. WILSON: Your Honor, at this time we'd often
20 Lieutenant Powell as an expert in gunshot residue
21 analysis.

22 THE COURT: Any objection?

23 MR. BUTLER: No objection.

24 THE COURT: All right. The Court finds he is so
25 qualified in that area without objection.

1 BY MS. WILSON:

2 Q Lieutenant Powell, if you'd just explain to the jury
3 what gunshot residue is.

4 A Yes, ma'am. Gunshot residue is the material that is
5 expelled by a weapon upon discharge. A bullet once placed
6 inside the chamber of a gun, the handle will strike the
7 back of it. There is a compound material that is found
8 inside of the bullet which is shock sensitive. This
9 material when struck will ignite.

10 This fire within will start the gun powder to
11 burn. These two in combination will create enough heat
12 and energy to be able to expel the bullet from the
13 cartridge case down the barrel towards its intended
14 target.

15 The material itself looks like a blue/gray smoke
16 when you see it coming out of the weapon. And if you
17 discharge a weapon, that cloud will envelope the weapon
18 and also begin to get on your clothing, you get it on your
19 face, you could get it on your hands, anywhere you come in
20 contact with it.

21 All weapons will produce gunshot residue. Some
22 weapons such as 22 calibers will produce a very small
23 amount. Very large caliber weapons will produce a larger
24 amount, but all weapons will produce this material.

25 Once on the hands, it is very fragile and easily

1 removed. Someone may not intentionally want to remove it,
2 but just by normal activity can have the material be
3 removed within six hours. If you wash your hands, do
4 something else, it's removed even quicker.

5 Q Now, you mentioned that it was very fragile. Does a
6 negative test mean that someone did not fire a gun?

7 A It would indicate that someone did not fire a weapon,
8 or if they had fired a weapon, the materials that was
9 there was removed before the test was administered.

10 The test itself actually involves a set of both
11 swabs and what is called particle list, which is nothing
12 more than a flattened piece of aluminum with a sticky
13 adhesive, much like you have with adhesive tape, the idea
14 being that you actually pull these particles off the hands
15 with this sticky adhesive and follow it up with a cotton
16 swabs to mop up any residue that's there.

17 If you have fired a weapon and time has passed,
18 this material has been lost. There is nothing there to be
19 picked up by the kit so the kit would be negative.

20 Q Okay. And you mentioned time passing. Does SLED
21 have certain requirements for items being submitted for
22 gunshot residue analysis?

23 A Yes, ma'am. We have based upon experimentation over
24 the years a set of criteria that we utilize to define the
25 time in which we'll do this test. If someone is alive, we

1 have set up a window of six hours from the point of the
2 shooting for us to be able to consider the gunshot residue
3 from the kit. If it is on an inanimate object, it may be
4 a longer period of time, such as inside an automobile.

5 On clothing we have a set of criteria that the
6 clothing must be directly linked to the crime scene
7 itself, meaning there must be some evidence that the
8 clothing of interest being tested was at that crime scene.

9 Q Okay. And do you have to -- when you say it has to
10 be linked to the crime scene, does it have to be
11 conclusive that that item has not been washed or, you
12 know, tampered with in any way from the time that the gun
13 was fired until the time that the item is analyzed?

14 A Yes. The material, like on clothing, if you wash the
15 garment, it's gone; it's easy to remove that way. Also,
16 the longer the time from the discharge of that weapon and
17 the more activity that is performed in that garment, the
18 less material that can also be found.

19 Q I believe when we spoke the example that was given to
20 me or that we used was situations where law enforcement
21 has a gunman under surveillance, and even if that time
22 period passes, say six hours, in that situation you would
23 still take the clothes and examine them?

24 A Yes. If there was no kit to be examined, for
25 example, a weapon had been discharged, six hours had

1 passed on the hands, but there was some question was this
2 person actually around a fired weapon and we can show that
3 that garment was there at the crime scene or someone had
4 seen that person wearing it, we would then examine the
5 garment to see if we could find gunshot residue on the
6 garment.

7 Q What is the time window or requirement for garments?

8 A Again, we don't have an actual time event. We look
9 at more of can we establish a link or change of events
10 which would show where that garment has been, what has
11 happened to it to see if it's relevant for testing.

12 Q So you need some reliable measure of where the
13 garment has been between the shooting and when it arrives
14 in law enforcement hands?

15 A That's correct.

16 Q Okay. Now, can gunshot residue tests turn out
17 positive from other sources besides a gun being fired?

18 A If we are allowed or have the evidence for both parts
19 of the kit, which I've described earlier as being both the
20 particle lift as well as the swab, we're able to uniquely
21 identify gunshot residue. There are, however, several
22 areas that you can actually obtain gunshot residue from
23 other than firing a weapon. If you're using a brad gun or
24 some type of weapon which is using a 22 cartridge or some
25 type of cartridge to fire --

1 Q Did you say a brad gun?

2 A I called it a brad gun.

3 Q What is that?

4 A It's a weapon that's used to be able to drive metal
5 into concrete.

6 Q Like a nail gun?

7 A Well, a nail gun could be pneumatic as well as other
8 types. You usually don't use this type of round for a
9 nail gun.

10 Q Okay.

11 A But if you wanted to drive a piece of steel through
12 concrete, you want something strong enough to be able to
13 drive through. This is another item which can produce
14 gunshot residue because it is a gun; although it is not
15 shooting a bullet, it's still shooting a piece of metal.

16 Q And I'm going to show you what has already been
17 introduced into evidence as State's Exhibit 4, the gunshot
18 residue kit on the victim in this case, Dante Tobias.

19 Did you analyze that gunshot residue kit?

20 A Yes, ma'am. What's been listed as State's Exhibit 4
21 is a gunshot residue fleshing kit which bears my initials
22 on the back of the packet. Inside there are four
23 containers which are the particle lifts which were used in
24 this case.

25 Q And what were the results of your test on the gunshot

1 Q Doing any drugs?

2 A No.

3 Q No?

4 A No. I don't do drugs, no.

5 Q You don't do any drugs?

6 A No.

7 Q And you described for us that you went and talked to
8 the police and gave them a statement?

9 A Uh-huh.

10 Q You did that after your stepfather said they were
11 looking for you?

12 A Uh-huh.

13 Q Is that correct?

14 A Uh-huh.

15 Q Now, you were involved in an incident in Hanahan that
16 took place right before this, is that correct, at The
17 Hanahan Self-Storage Container?

18 A Yes.

19 Q And you and these buddies of yours got charged with
20 burglary; is that correct?

21 A I got charged with accessory, yes.

22 Q And these are the people that you were hanging out
23 with that evening; is that correct?

24 A Yes.

25 Q And prior to -- what was the date of this? Do you

1 recall when it was that Anthony Mann came to your
2 apartment?

3 A I believe it was the 16th.

4 Q The 16th. And when you and your buddies went to
5 Hanahan and broke into that self-storage container, that
6 was ten days, six days before?

7 A Can I state something?

8 Q Sure.

9 A I was not there.

10 Q But you were charged?

11 A Yes.

12 Q Did you go through PTI?

13 A I'm going through it now.

14 Q You are?

15 A Uh-huh.

16 Q And the solicitor had to agree for you to go through
17 PTI?

18 A No.

19 Q Nobody had to agree for you to go through it?

20 A No.

21 Q On the night your stepfather told you that they were
22 looking for you --

23 A He told my mother that.

24 Q -- you knew -- just tell me, what was your
25 involvement in the Hanahan thing then?

1 A Fourteen years.

2 Q Fourteen?

3 A Uh-huh.

4 Q What did you do before that?

5 A Police officer.

6 Q Where were you a police officer?

7 A Down in Mt. Pleasant and the State Port Authority
8 Police Department.

9 Q Do you know a young woman named Krystal Lackey?

10 A I do.

11 Q And she just was in the courtroom?

12 A Yes. That is my stepdaughter.

13 Q And how long have you been married to her mother?

14 A Seventeen years.

15 Q And Krystal is how old?

16 A She will be 21 in December.

17 Q Now, do you recall in January of 2002 having a
18 conversation with Krystal's mother about some things
19 Krystal had done?

20 A Yes.

21 Q Don't go into what she told you.

22 A Okay.

23 Q As a result of the conversation with Krystal's
24 mother, what did you seek to do?

25 A I had not even heard anything about this case or

1 anything or what was going on and --

2 Q When you say that, had you seen the news or anything?

3 A No.

4 Q Okay.

5 A I have a friend, a former roommate that is a sergeant
6 with the City of Charleston Police Department, and I
7 called him to find out if he knew anything about the case,
8 you know, or somebody we should call.

9 Q When you say "we should call," when your wife gave
10 you this information did you tell her to do anything or
11 tell Krystal to do anything?

12 A No, not at that point.

13 Q What did you tell them you would do?

14 A I told them that I would get ahold of somebody and
15 that she needed to go to the police.

16 Q Now, you said you had this roommate that knew some
17 police officers?

18 A He is a police officer for the City of Charleston.

19 Q Did you try to determine who Krystal should go talk
20 to?

21 A That's what I was calling him for, to find out if the
22 city had the case or the county had the case.

23 Q What did you find out?

24 A That the county had the case, and he gave me an
25 investigator's name to call.

1 Q And after you got that investigator's name, did you
2 get his number?

3 A I did.

4 Q After you got that information, what did you do with
5 it?

6 A I gave it to Krystal.

7 Q And why did you give it to Krystal?

8 A For her to call to tell what she had been told.

9 MS. WILSON: That's all I have, your Honor.

10 MR. BUTLER: No questions of this witness.

11 THE COURT: You may step down, sir.

12 All right. Ladies and gentlemen, I have been
13 requested to give extra time during lunch so they can
14 check on something. So if you could please report back at
15 2:15 we'll proceed with the trial. Do not discuss this
16 case in any way whatsoever. Thank you very much.

17 We probably will not run until the end of the
18 day, just to let you know. We'll probably stop a little
19 early. Thank you.

20 (The jury left open court at approximately 12:06
21 p.m.)

22 THE COURT: All right. What is it that you all
23 need to take care of that you needed extra time at lunch?

24 MS. WILSON: Can we approach?

25 THE COURT: Yes.

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 (A lunch break was taken.)

5 THE COURT: Are you ready to proceed?

6 MS. SHEALY: Yes, sir.

7 THE COURT: State's ready?

8 MS. WILSON: Yes, sir.

9 THE COURT: Bring the jury in, please.

10 (The jury came into open court at approximately
11 2:16 p.m.)

12 THE BAILIFF: All jurors are present, your
13 Honor.

14 THE COURT: Thank you. Please be seated.
15 Go ahead, please.

16 MS. WILSON: The State calls John Burnett.

17 JOHN BURNETT, after being duly sworn, testified
18 as follows:

19 THE CLERK: Please state your full name for the
20 Court and spell your last.

21 THE WITNESS: John Charles Burnett,
22 B-U-R-N-E-T-T.

23 DIRECT EXAMINATION

24 BY MS. WILSON:

25 Q And if you could just tell the jury where you're

1 employed?

2 A I work at the 9th Circuit Solicitor's office.

3 Q What do you do for our office?

4 A I'm an investigator.

5 Q And before that were you in law enforcement?

6 A I was.

7 Q What law enforcement agency did you work with?

8 A I started with the Charleston County Police

9 Department. I later worked for Mt. Pleasant. I then was

10 with the federal government in the investigative service,

11 the Charleston Police Department and then the Solicitor's

12 office.

13 Q And have you been assisting with the prosecution in
14 this case?

15 A I have.

16 Q And as part of your investigation in this case, did
17 you go to research telephone calls in the South Carolina
18 Department of Corrections?

19 A I did, at Lieber Correctional Institution.

20 Q Tell the jury where Lieber is.

21 A Lieber is west of Charleston in what is called
22 Jedburg.

23 Q And when you went to Lieber, were you seeking to
24 listen to calls made by an inmate named Anthony Mann?

25 A That's correct.

1 Q If you would explain to the jury what you found as
2 far as records of telephone calls made when you got to
3 Lieber.

4 A They have an in-house system, a computerized system
5 that is designed to monitor and record every call made by
6 the inmates housed there. The system is such that it is
7 contracted out to a private concern. Someone from the
8 county comes in once a month on downloads these phone
9 calls onto CDs. The CDs, once you know how to research
10 theme, the CDs can then be placed in the computer and you
11 can actually listen to phone calls.

12 Q And do you know how it is that calls are tracked by
13 inmate?

14 A It's tracked by their inmate number.

15 Q And does the inmate have to use that number in order
16 to make a call out?

17 A He does.

18 Q And do you know whether or not inmates are able to
19 switch ID numbers and make calls out?

20 A I believe that if you had another --

21 MS. SHEALY: Your Honor, I object to this.

22 May we approach, your Honor?

23 THE COURT: Yes.

24 (A bench conference was held with the judge and
25 attorneys in the presence of the jury but out of the

1 hearing of the jury.)

2 THE COURT: Sustained.

3 BY MS. WILSON:

4 Q Were you able to get a list of calls assigned to
5 Anthony Mann?

6 A Yes.

7 Q And over what time period were these calls made?

8 A The initial calls that we looked at according to
9 system four were between August 17th through the end of
10 the year.

11 Q And between August 17th, 2002; is that right?

12 A That's correct.

13 Q And was December 4th or the end of the year you
14 said?

15 A In looking on the list of the calls that were made,
16 the last call made to a certain individual was the end of
17 the area we're looking at.

18 Q During that period, August 17th through the end of
19 year of 2002, did you ascertain how many calls were made
20 to a number associated with Kristy Bunch?

21 A Yes. I counted approximately 706 calls.

22 Q Okay. And those calls, would they have been collect
23 calls?

24 A That's correct.

25 Q That she would have had to pay for?

1 A That's correct.

2 Q And that was just from August to December?

3 A Correct.

4 Q Eventually did you look further back than August?

5 A Yes. I went back into June, July, and the first part
6 of August.

7 Q In the months of June and July, did you count how
8 many calls were made then?

9 A I was unable to count those calls. The person
10 responsible for recording the information on the
11 individual CDs for whatever reason didn't record that
12 information, so looking through those records was very
13 difficult to find and identify individual calls.

14 Q If you could just tell the jury and explain to the
15 jury physically what you would have to do to look for a
16 call in June on July where they weren't labeled, is that
17 what you said, the person responsible did not label them?

18 A Correct. The normal way of doing it was once you
19 made your query and knew the calls that were made, you
20 would have the date and the time the calls were made. To
21 then listen to those calls, you would go by date, pick a
22 particular CD, you would be given a reference number, and
23 you could then put the CD in the computer and go in and
24 identify that reference number and listen to that call.

25 For the ones that were not labeled, it was just

1 a matter of guessing. You would have to go through, pull
2 out a CD that you thought might be in a stack around that
3 particular date, go in, and once you found that date, then
4 it was a matter of just picking out calls and hoping that
5 you got the right one.

6 Q And you said that you were not able to count the
7 number of calls between June and August 17th?

8 A No, ma'am.

9 Q Because they were not categorized?

10 A No, ma'am.

11 Q Do you know if there were any calls made on Anthony
12 Mann's inmate number before June? Was he in Lieber before
13 June?

14 A He was. I believe he was incarcerated on
15 April 17th.

16 Q Do you know if there were any calls to Kristy Bunch
17 between April 17th and June?

18 A I believe that there were, but I have no actual
19 record of those.

20 Q Okay. And do you know if those months between April
21 and June were properly labeled?

22 A I know that June, July and August were not. I don't
23 know about April or May.

24 Q You were here earlier this week when Kristy Bunch
25 testified, were you not?

1 A I was.

2 Q Do you recognize her voice?

3 A I did.

4 Q How is it that you recognized her voice?

5 A During the course of my involvement, I've listened to
6 over 300 phone calls between Anthony Mann and Kristy
7 Bunch.

8 Q And you were doing that to search for a particular
9 phone call?

10 A That's correct.

11 Q Did you find the phone call that you were looking
12 for?

13 A I did not.

14 Q And can you say with confidence based on what you
15 listened to and what you saw as far as the record keeping
16 with the CDs that that phone call did not exist?

17 A I cannot say that it does not exist. I barely
18 scratched the surface as to the calls that were actually
19 there as to what I listened to.

20 Q When you were going through some 706 calls between
21 August and December, can you tell the jury about what the
22 average length of the calls would be between Anthony Mann
23 and Kristy Bunch?

24 A The maximum length, the system is designed to allow
25 for 15 minutes and then it will cut off. The calls varied

1 from anywhere one minute to 15 minutes. Most were 15
2 minute calls.

3 Q Would there be consecutive calls?

4 A Yes. Some days there were well over 20 calls. Some
5 days there would be two or three. But I counted as many
6 as 29 in one day.

7 Q And did you, in listening to these calls and in your
8 experience with calls in the Department of Corrections,
9 did you hear any three-way calls made?

10 A Frequently.

11 Q And tell the jury how based on what you heard that
12 would work, the three-way call.

13 A The call would go in for instance to Kristy Bunch. A
14 request would be made to call a particular number or --
15 either the number itself or an individual. She would then
16 place him on hold, call the number, and if someone picked
17 up the receiver they would then all three be able to talk.

18 Q Okay. Were there times in conversations that you
19 heard when Anthony Mann called Kristy Bunch that another
20 inmate would get on the phone with her?

21 A Yes.

22 MS. WILSON: That's all I have, your Honor.

23 MS. SHEALY: May it please the Court.

24 THE COURT: Yes, ma'am.

25 CROSS-EXAMINATION

1 BY MS. SHEALY:

2 Q Can you tell me, how long were you in law enforcement
3 before you began working with the Solicitor's office?

4 A Thirteen years.

5 Q And are you assigned to certain solicitors within the
6 Solicitor's office? Is that how you all organize your
7 investigators?

8 A Yes.

9 Q You are in fact assigned to the Deputy Solicitor and
10 the Solicitor himself; is that correct?

11 A That's correct.

12 Q Do you have a title because of that?

13 A I'm the chief investigator.

14 Q Chief investigator. And it's fair to say, is it not,
15 that obviously you were looking for this conversation and
16 wanted to find it?

17 A That's correct.

18 Q And you told us that your earlier pursuit was between
19 certain dates, August 17th to December 2002; is that
20 correct?

21 A That's correct.

22 Q I'm sorry.

23 A If I could clarify.

24 Q Sure.

25 A The December 4th date is based on that being the

1 last date that a call to Kristy Bunch goes out.

2 Q Okay. And just to make sure I understand, when you
3 were out there, he was assigned a certain number and you
4 could look for her phone number to see where the phone
5 calls were being placed; is that correct?

6 A The way it works, you query the system based on an
7 inmate number and ask for all calls made by that inmate.

8 Q Okay. Then you were able to determine that that was
9 the last date for phone calls to Kristy Bunch or Kristy
10 Bunch had advised you all of that?

11 A No. Looking on that list, you can see that that is
12 the last date that she received a call from him.

13 Q Did you get the beginning date of August 17th because
14 you had been told by her that that's when she believed the
15 conversation occurred?

16 A I picked that date arbitrarily. In between --
17 actually, I believe what we were looking at is a time in
18 October.

19 Q In October?

20 A So to be on the safe side, we broadened it a little
21 bit on either side.

22 Q So you had been advised of October, but you looked on
23 either side of it to be cautious?

24 A Right.

25 Q Is it fair to say, then, that since you were looking

1 at October that you spent a lot of time looking at phone
2 calls that had been placed in October?

3 A That's correct, yes, ma'am.

4 Q Can you tell the jury how many days did you actually
5 go out to Lieber and try to listen to the tapes, how many
6 days are we talking about?

7 A I know that I went a total of seven days. It may
8 have been more, but I base that upon looking at my
9 calendar as to the number that I wrote down that I would
10 be at Lieber just for record purposes.

11 Q So when you went back to figure out how many days --

12 A I could look on my calendar because I would have
13 written on my calendar that I was going to be out of the
14 office.

15 Q Okay. Now, you told us that you're the chief
16 investigator in your office. How many other investigators
17 are in the Solicitor's office?

18 A There's a total of ten of us.

19 Q Keith Hair, for example, is another investigator in
20 your office who had been working on this case; is that
21 correct?

22 A That's correct.

23 Q Detective Walker is the head investigator on the
24 case; is that correct?

25 A That's correct.

1 Q And you had been working with him throughout the
2 process of preparing for this trial; is that correct?

3 A That's correct.

4 And if I could clarify, Detective Walker works
5 for the sheriff's office, not the Solicitor's office.

6 Q Yes, sir, I understand that he works for the
7 sheriff's office.

8 So you have a member of the sheriff's office who
9 has been assisting you in preparing for trial. You've met
10 with various other officers in the case in preparation for
11 trial; is that correct?

12 A That's correct.

13 Q And then you have ten other investigators in your
14 office?

15 A That's correct.

16 MS. SHEALY: I beg the Court's indulgence.

17 I have no further questions. Thank you.

18 MS. WILSON: Nothing further.

19 THE COURT: You may step down.

20 MS. BURNEY: May I approach, your Honor?

21 THE COURT: Yes.

22 (A bench conference was held with the judge and
23 attorneys in the presence of the jury but out of the
24 hearing of the jury.)

25 THE COURT: We're checking on a witness, ladies

1 and gentlemen.

2 Ladies and gentlemen, I apologize. I will send
3 you to your jury room and find out what is going on with
4 the witness.

5 Do not discuss the case in any way.

6 (The jury left open court at approximately 2:34
7 p.m.)

8 THE COURT: You all please go call him. Thank
9 you.

10 (A short break was taken.)

11 THE COURT: Any news yet?

12 MS. WILSON: We have a witness to bring up.
13 Mr. Culp is here. We're working on that. In the
14 meantime, we'll call this witness.

15 THE COURT: How long is that going to take?

16 MS. WILSON: This witness? Not very long.

17 THE COURT: To do him?

18 MS. WILSON: I don't know. He's working on it
19 now.

20 THE COURT: I told the jurors I'd let them go
21 early. We'll play it by ear.

22 Bring the jury in.

23 (The jury came into open court at approximately
24 2:52 p.m.)

25 THE BAILIFF: The jurors are all present, your

1 Honor.

2 THE COURT: Go ahead, please.

3 MS. WILSON: Your Honor, we call Paula Stone.

4 PAULA A. STONE, after being duly sworn,
5 testified as follows:

6 THE CLERK: Please have a seat. State your full
7 name for the Court and spell your last.

8 THE WITNESS: Paula A. Stone, S-T-O-N-E.

9 DIRECT EXAMINATION

10 BY MS. WILSON:

11 Q Ms. Stone, how old are you?

12 A Pardon me?

13 Q How old are you?

14 A How old am I?

15 Q Uh-huh.

16 A Forty.

17 Q Do you have any children?

18 A Yes, I have three.

19 Q How old are your children?

20 A Twenty, fifteen and nine.

21 Q Are you working now?

22 A Not right now.

23 Q What has been your job in the past?

24 A I have spent 20 years in Air Force and then I worked
25 at Wal-Mart for about three years.

- 1 Q And is one of your daughters named Danielle?
- 2 A Yes, it is. That's my oldest.
- 3 Q And is her last name Batista?
- 4 A She's married now. Her last name is Bryan.
- 5 Q Bryan. But it was Bastista?
- 6 A Yes.
- 7 Q Where did you live with your daughter Danielle back
8 in January of 2002?
- 9 A 125 Willow Drive in Goose Creek, South Carolina.
- 10 Q And through your daughter Danielle did you meet
11 Anthony Mann?
- 12 A Yes, I did.
- 13 Q Did you become friends with him as well?
- 14 A I got to know him fairly well.
- 15 Q Were they -- did they date?
- 16 A Not to my knowledge.
- 17 Q They were just friends?
- 18 A Right.
- 19 Q And have you had occasion to see Anthony Mann since
20 he's been arrested in this case?
- 21 A Yes, I have.
- 22 Q Where did you see him?
- 23 A I saw him in two different institutions. I saw him
24 in Lieber and the one most recent.
- 25 Q You went and visited him?

1 A Yes.

2 Q And back in January of 2002, did you and your
3 daughter share a car?

4 A Technically in name -- well, according to the
5 registration both of our names are on it, but it was her
6 car because I had my own.

7 Q Did you help her with financing that car or anything
8 like that, paying for it?

9 A Yes.

10 Q Okay. Now, in the early part of January of that
11 year, did she -- did the car -- did she not have the car?

12 A Yes.

13 Q And did you help her try to find the car?

14 A Yes, I did.

15 Q And who was it you understood had it?

16 A Anthony Mann.

17 Q And did you make calls and try to get him to return
18 the car?

19 A Yes, I did. Danielle had left me with instructions
20 to do that while she was out of town.

21 Q Where was she out of town?

22 A She had gone to visit her father in Texas.

23 Q Okay. And so during the first couple of weeks of
24 January she was out of town and you understood that
25 Anthony Mann had her car?

1 A Yes.

2 Q And what kind of car was that?

3 A It's a 1996 Hyundai.

4 Q I'm going to you show what's already been introduced
5 as State's Exhibit 72. Is that her car?

6 A Yes, it is.

7 MS. WILSON: Your Honor, if I can show these to
8 the jury. I think they may have already seen them.

9 BY MS. WILSON:

10 Q When was it that you finally got this car back?

11 A When the police department called us and told us that
12 they had found the car, an abandoned car in Summerville in
13 a neighborhood next to the playground.

14 Q Do you remember what day in January that was?

15 A I do not remember the exact date. I know they called
16 us first thing in the morning because it was before I went
17 to work.

18 Q Was it in the second or third week of January? How
19 long was the car missing?

20 A About a week and a half.

21 Q Okay. And you think you got it when?

22 A I believe it was the second Monday of January, but I
23 cannot be exactly sure of the date.

24 Q All right. And when you got the car you said -- who
25 was it that called you and said they had found it?

1 A The police department.

2 Q And which police department was that?

3 A Summerville.

4 Q And did you go to Summerville Police Department to
5 get it?

6 A We did not go to the police department. They gave us
7 instructions on where the car was located and there was an
8 officer that met us there.

9 Q And when you went to where the car was, what
10 condition was it in?

11 A It was in fairly good condition. It was dusty on the
12 outside and dirty on the inside.

13 Q After you all picked up the car, was anything done to
14 it?

15 A When my daughter drove it home and I drove my car
16 home, once we got to the house I had to go to work, so she
17 was there and then she cleaned it.

18 Q She cleaned it. How did she clean it?

19 A She washed it and vacuumed it on the inside.

20 Q At some point later in January after you recovered
21 the car were you asked to provide it or make it available
22 for the Charleston County Sheriff's office?

23 A Yes. They contacted my daughter. It was two days
24 after we got it back.

25 Q Two days after you got it back they contacted you?

1 A Right.

2 Q Did you make it available for them?

3 A Yes, they came and picked it up that afternoon.

4 MS. WILSON: Beg the Court's indulgence.

5 That's all I have for this witness, your Honor.

6 MS. SHEALY: May it please the Court.

7 CROSS-EXAMINATION

8 BY MS. SHEALY:

9 Q Ms. Stone, just a couple questions.

10 You indicated that you've seen Anthony Mann
11 since he was in Columbia; is that correct?

12 A Yes.

13 Q How long ago was that?

14 A I think it was two months. I believe it was a little
15 more than two months.

16 Q Ago?

17 A Yes.

18 Q Okay. When you indicated that Danielle was out of
19 town and Amp had her car, she had let Amp have it while
20 she was going out of town; is that correct?

21 A Yes.

22 Q And you told us that the police called you and said
23 they had the car and you went with Danielle to go pick it
24 up?

25 A Yes, I drove her there.

1 Q You had mentioned that it was dusty on the outside
2 just like a car that needed to be washed?

3 A Yes.

4 Q And dirty on the inside. Did you mean with trash?

5 A Just trash like cigarette butts, empty cigarette
6 packs, a couple of fast food cups, that kind of thing.

7 Q And you didn't see any scratches on the car or
8 anything on the outside?

9 A Unh-unh.

10 Q Then Danielle vacuumed it. Do you all have one of
11 those little hand-held vacuums?

12 A She took a vacuum from the house and actually did it.

13 Q Okay. Do you know what kind of vacuum you have in
14 the house?

15 A No, because I don't have that vacuum anymore. I
16 don't remember the brand.

17 MS. SHEALY: That's fine.

18 Beg the Court's indulgence just a moment.

19 Thank you, Ms. Stone. That's all I have.

20 MS. WILSON: I don't have anything further.

21 May she be excused finally?

22 MS. SHEALY: No objection.

23 THE COURT: You may be excused, ma'am.

24 MS. WILSON: Thank you for waiting, Ms. Stone.

25 THE COURT: Are you ready? Approach.

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 MS. WILSON: Your Honor, the State calls Mervin
5 Menier.

6 MERVIN MENIER, after being duly sworn, testified
7 as follows:

8 THE CLERK: Please have a seat and state your
9 full name for the Court and spell your last.

10 THE WITNESS: Mervin Menier, M-E-N-I-E-R.

11 DIRECT EXAMINATION

12 BY MS. BURNEY:

13 Q How old are you, Mr. Menier?

14 A Thirty-one.

15 Q And you're incarcerated now?

16 A Yes, I am.

17 Q Did you know Anthony Mann?

18 A Yes. I met him while I was over here at the
19 Charleston County Detention Center.

20 Q And were you in the same area with him?

21 A Yeah, we were roommates.

22 Q About how long do you think you were roommates?

23 A I would say from anywhere from a week to a couple of
24 weeks or like that.

25 Q At some point were you able to see him after that

1 time?

2 A Yes. He got moved, and he moved like two rooms down
3 from me, and we still kept in contact. We were together
4 after that for like a couple of months.

5 Q So the entire time that you were around him was about
6 how long?

7 A I would say a few months.

8 Q Did he talk to you about his charges?

9 A Yes, he did.

10 Q And how often would you he talk to you?

11 A Every day.

12 Q And every day did he talk to you about his case?

13 A That's all he seemed to talk about.

14 Q What did he tell you about it?

15 A He told me a lot of different things about it. What
16 he was talking about is how to get over on the case.

17 Q What do you mean by "get over on the case"?

18 A Come up with ways to try to get not convicted.

19 Q And did he talk to you about what actually happened
20 as far as the events that took place?

21 A Yes, he did.

22 Q What did he tell you about that?

23 A He told me that he had got a phone call from a girl
24 named Star and about this girl named Brownie and that she
25 had to move out from where she was staying. And then they

1 went over there. And the whole thing was to get her
2 clothes and get her out of there and to rob the guy who
3 she was staying with, which his name was Tobias.

4 Q And did he tell you about they actually did go over
5 to Tobias' house?

6 A Yes, he did.

7 Q What did he say happened when he went there?

8 A He said they went and got her clothes.

9 Q Who are you talking about when you say "they"?

10 A He rode over there in this kid named Eric's car. I
11 believe Brownie was with him or she was at the house
12 already. And he was with -- Amp was with them, Anthony,
13 they went over there, got her clothes and they left. They
14 came downstairs and he stayed upstairs and robbed the dude
15 and I guess he shot him.

16 Q Why are you guessing that he shot him?

17 A Well, he did shoot him.

18 Q Did he tell you that he shot him?

19 A He says he robbed him and the guy got shot, the guy
20 died, and he said the other people that were with him,
21 they didn't see it because they had already gone back down
22 to go to the car.

23 Q And he was alone with the man when the guy got shot?

24 A Yes, he was.

25 Q Did he tell you what happened after -- did he tell

1 you where he shot the guy or where the guy got shot?

2 A From what he told me, the guy got shot in the back.

3 Q Did he tell you what happened after they left Tobias'
4 house?

5 A Well, he robbed the dude. He said they had took some
6 money from him and some drugs and they left. From there
7 they went either to a girl named Danielle's house or a guy
8 named Peter's house. I believe it was Peter's house.

9 Q What happened when he got back to Peter's house?

10 A They went into a room and they divided up the money
11 or they counted it, and I believe they gave Eric a part of
12 money and that's when they split up. Another guy came to
13 pick him up named Terrance and took him to Danielle's
14 house.

15 Q Okay. Now, what did he tell you that he did next
16 after -- Terrance picked up who?

17 A Him and Peter and the girl named Brownie.

18 Q And what happened after Terrance picked Peter, Amp,
19 and Brownie up?

20 A He took them to Danielle's house, and I guess they
21 hanged around there for a little while and he noticed that
22 she was nervous and they in Danielle's car, Amp, Peter and
23 Brownie.

24 Q Okay. Did you keep any notes about the stuff that he
25 was telling you?

1 A Yes, I did.

2 (WHEREUPON, State's Exhibit No. 127 was marked
3 for identification only.)

4 BY MS. BURNEY:

5 Q I'm going to hand you what's been marked as State's
6 127 for ID. Take a look at that and read it.

7 A Want me to read the whole thing?

8 Q To yourself.

9 A Okay.

10 MR. BUTLER: May we approach?

11 THE COURT: Yes.

12 (A bench conference was held with the judge and
13 attorneys in the presence of the jury but out of the
14 hearing of the jury.)

15 BY MS. BURNEY:

16 Q Let me take this back and ask you a question.

17 So you said that he left in Danielle's car?

18 A Yeah, they left in Danielle's car.

19 Q Now, did he tell you -- why was he telling you all
20 this in the first place?

21 A Like I told you at the beginning, he was just --
22 basically he was talking to me and he was trying to come
23 up with a way, we both were for him to try to get over on
24 the whole case.

25 Q When you say you both were, you would try to help

1 him?

2 A He just talked to me -- he just talked to me and I
3 guess I gave him ideas or whatever, but at the same time
4 he was just telling me about the whole case.

5 Q Okay. Now, were you -- I think I might have asked
6 you this already, but I'm not certain. Were you keeping
7 any notes or anything while he was telling you this?

8 A Right as he was telling me I wasn't taking notes, but
9 afterwards, yes, I would.

10 Q What did you do with the notes?

11 A I hid them.

12 Q Do you still have your notes?

13 A I do still have my notes but not with me.

14 Q What did you do with the notes?

15 A I had them in my paperwork, and since I was being
16 transferred I gave them to my lawyer.

17 Q Did you give all of your notes to your lawyer?

18 A Yes, I did, with all my paperwork.

19 Q Okay. How was it that -- were you concerned at all
20 that anybody could read your notes?

21 A Yeah, I know that could give me a problem even if he
22 found the notes or if somebody else read them.

23 Q Okay. Now, after he told you that they left in
24 Danielle's car, what did he tell you happened next?

25 A He said they was driving, and he must have pulled

1 over. He must have been on a highway or something. They
2 pulled over like in a wooded area, and he lured the girl
3 out the car. I don't know exactly what he told her to get
4 out the car, but he did, and that's when he shot her. And
5 he said he left her in some woods or something.

6 Q Did he talk to you about anything else? What did he
7 tell you he did after that?

8 A After the shooting?

9 Q Uh-huh.

10 A Well, I don't know exactly what he did after the
11 shooting, but I know he made the comment of there was no
12 shells around when she was shot.

13 Q When the girl was shot?

14 A Yes.

15 Q Is that all he told you about what happened with the
16 facts of his case?

17 A That's what he told me about the case. He also told
18 me that afterwards they took the cars to get detailed.

19 Q Who is "they" when he said they took the cars to get
20 detailed?

21 A When he says "they," I guess it was his little group
22 he was with or it could be the other car, too, that they
23 originally went to the house in.

24 Q All right. Now, did he talk to you about any of the
25 evidence in this case at all? Did you see anything about

1 any of the paperwork that he had or did he have any
2 paperwork when he was talking to you?

3 A When he was in my room he didn't have no paperwork
4 really because he had just recently had got arrested.
5 Afterwards when he was like two rooms down from me, he did
6 have some paperwork, and he showed it to me and I don't
7 believe I read it. It was about some statements that came
8 back to a young boy named Eric, that he had gave some
9 statements.

10 Q Did he talk to you about anything else, any reports
11 or anything?

12 A He told me about -- I remember he seen it on TV and
13 he was still in my room at that time about the autopsy
14 report, that it was wrong because the date they were
15 saying was contradicting on day that it really happened.

16 MS. BURNEY: Beg the Court's indulgence just a
17 moment.

18 BY MS. BURNEY:

19 Q Do you know who Lisa and Nicky are?

20 A Yeah. Just from right now reading the notes, I know
21 I said they went to Danielle's house, and I'm sorry, it
22 was really Lisa and Nicky's house, I think.

23 Q Is that what he told you or is that what you know?

24 A That's what he told me.

25 MS. BURNEY: Beg the Court's indulgence just a

1 moment.

2 BY MS. BURNEY:

3 Q When did he tell you that the girl was killed.

4 A When?

5 Q Uh-huh.

6 A It either happened that Sunday night or either
7 Monday.

8 Q Okay. Do you know when he told you it happened in
9 relationship to when the guy was killed?

10 A He said it happened afterwards.

11 Q He said afterwards?

12 A Yeah, later on that night.

13 Q Okay. Now, when was this that you all were together?
14 Was it this year, 2003, or some other time?

15 A It was January of 2002.

16 Q Last year?

17 A Last year.

18 MS. BURNEY: I don't have any other questions.

19 MR. BUTLER: May it please the Court.

20 THE COURT: Yes, sir.

21 CROSS-EXAMINATION

22 Q Welcome to South Carolina.

23 A Thank you.

24 Q How is West Virginia?

25 A It's all right.

1 Q Good to be back?

2 A Where?

3 Q Here.

4 A Not really.

5 MR. BUTLER: With the Court's permission I'd
6 like to use this.

7 THE COURT: All right.

8 BY MR. BUTLER:

9 Q Who are you today?

10 A Me? I'm Mervin Menier.

11 Q Does that seem like a silly question for me to ask
12 you?

13 A I don't know. You asked me a question and I just
14 answered it.

15 Q Because you're not always Mervin Menier, are you?

16 A I wasn't at one point.

17 Q At just one point?

18 A Yes. I had some problems with the law and I wasn't
19 using my name, but that doesn't mean I wasn't Mervin
20 Menier.

21 Q Is that another example of getting over on somebody
22 to use your term?

23 A No.

24 Q It's not?

25 A (Witness shaking head.)

1 Q Who is Damon Stone?

2 A That's the alias that I used.

3 Q What is Damon's date of birth?

4 THE COURT: Hold on a second. Can everybody see
5 that? That red is sometimes hard for some people to read.

6 BY MR. BUTLER:

7 Q What is Damon's date of birth? When you're Damon
8 what's your date of birth?

9 A Damon's date of birth is 9-26-72.

10 Q What's his Social Security number?

11 A Right now I don't know. I don't remember.

12 Q Does 077-58-4436 sound familiar?

13 A That could be it.

14 Q Who is Robert Quincy Rodriguez?

15 A That's the name I originally got arrested in.

16 Q Robert Quincy Rodriguez. That is not you, right?

17 A No.

18 Q That is another name you used?

19 A Yes, it is.

20 Q When you're Robert what is your date of birth?

21 A Robert's date of birth that I used was, if I'm right,
22 5-24-70.

23 Q Close. 6-24-70. Does that sound right?

24 A Yes.

25 Q Gets confusing sometimes, doesn't it?

1 A Yes.

2 Q When you're Robert Quincy Rodriguez what is your
3 Social?

4 A Right now I don't remember.

5 Q Does 058-58-9764 sound familiar?

6 A That could be it.

7 Q What about 403-29-7730?

8 A I don't know.

9 Q Do you find when you tell so many lies it's hard to
10 keep them straight?

11 A It's just that I haven't used those names in over two
12 years, so I have been having to give my real name and my
13 real Social Security.

14 Q Who is Gary O'Neil Pamphile?

15 A That's another alias that I use.

16 Q Gary O'Neil Pamphile. Am I saying that right,
17 Pamphile?

18 A Pamphile.

19 Q Who is Mark Taylor?

20 A I don't know.

21 Q You don't know him?

22 A No.

23 Q Who is Mark Stone?

24 A Mark is a name that people call me by, but Mark
25 Taylor and Mark Stone.

1 Q So some people get confused with all the lies and
2 lying, so Mark with Stone and you get Mark Stone?

3 A You could say that.

4 Q I'm not saying that. I'm asking you.

5 A No, nobody never called me Mark Stone.

6 Q Okay. And when you use these names, you're not
7 trying to pull anything over on anyone, are you?

8 A Like I said before, I was in trouble with the law so
9 I wasn't using my real name.

10 Q What's wrong with the name your momma gave you?

11 A I don't think nothing's wrong with it.

12 Q You come up with these other names so you can commit
13 crimes and then the cops can't catch you, right?

14 A Basically that's what it was for.

15 Q Because if you're Mervin and they're looking for
16 Damon Stone they don't know to look for you?

17 A No, they weren't looking for Damon Stone, they were
18 looking for Merv.

19 Q Or Robert Quincy Rodriguez, they were looking for
20 him, weren't they?

21 A Oh, yeah, they were looking for him.

22 Q Where were you earlier in the week in West Virginia
23 and what were you doing?

24 A This week? I was in jail over there in West
25 Virginia.

1 Q When did you just finish testifying in West Virginia?

2 A Tuesday.

3 Q Okay. The indictment for you in that case was for
4 Robert Rodriguez, was it not?

5 A Yeah. It had a lot of names on it. One of them was
6 for Robert Rodriguez.

7 Q Mervin Menier also known as Merv Menier, Robert
8 Quincy Rodriguez, Damon Anthony Stone, Gary O'Neil
9 Pamphile, Mark Taylor, Mark Stone. All those names were
10 on your indictments, right?

11 A I believe so.

12 Q But the original warrant was for Robert Quincy
13 Rodriguez, right?

14 A Uh-huh.

15 Q And that's who they were looking for was you but they
16 were looking for you under that name, right?

17 A Yes.

18 Q And the offenses for that warrant were from 1995?

19 A Around that time, yes.

20 Q And when you were arrested finally, that was when in
21 '99, 2000, 2001, when was that?

22 A I was arrested January 11th, 2002.

23 Q 2002. So for seven years the federal government was
24 looking for Robert Quincy Rodriguez or you, right?

25 A Yes.

1 Q And when you got arrested you were in Charleston,
2 weren't you?

3 A No, I wasn't in Charleston when I got arrested. I
4 was on the highway. I got pulled over for speeding.

5 Q You were in South Carolina?

6 A Yes.

7 Q Outside of Charleston?

8 A I remember the name of the town I got pulled over in.
9 It was Walterboro, Colleton County.

10 Q And so I'm sure that when you were arrested you told
11 them they're probable looking for me, Robert Quincy
12 Rodriguez, right?

13 A No, I didn't tell them.

14 Q Well, when law enforcement started to put together
15 who you were, you came clean, right?

16 A Yes, eventually I did.

17 Q Eventually?

18 A Yeah.

19 Q How long did it take?

20 A How long did it take for me to come clean?

21 Q Right.

22 A I don't know the exact date. I don't know.

23 Q You stayed down in our jail for six months, didn't
24 you?

25 A I stayed seven months.

1 Q Seven months, okay. And then they had to have a
2 hearing in federal court to determine who you were; isn't
3 that right?

4 A Yes, they did.

5 Q Because you were adamant that you were not Robert
6 Quincy Rodriguez or the Robert Quincy Rodriguez they were
7 looking for, right?

8 A They didn't know who they want.

9 Q But when you knew that they were looking for you as
10 Robert Quincy Rodriguez, you said, I'm not that person
11 that you're looking for, right?

12 A I didn't admit to it at first, no, I didn't.

13 Q At first. There was a two-day hearing in federal
14 court, was there not, two days?

15 A Yes, there was.

16 Q Where you said, I'm not that guy, right?

17 A They didn't even know if I was the guy they wanted.

18 Q Do you know who you are?

19 A I just told you before.

20 Q And I should believe you today?

21 A I don't see why not.

22 Q You don't see why not? You see how reasonable people
23 might disagree with you about that?

24 A (Witness nodding.)

25 Q And at the end of the two days of hearing, what

1 happened?

2 A I got extradited.

3 Q Low and behold they decided contrary to what you had
4 been saying that you were the person they were looking
5 for, right?

6 A Yeah. I pled guilty and I told them.

7 Q After they had the FBI come and match fingerprints
8 and everything, then you said okay, you got me?

9 A No. My fingerprints came up with my name about three
10 days after I got arrested.

11 Q What did they spend two days in federal court in
12 Charleston trying to figure out then, Mr. Stone Rodriguez
13 Pamphile?

14 A They were trying to figure out if I was the right
15 person they wanted in West Virginia.

16 Q But you had been operating in West Virginia, running
17 drugs in West Virginia under that name, right?

18 A What name?

19 Q Robert Quincy Rodriguez?

20 A No. I was using the name Mark.

21 Q Mark.

22 You have got charges under the name Damon Stone,
23 too, haven't you?

24 A No, I haven't.

25 Q You have not. You were not arrested in Columbia

1 under the name Damon Stone?

2 A No, I wasn't.

3 Q Is Damon Stone a real person?

4 A Yes, he is.

5 Q Who is he?

6 A He's a real person. He's another guy.

7 Q Whose identify you borrowed, I guess?

8 A Yes.

9 Q Whose date of birth you borrowed?

10 A His identity, yes.

11 Q Is he a friend of yours?

12 A I knew him, yes.

13 Q What about Robert Quincy Rodriguez?

14 A I knew himself.

15 Q That is a real person?

16 A A real person.

17 Q And the real Robert Quincy Rodriguez was arrested in
18 New York, wasn't he?

19 A Yeah, he had been arrested a few times.

20 Q On the warrant that was really for you?

21 A Yes, the warrant was under Robert Rodriguez's name.

22 Q And is Robert Quincy Rodriguez a friend of yours?

23 A I know him, yes, sir.

24 Q So your friend in New York was picked up on a warrant
25 meant for you and they drug him, the federal government

1 drug him from New York to West Virginia because of what
2 you did; isn't that right?

3 A Yeah, that's true, but he was also involved in it.
4 He's also let go.

5 Q But none of this is trying to get anything over
6 anybody, is it?

7 A I don't know what you're trying to say.

8 Q Well, look. "Get over on someone" is a term that you
9 used. I'm assuming that you mean a certain thing, maybe
10 you don't, so I will just ask you. What does it mean to
11 get over, get something over someone?

12 A To get over means to get by it.

13 Q That's not what you're doing with all these different
14 name?

15 A That's what I was doing. I can't do it no more, I'm
16 incarcerated.

17 Q They finally found out who you really were so now you
18 can't do it anymore; isn't that right? Was there an
19 answer?

20 A Yes, it was.

21 Q And was the answer yes?

22 A Yeah, I can't do it. I have been incarcerated for
23 the past almost two years.

24 Q The charges that you were -- that you were wanted on
25 under the name Robert Quincy Rodriguez, distribution over

1 50 grams of crack, five kilograms of powder, 100 kilos of
2 marijuana, right?

3 A I believe that's right.

4 Q Uh-huh. And in West Virginia you were testifying
5 against your co-defendants in that case?

6 A No. I ended up having to testify against this
7 co-defendant because he took his plea back at the last
8 minute and he decided to go to trial.

9 Q Have you been sentenced yet?

10 A Yes, I was sentenced.

11 Q What sentence did you receive?

12 A I received 270 months.

13 Q Do you know how much that charge carries?

14 A What charge?

15 Q The thing that you were charged with.

16 A Well, I know I took a plea to zero to 20 and then the
17 mandatory five years for possession of a gun.

18 Q Possession of a gun carries five to life, doesn't it?

19 A Yeah. It's mandatory five years, though. And that's
20 what I was getting for it.

21 Q And the other charge carries one to 20?

22 A Zero to 20.

23 Q Zero to 20. And you got what?

24 A Total, 270 months.

25 Q That was in part for cooperating against your

1 co-defendant?

2 A That was for nothing. That's what they gave me.

3 Q The sentence that you have now is 270 months you
4 said?

5 A Yes, I did.

6 Q What is downward departure?

7 A What is it?

8 Q Yes, what is a downward departure?

9 A They impose down from the guidelines.

10 Q What are the guidelines?

11 A What they sentence you by in the federal court
12 system.

13 Q A downward departure is either before your sentence
14 and sometimes after your sentence, you can go to a judge,
15 have your lawyer go to a judge and say, I think that my
16 sentence should be reduced, right?

17 A I guess.

18 Q And that can even happen after you have been
19 sentenced?

20 A I believe so.

21 Q After you got 270 months, because of your cooperation
22 in a federal case or in a state case, you can go to a
23 judge say, because I did this I would like my time cut,
24 right?

25 A Yeah, my lawyers can do that, yes, sir.

1 Q And whether to do that is in the sole discretion of
2 the judge, right?

3 A I guess. I don't know.

4 Q And if he gives you a downward departure, the amount
5 that he gives you is at his sole discretion, right?

6 A I believe so.

7 Q So 270 months can be zero, can't it?

8 A I believe so.

9 Q You don't want to do 270 months, do you?

10 A I don't think nobody does.

11 Q You getting a better idea of what I mean by getting
12 over something on someone with respect to what you did?

13 A If I'm getting a better idea about it?

14 Q Yeah.

15 A I don't understand what you're saying.

16 Q All these things that you do with these names, you're
17 getting over on someone, are you not?

18 A No, I did.

19 Q You did, okay. With lies?

20 A Yeah, you could say they were lies because I was
21 lying.

22 Q And you're a persistent liar?

23 A I wouldn't call myself a persistent liar.

24 Q Seven years, is that not a long time to you?

25 A Yes, it is awhile.

1 Q Okay. And two days maintaining you're not somebody
2 who you really -- well, I guess not who you really are,
3 but two days in federal court in Charleston, six months,
4 seven months maintaining that you are not the person that
5 they were looking for, that's not persistence to you?

6 A Like I told you before, they didn't know who they
7 wanted, so I didn't feel like I should say that it was me.

8 Q To make sure I understand, you were only in the cell
9 with Anthony two weeks, a week or two weeks is what you
10 said?

11 A An exact date, an exact amount of days I don't know.

12 Q That's fine. Just a week or two, right?

13 A Yes.

14 Q After that you were moved to another cell?

15 A No. He was moved to another cell.

16 Q How far away were you?

17 A He was like two doors away from me.

18 Q So there would be another cell in between the two of
19 you, right?

20 A Yes, there was.

21 Q Was there someone else in the cell with you?

22 A Yeah, there's always two people to a room.

23 Q And there was someone in the cell, in the cell with
24 him?

25 A Yes, there was.

1 Q And there would be two people in the cell in between
2 the two of you?

3 A Yes, sir.

4 Q You had a bunch of other charges, too, didn't you, in
5 federal court that they dismissed as part of your pleading
6 guilty?

