

1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

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6 On Behalf of the Defendant:

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8 Public Defender
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10 and

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14
15 (January 3, 1996. Proceedings in open court.)

16 (10:00 a.m.)

17

18 (Whereupon an in camera proceeding ensued
19 as follows.)

20

21 (Court reviews a document.)

22 THE COURT: All right. For the
23 record, the last paragraph is an
24 authorization by the defendant.

25 MR. THOMPSON: Yes, sir.

1 THE COURT: Authorizing you to --

2 MR. BOWEN: Object.

3 MR. THOMPSON: Object.

4 THE COURT: Listen to me, folks,
5 I'm not going to reveal anything specific.
6 Authorizing you to make the statements
7 and/or concessions as set out in your
8 memorandum.

9 MR. THOMPSON: Yes, sir.

10 MR. BOWEN: Yes, sir.

11 THE COURT: That's all I was
12 going to say. All right.

13 Mr. Green, you have reviewed this
14 written document, sir?

15 MR. GREEN: Yes, sir.

16 THE COURT: For the record, let
17 me hand it to you at this time, ask you
18 again to determine whether or not that is
19 the same document that you reviewed on
20 today's date.

21 MR. GREEN: Yes, sir.

22 THE COURT: It is the document
23 that you signed on today's date?

24 MR. GREEN: Yes, sir.

25 THE COURT: Also the document

1 that was initially presented to you
2 sometime in November of 1995?

3 MR. GREEN: Yes, sir, it is.

4 THE COURT: Except for the
5 changes as noted on the document as it
6 appears now, it is in the same condition as
7 it was in November of 1995?

8 MR. GREEN: Yes, sir.

9 THE COURT: Those changes have
10 been initialed by you?

11 MR. GREEN: Yes, sir.

12 THE COURT: And that initialing
13 was done today?

14 MR. GREEN: Yes, sir.

15 THE COURT: Folks, for the
16 record, I'm going to direct that this be
17 made a part of the record in this case.

18 MR. BRITT: May I ask if each
19 page of the document will be initialed by
20 counsel and by the defendant?

21 THE COURT: His initials appear
22 on each page with the exception of the last
23 page where his signature appears.

24 MR. BRITT: Where his signature
25 appears, okay.

1 THE COURT: But there is not an
2 initialing of the page. His initials
3 simply appear on each page. It is, for the
4 record, a one, two, three, four page
5 document.

6 Mr. Green, do you concur with that?

7 MR. GREEN: Yes, I trust you.

8 THE COURT: Count them for the
9 record, if you will please, sir.

10 MR. GREEN: Yes, sir.

11 THE COURT: And his initials
12 appear on the first three pages and
13 signature appears on the fourth page.
14 Anything further?

15 MR. BRITT: No, sir.

16 THE COURT: That concludes our
17 matters with regard to the in camera
18 proceeding. But since we've got this time,
19 the Court has been provided with
20 information regarding the computer
21 integrated courtroom.

22 MR. THOMPSON: Your Honor, how
23 will that be marked as --

24 THE COURT: I'm going to have it
25 sealed, placed in the record pending

1 appellate review, pending further order of
2 the Court.

3 MR. THOMPSON: Date and
4 everything on it?

5 THE COURT: Yes.

6 Okay. I think the pertinent part as
7 relates to the information sheet, what's
8 helpful and useful for the court reporters,
9 obviously, which is true in any case, cross
10 talking, talking too fast, or not talking
11 clearly makes their job considerably
12 harder. So to the extent that we can, we
13 need to be mindful of their duty and
14 responsibility. Okay?

15 Any other matters, folks? As a matter
16 of fact, Mr. Thompson, I'm placing on here
17 right now today's date. It's going to be
18 sealed and made part of the record. And
19 I'm also initialing it myself. Any other
20 matters?

21 MR. THOMPSON: That's it.

22 THE COURT: Ready to go, folks?
23 Let's go try the case.

24 (End of in camera proceeding.)

25

1 THE COURT: Good morning, folks.

2 Let the record reflect all counsel are
3 present, the defendant is present in open
4 court. What is our status in regard to our
5 jurors?

6 Before we bring the jury in, the Court
7 directs that the manila envelope now in my
8 hand be made a part of the record in this
9 case, be sealed pending further order of
10 the Court or appellate review. Are there
11 any matters for counsel for the State
12 before we go forward?

13 MR. BRITT: No, sir.

14 THE COURT: Any matters for the
15 Defendant before we go forward?

16 MR. BOWEN: No, sir.

17 THE COURT: Folks, it's my intent
18 at this time to ask that the jurors be
19 brought in. If you'll have them line up in
20 two rows. We'll call out the names of the
21 individual jurors by names and seat number
22 please.

23 If we can form two rows, please,
24 folks.

25 Good morning ladies and gentlemen of

1 the jury. Ladies and gentlemen of the
2 jury, at this time we're going to call you
3 out by name and seat number, and if you
4 will take the seats as indicated by Ms.
5 Gaines when you hear your name called,
6 please. Ms. Gaines.

7 (JURY ROLL CALL.)

8 THE COURT: Thank you, ma'am.

9 Once again, ladies and gentlemen of
10 the jury, good morning to you. Mr. Kotai,
11 you appear be having some difficulty with
12 your seat. Is that a problem, sir? Is
13 that chair leaning back too far? We'll do
14 the best we can to correct that situation.

15 Ma'am, at this time if you will please
16 empanel the jury.

17 THE CLERK: Ladies and gentlemen
18 of the jury, you have been sworn and are
19 now being empaneled to try the State of
20 North Carolina versus Daniel Andre Green,
21 also known as As-Saddiq Al-Amin Sallam
22 U'Allah as the defendant. Sit together,
23 hear the evidence, and render your verdict
24 accordingly.

25 THE COURT: Thank you, ma'am.

1 Members of the jury, you have been selected
2 and now empaneled to serve as jurors in
3 this case, and I would like to take this
4 opportunity to explain to you the manner in
5 which we will proceed as we attempt
6 together to find the truth in this case.

7 First, the lawyers will have an
8 opportunity to make opening statements.
9 Folks, I instruct you that the purpose of
10 opening statement is narrow in limit.
11 Opening statement gives counsel the
12 opportunity to provide a kind of road map
13 or forecast of what counsel contends the
14 competent and admissible evidence in the
15 case will be.

16 Now, I instruct you that an opening
17 statement is not evidence and must not be
18 considered by you as evidence. The
19 evidence in this case will come in the form
20 of the testimony of the witnesses; the
21 admissions of the parties, if any; the
22 stipulations of counsel, if any; or any
23 physical exhibits that may be offered and
24 received as evidence in this case.

25 Now, following the opening statements

1 evidence will be offered, and by that I
2 mean that witnesses will be called to the
3 witness stand, placed under oath and
4 questioned by the lawyers in this case.

5 Now, ladies and gentlemen of the jury,
6 it may be that documents or other
7 intangible exhibits are offered and
8 received as evidence in this case. If this
9 does occur, I instruct you that you should
10 examine any exhibit given to you
11 independently and carefully without any
12 comment at all.

13 Now, ladies and gentlemen of the jury,
14 it is not only the right, but it is also
15 the duty of an attorney to object when
16 testimony or other evidence is offered
17 which the attorney proffers is not
18 admissible; therefore, when the Court
19 sustains an objection to a question, you,
20 the members of the jury, must disregard the
21 question and the answer if one has been
22 given.

23 I further instruct you that you're not
24 to draw any inference from either the
25 question or the answer and you're not to

1 otherwise speculate as to what a witness
2 would have said if permitted to answer.

3 Now, when the Court overrules an
4 objection to a question, you must not give
5 such question any more weight than if the
6 objection had not been made at all. If the
7 Court grants a motion to strike all or part
8 of an answer to a question, you must
9 disregard and not consider the evidence
10 which has been stricken.

11 Now, also during the course of this
12 trial, it's likely that questions of law
13 will arise that need to be considered by
14 the Court out of the hearing and the
15 presence of the jury. If this does occur,
16 you shouldn't worry or speculate about what
17 takes place in the courtroom during your
18 absence. I instruct you that we will
19 merely be considering questions of law that
20 are required to be heard in the absence of
21 the jury.

22 And I further instruct you that all of
23 the competent and admissible evidence in
24 this case will be presented while you are
25 present in the courtroom.

1 Now, when the evidence is completed,
2 the lawyers will have an opportunity to
3 make their final statements or arguments to
4 you, and, again, I instruct you that the
5 final arguments of counsel are not evidence
6 but they are given to assist you in
7 evaluating the evidence that has been
8 presented during the course of this trial.

9 Finally, just before you are required
10 to consider your verdict in this matter, I
11 will give you further instruction on the
12 law which applies to this particular case.
13 And at that time I would declare and
14 explain the law arising on the evidence
15 presented, and then you will be taken to
16 the jury room to begin your deliberations
17 in this matter.

18 Now, as I have previously instructed
19 you, while you serve as jurors in this
20 case, each of you must obey the following
21 rules to the letter, which again I instruct
22 you you must not talk about the case among
23 yourselves. The only place this case may
24 be discussed by members of the jury is in
25 the jury room and then only after the Court

1 has specifically instructed the jury to
2 begin deliberations in this matter.

3 Second, you must not talk about the
4 case with anyone else, and that includes
5 members of your own families, or allow
6 anyone to say anything to you or in your
7 presence about this case. If anyone does
8 communicate with you about this matter or
9 attempts to do so or if anyone says
10 anything in your presence about this case,
11 it remains your duty to inform the Court of
12 that immediately, and again the means by
13 which you would do so would be to contact
14 one of the bailiffs assigned to this
15 courtroom and indicate to the bailiff there
16 is a matter that you want brought to our
17 attention. Please do not approach me
18 directly.

19 And third, I instruct you that while
20 you serve as a juror in this case, you are
21 not to form or express any opinion about
22 the guilt or the innocence of the defendant
23 or about any matter related to the issues
24 which are before us, until I have
25 specifically instructed the jury to begin

1 deliberations in this case.

2 Fourth, you must not talk with or
3 communicate with, directly or indirectly,
4 any of the attorneys, any of the parties,
5 any of the witnesses or prospective
6 witnesses involved in this matter.

7 Folks, again, this prohibits any type
8 of conversation at all. Even if such
9 conversation is merely to exchange
10 greetings or to pass the time of day. I'm
11 sure all of you can understand that the
12 mere fact that if someone on the jury is
13 seen talking with someone who has some
14 interest or involvement in the case gives
15 rise to a suspicion that something wrong is
16 occurring; therefore, I emphatically
17 instruct you that you're not to have any
18 contact or communication of any kind with
19 any of the attorneys, any of the parties,
20 any of the witnesses or prospective
21 witnesses involved in this matter.

22 And, fifth, I instruct you that you
23 must not read about this case in the
24 newspaper or listen to any radio broadcast
25 or watch any television accounts in

1 connection with this matter.

2 As I have previously instructed you,
3 the verdict of any case must be based
4 exclusively on evidence brought out in the
5 courtroom, under oath, and subject to
6 cross-examination.

7 Now, as to news accounts in
8 particular, again, I instruct you that such
9 matters as might be contained in any news
10 accounts might first of all be inaccurate
11 or may contain reference to matters which
12 are not proper for the consideration of the
13 jury. It is your responsibility to base
14 any verdict reached in this case only on
15 the evidence brought out in open court
16 under oath and subject to
17 cross-examination.

18 And finally I instruct you that you
19 must not go to any place or scene which is
20 a subject matter of these proceedings, and
21 you must not conduct any independent
22 inquiry or investigation or research of any
23 kind about this matter.

24 Now, folks, unless each of you obeys
25 each of these rules to the letter, neither

1 the State of North Carolina nor the
2 defendant in this case can be assured of
3 absolute fairness and impartiality. Both
4 the State as well as the defendant are
5 entitled to nothing less, and it remains
6 your duty while the trial is in progress or
7 while we might be at recess or while you
8 might be away from the courtroom to see to
9 it that each of you remains open-minded
10 about this matter until you have heard all
11 of the evidence in this case, until you've
12 heard the arguments of counsel and heard
13 the Court's instructions on the law. It is
14 also your duty to remain objective, fair
15 and impartial triers of the facts.

16 Mr. Britt, on behalf of the State,
17 will there be an opening statement?

18 MR. BRITT: Yes, sir.

19 THE COURT: You may proceed.

20 MR. BRITT: Thank you.

21 May it please the Court, counsel.
22 Good morning, ladies and gentlemen of the
23 jury. As Judge Weeks just told you, the
24 purpose of an opening statement is to give
25 you an outline or road map of the evidence

1 that the State will present to you to show
2 that on July the 23rd, 1993, Daniel Green
3 murdered James Jordan.

4 The evidence in this case will show
5 you that on July the 22nd, 1993 Mr. Jordan
6 left his home in the area of Charlotte,
7 North Carolina and went to Atkinson, North
8 Carolina, which is near Wilmington. He
9 went there for the purpose of attending the
10 funeral of his friend, Willie Kemp.

11 Upon arriving in the Wilmington area
12 on July the 22nd, Mr. Jordan went to the
13 home of longtime friend, Dorothy
14 Robinson. Ms. Robinson and Mr. Jordan
15 worked together at GE in Wilmington.
16 Together they went to Mr. Kemp's funeral in
17 Mr. Jordan's 1992 Lexus automobile.

18 After attending the funeral,
19 Mr. Jordan and Ms. Robinson returned to her
20 home where Mr. Jordan changed from the
21 clothes that he wore to the funeral into
22 more casual clothes, and then returned to
23 Ms. Kemp's house to visit with her and
24 offer the condolences in the death of her
25 husband.

1 After staying there for a period of
2 time, Mr. Jordan and Ms. Robinson then
3 returned to her home. Her husband had
4 returned from work and prepared dinner.

5 Mr. Jordan ate dinner with the
6 Robinsons. They talked and they visited.
7 Shortly before midnight on July the 23rd,
8 Mr. Jordan announced that he had to return
9 to Charlotte and that he was returning that
10 night. The Robinsons asked him to stay and
11 spend the night because of the late hour.
12 Mr. Jordan told them he had plans to be in
13 the Charlotte area the next morning to go
14 look at a piece of property with his son
15 Larry, and then after looking at the piece
16 of property he was scheduled to catch a
17 flight to Chicago, Illinois to attend a
18 benefit that his son Michael was involved
19 with on July the 24th.

20 Mr. Jordan left the Robinsons' home
21 shortly after midnight on the morning of
22 July the 23rd, 1993. His route was U.S.
23 Highway 74, the highway that runs east and
24 west across Robeson County.

25 Mr. Jordan had been drinking. The

1 evidence in this case will show you that at
2 the time of his death, Mr. Jordan's
3 blood-alcohol level was .084, that the
4 alcohol level in his kidney was 1.33, and
5 the blood-alcohol level in his liver
6 was .154. All three levels of alcohol
7 concentration exceed the legal limits for
8 impairment.

9 Mr. Jordan reached the intersection of
10 I-95 and U.S. 74 here in Robeson County.
11 The evidence will show Mr. Jordan pulled
12 over on the shoulder of the road along U.S.
13 74. Why? Because of the level of alcohol
14 in his system? Maybe. Why? Because he
15 was tired from the long day of travel from
16 Charlotte to Wilmington and then back to
17 Charlotte he pulled over to catch a nap, to
18 rest. The evidence will show that lurking
19 in the shadows along U.S. 74 were two
20 individuals. Those two individuals were
21 Larry Martin Demery and the defendant,
22 Daniel Green.

23 The evidence will show that prior to
24 Mr. Jordan arriving, that Larry Martin
25 Demery and Daniel Andre Green had planned,

1 conspired to commit an armed robbery on the
2 morning of July the 23rd, 1993. No
3 particular person, a random act of
4 violence. They planned to conduct it in
5 the hotel parking lot of the Quality Inn
6 located near the intersection of U.S. 74
7 and I-95.

8 The evidence will show that Larry
9 Martin Demery and Daniel Green went to that
10 location, they drove in a car that belonged
11 to Larry Demery, that near that location is
12 a canal and beside that canal is an access
13 road that leads into some woods.

14 The evidence will show that the two of
15 them parked the car in the wooded area near
16 the canal, they walked the distance from
17 where the car was parked to an abandoned
18 gas station beside the motel. The evidence
19 will show that there, they watched and they
20 lurked in the darkness to find an
21 unsuspecting victim in the motel parking
22 lot. They waited, they waited, and they
23 waited. They walked through the parking
24 lot looking for someone. They could not
25 find anyone in that parking lot.

1 The evidence will show as they walked
2 back along the service road that parallels
3 I-95, that in the distance they observed an
4 automobile on the shoulder of the road with
5 the parking lights on. There was
6 conversation between the two as to what
7 kind of car it was, was it an undercover
8 police car or was it simply someone that
9 pulled over on the side of the road.

10 They walked over in the area of the
11 car and they observed what's known as a
12 vanity license plate, a license plate that
13 bore the license plate number, the seal of
14 the State, of the University of North
15 Carolina, Chapel Hill, and the number
16 0023. The evidence in this case will show
17 that that license plate was issued by the
18 North Carolina Department of Motor Vehicles
19 to James Jordan. Number 23 was his son's
20 number when he played basketball at North
21 Carolina.

22 The evidence in this case will show as
23 they approached the vehicle, they again had
24 conversation about who it was that may be
25 in the car. Was it a college student who

1 simply was on the way home? Who exactly
2 was it? As they approached to car, they
3 noticed that the passenger window of the
4 car was down. They looked inside. It was
5 one person. That one person was reclined
6 back in the driver's seat asleep.

7 They stepped away from the car. They
8 talked about what they would do with that
9 car. They crossed over U.S. 74 to talk
10 about their plan. They reapproached the
11 car and noticed that the person was still
12 asleep, a black man, middle aged. They
13 talked about taking the car, taking the
14 driver of the car, tying him up, putting
15 him out beside the road where someone could
16 come along and pick him up.

17 As they walked back to the car, a
18 vehicle was coming down U.S. 74. Afraid
19 that they might be seen, they ran and hid.
20 But they again talked about taking the car
21 and taking the driver and tying him up.

22 After the vehicle passed along 74, the
23 evidence will show they again approached
24 the vehicle; and as they approached the
25 vehicle again, another car came. They ran

1 and hid behind the sign along the roadway.
2 There, they encouraged each other, they
3 pumped each other up, let's get this car
4 and let's get this over with. The evidence
5 is going to show that Daniel Green had in
6 his possession at that time a .38 caliber
7 revolver.

8 As they left the sign to walk back to
9 the car, Daniel Green pulled the gun out of
10 his pants. The evidence will show as they
11 approached the car, they again pumped each
12 other up, let's do this. And as they
13 approached the car, they looked in and the
14 driver of that vehicle was still asleep.

15 The evidence will show Daniel Green,
16 with Larry Demery standing beside him,
17 pointed the gun inside the car. The driver
18 of the car started to wake up, made some
19 statements, and the evidence will show that
20 on July the 23rd, 1993, Daniel Green pulled
21 the trigger of that .38 caliber revolver
22 and shot the driver of that car one time.

23 The evidence, as it was deduced
24 through the autopsy, will show that the
25 driver of that vehicle was shot one time in

1 the right side of his chest, that that .38
2 bullet crossed his chest, penetrated his
3 lung, and remained in the body.

4 The evidence will show that after
5 Daniel Green shot the driver of that
6 vehicle, that he then moved the body from
7 the driver's side over to the passenger
8 side. Larry Demery ran back to the car
9 that was parked along the canal bank, and
10 they had agreed to meet at the mobile home
11 lot where Daniel Green lived.

12 The evidence will show that at the
13 time in question, Daniel Green lived in
14 Bob's Landing Mobile Home Park, located off
15 the Back Swamp Road here in Robeson County,
16 approximately three miles from the very
17 site that the murder was committed.

18 The evidence will show that Larry
19 Demery arrived at the mobile home, parked
20 his car, and then went to the bridge that
21 crosses the Back Swamp canal and waited for
22 Daniel Green to bring the car to that
23 point.

24 The evidence will show that Daniel
25 Green drove the car along the canal access

1 road beside the Back Swamp canal, and upon
2 arriving at that bridge, Larry Demery got
3 into the car with him, they drove back Back
4 Swamp Road to U.S. 301. They turned right
5 on U.S. 301 and proceeded to go south
6 toward the town of Rowland.

7 On their way toward the town of
8 Rowland, they pulled over and pulled off of
9 the main highway onto a loop road, a dirt
10 road. They pulled into a cornfield and
11 stopped, and they started going through the
12 personal items of the individual who was
13 driving that car. They started going
14 through the glove compartment.

15 The evidence will show that there in
16 that cornfield, Daniel Green removed the
17 wallet of the driver and removed the
18 driver's license. And upon removing the
19 driver's license and reading it, he told
20 Larry Demery, I believe we've killed
21 Michael Jordan's daddy. That North
22 Carolina driver's license showed the driver
23 of that car to be one James R. Jordan of
24 Charlotte, North Carolina.

25 They conversed about whether or not it

1 really was Michael Jordan's father. They
2 continued to go through the items there in
3 the car, and they decided they needed to do
4 something with the body.

5 The evidence will show that they then
6 traveled from that cornfield just outside
7 of the town of Rowland to the wastewater
8 treatment plant in the town of Rowland
9 where they intended to throw the body into
10 one of the vats, hoping that it would never
11 be discovered, hoping that the chemicals in
12 that vat would eat the skin and conceal the
13 identity of that body.

14 The evidence will show that when they
15 arrived there, the gates were locked. They
16 could not get in. They then formulated
17 into plan as to where they could dispose of
18 the body.

19 The evidence will show that Larry
20 Demery was familiar with the bridge in
21 Scotland County along the Scotland County/
22 Marlboro County, South Carolina line.
23 Larry Demery's girlfriend's father had
24 worked for Crestline Mobile Homes at a
25 plant located in Scotland County. Pea

1 Bridge Road runs from Crestline Mobile Home
2 plant into South Carolina. Pea Bridge Road
3 crosses over what is called the Gum Swamp.

4 The evidence will show that the Gum
5 Swamp on Pea Bridge Road is a very remote
6 area, that there is a trailer in North
7 Carolina where a lady by the name of Ida
8 Chavis lives, and that there was a
9 nightclub there along that stretch of
10 road. But there is no other houses, no
11 other businesses in that area.

12 The evidence will show that Larry
13 Demery, because he was familiar with that
14 area, suggested and then drove that 1992
15 Lexus automobile to Pea Bridge Road in the
16 Gum Swamp along the North Carolina-South
17 Carolina road line. The evidence will show
18 that the defendant and Larry Demery removed
19 the body from the car and dropped that body
20 into the waters of the Gum Swamp July the
21 23rd.

22 On July the 23rd, James Jordan did not
23 make his scheduled flight to Chicago. The
24 evidence will show that there was no
25 concern that Mr. Jordan did not arrive in

1 Chicago as planned.

2 On August the 3rd, 1993, Hal Locklear,
3 who lives in Scotland County, decided to go
4 fishing that afternoon. Mr. Locklear went
5 to the Pea Bridge Road Gum Swamp area along
6 the North Carolina-South Carolina line. He
7 left the area of the road and walked
8 approximately 200, 300 yards along a path
9 into the woods that joined the swamp, and
10 upon going to his fishing hole, he saw
11 something that he had never seen before.

12 His first reaction was that there was
13 a manikin, a dummy, stretched across some
14 limbs above the water of the Gum Swamp.
15 And as he looked and looked closer, he
16 realized it wasn't a manikin or a dummy,
17 but he realized that it was the body of a
18 dead man. He left the area of the fishing
19 hole, went to Ida Chavis's trailer, asked
20 her to call the Scotland County Sheriff's
21 Department. That call was made. Scotland
22 County dispatched a deputy to the
23 location. 911 in Scotland County
24 dispatched Emergency Services to the
25 location.

1 When officials from Scotland County
2 arrived at the scene, they determined that
3 the body was in South Carolina and not in
4 North Carolina. They then contacted
5 officials from Marlboro County, South
6 Carolina, the Sheriff's Department, rescue
7 squad, and the coroner.

8 The deputy who arrived walked down the
9 path that Hal Locklear had taken.
10 Emergency personnel from Scotland County
11 walked down the path that Hal Locklear had
12 taken, and they, too, saw stretched out
13 over the water on limbs of a tree the body
14 of a dead man.

15 Rescue personnel from Marlboro County,
16 South Carolina, after being authorized by
17 the coroner, removed the body from the tree
18 limbs. But first they checked the body for
19 any identification. There was none to be
20 found. The body was bloated. The pigment
21 of the individual's skin was faded. They
22 did not know if it was a black man, a white
23 man or an Indian man. Maggots had infested
24 the body where the skin had started to
25 split after being in the water for so

1 long. Maggots had infested a penetrating
2 wound that was found in the chest.

3 The body that was found had on gray
4 slacks, had on a white knit shirt with
5 burgundy and black stripes across a portion
6 of it. The evidence will show those are
7 the very same clothes that James Jordan was
8 wearing on July the 22nd when Dorothy
9 Robinson took photographs of him in
10 Wilmington, North Carolina.

11 The body was removed from the swamp.
12 The body was then taken to South Carolina,
13 and on August the 4th, 1993, an autopsy was
14 performed by Dr. Joel Sexton. Dr. Sexton
15 found a .38 caliber round in the chest
16 cavity of the individual that had been
17 pulled from the swamp.

18 Because there was no identification on
19 the body and during the course of the
20 autopsy Dr. Sexton noticed the extensive
21 dental work that this individual had, the
22 individual's jaw was removed. The teeth
23 were charted and x-rays were made of those
24 teeth.

25 In addition, for purposes of trying to

1 identify who this person was, that
2 individual's hands were removed.
3 Fingerprints were made by an agency called
4 SLED, South Carolina Law Enforcement
5 Division, to determine if they could match
6 those fingerprints with any known
7 fingerprints of any missing individual.

8 The body was cremated on August the
9 6th of 1993.

10 Also, on August the 3rd of 1993,
11 Christopher Jones, a young man who lives
12 near Fayetteville, North Carolina, was
13 walking in the woods near his home. On
14 August the 3rd, 1993, Christopher Jones
15 discovered in a heavily wooded area in
16 Cumberland County, North Carolina, a 1992
17 Lexus automobile. The license plate on
18 that car bore the insignia of the
19 University of North Carolina at Chapel
20 Hill, the license plate number 0023, the
21 same car that was registered to James
22 Jordan. Mr. Jones went through the car to
23 determine who the possible owner might be.
24 He found the information referring to James
25 Jordan. He attempted to contact a James

1 Jordan but was to no avail.

2 On August 5th of 1993, Christopher
3 Jones reported to the Cumberland County
4 Sheriff's Department the discovery of that
5 1992 Lexus automobile in the woods near his
6 home.

7 The evidence will show that Cumberland
8 County Sheriff's Department dispatched a
9 deputy to that scene, that in the area at
10 the time of that dispatch was a North
11 Carolina highway patrolman. And that based
12 upon the dispatch that a car was in the
13 woods, he assumed that there had been a
14 wreck and that the highway patrol would be
15 called. Trooper Battle went to the area.
16 He arrived in the area, found Christopher
17 Jones, and Christopher Jones showed him the
18 car that he had discovered.

19 The car at that point had been
20 vandalized, the emblems on the car had been
21 removed, the license plate on the car had
22 been removed. Windows had been broken, the
23 sun roof had been broken, the CD player had
24 been taken out. A cellular telephone in
25 the car that had been in the car, was

1 missing. The tires and the rims on the car
2 were missing. Trooper Battle, upon
3 arriving, checked the vehicle
4 identification number and ran it through
5 the North Carolina Highway Patrol. That
6 vehicle identification number came back to
7 James R. Jordan of Charlotte, North
8 Carolina.

9 By that point, Deputy Scotten Williams
10 of the Cumberland County Sheriff's
11 Department had arrived on the scene. He
12 and Mr. Battle talked, Mr. Battle gave
13 Mr. Williams certain items that he had
14 found in the area around the car, the
15 emblems, registration, and owner's manual.
16 That information was then transferred to
17 the Cumberland County Sheriff's
18 Department.

19 On August the 11th, 1993, Coroner Tim
20 Brown in South Carolina contacted the
21 Cumberland County Sheriff's Department to
22 determine if there was a link between the
23 body that had been discovered in the Gum
24 Swamp on August the 3rd, and the vehicle
25 that had been discovered in Cumberland

1 County, North Carolina. At that point, no
2 identification of the body had been made.

3 On August the 11th, Cumberland County
4 Sheriff's Department began an extensive
5 investigation into the discovery of this
6 car and the possibility of a body being
7 found in the wooded area where the car was
8 located. They could not find a body.

9 On August the 11th, on the morning of
10 August the 12th, Detective Don Smith, a
11 homicide detective with the Cumberland
12 County Sheriff's Department was sent to
13 meet the sheriff of Mecklenburg County to
14 pick up the known dental records of James
15 Jordan. Those records were provided by
16 Dr. Larry Seitlin, who was Mr. Jordan's
17 personal dentist in Charlotte, North
18 Carolina. Detective Smith then took those
19 dental records to the Coroner's office in
20 Marlboro County, South Carolina.

21 The x-rays that were part of the known
22 dental records of James Jordan were
23 compared with the dental x-rays that were
24 made during the course of the autopsy. A
25 chart of Mr. Jordan's teeth and the teeth

1 that were missing and the dental work that
2 had been done by Dr. Seitlin or at his
3 recommendation were compared with the chart
4 that was made of the body that was found in
5 the Gum Swamp. The evidence will show that
6 the dental record, the known dental records
7 of James Jordan, matched the dental records
8 for the body that was removed from Gum
9 Swamp on August the 3rd, 1993.

10 In addition, the evidence will show
11 that the fingerprints that were taken
12 during the autopsy, after the hands had
13 been removed, were compared with known set
14 of fingerprints, not only ones that had
15 been obtained in South Carolina that showed
16 that those fingerprints that were taken at
17 the autopsy matched the known fingerprints
18 of James Jordan, but also fingerprints that
19 were on file with the North Carolina State
20 Bureau of Investigation of James Jordan,
21 were compared with the fingerprints that
22 were taken of the autopsy. Skin tissue
23 that was removed from those fingers during
24 the autopsy was used to verify the
25 fingerprints on file at the SBI lab. Those

1 fingerprints, both the ones that were
2 compared in South Carolina and the ones
3 that were compared here in North Carolina,
4 showed that the individual found in the Gum
5 Swamp was James Jordan. The dental records
6 show that the individual found in the Gum
7 Swamp was James Jordan.

8 On July the 23rd, 1993, after Daniel
9 Green and Larry Demery had robbed and
10 killed James Jordan, the evidence will show
11 you they began using the cellular telephone
12 that was in that car.

13 The evidence will show that on August
14 the 14th of 1993 and August the 13th of
15 1993, copies of the phone records for the
16 account of James Jordan were obtained by
17 the Cumberland County Sheriff's
18 Department. Each phone call that appeared
19 on the record from July the 22nd through
20 July the 24th was investigated in terms of
21 who received the call, where that person
22 was, and who that person may have talked
23 to.

24 The evidence in this case will show
25 that beginning at 7:00 a.m. on July the

1 23rd, Daniel Green and Larry Demery started
2 placing phone calls. First phone call that
3 was made was to a 1-900 number. Evidence
4 will show that's some type of sex line.
5 Next phone call was made to a residence in
6 the area between Pembroke and Wilmington.
7 10:00 on the morning of July the 23rd,
8 1993, Daniel Green placed a phone call to
9 Fort Bragg, North Carolina. Daniel Green's
10 half brother, David Moore, Sergeant in the
11 United States Army, stationed at Fort
12 Bragg. Evidence will show that Daniel
13 Green at 10:00 that morning called his
14 brother. Evidence will show that there
15 were phone calls placed to Pembroke, to
16 Rowland, to Lumberton, to Fayetteville, to
17 High Point, to Philadelphia, to New York,
18 to Marion, South Carolina. The evidence
19 will show that all but two of those phone
20 calls were made by one person. And that
21 person sits in this courtroom, and the
22 person is the defendant.

23 The evidence will show that on July
24 the 23rd in regard to the phone call to
25 Philadelphia, Pennsylvania, that the

1 defendant called one David Carter, his
2 mother's boyfriend, and talked with David
3 Carter about bringing a 1992 Lexus
4 automobile to Philadelphia, Pennsylvania
5 for purposes of having it sold.

6 The evidence will show in addition to
7 the phone calls, that the defendant was in
8 possession of that car and the defendant
9 used that telephone at a time right after
10 James Jordan was murdered, that there were
11 five individuals arrested in Cumberland
12 County, North Carolina for the vandalism of
13 that car. Those five individuals, in
14 statements to members of the Cumberland
15 County Sheriff's Department, told him that
16 the car was brought there by Daniel Green
17 and a guy named Larry, and this guy named
18 Larry had a tattoo on his arm.

19 The evidence will show the officers
20 went to David Moore's home and interviewed
21 him. David Moore said, yes, my brother
22 called me; yes, my brother came to my house
23 on the Sunday following the 23rd of July.
24 He was driving a 1992 red Lexus. My
25 brother was wearing an NBA All-Star ring.

1 My brother was wearing a Chicago Bull's
2 watch, and my brother had a .38 caliber
3 revolver with him, and that my brother
4 removed a set of golf clubs from that
5 automobile that bore the name of Michael
6 Jordan on the back. The evidence will show
7 those golf clubs were recovered in the
8 woods near David Moore's house in
9 Fayetteville, North Carolina.

10 With that information, the Cumberland
11 County Sheriff's Department then brought in
12 the assistance of the State Bureau of
13 Investigation because at that point they
14 realized this case involved Robeson
15 County. Cumberland County's jurisdiction
16 cuts off at the county line. The SBI and
17 Robeson County Sheriff's Department were
18 brought into this investigation.

19 On August the 14th, 1993, 9:00 p.m.,
20 Captain Art Binder, Special Agent Myers,
21 Detective Mark Locklear and Sergeant Junior
22 Mitchell went to Bob's Landing Mobile Home
23 Park. The evidence will show they went
24 there for the purposes of talking to the
25 defendant, Daniel Green, to talk to him

1 about the stolen car that had been
2 discovered in Cumberland County.

3 The evidence will show that when they
4 arrived, Daniel Green was at home and his
5 mother was there. Captain Binder and
6 Special Agent Myers identified themselves
7 and asked to speak to the defendant. The
8 defendant came to the door, they told him
9 who they were, why they were there, and
10 asked him if he would accompany them to the
11 Robeson County Sheriff's Department to talk
12 about the stolen car. He agreed. He was
13 allowed to go -- he went back into his
14 room, put on a shirt, and came out. As
15 they were getting ready to leave, the
16 officers asked permission to search the
17 house. The evidence will show that Mrs.
18 Green asked her son, will they find
19 anything. And the defendant's response
20 was, not what they are looking for.

21 He then left with the officers and
22 went to the Robeson County Sheriff's
23 Department. On August the 15th at 1:00
24 p.m., August the 15th, 1993, Larry Martin
25 Demery returned home. The officers had

1 already been to his house looking for him,
2 they had talked with his parents. At 1:00
3 p.m. when he returned home, his parents
4 called the Robeson County Sheriff's
5 Department and said Larry is here, would
6 you like us to bring him to the Sheriff's
7 Department. They said no, we'll come pick
8 him up.

9 August the 15th of 1993, in two
10 separate rooms, Daniel Green was asked
11 questions and Larry Demery was asked
12 questions. On August the 15th, 1993, Larry
13 Demery initially told members of the
14 Cumberland County Sheriff's Department and
15 the State Bureau of Investigations, that
16 that car, that 1992 Lexus automobile, had
17 been brought to Daniel Green's house by a
18 guy he knew as Rick. Larry Demery
19 repeatedly told them that story.

20 The evidence will show that during the
21 course of the interview, that Larry Demery
22 was presented with the evidence that the
23 officers had already obtained, that
24 contradicted what he was telling them.
25 That he was presented with the evidence

1 that Daniel Green will say on August the
2 15th of 1993, Larry Demery told the
3 officers that the story about Rick was not
4 true, and that they had come into
5 possession of the car because they were at
6 the location of 74 and 95, they being the
7 defendant and Larry Demery, were at that
8 location to rob anybody. They were there,
9 it didn't matter. They didn't have a plan
10 to rob Mr. Jordan, they were just going to
11 rob a tourist.

12 He took them to various locations,
13 Larry Demery. The officers were able to
14 verify the matters that he told them. On
15 August the 15th, 1993, after they had both
16 been arrested and charged with first degree
17 murder, armed robbery and conspiracy to
18 commit armed robbery, were both placed in
19 the Robeson County jail.

20 The afternoon of August the 15th,
21 1993, the evidence will show that Daniel
22 Green, from his jail cell, contacted a
23 jailer, told that jailer he wanted to see
24 the sheriff, Sheriff Hubert Stone. The
25 jailer then informed the lady or the jailer

1 occupying the control booth at the jail,
2 JoAnn West then called the dispatcher, the
3 Robeson County Sheriff's Department, told
4 him them that Sheriff Stone was needed at
5 the jail. Dispatcher called Sheriff Stone
6 at home that afternoon, told him you're
7 needed at the jail, Daniel Green would like
8 to see you.

9 The evidence will show that shortly
10 after receiving that call, Sheriff Stone
11 traveled from his home in Rowland, North
12 Carolina to the jail here in Lumberton.
13 Upon arriving, he went to the jail,
14 inquired as to what he was needed for, and
15 then was taken to a holding cell where
16 Daniel Green was being kept.

17 In that holding cell, Daniel Green
18 told the Sheriff he wanted to show him
19 something, he wanted to take him to an
20 item.

21 Sheriff Stone told him he was not
22 involved in the investigation but he would,
23 if Mr. Green wanted to, he could talk with
24 one of the investigators. And he said, no,
25 I'm only going to talk to you and you

1 alone. I can show you something, I can
2 take you somewhere.

3 On August the 15th of 1993, Sheriff
4 Hubert Stone then contacted Special Agent
5 Tony Underwood, State Bureau of
6 Investigation. Mr. Underwood came to the
7 Sheriff's Department, went to Sheriff
8 Stone's private office, met with the
9 sheriff, and shortly thereafter, he and
10 Daniel Green and Sheriff Stone left the
11 Robeson County Sheriff's Department en
12 route to Elrod, North Carolina. Elrod is
13 located near Rowland. Elrod is also the
14 area where the defendant's grandmother
15 lived.

16 En route from the Robeson County
17 Sheriff's Department, Highway 17 takes you
18 to Elrod. As they are approaching the
19 intersection of I-95 and U.S. 74, Special
20 Agent Underwood noticed a TV van. Someone
21 doing a news story about this case. Daniel
22 Green asked Special Agent Tony Underwood if
23 they could find footprints at that
24 location. Special Agent Underwood told him
25 that's a TV news team, that's not the

1 police. And they continued on their way,
2 and they arrived at Daniel Green's
3 grandmother's home. When they arrived, his
4 uncle walked out of the house, and they
5 spoke.

6 They then asked Mr. Green, what is it
7 that you want to show us. He took them
8 around to the side of the house and
9 gestured to the ground at the corner. He
10 said, "It's there."

11 When they asked him what is there, he
12 said, "It's there." The officers --
13 Mr. Underwood then began to dig in the area
14 that the defendant had indicated, and after
15 digging down some distance, they hadn't
16 found anything. And they told him, there's
17 nothing here. He said, "Dig further, it's
18 there." And as they dug, they discovered a
19 plastic bag, a plastic Ziplock bag that
20 contained inside of it another Ziplock bag
21 that contained inside of it a third Ziplock
22 bag that was brought up. And inside that
23 Ziplock bag was a 1986 NBA All-Star ring
24 issued to Michael Jordan for his
25 participation in the 1986 NBA All-Star game

1 in Dallas, Texas.

2 Later that same day, from information
3 that had been received from Larry Demery,
4 Special Agent Tony Underwood and Special
5 Agent Randy Myers then went to an area of
6 Dunn Road, near Lumberton, located off of
7 West Fifth Street here in Lumberton, behind
8 the Food Lion.

9 Information received from Larry Demery
10 was that there was certain information,
11 certain items that had been thrown out of
12 the car that belonged to Mr. Jordan. The
13 officers went to that area. And in
14 searching the shoulder and wood line along
15 the road, they discovered personal items
16 belonging to James Jordan. On August the
17 23rd, 1993, another search was conducted,
18 this time along the canal bank off of
19 Highway 710 here in Robeson County.
20 Discovered along the canal bank were credit
21 cards that belonged James Jordan, compact
22 disk CD's belonging to Mr. Jordan, a number
23 of them. Those items were submitted to the
24 State Bureau of Investigation for purposes
25 of fingerprint analysis. Eighteen of those

1 CD's bore his fingerprints. The evidence
2 will show that they had gone there after
3 returning from dumping the body and had
4 gone through the items and threw things
5 away that were of no value to them.

6 The evidence will show you that in
7 April of 1995, Larry Demery pled guilty to
8 his involvement in the robbery and the
9 conspiracy and the murder of James Jordan.
10 The evidence will show you that Larry
11 Demery had agreed to testify, Larry Demery
12 will testify for the State of North
13 Carolina.

14 As a result of his plea, Larry Demery
15 has pled guilty to first degree murder
16 pursuant to the felony murder rule. He has
17 no agreement as to the sentence that he
18 will receive in that case, and he faces the
19 possibility of the death penalty for his
20 involvement in the death of James Jordan.

21 The evidence will also show that
22 Mr. Demery pled guilty to a number of other
23 charges, including other armed robberies,
24 and as a result of his plea to those,
25 Mr. Demery, the agreement that Mr. Demery

1 has is that he will receive a 40 year
2 sentence in the North Carolina Department
3 of Corrections for those other crimes. And
4 that whether that 40 years runs with or
5 consecutively to his sentence in the murder
6 case is up to the Court that sentences
7 him.

8 The evidence will show that everything
9 that Larry Demery has told us has been
10 verified. The evidence will also show on
11 August the 16th of 1993, there was a search
12 warrant issued for the mobile home where
13 Daniel Green lives. On August the 16th of
14 1993, officers for the State Bureau of
15 Investigation and the Robeson County
16 Sheriff's Department went to that mobile
17 home, and in searching that mobile home
18 there was discovered a shop type vacuum
19 cleaner in the defendant's room. The
20 evidence will show that Special Agent Barry
21 Lea of the State Bureau of Investigation
22 was responsible for searching that
23 particular room. The evidence will show
24 that that vacuum cleaner had been there on
25 August the 14th of 1993, but no one had

1 looked in it.

2 The evidence will show that on August
3 the 16th, 1993, the top to that vacuum
4 cleaner was removed and in the canister of
5 that vacuum cleaner was discovered a .38
6 caliber Smith & Wesson revolver. That gun,
7 along with the bullet that was removed from
8 James Jordan's body in South Carolina,
9 along with the shell casing that was found
10 in the area of the Pea Bridge Gum Swamp
11 Road area, were submitted for analysis to
12 the State Bureau of Investigation. The
13 bullet that was removed from James Jordan
14 was a .38 caliber .357 type shot.

15 There were deformities to that
16 bullet. There was analysis and a
17 comparison done between the .38 caliber
18 revolver, the bullet removed from his body,
19 and the shell casing found in the area of
20 the bridge. Special Agent R. N. Marrs of
21 the State Bureau of Investigation, who
22 conducted the analysis, will testify that
23 the bullet removed from the body of James
24 Jordan had similar markings as the test
25 bullet that was fired for the purposes of

1 conducting that examination, but due to the
2 deformity of the bullet he could not
3 conclusively say that the bullet was fired
4 from the gun. However, he cannot rule it
5 out. The evidence will show that the shell
6 casing found in the area of the bridge
7 where the body was dumped matched,
8 conclusively matched the test bullet that
9 was fired from that .38 caliber gun.

10 The evidence will show that on July
11 the 20th, 1993, Daniel Green went to a pawn
12 shop in Pembroke, North Carolina and bought
13 a box of assorted .38 caliber bullets.

14 The evidence will show in this case
15 that when the Cumberland County Sheriff's
16 Department began their investigation, they
17 started at one point involving information
18 received from individuals with knowledge of
19 the car and on the other point with
20 information received from the telephone
21 records. And from that information, their
22 investigation centered on one person --
23 actually two, Daniel Green and the
24 individual named Larry.

25 The evidence will show that when that

1 information centered on Larry Demery and on
2 Daniel Green, they had met their mark,
3 because the evidence in this case will show
4 beyond a reasonable doubt, Daniel Andre
5 Green and Larry Martin Demery conspired to
6 commit armed robbery, that they committed
7 an armed robbery, and that they murdered
8 James Jordan.

9 At the conclusion of this trial after
10 all of the evidence has been presented,
11 after you've heard the evidence, the
12 lawyers will get a chance to argue once
13 again. And at that point, I will ask you
14 to do your duty, to follow the law, and to
15 find Daniel Green guilty of first degree
16 murder, guilty of armed robbery, and guilty
17 of conspiracy to commit armed robbery.
18 Thank you.

19 THE COURT: Will there be an
20 opening statement on behalf of the
21 defendant?

22 MR. THOMPSON: Yes, sir, Your
23 Honor.

24 THE COURT: How long do you
25 anticipate?

1 MR. THOMPSON: About equal amount
2 of time as Mr. Britt.

3 THE COURT: Folks, we apparently
4 are experiencing some technical
5 difficulties. This is probably an
6 appropriate point for us to take a recess
7 at this time.

8 Members of the jury, ordinarily we
9 would take the mid-morning recess somewhere
10 in the neighborhood of 11:30 to 11:45.
11 We're going to take it at this time,
12 however.

13 During this recess, please remember
14 you need to abide by all prior instructions
15 of the Court concerning your conduct.
16 Everyone else, please remain seated, the
17 members of the jury are excused at this
18 time. Let me give you until 11:30 folks,
19 and if you would, please reassemble in the
20 jury room at 11:30. Thank you. Everyone
21 else please remain seated, the members of
22 the jury are excused.

23 Folks, I apologize, if you'll remain with
24 us, we need to give you your juror
25 badges. I thought that had been done, I

1 apologize. Please make sure they are
2 visible. Badges are to identify you as
3 jurors in this matter and hopefully that
4 will prevent inadvertent conversation about
5 the matters in your presence.

6 (Jury out at 11:30 a.m.)

7 Anything from either counsel?

8 MR. BRITT: No, sir.

9 THE COURT: We're at ease.

10 (Brief recess.)

11 THE COURT: For the record, all
12 counsel are present, the defendant is
13 present in open court. Are we ready to go
14 forward, folks?

15 MR. THOMPSON: Yes, sir.

16 THE COURT: If you'll bring the
17 jury in, please.

18 (Jury returns to the courtroom.)

19 THE COURT: The jury is with the
20 defendant for opening statement.

21 MR. THOMPSON: May it please the
22 Court, Mr. Britt, ladies and gentlemen of
23 the jury, Daniel -- U'Allah, our client, is
24 innocent. He's not guilty of the three
25 charges which have been lodged against him

1 by the State of North Carolina. He is not
2 guilty of murder in any degree. He is not
3 guilty of robbery with a dangerous weapon.
4 He is not guilty of conspiracy to commit
5 robbery with a dangerous weapon.

6 Now, the defense contends that while
7 the evidence will show U'Allah in the
8 possession of certain items, an NBA
9 All-Star ring, a championship watch, and,
10 yes, even in possession of the 1992 Lexus,
11 he did not kill James Jordan or any other
12 person on July the 23rd of 1993.

13 In fact, the defense contends that the
14 believable evidence in this case, the
15 credible evidence in this case --

16 MR. BRITT: Objection.

17 THE COURT: Overruled at this
18 point. You may continue, Mr. Thompson.

19 MR. THOMPSON: The believable
20 evidence in this case, the credible
21 evidence in this case will show that while
22 U'Allah helped a childhood friend perhaps
23 dump a body during the early morning hours
24 of July 23rd of 1993, he, from his own
25 knowledge, meaning U'Allah from his own

1 knowledge, can't tell you when, can't tell
2 you where this person was killed. And why
3 is only known by the person who killed him.

4 MR. BRITT: Objection.

5 THE COURT: Objection sustained.
6 Members of jury, disregard the last comment
7 of counsel for the defendant. That
8 argument is not appropriate. You may tell
9 the jury what the competent and admissible
10 evidence will show.

11 MR. THOMPSON: It is the
12 defense's contention that on July the 23rd
13 of 1993, which is almost about two and a
14 half years ago, James Jordan, the evidence
15 will show, and Carolyn Robinson, a friend
16 from Wilmington, North Carolina, did attend
17 a funeral over in Pender County. After the
18 funeral, they visited the widow of the
19 deceased. James Jordan and Carolyn
20 Robinson then left the home of the deceased
21 and returned to the home of Carolyn
22 Robinson and her husband, whose name is
23 James Robinson. There, they sat around and
24 talked and ate dinner, and James Jordan
25 indicated to James Robinson and Carolyn

1 Robinson that he would be returning to
2 Charlotte, North Carolina.

3 Now, the evidence will show and the
4 defense will contend that sometime after
5 midnight or 12:00 on July the 23rd, James
6 Jordan left the residence of James Robinson
7 and Carolyn Robinson.

8 Now, just remember, ladies and
9 gentlemen of the jury, that when Mr. Britt
10 stands up representing the State and says
11 to you what he contends is happening, the
12 defense's contention is that much if not
13 most of what Mr. Britt is saying, remember,
14 will be coming from the chief witness, we
15 contend, Larry Demery.

16 And let me tell you about Larry
17 Demery, what we contend the evidence will
18 show. The evidence will further show you
19 that Larry Demery is the son of a gun
20 maker, a gunsmith, a purveyor of guns. The
21 evidence will show you that the same Larry
22 Demery had a key to U'Allah's residence,
23 this same Larry Demery, a childhood friend
24 of U'Allah, had access to the Green
25 residence. The evidence will show that

1 Larry Demery had possession of certain
2 items, a wedding band and golf shoes which
3 purportedly belonged to James Jordan.

4 Larry Demery, the evidence will show,
5 who at this very time as we pick up on him
6 right now, has already committed and been
7 convicted of at least 230 years of
8 felonies, felony crimes for which he
9 expects to receive pursuant to a deal cut
10 by him and the State, of a minimum of 42
11 years.

12 Now, the evidence will show you that
13 this one Larry Demery, a childhood friend
14 of U'Allah, has cut a deal with the State
15 to testify, as the State would have him
16 testify against our client, U'Allah --

17 MR. BRITT: Objection.

18 THE COURT: Sustained. Members
19 of the jury, you will disregard that last
20 statement of Mr. Thompson on behalf of the
21 defendant. You will not consider it in any
22 way.

23 MR. THOMPSON: Mr. Demery, the
24 defense will show that Larry Demery pled
25 guilty to the following felony crimes back

1 on April the 27th of 1995, pursuant to this
2 deal cut between the State and Larry
3 Demery. He pled guilty, you see, to three
4 counts of breaking and entering and
5 larceny. The same Larry Demery pled guilty
6 pursuant to this deal cut with the State to
7 three counts of robbery with a dangerous
8 weapon. This same Larry Demery, who the
9 State cut a deal with, pled guilty to two
10 counts of assault with a deadly weapon with
11 intent to kill, inflicting serious bodily
12 injury. This same Larry Demery, who the
13 State cut a deal with the evidence will
14 show, pled guilty to conspiracy to commit
15 robbery with a dangerous weapon. The same
16 Larry Demery, who the State cut a deal
17 with, pled guilty to first degree murder.

18 Now, ladies and gentlemen of the jury,
19 the believable evidence will show, the
20 defense contends, that on Thursday, July
21 the 22nd, this same Larry Demery shows up
22 at one by the name of Kay Hernandez's
23 house, where U'Allah and others are having
24 a cookout. Now, Kay Hernandez is a friend
25 of Elizabeth Ann Green who is the mother of

1 U'Allah, our client. Larry Demery asked
2 his friend, his childhood friend, U'Allah,
3 on this very evening, to ride with him in
4 Larry Demery's Ford Tempo over to Larry
5 Demery's house.

6 The evidence will show, we contend,
7 that while at his house, Larry Demery's
8 house, Larry Demery makes a phone call to
9 Huntington Port in New York and he talks
10 with his cousin, Janine, and who indicates
11 that his cousin Joy, for whom Larry Demery
12 really wanted to speak to, is not home.
13 The evidence will show that Larry Demery
14 indicated to Janine he's going to bring him
15 something to Huntington Port, New York.

16 The evidence will show that after some
17 time, a short period of time, 15, 20
18 minutes there at Larry Demery's house, who,
19 by the way, Larry Demery's mother was
20 present, they left the house and returned
21 to Kay Hernandez's house, which was
22 sometime around 10:00 on this Thursday,
23 July the 22nd of 1993. The evidence will
24 show that when Larry Demery returned, left
25 his house, going to Kay Hernandez's house,

1 he has a bag, and also in possession of
2 some guns.

3 Now, they stay at Kay Hernandez's
4 house where the cookout is for some period
5 of time, and sometime after midnight, after
6 12:00 a.m. on the morning of July the 23rd
7 of 1993, Larry Demery leaves Kay
8 Hernandez's house by himself in his Ford
9 Tempo with the distinctive sounding
10 engine.

11 Now, the believable evidence will
12 show, we contend, that U'Allah will be
13 there at Kay Hernandez's house resuming
14 watching television with the other
15 occupants there at the cookout. And when
16 Larry Demery leaves Kay Hernandez's house,
17 he's relatively calm compared to when he
18 arrives back to Kay Hernandez's house,
19 several hours later and in the morning, and
20 the evidence will show that when Larry
21 Demery shows back up at Kay Hernandez's
22 house, in the common vernacular here in
23 Robeson County, he was all shook up.

24 Now, ladies and gentlemen of the jury,
25 the defense contends that the believable

1 and credible evidence will show that it was
2 at --

3 MR. BRITT: Objection.

4 THE COURT: The objection is
5 overruled. You may continue.

6 MR. THOMPSON: The defense
7 contends that the believable and credible
8 evidence will show that at this time, Larry
9 Demery is rattling around the house. Ann
10 Green, Elizabeth Ann Green, U'Allah's
11 mother, comes to the door to quiet the
12 noise. U'Allah comes to the door, and
13 there at the door Larry Demery begs U'Allah
14 to go with him. U'Allah -- the whole
15 household is asleep. U'Allah gets up, he
16 goes with Larry Demery. And where the
17 evidence will show does he go? He goes to
18 an abandoned station next to what was then
19 the Quality Inn, which is located at the
20 intersection of Interstate 95 and U.S.
21 Highway 74.

22 Now, the evidence will show the
23 defense will -- and the defense contends
24 that it will show that when they arrived
25 there at the abandoned station, it was then

1 that U'Allah saw the red Lexus. His friend
2 Larry Demery, his childhood friend, Larry
3 Demery, asked him to drive the Lexus and
4 follow him to the nearby canal bank which,
5 by the way, is just beyond the abandoned
6 store.

7 U'Allah gets in the Lexus, and he
8 follows Larry Demery, his childhood friend,
9 to the canal bank. And there on the canal
10 bank, the evidence will show, was the body
11 of a black male lying on the ground with
12 blood on the front of his clothes.

13 Now, the believable evidence in this
14 case, we contend, will absolutely show that
15 the -- this man was not even killed where
16 the State claims he was killed. The
17 evidence will show absolutely, we believe,
18 that this man was not even shot in the
19 manner that the State claims he was shot.

20 MR. BRITT: Objection.

21 THE COURT: Okay. The objection
22 is sustained. You can't personally vouch
23 for what the evidence in the case will
24 show. You can tell what you contend the
25 evidence in the case will show.

1 MR. THOMPSON: Ladies and
2 gentlemen of the jury, I want you to
3 understand that anything that is said
4 during this opening argument, contentions,
5 are merely contentions of the defense as
6 what Mr. Britt contended the State's
7 evidence will show.

8 Now, the believable evidence in this
9 case, we believe, will show that when the
10 body was lying there on the canal bank,
11 U'Allah asked Demery what happened. Demery
12 says, the man reached for a gun and he shot
13 it. U'Allah says, well, why don't we leave
14 him here. And Demery says, we can't leave
15 him there because they will find him.

16 Now, U'Allah, a childhood friend, who
17 knows Larry Demery, the evidence will show,
18 thinks that this is perhaps some drug deal
19 gone bad. Now, he helps his childhood
20 friend, Larry Demery, put the body in the
21 Lexus, on a blanket, and he helps his
22 friend dispose of the body. The evidence
23 will show that U'Allah has no driver's
24 license and had no driver's license back on
25 July the 23rd, and that U'Allah could not

1 drive the straight stick Tempo which Larry
2 Demery was driving, and therefore, he drove
3 the Lexus.

4 Larry Demery, U'Allah's childhood
5 friend, asked him to go, meaning asked
6 U'Allah to go to his house which is nearby,
7 and he will follow him to his house.

8 Now, when he gets to his house, Larry
9 Demery changes clothes and he immediately,
10 Larry Demery, tells U'Allah, I know where
11 we can dispose of the body. The evidence
12 will show that it was Larry Demery's idea,
13 who we contend will be the State's chief
14 witness, who said, let's go to the Pea
15 Bridge Road which has been referred to by
16 the State as some remote area.

17 But ladies and gentlemen of the jury,
18 the evidence will show that the Pea Bridge
19 Road and the bridge where the body was
20 thrown off is just down the road from where
21 Larry Demery worked at Crestline Mobile
22 Home buildings.

23 Now, the evidence will show, the
24 defense contends that Larry Demery and
25 U'Allah throw the body off the bridge.

1 Now, on the way back to Larry Demery's
2 house, after some riding around in
3 Laurinburg, the evidence will show the
4 State, the defense contends, that there
5 were some phone calls made. The first
6 phone call was some 800 number. The second
7 phone call, the evidence will show, that
8 was made around 10:36 in the morning, July
9 the 23rd, was made to one by the name of
10 Hubert Dees, who is the reputed son of
11 Hubert Stone, known drug dealer in Robeson
12 County, who is now serving time for drug
13 related charges in federal prison. That
14 call was made, the evidence will show, by
15 Larry Demery on the Lexus phone.

16 The evidence will show, the defense
17 contends, that they came back to the Green
18 residence and at that time, with the Lexus,
19 they went to sleep.

20 Now, ladies and gentlemen of the jury,
21 the believable evidence in this case will
22 also show that two people by the name of --
23 one by the name of Greg Stephenson, and
24 another by the name of Christopher Rumfelt,
25 two gentlemen who left Sunset -- I mean

1 Sunset Motel in Wrightsville Beach after
2 and during -- after 12:00 midnight and
3 during the early morning hours of July the
4 23rd, which was on a Friday, that these two
5 people left Wrightsville Beach headed
6 toward home, towards Marion, North
7 Carolina, which is west of Charlotte. And
8 the route that they took was U.S. 74.

9 The evidence will show that these two
10 individuals observed a -- in fact, Rumfelt
11 was driving, and as he was traveling en
12 route to Marion on 74, he was talking on
13 the CB in his red Fierro to a truckdriver.
14 And in fact, was following the
15 truckdriver. This truckdriver turned off
16 of 74 onto the southbound lane of
17 Interstate 95, headed in the direction of
18 Florence, South Carolina. And at that
19 time, shortly after the truckdriver pulled
20 off of 74, turned off of 74 on Interstate
21 95, Mr. Rumfelt and -- pulled his car off
22 on the shoulder of the road for them to use
23 the bathroom. Now, the evidence will show
24 that some 40 or so feet behind them was a
25 parked vehicle which appeared to be empty

1 at that time.

2 However, some 10 or 15 minutes later
3 as they were traveling down 74 en route to
4 Marion, Mr. Rumfelt and Mr. Stephenson
5 observed a 1992 Lexus bearing license plate
6 UNC, either 0023 or 00023 go past them at a
7 high rate of speed.

8 Now, the evidence will show that this
9 Lexus was the same Lexus in which
10 Mr. Demery and Mr. Green carried the body
11 to Pea Bridge Road, unlike and not like the
12 route that the State contends the evidence
13 will show.

14 MR. BRITT: Objection.

15 THE COURT: Mr. Thompson, your
16 objection is sustained.

17 MR. THOMPSON: Now, ladies and
18 gentlemen of the jury, the evidence will
19 show that this same Mr. Rumfelt told Agent
20 Heffney of the SBI on August the 18th of
21 1993, in an interview, that the reason he
22 didn't call the police earlier with this
23 information was because on Friday, August
24 the 13th of 1993, when the news broke,
25 reports said that the car was found in

1 Fayetteville, but also that Mr. James
2 Jordan had reportedly called home on July
3 the 26th. The evidence will show that
4 someone by the name of Donald A. Chiofolo,
5 who was the owner of the building where
6 once J.V.L. Enterprises was operated in
7 Rock Hill, South Carolina, this being the
8 business of James Jordan, that this man,
9 Donald Chiofolo, owned that building
10 operated -- in which the business of J.V.L.
11 was operated by James Jordan in July and in
12 August, that this man, Donald Chiofolo,
13 spoke with Delores Jordan, the wife of
14 James Jordan, and the evidence will show
15 that she informed Mr. Chiofolo that she had
16 spoken with her husband on August the 5th,
17 this conversation having taken place on
18 August the 6th of 1993.

19 Now, ladies and gentlemen of the jury,
20 besides the fact that Delores Jordan, James
21 Jordan's wife, represented to Mr. Chiofolo
22 that she had talked to her husband as late
23 as August the 5th of 1993, when the State
24 claims that James Jordan was dead some two
25 weeks earlier, Mr. Jordan, the evidence

1 will show, was seen by numerous citizens
2 who are disinterested and disconnected with
3 this case.

4 Now such evidence, the defense
5 contends, was and is such a disastrous blow
6 to the State's theory --

7 MR. BRITT: Objection.

8 THE COURT: Sustained.

9 MR. THOMPSON: Well, the evidence
10 will show that law enforcement officers
11 made no real attempt to follow up some of
12 these leads. The evidence will show that
13 from the very beginning in this case, this
14 was a case of selective investigation, that
15 if it did not fit their theory of a case,
16 that they, the law enforcement officers in
17 this case, turn their back to certain
18 evidence.

19 Now, the evidence will show the
20 defense contends that someone by the name
21 of Bobby Millan, an official with the
22 Federal Aviation Agency, days after the
23 alleged death of James Jordan, identified
24 the Lexus on I-40 with a black male, age 50
25 to 55 wearing a Ben Hogan type hat, and

1 that the State had little interest in
2 that.

3 The evidence will show that almost
4 amazingly James Jordan presented himself at
5 the Cumberland County Library on July 27th,
6 1993, and talked at length with the state
7 and county historical librarian, Ivan
8 Johnson, and that he told Mr. Johnson that
9 he needed to call his son at Fort Bragg,
10 and that James Jordan did have a son at
11 Fort Bragg. And then Johnson reported that
12 Jordan made reports about making bets,
13 losing a car and asking to use the phone to
14 call the police, all the while accompanied
15 by males who, the evidence will show, to
16 neither be Demery nor U'Allah, who stood
17 nearby at the library cabinets while the
18 conversation took place.

19 Now, these details, ladies and
20 gentlemen of the jury, the evidence will
21 show, were available to the district
22 attorney, then district attorney,
23 Mr. Richard Townsend, who for a year sat on
24 this evidence before presenting it to the
25 defense.

1 of the objection is that Mr. Thompson is
2 making an argument as opposed to
3 forecasting what the evidence would be, and
4 an argument as comparing the State's
5 evidence to the defense's evidence at this
6 point is improper.

7 THE COURT: Folks, it's not my
8 intent to interrupt anybody's opening
9 statement or impede in any way with regard
10 to any tactics that might be employed by
11 either counsel for the State or counsel for
12 the defendant. Much of the opening
13 statement is argumentative. You can't
14 characterize the evidence. You can't
15 interpret the evidence, can't tell the jury
16 what you contend the evidence means. You
17 can tell the jury what you believe the
18 evidence in this case will be. And you
19 can't characterize what you contend the
20 competent and admissible evidence in the
21 case will be as opposed to what counsel for
22 the State has told them, because that's
23 argumentative. But you can forecast for
24 the jury what you contend the evidence in
25 this case will show.

1 MR. THOMPSON: Yes, sir.

2 THE COURT: The objection is
3 sustained. Is the State asking for any
4 instructions to the jury?

5 MR. BRITT: Yes, sir.

6 THE COURT: All right. Bring the
7 jury back in.

8 (Jury in at 11:57 a.m.)

9 THE COURT: Mr. Thompson, if
10 you'll bear with me for one second.

11 Members of the jury, as I instructed
12 you in the instructions given prior to
13 opening statements in this case, the
14 purpose of opening statement is to provide
15 counsel with the opportunity to provide a
16 forecast, or a road map as it were, of what
17 counsel contends the competent and
18 admissible evidence in this case will be.

19 It is not appropriate for counsel in
20 opening statement to argue the contentions
21 of counsel, nor is it appropriate for
22 counsel to interpret or to suggest to the
23 jury what the evidence in this case means,
24 but simply to provide a forecast of what
25 counsel believes that evidence will be.

1 Now, the evidence will -- from the
2 evidence, the defense will contend, arise
3 perhaps many unanswered questions. The
4 burden of proof remains on the State in
5 this case. And now, what if anything the
6 evidence does show to you must ultimately
7 be answered by you, the members of the
8 jury. It is not what the lawyers have
9 contended that it will show, but what the
10 members of the jury decide that it will
11 show, does show, or the lack of it does
12 show.

13 However, the defense earnestly
14 contends that the believable and credible
15 evidence in this case that you will hear,
16 or the lack of this evidence, will leave
17 each of you with a reasonable doubt, and
18 that it will justify only one fair and just
19 verdict, and that is that U'Allah is not
20 guilty as to all of these charges, the
21 defense prays the Court, ladies and
22 gentlemen of the jury.

23 THE COURT: Mr. Britt, are you
24 ready to go forward with your evidence,
25 sir?

1 MR. BRITT: Yes, sir, we can do
2 that at this time.

3 THE COURT: You may call your
4 first witness.

5 MR. BRITT: First witness is
6 Annie Hutchison. She's in my office, if I
7 can leave the court to have her brought
8 around.

9 THE COURT: Yes, sir.

10 Yes, ma'am, if you'll come up and be
11 sworn please, ma'am. If you'll place your
12 left hand on the bible, please, and raise
13 your right.

14 ANNIE LEE HUTCHISON,
15 being first duly sworn was examined and testified as
16 follows:

17 THE COURT: If you'll take the
18 witness stand, please. If you would,
19 please state your full name for the record,
20 ma'am.

21 THE WITNESS: Annie Lee
22 Hutchinson.

23 THE COURT: Would you spell your
24 last name for the record?

25 THE WITNESS: H-U-T-C-H-I-S-O-N.

1 THE COURT: Members of the jury,
2 if at any time you are unable to hear the
3 testimony of any witness, please don't
4 hesitate to let us know that by simply
5 raising your hand.

6 Yes, sir, Mr. Britt.

7 DIRECT EXAMINATION

8 BY MR. BRITT:

9 Q Ms. Hutchison, did you know James Jordan?

10 A Yes, I do.

11 Q How did you know James Jordan?

12 A I was one of his employees.

13 Q Where did you work for Mr. Jordan?

14 A J.V.L. in Rock Hill.

15 Q How long did you work at J.V.L. Enterprises
16 for James Jordan?

17 A About almost a year.

18 Q What were your responsibilities at J.V.L.?

19 A I was a supervisor.

20 Q What type of business is J.V.L., or what's
21 J.V.L.?

22 A We sold T-shirts, sportswear.

23 Q Were you working at J.V.L. Enterprises in
24 July of 1993?

25 A Yes, I was.

1 Q On July the 21st of 1993, did you have an
2 occasion to see James Jordan there at the business?

3 A Yes.

4 Q On July the 21st of 1993, did you and
5 Mr. Jordan have any conversation in regard to his
6 plans for July the 22nd, 1993?

7 A Yes. He informed me that he was off that
8 day and he would be gone out of town to a funeral for
9 one of his friends.

10 Q Did he tell you where that funeral was to
11 be held?

12 A He said in Fayetteville.

13 Q And did you talk about his plans upon
14 returning from the funeral?

15 A Not really. Just said he will call
16 us.

17 THE COURT: I'm sorry?

18 THE WITNESS: He would call us.

19 BY MR. BRITT:

20 Q Did you ever receive a phone call from
21 Mr. Jordan following his departure to the funeral
22 July the 22nd, 1993?

23 A No, we didn't.

24 Q Did it concern you that you did not receive
25 a phone call from Mr. Jordan at that time?

1 A Yes.

2 Q Why was it a concern to you that you had
3 not received that phone call?

4 A Because he usually calls concerning
5 payroll.

6 THE COURT: I apologize for the
7 interruption. Ma'am, keep your voice up so
8 all the members of the jury can hear you.

9 THE WITNESS: Okay.

10 BY MR. BRITT:

11 Q Ms. Hutchison, when was the last time you
12 saw Mr. Jordan?

13 A That Wednesday about 3:30 when I left.

14 Q Ms. Hutchison, do you recall whether
15 Mr. Jordan wore any type of jewelry?

16 A He normally -- yes.

17 Q What type of jewelry would Mr. Jordan wear?

18 A He had a watch, a ring.

19 Q Can you describe the watch that Mr. Jordan
20 wore?

21 A I really can't remember.

22 Q Can you describe the ring that he wore?

23 A It was a wedding band and it was a big NBA
24 ring.

25 MR. BRITT: May I approach the

1 witness?

2 THE COURT: Yes, sir.

3 (State's Exhibits 2 through 7 were
4 marked for identification.)

5 MR. BRITT: If I may approach the
6 witness?

7 THE COURT: Yes, sir.

8 BY MR. BRITT:

9 Q Ms. Hutchison, I'm going to show you what's
10 been marked as State's Exhibit Number 2, just a
11 photograph. Do you recognize the person depicted in
12 that photograph?

13 A Yes, I do.

14 Q Who do you recognize the person depicted in
15 that photograph to be?

16 A Mr. Jordan.

17 Q I'm going to hand you what's been marked as
18 State's Exhibit Number 3, which is also a photograph,
19 and ask you to examine it. The photograph depicts a
20 watch. Are you familiar with such a watch that was
21 owned by Mr. Jordan?

22 A Yes.

23 Q I hand you what's been marked as State's
24 Exhibits 4, 5 and 6, which are photographs of a
25 ring. Do you recognize the ring that is contained in

1 photographs marked State's Exhibits 4, 5 and 6?

2 A Yes.

3 Q And do you recognize that as a ring that
4 was owned by the deceased James Jordan?

5 A Yes.

6 Q I'm going to hand you what's been marked as
7 State's Exhibit Number 12 -- excuse me, Number 7,
8 which is a plastic bag containing an item. Do you
9 recognize the item that is contained inside the
10 plastic bag marked as State's Exhibit Number 7?

11 A Yes.

12 Q And how are you able to recognize the item
13 that is contained in State's Exhibit Number 7?

14 A He often wore it.

15 THE COURT: I'm sorry?

16 THE WITNESS: He often wore it.

17 BY MR. BRITT:

18 Q When you say "he often wore it," who are
19 you referring to?

20 A Mr. Jordan.

21 Q Ms. Hutchison, following July the 21st of
22 1993, did you ever have any other contact with James
23 Jordan?

24 A No, I did not.

25 Q On the Monday following the 21st, which

1 would have been the 26th of July, did a member of the
2 Jordan family come to J.V.L. Enterprises?

3 A On Monday?

4 Q Yes, ma'am.

5 A Yes.

6 Q Who was that member of the family?

7 A Ms. Jordan.

8 Q Did Mrs. Jordan routinely come to the
9 business operated by her husband?

10 A No. She had never been there.

11 Q And what if any impression did her
12 appearance on Monday, July the 26th, make upon you?

13 A It surprised me.

14 Q Why did it surprise you?

15 A Because I never seen her and she had never
16 been there, and it was just surprising me knowing
17 that she was there.

18 Q Were you familiar with any automobiles that
19 Mr. Jordan drove?

20 A Yes.

21 Q What type of automobiles were you familiar
22 with that he drove?

23 A He drove his Lexus, the burgundy one.

24 Q Did that Lexus automobile have any type of
25 special license plate that you know of?

1 A I can't remember.

2 MR. BRITT: I don't have any
3 other questions.

4 THE COURT: Any
5 cross-examination?

6 MR. THOMPSON: Yes, sir.

7 MR. BOWEN: Yes, Your Honor.

8 CROSS EXAMINATION

9 BY MR. BOWEN:

10 Q Ms. Hutchison, you had been spoken to right
11 after the disappearance of Mr. Jordan by the Federal
12 Investigation officers, is that true?

13 A Yes.

14 Q And at that time did the FBI officers
15 appear to be recording what you said?

16 A Yes.

17 Q And did they ever furnish you a written or
18 transcribed copy of what you said?

19 A No.

20 Q Now, then, do you remember at some later
21 time a man named Mr. Barnes came and talked to you,
22 identifying himself as a private investigator
23 appointed by the Court for the defense in this
24 matter?

25 A I don't remember his name, but a man came.

1 Q A man came telling you that he was
2 associated with the --

3 A Right.

4 Q And did Mr. Barnes ask you some questions
5 about the things that you had already discussed with
6 the Federal Bureau of Investigation?

7 A Yes, he did.

8 Q Now, did he appear to record what you were
9 saying?

10 A Yes.

11 Q And did you ever get an opportunity to look
12 at a transcribed or written copy of what Mr. Barnes
13 elicited from you as far as a statement?

14 A No, I did not.

15 Q Ms. Hutchison, you told the FBI that
16 Mr. Jordan had been, in your words, depressed about
17 some things before his disappearance, is that
18 correct?

19 A Yes.

20 Q And what were those things?

21 MR. BRITT: Objection.

22 THE COURT: Sustained, unless you
23 want to be heard as to relevance.

24 MR. BOWEN: If I have to be, I
25 will, because I'll need to go into these

1 things.

2 THE COURT: Are you asking to be
3 heard?

4 MR. BOWEN: Yes, sir.

5 THE COURT: Ladies and gentlemen
6 of the jury, there's a matter of law the
7 Court must take up at this time out of the
8 presence of the jury.

9 Please recall my instructions in that
10 regard. Again, if you'll step into the
11 jury room, please.

12 (Jury out at 12:15 p.m.)

13 THE COURT: While we have this
14 opportunity in the absence of the jury,
15 folks, I appreciate you making efforts to
16 clear an aisleway there. We will need that
17 for obvious purposes.

18 Yes, sir?

19 MR. BOWEN: Your Honor, before I
20 make my argument and my showing, may I ask
21 in the Court's discretion that the witness
22 be excused from the room so she does not
23 hear what it is I'm about to go into?

24 THE COURT: Mr. Britt?

25 MR. BRITT: I don't see the need

1 for her to leave.

2 THE COURT: At this point, do you
3 want to be heard further --

4 MR. BOWEN: Yes, on the issue.

5 THE COURT: -- as to your
6 request? That request is in the discretion
7 of the Court denied.

8 MR. BOWEN: Now, the nature of
9 our inquiry, Your Honor, has to do with two
10 statements, one given to the FBI at one
11 point, one given and recorded by our
12 investigator.

13 Now, on the one statement to the FBI,
14 I've just highlighted a few things. The
15 witness, Ms. Hutchison, says that
16 Mr. Jordan had reason to be depressed about
17 some things, that they were having trouble
18 making payroll, that it appeared that that
19 particular plant was about to close, that
20 things were not good. And the last part of
21 her interview, she says -- well, that's
22 what I'm talking about from that
23 interview.

24 From the interview with Mr. Barnes
25 conducted a few months later, Barnes asked

1 her, are you aware of any problems that
2 Mr. Jordan might have had. No, he didn't.
3 Every time I saw him he had a smile on his
4 face. I don't know whether he had any
5 problems or not. These issues go to
6 credibility of the witness.

7 THE COURT: How is that relevant
8 to any issue in this case, though?

9 MR. BOWEN: The credibility of
10 the witness seems to me, Your Honor, is
11 always at issue. If she can be shown to be
12 telling one investigator one thing at one
13 time and another investigator something
14 else at another time, goes to the value and
15 weight of the credibility and credibility
16 of what she's saying about the issue at
17 hand.

18 THE COURT: It still has to
19 relate to something of relevance in the
20 case.

21 MR. BOWEN: Also has to do with
22 the state of mind that Mr. Jordan was in.
23 Remember, there are some bizarre issues in
24 this case. Mr. Jordan was seen by some
25 very credible, reasonable, disinterested

1 folks, and the fact that he may have been
2 having some depression or some problems of
3 that nature that she see then at a later
4 time to cover up with an interview with our
5 witness, of course gets into the issue of
6 any kind of reason or motivation for the
7 man to disappear.

8 I have evidence that the man was
9 \$40,000 behind on his IRS holding, could
10 have faced jail sentence and jail time for
11 that, a carload of checks that were checks
12 on former employees that hadn't worked
13 there in six months, and that was
14 discovered in the car, yet she's saying
15 they are having trouble making the existing
16 payroll.

17 THE COURT: At this point,
18 Mr. Bowen, until some foundation is laid by
19 you or otherwise in the evidence, the
20 objection is sustained.

21 Now, you have the absolute right to
22 place Ms. Hutchison under subpoena and call
23 her as a witness if you wish to do so.
24 Foundation has to be laid for the type of
25 evidence that you're seeking to admit at

1 this point. Otherwise, the evidence is
2 purely speculation and conjecture.

3 MR. BOWEN: Well, at this point,
4 lest she be allowed to get down off that
5 stand and these matters which I have now
6 alerted her that I'm going to be talking
7 about for which there may be preparation
8 which would be disadvantageous to the
9 defendant, I desire at this point to make a
10 record on these issues outside the presence
11 of the jury.

12 THE COURT: We've got the
13 opportunity. Do you want to make an offer
14 for proof?

15 MR. BOWEN: Yes, sir.

16 THE COURT: In the absence of the
17 jury you may do so.

18 BY MR. BOWEN:

19 Q Ms. Hutchison, you told the investigator
20 sometime -- that is for the FBI, sometime the 13th of
21 August of 1993 that Mr. Jordan was depressed, and you
22 have agreed to that, is that correct?

23 A In August?

24 Q Well, there is an indication on my sheet
25 that sometime in the middle of August or so of 1993

1 is when the FBI officer talked to you. Is that not
2 your recollection?

3 A Right.

4 Q Is that about right as far as you recall?

5 A Yes.

6 Q And when you told him that Mr. Jordan was
7 depressed, what about, please?

8 A I really don't know. All I know is about
9 the payroll.

10 Q You told him that the business was having
11 trouble making the payroll?

12 A Right.

13 Q Did you tell him something about it looked
14 like the plant might have to close?

15 A Yes, I did.

16 Q Now, you also mentioned a person named
17 Woodrow, is that right?

18 A Yes.

19 Q And what was Woodrow's function in the
20 business?

21 A Custodian, clean-up.

22 Q Did you mention to the investigator for the
23 FBI that Mr. Woodrow had to be -- had had to be let
24 go because of lack of business?

25 A Right.

1 Q And did you tell the officer that
2 Mr. Jordan was depressed because a contract between
3 Bob Sanders and Windjammer, Incorporated had been
4 cancelled due to their material manufacturer and he
5 was worried that J.V.L. might have to close?

6 A Yes.

7 Q Is that right?

8 A Right.

9 Q Now, then you talked to the person, the
10 investigator identifying himself as working for the
11 defense and you stated that he --

12 THE COURT: Establish a time
13 frame, Mr. Bowen, for the record.

14 BY MR. BOWEN:

15 Q Let me ask you, do you remember about when
16 you talked to this person, that you talked to with
17 the defense?

18 A No, I do not.

19 Q But it was after you talked to the FBI, is
20 that correct?

21 A Yes.

22 Q Would about Christmastime of 1994, would
23 that sound about right?

24 A I really can't remember.

25 Q Do you remember telling Mr. Barnes as to

1 his question, are you aware of any problems that he
2 may have had, that is referring to Mr. Jordan, and
3 you said, no, he didn't, every time I seen him he had
4 a smile on his face. I don't know whether he had any
5 problems or not. Did you tell the investigator that?

6 A I can't remember that.

7 Q You don't deny stating that though, do you?

8 A I don't remember.

9 Q Then the defense investigator asked you if
10 the FBI had talked to you and if they had made any
11 kind of recording, if they had given you a copy, and
12 you said no, is that correct?

13 A That's correct.

14 Q And then later you told the defense
15 investigator that Mr. Jordan had always been a lively
16 person, is that correct?

17 A That's correct.

18 Q You didn't mention to the investigator for
19 the defense anything about Mr. Jordan being worried,
20 upset, or depressed or less than lively about
21 anything, is that correct?

22 A No, I did not.

23 Q All right. Which was the truth of those
24 two statements regarding whether or not he was
25 depressed or worried about anything?

1 A At the time that he left, he was
2 depressed.

3 Q Why didn't you tell the defense
4 investigator anything about that?

5 A He didn't ask me.

6 Q All right.

7 MR. BOWEN: That's all.

8 THE COURT: Anything on behalf of
9 the State on the offer of proof now before
10 the Court?

11 MR. BRITT: No, sir.

12 THE COURT: Mr. Bowen, if you
13 want to establish on one occasion she told
14 someone that Mr. Jordan was depressed and
15 on another occasion she told someone else
16 something that you contend is different,
17 then you can establish that for the
18 purposes of credibility. I'll give an
19 appropriate limiting instruction to the
20 jury. But you may not go into the details,
21 because the details of why he may have been
22 depressed according to her testimony are
23 not relevant at this point.

24 MR. BOWEN: Very well, sir. I
25 understand.

1 THE COURT: State want to be
2 heard further?

3 MR. BRITT: No, sir.

4 THE COURT: For the record and so
5 that we're all clear, you may establish
6 that according to your position she made
7 what you contend is an inconsistent
8 statement, and nothing else.

9 MR. BOWEN: Yes, sir.

10 THE COURT: Bring the jury back
11 in, please.

12 Mr. Britt, is the State asking for a
13 limiting instruction?

14 MR. BRITT: Yes, sir.

15 (Jury in at 12:25 p.m.)

16 THE COURT: Yes, sir, Mr. Bowen.

17 MR. BOWEN: Thank you, Your
18 Honor.

19 BY MR. BOWEN:

20 Q Ms. Hutchison, when you talked to the
21 representative for the Federal Bureau of
22 Investigation, that was about the middle of August of
23 1993, is that correct?

24 A Yes.

25 Q And at that time, you stated to that

1 investigator that Mr. Jordan was depressed about some
2 things concerning the business, is that true?

3 MR. BRITT: Objection.

4 THE COURT: Sustained to the
5 form.

6 BY MR. BOWEN:

7 Q You said that Mr. Jordan was depressed, is
8 that correct?

9 A Yes.

10 Q And then when you had an interview with the
11 defense investigator sometime later, do you recall
12 his asking you, are you aware of any problems that
13 he, that is, Mr. Jordan, might have had?

14 A I don't remember.

15 Q Do you recall telling that --

16 THE COURT: They need to hear
17 you, ma'am. If you'll repeat your answer
18 please.

19 THE WITNESS: I don't remember.

20 BY MR. BOWEN:

21 Q Do you recall telling that investigator,
22 no, he didn't have any problems, every time I saw him
23 he had a smile on his face, and I didn't know whether
24 he had any problems or not. Did you tell the defense
25 investigator words to that effect?

1 A Yes.

2 THE COURT: Now, members of the
3 jury, I instruct you that the evidence just
4 elicited is being offered and admitted in
5 this case solely on the issue of the
6 credibility of the witness now before you,
7 and to the extent that you find that it
8 bears on the credibility of the witness now
9 before you, you may consider it for that
10 limited purpose and for no other purpose.

11 Anything further on behalf of the
12 State?

13 MR. BRITT: No, sir.

14 THE COURT: Anything further by
15 way of cross-examination?

16 BY MR. BOWEN:

17 Q Ms. Hutchison, which was the truth, the
18 first statement or last?

19 MR. BRITT: Objection.

20 THE COURT: Overruled. You may
21 answer.

22 THE WITNESS: The first.

23 BY MR. BOWEN:

24 Q Why did you tell the defense investigator
25 something that wasn't the truth?

1 MR. BRITT: Objection to the
2 form.

3 THE COURT: Sustained as to the
4 form. Rephrase it.

5 MR. BOWEN: That's all.

6 THE COURT: Anything on
7 redirect?

8 MR. BRITT: If I could have just
9 a second.

10 THE COURT: Yes, sir.

11 MR. BRITT: No, sir, I don't have
12 any other questions.

13 THE COURT: May the witness be
14 released, folks?

15 MR. BOWEN: Yes, Your Honor.

16 THE COURT: Thank you,
17 Ms. Hutchison, you're free to go. You may
18 step down.

19 THE COURT: Mr. Britt?

20 MR. BRITT: Your Honor, due to
21 the anticipated length of the next witness,
22 could we recess for lunch at this time and
23 return at 2:00 so that the testimony does
24 not have to be broken up?

25 THE COURT: You folks want to be

1 heard?

2 MR. THOMPSON: No, sir.

3 THE COURT: Ladies and gentlemen
4 of the jury, ordinarily -- let me give you
5 that information now. The schedule that we
6 will attempt to adhere to is as follows:
7 We will start the proceedings each morning
8 at 9:30. We'll attempt to take a
9 mid-morning recess somewhere in the
10 neighborhood of 11:30 to 11:45.

11 Generally, we'll take lunch recess
12 from 1:00 until 2:30. We will attempt to
13 take a mid-afternoon recess somewhere in
14 the neighborhood of 3:45. And we will
15 attempt to stop the proceedings each day no
16 later than 5:00 p.m.

17 At this time, however, we're going to
18 recess until 2:00. We will continue with
19 the presentation of evidence at that time.

20 Please recall it is your duty to abide
21 by all prior instructions of the Court
22 concerning your conduct during this lunch
23 recess. I'm obligated at this point to
24 again instruct you that you're not to
25 discuss this matter among yourselves or

1 with anyone else. You're not to allowed
2 for anyone to say anything to you or in
3 your presence about this case. If anyone
4 does communicate with you about this matter
5 or attempts to do so, or if anyone says
6 anything in your presence, you need to
7 inform us of that immediately.

8 Don't form or express any opinions on
9 this matter. Don't have any contact or
10 communication of any kind with any of the
11 attorneys, parties, witnesses, prospective
12 witnesses or directly with the Court.
13 Please recall that it is your duty to avoid
14 any exposure to any media accounts,
15 regardless of what form they might take, in
16 connection with this matter. And you're
17 not to conduct any independent inquiry or
18 investigation or research of any kind. You
19 folks have belongings in the jury room that
20 you need to get? Everyone else please
21 remain seated, the members of the jury are
22 excused at this time. Folks, if you'll get
23 your belongings.

24 (Jury out at 12:30 p.m.)

25 THE COURT: In the absence of any

1 members of the jury, Mr. Britt you
2 indicated there was a matter you wanted to
3 put on the record?

4 MR. BRITT: Yes, sir. During the
5 mid-morning recess, it was brought to my
6 attention from Ms. Azalea Kemp, who is a
7 State's witness in this matter, that she
8 had received a letter from the defendant
9 dated September 6, 1995.

10 As I say, it was given to me
11 mid-morning recess. I have not given a
12 copy of it to counsel as an opportunity for
13 them to review it. My concern is that the
14 defendant has contacted a witness not in
15 the sense that he may be trying to
16 influence a witness in any way, but that
17 the mere contact of that witness by the
18 defendant may cause some difficulty in this
19 case.

20 THE COURT: Well, among other
21 things, it could cause difficulty
22 potentially for the defendant.

23 MR. BRITT: Yes, sir.

24 THE COURT: You've not provided a
25 copy of that to Mr. Thompson or Mr. Bowen?

1 MR. BRITT: No, sir, I'll do that
2 at this time.

3 THE COURT: If you'll do that. I
4 take it that the tenor of what you're
5 holding in your hand does not arise to a
6 level where you contend there's been any
7 attempt to interfere with any State's
8 witness?

9 MR. BRITT: Not in a direct
10 attempt to interfere with her testimony,
11 but it would be my position it's an attempt
12 by him to garner sympathy for himself in
13 the plight that he finds himself in.

14 THE COURT: Have that marked as
15 an exhibit. For the record, folks, I've
16 not seen it.

17 MR. BOWEN: We have not.

18 THE COURT: But I'm going to
19 direct that it be entered into the record
20 in the case, with copies to be provided to
21 counsel for defendant, both Mr. Bowen and
22 Mr. Thompson.

23 (Off-the-record discussion.)

24 THE COURT: For the record,
25 folks, I've also been informed that the

1 city wanted some sort of designation for
2 jurors to place on their car which would
3 prevent any problems in terms of their
4 parking in the designated area. With the
5 consent of all counsel, these are unmarked
6 except for colors in any way. There's no
7 writing at all on any of these indicators.
8 You folks want to be heard in that regard?
9 Mr. Thompson, Mr. Bowen?

10 MR. BOWEN: I'm sorry, Judge, I
11 was looking at this document. I'm sorry.

12 THE COURT: We're going to give
13 these to the jurors to put in the vehicles
14 to indicate that they have access to the
15 designated parking spaces.

16 MR. BOWEN: No problem.

17 MR. THOMPSON: That's fine.

18 MR. BRITT: For the record, the
19 letter or the copy of the letter's been
20 marked as State's Exhibit 10, I had already
21 pre-marked some photographs in anticipation
22 of my next witness, so it will be out of
23 order in terms --

24 THE COURT: That's not something
25 at this point that you intend to offer?

1 MR. BRITT: No, sir, it's just
2 been marked that way for identification.

3 THE COURT: For the purpose of
4 identification, State's Exhibit 10 is
5 directed to be marked also as whatever the
6 next number Court's exhibit is, entered
7 into the record in this case.

8 MR. BRITT: For purposes of
9 keeping things in context, I don't object
10 to simply marking it as a Court's exhibit
11 as opposed to State's 10.

12 MR. THOMPSON: Can we just get a
13 copy of it?

14 THE COURT: If you'll eliminate
15 the reference -- strike that. State's
16 Exhibit Number 10, it will be whatever the
17 next number Court's exhibit is and entered
18 into the record. If you'll return to
19 Mr. --

20 THE CLERK: That's number 10
21 also.

22 THE COURT: That's fine. Court's
23 Exhibit Number 10 also.

24 MR. THOMPSON: Give it to the
25 Clerk.

1 THE COURT: Give it to Ms. Gaines
2 since it's now been entered into the record
3 by my order and she will make copies for
4 you folks.

5 Anything further?

6 MR. BOWEN: I think at this point
7 a response from Mr. Britt's contention, and
8 I understand where he may be, having read
9 the letter, it's apparent that the letter
10 came about as a result of Mr. Craig
11 Whitlock's article which Mr. Whitlock
12 reported that Mr. Kemp and family were
13 praying for Green and his family.

14 While that's not a direct invitation
15 to write a letter or anything, it certainly
16 explains why there would be some sort of
17 communication not necessarily
18 inappropriate, because Ms. Kemp made the
19 statement to the reporter, it was reported
20 widely, and as a result there was a
21 response.

22 THE COURT: Well, folks, it's not
23 a matter of concern to me at this point
24 except that I think that Mr. Green,
25 Mr. U'Allah needs to be aware that any

1 statement, written or otherwise which may
2 be attributable to him may potentially be
3 offered into evidence against him. And
4 it's something you folks probably need to
5 talk to your client about.

6 The State is not making any allegation
7 at this point that there is an overt
8 attempt or otherwise --

9 MR. BRITT: No, sir, I just want
10 to bring it to attention.

11 THE COURT: -- on the part of
12 Mr. Green to interfere with any witness.

13 Anything else?

14 MR. BRITT: No, sir.

15 THE COURT: Recess until 2:00,
16 please.

17 (Lunch recess.)

18 THE COURT: Good afternoon,
19 folks. All right. Let the record reflect
20 all counsel are present, the defendant is
21 present in open court. All members of the
22 jury are secured in the jury room.

23 I understand there is a matter we need
24 to put on the record regarding access to
25 the courtroom during lunch recess.

1 It was brought to my attention by
2 Ms. Gaines that after we recessed for lunch
3 the court reporters indicated they needed
4 access to the courtroom. There was some
5 discussion, as I understand it, by Ms.
6 Gaines with counsel for the State and with
7 counsel for the defendant, specifically
8 Mr. Thompson. I understand that consent
9 was given to provide a key to the court
10 reporters so they can have access to the
11 courtroom.

12 Is that correct, Mr. Britt?

13 MR. BRITT: Yes, sir.

14 THE COURT: Correct,
15 Mr. Thompson?

16 MR. THOMPSON: Yes.

17 THE COURT: Let the record so
18 reflect. That will remain our situation
19 unless we decide otherwise. They will have
20 access to the courtroom during the lunch
21 recess with the key as provided by Ms.
22 Gaines.

23 Also for purposes of the record, the
24 jury parking instructions have been
25 completed. It's my intent to distribute

1 these parking instructions to the jurors at
2 the conclusion of the proceedings today
3 along with the passes that will be utilized
4 by them.

5 Counsel for the State want to be heard
6 or counsel for the defendant?

7 MR. BRITT: No, sir.

8 MR. THOMPSON: No, sir.

9 THE COURT: Ready to go forward,
10 Mr. Britt?

11 MR. BRITT: Yes, sir. I believe
12 my witnesses have returned.

13 THE COURT: If you'll bring the
14 jury in, please.

15 (Jury in at 2:02 p.m.)

16 THE COURT: Good afternoon,
17 ladies and gentlemen of the jury.

18 Mr. Britt, you may call your next
19 witness, sir.

20 MR. BRITT: Your Honor, at this
21 point I would like to introduce a
22 stipulation.

23 THE COURT: Okay.

24 MR. BRITT: I would like to have
25 the stipulation marked as a State's

1 exhibit.

2 (State's Exhibits 8, 9, 10, 11 were
3 marked for identification.)

4 THE COURT: Does counsel for the
5 defendant stipulate to Mr. Britt's reading
6 the stipulation into the record at this
7 time?

8 MR. THOMPSON: No objection.

9 THE COURT: Okay. Yes, sir.

10 MR. BRITT: Your Honor, this has
11 been marked as State's Exhibit Number 10.
12 It's a document entitled Stipulation of
13 Facts.

14 The parties stipulated to the
15 following facts: That Michael Jordan is
16 the son of a James R. Jordan. In February
17 1986, Michael Jordan gave his father, James
18 R. Jordan, a 1986 NBA All-Star ring that
19 had been presented to Michael Jordan for
20 his participation in the 1986 NBA All-Star
21 game held in Dallas, Texas. Michael Jordan
22 gave his father and others a replica
23 1990-1991 NBA championship ring as a
24 Christmas present in 1991. In 1991 an NBA
25 championship ring was made by Howard

1 Kaplan, Henry Kay Jewelers, Chicago,
2 Illinois at a cost of \$3500 per ring.
3 Michael Jordan gave his father and others a
4 1991-92 NBA championship watch as a
5 Christmas present in 1992. The 1991-92 NBA
6 championship watch was made by Howard
7 Kaplan, Henry Kay Jewelers, Chicago,
8 Illinois at a cost of \$3500 per watch.
9 Michael Jordan purchased a 1992 Lexus
10 SC400, automobile VIN number
11 JT8UZ30C9N001121 from Bredemann Lexus,
12 Glenview, Illinois, and gave it to his
13 father as a present. The cost of the Lexus
14 automobile was \$40,000.

15 On December the 27th, 1995, Michael
16 Jordan met with District Attorney Johnson
17 Britt, Special Agent Kim Heffney, and
18 Detective Anthony Thompson in Chicago,
19 Illinois. At that time Michael Jordan
20 viewed a photograph of Daniel Green, marked
21 as State's Exhibit Number 1, and identified
22 the following items in the photograph as
23 items belonging to his father or as gifts
24 from him to his father: One, eyeglasses
25 worn by the defendant are identical to

1 I instruct that since the parties for the
2 State and for the defendant, counsel for
3 the State and for the defendant have
4 stipulated that the facts as just read into
5 the record by Mr. Britt are true for the
6 purposes of this case, that you are to
7 accept those facts as being true for all
8 purposes connected with this case.

9 Anything further on behalf of the
10 State?

11 MR. BRITT: Yes, sir. I would
12 ask that the stipulation and the
13 accompanying photograph be published to the
14 jury.

15 THE COURT: Yes, sir.

16 MR. THOMPSON: Your Honor --
17 that's all right.

18 THE COURT: Yes, sir, if you'll
19 hand the exhibit to Mr. Horne. Members of
20 the jury, please recall my instructions in
21 that regard. You are to examine each
22 exhibit given to you individually and
23 carefully and without any comment at all.

24 For the record, State's Exhibit 10 is
25 admitted at this time. Yes, sir.

1 Mr. Britt, we only have one copy of that?

2 MR. BRITT: Yes, sir, I
3 apologize.

4 THE COURT: Is there a copy on
5 file?

6 MR. BRITT: That is the
7 original. There are copies of the
8 stipulation. There are no other copies of
9 the photograph.

10 THE COURT: Okay. If you'll hand
11 the exhibit to Ms. Gaines now.

12 MR. BRITT: Your Honor, at this
13 time the State calls Carolyn Robinson.

14 THE COURT: If you will come up
15 to the witness stand, please, ma'am, place
16 your left hand on the Bible and raise your
17 right.

18 CAROLYN JACOBS ROBINSON,
19 being first duly sworn was examined and deposed as
20 follows:

21 THE COURT: If you'll take the
22 witness stand, please, ma'am.

23 Q If you will state your full name for
24 the record, please, ma'am.

25 A Carolyn Jacobs Robinson.

1 Q If you'll spell the last name for the
2 purpose of the record.

3 A R-O-B-I-N-S-O-N.

4 Q Thank you, ma'am.

5 DIRECT EXAMINATION

6 BY MR. BRITT:

7 Ms. Robinson, where do you live?

8 A One Wood Creek, Castle Hayne, North
9 Carolina.

10 Q How long have you lived in Castle Hayne
11 North Carolina?

12 A About 13 years.

13 Q Where are you presently employed?

14 A General Electric.

15 Q How long have you worked at General
16 Electric?

17 A 28 years.

18 Q In what capacity do you work for General
19 Electric?

20 A I'm a human resources specialist.

21 Q Ms. Robinson, did you know James Jordan?

22 A Yes, I did.

23 Q Approximately when did you first meet James
24 Jordan?

25 A 1968, when I went to work for GE.

1 Q Was Mr. Robinson employed at GE at that
2 time?

3 A Yes.

4 Q From 1968 through July of 1993, can you
5 describe your relationship with Mr. Jordan?

6 A Well, we had been friends since the time I
7 had worked for GE, and we continued our friendship.

8 Q Ms. Robinson, in July of 19 -- strike
9 that. Did you know Willie Kemp?

10 A Yes, I did.

11 Q Who was Willie Kemp?

12 A He was a coworker of ours and friend.

13 Q In July of 1993, did you have an occasion
14 to see James Jordan?

15 A Yes, I did.

16 Q On what date did you see Mr. Jordan?

17 A July the 22nd.

18 Q Prior to July the 22nd of 1993, had you had
19 any conversation with Mr. Jordan in regard to him
20 coming to the Wilmington area?

21 A Yes.

22 Q When did that conversation take place?

23 A Maybe three or four days before July 22nd.

24 Q And did you know -- did Mr. Jordan tell you
25 his purpose for coming to Wilmington on July the

1 22nd?

2 A Yes.

3 Q What was that purpose?

4 A To attend Mr. Kemp's funeral.

5 Q On July the 22nd of 1993, you've testified
6 that you saw Mr. Jordan. Where did you first see him
7 on that day?

8 A At my home.

9 Q How did he arrive there?

10 A He came in his car.

11 Q What type of car was he driving that day?

12 A His Lexus.

13 Q Approximately what time of the day did he
14 arrive at your house?

15 A Approximately 1:00.

16 Q Where was the funeral scheduled to be
17 held?

18 THE COURT: Sorry, is that a.m.

19 or p.m.?

20 BY MR. BRITT:

21 Q A.m. or p.m.?

22 A P.m.

23 Q Where was the funeral scheduled to be held?

24 A In Wilmington, on the corner of 10th and
25 Cancel.

1 Q When Mr. Jordan arrived at your home on the
2 afternoon of July the 22nd, how was he dressed?

3 A In a suit and tie.

4 Q Can you describe the color of the suit that
5 he was wearing?

6 A If I recall, the suit was kind of a grayish
7 suit with maybe some stripes in it.

8 Q And upon arriving at your residence on the
9 22nd of July, how long did the two of you remain
10 there before leaving to go to the funeral?

11 A Just maybe ten minutes, at the very most.
12 I was almost ready to leave out when he came in.

13 Q Did the two of you ride together to the
14 funeral?

15 A Yes.

16 Q In whose vehicle did you ride?

17 A In his vehicle.

18 Q After attending the funeral, what did the
19 two of you then do?

20 A We went to the grave site, we left there
21 and went back to my house.

22 Q Was anyone at your home when you returned?

23 A No.

24 Q What occurred at your house upon returning
25 from the funeral?

1 A I went in to change clothes, and when I
2 came out he had already changed and put his clothes
3 back in the car.

4 Q Can you describe the clothes he had changed
5 into?

6 A Just casual clothes, slacks and shirt.

7 Q And after the two of you had changed your
8 clothes, what then occurred?

9 A I took two or three pictures and then we
10 went to another coworker's home and then to another
11 coworker's home. We visited a couple of places.

12 Q The photographs that you took, what type of
13 camera were you using to take those photographs?

14 A Polaroid 600.

15 Q And for what reason did you take
16 photographs of Mr. Jordan?

17 A I had a cousin visiting with us from
18 Hartford, Kentucky, and he liked to take pictures,
19 and that day he had gone to visit someone else in the
20 family, and I decided I would take some photographs
21 for him to take back home with him.

22 Q And that cousin's name is what?

23 A Bobby Flowers.

24 Q Can you describe for us the locations where
25 these photographs were taken?

1 A One was taken in my kitchen area, at a
2 casual table, just at the table. Two was taken
3 outside, one in the drive -- well, one in the
4 driveway.

5 Q The ones that were taken in the driveway,
6 was his car depicted in those photographs?

7 A Yes.

8 Q Did you take photographs of the license
9 plate of the car as well?

10 A Yes, I did.

11 Q Why did you take a photograph of the
12 license plate?

13 A Just so he would have it to show to his
14 friends.

15 THE COURT: When you say he would
16 have it to show to his friends, who are you
17 referring to?

18 THE WITNESS: My cousin Bobby.

19 THE COURT: Thank you, ma'am.

20 BY MR. BRITT:

21 Q Ms. Robinson, on July the 22nd of 1993, do
22 you recall Mr. Jordan wearing any type of jewelry?

23 A Not until I reflected back to the
24 pictures.

25 MR. BRITT: May I approach the

1 witness?

2 THE COURT: Yes, sir.

3 MR. BRITT: Mr. Thompson, have
4 you seen this? It's State's Exhibit 7.

5 MR. THOMPSON: Yes.

6 MR. BRITT: May I approach the
7 witness?

8 THE COURT: Yes, sir.

9 BY MR. BRITT:

10 Q Ms. Robinson, I'm going to show you what's
11 been marked as State's Exhibit Number 2, ask you to
12 look at that photograph and tell me if you can
13 identify the person depicted in that photograph?

14 A Yes, it's James.

15 Q And is State's Exhibit Number 2 an exact
16 copy of the Polaroid photograph that you took of
17 Mr. Jordan on July the 22nd of 1993?

18 A Yes, it is.

19 MR. BRITT: Your Honor, at this
20 time I would ask that State's Exhibit 2 be
21 admitted.

22 THE COURT: Without objection,
23 State's Exhibit 2 is admitted. Is it being
24 admitted for substantive purposes, sir?

25 MR. BRITT: Yes, sir.

1 MR. THOMPSON: No objection.

2 BY MR. BRITT:

3 Q I'll show you what has been marked as
4 State's Exhibit 9 and ask you to look at that
5 photograph, and if you can identify the photograph.

6 A This is one of the four photographs of
7 James that I took in my driveway.

8 Q Does State's Exhibit Number 9 fairly and
9 accurately represent Mr. Jordan as he appeared on
10 July the 22nd, 1993?

11 A Yes, it does.

12 Q Is State's Exhibit 9 an enlargement of the
13 original Polaroid photograph that you took?

14 A That's correct.

15 MR. BRITT: Your Honor, at this
16 time I ask that it be admitted.

17 THE COURT: Admitted without
18 objection.

19 BY MR. BRITT:

20 Q I'll show you what has been marked as
21 State's Exhibit Number 8 and ask you to look at that
22 photograph. Again, can you identify that photograph?

23 A Yes.

24 Q And for the record, what is depicted in
25 State's Exhibit Number 8?

1 A James Jordan with his car and -- that's it.

2 Q Does State's Exhibit Number 8 fairly and
3 accurately represent Mr. Jordan as he appeared on
4 July the 22nd, 1993?

5 A Yes, it does.

6 MR. BRITT: Your Honor, I ask
7 that State's Exhibit 8 be admitted.

8 THE COURT: It's admitted.

9 BY MR. BRITT:

10 Q Ms. Robinson, what has been marked as
11 State's Exhibit Number 11, I'll ask you to look at
12 that photograph and tell me if you're able to
13 identify State's Exhibit Number 11?

14 A Yes, it's a close-up of James' license
15 plate.

16 Q And does it fairly and accurately represent
17 the appearance of the automobile and the license
18 plate as it appeared on July the 22nd, 1993?

19 A Yes, it does.

20 Q And is the license plate number that was
21 depicted on the back of his car depicted in the
22 photograph?

23 A Yes, it is.

24 MR. BRITT: Your Honor, at this
25 time I ask that State's Exhibit Number 11

1 be admitted.

2 THE COURT: It's admitted.

3 BY MR. BRITT:

4 Q Ms. Robinson, I show you what is State's
5 Exhibit 3 and ask if you can identify what is
6 contained in that photograph?

7 A It's a Chicago Bulls world championship
8 watch.

9 Q And is that watch similar to one or
10 identical to one that you saw James Jordan wearing on
11 July the 22nd, 1993?

12 A I'm not sure he had the watch on.

13 THE COURT: I'm sorry, ma'am?

14 THE WITNESS: I'm not sure he had
15 the watch on. Could have very well had it
16 on.

17 BY MR. BRITT:

18 Q I hand you State's Exhibits 4, 5 and 6 and
19 ask you to look at those photographs and ask you if
20 you've ever seen a ring -- the ring that's depicted
21 in those photographs?

22 A I have seen the ring before.

23 Q And on whose person had you seen the ring
24 before?

25 A I had seen it on James before.

1 Q Do you recall if Mr. Jordan was wearing it
2 on July the 22nd of 1993?

3 A I don't recall if he was wearing it on that
4 day.

5 Q I'm going to hand you what has been marked
6 as State's Exhibit Number 7, which is a plastic bag
7 containing an item. I would ask you to look at the
8 item contained in the bag and ask if you can identify
9 it and whether you had seen it before.

10 A I think I've seen the ring before. Looks
11 like James' ring.

12 MR. BRITT: Your Honor, I ask
13 that Ms. Robinson be allowed to step down
14 for purpose of using the exhibits.

15 THE COURT: Yes, sir. You may
16 step down. Ms. Robinson, please keep your
17 voice raised so all members of the jury can
18 hear you, please.

19 THE WITNESS: Yes.

20 BY MR. BRITT:

21 Q I'm going to hand you what's been marked as
22 State's Exhibit Number 2 which you've identified as a
23 photograph of Mr. Jordan. Where was this photograph
24 taken?

25 A It was taken in my kitchen area.

1 Q If you'll show that to the jury area, show
2 the jurors on this end and walk down, show the jurors
3 on the other end.

4 A (Witness complies).

5 Q I'm going to hand you State's Exhibits 8
6 and 9, and ask you where those photographs were taken
7 and show those to the jury as well.

8 A They were taken at my home in my driveway.

9 Q I hand you State's Exhibit Number 11 which
10 you've previously testified was a close-up of the
11 license plate that appeared on Mr. Jordan's car.

12 A It was taken in my driveway also.

13 Q If you would return to the witness stand,
14 please.

15 A (Witness complies).

16 Q Ms. Robinson, after the photographs were
17 taken at your residence, did you and Mr. Jordan go to
18 the Kemp family home?

19 A We went to another friend's home first.

20 Q How long did you stay at that friend's
21 home?

22 A Probably 15 to 20 minutes.

23 Q And from there, where did you go?

24 A We went to another friend's home.

25 Q And how long did you stay there?

1 A Probably about 30, 40 minutes.

2 Q From that residence where did you go?

3 A We left there and went to the Kemp's home.

4 Q For what purpose did you go to the Kemp's
5 home?

6 A To visit Ms. Kemp.

7 Q And when you arrived there -- strike that.
8 Where does Ms. Kemp live?

9 A Approximately 15 miles from where I live,
10 maybe not that far, maybe 12.

11 Q How did you get to Ms. Kemp's house?

12 A I rode with James in his car.

13 Q And upon arriving at the Kemp residence, do
14 you recall approximately what time of the day that
15 was?

16 A Not really. I would imagine -- I'm not
17 real sure, it's been so long ago. I'm not sure what
18 time we arrived.

19 Q Did you see Ms. Kemp?

20 A Yes.

21 Q And approximately how long did the two of
22 you stay at the Kemp residence?

23 A Maybe two hours, somewhere.

24 Q Upon leaving the Kemp residence, where did
25 you go?

1 A We went back to my home.

2 Q During the drive from the Kemp residence to
3 your home, did you have an occasion to use a
4 telephone?

5 A Yes, I did.

6 Q Where was that telephone?

7 A In his car.

8 Q And who did you call?

9 A I called my husband.

10 Q And when you called, was your husband at
11 home?

12 A Yes.

13 Q What if anything did you say to your
14 husband at that time?

15 A I asked him if he wanted us to bring
16 something home, what was we going to have for dinner,
17 we were hungry, and he said he was preparing dinner
18 for us.

19 Q After making the phone call, did you and
20 James Jordan proceed directly to your home?

21 A Yes.

22 Q Upon arriving at your home, what did the
23 two of you then do?

24 A Sat down, my husband had dinner about
25 ready, and I started helping him and fixed our food.

1 Q Do you recall what you had for dinner that
2 night?

3 A Yes, we had fish and salad and -- I guess,
4 I can't recall anything else, just the fish and
5 salad.

6 Q Did anyone have anything to drink in terms
7 of an alcoholic type drink?

8 A Yes. In fact, I asked James if he wanted a
9 drink before dinner, and he said yeah, and we both
10 had a drink before dinner.

11 Q Do you recall what kind of drink that you
12 made for him?

13 A It was vodka, and I don't know whether he
14 used orange juice or soda pop.

15 Q Do you recall if he had one or more drinks?

16 A I'm sure he had one before dinner, I don't
17 know if he had any more. The bottle was on the
18 table.

19 Q There in your residence, did you have
20 conversation with James Jordan?

21 A Yes.

22 Q During the conversations with James Jordan,
23 did he indicate to you what his plans were for the
24 following day?

25 A Yeah, we discussed his plans. He had a

1 very busy schedule for the next day. In fact, he had
2 airline tickets for Chicago, and he said he had some
3 other things he had to get done before going to
4 Chicago.

5 Q How long did Mr. Jordan stay at your house
6 the evening of July the 22nd, 1993?

7 A Well, from the time that he came for the
8 funeral until we left there and went to the friend's
9 and came back, he was there, he left my house
10 approximately 12:30.

11 Q A.m.?

12 A At night.

13 Q On the morning of July 23rd, 1993?

14 A Yes.

15 Q When he left your house at 12:30 a.m. on
16 July the 23rd, had he told you where he intended to
17 go?

18 A He was going to Charlotte, back home.

19 Q Did you make any request of Mr. Jordan
20 prior to his leaving?

21 A I asked him to give me a call when he got
22 home.

23 Q Did you ever receive such a phone call from
24 Mr. Jordan?

25 A No, I didn't.

1 Q Had you and Mr. Jordan spoken about his
2 intent, intentions of returning to the Wilmington
3 area at any time in the future?

4 A Not -- I think through general
5 conversation, you know, he said he would be back in
6 two or three weeks, you know, why couldn't we all go
7 to Hilton Head or something. He would be back in two
8 or three weeks in that area.

9 Q Did he tell you why he had plans to go to
10 Chicago?

11 A I can't remember. I'm sure he did, but I
12 can't remember specifically what he said.

13 Q And at the time Mr. Jordan left your
14 residence, was he still wearing the same clothes that
15 he was wearing at the time that the photos were taken
16 that afternoon?

17 A Yes, yes, he was.

18 MR. BRITT: I don't have any
19 other questions.

20 THE COURT: Cross-examination?

21 MR. BOWEN: Thank you, Your
22 Honor.

23 CROSS-EXAMINATION

24 BY MR. BOWEN:

25 Q Ms. Robinson, the officer from the FBI came

1 and talked with you sometime around the middle of the
2 month of August of 1993, is that correct?

3 A Probably, they had been several times.

4 Q And I believe at that time you were out of
5 state visiting some family, is that correct, when the
6 FBI officer talked to you?

7 A Yes.

8 Q You were in Washington, Maryland at the
9 time?

10 A Right.

11 Q Now, when the officer talked to you there,
12 he asked you questions having to do with what had
13 occurred the day and the evening that you spent some
14 time there with Mr. James Jordan, you told him what
15 you recall, is that right?

16 A Right.

17 Q And you told the officer about, for
18 example, the fact that Mr. Jordan had some vodka to
19 drink, at least one drink that you were aware of, is
20 that correct?

21 A Yes.

22 Q And you told the officer to your best
23 recollection at that time that Mr. Jordan had eaten
24 at your home and what he had eaten, and what was it
25 that you said a moment ago that he had had to eat?

1 A Fish, he had probably lettuce and tomato.

2 Q And that to your recollection then with the
3 FBI officer, and now, is all that you can recall that
4 he had to eat?

5 A Well, no, that day during the course of the
6 day, when we went by Kelly's house, Kelly offered him
7 a bowl of, I think they were field peas, and I
8 remember him eating those.

9 Q Other than that, you can't recall him
10 eating anything else that day, is that correct?

11 A No.

12 Q Specifically, you cannot recall him
13 eating -- ever eating any mushrooms or having any
14 mushrooms being served anyplace that you went with
15 him those two days, do you?

16 A Not unless my husband made mushroom gravy
17 for the fish, that's the only thing.

18 Q But you don't specifically recall that he
19 did, do you?

20 A No.

21 Q When you did not receive a telephone call
22 from Mr. Jordan, that was not unusual as far as you
23 were concerned, is that correct?

24 A That's correct.

25 Q You did not have any immediate concern

1 about that or call anybody, did you?

2 A That's correct.

3 Q Mr. Jordan did not tell you what other
4 things, as you have earlier referred to, what other
5 things he had to do before he flew to Chicago, did
6 he?

7 A Well, on the way to Mr. Kemp's house he
8 made a telephone call, and I assumed that was to his
9 office or somewhere, and something obviously hadn't
10 gotten done. And he said, okay, I'll have to do that
11 in the morning. And I said, gee, how are you going
12 to do all that in the morning. He said, well, we'll
13 get Larry, we'll go to Rock Fish and do whatever and
14 come back, and I'll still be able to make my flight.

15 Q But he didn't say Larry who, did he?

16 A No.

17 Q Didn't say what hour of the morning he
18 intended to do these things either?

19 A No.

20 Q Were you present when Mr. Jordan left in
21 his automobile?

22 A Yes.

23 Q And did you see the direction in which he
24 turned when he left?

25 A Yes.

1 Q Are you aware also that your husband was
2 interviewed by the FBI?

3 A Yes.

4 Q Were you interviewed together at the same
5 time?

6 A Yes. Well, for a while. He asked me to
7 leave.

8 Q Who asked you to leave?

9 A The FBI. He told me I could leave the
10 room. During that time, it was very emotional. It
11 was right after it happened, or I didn't realize that
12 James had actually -- they had found the body until I
13 had gotten to the D.C. area.

14 Q Ms. Robinson, let me ask you this if you
15 recall. Do you recall being present with your
16 husband with the FBI officer when it was talked about
17 exactly what direction Mr. Jordan drove off in?

18 A Yes.

19 Q What did you and your husband tell the FBI
20 officer about that if anything?

21 A That we thought at first -- my husband
22 asked me was I sure that James was going home, and I
23 said yes, because -- and I asked him why. And he
24 said, I just wondered why he went that way. And I
25 said, well, we take that direction, I mean --

1 Q Well, then, do I understand that your
2 husband was indicating by that way, a different
3 direction than the compass direction of
4 Charlotte?

5 MR. BRITT: Objection.

6 THE COURT: Sustained.

7 BY MR. BOWEN:

8 Q Well, what direction was he indicating --
9 let me drop back. It was on Paimly Street,
10 P A I M L Y?

11 A Parmele Road.

12 Q Parmele Road that he turned?

13 A Yes.

14 Q I think the officer has misspelled it.
15 Would you correctly spell it for us?

16 A It's P A R M E L E.

17 Q Now, can you tell us which way, coming from
18 your house, did he go down Parmele Road, is that the
19 road out in front of your house?

20 A Yes.

21 Q Can you tell us when he left the driveway,
22 which direction did he go on that road?

23 A He made a right on Parmele.

24 Q And that would have taken him in what
25 direction, north, east, south or west?

1 A That would have taken him north.

2 Q And you're not aware when he left whether
3 he specifically had any jewelry on him at that
4 particular time?

5 A No.

6 Q Did you see any jewelry in the car when you
7 had traveled earlier in the car with Mr. Jordan?

8 A No.

9 MR. BOWEN: That's all, Your
10 Honor.

11 THE COURT: Anything on redirect?

12 MR. BRITT: Yes, sir.

13 REDIRECT EXAMINATION

14 BY MR. BRITT:

15 Q Ms. Robinson, this route that you saw
16 Mr. Jordan leave on from the residence, does that
17 lead to Highway 74?

18 A Yes, either direction, you could take to
19 Highway 74.

20 Q Is one direction quicker than the other
21 direction?

22 A Yes.

23 Q The route that Mr. Jordan took leaving your
24 residence, is that the shorter or longer route to 74?

25 A Well, we normally say it's the shorter

1 route for us, it cuts off traffic plus you can do 55
2 instead of 45.

3 MR. BRITT: I don't have any
4 other questions.

5 THE COURT: Anything further?

6 MR. BOWEN: No.

7 THE COURT: May the witness be
8 released, folks?

9 MR. BOWEN: Yes.

10 THE COURT: Thank you, ma'am,
11 you're free to go.

12 MR. BRITT: Your Honor, at this
13 time we call James Robinson.

14 THE COURT: Place left hand on
15 the Bible and raise your right, sir.

16 JAMES E. ROBINSON,
17 being first duly sworn was examined and deposed as
18 follows:

19 DIRECT EXAMINATION

20 THE COURT: If you'll take the
21 witness stand please. And sir, if you'll
22 state your full name for the record.

23 THE WITNESS: My name is James
24 Edward Robinson.

25 THE COURT: Thank you,

1 Mr. Robinson. Mr. Britt.

2 BY MR. BRITT:

3 Q Mr. Robinson, what, if any, is your
4 relationship to Carolyn Robinson?

5 A I'm her husband.

6 Q How long have the two of you been married?

7 A Approximately 20 years.

8 Q And did you know James Jordan?

9 A Yes, I did.

10 Q How long did you know Mr. James Jordan?

11 A Approximately 20 years.

12 Q July the 22nd of 1993, did you have an
13 occasion to see Mr. James Jordan at your residence?

14 A Yes, I did.

15 Q When was the first time that you saw
16 Mr. James Jordan at your residence?

17 A Approximately 9:30 that afternoon, that
18 night.

19 Q And who if anyone accompanied him to your
20 residence?

21 A My wife.

22 Q When you saw Mr. Jordan, do you recall how
23 he was dressed?

24 A He was dressed casual.

25 Q Mr. Robinson, I want to show you what has

1 previously been admitted as State's Exhibit Number 2
2 and State's Exhibit Number 8. Do those photographs
3 show Mr. Jordan in the clothes that he was wearing
4 when you saw him approximately 9:30 p.m. on the night
5 of July 22nd, 1993?

6 A Yes.

7 Q Mr. Robinson, on the night of July 22nd of
8 '93, who had prepared dinner?

9 A I did.

10 Q Do you recall what you prepared for dinner
11 that evening?

12 A Fish and a salad.

13 Q And who consumed that meal, who ate that
14 meal?

15 A The three of us, the three of us, also my
16 son.

17 Q When you say the three of us, who are you
18 referring to?

19 A I'm talking James Jordan, Carolyn, my wife,
20 and myself. Also, my son was there.

21 Q Following dinner that evening, did you,
22 your wife and James Jordan have conversation?

23 A Yes, we did.

24 Q How long did the three of you talk there in
25 your residence that night?

1 A Well, they arrived there, I think, around
2 9:30, to -- it was around 12:30 a.m.

3 Q During that time frame, do you recall if
4 Mr. Jordan had anything to drink of an alcoholic
5 nature?

6 A I recall, I think, one drink.

7 Q Approximately what time did Mr. Jordan
8 leave?

9 A Approximately 12:30 a.m.

10 Q And did you see him leave from your
11 driveway?

12 A Yes, I did.

13 Q What vehicle was he in when he left your
14 driveway?

15 A The Lexus.

16 Q And in which direction did you see him turn
17 from --

18 A He made a right.

19 Q On to what road?

20 A On to Parmele.

21 Q Was there anything about his taking that
22 direction that you -- that caught your attention?

23 A At the time, but later I found out because
24 I have a son that goes to St. Mary, and for traffic
25 reasons, I take that same route now. Both leads back

1 into 117 which can get you back to 74.

2 Q And on July the 22nd of 1993, do you recall
3 whether Mr. Jordan was wearing any type of jewelry?

4 A No, I don't.

5 MR. BRITT: I don't have any other
6 questions.

7 THE COURT: Yes, sir.

8 CROSS-EXAMINATION

9 BY MR. BOWEN:

10 Q Yes. Mr. Robinson, you were preparing
11 dinner that night, did you also prepare the vodka and
12 orange juice or whatever it was Mr. Jordan drank?

13 A No, I didn't.

14 Q He got that for himself, did he?

15 A Yes, he did.

16 Q Can you give us an idea what size glass
17 tumbler we're talking about, approximately how much
18 alcohol?

19 A I have no idea.

20 Q You didn't see him with a glass or
21 anything?

22 A I saw him with a glass, but I don't know
23 the amount.

24 Q Could you kind of describe with your hands
25 the size of the glass?

1 A (Indicating). I guess, what, about three
2 inches.

3 Q I can't see you.

4 A I guess about three inches, two or three
5 inches in diameter.

6 Q How tall?

7 A It's about three inch glass.

8 Q You mean three inches around and three
9 inches tall?

10 A Yes.

11 Q What color was it? Did it appear to have
12 some orange juice in it? Obviously not all alcohol,
13 was it?

14 A I don't know, I didn't pay that much
15 attention to it.

16 Q Did it have ice?

17 A I assume, because I was preparing the food,
18 the drinks were there.

19 Q You didn't see him have but one drink, is
20 that correct?

21 A That's the only one. It could have been
22 more, because I was preparing the food.

23 Q And you know it was vodka because he got it
24 out of a vodka bottle, is that correct?

25 A That's correct.

1 Q Were there other types of alcoholic
2 material there available?

3 A That was the only thing there.

4 Q All right. Now, you had been with him, as
5 I understand it, since about 9:30 p.m.

6 A Approximately 9:30 p.m.

7 Q Right. Now, the other places that you had
8 gone to that night with Mr. Jordan, you didn't see
9 any alcohol being served there, did you?

10 A I didn't go in any other place but my home.

11 Q All right. Now, then, when he came there,
12 when you first saw him at 9:30, you were not -- you
13 were not of the opinion that he was or had had
14 anything to drink at that time, were you?

15 A I wasn't aware of it.

16 Q At no time did you serve him any mushrooms,
17 did you?

18 A No, I didn't.

19 Q And were you aware of his having gotten any
20 mushrooms or brought any mushrooms or being around
21 any mushrooms while he was visiting you?

22 A No, I wasn't.

23 Q And what you're saying about the direction
24 of the car was that at that time you didn't think
25 that was an appropriate way to turn to get where he

1 needed to go, is that correct?

2 A Well, later on, I was taking another route,
3 but like I said, I have a son that goes to St.
4 Mary's, and to beat the traffic I take that route
5 now.

6 Q At that time you didn't think it was an
7 appropriate route, isn't that what you said?

8 A That's correct.

9 Q That's what you told the FBI at that time?

10 A Right.

11 Q And you're sure that you did not see any
12 jewelry on Mr. Jordan, or if you did you didn't
13 recall?

14 A I don't recall.

15 Q Did you travel in the Lexus along with
16 Mr. Jordan?

17 A No, I didn't.

18 Q So you didn't know where his jewelry was if
19 he had any with him?

20 A No, I didn't.

21 Q And the fact that he did not call in later
22 that night when he got to his destination, that was
23 not unusual, was it?

24 A No, it was not.

25 MR. BOWEN: One moment.

1 That's all, Your Honor.

2 THE COURT: Anything on
3 redirect?

4 MR. BRITT: No, sir.

5 THE COURT: May Mr. Robinson be
6 released?

7 MR. BOWEN: Yes, sir.

8 THE COURT: Thank you, sir. Yes,
9 sir, Mr. Britt.

10 MR. BRITT: Your Honor, we would
11 call Larry Jordan. If you would bear with
12 us just a second.

13 THE COURT: Yes, sir. Sir, if
14 you'll come up to the witness stand,
15 please. Place your left hand on the Bible
16 and raise your right.

17 LARRY DONNELL JORDAN,
18 being first duly sworn was examined and deposed as
19 follows:

20 DIRECT EXAMINATION

21 THE COURT: Thank you. You may
22 have a seat, please. If you will state
23 your full name for the record please, sir.

24 THE WITNESS: Larry Donnell
25 Jordan.

1 BY MR. BRITT:

2 Q For the record, spell last name if you
3 will.

4 A J-O-R-D-A-N.

5 Q Mr. Jordan, what, if any, is your
6 relationship to Mr. James Jordan?

7 A He would be my father.

8 Q How many children would be in your family?

9 A Be five children, three boys and two girls.

10 Q What your brothers' and sisters' names?

11 A James Ronald Jordan would be my oldest
12 brother. My eldest sister would be Delores
13 Chasen-Jordan. My name, of course, Larry Donnell
14 Jordan. Younger brother, Michael Jeffrey Jordan.
15 And I have a younger sister, Roslyn Jordan.

16 Q Where do you live?

17 A Charlotte, North Carolina.

18 Q How long have you resided there?

19 A Excuse me?

20 Q How long have you lived there?

21 A Lived there roughly ten and a half years
22 now.

23 Q And prior to moving to Charlotte, where did
24 you live?

25 A Wilmington, North Carolina.

1 Q How long did you live in Wilmington, North
2 Carolina?

3 A Since 1962.

4 Q Since your birth?

5 A Since birth, right.

6 Q What -- did your father work in the
7 Wilmington area?

8 A He was an employee of General Electric.

9 Q And approximately how long did he work at
10 General Electric?

11 A He lived there -- I mean, he worked there
12 for, I would say 15, 16 years, something like that,
13 best of my recollection.

14 Q Did there come a time when your father --
15 your parents moved to the Charlotte area?

16 A Yes, sir, they moved to Charlotte in 1985.

17 Q Specifically in the Charlotte area, where
18 did they live?

19 A Actually, they lived up at Lake Norman,
20 which is 15 minutes north of Charlotte, but it would
21 still be in Mecklenburg County.

22 Q Are you familiar with an area or a town
23 called Mint Hill?

24 A That would be a present address now.

25 Q How long did your parents reside at that

1 address?

2 A Since 19 -- to the best of my recollection,
3 I would say 1986, '84 possibly.

4 Q And in July of 1993, were your parents
5 living in Mint Hill, North Carolina?

6 A Yes, sir, that would have been their
7 primarily residence.

8 Q What do you do for a living?

9 A I have my own company which is called
10 Jordan Marketing Group, and also I practice real
11 estate.

12 Q When your parents moved to the Charlotte
13 area, did your father go into business, was he
14 involved in a business?

15 A Yes, he did. As a matter of fact, he
16 started his own business which was called Jordan Auto
17 Parts, and he was in that roughly for two years
18 before he started another family operated business
19 which was called Flight Twenty Three by Jordan, which
20 was sportswear stores.

21 Q In July of 1993, did you have an occasion
22 to see your father on the weekend of July the 17th?

23 A Yes, I did. He came by my house to visit
24 with my grand -- my daughter, which would have been
25 his granddaughter.

1 Q And when he arrived at your home, did you
2 see what type of car he was driving?

3 A He was driving a dark green Lexus, and it
4 was very dark green, almost looked like it was black.

5 Q And to your knowledge, did that car belong
6 to him or someone else?

7 A That would have belonged to my brother
8 Michael.

9 Q And where was that car normally kept?

10 A Normally it was kept down in Hilton Head,
11 South Carolina.

12 Q And do you know why the car was kept in
13 Hilton Head, South Carolina or where?

14 A That would be the summer home for my
15 brother Michael, which we all would frequent from
16 time to time.

17 Q How long did your father stay there and
18 visit with you and your daughter on the 17th?

19 A He stayed roughly about an hour or hour and
20 a half.

21 Q Following July the 17th did you ever see
22 your father again?

23 A That would have been the last time I saw my
24 father.

25 Q Following July the 17th of 1993, did you

1 have any telephone conversations with him?

2 A I would have -- I spoke with him the
3 following Monday, it would have been approximately
4 around 1:00 p.m. He telephoned me at my home.

5 Q And when you received the telephone call
6 did you immediately recognize his voice?

7 A Yes, sir, sure did.

8 Q And during that telephone conversation, did
9 the subject of Willie Kemp's funeral come up?

10 A No, it did not come up at that time.

11 Q When you spoke with your father on what
12 would have been July the 18th or 19th, were plans
13 made between you -- did your father make any request
14 of you?

15 A Not at that time he didn't.

16 Q Were you scheduled -- did he ask to meet
17 with you?

18 A Okay. When I spoke with him during that
19 phone conversation, he was up at a facility called
20 Crew Color, he was looking at. Its a sewing
21 facility, and he was looking at that facility and
22 trying to determine whether or not he wanted to buy
23 the plant. So he asked if I could come up and take a
24 look with him at the building.

25 Q Were you able to do that?

1 A My schedule didn't permit it at that time.

2 Q Did you have any other phone conversations
3 with him following that particular conversation about
4 Crew Color?

5 A That would have been the last phone
6 conversation I had with my father.

7 Q Did you become aware at some later point
8 that your father had left Charlotte and had gone to
9 Willie Kemp's funeral in the Wilmington area?

10 A Later that day between 4:00 and 6:00 p.m.,
11 I was away from my home and he had called and my wife
12 answered the phone. And during that phone
13 conversation with her, he let her know then that --

14 MR. BOWEN: Object.

15 THE COURT: The objection is
16 sustained at this point. Do you want to be
17 heard, Mr. Britt?

18 MR. BRITT: No, sir, that's all
19 right.

20 BY MR. BRITT:

21 Q What type of automobiles did your father
22 have?

23 A He owned the Lexus SC400, which would have
24 been a 1992, if I'm not mistaken.

25 Q Do you recall what color that car was?

1 A Would have been cherry red, deep red.

2 Q Did he own any other vehicles?

3 A No, he didn't own any other vehicles, but
4 he had a leased truck that he drove from time to time
5 and also he had one of my brother's company cars from
6 a dealership that's located in Durham.

7 Q Did your father play golf?

8 A Yes, he did.

9 Q Did he have any golf clubs?

10 A Yes, he did.

11 Q Did your father wear any jewelry?

12 A Yes, he did wear jewelry.

13 Q What type of jewelry did your father wear?

14 A He wore a watch, he wore a championship
15 basketball ring which was given to him by my
16 brother. The watch also was given to him by my
17 brother. And also a blue All-Star basketball ring.

18 Q Can you describe the watch that you've
19 referred to?

20 A Sure can. It was -- as a matter of fact,
21 I have one myself.

22 Q Your brother gave you a similar watch?

23 A It was given to each family member for
24 Christmas of '93.

25 MR. BRITT: May I approach?

1 THE COURT: Yes, sir.

2 BY MR. BRITT:

3 Q Mr. Jordan, I'm going to show you what's
4 been marked as State's Exhibit Number 3, ask you to
5 look at that photograph and tell me if you can
6 identify what is depicted there?

7 A It would be the watch that was given to me
8 by my brother and to my father and all the family
9 members, and pretty much has a Bulls' face on it, has
10 Chicago Bulls at the top, World Champions down at the
11 bottom, '91-'92, and also has the regular season
12 record on it, which would be 67 and 15, and playoff
13 record, which would be 15 and 7 for that particular
14 year.

15 Q Is that photograph a fair and accurate
16 representation of the watch that you received from
17 your brother Michael and also the watch that your
18 father received from Michael?

19 A It would have been consistent with the
20 watch that we all received from my brother. Well,
21 when I say we all, let me clarify myself. It would
22 be the watch consistent with all the ones the men
23 received and women would have received a similar
24 edition but it was smaller.

25 MR. BRITT: Your Honor, at this

1 time I ask that the photograph State's
2 Exhibit 3 be admitted.

3 THE COURT: Admitted without
4 objection.

5 BY MR. BRITT:

6 Q Mr. Jordan, I'm going to show you what's
7 been marked as State's Exhibit Numbers 4, 5 and 6,
8 and ask you to look at those photographs and tell me
9 if you can identify what is contained in those
10 photographs?

11 A Championship ring that was given to us
12 Christmas of 1992, if I'm not mistaken, 1992. Has a
13 red stone in the background, a gold Bull head on top
14 of the red stone, and it's surrounded by diamonds,
15 and it would say Chicago Bulls at the top, World
16 Champions at the bottom, and on the left side it
17 would have the year '90, and left side it would have
18 the year '91.

19 Q And the sides of the rings, were there any
20 inscriptions or designs on the side of that ring?

21 A On one side of the ring it would be a
22 basket and a basketball with a number 23, which
23 represents Michael's number, and also down at the
24 bottom, 15 and 2, which would be the playoff record
25 for that year. And then the opposite side of the

1 ring would be the message, "Thanks, MJ," and also
2 "61-21" which would be regular season record for
3 that particular year.

4 Q And are State's Exhibits 4, 5 and 6 fair
5 and accurate depictions of the ring that you received
6 and also that your father received as a gift from
7 your brother Michael?

8 A That's correct.

9 MR. BRITT: Your Honor, at this
10 time I ask State's Exhibits 4, 5 and 6 be
11 admitted.

12 THE COURT: They are admitted
13 without objection.

14 BY MR. BRITT:

15 Q Larry, I'll show you what has been marked
16 as State's Exhibit 7, which is a plastic bag that
17 contains an item. If you will, I would ask you to
18 open State's Exhibit Number 7 and remove the item.
19 Do you recognize what was contained in State's
20 Exhibit Number 7?

21 A Yes, sir, I sure do.

22 Q And what do you recognize the item that you
23 removed from State's Exhibit Number 7 to be?

24 A It would be an All-Star ring that was given
25 to my brother in 1986 for his selection to the

1 All-Star team, which he later gave to my father as a
2 gift.

3 Q And is State's Exhibit Number 7, the ring,
4 I mean, is it in substantially the same condition it
5 was in the last time you saw it?

6 A I would say so.

7 Q Did your father regularly wear the watch
8 that Michael had given to him as a gift?

9 A I've always seen him wear that watch. I
10 can't tell you when I haven't seen him wear that
11 watch, so the answer to your question would be yes.

12 Q Did he regularly wear the NBA championship
13 ring that Michael had given him?

14 A He would switch between the two, the Bulls
15 championship ring and also from time to time he would
16 wear also the blue All-Star ring, so he would flip
17 between the two.

18 Q The watches that Michael gave you and gave
19 others as presents, were they inscribed in any way?

20 A Yes, sir. It would have had each one of
21 our names inscribed on the back. And it also would
22 have said, "Thanks, from Michael and Juanita" which
23 would be his wife.

24 Q The watch that you wear in court today,
25 that's identical to the watch that your father

1 received from Michael, is that correct?

2 A Yes, sir.

3 Q And the inscription that you've referred
4 to, how is your watch inscribed?

5 A It would say "Larry, Christmas, '92, from
6 Juanita and Michael."

7 Q Were you aware that your father had plans
8 to travel to Chicago from Charlotte, North Carolina
9 on July the 23rd of 1993?

10 A No, sir, I wasn't aware of those plans.

11 Q Had you ever traveled with your father by
12 car?

13 A Yes, I have traveled with him on numerous
14 times.

15 Q At any time during the periods that you
16 traveled with him had your father ever pulled over on
17 the side of the road to stop to take a break from
18 driving?

19 A He has done that before on a few occasions,
20 but most of the time when we travel together I would
21 do the driving because I knew particularly at night
22 he had a problem with his eyes sometimes.

23 Q Your father wore glasses, did he not?

24 A Yes, sir, he sure did.

25 Q Can you describe the glasses that your

1 father wore?

2 A Well, right now I can't really say because
3 I've known him to have several different pairs, so it
4 would be hard to really pinpoint any one particular
5 pair.

6 Q Were they prescription glasses or simply
7 sunglasses?

8 A Prescription glasses, they were.

9 Q When did you first learn that your father
10 was missing?

11 A To the best of my recollection, it would
12 have been probably around August 3rd, if I'm not
13 mistaken, right around in that vicinity.

14 Q When was your father buried?

15 A To the best of my recollection, that would
16 have been August the 15th.

17 Q What year?

18 A 1993.

19 MR. BRITT: I don't have any other
20 questions.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. BOWEN:

24 Q Mr. Britt mentions, Mr. Jordan, a burial of
25 your father. Actually, that was a service, was it

1 not?

2 A Excuse me?

3 Q That was a service following the receipt of
4 the cremated remains, was it not?

5 A I barely can hear you.

6 THE COURT: Mr. -- Mr. Bowen, the
7 jurors are having difficulty hearing you
8 also.

9 BY MR. BOWEN:

10 Q Mr. Jordan, my question is simply this, and
11 I suppose I didn't raise my voice because it's a --
12 well, refers to your father. What you have referred
13 to as a funeral, of course it is, but please tell me,
14 was a body interred at that time or was it a funeral
15 service by the use of some cremated remains?

16 A That -- that would have been correct, by
17 the use of cremated remains. So --

18 Q When Mr. Britt asked you about the burial
19 of your father, the reference would be to the burial
20 or the distribution of the cremated remains, is that
21 correct?

22 A We had the service on August the 15th, so
23 if, I guess that's, that would be correct.

24 Q It would be a funeral service but not a
25 burial?

1 A Funeral service.

2 Q I see. Mr. Jordan, then your father did
3 not speak to you directly from Wilmington, North
4 Carolina about any kind of plans the morning -- for
5 the morning of the 23rd of July, 1993 when he
6 returned from Wilmington?

7 A No, he did not speak to me directly.

8 Q You had not formed any plans to go with him
9 to Rock Hill or to -- or to anywhere else that
10 morning, had you?

11 A No, I hadn't formed any plans with him, but
12 it wouldn't have been unusual for him if he was
13 thinking that to come by my house the next morning
14 and ask me to go down.

15 Q I see. Now, you had an interview with a
16 member of the North Carolina State Bureau of
17 Investigation somewhere along about March, 1994, is
18 that correct?

19 A It would have been somewhere in that time
20 frame, yes.

21 Q Do you recognize the officer that you
22 talked to at that time here in the courtroom?

23 A Yes, I sure do.

24 Q And where is he seated?

25 A Would be the gentleman that's seated in

1 front of me with the dark gray pinstripe suit on.

2 Q Okay. Are you referring to Mr. Heffney?

3 A Yes, sir, I guess that's who I'm referring
4 to.

5 Q All right. Now, Mr. Heffney asked you some
6 questions. Did he appear to be writing down your
7 answers, sir?

8 A I was sitting across from him but he
9 appeared to be taking notes, yes.

10 Q Did he ever read back to you what you had
11 told him?

12 A No, not that I can remember. I don't think
13 he did.

14 Q So you don't know what he wrote down in any
15 report, do you, about what you had told him?

16 A He didn't read anything back to me, no.

17 Q Mr. Jordan, I would like to ask you, do you
18 recall Mr. Heffney asking you whether or not your
19 father had a girlfriend?

20 A He may have asked me that question, I can't
21 remember for sure.

22 Q All right.

23 A But possibly he could have.

24 Q In any case, do you recall your telling him
25 that he did not, to your knowledge?

1 A I told him that that would be something
2 that I didn't know anything about.

3 Q All right. Now, in fact, you were at that
4 time aware of a paternity suit that had been filed in
5 Chicago against your father arising out of a
6 relationship up there, were you not?

7 MR. BRITT: Objection.

8 THE COURT: Sustained. Members
9 of the jury, there's a matter of law the
10 Court must take up at this time out of the
11 presence and the hearing of the jury. It's
12 probably a good point, ordinarily -- let me
13 do it this way. I'm going to ask you to go
14 to the jury room while the Court takes up
15 this matter of law. Please don't worry
16 about what takes place in the courtroom in
17 your absence. Members of the jury, I
18 instruct you to go to the jury room.

19 (Jury out at 3:12 p.m.)

20 THE COURT: Let the record
21 reflect the following is being conducted in
22 the absence of the jury.

23 The basis of the objection for the
24 record, Mr. Britt?

25 MR. BRITT: Relevance.

1 THE COURT: Yes, sir.

2 MR. BOWEN: Credibility, Your
3 Honor. If he's telling the SBI officer
4 that he -- the quote from the officer's
5 statement is, quote, he stated he did not
6 know if his father had a girlfriend or
7 not.

8 Now, there were extensive documents
9 found in the Lexus, the State purports
10 there to have been, the contents of the
11 Lexus, which are correspondences back and
12 forth from a Chicago law firm relative to
13 an existing paternity lawsuit in which
14 Mr. Jordan, Mr. James Jordan, is the
15 defendant. And my question probes whether
16 or not this witness knew that, and if he
17 did know that, then he couldn't possibly be
18 telling Mr. Heffney the truth, and that
19 would go to his credibility.

20 THE COURT: Well, the mere fact
21 that a lawsuit may have been pending
22 doesn't necessarily mean that lawsuit had
23 merit, doesn't necessarily mean there was a
24 relationship between anyone who filed such
25 a lawsuit and Mr. James Jordan.

1 MR. BOWEN: Correct.

2 THE COURT: Doesn't necessarily
3 mean there was a relationship between
4 anyone who may have filed such a suit and
5 Mr. James Jordan, so how does that relate
6 to this witness's credibility in any
7 respect?

8 MR. BOWEN: Well, it leads into
9 the question as to whether or not he does
10 in fact know that there was a girlfriend.