7 A Yeah. It was a 12-count indictment. I believe I was
8 like in eight of them.

9 Q You were in eight and you pled to two?

10 A I pled to one and an information count.

11 Q When you got this information that you say that
12 Anthony divulged to you, I'm assuming you came forward
13 right away?

14 A Came forward in what way?

15 Q Came forward and told either law enforcement or the
16 people at the jail or somebody that this person has just
17 confess his involvement in two homicides; you did that,
18 right?

19 A The only person I ever told that to is my lawyer.

20 Q Okay. The notes that you took, when did you turn
21 those over to him?

22 A I was getting moved, I was in transfer, and the exact
23 date I don't know, but I had a big box of paperwork and
24 they were hidden in the paperwork.

25 Q Were you still in South Carolina at that point?

1 A No, I wasn't.

2 Q After the federal government figured out who you were
3 and you had left Charleston and were in West Virginia,
4 that's when you relayed the information?

5 A One day my lawyer asked me where that paperwork was
6 or whatever, and I told him it was hidden in my box that I
7 had given him.

8 Q That was after you had been, after they had
9 determined that you were going to be extradited to West
10 Virginia?

11 A I believe so.

12 Q So when you're in South Carolina and you're still
13 saying, I'm not the guy they want, you don't say anything?

14 A I don't say anything about what?

15 Q You don't give over those papers, your notes that you
16 say reflect the things he told you?

17 A No, I didn't give those notes to nobody.

18 Q But once the federal government has their hands on
19 you and you're in West Virginia, that's when you decide,
20 hey, I know what, I would like to assist the State of
21 South Carolina in prosecuting this violent and heinous
22 crime; isn't that right?

23 A No. I had the paperwork hidden in -- I had those
24 notes hidden in my paperwork. They asked me for them one
25 day, so I gave them to them and told them where it was at.

1 Q You say that the information that Anthony told you
2 was that when he came, something about when he came
3 downstairs, he was upstairs and he came downstairs?

4 A I know I was upstairs and I came downstairs, and a
5 few days after me being downstairs is when he came to my
6 room.

7 Q I'm talking about what you said he told you about at
8 the guy's house.

9 A Okay.

10 Q About the crime.

11 A Okay.

12 Q That there was an upstairs and downstairs?

13 A Yes, that's what he explained to me, yes.

14 Q Tell me about that.

15 A He said that he went upstairs, got the girl's
16 clothes, the girl Brownie's clothes, and she went
17 downstairs with this other kid, and I didn't know the
18 kid's name, but from reading the notes his name was
19 Michael, and they were putting the clothes away and he
20 stayed up there and he robbed the guy.

21 Q Then they went to Danielle's house?

22 A Either Danielle or Peter's house, and I believe it
23 was Peter's house from the way he told the story.

24 And I said Danielle's house. It was really Lisa
25 and Nicky's house.

1 Q Was it Lisa and Nicky or Danielle or Peter?

2 A No.

3 Q Is that just as confusing as Damon, Robert and Gary?
4 Which one is it?

5 A It's a long time ago. It's not like I've been
6 thinking about this. I got a lot of other problems.

7 Q All right. Do you have any other convictions under
8 any of these other names?

9 A I have no priors.

10 MR. BUTLER: Beg the Court's indulgence one
11 moment, please.

12 THE COURT: Yes, sir.

13 MR. BUTLER: I'm finished. Thank you.

14 THE COURT: Anything else? Any response?

15 MS. WILSON: Beg the Court's indulgence.

16 REDIRECT EXAMINATION

17 BY MS. BURNEY:

18 Q Did you know any of those people that Amp was talking
19 about? Any of those names that you called out, Eric,
20 Peter, Zack, Danielle, Brownie, Tobias?

21 A No, personally I didn't know them.

22 MS. BURNEY: That's all I have.

23 THE COURT: You may step down, sir.

24 All right. Ladies and gentlemen, I know I
25 promised to get you out a little early today. I know it's

1 been a long week, and I also realize we have to run into
2 next week.

3 I received a note, and I'll probably be able to
4 tell you more about that on Monday, about when I think the
5 case will probably get over. I don't expect it to take
6 all of next week, thought, if that's what you're really
7 inquiring about.

8 Again, I wanted to get you out a little early
9 since we have been working late every day. So if you'll
10 please give your pads to the bailiff on the way out.

11 I hope you all have a good weekend.

12 If you could, just to avoid a little bit of the
13 usual Monday morning commotion as far as we have a jury
14 panel here for other cases, if you'll just report at 9:30
15 on Monday and we'll start trial then.

16 Thank you very much. Have a good weekend. I
17 appreciate again your willingness to serve these two
18 weeks.

19 (The jury left open court at approximately 3:41
20 p.m.)

21 THE COURT: Thank you.. See you all Monday.

22

23 (The proceedings were concluded for the day to
24 be reconvened on September 22, 2003.)

25

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 19th day of
September, 2003.

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

June 11, 2004



CAROL M. THUEME, RPR, Court Reporter

My Commission Expires: 06-04-2007

1 Q Did he appear to be under the influence of alcohol or
2 drugs?

3 A Not at all.

4 Q Did he appear to understand you as you explained the
5 rights to him?

6 A Yes, ma'am, fully.

7 Q Did you understand his speech to be coherent?

8 A Yes, ma'am.

9 Q Did he tell you at any time that he wanted a
10 attorney?

11 A No, ma'am.

12 Q Did he invoke his right to remain silent when you
13 talked to him?

14 A No, ma'am, he didn't.

15 Q Did he agree to answer questions without an attorney
16 present?

17 A Yes, he did.

18 Q Did you promise him anything in return for giving the
19 statement?

20 A Nothing whatsoever.

21 Q And did you coerce him into making this statement?

22 A Not at all.

23 Q Any verbal or physical threats?

24 A None.

25 Q Was he allowed sufficient time for breaks, creature

1 comforts, bathroom, eating?

2 A Yes, ma'am. We allowed him cigarettes. If he said
3 he was thirsty we provided a drink at any time. He also
4 at one point said he was hungry and we brought him some
5 food and allowed him to eat.

6 Q Did you make a record of that as well?

7 A Yes, ma'am, we made some notations at the top of the
8 advisement form.

9 Q To the best of your knowledge was his statement
10 freely and voluntarily given?

11 MS. SHEALY: Your Honor, I object to this
12 officer as being able to testify to that.

13 THE COURT: No, I'm going to allow that
14 question. Go ahead.

15 THE WITNESS: Could you repeat it, ma'am?

16 BY MS. BURNEY:

17 Q To the best of your knowledge, was this statement
18 freely and voluntarily given?

19 A Yes, it was.

20 Q And was his statement recorded in any fashion?

21 A Yes, ma'am, it was recorded. It was written as he
22 gave it to me, the information.

23 At the beginning of the statement I asked him if
24 he wanted to write it and he elected to have me write it.

25 Q Now, is this time that we're speaking of here the

1 only time that he was interviewed by you or in your
2 presence in reference to this case?

3 A No, ma'am, it wasn't. On January 22nd, myself and
4 Detective Watson took Mr. Mann to Charleston County
5 Memorial Hospital to collect some evidence.

6 MS. SHEALY: Your Honor, you'll note our earlier
7 objection.

8 THE COURT: Yes, ma'am. Go ahead.

9 THE WITNESS: Thank you, your Honor.

10 We took him to the Charleston County Hospital to
11 collect some evidence. A suspect evidence collection kit
12 consists of head hair, pubic hair, saliva samples, things
13 to be tested at a later time if necessary.

14 I explained the process to Mr. Mann because I
15 believe in letting people know what is going to happen to
16 them. I didn't want him to be surprised. When I informed
17 him that they were going to take head hair to be compared,
18 Mr. Mann made an utterance that, I told you that her hair
19 was going to be on me, I hugged her that night.

20 BY MS. BURNEY:

21 Q What night?

22 A That night. At that time, I asked him, I said, Is
23 there something you want to talk to me about? And he
24 said, Yes.

25 Q And did, at some point, did you ever talk to him any

1 further after he said yes?

2 A Yes, ma'am. I advised him, I said, Well, let's wait
3 until we get back to the office.

4 MS. SHEALY: Your Honor, may we approach for a
5 minute?

6 THE COURT: Yes.

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 BY MS. BURNEY:

11 Q All right. Now, Sergeant Walker, were there any
12 search warrants executed in investigating this case?

13 A Yes, ma'am, there were several search warrants.

14 Q Were there any search warrants in relation to the
15 defendant, Anthony Mann?

16 A Yes. We had a search warrant for his parent's
17 residence on Willow. We also had a search warrant for
18 Kristy Bunch's residence on Pandora, Lisa and Nicky
19 O'Connell's residence off of Ladson Road, and a search
20 warrant for Mr. Mann's person, like I said stated earlier,
21 head hair and things of that nature.

22 Q Did he have a vehicle?

23 A Yes, ma'am, he had a vehicle, I believe it was a
24 Toyota, and we conducted a search warrant on that.

25 Q Now, I'm going to show you what is in evidence as

1 State's Exhibit 80 and ask you if you can identify that.

2 A Yes, ma'am. I believe that is Mr. Mann's personal
3 vehicle.

4 Q State's 81?

5 A Yes, ma'am, that's the same vehicle from the rear.

6 Q This is State's 84.

7 A Yes, ma'am, that's the same vehicle.

8 Q Now, what is that inside the vehicle?

9 A I can't see it from this vantage point.

10 Clothing, a black leather jacket and some trash
11 on the floor.

12 Q Take a look at the other one.

13 A This is a multi-colored polo-type shirt and a black
14 leather jacket.

15 Q 96 and 85 are the same shirt and jacket that are in
16 the back seat on 84?

17 A Yes, ma'am, they are.

18 Q This is State's --

19 Now, I'm showing you what's marked as State's
20 Exhibit 15.

21 A Yes, ma'am.

22 Q Can you identify this?

23 A Yes, ma'am. That's a black leather jacket that was
24 retrieved from the vehicle belonging to Mr. Mann.

25 Q And State's Exhibit 5?

1 A Yes, ma'am. That is a pager taken off his person
2 upon him being taken into custody.

3 Q Now, was -- as part of this investigation, was Eric
4 Zack interviewed?

5 A Yes, ma'am. Eric Zack was interviewed on
6 January 16th, 2002.

7 Q How many times did you meet with him?

8 A We met with Mr. Zack a total of three times.

9 Q And what was the second occasion that you wanted to
10 meet with him?

11 A We met with Mr. Zack on the first occasion, he gave a
12 statement. On the second occasion we were contacted by
13 his attorneys and they advised us that they and their
14 client wanted to speak with representatives from the
15 Solicitor's office and the sheriff's office.

16 Q So Zack and his attorneys initiated the second
17 contact?

18 A That's correct.

19 Q How did the third interview come about?

20 A What had happened was, on the second interview
21 initiated by Mr. Zack and his attorneys, the sheriff's
22 office, the Solicitor's office and his attorneys agreed
23 that we wouldn't take a signed written statement but that
24 someone would be responsible for taking detailed notes on
25 the interview because some new information had arrived in

1 reference to Mr. Zack's previous statement.

2 What had happened was human error. We had a
3 bunch of people involved in the interview and no one took
4 detailed notes. I did a supplemental report as to the
5 interview taking place, but no one took detailed notes.

6 Q Were notes taken at all?

7 A Yes, some notes were taken by everyone there, but a
8 detailed summary report was not done.

9 Q So how -- what was the context of the third
10 interview? How was that set up?

11 A The third interview was set up so that the
12 information Mr. Zack gave us in his second interview
13 wouldn't be missed and we would be able to give that
14 information to Mr. Mann's attorneys, so we videotaped the
15 third interview.

16 MS. BURNEY: Beg the Court's indulgence for a
17 moment.

18 BY MS. BURNEY:

19 Q Now, Sergeant Walker, were you familiar with the
20 physical evidence that was collected in the case and the
21 efforts to examine those items?

22 A Yes, ma'am.

23 Q And I had just asked you a moment ago about search
24 warrants that were executed and you mentioned a residence
25 on Ladson Road, Lisa and Nicky O'Connell?

1 A Yes, ma'am.

2 Q What was seized from that residence?

3 A We took a pair of blue jeans, actually three pair of
4 blue jeans from the O'Connell residence.

5 Q Was there anything detected on those blue jeans?

6 A Nothing, ma'am.

7 Q What other residence were -- you mentioned Pandora?

8 A We went to Kristy Bunch's house on Pandora, and we
9 took a beige sweater, and nothing was detected at all on
10 that also.

11 Q And are there any other residences that were
12 examined?

13 A Yes, ma'am. We also went to a residence at 2494
14 Etiwan.

15 Q What is that address?

16 A That is Peter Davies' address, that is where he was
17 staying at the time.

18 Q And where -- he was staying there? Who was staying
19 there?

20 A Peter Davies.

21 Q Not the defendant. Okay. All right. And what was
22 seized from that residence?

23 A We took a pair of boxer shorts, two pairs of khaki
24 pants, some khaki jeans, black and white shirt, and
25 nothing was found on any of that clothing either.

1 Q And was anything collected from the defendant at the
2 time of his arrest other than that pager?

3 A Yes, ma'am. We collected a pair of suede shoes, a
4 maroon sweater, a pair of black pants. Actually it was
5 two pair of black pants and a black jacket from Mr. Mann's
6 person. And nothing was found on any of that clothing.

7 MS. BURNEY: Can I approach, your Honor?

8 THE COURT: Yes, ma'am.

9 (WHEREUPON, State's Exhibit No. 129 was marked
10 for identification and received into evidence.)

11 MS. BURNEY: Your Honor, the State and defense
12 have entered a stipulation regarding trace evidence expert
13 testimony. At this time we request the Court's permission
14 to publish it to the jury.

15 THE COURT: Go ahead.

16 MS. BURNEY: The attorneys for the government
17 and defense counsel do hereby agree and stipulate that if
18 Lieutenant Emily B. Rineheart of the State Law Enforcement
19 Division, SLED, were called to testify, she would state
20 the following: One, she is an expert in the field of
21 forensic serology and trace evidence analysis; two, she
22 examined the following items and obtained the following
23 results: A, boxer shorts from 2494 Etiwan Avenue,
24 Apartment G8; no blood detected: B, khaki pants from 2494
25 Etiwan Avenue, Apartment G8; no blood stains present. C,

1 khaki jeans, 2494 Etiwan Avenue, Apartment G8; no blood
2 detected. D, khaki pants from 2494 Etiwan Avenue
3 Apartment G8; no blood stains present, E, maroon sweater
4 from Anthony Mann on January 16th, 2002; no blood
5 detected. F, suede shoes from Anthony Mann on
6 January 16th, 2002; no blood detected. G, pants from
7 Anthony Mann on January 16th, 2002; no blood detected.
8 H, black pants from Anthony Mann on January 16th, 2002; no
9 blood detected. I, black leather jacket from Anthony Mann
10 on January 16th, 2002; no bloodstains present. J, beige
11 sweater from Kristy Bunch's house on Pandora on
12 January 17th, 2002; no apparent bloodstains present. K,
13 black and white shirt, 2494 Etiwan Avenue, Apartment G8 on
14 January 16th, 2002; no blood detected. L, Old blue jeans
15 from O'Connell residence on Ladson Road, January 16th,
16 2002; no blood detected. M, blue jeans from O'Connell
17 residence on Ladson Road, January 16th, 2002; no apparent
18 bloodstains present. N, blue jeans from O'Connell
19 residence on Ladson Road; no blood detected. And it's
20 signed by Scarlett Wilson, Chief Deputy Solicitor and
21 Jennifer Shealy, attorney for Anthony Mann.

22 THE COURT: I've already told you about
23 stipulations, ladies and gentlemen. The same would apply
24 to this said stipulation.

25 MS. BURNEY: Your Honor, may we approach?

1 THE COURT: Yes, ma'am.

2 (A bench conference was held with the judge and
3 attorneys in the presence of the jury but out of the
4 hearing of the jury.)

5 MS. SHEALY: I objected and the Solicitor's
6 office has asserted that they intend to have this officer
7 testify to what another officer said during the course of
8 my client giving a statement. I object on the grounds of
9 hearsay, and I object on the grounds that I am unable to
10 cross-examine the officer who said the purported
11 statement.

12 THE COURT: Response?

13 MS. BURNEY: Your Honor, the State's eliciting
14 this testimony is not for the truth of the matter
15 asserted, it's not in opposition hearsay. It is simply
16 offering this to show how the defendant's -- what the
17 defendant's effect was after hearing this other statement
18 by the other officers who were interviewing him.

19 THE COURT: Overruled.

20 MS. WILSON: One other thing, your Honor. With
21 this witness we would attempt to offer the driving record
22 of, a certified copy of the driving record of the
23 defendant which has his height and weight. I believe they
24 object based on --

25 MS. SHEALY: I have several objections to it,

1 your Honor. I mean, this is just something that reflects
2 the height and weight.. It doesn't say when that
3 information had been provided, whether it's accurate. I
4 would assert that it is hearsay. I can't cross-examine
5 anybody that's in the process of entering that
6 information. I don't know when this was generated. I
7 don't know if it reflects that or not.

8 MS. WILSON: We can get the self-authenticating
9 document.

10 MS. SHEALY: I would object. They had the
11 ability to weigh him and measure him that night if they
12 wanted to, but I think to put this in to assert the weight
13 and height I think is inappropriate.

14 THE COURT: If she has an objection to the
15 document, then --

16 MS. WILSON: I want to make sure what the
17 objection is. Is your objection the authentication of the
18 document? Because we can get the original certification
19 which is self-authenticating. And I assume that's not the
20 basis.

21 MS. SHEALY: Well, even if they have that, your
22 Honor, what is entered as height and weight, there is no
23 way they establish whether or not that's accurate.

24 THE COURT: You don't know when that was taken.

25 MS. WILSON: I believe it does have when it was

1 issued.

2 THE COURT: I know mine's not right.

3 MS. SHEALY: I'll tell you mine's not right.

4 MS. WILSON: Well, it's what you give to the
5 person. It's still a self-authenticating document, and
6 that would go to the weight, not the admissibility of it.
7 And certainly they can argue everybody's height and weight
8 is off on their driver's license, but --

9 THE COURT: Yes.

10 MS. WILSON: But that goes to the weight, not
11 admissibility.

12 MS. SHEALY: I don't think it should be entered
13 in, your Honor. What he may have told the people getting
14 a driver license, why should that come in through this
15 officer? Why should it come in at all?

16 THE COURT: Well, it's an official record. Did
17 he look at this record?

18 MS. WILSON: Yes, he's seen this record.

19 THE COURT: If he looked at the record during
20 his investigation that's what he saw. And aside from your
21 requiring her to get it properly authenticated, if she can
22 do that, then I don't see any reason not to let it in.
23 It's just other information.

24 MS. WILSON: I don't mine tearing this off which
25 has the points and all that. I'll be happy to do that.

1 MS. SHEALY: We certainly don't need that.

2 MS. WILSON: We can cut the whole thing off
3 right there.

4 MS. SHEALY: As long as the record is clear that
5 I don't think it's appropriate at all.

6 THE COURT: All right.

7 MS. BURNEY: Beg the Court's indulgence just a
8 moment.

9 Your Honor, the State and defense have entered a
10 stipulation regarding firearms expert testimony. Rather
11 than read it, it's kind of lengthy, I'd rather go ahead
12 and question on it. We'll still introduce it, your Honor.

13 THE COURT: All right.

14 MS. SHEALY: No objection.

15 THE COURT: All right.

16 (WHEREUPON, State's Exhibit No. 134 was marked
17 for identification and received into evidence.)

18 BY MS. BURNEY:

19 Q Now, the guns that were collected and the bullets and
20 bullet fragments that were collected, were they sent off
21 for testing?

22 A Yes, ma'am.

23 Q I believe there was a gun that was associated with
24 Anthony Floyd. Was that gun sent off for testing?

25 A Yes, ma'am, it was.

1 Q And was that gun determined to be consistent with any
2 of the bullets -- the bullet that killed Dante Tobias?

3 A No, ma'am, it wasn't.

4 Q And the bullet that killed Dante Tobias, was there
5 any correlation to any type of gun that could have fired
6 that bullet?

7 A Yes, ma'am. The characteristics were consistent with
8 that of a high point firearm.

9 Q And what is the caliber of that bullet?

10 A 9-millimeter.

11 Q Now, the bullet and bullet fragments that were
12 collected through the autopsy of Beverly Blake and at the
13 scene, were those sent off for testing?

14 A Yes, ma'am, they were.

15 Q And were they consistent with any type of weapon?

16 A Yes, ma'am. All the bullets collected were fired
17 from the same weapon and they were consistent with a 38
18 special, 357 Magnum.

19 Q And the 9-millimeter bullet that was collected at the
20 Dante Tobias scene and the bullets and fragments that were
21 collected at the Brownie Blake, Beverly Blake scene, was
22 there any determination as to what type of gun could have
23 fired either of those, whether the same gun could have
24 fired those or different guns or what was the result?

25 A It was determined that two different weapons were

1 fired at each scene.

2 Q Now, did you have an opportunity to review the
3 driving record of Anthony Mann?

4 A Yes, ma'am.

5 MS. BURNEY: If I could approach the court
6 reporter, your Honor.

7 (WHEREUPON, State's Exhibit No. 130 was marked
8 for identification only.)

9 BY MS. BURNEY:

10 Q Before I get to the driving record, I would just ask
11 you one other thing about firearms. There was a shotgun
12 that was recovered in regards to this case; is that
13 correct?

14 A Yes, ma'am, there was.

15 Q And where was that shotgun recovered?

16 A It was recovered behind the McDonald's at the
17 intersection of Ashley Phosphate Road and Dorchester Road.

18 Q Was that one sent off for testing?

19 A Yes, it was.

20 Q Was that consistent with any of the bullets that were
21 fired?

22 A No, ma'am.

23 Q Now, you had an opportunity to review Anthony Mann's
24 driving record in this case?

25 A Yes.

1 Q And what is the height and weight that is recorded on
2 the driving record?

3 A The height is 5 feet 11 inches, the weight is 175,
4 ma'am.

5 Q Now, when the statement of Anthony Mann was taken
6 shortly after his arrest at the Pantry, were there any
7 oral statements that were made by the defendant?

8 A Yes, ma'am. During the course of the interview he
9 just asked me several times to help him, that he was
10 scared, and when we brought him to talk to him about an
11 unrelated matter, he kept asking, Is this all I'm here
12 for, is this all I'm here for, repeatedly.

13 Q And when he gave his statement, was that in response
14 to any question from any -- what officers were in there
15 during the time he was in there?

16 A Myself and Detective Garland was in there primarily.
17 At one point Lieutenant Detective Brock came into the room
18 and spoke with Mr. Mann briefly.

19 Q Could you read the statement that Anthony Mann gave?

20 A Yes, ma'am.

21 MS. BURNEY: Your Honor, at this time before
22 this statement is read we move it into evidence, offer
23 that statement into evidence.

24 THE COURT: Any objection?

25 MS. SHEALY: Just subject to my earlier

1 objection.

2 THE COURT: All right. Overruled.

3 (WHEREUPON, State's Exhibit No. 128 was admitted
4 into evidence.)

5 THE WITNESS: Continue, Ms. Burney?

6 BY MS. BURNEY:

7 Q Yes, please.

8 A Question: Do you wish to write your statement?

9 Answer: I'm too shaky right now.

10 I had Mr. Mann sign that he was unable to write
11 his statement because he was too nervous.

12 Question: Do you wish for Detective R. Walker
13 to write the statement based on the information that you
14 provide? His answer was yes.

15 It says, This is the statement of Anthony L.
16 Mann written for the subject by Detective Walker based on
17 the information that Mr. Anthony L. Mann provides.

18 On last Monday, Brownie paged me and I called
19 her back. I was in Monck's Corner at the time. Brownie
20 told me that her roommate told her that if she didn't
21 start selling -- it's some profanity here. Do you want me
22 to read it verbatim?

23 Q You can spell it or something if that makes you feel
24 better.

25 A Okay.

1 Told her that if she didn't start selling her
2 P-U-S-S-Y for him, that she had to be out of his house by
3 6 o'clock.

4 The first time she called me I told her no
5 because I was in Monck's Corner and I didn't feel like
6 coming to West Ashley. Brownie kept calling me back
7 asking me to come get her. Finally Brownie told me her
8 room had 2 ounces of coke and a pound of weed in his safe
9 and that the safe was open. She said that she already
10 took one of his guns and that she could grab the rest of
11 the stuff when we drove up. She also said he had money in
12 there and she was going to get that, too.

13 After I left Monck's Corner on the way to get
14 Brownie I stopped on Rivers Avenue to pick up Peter
15 Davies. I was driving my friend Danielle's white Hyundai.

16 I picked up Peter, we went to Brownie's house.
17 While we were on the phone Brownie told me she was going
18 to get everything out of the safe because dude was
19 cooking. She also told me that if he tries to do anything
20 to her before I got there that she was going to shoot him.

21 When we got there Brownie met me at door. I
22 walked in the house and Brownie told me, quote, My stuff
23 is over there, end quote. I saw her bag sitting outside
24 her room. I walked over and picked her bag up. That's
25 when dude came in from the kitchen. He asked Brownie,

1 quote, Where the F-U-C-K are you going, end quote. I told
2 him she was going with me. Dude said no, the F-U-C-K, she
3 ain't. And I was, like, watch. I told him try to stop
4 me.

5 Brownie was still in the living room. I was
6 standing in the doorway. I turned around to leave. I was
7 on the front porch. That's when dude tried to grab
8 Brownie's bag out of my hand.

9 We started wrestling and fighting on the front
10 porch. He boxed me in my face or jaw. We were still
11 fighting. I picked him up and threw him on the floor.
12 That's when Brownie ran up beside me and told me to watch
13 out. I moved to the side and Brownie shot him in the back
14 on the porch. He was already on the ground trying to get
15 back up when Brownie shot him.

16 While we fighting dude kept trying to grab a 357
17 he had in his waist but it fell on the floor.

18 Peter was in the car the whole time in the
19 driver's seat. He was parked along the wood line next to
20 the house.

21 After Brownie shot him I grabbed the chrome 357
22 he dropped. Brownie told me he had another gun on him, I
23 patted his pockets. I found a Derringer in his
24 right-front pants-pocket and took that. It was a 32
25 Derringer.

1 After I grabbed the guns, I grabbed Brownie's
2 bag. We both ran off the porch and ran to the car and got
3 in. We were about to pull off, Brownie said, Hold up,
4 that dude had a sawed-off shotgun in the house. Brownie
5 ran back in the house and came out with the sawed-off.
6 She got in the car and Peter pulled off. On the way back,
7 Brownie pulled out 2 ounces of coke, a pound of weed and
8 money she got out of dude's safe. Brownie kept the money
9 and me and Peter kept the drugs. We went straight to
10 Lisa's house on Ladson Road.

11 When we got there, I was shaken up so I took a
12 shower for 45 minutes to calm down. I didn't want
13 everybody to see me upset. After I got out of the shower
14 I got dressed. Me and Peter and Brownie left Lisa's house
15 and we took Brownie to Planter's Crossing apartments. We
16 pulled in the parking lot, Brownie grabbed her bags and
17 left. That was the last time I saw her.

18 After we dropped Brownie off, me and Peter went
19 to his house. When we got there, we divided up the dope.
20 We cut it, bagged it and chilled out. I gave Peter the
21 weed because I don't like weed. After that we hit the
22 clubs and sold the dope the rest of the night. We went to
23 the Old Dorchester Club, Tucker's River Bend, Charlies 2,
24 Rusty's 2, and the Joker.

25 I talked and seen Peter a couple of times since

1 this. I told Peter I was scared. Peter told me not to
2 worry about it because I didn't do anything.

3 Question: Have you seen Brownie since that
4 night? No, sir. She told me she was going to New York.

5 Question: What kind of gun did Brownie shoot
6 her roommate with that night? Answer: A black
7 9-millimeter. I never touched that. She kept that and
8 took it with her.

9 Question: What happened to the 357 and the
10 Derringer you took from Brownie's roommate? The Derringer
11 I threw in the garbage at the Shell Station near Lisa's
12 house in the dumpster because I didn't -- it didn't work
13 right to shoot. It was a 32. And the 357, I sold it for
14 \$150 to a guy named Eddie. He lives in Ferndale.

15 Question: How do you know where Brownie lived?
16 Answer: She gave me directions when we were on the phone
17 and I dropped her and Star off there before.

18 Question: Describe what you were wearing the
19 night of the shooting. I don't remember what I was
20 wearing.

21 Question: What was Peter Davies wearing?
22 Answer: Khaki jeans, and a big blue FUBU shirt.

23 Question: What was Brownie wearing? Blue
24 jeans, a gray hooded sweatshirt she always wears.

25 Question: Do you Brownie's -- do you know

1 Brownie's roommate's name? No, but she called him Black.

2 End of statement.

3 What we do is after we take an initial
4 statement, I take the statement to my supervisors and I
5 let them review it, and if they feel that we have some
6 more questions that need to be asked, then I will ask them
7 at that time. And I have four more questions that I
8 asked.

9 Question: What phone were you on when you were
10 talking to Brownie? Answer: Eric's phone, my boy.

11 Question: Do you know the number? Answer: No
12 not offhand because I talk to so many people every day.

13 Question: Tell me more about Fast Eddie who you
14 sold the 357 to. He lives in Ferndale. I met him through
15 Peter while we were at Peter's house. Peter called Eddie
16 and asked him if he needed a gun. We went to his house in
17 Ferndale. He was standing on the one of the corners.
18 Peter knows his phone number.

19 Question: Describe Fast Eddie. A short white
20 fellow, 5-10, 150 or 160 pounds, stocky with brown hair.

21 That's the end of this statement. It was closed
22 out at that time.

23 Q Now, when did he tell you that Brownie was the
24 shooter?

25 A On January 16th when I took his statement.

1 Q Does this process involve consultation with other
2 officers or how does that work?

3 A Yes, ma'am. Like I said, the case agent is not
4 directly responsible for the overall case. We have
5 supervisors. So what I will do is, when I conduct an
6 interview and am done with the statement, I have to take
7 it to them and get their approval and then we close it
8 out. So a multitude of people are involved in the
9 interview process.

10 Q And your supervisor was Brock?

11 A It was Detective Sergeant Tittle and Detective
12 Lieutenant Sam Brock.

13 Q Did Brock or Tittle come into that meeting at any
14 point?

15 A Yes, ma'am. Officially when we were verbally
16 interviewing Mr. Mann, the interview process takes place
17 is when we get them to describe the incident verbally,
18 then we'll go back and write everything down. Just before
19 we got started Mr. Mann became upset, he started crying
20 and weeping, saying he was scared. Lieutenant Brock came
21 into the interview room and talked to Mr. Mann and stated
22 that it's a possibility that Beverly Blake shot
23 Mr. Tobias. You need to just go ahead and tell us what
24 happened if that's the case. If you did it, tell us.
25 That's when he gave us his signed written statement.

1 Q He admitted his involvement after that?

2 A He admitted his direct involvement after that, yes,
3 ma'am.

4 (WHEREUPON, State's Exhibit No. 131 was marked
5 for identification only.)

6 BY MS. BURNEY:

7 Q Now, you mentioned a search warrant that was executed
8 on Ladson Road and also the defense statement that you
9 just read indicated that he went to -- went straight to
10 Lisa's house on Ladson Road?

11 A That's correct.

12 Q And did you have an opportunity to go out there to
13 that Ladson Road address?

14 A No, ma'am, I didn't.

15 Q Okay. Are you familiar with the Brownie, the Beverly
16 Blake scene?

17 A Yes, ma'am.

18 Q Where she was located?

19 A Yes.

20 Q It's Von Oshen and Lincolnville Road?

21 A Yes, ma'am.

22 Q Have you had an opportunity to review the county maps
23 and sketches of that area, the Ladson Road area and the
24 Von Oshen/Lincolnville Road scene?

25 A Yes, ma'am.

1 Q And what is the relationship between the Ladson Road
2 address, 4005 Ladson Road address, and the Lincolnville
3 Road/Von Oshen scene?

4 A What was your question again, counsel?

5 MS. BURNEY: Your Honor, may the witness step
6 down?

7 THE COURT: You may step down, sir.

8 THE WITNESS: Thank you.

9 BY MS. BURNEY:

10 Q Now, if you would just point to the jury where the
11 Lincolnville, excuse me, the Ladson Road address is in
12 relationship to the Lincolnville Road scene?

13 A Yes, ma'am. This right here indicated by the star is
14 the Ladson Road address of Lisa and Nicky O'Connell where
15 Mr. Mann said that they went right after the incident. If
16 you travel up Ladson Road, this is Lincolnville Road right
17 here, this is Von Oshen, and Ms. Blake's body was found
18 right in this general vicinity.

19 MS. BURNEY: Beg the Court's indulgence.

20 THE COURT: Yes, ma'am.

21 (WHEREUPON, State's Exhibit Nos. 132-133 were
22 marked for identification only.)

23 BY MS. BURNEY:

24 Q And again I will show you State's 94 that is marked
25 for identification.

1 A Yes.

2 Q Is this the shotgun you were referring to?

3 A Yes, ma'am.

4 MS. BURNEY: Your Honor, at this time the State
5 would move in State's 94, which is the shotgun, and
6 State's 131, which is the map showing the distance between
7 4005 Ladson Road and the Von Oshen scene.

8 MS. SHEALY: No objection, your Honor.

9 THE COURT: All right. Those exhibits are in
10 evidence without objection.

11 (WHEREUPON, State's Exhibits Nos. 94, 131 were
12 admitted into evidence.)

13 MS. BURNEY: Your Honor, we would also seek to
14 introduce State's 132 and 133. They are firearm
15 stipulations labeled one and two.

16 THE COURT: Any objection?

17 MS. SHEALY: No, sir.

18 THE COURT: 132 and 133 in evidence without
19 objection.

20 (WHEREUPON, State's Exhibits Nos. 132-133 were
21 admitted into evidence.)

22 MS. BURNEY: Beg the Court's indulgence, your
23 Honor.

24 That's all I have, Sergeant.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: It's a good time to go ahead and
2 take a break.

3 Ladies and gentlemen, I'll send you your jury
4 room for a break. Do not discuss this case in any way.

5 Sir, you may step down during the break. You
6 may not discuss testimony with anyone.

7 THE WITNESS: Thank you, your Honor.

8 (The jury left open court at approximately 10:56
9 a.m.)

10 (A short break was taken.)

11 THE COURT: You all ready to proceed?

12 MS. WILSON: No, sir. We need just a minute,
13 please.

14 THE COURT: You all ready?

15 MS. WILSON: No, sir.

16 Judge, after this witness, our plan is to rest,
17 but we will need to go through the exhibits one more time
18 on both sides before we rest because there has been some
19 confusion.

20 THE COURT: Just do it right now.

21 MS. WILSON: I think it's going to take awhile.

22 THE COURT: That's all right. Let's do it now.
23 Either way I'm going to have to take a break to do it.

24 MS. WILSON: Well, I was thinking we could break
25 over lunch, get it all done, then come back and be ready

1 to go into the defense case.

2 THE COURT: That's fine.

3 MS. WILSON: That's why we're trying to work out
4 a stipulation because it will eliminate calling a witness.

5 I believe we're ready, your Honor.

6 THE COURT: You're ready?

7 MS. WILSON: Yes, sir.

8 THE COURT: Are you ready, Ms. Burney?

9 MS. BURNEY: Yes, your Honor.

10 THE COURT: Bring the jury in, please.

11 (The jury came into open court at approximately

12 11:25 a.m.)

13 THE BAILIFF: The jury is seated, your Honor.

14 THE COURT: Thank you. Please be seated.

15 Ladies and gentlemen, we're ready to proceed
16 with this witness.

17 MS. SHEALY: May it please the Court.

18 THE COURT: Yes, ma'am.

19 CROSS-EXAMINATION

20 BY MS. SHEALY:

21 Q Sergeant Walker, you had told us that you were the
22 lead investigator. Is that your title regarding this
23 incident?

24 A Case agent.

25 Q Case agent. Again, we have been talking about

1 searches and collection of evidence. It's because you're
2 trying to find whatever you can of a physical nature to
3 connect suspects to a crime; is that fair to say?

4 A Correct.

5 Q You mentioned several searches that took place. Just
6 to make sure the jury understands, if you think a suspect
7 has been somewhere, to their home and may have items there
8 connected to a crime, you get a search warrant and go in
9 and look in that residence; is that correct?

10 A Correct.

11 Q Similarly, if there is a vehicle that you believe may
12 have been used, you get a search warrant and then you
13 check the vehicle; is that correct?

14 A Correct.

15 Q And in doing so in this case, you received search
16 warrants on all those places that you thought may be
17 important; is that fair to say?

18 A Yes, ma'am.

19 Q Okay. And when it came to Peter Davies, there were
20 various locations that you thought were significant; is
21 that also fair to say?

22 A Yes.

23 Q He was married but he had a girlfriend as well and
24 you needed to go to both residences; is that correct?

25 A Correct.

1 Q And then there was also Jennifer Santiago, where he
2 had been earlier in the day in question; is that correct?

3 A Correct.

4 Q So regarding Peter Davies, there were three locations
5 that you searched?

6 A There was -- I believe there was, yes.

7 Q And one of those places was Tabitha Kylander's home;
8 is that right?

9 A Yes, ma'am.

10 Q And she lived there with her mother, Jamie Bevins?

11 A Correct.

12 Q And that was the place that you had believed he had
13 been staying, because that was his girlfriend?

14 A Correct.

15 Q When you went there, you did find some 9-millimeter
16 rounds in a plastic Federal case; is that correct?

17 A Yes, ma'am.

18 Q And 40 S&W cartridge?

19 A Yes, ma'am.

20 Q A box of Federal gold metal 25 count?

21 A Yes, ma'am.

22 Q What is that?

23 A 25-caliber bullets.

24 Q 410 shotgun shells?

25 A Yes, ma'am.

1 Q A shoe box on the floor with a wooden tray with
2 plastic baggies containing green leafy material; is that
3 correct?

4 A Yes, ma'am.

5 Q Rolling papers and a pipe?

6 A Yes, ma'am.

7 Q Some hand-rolled cigarettes; is that correct?

8 A Yes, ma'am.

9 Q And that was the location that you associated with
10 Peter Davies?

11 A One.

12 Q One of the locations?

13 A Yes.

14 Q And again, your efforts -- you looked at the car
15 that -- did you look at the car that Michael Crumb had
16 stolen, Christopher Reed's car?

17 A Yes, ma'am, we took it back and towed it.

18 Q And what?

19 A We took it back to the sheriff's office because the
20 vehicle was reported stolen.

21 Q So you looked at Michael Crumb's vehicle that he had
22 been using, which was Christopher Reed's?

23 A Correct.

24 Q Eric Zack's vehicle?

25 A Correct.

1 Q The vehicle that you believe to be Mann's, the
2 Celica?

3 A Correct.

4 Q And Danielle Batista's vehicle; is that correct?

5 A Correct.

6 Q And after examining all those various residences and
7 all the various cars, you did not get anything of a
8 physical nature that linked these suspects to Dante
9 Tobias' house; is that correct?

10 A That's correct, ma'am.

11 Q And you also did not get anything of a physical
12 nature linking Anthony Mann to the scene at Lincolnville;
13 is that correct?

14 A That's correct.

15 Q Now, as the case agent, you've explained to us that
16 you were involved in the very beginning of the
17 investigation?

18 A Yes, ma'am.

19 Q Excuse me. And you went out to Dante Tobias' that
20 evening?

21 A Yes, ma'am, I did.

22 Q And you told us that, in that you learned that
23 Beverly Blake had been staying there, that you wanted to
24 find out as much as you could about her life; is that
25 correct?

1 A Correct.

2 Q And as part of your investigation you also wanted to
3 find out as much as you could about Dante Tobias' life; is
4 that correct?

5 A That's correct.

6 Q You've mentioned to us that there were some 70 or 80
7 leads in this case?

8 A Correct.

9 Q And some of those leads were people who were shedding
10 some light on how Dante Tobias was living; is that fair to
11 say?

12 A It's fair to say, yes, ma'am.

13 Q And in fact you determined that he was involved in
14 selling drugs, did you not?

15 A Some people indicated that he may have been involved
16 in narcotics, yes, ma'am.

17 Q And selling; is that fair to say?

18 A Yes, ma'am.

19 Q And earlier on, did you all attempt to get phone
20 records of people calling into Dante Tobias' house and
21 people Dante Tobias' phone had called to?

22 A Yes, ma'am.

23 Q That is how some of these leads developed; is that
24 correct?

25 A A few, yes, ma'am.

1 Q You would determine who had been calling Dante
2 Tobias' house and try to go talk to them?

3 A Correct.

4 Q I think you indicated to us that earlier you learned
5 that Anthony Floyd had some connection with a weapon?

6 A Yes, ma'am.

7 Q You all in fact got that weapon?

8 A Yes, ma'am.

9 Q Now, I'm confused about one thing. Was there a
10 weapon found at Dante Tobias' that night or is that the
11 weapon you are referencing when you were asked about the
12 weapon at Dante's?

13 A Okay. To clarify, no weapon was found at Mr. Tobias'
14 residence. Mr. Floyd was questioned as to whether or not
15 he owned a weapon, and he indicated yes, but that his
16 brother had possession of it, and Mr. Floyd's brother
17 relinquished the weapon over to the sheriff's office and
18 it was tested.

19 Q That was Terry Grant?

20 A Yes, ma'am.

21 Q And in looking at Dante Tobias' life and looking at
22 Beverly's life, you also learned that he had started an
23 escort business; is that correct?

24 A That was determined, yes, ma'am.

25 Q And you told us that there was a certain bedroom you

1 associated with Beverly Blake, I think the middle bedroom?

2 A Correct.

3 Q And there were no items of hers there when you all
4 arrived at the scene?

5 A Correct.

6 Q So as far as you knew everything that belonged to
7 Beverly Blake had been taken from the residence; is that
8 correct?

9 A Correct.

10 Q Now, you told us that because of what you believed
11 was important, you all did put her picture on the news; is
12 that fair to say?

13 A Yes, ma'am.

14 Q You were asking if anybody had seen this witness to
15 please contact the police, you believed that she was a
16 witness in a murder case?

17 A At the time we stated that we needed to speak to her
18 in reference to this case.

19 Q Okay. And later you are criticized for that; is that
20 correct?

21 A Yes, ma'am, we were.

22 Q And that was by Brownie's family?

23 A Correct.

24 Q And so -- well, I will get to that in a little bit
25 more detail, but there is no question that her face was on

1 the news and her face was in the paper and the police were
2 looking for her?

3 A That's correct.

4 Q And in evaluating the physical evidence again, there
5 were no fingerprints that were found in Dante Tobias'
6 house that would connect them with Michael Crumb, Eric
7 Zack, Brownie or Dante; is that correct?

8 A That's correct.

9 Q You all found no fingerprints in the house?

10 A None connecting any of the individuals, no, ma'am.

11 Q And you did learn -- did you go to the autopsy of
12 Dante Tobias?

13 A Yes, ma'am, I was present.

14 Q When you went there you learned that he had a holster
15 on his waist; is that correct?

16 A Yes, ma'am, he did.

17 Q Would you agree you would associate guns with drug
18 dealers?

19 A That would be speculation on my part, ma'am. Not all
20 drug dealers carry guns, no.

21 Q It didn't surprise you that he had a holster on, did
22 it?

23 A Yes, it did.

24 Q It did surprise you?

25 A Yes, it did. He was at his residence, he was home.

1 Q Now, you told us that in developing these leads that
2 you talked to no one who had seen Beverly Blake since
3 January 7th; is that correct?

4 A Correct.

5 Q But you all did talk to a couple of people who
6 believed that they had heard from her since that day; is
7 that correct?

8 A Yes, ma'am.

9 Q And that was Ervin Frasier and Steven Wolf?

10 A Mr. Wolf stated. I think Mr. Frasier said he hadn't
11 heard from her in awhile.

12 Q That he had not heard from her in awhile?

13 A Correct.

14 Q Well, did you all go to the effort to get his phone
15 records, do you not?

16 A Yes, ma'am.

17 Q Did you all request them early enough to get a copy
18 of all of them?

19 A Rephrase the question.

20 Q Let me ask you this way: Do you remember Ervin
21 Frasier being involved in this, do you not?

22 A Yes, ma'am, I spoke to him.

23 Q You spoke to him and then he contacted you all again
24 to indicate that Brownie had called?

25 A Yes, ma'am.

1 Q Okay. And did you all ask for his records early
2 enough to be able to check and see if there was any phone
3 calls coming into his home that was associated with
4 Brownie?

5 A No, ma'am, I don't believe that we did.

6 Q So you all were unable to verify that; is that
7 correct?

8 A Yes, ma'am.

9 Q But you all did request lots of phone records in this
10 case; is that fair to say?

11 A That is a fair statement, yes, ma'am.

12 Q Now, in talking about finding Beverly and being at
13 the scene that evening, someone was out there videotaping
14 that; is that correct?

15 A That's correct.

16 Q There were several officers that came out after the
17 two gentleman had found her body -- what they believed
18 could have been a body; is that correct?

19 A Correct.

20 Q And you were there then when the coroner Rae Wooten
21 arrived at the scene?

22 A Yes, ma'am, I was.

23 Q How many officers were out there all together, do you
24 recall?

25 A Approximately eight or nine.

1 Q Do you recall stating that if she had a G-string on,
2 that must be her?

3 A Yes, ma'am.

4 Q And that was because you were connecting a G-string
5 with the type of life-style Beverly had been living?

6 A No, ma'am. The reason I connected that because there
7 was some reference made to her possibly being some type of
8 dancer.

9 Q A dancer. Well, that's what I mean by life-style you
10 said that if she had a G-string on it must be her?

11 A I said it could be her, yes, ma'am.

12 Q And do you recall when her body was moved, that there
13 was steam that came out from under the body?

14 A There was some type of something coming from the
15 ground. It appeared to be steam. It was very cold
16 outside.

17 Q And you remember that her body was stiff when you all
18 were out there?

19 A Yes, ma'am, it was.

20 Q Did you happen to also see the fly eggs that were in
21 the eye area?

22 A Yes, ma'am, I did.

23 Q Okay. Now, you then went also to the autopsy of
24 Beverly Blake or you did not?

25 A Yes, ma'am, I attended her autopsy.

1 Q And is it fair to say, then, that at the time of her
2 autopsy that law enforcement was a bit concerned that she
3 had been found dead after her face had been all over the
4 paper and the news?

5 A I was concerned the day I found her, ma'am. It's a
6 17 year-old girl that was found dead.

7 Q I understand that. I certainly understand how that
8 is upsetting. But I'm asking you a different question.
9 I'm asking whether law enforcement was also concerned that
10 she was found dead after her face had been in the paper
11 and on the news.

12 A There was some concern, yes.

13 Q And do you recall that being expressed to Dr.
14 Presnell?

15 A I didn't have any knowledge of that information.

16 Q You didn't talk to her about that?

17 A No, ma'am, I didn't, not at all.

18 Q I think you told us earlier that the way your
19 department is set up, you have supervisors over you; is
20 that correct?

21 A Correct.

22 Q And you told us that Sergeant Tittle was your
23 supervisor; is that correct?

24 A Correct.

25 Q So are you aware of any conversations Sergeant Title

1 had with Dr. Presnell concerning that?

2 A Not in reference to that, but I knew that he had
3 discussions with Dr. Presnell, yes.

4 Q Okay. And you are aware, then, that there was
5 nothing found in her panty area, that there was semen
6 found in her mouth and her vaginal area and her rectal
7 area?

8 A Yes, ma'am.

9 Q Now, in making sure that I understand the sequence of
10 the interviews, you indicated to us that you all talked to
11 Shannon Keyes about Amp that evening of this incident; is
12 that correct?

13 A Absolutely. We interviewed Ms. Keyes on 14th of
14 January.

15 Q I'm sorry, on January 14th?

16 A Yes, ma'am.

17 Q At that time you all had found Beverly Blake's body?

18 A Yes, ma'am, we did.

19 Q But that is prior to Anthony Mann being arrested; is
20 that correct?

21 A Correct.

22 Q And then you also talked to Nicky O'Connell?

23 A Correct.

24 Q So Shannon gave you Anthony Mann's name. And then
25 Nicky O'Connell, did she tell you about Peter Davies at

1 that point?

2 A Yes, she gave us a statement about Peter Davies.

3 Q And she told you that Peter Davies came over to her
4 house on the night that Dante was shot; is that correct?

5 A Correct.

6 Q So before Anthony Mann is arrested, you are aware,
7 are you not, that Peter Davies and Anthony Mann went to
8 the O'Connell's that evening?

9 A I don't know the exact date of her statement. I
10 would have to look at it.

11 Q Do you have a copy of it up there?

12 A I have a thick book. If you have a copy it will
13 probably be quicker.

14 MS. SHEALY: Beg the Court's indulgence.

15 THE COURT: All right.

16 BY MS. SHEALY:

17 Q Detective Walker, I'm handing this up to refresh your
18 memory as to the date.

19 A Thank you. The statement was taken on
20 January 15th. It was on the same day that Mr. Mann was
21 taken into custody.

22 Q Okay. Do you recall that you had talked to Nicky
23 O'Connell prior to Anthony Mann being arrested?

24 A I can't remember what time it was, ma'am.

25 Q Well, let me ask you this way, then. Do you recall

1 when you were talking to Anthony Mann about the death of
2 Dante Tobias and Beverly Blake that you knew Peter Davies
3 was involved in this thing?

4 A We didn't know before. I knew after obtaining Mr.
5 Mann's statement that Peter Davies was possibly involved.

6 Q But you had talked to Nicky O'Connell; is that
7 correct?

8 A I wasn't involved in that interview.

9 We have 15 detectives going in various
10 directions, and I don't know what everyone is doing every
11 minute. I didn't know about Peter Davies involvement
12 until after I took Mr. Mann's statement.

13 Q But you told us that you all had meetings every two
14 hours or so; is that correct?

15 A Correct.

16 Q And the purpose of those meetings was keep each other
17 abreast of what is going on?

18 A Correct.

19 Q What about Lisa O'Connell, do you recall that you all
20 talked to her on the 14th, the day prior to Mr. Mann
21 being arrested?

22 I've got a copy.

23 A What I think happened, we picked up Lisa and Nicky
24 O'Connell at the same time, and what happened was, it went
25 over into the next day but they were actually brought in

1 at the same time.

2 What occurred was, while I was in the interview
3 with Mr. Mann, some other detectives were in interviewing
4 Ms. O'Connell and her daughter.