11 THE COURT: Even if he knew, how
12 does that relate to his credibility in
13 terms of any answer he may have given
14 Mr. Heffney?

15 MR. BOWEN: Well, if he's telling
16 Mr. Heffney that to his knowledge his
17 father did not have a girlfriend when in
18 fact he knows or has reason to believe that
19 he did, that goes to his credibility.

20 THE COURT: No, that's assumes
21 that the paternity suit had merit and that
22 a relationship existed.

23 All right. Folks, pursuant to Rule
24 611 of the Rules of Evidence, the Court has
25 the authority to control the mode of

1 interrogation. Specifically, Rule 611
2 reads as follows. 611(a) indicates --
3 which is entitled Control by the Court.
4 "The Court shall exercise reasonable
5 control over the mode and order of
6 interrogating witnesses and presenting
7 evidence so as to, one, make the
8 interrogation and presentation effective
9 for the ascertainment of the truth. Two,
10 avoid needless consumption of time, and
11 three, protect witnesses from harassment or
12 undue embarrassment."

13 Subsection B, which deals with scope
14 of cross-examination, says a witness may be
15 cross-examined on any matter relevant to
16 any issue in this case, including
17 credibility.

18 Now, you've got a burden of showing me
19 that whatever it is you want to ask relates
20 to this witness's credibility.

21 MR. BOWEN: Well, the paperwork
22 tends to indicate there was a settlement of
23 the matter not favorable to Mr. Jordan, so
24 it seems to me that as far as the papers
25 that we've been shown in discovery, we're

1 beyond the issue of whether the lawsuit had
2 any merit --

3 THE COURT: I'm not aware of
4 that, there's not any evidence of that
5 before me. If you want to make an offer of
6 proof, you're entitled to do that at this
7 point. But unless you have some additional
8 matters which show that something that you
9 want to ask relates to the credibility of
10 this witness, I'm going to sustain the
11 objection. Do you want to make any offer
12 of proof?

13 MR. BOWEN: Yes, sir, I do.

14 Mr. Jordan, from our remarks, were you
15 aware at all of any litigation in Chicago
16 regarding an alleged child or offspring --

17 THE WITNESS: No, I was not.

18 MR. BOWEN: You were not? That's
19 all.

20 THE COURT: Anything further?

21 MR. BOWEN: Second question.

22 Mr. Jordan, were you aware of any
23 relationship that your father had with
24 anyone in Pennsylvania or litigation in
25 that regard?

1 MR. BRITT: Objection.

2 THE COURT: It's an offer of
3 proof. For purposes of the offer being
4 made, the objection is overruled. You may
5 answer if you can, Mr. Jordan.

6 THE WITNESS: No, I was not.

7 MR. BOWEN: That's all.

8 THE COURT: Anything on behalf of
9 the State as to the offer of proof?

10 MR. BRITT: No, sir, other than
11 they failed to show any relevance and that
12 I would tell the Court, I consider this a
13 backhanded character assassination of
14 Mr. Jordan that has no place in this
15 courtroom. The character of an alleged
16 victim is not at issue except where self
17 defense in terms of whether or not the
18 victim was the aggressor in bringing on the
19 acts that resulted in his death, and that's
20 not here.

21 THE COURT: Anything further on
22 behalf of counsel for the defendant?

23 MR. BOWEN: We have offered this
24 for the specific purpose of credibility.
25 All of the information on which these

1 questions were based came from the State,
2 the State's officers, the contents of the
3 car. They furnished this information and I
4 think we're --

5 THE COURT: Even though the
6 information may have been furnished in
7 discovery, there are still Rules of
8 Professional Responsibility that govern our
9 conduct. In addition to the Rules of
10 Professional Responsibility, we're governed
11 by the Rules of Practice in the Superior
12 and District Courts here in North
13 Carolina. Specifically, Rule 12 reads that
14 the conduct of lawyers before the Court and
15 with other lawyers shall be characterized
16 by candor and fairness. Counsel shall not
17 knowingly misinterpret the contents of the
18 paper, the testimony of a witness, the
19 language or argument of opposite counsel,
20 or the language or decision of other
21 authority, nor shall he offer evidence
22 which he knows to be inadmissible.

23 There has to be a good faith basis for
24 the asking of any question, whether it's on
25 direct or cross-examination. Now, the good

1 faith basis is grounded in the Rules of
2 Evidence, the rules of law, and the facts
3 that might be available to counsel in
4 discovery or otherwise.

5 MR. BOWEN: Yes, sir. But the
6 law does not require that you know in
7 advance the answer. The good faith basis
8 to the question is all that documentation
9 showing that this paternity lawsuit does
10 exist, it terminated unfavorably to James
11 Jordan, and --

12 THE COURT: That's not in
13 evidence before me.

14 MR. BOWEN: And it goes to
15 whether or not there was a relationship,
16 and if a man in this courtroom told an
17 officer in a solemn investigation that he
18 knew of no relationship when in fact it
19 turned out he does -- now, I'm bound by Mr.
20 Jordan's answer. I cannot go any further.
21 I will not go any further. That's the law
22 and that's the rule, but I say I'm entitled
23 to inquire.

24 Now, I will say this. If I see
25 something like this coming in the future, I

1 will stand up and suggest to Your Honor
2 that I've got something sensitive I want to
3 go through, and, you know, in the interest
4 of fairness save us this. But Mr. Britt
5 could have objected halfway through the
6 question, I don't know. But there's no
7 question in my mind about good faith basis.

8 THE COURT: I would appreciate
9 your taking that later tact, and that if
10 you have a matter that you believe may
11 constitute good faith basis, the
12 appropriate way to deal with it is alert us
13 so we can inquire further in the absence of
14 the jury.

15 MR. BOWEN: Yes, sir.

16 THE COURT: Objection is
17 sustained. Do you want any instruction
18 given to the jury?

19 MR. BRITT: Yes, sir.

20 THE COURT: All right. If you'll
21 ask the jury to come back in, please.

22 (Jury in at 3:20 p.m.)

23 THE COURT: Ladies and gentlemen
24 of the jury, I instruct you that you are to
25 disregard the last question asked by

1 counsel for the defendant, specifically the
2 last question asked by Mr. Bowen, and it is
3 not to take any place in your deliberation
4 in this case. You are not to consider it
5 or allow it to play any role in your
6 deliberations in this matter in any
7 respect.

8 Do all members of the jury understand
9 that instruction? Can all members of the
10 jury follow that instruction? If so,
11 please indicate that by raising your right
12 hands at this time.

13 Let the record reflect all 15 members
14 of the jury have responded affirmatively.
15 Anything further?

16 MR. BRITT: No, sir.

17 THE COURT: You may continue with
18 cross-examination.

19 MR. BOWEN: Thank you, Your
20 Honor.

21 BY MR. BOWEN:

22 Q Mr. Jordan, as best you can recall, can you
23 tell us when family left Wilmington, that is, when
24 your father left the employment of General Electric
25 and you all moved to the Charlotte area as close as

1 you can come?

2 A It would have been the fall of '85. Could
3 have been possibly September or maybe even October.

4 Q All right. Thank you. Mr. Jordan, prior
5 to your first knowledge of the disappearance of your
6 father, had you known of any conversations concerning
7 the sale of the business J.V.L.?

8 A No, I haven't. No, I did not.

9 Q Did you know a person named Mr. Chiofolo,
10 if I pronounce that correctly? I believe he was the
11 plant manager or owner of the building that your
12 father had his business?

13 A The landlord, Don Chiofolo?

14 Q Yes.

15 A Yes, I knew him.

16 Q You knew him?

17 A Yes.

18 Q Were you present during any conversation
19 between Ms. Delores Jordan and Mr. Chiofolo after the
20 disappearance of your father or after the 22nd of
21 August -- 22nd of July, 1993?

22 MR. BRITT: Objection.

23 THE COURT: Repeat your question,
24 Mr. Bowen.

25 MR. BOWEN: Yes.

1 BY MR. BOWEN:

2 Q After July 23rd, 1993 were you present at
3 any business meetings between Ms. Delores Jordan and
4 Mr. Chiofolo?

5 THE COURT: The objection is
6 based on relevance ground?

7 MR. BRITT: Yes, sir.

8 THE COURT: Sustained. You folks
9 want to be heard?

10 MR. BOWEN: Let me ask, sir, a
11 different way.

12 BY MR. BOWEN:

13 Q Were you aware that a telephone call had
14 come to your mother, Ms. Delores Jordan, from
15 Mr. James Jordan on or about the 5th day of August,
16 1993?

17 MR. BRITT: Objection.

18 THE COURT: You may answer yes or
19 no, if you know.

20 THE WITNESS: I don't live with
21 my mother at first, first off, so the
22 answer to that would be no.

23 BY MR. BOWEN:

24 Q Do you recall having a meeting or being
25 present at the meeting with Mr. Chiofolo on or about

1 the 5th of August, 1993?

2 MR. BRITT: Objection to
3 relevance.

4 THE COURT: Sustained.

5 MR. BOWEN: We'll need to be
6 heard, please.

7 THE COURT: Ladies and gentlemen
8 of the jury, I'm going to give you the
9 afternoon recess at this time. During this
10 recess, again, please recall my
11 instructions and recall also that it is
12 your duty to abide by the Court's previous
13 instructions concerning your conduct at all
14 times throughout your involvement in this
15 case. All -- everyone else remain seated,
16 the members of the jury excused. Folks,
17 please return to the jury deliberation room
18 at -- let me give you folks until 15
19 until. If you'll reassemble in the jury
20 room at 15 until.

21 (Jury out at 3:24 p.m.)

22 THE COURT: Let the record
23 reflect the following is being heard in the
24 absence of the jury. Yes, sir, Mr. Bowen.

25 MR. BOWEN: Yes. Now,

1 Mr. Jordan --

2 THE COURT: I'm sorry. You were
3 going to make an offer of proof?

4 MR. BOWEN: Yes, sir.

5 BY MR. BOWEN:

6 Q Mr. Jordan, Mr. Chiofolo has said in the
7 material that we have that a meeting took place
8 between himself and some family members.

9 MR. BRITT: I object.

10 THE COURT: Phrase it
11 differently.

12 BY MR. BOWEN:

13 Q Do you know anything about a business
14 meeting that occurred between Mr. Chiofolo and some
15 family members on the 5th, members of your family
16 that is, on the 5th day of August, 1993?

17 THE COURT: The question is, do
18 you know anything about such meeting.

19 THE WITNESS: On the 5th of
20 August?

21 BY MR. BOWEN:

22 Q Yes.

23 A No, I don't.

24 Q What about, let's start on the 23rd of
25 July, do you know from July the 23rd up to, say, the

1 middle of August, 1993, do you know of any business
2 meetings that occurred between any family members of
3 yours and Mr. Chiofolo?

4 A No, I don't.

5 Q And if there were any meetings, then you
6 weren't there, is that correct?

7 A What I'm saying is I don't know --

8 THE COURT: Not only was he not
9 there, he doesn't know anything.

10 THE WITNESS: I don't know
11 anything about those meetings.

12 MR. BOWEN: That's all we
13 needed.

14 THE COURT: Anything else?

15 MR. BOWEN: No, sir.

16 THE COURT: We're at ease until
17 15 until. Mr. Jordan, thank you, sir, you
18 may step down.

19 (Brief recess.)

20 THE COURT: Let the record
21 reflect all counsel are present, the
22 defendant is present in open court. All
23 members of the jury are secured in the jury
24 room.

25 Mr. Bowen, you indicated there was a

1 matter you wanted to put on the record.

2 MR. BOWEN: Yes, Your Honor. I
3 have a short list of questions that I would
4 propose to ask Mr. Larry Jordan. They do
5 not go to anything of a matter of character
6 as Your Honor observed in perhaps earlier
7 questions. I do anticipate objections by
8 the State along the same lines they
9 objected about any reference to the meeting
10 of August 6th.

11 What I propose to do, and I can give
12 you my good faith basis in camera for
13 asking the questions at all, but depending
14 on the answers that we get, I want to argue
15 that those answers should go before the
16 jury and I am prepared to give you my
17 grounds and in camera my good faith basis
18 and any connection that I propose they
19 would have.

20 THE COURT: I'm confused. You
21 want to ask those questions of Mr. Jordan
22 now?

23 MR. BOWEN: Yes, because you
24 know, I anticipate there are going to be
25 objections from the State. Your Honor has

1 asked me to be very careful with this, I
2 want to do it, but these are not character
3 type questions, they simply go to
4 Mr. Jordan's activities on the 5th day of
5 August, 1993.

6 THE COURT: By Mr. Jordan? Who
7 are you referring to?

8 MR. BOWEN: I'm talking about
9 Mr. Larry Jordan, the witness.

10 THE COURT: Okay. Is Mr. Larry
11 Jordan in your office?

12 MR. BRITT: Yes, sir, he is.

13 THE COURT: Take this
14 opportunity, while the jury still out, to
15 go forward with what I believe is an offer
16 of proof, is that correct?

17 MR. BOWEN: Yes.

18 THE COURT: All right.

19 Mr. Jordan, if you'll retake the
20 witness stand, please.

21 THE WITNESS: Yes, sir.

22 THE COURT: Mr. Bowen.

23 BY MR. BOWEN:

24 Q Mr. Jordan, I want to call your attention
25 back to approximately the 5th day of August of 1993.

1 Do you recall sometime back in that time frame where
2 you led a group of school children through a tour of
3 your father's plant?

4 A I led a bunch of school kids through --

5 Q Do you remember such an incident?

6 A To be honest with you, no.

7 Q All right. Now, do you remember on or
8 about the 5th of August of 1993, do you recall
9 telephoning Mr. Chiofalo and arranging a meeting for
10 your mother, Delores Jordan, on the following day?

11 A That would be August the 5th?

12 Q Well, the meeting would have been on August
13 the 6th.

14 A I'm testifying I am on the 5th is what
15 you're asking me, right?

16 Q Did you telephone him on the 5th?

17 A Not that I can remember.

18 Q Did you talk to him or contact him any at
19 all after the 25th of July of 1993, setting up a
20 business meeting for your mother or anybody else
21 concerning the plant?

22 A Best of my knowledge, I don't recall
23 setting up any meetings in that time period.

24 Q So you are denying any contact by you with
25 Mr. Chiofalo after the 23rd day of July, 1993,

1 referencing to the disposition of the plant or any
2 other business matters?

3 A What are you asking me? I mean, as far as
4 trying to sell the business or maybe bumping into
5 him? When you said in contact, define what you're
6 asking me.

7 Q Sorry. Well, first of all, let's talk
8 about did you have any conversation with him after
9 the 23rd of July, 1993 about selling the business?

10 A Did I personally have a conversation with
11 him about selling the business, no.

12 Q Did you arrange any meetings for any other
13 family members with him about that matter?

14 A Not to the best of my knowledge, no.

15 Q Did you have any meetings with him after
16 the 23rd day of July, 1993 in reference to the J.V.L.
17 business?

18 A I've been down there several times, and he
19 would come in, but as far as me sitting down,
20 meeting, discussing the future or any type of
21 business with J.V.L., no.

22 Q And you did not set up any such business
23 meeting after the 23rd day of July, 1993 for anybody,
24 any member of the family?

25 A When you're saying after July 23rd 1993, I

1 mean, today is after that.

2 Q Yes, sir.

3 A I mean, what are you asking me, from what
4 time period?

5 Q Let me restrict it down. Let me say 23rd
6 of July, 1993 and August 15th, 1993, did you set up
7 any business meetings with any member of the family
8 and Mr. Chiofolo?

9 A Best of my knowledge, no.

10 Q And you did not attend any during that time
11 period?

12 A Let me say that I've been down there when
13 Mr. Chiofolo came in and I've talked to him on the
14 phone, but as far as setting up meetings or anything,
15 as far as bringing my family members together and
16 bringing him together, me coordinating the meeting,
17 no.

18 Q All right, sir. Now, while we're without
19 the jury, let me ask you, do you know Mr. Gerald
20 Brant of Rick Security of Chicago?

21 A No, I can't say that I do.

22 Q How about Mr. Joe Duffie?

23 A Yes, sir, I do.

24 Q Who is Mr. Duffie?

25 A He would be the family attorney.

1 Q Is he present in the courtroom?

2 A He sure is.

3 Q Did you have a meeting with Mr. Duffie and
4 Mr. Gerald Brant following the 23rd day of July,
5 1993?

6 A Following the 23rd -- excuse me, around
7 that time period, is that what you're asking me?

8 Q Yes, sir.

9 A No, I did not. As a matter of fact, I
10 don't even know Mr. Brant.

11 Q Now, when you talked with Mr. Heffney, the
12 officer, on or about February 21, 1994, don't you
13 recall Mr. Gerald Brant being present?

14 A I can't say that for sure to the best of my
15 recollection, I can't remember.

16 Q Do you recall Mr. Duffie being present when
17 you talked to Mr. Heffney?

18 A Yes, sir, I sure do.

19 MR. BOWEN: Your Honor, that's
20 our showing.

21 THE COURT: Yes, sir.

22 MR. BOWEN: I propose to ask
23 those questions to this witness
24 specifically about the meetings between
25 July 23rd and 15th of August.

1 THE COURT: First of all, what's
2 the relevance?

3 MR. BOWEN: Relevance is that we
4 have evidence that what he's saying about
5 this matter is not so, that --

6 THE COURT: You look at Rule
7 608(b)?

8 MR. BOWEN: Yes, I'm looking at
9 credibility.

10 THE COURT: You look at Rule
11 608(b).

12 MR. BOWEN: I can.

13 THE COURT: If you would,
14 please.

15 MR. BOWEN: This is not
16 introduced for matters of character --

17 THE COURT: That's not what B
18 says. You're trying to get into evidence
19 specific instances of conduct on the part
20 of this witness for the purposes of
21 attacking or supporting credibility other
22 than conviction by crime, of crime as
23 provided in Rule 609. The rule says that
24 such matters may not be proved by extrinsic
25 evidence. They may, however, if in the

1 discretion of the Court, if probative of
2 truthfulness or untruthfulness, be inquired
3 into on cross-examination concerning
4 character for truthfulness or
5 untruthfulness or character of another for
6 truthfulness or untruthfulness.

7 MR. BOWEN: Judge --

8 THE COURT: What is it that you
9 contend is admissible in terms of what you
10 asked this witness?

11 MR. BOWEN: I'm on
12 cross-examination. I know from my research
13 and from my investigation that there was a
14 meeting on August the 5th, there was a call
15 on August the 5th by this witness to Mr.
16 Chiofolo setting up a meeting between
17 Delores Jordan and Mr. Chiofolo.

18 THE COURT: How is that relevant
19 to anything in this case?

20 MR. BOWEN: Because on the next
21 day when Ms. Jordan comes to have the
22 meeting with Mr. Chiofolo, she says to Mr.
23 Chiofolo that she talked to Mr. Jordan,
24 that is, Mr. James Jordan, the night
25 before.

1 THE COURT: Do you intend to
2 offer that evidence?

3 MR. BOWEN: Yes, sir, and I have
4 that in a written statement. I was going
5 to offer it in camera and I was going to
6 tell you about it. That's the guy that's
7 the plant manager -- I'm sorry, the owner
8 of the property. All I'm trying to do is
9 show that which led up to this meeting.

10 Now, if family members are not being
11 completely forthcoming about this meeting,
12 I think it's relevant. If they admitted
13 the meeting took place, it's relevant, so
14 it doesn't matter how he answers. We win
15 either way. I think I'm entitled to ask
16 him whether he knows anything about this
17 meeting.

18 THE COURT: Mr. Britt?

19 MR. BRITT: How is it relevant to
20 the issue of whether or not this defendant
21 killed James Jordan? Any statement that
22 Mr. Chiofalo may have given them as to the
23 purported statement of Ms. Jordan is
24 clearly hearsay unless they can fit it into
25 an exception, which I don't believe based

1 on what they have said so far they can do,
2 short of bringing Ms. Jordan down here and
3 saying did you say this and her denial.
4 Again, how is it relevant?

5 THE COURT: Well, even on the
6 theory of it going to credibility, they
7 haven't laid a foundation for that either.
8 So at this point the objection is sustained
9 based on what is now before me.

10 Note the objection and exception of
11 the -- or excuse me, the exception of the
12 defendant to the Court's ruling.

13 Folks, put whoever you want to under
14 subpoena, lay whatever foundation for
15 whatever matters you contend are admissable
16 during your case in chief, but on
17 cross-examination, based on what is now
18 before me, the objection is sustained.

19 Anything further in that regard
20 considering the offer of proof?

21 MR. BOWEN: No, sir.

22 THE COURT: Ready to go forward
23 with additional cross-examination?

24 MR. BOWEN: Judge, just a couple
25 more questions, Your Honor.

1 THE COURT: Okay.

2 MR. BOWEN: We're ready.

3 THE COURT: I'm sorry, bring the
4 jury in please.

5 (Jury in at 3:57 p.m.)

6 THE COURT: Mr. Bowen, you may
7 continue.

8 BY MR. BOWEN:

9 Q Mr. Jordan, when you were interviewed by
10 Mr. Heffney on the 21st of February, 1994, do you
11 recall who was present other than yourself and Agent
12 Heffney?

13 A Joe Duffie would have been present.

14 Q And who is Joe Duffie?

15 A He's the family attorney.

16 Q Who else?

17 A To the best of my knowledge, that's all
18 that was present as far as I can remember.

19 MR. BOWEN: That's all.

20 MR. BRITT: No other questions.

21 THE COURT: May Mr. Jordan be
22 released, folks?

23 MR. BOWEN: Yes, sir.

24 THE COURT: Thank you, sir,
25 you're free to go.

1 Mr. Britt?

2 MR. BRITT: At this time I would
3 ask that State's Exhibits 3, 4, 5 and 6
4 that were admitted into evidence be
5 published to the jury.

6 THE COURT: You folks want to be
7 heard?

8 Yes, sir. Mr. Horne, if you'll hand
9 the exhibits, State's Exhibits 3, 4, 5, 6.
10 Folks, please recall my instructions.
11 Examine each exhibit carefully and without
12 any comment.

13 Yes, sir, Mr. Britt.

14 MR. BRITT: Your Honor, at this
15 time the State calls Hal Locklear.

16 **HAL E. LOCKLEAR,**
17 being first duly sworn was examined and deposed as
18 follows:

19 DIRECT EXAMINATION

20 THE COURT: If you'll take the
21 witness stand, please, sir. For the record
22 would you state your full name.

23 THE WITNESS: Hal Evans
24 Locklear.

25 THE COURT: Mr. Locklear, spell

1 your last name for the record.

2 THE WITNESS: L O C K L E A R

3 THE COURT: If you'll pull the
4 microphone in front of you, sir, speak
5 clearly and directly into the microphone.

6 BY MR. BRITT:

7 Q Mr. Locklear, how old are you, sir?

8 A Thirty-seven.

9 Q Where do you live?

10 A 3639 Oak Grove School Road.

11 Q If you could slow down a little bit, I'm
12 having a hard time understanding you. What town?

13 A Laurinburg.

14 Q What county is that located in?

15 A Scotland.

16 Q How long have you lived there?

17 A Thirty-one years.

18 Q Mr. Locklear, what do you do for a living?

19 A Run a crane.

20 Q And who do you work for?

21 A Strickland's Carpentry.

22 Q Are you familiar with Pea Bridge Road in
23 Scotland County?

24 A Yes.

25 Q Are you familiar with an area called the

1 Gum Swamp?

2 A Yes.

3 Q On the South Carolina, North Carolina line?

4 A I fish there all the time.

5 Q How long have you been fishing in that
6 area?

7 A Ten, 12 years.

8 Q On August the 3rd of 1993, did you have an
9 occasion to go to the Gum Swamp along Pea Bridge Road
10 to fish?

11 A Yes.

12 Q Did anyone go with you?

13 A No.

14 Q How did you get there?

15 A Drove a car.

16 Q Can you describe that stretch of road,
17 please?

18 A It's just a back road from Maxton to
19 McColl.

20 Q And in the area of the state line, are
21 there houses or trailers or businesses along that
22 area?

23 A No, there's not. Closest house is Ida
24 Chavis', the other side of Jerry's Club.

25 Q What is the name of that club?

1 THE COURT: I'm sorry, that
2 entire answer was missed by members of the
3 jury. If you'll ask him the question
4 again.

5 BY MR. BRITT:

6 Q What's the closest house to the state line
7 along Pea Bridge Road?

8 A Ida Chavis'.

9 Q What is Ida Chavis' house near?

10 A Right beside a little club there.

11 Q What's the name of that club?

12 A Jerry's Place.

13 Q Any other building or houses along that
14 stretch of road?

15 A Yes, houses up above it.

16 Q How much further up above it?

17 A Probably 500 yards from Ida's side of the
18 road, same side.

19 Q Is that back in the direction of North
20 Carolina or over in the South Carolina?

21 A Back on North Carolina side.

22 Q Along the roadway, along that stretch of
23 road, what's the terrain, is it -- what is there?

24 A Once you go past the bridge, there's
25 nothing.

1 Q Trees?

2 A Yes.

3 Q Swamp?

4 A Yeah.

5 Q On August the 3rd of 1993, do you recall
6 what time you left to go fishing?

7 A I left -- there's a bad cloud come up that
8 day at 2:30, and I left. I was working about seven
9 miles from there.

10 Q When you say you left, did you leave from
11 home or --

12 A No, I left from work.

13 Q When you left work, where did you go?

14 A I stopped at another bridge, going to fish,
15 and still raining hard and lightning. And I left
16 there and started to go back home to get my two boys,
17 and just something told me not to, and I went on down
18 there to Pea Bridge.

19 Q How many bridges are there along Pea Bridge
20 Road there at the Gum Swamp at the State line?

21 A Just two.

22 Q And how far is -- if you're traveling
23 towards South Carolina along the Pea Bridge Road, how
24 far is the first bridge from the club that you've
25 talked about earlier?

1 A Probably a hundred feet, hundred, 150 feet.

2 Q On which side of the state line are the two
3 bridges? Are they on the North Carolina side or
4 South Carolina side?

5 A South Carolina side.

6 Q Did you drive to the area of the bridges or
7 did you walk?

8 A I drove.

9 Q What were you driving?

10 A '79 Plymouth Horizon.

11 Q About what time was that when you arrived
12 in the area of the bridges along Pea Bridge Road?

13 A Somewhere around 4:00, somewhere along in
14 there.

15 Q Where did you park your car?

16 A Right at the first bridge.

17 Q Did you park it on the left-hand side or
18 the right-hand side of the road?

19 A Right-hand side coming back into North
20 Carolina.

21 Q After parking your car, what did you do?

22 A I got my fishing pole out, started walking
23 down the creek.

24 Q How do you get to the creek that you've
25 referred to?

1 A Little path that goes down.

2 Q Did you go by either of the bridges to get
3 to that path?

4 A I walked right down beside the first
5 bridge.

6 Q The first bridge, you mean the one closest
7 to the North Carolina line?

8 A Uh-huh.

9 Q Can you describe what you saw along that
10 path?

11 A Just basically just walking down through
12 there throwing a spinner, fishing. I got probably a
13 quarter of a mile down in the woods, one of the deep
14 curves, I looked down there and saw like a man, or
15 dummy or whatever, floating down there in the water,
16 hung up on a limb. I walked down to see what it was,
17 and that's what it was.

18 Q Now, this area of water that the bridge
19 crosses, how large a body of water is that?

20 A It's probably 20 foot wide.

21 Q And in the direction that you walked along
22 this path, does the creek or the swamp follow that
23 path in that direction?

24 A Yes.

25 Q Are there turns and twists to that creek or

1 that swamp?

2 A Yeah.

3 Q Approximately how far had you walked into
4 the woods when you first saw what you had described
5 as a dummy?

6 A Probably about an eighth of a mile.

7 Q When you saw what you described as a dummy
8 floating on the water, what did you do?

9 A I kept fishing. I didn't know what it
10 was. I kept fishing and getting closer and closer to
11 it. When I got down there to where it was at, I saw
12 what it was.

13 Q Were you walking along the creek bank
14 fishing?

15 A Yes.

16 Q When you realized what it was, what did you
17 do?

18 A Turned around and got out of there.

19 Q Can you describe for us what it was that
20 you saw?

21 A Just a man. He was -- a person hung up on
22 that tree, looked like he was holding onto it.

23 Q Could you tell what race the person was?

24 A He looked black.

25 Q Could you describe the clothing that the

1 person was wearing?

2 A Had on light colored shirt, light colored
3 pants and dark socks.

4 Q Were there any shoes?

5 A No.

6 Q When you say you got out of there, where
7 did you go?

8 A I came out and went straight to Ida's and
9 called the Sheriff.

10 Q Did you stay there at Ms. Chavis' until
11 someone arrived?

12 A I came back and sat down on the bridge and
13 waited for the deputy.

14 Q Were you there when she made a phone call?

15 A Yes.

16 Q How long did you have to wait until anyone
17 arrived?

18 A Maybe 15 minutes.

19 Q At any point did you walk back down the
20 creek, back to the area where you observed the body?

21 A When the deputy got there.

22 Q When the deputy arrived was that Scotland
23 County deputy?

24 A Scotland County.

25 Q What did you do when he got there?

1 A He asked me to show it to him.

2 Q And where did you take him?

3 A I took him down there and showed it to him.

4 Q At that point, how far away from the body
5 were you?

6 A About quarter of a mile.

7 Q From the body?

8 A When I walked back down there?

9 Q Yes.

10 A You could reach out and touch it.

11 Q Notice anything about the individual's
12 skin?

13 A His arm was busted, the one that was out of
14 the water.

15 Q When you say his arm was busted, what do
16 you mean by that?

17 A The skin had gone to cracking on him.

18 Q Do you recall which arm that was?

19 A No, no.

20 Q Using your arm, can you indicate what
21 portion of the arm that you've said was busted?

22 A Right there in his forearm.

23 MR. BRITT: May I approach the
24 witness?

25 THE COURT: Yes, sir.

1 (State's Exhibits 12 through 16 were
2 marked for identification.)

3 MR. BRITT: May I approach the
4 witness?

5 THE COURT: Yes, sir.

6 BY MR. BRITT:

7 Q I'm going to show you what's been marked as
8 State's Exhibit Number 12. It's a photograph. I ask
9 you to look at that photograph and tell me if you can
10 identify what is depicted in that photograph?

11 A That's Pea Bridge.

12 Q It's your testimony that the photograph is
13 a photograph of the road you've referred to as Pea
14 Bridge Road?

15 A Yes.

16 Q And is State's Exhibit Number 12 a fair and
17 accurate representation of the scene as depicted
18 along the Pea Bridge Road?

19 A Yes, sir.

20 Q And is it a fair and accurate
21 representation of the condition of the area on July
22 the 23rd -- excuse me, August the 3rd, 1993?

23 A Yes.

24 Q I'll hand you what's been marked as State's
25 Exhibit Number 13 and ask you to look at that

1 photograph and tell me if you can identify what is
2 depicted there?

3 A That's North Carolina side of Pea Bridge
4 going into South Carolina.

5 Q State's Exhibit Number 13 is a photograph
6 of the same road from a different direction?

7 A Yes, sir.

8 Q And is it a fair and accurate
9 representation of the condition of the area as it
10 appeared on August the 3rd, 1993?

11 A Yes, trash and all.

12 Q I hand you what's been marked as State's
13 Exhibit Number 14, ask you if you can identify that
14 photograph?

15 A That's taken from side, the second bridge
16 going back into North Carolina.

17 Q State's Exhibit Number 14 is a photograph
18 of the Pea Bridge Road area as an individual would
19 look from the South Carolina back toward the North
20 Carolina side?

21 A Yes.

22 Q And is it a fair and accurate
23 representation of the scene as it appeared on August
24 the 3rd, 1993?

25 A Yes.

1 Q I hand you what's been marked as State's
2 Exhibit Number 15, ask you to look at that
3 photograph.

4 A That's the end of the first bridge where
5 you have to pass to go back down by the creek.

6 THE COURT: Could you repeat
7 that?

8 THE WITNESS: That's the end of
9 the first bridge where the path goes down
10 the side of the creek.

11 BY MR. BRITT:

12 Q Is State's Exhibit Number 15 a fair and
13 accurate representation of the scene as it appeared
14 on August the 3rd, 1993?

15 A Yes.

16 Q State's Exhibit Number 15, does it depict
17 the path beginning at the roadway that you took?

18 A Yes.

19 Q On August the 3rd, 1993?

20 A Yes.

21 Q I hand you what's been marked as State's
22 Exhibit Number 16 and ask you if you can identify
23 that photograph?

24 A That's what I found.

25 Q When you say that's what you found, what do

1 you mean by that?

2 A The body.

3 Q And is State's Exhibit Number 16, a
4 photograph of a body stretched across a limb, a fair
5 and accurate representation of the scene as you found
6 it on August the 3rd, 1993?

7 A Yes.

8 Q Mr. Locklear, would the use of State's
9 Exhibits 12, 13, 14, 15 and 16 help you in
10 illustrating your testimony to the jury?

11 A Yes.

12 MR. BRITT: Your Honor, at this
13 time I ask State's Exhibits 12, 13, 14, 15,
14 16 be admitted for illustrative purposes.

15 THE COURT: You folks want to be
16 heard?

17 MR. THOMPSON: No, sir.

18 THE COURT: Asking for a limiting
19 instruction?

20 Members of the jury, State's Exhibits
21 12, 13, 14, 15, 16 are now being admitted
22 into evidence for the limited purpose of
23 illustrating the testimony of the witness
24 now before you.

25 Now, to the extent you find State's

1 Exhibits 12 through 16 to be illustrative
2 of that testimony, in other words, of aid
3 or assistance to you in understanding that
4 testimony, then you may consider it for
5 that limited purpose and for no other
6 purpose.

7 MR. BRITT: Your Honor, I ask
8 that Mr. Locklear be allowed to step down
9 in front of the jury box.

10 THE COURT: Yes, sir. You may.

11 BY MR. BRITT:

12 Q Mr. Locklear, you previously testified that
13 you went to the Pea Bridge Road, the area of the Gum
14 Swamp on the afternoon of August the 3rd, 1993, is
15 that correct?

16 A Yes, sir.

17 Q When you went to that area, did you travel
18 from north to south going from North Carolina towards
19 the South Carolina line?

20 A Yes, sir.

21 Q Using State's Exhibit Number 12, if you
22 will, Mr. Locklear, indicate -- start down here at
23 this end, indicate to the jury, please, the location
24 if it's depicted here of the club that you referred
25 to.

1 A Here is the club right here, Jerry's
2 Place.

3 MR. THOMPSON: Your Honor, I
4 object to the district attorney
5 illustrating it. If he's going to let the
6 witness illustrate, that's fine. Give him
7 the photograph, let him illustrate.

8 THE COURT: Overruled.

9 BY MR. BRITT:

10 Q Mr. Locklear if you can step down. If you
11 can point on State's Exhibit 12, can you tell the
12 jury where Jerry's Place is?

13 A This is it right here, other side of the
14 bridge.

15 Q And in this photograph, State's Exhibit
16 Number 12, can you point out to the area where you
17 parked your car?

18 A Parked my car right here on the side, on
19 this side of the bridge, right here (indicating).

20 Q Referring to State's Exhibit Number 13 --

21 MR. THOMPSON: Your Honor, if
22 we're going to be able to see, can he step
23 back so at least we can see? I can't see
24 what he's illustrating.

25 THE COURT: They have not been

1 previously shown to you?

2 MR. BRITT: They have got copies
3 of them.

4 MR. THOMPSON: I can't see what
5 he is illustrating, what the witness is
6 illustrating.

7 JUROR: Then we can't see.

8 MR. BRITT: May I suggest,
9 Mr. Bowen, Mr. Thompson stand in the
10 corner?

11 BY MR. BRITT:

12 Q Mr. Locklear, using State's Exhibit Number
13 13, can -- this is a photograph that you've
14 previously identified that is taken from the North
15 Carolina side of the bridge looking toward the South
16 Carolina side?

17 A Yes, sir.

18 Q State's Exhibit Number 13, can you point
19 out on this photograph where it was you parked your
20 car and where the path, the area of the path that you
21 took?

22 A Parked my car between the two bridges right
23 here (indicating) and the path goes right down beside
24 the first bridge.

25 Q I would ask you to step down to this end of

1 the jury box and show that to these jurors.

2 THE WITNESS: Parked my car
3 between these two bridges here, and path
4 goes down beside the bridge.

5 BY MR. BRITT:

6 Q Using State's Exhibit Number 15, the
7 photograph, if you again could use that photograph to
8 show where the front of your car would have been in
9 relationship to the path leading to the creek bank?

10 A From my car, would have been right here
11 (indicating), end of the bridge right here, and the
12 path starts right there at the end of the bridge.

13 Q If you'll show that to the jurors at this
14 end.

15 A I parked right here with my car, path right
16 there at the end of the bridge.

17 Q And after walking down the creek bank, I
18 ask you to use State's Exhibit Number 16, and
19 illustrate to the jury what it was that you observed
20 there in the water.

21 A This is what I saw (indicating).

22 JUROR: Tilt it up just a little
23 bit.

24 JUROR: Move it over here some,
25 please.

1 BY MR. BRITT:

2 Q If you would return to the witness stand.

3 Mr. Locklear, at any point prior to going
4 to Ida Chavis's to ask her to call the Scotland
5 County Sheriff's Department, did you touch or move
6 the body that you saw that was suspended above the
7 water?

8 A No.

9 Q After the phone call was made and when you
10 returned to the area with the deputy, did you touch
11 or remove the body that was suspended above the
12 water?

13 A No.

14 Q How long did you remain there at the scene
15 that day?

16 A I stayed about two hours. I left and went
17 got a six-pack of beer and came right back.

18 Q When you returned, while you were there,
19 before leaving to go buy the beer, was the body that
20 you had observed suspended above the water removed
21 and brought back to the roadway?

22 A No, they had just got it out when I got
23 back.

24 Q When you got back, and can you describe for
25 us what it was that you saw that had been removed

1 from the area of the Gum Swamp?

2 A They had it zipped up in a body bag. I
3 didn't see it.

4 MR. BRITT: I don't have any
5 other questions.

6 THE COURT: Any
7 cross-examination?

8 MR. BOWEN: Yes.

9 CROSS-EXAMINATION

10 BY MR. BOWEN:

11 Q Mr. Locklear, this individual that you saw
12 in the creek, you had never seen that person before
13 to your knowledge, had you?

14 A No.

15 Q And now you say that it was approximately
16 an eighth of a mile to a quarter of a mile down the
17 creek bank before you saw this, what you took to be a
18 manikin in the water?

19 A By the way the creek runs, yes.

20 Q Now, this is the bridge that is near the
21 little joint, or the club there?

22 A Yes.

23 Q Not the other. And can you describe the
24 water from the bridge down to where you saw this
25 object in the river?

1 A Two turns in the creek before you get to
2 where I found him at.

3 Q What about any trees or obstructions or
4 fallen limbs or anything like that from the bridge
5 down to where you found this object in the river?

6 A Yes, there's plenty of trees and stuff in
7 there.

8 Q You're used to fishing in that area?

9 A Yes.

10 Q It's not fished with a boat, is it?

11 A Yes, I fish it with a boat.

12 Q Sometimes with a one-man boat?

13 A I used to fish it with a boat, yeah.

14 Q Now, how many stumps or obstructions or
15 trees or whatever would you say there were between
16 the area of the bridge and down to the area where you
17 saw, where you saw this object in the water?

18 A The end there was one in there.

19 Q You're saying there was only one in there?

20 A One big oak tree floating across the water,
21 thin.

22 Q I'm talking about between the bridge and
23 all the way down to the end.

24 A That's what I'm talking about.

25 Q There weren't any other fallen limbs or

1 obstructions or anything of that nature?

2 A Not that I saw.

3 Q Can you tell us how the water was at that
4 particular time? You characterize it as high, low,
5 medium, what?

6 A It was low for the simple reason it hadn't
7 rained in 30 days. That was the first rain we got in
8 30 days. And the temperature stayed up above a
9 hundred, same length of time.

10 Q So Mr. Locklear, would you agree that at
11 least you found this body on the 3rd of August, you
12 would agree that for almost a month before the water
13 had remained unusually low, is that correct?

14 A Yes.

15 Q Now, when the water is low, whatever
16 obstructions or limbs or things, objects that are in
17 the water, those are more exposed on low water, are
18 they not?

19 A Yes.

20 Q You mentioned in your statement to the
21 officers that there were some beer cans down in the
22 area where you saw this body, is that correct?

23 A Yes, there was.

24 Q And you mentioned to the officers that
25 sometime later you went back and those beer cans were

1 gone, is that what you said?

2 A Yes.

3 Q Did you point out those beer cans to the
4 officer in any way?

5 A There would be beer cans down there all the
6 time anyway.

7 Q So as far as you know the officers didn't
8 take any into custody or dust any for prints?

9 A Not that I know of.

10 Q And you didn't see any other objects down
11 there beside the body?

12 A No.

13 Q Have you from time to time seen other
14 bullet holes and casings down there in other areas of
15 the bank?

16 A I didn't see any down there at all.

17 Q And you didn't see any casings at that time
18 either, did you?

19 A No.

20 Q Was there any other object that you
21 reported to any of the officers that you had seen
22 down there?

23 A No.

24 Q Now, when you saw the body, the body was
25 not actually submerged under water, was it?

1 A It was not under water, no.

2 Q Was it even at all wet, did it appear to
3 you when you saw it?

4 A It was just a very small, maybe that much
5 of it (indicating) touching the water, that's all.
6 Maybe that much (indicating).

7 Q With your fingers, would you agree you're
8 showing maybe two and a half --

9 A Maybe two inches.

10 Q Now those waters are not tidal, they don't
11 go up and down?

12 A No.

13 Q The only thing that raises that water is
14 typically the level of rainwater in there?

15 A Yes.

16 Q It's not spring fed?

17 A No.

18 Q Had the level of the water varied more than
19 a couple of inches during the last few weeks to your
20 knowledge?

21 A It's possible, I don't know.

22 Q When was the last time you had been down in
23 that area fishing?

24 A The week before.

25 Q The week before. Is that the week prior to

1 the 3rd of August?

2 A Yes, sir.

3 Q Would you say the level of water was
4 identical to the level it was on the 3rd of August?

5 A Close.

6 Q Now, would you care to say how close, a
7 matter of inches?

8 A No.

9 Q Sir?

10 A No.

11 Q No, not a matter of inches?

12 A I don't know. I can't say.

13 Q All right. Hadn't changed a foot or more,
14 had it?

15 A No.

16 Q Now, so you were there on a week prior to
17 the 3rd of August, which would have been about the
18 25th or 26th somewhere?

19 A Somewhere along in there.

20 Q Or were you there as early as the 23rd?

21 A No, I took my little boy back there the
22 week before.

23 Q And when you were there that week before,
24 you went to that same area fishing?

25 A We fished the same stretch.

1 Q And the water level was approximately the
2 same?

3 A Just about.

4 Q And that tree or stump on which you saw
5 this body later on the 3rd, that tree or stump was
6 there, wasn't it?

7 A Yeah, it was there.

8 Q But there wasn't a body on it when you saw
9 it the week before?

10 A No.

11 MR. BOWEN: That's all.

12 THE COURT: Any on redirect?

13 REDIRECT EXAMINATION

14 BY MR. BRITT:

15 Q Mr. Locklear, would you describe the flow
16 of the water? Can you describe the flow of the water
17 in that creek?

18 A It's slow.

19 Q When you is say slow, what do you mean by
20 that?

21 A Might run two or three mile an hour.

22 Q Is the movement of the water detectable
23 when looking at it?

24 A No, very low.

25 Q And the oak tree that is suspended there

1 across, or in the swamp, how long has it been there?

2 A About five, six years.

3 Q And do the branches of the oak tree extend
4 down into the water?

5 A No, it's just a trunk, trunk laid across
6 the water.

7 MR. BRITT: I don't have any
8 other questions.

9 THE COURT: Anything further on
10 recross?

11 MR. BOWEN: One question, Your
12 Honor.

13 RECROSS EXAMINATION

14 BY MR. BOWEN:

15 Q The body, where you saw it, that was
16 downstream from the bridge, is that correct?

17 A Yes.

18 MR. BOWEN: Thank you. That's
19 all.

20 THE COURT: Anything further?

21 MR. BRITT: No, sir.

22 THE COURT: May Mr. Locklear be
23 released?

24 MR. BOWEN: Yes, sir.

25 THE COURT: You're free to go,

1 Mr. Locklear. Thank you, sir.

2 MR. BRITT: Your Honor, I need to
3 bring a matter to the Court outside the
4 presence of the jury.

5 THE COURT: Members of the
6 jury -- how long do you anticipate that
7 will take?

8 MR. BRITT: Your Honor,
9 Mr. Locklear is actually my last witness
10 for today.

11 THE COURT: That's what I was
12 trying to inquire, whether it's appropriate
13 to go ahead and release the jury at this
14 point and then deal with that other
15 matter.

16 Ladies and gentlemen of the jury, I'm
17 going to release you at this point. Please
18 report directly to the jury assembly room
19 no later than 9:30 tomorrow morning.
20 Before you leave, Mr. Horne, if you'll
21 assist us in passing out the parking
22 instructions to the members of the jury and
23 the parking passes at this time, too.

24 MR. BRITT: May I approach?

25 THE COURT: Yes, sir.

1 Does everyone have both the written
2 instructions, the form and the parking
3 pass? Folks, I think the instructions are
4 self-explanatory, but for your information,
5 the designated area that was provided to
6 you this morning which is adjacent to the
7 other street side of the courthouse will be
8 available for your purposes on each and
9 every day that the court is in session.

10 The passes that you have been provided
11 are to be placed on your dashboards inside
12 so that the officers assigned there in the
13 morning will know that you are members of
14 the jury and facilitate your parking in
15 those designated spaces. As is indicated
16 on the form, if you move your vehicle
17 during the day, we can't guarantee parking
18 space for you. We will have officers
19 available out there to make sure that you
20 are accommodated in the morning after you
21 are all in your designated parking area,
22 that space will be open to the public. So
23 the better course would be to leave your
24 vehicle there.

25 Before you leave, I also instruct you

1 that during the overnight recess, you're
2 not to talk about this matter among
3 yourselves, not to allow anyone else to say
4 anything to you or in your presence about
5 this case. If anyone does communicate with
6 you or attempts to do so, or anyone says
7 anything in your presence about this
8 matter, it remains your duty to inform us
9 of that by the means that I have previously
10 instructed you about.

11 Now, you are not to form or express
12 any opinion about this matter, not to have
13 any contact or communication with any of
14 the attorneys, parties, witnesses,
15 prospective witnesses, or directly with the
16 Court. Please recall it is your duty to
17 avoid any contact or communication of any
18 kind with any of the attorneys, parties,
19 witnesses, in any regard whatsoever.

20 There's been some confusion about that in
21 the past. Some members of the jury, panels
22 that were summonsed in connection with this
23 case, thought it was appropriate to ask
24 specific questions of some of the folks
25 involved. That also would be prohibited.

1 If you have any questions at all, address
2 those questions to one of the bailiffs and
3 we will do the best we can to address them
4 or address your questions expeditiously as
5 possible.

6 Don't allow yourselves to be exposed
7 to any media communication of any kind in
8 connection with this matter, and don't
9 conduct any independent inquiry or
10 investigation or research of any kind.

11 Have a good night, we'll see you 9:30
12 tomorrow morning. Everyone else remain
13 seated. Members of the jury are excused
14 until that time.

15 (Jury out at 4:35 p.m.)

16 THE COURT: Mr. Britt?

17 MR. BRITT: Yes, sir. Back at
18 the beginning of November, prior to that,
19 there's been a ballistics expert hired by
20 the defense in Dallas, Texas that resulted
21 in Mr. Heffney and Mr. Thompson
22 transporting three pistols to
23 Mr. Fletcher. When they arrived in Dallas,
24 they were informed by Mr. Fletcher he also
25 needed clothing that was recovered. When

1 they returned from their trip from Dallas,
2 the clothing was then shipped via UPS,
3 Federal Express to Mr. Fletcher back around
4 the beginning of November. That evidence
5 has not been returned and we're at a stage
6 beginning tomorrow where that evidence is
7 needed.

8 THE COURT: Two things. One, if
9 the expert designated by the defendant
10 needed the clothing, why didn't he say so
11 at the time he requested to examine the
12 weapons? That's number one.

13 MR. BOWEN: He did. And we faxed
14 that information to the SBI, and they
15 didn't get the fax in time, and they had
16 already gone out, and we contended it
17 wasn't necessary for him to go anyway
18 because we stipulated with the chain of
19 custody, let him send it out six, eight
20 months before they ever went.

21 Be that as it may, Mr. Fletcher for
22 whatever reason has not sent stuff back as
23 early as we asked. I asked for a report
24 and he hasn't sent it back. Mr. Thompson
25 asked for a report, hasn't sent that back,

1 so today we told Mr. Heffney about it. We
2 had our secretary call and tell him to get
3 everything Fed Exed back here to us.

4 THE COURT: Let me say this. Any
5 AKE expert appointed ex parte by the Court,
6 Court determines compensation. Enough
7 said?

8 MR. BOWEN: Yes, sir. This is a
9 man who's been used by the State and by the
10 defense. The man's got a good reputation.
11 I don't know what to tell the Court except
12 that we've asked and demanded the stuff
13 back long before that.

14 THE COURT: If it continues to be
15 a problem, we'll just have to address it
16 depending on what our situation is, but I'm
17 understanding from you that you understand
18 to be getting into that early tomorrow
19 morning?

20 MR. BRITT: Anticipate getting
21 into it in terms of tomorrow. We're at a
22 stage now where the body has been -- a body
23 has been discovered, there is the clothing
24 removed from that body at the autopsy. I
25 anticipate getting into evidence --

1 MR. BOWEN: Judge, permit me to a
2 quick call?

3 THE COURT: Yes, sir, because I'm
4 getting ready to enter an order on the
5 record.

6 MR. BRITT: Specifically, I think
7 we'll get to it by Friday. And possibly
8 we'll get to it by tomorrow as well.

9 MR. THOMPSON: This stuff should
10 be here overnight I would think if he's
11 shipped it out.

12 THE COURT: For the record, that
13 was A-K-E.

14 Anything further from either counsel?

15 MR. BRITT: No, sir.

16 MR. BOWEN: Supposedly it was Fed
17 Exed today.

18 THE COURT: Recess until 9:30
19 tomorrow morning.

20 (Court adjourned, 4:40 p.m.)

21

22

23

24

25

1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3

4 LUTHER JOHNSON BRITT, III, Esq.
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6

7 On Behalf of the Defendant:

8

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10

and

11

12 WOODBERRY A. BOWEN, Esq.
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P.O. Box 846
Lumberton, North Carolina 28359

13

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14

15 (January 4, 1996. Proceedings in open court.)

16

17 THE COURT: Good morning, folks.

18

19 Let the record reflect all counsel are
20 present, the defendant is present in open
21 court. Mr. Horne, I understand all members
of the jury are secured in the jury room?

22

THE BAILIFF: Yes, sir, they are.

23

24 THE COURT: Any matters before we
proceed, folks?

25

MR. BRITT: Yes, sir, I would

1 like to inquire into the status of the
2 clothing.

3 THE COURT: I also inquired while
4 we were standing outside the courtroom.
5 Mr. Bowen indicated to me the latest
6 information was that the material had been
7 Fed Exed from Texas.

8 MR. BOWEN: Yes, sir. On
9 yesterday afternoon after I delivered a
10 message from the Court, Ms. Maynerd of our
11 office came back and told me it was our
12 confirmation from Texas it was sent 5:00
13 yesterday afternoon. I've sent her to have
14 the Fed Ex folks check their computer to
15 see exactly physically where the package
16 is. I understand they are able to do
17 that. Ms. Maynerd also reminded me that
18 she had, on the 21st of last month had
19 conversations with Fletcher's office and
20 requested the clothing back.

21 THE COURT: Apparently, it's
22 on -- you need it immediately this
23 morning?

24 MR. BRITT: I will need it before
25 the day is over. That's why I brought it

1 to the Court's attention yesterday. When
2 we get to a point in the evidence where
3 it's needed and it's not here, I'm going to
4 be in a position where I'm going to have to
5 ask the Court for a recess.

6 THE COURT: If we reach that
7 point, let me know. I'll do the best I can
8 to accommodate you. If the situation
9 arises in the context of the defendant's
10 evidence, I'll do the same for them.
11 Otherwise, are we ready to go forward?

12 MR. BRITT: Yes, sir.

13 THE COURT: Bring the jury in,
14 please, Mr. Horne.

15 (Jury in at 9:32 a.m.)

16 THE COURT: Good morning, ladies
17 and gentlemen of the jury.

18 Mr. Britt, you may call your next
19 witness.

20 MR. BRITT: Your Honor, the State
21 would call Pat Lathrop. She's en rout from
22 the office.

23 MR. BOWEN: Would you say the
24 last name again?

25 MR. BRITT: L-A-T-H-R-O-P.

1 THE COURT: Good morning, ma'am.
2 If you'll place your left hand on the
3 Bible, raise your right and face Ms. Gaines
4 to my left, please.

5 PATRICIA N. LATHROP,
6 being first duly sworn was examined and
7 testified as follows:

8 DIRECT EXAMINATION

9 THE COURT: If you'll take the
10 witness stand, please. Please state your
11 full name.

12 THE WITNESS: Patricia Norton
13 Lathrop.

14 THE COURT: Spell your last
15 name.

16 THE WITNESS: L-A-T-H-R-O-P.

17 THE COURT: Thank you, ma'am.

18 BY MR. BRITT:

19 Q By whom are you employed?

20 A Scotland County Emergency Service.

21 Q How long have you been employed by the
22 Scotland County Emergency Service?

23 A 16 years.

24 Q What is Scotland County Emergency Service?

25 A Ambulance service.

1 Q And in what capacity do you work for them?

2 A Assistant administrator.

3 Q What are your duties and responsibilities
4 there? If you'll speak up, please.

5 A Yes, sir. I assist the director.

6 Q And as the assistant director, what are
7 your responsibilities?

8 A I see to the dispatching, keep all the
9 records, so forth.

10 THE COURT: I apologize, ma'am,
11 your voice trails off at the end of your
12 sentence. If you could keep your voice
13 raised so all members of the jury can hear
14 you.

15 BY MR. BRITT:

16 Q What mechanism do you use to dispatch
17 calls?

18 A Enhanced 911.

19 Q What is enhanced 911?

20 A I'm sorry?

21 Q Can you explain what enhanced 911 is?

22 A Yes, sir. When a call comes in, we have
23 computers, and the person's name is on the computer
24 screen, telephone number, where they are located, and
25 then we say -- we listen to what they have to say and

1 then dispatch an ambulance and/or sheriffs
2 department.

3 Q And in dispatching an ambulance or
4 dispatching to the sheriff's department, how is the
5 information communicated?

6 A We transfer the calls by radio.

7 Q On August the 3rd of 1993, do you recall
8 working that day?

9 A Yes, sir.

10 Q Did you dispatch emergency services to the
11 area of Pea Bridge Road near the North Carolina-South
12 Carolina line in Scotland County?

13 A Yes, sir.

14 Q Who from emergency services did you send
15 the dispatch to, who did you dispatch to the scene of
16 Pea Bridge Road?

17 A Our people, Tom Hatcher and William Norton.

18 Q Did you contact or dispatch anybody else?

19 A The sheriff's department.

20 Q Do you recall what time the call came in to
21 Scotland County Emergency Services?

22 A Yes, sir. The original call, 16:33.

23 Q 16:33 is military time?

24 A Yes, sir.

25 Q What is that --

1 A 4:33.

2 Q P.m. or a.m.?

3 A P.m.

4 MR. BRITT: I don't have any
5 other questions.

6 THE COURT: Thank you. Mr. Bowen
7 and Mr. Thompson?

8 CROSS-EXAMINATION

9 BY MR. THOMPSON:

10 Q Good Morning, Ms. Lathrop.

11 A Good morning.

12 Q Ms. Lathrop, do you recall talking to SBI
13 Agent Barry Lea back on August the 17th of 1993
14 concerning this matter?

15 A Yes, sir.

16 Q The call that came in, did the call
17 indicate that there was a body lying in the road?

18 A Yes, sir.

19 Q And you told Agent Lea that that's what the
20 call indicated, is that right?

21 A Yes, sir.

22 Q And did you convey that information to Tom
23 Hatcher and William Norton, that there is a body
24 lying in the road out on Pea Bridge Road?

25 A Yes, sir.

1 Q And I believe you indicated also that the
2 computer system or recording system was not properly
3 working on that day, is that right?

4 A Correct.

5 Q And therefore, you could not identify from
6 whence the call came?

7 A Yes, sir, I could.

8 Q You could?

9 A Yes, sir, because we had the printout from
10 the Dictaphone.

11 Q But there was no -- you did not identify
12 the individual who made the call?

13 A Yes, sir.

14 Q You did?

15 A Yes, sir, it's on the printout.

16 Q Do you recall telling Agent Lea that these
17 calls are normally recorded but on that date their
18 recording system was not working, that there's no
19 record of the identity of the individual reporting
20 the incident, do you recall telling Agent Lea that?

21 A No -- yes, that it was not recorded, but I
22 don't recall telling him that the person -- because
23 we have the person's name on the 911 record.

24 Q Okay. But you do recall telling him
25 something about the system not working?

1 A Being -- right, that's correct.

2 Q Did you speak to the individual who called?

3 A No, sir, I did not.

4 Q -- 911.

5 MR. THOMPSON: That's all. Thank
6 you.

7 THE COURT: Anything on
8 redirected, Mr. Britt?

9 REDIRECT EXAMINATION

10 BY MR. BRITT:

11 Q What was the name of the person that
12 called?

13 A Jerry Smiling.

14 MR. BRITT: Thank you.

15 THE COURT: Anything further?

16 MR. THOMPSON: No, sir.

17 MR. BRITT: No, sir.

18 THE COURT: May Ms. Lathrop be
19 released, folks?

20 MR. THOMPSON: Yes.

21 MR. BRITT: We call Lieutenant
22 James Daniel Monroe.

23 THE COURT: If you'll come up to
24 the witness stand please, sir, place your
25 left hand on the Bible, raise your right

MONROE

1 and face Ms. Gaines to my left.

2 JAMES DANIEL MONROE,

3 being first duly sworn was examined and

4 testified as follows:

5 DIRECT EXAMINATION

6 THE COURT: If you'll take the
7 witness stand, sir.

8 For the record, sir, please state your
9 full name.

10 THE WITNESS: James Daniel
11 Monroe.

12 THE COURT: If you wil spell your
13 last name for the record.

14 THE WITNESS: M O N R O E.

15 BY MR. BRITT:

16 Q Mr. Monroe, by whom are you employed?

17 A Scotland County Sheriff's Department.

18 Q How long have you worked for them?

19 A Approximately eight years.

20 Q What rank do you presently hold?

21 A Lieutenant.

22 Q And how long have you held that position?

23 A I would say approximately four years.

24 Q And what are your duties and

25 responsibilities as a deputy sheriff with the

1 Scotland County Sheriff's Department?

2 A I'm over the road, and to check buildings,
3 basically, keep up with the people on the road.

4 Q Do you recall if you were working back on
5 August the 3rd of 1993 in your capacity as a deputy?

6 A Yes, sir, I was.

7 Q Did you receive a dispatch to go to the
8 area of the Pea Bridge Road along the Scotland County
9 Marlboro County, South Carolina line?

10 A Yes, sir, I did.

11 Q At the time that you received that
12 dispatch, what did you then do?

13 A I proceeded to the area of Pea Bridge Road
14 and to the location where the subject was supposed to
15 be laying on the side of the road.

16 Q What was the information that you had
17 received in regard to the dispatch?

18 A That the subject was supposed to be --
19 subject laying on the side of the road.

20 Q When you got to the area of Pea Bridge
21 Road, what did you find?

22 A A male subject standing beside of the
23 bridge by the name of Hal Locklear.

24 Q Was there an individual lying in the road?

25 A No, sir, there was not.

1 Q Upon arriving there at the scene, did you
2 talk with Mr. Locklear?

3 A Yes, sir, I did.

4 Q What if anything did Mr. Locklear tell you?

5 A I asked him was -- had he seen a subject
6 laying in the side of the road. He said no, that he
7 had seen one laying in the creek. And I asked him
8 was the subject intoxicated or did he mean the
9 subject was disceased.

10 Q What if anything did Mr. Locklear tell you
11 at that point?

12 A He said he thought the subject was
13 deceased.

14 THE COURT: Mr. Thompson,
15 Mr. Bowen, do you folks want a limiting
16 instruction?

17 MR. BOWEN: We would object
18 unless it's for corroboration.

19 THE COURT: Members of the jury,
20 the testimony now being elicited from the
21 witness before you, Lieutenant Monroe, as
22 to statements that the witness contends
23 were made to him by the previous state's
24 witness, Mr. Locklear, are being offered
25 for the limited purpose of corroborating

1 the testimony of the prior State's witness
2 Mr. Locklear.

3 Now, "corroboration" means as tending
4 to strengthen or support. It is for you,
5 the members of the jury, to determine what
6 the evidence in this case does show. But
7 to the extent that you find the testimony
8 now being elicited from Mr. Monroe as to
9 statements he contends were made to him by
10 Mr. Locklear as corroborative of that
11 testimony, you may consider it for that
12 limited purpose and for no other purpose.

13 Anything further, folks?

14 BY MR. BRITT:

15 Q Do you recall if there were any cars along
16 the roadway when you arrived?

17 A Yes, sir. There was one yellow Plymouth
18 Dodge Horizon TC-3 vehicle by the side of the road.

19 Q And did you ask Mr. Locklear what he was
20 doing there in the area?

21 A Yes, sir, I did. He stated that he was
22 fishing.

23 MR. BOWEN: Same objection.

24 THE COURT: I'm sorry, objection

25 or --

1 MR. BOWEN: I'm saying objection.

2 THE COURT: This is being offered
3 for what purpose?

4 MR. BRITT: Corroboration.

5 THE COURT: Objection is
6 overruled. It's being offered and admitted
7 for corroborative purposes. Please recall
8 my instructions in that regard.

9 BY MR. BRITT:

10 Q After Mr. Locklear identified himself and
11 after you talked there along the roadway, did you ask
12 Mr. Locklear to show you what he had found?

13 A Yes, sir, I did.

14 Q And where did he take you, where did you
15 go?

16 A He took me to the second bridge as if going
17 into South Carolina, wooded path along the side of
18 the bridge, walked approximately 200 to 300 yards
19 alongside of the bridge to a wooded path where you
20 could see the body from the edge of the creek bank in
21 the creek.

22 Q Can you describe for us what you saw?

23 A I saw what appeared to be a male subject,
24 approximately six foot tall, unable to determine race
25 at the time, laying across a tree limb, suspended in

1 the area with the subject -- possibly the feet were
2 the only thing in the water. The subject was dressed
3 in dark clothing, possibly black or blue jeans with
4 possibly a black shirt.

5 Q Why were you unable to determine the race
6 of the person?

7 A In the past I've been to calls where
8 deceased people have been deceased for a while and
9 it's hard to determine their race because the body's
10 decaying process.

11 Q Did you have an idea as to the
12 decomposition of the body?

13 MR. BOWEN: Object.

14 THE COURT: Overruled. You may
15 answer.

16 THE WITNESS: Yes, sir. The
17 decomposure had started setting in.

18 BY MR. BRITT:

19 Q And upon seeing the body there in the
20 creek, did you make any attempts to reach the body or
21 go to the body?

22 A No, sir, I did not.

23 Q Why did you not do that?

24 A Because it was suspended in mid-air in the
25 middle of the creek out of my reach, and I didn't

1 want to tamper with any evidence that may be around
2 the area.

3 Q After you first observed the body there in
4 the creek, what did you then do?

5 A Notified my sheriff's department that we
6 did have possibly a homicide, but I felt like it was
7 possibly in Marlboro County, to notify our chief and
8 notify the Sheriff of Marlboro County of same.

9 Q Why did you believe the body was in South
10 Carolina?

11 A Because of the position of the creek to the
12 North Carolina and South Carolina line. It did not
13 appear to me that it went on back into North
14 Carolina.

15 Q Is there a marker there at the bridge area
16 indicating the state line?

17 A Probably an eighth of a mile up the road
18 there is North Carolina-South Carolina state mile
19 road on the other side of Jerry's Place.

20 Q Jerry's Place is located where?

21 A Just across the state line.

22 Q What road?

23 A Pea Bridge.

24 Q From where the body was positioned, in
25 which direction was Jerry's Place from the state

1 line?

2 A On the North Carolina-South Carolina line.

3 Q North, south, east or west from where the
4 body was found?

5 A I believe south, I'm not sure.

6 Q The body was south of the state line or the
7 mark was south?

8 A The body was south of the state line, it
9 was going into South Carolina.

10 Q After contacting your dispatcher, did you
11 remain there at the scene?

12 A Yes, sir, I did.

13 Q At any point did you touch the body?

14 A No, sir, I did not.

15 Q While you were there waiting for anyone to
16 arrive, did anyone else touch the body, in your
17 presence?

18 A No, sir, they did not.

19 Q After contacting your sheriff's department,
20 did other officers arrive?

21 A Yes, sir, they did. Our chief, Chief
22 Murphy, and our detective, Detective Paul Lemmons,
23 and I believe a couple other detectives also arrived.

24 Q Did any personnel from South Carolina ever
25 come to the scene while you were there?

1 A Yes, sir, they did.

2 Q Did you know those individuals when they
3 arrived?

4 A Yes, sir, few of the detectives, I can't
5 recall their name, and Sheriff Foley, and some SLED
6 officers.

7 Q When the South Carolina or North Carolina
8 personnel arrived, did you turn the scene over to
9 them?

10 A Yes, sir.

11 Q How long did you remain at the scene that
12 day?

13 A Until the scene was cleared, sir.

14 Q Were you there when the body was removed
15 from the creek bed?

16 A Yes, sir, I was.

17 Q What if anything did you observe being done
18 with the body once it was removed from the creek to
19 the roadside?

20 A While I was at the creek bank, I heard the
21 Coroner, Tim Brown, state to be real particular about
22 how to move the body, that he didn't want no evidence
23 being destroyed, to search the subject's pockets for
24 any identification or any evidence that may be upon
25 him. They removed the body by boat to the creek

1 bank, and transported him by EMS to Marlboro, or the
2 location they took him to.

3 MR. BRITT: May I approach?

4 THE COURT: Yes, sir.

5 BY MR. BRITT:

6 Q I'm going to show you what's previously
7 been marked and introduced as State's Exhibit 16, ask
8 you if you recognize what is depicted in that
9 photograph?

10 A Yes, sir.

11 Q How are you able to recognize what is
12 depicted in that photograph?

13 A I witnessed that scene that is in the
14 picture on that date and time. On that date and time
15 I seen what is pictured in this picture with my own
16 eyes.

17 Q State's Exhibit Number 16, is that a
18 photograph of the scene as you saw it, the Gum Swamp
19 on the Pea Bridge Road area, Scotland County,
20 Marlboro County, South Carolina?

21 A Yes, sir, it is.

22 Q State's Exhibit 16 a photograph of the body
23 as you saw it positioned on the tree limbs in the
24 creek bed?

25 A Yes, sir, it is.

1 Q Is it a fair and accurate representation of
2 what you saw?

3 A Yes, sir, it is.

4 Q I'll show you what's been marked as State's
5 Exhibit Number 14, and ask you if you can identify
6 what is depicted in that scene?

7 A Yes, sir, I can. It's Pea Bridge Road,
8 and --

9 Q How do you recognize it as the photograph
10 of Pea Bridge Road?

11 A Because Jerry's Place is on the left, if
12 you come from North Carolina and the two bridges that
13 I've been to on several different occasions.

14 Q And can you use State's Exhibit Number 14,
15 the photograph, to illustrate your testimony and
16 point out to the jury where it was that Mr. Locklear
17 was standing when you arrived in the area where his
18 car was parked and the area where you followed this
19 path down along the creek?

20 A Yes, sir, I could.

21 MR. BRITT: Your Honor, may he
22 step down?

23 THE COURT: Yes, sir.

24 MR. BRITT: Mr. Monroe, if you'll
25 start at this end of the jury box, using

1 State's Exhibit 14 can you indicate on that
2 photograph where it was Mr. Locklear was
3 standing when you first arrived. Show it
4 to these jurors, stop in the middle show it
5 to these jurors and stop in the middle,
6 show it to these jurors.

7 THE WITNESS: When I first
8 arrived --

9 THE COURT: Folks on the end are
10 blocked by your body.

11 THE WITNESS: Okay. When I
12 arrived, I called, Mr. Locklear was
13 standing near his car around the second
14 bridge going into North Carolina. I asked
15 him at the time had he seen anyone laying
16 beside the bridge, he stated no. We left
17 from the first bridge to the area of the
18 path which is located on the left side of
19 the road at the second bridge, we proceeded
20 down a wooded path to where the body was
21 located at the creek bank.

22 BY MR. BRITT:

23 Q You said you went down the left side. The
24 left side are you facing towards South Carolina or
25 facing back towards North Carolina?

1 A Facing toward South Carolina.

2 Q If you'll step down. You can show these
3 jurors.

4 A As I stated before, if I remember
5 correctly, Mr. Locklear's car parked along the second
6 bridge. When I arrived, asked him had he seen a
7 subject laying beside the bridge, he stated no. We
8 proceeded from the first bridge to the second bridge
9 to the left-hand shoulder of the road where the path
10 ceased, off into the woods. Went into the woods
11 approximately 300 yards, where we located the subject
12 laying approximately in the middle of the creek area.

13 Q If you will show these jurors at this end.

14 A This is the first bridge, where we located
15 Mr. Locklear. Moved from the first bridge to the
16 second bridge, entering into South Carolina.
17 Proceeded off of that road down a wooded path and the
18 subject was located, lying in the middle of the creek
19 off the bridge off the left shoulder side of the
20 road.

21 Q If you'll return to the witness stand.

22 Mr. Monroe, after the body was removed from
23 the creek, were you present when the body was placed
24 into a body bag there along the roadway of Pea Bridge
25 Road?

1 A Yes, sir, I was

2 (State's Exhibit 17 was
3 marked for identification.)

4 MR. BRITT: May I approach?

5 THE COURT: Yes, sir.

6 BY MR. BRITT:

7 Q I'll show you what has been marked as
8 State's Exhibit Number 17, ask you if you can
9 identify that photograph?

10 A I was never close, that close at the time
11 that appears to be from.

12 MR. THOMPSON: Object.

13 THE COURT: Sustained at this
14 time.

15 MR. THOMPSON: Move to strike.

16 THE COURT: Motion to strike is
17 allowed. Anything further? Anything
18 further?

19 MR. THOMPSON: Request
20 instructions.

21 THE COURT: Members of the jury,
22 disregard the answer of Mr. Monroe, the
23 last answer that was given. It's not to
24 take any part in your deliberation in any
25 respect.

1 BY MR. BRITT:

2 Q From what distance did you observe the
3 individuals place the body removed from the creek
4 into a body bag?

5 A From approximately here to the back part
6 (indicating).

7 Q And at that time, could you see the
8 clothing that the body had on it?

9 A Not that distinctly, no, sir.

10 Q Deputy Monroe, at what time on the evening
11 of August the 3rd, 1993, did you leave the scene of
12 the Pea Bridge Road?

13 A Around 7:00 p.m., sir.

14 Q At the time that you were leaving, what was
15 the weather like?

16 A It was raining very hard.

17 MR. BRITT: I don't have any other
18 questions.

19 THE COURT: Any
20 cross-examination?

21 CROSS-EXAMINATION

22 BY MR. THOMPSON:

23 Q Good morning, Officer Monroe. Officer
24 Monroe, when you went down the path there at the Pea
25 Bridge --

1 A Yes, sir.

2 Q -- Gum Swamp, you observed a body from the
3 bank of the creek, is that right?

4 A Yes, sir, I did.

5 Q How far were you from the body when you
6 observed the body from the bank of the creek?

7 A Approximately 15 feet.

8 Q Now, you walked some 300 yards down a
9 pathway off of Pea Bridge Road, is that right?

10 A Yes, sir.

11 Q Some 300 yards would be the length of three
12 football fields, is that right?

13 A Approximately, yes, sir. Well, it is 300
14 yards is the length of three football fields, but
15 approximately 300 yards.

16 Q All right. Now, do you recall giving a
17 statement to SBI Agent Barry Lea?

18 A Yes, sir, I do.

19 Q And I believe you gave that statement
20 sometime August 17 of 1993, is that right?

21 A Yes, sir.

22 Q And I believe you told Agent Lea that the
23 body that you observed had on black or dark gray blue
24 jeans type pants, is that right?

25 A From what I can observed from the bank,

1 yes, sir.

2 Q Some 15 feet away from the bank?

3 A Yes, sir.

4 Q And from the body, that's what you
5 observed, is that right?

6 A Yes, sir.

7 Q And that the body had on a black type
8 shirt, that's what you told Agent Lea, is that right?

9 A From what I could tell from the bank, yes,
10 sir.

11 Q Now, this Chief Deputy Murphy, is his name
12 Chip, C H I P, Murphy?

13 A Yes, sir.

14 Q Chip Murphy. And I believe that you
15 indicated that the path is on the left-hand side of
16 the road looking into South Carolina on Pea Bridge
17 Road, is that right?

18 A Yes, sir.

19 MR. THOMPSON: That's all.

20 THE COURT: Anything on redirect,
21 Mr. Britt?

22 MR. BRITT: Yes, sir. May I
23 approach the witness?

24 THE COURT: Yes, sir.

25 REDIRECT EXAMINATION

1 BY MR. BRITT:

2 Q Mr. Monroe, to illustrate your testimony to
3 the jury, can you draw us a diagram depicting the
4 location of Jerry's Place, the roadway of Pea Bridge
5 Road, the two bridges and the path and the creek and
6 the location where you found the body?

7 A Yes, sir, I could.

8 MR. THOMPSON: Object.

9 THE COURT: Do you want to be
10 heard, sir?

11 MR. THOMPSON: No, sir.

12 THE COURT: Objection is
13 overruled. Yes, sir, Mr. Britt.

14 BY MR. BRITT:

15 Q If you'll step up to this chart.

16 A (Witness complies). To my memory, that's
17 basically where it is. This is coming from --

18 MR. THOMPSON: Your Honor, I'm
19 having problems understanding.

20 THE COURT: If you'll allow
21 Mr. Britt to put questions to you.

22 MR. BRITT: Your Honor, for the
23 purposes of the record, I'm going to mark
24 this as State's Exhibit 18.

25 THE COURT: Okay.

1 (State's Exhibit 18 was
2 marked for identification.)

3 BY MR. BRITT:

4 Q Deputy Monroe --

5 THE COURT: It may be more
6 appropriate to put it down in the middle so
7 all members of the jury are able to see it,
8 please.

9 BY MR. BRITT:

10 Q Mr. Monroe, referring to what's now been
11 marked as State's Exhibit Number 1, is that a fair
12 and accurate representation of the scene along Pea
13 Bridge Road as you remember it to be?

14 MR. THOMPSON: Object. For the
15 record --

16 THE COURT: It's 18.

17 MR. BRITT: Excuse me, I thought
18 I said 18.

19 THE COURT: I thought I heard 1.

20 MR. BRITT: I'm sorry.

21 BY MR. BRITT:

22 Q Is that --

23 A Yes.

24 Q And can this diagram help you in
25 illustrating your testimony to the jury?

1 A Yes, sir.

2 THE COURT: At this time, I ask
3 that State's Exhibit 18 be marked.

4 THE COURT: You folks want to be
5 heard.

6 MR. THOMPSON: For what --

7 MR. BRITT: Illustrative.

8 THE COURT: 18 is admitted for
9 the limited purpose of illustrating the
10 testimony of Mr. Monroe. To the extent you
11 find it to be of aid and assistance in
12 understanding that testimony, you may
13 consider it for that limited purpose and
14 for no other purpose.

15 BY MR. BRITT:

16 Q Mr. Monroe, referring to the diagram that
17 you've drawn here in court, if you will, indicate --
18 let me change the color of markers.

19 THE COURT: Mr. Thompson, you may
20 be blocking the view of the members of the
21 jury on the end. If you'll stand --

22 BY MR. BRITT:

23 Q If you will, referring to the exhibit with
24 the red marker pen, will you circle the area where
25 you located the body?

1 A (Witness complies).

2 Q And with the red marking pen, will you
3 place an X where you found Mr. Locklear's car parked?

4 A Be right there --

5 THE COURT: You're going to have
6 to keep your voice up so the court reporter
7 can hear you.

8 THE WITNESS: I believe it was in
9 the area of the fist bridge on the
10 left-hand side.

11 MR. THOMPSON: For the record,
12 Your Honor, the witness has marked an X on
13 the diagram.

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q And with the red marking pen, will you
17 highlight the portion of the diagram that you have
18 labeled as the path?

19 A (Witness complies).

20 Q If you'll do it on both sides of that black
21 line?

22 A Yes, sir (Witness complies).

23 Q Thank you.

24 MR. BRITT: I have no further
25 questions.

1 THE COURT: Any additional
2 cross-examination?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. THOMPSON:

7 Q I need to do it from my seat or may I --

8 THE COURT: You can do it there.

9 BY MR. THOMPSON:

10 Q Officer Monroe, I believe you drew State's
11 Exhibit Number 18 using a paper writing that you held
12 in your hand, is that right?

13 A Yes, sir.

14 Q Are those your notes?

15 A Yes, sir, they are.

16 Q May I see those, please?

17 A Yes, sir, you may.

18 Q I'm handing the witness's notes back. Now
19 Officer Monroe, when was the diagram prepared in your
20 notes, when did you prepare that diagram, the one
21 that is in your notes?

22 A Yes, sir.

23 Q The notes that I just hand you back?

24 A The next day.

25 Q And there's a diagram attached to those

1 notes, is that right?

2 A Yes, sir.

3 Q Now, did you prepare that diagram?

4 A Yes, sir, I did.

5 Q When was that prepared?

6 A The next day.

7 Q The next day. I'm sorry, I didn't hear
8 you, understand you. Now, I believe you said as
9 indicated in your notes that the body was some ten
10 feet off of the bank?

11 A Approximately.

12 Q You said ten feet in your notes?

13 A Yes, sir.

14 Q Now, Officer Monroe, where is -- which way
15 is upstream using State's Exhibit Number 18? Can
16 you --

17 THE COURT: May I interrupt?
18 Folks, why don't we establish directions,
19 north, south, east, west, establish where
20 the North Carolina-South Carolina line is
21 in relationship, if that can be done.

22 MR. THOMPSON: Thank you, Your
23 Honor.

24 BY MR. THOMPSON:

25 Q Officer Monroe, using State's Exhibit 18,

1 would you indicate where the North Carolina --
2 approximately where the North Carolina-South Carolina
3 line is?

4 A Okay. North Carolina-South Carolina line
5 is right here (indicating). And north is in this
6 direction. And south would be in this direction
7 (indicating) according to the -- I mean, according to
8 my records.

9 Q And for the record you've indicated on
10 State's Exhibit Number 18 an N and an arrow pointing
11 in and out an S an arrow pointing south?

12 A I mean, according to the way the road goes.

13 Q And using State's Exhibit Number 18, can
14 you identify by using an arrow which way downstream
15 would be?

16 A If I recall correctly, I believe downstream
17 would be going this way (indicating).

18 Q Would you indicate that using an arrow?

19 A (Indicating).

20 Q And would you put D S next to that?

21 A (Indicating).

22 Q You may take your seat at this point.

23 A Thank you.

24 THE COURT: Do you want to leave
25 the diagram where it is, sir?

1 MR. THOMPSON: Right now, Your
2 Honor, let me consult. I may be through.

3 THE COURT: Okay.

4 BY MR. THOMPSON:

5 Q Officer Monroe --

6 THE COURT: Sorry, Mr. Thompson,
7 do you need the diagram?

8 MR. THOMPSON: No.

9 THE COURT: Thank you, sir.

10 MR. THOMPSON: Thank you,
11 Mr. Britt.

12 BY MR. THOMPSON:

13 Q Now, Officer Monroe, when you arrived at
14 the scene there on Pea Bridge Road there at the
15 bridge, I believe you indicated there was a female
16 with Hal Locklear, is that right?

17 A Yes, sir, unknown to me.

18 Q In other words, you didn't try to ascertain
19 who that individual was?

20 A At the time I was there, she had -- she was
21 there at the scene but she had not proceeded up to
22 me. I believe Detective Lemmons got there.

23 Q You still don't know who that individual
24 was?

25 A No, sir, I do not.

1 Q Now, Officer Monroe, the notes that you
2 have here with you today, did you give any law
3 enforcement officer involved in this case or
4 Mr. Britt a copy of those notes -- prior to today?
5 You gave them to Mr. Britt?

6 THE COURT: I'm sorry, let's
7 clarify the question. If you'll allow him
8 to complete his question. State your
9 question again, please, Mr. Thompson.

10 BY MR. THOMPSON:

11 Q The notes that you hold in your hands now
12 that you've indicated that you used to testify from,
13 the notes that you used to draw State's Exhibit
14 Number 18 from, did you give a copy of those notes to
15 any law enforcement officer or District Attorney
16 Britt prior to today?

17 A No, sir.

18 Q Was it -- was any -- strike that. Had
19 anyone requested of you, meaning Mr. Britt or any
20 other law enforcement officers involved in this case,
21 requested of you a copy of those notes prior to
22 today?

23 A They told me to keep them for court.

24 Q Who told you to keep them for court?

25 A I don't recall. I was just told to keep

1 the notes for court. I don't recall who. That's
2 been some time back.

3 Q Officer Monroe, can you describe what if
4 any obstructions that you noticed in that stream
5 there at Pea Bridge from the bridge to the point
6 where you saw the body hanging on the limb?

7 THE COURT: Do you understand the
8 question?

9 BY MR. THOMPSON:

10 Q Obstruction in the stream, like limbs or
11 any other obstructions that you observed from the
12 bridge to the limb where the body was hanging on?

13 A Just the tree that -- I mean that's the
14 only thing I really paid attention to.

15 Q You noticed no other obstructions, is
16 that --

17 A Not that I noticed, no, sir.

18 MR. THOMPSON: That's all. Thank
19 you.

20 MR. BRITT: No other questions.

21 THE COURT: May the Lieutenant be
22 released, folks?

23 MR. THOMPSON: Yes, thank you,
24 sir, you're free to go.

25 THE COURT: Yes, sir, Mr. Britt?

HATCHER

1 MR. BRITT: Your Honor, at this
2 time we call Tom Hatcher.

3 THE COURT: If you'll place your
4 left hand on the Bible, raise your right
5 and face Ms. Gaines to my left.

6 TOM HATCHER, III,
7 being first duly sworn was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 THE COURT: If you'll take the
11 witness stand. Please state your full name
12 for the record.

13 THE WITNESS: My name is Tom
14 Hatcher, III.

15 THE COURT: Spell THE last name.

16 THE WITNESS: H A T C H E R.

17 BY MR. BRITT:

18 Q Mr. Hatcher, by whom are you employed?

19 A Scotland County EMS.

20 Q How long have you worked for Scotland
21 County EMS?

22 A A total of seven years.

23 Q What is your job with the Scotland County
24 EMS?

25 A I'm an EMT.

1 Q As an EMT what are your duties and
2 responsibilities?

3 A Respond to medical emergencies, traffic
4 accidents.

5 Q What training and education have you
6 received in becoming an EMT?

7 A I have to be certified by the State of
8 North Carolina through emergency medical technician
9 class.

10 Q Where did you receive your initial training
11 in that capacity?

12 A Richmond Community College.

13 Q When did you complete your course of study
14 there?

15 A The first time was 1979. I recertified
16 again.

17 Q How long --

18 A Several times.

19 Q How often do you have to be recertified?

20 A Every four years.

21 Q Are you currently a certified EMT?

22 A Yes, sir.

23 Q Back on August the 3rd of 1993, in your
24 capacity with the Scotland County EMS were you
25 dispatched to a location along the Pea Bridge Road in

1 Scotland County?

2 A Yes, sir.

3 Q Where specifically were you dispatched to?

4 A We were told on Pea Bridge Road. Not an
5 exact location, I think they gave us a house number
6 but it was on Pea Bridge Road. It was supposedly a
7 creek on Pea Bridge Road.

8 Q Where did you go on Pea Bridge Road?

9 A Initially we went down Hasty Road, went to
10 Pea Bridge and Pea Bridge goes to the right and
11 left. We had to make a judgment call which way to
12 go, we went to the left.

13 Q Which direction would that take you?

14 A Back to 501. We went to 501, Pea Bridge
15 ended, we turned around and retraced ourselves and
16 went down the other way to the South Carolina line.

17 Q And upon going in the direction of the
18 South Carolina line, did you reach an area where
19 there's an establishment called Jerry's Place?

20 A Yes, sir.

21 Q What happened when you got to that area of
22 the Pea Bridge Road?

23 A Once we reached the bridge, we saw Scotland
24 County deputy sheriff car and we proceeded up to the
25 bridge, and the deputy was coming out of the creek

1 bank with another male.

2 Q Did you know the deputy when you saw him?

3 A Lieutenant Danny Monroe.

4 Q Anyone else with him?

5 A Male with him, I don't know his name. It
6 was an Indian male.

7 Q Did you talk with Lieutenant Monroe?

8 A Yes, I did.

9 Q What if anything did Lieutenant Monroe tell
10 you at that point?

11 A Basically, he said there was a man hanging
12 from a tree and he was dead.

13 Q What did you do at that time?

14 A I said, can you go down and show me,
15 because he -- we have to witness anything like that.
16 He took us down to the scene.

17 Q Where did you go?

18 A We were at the bridge, went down to the
19 right, down through the -- down the right creek bank,
20 right side of the creek.

21 Q How far along the creek bank did you walk?

22 A I guess 50 to a hundred yards.

23 Q And what if anything did you see at that
24 time?

25 A Off to the left, there was a tree limb

1 coming from the left side of the bank across the
2 creek, and there was, looked like a body hanging from
3 it.

4 Q Can you describe what the body looked like?

5 A Two legs, two arms. Head. I mean --

6 Q Clothed?

7 A Clothing, light colored shirt, looked like
8 it might have been real dirty. White shirt, real
9 dirty. Looked like he might have blue jeans on, no
10 shoes.

11 Q How close did you get to the body?

12 A I'm guessing about 50, 50 feet. Because it
13 was over the creek and we couldn't access it from our
14 side of the creek.

15 Q Did you detect any odor in the area where
16 you were standing?

17 A You can smell that from the bridge.

18 Q Did you recognize the odor?

19 A It was a foul odor that I smelt several
20 times in houses where people had been dead for
21 several days.

22 Q Based upon the odor that you detected and
23 based upon the appearance of the body, did you form
24 an opinion as to the condition the body was in at the
25 time you observed it?

1 A From a distance with the smell, and hanging
2 above the water, as far as condition, it looked like
3 it was real decomposed, real foul odor.

4 Q At any point did you go out on the creek to
5 where the body was located?

6 A No, sir, never left the bank.

7 Q Did at any time did you touch or move the
8 body --

9 A No, sir.

10 Q -- as it was suspended there above the
11 water?

12 A No, sir.

13 Q After observing the body, what did you then
14 do?

15 A We came back out, went to the bridge, I
16 notified our base that this was in Marlboro County,
17 it was right across the South Carolina line. We
18 didn't have jurisdiction there. South Carolina
19 authorities had to be notified, and we had our
20 dispatcher notified Marlboro County EMS that they
21 needed to respond to our location.

22 Q Shortly after you made the request of your
23 base to contact Marlboro County, were you present
24 when any personnel from Marlboro County or South
25 Carolina arrived to the scene?

1 A Rescue member from McColl Rescue that came
2 up. He identified himself, I can't remember his
3 name. He had a radio, said they had units en route.
4 Basically done a courtesy turnover from one agency,
5 one EMS to another, what we had found when we got
6 there, what we had done, who we had notified, so he
7 would be familiar with what I had done.

8 Q After doing this courtesy turnover, what
9 did you then do?

10 A We stayed at the scene, we were going to
11 stay at the scene until their units arrived, and then
12 a severe storm was coming up. There's a possibility
13 any time during a severe storm, we might have traffic
14 accidents. We were a pretty good ways from
15 Laurinburg, so we were headed back towards town to
16 get back in a more centralized location, if we needed
17 to respond to anything else.

18 MR. BRITT: May I approach?

19 THE COURT: Yes, sir.

20 BY MR. BRITT:

21 Q I'm going to show you previously marked and
22 admitted State's Exhibit Number 16. It's a
23 photograph. Do you recognize what is depicted in
24 that photograph?

25 A Yes, sir.

1 Q Is it a fair and accurate representation of
2 the scene there along the Pea Bridge Road Gum Swamp
3 as you found it when you went there August the 3rd,
4 1993?

5 A Yes, sir.

6 MR. BRITT: No other questions.

7 THE COURT: Cross-examination?

8 MR. THOMPSON: Yes, sir.

9 CROSS-EXAMINATION

10 BY MR. THOMPSON:

11 Q Good morning, Officer Hatcher.

12 A Good morning.

13 Q I believe you indicated that when you went
14 down the creek, you observed a body that appeared to
15 have blue jeans on, is that right?

16 A Yes, sir.

17 Q About how far from the bridge would you say
18 the body was, as it appeared hanging?

19 A From the bridge?

20 Q Yes.

21 A I would have to judge by the distance I
22 walked because you couldn't visualize it from the
23 bridge.

24 Q The distance you walked?

25 A I think we walked, may have been 50 to

1 hundred yards in there.

2 Q Or more?

3 A Or more, and then we didn't get to it
4 because we couldn't access it so probably another 50
5 yards, 150, 200 yards maybe from the bridge.

6 Q You indicated that you made a call --

7 A Yes, sir.

8 Q -- to I believe South Carolina?

9 A No, sir. I went to the unit, the
10 ambulance, I called back to our dispatcher and
11 advised them that this was in South Carolina, they
12 needed to notify Marlboro County EMS because there's
13 nothing that we could do.

14 Q Did you hear or could you hear the
15 dispatcher calling?

16 A No, sir.

17 Q Now, when you -- at some point you left and
18 when you left, were any South Carolina officials or
19 any personnel?

20 A There was a member of the McColl Rescue on
21 the scene. He had identified himself to me as a
22 member. I don't know who he was. I don't remember
23 his name.

24 Q How was he dressed?

25 A Civilian clothes. They are an all

1 volunteer organization. There was our chief deputy
2 from Scotland County was on the scene, Deputy Monroe
3 was still there, and a Detective Paul Lemmon was
4 there, and then other people started arriving that I
5 didn't know who they were because they were in state
6 cars.

7 MR. THOMPSON: That's all. Thank
8 you, Officer Hatcher.

9 MR. BRITT: No other questions.

10 THE COURT: May Mr. Hatcher be
11 released, folks?

12 Thank you, sir, you're free to go.

13 THE WITNESS: Thank you.

14 MR. BOWEN: Your Honor, please
15 let me --

16 (Off-the-record discussion.)

17 THE COURT: Members of the jury,
18 there's an administrative matter that I
19 need to attend to out of the hearing and
20 the presence of the jury. Again, please
21 don't worry or speculate about what takes
22 place in the courtroom in your absence, and
23 if all members of the jury step to the jury
24 room at this time.

25 (Jury out at 10:27 a.m.)

1 THE COURT: For the record, let
2 the record reflect Mr. Bowen is handing a,
3 what appears to be a Fed Ex container to
4 Mr. Johnson Britt at this time.

5 Mr. Britt, I didn't know if you needed
6 an opportunity to examine anything that
7 might be contained in the box prior to any
8 additional examination.

9 MR. BRITT: Yes, sir, I would
10 like an opportunity to examine, make sure
11 that it's proper.

12 THE COURT: Yes, sir. Why don't
13 you do that in open court on the record so
14 that we can make a determination as to
15 whether or not anything is a problem.

16 MR. BOWEN: There may be some
17 papers there, Your Honor, which he's
18 entitled to a copy of per the Court's
19 orders anyway.

20 MR. BRITT: Let the record
21 reflect this box was sealed prior to my
22 opening one side.

23 THE COURT: Folks, my
24 understanding is with regard to those
25 items --

1 MR. THOMPSON: We'll stipulate.

2 THE COURT: Stipulation is to the
3 chain of custody, is that correct?

4 MR. BRITT: Yes, sir, so it's
5 clear, it's on the record.

6 MR. BRITT: Your Honor, we're
7 going to have to retrieve another knife.

8 (Off-the-record discussion.)

9 MR. BRITT: For the record, I've
10 opened the box and I'm going to mark it as
11 an exhibit, but at this point, let the
12 record reflect there are four packages
13 contained inside this box. Three of those
14 four are brown paper grocery type bags.
15 The other is an orange plastic bag that
16 bears the markings Fisher brand auto
17 clothing bag for biohazardous materials.

18 For the record, the sealed box that
19 has been opened has been marked as State's
20 Exhibit 19.

21 THE COURT: Yes, sir.

22 (State's Exhibits 19 through 21 were
23 marked for identification.)

24 MR. BRITT: For the record, the
25 orange bag previously mentioned that's

1 contained inside of the box is now marked
2 as State's Exhibit 19 has been marked as
3 State's Exhibit 20. The brown paper bag
4 that bears the letters L F and the numbers
5 R dash 34, item number 61, going to be
6 marked as State's Exhibit 21.

7 THE COURT: What were the markings
8 again, please, sir?

9 MR. BRITT: Letters L F,
10 everything that appears on here. L F, R
11 dash 34, item number 61. Then the
12 following also appears, R 91 dash 16441
13 slash 491 dash H dash 16. And then the
14 date 8-19-93, with initials that I can't
15 make out.

16 THE COURT: Okay.

17 MR. BRITT: I'm informed those
18 initials may be R.N.M. For Special Agent
19 Ron Marrs of the SBI.

20 THE COURT: Okay.

21 MR. BRITT: The record will
22 reflect I'm going to open State's Exhibit
23 21 to examine the contents.

24 THE COURT: Yes, sir.

25 MR. BRITT: Contents of this bag

1 contain --

2 THE COURT: That would be State's
3 Exhibit 21?

4 MR. BRITT: Yes, sir. One pair
5 of men's undershorts and two socks.

6 THE COURT: Okay.

7 MR. BRITT: State's Exhibit 20,
8 which is the orange bag, contains a strand
9 of red and white rope, could be nylon rope,
10 and also a plastic bag that bears certain
11 markings, and the date 8-4-93.

12 THE COURT: Okay.

13 MR. BRITT: Having marked State's
14 Exhibit Number 22, a brown paper bag that
15 is in sealed condition that bears the
16 following markings: R dash 1, item number
17 61, R 93 dash 16441 slash 491 dash H dash
18 16, bears the date 8-19-93, and again the
19 initials that I've been informed are RNM.

20 As I open State's Exhibit Number 20 --

21 THE COURT: That would be State's
22 Exhibit 22.

23 MR. BRITT: Excuse me, yes, sir,
24 and examine the contents, is a Grand Slam
25 size large shirt, has what was a white

1 background, has --

2 MR. THOMPSON: Well --

3 MR. BRITT: Appears to be what
4 was a white background. What appears to be
5 dark color stains in the area of the
6 shoulders. Also those stripes appear at
7 the base of the neck opening of the shirt
8 and are also present along the part of the
9 pocket on the front of the shirt, there is
10 a broader, what appears to be red stripe
11 beginning at the base of the shirt pocket
12 and continuing down toward the area of the
13 stomach. And based upon the back of the
14 shirt, it would appear that there are no
15 stripes in that region from the back to the
16 front of the shirt.

17 THE COURT: Okay.

18 (State's Exhibit 23 was
19 marked for identification.)

20 MR. BRITT: Marking a brown paper
21 bag as State's Exhibit Number 23, bears the
22 following markings, R-2, item number 61, R
23 93-16441/491-H-16, bears the date of
24 8-19-93, and again what appear to be the
25 initials RNM.

1 THE COURT: Okay.

2 MR. BRITT: Removing the contents
3 of that bag, contents pair of Levi's
4 Dockers pants, waist size 33, length size
5 34, contain -- that has a belt inserted
6 through the belt loops, belt appears to be
7 black in color, and the Levi's pants appear
8 to have been --

9 MR. THOMPSON: Well, I object,
10 Your Honor.

11 THE COURT: Overruled.

12 MR. BRITT: -- green in color.

13 THE COURT: This is for the
14 purposes of establishing only that the
15 items that the State turned over the
16 counsel for the defendant for independent
17 examination are now being returned to the
18 State.

19 MR. THOMPSON: I understand, and
20 if he can identify them, it seems to me
21 that's all he has to say.

22 THE COURT: Well, the objection
23 is overruled.

24 Mr. Britt, are those the items that
25 were turned over by representatives of the

1 State of North Carolina to counsel for the
2 defendant for independent examination?

3 MR. BRITT: Yes, sir. They
4 appear to be in substantially the same
5 condition they were in when they were
6 submitted, actually when they were
7 received.

8 THE COURT: Okay.

9 Ready to go forward, sir?

10 MR. BRITT: Yes, sir. If the
11 Court would indulge me, I would like to be
12 able to reseal this box in terms -- because
13 it does emit a very foul odor. I don't
14 know if you can detect it from where you
15 are, and also be given an opportunity to
16 kind of clean up this area over here where
17 Mr. --

18 MR. THOMPSON: We don't object,
19 Your Honor.

20 THE COURT: I appreciate that.
21 Yes, sir, we'll be at ease.

22 MR. THOMPSON: And probably,
23 Judge --

24 THE COURT: We will bring the
25 jury in rather than keeping them back.

1 MR. BRITT: That would be fine.

2 THE COURT: Can we sit that down
3 for the moment, please, sir. You may want
4 to slide it up against the desk as opposed
5 to next to the jury box.

6 Ready for the jury to come back in,
7 folks?

8 MR. THOMPSON: Your Honor, may I
9 address the Court concerning a matter?

10 THE COURT: Yes, sir.

11 MR. THOMPSON: Rather than having
12 them come in and send the jury back out, I
13 mean, it appears that Agent Heffney has
14 brought in some masks, and I know -- I
15 don't know -- well, anyway, I don't know
16 with respect to these items if the intent
17 of the State upon introducing them is to
18 have them passed to the jury.

19 THE COURT: I don't think so.

20 MR. BRITT: I don't intend to
21 pass them. I intend to display them.

22 MR. THOMPSON: I just wanted for
23 the record to --

24 MR. BRITT: I'm not going to ask
25 anybody to handle that stuff, in terms of

1 the jurors.

2 MR. THOMPSON: Thank you.

3 THE COURT: Okay. Ready for the
4 jury now, folks?

5 MR. BRITT: Yes, sir.

6 THE COURT: If you'll ask them to
7 come in, please, Mr. Horne.

8 (Jury in at 10:51 a.m.)

9 THE COURT: Ladies and gentlemen
10 of the jury, as I indicated to you, we had
11 some administrative and some logistical
12 matters to attend to and hopefully that
13 will allow us to proceed with presentation
14 of evidence in this case with minimal
15 interruptions. It appears that we will
16 need approximately fifteen to twenty
17 minutes more to conclude these
18 administrative and logistical matters.

19 Rather than keeping you back there in
20 the jury room, we're going to take our
21 mid-morning recess a little early today.
22 During the recess it remains your duty to
23 abide by all prior instructions of the
24 Court concerning your conduct. If you
25 folks would resemble back in the jury room

1 at fifteen after by the clock on the far
2 wall, hopefully we will be in a position to
3 go forward with the evidence at that time.
4 Everyone else remain seated, all members of
5 the jury are excused until 11:15.

6 (Jury out at 10:48 a.m.)

7 THE COURT: Court now stands at
8 ease until 11:15.

9 (Brief recess.)

10 THE COURT: Let the record show
11 all counsel are present, the defendant is
12 present in open court. Are we ready to
13 proceed?

14 MR. THOMPSON: Your Honor, can I
15 be heard?

16 THE COURT: Okay.

17 MR. THOMPSON: First of all, I
18 want to beg SBI Agent Heffney's apology.
19 He indicated to me that I indicated that he
20 brought the masks into the courtroom. He
21 indicated to me he did not bring them in
22 here, and I hope you'll accept my apology.

23 Now while we're on the mask, I wanted
24 to inquire to the intentions of the State
25 of what they intend to do with it, because

1 I wanted to address that issue at this
2 point. If they are intending to hand masks
3 to jurors or to -- I just -- you know, they
4 are here in the courtroom and I want to
5 know.

6 THE COURT: Mr. Britt?

7 MR. BRITT: Your Honor, Mr. Sealy
8 with the sheriff's department is the one
9 who brought the mask in. As you were aware
10 from where you were seated, there is a
11 stench to these items. I simply intend to
12 open the bags and either have the witness
13 and myself hold those -- that clothing up
14 and display it to the jury. I don't intend
15 to pass it to the jury. I think that
16 because of the hazards associated with
17 blood-borne disease and handling of
18 biohazardous materials that would be
19 improper for me to do, but I do intend to
20 display them here in the courtroom.

21 THE COURT: What he's asking you
22 is what are the masks for.

23 MR. BRITT: The masks, I assume,
24 are to help alleviate the stench in
25 terms --

1 THE COURT: Who is going to wear
2 them.

3 MR. BRITT: I don't intend to
4 wear them. I'm not going to hand it to
5 jury. If someone -- if it becomes
6 necessary, we can of course do that through
7 the bailiffs distributing them, but I don't
8 think that's going to be a problem.

9 THE COURT: You folks want to be
10 heard further?

11 MR. THOMPSON: No, sir, not in
12 light of his comments, and I personally --
13 of course, I didn't stay over there the
14 whole time, but on the first exhibit I just
15 didn't smell it. I don't doubt that
16 there's some smell to it.

17 THE COURT: Are we otherwise
18 ready?

19 MR. THOMPSON: Oh, yes, sir. Our
20 client has informed us, Your Honor, that
21 while he has been taken back in the hallway
22 and being -- he's locked up in the holding
23 cell back there in the hallway, jurors are
24 also in the hallway. I indicated some --

25 THE COURT: He's not in

1 handcuffs.

2 MR. THOMPSON: No.

3 THE COURT: No shackles.

4 MR. THOMPSON: Not in handcuffs,
5 not in shackles, but they are looking at
6 him in a holding cell, and that's --

7 THE COURT: Your client contends
8 that he's been observed by any member of
9 the jury?

10 MR. THOMPSON: Yes, sir, because
11 they are in the same hallway. The holding
12 cell is in the hallway, and that's a
13 concern.

14 THE COURT: Well, we'll do the
15 best --

16 MR. THOMPSON: That's a
17 legitimate concern.

18 THE COURT: We'll do the best we
19 can to minimize that. What I have done is
20 attempt to release the jury prior to
21 releasing anybody else in the courthouse so
22 they can be situated before Mr. Green is
23 escorted. If you folks will work with me,
24 I'll let you know when we can take
25 Mr. Green back.

1 MR. THOMPSON: I understand --
2 it's not on any part the bailiffs, just the
3 jurors are hanging around in the hall
4 and --

5 THE COURT: Folks, we got --

6 MR. THOMPSON: Your Honor, I was
7 just wondering, this room that's right off
8 from the courtroom right here has bathroom
9 facilities in it. Why can't we use that
10 one?

11 THE COURT: Is that a problem,
12 Mr. Horne or Sergeant Meares.

13 THE BAILIFF: He's just in our
14 custody, that's the only problem.

15 THE COURT: Mr. Thompson, if you
16 folks remind me next time we take a break
17 we'll make sure the hallway clear, send
18 someone up that way to make sure the
19 hallway is clear before Mr. Green is
20 escorted in that direction.

21 MR. THOMPSON: Yes, sir.

22 THE COURT: Okay. Are we
23 otherwise ready to go forward?

24 MR. THOMPSON: Yes, sir.

25 THE COURT: Bring the jury in

1 please, Mr. Horne.

2 (Jury in at 11:18 a.m.)

3 THE COURT: Mr. Britt?

4 MR. BRITT: Your Honor, the State
5 would call at this time Jerry Starnes.

6 MR. THOMPSON: Your Honor, while
7 the witness is coming in, may we approach
8 the bench with counsel?

9 THE COURT: Mr. Huseby, if you'll
10 please approach the bench too as well.
11 Come on up counsel.

12 (Whereupon a bench conference ensued
13 as follows.)

14 MR. THOMPSON: I told Mr. Rogers
15 that our conversation was concerning the
16 defendant is having a problem with him
17 sitting on the row, seeing the evidence for
18 defense.

19 THE COURT: What specifically is
20 the problem?

21 MR. THOMPSON: If he's right
22 behind us, the defendant is inclined to
23 know what you're doing. He's concerned
24 about looking at his file. He is not going
25 to be -- I mean, he is not certainly a

1 friend of this defense, and we don't want
2 him associated with the defense. And
3 that's the problem. I thought it would,
4 you know, be voluntarily. He indicated
5 that he would, and then but he said that
6 you told him --

7 THE COURT: I told him to sit
8 there simply because I thought that would
9 be the most convenient place.

10 MR. THOMPSON: Then I told him
11 that you said it was all right to move
12 someplace else, he didn't want to sit
13 there.

14 THE COURT: State want to be
15 heard?

16 MR. BRITT: In terms of looking
17 at them when everybody in this room looks
18 at him, I don't think Mr. Rogers'
19 appearance on that bench is going to be
20 interpreted in any fashion at all. The
21 Court has requested that Mr. Rogers and
22 Mr. Campbell attend the proceedings at the
23 times that they were necessary because of
24 their client.

25 MR. THOMPSON: That's right, but

STARNES

1 he's your witness.

2 THE COURT: Okay. I'm going to
3 simply ask one of the bailiffs to ask
4 Mr. Rogers to move to another location.

5 MR. THOMPSON: Thank you.

6 (Bench conference concluded.)

7 MR. BRITT: Your Honor, if the
8 record will reflect I've removed State's
9 Exhibit Number 18 from the pad of the easel
10 here in the courtroom. I'm going to hand
11 that to the clerk.

12 THE COURT: Yes, sir. It's been
13 introduced?

14 MR. BRITT: Yes, sir, it was.

15 Your Honor, at this time we call
16 Mr. Starnes to the stand.

17 THE COURT: Mr. Starnes, if
18 you'll come up please, sir. If you will
19 place your left hand on the Bible, raise
20 your right, face Ms. Gaines to my left
21 please.

22 **JERRY STARNES,**
23 being first duly sworn was examined and
24 testified as follows:

25 THE COURT: Please state your

1 full name for the record, sir.

2 THE WITNESS: Name is Jerry
3 Starnes, S T A R N E S.

4 THE COURT: Thank you, sir.
5 Mr. Britt?

6 DIRECT EXAMINATION

7 BY MR. BRITT:

8 Q Mr. Starnes, by whom are you employed?

9 A I'm employed with the Marlboro County
10 Sheriff's Department in South Carolina.

11 Q How long have you worked for that agency?

12 A I've been with the Sheriff's Department
13 some six and a half years. Prior to that I was with
14 the City of Bennettsville Police Department for
15 fourteen and a half years.

16 Q What position do you hold with the Marlboro
17 County Sheriff's Department?

18 A My position is captain over investigations,
19 criminal investigations.

20 Q Mr. Starnes, on August the 3rd, 1993, were
21 you working in your capacity with the Marlboro County
22 Sheriff's Department?

23 A Yes, sir, I was.

24 Q On August the 3rd 1993, on that afternoon,
25 did you have an occasion to go to the area of Pea

1 Bridge Road along the Marlboro County, South Carolina
2 Scotland County, North Carolina line?

3 A Yes, sir, I did.

4 Q Who did you accompany to that location?

5 A Myself and Sheriff Foley went to that site.

6 Q When you arrived, where along the Pea
7 Bridge Road area did you go?

8 A I stayed on the highway part.

9 Q When you refer to the highway, are you
10 referring to the actual --

11 A The road that runs there by the bridge and
12 all.

13 Q Can you describe that area for us?

14 A The bridge is there, you've got a joint
15 that is just on the other side of the creek.

16 Q When you refer to a "joint," what do you
17 mean?

18 A A club. Well, we refer to it different in
19 South Carolina.

20 Q I understand.

21 A We have different kinds.

22 Q Were there any people there when you
23 arrived in this area along the roadway?

24 A Yes, sir.

25 Q How many people do you recall being there

1 in the area along the road?

2 A There were several there, some of the
3 Scotland County law enforcement officers was there,
4 the Scotland County EMS was there, and some other
5 civilians.

6 Q Were there members of the McColl Rescue
7 Squad that you know of?

8 A We called the McColl Rescue Squad later.

9 Q From the scene?

10 A Yes, sir.

11 Q Was the coroner there at the time you
12 arrived?

13 A Not at the time I arrived. We called him.
14 And once we got there and assessed everything, then
15 we notified our Coroner.

16 Q Who is your Coroner?

17 A Tim Brown.

18 Q At any time did you walk from the roadway
19 down along the creek bed?

20 A Yes, sir, myself and Sheriff Foley.

21 Q What if anything did you observe when you
22 walked along the creek bed?

23 A As we went down the creek bed, probably
24 about I would say a hundred yards back into the area,
25 we noticedd a body over some trees.

1 Q Can you describe the body that you saw
2 there?

3 A The best that we could tell from shore, it
4 was a body that was hanging over some trees, was not
5 able to get close enough to determine anything else
6 at that time.

7 Q Was the body clothed?

8 A Yes, sir.

9 Q Can you describe the clothing as you saw
10 it?

11 A The -- it was a light colored shirt with
12 some kind of stripes, and some light colored pants,
13 if I recall right.

14 Q Could you determine if -- could you
15 determine the race of the person?

16 A Not from there, no, sir.

17 Q At any point did you go out onto the water
18 to the location of the body?

19 A No, sir.

20 Q Prior to the removal of the body from the
21 creek, did you touch or move the body in any way?

22 A No, sir.

23 Q Did you have a camera with you on that day?

24 A Yes, sir.

25 Q What kind of camera did you have with you?

1 A 35 millimeter.

2 Q Is that one that has been issued to you by
3 the Marlboro County Sheriff's Department?

4 A Yes, sir.

5 Q Was it a manual focus or automatic focus
6 camera?

7 A Automatic focus.

8 Q At the time on August the 3rd, 1993, was
9 there film in the camera?

10 A Yes, sir.

11 Q Was the camera working properly?

12 A Yes, sir.

13 Q Did you take photographs of the body as you
14 saw it suspended above the water?

15 A Yes, sir.

16 Q What other photographs did you take there
17 on August the 3rd, 1993?

18 A The general area there of the creek, of the
19 body in the creek.

20 Q Once the body was removed from the creek,
21 did you also take pictures of it?

22 A Yes, sir.

23 Q And where were those pictures taken?

24 A They were taken at the McColl Rescue Squad
25 building.

1 Q At the time you took the pictures of the
2 body at the McColl Rescue Squad building, what if
3 anything was the body contained in?

4 A It was in a plastic container bag type that
5 when they removed it they had put the body in, and a
6 basket that the squad uses to remove --

7 Q The plastic bag that you've mentioned is
8 that commonly referred to as a body bag?

9 A Yes, sir.

10 Q Were you present when the body was placed
11 into that body bag there in the area of the Pea
12 Bridge Road?

13 A No, sir, because they went down into the
14 area and removed the body.

15 MR. BRITT: May I approach the
16 witness?

17 THE COURT: Yes, sir.

18 BY MR. BRITT:

19 Q I'm going to hand hand previously admitted
20 as State's Exhibit 16 and ask if you can identify
21 that photograph?

22 A Yes, sir.

23 Q And how are you able to identify State's
24 Exhibit Number 16?

25 A State's Exhibit 16 is -- appears to be a

1 blowup of a picture that I took when I got on the
2 scene down there, and on my camera it has the date in
3 the lower right corner.

4 Q And is the date reflected on that
5 photograph enlargement?

6 A Yes, sir.

7 Q What is the date that appears on that
8 photograph enlargement?

9 A 8-3-93.

10 Q Is that photograph State's Exhibit Number
11 16?

12 A State's Exhibit Number 16.

13 Q Does it show the actual condition of the
14 body as you found it on August the 3rd, 1993?

15 A Yes, sir.

16 MR. BRITT: Your Honor, I move
17 that State's Exhibit 16, previously
18 introduced as illustrative evidence, at
19 this time I move for its introduction as
20 substantive evidence.

21 THE COURT: Counsel want to be
22 heard?

23 MR. THOMPSON: No objection.

24 THE COURT: It's admitted for
25 that purpose.

1 BY MR. BRITT:

2 Q I'll show you what has been marked as
3 State's Exhibit 17, ask you to look at that
4 photograph tell me if you can identify it.

5 A Yes, sir. State's Exhibit Number 17 is
6 another blown up picture that I took, and this was
7 after the body had been removed from the creek and it
8 was at the rescue squad building.

9 Q And does that photograph also bear the date
10 when you took the photograph?

11 A Yes, sir.

12 Q And what is the date that appears on
13 State's Exhibit Number 17?

14 A Lower right corner it has 8-3-93.

15 Q Does that enlarged photograph accurately
16 reflect the condition of the body as you saw it at
17 the McColl Rescue Squad?

18 A Yes, sir.

19 MR. BRITT: At this time I move
20 that State's Exhibit Number 17 be admitted
21 for substantive purposes.

22 THE COURT: Admitted without
23 objection.

24 MR. BRITT: Your Honor, I ask
25 that 16 and 17 be published to the jury.

1 THE COURT: Folks, please recall
2 my instructions, you are to examine each
3 exhibit given to you individually and
4 carefully and without any comment.

5 MR. THOMPSON: Your Honor, I
6 object to number 16 being published. I
7 think it's already been passed. I may be
8 wrong.

9 THE COURT: Overruled.

10 BY MR. BRITT:

11 Q Mr. Starnes, on August the 3rd, 1993, prior
12 to the body being removed to the McColl Rescue Squad,
13 did the weather change?

14 A Yes, sir.

15 Q What change occurred in the weather?

16 A We had a very severe thunderstorm shortly
17 after we arrived there on the scene.

18 Q And on August the 3rd, 1993, did you
19 individually or did you assist anyone else in trying
20 to gather any evidence there along the creek bank?

21 A Once we arrived on the scene and seen that
22 there was a body there, then we in turn called for
23 our Coroner and also called for SLED, which is our
24 state law enforcement division, for assistance in the
25 investigation.

1 Q Why did you request SLED'S assistance?

2 A The sheriff asked me to call and ask SLED
3 to come in and assist us in the investigation because
4 at that time we did not know exactly what we had.

5 Q And did any representative of SLED arrive
6 there at the scene?

7 A Yes, sir.

8 Q Do you recall who that was?

9 A Senior Agent Tommy Frazier.

10 Q August the 3rd, 1993, other than the body,
11 was anything removed from the area of the water of
12 the creek bank, to your knowledge?

13 A No, sir.

14 Q What if any effect did the change in the
15 weather and the storm have on your ability to search
16 the area along the creek bank?

17 A That area beside the creek was right muddy,
18 and it had rained steady real heavily and we were
19 unable to get back in there.

20 Q On August the 4th, did you accompany
21 Sheriff Foley back to the location of Pea Bridge
22 Road?

23 A Sheriff Foley had went back to the location
24 and called me and asked me to meet him there. And I
25 arrived shortly after he had got to the location.

1 Q And when you arrived, where did you find
2 Sheriff Foley?

3 A He was just down off the road down by the
4 creek.

5 Q And when he arrived, did Sheriff Foley show
6 you any item or items?

7 A Yes, sir.

8 Q What item or items did he show you?

9 A He had shown me a casing pistol or
10 cartridge casing, and also a cigarette lighter that
11 he had found there beside the creek.

12 Q Can you describe the shell casing that he
13 showed you?

14 A Can I refer to my notes?

15 Q Please.

16 A Shell casing was a Winchester .38 Special
17 shell casing. The lighter was a blue Bic type
18 lighter.

19 Q Did he give you those items or did he
20 retain them?

21 A He gave them to me.

22 Q What if anything did you do with those
23 items?

24 A I took them, took them in my possession and
25 took them back to the office and put them in the

1 evidence room because at that point in time we still
2 did not know exactly what we had here at the scene.

3 Q Did there come a time when you retrieved
4 those items and returned them to Sheriff Foley?

5 A Yes, sir. On August the 17th, 1993, I gave
6 those items to Sheriff Foley at that time because an
7 SBI agent was going to come by and pick them up, and
8 I had a meeting to go to in Columbia and I was going
9 to be out of town.

10 Q When you placed the shell casing and the
11 lighter into your evidence locker, were they
12 contained inside any type of container?

13 A A little brown envelope that we place them
14 in.

15 THE COURT: Number 24,
16 Mr. Britt?

17 MR. BRITT: Yes, sir, I believe
18 it will be.

19 (State's Exhibit 24 was
20 marked for identification.)

21 BY MR. BRITT:

22 Q Mr. Starnes, I'm going to hand you what's
23 been marked as State's Exhibit Number 24 and ask you
24 to examine that envelope and the handwriting that
25 appear on it and tell me if you can identify that

1 envelope?

2 A It looks like the envelope that I had put
3 the items in, State's Exhibit 24.

4 Q At the time you placed --

5 MR. BOWEN: Looks like --

6 MR. THOMPSON: Object.

7 THE COURT: Ask additional
8 questions. I'll rule on your objection.
9 Go ahead.

10 BY MR. BRITT:

11 Q At the time you placed the item in the
12 envelope, did you place your initials on that
13 envelope?

14 MR. THOMPSON: Object.

15 THE COURT: Overruled. You may
16 answer yes or no.

17 THE WITNESS: No, sir, I'm not --
18 I don't recall whether I did or not at that
19 particular time.

20 BY MR. BRITT:

21 Q Did you place any markings on the envelope
22 to identify it in terms of it containing the shell
23 casing that was recovered that Sheriff Foley had
24 given you on August the 4th?

25 A I want to say this is where I indicated

1 here Winchester .38 Special casing.

2 MR. THOMPSON: Well, I object and
3 move to strike.

4 THE COURT: The objection is
5 sustained. Motion to strike is allowed.

6 MR. THOMPSON: Request
7 instruction.

8 THE COURT: Members of the jury,
9 you will not consider either the last
10 question asked by Mr. Britt or the answer
11 give by Mr. Starnes. Those matters are not
12 to take any part of your deliberations in
13 this case in any respect.

14 BY MR. BRITT:

15 Q Mr. Starnes, do you recognize any of the
16 handwriting on State's Exhibit Number 24 as your
17 handwriting?

18 A I feel like this is.

19 MR. BOWEN: Object.

20 THE COURT: The objection is
21 sustained.

22 MR. BRITT: May I be heard?

23 THE COURT: Yes, sir. Members of
24 the jury, please recall my instructions.
25 There's a matter of law the Court must take

1 up at this time out of the presence and the
2 hearing of the jury. Don't worry or
3 speculate about what takes place in the
4 courtroom in your absence. If you'll step
5 to the jury room at this time.

6 (Jury out at 11:44 a.m.)

7 THE COURT: Let the record
8 reflect the following is being heard in the
9 absence of the jury.

10 Mr. Starnes, this may be purely a
11 matter of semantics or language, but the
12 question was, do you recognize any writing
13 on State's Exhibit Number 24 as being your
14 own writing, yes or no.

15 THE WITNESS: Yes, sir.

16 THE COURT: Yes, sir. Do you
17 want to be heard?

18 MR. THOMPSON: Not with that
19 answer, not at this time.

20 THE COURT: Anything further on
21 behalf of the State?

22 MR. BRITT: No, sir.

23 MR. THOMPSON: My objection of
24 course is that "he felt like" --

25 THE COURT: Use of the language

1 "I feel like" is ambiguous. It's either a
2 yes or no answer, and that's been
3 established for the record. I appreciate
4 it.

5 THE WITNESS: Yes, sir.

6 THE COURT: Anything further?

7 MR. BRITT: No, sir.

8 THE COURT: Bring the jury back
9 in, please.

10 THE COURT: For clarification,
11 you may want to repeat or rephrase your
12 question.

13 MR. BRITT: Yes, sir.

14 (Jury in at 11::45 a.m.)

15 THE COURT: For the record, the
16 objection at this time is overruled. You
17 may ask additional questions, Mr. Britt.

18 BY MR. BRITT:

19 Q Mr. Starnes, referring to State's Exhibit
20 24, do you recognize any writing on State's Exhibit
21 24 as being your own writing?

22 A On State's Exhibit 24, yes, sir.

23 Q And what writing on State's Exhibit Number
24 24 do you recognize as being your own?

25 A In the corner I've got Winchester .38

1 Special shell casing.

2 MR. BRITT: May I approach?

3 THE COURT: Yes, sir. You'll
4 need to establish time frame as to when,
5 if --

6 BY MR. BRITT:

7 Q Mr. Starnes, when did you write those words
8 on the envelope marked State's Exhibit Number 24?

9 A It would have been on the date that it was
10 turned over to me from the sheriff at that
11 location.

12 THE COURT: For the record, when
13 you testify that was on August 4th, 1993.

14 THE WITNESS: Yes, sir.

15 MR. BRITT: May I approach?

16 THE COURT: Yes, sir. Mr. Britt.

17 BY MR. BRITT:

18 Q The record would reflect State's Exhibit --
19 strike that.

20 Mr. Starnes, I ask you to look at State's
21 Exhibit Number 24. Is State's Exhibit Number 24 a
22 sealed envelope?

23 A Yes, sir.

24 Q Does it bear other initial -- other
25 writings?

1 A Yes, sir.

2 MR. BRITT: Let the record
3 reflect I'm opening State's Exhibit 24.

4 THE COURT: Yes, sir.

5 BY MR. BRITT:

6 Q Mr. Starnes, if you will --

7 MR. BRITT: The record will
8 reflect State's Exhibit Number 24 has been
9 opened.

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Mr. Starnes, if you will remove the
13 contents of State's Exhibit Number 24.

14 A (Witness complies).

15 Q Do you recognize what is contained in
16 State's Exhibit Number 24?

17 A Yes, sir.

18 Q How are you able to recognize it?

19 A This is the shell casing that was given to
20 me by the sheriff, and I placed it in the envelope.

21 Q And for the record, what was contained
22 inside of State's Exhibit 24?

23 A A .38 Special Winchester shell casing.

24 MR. BRITT: I don't have any
25 other questions.

1 THE COURT: Any

2 cross-examination?

3 MR. THOMPSON: Yes, sir.

4 CROSS-EXAMINATION

5 BY MR. THOMPSON:

6 Q Good morning, Agent Starnes.

7 A Good morning.

8 Q Agent Starnes, on direct examination you
9 indicated that when you arrived to -- at the bridge,
10 there was a joint on the other side of the bridge.
11 Do you recall testifying to that?

12 A Yes, sir.

13 Q Meaning a club?

14 A Club, yes, sir.

15 Q On the other side of the bridge from where
16 you were located?

17 A Yes, sir. It would have been back towards
18 the -- from where I was at, the club would have been
19 back towards the North Carolina state line.

20 MR. THOMPSON: May I approach the
21 witness?

22 THE COURT: Yes, sir.

23 BY MR. THOMPSON:

24 Q Agent Starnes, will you take that pointer
25 there, and I direct your attention to what has been

1 previously marked as State's Exhibit Number 18. Can
2 you use State's Exhibit Number 18 to --

3 THE COURT: You may not want to
4 stand there.

5 MR. THOMPSON: I'm sorry.

6 BY MR. THOMPSON:

7 Q Can you use State's Exhibit Number 18 to
8 illustrate your testimony as to where you were
9 standing and the other side of the bridge that you
10 referred to as where the joint was?

11 A Yes, sir. On State's Exhibit 18, I would
12 have been here along the road here, and Jerry's
13 Place, the club, is over here (indicating).

14 Q Now, is that on the other side of the road
15 or is that on the same side of the road where you
16 were standing?

17 A This club was right on the same side of the
18 road that I was on but on the other side of the
19 bridge.

20 Q Okay. So you mean -- so Jerry's was on the
21 other side of the creek, not the other side of the
22 road?

23 A No, sir. I was was on the other side of
24 the creek, same side of the road.

25 Q I understand. Thank you. You may have a

1 seat.

2 Now, when you walked down the path, would
3 you say that it was about maybe 400 yards down there
4 before you actually saw the body, from the bridge?

5 A I would not say it was that far, but you
6 had a sort of winding path.

7 Q How far would you say it was?

8 A I would say probably 300 feet, maybe a
9 hundred yards, somewhere along in there.

10 Q 300 feet to a hundred yards. And when you
11 observed the body there hanging on the tree, did you
12 observe what appeared to be blue jeans on the body?

13 A From where I was standing on the bank, you
14 could not tell exactly what color the clothing was.

15 Q From where you were standing?

16 A From where I was standing of the bank.

17 Q From where you were standing on the bank
18 was some maybe, I think you said 50 feet?

19 A No. From where I went down, I would say
20 the body would have been no more than ten or fifteen
21 feet from me.

22 Q About as far as, using a place here in the
23 courtroom, about how far are you talking about from
24 where you're situated?

25 A I would say probably about half way back.

1 Q Ten, fifteen feet, meaning half way back to
2 the courtroom?

3 A Behind the first or second seat there, yes,
4 sir.

5 Q And in your sense of distance, that would
6 be ten or fifteen feet, is that what you're saying?

7 A Give or take some, yes, sir.

8 Q You indicated that the body was placed in a
9 bag while you were not present, is that right?

10 A The body was brought out in a bag, yes,
11 sir.

12 THE COURT: For purposes of
13 clarification, Mr. Starnes, did you observe
14 the body being placed in the bag?

15 THE WITNESS: No, sir.

16 THE COURT: Okay.

17 BY MR. THOMPSON:

18 Q Now, Agent Starnes, on the 4th, which would
19 have been a Wednesday, is that right, would that have
20 been a Wednesday, August 4th, to your recollection?

21 A Yes, sir.

22 Q Which was the next day after the body was
23 pulled from the creek?

24 A Yes, sir.

25 Q You indicated you went back down to the

1 creek?

2 A Yes, sir.

3 Q Now, when you got back down to the creek
4 had Sheriff Foley already -- was he already there?

5 A Yes, sir.

6 Q And when you got there at the bridge, where
7 was Sheriff Foley?

8 A Sheriff Foley was down off the road down by
9 the creek.

10 Q Was he by himself?

11 A Yes, sir.

12 Q And could you see him from the bridge?

13 A Yes, sir.

14 Q And what was he doing when you first
15 observed him?

16 A He was standing there when I drove up.

17 Q Just --

18 A Standing there looking around when I drove
19 up, yes, sir.

20 Q And when you drove up, you then went down
21 the path and joined Sheriff Foley?

22 A Yes, sir.

23 Q At that time, you and Sheriff Foley
24 proceeded further on down the path, is that right?

25 A Sheriff Foley gave me the items that he had

1 found.

2 Q And did Sheriff Foley indicate to you where
3 he had found those items?

4 A In the area there by the creek.

5 Q Well, did he point out to you a specific
6 area --

7 A Yes, sir, he pointed over in an area and
8 said that's why it was at.

9 Q Now, how far was that from the area that he
10 pointed out to you, how far was that from the bridge?

11 A From the bridge?

12 Q Yes, sir.

13 A I would say maybe ten or twelve feet, give
14 or take it could have been a little bit further.

15 THE COURT: Where was that area
16 in relationship to the path that you
17 previously described?

18 THE WITNESS: It was just to the
19 right of the path. It was off the path,
20 but I mean, not a -- a distance off the
21 side of the path, it was a little area.

22 BY MR. THOMPSON:

23 Q Now, Sheriff Foley handed you the .38 shell
24 casing, is that right?

25 A Yes, sir.

1 Q There on the bank of the creek?

2 A Uh-huh, yes, sir.

3 Q And he handed you the blue lighter?

4 A Yes, sir.

5 Q And was it at that time that you put it in
6 an envelope?

7 A Yes, sir, I took it back up to my car and
8 put it in an envelope.

9 Q And is that when you wrote on the envelope
10 the Winchester .38 Special?

11 A To the best of my knowledge, yes, sir.

12 Q Now, you indicated that an Agent Thomas
13 Frazier arrived while you were there, we're back on
14 the 3rd now of August?

15 A Yes, sir.

16 Q When the body was found. You indicated
17 that an agent -- a SLED agent?

18 A Yes, sir.

19 Q Thomas Frazier arrived?

20 A Yes, sir.

21 Q Now, after the 3rd of August, did you and
22 Agent Thomas Frazier have any conversation concerning
23 a missing person from Robeson County?

24 A Yes, sir.

25 Q And was that person an Alphonzo Green from

1 Rowland, North Carolina?

2 A Yes, sir, I recall Fairmont, but it could
3 have been Rowland.

4 Q And did you contact the family of Alphonzo
5 Green with respect to the missing body that you found
6 down there?

7 MR. BRITT: Objection.

8 THE COURT: Do you want to be
9 heard, Mr. Britt?

10 MR. BRITT: Yes, sir.

11 THE COURT: Ladies and gentlemen
12 of the jury, there's a matter of law the
13 Court must take up out of the presence and
14 the hearing of the jury. Please recall my
15 instructions. If the members of the jury
16 would step to the jury room.

17 (Jury out at 11:58 a.m.)

18 THE COURT: In the absence of the
19 jury, Mr. Britt, please state the
20 objection.

21 MR. BRITT: Your Honor, the
22 objection is based on a number of grounds.
23 First of all, relevance as to a missing
24 person from Robeson County. Secondly,
25 there's absolutely no foundation laid as

1 far as this line of questioning, and third,
2 this line of questioning in my opinion is
3 hearsay.

4 MR. THOMPSON: Well, Your Honor,
5 first of all, identity is certainly an
6 issue in this case. We've said it early on
7 we had not conceded to that. And it goes
8 to -- the relevancy is it goes to identity
9 or an attempt to at least identify the
10 body. And I think that --

11 THE COURT: How do you contend
12 this is relevant?

13 MR. THOMPSON: Because it goes to
14 the issue of identity.

15 THE COURT: What would you intend
16 to ask the witness as to -- what was the
17 individual's name you referred to?

18 MR. THOMPSON: Alphonzo Green.

19 THE COURT: What would you intend
20 to ask?

21 BY MR. THOMPSON:

22 Q First of all, did you or Agent Frazier
23 contact the family of an Alphonzo Green concerning
24 the body being that of Alphonzo Green?

25 THE COURT: You may answer.

1 THE WITNESS: We contacted the
2 family to -- because we got information
3 from Robeson County that a person was
4 missing. And after we got our preliminary
5 report from the Coroner, then we began to
6 check out black missing persons to
7 determine who the unidentified body we had
8 was.

9 BY MR. THOMPSON:

10 Q Agent Starnes, did you not contact --

11 THE COURT: Mr. Thompson, bottom
12 line question is, what if anything did the
13 absence or disappearance of one Alphonzo
14 Green have to do with any identification of
15 anybody made in this case?

16 MR. THOMPSON: That's what I'm
17 trying to find out, Your Honor. We have a
18 report that from at least of Thomas
19 Frazier, that the family of Alphonzo Green
20 was contacted --

21 THE COURT: Do you have any
22 evidence that an identification of the body
23 was made which ties to Alphonzo Green?

24 MR. THOMPSON: Well, they
25 contacted the family of Alphonzo Green, and

1 the report says, indicated to them that
2 they had found the body of Alphonzo Green.

3 THE COURT: Do you have any
4 evidence that someone, anywhere, made an
5 identification of the body and indicated
6 that that person was Alphonzo Green?

7 MR. THOMPSON: That's what the
8 report suggests, Your Honor. That's
9 exactly --

10 THE COURT: I'm not asking you
11 what it suggests. Do you have evidence to
12 that effect?

13 MR. THOMPSON: That's the
14 evidence. Yes.

15 THE COURT: Mr. Starnes, was
16 there any identification ever made of the
17 body that was recovered on August 3rd,
18 1993, from Pea Bridge Road relating to the
19 disappearance of or the absence of Alphonzo
20 Green?

21 THE WITNESS: No, sir.

22 MR. THOMPSON: May I continue to
23 ask this witness some questions?

24 THE COURT: Yes, sir.

25 BY MR. THOMPSON:

1 Q Now, Agent Starnes, you had information,
2 did you not, which caused you to believe that this
3 was the body of Alphonzo Green, isn't that right?

4 A No, sir. We had information that the
5 description of Alphonzo Green possibly fit the
6 description of the body that we had found.

7 THE COURT: For the record, what
8 was that description?

9 THE WITNESS: Can I refer to my
10 notes?

11 THE COURT: Yes, sir.

12 THE WITNESS: The information
13 that we received from the Coroner was a
14 black male, 25 to 55 years old.

15 THE COURT: That's the body that
16 was found at the Pea Bridge Road?

17 THE WITNESS: Yes, sir. The
18 information that we received from Robeson
19 County was that it was a black male, age of
20 about 28.

21 THE COURT: So essentially what
22 you had was black male?

23 THE WITNESS: Yes, sir.

24 THE COURT: Between the ages of
25 25 and 55 in the context of the body that

1 was recovered from Pea Bridge Road?

2 THE WITNESS: Yes, sir.

3 THE COURT: A black male age 28
4 in terms of the alleged missing person?

5 THE WITNESS: Yes, sir.

6 BY MR. THOMPSON:

7 Q May I see -- you've been testifying from
8 your notes, is that right?

9 A Yes, sir, I've referred to my notes.

10 Q May I see those notes?

11 A Yes, sir.

12 MR. THOMPSON: Your Honor, I ask
13 that I --

14 THE COURT: Yes, sir.

15 (Short pause).

16 MR. THOMPSON: I'm handing you
17 your file back, Agent Starnes.

18 THE COURT: Any additional
19 questions?

20 MR. THOMPSON: Yes, sir.

21 THE COURT: Okay.

22 BY MR. THOMPSON:

23 Q Now, Agent Starnes, it appears from your
24 file that you have rather extensive notes or papers
25 pertaining to this person Alphonzo Green, is that

1 right?

2 A Yes, sir.

3 Q Now, basically, those notes indicate that
4 they were made around or about August the 5th of '93,
5 is that fair to say? Would you look in your notes?

6 A You're talking about the ones on
7 Mr. Green --

8 Q With respect to an identification of the
9 body and perhaps this being Alphonzo Green.

10 A Talking with family members is what you're
11 referring to, sir?

12 Q Yes.

13 A Yes, sir, I have notes where we've talked
14 and interviewed family members.

15 Q When did you -- on what date did you begin
16 to interview family members --

17 THE COURT: Mr. Thompson, two
18 things, one it's cross-examination, second
19 it's voir dire, so you get to put what you
20 want, communicate to the witness in the
21 form of a statement and let him say yes or
22 no.

23 MR. THOMPSON: I tried that and
24 it appeared it was on August the 5th, and
25 I'm asking you now, when was it.

1 THE COURT: He's asking you
2 whether or not you talked with the family
3 members of Alphonzo Green on August 5th,
4 1993.

5 THE WITNESS: August 4th.

6 BY MR. THOMPSON:

7 Q Is that the first time that you talked to
8 family members of Alphonzo Green, on August the 4th?

9 A August the 4th, yes, sir.

10 Q When you made contact with the family
11 members of Alphonzo Green, did you indicate to them
12 that you had possibly found Alphonzo Green or did you
13 indicate to them that you had found Alphonzo Green?

14 A I did not indicate to them that we had
15 found Alphonzo Green. We went and questioned them to
16 find out if this body that we had found could have
17 possibly been the body of Alphonzo Green.

18 THE COURT: If you'll bear with
19 me, Mr. Thompson, if you'll bear with me
20 for one second.

21 THE COURT: Were any dental
22 records, known dental records of Alphonzo
23 Green compared with dental records compared
24 with the body removed from the creek at Pea
25 Bridge Road?

1 THE WITNESS: Not to my
2 knowledge, Your Honor.

3 BY THE COURT:

4 Q Any comparison made of known fingerprints
5 and the body that was removed from Pea Bridge Road?

6 A Not to my knowledge, Your Honor.

7 Q Were there any unique characteristics
8 described to you by members of the family of Alphonzo
9 Green that related to or connected to the body that
10 was removed from the creek at Pea Bridge Road?

11 A The age of Mr. Green, Alphonzo Green,
12 related to the age of our preliminary report of the
13 body that was found in the creek.

14 Q That being the Coroner's description of the
15 body removed from the creek being between 25 and 55?

16 A Yes, sir.

17 Q And information obtained from the Alphonzo
18 Green family that he was 25 to 55?

19 A Yes, sir.

20 Q That and the race of the body were the only
21 factors that you had in terms of description?

22 A Yes, sir.

23 BY MR. THOMPSON:

24 Q And also, Agent Starnes, it was indicated
25 based on your investigative notes on August the 4th

1 of 1993, that he was last seen about two weeks prior
2 to August the 4th of 1993, which would have put it on
3 July the 23rd. That also was something that you
4 considered too, was it not?

5 A Yes, sir, that was information revealed by
6 the family.

7 Q Now, are you aware, Agent Starnes, of a
8 report of -- let me --

9 MR. THOMPSON: May I approach the
10 witness? Marked as Defendant's --

11 THE COURT: Let's make that 2.

12 (Defense Voir Dire Exhibit 2
13 was marked.)

14 BY MR. THOMPSON:

15 Q Agent Frazier, I hand you what has been
16 previously marked as Defendant's Exhibit voir dire
17 2.

18 A I'm Starnes.

19 Q I'm sorry, excuse me. Agent Starnes, I
20 hand you what has been previously marked as
21 Defendant's Exhibit voir dire 2. Have you ever seen
22 that paper writing before?

23 A Yes, sir.

24 Q Did you and Agent Tom -- well, first of
25 all, identify what Defendant's Exhibit voir dire

1 Number 2 is. What is it?

2 A This is a report made by Lieutenant Tommy
3 Frazier with the State Law Enforcement Division in
4 reference to the case that we were working on in
5 Marlboro County.

6 Q What case were you working on, are you
7 referring to?

8 A The body that was found in the creek on Pea
9 Bridge Road.

10 Q On August the 3rd of --

11 A August the 3rd of 1993.

12 Q All right. And so you and Agent Frazier
13 had conversations concerning the matters pertained in
14 Defendant's Exhibit voir dire Number 2 prior to it
15 being prepared, is that right?

16 MR. BRITT: Objection. He didn't
17 testify to that, he hadn't testified he
18 knows what is in the document.

19 MR. THOMPSON: I'm asking him
20 it's on cross, it's on voir dire.

21 THE COURT: It's voir dire. Lay
22 the foundation for purposes of the record
23 so we'll have clarity. At this time the
24 objection is overruled -- or holding in
25 abeyance any ruling on the objection

1 BY MR. THOMPSON:

2 Q Did you all have conversation, meaning you
3 and Agent Frazier, concerning the matters pertained
4 in Defendant's Exhibit voir dire Number 2, before it
5 was prepared?

6 A Before it was prepared?

7 Q Yes, sir.

8 A No, sir.

9 Q Okay. Did you have conversations about it
10 after it was prepared?

11 A Yes, sir.

12 THE COURT: Establish the date,
13 Mr. Thompson.

14 BY MR. THOMPSON:

15 Q What is the date on Defendant's Exhibit
16 Voir Dire Number 2, the date that that document was
17 prepared, the date on it?

18 A August the 16th, 1993.

19 THE COURT: Establish who may
20 have prepared it.

21 BY MR. THOMPSON:

22 Q Who is it signed by?

23 A Signed by Lieutenant Tommy Frazier, with
24 the State Law Enforcement Division.

25 Q So you saw it after -- first time you saw

1 this document -- when did you first see this
2 document?

3 A This document?

4 Q Yes.

5 A This morning.

6 Q Where?

7 A Mr. Frazier showed it to me when we were
8 riding, coming to the Court this morning. We did not
9 get a copy of their reports.

10 Q I understand. Okay. So then it's your
11 testimony that since you only saw this document this
12 morning, it's fair to say obviously you didn't know
13 what was in it?

14 A Not until what I seen this morning. Like I
15 said we don't get a copy of their reports.

16 Q But you've now read what was in it, is that
17 right?

18 A Yes, sir.

19 Q And I mean you've read what is it, in that
20 document, haven't you?

21 A Yes, sir.

22 Q And particularly, I direct you to the
23 second page of that document, and this sentence
24 that's been highlighted.

25 A Uh-huh.

1 MR. BRITT: For the record, can
2 we establish the page and line number?

3 MR. THOMPSON: Page two, and I'm
4 going to have him read that sentence.

5 THE COURT: I take it the State
6 would object if this comes in or is offered
7 through this witness on hearsay grounds?

8 MR. BRITT: Yes.

9 THE COURT: For purposes of voir
10 dire, I'm going to allow it.

11 BY MR. THOMPSON:

12 Q Would you read that sentence please?

13 A This is report prepared by Tommy Frazier,
14 with the State Law Enforcement Division, I'm reading
15 from page two. Starting with the second line, a
16 misunderstanding between the Marlboro County
17 Sheriff's Department, the office of Dr. Joel Sexton,
18 and Robeson County Sheriff's Department resulted in
19 the family of Alphonzo Green being informed that the
20 body found at Pea Bridge was that of Alphonzo Green.

21 Q Do you know what misunderstanding
22 Mr. Frazier is referring to or did you all discuss
23 that, first of all, from your own knowledge?

24 A Yes, sir.

25 Q What is he referring to?

1 A A telephone call was made from Robeson
2 County from a -- it was either Sexton or Simmons, and
3 our secretary understood it to be Dr. Sexton calling
4 about a tattoo.

5 THE COURT: About what, sir?

6 THE WITNESS: A tattoo on the
7 missing person from Robeson County. And
8 when she referred it to the sheriff, she
9 referred it to him and took it as
10 Dr. Sexton, who is the pathologist, had
11 called and said that the person had a
12 tattoo, which in essence, that officer from
13 Robeson County had called and she
14 misunderstood the pronouncing of his name.

15 THE COURT: Can we stop and
16 clarify here? Is it your testimony that
17 the secretary in your office understood
18 that a Dr. Sexton called and said that the
19 body recovered from Pea Bridge Road had a
20 tattoo?

21 THE WITNESS: That's what she
22 took.

23 THE COURT: And in reality your
24 testimony is that the call came in from a
25 Robeson County officer.

1 THE WITNESS: Officer, whose last
2 name is either Simmons or Sexton.

3 THE COURT: And the information
4 apparently came in was that the missing
5 person from Robeson County had a tattoo.

6 THE WITNESS: She took it, yes,
7 sir, the missing person from Robeson County
8 was the one that had the tattoo.

9 THE COURT: But she understood it
10 to be the doctor in the coroner's office?

11 THE WITNESS: She understood it
12 to be Dr. Sexton, the pathologist.

13 THE COURT: Indicating that the
14 body recovered from Pea Bridge Road had a
15 tattoo?

16 THE WITNESS: Yes, sir.

17 THE COURT: Go ahead,
18 Mr. Thompson.

19 BY MR. THOMPSON:

20 Q Okay. And did the body, was it -- well,
21 was it your information that then Alphonzo Green had
22 a tattoo?

23 A For, we got the information correct and
24 found out that the officer from Robeson County had
25 called and said the missing person there had a

1 tattoo.