5 Q Okay. So you're saying these interviews were taking
6 place simultaneously?

7 A Correct.

8 Q Do you have a copy of Lisa O'Connell up there? If
9 not I can hand you one.

10 A I have it, ma'am.

11 Q You'll note that the date of Lisa O'Connell's
12 statement is the 14th; is that correct?

13 A Yes, ma'am.

14 Q Do you recall what time of day it was that Anthony
15 Mann was arrested?

16 A I believe sometime around 8.

17 Q In the morning?

18 A Evening. It was sometime early evening.

19 Q That was on the 16th?

20 A It was on the 15th, ma'am.

21 Q 8 o'clock at night?

22 A Sometime around 8, yes, ma'am.

23 Q So in asking you about the sequence of interviews,
24 Lisa O'Connell gives her interview the day before and it
25 may have been late in the evening as I understand your

1 testimony on the 14th?

2 A Correct.

3 Q Then her daughter is there with her, gives her
4 statement in the early hours of the 15th; is that
5 correct?

6 A Correct.

7 Q And then Anthony Mann gives his statement later in
8 the day on the 15th; is that correct?

9 A Correct.

10 Q So in that you all were having these updates, does
11 that refresh your memory that you were advised that Lisa
12 and Nicky had said that Anthony Mann was with Peter
13 Davies?

14 A Yes, ma'am. Based on the statements, yes.

15 Q So at the time that you were talking to Anthony Mann,
16 which would have been that day of the 15th, later that
17 evening, you were aware that Lisa and Nicky had said that
18 on the night that Dante Tobias was shot that Anthony Mann
19 and Peter Davies were over at her house -- their house?

20 A Based on the statements, yes.

21 Q And on the day that Anthony Mann was arrested then,
22 you also spoke with Kristy Bunch; is that correct?

23 A Correct.

24 Q And do you recall, and I don't know whether it was
25 you or another officer, someone threatened to take her

1 kids if she didn't give a statement that evening?

2 A No, ma'am, I wasn't involved in her interview.

3 Q Okay. So you don't know whether or not that
4 happened?

5 A No, ma'am.

6 Q In talking about the statement that you told us that
7 Anthony Mann gave, that statement is actually dated the
8 16th?

9 A Correct.

10 Q And he was arrested 8 o'clock on the 15th?

11 A Yes, ma'am.

12 Q Okay. And regarding the perceived incidences, Dante
13 Tobias' and Beverly Blake's, you began talking to him
14 about those at 12:20 a.m.?

15 A Correct.

16 Q On the 16th?

17 A Correct.

18 Q And you indicated you finished that conversation with
19 him at 2:40?

20 A Yes, ma'am.

21 Q And do you recall during that conversation when you
22 told us that you wrote the statement because he said he
23 was nervous?

24 A Yes, ma'am.

25 Q That's correct?

1 A Yes, ma'am.

2 Q Do you recall telling him that the death penalty was
3 a possible penalty for what had occurred in the case?

4 A Not at all, ma'am.

5 Q You didn't say that at all to him?

6 A Not at all, ma'am.

7 Q Do you recall getting rough with him at all?

8 A No.

9 Q Not at all during that conversation?

10 A Not at all.

11 Q Well, you explained to us that you start with a
12 statement at 12:20 and it's not over until 2:40. Is your
13 testimony that things were just pleasant during that time
14 period?

15 A For me, yes. Actually for him it was a rough time.
16 He was visibly upset. We talked to him, gave him breaks
17 in between that time, allowed him to smoke cigarettes.
18 And as I just testified previously, what we do is we go
19 over their statement verbally first and then we'll go back
20 and we'll do it written, and it's time-consuming.

21 Q Well, let me ask you this, Detective Walker: Who was
22 present during that process other than you and Anthony
23 Mann?

24 A Detective Garland.

25 Q And would you agree with me that you all were

1 Q But you still deny that you said something to Anthony
2 Mann about hair being found on her connected to him?

3 A Not at all, ma'am. No, I didn't.

4 Q In fact, that hair has not been connected with
5 anyone; is that correct?

6 A Correct.

7 MS. SHEALY: I have no further questions. Thank
8 you.

9 MS. WILSON: Beg the Court's indulgence.

10 THE COURT: All right.

11 REDIRECT EXAMINATION

12 BY MS. BURNEY:

13 Q Sergeant Walker, you were asked about physical
14 evidence that was collected in this case and found for
15 testing; do you recall that?

16 A Yes, ma'am.

17 Q Part of that you were asked about was ballistics?

18 A Yes, ma'am.

19 Q Can a 38-caliber bullet be fired by a 357 weapon?

20 A Yes, ma'am, it can.

21 Q Now, the fact that you were not able to pinpoint a
22 weapon, how does that coincide with your investigation?

23 A Can you rephrase the question, Counselor?

24 Q Well, you were asked about -- let me ask about
25 something else. How about the fingerprints? The

1 fingerprints were not detected at the residence of 36
2 Magnolia Street. How did that relate to your
3 investigation?

4 A It related because we received several statements
5 that indicated that Mr. Mann was wearing gloves during his
6 participation in the robbery and murder of the victim.

7 Q And you were also asked about things that were taken
8 from the residence, the bullets that were taken and so
9 forth. How did that relate to the type of weapon that you
10 learned had been used or brought up during this
11 investigation?

12 A Because we believed the weapons were taken from
13 Mr. Tobias' residence.

14 Q You mentioned that the -- the defendant gave you a
15 statement which indicated that there was a 357 that was
16 taken, in his statement?

17 A Correct.

18 Q And also a Derringer?

19 A Correct.

20 Q How did those guns relate to the entire
21 investigation?

22 A The 357 Mr. Mann stated he took from the residence is
23 consistent with the rounds that was found at the scene of
24 Ms. Blake. We also have the Derringer where other
25 defendants stated that they were given the weapon by Mr.

1 Mann.

2 Q You were asked about releasing Ms. Blake's
3 information to the media to locate her. Was her face and
4 image introduced to the media on the same day, January
5 7th?

6 A No, ma'am, it was almost a week later.

7 Q Now, you were asked about any individuals who might
8 have heard from Brownie or Beverly Blake after the January
9 7th date. Do you recall Ms. Shealy asking you about
10 that?

11 A Correct.

12 Q She asked you about Steven Wolf and Ervin Frasier,
13 having reviewed their statements?

14 A Yes, ma'am.

15 Q Are they included as part of your case file?

16 A Yes, ma'am.

17 Q It would refresh your recollection to --

18 MS. SHEALY: Your Honor, I think the preferred
19 way is for her to ask him a question.

20 THE COURT: Yes, I agree.

21 BY MS. BURNEY:

22 Q Do you recall whether Steven Wolf indicated that he
23 had seen Beverly Blake after January 7th?

24 A I would have to refer to the statement.

25 Q And do you recall whether Steven Wolf indicated to

1 law enforcement that he had seen Beverly Blake after
2 January 7th?

3 A No.

4 Q Did he have any information about seeing her?

5 A No, ma'am.

6 Q Did he indicate to you whether he had heard from her?

7 A No, ma'am.

8 Q Or to law enforcement that he had heard from her?

9 A No, ma'am.

10 Q Now, do you recall the exact date that Eric Zack's
11 videotaped interview occurred? Do you recall it?

12 A No, ma'am, I don't have it on my calendar.

13 Q Were there other detectives present when that video
14 occurred?

15 A Yes, ma'am, there were.

16 Q Was Detective Schwerin present?

17 A Yes, ma'am, she was.

18 Q Did she -- do you know if Detective Schwerin
19 collected notes during that videotaped interview?

20 A Yes, ma'am.

21 Q Are all of the detective notes part of the case file?

22 A Yes, ma'am, they are.

23 Q Would it refresh your recollection to take a look at
24 the case file to determine when the videotape of Eric Zack
25 took place?

1 days after the time that Tobias was killed; is that
2 correct?

3 A According to his statement, yes.

4 Q And regarding Michael Crumb, you all got an initial
5 statement from him when he was arrested that you just
6 testified to; is that correct?

7 A On the 26th, ma'am.

8 Q And you all go back and talk to him pursuant to his
9 proffer agreement in January of '03; is that correct?

10 A Correct.

11 Q And at the time you all interviewed Michael Crumb on
12 January 22nd '03, Eric Zack had given his videotaped
13 statement; is that correct?

14 A Correct.

15 Q And regarding Ervin Frasier, then, based on what he
16 had told you all about hearing from Beverly after the date
17 of Dante's death, you all attempted to get his phone
18 records to verify that; is that correct?

19 A Yes, ma'am.

20 Q Okay. And you were unable to get his records because
21 I think you all requested toll records; is that correct?

22 A Yes, ma'am.

23 Q So, in other words, as case agent you had two people
24 telling you that Beverly was alive after the date of
25 Dante's death; is that fair to say?

1 A Yes, ma'am.

2 Q And when you were just asked about how long it took
3 you all to report to the media that you were looking for
4 Beverly, you said it was about a week later?

5 A It was almost a week, yes, ma'am. Sometime later in
6 the week.

7 Q And Dante died on the 7th?

8 A Correct.

9 Q Is that correct?

10 A Correct.

11 Q Let me show you this and ask if you can identify the
12 date, please.

13 A January 10th.

14 Q And is that a section from the Post and Courier?

15 A It is.

16 Q And does it reflect that the police are looking for
17 Beverly Blake?

18 A The police wanted to question a girl in a slaying,
19 yes, ma'am.

20 MS. SHEALY: I would like to offer this, your
21 Honor, into evidence.

22 THE COURT: Any objection?

23 MS. WILSON: Yes.

24 MS. BURNEY: May we approach, your Honor?

25 THE COURT: Yes.

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 (WHEREUPON, Defendant's Exhibit No. 30 was
5 marked for identification only.)

6 MS. SHEALY: I have no further questions. Thank
7 you.

8 MS. BURNEY: Just briefly, your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MS. BURNEY:

12 Q Sergeant Walker, when you talked with Ervin Frasier
13 at Tiffany Mercardo's on January 8th, did you ask if he
14 had talked to Brownie or he had seen her?

15 A Yes, ma'am.

16 Q Had he seen her or talked to her --

17 A No.

18 Q -- at least on that day, which is January 8th?

19 A No, ma'am.

20 Q And then you testified that you met with him the
21 next, the following day?

22 A Yes, ma'am.

23 Q January 9th?

24 A Yes, ma'am.

25 Q And did you -- was a statement taken from him?

1 understand theft and robbery because robbery, by
2 definition, entails larceny. Theft obviously by
3 definition entails larceny. And perhaps burglary in other
4 jurisdictions entails larceny. I don't know. But
5 burglary is one of those crimes that varies, the
6 definition varies from jurisdiction to jurisdiction. In
7 South Carolina, it's unlawful entry with intent to commit
8 any crime inside. So if somebody goes into someone's
9 house without permission and strikes them, that would be
10 burglary in South Carolina, but it wouldn't necessarily
11 entail dishonesty. The fact that there is an accompanying
12 grand larceny in this case as the State submits, that's
13 improper analysis. I mean, we know we're not supposed to
14 look at the facts of the case and decide whether or not
15 something is impeachable. Once something is impeachable,
16 you don't need to get into the facts. It's the statute
17 itself.

18 THE COURT: Well, then under your argument
19 burglary would never be admissible even though the Court
20 of Appeals cited those cases with approval.

21 MR. BUTLER: Well, it's indicative. It's in a
22 footnote. Did they find in Shaw that his burglary
23 conviction should have been used for impeachment purposes
24 under 609?

25 THE COURT: Well, in Shaw they weren't

1 THE COURT: I think it's a footnote in the
2 opinion. We'll check it.

3 MR. BUTLER: Okay.

4 MS. WILSON: Your Honor, under 609(a), I still
5 believe the burglary second would be admissible if the
6 Court does a balancing test since there is no issue as to
7 whether or not it was in fact a burglary for the purpose
8 of something dishonest versus something violent. I think
9 it's clear that it is in this situation a crime of
10 dishonesty because he broke in and stole something. It
11 does carry over a year.

12 MR. BUTLER: Your Honor, the citation from the
13 Shaw case?

14 THE COURT: Yes. Do you have it? Do you want
15 it from me?

16 MR. BUTLER: Yes, sir.

17 THE COURT: I don't memorize the cites.

18 MR. BUTLER: Yes, sir.

19 THE COURT: 328 South Carolina 454.

20 They cite with a litany of others, robbery,
21 burglary and theft. They cite like two or three cases,
22 burglary, grand theft, receiving stolen property, robbery,
23 burglary and theft. I immediately cited those are
24 provable. That's about all I can really go on.

25 MR. BUTLER: Yes, sir. All I can say is that I

1 MR. BUTLER: I would disagree with the burglary.

2 THE COURT: All right.

3 MR. BUTLER: I agree with the grand larcenies
4 and larceny of a bike, whatever that is, to come in. We
5 object to the ABHAN, unlawful pistol, and the burglary
6 second.

7 THE COURT: Why do you think burglary would not
8 fall under that?

9 MR. BUTLER: Because burglary is not necessarily
10 a crime of dishonesty. The larceny aspect of it is. I
11 mean, the grand larceny would come in, but if somebody
12 commits a burglary to commit an assault, it's not a crime
13 of dishonesty. So burglary in and of itself, we look to
14 the elements. We don't look to the facts of a particular
15 crime. The elements of burglary do not contain anything
16 that is indicative of dishonesty. We usually associate it
17 with dishonesty because it's associated with stealing, but
18 that's just because most burglary entail a larceny, as
19 does this one, and the larceny should come in but not the
20 burglary.

21 THE COURT: Didn't the Court of Appeals in State
22 versus Shaw in the footnote suggest that burglary and
23 armed robbery would be included?

24 MR. BUTLER: I don't know. I'm not familiar
25 with that case.

1 point, let me know if he's made a decision.

2 MS. SHEALY: Yes, sir.

3 THE COURT: Prior record is what? What is the
4 prior record that you are seeking to introduce? Is it
5 like a CSC and possession, anything?

6 I can't remember what you all told us at
7 pretrial. I thought there was something you all indicated
8 about the prior record. Maybe not.

9 MS. WILSON: Your Honor, it looks like that he
10 has a 1996 larceny of a bicycle conviction, and he has an
11 ABHAN conviction. It's looks like ABHAN was reduced from
12 CSC third from 1996. Also a grand larceny conviction at
13 the same time and unlawful carrying of a pistol from 1996.
14 Then he has a 2001 conviction for burglary second and
15 grand larceny.

16 THE COURT: Are you seeking to introduce all
17 those?

18 MS. WILSON: Yes, sir.

19 THE COURT: That was larceny of a bicycle,
20 ABHAN, burglary second, grand larceny. Did I forget one?

21 MS. SHEALY: Unlawful pistol.

22 THE COURT: Unlawful carrying of a pistol.

23 The larceny, burglary second, grand larceny, all
24 seem to fall under 609(a)(2). Do you all take a position
25 on that? Defense?

1 record that falls under the governance of our rules, where
2 there's some other basis for the admission of that record,
3 the Solicitor will be able to present that prior record to
4 the jury for its consideration for impeachment and
5 possibly other purposes.

6 If you elect not to take the stand, then I will
7 charge the jury that they're not to give the fact that you
8 did not testify any consideration whatsoever, and that
9 there is to be no prejudice to you because you did not
10 testify. It will be left entirely up to you as to whether
11 or not you wish to testify.

12 Have you discussed the advantages and
13 disadvantages of testifying with your attorneys?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Counsel, have you discussed the
16 advantages and disadvantages of testifying with your
17 client?

18 MS. SHEALY: I have, your Honor.

19 THE COURT: Has your client made a decision?

20 MS. SHEALY: I don't know that he's made a final
21 decision yet.

22 THE COURT: Do you understand everything I've
23 said, sir?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right. Before you get to that

1 knowledge. I didn't belabor that point. But I throughout
2 404 (b) suggested that that would also indicate a reason
3 why the defendant would not be prejudiced. And I found
4 that for purposes of that preliminary determination, that
5 the State had met its burden to show that the charges were
6 properly joined, preserved the right to seek the
7 appropriate remedy, which you're now seeking.

8 And just for the record, on page ten of that
9 same May transcript, I indicated I didn't think it was
10 ordered that there would be a full hearing and I said that
11 was a possibility. I don't think I flat out denied any
12 request for a hearing.

13 I deny the motion, those motions. Anything
14 further?

15 MR. BUTLER: I don't know if your Honor wants to
16 take this up at this time, but when defendant testifies
17 we'll need to agree on his prior record and determine what
18 comes in and what doesn't. Do you want to do this now?

19 THE COURT: Are you resting at this point?

20 MS. WILSON: Yes, sir.

21 THE COURT: Please stand, sir.

22 We have reached that stage in the trial where
23 you may present your defense. You have a right to testify
24 in your own behalf. However, no one can make you testify.

25 If you elect to testify and you have some prior

1 think there has been adequate and abundant linkage between
2 these two, and it's clear even in the defendant's
3 statements, every time he opens his mouth about this case
4 he talking about both of them at the same time. And I
5 think all of those things were our reasons for joinder,
6 and we believe that we have met any burdens that would
7 have been required for joinder, and we ask that you deny
8 the motion for mistrial and for directed verdict.

9 THE COURT: I've reviewed the transcript of the
10 findings of the Court and I think that the State has
11 stayed within the parameters of what the Court had
12 indicated.

13 The Court went into issues about, in considering
14 joinder, that the evidence for the murder victim one,
15 Dante Tobias, was necessary for full presentation of the
16 case, charged the defendant with murder victim number two,
17 Beverly Blake, and I did indicate that if anything turned
18 up differently that explain that, that would contradict
19 that, that I would address any further remedies. I made
20 it clear it's a preliminary determination. Also said that
21 evidence of the murder of victim two is probative of the
22 defendant's alleged intent to cover up responsibility for
23 the murder of victim number one. Then I went into some
24 analysis about victim elimination or witness elimination.
25 That in and of itself could go to the concept of guilty

1 with Brownie and put her in woods. Again, Lackey, the
2 robbery, the guy being shot, the girl talking to the
3 police, him having to kill her. Again, Menier, Brownie
4 was acting nervous, he had to kill her, and that he did it
5 that night after the robbery. That again goes directly to
6 context and directly from the defendant's mouth. It's
7 more than an inference, it's direct evidence of when it
8 happened.

9 And finally Detective Walker's testimony, which
10 taken in context with all the other testimony, it's clear
11 that the defendant lied about dropping her off. The
12 defendant admitted stealing a 357 from Tobias which is
13 consistent with the type of murder weapon used to kill
14 Brownie.

15 Finally, your Honor, one of the things we
16 discussed at that hearing was overlapping witnesses for
17 Brownie's trial or Beverly Blake's murder trial. And we
18 would submit that at least just at a cursory glance
19 witnesses Floyd, Crumb, Zack, Keyes, James, Jacques,
20 Menier, Lackey and Detective Walker regarding the
21 defendant's confession would overlap.

22 I think we've clearly met our burden in proving
23 both these murders beyond a reasonable doubt at this
24 point, certainly to survive a directed verdict when taken
25 in the light most favorable to the State. In addition, I

1 testified that the deal with the dude went bad and he had
2 to do what he had to do with her, meaning Brownie, and put
3 her, meaning Brownie, in the woods.

4 Finally, your Honor, Krystal Lackey testified
5 that there was a robbery, that a guy was shot, that the
6 girl was talking to the police and he had to kill that
7 expletive, expletive. All those things go to motive.

8 Again, not to be redundant but to give context,
9 we ask the Court to look to the fact that Brownie was this
10 defendant's and the other's only connection to Dante
11 Tobias. That would be circumstantial evidence of the
12 connection between the two.

13 Again, we have Crumb and Zack saying that the
14 defendant said he was going to get rid of Brownie;
15 O'Connell asking the defendant -- asking Brownie if she
16 had any regrets and her being quiet; Brownie leaving with
17 the defendant and Peter Davies; Star or Tiffany Mercado
18 testifying that Brownie never showed up that night after
19 calling Amp for a ride and Brownie wanting Amp to come
20 help her. I believe she testified regarding the robbery.
21 In addition, Shannon Keyes providing context that the
22 defendant said that he and Brownie had to go do something
23 and it didn't turn out the way it was planned and that he
24 had to lay low. Dustin James saying the deal with the
25 dude went bad. The defendant had to do what he had to do

1 THE COURT: You wish to respond?

2 MS. WILSON: Yes, your Honor.

3 Just so the record is clear, Mr. Butler did not
4 quote page 30 of the April 14th transcript where I state
5 to the Court, And don't forget, your Honor, again that
6 there are going to be several statements that the
7 defendant made to acquaintances before he went to jail and
8 statements that he made after he went to jail that include
9 the whole picture. So we definitely addressed that at the
10 first hearing.

11 Just for the record, as far as I know, that when
12 we had the hearing the Court was concerned about motive
13 for the second murder and context for the second murder.
14 And for the record I would point out that though Crumb and
15 Zack, who were involved in the first murder, testified
16 that the defendant said he was going to get rid of
17 Brownie. Also, your Honor, with regards to Nicky
18 O'Connell, she said that the defendant was asking Brownie
19 was she having any regrets and that Brownie acted really
20 quiet. That ties in with Mr. Menier as you stated that
21 Brownie was acting nervous so he lured her out of the car
22 and killed her on some dirt road. He also testified, your
23 Honor, that that happened on the same night as the
24 robbery.

25 In addition, as far as motive, Dustin James

1 to be that they didn't present all that they could
2 presented.

3 MR. BUTLER: Well, my concern is that -- my
4 concern is that they didn't present any of what they said
5 they would present. I understand that the testimony
6 allows for the inference that what was presented pretrial
7 in fact happened, but what was presented pretrial is that
8 there would be testimony from a witness who connects these
9 two. Because that's what is missing is the continuity;
10 that there was an eye witness that gives the State's
11 version of what happened. The continuity that I was
12 saying requires this to be a single transcript or a
13 continuing course of conduct, and that without that, I
14 don't think they have met the first element of joinder
15 under City of Greenville.

16 I should also add that to the extent that 404(b)
17 and Lyle is implicated in the joinder analysis, before
18 something can come in there has to be clear and convincing
19 evidence that the crime occurred and that the person
20 committed it. Our position would also be that the scant
21 references to things that he is supposed to have said
22 wouldn't rise to that level as well, and that would also
23 be our position.

24 Beg the Court's indulgence.

25 For those reasons we would move for a mistrial.

1 THE COURT: Other than any inferences to be
2 drawn from the medical.

3 MR. BUTLER: Sure, the inference from 24 to 36
4 to four to six days, yes, sir.

5 THE COURT: Anything else?

6 MR. BUTLER: I don't believe so.

7 Beg the Court's indulgence one moment.

8 Just so we're clear, both transcripts are in the
9 record, I don't need to move them in?

10 THE COURT: You can mark them for ID purposes if
11 you would like.

12 And one other point about the time. Why can't a
13 reasonable inference be drawn that she may have vanished
14 within the day if she was wearing the same clothes that
15 she was in on the night of the murder of Tobias?

16 MR. BUTLER: That inference can be made, sure.
17 But the inference also can be made that she's a runaway,
18 she is homeless, she only has --

19 THE COURT: I agree those are all arguments that
20 you can make, but if you're saying -- if the State
21 indicated in the joinder here we're going to show that
22 it's connected in these ways, that there was a linkage,
23 that one was done to cover up for the other, that it was
24 all within a short period of time, and why isn't it that
25 they haven't fulfilled what they said? Your concern seems

1 appropriate to say, your Honor, we would like a hearing on
2 these 404(b) issues; is that not correct?

3 MR. BUTLER: Yes, sir. But it's my
4 understanding that we had had those hearings and that your
5 Honor had ruled -- that's what I understand your Honor to
6 say. You said, I don't think that was ordered. I said
7 that was a possibility. I don't think we ordered that.
8 And the way I take that is you've ruled and that we
9 weren't entitled to a hearing. And the only reason I'm
10 bringing this up now is this: I think I've gotten off
11 track. The only reason I'm bringing this up now is in
12 response to this about the discussion about a hearing is
13 that the State says that's not necessary. If it's not
14 exactly as I portrayed it today, they get a mistrial. And
15 I'm saying it's not as how they portrayed it would be.

16 THE COURT: Well, your argument is based on the
17 fact that they ended up not presenting other testimony?

18 MR. BUTLER: Any testimony that the motive --
19 any testimony that the motive for the killing of Ms. Blake
20 was that he was angry that the proceeds from the robbery
21 were not as anticipated, that she was a witness to the
22 first so that she had to be killed so she couldn't testify
23 against him, and that it happened within hours. No one
24 has testified that it happened within hours. There has
25 ben no testimony as to the timing.

1 MR. BUTLER: We wouldn't have witnesses.

2 THE COURT: They should have them.

3 MR. BUTLER: They would.

4 THE COURT: But when we started this trial,
5 everyone was given an opportunity to say whether or not
6 there was anything else we needed to address.

7 MR. BUTLER: And I think what we did was, by
8 incorporating these transcripts by reference, that's the
9 only reason I did that is to make sure that nothing I
10 raised in April and May is waived.

11 THE COURT: Well, I'm not concerned about the
12 waiver as much as the fact that we already knew we were
13 proceeding under that game plan. There was nothing magic
14 about you saying we're incorporating everything and at the
15 same time Ms. Shealy saying there may be some lingering
16 issues we need to go to.

17 MR. BUTLER: That's right. And I don't know if
18 this is your concern, but what I'm not saying is that we
19 sandbagged anybody and held onto this issue and said, Oh
20 well.

21 THE COURT: That is my concern. Because when I
22 indicated that 404(b) may need to be addressed by the
23 Court at the appropriate time and then there's no request
24 made either before trial if you don't have the
25 transcripts, fine, but before that testimony, it would be

1 404(b) analysis, then I agree, your Honor, we probably
2 should have a hearing. And numerous times in the
3 April 14th hearing, the possibility of a full hearing with
4 live testimony is contemplated. And Ms. Wilson says, We
5 don't need to do that; they know what the testimony is
6 going to be; they have all the statements.

7 Then when your Honor makes your final ruling,
8 because your Honor did not rule in April, when you put
9 your final ruling and the bases therefore on the record --

10 THE COURT: With all respect to the preliminary
11 ruling.

12 MR. BUTLER: Yes.

13 THE COURT: I'm clear about that directive.

14 MR. BUTLER: The April ruling was.

15 THE COURT: All of them?

16 MR. BUTLER: Yes, sir.

17 THE COURT: My ruling was, Of course, in a
18 preliminary determination in May, pretrial if that turns
19 out not to be the case, I'll have to take up any
20 appropriate remedy at that time.

21 I did not foreclose your ability to raise this
22 before this trial. There were no witnesses available at
23 that hearing. I made it clear that we're not hearing that
24 because there were no witnesses, there was nothing else to
25 do.

1 acknowledge those are my words. How can those words be
2 interpreted that you do not get a hearing?

3 MR. BUTLER: I interpret what the Court says on
4 page 10 in the May 12th hearing where I'm stating the
5 grounds for my objection. I'm not further arguing, and I
6 say, I object to the finding being made, it says the fact,
7 it should be absence, and object to the finding being made
8 absent a full hearing. I understand it's contemplated at
9 the last hearing with live testimony from the witnesses.
10 Thank you. Which is my way of saying I'm just putting
11 that on the record and I'll sit down and be quiet now.

12 THE COURT: That was the motion to join, which
13 was the only motion before the Court.

14 MR. BUTLER: Yes, sir.

15 THE COURT: Not whether or not Lyle was being
16 implicated in any way.

17 MR. BUTLER: At that stage the only way Lyle can
18 be implicated is in the context of the joinder analysis
19 also raised by your Honor.

20 THE COURT: Right.

21 MR. BUTLER: So when we're discussing the
22 joinder analysis, your Honor says, Well, if they're going
23 to come in under 404(b) anyway for that consideration, we
24 argued at great length about that, and I say, If the
25 joinder analysis is in some part contingent upon the Lyle

1 MR. BUTLER: Well then, my position is that when
2 the issue from the Court of 404(b) is brought into that
3 discussion at some point either through your Honor or
4 through me.

5 THE COURT: I raised that.

6 MR. BUTLER: Your Honor raised the issue of
7 whether or not we needed to have a hearing, and I agreed.
8 And by hearing we mean live testimony. What are these
9 people going to really say before we get in this two-week
10 long --

11 THE COURT: But you all -- no one had witnesses
12 at the last hearing. So why was I not told at the start
13 of this trial when you asked that we delay this trial so
14 we can get those transcripts that we need to go back to
15 any possible 404(b) issues?

16 MR. BUTLER: I don't think that we had these
17 transcripts when we actually got started, and that's why I
18 moved to incorporate by reference the transcripts and all
19 requests that we made therein. And you had ruled. You
20 ruled that we weren't going to get a hearing, so there was
21 no need to revisit that.

22 THE COURT: We're back to the same thing. We're
23 mincing words over the fact that if my language is we need
24 to a hearing, we may need a hearing on 404(b), it does not
25 interpret my ruling that you do not get a hearing. You

1 denied you a 404(b) hearing, and I did not.

2 MR. BUTLER: Not a hearing. What I had
3 requested -- I objected to the Court's ruling on the
4 joinder issue, and as I understand it, the Court's ruling
5 was based, in part, on the fact that the evidence would
6 come in under 404(b) anyway, in part.

7 THE COURT: Alternatively.

8 MR. BUTLER: Yes, sir. My position was that --

9 THE COURT: That was only to analyze prejudice.

10 MR. BUTLER: Yes, sir. My position was that
11 since the lawyers for both sides were disputing what the
12 testimony would be and the evidence would be, that we
13 should have a hearing. And I believe if you go back and
14 look, I believe that the Court raised the issue and that I
15 agreed and said yes, we need to have a hearing then.
16 Ms. Wilson said, We don't need a hearing; they know what
17 the statements are, okay? And then when your Honor ruled,
18 just to preserve the issue, I said I object to the finding
19 without a full hearing. And my understanding was that you
20 had ruled on that and that was incorporated pretrial. And
21 the only reason I'm going through that now is to preserve
22 that issue.

23 THE COURT: I have no problem with that. But
24 the fact of the matter is we had a full hearing on the
25 joinder issue.

1 MR. BUTLER: May 12th.

2 THE COURT: Yes.

3 MR. BUTLER: I'm putting my grounds for my
4 objections on the record. Your objections noted for the
5 record. I believe we've already heard all your arguments
6 at the prior motion hearing. Yes, sir. I'm not going to
7 hear any further arguments. I'll incorporate all those in
8 the motion now. Yes. And object to the finding being
9 made without a full hearing. I understand it was
10 contemplated at the last hearing with live testimony from
11 the witnesses. Thank you. I don't think that that was
12 ordered. I said it was a possibility.

13 THE COURT: That was on the joinder issue, Mr.
14 Butler. There was no 404(b) motion before the Court
15 during that last hearing. That came in for purposes of
16 the joinder analysis, that it could very well possibly
17 come in under 404(b) separate and aside to link that
18 together for purposes of joinder. And I specifically said
19 if that becomes necessary, we may need a 404(b) hearing.
20 And I also indicated we may need to do that before trial.

21 MR. BUTLER: Yes, sir.

22 THE COURT: Is that incorrect?

23 MR. BUTLER: No. But I think we're saying the
24 same thing.

25 THE COURT: No, you're saying that I said that I

1 MS. SHEALY: That's correct.

2 THE COURT: We proceeded to trial and no one
3 said there was anything else we needed to resolve.

4 MR. BUTLER: Yes, sir, that's because you had
5 already resolved it. The Court had ruled that we wouldn't
6 get a hearing in May. I'll find it. And I'm not taking
7 issue with that ruling. We didn't have -- we did not have
8 either of these transcripts when we got started. Before
9 we got started, I think one of us made it clear that we
10 were incorporating by reference these transcripts and all
11 the motions contained therein, and that was one of them.

12 THE COURT: Well, actually, with all due
13 respect, I did indicate, contrary to what you're saying,
14 that if it becomes necessary we may need a hearing on the
15 404(b). That is in the transcript. But no one requested
16 a hearing when we started out this trial on that.

17 MR. BUTLER: And I won't say other than what I
18 just said, that I requested it in May and it was ruled
19 upon and I'm not quibbling with that anymore. It was
20 ruled upon and it's my understanding it was denied.

21 THE COURT: No. I ruled on the joinder issue.

22 MR. BUTLER: I will find it. Maybe I'm
23 miss-remembering.

24 Page nine.

25 THE COURT: What date?

1 been shown, I would consider the appropriate remedy at the
2 appropriate time.

3 MR. BUTLER: Yes, sir.

4 THE COURT: And never setting forth the course
5 for the 404(b) was one possibility of considering the
6 analysis. It wasn't dispositive in and of itself.

7 And I have to keep going back to the fact that
8 we have taken several long breaks in this case. We
9 started out with a long delay because everyone told me
10 they wanted to review these transcripts to see if there's
11 anything else we needed to address. Absent a motion
12 hearing when we started out, the Court had nothing to do
13 but assume that we were going to address this at the
14 directed verdict stage. Are you trying to suggest that we
15 were supposed to have a hearing?

16 MR. BUTLER: Yes, sir. But I asked for that in
17 May and it was incorporated by reference before we started
18 this case. It's my understanding you had ruled on that.
19 It's my understanding that you had ruled that we would not
20 have a hearing. And I can find that in the May
21 transcript.

22 THE COURT: But Ms. Shealy stood up at the
23 beginning of this trial and said we have, may have some
24 lingering issues, I want a delay to be able to look at the
25 transcript to make sure. Is that correct, Mr. Shealy?

1 name when I made my ruling.

2 MR. BUTLER: Yes, sir, I understand.

3 Again on page 35 Ms. Wilson said, We don't need
4 to have a full blown Lyle hearing because if we don't
5 prove up our joinder case, then a mistrial may be
6 appropriate.

7 Beg the Court's indulgence.f.

8 The Court on page 44, But if they show at a
9 pretrial hearing a sufficient basis for the admissibility
10 of that testimony, then they are going to be able to admit
11 it.

12 THE COURT: Well again, the ruling was based on
13 the ability to show that linkage, and they have shown some
14 linkage. I didn't set forth the course that they had to
15 walk.

16 MR. BUTLER: Yes, sir, I understand.

17 Page 51, bottom of the page: THE COURT: I
18 can't hash out those details absent a hearing. And this
19 is after Ms. Wilson has laid out what she expects the
20 evidence to be. But I have made the State aware of the
21 fact and they concur that that may subject the State to a
22 mistrial if that turns out to be the case. This is in the
23 context of us requesting a full hearing on this matter.

24 THE COURT: Again, the intent that I have
25 indicated all along was if an insufficient linkage has

1 connection. It's a hypothetical connection, but it's not
2 real.

3 THE COURT: All right. Anything else?

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

5 On page 34, the Court: Well, I don't know then
6 that I could determine that without the hearing then. It
7 may be that we need to have a Lyle hearing.

8 I'm only pointing this out because of how
9 Ms. Wilson responds. She says that we don't need to have
10 a hearing. She says, page 34, I mean, it's going to take
11 us, and I understand time is not the issue, but I don't
12 think the defendant -- I think for purposes of this
13 analysis the defendant knows what the statements would be,
14 and those are the ones that she's presenting and
15 characterizing in this pretrial hearing.

16 THE COURT: Have any statements come out that
17 were not tendered?

18 MR. BUTLER: No. But there are ones that were
19 tendered that did not come out, an eye witness to the
20 second crime who is present for the first one, Peter
21 Davies. We all know who we're talking about, Peter
22 Davies. He wasn't called. He was the link, and that is
23 exactly what was held out in May.

24 Beg the Court's indulgence.

25 THE COURT: But I never mentioned Mr. Davies'

1 So I don't know.

2 THE COURT: That was on cross-examination?

3 MR. BUTLER: That's right. And I think whatever
4 she says has to be taken in the context of her testimony
5 on cross was that the reason the girl was killed was she
6 had gone to police, which of course is not in evidence at
7 all.

8 Seems to me the question is regardless of what
9 was presented at pretrial, does what's presented here
10 allow --

11 THE COURT: Let's stop. Let's just take that
12 for a second, what you just said. Let's just take that to
13 be the case: If she went to the police he had to do it.
14 I'm saying "he" generically, the person had to do it.

15 MR. BUTLER: Yes, sir.

16 THE COURT: And doesn't that show a connection,
17 that because someone went to the police about the first
18 one, someone had to do the second?

19 MR. BUTLER: Yes, that is a connection, but it's
20 not a connection that is at all borne out by the evidence,
21 because Brownie didn't go to the police. If Brownie had
22 gone to the police, surely you would have heard that. She
23 didn't go to the police. There has been so much testimony
24 that nobody had heard from her since the 7th. It's clear
25 that she didn't go to the police. So perhaps that's a

1 confused.

2 So that's who I'm talking about that. And that
3 is what we would expect to come out in the pretrial
4 hearing.

5 THE COURT: What about Mr. Menier's testimony?

6 MR. BUTLER: Mr. Menier?

7 THE COURT: He testified the defendant told him
8 that he and others robbed a guy, shot him, and then killed
9 the girl Brownie because she saw the defendant kill
10 Tobias.

11 MR. BUTLER: That's what it was, "because"?

12 THE COURT: All right. I'm not going to say the
13 exact words because I'm going by the notes. Go ahead.

14 MR. BUTLER: Well, that would help the State's
15 position if you said "because." That's what I'm saying is
16 not in the record. They held out pretrial that that was
17 going to be the evidence was that he did it because, one,
18 he was dissatisfied with the take in the robbery; two, she
19 was going to be a potential witness.

20 THE COURT: Well, why can't reasonable
21 inferences be drawn from both Krystal Lackey's testimony
22 and Mr. Menier's testimony as well as Mr. James that I
23 mentioned earlier?

24 MR. BUTLER: Krystal Lackey says that, from our
25 notes on cross was that the girl had gone to the police.

1 THE COURT: What do you mean, If it would have
2 been? What is is what is. That is the testimony that's
3 been presented. That's why I said if it becomes apparent
4 at the appropriate stage, then you can seek the
5 appropriate remedies. What other testimony would there
6 be?

7 MR. BUTLER: Peter Davies, which is exactly what
8 she is talking about when she's saying what the
9 testimony's going to be; that there is an eye witness to
10 the second crime and his testimony is necessary to link
11 these two together. He's necessary for crime one she
12 says, and we can't just stop his testimony at crime one.
13 It wouldn't make any sense, which is patently false
14 because they won't even call him. So I have to go back
15 and find it. I think it's on page 29.

16 I think if we don't go forward with the last
17 murder, it would be most difficult to just end our
18 evidence. I mean the witness, the witness who contended
19 along with the defendant would just have to stop and
20 explain what happened the rest of the day, the rest of the
21 evening.

22 Next paragraph: To leave it out, to ask the
23 witness, the eye witness to the second murder to just halt
24 his testimony after Tobias, after the Tobias murder after
25 they return to his apartment would just leave the jury

1 Beg the Court's indulgence.

2 THE COURT: What would you have us have a
3 hearing on?

4 MR. BUTLER: The testimony they rely on for
5 joining these two cases.

6 THE COURT: Why would we not have started this
7 trial out with that, making that request again?

8 MR. BUTLER: Because it was denied. I did
9 request it in May. I requested it in May and it was
10 denied.

11 THE COURT: But we started this trial out with
12 the fact that we wanted to review everything. You all
13 wanted to review everything to see if we needed to pick
14 back up on everything. Is that not true?

15 MR. BUTLER: Yes. And we incorporated by
16 reference all our motions in the transcript.

17 THE COURT: Right.

18 MR. BUTLER: So that request was made by
19 incorporating by reference to the transcript; that's why
20 we had to have them.

21 THE COURT: What is it that we would accomplish
22 in a hearing that we have not accomplished so far?

23 MR. BUTLER: I don't know. I guess, if the
24 testimony would have been just what it has come out in the
25 State's case, we would be exactly what we're arguing now.

1 to going forward joining these cases without a hearing on
2 all this. And the State assured us there's not going to
3 be a hearing, that a hearing wasn't necessary because we
4 had all the statements, we knew what the statements said,
5 and if it was not proved at trial, what we had in
6 discovery, that we would get a mistrial.

7 THE COURT: No. The Court never said that.

8 MR. BUTLER: I understand that, but --

9 THE COURT: Any such thing. And we started the
10 trial out with, do we need to revisit any issues. That's
11 why we didn't want to go forward. We had Holly rush the
12 transcript even though her mother had passed away. I
13 mean, what is it that we didn't revisit that you want to
14 revisit?

15 MR. BUTLER: We did not revisit anything. I'm
16 just saying that our position was that we had a hearing to
17 straighten all this out, and in April the transcript
18 suggested the Court was strongly considering that, okay?
19 And then in May when we got to try the case for the first
20 time before we had a continuance I brought that up again,
21 and, your Honor's ruling was, I never said we would have a
22 hearing, that was suggested and we don't need it. And at
23 some point Ms. Wilson said, We don't need to have a
24 hearing. This is back in April. If you give me a second
25 I will find it.

1 went out, did the home invasion, and ended up shooting the
2 person, and then he had to kill that, I won't say the
3 words he used, you know which words he used, referencing
4 Brownie. He had to do it.

5 MR. BUTLER: Yes, I understand that.

6 THE COURT: I'm looking at what evidence is in
7 the case for purposes of directed verdict. Because of the
8 first he had to do the second. That was the testimony.

9 MR. BUTLER: Because of the first he had to do
10 the second. Is that what she testified to?

11 THE COURT: Well, that's the inference that can
12 be drawn from that, he had to kill that blank.

13 MR. BUTLER: She said because of the first
14 thing?

15 THE COURT: Krystal Lackey said they went and
16 did this and then he had to do that. You can check the
17 language.

18 MS. WILSON: Because she was talking to police.

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

20 I'm being told that her testimony that --
21 because someone had talked to the police or because she
22 had talked to the police, which of course is not in
23 evidence. There is no evidence that either victim talked
24 to the police.

25 And up to this point I should say, we objected

1 thing comes up. And it seems to me that a continuing
2 course of conduct or part of the single, same transaction
3 which was required under the City Of Greenville has not
4 been met. It was presented that the timing was going to
5 be -- that there was a continuity between these two
6 events, and that's not come to light.

7 THE COURT: I mean, the State's theory that they
8 both took place on the same day, I guess. That was their
9 original theory at pretrial.

10 MS. WILSON: And it still is.

11 THE COURT: And if there is some conflict about
12 that, that doesn't mean that that is not their theory,
13 just that there is evidence of their theory.

14 MR. BUTLER: Yes, sir, that's right. But we
15 keep, as we did in pretrial, coming back to whether or not
16 under 404(b) and Lyle it would come in as motive, and if
17 so, does that mitigate the prejudice. And we talked about
18 that at great length. And assuming that it would have,
19 they still have to prove it's part of the same
20 transaction, continuing course of conduct, and they
21 haven't done that through any of these witnesses. Even if
22 the defendant, as has been testified, told people that he
23 killed both people, that doesn't make them connected.

24 THE COURT: Well, Krystal Lackey testified the
25 defendant told her and a bunch of other people that they

1 together.

2 MR. BUTLER: I think that others have linked
3 them together but not in the continuous fashion that was
4 presented to us. So for all we know, when Dustin James
5 says what he said, we don't know if that's part of a
6 continuing course of conduct. We don't know if that's
7 part of the same transaction that's required in the City
8 of Greenville. For all we know he means days later, weeks
9 later. I mean, we don't know based on what he testified
10 to. And going back through the --

11 THE COURT: As far as I can see in the pretrial
12 notes, I said the evidence the State uses to prove the
13 murder victim number one will most likely be admissible to
14 show the defendant's alleged motive for murdering victim
15 number two. That was the theory, the general theory
16 advanced by the State. The Court did not base its
17 decision on this specific testimony, but I did say, of
18 course, it was a preliminary determination. If that turns
19 out not to be the case, I'd take that up with any perfect
20 remedies at the time.

21 MR. BUTLER: Yes, sir. And it seemed to me that
22 to justify a theory of motive and introducing one in the
23 prosecution of the other, the timing was critical. And if
24 your Honor would look back at the questions and the
25 colloquy between the Court and the attorneys, the timing

1 Jumping down to the next full paragraph, To leave it out
2 and ask for that witness, the eye witness to the second
3 murder, to just halt his testimony after the Tobias murder
4 after they returned to his apartment would leave the jury
5 confused.

6 So there she's holding out that there would be
7 an eye witness to the second murder and that his testimony
8 is crucial to make the evidence of the Tobias crime make
9 sense. That's page 29.

10 So our position is, and it was then, that there
11 was an easy way to present the first crime, the Tobias
12 crime without the second; that the narrative would begin
13 just as it began in the State's presentation but would end
14 after, I guess, after they go back to the O'Connell's
15 house.

16 Beg the Court's indulgence one moment.

17 So there wasn't any reason to -- evidence of the
18 Tobias killing is no more clear because of the evidence of
19 the Blake crime, and that's borne out by the fact that
20 this witness does not testify. They presented their case
21 without this witness, this witness that was held out
22 pretrial to be the link. Page 29, she says that there's
23 going to be an eye witness and he's going to link the two
24 together. That person hasn't testified.

25 THE COURT: But other people have linked them

1 was going to talk.

2 THE COURT: Didn't Mr. James testify that the
3 defendant told him he killed some guy and got rid of
4 Brownie and put her in the woods? Doesn't that suggest
5 that that linkage is there for purposes of what might have
6 motivated the second? Was that testimony there, what I
7 indicated?

8 MR. BUTLER: I think that that is he how
9 testified, yes, sir.

10 THE COURT: All right. Anything else?

11 MR. BUTLER: Yes, sir. Ms. Wilson, on page 17,
12 I believe he was angry about the amount. The Court
13 follows up, Well, that would go to his intent perhaps,
14 finding that he had the second ground perhaps to allow
15 joinder by way of Lyle 404(b).

16 Beg the Court's indulgence one moment.

17 Additionally, there was another argument that
18 was put forth by the State that the testimony would be
19 disjointed and that the presentation of their case would
20 not make sense without evidence of the second crime, top
21 of page 29. Likewise, I think if we go forward on the
22 Tobias murder, it would be most difficult to just end our
23 evidence. I mean, the witness who continued along with
24 the defendant would just have to stop and explain what
25 happened the rest of the day or the rest of the evening.

1 he had an eye witness to that shooting as well.

2 I think it's clear, based on those things, that
3 it's a single chain of circumstances.

4 I don't believe that there has been any
5 testimony to that effect. There certainly has not been
6 any testimony from an eye witness.

7 I think that most of the testimony has been that
8 the defendant is to have said to others that he killed
9 her. As to the reasons why, those have not come into
10 evidence.

11 As to the timing, there's an estimation from Dr.
12 Presnell as to the time of death, which is as far as I can
13 tell by the time she's finished testifying in
14 cross-examination could be anywhere from 24 to 36 hours to
15 four to six days. She obviously said she favors the
16 latter but can't rule out the former.

17 Ms. Wilson on page eight says, in responses to
18 the Court's questions, states this may have took place on
19 the same day, within several hours. I don't believe
20 there's been any testimony to that.

21 Beg the Court's indulgence.

22 Again on page 16, Ms. Wilson, Our evidence will
23 show the defendant was upset; that he had been led to
24 believe that there would be more drugs and money than they
25 actually recovered in the robbery. He was concerned she

1 specifically.

2 The State's position was that the two homicides
3 should be joined and that they were of a piece of one
4 continuing transaction because the second was committed as
5 a coverup for the first, or more specifically that Beverly
6 Blake was killed because she was a witness to the murder
7 of Dante Tobias.

8 And secondly -- that was the first grounds. And
9 secondly was that the defendant having been lured to
10 participate in a robbery was disappointed in the proceeds
11 of the robbery and for that reason was angry at Ms. Blake
12 and retaliated against her.

13 And the third basis was that these were all
14 continuous. There was a continuity of activity; that it
15 all took place, I believe, within several hours of one
16 another. And if I could, I will just go through -- the
17 easiest way for me to do it is to go through the
18 transcripts of the April 14th hearing and appeal the
19 language therein.

20 Bottom of page five: After that, your Honor,
21 the defendant was disappointed with the loot from the
22 robbery. They didn't get as much money or drugs as he
23 anticipated. He was also concerned about Ms. Blake and
24 her running her mouth about what happened. Because of
25 that, later on that same night, he killed Ms. Blake, and

1 THE COURT: I'll go ahead and hear your motion
2 and then when the jury comes in I'll just ask if there's
3 anything further from the State.

4 MR. BUTLER: Beg the Court's indulgence one
5 moment.

6 May it please the Court.

7 THE COURT: Yes, sir, go ahead.

8 MR. BUTLER: At this time, your Honor, the
9 defendant moves for a directed verdict for all charges on
10 the grounds that the evidence taken in the light most
11 favorable to the State does not allow a reasonable juror
12 to find the defendant guilty on any of the charges.
13 Specifically with respect to the charge of murder, the
14 victim is Beverly Blake. The State cites the case of
15 State versus Schrock with the proposition that mere
16 suspicion does not allow a case to be submitted to the
17 jury.

18 Additionally, at this time we would move for a
19 mistrial based on all motions and all objections,
20 including our pretrial motion for a severance and our
21 motion in opposition of joinder. Our position is that
22 what was held forth as to what the evidence would be in
23 this case in the pretrial hearings that we had back in
24 April, that none of the testimony has supported the
25 State's theory that they presented at that point

1 THE COURT: All right.

2 MS. WILSON: Your Honor, when the jury comes in,
3 I will just move these items into evidence in their
4 presence and then we'll rest.

5 THE COURT: What items are those?

6 MS. WILSON: These are the ones that we just
7 talked about, the telephone summary chart and the three
8 sets of phone records.

9 THE COURT: Those have been already been
10 referenced by someone?

11 MS. WILSON: Yes. The summary chart was not,
12 but it's being moved in without objection.

13 THE COURT: I understand. I was just trying to
14 see if we can take a directed verdict motion. I don't
15 want to bring the jury in and send them back out.

16 MS. WILSON: It seems to me to do it that way.
17 That's all we need to do is discuss these and then rest.

18 THE COURT: I mean, if those are in by
19 agreement, then State can rest. Do you have any problem
20 with that?

21 MS. SHEALY: We have no problem with that, your
22 Honor.

23 THE COURT: All right. Those are in. So the
24 State rests?

25 MS. WILSON: Yes, sir.

1 THE COURT: Is that correct?

2 MS. SHEALY: That's correct.

3 THE COURT: State's 26 is withdrawn.

4 MS. WILSON: 17 for I.D., 97B for I.D., 102 for
5 I.D., 103 for I.D., 108 for I.D., 109 for I.D., 121 for
6 I.D., 122 for I.D., 127 for I.D., but for those that I've
7 just mentioned, State's 1 through 138 are in evidence and
8 we would so move.

9 In addition, your Honor, State's 124 and 125 for
10 I.D. should have been Court's exhibits. Those were two
11 articles regarding Dr. Presnell, and I believe the court
12 reporter adjusted those to reflect that they are Court's
13 exhibits, not State's Exhibits.

14 THE COURT: Do you agree?

15 MS. SHEALY: Yes, sir.

16 THE COURT: All right.

17 MS. WILSON: And then again State's 135 is phone
18 records regarding Cheatom, 136 is an invoice for a
19 cellular pager regarding the defendant, 137 is telephone
20 records regarding Anthony Floyd, 138 is a summary chart of
21 phone records, and I believe everything else is in, your
22 Honor.

23 THE COURT: Do you agree that everything else is
24 let in, Ms. Shealy?

25 MS. SHEALY: Yes, sir.

1 off the record.)

2 THE COURT: Are you saying that was said?

3 MS. WILSON: There is no question that's what I
4 said.

5 THE COURT: Go ahead and look for that, madam
6 court reporter, while I'm discussing this issue.

7 (A short break was taken and a discussion held
8 off the record.)

9 MS. SHEALY: Judge, we found that they were
10 taken on February 5th, so at the beginning of my case I
11 will just move them in again for clarification and note
12 that the photographs were taken on February 5th.

13 THE COURT: Do any of those have anything to do
14 with the directed verdict stage of the case?

15 MS. SHEALY: No, sir.

16 THE COURT: Okay. That's fine. It's up to you
17 all.

18 So you all don't need us to look. You can
19 terminate looking, madam court reporter.

20 Ready to proceed?

21 MS. WILSON: Your Honor, this is just for the
22 record. It's my understanding that but for State's 19 for
23 ID, 20 for I.D, 21 for I.D, 22 for I.D., 23 for I.D., 24
24 for I.D, 25 for I.D, 26 for I.D, and we'd move to withdraw
25 26. I think we withdrew that.

1 I.D, your Honor, when we marked them before we got started
2 back again. And then when I was questioning Presnell, I
3 said these have been marked as I.D. and Ms. Wilson said
4 no, they're in and that I should have Detective Presnell
5 testify about those pictures in front of the jury.

6 THE COURT: We can try to find that in the
7 record unless there is some objection.

8 MS. WILSON: I thought that he couldn't say.

9 MS. SHEALY: I showed him the pictures in front
10 of the jury, and he said that resembles the area, and I
11 asked him why he wasn't sure, but he was certainly
12 testifying to them in the presence of the jury after my
13 inquiry as to whether or not they were in. So what I was
14 doing was I was trying to look and see if I find the note
15 as to what date we went out there. I guess we can call
16 one to do that, but at the time when it should have been
17 brought up that they were still for I.D, I inquired and I
18 was told they were in.

19 MS. WILSON: That was the question.

20 THE COURT: I'm just going to check the record.
21 Find it, please, madam court reporter, that
22 segment.

23 MS. SHEALY: It would have been during the cross
24 of Sergeant Presnell, not Dr. Presnell.

25 (A short break was taken and a discussion held

1 (WHEREUPON, State's Exhibits Nos. 135-138 were
2 admitted into evidence.)

3 MS. SHEALY: And defendant's 1 through 16.

4 THE COURT: Any objection to that, defendant's 1
5 through 16?

6 MS. WILSON: Subject to the date, clarifying the
7 date.

8 THE COURT: How are you all going to clarify the
9 date?

10 MS. SHEALY: Well, we all were at the scene the
11 same day, Ms. Wilson, and some officers and Mr. Butler and
12 I, and I'm looking back to try to determine what that date
13 was.

14 THE COURT: Well, then they're not in yet. If
15 it's going to be subject to something, they're not in.

16 MS. SHEALY: At the time I presented them, your
17 Honor, I inquired whether they were ID or in and
18 Ms. Wilson indicated on the record that they were in. So
19 now I'm having to try to --

20 THE COURT: Madam court reporter, what do you
21 show for defendant's 1 through 16?

22 THE COURT REPORTER: I was told that they were
23 ID.

24 THE COURT: They have been marked for ID.

25 MS. SHEALY: But I think she marked those for

1
2 MS. WILSON: I mean, I need to formally move
3 some in. We've already gotten all those straight. I just
4 need to have these three things marked and move them in
5 and move in some other ones that we're unclear on.

6 THE COURT: Is this by agreement?

7 MS. SHEALY: I'm sorry, your Honor?

8 THE COURT: Go ahead and approach the bench.

9 (A bench conference was held with the judge and
10 attorneys.)

11 THE COURT: Are there any others?

12 MS. SHEALY: Judge, we have some that I think
13 are currently still marked as ID only that the Solicitor
14 agrees to come in, but we need to determine what date
15 certain photographs were taken.

16 (WHEREUPON, State's Exhibits Nos. 135-138 were
17 marked for identification only.)

18 MS. SHEALY: Those are defendant's 5 through --
19 wait a minute. I'm sorry.

20 THE COURT: While you're doing that, State's
21 135-136-137-138 are entered into evidence without
22 objection; is that correct?

23 MS. WILSON: Yes, sir.

24 MS. SHEALY: That's correct.

25 THE COURT: All right.

1 hearing of the jury.)

2 THE COURT: All right. Ladies and gentlemen,
3 Counsel has requested that I give you an extended lunch so
4 that certain items can be taken care of. If you will
5 please report back at 2:45 we'll proceed with the trial.

6 Do not discuss the case in any way whatsoever.
7 Thank you very much.

8 (The jury left open court at approximately 12:28
9 p.m.).

10 THE COURT: Who are you all going to call?

11 MS. BURNEY: I think -- your Honor, let me just
12 check outside.

13 MS. WILSON: Your Honor, our next witness isn't
14 here yet, but we anticipate that he'll be here. Our
15 understanding was that he would be here at 1:30. Our
16 investigator asked for a contact to go get him. He only
17 had to go to North Charleston. Hopefully he'll be here
18 soon.

19 THE COURT: All right.

20 (A lunch break was taken.)

21 MS. WILSON: We're not going to call another
22 witness. We need to get straight on our exhibits. What
23 we intended to do --

24 THE COURT: What do you mean, get straight on
25 the exhibits?

1 A Yes, ma'am, it was.

2 Q Is that statement included as a part of this case
3 file?

4 A Yes, it is.

5 Q Do you recall what he said about whether he had seen
6 Beverly Blake or Brownie up until that point?

7 A No, ma'am.

8 Q Do you recall the date that his statement was made?

9 A On the 9th of January.

10 Q Would it refresh your recollection to take a look at
11 his statement?

12 A I have a copy of it, yes.

13 Yes, ma'am, Mr. Frasier stated the last time he
14 saw the victim was on New Year's Eve, I believe.

15 Q And had he seen her or spoken to her since that time?

16 A He stated that he had not seen -- he said he had not
17 seen her or spoken to her since.

18 MS. BURNEY: That's all I have, your Honor.

19 MS. SHEALY: Nothing further.

20 THE COURT: All right. You may step down, sir.

21 MS. SHEALY: Your Honor, may we approach for a
22 moment?

23 THE COURT: Yes.

24 (A bench conference was held with the judge and
25 attorneys in the presence of the jury but out of the

1 considering burglary. They went through the analysis of
2 those states that consider certain things and those that
3 have not.

4 MR. BUTLER: That's why I bring up the fact that
5 a burglary varies by definition, definitionally from
6 jurisdiction to jurisdiction, so the footnote perhaps
7 gives us guidance; however, it's not a holding of the
8 case.

9 THE COURT: Do you want to respond to that?

10 MS. WILSON: Your Honor, it seems to me under
11 609(a)(1), unless I'm missing something, if the crime
12 carries over a year, the Court should do a balancing test.
13 I think in doing your balancing test you can consider what
14 the facts of the case were, or, at least, the fact that
15 the grand larceny is pertaining to the burglary, as they
16 have conceded.

17 THE COURT: Well, if I do the balancing test, in
18 this case it contains an armed robbery charge.

19 MR. BUTLER: I have no problem with analyzing
20 under 609(a)(1) if that's their position, and I would ask
21 the Court to engage in a balancing test. And under
22 609(a)(1), when it's the defendant testifying the standard
23 is different. It's presumed prejudicial. And the Court
24 has to find whether the probative value outweighs the
25 prejudicial effect. And given the circumstances, I would

1 think the balancing would be in favor of excluding that
2 testimony.

3 MS. WILSON: I think we should start with
4 (a)(2). And if you find that under (a)(2) that it's not a
5 crime of dishonesty, which we're not conceding that it's
6 not, then go back to (a)(1). But I believe under Shaw, as
7 you stated, that the Court has indicated that -- the
8 appellate court has indicated burglary would be considered
9 a crime of dishonesty. I don't have Shaw in front of me.

10 THE COURT: When you introduce this conviction,
11 what are you going to use to prove his conviction?

12 MS. WILSON: What am I going to use to prove it?

13 THE COURT: Uh-huh.

14 MS. WILSON: I'm going to ask him about it.

15 THE COURT: You're just going to ask him about
16 it?

17 MS. WILSON: Right. If he denies it, then I
18 don't think that I have a copy of the certified
19 conviction. And certainly I can get one.

20 THE COURT: Well, I was going to look at the
21 indictment to see what the charge was exactly.

22 MR. BUTLER: May it please the Court?

23 THE COURT: Hold on just a second.

24 MR. BUTLER: Yes, sir.

25 THE COURT: Yes, sir.

1 MR. BUTLER: After having the opportunity to
2 review the language in the Shaw case, I would like to
3 bring out the fact that the analysis here is bringing out
4 this distinction as I understand it. In the federal
5 system, crimes of dishonesty are limited to those things
6 that are tantamount to a lie. All crimes can be generally
7 categorized as lying, stealing, violence or drugs.

8 THE COURT: Right.

9 MR. BUTLER: In the federal court, only lying is
10 a crime of dishonesty. Forgery, perjury, giving false
11 information to the police, okay. Most of the state
12 courts, including South Carolina, do not limit crimes of
13 dishonesty to just lying. Crimes that are violent and
14 only violent and crimes that are drug crimes are not
15 dishonest. So the question then is, are crimes that are
16 theft or stealing crimes dishonest? And these foreign
17 jurisdictions, they're not federal, other states, and
18 South Carolina recognize that we will not limit dishonesty
19 to lying, stealing is included. There is one citation, I
20 think it's an Ohio case -- I'm sorry, I've lost it, but
21 obviously the federal courts don't let burglary in for the
22 reasons that I just set forth.

23 THE COURT: Well, federal court doesn't
24 necessarily let armed robbery in either, but our State
25 Supreme Court chose not to follow the federal rules.

1 MR. BUTLER: Yes, sir. And that's because
2 robbery by definition contains larceny, but burglary does
3 not. So even within the context of the Shaw case when
4 we're drawing these distinctions between lying and
5 stealing on the one hand and everything else, if it's
6 stealing it comes in, but burglary by definition in South
7 Carolina does not involve stealing. It sometimes does,
8 but it doesn't have to.

9 THE COURT: How about the times that it does, do
10 you just get a free ride?

11 MR. BUTLER: No, the stealing comes in, and he's
12 got a larceny conviction.

13 THE COURT: No. What if the burglary involves
14 stealing, do you just get a free pass?

15 MR. BUTLER: If the only evidence of the
16 stealing is the facts from the indictment or the discovery
17 and there is no accompanying larceny charge, that's right,
18 you do.

19 THE COURT: Why would that be?

20 MR. BUTLER: Because you look to the elements of
21 the offense. And until such time as the legislature
22 decides to define burglary otherwise, then prosecuting
23 attorneys and states are stuck with that. Just like you
24 get a free ride for drug convictions. I mean, I know
25 those aren't dishonest in the way that we've defined them

1 here, but if they don't pursue the larceny -- I guess
2 you're stuck with it if --

3 THE COURT: You don't get a free ride for drug
4 convictions.

5 MR. BUTLER: I mean, they're not used to
6 impeach.

7 THE COURT: Generally.

8 MR. BUTLER: Generally, yes, sir.

9 THE COURT: Generally is the catch-all word.

10 MR. BUTLER: Yes, sir. I guess my response to
11 the free ride issue is, the State could prosecute a person
12 on larceny. If they chose not to, they're stuck with the
13 consequences of that down the line. If there is an
14 accompanying larceny, as there is in this case, they get
15 to get into it even if petty larceny comes in, but
16 burglary in and of itself doesn't involve dishonesty.

17 THE COURT: Anything else?

18 MR. BUTLER: No, sir.

19 THE COURT: I'm going to allow the larceny, the
20 grand larceny, and that's it. I'm excluding the burglary
21 second. There's some doubt about that. I think that
22 doubt needs to be resolved to exclude it. If it were
23 analyzed under (a)(1), I think that it would be more
24 prejudicial than probative.

25 Anything further?

1 MS. SHEALY: May we approach, your Honor, for
2 scheduling purposes?

3 THE COURT: Yes.

4 (A bench conference was held with the judge and
5 attorneys.)

6 THE COURT: We'll go ahead and take a
7 five-minute break.

8 (A short break was taken.)

9 (WHEREUPON, The Court's Exhibits Nos. 10-11 were
10 marked for identification only.)

11 (WHEREUPON, State's Exhibit No. 139 was marked
12 for identification only.)

13 THE COURT: Now, just for purposes of that last
14 analysis, that was based on the impression that there is
15 no indictment or anything. So I didn't want to -- so if
16 we have future cases or anything like that, I don't accept
17 the argument that you get a free pass. I don't want
18 anyone to think that. I think that the Court has the duty
19 to look at the indictment.

20 MS. WILSON: Your Honor, depending on when he
21 testifies, if we get the indictment in time, we would ask
22 to revisit it. If we don't, then I understand the Court's
23 ruling.

24 THE COURT: I based it on that, because I don't
25 think the intent was to get a free ride if it is a theft

1 type of offense. I think there's Hunter versus Staples
2 that supports that approach in South Carolina. That is
3 515 SE2nd 261.

4 MR. BUTLER: That is the Shaw case?

5 THE COURT: No. Hunter versus Staples.

6 MR. BUTLER: 515?

7 THE COURT: SE2nd 261.

8 MR. BUTLER: Thank you.

9 THE COURT: It says even if the dishonesty, the
10 issue of dishonesty under Rule 609(a)(2) had been argued
11 to the trial court, the argument will fail in order to
12 preserve the issue, and that was a different kind of case,
13 but the department should have submitted the burglary
14 indictment to the judge so that he could rule on the
15 dishonesty question. And then they cite the Creed rules
16 of evidence case whether assault and battery of a high and
17 aggravated nature is a crime of moral turpitude depending
18 on facts of the case. The party seeking to impeach
19 witness using prior ABHAN condition must produce the
20 indictment for the trial judge's review. That case seems
21 to suggest that -- well, it specifically talks about
22 burglary also, but you're not just confined to the
23 elements, that the judge has to review it.

24 MR. BUTLER: Can I ask what year that case is,
25 please?

1 THE COURT: 1999.

2 MR. BUTLER: Thank you.

3 THE COURT: It's goes on to say, There is no way
4 for the judge -- no where -- there remains for us to
5 determine the nature of the burglary without this
6 information.

7 I mean, I agree with what you're saying in part.
8 I don't want you to think otherwise. I think that is a
9 valid concern, that if it's not necessarily a theft type
10 of offense it shouldn't come under the theft type of
11 analysis. But there has to be a way for the Court to make
12 that determination; otherwise, people would, as you
13 indicated, get a free ride, and I definitely don't think
14 that is the intent, to the extent that means a free ride.
15 I don't mean it any other way. I've just borrowed the
16 same language.

17 You all ready?

18 MS. WILSON: Yes, sir.

19 MS. SHEALY: Yes, sir.

20 THE COURT: Bring the jury in.

21 (The jury came into open court at approximately
22 4:07 p.m.)

23 THE COURT: Ladies and gentlemen, sorry for the
24 delay. We're ready to proceed.

25 I appreciate the fact that you're working with

1 me as far as delays and all. I know that's sometimes
2 aggravating to jurors, and you all have been a great jury.
3 You haven't complained, at least, as far as I know.

4 Go ahead.

5 MS. WILSON: Thank you, your Honor.

6 First of all, the State would offer State's
7 Exhibit 139, which is a summary chart of cell assignment
8 overlap, I believe without objection.

9 MS. SHEALY: That's correct, your Honor.

10 THE COURT: All right.

11 (WHEREUPON, State's Exhibit No. 139 was admitted
12 into evidence.)

13 MS. WILSON: In addition, your Honor, the State
14 would offer State's Exhibit 136, which is an invoice
15 regarding Anthony Mann's pager, I believe without
16 objection.

17 MS. SHEALY: That's correct.

18 (WHEREUPON, State's Exhibit No. 136 was admitted
19 into evidence.)

20 MS. WILSON: State's 135, which includes the
21 cell phone records of Marcus Cheatom, I believe without
22 objection.

23 MS. SHEALY: That's correct.

24 (WHEREUPON, State's Exhibit No. 135 was admitted
25 into evidence.)

1 MS. WILSON: State's 137, which is the Easytalk
2 Communications phone records for 36 Magnolia and Anthony
3 Floyd, I believe without objection.

4 MS. SHEALY: That's correct, your Honor.
5 (WHEREUPON, State's Exhibit No. 137 was admitted
6 into evidence.)

7 MS. WILSON: And finally, the State offers a
8 telephone call chronology of the telephone records that
9 are in evidence as State's Exhibit 138, I believe without
10 objection.

11 MS. SHEALY: That's right.
12 (WHEREUPON, State's Exhibit No. 138 was admitted
13 into evidence.)

14 THE COURT: All right. State's 135, 136, 137,
15 138 are in evidence without objection.

16 Anything further?

17 MS. WILSON: Your Honor, the State rests.

18 THE COURT: All right. Ready to proceed?

19 MS. SHEALY: Yes, sir.

20 THE COURT: Go ahead.

21 MR. BUTLER: At this time defense calls David
22 Barnes.

23 DAVID BARNES, after being duly sworn, testified
24 as follows:

25 THE CLERK: Please be seated. Please state your

1 full name to the Court and spell your last .

2 THE WITNESS: David Thomas Barnes, B-A-R-N-E-S.

3 MR. BUTLER: May it please the Court.

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION

6 BY MR. BUTLER:

7 Q Dave, I'm going to ask you to speak up real good for
8 me, okay?

9 A Okay.

10 Q Dave, where do you currently live?

11 A Fort Edward, New York.

12 Q Ford Edward, New York?

13 A Yeah.

14 Q When did you arrive in Charleston, South Carolina?

15 A This week, yesterday.

16 Q Yesterday. Aside from yesterday, when was the last
17 time you were in Charleston, South Carolina?

18 A It was in November.

19 Q November?

20 A Yeah.

21 Q Okay. What were you here for the last time?

22 A Just visiting my friends.

23 Q Okay. And who's your friend?

24 A Jim and Tim Elsworth.

25 Q And I'm going to get to this in more detail in a

1 minute.

2 Was it that time that you were here that you had
3 to speak to the police about something?

4 A No, it was in January.

5 Q Okay. Tell me about the time you were here in
6 January. When was that, what year?

7 A 2002, last year.

8 Q Okay. January of 2002 you were here visiting who?

9 A Jim and Tim Elsworth.

10 Q How do you know them?

11 A We grew up together up in New York, went to school
12 with them and stuff.

13 Q So they used to live in New York with you and then
14 they moved here?

15 A Yeah.

16 Q And you came down to visit in January of 2002?

17 A Yes.

18 Q And aside from visiting, what was the purpose of your
19 stay here?

20 A Just come down. It's nicer weather down here, and we
21 went dirt bike and four-wheeling.

22 THE COURT: Can you get closer to that
23 microphone?

24 BY MR. BUTLER:

25 Q Can you repeat your last answer, please? What were

1 your plans when you were here?

2 A Dirt biking and four-by-fouring.

3 Q Okay. And tell the jury what four-by-fouring is,
4 please.

5 A Where you take a four-wheel drive vehicle and find
6 some water and some hills and stuff and splash around in
7 the mud.

8 Q When you say "splash around in the mud," under what
9 conditions is it best to go four wheeling or
10 four-by-fouring?

11 A Wet, rainy.

12 Q How many times in January of 2002 while you were in
13 Charleston, how many times did you and your friends go
14 four-by-fouring?

15 A We went twice actually. Yeah, twice.

16 Q And before we talk about the night that you had to
17 talk to the police, how many times did you go four
18 wheeling before that time?

19 A Just once.

20 Q Okay. And how many days before that? How many days
21 before the time you had to talk to the police was the
22 first time you went?

23 A Down here?

24 Q Yes, sir.

25 A Just once.

1 Q How many days before the day you talked to the police
2 was that?

3 A The day before.

4 Q So you went two days in a row then?

5 A Yes.

6 Q You went one day and then the next day was the time
7 you had to talk to the police?

8 A Yes.

9 Q And when you went the first day what was the weather
10 like? What had the weather been like that day?

11 A It was raining all day.

12 Q So much so that what happened when you guys were
13 four-wheeling?

14 A We got stuck.

15 Q What happens when you get stuck?

16 A You just can't move. We had to call Jim's friend and
17 he came down and pulled us home.

18 Q What was weather like that day precipitation-wise?

19 A Raining.

20 Q And how would you characterize it, heavy or light?

21 A Kind of -- it was like raining on and off, just
22 sprinkling all day.

23 Q And then after that day, when was the next day that
24 you went?

25 A The next night.

1 Q The very next night?

2 A Yeah.

3 Q And what was the weather like that day?

4 A Just kind of like humid and stuff.

5 Q Okay. Precipitation-wise, what was the weather like
6 that day?

7 A It rained. I believe it rained in the morning.

8 Q And that's when it's best to go four-wheeling, right?

9 A Yeah.

10 Q After it's rained?

11 A Yeah.

12 Q Tell me about, as best you can, where it was you were
13 going when you went four-wheeling the second night.

14 A It was no exact location or nothing. It was just,
15 like, Jim drove around. There's a couple of places that
16 he used to go that were like posted, and we just went down
17 to this one spot that he knew a road that wasn't posted or
18 nothing, so we drove down it.

19 Q And is that ultimately where you saw what you thought
20 was a body and had to call the police?

21 A Yes.

22 Q Before we get to that, how would you describe that
23 trail where you were that night?

24 A Like the beginning of it was wet. It was like some
25 big wet mud puddles.

1 Q How big?

2 A Like 15-foot long by 10-foot wide.

3 Q Obviously filled with rain water?

4 A Yes, rain water.

5 Q And how would you describe the width of the trail as
6 you get further back?

7 A It got narrower, tighter.

8 Q And how did you know that it was narrow and tight?

9 A Because the tree branches were scraping on the sides
10 of the vehicles, or the vehicle, I mean.

11 Q When you were there did you notice anything in the
12 path itself that let you know whether or not there had
13 been other vehicles back there?

14 A Yeah. Right -- there's trees, like little pine trees
15 in the middle of the trail, and they're bent over, and the
16 side towards us, the bark was all scraped up on it.

17 Q So let me make sure I understand. In the center of
18 the trail there are smaller trees?

19 A Yes.

20 Q And circumference-wise, how big would you say they
21 were, or diameter-wise I guess is easier?

22 A Inch and a half to two inches.

23 Q And what happens when you drive down the trail and
24 they're in the middle?

25 A You just run them over.

- 1 Q What happens to them when you run them over?
- 2 A They just bend over.
- 3 Q And which direction do they bend over?
- 4 A They bend away from you.
- 5 Q And when you came upon them what did you notice about
- 6 them?
- 7 A That somebody's been through there before because
- 8 like how the bark was scraped off the trees.
- 9 Q What direction would that person have been going, the
- 10 same direction as you or the opposite direction?
- 11 A The same way we're going.
- 12 Q And what could you tell about how recent that tree
- 13 had been bent over by the way it appeared?
- 14 A Because the tree underneath the bark was like a
- 15 yellowish color.
- 16 Q What did that mean to you?
- 17 A That the bark's just been scraped off recently.
- 18 Q If it is bark that's been scraped off a longer time
- 19 before you see it, what color is the tree underneath?
- 20 A A grayish color.
- 21 Q And it was what color this day?
- 22 A I think yellow, yellowish.
- 23 Q Did you see any other evidence in the path to
- 24 indicate that another vehicle had been through there?
- 25 A Just like further on when we're leaving there was

1 tracks like wider than our vehicle.

2 Q What kind of tracks? When you say tracks, do you
3 mean footprints?

4 A No, like tire tracks.

5 Q You saw tire tracks in the same vicinity, along the
6 same path that you and your friend had been driving down?

7 A Yes.

8 Q And how fresh did the tracks look?

9 A They could have been there, could have been there for
10 awhile.

11 Q You're not talking about a path that is worn from
12 heavy traffic, though, are you?

13 A It could be, but no, I would say it's like heavy
14 equipment or something maybe, like a log splitter.

15 Q Okay. But you couldn't see the trail?

16 MS. WILSON: I object to the leading.

17 THE COURT: Rephrase, Counsel.

18 BY MR. BUTLER:

19 Q What could you see -- what, if anything, did you see
20 in the path that let you know it was vehicle?

21 A Well, I -- it would be like, I don't know, just like
22 imprints from the tire.

23 Q Imprints from the tires and that would be in what
24 substance?

25 A What do you mean?

1 Q Well, in what do you see the imprint of the tire? Is
2 it in grass, is it --

3 A It's like where the pine needles and stuff, it was in
4 that, and you could see the dents.

5 Q Okay. And you said something about the width. Tell
6 me what you're talking about.

7 A Like the vehicle we were in was like a mid-size
8 vehicle and this would have been like a full-size vehicle.

9 Q Okay. And what, if anything, could you tell about
10 the wheelbase of that vehicle?

11 A It's wider than the one we were in.

12 Q So what kind of vehicle are you in?

13 A A Chevy Blazer.

14 Q You're in a Chevy Blazer?

15 A S10.

16 Q And the wheelbase of the vehicle that had been
17 through before was wider than that wheelbase?

18 A Yes.

19 Q Okay. What can you say about the condition of the
20 path itself?

21 A A lot of leaves and stuff were on it, and like the
22 trees overhead was all like gnarled up and everything. It
23 was like driving through a tunnel.

24 Q Was it wet or dry?

25 A It was damp.

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

3 THE COURT: Yes, sir.

4 BY MR. BUTLER:

5 Q David, you don't know Anthony Mann, do you?

6 A No, I don't.

7 Q And how did you arrive here yesterday?

8 A On an airplane.

9 Q Had you ever flown before?

10 A No.

11 Q And what is it that you had that required your
12 appearance here today?

13 A I got a subpoena.

14 MR. BUTLER: That's all I have. Thank you.

15 CROSS-EXAMINATION

16 Q Hey, I'm Scarlett Wilson, Solicitor's office.
17 Appreciate you making the flight. Did you like it?

18 A It was all right.

19 Q I don't like it at all.

20 A I was on two planes.

21 Q Mr. Barnes, I just have a few questions for you.

22 You mentioned that the day before the night --
23 let me start -- Monday night on the 13th is the night
24 you had to talk with the police; is that right?

25 A Yes.

1 Q Late that night on into the Tuesday morning. Now,
2 you all stayed out there all night, right?

3 A Yes.

4 Q Did you all go four-wheeling on Sunday?

5 A The night before?

6 Q Yeah.

7 A Yeah.

8 Q So you all went four-wheeling on the 12th?

9 A Yes.

10 Q And when you all went four-wheeling that day where
11 did you all go?

12 A I'm not sure where it was. It was just like a place
13 where there were -- like it was going to be a development
14 and they just bulldozed a bunch of spots and it was just,
15 you know, all clay and big mud puddles and stuff.

16 Q Do you remember what part of the county it was in?
17 Charleston or Berkeley County?

18 A It was more like Summerville.

19 Q Do you know how far away it was from the place where
20 you all found this body?

21 A From where we went the night before?

22 Q Yeah. The place where you found the body versus the
23 place you first went four-wheeling.

24 A I think it was like a half hour or 40 minutes away.

25 Q So it was a fair amount away?

1 A Yes.

2 Q Now, you mentioned that going to the place where you
3 found the body was like a tunnel. Tell the jury what that
4 was like. Why was it like a tunnel?

5 A Because the trees were all, like up on top they were
6 all like all snarled up and everything, so it was like a
7 tunnel driving through.

8 Q It was like a canopy, wasn't it?

9 A Yeah, like branches and stuff.

10 Q So things underneath that canopy could be protected,
11 right?

12 A Yes.

13 Q It's more than being out in the middle of the highway
14 or the interstate with no trees above you?

15 A Right.

16 Q Have you ever stayed in the water too long and your
17 hands and feet got all wrinkled up?

18 A Yes.

19 Q You've had that happen before? Did you know that was
20 called washer woman's changes or washer woman's hands?

21 A I never knew that.

22 Q You never heard that?

23 A No.

24 Q But you've had that happen to you before?

25 A Yes.

1 Q You had that happen when you were in the water too
2 long?

3 A Yes.

4 Q Now, the night that you had to talk to the police,
5 the night that you found this body, do you remember how
6 cold it was?

7 A Yeah, it was fairly mild.

8 Q Well, you're from New York.

9 A Yeah. It was T-shirt weather to me. It was cold and
10 damp.

11 Q I bet your buddy said it was cold to him, wasn't it?

12 A Yeah, he was complaining about it.

13 Q Okay. When you all were waiting on the police you
14 all stayed in car, right?

15 A Right.

16 Q So you could stay warm?

17 A Yes.

18 Q Did you hear the cops complaining about how cold it
19 was?

20 A Yeah, a little bit.

21 MS. WILSON: Beg the Court's indulgence.

22 That's all I have, your Honor.

23 REDIRECT EXAMINATION

24 BY MR. BUTLER:

25 Q David, this was in what month again?

1 A January.

2 Q And it would feel like winter here, right?

3 A Yes..

4 Q And earlier you described leaves on the ground, did
5 you not?

6 A Yes.

7 Q And you said that above you and over the path were
8 branches; is that right?

9 A Yes.

10 Q And there were leaves on the ground?

11 A Yes.

12 Q Did you notice whether or not those branches had
13 leaves on it given that this is winter?

14 A Just like the pine trees still had needles on them.

15 Q Okay.

16 A But the trees were, yeah, they were bare..

17 Q Bare?

18 A Bare, yeah.

19 MR. BUTLER: That's all I have.

20 RE CROSS-EXAMINATION

21 BY MS. WILSON:

22 Q Still felt like a tunnel, didn't it?

23 A Yes, sir, it did.

24 MS. WILSON: That's all I have.

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

1 MS. SHEALY: May he be excused, your Honor?

2 THE COURT: Any objection? Any objection?

3 MS. WILSON: No. I'm sorry. Have fun on that
4 flight.

5 MS. SHEALY: Defense would call Chuck Jones.

6 I will go ahead and call Mark Akmen.

7 MARK AKMEN, after being duly sworn, testified as
8 follows:

9 THE CLERK: Please be seated. If you would,
10 please, give your full name to the Court and spell your
11 last.

12 THE WITNESS: Mark Akmen, A-K-M-E-N.

13 DIRECT EXAMINATION

14 BY MS. SHEALY:

15 Q Mark, tell me where you work.

16 A I am my own company. I do vinyl siding in
17 Summerville.

18 Q In fact, today because of my subpoena you got taken
19 off a job; is that correct?

20 A Yes.

21 Q Let me ask you, you have been working in the vinyl
22 company business for how long?

23 A Just recently, for about six months now. Previously
24 I owned a bar in West Ashley.

25 Q And how old are you?

1 A I'm thirty.

2 Q I would like for you to focus your attention back to
3 January 11th, late at night, early morning hours of the
4 12th. Do you recall being in a bar called the ODC Club?

5 A Yes.

6 Q That stands for what?

7 A Old Dorchester Club.

8 Q Did you get in a fight that evening?

9 A Yes.

10 Q Let me show you some photographs, and these were
11 taken by my investigator on September 4th of this year,
12 and ask if you can identify these.

13 A That is the pool table area; that is the bathroom
14 door, that is where the fight was at; that is the front
15 bar.

16 Q I'm going to ask you more details. Do these reflect
17 pictures from the inside of the ODC?

18 A They do, but these are newer pictures. It's been
19 remodeled, but the layout is the same.

20 Q I'm going to ask you to describe the differences
21 between them. May I hold those just for a second and get
22 them marked?

23 A Sure.

24 MS. SHEALY: Your Honor, I offer these at this
25 time.

1 THE COURT: Any objection?

2 MS. WILSON: No objection as to the
3 September 4th of this year photos.

4 THE COURT: What are those numbers?

5 MS. SHEALY: Your Honor, those are Defendant's
6 Exhibits 31 through 36 in evidence.

7 THE COURT: 31 through 36 in evidence without
8 objection.

9 (WHEREUPON, Defendant's Exhibits Nos. 31-36 were
10 marked for identification and received into
11 evidence.)

12 MS. SHEALY: May I approach the witness, your
13 Honor?

14 THE COURT: Yes, ma'am.

15 BY MS. SHEALY:

16 Q Mark, I'm going to hand you this. And if you will
17 press the button that says "laser" when I ask you about a
18 particular area, okay.

19 A Uh-huh.

20 Q Who did you get in a fight with that evening? Do you
21 know Anthony Mann that is seated at that table?

22 A No.

23 Q Is he the gentleman that you got in a fight with that
24 evening?

25 A I believe so, yes.

1 Q And in showing you this, which is Defendant's Exhibit
2 35, could you use that laser pointer and point to where
3 the bathroom is?

4 A That is the bathroom door right there.

5 Q And while we have this photograph depicted, tell us
6 what is different about it in this photograph than it was
7 back in January.

8 A The only thing that is different is that area there
9 used to be an open bar area and there used to be open
10 entranceway to the left of the bathroom door where you
11 could walk back behind the bar. I don't know whether
12 that's been paneled or painted.

13 Q It's just been painted?

14 A Yes.

15 Q Now, on that evening then, let me show you
16 Defendant's Exhibit 31, is that a little bit better shot
17 of the bathroom door?

18 A Yes.

19 Q If you would describe for the jury, how did the fight
20 begin?

21 A I went to the bar that night with about four or five
22 of my friends, we were at that pool table, we were
23 shooting pool, and one of my friends had to go to the
24 bathroom. So he went to the bathroom and they wouldn't
25 let him in. They kept shoving the bathroom door shut.

1 After about a minute of that going on, I walked over to
2 the bathroom door and I tried to go in myself and they did
3 the same thing, they slammed the door shut on me.

4 Q Did the door eventually open up?

5 A Eventually. It took some persuading.

6 Q Were there words of profanity being exchanged?

7 A Yes.

8 Q Between you and whoever was on the other side of the
9 door?

10 A Yes.

11 Q Once Mr. -- you see Mr. Mann seated at the table?

12 A Yes.

13 Q Once Mr. Mann came out of that bathroom did you all
14 actually start physically struggling?

15 A Yes.

16 Q And if you would, describe for the jury what
17 occurred.

18 A Basically I was irate and explained to him to listen,
19 you know, I had to go to the bathroom, some other friends
20 are here. He said; Well, I don't give a damn. I don't
21 remember exactly what was said, but we were swearing and
22 yelling and fighting back and forth.

23 Q What were you all doing physically to each other?

24 A Physically? I believe it was just -- he had a couple
25 of friends himself that were trying to come out of the

1 bathroom at the same time I was trying to go in. We
2 grabbed each other. I believe I probably took the first
3 swing, because grabbed me. Once that began, the fight
4 ended up going behind that bar area. We got shoved in
5 behind there.

6 Q Behind?

7 A Behind here.

8 Q What was in that area?

9 A Back then it was just a storage area. There was a
10 bunch of empty cases of empty beer bottles there and some
11 full ones. I believe it was just a storage area.

12 Q So during that time are you and Mr. Mann still having
13 physical contact with each other?

14 A Yes.

15 Q And you all are mouthing off?

16 A The whole time, yes.

17 Q After you were in that area then, where did the fight
18 continue?

19 A It stayed right there behind that area.

20 Q Let me also show you Defendant's Exhibit 34 to kind
21 of give you another perspective.

22 Using your laser, what's the area again where
23 you went behind?

24 A The left-hand corner.

25 Q Point again if you for us the bathroom.

1 A That's the door that is open.

2 Q Now, did the fight continue in that area?

3 A Yes, it never left that area.

4 Q Did other people join in the fight?

5 A No. I believe, you know, just some of his friends
6 and some of my friends, but basically it's just between me
7 and him.

8 Q Okay. And you told us then that you all were
9 continuing to exchange things vocally to each other; is
10 that correct?

11 A Yes.

12 Q Tell the jury, if you would, did Mr. Mann ever say to
13 you that he's got two murder charges and that he wasn't
14 afraid of another?

15 A No.

16 Q Did he ever say anything to you like, I'm wanted for
17 two murders, I'll kill you, too?

18 A No.

19 Q And it was you that he was having the fight with; is
20 that correct?

21 A Yes.

22 Q Now, at some point that evening then do you all get
23 separated?

24 A It went on for about five minutes, then we got
25 separated.

1 Q And when you get separated, do you get separated by
2 Chuck Jones?

3 A Yes.

4 Q What was Chuck Jones' position at the ODC?

5 A Chuck was managing, bartending at the time.

6 Q And was he sort of a bouncer as well?

7 A Well, he was just a mutual friend between me and your
8 defendant, too.

9 Q And what does Chuck do to resolve the situation?

10 A From what I remember, he got in between us, he forced
11 us apart, and he's like, come on, you guys, you're both my
12 friends and stuff like that, trying to smooth it over.
13 He's like, you go to one corner and you go to the other
14 corner. Once he got us separated, that was pretty much
15 it.

16 Q And do you and Mr. Mann then stay inside the ODC
17 longer that evening at the same time?

18 A I probably stayed for about another five or ten
19 minutes after the fight.

20 Q Do you all have any further problems with each other?

21 A No.

22 MS. SHEALY: I beg the Court's indulgence just a
23 moment.

24 THE COURT: All right.

25 MS. SHEALY: I have no further questions.

1 Please answer any the Solicitor may have.

2 CROSS-EXAMINATION

3 BY MS. WILSON:

4 Q Is it Akmen?

5 A Yes.

6 Q Mr. Akmen, on the night that you got into this fight,
7 were you drunk?

8 A Yes.

9 Q And were the other people involved in the fight drunk
10 as well?

11 A I assume. I don't know.

12 Q Had you all been there awhile?

13 A No. Actually I had just gotten there about ten
14 minutes before this happened.

15 Q And when you were answering questions by Ms. Shealy
16 you said that you believe you had gotten into the fight
17 with Anthony Mann?

18 A Yes.

19 Q Okay. And you also said when discussing being
20 separated, I guess with your client?

21 A Well, I'd never seen him before except for that night
22 and just now.

23 Q Okay. And do you know Dustin James?

24 A No.

25 Q Okay. So you couldn't tell the jury the difference

1 between the appearance of Dustin James and the appearance
2 of this defendant sitting here today?

3 A Can I tell the difference?

4 Q Uh-huh.

5 A No.

6 Q So they're both blond and both have a solid build?

7 MS. SHEALY: I think he testified that he did
8 not know Mr. James.

9 THE COURT: Is that an objection, Counsel?

10 MS. SHEALY: I apologize. Yes, sir.

11 THE COURT: Approach.

12 (A bench conference was held with the judge and
13 attorneys in the presence of the jury but out of the
14 hearing of the jury.)

15 BY MS. WILSON:

16 Q Mr. Akmen, if you saw another man with blond hair and
17 a solid build, you wouldn't know the difference between
18 him and this defendant as far as that fight goes, would
19 you?

20 A No.

21 Q So you don't know for sure that this is the man you
22 were in the fight with?

23 A No. I seen his face against me, I remember his face.

24 Q So he was in the fight?

25 A Yes.

1 Q And you had some buddies in the fight?

2 A No, my friends stayed out of it. I was left alone to
3 fight him.

4 Q Do you remember Dustin James being in the fight?

5 A The only person I remember actually being in physical
6 contact with was him.

7 Q Was this defendant?

8 A This defendant.

9 Q The one that you just earlier said that you guessed
10 was him and that you believed was him?

11 A Yes. Like I said --

12 Q So now you're sure?

13 A Yes.

14 Q Now, you mentioned that you had been trying to get to
15 the bathroom and your friend tried to get into the
16 bathroom; is that right?

17 A Yes.

18 Q And in your experience, guys go into the bathroom on
19 each other all the time, do they not?

20 A Yes.

21 Q It's no big deal for guys to walk in and out of the
22 bathroom while we ladies stand in line?

23 A Uh-huh.

24 Q And do you know why it was that the door was being
25 pushed shut this time?

1 A No, other than the fact that I just know there was
2 more than one person in the bathroom.

3 Q You don't know if Dustin James was one of those
4 people?

5 A No.

6 Q Okay. And you mentioned that you were separated. Do
7 you recall the defendant being taken outside and talked to
8 by the police?

9 A No.

10 Q Do you recall the defendant taking off his shirt?

11 A Yes.

12 Q Okay. Did that happen inside or outside?

13 A I believe that happened inside because it got ripped.
14 Mine had gotten ripped also.

15 Q So he took off his shirt. Were you still in the
16 fight when he took off his shirt?

17 A No.

18 Q And there were, what, 50-60 people there that night?

19 A I would guess.

20 Q Big crowd?

21 A Yes.

22 Q And you mentioned that you think your friends and his
23 friends also got into a tussle?

24 A No. My friends actually stayed out of it. They
25 stayed at the pool table shooting pool.

1 Q Who were all his friends fighting with then if it
2 wasn't your friends?

3 A I have no idea.

4 Q Was it another group of guys that didn't belong with
5 you that they were tussling with?

6 A It could have been. I was preoccupied at the time.

7 Q And during all of that Mr. Mann could have said
8 something you didn't hear?

9 A Could have. I just didn't hear it.

10 Q You don't claim that you heard --

11 MS. SHEALY: Your Honor, I'd ask that he be
12 allowed to finish.

13 THE COURT: Do you have something more you want
14 to say, sir?

15 THE WITNESS: Yeah. I would say he never said
16 anything to me other than just being obscenities back and
17 forth. There was no statements.

18 BY MS. WILSON:

19 Q You don't know what he may have yelled to someone
20 else who was also in a fight at the same time?

21 A No.

22 Q You don't know what he said to Dustin James in that
23 bathroom?

24 A No.

25 Q And you mentioned that Chuck Jones is the one who

1 broke the fight up?

2 A Yes.

3 Q Who is Pat Rose?

4 A Pat Rose is the owner.

5 Q Do you recall if she was there that night?

6 A No, I don't.

7 Q You don't recall?

8 A I don't recall.

9 Q You mentioned that Chuck Jones was a mutual friend of
10 yours and the defendant's?

11 A Yes.

12 Q How close friends was Chuck Jones to the defendant?

13 A I don't know. I didn't know that they had a
14 friendship.

15 Q What made you think they had a friendship?

16 MS. SHEALY: Again, I'd ask he be allowed to
17 answer.

18 THE COURT: Go ahead, sir.

19 THE WITNESS: I remember when he was breaking us
20 up he was stating matter of factly that you guys are both
21 friends of mine, you know, just stop this.

22 BY MS. WILSON:

23 Q Was it pretty chaotic in there?

24 A At one point for me it was, but it wasn't -- nobody
25 else I don't think jumped in or got involved.

1 Q And how long did you say the fight between you and
2 the defendant lasted?

3 A About five minutes.

4 Q Anybody get hit with a beer bottle?

5 A Me.

6 Q Did you get cut?

7 A No.

8 Q How many times did you get hit with that beer bottle?

9 A About four or five times.

10 Q Who was it that hit you?

11 A It was Anthony Mann.

12 Q Do you think you were pretty focused on that beer
13 bottle hitting you in the head?

14 A Yes. I still remember it.

15 MS. WILSON: That's all I have.

16 MS. SHEALY: Just a few follow-up questions.

17 REDIRECT EXAMINATION

18 BY MS. SHEALY:

19 Q When the fight began that evening, who did it begin
20 between? Who was fighting?

21 A Between me and the defendant.

22 Q And it was Anthony Mann that hit you with the beer
23 bottle; is that correct?

24 A Yes.

25 Q So you're certain of that?

1 A Yes.

2 Q And is it fair to say that made you pretty mad?

3 A Yes.

4 Q While you were angry and you all were in a fight,
5 were you listening to what he was saying to you?

6 A Yes.

7 Q And again, you never heard him say anything about,
8 I'll kill you, I've killed two other people?

9 A No.

10 Q And let me make sure I understand your testimony.
11 You all were fighting and then what would the other people
12 do while you all were fighting?

13 A I don't recall that.

14 Q When Chuck Jones said to you that you're his friend
15 and Anthony is his friend, is that in an effort to
16 separate you all?

17 MS. WILSON: Your Honor, objection, leading
18 again.

19 THE COURT: Rephrase the questions, Counsel,
20 without leading. Go ahead.

21 BY MS. SHEALY:

22 Q When Chuck Jones said to you that you're his friend
23 and Anthony Mann is his friend, what do you believe is the
24 reason that he said that to you?

25 A Just out of respect for Chuck and to stop fighting,

1 that we're two friends of his and he didn't want that
2 going on in his establishment. That's what I get from it.

3 MS. SHEALY: Very good. No further questions,
4 your Honor.

5 I would ask that he be excused.

6 THE COURT: Any objection?

7 MS. WILSON: None, sir.

8 THE COURT: You may be excused, sir. Thank you.

9 MS. SHEALY: We'd call Chuck Jones.

10 CHARLES JONES, after being duly sworn, testified
11 as follows:

12 THE CLERK: Please be seated. State your full
13 name for the Court and spell your last.

14 THE WITNESS: Charles Jones.

15 DIRECT EXAMINATION

16 BY MS. SHEALY:

17 Q If you could get up a little bit closer to the
18 microphone for me.

19 State your full name.

20 A Charles Jones.

21 Q Do people call you Chuck?

22 A Chuck, yes.

23 Q How old are you?

24 A Thirty-two.

25 Q And where are you working now?

- 1 A I've got my own business.
- 2 Q What kind of work do you do?
- 3 A Pressure washing and painting.
- 4 Q How long have you been doing that?
- 5 A About two years now.
- 6 Q Back in January of 2002, where were you also working?
- 7 A Old Dorchester Club.
- 8 Q Is that owned by a family member of yours?
- 9 A Yeah, my aunt.
- 10 Q What is your aunt's name?
- 11 A Pat Rose.
- 12 Q If you would, please, describe for the jury what your
13 duties were at the ODC.
- 14 A Bartender, bouncer, trash taker, everything.
- 15 Q A little bit of everything?
- 16 A Yes.
- 17 Q Focusing your attention back to the evening of the
18 11th and the early morning hours of the 12th, do you
19 recall whether you were working when a fight erupted?
- 20 A Yes.
- 21 Q I'm going to show you what's been marked as
22 Defendant's 31, 34, 35, and just ask you if you can
23 identify those.
- 24 A That's part of the Old Dorchester Club. It's the
25 bathroom.

1 Q Okay. I'll ask you more details about them.

2 Let me show you this laser pointer. If you'll
3 push that button for me and point it up, okay?

4 A Okay.

5 Q Now, these photographs were actually taken recently;
6 is that fair to say?

7 A Yes.

8 Q And if you need to when I show you a photograph you
9 can describe for me in what way it may be different in
10 these pictures than it was in January of 2002, okay?

11 I'm showing you Defendant's Exhibit 35. Kind of
12 orient us, explain to us what this depicts.

13 A This right here is the bathroom door. This right
14 here was all open. It's supposed to be a bar right there.

15 Q What did you use the area behind that for?

16 A Storage for like extra beer or the freezer food.

17 Q I think you need to -- if you could turn right in
18 front of that microphone for me.

19 And you used it for what again?

20 A Storage.

21 Q Storage, okay. Now, this depicts then a pool table?

22 A Yes, ma'am.

23 Q And there is another pool table here?

24 A Yes, ma'am.

25 Q Do you recall what you were doing when a fight broke

1 out that evening?

2 A I was bartending.

3 Q What area, if you could describe for us where you
4 were in relationship to that bathroom where the fight
5 broke out.

6 A It's not on here. It's in the other picture.

7 Q Showing you Defendant's 36.

8 A Still not on there either.

9 Q Showing you Defendant's 32.

10 A See that silver part there?

11 Q Yes.

12 A That is the bar up there, and that's where I was
13 bartending at.

14 Q And did you then hear some commotion?

15 A Yes.

16 Q What did you do as a result of hearing the commotion?

17 A I had to come out behind here and go over there and
18 break it up.

19 Q When you first approached the struggle between the
20 two people -- first of all, tell us who was having
21 problems with each other.

22 A A friend of mine named Mark and Amp.

23 Q Tell the jury, if you would, by using that pointer,
24 where were they when you saw them fighting?

25 A Right there in front of the door.

1 Q Could you hear them mouthing off at each other?

2 A No, not really. I just seen them two fighting.

3 Q And then as you approach where they were, what were
4 you able to see?

5 A Right past that you can't see because the pole is
6 there. There was a door there, an entrance, and they both
7 fell into there, fell in that area right there.

8 Q Was there anyone else in that area other than Anthony
9 and Mark?

10 A About like 20 other guys.

11 Q In fact, in what area, if you could show us?

12 A See where the wood is right here?

13 Q Uh-huh.

14 A All that was open in behind it. That's where they
15 fell at.

16 Q And the area where they fell, were they the only two
17 in that area and the other guys were around?

18 A Yes.

19 Q And when you approached them then, were you able to
20 hear what they were saying to each other?

21 A Mark was trying to tell me just to break it up and
22 they were just fighting.

23 Q Did you ever hear anyone say, The guy doesn't know
24 who he's messing with, I've got two murders, I'm not
25 afraid of another; did you ever hear that said?

1 A I never heard that.

2 Q And did you ever hear, I'm wanted for two murders, I
3 will kill you, too?

4 A Never heard that either.

5 Q How long did you say it was that the fight was going
6 on before you got there? Did you get there quickly or
7 slowly?