2 THE COURT: Simply for purposes
3 of the record, was there any tattoo on the
4 body that was recovered from Pea Bridge
5 Road?

6 THE WITNESS: Not to my
7 knowledge.

8 BY MR. THOMPSON:

9 Q Well, what was it that then Agent Starnes
10 caused the confusion with respect to a tattoo, what
11 significance at all does that have to do that would
12 cause you or Agent Frazier to contact the family of
13 Alphonzo Green and say that they had found his body?

14 MR. BRITT: Objection. He can't
15 answer what would cause Mr. Frazier to do
16 anything.

17 BY MR. THOMPSON:

18 Q What would cause you, if you can, sir?

19 THE COURT: If you can, sir?

20 THE WITNESS: Rephrase your
21 question again.

22 BY MR. THOMPSON:

23 Q What is the significance of this thing
24 about a tattoo that would cause you to make a
25 connection between the body that you found on August

1 the 3rd there at Pea Bridge and the missing person
2 report referring to Alphonzo Green?

3 A The --

4 Q That would cause you to contact the family
5 of Alphonzo Green and say -- cause you to contact the
6 family of Alphonzo Green?

7 A The reason we contacted the family of
8 Alphonzo Green is because of the information that we
9 received that he was missing and he was in this
10 bracket that we were trying to identify a body that
11 we had found. We went to the family and talked with
12 them. Like I said, during the time our secretary
13 received this call, and forwarded it to the sheriff
14 as being from Dr. Sexton, when -- and then the
15 sheriff actually talked with Dr. Sexton and he says
16 no, that he has not called that office, that's when
17 we found out it come from Robeson County.

18 Q But what you've just read in the report of
19 Mr. Frazier, Defendant's Exhibit voir dire Number 2,
20 indicates clearly that the family was told that it --
21 had been informed that the body found at Pea Bridge
22 Creek was that of Alphonzo Green, now is that true or
23 not? Was the family told that?

24 THE COURT: Do you know
25 personally?

1 THE WITNESS: No, sir, I don't
2 recall that being said like that.

3 THE COURT: At the same time
4 Starnes, is it fair to say that when the
5 dust cleared, after a series of
6 miscommunications, what may have led to an
7 identification in this case was a mistaken
8 belief that a missing person had a tattoo
9 and the body recovered from the creek had a
10 tattoo?

11 THE WITNESS: Yes, sir.

12 THE COURT: That turned out not
13 to be accurate?

14 THE WITNESS: Yes, sir.

15 THE COURT: Yes, sir.

16 BY MR. THOMPSON:

17 Q Based on that information, you having not
18 seen either Mr. Green or a body with a tattoo, you
19 would call the family and tell them that you found
20 the body of the loved one, is that what you're
21 saying?

22 A No, sir.

23 MR. BRITT: Objection.

24 THE COURT: He said he didn't do
25 it, he didn't have personal knowledge as to

1 who did, Mr. Thompson.

2 BY MR. THOMPSON:

3 Q You don't have personal knowledge as to who
4 contacted them?

5 A As to that -- that was the body of Alphonzo
6 Green?

7 Q Yes, sir.

8 A No, sir.

9 Q Well, now --

10 MR. THOMPSON: May I approach the
11 witness?

12 THE COURT: Yes, sir.

13 BY MR. THOMPSON:

14 Q Do you know, Agent Starnes, who called or
15 gave you any information pertaining to the mistake
16 that you've just testified to?

17 THE COURT: How did you find out
18 about the mistake?

19 THE WITNESS: The sheriff, after
20 he had talked with Dr. Sexton, talked with
21 the secretary, got everything straightened
22 out, the sheriff revealed it to me.

23 BY MR. THOMPSON:

24 Q And on what date did he reveal it to you if
25 you recall?

1 A I don't recall exactly what day it was.

2 Q But would it be fair to say that it would
3 have been at least on or after August the 5th?

4 A I would say it would be in that general
5 area of the same day that we talked with the family
6 members.

7 Q Now, Agent Starnes, did you turn your
8 investigative file, copies of your investigative file
9 over to anyone, any law enforcement agency in the
10 State of North Carolina?

11 A Are you referring to my personal interview
12 notes and all?

13 Q That you testified to today, that you
14 testified from today, the notes that you hold there
15 in your hands.

16 A They were turned over to Mr. Britt this
17 morning.

18 Q Were you ever told prior to this morning
19 that -- or requested prior to this morning to turn
20 over those investigative notes to anyone?

21 A Not my personal notes, investigative notes,
22 no, sir.

23 MR. THOMPSON: Your Honor, with
24 respect to this line of questioning, that's
25 all that we have. We would request though

1 at this time prior to him being released
2 that we get a copy of those notes. I have
3 a few more questions on another line and we
4 will be through.

5 THE COURT: Mr. Thompson,
6 Mr. Bowen, do you intend to offer any
7 evidence that would link any identification
8 of Alphonzo Green as being the person who
9 was found in the creek off of Pea Bridge
10 Road?

11 MR. BOWEN: I --

12 THE COURT: Fingerprints or
13 otherwise, I'm simply asking so that I can
14 rule fairly to both sides.

15 MR. BOWEN: We intend to,
16 however, this issue may come up to other --

17 THE COURT: As to Alphonzo Green,
18 that's what I'm asking you. Are you
19 intending to offer any other evidence that
20 would link the disappearance of Alphonzo
21 Green or anyone else with the body that was
22 discovered off of Pea Bridge Road?

23 MR. BOWEN: I think the fairest
24 we can answer that is possibly.

25 THE COURT: All right. At this

1 point, folks, based on what is before me,
2 the objection is sustained on the grounds
3 of relevance.

4 Also, under Rule 403, the Court finds
5 that any probative value, if any, and I
6 don't really see any, is clearly minimal in
7 terms of the danger of confusion of the
8 issues in this case based on what is now
9 before me. And for that reason as well,
10 under Rule 403, the objection is sustained,
11 as well as Rule 401. Note the defendant's
12 exception to the Court's ruling so that
13 your issues are preserved in that. If you
14 folks feel that you have a basis for going
15 back into it, please let me know, I'll be
16 glad to reconsider.

17 MR. THOMPSON: Yes, sir. With
18 respect to the notes, Your Honor, that was
19 pursuant to a previous order.

20 THE COURT: You need -- well, I
21 don't have authority to order anybody in
22 South Carolina to do anything.

23 MR. BOWEN: I think they are
24 sitting in North Carolina now.

25 THE COURT: You're talking about

1 prior orders?

2 MR. THOMPSON: I'm talking about
3 now.

4 THE COURT: As of right now, yes,
5 sir.

6 THE WITNESS: As far as the
7 personal notes, the states might vary
8 different. In South Carolina our personal
9 investigative notes are not revealed unless
10 the -- which is our, what wall solicitor's
11 request for us to turn them over to them.
12 And usually we do not turn any personal
13 investigation notes over.

14 THE COURT: I certainly
15 understand and appreciate that we have a
16 case here called State versus Hardy, rule
17 of discovery that says if the notes were
18 used in contemplation of your testimony in
19 court, if you reviewed those notes prior to
20 your testimony in court, then for the
21 purposes of that testimony, they are
22 entitled to examine those notes. Now
23 that's what Hardy says. That's what the
24 pertinent provision of the discovery
25 statutes provide. You're asking me to go a

1 step beyond that and to order that they be
2 copied.

3 MR. THOMPSON: We've got a jury
4 sitting back there. This is the first time
5 he used his notes to testify.

6 THE COURT: You're fine. What
7 I'm going to do is rule consistent with
8 North Carolina law. You have asked for
9 access to the notes for purposes of
10 examining those notes; you've had that
11 opportunity. I will give you an additional
12 opportunity to examine those notes. I will
13 not order they be copied. I'm going to
14 bring the jury in, excuse them at this
15 point for lunch. You will have between now
16 and the time we reconvene at 2:30 to
17 examine those notes and make any notes that
18 you want to, but I'm not going to order
19 this that they be copied.

20 MR. THOMPSON: Yes, sir.

21 THE COURT: Do you want to be
22 heard further in that respect or any
23 other?

24 MR. BRITT: No, sir. Let me just
25 put this on the record. There is an order

1 in effect. The Court ordered me to obtain
2 the notes of the investigation in this
3 case.

4 We -- my office, through me and
5 others, contacted the SBI, the FBI, SLED,
6 Cumberland County, Robeson County, Scotland
7 County. In oversight, we did not contact
8 Marlboro County.

9 THE COURT: Bottom line you don't
10 have jurisdiction to do anything other than
11 request that they be provided to you, and
12 unless they are in your possession or
13 obtainable by you, then I don't think the
14 statute has been violated.

15 MR. BRITT: My concern is --

16 MR. THOMPSON: He just said it
17 was an oversight, and any request --

18 THE COURT: He can't copy two
19 people at the same time.

20 MR. BRITT: I apologize. My
21 concern is the Court's previous order. I
22 just wanted to bring that to the Court's
23 attention.

24 THE COURT: I appreciate that.
25 If you'll bring the jury in, Mr. Horne.

1 For our purposes right now,
2 Mr. Starnes, you may step down, if you will
3 give your notes to Mr. Britt at this time.

4 THE WITNESS: All right, sir.

5 (Jury in at 12:43 p.m.)

6 THE COURT: Ladies and gentlemen
7 of the jury, it appears that the matters
8 taken before the Court will take a little
9 longer than anticipated. I'm going to
10 release you folks for the lunch recess at
11 this time. Please return directly to the
12 jury assembly room or -- strike that -- the
13 jury deliberation room from which you've
14 just come no later than 2:30. We
15 anticipate being prepared to go forward at
16 that time.

17 Now during the lunch recess, again I
18 instruct you that you're not to talk about
19 this matter among yourselves or anyone
20 else. Do not allow anyone to say anything
21 to you or in your presence about this
22 case. If anyone communicates with you
23 about this matter or attempts to do so or
24 if anyone says anything in your presence
25 about the case, it's your duty to inform us

1 of that immediately by contacting one of
2 the bailiffs assigned to the courtroom.

3 Don't form or express any opinions
4 about this matter. Don't have any contact
5 or communication of any kind with any of
6 the attorneys, parties, witnesses,
7 prospective witnesses or directedly with
8 the Court.

9 Please recall it is your duty to avoid
10 any exposure to any media accounts which
11 might exist in connection with this
12 matter. And you're not to conduct any
13 independent inquiry or investigation or
14 research of any kind.

15 Everyone remain seated. Members of
16 the jury are excused until 2:30. Folks,
17 you need to get coats or anything out of
18 the jury room? Okay. Feel free to do
19 that.

20 (Jury out at 12:45 p.m.)

21 THE COURT: In the absence of the
22 jury I have directed Captain Starnes to
23 turn over the notes that were utilized in
24 reviewing in preparation for his testimony
25 to Mr. Britt as the District Attorney here

1 in this district, consistent with the
2 Court's prior rulings in this case.
3 Mr. Britt if you will provide materials
4 which are discoverable pursuant to that
5 order and discoverable under existing case
6 law to counsel for the defendant for
7 purpose of examination. I'm not ordering
8 that they be copied. I'm ordering they be
9 made available to you for purpose of your
10 examination in anticipation of additional
11 cross-examination.

12 MR. BRITT: Just for Court's
13 information, the practice I've utilized,
14 open files, I'm going to make copies of
15 everything.

16 THE COURT: Fine. I'm just not
17 going to order it.

18 MR. BRITT: Since I took over the
19 case, I've provided open files and I
20 continue to do that.

21 THE COURT: Does that satisfy
22 you?

23 MR. THOMPSON: Yes, that
24 satisfies us.

25 THE COURT: Anything further?

1 From either counsel?

2 MR. THOMPSON: No, sir.

3 THE COURT: We're at recess until
4 2:30.

5 (Lunch recess.)

6 THE COURT: Good afternoon,
7 folks. Let the record show that all
8 counsel are present, the defendant is
9 present in open court. Are we ready to
10 proceed, folks?

11 MR. BRITT: Your Honor, for the
12 Court's information, I believe Mr. Thompson
13 and Mr. Bowen just recently, last few
14 minutes, have been able to pick up a copy
15 of the notes that were prepared. It took
16 longer to copy than was anticipated.

17 MR. THOMPSON: We've got the
18 material.

19 THE COURT: You need additional
20 time to review the notes or are you ready
21 to go forward?

22 MR. THOMPSON: Your Honor, we
23 have some more questions of --

24 THE COURT: Are you ready?

25 MR. THOMPSON: Not on the voir

1 dire at this point.

2 THE COURT: Ready?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Captain Starnes, if
5 you retake take the stand, please.

6 MR. THOMPSON: Judge, before we
7 do that, I can tell you, I think this is
8 the time to address this, rather than
9 having to do it in front of the jury.

10 Mr. Starnes, Agent Starnes, having
11 been called as a witness by the State, I
12 know at the end of this testimony you're
13 going to ask may he be released. Now, it's
14 our position that we don't want to release
15 him. We want him to sit here throughout
16 the rest of the trial, as long as he
17 understands he's still under the
18 jurisdiction of this court.

19 THE COURT: He's under subpoena.

20 MR. BRITT: My subpoena.

21 THE COURT: By the State. You
22 folks issue a subpoena for him?

23 MR. THOMPSON: If necessary, but
24 it's my understanding if he's called as the
25 witness by the State, and if -- until

1 released --

2 THE COURT: No, sir. You will be
3 entitled to cross-examine. I think I hear
4 you saying that what you may do in this
5 case is call him as your witness.

6 MR. THOMPSON: Exactly.

7 THE COURT: Then you need to
8 issue a subpoena for him.

9 MR. THOMPSON: Then we'll have to
10 do that, you know, I've always -- the Court
11 is asking may the witness be released after
12 the -- we finish with him, and I understood
13 that to mean --

14 THE COURT: No, sir, asking if
15 you have any additional matters on
16 cross-examination, if you intend to call
17 someone who has been called as a State's
18 witness, you folks need to put that person
19 or persons under subpoena.

20 MR. THOMPSON: Well, I
21 understand, and that's why we want to get
22 this straight, because not that he -- we
23 are aware of the process of having to go
24 through an out of state jurisdiction for a
25 witness, but I think that --

1 THE COURT: Well, if he's here --

2 MR. THOMPSON: If he's here,
3 exactly, we won't have those jurisdictional
4 problems.

5 THE COURT: Exactly.

6 MR. THOMPSON: Or we will have
7 one. My point is, we don't want him
8 released until we get him served, and
9 that's my point.

10 THE COURT: Yes, sir.

11 MR. THOMPSON: Is that all right.

12 THE COURT: Yes, sir.

13 MR. BOWEN: If I may interject
14 here, when I was a prosecutor I had this
15 come up few times where defense was allowed
16 to rely on my subpoena in having someone
17 stick around and went to my case base, I
18 may not have plugged in the right
19 nomenclature and I could not give you a
20 case. I've had judges rule that way
21 before.

22 THE COURT: All I know is the
23 safer course if you intend to call someone
24 put them under subpoena.

25 Thank you, Captain Starnes. If you'll

1 take the stand.

2 Are we ready?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: If you'll ask the
5 jury to come in.

6 (Jury in at 2:34 p.m.)

7 THE COURT: Good afternoon,
8 folks.

9 Mr. Thompson you may continue with
10 cross-examination.

11 MR. THOMPSON: Yes, sir. Good
12 afternoon Agent Starnes.

13 THE WITNESS: Yes, sir.

14 BY MR. THOMPSON:

15 Q Agent Starnes, when you picked up the shell
16 casings or received the shell casing from Agent
17 Foley, as well as the blue lighter, how did you
18 handle them, could you describe how you handled them?

19 A Yes, sir. If I recall, I -- the casing was
20 in between the two fingers, and I took it up and
21 placed it into the brown envelope.

22 Q Was that so to as not to contaminate or --
23 the evidence perhaps for -- was that the reason that
24 you handled it that carefully?

25 A Yes, sir.

1 Q And you did the lighter the same way?

2 A Yes, sir.

3 Q Did you ever request to have any of those
4 items -- did you ever dust any of those items for
5 fingerprints or ever request to have them dusted?

6 A No, sir.

7 Q To your knowledge, did anyone from your
8 agency make such a request?

9 A No, sir.

10 Q Now, you filed incident reports as a part
11 of your investigation, is that right?

12 A Yes, sir.

13 Q And that's normal in the course of an
14 investigation?

15 A Yes, sir.

16 Q Now, on August the 3rd, I believe you filed
17 an incident report with respect to locating the body?

18 A Yes, sir.

19 Q And with respect to locating the shell
20 casing as well as the lighter, was an incident report
21 filed?

22 A No, sir.

23 Q On State's Exhibit Number 24, the envelope
24 that you just testified to at which place the shell
25 casing --

1 A Yes, sir.

2 Q Is -- is there a date on that envelope with
3 respect to when this shell casing was placed in that
4 envelope?

5 A No, sir.

6 MR. THOMPSON: That's all.

7 THE COURT: Mr. Britt, there was
8 an objection that the Court had to rule on
9 that objection in the presence of the
10 jury. That objection is sustained.

11 Anything further on behalf of the
12 State by way of a motion to strike or any
13 request for additional instructions?

14 MR. BRITT: I would ask for an
15 instruction regarding --

16 THE COURT: Motion to strike is
17 also allowed.

18 Members of the jury, I instruct you
19 that any question asked by counsel for the
20 defendant, specifically Mr. Thompson, of
21 the witness now before you, Mr. Starnes,
22 relating to an Alphonzo Green are to be
23 disregarded by you, and any answer that may
24 have been given also is to be disregarded
25 by you. You are not to consider these

1 matters in any respect in the deliberation
2 in this case. Each of you understand? All
3 members of the jury can understand and
4 follow that instruction, please indicate by
5 raising your right hand at this time. Let
6 the record reflect all fifteen members of
7 the jury have responded affirmatively. Any
8 additional matters for Mr. Starnes?

9 MR. BRITT: One more question.
10 May I approach the witness?

11 THE COURT: Yes, sir.

12 REDIRECT EXAMINATION

13 BY MR. BRITT:

14 Q Let me hand you State's Exhibit 24 again.
15 Is that exhibit in substantially the same condition
16 it was in after placing the shell casing in the
17 envelope and sealing it?

18 A Yes, sir.

19 Q Is it in substantially the same condition
20 it was in when you retrieved it on August of 1993 and
21 delivered it to Sheriff Foley?

22 A Yes, sir.

23 Q Is there any different appearance in that
24 envelope than it was in 1993?

25 A It's got a lot more writing on it.

1 MR. BRITT: That's all.

2 THE COURT: Anything further

3 Mr. Thompson and Mr. Bowen?

4 MR. THOMPSON: No, sir.

5 THE COURT: Captain Starnes, if
6 you will step down at this time. Will you
7 remain with us at this time pending further
8 ruling of the Court.

9 THE WITNESS: Yes, sir.

10 MR. BRITT: At this time we call
11 Lieutenant Charles Foley.

12 CHARLES E. FOLEY,
13 being first duly sworn was examined and
14 testified as follows:

15 DIRECT EXAMINATION

16 THE COURT: If you'll take the
17 witness stand, please.

18 Please state your full name and spell
19 your last name for the record.

20 THE WITNESS: Charles E. Foley,
21 F O L E Y.

22 THE COURT: Thank you.

23 Mr. Britt?

24 BY MR. BRITT:

25 Q Mr. Foley, will you state your occupation,

1 please?

2 A Sheriff of Marlboro County, South Carolina.

3 Q How long have you been the sheriff in
4 Marlboro County, South Carolina?

5 A This is my fourth.

6 Q Prior to becoming the sheriff of Marlboro
7 County, how were you employed?

8 A Deputy sheriff.

9 Q How many years were you employed as deputy
10 sheriff?

11 A Total law enforcement be over thirty years.

12 Q The Gum Swamp is located in Marlboro
13 County?

14 A Yes, it is.

15 Q And are you familiar with the area of the
16 Gum Swamp where Marlboro County and South Carolina,
17 Scotland County, North Carolina join?

18 A Yes, sir.

19 Q On August the 3rd, 1993, did you go to that
20 area of Marlboro County?

21 A Yes, sir.

22 Q And who did you go there with?

23 A I went alone.

24 Q And what was your purpose of going to the
25 area of the Gum Swamp of Marlboro County, South

1 Carolina?

2 A It had been reported to me --

3 MR. BOWEN: Object.

4 THE COURT: This is to explain
5 subsequent conduct?

6 MR. BRITT: Yes, sir.

7 THE COURT: Objection is
8 overruled. Yes, sir.

9 THE WITNESS: I was at my home
10 and it was reported to me that a body had
11 been located in that section.

12 BY MR. BRITT:

13 Q And upon arriving in the area of the Gum
14 Swamp Marlboro County, South Carolina, did you
15 observe any officers from your department or any
16 officers from any other department at --

17 A Both departments.

18 Q What officers from your department were
19 present that you recall?

20 A Captain Starnes, Chief Quick, at least
21 those two.

22 Q Upon arriving there at that seen, did you
23 leave the roadway area and walk off into the woods?

24 A I did.

25 Q What if anything did you observe when

1 walking in the woods?

2 A A body in the Gum Swamp creek hanging on a
3 fallen tree, branches of the fallen tree.

4 Q And approximately how far had you walked
5 from the road to where you first observed the body?

6 A Probably a hundred yards.

7 Q And did anyone direct you to that location?

8 A Hal Locklear.

9 Q At any point did you touch or move the body
10 that was located there in the Gum Swamp creek?

11 A No, sir.

12 Q After observing the body in Gum Swamp
13 creek, what did you then do?

14 A The Coroner joined us there, Coroner Brown.

15 Q Was he there when you first arrived?

16 A I don't think he was there, he may have
17 been there when I got there. At least he and I and
18 the other officers were there. We contacted the
19 McColl Rescue Squad, had them come to the scene, and
20 they recovered the body.

21 Q Did you make any request of any outside law
22 enforcement agency?

23 A I asked for the local SLED, Tommy Frazier.

24 Q For what reason did you call for the local
25 SLED agent?

1 A It's my policy.

2 Q For the record, what is SLED?

3 A State Law Enforcement Division, South
4 Carolina.

5 Q And for what purpose was SLED contacted?

6 A It's a policy of mine on any violent death,
7 on what I think may turn out to be a violent death,
8 is to have their professionalism there to assist me
9 in these investigations.

10 Q As a result of your request, did a SLED
11 agent come to the area?

12 A Lieutenant Frazier.

13 Q How long did you remain there at the scene?

14 A I think I was there over an hour. I stayed
15 there until the body was recovered and taken to
16 another location.

17 Q Did you observe the body at any point after
18 it was removed?

19 A I did.

20 Q Where did you observe the body?

21 A McColl Rescue Squad building.

22 Q Who was present when you observed the body?

23 A Lieutenant Frazier, Captain Starnes,
24 myself, members of the McColl Rescue Squad.

25 Q While you were there in the area of the Gum

1 Swamp, were any photographs taken by anyone that you
2 recall?

3 A I think Captain Starnes took some
4 photographs.

5 Q And were any photographs taken at the
6 McColl Rescue Squad while you were there?

7 A I believe there were, I'm not positive. I
8 believe there were.

9 Q Once the body was removed from the swamp --
10 strike that. On the afternoon of August the 3rd,
11 1993, was there a change in the weather while you
12 waited for the removal of the body?

13 A Yes, sir.

14 Q What change in the weather occurred?

15 A We had rain.

16 Q How would you describe the rain that
17 resulted?

18 A Kind of come and go but at one point it
19 just poured down.

20 Q The following day, on August the 4th, 1993,
21 did you have an occasion to go back to the area of
22 the Gum Swamp where the body was located?

23 A I did.

24 Q What was your purpose in going back to that
25 location?

1 A I personally like to do that an awful lot,
2 to go back to the -- to these scenes, and I like to
3 go alone a lot. And I had the opportunity and I just
4 drove out there.

5 Q When you went there, were you looking for
6 anything?

7 A Anything and everything, sir.

8 Q When you arrived there that day, do you
9 recall if it was in the morning or the afternoon?

10 A In the afternoon.

11 Q Was anyone with you at the time?

12 A Not when I arrived.

13 Q When you arrived there in the area where
14 the body was located, what did you do?

15 A I parked, I think before I got to the
16 bridge, I pulled over on the side of the road and
17 parked, walked up near the bridge, and you can go
18 down the bank, people fish there a lot. And they do
19 a little cooking out. So there was a bare spot down
20 from the highway. From the bare spot, the bare spot
21 is probably as large as this jury box, and then from
22 on through the bare spot, there's a path that goes
23 back through there. People go up and down there
24 fishing.

25 Q And did you walk down that path?

1 A Yes, sir. I went through the bare spot and
2 then the path.

3 Q While you were there in what you call the
4 bare spot an walking on the path, were you looking
5 for items?

6 A For items, yes, sir.

7 Q And while you were doing that, did you
8 locate any or did you find anything?

9 A Yes, sir, I did.

10 Q What did you find?

11 A I found what I believed to be a .38 caliber
12 hull, a spent hull laying on the ground.

13 Q Where did you find that item?

14 A Fifteen, twenty feet from the highway.

15 Q And upon seeing that item, what did you do
16 with it?

17 A Picked it up.

18 Q Can you describe for the jury how you
19 picked it up?

20 A I didn't protect it any way. I didn't
21 personally protect it, I just picked it up and looked
22 at it, held it.

23 Q Did you find any other item?

24 A Yes, sir. I walked a short distance on
25 through the clearing to the path, and over, I

1 believe, it was over near the creek itself, I found a
2 cigarette lighter.

3 Q What if anything did you do with the spent
4 hull and the cigarette lighter that you found?

5 A I kept them both. I called Captain Starnes
6 to come out there.

7 Q As a result of that phone call, did Captain
8 Starnes come to where you were?

9 A Yes, sir.

10 Q Upon his arrival, what if anything did you
11 do with the spent hull, the .38 hull casing that you
12 found and the cigarette lighter?

13 A I turned them over to Captain Starnes to
14 preserve as evidence.

15 Q After you turned the .38 caliber hull
16 casing over to Captain Starnes, did there come a time
17 later when you asked him to return that item to you?

18 A Yes, sir.

19 Q Do you recall when that was?

20 A I have it on this note, if you'll allow me
21 to look at it. I believe it was the 17th of August.
22 August 17th.

23 MR. BRITT: May I approach the
24 witness?

25 THE COURT: Yes, sir.

1 BY MR. BRITT:

2 Q Sheriff Foley, I'm going to hand you
3 State's Exhibit 24, ask you to examine that item and
4 tell me if you can identify first the envelope that
5 has been marked as State's Exhibit 24?

6 A This envelope is like the envelope that
7 Captain Starnes --

8 MR. THOMPSON: Object.

9 THE COURT: Be specific with your
10 question, Mr. Britt.

11 BY MR. BRITT:

12 Q Sheriff Foley, State's Exhibit Number 24
13 contains a number of handwriting?

14 A Yes, sir.

15 Q And do you recognize any of the handwriting
16 that appear on State's Exhibit Number 24?

17 A The only thing that I can tell you about
18 this, this is Captain Starnes' writing up here, and
19 when I turned this over to Barry Lea, the SBI agent
20 from North Carolina, this is where I believe he --

21 MR. THOMPSON: Object.

22 THE COURT: Was it done in your
23 presence?

24 THE WITNESS: Yes, sir, it was.

25 THE COURT: You observed what was

1 placed on there?

2 THE WITNESS: Yes, sir.

3 THE COURT: At this time the
4 objection is overruled.

5 BY MR. BRITT:

6 Q At any point after Captain Starnes handed
7 you the envelope, did you open the envelope?

8 A No, sir.

9 Q When you gave it to Mr. Lea, was it in the
10 sealed condition?

11 A Yes, sir.

12 Q Ask you to examine?

13 THE COURT: Back up and ask him
14 what if anything he observed Mr. Lea do at
15 the time it was given to him.

16 BY MR. BRITT:

17 Q What did you observe Mr. Lea do with the
18 envelope?

19 A Made a notation that he got this from me on
20 that date, 8-17-93.

21 Q Did Mr. Lea ask you to sign an evidence
22 receipt form showing the transfer from you to him?

23 A I believe he did. My recollection that he
24 did.

25 Q Sheriff Foley, after you gave Mr. Lea the

1 envelope, was it ever returned to you?

2 A No, sir.

3 Q Sheriff Foley, if you will examine the
4 shell casing that is contained inside of State's
5 Exhibit Number 24. Do you recognize it?

6 A I cannot tell you positively that this is
7 it.

8 Q Did you make any markings on the shell
9 casing that you picked up?

10 A I did not make any markings, no, sir.

11 Q Sheriff Foley, the envelope marked as
12 State's Exhibit 24, is it in substantially the same
13 condition today as it was when you delivered it to
14 Mr. Lea back on August the 17th of 1993?

15 A Except for all the notations on it.

16 Q At the time you gave it to Mr. Lea, was it
17 opened or unopened, the envelope?

18 A It was open -- it was unopened.

19 Q If it please the Court, Mr. Heffney has
20 gone to retrieve a document that would --

21 MR. THOMPSON: Object.

22 MR. BOWEN: Object to what it
23 would do.

24 THE COURT: We'll be at ease.

25 MR. BRITT: Yes.

1 THE COURT: This will be number
2 25?

3 MR. BRITT: Yes, sir.

4 (State's Exhibit 25 was
5 marked for identification.)

6 BY MR. BRITT:

7 Q Sheriff Foley, I hand you what's been
8 marked as State's Exhibit Number 25. Ask you to look
9 at that document and tell me if you identify it?

10 A This would be the receipt made out to Barry
11 Lea.

12 Q Did you observe Mr. Lea make out that
13 receipt?

14 A I did.

15 Q Where was that receipt made out at the time
16 that you observed it? Where did you meet with
17 Mr. Lea?

18 A In my office, Marlboro County Sheriff's
19 Department.

20 Q What date appears on that?

21 A 8-17-93.

22 Q Is that document in substantially the same
23 condition it was in when you saw Mr. Lea in your
24 presence fill it out?

25 A Yes, sir.

1 MR. BRITT: I don't have any
2 other questions.

3 THE COURT: Do you want to
4 establish whether or not it was signed by
5 the witness?

6 BY MR. BRITT:

7 Q Sheriff Foley, does your signature appear
8 on this?

9 A No, sir.

10 THE COURT: Any
11 cross-examination?

12 CROSS-EXAMINATION

13 BY MR. BOWEN:

14 Q Sheriff Foley, you later gave a statement,
15 did you not, to members of the State Bureau of
16 Investigation of North Carolina, particularly
17 Mr. Berry, or Agent Barry Lea, is that correct?

18 A Yes, sir.

19 Q Now, to Mr. Lea, you gave a statement that
20 as to the matters and things you've just testified to
21 out at the Pea Bridge on the days in question, you
22 made absolutely no written notes at all, did you?

23 A Did not.

24 Q You filed absolutely no written report, did
25 you?

1 A Did not.

2 Q You were unable to tell Mr. Lea the exact
3 day on which you say you got these objects, the shell
4 casing and the cigarette lighter, is that correct?

5 A Told Mr. Lea it was the following day after
6 I found the body.

7 Q Actually you told Mr. Lea it was either the
8 4th or the 5th, you didn't know which?

9 A That could have been, that could be.

10 Q Of course he was asking for your written
11 incident report, wasn't he?

12 A I don't know if he asked me for an incident
13 report or not. I'm sure he got one from my office.

14 Q Either he asked and you were not able to
15 give it to him or you volunteered that you had not
16 made one, is that correct?

17 A That could be.

18 Q And it is not the policy and procedure of
19 your office to make an incident report especially
20 with regard to incidents where a dead body is
21 involved?

22 A At the appropriate time, yes, sir.

23 Q Sir?

24 A At the appropriate time.

25 Q Did that appropriate time ever come, sir?

1 A It would not have been the 4th.

2 Q So you have never made a written report of
3 any of these incidents, is that correct?

4 A There's an incident report.

5 Q Where is it?

6 A I didn't bring one. I wasn't told to bring
7 one.

8 Q When did you make one?

9 A There's one in the office, I'm sure.

10 Q Did you make one?

11 A I can tell you a report that is in my
12 office in my computer not in the form of an incident
13 report but it's a record.

14 Q It's a record of your notes?

15 A Not a record of my notes, a record of what
16 occurred on the 3rd.

17 Q And you did not bring that with you today?

18 A I got what I got out of my computer.

19 Q It is a record of what happened on the 3rd
20 of August of 1993, is that correct?

21 A Well, it's covers -- it covers several
22 days.

23 Q And when did you actually sit down into
24 your computer, best you remember, and put that in the
25 memory?

1 A I didn't put it in.

2 Q Who put it in?

3 A Secretary.

4 Q At whose direction?

5 A Either myself or Captain Starnes.

6 Q When did you direct, approximately, the
7 secretary to make this record into your computer's
8 memory?

9 A I can't answer that question.

10 Q What are you referring to in front of you,
11 the paper writing in your hands, sir?

12 A This is the notes out of the computer.

13 Q Well, then you did bring the notes out of
14 the computer?

15 A Yes, I brought the notes out of the
16 computer, I just told you that.

17 Q May I look at them?

18 A Yes, sir

19 (Defense Exhibit 1 was
20 marked for identification.)

21 BY MR. BOWEN:

22 Q Now this paper writing that you've handed
23 to me, Sheriff Foley, is now marked for
24 identification purpose as Defense Exhibit 1, is that
25 correct? Is it now marked as Defense Exhibit 1?

1 A Yes, sir.

2 Q Now, have you reviewed this document before
3 coming into court today?

4 A I glanced at it, yes, sir.

5 Q So you haven't read it since it was
6 originally made by your secretary?

7 A I've read the report, yes.

8 Q And you say this has to do with your
9 activities with regard to this case on August 3rd,
10 4th and 5th, is that correct?

11 MR. BRITT: Objection.

12 THE COURT: You can answer that
13 yes or no. If it's incorrect, you can let
14 him know that. If it's correct, you can
15 let him know that?

16 THE WITNESS: It's not correct.

17 BY MR. BOWEN:

18 Q What does it refer to?

19 A There is several dates. May I have my
20 notes?

21 Q Let me just ask you as I'm coming, does it
22 have anything to do with what you did on the 3rd or
23 4th of August with respect to the shell casing or the
24 lighter?

25 A I'll have to look at my notes.

1 Q All right, sir.

2 A I don't see anything in here referring to
3 the lighter or the shell case.

4 Q So in fact, that report has to do only with
5 what you say occurred on the 3rd of August, is that
6 correct?

7 A Has to do with what occurred on the 3rd,
8 makes reference to Dr. Sexton's autopsy, makes
9 reference to the description of the body. Makes
10 reference on August the 12th the body being
11 identified that of Mr. Jordan. Makes reference to
12 dental charts, makes reference to fingerprints.
13 Makes reference to Cumberland County Sheriff's office
14 and Robeson County Sheriff's office.

15 Q So then those notes having referred to a
16 date as late as August 12th, 1993, those notes were
17 caused by you to be made after at least August 12th,
18 1993, weren't they?

19 A Yes, sir.

20 Q And those notes refer to absolutely nothing
21 concerning a shell casing or a cigarette lighter or
22 any of your particular activity on August 3rd our
23 4th, do they -- August 4th or 5th, I'm sorry, do
24 they?

25 A No, sir.

1 Q Now, Sheriff Foley, in connection with this
2 case, did you have an occasion to notify a family in
3 Robeson County --

4 MR. BRITT: Objection.

5 THE COURT: Sustained.

6 MR. BOWEN: Desire to be heard.

7 THE COURT: Ladies and gentlemen
8 of the jury, there's a matter of law the
9 Court must take up. Please recall my
10 instruction in that regard, and if you will
11 step to the jury room, please.

12 (Jury out at 3:06 p.m.)

13 THE COURT: Following is being
14 heard in the absence of the jury. Yes, sir
15 Mr. Bowen.

16 MR. BOWEN: Your Honor, what I
17 intend to pursue, and I phrased my question
18 that way, put the Court on alert that I
19 would be traveling back to this area of the
20 Alphonzo Green matter. It is my impression
21 from these reports --

22 THE COURT: Folks, isn't a fact
23 that Mr. Alphonzo Green was subsequently
24 located.

25 MR. BRITT: Yes.

1 this is just the beginning of it, this is
2 just part of it. Now, anything that goes
3 to the credibility of these folks that are
4 handling this stuff making or not making
5 reports on any of it, being or not being
6 responsible with regard to the analysis of
7 it, goes to credibility, goes to the
8 quality of this investigation, and goes to
9 whether or not the whole matter is worthy
10 of belief by the jury when they come up
11 with their ultimate conclusion that they
12 finally decide to stick with.

13 Now, I don't mind them knowing that
14 Alphonzo Green, if he has has come back on
15 the scene. What's important is there's
16 this rush to justice that causes them
17 without due investigation, without due
18 analysis, to call some poor family in
19 Robeson, North Carolina, and say your son
20 is dead, then call back and say, no, next
21 day, no, sorry, we made a mistake, he's not
22 dead.

23 Now, there's some more coming that's a
24 lot worse than that. This is just the
25 beginning.

1 Now, the jury is not going to decide
2 this whole case on that, and I think they
3 are smart enough to determine what if any
4 weight it's given. And obviously, if it's
5 going to be used for prior inconsistent
6 statement, you're going to properly
7 instruct them. But I think for what it's
8 worth, it is worth that.

9 THE COURT: Mr. Britt?

10 MR. BRITT: Your Honor, they know
11 what the evidence is, they have had this
12 evidence in their possession for well over
13 a year, they know how the body was
14 identified, in terms of the fingerprints,
15 the dental work, they know what their
16 client had and what they didn't have, they
17 already stipulated that their client had
18 these items that belonged to Mr. Jordan.
19 Now, they have got to lay some groundwork,
20 and back up, Alphonzo Green is alive and
21 well. If necessary, we'll bring him in
22 here and parade him around in front of jury
23 if that's what it takes to satisfy them
24 that this line of questioning is improper.
25 They haven't laid any foundation of any

1 kind.

2 THE COURT: Well, his argument,
3 from what I understand of the argument, is
4 that it goes to the issue of any other
5 identification that may have been made by
6 law enforcement authorities in South
7 Carolina, specifically any other
8 identification as to Mr. James Jordan.

9 MR. BRITT: The only person, the
10 only identification that was made as to the
11 body that was recovered from the Gum Swamp
12 on August the 3rd, 1993, was James Jordan.
13 They know that, this court knows that, and
14 this is simply a matter of blowing smoke
15 and trying to create some doubt where there
16 is no doubt. I mean, it's conclusive.
17 Their experts have examined this stuff.
18 They are not going to bring their experts
19 in here to say these aren't the dental
20 charts of Mr. Jordan. They are not going
21 to bring an expert in here to say that some
22 other person's hand made these fingerprints
23 when compared with the known --

24 THE COURT: A pertinent question
25 that needs to be asked of this witness as

1 to the matter now before me. Sir, did you
2 personally notify anybody in Robeson County
3 as to an identification made of the body
4 that was recovered from the creek?

5 A Not in Robeson County, no, sir.

6 MR. BOWEN: I'd like to ask him
7 just a couple of questions on that issue.

8 THE COURT: On voir dire, you
9 may.

10 BY MR. BOWEN:

11 Q Mr. Foley, did you have a conversation with
12 Thomas Frazier of SLED regarding this case?

13 A I've had many, many conversations with
14 Lieutenant Frazier.

15 Q Well, did you tell him that the family of
16 Alphonzo Green had been informed that the body found
17 at the Pea Bridge was that of Alphonzo Green, did you
18 tell the SLED agent Mr. Frazier that that had been
19 done?

20 A No, sir. That family lives in
21 Bennettsville, South Carolina.

22 Q I see. Did you contact them in
23 Bennettsville?

24 A I went to their house.

25 Q Whom did you see?

1 A Best of your knowledge, Lieutenant Frazier
2 went with me.

3 Q Whom did you see?

4 A I believe it was his mother.

5 Q And what day was that, sir?

6 A I think probably the 5th possibly.

7 Q And what time of day, as best you recall?

8 A I think it was right after noon.

9 THE COURT: Pardon me?

10 THE WITNESS: I believe it was
11 after noon.

12 BY MR. BOWEN:

13 Q And you saw the mother of Alphonzo Green?

14 A There was some family members. I know we
15 talked with the mother.

16 Q What did you tell them?

17 A We told them that there was a body that had
18 been found at Pea Bridge, and that we had searched
19 the surrounding counties and jurisdictions trying to
20 find a missing black male, that we had come up with
21 one, and that he was from Robeson County, I believe
22 Rowland, I'm not certain about the town, but I
23 believe it was Rowland. And that this name was her
24 son, and there is a possibility that this body we had
25 located was her son. I didn't tell her definitely, I

1 didn't know who the man was. I didn't learn the
2 identification of that body until much later from the
3 experts.

4 Q So that you're saying then that
5 Mr. Frazier's report is wrong if it says that she was
6 in fact informed that the body at the Pea Bridge was
7 that of Alphonzo Green?

8 A If he states it that way, it's wrong, yes,
9 sir. He was with me.

10 Q Then is Mr. Frazier here today?

11 A Yes, sir.

12 Q And you then, Mr. Frazier, you then told
13 Mr. Frazier that you contacted Mr. Green's mother
14 again, is that correct?

15 A I may have told him that.

16 Q When you contacted her again, what was the
17 purpose of that visit and when was it in reference to
18 the first?

19 A I don't recall contacting her again. I
20 recall talking to her the one time when Frazier was
21 with me. And I did not know the identification of
22 the body at that time. I could not have told her it
23 was her son because I didn't know who it was.

24 Q So if Mr. Frazier's report says that that
25 is Mrs. Green, the family of Alphonzo was again

1 contacted and told by Sheriff Foley that we have
2 reason to believe that this body was not that of
3 their son Alphonzo Green, then Mr. Frazier's report
4 would be mistaken?

5 MR. BRITT: Objection.

6 THE COURT: Overruled for purpose
7 of voir dire.

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1 A I can't deny that, that could have
2 happened.

3 Q You just don't remember?

4 A I just don't remember.

5 Q Is it fair to say that at a point that the
6 identification was pointing toward Alphonzo Green and
7 then you eliminated that possibility?

8 A That's fair, it's fair to say because that
9 was the only black male missing person report that I
10 could find.

11 Q All right, sir. What was your policy and
12 procedure as far as notifying a family before you had
13 a --

14 A I went there on investigative -- I went
15 there partly investigation, investigative move. I
16 did not tell her that was her son, I did not know
17 that.

18 Q And do you now know that Mr. Alphonzo Green
19 is alive?

20 A I don't know it, I haven't seen
21 Mr. Alphonzo Green.

22 MR. BOWEN: That's all of this
23 witness.

24 THE COURT: Anything on voir dire
25 on behalf of the State?

1 MR. BRITT: No, sir.

2 THE COURT: Do you want to be
3 heard further in argument, Mr. Bowen?

4 MR. BOWEN: Beforehand, I would
5 like permission to put Mr. Frazier on the
6 stand.

7 THE COURT: With regard to any
8 questions you intend to ask this witness in
9 the presence of the jury.

10 MR. BOWEN: Nothing further, Your
11 Honor.

12 MR. THOMPSON: Wait a minute.

13 MR. BOWEN: Excuse me, I'm
14 sorry.

15 Yes, just I have a question for the
16 jury, not on voir dire.

17 THE COURT: With regard to what
18 you contend you wanted to ask in the
19 presence of the jury as to Alphonzo Green,
20 do you want to be heard further in argument
21 as to the State's objection?

22 MR. BOWEN: Only to sum up, again
23 to say that it appears that --

24 THE COURT: You're offering it
25 for impeachment purposes?

1 MR. BOWEN: Exactly.

2 THE COURT: How does that impeach
3 him?

4 MR. BOWEN: Let me read you
5 language that I believe is appropriate. In
6 State versus Ayudkya, A Y U D K Y A, 96 NC
7 Appeals 606, 1989 case, we're talking about
8 cross-examination was held proper when it
9 was not offered to sub -- for substantive
10 evidence but admitted for the limited
11 purpose of impeachment or corroboration of
12 the witness, whichever the jury found.

13 Now, we've already established this
14 man keeps no notes, he doesn't know what
15 day things happened on, necessarily. There
16 are some other problems he doesn't know for
17 sure that this important piece of evidence
18 that he records, he's not sure if that is
19 the piece of evidence or not. And I think
20 when the jury also sees that he at least
21 could be argued to have gone and alerted a
22 family.

23 THE COURT: You can ask the
24 witness did he ever alert Alphonzo Green's
25 family that the body in the swamp was

1 Alphonzo Green.

2 MR. BOWEN: Yes, sir.

3 THE COURT: Then you can ask
4 that.

5 MR. BOWEN: That's the question. I
6 want to ask.

7 THE COURT: Based on the voir
8 dire.

9 MR. BOWEN: Okay.

10 THE COURT: Understanding that
11 his answer given on voir dire is likely to
12 be the answer he's going to give in the
13 presence of the jury. Okay? And the State
14 is asking for a limiting instruction.

15 MR. BRITT: Yes, sir.

16 THE COURT: Let's bring the jury
17 back in, please.

18 (Jury in at 3:17 p.m.)

19 THE COURT: The objection to the
20 question as phrased was ruled upon, the Court
21 sustains, again, that objection, but you may ask
22 additional questions of the witness at this
23 time.

24 MR. BOWEN: Thank you, Your
25 Honor.

1 BY MR. BOWEN:

2 Q Sheriff Foley, did you at any time contact
3 the family members of Mr. Alphonzo Green?

4 A Yes, sir.

5 Q And did you at any time tell the family
6 members of Alphonzo Green after the 3rd day of August
7 of 1993 that the body found in the Gum Swamp was
8 likely to be that of Alphonzo Green?

9 MR. BRITT: Objection.

10 THE COURT: Overruled. You may
11 answer based on his question, yes or no.

12 THE WITNESS: Yes, sir.

13 BY MR. BOWEN:

14 Q Did you ever at any subsequent time --

15 THE COURT: There's some
16 confusion. I apologize. Did you
17 understand his question?

18 THE WITNESS: He said likely --

19 THE COURT: You'll have to answer
20 his question, what he indicated. Did he
21 say likely? And I'm asking Mr. Bowen to
22 repeat his question and listen carefully to
23 his question.

24 BY MR. BOWEN:

25 Q Did you tell the family that based upon the

1 investigation and following the 3rd day of August,
2 1993, that the body found in the Gum Swamp was likely
3 to be that of Alphonzo Green?

4 A No, sir.

5 Q All right. Did you tell them that there
6 was a possibility that it was the body of Alphonzo
7 Green?

8 A Yes, sir.

9 Q Now, did you later tell them something
10 other than that?

11 A I'm not sure when you're talking about,
12 sir.

13 Q At any time did you ever tell the family of
14 Alphonzo Green that there was not a possibility that
15 the body found in the Gum Swamp was that of Alphonzo
16 Green?

17 MR. BRITT: Object to the form of
18 the question.

19 THE COURT: Sustained as to form.

20 BY MR. BOWEN:

21 Q Did you ever have any future contact or
22 communication that you can recall with the family of
23 Alphonzo Green?

24 A I don't recall going back to the house.

25 Q Now, when you talked with the family of

1 Alphonzo Green, was this by telephone or in person or
2 how?

3 A We --

4 Q First talked to them?

5 A We went to their home.

6 Q When you say we, who did that include?

7 A Captain Starnes, Lieutenant Frazier,
8 myself.

9 THE COURT: Put it in a time
10 frame, if you will, Mr. Bowen.

11 MR. BOWEN: Do you know when it
12 was with respect to the 3rd of August '93
13 when you and those people went to see the
14 family of Alphonzo Green?

15 THE WITNESS: I think, I think
16 that possibly the 5th or the 6th. It was
17 after I received a report from Robeson
18 County of their missing person report.

19 BY MR. BOWEN:

20 Q So if Captain Starnes says he's not aware
21 of that visit he would be mistaken?

22 MR. BRITT: Objection.

23 THE COURT: Sustained.

24 MR. BRITT: Move to strike, ask
25 for --

1 one is necessary, Your Honor, we were there
2 to talk to this family about the
3 possibility of the body we pulled out of
4 Gum Swamp being her son. There was general
5 conversation with her, there were other
6 family members there. And the officer, we
7 all talked with them.

8 THE COURT: Any further
9 questions?

10 BY MR. BOWEN:

11 Q Sheriff Foley, going back to the scene that
12 you inspected, you say first on, I believe, August
13 the 3rd, 1993, is that correct, the area of the gum
14 branch swamp?

15 A Yes, sir.

16 Q Is when you were first there?

17 A Yes, sir.

18 Q When you got there, other officers, other
19 personnel were there?

20 A Yes, sir.

21 Q Correct?

22 A Yes, sir.

23 Q And you walked down to where the body had
24 been discovered, is that correct?

25 A Yes, sir.

1 Q And at that time, as far as you knew, the
2 body had not been moved or disturbed, is that
3 correct?

4 A That's correct.

5 Q Now, when you approached the body on the
6 creek bank, how far away would you say you were from
7 the body?

8 A Possibly from here to the back of the
9 courtroom.

10 Q Now, was that as close as you chose to get
11 or was that as close as one could get to the body
12 from the creek bank?

13 A That was as close as I could get.

14 Q Was there anything or anybody keeping you
15 from getting any closer?

16 A No, there was out in the creek, this was a
17 rainy day and very swampy area, very muddy in there.

18 Q Was this body as much as forty feet away
19 from the nearest creek bank on the side that you
20 were?

21 A No, I was looking down the creek on an
22 angle.

23 Q So you couldn't get right to where the body
24 was on the side?

25 A No, I couldn't, no.

1 Q But you could see the body with reference
2 to where it was positioned over the water, is that
3 correct?

4 A Yes, sir.

5 Q Did you form an opinion satisfactory to
6 yourself, Sheriff Foley, as to the distance between
7 the surface of the water and the highest part of the
8 body, that you observed?

9 A No, I didn't form an opinion as to that
10 measurement, no, sir.

11 Q Well, do you have any kind of opinion now?
12 Would it be a foot, two feet, ten feet, how?

13 A It could possibly be the way the body was
14 hanging on this limb, the uppermost part of the body
15 could have possibly been eight to ten inches above
16 the water, I'm not certain, I saw that position one
17 time three years ago.

18 Q All right. Now you say that there were no
19 shoes on this body, is that correct?

20 A No what?

21 Q No shoes?

22 A I didn't see shoes.

23 Q On the body that you saw?

24 A No, sir.

25 Q The body was downstream from the bridge,

1 correct?

2 A Yes, sir.

3 Q The body was downstream from the bridge how
4 far, would you say, Sheriff Foley?

5 A My estimation, possibly a hundred yards.

6 Q Hundred yards. Now did you see any other
7 trees or obstructions in the stream between the
8 bridge and the place down the stream where you saw
9 the body?

10 A There was at least one large tree or log
11 laying across that creek.

12 THE COURT: The question is,
13 other than the obstruction that was holding
14 the body up, were there any other
15 obstructions between the bank and the
16 body?

17 THE WITNESS: The bank and the
18 body?

19 BY MR. BOWEN:

20 Q Actually I was asking, we can get that one
21 in, but I was asking from the bridge downstream?

22 THE COURT: I misunderstood you.

23 A That was my answer, there was a large tree,
24 a large tree across the creek between the bridge and
25 the body.

1 Q I think what we want to clarify that was
2 another tree other than the one that contained the
3 body, is that right?

4 A That's correct.

5 Q Now, the place that you found the spent
6 cartridge and the cigarette lighter, now, that was
7 off the path, is that correct?

8 A It wasn't off the path that we had to take
9 to get to the body.

10 Q It was or was not?

11 A Was not.

12 Q Was not, right in the path?

13 A Those items were found just a ways from the
14 bridge, from the edge of the bridge, as I explained.
15 As I approached the bridge, I parked, went up to the
16 edge of the bridge where the bridge started, walked
17 down the bank. There was a clearing, over in that
18 area is where the spent shell and the lighter was
19 found. In order to get to the body, we had to go
20 back up the road 50, 75 yards, and we walked through
21 a path to get to the body.

22 Q So the items that you retrieved out there,
23 the spent casing and the cigarette lighter, it would
24 be fair to say, were not on the path going in the
25 direction of the body, were they?

1 A Well, this path that you're referring to,
2 we're referring to, rather, is not a path as anyone
3 in this courtroom would just get in and walk on. You
4 had to know it was there. I didn't know it was
5 there. It was something that Hal Locklear knew it
6 was there because he occasionally went there to
7 fish. It was a rough path. It was muddy, you had to
8 climb over logs, it was hard to get through there.
9 And wasn't something that you would just normally
10 discover. You had to know it was there. And Hal
11 Locklear showed it to me and took me in there to get
12 to the body.

13 Q Nevertheless, you found the objects, you
14 found those items on another path?

15 A Just off of the bridge.

16 Q Was that at a path?

17 A Well, it's a clearing when people go and
18 they build fires and they cook out and they fish.

19 Q You've been familiar with that from your
20 thirty years in law enforcement?

21 A I've known about it for years.

22 Q It's not unusual to see a bullet casing out
23 there?

24 A No, sir.

25 Q Fishermen take .38 weapons out there often

1 as snake guns, and other calibers, don't they?

2 A I would assume so.

3 Q Lots of sportsmen take lighters and so
4 forth?

5 A Yes, sir.

6 Q How did you handle those items before you
7 turned them over to Captain Starnes?

8 A Very poorly, I'm afraid to say, I just
9 picked them up and held on to them.

10 Q So in other words, you destroyed any
11 possibility of dusting them for fingerprints and
12 things like that?

13 A I did, yes, sir.

14 Q Now, there were some beer cans out there in
15 the area too?

16 A Very possible.

17 Q Did you ever take any custody of
18 those?

19 THE COURT: Well, did you see
20 any?

21 THE WITNESS: You know, Your
22 Honor, I don't recall seeing any beer can,
23 but it wouldn't be unusual.

24 BY MR. BOWEN:

25 Q Did you see any other objects out there,

1 particularly objects with smooth surfaces?

2 A No. There was some wire from an old tire
3 where a fire had been built, I believe. I didn't see
4 anything else that I wanted to pick up I don't
5 believe. I don't recall that, no, sir.

6 Q You didn't even have any kind of a bag with
7 you to put those items in, did you?

8 A No, sir. I have deputies that carry those
9 bags around and make those notes for me.

10 Q And I take it Mr. Starnes, Captain Starnes
11 is one of them that would have a bag?

12 A He's one of them, one of them, yes.

13 MR. BOWEN: Nothing further, Your
14 Honor.

15 THE COURT: Anything on
16 redirect?

17 MR. BRITT: Yes, sir.

18 REDIRECT EXAMINATION

19 BY MR. BRITT:

20 Q At the time you went to speak to the family
21 of Alphonzo Green, did you know the identity of the
22 body removed in Gum Swamp?

23 A No, sir.

24 Q Why did you go talk to the family of
25 Alphonzo Green?

1 A There was a possibility --

2 THE COURT: Why do you say that, sir?

3 THE WITNESS: That family had a
4 missing son who was a black male, and all
5 the jurisdiction around Marlboro County we
6 had done everything we could to check, we
7 found one black male missing that was from
8 Robeson County.

9 THE COURT: Mr. Britt, anything
10 further?

11 BY MR. BRITT:

12 Q Did you later after contacting the family
13 of Alphonzo Green learn the identity of the body that
14 was pulled from the Gum Swamp?

15 A Yes, sir.

16 Q And when did you learn the identity of the
17 body that was pulled from the Gum Swamp?

18 MR. BOWEN: Object.

19 THE COURT: Overruled. The door
20 was opened on cross-examination.

21 THE WITNESS: Here --

22 MR. BRITT: May I?

23 THE COURT: Yes, sir.

24 (State's Exhibit 26 was
25 marked for identification.)

1 BY MR. BRITT:

2 Q Sheriff Foley, you pulled from your pocket
3 a document that had been folded into quarters. It's
4 previously been marked with blue exhibit tag. It's
5 now been marked as State's Exhibit 26?

6 A Yes, sir.

7 Q Is that the document you pulled from your
8 pocket?

9 A Yes, sir, it is.

10 Q And for the record, what is State's Exhibit
11 26?

12 A This is the narrative out of my computer.
13 It's just a narrative stating what we in Marlboro
14 County knew about this body.

15 Q And is State's Exhibit Number 26, that's
16 the record that's maintained by your department?

17 A Yes, sir.

18 Q In the normal course of its business?

19 A Yes, sir.

20 Q And as the Sheriff of Marlboro County,
21 you're responsible for that business?

22 A Yes, sir.

23 MR. BRITT: Your Honor, at this
24 time I ask that State's Exhibit Number 26
25 be admitted.

1 THE COURT: Like to be heard?

2 MR. BOWEN: Yes.

3 THE COURT: Foundation is

4 incomplete at this time.

5 BY MR. BRITT:

6 Q State's Exhibit Number 26 is the report
7 that Mr. Bowen questioned you about on
8 cross-examination, is it not?

9 A Yes, sir.

10 Q State's Exhibit Number 26, does it contain
11 an entry from August the 12th of 1993?

12 A Yes, sir.

13 Q August the 12th of 1993, did you learn the
14 identity of the body that was pulled from the Gum
15 Swamp?

16 A Yes, sir.

17 Q What was the identity of that body that was
18 reported to you?

19 MR. THOMPSON: Object.

20 THE COURT: Overruled.

21 A Body was identified as James Jordan of
22 Charlotte, North Carolina.

23 Q How is that identification made, is that
24 part of the report?

25 THE COURT: As to part of the

1 report, objection is sustained. The
2 foundation is incomplete for business.

3 BY MR. BRITT:

4 Q Were you informed as to the manner in which
5 the body was identified?

6 A Yes, sir.

7 Q How were you informed that the body was
8 identified?

9 A Through dental charts and
10 fingerprints.

11 MR. BRITT: No other questions.

12 THE COURT: Anything further?

13 MR. BOWEN: No, sir, I just renew
14 my objection to that document.

15 THE COURT: He's not offering the
16 document at this point. Any additional
17 questions as to Sheriff Foley?

18 RECROSS-EXAMINATION

19 BY MR. BOWEN:

20 Q But that document that you've been reading
21 from earlier, it says nothing about the Alphonzo
22 Green --

23 THE COURT: You're opening the
24 door to the contents of that document by
25 that question, Mr. Bowen, do you want to do

1 that?

2 MR. BOWEN: Your Honor, I'm not
3 afraid of that document. We've talked to
4 him about it before.

5 THE COURT: That's a yes or no
6 question. That's like -- that's how I
7 would like you to answer it. Do you want
8 to ask the question?

9 MR. BOWEN: Wait. Yes, I want to ask
10 a question.

11 THE COURT: You may proceed.

12 BY MR. BOWEN:

13 Q So you say nothing about the Alphonzo Green
14 matter, is that correct?

15 A There's nothing in this document about
16 Alphonzo Green, no, sir.

17 Q And you do, as Mr. Britt points out, make
18 some mention of an identification of a body, is that
19 correct?

20 A I do, yes, sir.

21 Q Is that right?

22 A Yes, sir.

23 Q And you didn't examine yourself any kind of
24 medical records or anything of that nature, did you?

25 A No, sir.

1 MR. BOWEN: That's all.

2 THE COURT: Anything further?

3 MR. BOWEN: No, sir.

4 THE COURT: State want to be heard
5 further?

6 MR. BRITT: Yes, sir.

7 THE COURT: Okay.

8 FURTHER REDIRECT EXAMINATION

9 BY MR. BRITT:

10 Q Sheriff Foley, read for us the document
11 that's been marked for identification as State's
12 Exhibit 26?

13 THE COURT: You folks want to be
14 heard?

15 MR. BOWEN: No, sir.

16 THE COURT: Yes, sir, you may
17 read it.

18 THE WITNESS: This is a narrative
19 text taken from my computer. "On August the
20 3rd, 1993, at 16:33, a body was found by a
21 man fishing at the Gum Swamp Creek. He
22 notified the law enforcement because the
23 creek is close to the state line. The
24 creek was in Marlboro County, South
25 Carolina. The body was taken to Newberry,

1 South Carolina to Dr. Sexton to do the
2 autopsy.

3 The autopsy was done and revealed that
4 this was the body of a black male, over 25,
5 under 55, short or no hair, lots of dental
6 work, five foot ten to six foot, 175 to 195
7 pounds, shot one time in the chest.
8 Wearing medium gray Docker pants, Grand
9 Slam shirt with burgundy and green, small
10 black stripes, white and black nylon bikini
11 shorts. Subject had been dead
12 approximately a week. Subject had no ID on
13 this person. Still under investigation.

14 On August the 12th, 1993, the body was
15 identified as the body of James R. Jordan
16 of Charlotte, North Carolina. The ID was
17 made through dental work and fingerprints.
18 Cumberland County Sheriff's Department,
19 (919) 232-1500, Robeson County Sheriffs
20 Department, (919) 671-3100, assisted in
21 that investigation. All charges were filed
22 in North Carolina, as to where the crime
23 was committed.

24 Arrested for -- arrested for murder
25 and robbery of James Jordan were Larry

1 Martin Demery and Daniel Andre Green.

2 MR. BRITT: Thank you. No other
3 questions.

4 THE COURT: Anything further?

5 MR. BOWEN: Yes, sir.

6 FURTHER RECROSS-EXAMINATION

7 BY MR. BOWEN:

8 Q Sheriff, may I hold the document, please,
9 sir?

10 A (Witness complies).

11 Q You say you had caused your secretary to
12 put this into the computer system, is that right?

13 A Yes, sir.

14 Q Now, had you received any directive to
15 furnish this document, what's now marked as State's
16 Exhibit Number 26 to the District Attorney in Robeson
17 County?

18 A No, sir.

19 Q Or any of the officers up here in North
20 Carolina?

21 A No, sir.

22 Q You were not aware of any court order to
23 furnish notes and materials relating to the case?

24 A No, sir.

25 Q So this is the first time you brought it up

1 here?

2 A Yes, sir, I pulled that out of the computer
3 to refresh my memory.

4 Q You didn't make this document until the
5 28th of December of 1995, did you?

6 A I have no idea when that was put in there.
7 I didn't put it in.

8 Q Look up here at the top left Coroner of
9 your written document and see if it doesn't say
10 12-28-95?

11 A Yes, sir.

12 Q And that's when that document was made,
13 isn't it?

14 A No, I think this is the date this document
15 was pulled out of the computer.

16 Q How can you tell?

17 A Pardon me?

18 Q How can you tell?

19 A I don't know how to tell. It doesn't
20 matter to me. This is my notes.

21 Q So you don't put on there the date that you
22 wrote the material?

23 A I didn't write this material. This
24 material was accumulated by the officers for the
25 young lady to put in the machine so we would have a

1 case on it.

2 Q So you don't know when the young lady put
3 it in the machine, do you?

4 A No, sir.

5 Q As far as you know, she put it in the
6 machine on the 28th day of December 1995, is that
7 correct?

8 A No, sir, that's not correct.

9 Q You just said you didn't know?

10 A I know that's the day she printed this out
11 for me. I've had this in my possession three, four,
12 five days.

13 Q But there's no day?

14 A No, sir.

15 THE COURT: Anything further.

16 MR. BOWEN: No, sir.

17 THE COURT: Sheriff Foley be
18 released?

19 MR. BOWEN: We have a subpoena.

20 THE COURT: If you'll remain
21 pending further order of the Court. If
22 you'll have a seat.

23 Ladies and gentlemen of the jury we're
24 going to take the afternoon recess at this
25 time. We're going to be at recess until

1 4:00. Please abide by all prior
2 instruction of the Court concerning conduct
3 of the Court. Members of the jury are
4 excused. Everyone else remain seated,
5 thank you, folks.

6 (Jury out at 3:41 p.m.)

7 THE COURT: In the absence of any
8 member of the jury panel, Sergeant Myers,
9 if you will assist us, if we could have one
10 of the bailiffs stationed at the far end of
11 the hallway so we can make sure the hallway
12 is cleared before Mr. Green is taken to
13 that area, or another option is that if he
14 needs to use the facilities, he can use the
15 ones immediately to your left, whatever is
16 consistent with security in the Robeson
17 County Sheriff's Department. I'm leaving
18 that to your discretion. If you'll make
19 sure someone is positioned in the far end
20 of the hallway so no jurors are positioned
21 in the hallway.

22 Anything further from either counsel?

23 MR. BRITT: No, sir.

24 THE COURT: We're at ease until
25 4:00.

1 (Brief recess.)

2 THE COURT: All counsel are
3 present, the defendant is present in open
4 court. Mr. Britt, any matters before we
5 continue with the evidence?

6 MR. BRITT: Yes, sir. I would
7 like to bring a matter to the Court's
8 attention as relates to subpoenas that have
9 been served on Foley, Starnes, and Agent
10 Frazier with SLED. They have been --
11 defense has served them with subpoenas that
12 would in essence require their appearance
13 in court from now until the conclusion of
14 the trial. As a matter of convenience to
15 those officers, taking into account they do
16 reside in another state, I would ask the
17 Court to consider placing them on some type
18 of stand by notification. They have
19 informed me that they can be here within a
20 reasonable amount of time.

21 THE COURT: How much notice would
22 they need?

23 MR. BRITT: Minimum of two hours.

24 MR. BOWEN: That's what we
25 contemplated. That's perfectly okay.

1 THE COURT: I take it you folks
2 consent to them being released until such
3 time as you determine you're going to call
4 them?

5 MR. THOMPSON: Yes, sir. That's
6 what I indicated to the Court. I just
7 wanted to make sure we had jurisdiction
8 over them.

9 THE COURT: So they are free to
10 leave at this time until otherwise
11 notified?

12 MR. THOMPSON: That's correct.

13 THE COURT: Does not include
14 Lieutenant Frazier.

15 MR. BRITT: No, sir, State is
16 releasing him from his -- so it's clear
17 they are not notified of that when they
18 were served. They brought it to my
19 attention.

20 MR. BOWEN: Bottom of every
21 subpoena is a two sentence information
22 about calling in and receiving word, and we
23 could either notify them through the DA or
24 notify them directly, but they were given
25 to understand that they were on telephone

GROOMS

1 stand by.

2 MR. THOMPSON: I simply hadn't
3 had a chance to tell them.

4 THE COURT: You folks are free to
5 go.

6 THE COURT: Ready to go forward
7 with your evidence, Mr. Britt.

8 MR. BRITT: Yes, sir.

9 THE COURT: All members of the
10 jury secured in the jury room, Mr. Horne.

11 THE BAILIFF: Yes, sir.

12 THE COURT: If you'll bring the
13 jury in please, sir.

14 (Jury in at 4:01 p.m.)

15 THE COURT: Mr. Britt you may
16 call your next witness.

17 MR. BRITT: Your Honor, at this
18 time the State calls Jennings Groomes. Mr.
19 Groomes, if you'll come forward.

20 THE COURT: If you'll place your
21 left hand on the Bible, sir, raise your
22 right, face Ms. Gaines to my left.

23 JENNINGS GROOMS, JR.,
24 being first duly sworn was examined and
25 testified as follows:

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DIRECT EXAMINATION

THE COURT: If you'll take the witness stand, please, sir.

State your full name for the record, please?

THE WITNESS: Jennings Grooms, Jr. G R O O M S.

BY MR. BRITT:

Q Mr. Grooms, where are you from?

A McColl, South Carolina.

Q Who do you work for at this time?

A I work for Scotland County Emergency Medical Service in Scotland, North Carolina.

Q How long have you worked for that organization?

A Approximately eleven months.

Q What capacity?

A I am a dispatcher, slash road medic.

Q Are you a member of the McColl Rescue Unit?

A Yes, sir.

Q How long have you been a member of the McColl Rescue Unit?

A Approximately five and a half years, sir.

Q What training in terms of -- what training have you received as a member of the McColl Rescue

1 Unit?

2 A Various amounts of training, sir, dealing
3 with emergency medical cases, trauma, extrication
4 CPR, first aid, extensive training, also had some
5 advanced training, advanced life support, also.

6 Q In August of 1993, you were a member of the
7 McColl Rescue Unit?

8 A Yes, sir, Operation Lieutenant, First Aid
9 Lieutenant.

10 Q In terms of order of command in August of
11 1993, where were you in that order of command?

12 A I was in second of command at that time.

13 Q On August the 3rd of 1993, as a member of
14 the McColl Rescue Unit, was your unit -- were your
15 unit's services requested in the area of the Gum
16 Swamp Pea Bridge Road area Marlboro County area,
17 South Carolina?

18 A Yes, sir.

19 Q Did you go to that area that day?

20 A Yes, sir.

21 Q How many members of your unit responded to
22 that call?

23 A Initially, me and one other member
24 responded. After we observed what we needed to see,
25 we requested more manpower.

1 Q And when you say after you observed, what
2 you were requested to -- what did you see?

3 A I was met on the scene by Narcotics Agent
4 Rusty Parish and Chief Deputy Richard Quick.

5 Q From what department?

6 A From what department? Marlboro County
7 Sheriffs Department. At that time, they took me down
8 a path to show me what was supposed to be or
9 should -- would have been, I mean, was a body. And
10 we observed it from approximately thirty to forty
11 feet off the bank.

12 Q Where was the body that you observed?

13 A Excuse me?

14 Q Where was the body that you observed?

15 A It was on a limb in the creek, in the run
16 area, in the wide run area.

17 Q Were you able to determine the race of the
18 section of the body that you observed?

19 A Negative.

20 Q After making those observations, you said
21 that you requested additional assistance?

22 A Correct.

23 Q Why was that?

24 A At that time, we needed more manpower and
25 we also needed our vessel to be able to obtain and

1 retrieve the body out of the creek. It was
2 unobtainable through -- on the bank in there, we
3 couldn't get to the body from our viewpoint.

4 Q When you say you had to obtain your vessel,
5 are you referring to a boat of some kind?

6 A Correct.

7 Q What time type of boat did you request?

8 A Probably a twelve foot or fourteen foot
9 vessel.

10 Q After you made that request, was the McColl
11 Rescue Unit vessel or boat delivered to the scene?

12 A Yes, it was sir.

13 Q Was that boat placed into the water?

14 A Yes, it was, sir.

15 Q Were you instructed or authorized to remove
16 the body from the creek?

17 A Yes, I was, sir.

18 Q Who instructed you or authorized you to
19 remove the body from the creek?

20 A After observing the body, I returned to the
21 first -- to the second bridge, I conversed with
22 Coroner Tim Brown and other law enforcement
23 personnel, two law enforcement personnel from North
24 Carolina and also Chief Deputy Richard Quick was
25 there.

1 Q How did you get to the body?

2 A Through traveling in the vessel.

3 Q Were you able to take the boat from the
4 bridge to the body?

5 A Yes, sir, we ran into some obstacles along
6 the pathway of the stream that we had to take the
7 boat out of the water to get around and place the
8 boat back in the water to continue to the body.

9 Q What kind of obstacle did you run into?

10 A We went down the run, put the boat in at
11 the first bridge, closest to the North Carolina line,
12 we went straight down the run, approximately 25 to 35
13 foot. We hung to the right kind of like a veer to
14 your right, and we noticed a huge tree had fallen
15 across the creek bed.

16 Q Is there another run that's part of that
17 creek?

18 A Yes, sir.

19 Q Where is that other run?

20 A It's prior to reaching the North Carolina
21 line, there's one bridge here, that I show you -- can
22 I show you on --

23 Q If you can refer to what's been marked. I
24 believe. As State's Exhibit Number 18, can you use
25 that to illustrate your testimony?

1 A Yes, sir.

2 Q If you would step up to the diagram. Can
3 you refer to what you have referred to as the first
4 run?

5 A Closest to the North Carolina line, North
6 Carolina line runs in this right here, I think
7 Jerry's Place is right there on the line. This was
8 the area that we put the vessel into the water. This
9 was the first run I'm talking about right here. This
10 run here has no or very little water running through
11 it more like sod or mud, doesn't have any water
12 connecting into it.

13 Q Referring to the exhibit, can you indicate
14 on it using this green marking pen where it was that
15 this obstruction was in the water? If you'll mark
16 that with a straight line, and then beside that, if
17 you will put the letter O?

18 A Okay. Right here on, I'm going to consider
19 this the first bridge, this the second bridge. When
20 we put the vessel in the water, this here goes up and
21 it breaks back a little more this way than like it's
22 drawn out here. But the log or the tree is in a --
23 that area right there.

24 Q If the record will reflect Mr. Grooms had
25 drawn a straight green line on State's Exhibit Number

1 18 and has placed the letter O as an identification
2 marker for that green line?

3 THE COURT: Yes, sir.

4 BY MR. BRITT:

5 Q When you reached that obstruction, again
6 referring to the exhibit, what path did you take to
7 reach the body?

8 A Okay. We proceeded and we reached the tree
9 that was across the stream, we then took the vessel
10 out and put it on this land banking area here, that
11 break between the first and second bridge, proceeded
12 around the tree to carry the boat around the tree
13 here, over the tree, and put the vessel back in the
14 water after passing the tree.

15 Q The obstruction, the tree that was across
16 the water, was it actually in the water?

17 A It was, the tree was on the creek bed, and
18 approximately 12 to 18 inches above the creek, the
19 water itself.

20 Q So the tree itself was not sticking down
21 into the water of the creek?

22 A It was laying across the stream, laying
23 flat with half of it under the water and a half of it
24 above the water.

25 Q In retrieving the body, in going to the

1 body, you can return to the seat, did you actually
2 ride inside the vessel?

3 A Correct, yes, sir.

4 Q At any time did you get out and push or
5 walk in the creek itself?

6 A Yes, I did, sir.

7 Q What area of the creek were you walking in
8 in terms of, was it before or after you got to this
9 obstruction?

10 A Okay. It was after we passed the
11 obstruction, we had to get out of the boat and get
12 into the water before the obstruction to take the
13 vessel out, then we returned in the vessel and
14 proceeded and then we went on up into the run and
15 pulled the boat over to the far left bank, and then
16 we observed and sized up our scenario here, what we
17 had, and we decided three of us had to get out of the
18 boat to access the body.

19 Q How many other members of the rescue unit
20 were assisting you in retrieving the body?

21 A Approximately four.

22 Q One of your members remained inside the
23 boat?

24 A Correct. My captain arrived prior to us
25 putting the vessel in the water and he came along

1 with us.

2 Q And when you -- the decision was made to
3 for three of you to get out of the vessel, had the
4 vessel been placed back in the creek?

5 A Yes, it had.

6 Q How tall are you?

7 A Six-two.

8 Q And at that time, when you got out of the
9 vessel, how deep was the water in relationship to
10 your height?

11 A The water varied at one point. As soon as
12 I exited the boat, I was up to my, like shoulder
13 length. As I walked closer to the farther -- the
14 outer bank closer to the body, I varied from my chin
15 to my eyes back to my, under my arms. It was real up
16 and down.

17 Q You made a motion to the area beneath your
18 arms and referred to that as your shoulder?

19 A Correct.

20 Q When you first got in was the water above
21 your shoulders or in the area of your arm pits?

22 A The area of my arm pits, sir.

23 Q How deep, based upon your height, would you
24 say the water was at that point if it was at your arm
25 pits?

1 A Four foot, four and a half foot.

2 Q And there were times that the water, places
3 in the water were deeper, is that correct?

4 A That's correct.

5 Q In the area, were you able to walk to the
6 area where the body was located?

7 A Yes, sir.

8 Q In the area where the body was located, how
9 deep, if you recall, was the water?

10 A Arm pit length, shoulder length, shoulder
11 depth.

12 Q The tree where the body was located, can
13 you describe how it was positioned across the creek?

14 A Could I refer back to the diagram, sir?

15 Q Yes, sir, if it will help you.

16 THE COURT: Yes, sir.

17 THE WITNESS: This here, like I
18 said, there's very little water or anything
19 running under this first bridge here. This
20 here broadens out to a wider, like a wider
21 run area, a big -- a whole lot bigger area
22 of water where the fishing takes place.
23 The body, I would say, like there was a
24 root, there was a tree on the banking right
25 here, this far banking, and it extended

1 like the roots had extended across into the
2 run area approximately five to six feet
3 out, out where there was like a root, but
4 had branches branching off of it.

5 Q How far did that extend, did the tree
6 itself, the trunk extend back into the
7 creek?

8 A Yes, it did, sir, it extended into the
9 creek.

10 Q When you refer to roots, do you refer
11 to the roots of the tree or do you refer to
12 the branches of the tree?

13 A I would say roots of the tree because
14 this banking here is a higher level than
15 the water itself. And it was like the
16 roots had come across the top of the water,
17 had like tree growing up, and half of it
18 had extended across the water and the tree
19 was in upright position.

20 Q Were any parts of that tree beneath
21 the surface of the water?

22 A Very little. The main limb which the body
23 was attached to was above the water.

24 Q When you got to the point where the body
25 was located, can you describe the clothing that you

1 observed on the body?

2 A Yes, sir. Under my first initial
3 observance of the body prior to removal, it looked to
4 be at that time it looked to be a lot of grayer ashen
5 in color. But as I proceeded to the body in the
6 vessel and we proceeded out exiting the boat to the
7 body, I noticed -- I was informed by Coroner Tim
8 Brown to look for any identification, any jewelry,
9 anything, wallet, any kind of identification on this
10 body. When I got to the body, I noticed seemed to be
11 a pair of dark charcoal gray Docker slacks and a gray
12 burgundy and green and a black striped shirt, black
13 socks, accented in white dots or somewhat accented in
14 white dots, I think.

15 Q Did you check the body for identification?

16 A Yes, I did.

17 Q Were you able to find any form of
18 identification on the body?

19 A No, sir.

20 Q Did you check the body for any jewelry?

21 A Yes, sir.

22 Q Were you able to find any jewelry on the
23 body?

24 A No, sir.

25 Q Did you find any articles of any kind in

1 the, in or around the pockets of the body?

2 A No, sir.

3 Q After checking the body for identification,
4 what steps were then taken to remove the body from
5 the tree?

6 A Well, the first thing we done, I had a
7 member to come down the pathway that we observed a
8 body to start out with, and he had a rough time
9 getting to the banking where the tree was that I have
10 just described that released out on to the water. We
11 decided to get out of the boat, the three of us, we
12 decided to take the head, the torso, and the feet and
13 try to bring the body off of the limb and one unit
14 tried to keep the body intact.

15 Q Had you been given any instructions by the
16 Coroner in terms of removing the body?

17 A To try to --

18 MR. BOWEN: Object.

19 THE COURT: For what purposes is
20 this offered?

21 MR. BRITT: To explain subsequent
22 conduct.

23 THE COURT: Do you want a
24 limiting instruction?

25 MR. BOWEN: Yes.

1 THE COURT: Members of the jury,
2 the testimony now elicited is being offered
3 for truth of the matters asserted by the
4 witness in that testimony, but simply to
5 explain the subsequent conduct of the
6 witness, and you may consider it for that
7 limited purpose, no other purpose. Any
8 further, Mr. Bowen?

9 MR. BOWEN: No, sir.

10 BY MR. BRITT:

11 Q Mr. Grooms, what instruction had you been
12 given in regard to removing the body by the Coroner?

13 A To try to keep the body intact as possible,
14 not disturb anything, to take precautionary measures
15 and keep the body intact in one, one area.

16 Q What article or apparatus was the body to
17 be placed into?

18 A It was placed into what we call a Stokes
19 basket which is a wire stretcher that we transported
20 also on the vessel to the scene of the body for
21 removal.

22 Q And how was the body removed from the tree
23 limb?

24 A The body was removed, like I say, we exited
25 the boat, myself, I initially went up to the body,

1 examined the body to try to find any ID, any jewelry,
2 anything of that nature, wallet. Found none at that
3 time. I requested two more members to exit the boat
4 with me. At that time I requested the Bowie rope.
5 We have a Bowie. I requested a rope. Myself, I was
6 at the shoulder and the head. My counterparts.
7 One at the mid-section, one was at the legs at that
8 time. And we tried to just untangle the body,
9 especially the leg area, and bring the body off as
10 one unit. As we did that, we floated the body face
11 down and brung the fourth man, that I recall, told
12 you about earlier, had him take the wire basket under
13 the water, placed and picked the body up with the
14 wire basket underneath the body.

15 Q Was the body secured in the wire basket in
16 any fashion?

17 A No, sir.

18 Q What was the purpose of the Bowie rope?

19 A We tied it around the waistband of the body
20 to bring it off in one section where we can all have
21 like equal power, because one guy was the middle guy
22 who was on the torso, we had him tie the rope around
23 it, and I was at the head, and the other guy was at
24 the foot where we can bring equal pressure to try to
25 bring the body off in one, keep it intact more or

1 less.

2 Q After the body was -- after the body was
3 placed in the wire basket, what position was the body
4 in?

5 A The body was in the prone position, sir,
6 face down, sir.

7 Q Can you describe for us the condition of
8 the skin on the body?

9 A The skin seemed to be a beigeish, ashen
10 color, especially the back side of the cranium and
11 the neck area. The hands seemed to be a lot darker
12 than that was on the exposed area of the body.

13 Q Based on your observations of the body
14 while you were in the water, were you able to
15 determine if it was the body of a man, or a woman?

16 A No, sir, I wasn't there to determine that,
17 I was there to retrieve it. I couldn't determine
18 that at that time.

19 Q Were you able to tell what race the person
20 was?

21 A Negative, sir.

22 Q Why weren't you able to determine --

23 A The discoloration of the body, and the
24 decaying of the body. It was really -- you really
25 couldn't tell.

1 Q What type of decay did you note about the
2 body?

3 A I noticed the cranium, the back occipital
4 of the cranium and the back side of the neck pretty
5 decomposed. Also the left-hand pretty decomposed
6 also.

7 Q After the body was placed face down in the
8 wire basket, how was the body then removed from the
9 creek to the land?

10 A Okay. As I said earlier, we had our boat
11 parked over, anchored over to the left. We placed
12 the body in the wire basket. Myself and
13 counterpartner picked the stretcher up and walked it
14 to the boat, excuse me, correction, picked the Stokes
15 basket up and carried it to the boat and placed it on
16 the boat at that time.

17 Q And from there, was the body transported
18 back to the road?

19 A It was at that time we placed the boat, I
20 mean the body on the boat, we proceeded to the
21 closest banking area and docked the boat and put the
22 body, which was in the Stokes basket, on the bank.

23 Q During the removal process, did you utilize
24 what is commonly referred to as a body bag?

25 A Correct, sir.

1 Q When did you use a body bag?

2 A We used a body bag after we docked the boat
3 and placed the Stokes basket on the banking, and we
4 called for a body bag from the bridge where there
5 were approximately one or two members standing by
6 from the McColl Rescue Squad, and we received the
7 body bag at our location, and we placed the body in
8 the body bag on the banking.

9 Q And after the body was placed into --
10 inside the bag, what if anything was done with the
11 bag at that time?

12 A At that time, the body was placed in the
13 bag, it was zipped up, we carried it up the banking
14 to the first bridge area and we put it on the unit
15 and it was transferred to the McColl rescue unit. It
16 was put on a crash truck.

17 Q Did you drive the crash truck to the rescue
18 unit?

19 A Negative.

20 Q Did you follow the crash truck to the unit?

21 A Negative.

22 Q At any time did you go to the rescue unit
23 after the body was transferred from the rescue unit?

24 A Yes, sir.

25 Q Did you observe the bag there in the rescue

1 unit?

2 A Yes, I did, sir.

3 Q Who was present at the time you observed
4 it?

5 A There were various members of the McColl
6 Rescue Squad, Coroner Tim Brown was there, Deputy
7 Richard Quick, Sheriff Chuck Foley, Narcotics Agent
8 Rusty Parish, Narcotics Agent David Freeman, and
9 various other members of the McColl Rescue.

10 Q Were you present in the McColl Rescue unit
11 when the body bag was open?

12 A I elected not to be present, sir.

13 MR. BRITT: May I approach the
14 witness?

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q I'll show you what has been marked as
18 admitted State's Exhibit Number 16, photograph taken
19 by Detective Jerry Starnes of the Marlboro County
20 Police Department. Do you recognize what is
21 contained in that photograph?

22 A Yes, sir, I do.

23 Q What do you recognize that photograph to
24 be?

25 A To be what I encountered on August the 3rd,

1 1993.

2 Q You recognize that to be the body that you
3 observed in the Gum Swamp?

4 A Correct, sir.

5 Q I'm going to show you what's previously
6 been identified as State's Exhibit Number 17 and
7 admitted, photograph taken by Detective Jerry Starnes
8 Marlboro County Police Department. Do you recognize
9 what is contained in that photograph?

10 A Yes, sir.

11 Q How are you able to recognize what is
12 contained in that photograph?

13 A Through the body bag and also the clothing
14 and the position that the body is in in this body
15 bag.

16 Q And is State's Exhibit Number 17 a
17 photograph of the body that you helped remove from
18 the Gum Swamp Marlboro County, South Carolina?

19 A Yes, sir.

20 MR. BRITT: I don't have any
21 other questions.

22 THE COURT: Any cross-examination?

23 MR. BOWEN: Yes, thank you.

24 CROSS-EXAMINATION

25 BY MR. BOWEN:

1 Q Mr. Groomes, when you went to the area that
2 the body was located, in your vessel, you say you got
3 out and at that point the water was way up above your
4 waist, sometimes as far as, say, your chin or your
5 eyes, is that correct?

6 A Yes, sir.

7 Q And then when it came time to handle the
8 body there on the creek, what would you say the
9 height of the water was?

10 A It was, I would say, probably arm pit.

11 Q Yes, sir.

12 A Depth.

13 Q And the condition of the current, if any?

14 A Very, very mild, if any. If any at that
15 time. We had a pretty bad cloud that evening, and I
16 came real close to calling it off because of the
17 weather that we were encountering, the lightning and
18 stuff. It was real hot that day. And the current
19 was very mild, if any.

20 Q Now, from the place that you were there in
21 the water handling the body, how far would you say it
22 was to the shore on the side where the path was?

23 A Rephrase. I mean, excuse me, sir?

24 Q Do you remember there being a path on one
25 side of the creek and not a path on the other side?

1 A Yes, sir, I do.

2 Q From the side of the creek where the path
3 was, from the side of the bank, there as close as you
4 could get to the water, how far would you say it was
5 straight into the canal to where the body was?

6 A From the starting of the path or to the
7 point of observance?

8 Q To the point of the side of the creek, same
9 side the path was on, where you had gotten on that as
10 close as you could get to the body, how close to the
11 body would that be, from the bank to the body?

12 A Sir, we parked -- I'm trying to answer your
13 question best I can. We parked -- well, anchored the
14 vessel on the opposite side of the pathway.

15 THE COURT: I think part of the
16 confusion, he's asking you in terms of
17 where you were and how far the body was
18 from where the creek was?

19 THE WITNESS: From the bank,
20 twelve, fifteen feet.

21 BY MR. BOWEN:

22 Q That's from the --

23 A The path bank, yes, sir, on the right-hand
24 side.

25 Q Was the body as it was suspended over the

1 water, was it more or less horizontal to the water or
2 one portion of the trunk of the body closer to the
3 water than another?

4 A I would say my observance of the body was
5 in a horizontal position, left incumbent position
6 with portion of the body in the water and portion of
7 the body above the water, meaning the right, from the
8 right midline up, the right midline was out of the
9 water and the left midline being in the water
10 somewhat.

11 Q Now, in fact, the only thing that was
12 actually in the water was a portion of one of the
13 legs, is that not true?

14 A Not on my observance, sir.

15 MR. BRITT: It's here.

16 BY MR. BOWEN:

17 Q Now, I believe you have spoken to this
18 photograph which has been introduced as State's
19 Exhibit number 16. And I'll ask you to look at that
20 again, please, and I'll ask you, is not this left leg
21 from the knee back to the foot the only thing that is
22 actually in the water?

23 A On this photograph, that's all you see in
24 the water, sir, yes, sir, on this photograph,
25 particularly this photograph.

1 Q Now this photograph was taken the very same
2 afternoon within minutes or hours after you retrieved
3 the body, is that true?

4 A Prior to our retrieval, not after our
5 retrieval, prior.

6 Q How long would you say prior?

7 A I could not say, sir, I wasn't down there
8 at that time. The pictures was taken. I was unaware
9 of any pictures.

10 Q So how, based upon the photograph or what
11 you saw, how far would you say that the body was
12 suspended above the water?

13 A Suspended above the water?

14 Q Yes, sir.

15 A I would say 18 inches to 22, 18 to 22
16 inches. More --

17 Q That would be the trunk of the body?

18 THE COURT: Let him finish.

19 A Like I said earlier it was in the
20 horizontal position, as you showed me on this
21 photograph, this photograph depicts the left leg
22 being in the water. Also, this photograph, it
23 doesn't show the torso area from the midline, the
24 left side doesn't show it's in the water also.
25 BY MR. BOWEN:

1 Q Now where are the hands with reference to
2 the water?

3 A The right-hand was on a limb, kind of like
4 a limb that was suspended off the branch, and the
5 left arm was in a motion like this right here
6 (indicating).

7 Q Were both hands above the water?

8 A I seen the left hand above the water
9 hanging on the limb here, the right hand I did not
10 see when it was over, it was like in the -- to his
11 anterior portion of his body.

12 Q But you did not see it in the water --

13 A No, sir, I seen the torso area from the
14 shoulder to the midline and down the leg of the left
15 side in a horizontal position.

16 Q And the placing of the body face down, that
17 was in keeping with the instructions of the Coroner,
18 is that correct?

19 A No, sir. That was my call.

20 Q Did you see Sheriff Foley out there that
21 day? I believe you said you did, didn't you?

22 A No, sir, I didn't say I seen Sheriff Foley.

23 Q Did you see anybody looking around the
24 immediate area?

25 A The immediate area of the body?

1 Q All right. Yes, sir.

2 A No, sir, I did not.

3 Q Did you see anybody looking around the
4 immediate area of the bridge?

5 A Yes, sir, I did.

6 Q Who were those people?

7 A As I recall, there was Coroner Tim Brown,
8 Chief Deputy Richard Quick, Narcotics Agent from
9 North Carolina, Paul Lemmons, I think Chip Murphy,
10 Agent Chip Murphy, several officers on the bridge
11 right there when I arrived on the scene.

12 Q Did you see anyone search the area not on
13 the bridge but immediately around the bridge on both
14 sides?

15 A No, sir, I did not.

16 Q Mr. Grooms, you live in Scotland County,
17 not far from that bridge area, is that correct?

18 A Negative, I live in McColl, South Carolina,
19 Marlboro, South Carolina, approximately seven miles
20 in Scotland County, but closer, four miles from the
21 state line.

22 Q Are you familiar for some period of time
23 with the Pea Bridge area?

24 A Catfish there.

25 Q Lot of fishing?

1 A Lot of fishing, lot of drinking, lot of --

2 Q Not uncommon for handguns to be fired
3 there, is it?

4 A I couldn't say that handguns are fired
5 there, because I've never fired myself, but, yeah,
6 there's usually handguns out there in that area.

7 Q Been some shootings and so forth around
8 that joint or that club out there, is that true?

9 MR. BRITT: Objection, relevance.

10 THE COURT: Overruled, you may
11 answer if you know.

12 THE WITNESS: Has there been any
13 shootings at the club?

14 BY MR. BOWEN:

15 Q Yes, sir. Jerry's Place?

16 A Yes, sir.

17 Q Not unusual for fishermen and sportsmen to
18 have Bic cigarette lighters, is it?

19 A No, sir.

20 Q I'm a little unclear, Mr. Groomes, where
21 you put the vessel in, was that the bridge closest to
22 Jerry's Place, sir?

23 A Correct, sir.

24 Q It was there you went down the more open of
25 the two runs of the creek, is that correct?

1 A Yes, prior to re -- prior to taking the
2 vessel out, I proceeded when I reached the obstacle
3 which I have put on the board here, we took the
4 vessel out of the water, proceeded around the
5 obstacle, placed the vessel back in the water and
6 proceeded to the body.

7 Q Going down that particular run of the
8 creek, was that the only obstacle that you noticed or
9 were there other stobs and stumps and things like
10 that sticking out?

11 THE COURT: Other what?

12 MR. BOWEN: Stobs and stumps,

13 Your Honor.

14 BY MR. BOWEN:

15 Q Excuse me. Do you know what I mean when I
16 say stobs and stumps?

17 A Yes, I know what you mean.

18 Q Did you see any?

19 A Yes, sir. Where we put the boat in, as
20 soon as we put the boat in, there was a lot of
21 branches to our left, as we were traveling to our
22 left, which was pretty tough to get through, but the
23 main obstacle was a tree that was laid across the
24 creek bed, that was our main obstacle. We actually
25 got hung up on a stump there underwater because of

1 the boat being under water, but we encountered a few
2 obstacles in our path to the body.

3 Q Now I believe you indicated the other run
4 of this particular creek or run was basically not
5 deep water at all, it was just mostly spongy grass
6 and mud?

7 A Very little water, sir. Just about what
8 you said, very little water. It runs into that main
9 run there, and it was very little water, if any.

10 Q You couldn't have floated your vessel in
11 that, sir?

12 A Negative.

13 MR. BOWEN: That's all.

14 THE COURT: Anything on
15 redirect?

16 MR. BRITT: No, sir.

17 THE COURT: May Mr. Groomes be
18 released, folks?

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Thank you, sir,
21 you're free to go.

22 THE COURT: We've got about
23 twenty minutes.

24 MR. BRITT: My next witness is
25 the Coroner, Mr. Tim Brown. We can start.

BROWN

1 THE COURT: Yes, sir.

2 TIMOTHY EARL BROWN,

3 being first duly sworn was examined and testified as
4 follows:

5 DIRECT EXAMINATION

6 THE COURT: Have a seat, please.

7 If you'll state your full name for the
8 record, please?

9 THE WITNESS: Timothy Earl Brown.

10 THE COURT: Mr. Britt.

11 BY MR. BRITT:

12 Q Mr. Brown, where are you from?

13 A Bennettsville, South Carolina.

14 Q How are you employed?

15 A By Marlboro County, Coroner in Marlboro
16 County.

17 Q Is that an elected position?

18 A Yes, it is.

19 Q How long have you been the Coroner in
20 Marlboro County, South Carolina?

21 A Twelve year now.

22 Q Do you also have private --

23 A Yes, I'm also self-employed.

24 Q What business --

25 A Construction, excuse me, construction.

1 Q On August the 3rd of 1993, were you called
2 and requested to come to the Gum Swamp area of
3 Marlboro County in your capacity as the Coroner?

4 A Yes, sir, I was.

5 Q As the Coroner of Marlboro County what are
6 your duties and responsibility?

7 A To investigate and determine the cause of
8 any violent and unusual deaths, determine the cause.

9 Q Do you recall who it was that contacted you
10 and requested your presence in the Gum Swamp area
11 along Pea Bridge Road?

12 A Yes, sir, Lieutenant Jerry Starnes with the
13 Marlboro County Sheriff's Department.

14 Q And did you travel to that location?

15 A I did, yes, sir.

16 Q When you arrived at that location, were
17 other persons present?

18 A Yes, sir, there were.

19 Q What other persons were present that you
20 knew personally?

21 A There was Chip Murphy, a detective from
22 Scotland County Sheriff's Department. There were two
23 other uniformed officers from Scotland County. There
24 was the Chief Deputy of Marlboro County, Lieutenant
25 Starnes, from Marlboro County. Sheriff Foley, and

1 Tommy Frazier with the State Law Enforcement
2 Division, and members of the Marlboro, or excuse me,
3 the McColl Rescue Squad.

4 Q Prior to going to the Gum Swamp area along
5 Pea Bridge Road, had you been informed as to why you
6 were needed there?

7 A Lieutenant Starnes just notified me that
8 there was a body found and they referred to as a ten
9 seven in the creek, and they wanted my presence.

10 Q When you arrived, did you receive any
11 information as to the location of that body?

12 A Yes, sir.

13 Q Who provided that information to you?

14 A One of the members from the Scotland Police
15 Department.

16 Q And after receiving that information, were
17 you then taken to the area where you could observe
18 the body in the creek?

19 A Yes, sir.

20 Q What did you observe when you got to the
21 area where you could see the body?

22 A There was a body draped over some limbs in
23 the middle of the creek.

24 Q Could you determine the race of the
25 individual?

1 A No, sir.

2 Q Were you able to determine from your
3 observation if it was a man or woman?

4 A No, sir, I was not.

5 Q Do you recall how the person or body was
6 clothed?

7 A In my initial viewing?

8 Q In your initial observation?

9 A No, sir.

10 Q After observing the body at that location,
11 what did you then do?

12 A I instructed the rescue squad to look for
13 any -- when they made the removal of the body, to
14 look for any identifying jewelry or wallet, billfold,
15 anything of that nature, that may be on the person.

16 Q Were there members of the McColl Rescue
17 Unit present at that time?

18 A Yes, sir.

19 Q And did you observe what they did in terms
20 of trying to -- in terms of removing the body?

21 A No, sir.

22 Q What instructions did you give them in
23 regard to removal of the body?

24 A I asked them to try to keep everything in
25 tact as best they could and after they looked for the

1 identification, for them to try to keep the body face
2 down in the same manner it was lying across the
3 limbs.

4 Q And approximately how long do you recall it
5 taking them to remove the body from its position in
6 the creek?

7 A Approximately 45 minutes.

8 Q And did you observe the members of the
9 rescue unit removing the body from the tree in the
10 creek?

11 A No, sir.

12 Q After the rescue members went into the
13 creek, did they return?

14 A Yes, sir.

15 Q And when they returned, what if anything
16 were they carrying?

17 A They had a wire basket with a body bag and
18 the remains in the bag.

19 Q What if anything was done with the body bag
20 and its contents at that point?

21 A At that point they were put on a trailer,
22 boat trailer, and taken to the McColl Rescue Squad
23 hut.

24 Q Did you make any -- prior to leaving the
25 area where the body was found, did you place any

1 phone call to anyone in regard to transporting the
2 body for purposes of an autopsy?

3 A Yes, sir, I called the Hal Meadow
4 Professional Services, Darlington, South Carolina who
5 handle removals or transportation for -- to and from
6 autopsy locations.

7 Q Was the body bag and its contents removed
8 from the scene where it was located by members of the
9 McColl Rescue Unit?

10 A Repeat your question, I'm sorry.

11 Q Was the body bag and its contents, was it
12 removed from the scene where it was located and
13 transported anywhere by the members of the McColl
14 Rescue Unit?

15 A Yes, sir, it was.

16 Q Did you accompany those rescue members in
17 terms of where they transported to body to?

18 A I did. I followed directly behind the
19 vehicle.

20 Q And from the point that you left the area
21 of the bridges along Pea Bridge Road, where did the
22 rescue members take the body bag and its contents?

23 A It was taken to the McColl Rescue Squad
24 hut, and at that point, the body was taken from the
25 trailer and put on the back of my pickup truck, and

1 then back, my pickup truck into the garage area of
2 the rescue squad hut.

3 Q Prior to leaving the area where the body
4 was located, did you open the body bag to observe the
5 body?

6 A No, sir, I did not.

7 Q At any point after the body was transported
8 did you observe the body bag and look inside?

9 A Only after we gotten it inside and under
10 shelter at the hut.

11 Q And at the time that the body was -- the
12 body bag and its contents were taken to the rescue
13 unit, what was the lighting condition outside?

14 A Well, it was getting dark by that time. Of
15 course, the storm had cut the light quite a bit.

16 Q And once you arrived at the rescue unit
17 hut, what were the lighting conditions inside the hut
18 once your pickup truck with the body bag and its
19 contents were backed in there?

20 A Well, it was just a fluorescent light, but
21 not what I determined well lit, but adequate.

22 Q Did it, in your opinion, did it produce a
23 sufficient light that you could make observations
24 about the body bag and the body contained in it?

25 A Yes, sir.

1 Q After the body bag was opened, was that the
2 first opportunity you had to closely examine or
3 observe the body that has been removed from the
4 swamp?

5 A Yes, sir.

6 Q Can you describe for us, please, the
7 condition of the skin as you observed it?

8 A The body was in a state of decomposition,
9 the skin itself, I think is what is referred to as a
10 slippage, discolored, when bodies have been in water
11 for a period of time, the pigmentation changes, and
12 it's light in some areas and then what was exposed to
13 the light were very dark.

14 Q What do you mean when you say that the skin
15 itself is what is referred to as slippage, what is
16 slippage?

17 A Very loose.

18 Q Was the body bloated?

19 A Portions, yes, sir.

20 Q What portions of the body were bloated?

21 A The torso.

22 Q Head, face, neck, were they --

23 A Head was swollen, yes, sir, face was
24 swollen.

25 Q Did you note any tears or cuts in the skin

1 as a result of this bloating?

2 A I did not observe any, no, sir.

3 Q The body was face down in the body bag, is
4 that correct?

5 A Yes, it was.

6 Q Was it ever removed to the point where you
7 could observe the face and the frontal portion?

8 A No, sir.

9 Q Can you describe the clothing that was on
10 the body?

11 A Pair of khaki pants, knit shirt, I believe
12 it was a burgundy and white, green and black striped
13 knit shirt was on the --

14 Q In terms of composition, excuse me, in
15 terms of the stage of decomposition, are you able to
16 describe the stage of decomposition that the body was
17 in?

18 MR. THOMPSON: Object.

19 MR. BOWEN: Object.

20 THE COURT: You folks want to be
21 heard?

22 MR. THOMPSON: Yes, sir.

23 THE COURT: Ladies and gentlemen
24 of the jury, since it's now ten till, I'm
25 going to release you folks at this time.

1 Please return promptly at 9:30 tomorrow to
2 go forward with presentation of evidence in
3 this case. I'm at this point going to
4 instruct you that during the overnight
5 recess not to talk about this matter among
6 yourself or anyone else, not to allow
7 anyone to say anything to you or in your
8 presence about this case.

9 If anyone communicates with you about
10 this matter or attempts to do so, says
11 anything in your presence, it's your duty
12 to inform us or contact one of the bailiffs
13 assigned to the courtroom.

14 Don't form or express any opinions
15 about this matter. Don't have any contact
16 or communication of any kind with any of
17 the attorneys, parties, witness's
18 prospective witnesses or directly with the
19 Court. Don't allow yourself to be exposed
20 to any media accounts which may exist in
21 connection with this matter, and don't
22 conduct any independent inquiry or
23 investigation or research of any kind.

24 Everyone else remain seated, the
25 members of the jury are excused. You folks

1 need to go back to the jury room. Feel
2 free to do so.

3 (Jury out at 4:50 p.m.)

4 THE COURT: Let the record
5 reflect the following is being conducted in
6 the absence of the jury. Is the objection
7 is based on foundational grounds?

8 MR. BOWEN: Yes, sir. This man
9 while he has been labeled coroner, is
10 nevertheless by profession, as far as we
11 know now, a contractor with a pickup
12 truck. There is, at least in the question
13 about stages of decomposition, there's a
14 requirement of some sort of scientific
15 medical expertise.

16 THE COURT: The man testified
17 he's been the Coroner going on his twelfth
18 year. There's some additional foundational
19 questions that can be asked in terms of the
20 number of bodies he's observed and whether
21 or not there were various states of
22 decomposition. But the fact that he's been
23 Coroner in that county for almost twelve
24 years now is probably foundation enough.
25 Ask some questions at this point, please.

1 MR. BRITT: I can do that or I
2 can just wait until tomorrow morning.

3 THE COURT: All right.
4 Foundation needs to be laid not only for
5 purpose of admissibility but also for
6 purposes of persuasion. So we can do that
7 tomorrow morning.

8 MR. BRITT: That would be fine.

9 THE COURT: At this point, court
10 holds in abeyance any rulings on the
11 objection pending further questioning.

12 We're at ease. Any other matters
13 before we recess for the day, folks?

14 Recess until tomorrow at 9:30,
15 please.

16 (Court adjourned 4:50 p.m.)

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1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3 LUTHER JOHNSON BRITT, III, Esq.
4 District Attorney
5 16-B Prosecutorial District
Lumberton, North Carolina 28358

6 On Behalf of the Defendant:

7 ANGUS B. THOMPSON, Esq.
8 Public Defender
9 16-B Prosecutorial District
Lumberton, North Carolina 28358

10 and

11 WOODBERRY A. BOWEN, Esq.
12 Bowen & Byerly
13 P.O. Box 846
Lumberton, North Carolina 28359

14 - - -

15 (January 5, 1996. Proceedings in open court.)

16 THE COURT: Good morning, folks.

17 MR. THOMPSON: Good morning.

18 THE COURT: Let the record
19 reflect all counsel are present, the
20 defendant is present in open court. All
21 members of the jury are secured in the jury
22 room.

23 Folks, before we bring the jury in, to
24 follow up on a matter that was raised
25 yesterday concerning the potential for

1 Mr. Green to be seen by members of the jury
2 during the recesses and otherwise, what I
3 have directed is that beginning Monday of
4 next week, Mr. Green will be secured
5 downstairs in a holding area until we
6 determine that all fifteen members of the
7 jury are present in the jury room in the
8 mornings. Once we make that determination,
9 Mr. Green will be brought upstairs.

10 During all recesses, a bailiff will be
11 positioned at the end of the hallway. Once
12 we determine that all members of the jury
13 are no longer in that area, then Mr. Green
14 will be moved. Hopefully that will
15 minimize the concern expressed by counsel
16 for defendant in that regard.

17 You folks want to say anything in that
18 respect?

19 MR. THOMPSON: No, sir, thank
20 you.

21 THE COURT: Anything on behalf of
22 the State?

23 MR. BRITT: Your Honor, I
24 couldn't help but overhear standing outside
25 the doorway, one of the jurors, I don't

1 know who it was, approached Mr. Horne, said
2 something about them being able to take
3 notes, and they had been told that they
4 could not. And I believe Mr. Horne told
5 them they could. I think that needs to be
6 made part of the record.

7 THE COURT: Folks, you are all
8 aware of the 1993 change in our rules. It
9 is discretionary with the Court on motion
10 of any party or any counsel motion on that
11 matter may be raised. It's my intent to
12 allow them to take notes in the exercise of
13 my discretion. Did either counsel want to
14 be heard?

15 MR. THOMPSON: No, sir.

16 THE COURT: They have been
17 informed by Mr. Horne pursuant to my
18 instruction, pursuant to the 1993 change in
19 rules, that they are permitted to take
20 notes until the Court directs otherwise.

21 Anything further?

22 MR. BRITT: No, sir, that's fine.

23 THE COURT: Anything on behalf of
24 the defendant.

25 MR. THOMPSON: No, sir.

1 THE COURT: Ready to proceed,
2 folks?

3 MR. BRITT: Yes, sir.

4 THE COURT: If you'll bring the
5 jury in please, Mr. Horne.

6 (Jury in at 9:37 a.m.)

7 THE COURT: Good morning ladies
8 and gentlemen of the jury.

9 In response to a matter which I
10 understand was raised by one or more
11 members of the jury regarding the taking of
12 notes, folks, I direct you that you may
13 take notes during the course of these
14 proceedings unless and until the Court
15 directs otherwise. And I further direct
16 you that you may take your notes into the
17 jury room in your deliberation.

18 However, in that regard, let me
19 emphasize to you that you shouldn't place
20 too much emphasis on the notes that one or
21 more members of the jury might take during
22 the course of these proceedings. It is
23 your duty to listen to all of the evidence
24 and all of the testimony presented in this
25 case and to rely on your collective

1 recollection of that evidence as it is
2 presented in the courtroom in your
3 deliberations in this matter.

4 In that regard, anything further on
5 behalf of the State?

6 MR. BRITT: No, sir.

7 THE COURT: Anything further on
8 behalf of the defendant?

9 MR. THOMPSON: No, sir.

10 THE COURT: Folks, I believe
11 we're ready to proceed. Mr. Britt, you may
12 call your next witness.

13 MR. BRITT: We recall Mr. Brown.
14 He's still on the stand from yesterday.

15 THE COURT: I apologize.
16 Mr. Brown, if you retake the stand. You've
17 previously been sworn and remain under
18 oath.

19 BY MR. BRITT:

20 Q Mr. Brown, yesterday you testified you had
21 been the Coroner of Marlboro County, South Carolina
22 for how long?

23 A Eleven years, I'm in my twelfth year now,
24 sir.

25 Q In your capacity as Coroner, how many times

1 have you been called to the scene where a dead body
2 had been found?

3 A Numerous times.

4 Q Approximately how many?

5 A Hundreds of times.

6 Q And of those hundreds of times that you've
7 been called to the scenes of dead bodies, how many of
8 those would you say involved drownings, where bodies
9 were found in bodies of water?

10 A Several.

11 Q Again, approximately how many?

12 A Twelve.

13 Q And of those number of bodies that you've
14 been called to those locations, were all those
15 bodies, were you able to identify the race and sex of
16 those bodies upon first observing them?

17 A The sex on some, the race, or not being
18 able to determine the race on others.

19 Q And on approximately how many of those
20 bodies have you viewed where decomposition has
21 occurred?

22 A Just in the drowning or in --

23 Q In all the cases?

24 A 50, I would say.

25 Q The body that was found in the Gum Swamp,

1 Marlboro County, South Carolina on August the 3rd of
2 1993, can you describe based upon your observation
3 and your prior experiences the state of decomposition
4 that you saw?

5 A It was in a severe state of decomposition.

6 Q The -- excuse me, the McColl Rescue Unit,
7 you testified yesterday that the body bag containing
8 the body from the swamp was placed on the back of
9 your truck?

10 A That's correct.

11 Q You backed your truck into the rescue unit?

12 A Yes, sir.

13 Q After your truck was backed into the rescue
14 unit, was the bag containing the body ever opened?

15 A Yes, sir, it was.

16 Q For what purpose was that bag opened?

17 A To try to determine, try to identify
18 anything on the body. That was the first opportunity
19 that the law enforcement or myself had to actually
20 take a close look at the body.

21 Q And who opened that bag in the McColl
22 Rescue Unit?

23 A I did.

24 Q And did you remain with that body the
25 entire time that the bag was opened?

1 A Yes, sir, I did.

2 Q Can you describe for us the appearance of
3 the body and the position of the body in that bag
4 when you opened it?

5 A The body was face down in the bag, and the
6 body was discolored, had a silt, I guess from the
7 creek covering it, and it was in a bad state of
8 decomposition.

9 Q Was there any smell that you detected?

10 A Yes, sir, there was.

11 Q Can you describe that smell?

12 A It was very strong, pungent

13 (State's Exhibit 27 was
14 marked for identification.)

15 MR. BRITT: May I approach the
16 witness?

17 THE COURT: Yes, sir.

18 BY MR. BRITT:

19 Q Mr. Brown, I'll hand you what's been marked
20 as State's Exhibit Number 27, ask you if you can look
21 at that photograph, if you can identify that
22 photograph.

23 A Yes, sir. This was the photograph taken
24 of, at that, time a John Doe, still in the body bag
25 on the back of my pickup truck.

1 BY MR. BRITT:

2 Q I hand you what's been marked as State's
3 Exhibit Number 28, ask you to look at that
4 photograph, tell me if you can identify it?

5 A Yes, sir. Appears to be the same -- or
6 another photograph taken from another angle.

7 Q And does it fairly and accurately represent
8 the condition of the back of the head of the body
9 that was removed the from the Gum Swamp, Marlboro
10 County, South Carolina August 3rd, 1993?

11 A Yes.

12 Q Does State's Exhibit Number 28 help you in
13 illustrating your testimony to the jury as to the
14 condition of the back of the head as you saw it on
15 that day?

16 A Yes, sir, it would.

17 Q I hand you what's been marked as State's
18 Exhibit Number 29, ask you to look at that
19 photograph, tell me if you can identify it?

20 A Yes, sir, it's another photograph taken of
21 the body in the bag in the back of the pickup.

22 Q Does State's Exhibit Number 29 fairly and
23 accurately represent, illustrate the position of the
24 body as you found it when you opened the body bag?

25 MR. THOMPSON: Object to leading.

1 THE COURT: I apologize,
2 Mr. Britt. It's a foundation question.
3 Your objection is overruled. You may
4 complete your question.

5 BY MR. BRITT:

6 Q State's Exhibit Number 29, does it fairly
7 and accurately illustrate the position of the body as
8 you found it to be in when you opened the body bag in
9 the McColl Rescue Unit, August the 3rd, 1993?

10 A Yes, sir, it does.

11 Q Your Honor, at this time I asked State's
12 Exhibit 27, 28, 29 be admitted for illustrative
13 purposes.

14 MR. THOMPSON: Desire to be heard.

15 THE COURT: Members of the jury,
16 please recall my instruction in that
17 regard, don't worry or speculate about what
18 takes place in the courtroom in your
19 absence. All members of the jury step to
20 the jury room at this time, please.

21 (Jury out at 9:44 a.m.)

22 THE COURT: Let the record
23 reflect the following is being conducted in
24 if absence of the jury. If you'll state
25 the basis of your objection for the record.

1 MR. THOMPSON: Yes, sir, Your
2 Honor, State's Exhibit Number 27 and number
3 28 and number 29 basically show the body
4 face down. The photographs are
5 duplicitous. Even the witness testified
6 that State's Exhibit Number 28 appears to
7 be the same when referring to State's
8 Exhibit 27.

9 Now, the District Attorney in his
10 foundational question says that State's
11 Exhibit Number 27 shows -- depicts the head
12 and shoulders. And his foundational
13 question was State's Exhibit Number 28, the
14 State indicated that the photo show the
15 back of the head. And that is the exhibit
16 which this witness testified it appears to
17 be the same as State's Exhibit 27. As to
18 State's Exhibit Number 29, the District
19 Attorney in his foundation question
20 indicated that this photo depicted the
21 position of the body in the body bag.
22 Well, all of them are pictures of the body
23 in the body bag. It's duplicitous. His
24 intent is to use those photographs to
25 inflame the jury, Your Honor, and I think

1 one obviously shows every bit of what the
2 District Attorney has set fourth in his
3 foundational question.

4 MR. BRITT: Your Honor, if I
5 could approach so the Court could have an
6 opportunity to view these. I hand you
7 State's Exhibit Number 27, 28, 29. As to
8 State's Exhibit Number 27, it is a
9 photograph depicting the head and shoulder
10 region of the body.

11 THE COURT: For what purpose is
12 the State offering 27 -- being offered for
13 illustrative purpose but specifically what
14 purposes.

15 MR. BRITT: To illustrate
16 primarily the shirt that's being -- also if
17 you'll note in that photograph there is
18 bloating. There is a portion of that
19 photograph that shows what I contend is a
20 tear in the skin. Shows just a portion of
21 that.

22 State's Exhibit 28 taken from a
23 different angle of the head region, shows
24 that entire area that was split. It
25 also --

1 THE COURT: For what purpose is
2 that?

3 MR. BRITT: That is to show, as
4 we continue, the evidence will show that at
5 the time they opened that bag, when the
6 body was removed from the swamp --

7 THE COURT: What does it
8 appear on that is at issue in this case,
9 the length of the time that the body was in
10 the swamp?

11 MR. BRITT: When Dr. Sexton
12 testifies, but in regard to the maggot
13 infestation, but also the decomposition in
14 regard to the body.

15 THE COURT: All of which relates
16 to what that is at issue in this case?

17 MR. BRITT: Eventually lead to
18 identification because it goes to the fact
19 that they could not identify the body at
20 that time.

21 MR. THOMPSON: Well --

22 MR. BRITT: Nor could they
23 identify the race of the individual.

24 THE COURT: That's to explain
25 why --

1 MR. BRITT: Yes, sir. State's
2 Exhibit Number 29 is a photograph that was
3 taken from head almost to the foot, that
4 shows the clothing, not only the shirt and
5 the pants that the body had on, those are
6 the clothes that we will show have already
7 introduced a photograph of Mr. Jordan
8 wearing the identical clothing.

9 THE COURT: So they are being
10 offered to link the clothing

11 MR. BRITT: Yes, sir.

12 THE COURT: Show the State of
13 decomposition as relates to the issue of
14 identification. And the condition of the
15 body as relates to identification?

16 MR. BRITT: Yes, sir.

17 MR. THOMPSON: May I be heard?

18 THE COURT: Yes, sir.

19 MR. THOMPSON: Your Honor, now,
20 there's several photographs of this body.
21 Even some taken at the autopsy. Now, we
22 filed a motion in limine, and perhaps this
23 is a time with regard to photographs.

24 THE COURT: Well, folks, in order
25 for me to rule in context, I need to know

1 what if any other additional photographs
2 the State intends to introduce and through
3 whom.

4 MR. THOMPSON: Thank you.

5 THE COURT: The essence of the
6 objection is that the number of photographs
7 are inflammatory and prejudicial, is that
8 correct?

9 MR. THOMPSON: Yes, sir.

10 MR. BRITT: Do you want me TO
11 mark these for purpose of this hearing?

12 THE COURT: Yes, sir, I think
13 that would be appropriate.

14 MR. BRITT: If I could have just
15 a second.

16 THE COURT: Yes, sir. .

17 Anybody have a copy of State versus
18 Hennis? That's the controlling case.

19 MR. THOMPSON: State versus --

20 THE COURT: Hennis, H E N N I S.

21 MR. THOMPSON: Yes. Fayetteville
22 Cumberland County case.

23 THE COURT: If you could have
24 somebody --

25 MR. THOMPSON: Have somebody bring

1 it down?

2 THE COURT: Yes, sir, pull the
3 cite.

4 THE COURT: While you're doing
5 that, let me get some material.

6 (Off-the-record discussion.)

7 (State's Exhibits 30 through 33 were
8 marked for identification.)

9 MR. BRITT: May I approach? Your
10 Honor, I've had marked as State's Exhibits
11 30 through 33, four photographs that I
12 intend to introduce into evidence during
13 the testimony of Dr. Joel Sexton who was
14 the pathologist that performed the autopsy
15 in this case, and these were photographs
16 that were taken during the course of --
17 well, at the autopsy.

18 THE COURT: Okay. These are the
19 only additional photographs you intend to
20 offer for any State's witness?

21 MR. BRITT: In regard to the
22 body?

23 THE COURT: Yes, sir.

24 MR. BRITT: Yes.

25 THE COURT: Then the only

1 additional photographs offered up to this
2 point by the State depicting the body of
3 the alleged victim are State's Exhibits 16
4 and 17.

5 MR. BRITT: Yes, sir, I believe
6 that's correct. 16 showing the body draped
7 over the limb in the swamp, and then
8 State's Exhibit Number 17 is a photograph
9 that Captain Starnes testified that he took
10 at the McColl Rescue Unit on the night of
11 August the 3rd, 1993. That photograph was
12 initially admitted for illustrative
13 purposes in the testimony of another
14 witness and then Captain Starnes' testimony
15 was admitted for substantive evidence.

16 MR. THOMPSON: Your Honor, as
17 to -- for example, State's Exhibit Number
18 17, it basically depicts the same thing
19 that the District Attorney is now trying to
20 introduce by way of another photograph,
21 which I think is State's Exhibit Number
22 27. Well --

23 THE COURT: 29?

24 MR. THOMPSON: 29. And that's
25 duplicitous.

1 THE COURT: And 27.

2 MR. THOMPSON: And 27.

3 THE COURT: The only difference
4 being apparently 16 is a photograph that
5 was apparently taken, as I recall the
6 testimony, at the scene.

7 MR. BRITT: Yes, sir.

8 THE COURT: At the Pea Bridge --

9 MR. BRITT: No, I'm sorry, that
10 was taken at the McColl Rescue Unit.

11 MR. THOMPSON: Same unit, shows
12 the shirt, shows the pants, shows the back
13 of the head.

14 THE COURT: For the record,
15 folks, I'm looking at State's Exhibit 30,
16 31, 32, and 33. And have you folks seen --

17 MR. THOMPSON: Which we've not
18 seen, no, sir.

19 THE COURT: Let me let you look
20 at those at this time. So you can be heard
21 in the context of all proffered photographs
22 the State intends to show.

23 MR. THOMPSON: I believe Mr. Bowen
24 has State's Exhibit --

25 THE COURT: Thank you.

1 THE COURT: Folks, for the
2 record, have you had an opportunity to
3 examine the exhibits, what are the numbers,
4 30 through what?

5 MR. THOMPSON: 30 through 33.
6 Yes, sir.

7 THE COURT: State has indicated
8 that the State intends to proffer those
9 exhibits through to --

10 MR. THOMPSON: Yes, sir, again,
11 Your Honor, we raise the same objections.

12 THE COURT: We're not at that
13 point yet. I'm simply ruling in the
14 context of any and all photographs that
15 might be at issue in this light.

16 MR. THOMPSON: Well, yes, sir, I
17 understand.

18 THE COURT: Do you have any
19 argument that those photographs, in
20 addition to what has been offered and what
21 is now being offered, add support to your
22 argument in any way?

23 MR. THOMPSON: Yes, sir,
24 particularly as to he indicated the body
25 being bloated, as to that, I mean, these

1 photographs obviously depict the body with
2 its clothes on --

3 THE COURT: Not all of them.

4 MR. THOMPSON: When I say these
5 photographs, the series of photographs
6 State's Exhibit 30.

7 THE COURT: You're indicating 30
8 through 33 all reflect the body with
9 clothes on?

10 MR. THOMPSON: No, sir, I'm
11 saying --

12 THE COURT: Let's be specific
13 then.

14 MR. THOMPSON: Yes, sir, if you'll
15 allow me to finish, Your Honor, they depict
16 the body with clothes on as well as, for
17 example, State's Exhibit Number 30 does.
18 State's Exhibit then, 32, 33, and 31,
19 without the clothes on.

20 THE COURT: Yes, sir.

21 MR. THOMPSON: But he indicated
22 that one of the previous exhibits, 27, 28
23 or 29, was used to depict, in addition to
24 other things, the body being bloated. Your
25 Honor, as to the -- to those exhibits that

1 State's Exhibit 27, 28, and 29, I've
2 indicated State's Exhibit Number 17 shows
3 much of what he's trying, or attempting to
4 show through those exhibits,, that is
5 duplicitous. Now as to these exhibits, 30
6 through 33, I think he can do with one or
7 two, no more than two of these.

8 THE COURT: We're not at that
9 point yet. I'm simply giving you the
10 opportunity to look at all the photographs
11 in context, make your argument as to 27,
12 28, 29.

13 MR. THOMPSON: Yes, sir.

14 THE COURT: Anything further?

15 MR. THOMPSON: No, sir.

16 THE COURT: Mr. Britt, do you
17 want to be heard further?

18 MR. BRITT: No, sir, I understand
19 the circumstances of Hennis, I think this
20 is much different. Hennis, they presented
21 a series of 25 photographs showing the same
22 thing, and I think in Hennis not only did
23 they do that, if I recall, those
24 photographs were displayed in such a manner
25 that the photograph, there was a screen or

1 something that was placed behind the
2 defendant who was seated, and to look at
3 those photographs, the jury had to look at
4 the defendant at the same time, and showed
5 the three bodies of the dead lady and the
6 two dead girls. And the Court found that
7 to be inflammatory or prejudicial. Hennis
8 doesn't stand for the proposition that one
9 photograph will suffice.

10 THE COURT: I understand that.
11 Hennis does stand, however, for the
12 proposition that while our general rule is
13 that where a photograph is relevant and
14 competent and otherwise admissible, the
15 admission of a -- excessive number of
16 photographs showing substantially the same
17 scene may be sufficient ground for a new
18 trial when the additional photographs add
19 nothing in the way of probative value but
20 intends solely to inflame the jury.

21 And it's clear from Hennis that not
22 only based on Hennis but all prior cases
23 excessive use of photographs is not favored
24 by our appellate courts.

25 The issue is whether the use of the

1 photographic evidence is more probative
2 than prejudicial and what constitutes an
3 excessive number in the light of the
4 illustrative value of each, which is a
5 matter within the sound discretion of the
6 trial court. The trial court's
7 responsibility is to examine both the
8 content and the manner in which the
9 photographic evidence is used and to
10 scrutinize the totality of the
11 circumstances composing that presentation.

12 And among the factors at Hennis
13 indicates that we are to consider is what
14 the photograph depicts, the level of detail
15 and scale, whether it's in color or black
16 and white, the scope reflected in the
17 photograph, how and under what
18 circumstances it's projected or presented.
19 The Court must, in addition, probe the
20 relevance of each scene depicted and
21 concludes that its irrelevant portions
22 don't obscure those elements that are
23 important to the testimony, that is the
24 key, for what purpose does the photograph
25 illustrate or to what extent does it

1 illustrate that testimony.

2 Now Hennis also stands for the
3 proposition that where photographs are
4 unduly repetitious of other illustrative
5 evidence already presented, the probative
6 value is minimal, if it exists at all, and
7 the only logical reasonable tendency of
8 that evidence is to inflame the jury.

9 Folks, having considered the proffered
10 photographs at this time, State's Exhibits
11 28, 27, 29, the Court sustains the
12 defendant's objection to State's Exhibit
13 29, finding that State's Exhibit 17 is
14 essentially the same.

15 The defendant's objection to State's
16 Exhibit 28, 27 is overruled. Note the
17 defendant's exception to the ruling of the
18 Court. You may use what has previously
19 been entered as State's Exhibit 17, and for
20 purposes of the record, you may use State's
21 Exhibit 27 and 28. 29 is excluded. Note
22 the State's objection to the Court's ruling
23 as to State's Exhibit Number 29.

24 MR. BRITT: For purposes of
25 appellate review at a later date, I would

1 ask the court --

2 THE COURT: It's going to be
3 placed in the record.

4 MR. BRITT: Place it in the
5 record and have it sealed.

6 THE COURT: All right. 17
7 already been admitted, I'm giving that back
8 to you at this time. 27 and 28, the Court
9 has ruled on, you may proceed with those.
10 If you have those other exhibits if you'll
11 return them to Mr. Britt.

12 MR. BRITT: I have them.

13 THE COURT: Any objection that's
14 raised as to them, take up at the time that
15 the objection is made.

16 MR. THOMPSON: Your Honor, may I
17 see 27 and 28 again, Mr. Britt?

18 THE COURT: Yes, sir.

19 THE COURT: Anything further?

20 MR. THOMPSON: No, sir.

21 THE COURT: If you'll bring the
22 jury back in please, Mr. Horne.

23 (Jury in at 10:08 a.m.)

24 THE COURT: Yes, sir, Mr. Britt?

25 MR. BRITT: May I approach the

1 witness.

2 THE COURT: For the record, the
3 objection the State's Exhibit Number 29 is
4 sustained. The objection as to State's
5 Exhibits 27 and 28 is overruled, with the
6 exception as noted.

7 MR. BRITT: Yes, sir.

8 BY MR. BRITT:

9 Q Mr. Brown let me show you what's previously
10 been introduced as State's Exhibit 17, a photograph.
11 Do you recognize that photograph?

12 A Yes, sir, I do.

13 Q How do you recognize that photograph?

14 A This was a photograph taken on August the
15 3rd of a John Doe body in a bag in the back of my
16 pick up truck.

17 Q Is that the body that you observed inside
18 the body bag at the McColl Rescue Unit August the
19 3rd, 1993?

20 A Yes, sir, it does.

21 Q Does that photograph depict the condition
22 and the clothing of the body that you saw on August
23 the 3rd, 1993?

24 A Yes, sir, it does.

25 Q Now August the 3rd, 1993, how many bodies

1 did you view that were actually located?

2 A One.

3 Q You stated earlier that in your opinion the
4 body was badly decomposed at the time you observed
5 it?

6 A Yes, sir.

7 Q Was there any type of insects or larva
8 infestation that you observed?

9 A Yes, sir, there was.

10 Q What type of insect or larva infestation
11 did you observe?

12 A Maggots were over the body.

13 Q And in what area did you observe these
14 maggots?

15 A Back of the neck and on the back itself as
16 I lifted the shirt.

17 Q In regard to the back of the neck and the
18 condition of the head of the body that was located,
19 can you describe that for us?

20 A That area, the skin had split open and the
21 infestation of maggots were present in that area.

22 Q Again, I'm going to show you what's
23 previously been marked as State's Exhibit Number 27.
24 Does State's Exhibit 27 accurately depict the
25 condition of the head as you observed it?

1 A Yes, sir.

2 Q And I'll hand you what's previously been
3 marked as State's Exhibit 28. Does that also show,
4 depict an area of the head but the area of the neck
5 that you've previously described?

6 A Yes, sir, it does.

7 Q And would this help you in illustrating
8 your testimony to the jury in regard to the condition
9 of the neck and head area of the body that you
10 observed in the McColl Rescue Unit on August the 3rd?

11 A Yes, sir.

12 MR. BRITT: Your Honor, ask that
13 he step down.

14 THE COURT: You're proffering
15 State's Exhibit 27, 28 for illustrative
16 purposes? Objection is overruled.

17 Members of the jury, State's Exhibits
18 27 and 28 are being introduced for the
19 limited purposes of illustrating the
20 testimony of the witness now before you.
21 To the extent that you find State's
22 Exhibits 27 and 28 of aid or assistance in
23 understanding that testimony, you may
24 consider it for that limited purpose and
25 for no other purpose.

1 BY MR. BRITT:

2 Q Mr. Brown, if you could step down, please.
3 I'm going to hand you first State's Exhibit Number
4 17. Using that, if you will show that to the jury
5 and describe, please, the position of the body as you
6 found it when you opened the bag on August 3rd 1993.
7 Start at this end, work your way to the middle and
8 over to the far end.

9 THE COURT: If you'll keep your
10 voice raised, sir, so that the court
11 reporter will be able to hear and take down
12 your testimony.

13 THE WITNESS: All right, sir.
14 This is a photograph of the body in the
15 body bag that was in the McColl Rescue Unit
16 hut after it had been removed from the Gum
17 Swamp Creek in Marlboro County. Depicts
18 the individual's body clothed and badly
19 decomposed as you can see, I guess. Am I
20 doing this correctly?

21 MR. BRITT: Yes, sir. If you'll
22 move to this area of the jury box.

23 THE COURT: You'll need to ask
24 him questions, Mr. Britt.

25 BY MR. BRITT:

1 Q Mr. Brown, again for purposes -- what does
2 the photograph illustrate?

3 A This photograph depicts the body in the
4 body bag that was removed from the Gum Swamp,
5 Marlboro County, August the 3rd of 1993, depicting
6 the clothing of the individual and the condition of
7 the body when it was removed.

8 Q Again if you'll --

9 A Again, this is a photograph of an
10 individual in a body bag removed from Gum Swamp on
11 August the 3rd, it was taken to the McColl Rescue
12 Squad hut, depicting the clothing, the individual,
13 and the state of the body as I stated it, in a state
14 of decomposition. Did everyone --

15 Q I'm going the hand you State's Exhibits 27,
16 28 and ask you to use these photographs to illustrate
17 your testimony to the jury as to the condition of the
18 head region of the body and also the region of the
19 neck as you observed it?

20 A Again, these are two photographs of the
21 head and shoulder area in one, the head and neck area
22 in the other. Both taken of the same body, on August
23 the 3rd, 1993, showing infestation in the neck area,
24 and photograph 28, the decomposition in Exhibit 27.

25 These are the two photographs taken, one of

1 the head and neck and one of the head and shoulders
2 of the individual found in the Gum Swamp on August
3 the 3rd, 1993 and taken to the McColl Rescue Squad
4 hut.

5 Again, these are two photographs taken, one
6 of the head and the shoulders, one more of the head
7 and neck, showing the decomposition of the body,
8 infestation in the neck region.

9 Q Thank you. If you will return to the
10 witness stand.

11 THE COURT: Thank you, sir.

12 BY MR. BRITT:

13 Q Mr. Brown, at any time did you or did you
14 direct anyone there at the McColl Rescue hut to turn
15 the body over inside the body bag?

16 A No, sir, I did not.

17 Q At any point did you ever observe the face
18 or the front of the body?

19 A No, sir.

20 Q At any time there in the McColl Rescue Unit
21 did you examine the body for any type of bullet wound
22 or any other indentation or deformity to the body?

23 A I raised the individual's shirt to see if
24 there was any type of marks there, but that was all I
25 did.

1 Q What area did you look at at that time?

2 A The individual's back.

3 Q Did you note any marks in the area of the
4 back?

5 A No, sir, I did not.

6 Q Did you there, in the McColl Rescue Unit,
7 look for any identification on the body?

8 A Yes, sir, I felt the pockets, the pants
9 pockets to see if there was any type of
10 identification, did not find any.

11 Q Did you find a wallet?

12 A No, sir, I did not.

13 Q Did you find car keys?

14 MR. THOMPSON: I object, he said
15 he didn't find anything.

16 THE COURT: Sustained.

17 BY MR. BRITT:

18 Q What if any car keys were found on the
19 body?

20 MR. THOMPSON: Object.

21 THE COURT: Overruled.

22 BY MR. BRITT:

23 Q What if any car keys were found?

24 A No keys found.

25 Q What if any money was found?

1 A None sir.

2 Q What if any jewelry was found?

3 MR. THOMPSON: Objected, Your
4 Honor.

5 THE COURT: Overruled.

6 A Nothing was found in the way of jewelry.

7 Q After examining the body there at the
8 McColl Rescue Unit, was the body bag then reclosed?

9 A Yes, sir, it was.

10 Q What if anything was done with the body and
11 the body bag after the bag was reclosed?

12 A I transported the body to the Marlboro Park
13 Hospital in Bennettsville, South Carolina and waited
14 for Palmetto Professional Services to meet me there
15 to further transport the body for autopsy.

16 Q How did you transport the body from the
17 rescue hut to Marlboro Park Hospital?

18 A In my pickup truck.

19 Q At any time after you left the McColl
20 Rescue hut and en route to the Marlboro Park
21 Hospital, did the body ever leave your sight?

22 A No, sir.

23 Q Did anyone ride with you from the rescue
24 unit hut to the hospital?

25 A No, sir.

1 Q When you arrived at the hospital, what did
2 you do there?

3 A I waited for the Palmetto Professional
4 Services to arrive.

5 Q Where did you wait?

6 A Back of the hospital by the loading area of
7 the hospital.

8 Q Was the bag containing the body removed
9 from the Gum Swamp ever taken into the Marlboro Park
10 Hospital?

11 A No, sir, it was not.

12 Q Why was it not taken into the hospital?

13 A I determined that at that time that it
14 would not be a safe thing to do for the hospital to
15 have that body inside the facility.

16 Q And why did you come to that conclusion?

17 A The odor that was exuding from the truck
18 was very strong.

19 Q At any point after you arrived at the
20 hospital, did you leave the bag containing the body
21 by itself at any point?

22 A No, sir.

23 Q After going to the Marlboro Park Hospital,
24 did anyone ever come and meet you at that location?

25 A Yes, sir.

1 Q Who came and met you at that location?

2 A Mr. Art Springer from Palmetto Professional
3 Services.

4 Q Had you previously called or notified him
5 or Palmetto Professional Services?

6 A I had -- we contacted him while we were
7 still at Gum Swamp to meet us at the hospital.

8 Q For what purpose did you call Mr. Springer
9 or Palmetto Professional Services?

10 A In cases -- well, in any case that we have
11 an autopsy performed, we have a contract with
12 Palmetto Professional Services to handle the
13 transportation to and from the site of the autopsies.

14 Q Are autopsies not performed there at
15 Marlboro Park hospital?

16 A Oh, no, sir.

17 Q Why not?

18 A We do not a resident pathologist there.

19 Q Do you have a contract with another
20 hospital for the performance of autopsies?

21 A No, sir, we do not a have a contract, but
22 we have either -- two areas, one is in Newberry,
23 South Carolina with Dr. Joel Sexton. The other is at
24 the State Medical University in Charleston, South
25 Carolina.

1 Q Is there a medical examiner's office in the
2 State of South Carolina?

3 A There are in three counties in the state.

4 Q Is Marlboro County one of those?

5 A No, sir, it's not.

6 Q After Mr. Springer arrived, did anyone
7 accompany Mr. Springer when he arrived at Marlboro
8 Park Hospital?

9 A No, sir, he was alone.

10 Q Were you at that time still able to detect
11 the pungent odor that you described earlier?

12 A Yes, sir.

13 Q And that was with the bag closed?

14 A Yes, sir.

15 Q What if anything was done to try to
16 eliminate or lessen that pungent odor?

17 A Art Springer and myself rinsed the body bag
18 in the back of the pickup truck off and sprayed it
19 with a disinfectant.

20 Q Why did you do that?

21 A I called Dr. Sexton and asked him what
22 would be the best way to try to eliminate the odor
23 and not do anything to change the body in any way.

24 Q When the -- and based upon the information
25 that he gave you, the body bag was rinsed off with

1 water and then sprayed with a disinfectant?

2 A Yes, sir.

3 MR. THOMPSON: Objected leading.

4 THE COURT: Do you want a
5 limiting instruction for what purpose being
6 offered?

7 MR. BRITT: Explain subsequent
8 conduct.

9 THE COURT: Limiting
10 instruction?

11 MR. THOMPSON: Yes.

12 THE COURT: Any testimony
13 elicited as to this testimony is simply to
14 explain the subsequent conduct of this
15 witness, and you may consider this evidence
16 for that limited purpose and for no other
17 purpose. Anything further, folks?

18 Yes, sir.

19 BY MR. BRITT:

20 Q At the time the body bag was rinsed off and
21 sprayed with the disinfectant, was it open or closed?

22 A Closed.

23 Q At any time you rinsed and sprayed this
24 disinfectant on it, was the body bag opened?

25 A No, sir, it was not.

1 Q After spraying the body bag, what then was
2 done with that bag and the body inside it?

3 A Mr. Springer and myself put it onto a
4 stretcher and then puts it into the back of his van.

5 Q And where did that take place?

6 A At my office, Highway 38 in Bennettsville.

7 Q Had you been anywhere with Mr. Springer and
8 the body prior to transferring the body from your
9 pickup truck to Mr. Springer's van?

10 A Yes, sir, we went by the Marlboro County
11 Sheriff's Office before we went to my office.

12 Q And at the time you went to the sheriff's
13 office, did you or Mr. Springer remain with the body?

14 A I don't recall.

15 Q When you called Dr. Sexton and asked his
16 advice in terms of trying to alleviate the odor, did
17 you make any other request of him at that time?

18 A Just asked if we could send the body for an
19 autopsy, I made that request.

20 Q And was an autopsy scheduled?

21 A Yes, sir, it was the next morning.

22 Q And that would have been August the 4th,
23 1993?

24 A That's correct.

25 Q Where was that autopsy scheduled to take

1 place?

2 A In Newberry, South Carolina.

3 Q How was the body to be transported from
4 Marlboro County, South Carolina to Newberry, South
5 Carolina?

6 A By the Palmetto Professional Service
7 Company.

8 Q Who if anyone did you turn the body that
9 had been found in the Gum Swamp over to on August the
10 3rd, 1993?

11 A I turned the body over to Mr. Art Springer.

12 Q Are you required by law to issue any type
13 of permit in your capacity as a Coroner for the
14 burial removal or transit of a dead body?

15 A Yes, sir, I am.

16 Q And did you issue such a permit on August
17 the 3rd, 1993?

18 A Yes, sir, I did.

19 (State's Exhibit 34 was
20 marked for identification.)

21 BY MR. BRITT:

22 Q I'll show you what has been marked as
23 State's Exhibit Number 34, and ask you if you can
24 recognize that document?

25 A Yes, sir.

1 Q And how are you able to identify that
2 document?

3 A Has my signature on it.

4 Q And does a date appear with your signature?

5 A It does.

6 Q And what is the date that appears at your
7 signature?

8 A 8-3-93.

9 Q Is State's Exhibit Number 34, for the
10 record, what is that document?

11 A It is a burial removal transit permit.

12 Q And is that a photocopy of the original
13 that you issued on August the 3rd, 1993?

14 A Yes, sir, it is.

15 Q And to whom did you give this burial
16 removal or transit permit?

17 A To Mr. Art Springer.

18 Q For what purpose did you give Mr. Springer
19 the burial removal or transit permit?

20 A For the purposes of transporting the body
21 from Marlboro County to Newberry, South Carolina.

22 Q Is State's Exhibit Number 34, as best you
23 can tell, an exact duplicate of the original that you
24 gave Mr. Springer?

25 A Yes, sir, it is.

1 Q Is it in substantially the same condition
2 as it was in when you issued the original on August
3 the 3rd, 1993?

4 A Yes, sir.

5 MR. BRITT: At this time I ask
6 State's Exhibit 34 be admitted.

7 THE COURT: It's admitted without
8 objection.

9 BY MR. BRITT:

10 Q On August the 4th, 1993, did you have a
11 telephone conversation with Dr. Joel Sexton?

12 A I did, yes, sir.

13 Q Was -- did that telephone conversation
14 involve the autopsy that you had requested on August
15 the 3rd of 1993?

16 A Yes, sir.

17 Q As a result of your conversation with
18 Dr. Sexton, what if any procedure did you authorize
19 Dr. Sexton to perform on August the 4th, 1993 in
20 connection with that autopsy?

21 A I authorized the removal of the hands of
22 the individual, and I also authorized the removal of
23 the mandibular maxillary archs of the individual.

24 Q For what purpose did you authorize the
25 removal of the hands from the body that was found in

1 the Gum Swamp on August the 3rd, 1993?

2 A For the purposes of fingerprinting the
3 hands in a controlled atmosphere at the State Law
4 Enforcement Division in Columbia, South Carolina.

5 Q And for what purpose did you authorize the
6 removal of the jaws of the body that was recovered
7 from the Gum Swamp on August the 3rd, 1993?

8 A To compare the dental work at a later date,
9 if we determined someone to compare it with.

10 Q Did you also request that State Law
11 Enforcement Division do this fingerprint?

12 MR. THOMPSON: I object to leading,
13 Your Honor.

14 THE COURT: Let him complete his
15 question.

16 BY MR. BRITT:

17 Q Did you request the State Law Enforcement
18 Division in Columbia, South Carolina do any
19 fingerprinting of the hands that were removed at the
20 autopsy?

21 A Yes, sir.

22 THE COURT: Overruled.

23 THE WITNESS: Excuse me, sorry.

24 THE COURT: That's okay. You may
25 answer.

1 THE WITNESS: Yes, sir.

2 BY MR. BRITT:

3 Q After you requested the removal of the jaws
4 from the body of the individual removed from the Gum
5 Swamp, did you later receive a dental chart that had
6 been prepared as a result of the removal of those
7 jaws?

8 A Yes, sir.

9 Q And from whom did you receive that dental
10 chart?

11 A From Dr. Sexton.

12 Q After you requested or authorized the
13 removal of the jaws of the body found in the Gum
14 Swamp, did you later obtain x-rays that were made
15 from those teeth and those jaws by Dr. Sexton?

16 A Yes, sir.

17 Q After the autopsy was performed on August
18 the 4th, 1993, what if anything, to your knowledge,
19 was done with the body that you had sent to Newberry,
20 South Carolina?