8 A Well, I tried to get there as quickly as possible,
9 but, you know.

10 Q And then how long did you stay in the area that they
11 were fighting until the fight stopped?

12 A Until it got broke up. Until I got Amp to go out the
13 front door and Mark to go to the bar.

14 Q And so in separating them, did you say anything to
15 them to encourage them to stop fighting?

16 A No. I told them to take it outside.

17 Q To take it outside?

18 A Yes.

19 Q Did the police come out that evening?

20 A After everything was over with and everybody was
21 gone.

22 Q Did you have any further problem that evening with
23 Anthony and with Mark?

24 A No.

25 Q Together?

1 A No.

2 Q Again, once you heard the fighting you went where?

3 A I went back behind the bar.

4 Q And you were back there with them until what point?

5 A You mean once they were fighting?

6 Q Uh-huh.

7 A I had to jump on top of that bar to separate them. I
8 was shorter than both of them, they are, so I had to grab
9 them and pull them apart.

10 Q After pulling them apart were you with both of them
11 until they separated in the bar?

12 A Yes.

13 MS. SHEALY: Beg the Court's indulgence just a
14 moment.

15 BY MS. SHEALY:

16 Q Do you recall whether or not Mark and Anthony had any
17 further contact after you had separated them that evening?

18 A Yeah. They bought each other a beer and said, See
19 you later.

20 MS. SHEALY: I have no further questions.
21 Answer any the Solicitor may have.

22 THE WITNESS: Okay.

23 CROSS-EXAMINATION

24 BY MS. WILSON:

25 Q Mr. Jones, the fight got pretty heated, didn't it?

- 1 A Yes.
- 2 Q And at some point Anthony Mann took off his shirt?
- 3 A That was during the fight.
- 4 Q And the police were called?
- 5 A Yes, somebody called them. I never called them.
- 6 Q You didn't call the police?
- 7 A No, ma'am.
- 8 Q Somebody was concerned enough to call the police
- 9 about it?
- 10 A I don't know who. I'm usually the one that's going
- 11 to call the law.
- 12 Q Okay. And let me ask you this before we go any
- 13 further. You have a conviction for distribution of
- 14 cocaine; is that right?
- 15 A Yes, ma'am. Served my time and done with crime.
- 16 Q Are you still on probation for that?
- 17 A No, ma'am. I've got my driver's license back, got a
- 18 new business owned and everything.
- 19 Q Are you still in substance abuse counselling?
- 20 A No, ma'am.
- 21 Q You finished that as well?
- 22 A That is gone. Everything. I'm out of trouble.
- 23 Q Excuse me?
- 24 A I'm out of trouble. Started a new life.
- 25 Q Good.

1 Now, you mentioned that when you were coming
2 from where you were posted to this fight, you couldn't
3 hear exactly what they were saying?

4 A No.

5 Q You all had a big crowd that night?

6 A Yes.

7 Q And had music going?

8 A Yes.

9 Q Do you have video games and that sort of thing?

10 A At the time I can't remember if we had video games or
11 if it was in between the two, you know, the law where you
12 can't have no video games.

13 Q But you have pool tables?

14 A Yes.

15 Q That sort of thing?

16 A Yes.

17 Q And there were some girls there that night, too;
18 isn't that right?

19 A There was a whole bunch of girls there that night.

20 Q Do you know Merv or Maria Jacques?

21 A I don't know people by their names. I know them by
22 their.

23 Q Real tall skinny blond girl? Remember her that
24 night?

25 A Like I said, I don't know people by their names, I

1 know them by their faces.

2 Q And do you know Star by her name?

3 A Yes.

4 Q You remember seeing her there; isn't that right?

5 A Yes.

6 Q And Clarence Pugh was there?

7 A Yes.

8 Q And I think you mentioned Dustin James?

9 A Yes.

10 Q Any of these people under 21?

11 A I didn't think so. I IDed them all or my doorman.

12 Q What about Shannon Keyes, you know her?

13 A No.

14 Q Straight red-haired girl, petite?

15 A I don't know her.

16 Q Acted like Anthony Mann's sister, they're real close?

17 Do you remember seeing her there that night?

18 A No, I don't.

19 Q But it's your policy not to let in people who are

20 under 21?

21 A That's what my doorman's supposed to be doing.

22 Q You were not the doorman that night?

23 A No, I was bartending.

24 Q And you mentioned that outside is where Anthony Mann

25 had contact with the police; is that right?

1 A No. There was no contact with the police whatsoever
2 between him and an officer.

3 Q Well, he was outside. You sent him outside?

4 A Yeah, we sent him outside.

5 Q So you don't know what contact he had outside?

6 A Well, yeah, I do because I went outside with him and
7 cooled him down while Mark sat in there by the bar and
8 cooled down.

9 Q So when you said that you sent Mark to one corner and
10 Amp to the other corner, you went with Amp?

11 A Right.

12 Q And what did you do about Dustin James?

13 A He wasn't in the fight; had nothing to do with him.

14 Q You don't remember him fighting as well?

15 A No.

16 Q Do you remember anybody else with your friend Mark
17 fighting?

18 A No.

19 Q You just remember those two people fighting, that's
20 it?

21 A Right.

22 Q Do you recall saying that during the fight you heard
23 people yelling out about guns and I will get my gun and
24 kill you, a bunch of people were saying things like that?

25 A Everybody's hollering. When you're fighting you're

1 hollering stupid stuff.

2 Q And one of the stupid things that you do recall
3 hearing is I'll get my gun and kill you?

4 A Right.

5 Q Okay. You're not sure you heard that?

6 A I heard that.

7 Q I mean who said that, I'm sorry?

8 A I don't recall who said it.

9 Q So you could have missed Anthony Mann saying, I've
10 got two murders, I don't mind another one, I'll kill you?

11 A I probably could, but I never heard him say it.

12 Q Okay. Now, for some reason the next day after this
13 fight you went and talked to your aunt about it, didn't
14 you?

15 A No, I didn't. I just told her we had a big old
16 fight.

17 Q Didn't you tell her at that time that Amp was talking
18 about killing two people during the fight?

19 A No, I never said that.

20 Q You deny telling your aunt that the next day?

21 A I deny that.

22 MS. WILSON: Beg the Court's indulgence.

23 BY MS. WILSON:

24 Q Do you remember what time of night it was the fight
25 broke out?

1 A I worked from 12 to 8.

2 Q Twelve midnight until 8 in the morning?

3 A Midnight until 8 in the morning.

4 Q You all close at 8 in the morning?

5 A They don't close at all. It's an all-the-time bar
6 besides Sunday.

7 Q And you would admit, wouldn't you, Mr. Jones, that
8 somebody who was there during the whole fight might have
9 heard something you didn't?

10 A Yes.

11 MS. WILSON: Thank you.

12 MS. SHEALY: I have nothing further. I'd ask
13 that he be excused, your Honor.

14 THE COURT: Any objection?

15 MS. WILSON: No, sir.

16 THE COURT: You may be excused, sir.

17 THE WITNESS: Thank you.

18 MS. WILSON: Judge, may we approach just
19 briefly?

20 THE COURT: Yes.

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 MR. BUTLER: The defense calls William Woodson.

25 WILLIAM WOODSON, after being duly sworn,

1 testified as follows:

2 THE CLERK: Please be seated. State your full
3 name for the Court and spell your last.

4 THE WITNESS: My name is William Henry Woodson,
5 W-O-O-D-S-O-N.

6 DIRECT EXAMINATION

7 BY MR. BUTLER:

8 Q Mr. Woodson, where do you currently reside for lack
9 of a better term?

10 A At Lieber Correctional Center.

11 Q And you're serving a sentence for criminal sexual
12 conduct?

13 A Yes.

14 Q And when did you start serving that sentence?

15 A Last year in April's when I got locked up. I was
16 sentenced in August.

17 Q So you were locked up in April and began your
18 sentence in August?

19 A Yes, sir.

20 Q And when you were locked up in April where was that?

21 A At the Charleston County Detention Center.

22 Q So you were in the Charleston County Detention Center
23 from April until August, then you went to Lieber?

24 A From county jail to R&E which is in Columbia.

25 Q That's just what, 23 weeks then at Lieber?

1 A I was there at R&E for like 62 days because I had to
2 go through a mental evaluation there and then I was at
3 Lieber for the rest of the time.

4 Q And when you were at the county jail did you come to
5 know an inmate named Mike Crumb?

6 A Yes, sir, I did.

7 Q And how did you come to know him?

8 A We had a conflict in the jail.

9 Q Okay.

10 A The man threatened me quite a few times.

11 Q Okay. And were you housed in the same unit?

12 A Yes, sir.

13 Q And did you ever have the occasion to hear him
14 discuss his case?

15 A Yes, sir, many times.

16 Q And with respect to some of the facts of his case
17 what did you hear him say?

18 MS. WILSON: Your Honor, I object. May we
19 approach?

20 THE COURT: Yes.

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
25 THE COURT: Yes. What is your objection?

1 MS. WILSON: My objection is it's hearsay.

2 MR. BUTLER: Prior inconsistent statement.

3 Crumb testified on direct to his version of events.

4 Ms. Shealy asked him, Have you not down at the jail

5 discussed your case otherwise, and he said things.

6 differently, he said no. And we asked him, Do you know

7 William Woodson? He said no. This is a prior

8 inconsistent statement. He's going to say that, and I

9 will lead him through it. I'm worried that --

10 THE COURT: Talk lower.

11 MR. BUTLER: I'm worried just to say it

12 open-ended, I don't know what he's going to say, but I

13 didn't want to lead him either.

14 MS. WILSON: I think this is something we need
15 to take up.

16 MS. SHEALY: It's a prior inconsistent
17 statement.

18 MS. WILSON: I don't know that. I don't know
19 what the statement is.

20 THE COURT: All right. I'll send the jury out.

21 Ladies and gentlemen, I need to send you to the
22 jury room momentarily. Do not discuss the case in any
23 way. Thank you very much.

24 (The jury left open court at approximately 5:06
25 p.m.)

1 THE COURT: Yes, ma'am.

2 MS. WILSON: Your Honor, I don't know whether
3 it's a prior inconsistent statement or not because they
4 haven't identified what statement it is that's
5 inconsistent.

6 MR. BUTLER: I can't do that through this
7 witness. He doesn't know what the testimony was, and
8 that's not a foundational requirement for a prior
9 inconsistent statement.

10 MS. WILSON: I think a blanket statement to ask
11 him what all did Michael Crumb say is not getting into
12 just prior inconsistent statements.

13 MR. BUTLER: I'll be happy to lead on that.

14 THE COURT: He said he'd be happy to lead on
15 that.

16 MR. BUTLER: I'll be happy to lead him through
17 it if you'd like.

18 MS. WILSON: I think that we ought to take that
19 up.

20 THE COURT: Go ahead and do that now.

21 IN CAMERA DIRECT EXAMINATION

22 BY MR. BUTLER:

23 Q What did Michael Crumb tell you with respect to what
24 happened in the house in the case of --

25 A As far as in the house, he stated that when they

1 arrived there was a scuffle going on, they disarmed this
2 gentleman that had two guns at the time that they were
3 tossing. Once they went to separate, the female somehow
4 had the gun and shot the gentleman.

5 Q Okay. And what did he tell you about or what did you
6 hear him say about how -- events leading up to being in
7 the house, what did you hear him say?

8 A As far as the events leading up to the house, he
9 stated that him along with three of his friends were
10 together, this female just happened to be a friend of
11 theirs, she was having problems arguing and bickering with
12 the guy that she was staying with supposedly. They were
13 at it at that point in time, and she asked them to come
14 over and get her.

15 Q Hold on. She asked who to come over and get her?

16 A He just said she asked them.

17 Q Go ahead.

18 A Asked them to come get her and her stuff and take her
19 from that house to somewhere else.

20 Q Okay. From there on what you just testified to is
21 what happened in the house?

22 A Yes, sir.

23 Q Did he also tell you what measures he would take to
24 get himself out of the situation that he was in?

25 A He plainly stated that he would do anything necessary

1 to get out of being tied to these charges; that there was
2 not enough evidence on him to be tied to this.

3 MR. BUTLER: Beg the Court's indulgence one
4 moment.

5 That's all I have from this witness.

6 THE COURT: Anything from the State?

7 MS. WILSON: Argument, your Honor.

8 THE COURT: All right.

9 MS. WILSON: And I'd appreciate if the witness
10 was excused while we argue.

11 THE COURT: Sir, you may step down momentarily
12 please. Thank you.

13 Yes, ma'am.

14 MS. WILSON: Your Honor, I think under the rules
15 and the law, the person who made the statement, that being
16 Michael Crumb, has to be given an opportunity to address
17 the statement. In other words, that he has to be
18 confronted with the substance of the statement, the time
19 of the statement and the place of the statement.

20 I think in this case the only thing that Michael
21 Crumb was asked about William Woodson was whether or not
22 he told him that he would do whatever it took to get out
23 of this. If they want to just ask this witness that,
24 that's fine, but to get into all of the facts of what went
25 on inside the house, Michael Crumb has not been confronted

1 with those statements and has not had a chance to address
2 them.

3 I think they haven't laid the proper foundation
4 under State versus White which says failure to give notice
5 as to one or more of the elements has been fatal to the
6 foundation. So I think, under -- based on the foundation
7 that was laid, the only thing that would be appropriate
8 for them to ask this witness was something to the effect
9 of whether or not Michael Crumb told him he would do
10 whatever it took to get out of this.

11 I think they get to ask that because they
12 confronted him specifically about that statement to
13 William Woodson. They did not confront him about the
14 specific statements to William Woodson regarding what went
15 on in the house. It's inappropriate, a foundation has not
16 been laid, and we would strenuously object to that
17 testimony.

18 MR. BUTLER: I agree with what the law is.

19 THE COURT: Yes, sir.

20 MR. BUTLER: Our recollection is that Ms. Shealy
21 asked Michael Crumb, Did you talk about your case while
22 down at the jail? And he said no. Then she asked him, Do
23 you know Michael Woodson? He said no. It would be
24 pointless to say, Did you speak about your case in the
25 presence of Michael Woodson, because he just said he

1 didn't know. But he was given the opportunity to explain
2 it or not. The content was laid out, the place was laid
3 out, and I think that we're entitled to ask him about the
4 statement, ask him the testimony that was elicited just
5 now.

6 THE COURT: Why can't you ask him if the
7 statement was made and then ask the other witness what the
8 statement was first, confront him with this?

9 MR. BUTLER: I don't understand.

10 THE COURT: Why wouldn't you call the other
11 person first?

12 MR. BUTLER: Michael Crumb? They already called
13 Michael Crumb.

14 THE COURT: Why can't you call him?

15 MR. BUTLER: We don't need to. All she needs to
16 ask him is to give him the opportunity to explain or deny
17 the statement. He made a blanket statement saying, I
18 didn't talk about my case, okay? At that point there is
19 no need to go into the details. And you know what? If
20 she did, don't you know that they would have been jumping
21 up and down screaming and objecting and she'd have said,
22 Didn't you tell William Woodson that in fact that Brownie
23 shot the person? They are going to be up in arms if we
24 ask that question, and perhaps rightfully so. So we
25 didn't get that far. She asked a very general statement,

1 Did you speak about your case down in the jail, and he
2 said no. There is no reason to go any further because
3 this blanket denial covers whatever will come after that.
4 So because we were gracious in the way we asked the
5 question and not to put the inflammatory information
6 before the jury, and I'll tell you, I hadn't talked to
7 this witness, so we wouldn't necessarily want that out
8 there, and they would have good grounds to object. But
9 now that we have them here, the proper foundation has been
10 laid and we don't have to recall Michael Crumb. He said
11 he didn't talk about his case and here's a guy that said
12 he talked about his case.

13 THE COURT: Well, that part you don't have to
14 call him for, but to get into statements, that's
15 different. You acknowledge what the statement is,
16 correct, the statement of law?

17 MR. BUTLER: Which is that before a prior
18 inconsistent statement comes in, a person has to be given
19 an opportunity to explain or deny, okay, which is,
20 Mr. Witness, you've testified to X today. Isn't it true
21 that in the past you have said Y? No, I have not. And
22 the reason is because there may be something out there he
23 doesn't know about. And so instead of making him look
24 like a liar, you can't sandbag the witness, okay? So he
25 may say, Oh, you know what, as a matter of fact I did say

1 that, okay? But Ms. Shealy asked him, Did you not --

2 THE COURT: Go ahead.

3 MR. BUTLER: The rationale behind the rule is to
4 not sandbag the witness and make him look like a liar.

5 Ms. Shealy asked him, Did you not talk about
6 your case down at the jail? He said no. So should she
7 then say, Isn't it true that you spoke in front of
8 Mr. Woodson and said what we just said he said, that
9 Brownie shot the person? He is going to say no. And then
10 they're going to be upset for us asking that question
11 because the jury is going to think that's out there. But
12 we didn't need to. There is no requirement that the
13 specific word-for-word statement has to be asked. He was
14 given the opportunity to explain or deny speaking about
15 his case down at the jail. She even prompted him with the
16 witness, this witness, Do you know William Woodson, and he
17 said no. So the foundation has been laid.

18 THE COURT: So why didn't she say, Did you make
19 a statement to William Woodson?

20 MR. BUTLER: Well, she could have, but she
21 said --

22 THE COURT: Wouldn't that have laid a foundation
23 for it?

24 MR. BUTLER: The foundation is laid. Because
25 this witness is not saying he said it to him. He said he

1 overheard him say it.

2 THE COURT: Yes, ma'am.

3 MS. WILSON: Judge, I think it's obvious what
4 happened here. Mr. Butler's saying that they were
5 gracious in the way they asked their questions and that
6 they avoided putting things out there. But what happened
7 in fact was, Mr. Crumb was asked if he knew William
8 Woodson, and then asked if he denied telling Mr. Woodson
9 that he would do whatever it took to get out of this. The
10 reason they asked that specific question is because that's
11 the one they knew about. Mr. Butler just said he hadn't
12 talked to the witness. They didn't know about the new
13 stuff.

14 MR. BUTLER: I hadn't, my investigator had, and
15 I had the report. I hadn't talked to him.

16 MS. WILSON: Well, the point is she asked him --

17 THE COURT: Hold on. One at a time, please.

18 MS. WILSON: The point is that they did ask a
19 specific question about a specific statement. We don't
20 have a problem with them getting into that specific
21 question with this witness. They could have easily
22 confronted him with that statement.

23 THE COURT: What's that specific question?

24 MS. WILSON: The specific question was whether
25 or not he would do whatever it took to get out of this. I

1 think that is fair game. And they could have gone through
2 each one of those with the witness. To say that we would
3 have objected, if they have a good faith basis for asking
4 that question, I don't think I do have an objection when
5 it's not on a collateral issue.

6 MR. BUTLER: Does the State dispute that the
7 question was put to the witness, Did you talk about your
8 case down at the jail? If that's the dispute, we need to
9 get it resolved. Because if that didn't happen, then I
10 don't have a leg to stand on. But if that question was
11 asked, that's the issue, because that then would lay the
12 foundation.

13 THE COURT: Does it lay the foundation for the
14 State? That's the question.

15 MR. BUTLER: Yes.

16 THE COURT: There is no doubt given the fact
17 that the statement was made. The question is, can you get
18 the statement in?

19 MS. WILSON: And I think the foundation has not
20 been laid.

21 I don't recall whether or not there was a
22 question, Did you talk to anybody at the jail? Even if
23 there were that question, I think that is too general.
24 It's not specific enough to put this witness on notice,
25 not this witness, but Michael Crumb on notice as to what

1 needs to be addressing. Especially if it's something
2 that's overheard, because it doesn't put it in good enough
3 context for him to be able to answer the question.

4 MR. BUTLER: Judge, it was asked that way
5 because he initially denied knowing William Woodson.
6 Ms. Shealy says she asked him, Do you know William
7 Woodson? He said no. So you deny speaking about your
8 case down at the jail; is that right?

9 MS. SHEALY: That's the way I recall it.

10 THE COURT: Do you reference Mr. Woodson in
11 jail?

12 MS. SHEALY: If I remember correctly, I
13 initially asked him, Do you know William Woodson? He
14 tells me no. Then I asked him, Do you deny saying that
15 you would do whatever it takes to get out of this? He
16 said yes, I deny that. I said, Do you deny talking about
17 your case down at the jail? And he said yes. I certainly
18 think I gave him ample opportunity to have notice. He's
19 denying he's talking about his case at the jail.

20 THE COURT: Yes, but is it the substance of the
21 statement in the case?

22 MS. WILSON: Exactly.

23 THE COURT: For the foundation.

24 MR. BUTLER: About his case at the jail. About
25 his case at the jail. That is substance.

1 You know if we want to drag this case out until
2 Wednesday or Thursday we can. We can recall Michael
3 Crumb, ask him this one question and have him deny it,
4 and -- but I don't think that we need to. The substance
5 of question, Did you talk about your case? He said no.

6 THE COURT: Well, I mean that could be almost
7 anything. If substance means your case, then that means
8 anything you say, period.

9
10 MR. BUTLER: Right. And he said no, which
11 includes everything, including the statement that I asked
12 this witness. It would be more problematic if it was so
13 specific that it might not encompass this information,
14 but, Did you talk about your case? No. Well, that is so
15 broad that it would have to cover this specific statement.

16 THE COURT: Then why would you need to lay a
17 foundation as to whom the statement was made if the first
18 would be the catch-all of everything?

19 MS. SHEALY: That wasn't the first. The first
20 was, Do you know William Woodson?

21 THE COURT: But your question was -- it was not,
22 Did you make a statement to William Woodson?

23 MS. SHEALY: No, because it's our understanding
24 that he is making a statement and William Woodson hears it
25 when he's talking about his case down at the jail, and

1 he's denying that he's talking about his case down at the
2 jail.

3 THE COURT: But if the point of the rule is to
4 not be as specific as you articulate, then why is it
5 important for saying who it was made to?

6 MR. BUTLER: The point of the rule is to not
7 sandbag the witness. The point of the rule is to give him
8 an opportunity to not look like a liar because somebody
9 may have said something in the past that they forgot. So
10 it's unfair to the witness to have to hold on to some
11 little tidbit, not tell them about it, and if it's
12 inconsistent then spring it on them later, because then it
13 unfairly makes them look like a liar, all right? That
14 concern is addressed when you say, Did you speak about
15 your case down at the jail, and he says no.

16 We can call him and then we'll be here until
17 Wednesday or Thursday.

18 THE COURT: Well, it's not a concern of mine
19 about when we're here through, Mr. Butler.

20 MR. BUTLER: Yes, I understand.

21 THE COURT: If that's what it takes to have
22 justice in this case, then that's what it takes. I'm not
23 concerned about the time requirements. I'm not interested
24 in the next case right now, I'm only interested in this
25 case.

1 MR. BUTLER: Yes, sir, I understand. And I
2 think that the foundation has been laid. I think we can
3 ask this witness this question. He was given an
4 opportunity to explain or deny speaking about his case in
5 the jail.

6 THE COURT: Yes, ma'am.

7 MS. WILSON: Your Honor, I believe, and I don't
8 have this case, I'm just looking on page 139 of this South
9 Carolina Evidence Book by Danny Collins where it says, and
10 I believe the Court's hit on this, that the witness must
11 be given notice as to the substance, time and place of the
12 statement and to whom it was made. And I don't believe --
13 they have conceded that it wasn't made to Mr. Woodson. So
14 we don't know who it was made to.

15 MR. BUTLER: It can be said in his presence and
16 the point is the same.

17 MS. SHEALY: Your Honor, just that I'm the one
18 who elicited the question is why I'm responding right now.
19 But that's why it had to be asked generally. We don't
20 know the exact person to whom he was directing the
21 comment. We know he was talking about his case down at
22 the jail and that is why it was asked in that fashion, Do
23 you deny talking about your case down at the jail?

24 MS. WILSON: Then why did they get specific and
25 then say, You didn't tell anybody that you would do

1 whatever it took to get out of this? That's the reason
2 they did that is because that is the one they knew about.

3 MR. BUTLER: That's the thing that I think
4 you're saying he testified to him directly. I will put in
5 the record and show the reports from our investigator
6 where he had that information if that's the problem.

7 MS. WILSON: I'm also not entirely comfortable,
8 and I don't mean that anybody is misleading anybody else,
9 but I don't have a great memory of how it unfolded at the
10 time, and I'm afraid that all of us might have a little
11 prior memory on that, and it might be helpful to look at
12 it and see how those questions came out.

13 THE COURT: I'll be happy to have the court
14 reporter find it for us.

15 Madam court reporter, can you find his
16 testimony, please.

17 Okay. The second part of the rule, that gives
18 the witness the opportunity to explain the statement once
19 he's confronted with it.

20 MS. SHEALY: It's not like he denied that he has
21 been talking about his case.

22 THE COURT: Well, the problem is, I'm just
23 wondering by not being specific as to Mr. Woodson, has he
24 been confronted with it in such a way that he has an
25 opportunity to explain it?

1 MS. SHEALY: We'll have to listen to how the
2 questions develop, your Honor. Certainly at the time that
3 I was doing it I thought that had been accomplished.

4 THE COURT: All right. Let's go ahead and find
5 that.

6 (The jury came into open court at approximately
7 5:30 p.m.)

8 THE COURT: Ladies and gentlemen, I'm going to
9 go ahead and excuse you for the evening. We'll pick up
10 with this witness tomorrow.

11 Do not discuss this case in any way whatsoever.

12 If you'll report back tomorrow at 9 we'll
13 proceed with the trial.

14 Thank you very much. Have a good night.

15 (The jury left open court at approximately 5:30
16 p.m.)

17 THE COURT: Will you please be seated and we'll
18 look up that testimony.

19 (The requested portion of the record was located
20 and played back for the Court.)

21 THE COURT: Based on the portion of the
22 testimony regarding William Woodson, I think it's clear
23 and perhaps as you can see that a foundation hasn't been
24 laid. They laid a foundation for a number of other
25 witnesses, just not this one.

1 THE COURT: Do you agree?

2 MR. BUTLER: Yes, that's right. We'll have to
3 call him tomorrow. We ask he be brought over tomorrow
4 morning.

5 THE COURT: That's all I need to hear. We'll
6 see you all tomorrow at 9 o'clock. Thank you.

7 MS. SHEALY: Your Honor, but Security will need
8 to know that. We'll need to make sure they bring Michael
9 Crumb over tomorrow.

10 THE COURT: Is that you all in the back,
11 Transport?

12 THE TRANSPORT OFFICER: We have two, Mr. Woodson
13 that they're willing to turn over for overnight stay
14 because the order wasn't given before 5 o'clock for
15 transport tomorrow, so we'll have to turn him over to the
16 County tonight for overnight.

17 THE COURT: Do you have any problems with that?

18 MS. WILSON: He just needs to be kept separate
19 from the defendant and from Peter Davies, Eric Zack,
20 Michael Crumb, Merv Menier, Pierre Matthews.

21 MS. SHEALY: I mean, the jail needs to know
22 this.

23 THE COURT: Yes.

24 MS. SHEALY: Can you all communicate that to the
25 jail if we give you a list of people?

1 But the other thing was that we need Michael
2 Crumb brought over.

3 THE COURT: How about Michael Crumb?

4 MS. SHEALY: He's in the jail.

5 THE COURT: All right. He needs to be brought
6 over tomorrow.

7 Does that cover everyone?

8 So they're turning him over -- you all are
9 turning Woodson over to the County?

10 THE TRANSPORT OFFICER: Yes.

11 THE COURT: All right.

12 THE TRANSPORT OFFICER: Mr. Woodson and
13 Mr. Hines.

14 MS. SHEALY: Mr. Hines can go back.

15 THE COURT: Do you need Mr. Hines tomorrow?

16 MS. SHEALY: No, your Honor.

17 THE COURT: Okay. All right. See you all
18 tomorrow. Thank you.

19 (The proceedings were concluded for the day to
20 be reconvened on September 23, 2003.)
21
22
23
24
25

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 22nd day of September, 2003.

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

June 15, 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 7
ANTHONY L. MANN)
)
) DEFENDANT)

September 23, 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:

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I N D E X O F W I T N E S S E S

VOLUME 7

MICHAEL CRUMB

Direct exam by
Cross-exam by
Redirect exam by
Recross-exam by
Redirect exam by
Recross-exam by

WILLIAM WOODSON

Continued Direct exam by
Cross-exam by
Redirect exam by
Recross-exam by

RAE WOOTEN

Direct exam by
Cross-exam by
Redirect exam by

PATRICIA ROSE

Direct exam by
Cross-exam by

CHARLES JONES

Direct exam by
Cross-exam by

EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
State's 97B	Advise of Rights (Exhibit withdrawn for evidence) 1332	1317	1327
Court's 12	Page 2 statement.	1318	
State's 140	Petition	1339	
Defendant's 37	Stipulation	1356	1356
6	Photo		1359
13	Photo		1359
16	Photo		1359
1	Photo		1360
2	Photo		1360
3	Photo		1360
4	Photo		1360
5	Photo		1360
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9	Photo		1360
10	Photo		1360
11	Photo		1360
12	Photo		1360
14	Photo		1360
15	Photo		1360
17	Tape of crime scene		1371
30	Article		1399

1 THE COURT: Ready to proceed?

2 MS. WILSON: State's ready.

3 MR. BUTLER: If I could raise one brief matter,
4 your Honor.

5 THE COURT: Yes, sir.

6 MR. BUTLER: At this time we renew our motion
7 pursuant to Gray versus Maryland and Kyle V Whitley and
8 ask the State produce, if there's been any new
9 developments, to produce any exculpatory or impeachment
10 evidence specifically as relates to Peter Davies.

11 THE COURT: Do you wish to respond?

12 MS. WILSON: We've complied with all those
13 necessary items.

14 THE COURT: All right.

15 MR. BUTLER: That's all I have.

16 THE COURT: Ready to proceed?

17 MR. BUTLER: Beg the Court's indulgence.
18 Yes, sir.

19 THE COURT: I stand by my decision on the
20 burglary charge. The case that they cited, the proof on
21 that case without looking to the indictment says that any
22 other proof of the underlying circumstance would require
23 an extensive hearing on collateral matters and therefore
24 be adverse to the uniform official administration of the
25 law. So I'm not going to allow that in.

1 So they revisit that reason. The indictment in
2 this case that was handed up does not give an opinion of
3 the circumstances, and the Appellate Court apparently felt
4 that to do anything otherwise would enmesh the courts in a
5 hearing process on what the actual circumstances are. So
6 I will stand by that decision.

7 Ready to proceed?

8 MR. BUTLER: Yes, sir.

9 THE COURT: Bring the jury in.

10 (The jury came into open court at approximately
11 9:10 a.m.)

12 THE COURT: That was the cite of State versus
13 Bailey, 272 SE2nd 439, in addition to what I cited
14 yesterday of Hunter versus Staples, 515 SE2nd 261.

15 THE BAILIFF: The jurors are seated, your Honor.

16 THE COURT: Thank you. Please be seated.

17 Good morning, ladies and gentlemen.

18 THE JURORS: Good morning.

19 THE COURT: We're ready to proceed at this time.
20 Go ahead and call your witness, please.

21 MR. BUTLER: Defense calls Michael Crumb.

22 MICHAEL CRUMB, after being duly sworn, testified
23 as follows:

24 THE WITNESS: Michael Wayne Crumb, C-R-U-M-B.

25 MR. BUTLER: May it please the Court.

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. BUTLER:

4 Q Michael, when you were down at the detention center
5 in Charleston awaiting disposition of your charges as they
6 relate to this case, did you ever speak to inmates at the
7 jail about your case?

8 A I wouldn't tell them the details, but I told a couple
9 of people what I was in there for. They already knew,
10 yeah.

11 Q Did you ever tell inmates at the jail that, in fact,
12 Brownie was the person who shot Dante Tobias?

13 A No, sir.

14 Q Did you ever say that in the presence of an inmate
15 named William Woodson?

16 A No, sir.

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

18 That's all I have for this witness.

19 MS. WILSON: Your Honor, at this time we offer
20 97B, Michael Crumb's written statement.

21 THE COURT: Any objection?

22 MR. BUTLER: May we approach?

23 THE COURT: Yes.

24 (A bench conference was held with the judge and
25 attorneys in the presence of the jury but out of the

1 hearing of the jury.)

2 THE COURT: Ladies and gentlemen, while we are
3 waiting you may notice there is a cameraman in the
4 courtroom. That happens from time to time, they pop in
5 and visit, take pictures. Don't let that distract you in
6 any way. Also, understand that at no time can they ever
7 take any pictures or photographs of the jury.

8 But that's a good point for me to remind you
9 that you need to be careful about exposing yourself to
10 media coverage. Please don't bring any newspapers with
11 you to court each day. And again, if you are exposed to
12 any coverage, you must immediately report that matter to
13 me.

14 Ladies and gentlemen, I'm going to go ahead and
15 send you to your jury room while we're waiting. Thank you
16 very much.

17 (The jury left open court at approximately 9:22
18 a.m.)

19 MR. BUTLER: Your Honor, we have to review our
20 files for any other documented versions of statements from
21 this witness to see if those would have to come in
22 pursuant to the rule of completeness, and that's what
23 we're doing.

24 THE COURT: All right. Go ahead.

25 MR. BUTLER: Judge, there's one reference to

1 drugs in the statement that would be of the same nature as
2 the evidence that your Honor had already ruled excluded.

3 Aside from that, if your Honor's ruling is that
4 statement comes in, we have no further objections other
5 than ones we have already posed.

6 THE COURT: What are the others? Might as well
7 state them all for the record.

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

9 THE COURT: You better repeat it because I don't
10 know if it got on the record.

11 MR. BUTLER: That it's hearsay; that the written
12 version of the statement is hearsay beyond just the
13 testimony itself; that the proper time to have elicited
14 this testimony, if it's in response to an allegation of
15 recent fabrication would have been on redirect of this
16 witness in the State's case in chief; and that it is
17 proper to get into that now. She can ask him what his
18 testimony was, but then to additionally introduce the
19 written statement would be cumulative and additional
20 hearsay, and those would be our objections.

21 MS. WILSON: I was going to ask him to tell me
22 which lines needed to be redacted.

23 MR. BUTLER: There's a line where the written
24 statement says something about going to Peter Davies'
25 house and he thought that it had to do with drugs.

1 MS. WILSON: That's what the witness thought.
2 That doesn't say anything about the defendant.

3 MR. BUTLER: I think it would still -- for all
4 the same reasons that the other drug evidence doesn't come
5 in, shouldn't come in. He had to have some reason for
6 thinking it was about drugs, even if they're not
7 articulated.

8 MS. WILSON: Can you tell me where that line is?

9 MR. BUTLER: It's the second page.

10 MS. WILSON: Well, your Honor, the line before,
11 the witness says, I don't know what the favor was. Then
12 he says, I thought it had to do with drugs. That doesn't
13 impugn Anthony Mann in any way.

14 In addition, the defendant's own statements come
15 in when he talks about his selling drugs and things of
16 that nature, so I don't think that this would be
17 prejudicial.

18 I think to redact it looks like once again that
19 we're hiding something when in fact we just want to get
20 into the entire statement.

21 THE COURT: He said, I thought it had something
22 to do about drugs?

23 MS. WILSON: Right.

24 THE COURT: What about that?

25 MR. BUTLER: It doesn't change my position.

1 THE COURT: How does it impugn him in any way?

2 MR. BUTLER: Because he says that he thought --
3 the fact that Anthony wanted to go to Peter Davies' house
4 had something to do with drugs.

5 THE COURT: He thought it had something to do
6 with drugs. That doesn't mean that's what it was.

7 MR. BUTLER: Well, if someone says that about
8 someone, it's usually because they have a reason to
9 speculate about it. I mean, if I go to my friend's house,
10 someone wouldn't say, I thought it had something to do
11 with drugs because I'm not a drug dealer. So if this
12 person is acquainted with people and thinks that, it must
13 be for a reason, whether good or bad. I mean, I don't
14 understand what fact or consequence is more probably true
15 with that piece of evidence than not? How is it relevant?

16 THE COURT: How is it relevant to the State?

17 MS. WILSON: Your Honor, it's relevant to show
18 the complete statement this witness gave to the police
19 before any kind of negotiations were entered into. And I
20 think that it shows his state of mind, what he was
21 thinking, how the afternoon progressed.

22 MR. BUTLER: I'm not asking why the statement is
23 relevant, and I'm not asking to say I think it's relevant
24 because it's relevance. Relevancy is a fact or
25 consequence more likely true than without this piece of

1 evidence. What fact or consequence is more likely true
2 because Michael Crumb thought this was about drugs than
3 without Michael Crumb thinking this is about drugs?
4 That's the question.

5 THE COURT: Yes, ma'am.

6 MS. WILSON: Judge, it's not our position that
7 it's relevant in that sense. It's our position that in
8 order for it to be, his statement to be complete and for
9 it to give the jury the whole truth of what Michael Crumb
10 told the police before these motivations, that it's
11 relevant in that sense. It's not offered for the truth of
12 the matter asserted, so it's not hearsay, and I understand
13 hearsay is not really his objection, but I guess --

14 THE COURT: If he's just speculating it raises
15 the aura of, you know, that there was something bad going
16 on.

17 MS. WILSON: Well, there was something bad going
18 on.

19 THE COURT: I mean as far as drugs are
20 concerned.

21 MS. WILSON: Well, there's always --

22 THE COURT: I mean, he's just speculating,
23 though.

24 MS. WILSON: There's also testimony from Eric
25 Zack regarding conversations on the telephone with Beverly

1 Blake regarding drugs and money being in the safe. So, I
2 mean, I think it's in the whole environment. It doesn't
3 have to mean that Anthony Mann was setting up a drug deal.

4 I don't mind redacting it if that's what the
5 Court wants me to do. I just need to know which lines
6 precisely they want redacted.

7 THE COURT: What are the lines?

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

9 THE COURT: When you questioned him, did you
10 reference his statement?

11 MS. WILSON: Yes, sir.

12 THE COURT: Okay. I'm going to allow it in,
13 subject -- with that redaction.

14 MS. WILSON: We're getting a copy of that made
15 with page two the -- it starts on the third line that
16 says, I thought it was to do with drugs, that will be
17 redacted out. We'll substitute that page.

18 THE COURT: All right. Yes, sir.

19 MR. BUTLER: In her direct testimony, his direct
20 testimony through Ms. Wilson, if there was already a
21 question elicited from this witness about the statement
22 specifically, that is consistent with his testimony today,
23 and I didn't prepare this witness for cross-examination,
24 so I don't know, but the Court's last question raises that
25 issue in my mind. If she's already asked him, Is your

1 prior written statement consistent with what you testified
2 to today, that would further my argument that the written
3 statement is now improper. She's already elicited that
4 testimony. And to introduce a written version of it at
5 this point would be improper.

6 THE COURT: What about that?

7 MS. WILSON: I don't believe that was the
8 question.

9 MR. BUTLER: And I admit, I don't recall, but
10 the Court's last question raises that issue with me.

11 I do recall there was some discussion about the
12 timing between reviewing a video of the other
13 co-defendant's testimony, the proffer agreement, and his
14 statement. And I thought that on redirect it was brought
15 out that his written statement to the police was prior to
16 his proffer agreement. And if that's so, that furthers my
17 argument that the entry of the written statement at this
18 point is improper.

19 THE COURT: That his written statement was prior
20 to the proffer?

21 MR. BUTLER: Yes, sir. Her argument is that on
22 cross Ms. Shealy brought out the fact that he has
23 incentive now to change his version of what happens
24 because now he has an agreement with the State, and that
25 because of that question on cross, she's now allowed to

1 elicit from him that he gave another statement to police
2 prior to his proffer agreement which is consistent with
3 his testimony today. If that's proper, a prior consistent
4 statement, then to introduce the written version of it at
5 this point when she's already asked that question and
6 elicited from him that his written statement is consistent
7 with his testimony would mean that to introduce the
8 written statement now would be improper.

9 THE COURT: Is that another cumulative argument?

10 MR. BUTLER: Another cumulative argument and the
11 written version of the statement is hearsay as well.

12 We can cross-examine the witness when he
13 testifies as to what his testimony was, but once the
14 written document is in evidence, I can't cross-examine him
15 anymore and that goes back to the jury.

16 THE COURT: Why can't you cross-examine him now?

17 MR. BUTLER: I can cross-examine him now, but I
18 can't -- when the written document comes into evidence and
19 goes back to the jury in the jury room, I can't
20 cross-examine him then. I can't cross-examine him at the
21 time he made the statement. I can cross-examine when he
22 testifies.

23 THE COURT: Yes.

24 MR. BUTLER: But then to suspend that testimony
25 in the memorialized version, then that limits my ability

1 to cross-examine.

2 THE COURT: I don't understand that. Why can't
3 you go through the statement with him?

4 MR. BUTLER: I can, but I can't do it at the
5 time that he makes it. I mean, that's the whole problem
6 with introducing a prior consistent statement.

7 THE COURT: Well, obviously you can't do it at
8 the time he's making the statement, but if that were a
9 concern, a statement would never come in.

10 MR. BUTLER: And most of the time it shouldn't.
11 If it does under this rare circumstance to rebut an
12 inference of recent fabrication, then it's our position
13 that he can testify to that but the written statement
14 can't come in.

15 THE COURT: Anything else? What about his
16 cumulative argument?

17 MS. WILSON: Judge, I don't --

18 THE COURT: It's just cumulative to his
19 testimony.

20 MS. WILSON: I don't believe it is cumulative,
21 and I don't know what testimony he's citing that it's
22 cumulative of. Well, it's clearly --

23 THE COURT: Well, for it to be a prior
24 consistent statement would you not need to show -- well,
25 let me rephrase that. Almost by definition it has to be

1 cumulative.

2 MS. WILSON: Because it has to be consistent.

3 THE COURT: Because it's a prior condition
4 statement.

5 MS. WILSON: Right. Again, this statement is
6 not offered for the truth. It's offered to show that he
7 was consistent even before the motive to falsify arose.
8 He was consistent before the proffer, before the plea
9 agreement.

10 MR. BUTLER: But now we're talking about
11 cumulative. She's going back to hearsay. I think we are
12 beyond that. My objection now is that it's cumulative to
13 his testimony on redirect.

14 THE COURT: It's just like any other statement,
15 why bring in the statement if the witness is there to
16 testify as to the contents of the statement.

17 MS. WILSON: Because I don't think the witness
18 has gone through and read the statement or shown the jury
19 exactly what he said at that time. He's talked generally
20 about it. He hasn't gone through in specifics.

21 THE COURT: Why can't you do that now?

22 MS. WILSON: Because this is the best evidence.
23 The best evidence is the actual written statement.

24 THE COURT: I'm still not clear as to why you
25 would be deprived of any cross-examination if you go

1 through the statement line by line with him now.

2 MR. BUTLER: I don't know what else to say other
3 than what I said. It's hard, it's confusing, I
4 understand, and I'm probably not articulating it well, but
5 I can't cross-examine at the time he makes the statement,
6 okay? I can cross-examine him when he testifies about it,
7 and I can't cross-examine any further once the jury has
8 the memorialized version. That's the problem with
9 introducing a written statement from somebody who has
10 already testified. I can cross-examine them all day long
11 when they're testifying, but if the jury has --

12 Here's how it would be, okay? If there's a
13 transcript generated of my cross-examination, then that
14 could go back to the jury as well. But it can't and it
15 doesn't for the same reason that it's improper to take a
16 specific portion of a person's testimony, a specific
17 portion of the entire State's case, and for the jury to
18 have it back there in the jury room to scrutinize and
19 examine it removes it from the context of the trial and
20 it's unfair.

21 Now if they would have a transcript of the
22 cross-examination of the witness as well, then I withdraw
23 the objection.

24 THE COURT: You're going to -- you're offering
25 this to rebut the statement that he did not speak to

1 anyone else?

2 MS. WILSON: I'm offering it to rebut the claim
3 that they've made in total; that this witness was tainted
4 and that he tailored his testimony based on the plea
5 agreement and the proffer agreement. And I think that
6 they are trying to show that he made some other statement
7 about Brownie having done the shooting which would
8 indicate --

9 THE COURT: He made the statement to another
10 person?

11 MS. WILSON: Right. And I think the fact that
12 when they offer that, they are impeaching him saying that
13 see, once again when he's talking to William Woodson or
14 whoever that dude is, when he's talking to him, he's
15 saying Brownie did it, because he wants to give the State
16 what they want to hear, he's saying the defendant did it.
17 And I think the fact that he told the police that the
18 defendant did it from the very start shows that he is
19 consistent. It's a prior consistent statement that arose
20 before any need to comply with some plea agreement or to
21 tailor his testimony.

22 THE COURT: Why can't you just ask him, Have you
23 maintained that position all along even prior to the plea
24 and proffer?

25 MR. BUTLER: I thought that's what's already

1 been done, and I don't have any problem with that. It's
2 my understanding, that's what I'm worried about, that's
3 already been done.

4 THE COURT: I don't know that it's been done.

5 MS. WILSON: I think I could do it that way, but
6 I think under the rule I am allowed to get in his prior
7 consistent statement. It's no different than him saying,
8 I told the police X-Y-Z and showing --

9 THE COURT: Well, it doesn't mean his written
10 statement. It's just a prior consistent statement.

11 MS. WILSON: But it is a written statement.

12 THE COURT: But what I'm concerned about is
13 there's other stuff in there.

14 MS. WILSON: They have already redacted what
15 they want redacted.

16 THE COURT: That doesn't go to that question.

17 MS. WILSON: And that's not offered. Those
18 parts, if you're worried about hearsay, I don't know what
19 your concern is. They have picked out the parts that they
20 have a problem about. We've redacted it. If it's an oral
21 statement, if it had been an oral statement he would just
22 have to say it. It's a written statement, so it comes in
23 as a written statement. I guess I'm missing the hang up
24 on the written statement part of it.

25 THE COURT: I mean, just any written statement

1 in that it's cumulative, that's always discretionary.
2 There is nothing to hang up on. It's just whether I feel
3 comfortable doing it or not.

4 MR. BUTLER: And his written statement, it's not
5 like a statement in that this is testimony from
6 Investigator Walker. It's not like they just gave him a
7 piece of paper and say write down what happened. They
8 interviewed him. They get his statement first verbally,
9 and then he writes down. So the written statement is a
10 memorialized version of what he told the police. It's not
11 that the written statement itself is crucial, it's what he
12 told police. This just happens to be the evidence of it.

13 MS. WILSON: The best evidence of it.

14 MR. BUTLER: Well, the best evidence rule
15 doesn't apply. It's what he told police that is crucial
16 that she's trying to elicit. It's not the content of the
17 writing.

18
19 THE COURT: Go ahead and mark it for ID only
20 once you get it redacted.

21 MS. WILSON: It is redacted, your Honor.

22 THE COURT: Thank you. All right, let's mark it
23 for ID.

24 (WHEREUPON, State's Exhibit No. 97B was marked
25 for identification only.)

1 THE COURT: Are you ready to proceed?

2 MS. WILSON: Now, just so our record is clear,
3 we had 97B which was for I.D. only, Michael Crumb's
4 statement. Per what I thought was going to be the Court's
5 ruling, I took another copy of page two of that statement
6 and redacted it, substituted page two and put it in 97B,
7 so I still have the original page two that stands alone.

8 THE COURT: All right.

9 MS. WILSON: Do you want it marked as 97C or
10 something?

11 THE COURT: Mark it as a Court's exhibit.

12 MS. WILSON: That will be page two of Michael
13 Crumb's statement as a Court's exhibit.

14 (WHEREUPON, The Court's Exhibit No. 12 was
15 marked for identification only.)

16 MR. BUTLER: Can I ask, Judge, how are we going
17 to proceed? If we're going to introduce the statement, is
18 she going to ask him about the statement, is he going to
19 read the statement and then she can introduce it?

20 THE COURT: I thought she was going to move to
21 introduce that statement. I'm going to mark it for ID and
22 think about it.

23 MR. BUTLER: Okay. And is she going to ask the
24 witness now to read the entire statement?

25 THE COURT: I thought she was going to ask the

1 witness, if she hadn't already done it, whether or not
2 that statement was consistent with what he told police.

3 MR. BUTLER: If that's the case, I don't have
4 any further objections.

5 THE COURT: I assume you are going to ask him to
6 look at the statement, because otherwise he won't have any
7 clue what's in the statement. Is that what you were going
8 to do?

9 MS. WILSON: I don't know, Judge. I'm just kind
10 of -- I'm sort of lost over what we're doing here.

11 THE COURT: I assume you're going to ask the
12 witness to read the statement and is that consistent with
13 what he told the police prior to the proffer or whatever
14 point you're looking at.

15 MS. WILSON: So it's okay to have him read the
16 whole statement to the jury?

17 THE COURT: No. Ask him to read the statement.

18 MS. WILSON: To himself?

19 THE COURT: Yes.

20 MS. WILSON: I don't know that I will do that.

21 THE COURT: You're not going to introduce the
22 statement?

23 MS. WILSON: I've moved to introduce the
24 statement, but I don't know about sitting here and having
25 the jury wait on him for ten minutes to read the thing.

1 He's identified it, he has said that that was his
2 statement. I mean --

3 THE COURT: I don't know that anyone established
4 that it's consistent.

5 MS. WILSON: Okay. I will do that.

6 THE COURT: And I think you have to lay a
7 foundation. If you don't want to, that's your decision.

8 I don't tell people how try cases. I just make
9 rulings based on what's presented to me.

10 Bring the jury in.

11 MS. WILSON: Thank you, your Honor.

12 (The jury came into open court at approximately
13 9:48 a.m.)

14 THE BAILIFF: The jurors are seated, your Honor.

15 THE COURT: Thank you. Please be seated.

16 Go ahead, please.

17 MS. WILSON: Thank you, your Honor.

18 CROSS-EXAMINATION

19 BY MS. WILSON:

20 Q Mr. Crumb, I'm going to show you what's been marked
21 as State's Exhibit 97B for identification and ask you to
22 look over that. Just thumb through it.

23 A I know what it says.

24 Q Is that your written statement that you gave to the
25 police?

1 A Yes, ma'am.

2 Q And keep going. Up until page six this written
3 statement is in your hand; is it not?

4 A Yes, ma'am.

5 Q You handwrote that?

6 A Yes, ma'am.

7 Q And then on page six, seven, eight and nine,
8 Detective Walker asked you questions and answers and he
9 wrote it in his hand; did he not?

10 A Yes, ma'am.

11 Q And in this statement that you gave to police on
12 February 26th of 2002, you told the police that Anthony
13 Mann shot Dante Tobias?