21 A It was removed and taken to Kaufmann Harmon
22 Funeral Home in Lexington, South Carolina.

23 Q Do you know when the body was taken to the
24 funeral home in Lexington, South Carolina?

25 A After the completion of the autopsy.

1 Q Do you know how long the body remained at
2 the Kaufmann Funeral Home in Lexington, South
3 Carolina?

4 A In August the 7th.

5 MR. THOMPSON: Object, Your
6 Honor, unless foundation.

7 THE COURT: Do you have personal
8 knowledge of that, sir?

9 THE WITNESS: As to whether I saw
10 it or --

11 THE COURT: Repeat your question
12 to the witness.

13 BY MR. BRITT:

14 Q To your knowledge, how long did the body
15 remain at Kaufmann Funeral Home in Lexington, South
16 Carolina?

17 THE COURT: Do you have personal
18 knowledge of that?

19 THE WITNESS: Yes, sir.

20 THE COURT: Objection overruled.

21 THE WITNESS: August the 7th,
22 '93.

23 THE COURT: On August the 7th,
24 '93. Did you authorize anything to be
25 done from the body that was removed from

1 the Gum Swamp on August the 3rd, 1993?

2 THE WITNESS: No, sir, I did
3 not. I think I understand your question, but I
4 did that the day before. I'm not --

5 MR. THOMPSON: Well, I object,
6 Your Honor, to the comment, move to strike.

7 THE COURT: Your objection is
8 sustained, motion to strike allowed.

9 MR. THOMPSON: Request
10 instruction.

11 THE COURT: Members of the jury
12 do not consider the last response of
13 Mr. Brown.

14 Mr. Britt, if you'll rephrase your
15 question or ask additional questions.

16 BY MR. BRITT:

17 Q Yes, sir, August the 6th, 1993, Mr. Brown,
18 did you authorize that anything be done to the body
19 that had been record in the Gum Swamp on August the
20 3rd and that was being held at the Kaufmann Funeral
21 Home in Lexington, South Carolina?

22 A Yes, sir, I did.

23 Q What if anything did you authorize in your
24 capacity as the Coroner be done to that body?

25 A I ordered it to be cremated.

1 Q Why did you order that body be cremated on
2 August the 6th of 1993?

3 A So that the remains could be returned to me
4 in my office.

5 Q Did you have a facility available to you in
6 Marlboro County where the body could be stored?

7 A No, sir.

8 Q And to your knowledge, was the body that
9 was recovered from the Gum Swamp on August the 3rd
10 cremated per your authorization?

11 A Yes, sir.

12 Q And to your knowledge, who cremated the
13 body and when did that occur?

14 A The cremation took place on August the
15 7th. By whom, I don't know. The records would show
16 I'm sure the --

17 MR. THOMPSON: Well, I object.

18 THE COURT: Overruled.

19 BY MR. BRITT:

20 Q After the body was cremated, Mr. Brown,
21 were you subsequently contacted by the Cumberland
22 County Sheriff's Department in regard to an
23 investigation that they were involved in?

24 A Yes, sir, I was.

25 Q Do you recall the date that you were

1 contacted by the Cumberland County Sheriff's
2 Department?

3 A August the 12th, 1993.

4 Q Did you make -- based upon your
5 conversations with individuals at the Cumberland
6 County Sheriff's Department, did you make any
7 requests of them in regard to providing you with any
8 type of records?

9 A Yes, sir, I did.

10 Q What if any type of records did you request
11 that the Cumberland County Sheriff's Department
12 provide you?

13 A With the dental records of Mr. James
14 Jordan.

15 Q And subsequent to your request, were dental
16 records brought to you in Marlboro County, South
17 Carolina by a member or members of the Cumberland
18 County Sheriff's Department?

19 A Yes, sir, they were.

20 Q Do you recall when those dental records
21 were delivered to you?

22 A On the morning of August the 13th,
23 approximately 1:30 a.m.

24 Q At the time you received those dental
25 records from Cumberland County Sheriff's Department,

1 had you already received the dental x-rays that
2 Dr. Sexton had made during the autopsy on August the
3 4th of 1993?

4 MR. BOWEN: Objection.

5 THE COURT: Do you want to be
6 heard, Mr. Bowen?

7 MR. BOWEN: I can give you
8 reason -- yes, I would like to be heard.

9 THE COURT: Ladies and gentlemen
10 of the jury there are matters of law we
11 must take up. Please recall my
12 instructions in that regard, don't worry or
13 speculate about what takes place in the
14 courtroom during your absence. If all
15 members of the jury would step to the jury
16 room, please.

17 (Jury out at 10:40 a.m.)

18 MR. BOWEN: Objection to the question,
19 Your Honor, on the grounds that it assumes matters
20 not in evidence, what Mr. Sexton has done.

21 THE COURT: He previously asked
22 the following: "After you requested or
23 authorized the removal of the jaws of the
24 body found in the Gum Swamp, did you later
25 obtain x-rays that were made from those

1 teeth and those jaws by Dr. Sexton?

2 His answer was, yes, sir.

3 "Question: After the autopsy was
4 performed on August the 4th, 1993, what if
5 anything, to your knowledge, was done with
6 the body that you had sent to Newberry,
7 South Carolina?

8 "Answer: It was removed and taken to
9 Kaufmann Funeral Home in Lexington, South
10 Carolina."

11 That question and answer came in
12 without objection.

13 MR. BOWEN: Yes, sir.

14 THE COURT: So the Court deems
15 the objection now being made is waived.

16 Note the defendant's exception for the
17 record. The objection is overruled.
18 Exception is noted for the record.

19 Bring the jury back in.

20 MR. BRITT: Your Honor, I've got
21 a technical problem over here.

22 THE COURT: Ready to proceed,
23 folks?

24 MR. BOWEN: Yes, sir.

25 THE COURT: Bring the jury in

1 please. .

2 (Technical problem solved).

3 (Jury in at 10:44 a.m.)

4 THE COURT: Objection is overruled, the
5 exception is noted. Mr. Britt, you may repeat your
6 question, sir.

7 MR. BRITT: I apologize.

8 BY MR. BRITT:

9 Q Mr. Brown, when you received the dental
10 records from the Cumberland County Sheriff's
11 Department, had you already received the x-rays of
12 the teeth and the jaws of the body that were made
13 during the autopsy of August the 4th, 1993, from
14 Dr. Sexton?

15 A Yes, sir

16 (State's Exhibit 35 was
17 marked for identification.)

18 MR. BRITT: May I approach?

19 THE COURT: Yes, sir.

20 BY MR. BRITT:

21 Q I'm going to hand you a large envelope
22 marked State's Exhibit Number 35. Are you able to
23 identify the envelope that's been marked as State's
24 35?

25 A Yes, sir.

1 Q And how are you able to identify that
2 envelope?

3 A It has my initials on it, dated 8-17-93.

4 Q Is there a time?

5 A 6:00 p.m.

6 Q On 8-17-1993, what if anything did you do
7 with the contents of this envelope, with this
8 envelope and the contents?

9 A I turned it over to the State Bureau of
10 Investigation for the State of North Carolina.

11 Q And where did that occur?

12 A In my office, Bennettsville, South
13 Carolina.

14 Q And do you recall to what agent you turned
15 State's Exhibit 35 and its contents over to?

16 A Agent Barry Lea.

17 Q And how long prior to August the 17th of
18 1993 had you had State's Exhibits 35 and it's
19 contents in your possession?

20 A I don't recall.

21 Q Do you recall when you released State's
22 Exhibit Number 35?

23 A No, sir.

24 Q Do you recall giving a statement to special
25 Agent Lee at the time you transferred the State's

1 Exhibit Number 35 and its contents to him?

2 A Yes, sir.

3 Q Would it help you in refreshing your
4 recollection to review the statement that you gave to
5 Mr. Lee on August the 17th of 1993?

6 A I'm sure it would, yes, sir.

7 MR. BRITT: May I approach, Your
8 Honor?

9 THE COURT: Yes, sir.

10 MR. BRITT: May I approach the
11 witness?

12 THE COURT: If you'll show that
13 to counsel for the defendant first,
14 please.

15 Yes, sir.

16 BY MR. BRITT:

17 Q Mr. Brown, I'm going to hand you a
18 document, ask you to review that document, if you
19 will just simply read it to yourself.

20 A (Witness complies). All right, sir.

21 Q Does that document refresh your
22 recollection as to when you received State's Exhibit
23 Number 35?

24 A Yes, it does.

25 Q And when did you receive State's Exhibit

1 Number 35?

2 A August the 14th, 1993.

3 Q And from whom did you receive State's
4 Exhibit Number 35?

5 A Dr. Joel Sexton.

6 MR. BRITT: May I approach?

7 THE COURT: Yes, sir.

8 BY MR. BRITT:

9 Q What if anything did you do with State's
10 Exhibit 35 after you received it from Dr. Sexton on
11 August the 14th of 1993?

12 A I reviewed them.

13 Q And did you -- where did you keep those
14 items once you received them from Dr. Sexton?

15 A In my office.

16 Q Did anyone have access to State's Exhibit
17 Number 35 while it was in your possession?

18 A No, sir.

19 Q And I ask you to examine the envelope and
20 the contents of the envelope and tell me if they are
21 in substantially the same condition as they were when
22 you received them on August the 14th of 1993 and when
23 you released them to Special Agent Barry Lea of the
24 SBI on August the 14th, 1993?

25 A As far as I can tell, they are the same.

1 Q And you have removed certain items from the
2 envelope marked as State's Exhibit Number 35. For
3 the record, can you identify what you have removed
4 from the envelope?

5 A Yes, sir. The x-ray of -- marked FA-93-243
6 dated 8-8-93, depicting bite wing x-rays from the
7 autopsy that was performed by Dr. Sexton.

8 MR. THOMPSON: Object, move to
9 strike.

10 THE COURT: The objection is
11 sustained. Motion to strike is allowed.
12 Members of the jury, you are to disregard
13 the testimony of Mr. Brown as to what if
14 anything was performed by Dr. Sexton. That
15 testimony is to take no part in your
16 deliberations in this matter in any way.
17 You are to absolutely disregard it.

18 MR. BRITT: May I be heard?

19 THE COURT: Yes, sir. All
20 right.

21 Members of the jury, at this point,
22 there's a matter of law the Court must take
23 up out of the presence of the jury. Please
24 recall my instruction in that regard. If
25 you will step to the jury room.

1 (Jury out at 11:54 a.m.)

2 THE COURT: All right. In the
3 absence of the jury, Mr. Thompson, I assume
4 that the basis of the objection was that
5 portion of Mr. Brown's response, his answer
6 was, "Yes, sir, the x-ray of -- marked FA
7 93243 dated 8-8-93, depicting bite wing
8 x-rays from the autopsy that was performed
9 by Dr. Sexton." Is that later portion that
10 was objected to.

11 MR. BRITT: Your Honor, it came
12 in unobjected to, that Dr. Sexton provided
13 him with copies of x-rays that were made
14 during the autopsy.

15 THE COURT: Yes, sir. We're
16 getting a little more specific now in terms
17 of what x-rays were performed, and I'm not
18 going to allow it at this point. I'm
19 assuming you're going to call Dr. Sexton.

20 MR. BRITT: Yes, sir, this
21 afternoon.

22 THE COURT: Then there's no
23 problem in that regard as to the specific
24 response as to what specific x-rays may
25 have been performed or done by Dr. Sexton.

1 The objection is sustained. The State's
2 exception is noted for the record. You can
3 ask additional questions of this witness if
4 you want to consistent with what was
5 previously admitted without objection, or
6 you may ask any questions of Dr. Sexton
7 should the State call him as a witness.

8 MR. BRITT: Yes, sir.

9 THE COURT: Anything further?

10 MR. BRITT: I just simply want
11 the record to reflect I'm asking the Court
12 to reconsider his ruling as it relates back
13 to earlier questioning that came in without
14 objection.

15 THE COURT: In my view, that was
16 a much more general question, and we're
17 dealing with some specifics now that I'm
18 not comfortable in letting in unless they
19 come in from Dr. Sexton. So objection is
20 sustained, exception is noted for the
21 record.

22 If you'll bring the jury back in,
23 please.

24 (Jury in at 11:56 a.m.)

25 MR. BRITT: May I approach the

1 witness?

2 THE COURT: Yes, sir.

3 BY MR. BRITT:

4 Q Your Honor, so the record will reflect, I'm
5 going to have to mark as State's Exhibit 35-A the
6 x-ray that was --

7 THE COURT: Yes, sir, you --

8 MR. THOMPSON: I object --

9 THE COURT: Well, what I was
10 going to suggest is we have not marked for
11 the purposes of identification any document
12 or writing that may have been used for
13 purposes of reviving or refreshing
14 recollection, and I would like to do that
15 for the purposes of the record.

16 MR. BRITT: Yes, sir, I'll mark
17 that as 36.

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q I have marked that as State's Exhibit
21 Number 36.

22 THE COURT: Yes, sir, simply for
23 the purposes of identification.

24 MR. BRITT: Identification, yes,
25 sir.

1 MR. BRITT: Marking as State's
2 Exhibit Number 35 --

3 THE COURT: 35 --

4 MR. BRITT: 35-A, excuse me, the
5 x-ray that bears the number FA-93-243, and
6 the date 8-8-93.

7 THE COURT: Yes, sir.

8 MR. BRITT: And if I could
9 approach the clerk for use of her stapler.

10 THE COURT: Yes, sir.

11 (State's Exhibits 35-A, 35-B, 36 were
12 marked for identification.)

13 BY MR. BRITT:

14 Q Mr. Brown when you removed the items from
15 State's Exhibit Number 35, you also -- you removed
16 what items? What items did you take out of the
17 envelope marked as State's Exhibit Number 35?

18 A An x-ray marked FA-93-243, dated 8-8-93.

19 Q And from whom did you receive State's
20 Exhibit Number 35 and its contents?

21 A From Dr. Sexton's office.

22 Q What other item or documents did you remove
23 from State's Exhibit Number 35?

24 A The dental charted that was prepared and
25 sent to me by Dr. Sexton's office.

1 Q Is that now marked as State's Exhibit
2 Number 35-B?

3 A Yes, sir.

4 Q Are State's Exhibit Number 35-A and 35-B in
5 substantially the same condition as they were in when
6 you received them on August the 14th of '93 from
7 Dr. Sexton and when you released them to Special
8 Agent Barry Lea on August the 17th of 1993?

9 A Yes, sir, they are.

10 Q Mr. Brown, do you hold any degree in the
11 area of dental laboratory technology?

12 A Yes, sir, I do.

13 Q What type of degree do you hold in that
14 area?

15 A It's an Associate Degree from the Medical
16 University of South Carolina.

17 Q And what course of study did you have to
18 take to receive that degree?

19 A Study of dental technology.

20 Q How long did that course of study take you?

21 A Two years.

22 Q What is your other educational background?

23 A Attended the University of South Carolina
24 for two years.

25 Q And when did you receive your Associate's

1 Degree in dental laboratory technology?

2 A In 1976.

3 Q Did you ever work in that field once you
4 received that degree?

5 A Yes, sir, I did.

6 Q For what period of time did you work as a
7 dental laboratory technologist?

8 A From 1976 to 1986.

9 Q And for whom did you work?

10 A I was self-employed.

11 Q Describe the nature of your business in
12 that area?

13 A To construct artificial prostheses for
14 restoration in the human mouth.

15 Q Commonly referred to as dentures?

16 A Dentures, yes.

17 Q In that capacity, were you familiar, did
18 you utilize dental x-rays?

19 A On occasion, yes, sir.

20 Q State's Exhibit Number 35-A, what do you
21 recognize that x-ray to be?

22 A These are the x-rays of bite wings.

23 MR. THOMPSON: Object, Your Honor.

24 THE COURT: Objection comes late,
25 the objection is overruled.

1 MR. THOMPSON: Motion to strike.

2 THE COURT: Denied.

3 BY MR. BRITT:

4 Q When you say bite wings, what do you mean
5 by that?

6 THE COURT: It's not necessary
7 under our case law -- are you formally
8 offering Mr. Brown as an expert in any
9 particular areas?

10 MR. BRITT: Your Honor, at this
11 time I tender him in the area of dental
12 laboratory technology.

13 THE COURT: You folks want to be
14 heard about the proffer?

15 MR. THOMPSON: Well, we object to
16 that, Your Honor. To him being qualified
17 as an expert?

18 THE COURT: Yes.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: Do you want to be
21 heard further? Overruled, exception noted
22 for the record.

23 BY MR. BRITT:

24 Q What is a bite wing x-ray?

25 A It's an x-ray, I would say smaller x-ray

1 depicting a certain portion of the arch or the teeth
2 that are being x-rayed.

3 Q And for what purpose can an individual's
4 dental work and teeth be utilized in identifying
5 someone?

6 A By the type of restoration --

7 MR. THOMPSON: Object.

8 THE COURT: Sustained, goes
9 beyond the area of expertise.

10 BY MR. BRITT:

11 Q To your knowledge, are dental works and
12 teeth used in identifying individual's?

13 A Yes, sir.

14 MR. THOMPSON: I --

15 BY MR. BRITT:

16 Q And do you know why dental works and teeth
17 are used in identifying people?

18 MR. THOMPSON: Object.

19 THE COURT: Ladies and gentlemen,
20 this is probably a good time for us to take
21 the -- or to me to allow you to take the
22 mid-morning recess. During the mid-morning
23 recess, please recall it is your duty to
24 abide by all prior instructions by the
25 court concerning your conduct. Everyone

1 else please remain seated, all members of
2 the jury are excused at this time. Folks
3 please reassemble -- I'm going to give you
4 until 11:30. Please reassemble in the jury
5 room at 11:30.

6 (Jury out at 11:06 a.m.)

7 THE COURT: All right. Let the
8 record show the following is being
9 conducted in the absence of the jury.

10 Mr. Britt, where are we going with
11 this? What are you going to attempt to do
12 with Mr. Brown?

13 MR. BRITT: All I've asked is if
14 he knows why dental works and teeth --

15 THE COURT: He's been proffered
16 as an expert in general dental technology.
17 I think that area, probably in my view, at
18 least, under the seven hundred series
19 allows him to testify that this x-ray is a
20 bite wing x-ray.

21 MR. BRITT: Where we're going
22 with this, he had these items in his
23 possession, this x-ray and this chart of
24 the teeth that were provided to him by
25 Dr. Sexton. When Captain Binder,

1 specifically Sergeant Smith with the
2 Cumberland County Sheriff's Department
3 delivered known dental records of James
4 Jordan, based on his experience in this
5 field of dental laboratory technology, he
6 compared the teeth chart that had been
7 prepared, looked at the x-rays with the
8 known x-rays of Mr. Jordan's teeth and the
9 known dental chart that was provided by
10 Mr. Jordan's dentist.

11 THE COURT: Is this the only
12 testimony the State --

13 MR. BRITT: No, sir.

14 THE COURT: Out of an abundance
15 of precaution, sustain the objection to
16 comparison.

17 MR. BRITT: I'm not there yet.

18 THE COURT: But I'm saying in
19 anticipation of us heading in that
20 direction, I would sustain the objection
21 unless additional foundation is laid. And
22 out of an abundance of precaution, if you
23 have other evidence, it may be best to deal
24 with that at the appropriate time.

25 At this point the objection is

1 sustained for the question. Let me back up
2 to the question, make sure I'm --

3 MR. THOMPSON: Line sixty five --
4 page sixty five, line --

5 THE COURT: The question
6 specifically objected to is, "Do you know
7 why dental works on teeth are used in
8 identifying people?"

9 In my view, the foundation hasn't been
10 laid for that, so the objection is
11 sustained to that.

12 All right. We're at ease until -- I'm
13 sorry, while we have this opportunity, in
14 the absence of the jury, at the earlier
15 instance where the jury was sent out so the
16 Court could take up a matter of law,
17 Mr. Brown leaned over and asked whether he
18 could ask me a question. I indicated that
19 would not be appropriate.

20 Yes, sir, do you want to ask your
21 question now?

22 THE WITNESS: I just want a glass
23 of water. I apologize.

24 THE COURT: I'm sorry, sir. I
25 certainly will accommodate you in that

1 regard.

2 (Brief recess.)

3 THE COURT: All counsel is are
4 present, the defendant is present. We also
5 have a water pitcher and water present.

6 Ready to go forward, folks?

7 MR. BRITT: Yes, sir.

8 THE COURT: If you'll bring the
9 jury in, please, Mr. Horne.

10 (Jury in at 11:30 a.m.)

11 THE COURT: Yes, sir, Mr. Britt.

12 BY MR. BRITT:

13 Q Mr. Brown, in your experience as a Coroner,
14 had you ever requested x-rays, dental works of bodies
15 that had been found?

16 A Yes, sir.

17 Q On how many occasions had you made such a
18 request?

19 A Just a few.

20 Q And for what purpose would you make those
21 requests?

22 A To try to identify the individual.

23 Q And do you know how it is that dental work
24 and dental x-rays can be utilized in identifying a
25 body?

1 A The dental work is usually unique to --

2 MR. THOMPSON: I object.

3 THE COURT: If he knows he may
4 answer. The objection is overruled but you
5 may answer only the specific question.

6 THE WITNESS: Would you repeat
7 the question?

8 BY MR. BRITT:

9 Q Do you know how it is that dental work and
10 dental x-rays can be utilized in identifying a body?

11 A Simply by comparing --

12 MR. THOMPSON: Object.

13 THE COURT: Overruled, exception
14 noted for the record.

15 BY MR. BRITT:

16 Q Comparing what?

17 A Comparing the x-rays or the dental charts
18 to that of the deceased individual.

19 Q And when you say to that of the deceased
20 individual, what do you mean by that?

21 A By the restorations in their mouth.

22 Q And you're referring to known dental
23 records?

24 MR. THOMPSON: Object.

25 THE COURT: Rephrase your

1 question, Mr. Britt.

2 BY MR. BRITT:

3 Q Are you familiar with the term, what can be
4 referred to as a known record of an individual?

5 A Yes, sir.

6 Q And what do you know that to mean?

7 A With the dental chart, the records that
8 have been made by the dentist who has performed the
9 work on that individual.

10 Q And what is it about a person's dental work
11 or teeth that make it -- that make it possible to
12 utilize dental x-rays in identifying bodies?

13 MR. THOMPSON: Object.

14 THE COURT: Overruled. You may
15 answer.

16 THE WITNESS: The uniqueness of
17 the teeth to the individual.

18 MR. THOMPSON: Move to strike.

19 THE COURT: Denied.

20 BY MR. BRITT:

21 Q The hands that were removed from the body
22 that you authorized the removal from the body during
23 the autopsy, what if any request did you make to SLED
24 in regard to those hands?

25 A I requested them to make -- or excuse me,

1 make fingerprints from the hands that were removed.

2 Q And for what purpose did you request that
3 those fingerprints be made?

4 A So that we would have a record of the
5 fingerprints if , at a later date, an individual that
6 was found to be missing could be compared, their
7 fingerprints to the ones that we had.

8 Q And what is it about fingerprints that make
9 it possible to identify a body?

10 MR. THOMPSON: Object.

11 THE COURT: Sustained at this
12 time.

13 BY MR. BRITT:

14 Q Had you ever requested the removal of hands
15 for purposes of fingerprinting in an autopsy?

16 A No, sir, I had not.

17 Q Had you ever requested fingerprints be made
18 from the body during the course of an autopsy?

19 A Yes, sir, I have.

20 Q And for what purpose had you made those
21 requests?

22 A To compare the existing fingerprint charts
23 to match the two individuals, or the same
24 individuals, two charts.

25 Q After receiving the x-rays from Cumberland

1 County, the dental x-rays from Cumberland County,
2 what if anything did you do with those x-rays?

3 A I compared them to the dental chart that
4 was prepared at the autopsy of at that time John
5 Doe.

6 MR. THOMPSON: I object as to --

7 THE COURT: As to what he did,
8 the objection is overruled. Exception is
9 noted for the record.

10 BY MR. BRITT:

11 Q After you compared the known dental records
12 of James Jordan that were provided to you by the
13 Cumberland County Sheriff's Department with the
14 x-rays that -- excuse me, with the dental records
15 that Dr. Sexton had provided you, did you ever
16 have --

17 MR. THOMPSON: Object.

18 THE COURT: Complete your
19 question.

20 BY MR. BRITT:

21 Q Did you ever have a conversation with
22 Dr. Lawrence Seitlin of Charlotte, North
23 Carolina?

24 THE COURT: Overruled. You may
25 answer?

1 A Yes, sir, I did.

2 Q What was your --

3 MR. THOMPSON: Move to strike.

4 THE COURT: Denied.

5 BY MR. BRITT:

6 Q What was your purpose in contacting
7 Dr. Lawrence Seitlin?

8 A My purpose at that time was to read the
9 dental chart that I had -- that was furnished to me
10 by Dr. Sexton's office to him as a matter of
11 comparison to Mr. Jordan --

12 MR. THOMPSON: Object, move to
13 strike to the last comment.

14 THE COURT: Objection overruled,
15 motion to strike is denied.

16 BY MR. BRITT:

17 Q The dental records that were provided by
18 Dr. Sexton's office, and the dental records that
19 Cumberland County Sheriff's Department had brought to
20 you, what if anything did you do with those dental
21 records?

22 A I compared the two.

23 Q After your comparison, did you give those
24 items to anyone?

25 A Turned them back over to the Cumberland

1 County Sheriff's Department.

2 THE COURT: When you referred,
3 when you say "them," what are you referring
4 to?

5 THE WITNESS: There was three
6 individuals from the Sheriff's Department
7 from Cumberland County.

8 THE COURT: I apologize for the
9 confusion. You indicated that you turned
10 certain things back over to detectives from
11 the Cumberland County Sheriff's
12 Department. What was it that you turned
13 back over to them?

14 THE WITNESS: I'm sorry, I turned
15 back over to them the dental x-rays and
16 charts that they had brought down, and I
17 also turned over a copy of the dental
18 record that we had obtained from
19 Dr. Sexton's office.

20 THE COURT: Thank you, sir.

21 MR. BRITT: If the Court would
22 indulge me just a moment.

23 THE COURT: Yes, sir.

24 MR. BRITT: May I approach the
25 witness?

1 THE COURT: Yes, sir.

2 MR. THOMPSON: Your Honor I'm
3 going the need a length of time --

4 THE COURT: Yes, sir.

5 (Short pause)

6 (State's Exhibit 37 was
7 marked for identification.)

8 MR. BRITT: May I approach the
9 witness?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Mr. Brown, I'm going to hand you what's
13 been marked as State's Exhibit Number 37. Can you
14 identify that envelope?

15 A It's an envelope from Dr. Lawrence Seitlin,
16 Charlotte, North Carolina.

17 Q At a previous time, had you seen that
18 envelope?

19 A Yes, sir.

20 Q When do you recall first seeing that
21 envelope?

22 A The morning of August the 13th, 1993.

23 Q And from whom, at the time you first saw
24 the envelope marked as State's Exhibit Number 37, in
25 whose possession was it?

1 A In the possession of the Sheriff of
2 Cumberland County, Sheriff Bledso.

3 Q And on the morning of August the -- I
4 believe you said the 13th --

5 A Yes, sir.

6 Q -- of 1993, was that envelope and its
7 contents transferred to you?

8 A Yes, sir, it was.

9 Q Is State's Exhibit Number 37-is in
10 substantially the same condition as it was in when
11 you received it on August the 13th, 1993?

12 A Yes, sir.

13 Q What if anything did you do after receiving
14 State's Exhibit Number 37 and its contents, what if
15 anything did you do with its contents?

16 A I opened the envelope and examined the
17 contents.

18 Q And do you recall what specifically you
19 located inside the envelope marked as State's Exhibit
20 Number 37?

21 A There were several x-rays, and I believe
22 one or two panorex x-rays.

23 Q Were there any identifying markers on the
24 x-rays that you found inside of State's Exhibit
25 Number 37?

1 A I don't recall.

2 Q I ask you to open State's Exhibit Number 37
3 and remove it's contents.

4 Mr. Brown, for the record, if you will
5 count the number of items that you have removed from
6 State's Exhibit Number 37?

7 A Eleven items.

8 Q And are they all marked with the State's
9 Exhibit sticker?

10 A Yes, sir, they are

11 (State's Exhibits 37-A through 37-K
12 were marked for identification.)

13 BY MR. BRITT:

14 Q Referring to State's Exhibit -- excuse me,
15 number 37-A, ask you to look at that and tell me if
16 you can identify it?

17 A Yes, sir, it's a panorex x-ray of what is
18 marked James Jordan, dated 8-18-89, marked copy.

19 Q Is it in substantially the same condition
20 as it was in when you first saw it on August the 13th
21 of 1993?

22 A Yes, sir.

23 Q Ask you to look at what has been marked as
24 State's Exhibit 37-B, ask you if you can identify it?

25 A Again, it is another panorex x-ray of James

1 Jordan, marked copy, dated 9-91, also marked again
2 James Jordan, 9-7-91.

3 Q Ask you to look at what has been marked as
4 State's Exhibit 37-C, a small manila envelope. Can
5 you identify it?

6 A It's marked James Jordan, number 22, dated
7 11-14-86.

8 THE COURT: I'm sorry. What was
9 that date again?

10 A 11-14-86.

11 BY MR. BRITT:

12 Q State's Exhibit Number 37-B, is it in
13 substantially the same condition as it was in when
14 you first saw it on August 13, 1993?

15 A Yes, sir.

16 Q And as State's Exhibit Number 37-C, does
17 that envelope contain any items?

18 A Yes, sir, it does.

19 Q For the record, you have removed that item
20 from the envelope?

21 A Yes, sir.

22 Q And for the record, what have you removed
23 from that envelope?

24 A Bite wing x-ray.

25 Q If you'll return that, is the envelope and

1 the bite wing x-ray that you've identified in
2 substantially the same condition as it was in when
3 you first saw it on August the 13th of 1993?

4 A Yes, sir.

5 Q As to State's Exhibit Number 37-D another
6 small manila envelope, can you identify it?

7 A Yes, sir, it's marked James Jordan, number
8 15, and number 22, dated 2-12-87.

9 Q If you will remove the contents of the
10 envelope marked as State's Exhibit Number 37-D. For
11 the record, what have you removed from the contents
12 of the envelope marked State's Exhibit 37--D?

13 A Three bite wings, x-rays.

14 Q When you say --

15 A Three bite wing x-rays.

16 Q If you'll return those to the envelope.
17 And is State's Exhibit 37-D in substantially the same
18 condition as it was in when you first saw them on
19 August the 13th of 1993?

20 A Yes, sir.

21 Q Ask you to look at State's Exhibit Number
22 37-E, another small manila envelope, can you identify
23 it?

24 A It's marked James Jordan, number 22, dated
25 2-25-87.

1 Q Will you remove the contents? The record
2 will reflect that Mr. Brown has removed the contents
3 of State's Exhibit 37-E. Mr. Brown, for the record,
4 what have you removed?

5 A Two x-ray -- bite wing x-rays.

6 Q Is State's Exhibit 37-E and its contents in
7 substantially the same condition as they were in when
8 you first saw them on August the 13th of 1993?

9 A Yes, sir.

10 Q Ask you to look at State's Exhibit Number
11 37-F. Examine it, tell me if you can identify it?

12 A It's marked James Jordan, number six and
13 fifteen, dated 5-12-87.

14 Q Ask you to remove the contents of State's
15 Exhibit 37-F. What have you removed from State's
16 Exhibit 37-F?

17 A One bite wing x-ray.

18 Q Is the x-ray and the envelope marked
19 State's Exhibit 37-F in substantially the same
20 condition it was in when you saw it on August the
21 13th of 1993?

22 A Yes, sir.

23 Q Ask you to look at State's Exhibit Number
24 37-G, ask you if you can identify that envelope?

25 A This one is marked James Jordan, number six

1 and eleven, dated 9-5-89.

2 Q Ask you to remove the contents. What if
3 anything have you removed from State's Exhibit 37-G?

4 A Two bite wing x-rays.

5 Q And of the x-rays in the envelope
6 substantially the same condition when you saw them on
7 August the 13th of 1993?

8 A Yes, sir, they are.

9 Q Ask you to look at State's Exhibit Number
10 37-H. Can you identify that envelope?

11 A Yes, sir. It's marked James Jordan, 5-91.

12 Q Ask you to remove the contents of State's
13 Exhibit 37-H. What if anything have you removed from
14 that exhibit?

15 A Two x-ray bite wings.

16 Q Are the x-rays and the envelope in which
17 they were contained in substantially the same
18 condition they were in when you saw them on August
19 the 13th of 1993?

20 A Yes, sir, they are.

21 Q Ask you to look at State's Exhibit 37-I.
22 Can you identify that?

23 A It's marked James Jordan, 7-8-91, number
24 31.

25 Q If you'll remove the contents. And what if

1 anything have you removed from the envelope marked
2 State's Exhibit 37-I?

3 A Two x-ray bite wings.

4 Q And are the x-rays and the envelope marked
5 State's Exhibit 37-I in substantially the same
6 condition they were in when you saw them on August
7 the 13th of 1993?

8 A Yes, sir, they are.

9 Q Ask you to look at State's Exhibit Number
10 37-J, ask you if you can identify that?

11 A It's marked James Jordan, 8-18-89, and the
12 other one is marked James Jordan, 8-18-89 also.

13 Q For the record, what is State's Exhibit
14 37-J?

15 A They are two bite wing x-rays on two
16 separate films.

17 Q And are the x-rays marked State's Exhibit
18 37-J in substantially the same condition they were in
19 when you saw them on August the 13th of 1993?

20 A Yes, sir.

21 Q Ask you to look at what has been marked as
22 State's Exhibit 37-K, ask you to examine that
23 document.

24 For the record, State's Exhibit 37-K is a
25 paper writing.

1 A Yes, sir.

2 Q And how many pages make up State's Exhibit
3 37-K?

4 A Four.

5 Q And for the record, can you identify
6 State's Exhibit 37-K?

7 A It's the dental record of James R. Jordan,
8 dated 11-13-86.

9 Q And is State's Exhibit 37-K in
10 substantially the same condition as it was in when
11 you first viewed it on August the 13th, 1993?

12 A Yes, sir.

13 Q Mr. Brown, after the Cumberland County
14 Sheriff's Department delivered the exhibits marked
15 State's Exhibit 37 through 37-K, in what way did you
16 utilize these records?

17 A I compared the x-rays and the dental chart
18 that they, that Cumberland County had provided me
19 with that of the dental chart that was charted at the
20 autopsy of the John Doe.

21 Q After you completed your comparison, what
22 if anything did you do with the dental records that
23 had been provided to you by the Cumberland County
24 Sheriff's Department?

25 A After I had compared them, there was a

1 discussion and the Cumberland County Sheriff's
2 Department requested that we might have a dentist to
3 also look at these records.

4 Q And was a local dentist there in
5 Bennettsville, South Carolina contacted?

6 A Yes, sir, he was.

7 Q Who was that dentist?

8 A Dr. Dudley C. Bailey, Jr.

9 Q And were these records taken to Dr. Bailey
10 or did Dr. Bailey come to your office?

11 A They were taken to his home.

12 Q And did you accompany the officers from
13 Cumberland County?

14 A I did.

15 Q And in your presence, did Dr. Bailey
16 examine the dental records that were provided by
17 Dr. Sexton and the dental records that had been
18 provided by the Sheriff's Department?

19 A Yes, sir, he did.

20 Q After that comparison was made, what if
21 anything was done with the known dental records of
22 James Jordan?

23 A We then returned back to the Marlboro
24 County Sheriff's Department, and I suggested and
25 subsequently made a phone call to Dr. Seitlin to

1 further compare the two charts.

2 Q After you talked with Dr. Seitlin, did you
3 return the known dental records of James Jordan to
4 the Cumberland County Sheriff's Department agents?

5 A Yes, sir.

6 Q And what if anything did you do with the
7 dental records that Dr. Sexton had provided you?

8 A I made a copy of the chart and gave that to
9 the Cumberland County Sheriff's Department.

10 Q On August the 14th, 1993, did you receive
11 the x-ray that was contained inside of State's
12 Exhibit 37 -- excuse me, 35, from Dr. Sexton's
13 office?

14 A Yes, sir, I did.

15 Q What if anything did you do with that x-ray
16 after you received it on August the 14th and until
17 you transferred it to Special Agent Barry Lea on
18 August the 17th of 1993?

19 A I kept it in my custody.

20 Q At the time you received State's Exhibit
21 Number 35, the envelope -- may I approach?

22 THE COURT: Yes, sir.

23 BY MR. BRITT:

24 Q The envelope containing the dental x-ray,
25 was there a number that appeared on that envelope?

1 A Yes, sir.

2 Q What number appeared on that envelope?

3 A FA-93-243.

4 Q Was there a name that appeared on that
5 envelope?

6 A Yes, sir.

7 Q What name appeared on that envelope?

8 A Jackson, comma, James.

9 Q And do you know by whom that name was
10 placed on the envelope?

11 A No, sir, I do not.

12 Q Did you ever have a conversation with
13 Dr. Sexton regarding the name Jackson comma James
14 being on the envelope bearing the autopsy number for
15 the body that was found in the Gum Swamp on August
16 the 3rd, 1993?

17 A I had a conversation with Mrs. Sexton.

18 Q When did that conversation take place, if
19 you recall?

20 A Sometime after I had received the x-rays.

21 Q And the time and place you had that
22 conversation with her, had the dental comparisons
23 between the records that were obtained during the
24 autopsy and the records provided by the Cumberland
25 County Sheriff's Department taken place?

1 A Yes, sir.

2 Q To your knowledge, did Dr. Sexton make a
3 comparison of the dental records that were made
4 during the autopsy and the dental records that were
5 provided by Dr. Seitlin those being the known dental
6 records of James Jordan?

7 MR. THOMPSON: Object.

8 THE COURT: If you know you may
9 answer.

10 THE WITNESS: Not to my
11 knowledge, he did not.

12 BY MR. BRITT:

13 Q Can you explain why the name James Jackson
14 appears on the envelope bearing the autopsy number
15 for the body that was discovered on August the 3rd,
16 1993 in the Gum Swamp?

17 MR. BOWEN: Object.

18 THE COURT: Sustained.

19 BY MR. BRITT:

20 Q Do you know what a toxicology report or
21 toxicology analysis is?

22 A Yes, sir.

23 Q What is a toxicology analysis?

24 A Analysis of the body fluids to determine
25 substance in the system.

1 Q And the autopsy that was performed on the
2 body that was removed from the Gum Swamp, that
3 autopsy on August the 4th, 1993, did you request or
4 authorize a toxicology analysis?

5 A Yes, sir, I did.

6 Q Who did you request do that toxicology
7 analysis?

8 A South Carolina law enforcement division.

9 Q And as a result of that request, did you
10 subsequently receive a report in your capacity as
11 Coroner on the results of that toxicology analysis?

12 A Yes, sir, I did.

13 Q Mr. Brown, as the Coroner of Marlboro
14 County, South Carolina, are you required to keep
15 records regarding each of the bodies that are found
16 or located under suspicious causes?

17 MR. BOWEN: Object.

18 THE COURT: Overruled. You may
19 answer.

20 THE WITNESS: Yes, sir.

21 BY MR. BRITT:

22 Q And do you maintain those records as an
23 official part of your duties as Coroner?

24 A I do.

25 Q Where are those records maintained?

1 A In the Marlboro County courthouse.

2 Q And under who's direction are those records
3 maintained?

4 A Clerk of Court.

5 Q Is it the regular practice of the office of
6 Coroner Marlboro County, South Carolina to maintain
7 these records?

8 A Yes, sir.

9 Q And the information that's placed in those
10 records, they become a part of the official record of
11 the Coroner's office?

12 A Yes, sir, they do.

13 Q As the Coroner, are you the official record
14 keeper of those records?

15 A I am, yes, sir.

16 (State's Exhibit 38 was
17 marked for identification.)

18 BY MR. BRITT:

19 Q Mr. Brown, I'm going to hand you what's
20 been marked as State's Exhibit Number 38 and ask you
21 if you can identify that document?

22 A Yes, sir, I can.

23 Q And how are you able to identify that
24 document?

25 A It was addressed to me.

1 Q And is State's Exhibit Number 38 a document
2 that was sent to you by the State Law Enforcement
3 Division, Columbia, South Carolina?

4 A Yes, sir.

5 Q Bears the signature of Mark Peavy?

6 A Yes, sir.

7 Q And is it -- for the record, what is
8 State's Exhibit Number 38?

9 A It's a photocopy of a toxicology report
10 provided to me by the State Law Enforcement Division,
11 signed by Mr. Mark Peavy, dated 10-21-93, and the
12 location of the SLED, short for State Law Enforcement
13 Division.

14 Q State's Exhibit Number 38, was that
15 document made a part of the official records that you
16 maintained as the Coroner of Marlboro County, South
17 Carolina?

18 A Yes, sir.

19 Q And those records are kept in the ordinary
20 course of your business?

21 A Yes, sir.

22 MR. BRITT: Your Honor, at this
23 time, I move that State's Exhibit Number 38
24 be admitted.

25 THE COURT: Counsel want to be

1 heard?

2 MR. BOWEN: Yes, sir.

3 THE COURT: It's matter of law,
4 members of the jury, we must take up with
5 counsel. Don't worry or speculate about
6 what takes place in the courtroom in your
7 absence. If all members of the jury would
8 step to the jury room, please.

9 (Jury out at 12:14 p.m.)

10 THE COURT: Let the record show
11 the following is being conducted in the
12 absence of the jury.

13 What is the specific objection by
14 counsel for the defendant as to State's
15 Exhibit 38?

16 MR. BOWEN: Your Honor, we
17 object -- what he's trying to do is get in
18 under the business records exception matter
19 which pertains to what an expert would be
20 entitled to do. For that reason, we object
21 to it.

22 THE COURT: So that I'm clear,
23 you're objecting on hearsay grounds.

24 MR. BOWEN: Yes, and an improper
25 business records foundation.

1 THE COURT: All right. What
2 purpose is State's Exhibit 38 being
3 offered?

4 MR. BRITT: Your Honor, it's
5 being offered as exception to hearsay rule
6 pursuant to 803-6 which is records of
7 regularly conducted activity, and
8 specifically, I refer to the rule which
9 says "A memorandum, report, record or data
10 compilation in any form of acts, events,
11 conditions, opinions or diagnosis made at
12 or near the time by or from information
13 transmitted by a person with knowledge, if
14 kept in the course of regularly conducted
15 business activity, and if it was the
16 regular practice of that business activity
17 to make memorandum, report, record or data
18 compilation, all is shown by the testimony
19 of the custodian or other qualified
20 witness, unless the source of the
21 information or the method of the
22 circumstances of preparation indicate lack
23 of trustworthiness."

24 THE COURT: It's a business
25 record which you're offering it under.

1 MR. BRITT: Yes, sir.

2 THE COURT: Objection is
3 sustained, foundation incomplete as to this
4 witness. He can identify it, he can
5 identify having received it, he can
6 identify or testify as to what he did with
7 it, but it's going to have to come in
8 through another witness.

9 THE COURT: Bring the jury back
10 in, please.

11 (Jury in at 12:47 p.m.)

12 THE COURT: All right. The
13 objection is sustained. You may ask
14 additional questions, Mr. Britt.

15 BY MR. BRITT:

16 Q Mr. Brown, State's Exhibit Number 38 that
17 you previously identified as a toxicology report?

18 A Yes, sir.

19 Q Does it contain the results of the
20 toxicology analysis that you requested of the body on
21 August the 4th, 1993?

22 A Yes, sir, it does.

23 Q Who performed that toxicology analysis if
24 you know?

25 MR. THOMPSON: Well, I object.

1 THE COURT: Do you have personal
2 knowledge?

3 THE WITNESS: State Law
4 Enforcement Division. Is he specifically
5 asking the person?

6 THE COURT: Well, ask additional
7 questions. The objection is sustained.

8 BY MR. BRITT:

9 Q Does the name Mark Peavy appear on State's
10 Exhibit 38?

11 A Yes, sir.

12 Q State's Exhibit 38, you made part of your
13 official records as it related to the investigation
14 of the death that was found in the Gum Swamp or the
15 body?

16 A Yes, sir.

17 Q Mr. Brown, after the dental comparisons
18 were made on August the 14th, did you authorize
19 anything to be done with the jaws and the hands that
20 had been retained from the autopsy?

21 A Yes, sir, I did.

22 Q What if anything did you authorize be done
23 to those objects?

24 A I authorized the jaws and the hands to be
25 returned to me in my custody, and then I authorized

1 them to subsequently be cremated.

2 Q What if anything do you know happened with
3 the ashes from the cremation of the body and then the
4 ashes from the cremation of the hands and the jaws?

5 A I took the remains of the cremated body to
6 Newberry, South Carolina, picked up the jaws from the
7 hospital, from Dr. Sexton's office. I then went to
8 Columbia, South Carolina, picked up the hands,
9 carried them to Kaufmann Harmon Funeral Home, had
10 them cremated, and all the ashes put into one
11 container. I then flew to Wilmington, North Carolina
12 and delivered them to Jordan Funeral Home in
13 Wilmington, North Carolina.

14 MR. BRITT: Thank you, I don't
15 have any other questions.

16 THE COURT: Any cross-examination
17 Mr. Thompson, Mr. Bowen?

18 CROSS-EXAMINATION

19 BY MR. THOMPSON:

20 Q Good afternoon.

21 A Good afternoon, sir.

22 Q Mr. Brown, I believe when you -- sometime
23 after, at least, August the 12th, 14th of 1993, you
24 gave several interviews to media, is that right?

25 A Yes, sir, that's correct.

1 Q And you talked about the body that was
2 found off of Pea Bridge Road on July 23, 1993, with
3 several media persons, did you not?

4 A No, sir. August the 3rd, not July 23rd, is
5 when the body was found. Is that what --

6 Q I'm sorry, August the 3rd, I'm sorry.

7 A Yes.

8 Q You discussed that incident, did you not?

9 A Yes, sir, I did.

10 Q And you discussed with certain media
11 personnel or persons things about the autopsy that
12 you had found out about or talked with others about,
13 did you not, you talked with media personnel about
14 that?

15 A Could you be more specific? I'm --

16 Q Well, did you discuss -- you discussed with
17 media persons that the body had been cremated, which
18 was found off of Pea Bridge Road?

19 A Yes, sir, that question was posed to me and
20 I answered it.

21 Q Did you discuss with those individuals
22 about Dr. Sexton's findings, any findings as a result
23 of the autopsy?

24 A Yes, sir.

25 Q To several media persons?

1 A To the best of my knowledge, yes, sir.

2 Q Did you have an autopsy report, had you
3 gotten an autopsy report when you discussed those
4 matters with the media?

5 A I had a conversation by telephone with
6 Dr. Sexton, and I had subsequently received his
7 autopsy report, I believe, before the discussions
8 were made to the press, the media.

9 Q Well, now, does South Carolina -- are you
10 prevented by South Carolina law -- were you prevented
11 by South Carolina law back in August of 1993 from
12 providing autopsy reports to anyone? I mean, is it a
13 process, was there a law for obtaining autopsy
14 reports other than directly from you?

15 MR. BRITT: Objection.

16 THE COURT: Well, there's three
17 or four questions.

18 MR. THOMPSON: Well, let me strike
19 all that and start over.

20 BY MR. THOMPSON:

21 Q Was there a South Carolina law which
22 prevented you from providing an autopsy report, for
23 example, to me, if I requested such an autopsy
24 report?

25 A Freedom of Information Act that's in the

1 State of South Carolina provides that autopsies that
2 are made part of the record, or my records, are
3 obtainable by the public, yes, sir.

4 Q Did anyone instruct you -- strike that. I
5 talked to you sometime in August of 1993?

6 A Yes, sir.

7 Q By telephone?

8 A Correct.

9 Q And I asked at that time for a copy of an
10 autopsy report, did I not?

11 MR. BRITT: Objection to what
12 Mr. Thompson may have requested. It's
13 hearsay.

14 THE COURT: For the purposes of
15 cross-examination, the objection is
16 overruled. Exception is noted for the
17 record. You may continue, Mr. Thompson.

18 BY MR. THOMPSON:

19 Q You had a copy of the autopsy report at
20 that time?

21 A Yes, sir, I did.

22 Q Now, did anyone instruct you not to give me
23 a copy of the autopsy report? Let me just strike
24 that and back up.

25 Mr. Brown, you remember there was some

1 conversation concerning, I believe, the Attorney
2 General.

3 THE COURT: We're getting into
4 problematic areas involving conversation
5 between counsel and the witness. You're
6 going to have to ask other questions, sir.

7 BY MR. THOMPSON:

8 Q Were you instructed not to provide me a
9 copy of the autopsy report after I requested it from
10 you, by anyone?

11 A Yes, sir.

12 Q Who instructed you not to provide me a copy
13 of the autopsy report?

14 A Mr. Charles Richardson.

15 Q Who is Mr. Charles Richardson?

16 A He's with the State Attorney General's
17 Office, State of South Carolina.

18 Q Now, that was -- those instructions --
19 strike that. Let me ask you, do you normally contact
20 the -- did you contact the Attorney General's office?

21 A Yes, sir, I did.

22 Q After I called you?

23 A Yes, sir.

24 Q Do you normally do that when someone, an
25 attorney requests a copy of the autopsy report?

1 A No, sir.

2 Q And after contacting -- what did you say --
3 Mr. Charles Richardson --

4 A Yes, sir.

5 Q -- he advised you at that time to not give
6 it to me unless I obtain a court order?

7 MR. BRITT: Objection hearsay.

8 THE COURT: Sustained.

9 BY MR. THOMPSON:

10 Q Well what did he --

11 MR. BRITT: Objection, hearsay.

12 THE COURT: You can't get into
13 that.

14 MR. THOMPSON: Yes, sir.

15 BY MR. THOMPSON:

16 Q Were you advised by anyone not to discuss
17 with me, Mr. Brown, the matters that you had
18 previously discussed with the media that you just
19 testified to?

20 MR. BRITT: Objection.

21 THE COURT: If you'll bear with
22 me for one second. It's almost 12:30 now.
23 How long do you estimate the
24 cross-examination is going to take.

25 MR. THOMPSON: The entire

1 cross-examination?

2 THE COURT: Would it carry into
3 this afternoon.

4 MR. THOMPSON: Yes.

5 THE COURT: Ladies and gentlemen
6 of the jury, we're going to take the lunch
7 recess. You will be allowed to take the
8 lunch recess a little earlier today. I'm
9 going to release you at this time. Please,
10 return to the jury room no later than
11 2:15. We will start back at 2:15 this
12 afternoon.

13 During the lunch recess, please don't
14 discuss this matter among yourself or
15 anyone else. Don't allow anyone to say
16 anything to you or in your presence about
17 this case. If anyone does or attempts to
18 do so, or says anything in your presence
19 about this case, it's your duty to inform
20 us of that immediately through one of the
21 bailiffs assigned to the courtroom.

22 Don't form or express any opinions
23 about this matter. Don't have any contacts
24 or communication of any kind with any of
25 the attorneys, parties, witnesses,

1 prospective witnesses or directly with the
2 Court. Don't allow yourselves to be
3 exposed to any media accounts which may
4 exists in connection with this matter and
5 don't conduct any independent inquiry or
6 investigation or any research of any kind.

7 Everyone else please remain seated.
8 Members of the jury are excused until
9 2:15.

10 (Jury out at 12:28 p.m.)

11 THE COURT: All right, in the
12 absence of the jury, Mr. Thompson, I'm
13 assuming that generally this area that
14 you're now in in terms of your
15 cross-examination goes to the issue of
16 bias.

17 MR. BOWEN: Yes, sir.

18 THE COURT: You're entitled to
19 explore that but we are on perilous grounds
20 in terms of phrasing questions. We are in
21 the context of any conversations between
22 this witness and counsel. You're entitled
23 to explore bias, but that's a problematic
24 area.

25 MR. THOMPSON: Yes, sir.

1 THE COURT: Could give rise to
2 the necessity for counsel for the defendant
3 to potentially become a witness in this
4 case, or rendering ineffective assistance
5 of counsel because of the inability to
6 become a witness in this case. That is a
7 real difficult area, needs to be avoided if
8 at all possible. You can phrase the
9 questions in other ways to deal with the
10 areas that I think you want to get into.

11 MR. THOMPSON: I understand.

12 THE COURT: Any other matters
13 that we need to address at this point,
14 folks?

15 MR. BRITT: No, sir.

16 THE COURT: Okay. You're
17 entitled to explore, I'm simply going to
18 ask that you rephrase.

19 MR. THOMPSON: Okay.

20 THE COURT: We'll come back.
21 Mr. Brown, you may step down. Thank you,
22 sir. We'll be at ease until 2:15 this
23 afternoon.

24 (Lunch recess.)

25 THE COURT: Good afternoon,

1 folks.

2 MR. BRITT: Good afternoon.

3 THE COURT: We still have about
4 three minutes. I wanted to make sure all
5 the members of the jury are secured.

6 THE BAILIFF: Yes, sir, they
7 are.

8 MR. THOMPSON: I'm going the need
9 those three minutes, Your Honor.

10 THE COURT: Okay. Yes, sir.

11 MR. BRITT: We still have a
12 couple of minutes?

13 THE COURT: Yes, sir.

14 MR. BRITT: I need to retrieve
15 something from my office.

16 THE COURT: Yes, sir.

17 MR. BRITT: We're ready to go.

18 THE COURT: Let the record show
19 that all counsel are present, the defendant
20 is present in open court. All members of
21 the jury are secured in the jury room.
22 Mr. Thompson, are you ready to proceed with
23 cross-examination of Mr. Brown?

24 MR. THOMPSON: Yes, sir.

25 THE COURT: Mr. Brown, if you'll

1 again take the witness stand. And sir, you
2 remain under oath. If you will bring the
3 members of the jury in at this point.

4 (Jury in at 2:14 p.m.)

5 THE COURT: Good afternoon,
6 ladies and gentlemen of the jury.

7 Mr. Thompson you may continue with
8 cross-examination, sir.

9 BY MR. THOMPSON:

10 Q Good afternoon, Mr. Brown?

11 A Good afternoon.

12 Q When I contacted you back in August 1993
13 concerning that autopsy report I indicated to you
14 that I was representing Daniel Green?

15 MR. BRITT: Objection.

16 THE COURT: At this point,
17 overruled.

18 BY MR. THOMPSON:

19 Q You may answer?

20 A Yes, sir, you did.

21 Q Now, let's go back to the 3rd of August of
22 1993 when you received a call from Officer Starnes, I
23 believe it was, to go to Pee Bridge, is that correct?

24 A Yes, sir, that's correct.

25 Q And Mr. Brown, when deaths occur in

1 Marlboro County during your tenure as Coroner, are
2 you usually called when suspicious deaths occur as
3 Coroner?

4 A Yes, sir, I am.

5 Q So having received a call from Mr. Starnes
6 indicating to you that perhaps there was a suspicious
7 death, is that right?

8 A Yes, sir, that's correct.

9 Q And when you went to Gum Swamp down on Pea
10 Bridge Road were you in charge of the investigation
11 as Coroner?

12 A I was in charge of my investigation.

13 Q So your investigation is separate from law
14 enforcement investigation, is that correct?

15 A Yes, sir.

16 Q And when you were there, near or about that
17 creek, Gum Creek there on Pea Bridge Road, you
18 instructed certain people to do certain things, is
19 that right?

20 A Yes, sir, I did.

21 Q And you authorized certain people to do
22 certain things?

23 A Yes, sir.

24 Q And while the body was there on the scene,
25 in fact, you have the last word, is that not right,

1 as Coroner, in your capacity as Coroner?

2 A Last word --

3 Q As to what if anything is to be done there
4 on the scene with the body?

5 A Oh, yes, sir.

6 Q And I believe it was your call not to call
7 James Grooms, to make sure that when the body was
8 retrieved to keep the body face down, is that right?

9 A I instructed the rescue squad to that
10 effect, yes, sir.

11 Q Now Mr. Brown, I believe you indicated you
12 made some photographs, is that correct?

13 A Yes, sir, I did.

14 Q Did you have a conversation with any SLED
15 officers or local Marlboro County Sheriff's
16 Department officers with regard to what if anything
17 was to be done with the clothes on the body?

18 THE COURT: At what time, Mr. Thompson?

19 BY MR. THOMPSON:

20 Q August the 3rd, 1993?

21 A No, sir.

22 Q Thereafter, on any date after August the
23 3rd of 1993, did you have any conversation with any
24 officers as to what was to be done with the clothes?

25 A No, sir.

1 Q And what about with ambulance people,
2 emergency personnel, did you have any conversation
3 with that personnel as to what if anything were to be
4 done with the clothes?

5 A No, sir, I did not.

6 Q Now, when you opened the body bag, that was
7 at the McColl Rescue Unit?

8 A Yes, sir.

9 Q And it's your testimony you did not turn
10 the body over, you basically looked at, pulled up the
11 shirt and looked at the back of the body, is that
12 right?

13 A That's correct, sir.

14 Q Now, again, would you tell me who was
15 present there at the McColl Rescue Unit building back
16 on August the 3rd of 1993 when you examined that
17 body.

18 A It was myself, Sheriff Chuck Foley,
19 Lieutenant Jerry Starnes, Marlboro County Sheriff's
20 Department. Tommy Frazier with South Carolina Law
21 Enforcement Division, members of the McColl Rescue
22 Squad, other deputies, I can't recall everybody, but
23 that's --

24 Q Okay. Do you know which law enforcement
25 agency took the lead or was in charge of their

1 investigation? I mean, you indicated that you were
2 in charge of your investigation. Was there a lead
3 law enforcement agency in this investigation?

4 THE COURT: Still talking about
5 on August the 3rd?

6 BY MR. THOMPSON:

7 Q August the 3rd, I'm sorry.

8 A Marlboro County Sheriff's Department has
9 jurisdiction over the investigation. I work closely
10 with the county law enforcement, but SLED was called
11 in, which is a routine practice of the Sheriff, to
12 assist, I don't know who exactly would be your lead,
13 but I would say the Sheriff from Marlboro County has
14 jurisdiction.

15 Q Well, even though Sheriff Foley was the
16 Sheriff of Marlboro County, did he normally get
17 involved in collection of evidence and investigations
18 if you know --

19 MR. BRITT: Objection.

20 BY MR. THOMPSON:

21 Q When you had been on the scene?

22 THE COURT: If you know you may
23 answer.

24 THE WITNESS: In some cases I
25 have witnessed him to collect evidence and

1 investigate a crime scene.

2 BY MR. THOMPSON:

3 Q Okay. Jerry Starnes, I believe, back on
4 August the 3rd was a Lieutenant then, was he not, or
5 do you know?

6 A I believe that's correct, yes, sir.

7 Q Was he the -- strike that.

8 You never, while you were there at the
9 McCull Rescue Unit, never saw a wound to the body, is
10 that correct?

11 A That's correct.

12 Q Were you present when the autopsy was
13 performed by Dr. Sexton?

14 A No, sir, I was not.

15 Q Do you generally attend autopsies in
16 suspicious deaths in your position as Coroner, or
17 sometimes you do, sometimes you don't? What is your
18 practice?

19 A When I was first elected, I did attend a
20 number of autopsies, but have not been present at one
21 in several years.

22 Q Now, you have testified that you authorized
23 the hands and the jawbone of the body being removed,
24 is that correct?

25 A Yes, sir, I did.

1 Q Were you -- was it suggested to you by
2 anyone that the hands and the jawbone be removed?

3 A Yes, sir.

4 Q Who suggested that to you?

5 A Dr. Sexton.

6 Q And I believe you indicated in your direct,
7 on direct examination, that you've never requested
8 the removal of hands before, is that correct?

9 A That's correct.

10 Q Now, was there any law existing back in
11 August of 1993 with respect to how long you or -- as
12 Coroner or any other law enforcement official was
13 required to keep a body in these types of
14 investigations?

15 A No, sir.

16 Q Is there a law now which exists?

17 A Oh, yes, sir.

18 Q When was that law passed?

19 MR. BRITT: Objection.

20 THE COURT: Sustained.

21 BY MR. THOMPSON:

22 Q Now, Mr. Brown, you left the McColl Rescue
23 Unit with the body on your truck, is that right?

24 A Yes, sir, I did.

25 Q You went to the Marlboro County Hospital?

1 A Yes, sir.

2 Q And there you met Art Springer?

3 A Yes, sir.

4 Q Who was the driver for Palmetto Services?

5 A Palmetto Professional Services, yes, sir.

6 Q And from there you -- did you load the body
7 at the Marlboro County Hospital into the van of
8 Mr. Springer?

9 A No, sir.

10 Q You went to your office?

11 A We went to the Sheriff's office first, and
12 left the Sheriff's office and then went to my office,
13 my business office, and at that location we -- I
14 think I testified that we rinsed the body bag off, we
15 sprayed it, and then we loaded it into the van.

16 Q I believe you also testified that while at
17 the Sheriff's office you don't recall whether you
18 stayed with the body or not, is that right?

19 A No, I did -- I know I did not stay with it
20 the entire time. I couldn't recall if Mr. Springer
21 had stayed outside while I went inside or not.

22 Q Now, Mr. Brown, in your capacity as
23 Coroner, you signed a death certificate in this case,
24 is that correct?

25 A Yes, sir, I did.

1 Q Now, what is your duty or what were your
2 duties with regard to filing death certificates or --
3 in this case as Coroner?

4 A Well, it's no different than in any ways.
5 I file a death certificate on any death that I
6 investigate.

7 Q Okay. And do you actually fill out the
8 information in the document itself?

9 A I fill out the portion that is required to
10 be filled out by the certifier, the person that's
11 certifying the death. The person that certifies the
12 death, I do not fill out the entire death
13 certificate. There are portions of that that are
14 filled out by the funeral homes and through the
15 family, information of that nature, at the top of the
16 death certificate.

17 Q You don't have a copy of the death
18 certificate with you, do you?

19 A Not here. I mean, I have one --

20 MR. THOMPSON: May I approach the
21 witness, Your Honor?

22 THE COURT: Yes, sir.

23 (Defense Exhibit 2 was
24 marked for identification.)

25 BY MR. THOMPSON:

1 Q I hand you what's been previously marked,
2 Mr. Brown, as Defense Exhibit Number 2, which appears
3 to be a copy of the death certificate. Can you
4 identify that document, Defendant's Exhibit Number 2?

5 A Yes.

6 Q What is it?

7 A It's a death certificate of a James Raymond
8 Jordan.

9 Q Now, I believe as indicated on Defendant's
10 Exhibit Number 2, you signed that death certificate
11 on August the 23rd of 1993, is that right?

12 A Yes, sir, that's correct.

13 Q Now, you took the ashes to Wilmington prior
14 to August the 23 of 1993?

15 A Yes, sir. August 14th.

16 Q August 14th. I believe you said that the
17 body remained with Kaufmann Funeral Home after it was
18 transported to Kaufmann by the -- by Professional
19 Services, Palmetto?

20 A Yes, sir.

21 Q Until August the 7th of 1993?

22 A That's correct.

23 Q And you ordered the body to be cremated on
24 August the 6th, the day before?

25 A That's correct now.

1 Q Now, when you filled out the portion of the
2 death certificate as -- that you have now before you,
3 which has been identified as Defendant's Exhibit
4 Number 2, it's your testimony that certain portions
5 of that document was not filled out, is that correct,
6 when you signed it?

7 A No, sir, my testimony would be that
8 portions were filled out by others and then sent to
9 me. And then I completed my portion and sent it
10 back.

11 Q So Defendant's Exhibit Number 2 was filled
12 out by others and then sent to you?

13 A That's correct.

14 Q And then you signed it?

15 A Yes, sir.

16 THE COURT: For the purposes of
17 clarification, is it your testimony that
18 the document was filled out in its entirety
19 by others before it was sent to you and
20 signed by you, or is it your testimony that
21 portions of Defendant's Exhibit 2 were
22 filled out by others before that document
23 was sent to you and then you completed the
24 portion that you were responsible for and
25 signed it?

1 THE WITNESS: That's correct.

2 THE COURT: The latter or the
3 former?

4 THE WITNESS: The latter.

5 BY MR. THOMPSON:

6 Q That portions of Defendant's Exhibit Number
7 2 were filled out by others before you signed it?

8 A That's correct.

9 Q But there were portions of that document
10 which were not filled out when you signed it, that's
11 your testimony?

12 A If I could --

13 THE COURT: Yes, sir.

14 THE WITNESS: Clarify. On the
15 death certificate, there are four different
16 sections. First being labeled decedent,
17 second is the cause of death. Third is
18 called certifier and fourth is the
19 disposition. The only portions that I
20 filled out were the cause of death and the
21 certifier. The decedent's information and
22 the disposition was filled out by others.

23 BY MR. THOMPSON:

24 Q Okay. My question, Mr. Brown, is when you
25 signed the death certificate after filling out the

1 portion that you filled out, that was on August the
2 23rd of 1993, is that right?

3 A That's correct.

4 Q Was any of the top portion of Defendant's
5 Exhibit Number 2, particularly with respect to the
6 portion indicated decedent, was that filled out when
7 you signed it as it appears now on Defendant's
8 Exhibit Number 2?

9 A Yes, sir.

10 Q Is it your testimony, Mr. Brown, that when
11 you filled out and signed Defendant's Exhibit Number
12 2, that the date of death portion was filled out on
13 Defendant's Exhibit Number 2, which appears in the
14 top right-hand corner?

15 A The portions of that were typed in by
16 others. I'm not sure about the 1993.

17 Q Was it filled out when you signed the
18 document on 8-23-1993?

19 THE COURT: Was what filled out?

20 MR. THOMPSON: What I've just referred
21 to as the date of death.

22 THE COURT: Okay.

23 BY MR. THOMPSON:

24 Q As it appears now on Defendant's Exhibit
25 Number 2?

1 A Yes, sir.

2 Q And it appears on Defendant's Exhibit
3 Number 2 that the county of death is indicated as
4 Robeson County, is that right?

5 A Yes, it is.

6 Q And that had appeared on the document when
7 you signed it, is that right?

8 A Yes, sir, it did.

9 Q And it appeared on the document,
10 Defendant's Exhibit Number 2, that the city, town and
11 location was Lumberton, that's what is on Defendant's
12 Exhibit Number 2, is that right?

13 THE COURT: Can you refer to it by the
14 designation that appears on the document, what those
15 four areas he recited?

16 BY MR. THOMPSON:

17 Q Well, looking under the block that has 9-C
18 on Defendant's Exhibit Number 2?

19 A Yes, sir.

20 Q That's correct?

21 MR. THOMPSON: Thank you, Your
22 Honor.

23 THE COURT: What is that
24 entitled, block on the left-hand side?

25 MR. THOMPSON: Talking about the

1 section that has decedent.

2 THE COURT: Thank you. That's
3 the word I was looking for. Let's refer to
4 it by those areas.

5 BY MR. THOMPSON:

6 Q The decedent block, 9-C, it's your
7 testimony that was filled out when you signed the
8 document on 8-23-93?

9 A That's correct.

10 Q Along with block 9-E , which you just
11 testified to has Robeson in it?

12 A That's correct.

13 Q For the record, we're going back, okay.
14 Now, when you signed Defendant's Exhibit Number 2 on
15 August the 23rd of 1993, block 12-A under the
16 decedent section, what does that indicate?

17 A Decedent's usual occupation.

18 Q And what is indicated in that block?

19 A Clothing sales.

20 Q And that was there when you signed this
21 document an 8-23-1993?

22 A As far as I know, yes, sir.

23 Q The type of business or industry, next, in
24 the decedent section, which is block 12-B, "retail
25 clothing" appears in that block, does it not?

1 A Yes, sir.

2 Q And it was there when you signed this
3 document on August the 23rd of 1993?

4 A Yes, sir.

5 Q When was this document filed, do you know,
6 based on looking at Defendant's Exhibit Number 2?

7 A It was filed under the, I believe it's item
8 number 28 under disposition, is that -- little hard
9 for me to read but I believe it's 28. It says date
10 filed 8-30-1993. It's at the bottom, in the middle
11 of the document.

12 Q Okay. Now, the date December 6, 1993,
13 which appears on the top right-hand corner of
14 Defendants Exhibit Number 2, do you know what that
15 date refers to, if you know, do you know?

16 A Refers to December 6th.

17 Q Says December 6 of 1993?

18 A Yes, sir.

19 Q What did that refer to, do you know? Was
20 that on the document? That wasn't on the document
21 when you filled it out, was it?

22 A I don't recall.

23 Q September 8th of 1993, do you know what
24 that means on the document in the top left-hand
25 corner?

1 A No, sir, I do not.

2 Q That is your signature on Defendant's
3 Exhibit Number 2, is it not, at the bottom portion of
4 that document?

5 A Yes, sir, it is, under 23 A.

6 Q Under section 23 A under certifier?

7 A That's correct

8 (Defense Exhibit 3 was
9 marked for identification.)

10 MR. THOMPSON: May I approach the
11 witness?

12 MR. BRITT: May I ask the
13 necessity for Mr. Bowen's presence at the
14 witness stand?

15 MR. BOWEN: I would like to see
16 the exhibits, please, sir.

17 THE COURT: Yes.

18 BY MR. THOMPSON:

19 Q Hand you, Mr. Brown, what has been
20 previously marked and identified as Defendant's
21 Exhibit Number 3. Is that also a copy of the death
22 certificate of James Jordan?

23 A Yes.

24 Q Signed by you?

25 A Yes.

1 Q Certified by you?

2 THE COURT: What's that number
3 sir?

4 MR. THOMPSON: Defendant's Exhibit
5 Number 3.

6 BY MR. THOMPSON:

7 Q Now that death certificate, Defendant's
8 Exhibit Number 3, is signed by you and indicated that
9 it was signed by you on August the 23rd of 1993, is
10 that right?

11 A That's correct.

12 Q Now, on Defendant's Exhibit Number 3 that's
13 signed by you, does it appear under section 9-H-E
14 under the section where it says decedent, is 9-E
15 filled out?

16 MR. BRITT: Objection.

17 THE COURT: Like to be heard.

18 MR. BRITT: Yes.

19 THE COURT: Ladies and gentlemen
20 of the jury, a matter of law the court must
21 take up out of the presence of the jury.
22 Please recall my instruction in that
23 regard. Again, don't worry or speculate
24 what takes place in the courtroom in your
25 absence. Please step to the jury room at

1 this time.

2 (Jury out at 2:45 p.m.)

3 THE COURT: The following is
4 being heard in the absence of the jury.

5 I've asked the witness to hand me
6 Defendant's Exhibit Number 3 so that I can
7 look at it. What was the --

8 MR. THOMPSON: Here's number two
9 also.

10 THE COURT: Thank you. If you'll
11 bear with me for one second, please.
12 Mr. Britt?

13 MR. BRITT: Your Honor, as to
14 Defendant's Exhibit Number 3, there had
15 been no foundation laid. The objection
16 also goes to -- along the lines that I
17 anticipate Mr. Thompson is going to ask
18 Mr. Brown to compare information contained
19 in Defendant's Exhibit Number 2 with that
20 compared with Defendant's Exhibit Number 3,
21 neither one of which are in evidence at
22 this point.

23 THE COURT: Well, he's been
24 allowed to elicit on cross-examination its
25 contents of Defendant's Exhibit 2, without

1 objection.

2 MR. BRITT: As to number two,
3 yes, sir.

4 THE COURT: Yes. As to number 3
5 you're objecting now as to the contents.

6 MR. BRITT: Yes, sir.

7 THE COURT: He doesn't have to --
8 he can give him the opportunity to examine
9 it, review it to himself and then ask
10 questions on cross-examination. Without
11 reference to the contents specifically in
12 the hand of the witness. But there are
13 several foundational questions that have to
14 be asked first.

15 MR. THOMPSON: All right.

16 THE COURT: Where are you going
17 with this, Mr. Thompson? What is it being
18 offered for?

19 MR. THOMPSON: Well, the
20 difficulty -- I mean, this is
21 cross-examination, excuse me, Your Honor,
22 and --

23 THE COURT: I know that.

24 MR. THOMPSON: We're dealing with
25 the testimony of Mr. Brown who says that he

1 signed the death certificate on August 23
2 of 1993, and when he signed the document --

3 THE COURT: That's as to Number
4 2.

5 MR. THOMPSON: It was filled out,
6 and I'm simply trying to now, as to Number
7 3, which is also a death certificate with
8 his signature on it, the same day, appears
9 to -- and it's clear that the sections
10 which he testified to were filled out on
11 Defendant's Exhibit Number 2 are not filled
12 out on Number 3.

13 THE COURT: I understand.

14 MR. THOMPSON: That's what --

15 THE COURT: You'll need to
16 establish how many copies may have been
17 signed by the witness on the date in
18 question.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: You'll need to
21 establish that he has some knowledge as to
22 State's Exhibit Number -- or Defendant's
23 Exhibit Number 3, pardon me, either as to a
24 copy or in some other context, but his
25 testimony is that as to the information

1 contained in that portion marked decedent
2 he had no responsibility for filling out
3 any of that information. Presumably that
4 applies to Defendant's Exhibit Number 3,
5 but if you're attempting to establish that
6 there may have been multiple copies signed
7 by him at one time or at different times,
8 then you're entitled to pursue that for
9 purposes of either impeachment or as going
10 to bias or some other legitimate grounds of
11 cross-examination.

12 Foundation at this point is incomplete
13 as to Defendant's Exhibit Number 3, the
14 objection is sustained on that ground as
15 well as it referring to the contents of
16 Defendant's Exhibit Number 3.

17 MR. THOMPSON: Yes, sir.

18 THE COURT: I'm going to give
19 both Defendant's Exhibits 2 and 3 to the
20 witness. If you need either of those
21 documents you may obtain them from the
22 witness. Any other matters?

23 MR. BRITT: No, sir.

24 THE COURT: The objection
25 sustained. Please bring the jury back in.

1 (Jury in at 3:51 p.m.)

2 THE COURT: The objection is
3 sustained to the question as phrased. You
4 may ask additional questions.

5 MR. THOMPSON: Thank you.

6 BY MR. THOMPSON:

7 Q Mr. Brown, Defendant's Exhibit Number
8 which is the last document I just handed to you?

9 A Yes, sir.

10 Q You identified that also as a copy of the
11 death certificate of James Jordan, is that right?
12 Defendant's Exhibit Number 3, that's the last
13 document that I handed to you.

14 A Yes, sir.

15 Q You had indicated earlier when I questioned
16 you about Defendant's Exhibit Number 2, which is also
17 a copy of the death certificate of James Jordan, that
18 Defendant's Exhibit Number 2 was completely filled
19 out when you signed it on August the 23rd of 1993,
20 you testified to that, did you not?

21 A Portions that I signed which were sections
22 marked certifier and cause of death were completely
23 filled out by myself, yes, sir.

24 Q But I also asked you specifically as to
25 certain sections under the section entitled decedent

1 if certain things did not appear on that document
2 when you signed it, for example, the county of death,
3 Robeson, you said that appeared on the document,
4 Defendant's Exhibit Number 2, when you signed it, did
5 you not?

6 A I think I said as far as I know, yes, sir.

7 Q Well, was it on there when you signed it?

8 A As far as I know it was, yes, sir, but I,
9 you know, I didn't fill that portion out is what I
10 was saying.

11 Q But it was on there when you signed the
12 document, was it not?

13 MR. BRITT: Objection, asked and
14 answered.

15 THE COURT: The question is
16 argumentative. Sustained on that ground.
17 You may ask additional questions.

18 MR. THOMPSON: He's qualifying him
19 and I'm --

20 MR. BRITT: Objection.

21 THE COURT: Ask another question.

22 BY MR. THOMPSON:

23 Q Okay. Well, Mr. Brown, you've had a chance
24 to compare Defendant's Exhibit Number 3 and
25 Defendant's Exhibit Number 2 --

1 MR. BRITT: Objection.

2 MR. THOMPSON: Have you not?

3 THE COURT: Sustained at this
4 time. The foundation is lacking.

5 BY MR. THOMPSON:

6 Q Mr. Brown, Defendant's Exhibit Number 3,
7 pick that up please.

8 A Three?

9 Q Yes, sir. Where were you when you signed
10 this document, Defendant's Exhibit Number 3?

11 MR. BRITT: Objection.

12 THE COURT: Sustained. Establish
13 that it was signed if you can.

14 BY MR. THOMPSON:

15 Q Your Honor he's testifying -- okay.
16 Mr. Brown, did you sign Defendant's Exhibit Number 3?

17 A My signature is on that document, yes, sir.

18 Q And it is also dated that you signed it on
19 August the 23 of 1993?

20 A That's correct.

21 Q Is that your handwriting?

22 A Yes, sir.

23 Q Where it say August 23, 1993?

24 A Yes, sir.

25 THE COURT: The date or the

1 signature?

2 MR. THOMPSON: The date.

3 BY MR. THOMPSON:

4 Q Did you write that date in your
5 handwriting?

6 A I believe I did, yes, sir.

7 Q Is it in your handwriting where in section
8 24 A, certifier, where it says Timothy E. Brown, is
9 that your handwriting?

10 A Where it's printed?

11 Q Yes, sir?

12 A That's my printing.

13 Q Box 77, Bennettsville South Carolina, is
14 that your handwriting?

15 A Box 577, Bennettsville, South Carolina,
16 yes, sir.

17 Q And in the box 24 B where the date appears
18 8-3-93, is that your handwriting?

19 A Yes, sir.

20 Q Now, Mr. Brown, when you signed Defendant's
21 Exhibit Number 3 there under section 23-A do you know
22 where you were when you signed this document?

23 A Yes, sir, I was in my office in
24 Bennettsville, South Carolina.

25 Q Now, when you signed Defendant's Exhibit

1 Number 3, -- well, let me back up. Defendant's
2 Exhibit Number 2, pick that up.

3 A All right, sir.

4 Q When you signed Defendant's Exhibit -- you
5 signed Defendant's Exhibit Number 2, that's your
6 signature under 23-A, section 23-A?

7 A Yes, sir.

8 Q That's your handwriting where it says under
9 section 23-B, date, August 23, '93?

10 A Yes, sir, it's a photocopy of the Exhibit
11 3, my portion filled out.

12 Q Yes. Now, how many documents or death
13 certificates, Mr. Brown, did you fill out while there
14 in your office on August the 23rd of 1993?

15 A To my knowledge, I filled out one.

16 Q Well, the one that you filled out, you've
17 got two documents, Defendant's Exhibit Number 2, and
18 Defendant's Exhibit Number 3, and the top portion of
19 those documents in the section that's indicated next
20 to decedent differ with respect to the information
21 contained therein, don't they?

22 MR. BRITT: Objection.

23 THE COURT: Overruled.

24 BY MR. THOMPSON:

25 Q You may answer?

1 A In the portion marked decedent?

2 Q Yes, sir?

3 A There is a difference? Yes, sir.

4 Q Now, with respect to Defendant's Exhibit
5 Number 3 under section 12-A, would you look at that,
6 section 12-A, Number 3?

7 A Number 3.

8 Q Defendant's Exhibit Number 3, section 12-A?

9 A Yes, sir.

10 Q It indicates that the decedent's usual
11 occupation is clothing manufacturing, does it
12 not?

13 MR. BRITT: Objection.

14 THE COURT: Do you want to be
15 heard?

16 MR. BRITT: Foundation.

17 THE COURT: Overruled.

18 BY MR. THOMPSON:

19 Q You may answer.

20 A Yes, sir, that's what is typed in there,
21 yes.

22 Q In Defendant's Exhibit Number 2, under
23 section 12-A it indicates that the decedent's usual
24 occupation is clothing sales, does it not?

25 A It certainly does, yes.

1 Q In Defendant's Exhibit Number 3, under
2 section 12-B, it indicates the kind of business or
3 industry, self-employed?

4 A That's correct.

5 Q But in Defendant's Exhibit Number 2, it
6 indicates under section 12-B, kind of business in
7 industry, retail clothing?

8 A Yes, it does.

9 Q And you filled -- signed one document back
10 on August the 23 of 1993 with respect to the death
11 certificate, isn't that right?

12 A That's correct.

13 Q Now, what was your responsibility for
14 filing the document, the death certificate?

15 A Once I completed my portion of the death
16 certificate, I returned it to the Jordan Funeral Home
17 in Wilmington, North Carolina.

18 Q Do you know when it was filed?

19 A No, sir, I do not.

20 Q But clearly Defendant's Exhibit Number 3
21 and Defendant's Exhibit Number 2 have changes
22 appearing under the decedent section, right?

23 MR. BRITT: Objection.

24 THE COURT: To the form of the
25 question, sustained.

1 MR. BRITT: Motion to strike.

2 THE COURT: Members of the jury,
3 you would not consider the last question
4 counsel for the defendant, Mr. Thompson,
5 that question is to take no part in your
6 deliberation in this matter in any respect.

7 Yes, sir, Mr. Thompson, ask additional
8 questions.

9 BY MR. THOMPSON:

10 Q Mr. Brown, Defendant's Exhibit Number 2,
11 under -- next to the -- in the decedent section,
12 section three, where it says date of death, it has
13 August the 3rd of 1993, doesn't it?

14 A Yes, sir, it does.

15 Q In Defendant's Exhibit Number 3, in the
16 same section, section three in the decedent section,
17 date of death, it only has 1993, doesn't it?

18 A Yes, sir, that's correct.

19 THE COURT: Is this line -- are
20 you through with this line of questioning.

21 MR. THOMPSON: Yes.

22 MR. BRITT: Limiting instruction.

23 THE COURT: Being offered for the
24 limited purposes of impeachment.

25 MR. THOMPSON: Yes, sir.

1 THE COURT: Members of the jury,
2 the testimony just elicited as to two and
3 three is being offered and received in this
4 case for the limited purposes of
5 impeachment.

6 Now impeachment means as tending to
7 contradict or to discredit. It is for you
8 the members of the jury to determine what
9 the evidence in this case does show. But
10 to the extent that you find that the
11 testimony elicited is impeachment evidence,
12 you may consider it for that limited
13 purpose and for no other purpose. Do all
14 of you understand that instruction?

15 If all members of the jury understand
16 and can follow that instruction, please
17 indicate by raising your right hand at this
18 time.

19 Let the record reflect all fifteen
20 members of the jury have responded
21 affirmatively. You may continue,
22 Mr. Thompson.

23 BY MR. THOMPSON:

24 Q Do you recall being shown State's Exhibit
25 Number 36 to refresh your memory earlier today,

1 Mr. Brown? That was the statement that you -- you
2 don't have it there before you, do you?

3 A No, sir, I don't.

4 MR. THOMPSON: Let me get that
5 document for you.

6 BY MR. THOMPSON:

7 Q I hand you what's been previously marked
8 and identified as State's Exhibit Number 36. That's
9 the document that you used to refresh your memory on
10 direct examination this morning, is that right?

11 A Yes, sir.

12 MR. THOMPSON: Your Honor, if you
13 excuse me I have an accident with some water, I don't
14 know where it came from -- on the table, for the
15 record.

16 THE COURT: Yes, sir, ladies and
17 gentlemen of the jury, there's also an
18 administrative matter that I need to take
19 up at this time. Since we need to address
20 Mr. Thompson's situation as well, I'm going
21 to ask that you folks step to the jury
22 room. Again don't worry or speculate about
23 what takes place in the courtroom in your
24 absence. If all members would step to the
25 jury room at this time.

1 (Jury out at 3:04 p.m.)

2 THE COURT: In the absence of the
3 jury, at least one of those computers
4 belongs to the court reporting service
5 involved in this case.

6 MR. THOMPSON: Yes, sir, I didn't
7 spill any water or anything on the
8 computers.

9 THE COURT: Just trying to
10 establish liability, if I can.

11 Folks, while we have this opportunity,
12 the Court was just handed a paper writing
13 from Mr. Horne, one of the bailiffs
14 assigned in this case which reads as
15 follows. "Juror number twelve, Phillip
16 Burnett stated apparently to Mr. Horne that
17 he knows a lady on the front row behind the
18 defense in that she works where he does and
19 that her name is Beverly Godfrey. Mr.
20 Burnett, according to this, thought he
21 should let us know this fact. Is there a
22 Mrs. Beverly Godfrey present?

23 We appreciate that. I just wanted to
24 verify there was no confusion about her
25 identity.

1 Does the state want to be heard
2 further about the information that Mr.
3 Burnett has provided to us?

4 MR. BRITT: Hasn't indicated that
5 it would affect him in any way?

6 THE COURT: He has not.
7 Obviously, that's a matter we can inquire
8 into, but I think the juror was simply
9 being conscientious.

10 MR. THOMPSON: We don't know. As
11 I understand, she's just a spectator. We
12 don't know.

13 THE COURT: Is she related to the
14 family members of the defendant in any
15 way? So apparently she was just simply
16 here as a member of the audience.

17 MR. THOMPSON: Yes, sir.

18 THE COURT: Out of abundance of
19 caution, I think what I would like to do is
20 bring Mr. Burnett in and inform him of
21 that, and make appropriate inquiry. State
22 want to be heard?

23 MR. BRITT: That's fine.

24 THE COURT: Counsel for defendant
25 want to be heard?

1 MR. THOMPSON: Yes.

2 THE COURT: I think that clears
3 the air as far as he is concerned, as well
4 as clearing the record. You've got your
5 situation taken care of?

6 MR. THOMPSON: Yes, sir.

7 THE COURT: If you'll ask Mr.
8 Burnett to come in, please.

9 Mr. Burnett, thank you very much. If
10 you'll take your seat in the jury box for a
11 moment.

12 First of all, sir, let me thank you
13 for being conscientious. The court been
14 provided with a paper writing which
15 indicates that you apparently indicated to
16 Mr. Horne, one of the bailiffs assigned to
17 the jury in this case, that you thought you
18 recognized someone seated on the front row
19 behind the defense in this case.

20 JUROR: Yes, sir.

21 THE COURT: The information that
22 we have is that you recognize that person
23 to be Beverly Godfrey, someone you work
24 with.

25 JUROR: Yes, sir.

1 THE COURT: We appreciate you
2 letting us know that. I want to thank you
3 again for being conscientious. I am
4 informed that Ms. Godfrey is apparently not
5 connected with any family members of anyone
6 in this case, she was here apparently just
7 as a spectator. That being said, does the
8 fact that you have recognized her in the
9 context that I've just explained to you
10 affect your ability in any way to be fair
11 and impartial to either the State of North
12 Carolina or to the defendant in this
13 action?

14 JUROR: No, sir.

15 THE COURT: We appreciate you
16 being candid with us and conscientious
17 about your duties.

18 Anything on benefit of the State?

19 MR. BRITT: No, sir.

20 MR. THOMPSON:

21 THE COURT: Behalf of the
22 defendant?

23 MR. THOMPSON: No, sir.

24 THE COURT: Sir, I am going to
25 instruct you that you're not to discuss

1 with anyone, including other members of the
2 panel, the matters gone into.

3 JUROR: Yes, sir.

4 THE COURT: Thank you very much
5 sir. You may return to the jury room. For
6 the record, the Court is going to direct
7 that the document referred to be made a
8 part of the record in this case, marked as
9 Court Exhibit, is that number 11?

10 THE CLERK: Yes.

11 THE COURT: Court Exhibit Number
12 11.

13 Are we ready to go back with the jury,
14 folks?

15 MR. THOMPSON: Yes.

16 THE COURT: Yes, sir, if you'll
17 bring the jury in.

18 (Jury in at 3:08 p.m.)

19 THE COURT: Yes, sir,

20 Mr. Thompson?

21 BY MR. THOMPSON:

22 Q Yes, Mr. Brown, to your knowledge, had any
23 missing person's report been filed by James Jordan's
24 family?

25 MR. BRITT: Objection.

1 MR. THOMPSON: To your knowledge.

2 THE COURT: The objection is
3 sustained.

4 BY MR. THOMPSON:

5 Q Mr. Brown, have you ever talked to any
6 members of the James Jordan family?

7 MR. BRITT: Objection.

8 THE COURT: Sustained.

9 BY MR. THOMPSON:

10 Q Mr. Brown, have you ever talked to a person
11 by the name of Jerry -- Gerald Brant?

12 MR. BRITT: Objection.

13 THE COURT: Sustained on
14 relevance grounds. Do you want to be
15 heard, folks?

16 MR. THOMPSON: Yes, sir.

17 THE COURT: Okay. Let me give
18 you your break at this time, ladies and
19 gentlemen. We're going to be at recess,
20 allow you to be at recess until 3:30. Let
21 me give you until 3:35. Again, recall it
22 is your duty to abide by all prior
23 instruction of the Court. Everyone else
24 remain seated. Members of the jury are
25 released until 3:35. Please reassemble in

1 the jury room at that time.

2 (Jury out at 3:10 p.m.)

3 THE COURT: The following is
4 being conducted in the absence of the
5 jury. The objection being on the grounds
6 of relevance. Yes, sir, I'll hear you.

7 MR. BOWEN: What we know, Your
8 Honor, from other discovery is there were
9 contacts made from members of
10 representatives of the Jordan family,
11 particularly the security force. We would
12 request to -- with respect to a request at
13 least North Carolina law enforcement, that
14 if a body were found, not to let anyone
15 know. Now, the answer to this question
16 Mr. Thompson is trying to ask, frankly, we
17 do not know the answer to the question in
18 advance but --

19 THE COURT: Let's take it on voir
20 dire. That might answer it.

21 MR. BRITT: As I understand the
22 rules of practice, he's now Mr. Thompson's
23 witness and Mr. Bowen is arguing the
24 objections.

25 MR. THOMPSON: What difference

1 does it make?

2 THE COURT: Well, he's absolutely
3 correct. The rules are that if an attorney
4 is conducting an examination, that attorney
5 is responsible for objections, and that
6 where there are multiple counsel in a case,
7 one attorney, except in the discretion of
8 the Court, because it is discretionary, is
9 to be responsible for any matters relating
10 to that examination.

11 Folks, as I indicated to you a long
12 time ago, it's my intent to try to be as
13 fair as I possibly can to both State and
14 counsel for defendant. Where it really
15 doesn't relate to something that is at
16 issue in the case or anything that isn't
17 contested in the case, I'm going to give
18 latitude to both sides within the context
19 of our rules.

20 MR. BRITT: I just point out to
21 the Court, as I did earlier when Mr. Bowen
22 walked up and stood behind, off
23 Mr. Thompson's shoulder, the rules again in
24 examination of witness, the attorney remain
25 seated unless he is showing a witness an

1 exhibit.

2 THE COURT: You're right.

3 MR. BRITT: Mr. Bowen did
4 neither.

5 THE COURT: You're right. As I
6 indicated in my ruling, it's in the
7 discretion of the Court. I was however
8 concerned about after his statement that I
9 simply wanted to see the exhibit, that he
10 did appear to move up close to the right
11 shoulder of the witness. That's not
12 appropriate.

13 I exercise my discretion and latitude,
14 but, folks, if it gets to be a problem,
15 then I'll have to reassess my position in
16 that regard. It's my intent to give both
17 sides a full, fair opportunity to be heard,
18 but we are bound by rules.

19 MR. BRITT: Yes, sir.

20 THE COURT: Yes, sir. Ask
21 questions, Mr. Thompson, since this is your
22 witness on voir dire.

23 MR. THOMPSON: Yes, sir.

24 BY MR. THOMPSON:

25 Q Mr. Brown, were you ever contacted by any

1 members of the Jordan family? Have you ever been
2 contacted by any members of the Jordan family
3 concerning this investigation?

4 A No, sir, I have not.

5 Q Now, have you ever been contacted or had a
6 conversation with any member of Michael Jordan's
7 security force?

8 A Yes, sir, I have.

9 Q Specifically, have you had a conversation
10 with Gerald Brant of the security force?

11 A Not by anyone -- well, not with the name
12 Gerald. There was a Jerry.

13 Q Jerry Brant?

14 A I don't mean to correct you.

15 Q That's all right. Who did you have a
16 conversation with, who contacted you?

17 A Jerry Brant.

18 THE COURT: When?

19 A When, I'm sorry.

20 Q No.

21 THE COURT: No, when and who?

22 A Oh, I would have to stop and try to
23 remember exactly.

24 THE COURT: Well, approximately.

25 THE WITNESS: Well.

1 THE COURT: '93, '94 --

2 THE WITNESS: It was August of
3 '93. Sometime after the 12th, if I've got
4 my dates correct, I believe it was August
5 13th, '93.

6 THE COURT: Yes, sir.

7 BY MR. THOMPSON:

8 Q Okay. And did the conversation that you
9 had with Mr. Brant, was it concerning what to do, if
10 anything, to do with the body parts of Mr. James
11 Jordan who you identified as Mr. James Jordan?

12 A Yes, sir, it did.

13 Q And was it Mr. Brant's, as a result of the
14 conversation with Mr. Brant, is that why you had
15 those body parts cremated?

16 A Yes, sir.

17 Q No member of the Jordan family ever talked
18 with you directly, is that correct?

19 A That's correct.

20 Q And did you attempt to contact any members
21 of the Jordan family?

22 A Through the security company, Mr. Brant, I
23 made myself available to the family at any time if
24 they wanted to have -- if they had any questions of
25 me or wanted to discuss anything in the case, yes,

1 sir, but I did not --

2 Q Right. And after making that clear to the
3 security folks, nobody ever contacted you from the
4 Jordan family?

5 A That's correct.

6 Q And of course, nobody then from the Jordan
7 family authorized the original cremation of the
8 body?

9 MR. BRITT: Objection.

10 THE COURT: Well, I think it
11 speaks for itself, but you may answer.

12 THE COURT: The cremation was on
13 what date?

14 THE WITNESS: Cremation, August 7.

15 THE COURT: First contact you had
16 with anybody from the Jordan family or
17 representatives was when?

18 THE WITNESS: August 14th.

19 THE COURT: Does that answer your
20 question?

21 MR. THOMPSON: All right, sir.

22 MR. THOMPSON: Your Honor, that's
23 all we have.

24 THE COURT: How is that
25 relevant?

1 MR. THOMPSON: How it's relevant,
2 for the same argument that co-counsel just
3 made, Your Honor. We feel it's relevant,
4 it goes to the reason why he did what he
5 did, it was as a result of a conversation
6 with a security person, some member of the
7 security force of Michael Jordan. That's
8 why he cremated, and that's relevant.

9 THE COURT: Record doesn't
10 reflect that notice. You put it in the
11 record. That's what I'm asking you to do.

12 MR. THOMPSON: Yes, sir.

13 THE COURT: So you're arguing
14 that it goes, one, to bias.

15 MR. THOMPSON: Yes, sir.

16 THE COURT: Also goes to explain
17 conduct that he's already testified to in
18 the context of direct examination.

19 MR. THOMPSON: Yes, sir.

20 THE COURT: State want to be
21 heard?

22 MR. BRITT: In regard to the --
23 well, again, I don't think it's relevant,
24 but in regard to the conversation itself
25 that he may have had is hearsay.

1 THE COURT: Yes, sir. That's the
2 problem.

3 MR. THOMPSON: Well, Your Honor.
4 I'm not asking about the conversation, I'm
5 asking did he have -- I never asked -- on
6 voir dire, I did, but my point is, did he
7 have a conversation, did any member of the
8 family ever contact him. That's what
9 raised the objection and we went into the
10 voir dire, and the purposes of voir dire --

11 THE COURT: Folks, there's some
12 limited matters that I think they are
13 entitled to get into. They are entitled to
14 get into the fact that Mr. Brown was
15 contacted by a representative of the Jordan
16 family. That person may be named. They
17 are entitled to get into the fact that
18 according to his testimony on voir dire, he
19 directed certain things as a result of that
20 conversation. Beyond that in terms of the
21 content of any conversation, you can't get
22 into that. He's testified that he didn't
23 have any contact with any member of the
24 Jordan family, so that's not a question
25 that you can ask in good faith. The Jordan

1 family -- or did I misunderstand his
2 testimony?

3 MR. THOMPSON: No, that's what he
4 said.

5 THE COURT: And folks, yesterday
6 it was indicated that where you folks
7 thought you had a question in your own
8 minds about the good faith basis for
9 questions, you bring it to our attention
10 first in the absence of the jury. This is
11 one of those areas where I think before
12 this line was pursued, you should have done
13 that, because as I understood what
14 Mr. Bowen said at the outset in his
15 argument, we don't know what the answer is
16 going to be to these questions. Since you
17 didn't know what the answer was going to be
18 to those questions, you couldn't possibly
19 have a good faith basis for it.

20 MR. THOMPSON: I'm sorry, and
21 Mr. Bowen was pointedly incorrect about
22 that.

23 THE COURT: That's another reason
24 not to have him arguing your position.

25 MR. THOMPSON: Why, I mean, you

1 know, it was asked in good faith.

2 THE COURT: You understand my
3 point?

4 MR. THOMPSON: I understand.

5 THE COURT: If you don't know but
6 you suspect there are other indications
7 leading to that, then the appropriate thing
8 to do is, we would like to have the jury
9 excused, there's a matter we want raised.

10 MR. THOMPSON: And I'm sorry. For
11 the record, I understood that Gerald Brant,
12 Jerry Brant, and Mr. Brown had a
13 conversation.

14 THE COURT: He didn't say that.
15 Said that he didn't have any conversation
16 with family members.

17 MR. THOMPSON: And I understand
18 that he never -- Mr. Brown never had
19 conversation with family members of the
20 Jordan family.

21 THE COURT: So where is our
22 disagreement?

23 MR. THOMPSON: I'm just saying,
24 I'm sorry, co-counsel, he may not -- he may
25 have forgotten that, but I understood

1 that. And the question was asked in good
2 faith, because he gave me the answer that I
3 expected.

4 THE COURT: But you didn't know.
5 That's my point.

6 MR. THOMPSON: Didn't know what?

7 THE COURT: You thought those
8 were going to be the answers. But I'm
9 assuming for what you're telling me now
10 that you didn't know for sure.

11 MR. THOMPSON: Well, it appeared
12 from what I could glean from information
13 that we had that that would be the answer.
14 I mean, it was as good faith as I could
15 ask, Judge.

16 THE COURT: We're not talking
17 about inferential matters, talking about
18 good faith basis for answering the
19 questions.

20 MR. THOMPSON: I'm glad I was
21 right, at least. I understand.

22 THE COURT: My point is, when we
23 get into those areas, to me, to satisfy
24 integrity of the process, the appropriate
25 thing is to let us know so we can excuse

1 the jury and inquire on voir dire.

2 MR. BOWEN: Judge, in your
3 discretion will you hear me just a second.
4 Because I'm wrong, Mr. Thompson is right,
5 and in our report that was done by Sheriff
6 Barnes, right over here, in our materials
7 it says Coroner Brown stated to Sheriff
8 Barnes here that after talking with the
9 security personnel from the Jordan family
10 that he personally went to Newberry to be
11 picked up.

12 THE COURT: Why was the question
13 asked as it was if you knew that?

14 MR. BOWEN: Looks like we can --
15 you know, I hope the Court is not
16 suggesting that we've got to know the
17 answer to every single question we ask.

18 THE COURT: No, sir, as part of
19 being -- unless you know the answer, apart
20 from that, we're talking about good faith
21 matters.

22 MR. BOWEN: Well, there's your
23 good faith. Second thing, as far as the
24 asking about the Jordan family contacting,
25 there's certain questions that you can ask

1 that regardless of the answer that you get
2 you win either way.

3 THE COURT: Folks, I'm not here
4 to argue about tactics or strategy, I'm
5 simply saying from my point of view, since
6 I'm the one sitting up here, who has to
7 make the rules, I think it's appropriate
8 when you think there's a question dealing
9 with good faith, to bring it to our
10 attention, I would expect the same thing of
11 the State.

12 MR. THOMPSON: Yes, sir. Judge,
13 and I -- I think I understand what you're
14 saying, but I declare, are you saying that
15 every time I mention the Jordan family, I
16 got to ask permission to get into that.

17 THE COURT: How long have you
18 been practicing law, Mr. Thompson?

19 MR. THOMPSON: 17, since 1977.

20 THE COURT: I'm confident that
21 you know the difference between areas
22 involved in potential breaches of the rules
23 and areas where good faith is clear. I'm
24 confident Mr. Bowen knows the same thing.
25 I'm confident you folks, as I expect

1 counsel for the State, know the rules of
2 evidence, know rules of professional
3 responsibility. All I'm asking, we abide
4 by the rules of evidence, rules of
5 procedure and rules of professional
6 responsibility. That's all.

7 MR. THOMPSON: Judge, and I'm
8 certainly sorry, when I spilled that water
9 on this table --

10 THE COURT: We've got ten
11 minutes, do you want to be heard further?

12 MR. THOMPSON: I knew I had it in
13 my notes somewhere. I handed him State's
14 Exhibit Number 36. That is not the
15 document where it appeared in. It was in
16 our investigative report, and I guess the
17 reason I asked the question was, I was
18 looking at this, and it wasn't there, but I
19 knew I had seen it there.

20 THE COURT: Absolutely nothing
21 wrong with saying I need a few moments.
22 I'm going to give latitude to both counsel,
23 but I do expect us to comport ourselves
24 consistent with the rules of
25 responsibility, rules of evidence and rules

1 of procedure.

2 MR. BOWEN: I'm sorry as I can
3 be. I don't see any infraction in
4 anything --

5 THE COURT: I'm not saying there
6 is, Mr. Bowen, I'm saying this is
7 illustrative of one of those areas that you
8 yourself indicated yesterday.

9 MR. BOWEN: The reason I didn't
10 alert you, I don't see the problem, I don't
11 see it if we asked the man did the Jordan
12 family contact you, he said yes, it means
13 one thing. If he said no, it means another
14 thing, it's important to our inquiry, I
15 don't think it hurts anybody, we don't mean
16 to hurt the Jordan family by asking that
17 question.

18 THE COURT: Mr. Thompson, do you
19 want to be heard again? He's sitting down.

20 MR. THOMPSON: No, sir.

21 THE COURT: Anything from the
22 State?

23 MR. BRITT: Your Honor, I object
24 to the characterization of Mr. Brant as
25 security for Michael Jordan.

1 THE COURT: I have no idea who
2 Mr. Brant is.

3 MR. BRITT: Think --

4 THE COURT: If you feel --

5 MR. THOMPSON: I'll lay the
6 foundation.

7 MR. BRITT: I know who Mr. Brant
8 is, he is co-owner of Risk Security
9 Management. He has a number of clients,
10 not exclusively Mr. Jordan, but the
11 characterization that he is head of
12 Mr. Jordan's security team is misleading,
13 and partially is hearsay.

14 MR. THOMPSON: Judge, I will ask
15 the proper questions to lay the
16 foundation. Whoever he said he was, I'll
17 ask that question. Thank you. Thank you,
18 Mr. Britt.

19 THE COURT: Mr. Bowen?

20 MR. BOWEN: No, sir.

21 THE COURT: We're at ease.

22 (Brief recess.)

23 THE COURT: All counsel are
24 present, the defendant is present in open
25 court. Are we ready to go forward, folks?

1 Sergeant Meyers, if you'll bring the jury
2 in, please.

3 (Jury in at 3:38 p.m.)

4 THE COURT: Mr. Thompson?

5 BY MR. THOMPSON:

6 Q Mr. Brown, I believe you indicated that you
7 had come in contact with decomposed bodies before
8 during your tenure as a coroner, is that correct?

9 A Yes, sir, I have.

10 Q And Mr. Brown, had you -- have you ever
11 cremated a body before without identifying it?

12 MR. BRITT: Objection.

13 THE COURT: Overruled.

14 BY MR. THOMPSON:

15 Q You may answer.

16 A No, sir, I have not.

17 Q Other than of course this body involved in
18 this case?

19 A That's correct.

20 Q And Mr. Brown, did you -- didn't you have
21 conversations with some state officials concerning
22 what to do with this body?

23 MR. BRITT: Objection.

24 BY MR. THOMPSON:

25 Q With respect to whether to bury it or

1 burying it or not?

2 MR. BRITT: Objection.

3 THE COURT: As to whether or not
4 such conversation took place, you may
5 answer yes or no. The objection is
6 overruled.

7 THE WITNESS: Yes, I did.

8 BY MR. THOMPSON:

9 Q And does Marlboro County have a potter's
10 field? Do you know what a potter's field is?

11 A Yes, sir, I know the term.

12 Q What is a potter's field?

13 A It is a place owned usually by the State or
14 county for the placement of indigents, persons, as
15 far as for the remains.

16 Q And indigent meaning poor, poor people or
17 paupers?

18 A Paupers.

19 Q And I believe you had a conversation, you
20 had -- did you have a conversation concerning this
21 body involved in this case with respect to it being
22 buried in a potter's field?

23 THE COURT: Well --

24 MR. BRITT: Objection to form.

25 THE COURT: Sustained. Rephrase

1 it.

2 BY MR. THOMPSON:

3 Q Were you ever a part of any -- involved in
4 a conversation regarding disposing of this body
5 involved in the investigation of this case in a
6 potter's field?

7 MR. BRITT: Objection.

8 THE COURT: To the form,
9 sustained.

10 MR. BRITT: Move to strike.

11 THE COURT: Members of the jury,
12 don't consider the last question, it's not
13 to take part in your deliberation in this
14 matter in any respect.

15 BY MR. THOMPSON:

16 Q Did you consider burying this body involved
17 in this case in a potter's field, Mr. Brown?

18 A No, sir, I did not.

19 Q And why was that?

20 A Marlboro County does not have a potter's
21 field, sir.

22 MR. THOMPSON: That's all.

23 THE COURT: Anything further on
24 redirect?

25 MR. BRITT: Yes, sir. If I

1 could -- a couple of exhibits.

2 REDIRECT EXAMINATION

3 BY MR. BRITT:

4 Q Mr. Brown, I'm going to hand you what's
5 been marked as Defendant's Exhibit Number 2 for the
6 purpose of identification, and Defendant's Exhibit
7 Number 3 for the purposes of identification. You
8 previously testified that your signature appears on
9 both of those document?

10 A That's correct.

11 Q And for the record, Defendant's Exhibit
12 Number 2 for identification and Defendant's Exhibit
13 Number 3 for identification, those are death
14 certificates, are they not?

15 A Yes, sir, they are.

16 Q And those are the death certificates that
17 you filed, that your signature appears on as it
18 relates to the death of James Jordan?

19 A That's correct.

20 Q And there are four parts to a death
21 certificate or to these death certificates, are there
22 not?

23 A Yes, sir.

24 Q There's a portion labeled decedent?

25 A Yes, sir.

1 Q There's a section entitled cause of death?

2 A Yes, sir.

3 Q There's a section entitled certifier?

4 A That's correct.

5 Q And a section entitled disposition?

6 A That's correct.

7 Q Did you place any of the information in
8 either Defendant's Exhibit Number 2 or Defendant's
9 Exhibit Number 3 in the section entitled decedent?

10 A I did not.

11 Q Do you know who did that?

12 A Excuse me, let me -- if I can, before I
13 answer too quick, I believe I put the year 1993 on
14 the top under item three, date of death.

15 Q And --

16 THE COURT: I'm sorry, for
17 clarification in the record, what section
18 does that involve as to Defendant's
19 Exhibits two and/or three?

20 THE WITNESS: Under the heading
21 of decedent, which was what he was -- I
22 thought he was asking.

23 BY MR. BRITT:

24 Q And in section number three of the heading
25 decedent, is the word "found" typed in section three

1 of Defendant's Exhibit Number 2?

2 A Yes, sir, it is.

3 Q And that is not present in Defendant's
4 Exhibit Number 3?

5 A No, sir.

6 Q That same section, is that correct?

7 A No, sir.

8 Q Other than placing the date in that
9 section, section number three, did you place any
10 other information in the area headed decedent?

11 A I did not.

12 Q What if any information did you place in
13 the area titled cause of death?

14 A Under the immediate cause, I placed gun
15 shot wound of the chest and approximate interval
16 between onset and death, I placed the word "minutes."

17 Q And under the heading certifier, what if
18 any -- excuse me -- section 21 A and 22 B, did you
19 include any information there?

20 A Yes, sir, those are also under the cause of
21 death. 21 A was an autopsy performed, and I answered
22 yes, and 21 B, were autopsy findings available prior
23 to completion of the death certificate, and I also
24 answered those yes.

25 Q And under the heading certifier, what if

1 any information did you provide in that area?

2 A 21 C, I had checked homicide, under 22,
3 which was the manner of death. Under 22 A which was
4 the date of injury, I placed unknown. 22 B which
5 states the time of injury, I placed unknown. 22 C,
6 injury at work, I placed unknown. And under 22 D
7 which describe how injury occurred, I inserted "shot
8 by others." Under 22 G, time of death, I put
9 unknown. Under 23 A, it was my signature. And
10 printed beside it was Coroner of Marlboro County,
11 South Carolina.

12 Q In the area titled -- excuse me.

13 A I've got a few more to go if you want me
14 to.

15 MR. THOMPSON: Your Honor, I'm
16 sorry, I just couldn't hear the colloquy
17 between --

18 THE COURT: He's continuing with
19 his answer.

20 You may continue, Mr. Brown.

21 THE WITNESS: Under 23 B, date
22 signed, I have 8 dash 23 dash 93. Under 24
23 A, name and address of person who completed
24 the cause of death, I printed my name
25 Timothy E. Brown, Box 577, Bennettsville

1 SC, and under 24 B, date pronounced death,
2 I inserted 8 dash 3 dash 93.

3 BY MR. BRITT:

4 Q And all that information appears in both
5 Defendant's Exhibit Number 2 and Defendant's Exhibit
6 Number 3, is that correct?

7 A Yes, sir, it does.

8 Q In the area entitled disposition, what if
9 any information did you provide in that area of the
10 death certificate?

11 A None at all.

12 Q And in Defendant's Exhibit Number 2, is
13 there information contained on Defendant's Exhibit
14 Number 2 in regard to the disposition section?

15 A Is there, yes, sir, there's information
16 there.

17 Q And in Defendant's Exhibit Number 3,
18 likewise, is there information contained in the
19 section entitled disposition?

20 A Yes, sir, it is.

21 Q Did you mail the death certificate that you
22 signed to anyone?

23 A Yes, sir, I -- after I had signed what is
24 Exhibit 3, I returned to the Jordan Funeral Home in
25 Wilmington, North Carolina.

1 Q And what if anything did you do with the
2 death certificate that has been marked as Defendant's
3 Exhibit Number 3 there at the Jordan Funeral Home in
4 Wilmington, or did you mail it?

5 A I mailed that to the funeral home. I kept
6 a copy of it -- of the one I mailed, which is Exhibit
7 3, for my files.

8 Q And Defendant's Exhibit Number 2, does it
9 contain a stamp dated November the 30th, 1993?

10 A Yes, sir, it does.

11 Q How is that stamp headed?

12 A I can't read the first portion, but the
13 second portion says "amended." I don't know if
14 that's a date.

15 Q Was this death certificate filed, to your
16 knowledge, in Marlboro County, South Carolina?

17 A No, sir, this is a North Carolina death
18 certificate.

19 Q Do you know where it was filed?

20 A No, sir, I don't.

21 Q Do you know the circumstances under which
22 the amended stamp was placed on Defendant's Exhibit
23 Number 2?

24 A No, sir, do not.

25 Q Does Defendant's Exhibit Number 2 contain

1 information in the disposition section that is not
2 contained in the copy of Defendant's Exhibit Number
3 3, the copy of which you retained?

4 A It does, yes, sir.

5 Q And would it be fair to say that the
6 information contained in Defendant's Exhibit Number 2
7 was inserted into the disposition section after you
8 mailed it to the Jordan Funeral Home in Wilmington,
9 North Carolina?

10 A It would appear so, yes, sir.

11 Q And in both, Defendant's Exhibit Number 2
12 and in Defendant's Exhibit Number 3, under the
13 section entitled decedent, in section one, what name
14 appears in both documents?

15 A James Raymond Jordan.

16 Q And in section number nine A entitled place
17 of death, what information is contained in both of
18 those documents?

19 A On Exhibit 3, it is blank, and on Exhibit
20 2, it is a check mark under other. Beside other, in
21 front of the word other, and off to the right of that
22 is typed the word "highway".

23 Q In that same section entitled decedent,
24 what information appears in Section 9-B, 9-C, and
25 9-E?

1 A In Exhibit 3?

2 Q Two and three.

3 A Exhibit 3, 9-B, 9-C, 9-D, and 9-E are all
4 blank. In Exhibit 2, 9-B, it says U.S. 74. 9-C, is
5 typed Lumberton. 9-D is the word no. And 9-E has
6 Robeson.

7 Q In the section entitled decedent, what
8 appears in both Exhibit 3 and Exhibit 2 in sections
9 13 A, 13 B, 13 C, and 13 D?

10 A In Exhibit 3, under 13 A, has NC. 13 B,
11 Mecklenburg. 13 C, Charlotte. 13 D, P.O. Box
12 23236. On Exhibit 2, 13 A, has NC. 13 B,
13 Mecklenburg. 13 C, Charlotte. 13 D, P.O. Box 23236.

14 Q And in the section entitled cause of death,
15 what information appears in part one, line A of both
16 documents?

17 A Gun shot wound of the chest, and minutes.

18 Q In the section entitled certifier, what
19 information appears in both documents as it relates
20 to section 21 C, entitled manner of death?

21 A There's a box beside the word "homicide"
22 and there's an X placed in that box.

23 THE COURT: On both documents?

24 THE WITNESS: Yes, sir, on both
25 documents.

1 BY MR. BRITT:

2 Q In that same section entitled certifier,
3 what appears in section 22 A, date of injury?

4 A Unknown.

5 Q And in the next section, 22 B, time of
6 injury what information appears in both documents?

7 A Unknown.

8 Q Section 22 C, what information appears in
9 both documents in the area entitled injury at work?

10 A The word unknown.

11 Q Section 22 D, entitled describe how injury
12 occurred, what information appears in both documents?

13 A Shot by other.

14 Q Mr. Brown, is it fair to say based upon
15 your examination of Defendant's Exhibit 2 and
16 Defendant's Exhibit 3, that Defendant's Exhibit
17 Number 2 is an amended copy of the death certificate?

18 A Of the original certificate that I signed,
19 which would have been Defendant's Exhibit 3, yes,
20 sir.

21 THE COURT: I'm sorry, where did
22 you say that was filed as compared to
23 Defendant's Exhibit 2?

24 THE WITNESS: I signed this one
25 and sent it to the funeral home in

1 Wilmington.

2 THE COURT: Which one are you
3 referring to?

4 THE WITNESS: Defendant's Exhibit
5 3.

6 THE COURT: Where did you say
7 Defendant's Exhibit 2 was filed? You said
8 it bore some kind of stamp.

9 THE WITNESS: With the State of
10 North Carolina, has that information across
11 the top. This one does not. And this one
12 also has -- two also has a death
13 certificate number on it that this does not
14 have.

15 THE COURT: Okay.

16 THE WITNESS: And I think if I
17 can interjected, Defendant's Exhibit 2 also
18 has copy one state copy.

19 THE COURT: Anything further?

20 MR. BRITT: Yes, sir. Just so
21 the record is clear, Mr. Brown, the --

22 MR. BOWEN: Object to comment.

23 THE COURT: State your question.

24 MR. BRITT: Excuse me.

25 BY MR. BRITT:

1 Q The exhibit that was marked as State's
2 Exhibit Number 35, the large envelope containing an
3 x-ray and a dental chart --

4 A Yes, sir.

5 Q -- where did you receive those items?

6 A I received those at the Newberry Hospital
7 in Newberry, South Carolina.

8 Q And from whom did you receive those?

9 A From Mrs. Joel Sexton.

10 Q Did those items remain in your possession
11 until you transferred them to Special Agent Barry Lea
12 of the North Carolina State Bureau of Investigation
13 on August the 17th of 1993?

14 A Yes, sir.

15 MR. BRITT: No other questions.

16 THE COURT: Anything further

17 Mr. Thompson?

18 REXCROSS EXAMINATION

19 BY MR. THOMPSON:

20 Q On Defendant's Exhibit Number 3, it has
21 state copy on it, too, doesn't it, just like it does
22 on Defendant's Exhibit Number 2?

23 A Well, the copy is not clear on Exhibit 3.
24 I apologize, but part of the S appears to be there,
25 but the T and the A are out.

1 Q Appears to be state copy?

2 A Yes, sir.

3 Q So when I asked you earlier the section
4 entitled decedent, which appeared on Defendant's
5 Exhibit Number 2, was that filled out when you signed
6 it, you indicated yes, that's not true?

7 A Excuse me, repeat your question.

8 Q I asked you earlier on cross-examination,
9 with respect to Defendant's Exhibit Number 2, the
10 section entitled decedent on that Defendant's Exhibit
11 Number 2, was that filled out when you signed the
12 document down where it said certified, you said yes.

13 A To the best of my knowledge, yes, sir.

14 Q And you said that Robeson County appeared
15 in 9-E, didn't you?

16 A I believe I did.

17 Q Where it says 9-E?

18 A Yes, sir.

19 Q You said Lumberton appeared in 9-C?

20 A Think I the question was what was in here,
21 and I agreed that what was on this document.

22 Q And you said that it was there when you
23 signed that document, didn't you Mr. Brown? You said
24 it was on the document when you signed it?

25 MR. BRITT: Objection.

1 THE COURT: Overruled.

2 MR. THOMPSON: Did you not?

3 THE COURT: You may answer.

4 Overruled.

5 THE WITNESS: If we could go
6 back, I might have said, as I recall on
7 some of them, but my memory is not that
8 good

9 BY MR. THOMPSON:

10 Q It wasn't on the document, is that your
11 testimony now as to those items --

12 A Yes, sir.

13 Q -- when you signed it?

14 A When I signed it, I signed it as Exhibit 3,
15 that's the one I made a copy of, and it did not have
16 that information that is now on Exhibit 2, which is
17 the amended death certificate.

18 MR. THOMPSON: Okay. No
19 questions.

20 THE COURT: Anything further?

21 MR. BRITT: One question.

22 FURTHER REDIRECT EXAMINATION

23 BY MR. BRITT:

24 Q Have you ever been involved in a case where
25 an amended death certificate was filed?

1 A Yes, sir.

2 Q Is it usual, unusual?

3 MR. BOWEN: Object.

4 THE COURT: Overruled. You may
5 answer.

6 THE WITNESS: It's not unusual,
7 no, sir.

8 MR. BRITT: I don't have any
9 other questions.

10 THE COURT: Anything else?

11 MR. THOMPSON: No, sir.

12 THE COURT: May Mr. Brown be
13 released?

14 MR. THOMPSON: Yes, sir.

15 THE COURT: Thank you, sir,
16 you're free to go.

17 THE COURT: Mr. Britt?

18 MR. BRITT: May I have a short
19 recess to address some scheduling of
20 witnesses? I have three witnesses that are
21 here at this time.

22 THE COURT: How much time do you
23 need?

24 MR. BRITT: Just a matter of two
25 or three minutes at the most.

1 THE COURT: Yes, sir.

2 Folks, if you'd like to stand in the
3 box, you're freed to do so.

4 MR. BRITT: May I be allowed to
5 leave the courtroom?

6 THE COURT: Yes, sir.

7 (Brief pause.)

8 MR. BRITT: May we approach the
9 bench?

10 (Whereupon a bench conference ensued
11 as follows.)

12 THE COURT: Folks, before we
13 address anything else, there was one
14 previous bench conference held in this
15 case. I want the record to reflect at that
16 prior bench conference were counsel for the
17 defendant, and the defendant, as well as
18 the court reporter, and the presiding
19 Judge. Any disagreement?

20 MR. THOMPSON: That's correct.

21 THE COURT: This is the second
22 one. Yes, sir.

23 MR. BRITT: Just want to bring to
24 the Court's attention my next witness will
25 be Dr. Sexton. For the Court's

1 information, he is scheduled to appear in
2 court on Monday in South Carolina. He has
3 traveled three and a half hours to be here,
4 he's been here since a little after 12 this
5 morning. I think in order to complete his
6 direct and cross-examination it may be
7 necessary to go beyond the 5:00 hour so
8 that he can make his commitment in South
9 Carolina.

10 THE COURT: Well, I'm assuming
11 that direct is going to take a while.

12 MR. BRITT: I think. It depends.

13 MR. THOMPSON: I object to that
14 because I have some personal obligations.

15 MR. BOWEN: This is --

16 THE COURT: Folks, okay. You
17 folks anticipate a fairly lengthy
18 cross-examination?

19 MR. BOWEN: Yes, sir. Yes, sir.

20 MR. BRITT: I had two other
21 witnesses here who live in Darlington, and
22 I went out to ask them who would be greater
23 inconvenienced to ask to return Monday, the
24 other two witnesses have been here for two
25 days, they both agreed that it would be a

1 greater inconvenience for Dr. Sexton to
2 have to return, so they have agreed to
3 return on Monday for their portion.

4 THE COURT: I have to make
5 inquiry of the jury, too.

6 MR. BRITT: Yes, sir.

7 MR. BOWEN: I've had Sheriff
8 Barnes here for two days. We haven't had
9 the benefit of knowing he was going to
10 testify. I would be glad for them to swap
11 the two witnesses.

12 MR. BRITT: We started, Mr. Brown
13 yesterday. And Mr. Brown's testimony has
14 taken the bulk of today.

15 THE COURT: What is his
16 obligation in a South Carolina court on
17 Monday? How long does he anticipate that
18 will take?

19 MR. BRITT: I'm not sure about
20 that.

21 THE COURT: Can you check?

22 MR. BRITT: Yes. His commitment
23 is in Pickens County, South Carolina, west
24 of Greenville. Retrial of a murder case.
25 He's been informed that they would not need

1 him until Monday afternoon. The last time
2 he testified in the case, he recalled being
3 there some two and a half to three hours.

4 THE COURT: How long does it take
5 for him to get from here to Pickens County,
6 South Carolina?

7 MR. BRITT: My guess is it's
8 going to be in excess of six hours. It's
9 west of Greenville.

10 THE COURT: Yes. So if we don't
11 get him today, folks, we're probably
12 talking about going until 6:00 or 6:30.

13 MR. BRITT: He indicated to me
14 they told him if he was tied up here, then
15 they would understand. But what is going
16 to require is that he has driven three and
17 a half hours to be here today. Been in
18 courtroom now -- well, been here for four
19 hours. If he stays the weekend, which I
20 doubt very seriously, that means he drives
21 another three and a half hours home, three
22 and a half back here, be in court, and then
23 he drives to Newberry or on to Pickens.

24 THE COURT: Okay.

25 MR. THOMPSON: May I be heard?

1 THE COURT: Yes, sir.

2 MR. THOMPSON: We object to going
3 over to past and beyond 5:00. What he's
4 doing, what's going to happen is if he
5 finishes direct, we're going to be in
6 cross, and the burden is going over into
7 past the --

8 MR. BOWEN: Judge, the jury is
9 going to blame us.

10 MR. THOMPSON: They are going to
11 blame us.

12 THE COURT: I'm not going to make
13 that inquiry. I'm going to recess at this
14 point. We'll start back at 9:30 Monday
15 morning with him being the first witness.
16 I am going to direct that examination
17 proceed expeditiously. It's not my intent
18 to impinge on anybody's right to examine in
19 full either on direct or on cross, but I'm
20 giving you folks notice now that I expect
21 you to anticipate any potential problems,
22 be prepared to address those problems
23 quickly and expeditiously so we can move
24 forward.

25 MR. BRITT: Well, we've got 50

1 minutes today.

2 THE COURT: We can start with
3 direct and stop at 5:00. Yes, sir.

4 MR. BRITT: I'll just tell him.
5 (Bench conference concluded.)

6 MR. BRITT: We're ready to go
7 forward.

8 THE COURT: Yes, sir.

9 MR. BRITT: At this time the
10 State would call Dr. Joel Sexton.

11 THE COURT: If you'll come up,
12 please, sir.

13 Dr. Sexton, place your left hand on
14 the Bible, if you'll raise your right and
15 face Ms. Gaines, please.

16 JOEL SEXTON, M.D.,
17 being first duly sworn was examined and deposed as
18 follows:

19 DIRECT EXAMINATION

20 THE COURT: Thank you, sir. If
21 you'll take the witness stand.

22 Sir, if you would please state your
23 full name and spell your last name for the
24 record, please.

25 THE WITNESS: It's Dr. Joel

1 Stephen Sexton. Last name is spelled S E X
2 T O N.

3 THE COURT: Thank you.

4 Mr. Britt?

5 BY MR. BRITT:

6 Q Dr. Sexton, where do you reside?

7 A I live in Newberry, South Carolina.

8 Q And what is your educational background,
9 please?

10 A Graduated from the University of Virginia
11 1958. Then served in the Navy for three years, since
12 I was on a naval scholarship, then attended the then
13 Medical College of South Carolina in Charleston,
14 South Carolina, where I received a Masters in
15 chemistry.

16 I then attended the Medical University of
17 South Carolina and received an M.D. degree in 1968.
18 After finishing my medical training in medicine, I
19 went ahead and became licensed in the State of South
20 Carolina, and nationally with the national board.

21 I then attended the residency program at
22 the Medical University in pathology, which is a
23 five-year program. I finished that in 1972, and took
24 the national board certification at that time,
25 finishing and qualifying in anatomic pathology,

1 clinical pathology, and forensic pathology. I then
2 became an instructor at the Medical University, and
3 rose to the rank of assistant professor, teaching in
4 the area of pathology, particularly in the area of
5 forensic pathology not only to the nurses and the
6 pharmacy students and med students, but to the
7 residents, the physicians who were in training in the
8 department of pathology.

9 I did that until 1983 when I went into
10 private practice in Newberry, where I'm the director
11 of the laboratory in Newberry, and still a consultant
12 for the coroners in the state. While I was at the
13 Medical University, I was also appointed as the
14 Charleston County Medical Examiner, which was the
15 medical equivalent of a coroner, in that the medical
16 examiner's office along with the coroner's office in
17 that county has responsibility of investigating those
18 deaths that either violent deaths or sudden deaths
19 where there's not a physician who's been attending
20 the patient.

21 And in that capacity we had about 550
22 deaths each year that I was responsible for, either
23 investigating personally or supervising the
24 investigation of that death, and we autopsied about
25 130 of those cases each year. In addition, I was a

1 consulting pathologist for the forty six county
2 coroners across the state. So when I moved to
3 Newberry, many of those coroners continued to send
4 cases to me, so I do a little over 350 cases a year
5 as consulting cases for the coroners primarily across
6 the upper part of the state.

7 Q And in your career, approximately how many
8 autopsies have you conducted?

9 A Over eight thousand autopsies either
10 personally or supervised.

11 Q And Dr. Sexton, what is the study of
12 forensic pathology?

13 A Basically, pathology, as I mentioned, a
14 pathologist is an M.D. who studies more about how to
15 diagnose disease and illness, particularly as
16 pertains to examine tissue removed as in surgery, to
17 determine if that tissue has cancer in it or some
18 other type of infection in it, or if it's just
19 normal. If it is a type of cancer, what type it is,
20 and this helps your physician understand how to
21 better treat you.

22 So pathology has to do with the diagnosis
23 of disease. This also pertains to the evaluation of
24 various fluids that are removed, such as blood and
25 urine and spinal fluid are analyzed in the

1 laboratory. Pathologists supervise the analysis of
2 these various fluids in the laboratory, making sure
3 they are done properly, and helps interpret those
4 results for your physician. But the pathologist is
5 also a person that does autopsies in the case of a
6 person in the hospital to find out more about that
7 disease or illness that killed the individual, so the
8 physicians can better understand how to treat that
9 disease or illness in the future.

10 Forensic pathology is the study of this
11 same information, but a forensic pathologist has
12 additional training in understanding trauma
13 pathology, what gun shot wounds look like, stab
14 wounds look like, insize wounds and blunt force
15 injuries, and information about examining a dead
16 person to determine if they have been injured or if
17 they died of a natural disease, and to what extent
18 the injury has been inflicted. And in addition to
19 recognizing the injury, finding out as much as
20 possible about the circumstances surrounding the
21 death.

22 When I was at the Medical University, I
23 used to travel across the State going to death scenes
24 and examining the body there to learn as much as I
25 could about the circumstances surrounding that death,

1 not only from the scene but from the autopsy
2 findings. In private practice, I've been unable to
3 do that just because of the lack of sleep that it
4 would induce. I got to the point where I couldn't
5 tolerate three hours of sleep during the night and
6 still function the next day. And it's still a seven
7 day a week type job. .

8 But the forensic pathologist is trained to
9 recognize not only the cause of death from injuries
10 but to recognize various other information that helps
11 to understand the circumstances surrounding that
12 particular death, such as blood spatters, if there at
13 the scene, the effects of drugs or chemicals on the
14 body, and the way particular injuries may have
15 occurred, such as the passage of bullets and the
16 distance between the gun and the person at the time
17 the shot was fired, all of which have to do with the
18 circumstances surrounding the death.

19 MR. BRITT: Your Honor, at this
20 time I would tender Dr. Sexton as an expert
21 in forensic pathology.

22 THE COURT: Counsel want to be
23 heard?

24 MR. BOWEN: No, Your Honor.

25 THE COURT: Witness may so

1 testify.

2 BY MR. BRITT:

3 Q On August the 3rd, 1993, did you receive a
4 telephone call from Tim Brown, the Coroner of
5 Marlboro County, South Carolina?

6 A Yes, I did.

7 Q And pursuant to that telephone call, did
8 Mr. Brown make any request of you regarding a body
9 that was discovered in the Gum Swamp area of Marlboro
10 County, South Carolina?

11 A Yes, he asked if I would be able to autopsy
12 the body, and I told him I would be able to the next
13 morning.

14 Q When was the autopsy scheduled?

15 A 8:00 the following morning, the fourth of
16 August.

17 Q On August the 4th -- strike that. Who if
18 anyone delivered a body to you from Marlboro County,
19 South Carolina?

20 A Art Springer, who works for Palmetto
21 Transport brought the body to us.

22 Q When was that body brought to you for the
23 purposes of the autopsy?

24 A On the morning of the fourth of August at
25 8:00 a.m.

1 Q Where did you meet Mr. Springer? Where did
2 you meet with Mr. Springer?

3 A The bodies are brought to the hospital. A
4 case like this, which we had already been informed
5 was decomposed and had an odor, we normally examine
6 first at the hospital and x-ray to see if there's
7 anything there such as a bullet. And then we carry
8 it to a different area where at that time we had to
9 use -- to keep the odor from being in the hospital.
10 We now have a better ventilation system so we're able
11 to do it in our morgue, but in this case we did it at
12 a storage area that's at the old hospital.

13 Q Did you give Mr. Brown any instructions in
14 regard to the odor that was being emitted from the
15 bag?

16 A I don't specifically recall, but I
17 oftentimes, the coroners ask if there's something
18 they can do to cut down on the odor. We encourage
19 them to put it in a well sealed bag and then wash the
20 outside of the bag but not put anything directly on
21 the body, because generally the odor comes from
22 what's on the outside of the bag as they are putting
23 this body into the bag.

24 Q August the 4th of 1993, when you met
25 Mr. Springer in the hospital there in Newberry, South

1 Carolina, did Mr. Springer have in his possession a
2 body bag that contained a body?

3 A Yes, he did.

4 Q What was the first thing you did in regard
5 to -- with this body on August the 4th, 1993?

6 A As mentioned, that was at the hospital, so
7 we x-rayed the body to see if there is anything
8 foreign there, and then we proceeded over to the
9 storage area to do the autopsy.

10 Q As a result of the x-rays that were done on
11 August the 4th, 1993, did those x-rays reveal any
12 type of foreign object in that body?

13 A Yes, there was a round nosed bullet found
14 in the chest on the left side and the posterior wall
15 of the chest or in the back, essentially.

16 Q Did Mr. Springer stay with you in the area
17 of the body during the time that it was x-rayed?

18 A I'm sure he did during the time it was
19 x-rayed, because we had to use his transportation to
20 get the body over to the area where we did the
21 autopsy. I don't recall whether he stayed throughout
22 the whole autopsy.

23 THE COURT: Doctor, if you could
24 keep your voice raised so that all members
25 of the jury could hear you, sir?

1 THE WITNESS: Yes, sir, I'll try.

2 BY MR. BRITT:

3 Q What is an autopsy?

4 A Basically, an autopsy is a complete
5 surgical procedure where we examine all of the
6 internal organs, including the brain, after we first
7 examine the external surface of the body and anything
8 that might be on the body such as clothing, and
9 collect all of this for evidence. So it's a
10 procedure whereby we try to examine the body from
11 outside in taking photographs, doing drawings, making
12 notations, making a dictation, and then examine all
13 the internal organs looking at them grossly and/or
14 possibly microscopically, and then issuing a report.

15 Q Describe for us, please, Dr. Sexton, the
16 appearance of this body that was in the bag that
17 Mr. Springer delivered or brought to the Newberry
18 hospital on August the 4th, '93.

19 A The deceased, as I mentioned, had started
20 to decompose. We refer to this in this case as
21 moderate decomposition. The skin was intact except
22 for a few areas where there was some maggot
23 infestation, and there was an open injury on the
24 right upper chest that was enlarged by the postpartum
25 effects of the maggots. But in general, the body was

1 intact but it had started to bloat and had started to
2 develop an odor, and there some what we call purging
3 or fluid coming out of the body from the
4 decomposition.

5 THE COURT: If I may interrupt
6 for a moment, please --

7 MR. BRITT: Yes, sir.

8 THE COURT: Doctor, would you
9 like some water, sir?

10 (Off-the-record discussion.)

11 THE COURT: Mr. Britt?

12 BY MR. BRITT:

13 Q Dr. Sexton, your first observation of the
14 body, was the body clothed?

15 A Yes, the body was clothed.

16 Q Can you describe the clothing?

17 A The clothing was a Polo type shirt with a
18 collar, and was white background with maroon and sort
19 of a greenish gray large stripes across it, and some
20 darker stripes. I couldn't really tell because of
21 the decomposition whether these were dark blue or
22 black, but thinner stripes up in the upper part of
23 the shirt that went down, were around the sleeves as
24 well. The pants were a pair of Docker's that
25 appeared to be gray in color. The pants were size 33

1 waist and 34 length. The shirt was a large sized
2 shirt. There was a pair of black socks and a pair of
3 black Jockey type undershorts that appeared to be of
4 the synthetic type. There was a black belt.

5 Q Were there any shoes on the feet of the
6 body?

7 A No shoes were present.

8 Q The body was transported to -- from the
9 hospital to what you referred to as the storage
10 building?

11 A That's correct.

12 Q Who accompanied the body from the hospital
13 to the storage building?

14 A Mr. Springer drove the body there and
15 myself and Dr. Garvin and the others that helped
16 us -- from the looks of the notice, my wife was
17 there making transcription -- all went over to the
18 area to do the autopsy.

19 Q When the body was removed from
20 Mr. Springer's van, where was it placed in the
21 storage building?

22 A We have a table that we use, a stainless
23 steel table, that the body is placed on in order to
24 do the autopsy.

25 Q Were any photographs taken at that point?

1 A Yes, they were.

2 Q When you opened -- when you first opened
3 the body bag there in the storage building, what did
4 you do?

5 A Basically just examined the body to see if
6 there was anything unusual about it. And then we
7 took photographs. Normally, the first thing we do is
8 open up the bag, do our photographs of the body as it
9 is, look carefully on the outside surface of the
10 clothing, and then removed that clothing and
11 rephotograph the body, and then proceed with the
12 autopsy.

13 Q When you examined the clothing of this body
14 on August the 4th, 1993, prior to removing it, what
15 if anything did you find?

16 A There were holes in the shirt that were on
17 the right side of the chest.

18 Q And where were those holes located on that
19 shirt?

20 A The ones that I saw were here on the right
21 side down a little about the area of the edge of the
22 rib cage.

23 Q And after conducting an examination of the
24 clothing, what then took place?

25 A As mentioned, we removed the clothing, we

1 then photographed the body again and looked at the
2 body. At that time there was evidence of an injury
3 here on the upper right chest just to the right of
4 the nipple and slightly above the nipple. And it was
5 a fairly large injury that obviously had been
6 enlarged by the postpartum effects of the maggots.

7 Q What was the condition of the skin when you
8 first examined it?

9 A The skin is composed of two layers, the
10 epidermis, which is the coating layer, and the
11 dermis, which is a thicker underlayer. The epidermis
12 tends to first blister or slip and then come off when
13 a body decomposes, and a great deal of the
14 superficial layer had slipped and come off, so there
15 was very little of that present in some areas,
16 although there appeared to be some still on the
17 hands.

18 Q Were you able to determine the race of the
19 individual?

20 A Yes. It was apparent from the skin that
21 was intact that it was a Negroid or black
22 individual. The pubic hair was consistent also with
23 a black individual.

24 Q After the clothing was removed, what type
25 of examination did you conduct of the external

1 portion of the body?

2 A We simply just looked from head to toe at
3 what's there and photographed the overall body as
4 well as anything that we see that's of interest.

5 Q Did you examine the area of the mouth of
6 this individual?

7 A We did.

8 Q What if anything did you note about the
9 dental work or teeth of this individual?

10 A Both from the x-rays that we had taken and
11 from the visual examination, there was some very
12 expensive dental work, full bridge across the upper
13 portion, there was -- the upper teeth were part of an
14 artificial bridge that went from one end to the
15 other, and there was some other dental work,
16 including another bridge here in the lower portion.
17 So there was expensive dental work present in the
18 mouth.

19 Q Other than the dental work and the injury
20 that you've described, did you detect any other
21 things about -- during the external examination of
22 the body?

23 A I don't recall anything of significance
24 other than the decomposition and the injury.

25 Q After you completed the external

1 examination of the body, what did you then do?

2 A We then do an internal exam. And we
3 dissect the body and particularly looking at the area
4 where there was an external injury, which we had
5 initially gently probed to see which direction it
6 might go, and then we look inside to see what the
7 organs looked like and see where the bullet that we
8 had seen on x-ray had passed.

9 It obviously had entered at the point where
10 there was the defect in the skin, because there was
11 hemorrhage of the tissue under this. And we could
12 follow that bullet track across the front of the
13 lower portion of the right lung, where it had bruised
14 that area, or produced a contusion, by the shock wave
15 that accompanies a missile passing through the body.
16 It had then passed behind the heart and through the
17 aorta, which is the largest artery leading from the
18 heart that carries blood throughout the body, down to
19 the legs.

20 It passed through the aorta, on through the
21 left lower lobe of lung, and then into the back of
22 the chest, and was found in the subcutaneous tissue
23 of the back of the left side. So that we were able
24 to document the path of the bullet, the fact that it
25 occurred during light because there was hemorrhage

1 along this missile track, and there was two pints of
2 bloody fluid in the left chest that was as a result
3 of that bullet passing through the aorta, which was
4 in fact the cause of death, because the bleeding
5 internally from a bullet passing through the aorta
6 can cause a person's death in a very short period of
7 time.

8 Q Did you ever detect any other wound that
9 would be characterized as an exit wound?

10 A No, there was no exit wound. We examined
11 the back of the body, no holes in the back of the
12 body. The only hole in the skin was the one here in
13 the upper right chest region that had the underlying
14 hemorrhage and matched up with the path through the
15 right chest into the left chest and into the
16 subcutaneous tissue in the back where the bullet was
17 found.

18 Q In your examination of the clothing, did
19 you ever detect any stains on the clothing that you
20 would characterize as blood stains?

21 A The clothing was soaked with decomposition
22 fluid, and looked like you had dumped it in mud, so
23 it was very difficult to evaluate any stains on the
24 clothing. I did not see anything on the clothing
25 that in my opinion represented or that I could within

1 reasonable medical certainty say was blood.

2 Q During the internal examination of this
3 body, did you detect whether the lead projectile had
4 struck any ribs?

5 A Yes, the bullet as it entered here in the
6 upper right chest above and -- slightly above the
7 right nipple hit the undersurface of the fifth rib.
8 The ribs come down from the back and swing around
9 sort of downward and to the front, and it passed just
10 under the edge of that fifth rib, then exited on the
11 left side, passed just under the edge of the tenth
12 rib, which might sound like it went down fairly
13 acutely, but these ribs, because of the way they
14 curve, they start out nearly horizontal in the back,
15 come down a bit, and curve around to the front. In
16 front, the path was only slightly downward, maybe ten
17 or fifteen degrees.

18 Q Was the lead projectile that you noted in
19 the x-ray removed from the body?

20 A Yes, it was.

21 Q What if anything did you do with the lead
22 projectile?

23 A The projectile and other evidence was
24 turned over to the agent from our State Law
25 Enforcement Division, David Collins, who was there at

1 the autopsy.

2 Q Did you examine the contents of the
3 gastrointestinal tract?

4 A I did.

5 Q And if you will, can you explain to us what
6 is meant by the gastrointestinal track?

7 A Basically, it's the track leading from your
8 mouth all the way out to your anus. Your esophagus
9 carries food down to your stomach where it stays
10 until it's partially digested and emptied into the
11 small intestine and on into the large intestine. In
12 examining the stomach there was undigested material
13 present, which was a type of pea, or like a
14 black-eyed pea, some tomato fragments, and some
15 fragments that looked like sliced mushrooms.

16 It's amazing that things in our stomach
17 look like they do when we eat them, but they
18 frequently do, depending on the ability of the person
19 to chew, and for them to smell like what we eat and
20 not vomitus, if it's not been chewed too fast or not
21 been completely dissolved by the digestive process.
22 So it appeared that there were four ounces of peas,
23 tomatoes, and what to me looked like sliced
24 mushrooms.

25 Q Based on the appearance of the items that

1 you found in the gastrointestinal track, do you have
2 an opinion as to when that food would have been
3 consumed as it related to the time of death?

4 A There's quite a variability as to how long
5 digestion takes. It varies between an individual who
6 has a good digestive system, is not either angry or
7 frightened, or has something to upset their normal
8 digestive track, to a person who has some of these
9 influences or has some surgical procedure that would
10 change their normal digestive track.

11 The condition of this food indicated it had
12 not undergone much if any digestion, which means it
13 could have been there as short as an hour. It also
14 could have been there much longer if for whatever
15 reason the person had a slowed digestion or slowed
16 emptying time, up to about six hours. So somewhere
17 between one and six hours would be my estimate, based
18 on the condition of the food that was in the stomach
19 of James Jordan.

20 Q What if any effect would the presence of
21 alcohol have, in your opinion, on the digestion of
22 food?

23 A Alcohol can aid in the rapid absorption of
24 some things from the stomach. Some things that
25 actually get absorbed from the stomach as opposed to

1 getting absorbed from the intestinal track after the
2 stomach digested it, but also slow down sometimes the
3 emptying of the stomach into the intestine. So it
4 can act both ways, slow down or speed up the
5 absorption.

6 Q As a procedure during an autopsy, is it a
7 procedure to remove bodily fluids such as blood,
8 organ tissue, for the purpose of toxicology analysis?

9 A Yes, it is.

10 Q And was such a procedure followed in this
11 case?

12 A Yes. There's the blood that was present,
13 and most all of this was in that left chest cavity,
14 was removed along with some liver tissue and some
15 kidney tissue. Let me refer to my notes, see if
16 there was any other tissue removed. And it was given
17 to officer Collins. Stomach contents, we sent the
18 stomach contents, some liver tissue, some kidney
19 tissue, and some blood.

20 Q How were those items handled?

21 A The blood would have been in a small
22 plastic inert bottle. Same would be true of the --
23 I'm sorry, the liver and the kidney tissue were
24 sealed in heat sealed bags, and the stomach contents
25 was put in a small plastic bottle, wide mouthed

1 bottle.

2 Q What if anything was done with the
3 clothing?

4 A The clothing, because of the odor, was
5 placed in plastic bags and initially it was
6 transferred to officer Collins, who then elected as
7 far as to transfer them to Art Springer, who had
8 brought the body.

9 Q Either during the autopsy or after the
10 autopsy had been completed, did you have a
11 conversation with Coroner Tim Brown, regarding the
12 hands and the jaws of this individual that you had
13 performed this autopsy on?

14 A I don't recall exactly what the
15 conversation was, but it was before the body left
16 that day or that morning. There are three ways that
17 medically we identify people. There are a lot of
18 things that give tentative identification, such as
19 clothing or rings or appearance, but medically we
20 look at the fingerprints -- we don't, but
21 fingerprints are considered a means of identification
22 that is a proven means. And one way to make sure
23 that the fingerprints in this case were obtained and
24 useful as far as comparing was to remove the hands.

25 The reason for that is that the epidermis,

1 as I mentioned earlier, tends to slide off of the
2 body, including the hands, and the epidermis is the
3 portion that has the prominent friction ridges that
4 are used for fingerprint identification that are
5 inked and then pressed on a paper so you can see
6 those ridges.

7 Once the epidermis is removed, you have a
8 pair of double ridges for each single ridge on the
9 surface that are much thinner. So when you try to
10 ink it and roll a print on it, you just get a smear.
11 So it has to be carefully handled in a laboratory by
12 either photographic techniques or dissecting that
13 tissue away, putting it in between plates and
14 photographing it, or using a special type of material
15 that fills those tiny thin cracks and produces an
16 imprint. It's not something that is routinely done
17 in the field.

18 I discussed with Mr. Brown about the fact
19 that we might need to remove the hands. The other
20 would be to remove the jaws, because the second means
21 of identifying a person is by comparing their pre and
22 post mortem dental records. When you think about
23 fingerprints, they are all sorts of little tiny
24 ridges and grooves and bifurcations on the
25 fingerprint that help make each one individual and

1 unique to that person. My index finger is like no
2 other in the world.

3 The same is true when you consider your
4 teeth in total, particularly, if they have had
5 restorations, because each tooth has five surfaces
6 that are above the root or above the gum line, and
7 they all have roots that are either one, two, three
8 or four in number, and they may have restorations
9 such as fillings or caps or prosthetic devices or
10 root canals in all those different areas. So when
11 you add all that up, you can have hundreds of
12 different points of comparisons, or even thousands.

13 So dental tissue is useful to make a
14 positive identification. But on a dead body, the
15 only way to make that by x-ray means is to remove the
16 jaws and cut them in such a fashion that you can lay
17 them flat so they can be x-rayed the same we they are
18 during life. During life, we put a little bit of
19 wings in place in x-ray. We do not have a means of
20 doing that in dead people.

21 The third means of identification that's
22 medically proven is to compare the prior x-rays of
23 various parts of the bony structure of the body, the
24 skeleton, with pre mortem x-rays. So had we had any
25 fractures that we had seen when we initially x-rayed

1 the body that were healing, those would have been
2 helpful, although sometimes fractures will completely
3 heal so you won't recognize them on just a screening
4 x-ray.

5 But I talked with Mr. Brown about us
6 needing to remove the hands and remove the jaws,
7 since we had no identification of this person who
8 obviously died a violent death, so we needed to do
9 that in order to make a positive identification.

10 Q What technique was used to remove the
11 hands?

12 A There are simply cut off.

13 Q What if any technique was used to -- was
14 any tissue removed from the finger tips of the
15 finger?

16 A There was not enough tissue there for us to
17 carefully remove it and feel sure that they could
18 make a positive identification, so we simply removed
19 the whole hand. That insures that finger are not
20 mixed up so you know you're dealing with the right
21 thumb because the person doing the examination has
22 the whole hand to examine.

23 Q And after the hands were removed, how were
24 they packaged?

25 A They were simply put in a sealed plastic

1 container, probably two on that occasion to make sure
2 the odor was down when they would examine it in the
3 laboratory.

4 Q And to whom was that sealed container
5 given?

6 A That also would have been passed to SLED
7 Agent Collins, David Collins, as far as I know. Let
8 me check here to make sure on my transfer sheet.
9 Yes, they were transferred to David Collins.

10 Q That was on August the 4th of 1993?

11 A Correct, along with the bullet and some
12 pulled hair and some tissue from this wound site in
13 the upper right chest, so it could be evaluated to
14 see at the forensic lab whether any powder particles,
15 to see whether the gun was close to the person.

16 Q How were the jaws removed?

17 A We first dissect and then use a saw to
18 remove the jaws.

19 Q In removing the jaws, were the bone, the
20 bones of the lower jaw kept intact?

21 A No. In order to do the x-ray we have to
22 split them down the middle so as to lay them flat to
23 x-ray, by the type of x-ray machine that we have
24 available.

25 Q And both the lower and upper jaw were

1 removed in this case?

2 A That's correct.

3 Q What if anything was done with those jaws
4 after they were removed?

5 A Let me rephrase what I just said. On
6 this -- routinely, we do cut the jaws in two, but on
7 this occasion, because of this complete arch of one
8 large bridge of metal, and enamel in front, we could
9 not cut the jaw in two. So on this occasion, the
10 dentist that we use to help us with identification
11 when it has to do with dental, Dr. Robert Brown,
12 actually put that jaw in his office, much to the
13 chagrin of his employees, on a Saturday, and actually
14 x-rayed it as you would a living person to some
15 degree.

16 There are limitations to trying to do that
17 with jaws as opposed to a person, who can cooperate.
18 But on that occasion, we do not cut them in two as we
19 normally do, but he x-rayed them in his office.

20 Q Were you present when those x-rays were
21 made?

22 A No, I was not.

23 Q Were those x-rays later given to you?

24 A Yes, they were.

25 Q Was Dr. Brown, Dr. Robert Brown, did he

1 also, in addition to providing you with the x-rays,
2 provide you with a chart, charting the teeth?

3 A He did.

4 Q After the x-rays were made by Dr. Robert
5 Brown, did he provide you with those x-rays and the
6 jawbone?

7 A Not me personally. He provided -- brought
8 the x-rays to our office and the jawbones were --
9 while I was in California at the Olympic shooting
10 trial, were transferred to Mr. Brown.

11 MR. BRITT: May I approach the
12 witness.

13 THE COURT: Yes, sir.

14 MR. BRITT: You've previously
15 seen these, these are State's Exhibit 30
16 through 33.

17 BY MR. BRITT:

18 Q Doctor, I'm going to hand you what's been
19 marked as State's Exhibits 30 through 33, and ask you
20 to look at those photographs and tell me if you can
21 identify them.

22 A Yes.

23 Q For the record, how are you able to
24 identify State's Exhibit 30 through 33?

25 MR. BOWEN: Object. Wish to be

1 heard, Your Honor.

2 THE COURT: Members of the jury,
3 there's a matters of law the Court must
4 take up at this time out of the hearing of
5 the jury. I anticipate that will probably
6 take us up to 5:00, so I'm going to release
7 you folks at this time.

8 Ladies and gentlemen of the jury, the
9 weekend recess is an extended recess, so
10 it's especially important that you
11 continued to abide by all prior
12 instructions of the Court concerning your
13 conduct during this recess. Again, I
14 instruct you that during this weekend
15 recess you are not to talk about this
16 matter among yourself, you are not to talk
17 about the matter with anyone else,
18 including members of your own families.

19 You're not to allow anyone to say
20 anything to you or in your presence about
21 this case. If anyone at all communicates
22 with you about this matter or attempts to
23 do so, or if anyone at all says anything
24 about this case in your presence, it would
25 be your duty to inform us of that at the

1 earliest opportunity through one of the
2 bailiffs assigned to this courtroom.

3 I specifically instruct you that you
4 are not to form or express any opinion
5 about this matter until the jury has been
6 specifically instructed to begin
7 deliberations in this case. You're not to
8 have any contact or communication of any
9 kind with any of the attorneys, parties,
10 witnesses, prospective witnesses in this
11 matter, or directly with the Court. You
12 are not to allow yourselves to be exposed
13 to any media accounts which may exist in
14 connection with this matter, regardless
15 what form those take, may they be newspaper
16 accounts, radio broadcast accounts, or
17 television news accounts.

18 You are instructed that it is your
19 duty to avoid any exposure at all to any
20 matters external to the evidence in this
21 case. It is your duty and obligation to
22 base any verdict reached in this case
23 solely on the evidence presented in open
24 court, subject to cross-examination, and
25 subject to the administration of an oath.

1 I instruct you further that you are
2 not to conduct any independent inquiry or
3 investigation or research of any kind.
4 Again, the function, duty and
5 responsibility of the jury in any case is
6 to base any verdict reached only on the
7 evidence presented in open court, under
8 oath, and subject to cross-examination.

9 Have a good weekend, folks. Please
10 report promptly at 9:30 Monday morning, and
11 we'll continue with the presentation of
12 evidence at that time. Everyone else
13 please remain seated, members of the jury
14 are excused.

15 (Jury out at 4:47 p.m.)

16 THE COURT: Let the record
17 reflect the following is being heard in the
18 absence of the jury. Is this a Hennis
19 objection, folks?

20 MR. BOWEN: Yes, sir, it is, Your
21 Honor.

22 We object to the photographs in that
23 we contend they are cumulative as to each
24 other and redundant in the light of other
25 photographs of the dead body in question

1 introduced earlier, and that their effect,
2 if not their intent, would be to inflame
3 the jury. And furthermore, we are informed
4 that Dr. Sexton has available some
5 competent medical diagrams in this case
6 which would allow him to professionally and
7 clinically explain --

8 THE COURT: As to each proffered
9 exhibit, beginning with State's Exhibit 30,
10 for what purpose are you offering State's
11 Exhibit 30?

12 MR. BRITT: Your Honor, we're
13 offering it for substantive purpose.

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q Dr. Sexton, if I may --

17 THE COURT: For what purpose are
18 you offering --

19 MR. BRITT: I --

20 BY MR. BRITT:

21 Q Dr. Sexton, State's Exhibit Number 30 --

22 MR. THOMPSON: May we stand
23 behind the witness?

24 BY MR. BRITT:

25 Q For the record, can you observe State's

1 Exhibit Number 30?

2 A Yes, I can.

3 Q How are you able to identify State's
4 Exhibit 30?

5 A By comparing it with my two-by-two
6 photographs and the three-by-five prints that I had
7 made at the time these eight-by-tens --

8 THE COURT: All we need at this
9 point is what you intend to elicit from the
10 witness.

11 BY MR. BRITT:

12 Q Does that accurately reflect the condition
13 of the front portion of the body as you observed it
14 on August the 4th, 1993?

15 A Yes, it does.

16 THE COURT: Okay. Why is that
17 important in the case?

18 MR. BRITT: He's testified that
19 he opened the bag and examined the
20 external --

21 THE COURT: What does 30 show
22 that you want to get before the jury, is
23 what I'm asking.

24 MR. BRITT: 30 shows the
25 condition the body was in. There's nothing

1 in evidence with regard to the front of the
2 body, nothing previously. It shows the
3 condition of the front of the body.

4 THE COURT: Does it depict the
5 entry wound?

6 MR. BRITT: Yes, sir, but you
7 can't see it on this photograph. It's
8 there, because --

9 THE COURT: Okay. What are you
10 getting it in for, is what my point is.
11 You have to have a specific purpose for
12 each exhibit.

13 MR. BRITT: It is substantive
14 evidence as of the condition of the body as
15 he saw it on the date.

16 THE COURT: What does that mean
17 to the jury?

18 MR. BRITT: Condition of the
19 body.

20 THE COURT: That's already been
21 testified to.

22 MR. BRITT: But not from this
23 expert.

24 THE COURT: What is it that you
25 intend to elicit from Dr. Sexton regarding

1 the front of the body that is relevant in
2 this case that you want the jury to hear
3 about? For example, does it depict an
4 entry wound that you want him to describe
5 to the jury?

6 MR. BRITT: This does not. It
7 depicts the slippage of the epidermis that
8 he's testified to in regard to the arm.

9 THE COURT: Are you referring it
10 for that purpose?

11 MR. BRITT: Yes, sir.

12 THE COURT: Do you want to be
13 heard as to number 30?

14 MR. BOWEN: Yes, sir, we do in
15 the sense that if he wants to talk about
16 his fingerprints, his best evidence is the
17 skin that he used --

18 THE COURT: He said slippage.
19 Folks, the objection -- the proffer has to
20 be for a specific purpose that's relevant
21 to the case that does not run afoul of the
22 Hennis rule. The exhibit has to be for a
23 specific purpose related to the criteria
24 set out in Hennis.

25 MR. THOMPSON: Your Honor --

1 THE COURT: Don't argue. For
2 example, the State has to tell me I'm
3 offering it for this purpose because it
4 means this case to this jury. Then you
5 folks are entitled to be heard by way of
6 objection as to that proffer. Then this
7 next photograph, state tells me why they
8 want it in for, what purpose it's coming in
9 and how it relates to any issue before the
10 jury. That's the way it's done.

11 Now, as to 30, what is your --

12 MR. THOMPSON: The objection for
13 the defense, if he's talking about
14 slippage, I assume he says the arm, then
15 the other photographs, certainly Your
16 Honor, this is a photograph which shows
17 much more than the arm.

18 THE COURT: That's not -- that's
19 not a factor in Hennis.

20 MR. THOMPSON: And there may
21 be -- well, I suggest to you, Your Honor --

22 THE COURT: Folks I'm not going
23 to argue with you. We've got ten minutes.
24 I'm going to give you folks now the
25 opportunity to be heard, but I ask that you

1 be precise in terms of why you're offering
2 stuff.

3 MR. BOWEN: He says slippage in
4 relation to the hand, and I--

5 MR. BRITT: I said the arm, Mr.
6 Bowen.

7 MR. BOWEN: Slippage of the arm,
8 in relation to the arm, because he said it
9 bears on the from, but the hand doesn't
10 even show --

11 THE COURT: Counsel for
12 defendant, have a seat at the counsel
13 table. Counsel for the State, take your
14 exhibits and return to counsel for the
15 State's table.

16 I apologize, Dr. Sexton.

17 THE WITNESS: I'm used to this,
18 Your Honor.

19 THE COURT: Yes, sir. All
20 right. Yes, sir, I'll hear you as to 30.
21 You've heard his contention, let's hear
22 your argument. Make it concise.

23 MR. BOWEN: He says it relates to
24 the hand; hand doesn't even show in the
25 photograph.

1 MR. BRITT: Your Honor, if we go
2 back, I said slippage as to the skin and
3 it's detected on the arm.

4 THE COURT: I heard what you
5 said.

6 That's your basis?

7 MR. BOWEN: Yes, sir, because the
8 hand and the arm are connected. He said
9 earlier that -- the Doctor said that the
10 skin tends to slip away from the body
11 toward the hand, so I that you need the arm
12 and the hand to show the relationship.
13 He's got other photographs to do that.

14 THE COURT: Are you done with
15 number 30?

16 MR. BOWEN: Yes, sir.

17 THE COURT: 31?

18 MR. BRITT: 31 is a photograph --
19 as Dr. Sexton has testified, there were
20 areas of the body where he was able to
21 determine the race of the individual
22 because the pigment had not faded. 31 is a
23 photograph of the body after the clothes
24 had been removed, that show those areas,
25 the area of pigmentation that had not

1 faded, and also he's testified that the
2 pubic hair that was examined that was
3 consistent of that of a male, black male.

4 THE COURT: Which goes to the
5 issue of identification?

6 MR. BRITT: Yes, sir.

7 THE COURT: Which is a contested
8 issue in this case.

9 MR. BRITT: Yes, sir.

10 THE COURT: What is your
11 objection as to 31?

12 MR. BOWEN: This photograph is, I
13 believe it's the one that shows the
14 genitals. That particular one is
15 inflammatory. There's many other pictures,
16 including some already in evidence, that
17 show the skin, and that tend to show race,
18 and which --

19 MR. BRITT: They tend to show --

20 THE COURT: I understand your
21 argument and I'm thinking as I'm
22 listening. Go ahead.

23 MR. BOWEN: And rather than have
24 that particular one in, we will simply
25 stipulate that it appears from other

1 photographs and other evidence that this is
2 the body of black man.

3 THE COURT: Doesn't preclude them
4 from offering it under Hennis. Any
5 additional objection?

6 MR. BOWEN: It's an entire body
7 view, it's a naked view. It's a genitalia
8 view. There's other evidence available
9 that can show --

10 THE COURT: Where is that other
11 evidence?

12 MR. BOWEN: I'm satisfied this is
13 not the only photograph that he can make
14 this testimony from.

15 THE COURT: 33? -- Or 32, I'm
16 sorry.

17 MR. BRITT: 32 is a photograph
18 from the waist up of the body that shows
19 the open mouth and the teeth and also it
20 shows the defect that he's testified to
21 that was located in the area of the right
22 nipple on the chest.

23 THE COURT: What is your
24 objection as to 32?

25 MR. THOMPSON: Let me see the

1 exhibit.

2 MR. BOWEN: We don't object to
3 that, Your Honor.

4 THE COURT: There is no objection
5 to 32. 32 is admitted, or will be admitted
6 in the presence of the jury.

7 Yes, sir as to 33?

8 MR. BRITT: 33 is simply a closer
9 view of the defect in the chest where it is
10 much clearer in 33 than it is -- than it
11 appears in 32. And I would hand those to
12 the Court for --

13 THE COURT: Which is a part of
14 your purpose with regard to 32, but deals
15 more with the defect?

16 MR. BRITT: Yes, sir.

17 THE COURT: Primarily, that's why
18 you're offering it?

19 MR. BRITT: Yes.

20 MR. BOWEN: The previous one we
21 stipulated to is if it's nothing but the
22 defect, then we prefer the later one that
23 comes in on defect.

24 THE COURT: As to defendant's
25 objection as to 31, 32, 33, the objections

1 are overruled. Exceptions are noted for
2 the record. The Court finds under Hennis
3 they are being offered for a competent and
4 proper and admissible purpose. The Court's
5 finding that they are not overly
6 repetitious, inflammatory, or for the
7 limited purpose for which they are being
8 offered. Note the defendant's objection
9 for the record.

10 Folks, that's the way it's done under
11 Hennis. We resolved that so we can go
12 forward with those exhibits on Monday
13 morning promptly at 9:30.

14 Let me state for the record what I
15 said at the bench conference. The Court
16 has been informed, as was accounted for by
17 the defendant and the defendant proper at
18 the bench conference, that Dr. Sexton is
19 scheduled to appear in a proceeding in
20 South Carolina on Monday, that as I
21 understand it, sir, if you are tied up here
22 in this case, your appearance in South
23 Carolina on Tuesday will not cause any
24 substantial inconvenience for either you
25 personally or for the authorities in South

1 Carolina. Is that accurate?

2 THE WITNESS: Reasonably
3 accurate, sir.

4 THE COURT: Reasonably accurate.
5 We will do the best we can to expedite the
6 direct examination and cross-examination.
7 It's not my intent to impinge on anybody's
8 right to examine any witness fully, but I'm
9 going to require that you folks be prepared
10 to go forward with cross-examination and
11 direct examination, and again without any
12 intent on my part to impinge on anybody
13 else's right to examine fully.

14 Dr. Sexton, thank you very much.
15 We'll proceed promptly at 9:30 Monday
16 morning. We appreciate your cooperation.
17 You're excused at this time.

18 Anything further from either counsel?

19 MR. BRITT: No, sir.

20 THE COURT: We're at ease, or
21 recess until 9:30 Monday morning.

22 (Court adjourned, 5:00 p.m.)

23

24

25

1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

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10 and

11 WOODBERRY A. BOWEN, Esq.
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13 Lumberton, North Carolina 2835914
15 (January 8, 1996. Proceedings in open court.)16 THE COURT: Good morning, folks. I
17 understand that all members of the jury are secured
18 in the jury room, let the record reflect that all
19 counsel are present, that the defendant is present in
20 open court.21 Are there any matters before we proceed
22 with the examination of Dr. Sexton?23 MR. BRITT: Yes, sir, I just want
24 to bring a matter to the attention of the
25 Court. If I could approach, ask that this

1 be made a part of the record in this case.

2 THE COURT: Okay

3 (State's Exhibit 39 was
4 marked for identification.)

5 MR. BRITT: Your Honor, Exhibit
6 39, it's a memorandum that I provided to
7 Mr. Thompson and to Mr. Bowen this
8 morning. This is a result of an interview
9 that was conducted Saturday by myself,
10 Mr. Heffney and Mr. Thompson of a witness
11 in this case by the name of Jamie Moore.

12 THE COURT: So this is
13 potentially exculpatory material under
14 Agurs, A G U R S, and Brady versus
15 Maryland, is that correct?

16 MR. BRITT: Yes, sir.

17 THE COURT: Okay.

18 THE COURT: You folks want to be
19 heard? I'm going to admit for purposes of
20 the record, 39. State's Exhibit 39 is
21 admitted as a State's Exhibit and also as
22 whatever the next number of the Court's
23 exhibit is, for the purposes of appellate
24 review.

25 THE CLERK: That would be 12.

1 THE COURT: So State's 39 is
2 Court's 12.

3 Ready to go forward, folks?

4 MR. BRITT: Yes, sir.

5 MR. THOMPSON: Yes, sir.

6 THE COURT: If you'd bring the
7 jury in, please.

8 (Jury in at 9:35 a.m.)

9 THE COURT: Good morning, ladies
10 and gentlemen of the jury.

11 Yes, sir, Mr. Britt.

12 MR. BRITT: May I approach the
13 witness, please?

14 THE COURT: Yes, sir.

15 DIRECT EXAMINATION (Continued).

16 BY MR. BRITT:

17 Q Dr. Sexton, I'm going to hand you what's
18 previously been marked as State's Exhibit 30 through
19 33. Ask you to look at those photographs and tell me
20 if you can identify them?

21 A Yes, these are eight by ten copies of the
22 two by two slides that I made of the decedent at the
23 time of the autopsy.

24 Q For the record, what is State's Exhibit
25 Number 30?

1 A State's Exhibit Number 30 is an overall
2 view of the deceased after we had opened the body bag
3 that he was in, just showing the condition of the
4 body, the clothing that was on him, as he was first
5 viewed after we opened the bag.

6 Q And for the record, what is State's Exhibit
7 Number 31?

8 A 31 is a view of the body after we had
9 undressed the body, still in the body bag, showing
10 the condition of the body once we undressed it.

11 Q For the record, what is State's Exhibit
12 Number 32?

13 A 32 is a closer view of the upper half of
14 the body, again showing the condition of the body at
15 the time we viewed it.

16 Q Is State's Exhibit Number 32, is the
17 penetrating defect that you found during the external
18 examination of the body depicted?

19 A It is, it's in the upper right chest region
20 just above an lateral to the right nipple.

21 Q An State's Exhibit 33, for the record, what
22 is that?

23 A Number 33 for the record is a closer view
24 of that same area of the body, the upper right chest
25 so that you can see the gunshot entrance wound a

1 already better. You can also see the decedent's
2 teeth and the condition of the body.

3 Q Do State's Exhibit 30 through 32 depict the
4 body that you performed the autopsy on on August the
5 4th of 1993?

6 A They do accurately depict the condition of
7 the body? What we saw in the body.

8 MR. BRITT: Your Honor, at this
9 time I move for admission of 30 through 32.

10 MR. THOMPSON: Renew our
11 objection.

12 THE COURT: My understanding 32
13 there was no objection, is that correct.

14 MR. THOMPSON: That's correct.

15 THE COURT: Then 32 is admitted
16 without objection, the objection as to 30
17 and 30 one is overruled, exception is noted
18 for the record. 30 through 32 are admitted
19 at this time.

20 MR. BRITT: Your Honor I ask that
21 Dr. Sexton be allowed the step down in
22 front of the jury box.

23 THE COURT: Yes, sir. .

24 BY MR. BRITT:

25 Q Using State's Exhibit Number 30, can you

1 use it in describing for the jury the condition of
2 the body as you saw particularly the area of the arm
3 that is exposed in regard to the discoloration of the
4 skin?

5 A Yes. The body as you see in this
6 photograph, show part of the jury and then the other
7 part, the body looks damp it was in water, there's a
8 red and white robe that's around the right leg. This
9 was used to retrieve the body from the water. You
10 can see the pants which sort of look brown here but
11 on closer exam actually a light gray color
12 internally. Dark belt, it's hard to tell the color
13 of the shirt in this photograph.

14 The left arm as you see has varying
15 colors. Looks very pale, but there's some brown
16 areas. The brown areas are the remaining black
17 skin. The pale areas are where the skin, the
18 epidermis has been sluffed off. There's also a lot
19 of maggots, little white objects on the body.

20 As you can see down at this end, like I say
21 the pants, everything looks wet, because the water,
22 here's the red and white rope that was used to
23 retrieve him from the water. The pants look sort of
24 brown but internally where the mud was not present
25 you can see they are gray. They are Docker's, size

1 33. Black belt. It's hard to tell much about the
2 shirt. The left arm is visible, you can see that it
3 looks very pale except for a few areas where there's
4 dark material, and that dark material is a normal
5 black skin that's still present. The other black
6 skin has sluffed off, the superficial layer that we
7 call the epidermis.

8 BY MR. BRITT:

9 Q Using State's Exhibit Number 31, can you
10 use that photograph and describing the areas of
11 discoloration of the body once the clothing was
12 removed and you've previously testified that the
13 pubic hair that was found on the body was consistent
14 with that of a black male, is that correct?

15 A That's correct.

16 Q Is that also depicted in State's Exhibit
17 Number 32?

18 THE COURT: Okay, Mr. Britt, and
19 Dr. Sexton, if you'll accommodate us, it
20 may be more appropriate in terms of the
21 jury to give your explanation as to
22 anything that might be depicted according
23 to your testimony in three stages so that
24 all members of the panel are able to see.

25 THE WITNESS: I would be glad to

1 Your Honor.

2 This shows the body after we've
3 undressed the body. The hair here is
4 black, it is curly, consistent with Negroid
5 hair. You can see some areas of skin that
6 are still remaining. There's some
7 discoloration due to drying. This is after
8 the body starts to decompose and the
9 epidermis slipped off, after it gets out of
10 the water, starts drying and getting
11 discoloration. That's artifactual. Same
12 is true to the facial part of the body.
13 And you can see again the maggots up in
14 this area (indicating).

15 You can see that most of the skin has
16 slipped off. There are a few areas like
17 here on the right leg where there's some
18 black skin remaining. Discoloration here
19 on the chest that artifactual. Black hair
20 is consistent, was when we examined it
21 closely, with black Negroid hair.

22 You can see the body looks nearly
23 white except for a few areas where there's
24 some Negroid skin still remaining. You can
25 see the black pubic hair. This area here

1 on the left chest is also present on some
2 other parts of the chest is some drying
3 artifact from the skin, epidermis being
4 missing, and then the body being out in the
5 air and starting to discolor.

6 BY MR. BRITT:

7 Q Using State's Exhibit 32, use it to show
8 the jury the location of the penetrating defect that
9 you found and the State's Exhibit Number 32 also
10 depict the full bridge that was located in the upper
11 portion of the jaw?

12 A This is 32. You can see that there is
13 black discoloration here that is artifactual, but
14 part of that is around a defect here in the upper
15 right chest. This is the right nipple just below and
16 to the left of the teeth. What happens in the water,
17 some of the various animals that are in the water
18 will eat away some of the soft tissue of the ear and
19 lips, so the teeth are very easily seen. You can't
20 really tell here that they are artificial because
21 they have enamel coating on the surface, but this is
22 a full gold bridge across the top, enamel in the
23 front. Easily visible up close, the defect in the
24 right upper chest.

25 This shows the upper portion of the body.

1 This black area here on the right, up here around the
2 neck, is artifact. Some of that black artifact is
3 around a defect in the upper right chest where the
4 bullet entered. The nipple is here just below and to
5 the left of that, as I mentioned earlier. Here is
6 the full bridge, full upper and lower bridge that
7 is -- the lower is partial, hasn't been completed
8 yet.

9 Here you can see the dark discoloration.
10 This artifact here on the right side of the abdomen
11 and chest, and you can see the dark discoloration.
12 This artifact here on the upper chest. Around this
13 area of artifact is a defect here in the upper right
14 chest adjacent to the nipple, which is where the
15 bullet entered. You can see the teeth very clearly.
16 They are outlined and look like they are in good
17 condition. It's because a full upper bridge and
18 partial lower bridge is present.

19 Q State's Exhibit 33, use that to show the
20 jury --

21 THE COURT: Folks, my
22 recollection is that the tender was 30, 31
23 and 32. He was shown 33 and identified 33
24 but 33 was not included in the tender. You
25 offered 30 through 32.

1 MR. BRITT: Yes, sir. At this
2 time I offer 33 as well. I apologize.

3 MR. THOMPSON: As to that we
4 renew our objection.

5 THE COURT: Objection to 33 is
6 overruled. Exception is noted for the
7 record. 33 is admitted at this time.

8 MR. BRITT: Thank you, Your
9 Honor.

10 THE WITNESS: 33 is a closer view
11 of 32. You can see the teeth more easily,
12 here's the right nipple, here is the defect
13 in the upper right chest. I realize it's
14 sort of difficult to evaluate this
15 considering these photographs and so many
16 artifacts around, but there is a hole here
17 in the upper right chest where the bullet
18 entered.

19 The number here is simply an
20 identifying number for that case for that
21 year. Again, the teeth are more clearly
22 visible here in the upper part of the
23 photograph. The entry wound is here in the
24 upper right chest adjacent to the right
25 nipple. This is the right arm.

1 Here are the teeth that are very
2 easily visible. And here's the defect in
3 the upper right chest adjacent to the right
4 nipple. This is the right arm in this
5 location. This is the case number.

6 BY MR. BRITT:

7 Q If you would return to the witness stand,
8 please.

9 A (Witness complies).

10 Q Dr. Sexton, based upon your experience and
11 examination of the body on August the 4th of 1993,
12 did you form an opinion as to the cause of this
13 individual's death?

14 A Yes, I did.

15 Q And what if any opinion did you form on
16 August the 4th of 1993 as to the cause of this
17 individual's death?

18 A Within reasonable medical certainty, it's
19 my opinion that the cause of death is the gunshot
20 wound to the right upper chest that passed through
21 his aorta and his left lung causing internal
22 bleeding.

23 Q Dr. Sexton, based upon your examination and
24 observations of the body, were you able to form an
25 opinion as to how long this individual had been dead

1 at the time that you performed the autopsy on August
2 the 4th, 1993?

3 A When a body has been dead for a significant
4 period of time, more than a week, then the estimate
5 has to be fairly large, because it's -- there are a
6 lot of variables, and also not being presented at the
7 time the body is removed to evaluate the environment
8 and the condition of the body at that time makes it a
9 little more difficult, because temperature there are
10 two things that go on when a body decomposes, one is
11 the normal autolysis where the internal enzymes are
12 released after death and start dissolving the body
13 from within.

14 The other is the outside effects, in this
15 case, the animals in the water, eating on the body,
16 out on land and the other animals doing this as well
17 as the bacteria that are becoming -- that are causing
18 putrefaction. All this is temperature dependent,
19 moisture dependent as well as the condition of the
20 body. If the person had a fever prior to death it
21 would increase the rate at which this occurs.

22 And also it's fairly subjective because
23 there are studies where people have taken animals and
24 left them outside, put them in such a fashion that
25 they can't be gotten to by animals, and slowly watched

1 the decay. But again, it's quite variable. But in
2 my opinion, based on my experience of twenty seven
3 years of doing this, seeing hubs of cases, it's at
4 least a week considering the decomposition that was
5 present. But it could have been depending on the
6 temperature of that water which may have been fairly
7 cool at sometimes, and warm other times depending on
8 how fast it's move, we gave an estimate up to five
9 weeks.

10 The reason for that, we didn't want to
11 exclude a period of time where they may not look for
12 where the vehicle might have been or other facts
13 about the case, so the at the time we gave a one to
14 five week window, the window is probably a little
15 less than that, maybe one to two, to two and a half
16 weeks, but again, it's fairly subjective when it
17 comes to decomposed body.

18 Q What effect if any would the presence of
19 that body being in the water have on the rate of
20 decomposition in your opinion in regard to how long
21 the individual had been dead?

22 A As I mentioned the water being a moving
23 material that keeps heat quite well an aspect source
24 heat could cool the body if it's moving and if it's
25 cooler at sometimes as opposed to others. This was

1 during the summer but there are some spring that are
2 quite cold during the summer because they come from
3 deep in the ground. So if the water that he was in
4 was cool at sometimes, it could have prolonged that
5 period of time. That's why we gave the period of up
6 to about five weeks.

7 Q Dr. Sexton, during decomposition, what if
8 any by product does the human body produce?

9 A There are a number of buy products, sulfur,
10 methane gas, alcohol is one of these, where the body
11 actually, during decomposition, the bacteria in the
12 test stipulations sometimes produce ethyl alcohol,
13 and it can defuse throughout the body and give the
14 patterns that this person may have been intoxicated.
15 Generally a limited amount of this so if the person
16 is really intoxicated you can get an indication that
17 that probably is the case because the level would be
18 higher than the amount you would expect from
19 decomposition.

20 Q In this case, you ordered, requested a
21 toxicology analysis, is that correct?

22 A That's correct.

23 Q You were provided with a copy of the report
24 that was prepared, is that correct?

25 A Yes, that's correct.

1 Q Based upon that report, you're aware that
2 there were varying degrees of alcohol concentration
3 in this body?

4 A Yes, that's correct.

5 Q Do you have an opinion as to why there
6 would have been varying degrees of alcohol
7 concentration based upon the specimens that were
8 submitted for analysis?

9 A Yes, there are a number of explanations for
10 that. As I mentioned alcohol does form in the blood
11 or actually in the intestine and diffuse into the
12 blood. So that sometimes can be higher. There also
13 are bacteria and other things that will come assume
14 the alcohol that's in the blood so it can then lower
15 after it's become elevated. There are also is in the
16 organs generally less accumulation of alcohol, in
17 this case there are a lower level in the liver and
18 kidney than there was in the bloodstream, so I
19 suspect that the bloodstream level went up because of
20 the effects of decomposition, then negotiation down
21 because bacteria consumed that, where as what was in
22 the liver or kidney are closer to the actual level
23 that was probably present at the time of death.
24 There was probably some alcohol present, the total
25 level in the kidney and liver were around hundred 33,

1 hundred forty something, so it suspect it was
2 something less than that, but maybe close to point
3 one at the time of death. Although there may have
4 been somewhere between point seven and point one.
5 It's variable enough we can't say, but oftentimes as
6 much as point 0 five will be present in the body from
7 decomposition, so I suspect the level here might have
8 been point 0 seven to point one, actually at the time
9 of death before the decomposition occurred.

10 Q Dr. Sexton, based upon your experience and
11 your examination of this body, after receiving such a
12 penetrating defect, what length of time would have
13 elapsed in your opinion before death would have
14 resulted?

15 A Because the bullet partially transected the
16 aorta which is the largest vessel in the body, it's
17 about the diameter of your thumb, it would have taken
18 very short period of time for the blood to
19 accumulate, and therefore not have blood in the
20 bloodstream to nourish the various organs, including
21 the brain and the heart.

22 So I would say it could have been less than
23 a minute, certainly no more than a minute or two. As
24 far as consciousness, the person may have passed out
25 immediately, or in the case of animals that are shot

1 and have devastating wounds, may have done things
2 from the time the injury occurred until the time they
3 actually succumb, but it certainly would not have
4 taken long. One or two minutes would have certainly
5 been enough. Because each beat of the heart pumps
6 fifty cc's down that aorta, so it doesn't take long,
7 as your heart is beating fast, as it presumably would
8 be after being shot, maybe 120 beats a minute. So
9 you could easily have 50 times a hundred or five
10 thousand cc's go through that aorta in that first
11 minute, of which half would exit. It only takes
12 about 50 cc's to exit the vasculature, which is three
13 pints of blood if that is quickly, generally results
14 in death. So easily could have been a minute to two
15 minutes.

16 Q Based upon your examination of the body,
17 approximately how much blood did you find in the
18 chest cavity of this individual?

19 A There was a thousand cc's of bloody fluid,
20 some of which was actually blood, some of which was
21 decomposition fluid. Recognize that after death with
22 decomposition, the fluid part of the body, once it
23 forms, is then consumed by the bacteria that is
24 present, so sometimes decomposed bodies just have gas
25 inside them with no fluid.

1 MR. BRITT: With the Court's
2 permission, may I remove my jacket?

3 THE COURT: Yes, sir.

4 MR. BRITT: May I approach the
5 witness?

6 THE COURT: Yes, sir.

7 BY MR. BRITT:

8 Q I'll show you what has been marked
9 previously marked as State's Exhibit 19, ask you to
10 examine the external portion of this box. Can you
11 describe the condition this box is in?

12 A It appears to be taped closed on all open
13 surfaces.

14 MR. BRITT: With the Court's
15 permission --

16 THE COURT: Yes, sir.

17 MR. BRITT: The record will
18 reflect that I'm going to unseal State's
19 Exhibit Number 19.

20 THE COURT: The record will so
21 show.

22 BY MR. BRITT:

23 Q Dr. Sexton, after you removed the clothing
24 from the individual, what if anything did you do with
25 the clothing?

1 A It was turned over initially to officer
2 Collins who was there from our State Law Enforcement
3 Division, who then turned it over to Art Springer.

4 Q At the time you gave the clothing to
5 Mr. Collins, what was it contained in?

6 A In a plastic bag. The clothing as
7 mentioned earlier was quite wet and covered with
8 muddy material and decomposition fluid.

9 Q Specifically, what items did you place into
10 the plastic bag and give to Mr. Collins who
11 subsequently, as you testified, gave to Mr. Springer?

12 A The shirt, the pants, the belt, the socks,
13 and I believe that was all. Just one moment. Let me
14 check. And undershorts.

15 Q For the record, will you please count the
16 number of bags that are contained inside State's
17 Exhibit Number 19?

18 A There are three paper bags. There's one
19 orange biohazard bag that has in it the white plastic
20 bag that we put the body clothing. In this orange
21 bag also has the red and white rope in it.

22 Q The orange bag that you referred to, is
23 that marked as State's Exhibit 20?

24 A It is.

25 Q I'm going to hand you what has been marked

1 as State's Exhibit Number 21, a brown paper bag, and
2 have you ever seen the bag before?

3 A No, I haven't.

4 Q At the time you placed the clothing inside
5 the plastic bag that has been marked as State's
6 Exhibit number 20, were all the items located inside
7 the plastic bag?

8 A They were, because they were wet at the
9 time, and to cut down the odor on the person
10 traveling, it was advantageous, they are generally
11 air dried at some other location so they can be
12 examined.

13 Q I'm going to remove the contents of State's
14 Exhibit Number 21, and ask you to look at those items
15 and tell me if you can identify them?

16 A These are the black undershorts that were
17 present, or at least they are consistent with the
18 same type that I saw on the body, and they still have
19 the same odor they had earlier. The other item that
20 is in here are the socks that actually don't look
21 nearly as black as they did at the time that we
22 removed them. They look a little cleaner. They have
23 obviously been cleaned to some degree, but these were
24 the socks that were present on the decedent.

25 Q And for the record, the undershorts and the

1 socks that were removed from State's Exhibit 21 are
2 they in substantially the same condition as they were
3 in when you last saw them on August the 4th, 1993,
4 with the exception of the changes that you've noted
5 in your testimony?

6 A That's correct.

7 Q I'll show you what has been marked as
8 State's Exhibit 22. I'm going to remove the contents
9 of State's Exhibit Number 22, ask you to look at this
10 and tell me if you can identify this?

11 A This is the shirt worn by James Jordan.
12 You can see the wide maroon stripe a little better
13 here on the back, sort of reddish green, and the
14 light purple stripes that are across the shoulders
15 and the sleeves. And you can see that there are
16 defects present, defects here in the upper right
17 chest, there are three defects here in the lower
18 right chest. And there appear to be some other
19 defects.

20 That's all I see presently on it at this
21 time, are the gunshot wound in the right chest, and
22 this is same Grand Slam type large with the design
23 that I just described to you.

24 Q Is this shirt in substantially the same
25 condition as it was in when you removed it from the

1 body on August the 4th, 1993?

2 A It is.

3 Q Is it in substantially the same condition
4 as it was in when you placed it into the plastic bag
5 that you subsequently delivered to SLED agent David
6 Collins?

7 A It is.

8 Q I'll show you what has been marked as
9 State's Exhibit Number 23. I'm going to remove the
10 contents, ask if you can identify this item?

11 A These are size 33 waist, 34 length Docker
12 pants that were on the decedent. They are sort of a
13 grayish green color. They are in the same condition
14 that I saw them at that time, except the mold was not
15 present at that time. That's occurred later.
16 There's a black belt on there that is consistent with
17 the black belt that was there at the time that I
18 examined these earlier.

19 MR. BRITT: May Mr. Thompson
20 approach Dr. Sexton?

21 THE COURT: Yes, sir.

22 MR. BRITT: May he be allowed to
23 step down to wash his hands?

24 THE COURT: Yes, sir.

25 MR. BRITT: If I could have that

1 same opportunity.

2 THE COURT: Yes, sir.

3 (Short pause).

4 BY MR. BRITT:

5 Q Dr. Sexton, after the bullet was removed
6 from the body, what if anything did you do with that
7 bullet?

8 A That was also transferred to SLED agent
9 David Collins.

10 Q Were any photographs of that bullet taken
11 during the course of the autopsy?

12 A Yes, they were.

13 Q Was there a number assigned by you or by
14 your office at your direction in regard to this
15 autopsy?

16 A Yes.

17 Q The number, is it referred to as a file
18 number?

19 A Can be, just a sequence number, we use the
20 year, followed by the case number, and this was
21 93-243

22 (State's Exhibit 40 was
23 marked for identification.)

24 MR. BRITT: May I approach?

25 THE COURT: Yes, sir.

1 BY MR. BRITT:

2 Q Dr. Sexton, I'm going to show you what has
3 been marked as State's Exhibit 40, ask you if you can
4 identify that?

5 A This is a eight by ten photograph that is a
6 blowup of the two by two slide that I took at the
7 time of the autopsy, that of the bullet that I
8 removed from James Jordan.

9 Q Does State's Exhibit Number 40 fairly and
10 accurately depict the condition of the bullet as you
11 found it when you removed it from the body August the
12 4th of '93?

13 A Yes, it does.

14 MR. BRITT: At this time I ask
15 that State's Exhibit 40 be admitted.

16 THE COURT: Admitted without
17 objection.

18 (State's Exhibit 41 was
19 marked for identification.)

20 BY MR. BRITT:

21 Q I'll show you what has been marked as
22 State's Exhibit Number 41, ask you to examine the
23 condition of that package and tell me whether it's a
24 sealed or unsealed package?

25 A Exhibit 41 is a sealed package with a

1 number of initials and other statements on it.

2 MR. BRITT: Your Honor, if the
3 record will reflect I'm going to open
4 State's Exhibit 41.

5 THE COURT: Yes, sir.

6 MR. BRITT: Your Honor, if the
7 record will reflect I've opened State's
8 Exhibit Number 41, and I'm removing the
9 contents.

10 THE COURT: Yes, sir.

11 (State's Exhibit 41-A was
12 marked for identification.)

13 BY MR. BRITT:

14 Q Dr. Sexton, I'm going to hand you what has
15 been marked as State's Exhibit 41-A, a plastic bag
16 that contains an item, and ask you if you can
17 identify the item contained inside of State's Exhibit
18 41-A?

19 A Afraid not. It's not the bullet that I
20 removed. It's a .32. The bullet removed was a .38.

21 MR. BRITT: May I have just a
22 minute?

23 THE COURT: Yes, sir.

24 THE WITNESS: The bullet I
25 removed should have been --

1 MR. THOMPSON: Object.

2 THE COURT: Objection sustained.

3 If you'll bear with us, Doctor.

4 THE WITNESS: All right.

5 MR. BRITT: Your Honor, may I
6 request a recess at this time?

7 THE COURT: Yes, sir.

8 Dr. Sexton, you may step down.

9 How much time did you need,
10 Mr. Britt? Fifteen, twenty minutes?

11 MR. BRITT: Yes, sir.

12 THE COURT: Ladies and gentlemen
13 of the jury, we're going to take an
14 unscheduled recess at this time. We will
15 be at ease until twenty until, by the clock
16 on the far wall.

17 Please recall it is your duty to abide
18 by all prior instructions by the Court
19 concerning your conduct during this
20 recess. Everyone else remain seated,
21 members of the jury are excused. Members
22 of the jury, please retire to the jury
23 room.

24 (Jury out at 10:26 a.m.)

25 THE COURT: We're at ease, folks.

1 (Brief recess.)

2 THE COURT: Let the record
3 reflect all counsel are present. The
4 defendant is present in open court. All
5 members of the jury are secured in the jury
6 room.

7 Mr. Britt, you indicated you wanted to
8 be heard on the record?

9 MR. BRITT: Yes, sir. Just as
10 the Court is already aware, there was a
11 ballistics examination in this case. There
12 was an exhibit that was handed the Court a
13 week ago in regard to a 404(b) hearing.
14 That ballistics report was done by Special
15 Agent R. N. Mars and bears the following
16 file number: R-930016441. That is the
17 ballistics examination report for this
18 case.

19 THE COURT: Conducted by the
20 North Carolina State Bureau Of
21 Investigation?

22 MR. BRITT: Yes, sir. There was
23 also a ballistics examination done in the
24 matter involving Clewis Demory that's
25 subject to 404(b) hearing. That file

1 number is 930016453.

2 THE COURT: Yes, sir.

3 MR. BRITT: That examination
4 involved a .32 caliber bullet. As the
5 Court is aware, the defense retained the
6 services of one Larry Fletcher as a
7 ballistics expert. This evidence was
8 delivered to Mr. Fletcher in October,
9 specifically October the 25th of 1995, for
10 his examination.

11 When that examination was completed,
12 the items were returned to Mr. Heffney and
13 Mr. Thompson in a sealed condition. Upon
14 examining -- the items have remained in a
15 sealed condition since that day until they
16 were opened in court, after examining --
17 after Dr. Sexton informed us that the
18 bullet that had previously been marked as
19 31 A was not the one that he removed from
20 the body of the person that was autopsied
21 on August the 4th, 1993. The envelope in
22 which it was contained bears the following
23 lab report number. R 93 dash 16441, which
24 is the lab -- ballistics lab report for the
25 James Jordan case. The plastic bag

1 contained inside that sealed envelope at
2 that time bears the following lab number,
3 93 dash 16453, which is the bullet that was
4 submitted for examination in the Clewis
5 Demory case.

6 THE COURT: I think I see where
7 we're going. I think the State's position
8 is, upon examination by the defense expert,
9 Mr. Fletcher, he placed the wrong baggy in
10 the wrong manila envelope.

11 MR. BRITT: That's what it would
12 appear.

13 THE COURT: Defendant want to be
14 heard?

15 MR. BOWEN: Yes, sir, that's what
16 it seems to say. Now, I have calls in to
17 Mr. Fletcher, I have not confirmed but I'm
18 trying to arrange a telephone conference
19 with him at 1:15 today. I can try to do it
20 earlier.

21 THE COURT: The difficulty we've
22 got at this point is we're now before the
23 jury.

24 MR. BRITT: Yes, sir.

25 THE COURT: Is the State prepared

1 to put on evidence that at the time the
2 items were delivered to Mr. Fletcher, they
3 were in the correct bags, baggies in the
4 correct manila envelopes with the correct
5 file numbers?

6 MR. BRITT: Yes, sir. And to
7 further establish on the record, I've
8 opened -- I've unsealed an envelope that
9 bears the lab number of 93 dash 16453,
10 which is the Clewis Demory case, and
11 removed from it a sealed plastic bag that
12 bears the following lab number, 93 dash
13 16441, which is the ballistics report
14 number for the James Jordan case.

15 THE COURT: It will be really
16 interesting if it comes down to a battle of
17 the experts in terms of can you put the
18 right baggy in the right bag.

19 MR. BOWEN: Well, we have been
20 relying on what was given to us at first on
21 discovery. And we don't know at this point
22 what our expert will say about that.
23 Obviously, Mr. Fletcher is someone of quite
24 high stature throughout the country in this
25 type of thing. And frankly, it's

1 incredulous to me that something like that
2 could have happened, and have no way of
3 knowing that it happened, and they
4 apparently would have no way it would
5 happen because even though they had
6 stipulated that everything came back okay,
7 apparently now they didn't check.

8 THE COURT: Without opening the
9 manila envelope which contained the plastic
10 bag, it would be difficult for them to do
11 that. All they had to go on is what was
12 contained on the outside of the manila
13 envelope.

14 MR. THOMPSON: I have a question,
15 Your Honor, with respect to the plastic bag
16 that contained the 32, which Dr. Sexton
17 just testified to. That plastic bag is
18 marked State's Exhibit 41-A?

19 MR. BRITT: That's correct.

20 MR. THOMPSON: And that is in fact
21 a .32, at least from the testimony of Dr.
22 Sexton. Okay. Then if the .38 has been
23 located --

24 THE COURT: The .38 has been
25 located.

1 MR. THOMPSON: And is that also
2 in a plastic bag?

3 MR. BRITT: Yes, sir.

4 THE COURT: Also contained in a
5 manila envelope. The problem is the wrong
6 bag was put in the wrong manila envelope.

7 MR. THOMPSON: That's what it
8 appears. May I see, observe the envelope
9 containing the -- I mean, the manila --
10 excuse me, the plastic bag containing
11 the .38, the State's alleged 38?

12 THE COURT: Yes, sir.

13 MR. BRITT: Yes, sir.

14 (Off-the-record discussion.)

15 THE COURT: Folks, for the
16 purposes of the record, is counsel for
17 defendant prepared to stipulate at this
18 time, or will counsel for defendant be
19 prepared to stipulate at the time the items
20 were received, the plastic baggy -- bear
21 with me.

22 Mr. Britt, why don't you state for the
23 record what plastic bag bearing what
24 notation should have been contained in what
25 manila envelope.

1 MR. BRITT: A plastic bag bearing
2 the following information should have
3 appeared -- should have been placed inside
4 the envelope marked as State's Exhibit
5 Number 41. That plastic bag has this
6 information on it: S C law enforcement
7 division evidence. Sealing officer David
8 Collins, date 8-4-93, agency, Marlboro
9 Coroner. Department, I can't make out what
10 this reads. Says analysis -- analysis,
11 excuse me, Collins, SLED L 93 dash 11373,
12 subject slash victim, unknown black male,
13 item number six. Ballistics FA 93-243,
14 which was the autopsy number.

15 THE COURT: That should have been
16 contained in 41-A -- item 41?

17 MR. BRITT: Yes, sir. So that
18 everything is complete, on the side
19 opposite the preprinted label for South
20 Carolina Law Enforcement Division is a
21 piece of tape that has been placed on
22 there. The following information appears
23 on that tape: Q slash one, R 93 dash
24 16441, eight, it's either a two or a one,
25 that is smudged, 93, and the initials RNM.

1 THE COURT: Do you intend to call
2 agent Collins?

3 MR. BRITT: Yes, sir.

4 THE COURT: Is Agent Collins --
5 presumably is he going to testify that he
6 placed that plastic baggy inside that
7 manila envelope that has previously been
8 marked as 41?

9 MR. BRITT: Yes, sir, and the
10 manila --

11 THE COURT: That testimony before
12 the jury will establish the link between
13 that plastic baggy as enumerated as
14 specified on the record, and that manila
15 envelope?

16 MR. BRITT: Yes, sir.

17 THE COURT: Okay. The
18 difficulty, the problem area is it the
19 State's position that the jury is entitled
20 to know about the confusion?

21 MR. BRITT: Yes, sir.

22 THE COURT: How do we adduce that
23 before the jury? Now, if any expert who
24 conducted any ballistics examination on
25 behalf of the defendant is called,

1 obviously that's something that can be
2 brought out on cross-examination.

3 MR. BRITT: Yes, sir.

4 THE COURT: If that expert is not
5 called, then that testimony arguably may be
6 adduced through the testimony of the
7 officers who transported it and turned it
8 over, if it's something that they can
9 testify to under oath.

10 MR. BRITT: Yes, sir.

11 THE COURT: If that's not the
12 case, the only way to establish it's is by
13 stipulation.

14 MR. BRITT: Yes, sir.

15 THE COURT: You folks indicated
16 that you're going to talk with your expert
17 this afternoon?

18 MR. BOWEN: It at least appears
19 at this point, Your Honor, if we can
20 establish that the mistake was his, we will
21 of course stipulate it. If not, it's going
22 got to remain an open, because we've been
23 relying on these assertions that these
24 envelopes contained certain things. And
25 just depends on what our expert says they

1 contained when he opened them. If he's
2 wrong, we're going to stipulate that he was
3 in error.

4 MR. BRITT: Your Honor, on the
5 outside of the manila envelope, Mr. Bowen's
6 initials appear from July the seventh of
7 1994 when this was a discovery conference.

8 THE COURT: Problem is we can't
9 call Mr. Bowen as a witness.

10 MR. BOWEN: Mr. Bowen didn't see
11 the contents.

12 THE COURT: Was the envelope
13 marked State's Exhibit 41 in a sealed
14 condition at the time it was transported to
15 and turned over to the defendant's expert?

16 MR. BRITT: Yes, sir.

17 THE COURT: I think that in
18 combination with the testimony of Agent
19 Collins ought to establish it. What are we
20 going to do about marking the correct
21 plastic bag for the purposes of the jury?

22 MR. BRITT: Therein I believe
23 lies the problem.

24 MR. THOMPSON: Your Honor, if
25 you'll just give me -- if you leave some

1 time to try to find my notes during
2 discovery conference, I've made pretty good
3 notes and it may indicate exactly that,
4 again. Mr. Bowen -- I know I observed the
5 contents. I'm just not sure which was in
6 which, but it may be in any notes.

7 THE COURT: I would like to
8 minimize the delay because of the weather
9 conditions and Dr. Sexton's obligation in
10 the South Carolina court. I would like to
11 get through testimony today, and also Agent
12 Collins' testimony today.

13 It's now ten until 11:00. How much
14 time do you think you're going to need?

15 MR. THOMPSON: I'm not sure. I
16 don't think it will probably be fifteen,
17 twenty minutes. I've got a lot of stuff in
18 here, but I'm sure it's somewhere.

19 THE COURT: Yes, sir. We're at
20 ease.

21 (Brief recess.)

22 THE COURT: Let the record
23 reflect all counsel are present. The
24 defendant is present in open court.

25 Folks, so that the record is complete

1 as to where we are, Mr. Britt are you
2 prepared to go forward with the correctly
3 marked plastic baggy at this time with
4 regard to the testimony of Dr. Sexton?

5 (State's Exhibits 41-A, 42, 42-A, 42-B
6 were marked for identification.)

7 MR. BRITT: Yes, sir. And so
8 that things are clear, because of the
9 confusion, the exhibit that had been handed
10 to Dr. Sexton was marked as State's Exhibit
11 Number 41 and the contents were marked as
12 State's Exhibit 41-A. I've had, so that
13 it's on record, marked an envelope as
14 State's Exhibit 42. In open court, I
15 opened that envelope. It was in a sealed
16 state, and removed the contents, removed
17 that plastic bag, and have had that bag
18 marked as State's Exhibit 42-A. Inside
19 that plastic bag is a brown medicine bottle
20 with a white cap. That will be marked as
21 State's Exhibit 42-B. And inside of
22 that --

23 THE COURT: Is that 42-B or
24 42-A?

25 MR. BRITT: 42-A is the plastic

1 bag. And contained inside the plastic bag
2 is a brown medicine bottle with a white
3 cap. That will be marked as State's
4 Exhibit 42-B.

5 THE COURT: So the manila
6 envelope is 42.

7 MR. BRITT: Yes, sir.

8 THE COURT: Plastic bag coming
9 from that is 42-A.

10 MR. BRITT: Yes, sir.

11 THE COURT: Medicine bottle
12 contained within 42-A is 42-B?

13 MR. BRITT: Yes, sir.

14 THE COURT: Folks, for the
15 purposes of fundamental fairness and for
16 purposes of clarification, as I indicated
17 to all counsel just a moment ago -- and let
18 the record reflect that I met with counsel
19 for the State and counsel for the
20 defendant, Mr. Thompson and Mr. Bowen, in
21 chambers. Mr. Green was not present at
22 that time. He is now present and I'm
23 putting these matters on the record in his
24 presence.

25 As I understand it, our situation as

1 of now is as follows: Counsel for the
2 State will be entitled to clarify the
3 situation through the testimony if possible
4 of Dr. Sexton, Agent Collins, and any
5 agents from North Carolina who may have
6 transmitted what has previously been marked
7 as State's Exhibits 41 and 42, to an expert
8 designated by the defendant. The purpose
9 of that expert being designated was for the
10 purposes of the defendant conducting an
11 independent ballistics examination and
12 analysis. That will carry us up to the
13 point of where the confusion may have been
14 initiated.

15 At this point there will be no
16 stipulations as to what happened to those
17 items once they are in Mr. Fletcher, and he
18 was the defendant's designated expert,
19 until such time as the counsel for the
20 defendant has had the opportunity to confer
21 with Mr. Fletcher, after which counsel for
22 defendant may be in a position to stipulate
23 as to the mislabeling of any items as being
24 deemed appropriate. Or in the alternative,
25 at that time I will hear from counsel for

1 the State or counsel for the defendant to
2 determine what if any other steps might be
3 necessary to clarify any and all factual
4 issues before the jury.

5 Is that accurate, gentlemen?

6 MR. THOMPSON: Yes, sir.

7 MR. BRITT: Yes, sir.

8 THE COURT: Ready to go forward
9 with the jury at this time?

10 MR. BRITT: Yes, sir.

11 THE COURT: If you'll bring the
12 jury in please, Mr. Horne.

13 (Jury in at 11:18 a.m.)

14 THE COURT: Members of the jury,
15 we appreciate your cooperation and your
16 indulgence. We are prepared at this time
17 to continue with the presentation of
18 evidence.

19 Mr. Britt, you may continue with your
20 questions of Dr. Sexton.

21 BY MR. BRITT:

22 Q Dr. Sexton, I'm going to show you an
23 envelope that's been marked as State's Exhibit Number
24 42, has previously been opened here in court. I'm
25 going to remove the contents of State's Exhibit

1 Number 42, show you a plastic bag that is marked as
2 State's Exhibit Number 42-A.

3 MR. BRITT: Your Honor, if the
4 record will reflect I'm going to unseal
5 State's Exhibit 42-A here in court.

6 THE COURT: Yes, sir.

7 BY MR. BRITT:

8 Q From State's Exhibit 42-A, I'm removing an
9 item --

10 MR. BRITT: Your Honor, if the
11 record will reflect for the purposes of
12 identification, it is being marked as
13 State's Exhibit 42-B.

14 BY MR. BRITT:

15 Q Ask you to look at State's Exhibit 42-B.
16 Does State's Exhibit 42-B bear any numbers or
17 identifying marks that you recognize?

18 A May I have the large photograph? Yes, this
19 is a bullet that matches the photograph that I took
20 of it at the time of autopsy. I took photographs to
21 show the different defects that occurred as the
22 bullet was either fired or passed through some
23 objects. You can see some of those on the
24 photograph.

25 I also placed a label on the base of the

1 bullet, which is in this brown vial, is one that we
2 put bullets in. It is consistent and bears my
3 initials with the vial that we put the bullet in.

4 42-A, which is the South Carolina Law
5 Enforcement Division evidence container, is the one
6 that also this vial was placed in. It also has the
7 appropriate labels on the outside of it.

8 In my opinion, within reasonable medical
9 certainty, this is the bullet that I removed from
10 James Brown.

11 THE COURT: You said James Brown.

12 THE WITNESS: James Jordan. I'm
13 sorry.

14 BY MR. BRITT:

15 Q Is the bullet contained in State's Exhibit
16 42-B in substantially the same condition that it was
17 in when you removed it from the body of James Jordan
18 on August the 4th of 1993?

19 A Essentially the same. There have been
20 other persons that have labeled it so there are other
21 labels on it.

22 (State's Exhibits 43, 44 were
23 marked for identification.)

24 MR. BRITT: May I?

25 THE COURT: Yes, sir.

1 BY MR. BRITT:

2 Q Dr. Sexton, as a result of the autopsy that
3 you performed, did you complete a written report in
4 connection with this that autopsy?

5 A Yes, I did.

6 Q I'm going to hand you what has been marked
7 as State's Exhibit 43, ask you to examine that
8 document and also State's Exhibit Number 44, and ask
9 you to examine that document and tell me if you can
10 identify both of those exhibits?

11 A State's Exhibit 43 is an accurate copy of
12 the -- my original autopsy report. Also attached to
13 43 is a toxicology report issued by State Law
14 Enforcement Division.

15 Q State's Exhibit Number 44?

16 A State's Exhibit 44 is an accurate copy of
17 my amended death certificate indicating the identity
18 of the decedent.

19 Q Are State's Exhibits 43 and 44 accurate
20 copies of the original report that you prepared in
21 connection with the autopsy of August the 4th 1993?

22 A Yes, they are.

23 MR. BRITT: At this time I move
24 that State's Exhibit 43 and 44 be admitted.

25 THE COURT: They are admitted

1 without objection.

2 MR. BRITT: I don't have any
3 other questions of the witness.

4 THE COURT: Any
5 cross-examination?

6 MR. BOWEN: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. BOWEN:

9 Q Now, Dr. Sexton, where are those copies of
10 your death certificate and amended death certificate
11 that you just referred to?

12 A Those were copies of the autopsy report and
13 the amended --

14 Q You called them death certificate a minute
15 ago?

16 A I don't recall doing that. I don't think I
17 did, but I think I called them autopsy reports.

18 Q Now, the face of State's Exhibits 43 and 44
19 are essentially the same except the amended report
20 carries the name at the top of James Raymond Jordan,
21 Sr., correct?

22 A Also at the bottom it lists as homicide as
23 opposed to pending. I think those are the only two
24 changes I see on the two.

25 Q In both reports, Dr. Sexton, you say that

1 the time frame for the time of death varies from the
2 first day of July, all the way to the 28th day of
3 July, is that correct?

4 A Correct, approximately one to five weeks
5 before we examined the body.

6 Q Then elsewhere in another section of both
7 reports, you note that the time of the shooting
8 varies between the first day of July, 1993 and the
9 28th day of July, 1993, also, correct?

10 A Yes, that's correct.

11 Q Now, you've also noted on this report that
12 the body was found floating in a creek, correct?

13 A Yes, sir, that's correct.

14 Q And do you know where that information came
15 from?

16 A From the Coroner, who contacted me about
17 doing the autopsy, Coroner Brown.

18 Q Do you know now that that's not entirely
19 correct?

20 MR. BRITT: Object to form.

21 THE WITNESS: No, I'm not aware.

22 THE COURT: Overruled. You may
23 answer. I'm sorry.

24 THE WITNESS: I'm not aware of it
25 being any different. I was told he was

1 found floating on the edge of a creek,
2 caught on a snag. And I have not been told
3 differently since that time.

4 BY MR. BOWEN:

5 Q And your position still is that the time of
6 death, in your opinion, could have been anywhere
7 within this one month, almost full month time frame,
8 is that correct?

9 A As I mentioned earlier, that was the time
10 frame given to make sure we didn't narrow it down to
11 prevent them from investigating thoroughly. As I
12 mentioned, the report is more likely a week to two
13 weeks as opposed to that entire time.

14 Q From the standpoint of simply a medical
15 analysis, you have not changed that opinion since
16 back in August of 1993, have you?

17 A That's correct, I have not.

18 Q And likewise, you have not changed your
19 opinion that the time of shooting could have varied
20 within almost the one month period of July, 1993,
21 have you?

22 A That's correct, because as I mentioned
23 earlier we have been only a minute or two from the
24 time the person was shot until the time the person
25 died.

1 Q Dr. Sexton, the body, generally speaking,
2 contains about five pints of blood, is that correct?

3 A No, sir, it contains ten pints.

4 Q How fast in general, how fast does the
5 blood pump through the aorta?

6 A Depends on how fast your heart is beating.
7 As I mentioned a while ago, you can have as much as
8 50 cc's of blood being pumped each time the heart
9 beats. We normally have a heartbeat around seventy
10 but when we're frightened or angry, then the heart
11 beat goes up faster, around 120. So depending on the
12 size of the hole, the force coming out, the number of
13 beats, as I mentioned, you could have five liters of
14 blood or the full amount of blood in the body pumped
15 out in less than a minute's time.

16 Q In a minute's time?

17 A Or a little longer, just depends how fast
18 it comes out that hole and actually how fast the
19 heart is beating.

20 Q And as you testified earlier, you would
21 expect the heart to be beating much faster in
22 response to a trauma such as a gun shot?

23 A Yes, that's correct.

24 Q Now, you only say that you found around a
25 thousand milliliters?

1 A As mentioned earlier, the fluid in the body
2 gets consumed by bacteria after death. What I found
3 was a thousand milliliters of bloody fluid, some of
4 which would be blood from the gunshot wound. There's
5 some decomposition fluid that forms after death as
6 the organs tend to decompose. That's correct, I
7 found a thousand cc's of bloody fluid.

8 Q So not all of that two pints was blood?

9 A That's correct, no, there was only --
10 that's right. Two pints, not all of it was blood.
11 Some of it was decomposition fluid, because of the
12 decomposition of the body. And some had been lost
13 through decomposition.

14 Q Now, you found no blood on the exterior of
15 the body or the clothing, did you?

16 A The clothing as you saw earlier and you saw
17 in the photographs had enough mud and decomposition
18 fluid on it that I could not identify something that
19 I could say was truly blood. I've not seen a report
20 to know whether it has been analyzed and any blood
21 was found, but I did not see something that I could
22 identify as being blood as opposed to decomposition
23 material.

24 Q Dr. Sexton, there are tests of course for
25 fabrics and textiles in order to tell whether or not

1 there had been blood, isn't that true?

2 A That's right. The law enforcement
3 division, generally the forensic labs, generally have
4 testing for blood.

5 Q You did not find any obvious powder burns
6 or indication of close range shot that you could
7 conclusively identify on or about the wound, did you?

8 A That's correct, I did not. The wound had
9 been exaggerated because of the effects of the
10 maggots. Any time maggots start eating on a body,
11 they start at openings. This includes the openings
12 of the face and the anus, also includes any defects,
13 any injuries to the body. So the wound, in my
14 opinion, had been exaggerated or enlarged due to the
15 effects of the maggots, so it made it very difficult
16 to evaluate whether it had any powder particles or
17 powder tattooing around it, but none was found in the
18 area of the wound.

19 Q You testified that you found multiple holes
20 in the shirt?

21 A On the right side, down on the lower right
22 side of the shirt, were multiple holes in the front.

23 Q You say that you found mushrooms in the
24 digestive track, is that correct?

25 A In the digestive track, I found what

1 appears to be peas, tomatoes, and what in my opinion
2 looked like sliced mushrooms, that's correct.

3 Q You did not identify the type of mushrooms
4 they were, did you?

5 A No, sir, I did not.

6 Q Did not submit them to any toxicology, did
7 you?

8 A Yes, I did.

9 Q Now, following your examination of this
10 body, what was done with the body to your knowledge?

11 A It was transported by Mr. Springer -- I do
12 not know where it was transported or specifically
13 what was to be done with it.

14 Q To your knowledge, were facilities
15 available in the State of South Carolina to have kept
16 this body longer than it was kept?

17 MR. BRITT: Objection.

18 THE COURT: Sustained, unless you
19 folks wants to be heard as to relevance?

20 MR. BOWEN: Let me rephrase.

21 BY MR. BOWEN:

22 Q Did you make any request to keep this body
23 for any further -- for any additional length of time?

24 A No, I did not. We had already collected
25 all the evidence I felt was needed on this particular

1 body, and so I released it to the Coroner to do with
2 it as he saw fit.

3 Q But at the time that you released it, the
4 identity of this individual was unknown, is that
5 correct?

6 A Correct, but we had as I mentioned earlier
7 saved the dental work so we could compare that at a
8 later date, plus we had taken x-rays of that that
9 would be sufficient for comparison, and we kept the
10 hands for purposes of fingerprinting. So I knew we
11 had two means of identifying the person.

12 Q Was it your understanding that this body
13 and the hands and other parts taken were later
14 cremated?

15 A That's what I learned later.

16 Q Would that include the brain sections that
17 you took?

18 A Not the -- when you say brain sections,
19 you're referring to tissue I may have removed at
20 autopsy?

21 Q Yes, sir.

22 A No, not including those. But recognize,
23 this body was decomposed to the point where chances
24 are there was not any brain tissue that was solid
25 enough to make sections of. The brain is already

1 about 75 percent liquid, and in decomposition, that
2 rapidly becomes softer and softer. When we examine
3 it, we can see the configuration and see if there is
4 any defect there, but as we start to remove it, it
5 generally quickly liquefies, and sort of collapses.
6 So I doubt if I took any sections of the brain.

7 To my recollection, the only microscopic
8 sections were probably of the heart, because it tends
9 to decompose less rapidly than other tissue.

10 Q So if your report reflects that you took
11 sections of the brain, then that would be in error,
12 is that correct?

13 A What we do is we section, we cut the brain,
14 and we take gross sections, examine gross sections of
15 the brain. Then in some cases, we also examine
16 microscopic sections. I think if you look at the
17 last sheet of my report, I mention that multiple
18 sections through the liver, heart, lungs, kidney,
19 brain and other tissues failed to reveal any acute
20 injury or illness or disease. These are gross
21 sections, not microscopic. If I take microscopic, I
22 mention gross and microscopic.

23 Q So you did not retain any kind of sections
24 of these areas of the brain, cerebellum, the
25 hemispheres, or anything like that?

1 A There would be some gross tissue, we always
2 keep some gross tissue in formaldehyde for a period
3 of time, usually about a year, because it takes so
4 much space to store that much tissue in a large
5 closet. Also we take microscopic. In this case,
6 there is no mention of microscopic, but my
7 microscopic report says that I saw autolysis and
8 decomposition in the heart, which I did submit.

9 Q Saw what?

10 A Autolysis, not really recognizable as
11 anything other than the fact that it was a heart.

12 Q I see. Now, that examination of the heart,
13 for example, would not have revealed, for example, a
14 heart failure brought on by tachycardia or
15 arrhythmia, would it?

16 A That's true. There's -- tachycardias and
17 arrhythmias are something that is physiological. The
18 heart, size-wise, was 124 grams. And that's because
19 of the decomposition. As I mentioned, the body tends
20 to dissolve, essentially by the effects of the
21 bacteria. With the heart being that small, it's
22 probably due to decomposition. Hearts that have
23 arrhythmias and tachycardias are generally very
24 large.

25 Because of the decomposition, I could not

1 say whether the heart was larger during life. So to
2 answer your question there was no way I could tell
3 that, but certainly with the injury that the person
4 had, there would be no reason to suspect something
5 like an arrhythmia or tachycardia with a rapidly fatal
6 injury.

7 Q You did not have a medical history of this
8 person when you performed the autopsy, did you?

9 A That's correct, we did not know who the
10 person was.

11 Q While you examined the brain tissue and
12 found no evidence of hemorrhage, you were not in a
13 position to assess any possibility or all
14 possibilities of stroke throughout the tissues of the
15 brain, were you?

16 A A stroke leaves a large area of hemorrhage
17 or defect inside the brain. That's why we slice the
18 brain. There was no evidence of hemorrhage inside
19 the brain to indicate that a stroke might have
20 occurred. And the vessels in the brain are what
21 causes a stroke. The vessels become atherosclerotic,
22 meaning they get narrowed by the plaque that develops
23 in the vessels. There was no evidence of that in the
24 vasculature, just as there was none in the heart.

25 Q That was at least on the issue that

1 remained after the decomposition had occurred, right?

2 A The vessels are very resistant to
3 decomposition because they are elastic and muscle
4 tissue, just like the muscle of the heart are. Those
5 are paronychial type tissue, such as the liver and
6 pancreas that have a lot of enzymes in them, not any
7 degree that the muscles are and the collagen or
8 elastic tissue that make up the vessels and the
9 heart. So they tend to stay. Even after the other
10 tissues remain as decomposed, you can see the vessels
11 in place.

12 Q Now, when you requested a toxicology report
13 from the forensic services laboratory of the South
14 Carolina Law Enforcement Division, did you request
15 any particular toxicology report, that is, did you
16 ask them to look for particular substances?

17 A What we request is generally an alcohol
18 determination on the material that we send and a
19 general drug screen. In this particular case, we had
20 no history of any particular drugs or chemicals being
21 used so we did not indicate any specific drugs that
22 they should look for.

23 Q So Dr. Sexton, what you ended up with was
24 an indication of a 0.133 ethanol, that is, alcohol in
25 the kidney, is that safe?

1 A Yes, that's correct.

2 Q And a 0.154 ethanol found in the liver, is
3 that right?

4 A That's correct.

5 Q As I understand your testimony, that would
6 be a little bit more accurately indicative of how
7 much alcohol was in the person than the blood-alcohol
8 due to the decomposition factor, is that safe?

9 A That would be closer to the value. Some of
10 that value still may be elevated because of the
11 effects of decomposition producing alcohol in the
12 body. That's why I said earlier that the actual
13 level may have been closer to one hundred or 0.100
14 down to 0.07, because it may be about almost half of
15 what is reflected there, because you generally only
16 get about 0.05 percent generated post mortem, but
17 that's still variable, so it would pin closer to that
18 value but still probably less than a hundred.

19 Q Dr. Sexton, you asked for a screening on
20 barbiturates, and that was negative, correct?

21 A Yes, that's correct.

22 Q You asked for a screening on, and please
23 correct my pronunciation if I'm wrong,
24 benzodiazepines?

25 A Yes, benzodiazepine.

1 Q And that was negative?

2 A That's correct.

3 Q You asked for a screening on cocaine?

4 A That's correct. Actually, I didn't ask
5 specifically for these determinations. These are the
6 general tests done when we ask for a drug screen.

7 Q Well, when you ask for a toxicology, you
8 understand that unless you specify other things, that
9 at least these things that I'm reading out will be
10 analyzed for, is that correct?

11 A Yes, sir, that's correct.

12 Q So therefore, when you requested this
13 screening, you knew that a cocaine test was going to
14 be part of it, didn't you?

15 A Yes, that's correct.

16 Q And that was also negative?

17 A Yes, it was.

18 Q You requested -- or this general request
19 included and did include a test for opiates, correct?

20 A Yes, sir.

21 Q That was also negative?

22 A Yes, sir, that's correct.

23 Q And for the tricyclic antidepressants, is
24 that correct?

25 A That's correct.

1 Q As opposed to the SSRI or serotonin
2 re-uptake inhibitor drugs, is that correct?

3 A That's correct.

4 Q You didn't ask for those?

5 A I just asked for the general drug screen.

6 Q Now, you didn't ask for poison screen even
7 though you say you asked for a toxicology?

8 A I did not have an indication that the
9 person may have been poisoned. We obviously had a
10 cause of death. We were simply trying to determine
11 if there was any drugs of abuse or medications in the
12 person.

13 Q And when a cause of death is obvious to
14 you, you do not generally go further with a complete
15 toxicology screen or to look for other causes of
16 death, do you?

17 A That's correct.

18 Q You did not do heavy metals analysis,
19 toxicology, did you?

20 A There was no history of the person may have
21 been exposed to lead or that somebody had given him
22 arsenic, so yes, we did not.

23 Q Well, you say there was no history of
24 that. Actually you had no history at all about this
25 person, did you?

1 A That's correct, we had no history but we
2 had a cause of death, and the other procedures are
3 sometimes not available in our state and have to be
4 sent out, and they are not the kind of thing that you
5 would expect to find in a person that has a gunshot
6 wound.

7 Q You did know that -- scratch that. You did
8 not call for any kind of analysis with regard to
9 carbon monoxide, did you?

10 A That's correct. The decomposition
11 oftentimes prevents the determination of carbon
12 monoxide, but we did not have any reason to suspect
13 carbon monoxide.

14 Q Did not do analysis of body for
15 suffocation, did you?

16 A Suffocation is a diagnosis of exclusion in
17 a fresh body where you're able to find petechiae in
18 the eyes that indicates the person has died from
19 hypoxia. In this case, the eyes were not really
20 available to examine, they had already been autolyzed
21 and decomposed beyond our being able to examine
22 them. Suffocation comes from holding somebody's
23 mouth and nose closed or strangling them, and the
24 only thing I generally see are petechiae of the eye.
25 Again, we had a cause of death, there was no reason

1 to examine or check for that particular condition.

2 Q Dr. Sexton, the type of wound that you have
3 described leading to the trajectory which you probed
4 and found that type of injury would be conducive to
5 some bleeding, would it not, in a person who was
6 shot?

7 A What happens when a person is shot in the
8 chest, you have extensive, as in this case with a
9 hole through the aorta, you have extensive internal
10 bleeding but the bleeding is such that it's like
11 filling a glass up. You don't have any blood coming
12 out until you actually fill the container internally
13 completely, and then have enough pressure to force
14 out through the hole, depending upon the condition of
15 the body.

16 If the body is in an upright condition and
17 the hole is high on the front, it may be a while
18 before that blood will come out. Plus, you have
19 tissues that tend to cover a hole. You have the fat
20 tissue layer, you have the skin tissue layer, you
21 have the muscle tissue layer and interfibrous tissue
22 layer. So that it's not uncommon for a person shot
23 in the chest not to bleed for a good while or perhaps
24 not to bleed externally at all.

25 Q And that would indicate that for whatever

1 reason, pressure was absent to have forced that
2 additional blood into the body cavity and then out
3 the hole, is that correct?

4 A Correct. In other words, the heart had
5 finished pumping all the blood out to the cavities,
6 had no more blood to pump, therefore could put no
7 more pressure on the system to cause blood to come
8 out.

9 Q The size of the individual whom you
10 autopsied would have been of such a size that you
11 would have, in your opinion, felt that when he was
12 alive he would have had that full ten pints of blood
13 in his system, correct?

14 A Yes, sir. In my opinion, he was normal in
15 appearance, and if anything, a little larger than
16 normal. So I would have expected him to have the
17 full ten pints.

18 Q So in essence, you're saying that when you
19 found a wound and when you discovered a bullet in the
20 body, that to you was the obvious explanation of
21 death and that's what you went with, right?

22 A That's correct. In my opinion, that's the
23 most probably cause of death within reasonable
24 immediate certainty.

25 Q Now, your past official opinions of death

1 have not always been accurate?

2 A There's been one where I failed to x-ray
3 the body, that that was a burned body, and therefore
4 overlooked a bullet, bullets that were in the brain
5 and had to be reautopsied later to identify. So it's
6 true that over -- out of eight thousand autopsies,
7 there was one that I failed to x-ray and therefore
8 didn't find a bullet or bullets in the brain.

9 Q We're talking about I believe the body of
10 Mr. Billy Graham in June 10th of '87, who was --
11 burned remains were found in his home, is that right?

12 A Yes, sir, that's correct.

13 Q And because of fire in Mr. Graham's
14 instance, the body was badly disfigured, is that
15 correct?

16 A The body was badly disfigured, that is
17 correct.

18 Q In this case, the body was badly disfigured
19 from decomposition from the elements, is that safe to
20 say?

21 A Yes, that's correct.

22 Q Now, in that particular case, at that time
23 Mr. Barnes, who sits here at our table, Mr. William
24 Barnes, was the sheriff of Florence County, is that
25 correct?

1 MR. BRITT: Objection, relevance.

2 THE COURT: Do you want to be
3 heard, Mr. Britt?

4 MR. BRITT: Yes, sir. I also ask
5 for a limiting instruction.

6 THE COURT: We'll take it up one
7 at a time.

8 Members of the jury, we must take up a
9 matter of law out of the presence of the
10 jury. Folks, you have not had a recess
11 where you were able to leave the jury room,
12 is that correct?

13 JUROR: That's correct.

14 THE COURT: Let me give you until
15 ten after. Please recall it is your duty
16 to abide by all prior instructions of the
17 Court concerning your conduct during
18 recess. Everyone else remain seated, all
19 members of the jury are excused until ten
20 after.

21 (Jury out at 11:52 a.m.)

22 THE COURT: Mr. Britt, basis of
23 the objection in the absence of the jury?

24 MR. BRITT: Basis in regard to
25 Mr. Barnes is the relevance to this case.

1 THE COURT: Yes, sir. Where are
2 we going with this, Mr. Bowen?

3 MR. BOWEN: Simply to -- I would
4 be asking Dr. Sexton was he not advised by
5 Mr. Barnes that this was a high suspect
6 potential homicide --

7 THE COURT: That's hearsay at
8 this point.

9 MR. BOWEN: But if it cranks into
10 his professional opinion at that time, and
11 it indicates that he overlooks that
12 information --

13 THE COURT: Still hearsay.

14 MR. BOWEN: It goes to the
15 obvious conclusion --

16 THE COURT: What's the exception
17 to hearsay rule?

18 MR. BOWEN: Goes to his
19 credibility.

20 THE COURT: I didn't see that
21 under 803 or 804.

22 MR. BOWEN: It's not offered for
23 the truth of it, except it does show that
24 he had, as part of his investigation,
25 information which he chose to overlook and

1 went another direction, found another -- a
2 diagnosis, buried the body; it turned out
3 to be wrong, they dug the body back up, he
4 x-rays the body, and finds by golly it's
5 not smoke inhalation, but two bullet holes.

6 THE COURT: That's been
7 established already by the questions that
8 have been asked of Dr. Sexton. You've
9 established that in one case out of eight
10 thousand plus, that occurred. That's
11 already been established.

12 MR. BOWEN: I desire to sift him
13 a little bit. If it offends the Court that
14 I want to mention --

15 THE COURT: It's not a matter of
16 offending the Court. It's a matter of the
17 Rules of Evidence. You're asking or
18 attempting to ask him a question which
19 involves some hearsay matters. In order to
20 do that, you've got to state an exception
21 under the rules 803 or 804.

22 MR. BOWEN: The information would
23 have or should have come into his official
24 records of the investigation, have been
25 part of his analysis of the whole

1 situation, just like input from these
2 officers, or lack of it, has formed the
3 basis of his opinion here in this case.

4 THE COURT: The objection is
5 sustained; exception is noted for the
6 record.

7 MR. BRITT: Your Honor, in
8 addition I would also refer the Court to
9 Rule 608(b).

10 THE COURT: Extrinsic matters?

11 MR. BRITT: Yes.

12 THE COURT: It's a collateral
13 matter.

14 MR. BRITT: Yes.

15 THE COURT: He's entitled to
16 impeach, he's done that. It's a collateral
17 matter. Extrinsic material would not be an
18 admission, but involves a hearsay matter,
19 and the objection is sustained on that
20 ground. Exception is noted for the record.

21 We're at ease until -- what did I say,
22 ten after?

23 MR. BRITT: Ten after.

24 (Brief recess.)

25 THE COURT: Let the record show

1 all counsel are present. The defendant is
2 present in open court.

3 Ready to go forward with
4 cross-examination, Mr. Bowen?

5 MR. BOWEN: Yes, sir.

6 THE COURT: If you'll bring the
7 jury in please, Mr. Horne.

8 (Jury in at 12:11 p.m.)

9 THE COURT: The objection is
10 sustained. You may ask additional
11 questions on cross.

12 BY MR. BOWEN:

13 Q Dr. Sexton, with reference to the Billy
14 Graham autopsy and your testimony before the break,
15 you indicated having gone back and reautopsied that
16 individual and found a bullet. The point of fact is
17 you found two bullets in his skull.

18 MR. BRITT: Objection.

19 THE COURT: Overruled. You may
20 complete.

21 THE WITNESS: I think that's what
22 I indicated to the jury. I said one, then
23 I recalled there was two.

24 MR. BRITT: May I request a
25 limited instruction?

1 THE COURT: Members of the jury,
2 the testimony just introduced or being
3 adduced at this time, that is being offered
4 for the limited purpose of impeachment.
5 Now, as I previously instructed you, the
6 term impeachment means tending to
7 contradict or discredit. Now, for that
8 limited purpose you may consider this
9 evidence, but not for any other purpose.

10 Anything further on behalf of the
11 State?

12 MR. BRITT: No, sir. That's
13 satisfactory.

14 BY MR. BOWEN:

15 Q AND in Billy Graham's case, you adopted the
16 cause of death as smoke inhalation because it was
17 obvious, is that correct?

18 A A death in a fire is felt to be death from
19 a fire unless another cause of death is determined,
20 providing there are findings at the time of death to
21 support the person died as a result of fire.

22 In that case, since I failed to therefore
23 overlooked the bullets in the brain, I concluded the
24 person died as a result of fire.

25 MR. BOWEN: That's all.

1 THE COURT: Anything further?

2 MR. BOWEN: No, sir.

3 MR. BRITT: Anything on

4 redirect?

5 MR. BRITT: No, sir.

6 THE COURT: May Dr. Sexton be
7 released to go?

8 MR. BOWEN: Yes.

9 THE COURT: Thank you, Dr.
10 Sexton, you're free to go.

11 MR. BRITT: Your Honor, at this
12 time we would call Ms. Lu Lynn Sexton.

13 THE COURT: If you will place
14 your left hand on the Bible please, ma'am.
15 If you'll raise your right hand and face
16 Ms. Gaines, please.

17 LU LYNN SEXTON,

18 being first duly sworn was examined and deposed as
19 follows:

20 DIRECT EXAMINATION

21 THE COURT: Ms. Sexton, if you'll
22 take the witness stand please, ma'am.

23 For the record, if you will state and
24 then spell both your first and last names
25 please.

1 THE WITNESS: My name is Lu Lynn
2 Sexton, L-U, space, and then L-Y-N-N,
3 S-E-X-T-O-N.

4 THE COURT: Thank you, ma'am.
5 Mr. Britt?

6 BY MR. BRITT:

7 Q What is your relationship to Dr. Sexton?

8 A I am his wife.

9 Q As his wife, do you work in his office
10 there in Newberry, South Carolina?

11 A Yes, I do.

12 Q In what capacity do you work for your
13 husband?

14 A I work with him sometimes when he is doing
15 autopsies. I guess I act as his recorder as he tells
16 me his findings.

17 Q On August the 14th of 1993, Ms. Sexton, do
18 you recall Coroner Tim Brown of Marlboro County
19 coming to your husband' office?

20 A Yes, he did.

21 Q And when Mr. Brown came to your husband's
22 office, what if any item from the autopsy that had
23 been performed on August the 4th, 1993 were given to
24 Mr. Brown?

25 A We gave him a copy of the x-rays of the

1 teeth and we gave him a 32 ounce container, plastic
2 container that had formula in it that had the teeth.

3 Q May I approach?

4 THE COURT: Yes, sir.

5 MR. BRITT: 35.

6 BY MR. BRITT:

7 Q I'm going to hand you what has been marked
8 as State's Exhibit 35. Do you recognize this
9 exhibit?

10 A Yes, I do.

11 Q How do you recognize this exhibit?

12 A The autopsy number FA 93 243, and the name,
13 which I wrote incorrectly.

14 Q And for the record, is State's Exhibit
15 Number 35-A large manila envelope?

16 A It is an envelope that holds x-rays, x-ray.

17 Q I'll hand you what has been marked as
18 State's Exhibit 35-A and ask if you recognize it?

19 A Yes, I do.

20 Q How are you able to recognize State's
21 Exhibit 35-A?

22 A Our -- again, our writing at the top of
23 when we took the x-ray, 8-8-93.

24 Q I'm going to hand you what has been marked
25 as State's Exhibit 35-B and ask if you can identify

1 that document?

2 A This look like a copy of some dental
3 records. I did not make these dental records so I do
4 not wish to -- we have copies but I'm not going to
5 verify that.

6 Q State's Exhibit 35-A, and State's Exhibit
7 Number 35, are they in substantially the same
8 condition they were in when you gave them to Coroner
9 Tim Brown on August the 14th of 1993?

10 A Yes, sir.

11 Q For the record, State's Exhibit 35, what is
12 this exhibit?

13 A These are the little x-rays, dental x-rays
14 that are made, and we just laid them all down, and
15 had the x-ray department make a picture of this.

16 Q Thank you.

17 MR. BRITT: I don't have any
18 other questions.

19 THE COURT: Any cross-examination?

20 MR. BOWEN: Yes.

21 CROSS-EXAMINATION

22 BY MR. BOWEN:

23 Q Ms. Sexton, you say the x-ray department.
24 You mean the x-ray department of your office?

25 A We do not have an x-ray department of our

1 office.

2 Q Yes, ma'am. So when you say that you had
3 the x-ray department make that large x-ray that
4 Mr. Britt has just shown you, what -- who did that
5 x-ray?

6 A I do not know if it was made -- you know,
7 usually we have them made at our Newberry hospital,
8 but our dental work was done by a dentist in
9 Newberry, Dr. Brown, and he did that for us. So I do
10 not know.

11 Q So do I correctly understand that you
12 caused that x-ray that Mr. Britt has just shown you
13 to be made?

14 A No, I did not carry it down there.

15 Q Who did?

16 A It may have been carried down by
17 Dr. Brown -- I don't know -- I'm not sure.

18 Q Somebody in your office, you think?

19 A It would either have been Dr. Garvin who
20 was assisting Dr. Sexton at the time, but I did not
21 carry it down there.

22 Q All right. So we don't know who actually
23 took it and had it made?

24 A Correct, well, I don't know.

25 Q I understand. You don't know. And you do

1 know or you suppose that whoever took it had it made,
2 had to take the small bite wings with them, is that
3 correct?

4 A Correct.

5 Q Who furnished those bite wings?

6 A Those were sent to us.

7 Q And did you --

8 A I do not know, I don't recall -- I don't
9 have the notes on that.

10 Q Okay. You didn't have custody of those
11 bite wings, did you?

12 A Correct.

13 Q Now, the name of course as you have said
14 that you incorrectly put on the envelope, that is
15 that was the name of James Jackson, is that correct?

16 A That's correct.

17 Q Where did you get that name from?

18 A They are two very famous men. Michael
19 Jackson and Michael Jordan.

20 Q Do you know if anybody told you what name
21 to put on there?

22 A When the Coroner came to get it, we were
23 talking about the fact that he felt that it was
24 possibly Michael Jordan's father. And they had been
25 conversation and it was strictly a slip of

1 interchanging words.

2 Q I fully understand. Yes, ma'am. Thank
3 you.

4 A And I admit that I did it. I didn't try to
5 change the folder when Mr. Brown wrote back that,
6 hey, you made a bad slip.

7 MR. BOWEN: That's all.

8 THE COURT: Anything further?

9 MR. BRITT: No, sir.

10 THE COURT: May Ms. Sexton be
11 excused?

12 MR. BRITT: Yes.

13 MR. BRITT: Your Honor, at this
14 time we call Arthur Sprenger.

15 THE COURT: If you'll raise your
16 right hand please.

17 ARTHUR SPRENGER,
18 being first duly sworn was examined and deposed as
19 follows:

20 DIRECT EXAMINATION

21 THE COURT: Sir, if you'll state
22 your full name and spell both your full
23 first and last names for the record.

24 THE WITNESS: Arthur Sprenger.

25 A-R-T-H-U-R, S-P-R-E-N-G-E-R.

1 THE COURT: Thank you, sir.

2 BY MR. BRITT:

3 Q By whom are you employed?

4 A Palmetto Professional Services.

5 Q What do you for that business?

6 A I do transport.

7 Q What is the nature of the business of
8 Palmetto Professional Services?

9 A We transport and embalm bodies for other
10 funeral homes, do coroner work, transport the
11 autopsies, stuff like that.

12 Q And were you working in that capacity back
13 on August the 3rd of 1993?

14 A Yes, sir.

15 Q How long have you worked for that business?

16 A Full-time, since 1992. Couple of years
17 before that off and on when I was in town.

18 Q Now, do you know Coroner Tim Brown, from
19 Marlboro County, South Carolina?

20 A Yes, sir.

21 Q How long have you known Mr. Brown?

22 A Since probably 90, 91.

23 Q Back on August the 3rd of 1993, did you
24 have an occasion to meet with Coroner Brown in regard
25 to a body that was found in the Gum Swamp area of

1 Marlboro County, South Carolina?

2 A Yes, sir.

3 Q Where do you recall meeting first with the
4 Coroner?

5 A At Marlboro Park hospital in Bennettsville,
6 South Carolina.

7 Q Can you describe for us what if anything
8 you saw when you first arrived there?

9 A I saw Mr. Brown standing beside his pickup
10 truck, and I mean, I already knew what I was there to
11 are you be that's what I saw was him standing beside
12 his pickup truck.

13 Q Was there a body bag in the pickup truck?

14 A Yes, sir.

15 Q Was the bag opened or closed?

16 A Bag was closed.

17 Q At any point after you arrived was the bag
18 opened?

19 A No, sir.

20 Q What if anything was done with that bag
21 that was located there on the back of Mr. Brown's
22 pickup truck?

23 A At that time?

24 Q Yes, sir.

25 A Nothing as long as we were at the hospital.

1 Q Did there come a time when the two of you
2 left Marlboro Park hospital?

3 A Yes, sir. I followed Mr. Brown to the
4 sheriff's department, and then from the sheriff's
5 department -- let me back up. I followed him to the
6 sheriff's department and Mr. Brown went inside, I
7 remained outside in the vehicle. In my vehicle,
8 looking at his vehicle, while he went inside and did
9 whatever he had to do. I wasn't there so I don't
10 know exactly what he did do. And we left there and
11 went to Mr. Brown's office.

12 Q From the hospital to the sheriff's
13 department, where was the body bag?

14 A In the back of the pickup.

15 Q And there after Mr. Brown, went into the
16 sheriff's department, where was the body bag?

17 A In the back of the pickup.

18 Q And could you see it from where I was
19 sitting in your vehicle?

20 A Yes, sir.

21 Q During that time, did anyone approach or
22 come into contact with either the truck operated by
23 Mr. Brown or the body bag that was in the back of the
24 pickup truck?

25 A No, sir, can we back up just a little bit?

1 Actually, physically, seeing the body bag with the
2 tailgate up, no, I guess I really couldn't see the
3 bag. I saw it before we left the hospital, and I
4 followed directly behind the pickup until we got to
5 the sheriff's department, and never took my eyes off
6 of the pickup while I was sitting there, so as far as
7 actually seeing the black bag, no, I couldn't see the
8 black bag from where I was sitting.

9 THE COURT: For the purposes of
10 clarification, you indicated that you
11 followed Coroner Brown to the sheriff's
12 department?

13 THE WITNESS: Yes, sir.

14 THE COURT: Once he arrived there
15 he packed his vehicle?

16 A Yes, sir.

17 Q You parked your vehicle?

18 A Yes, sir.

19 Q Where was your vehicle parked in
20 relation shin to Mr. Brown's vehicle? Was
21 it beside, behind?

22 A I was behind him.

23 THE COURT: Okay.

24 BY MR. BRITT:

25 Q Was the body bag that you saw in the back

1 of Mr. Brown's truck at the hospital ever removed
2 from the back of his truck there at the hospital?

3 A No, sir.

4 Q Was the body bag that you saw in the back
5 of his truck while at the hospital ever removed from
6 that truck while it was en route -- the truck was en
7 route to the sheriff's department?

8 A No, sir.

9 Q There at the sheriff's department, after
10 Mr. Brown went inside, was the body bag that you had
11 previously seen in the back of his pickup truck
12 removed from that truck there at the sheriff's
13 department?

14 A No, sir.

15 Q From the sheriff's department you testified
16 you went to Mr. Brown's office?

17 A Yes, sir.

18 Q Did you follow Mr. Brown to his office?

19 A Yes, sir, I did.

20 Q En route, was that body bag ever removed
21 from the back of his pickup truck?

22 A No, sir.

23 Q When you arrived at his office, where did
24 Mr. Brown park and where did you park, if you recall?

25 A He was parked on the side of the building,

1 and I was in the front of the building, but I could
2 still see his truck.

3 Q There at his office, was the body bag ever
4 removed from the back of his pickup truck?

5 A Yes, sir.

6 Q Who removed it?

7 A Mr. Brown and myself.

8 Q And when it was removed from the back of
9 his pickup truck, where was it's taken?

10 A It was put on to my stretcher and I put it
11 into my vehicle.

12 Q At any time there at Mr. Brown's, was the
13 body bag sprayed with any water or any other type of
14 materials?

15 A Yes, sir. We got a hose and hosed the body
16 bag off in the back of the pickup truck and then
17 sprayed disinfectant on the outside of the body bag
18 to try to cut down on some of the odor, because --
19 well, any ways, to cut down on some of the odor.

20 Q The odor that you smelled, can you describe
21 it?

22 A I would rather -- I mean, no, it's
23 indescribable.

24 Q Was it a light smell, medium smell or
25 strong smell?

1 A It was very, very strong stench.

2 Q What type of vehicle were you driving?

3 A A Chevrolet van.

4 Q And is that vehicle enclosed?

5 A Yes, sir.

6 Q The area where the body, the bag was to be
7 placed is that enclosed?

8 A It's all part of the van, yeah. But I
9 mean, it's not a separate -- in other words, there's
10 not a separate section in the back of the van for
11 it. It's all an open van, so --

12 Q After the bag was hosted down an sprayed
13 with disinfectant what was then done with the bag?

14 A Then I took -- we took the body bag, pulled
15 the cot up to the back of the pickup and slid the
16 body bag on to the cot, and then I took my cot and
17 slid it into the back of the van.

18 Q And from there, where did you go?

19 A 251 Darlington Street in Darlington.

20 Q What is at that address?

21 A At that time, that was Palmetto
22 Professional Service' office and embalming room.

23 Q After arriving at that location, what if
24 anything was done with the van that you were driving
25 that contained the body bag inside of it?

1 A I backed the van up and unloaded the body
2 into the office.

3 Q And where in the office was the body bag
4 placed? Where was the body placed?

5 A I put it in the office.

6 Q Was it secured after the body was placed in
7 the office?

8 A Yes, sir, I put the body in there and then
9 secured, made sure all the doors were locked, which
10 we always do when we leave the office.

11 Q Was anyone present when the body was
12 transferred from the van to the office, other than
13 yourself?

14 A No, sir.

15 Q After securing the body in the office, what
16 did you then do?

17 A Went home and took a shower.

18 Q Did you return to the office sometime
19 later?

20 A The next morning, yes, sir.

21 Q And when you arrived at the office the next
22 morning, was the bag containing the body in the exact
23 location where you had left it?

24 A Yes, sir.

25 Q Was the office locked when you arrived that

1 morning?

2 A Yes, sir.

3 Q Approximately what time did you go to the
4 office on the morning of August the 4th?

5 A It would have had to have been 5:30, 6:00.

6 Q Were I aware that autopsy had been schedule
7 for eight am August the 4th, '93?

8 A Yes, sir.

9 Q Approximately how long did it take you to
10 drive from your office in Darlington South Carolina
11 to Newberry, South Carolina?

12 A Hour and 45 minutes.

13 Q And --

14 A Approximately.

15 Q On the morning of August the 4th, 1993,
16 when you went back to the office, what if anything
17 was done with the bag and the body contained in it?

18 A Excuse me?

19 Q On the morning of August the 4th, 1993,
20 before leaving to go to Newberry, what did you do
21 with the bag and the body contained in it?

22 A I had to move -- I had to move the bag out
23 of the way, the cot out of the way. I left the body
24 on the cot and I had to move the cot out of the way
25 and start cleaning up the floor where there was a

1 mess underneath it.

2 Q Was the bag with the body subsequently
3 returned to the van that you were driving the night
4 before?

5 A Yes, sir.

6 Q And after the body was placed in the van,
7 where did you go?

8 A To Newberry.

9 Q Who accompanied you?

10 A I went by myself.

11 Q Where in Newberry, South Carolina did you
12 go?

13 A To the hospital there in Newberry.

14 Q Upon arriving at the hospital in Newberry,
15 did you meet with anyone?

16 A Yes, I met -- I pulled up to the back and
17 locked the van, got out, went in and looked for --
18 went to the autopsy room where normally Dr. Sexton or
19 Dr. Garvin or Ms. Sexton would meet us, and I believe
20 the first person I came into contact with was
21 probably Dr. Garvin.

22 Q And when you locked the van to go inside
23 the hospital, where was the body bag?

24 A It was in the back of the van.

25 Q And were all doors to the van locked at

1 that time?

2 A Yes, sir.

3 Q You're the only one that had keys to the
4 van?

5 A Yes, sir.

6 Q After locating either Dr. Sexton or
7 Mr. Garvin or Ms. Sexton, did you return to the van?

8 A Yes.

9 Q Was the van still secured, that is, locked?

10 A Yes, sir.

11 Q Was the body bag still contained inside the
12 van?

13 A Yes, sir.

14 Q From there where -- after returning to the
15 locked van, what if anything was done with the bag
16 and the contents of the bag?

17 A I backed up, pulled around and backed up to
18 the back of the hospital, and we pulled the cot with
19 the body bag on it on to the back loading dock area,
20 which is very close to the autopsy room. The autopsy
21 room is right inside the back door. We brought it
22 there and then had x-ray come down and do the x-rays
23 while we were right there on the loading dock,
24 because we needed -- for whatever reason, but we did
25 the x-rays there. And then loaded the cot with the

1 body bag zipped it back up and loaded it on to the
2 van and transported it to the old hospital.

3 Q At any time prior to the point when the bag
4 was opened for the purposes of x-raying, had you seen
5 the contents of the bag?

6 A No, sir.

7 Q Can you describe for us what you saw when
8 the bag was opened there at the back of the hospital
9 prior to the x-rays being taken?

10 A A very badly decomposed body, covered with
11 maggots.

12 Q You testified after the x-rays were taken,
13 you then transported the body to the old hospital?

14 A Yes, sir.

15 Q Who accompanied you to the old hospital?

16 A In the van with me?

17 Q In the van with you or in another vehicle.

18 A I followed Dr. Garvin and I believe Dr.
19 Sexton and his wife, because I didn't know exactly
20 where it was, so I had to follow somebody.

21 Q And when you arrived at the old hospital,
22 what was done with the bag that contained the body?

23 A We pulled the cot out with the body inside,
24 still inside the bag, and took it in to the area that
25 they were going to perform the autopsy.

1 Q And did you remain present with the body
2 during the course of the autopsy?

3 A Yes, sir.

4 MR. BRITT: May I approach?

5 THE COURT: Yes, sir.

6 BY MR. BRITT:

7 Q Mr. Sprenger I want to I'll show you what
8 has been marked as State's Exhibit 30, State's
9 Exhibit Number 31, and State's Exhibit Number 32. Do
10 you recognize what is depicted in those photographs?

11 A Yes, sir.

12 Q The body that is depicted in State's
13 Exhibit 30, 31 and 32, how are you able to recognize
14 this body?

15 A I recognize -- I recognize it as the John
16 Doe that I picked up from Tim Brown. How?

17 Q Yes, sir, how do you recognize it?

18 A Because of the way it's so badly decomposed
19 because of the rope that was there when we opened the
20 bag, because of the pants that were on it.

21 Q Do you recognize the body depicted on those
22 photographs as the body that you transported to the
23 autopsy on August the 4th of 1993?

24 A Yes, sir.

25 Q During the course of the autopsy,

1 Mr. Sprenger, did you observe the clothing of the
2 individual being removed?

3 A Yes, sir.

4 Q What if anything did you see that was done
5 with that clothing after it was removed from that
6 body?

7 A First thing that we did was, examined for
8 any markings on it or anything, and then of course
9 looked inside to see if there was any laundry tags
10 or anything like that, and then it was looked at even
11 further to see what type of shirt it was, what type
12 of clothing, sizes, anything, any information that we
13 could get from it. And then it was -- I guess that's
14 about it.

15 Q Was the clothing placed into any type of
16 container?

17 A Yeah, it was placed in a bag.

18 Q And who did you observe place the clothing
19 into a bag?

20 A I don't recall who exactly physically
21 placed that -- it could have been me, could have
22 been --

23 MR. THOMPSON: Object.

24 THE COURT: Overruled. Complete
25 your answer it.

1 THE WITNESS: Could have been me,
2 Dr. Sexton, or could have been Dr. Garvin.
3 We were all three there. Who actually
4 placed each piece of garment in that bag, I
5 couldn't honestly tell you.

6 MR. THOMPSON: Move to strike.

7 THE COURT: Denied.

8 BY MR. BRITT:

9 Q Can you describe for us the clothing that
10 was removed from the body and placed into the bag?

11 A There was like a golf shirt with stripes on
12 it. There was a pair of Docker pants. There was a
13 belt. There was a pair of socks. There was a pair
14 of underwear. Then there was a rope also went into
15 the bag which was not a part of clothing but it was
16 in the bag.

17 Q What if anything was done with that bag
18 when the clothing was placed inside of it?

19 A During the autopsy?

20 Q Yes, sir. And afterwards?

21 A Well, during the autopsy, after all the
22 clothing was examined, which was prior to doing the
23 physical examination or whatever you would call it,
24 it was just set to the side, still in the same room
25 that we were in. And then later, it was given to --

1 it was first -- what you do is you sign off on
2 whenever you accept clothing evidence or whatever it
3 is, and when you accept that from Dr. Sexton's
4 office, you have to sign for it. Anything that goes
5 out of there, you sign for it. So it was signed for
6 by one of the SLED agents. But then he didn't want
7 the clothing. So he told me to take the clothing.

8 Q And did you take the clothing from the SLED
9 agent?

10 A Yes, sir.

11 Q What if anything did you do with the
12 clothing that you received from the SLED agent during
13 the autopsy?

14 A Put it in the van.

15 Q And after placing it's in the van, did you
16 take the clothing anywhere?

17 A I took the clothing with me.

18 Q And what if anything did you do with it,
19 with the clothing when you returned to Palmetto
20 Professional Services?

21 A When I got back to the office, I turned it
22 over to my boss.

23 Q And who was that?

24 A Jay Todd Hardee.

25 Q In addition to returning, when you returned

1 to work with the clothing, did you also have the
2 body?

3 A No, sir.

4 Q At what point did you leave Newberry with
5 the body after the autopsy was performed?

6 A Yes, sir, after the autopsy was finished, I
7 took the body to Kaufmann Harmon Funeral Home in
8 Lexington.

9 Q For what purpose did you take the body to
10 that funeral home?

11 A They have -- they had a place to put the
12 body, a -- they have a crematory there for one. They
13 also have a refrigeration device, and their crematory
14 and refrigeration device is separate from the funeral
15 home, so it's not like you're going to be putting a
16 decomposed body that had a very bad odor in it right
17 in a funeral home. It was set out away from it. So
18 that's where I took it.

19 Q And was that the last contact that you had
20 with that body?

21 A Yes, sir.

22 MR. BRITT: With the Court's
23 permission?

24 THE COURT: Yes, sir.

25 MR. BRITT: And may I remove my

1 jacket?

2 THE COURT: Yes, sir.

3 MR. BRITT: If I could approach
4 the witness?

5 THE COURT: Yes, sir.

6 BY MR. BRITT:

7 Q Mr. Hardee, for the purposes of the record,
8 I'm going to show you a box that's been marked --
9 excuse me. Mr. Sprenger -- State's Exhibit 19?

10 A Yes, sir.

11 Q You see the exhibit sticker?

12 A Yes, sir.

13 MR. BRITT; Your Honor, if the
14 record will reflect, I'm opening State's
15 Exhibit 19.

16 THE COURT: Yes, sir.

17 BY MR. BRITT:

18 Q Mr. Sprenger, I'm going to show you a bag
19 marked as State's Exhibit 22. You see the exhibit
20 stickers?

21 A Yes, sir.

22 Q I'm going to remove the contents of State's
23 Exhibit Number 22, and ask you to examine the
24 contents of State's Exhibit Number 22. Do you
25 recognize what I'm holding in my hands?

1 A Yes, sir.

2 Q For the record, will you state what it is
3 that I'm holding?

4 A It's the shirt off of the deceased, the
5 John Doe that I picked up from Tim Brown.

6 Q Is this shirt in substantially the same
7 condition it was, as it was in when you received it
8 on August the 4th, 1993?

9 A It's a little bit cleaner, but yeah, pretty
10 much.

11 MR. THOMPSON: Excuse me, Your
12 Honor. I'm having problems hearing. But
13 it is on the screen. I would like to hear,
14 too, though.

15 THE COURT: If you would speak up
16 so that all counsel and the court reporter
17 are able to hear you, Mr. Sprenger.

18 BY MR. BRITT:

19 Q Do you recognize this shirt as being the
20 one that was removed from the body that you
21 transported to Newberry, South Carolina for the
22 purposes of autopsy on August the 4th, 1993?

23 A Yes, sir.

24 Q I'm going to show you a bag that's been
25 marked as State's Exhibit 23. Do you see the exhibit

1 sticker?

2 A Yes, sir.

3 Q I'm going to remove the items from the bag,
4 and ask you to examine that item. Do you recognize
5 it?

6 A Yes, sir.

7 Q And how is it that you're able to recognize
8 the item that was contained inside the bag marked as
9 State's Exhibit Number 23?

10 A Those are the pants that came off of the
11 deceased.

12 Q And are these pants that were contained
13 inside of State's Exhibit 23 in substantially the
14 same condition as they were in when you received them
15 on August the 4th, 1993 at the autopsy?

16 A Yes, sir, except the mold.

17 Q And the pants that were contained inside of
18 State's Exhibit Number 23, do you recognize those to
19 be the pants that were removed from the body that was
20 autopsied in Newberry, South Carolina on August the
21 4th, 1993?

22 A Yes, sir.

23 Q I'll show you what has been marked
24 previously as State's Exhibit 21. Do you see the
25 exhibit sticker?

1 A Yes, sir.

2 Q I'm going to remove the items contained
3 inside of State's Exhibit 21 and ask you to examine
4 the item that I hold in my hand. Do you recognize
5 those items?

6 A Yes, sir.

7 Q And how do you recognize those items?

8 A Those are the socks that came off of the
9 deceased.

10 Q And are they in substantially the same
11 condition as they were in when you received them on
12 August the 4th, 1993?

13 A Yes, sir.

14 Q And do you recognize these as being the
15 socks that were removed from the body that was
16 autopsied in Newberry, South Carolina on August the
17 4th, 1993?

18 A Yes, sir.

19 Q I'll show you what has been marked as
20 another item that was contained inside of State's
21 Exhibit Number 21, ask you to examine it and tell me
22 if you can identify it?

23 A That was his underwear.

24 Q How is it that you're able to recognize
25 this as the underwear that was removed from the body

1 on August the 4th, 1993?

2 A Because of the discoloration in it, because
3 of the type of underwear it was.

4 THE COURT: Mr. Thompson, feel
5 free to stand over on the other side if you
6 like but the members of the jury must be
7 able to see as well.

8 BY MR. BRITT:

9 Q And the underwear removed from State's
10 Exhibit 21 is it in substantially the same condition
11 as it was in when you received it?

12 A Yes.

13 Q On August the 4th, 1993?

14 A Yes, sir.

15 Q I'll show you what has been marked as an
16 orange bag, State's Exhibit 20. Do you see the
17 exhibit sticker?

18 A Yes, sir.

19 Q Removing the items that are contained
20 inside of State's Exhibit Number 20, I'll ask you to
21 look at these items and tell me if you're able to
22 identify them?

23 A Yes, sir. This appears to be the plastic
24 bag that was used to hold all that originally, and
25 that's the rope that was found on the body.

1 Q And the rope and the plastic bag contained
2 inside of State's Exhibit 20 do they appear to be in
3 substantially the same condition as they were in when
4 you first received them on August the 4th, 1993?

5 A Yes, sir.

6 Q The items that were contained inside
7 State's Exhibit Number 23, 22, and 21, is it your
8 testimony when you received them, they were contained
9 inside the white plastic bag?

10 A Yes, sir.

11 Q That was contained in State's Exhibit
12 Number 20, the orange bag?

13 A I don't remember the orange bag.

14 Q Excuse me. The items were contained inside
15 this white plastic bag?

16 MR. THOMPSON: Object to
17 leading.

18 THE WITNESS: That's correct,
19 that's what I testified earlier.

20 THE COURT: Objection is
21 overruled. He's clarifying. Repeat your
22 question.

23 BY MR. BRITT:

24 Q Items that were found in State's Exhibit
25 21, 22, and 23, when you first received them on

1 August the 4th, 1993, were they contained inside the
2 white plastic bag?

3 A That's correct.

4 Q That is found in State's Exhibit Number 20,
5 the orange bag?

6 A That's correct.

7 Q And when you returned to Palmetto
8 Professional Services on August the 4th, 1993, the
9 shirt, the pants, the underwear and the socks were
10 contained inside the white plastic bag, is that
11 correct?

12 A Along with the belt and the rope.

13 Q And you then released those items to your
14 employer, Todd Hardee?

15 A That's correct.

16 MR. BRITT: I don't have any
17 other questions.

18 THE COURT: Any
19 cross-examination?

20 MR. THOMPSON: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. THOMPSON:

23 Q Mr. Sprenger, good afternoon.

24 A Good afternoon, sir.

25 Q I believe you indicated you worked

1 full-time for Palmetto Professional Services since
2 1992, is that right, in the transport business?

3 A Yes, sir, I believe so. I believe that is
4 correct.

5 Q But you had worked part-time in the
6 transport business prior to 1992?

7 A Yes, sir, that's correct.

8 Q About how long had you worked part-time?

9 A Two to four years.

10 Q And you have had an opportunity to
11 transport several bodies while in the transport
12 business?

13 A Yes, sir.

14 Q Prior to August the 3rd of 1992?

15 A Yes, sir.

16 THE COURT: August 3rd of '92?

17 MR. THOMPSON: '93, I'm sorry,
18 prior to August the 3rd of 1993.

19 BY MR. THOMPSON:

20 Q Now, you knew -- you had met Dr. Joel
21 Sexton prior to August the 3rd of '93?

22 A Yes, sir.

23 Q Had you met his wife, Mrs. Sexton?

24 A Yes, sir.

25 Q Dr. Garvin, who you referred to, you had

1 met him?

2 A Yes, sir.

3 Q Now, at some point I believe you indicated
4 that you were in the presence of some SLED agent
5 while you were also in the presence of the body? Let
6 me strike that.

7 For point of reference, Mr. Sprenger, I
8 believe you indicated that some SLED agent didn't
9 want the clothes.

10 THE COURT: Let's put it in time
11 frame and place. Are you referring to
12 Newberry, South Carolina?

13 MR. THOMPSON: Well, I'm trying
14 to find out, did a SLED agent tell you that
15 he did not want the clothes that you --
16 that were taken off the body?

17 THE WITNESS: That's correct.

18 BY MR. THOMPSON:

19 Q Who was the SLED agent, the name of the
20 SLED agent?

21 A Probably have to be Collins, but I couldn't
22 swear to that. I could find out, but I couldn't
23 swear to it.

24 Q Had you seen that?

25 A I don't remember names real well.

1 Q Had you seen this individual before who
2 you've just referred to as Collins?

3 THE COURT: Before when,
4 Mr. Thompson?

5 MR. THOMPSON: Before the date
6 that he told you he didn't want the
7 clothes.

8 THE COURT: Let's establish when
9 that was.

10 BY MR. THOMPSON:

11 Q When was it, when was the date?

12 A The date of the autopsy.

13 Q Which would have been what date? August
14 the 4th, 1993?

15 A That's correct.

16 Q All right. And had you seen this
17 individual before prior to August the 4th of 1993,
18 this SLED agent who told you he did didn't want the
19 clothes?

20 A I possibly could have seen him at another
21 autopsy prior to that.

22 Q Are you saying you don't recall at this
23 point whether you had seen him before or not. You
24 possibly could have?

25 A I'm saying I possibly could have.

1 Q Have you seen him since?

2 A I'm not real good with names and faces, so
3 I could have. And I wouldn't remember it.

4 Q Well, you're not real good with names but
5 you're better with faces, is that fair to say?

6 A I didn't say either one.

7 Q Well, you're not real good with either one
8 of them is that what you're testifying to, faces or
9 names?

10 A What I'm saying is, I don't recall if I saw
11 the gentleman before or after. I know that there was
12 a SLED agent there at that time, and with -- there
13 was other people involved also that can tell you
14 exactly who that was.

15 Q All right, sir.

16 A If I had to honestly say exactly who that
17 was I would be lying because I can't honestly say who
18 it was.

19 THE COURT: Where was it
20 according to your testimony that you had
21 this conversation took place.

22 THE WITNESS: In the autopsy room
23 at the Newberry Hospital.

24 BY MR. THOMPSON:

25 Q But you do recall other persons being

1 present in that room when the conversation took
2 place?

3 A Yes, sir.

4 Q And those other persons are whom?

5 A That would be Dr. Sexton, Dr. Garvin, an
6 possibly Mrs. Sexton.

7 Q Now, the clothes that we're referring to,
8 did you actually physically handle those clothes when
9 asking the SLED agent what he wanted you to do with
10 them? Were they in your actual possession when you
11 had that conversation?

12 A Yes, sir.

13 Q You indicated that you --

14 A But can I --

15 Q Certainly, you may explain.

16 A They were inside the bag. Once the clothes
17 were put inside the bag and sealed, the bag was never
18 opened again.

19 Q I understand that. The point is, is that
20 the clothes were handed to you in the white bag that
21 you've testified to?

22 A Exactly, yes, sir.

23 Q And you offered to give the clothes to a
24 SLED agent?

25 A That's correct.

1 Q And that SLED agent told you he didn't care
2 what you did with the clothes, is that right?

3 MR. BRITT: Objection.

4 THE COURT: It's 1:00, and it's
5 probably a good point for us to take the
6 lunch recess. Mr. Britt, for my
7 information, so that I can share the
8 information with the members of the jury,
9 how many additional witnesses do you have
10 scheduled for today?

11 MR. BRITT: There are two
12 additional witnesses today.

13 THE COURT: Ladies and gentlemen
14 of the jury, it appears that we may be
15 breaking somewhat earlier than our 5:00
16 recess today, and I'm simply giving you
17 that information at this time so you can
18 plan your day accordingly. There are two
19 additional witnesses just been indicated.

20 We in all likelihood will finish both
21 direct and cross-examination. That may not
22 be the case but it also may be the case.
23 And to the extent that that's helpful for
24 you folks in planning the balance of your
25 afternoon, especially given the nature of

1 the weather outside, I think you're
2 entitled to know that at this point.

3 We're going to recess at this time
4 until -- any objection to coming back at
5 2:00, folks?

6 MR. BRITT: No, sir.

7 THE COURT: Is that a problem for
8 anyone in the jury?

9 All right. We'll come back at 2:00.

10 During the lunch recess, please recall
11 it is your duty not to talk about this
12 matter even among yourselves. Don't allow
13 anyone to say anything to you in this case,
14 don't allow anyone to communicate with
15 you. If anyone attempts to do so or if
16 anyone says anything about this matter in
17 your presence, it remains your duty to
18 inform us of that immediately, or one of
19 the bailiffs immediately.

20 Don't form or express any opinions
21 about this case whatsoever. Don't have any
22 contact with any of the parties in this
23 case, including any attorneys, parties,
24 witnesses, prospective witnesses, or
25 directly with the Court. Don't allow

1 yourselves to be exposed to any media
2 accounts which may exist in connection with
3 this matter, or don't conduct any
4 independent inquiry or examination or
5 research of any kind. Everyone else remain
6 seated, the members of the jury are excused
7 until 2:00 p.m.

8 (Jury out at 1:00 p.m.)

9 THE COURT: In the absence of the
10 jury, Mr. Britt, do you want to state your
11 objection?

12 MR. BRITT: Your Honor, as to
13 what the SLED agent may have told him is
14 hearsay.

15 THE COURT: Well, that --

16 MR. THOMPSON: It's offered for
17 substantive --

18 THE COURT: I'm going to -- maybe
19 I misunderstood the testimony, but I
20 understood his testimony to be that the
21 SLED agent initially signed for the
22 objects, which would in my mind logically
23 mean the SLED agent had possession of them
24 first, and then the SLED agent gave them to
25 him. Your question assumes they were given

1 to him and then he tried to give them to
2 the SLED agent and the SLED agent says no,
3 I don't want them, I don't care what you do
4 with the items.

5 I don't recall him testifying that the
6 SLED agent said anything along those lines,
7 is my understanding, but we can clarify
8 that, that is, the SLED agent initially
9 signed for them and then gave the items to
10 him. Did I misunderstand you?

11 THE WITNESS: No, that's -- but I
12 don't know that Dr. Sexton, you know, that
13 Dr. Sexton didn't know that I was going to
14 take them. Just naturally, he signed it
15 over to him and then the SLED agent just
16 said, well, I don't want them.

17 THE COURT: Okay.

18 THE WITNESS: So that's why that
19 was changed.

20 THE COURT: We'll come back on
21 that, but I think the question, we need to
22 get what happened.

23 THE WITNESS: But they never left
24 my possession.

25 THE COURT: The objection is

1 sustained. We'll rephrase.

2 Given the fact we've only got two
3 additional witnesses, there's a likelihood
4 we will finish somewhere earlier than
5 5:00.

6 (Lunch recess).

7 THE COURT: Good afternoon,
8 folks. Let the record reflect all counsel
9 are present and the defendant is present in
10 open court.

11 Mr. Horne, I understand all members of
12 the jury are secured in the jury room.

13 THE BAILIFF: Yes, sir, they are.

14 THE COURT: Ready to go forward
15 with cross-examination?

16 MR. THOMPSON: Yes, sir.

17 MR. BRITT: Your Honor, so as not
18 to cause any delay, could we wait?

19 Mr. Heffney is in the process of rolling a
20 cart around from my office. Later this
21 afternoon, as you can see, there's what I
22 call an x-ray box, or light box, in the
23 courtroom. The cart is going to be used to
24 place the box on top of it to display
25 certain x-rays to the jury. So that we

1 don't have to break all that up, if we
2 could wait until Mr. Heffney brings the
3 cart in before we bring the jury in.

4 THE COURT: If you could hold up
5 for a moment, Mr. Horne.

6 (Jury in at 2:02 p.m.)

7 THE COURT: Good afternoon.

8 Mr. Thompson?

9 BY MR. THOMPSON:

10 Q Good afternoon, Mr. Sprenger.

11 Mr. Sprenger, you were present during part
12 of the autopsy, is that right?

13 A Yes, sir.

14 Q And you saw what appeared to be a bullet
15 hole in the right chest area of the body, did you
16 not? Or did you see that?

17 A Yes, sir.

18 Q And you saw multiple holes or what has been
19 previously testified to by Dr. Sexton as defects in
20 the shirt, did you not?

21 A Yes, sir.

22 Q And along with you present at the autopsy
23 was Dr. Sexton, Mrs. Sexton and a Dr. Garvin and a
24 SLED agent, is that right?

25 A No, sir.

1 Q SLED agent wasn't there?

2 A No, sir.

3 Q Who was present?

4 A Dr. Sexton, Mrs. Sexton and Dr. Garvin.

5 Q Now, at what point, did you come in contact
6 with the SLED agent?

7 A After the autopsy, after the body was
8 loaded back into the van, we drove back over to the
9 hospital.

10 Q So now, the clothes that you have testified
11 to, the shirt, the pants and those items that were in
12 the white bag, they were given to you, were they not,
13 from Dr. Sexton?

14 A Yes, sir.

15 THE COURT: When and where?

16 BY MR. THOMPSON:

17 Q And when were they given to you by Dr.
18 Sexton?

19 A I carried them back over to the hospital,
20 so -- but they actually were not released to my
21 custody until after I signed that piece of paper when
22 the SLED agent wasn't going to take them. Because I
23 carried them back into the hospital. When we came
24 back from where the autopsy was taken --

25 Q When you say we, who are you talking about?

1 A Dr. Sexton, Mrs. Sexton, Dr. Garvin, and we
2 left the place where we had done the autopsy and came
3 back to the hospital, when we came inside, I brought
4 them inside, because I wasn't thinking that I was
5 supposed to get them.

6 Q Right, because you're not a SLED agent, are
7 you?

8 A No, sir.

9 Q You're not in the business of custodial
10 agent for the South Carolina Law Enforcement Agency,
11 are you?

12 A No, sir.

13 Q You thought that these items in the white
14 bag were possibly evidence related to the possible
15 homicide, did you not?

16 A Yes, sir.

17 Q And you offered -- when you were there at
18 the hospital with the SLED agent whom you right now
19 cannot or do not know his name, you offered to give
20 the items to the SLED agent, did you not?

21 A Yes, sir.

22 Q And the SLED agent wasn't interested in
23 those clothes, was he?

24 MR. BRITT: Objection, form.

25 THE COURT: Sustained as to form.

1 BY MR. THOMPSON:

2 Q Well, now, Mr. Sprenger, you offered to
3 give the clothes to the SLED agent and had a
4 conversation with the SLED agent, did you not, about
5 those clothes?

6 A Yes, sir.

7 Q And you have just -- as previously
8 testified, you thought that the SLED agent would want
9 the clothes or the possible evidence?

10 A I knew that either the SLED agent or
11 possibly the Coroner would want those clothes. It
12 varies from time to time. Sometimes the South
13 Carolina Law Enforcement takes over and takes the
14 clothes, and sometimes it's returned along with other
15 evidence, sometimes goes back to the Coroner.

16 Q And you previously spoke with William
17 Barnes, an investigator in this case?

18 A That's correct.

19 Q That was back on -- around January of 1995?

20 A I can't recall the exact date, but yes,
21 sir.

22 Q And do you recall telling him,
23 Mr. Sprenger, that you asked the SLED agent to keep
24 the clothes but you said he didn't want them?

25 MR. BRITT: Objection.

1 THE WITNESS: That's correct.

2 THE COURT: There's an
3 objection.

4 Do you want to be heard, Mr. Britt?

5 MR. BRITT: Yes, sir.

6 THE COURT: Okay. Before I do
7 anything with regard to the jury, all I'm
8 asking for is specific purpose. For what
9 purpose is this being offered?

10 MR. THOMPSON: To explain
11 subsequent conduct, Your Honor.

12 THE COURT: Do you want to be
13 heard on that?

14 MR. BRITT: No, sir. Ask for a
15 limited instruction.

16 THE COURT: Members of the jury,
17 the testimony just elicited from the
18 witness who is now before you,
19 Mr. Sprenger, as to what Mr. Sprenger
20 contends was said to him by someone else,
21 specifically some unidentified SLED agent,
22 is not being offered for the truth of the
23 matter or matters asserted. But is simply
24 being offered to explain the subsequent
25 conduct of this witness, Mr. Sprenger.

1 Now, to the extent that you find that
2 it is of some explanation as to his
3 subsequent conduct, you may consider it for
4 that limited purpose and for no other
5 purpose.

6 Mr. Britt, do you want to be heard
7 further?

8 MR. BRITT: No, sir.

9 THE COURT: You may continue.

10 Repeat your question so he can answer on
11 the record.

12 BY MR. THOMPSON:

13 Q You asked a SLED agent to keep the clothes
14 and the SLED agent told you he didn't want them?

15 MR. BRITT: Objection. That was
16 not the question.

17 THE COURT: Rephrase. You were
18 asking him about a statement he made.

19 BY MR. THOMPSON:

20 Q You told the investigator, Mr. Barnes, that
21 you asked a SLED agent to keep the clothes and this
22 SLED agent told you he didn't want them. That's what
23 you told Mr. Barnes, is that right?

24 A Yes, sir.

25 Q You also told him that the SLED agent told

1 you that he didn't care what you did with those
2 clothes?

3 MR. BRITT: Objection.

4 BY MR. THOMPSON:

5 Q Did you tell him that?

6 THE COURT: Objection is
7 sustained.

8 MR. BRITT: Motion to strike.

9 THE COURT: Motion to strike is
10 allowed.

11 MR. BRITT: I'd ask the Court for
12 a limiting instruction.

13 THE COURT: Members of the jury,
14 you will not consider either the question
15 of Mr. Thompson or the answer if one was
16 given by Mr. Sprenger to that question. It
17 is to take no part in your deliberations in
18 this matter in any respect.

19 BY MR. THOMPSON:

20 Q So as a result of what the conversation
21 that you had with the SLED agent, in any event you
22 kept the clothes, is that right?

23 A That's correct.

24 Q Was it after the conversation with the SLED
25 agent that you signed the receipt for those clothes?

1 A Yes, sir

2 (Defense Exhibit 4 was
3 marked for identification.)

4 BY MR. THOMPSON:

5 Q I'll hand you what's been previously marked
6 as Defendant's Exhibit Number 4, a paper entitled
7 evidence transfer. Can you identify Defendant's
8 Exhibit Number 4?

9 A Yes, sir.

10 Q What is Defendant's Exhibit Number 4?

11 A It's an evidence transfer sheet.

12 Q And does your signature appear on that
13 sheet?

14 A Yes, sir, it does.

15 Q Does the signature of Dr. Joel Sexton
16 appear on that sheet?

17 A Yes, sir, it does.

18 Q What is typed next to the signature of
19 Dr. Joel Sexton?

20 THE COURT: You're getting into
21 contents, Mr. Thompson.

22 MR. THOMPSON: I'll withdraw that
23 question.

24 BY MR. THOMPSON:

25 Q Do you recall -- is this the receipt that

1 you've testified to that you signed upon transfer of
2 the clothes from Dr. Sexton to you there at the
3 hospital, a copy of it?

4 A Yeah, this -- yes, sir.

5 Q You may explain your answer if you have
6 some --

7 A Before this was done, there was another
8 sheet that would have had the blood samples and
9 tissue samples. And that's the one that the SLED
10 guy --

11 Q All right. But you --

12 THE COURT: I'm sorry, that's the
13 one that the SLED guy --

14 THE WITNESS: The SLED agent,
15 there was another -- to the best of my
16 recollection, there was a paper that had
17 that and the clothing on one, and then when
18 we decided that I was going to take the
19 clothing, then Dr. Sexton issued me this.
20 Because actually, the SLED agent had never
21 taken possession of the clothes.

22 THE COURT: So if I'm
23 understanding you correctly, and I'm simply
24 asking for purposes of clarification,
25 evidence transfer sheet was initially

1 prepared listing certain items?

2 THE WITNESS: Yes, sir. To the
3 best of my knowledge, there was another one
4 before this --

5 THE COURT: That's where I'm
6 going.

7 THE WITNESS: Right.

8 THE COURT: That evidence
9 transfer sheet that was initially prepared
10 was prepared for purposes of transferring
11 certain items to the SLED agent?

12 THE WITNESS: Right, yes, sir.

13 THE COURT: Once it was
14 determined that the clothing would be given
15 to you, a second evidence transfer sheet
16 was prepared?

17 THE WITNESS: Right.

18 THE COURT: On that second
19 evidence transfer sheet, the only thing
20 that was reflected or involved was the
21 clothing that was removed from the body
22 during autopsy?

23 THE WITNESS: That's correct, and
24 that's what this is.

25 BY MR. THOMPSON:

1 Q And there on Defendant's Exhibit Number 4,
2 which is the second evidence sheet, which you signed
3 as well as Dr. Joel Sexton, what does it appear was
4 transferred to you under description of evidence
5 transferred?

6 MR. BRITT: Objection.

7 THE COURT: The objection as to
8 contents is sustained, but you can ask him
9 what he got.

10 BY MR. THOMPSON:

11 Q Does Defendant's Exhibit Number 4 indicate
12 that the shirts, the pants?

13 THE COURT: You can't get into
14 contents, Mr. Thompson. You can ask him
15 what he received as a result of that
16 evidence transfer sheet.

17 BY MR. THOMPSON:

18 Q What did you receive as a result of the
19 transfer sheet as evidenced in Defendant's Exhibit
20 Number 4, Mr. Sprenger?

21 A I did receive this.

22 Q What is this?

23 A Oh, shirt, pants undershirt, socks --

24 MR. BRITT: Objection, move to
25 strike.

1 THE COURT: You can't read from
2 the document because the document is not in
3 evidence. You can testify from your
4 recollection what items you may have
5 received, if any.

6 THE WITNESS: Okay.

7 BY MR. THOMPSON:

8 Q Do you know from your own recollection what
9 you received?

10 A Yes, sir.

11 Q What were those items that you received?

12 A Shirt, two socks, pair of pants, a belt,
13 pair of underwear, and a rope.

14 Q And what did you do with those items after
15 you received them? Where did you take them to?

16 A I left them in that white plastic bag and
17 never opened the bag. From the time that we did the
18 autopsy, when we put them in there, we sealed them up
19 because they stunk so bad, trying to hold down the
20 smell. So I took the bag with me to Lexington,
21 dropped the body off in Lexington, and then proceeded
22 to the office in Darlington, 251 Darlington Street.

23 Q With the bag?

24 A Yes, sir.

25 Q And who, if anyone, did you give the bag

1 to?

2 A Mr. Todd Hardee.

3 Q And who is he?

4 A He was my boss.

5 MR. THOMPSON: That's all.

6 THE COURT: Anything on

7 redirect?

8 MR. BRITT: No.

9 THE COURT: May Mr. Sprenger be
10 released, folks?

11 MR. THOMPSON: Yes, sir.

12 THE COURT: Thank you, sir.

13 You're free to go.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Britt?

16 MR. BRITT: Your Honor, at this
17 time we call Todd Hardee.

18 THE COURT: If you'll place your
19 left hand on the Bible and raise your right
20 and face Ms. Gaines.

21 **J. TODD HARDEE,**

22 being first duly sworn was examined and deposed as
23 follows:

24 DIRECT EXAMINATION

25 THE COURT: Please state your

1 full name, and if you'll spell both your
2 full and last name.

3 THE WITNESS: Jay Todd Hardee,
4 T-O-D-D, H-A-R-D-E-E.

5 THE COURT: Thank you, sir.

6 BY MR. BRITT:

7 Q Mr. Hardee, how are you employed, sir?

8 A I'm employed by Palmetto Companies
9 Incorporated of which I am the president.

10 Q What is the nature of your business?

11 A The nature of my business at this present
12 time is wholesale casket sales and wholesale funeral
13 supplies.

14 Q Did you previously operate a business known
15 as Palmetto Professional Service?

16 A Yes, sir, I operated that business from
17 1986 up until last Monday when the business was sold
18 to an affiliate of mine of ten years.

19 Q And what was the nature of the business at
20 Palmetto Professional Services?

21 A Palmetto Professional Service is an
22 embalming transportation company, of which we
23 contract with the local funeral homes, state wide
24 funeral homes to do contract embalming and
25 transportation. In the transportation business, we

1 sometimes contract with the Coroners office in our
2 surrounding counties for their transportation.

3 Q Did you have such a contract with Marlboro
4 County, South Carolina?

5 A Yes, sir, we do.

6 Q On August the 3rd of 1993, to your
7 knowledge was your business notified by Coroner Tim
8 Brown in regard to a body that was discovered in the
9 Gum Swamp of Marlboro County, South Carolina?

10 A Yes, sir.

11 Q Was Arthur Sprenger an employee of yours on
12 August the 3rd, 1993?

13 A Yes, sir.

14 Q On August the 3rd, 1993, did you ever see
15 the body or the bag containing the body that was
16 removed from the Gum Swamp of Marlboro County, South
17 Carolina?

18 A No, sir.

19 Q Did you ever go to the scene where the body
20 was recovered?

21 A No, sir.

22 Q Did you ever go to the McColl Rescue Unit
23 on the evening of August the 3rd, 1993?

24 A No, sir.

25 Q On August the 4th, 1993, did you accompany

1 Mr. Sprenger to an autopsy in Newberry, South
2 Carolina?

3 A No, sir.

4 Q On August the 4th of 1993, did you receive
5 any items from Mr. Sprenger that he returned with
6 from the autopsy that was performed?

7 A Yes, sir.

8 Q What if any item did Mr. Sprenger -- did
9 you see on August the 4th, 1993?

10 A He gave me a bag that contained the
11 clothing of the gentleman that he had carried to
12 Newberry.

13 Q At the time Mr. Sprenger gave you the bag,
14 was it a sealed bag or was it opened? Was it an
15 opened bag?

16 A I can't recall. I'm sure it was sealed.

17 Q At any time August the 4th 1993 --

18 MR. THOMPSON: Object, move to
19 strike as to that last comment, Your Honor.

20 THE COURT: As to the last
21 comment, the objection is sustained.
22 Motion to strike is allowed.

23 Members of the jury, don't consider
24 the last statement of Mr. Hardee. You may
25 ask additional questions. If he has a

1 recollection, he can testify to that
2 recollection. If he doesn't have one, he
3 can tell us that.

4 BY MR. BRITT:

5 Q Mr. Hardee, do you recall if at the time
6 Mr. Sprenger gave you the bag, whether it was sealed
7 or whether it was open?

8 A I don't recall whether it was or not.

9 Q August the 4th of '93, do you recall
10 opening the bag and looking inside to see what was
11 there?

12 A No, sir, I did not.

13 Q What if anything did you do with the bag
14 that Mr. Sprenger gave you on August the 4th, 1993?

15 A August the 4th of 1993, I placed the bag in
16 our warehouse.

17 Q And how long did it remain in your
18 warehouse?

19 A It wasn't long, probably a matter of hours.

20 Q Who had access to the warehouse?

21 A I did, I was there.

22 Q Did any other employee of the business have
23 access to the warehouse?

24 A I don't recall if anybody else was there or
25 not. All of our employees do have access to the

1 warehouse, yes, sir.

2 Q After placing the bag that Mr. Springer had
3 given you in the warehouse, did there come a time
4 when you removed the bag from the warehouse?

5 A Yes, sir, sure did.

6 Q Was that on the same date or a later date?

7 A It was the same day.

8 Q And what if anything did you do with the
9 bag after you removed it from the warehouse?

10 A When I removed the bag from the warehouse,
11 I carried it next door to our warehouse and buried
12 it.

13 Q And specifically, where at the warehouse
14 did you bury that bag?

15 A Where at the warehouse?

16 Q Yes.

17 A Specifically, one foot to the north of the
18 side of the warehouse.

19 Q Why did you --

20 THE COURT: I apologize, I simply
21 want to clarify. You indicated that
22 initially when the bag was given to you,
23 you placed it in the warehouse?

24 THE WITNESS: Yes.

25 THE COURT: Where were you in

1 relationship to the bag during the time the
2 bag was there.

3 THE WITNESS: I was in the
4 office. It's right next to each other.
5 The office door opens up into the
6 warehouse, and I was working in my office
7 with the bag in the warehouse.

8 THE COURT: And you indicated at
9 some point you removed the bag from the
10 warehouse?

11 THE WITNESS: Yes, sir, about the
12 time I was going home that afternoon.

13 THE COURT: I apologize for
14 interrupting. Go ahead.

15 BY MR. BRITT:

16 Q Where did you remove the bag --

17 THE COURT: We still need
18 clarification. You indicated that you
19 buried the bag?

20 THE WITNESS: Yes, sir.

21 THE COURT: Where was the bag
22 buried?

23 THE WITNESS: The bag was buried
24 just outside the door, beside the
25 warehouse, beside the building.

1 THE COURT: Because there was
2 some confusion. You said I buried the bag
3 in the warehouse.

4 THE WITNESS: I'm sorry, the
5 warehouse has a concrete floor.

6 BY MR. BRITT:

7 Q Where did you remove the bag and its
8 contents from inside the warehouse?

9 A I removed the bag due to a displeasing
10 aroma.

11 Q And when you removed the bag, where did you
12 take it?

13 A I took it right outside the door.

14 Q And was it there near the entrance to the
15 warehouse that it was buried?

16 A Near the rear entrance, yes.

17 Q At the time you buried the bag, do you
18 recall if it was sealed or if it was opened?

19 A It had a knot tied in it. Now, I don't
20 know whether you call that sealed or not, but it had
21 a knot in it.

22 Q And describe for us how it was that you
23 buried this bag.

24 A I walked over to the side of the warehouse
25 and dug a small hole, put the bag in it, put the dirt

1 on top of it.

2 Q Was the bag completely sealed by the dirt
3 that you had placed on top of it?

4 A Yes, sir, it was.

5 Q On August the 15th of 1993, Mr. Hardee, do
6 you recall a SLED agent by the name of Mike Avery
7 coming to your business?

8 A Yes, sir, I do.

9 Q On August the 15th of '93, did you direct
10 Mr. Avery to the location where you had buried this
11 bag?

12 A Yes, sir.

13 Q What if anything happened when you arrived
14 at the area where you had buried the bag?

15 A The SLED agent -- and you said his name was
16 Mr. Lee?

17 Q Mr. Avery?

18 A Mr. Avery. Mr. Avery dug the clothes up.

19 Q Were you present when Mr. Avery did that?

20 A Yes, sir, I was.

21 Q After Mr. Avery -- was the bag present in
22 the place where you had buried it?

23 A Yes, sir, it was.

24 Q After the bag was dug up, did you observe
25 Mr. Avery open the bag?

1 A Yes, sir, I did.

2 Q Where was Mr. Avery at the time he opened
3 the bag?

4 A I don't recall.

5 Q And after the bag was opened by Mr. Avery
6 in your presence, were the contents of that bag
7 removed?

8 A Yes, sir, they were -- they were not
9 removed, but we opened the bag and looked through
10 it. We didn't bring each piece out and lay it out,
11 no, sir.

12 Q And when you looked into the bag at the
13 articles that were there, what do you recall seeing?

14 A I recall seeing a piece of rope, the red
15 and white rope that was there, and the shirt with the
16 burgundy stripe on it, and I recall the belt, and the
17 other stuff was present. But I looked a little
18 closer to it, and it seemed like it was in the bottom
19 of the bag, but I didn't pull it out. But there was
20 a pair of pants and some undershorts of some sort.

21 Q After you and Mr. Avery looked through the
22 bag, do you recall what was done with the clothing
23 and the bag?

24 A It was put back in the bag and Mr. Avery
25 took it, or left with it.

1 Q At any time did you alter or remove the
2 contents of the bag?

3 A No, sir.

4 MR. BRITT: With the Court's
5 permission --

6 THE COURT: Yes, sir.

7 BY MR. BRITT:

8 Q I'll show you what has previously been
9 marked as State's Exhibit Number 19. Do you see the
10 sticker?

11 A Yes, sir, I do.

12 Q I'm going to show you what's been marked
13 previously as State's Exhibit 20, an orange bag
14 marked Fisher Brand. I'm going to remove the
15 contents of State's Exhibit Number 20, and ask you to
16 look at the items that have been removed. Do you
17 recognize those?