14 A Yes, ma'am.

15 Q And you testified here this week that Anthony Mann
16 shot Dante Tobias?

17 A Yes.

18 Q Okay. At any time did you tell police that Brownie
19 shot Dante Tobias?

20 A No, ma'am.

21 Q Did Brownie shoot Dante Tobias?

22 A No, ma'am.

23 Q You need to look at these people right here, Dante
24 Tobias' parents and tell them --

25 MR. BUTLER: Objection.

1 THE COURT: I sustain the objection. Just ask
2 the question..

3 BY MS. WILSON:

4 Q Look at them.

5 MR. BUTLER: Objection. The question --

6 THE COURT: I sustain that, too, Counsel.

7 BY MS. WILSON:

8 Q Who shot him?

9 A Anthony Mann.

10 Q How do you know that Anthony Mann is the one who shot
11 Dante Tobias?

12 A Because he came running out the house.

13 Q Who was in the car with you when he came running out
14 the house?

15 A Brownie and Eric.

16 Q So when you left the house there were only two people
17 there?

18 A Yes, ma'am.

19 Q Okay. Now, when you were first interviewed by police
20 they advised you of your rights; is that right?

21 A Yes, ma'am.

22 Q And they asked you to tell them what happened, right?

23 A Yes, ma'am.

24 Q Okay. That was way before you had the attorney who
25 negotiated the proffer agreement and the attorney who

1 negotiated your plea agreement, wasn't it?

2 A Yes, ma'am.

3 Q It was just you and them?

4 A That's right, yes, ma'am.

5 Q Okay. And when you -- after you gave that proffer
6 agreement, you were told that what you said protected --
7 that you were protected from what you said. In other
8 words, what you said during the proffer and during the
9 plea would not be used against you?

10 A Yes, ma'am.

11 Q You were not given any kind of immunity?

12 A No, ma'am.

13 Q And, in fact, you have been prosecuted?

14 A Yes, ma'am.

15 Q And after you were given this protection from what
16 you said, you told the police about your cousin?

17 A Yes, ma'am.

18 Q And you told them that you failed to mention that
19 your cousin knew for sure what had happened?

20 A Yes, ma'am.

21 Q And you told the police that you failed to mention
22 that your cousin had the gun, the Derringer?

23 A Yes, ma'am.

24 Q That you were given?

25 A I wasn't given it.

1 Q At that time you knew that you were free to tell us
2 anything that was wrong with this statement?

3 A Yes, ma'am.

4 Q It was your freebie?

5 A (Witness nodding.)

6 Q Is that right?

7 A Yes, ma'am.

8 Q And you set out to tell us that you hedged a little
9 on your own involvement?

10 A Yes, ma'am.

11 Q And at that time you were having a hard time dealing
12 with the fact that on the morning of January 7th you
13 wanted a pack of cigarettes and to go to John's Island and
14 you ended up in jail on a murder charge?

15 A Yes, ma'am.

16 Q You had a very hard time dealing with that, didn't
17 you?

18 A Yes, ma'am.

19 Q You still have a hard time dealing with that, don't
20 you?

21 A (Witness nodding.)

22 Q Don't you?

23 A Yes, ma'am.

24 Q You are depressed about it?

25 A (Witness nodding.)

1 Q Aren't you?

2 A Yes, ma'am.

3 Q You weren't up for that that day, were you?

4 A No, ma'am.

5 Q Even when you were on the stand earlier this week,
6 you told this jury that your momma knew your involvement,
7 didn't you?

8 A Yes, ma'am.

9 Q You risked putting your momma in trouble to tell this
10 jury exactly what happened, didn't you?

11 A Yes, ma'am.

12 Q Mr. Crumb, over and over again, have you not been
13 instructed not to worry about if there's a conviction, not
14 to worry about giving us Anthony Mann, but to tell us the
15 truth, period?

16 A Yes, ma'am.

17 Q And when you gave that statement with no attorney and
18 you told Detective Walker that Anthony Mann shot Dante
19 Tobias, were you telling the truth?

20 A Yes, ma'am.

21 Q Now, you testified earlier in the week, last week,
22 that Anthony Mann was calling you from jail three-way to
23 tell you, Say Brownie did it, say Brownie did it?

24 A Yes, ma'am.

25 Q And you have told people that Anthony Mann wanted you

1 to say Brownie did it; have you not?

2 A Yes, ma'am.

3 Q You have?

4 A Yes, ma'am.

5 Q Okay. Do you know how many people you have told?

6 A No.

7 Q That that's what he wanted you to say?

8 A Yes, ma'am. Not a lot. I don't really talk about
9 it.

10 Q Not too much, but you have told people he wanted you
11 to say Brownie did it?

12 A Yes, ma'am.

13 Q Do you know a guy named William Woodson?

14 A He was in jail with me for a little while, yes,
15 ma'am. He's kind of crazy in the head.

16 Q Are you friends with him?

17 A No.

18 MS. WILSON: I don't have any other questions,
19 your Honor.

20 We would move to offer State's 97B as redacted
21 into evidence.

22 MR. BUTLER: Subject to the same objection.

23 THE COURT: All right. I'm going to allow it
24 in.

25 MS. WILSON: Thank you, your Honor.

1 (WHEREUPON, State's Exhibit No. 97B was admitted
2 into evidence.)

3 MR. BUTLER: May it please the Court.

4 THE COURT: Yes.

5 REDIRECT EXAMINATION

6 BY MR. BUTLER:

7 Q Michael, you said that -- she asked you about the
8 time you met with the police and gave a written statement;
9 do you remember that testimony?

10 A Yes, sir.

11 Q That wasn't the first time you talked to Detective
12 Walker, was it?

13 A What?

14 Q That wasn't the first time you talked to Detective
15 Walker, was it?

16 A During the proffer?

17 Q No, sir. When you gave your written statement in
18 February?

19 A That wasn't the first time? I talked to him on the
20 phone.

21 Q You talked to him on the phone and other law
22 enforcement several times when you were on the run; isn't
23 that right?

24 A A couple times.

25 Q And you had talked to Eric Zack before then, too,

1 hadn't you?

2 A Yes, sir.

3 Q You talked to Eric Zack when he was in jail?

4 A Yes, sir.

5 Q And you saw a videotape of Eric's meeting with the
6 police and prosecutors?

7 A Yes, sir.

8 Q And did anybody ever videotape you?

9 A No, sir.

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

11 BY MR. BUTLER:

12 Q You're saying now that you do know William Woodson?

13 A Yes, sir. I thought about it after you asked me last
14 time. I know who you're talking about it.

15 Q Before when you said no, you were just mistaken?

16 A Yeah. I couldn't think of it right offhand.

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

18 That's all I have. Thank you.

19 RE CROSS-EXAMINATION

20 BY MS. WILSON:

21 Q Mr. Crumb, Mr. Butler asked you about Eric Zack and
22 you seeing that video. You did see Eric Zack's video
23 after you gave your written statement and before you gave
24 your proffer?

25 A Yes, ma'am.

1 Q And that was part of the discovery that we're
2 required to give your attorney, wasn't it, the videotape?

3 A Yes, ma'am.

4 Q And even after you had this opportunity to watch Eric
5 Zack's video, you disagreed with him on some things?

6 A Yes, ma'am.

7 Q You didn't try to tailor your testimony to fit Eric
8 Zack's, did you?

9 A No, ma'am.

10 Q You all disagreed about how Brownie acted after the
11 robbery, didn't you?

12 A Yes, ma'am.

13 Q And you disagreed about exactly when you went in the
14 house?

15 A Yes, ma'am.

16 Q And you all disagreed about who actually got the
17 Derringer?

18 A Yes, ma'am.

19 Q Okay. Even after seeing that video and as has been
20 implied, I guess, that you wanted to tailor your
21 testimony, you didn't say things just to agree with Eric
22 Zack, did you?

23 A No, ma'am.

24 Q You told the police and you told us pursuant to that
25 proffer exactly what happened?

1 A Yes, ma'am.

2 Q And you came clean about your full knowledge?

3 A Yes, ma'am.

4 Q As hard as that was to do.. That was hard for you,
5 wasn't it?

6 A Yes, ma'am.

7 MS. WILSON: I don't have anything further, your
8 Honor.

9 MR. BUTLER: Very briefly.

10 THE COURT: Yes, sir.

11 REDIRECT EXAMINATION

12 BY MR. BUTLER:

13 Q Where were you shown the video of Eric Zack?

14 A The police station.

15 Q How did you get to the police station?

16 A Car.

17 Q Whose car?

18 A Police car.

19 Q A Charleston County Sheriff's Department vehicle?

20 A It was a gold car, I don't know.

21 Q Do you remember who drove you there?

22 A A girl.

23 Q Were you taken to the sheriff's department and shown
24 any of the other discovery in your case?

25 A No.

1 Q Any of the witness statements?

2 A I think my lawyer thumbed through a couple of them,
3 but we didn't really go over them, no.

4 Q Any of the police reports?

5 A No.

6 Q Any of the forensic evidence?

7 A No, sir.

8 Q So the only evidence they took you to the sheriff's
9 department to show was the video?

10 A Yes.

11 Q That was a week before the proffer agreement?

12 A Same day.

13 Q The same day as your proffer agreement. So they take
14 you from the jail, take you to the sheriff's department in
15 a police car, they show you the video, and that same day
16 you decide to enter into an agreement with the State; is
17 that correct?

18 A Well, my lawyer called my mom a couple of days before
19 and mentioned it to her.

20 Q But the day you did it was the same day right after
21 you saw the video?

22 A Yes, sir.

23 MR. BUTLER: That's all I have.

24 MS. WILSON: Beg the Court's indulgence.

25 THE COURT: Counsel approach.

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 THE COURT: The last exhibit, Madam court
5 reporter, was for I.D. purposes only.

6 RE CROSS-EXAMINATION

7 BY MS. WILSON:

8 Q Mr. Crumb, you don't have VCR at the jail, do you?

9 A No, ma'am.

10 MS. WILSON: That's all I have, your Honor.

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

12 Next witness.

13 MR. BUTLER: Defense calls William Woodson.

14 WILLIAM WOODSON, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please have a seat. State your name
17 for the Court and spell your last.

18 THE WITNESS: My name is William Henry Woodson,
19 W-O-O-D-S-O-N.

20 MR. BUTLER: May it please the Court.

21 THE COURT: Yes, sir.

22 CONTINUED DIRECT EXAMINATION

23 BY MR. BUTLER:

24 Q Mr. Woodson, I want to pick up where we left off
25 yesterday. I was asking you about Michael Crumb; do you

1 recall that?

2 A Yes, sir, I do.

3 Q And what did Michael tell you about the facts of his
4 case?

5 A He stated quite a few things. As far as the name of
6 the people that were involved in it, he never mentioned
7 any names, but he stated that it was him and several other
8 guys that were involved with a female.

9 Q What did he say happened?

10 A Him and supposedly some friends of his went over to
11 help a female friend out that was having a dispute with
12 some guy she was living with, and they went over to get
13 her and her belongings and supposedly got in an argument
14 and a fight with the gentleman that was there. Supposedly
15 he had two pistols on him, and they disarmed him. During
16 the time they were fighting and all that, supposedly they
17 backed up and the female had a gun and shot the guy.

18 Q And what steps did he say he would take, if any?

19 A He said that he would take any necessary steps to get
20 out of this that he could; that he was not involved in it,
21 and that his mother and father had money and that they
22 could afford a good lawyer to represent him to get him out
23 of it.

24 Q When he was telling you these things, the facts of
25 his case, was he saying this is what someone else wants me

1 to say?

2 MS. WILSON: Your Honor, I object to leading.

3 THE COURT: Rephrase the question. I don't know
4 that that was -- just go ahead. Go ahead.

5 BY MR. BUTLER:

6 Q When he was telling you what he said he said, was he
7 saying this is what really happened or this is what
8 someone told me to say what happened?

9 THE COURT: I will allow it.

10 Go ahead.

11 THE WITNESS: This was back in April of last
12 year, and he was saying this is what actually happened,
13 that the female shot the guy, none of the guys that were
14 coming over to help her did it; that it was her that did
15 it.

16 BY MR. BUTLER:

17 Q Are you -- go ahead.

18 A That is exactly what was coming out of his mouth.

19 Q Are you friends with Anthony Mann?

20 A I just know of him. I don't really associate with
21 him.

22 Q Has he ever talked to you about the facts of his
23 case?

24 A No, sir, he has never mentioned this case to me at
25 all.

1 Q Do you have any other source of information about the
2 facts of this case other than Michael Crumb?

3 A No, I don't.

4 MR. BUTLER: That's all I have.

5 CROSS-EXAMINATION

6 BY MS. WILSON:

7 Q Mr. Woodson, you're at Lieber; is that right?

8 A Yes, ma'am.

9 Q That's the same place where the defendant is housed
10 as well, isn't it?

11 A Supposedly.

12 Q You've never seen him there?

13 A I had seen him prior, before he got transferred to a
14 different institution.

15 Q You said he's at Lieber now, though?

16 MR. BUTLER: Objection. She has to ask
17 questions.

18 THE WITNESS: If he is, he's.--

19 THE COURT: Hold on a second, sir. What's your
20 objection?

21 BY MS. WILSON:

22 Q Is he at Lieber now?

23 THE COURT: All right. Go ahead.

24 THE WITNESS: If he is, to my knowledge, he
25 would be on lock down.

1 BY MS. WILSON:

2 Q Do you remember seeing him at Lieber from last April
3 through December of last year?

4 A I did not arrive at Lieber until November 1st of
5 last year. I did see him, I think, it was three or four
6 times. All I would say is, What's up, and keep walking.

7 Q At some point you had to let him know you had
8 information about his case?

9 A No, ma'am, I never even knew this was his case until
10 after the defendant was transferred to a different
11 institution and a law clerk come up with some papers and
12 mentioned the fact about Crumb and me and the dispute we
13 had.

14 Q What kind of papers?

15 A The dockets from the detention center. It said on
16 there me and Crumb was involved in a dispute and they
17 logged it. All they had on there was my name and that I
18 was housed at the detention center.

19 Q So are you the guy that Michael Crumb got in a
20 scuffle with and punched?

21 A No, ma'am. I was the one he was threatening.

22 Q You didn't get in a fight with him?

23 A No, ma'am. I took and filed complaints on him for
24 him threatening me saying that he always -- you know, that
25 he had a shank and that he could do whatever he wanted as

1 he put it.

2 Q And that's when he was sent to lockup and then
3 released by the board from lockup the very next day?

4 A No, ma'am.

5 Q He wasn't released from lockup the very next day?

6 A That wasn't my case.

7 What happened with me and him is they moved me
8 on the bottom tier and put him upstairs on the top tier.
9 They never locked him up on my incident. They just
10 separated us.

11 Q They didn't even lock him up?

12 A No, ma'am, they just separated us.

13 Q Let me ask you this: At Lieber, how many phone calls
14 a day do you get to make?

15 A At Lieber? You can make as many as you want.

16 Q And stay on the phone all day long?

17 A If you want.

18 Q No restrictions?

19 A No restrictions.

20 Q How about at night?

21 A At night your phone calls basically get cut off right
22 around anywhere between 9:45, 10 o'clock, but that's
23 Lieber.

24 Q How can someone at Lieber be able to use the phone
25 past 9:30, 10 o'clock at night?

1 A It all depends on what the situation is.

2 Q I'm asking what the situation would be for someone to
3 be able to use the phone after 10:00 o'clock at night.

4 A If there's a death in the family or if there's an
5 injury in the family or if there's some kind of problem
6 going on at the house such as if you got permission from
7 the warden to make phone calls at certain times so that
8 people would be home.

9 Q So, in other words, if it's an emergency situation at
10 home they would let you use the phone after hours?

11 A Yes, ma'am.

12 Q And did they allow you to have cell phones back
13 there?

14 A Not that I know of.

15 Q How about street drugs?

16 A No, ma'am.

17 Q No street drugs at Leiber?

18 A You're not supposed to have them, no.

19 Q Are there some there?

20 A I'm pretty sure everybody is aware of that any type
21 drug you want, you can get, anywhere you want. I mean,
22 that's been a known fact for years.

23 Q Has it?

24 A Yes, ma'am.

25 Q Have you been there for years?

1 A No, ma'am.

2 Q Okay. Well, you were represented in your charges by
3 Boyd Gumm, who is with the Public Defender's office; is
4 that right?

5 A Yes, ma'am.

6 Q You pled guilty to criminal sexual conduct with a
7 minor under 11; is that right?

8 A Yes, ma'am. I accepted responsibility on my own.

9 Q You have three counts. Is that three different girls
10 or the same little girl?

11 A It was the same one, the same incident.

12 MR. BUTLER: Your Honor, I object at this point.
13 May we approach?

14 THE COURT: Yes.

15 (A bench conference was held with the judge and
16 attorneys in the presence of the jury but out of the
17 hearing of the jury.)

18 (WHEREUPON, State's Exhibit No. 140 was marked
19 for identification only.)

20 BY MS. WILSON:

21 Q Now, Mr. Woodson, before you pled guilty to criminal
22 sexual conduct with a minor under 11, you were evaluated,
23 were you not, by a psychiatrist?

24 A Yes, ma'am.

25 Q And your attorney sought to have you evaluated

1 because of you had a history of mental problems; isn't
2 that right?

3 A Yes, ma'am.

4 Q In fact, when you pled guilty to this criminal sexual
5 conduct with a minor under 11, you pled guilty but
6 mentally ill; isn't that right?

7 A No, ma'am.

8 Q You don't recall pleading guilty but mentally ill?

9 A No, ma'am. I pled guilty. The judge changed it to
10 guilty with a plea of mentally ill. I did not. I pled
11 guilty.

12 Q So based on what you or your attorney presented at
13 that guilty plea, the judge decided to make it guilty but
14 mentally ill?

15 A The judge states, and it should be in my files if you
16 have them, that what he was going to do was he was going
17 to change it to GBMI so that way if I needed any mental
18 health care or counseling, that I should receive it down
19 the road, which I went to R&E in Columbia and received the
20 treatment. But I pled guilty. I did not plead guilty by
21 mentally ill.

22 Q So you went to R&E and received psychological
23 treatment there?

24 A Yes, ma'am, I did.

25 Q And before you pled guilty you also had received

1 psychological treatment?

2 A Prior to that. Which way are you referring to?

3 Q Before the event of your guilty plea you had received
4 psychological treatment?

5 A As in where?

6 Q I don't know, I'm asking you.

7 A Years prior, yes.

8 Q How many years prior had you received this treatment?

9 A Last time I do recall would be '94, '95, something
10 like that.

11 Q And what was the nature of your mental illness or
12 psychological problems?

13 A Depression, attempted suicide.

14 Q And was that the only diagnosis made for you?

15 A Supposedly I'm hyperactive manic depressive.

16 Q When you -- when the judge changed your plea to
17 guilty but mentally ill, you understood that meant that
18 you knew right from wrong but just couldn't conform your
19 conduct?

20 MR. BUTLER: I object to the relevance at this
21 point. May we approach?

22 THE COURT: Yes.

23 (A bench conference was held with the judge and
24 attorneys in the presence of the jury but out of the
25 hearing of the jury.)

1 BY MS. WILSON:

2 Q Now, Mr. Woodson, when you were in jail in April of
3 2002, you said that you had some mental health treatment
4 before that, before you went to jail?

5 A Yes, ma'am.

6 Q And what medications were you on when you were in
7 jail at that time?

8 A At this time?

9 Q In April 2002?

10 A That's a good question. As far as medication goes,
11 whatever the psychiatrist thought that would fit your
12 needs that he would try out on you he would give you.
13 There were some medications he gave me that flat knocked
14 me out.

15 Q Really? So they were trying to get a medication to
16 suit you, to suit what you needed?

17 A That's what they were trying, but as of right now I'm
18 not on no type medications at all. I have not been on no
19 medications since last November and I'm doing fine.

20 Q I'm talking about April 2002, though. At that point
21 they were trying to get you fitted or suited to some
22 medication; is that what was going on?

23 A In April when I come into the jail I was heavily on
24 drugs such as Darvocets, marijuana, cocaine, all kinds of
25 stuff. When I come in there my nerves were shot, I was

1 not functioning proper and everything else. I spoke to
2 the psychiatrist there at the jail for about twice for
3 about maybe five minutes each time. And as far as
4 medications go that he issued there, I don't see how a
5 doctor can only take five minutes of somebody's time and
6 decide that this, this, this would suit their needs.

7 Q So they didn't do a good job fitting you or suiting
8 your medication to you?

9 A No, ma'am.

10 Q Sometimes it knocked you out?

11 A Yes, ma'am.

12 Q What other things did that medication do to you?

13 A Be real sluggish, couldn't walk right, stuff like
14 that.

15 Q Did you complain to him about it?

16 A Yes, ma'am, I did.

17 Q What would you tell them?

18 A Well, I told them I flat out refused to take -- as a
19 matter of fact, it was Giadone (phonetic).

20 Q Giadone?

21 A Yes, ma'am.

22 Q Why didn't you like Giadone?

23 A It would make you go to sleep, you just slept. I
24 mean when you got up, you was groggy, you just wanted to
25 go back to bed, you didn't feel like responding to any

1 activity such as cards or anything like that.

2 Q It sounds like you were a mess.

3 A No, I understood what was going on around me and
4 everything else. I just didn't want to involve myself in
5 playing Monopoly or cards or anything else. I just
6 preferred to sit by myself.

7 Q How often did you complain to the psychiatrist about
8 the medicine that they were giving you?

9 A I complained twice and that was after taking it three
10 times, and then I stopped taking it, which if you read the
11 jail records it will indicate in there that I was taking
12 the medication and refusing it. They keep a chart record
13 of that in there.

14 Q Did you ever not refuse to take the medication and
15 take it and try it out and see if it worked for you?

16 A No, ma'am. After the first three times I refused to
17 take it.

18 Q What about -- you said there were times when it just
19 would knock you flat out. Is that the medication that
20 started with a G?

21 A Yes, ma'am.

22 Q Any other medication that they gave you other than
23 that one?

24 A Other than that, they were giving me some medications
25 stating that I had a high blood pressure problem. But

1 come to find out the medication that they claim I had a
2 high blood pressure problem, I don't have no high blood
3 pressure. I have been checked. I'm perfectly fine. So
4 the doctors and everything at the county detention center
5 in my point of view are way off track.

6 Q Okay. And so you don't have high blood pressure?

7 A No, ma'am. I have been diagnosed perfect, no heart
8 problems, no high blood pressure, no diabetes, nothing.
9 That's in my jacket record right now at Leiber.

10 Q Just like the mental illness is in your jacket?

11 A I have a repeated history of seeing psychiatrists for
12 depression, okay, and suicide attempts. As far as
13 anything else, no, ma'am.

14 MS. WILSON: Your Honor, at this time we offer
15 State's Exhibit 140.

16 MR. BUTLER: May we approach?

17 THE COURT: Yes, sir.

18 (A bench conference was held with the judge and
19 attorneys in the presence of the jury but out of the
20 hearing of the jury.)

21 MR. BUTLER: Absolutely not. I object. A
22 psychiatric evaluation has nothing to do with anything he
23 testified to. It's completely irrelevant and improper in
24 the attempt to offer it.

25 THE COURT: Yes, ma'am.

1 MS. WILSON: It has to do with his credibility,
2 your Honor. This is a clerk's document, an official filed
3 document where it's represented that this person needs to
4 see a psychologist and has a history of mental problems.

5 MR. BUTLER: By his lawyers.

6 MS. WILSON: Exactly.

7 THE COURT: You're the one that's inquiring
8 here. That doesn't mean --

9 MS. WILSON: His lawyer sets out that he has a
10 history of mental problems.

11 MR. BUTLER: Well, then call his lawyer and then
12 we'll invoke the privilege. He doesn't know.

13 MS. WILSON: It's not privileged if it's
14 introduced into --

15 THE COURT: I'm not going to allow it in.

16 BY MS. WILSON:

17 Q Mr. Woodson, isn't it true you and Anthony Mann were
18 together at Edisto from November 2nd until Mr. Mann was
19 moved to Kirkland in April or May of 2003?

20 A If we were I wasn't aware of that, no.

21 Q You don't remember seeing him from --

22 A I only saw him like three or four times. Edisto is a
23 big building, but prior to -- you're trying to say him
24 being in there where I was at, no, ma'am, he was not in
25 that cell where I was at the whole time.

1 Q But the two of you were in Edisto for six months
2 together?

3 A Like I say, Edisto is a big building divided into two
4 separate parts.

5 Q A big building at Lieber?

6 A Yes, ma'am.

7 Q And then you all get to have breaks on the yard
8 together, don't you?

9 A No, ma'am.

10 Q No breaks?

11 A No ma'am. We're separate. A goes out, B comes back
12 in, B goes out, comes back in, totally separate.

13 Q So you're telling the jury there is no way for you to
14 have communicated with Anthony Mann while in the Edisto
15 building?

16 A No, ma'am. We get to go to chow basically at the
17 same time that they call school, yes. But like I stated
18 before, I don't associate with Mann.

19 MS. WILSON: That's all I have, your Honor.

20 MR. BUTLER: May it please the Court.

21 REDIRECT EXAMINATION

22 BY MR. BUTLER:

23 Q Do you know how many inmates there are in each dorm?

24 A In one dorm, there could be anywhere from 160 up to
25 220.

1 Q And you suffer from depression you testified?

2 A Yes, sir.

3 Q And on direct, your testimony on direct is that
4 Michael Crumb told you that a girl called the men, she was
5 having problems with her roommate, right?

6 A Yes, ma'am.

7 Q And that they went over --

8 MS. WILSON: Your Honor, I object to leading.

9 MR. BUTLER: Going over what he said on direct.

10 THE COURT: No, don't lead, Counsel.

11 MR. BUTLER: Okay.

12 BY MR. BUTLER:

13 Q What were the facts again that Michael Crumb told you
14 briefly?

15 A Mike Crumb basically told me that the female was
16 having problems, she called him and a couple of friends
17 who supposedly went over to help her to get out of there.
18 They got in a fight with the gentleman. He had two guns,
19 they disarmed him, he was still fighting. Next thing you
20 know the female had the gun, she shot him. He claimed
21 that whatever he had to do, whatever he had to do to get
22 out of it he would.

23 Q Did your depression make you imagine that?

24 A No, sir.

25 Q Did the medication you take make you imagine that

1 that happened?

2 A No, sir.

3 Q Did Michael Crumb come to you in a dream and tell you
4 that?

5 A No, sir.

6 MR. BUTLER: That's all I have.

7 REXCROSS-EXAMINATION

8 BY MS. WILSON:

9 Q Mr. Woodson, didn't you testify yesterday that you
10 overheard the conversation, that Mr. Crumb was not talking
11 to you?

12 A Ma'am, he was on the phone threatening people, too.
13 He was also on the phone discussing this case. He was
14 also hollering from one rec yard across over to another
15 rec yard to another co-defendant.

16 Q And you overheard it?

17 A Yes, ma'am.

18 Q He was not talking to you, was he?

19 A He talked to me several times, and he also talked to
20 another gentleman named Russell Herron several times.

21 Q You told us yesterday --

22 A That I overheard.

23 Q That you were not in the conversation, that you
24 overheard it?

25 A I overheard him on the phones. I overheard him

1 holler through the rec field to another co-defendant.

2 Q Uh-huh.

3 A Okay? He discussed his case like I stated yesterday
4 with several people.

5 Q That you overheard?

6 A I overheard a lot of stuff, and I also know what the
7 man discussed with me.

8 MS. WILSON: That's all I have, your Honor.

9 MR. BUTLER: Nothing further.

10 THE COURT: You may step down, sir.

11 It's been about an hour and a half for the rest
12 of us, ladies and gentlemen. We'll go ahead and take our
13 morning break.

14 Please do not discuss the case in any way.

15 Thank you.

16 (The jury left open court at approximately 10:27
17 a.m.)

18 MR. BUTLER: May it please the Court. Before
19 the jurors come in may we take up a brief matter?

20 THE COURT: Tell them to hold off on the jury.

21 Sorry. Go ahead.

22 MR. BUTLER: First, I guess I'd characterize it
23 as a request.

24 We would ask that the lawyers for both sides,
25 and if I deviate from the practice I apologize, but that

1 all lawyers before attempting to introduce documents into
2 evidence, please show the lawyers from the other side. If
3 the State wants to introduce a document to present to the
4 witness, please show us first so in case I have an
5 objection, I would like to be able to bring that to the
6 Court's attention as opposed to having the document waved
7 around in front of the jury, then to have me object. It
8 looks as if I'm trying to keep something from the jury.

9 THE COURT: I don't have a problem with that.
10 Just as a statement for the record, not the
11 record but the procedure, both of you were told at
12 pretrial to go over all the exhibits.

13 MR. BUTLER: Yes, sir. And there have been
14 exhibits that we have had objections to, and this last
15 one, and obviously she wouldn't have known about it
16 because she wouldn't have known about the witness, so I'm
17 not saying that, but I would like the opportunity to
18 object instead of having it presented and waved around and
19 make it look as if I'm trying to hide something from the
20 jury, so I'd like to follow that protocol.

21 THE COURT: I don't have any problems with that.
22 Do you?

23 MS. WILSON: No, not at all.

24 THE COURT: All right. What else?

25 MR. BUTLER: Secondly, at some point during I

1 think it was Mike Crumb's testimony, after the State had
2 moved to introduce the physical statement, your Honor
3 after reviewing as I understand you some further case law
4 decided the written statement could not come in.

5 THE COURT: Yes.

6 MR. BUTLER: And at this point I would ask that
7 your Honor please put the basis for that ruling on the
8 record, if you don't mind, please.

9 THE COURT: I just decided that if it were a
10 statement that the motive to fabricate could have occurred
11 at the time of arrest, then that's one basis for not
12 letting it in. And secondly, even if not, I did reach the
13 decision that it was cumulative after the way it was all
14 presented --

15 MR. BUTLER: Yes, sir.

16 THE COURT: -- by the State in the questions,
17 which originally was what I initially indicated, that the
18 State could just ask questions about it, and once the
19 State asked those questions, it did appear to be
20 cumulative, so I reversed myself and decided not to -- I
21 exercised that discretion to not allow it in.

22 Anything further?

23 MR. BUTLER: Yes, sir. Just briefly.

24 And thank you. That was my understanding from
25 what you said at the bench as well. And in light of that,

1 it's our position that if the motive to fabricate is the
2 arrest itself, then any of that testimony was then
3 improper bolstering and was not a proper prior consistent
4 statement under State V Sultz, and we would move on the
5 one hand respectfully for a mistrial, and in the
6 alternate, a curative instruction that the jury disregard
7 all of that testimony.

8 THE COURT: Do you wish to respond?

9 MS. WILSON: Judge, I just want to make it clear
10 that we don't concede that their path or their attack on
11 Michael Crumb was that the motive for his alleged
12 fabrication was the arrest.

13 THE COURT: I understand that. That's not why
14 I'm not hinging that ruling on that.

15 MS. WILSON: It was our understanding I think
16 the impression left to the jury or the impression they
17 tried to make on the jury was that Mr. Crumb's motive to
18 falsify arose at the proffer, from the proffer agreement
19 and from the plea agreement, and Ms. Shealy said over and
20 over and over again, the Solicitor's office, the
21 Solicitor's office, the Solicitor's office, and that's
22 what we were responding to.

23 THE COURT: I agree. I think that's how it was
24 originally portrayed, and that's why I asked the question
25 when I called you up to the bench, so the question about

1 did the motive to fabricate occur at an earlier point.

2 That was just my point to inquire.

3 I don't think it was really raised in that
4 context, but giving the defendant the benefit of the
5 doubt, as Counsel argued, they weren't just basing it
6 solely on that.

7 The Court is not basing its decision on that. I
8 think once I heard the testimony about the document itself
9 and decided it was just cumulative, that would enure to
10 the defendant's benefit and accomplish the same thing
11 given the benefit of the doubt.

12 In any event, if I did -- if it were not
13 admissible based on the reasons defense counsel
14 articulated, I don't think that would be the basis of a
15 mistrial. That motion would be denied. Although that had
16 been gone over in this statement during direct
17 examination, but I don't think it's improper bolstering to
18 ask the witness about his statement in that context.

19 That motion is denied.

20 Ready for the jury?

21 MR. BUTLER: As to the curative instruction,
22 your Honor?

23 THE COURT: I'm not giving a curative
24 instruction based on the denial of the motion.

25 MR. BUTLER: Yes, sir.

1 THE COURT: Anything further you need to put on
2 the record?

3 MR. BUTLER: No, sir.

4 THE COURT: All right. Bring the jury in.

5 (The jury came into open court at approximately
6 10:53 a.m.)

7 THE COURT: Just as a matter of academic debate,
8 not that the Court hinges its ruling on it, but a lot of
9 federal commentaries are not convinced that bolstering
10 argument even survives an adoption of the rules. Nowhere
11 is that word mentioned in the rules.

12 THE BAILIFF: Jurors are seated.

13 THE COURT: All right. Ladies and gentlemen,
14 we're ready to proceed.

15 MR. BUTLER: May it please the Court.

16 At this time defense seeks to publish a
17 stipulation agreed upon by the State and defense.

18 THE COURT: Again, ladies and gentlemen, I
19 directed you about what stipulation means and you're to
20 accept that statement as being true.

21 MR. BUTLER: Attorneys for the defendant and the
22 State entered into an agreement and stipulate that Wes
23 Tyler is employed by the South Carolina Department of
24 Natural Resources as the State climatologist, and if
25 called to testify for the defense, his testimony

1 concerning weather conditions for the Charleston
2 International Airport would contain the following
3 information in the attached document: January 7th, the
4 high temperature, 48.2 degrees, the low 35.6, no rain;
5 January 8th, the high, 48.2, low 26.6, no rain;
6 January 9th, 60.8 degrees the high, the low 28.4, no rain;
7 on the 10th, 69.8 degrees the high, 46.4 the low, no rain;
8 the 11th, 68 degrees the high, 48.2 degrees the low, no
9 rain; the 12th, 62.6 degrees the high, 37.4 the low, 57
10 one-hundredths of an inch in rain; the 13th, 59 degrees
11 the high, 37.4 the low, 22 one-hundreds of an inch of
12 rain.

13 I would ask this be a defense exhibit and
14 entered into evidence.

15 THE COURT: All right.

16 (WHEREUPON, Defendant's Exhibit No. 37 was
17 marked for identification and received into
18 evidence.)

19 MR. BUTLER: The defense calls Rae Wooten.

20 RAE WOOTEN, after being duly sworn, testified as
21 follows:

22 THE CLERK: Please be seated. Please state your
23 full name for the Court and spell your last.

24 THE WITNESS: Rae H. Wooten, W-O-O-T-E-N.

25 MR. BUTLER: May it please the Court.

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. BUTLER:

4 Q Ms. Wooten, where are you employed and in what
5 capacity?

6 A I'm the Chief Deputy Coroner for the Charleston
7 County Coroner's office.

8 Q And how long have you been with the coroner's office?

9 A Between eight and nine years.

10 Q And what are your duties there?

11 A My primary duties are the investigation of deaths
12 that are defined by the statute.

13 Q And in your capacity as deputy coroner, in your work
14 at the coroner's office, how many homicide investigations
15 have you participated in?

16 A I don't know the exact number, but I would think
17 somewhere in the area of 100.

18 Q What training do you have in the area of homicide
19 investigation?

20 A I am a registered nurse, but in addition to that I'm
21 a forensic nurse with various kinds of death investigation
22 training.

23 Q And where would that formal training have taken
24 place?

25 A Some of the most intense was in the Dade County

1 Medical Examiner's office in Miami.

2 Q As part of your duties as deputy coroner were you
3 asked to go to a scene on January 13th?

4 A Yes, I was.

5 Q And where was that?

6 A I was called to a wooded area in Lincolnville.

7 Q And do you recall approximately what time of day that
8 was?

9 A Around 23:30 the night of Sunday, the 13th.

10 Q So that is 11:30 p.m.?

11 A Correct.

12 Q And can you describe what happened when you got there
13 and what you saw?

14 A I was escorted into the wooded area by a deputy where
15 there had been discovered the body of what appeared to be
16 a young black female.

17 Q Okay. And do you recall what the weather conditions
18 were like that evening?

19 A It was very cold, damp feeling.

20 Q And can you describe, please, the condition of the
21 body as it appeared when you arrived?

22 A The body was lying on the right side with the left
23 hand near the face, one leg somewhat more flexed than the
24 other, one on top of the other. The body was dressed
25 lying on top of leaf debris.

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

2 THE COURT: Yes, sir.

3 MR. BUTLER: May I approach the witness?

4 THE COURT: Yes, sir.

5 BY MR. BUTLER:

6 Q Ms. Wooten, I'm showing you what's been marked
7 defense exhibits 6, 13 and 16.

8 MS. WILSON: No objection.

9 THE COURT: All right. In evidence without
10 objection.

11 (WHEREUPON, Defendant's Exhibits Nos. 6, 13, 16
12 were admitted into evidence.)

13 BY MR. BUTLER:

14 Q Tell me if you recognize these photographs.

15 A Yes.

16 Q And what do those appear to be?

17 A It appears to be the body of the individual I
18 described earlier.

19 MR. BUTLER: Beg the Court's indulgence one
20 moment.

21 THE COURT: I was thinking 1 through 16 is
22 already in evidence.

23 Oh, I remember. Right.

24 MR. BUTLER: Your Honor, also at this time, I
25 believe without objection from the State I'd seek to admit

1 Defendant's 14, 15, 12, 11, 10, 9, 8, 7, 5, 4, 3, 2, and
2 1.

3 MS. WILSON: Let me check one thing.

4 THE COURT: All right.

5 MS. WILSON: Your Honor, with regards to
6 Defendant's 5 through 14, we have no objections.

7 THE COURT: Is 6 in that stack? I didn't hear 6
8 called out by defense counsel.

9 MR. BUTLER: Six was previous.

10 THE COURT: That's fine.

11 MS. WILSON: No objection as to those. And as
12 to Defendant's one, two, three and four, we would have no
13 objection and stipulate that these were taken in February
14 of 2003.

15 THE COURT: Is that correct?

16 MR. BUTLER: Yes, sir.

17 THE COURT: All right. Subject to that
18 stipulation as to one, two, three and four, Defendant's 1
19 through 4 are in evidence without objection. Defendant's
20 5, 7, 8, 9, 10, 11, 12, 14 and 15 are in evidence without
21 objection.

22 (WHEREUPON, Defendant's Exhibit Nos. 1-4 were
23 admitted into evidence.)

24 (WHEREUPON, Defendant's Exhibit Nos. 5, 7, 8, 9,
25 10, 11, 12, 14, 15 were admitted into evidence.)

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

2 Your Honor, for clarification, State's 1 through
3 4, photographs of the Lincolnville scene, were taken
4 February of 2003.

5 THE COURT: Okay.

6 MS. WILSON: That's correct, Defendant's 1
7 through 4.

8 THE COURT: All right.

9 BY MR. BUTLER:

10 Q Ms. Wooten, you were describing the position of the
11 body. Can you also describe the condition of the body as
12 it appeared to you?

13 A The body appeared to be clean. There were a number
14 of what appeared to be gunshot wounds. The body had --
15 was intact. There were no wounds noted that appeared to
16 be other than those noted wounds, the gunshot wounds.

17 The body was cold to the touch. There was rigor
18 mortis present. Nothing else outstanding.

19 Q Is there any indication of animal activity?

20 A No. Other than -- well, let me back up. I tend to
21 separate animal and insect.

22 Q Yes.

23 A Okay. Animal activity. No insect activity. There
24 were a very small amount of what appeared to be fly eggs
25 around the eyelids.

1 Q Why do you look for animal activity as opposed to
2 insect activity? Why do you look for that and what does
3 it mean?

4 A Animal activity to me means that we've had the body
5 attacked and damaged by animals such as dogs, possums,
6 those kinds of things versus insects that I tend to think
7 more typically of in terms of flies, fly eggs.

8 Q And the absence of animal activity, why is that
9 significant?

10 A Well, it may or may not be significant, but I just
11 noted that it appeared to be absent. We frequently do
12 find animal activity in bodies that have been in a wooded
13 or remote area where animals roam freely for some period
14 of time.

15 Q And you mentioned rigor?

16 A Correct.

17 Q That was present?

18 A It was present. It was breakable, what we call
19 breakable rigor.

20 Q What does that mean, please?

21 A Meaning that I could straighten the limbs with a fair
22 amount of effort, it wasn't impossible to straighten them.
23 At the same time it was present, it was definitely present
24 and not absent.

25 Q Did you in fact do that?

1 A Yes, to some small degree.

2 Q How would you characterize the condition of the body
3 if you could qualitatively? The condition of the body,
4 was it in good shape or bad shape? We understand of
5 course the person is dead, but do you understand what I
6 mean?

7 A Certainly. I would, using those terms, I would say
8 she was in good shape.

9 Q And what does that mean in this context?

10 A Meaning that she had not progressed to the naked eye
11 to any state of appreciable decomposition that typically
12 occurs following any and all deaths at varying rates to
13 some degree, but she was still in good condition at this
14 time.

15 Q What about discoloration?

16 A It was nothing marked or particularly noticeable;
17 however, we are in a dark area and at night. The body was
18 clad in multiple layers of clothing which I deliberately
19 limited my manipulation of at that time because of
20 concerns about evidence loss on transfer.

21 Additionally, she is a fairly dark-complected
22 black female which complicates that a little more without
23 good lighting.

24 Q Yes, ma'am. In addition to viewing the body at the
25 scene, did you also have occasion to attend the autopsy?

1 A I did.

2 Q And did you observe the body there?

3 A I did.

4 Q Now, when you first arrived and took note of the
5 condition of the body and the surrounding circumstances,
6 did you express at that time an opinion as to how long the
7 body had been there?

8 A I did.

9 Q And what was that?

10 A Based on the early limited assessment of the body, I
11 would have thought and did express the thought that
12 probably 24 to 36 hours would be consistent with what we
13 typically see.

14 Q And what was your basis for expressing that opinion?

15 A The good condition of the body, the rigor which was
16 breakable, the temperature of the body, and the lack of
17 obvious more advanced evidence of decomposition.

18 MR. BUTLER: Beg the Court's indulgence one
19 moment.

20 BY MR. BUTLER:

21 Q Did you take a look at the condition of the clothes?

22 A I did.

23 Q And what can you say about that?

24 A That they were relatively clean. There wasn't
25 evidence that there had been some blood staining. There

1 were some noted defects that would be consistent with
2 gunshot wounds, but there was again no evidence of animal
3 activity or advanced decomposition.

4 Q What about body fluid leakage?

5 A There was none apparent.

6 Q What is that?

7 A Typically as the decomposition process progresses,
8 there is -- there are changes in the layers of the tissue
9 and you have a leakage of body fluids.

10 Q And that not being present means what to you?

11 A That usually speaks to a shorter postmortem interval.

12 Q Body fluid leakage takes place over time? If there
13 isn't any, that supports a shorter postmortem interval?

14 A Typically.

15 Q What about this, is it sloughing of the skin?

16 A Sloughing.

17 Q What is that?

18 A You actually have separation of the various layers of
19 the skin where one, particularly the outer layers tend to
20 slough off.

21 Q Was that present in this case?

22 A No, sir.

23 Q And the absence of that means what to you?

24 A Again that is consistent with a shorter postmortem
25 interval.

1 Q A protruding tongue, what does that mean?

2 A We more typically see that in longer postmortem
3 intervals.

4 Q What does protruding tongue mean?

5 A Well, as tissue starts to decompose you get certain
6 swelling, you get the buildup of gases and so forth that
7 cause pressure that can cause protrusion.

8 Q Do you recall at some point that the body was rolled
9 over?

10 A Yes.

11 Q And what did you observe at that point?

12 A Essentially the same things we've identified before,
13 but additionally that her rigor was maintained when we
14 rolled her onto her back.

15 Q What did you notice, if anything, coming from the
16 ground when the body was rolled over?

17 A What appeared to be steam.

18 Q And what does that mean?

19 A Well, I always note anything of that nature. What
20 that means to me is that we obviously have got the
21 presence of moisture and we have a temperature variation,
22 either the ground was warmer and when we rolled the body
23 we exposed that to the cooler air or the body was warmer
24 and had been placed on colder ground. Again, when we
25 rolled the body we had a variation there.

1 Q With respect to time of death and how long the body
2 had been there, what does steam mean in that context?

3 A The only thing that I could speak to there is that
4 that says to me that for some reason there was a
5 temperature variation between the body and the surface it
6 was resting on; that when we changed that position with
7 the moisture being present we produced what appeared to be
8 steam.

9 Q Is that consistent with a longer postmortem interval
10 or a shorter one?

11 A I tend to associate it with a shorter one.

12 Q Are any of the physical features that you have
13 described here today, condition of the body and the
14 clothes and the surrounding circumstances, are any of
15 those features typical of a postmortem interval of six
16 days?

17 A Not typical of.

18 Q Are you familiar with the process of obtaining
19 potassium levels from vitreous fluid?

20 A Yes.

21 Q And are you familiar with that process in attempting
22 to determine time of death and postmortem interval?

23 A Yes.

24 Q And you're aware that that was done in this case?

25 A Yes.

1 Q And you're aware that that figure is consistent
2 possibly with a postmortem interval of four to six days?

3 A Yes, I am.

4 Q Is there anything besides the vitreous level, the
5 potassium and vitreous that is consistent for --

6 MS. WILSON: Your Honor, I would object to this
7 question.

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 MR. BUTLER:

13 Q Can the use of potassium levels in the vitreous fluid
14 be a sole basis for the determination of time of death?

15 A To my knowledge, no.

16 Q And by your estimation the other evidence is not
17 consistent with a typical case of six days?

18 A It is not consistent with a more typical appearance
19 of six days.

20 Q Now, at some point subsequent to the 13th did you
21 become aware of the media coverage of this incident?

22 A Yes, I did.

23 Q And the publicity -- there was publicity surrounding
24 it, or was there?

25 A Yes.

1 Q And what do you recall about it?

2 MS. WILSON: I would object to hearsay, your
3 Honor.

4 THE COURT: Hold on a second.

5 I sustain that objection.

6 BY MR. BUTLER:

7 Q Did you observe photographs of the victim in the
8 newspapers?

9 A Yes.

10 Q And you saw stories in the newspapers?

11 A Yes.

12 Q And you worked -- when you work cases, you work with
13 law enforcement and with the pathologist?

14 A That's correct.

15 Q And were you aware of, in response to the media
16 coverage, allegations by this victim's family?

17 A Allegations of?

18 MS. WILSON: Your Honor, again I would object;
19 same grounds.

20 MR. BUTLER: I just asking if she's aware of
21 them.

22 MS. WILSON: Well, he's assuming a fact that's
23 not in evidence.

24 THE COURT: All right. You can ask if she was
25 aware.

1 BY MR. BUTLER:

2 Q Are you aware?

3 A Of? Can you clarify?

4 THE COURT: Restate your question.

5 MR. BUTLER: Can we approach?

6 THE COURT: Yes.

7 BY MR. BUTLER:

8 Q Ms. Wooten, do you know Dr. Presnell?

9 A Yes.

10 Q Did you work with her on this case?

11 A Yes.

12 Q Did you discuss with her this case, specifically the
13 aspect of media publicity?

14 A Not that I recall.

15 Q Are you familiar with the prevailing opinions of
16 experts in the field on the potassium level and vitreous
17 fluid and that whole process?

18 A Yes, I'm aware that there is a lot of research that
19 continues in that area.

20 Q And that opinion is what?

21 A That it is a somewhat reliable indicator of
22 postmortem interval.

23 Q You say somewhat reliable?

24 A As I understand it, it still has not been found to be
25 an exact science and it's subject to a number of

1 variables, but it does seem to have value and benefit in
2 helping to determine postmortem intervals.

3 Q When you were present when some members of law
4 enforcement were videotaping the scene there?

5 A That's correct.

6 Q And is that a usual practice?

7 A It certainly is not uncommon.

8 Q And have you reviewed the video?

9 A Yes.

10 Q And some of your comments and the comments of law
11 enforcement are contained on video?

12 A Correct.

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

14 Your Honor, Defendant wishes to introduce into
15 evidence Defendant's 17, the videotape of the crime scene
16 of Beverly Blake.

17 THE COURT: Any objection?

18 MS. WILSON: No, sir.

19 THE COURT: All right.

20 (WHEREUPON, Defendant's Exhibit No. 17 was
21 admitted into evidence.)

22 MR. BUTLER: May we approach?

23 THE COURT: Yes, sir.

24 (A bench conference was held with the judge and
25 attorneys in the presence of the jury but out of the

1 hearing of the jury.)

2 MR. BUTLER: Your Honor, at this time the
3 defense seeks to play the videotape.

4 THE COURT: All right.

5 (Videotape being played.)

6 MR. BUTLER: That's all I have for this witness.

7 THE COURT: All right.

8 CROSS-EXAMINATION

9 BY MS. WILSON:

10 Q Deputy Wooten, I just have a few questions. I hope
11 it will be just -- you were out on the scene when they
12 were looking for evidence, looking for shell casings and
13 looking for anything they thought might matter?

14 A That's correct.

15 Q Do you recall, I'm not sure whether it was you or
16 Sergeant Presnell, who noticed a long strand of black hair
17 on the victim's left elbow? Do you remember that being
18 collected?

19 A It seems I vaguely do, but quite honestly I'm not
20 clear about it.

21 Q You mentioned that animal activity is one of the
22 things that you're looking for. Isn't it true that one of
23 the things that would make animals more likely to seize on
24 a dead body would be more skin and tissue exposed than
25 what we had in this situation?

1 A I would think that would certainly play a part, yes.

2 Q In this situation, before you rolled over Beverly
3 Blake, there was only a small portion of her face showing,
4 a small portion of her hand and then her ankle; is that
5 what you recall?

6 A That's correct.

7 Q Okay. And there wasn't a whole lot of blood exposed
8 to the elements?

9 A That's true.

10 Q It was all mostly, not all, but mostly underneath
11 her?

12 A That's correct.

13 Q And when you were looking through Ms. Blake's pockets
14 I believe you found a little bit of marijuana, what you
15 thought was marijuana, a Swiss army knife, and do you
16 recall that she had several CDs in her sweatshirt front?

17 A She did.

18 Q And you noted that her belt was fastened but her
19 zipper was undone?

20 A That's correct.

21 Q At that time were you looking for any evidence of
22 rape or anything like that?

23 A I wasn't looking for it, however, I always note
24 things of that nature.

25 Q And the zipper being down could be a sign of that or

1 it might be she left her zipper down?

2 A Correct.

3 Q And I believe that somebody, I'm not sure if it was
4 you we heard on the videotape noted that her pants were
5 skin-tight?

6 A I think one of the other deputies made that comment.

7 Q Did you note that as well when you were examining the
8 body?

9 A Yes.

10 Q Now, when Mr. Butler was asking you questions about
11 skin slippage and protruding tongue, you kept using the
12 term "typical" as in skin slippage would be typical for
13 being there, the body being there for a long time or a
14 longer postmortem interval, correct?