18 A I recognize that as being a rope similar to
19 the one that I saw in the bag.

20 Q On the day that you and Mr. Avery opened
21 the bag?

22 A Yes, sir.

23 Q And the other item, do you recognize it?

24 A Plastic bag with the knot in the top of it
25 that I told you about.

1 THE COURT: I'm sorry?

2 THE WITNESS: It's the plastic
3 bag that has got the knot in the top of
4 it. See, it's tied there.

5 BY MR. BRITT:

6 Q You're referring to this section of the
7 bag?

8 A They appear to be the same thing that I
9 saw, yes, sir.

10 Q They appear to be in the same condition as
11 they were in when they were removed from the
12 ground --

13 A Yes.

14 Q -- there at your business?

15 A That's correct.

16 Q You testified when the white bag was
17 opened, you saw a shirt with a burgundy stripe, is
18 that correct?

19 A Yes.

20 Q I'll show you what has been marked as
21 State's Exhibit 22. I'll remove the contents, ask
22 you to look at it and tell me if you can identify the
23 contents of State's Exhibit Number 22?

24 A It looks to be the shirt that we saw in the
25 bag.

1 Q And how are you able to identify State's
2 Exhibit --

3 A I recognize the stripe across it. It had a
4 burgundy stripe, and I just look for things like
5 that.

6 Q Does it appear to be in substantially the
7 same condition as it was in when you saw it on August
8 the 15th of '93?

9 A It was wet. That would probably be the only
10 difference. Unless it's wet now, I haven't felt it.

11 Q You testified that there were a pair of
12 pants also in the bag, with a belt. I'll show you
13 what has been marked as State's Exhibit Number 23.
14 I'll remove the contents, ask you to examine those
15 and tell me --

16 A I would assume that's them. They were in
17 the bottom of the bag and I just looked. I was more
18 or less looking for pants than I was anything else.

19 Q They appear to be in the same condition
20 when you observed them on August the 15th of 1993?

21 A Yes, sir.

22 Q You previously testified that you observed
23 a pair of underwear and a pair of socks?

24 A Yes, sir.

25 Q Showing you State's Exhibit 21. I'm

1 removing those items. Ask you to look at those items
2 and tell me if you're able to identify that?

3 A I assume that's them, I don't know.

4 MR. THOMPSON: I object, move to
5 strike.

6 THE COURT: Objection sustained.
7 Motion to strike is allowed.

8 MR. THOMPSON: Request
9 instruction.

10 THE COURT: Ladies and gentlemen
11 of the jury, you will not consider the last
12 statement of Mr. Hardee. Speculation or
13 conjecture has no part in this matter. You
14 are not to consider his statement in any
15 respect in your deliberations in this case.

16 THE WITNESS: I apologize.

17 BY MR. BRITT:

18 Q Mr. Hardee, after Mr. Avery dug up the
19 plastic bag containing the clothing that Mr. Sprenger
20 had given to you, did you see the plastic bag or the
21 clothing after that point?

22 A After he left with them?

23 Q Yes, sir.

24 A Not until you just showed them to me.

25 MR. BRITT: Thank you. No other

1 questions.

2 THE COURT: Any

3 cross-examination?

4 MR. THOMPSON: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. THOMPSON:

7 Q Mr. Hardee, have you ever had any law
8 enforcement training, sir?

9 A Have I have ever had any law enforcement
10 training? No, sir, I have not.

11 Q What about with respect to collection and
12 the preservation of evidence?

13 A No, sir, I have not.

14 Q Now, I believe you indicated that you were
15 the owner of Palmetto Professional Services up until
16 Monday, I believe you testified, is that correct?

17 A That is correct.

18 Q And you had operated that facility since
19 1986?

20 A I think 1986 is correct. I believe it was
21 April the 10th of 1986.

22 Q And you received this plastic bag that
23 you've testified to from Art Sprenger who was then
24 your employee?

25 A That's correct, sir.

1 Q And your warehouse is located in
2 Darlington?

3 A It was at that particular time.

4 Q And did you receive them at the warehouse
5 in Darlington from Mr. Sprenger?

6 A Yes, sir.

7 Q And I believe you indicated that your
8 office is there in the building next to the
9 warehouse, or is it part of the same building?

10 A It's all under the same roof, yes, sir.

11 Q And you took the bag and you buried the bag
12 on the north side of the building?

13 A That would be correct, sir.

14 Q Had you ever buried any evidence before in
15 a possible homicide?

16 THE COURT: All right,

17 Mr. Thompson. Rephrase.

18 BY MR. THOMPSON:

19 Q Mr. Hardee, you buried the bag?

20 A Yes, sir.

21 Q About a foot, I believe you said, from the
22 building?

23 A Could have been two foot, sir. It was
24 right beside the building.

25 Q And when you buried the bag, you came back

1 inside the building, did you not?

2 A I possibly did, yes, sir.

3 Q How many employees were working for you
4 back then on -- this would have been August the 4th,
5 would it not, of 1993?

6 A I would have to check my records. I don't
7 know how many were working at that particular time.

8 Q How many people were working for you back
9 then when you received custody of that bag?

10 A Well, sir, I could think back. It was
11 probably, approximately -- approximately four.

12 Q And I believe you testified they all had
13 access to the warehouse?

14 A That would be correct.

15 Q And to the facilities and grounds there
16 about the warehouse?

17 A That would be correct.

18 Q Now, you know, you're not -- do you know
19 for certain that it was on August the 15th of 1993
20 that Mr. Avery came to retrieve the bag, is that
21 right?

22 A Is that a Sunday, sir?

23 Q I don't know. You testified it was August
24 the 15th.

25 A It was Sunday, August the 15th. I assume

1 that would be correct.

2 Q You testified that it was on August the
3 15th on direct examination, did you not?

4 A Yeah.

5 Q And did Mr. Avery call you or anybody
6 notify you that he was coming?

7 A Yes, sir, they did.

8 Q So did you meet him there?

9 A Yes, sir, I did.

10 Q And I believe you said that you were
11 present when he dug up the bag?

12 A Yes, sir, I was present.

13 Q Did you say at some point though you were
14 not present when he opened the bag? You didn't know
15 where he was when he opened the bag?

16 A I thought you were talking about in
17 relation to where he was on the grounds. I don't
18 remember if we were beside the building or beside his
19 car or in the backyard. I was present when he
20 physically opened the bag, but where we were on the
21 property, I don't know.

22 Q You said you thought I was talking about
23 it; you mean Mr. Britt?

24 A Whoever asked the question.

25 Q Mr. Britt asked you the question.

1 THE COURT: Mr. Thompson, let him
2 complete his answer.

3 THE WITNESS: I'm sorry, I just
4 misunderstood you. Please excuse me.

5 THE COURT: Folks, the court
6 reporter needs to be able to take down what
7 is said, and that's difficult when more
8 than one person talking at the same time.
9 So if you will allow him to complete his
10 question.

11 THE WITNESS: Yes, sir.

12 THE COURT: If you will allow
13 Mr. Hardee to complete his answer.

14 THE WITNESS: I apologize.

15 BY MR. THOMPSON:

16 Q On how many other occasions have you buried
17 clothes while in the transport business?

18 A I don't think I've ever done it, other than
19 this particular occasion.

20 MR. THOMPSON: That's all.

21 THE COURT: Anything further for
22 Mr. Hardee?

23 MR. BRITT: No, sir.

24 THE COURT: May Mr. Hardee be
25 released?

1 MR. THOMPSON: Yes.

2 THE COURT: You're free to go.

3 THE WITNESS: Thank you so much.

4 THE COURT: Mr. Britt?

5 MR. BRITT: Your Honor, at this
6 time we call Dr. Robert Brown.

7 THE COURT: Dr. Brown, if you
8 will place your left hand on the Bible and
9 raise your right, please.

10 ROBERT BROWN, DMD,
11 being first duly sworn was examined and deposed as
12 follows:

13 DIRECT EXAMINATION

14 THE COURT: If you'll take the
15 witness stand, please.

16 BY MR. BRITT:

17 Q Dr. Brown --

18 THE COURT: That's okay. I don't
19 think there's any confusion on how to spell
20 it.

21 Well, for the record, will you spell
22 your last name please?

23 THE WITNESS: B R O W N.

24 BY MR. BRITT:

25 Q Dr. Brown, where do you live?

1 A Newberry, South Carolina.

2 Q And what is your occupation?

3 A General dentist.

4 Q An how long have you been practicing
5 dentistry?

6 A Since July of 1978.

7 Q What is your educational background? Where
8 did you receive your undergraduate degree?

9 A Vanderbilt University. I received my DMD
10 degree from the Medical University of South Carolina.

11 Q And are you in the private practice of
12 dentistry?

13 A Yes, I am.

14 Q And you've been in that practice since
15 1978?

16 A I have.

17 Q Do you have any partners or are you a solo
18 practitioner?

19 A Solo.

20 THE COURT: It's necessary that
21 all members of the jury as well as counsel
22 be able to hear you. If you'll keep your
23 voice raised, please, sir.

24 THE WITNESS: Okay.

25 BY MR. BRITT:

1 Q After receiving your DDS --

2 A DMD.

3 Q Excuse me, from the University of South
4 Carolina, were you licensed to practice dentistry in
5 the State of South Carolina?

6 A I was.

7 Q Have you -- are you board certified by any
8 dental association?

9 A No.

10 Q On August the 4th -- strike that.

11 MR. BRITT: Your Honor, at this
12 time I would tender Dr. Brown as an expert
13 in general dentistry.

14 THE COURT: You folks want to be
15 heard as to the tender?

16 MR. BOWEN: Yes, sir. We object
17 to this.

18 THE COURT: I'm sorry, do you
19 want to be heard?

20 MR. BOWEN: Yes, sir.

21 THE COURT: Members of the jury,
22 there's a matter of law the Court must take
23 up at this time out of the presence of the
24 jury. Please recall my instructions in
25 that regard. Don't worry or speculate

1 about what takes place in your absence.
2 All members of the jury step to the jury
3 room, please.

4 (Jury out at 2:38 p.m.)

5 THE COURT: For the record, and
6 in the absence of any members of the jury,
7 please state the basis of your objection,
8 Mr. Bowen.

9 MR. BOWEN: The basis is
10 foundation, Your Honor. I understand that
11 he's qualifying him as a general dentist,
12 and for the purpose of explaining filling
13 of teeth and things like that, I think it
14 would be fine. I anticipate where he's
15 going would be some type of identification
16 matter, and I would submit to the Court
17 that he needs to lay a foundation as to
18 what area, at least some experience he's
19 had in this area.

20 THE COURT: For the purposes of
21 argument, let's say you're a patient of a
22 dentist, and he takes an x-ray, or she
23 takes an x-ray of your mouth, and goes back
24 in -- you go back in sometime in the
25 future. Are you indicating to me that that

1 dentist cannot compare cast x-rays with any
2 current x-rays and say this x-ray belongs
3 to this person?

4 MR. BOWEN: No, sir, that not --
5 I would agree with you, but that's not
6 what's going to happen. That man here was
7 not Mr. Jordan's dentist. This is simply a
8 dentist who was located there in town who's
9 going to be asked to compare bite wings
10 with the x-rays taken of the jaw that were
11 given to him and he was asked to compare.
12 And with a little more foundation, they may
13 be able to make him qualified to do that.
14 But he hasn't at least done it once
15 before. If he says he took x-rays of
16 Mr. Jordan's mouth, that's another matter,
17 but my understanding is that's not what
18 he's going to say.

19 THE COURT: You're telling me
20 that general dentistry in your view does
21 not qualify someone to compare dental
22 x-rays?

23 MR. BOWEN: I think he would be
24 qualified to compare dental x-rays that he
25 took. I simply think that the proper

1 foundation for him to do this, he must show
2 that he has at least done it before.

3 THE COURT: Have you got any
4 cases you want me to look at?

5 MR. BOWEN: No, sir.

6 THE COURT: Objection is
7 overruled. You want to take the witness on
8 705? It's in the discretion of the Court
9 whether that occurs on cross-examination or
10 prior to direct.

11 MR. THOMPSON: No, sir.

12 MR. BOWEN: No, sir.

13 THE COURT: Note the objection to
14 the tender of Dr. Brown in the field of
15 general dentistry. The objection is
16 overruled. The exception is noted for the
17 record.

18 You folks are declining an opportunity
19 pursuant to rule 705 of the Rules of
20 Evidence, is that correct?

21 MR. BOWEN: We will talk to him
22 on cross.

23 THE COURT: Okay. If you'll
24 bring the jury back in, please.

25 (Jury in at 2:43 p.m.)

1 THE COURT: The objection is
2 overruled, exception is noted for the
3 record. The witness may testify as an
4 expert in the field of general dentistry.

5 MR. BRITT: Thank you.

6 BY MR. BRITT:

7 Q Dr. Brown, where is your practice located?

8 A 1504 Wilson Road.

9 Q In what city?

10 A Newberry, South Carolina.

11 Q Do you know Dr. Joel Sexton?

12 A Yes, I do.

13 Q How long have you known Dr. Sexton?

14 A Known him since he moved to Newberry, which
15 was somewhere in the range of ten to twelve years
16 ago. I don't remember the specific date.

17 Q Was your assist requested by Dr. Sexton in
18 regard to an autopsy that he had performed on August
19 the 4th of 1993?

20 A It was requested by Dr. Garvin.

21 Q And do you recall when your assistance was
22 requested, what date?

23 A It would have been that Friday, which I
24 believe, I don't have a calendar in front of me, I
25 believe it was -- you have to check me -- I think it

1 was August the 6th, approximately noon that day.

2 Q And after your assistance was requested,
3 did you examine certain items that were removed at
4 the autopsy?

5 A Yes, they were brought to my office.

6 Q Specifically, what did you examine?

7 A There was a plastic 32 ounce container with
8 a top on it, similar to -- very similar to a
9 Tupperware container, quart size, had formula in it,
10 marked with a number on the outside, 93-243. And
11 inside, there were two disarticulated or removed
12 jaws, maxilla with teeth intact and an intact
13 mandible, which is the lower jaw.

14 Q Can you describe for the jury the
15 appearance of the maxilla and the intact mandible
16 that you observed inside the container?

17 A They were whole specimens, they were fresh
18 as one would be after they had recently been
19 removed. There was a very strong odor with these,
20 that's why we had kept them emerged in formula.

21 Q After making your initial observation of
22 the maxilla and mandible that were brought to your
23 office, what if anything -- what did you then do
24 next?

25 A I still had patients in the office and I

1 asked about the urgency of the request for an x-ray
2 series on this. I was told that it was not urgent at
3 that moment, and I elected to store them in the lab
4 in my office until after hours.

5 Q And after -- at the time you stored them in
6 your laboratory, who had access to your laboratory?

7 A Myself and my two employees.

8 Q Did there come a time when you returned to
9 your laboratory to retrieve the container that had
10 the maxilla and mandible inside of them?

11 A Yes, I return on Sunday afternoon, August
12 the 8th.

13 Q At the time you returned to your office,
14 were the maxilla and mandible in the same condition
15 they were in when you had received them on August the
16 6th?

17 A Yes, they were.

18 Q After retrieving them from your laboratory,
19 what did you do with those items?

20 A I took them in the building into one of my
21 laboratories and removed them and set them up to take
22 an x-ray series of these.

23 Q What type of x-ray series did you do?

24 A This was -- we consider it a modified
25 complete. I would have to open and count -- it was,

1 I don't remember what the exact number was offhand,
2 but I can tell you. There were fourteen individual
3 films.

4 Q When you refer to films, are you referring
5 to x-rays?

6 A Yes, x-rays.

7 Q What type of x-ray would you describe that?

8 A These were all, what we describe as
9 periapical radiographs. They are ones that are taken
10 to show the entire tooth and surrounding bone. Shows
11 the crown of the tooth, bone, and the root also.

12 Q Prior to taking the x-rays of these jaws,
13 what if anything did you note about the dental work
14 and the teeth that were intact?

15 A There was extensive dental work, fixed
16 dental work done, crowns and bridge work, including a
17 complete bridge of the upper arch from tooth number
18 two to tooth number fifteen. And there were also
19 evidence on the lower arch on the mandible of a
20 bridge on the lower right, and what appeared to be at
21 that time previous implants that had been placed in
22 the lower left posterior, or the back region towards
23 the molars.

24 Q Can you describe for us the procedure that
25 you followed in making the x-rays?

1 A I placed them on paper towels on a counter,
2 adjacent to the x-ray machine, and then the films
3 or -- I tried to position films in a manner similar
4 to what we would place in the mouth to as nearly as I
5 can duplicate the same angulation of each film to
6 where he would look in the case of a -- of a removed
7 specimen like this, just as though it was done from
8 your mouth or mine. And you take the x-rays of each
9 series of teeth this way as you go around the mouth.

10 Q And after taking the x-rays of the jaws,
11 did you chart the teeth in any way?

12 A Yes, the charting was actually done, the
13 charting of the gross appearance was done before I
14 actually took the x-rays, before I developed
15 them.

16 MR. BRITT: May I approach?

17 THE COURT: Yes, sir.

18 BY MR. BRITT:

19 Q Dr. Brown, I'm going to hand you what has
20 previously been marked as State's Exhibit 35, which
21 is a brown envelope. Do you recognize State's
22 Exhibit Number 35?

23 A Just from having previously seen it today.

24 Q I'm going to remove what is contained
25 inside of State's Exhibit 35, ask you to look at

1 what's been marked as State's Exhibit 35-A. Do you
2 recognize that?

3 A Yes, I do.

4 Q How are you able to recognize State's
5 Exhibit 35-A?

6 A These are duplicate copies of the x-rays
7 that I took.

8 Q Do you know how these duplicates were made?

9 A Yes, I do.

10 Q How was it made?

11 A I took each of the individual x-rays -- I
12 was at Newberry County Memorial Hospital. I took
13 them to the radiology department, and we have what is
14 called duplicating film, which is what this is, and I
15 used tape and taped each x-ray to a piece of film to
16 mimic or simulate the -- not only the position in the
17 mouth but the relative position they would be in a
18 permanent mount, and then we duplicate this.

19 Q State's Exhibit 35-A was made from the
20 original x-rays --

21 A The original x-rays.

22 Q -- that you had made on August the 8th?

23 A It was.

24 Q Is 35-A in substantially the same condition
25 as it was in after you had made this duplication?

1 A Yes, it is.

2 Q Does it fairly and accurately represent the
3 original x-rays that you made on August the 8th of
4 1993?

5 A Yes, sir, it does.

6 Q I'll show you what has been marked as
7 State's Exhibit 35-B. Do you recognize that
8 document?

9 A I do.

10 Q How are you able to recognize State's
11 Exhibit 35-B?

12 A This is the charting and notation that I
13 made of the specimens before I took the x-rays.

14 Q Is State's Exhibit 35-B a duplicate of the
15 original that you made?

16 A Yes, it is.

17 Q Does it fairly and accurately depict the
18 information on the original document that you
19 prepared?

20 A Yes, it does. It includes the items that I
21 found upon interpretation of the x-rays, too.

22 Q Is State's Exhibit 35-B a two-page paper
23 writing?

24 A Yes, it is.

25 Q The second page of State's Exhibit 35-B,

1 what if anything is contained in terms of a
2 description of that information?

3 A This is the narrative summary of the
4 interpretation of the x-rays that tells a little bit
5 about how they were taken in terms of the amount
6 of -- the settings on the x-ray machine and it breaks
7 down the examination results by tooth or by section.
8 In some cases there are bridges so they were done as
9 a group.

10 MR. BRITT: Your Honor, at this
11 time I ask State's Exhibit 35, 35-A and
12 35-B be admitted.

13 THE COURT: Folks want to be
14 heard?

15 MR. BOWEN: No, sir.

16 THE COURT: They are admitted
17 without objection.

18 MR. BRITT: Your Honor, if I
19 could request an opportunity to set up an
20 x-ray box.

21 THE COURT: Yes, sir.

22 MR. BRITT: Your Honor, if
23 Dr. Brown could step down.

24 THE COURT: Yes, sir.

25 MR. BRITT: If I could inquire if

1 all the members of the jury could see the
2 box?

3 THE COURT: Members of the jury,
4 are you able to see both the box and any
5 exhibits that might be placed on the box?

6 BY MR. BRITT:

7 Q Dr. Brown, if you could --

8 MR. BRITT: The record will
9 reflect that the display in front of the
10 jury now is an x-ray box. The lights have
11 been turned on the box, and State's Exhibit
12 35-A has been placed so that the film is
13 illuminated.

14 THE COURT: Yes, sir.

15 Dr. Brown, you may have to stand to
16 one side as you're being asked questions
17 and explain so that the folks -- if you'll
18 come around to the -- yes, sir.

19 BY MR. BRITT:

20 Q Dr. Brown, you've testified that you made
21 x-rays from the jaws that were provided to you by
22 Dr. Garvin and Dr. Sexton as a result of the autopsy
23 that was performed on August the 4th, 1993, is that
24 correct?

25 A That's correct.

1 Q State's Exhibit 35-A is a duplicate of
2 those x-rays that you made, is that correct?

3 A Yes, sir.

4 Q On State's Exhibit 35-A, there are two rows
5 of copied films, is that correct?

6 A That's correct.

7 Q Using the upper row that appears on 35-A,
8 Dr. Brown, if you will interpret the x-rays as you
9 saw them on August the 8th of 1993 and as you see
10 them today?

11 A This would be the person's mouth as you
12 look at them. Say you were standing here looking at
13 me, this would be my right side, right side on the
14 x-rays, left side (indicating). If you can imagine
15 this line through here separates the two arches. The
16 top several films are of the upper arch or maxillary,
17 and the bottom several films are the lower arch or
18 mandible.

19 What you see in the white looking areas are
20 called radiopacities. These are usually a denser
21 material that shows up. In this case, this is the
22 metal underlying porcelain bridge. This bridge was
23 one unit of one piece that extended from the tooth on
24 the upper right, which is tooth number three here,
25 all the way around on the other side to tooth number

1 fifteen.

2 Number three is the upper right first
3 molar. Number fifteen is the upper left second
4 molar. The teeth that supported this particular
5 bridge were the first molar, the second bicuspid or
6 premolar, the upper right cuspid, and then the upper
7 left second bicuspid premolar, upper left first molar
8 and upper left second molar. No teeth between the
9 upper right cuspid and the second molar on the left.
10 But it was cast as porcelain metal bridge and it was
11 one piece.

12 There were root canals that had been done
13 on the cuspid here and indicated, if you could see
14 it -- tell me if I'm in your way -- is a less
15 bright, it's a white line that runs through the
16 length of the tooth, shows up in these two x-rays.
17 These are both the same tooth. Also shows up on the
18 second molar here, indicating that there's a root
19 canal here. Those are really the distinguishing
20 characteristics of the upper bridge as far as the
21 x-rays themselves.

22 Counting the canals, you see two white
23 lines in the molar here, which indicates there were
24 two canals in this particular tooth. That is
25 generally the case with the second premolar, has two

1 canals. On the lower behind, there were three
2 roots. This is the larger root. It's a fairly
3 straight one, as you can tell by the straightness of
4 the white line, and it extends into the maxillary
5 sinus of it. You can see it's less extensive on the
6 left side.

7 Also, on this set on the upper, there's a
8 small radiopacity. A radiopacity is an area that's a
9 little bit lighter. It's different, shows different
10 from the bone, which indicates a retained root from
11 the upper first premolar on the right side. This is
12 very common in a case where you have a fragment or
13 tooth that will break off during an extraction and is
14 retained in the bone and heals around it and shows up
15 later as just a white dot or small area. That's
16 really all that's noteworthy on the upper arch.

17 The distal buccal or the buccal being the
18 cheek side -- on a molar you have three roots. Two
19 roots are out to the cheek, buccal roots. The inside
20 root, third root stands up like this. It's called
21 the pallid root. Gives you kind of a tripod or TP
22 effect. But the distal one, the one farthest away
23 from the lips tends to be shorter and in front of the
24 first molar. You can see the second molar behind
25 it's a little longer root. The lower arch on the

1 left side, the two little white lines are implants
2 that were placed for the purposes ultimately of
3 supporting bridge work on the bottom at a later
4 date. They are surgically placed, and bone heals
5 around them and fills in. It's called
6 osteointegration, which means the bone just invades
7 part of the ceramic material and heals this and forms
8 a root to support your bridge.

9 These two are different lengths. You
10 notice the one back here in the back region is flat
11 on top, and one in front of it has a little dark line
12 and then like a cap on top. It's called a healing
13 button. Generally when they are placed, it requires
14 several months for all this to heal. Put a healing
15 button or cap on the top. This maintains the access
16 to it through the tissue. The gum tissue heals all
17 around this.

18 When the time comes to physically place the
19 bridge in what we call lobe, the implant, the healing
20 button or cap is unscrewed, the post on top of it is
21 threaded in place, and the bridge or crown is placed
22 on top of that.

23 In this case, only one of the two had a
24 healing button. The other one has been lost at some
25 time after it was placed. It's not uncommon for them

1 to come off, but it did show up that way.

2 On up farther, somewhat cut off on here,
3 this is a first premolar on the bottom. Shows up
4 better on a different x-ray. But you can see, it had
5 no tooth over the top of it. It had fractured, but
6 showed evidence of a root canal that had been done on
7 the tooth. The lower left canine tooth number 22 is
8 this one here. This one had had a root canal done
9 also, and it has -- had a stainless steel post that
10 had been threaded in place. Generally, the posts are
11 placed so that a tooth can be rebuilt on top of the
12 root and then this helps support to crown later.

13 Both of those obviously were being used for
14 a plan for the future to support a bridge, including
15 the two implants and these two teeth. There was some
16 decay noted, tooth number 23 right here, number 24,
17 showed evidence of decay or tooth color material that
18 was placed long enough ago that it didn't show up as
19 a light material when x-rayed.

20 Moving on around to the lower right, on the
21 lower right cuspid, you see once again the light
22 area, indicative of a crown being placed on it. And
23 this goes to missing two bicuspids next to it, and
24 then first molar behind it. This first molar also
25 had a root canal done. You see on this indication,

1 root canal been filled and sealed. And there's a
2 small little halo or shadow at the end of the front
3 or the medial root of that molar. It's called
4 radiolucency. It's what we find when we see a tooth
5 has been abscessed or a chronic sort of infection.

6 This is one of the clues that you see on
7 x-rays. The fact that it's had a root canal done
8 shows it was treated that way. On cross examination,
9 this root canal was done after the bridge was placed
10 because it had a silver filling that had been placed
11 in a hole that had been opened up in the top of the
12 crown. Rather than remove the bridge, the dentist
13 had re -- opened up the top of the crown, done the
14 root canal, filled it and sealed it with a silver
15 filling. This is fairly common.

16 Q The evidence of the root canal, the post,
17 and the fillings, did they have any significance in
18 terms of dental comparisons that can be made at a
19 later date?

20 A Yes. They would, on both antemortem or
21 postmortem, or after death and before death x-rays,
22 these can be compared, and for points of
23 identification on how many areas that show up that
24 are the same within a certain mouth.

25 Q And why are dental records useful in terms

1 of being able to identify individuals?

2 A With the -- the number of teeth that are
3 available in an adult, which is 32 teeth, each tooth
4 has five surfaces to the tooth. Gives a total of 160
5 possible surfaces within the mouth. Add that to the
6 fact that you can place numerous types of fillings,
7 numerous shapes, plus crowns, plus posts, plus root
8 canals, and then in the absence of teeth, you can do
9 bridge work and implants. Each individual is -- that
10 has, you know, some work that has been done in their
11 mouth, especially if it's extensive work, is really a
12 unique person as far as the dental identification.

13 Q If you would return to the witness stand at
14 this time.

15 A (Witness complies).

16 MR. BRITT: Your Honor, at this
17 time I ask that copies of State's Exhibit
18 35-B that have been admitted into evidence
19 be published to the jury. And I have
20 fifteen copies for them.

21 THE COURT: I appreciate that.
22 If you'll show those copies first to
23 counsel for the defendant.

24 MR. BRITT: Your Honor, I need to
25 obtain a copy of the State's Exhibit 35.

1 THE COURT: Okay.

2 MR. BRITT: Your Honor, while we
3 are waiting, could the bailiffs distribute
4 the copies that are available to the jury?

5 THE COURT: Yes, sir. Give them
6 to Sergeant Meares, please.

7 THE COURT: Folks, please recall
8 my instructions. Any exhibit that is given
9 to you, you are to examine it carefully and
10 individually and without any comment.

11 MR. BRITT: For the Court's
12 information --

13 THE COURT: Thank you, sir.

14 Have you folks received your copy?

15 MR. THOMPSON: Yes, sir.

16 MR. BRITT: May I approach the
17 witness?

18 THE COURT: Yes, sir.

19 BY MR. BRITT:

20 Q Dr. Brown, in State's Exhibit 35-B, the
21 two-page document that you have previously testified
22 are your charting of the teeth that were present in
23 the jaws that you examined on August the 8th of 1993,
24 is that correct?

25 A That's correct.

1 Q State's Exhibit 35-B, if you would refer to
2 it, what teeth at the time you charted them did you
3 note that were present or absent from the jaw, both
4 the maxilla and the mandible?

5 A In the maxilla, teeth three, four, six,
6 thirteen, fourteen, fifteen were present. Do you
7 want the ones listed that were absent also?

8 Q Yes, sir.

9 A One, two, five, seven, eight, nine, ten,
10 eleven, twelve, sixteen were absent. In the
11 mandible, tooth 21, 22, 23, 24, 25, 26, 27, 30 were
12 present. 17, 18, 19, 20, 28, 29, 31, 32 were absent.

13 Q On State's Exhibit 35-B, there are three
14 letters that appear under both the heading for the
15 maxillary bridge and also for the mandible. The
16 letters are RCT. And some numbers. What does RCT
17 stand for?

18 A RTC is shorthand for Root Canal Therapy,
19 and maxilla root canals were performed on 6, 13, 15.
20 In the mandible, the gross examination was on 22 and
21 30. And radiographically, and also appeared on 21.

22 Q What is referred to as a modified full
23 mouth series of radiographs?

24 A Modified full mouth series, in this case
25 indicated there was no bite wing radiographs taken.

1 Those are the ones that you have taken at periodic
2 visits where you bite down on the cardboard tab and
3 it shows just the crowns of the two opposing arches.
4 That way you can get the maximum amount of
5 information from one or two films on each side. I
6 didn't need that in this case because I wanted to see
7 the whole tooth of each tooth.

8 Q And after you completed your examination of
9 the jaws and the teeth that were provided to you,
10 what did you do with those jaws and teeth?

11 A I returned them to Dr. Sexton's office on
12 the ninth of August.

13 Q And the series of x-rays that you had made,
14 what if anything did you do with the original --

15 A I returned the original x-rays with the
16 jaws that day.

17 Q And the duplicate that's been entered into
18 evidence today, what if anything did you do with that
19 duplicate copy?

20 A Duplicate was actually made at a later
21 date, later that week.

22 THE COURT: What was done after
23 it was made, Doctor?

24 THE WITNESS: As far as
25 duplicates, they were stored.

1 BY MR. BRITT:

2 Q Was the duplicate ever provided to Dr.
3 Sexton's office?

4 A Yes, Dr. Sexton had one copy and I had one
5 copy of the duplicate.

6 MR. BRITT: May I approach?

7 THE COURT: Yes, sir.

8 BY MR. BRITT:

9 Q Dr. Brown, I'll show you what has been
10 previously marked as State's Exhibit 37, and its
11 contents.

12 THE COURT: Before we proceed
13 with that, there's some administrative
14 matters that I need to attend to. If
15 you'll bear with me.

16 Members of the jury -- this will be
17 your last witness for today?

18 MR. BRITT: Yes, sir.

19 THE COURT: If you'll bear with
20 us for about fifteen minutes. This is
21 probably a good opportunity for me to give
22 you a very brief recess. Please, let me
23 give you until twenty five until. If
24 you'll report directly back to the jury
25 room at twenty five until, we will be

1 prepared to go forward at that time.
2 During the recess -- if you'll put the
3 exhibits in your seats during the recess.
4 And during the recess, please continue to
5 abide by all prior instructions of the
6 Court concerning your conduct. Thank you.
7 You're excused at this time.

8 (Jury out at 3:18 p.m.)

9 THE COURT: Out of an abundance
10 of caution, simply so I'm clear, are you
11 going to call Dr. Seitlin?

12 MR. BRITT: Yes, sir. He is
13 scheduled to be here in the morning.

14 THE COURT: Dr. Seitlin, for the
15 record, was the attending dentist for James
16 Jordan?

17 MR. BRITT: Yes, sir.

18 THE COURT: He maintained those
19 records?

20 MR. BRITT: Yes, sir.

21 THE COURT: You're going to
22 elicit an opinion as a comparison from
23 Dr. Seitlin as to the x-rays that were made
24 by Dr. Brown an x-rays maintained by his
25 office?

1 MR. BRITT: Actually, I'm going
2 to do both. Dr. Brown made these x-rays.
3 Dr. Seitlin provided his records. Those
4 records were then taken. Dr. Brown saw
5 those, compared them with the x-rays he had
6 made. He had conferred with Dr. Seitlin
7 over the telephone. Based upon what
8 evidence would show, based upon Dr. Brown's
9 comparison with the x-rays that he made
10 with the known dental records of
11 Mr. Jordan, he concluded that the same --

12 THE COURT: You're going to
13 adduce two examinations, two comparisons,
14 two opinions?

15 MR. BRITT: Actually three.

16 THE COURT: What is the third
17 one?

18 MR. BRITT: Dr. Earnest Burkes,
19 state forensic odontologist.

20 THE COURT: One of the things I
21 want to make sure of, one, we're going to
22 have some testimony, some opinion given by
23 the dentist for the alleged victim.

24 MR. BRITT: Yes, sir.

25 THE COURT: That's number one.

1 Number two, whether or not the State
2 intended to call a forensic odontologist.

3 MR. BRITT: Yes, sir.

4 THE COURT: So in essence, this
5 would be corroborative?

6 MR. BRITT: In regard to Dr.
7 Seitlin's, yes, sir. I understand what
8 you're asking me.

9 THE COURT: Corroborative of the
10 attending dentist for the alleged victim
11 and a forensic odontologist.

12 MR. BRITT: Yes, sir.

13 THE COURT: Do you folks want to
14 be heard further?

15 MR. THOMPSON: Well, if it's in
16 good faith -- it sounded sort of odd, but --

17 THE COURT: Sounds --

18 MR. THOMPSON: Excuse me. No,
19 sir. No, sir.

20 THE COURT: That's -- I simply
21 want to make sure that's -- that's what I
22 thought was coming but I wanted to be
23 absolutely sure.

24 Dr. Brown, you may step down for the
25 moment. We'll come back at twenty five

1 until.

2 MR. BRITT: Twenty five until?

3 THE COURT: Yes.

4 THE BAILIFF: Court stands at
5 ease until twenty five until.

6 (Brief recess.)

7 THE COURT: All counsel are
8 present. The defendant is present in open
9 court. Before we bring the jury in,
10 Mr. Britt, do you have a motion to amend?

11 MR. BRITT: Yes, sir. In regard
12 to the memorandum that's been marked
13 earlier today, it shows on the writing --
14 as it appears now, it shows the date of
15 January the 8th 19 95. That should be
16 January the 8th, 1996. And in the contents
17 of the memorandum, it should read on
18 Saturday January the 6th, 1996 as opposed
19 to 1995.

20 THE COURT: Do you folks want to
21 be heard on the motion to amend what was
22 previously marked as Court Exhibit 12 and
23 State's Exhibit 39?

24 MR. BOWEN: We assumed that was
25 the way it was, Your Honor.

1 MR. THOMPSON: I've been in 1995
2 still for the last couple of days.

3 THE COURT: For the record,
4 ma'am, if you'll hand up Court Exhibit
5 Number 12, State's Exhibit 39. The Court
6 is going to amend the date to reflect
7 1996. I'm also adding the notation,
8 amended with consent of all counsel for
9 both parties.

10 Are we ready to go forward?

11 MR. BRITT: Yes, sir.

12 THE COURT: If you'll bring the
13 jury in please, Mr. Horne.

14 (Jury in at 3:37 p.m.)

15 THE COURT: For the record, the
16 Court is aware, having been made aware
17 earlier by Mr. Horne, the bailiff assigned
18 to the jury, that a member of the jury
19 wanted to make a phone call to inquire into
20 the status of a child. Has that been
21 done?

22 JUROR: (Nods head
23 affirmatively.)

24 THE COURT: Thank you. Let the
25 record so show.

1 Mr. Britt?

2 MR. BRITT: May I approach the
3 witness?

4 BY MR. BRITT:

5 Q I'll show you what has been marked as
6 State's Exhibit 37, a gray envelope and its
7 contents. Ask you to examine the contents of State's
8 Exhibit Number 37 and ask you after examining the
9 contents of State's Exhibit Number 37, if you've ever
10 seen those documents before?

11 A Yes, I have.

12 Q And for the record, what do you recognize
13 the contents of State's Exhibit 37 to be?

14 A These are the office records, both
15 narrative summaries, health histories and x-rays
16 taken in the office of Dr. Lawrence Seitlin.

17 Q And following the x-rays that you made on
18 August the 8th of 1993, were the office records of
19 Dr. Lawrence Seitlin provided to you?

20 A Yes, I did see the records, not the x-rays.

21 Q And for the record, when you say the
22 records, that was provided, you're referring to the
23 written document?

24 A Yes, the written.

25 Q And that's marked as State's Exhibit 37-K,

1 is that correct?

2 A That's correct.

3 Q And do you recall who it was that provided
4 you a copy of the written record of Dr. Lawrence
5 Seitlin?

6 A I received these from Dr. Sexton's office
7 and they were transmitted to him by Mr. Foley, who is
8 the sheriff of Marlboro County.

9 Q And what if anything did you do with the
10 written document marked as State's Exhibit 37-K?

11 MR. THOMPSON: Excuse me. Your
12 Honor, I can't see. May I move that?

13 THE COURT: Yes, sir.

14 THE WITNESS: I used this and
15 compared with my narrative summary and the
16 x-rays that I had taken, looking for
17 similarities, and then conferred with
18 Dr. Seitlin on the phone on the morning of
19 I believe it was either the 13th or 14th of
20 August, and discussed similarities, the
21 possibility that the unknown --

22 MR. BOWEN: Object.

23 THE COURT: Objection is
24 sustained as to any possibilities.

25 BY MR. BRITT:

1 Q Based upon your comparison of the written
2 record that had been provided to you from Dr.
3 Seitlin's records, and the x-rays and your narrative
4 in interpretation of the teeth that you had charted
5 in State's Exhibit 35-B, what if any conclusion did
6 you come to in regard to the comparisons that were
7 noted in State's Exhibit 35-B and State's Exhibit
8 37-K?

9 MR. BOWEN: Object.

10 THE COURT: Sustained at this
11 point.

12 BY MR. BRITT:

13 Q Is State's Exhibit 37-K in substantially
14 the same condition as it was in when you received it?

15 A Yes, it is.

16 Q And is it a duplicate of the original that
17 was provided to you --

18 A It appears to be.

19 Q -- the information that was provided to you
20 in regard to the records that you received from
21 Dr. Seitlin's office with those of the known dental
22 records of James Jordan, is that correct?

23 MR. BOWEN: Object.

24 THE COURT: Sustained at this
25 point. We're going to need Mr. Seitlin,

1 Mr. Britt.

2 BY MR. BRITT:

3 Q What if any comparison did you do between
4 the x-rays that you made and the dental charting that
5 you did, State's Exhibits 35-A and 35-B, with those
6 of 37-K?

7 A I compared these and found --

8 MR. BOWEN: Object.

9 THE COURT: Objection is

10 sustained.

11 BY MR. BRITT:

12 Q After examining the document marked as
13 State's Exhibit 37-K and the exhibit marked as
14 State's Exhibit 35-A and 35-B, did you form any
15 opinion as to the similarities between the
16 information in 37-K and 35-A and B?

17 MR. BOWEN: Object.

18 THE COURT: Sustained.

19 MR. BRITT: May I be heard?

20 THE COURT: Yes, sir.

21 Members of the jury, there's a matter
22 of law the Court must take up at this
23 time. Please recall my instructions in
24 that regard. Don't worry or speculate
25 about what takes place in your absence. If

1 you'll step to the jury room. If you
2 would, please leave the exhibits in your
3 chair.

4 (Jury out at 3:45 p.m.)

5 THE COURT: In the absence of the
6 jury, Mr. Britt, Mr. Seitlin is going to
7 have to come testify that what has
8 previously been marked as 37-K is an office
9 record, a business record.

10 MR. BRITT: Yes, sir. I would
11 also point out to the Court they have
12 previously been identified in the record.

13 THE COURT: I understand that.

14 MR. BRITT: As the known dental
15 records of James Jordan without an
16 objection from the defense.

17 THE COURT: I understand that.
18 But this is a key area in this case. Out
19 of an abundance of caution, we're going to
20 have to put the horse before the cart in
21 this instance.

22 MR. BRITT: Looking at rule 703,
23 the basis of an opinion --

24 THE COURT: He's entitled to give
25 an opinion, but first, a predicate

1 foundation, foundational matter, is
2 somebody's going to have to come in from
3 Dr. Seitlin's offices, neither Dr. Seitlin
4 or someone else, and say that 37-K is what
5 it purports to be, and lay enough of a
6 foundation for it to qualify as a business
7 record exception. Once that is done, then
8 any arguable objection that exist will not
9 exist.

10 MR. BRITT: Yes, sir.

11 THE COURT: So the objection is
12 sustained at this point.

13 I recognize -- I looked back, once I
14 had that discussion with you on the record
15 a few moments ago, and saw that it had come
16 in without objection, but out of an
17 abundance of precaution, because this is a
18 key issue in this case, I would prefer that
19 we not take any risks, that we put the
20 horse before the cart in this instance,
21 because essentially his opinion would come
22 in as corroboration, essentially,
23 Dr. Brown's opinion. And before that can
24 come in, there has to be something in the
25 record establishing that 37-K is what it

1 purports to be.

2 MR. BRITT: Yes, sir.

3 THE COURT: I think once that is
4 done, it qualifies as an exception to the
5 hearsay rule and comes in as a record kept
6 in the ordinary course of business.

7 MR. BRITT: But also it would
8 come in as a medical record.

9 THE COURT: Yes, sir.

10 You folks want to be heard further?

11 MR. THOMPSON: No, sir.

12 THE COURT: I recognize this
13 probably means an inconvenience to
14 Dr. Brown should the State decide that it
15 wants that third opinion in addition to any
16 opinion that may be elicited from
17 Dr. Seitlin or from any forensic
18 odontologist, and I apologize to Dr. Brown
19 for that, but because this is a critical
20 area in this case, I prefer we do it
21 according to the book.

22 MR. BRITT: Yes, sir.

23 THE COURT: So the objection is
24 sustained. Are you in position to go
25 forwarded with other matters at this time?

1 MR. BRITT: That would complete
2 my examination at this time.

3 THE COURT: You folks ready to go
4 forward with any cross-examination or do
5 you want to withhold any
6 cross-examination? You would be entitled
7 to additional cross.

8 MR. THOMPSON: Yes, sir. I don't
9 see any need to go through it right now. I
10 thought that Your Honor yesterday indicated
11 that this same area we would need Dr.
12 Seitlin, so --

13 THE COURT: Well, an argument can
14 be made that an objection has been waived.
15 An argument can be made that there is
16 already evidence before this jury that 37-K
17 is what it purports to be. But on the
18 issue of identification, I'm not going to
19 take any chances, so we're going to have to
20 have Dr. Seitlin come in first.

21 MR. BRITT: He will be here in
22 the morning.

23 THE COURT: Is Dr. Brown still
24 under subpoena?

25 MR. BRITT: Yes, sir.

1 THE COURT: I apologize,
2 Dr. Brown, sincerely.

3 What explanation do you want me to
4 give the jury? At this point we're not in
5 a position to go forward. Are you going to
6 have him step down, put on Dr. Seitlin, and
7 then recall Dr. Brown?

8 MR. BRITT: Yes, sir, that's what
9 I have to do.

10 THE COURT: I'll explain that we
11 have another witness that -- if you'll make
12 your request in that regard in the presence
13 of the jury so that I can exercise my
14 discretion.

15 MR. BRITT: Yes, sir. And due to
16 the weather, I don't know that it's a
17 problem in Charlotte, but I know Dr. Burkes
18 is coming from Chapel Hill, and I do know
19 they received a tremendous amount of snow.

20 THE COURT: Do you folks want to
21 start at 10:00?

22 MR. BRITT: That may be
23 appropriate.

24 THE COURT: That would give an
25 additional half hour for folks coming from

1 other areas.

2 MR. THOMPSON: Your Honor, I
3 heard that classes started on time at UNC
4 so that may not be a problem.

5 THE COURT: Does that mean 9:30
6 is okay?

7 MR. BOWEN: Whatever you say,
8 Your Honor.

9 MR. BRITT: That's fine. Dr.
10 Seitlin is coming in tonight from
11 Charlotte.

12 THE COURT: Again, Dr. Brown, I
13 apologize for the inconvenience.

14 If you'll bring the jurors back in,
15 please.

16 (Jury in at 3:50 p.m.)

17 THE COURT: Mr. Britt, do you
18 have a request at this time?

19 MR. BRITT: Yes, sir. I request
20 that we recess at this point due to the
21 fact that there is a necessary witness who
22 will be here in the morning to tie up some
23 loose ends in regard to matters before the
24 Court right now.

25 THE COURT: You intend to ask

1 that Dr. Brown step down at this point?

2 MR. BRITT: Yes, sir.

3 THE COURT: Put on any additional
4 evidence that you want to put on and then
5 you're asking to recall Dr. Brown on direct
6 examination.

7 MR. BRITT: Yes.

8 THE COURT: Do you folks want to
9 be heard?

10 MR. THOMPSON: No, sir.

11 THE COURT: In my discretion,
12 that will be allowed.

13 Members of the jury, we're going to
14 stop at this point. We'll reconvene at
15 9:30 tomorrow morning. I've already
16 inquired of counsel, let me make the same
17 inquiry of you folks. From your point of
18 view, is it a problem to start at 9:30 as
19 opposed to 10:00? We've got some witnesses
20 coming from other areas like Chapel Hill
21 and Charlotte that may have some difficulty
22 in getting from those areas here. It
23 appears that our situation is not quite as
24 bad as it was this morning. Certainly we
25 have not been affected as much of the state

1 has been by the storm, but is 9:30 okay
2 with you folks?

3 All right. We'll reconvene at 9:30.
4 If you will leave the exhibits in your
5 chairs, please. I'm obligated, I apologize
6 to you, let me tell you folks at this point
7 that during the overnight recess, you're
8 not to talk about this matter among
9 yourselves or with anyone else, you're not
10 to allow yourselves to have anyone say
11 anything to you about this case. If anyone
12 communicates with you or attempts to do so
13 or anyone attempts to say something in your
14 presence, it remains your duties to inform
15 us of that immediately.

16 Don't have any contact or
17 communication with in any of the attorneys,
18 parties, witnesses, prospective witnesses,
19 or directly with the Court. Don't allow
20 yourselves to be exposed to any media
21 accounts or conduct any independent
22 inquiry. Be careful going home. See you
23 at 9:30 tomorrow morning.

24 (Jury out at 3:53 p.m.)

25 THE COURT: Anything from either

1 counsel?

2 MR. BRITT: No, sir.

3 THE COURT: Have a good evening,
4 folks. You also be careful going home.
5 I'm planning on doing the same. We'll see
6 you at 9:30 tomorrow morning.

7 (Court adjourned, 3:54 p.m.)

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1 APPEARANCES OF COUNSEL:

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10 and

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13 - - -

14
15 (January 9, 1996. Proceedings in open court.)

16 THE COURT: Good morning, folks.

17 Let the record show that all counsel are
18 present. The defendant is present in open
19 court.

20 Mr. Horne, I understand all members of
21 the jury are secured in the jury room, is
22 that correct?

23 THE BAILIFF: Yes, sir, they
24 are.

25 THE COURT: State ready to go

1 forward, Mr. Britt?

2 MR. BRITT: Yes, sir, if I could
3 have just a second.

4 THE COURT: Yes, sir.

5 MR. BOWEN: Your Honor, before we
6 proceed, I would like to state for the
7 record, clarify a couple of things. First
8 I spoke with Mr. Fletcher, he is the
9 defense ballistics expert. I spoke with
10 him last night. Now, as officers of the
11 Court, we have no problem agreeing that
12 the .38 bullet in question should have been
13 in the manila envelope, I believe marked
14 State's Exhibit Number -- or Evidence
15 Number 63. That's not a problem. We are
16 not contesting that.

17 Now, after talking with Mr. Fletcher
18 last night, any suggestion that a mistake
19 was made in Mr. Fletcher's office or is the
20 responsibility of the defense expert, is a
21 highly contested matter. Mr. Fletcher will
22 be here, he'll be here to talk about that
23 at a later time.

24 THE COURT: I assume that the
25 officers who transported the items of

1 evidence on behalf of the State will be
2 called as witnesses in this case.

3 MR. BRITT: Yes, sir.

4 THE COURT: I assume the State
5 will elicit from them exactly what was done
6 in that context.

7 MR. BRITT: Yes, sir.

8 THE COURT: Assume from what is
9 now being said by Mr. Bowen that the
10 defendant does intend to call Mr. Fletcher.

11 MR. BOWEN: Yes, sir.

12 THE COURT: And that
13 Mr. Fletcher -- testimony will be elicited
14 from Mr. Fletcher what was done once the
15 items were turned over to his possession.

16 MR. BOWEN: Yes, sir.

17 THE COURT: Well, that's a matter
18 of fact for the jury to resolve. Is the
19 state ready to go forward at this time?

20 MR. BRITT: Yes, sir.

21 THE COURT: Counsel for defendant
22 ready to go forward?

23 MR. THOMPSON: Yes.

24 THE COURT: If you'll bring the
25 jury in, please, Mr. Horne.

1 (Jury in at 9:30 a.m.)

2 THE COURT: Good morning, ladies
3 and gentlemen of the jury.

4 Mr. Britt, are you recalling Dr. Brown
5 at this time or are you calling another
6 witness?

7 MR. BRITT: No, sir, at this time
8 the State reserves the right to recall
9 Dr. Brown at a later time today. At this
10 time we call Dr. Lawrence Seitlin.

11 THE COURT: If you'll come up and
12 be sworn, sir.

13 If you'll come to the witness stand,
14 place your left hand on the Bible, raise
15 your right and face Ms. Gaines.

16 LAWRENCE SCOTT SEITLIN,
17 being first duly sworn was examined and deposed as
18 follows:

19 DIRECT EXAMINATION

20 THE COURT: If you'll take the
21 stand, please, sir. For the record if you
22 would state and spell both your first and
23 last name.

24 THE WITNESS: Lawrence,
25 L A W R E N C E, Scott, S C O T T, Seitlin,

1 S E I T L I N.

2 BY MR. BRITT:

3 Q Dr. Seitlin, where do you live?

4 A Charlotte, North Carolina.

5 Q What is your occupation?

6 A I am a dentist, general dentist.

7 Q What is your educational background? Where
8 did you receive your undergraduate degree?

9 A Went to the University of North Carolina,
10 graduated in 1970, and went to Chapel Hill,
11 University of North Carolina, graduated dental school
12 in December of '73.

13 Q Are you licensed by the State of North
14 Carolina to practice dentistry?

15 A Yes.

16 Q And when were you licensed by the State of
17 North Carolina to practice dentistry?

18 A I think January '74, could be December '73.

19 Q And since that time, have you maintained a
20 dental practice here in the State of North Carolina?

21 A In Charlotte.

22 Q And do you practice by yourself or are you
23 in practice with other doctors, other dentists?

24 A I have two partners.

25 Q What is the name of your practice?

1 A Well, we're -- it's Doctors Marshall,
2 Seitlin, and Shapiro.

3 Q Can you describe for us in general terms
4 your practice of dentistry?

5 A Well, as a general dentist, I do, you know,
6 pretty much all phases of dentistry. I don't do
7 braces, and I refer out periodontal if it's indicated
8 periodontal surgery. And we do fillings, crowns,
9 clean teeth, do all kinds of bridge work. We restore
10 implants.

11 If I were to have a patient that was
12 missing teeth and needed implants done, I would refer
13 them to an oral surgeon. And the oral surgeon places
14 the implant and I would place a bridge or denture on
15 top of that. And pretty much everything. You know,
16 we, you know --

17 Q Are you a member of any dental
18 associations?

19 A Yes.

20 Q What if any associations are you a member
21 of?

22 A Well, all of the district, local, state
23 dental societies, the American Dental Association and
24 the Academy of General Dentistry.

25 MR. BRITT: Your Honor, at this

1 time I would tender Dr. Seitlin as an
2 expert in general dentistry.

3 THE COURT: Counsel want to be
4 heard as to the tender?

5 MR. BOWEN: No, sir.

6 BY MR. BRITT:

7 Q Dr. Seitlin, during your practice, did you
8 come to know and to treat an individual by the name
9 of James Jordan?

10 A Yes.

11 Q When did you first begin -- when did you
12 first meet Mr. Jordan and how long did you treat
13 Mr. Jordan?

14 A My first appointment with Mr. Jordan was in
15 November of 1986, November 14th, he had a toothache,
16 and a friend of his, a neighbor referred him to my
17 practice. So that was November '86.

18 Q What period of time from 1986 did you treat
19 Mr. Jordan for any dental problems?

20 A I saw him 15 times between 1986 and the
21 summer of 1981, or 1991. I referred him to an oral
22 surgeon at that time, and he did have some implant
23 surgery done, which takes a time, quite a while to
24 heal, and so after that, I would see him, you know,
25 different places but not as a patient. I think

1 July '91 was the last time I saw him as a patient.

2 Q And the James Jordan that was your patient,
3 did you know him to be the son of Michael Jordan, the
4 basketball player?

5 A The father.

6 Q Excuse me. Thank you.

7 A You're welcome.

8 Q Dr. Seitlin, as a matter of business
9 practice, do you maintain records on each of your
10 patients?

11 A Yes, I do.

12 Q And during -- do you keep those records in
13 the ordinary course of your business?

14 A Yes.

15 Q The records that you maintain of your
16 patients, and specifically any records that you may
17 have maintained in regard to James Jordan, do those
18 records bear your handwriting or an assistant of
19 yours in your office?

20 A Mostly my handwriting, although if a
21 hygienist were, if you just came in to have routine
22 teeth cleaned, the hygienist would make the record
23 that day.

24 Q And the information contained in the
25 records is that this was made at or near the time of

1 the circumstances described in those records?

2 A Immediately upon treatment.

3 Q And just so that I'm clear, who makes those
4 records?

5 A I make them myself.

6 Q And is it fair to say that in making those
7 records, you have personal knowledge of the
8 transactions that are reflected in those records?

9 A Everything, yes, yes.

10 Q In addition to any written records, do you
11 also maintain records of x-rays that are made of the
12 patients that you treat?

13 A Yes, we x-ray patients initially before we
14 see them. We usually take a panoramic x-ray of their
15 whole mouth and, depending on the particular
16 treatment of the patient, the patient had a root
17 canal, we take a series of treatments during the root
18 canal. If they had teeth cleaned periodically every
19 year, we take a couple to check for cavities.

20 Q In any handwritten entries that are made
21 into the records and the x-rays, are they maintained
22 in the same file for an individual patient?

23 A Yes, yes.

24 Q Are those records made and kept as a part
25 of your regular course of business?

1 A Yes.

2 MR. BRITT: May I approach the
3 witness?

4 THE COURT: Yes, sir

5 BY MR. BRITT:

6 Q Dr. Seitlin, I'm going to hand you what has
7 been marked as State's Exhibit 37 and ask you first
8 if you can identify the envelope on the outside?

9 A That's my envelope.

10 Q When you say it's your envelope, how are
11 you able to identify it as yours?

12 A Well, if we're having a -- this envelope is
13 for the larger x-rays that we might take, and if I
14 were going to send this to somebody, if I were going
15 to give it to somebody to take, for example if you
16 were having your wisdom teeth removed, I would give
17 you this envelope with your x-ray in it and put my
18 stamp in both places so the oral surgeon could just
19 simply put a stamp on it, mail it back to me.

20 Q If you will examine the contents of State's
21 Exhibit 37. Try to do this in the order that the
22 exhibits appear.

23 A Okay.

24 Q Referring to the exhibit that's been marked
25 as State's Exhibit 37-A, do you recognize that

1 exhibit?

2 A Yes.

3 Q How are you able to recognize that exhibit?

4 A Well, it has my dental assistant's
5 handwriting on it, Mr. Jordan's name, and I've seen
6 this x-ray many times, I mean, I know it to be.

7 Q Is State's Exhibit 37-A an exact copy of
8 the original x-rays that were made of Mr. Jordan?

9 A Yes, this is an exact copy.

10 Q And for the record, what is State's Exhibit
11 37-A?

12 A This is a panoramic x-ray that was taken on
13 August 18th, 1989 at a time when Mr. Jordan was
14 getting ready to do some extensive dental work that
15 we were preparing, that we were getting ready to
16 begin it.

17 Q What if any type of extensive dental work
18 was this x-ray taken in anticipation?

19 A Well, in all my years of practice,
20 Mr. Jordan, he originally came to my office and I
21 don't know if the jury has seen this x-ray, but his
22 mouth was in terrible shape. He had five or six just
23 huge open cavities, old bridge work that was decayed
24 up underneath it. He was missing most of his front
25 teeth and he had just a terrible old partial

1 denture. If he hadn't had what we call low lip line,
2 I mean, if he would have smiled, you couldn't see his
3 teeth. But this old removable partial was awful.

4 So after seeing him for a few years between
5 visits he finally decided that he was going to get
6 rid of the old partial and begin to restore his mouth
7 with something more permanent. Up until then I had
8 only done, you know, palliative type of treatment,
9 emergency treatment for him.

10 Q I hand you State's Exhibit 37-B, ask if you
11 can identify that exhibit?

12 A Yes, this is an x-ray taken not quite as
13 good a quality, a little bit elongated, but this is
14 Mr. Jordan in September of '91 after all of the
15 bridge work that was done, that I had done, and he
16 had a couple of months earlier had a couple of
17 implants placed. But this is sort of after the
18 treatment but while he was waiting to put a bridge
19 over the two implants that were done.

20 Q Is State's Exhibit 37-B an exact copy of
21 the original x-ray that was made at the time?

22 A Yes.

23 Q I'll show you what has been marked as
24 State's Exhibit 37-C, ask if you can identify that
25 envelope and the contents therein?

1 A This is the first x-ray that was taken of
2 Mr. Jordan. He came in and he had an abscessed lower
3 left cuspid, this tooth, and just came in all
4 swollen, and the tooth was opened to drain, cleaned
5 up the infection, so this was the first x-ray I ever
6 took.

7 Q Is the x-ray contained in 30-C an exact
8 copy of the original x-ray that was made?

9 A Yes.

10 Q I'm going to hand you what has been marked
11 as State's Exhibit 37-D, ask you to remove the
12 contents and tell me if you can identify those?

13 A Well, these are a little darker than the
14 originals, but -- can I refer to my --

15 Q You have notes?

16 A Well, this is the chart.

17 Q And you're referring to what's been marked
18 as State's Exhibit 37-D, is that correct?

19 A Right, right, right. This was when we
20 finished one root canal and we were getting ready to
21 start another one on the top left.

22 Q What is a root canal?

23 A When the tooth has living tissue inside of
24 it, I don't know whether the jury remembers from
25 school, but a tooth is hollow and there's nerves and

1 blood vessels that made the tooth grow when the tooth
2 was forming. Once the tooth is fully formed, that
3 just sort of sits there, once bacteria has been
4 allowed to infect a cavity and eats its way through
5 the enamel, gets into that pulp. Pressure builds up
6 in the tooth, tooth dies, and can either abscess,
7 sometimes pain, sometimes don't, but root canal is
8 basically just a word for the process of cleaning out
9 and sterilizing the inside of the root, and then
10 instead of just putting a filling on the top, you
11 actually place a filling, you know, the full length
12 of the root. You don't want to go too far, or leave
13 it too short. And that way, the pain is relieved and
14 any tissue that was bad inside the tooth is cleaned
15 out, and the tooth is, you know -- hopefully it will
16 last forever and ever. Sometimes they do hopefully.

17 Q Again referring to State's Exhibit 37-D,
18 they are x-rays of the abscessed tooth?

19 A Well, the original x-ray, what happened was
20 the first time I saw him, we started one root canal,
21 and this is that completed x-ray. The same day I
22 finished that root canal, he had pain on the upper
23 left. Like I said, he had a half a dozen teeth that
24 were all in bad shape. So we started that x-ray and
25 that's, I believe -- this is not -- this is an x-ray

1 of the upper left molar that I started when -- same
2 day that I finished the other one.

3 Q And other than the x-rays in State's
4 Exhibit 37-D being darker than the originals?

5 A Same ones.

6 Q Is that an exact copy of the original?

7 A Yes.

8 Q I'm going to hand you what has been marked
9 as State's Exhibit 37-E, ask you if you can identify
10 it and its contents?

11 A Well this is another picture of the tooth
12 on the bottom left, and another root canal we're
13 getting ready to start on the right cuspid.

14 Q And the x-rays contained in 37-E are they
15 exact copies of the original x-rays that you made?

16 A Yes.

17 Q I'm going to hand you what has been marked
18 as State's Exhibit 37-F, ask you to examine it and
19 its contents and tell me if you can identify it?

20 A It's just a picture of maybe a particular
21 tooth that he was having problems with. I'm not sure
22 if this one is a little out of sequence but it's on
23 the same side that we finished the other root canal,
24 just a little bit different time.

25 Q Is that x-ray an exact copy of the original

1 that was made at the time?

2 A Yes, yes it is.

3 Q I'm going to hand you what has been marked
4 as State's Exhibit 37-G, ask you if you can identify
5 it?

6 A Yes. These are the completed root canals
7 that were started on February 25th, excuse me -- yes,
8 February 25th, and are now completed. So those are
9 the x-rays of the fillings that go up into the seal
10 up the tooth.

11 Q Are those the exact copies of the originals
12 that were made at the time?

13 A Yes, yes.

14 Q I'm going to hand you what has been marked
15 as State's Exhibit 37-H, ask you if you can identify
16 it?

17 A Yes.

18 Q And how are you able to identify it?

19 A This was an x-ray taken in May of '91. We
20 were getting ready to refer him, Mr. Jordan, to have
21 the implants placed and the lower left, and I was
22 just checking to make sure that everything was okay
23 there. And then he was having problems underneath an
24 old bridge on the lower right, which I removed, and
25 to save the bridge, we were going to do whole new

1 bridge work on the bottom. He had a bridge on the
2 bottom right that had been on for a long time but the
3 tooth underneath it had decayed. So we have a
4 process we can remove an old bridge, sometimes they
5 come off easy and this one came off very easy so I
6 was able to start another root canal, and after that
7 was completed, we were then going to refer him to
8 have the implants done on the lower left.

9 Q How many implants --

10 A Two.

11 Q -- was he to receive?

12 A Two.

13 Q What was the purpose of receiving the
14 implants?

15 A Well, at that point it was the only area of
16 his mouth where he didn't have any teeth, and he was
17 able -- you know, lot of people don't do implants
18 because they are scared or whatever, but pain, or
19 expense, whatever, but at his point, he wanted other
20 teeth where he didn't want any, didn't have to have
21 anything removable, so where you have teeth missing
22 and didn't want to have a denture that's removable,
23 then an oral surgeon can place little threaded
24 cylinders down in the bone. The tissue heals up over
25 the top of it over a three or four month period, and

1 then you actually come back in, you open the top of
2 that, look down, looks like a little threaded tin
3 can. And then I would screw in a little metal tooth
4 that screws down on top of that, and then teeth can
5 just be screwed on or cemented on top of that. It's
6 a simple procedure now, but that summer of '91, he
7 was getting ready to have that procedure done.

8 Q And to your knowledge, did he have that
9 procedure done?

10 A Yes.

11 Q I'm going to hand you what has been marked
12 as State's Exhibit 37-I, ask you if you can identify
13 those?

14 A Yes. This is after the bridge on the lower
15 right was removed, of a picture of the tooth that was
16 abscessed before I finished it, and this is the
17 completed root canal.

18 Q Are those x-rays exact copies of the
19 originals that were made?

20 A Yes.

21 Q I'm going to hand you what has been marked
22 as State's Exhibit 37-J, ask you if you can identify
23 that series of x-rays?

24 A These are just bite wing x-rays when he
25 came in at one time before we did anything to have,

1 you know, just his teeth cleaned. We routinely take
2 these just for decay purposes, and this was just
3 routine pictures that my hygienist took.

4 Q Are those x-rays exact copies of the
5 originals?

6 A Yes.

7 Q Ask you to refer to the written document
8 that's been marked as State's Exhibit 37-K?

9 A Right.

10 Q Ask you to examine that, tell me if you can
11 identify it?

12 A This is a copy of my exact office records.

13 Q And are State's Exhibits 37-A through 37-K
14 the records that you maintained in regard to your
15 treatment of Mr. Jordan?

16 A Yes.

17 MR. BRITT: Your Honor, at this
18 time I move for admission of State's
19 Exhibits 37, 37-A, B, C, D, E, F, G, H, I,
20 J, K.

21 THE COURT: Counsel for defendant
22 want to be heard?

23 MR. BOWEN: No, sir.

24 THE COURT: Admitted without
25 objection.

1 BY MR. BRITT:

2 Q Dr. Seitlin, you previously testified that
3 you had referred Mr. Jordan to an oral surgeon for
4 the purposes of having two implants --

5 A Yes.

6 Q -- surgically placed in his jaw. And
7 you've testified that to your knowledge that work was
8 done?

9 A Oh, yes.

10 Q What if any dental work was to occur after
11 the implants had been placed inside Mr. Jordan's
12 mouth?

13 A Mr. Jordan -- I believe it was between
14 January and -- sometime in January of 1992, what we
15 call healing posts are placed into the implant area.
16 In your gum, sort of like if you pierce your ears,
17 the implant is down there, so the oral surgeon just
18 has a little punch, doesn't hurt, but you punch out a
19 hole on top of the implant and then he'll screw on a
20 little metal -- they call it a healing post.

21 And over a period of a week or two, the
22 healing post is supposed to allow the gum tissue to
23 heal up with a permanent hole there. Like your ear
24 would have a hole in it, say, and then Mr. Jordan
25 would come to my office, and I have another part of

1 the implant that's placed into that that the actual
2 tooth would fit down on. Mr. Jordan had three -- two
3 or three appointments, but his son was playing ball
4 and he would miss this, so I would see him --

5 MR. BOWEN: Object to that.

6 THE COURT: Overruled, offered in
7 explanation.

8 THE WITNESS: And he had a number
9 of appointments scheduled, for various
10 reasons, mainly because he was following
11 his son around, he would have to cancel --

12 MR. BOWEN: Move to strike.

13 THE COURT: Denied. You may
14 continue.

15 THE WITNESS: Would have to
16 change those appointments. And he would
17 call me or I would see him and he would
18 apologize, but we never got to restore the
19 actual implants. He did -- if that's --

20 BY MR. BRITT:

21 Q After the implants were surgically placed
22 in his mouth, were the healing posts ever placed in
23 those implants?

24 A Yes, they were, in fact, I saw him on two
25 occasions outside of the office, and he would act

1 embarrassed, oh, I've got to come see you.

2 MR. BOWEN: Object.

3 THE COURT: Overruled.

4 THE WITNESS: And would show me
5 the posts were in there. So I did see the
6 healing post in his mouth.

7 BY MR. BRITT:

8 Q And the teeth that were to be inserted into
9 those posts and into the implants, were they ever
10 placed there?

11 A No, no.

12 Q Dr. Seitlin, in August, specifically around
13 August the 12th of 1993, were you contacted by
14 representatives of the Cumberland County Sheriff's
15 Department?

16 A Yes.

17 Q As a result of that contact with those
18 officers, did you provide anyone with copies of the
19 dental records that you maintained?

20 A Yes.

21 Q -- on Mr. Jordan?

22 A Yes.

23 Q After you provided copies of those dental
24 records to officers connected with the Cumberland
25 County Sheriff's Department, did you have an occasion

1 to speak with Dr. Robert Brown from Newberry, South
2 Carolina?

3 A I spoke to -- yes.

4 Q And at the time you spoke with Dr. Brown,
5 based upon the information that Dr. Brown gave you,
6 were you familiar with the dental work of the
7 individual that he was describing?

8 A Yes.

9 Q And how was it that you were familiar with
10 the dental work that Dr. Brown was describing?

11 A Well, can I talk about the night before?

12 Q The night before you talked to Dr. Brown?

13 A Yes.

14 Q Had you had an opportunity to -- before you
15 talked with Dr. Brown had you been provided other
16 information?

17 A Yes.

18 Q What other information had you been
19 provided?

20 MR. BOWEN: Object.

21 THE COURT: Where are we going
22 with this? By whom? Provided with other
23 information by whom?

24 BY MR. BRITT:

25 Q Who provided you information prior to you

1 spoke --

2 A Spoke to, I think a Captain Binder when he
3 originally called me, asked me if I was a dentist,
4 and I said yes. And he wanted me to talk to a -- I
5 believe it was a Coroner in Bennettsville.

6 Q You talked with Tim Brown?

7 A Yes, but not the same Brown. And he
8 basically gave me, asked me if he was my patient. I
9 said yes, Mr. Jordan was my patient. And he told me
10 that they had a body --

11 MR. BOWEN: Object.

12 THE COURT: For what purpose is
13 this being offered?

14 MR. BRITT: Explain subsequent
15 conduct.

16 THE COURT: Do you want a
17 limiting instruction.

18 MR. BOWEN: Yes.

19 THE COURT: Members of the jury,
20 the testimony now being elicited from
21 Dr. Seitlin as to statements he contends
22 made to him by a prior state's witness, Tim
23 Brown, are being offered for the limited
24 purposes of explaining the subsequent
25 conduct of Dr. Seitlin. Now, you may

1 consider this evidence for that limited
2 purpose and for no other purpose. Do each
3 of you understand that instruction? If all
4 members of the jury are able to follow that
5 instruction, please indicate by raising
6 your right hand at this time.

7 Let the record reflect all fifteen
8 members of the jury responded
9 affirmatively. Anything further?

10 MR. BOWEN: No.

11 BY MR. BRITT:

12 Q Dr. Seitlin, when you spoke with Mr. Brown,
13 what if any information was given to you in regard to
14 any dental work that he had observed?

15 A Well, -- first of all, he asked me if I was
16 his doctor, and I said yes. And I had heard about
17 the car, so I was familiar with the situation. And I
18 guess the first comment was that they had found
19 someone that had had extensive dental work, and if I
20 were able to, would I give him -- did I remember the
21 dental work. And of course, it was unusual to have
22 had this much work, and certainly the person who it
23 was, I was very familiar with him.

24 And he basically asked me to describe the
25 dental work that I had done for him, I believe. And

1 so just briefly, just from memory, I did what I --
2 you know, I basically repeated what I had done to
3 him, for Mr. Jordan. And then they asked, when it
4 sort of matched the body that they had found, he
5 asked me if I could get my -- I guess he put Captain
6 Binder back on the phone, and I went and got my
7 records, and then Sheriff Kidd came and picked them
8 up and I guess took them.

9 MR. BOWEN: Object to what he
10 guesses.

11 THE COURT: You may not
12 speculate. The objection is sustained.

13 BY MR. BRITT:

14 Q Did you receive a second phone call?

15 A From Sheriff Kidd, Sheriff in Charlotte.

16 Q After the conversation that night, were you
17 then contacted again in regard to dental comparisons?

18 A Yes. When I -- I went back to my office,
19 brought the x-rays back, I suppose it was -- I think
20 it was Captain Binder, but someone else was on the
21 phone, and basically they must have had --

22 MR. BOWEN: Object.

23 THE COURT: Sustained. You can
24 tell what you did, sir.

25 THE WITNESS: Okay. I spoke to

1 right.

2 THE COURT: Mr. Bowen?

3 MR. BOWEN: Yes, the response was
4 something to the effect that charting was
5 almost exact, something about the charting
6 was the same as what they had. I would
7 like to read that back.

8 THE COURT: That context. Let's
9 stop so I can run it back.

10 MR. BOWEN: Charting that they
11 had --

12 THE COURT: Mr. Bowen, he has to
13 copy what we say, so if you'll hold up for
14 just a second. I'm looking at line 28 --
15 strike that. Page 28, line nine.
16 Beginning actually on line eight. Okay, I
17 spoke to someone over the phone, Captain
18 Binder I believe it was, the charting that
19 they had was almost exact to the body that
20 they found. That's the basis of the
21 objection.

22 MR. BOWEN: Yes, sir, we don't
23 know what charting he's talking about.

24 THE COURT: On voir dire, while
25 we've got that opportunity. Why don't you

1 clarify the question.

2 MR. BRITT: Yes, sir.

3 BY MR. BRITT:

4 Q Dr. Seitlin, in your conversation regarding
5 the dental charting, what information was provided to
6 you witness?

7 A They read to me, I guess, a charting that
8 the coroner had made, missing teeth, root canals,
9 bridges that were done, and it was exact to my
10 treatment.

11 Q Exact to your records?

12 A Yes.

13 Q Regarding Mr. Jordan?

14 A Right. That's what I was going to ask. I
15 didn't mean almost. It was exact.

16 THE COURT: All right. The
17 objection would be based on what?

18 MR. BOWEN: On the basis that we
19 don't have, we don't have identified that
20 charting to which he had referred.

21 THE COURT: We've got two
22 problems. One, the testimony refers to a
23 vague. And I'm assuming, Dr. -- or
24 Mr. Brown, Mr. Tim Brown and Captain
25 Binder -- secondly, my recollection is Tim

1 Brown, the prior State's witness, was not
2 allowed to testify to that.

3 MR. BRITT: I believe he
4 testified to the -- he had reviewed the
5 dental chart. He was now allowed to
6 testify as to his opinion.

7 THE COURT: Did he -- would this
8 be in corroboration as to his testimony as
9 to any discussion he had with Dr. Seitlin?

10 MR. BRITT: Yes, because he
11 testified he had a conversation with Dr.
12 Seitlin about the information that he had
13 gathered as a result of the dental
14 examination.

15 THE COURT: So if that's the
16 case, you would be offering it for what
17 purpose?

18 MR. BRITT: To corroborate
19 Dr. Brown's testimony. Already in evidence
20 are Dr. Robert Brown's dental charts that
21 were -- came in yesterday.

22 THE COURT: Yes, sir.

23 MR. BRITT: As State's Exhibit
24 Number 35.

25 THE COURT: We don't know whether

1 they encompasses that.

2 MR. BRITT: No, sir, but as we go
3 forward in this, Dr. Seitlin was given an
4 opportunity to review and compare the South
5 Carolina records with his known records of
6 Mr. Jordan.

7 THE COURT: And that was done
8 when?

9 MR. BRITT: That was done on --

10 THE WITNESS: Few months ago.

11 MR. BRITT: Following August
12 the -- conversation took place at 4:00 a.m.
13 on August the 12th. It's going to be
14 August the 12th or August the 13th,
15 somewhere in that time frame.

16 THE COURT: Mr. Bowen,
17 Mr. Thompson you disagree Tim Brown
18 testified to matters as cited by Mr. Britt.

19 MR. BOWEN: Even if he did, in
20 this particular response, the chart which
21 he's making an opinion of comparison about
22 is not in any way identified or attributed
23 to any person. And we don't --

24 THE COURT: Yes, sir. That's the
25 problem. I'm going to sustain the

1 objection. You can ask additional
2 questions if you feel it's important.
3 Otherwise you can move on to any
4 comparisons that are made or have been
5 made. Note the State's exception to the
6 ruling of the Court.

7 Any other matters before we bring the
8 jury back in?

9 MR. BRITT: No, sir.

10 THE COURT: Mr. Horne, if you'll
11 bring the jury in, please.

12 It's not permissible for me to have
13 conversations with you that are not on the
14 record. I apologize.

15 (Jury in at 10:06 a.m.)

16 THE COURT: The objection to the
17 question as phrased is sustained. Mr. Britt, you may
18 ask specific questions to explain subsequent conduct
19 on the part of this witness or you may move on to
20 other matters.

21 MR. BRITT: Yes, sir.

22 BY MR. BRITT:

23 Q Dr. Seitlin, on the morning of August the
24 12th of 1993, or August the 13th, 1993, excuse me,
25 you testified you had a conversation with the Coroner

1 in Bennettsville, South Carolina, is that correct?

2 A Yes.

3 Q You also had a conversation with Captain
4 Art Binder?

5 A Yes.

6 Q Of the Cumberland County Sheriff's
7 Department. During that conversation, descriptions
8 of dental work were given to you, is that correct?

9 A Yes.

10 Q Based upon the descriptions that were given
11 to you --

12 THE COURT: By whom?

13 BY MR. BRITT:

14 Q By Mr. Brown, the Coroner?

15 A Right.

16 Q -- were you familiar with the dental works
17 that he was describing?

18 A Yes.

19 Q And how was it that you were familiar with
20 those dental works that Mr. Brown described to you?

21 A The type of treatment from right to left,
22 top to bottom that he described to me was exactly the
23 treatment that was on my personal chart that I had.

24 Q And the personal chart that you had
25 pertained to what patient of yours?

1 A The treatment of James Jordan.

2 Q And that's the dental record that's been
3 introduced as State's Exhibit 37-A, 37-A through
4 37-K?

5 A Yes.

6 Q After that conversation with Mr. Brown and
7 Captain Binder, was a dental charting and x-rays
8 provided to you --

9 A Yes.

10 Q -- by Mr. Binder for the purposes of
11 comparing that -- those x-rays and those charts with
12 the records that you maintained on James Jordan?

13 A Yes.

14 MR. BRITT: May I approach the
15 witness?

16 THE COURT: Yes, sir.

17 BY MR. BRITT:

18 Q Dr. Seitlin, I'm going to -- I'll show you
19 what has been marked as State's Exhibit 35-B, it's
20 previously been introduced into evidence. Do you
21 recognize that document?

22 A Yes.

23 Q And how is it that you recognize that
24 document?

25 A This was mailed to me or delivered to me, I

1 think,, you know, for my identification to compare.

2 Q And what if anything did you do with the
3 document that's been -- the copy of the document that
4 you received that's now marked as State's Exhibit
5 35-B?

6 A My copy?

7 Q What if any -- yes, did you utilize the
8 document that was provided to you that's now marked
9 as State's Exhibit 35-B?

10 A Yes, I just -- I mean, I compared it to my
11 record which is -- everything is almost -- is -- not
12 almost, everything is identical.

13 Q I'm going to hand you what's previously
14 been admitted as State's Exhibit 37-K which is the
15 dental record that you testified you maintained on
16 James Jordan?

17 A Yes, right, yes.

18 Q The records that have been identified as
19 State's Exhibit -- and admitted as State's Exhibit
20 35-B, you used 35-B and compared it with your record
21 that's marked as 37-K?

22 A Yes.

23 Q Based upon your comparison of the record
24 marked as State's Exhibit 35-B, did you form an
25 opinion and reach a conclusion as to the similarities

1 between 35-B and your records marked as 37-K?

2 A They were identical, identical.

3 Q When you say they were identical, the
4 dental charting in 35-B matched those that you
5 maintained of James Jordan at 37-K, same teeth are
6 missing, same root canals were done, same 13 unit
7 bridge, the two implants were placed. I doubt
8 there's anybody on earth with the same amount of
9 work, same double charting.

10 Q And the x-ray, I'm going to hand you what's
11 previously been admitted as State's Exhibit 35-A, do
12 you recognize that?

13 A Yes.

14 Q And did you utilize the x-ray marked as
15 State's Exhibit 35-A in your comparison with the
16 known dental records of James Jordan in attempting to
17 identify the body that was found in South Carolina?

18 A Yes.

19 Q Based upon your examination of State's
20 Exhibit 35-A and the dental records that you
21 maintained on James Jordan, did you form an opinion
22 as to whose dental works appear on State's Exhibit
23 35-A?

24 A Yes.

25 Q And in your opinion, whose dental works

1 appeared in State's Exhibit 35-A?

2 A This is 35-A, right?

3 Q Yes?

4 A James Jordan.

5 Q And that's based on your comparison of the
6 records you maintained in your office in Charlotte,
7 North Carolina, and those provided to you by
8 officials with Cumberland County Sheriff's Department
9 and the South Carolina Coroner's office?

10 A Yes.

11 MR. BRITT: Your Honor, if I
12 could have just a second.

13 THE COURT: Yes, sir.

14 MR. BRITT: Your Honor if
15 Dr. Seitlin could step down. Your Honor,
16 if the record will reflect, I'm placing
17 State's Exhibit 35-A into the x-ray box,
18 and that the light box is turned on.

19 THE COURT: Yes, sir.

20 BY MR. BRITT:

21 Q Dr. Seitlin, using this pointer, and it may
22 out of necessity require that you stand to the -- so
23 that the jurors can see.

24 Dr. Seitlin, you've previously testified
25 that two implants were placed in the lower left jaw

1 of Mr. Jordan. Can you identify those for the jury
2 on State's Exhibit 35-B?

3 A That's what these two white cylinder
4 looking things.

5 Q You previously testified that Mr. Jordan
6 had extensive bridge work done in the upper portion
7 of his jaw.

8 A The white is, that you see is metal, it's a
9 gold alloy, and it's covered with porcelain, and it
10 goes from tooth number three all the way up around to
11 the molar, so the whole upper arch had caps.

12 Q You've also described for the jury a number
13 of root canal procedures that were performed?

14 A The root canal in the upper left, if you
15 could see these little white lines going through the
16 teeth, this lower left was the first root canal we
17 had done. He had had a bridge here which isn't there
18 now, but that's a post that I put in to help support
19 the bridge until he had the implants restored. Other
20 root canals, you see on the upper right here, upper
21 left. And then the missing teeth are where there's
22 nothing.

23 Q Dr. Seitlin, I'm going to hand you what has
24 been marked as 37-B, ask you to place that into the
25 light box as well, beside 35 -- 37-B is an x-ray that

1 was taken of Mr. Jordan in June of 1991, is that
2 correct?

3 A Well, this is September.

4 Q Excuse me, September of 1991?

5 THE COURT: Taken by whom and
6 where?

7 THE WITNESS: This was taken at
8 the oral surgeon's office, Dr. Bob
9 Seymore. And a copy was sent to me.

10 THE COURT: Thank you, sir.

11 BY MR. BRITT:

12 Q And you maintained that copy in your
13 records of Mr. Jordan?

14 A Yes.

15 Q In State's Exhibit 37-B, Dr. Seitlin, can
16 you point out to the jury the two implants that
17 existed in Mr. Jordan's lower left jaw?

18 A Well, this is immediately after they were
19 placed, so it doesn't have the healing posts.
20 There's one -- the healing post that I explained goes
21 on top to let the tissue heal. You can see there's
22 one here, the other one isn't in this particular
23 x-ray. And you can see here's the post right there.
24 I'm sorry, there's the post, this same post right
25 here, but the bridge that was there is no longer on

1 the -- on this x-ray. But there's the post right
2 there.

3 Q And is State's Exhibit 37-B, are the root
4 canal procedures that were performed visible in that
5 x-ray?

6 A Yes, the x-ray is little elongated. It's
7 not in exact proportions, but there's the root canal
8 on the bottom right, matches here the bridge, the
9 upper bridge work from right to left, although those
10 are single x-rays. It's just continuous. This is
11 the root canal. There's the upper right cuspid is
12 there. You can also see on my original x-ray,
13 there's a piece of a root right there. And there's
14 that piece of the root real clear. You can see on
15 the other x-ray quite clearly. But I mean, you know,
16 it's -- took about three seconds --

17 Q Based upon your comparison of the known
18 record that you maintained of Mr. Jordan and the
19 records that were provided to you that are marked as
20 State's Exhibit 35, is there any doubt in your
21 mind --

22 MR. BOWEN: Object.

23 THE COURT: Complete your
24 question.

25 BY MR. BRITT:

1 Q Any doubt in your mind as to who the
2 individual was that was pulled from the swamp in
3 South Carolina based upon the dental records?

4 MR. BOWEN: Object.

5 MR. THOMPSON: Object.

6 THE COURT: Overruled.

7 THE WITNESS: These x-rays and
8 that x-ray are of the same person. No
9 question, no doubt, no -- I mean --

10 MR. BRITT: Thank you. If you would
11 return to the witness stand. I don't have any other
12 questions.

13 THE COURT: Any
14 cross-examination?

15 MR. BOWEN: Yes.

16 CROSS-EXAMINATION

17 BY MR. BOWEN:

18 Q Dr. Seitlin, what you've been discussing is
19 specific procedures that you had done in Mr. Jordan's
20 mouth and jaw when he was your patient, is that
21 correct?

22 A Yes.

23 Q Roughly speaking, how many specific
24 distinct procedures did you perform in Mr. Jordan's
25 mouth?

1 A Roughly?

2 Q Yes.

3 A I guess if you could include all 13 of the
4 upper teeth, 30 OR 40 different procedures -- 20, 30
5 40 different procedures. You know, I'm not sure
6 exactly what you --

7 Q I see what you mean. Let's talk about the
8 upper bridge as one procedure?

9 A Correct.

10 Q Because it was one distinct piece of
11 hardware, wasn't it?

12 A Yes.

13 Q Now, if you consider that as one procedure
14 and a root canal as one procedure, this kind of
15 notion, how many distinct procedures did you --

16 A 15, just without checking, 20.

17 Q And that was over what period of time?

18 A Five-year period of time.

19 Q And you had not seen Mr. Jordan, that is,
20 not seen him as a patient. I think you had talked to
21 him on the phone, meeting him in the community, but
22 you had not seen him as a patient for almost two
23 years when you received these calls, is that correct?

24 A That is correct.

25 Q And Dr. Brown previously testified that

1 there were over 160 distinct surfaces in the mouth,
2 is that correct?

3 MR. BRITT: Objection.

4 THE COURT: Sustained to the
5 form.

6 BY MR. BOWEN:

7 Q Excuse me, there are 160 or more distinct
8 surfaces in the mouth?

9 A There could be a thousand, I'm not --

10 Q You could not distinguish a root canal
11 performed by yourself as opposed to a root canal
12 performed by some other dentist, could you?

13 A I could, yes.

14 Q You are able to do that?

15 A Yes.

16 Q Now, the upper plate that was placed in
17 Mr. Jordan's mouth, that was not fabricated by your
18 dental clinic, was it?

19 A Yes, it was.

20 Q Made by you?

21 A Yes.

22 Q Bear any kind of signature or marking as
23 your work?

24 A No, there's no initials or anything.

25 Q Nor does anything else that was done in

1 that mouth bear any kind of initials or markings or a
2 specific identification, does it?

3 A No, no, sir.

4 Q Basically going on the fact that certain
5 procedures that you performed in Mr. Jordan's mouth
6 were procedures that recurred on the records that you
7 received from somewhere else for the purposes of
8 this, is that correct?

9 A Would you repeat that?

10 Q In other words, what you did was you looked
11 to see the 15 or so procedures that you had performed
12 on Mr. Jordan, is that right?

13 A Well, not exactly.

14 Q And when you saw 15 or so procedures recur
15 in the same places in this chart you received from
16 South Carolina, and you made a comparison, correct?

17 A It was a lot more than just the 15
18 procedures.

19 Q And would you say, Dr. Seitlin, that many
20 of the procedures that were done in Mr. Jordan's
21 mouth were relatively expensive procedures as dental
22 work goes?

23 A Yes.

24 Q This is not the type of dental work that
25 one would expect to have been done on an indigent

1 person or a pauper, is that correct?

2 A I wouldn't know.

3 Q Well, can you give us some idea of the
4 expense of those procedures?

5 A Well, at the time -- I'm not exactly sure
6 the -- probably the upper bridge could have been a
7 45 -- in my office, the fee was \$4500. I gave him a
8 little discount, but --

9 Q Yes, sir. And the rest, that would be the
10 most expensive part of the work?

11 A Yes.

12 Q And the rest of the work, got any general
13 idea, with the discount, of course?

14 A He could have spent five or six thousand
15 dollars for the total work, including the implants,
16 which I didn't do.

17 Q And there was some more work yet to be done
18 on his case?

19 A Yes, yes.

20 Q And you say that bridge that had been -- or
21 you had expected to find in the mouth of Mr. Jordan
22 was absent, is that correct?

23 A Well, no, not exactly. Do you want me to
24 elaborate?

25 THE COURT: You may explain.

1 THE WITNESS: There was a
2 temporary bridge that was -- he had had an
3 old little two tooth bridge on the bottom
4 left that was removed when the original
5 root canal was done, and it kept coming
6 off. So in an effort to put that on until
7 the implants were finished, I put the
8 posts -- I don't know if you remember,
9 there was like a little metal post that I
10 placed right before he went to see Dr.
11 Seymore, the oral surgeon who did the
12 implants, in an effort to keep that on
13 until we were finished with the implants.
14 So I don't remember the beginning of the
15 question, but that was a temporary bridge
16 that was just something as a provisional
17 thing. But that was what I did -- when I
18 said I didn't see it, it wasn't there, but
19 the post that was underneath it that was
20 supposed to be there to hold it in, that
21 was still there.

22 BY MR. BOWEN:

23 Q It's not unusual in an adult person, say in
24 their 50's or later to have several root canals in
25 their mouth, is it?

1 A No.

2 MR. BOWEN: That's all, Your
3 Honor.

4 THE COURT: Anything on redirect,
5 Mr. Britt?

6 MR. BRITT: No, sir.

7 THE COURT: May Dr. Seitlin be
8 released gentlemen?

9 MR. BOWEN: Yes, sir.

10 THE COURT: Thank you, sir,
11 you're free to go.

12 THE WITNESS: Thank you.

13 MR. BRITT: Your Honor, at this
14 time we re-call Dr. Brown.

15 THE COURT: If you'll again take
16 the witness stand. You have previously
17 been sworn and remain under oath, sir.

18 (Dr. Robert Brown re-takes the witness
19 stand, having been previously sworn, was
20 examined and testified further as follows:)

21 MR. BRITT: May I approach the
22 witness?

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. BRITT:

1 Q Doctor, I'm going to hand you what you
2 identified yesterday as a dental x-rays and dental
3 charting that you did on August the 8th of 1993, that
4 being State's Exhibit 35, 35-A, and 35-B.

5 A Yes, it's all here.

6 Q And after you charted the teeth and made
7 those findings on State's Exhibit 35-B, did you have
8 a telephone conversation with Dr. Lawrence Seitlin?

9 A I did.

10 Q And did you discuss your findings with
11 Dr. Seitlin?

12 A I did.

13 Q And during your discussion with Dr.
14 Seitlin, was there a comparison being made between
15 your findings and his records that he maintained in
16 his office?

17 A Yes.

18 MR. BRITT: Your Honor, this is
19 all for the purposes of corroboration.

20 THE COURT: You folks want a
21 limiting instruction?

22 MR. THOMPSON: Yes.

23 THE COURT: Members of the jury,
24 the testimony now being elicited from
25 Dr. Brown as to statements Dr. Brown

1 contends were made to him by Dr. Seitlin,
2 the prior state's witness, are being
3 offered for the limited purpose of
4 corroboration. Now, as I previously
5 instructed you, the term corroboration
6 means as tending to strengthen or support.
7 Again, I instruct you that it is you, the
8 members of the jury, who must determine
9 what the evidence in this case does show.
10 But you may consider these statements or
11 this testimony for that limited purpose and
12 for no other purpose. Do each of you
13 understand that instruction?

14 Yes, sir, Mr. Britt.

15 BY MR. BRITT:

16 Q Dr. Brown, what if any information did you
17 relay to Dr. Seitlin in response to what if any
18 information that he relayed to you in regard to the
19 information that he had in his records in comparing
20 the charting that you had done with his records?

21 A I discussed my findings based on the
22 radiographic survey and based on my narrative summary
23 and charting, and at that time Dr. Seitlin also
24 described his records, his charting, and his
25 findings.

1 Q Based upon the information that Dr. Seitlin
2 provided to you, did you form any opinion based upon
3 that information when comparing it with the charting
4 that you had done that's marked as State's Exhibit
5 35-B?

6 A I did.

7 Q What if any opinion did you form at that
8 time?

9 A It was my opinion at that time that the two
10 charts, or the two sets, were identical.

11 Q Did there come a time after you spoke with
12 Dr. Seitlin when the known dental records of James
13 Jordan were provided to you for the purposes of
14 comparing your findings with those known records?

15 A There was, yes.

16 MR. BRITT: May I approach?

17 THE COURT: Yes, sir.

18 BY MR. BRITT:

19 Q Dr. Brown, I'm going to show you what's
20 previously been admitted as State's Exhibit 37, and
21 its contents, 37-A through 37-K. What if any
22 information in regard to the known dental records of
23 Mr. Jordan was provided to you?

24 A I have received copies of each of these --
25 of both the charting and copies of each of the

1 x-rays.

2 Q And after receiving the charting and the
3 x-rays, what did you do with those?

4 A I made a comparison with the ones that I
5 had.

6 MR. BRITT: Your Honor, if
7 Dr. Brown could step down.

8 THE COURT: Yes, sir.

9 MR. BRITT: If the record will
10 reflect again I'm placing State's Exhibit
11 35-A into what I refer to as a light box.

12 THE COURT: Yes, sir.

13 MR. BRITT: I've also placed
14 State's Exhibit 37-B into that light box.

15 Dr. Brown, using State's Exhibit 35-A,
16 the x-ray that you prepared, and State's
17 Exhibit 37-B, the x-ray that was provided
18 to you as a known dental record of James
19 Jordan, can you use those in showing the
20 jury the comparisons that you found, the
21 similarities that you found between the two
22 x-rays?

23 THE WITNESS: Yes, I can. As Dr.
24 Seitlin testified, this is the x-ray that
25 he had that was after the surgery, after

1 the implants were placed.

2 We'll start from, I guess, from right
3 to left on the top. And you'll notice the
4 bridge work that starts with the upper
5 right first molar and goes continuous, as
6 we discussed the white line indicating the
7 metal framework under the porcelain,
8 continue this piece to the upper left
9 second molar.

10 On this, as we go along, you note
11 there's the retained or root tip that's in
12 the space that would have been positioned
13 on the upper right first molar, it also --
14 it's vague but it shows on here as you go
15 around, there is a root canal that's been
16 placed on the upper right cuspid, also
17 shows in the upper right cuspid here.

18 One of the problems with a panoramic
19 x-ray is right in the front, in the front
20 teeth, top and bottom, it tends to blur out
21 because it gets superimposed on the spine
22 in the back. So it's rather indistinct in
23 here, and there's some duplication, so you
24 can't see the roots here. These would show
25 on individual x-rays, as it continues

1 around, there's not another tooth on my
2 x-rays, upper left second bicuspid which
3 has a root canal done, also shows up right
4 here.

5 BY MR. BRITT:

6 Q If I could interrupt you, could I ask you
7 to step back so the jurors at this end of the jury
8 box could see what you're pointing to?

9 A I'll go back and do that part for you. The
10 upper left bicuspid with the root canal is here.
11 Also shows over here. And then the two molars, one,
12 first molar I discussed yesterday, what I call the
13 distal buckle root, the outside root that is farthest
14 away from the limbs, I told you it was a little
15 shorter and blunter than the one in front of it, and
16 also the one behind it. This one right here also
17 shows the similar characteristics here, you can see
18 only comes up to about here, the ones behind it are
19 up a little farther.

20 In the upper left second molar that has the
21 root canal, I told you had the big root in the inside
22 was straight. You can see it projecting up into the
23 sinus area, also shows on this one here. The roots
24 of these last three teeth are very close to the floor
25 of the maxillary sinus. This is the area, this is

1 the part that stuffs you up, gives you runny noses
2 and all that. This is projected into this area,
3 particularly the large root, of the second molar.

4 As you proceed down in the lower left, you
5 can see the two implants in the lower left back
6 region, one of them had what I referred to as a
7 healing button in place. I believe Dr. Seitlin
8 referred to it as healing post. One and the same,
9 depends on which form of training you had as to which
10 professor called it posts and which one called it a
11 button.

12 In this case, from the surgeons, these were
13 placed right after, this x-ray was taken right after
14 the surgery. The posts aren't placed for several
15 months. And during healing, they are not there.
16 Here, two implants themselves are but there's no
17 button.

18 If you take -- as we come up, you can see,
19 here's the little -- there's a little bridge here,
20 two root canals done. You can see a projection of a
21 little post coming below this one. Only the post is
22 left here. Little bridge is off, but the post that
23 was placed in the lower left cuspid after it had the
24 root canal was still in place.

25 There are -- the front region here, the

1 lower incisors is blurred out on the panoramic
2 x-rays, so you have to go around to the lower right.
3 In the cuspid region you see a bridge from the lower
4 right cuspid to the first molar with two what we call
5 ponding or two false teeth in between supporting an
6 area or forming teeth and an area that had no teeth.
7 You can see this here, it starts with this x-ray.
8 This is the cuspid, you see, has the little bumps to
9 indicate two teeth over the area of no teeth and then
10 the molar has the -- is the end of the bridge, you
11 can see the crown or beyond that.

12 Also in this one, I talked to you yesterday
13 about what I called radiolucencies or little shadows
14 or halos around teeth that become infected. On both
15 of the roots of this molar, you can see this evidence
16 of something that's going on in there because of the
17 radiolucency, and also some decay up under the back
18 of this bridge.

19 This indicates that decay has gotten in
20 there, it's infected the nerve and that's started an
21 infection or abscess. Chronic abscesses can be
22 painful, sometimes they are not. On the x-ray here
23 it's even more apparent on the back root, there's a
24 rather large shadow around it.

25 Take some of the cases here, you can

1 actually overlay one over the other and get the same
2 effect. If you place these on a grid, have the same
3 magnification, one would overlay the other one
4 precisely. This is one of the ways that you can use
5 to compare on things that match up. You can compare
6 x-rays, placement of the bumps on filling, bumps on
7 crowns, particularly metal parts.

8 And like I said, the spacing is where they
9 are missing. The smaller x-rays you can compare
10 cavities, decay, and teeth.

11 MR. BRITT: Thank you. If you
12 could return to the stand.

13 THE WITNESS: (Witness complies).

14 BY MR. BRITT:

15 Q Dr. Brown, based upon your study and
16 comparison of the x-rays and dental charting of
17 August the 8th, 1993, with those that -- with the
18 known dental records of James Jordan, did you form an
19 opinion as to the identity of the body in which the
20 jaws and the dental works had been removed?

21 A Yes, I did.

22 Q And based upon -- what was your opinion?

23 A Okay. It's my opinion, based on the dental
24 information in the records premortem, antemortem and
25 postmortem records that were taken, that in this case

1 that they are comparable and identical.

2 Q To whom?

3 A It's the remains, comparable and identical
4 to the remains of autopsy 93-243.

5 Q That is the known dental records of James
6 Jordan and the dental records that you made in
7 connection with Dr. Sexton's autopsy?

8 A That's correct.

9 MR. BRITT: Thank you. I don't
10 have any other questions.

11 THE COURT: Any
12 cross-examination?

13 MR. BOWEN: Yes.

14 CROSS-EXAMINATION

15 BY MR. BOWEN:

16 Q Let's talk about root canals a minute. Do
17 you make root canals in your practice?

18 A Yes, I do.

19 Q As you were looking at the x-rays there on
20 the chart there, did you see anything distinctive
21 about those root canals on that chart that would have
22 in effect been the signature of a particular dentist,
23 something that we could have used to distinguish that
24 dentist's root canals from anybody else's root
25 canals?

1 MR. BRITT: Objection to form.

2 THE COURT: Do you understand the
3 question, Dr. Brown?

4 THE WITNESS: Yes.

5 THE COURT: Objection overruled,
6 you may answer.

7 THE WITNESS: In the case of root
8 canals, there's nothing -- it's not a
9 matter of one root canal being
10 significantly different from another based
11 upon the operator other than the material
12 he used. It's a matter of comparing
13 numbers of root canals and placements in
14 the mouth and certain teeth that they were
15 done on that you can make the comparison.

16 BY MR. BOWEN:

17 Q So it is, if you will, a statistical
18 analysis more than it is a specific analysis of the
19 art or the craft of one particular dentist?

20 A Depending on the dentist, the materials
21 used may be quite similar and therefore an x-ray of a
22 root canal on one cuspid, the inside, the white
23 material that shows up may look the same but the
24 shape of the tooth may be quite different.

25 Q But you can't look at an individual root

1 canal in those x-rays and say that Dr. Seitlin out
2 there did that root canal as opposed to some other
3 dentist, can you?

4 MR. BRITT: Objection as to form.

5 THE COURT: Sustained as to
6 form. There's no foundation for that
7 question.

8 BY MR. BOWEN:

9 Q Well, you looked at the x-rays of specific
10 individual root canals on specific teeth in these
11 photos, both -- that is, the x-rays, both the ones
12 furnished you through the Coroner's office and the
13 ones that came through Dr. Seitlin's office, is that
14 correct?

15 A That is correct.

16 Q Of all the root canals that you saw, you're
17 not able to look at a specific root canal and know
18 which dentist did it, are you?

19 MR. BRITT: Objection.

20 THE COURT: You have to establish
21 that there was some familiarity beforehand
22 with a specific dentist or class of
23 dentists, so the objection is sustained.

24 BY MR. BOWEN:

25 Q Is it possible to distinguish merely by

1 looking at a root canal what dentist did the
2 work?

3 MR. BRITT: Objection.

4 THE COURT: Do you understand his
5 question?

6 THE WITNESS: I believe so.

7 THE COURT: The objection is
8 overruled. You may answer if you can.

9 THE WITNESS: Unless there's a
10 particular curvature or something that
11 shows up, there's no signature, there are
12 no initials that we place on a root canal
13 that says, this is my work.

14 BY MR. BOWEN:

15 Q Now if you count the upper plate as one
16 procedure, you agree that approximately 15 procedures
17 were involved in the x-rays that you compared, is
18 that correct?

19 MR. BRITT: Objection.

20 THE COURT: Do you want to be
21 heard, Mr. Britt?

22 MR. BRITT: There's no foundation
23 that's been laid for this witness to answer
24 that question.

25 THE COURT: Rephrase, Mr. Bowen.

1 BY MR. BOWEN:

2 Q As I understand it, you looked at some root
3 canals, is that correct?

4 A Yes.

5 Q You looked at evidences of implant
6 procedure or procedures, is that correct?

7 A Yes.

8 Q You looked at an upper plate in the mouth,
9 is that correct?

10 A No, I looked at an upper bridge in the
11 mouth.

12 Q Upper bridge, is that what it's called?
13 Okay. And you looked at some other, I will call it,
14 false tooth attachments in the mouth, is that
15 correct?

16 A Yes.

17 Q Now, if I count the upper bridge as one
18 procedure, for example, each root canal as one
19 procedure, the implant as one procedure,
20 approximately how many procedures, in your opinion,
21 did you study?

22 MR. BRITT: Objection.

23 BY MR. BOWEN:

24 Q Or observe in that manner?

25 THE COURT: Overruled as to the

1 corrected question. You may answer.

2 THE WITNESS: Okay, if you'll
3 bear with me we can go through this, if you
4 want to go through it I'll tell you exactly
5 which ones we did and how the procedures
6 would be noted.

7 They would be noted as both positive
8 findings and negative findings in that some
9 places there are teeth and some places
10 there aren't teeth.

11 Tooth number one was missing so that
12 would be the first procedure. Tooth number
13 two was missing, that would be the second
14 procedure. Tooth number four was missing,
15 that would be another one. There was a
16 root tip on that which could also apply as
17 a fifth area. Tooth number five was
18 missing. That would be another procedure.
19 There is a root canal done on number six,
20 that would be -- if somebody is keeping --
21 that's six, sixth procedure, I believe.
22 Seven, eight, nine and ten are missing, and
23 11 and 12 are missing, so those are six
24 teeth, so I added six to that. That would
25 be 12 procedures at that point. Tooth

1 number 13 is there with a root canal.
2 That's a separate procedure. 14 is found
3 there. That would show up as another
4 procedure. 15 is there, it also has a root
5 canal done. 16 is missing. That would be
6 another procedure. And then you have the
7 fact that the bridge is there, as you said,
8 if you wanted to consider that as one
9 procedure in that it was placed at one
10 time. And I believe we're up to probably
11 15 or 16 at this point. Do you want me to
12 continue on the bottom?

13 BY MR. BOWEN:

14 Q So then it would be considerably more than
15 15 procedures the way you were numbering them, is
16 that correct?

17 MR. BRITT: Objection.

18 THE WITNESS: In my comparison --

19 THE COURT: Overruled.

20 THE WITNESS: I looked at all the
21 findings both positive and negative.

22 BY MR. BOWEN:

23 Q Now Dr. Brown, you are numbering missing
24 teeth as procedures because you are assuming that
25 those missing teeth occurred as a result of a dental

1 extraction procedure, is that correct?

2 A That's a common practice, I can't --

3 Q How many missing teeth would you say there
4 are in this mouth that you -- the x-rays of which you
5 compared?

6 A There are 11 missing on the top.

7 Q All right. Do you have any dental records
8 whatsoever that those extraction took place or were
9 performed by any dentist?

10 A I do not.

11 Q So you do not know whether those teeth were
12 pulled by a dentist or came out in some way, do you?

13 A No.

14 Q Therefore, you don't know whether those 11
15 so-called procedures ever took place, do you?

16 A In some cases I do know, because you could
17 see evidence of retained root tips so you know at one
18 time there was a tooth there.

19 Q But you don't know how it came to be
20 missing?

21 A I don't know the circumstances under which
22 it happened, no.

23 Q You assumed a doctor pulled it, but you
24 don't know?

25 A No, I said I assumed it was removed. I

1 didn't state who did it.

2 Q Yes, sir. But at least 11 of the
3 procedures that you're counting simply relate to
4 missing teeth?

5 A On the top, that's correct.

6 MR. BOWEN: That's all, sir.

7 THE COURT: Anything on redirect,
8 Mr. Britt?

9 MR. BRITT: No, sir.

10 THE COURT: May Dr. Brown be
11 released?

12 MR. THOMPSON: Yes, Your Honor.

13 THE COURT: Thank you, sir,
14 you're free to go.

15 Mr. Britt?

16 MR. BRITT: Your Honor, at this
17 time I ask that State's Exhibit 37-K be
18 published to the jury.

19 THE COURT: Do you have multiple
20 copies?

21 MR. BRITT: Yes, sir.

22 THE COURT: Have you shown the
23 copies to counsel for the defendant?

24 MR. BRITT: I'll be glad to.

25 THE COURT: Ladies and gentlemen

1 of the jury, please recall my instruction.
2 You are to examine each exhibit given to
3 you carefully and individually and without
4 any comment.

5 Do all members of the jury have a copy
6 of State's Exhibit 37-K? If so, please
7 indicate by raising your right hands.

8 Thank you, folks. Let the record
9 reflect all 15 members of the jury have
10 responded affirmatively. .

11 Mr. Horne, we've got an extra copy.
12 Thank you, sir.

13 THE BAILIFF: Yes, sir.

14 (Short pause).

15 THE COURT: Mr. Britt, for the
16 record, have all members of the jury had
17 the opportunity to examine State's Exhibits
18 35-B and State's Exhibit 37-K? If so
19 please so indicate by raising your right
20 hands.

21 Let the record reflect all fifteen
22 members of the jury have responded
23 affirmatively. Yes, sir.

24 MR. BRITT: Your Honor, at this
25 time, we call Dr. Ernest Burkes.

1 THE COURT: If you'll come up and
2 be sworn, please, sir.

3 THE COURT: Do the jurors need to
4 retain the exhibits for the purposes of his
5 examination?

6 MR. BRITT: They will be referred
7 to.

8 MR. THOMPSON: Your Honor, may we
9 have a break before he testifies?

10 THE COURT: Yes, sir. How long
11 do you anticipate the direct examination
12 will involve?

13 MR. BRITT: Half hour.

14 THE COURT: I apologize, Doctor,
15 it appears we need a break at this point.
16 You may have a seat in the audience.

17 Ladies and gentlemen of the jury, if
18 you will leave the exhibits in your chair.
19 Please recall it is your duty to abide by
20 all prior instruction of the Court
21 concerning your conduct during this
22 recess. Everyone else please remain
23 seated. Members of the jury are excused
24 until 11:25 by the clock on the far wall.
25 Pleases reassemble in the jury room at that

ERNEST
BURKES

1 time.

2 .m.)

3 THE COURT: We're at ease until
4 11:25.

5 (Brief recess.)

6 THE COURT: Let's the record show
7 that all counsel are present. The
8 defendant is present in open court. Mr.
9 Horne, are all members of the jury secured
10 in the jury room.

11 THE BAILIFF: Yes, they are.

12 THE COURT: Ready to go forward,
13 Mr. Britt?

14 MR. BRITT: Yes, sir.

15 THE COURT: If you'll bring the
16 jury in, please.

17 (Jury in at 11:27 a.m.)

18 THE COURT: Doctor, if you'll
19 come up and be sworn, sir. If you'll place
20 your left hand on the Bible, raise your
21 right, face Ms. Gaines, please.

22 ERNEST JEFFERSON BURKES, JR.,
23 being first duly sworn was examined and deposed as
24 follows:

25 DIRECT EXAMINATION

1 THE COURT: If you'll take the
2 witness stand. Sir, for the record, if you
3 will state and spell both your first and
4 last names.

5 THE WITNESS: My name is Ernest
6 Jefferson Burkes, Jr. E R N E S T.
7 J E F F E R S O N, B U R K E S, Junior.

8 BY MR. BRITT:

9 Q Dr. Burkes, state your occupation, please.

10 A I'm a dentist, I'm a professor at the
11 University of North Carolina.

12 Q What is your educational background?

13 A My educational background is a Bachelor's
14 Degree from Baylor University, a DDS Degree from
15 Baylor University School of Dentistry, Master's
16 Degree and a residency at the University of Michigan.

17 Q What area do you hold your Master's Degree
18 in?

19 A Oral pathology.

20 Q You've said you're a professor at the
21 University of North Carolina. What do you teach?

22 A I teach pathology and oral pathology at the
23 dental school.

24 Q And how long have you done that?

25 A I was first employed with the dental school

1 in 1969.

2 Q Do you presently still work with the dental
3 school at the University of North Carolina?

4 A Yes, I do.

5 Q Do you also work as a consultant with the
6 Chief Medical Examiner's Office which is located at
7 Chapel Hill?

8 A Yes, I do.

9 Q How long have you worked as a consultant to
10 the Chief Medical Examiner's Office?

11 A Since 1969, I filled in for the person who
12 was the major consultant when he was on vacation, out
13 of town, something. He retired in 1989, and I have
14 been the chief consultant since 1990.

15 Q What is the study of oral pathology?

16 A Oral pathology is the study of diseases of
17 all kinds that happen in the mouth, things that
18 happen to you systemically that can show up in the
19 mouth and things that are unique to teeth and
20 structures in the mouth.

21 Q And are you licensed to practice dentistry
22 here in the State of North Carolina?

23 A Yes, I am.

24 Q How long have you held such a license?

25 A Since 1969.

1 Q What training have you received in regard
2 to your position as professor of oral pathology at
3 the University of North Carolina?

4 A During my program at the University of
5 Michigan, I was thoroughly trained in educational
6 procedures as well as conditions that I might find in
7 and around the mouth. In 1964, I was sent to
8 Vietnam, where I was -- where I acquired some
9 on-the-job training in all phases of dentistry and in
10 forensic odontology.

11 Q What is the study of forensic odontology?

12 A Forensic odontology is basically what the
13 dentist can do to help identify and to help law in
14 any way that we can, through things like dental
15 identification.

16 Q Have you previously testified as an expert
17 in the area of forensic odontology?

18 A Yes, I have.

19 Q On how many occasions would you estimate
20 that you have testified as an expert in the area of
21 forensic odontology?

22 A Since 1990 when I became the consultant I
23 have testified approximately two times a year.

24 MR. BRITT: Your Honor, I would
25 tender Dr. Burkes as an expert in the area

1 of forensic odontology, and also the area
2 of oral pathology.

3 THE COURT: Counsel for the
4 defendant want to be heard as to the tender?

5 MR. BOWEN: No, sir.

6 THE COURT: The witness may so
7 testify.

8 BY MR. BRITT:

9 Q Dr. Burkes, in the area of forensic
10 odontology, how can an individual's mouth structure
11 and dental works be used in terms of identifying an
12 individual?

13 A Structures in the mouth, the teeth, the
14 jaws, the soft tissues, are unique for each
15 individual, and by the studies that I have done
16 before and that we do in oral pathology, we study
17 about the arrangement of these things about the
18 conditions that would be associated with these
19 things, and, as an odontologist, I would compare, as
20 I do in the medical examiner's office, all of the
21 things if there are soft tissues there, I will look
22 at those soft tissues, if there are bones, teeth,
23 those are all things that I look at as I make those
24 comparisons.

25 Q In August -- specifically, August the 20th

1 of 1993, Dr. Burkes, were you contacted by Special
2 Agent Kim Heffney of the State Bureau of
3 Investigation in regard to an investigation in which
4 he was involved?

5 A Yes, I was.

6 Q And on August the 20th of 1993, did
7 Mr. Heffney provide you certain radiographs and other
8 dental records for your study and comparison?

9 A Yes, he did.

10 Q Where did you meet with Mr. Heffney?

11 A At my home. I was on vacation.

12 Q And did the comparison and the study that
13 you did ultimately as a result of Mr. Heffney's
14 request occur there at your home?

15 A Yes, it did.

16 Q What if anything did Mr. Heffney ask you to
17 compare and render an opinion from?

18 A I had basically two sets of records, one an
19 older set that came from a dentist that was known to
20 Mr. Heffney, and one, records that had been provided
21 on what I understood was a remains that had been
22 charted and radiographed where they had been found.

23 Q Radiograph is another word for x-rays?

24 A X-rays, uh-huh.

25 Q And did you do that comparison that was

1 requested by Mr. Heffney?

2 A I did.

3 Q Did you make any notes of that comparison?

4 A Yes, I did.

5 Q In your comparison of the two sets of
6 x-rays, Dr. Burkes, what if anything did you find,
7 and what if anything did you conclude based upon your
8 study?

9 MR. BOWEN: Object.

10 THE COURT: Sustained at this
11 point. You're going to have to establish
12 for the record what was compared, if
13 anything.

14 MR. BRITT: Yes, sir, may I
15 approach?

16 THE COURT: Yes, sir.

17 BY MR. BRITT:

18 Q I'll show you what has been marked as
19 State's Exhibit 35-A, and ask if that was one of the
20 items that Mr. Heffney provided to you for purposes
21 of your comparison?

22 A It was a -- a copy of this was provided to
23 me.

24 Q I hand you what's been marked as State's
25 Exhibit 37-B and ask you if that was also an x-rays

1 or radiograph that was provided to you for the
2 purposes of conducting your comparison?

3 A Yes, it was.

4 Q And are State's 35-A and 37-B in
5 substantially the same condition as they were in when
6 you compared them on August the 20th of 1993?

7 A Substantially.

8 Q Dr. Burkes, for the record, State's 35-A
9 has previously been identified as the dental x-rays
10 that Dr. Brown in Newberry, South Carolina had made,
11 and State's Exhibit 37-B have previously been
12 identified as the known dental records of James
13 Jordan as provided by Dr. Lawrence Seitlin.

14 MR. BRITT: Could I ask
15 Dr. Burkes to step down?

16 THE COURT: Yes, sir.

17 MR. BRITT: If I could inquire if
18 all members of the jury could see the
19 x-rays.

20 THE COURT: Yes, sir.

21 BY MR. BRITT:

22 Q Dr. Burkes, when comparing a set of x-rays
23 with -- that the identity of an individual is
24 unknown, with a set of x-rays that are known to an
25 individual, what similarities or characteristics do

1 you look for in conducting the comparison for the
2 purposes of trying to identify the unknown set of
3 x-rays?

4 A Well, the system that I use is, depends on
5 basically what I have available. I enjoy having
6 radiographs like this available because I can use not
7 only the teeth to look at but I can look at other
8 structures like the sinus, I can look where the nerve
9 that supplies the lower teeth goes, so there are many
10 things anatomically that I can identify on a
11 radiograph like this. And I can similarly identify
12 some of those same structures on these radiographs.
13 It's just not quite as easy.

14 Once I have made those kind of
15 identifications of bone structures that might be
16 helpful to me, then I will start looking at the jaw
17 structure, specifically the part of the bone that
18 holds the teeth in it. It's called the alveolus.
19 And starting on the upper right, we usually number
20 from that direction, I go in that same direction as
21 the way we number teeth, looking at the level of bone
22 to compare the two levels of bone.

23 Then I will begin to look back at the teeth
24 and see what has been done individually to each
25 tooth. Once I have made that kind of assessment,

1 then I will look for unique circumstances like has
2 been referenced a couple of times, and that is the
3 root tip that shows up over here, which is very
4 unusual, as well as very unusual structures like the
5 implants that people have talked to you about.

6 So I have a systematic way that I look at
7 the bone, any kind of soft tissue that I might find
8 that would be helpful to me, teeth structures and
9 things that have been done to the teeth and
10 structures associated with the teeth.

11 Q And can you tell the jury or show the jury
12 the characteristics that you found in the x-rays that
13 have been marked as State's Exhibit 35-A which is
14 Dr. Brown's x-rays, and the same characteristics,
15 items that showed up in State's Exhibit 37-B, Dr.
16 Seitlin's x-rays?

17 A Okay. What I -- to start over, kind of
18 what I was looking at here, and I don't know if
19 you're close enough or not, but you can see where the
20 sinus dips down and looks like it's right on top of
21 the roots of the teeth. And I can look over here in
22 these radiographs and I can see a similar --

23 THE COURT: I apologize for the
24 interruption, Dr. Burkes but the members of
25 the jury on the far end of the jury are

1 unable to hear. Essentially, what it means
2 you're going to have to stand on the side
3 and point around. I apologize.

4 THE WITNESS: Can you see the
5 dark area right there? Dark area right
6 before these teeth here. That
7 correspondences with a dark area here, and
8 that's the sinus. In the teeth, the top
9 teeth roots stick right up to that sinus
10 and sometimes they stick into the sinus,
11 sometimes they don't quite get to the
12 sinus. So one of the things I would look
13 at would be the position of the roots of
14 the teeth. Then I would look at the
15 formation of the roots of those teeth.
16 Here you can see a size and shape, how many
17 roots those teeth have, all those are
18 unique factors that I would use to compare
19 what I am seeing with.

20 Then if I were to go back and look at
21 the kinds of appliances or kinds of
22 fillings that had been done on the teeth,
23 then I look at each tooth, compare each
24 tooth individually to figure out if the
25 same restorations or the same crowns or the

1 same kinds of appliances have been used in
2 all of those areas.

3 In this particular instance, we have
4 some unique features in that we do have a
5 good match with the sinus, we have a good
6 match with the number of teeth, the shapes
7 of the roots of those teeth, where the
8 teeth are in the jaw, in other words, the
9 numbers of which teeth were compared, and
10 we have a restoration that appears to go
11 across and include all of those, in that
12 same restoration, and the teeth roots and
13 the root canals that have been done show up
14 on that radiograph.

15 Same thing on the bottom, and again
16 going over here where we've some unique
17 features here and then we have a peculiar
18 kind of implant that's present in the jaw
19 and in approximately the same distance from
20 each other, the same slant that I would
21 expect in this instance. And I would look
22 at what has been done to the teeth and you
23 can see that there is the evidence of
24 crowns on some of those teeth with what we
25 saw was a dismissed root canal filling

1 there (indicating) and changes that occur
2 with the disease.

3 BY MR. BRITT:

4 Q You mentioned the implants and said they
5 were of a particular design or type. Why do you
6 characterize them in that way?

7 A There are evidently a lot of different
8 kinds of implants that can be used, and I think
9 perhaps the shape of these implants is important in
10 that we have the same shape in that implant on the
11 postmortem as well as on the antemortem
12 radiograph.

13 THE COURT: Doctor, can you
14 clarify for the purposes of the jury what
15 is meant by the terms antemortem and
16 postmortem.

17 THE WITNESS: Before this was
18 taken -- this was taken before the person
19 died, and this, as I'm told, were the
20 radiographs taken, or the x-rays taken
21 after the person had died.

22 THE COURT: Thank you, sir.

23 BY MR. BRITT:

24 Q Are an individual's dental works and bone
25 structures in their mouth unique to that particular

1 person?

2 A Yes, they are.

3 Q And what makes them unique?

4 A Well, basically all the features we just
5 talked about. If we took radiographs of all you all,
6 x-rays of all you all, we would see a position of the
7 sinus. We would see positions of the teeth, how they
8 are angled, what the size of the roots are, how long
9 they are, and all of those are unique to you. When I
10 look at this, I see that these are unique features in
11 these two radiographs, x-rays.

12 Q In comparing the two radiographs, did you
13 note any similarities as to location of root canals
14 that were present?

15 A Yes, the root canals are in the same teeth
16 on this, and this (indicating).

17 Q Did you note the presence of what I will
18 refer to as a pin in the area where a lower bridge
19 was located?

20 A Well, there is a pin displaced in a bridge
21 here, which which would occur with some angulation of
22 the x-rays which may not show up in other areas.

23 MR. BRITT: If you could return
24 to the stand.

25 THE WITNESS: (Witness complies).

1 BY MR. BRITT:

2 Q Dr. Burkes, based upon your comparison of
3 the known dental record of James Jordan as provided
4 by Dr. Seitlin and the postmortem x-rays made by
5 Dr. Brown, based upon your training and your
6 experience, did you form an opinion as to whether the
7 known dental x-rays of James Jordan was comparable to
8 the postmortem x-rays made by Dr. Brown?

9 A Yes, I did.

10 Q And based upon your training and experience
11 what if any opinion did you form?

12 A In my opinion, these radiographs, these
13 x-rays both before death and after death were made of
14 the same person.

15 MR. BRITT: Thank you. I don't
16 have any other questions.

17 THE COURT: Any
18 cross-examination?

19 MR. BOWEN: Yes.

20 CROSS-EXAMINATION

21 BY MR. BOWEN:

22 Q Dr. Burkes, my name is Woodberry Bowen,
23 representing the defendant. Sometime after your
24 examinations that you've described here in the
25 courtroom took place, do you recall receiving a

1 telephone call from me?

2 A Yes, I do.

3 Q And during that telephone conversation, do
4 you recall my asking to talk to you about these
5 matters and things?

6 MR. BRITT: Your Honor,
7 objection.

8 THE COURT: Members of the jury,
9 there's a matter of law the Court must take
10 up out of the hearing and presence of the
11 jury. Please recall my instruction in that
12 regard. Don't worry or speculate about
13 what takes place in the courtroom in your
14 absence. If all members of the jury would
15 step to the jury room, please.

16 (Jury out at 11:48 a.m.)

17 THE COURT: In the absence of the
18 jury, Mr. Britt, if you'll state the basis
19 of your objection.

20 MR. BRITT: Your Honor, the basis
21 of the objection, anything that Mr. Bowen
22 may have told Dr. Burkes is hearsay. And
23 as we went into the other day, such a line
24 of questioning could result in Mr. Bowen
25 potentially being called as a witness.

1 THE COURT: Well, they are both
2 valid concerns. One is, I don't know
3 whether this line of questioning is going
4 to lead to any communication of information
5 by counsel for defendant, specifically by
6 Mr. Bowen to the witness which would
7 involve hearsay. But more importantly, the
8 potential exists that if, for example, a
9 purported impeachment question were asked
10 of this witness in the context of that
11 conversation, and if that impeachment
12 question turns out not to impeach, for
13 example, it is by the witness, potentially
14 that puts you in the position of being a
15 possible witness in this case. An under
16 our rules you can't be both counsel for an
17 individual and a witness in the case.
18 Ethically, that raises a number of
19 considerations. Among those considerations
20 are the Sixth Amendment right to effective
21 assistance of counsel, which may be denied
22 to a defendant if a lawyer finds himself or
23 herself in the position of either being a
24 witness for purpose of impeachment for
25 foregoing that because it's prohibited by

1 the ethical rules and considerations, and
2 thereby denying his counsel -- or his
3 client effective assistance of counsel.

4 Do you understand where my --

5 MR. BOWEN: I understand exactly
6 what your concerns are, but that doesn't
7 mean to say that a defense lawyer who was
8 at a stage in the investigation where he
9 did not have investigators and where he
10 usually is in cases that he doesn't have
11 the luxury of having those investigators,
12 he has to be intimidated not to ask a
13 question.

14 THE COURT: It's not a matter of
15 intimidation, Mr. Bowen. Even if that
16 situation does arise, then as a matter of
17 precaution, the lawyer involved in that
18 situation needs to follow up that
19 conversation through an investigator,
20 through somebody who can be a witness.

21 MR. BOWEN: If the man answers as
22 I expect him to there's not a problem.

23 THE COURT: Let's go on voir
24 dire. See where we're going. Let the
25 record reflect the following voir dire is

1 being conducted in the action of the jury.

2 BY MR. BOWEN:

3 Q Dr. Burkes, you recall my calling you, sir?

4 A Yes, I do.

5 Q And I made a request of you to discuss with
6 me the matters of things that generally you've talked
7 about here in your testimony today, is that
8 correct?

9 THE COURT: That's hearsay but
10 let's go forward for purposes of voir
11 dire. You may answer.

12 THE WITNESS: Yes.

13 BY MR. BOWEN:

14 Q And as a result of that, did you talk to me
15 at that first telephone call?

16 A I didn't catch the first of your question.

17 Q Did you talk to me about those matters as a
18 result of my first telephone call?

19 A I do not recall the exact content of my
20 discussion with you.

21 Q Let me ask you this. Do you recall that
22 you declined to discuss with me the first time but
23 either called me back or allowed me to call you back
24 and we discussed it on the second telephone account?

25 A Yes, we had a second encounter, right.

1 Q Did you state to me as a result of my
2 question that there was no written documentation
3 concerning your dental comparisons at that time?

4 A As I recall, my comment to you was that
5 what I had written was a matter of public
6 record.

7 THE COURT: There we go.

8 Q You do not recall denying to me at first
9 that there was a written notation?

10 A At that point, I did not have the typed
11 copy of that communication.

12 Q But you're saying that it did exist, is
13 that correct?

14 A I had made a record, a handwritten record,
15 yes.

16 Q What did you tell me, if anything, about
17 that record, about the existence of that record?

18 A Best of my knowledge, what I told you was
19 that that would be a matter of public record.

20 MR. BOWEN: That's all.

21 THE COURT: All right. At the
22 time in question, Mr. Bowen, at the time
23 you made the call that you referred to in
24 your questions to Dr. Burkes, you were
25 co-counsel in this case with Mr. Angus

1 Thompson.

2 MR. BOWEN: Yes.

3 THE COURT: Mr. Thompson at that
4 time was the Public Defender.

5 MR. BOWEN: Yes, sir.

6 THE COURT: At that time
7 Mr. Angus Thompson had available to him the
8 services of an investigator in his office,
9 correct.

10 MR. BOWEN: That's probably true,
11 yes, sir.

12 THE COURT: That investigator's
13 name is Garth Locklear.

14 MR. BOWEN: Yes, sir.

15 THE COURT: We've got hearsay in
16 the form of what was communicated by you in
17 the context of your question to Dr. Burkes,
18 the request that you made, we've got a
19 potential for you're asking an impeachment
20 question of Dr. Burkes which turned out not
21 to be impeachment on the issue of bias,
22 because his recollection differs from what
23 you apparently recall from the context of
24 your question. That potentially makes you
25 a possible witness in this case on a

1 collateral matter.

2 MR. BOWEN: I don't believe I can
3 testify to a collateral matter. Anyway.
4 Judge, I have found out from the voir dire
5 that he is not going to answer in the way
6 that I recall the situation, and I think
7 I'm bound by that. He said that it didn't
8 happen that way.

9 THE COURT: Do you intend to
10 pursue that line of questioning of
11 Dr. Burkes in the presence of the jury?

12 MR. BOWEN: No, sir, not when I
13 now know he's going to answer differently
14 than I expected him to.

15 THE COURT: The delima is at some
16 point down the road should there be a
17 conviction in this case, your client may
18 very well argue that he was denied
19 effective assistance of counsel because the
20 matters elicited on voir dire were contrary
21 to what you have just stated on the record
22 as being your recollection. And that that
23 inconsistency should have been developed in
24 the presence of the jury.

25 MR. BOWEN: As a collateral

1 matter, if I did it in front of the jury,
2 am I not bound by the jury.

3 THE COURT: Those questions go to
4 the issue of bias, do they not?

5 MR. BOWEN: I still think I've
6 got a duty to ask him.

7 What would be worse ineffective
8 assistance of counsel, getting myself into
9 a position where I might have to testify or
10 not asking the questions at all?

11 THE COURT: I don't mean to cut
12 you off, Mr. Bowen, but we're not talking
13 about gradation or degrees of ineffective
14 assistance of counsel.

15 MR. BOWEN: You agree there's two
16 choices, I either do ask or don't ask. If
17 I don't ask, then I've not gotten into an
18 area that could have produced potential
19 bias.

20 THE COURT: My concern is this
21 entire situation could have been avoided by
22 utilizing the services of an investigator
23 who was available at the time.

24 MR. BOWEN: Except he did not
25 have the background to ask the kind of

1 questions that needed to be asked. Are you
2 suggesting that a lawyer cannot contact and
3 talk to a potential witness?

4 THE COURT: I'm suggesting all
5 the rules of professional responsibility
6 and ethics caution a lawyer against putting
7 himself in a situation where this potential
8 exists.

9 MR. BOWEN: Judge, 95 percent of
10 the cases in Robeson County don't even have
11 any investigator available to private
12 lawyers. They have to investigate their
13 own cases.

14 THE COURT: We're not talking
15 about 95 percent of the cases. We're
16 talking in this case. You had an
17 investigator. Under Ake versus Oklahoma,
18 seeking additional investigative services.

19 MR. BOWEN: And we got that, and
20 got another dentist at a later time. But
21 this was a preliminary matter when it was
22 necessary to find out some things early on
23 in a hurry, if we could, in fact to find
24 out whether or not we were going to need an
25 Ake expert, because if this man had not

1 been able to make an identification,
2 obviously we wouldn't have needed another
3 expert.

4 THE COURT: The record reflects
5 what it reflects. You have indicated you
6 do not intend to pursue this line of
7 questioning. What I suggest, folks, is you
8 look at the line of cases set out under our
9 rules of professional responsibility about
10 the caveat pertaining to lawyers becoming
11 both a witness and counsel in a particular
12 case and how that situation can be
13 avoided.

14 If you'll bring -- any other matters
15 before we bring the jury back in?

16 MR. BRITT: No, sir.

17 THE COURT: If you'll bring the
18 jury back in, Mr. Horne. The objection is
19 sustained.

20 (Jury in at 11:56 a.m.)

21 THE COURT: I apologize, I
22 indicated that the objection was
23 sustained. Before I make any rulings, do
24 you withdraw the question?

25 MR. BOWEN: I don't pursue it.

1 THE COURT: I'm sorry, is that a
2 yes or no.

3 MR. BOWEN: I will not pursue it.

4 THE COURT: You may ask
5 additional questions.

6 BY MR. BOWEN:

7 Q Dr. Burkes, implants are generally done by
8 oral surgeons, is that correct?

9 A It's my understanding that implants are
10 frequently done by oral surgeons. We train oral
11 surgeons at the dental school to do this. We train
12 the prosthodontists to do this, the periodontists to
13 do this, so anybody from a well trained general
14 dentist to several of the specialties certainly have
15 the possibility of doing implants.

16 Q So to your knowledge, with your familiarity
17 with dentists in the State of North Carolina, there
18 would be hundreds of, perhaps thousands of dental
19 professionals who regularly and routinely do
20 implants, is that correct?

21 MR. BRITT: Objection.

22 THE COURT: Overruled. You may
23 answer, sir.

24 THE WITNESS: I do not have
25 specific numbers on that. I know there are

1 some general dentists who do this. I know
2 that there are probably half of the
3 periodontists and I'm sure at least half of
4 the oral surgeons in the state who do
5 implants.

6 BY MR. BOWEN:

7 Q The posts that are implanted in the course
8 of an implant, are there different manufacturers who
9 make those posts?

10 A It's my understanding that there are a
11 number of manufacturers of implant materials.

12 Q Did you determine the manufacturer of the
13 posts or post that were placed in Mr. Jordan's mouth?

14 A I did not see those posts, so I have no
15 direct knowledge of what kind of posts those were.
16 We can probably eliminate some of the manufacturers
17 by the design of the post.

18 Q Now, did you have an opportunity to examine
19 the posts that were in the jaw that was removed from
20 the body of the victim in South Carolina?

21 A I did not have that opportunity.

22 Q And do you know where at this time that jaw
23 and its contents or whatever posts it contains is?

24 A I do not know where that jaw is.

25 Q So you can't say that the posts that were

1 implanted by an oral surgeon remembered by Dr.
2 Seitlin are even of the same manufacturer as those
3 that appear in the radiograph from the mouth of the
4 individual found in South Carolina?

5 A I can say that they are implants of a size
6 and shape that could be identified by manufacturer.

7 Q But have not been?

8 A I do not know the manufacturer of the
9 posts.

10 Q The angle and shape -- strike that. The
11 angle at which the implants are found in these
12 radiographs is at somewhat of a slanted angle to the
13 jawbone, is that correct, or not?

14 A In the dimensions of the radiographs, what
15 we're looking at on an x-rays is just a plane
16 angulation. I can't tell you an angulation one way,
17 this way or this way. I can probably tell you this
18 way or this way, because of the way the radiograph is
19 taken.

20 Q So if the angle is different in at least
21 one of the axes as between the two radiographs, you
22 can't tell the jury, can you?

23 A I'm not sure what your question is.

24 Q Well, you're saying that there may be --
25 there's a slant if you look at it one way, is that

1 correct, or not?

2 A There -- yes, they are in the jaw in one
3 film in one direction.

4 Q But whether they are moving in the other
5 axis on the slant, you're not able to tell because of
6 the way the radiographs were taken, correct?

7 MR. BRITT: Objection.

8 THE COURT: Do you understand the
9 question, sir?

10 THE WITNESS: Well, we're getting
11 into a matter of radiation physics here and
12 I'm not sure that we're ready for that, I'm
13 not ready to discuss radiation physics with
14 you.

15 BY MR. BOWEN:

16 Q You know there's some root canals on both
17 of those radiographs, is that right?

18 A That's correct.

19 Q And was Dr. Seitlin out here, was he your
20 student at Chapel Hill?

21 A He was.

22 Q Can you look at those root canals and see
23 any particular signature or any particular
24 characteristic that will tell you that to the
25 exclusion of all other doctors that your student, Dr.

1 Seitlin, did those particular root canals?

2 MR. BRITT: Objection.

3 THE COURT: Overruled. You may
4 answer if you can, sir.

5 THE WITNESS: What I would say is
6 there are different techniques of doing
7 root canals. The students at UNC are
8 taught a specific technique. At Baylor
9 when I went to dental school I was taught a
10 different technique, so we might not have a
11 signature of a particular dentist, but we
12 may have a signature of a technique of some
13 type.

14 BY MR. BOWEN:

15 Q So you can't say that a specific root canal
16 in those radiographs was made specifically by Dr.
17 Seitlin, can you? Just we're talking about one, pick
18 out any one root canal, you can't say it has the
19 signature of any one particular dentist, can you?

20 A I would not be able to tell you if you
21 showed me a whole series of people who had root
22 canals, I could not pick out the one that Dr. Seitlin
23 had done.

24 Q It's not unusual to find several root
25 canals in the mouths of adults age 40 or over, isn't

1 that true?

2 A I'm not sure what several is. Root canals
3 are usually things that are done for adults, yes, we
4 don't see those in children very often.

5 Q Now, a restoration of the type that was
6 found in the mouth in question, that is, what I
7 believe you referred to it as the upper bridge, full
8 upper bridge, is that the correct nomenclature?

9 A That's close, yes.

10 Q Those are done routinely and regularly
11 across the State of North Carolina by dentists, are
12 they not?

13 A The kind of restoration that goes from one
14 side, around and includes basically all of the teeth
15 in that arch is a fairly unique kind of restoration.
16 If you look at bridges done in the upper jaw, unless
17 there are teeth missing in certain unique places,
18 they would frequently not make that all as one piece.

19 Q You cannot look at that piece of hardware
20 or a radiograph of that piece of hardware and tell
21 simply by looking at it or its x-rays that it was
22 made or placed there by one particular dentist as
23 opposed to another, could you?

24 A I could not make that distinction
25 either.

1 MR. BOWEN: That's all, Your
2 Honor.

3 THE COURT: Anything on redirect,
4 Mr. Britt?

5 REDIRECT EXAMINATION

6 BY MR. BRITT:

7 Q Dr. Burkes, you looked at more than root
8 canals and you looked at more than dental implants in
9 your comparison, did you not?

10 A I looked at the things that I explained to
11 you, bone structures, fillings, root canals,
12 implants.

13 Q And the number of different areas that you
14 looked at in doing your study, they were unique, were
15 they not?

16 A In my opinion, there was a unique match
17 between the two records that I received.

18 Q When you say there was a unique match
19 between the two records that you compared, what do
20 you mean by the term "unique match"?

21 A That the radiographs that I saw of the
22 dead, the postmortem x-rays, were made on the same
23 individual as those made that I saw before death on
24 James Jordan.

25 MR. BRITT: I don't have any

1 other questions.

2 THE COURT: Anything further?

3 MR. BOWEN: Not at this time,
4 Your Honor.

5 THE COURT: May the witness be
6 released?

7 MR. BOWEN: Not yet. We're going
8 to need to have a moment to confer, Your
9 Honor.

10 THE COURT: Yes, sir, I'll give
11 you that.

12 You folks need to be excused to the
13 jury room?

14 MR. THOMPSON: Yes.

15 THE COURT: Ladies and gentlemen
16 of the jury, let me ask you to go to the
17 jury room again. Don't worry or speculate
18 about what takes place in the courtroom in
19 your absence. Please leave the exhibits in
20 your seats. Please recall it is your duty
21 to abide by all prior instructions by the
22 Court concerning your conduct.

23 (Jury out at 12:08 p.m.)

24 MR. BOWEN: May we have ten
25 minutes with our client, Your Honor,

1 something I need to take up with him in
2 view of Your Honor's remarks.

3 THE COURT: Yes, sir, you may
4 have that.

5 Folks, the rules of professional
6 responsibility apply equally in Robeson
7 County as they do everyone else in the
8 State.

9 MR. BOWEN: Yes, sir, and I --

10 THE COURT: I'm not arguing with
11 you, Mr. Bowen. You've asked for an
12 opportunity to consult with your witness.
13 You have that opportunity. Do it.

14 Thank you, sir, you may step down.

15 THE WITNESS: Am I dismissed?

16 THE COURT: No, sir, if you'll
17 remain with us for a few moments.

18 We're at ease, folks.

19 THE COURT: Mr. Bowen,
20 Mr. Thompson, at this point we're back on
21 the record. I'll ask you to pull State
22 versus Elam, E L A M, NC 56, 590. Spivey
23 versus United States, 96 Fed. 2nd, 80, 1994
24 Circuit case applying 5.2 of the Rules of
25 Professional Conduct.

1 MR. BOWEN: I've read 5.2 A and B
2 and particularly A(4), and based upon what
3 it says, I am of the opinion --

4 THE COURT: I'm sorry, sir, I'll
5 have to hold up until Mr. Britt gets back.

6 MR. THOMPSON: Your Honor, you're
7 saying Southeast Second?

8 THE COURT: Yes, sir.

9 MR. BRITT: May I approach?

10 THE COURT: Let the record
11 reflect all counsel are present. The
12 defendant is present in open court. All
13 members of the jury are secured in the jury
14 room.

15 Folks, Rule 5.2 of the Rules of
16 Professional Conduct reads as follows:
17 Paragraph A, a lawyer shall not accept
18 employment in contemplated or pending
19 litigation if he knows or it is obvious
20 that he or a lawyer in his firm ought to be
21 called as a witness, except that he may
22 undertake the employment and he or a lawyer
23 in his firm may testify and below are four
24 subparagraphs with listing the
25 circumstances under which a lawyer may

1 testify and represent a defendant in
2 litigation.

3 Our Supreme Court has held that the
4 weight of authority in this country is that
5 while it is a breach of professional ethics
6 for a party's attorney to testify about
7 other than formal matters, which deals with
8 the four enumerated cert paragraphs under
9 paragraph A, without withdrawing from the
10 litigation, a lawyer is not incompetent to
11 testify per se. The lawyer -- pardon me.
12 The testimony is admissible if otherwise
13 competent. Citing the case of Town versus
14 Mebane, M E B A N E, v. Iowa Mutual
15 Insurance Company as cited.

16 Elam stands for the following
17 proposition, whether to allow defense
18 counsel to testify on a collateral matter,
19 impeachment of a witness, which is our
20 situation, is in the discretion of the
21 trial judge. Now, the ethics opinions
22 notes below five point two are as follows:

23 A lawyer who must testify for a party
24 generally may not represent that party even
25 with the consent of the adverse party.

1 Folks, we are not in any of the
2 paragraphs one through four as set out
3 under paragraph A. Elam as I recall it,
4 involved a matter similar to our
5 situation.

6 Do you want to be heard further
7 Mr. Bowen in that regard?

8 MR. BOWEN: No, sir. Your Honor,
9 we have particularly read rule 5.2 A and B
10 and especially in light of A parens four,
11 and it would be our position that under
12 four, in the discretion of the Court, it
13 being that there would be a substantial
14 hardship to the client as we are in this
15 case, and as this difficulty could not have
16 been obvious to anyone, that it would be in
17 the discretion of the Court to allow me to
18 testify. However, the decision has also
19 been made among counsel and with the
20 defendant present that I will not offer my
21 testimony.

22 THE COURT: All right. Do you
23 consent to that, Mr. Green?

24 MR. GREEN: Yes, sir.

25 THE COURT: Mr. Green, you

1 understand that you may be foregoing,
2 waiving or giving up any rights that you
3 may have to alleged ineffective assistance
4 of counsel in any appeal that may result
5 from this trial as a result of that
6 decision?

7 MR. GREEN: Can you repeat that?

8 THE COURT: You understood what
9 Mr. Bowen just said?

10 MR. GREEN: Yes, sir.

11 THE COURT: He indicated after
12 consultation with you and with co-counsel,
13 Mr. Angus Thompson, that a decision has
14 been made by co-counsel, Mr. Thompson, by
15 Mr. Bowen, with your consent that he will
16 not offer himself as a witness in this
17 case. Do you understand that?

18 MR. GREEN: Yes, sir.

19 THE COURT: Do you understand
20 that specifically, under the existing case
21 law, under State versus Elam, the Court
22 does have discretion as to whether or not I
23 should allow Mr. Bowen to testify as a
24 witness for purposes of impeachment of
25 Dr. Burkes. Do you understand that I have

1 that discretion?

2 MR. GREEN: Yes, sir.

3 THE COURT: Also in the
4 discretion of the Court, the Court may
5 exercise his discretion to allow him to
6 remain your counsel in this case?

7 MR. GREEN: Yes, sir.

8 THE COURT: Do you understand
9 that the term impeachment means as tending
10 to discredit or contradict?

11 MR. GREEN: Yes, sir.

12 THE COURT: Do you understand
13 that therefore if Mr. Bowen were to testify
14 consistent with what was discussed earlier,
15 Mr. Bowen's testimony would essentially
16 consist of the following: He would testify
17 that on an earlier occasion prior to the
18 trial of this matter, he had a conversation
19 according to his recollection with
20 Dr. Burkes?

21 MR. GREEN: Yes, sir.

22 THE COURT: And that in that
23 conversation, Mr. Bowen would further
24 testify he asked Dr. Burkes whether or not
25 there was a written report or record of any

1 comparison he made and any findings that he
2 may have come to as a result of that
3 comparison?

4 MR. GREEN: Yes, sir.

5 THE COURT: You understand that
6 Mr. Bowen's recollection is that at the
7 time that conversation took place,
8 Dr. Burkes indicated to him, and if this is
9 incorrect, you let me know, that there was
10 no such written record?

11 MR. GREEN: Yes, sir.

12 THE COURT: Do you understand
13 that is in direct contradiction to the
14 testimony of Dr. Burkes who has testified
15 that according to Dr. Burkes' recollection,
16 he informed Mr. Bowen that there was a
17 written record which had not yet been
18 typed?

19 MR. GREEN: Yes, sir.

20 THE COURT: Do you understand
21 that that is in contradiction because he is
22 testifying that based upon his
23 recollection, his response to Mr. Bowen's
24 question was, yes, there is a record, it
25 has not been reduced to a typed form yet?

1 MR. GREEN: Yes, sir.

2 THE COURT: And that Mr. Bowen
3 would contend if he were to testify in this
4 case that that is not what Dr. Burkes told
5 him, that he instead told him that there is
6 no written record?

7 MR. GREEN: Yes, sir.

8 THE COURT: You understand that
9 would be admissible if at all only on the
10 issue of credibility of Dr. Burkes?

11 MR. GREEN: Yes, sir.

12 THE COURT: And that the jury
13 could consider that on the issue of
14 credibility as impeachment evidence as I
15 have defined what that evidence means for
16 you?

17 MR. GREEN: Yes, sir.

18 THE COURT: And are you telling
19 me that you consent to the decision made by
20 Mr. Bowen and Mr. Thompson, your counsel,
21 not to offer that evidence.

22 MR. GREEN: Yes, I am.

23 THE COURT: And are you fully
24 aware and do you -- I'm sorry, you were
25 going to say something?

1 that counsel could testify to impeach the
2 State's witness Dauze. To the effect that
3 Dauze was present during the entire
4 interview of State's witnesses, Rome and
5 Thompson, ethical considerations, EC 5-10
6 of the Code of Professional Responsibility,
7 North Carolina State Bar, Volume 4 A of the
8 General Statutes of North Carolina, parens,
9 cumulative supplement, 1981, close parens,
10 states, quote, in the exceptional situation
11 where it would be manifestly unfair to the
12 client for the lawyer to refuse employment
13 or to withdraw when he will likely be a
14 witness on a contested issue, he may serve
15 as advocate even though he may be a
16 witness. A mistrial was not necessary in
17 order for defendant's counsel to testify in
18 this case.

19 Now, so that the record is clear, is
20 the defendant moving for a mistrial based
21 on the matters that have developed?

22 MR. THOMPSON: No, sir.

23 THE COURT: Let the record
24 reflect that.

25 Do you consent or concur in that

1 decision not to move for a mistrial at this
2 time?

3 MR. THOMPSON: He said you lost
4 him.

5 THE COURT: Do you agree to the
6 consent -- to the decision not to move for
7 a mistrial based on the matters that have
8 developed, those matters being the matters
9 I just went in to on the record with you,
10 do you agree to that?

11 MR. GREEN: Mistrial means
12 starting all over?

13 THE COURT: Yes, sir.

14 MR. GREEN: Yes, sir, I agree to
15 that.

16 THE COURT: That's your decision
17 as well?

18 MR. GREEN: Yes, sir.

19 THE COURT: Let the record
20 reflect that as well.

21 Folks, that is a perilous area. I
22 recognize myself that that is an area that
23 we frequently find ourselves in. The
24 better course of action is to follow up any
25 communication between a lawyer and a

1 prospective witness for the opposition with
2 an investigator conducting that same
3 interview with counsel being present.

4 Yes, sir, Mr. Bowen?

5 MR. BOWEN: We did that except
6 for the counsel was not present.

7 THE COURT: Well, you had a
8 question earlier on, the investigator may
9 not necessarily know what to ask. That
10 problem is eliminated if it's a telephone
11 investigation or interview, and you're
12 sitting right next to your investigator
13 telling him what to ask.

14 Anything further on behalf of the
15 State?

16 MR. BRITT: No, sir, I think it's
17 all been covered.

18 THE COURT: I hope so.

19 Counsel for defendant, anything
20 further?

21 MR. BOWEN: No, sir.

22 MR. THOMPSON: No, sir.

23 THE COURT: Folks, again, I don't
24 mean to impinge on anybody's right to try
25 their case respectively the way I think it

1 ought to be tried, or trial tactics or
2 trial strategy, but that's a dangerous
3 area. And to the extent it can be avoid, I
4 hope we will in the future.

5 MR. THOMPSON: Your Honor, that's
6 why we asked for the time to discuss it
7 with our client.

8 THE COURT: Yes, sir. I think
9 that's the appropriate thing to do.

10 As to Dr. Burkes, will there be any
11 additional cross-examination of
12 Dr. Burkes?

13 MR. THOMPSON: No, sir.

14 THE COURT: I'm going to ask you
15 that in the presence of the jury. I'm
16 going to bring them back in. Mr. Britt,
17 I'll also ask you if you have any
18 additional questions.

19 MR. BRITT: No, sir, I don't have
20 any additional.

21 THE COURT: I'll ask that in the
22 presence of the jury.

23 MR. BRITT: I will inform the
24 Court, Dr. Burkes is my last witness for
25 this morning.

1 THE COURT: Yes, sir.

2 MR. BRITT: There are a number of
3 people en route both from Raleigh and from
4 Columbia, South Carolina.

5 THE COURT: 2:30 a good starting
6 time given their schedules?

7 MR. BRITT: Yes, sir.

8 THE COURT: We'll start back at
9 2:30. I'll inform the jury accordingly.
10 If you'll by the jury in, Mr. Horne.

11 (Jury in at 12:35 p.m.)

12 THE COURT: On behalf of the
13 defendant, will there be any additional
14 cross-examination?

15 MR. BOWEN: That's all, Your
16 Honor.

17 THE COURT: Any additional
18 redirect examination?

19 MR. BRITT: No, sir.

20 THE COURT: May Dr. Burkes be
21 released?

22 MR. BRITT: Yes.

23 MR. BOWEN: Yes.

24 THE COURT: Thank you, sir,
25 you're free to go.

1 Mr. Britt, do you have an additional
2 witness available at this time?

3 MR. BRITT: No, sir, not at this
4 time.

5 THE COURT: I understand from
6 comments made in the absence of the jury
7 that you have witnesses en route from
8 Raleigh and from Charlotte, is that
9 correct?

10 MR. BRITT: Columbia, South
11 Carolina.

12 THE COURT: I'm sorry. They will
13 be available at 2:30?

14 MR. BRITT: Yes, sir.

15 THE COURT: Members of the jury,
16 we're going to stop at this point. You
17 will have somewhat of an extended lunch
18 recess. Fortunately, the weather
19 conditions are much better today than they
20 were yesterday.

21 During the lunch recess, please recall
22 that it is your duty to abide by all prior
23 instructions of the Court concerning your
24 conduct. I'm obligated at this point to
25 again instruct you that you are not to talk

1 about this matter among yourselves or with
2 anyone else. You're not to allow anyone to
3 say anything to you or in your presence
4 about this case. If anyone communicates
5 with you about this matter or attempts to
6 do so, or if anyone says anything at all in
7 your presence about this case, it's your
8 duty to inform us of that immediately by
9 contacting one of the bailiffs assigned to
10 this courtroom.

11 Don't form or express any opinions
12 about this matter. Don't have any contact
13 or communication of any kind with any of
14 the attorneys, parties, witnesses,
15 prospective witnesses or directly with the
16 Court. Don't allow yourselves to be
17 exposed to any media accounts which may
18 exist in connection with this matter.
19 Don't conduct any independent inquiry or
20 research of any kind.

21 Mr. Britt, will it be necessary for
22 the jurors to retain the exhibits
23 previously given to them?

24 MR. BRITT: No, sir.

25 THE COURT: Ladies and gentlemen

1 of the jury, for those on the back row, if
2 you'll pass your exhibits up to the folks
3 on the front row. Mr. Horne, if you will
4 collect all exhibits given to the members
5 of the jury, please.

6 Everyone else please remain seated.
7 The members of the jury are excused until
8 2:30. Please reassemble in the jury room
9 at that time.

10 (Jury out at 12:38 p.m.)

11 THE COURT: Anything further from
12 either counsel?

13 MR. THOMPSON: No, sir, not from
14 defense.

15 MR. BRITT: No, sir.

16 THE COURT: Recess.

17 (Lunch recess).

18 THE COURT: Good afternoon,
19 folks. Mr. Horne, do we have all members
20 of the jury secured in the jury room?

21 THE BAILIFF: Yes, sir, we do.

22 THE COURT: Let the record
23 reflect all counsel are present, the
24 defendant is present in open court. All
25 members of the jury are now secured in the

1 jury room.

2 Folks, I don't mean to belabor this
3 point, but I believe that I have certain
4 obligations under the applicable case law
5 to make sure that any decision, any final
6 decision that's made by the defendant
7 Daniel Green, also known as U'Allah, be an
8 informed and intelligent decision. For
9 that reason, there are some additional
10 questions that I want to put to Mr. Green,
11 also known as U'Allah, at this time.

12 Mr. Green, if you will give me your
13 attention please, and if at any time you
14 don't understand anything I say, please let
15 me know that.

16 BY THE COURT:

17 Q Sir, do you understand that you were
18 entitled to have the independent judgment of an
19 attorney or attorneys free of any possible conflicts
20 of interest?

21 A Yes, sir.

22 Q Do you understand that because one of your
23 attorneys, specifically Mr. Woodberry Bowen, has
24 inquired on voir dire -- that term "voir dire" in
25 this instance means in a hearing held in the absence

1 of the jury, of a State's witness, specifically,
2 Dr. Burkes, as to certain matters which Mr. Bowen
3 contends were part of a telephonic conversation held
4 between Mr. Bowen and Dr. Burkes on some occasion
5 prior to the trial of this case?

6 A Yes, sir.

7 Q You understand that essentially those
8 matters gone into by Mr. Bowen on voir dire
9 examination of Dr. Burkes related to matters of
10 potential impeachment? That term "impeachment" again
11 means as tending to contradict or to discredit?

12 A Yes, sir.

13 Q Specifically, do you understand that
14 matters gone into by Mr. Bowen on voir dire as to
15 Dr. Burkes's related contention of Mr. Bowen, that in
16 this earlier telephonic conversation, Mr. Bowen
17 inquired of Dr. Burkes whether or not there was any
18 written record or report as to his comparisons or
19 findings regarding certain evidence given to him for
20 purposes of examination and analysis?

21 A Yes, sir.

22 Q And do you understand that this evidence,
23 if admitted before the jury in this case, is evidence
24 which could be considered by the jury on the issue of
25 Dr. Burkes' credibility?

1 A Yes, sir.

2 Q Do you further understand that any evidence
3 offered by Mr. Bowen on the question or issue as to
4 whether or not a telephonic conversation occurred
5 between himself and Dr. Burkes is also evidence that
6 the jury could consider in determining any matters
7 related to the credibility of Dr. Burkes?

8 A Yes, sir.

9 Q Do you understand that any evidence or
10 testimony offered by Mr. Bowen in contradiction of
11 that testimony given by Dr. Burkes on the voir dire
12 examination is evidence that could be considered by
13 the jury on the issue of Dr. Burkes' bias as a
14 State's witness?

15 A Yes, sir.

16 Q Do you understand that evidence as to bias
17 is also evidence that may be considered by the jury
18 on the issue of credibility?

19 A Yes, sir.

20 Q Now, I understand that at the time these
21 matters arose on the voir dire examination, at the
22 conclusion of the voir dire examination, based on
23 earlier matters of record, that you had an
24 opportunity to consult with your court appointed
25 counsel, specifically, with Mr. Angus Thompson, the

1 Public Defender here in this judicial district, as
2 well as Mr. Woodberry Bowen?

3 A Yes, sir.

4 Q Now, do you understand that you have the
5 right to independent consultation with another
6 attorney, specifically, the Court is willing and I'm
7 telling you now that I would appoint independent
8 counsel to advise you regarding this potential
9 conflict of interest between yourself and your court
10 appointed counsel?

11 A Yes, sir.

12 Q Now, specifically, as to a potential for
13 conflict of interest, I want to bring this to your
14 attention. I previously read out in the record the
15 provisions of Rule 5.2 of the North Carolina Rules of
16 Professional Conduct. I want to read that out in its
17 entirety at this time.

18 A provides that a lawyer shall not accept
19 employment in contemplated or pending litigation if
20 he knows or it is obvious that he or a lawyer in his
21 firm ought to be called as a witness, except he may
22 undertake the employment or he or a lawyer in his
23 firm may testify, one, if the testimony will relate
24 solely to an uncontested matter here, which is not
25 situation here; two, if the testimony will relate

1 solely to a matter of formality and there is no
2 reason to believe that substantial evidence will be
3 offered in opposition to the testimony, which is not
4 the situation here; three, if the testimony will
5 relate solely to the nature and the value of legal
6 services rendered in the case by the lawyer or his
7 firm to the client, which is not the situation here;
8 four, as to any matter if refusal would work a
9 substantial hardship on the client because of
10 distinctive value of the lawyer or his firm as
11 counsel in the particular case.

12 Now, your attorneys, Mr. Bowen or
13 Mr. Thompson, have contended to the Court that it
14 would represent a substantial hardship on you, the
15 client, if they were compelled to be withdrawn as
16 attorneys of record in this case.

17 Is that correct, in terms of what you
18 understand your contention to be Mr. Bowen, Mr.
19 Thompson?

20 MR. BOWEN: Yes, sir.

21 THE COURT: Do you also
22 understand it to be the contention of
23 Mr. Bowen and Mr. Thompson?

24 MR. GREEN: Yes, sir.

25 THE COURT: Specifically, that a

1 substantial hardship would result to you if
2 they were compelled to withdraw because of
3 the Rules of Professional Conduct in this
4 instance?

5 MR. GREEN: Yes, sir.

6 THE COURT: Paragraph B reads as
7 follows: "If after undertaking employment
8 in contemplated or pending litigation, a
9 lawyer learns or it is obvious that he or a
10 lawyer in his firm ought to be called as a
11 witness on behalf of his client, he shall
12 withdraw from the conduct of the trial and
13 his firm if any shall not continue
14 representation in the trial except that he
15 may continue representation and he or a
16 lawyer in his firm may testify under the
17 circumstances enumerated in paragraph A
18 above."

19 Again, your counsel contends that
20 paragraph A, subparagraph 4 applies to
21 them. That should Mr. Bowen be called as a
22 witness on your behalf, specifically as an
23 impeachment witness as it relates to the
24 testimony of Dr. Burkes, that their further
25 contention is that the Court in the

1 exercise of its discretion ought to allow
2 them to remain as counsel of record. Is
3 that correct, Mr. Bowen and Mr. Thompson?

4 MR. BOWEN: Yes, it is.

5 THE COURT: Is that your
6 understanding Mr. Green?

7 MR. GREEN: Yes, sir.

8 THE COURT: Paragraph C reads,
9 "If after pending litigation, a lawyer
10 learns or it is obvious that he or a lawyer
11 in his firm may be called as a witness
12 other than on behalf of his client, he may
13 continue the representation until -- pardon
14 me, it is apparent that his testimony is or
15 may be prejudicial to his client."

16 The Court find that paragraph C does
17 not apply to your situation. Do you concur
18 in that Mr. Thompson?

19 MR. THOMPSON: Yes.

20 THE COURT: Mr. Bowen?

21 MR. BOWEN: Yes.

22 THE COURT: Have you so advised
23 Mr. Green?

24 MR. THOMPSON: Yes.

25 THE COURT: Mr. Green, have they

1 so advised you?

2 MR. GREEN: Yes, sir.

3 THE COURT: Mr. Green, at this
4 time do you wish before, making any final
5 decision in this regard, the right to
6 independently consult with an attorney
7 other than Mr. Bowen or Mr. Thompson?

8 MR. GREEN: How long would it
9 take?

10 THE COURT: Feasibly, it should
11 be done this afternoon. And I am willing,
12 I'm telling you on the record, to suspend
13 these proceedings until you've had that
14 opportunity if you indicate to me that's
15 what you want to do. And before you answer
16 that question, let me give you the
17 following additional information. The
18 commentary to the 5.2 of the rule that I
19 have referred to reads as follows:
20 Combining the rolls of advocate and witness
21 can prejudice the opposing party and can
22 involve a conflict of interest between the
23 lawyer and the client. That conflict, as I
24 see it, is specifically as follows:
25 Mr. Bowen and Mr. Thompson are obligated as

1 are all attorneys in the State of North
2 Carolina to inform their conduct to the
3 Rules of Professional Conduct.

4 In fulfilling their obligation under
5 the Rules of Professional Conduct, that may
6 cause a conflict to arise between counsel
7 and the client they represent. In other
8 words, in an attempt to conform their
9 conduct to the Rules of Professional
10 Conduct, that is to avoid the situation
11 where there are both client or -- excuse
12 me, counsel and witness, they may refrain
13 from placing themselves in that delima by
14 indicating that they do not wish to testify
15 as a witness in the case, and therefore not
16 subject themselves to the potential or
17 possibility of being compelled to withdraw
18 from that case, and at the same time, avoid
19 violating the Rules of Professional
20 Conduct, specifically rule 5.2.

21 Further, a conflict may exist because
22 they have an obligation to explain to you
23 any potential conflicts of interest that
24 may arise and in their explanation of any
25 potential conflicts of interest, they may

1 not fully or adequately explain their
2 obligations under the Rules of Professional
3 Conduct so that you can make an informed
4 intelligent choice.

5 Do you understand what I've said up to
6 this point.

7 MR. GREEN: Yes, sir.

8 THE COURT: In determining
9 whether or not you want to make any final
10 decision or concurring in any decision that
11 may be reached by your counsel after
12 consultation with you, you have the right
13 to independent consultation with another
14 lawyer who is not affected or potentially
15 affected by the role. You also have a
16 right to waive or give up independent
17 consultation.

18 MR. GREEN: I mean, I honestly
19 don't see any error on Mr. Bowen's part,
20 but I think that to be safe, you know, that
21 I should probably consult with an
22 independent counsel.

23 THE COURT: So you're indicating
24 to me that you do want to exercise your
25 right to independent counsel consultation?

1 MR. GREEN: Yes, sir.

2 THE COURT: That's absolutely
3 your right.

4 Can you tell me who would be next on
5 the Court appointed list?

6 I'll call for that list. Do you have
7 a preference to any attorney locally?

8 MR. GREEN: Somebody out of his
9 office?

10 THE COURT: A conflict from
11 Mr. Thompson is a conflict to anybody's
12 office. Potential conflict for Mr. Bowen
13 is a potential conflict for any member of
14 his firm, any lawyer who is a member of his
15 firm.

16 MR. THOMPSON: We can't advise
17 him, Your Honor.

18 MR. GREEN: It doesn't -- I don't
19 know anybody.

20 THE COURT: We'll find out who is
21 next on the list, do it arbitrarily. Once
22 I determine who that next person is on the
23 list, I'll tell you who is the person I'm
24 contemplating appointing.

25 THE COURT: While we're trying to

1 find out that further information, let me
2 give you some additional.

3 You understand that because of any
4 potential impeachment evidence as to Mr.
5 Burkes' testimony will not be placed before
6 the jury because of the decision that
7 Mr. Bowen will not testify, that evidence
8 will not be considered by the jury?

9 MR. GREEN: Yes, sir.

10 THE COURT: Do you further
11 understand that your counsel would be
12 prohibited from arguing to the jury in this
13 case that as it relates to Mr. Burkes' or
14 Dr. Burkes' credibility in this case, they
15 may consider any inconsistent answer that
16 he may have given on the voir dire
17 examination with any testimony that may
18 contradict that evidence as it might come
19 through Mr. Bowen. In other words, that
20 evidence not being before the jury cannot
21 be considered by them and your lawyers
22 can't argue.

23 MR. GREEN: Yes, sir.

24 THE COURT: Do you further
25 understand that Dr. Burkes is -- has been

1 allowed to testify in this case as a
2 forensic odontologist, an expert in
3 forensic dentistry, and that his opinion as
4 to the identity of the alleged victim in
5 this case is critical evidence?

6 MR. GREEN: Yes, sir.

7 THE COURT: And that in
8 attempting to undercut or to contradict
9 that evidence, any matters related to the
10 credibility of Dr. Burkes or any
11 impeachment evidence as it relates to Dr.
12 Burkes' testimony is evidence which might
13 ordinarily be argued to the jury on the
14 issue of identification.

15 MR. GREEN: Yes, sir.

16 THE COURT: All right. Do you
17 further understand that it's not possible
18 for the Court to enumerate all of the
19 possible conflicts of interest which might
20 occur or arise because of the developments
21 occurring during the voir dire examination
22 of Dr. Burkes by Mr. Bowen, and do you
23 understand that there may very well be
24 other potential conflicts or actual
25 conflicts of interest arising from that

1 evidence, but the Court is simply not in a
2 position to enumerate them at this time?

3 MR. GREEN: Yes, sir.

4 THE COURT: Mr. Green, do you
5 have any questions about anything?

6 MR. GREEN: I just want to make
7 it clear it's not because of any lack of
8 trust of my attorneys.

9 THE COURT: I understand that you
10 indicate that you wish to, as a matter of
11 caution, exercise your right to independent
12 consultation?

13 MR. GREEN: Yes, sir.

14 THE COURT: Do you understand
15 fully the matters I've just gone into with
16 you?

17 MR. GREEN: Yes, sir.

18 THE COURT: The next listed
19 attorney is John W. Campbell. Mr. Campbell
20 represents the co-defendant in this case,
21 Larry Martin Demery. With the consent of
22 all parties I'm going to exclude
23 Mr. Campbell.

24 The next listed attorney after
25 Mr. Campbell is Ertle Knox Chavis. Do you

1 know Mr. Chavis?

2 MR. GREEN: No, sir.

3 THE COURT: He separate and apart
4 from Mr. Campbell who has a conflict in and
5 of itself. Do you have any objection to my
6 appointing Mr. Chavis for the purposes of
7 independent consultation?

8 MR. GREEN: No, sir.

9 THE COURT: Then with the consent
10 of Mr. Green, also known as U'Allah, on the
11 open record, court appoints Ertle Knox
12 Chavis for the limited purpose of
13 independent consultation.

14 MR. BRITT: The only attorneys
15 that have a conflicts would be
16 Mr. Campbell, Mr. Rogers and Arnold
17 Locklear who previously represented
18 Mr. Demery on one of the matters. I don't
19 know if Mr. Chavis has a conflict or not.

20 THE COURT: Are you folks aware
21 of any conflict?

22 MR. THOMPSON: No, sir.

23 MR. BOWEN: No, sir.

24 THE COURT: If you'll call
25 Mr. Chavis and ask him to come immediately

1 to the courtroom. Folks, because I don't
2 know at this point how long that
3 consultation might take and because we have
4 witnesses who have come from Columbia,
5 South Carolina and Raleigh, I'm simply
6 going to declare a recess to see whether or
7 not we are in position to go forward.

8 I want you to take whatever time you
9 need. I'm going to have Mr. Chavis brought
10 to the courtroom, and I will specifically
11 instruct him as to our situation. I'm also
12 going to ask -- how long will it take to
13 type up or print out a portion of the
14 entirety of the voir dire examination.

15 THE COURT REPORTER: Ten minutes.

16 THE COURT: If you'll print out
17 for Mr. Chavis' consideration all matters
18 after the State's objection and the jury's
19 being excused from the courtroom, including
20 the voir dire examination and all matters
21 transpiring up until this point.

22 THE COURT: Folks, again, I don't
23 mean to belabor this point but the Court is
24 required to make certain findings and
25 conclusion as to a knowingly and voluntary

1 waiver of any rights relating to conflict,
2 free counsel. The Court is also required
3 to make findings and conclusions with
4 regard to the knowing voluntary and
5 intelligent waiver of any possible
6 appellate issues that may arise.

7 In order for me to do that, the record
8 has to be complete. So we will be at ease
9 at this time for approximately 15 minutes.
10 That will give the court reporter the
11 opportunity to type up the appropriate
12 portion of the transcript, or print out the
13 appropriate portion of the transcript.

14 (Brief recess.)

15 THE COURT: Let the record
16 reflect counsel for the defendant are
17 present, counsel for the state is
18 presented. The defendant is present in
19 open court. All members of the jury are
20 secured in the jury room. Also present at
21 this time at the request and direction of
22 the Court is Mr. Ertle Knox Chavis, member
23 of the Robeson County Bar. Mr. Chavis, let
24 me apprise you in a nutshell of what our
25 situation is. Also for the purposes of

1 your information, let me inform you on the
2 record that a transcript of the proceedings
3 is being prepared for your benefit.

4 Essentially what has occurred is that
5 the State has called as a witness in this
6 matter Dr. Ernest Burkes, who is a dentist
7 and Professor of Dentistry at the
8 University of North Carolina Chapel Hill.
9 He was allowed to testify as an expert in
10 the field of forensic odontology, also
11 known as forensic dentistry, on behalf of
12 the State of North Carolina.

13 Dr. Burkes, among other things,
14 testified that he compared the known dental
15 records of James Jordan with dental records
16 which were obtained from a body which was
17 recovered from Gum Creek Swamp in the State
18 of South Carolina, and that following that
19 comparison it was his opinion that the
20 dental records of James Jordan were
21 identical to the dental records obtained
22 from the body that was located in the Gum
23 Creek Swamp in the State of South Carolina.

24 On cross-examination, counsel for the
25 defendant, Mr. Woodberry Bowen, asked a

1 question regarding a conversation which
2 Mr. Bowen contended occurred between
3 himself and Dr. Burkes prior to the trial
4 of this case. At that time, the State of
5 North Carolina objected. The Court sent
6 the jury out while the Court took up the
7 objection and related matters of law.

8 Counsel for the defendant,
9 Mr. Woodberry Bowen, was allowed to pursue
10 voir dire examination of Dr. Burkes, and
11 during the voir dire examination, it
12 appeared that Dr. Burkes would testify that
13 an earlier conversation by telephone did
14 occur between Mr. Bowen and himself, that
15 during that conversation, he was asked by
16 Mr. Bowen whether or not there was any
17 record or report of his examination and
18 findings of any exhibits or items of
19 evidence which were submitted to him, that
20 during that consultation with Mr. Bowen, he
21 does recall Mr. Bowen asking him that
22 question, but his recollection of what his
23 response was differed from Mr. Bowen's
24 recollection as contained in the question
25 of Mr. Bowen.

1 Specifically, Dr. Burkes testified on
2 voir dire examination that his recollection
3 of the conversation was that when asked by
4 Mr. Bowen whether or not there were any
5 records, he indicated to Mr. Bowen that he
6 had made notes of his examination and
7 findings but that those notes or written
8 records had not been typed or reduced to a
9 typed form.

10 In the form of the question asked by
11 Mr. Bowen, Mr. Bowen contended that
12 Dr. Burkes denied that any record exists.

13 Have I stated that correctly,
14 Mr. Bowen?

15 MR. BOWEN: Yes, sir.

16 THE COURT: That being the
17 situation, the Court having previously
18 advised on the record in the absence of the
19 jury, both Mr. Bowen and Mr. Thompson, that
20 that line of questioning as to Dr. Burkes
21 could potentially give rise to a situation,
22 if contradicted or denied, where Mr. Bowen
23 would conceivably or potentially be a
24 witness in terms of the impeachment or on
25 the issue of bias as it related to Mr.

1 Burkes.

2 There was a discussion between counsel
3 for the defendant, counsel for the State
4 and the Court with the defendant being
5 present on the record, regarding that
6 issue. Following that discussion, counsel
7 for the defendant, Mr. Bowen, Mr. Thompson
8 were allowed to consult in private with the
9 defendant, Mr. Green, also known as
10 U'Allah.

11 Following that consultation, Mr. Bowen
12 indicated, and Mr. Thompson concurred, on
13 the record that it was their position that
14 Mr. Bowen would not be called as an
15 impeachment witness or a witness on the
16 issue of bias as it related to Dr. Burkes.
17 One step revelation was made on the
18 record. The Court conducted an inquiry of
19 Mr. Green as to whether or not he agrees
20 with that decision, after consultation with
21 counsel, and whether such agreement or
22 concurrence was knowing, voluntary and
23 intelligent.

24 At that time, a recess for lunch was
25 taken, jury was brought back in and

1 excused. We reconvened at 2:30 this
2 afternoon. At the time that we reconvened,
3 the Court asked additional questions of
4 Mr. Green in an attempt to establish for
5 the record whether Mr. Green's position in
6 concurrence and after consultation with his
7 counsel was a knowing, voluntary and
8 intelligent decision. Among the things
9 that the Court advised Mr. Green of was his
10 right to independent consultation with an
11 attorney other than Mr. Thompson and
12 Mr. Bowen.

13 Mr. Green indicated that he did wish
14 to exercise his right to independent
15 consultation. It was at that point that we
16 consulted the court appointed list. The
17 first attorney, first available attorney
18 listed on the court appointed list was
19 Mr. John Campbell. He was disqualified by
20 the Court because of an actual conflict of
21 interest considering that he represents the
22 co-defendant in this matter, Larry Martin
23 Demery.

24 Your name was the next on the list.
25 We contacted your office and asked that you

1 report here so that you could consult
2 independently with Mr. Green about the
3 matters that I have just indicated to you.
4 And for that purpose, a transcript of the
5 proceedings, beginning with the question
6 asked by Mr. Bowen and the objection has
7 been prepared up until the point that you
8 were sent for. I'm going to ask that you
9 approach the bench at this time, please,
10 sir.

11 For the record, the Court is giving
12 Mr. Ertle Knox Chavis that portion of the
13 transcript beginning on page 917 up to and
14 including page 969.

15 I ask that you examine this and that
16 you consult with Mr. Green independently
17 regarding any possible conflict of interest
18 that may exist under Rule 5.2 of the North
19 Carolina Rules of Professional Conduct.
20 I've got that available to you, for you.
21 Do you have the Green book?

22 MR. CHAVIS: Mr. Thompson just
23 handed me this book. I don't have it with
24 me.

25 THE COURT: That contains rules

1 of professional conduct. Does that contain
2 the commentary?

3 MR. BRITT: No. It does not
4 contain the same information as the
5 annotated rules.

6 THE COURT: I'm giving you the
7 book utilized by the Court. The book
8 containing the Rules of Professional
9 Conduct among other rules of law. 5.2, and
10 specifically, what I'm asking that you
11 inquire into as to whether any waiver of
12 the right to conflict free counsel, under
13 Rule 5.2 an applicable case law is a
14 knowing, intelligent and voluntary waiver
15 on the part of Mr. Green. And I am also
16 asking that you inquire specifically as to
17 whether or not he understands that the
18 decision that has been made by his counsel
19 in which he apparently chose not to offer
20 Mr. Bowen as a witness necessarily means
21 that any impeachment evidence with regard
22 to Dr. Burkes' testimony as it pertains to
23 that telephone conversation will not be
24 offered for the jury, cannot be argued to
25 the jury, and what that means in terms of

1 implications and consequences as it relates
2 to this defendant on the charges which are
3 now before the Court.

4 Do you have any questions, sir?

5 MR. CHAVIS: No, sir.

6 THE COURT: Mr. Green, I'm going
7 to allow you to confer with Mr. Chavis.
8 There is a room to my left that you may
9 use. If you want another room, let me
10 know, I'll accommodate you in that respect.

11 MR. THOMPSON: There's no table
12 in that room.

13 THE COURT: Folks, the only room
14 available in this immediate area is the
15 jury room at the far end of the hallway,
16 and I want to specifically state for the
17 record, that is not the jury room where the
18 jurors are now assembled. They are
19 assembled in the jury deliberation room
20 immediately outside the courtroom, but
21 there is a second jury room at the far end
22 of the hallway. Will that suit your
23 purposes?

24 MR. CHAVIS: Yes, sir.

25 THE COURT: You may consult with

1 Mr. Green regarding the matters just gone
2 into at this time. Mr. Green, if you'll
3 accompany Mr. Chavis. .

4 Mr. Chavis, Mr. Green, take whatever
5 time you folks need. Before you leave,
6 Mr. Green, before you leave Mr. Chavis,
7 rather than keeping the jury in the jury
8 deliberation room, I don't want to run the
9 risk that Mr. Green will be seen by any
10 members of the jury so I can deal with that
11 by asking Sergeant Meares to position him
12 outside that room to make sure no jurors
13 are in the hallway. Is that agreeable
14 Mr. Bowen, Mr. Thompson?

15 MR. THOMPSON: Yes, sir.

16 THE COURT: It's my intent to
17 bring them in and give them a break rather
18 than keeping them back in that room for an
19 extended period.

20 MR. THOMPSON: Outside of the
21 presence of Mr. Green.

22 THE COURT: No, I'm going to have
23 him here. If you folks want to be heard in
24 that regard, let me know.

25 MR. THOMPSON: No, I just prefer

1 him being present.

2 THE COURT: I'm not doing
3 anything in that regard without the jury
4 present.

5 MR. BRITT: Counsel wants to be
6 heard.

7 MR. BRITT: No, sir.

8 THE COURT: Mr. Horne, if you'll
9 bring the jury in, please.

10 (Jury in at 3:25 p.m.)

11 THE COURT: Good afternoon,
12 ladies and gentlemen of the jury.

13 Ladies and gentlemen of the jury,
14 there are matters of law before the Court
15 which the Court needs to attend to out of
16 the hearing and the presence of the jury.
17 Please recall my instruction in that
18 regard. Again don't worry or speculate
19 about what takes place in the courtroom in
20 your absence.

21 Because it now appears that those
22 matters will take us additional time,
23 rather than keeping you confined to the
24 jury room, I'm going to give you a break at
25 this time. During this break, please

1 recall it is your duty to abide by and to
2 continue to abide by all prior instruction
3 of the Court concerning your conduct.

4 I'm going to excuse you at this time
5 until 15 until by that clock. Please
6 report directly back to the jury
7 deliberation room at that time. Everyone
8 else please remain seated, the members of
9 the jury are excused until 15 until 4:00.

10 (Jury out at 3:27 p.m.)

11 THE COURT: In the absence of the
12 jury Sergeant Meares, do you have Mr. Horne
13 available.

14 THE BAILIFF: Yes, sir.

15 THE COURT: If Mr. Horne will let
16 us know once the jurors have cleared the
17 hallway. Once the hallway is cleared, if
18 you will escort Mr. Green and Mr. Chavis to
19 the jury room at the far end of the hall,
20 and if you'll maintain a position outside
21 that room during their consultation,.

22 Mr. Chavis, once you're ready to come
23 back into the courtroom if you'll simply
24 knock on the door and let Sergeant Meares
25 know, we'll make sure there's no jurors in

1 the immediate vicinity. If you'll bear
2 with us until we make that determination.
3 If Mr. Horne out there with the jury now?

4 THE BAILIFF: Yes, sir.

5 THE COURT: Mr. Green, if you'll
6 accompany Mr. Chavis, please.

7 Folks, at this time tentatively we are
8 at ease until 15 until. If it appears
9 Mr. Green's consultation with Mr. Chavis is
10 going to take longer than that we'll extend
11 that. For our purpose, I've directed the
12 jury return until 15 until. It's my intent
13 that we keep them in the jury room until
14 then. We are at ease.

15 THE BAILIFF: Court stands at
16 ease.

17 (Brief recess.)

18 THE COURT: Yes, sir.

19 Let the record reflect counsel for the
20 State is present, counsel for the
21 defendant, Mr. Bowen and Mr. Thompson, are
22 present. The defendant is present in open
23 court. Also present at this time is
24 Mr. Chavis, who was appointed by the Court
25 for the special and limited purpose of

1 independent consultation with Mr. Green
2 regarding any potential or possible
3 conflict of interest as it relates to
4 Mr. Woodberry Bowen and/or Mr. Angus
5 Thompson in the context of the testimony of
6 the State's witness Dr. Ernest Burkes.

7 Mr. Chavis, have you had adequate
8 opportunity, first of all, to consult with
9 Mr. Green about the matters relating to the
10 Court's instructions to you on the record
11 and as to the matters set out in the
12 transcript which was provided to you,
13 specifically between pages 917 and 969 of
14 that transcript?

15 MR. CHAVIS: Yes, I have, Your
16 Honor.

17 THE COURT: And in particular,
18 have you consulted with Mr. Green about
19 Rule 5.2 of the North Carolina Rules of
20 Professional Conduct?

21 MR. CHAVIS: Yes, I have.

22 THE COURT: Have you consulted
23 with Mr. Green about the caveat set forth,
24 prohibition set forth in Rule 5.2 as it
25 relates to the inability of an attorney to

1 be both counsel for a litigant and a
2 witness in that litigation.

3 MR. CHAVIS: Yes, I have.

4 THE COURT: Have you discussed
5 with Mr. Green the implications and
6 consequence of any decision that he might
7 make separately and independently or in
8 concurrence with any decision made by
9 Mr. Bowen and Mr. Thompson regarding the
10 question of whether or not to present
11 testimony of one of his court appointed
12 counsel?

13 MR. CHAVIS: Yes, sir, we
14 discussed those matters.

15 THE COURT: Have you discussed
16 with him the fact that any impeachment
17 evidence which might exist in the form of
18 any testimony that might be offered by
19 Mr. Bowen will not be presented to the jury
20 and will not therefore be considered by the
21 jury?

22 MR. CHAVIS: Yes, sir, we
23 discussed that.

24 THE COURT: Have you further
25 discussed with him that any decision that

1 he might make in this regard may also
2 impact on any possible appeal in this case
3 as it relates to his ability to alleged
4 ineffective assistance of counsel in terms
5 of his current decision?

6 MR. CHAVIS: Yes, sir.

7 THE COURT: Are you satisfied
8 that he fully understands the possible
9 consequences and the range of consequences
10 and the possible implications and the range
11 of implications involved in such a
12 decision?

13 MR. CHAVIS: I think he
14 understands what his limit is at this time,
15 Your Honor.

16 THE COURT: Now, we'll need
17 clarification as to that. Are you
18 contending that he is limited in his
19 ability to understand?

20 MR. CHAVIS: No, sir, I'm not
21 contending that. He understands what his
22 position is at this time and his present
23 counsel, and whether or not they testify
24 and the subsequences if they don't testify,
25 and what would happen if the Court would

1 remove his present counsel for the case.

2 THE COURT: Have you explained to
3 him that under the existing case law,
4 specifically under State versus Elam, that
5 the Court does have discretion in terms of
6 allowing Mr. Bowen to testify on matters of
7 impeachment as it may relate to the
8 testimony of Dr. Burkes?

9 MR. CHAVIS: Yes, sir, we
10 discussed those things.

11 THE COURT: Have you informed him
12 that in deciding not to offer that
13 testimony, he is in effect indicating that
14 he does not wish to have the Court exercise
15 its discretion in that regard?

16 MR. CHAVIS: Yes, sir.

17 THE COURT: Are you satisfied
18 that he understands those things?

19 MR. CHAVIS: Yes, sir.

20 THE COURT: Do you have any
21 questions, Mr. Green, about anything that
22 has previously been said to you by the
23 Court on the record in this matter or
24 anything arising from your independent
25 consultation with Mr. Chavis?

1 MR. GREEN: No, sir, I do not.

2 THE COURT: Are you satisfied
3 that you fully understand the consequences
4 or possible consequences or possible range
5 of consequences involved in any decision
6 that you might make in that regard?

7 MR. GREEN: Yes, sir.

8 THE COURT: Is it still your
9 decision at this time not to ask the Court
10 to exercise its discretion in terms of
11 allowing Mr. Bowen to testify as a
12 potential impeachment witness in this
13 case?

14 MR. GREEN: Yes, sir, it is.

15 THE COURT: You understand that
16 that necessarily means that any evidence
17 which might be considered as to impeachment
18 evidence will not be before the jury and
19 therefore will not be considered by the
20 jury?

21 MR. GREEN: Yes, sir.

22 THE COURT: You understand that
23 the attorneys, because that evidence will
24 not be before the jury, will be prohibited
25 from arguing any such contentions?

1 MR. GREEN: Yes, sir.

2 THE COURT: Do you have any
3 questions that you want to ask me about
4 anything that I have said to you in this
5 regard on the record?

6 MR. GREEN: No, sir. I do not.

7 THE COURT: Do you have any
8 questions that you want to ask me arising
9 out of your independent consultation with
10 Mr. Chavis?

11 MR. GREEN: No, sir.

12 THE COURT: Are you satisfied
13 with the consultation with Mr. Chavis? And
14 by satisfied, I mean, are you satisfied
15 with having had the opportunity to consult
16 with an independent counsel?

17 MR. GREEN: Yes, sir.

18 THE COURT: Are you satisfied
19 with the advice and information provided to
20 you by that independent counsel?

21 MR. GREEN: Yes, sir.

22 THE COURT: With these things in
23 mind, at this point, do you have any
24 questions at all that you want to ask me
25 about any of the things that I've said to

1 you?

2 MR. GREEN: No, sir.

3 THE COURT: And do you now, of
4 your own free will, understandably and
5 voluntarily, waive your right to
6 representation by an attorney unimpeded by
7 a possible conflict of interest?

8 MR. GREEN: Yes, sir.

9 THE COURT: Specifically, do you
10 now of your own free will, understandably
11 and voluntarily waive your right to be
12 represented by Mr. Woodberry Bowen, who may
13 face a possible conflict of interest as it
14 relates to Rule 5.2 of the Rules of
15 Professional Conduct?

16 MR. GREEN: Yes, sir.

17 THE COURT: Do you now, of your
18 own free will, understandably and
19 voluntarily waive any rights that you may
20 have resulting from any appeal which might
21 come about in this case as to any claims of
22 ineffective assistance of counsel arising
23 from these matters?

24 MR. GREEN: Yes, sir.

25 THE COURT: Anything further on

1 behalf of the State, Mr. Britt?

2 MR. BRITT: No, sir.

3 THE COURT: Mr. Thompson,
4 Mr. Bowen, anything on behalf of either of
5 you gentlemen?

6 MR. BOWEN: I would like the
7 record to reflect, Your Honor, that I am
8 not the least bit hesitant to take the
9 witness stand in this case. My
10 interpretation of the Rules of Professional
11 Conduct make me believe that this
12 particular type of situation is allowed for
13 and allows the Court to deal with it in its
14 discretion.

15 THE COURT: It's an extraordinary
16 situation.

17 MR. BOWEN: The implication that
18 I would be hesitant for the reason of 5.2
19 to go on the witness stand is at least not
20 in my mind the fact at all.

21 THE COURT: Let me suggest to
22 you, Mr. Bowen, that 5.2 says that the
23 general rule, and I don't think there is
24 any disagreement about this, the general
25 rule is, it is inappropriate under the

1 Rules of Professional Conduct for an
2 attorney to be both counsel of record and a
3 witness in litigation. Do you agree with
4 that?

5 MR. BOWEN: Yes, sir, that is
6 true, when the attorney can with reasonable
7 degree of accuracy foresee that he might
8 likely be called as a witness. I'm saying
9 to Your Honor that had the man had told the
10 truth on the stand, that wouldn't even have
11 arisen.

12 THE COURT: That's an improper
13 statement, that's an improper comment.
14 That's exactly what got us into this
15 situation to begin with. 5.2 says when you
16 can reasonably foresee, but it also says
17 when it occurs during the pending
18 litigation.

19 MR. BOWEN: Yes, sir.

20 THE COURT: When it becomes
21 apparent. And to contend that a witness
22 has not told the truth is a matter which,
23 if so, would be information that would
24 properly be -- properly be before the jury
25 for their determination. And if that's the

1 case, then your client suffers by your
2 determination that this evidence should not
3 be offered. And on its face, for a lawyer
4 to contend that a witness has been
5 untruthful in this context or any other
6 context is not appropriate under the Rules
7 of Professional Conduct. That's a personal
8 opinion.

9 MR. BOWEN: However, as a
10 practical matter, when you go on the
11 witness stand, you subject yourself to
12 cross-examination about some other matters
13 that may have come into the conversation
14 with the witness, and therefore, you have
15 to do a balancing test of the whole
16 situation.

17 THE COURT: It's the Court that
18 has to do the balancing test under Elam.
19 The Court has to, under Elam, balance the
20 prejudice or possible prejudice to opposing
21 party to the rights of a defendant to
22 counsel that the defendant considers to be
23 important in the context of continued
24 representation.

25 MR. BOWEN: But you see, the

1 Court suggested perhaps initially that we
2 just stay away from the whole area.

3 THE COURT: No, I did not suggest
4 that. What I suggested initially was that
5 a lawyer who talks with a witness and asks
6 a question on cross-examination, "didn't
7 you tell me," is a lawyer who is
8 potentially setting himself or herself up
9 for this situation. That's what I
10 suggested.

11 MR. BOWEN: Nevertheless, I
12 contend that I have a duty to get to what
13 the man has said to me. We have a similar
14 situation with Mr. Thompson talking to
15 Coroner, and the Coroner had to admit he
16 told Mr. Thompson he wasn't able to have an
17 autopsy --

18 THE COURT: If you recall when
19 that situation arose last week I told
20 Mr. Thompson the exact thing I said to you
21 when we started out this morning. This is
22 perilous grounds, we are on dangerous
23 territory, it ought to be avoided.

24 MR. BOWEN: When you speak about
25 Mr. Garth Locklear, he was about the only

1 investigator available to us at that time.
2 His responsibility involved over five
3 hundred cases in the Public Defender's
4 office. Although I was appointed in the
5 case, I didn't feel comfortable picking up
6 and giving commands to Mr. Locklear. So I
7 had no investigator. I did the best I
8 could representing my client.

9 THE COURT: For the purpose of
10 explanation, that's on the record.

11 Any other matters you folks want to
12 put on the record?

13 MR. BOWEN: No, sir.

14 THE COURT: I'm obligated to make
15 findings. They are going to be consistent
16 with the questions that I asked of
17 Mr. Green and his responses of record.

18 The Court will enter findings and
19 conclusions in writing, but essentially, my
20 conclusions will be that based on the
21 foregoing finding, and the findings
22 provided by the questions and the answers,
23 the Court finds that any possible conflict
24 of interest existing under Rule 5.2 is
25 being knowingly, voluntarily and

1 intelligently waived by Mr. Green.

2 The Court further, in the exercise of
3 its discretion, and based on the matters
4 and balancing tests set forth in Rule 5.2,
5 subparagraph four, and the accompanying
6 commentary in case law, will allow
7 continued representation by Mr. Bowen and
8 Mr. Green -- strike that. Mr. Bowen and
9 Mr. Thompson of Mr. Green, also known as
10 U'Allah. That is your desire as I
11 understand it, is that correct, Mr. Green?

12 MR. GREEN: Yes, sir, it is.

13 THE COURT: The court will enter
14 the appropriate findings and conclusions
15 consistent with what I said on the record.
16 Anything further from either counsel?

17 MR. THOMPSON: No, sir.

18 THE COURT: Mr. Britt, are you
19 ready to go forward? Or would you prefer
20 starting at 9:30 tomorrow morning?

21 MR. BRITT: Your Honor, I think
22 due to the hour and it may best flow if we
23 started in the morning.

24 THE COURT: Final matters and
25 then leave this alone. Hopefully it

1 wouldn't arise. State versus Daniels, 337
2 NC 243 deals with a situation where a trial
3 court refused to permit the public defender
4 in the Mecklenburg County area, or in
5 Mecklenburg County to testify. The basis
6 for the Court's refusal in that case was an
7 assistant public defender was one of the
8 two lawyers in representing the defendant
9 in that case.

10 It appears from what is now before the
11 Court, and I don't have the complete
12 decision, that the defendant, through
13 counsel, wanted to elicit that testimony on
14 the issue of apparently voluntariness of a
15 statement in the context of an
16 interrogation. The Court refused to allow
17 the testimony and refused to allow counsel
18 for the defendant's motion to withdraw.
19 There is no motion to withdraw before me,
20 is that accurate?

21 MR. THOMPSON: That's correct.

22 THE COURT: To the contrary, what
23 is before me is a motion, as I understand
24 it, for the Court to exercise its
25 discretion to allow current counsel to

1 remain counsel of record in this case.

2 MR. THOMPSON: That's correct.

3 THE COURT: There is no motion
4 for mistrial before the Court on behalf of
5 the defendant, is that accurate?

6 MR. THOMPSON: That's correct.

7 THE COURT: Is that accurate
8 based on your earlier response, Mr. Green?

9 MR. GREEN: Yes, sir.

10 THE COURT: Is that still
11 accurate based on your independent
12 consultation with Mr. Chavis?

13 MR. GREEN: Yes, sir.

14 THE COURT: You concur that is
15 the state of the situation, Mr. Bowen?

16 MR. BOWEN: Yes, sir.

17 THE COURT: The Court finds that
18 Daniels is not entirely applicable, there
19 is some language in Daniels as follows:

20 Counsel's motion to withdraw is
21 usually committed to the sound discretion
22 of the trial court as is a motion to be
23 allowed to remain in the case based on a
24 possible conflict of interest. And that
25 language is the Court's language.

1 But where the defendant's
2 Constitutional right to present testimony
3 in his behalf is implicated, the decision
4 is reviewed as a matter of law. So it's
5 not a matter of abuse of discretion being
6 the standard here, it's a matter of law as
7 to whether or not there was a denial of the
8 Sixth Amendment right to present
9 testimony.

10 Here we have a situation where a
11 defendant, after consultation with current
12 counsel and after consultation with
13 independent counsel, has indicated that he
14 elects not to offer evidence. For the
15 record, this -- is there any disagreement
16 that this evidence, if offered, would be
17 offered only for the limited purposes of
18 impeachment?

19 MR. THOMPSON: Yes.

20 THE COURT: Not for substantive
21 purpose?

22 MR. THOMPSON: That's correct.

23 THE COURT: That's the other
24 distinction between this and Daniels. The
25 evidence in Daniels is substantive in

1 nature. This is impeachment evidence. I
2 think our record is clear in that regard.
3 I just hope we don't have to deal with this
4 area again.

5 MR. THOMPSON: Yes, sir.

6 THE COURT: I appreciate that.
7 I'm going to bring the jury in. Any other
8 matters regarding Mr. Chavis?

9 MR. BRITT: I believe the Court
10 needs to enter an appropriate order
11 compensating Mr. Chavis for his time.

12 THE COURT: I'll do that right
13 now. Mr. Chavis -- ma'am, if you'll
14 prepare an order with my signature
15 appointing Mr. Chavis for the limited
16 purpose of consultation with Mr. Green.

17 Mr. Chavis, if you will submit a fee
18 application to the Court for your time
19 involved from the time you were notified
20 until 4:30. I want to thank you for your
21 willingness to assist us as independent
22 counsel, and I appreciate it very much.

23 MR. CHAVIS: You're welcome.

24 THE COURT: You're discharged
25 from all further responsibility in this

1 case at this time. Thank you, sir.

2 If we could bring the jury in, I'm
3 going to excuse them. We'll start back at
4 9:30 tomorrow morning.

5 Yes, sir.

6 MR. THOMPSON: I just have those
7 cases.

8 THE COURT: If you'll give a copy
9 to Mr. Britt. The personality part of
10 Daniels satisfies me that only tangentially
11 is it involved.

12 (Jury in at 4:28 p.m.)

13 THE COURT: Ladies and gentlemen,
14 we very much appreciate your cooperation
15 and indulgence. It's now 4:30. We are
16 prepared to go forward at this time but
17 given the hour, we're going to stop and
18 begin anew tomorrow at 9:30.

19 I'm going to recess or allow you folks
20 to leave in just a moment. During the
21 overnight recess, again, please recall it
22 is your duty not to talk about this matter
23 among yourself or anyone else, it is your
24 duty not to allow anyone to say anything to
25 you or in your presence about this case.

1 If anyone communicates with you about this
2 matter or attempts to do so, or anyone says
3 anything about this case in your presence
4 it remains your duty to inform us of that
5 immediately through one of the bailiffs
6 assigned to the courtroom.

7 Don't form or express any opinions
8 about this matter. Don't have any contact
9 or communication of any kind with any of
10 the attorneys, parties, witnesses,
11 prospective witnesses, or directly with the
12 Court. It remains your duty to avoid any
13 exposure to any media accounts which may
14 exist in connection with this proceedings,
15 and you're not to conduct any independent
16 inquiry or investigation or research of any
17 kind.

18 Have a good evening, folks, we'll see
19 you 9:30 tomorrow morning. Everyone else
20 please remain seated, members of the jury
21 are excused until 9:30 tomorrow morning.

22 (Jury out at 4:29 p.m.)

23 THE COURT: Mr. Britt, can you
24 give us a general estimate of what our
25 schedule is going to be tomorrow in terms

1 of witnesses?

2 MR. BRITT: In terms of
3 witnesses, those that are scheduled that
4 are here today are the following SLED
5 agents, David Collins, Michael Avery, John
6 Christie. Also present are Stanley Lewis,
7 and Jerry Richardson from the North
8 Carolina State Bureau of Investigation.
9 Also as a part of the next presentation of
10 evidence will be Special Agent, former
11 Special Agent April Grant Sweat, who's
12 involved in the collection of certain
13 evidence from the SLED and transferring
14 that to the State Bureau of Investigation.

15 Tomorrow afternoon, if we complete all
16 that tomorrow morning, tomorrow afternoon,
17 we will move into an area that involves the
18 location and the discovery of the car that
19 belonged to Mr. Jordan in Cumberland
20 County. We have a number of witnesses who
21 will be here in the morning and number of
22 witnesses scheduled to be here tomorrow
23 afternoon as well.

24 THE COURT: Ms. Gaines, for the
25 record, what is the next number for the

1 Court's exhibits? Is that 13?

2 THE CLERK: Yes, sir.

3 THE COURT: I'm going to direct
4 that the transcript that was provided to
5 Mr. Chavis and utilized by him in his
6 independent consultation with Mr. Green be
7 marked as Court's Exhibit Number 13 and be
8 made a part of the record in this case.
9 Anything further on behalf of counsel for
10 the defendant?

11 MR. THOMPSON: No, sir.

12 THE COURT: Have a good evening,
13 we'll see you tomorrow morning at 9:30.

14 (Court adjourned 4:32 p.m.)

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1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3

4 LUTHER JOHNSON BRITT, III, Esq.
5 District Attorney
6 16-B Prosecutorial District
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8

9 On Behalf of the Defendant:

10

11 ANGUS B. THOMPSON, Esq.
12 Public Defender
13 16-B Prosecutorial District
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15

16 and

17

18 WOODBERRY A. BOWEN, Esq.
19 Bowen & Byerly
20 P.O. Box 846
21 Lumberton, North Carolina 28359

22

23

24 (January 10, 1996. Proceedings in open court.)

25

THE COURT: Good morning, folks.

26

27 Let the record reflect that all counsel are
28 present. The defendant is present in open
29 court. Mr. Horne, I understand all members
30 of the jury are secured in the jury room,
31 is that correct?

32

THE BAILIFF: Yes, sir, they are.

33

34 THE COURT: On behalf of the

35

36 State, are there any matters before we
37 continue with presentation of the State's

COLLINS

1 evidence.

2 MR. BRITT: No, sir.

3 THE COURT: Mr. Thompson,
4 Mr. Bowen, any matters on behalf of the
5 defendant?

6 MR. THOMPSON: No, sir.

7 MR. BOWEN: No, sir.

8 THE COURT: If you'll bring the
9 jury in, please, Mr. Horne.

10 (Jury in at 9:30 a.m.)

11 THE COURT: Good morning, ladies and
12 gentlemen of the jury.

13 Mr. Britt?

14 MR. BRITT: Your Honor, at this
15 time the State would call David Collins.

16 THE COURT: Yes, sir.

17 Mr. Collins, if you'll come up to the
18 witness stand, place your left hand on the
19 Bible, raise your right, and face Ms.
20 Gaines to my left, please.

21 **DAVID COLLINS,**

22 being first duly sworn was examined and deposed as
23 follows:

24 DIRECT EXAMINATION

25 THE COURT: If you'll take the

1 witness stand, please, sir.

2 For the record, would you state and
3 spell your first and last names, please.

4 THE WITNESS: David Collins, D A
5 V I D. C O L L I N E S:

6 BY MR. BRITT:

7 Q Mr. Collins, by whom are you employed?

8 A I'm employed by the South Carolina Law
9 Enforcement Division, commonly known as SLED.

10 Q How long have you been employed by that
11 agency?

12 A Approximately five and a half years.

13 Q In what capacity do you work for SLED?

14 A Forensic firearms and tool marks examiner.

15 Q Where is the forensic laboratory located?

16 A Columbia, South Carolina.

17 Q As a member of the agency known as SLED,
18 what if any training have you received in connection
19 with your work as a forensic firearms identifier?

20 A After becoming employed at SLED, I entered
21 on-the-job training program in firearms and tool
22 marks examination. This program lasted approximately
23 two years. After completion of that program, being
24 certified by SLED as a fire marks examiner, I joined
25 an association which is the Association of Firearms,

1 Tool Marks Examiner. Through that association, I
2 have received continuing education in my field
3 through annual training seminars, courses that were
4 provided by various firearms manufacturers, including
5 Glock, and Beretta.

6 Beyond that, I have continued to stay
7 abreast of developments in the firearms field as they
8 have been made known to me.

9 Before becoming employed at SLED, I was
10 employed part-time at a gun shop and had taken some
11 gunsmith courses.

12 Q Prior to going to work for SLED, did you
13 have any type of law enforcement experience?

14 A No, I did not.

15 Q What is your educational background?

16 A Received a Bachelor's Degree from the
17 Citadel, Charleston, South Carolina, 1984.

18 Q What subject did you major in?

19 A History.

20 Q On August the 4th, 1993, Mr. Collins, did
21 you have an occasion to go to the hospital located in
22 Newberry, South Carolina?

23 A Yes, I did, August 4th, '83, I did go to
24 Newberry County Hospital.

25 Q 1993, excuse me. I believe I said '83.

1 When you went to the hospital there in
2 Newberry, South Carolina, had you come at anyone's
3 request?

4 A I was instructed by the my supervisor and
5 supervisor of latent prints and crime scene
6 processing.

7 MR. BOWEN: Object.

8 THE COURT: Explain limited
9 conduct?

10 MR. BRITT: Yes.

11 THE COURT: Members of the jury,
12 any statement testified to by Mr. Collins
13 as to what he contends someone else told to
14 him is not being offered for the truth of
15 the matters asserted, but simply to explain
16 his subsequent conducted. You may consider
17 that for this limited purpose, no other.
18 Anything further?

19 MR. THOMPSON: No, sir.

20 BY MR. BRITT:

21 Q Who instructed you to go to the hospital in
22 Newberry, South Carolina?

23 A My supervisor and the supervisor at the
24 crime scene processing or latent prints processing.

25 Q For what reason were you to go to the

1 hospital there in Newberry?

2 A Pick up and bring back to the laboratory
3 that which is known as autopsy protocol or materials
4 that is recorded at autopsy from an unknown
5 individual.

6 Q And upon arriving at the hospital in
7 Newberry, South Carolina, was the autopsy being
8 conducted or, to your knowledge, had it already been
9 completed?

10 A To my knowledge, it had already been
11 completed.

12 Q When you arrived at the hospital in
13 Newberry, South Carolina, who if anyone did you meet?

14 A Upon arrival I was met by Dr. Garvin, I
15 believe the assistant pathologist in that department.

16 Q Do you know who Dr. Joel Sexton is?

17 A Yes, he is Dr. Garvin's immediate
18 supervisor.

19 Q How long have you known who Dr. Joel Sexton
20 is?

21 A I have known Dr. Sexton since approximately
22 1980, before I became involved in law enforcement.

23 Q On August the 4th of 1993, were any items
24 given to you there at the Newberry Hospital?

25 A Yes, at the Newberry County Hospital I was

1 given a bag containing other containers of parcels
2 that contained various pieces of protocol.

3 Q And the bags containing the autopsy
4 protocol, in what condition were they when you
5 received them?

6 A Each was individually sealed, and the
7 individually sealed containers were placed in another
8 bag for transportation.

9 Q Specifically, what items were delivered to
10 you on August the 4th of 1993?

11 A I received one bottle of blood, one slice
12 of liver tissue, a slice of kidney tissue, a bottle
13 containing stomach contents, an envelope containing
14 pubic hair, bottle containing a projectile. Two
15 hands, and tissue from the wound area.

16 Q After receiving those items, what if
17 anything did you do with them?

18 A I transported them to SLED.

19 Q And upon transporting them to SLED, what if
20 anything did you do with those items?

21 A I took them into the evidence log in the
22 office, at which point the evidence log in personnel
23 assisted me in separating the individual items into
24 groups determining which department at the laboratory
25 they would go to.

1 After placing them in the proper containers
2 and making notes of this, they were then taken into
3 custody by the evidence custodian for later
4 distribution to those departments, with the exception
5 of the two hands, which were turned over to Special
6 Agent John Christy of the latent prints department,
7 by me in the log-in section at that time, and I
8 retained the projectile or bullet so I could perform
9 tests on that item.

10 Q When you say you retained the projectile,
11 where was it kept?

12 A It would have been kept in my evidence
13 locker in my office.

14 Q And who if anyone other than yourself has
15 access to your evidence locker?

16 A My supervisor and at that time two other
17 firearms examiners would have had access.

18 Q At the time you placed the projectile in
19 your evidence locker, what if anything was it kept
20 in?

21 A It was contained in a bottle that would
22 have been like a brown medicine bottle, and it would
23 have been in -- beyond that, possibly would have been
24 in a heat sealed pouch. My notes indicate it was,
25 and that I opened it on that date, on the 4th of

1 August and did my examination on that date.

2 Q After you conducted any examination on the
3 item, what if anything did you do with it after that?

4 A After I conducted my examinations, rendered
5 my conclusions on this evidence, I would have
6 re-sealed it in the container, placed it back in my
7 evidence locker. The reason I would have retained
8 the evidence there would have been -- at this time we
9 did not have a firearm submitted to the laboratory to
10 render any comparisons of that bullet with, so I
11 would have kept the bullet there on the chance that
12 they would recover a firearm.

13 MR. BRITT: Your Honor, at this
14 time I would tender Mr. Collins as an
15 expert in the area of firearms
16 identification.

17 THE COURT: You folks want to be
18 heard as to the tender?

19 MR. BOWEN: No, sir.

20 THE COURT: Then the witness may
21 so testify without objection.

22 BY MR. BRITT:

23 Q Mr. Collins on August the 4th of 1993,
24 you've testified that you rendered an examination of
25 the projectile that had been rendered to you that day

1 in Newberry, South Carolina. What if anything did
2 you do with that lead projectile?

3 A In the case where you receive only a bullet
4 or projectile, our examination is pretty
5 straightforward. You would -- first thing I did was
6 examine the bullet and made notes as to its
7 condition, how damaged it was, overall appearance,
8 and then I would have weighed it and done a
9 microscopic examination to determine if it was
10 suitable for examination with another firearm, should
11 the firearm be submitted.

12 Also, I made various measurements of what
13 is known as the general lifeline characteristics.
14 This would be the width of the impressions left by
15 the rifling on the bullet and the number of the
16 grooves in that rifling, and by comparing that with a
17 statistical base provided by the FBI I can come up
18 with a list of possible makes of weapons that may
19 have fired that bullet. This is done to provide the
20 investigators with a tool or investigative tools so
21 they can have an idea of what type of weapon they
22 might be looking for. After doing this analysis, I
23 would have then re-sealed the evidence and had a
24 report issued on the case. It would have been sent
25 to the submitting agency.

1 Q And in examining the bullet, were you doing
2 it with the naked eye or using any type of instrument
3 that would enlarge or better enable you to see the
4 object?

5 A It would have been done with both, with the
6 naked eye and with a microscope.

7 Q In conducting your examination, did you
8 detect any marks about the lead projectile?

9 A For the most, the rifling marks on the
10 projectile, also noticed that there was -- it was
11 poorly marked, which is indicative of a slightly
12 undersized bullet. The quality of the projectile is
13 what I would consider to be low. There was some gas
14 voids or -- in the bullet material itself to indicate
15 it was a poor quality. Typically on bullets of this
16 type that are recovered from the autopsy performed at
17 Newberry County Hospital, there would be some
18 markings there by the pathologist. However, in this
19 case, I do not have a note of that, I just may have
20 not noted it in my notes.

21 Q What is a rifling?

22 A Rifling is the spiraling grooves that you
23 often see in the barrel of a pistol or rifle. The
24 rifling serves to cause the bullet to spin as it
25 leaves the muzzle of the firearm. Stabilize much in

1 the same way a quarterback spirals when he throws a
2 pass. The rifling characteristics of each
3 manufacturer can be different from others. In this
4 case, this bullet displayed the impressions of five
5 distinct rifling grooves and also displayed them to
6 have a right hand twist or clockwise twist.

7 By using that data, as I stated before, and
8 the measurements that I made of the width of those
9 impressions left by the rifling on the bullet, I was
10 able to provide a list of possible makes of firearms
11 that might have fired the bullet.

12 Q And --

13 THE COURT: For the purposes of
14 clarification, so that the jury is able to
15 understand the testimony, when a firearm is
16 manufactured, how is the barrel created?

17 THE WITNESS: The barrel is
18 created by first using usually a
19 cylindrical piece of metal, then drilled
20 out, with a long drill to create a hole all
21 the way through it. This hole is then
22 slightly polished and finished. Then a
23 tool is pulled through that barrel or
24 pushed through that barrel to cut the
25 rifling into the inner surface of the

1 barrel itself. This tool can be either
2 what we call button rifling, or it can be
3 used with a gang cutting device with little
4 blades that actually cut away the metal.

5 An added factor of this is as each
6 barrel is manufactured, that tool is
7 dulling as it cuts that barrel. And that
8 plus other factors cause microscopic
9 imperfections to be transferred or cut onto
10 the surface of the barrel as it is
11 produced. These imperfections are
12 individual to that barrel just as a
13 fingerprint is individual to a person.
14 When a bullet is fired through that barrel
15 these imperfections would be transferred or
16 scratched on to the surface of that
17 bullet.

18 By making use of these imperfections
19 or these unique imperfections on this
20 bullet, and by test firing perhaps a
21 suspect bullet and comparing the test
22 bullet that we have fired with the bullet
23 under a microscope, we can determine if
24 that bullet was fired by that gun or not.
25 And this, of course, depends on the quality

1 of the bullet, the damage that is sustained
2 by the bullet when it is fired into an
3 object or person, and many other factors
4 come into play as to whether or not we can
5 actually -- accurately perform that
6 analysis.

7 BY MR. BRITT:

8 Q And are these rifling characteristics, are
9 they unique to each manufacturer based upon your
10 experience?

11 A Each manufacturer you would have perhaps a
12 bullet that has certain general rifling
13 characteristics that may be similar to those produced
14 by several manufacturers of firearms. Typically,
15 there are a few instances where you would be able to
16 narrow it down to one or two manufacturers, usually
17 the list is somewhat longer.

18 Q What in your opinion would the age of a
19 firearm have on the riflings that are left on a
20 bullet fired from it?

21 A The age of the actual firearm may not play
22 as much of a role as how well it has been taken care
23 of over its life. If the barrel has been allowed to
24 deteriorate, rust has been allowed to form in the
25 barrel or other forms of debris are allowed to

1 accumulate that can effect how well that barrel marks
2 individual bullets for later analysis.

3 Q You testified that the bullet that you
4 examined was of low quality?

5 A The bullet was what I considered to be low
6 quality of manufacturer. It appears to be a cast
7 lead bullet, that is to say, it was formed by taking
8 a mold and poured molten lead or lead alloy into the
9 mold, allowing it to cool and then removing it from
10 the mold.

11 It would then be sized slightly to properly
12 fit the barrel of the firearm. It appeared although
13 this is not 100 percent accurate, the bullet may be
14 slightly undersized, may have been a size smaller
15 than is typical for a .38 caliber bullet. However,
16 the basic poor quality of the bullet itself may have
17 lent itself to this.

18 The fact that it is undersized also makes
19 the markings that we would use for identifying this
20 bullet with an individual firearm be of lower quality
21 because it is not forming or fitting to the inside of
22 the barrel enough to be marked well by that barrel.
23 In this particular case, my notes indicate that the
24 bullet was maybe suitable for identification with
25 another firearm, however, the markings are poor.

1 Q When a bullet is fired, are there any
2 markings left on the shell casing that contain that
3 bullet?

4 A Yes, typically when a bullet is fired from
5 a cartridge casing, the cartridge casing width would
6 be marked by either the breech face or the chamber of
7 the firearm or the firing pin. In the case of a
8 revolver, these markings are also individual to that
9 firearm for the same reason that the bullet would be
10 individually marked. When the firing pin, the breech
11 face or the chamber of the firearm are manufactured,
12 the same cutting tools or same cutting principle
13 would be applied that would leave individual
14 imperfections on those surfaces. In other words, if
15 I received an individual firing cartridge case and
16 had a suspect firearm available to me, I could
17 potentially determine if that cartridge case was
18 fired by that particular firearm.

19 Q Are there any factors, in your opinion,
20 that would affect the markings left by the breech
21 face of an individual weapon?

22 A There are several major forces that could
23 effect that, among them being the actual power or
24 chamber pressure of the cartridge that would have to
25 force it rearward against the breech face to leave

1 these markings, transfer markings on the primer or
2 the head of the cartridge case. The more powerful
3 the cartridge, typically the better the markings are
4 going to be.

5 Each individual manufacturer uses, for
6 instance, also different hardness of metal in the
7 primer material. This also can alter the quality of
8 markings that were received based on the manufacturer
9 of the ammunition. Others factors such as the
10 condition of the breech face, whether it's dirty, any
11 kind of dirt or debris that gets in between the
12 breech face and cartridge case, that can also poorly
13 affect markings.

14 Q Are you familiar, Mr. Collins, with what is
15 commonly referred to as a reload?

16 A Yes, I am.

17 Q What is a reload?

18 A Reload would be anything that had been
19 reconstructed. Somebody has taken a fired cartridge
20 casing, has removed the spent or fired primer from
21 it, replaced it with a new primer, replaced a new
22 powder charge in the cartridge case and seated a new
23 bullet or other kind of projectile on top of the
24 powder charge, basically remanufacturing or
25 recreating the cartridge case. In this case, the

1 bullet that I received was most consistent with the
2 type of bullets that you would expect to find in
3 reloaded ammunition.

4 Q Why do you say that?

5 A None of the major manufacturers that I know
6 would have created a bullet of this low quality, for
7 one thing. Additionally, the specific design of the
8 bullet is consistent with what I normally see used in
9 reloaded ammunition.

10 (State's Exhibit 45 was
11 marked for identification.)

12 MR. BRITT: May I approach the
13 witness?

14 THE COURT: Is this 45?

15 MR. BRITT: Yes, sir.

16 BY MR. BRITT:

17 Q I'll show you what has been previously
18 marked State's Exhibit 42-A, ask you to examine that
19 plastic bag, tell me if you can identify that bag?

20 A Yes, the plastic bag is initialed by me,
21 have also placed upon it the SLED case number, the
22 item number that I have assigned or assigned to this
23 particular bullet, also initialed by me where I had
24 sealed it upon receipt, excuse me, upon return to
25 SBI.

1 Q If you will look at what's been marked as
2 State's Exhibit 42-B and tell me if you can identify
3 it?

4 A Yes, this brown plastic bottle has a label
5 on it that was placed on it at autopsy. It also
6 bears my initials, the case number from SLED, and the
7 item number it.

8 Q For the record what is the case number,
9 SLED case number that was assigned to this evidence?

10 A L93-11373.

11 Q If you will open the brown bottle that's
12 been marked as State's Exhibit 42-B and remove the
13 contents. Ask you to identify -- to examine that and
14 tell me if you can identify it?

15 A Yes, this is the bullet that I recovered
16 from the autopsy in Newberry, South Carolina.

17 Q How are you able to identify that as the
18 bullet that you recovered from the autopsy?

19 A Label within the bottle and also have
20 photographs in my case file that I can use for
21 identification of this evidence.

22 Q And is State's Exhibit -- the contents of
23 State's Exhibit 42-B in substantially the same
24 condition it was in when you received it on August
25 the 4th, 1993, conducted your examination of August

1 the 4th, 1993?

2 A With the exception of some additional tape
3 for sealing the container later, yes.

4 Q And the bullet itself, is it in
5 substantially the same condition?

6 A It is as when I received it and in the same
7 condition as when it turned it over the SBI.

8 Q Do you recall on what date that the
9 bullet,, the container that held the bullet, and the
10 plastic bag that's been marked as State's Exhibit
11 42-B -- excuse me A, were turned over to the SBI?

12 A Would have been on the 18th of -- let me
13 refer to my notes. It was turned over on the 18th of
14 August of 1993.

15 Q And to whom did you turn those items over?

16 A I turned this over to Agent April Sweat of
17 the North Carolina SBI.

18 Q I'm going to hand you what has been marked
19 as State's Exhibit 45, ask you to look at that
20 document, tell me if you can identify it?

21 A Yes, this is the report that I issued to
22 Coroner Timothy Brown in Bennettsville, South
23 Carolina, referred my results in the examination of
24 this bullet.

25 Q State's Exhibit Number 45, is that an exact

1 photocopy of the original report that you filed in
2 connection with your examination?

3 A Yes, it is.

4 Q And is does it contain all the information,
5 the originally contained --

6 A Yes, does.

7 MR. BRITT: Your Honor, I ask
8 that State's Exhibit 45 be admitted.

9 THE COURT: You folks want to be
10 heard?

11 MR. THOMPSON: No.

12 THE COURT: Admitted without
13 objection.

14 BY MR. BRITT:

15 Q I'll show you what has previously been
16 marked -- has been introduced as State's Exhibit
17 Number 40, ask you to look at that photograph and ask
18 you if you recognize it?

19 A It appears to be the same bullet that I
20 have here.

21 Q When you say it appears to be, on what
22 basis do you make that --

23 A Same appearance, some of the same defects
24 that I have on this bullet are also visible on this.
25 However, I did not take this photograph.

1 Q Can you use State's Exhibit 40 in
2 illustrating your testimony to the jury in regard to
3 the characteristics and markings that you look for on
4 bullets when conducting examination?

5 A Yes, I believe I can.

6 MR. BRITT: Your Honor, may he
7 step down?

8 THE COURT: You folks want to be
9 heard?

10 MR. BOWEN: No.

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q Ask you, because of the size of the jury
14 box, to start at this end, at midway, stop, and then
15 at the end, again stop.

16 And State's Exhibit Number 40, photograph
17 of the bullet, can you show the jurors by use of that
18 photograph the markings and characteristics you look
19 for that are evident as a result of that photograph
20 that you look for in your examinations?

21 A The photograph is a little dark to be able
22 to determine exactly what may be seen, but here, you
23 can see perhaps where there's an impression of one
24 land groove visible here distinctly.

25 Q What is a land groove?

1 A Land impression, proper term would have
2 been a land impression. Land impression would be the
3 groove that is formed on the bullet as it passes over
4 the raised portion of the rifling. Here on the side,
5 here's the land impression, here on the side you see
6 a deep groove cut across the axis of the bullet.
7 This groove, when the bullet was manufactured, would
8 have been designed to contain a lubricant to ease its
9 passage through the barrel of the firearm.

10 When I received this bullet there was no
11 lubricant remaining in that groove. However, that is
12 not unusual for a fired bullet to have lost that
13 after being fired and after striking an object. If
14 you look down both in the lubed groove on above it,
15 that is caused by being in the -- you can see what
16 appear to be two holes that are represented by these
17 two black spots. These would be consistent with a
18 hole caused by escaping gas from inside the bullet
19 when it was passed. These were not passed typically
20 on any kind of well manufactured bullet. This is one
21 of the implications that I had that this was a poor
22 quality bullet.

23 Q If you would return to the witness stand.

24 Based upon your examination of the bullet
25 that's contained inside of State's Exhibit 42-B, were

1 you able to -- or are you able to state an opinion as
2 to what manufacturer of firearm that bullet would
3 have been fired from?

4 A Yes, when I -- after I performed my
5 analysis and made my measurements and compared them
6 with that database that I previously described from
7 the FBI, I was able to conclude that it could have
8 been fired by -- if I could refer to my original
9 report -- any one of my list contains 14 different
10 brands of firearm. This list is not all inclusive,
11 and there could be other makes of firearms that could
12 have also fired that projectile, and I just -- they
13 are just simply not included in the database. The
14 database is provided by and maintained by the FBI.
15 However, most of the data they get for that database
16 is provided by other laboratories across the country
17 such as ours.

18 Q One of the possible firearms or weapons
19 that could have fired that bullet, was that the Smith
20 & Wesson?

21 A Yes.

22 Q Is Smith & Wesson one of the larger
23 manufacturers of firearms in the United States?

24 A Yes, it is.

25 Q In your report that's been marked as

1 State's Exhibit Number 45, you state that the bullet
2 could be a fired .38 or a .357 caliber round nose
3 bullet, is that correct?

4 A That's correct.

5 Q What is the different between a .38 round
6 nose bullet and a .357 round nose bullet?

7 A When a manufacturer designates different
8 calibers for their ammunition, for instance, .38
9 Special being an industry standard, .357 being
10 industry standard, however both of these cartridges
11 use the same diameter of bore, and same diameter and
12 type of bullet in many cases. And .357 Magnum
13 caliber, for instance, has a bore diameter of .358
14 inches. A .38 Special, although it says .38, does
15 not truly indicate the diameter of the barrel. The
16 barrel is also .358 inches in diameter, the bore is
17 .38 Special ammunition, which is what this
18 bullet is most consistent with being loaded into or
19 having been loaded into, will fire effectively
20 in .357 Magnum caliber revolvers. Therefore, for
21 purposes of the report, with this type of ammunition,
22 I always state that it is consistent with a .357
23 or .38 caliber ammunition. So while it's more
24 consistent with a .38 Special, you should also be
25 looking for a .357 Magnum gun.

1 MR. BRITT: I don't have any
2 other questions.

3 THE COURT: Any
4 cross-examination?

5 CROSS-EXAMINATION

6 BY MR. BOWEN:

7 Q The notes that you refer to here in the
8 courtroom today, do you have those here with you or
9 just your file report?

10 A I have my notes with me as well, sir.

11 Q Has anybody ever communicated to you to
12 turn those over to the investigators for the
13 prosecutors up here in North Carolina?

14 A No, they have not.

15 Q May I see those notes, please?

16 A Yes, you may.

17 THE COURT: There's a predicate
18 question missing.

19 MR. BOWEN: Right.

20 BY MR. BOWEN:

21 Q Have you been using your notes to testify
22 from and to formulate your report from, sir?

23 A Yes, I used my notes to formulate my report
24 and I've been testifying from them here today.

25 Q May I see your notes?

1 A Yes.

2 THE COURT: Yes, sir.

3 THE WITNESS: You need the
4 photographs as well? I didn't use those to
5 testify.

6 MR. BOWEN: Just what you used.
7 Thank you.

8 THE COURT: Mr. Bowen, Mr.
9 Thompson, you folks need a few moments?

10 MR. BOWEN: I think this will be
11 pretty quick.

12 BY MR. BOWEN:

13 Q Officer Collins, the computer printout
14 material within these notes or attached to these
15 notes, that's what you received in making your list
16 of the possible manufacturers of the firearm that
17 fired the bullet in question, is that correct?

18 A Yes, sir, that printout was generated by me
19 upon inputs of this data into the computer where the
20 data base is stored.

21 Q Now, according to your conclusion, the
22 bullet in question could have been fired from a Smith
23 & Wesson weapon, is that correct?

24 A That is correct.

25 Q Could have just as reasonably been fired

1 from a brand called a Spanish weapon, correct?

2 A Well, yes, the word Spanish appears on my
3 list. However, that's merely to indicate that
4 any .38 Special caliber gun of Spanish manufacturer
5 could have been submitted.

6 Q Any gun made in the country of Spain would
7 have the same type of rifling characteristics as
8 appeared on this bullet?

9 A Not necessarily. They could be several
10 different rifling characteristics in .38 Special
11 revolvers manufactured in Spain. However, there are
12 so many small manufacturers in Spain that without
13 examining the firearm in the laboratory, it would be
14 impossible to determine if it could have been fired
15 from that gun.

16 Q So it's fair to say, as I understand it,
17 that that is a typical rifling characteristic for a
18 handgun of Spanish manufacturer?

19 A For many handguns of Spanish manufacturer,
20 yes.

21 Q It would be typical of a handgun made by
22 Iver Johnson?

23 A That's correct.

24 Q That's made in this country?

25 A Yes, it is it's made in America, USA.

1 Q And typical of the rifling characteristics
2 of a firearm made by the Rome manufacturer, is that
3 correct?

4 A That's correct.

5 Q Is that USA manufacturer or --

6 A That is German.

7 Q German, all right. Now, the other
8 manufacturer that it would fit would be Ruger Arms,
9 is that correct?

10 A That's correct.

11 Q Ruger Arms is a very large American
12 manufacturer, is it not?

13 A Yes, it is.

14 Q Another manufacturer that you list that
15 would give the very same rifling characteristics on a
16 bullet was the Alpha Manufacturing Gun?

17 A That's correct.

18 Q Where is that sir?

19 A I believe they are manufactured in Spain
20 but I would have to refer to the printout, it would
21 tell me.

22 Q Then you list U.S. Revolver, that's also a
23 large U.S. manufacturer?

24 A Was at one time, I don't believe they are
25 still in business.

1 Q Still a lot of firearms made by this
2 manufacturer out in circulation?

3 A Yes, there would be a fair number of those
4 firearms available on the market.

5 Q And it appears that it would have been an
6 American manufacturer in operation?

7 A Yes.

8 Q Now you list another potential manufacturer
9 of a weapon that would have caused these rifling or
10 tool marks on the bullet, and that is Alama,
11 A L A M A?

12 A Yes, sir.

13 Q Where is that manufactured?

14 A Those are manufactured in Spain.

15 Q And then you list Taurus, where is Taurus
16 made?

17 A Manufactured in Brazil.

18 Q You mention R & R?

19 A Yes, sir.

20 Q R & R is an American manufacturer?

21 A Yes.

22 Q Very large one?

23 A Yes, it is.

24 Q One still in business?

25 A I believe it changed its name to NEF or New

1 England Firearms, but I believe the basic design of
2 that firearm is still in production. So New England
3 Firearms would also be another manufacturer because
4 it's derived from the old R & R that would still be
5 making a weapon that would give the same rifling
6 characteristics, correct.

7 If I could rephrase that. The company is
8 still in business, I believe, the New England
9 Firearms brand. I don't know if they are still
10 manufacturing a .38 caliber revolver, although the
11 parent company H & R, Hatton & Riferson does
12 manufacturer a .38 revolver.

13 Q There's many thousands of those guns out in
14 circulation?

15 A That would be accurate.

16 Q Then you mention a potential manufacturer
17 INA as one that would have made a weapon that had the
18 rifling characteristics that would have appeared on
19 the bullet that you examined, correct?

20 A That's correct, sir.

21 Q Where is INA made?

22 A Refer again to the printout to make sure,
23 but I believe that INA in this case is referred to a
24 Brazilian manufacturer of firearm.

25 Q Now, I believe that you say that the source

1 of this list that gets printed out from the FBI is
2 largely composed of submissions from agencies like
3 yours who have had an opportunity to do tool marks
4 identification on bullets that come from these known
5 firearms, is that correct?

6 A That's correct.

7 Q So in other words, for all we know, there
8 are even more firearms out there that have the same
9 type of rifling characteristics but they didn't make
10 this list because they didn't get anyone else's lab
11 except for yours?

12 A That's correct.

13 Q Another manufacturer that could have
14 produced or that did produce a gun that could have
15 produced these rifling or tool marks would be Union
16 Arms, is that correct?

17 A That's correct, sir.

18 Q Is that a state side company or --

19 A That is a U.S. manufacturing company and to
20 the best of my knowledge, it also refers specifically
21 to one model of firearm which is the .357 Magnum
22 semiautomatic, which is a rather unique gun.

23 Q Then there's a manufacturer you list named
24 Hollis; that a state side manufacturer?

25 A I believe it is.

1 Q Still in business, as far as you know?

2 A I do not believe they are still in
3 business.

4 Q All right. But you know there are guns out
5 there that they make?

6 A Yes.

7 Q And Sports Arms, where is that
8 manufactured?

9 A Sports Arms firearms are manufactured in
10 various places, many of them are manufactured in
11 Europe, many of them come from Germany, some of them
12 may have come from the United States. In the case of
13 this particular instance, I would hesitate to
14 specifically pin it down with any individual company.

15 Q Now, this list that you received from the
16 FBI, this was made as a result of guns having -- of
17 these manufacturers having been examined in labs in
18 this country, is that correct?

19 A I do not know if they get their data from
20 any laboratories outside of the United States.
21 The -- professional association, which is the
22 Association of Firearms and Tool Marks Examiners
23 which works closely with laboratories such as the FBI
24 is the international organization, and we do share
25 information outside the national borders.

1 Q As far as you know, each one of these guns
2 is or has been at one time, each one of these brands
3 of guns is or has been at one time imported into this
4 country?

5 A Yes, best of my knowledge.

6 Q Now, on your list that you received from
7 the FBI -- may I approach the witness?

8 THE COURT: Yes, sir.

9 THE WITNESS: If I could offer a
10 correction at this time, I did not receive
11 that list from the FBI. They provide the
12 computer database to us and we use it
13 ourselves.

14 (Defense Exhibit 5 was
15 marked for identification.)

16 MR. BOWEN: May I approach?

17 THE COURT: Yes, sir

18 BY MR. BOWEN:

19 Q Mr. Collins, I have marked two pieces of
20 paper which have been joined together as Defense
21 Exhibit Number 5. Can you tell the jury what those
22 two pieces of paper are, sir?

23 A This is the computer printout that was
24 generated when I input the data from my examination
25 of the bullet.

1 THE COURT: By the bullet, are
2 you referring to what has previously been
3 marked as what is contained in State's
4 Exhibit 42-B, sir?

5 THE WITNESS: Yes, I am, sir.

6 BY MR. BOWEN:

7 Q So that you put in certain characteristics
8 into your computer, is that correct?

9 A That is correct. Specifically I would put
10 in the number of rifling grooves that were visible on
11 the bullet, the direction of the twist, the range of
12 the widths of the impressions caused by the lands and
13 the grooves of the rifling, that is to say, the
14 minimum and maximum of those dimensions.

15 Typically also in the laboratory, if we
16 have a poorly engaged bullet such as this, we would
17 widen that margin by two to five thousandths of an
18 inch on either side to take into account the poor
19 engagement of the bullet. We are not trying to
20 provide a list here of all the manufacturers that
21 could have fired that bullet, we're trying to get the
22 investigator a tool of many of the possible
23 manufacturers.

24 Q All right. And in response to Mr. Britt's
25 question, you said that Smith & Wesson was one of the

1 possible manufacturers, is that right?

2 A That is correct.

3 Q Now, when you input the data that you just
4 described, then the computer from a database with the
5 FBI reported back to you this list that is now marked
6 as Defense Exhibit 5, is that correct?

7 A Yes, it is.

8 Q Would you tell the jury the descriptions of
9 all the different distinct Smith & Wesson weapons
10 that could have fired this bullet?

11 MR. BRITT: Objection.

12 BY MR. BOWEN:

13 Q According to your list?

14 THE COURT: Do you want to be
15 heard?

16 MR. BRITT: Exhibit not in
17 evidence.

18 THE COURT: Are you asking him to
19 testify based on information that was
20 considered in the formulation of any
21 opinion?

22 MR. BOWEN: Yes, sir.

23 THE COURT: Objection is
24 overruled. Exception is noted for the
25 record. You may answer his question,

1 Mr. Collins.

2 THE WITNESS: If I could
3 clarify. You're asking me to provide a
4 list of all the different calibers of Smith
5 & Wesson firearms that could have fired the
6 bullet? I'm not sure I understand the
7 question.

8 THE COURT: Rephrase your
9 question.

10 BY MR. BOWEN:

11 Q Are there a number of listings of different
12 kinds of weapons made by Smith & Wesson that could
13 have fired that bullet on your list?

14 A Yes, there are. There are several
15 different classes or types of Smith & Wesson pistols
16 that, according to this printout meet or match the
17 general rifling characteristics of that bullet.

18 Q So how many different Smith & Wessons could
19 have fired that bullet?

20 A According to the printout alone, you
21 could -- it could be construed -- seven different
22 types. However, in producing this printout, when I
23 input the data into the computer, I specify that it
24 should give me all the possible .38 caliber firearms
25 that could have produced this so that from that I can

1 glean out the .38 Special and .357 Magnum caliber
2 guns that it's most consistent with.

3 When I ask to give me all the .38 Caliber
4 firearms, it's going to give me all others that are
5 not consistent with this type of bullet. For
6 instance, .38 Long Colt, .38 Smith & Wesson and 9
7 millimeter Luger caliber which have all similar
8 general rifling characteristics. In this case, some
9 of those other types that I've just described would
10 fall under those categories of other guns that are
11 not consistent with being fired from this type of
12 bullet.

13 Q Now, a .38 will fire a .357 bullet,
14 correct?

15 A .38 Special cartridge will fire a .357
16 Magnum caliber firearm, yes, sir.

17 Q Will a .357 cartridge fire a .38 Special
18 revolver?

19 A Typically no, although there are some
20 poorly manufactured revolvers from outside the United
21 States that have, in our experience, been able to
22 chamber a .357 Magnum cartridge. There's only one or
23 two of these in existence that I know of and they are
24 dangerous to fire with .357 Magnum ammunition.

25 Q Is it fair to say although you have a

1 leaning towards one or the other, you're not
2 absolutely able to eliminate this bullet as a .357
3 bullet?

4 A That is correct.

5 Q Tell me this, Mr. Collins, the type of
6 bullet that you describe as reload ammunition, I
7 believe, is that the type of ammunition that one
8 would typically walk into a store and buy off a
9 shelf?

10 A There are several manufacturers of
11 remanufactured, reloaded ammunition available that do
12 offer their product for retail sale, I guess.

13 Q If I walked in and bought, you know,
14 Winchester, Remington, anything like that from a
15 standard manufacturer, would I be buying reloaded
16 ammunition?

17 A If you were buying ammunition from one of
18 the major manufacturers, for instance Remington,
19 Winchester, Federal, someone of that nature, you
20 would be buying new, factory new ammunition. But if
21 you were buying reloaded ammunition, typically it
22 will be in a box indicating the manufacturer or the
23 person who reloaded it or remanufactured it.

24 Q In other words, not a major brand name?

25 A Typically not, sir.

1 Q Major manufacturers do not sell reloaded
2 ammunition as finished ammunition, do they?

3 A I have not seen any evidence that they do.

4 Q You did not have the opportunity to compare
5 this bullet with any other data reference or weapon,
6 did you?

7 A No, sir, the firearm was never submitted to
8 me to compare with this bullet.

9 Q You did not have an opportunity to compare
10 this bullet with a casing, did you?

11 A No, sir. And typically, it is not
12 typically possible to determine if a given projectile
13 is fired from a given casing as the casing would
14 theoretically be able to leave markings on the
15 surface of the bullet that would be able to perhaps
16 identify it as having -- as that bullet as having
17 been fired from that casing. When the bullet goes
18 through the barrel, these markings would be
19 obliterated.

20 MR. BOWEN: Thank you,

21 Mr. Collins.

22 THE COURT: Anything on

23 redirect?

24 REDIRECT EXAMINATION

25 BY MR. BRITT:

1 Q Mr. Collins, in preparing your report,
2 analyzing the different manufacturers of the possible
3 weapons this bullet could be fired from, what was
4 that information generated for?

5 A That was generated specifically and only to
6 give the investigators a tool by which they might be
7 able to find or narrow down their search on a suspect
8 firearm.

9 MR. BRITT: I don't have any
10 other questions.

11 THE COURT: Anything further?

12 MR. BOWEN: No, sir, no
13 questions.

14 THE COURT: May the witness be
15 released?

16 MR. BOWEN: We need to be heard
17 before you do that.

18 THE COURT: Do you want to do
19 that now?

20 MR. BOWEN: Yes, sir.

21 THE COURT: Ladies and gentlemen,
22 if you will accommodate us again. There's
23 a matter of law we must take up outside the
24 presence of the jury. Please don't worry
25 or speculate about what takes place in the

1 courtroom in your absence. All members of
2 the jury please step to the jury room.
3 There's a matter of law the Court must deal
4 with.

5 (Jury out at 10:19 a.m.)

6 THE COURT: Let the record show
7 the following is being conducted in the
8 absence of the jury. Mr. Bowen.

9 MR. BOWEN: Yes, Your Honor.
10 Your Honor, we just learned that
11 Mr. Collins did have some notes. As Your
12 Honor knows, we have a firearms expert in
13 another state standing ready to testify.
14 Our motion at this time is that the Court
15 in its discretion consider allowing us to
16 have a copy of Mr. Collins' notes. Now, we
17 had an opportunity to look them over but
18 for them to be really meaningful to our
19 case, we must send a copy of those notes to
20 our expert.

21 THE COURT: Mr. Britt? Arguably
22 there are matters which are pertinent for
23 purposes of cross-examination under State V
24 Hardee, and now under 15 A, those
25 provisions dealing with discoverable

1 matters at least for the purposes of
2 cross-examination.

3 MR. BRITT: Yes, sir.

4 THE COURT: Yes, sir.

5 MR. BRITT: No, sir, I mean, I
6 imagine they intend to send them to
7 Mr. Fletcher in Dallas and have them
8 compare his personal findings with those of
9 Mr. Collins --

10 THE COURT: Well, all right, if
11 they were offered through a defense expert,
12 for what purposes would they come in.

13 MR. THOMPSON: Your Honor, we
14 need them to -- because this is a part of
15 his material and he's testified to from his
16 memory, and may not be a big deal, I didn't
17 think it was, because Mr. Britt on previous
18 occasions just went and gave us copies of
19 them, we probably should have requested
20 them.

21 THE COURT: I don't think it is.
22 My concern is, if, for example, you intend
23 to offer evidence through your expert,
24 which potentially might be impeachment
25 evidence of this witness, how has the

1 foundation been laid.

2 MR. THOMPSON: May not have at
3 this point, just --

4 THE COURT: That's my question.

5 MR. THOMPSON: May be just
6 general information that we need because we
7 took a very cursory look, as you know,
8 while the jury was present.

9 THE COURT: I take it the State
10 has no objection.

11 MR. BRITT: No, sir, I don't have
12 any objection.

13 THE COURT: Mr. Collins, for our
14 purposes, I don't have the authority or
15 jurisdiction to order anything out of South
16 Carolina but since you're here now, if you
17 will provide your notes to Mr. Britt.

18 THE WITNESS: Yes, sir, if I
19 could get a copy of them to return.

20 THE COURT: We're going to give
21 you the originals back. Mr. Britt is going
22 to make copies, so that -- other than that
23 is there any reason to --

24 MR. BOWEN: No, sir.

25 THE COURT: So otherwise, once

1 the notes have been copied, Mr. Collins is
2 able to leave?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: You may step down.
5 If you'll hand your notes to Mr. Britt. I
6 don't think there's an immediate need for
7 those notes, is there? Except for purposes
8 of Mr. Collins being able to leave?

9 MR. BRITT: Yes, sir.

10 THE COURT: Do you want to do
11 that now, Mr. Britt?

12 MR. BRITT: We will.

13 THE COURT: Okay.

14 THE COURT: In the discretion of
15 the Court, that is allowed.

16 MR. BOWEN: Thank you.

17 THE COURT: Any reason why we
18 can't go forward at this time, Mr. Britt,
19 while the notes are being copied?

20 MR. BRITT: No, sir.

21 THE COURT: If you'll bring the
22 jury back in. I'm sorry, Mr. Thompson, you
23 had your hand raised?

24 MR. THOMPSON: That's all.

25 THE COURT: If you'll bring the

1 jury back in.

2 (Jury in at 10:24 a.m.)

3 THE COURT: Mr. Britt, you may
4 call your next witness, sir.

5 MR. BRITT: Your Honor, before
6 doing that, I would ask that State's
7 Exhibit 40 and State's Exhibit 45 be
8 published to the jury.

9 THE COURT: Yes, sir. Let me
10 make sure 40 has come in. It has. Yes,
11 sir, 40 is the photograph, 45 is the report
12 testified to by Mr. Collins.

13 MR. BRITT: Yes, sir.

14 THE COURT: Yes, sir. Mr. Horne,
15 if you will hand the exhibits to the
16 jurors. Ladies and gentlemen of the jury,
17 please recall my instructions to examine
18 any exhibit given to you individually and
19 carefully and without any comment.
20 Mr. Collins, for the purposes of -- they
21 need to be -- yes, appreciate it.

22 I'm sorry, I said Mr. Collins, I
23 apologize, Mr. Horne.

24 THE BAILIFF: No problem.

25 (Short pause).

CHRISTY

1 THE COURT: Mr. Britt.

2 MR. BRITT: At this time we call
3 John Christy.

4 JOHN CHRISTY,
5 being first duly sworn was examined and deposed as
6 follows:

7 DIRECT EXAMINATION

8 THE COURT: If you will state and
9 spell for the record both your first and
10 last name, sir?

11 THE WITNESS: John Carlton
12 Christy. J O H N, Christy, C H R I S T Y.

13 BY MR. BRITT:

14 Q By whom are you employed?

15 A South Carolina Law Enforcement Division.

16 Q How long have you been employed by SLED?

17 A For a little over six years now.

18 Q And currently, what capacity do you work
19 for SLED?

20 A I'm assigned to the Implied Consent
21 Division, which is the breath testing division for
22 the State of South Carolina.

23 Q And how long have you worked in that
24 division?

25 A Since October the 2nd of 1995.

1 Q Prior to that, which -- in what division of
2 SLED did you work?

3 A I was assigned and employed in the latent
4 fingerprint, shoe and tire impression and crime scene
5 unit.

6 Q And how long did you work in that division?

7 A Little over five and a half years.

8 Q Mr. Christy, what is your educational
9 background?

10 A I'm a graduate of the University of South
11 Carolina with a Bachelor's of Science degree in
12 management and marketing.

13 Q And prior to going to work for SLED, did
14 you have any other -- did you have any previous law
15 enforcement background?

16 A Yes, sir, I did. I began my career in law
17 enforcement in 1982 with the Richland County
18 Sheriff's Department in Columbia, South Carolina as a
19 uniformed patrolman. After about three years, I took
20 the investigative exams and was promoted to the
21 identification division where I underwent a two year
22 internship under two qualified examiners studying
23 crime scene processing and shoe and tire impression
24 evidence, latent fingerprint evidence.

25 Q How long did you work with the Richland

1 County Sheriff's Department in that capacity?

2 A For a little over five years.

3 Q And after leaving the Richland County
4 Sheriff's Department, did you go to work for SLED?

5 A Yes, sir, I did.

6 Q And while at SLED, what training and
7 courses have you received in regard to latent
8 fingerprint evidence and what I will refer to as
9 trace evidence?

10 A I've attended numerous schools, and I have
11 a list if you would like me to publish that for the
12 jury. Basically, I started out at Richland County, I
13 did a two year internship under two supervisors
14 studying this thing, I attended schools conducted by
15 the South Carolina Criminal Justice Academy, the U.S.
16 Department of Justice and the FBI in this matter.
17 The Southern Police Institute out of the University
18 of Louisville in Kentucky through Broward Community
19 College in Fort Lauderdale, Florida.

20 Q And in your capacity as a latent
21 fingerprint and crime scene examiner, have you
22 received training in the lifting of latent
23 fingerprints?

24 A Yes, sir, I have. That was part of my
25 duties, whether it was evidence that we received at

1 SLED or whether we went out to process a crime scene,
2 was to examine items of evidence. Items of evidence
3 being an item that may be associated with or involved
4 in some type of criminal activity and presenting it
5 using the various methods that have available to us
6 for fragmentary latent prints which may be present on
7 the surface of these items.

8 Q Have you also received training in the
9 comparison and identification of fingerprints that
10 are lifted from a crime scene and compared with known
11 fingerprints of an individual?

12 A Yes, sir, I have.

13 Q And what training and experience have you
14 had in that area?

15 A Through attending the schools at the
16 Criminal Justice Academy, the FBI academy in Quantico
17 Virginia, and on-the-job training. It was a daily
18 job. On a daily average, I would examine latent
19 fingerprints and compare them with inked or known
20 standards to determine if the latent impression was
21 produced by one and the same individual.

22 Q What is meant by a latent fingerprint?

23 A The skin that is present on the palm or
24 surface on our hands and the soles of our feet is
25 different from the skin that is present on other

1 portions of our bodies. It's rough and corrugated,
2 having raised portions that we in the science of
3 fingerprints refer to as friction ridges. Present on
4 the tops of these ridges are minute pores where
5 perspiration is secreted from and coats the tops of
6 the ridges.

7 Perspiration is not the only factor that
8 determines whether a latent or hidden impression is
9 left behind. Oil or grease from objects such as food
10 or touching our hair is transferred to the tops of
11 the ridges, and when the hand or the finger comes in
12 contact with an object it may transfer a duplication
13 of the ridges to that object in the form of this
14 hidden residue.

15 Q And how are such impressions lifted?

16 A One of the most common methods that
17 everybody probably is familiar with is the use of
18 black fingerprint powder, where the surface is
19 lightly and generally dusted with the powder. The
20 powder would adhere to the oily residue deposited by
21 the finger or hand and stains this latent impression
22 a black color. This allows us to see the impression,
23 photograph it, and then by taking a thin piece of
24 transparent tape much like you would wrap a package
25 with, placing it over the latent impression, rubbing

1 it and lifting it, transferring the impression to the
2 adhesive backing of the tape. We then place the tape
3 on a card of contrasting color, such as white
4 backing. On the back we label the date, the case
5 number, all the pertinent data as to where the lift
6 came from.

7 Q What is an ink print or known fingerprint
8 impression?

9 A The ridges that I spoke of earlier that are
10 raised, an inked impression is where we take a layer
11 of black printer ink and apply it to the tops of the
12 ridges. We then systematically roll the fingers from
13 nail to nail to transfer a duplication of the ridge
14 detail to a known record or fingerprinted card in the
15 appropriate face for the appropriate finger. This is
16 a permanent record of the friction ridge detail of an
17 individual's fingers.

18 Q Are an individual's fingerprints unique to
19 that individual?

20 A Yes, they are. The two things that are
21 important about fingerprints are, number one, they
22 are permanent, that is, that they are formed during
23 the 12th week of gestation, and they remain with us
24 throughout life until decomposition sets in after
25 death. Barring mutilation, surgical or accidental

1 amputation, they remain permanent.

2 Q Mr. Christy, approximately how many times
3 would you say that you have compared and identified
4 known ink prints or impressions?

5 A Conservatively probably 10 to 12 thousand.
6 That's conservative. I have testified in South
7 Carolina conservatively in my career well over 150
8 times, twice in the State of Georgia and once in
9 Virginia. If we compare one latent impression
10 against a fingerprint card, that's ten comparison
11 because it's compared against all ten fingers, so as
12 far as how many comparisons I've made in my career
13 that would be a conservative estimate.

14 Q Have you previously testified in court
15 before as an expert regarding the identification of
16 people based upon fingerprint comparison?

17 A Yes, sir, I have.

18 Q On how many occasions would you estimate
19 that you have testified as an expert in that area?

20 A In South Carolina alone, conservatively,
21 150 times. In the State of Georgia, twice, and once
22 in the State of Virginia.

23 MR. BRITT: Your Honor, at this
24 time, I would tender Mr. Christy as an
25 expert in the area of fingerprint

1 impression -- excuse me, fingerprint
2 identification.

3 THE COURT: Counsel for the
4 defendant want to be heard as to the
5 tender?

6 MR. BOWEN: No, Your Honor.

7 THE COURT: Witness may so
8 testify.

9 BY MR. BRITT:

10 Q Mr. Christy, are there different
11 distinguishing characteristics of a fingerprint?

12 A Yes, sir, there are. The three basic
13 characteristics we look for in conducting an
14 examination of a latent impression versus an inked
15 impression are, number one, a ridge ending. A ridge
16 ending is a ridge that flows and abruptly stops. A
17 second characteristic we look for is a forking ridge
18 or sometimes referred to as a dividing ridge. A
19 dividing ridge or forking ridge is a single ridge
20 that flows and splits into two separate ridges,
21 forming a fork. The other or last main
22 characteristic we look for is a dot. A dot is simply
23 a ridge that has no direction.

24 Q And in your opinion, or to your knowledge,
25 Mr. Christy, how many possible points of

1 identification are there on each fingerprint?

2 A The average fingerprint contains anywhere
3 from 75 to 150 unique characteristics. The average
4 palm impression, on average, about 25 individual
5 characteristics, unique physical characteristics.

6 Q Is it possible, Mr. Christy, for two people
7 to have the same fingerprints?

8 A No, sir, it is not possible.

9 Q Why is that not possible?

10 A Because they are permanent and unique to
11 each individual. In the 93 years that fingerprints
12 have been used in this country, it was brought over
13 to this country by officials from Scotland Yard to
14 the St. Louis Police Department in 1903 at the
15 World's Fair, no two people have ever been recorded
16 as having the same fingerprints, not even identical
17 twins. The one unique thing about fingerprints is
18 that they can distinguish between identical twins
19 where DNA cannot.

20 Q Mr. Christy, on August the 4th of 1993, did
21 you receive certain items of evidence from special
22 agent David Collins of SLED?

23 A Yes, sir, I did.

24 Q When and where did you receive that
25 evidence from Special Agent Collins?

1 A Received it from him at the evidence log-in
2 area at the forensic services building.

3 Q And specifically, what items of evidence
4 did Mr. Collins deliver to you on August the 4th,
5 1993?

6 A Two hands, one left and one right hand.

7 Q And how were they contained at the time you
8 received them?

9 A They were packaged inside of an autopsy
10 plastic bucket filled with water or a saline type
11 solution.

12 Q Were you able to observe those hands in
13 that bucket without opening them?

14 A No, sir, it's not a clear bucket. No, I
15 was not. It was sealed. I did not open it down
16 there. I took it up to my laboratory and then opened
17 it under a fume hood or a work area where we do our
18 work.

19 Q And upon opening the bucket that
20 Mr. Collins had delivered to you, what if anything
21 did you discover inside?

22 A Two hands.

23 Q Were you able to determine, based upon the
24 pigmentation of the hands, whether they were the
25 hands of a black man, white man, Indian man?

1 A Based on my experience, they appeared to be
2 badly decomposed. No, I did not make any
3 determination of that. At that time, the request was
4 made that we try to obtain an inked impression for
5 search against the South Carolina Law Enforcement
6 automated fingerprint identification system.

7 Q And what if anything did you do with those
8 hands to prepare them for attempting to make inked
9 impressions?

10 A I visually examined them and found them to
11 be in an advanced state of decomposition. However, I
12 found that the right thumb did have some visible
13 ridge detail on it that was very detailed so I placed
14 them in a solution of glycerin and water to try to
15 preserve these ridges.

16 Later, I took a scalpel and removed the
17 skin from the right thumb finger, I placed it on my
18 gloved hand, transferred ink to it and then
19 transferred a ridge detail to a postmortem strip.
20 Prior to doing that, when I removed the skin, I
21 placed it between two pieces of glass, backlit it
22 with light, and photographed it just in case should
23 something I do maybe destroy this, I would still have
24 the documentation of the ridge detail and could make
25 the identification off of the skin itself.

1 Q You've testified that the hands, in your
2 opinion, were in an advanced state of decomposition.
3 What if any effect does decomposition of the body
4 have on an individual's fingerprints?

5 A Well, the fingerprints are permanent in the
6 sense that they remain with us throughout our life.
7 And then once the body decomposes or breaks down,
8 obviously the fingerprints or these fine ridges will
9 decompose also.

10 Q And upon your examination of these hands
11 that Mr. Collins had delivered to you, other than the
12 thumb, were you able to find any of these ridges that
13 you've referred to?

14 A No, sir, I was not. Some of the fingers
15 were somewhat hard and appeared to be like mud.

16 Q And the skin tissue that you removed from
17 the hands, from what location on the hand was that
18 tissue removed?

19 A It was from the number one finger or the
20 right thumb finger of the right-hand.

21 Q And can you describe for the jury the
22 procedure in which you removed that skin tissue?

23 A Yes, sir, I can. We take a scalpel, and
24 I'll use my left hand for demonstration purpose, we
25 simply cut the finger from the edge of the nail line

1 all the way around the top, all the way down to the
2 base, and cut across, and then we carefully remove
3 this skin so as not to tear it or stretch it.

4 Q And after the skin was removed from the
5 right thumb of the number one finger of the hand that
6 you were working with, what did you do with that skin
7 tissue?

8 A Photographed it.

9 Q You described a procedure where you placed
10 it in glass and then backlit the glass. Can you
11 explain what that is?

12 A Yes. Using two pieces of thin glass to
13 just hold the skin flat, and then positioning a 35
14 millimeter camera on a tripod above it, and then
15 having a light source underneath it to show the
16 ridges and the furrows on the skin. The furrows
17 being the depressions and the ridges being the raised
18 portion of the skin.

19 Q At the time you were doing these
20 procedures, were you wearing any type of gloves or
21 coating over your fingers?

22 A Yes, sir, I was wearing heavy gloves, yes,
23 sir.

24 Q Why were you wearing gloves?

25 A Well, it's a lab policy, to protect me from

1 one, being cut with the scalpel and number two, the
2 possible transmittal of disease such as hepatitis.

3 Q And the two pieces of glass that were
4 utilized in making the photograph of the skin tissue
5 that you removed from the thumb, where did you obtain
6 that glass?

7 A From our supply list in the latent
8 fingerprint laboratory.

9 Q Did you examine that glass prior to placing
10 the skin tissue on it to ensure that there were no
11 other fingerprint or markings on that glass?

12 A Yes, I did. It was clean, it comes between
13 two pieces of fine tissue type paper.

14 Q And after placing the skin tissue between
15 the glass, what type of camera were you using to make
16 that photograph?

17 A Just a standard 35 millimeter Nikon camera.

18 Q After you made the photograph of the
19 tissue, skin tissue, from the right thumb or the
20 number one finger of the hand, what did you then do?

21 A I then took the skin and placed it on my
22 gloved finger, transferred ink to the friction ridges
23 that were remaining on the skin from the right thumb
24 finger, and then transferred inked impression of that
25 friction ridge to postmortem strips.

1 Q What is a postmortem strip?

2 A That's where we take a fingerprint card and
3 cut the block out. It allows us to place them
4 between a postmortem spoon and it makes it easier to
5 fingerprint a deceased individual for identification
6 purposes, especially where rigor mortis or stiffness
7 has set into the joints.

8 Q Mr. Christy, is it possible in your opinion
9 when you place the skin tissue that you removed from
10 the right thumb of the hand on to your thumb, is it
11 possible for your fingerprints to be superimposed
12 along with those -- along with the ink impressions
13 it's made from the impression?

14 A No.

15 Q Why is that not possible?

16 A Because the glove is between my finger and
17 the piece of skin. The glove that we use is much
18 like a glove you would wash dishes with, it's a heavy
19 rubber type glove.

20 Q And can you describe for the jury the
21 manner and the number of prints that were -- ink
22 prints that were made in following this procedure?

23 A I don't recall the exact number, but
24 numerous were made, and after each one was made, I
25 examined each one with a magnifying glass to

1 determine how well the impressions were transferring.

2 Q Why were multiple impressions made?

3 A A lot of times with decomposed skin, the
4 more impressions you make, sometimes the better the
5 impression will get, the ridges will have a tendency
6 not to transfer as much body fluid that may be
7 present in them to the surface.

8 Q And after you made the inked impression,
9 you testified that you examined each of those
10 impressions?

11 A Yes, sir, with a standard magnification
12 glass.

13 Q What if anything were you looking for when
14 you examined those with standard magnification?

15 A Clearness and sharpness of the ridge detail
16 that was being transferred to these postmortem
17 strips.

18 Q Did you do any other examination of those
19 impressions?

20 A In regard to --

21 Q Did you examine the inked impressions for
22 identification points?

23 A Yes, sir, I did.

24 Q Did you find any of those identification
25 points that you've testified about earlier?

1 A Yes, divided ridges, yes, they were present
2 in the postmortem impression.

3 Q With that information, what if anything did
4 you do with that information?

5 A I'm not sure I understand --

6 Q You've previously testified that the SLED
7 has an automated fingerprint database?

8 A Yes.

9 Q What is that?

10 A That is where unknown impression is
11 searched against the fingerprint records that are on
12 file automated or through computer based on the
13 unique characteristics.

14 Q And that automated fingerprint database
15 maintained by SLED is that maintained in the regular
16 course of the business of the fingerprint division?

17 A Yes.

18 Q Is that -- that's information that is made
19 at or near the times of the circumstances of the
20 information contained in that database?

21 A Yes, sir.

22 Q And that's information that is made by a
23 person with personal knowledge of the transaction
24 that is recorded in that database?

25 MR. BOWEN: Object.

1 THE COURT: The objection is
2 overruled. The pertinent inquiry is under
3 Rule 703.

4 BY MR. BRITT:

5 Q Did you, in forming any opinion that you
6 made in this case, did you utilize information that
7 was provided to you by the automated fingerprint
8 database maintained by SLED?

9 A No, sir, I did not. I was unable to search
10 it on the database because the points of
11 identification are the minutia points in the lower
12 point of the friction ridge that was transferred to
13 the inked impression, which was an area that can't
14 commonly be charted or plotted by the records section
15 in our system. At that time, I had no known
16 individuals to compare this detail with, so I
17 preserved it.

18 Q How did you preserve the evidence?

19 A The postmortem strips were sealed inside of
20 a clear plastic bag or heat sealed pouch and placed
21 inside of my evidence locker, which only I have the
22 combination to. This locker is behind a door which
23 is inside of a vault that you must have a magnetic
24 card to get into. Each time you go in there, it
25 records the date and time of the individual going

1 through it. The remains of the hands as well as the
2 friction ridge skin was stored inside of my
3 refrigerator inside of this vault.

4 Q At any time after you placed them inside
5 the vault, was this evidence ever removed?

6 A Not by anybody other than myself. On
7 August the 14th of 1993.

8 Q On August the 14th of 1993, what if
9 anything was done with either the remains of the
10 hands or the skin tissue that you had used in making
11 the inked, postmortem impressions?

12 A The remains of the hands and the skin
13 tissue was turned over to Coroner Brown by myself
14 after I obtained the chain of custody or his
15 signature accepting those items from me.

16 MR. BRITT: May I approach?

17 THE COURT: Yes, sir.

18 (State's Exhibit 46 was
19 marked for identification.)

20 (State's Exhibits 46-A through 46-D
21 were marked for identification.)

22 BY MR. BRITT:

23 Q I'll show you what has been marked for the
24 purposes of identification as State's Exhibit 46, a
25 brown manila envelope bearing markings of the State
Bureau of Investigation, is that correct?

1 A Yes, sir.

2 Q I'm going to remove from inside the
3 envelope marked as State's Exhibit 46 an envelope
4 marked as State's Exhibit 46-A, another manila
5 envelope bearing certain identifying markers, ask you
6 to examine that.

7 A Yes, sir.

8 Q Removing from State's Exhibit 46-A, an item
9 marked as State's Exhibit 46-B, I'm going to ask you
10 to examine State's Exhibit 46-B and tell me if you're
11 able to identify it?

12 A Yes, sir, I can identify State's Exhibit
13 46-B by the unique markings which I myself placed on
14 this particular item.

15 Q What if any unique items did you place on
16 State's Exhibit 46-B?

17 A State's Exhibit Number 46-B is a black and
18 white scaled photograph of the friction ridge skin
19 which I removed from the right thumb finger between
20 the two pieces of glass using the back lighting
21 technique. In the scale it bears my initials, J C C,
22 for John Carlton Christy. It also bears the markings
23 RT thumb or number one on the scale, as well as the
24 laboratory case number, L93-11373. Further, on the
25 back of this, I noted the same case number, my

1 initials, the right thumb finger, and marked on it
2 that the photograph was not reversed.

3 Q When you say that it's noted that the
4 photograph was not reversed, what do you mean by
5 that?

6 A Meaning that it's in the -- not in the
7 right position. By reversing it you would get the
8 ridges in the right orientation, in other words,
9 rolling it.

10 Q Is State's Exhibit Number 46-B the original
11 photograph that you took or is it a duplicate of the
12 photograph that you took there in your laboratory?

13 A It's a duplicate.

14 Q Does it accurately and fairly depict the
15 item that you photographed during your examination of
16 the friction ridges or the skin that you examined in
17 connection with this case?

18 A Yes, sir, it does.

19 Q I'm going to hand you what has been marked
20 as 46-C, a plastic sealed envelope, and ask if you
21 can identify that envelope or the contents that
22 you're able to see through it?

23 A Yes, sir, I can.

24 Q How are you able to do that?

25 A By the unique markings which I myself

1 placed on it, the case number L93-11373, my initials
2 J C C, wrote on there right thumb, number one
3 finger. Also on the strips that are inside of here,
4 marked each one as the right thumb, number one
5 finger, they bear my case number, L93-11373 and my
6 initials, J C C. These are the strips.

7 Q The strips that are contained inside of
8 State's Exhibit 46-C, are those the postmortem strips
9 that you prepared as a result of the inked
10 impressions you made from the friction ridges of the
11 skin tissue that was removed from the hand that
12 Mr. Collins had delivered to you?

13 A Yes, sir, they are.

14 Q And as best you can tell, are those the
15 original strips, postmortem strips that you made?

16 A Yes, these are the original strips.

17 Q And are they in substantially the same
18 condition they were in after making the inked
19 impressions?

20 A Yes, the ink has been allowed to dry so
21 they will be preserved and be permanent marking on
22 the strips. These are the strips.

23 Q What if anything did you do with the
24 photograph marked as State's Exhibit 46-B and the
25 post -- the plastic bag containing the postmortem

1 strips that you made marked as State's Exhibit 46-C
2 once -- after you placed them into your evidence
3 locker?

4 A On August the 18th of 1993, I turned them
5 over to Special Agent April Sweat of the North
6 Carolina Bureau of Investigation.

7 Q And where did that transfer take place?

8 A At the state laboratory, South Carolina Law
9 Enforcement Division Forensic Services laboratory, I
10 turned these items over to her after I described them
11 and had a signed chain of custody from me to her on
12 the items.

13 Q I'm going to show you what was also
14 contained inside of 46-A, an item marked as 46-D for
15 the purposes of identification. Do you recognize
16 that?

17 A Yes, sir, I recognize the envelope, it
18 bears my case number, L93-11373. It's also embossed
19 in the paper, the case number, and has my last name,
20 Christy, on the outside of the envelope.

21 Q What if anything is contained in the
22 envelope for purposes of identification?

23 A Scaled photographs of the dental work which
24 I took on August the 14th of 1993 in the presence of
25 Coroner Tim Brown, my immediate supervisor,

1 Lieutenant Jim Springs with the South Carolina Law
2 Enforcement Division.

3 Q For what purpose did you take photographs
4 of the jaws and dental work that was removed from the
5 body in the autopsy of August 4th, 1993?

6 A To preserve the record of the dental work
7 to subsequent comparison so that it might be
8 presented in a court of law subsequently.

9 Q And the photographs that you took of the
10 jaws and the dental work, do they depict the actual
11 condition of the jaws and dental work as you saw them
12 at the time that the photographs were made?

13 A Yes, sir, they do.

14 MR. BRITT: May I have just a
15 second?

16 THE COURT: Yes, sir.

17 MR. BRITT: I don't have any
18 other questions.

19 THE COURT: Mr. Bowen, Mr.
20 Thompson, before beginning the
21 cross-examination, this is probably a good
22 point for us to take the mid-morning
23 recess. Do you folks have any objection to
24 that?

25 MR. THOMPSON: No.

1 THE COURT: Ladies and gentlemen
2 of the jury, we're going to take a recess
3 at this time. Please reassemble in the
4 jury room at 25 until by the clock on the
5 far wall. Also please recall it is your
6 duty to abide by all prior instruction of
7 the Court concerning your conduct during
8 this recess. Everyone else please remain
9 seated, the members of the jury are excused
10 until 11:35.

11 (Jury out at 11:15 a.m.)

12 THE COURT: Mr. Christy, you may
13 step down, thank you. We are at ease until
14 11:35.

15 (Brief recess.)

16 THE COURT: All counsel are
17 present. The defendant is present in open
18 court. Mr. Horne, are all members of the
19 jury in the jury room?

20 THE BAILIFF: Yes, they are.

21 THE COURT: Ready to go forward
22 with cross-examination?

23 MR. THOMPSON: Not quite.

24 If we may have just a few minutes.

25 THE COURT: Yes, sir.

1 MR. BOWEN: We're ready, Your
2 Honor.

3 THE COURT: Mr. Horne, if you'll
4 bring the jury in, please, sir.

5 (Jury in at 11:38 a.m.)

6 THE COURT: Mr. Christy, if you
7 will again take the witness stand, sir, you
8 remain under oath.

9 THE WITNESS: Yes, sir.

10 THE COURT: Mr. Bowen,
11 Mr. Thompson.

12 CROSS-EXAMINATION

13 BY MR. BOWEN:

14 Q Mr. Christy, within the past few minutes,
15 were you approached by Mr. Locklear who identified to
16 you to be an investigator for Mr. Angus Thompson
17 defense attorney in this case?

18 A Yes, sir.

19 Q Mr. Locklear asked you to talk to him about
20 matters concerning the testimony that you just
21 gave?

22 MR. BRITT: Objection to anything
23 Mr. Locklear may have said.

24 THE COURT: For what purpose is
25 it being offered?

1 MR. BOWEN: Claim subsequent
2 behavior.

3 THE COURT: On the part of
4 Mr. Christy?

5 MR. BOWEN: Yes.

6 THE COURT: Objection is
7 overruled. Do you want limiting
8 instruction?

9 MR. BRITT: Yes, sir.

10 THE COURT: Members of the jury,
11 the testimony now being elicited from the
12 witness before you, Mr. Christy, as to any
13 statements that may be testified to by
14 Mr. Christy, and any statements that may be
15 attributed specifically to Mr. Locklear are
16 not being offered for the truth of the
17 matters asserted, but are being offered and
18 received for the limited purpose of
19 explaining the subsequent conduct of the
20 witness who is now before you,
21 Mr. Christy. You may consider this
22 evidence for that limited purposes and for
23 no other purpose. Yes, sir.

24 BY MR. BOWEN:

25 Q Mr. Christy, you declined to speak to

1 Mr. Locklear about matters that you had discussed in
2 your testimony earlier, didn't you?

3 MR. BRITT: Objection, to
4 relevance.

5 THE COURT: Well, as to the form
6 of the question, if you would rephrase.

7 MR. BRITT: Move to strike.

8 THE COURT: Motion to strike is
9 allowed. Members of the jury, don't
10 consider that last question. Mr. Bowen,
11 you may ask additional questions. .

12 BY MR. BOWEN:

13 Q Based on the policy of your agency, you
14 declined to answer Mr. Locklear's question, did you
15 not?

16 A Yes, I did, based on the South Carolina Law
17 Enforcement Divisions policy. Our policy requires
18 that the solicitor in our state or the District
19 Attorney, as in your state, be present when we talk
20 with the defense counsel or defense investigators.
21 It's by no means trying to hide anything.

22 MR. BOWEN: Objected.

23 THE COURT: Overruled. He may
24 explain it.

25 THE WITNESS: It's a policy that

1 I must follow by. It comes under our
2 accreditation process, and it is one that
3 all agents are required to abide by. And I
4 was simply following the rules and
5 guidelines which the agency that I am
6 employed by has established.

7 BY MR. BOWEN:

8 Q So if a defense attorney or defense
9 attorney's representative, investigator, contacts you
10 and asks to speak to you about matters pertinent to
11 your investigation, unless the District Attorney is
12 willing to be present, that defense representative
13 doesn't get to talk to you about the case under your
14 policy, correct?

15 A The District Attorney can waive his
16 presence or he can be there, but until we hear from
17 him and we will require his presence being there
18 telling us that or in writing, you're right, we will
19 not talk to you. And here again, this is no means --
20 we had nothing to --

21 MR. BOWEN: Object to that.

22 THE COURT: Mr. Christy, I
23 apologize. The objection I need to rule on
24 before you complete your answer. He is
25 entitled to explain his answer. Objection

1 is overruled. You may explain if you feel
2 an explanation is necessary.

3 THE WITNESS: It's not an attempt
4 on the agents's part with the South
5 Carolina Law Enforcement Division or the
6 division itself to withhold any information
7 from the court or the defense. We're more
8 than happy to oblige any of their
9 questions, provide them with any
10 documentation which we may have in our
11 presence in our files, but we just require
12 that the District Attorney or the Solicitor
13 in our state be present or waive his
14 presence in writing to us and then
15 everything is fine.

16 BY MR. BOWEN:

17 Q And if he is unwilling to be present or
18 will not waive his presence, then the individual
19 representing the defense attorney gets nothing,
20 correct?

21 MR. BRITT: Objection.

22 THE COURT: Sustained as to form.

23 MR. BOWEN: All right. Thank

24 you.

25 BY MR. BOWEN:

1 Q Do you have any notes concerning this
2 investigation, Mr. Christy, that you've not
3 heretofore turned over to the District Attorney in
4 this division?

5 A I have my entire case file with me in
6 regards to this matter before the Court today.

7 Q Are there any personal notes in there that
8 you have not heretofore turned over?

9 A I'm sure there are, yes, sir.

10 Q Did you use those notes in preparing for
11 your testimony today?

12 A I reviewed my file and brought it with me
13 to court, yes, sir.

14 Q So with those notes as part of that file,
15 is it fair to say that you reviewed some or part of
16 those notes to form the basis of your testimony here
17 today?

18 A Yes, that's correct.

19 Q May I see your notes?

20 A Sure.

21 MR. BOWEN: May I approach, Your
22 Honor.

23 THE COURT: Yes, sir.

24 (Defense Exhibit 6 was
25 marked for identification.)

1 MR. BOWEN: No further questions,
2 Your Honor.

3 THE COURT: Anything further on
4 redirect, Mr. Britt?

5 MR. BRITT: No, sir.

6 THE COURT: May Mr. Christy be
7 released, gentlemen?

8 MR. THOMPSON: Yes, sir.

9 MR. BOWEN: Yes, sir.

10 THE COURT: Thank you, sir,
11 you're free to go. Before you leave, you
12 had something marked as an exhibit, Defense
13 Exhibit Number 6, I believe, is the next
14 number.

15 MR. BOWEN: We can stipulate that
16 copies can be subject to --

17 THE COURT: Well, it takes two to
18 stipulate.

19 MR. BOWEN: We can if they will.

20 MR. BRITT: If I can have an
21 opportunity to examine it, I don't think
22 that's going to be a problem.

23 THE COURT: Yes, sir.

24 That's no problem: I'll provide that
25 to the Clerk for --

1 THE COURT: Is it agreeable with
2 all counsel that a copy of what has been
3 marked as Defendant's Exhibit 6 be
4 substituted in the record.

5 MR. BOWEN: It needs to contain
6 the whole set of notes. I think there's
7 more than one sheet.

8 MR. BOWEN: And that's so he can
9 retain his original, that's all.

10 THE COURT: Yes, sir.

11 MR. BRITT: That's fine.

12 THE COURT: With the consent of
13 all counsel, a copy of what has been marked
14 and identified -- wait a minute.

15 MR. BRITT: Has not been
16 identified.

17 THE COURT: What has been marked
18 as Defendant's Exhibit 6 may be substituted
19 in the record, is that correct.

20 MR. BOWEN: Yes.

21 MR. THOMPSON: That's correct.

22 THE COURT: Mr. Britt.

23 MR. BRITT: I have no problem
24 with that.

25 THE COURT: If you'll make a copy

AVERY

1 of that, return the original to
2 Mr. Christy, is that agreeable with all
3 parties?

4 MR. THOMPSON: That's agreeable
5 with us.

6 MR. BRITT: That's fine.

7 THE COURT: Mr. Christy is
8 otherwise free to go?

9 MR. THOMPSON: Yes, sir.

10 THE COURT: You're free to go
11 once you retain your original notes, sir.

12 THE WITNESS: Thank you, sir.
13 Mr. Britt.

14 MR. BRITT: Your Honor, at this
15 time we call Michael Avery.

16 MICHAEL AVERY,
17 being first duly sworn was examined and deposed as
18 follows:

19 DIRECT EXAMINATION

20 THE COURT: Sir, if you'll state
21 your first and last name for the record and
22 then if you would please spell your first
23 and last names?

24 THE WITNESS: Michael Avery,
25 M I C H A E L, A V E R Y.

1 BY MR. BRITT:

2 Q By whom are you employed?

3 A I'm currently employed by the Computer
4 Consulting Group. Up until September 1st of 1995 I
5 was employed by the South Carolina Law Enforcement
6 Division, known as SLED, assigned to the trace
7 evidence department.

8 Q How long did you work for SLED?

9 A 14 years.

10 Q And in your 14 year career with SLED, was
11 that spent entirely in the trace evidence division?

12 A No, sir. When I began with SLED, I had a
13 Bachelor of Science degree in chemistry and had taken
14 a year of analytical chemistry and became employed in
15 what is known as the general chemistry section. In
16 1981 that section was assigned drug cases and also
17 what is referred to as trace evidence or trace
18 analysis.

19 Trace evidence is the analysis of hairs,
20 fibers, paint, glass, gunshot residues and other
21 items as they emanate from the scenes of crime. In
22 1987, the trace evidence department, a distinct
23 division or department of SLED, was formed. I was
24 named supervisor of that department at that time. In
25 1987, we ceased simply doing the drug case and

1 concentrated on trace evidence.

2 Q How long did you serve as the supervisor of
3 the trace evidence division of SLED?

4 A Eight and a half years.

5 Q What training and experience -- what
6 training and course of studies were you involved with
7 during the time that you were employed in the trace
8 evidence division of SLED?

9 A At that time, I underwent a training
10 program at SLED to apply the chemistry knowledge that
11 I had learned to the area of forensic, I took the FBI
12 school on the analysis of glass, took the FBI
13 analysis on hairs, fibers, I've attended seminars and
14 symposiums sponsored by the instrument --
15 manufacturers of the instruments that we use at
16 SLED. Also a member of the Southern Association of
17 Forensic Scientists who meet twice a year and have
18 seminars and workshops in the area of forensic, trace
19 analysis.

20 MR. BRITT: Your Honor, at this
21 time, I would tender Mr. Avery as an expert
22 in the area of trace evidence examination.

23 THE COURT: Counsel for defendant
24 want to be heard as to the tender.

25 MR. BOWEN: No, sir.

1 THE COURT: The witness may so
2 testify.

3 BY MR. BRITT:

4 Q Mr. Avery, on August the 15th of 1993, did
5 you have an occasion to go to the offices of Palmetto
6 Professional Services in Darlington, South Carolina?

7 A Yes, sir, I did.

8 Q Did anyone accompany you when you went to
9 that business?

10 A Yes, sir, they were two other individuals
11 with me.

12 Q Who else went with you?

13 A My sons went with me.

14 Q Upon arriving at Palmetto Professional
15 Services, did you locate one Todd Hardee?

16 A Yes, sir, I met him at Palmetto
17 Professional in Darlington.

18 Q Had you previously ever been introduced to
19 Mr. Hardee?

20 A No, sir, I had not.

21 Q For what purpose did you go to Palmetto
22 Professional Services on August the 15th of 1993?

23 A I was asked to retrieve clothing that were
24 at the facility in Darlington Palmetto Professional
25 Services in relation to case ^ L93-LL17.

1 Q The number that you've just given, that's
2 the laboratory number that was assigned by SLED to
3 finding of a body in Marlboro County, South Carolina
4 on August the 3rd, 1993?

5 A That's correct.

6 Q When you arrived at Palmetto Professional
7 Services on August the 15th, tell us what you did?

8 A I met with Mr. Hardee, and Mr. Hardee and I
9 proceeded to the side of the building, at which time
10 I was shown a location of which I was told that the
11 clothes were buried. I then proceeded to dig up the
12 clothes and found a plastic bag, opened the plastic
13 bag, and Mr. Hardee identified those as the clothes
14 that he had placed in that location, had been on the
15 body or received with the body in relation to this
16 case.

17 Q Can you describe the bag that you found
18 buried there outside --

19 A White plastic type garbage bag.

20 Q Was it secured in any fashion?

21 A It was tied and also was a red and white
22 nylon rope that separated -- also that was included
23 with it and it was tied up.

24 Q After the bag was retrieved from the site
25 where it was buried, where did you examine the

1 contents of that bag?

2 A As I stated, at that time I opened the bag
3 to ensure, to verify with Mr. Hardee this was the bag
4 that he had placed there or these were the clothes
5 that he had placed there. I then placed these items
6 into what is referred to as a biohazard bag. At the
7 State Law Enforcement Division, we use orange bags
8 which are label biohazard on the outside. I placed
9 the clothing into several of these bags, sealed it
10 up, transported it back to SLED headquarters. When I
11 got back, I logged the evidence into the computer
12 system, took it into the trace evidence department
13 into a hood, and this is what I refer to as a hood,
14 it's an enclosed area which has a glass front which
15 can be slid up and down and has a fan at the top
16 which pulls air out of the area. I opened the
17 plastic backing, inventoried the contents, placed the
18 contents out for drying.

19 Q At the time you examined, initially
20 examined the clothing, after it was retrieved from
21 the site it was buried, what condition were those
22 clothes, in, wet, dry?

23 A They were what we refer to as a poor
24 condition, they were wet. There was material which
25 was on the clothing. At that time I did not

1 determine what the material was. My primary
2 objective at that time -- in these instances when we
3 have clothing wet, especially from a body, a
4 decomposing body, the first criteria is to dry the
5 clothes as much as possible before anything is
6 removed or markings or anything that is done with the
7 clothing.

8 Q When you inventoried the items that you
9 retrieved from Palmetto Professional Services and
10 entered that information into the computer log there
11 at SLED, what items did you inventory?

12 A There were what was referred to as five
13 distinct sub items. Item number 12 referred to as
14 the bag of clothing. 12.1 is a blue striped pullover
15 shirt. Item number two is one pair of Docker's
16 pants. Item number three is one pair of underwear.
17 Item number 4 is one pair of socks and the item
18 number five was one belt.

19 Q For what purposes did you attempt to dry
20 this clothing?

21 A If a trace analysis is to be conducted on
22 the clothing, if we were to attempt to try to
23 retrieve any hairs or any fibers or if this was a
24 particular gunshot wound, before any examination
25 could be conducted on the clothing, the clothing must

1 be dry. That way, once we start our examination, one
2 of the examinations, if it's a hair or fiber
3 examination, is to visibly examine it and then to
4 scrape down the clothing. If the clothing is wet,
5 the particles tend to adhere to the clothing. Also,
6 too, if the clothing is wet and left in a sealed
7 container, it can become molded. And the mold can
8 sometimes counteract with biological fluids that may
9 be present.

10 Q And when you say that you attempted to dry
11 them, were they placed in some type of machine or
12 were they simply air dried there in the lab?

13 A Again, as I stated, I placed them into a
14 hood. This is approximately four foot wide by three
15 foot deep, and I would place these out into the hood,
16 it's an enclosed area, and I stated there's a fan
17 above it which pulls air across. This is, as I say,
18 a enclosed container inside a room. I just placed
19 these into this hood. This allows it to air dry. We
20 don't place them into a dryer, per se, we allow them
21 to air dry, and this also will pull out any fumes or
22 odors that the clothing may have, and exhaust them
23 out of the building.

24 Q On August the 15th, 93, when you first
25 examined the contents of the plastic bag that had

1 been buried, what if any odor did you detect coming
2 from inside that bag?

3 A There was the odor of decomposition of a
4 body that had been decomposing.

5 Q After these items were dried in the hood,
6 did you perform any type of analysis on the clothing
7 that you had received?

8 A No, sir, I did not.

9 Q Did you conduct any type of examination of
10 that clothing?

11 A Other than to inventory, no, sir, I did
12 not.

13 Q After the items were dried, what if
14 anything was done with them?

15 A On August the 18th of 1993, they were
16 returned, they were turned over to an Agent Sweat, I
17 believe with the -- I believe Agent Sweat was with
18 the State Bureau of Investigation. At that time, on
19 August the 18th, I was in court in another area of
20 South Carolina, one of the other trace analysts in my
21 charge at that time re-boxed the clothing and turned
22 it over the Agent Sweat at my instruction.

23 MR. BRITT: With the Court's
24 permission, may I remove my jacket?

25 THE COURT: Yes, sir.

1 MR. BRITT: And may I approach
2 the witness?

3 THE COURT: Yes, sir.

4 BY MR. BRITT:

5 Q I'll show you what has been previously
6 marked as State's Exhibit Number 19, and ask you to
7 examine this box and the lid that appears underneath
8 the brown paper wrapper.

9 A State's Exhibit Number 19 is the box I
10 referred to a few minutes ago in which the clothing
11 was placed at the time it was turned over to Agent
12 Sweatt. It bears markings from the State laboratory
13 L93-11373. At that time it was marked Marlboro
14 County Sheriff's office.

15 Q And the mark, L93-11373, that's the
16 laboratory number that was assigned to the subject
17 matter of this case, is that correct?

18 A Yes, sir, and also appears a number 12 as I
19 referred to a minute ago, number 12 was referred to
20 the overall bag of clothing in this case.

21 Q Is State's Exhibit Number 19, the box, in
22 substantially the same condition it was in when you
23 last saw it?

24 A Again, the box has been sealed and taped.
25 When I last saw it, the box was not sealed and

1 taped. The clothing was out at that time when I last
2 saw it.

3 Q I'll show you what's been marked as State's
4 Exhibit 20, ask if you can identify that?

5 A Yes, sir, State's Exhibit Number 20 is
6 the -- one of the orange biohazard bags I referred to
7 just a few minutes ago.

8 Q Do you recognize the contents contained
9 inside the orange biohazard bag?

10 A The contents are the white plastic bag and
11 the red and white rope that was used to secure the
12 evidence.

13 Q And the plastic bag that was used to retain
14 the clothing when you retrieved it and the red and
15 white nylon rope, do they appear to be in
16 substantially the same condition as they were when
17 you first observed them?

18 A As I stated, when I retrieved the clothing
19 it was inside the white plastic bag. Except for that
20 difference that the clothing is no longer in the bag,
21 and again, of course, the bag hasn't been opened --

22 Q State's Exhibit Number 20, the orange
23 biohazardous bag, does it appear to be in
24 substantially the same condition as it was in?

25 A Yes.

1 Q I'm going to hand you what has been marked
2 as State's Exhibit Number 21, which is a brown paper
3 bag, ask you to examine the contents of this bag and
4 tell me if you can identify the contents of that bag?

5 A The contents of the bag are a pair of
6 underwear and a pair of socks that appear to be the
7 same clothing that was in the orange biohazard bag
8 and the white bag.

9 Q Do they appear to be in substantially the
10 same condition as they were in when you last saw
11 them?

12 A Yes, sir. Except they are much dryer.

13 Q I'm going to hand you what has been marked
14 as State's Exhibit Number 22, which is a brown paper
15 bag, and ask you to remove the contents of that bag,
16 ask you if you can identify the contents of that bag?

17 A This item is the item I referred to a few
18 minutes ago, which is a blue and white pullover type
19 shirt which is in State's Exhibit Number 22.

20 Q And the shirt that is contained inside of
21 State's Exhibit Number 22, is that the shirt that you
22 recovered at Palmetto Professional Services on August
23 the 15th, 1993?

24 A Yes, sir, again it is much dryer and
25 cleaner.

1 Q In your inventory you referred to it as a
2 blue stripe pullover shirt, is that correct?

3 A That's correct.

4 Q Can you tell us why you used that
5 description of the shirt?

6 A Again, at the time I examined it, it is
7 what appears to be a pullover shirt, and at the time,
8 the color appeared to be blue, and I think it's blue
9 striped and has white backing.

10 Q At the time you examined it, did you note
11 any other colors of stripes on the shirt?

12 A No, sir, I made no note as far as any other
13 different colors.

14 Q And does the shirt appear to be in
15 substantially the same condition it was in when you
16 first examined it?

17 A Yes, sir, except again, it is much dryer
18 and cleaner.

19 Q I'll show you what has been marked as
20 State's Exhibit 23, ask you to remove that item and
21 tell me if you can identify it?

22 A State's Exhibit Number 23 is a pair of
23 Dockers pants which were originally in the orange
24 biohazard bag and the white bag, and also the belt.

25 Q Do the pants and the belt appear to be in

1 substantially the same condition they were in when
2 you first examined them on August the 15th of 1993?

3 A Yes, sir.

4 MR. BRITT: May I have just a second?

5 THE COURT: Yes, sir.

6 (State's Exhibit 47 was
7 marked for identification.)

8 MR. BRITT: May I approach the
9 witness?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Show you State's Exhibit 47, ask you if you
13 recognize that document?

14 A Yes, sir, I do.

15 Q How are you able to recognize that
16 document?

17 A This document contains my signature and
18 also again contains a laboratory number L93-11373,
19 copy of the State Law Enforcement Division report
20 issued by me in this case.

21 Q Is that an actual photocopy of the original
22 report that you prepared?

23 A Yes, sir.

24 Q And?

25 MR. BRITT: Your Honor, at this

1 time I ask that State's Exhibit Number 47
2 be admitted.

3 THE COURT: Admitted without
4 objection.

5 MR. BRITT: Could we approach the
6 bench?

7 THE COURT: Yes, sir. If the
8 court reporter will also come up here.

9 (Whereupon a bench conference ensued
10 as follows.)

11 THE COURT: Let the record
12 reflect at this time at the bench
13 conference now being held, the following
14 folks are present: Mr. Britt on behalf of
15 the State. Mr. Thompson, Mr. Bowen on
16 behalf of the defendant. The defendant.
17 Mr. Green, also known as U'Allah, is also
18 present, with the presiding Judge.

19 MR. BRITT: For the Court's
20 information, State's Exhibit 47 is my
21 working copy of that document. It does
22 contain a highlighted portion, we have
23 agreed to substitute a photocopy so that
24 the highlighted portion would not be
25 prevalent.

1 THE COURT: Is that agreeable,
2 Mr. Thompson?

3 MR. THOMPSON: Yes, sir.

4 MR. BOWEN: Yes, sir.

5 THE COURT: With the consent of
6 all counsel, with the consent of the
7 defendant, is that correct, Mr. Green?

8 MR. GREEN: Yes, sir.

9 THE COURT: A copy of what has
10 now been marked State's Exhibit 47 will be
11 substituted for the purposes of the
12 record. This concludes the bench
13 conference.