15 A That's correct.

16 Q When you use the term "typical," you mean moderate
17 conditions?

18 A I would say that's correct.

19 Q And in this case or in the literature that discusses
20 postmortem interval, when they refer to moderate
21 conditions that is usually noted as conditions around 75
22 degrees or so as being moderate?

23 A I would say that's accurate.

24 Q And in this situation we had temperatures that were
25 much cooler than that?

1 A We had some wide variations in temperatures but many
2 much colder than that.

3 Q And the nights were pretty cold?

4 A Correct.

5 Q And when you first saw the body, there's no question
6 you thought the body was well preserved?

7 A Yes.

8 Q And your initial impression was that the body had
9 been there for 24 to 36 hours?

10 A That's correct.

11 Q Isn't it true, Deputy Wooten, that you were
12 processing the whole situation as you were there? You
13 weren't making a final expert opinion as to how long she
14 had been there?

15 A Oh, certainly. My -- that's our first encounter with
16 the crime scene and the body, and my primary concern at
17 that time is preservation of evidence and to make all the
18 observations that we can at that time, being very aware
19 that this is the very beginning of a very long process.

20 Q And when you were discussing these matters with
21 Detective Walker and the other detectives, you used the
22 term, I'm guessing blah-blah with regards to how long she
23 had been there, I'm guessing blah-blah how long she had
24 been there, and you were just processing it, weren't you?

25 A Yes. And I think that is not unusual in that you

1 have a beginning point from which you proceed with
2 additional findings.

3 Q You might use the term, wouldn't you, you were
4 thinking out loud?

5 A Very much, sure.

6 Q Okay. And you reported what you saw to a forensic
7 pathologist?

8 A Correct.

9 Q And you actually did a typewritten page-and-a-half
10 report about what you saw?

11 A Correct.

12 Q And in preparation for this case when we thought it
13 was going in April or May, you met with me and the
14 forensic pathologist, Erin Presnell?

15 A That's correct.

16 Q And that was the first time we had met?

17 A Correct.

18 Q At that time you saw the video again without the
19 sound?

20 A Correct.

21 Q And we had a big discussion about why we couldn't get
22 the sound up. But there was no question then that you
23 made comments about the body being there for 24 to 36
24 hours or it looking like that anyway?

25 A Sure.

1 Q Okay. And you had that discussion with Dr. Presnell?

2 A Correct.

3 Q And then later, she looked more thoroughly into
4 issues that affected postmortem interval than you were
5 able to?

6 A Certainly. And even by virtue of the fact that even
7 nine hours later in a controlled situation there are a lot
8 of things that you can observe and that are assessed than
9 you can initially at the scene.

10 Q One of those things would be the washer woman changes
11 that were noted on Ms. Blake's feet?

12 A Correct, because, of course, we didn't remove any
13 shoes or socks or anything of that nature at the scene.

14 Q But you certainly intend on that being done at the
15 forensic autopsy?

16 A Certainly.

17 Q And you have been involved in cases where postmortem
18 interval was a question in the back --

19 A Oh, yes.

20 Q And I believe you told me that day and then again
21 this week about a case on John's Island where a man looked
22 like he had been out for over a week or so and it turned
23 out he had been dead a day?

24 A That's correct.

25 Q It was just depending on the environment and the

1 things that happened to him?

2 A That's true.

3 Q Were you also involved, I can't remember if you were
4 the one who mentioned this or not, but the case where
5 there was a double murder or murder/suicide where two
6 bodies were in the house, one was under the covers and one
7 was exposed by an air conditioner vent and they were
8 decomposed at totally different rates. Do you remember
9 that case?

10 A That was not my case, even though I had heard
11 discussion about it.

12 Q So that is not unusual. It just depends on the
13 particular conditions of the person?

14 A The person, the environment and so forth.

15 Q And when we met, you and me and my investigator and
16 Dr. Presnell, we even discussed the fact that there was,
17 appeared to be something that look like steam to you all
18 that night?

19 A That's true.

20 Q And that didn't affect Dr. Presnell or your view of
21 the postmortem interval one way or the other, did it?

22 A No. It was just an observation.

23 Q Isn't it true that that night, Beverly Blake's body
24 actually covered the ground and could have trapped heat?

25 A Yes.

1 Q Underneath there. And I think we also discussed a
2 case, and I'm not sure if this was your case or not, where
3 upon arrival on the scene there was a person with a chest
4 wound that everybody thought at the scene was a stabbing,
5 and it turned out that it was a shotgun wound, but because
6 a pillow was put on it, it had closed itself and looked
7 like a stab wound. Was that your case?

8 A No, but I'm somewhat familiar with that.

9 Q Again, a forensic autopsy is what told the
10 investigators and the coroner who was involved that no, it
11 wasn't a stabbing, the person had been shot with a
12 shotgun?

13 A We often find things at autopsy, which is the reason
14 we do autopsies rather than stop at a scene investigation.

15 Q Exactly. You do a forensic autopsy to get more in
16 depth, precise information?

17 A Correct.

18 Q Now, Deputy Wooten, you don't claim that postmortem
19 interval is an exact science at all, do you?

20 A That's correct.

21 Q It is a hard thing to determine?

22 A It's very difficult due to many, many variables.

23 Q You have not been provided with any of the discovery
24 in this case as far as witness statements and things like
25 that?

1 A I don't believe so.

2 Q That's not normal practice for the solicitor's office
3 to send you a copy of all the statements in the case?

4 A No, but it's not uncommon for me to have them either
5 because sometimes I have access to them in every
6 investigation.

7 Q And you would be interested in that information,
8 would you not, because eye witness testimony as to what
9 happened could shed some light on your findings?

10 A Certainly.

11 Q Okay. And you wouldn't discourage police officers
12 from taking heed to statements that a defendant made, this
13 defendant made, that Beverly Blake was killed on Monday,
14 January 7th?

15 A Can you repeat that?

16 Q You would not tell them to ignore that and just look
17 at the forensic autopsy?

18 MR. BUTLER: Your Honor, I object to
19 misrepresentation of the evidence. His statement?

20 MS. WILSON: His statement to Mervin Menier that
21 was testified to right here.

22 THE COURT: Go ahead.

23 BY MS. WILSON:

24 Q You wouldn't tell the police officers to ignore those
25 statements?

1 A No, absolutely not.

2 Q They would be important?

3 A I think statements, just like all other types of
4 evidence, are very important and should be considered as
5 part of the whole.

6 Q Especially when we're dealing with a gray area like
7 postmortem interval?

8 A I agree.

9 MS. WILSON: Beg the Court's indulgence.

10 That's all I have, your Honor, for this witness.

11 REDIRECT EXAMINATION

12 BY MR. BUTLER:

13 Q Were you present at the autopsy?

14 A Yes.

15 Q Were you able to observe the condition of the body at
16 autopsy?

17 A Yes.

18 Q In a room, right?

19 A Yes.

20 Q Was the room lit?

21 A Yes.

22 Q The clothing removed from the body?

23 A Correct.

24 Q Were you able to observe the lividity at that point
25 as well?

1 A I observed it as being there and being fixed, but I
2 don't recall much more about it.

3 Q When is the best time to assess the rigor?

4 A I'm not sure what you're asking me.

5 MS. WILSON: Your Honor, I would object to her
6 qualifications to answer that question. She is not
7 qualified as an expert in forensic pathology.

8 MR. BUTLER: I will move on.

9 THE COURT: Go ahead, Counsel.

10 BY MR. BUTLER:

11 Q Did you observe the rigor at the scene?

12 A Yes.

13 Q Did you observe the rigor at the autopsy?

14 A Yes.

15 Q Condition of the body, the lividity, rigor, any of
16 that different at the autopsy?

17 A As I recall, the rigor was somewhat less at autopsy.
18 The lividity was not able -- not readily assessed at the
19 scene due to the things we discussed earlier.

20 Q Rigor or rigor would be less later because it
21 dissipates in time?

22 A Correct.

23 Q When your present at the scene, are you aware of the
24 current weather conditions when you're there?

25 A Oh, yes.

1 Q And do you operate with the knowledge that there are
2 other cases that have turned out to be different than your
3 initial assessment?

4 A Yes.

5 Q So when you were there at the scene, you know what
6 the weather is like and you know about these other cases?

7 A Certainly.

8 Q Ms. Wilson asked you about moderate conditions and
9 use of the word "typical"?

10 A Correct.

11 Q And moderate conditions, 75 degrees?

12 A I tend to think of that as a moderate temperature,
13 yes.

14 Q Are there forensic pathologists and forensic
15 scientists and coroners all over the country?

16 A Yes.

17 Q And all over the world?

18 A Yes.

19 Q Are assessments of rigor and lividity and body
20 conditions limited to the deep south?

21 A No.

22 Q Are they limited to tropical areas?

23 A No.

24 Q Are they limited to the Pacific Islands?

25 A No.

1 Q Are there forensic pathologists that engage in these
2 sort of assessments other than the Hawaiian Islands?

3 A Yes.

4 Q And pathologists, do pathologists day in and day out
5 in cooler climates have to make these same sort of
6 assessments?

7 A I would think so.

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

9 That's all I have. Thank you.

10 THE COURT: Anything else?

11 MS. WILSON: No, sir.

12 THE COURT: You may step down. Thank you.

13 MS. SHEALY: May we approach, your Honor?

14 THE COURT: Yes.

15 (A bench conference was held with the judge and
16 attorneys in the presence of the jury but out of the
17 hearing of the jury.)

18 THE COURT: All right. Ladies and gentlemen, I
19 have been advised that this is a good time to break.
20 Again there appears to be some matters which need to be
21 attended to during the break, and I have been requested to
22 give you a longer lunch hour. So I've granted that
23 request. So if you'll please report back at 2 o'clock
24 we'll proceed with the trial.

25 Do not discuss the case in any way.

1 Thank you very much.

2 (The jury left open court at approximately 11:59
3 a.m.)

4 THE COURT: Please be seated.

5 All right. What is the matter that you need the
6 Court to address?

7 MR. BUTLER: Your Honor, I believe that the
8 State seeks to elicit some testimony from the defendant
9 should he testify concerning pending charges.

10 Beg the Court's indulgence one moment.

11 Concerning pending charges. At the time of his
12 arrest for these charges, there was some additional
13 discussion with Investigator Walker concerning some other
14 armed robberies that occurred sometime before. Your Honor
15 may or may not recall we discussed it briefly in the
16 Jackson V Denno portion of the pretrial last April.

17 It's my understanding that they seek to elicit
18 from him, from the defendant, the fact that he was
19 involved in those robberies pursuant to -- beg the Court's
20 indulgence -- Rule 608(b) as evidence of his credibility
21 at a specific instance of conduct which goes to his
22 credibility.

23 And before we even get to whether that is
24 proper, I would point out that's a pending charge for
25 which he can still be prosecuted for which he still has

1 the right to remain silent, and that if he were asked
2 about those other incidents, he would exercise his right
3 to remain silent.

4 I bring that up because in the second full
5 paragraph of Rule 608(b) it says, Giving of testimony,
6 whether by an accused or any other witness, does not
7 operate as a waiver of the accused or the witness's
8 privilege against self-incrimination when examined with
9 respect to matters which relate only to credibility, which
10 means just the fact that he testifies does not mean that
11 he cannot assert his fifth amendment privilege with
12 respect to collateral matters. And because he will do
13 that and because it's improper to call a witness just to
14 have him invoke the fifth and also to solicit questions
15 just to have him invoke the fifth, we would first submit
16 that that line of questioning would be improper.

17 And I point that out because if your Honor
18 agrees with us, that resolves the matter and we don't need
19 to take it any further. However, if you don't, I would
20 like the chance to respond at that point.

21 THE COURT: Yes, ma'am.

22 MS. WILSON: Your Honor, first of all, we aren't
23 calling the witness. The State can't call a witness just
24 to impeach them or to have them take the fifth. It's
25 improper, and I understand that.

1 As far as having the witness take the fifth, we
2 would give Mr. Mann use immunity for his statements
3 regarding that, so he wouldn't need to take the fifth. We
4 do agree that his statements regarding the robbery in
5 December would not be used against him, so there would be
6 no need for him to take the fifth.

7 THE COURT: Do you want to discuss that with
8 your client?

9 MS. WILSON: I don't think there's any question
10 that it's a crime of dishonesty and a crime --

11 MR. BUTLER: If it's a crime of dishonesty,
12 that's a different rule. He hasn't been convicted of it.

13 MS. WILSON: The prior bad act goes to his
14 credibility.

15 THE COURT: Well, the problem is to establish
16 that prior bad act, you have to establish it by clear and
17 convincing evidence.

18 MS. WILSON: Not if I just ask him about it. He
19 can deny it or he can admit it and I move on under 608(b).
20 It's a specific instance of bad conduct.

21 THE COURT: Well, have you talked to your client
22 about their offer of use immunity?

23 MR. BUTLER: No. This is the first --

24 THE COURT: That might be something he's
25 interested in knowing about.

1 MR. BUTLER: This is the first I've heard about
2 it. I think that clearly if they dismiss it with
3 prejudice, then he doesn't have any fifth amendment
4 privilege.

5 THE COURT: Well, she's saying use immunity.
6 That means he can't be prosecuted for that offense. Is
7 that what you're saying?

8 MS. WILSON: Transactional immunity would mean
9 that I couldn't prosecute him for that whole offense.
10 What I'm saying is his statements here won't be used
11 against him.

12 THE COURT: I see. I don't know that that
13 will -- do you want to respond to that?

14 MR. BUTLER: No. But I have to admit that I
15 don't know -- I understand use immunity means she can't
16 use that testimony to prosecute. That's still a pending
17 charge. I'm not sure if that somehow takes away from him
18 his fifth amendment right. I don't know the answer to
19 that question. I apologize.

20 But our position would be that he would still,
21 unless your Honor ruled otherwise, he would still invoke
22 his fifth amendment right to self-incrimination.

23 THE COURT: The pending charge, what is the
24 pending charge?

25 MS. WILSON: Your Honor, he has -- I believe he

1 is charged with armed robbery, two counts. I wouldn't ask
2 him necessarily about the charge, I would ask him about
3 the event which involved an armed robbery and grand
4 larceny of a motor vehicle.

5 THE COURT: What do you mean you are going to
6 ask about the events? Wouldn't that be getting into
7 extrinsic evidence about those incidents?

8 MS. WILSON: No. I'm going to ask him about,
9 was he involved in an armed robbery and grand larceny of a
10 motor vehicle in December of 2001.

11 THE COURT: Well, if she's not getting into
12 details on a specific instance of misconduct, that would
13 reflect on truthfulness.

14 MR. BUTLER: Yes, sir. We're at different --
15 have we moved onto whether or not -- I mean I can deal
16 with that separately, but my first response is that I'm
17 not sure that he has to accept an offer of use immunity.
18 He's going to assert his fifth amendment privilege.
19 Knowing that, I don't think the question is even proper.
20 And I can respond whether or not the rule, why I don't
21 think that it is. Would you like to hear from me on that
22 as well?

23 THE COURT: Yes.

24 MR. BUTLER: Okay. My understanding of the way
25 Rule 608 operates, 608(b) can be a response to --

1 THE COURT: Go ahead.

2 MR. BUTLER: A response to evidence put forth by
3 one party as to an opinion or reputation of a person's
4 character or credibility. So, by example, if we were to
5 put up somebody who said, In my opinion Anthony Mann is
6 honest, the Solicitor then can ask that witness, the
7 witness who gave the testimony, are you aware of the fact
8 that he has been charged with armed robbery, and they're
9 stuck with the answer. And the reason is, it's almost
10 sort a legal fiction.

11 The purpose of the rule is really to allow the
12 opposing side to test the accuracy and the bases for the
13 person's opinion. So if a witness says, In my opinion
14 he's honest, okay, the other side can call into question
15 the bases for that opinion by saying, Well, did you in
16 fact know that he committed bank robbery and that he
17 falsified documents? And if they say no, the reason
18 they're stuck with the answer, that's the second part,
19 that extrinsic evidence is not allowed to contradict a
20 witness. It's because it's not offered for the fact that
21 it really happened. It's offered to test that witness',
22 the basis for that witness' opinion and testimony. So no
23 one has testified to getting an opinion or reputation as
24 to his character or his credibility, and that's what
25 triggered 608(b). The mere fact that he testifies is not.

1 And secondly, even if it does, it's far more
2 prejudicial than it would ever be probative in a situation
3 where you have the defendant who is testifying as to the
4 events in a double homicide. The fact that he was charged
5 with armed robbery is of such minimal significance and can
6 be so incredibly prejudicial because it allows the jury to
7 draw a propensity inference. Assuming that the armed
8 robbery involved the use of weapons, the allegations in
9 this case are that there was an armed robbery, it can
10 allow the jury to find that simply because he is accused
11 of doing these other things that he probably did this
12 thing, too. That is the precise inference that 404(b) is
13 designed to prohibit. But the principle is the same.
14 It's would be so prejudicial and so -- of such slight
15 probative value that it's inadmissible for that reason as
16 well.

17 THE COURT: Has to the character of the witness
18 for truthfulness been attacked and raised properly in this
19 case?

20 MS. WILSON: I don't think we have got to that
21 point yet.

22 THE COURT: I mean, will it be? I'm not so sure
23 that the rule would apply unless the character of the
24 witness for truthfulness has been attacked.

25 MS. WILSON: This isn't about character, it's

1 about credibility.

2 THE COURT: Well, what do you mean by
3 credibility?

4 MS. WILSON: Credibility meaning truthfulness.
5 That is totally different than character.

6 THE COURT: But it says character. It's
7 credibility or character for truthfulness or
8 untruthfulness that the rule's addressed to.

9 MS. WILSON: And I'm referring to credibility,
10 not character. I'm not trying to say he's a bad person.

11 THE COURT: What I'm saying is that I think part
12 B goes hand in hand with part A of the ruling. Part A
13 talks about credibility and character and truthfulness.

14 MS. WILSON: And part B talks about specific
15 instances of bad conduct for the purpose of attacking or
16 supporting a witness's credibility.

17 THE COURT: I think in accordance with part A.

18 MR. BUTLER: And the witness is not the person
19 whose credibility is at issue. The witness is the person
20 referenced in A who is giving the opinion in a way that --

21 THE COURT: I agree with that interpretation,
22 that part two says evidence of truth and character is
23 admissible only after the character of the witness's
24 truthfulness has been attacked by opinion or reputation or
25 evidence or otherwise.

1 Part B does protect your right against
2 self-incrimination.

3 MS. WILSON: I don't understand what the Court
4 is saying regarding the fifth amendment part. I mean
5 surely -- I mean, I agree that he can take the fifth, and
6 I understand that if he is allowed to take the fifth that
7 I shouldn't be allowed to go into it.

8 What I'm saying is that an offer of use
9 immunity, I think that he can be compelled to answer the
10 question because he doesn't need the fifth amendment
11 protection anymore. It's not going to be used against
12 him. And I think -- I don't believe the rule is made to
13 address only third party witnesses. I think this rule
14 applies to defendants as well.

15 THE COURT: I didn't say it was only addressed
16 to third party witnesses.

17 MR. BUTLER: He says -- if he gets on the stand
18 and says, I wouldn't do something like that, I'm honest,
19 then right, she can ask about that. But until then, no.

20 THE COURT: I agree that -- I think it could
21 apply to the defendant. But I do think it goes hand in
22 hand with part A.

23 MS. WILSON: I don't -- in the cases that I'm
24 looking at in Collum's book, I don't see where 608(b) only
25 comes into effect when the witness basically opens the

1 door. And that's the way Mr. Butler is addressing it, as
2 if the only time 608(b) would apply is when the witness or
3 the defendant's witness opens the door.

4 THE COURT: How is the defendant's witness going
5 to open the door, then?

6 MS. WILSON: I don't know that he is. What I'm
7 saying is that he doesn't have to open the door by saying,
8 I'm a good person, I wouldn't lie.

9 MR. BUTLER: What would open the door? Maybe we
10 should figure that out. I think she's saying that merely
11 by taking the stand I'm opening the door, and that's the
12 position I'm taking issue with.

13 And if taking the stand -- if taking the stand
14 was sufficient to open the door, then there wouldn't be a
15 requirement in the rule that says once at issue. It only
16 becomes an issue when someone testifies to it.

17 THE COURT: Hold on a second. I'm looking at
18 some cases.

19 MS. WILSON: I think where we are, your Honor,
20 is whether or not by virtue of the defendant taking the
21 stand 608(b) applies. Mr. Butler believes that it has to
22 be -- the door has to be opened somehow. I believe by
23 taking the stand we can ask about specific instances of
24 conduct. And I think that the cases that are cited bear
25 that out.

1 Now, I agree if he is going to take the fifth,
2 and I know that, then I can't ask him about it.

3 MR. BUTLER: That seems to be resolved. I mean,
4 if he's going to take the fifth and her offer of use
5 immunity does not deprive him of his fifth amendment
6 privilege, then it seems to me the inquiry is over. She
7 can't ask him a question that she knows he's going to take
8 the fifth on.

9 THE COURT: I'm not so sure that it quite says
10 that, that part B of the rule suggests that they don't
11 give up their fifth amendment right. I'm not so sure that
12 that offer is enough to force him to have to do that.

13 MS. WILSON: Well, it would be for any other
14 witness. If I called another witness to the stand to
15 testify about a crime that he committed and he took the
16 fifth and I gave him use immunity, we could then move the
17 Court to compel him to testify and the Court could do
18 that.

19 THE COURT: Well, the problem is in this case,
20 too, you have a pending -- I mean, you don't just have a
21 pending armed robbery, he is being charged for armed
22 robbery also.

23 MS. WILSON: Are you talking about under 403
24 analysis?

25 THE COURT: Yes.

1 MS. WILSON: Yes, sir, I understand that.

2 THE COURT: And even if I were to conclude that
3 it would come in under 608(b), I'm not still sure it
4 should survive 403 scrutiny. It should survive 403
5 scrutiny. Because the courts have been pretty clear about
6 at least for purposes of --

7 MS. WILSON: Yes, sir.

8 THE COURT: -- similar charges that it would not
9 be favored. If it were a conviction, at least you could
10 go under 609(a)(2), but the policy of the Court seemed to
11 have adopted the fact that that should come in.

12 MR. BUTLER: And, your Honor, may it please the
13 Court.

14 What the Court just said makes me think that
15 that rationale should extend even more so to an uncharged
16 crime and a crime for which there is no conviction. If
17 you shouldn't be able to impeach a witness with a
18 conviction for something that's similar, you certainly
19 shouldn't be able to do it with a charge for which there
20 is no conviction. Because the reliability of that fact is
21 much more tenuous.

22 THE COURT: But aside from the fact that
23 609(a)(2) would let an armed robbery come in as going to
24 truthfulness.

25 MR. BUTLER: Yes, a conviction for it, yes.

1 THE COURT: Right. In the State versus Thrift
2 case, unless this has been modified somehow, they were,
3 you know, talking about grand jury testimony, but the
4 reference there was that, and that's in part why my gut
5 may have been saying that, are you talking about giving
6 him complete immunity? It was uncontroverted that
7 respondents who were compelled to testify under use
8 immunity were indicted after giving their compelled
9 testimony by the same grand jury that heard their
10 immunized testimony. Evidence was also placed before the
11 trial judge that a witness's demeanor and even answers to
12 his complete and thorough testimony can motivate a grand
13 jury to indict an individual.

14 Because we hold that only transactional immunity
15 exists under the South Carolina Constitution, we also hold
16 that since the indictments brought against Tom Thrift, Sam
17 Thrift, et cetera, were obtained in violation of their
18 state constitutional rights against compelled
19 self-incrimination, they must be dismissed.

20 While this might be argued, the justice is
21 frustrated when the State is unable to further pursue
22 public corruption charges against these individuals, it
23 would be far more devastating and injurious to our system
24 of justice if such a fundamental constitutional principle
25 as the protection against self-incrimination were trampled

1 in the process.

2 However, it should be noted that here with
3 immunity granted by the Horry County plea agreement nor
4 the transactional immunity granted before the State grand
5 jury concludes -- well, I won't bother to read the rest of
6 that.

7 It's an interesting notation in that it suggests
8 that our constitution only provides for transactional
9 immunity.

10 I think in the abundance of caution and actually
11 jumping straight forward to this issue about
12 self-incrimination in which he wants to invoke his right,
13 but also the 403 analysis, that will be proven to not
14 allow that testimony to come in.

15 MS. WILSON: Thank you, your Honor.

16 (A lunch break was taken.)

17 THE COURT: Yes, ma'am.

18 MS. SHEALY: Your Honor, one house-keeping
19 matter.

20 Defendant's Exhibit No. 30 that was previously
21 marked for I.D. purposes, there was an objection by the
22 Solicitor's office to determine whether some of the
23 language should be redacted.

24 THE COURT: Yes, ma'am.

25 MS. SHEALY: It's my understanding now that

1 she's not going to require the redaction.

2 THE COURT: All right. Is that correct?

3 MS. WILSON: Yes, sir.

4 THE COURT: All right. That will be in evidence
5 now, Madam court reporter.

6 (WHEREUPON, Defendant's Exhibit No. 30 was
7 admitted into evidence.)

8 MS. SHEALY: Your Honor, the other matter which
9 needs to be addressed, I think it would be appropriate if
10 it were addressed in an ex parte fashion. Our client has
11 advised us that he has concerns that he would need to
12 address with the Court, and I think it would be
13 inappropriate for the Solicitor's office to be a party to
14 it.

15 THE COURT: What kind of concerns, of what
16 nature?

17 MS. SHEALY: Regarding --

18 THE COURT: I can't talk about the case ex parte
19 with the defendant.

20 MS. SHEALY: I recognize that, your Honor. Let
21 me figure out the best way to articulate it.

22 THE COURT: All right.

23 MS. SHEALY: Your Honor, he's advised me that
24 his concern is regarding some witnesses that he believed
25 were going to be supporting his defense and the

1 Solicitor's office or their representatives' involvement
2 in changing his witnesses' minds. And I think in order
3 for him to be able to present what his concerns are, he
4 would have to first be able to say what he anticipated
5 their being able to say for him.

6 THE COURT: I don't see why that would have to
7 be ex parte. I don't mind doing it in camera with the
8 State there, but why would that have to be -- that's an
9 allegation against the State.

10 MS. SHEALY: Well, I understand the dilemma,
11 your Honor. I think, though, that coupling that concern
12 is the fact that he would have to reveal part of the
13 preparation for his case and what he believes the
14 witnesses would say on his behalf. He does not want to
15 reveal that to the Solicitor's office.

16 THE COURT: Well, either way, if those people
17 aren't going to testify, then it's not going to change the
18 scope of this case. If there is misconduct, that can be
19 addressed separately.

20 MS. SHEALY: Well, I want to make sure you
21 understand our position, your Honor.

22 THE COURT: Well, what I'm saying is that even
23 though it has something to do with this case, he would
24 have two options: You can get those people in here if
25 that's who you're going to call to testify, and do that,

1 and then at the appropriate point take that matter up as a
2 collateral matter, or -- I just don't see how it affects
3 your -- if you're having trouble getting a witness here,
4 that needs to be brought to the Court's attention, and
5 let's see what remedies might be available.

6 MS. SHEALY: Okay. I beg the Court's indulgence
7 just a moment.

8 THE COURT: If the allegation is that the
9 State's trying to tell them not to come, is that the
10 allegation?

11 MS. SHEALY: I don't think -- I don't believe
12 that's necessarily the allegation.

13 THE COURT: All right. I always prefer to do
14 this --

15 MS. SHEALY: In camera.

16 THE COURT: Yes, with the State.

17 MS. SHEALY: We'll proceed then, your Honor.

18 THE COURT: Madam court reporter, can you set up
19 in there.

20 (An in camera hearing was held in the conference
21 room. Transcript is provided under sealed cover.)
22
23
24
25

1 (Proceedings were resumed in the courtroom.)

2 THE COURT: I understand regarding the last
3 matter that was presented to the Court, that currently
4 that matter's not being pursued, it's not pending at this
5 time; is that correct?

6 MS. SHEALY: That's correct, your Honor, it's
7 not before you at this time.

8 THE COURT: All right. You all ready to
9 proceed?

10 MS. SHEALY: We are, your Honor.

11 MS. WILSON: Yes, sir.

12 MS. SHEALY: Your Honor, I think you need to, if
13 you would, inquire of the defendant again about his right
14 to testify.

15 THE COURT: Okay. Mr. Mann, please stand.

16 I previously advised you about your right and
17 specifically that you did not have any obligation to
18 testify whatsoever. Also I instructed you that I would
19 inform the jury that if you did not testify, I would
20 not -- that that was not to prejudice you in any way
21 whatsoever and it's not to be considered in any way. Do
22 you recall that discussion that I had with you?

23 MR. MANN: Yes, sir.

24 THE COURT: Have you had sufficient time to
25 discuss the advantages and disadvantages if you testify

1 with your attorneys?

2 MR. MANN: Yes, sir.

3 THE COURT: Have you made a decision?

4 MR. MANN: Yes, sir.

5 THE COURT: And what is that decision?

6 MR. MANN: I'm not going to testify.

7 THE COURT: Counsel, have you had sufficient
8 time to discuss it with him?

9 MS. SHEALY: Yes, your Honor.

10 THE COURT: And do you agree with his decision?

11 MS. SHEALY: Yes, your Honor.

12 THE COURT: All right. Are you ready to
13 proceed?

14 MS. SHEALY: Yes, sir.

15 THE COURT: So where does that leave us as far
16 as --

17 MS. SHEALY: Defense is going to rest, your
18 Honor. Is that what you're asking?

19 THE COURT: Yes. So there'll be no further
20 witnesses from the defense at this time?

21 MS. SHEALY: That's correct, your Honor.

22 THE COURT: Well, wouldn't it be perfect to go
23 ahead and do that, I mean, entertain any motions so I
24 don't have to send the jury back out?

25 MR. BUTLER: We're not going to have any other

1 witnesses in our case in chief and don't have any
2 witnesses pursuant to any other motions we have, but we
3 may have them tomorrow morning.

4 May we approach?

5 THE COURT: Yes.

6 (A bench conference was held with the judge and
7 attorneys.)

8 THE COURT: All right. What I was saying is if
9 you're going to rest, why not go ahead and do it now.

10 MR. BUTLER: Yes, sir.

11 THE COURT: You can do it again in front of the
12 jury, but I can go ahead and entertain any motions.

13 MR. BUTLER: Yes, sir. At this time we'd renew
14 our motion for a directed verdict and renew our previous
15 motions for a mistrial based on all the previous motions
16 and all objections.

17 THE COURT: All right. I deny those motions.
18 Are you ready to proceed? You have one more?

19 MS. WILSON: Short witness.

20 THE COURT: All right.

21 MR. BUTLER: And we may have one in sur reply
22 depending upon the testimony in reply.

23 THE COURT: All right. Bring the jury in,
24 please.

25

1 (The jury came into open court at approximately
2 3:50 p.m.)

3 THE BAILIFF: The jurors are seated, your Honor.

4 THE COURT: Thank you. Please be seated.

5 Ladies and gentlemen, we're ready to proceed at
6 this time. I apologize for the delay. As I indicated at
7 the outset when qualifying the jury panel at large, as far
8 as predicting with total accuracy how the case is going to
9 proceed, things require my attention and I have to go with
10 them as they come up, so thank you again for bearing with
11 us.

12 Go ahead, please.

13 MS. SHEALY: Your Honor, the defense would rest
14 at this time.

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

17 MS. WILSON: Yes, sir. The State would call Pat
18 Rose.

19 PATRICIA ROSE, after being duly sworn, testified
20 as follows:

21 THE CLERK: Please have a seat. State your full
22 name for the Court and spell your last.

23 THE WITNESS: Patricia Rose, R-O-S-E.

24 DIRECT EXAMINATION

25 BY MS. WILSON:

1 Q Ms. Rose, how old are you?

2 A Fifty-six.

3 Q And where are you employed?

4 A The Old Dorchester Club.

5 Q Do you own that club?

6 A I'm the manager.

7 Q How long have you managed the OCD or Old Dorchester

8 Club?

9 A Soon it will be 13 years.

10 Q Do you know a man by the name of Chuck Jones?

11 A Yes.

12 Q Who is that?

13 A He's my nephew.

14 Q Does he have any connection with the ODC as well?

15 A He used to work for me as a bartender.

16 Q And do you recall January, in January, early January

17 of 2002, there being a fight at the ODC?

18 A I wasn't present for the fight, but I was told about

19 it the next morning.

20 Q And who was it that told you about the fight the next

21 morning?

22 A Charles Jones.

23 Q Is that Chuck Jones?

24 A Yes.

25 Q Chucky Jones?

1 A Yes.

2 Q Okay. And what did he tell you about that fight?

3 A He told me there was a fight the night before and
4 that the fight was broke up and one of the participants of
5 the fight had said he had killed two other people and one
6 more wouldn't matter and he was going to get a gun, and
7 someone called the police and it was all settled. He
8 didn't go into detail as to whether the man left or who
9 left. It was said that the cops came and everything was
10 taken care of and everything settled, so he was just
11 telling me about it.

12 Q So Chuck Jones, the bartender/nephew, told you this
13 the day after the fight?

14 A The next morning.

15 THE COURT: Move closer to the mike, please,
16 ma'am, when you speak. Thank you.

17 BY MS. WILSON:

18 Q Did he tell you the name of the person who was in the
19 fight who made the statement?

20 A I don't recall whether he did that or not.

21 MS. WILSON: That's all I have, your Honor.

22 MS. SHEALY: May it please the Court.

23 CROSS-EXAMINATION

24 BY MS. SHEALY:

25 Q Ms. Rose, you said you've managed the ODC for 13

1 years at that time?

2 A Yes, almost.

3 Q Back in January of '02, did you have a pacemaker put
4 in? Do you recall when that was?

5 A Let me think. It was after -- in October.

6 Q In October of '01 then?

7 A This October it will be two years ago.

8 Q Okay. And back during that time is it fair to say
9 that you go to bed around 12 and leave the bar to Chuck to
10 kind of attend to?

11 A Normally I'd leave anytime between 4 or 5 in the
12 afternoon until 4 or 5 in the morning. Depends on the
13 crowd, the conditions, the day of the week, you know, that
14 sort of thing.

15 Q It kind of depends on what time you would stay then?

16 A Usually when Chucky got there if it was the weekend I
17 went home.

18 Q And as I understand your testimony then, you were not
19 present during any fight when these type of comments were
20 made; is that correct?

21 A No, I was not.

22 Q Now, did the police come out to the ODC Club before?
23 That wasn't the only occasion that they ever came out
24 there, was it?

25 A They very rarely come there. We used to try to take

1 care of the problems and settle everything.

2 Q But you would agree, would you not, that the police
3 have come to the ODC before?

4 A Oh, yes.

5 Q And let me ask you, do you an incident involving
6 Donald Little and Robby Johnson?

7 A Yes, I surely do.

8 Q And during that occasion, those two gentlemen had
9 stolen some money from a Korean boy; is that what you
10 recall?

11 A I do not know what happened. All I know is that
12 Robby came to me and said that there was some guys outside
13 who wanted to kill Donald Little and could he go to my
14 office, and I said no.

15 MS. WILSON: Your Honor, I object to the
16 relevance.

17 MS. SHEALY: I can tie it in, your Honor.

18 THE COURT: All right. Go ahead.

19 MS. SHEALY: Beg the Court's indulgence just a
20 moment.

21 THE COURT: Go ahead.

22 BY MS. SHEALY:

23 Q Let me ask you this question. Based then on what had
24 occurred that evening regarding Donald Little and Robby
25 Johnson, you had thought about calling the police that

1 night; is that correct?

2 A I did call the police.

3 Q And before calling the police, do you remember your
4 nephew Chuck Jones telling you, You'd better shut the hell
5 up, those boys said that they done shot somebody; do you
6 recall that?

7 A No. Robby come and told me that they were going to
8 kill Donald Little and could he please go to my office and
9 hide. And so at that time I said yes, I took him in my
10 office and I picked up my phone and I called the police.

11 Q You don't recall your nephew then telling you that
12 you'd better not do that because those boys had said they
13 had shot somebody?

14 A Not right off -- no, I don't recall that.

15 MS. SHEALY: I beg the Court's indulgence one
16 moment.

17 I have no further questions. Thank you.

18 MS. WILSON: Nothing further.

19 THE COURT: You may step down, ma'am. Thank
20 you.

21 Anything else?

22 MS. WILSON: No, sir. We rest.

23 THE COURT: All right.

24 MS. SHEALY: Your Honor, we would need to
25 approach for a minute.

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 MS. SHEALY: I'm not sure if I said we would
5 call Chuck Jones, your Honor.

6 CHARLES JONES, after being duly sworn, testified
7 as follows:

8 THE CLERK: Please be seated. Please state your
9 full name for the Court and spell your last.

10 THE WITNESS: Charles Jones, J-O-N-E-S.

11 DIRECT EXAMINATION

12 BY MS. SHEALY:

13 Q Mr. Jones, your aunt is Pat Rose; is that correct?

14 A Yes.

15 Q And as I believe I understand your testimony from
16 yesterday, she runs the ODC and you were working there for
17 a long time; is that correct?

18 A Yes.

19 Q Do you recall having a conversation with her when you
20 were telling her that some boys had said they had shot
21 somebody?

22 A That was with my cousin, Robby Johnson.

23 Q Could you describe for the jury what you recall
24 telling your aunt about that.

25 A Well, that night that that happened had nothing to do

1 with this incident. That was a totally different night.

2 The boys came in there looking for Donald Little
3 because he had stole some stuff from them, and Donald ran
4 into her office, and the boy looked at my other cousin
5 Robby and told him to come outside and take the bullet for
6 his best friend. And Pat was running around saying, I'm
7 calling the law, calling the law. I told her to be quiet
8 because those boys done shot somebody, you know.

9 Q Do you recall whether or not you told her whether the
10 boys had indicated they had shot somebody?

11 A Who?

12 Q Did you tell her that the boys had said they had shot
13 somebody?

14 A No.

15 Q Do you recall whether or not you ever had an occasion
16 to talk to her about the fight that occurred at the ODC
17 when Anthony Mann and Mark Akmen were involved?

18 A Yes. I told her there was a fight that night and
19 somebody called the cops and they came and everything was
20 quashed.

21 Q Do you recall whether or not you ever told her that
22 someone had said they'd shot two people and they would
23 shoot another?

24 A No, I never said that.

25 Q You never said that to your aunt?

1 A Right.

2 MS. SHEALY: I have nothing further. Thank you.

3 CROSS-EXAMINATION

4 BY MS. WILSON:

5 Q This other incident with Donald Little, is that who
6 the person was?

7 A Yes.

8 Q You said that was totally separate than the Anthony
9 Mann fight?

10 A Exactly.

11 Q And in fact your aunt was sort of involved in that in
12 that she was running around kind of frantic about what was
13 going on?

14 A Yes, she was.

15 Q She was pretty clear about what was happening with
16 Donald Little?

17 A Yes, because she was in the building that night.

18 MS. WILSON: That's all I have.

19 MS. SHEALY: Nothing further, your Honor.

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

21 MS. SHEALY: We would rest, your Honor.

22 THE COURT: Anything further from anyone?

23 MS. WILSON: No, sir.

24 MS. SHEALY: No, sir.

25 THE COURT: Approach the bench, please.

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 THE COURT: Ladies and gentlemen, that completes
5 the presentation of the evidence and testimony in this
6 case. As I indicated, once that phase was complete, you
7 will then hear the closing statements of Counsel. After
8 those closing statements are made I will instruct you on
9 the law as it applies to this case. Then I will release
10 you to begin your deliberations. We will do those closing
11 statements tomorrow, I will instruct you tomorrow, and
12 then we'll proceed from there as far as your
13 deliberations.

14 Do not discuss this case in any way whatsoever.

15 Again I remind you not to expose yourself to any
16 media coverage about this case.

17 If you will please give your pads to the bailiff
18 on the way out.

19 Thank you very much. If you'll report at 10
20 a.m. tomorrow. See you at 10 o'clock.

21 (The jury left open court at approximately 4:03
22 p.m.)

23 THE COURT: Thank you. Please be seated.

24 Any special requests as far as charges are
25 concerned?

1 MS. WILSON: Judge, I don't have it with me, but
2 I think I have a copy of the charge from federal court
3 regarding the jury's concern not being sentencing.
4 There's been a fair amount of discussion through
5 cross-examination about the potential sentences and things
6 of that nature, and I would just ask if the Court doesn't
7 have something that in the morning or this afternoon I
8 could fax it over to you, something regarding that. I
9 just don't want this jury to concern themselves with any
10 potential punishment, and I believe the Court has already
11 instructed them that this is not a death penalty case.

12 THE COURT: That's correct, I've already
13 instructed them as to that.

14 You can bring that charge in the morning and I
15 will look at it.

16 MS. WILSON: Thank you, Judge.

17 THE COURT: Anything else in particular?

18 So each of these charges will be straight up,
19 armed robbery, murder, and murder?

20 MR. BUTLER: No, sir. We'd ask for charges on
21 voluntary manslaughter in connection to the Tobias
22 homicide. We would also request the lesser-included
23 charge of larceny for the armed robbery charge.

24 THE COURT: What would be the basis for the
25 voluntary manslaughter?

1 MR. BUTLER: The defendant's written statement
2 that was read into evidence by Detective Walker. There is
3 a struggle; that the defendant goes over to pick up
4 Brownie at her request; at some point there is a struggle
5 and that during the struggle Brownie shoots the victim.
6 And the theory would be one of accomplice liability; that
7 she would be guilty of manslaughter if there was a
8 struggle in the heat of -- at the provocation, heat of
9 passion, and that he would be an accomplice thereto.

10 As to the larceny --

11 THE COURT: Well, if that were the case, then
12 you would have to have transferred provocation. South
13 Carolina does not recognize transferred provocation.

14 MR. BUTLER: Okay. Your Honor, we would also
15 appeal to Michael Crumb's testimony that the defendant was
16 holding a gun on the victim, accusing him of pimping her
17 out, and that that testimony -- beg the Court's
18 indulgence -- and that that would constitute the
19 provocation sufficient to warrant the charge of
20 manslaughter.

21 THE COURT: The State's position on that?

22 MS. WILSON: Your Honor, I believe the -- isn't
23 the threshold sufficient legal provocation, and I don't
24 believe that there's any evidence of that. They go to
25 this man's house, according to the defendant's own

1 statement, armed, at least the accomplice was armed and
2 intending to rob him of his possessions. I don't think
3 that there is anything, even if there was a scuffle, to
4 show that there was some legal provocation.

5 MR. BUTLER: His statement was that he didn't go
6 in armed. His statement --

7 MS. WILSON: His accomplice was armed. He says
8 that Beverly Blake had Dante's gun.

9 MR. BUTLER: Okay. But his statement is that he
10 does not go in armed.

11 MS. WILSON: That's correct. He does admit that
12 his accomplice is armed. And I think just because a man
13 being attacked in his own home puts up a struggle does not
14 give rise to voluntary manslaughter.

15 MR. BUTLER: The version that you could piece
16 together from the different statements is that Brownie had
17 told him that she could get the guns together to take
18 them, not to use in the robbery, and get whatever other
19 proceeds together. That's what makes the larceny. And
20 that when they go over there to get them, she's already
21 secured them and he helps her take the things out. That
22 would be a larceny, not a robbery. That's in his
23 statement.

24 THE COURT: That they were not armed?

25 MR. BUTLER: Right. She gets the guns. I

1 believe it's in his statement -- beg the Court's
2 indulgence.

3 THE COURT: Yes, sir.

4 MR. BUTLER: Can I ask, does the Court need
5 further explanation?

6 THE COURT: I'm going to think about that
7 voluntary manslaughter overnight.

8 MR. BUTLER: Okay. On transferred provocation,
9 I have to admit that I'm not familiar with that. I'm sure
10 there can be co-defendants to manslaughter.

11 THE COURT: I'll think about whether or not the
12 hand of one, hand of all would change that analysis.

13 MR. BUTLER: Yes, sir. And larceny on armed
14 robbery. I believe that would be it.

15 MS. WILSON: You are charging hand of one, hand
16 of all?

17 THE COURT: Yes.

18 What is your position on the larceny? If that
19 theory is accepted, would it be something lesser?

20 MS. WILSON: The theory --

21 THE COURT: Why would it not be just robbery?

22 MR. BUTLER: Because if she has secured the
23 items before he gets there, you know, there's evidence in
24 the record that he's cooking and she's getting her things
25 together and secretly taking his guns and whatever other

1 things that she wants to take and they come and get her
2 and she's got two bags of stuff and she hands it over.
3 That is just larceny. There would be no force or threat
4 of force in the taking.

5 MS. WILSON: That's fine, Judge.

6 THE COURT: All right. So larceny for the armed
7 robbery charge, and then I will think about the voluntary
8 manslaughter.

9 Anything else in particular you are requesting,
10 any special charges?

11 MR. BUTLER: No, sir.

12 THE COURT: You want to respond to his argument
13 about the -- again about the -- let me think about that
14 some more -- that if the jury accepts that Brownie may
15 have been provoked and if they believe that Brownie killed
16 the defendant, then could it possibly be voluntary
17 manslaughter as to the defendant?

18 MS. WILSON: It's got to be more than provoked,
19 though, I believe.

20 MR. BUTLER: I don't mean to interrupt, but to
21 make it go more smoothly, the provocation isn't that
22 Brownie was provoked, it's that the defendant is provoked.
23 When he tries to help her leave and he says no, you're not
24 going anywhere, and a fight ensues. So the provocation is
25 to him as well.

1 THE COURT: Other than the evidence is in the
2 case from the defendant, can you take that -- from his
3 statement can you take that --

4 MR. BUTLER: Yes, sir.

5 THE COURT: -- that consistency?

6 MR. BUTLER: Excuse me, what?

7 THE COURT: Let me think this through. Let me
8 think what I'm trying to say.

9 MR. BUTLER: Yes, sir.

10 THE COURT: Was there anything else you wanted
11 to say?

12 MS. WILSON: I just don't see there's sufficient
13 legal provocation. According to his statement, Brownie
14 was to get the things together that they were going to
15 steal from this man. So then they are now in the house
16 and the guy says, according to the defendant's statement,
17 you all aren't leaving. There still is not sufficient
18 legal provocation on anybody's part.

19 MR. BUTLER: A fight and struggle is
20 provocation. I believe that's in his statement.

21 MS. WILSON: I think you'd have to have clean
22 hands in going into the fight.

23 MR. BUTLER: No, that's self-defense.

24 THE COURT: That would be self-defense.

25 MR. BUTLER: He's not arguing self-defense.

1 THE COURT: All right. I will think about that
2 one.

3 MS. WILSON: Just so I'm clear, so it's the
4 defense position, the Court's ruling, that someone can
5 start the fight --

6 THE COURT: It's not my ruling. I said I would
7 think about it overnight.

8 MS. WILSON: I thought that you said -- I
9 thought that you redirected me to self-defense versus
10 voluntary manslaughter.

11 THE COURT: No, I was saying I do agree with him
12 that your comment about you can't have any fault is
13 addressed to self -- that's one of the factors of
14 self-defense. I don't know that as a factor of
15 voluntary-- to disprove voluntary manslaughter.

16 MS. WILSON: I will have to look at it, but the
17 train of thought that I'm having is, you know, he starts
18 the fight with the guy and then -- I mean, he's claiming
19 that's the provocation, his going to this house.

20 THE COURT: Well, the question would be whether
21 or not he started the fight or someone else started the
22 fight. Is that how you're posturing it, Mr. Butler?

23 MR. BUTLER: I'm not posturing it that way, but
24 I think I should point out that I'm not conceding that he
25 started the fight. I'm looking back over his statement

1 now. My recollection is that when he attempts to leave
2 that Mr. Tobias says, Where are you going, and from there
3 a struggle ensues. I'm not sure if it's clear that one
4 person is the initial aggressor or not. But again, when
5 talking of an initial aggressor, that sounds like
6 self-defense.

7 THE COURT: I think I know what Ms. Wilson
8 saying is that, and I think what she's really trying to
9 say is that if you started a fight and you're not being
10 provoked, you're the provoker.

11
12 MS. WILSON: Thank you.

13 MR. BUTLER: I would have to look.

14 THE COURT: So that's why I was assuming that
15 your position was that he didn't start the fight..

16 MR. BUTLER: Yes.

17 THE COURT: Or either there's a question about
18 him starting the fight.

19 MR. BUTLER: My first position is that perhaps
20 it doesn't matter. I don't know. I'd have to look. But
21 there's nothing in the record to suggest that he started
22 the fight.

23 THE COURT: I'll let you all go think about
24 voluntary manslaughter overnight. I'm not sure we're
25 going to argue that today.

1 Anything special, other than that?

2 MS. WILSON: I don't think so.

3 MR. BUTLER: No, sir.

4 THE COURT: All right then. I will see you at 9
5 o'clock tomorrow to take care of any other issues that
6 need to be addressed.

7 MR. BUTLER: Beg the Court's indulgence one
8 moment.

9 MS. SHEALY: May we approach for a moment, your
10 Honor?

11 THE COURT: Yes.

12 (A bench conference was held with the judge and
13 attorneys in the presence of the jury but out of the
14 hearing of the jury.)

15 THE COURT: Yes.

16 MS. SHEALY: Judge, with regard to the gentleman
17 from Turbeville, they've indicated they have no problem
18 bring him back tomorrow.

19 THE COURT: All right.

20 MS. SHEALY: I said Turbeville. I meant Lieber.

21 THE COURT: Approach the bench, please.

22 (A bench conference was held with the judge and
23 attorneys in the presence of the jury but out of the
24 hearing of the jury.)

25 THE COURT: All right. Thank you all. See you

1 tomorrow.

2 (The proceedings were concluded for the day to
3 be reconvened on September 24, 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 23rd day of September, 2003.

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

July 1, 2004

Carol M. Shume

CAROL M. THUEME, RPR, Court Reporter

My Commission Expires: 06-04-2007

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 8

September 24, 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.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

1 Court will charge self-defense and the defense of others?

2 THE COURT: No, I'm sorry, I'm not.

3 MR. BUTLER: May I put my position on the
4 record, please?

5 THE COURT: Yes.

6 MR. BUTLER: I think your Honor is going to
7 charge that the State request the hand of one is the hand
8 of all. That would leave room for the theory that if
9 Brownie shot Mr. Tobias, that she would be guilty of
10 murder or manslaughter, and therefore even if Mr. Mann did
11 not fire the weapon, he under the hand of one is the hand
12 of all would also be guilty of whatever Ms. Blake would be
13 guilty of.

14 Likewise, if Ms. Blake had a defense of the
15 defense of others, he would not be guilty. So we request
16 a charge of self-defense, defense of others, and the hand
17 of one, hand of all with respect to defense.

18 And I don't know exactly how to characterize
19 that, but it would be the equivalent of hand of one, hand
20 of all, but not accomplice liability but I guess
21 accomplice not liability.

22 THE COURT: I don't think there is any evidence
23 that Brownie was acting in defense of Mr. Mann.

24 MR. BUTLER: Yes, sir.

25 THE COURT: I don't think there is any evidence

1 whatever of that, so I don't plan to charge that.

2 MR. BUTLER: Yes, sir. So now that I've argued
3 that portion of the record is clear.

4 In Mr. Mann's statement that was read into
5 evidence by Mr. Walker, Brownie shot him while we were
6 fighting. Dude kept trying to grab the 357 he had in his
7 waist, but it fell on the floor.

8 THE COURT: What is the State's position on
9 that, about defense of others?

10 MS. WILSON: Judge, while we're looking for
11 that, you are charging felony murder?

12 THE COURT: I will.

13 Similarly, if Mr. Tobias were engaged in that
14 course of conduct to protect himself in his home, there
15 would be no provocation.

16 MR. BUTLER: Yes, sir. That's right. But
17 that's not the only evidence that's out there.

18 THE COURT: If the jury were to believe he
19 engaged in any acts, the State would be free to argue that
20 also.

21 MR. BUTLER: I'm sorry?

22 THE COURT: That would not be provocation that
23 would entitle anyone to manslaughter.

24 MR. BUTLER: Yes, sir, I agree. But that
25 scenario is one of several that could be one that they

1 could draw.

2 If your Honor is going to charge felony murder,
3 we would ask for an instruction as to armed robbery I
4 guess is a felony but larceny is not.

5 THE COURT: Okay. I would just say that armed
6 robbery and murder would be a felony. You want me to say
7 armed robbery and murder would be a felony, larceny would
8 not?

9 MR. BUTLER: Yes, sir. To say murder would be a
10 felony is misleading. It's true, but in the context of a
11 felony murder charge, it's misleading.

12 THE COURT: I see what you're saying.

13 MR. BUTLER: Yes, sir.

14 THE COURT: Armed robbery?

15 MR. BUTLER: Armed robbery and larceny, larceny
16 is not.

17 And, of course, the felony murder charge would
18 be the commission of a felony included allows for the
19 inference of malice, and we would request the permissive
20 inference charge.

21 THE COURT: Yes, sir.

22 Now, if the State agreed to the larceny charge,
23 this is general larceny, I guess. There's nothing that
24 would be needed to clarify any kind of value or anything.

25 You all ready to proceed?

1 MS. WILSON: What did you rule on self-defense?

2 THE COURT: I was waiting. You were going to
3 tell me what your position on defense of others based on
4 what he says, that language in Mr. Mann's statement, that
5 was introduced into trial that they were fighting and then
6 Brownie fired.

7 MS. WILSON: I think to be safe you should
8 probably charge it.

9 THE COURT: Okay.

10 MR. BUTLER: Your Honor?

11 THE COURT: Based on that agreement I will
12 charge self-defense and defense of others.

13 MR. BUTLER: Within the context of hand of one,
14 hand of all charge that the defense of one is the defense
15 of all. I don't know exactly, and I apologize for not
16 being able to come up with a clear way express it, but I
17 think if you have it one way, you have to have it the
18 other way, too.

19 THE COURT: I'll say the same concept applies to
20 defenses. Do you agree?

21 MS. WILSON: Yes, sir.

22 THE COURT: All right. Ready to proceed?

23 MS. WILSON: Yes, sir. And we would ask for
24 that break for five minutes after Ms. Shealy's closing.

25 THE COURT: Is the jury ready?

1 Now, you'll recall from the opening statement,
2 that Ms. Burney indicated to you it was just a fluke that
3 Dante Tobias even knew Beverly.

4 It was no fluke. He started a business.

5 You'll recall when Anthony Floyd testified,
6 Silhouettes, they were starting their business. And when
7 the police went in that evening, when they were looking
8 through all of Dante's materials, they found written
9 confirmation of his plan. There was no fluke.

10 As I told you in the opening statement, he was a
11 man with plans in his head and a holster on his belt, on
12 his leg.

13 Beverly Blake dies sometime later. We don't
14 know when.

15 Recall the testimony, it had rained. It had
16 rained. But remember the guys that were four-wheeling,
17 Elsworth and Barnes? Why did they go four-wheeling?
18 Because it's fun in the mud. It was wet. It was wet for
19 two days right before she was found, that being one day,
20 the day before.

21 It's unpleasant for us to put that videotape in,
22 I will tell you that now. To know the jury has to see the
23 scene of a young girl where she was found dead, but it's
24 purposeful because you need to look at the scene.

25 Why did we fly David Barnes all the way here?

1 Because he told you, it looked like somebody had just come
2 through there.

3 Her clothes are dry. Her clothes are dry. She
4 hasn't been out there since January 7th.

5 Look at the folds on the shirt. We have all
6 seen wet sweat clothes. These clothes aren't wet. She
7 hasn't been laying out in the rain.

8 And recall that when she is found, and I'll tell
9 you what I want you to do. When you go back and you have
10 the opportunity to listen to the videotape, it's somewhat
11 annoying to listen to because the lighting that they use
12 out there is buzzing, so you're not going to want to turn
13 it up, but turn it up, turn it up and hear what people are
14 saying. And they will tell you that when they find
15 marijuana in her pocket, it looks like freshly-bought
16 marijuana. Listen to what is being said as they see her
17 on the scene.

18 If we could go back to what happens initially in
19 the investigation, if you recall what Detective Walker
20 said, they were trying to find out about the world of
21 Dante Tobias and they were finding about the world of
22 Beverly Blake.

23 In finding out about the world of Dante Tobias,
24 they knew there was some information he had been selling
25 drugs. They knew he was found at the autopsy with a

1 holster on his waist. And they talked to Anthony Floyd.

2 And it's interesting, this is early on, this is
3 before they had found Beverly Blake's body. What does
4 Anthony Floyd tell you she has on her head? A knit hat.

5 Other witnesses have told you she always had
6 something on her head. Ms. Wilson was trying to get
7 Mr. Floyd to say well, it couldn't have been a bandana.
8 But Mr. Floyd not having the benefit of photographs of how
9 Beverly looked when she was found said that what Beverly
10 had on was a knit hat.

11 Why is that important? Because Donna Kann, the
12 EMS worker who lives right across the street from where
13 Dante was shot, says the shooter walked out with a knit
14 hat. These are people who were interviewed early on
15 before any photographs could be shown to someone. The
16 knit hat.

17 What else does Donna Kann tell us? She makes
18 some interesting conclusions based on, I guess, how she
19 relates to people, because she says, I didn't think the
20 person was black, not because I saw the skin and the skin
21 wasn't black, but because they weren't carrying themselves
22 as a black person does.

23 Well, what is coming through this record?
24 Beverly Blake was somewhat boyish. And when they go back
25 and talk to Donna Kann a second time, and this is a woman

1 who is sort of in this field of trauma and tragedy. She
2 knows details are important. She wants to correct
3 herself. It could have been a woman. It could have been
4 a woman.

5 So what we have is, it could have been a woman
6 with a knit hat.

7 Who was the woman with the knit hat? Brownie.

8 Who had a reason to kill Dante? Who believed he
9 owed her for what he had been putting her through?
10 Beverly, Brownie.

11 And remember when they go in, and you saw the
12 videotape put in through Sergeant Presnell, taped on a
13 mirror, third generation pimp, hustler. That's Dante
14 Tobias.

15 Beverly a fluke? No. Had enough? Yes.

16 Let's evaluate the testimony of Michael Crumb.

17 Now, interestingly, and it's in evidence, who
18 does he identify as his enemy? Peter Davies. And Michael
19 Crumb tells you they were going to get Brownie out of a
20 bad situation. That's what they all intended when they
21 were going to that house, was to get Brownie out. And we
22 know she's panicking, calling Tiffany Mercado, I got to
23 get out. And then she calls Anthony and they agreed to go
24 get her.

25 You'll also, if you recall his testimony, say

1 that there was no mention of money and drugs. That man
2 came in here and told you they weren't intending to rob
3 Dante Tobias.

4 The physical evidence in this case does not
5 support Michael Crumb's position. He's got all this
6 information that Anthony had a gun to Dante's head and
7 they went back into a bedroom where Anthony had Dante
8 against the wall and somehow simultaneously between having
9 him against the wall he's also undoing a safe. Presnell
10 tells you there is no evidence of a struggle. The only
11 place is on the porch.

12 Michael Crumb's testimony does not jive with the
13 physical evidence in this case. His fingerprints, he says
14 he went to the safe. There's the safe. Michael Crumb's
15 fingerprints aren't on the safe.

16 That safe was opened before they got there.
17 Brownie had packed her stuff. She had asked somebody to
18 come and get her. That safe was open.

19 And recall that the officer who came in and
20 brought the safe told us you've got to have a combination
21 and key. Michael Crumb didn't say anything about a key.

22 They didn't go into that safe. Brownie had
23 already gone into it.

24 And according to Michael Crumb, if he's telling
25 us that just seconds after he leaves the house he hears

1 the shot, well, what gets Dante to the porch? It doesn't
2 make sense under Michael Crumb's version. It just
3 completely does not make sense.

4 Is he telling you that Anthony Mann brought
5 Dante outside to kill him? That doesn't make sense. He
6 had him back in the bedroom, he's going to bring him
7 outside to kill him? There is nothing logical at all
8 about that. No evidence of that whatsoever.

9 And then he wants to tell you, Oh, Anthony, we
10 took some quarters out of that house; they want to make
11 this a robbery. We took some quarters out of that house.

12 Ladies and gentlemen, who was going to have
13 quarters in a bag? A runaway 17-year-old or a drug
14 dealer? She probably needed them for the bus. There is
15 no evidence that those were Dante Tobias'. There is no
16 evidence there was a robbery. But the State needs you to
17 believe there was a robbery.

18 And when you're looking at Michael Crumb and
19 you're evaluating whether or not to believe him, this is
20 the guy who stole his friend's car, left the state and got
21 his mother arrested.

22 And you saw William Woodson come in here and
23 testify. Ms. Wilson wanted to make him look like the
24 craziest loon that ever hit the courtroom. You saw him.
25 He doesn't know Anthony Mann.

1 What did he tell you? What did William Woodson
2 tell you? That Michael Crumb's a threatener, the guy who
3 causing problems down at the jail said that Brownie shot
4 Dante. That's what he's running his mouth about.

5 And also recall that before Michael Crumb gets
6 arrested, before he finally surfaces enough to get
7 arrested, that he and Eric could be communicating because
8 Eric's in jail. Eric's arrested. They had time to get
9 their stories straight, to communicate.

10 And it's certainly interesting to me that
11 before -- now you've heard about all the statements in the
12 case, that before Michael Crumb comes in on his proffer,
13 what does he get to look at? Eric Zack's videotape. Come
14 on in, we want to hear your version, but before we do,
15 take a look at this videotape.

16 Now Michael Crumb came in here and he wanted to
17 throw in some tidbits. He wants to say that Anthony Mann
18 had on a knit hat that night. He didn't say it in his
19 written statement. Oh, but we need to kind to connect
20 that up. Anthony Mann had on a knit hat? Eric Zack told
21 you no way. These girls stood up here and told you, he
22 looks good, he's into his looks. He's not going stick a
23 knit hat on him. Is there any testimony he stuck a knit
24 hat on before he went in that house? It's ridiculous for
25 Michael Crumb to come up here and try to say after having

1 the benefit of knowing what the evidence in the case is,
2 that Anthony Mann had the knit hat on. Brownie had the
3 knit hat on. Michael's trying to take care of the
4 proffer.

5 Oh, anyone can tell you, he's seen the pictures
6 of Brownie, that she took the time to go find the bandana.
7 Come on. The way he describes what is going on in that
8 house, are you telling me that he wants us to believe that
9 Beverly Blake took a moment to go find a bandana? That's
10 absurd. He wants it to be Anthony with the knit hit and
11 Brownie with the bandana. You need to look at those
12 details when you're trying to evaluate whether or not he's
13 being truthful.

14 Oh, and no, I didn't get anything out of it. I
15 did not get anything out of it. And then Eric Zack comes
16 in and tells you Michael Crumb gets the Derringer. I
17 think maybe Michael Crumb refers to it as a Dillinger, the
18 small gun.

19 Michael Crumb, he wants to distance himself from
20 this, and he wants to tidy up all the problems.

21 Let's look at Eric Zack. I do want to note that
22 both Zack and Crumb are cleared as to the purpose of going
23 over there. They both say it, to help Brownie. They both
24 say it. We didn't think anybody was going to get robbed,
25 we weren't planning on robbing anyone. You know what else

1 they both say? They both say that when they get the gun
2 from Peter Davies, that Anthony Mann says, I'm taking it
3 just to scare him, or I'm taking it in case anything bad
4 goes down.

5 Would you want to walk into a drug dealer's
6 house and take his prostitute? Would you?

7 And Eric Zack told you as regards Brownie, she
8 always had something on her head, always, and that Anthony
9 Mann did not have on a knit hat. Eric Zack, the driver.
10 Eric Zack who had been there with him that afternoon.
11 Eric Zack who had consistently been with him said, Anthony
12 Mann did not have on a knit hat.

13 According to Floyd, Beverly does. According to
14 Kann, the shooter does.

15 Now, can you imagine how scared to death Eric
16 Zack was? He's working at Wendy's and they come and pick
17 him up. I cannot imagine a more frightening event. And
18 he goes down and he talks to the police. And he tells us
19 he's crying when he's talking to them and that he's
20 scared.

21 All of that is significant for this reason: If
22 you recall the order of the statements, they had talked to
23 Shannon Keyes, they had talked to Nicky.

24 Now what is significant about that? Remember,
25 Detective Walker told us they were having meetings every

1 couple of hours to update on the investigation, the status
2 of the investigation. So Nicky gives them this little
3 pearl: That night I saw Anthony Mann, Peter Davies and
4 Brownie. And lo and behold in the statements that the
5 police get from the next two people, Anthony Mann and Eric
6 Zack, Peter Davies. It's the information the police had,
7 and these witnesses have told you, they're telling them
8 stuff, they're telling them stuff when they come in to
9 talk to them.

10 So what shows up in the statement? Oh, that
11 Peter Davies and Anthony Mann were together. And what did
12 Eric Zack tell you? I told them that because I believed
13 that's what they wanted to hear. He was a very scared,
14 very young man.

15 We have asked questions of the witnesses in this
16 case about the environment when they're giving their
17 statements. You need to keep that in mind. They're
18 brought in and they're told things and then facts show up
19 in the statements that some of them are now distancing
20 themselves from. They were telling the police what they
21 wanted to hear.

22 And it's interesting that once they found
23 Brownie, that the photographs of her are shown to people.
24 Remember little Shannon Keyes? Because they want you to
25 believe that what Brownie had on January 7th is what

1 Brownie had on when she was found. This how she looked
2 that night; look at the dead girl. They're trying to get
3 little pieces of information. Show them the picture.

4 But who are they interested in? Who were they
5 interested in? Peter Davies.

6 They heard the name Peter Davies and that
7 sparked some interest. Who shows up in the next
8 statement? Peter Davies.

9 And ladies and gentlemen, who's got the gun over
10 at Peter Davies' house? Who holds it and threatens them?
11 Threatens them? I'm not just talking about killing you,
12 I'm talking about a mass murder. I'm going to kill your
13 family.

14 Who does that? Does Anthony Mann? No. Does
15 Eric Zack, Mike Crumb or Brownie? No. Peter Davies does.
16 He's the source for the guns, he's the one holding the
17 gun. Peter Davies.

18 What else did Eric Zack tell you that was of
19 interest? He says whose adrenaline was pumping? Do you
20 recall that? Eric Zack says Beverly Blake's adrenaline
21 was pumping. Why was it pumping? She killed a man. She
22 killed a man who wronged her.

23 And who said he got what he deserved? Who said
24 it? Beverly Blake. Beverly Blake says, He got what he
25 deserved.

1 Now, in talking about getting the statements
2 from people, remember that some of these witnesses
3 testified they were chained while they were giving their
4 statements? The death penalty came up, murder. Some of
5 them were told that their kids would be taken away from
6 them. You've got to look at that very carefully in
7 evaluating why people say what they say.

8 You saw this group of people. They have all got
9 problems. All got problems. Can you imagine getting
10 called into the police station? Can you imagine being
11 told what you were being told by the detectives in this
12 case? You are going to say what you believe they want you
13 to hear, I mean, what they want to hear.

14 I want to talk about Kristy Bunch. It's in
15 evidence, her statement to Mr. Mann. It very, very
16 clearly sums up the anger that she has towards him, the
17 anger.

18 Do you believe that Anthony Mann during a
19 conversation with Kristy Bunch when they're arguing would
20 confess that he shot Beverly Blake? I mean, do you
21 believe it? Can you?

22 They sent their investigator down there for days
23 to look for the tapes. All the phone calls are recorded.
24 Days. They have got ten investigators in their office.
25 And remember what Mr. Burnett told us? They narrowed it

1 to October because that's when Kristy said it took place.
2 He listened to all those phone calls and didn't hear it.
3 So then he listened to past October, before October,
4 doesn't hear it. It didn't happen. That's why he doesn't
5 hear it.

6 Anthony Mann never told Kristy Bunch he killed
7 Beverly because he didn't. She's just mad. She don't
8 understand why Anthony might be a little disappointed in
9 her conduct while he's in jail. She prostitutes herself
10 out, she sleeps with one of his friends. And what really
11 got her was that he was seeing other women, other women
12 were coming to visit him. She's just an angry woman.

13 There is something interesting that Kristy Bunch.
14 does for us, though. Very interesting. They had started
15 this new relationship, interesting relationship. But
16 they're together from the evening of the 7th every day
17 except for brief times until Anthony Mann is arrested.
18 They all got this sickness that evening, they all got
19 sick. Remember the lives that she's telling us they were
20 leading, they were laying in bed all day sick and maybe
21 they'd go party at night. She was feeling so bad during
22 those days she didn't do her normal amount of partying.
23 Remember?

24 Now she didn't go with him to the ODC Club
25 because she feeling too badly.

1 Now, when we're looking at Shannon Keyes,
2 that's the young girl, that is the 16-year-old. That is
3 the 16-year-old who was interviewed for what she said felt
4 like eight hours alone without her parents. She felt
5 intimidated, they were showing her pictures of Beverly.
6 You can imagine in what way she was shown the pictures.

7 What does this tell us? It tell us -- oh, and
8 she's handcuffed. She's handcuffed during the procedure,
9 too, a little 16-year-old.

10 It's tells you the measures they go to try to
11 get information out of people. It tells you the way the
12 police are behaving. And it also tells you, remember,
13 they were trying to clarify, now in your statement that
14 evening you said that Dante mentioned they went over to a
15 black guy's house. And she says, I want to correct that,
16 I didn't say that. And the way she corrected it was, she
17 said, The officers were telling her this stuff. They're
18 feeding it to her and it lands in her statement despite
19 the fact that it didn't happen, despite the fact that she
20 didn't say it. That is very telling.

21 Maria Jacques and Dustin James. Remember Dustin
22 James? Kind of stalk-like, walked up to the stand, not in
23 federal prison right now. How can you resolve what they
24 say with Mark Akmen? As a reminder, Dustin James is the
25 guy who says this conversation happens in the bathroom.

1 According to him, there is two other people in the
2 bathroom, and where are they?

3 Then he also says this is the ODC Club. So when
4 he goes out into the ODC Club, my client is mouthing off
5 to a group at the ODC, I shot two people, I'll kill
6 another, and Mark Akmen doesn't hear it?

7 When does Dustin James tell the police about
8 this, about the part about I left her in the woods? Does
9 he call somebody that night? No. He talks to the police
10 after they found Beverly. Surely he was shown the
11 pictures, surely he was told she was found in the woods.
12 That's when he gives his statement. Is it about the
13 goodness in his heart? No. It's because they've arrested
14 him for a burglary first. Remember? A serious crime.
15 Somehow he's not in prison now, though.

16 Let's talk about Mark Akmen for a second. He
17 doesn't even know Anthony Mann. He just knows he's the
18 guy he got in a fight with that night. He has absolutely
19 no reason to walk in this courtroom, take the stand and
20 lie to you. None. And he's the one who gets hit over the
21 head with a beer bottle that evening. He's the one who
22 tells you where the fight occurs, how the fight stops. If
23 Anthony Mann had made this outrageous statement at the
24 ODC, Mark Akman would have heard it. He tells you it did
25 not happen.

1 Maria Jacques and Dustin James come in here and
2 want you tell you it did? Nobody else from the ODC comes
3 in here to say that? It's ridiculous. It's ridiculous.

4 Dustin James being arrested for burglary first
5 wants to do something to help himself out. That's
6 certainly something we keep seeing. He wants to help
7 himself out. And the police keep feeding him facts. She
8 was found in the woods. Oh, Anthony Mann said that he
9 killed somebody and he put her in the woods. Can you just
10 imagine how the interviews go?

11 Krystal Lackey. Krystal Lackey came in here,
12 and I will give her this, she doesn't look like the rest
13 of them. But she takes the stand and tells us that all
14 the people that she was eating pizza with that night have
15 now been involved in a burglary, who actually had been
16 involved with burglary but are now facing the
17 consequences. And so that night when she's eating pizza
18 with Angel Lorenzo, Michael Brando, the father of her
19 child, David Stein, and Richie Meeks, that my client comes
20 in there and makes these crazy statements? Well, where is
21 Angel Lorenzo? Where is Michael Brando? Did you hear
22 from them? Where is David Stein and Richie Meeks? Do
23 those guys come in here and tell you they heard it?

24 And again, again, when does she tell the police?
25 When does she have that goodness in her heart? When her

1 stepdad calls and says they're looking to talk to you.
2 They're looking to talk to you. And she knows she and her
3 little pizza buddies have all been involved in some bad
4 stuff in Hanahan. She goes in there. Wonder what all
5 they told Krystal Lackey before she made her statement?

6 Tiffany Mercado, Star. She gives us a flavor of
7 how these girls were living. They were dancers. They
8 were living on the street. Remember Tiffany Mercado? She
9 goes to a party at Marcus Cheathom's house. She and
10 Anthony are dating then. Can you believe they're there?
11 And she stays. She stays there for awhile.

12 What she does tell us is, she tells us how
13 frantic Brownie was on January 7th. She tells us how
14 fed up Brownie was on January 7th.

15 And what about Anthony? He moves on from
16 Tiffany Mercardo to Kristy Bunch. You know that young
17 girl's feelings are hurt. She gets left at an apartment.

18 What else does Tiffany Mercado tell us that's
19 important? She tells us that she knew, as Eric Zack and
20 Mike Crumb had mentioned, that Brownie had plans to leave.
21 She had plans to go to New York. Why is that important?
22 Because when Tiffany tells you, I didn't hear from Brownie
23 after that, they all knew she was planning on leaving.
24 She was a young runaway who was going back to New York.

25 Terrance Hudson. I will tell you what is

1 important about what Terrance Hudson said. First of all,
2 he said, Anthony Mann didn't have on a knit hat when he
3 saw him. He tells us that he had on a black coat, but he
4 doesn't have on a knit hat. This knit hat stuff is crazy.
5 The only person who wears stuff on their hat is Brownie --
6 on their head is Brownie.

7 But who called him? Who called Terrance Hudson
8 over there? Peter Davies. Who threatened Crumb, Brownie,
9 the others? Peter Davies. Who threatened them with a
10 gun? Peter Davies. Who stole from Terrance Hudson?
11 Peter Davies. And who was Walker interested in? Peter
12 Davies.

13 Nicky O'Connell. I'll tell you what is
14 important about what she says, a couple of things. She
15 also gives us a flavor of the environment of all these
16 statements. Remember? She was living with who she calls
17 her parents, who are actually biologically her
18 grandparents. And the police come barrelling in there and
19 they don't tell them why they're taking her. And they put
20 her in a police car and they take her down to the police
21 station, and she's young at the time and they're feeding
22 her information about what had gone on.

23 And what does she tell us of significance? She
24 tells us this: That Anthony Mann asked her, asked :
25 Brownie, Do you have any regrets? He asks Brownie, Do you

1 have any regrets? What does that question tell us?

2 Brownie, do you regret shooting Tobias? Nicky O'Connell
3 tells us that was asked of Brownie.

4 And she tells us that she's met with the
5 Solicitor's office five times. Five times to come up here
6 and tell you about Anthony posing with the gun. But she
7 also tells you that Peter Davies comes over her house that
8 night with Anthony, with Brownie, and that Peter Davies
9 hops in the shower. Suspicious. Peter Davies hadn't done
10 anything. Why is he hopping in the shower?

11 Marvin Menier. Now you talk about seriously a
12 professional and persistent liar. Marvin Menier. He's
13 traveling the U.S. testifying against people. He's just
14 done his performance in West Virginia and they're bringing
15 him on down here.

16 Now, I want to make sure, because it's kind of
17 confusing, I want you to understand what Mr. Butler was
18 asking Mr. Menier about Robert Rodrigues.

19 Okay. All those names were up there, people who
20 he had said he was to skirt the law. Well, Robert
21 Rodrigues was the name that he was using until that one
22 was going to get him in trouble. Then oh, oh, oh, I'm not
23 Robert Rodrigues when they want to arrest him in West
24 Virginia. I'm not Robert Rodrigues. For seven months he
25 sits in the jail. I'm not Robert Rodrigues. So what

1 happens because of this persistent liar? Robert
2 Rodrigues, the real one, gets arrested for something
3 Marvin Menier did. The levels to which he is a liar is
4 great.

5 It took two days of federal hearings to figure
6 out that Marvin Menier was Robert Rodrigues when he was
7 distributing crack. Two days in a federal hearing.

8 Can you believe one word out of a man like that,
9 one word? And do you have any reason to believe that
10 Anthony Mann would have trusted that guy, would have told
11 him things? It is absurd.

12 But I tell you what you do have reason to
13 believe, that Marvin Menier was thinking of a way to scam,
14 scam it again. And so, if anything, he had heard about
15 the accusations against Anthony Mann, was trying to find
16 to way to work them. What was that expression that he
17 used? Get over on it. He's just trying to get over on
18 his own case.

19 And he came in here and he tried to tell you
20 what he says Anthony Mann said, it's absurd. He said that
21 Anthony said they went upstairs and downstairs. Wrong,
22 Marvin. Wrong, Marvin. There is no upstairs and
23 downstairs. Your imagination is getting a little ahead of
24 you.

25 Oh, they went to Danielle Batista's house that

1 night. Nobody went to Danielle Batista's house that
2 night. Wrong, Marvin, wrong.

3 And here's the little pearl. Anthony Mann said
4 they got their car detailed that night. Tell me where you
5 can get a car detailed at night. That is ridiculous.

6 I don't think he was quite prepared for his
7 performance. Remember he was kind of looking at his notes
8 trying to get it back in his head? His script wasn't here
9 yet. All he's doing is looking to get out under a
10 270-month sentence. I can see why he's being imaginative.
11 I can see why he wants to tour the country lying.

12 He doesn't tell anybody about this until he gets
13 to West Virginia and sees what is ahead of him. He
14 understands that, Oh, Robert Rodrigues wasn't a good name
15 to use.

16 And ask yourself this. This thing took place
17 back in January of 2002. How many roommates has Anthony
18 Mann had since then? And only Marvin Menier is going to
19 come in and tell you for some reason he is his confidant.
20 That's absurd.

21 Now, Detective Walker told us of his statement
22 with Anthony Mann. And as a reminder, Nicky had come in
23 and told them that Peter Davies and Anthony and Brownie
24 had been at her house. And you will have the benefit, if
25 you need to go back and listen to any testimony, you can't

1 remember, and I know you all are taking notes, but if you
2 can't remember the details of something, you just have to
3 ask to be able to listen to it again.

4 But as it relates to Anthony Mann's statement to
5 the police, he, just as Zack had done or will do, says
6 that he and Peter Davies went to Dante's.

7 Now, the police are always feeding what they
8 know. What did the police know at the point in which they
9 talked to Anthony Mann? That Peter Davies and Anthony and
10 Brownie were at Nicky's. So what shows up in the
11 statement? Peter Davies. And what does Mann do? Like
12 Zack does, he tries to keep the other people out. He
13 doesn't mention Eric Zack, he doesn't mention Michael
14 Crumb, but he did say Peter Davies.

15 But what is significant about his statement? He
16 says they're going to go help Brownie. He says that she
17 was grabbing the stuff from Tobias' house before he gets
18 there, that she was getting everything out of the safe.
19 It was open, the safe was open. Not what Michael Crumb
20 describes. And that if Tobias tries to make her do
21 anything before he gets there she will shoot him.

22 And you will recall that Detective Walker in
23 telling you about Mr. Mann's statement, Mr. Mann tells
24 him, gives him a description of what takes place in that
25 house. When we got there, Brownie met me at the door. I

1 walked in the house and Brownie told me, My stuff is over
2 there. I saw her bags sitting outside her room. I walked
3 over and picked her bags up. That's when the dude came in
4 from the kitchen and he asked, Brownie, where the F you
5 going? He used the word. I told him, She's going with
6 me. The dude said, No, the fuck she ain't. Tells you
7 about Tobias. I was like, watch. I told him, Try to stop
8 me.

9 Brownie was still in the living room. I was
10 standing in the doorway. I turned around to leave. I was
11 on the front porch. That's when the dude tried to grab
12 Brownie's bag out of my hand. We started wrestling and
13 fighting on the front porch. He boxed me in my face or
14 jaw. We were still fighting. I picked him up and threw
15 him on the floor. That's when Brownie ran up beside me
16 and told me to watch out. I moved to the side and Brownie
17 shot him in the back on the porch.

18 He went -- he was already on the ground trying
19 to get up when Brownie shot him. While we were fighting
20 the dude kept trying to grab a 357 he had in his waist,
21 but it fell out on the floor.

22 Tobias was armed. His holster had a gun.
23 Tobias would not let Brownie leave. And Brownie shot him.
24 She shot him after the fight.

25 Anthony Mann's statement is clear about why they

1 were helping Brownie out, and clear about what she does
2 before they get there. It's clear who shot Tobias and
3 where.

4 Now let's look at the forensic evidence. When
5 we say forensic evidence, we mean physical evidence..

6 The only physical evidence really in the case is
7 Brownie's body. There is no blood, there's no
8 fingerprints and fibers, no DNA, none of the guns that
9 were purportedly used. You've got the safe, the safe that
10 can't be opened with just a combination. Completely
11 reduces what Michael Crumb says.

12 And we have heard testimony about the variety of
13 searches that took place in the case. All the vehicles
14 that were searched, all the homes that were searched. And
15 isn't it interesting out of all of the vehicles and out of
16 all of the cars, there is ammunition in two places: Dante
17 Tobias' and Peter Davies'.

18 Let's talk about Brownie's body. There's no
19 question that there was semen in her mouth, her vaginal
20 area and her rectal area. People who arrived at the scene
21 and they see the pants unzipped and they see the panties
22 rolled up believe there is a possible sexual assault. She
23 had had sex out at that scene. She could have been
24 assaulted out at that scene. That is why the stuff is
25 found in her at the scene.

1 Her clothes aren't wet. And all the people that
2 have testified about seeing her, the first officer who
3 arrived, the Presnells, Sergeant Presnell and Dr.
4 Presnell, Coroner Wooten. They're all there. You'll see
5 in the videotape, they're touching her. Her clothes
6 aren't wet. Her clothes aren't wet. But the ground under
7 her is wet.

8 You'll see in the photographs that when they
9 move her body, you'll see the wetness underneath her.
10 It's wet underneath her body. The ground is wet when she
11 was put on it but she's still dry.

12 And the evidence, the climatological evidence
13 then said it had been raining the day before, that evening
14 earlier. And I think the statement applies to minimize
15 all of the things that coroners, law enforcement officers
16 and pathologists usually look at to try to figure out how
17 long a body has been dead.

18 There's no odor. Remember that first officer?
19 He said that's the first thing that struck him, there was
20 no odor. No decomposition. No skin slipping, no
21 marbling, and she was rigid. No animal activity. You've
22 heard this area described. A wooded area. No animal
23 activity.

24 And the fly eggs in her eyes are at the very
25 beginning stage. No green abdomen, no leaking body.

1 fluids. Those are the things that every other day of the
2 week they look at in trying to decide how long has the
3 body been out there. How long has the body been dead?

4 Now, the Solicitor's office asked Dr. Presnell
5 about this washer woman. It's interesting to me, if you
6 recall, Dr. Presnell described it as the skin looking like
7 skin looks after it's been in water too long. After too
8 long of a hot bath or a Band-Aid had gotten moist or
9 washing your hands for too long. Washer woman.

10 The only place it is, however, on the whole body
11 is the sock area. If she's laying against the ground that
12 is that wet, that is that wet, the socks are going to take
13 up that moisture. Nothing else on her body suggests that
14 she's been exposed to water, just her sock area.

15 And again when you're looking at that video,
16 please remember that it is noted, that's a fresh bag of
17 pot when they get it out of her pocket.

18 And remember, she's homeless, she's been living
19 in the streets. We don't know what happened to Brownie.
20 We don't know.

21 Anthony Mann tells you in her statement that he
22 takes her to Planter's Crossing apartments. He drops her
23 off there. What happened to Beverly Blake after that, I
24 don't know. But as the Solicitor's evidence presented,
25 was presented, lots of people had a hard time keeping

1 track of Brownie. She was a runaway. She lived a tragic
2 life. But efforts to find her were difficult because
3 she'd run away from one place and then she's another
4 place, et cetera.

5 I don't know what happened to Beverly Blake
6 after she was dropped off at Planter's Crossing. But when
7 you're considering the fact that there's semen in her
8 mouth and semen in her vaginal area and rectal area, can
9 you believe that it would still be there back from the
10 7th if that's what the State is going to argue?

11 I mean, the State is probably going to suggest
12 to you, oh, Dante must have done this to her and that's
13 why she wanted to get out. But semen is still going to be
14 present in her mouth on the 13th?

15 Don't you think if semen could have still been
16 around, Dr. Presnell would have told us?

17 And the stipulation is about all the things they
18 checked, and one of the things they checked were her
19 panties. And this is very indelicate, but if she had been
20 walking around after she had had sex, wouldn't semen have
21 be in her panties? There's no semen in her panties, but
22 it's in her mouth, it's in her vaginal area and it's in
23 her rectal area.

24 And Dr. Presnell -- I'm sorry, Rae Wooten, the
25 coroner, described for us how when you moved her body

1 there was like a steam that came out. And the way that
2 Ms. Wooten explains that to us is there is a temperature
3 difference. Either the body is warmer than the ground or
4 the ground is warmer than the body.

5 Well, ladies and gentlemen, it had been cold,
6 and a warm body is on the ground, you see steam. That
7 body hadn't been out there since January 7th.

8 And there was a description of blood on her
9 face. The blood on her face was dried, it hadn't been
10 smeared in the rain, wetness didn't disturb it.

11 David Barnes, let's examine what he told you.
12 He told you he'd gone on his first air flight, told you he
13 came into town to hang out with his buddy, Mr. Elsworth.
14 He told you a little bit about four-wheeling or
15 four-by-fouring, whatever. It is fun to do when it's wet
16 and there are mud puddles, et cetera. He told you that
17 the night before it was so wet that they got stuck.
18 That's a lot of moisture on the ground. That's a lot of
19 moisture if those two guys got stuck the night before.

20 And he told you that the appearance back in that
21 area made him feel like somebody had just come through.
22 This is a man's man. He tells you that the bark is peeled
23 off and it's still yellow behind, it's not gray.

24 He tells you that the vehicle that had been in
25 there was wider than the vehicle he was in, and he told

1 you he was in a Blazer. Well, Danielle Batista's car
2 certainly isn't wide. That's because Anthony Mann didn't
3 go to Lincolnville. That is because Anthony Mann did not
4 kill Beverly Blake.

5 Oh, and remember Paula Stone, Danielle Batista's
6 mother came in. And what did she tell you? There was no
7 scratches on Danielle's vehicle. You heard about how that
8 path is back there and David Barnes told you things were
9 scratching against you as you drove through it. There are
10 no scratches on Danielle Batista's car. There are no
11 scratches on the car, because the car didn't go back
12 there.

13 Was it muddy? No. It was dusty she said.

14 Now, I noticed that both Sergeant Presnell and
15 Dr. Presnell used the term "canopy" for the way the trees
16 were back there. And I guess the State is suggesting that
17 the reason the body was so well preserved is because there
18 was a canopy. But David Barnes told you, yeah, there are
19 limbs up there, but it was January and the leaves were on
20 the ground. And you can look at the photographs that were
21 taken a year and a month later, which would have been
22 February of this year, just to show you in the daylight
23 hours what that spot looked like.

24 And looking a little more to Dr. Presnell and
25 her conclusions about time of death, basically what she

1 really bottom line tells you is, she can't tell you.
2 That's what she tells you, that she can't tell you. But
3 she did say her gut instinct initially was that body
4 hasn't been dead long. And she does tell you she was well
5 aware of the media coverage about the little girl and the
6 criticism of law enforcement. Don't you think Dr.
7 Presnell had a little heat about you've got to make it
8 January 7th, you've got to make it January 7th?

9 What did she tell you about rigor? I used to
10 always call it rigor. Rigor. She says that that is a
11 process, and you all remember what you do because I'm not
12 totally confident I've got this correct, but as I
13 understand it, it starts setting in a couple of hours
14 after death, and then it stays hard for 12 hours, and then
15 the next 12 hours it's dissipating, it's lessening.

16 Well, when you saw the videotape you saw how
17 stiff Beverly Blake's body was. When they turned that
18 body over, it stayed in the same position it was before
19 they turned it over. And unpleasantly you see Ms. Wooten
20 break the rigor. And Dr. Presnell told you once it's
21 broken, it begins dissipating more. So the rigor is
22 consistent with that body not being dead long.

23 And the lividity. She also told us that it's
24 gets fixed at 12 hours. Well, where does that get us?
25 That sure doesn't get us back to January 7th. Not if it

1 gets fixed in 12 hours.

2 All these things support a shorter time of
3 death: The rigor, the lividity, the complete lack of
4 decomposition, the animal activity, the insect activity
5 and her clothes.

6 The police were trying to get it to fit their
7 fact: Come on, couldn't she have been dead longer? And
8 so they do the potassium fluid out of the eye, the
9 vitreous fluid to see what is the potassium level. That
10 is a bizarre situation of how all that happened with Dr.
11 Russell. They take it, they send it to him, he refuses to
12 test it. They say we need you to test it, he refuses to
13 test it. He has to get subpoenaed to test it. Then he
14 sends the results back to her. I don't know what that
15 delay could have done to the results, his delay in
16 testing.

17 But finally she gets it back and she plugs it
18 into a formula. Even when she plugged it into the formula
19 she chooses, it still doesn't get you back to the 7th.
20 Still doesn't get you back to the 7th. But she chose the
21 formula that made it the longest time away.

22 But remember she really wasn't confident about
23 what she was doing. She was sending e-mails out to her
24 contemporaries. She didn't feel comfortable with the
25 results.

1 And what did we learn about these formulas? We
2 learned that each time they improve it, each time they
3 improve the formula, it lessens the days that the body
4 could have been dead. Do you recall that? She was asked
5 because remember there was an old formula and they made it
6 longer. She chooses this formula, that makes it shorter.
7 And then I, on cross-examination, asked her to use the
8 newest formula, the newest formula in the literature that
9 she trusts, and what did that give us? 3.88 days. So
10 with the newest technical formula the time of death is
11 lessened more greatly. 3.8 days.

12 Beverly Blake was not dead on January 7th.

13 Why is the time of death so important? Because
14 the State says she was killed on January 7th. And if
15 Brownie is not dead on January 7th, they have absolutely
16 nothing about Brownie's death, nothing. Nothing to link
17 my client, Anthony Mann, to the death of Brownie.
18 Nothing. It's a desperate attempt to get it back there,
19 back to the 7th.

20 So you maybe ask yourself, nobody heard from
21 Brownie since the 7th. Where was she if she was still
22 alive? You recall my asking Detective Walker, Ervin
23 Frasier, and James Wolf said somebody had heard from her.
24 But she's homeless, clothes are in a bag, she's headed to
25 New York. She's got a beeper without a battery, that

1 comes out through the crime scene videotape.

2 She's laying low. She's killed a man.

3 We don't know what happened to Beverly Blake
4 after she gets dropped off at Planter's Crossing. If you
5 recall my opening, I had said, Scrutinize Peter Davies.
6 They didn't call Peter Davies.

7 Where is the gun? Where is the guy who was with
8 Anthony Mann over at Nicky O'Connell's? Where is the guy
9 who with that evil-looking gun threatened to kill the rest
10 of them? Where is Peter Davies?

11 Peter Davies is the man Walker was interested
12 in; Peter Davies, the man Walker had dealt with before.

13 Ladies and gentlemen, Anthony Mann is not guilty
14 of murder. He is not guilty of murder. He is not guilty
15 of armed robbery.

16 You've got people who are mad, people who are
17 scared, and people who are trying to help themselves,
18 wanting you believe differently. But it's not true.

19 Thank you.

20 THE COURT: Solicitor.

21 MS. WILSON: May we approach?

22 (A bench conference was held with the judge and
23 attorneys in the presence of the jury but out of the
24 hearing of the jury.)

25 THE COURT: Ladies and gentlemen, I'm going to

1 give you a short break, then we'll hear the next argument.

2 Do not discuss this case in any way. Thank you
3 very much.

4 If everyone will please remain in their seats
5 while the jury is coming in and out. Thank you.

6 (The jury left open court at approximately 11:10
7 a.m.)

8 THE COURT: We'll go ahead and take the break
9 you requested.

10 MS. WILSON: Thank you, your Honor.

11 THE COURT: We're ready to proceed. Bring the
12 jury in.

13 (The jury came into open court at approximately
14 11:33 a.m.)

15 THE BAILIFF: All jurors are present, your
16 Honor.

17 THE COURT: Ladies and gentlemen, we're ready to
18 continue with the closing statements. I understand that
19 the bailiffs have got your drink orders, so we'll get
20 those to you as soon as we can.

21 Go ahead, please.

22 MS. WILSON: May it please the Court.

23 THE COURT: Yes, ma'am.

24 MS. WILSON: Ms. Shealy says what you have are
25 people who angry, people who are mad, people who are

1 upset, people who were scared. You'd better believe it.
2 That's exactly what you saw, exactly what you saw from
3 that witness stand.

4 You know what else you have? We've got 12
5 people who are deciding this case. Twelve people with
6 common sense, 12 people with life experience to know how
7 to look at that anger, who know how to look at that fear,
8 who know how to look beyond the drug haze that surrounds
9 this case. That's what you're here for.

10 You've heard a lot of speculation from
11 Ms. Shealy about Beverly Blake. You've heard a lot of
12 speculation about Beverly Blake from the witness stand.
13 Beverly Blake has been tried and she's been convicted and
14 she has been executed. She's not here to defend herself.
15 And but for Anthony Mann, she could be sitting right at
16 that table, because she, on January, 7th, 2002, was his
17 partner. His partner.

18 You need to think about that when you look at
19 this evidence and when you hear the law. Because the law
20 is going to be important in this case, especially with
21 regards to January 7th. And I'm going to go through
22 some of the law and I'm going to go through some of the
23 facts, but one bell I want to un-ring right now is when
24 Ms. Shealy talked to you about the State needing evidence
25 to fit that Brownie died on the 7th: They have to show

1 that she died on the 7th; they don't have a case; they
2 have to show it. Who says she died on the 7th? Who says
3 Brownie died on the 7th? I will tell you who. Anthony
4 Mann says Brownie died on the 7th, that's who. Anthony
5 Mann tells Mervin Menier she died after the robbery. And
6 then Anthony Mann's lawyer, Ashley Pennington, along with
7 Lieutenant Brock go to Dr. Presnell and say, Look at the
8 postmortem interval again.

9 You think about that.

10 I don't know when she died, I wasn't there. I
11 know what he says, and we've presented that to you.

12 The judge is going to instruct you in depth on
13 the law. You're going to hear some charges or
14 instructions about whether or not larceny fits.

15 Larceny. Does this sound like a larceny?
16 Ms. Shealy didn't even argue with you it was a larceny.

17 The most important concept of the law, I'm not
18 going to go through each charge. You know what murder is,
19 and the judge is going to give you a legal definition of
20 murder. You know what armed robbery is, but he's going to
21 give you a legal definition. But one thing that you have
22 got to understand when you start your deliberations is is
23 that the hand of one is the hand of all. And that is very
24 important because of Anthony Mann's statement in front of
25 you. What's also important is using your common sense in

1 picking through his statement.

2 Under the law, ladies and gentlemen, as I said,
3 the hand of one is the hand of all. If a crime committed
4 by two or more persons, Beverly Blake and Anthony Mann,
5 who are acting together in the commission of that offense,
6 the act of one is the act of all. This is true if there
7 are two people or more than two people involved in the
8 act.

9 Eric Zack, Michael Crumb pleading guilty. The
10 hand of one is the hand of all.

11 If two or more people are acting together
12 assisting each other in the commission of an event, armed
13 robbery, the law says that the act of one is the act of
14 all. The hand of one is the hand of all. Remember that
15 when looking at his statement when he talks about his
16 partner, Brownie. Remember that when he talked to all his
17 little thug friends, his bevy of women, about what he was
18 doing that night, going to help Brownie. Brownie had had
19 it.

20 Forget about Eric Zack and Michael Crumb, what
21 does he say in his statement? I'm not interested, I
22 didn't really want to help her until I hear about the weed
23 and coke in the safe. Oh, then he's interested, and then
24 he's going to get a gun. You don't need a gun for a
25 larceny, you need a gun for an armed robbery. Test fired

1 the gun, made sure it worked. Think about that when you
2 review his statement.

3 I'm going to go through some of the witnesses,
4 but before I do that, I want to talk with you a little bit
5 about law enforcement and about the allegation that
6 Ms. Shealy couldn't look at you to make, but she could
7 certainly lay it out there and hoped that you picked it
8 up.

9 She very subtly referred to the Presnells,
10 crime scene investigator Sergeant Ricky Presnell, the
11 forensic pathologist Dr. Erin Presnell. The Presnells as
12 she called them. Aren't they feeling all this heat, all
13 these heat to change the postmortem interval? Think about
14 that. Think about that inference and implication when you
15 think about credibility.

16 Here is the one newspaper article that they
17 brought you about what was going on at the time. All this
18 heat and criticism was going on that was making these
19 people scurry around. Don't you think that would have
20 been an exhibit instead of this one just saying the girl
21 was missing, showing her picture? All this heat.

22 And think about whether or not Detective Walker
23 in law enforcement for years; Sergeant Presnell in law
24 enforcement for years; Deputy Coroner Rae Wooten, who has
25 been doing this for years; Erin Presnell, the forensic

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1 have fit a lot more tightly than it did? We're trying to
2 make their stories fit.

3 The witnesses remember what they remember. It's
4 been two years almost. They were living a rough life.

5 Michael Crumb was in the middle of an armed
6 robbery with a gun pointed to back of another's head. You
7 think about that when you think about what he could
8 remember and what he couldn't. Is it because he's lying?
9 Or is it because of time? Is it because of the same
10 reason that every fight I ever had with my sister I said
11 she hit me first? And I believed that. I believed she
12 hit me first. As an adult I know that probably that
13 wasn't true, that sometimes I probably did start it, but
14 that's what I remember.

15 The same thing with the Derringer. Eric Zack,
16 he gave me -- he gave Crumb the Derringer. Crumb, he gave
17 Eric Zack the Derringer. Well, they both admit they got
18 the Derringer. Michael Crumb admits he gave it to his
19 cousin. They're arguing who got it. Maybe in the trauma
20 of realizing, Hello, I was supposed to be getting
21 cigarettes and going in the army and now somebody's been
22 shot in the leg, they think, because that's what Anthony
23 Mann tells them, shot in the leg.

24 Let's talk a little more about Crumb and Zack.
25 The judge will instruct you that credibility is yours.

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1 It's all yours. You are the sole judge of the credibility
2 of these witnesses. You get to believe some, you get to
3 believe all, you get to believe none. It's totally up to
4 you. And I'm not going to stand before you and tell you
5 that any of our witnesses were able to give you a
6 100 percent accurate account of what happened. Why not?
7 Because they're human. Why not? Because they're young.
8 Why not? Because they're traumatized. That's what your
9 common sense is for. And we just ask that you use it.
10 Because your common sense, ladies and gentlemen, one
11 direction, and that is to Anthony Mann.

12 Think again as I said earlier, look at what
13 doesn't fit in their statements. If Robert Walker is so
14 corrupt, don't you think he's going to make it all fit?

15 You know, there was all this conversation about
16 us making this knit cap fit when Anthony Mann tells you
17 what Brownie had on. He tells you in his statement. What
18 was Brownie wearing? Blue jeans and a gray hooded
19 sweatshirt. He doesn't say anything about a knit cap. He
20 doesn't say anything about a knit cap. Think about that
21 and look at what they don't tell you.

22 What would be so easy is they're just trying so
23 hard to make us happy. What do they not tell you? They
24 don't come in here and try to tell you that Anthony Mann
25 confessed to Brownie. They don't try to tell you that,

1 even though as you would see from the telephone call
2 chronology that shows who called whom, when, you have the
3 records that correspond with this chronology, that after
4 Dante Tobias was shot, they are paging him left and right,
5 they are talking to him. They're going to try to make us
6 so happy. It would be right here if he confessed. He
7 didn't do that. They didn't do that because he didn't
8 confess to them. And I think that is a prime example of
9 showing you why you could know that they're telling the
10 truth. You can know they're telling truth because when
11 they had that golden opportunity to give us that, they
12 didn't do it. They didn't do it.

13 And when they were first arrested, they both
14 said, Anthony Mann killed Dante Tobias, both of them. And
15 when they both got the protection of the proffer, which
16 remember is not immunity, the proffer letter and the plea
17 agreement says what you say won't be used against you.
18 Doesn't say, we aren't going to use other evidence against
19 you. It says what you say can't be used against you. And
20 what does both of them seize that opportunity for?

21 Let me go back, let me go back.

22 Mr. Zack says, I didn't tell you the truth about
23 Peter Davies. It was my buddy, Michael Crumb. Didn't
24 want to tell you about Michael Crumb because he really --
25 he didn't mean to be there. He wanted cigarettes and to