14 MR. THOMPSON: Yes, sir.

15 (Bench conference concluded.)

16 MR. BRITT: I don't have any
17 other questions.

18 THE COURT: Any
19 cross-examination?

20 MR. BOWEN: Yes, sir.

21 CROSS-EXAMINATION

22 BY MR. BOWEN:

23 Q Mr. Avery, when you took custody of these
24 items of clothing, was it your knowledge that your
25 agency, that is, SLED, had had previous custody of

1 those items?

2 MR. BRITT: Objection.

3 THE COURT: Well, do you
4 understand the question, sir?

5 THE WITNESS: Yes, sir, I do.

6 THE COURT: The objection is
7 overruled.

8 THE WITNESS: No, sir, I had no
9 notion that our agency had had custody of
10 these clothing.

11 BY MR. BOWEN:

12 Q Do you now have knowledge that they had
13 previously custody of those items before you received
14 them?

15 A No, sir, I do not.

16 Q Now, when you got these items, as I
17 understand it, you went to a funeral home, is that
18 correct?

19 A Yes, sir, if it be classed as a funeral
20 home. It's Palmetto Professional Services, I assume
21 that part of their duties is funeral arrangements.

22 Q And they do work with vaults and caskets
23 and things of that nature?

24 A Again, my understanding at the nature of
25 that time that I was exposed to them that they were

1 hired by the Coroner's office to dispose of the body,
2 or to transport the body.

3 Q Were they hired by the Coroner to dispose
4 of the clothes to your knowledge?

5 A Again, what details of their contract with
6 the Coroner's office I don't know the exact details.

7 Q So how the clothes got there and got in
8 their buried state, you don't actually know?

9 A I not there when they were buried, no, sir.

10 Q But you did go to an area near a warehouse
11 on the premises of Palmetto, is that correct?

12 A That's correct.

13 Q And you were escorted there by an employee
14 of Palmetto Services?

15 A Yes, sir, Mr. Hardee.

16 Q And who actually dug up the clothes for
17 you?

18 A I did.

19 Q And other than how you describe, were they
20 preserved or protected in any way as they were buried
21 there?

22 A No, sir, other than in the white plastic
23 bag, no, sir. They were -- all the clothes together
24 were in one bag and were in the white plastic bag.

25 Q So they were there in an area where rain

1 fell and where the weather was outdoor type weather,
2 right?

3 A Again, they were approximately about a foot
4 deep. They were not lying on the ground, they were
5 buried about a foot deep in the ground, but yes, sir,
6 I assume it did rain there.

7 Q Now, when you pulled them out of the
8 ground, you said they were damp, very damp?

9 A The clothing was wet, it was not damp it
10 was wet.

11 Q When you viewed the shirt, it had some
12 holes in it, correct?

13 A I did not examine the clothing for that
14 detail to determine whether there were holes or
15 whether there were other items, say, on the shirt.
16 The clothing was examined merely for inventory
17 purpose and to start drying. I did not examine them
18 for holes, no, sir.

19 Q So you can't say at the time that you
20 received these garments whether they had -- whether
21 the shirt had any holes at all anywhere on it, is
22 that correct?

23 A No, sir, I cannot. I do not recall any
24 holes nor was I examining for any holes. The purpose
25 of what I was doing was to retrieve them and start

1 the drying process pending subsequent analysis, which
2 would include determining if there were any holes
3 present or any other types of evidence that may be
4 present.

5 Q But you viewed the shirt when you laid it
6 out to dry, did you not?

7 A Strictly for inventory purposes. I did no
8 examination of it.

9 Q Don't you think if there had been some
10 holes or defects on the shirt that you would have
11 noticed it at that time?

12 MR. BRITT: Objection to form.

13 THE COURT: Sustained as to form.

14 MR. BOWEN: All right.

15 BY MR. BOWEN:

16 Q In any case, you did not notice even when
17 you laid the shirt out to dry, whether or not it had
18 any holes?

19 A No, sir, I made no -- no.

20 Q You did not see anything that appeared to
21 be blood stains?

22 A Again, the shirt was very damp, it was wet,
23 it did contain what I referred to as possible body
24 tissues. I don't know if it was decomposition
25 products at the time. As I stated, I laid it out.

1 Now, whether -- I did not notice what I referred to
2 as blood stains, but again, I was not examining for
3 blood stains.

4 Q Well, were you examining for anything?

5 A No, sir. As I stated, I was doing an
6 inventory and was laying it out to dry.

7 Q You dried out the material and so in your
8 document which is now marked State's Exhibit 47,
9 where it says results of examination, or
10 examinations, the only thing you note is that you
11 turned it over to the North Carolina State Bureau of
12 Investigation, correct?

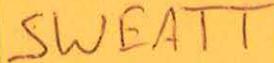
13 A That's correct.

14 Q Your background, as Mr. Britt put it, is in
15 what we call trace evidence. You are or consider
16 yourself expert in the manner of preservation of
17 evidence, do you?

18 A Yes, sir.

19 Q Is there anything about burying textile
20 evidence that would promote its preservation for
21 later analysis?

22 A Burying of evidence is not listed as one of
23 the best things that you can do for evidence for any
24 analysis with forensic, no, sir. The items were
25 contained in a plastic bag which, to use the term

SWEATT

1 saving grace, they had a plastic bag around them.
2 No, sir, burying evidence is not the best thing that
3 you can do for forensic evidence. I did not bury
4 them. My advice, if I had been asked, please, don't
5 bury them. But I wasn't asked.

6 Q You found traces of mold, did you?

7 A I saw what I believed to be mold. I did
8 not examine it for mold. Again, the articles were
9 wet, I knew they had come from a decomposing body.
10 It was not uncommon to find white substance which
11 turns out to be mold on the clothing.

12 MR. BOWEN: That's all.

13 THE COURT: Anything further?

14 MR. BRITT: No, sir, no other
15 questions.

16 THE COURT: May the witness be
17 released, gentlemen?

18 MR. BOWEN: Yes, sir.

19 THE COURT: You're free to go.

20 THE WITNESS: Thank you, Your
21 Honor, thank you.

22 THE COURT: Mr. Britt.

23 MR. BRITT: Your Honor, at this
24 time we call Aprille Sweatt.

25 APRILLE SWEATT,

1 being first duly sworn was examined and deposed as
2 follows:

3 DIRECT EXAMINATION

4 THE COURT: Ma'am, if you would
5 state both your first and last names.

6 THE WITNESS: Aprille Sweatt.

7 THE COURT: If you'll spell your
8 first and last names for the record.

9 THE WITNESS: A-P-R-I-L-L-E,
10 S-W-E-A-T-T.

11 THE COURT: Thank you, ma'am.

12 Mr. Britt?

13 BY MR. BRITT:

14 Q Ms. Sweatt, at the present time by whom are
15 you employed?

16 A Employed by the Richmond County Sheriff's
17 Department, in the detective division assigned as the
18 crime scene specialist.

19 Q How long have you worked for the Richmond
20 County Sheriff's Department?

21 A A year.

22 Q Richmond County, North Carolina?

23 A That's right, Rockingham.

24 Q As a crime scene specialist, what are your
25 duties and responsibility?

1 A As a crime scene specialist, I respond to
2 crime scenes, I do observations outside and within
3 the crime scene, making notes of my observations. I
4 photograph the crime scene, I do a diagram of the
5 crime scene, and I collect evidence at the crime
6 scene.

7 Q And prior to going to work for the Richmond
8 County Sheriff's Department, by whom were you
9 employed?

10 A Employed by the State Bureau of
11 Investigation, Southeastern District, which was
12 composed of ten counties, as a crime scene
13 specialist.

14 Q How long were you employed with the State
15 Bureau of Investigation?

16 A For eight years.

17 Q And prior to that, what if any law
18 enforcement experience did you have?

19 A I was employed by the Rockingham City
20 Police Department as a police officer for 11 years.

21 Q And when you went to work for the State
22 Bureau of Investigation, what if any training and
23 educational courses did you take in connection with
24 your employment?

25 A Okay. In addition to rookie school, I

1 attended SBI academy, I had training at the SBI
2 laboratory, the different laboratories within the
3 SBI, I've had training in blood spatter
4 interpretation, homicide investigation, medical,
5 legal seminars which were conducted by the State
6 Medical Examiner's Office in Chapel Hill, composite
7 training, I've had basic intermediate and advanced
8 arrest investigation training, advanced explosive
9 investigations, drug investigations, clandestine lab
10 investigations, with certifications, and/or marijuana
11 growing operations training, hazardous materials
12 operations and responder certification, satanic cults
13 and advanced ritualistic seminars. CU-5 training,
14 which is type of camera. Interview interrogation,
15 officer survival training, numerous SBI training and
16 also several computer classes, and had my basic
17 intermediate and advanced law enforcement
18 certificates.

19 Q On August the 18th of 1993, Ms. Sweatt, did
20 you go to the forensic laboratory operated by South
21 Carolina Law Enforcement Division in Columbia, South
22 Carolina?

23 A Yes, I did.

24 Q For what purpose did you go to the
25 forensics laboratory maintained and operated by SLED?

1 A I went to pick up items of evidence which
2 they had collected, and I then took them to our
3 laboratory in Raleigh for analysis.

4 Q And at the time you collected any items of
5 evidence from SLED, in what condition were the
6 containers that you received?

7 A They were sealed containers.

8 Q On August the 18th of 1993, did you receive
9 a sealed container from Special Agent David Collins?

10 A Yes, I did.

11 Q And upon receiving the sealed container
12 from Special Agent David Collins, did you do anything
13 with that sealed container?

14 A I kept it in my custody until I hand
15 delivered it myself to the laboratory in Raleigh,
16 which was on the same day.

17 Q And did you receive from Special Agent John
18 Christy any type of sealed container?

19 A Yes, I did.

20 Q What if anything did you do with that
21 sealed container that you received from Mr. Christy?

22 A Again, I kept that in my custody until I
23 hand delivered it at the SBI laboratory.

24 Q On that date, did you receive a sealed
25 cardboard box from the trace evidence division of

1 that laboratory, specifically from Special Agent John
2 Ortuno?

3 A Yes, I did.

4 Q Did you make any markings or any notations
5 on any of the packages that you received from the
6 South Carolina Law Enforcement Division agents?

7 A I should have my initials on it and the
8 date that I collected it.

9 Q At the time you received any of those
10 items, did you open those items to examine the
11 contents?

12 A No, I did not.

13 Q Did those items remain in a sealed state
14 until the point you delivered them to the North
15 Carolina State Bureau of Investigation laboratory in
16 Raleigh?

17 A That's correct.

18 MR. BRITT: May I approach?

19 THE COURT: Yes, sir.

20 BY MR. BRITT:

21 Q I'm going to hand you what has been marked
22 as State's Exhibit 41 ask you if you can identify
23 that item?

24 A Yes, I can.

25 Q How are you able to identify State's

1 Exhibit Number 41?

2 A I'm able to identify State's Exhibit Number
3 41 by the markings which I placed on the outside of
4 the bag.

5 Q What if any markings did you place in
6 State's Exhibit Number 41?

7 A I placed the item number, the SBI case
8 number, North Carolina State Bureau of Investigation
9 number, the date and time that I received it,
10 description of what was inside and my initials.

11 Q And at the time you received State's
12 Exhibit Number 41, was it in a sealed state?

13 A That's correct.

14 Q At any time while in your possession, did
15 you open State's Exhibit Number 41?

16 A No, I did not.

17 Q I'll show you what has been marked as
18 State's Exhibit Number 46, which is a manila envelope
19 bearing the address of the State Bureau of
20 Investigation. I'm going to remove from inside of
21 State's Exhibit Number 46 an item that's been marked
22 as State's Exhibit 46-A, another manila envelope, and
23 ask you to examine that envelope and tell me if you
24 can identify it?

25 A Yes, State's Exhibit Number 46-A is an

1 envelope which contains markings that I placed on it,
2 which are the item number, the SBI case number, the
3 date and time that I received it, a description of
4 what was inside, and my initials.

5 Q And at the time you received State's
6 Exhibit Number 46-A, was it in a sealed state?

7 A That's correct.

8 Q And did it remain in a sealed state while
9 in your possession up to the point where you
10 delivered it to the laboratory in Raleigh?

11 A Yes.

12 Q I'll show you what has been marked as
13 State's Exhibit 19, ask you to examine the box and
14 beneath the brown paper wrapping that appears on the
15 top of the box.

16 A State's Exhibit Number 19 is a cardboard
17 box which has been wrapped with paper and taped, and
18 the outside of the box itself has markings which I
19 placed on it, which include the item number, the SBI
20 case number, the date and time I received it, a
21 description of what is inside, and my initials.

22 Q At the time you received State's Exhibit
23 Number 19, was it in a sealed state?

24 A Yes.

25 Q And did it remain in a sealed state while

1 in your possession up to the time that you delivered
2 it to the laboratory in Raleigh?

3 A Yes, it did.

4 Q Are State's Exhibits 19, 46-A, and State's
5 Exhibit Number 41, in substantially the same
6 condition they were in when you first received them
7 on August the 18th, 1993 from the laboratory of SLED
8 in Columbia, South Carolina?

9 A That's correct.

10 Q On August the 18th of 1993, you've
11 testified that you delivered items to the SBI
12 laboratory in Raleigh?

13 A That's correct.

14 Q The items that you've identified?

15 A That's correct.

16 Q What if anything did you do with those
17 items when you delivered them to the laboratory?

18 A I turned them over to the evidence
19 collection unit. I had to complete evidence
20 submission forms with the items.

21 Q Did you receive other items while you were
22 at the SLED laboratory in Columbia?

23 A Yes, I did.

24 Q What other items did you receive in
25 addition to the ones you've previously identified?

1 A Okay. I received a bottle of blood from
2 David Collins, a section of liver from David Collins,
3 a section of kidney from David Collins, a bottle of
4 stomach contents from David Collins, an envelope
5 containing pubic hair from David Collins, one bottle
6 containing a projectile from David Collins,
7 photographs of hand tissue, I believe that was
8 photographs, might have been some of the hand tissue
9 itself, also from David Collins; tissue from a wound
10 that I collected, received from David Collins; a roll
11 of color film from John Christy; a roll of color film
12 from John Christy; a roll of black and white film
13 from John Christy, and victim's clothing, consisting
14 of a blue striped pullover, Docker pants pullover
15 pants, sock and a belt from Manuel Ortuno.

16 Q And all the items that you received from
17 agents of South Carolina Law Enforcement Division,
18 you delivered those to the North Carolina State
19 Bureau of Investigation laboratory in Raleigh?

20 A That's correct.

21 Q And at the time you received all those
22 items from South Carolina Law Enforcement Division
23 were they all contained in sealed packages?

24 A That's correct.

25 Q At any time did you break the seal on any

1 of those packages?

2 A I did not.

3 Q After the items were delivered to the
4 laboratory in Raleigh were any of those items ever
5 returned to you?

6 A No, they were not.

7 MR. BRITT: I don't have any
8 other questions.

9 THE COURT: Any
10 cross-examination?

11 MR. BOWEN: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. BOWEN:

14 Q Ms. Sweatt, if you did not break any of the
15 seals, how were you able to do the inventory of those
16 objects that you described?

17 A I did it based on what the agents told me
18 were inside, and they had them labeled also.

19 Q Well, and I move to strike this testimony.

20 THE COURT: Do you want to be
21 heard further?

22 MR. BOWEN: Yes, sir.

23 THE COURT: Ladies and gentlemen
24 of the jury, there's a matter of law the
25 Court must take up at this time out of the

1 presence of the jury. Please recall my
2 instructions in that regard, don't worry or
3 speculate about what takes place in your
4 absence. If all members of the jury would
5 step to the jury room, please.

6 (Jury out at 12:36 p.m.)

7 THE COURT: Let the record
8 reflect the following is being heard in the
9 absence of the jury.

10 Yes, sir, what is the basis?

11 MR. BOWEN: One minute, Your
12 Honor, please, just a moment.

13 I'm looking for -- Your Honor, at page
14 112 at line 19, where Ms. Sweatt begins to
15 say I received a bottle of blood from David
16 Collins, section of liver from David
17 Collins, a section of kidney and so forth,
18 that she was identifying these particular
19 items.

20 Now, it seems that she does not know
21 of her own knowledge that these were the
22 items, rather this is what somebody told
23 her they were. She didn't testify that
24 way.

25 THE COURT: Are there chain of

1 custody sheets that reflect the items?

2 MR. BRITT: Yes, sir, and they
3 were provided on discovery.

4 THE COURT: Chain of custody
5 sheets to some extent include matters
6 marked, identified, and entered into
7 evidence in this case.

8 MR. BRITT: Yes, sir.

9 THE COURT: Through prior
10 witnesses.

11 MR. BRITT: Yes, sir.

12 THE COURT: Specifically
13 Mr. Collins, Mr. Avery, Mr. Christy.

14 MR. BRITT: Yes, sir.

15 THE COURT: You folks have those
16 chain of custody or receipt forms.

17 MR. THOMPSON: Is it my
18 understanding he's saying the chain of
19 custody sheet has been marked as a prior
20 exhibit.

21 MR. BRITT: No, I'm not saying
22 the receipt has been marked.

23 MR. THOMPSON: I'm sorry.

24 THE COURT: What I'm trying to
25 establish is, one, is there any documentary

1 evidence that has been already marked,
2 identified, and received in this case as to
3 these items through earlier State's
4 witnesses, or is any documentary evidence
5 that is available for that purpose? Now my
6 recollection is, without going through the
7 testimony in its entirety with Mr. Christy,
8 Mr. Avery, Mr. Collins, some of those items
9 were testified to.

10 MR. THOMPSON: But as to your
11 first question, is there any receipt, are
12 there any receipts previously marked or
13 identified --

14 THE COURT: Yes, sir, my question
15 is in the testimony elicited certain
16 documents were identified by the witnesses
17 that are a part of the chain of custody.
18 The documentary chain of custody, some of
19 which have been identified. I don't recall
20 whether they have been introduced at this
21 point. I would have to look at my notes.

22 THE WITNESS: I've got copies of
23 all of that.

24 THE COURT: But that's point
25 number one. Point number two, isn't there

1 a stipulation as to chain of custody.

2 MR. BOWEN: The thing there's a
3 stipulation of chain of custody on is at
4 the time the items went out to Mr. Larry
5 Fletcher.

6 THE COURT: So that only pertains
7 to items that were turned over to the
8 defendant for purposes of pending
9 investigation. Doesn't apply across the
10 board?

11 MR. BOWEN: No, sir.

12 THE COURT: That's what I'm
13 trying to find out. Motion to strike is
14 taken under advisement. I'm going to have
15 to review the oral testimony of those
16 witnesses to determine whether or not those
17 items were included as part of any oral
18 testimony or any documentary evidence.
19 Folks are still here so it's a simple
20 matters for the State to recall them if
21 necessary and say is this part of the
22 documentary chain leading up to and
23 including Agent Sweatt.

24 MR. THOMPSON: Well, I think
25 there was testimony as to some items

1 through Mr. Christy and Avery.

2 THE COURT: Yes, sir.

3 MR. THOMPSON: Now, there was
4 some testimony as to what they did with
5 certain items.

6 THE COURT: Also some of the
7 exhibits may reflect what items were
8 involved. For example, a manila envelope
9 containing items of evidence may reflect on
10 that manila envelope what those items
11 were. If that's the case --

12 MR. BOWEN: Our motion simply,
13 Your Honor, was to strike the testimony
14 that she --

15 THE COURT: I can't rule on the
16 motion until I make a determination whether
17 or not that testimony is reflected in any
18 documentary evidence or any testimony that
19 may have been elicited, so the motion to
20 strike is held in abeyance at this time
21 until I have had the opportunity to do
22 that.

23 It's almost 15 until 1:00, so -- I
24 mean, there's no harm to either party if I
25 delay ruling on it until I review the

1 material. There's also no harm because the
2 State still has most of those folks present
3 and can put them up and have them simply go
4 through the documents.

5 Anything further in that regard?

6 MR. THOMPSON: No, sir.

7 THE COURT: Let me bring the jury
8 in, we'll stop at this point, I'll send the
9 jury out until 2:30.

10 (Jury in at 12:42 p.m.)

11 THE COURT: Ladies and gentlemen
12 of the jury, rather than keeping you back
13 in the jury room, I'm going to allow you
14 take the lunch recess. You'll have an
15 additional 15, 17 minutes for the lunch
16 recess. Please report back at 2:30, no
17 later than 2:30 so we can be in a position
18 to go forward.

19 During the lunch recess, don't talk
20 about this matter among yourselves, don't
21 allow anybody to say anything to you. If
22 anyone communicates with you or attempts to
23 do so or says anything about the case in
24 your presence, it's your duty to inform us
25 of that immediately, to inform one of the

1 bailiffs assigned to the courtroom.

2 Don't form or express any opinions
3 about this matter. Don't have any contact
4 or communication of any kind with any of
5 the attorneys, parties, witnesses
6 prospective witnesses or directly with the
7 Court. Don't allow yourself to be exposed
8 to any media accounts which might exist in
9 connection with this matter. Don't conduct
10 any independent inquiry or research of any
11 kind.

12 Everyone else remain seated, the
13 members of the jury are excused until
14 2:30.

15 (Jury out at 12:43 p.m.)

16 THE COURT: Let the record show
17 the following is being conducted in the
18 absence of jury.

19 Mr. Britt, do you have corresponding
20 exhibits as to each of the items mentioned
21 by Ms. Sweatt? Going back to page 112?
22 You've got 19, right, State's Exhibit 19?

23 MR. BRITT: Yes, sir, that's the
24 box of clothing.

25 THE COURT: Yes, sir. You've got

1 46-A.

2 MR. BRITT: Yes, sir, that's the
3 sealed envelope that she testified to that
4 Mr. Christy --

5 THE COURT: Mr. Christy
6 identified the items and the contents?

7 MR. BRITT: Yes, sir.

8 THE COURT: You've got 46-A?

9 MR. BRITT: Yes, sir.

10 THE COURT: Now, 46-A was
11 initially --

12 MR. BRITT: Excuse me.

13 MR. THOMPSON: -- manila envelope
14 containing the postmortem strips.

15 MR. BRITT: And Mr. Christy
16 identified those. As well as the -- well,
17 they have postmortem strips marked as 46-C.

18 THE COURT: Yes, sir.

19 MR. BRITT: There's a black and
20 white photograph.

21 THE COURT: 46-B.

22 MR. BRITT: Yes, sir.

23 THE COURT: 46-D is white manila
24 envelope with photographs of dental works.

25 MR. BRITT: Yes, sir.

1 THE COURT: 47 is Mr. Avery's
2 report.

3 MR. BRITT: Yes, sir.

4 THE COURT: Have you got any
5 exhibits previously marked or previously
6 testified to which relate to sealed
7 container of blood?

8 MR. BRITT: No, sir, not at this
9 point, not as to a container involving the
10 liver nor the kidney.

11 THE COURT: So no one has
12 testified as to any containers, envelopes
13 or anything else in that regard other than
14 Mr. Avery, I think it was.

15 MR. BRITT: Mr. Avery collected
16 the clothing.

17 THE COURT: As to the collection
18 of it.

19 MR. BRITT: Yes, sir. Now,
20 attached to -- if I could approach the
21 exhibit table.

22 MR. THOMPSON: For the record,
23 Mr. Avery, not as to the liver and all
24 that.

25 THE COURT: I'm sorry,

1 Mr. Christy.

2 MR. THOMPSON: Okay.

3 MR. BRITT: As part of State's
4 Exhibit Number 43, that's previously been
5 admitted, there's a copy of the toxicology
6 report that was conducted in this case
7 where the items of the blood, the piece of
8 liver, the piece of kidney, were utilized
9 in that examination.

10 THE COURT: But as to the actual
11 exhibits --

12 MR. BRITT: No, sir, not as to
13 the actual exhibit.

14 THE COURT: Rather than spend my
15 lunch hour dealing with this stuff, I'm
16 going to allow the motion to strike when
17 the jury comes back in. You can simply
18 hand her individual exhibits, because in
19 essence, even if she can identify receiving
20 a sealed exhibit, except on hearsay
21 grounds, she can't testify to the contents.

22 So the motion to strike will be
23 allowed. Note the State's exception.
24 Makes it a little bit more laborious. It's
25 an interesting thing, one of the things

1 that I've seen done is to explain chain of
2 custody in voir dire so that jurors know
3 what that term means and what is entailed,
4 so when it comes in, they understand, oh,
5 this is what was talked about, and have
6 some greater, hopefully, patience and
7 appreciation for the need to establish
8 chain of custody.

9 MR. BOWEN: I think Your Honor
10 has honed in exactly what I'm talking
11 about. In other words, if all she saw was
12 an envelope, I want her to call it an
13 envelope, not a vile of blood.

14 THE COURT: Motion to strike is
15 allowed. I'll give any curative or
16 additional instructions requested by
17 counsel for defendant. Anything further?

18 MR. BRITT: No, sir.

19 THE COURT: All right.

20 MR. BRITT: I would simply, I
21 think patience was the key word.

22 THE COURT: Yes, sir. Yes, sir.
23 That's not the way things are done in the
24 real world unless they have some advance
25 notice when it's coming, what it means, why

1 it's coming. It becomes a little more
2 cumbersome. Ms. Sweatt, you may step down.

3 We're at ease.

4 (Lunch recess).

5 THE COURT: Mr. Thompson, before
6 you leave, can we address the
7 administrative matter?

8 Let the record reflect both counsel
9 for the State and counsel for the defendant
10 are present. The defendant is present in
11 open court. All members of the jury are
12 secured in the jury room. Is that accurate?

13 THE BAILIFF: Yes, sir, it is.

14 THE COURT: Folks, a scheduling
15 matter, administrative matter we need to
16 take up. While I'm not entirely
17 comfortable taking it up on the record
18 because of the nature of the case, I think
19 I'm obligated to.

20 As you folks are aware, I'm up for
21 re-election, and I have to file for
22 re-election before February 5th of 1996.
23 That being the case, I'm going to ask all
24 counsel, I've got to go to Raleigh at
25 5:00. If you folks would be thinking about

1 a date that would be convenient for
2 everyone, it would either entail beginning
3 of session late, or ending a session early
4 so that I could file either early in the
5 morning or late in the afternoon. I think
6 the State Board of Elections closes at
7 5:00.

8 MR. THOMPSON: I prefer ending a
9 session early. As I --

10 THE COURT: Okay.

11 MR. THOMPSON: -- indicated, I
12 don't know about Mr. Britt, but the thing
13 about trial is during the weekday, there's
14 never any time during the day or very
15 little time to do things.

16 THE COURT: I was going to
17 suggest perhaps Friday afternoon.

18 MR. BRITT: I would note that
19 Monday the 15th is a holiday, and maybe
20 depending on whether you're prepared to do
21 it this Friday, we broke at lunchtime and
22 recess the Court until the following
23 Tuesday, that would be give you Friday
24 afternoon to do that, and then of course
25 Monday is a holiday.

1 THE COURT: Is that agreeable
2 with you folks?

3 MR. BOWEN: Yes. And the input,
4 Your Honor, is that I have mentioned to the
5 Court probably about a week ago that on the
6 23rd, my doctor has given me an appointment
7 at 2:00 p.m.

8 THE COURT: What date is that?

9 MR. BOWEN: 23rd. I'm agreeable,
10 since we're talking about those kings of
11 things, only thing I anticipated is I might
12 ask the Court's permission if the Court
13 gives me --

14 THE COURT: We'll certainly
15 accommodate you in that respect, same way I
16 would accommodate either Mr. Thompson or
17 Mr. Bowen or anyone else. If you folks --
18 tentatively, why don't we set this Friday,
19 which is January the 12th, as a short
20 session, we will start, we can either start
21 at 9:00 or 9:30. Stop at 1:00, take about
22 two hours, hour and a half to drive from
23 here to Raleigh. So we can go from 9:00
24 until 1:00 on this Friday. This Friday.
25 Is that agreeable?

1 MR. THOMPSON: Yes.

2 THE COURT: Any other matters
3 before we bring the jury in, folks?

4 MR. BRITT: No, sir.

5 THE COURT: If you'll bear with
6 me, I need to go back to where we were at
7 the time that the motion to strike was
8 made.

9 The question was, "What other items
10 did you receive in addition to the ones
11 that you previously identified?"

12 Answer: Okay, I received a bottle of
13 blood from David Collins, a section of
14 liver." et cetera. It's that testimony
15 that you're moving to strike?

16 MR. BOWEN: Yes, sir.

17 THE COURT: That's correct.

18 MR. THOMPSON: Yes, sir.

19 THE COURT: That was in response
20 to request asked by Mr. Britt on direct
21 examination, is that accurate?

22 I'm on page 112, line 14, which is the
23 beginning of the question.

24 Obviously the State would be free on
25 redirect examination to go back to any

1 specific items.

2 If you'll bring the jury in, please,
3 Mr. Horne.

4 (Jury in at 2:36 p.m.)

5 THE COURT: Good afternoon,
6 ladies and gentlemen of the jury.

7 Members of the jury, as you are aware
8 counsel for defendant, Mr. Bowen, has made
9 a motion to strike some aspects of the
10 testimony of Agent Sweatt, specifically
11 some aspects of the testimony of Agent
12 Sweatt that were elicited on direct
13 examination. By direct examination, I am
14 referring to the examination conducted by
15 counsel for the State, Mr. Britt, of Ms.
16 Sweatt.

17 Now, that motion to strike is being
18 allowed by the Court. And I instruct you
19 that you are not to consider the response
20 of Agent Sweatt in this case in any respect
21 in the following specific particulars.

22 I instruct you that insofar as she may
23 have testified in response to a question as
24 follows by Mr. Britt: "What other items
25 did you receive in addition to the ones

1 that you have previously identified?"

2 To the extent that Agent Sweatt
3 testified that she received "a bottle of
4 blood from David Collins, a section of
5 liver from David Collins, a section of
6 kidney from David Collins, a bottle of
7 stomach contents from David Collins, an
8 envelope containing pubic hair from David
9 Collins, one bottle containing a projectile
10 from David Collins, photographs of hand
11 tissue, I believe that was photographs,
12 might have been some of the hand tissue,
13 also from David Collins, tissue from a
14 wound that I collected, received from David
15 Collins, a roll of color film from John
16 Christy, a roll of color film from John
17 Christy, a roll of black and white film
18 from John Christy, and victim's clothing
19 consisting of a blue striped pullover,
20 Docker pants, pullover pants, socks, and a
21 belt from Manuel Ortuno."

22 That specific language is to be
23 disregarded. That specific testimony is to
24 be disregarded, because as you will recall,
25 it was elicited on cross-examination by

1 Mr. Bowen that she received certain
2 envelopes and boxes which were unsealed or
3 were not unsealed in her presence. She may
4 testify to the containers that she received
5 but not as to the contents of those
6 containers.

7 Therefore, that motion to strike is
8 allowed, and you are to disregard the
9 specific items referred to in her testimony
10 as I have just recited those items for
11 you.

12 Anything further on behalf of the
13 defendant?

14 MR. BOWEN: No, sir. No, sir,
15 Your Honor. Thank you.

16 THE COURT: Anything further by
17 the State?

18 MR. BRITT: No, sir.

19 THE COURT: Ms. Sweatt, if you'll
20 return to the witness stand.

21 Thank you, ma'am. And you remain
22 under oath.

23 You may continue with your
24 cross-examination, Mr. Bowen.

25 MR. BOWEN: No further questions

LEWIS

1 at this time.

2 THE COURT: Any redirect?

3 MR. BRITT: No, sir.

4 THE COURT: May Agent Sweatt be
5 excused?

6 MR. BRITT: I would reserve the
7 right to recall her later in the trial.

8 THE COURT: You folks want to be
9 heard?

10 MR. BOWEN: No, sir.

11 THE COURT: In the discretion of
12 the Court, that will be allowed. You are
13 free at this time, but you remain under
14 subpoena. Thank you, ma'am.

15 THE WITNESS: Yes, sir.

16 THE COURT: Any further evidence
17 from the State?

18 MR. BRITT: Yes, sir, at this
19 time we call Stanley Lewis.

20 **STANLEY WILLIAM LEWIS,**

21 being first duly sworn was examined and deposed as
22 follows:

23 DIRECT EXAMINATION

24 THE COURT: Please state your
25 full name for the record, sir?

1 THE WITNESS: Stanley William
2 Lewis.

3 THE COURT: If you would spell
4 your first and last name?

5 THE WITNESS: S T A N L E Y,
6 Lewis, L E W I S.

7 THE COURT: Thank you, sir.

8 BY MR. BRITT:

9 Q By whom are you employed?

10 A North Carolina State Bureau of
11 Investigation.

12 Q How long have you been employed by the SBI?

13 A Since 1973.

14 Q In what capacity do you work for the SBI?

15 A Supervisor of the identification section.

16 Q What are your duty and responsibilities as
17 a supervisor of the identification section?

18 A I am the custodian over the fingerprint
19 files and over the computerized criminal history.

20 Q And how long have you held that position?

21 A Since 1981.

22 Q Is all record keeping of the identification
23 section of the SBI done under your supervision?

24 A That's correct.

25 Q Are you familiar with the way the records

1 are prepared and kept there in the identification
2 section?

3 A Yes, sir.

4 Q Can you describe that for us, please?

5 A Yes. Once an individual is charged with a
6 crime in North Carolina and they are fingerprinted,
7 the fingerprints are submitted to the SBI, we send it
8 through a normal process of clocking the documents
9 in, attempting to locate a prior criminal record. If
10 a prior criminal record is located, we link that to
11 the prior record. If no prior record is located, we
12 establish that record within our files.

13 The documents are filed, the documents are
14 secured, and they are only able to have access by the
15 personnel internally actually working touching.

16 Q And those records that are maintained by
17 the SBI in the identification section, are those
18 records made at or near the time of the circumstances
19 described in the records?

20 A That's correct.

21 Q And fingerprint cards that are maintained
22 there in the SBI lab, who makes those cards?

23 A I don't quite understand the question.

24 Q The fingerprint cards that are submitted to
25 the SBI for purposes of your record keeping, who

1 makes those cards?

2 A Those are by the local law enforcement
3 agency charging the individual.

4 Q Is it fair to say that the person that
5 admits that card to the fingerprint section of the
6 SBI has personal knowledge of the transaction of the
7 fingerprint that's recorded on that card?

8 A Correct.

9 MR. BOWEN: Object.

10 THE COURT: Do you want to be
11 heard, sir?

12 MR. BOWEN: Yes, sir.

13 THE COURT: Members of the jury,
14 there is a matter of law the Court must
15 take up out of the presence of the jury.
16 Please recall my instructions in that
17 regard. If all members of the jury would
18 step to the jury room, please. Don't worry
19 or speculate about what takes place in your
20 absence.

21 (Jury out at 2:43 p.m.)

22 MR. BOWEN: I think there's
23 properly a way he can get to that but not
24 that way. He's asking if this witness
25 knows if the person who did the procedure

1 at the local law enforcement agency had
2 personal knowledge. I don't think that's a
3 proper question.

4 THE COURT: That's the basis of
5 your objection?

6 MR. BOWEN: Yes, sir.

7 THE COURT: Mr. Britt.

8 MR. BRITT: Your Honor, this is a
9 foundational question to establish this is
10 a business record, and one of the ways in
11 which to establish that is the record was
12 made by a person with knowledge of the
13 events that are contained in that record.

14 THE COURT: Yes, sir, but his
15 point is that you're asking him as to
16 knowledge that someone else may have had.
17 And unless he has some firsthand basis,
18 some basis for knowing that firsthand, then
19 the argument is that it's speculation,
20 conjecture or based on hearsay.

21 Folks, look at 803.

22 MR. THOMPSON: You mean business
23 records?

24 THE COURT: There's a lot of
25 exceptions under 803.

1 MR. THOMPSON: That's what I'm
2 asking.

3 THE COURT: It not my job to tell
4 you which one.

5 MR. THOMPSON: Oh, you said
6 look.

7 THE COURT: What is a fingerprint
8 card made by a local law enforcement
9 agency?

10 MR. BRITT: Are you asking --

11 THE COURT: I'm just suggesting.

12 MR. THOMPSON: I'm going to be
13 honest with you, I'm not sure. I know what
14 I would like it to be. You know, it may be
15 a public record, I mean, I don't know.
16 Things that I thought were public records
17 I've not been able to get access to, so I
18 don't know what it was.

19 THE COURT: Okay. All right.
20 The objection to the question as phrased is
21 sustained.

22 Bring the jury back in, please.

23 (Jury in at 2:46 p.m.)

24 THE COURT: The objection to the
25 question as phrased is sustained. You may

1 rephrase or ask additional questions.

2 BY MR. BRITT:

3 Q Mr. Lewis, the fingerprint cards that are
4 received by the fingerprint section of the State
5 Bureau of Investigation, local law enforcement
6 agencies after felony arrests are made, are they kept
7 in the regular course of business of the
8 identification section?

9 A That's correct.

10 Q And is that kept in the regularly conducted
11 business activity of the identification section of
12 the State Bureau of Investigation?

13 A That's correct.

14 Q As the supervisor of the fingerprint
15 section of the SBI laboratory, are you the custodian
16 of all those fingerprints?

17 A Yes, sir.

18 Q Included in those records maintained by the
19 identification section, is there a record of a
20 fingerprint card of James Raymond Jordan that's kept
21 on file at the SBI laboratory?

22 A Yes, sir.

23 Q Do you have a copy of that fingerprint card
24 with you here today?

25 A I have the original.

1 MR. BRITT: May I approach, Your
2 Honor.

3 THE COURT: Yes, sir.

4 MR. BRITT: May we approach?

5 THE COURT: Yes, sir. Court
6 reporter also come up.

7 (Whereupon a bench conference ensued
8 as follows.)

9 THE COURT: Let the record
10 reflect that at this bench conference are
11 counsel for the State, counsel for the
12 defendant, Mr. Thompson, Mr. Bowen. The
13 defendant is also present, and the
14 presiding Judge.

15 MR. BRITT: Your Honor, what I
16 propose, we make a photostatic copy of the
17 original fingerprint card, rather than
18 marking the original exhibit, use the --
19 enter the photocopy as evidence as opposed
20 to the original.

21 MR. THOMPSON: No problem with
22 that once you get it marked and get us
23 copies of it.

24 MR. BRITT: That's fine.

25 THE COURT: So no objection to

1 that?

2 MR. BRITT: May I have leave
3 to --

4 THE COURT: Yes, sir. This
5 concludes the bench conference.

6 (Bench conference concluded.)

7 THE COURT: While we're waiting
8 for copies to be made, would someone also
9 get State versus Miller, 80 NC App, 425.
10 That's instructive by way of analogy.

11 Ready to go forward, folks?

12 MR. BRITT: Yes, sir.

13 (State's Exhibit 48 was
14 marked for identification.)

15 BY MR. BRITT:

16 Q Mr. Lewis, I'm going to hand you what's
17 been marked as State's Exhibit 48, and return to you
18 the card that you produced here in court, and ask you
19 to examine State's Exhibit 48, compare it with the
20 card that you produced here in court, and tell if
21 that is an exact duplicate of the card that is
22 maintained in your office at the SBI?

23 A Yes, it is.

24 Q And for the purposes of the record, can you
25 identify State's Exhibit Number 48?

1 A It's what we call a master fingerprint card
2 on James Raymond Jordan.

3 Q And State's Exhibit Number 48 is an exact
4 duplicate of the original card maintained by your
5 office, is that correct?

6 A That's correct.

7 Q And was that record maintained in the
8 regular course of the business of the identification
9 section of the SBI laboratory?

10 A That's correct.

11 MR. BRITT: Your Honor, at this
12 time, I move that State's Exhibit 48 be
13 admitted.

14 THE COURT: Counsel for defendant
15 want to be heard?

16 MR. BOWEN: No, sir.

17 THE COURT: Without objection
18 State's Exhibit 48 is admitted.

19 BY MR. BRITT:

20 Q Mr. Lewis, can you tell the jury for what
21 reason fingerprints are maintained in the
22 identification section of the SBI lab?

23 A For law enforcement purposes.

24 Q Are the records maintained by your section
25 used by any analysts or agents at the SBI in doing

1 print comparisons?

2 A Yes, on a regular basis, our latent
3 evidence section requests the print ink card to make
4 latent comparisons against.

5 MR. BRITT: I don't have any
6 other questions.

7 CROSS-EXAMINATION

8 BY MR. BOWEN:

9 Q Roughly how many of those fingerprint cards
10 do you keep on hand in your section, sir?

11 A We have over 650,000 individual
12 fingerprints, and for the average number of print
13 cards per individual is about 3.5 for individual
14 record.

15 Q Now, I see something that looks like a bar
16 code such as we find on a product or something at the
17 grocery store, and it's somewhere in the middle of
18 the card or in one area of the card where some
19 fingerprints underlie that bar code. What is it
20 there for?

21 A That is what we call a PCN, PCN label. We
22 use that on our automated print identification system
23 for scanning and tracking it through the system.

24 Q Now, were you here earlier when
25 Mr. Christy, Mr. John Christy, were you here when he

1 testified this morning?

2 A Yes, sir.

3 Q He made reference to a computer system
4 whereby certain fingerprint characteristics were
5 placed in a database, did you know what he was
6 talking about?

7 A That's exactly the system I'm talking
8 about.

9 Q Same system?

10 A That's correct.

11 Q So then that bar code on this particular
12 fingerprint card would indicate that the fingerprint
13 characteristics of Mr. James Jordan would have been
14 placed prior to the -- prior to August of 1993, they
15 would have been placed into that master FBI computer
16 system, wouldn't they?

17 MR. BRITT: Objection.

18 THE COURT: Well, the question
19 assumes several things. Do you understand
20 the question? He's essentially asking you
21 whether it would have been available to
22 Mr. Christy in South Carolina.

23 THE WITNESS: Restate the
24 question.

25 BY MR. BOWEN:

1 Q Let me break it up. First of all, can you
2 tell when that print card, which is now Exhibit 48,
3 when it was made?

4 A When the inked impressions were actually
5 taken.

6 Q Let me ask you this. When did it arrive at
7 your section?

8 A Yes, sir, I would have to examine the card.

9 Q Okay. Do you have it there with you?

10 A Yes, sir.

11 Q Tell us, if you can.

12 A Looking on the back of the card on the
13 right-hand side about one-third of the way down,
14 there is a blue border block called "leave blank."
15 There is a time date stamp there, indicates received
16 ID SBI, April 3rd, 1985.

17 Q All right, sir. Now, can you tell from the
18 bar code approximately when it was affixed to that
19 card?

20 A I'm not sure, I would have to look at the
21 card.

22 Q You may do so.

23 A I'm not absolutely certain.

24 Q Can you give us some idea of what year it
25 was placed there?

1 A No, I cannot, without guessing.

2 Q All right. Are you -- let's talk about
3 your custom and practice with regard to that bar
4 code. When that card, State's Number 48, came into
5 your office under your agency, was your agency at
6 that time regularly analyzing those cards and
7 furnishing points of identification to the computer
8 system?

9 A No, sir.

10 Q When did that begin?

11 A We did not have the AFIS system until 1987.

12 Q What does AFIS mean?

13 A All Print Identification System.

14 Q Acronym what letters, please?

15 A A F I S.

16 Q All right. Now, when you started on the
17 system, am I to understand then you went back to your
18 old unautomated print cards and brought them forward
19 and incorporated them into that system?

20 A We used a day forward scheme to where
21 individuals born on a certain date that we would
22 convert those records because we would consider them
23 to be active individuals or in that age group that
24 would be active individuals still committing crime.
25 The ones prior to that date, we would leave into an

1 inactive manual mode, unless it there was current
2 activity, the individual had another arrest, then we
3 would convert it to that AFIS system.

4 Q Now, did there come a time when you were
5 reasonably sure that all of your prior cards got
6 converted to the AFIS system?

7 A We do not have all our cards in the AFIS
8 system now.

9 Q Let me ask you this: From the number that
10 the bar code bears on State's Exhibit Number 48,
11 would you be able to tell or should you be able to
12 tell when that bar code was affixed?

13 A The only thing that bar code does is track
14 it through the AFIS system. Once it's entered into
15 the AFIS, the bar codes has no significant value
16 whatsoever. It just tracks it through the system so
17 internally we can track it from the beginning of the
18 process to the end. Once it's automated, the images
19 are captured, the bar code serves no useful value.

20 Q But there is a record of when that
21 particular person's data was entered into the AFIS
22 system, is there not?

23 A I cannot say absolutely. That was
24 something I would have to check with some of my
25 subordinates to find out they could track, when a

1 record was actually entered into the AFIS system.
2 I'm not absolutely sure unless I check with some of
3 my subordinates.

4 Q So you can't say whether this information
5 on this card was in the AFIS system on, say, the 23rd
6 day of July of 19 --

7 THE COURT: One question you need
8 to ask that will clear up a lot of stuff,
9 is the AFIS system uniform throughout the
10 United States, for example, would records
11 on file in South Carolina be available
12 through the AFIS system in North Carolina,
13 and vice-versa.

14 MR. BOWEN: Good question. Could
15 you answer that, please? Thank you, Your
16 Honor.

17 THE WITNESS: The South Carolina
18 AFIS system is not connected to the North
19 Carolina AFIS or vice-versa. They are
20 separate. Each State's AFIS system is a
21 stand alone.

22 BY MR. BOWEN:

23 Q What about the FBI system, does each state
24 have access to the FBI system?

25 A Only through the submission of a manual

1 fingerprint card.

2 Q So then let me ask you this: Did you send
3 or cause to be sent a copy of item number 48, that
4 is, State's Exhibit Number 48, did you cause it to be
5 sent or know that it was sent to any agency in South
6 Carolina along about August 1993?

7 MR. BRITT: Objection.

8 THE COURT: Overruled. You may
9 answer it if you know.

10 THE WITNESS: I do not know. My
11 records do not reflect. I would not know.

12 BY MR. BOWEN:

13 Q Well, is there not a record made when
14 another state or agency requests a copy of one of
15 those cards and whether or not it's sent, when it's
16 sent?

17 A Yes, sir.

18 Q Where would that record be kept?

19 A Maintained in my jacket and I do not
20 reflected it.

21 Q Did any agent within the SBI, to your
22 knowledge, transmit a copy of State's 48 to South
23 Carolina to anyone?

24 A I don't know if one of our agents have or
25 has not.

1 Q Who actually made any requests of you for
2 one of these cards, State's 48, in the year 1993?

3 A Nobody in 1993.

4 Q Not even North Carolina SBI?

5 A Not 1993. Excuse me, can I --

6 THE COURT: Yes, sir.

7 THE WITNESS: Yes, an agent did
8 request the print card in 1993.

9 BY MR. BOWEN:

10 Q What agent was that?

11 A Special Agent Jerry Richardson.

12 Q All right. And where is he, if you know?

13 A Agent Richardson is in the courtroom.

14 Q Well, I mean, where does he normally have
15 his office?

16 THE COURT: Where does he work?

17 THE WITNESS: State Bureau of
18 Investigation, latent evidence section.

19 BY MR. BOWEN:

20 Q What if anything he did with that number
21 48, you don't know?

22 A I have no idea.

23 Q When did Mr. Richardson request it, sir?

24 A Pardon?

25 Q If your records reflect, when did

1 Mr. Richardson request State's 48?

2 A In the year 1993?

3 Q Yes, sir.

4 A August 20th, 1993.

5 MR. BOWEN: That's all.

6 THE COURT: Anything on
7 redirected examination Mr. Britt?

8 MR. BRITT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. BRITT:

11 Q Mr. Lewis in the upper left-hand corner of
12 the print card, there is an area that is entitled
13 "leave blank," parentheses, "SBI"?

14 A Yes, sir.

15 Q And there is a number?

16 A That's correct.

17 Q What is the significance of that number, if
18 you know?

19 A That is the SBI identification unique
20 number that we call a SID number, that identifies
21 that individual to that number.

22 Q And on State's Exhibit Number 48, what if
23 any number appears in that blank in the upper
24 left-hand corner of the card?

25 A That would be NC0038073A.

1 MR. BRITT: I don't have any
2 other questions.

3 THE COURT: Mr. Bowen.

4 RE-CROSS EXAMINATION

5 BY MR. BOWEN:

6 Q In the right-hand corner there's also a
7 "leave blank" area that gives a number, and says
8 parentheses, FBI, is that correct?

9 A That is correct.

10 Q And it says the word "master"?

11 A That's correct.

12 Q And what does that relate to with reference
13 to the FBI file?

14 A That's two questions. Is that two
15 questions or one?

16 Q What does that designation in that
17 right-hand corner refer to?

18 A It's two separate items. That's why I
19 asked the question. I'm sorry.

20 Q Would you explain it please?

21 A To leave blank, FBI, that is the number
22 that the FBI has assigned to James Raymond Jordan.
23 The master stamp is the State Bureau of
24 Investigation's stamp saying that this is our master
25 fingerprint card for that individual. So they are

1 not linked. The master does not signify anything or
2 relate it to the FBI number. They are not
3 interrelated.

4 Q But the FBI number designates what with
5 respect to this man's record?

6 A That he did have a fingerprint card with
7 the FBI. That's matched with our SID number.

8 Q And SID again is an acronym for what?

9 A State identification number.

10 Q And I believe you said that the FBI has a
11 similar computer identification system, is that
12 correct, the one that you have in the State?

13 A They have an all print identification
14 system, but I don't know if it's exact same as what
15 we have here in North Carolina or not.

16 Q Essentially, though, it catalogs
17 characteristics of the prints in a database for the
18 purposes of comparison, is that correct?

19 A That's correct.

20 MR. BOWEN: That's all.

21 THE COURT: Simply for the
22 purposes of clarification, if one wanted to
23 contact the FBI to determine whether
24 unknown prints could be matched to any
25 fingerprints on file with the SBI, would

1 one have to have a master card containing
2 unknown prints?

3 THE WITNESS: No, sir. You would
4 not -- restate the question, please.

5 THE COURT: If an agency wanted
6 to determine whether prints that were
7 unknown coming from an unknown individual
8 could be matched to any prints on file with
9 the SBI, how would that be done?

10 THE WITNESS: They would search
11 it against -- if it's an unknown subject,
12 we could search it through our AFIS
13 database.

14 THE COURT: That would involve
15 state records?

16 THE WITNESS: State records.

17 THE COURT: Only.

18 THE WITNESS: That's correct.

19 THE COURT: So in terms of what
20 is available in North Carolina, what you
21 would be attempting to match it against
22 would be North Carolina records alone.

23 THE WITNESS: That's correct.

24 THE COURT: Okay. And if you had
25 no match in terms of North Carolina

1 records, how would you get a comparison
2 done by the FBI.

3 THE WITNESS: We would have to
4 either fax or mail a copy to the FBI to
5 have them search the database.

6 THE COURT: What is it that you
7 would fax or mail to the FBI?

8 THE WITNESS: Postmortem
9 fingerprints or ink impressions.

10 THE COURT: So in other words, you
11 would have to have possession of those
12 unknown fingerprints in order to get a
13 comparison with anything on record with the
14 FBI?

15 THE WITNESS: That's correct.

16 THE COURT: Anything further from
17 either counsel?

18 MR. BOWEN: Yes, sir, I have one
19 other thing.

20 BY MR. BOWEN:

21 Q Earlier, our fingerprint man, Mr. Christy,
22 talked about certain identifiable characteristics.
23 Now, if one has analyzed, let's say, a set of
24 fingerprints and one comes up with a set of
25 characteristics that he can feed to the FBI, then he

1 can have the record checked based also on that list
2 of characteristics, can he not?

3 A I deal with the ten print inked impressions
4 that Mr. Christy was talking about. There's a
5 separation between latent prints and the inked
6 impressions of known subjects. It's two different,
7 apples and oranges. We, at the identification
8 section, only deal with the ten print known
9 impressions. The latent evidence section of the SBI
10 deals with your partial impressions, your latent
11 lifts, those type. They have the capability of
12 searching the AFIS database based on that criteria.
13 We generally only are in the business of doing ten
14 print rolled impressions.

15 Q I understand. So what you're saying is
16 your particular department does not do it, but there
17 is a department of law enforcement, to your
18 knowledge, in North and South Carolina, for that
19 matter, that is cable of analyzing fingerprints,
20 discerning certain characteristics, cataloging those
21 characteristics, and sending those to whatever
22 authority for comparison?

23 THE COURT: The question assumes
24 he is able to. What is available in South
25 Carolina has to be established.

1 BY MR. BOWEN:

2 Q Let's just talk about North Carolina.

3 A Yes, sir.

4 Q Since you're in North Carolina. Do you
5 know that at least a department within North Carolina
6 law enforcement, if not your own department, has the
7 capabilities and the personnel to isolate certain
8 identification characteristics and fingerprints,
9 catalog those, and send them off for comparison to
10 prints with the same or similar characteristics?

11 A Send them to where?

12 Q To the FBI?

13 A To the FBI, they would have to mail or fax
14 a copy of that document. The postmortem prints,
15 right now there's no electronic means for the SBI to
16 send the images or the -- what we call minutia, which
17 is identifying points on the fingerprints, to the FBI
18 to have them put that into their mainframe and search
19 it against their AFIS system. Right now, it's just a
20 manual submission fax or mailed copy.

21 Q But if you have the postmortem prints or
22 the inked prints, it's just a matter of a simple fax
23 away and you can get the FBI to take a look?

24 A Yes, if it's a legible set.

25 MR. BOWEN: Thank you. That's all.

RICHARDSON

1 MR. BRITT: No other questions.

2 THE COURT: May he be released,
3 folks?

4 MR. BOWEN: Yes, sir.

5 THE COURT: Thank you, Mr. Lewis,
6 you're free to go.

7 MR. BRITT: Your Honor, at this
8 time we call Jerry Richardson.

9 JERRY RICHARDSON,
10 being first duly sworn was examined and deposed as
11 follows:

12 DIRECT EXAMINATION

13 THE COURT: Please state your
14 full name.

15 THE WITNESS: My name is Jerry
16 Richardson.

17 THE COURT: Would you spell both
18 your first and last names or name for the
19 record?

20 THE WITNESS: First name Jerry,
21 J E R R Y; last name Richardson,
22 R I C H A R D S O N.

23 BY MR. BRITT:

24 Q Mr. Richardson, by whom are you employed?

25 A North Carolina State Bureau of

1 Investigation.

2 Q In what capacity do you work for the State
3 Bureau of Investigation?

4 A I'm a forensic analyst signed to the latent
5 evidence section of SBI crime lab in Raleigh, North
6 Carolina.

7 Q How long have you worked for the SBI in
8 that capacity?

9 A Seven years today.

10 Q What is your educational background?

11 A I have a Bachelor of Arts Degree in
12 communication from North Carolina State University.

13 Q What if any other law enforcement
14 experience did you have prior to going to work for
15 the SBI?

16 A Prior to -- none prior to the SBI. I also
17 worked with the SBI in the identification section
18 prior to going into the latent evidence section for
19 approximately one and a half years.

20 Q And since being employed with the State
21 Bureau of Investigation, what if any training or
22 education have you received in regard to fingerprint
23 analysis and comparison and identification?

24 A My training involves completion of the SBI
25 in-house training program which is a two year

1 comprehensive program including all aspects of
2 preserving, comparing identifying latent prints.

3 In that training we also do a number of
4 other things, as far as crime scenes, preserving
5 different items of evidence, unknown deceased
6 processing. I've also completed the FBI advanced
7 latent fingerprint training which is sponsored by the
8 Federal Bureau of Investigation out of Washington D.
9 C. and attended numerous conferences in the area of
10 ridge detail and identification of latent prints.

11 Q And in the time that you've worked for the
12 SBI, how many latent prints would you say that you
13 have compared as a part of your job?

14 A Actual comparing latent prints to known
15 impressions, there's no way I could give you an exact
16 number but probably the actual comparison side,
17 probably hundreds of thousands of latent prints
18 compared to known ink impressions.

19 Q What is a latent print?

20 A Basically what a latent print is, the word
21 latent means hidden or invisible.

22 If I were -- if you look on the area of
23 your hand and palm, you will see that there are
24 certain raised areas there, peaks and valleys. The
25 peaks are the actual friction, ridge detail. Between

1 the peaks are what we call furrows, which are like
2 valleys.

3 Through perspiration, moisture and
4 different things that are excreted from the hand,
5 they are oils and other substances found on the
6 finger. If I were to touch an item, say this, it
7 would be a transfer of the moisture, and other
8 substances which may be found on the ends of my
9 fingers on to that subject. Through the use of
10 commercial powders, chemicals, and/or light sources,
11 that print could be made visible to the naked eye.

12 At that point, it could be lifted, as I
13 stated, photographed, those things. It is still
14 referred to as a latent and it is preserved at that
15 point for later comparisons.

16 Q And what is an inked print or a known
17 fingerprint impression?

18 A An inked print is the intentional recording
19 of the friction ridge detail on the surface of the
20 hand. What is normally done is a thin layer of
21 printer's ink is applied to the hand, and depending
22 on how they are being recorded, they are rolled onto
23 a contrasting background, normally a white card, and
24 it is recorded in that manner and it is referred to
25 as a known inked impression or inked impressions

1 which are known to the individual.

2 Q Have you had an occasion in your work with
3 the SBI to identify individuals by comparing latent
4 fingerprints with their own known fingerprints?

5 A Yes, I have.

6 Q And how many times would you say that
7 you've done that?

8 A I'm unable to give an exact number but
9 probably in the thousands of times that actually made
10 identification and comparing known prints to latent
11 prints.

12 Q And, Mr. Richardson, have you previously
13 testified in court as an expert regarding
14 identification of people based upon fingerprint
15 comparisons?

16 A Yes, I have.

17 Q Approximately how many times have you done
18 that?

19 A To date, 31 times.

20 MR. BRITT: Your Honor, at this
21 time, I would tender Mr. Richardson as an
22 expert in the area of fingerprint
23 identification.

24 MR. BOWEN: No objection.

25 THE COURT: The witness may so

1 testify without objection.

2 BY MR. BRITT:

3 Q Mr. Richardson, are there different
4 distinguishing characteristics of a fingerprint?

5 A Yes, we basically look for three
6 characteristics of a fingerprint. Initially what we
7 look for are what we refer to as class
8 characteristics.

9 On each person's finger, there is a certain
10 pattern that's found there, and we break that down
11 into a class characteristic which would be either a
12 loop or what we refer to as an arch. Within that
13 pattern there are certain individual characteristics
14 which can be found within the finger, and we look for
15 those three in that print.

16 One would be simply a dot, which is a --
17 that's exactly what it looks like, a dot which is
18 found in that pattern area. The second one would be
19 what we refer to as an ending ridge, a ridge which
20 runs at some point and abruptly stops.

21 The third feature we look for is what we
22 refer to as a bifurcation or forking ridge, a ridge
23 that runs, at some point will divide into two
24 separate and distinct ridges. Those are the three
25 characteristics that we look for withing that

1 fingerprint pattern.

2 Q In your opinion, how many possible points
3 of identification are there on each fingerprint?

4 A It varies, but the average is usually
5 somewhere between 75 to 150 different points or
6 characteristics which can be found on each finger.

7 Q And can you tell us how it is that
8 fingerprints are used to identify people?

9 A Well, there are two factors that involved
10 in that. First of all, fingerprints start to form in
11 a child before it's even born. The areas of ridge
12 detail on the hands are actually formed before the
13 child is born. They are constant, they remain
14 permanent throughout the child, the individual's
15 life, and even until the body totally decomposes.
16 The ridges would also be there after the person is
17 deceased at that point. And they do not change
18 throughout an individual's life.

19 Q Is it possible for two people to have the
20 same fingerprint?

21 A No, it's not.

22 Q And why is that?

23 A Throughout history, no two people have ever
24 been found to have the exact fingerprints, and the
25 areas of ridge detail on the fingers, palms, joints

1 and even on the soles of the feet, those
2 characteristics do not duplicate themselves in the
3 exact same pattern on any other individual. So
4 that's why each person has their own unique and
5 individual fingerprints.

6 Q And what if any effect does decomposition
7 of the body have on an individual's fingerprints?

8 A Well, the prints will remain after the
9 person is deceased for a period of time, and
10 depending on environmental aspects, weather and
11 different things likes that, the areas of ridge
12 detail will remain for a certain period of time.
13 We're unable to control the environmental effects it
14 may have on an individual's hands or whatever, but
15 there are a number of times that we've identified
16 people that have been deceased using the areas of
17 ridge detail because they do remain constant
18 throughout a person's life.

19 Q What is a postmortem fingerprint strip?

20 A A postmortem fingerprint strip is one of
21 the techniques which is used to obtain the areas of
22 ridge detail from a person that is deceased. It can
23 be done a number of ways. The actual hand of the
24 person -- first of all, the strip is simply a strip
25 of paper which has blocks which can be cut from a

1 fingerprint card normally. And putting ink on that
2 person's hand it can be rolled, the hand can be
3 rolled onto that strip to record that area of ridge
4 detail. And also there are a number of other
5 techniques as far as removing the skin, putting the
6 skin over your finger and rolling it onto that
7 fingerprint to record as much as of that ridge detail
8 which may still be available at that point.

9 MR. BRITT: May I approach the
10 witness, please?

11 THE COURT: Yes, sir.

12 MR. BRITT: May I approach the
13 witness?

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q Mr. Richardson, I'm going to hand you
17 what's been previously marked as State's Exhibit 46,
18 ask you to examine that, ask you if you can identify
19 it?

20 A Yes.

21 Q How are you able to identify State's
22 Exhibit 46?

23 A State's Exhibit 46 bears my case number,
24 initials, it is an envelope that we normally use in
25 returning evidence that is submitted to the lab.

1 Q What if any case number appears on State's
2 Exhibit 46?

3 A R9416441 and my initials.

4 Q At the time you placed the case number and
5 your initials on State's Exhibit 46, were there items
6 that you had placed inside of that envelope?

7 A Yes, they were.

8 Q I'll show you what has been marked as
9 State's Exhibit 46-A and ask you if you can identify
10 that?

11 A Yes, I can.

12 Q How are you able to identify State's
13 Exhibit Number 46-A?

14 A It also bears my case number, and the date
15 I received it and in the condition I received it.

16 Q And what if any case number appears on
17 46-A?

18 A Case number R931641 appears on there, in
19 one submission, and I notice here I have R 94, and it
20 should be R9316441 on the other envelope.

21 Q On what date did you receive State's
22 Exhibit 46-A?

23 A On the first submission on 8-18-1993.

24 Q At the time you received State's Exhibit
25 46-A, what if any condition was the package in at

1 that time?

2 A In a sealed condition.

3 Q And from whom did you receive State's
4 Exhibit 46-A?

5 A The first submission?

6 Q Yes, sir.

7 A State's Exhibit 48 --

8 Q 46-A?

9 A Excuse me, was received on August 18th,
10 1993, from A. G. Sweatt.

11 Q And after receiving State's Exhibit 46-A,
12 where if anywhere did you take that exhibit?

13 A It was taken back to my office and placed
14 in my evidence cabinet.

15 Q Who has access to your evidence cabinet?

16 A No one but myself.

17 Q Did it remain there until such time as you
18 performed any type of analysis on the contents of the
19 envelope?

20 A Yes, it did.

21 Q And at what point was it removed from your
22 evidence locker and any analysis performed on the
23 contents?

24 A On the first submission, I received this
25 particular item, there was no analysis conducted on

1 it, and it was -- it was removed on 8-20-1993.

2 Q Removed from where?

3 A From my evidence locker.

4 Q At that point, what if anything did you do
5 with the contents of State's Exhibit 46-A?

6 A On the first submission of 8-20, when I
7 actually opened the item of evidence there was no
8 analysis conducted at that point on the item. I
9 simply initialed the contents and it was returned
10 with the other evidence in the case.

11 Q Was there a later time when State's Exhibit
12 46-A was returned to you?

13 A Yes, it was.

14 Q When did you receive it at a later date and
15 in what condition was the package in at that time?

16 A I received the second submission of the
17 item was returned to me on 8-20-1994, and it was in
18 one sealed envelope at that point.

19 Q At the time you first received State's
20 Exhibit 46-A in 1993, what if any items did you find
21 located in it when you opened it and inventoried the
22 contents?

23 A When I received it in 1993, State's Exhibit
24 48 --

25 Q 46-A.

1 A -- 46-A, there were three fingerprint
2 strips with ink impressions of a right thumb, one
3 photograph of skin tissue removed from a finger, and
4 41 photographs of a jaw.

5 Q Were those items placed back in the
6 envelope at that point when no analysis was done on
7 the contents?

8 A Yes, they were.

9 Q Was the package re-sealed at that point?

10 A Yes, it was.

11 Q When you received the items in August of
12 1994?

13 THE COURT: Would you reestablish
14 to whom it was returned between the first
15 submission?

16 BY MR. BRITT:

17 Q What if anything did you do with State's
18 Exhibit 46-A and its contents after inventorying the
19 contents in 1993?

20 A After handling the contents in 1993 they
21 were returned first class mail through our evidence
22 control unit, to Mr. Kim Heffney at that point.

23 Q And in 1994, it's your testimony you
24 received State's Exhibit 46-A in a sealed state from
25 Mr. Heffney?

1 A That's correct.

2 Q And at that point, was any requested
3 analysis made?

4 A At that point, a request was made to me to
5 compare the postmortem inked prints and the
6 photograph which were contained to the known ink
7 impressions bearing the name of James Raymond Jordan.

8 Q At the time, on the second occasion when
9 you received State's Exhibit 46-A, was it in a sealed
10 condition?

11 A Yes, it was.

12 Q What if any items were contained in State's
13 Exhibit 46-A when you opened it on the second time it
14 was submitted to you?

15 A On the second submission, there was the
16 same items were there, three postmortem fingerprint
17 strips with ink impressions of a right thumb, one
18 photograph of skin tissue removed from a finger, and
19 forty one prints of a jaw.

20 Q Did those items appear to be in the same
21 condition that they were in when you first observed
22 them after receiving State's Exhibit 46-A in the
23 summer of 1993?

24 A Yes, they were.

25 THE COURT: Let's take a break at

1 this point, we'll come back and get into
2 it.

3 MR. BRITT: Yes.

4 THE COURT: Members of the jury,
5 we're going to take the afternoon recess at
6 this time. Please reassemble in the jury
7 room at five until by the clock on the far
8 wall. Also recall that it is your duty to
9 abide by all prior instructions of the
10 Court concerning your conduct during this
11 recess. Everyone else please remain
12 seated, the members of the jury are excused
13 until 3:55.

1 MR. BRITT: Yes, Your Honor.

2 THE COURT: If you would please
3 return to the witness stand.

4 If you'll bring the jury in, please,
5 Mr. Horne.

6 (Jury in at 3:54 p.m.)

7 THE COURT: Yes, sir, Mr. Britt.
8 May I approach the witness once again?

9 THE COURT: Yes, sir.

10 BY MR. BRITT:

11 Q I'm going to hand you what has been
12 previously identified as 46-A and ask you to remove
13 the contents of that manila envelope.

14 A (Witness complies).

15 Q Show you what's been marked as State's
16 Exhibit 46-B, ask you to examine that and tell me if
17 you can identify it?

18 A Yes, I can.

19 Q And how are you able to identify State's
20 Exhibit 46-B?

21 A It bears my case number, item number, and
22 date, and initials.

23 Q For the record, can you identify what
24 State's Exhibit 46-B is?

25 A State's Exhibit 46-B is a photograph of a

1 part of a piece of skin which had been removed from a
2 finger which has been backlighted in an attempt to
3 record as much of that ridge detail which is on the
4 finger as possible.

5 Q Show you what's been marked as State's
6 Exhibit 46-C, ask you if you can identify it?

7 A Yes, I can.

8 Q How are you able to identify State's
9 Exhibit 46-C?

10 A It also bears my case number, item number,
11 and date and initials on the outer bag.

12 Q For the record, what is State's Exhibit
13 46-C and what if anything is contained inside of it?

14 A State's Exhibit 46-C are what I refer to as
15 fingerprint strips which were recorded from a
16 deceased individual to record the area of friction
17 ridge detail.

18 Q For the record, State's Exhibit 46-C is
19 that a sealed plastic, clear plastic container?

20 A Yes, it is.

21 Q And the postmortem strips that you've
22 referred to are visible through that clear plastic
23 container?

24 A Yes, they are.

25 Q And the container itself at this point is

1 sealed?

2 A Yes, it is.

3 Q And for the record, can you identify what's
4 been marked as State's Exhibit 46-D?

5 A State's Exhibit 46-D is a envelope which
6 bears also my case number, item number, and date and
7 initials also.

8 Q And for the record, did State's Exhibit
9 46-D, did you perform any analysis on the contents of
10 it?

11 A No, I did not.

12 Q State's Exhibit 46-C and 46-B, what if any
13 analysis did you do on those items?

14 A State's Exhibit 46-B and 46-C, I conducted
15 a comparison of the areas of ridge detail which were
16 present on the photograph and on the postmortem ink
17 fingerprint strips, and I compared them to the known
18 ink depression bearing the name James Raymond Jordan.

19 Q For the record, are State's Exhibits 46-B
20 and 46-C in substantially the same condition they
21 were in as of the time you received them and when you
22 conducted -- after you conducted any analysis and
23 comparison of those?

24 A Yes, they are.

25 Q I'll show you what has been marked as _

1 what's been accepted as State's Exhibit 48, the
2 fingerprint card of James Raymond Jordan. Do you
3 recognize it?

4 A Yes, it's a Xerox copy of the known ink
5 impressions bearing the name of James Raymond Jordan.

6 Q Mr. Richardson, what if any examination did
7 you conduct on the photograph marked as State's
8 Exhibit 46-B and the postmortem strips marked as
9 State's Exhibit 46-C?

10 A Initially, in examining the photograph and
11 the postmortem ink impressions, through a small
12 magnifier, I looked to see if there was a sufficient
13 number of those identifying characteristics to
14 actually effect a comparison with a known set of ink
15 impressions. I did that, I determined there were a
16 sufficient number of those characteristics present,
17 and then compared them to the known ink impressions
18 bearing the name of James Raymond Jordan.

19 Q Where did you obtain a copy or the
20 fingerprint card that has been marked as State's
21 Exhibit Number 48?

22 A The fingerprint card which is marked
23 State's Exhibit 48 was obtained from the SBI
24 identification section.

25 Q And what if anything did you do, any type

1 of examination or comparison did you do using the
2 fingerprint card marked as State's Exhibit 48 and the
3 photograph marked as 46-B and the postmortem strips
4 marked as 46-C?

5 A They were compared to each other in an
6 attempt to effect an identification at that point.

7 Q And based upon your training and expertise,
8 were you able to perfect an identification?

9 A Yes, sir, I was.

10 Q And based upon your examination, what if
11 any identification did you make in regard to the
12 photograph marked as State's Exhibit 46-B, the
13 postmortem strips marked as 46-C and the fingerprint
14 card of James Raymond Jordan marked as State's
15 Exhibit 48?

16 A In my comparison with the photograph, which
17 is marked State's Exhibit 46-B, I compared it to the
18 known ink impressions bearing the name of James
19 Raymond Jordan, and it was identified as having been
20 made by the right thumb of the same card that bears
21 the name James Raymond Jordan. I also compared the
22 postmortem inked fingerprint strips and there was one
23 particular one which was of good quality and
24 detailed. I was able to actually make a comparison
25 to the known ink impressions and it was also

1 identified as having been made by the right thumb of
2 the same card that bears the name James Raymond
3 Jordan.

4 Q And Mr. Richardson, as part of your duties
5 at the SBI laboratory, are you required to file any
6 reports in connection with the analysis that you
7 made?

8 A Yes, I was.

9 MR. BRITT: May I approach?

10 THE COURT: Yes, sir.

11 (State's Exhibit 49 was
12 marked for identification.)

13 BY MR. BRITT:

14 Q I'll show you what has been marked as
15 State's Exhibit 49, ask you if you can identify that?

16 A Yes, I can. State's Exhibit 49 is a copy
17 of a report that I prepared based on my findings at
18 that point.

19 Q And the copy that's been marked as State's
20 Exhibit 49, does it contain the same information as
21 the original report that you filed in connection with
22 your analysis in this case?

23 A Yes, it does.

24 Q Did it bear any identifying markers that
25 you recognize to be yours?

1 A Yes, my initials are on this particular
2 report on the very bottom.

3 Q Your Honor at this time I move for
4 admission of State's Exhibit 49?

5 THE COURT: Without objection,
6 State's Exhibit 49 is admitted.

7 BY MR. BRITT:

8 Q After completing your fingerprint analysis
9 and comparison of the items that were submitted, what
10 if anything did you do with the postmortem strips,
11 the photograph of the skin tissue, and the envelope
12 containing the 41 photographs of a jaw?

13 A At that point, all envelopes or items that
14 I received were sealed and they would be -- excuse
15 me, they were to be held for pick up at that point.

16 Q And when you say they were held for pick
17 up, did you retain custody of those items?

18 A Yes, I did.

19 Q Who if anyone did you deliver those items
20 to?

21 A The items were turned over to Mr. Kim
22 Heffney on 8-26 of 1994.

23 Q At the time you turned then over to Mr.
24 Heffney, what if any condition were the containers
25 that contained the items that you had examined in?

1 A They were in a sealed -- they were in a
2 sealed condition, and they had my initials on the
3 container at that point also.

4 MR. BRITT: Thank you. I don't
5 have any other questions.

6 THE COURT: Any
7 cross-examination?

8 MR. BOWEN: Yes, sir, Your
9 Honor. Thank you.

10 CROSS-EXAMINATION

11 BY MR. BOWEN:

12 Q Mr. Richardson, the fingerprint analysis
13 that you conducted in this case or the same type of
14 analysis that you conduct in any case has largely to
15 do with looking for ridge endings, does it not?

16 A Yes, sir.

17 Q It has to do with looking for specific
18 configurations of forking ridges, is that true?

19 A That is true, yes.

20 Q And sometimes areas known as dots, is that
21 right?

22 A Yes, sir.

23 Q Now, these things are kind of small, and
24 you indicated that you had to have magnification,
25 some sort of loop or magnifying glass when you looked

1 at the cord and looked at the postmortem ink
2 impressions, is that correct?

3 A That is correct.

4 Q And there's nothing particularly wrong with
5 your sight, anybody would have to have that
6 magnification to see?

7 A Yes, sir, it's general practice throughout
8 the United States to use the small magnifiers to
9 compare the known ink impressions to the latent
10 prints which are available to you.

11 Q But actually, Mr. Richardson, when you
12 compare fingerprints, you take that information,
13 whatever it is, and you blow it up large enough,
14 you're able to stand in front of a jury and actually
15 show them the ridge endings, the forking ridges and
16 the dots and identify those points of identification
17 that form the basis of your conclusions, can't you?

18 A That is correct.

19 Q Now, the SBI in Raleigh has a photo lab,
20 does it not?

21 A Yes, sir, that's correct.

22 Q You have available to you cameras that will
23 take black and white and color and will do what we
24 call macro, that is, close up photography, don't you?

25 A Yes, sir.

1 Q You have it within your capabilities, had
2 you wanted to, you could have photographed these
3 items that you've identified, that is, the inked
4 impression card and the print that you say came from
5 Mr. Jordan, and you could have blown that up into a
6 large photograph, couldn't you?

7 A Yes, sir, I could have.

8 Q You could have stood in front of this jury
9 and you could have pointed out each point of
10 identification that you claim to be the same between
11 the known ink card and the purported fingerprint of
12 Mr. Jordan, couldn't you?

13 A Yes, sir, that is possible.

14 Q And you did not do that, did you?

15 A No, I did not.

16 Q You did not bring that material today?

17 A No, sir.

18 Q That material did not exist because you
19 haven't caused it to be produced?

20 A It has not been produced because we
21 normally as policy within the section will reproduce
22 or prepare what we term a court exhibit anytime upon
23 request. Generally what we found is if we prepared a
24 court exhibit on every case, then it would take a lot
25 of time to prepare those things. It may take

1 sometimes three or four days to actually prepare a
2 court exhibit, and we normally will do it upon
3 request only.

4 Q So what you're saying is that Mr. Heffney,
5 chief investigator for the SBI, in your case did not
6 request it, is that correct?

7 MR. BRITT: Objection.

8 THE COURT: Sustained as to the
9 form.

10 BY MR. BOWEN:

11 Q Well, nobody including Mr. Heffney nor the
12 District Attorney or anybody involved in this case
13 requested that type of exhibit, did they?

14 A There was no formal request for a chart of
15 enlargement or exhibit on this particular case.

16 Q Now, you said that a typical fingerprint
17 has somewhere between 75 and 150 points of
18 identification, is that correct?

19 A That is correct, yes.

20 Q You do not claim that your comparison in
21 this case involved anywhere near that number, do you?

22 A No, I would not.

23 Q In fact, your number of points of
24 identification in this particular case involves fewer
25 than 50, doesn't it?

1 A Yes, sir.

2 Q In fact, fewer than 25?

3 A I'm not sure. I would have to actually
4 look at the print to see the total number of points.
5 However, it was much less than the number of
6 characteristics you would find on a fingerprint which
7 is rolled nail to nail.

8 Q Now, I want to ask you if on the
9 fingerprint card, that is, State's Exhibit Number 48,
10 Mr. Richardson, when you saw that card, was the bar
11 code information on that card or not or do you
12 remember, when you first saw it?

13 A When I first saw it, I do not recall if it
14 was there. If I'm -- I'm not sure, I think on the
15 second time I did see the card that the bar code was
16 there, the first time I do not recall.

17 Q When you say first time, we're talking
18 about the fact that the inked impression card and
19 postmortem prints were turned over to you at a time
20 shortly after summer of 1993, correct?

21 A That is correct.

22 Q And then there came a time when an officer
23 or officers got that material back from you, is that
24 correct?

25 A That's correct, yes.

1 Q And at that time you had not completed any
2 sort of identification or analysis of those prints,
3 had you?

4 A No, I had not.

5 Q And you had not issued a report, had you?

6 A I had issued a report but it basically
7 stated that there was no analysis conducted on that
8 particular item at that point.

9 Q So, at that juncture, you had not rendered
10 an opinion that there was a match on those prints,
11 had you?

12 A In the first reported there was no opinion
13 or analysis conducted on that particular item, no.

14 Q And then, those items were transferred back
15 over to whom?

16 A All the items or the --

17 Q I'll just ask you about the fingerprint
18 items that's the only thing I'm interested in right
19 now, the fingerprint card and the postmortem prints?

20 A The postmortem prints were returned back to
21 the addressee.

22 Q Who was the addressee, please?

23 A Mr. Kim Heffney.

24 Q And then can you tell the jury when you saw
25 those items again?

1 A The second time I saw the postmortem inked
2 fingerprint strips and the photograph was on 8-24 of
3 1994.

4 Q And you received them then from whom?

5 A From Mr. Kim Heffney.

6 Q And was it only then that you were asked to
7 perform analysis and a comparison?

8 A I had talked to Mr. Heffney prior to the
9 actual items being submitted, and at that point he
10 informed me that he would like for me to do a
11 comparison with the inked impressions that were on
12 file versus the postmortem ink impressions which were
13 available in this particular case.

14 Q And what had happened to these items in
15 between the time you first saw them and the time that
16 you saw them again, you don't know, do you?

17 A No, sir, I do not.

18 Q Now, you never submitted the postmortem
19 prints to any kind of computer analysis through the
20 SBI North Carolina or through the FBI through the
21 federal system, did you?

22 A That is correct, I did not.

23 Q Experts can sometimes differ on matters of
24 fingerprint identification, can they not, sir?

25 MR. BRITT: Objection.

1 THE COURT: Overruled.

2 THE WITNESS: Experts may differ
3 on a number of things, but when it comes to
4 the actual identification of a latent
5 print, we're all looking for the same thing
6 that are the individual characteristics
7 which are found in the latent versus a
8 known set of ink impressions, and they can
9 be identified at that point.

10 BY MR. BOWEN:

11 Q So the system you maintained is consistent
12 enough that you could have put the material through
13 the computer system in the State of North Carolina
14 and it should have run back to James Jordan's card,
15 shouldn't it?

16 MR. BRITT: Objection to form.

17 THE COURT: Sustained.

18 BY MR. BOWEN:

19 Q Should have run back to James Jordan's card
20 if his material were in the computer system?

21 MR. BRITT: Objection to the
22 form.

23 THE COURT: Sustained.

24 MR. BRITT: Move to strike, ask
25 for instruction.

1 THE COURT: Allowed. Members of
2 the jury, you will not consider the last
3 question of Mr. Bowen, that question is to
4 take no part in your deliberations in this
5 matter in any regard.

6 Mr. Bowen, you may rephrase or ask
7 additional questions.

8 BY MR. BOWEN:

9 Q If you will, Mr. Richardson, describe to
10 the jury what type of computerized fingerprint
11 identification system that the State of North
12 Carolina had in the later half of the year 1994?

13 A At that particular time, the automated
14 fingerprint identification system referred to as AFIS
15 was in place, and what was entered into that were
16 individuals throughout North Carolina who were
17 arrested, their entire fingers were entered into that
18 system and each finger was numbered and the
19 identifying characteristics based upon the computer
20 plotting that information, was also in the computer
21 at that point. AFIS allows us to search latent
22 fingerprints or parts of those prints. However,
23 there are situations where a print may not be of
24 value for an AFIS search because the area that we're
25 looking for may not be an area that will appear on

1 the fingerprint or will be plotted within the
2 fingerprint system at that point.

3 Q Now, from the fingerprint card and the
4 position, or the existence of the bar code there, are
5 you satisfied that when you performed your analysis
6 back in August of 1994, that Mr. Jordan's information
7 relative to his fingerprints, that is, the
8 fingerprint of James Jordan, was in the North
9 Carolina AFIS system?

10 A I can't say for sure but it does leave --
11 at that point both cards were in the system, and I
12 would believe that Mr. Jordan's prints would have
13 been in the computerized system at that point.

14 Q And that would have been the information
15 contained on State's Exhibit Number 48, the inked
16 fingerprint card?

17 A Yes.

18 Q Now, did you at any time attempt to cause a
19 computer comparison between the postmortem prints
20 and -- well, did you attempt to bring about a
21 comparison using the computer system with the
22 postmortem prints?

23 A No, I did not for two reasons, first reason
24 I did not run any computerized system, I was
25 requested to compare it to a set of known ink

1 impressions, and identification was effected at that
2 point so there was no need to run that print through
3 any type of computerized system at that point.

4 Second being that the postmortem inked
5 impression which you will normally find aren't of
6 your best quality and detailed in a lot of areas.

7 A lot of times you're working with areas
8 near the joints or other parts of the hand. Those
9 areas and that information is not contained in that
10 computerized system, and we have a number of prints
11 that we can only do what we call a manual search on,
12 which is a search against a set of ink impressions
13 that are either submitted or we are advised that that
14 person, we need to compare that person to those
15 prints, so there was no analysis or no entries into
16 the automated fingerprint system done for those
17 reasons.

18 Q You say that is in part because of the poor
19 quality of the prints that you were working with?

20 A Yes, which is normal on postmortem ink
21 impressions.

22 THE COURT: I'm sorry, simply so
23 that we can all understand what you're
24 saying, are you telling us that the purpose
25 of running unknown prints through the North

1 Carolina AFIS system is an attempt to make
2 an identification?

3 THE WITNESS: Yes, it is done
4 because we either are unaware of who the
5 individual is or we're unaware of who the
6 person who may have committed the crime is
7 or even we have run some unknown deceased
8 because we don't know who they are, and
9 that's the reason we would actually run a
10 print through the AFIS system.

11 THE COURT: If I'm understanding
12 correctly, are you testifying that
13 generally prints are run through the AFIS

1 when you've already made a comparison and
2 an identification with known prints.

3 THE WITNESS: No, simply there's
4 no need, if you've already effected an
5 identification with that individual there's
6 no need to run it through the AFIS system
7 because there's really nothing to gain at
8 that point. You've already identified that
9 person.

10 BY MR. BOWEN:

11 Q You would verify your own comparison if the
12 computer system agreed with what you had concluded,
13 wouldn't you?

14 MR. BRITT: Objection to the
15 form.

16 THE COURT: The form, the
17 objection is sustained but you may
18 rephrase.

19 BY MR. BOWEN:

20 Q You could run it through if you wanted to
21 simply make sure that the computer analysis was the
22 same as your analysis, correct?

23 MR. BRITT: Objection.

24 THE COURT: Overruled. You may
25 answer.

1 THE WITNESS: That could be done
2 if you wanted to run it just to see if that
3 individual was in there, you could.
4 However standard of practice we don't
5 because we've already made an
6 identification at that point, and there is
7 no need to run that print if you have
8 effected an identification against an
9 individual.

10 BY MR. BOWEN:

11 Q But you said earlier that you didn't run
12 this particular one in part because of the poor
13 quality of the print?

14 A Well, I didn't say I didn't run it, I said
15 I would not have run it because of the quality of the
16 print.

17 Q Now, then, as far as your own personal
18 analysis, without the aid and assistance of the
19 computer, you feel that the material that is
20 reflected here on State's Exhibit Number 49 is
21 accurate, is that correct?

22 A I'm not sure if State's Exhibit 49 is
23 the --

24 Q Take a look at it. It's your lab report?

25 A My lab report. Yes, I'm sure that

1 information is accurate. One policy we have within
2 the section also is that anytime an identification is
3 effected, whatever kind of identification, postmortem
4 or a normal print against a latent print left at a
5 crime scene, a second examiner also will look at that
6 print independently and come to the same conclusion
7 that the initial analyst came to prior to any reports
8 being released from the section.

9 Q And so what you do even if the information
10 on this report has come from other SBI officers
11 you're certain that you get it accurately and you
12 verify it and double check it before you write it
13 down on a solid report like State's Exhibit 49, is
14 that correct?

15 A I'm not sure I understand your question.

16 Q You make sure all your information is
17 accurate before you write it down, don't you?

18 A I try to, yes.

19 Q Well then, have a look, please,
20 Mr. Richardson as State's Exhibit Number 49, please.
21 Right below where it says lab report, there's the
22 column to the left and column to the right. I direct
23 your attention to the column to the right. Please go
24 down to where it says date of offense. Do you see
25 that?

1 A Yes, sir.

2 Q Is it the position of the SBI that
3 Mr. Jordan died on August the 23rd, 1993?

4 MR. BRITT: Objection.

5 THE COURT: Overruled.

6 BY MR. BOWEN:

7 Q Sir.

8 A No, that's not the opinion of the -- the
9 information that is taken and placed on the
10 information here date of offense is done by the
11 typist and it is taken from the submission form.

12 Q Well, you looked it over and signed it,
13 didn't you?

14 A Yes, sir.

15 Q So something is wrong on it, isn't it?

16 A As far as the date of offense, I'm not sure
17 what the date of offense is, sir.

18 Q So in fact, you didn't check that
19 particular fact, did you?

20 A I checked that fact based on what was on
21 the submission sheet and those two numbers matched.
22 As far as date of offense, I have no way of knowing
23 the date of offense in this particular case.

24 Q Who put this submission sheet together?

25 A It was completed by me in the presence of

1 Mr. Kim Heffney.

2 Q All right. Did Mr. Heffney sign off on
3 that submission sheet?

4 A That particular item, I'm not sure, sir.

5 Q But he was present when August the 23rd
6 1993 was placed down as the date of death of
7 Mr. Jordan, date of offense, excuse me?

8 A He was there but may have been some
9 information that I wrote down wrong, I'm not sure.

10 Q Did you have any reason to know when the
11 date of offense was in this case unless Mr. Heffney
12 told you?

13 MR. BRITT: Objection as to form.

14 THE COURT: Sustained as to form.

15 BY MR. BRITT:

16 Q Did anybody else tell you when the date of
17 offense was?

18 MR. BRITT: Objection.

19 THE COURT: That's hearsay. You
20 can ask it another way.

21 BY MR. BOWEN:

22 Q Well, you did not of your own knowledge
23 know what the date of alleged offense was except for
24 something that somebody told you, is that
25 correct?

1 MR. BRITT: Objection.

2 THE COURT: Sustained.

3 BY MR. BOWEN:

4 Q How did you know to put down August 23rd,
5 1993?

6 MR. BRITT: Objection.

7 THE COURT: If you know or
8 recall, you may answer.

9 THE WITNESS: I do not recall.

10 BY MR. BOWEN:

11 Q Did you have any independent knowledge of
12 the case yourself such that you could have come up
13 out of your own mind with that date?

14 MR. BRITT: Objection, asked and
15 answered.

16 THE COURT: Overruled. It's
17 cross-examination.

18 THE WITNESS: No, I do not. I'm
19 not sure why that particular date is there,
20 I don't recall.

21 THE WITNESS: Your Honor, if I
22 may --

23 THE COURT: Mr. Bowen.

24 MR. BOWEN: I don't have any
25 further questions, Your Honor.

1 THE COURT: Yes, sir.

2 Mr. Britt?

3 REDIRECT EXAMINATION

4 BY MR. BRITT:

5 Q Mr. Richardson, is it possible that the
6 information that is contained on your lab report,
7 date of offense, is a typographical error?

8 MR. BOWEN: Object.

9 THE COURT: Sustained as to
10 form. Calls for speculation and
11 conjecture.

12 BY MR. BRITT:

13 Q Do you know how the date August 23rd, 1993
14 came to be placed on your report?

15 A Yes, I do now. It was placed there because
16 on an earlier submission which I have no control over
17 there was a date on one of our submission forms in
18 the area where it has date of offense is listed as
19 8-23-93, and to simply get the information or get the
20 case logged into our computer system, that date was
21 entered, and I recorded it from a previous submission
22 sheet which is listed as date of offense, 8-23-93,
23 and basically took it from the same information that
24 I had previously had on hand in the first submission.

25 Q Does the date August 23rd, 1993 change your

1 opinion as to the identification that you made in
2 comparing the known inked impressions of James Jordan
3 with the photograph of the skin tissue and the
4 postmortem strips that were submitted to you?

5 A No, it does not.

6 MR. BRITT: I don't have any
7 other questions.

8 THE COURT: Anything further,
9 folks?

10 RECROSS EXAMINATION

11 BY MR. BOWEN:

12 Q On this so called submission sheet, when
13 did you first receive these items, sir, now that you
14 have that out there?

15 A On the second submission, sir?

16 Q Yes, sir. First submission, when was that?

17 A Well, there were a number of submissions.

18 Q Okay. I'm talking about the inked
19 impressions, the inked card, the photograph of the
20 thumb, and the postmortem fingerprints?

21 A According to my records, 8-18-93.

22 Q And you got them then from Mr. Heffney?

23 A No, at that point I received them from A.
24 G. Sweatt.

25 Q All right. And did the -- did the date of

1 offense appear there as August 23rd, 1993?

2 A No, that date of offense appeared on a
3 submission sheet which I have and the date on it is
4 8-24-93, and date of offense there appears as
5 8-23-93.

6 THE COURT: What does that
7 submission sheet that you just referred to
8 pertain to in terms of any items that may
9 have been submitted?

10 THE WITNESS: There's some later
11 items and we have them listed, certain item
12 numbers, each sheet contains as many items
13 as we can get on a particular sheet. And
14 this is a separate sheet from the one I
15 referred to earlier and it has that date of
16 offense there.

17 BY MR. BOWEN:

18 Q So when you told us earlier that you
19 checked all the facts on those forms before you
20 signed them, that's not altogether true, is it?

21 A Based on the information that I have, I try
22 to check as much of the information as possible.

23 MR. BOWEN: That's all.

24 THE COURT: Mr. Britt?

25 MR. BRITT: I don't have any

1 other questions.

2 THE COURT: May the witness be
3 released, gentlemen?

4 MR. THOMPSON: Yes.

5 MR. BRITT: I would reserve the
6 right to recall him later in the trial.

7 THE COURT: You are released at
8 this time. You remain under subpoena. In
9 the discretion of the Court that will be
10 allowed. Thank you, sir, you're free to go
11 at this time.

12 Yes, sir, Mr. Britt.

13 MR. BRITT: Your Honor, at this
14 time the State calls Christopher Jones.

15 THE COURT: Sir, if you would
16 place your left hand on the Bible, raise
17 your right and face Ms. Gaines.

18 CHRISTOPHER JONES,

19 being first duly sworn was examined and deposed as
20 follows:

21 DIRECT EXAMINATION

22 THE COURT: If you'll have a
23 seat, please. Please state your full name
24 for the record.

25 THE WITNESS: Full name,

1 Christopher Jones.

2 THE COURT: Would you spell your
3 first and last name for the record?

4 THE WITNESS: First name
5 Christopher, C H R I S T O P H E R, last
6 name Jones, J O N E S.

7 BY MR. BRITT:

8 Q Mr. Jones, in what city or town do you
9 live?

10 A Fayetteville.

11 Q How long have you lived in Fayetteville?

12 A Basically all my life.

13 Q How old are you?

14 A Twenty-three.

15 Q Are you presently employed?

16 A Yes, sir.

17 Q Where do you presently work?

18 A Best Way Insulation.

19 Q How long have you worked there?

20 A About three and a half months.

21 Q Are you familiar with an area east of the
22 City of Fayetteville known as Vander?

23 A Yes.

24 Q It also may be referred to as East Stedman?

25 A Yes, sir.

1 Q How is it that you're familiar with that
2 area of Cumberland County?

3 A That's my hometown.

4 Q Where did you attend high school?

5 A Cape Fear.

6 Q Where is that high school in relation to
7 this area known as Vander and East Stedman?

8 A That's the area that the kids in East
9 Fayetteville, East Stedman and Vander attend.

10 Q Do you have relatives that still live in
11 that area of Cumberland County?

12 A Yes.

13 Q What relatives of yours live in that area
14 of Cumberland County?

15 A I have 11 cousins, about three or four
16 aunts and about seven uncles.

17 Q Are you familiar with an area that was once
18 called Downing Road in Cumberland County?

19 A Yes, sir.

20 Q How is it that you're familiar with Downing
21 Road area of Cumberland County?

22 A I used to live on it.

23 Q How long did you live there?

24 A About 11 years.

25 Q Can you describe that area for us in terms

1 of whether it's wooded area, cleared area, housing
2 development?

3 A Well, as you turn on to Downing Road, it's
4 more of a wooded area until you get down the road,
5 and then you got a few trailers and few houses. As
6 you're going down the road, turns into some more
7 woods, then as you get down farther there's another
8 little trailer area and housing area.

9 Q Is Downing Road a paved or unpaved road?

10 A Paved.

11 Q And the roads that branch off of Downing
12 Road, are they paved or unpaved?

13 A McNeil Road, that's a dirt road.

1 Road area of Cumberland County?

2 A Yes, sir.

3 Q Is there a swimming area located near --

4 A Well, it's really like -- it's not a
5 swimming area, it's just something that they put out
6 there and me and cousins, family go down there and we
7 will swim in it, lay out on the dirt or anything,
8 didn't have no cars to go anywhere so we went down
9 there.

10 Q August the 3rd of 1993, did you go to this
11 swimming hole?

12 A Yes, sir.

13 Q How did you go from your mother's home to
14 this swimming hole?

15 A Back behind my mother's house is a wooded
16 area. It's family owned land. Through there is a
17 path. You take that path and get to the pond area in
18 about six minutes.

19 Q Did you go with anyone to that pond area
20 that day?

21 A No, sir; no, sir.

22 Q How did you go from your mother's home to
23 the pond?

24 A I walked.

25 Q And the area from your mother's home to the

1 pond, can you describe that area for us?

2 A It's just woods.

3 Q And as you were walking through the woods
4 that day on August the 3rd, did you discover anything
5 in the woods on your way to the pond?

6 A Well, once you get, I say, about 75 feet
7 away from the pond as you're walking through the path
8 from my mother's house, you run into another little
9 dirt road, like a path stuck up in the woods. As I
10 was walking, I had to walk across this path to get to
11 the other path, as I looked to the right of me, I
12 seen and Irish red Lexus sitting on the ground.

13 Q Was that a two door or four door car?

14 A Two door.

15 Q What if anything about that car caught your
16 attention?

17 A Sitting on the ground.

18 Q When you say it was sitting on the ground
19 were there tires on the car?

20 A No tires, windows broke out.

21 Q Were there any people in the area around
22 the car?

23 A No, nobody.

24 Q What did you do upon seeing that car in
25 that wooded area?

1 A I went back to the house and waited on my
2 cousin to get off work. Time he got off work, we got
3 in my car, drove back down. I told him I wanted to
4 show him a Lexus in the woods.

5 Q When you and your cousin returned, was the
6 car in the same condition it was in when you found it
7 earlier in the day?

8 A Yes, sir.

9 Q When you returned with your cousin, what
10 did you do and what if anything did you observe him
11 doing?

12 A The only thing we did is just look at the
13 car. He was just asking me did I know how it got
14 down in there. I told him no.

15 Q Did you touch or remove anything from the
16 car?

17 A Not at that time.

18 Q Did there come a time when you removed,
19 touched or removed things from the car?

20 A Two days later, I removed some paperwork
21 and stuff from around the car, on the ground, and a
22 Lexus pouch and some emblems on the ground, Lexus
23 emblems, and stuck them in the pouch.

24 Q What if anything did you do with those
25 papers, that pouch, and the Lexus emblems that you

1 found?

2 A When I got back to the house, I got on the
3 phone and called the operator, asked her to connect
4 me with the operator for a James Jordan, which on the
5 invoices and credit card invoices and some more
6 paperwork in an envelope that had James Jordan and
7 Janice Jordan. So she gave me a number to Matthews,
8 North Carolina somewhere named Carboro or somewhere
9 like that. So I called to Matthews, North Carolina.

10 At that time, I talked to a woman who said
11 that James Jordan was out of town, and I told her the
12 situation --

13 MR. THOMPSON: Object.

14 THE COURT: For what purposes is
15 this being offered?

16 MR. BRITT: I'll withdraw the
17 question.

18 THE COURT: You may not refer to
19 what someone else said who has not
20 testified at this trial because that
21 constitutes hearsay, but you may tell what
22 you did following a conversation.

23 THE WITNESS: Okay.

24 MR. BRITT: If the Court would --
25 I'll offer it to explain his subsequent

1 conduct. I apologize.

2 THE COURT: You folks want a
3 limiting instruction?

4 MR. THOMPSON: Yes, sir.

5 THE COURT: Members of the jury,
6 the testimony now being elicited from Mr.
7 Jones as to what he contends were
8 statements made to him by someone else are
9 not being offered for the truth of the
10 matters asserted, but simply to explain the
11 subsequent conduct of Mr. Jones. And you
12 may consider this evidence for that limited
13 purpose and for no other purpose.

14 Anything further on behalf of the
15 defendant?

16 MR. THOMPSON: No, sir.

17 THE COURT: Yes, sir.

18 BY MR. BRITT:

19 Q Mr. Jones, based upon the telephone
20 conversation that you had, what if anything did you
21 do as a result of this information?

22 A I called the Sheriff's Department.

23 Q In Cumberland County?

24 A Yes.

25 Q And what if anything did you report to the

1 Cumberland County Sheriff's Department?

2 A When I called them, I told the dispatch
3 lady that there was a car in the woods, a Lexus, and
4 it had been abandoned and stripped.

5 Q Did you give them a location where that car
6 could be found?

7 A Yes, sir.

8 Q What location did you give them?

9 A I told them in Vander, North Carolina, off
10 of Downing Road, McNeil Road at the end of the road.

11 Q And were you instructed by the dispatcher
12 to do anything?

13 A Yes.

14 Q And what if anything were you instructed to
15 do by the dispatcher?

16 A Dispatcher told me to wait beside the road
17 for a cop, a sheriff, somebody from the department,
18 to take them to the car, take them to the place where
19 the car was at.

20 Q And after being told to wait beside the
21 road, did you do that?

22 A Yes, sir.

23 Q How long approximately did you have to wait
24 before any police officer arrived?

25 A About seven minutes.

1 Q And do you recall what type of police
2 officer it was that arrived after you made this call?

3 A It was a highway patrol trooper.

4 Q And do you see that highway patrol man here
5 in court today?

6 A Yes, sir.

7 Q Where is he seated?

8 A Front row.

9 Q You're pointing to the officer on the front
10 row, Mr. Battle?

11 A Yes, sir.

12 Q When Mr. Battle came to your location that
13 day, what if anything did you tell him?

14 A Well, first, I told him about the car and I
15 gave him the pouch with the information and stuff in
16 the pouch, then took him to the location of the car.

17 Q And did you ride with Mr. Battle to that
18 location?

19 A Yes, sir.

20 Q Were you able to drive all the way down to
21 the point where the car was located?

22 A It was possible, you could have drove down
23 there, but he wanted to stay out, so the Sheriff
24 could see his car out on the dirt road. So we walked
25 up to the car.

1 Q And was the car in the same condition at
2 that point as it had been earlier?

3 A Yes, sir.

4 Q When you had been there. How long did you
5 and Mr. Battle stay there in the area where the car
6 was located?

7 A We stayed in the area about 30 minutes,
8 between the time walking from the dirt road and back.

9 Q And while you were there, did any other
10 officer arrive?

11 A Not at the time while we were around the
12 car.

13 Q After you left the area where the car was
14 located, did another officer arrive?

15 A He arrived after we were sitting in the
16 car, in Officer Battle's car.

17 Q What type of officer was that that arrived?

18 A A sheriff.

19 Q And did you have any conversation with the
20 deputy sheriff?

21 A No.

22 Q How long did you remain there at the area
23 of the car -- well, there where Mr. Battle's car was
24 parked after the deputy arrived?

25 A Approximately about fifteen minutes.

1 Q From there where did you go?

2 A Home.

3 Q Did you have any other contact with that
4 automobile?

5 A No.

6 (State's Exhibits 50, 51 were
7 marked for identification.)

8 MR. BRITT: May I approach the
9 witness?

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Mr. Jones, I'm going to show you what has
13 been marked as State's Exhibit 50, and State's
14 Exhibit 51, do you recognize what is contained in
15 those photographs?

16 A Yes. This is the Lexus that was in the
17 woods, but it didn't have no tires on it.

18 THE COURT: If you'll speak up
19 please, sir.

20 BY MR. BRITT:

21 Q State's Exhibit Number 50 is a photograph?

22 A It's a photograph of the Lexus that was in
23 the woods.

24 Q State's Exhibit Number 51?

25 A Same Lexus.

1 Q State's Exhibit Number 50 is a photograph
2 looking from the rear of the car forward, is that
3 correct?

4 A Yes.

5 Q And State's Exhibit Number 51 is a
6 photograph of the front of the car looking back, is
7 that correct?

8 A Yes.

9 Q At the time you saw the Lexus depicted in
10 State's Exhibit 50 and 51, were the tires on the car?

11 A No, sir.

12 Q Other than the -- and then the tires being
13 on the car in State's Exhibit 50 and 51, does the car
14 appear to be in the same condition as it was when you
15 saw it in the woods?

16 A Yes, sir.

17 Q And do these photographs accurately depict
18 the condition of the car as you found it on August
19 the 3rd, 1993, with the exception that those
20 photographs show the tires being on the car?

21 A Yes.

22 MR. BRITT: Your Honor, at this
23 time I ask that 50 and 51 be admitted.

24 MR. THOMPSON: For what purpose?

25 THE COURT: Without limitations

1 so that it would come in for substantive
2 purposes.

3 MR. THOMPSON: I object to that.

4 THE COURT: Do you want to be
5 heard?

6 MR. THOMPSON: No, sir.

7 THE COURT: The objection is
8 overruled. State's Exhibits 50 and 51 are
9 admitted. Noted the defendant's exception
10 for the record.

11 MR. BRITT: Your Honor, I ask
12 that Mr. Jones be allowed to step down.

13 THE COURT: Yes, sir. There's
14 some predicate questions that are
15 necessary.

16 BY MR. BRITT:

17 Q Can you use State's Exhibit 50 and 51 to
18 illustrate to the jury the condition of the car as
19 you saw it on August the 3rd, 1993 when you found it
20 in the wood?

21 A What you mean?

22 Q Can you use this to show the jury the
23 condition of the car?

24 A Yes.

25 Q If you'll start at this end of the jury

1 box, we'll break it up into three sections, from
2 there to the middle, to the end.

3 A This is the Lexus coop that was parked in
4 the woods.

5 MR. THOMPSON: Object unless he
6 identifies the exhibit.

7 THE COURT: I apologize. First
8 of all, sir, you're going to have to
9 identify the exhibit. Secondly, speak up
10 loudly enough for all members of the jury
11 to hear you, and the court reporter needs
12 to be able to hear you as well.

13 THE WITNESS: This is State's
14 Exhibit 50. This is the Lexus coop that
15 was in the woods behind -- well, in the
16 woods by my house. Okay. The car is in
17 the same condition that it's in now, except
18 the rims and the tires. Windows was broke
19 out, it was dirty but it's in the same
20 position, same condition. Front windshield
21 was cracked to my knowledge. Back
22 windshield is broke out.

23 BY MR. BRITT:

24 Q I'm going to hand you what has been marked
25 as State's Exhibit 51. Does it reflect the broken

1 windshield that you saw on August the 3rd 1993?

2 A State's Exhibit 51 is from the front of the
3 Lexus, front view of the Lexus, same condition, front
4 windshield cracked.

5 Q I'll ask you to return to the witness
6 stand.

7 A (Witness complies)

8 (State's Exhibit 52 was
9 marked for identification.)

10 MR. BRITT: May I approach?

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q Mr. Jones, I'm going to show you what has
14 been marked as State's Exhibit 52, ask you to look at
15 it and tell me if you can identify it?

16 A State's Exhibit 52 is the pouch, Lexus
17 pouch I picked up from off the ground around the
18 vehicle.

19 Q And is State's Exhibit Number 52 in
20 substantially the same condition it was in when you
21 found it there in the area around the car?

22 A Yes, sir.

23 Q Ask you to open State's Exhibit Number 52,
24 and to examine the contents.

25 Do you recognize the contents of State's

1 Exhibit Number 52?

2 A I don't recognize that.

3 Q You say you don't recognize which?

4 A That.

5 MR. THOMPSON: Your Honor --

6 THE COURT: We're going to put it
7 in the record. Yes, sir.

8 THE WITNESS: I recognize the
9 paperwork in the pouch because it's the
10 credit card invoices and the paperwork that
11 was around the wooded area of the car.

12 BY MR. BRITT:

13 Q Do you recognize any of the other items
14 other than the paperwork?

15 A These are the symbols, the emblems from the
16 car that was around the car on the ground.

17 Q There was an item that was contained inside
18 of State's Exhibit Number 52 that you have stated
19 that you do not identify?

20 A Huh-uh.

21 THE COURT: For the record, could
22 you describe what that item is?

23 MR. BRITT: Yes, sir, this is a
24 circular object, silver, along the edges
25 with a center circle that contains a black

1 emblem with a gold inlay.

2 MR. THOMPSON: We desire to just
3 have it marked as an exhibit, Your Honor.

4 THE COURT: We're going to do
5 that, but I wanted a description first. Do
6 you disagree with the description?

7 MR. THOMPSON: No.

8 THE COURT: Let's have it
9 marked. We'll mark it as 52-A or 53?

10 MR. BRITT: That's been marked
11 53.

12 (State's Exhibit 53 was
13 marked for identification.)

14 BY MR. BRITT:

15 Q Mr. Jones, other than State's Exhibit 53,
16 which you testified that you cannot identify, the
17 items that are contained in State's Exhibit 52, they
18 appear to be in the same condition as they were in
19 when you found them and placed them inside the pouch
20 that's marked as State's Exhibit Number 52?

21 A Yes, sir.

22 Q And State's Exhibit Number 52 and the items
23 that you've identified from inside of it, those are
24 the items you've testified you gave to Trooper Battle
25 on August the 5th?

1 A Yes, yes.

2 Q And the person to whom you spoke with on
3 the telephone when you called Matthews, North
4 Carolina, you do not know the identity of that
5 person, do you?

6 A No, sir.

7 MR. BRITT: Thank you. I don't
8 have any other questions.

9 THE COURT: Any
10 cross-examination?

11 MR. THOMPSON: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. THOMPSON:

14 Q Good afternoon, Mr. Jones. Mr. Jones, I
15 believe you gave a statement concerning this incident
16 to SBI Agent Heffney, is that correct?

17 A Yes, sir.

18 Q And did you have an opportunity to --
19 strike that. Did he write down anything as he was
20 talking to you?

21 A Yes, sir.

22 Q Did you read any report or any statement
23 that you purportedly gave to Mr. Heffney?

24 A You mean did I read a copy of it?

25 Q Yes, sir.

1 A Yes, sir.

2 Q When was the last time you had an
3 opportunity to review that?

4 A This morning.

5 Q Now, Mr. Jones, I believe you said that you
6 live in the area where the Lexus was found?

7 A Yes, sir.

8 Q And you have 11 cousins, some three or four
9 aunts and seven uncles who live in that same area?

10 A Yes, sir.

11 Q And you first discovered the Lexus back on
12 August the 3rd of 1993?

13 A Yes, sir.

14 Q Do you recall what day of the week that was
15 on?

16 A Tuesday.

17 Q All right. And you told SBI Agent Heffney
18 that you felt that the car had been stolen?

19 A Yes, sir.

20 Q And you felt that it had been stolen
21 because it was stripped?

22 A Yes, sir.

23 Q And you told Mr. Heffney that you went and
24 got your cousin, Alan Jones, is that right?

25 A Yes, sir.

1 Q And you and Alan Jones returned to the car?

2 A Yes, sir.

3 Q You and Alan Jones looked through the car,
4 looked in the car?

5 A Well, looked around the car and, you know,
6 through it, not inside of it, as far as looking
7 through it, through the windows.

8 Q You didn't get inside the car?

9 A No, sir.

10 Q You didn't touch the car?

11 A No, sir.

12 Q You didn't touch any items there about
13 lying on the ground?

14 A The items that you see in that pouch there,
15 sir.

16 Q So the pouch was on the ground?

17 A Yes, sir.

18 Q And you picked up the pouch at that time
19 for the first time?

20 A I picked up the pouch two days later.

21 Q Two days later, okay. So but I'm talking
22 about on the 3rd of August, you didn't pick up
23 anything?

24 A I didn't touch nothing.

25 Q And while Alan Jones, your cousin, was in

1 your presence, he didn't touch anything?

2 A No, sir.

3 Q And how long did you and your cousin stay
4 out there around the car?

5 A Three, four minutes. Three or four
6 minutes.

7 Q And you and Alan Jones left and you did not
8 come back to the car until --

9 A That Thursday.

10 Q August the 5th, that Thursday?

11 A Yes, sir.

12 Q Did you and Alan Jones -- did you have any
13 conversation with anyone other than Alan Jones about
14 that car between August the 3rd and August the 5th?

15 A Well, besides my mother.

16 Q None of your cousins?

17 A No.

18 Q Or uncles or aunts?

19 A No.

20 Q Did you go back in the wooded area at all
21 between August the 3rd and August the 5th?

22 A No, sir, I didn't go back to the woods
23 until August the 5th.

24 Q And what was your purpose for going back?

25 A Because me and my cousin were sitting

1 around talking, and -- can I say what he said?

2 THE COURT: He asked the
3 question, yes, sir, you may answer.

4 THE WITNESS: We were sitting
5 around talking. He said there might be a
6 reward for the car that the insurance might
7 be able to restore the car instead of
8 issuing a new one, paying for a new one.

9 BY MR. THOMPSON:

10 Q You told SBI Agent Heffney that you
11 returned to the car to get some paperwork to try to
12 locate the owner because you felt there might be some
13 type of reward, that's what you told Officer Heffney?

14 A Yes, same thing.

15 Q So you and your cousin felt there might be
16 some reward?

17 A Well, had felt and I just got it from him.

18 Q You all discussed that?

19 A Yes.

20 Q And it was at that time you picked up the
21 Lexus pouch?

22 A Yes, sir.

23 Q And the emblems from the car, you picked up
24 that you've identified?

25 A Yes, and the paperwork.

1 Q And the paperwork, you indicated there was
2 a 30 day maker receipt?

3 A Yes, there was a 30 day maker receipt.

4 Q And a credit card. Specifically, you told
5 Agent Heffney about those items?

6 A Yes, sir.

7 Q But there were other items in the leather
8 pouch, other paper items, were there?

9 A Like the little booklet that comes with the
10 pouch, explaining the car.

11 Q You also stated to Officer Heffney that you
12 picked up an envelope with the name of James Jordan
13 on it and that's when you went back home with the
14 information, is that right?

15 A Yes, sir.

16 Q Now, you called a number, a telephone
17 number which was in Matthews, North Carolina?

18 A Yes, sir.

19 Q And you testified that when you called the
20 number, you were advised that Mr. Jordan was out of
21 town, by some woman?

22 A As she stated.

23 Q You told that person about finding the car
24 in the woods?

25 A Yes, sir.

1 Q And the person on the phone advised you
2 that they always receive calls from Michael Jordan
3 and for you to call the police, that's what the
4 person told you?

5 A Yes, sir.

6 Q This was the same woman?

7 A Sir?

8 Q It was a woman, a female voice?

9 A A woman.

10 Q And so you discussed this with your mother?

11 A No, after I got off the phone with the
12 woman, my mother already said the whole time I was on
13 the phone with the lady, she was saying, call the
14 police.

15 Q So you called the Cumberland County
16 Sheriff's Department, did you not?

17 A Yes, sir.

18 Q And as a result of that conversation, you
19 met Trooper Battle out there at the woods?

20 A I met Trooper Battle in front of my house.

21 Q And then you took him to the location?

22 A Yes, sir.

23 Q Now, do you recall telling Agent Heffney
24 that you felt 90 percent sure that you told the
25 trooper that the car belonged to Michael Jordan?

1 A There's a possibility.

2 Q Are you saying it's a possibility that you
3 told Agent Heffney that?

4 A No, I told him that.

5 Q And do you recall telling him that prior to
6 getting to the car, the trooper ran the VIN from the
7 30 day maker receipt, and ran it again when he got to
8 the car because the number was different?

9 A Yes, sir.

10 Q What did you mean by the number being
11 different, what number?

12 A Well, I guess on the invoice it was a
13 different VIN number than on the car. The 30 day
14 maker receipt probably could have been another car,
15 if you understand.

16 Q Okay. Did you actually observe or see the
17 numbers?

18 A In the car or on the invoice?

19 Q You saw the numbers on the maker receipt?

20 A Uh-huh.

21 Q Did you see any other numbers, VIN numbers,
22 VIN numbers?

23 A No, sir.

24 Q Would you tell -- explain for the members
25 of the jury what a VIN number is? What do you refer

1 to when you refer to a VIN number?

2 A A VIN number is a number they stick on your
3 car. It's an issue of your car, explains what type
4 of car, what type of car it is, who the car belongs
5 to. Once you purchase a car, it's automatically
6 wrote on the receipt, automatically typed in the
7 computer with the DOT department. In case your car
8 is stolen, they type your number -- when they find
9 your car, they run the plate and the VIN number.

10 Q You and the trooper were in the woods for
11 approximately 30 minutes before a deputy arrived?

12 A Yes, sir.

13 Q Do you know, were you there when the deputy
14 arrived?

15 A Yes, sir.

16 Q Do you know who that deputy was?

17 A No, sir.

18 Q Do you know the name of that deputy?

19 A No, sir.

20 Q Had you ever seen him before?

21 A No, sir.

22 Q And you were there while the trooper and
23 the deputy talked for some fifteen minutes or so?

24 A Yes, sir.

25 Q And I believe Trooper Battle asked you to

1 go down there in the woods with the deputy but you
2 had to go to work?

3 A Yes, sir.

4 Q You never saw what if anything Trooper
5 Battle did with the pouch or what happened to the
6 leather pouch?

7 A Only thing I remember, when I gave it to
8 him, he put it on the dashboard. That's the last
9 time I seen it.

10 THE COURT: Mr. Thompson, I don't
11 mean to interrupt or rush you in any way.
12 It's now 5:00. Do you have much additional
13 cross-examination?

14 MR. THOMPSON: No, sir, only a
15 couple more questions, few more questions.

16 THE COURT: Yes, sir. Yes, sir.

17 BY MR. THOMPSON:

18 Q And did you look in the back seat of that
19 car?

20 A Well, besides --

21 Q I mean the first time or the second time?

22 A Besides looking through the window, yes.

23 Q Did you notice a -- did you see a bullet
24 round, a live round in that car anywhere, in the back
25 seat?

1 A I'm not an investigator so I wasn't there
2 looking for that.

3 Q I understand that, but you didn't see one?

4 A No.

5 Q Did you see anything that looked like blood
6 on or about the seats of the car?

7 A No, sir.

8 MR. THOMPSON: That's all.

9 THE COURT: Mr. Britt?

10 MR. BRITT: I don't have any
11 other questions.

12 THE COURT: May the witness be
13 released, folks?

14 MR. THOMPSON: Yes.

15 THE COURT: Thank you, Mr. Jones,
16 you're free to go, sir.

17 Folks, we're going to stop at this
18 point. For the purposes of your
19 information, we tentatively plan to have a
20 short day this Friday. And I need your
21 input in that regard. We anticipate
22 starting at 9:00 a.m. instead of 9:30 on
23 Friday. Is that a problem for any members
24 of the jury? .

25 So that you can plan your day

1 accordingly, we anticipate stopping no
2 later than 1:00 on Friday, so we will go
3 from 9:00 until 1:00.

4 Now during the overnight recess,
5 you're not to talk about this matter among
6 yourself or anyone else, including any
7 members of your own family, you are not
8 allowed to have anyone say anything to you
9 or in your presence about this case. If
10 anyone communicates to you about this
11 matter or attempts to do so, or anyone says
12 anything about this case in your presence,
13 it remains your duty to inform us of this
14 immediately by contacting one of the
15 bailiffs assigned to this courtroom at your
16 earliest opportunities. Don't form or
17 express any opinions about this matter. No
18 contact of any kind with any of the
19 parties, witnesses, prospective witnesses,
20 or directly with the Court. Don't allow
21 yourself to be exposed to any media
22 accounts which may exist in connection with
23 this matter, and do not conduct any
24 independent inquiry or investigation or
25 research of any kind.

1 Everyone else please remain seated,
2 we'll start tomorrow at 9:30, so if you
3 would please reconvene no later than that
4 time in the jury room.

5 Thank you folks, have a good evening.

6 (Jury out at 5:02 p.m.)

7 THE COURT: In the absence of the
8 jury, any matters on behalf of the State?

9 MR. BRITT: No, sir.

10 THE COURT: Any matters on behalf
11 of the defendant?

12 MR. BOWEN: I have nothing, no,
13 sir.

14 THE COURT: Have a good evening,
15 folks. See you tomorrow at 9:30.

16 If you'll recess us until 9:30,
17 please.

18 (Court adjourned, 5:03 p.m.)

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1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

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10 and

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14 Lumberton, North Carolina 28359

15 (January 11, 1996. Proceedings in open court.)

16 THE COURT: Good morning, folks.

17 MR. BRITT: Good morning.

18 THE COURT: Let the record show
19 that all counsel are present, the defendant
20 is present in open court. Mr. Horne, I
21 understand all members of the jury of our
22 jury are secured in the jury room, is that
23 correct?

24 THE BAILIFF: Yes, they are.

25 THE COURT: Mr. Britt, you

1 indicated there was a matter you wanted
2 brought up.

3 MR. BRITT: Yes, sir, there's
4 been some information that's been brought
5 to my attention this morning that could
6 possibly effect one of the jurors. In this
7 case information provided to me that the
8 second alternate, Ms. Odum, has been
9 observed purchasing copies of The
10 Robesonian newspaper, which is also her
11 employer, and the Court had previously
12 given the jurors an instruction not to read
13 newspaper accounts; if they read the paper
14 to have someone screen it to take any
15 information -- the information is that she
16 has simply been observed buying it on more
17 than one occasion.

18 THE COURT: Okay. Is your
19 information more specific as to when?

20 MR. BRITT: Yesterday.

21 THE COURT: Okay.

22 MR. BRITT: And again on Tuesday.

23 THE COURT: Of this week?

24 MR. BRITT: Yes, sir.

25 THE COURT: So that would be, for

1 the record, January 9th and January 10th.

2 MR. BRITT: Yes, sir.

3 THE COURT: Any other occasions?

4 MR. BRITT: Not that I'm aware
5 of.

6 THE COURT: Does your information
7 indicate where The Robesonian may have been
8 purchased by her?

9 MR. BRITT: Yes, sir, my
10 understanding, across the street, that the
11 stand that was moved from the courthouse
12 across the street.

13 THE COURT: Counsel for defendant
14 wanted to be heard in response to the
15 information just brought to our attention?

16 MR. THOMPSON: Yes, sir. Your
17 Honor, at this point, I mean, it seems to
18 be no indication of any violation of the
19 Court's order. I mean, she may be buying
20 them for sales, I don't know. I don't know
21 whether she's read them, there's no
22 indication that she's read them, there's no
23 order to prevent any juror from purchasing
24 a newspaper. There's obviously more in the
25 newspaper than pertains to this case.

1 THE COURT: Yes, sir. I think
2 where we are is essentially as follows. If
3 you folks disagree, let me know. Ms. Odum,
4 I think the record will reflect, is
5 employed by the Robesonian. I think the
6 record will further reflect that on a prior
7 occasion, before the beginning of
8 presentation of any evidence in this case,
9 Ms. Odum appeared in the office of the
10 Clerk of Superior Court here in Robeson
11 County, that her purpose in appearing on
12 that prior occasion was to inquire of us
13 whether or not it would be appropriate for
14 her to continue in her employment at the
15 Robesonian, given the fact that she had
16 been selected an alternate juror in this
17 case.

18 That once it was determined that she
19 was making that inquiry, she was brought in
20 to open court in the presence of all
21 counsel and in the presence of the
22 defendant, she was seated in the jury box,
23 and we responded to her inquiry by
24 instructing her, by the Court instructing
25 her that she would not be permitted to

1 continue in her employment throughout her
2 involvement as a member of the jury in that
3 case, or this case.

4 The Court at that time noted that it
5 was extremely conscientious of her to bring
6 that matter to our attention. Now, the
7 Court has specifically instructed Ms. Odum
8 at the same time, the Court specifically
9 instructed all other members of the jury
10 that among their duties and
11 responsibilities, they are not to read any
12 newspaper accounts about this case. Given
13 the fact that we now have some information
14 that she may have purchased copies of The
15 Robesonian, I think it's probably
16 appropriate to ask her to come in and
17 inquire further at this point. Does
18 counsel for the State disagree?

19 MR. BRITT: No, sir, I don't.

20 THE COURT: Does counsel for the
21 defendant disagree?

22 MR. THOMPSON: No.

23 THE COURT: I'm simply doing that
24 as a precautionary matter out of an
25 abundance of caution.

1 Mr. Horne, if you will knock on the
2 door to the jury room, ask Ms. Odum to come
3 in, please.

4 THE COURT: Good morning, for our
5 purpose right now, if you'll take seat
6 number nine in the jury box. How are you
7 ma'am?

8 JUROR: Just fine.

9 THE COURT: I'm going to ask you
10 some questions in just a moment or so.
11 Mr. Britt may also have some questions for
12 you, Mr. Thompson and/or Mr. Bowen may have
13 some questions for you. Before any of us
14 ask any questions, let me emphasize at the
15 outset that we don't mean to suggest in any
16 way that you may have done something
17 improper in this case. It's simply that
18 because of some information which has come
19 to our attention we have an obligation at
20 this point to pursue that information to
21 satisfy ourselves that nothing has occurred
22 which might effect your ability to be a
23 fair and impartial juror in this case you
24 understand that?

25 JUROR: Yes, sir.

1 THE COURT: You understand we
2 don't mean to suggest anything at all by
3 our questions. Information has been
4 brought to the Court that you may have
5 purchased copies or had access to copies of
6 The Robesonian on yesterday's date, which
7 would have been the 10th of January and the
8 day before that, the 9th of January, and
9 that you may have purchased or had access
10 to those copies from a newsstand located
11 immediately across the street from the
12 courthouse. We don't know that, and we are
13 simply bringing you into court so that we
14 can inquire into what information, if any,
15 you may have in that regard. Anything that
16 you can tell us about what I've just said
17 to you?

18 JUROR: No, sir, I have not bought
19 no papers. Guy I live with bought one
20 yesterday for his mother.

21 THE COURT: We appreciate that.
22 Again, we don't mean to suggest that you've
23 done anything wrong.

24 You understand that as the Court has
25 previously instructed you, I would not

1 instruct you or any other members of the
2 jury that you can't read the newspaper.
3 What I can instruct you and what I have
4 instructed you is that it is your duty not
5 to read anything in the newspaper about
6 this case.

7 JUROR: I haven't.

8 THE COURT: You understand that?

9 JUROR: Yes, sir.

10 THE COURT: And I understand from
11 what you've just said that you have not
12 read any newspaper accounts about this
13 case, is that accurate?

14 JUROR: No, sir, I haven't.

15 THE COURT: Is it also accurate
16 that while you have been a member in this
17 matter you have not been exposed to any
18 television news accounts about this
19 matter?

20 JUROR: I don't sit and watch
21 television.

22 THE COURT: Is it also accurate
23 that you've not been exposed to any radio
24 news broadcast about this matter?

25 JUROR: No, sir, I haven't.

1 THE COURT: Ms. Odum, I take it
2 from what you have said to us that you have
3 abided, followed all prior instructions of
4 the Court concerning your conduct in this
5 case, is that accurate?

6 JUROR: Yes, sir.

7 THE COURT: Is there anything
8 that has occurred that would affect your
9 ability to be fair and impartial and
10 objective in this matter with respect to
11 either the State of North Carolina or to
12 the defendant in this matter?

13 JUROR: No, sir.

14 THE COURT: Has this inquiry, has
15 the fact that we brought you into court and
16 asked you these questions in any way
17 affected your ability to be objective,
18 fair, impartial both to the State as well
19 as to the defendant?

20 JUROR: No, sir.

21 THE COURT: You understand again
22 we're not suggesting you have done anything
23 wrong, we simply needed to make inquiry?

24 JUROR: Yes, sir.

25 THE COURT: Mr. Britt, any

1 questions for Ms. Odum?

2 MR. BRITT: No.

3 THE COURT: Mr. Thompson, Mr.

4 Bowen.

5 MR. THOMPSON: No.

6 THE COURT: Ask you that return
7 to the jury room, please don't discuss with
8 anyone, including other members of the
9 panel, the matters just gone into. We
10 appreciate you sharing the information that
11 you have shared with us. Thank you. You
12 may return to the jury room.

13 (Juror leaves courtroom).

14 THE COURT: Anything further on
15 behalf of the State?

16 MR. BRITT: I just want to -- I
17 felt I had an obligation to bring it to the
18 Court's attention.

19 THE COURT: I think you did and
20 I'm satisfied.

21 MR. BRITT: I'm satisfied with
22 her answer.

23 THE COURT: Are you folks
24 satisfied having Ms. Odum remaining in her
25 capacity as members of the jury.

1 MR. THOMPSON: I don't see --

2 THE COURT: Is that also your
3 position, Mr. Green.

4 MR. GREEN: Yes, sir.

5 THE COURT: Let the record so
6 reflect. Folks, I neglected to tell the
7 members of the jury, we discussed it, but
8 not brought to my attention at least.
9 Monday is a holiday, we will not hold court
10 on that date in celebration of Martin
11 Luther King's birthday, and it's my
12 intention to inform them of that.

13 Any other matters before we bring the
14 jury in?

15 MR. BRITT: No, sir, we're ready
16 to go.

17 THE COURT: Mr. Horne, if you'll
18 bring the members of the jury in, please.

19 (Jury in at 9:41 a.m.)

20 THE COURT: Good morning ladies
21 and gentlemen of the jury.

22 I understand that someone is
23 celebrating a birthday.

24 Happy birthday to you. Ladies and
25 gentlemen of the jury, I neglected to

1 mention to you yesterday, Monday is an
2 official State holiday, it's Martin Luther
3 King's birthday. We will not hold court on
4 Monday in celebration of that holiday.

5 State ready to go forward?

6 MR. BRITT: Yes, sir.

7 Your Honor, at this time we call
8 Trooper Raymond Battle.

9 THE COURT: Trooper Battle, if
10 you'll come up and be sworn, please.

11 RAYMOND BATTLE,

12 being first duly sworn was examined and testified as
13 follows:

14 DIRECT EXAMINATION

15 THE COURT: Sir, if you'll state
16 your full name for the record?

17 A Raymond Battle.

18 Q If you'll spell first and last names
19 for the record.

20 A R A Y M O N D B A T T L E.

21 BY MR. BRITT:

22 Q By whom are you employed?

23 A State Highway Patrol.

24 Q How long have you been employed with the
25 Highway Patrol?

1 A Six years.

2 Q And where are you stationed?

3 A Fayetteville.

4 Q How long have you been stationed in
5 Cumberland County, North Carolina?

6 A Six years.

7 Q As a highway patrolman in general, what are
8 your duties and responsibilities?

9 A My duties and responsibilities are to
10 insure safe travels of the highways of North
11 Carolina.

12 Q And as part of your responsibilities with
13 the Highway Patrol, are you also to investigate
14 wrecks or accident?

15 A Yes, sir, that is correct.

16 Q You drive a marked or unmarked vehicle?

17 A At the present time, I drive an unmarked
18 vehicle.

19 Q In August of 1993 were you driving an
20 marked or unmarked vehicle?

21 A I was driving a '92 marked Chevrolet
22 Caprice.

23 Q Was that vehicle in August of '93 equipped
24 with a radio where you could communicate not only
25 with the Highway Patrol radio station in

1 Elizabethtown, North Carolina but you also had
2 contact with Cumberland County Sheriff's Department?

3 A I could hear the Cumberland County
4 Sheriff's Department's communications however I could
5 not talk with them directly on the radio.

6 Q On August the 5th of 1993, Mr. Battle, did
7 you work that day?

8 A Yes, sir, I did.

9 Q Do you recall the hours that you worked on
10 August the 5th of 1993?

11 A Yes, sir, I worked 4:00 p.m. until 1:00
12 a.m. the following morning.

13 Q And was there an area of Cumberland County
14 that you were assigned to cover?

15 A Yes, sir.

16 Q What area of Cumberland County were you
17 assigned to cover?

18 A I was assigned the east side of Cumberland
19 County, which would be the Cape Fear River,
20 borderline to the Sampson County line.

21 Q Are you familiar with an area where Downing
22 Road is located?

23 A Yes, sir, I am.

24 Q Is Downing Road located in that area that
25 you were assigned to cover on August the 5th of 1993?

1 A Yes, sir, it is.

2 Q On August the 5th of 1993, was the radio
3 equipment in your car working properly?

4 A Yes, sir, it was.

5 Q And you've testified that radio gave you
6 the capabilities of hearing dispatches from the
7 Cumberland County Sheriff's Department, is that
8 correct?

9 A That's correct.

10 Q Your radio equipment was not tuned into the
11 frequency that the Cumberland County Sheriff's
12 Department, so you could not communicate with them?

13 A I could hear but I could not transmit to
14 them.

15 Q On August the 5th of 1993, Mr. Battle, did
16 you hear a communication from the Cumberland County
17 Sheriff's Department dispatching a deputy to the area
18 of Downing Road, Cumberland County?

19 A Yes, sir, I did.

20 Q As a result of hearing that dispatch, what
21 if anything did you do?

22 A Well, I heard, I was outside of my vehicle
23 on a traffic stop. As I was entering my vehicle, I
24 heard the Sheriff's Department frequency giving out a
25 call, and what I recalled of the conversation was

1 there was a car in the woods off of Downing Road and
2 they were dispatching a deputy to the call.

3 Q When you heard that there was a car in the
4 woods, what was your reaction?

5 A Okay. At that time I assumed it was an
6 accident, a car had ran off the road and ran into the
7 woods.

8 Q Upon hearing that dispatch, what did you do
9 upon completing your traffic stop?

10 A Well, I proceeded in that direction because
11 I knew it would be my duty to investigate the
12 accident, if that had in fact is what had happened.

13 Q Was it the practice at the time in
14 Cumberland County for the Highway Patrol to
15 investigate all accidents in the county?

16 A Yes, sir, we -- except on private property,
17 the Sheriff's Department investigates accidents on
18 private property.

19 Q Where were you located at the time that you
20 heard the dispatch?

21 A I was on Maxwell Road.

22 Q And approximately how far is Maxwell Road
23 located from Downing Road?

24 A I was about a mile from Downing Road.

25 Q And after you completed the traffic stop

1 that you were involved with on Maxwell Road did you
2 go in the direction of Downing Road?

3 A Yes, I did.

4 Q What if anything occurred or who if anyone
5 did you see as you approached the area of Downing
6 Road?

7 A As I turned on to Downing Road, I was on a
8 cellular phone and I was talking with the Sheriff's
9 Department on the cellular phone and told them that I
10 was inquiring about what they had about the car in
11 the woods. And as they were telling me it was an
12 abandoned car, I was coming up on Downing Road
13 extension, I was still on the phone with the
14 Sheriff's Department when I noticed a subject on the
15 side of the road attempting to flag me down.

16 Q When you say you observed the subject was
17 that a man, woman, boy or a girl?

18 A Black male.

19 Q Upon seeing that individual on the side of
20 the road, what did you do?

21 A I pulled over and --

22 Q Did the individual identify himself?

23 A He did.

24 Q Who did the individual identify himself to
25 be?

1 A He identified himself to be Chris Jones.

2 Q Did you have a conversation with Mr. Jones
3 there at that location?

4 A Yes, I did.

5 Q And at that time, what if anything did
6 Mr. Jones tell you in regard to the call that you had
7 intercepted?

8 A Mr. Jones inquired of me if I were there
9 about the abandoned vehicle, and I had just at that
10 time discovered that there was an abandoned vehicle,
11 and I told him, no, that a deputy was en route. And
12 I was still talking with the Cumberland County
13 communicator, and as a result of that conversation, I
14 learned that the -- it was going to be sometime
15 before the deputy would arrive because he had to
16 travel some distance to get there.

17 Q What did you then do?

18 A I told Mr. Jones that I would assist him
19 until the deputy got there. At that time, we rode
20 down Downing Road extension to McNeill Road, which is
21 a rural paved dirt road, rural dirt road, I'm sorry.

22 Q How far down McNeill Road did you travel?

23 A Probably three-tenths of a mile.

24 Q Can you describe that area for us?

25 A It is a dirt road approximately 25 feet

1 wide, I think it has three or four small dwellings on
2 it, wooded area.

3 Q When you reached the end of McNeill Road,
4 where did you then go?

5 A When we got to the end of McNeill Road,
6 there is a dirt path that leads off of McNeill Road,
7 it's sort of like an old logging trail, and just wide
8 enough that you can get a vehicle down it. It had
9 growed up some, and appeared that there hasn't been
10 any vehicle traffic of any substance in there in a
11 while.

12 Q The area where this path is located, can
13 you describe that for us? You said it was a logging
14 road?

15 A It's wooded area.

16 Q How would you describe the manner in which
17 that area was wooded? Was it thick?

18 A Heavy undergrowth, tall timber on it.

19 Q Did you drive your car down that path?

20 A No, I did not.

21 Q Did you get out of your car at any point?

22 A I did.

23 Q Did Mr. Jones get out of the car?

24 A Yes, he did.

25 Q After you got out of your car, what then

1 took place?

2 A Myself, along with Mr. Jones, traveled down
3 the path approximately 400 yards, I would say, and
4 Mr. Jones showed me the Lexus automobile that was on
5 the path.

6 Q Can you describe for us the car that
7 Mr. Jones showed you?

8 A It was a burgundy colored Lexus coop. I
9 noticed about the vehicle it had been stripped, the
10 tires were off, radio, speakers, sun roof, windows
11 broken out.

12 Q Did you see any license plate on the car?

13 A There was no plate on the car, no.

14 Q Were there any of the emblems that are
15 affixed to the car present?

16 A Not around the vehicle, no.

17 Q And what was the general condition of the
18 car as you saw?

19 A The car itself -- excuse me. The condition
20 of the automobile was, other than the tires off and
21 the window broken out was generally good.

22 Q And you're referring to the body of the
23 car?

24 A The body of the car. The interior of the
25 car.

1 Q And after seeing the car and making these
2 observations, did you notice anything on the ground
3 in the area around the car?

4 A I did. I -- the first thing I done, I had
5 my portable walkie-talkie. And I went to the front
6 left windshield area of the vehicle to run the serial
7 number on it through our Highway Patrol
8 communications center.

9 Q Does the serial number have another name?

10 A VIN number.

11 Q What is the purposes of that?

12 A Each vehicle manufacturer has its own VIN
13 number such as any other -- such as a pistol would
14 have a serial number to identify.

15 THE COURT: Mr. Battle, for the
16 purposes of clarification, would you
17 explain to the jury what the acronym VIN
18 means, if you know?

19 A Vehicle Identification Number.

20 THE COURT: Thank you, sir.

21 BY MR. BRITT:

22 Q Were you able to locate the VIN number on
23 that automobile?

24 A Yes, sir, I was.

25 Q After locating the VIN number on that

1 automobile, what did you do?

2 A Well, I ran a check on it through our
3 communications center, because at first looking at
4 the vehicle it was pretty obvious that it was
5 probably stolen. So I ran a stolen check and also an
6 ownership check on it.

7 Q As a result of your inquiry into the VIN
8 number, were you provided certain information in
9 regard to the registration and the ownership of that
10 vehicle?

11 A Yes, I was.

12 Q And was that provided to you by the Highway
13 Patrol?

14 A Yes, it was.

15 Q What if any information did you receive in
16 regard to the ownership of that vehicle?

17 A Well, as a result of a conversation I had
18 with my telecommunicator, I determined that the
19 vehicle had not been reported stolen, and it was
20 registered to a James Raymond Jordan.

21 Q Were you given an address of the owner of
22 the vehicle?

23 A Yes, I was.

24 Q What address were you given?

25 A Duncan Road in Mint Hill address.

1 Q In what state?

2 A North Carolina.

3 Q After running the VIN number and being
4 advised that the car had not been reported stolen,
5 what did you then do?

6 A I looked around the vehicle, in the
7 vehicle, in search of some way of contacting the
8 owner. Around the vehicle I found several papers,
9 including gas receipts and items such as that with
10 the name of James Jordan, and also one item I
11 specifically remember finding was a picture of
12 Michael Jordan at a celebrity golf tournament, with a
13 note thanking him for participating in the golf
14 tournament.

15 Q When you were first advised that this car
16 belonged to a James Jordan in Mint Hill, North
17 Carolina, did you recognize the name?

18 A I did not know who James Jordan was at that
19 time.

20 Q And upon finding the photograph of Michael
21 Jordan, did you then have some idea who James Jordan
22 might be?

23 A Yes, I did.

24 Q When you say that you saw a photograph of
25 Michael Jordan, are you referring to Michael Jordan

1 the basketball player?

2 A That is correct.

3 Q Upon finding this photograph of Michael
4 Jordan and making a connection between James Jordan
5 and Michael Jordan, did that cause you any concern?

6 A Well, it concerned me that the vehicle had
7 not been reported stolen. Obviously, an expensive
8 vehicle like that should have been reported stolen.
9 And I knew it had been in the woods for approximately
10 three days, which would give a person ample time to
11 report it.

12 Q Did you have any conversation with
13 Mr. Jones in regard to any attempt he had made to
14 contact Mr. Jordan?

15 A Yes, I did.

16 Q And what if anything did Mr. Jones tell you
17 about his attempt to contact Mr. Jordan?

18 A As a result of the conversation I had with
19 him, I learned that he had made an attempt to contact
20 a member of the Jordan family, and was unsuccessful
21 at getting anywhere with it.

22 Q After seeing these items, after seeing the
23 car and seeing this paperwork, did you ever look
24 inside the automobile?

25 A Yes, I did.

1 Q When you looked inside the automobile, what
2 if anything did you see?

3 A Well, nothing out of the ordinary in the
4 vehicle except for the -- I found a .38 caliber
5 unspent round in the right back floorboard of the
6 vehicle.

7 Q When you say an unspent round, what do you
8 mean by that?

9 A Had not been fired.

10 Q Did you do anything with that .38 caliber
11 bullet?

12 A No, sir, I never touched it.

13 Q When you say you never touched it, did you
14 ever pick it up?

15 A No, sir.

16 Q Did you ever place it inside an evidence
17 bag?

18 A No, sir.

19 Q Did you attach any significance to the
20 presents of that 0.38 caliber bullet?

21 A Not at that time, no, sir.

22 Q After -- while looking in the car, did you
23 see any evidence of whether the car was equipped with
24 a cellular telephone?

25 A I did not. I did not notice. It could

1 have been.

2 Q After looking at the car and the area
3 around the car and inside the car, how long were you
4 and Mr. Jones there in that area?

5 A I would say twenty minutes.

6 Q After spending twenty minutes in the area
7 of the car, where did you then go?

8 A We went back to my parole car and discussed
9 the possibilities of the car belonging to Michael
10 Jordan and the reasons for it -- I expressed my
11 reason to him why it probably was not reported
12 stolen.

13 Q When you say you expressed your reason to
14 him as to why it was not stolen, what did you tell
15 Mr. Jones?

16 A Well, at that point I figured that the car
17 belonged to Michael Jordan and that it was probably
18 stolen from a residence here in North Carolina and he
19 was in Chicago somewhere playing ball and did not
20 know it was gone.

21 Q After you returned to your car, did a
22 deputy with the Cumberland County Sheriff's
23 Department arrive?

24 A Yes.

25 Q Approximately how much time had elapsed

1 from when you had first met Mr. Jones, observed the
2 car, and then returned to your car, had elapsed
3 before the Deputy arrived?

4 A I'm going to say around 25 minutes or so.
5 I'm not for sure on that.

6 Q The Deputy that arrived there at that
7 location, did you know him?

8 A No.

9 Q When the Deputy arrived, did you speak with
10 the Deputy about what you had seen?

11 A Yes, I did.

12 Q And what you had found?

13 A Yes, I did.

14 Q What did you tell the Deputy about what you
15 had seen and found?

16 A That the Lexus was in the woods, belonging
17 to the Jordan family, and expressed, again, to him,
18 my belief on what had happened, that the car was
19 probably stolen from a residence here in North
20 Carolina, and the Jordan family did not know it was
21 gone because they were probably in Chicago.

22 Q Prior to the Deputy arriving, had
23 Christopher Jones given you anything that he had said
24 he had found in the area of the car?

25 A Yes, a leather pouch, Lexus pouch.

1 Q Did you look inside that pouch after he
2 handed it to you?

3 A I don't know whether I did or not. I laid
4 it up on the dash of the car.

5 Q Did you ever at any time after he had given
6 it to you make an inventory of the items contained
7 inside that pouch?

8 A I did not.

9 Q After Mr. Jones gave you the pouch, did you
10 retain it, did you keep it in your possession?

11 A I put it on the dash of the car while I was
12 talking to Mr. Jones.

13 Q Did you ever remove anything from inside
14 the pouch?

15 A I did not.

16 Q What if anything did you do with the pouch
17 that Mr. Jones had given to you?

18 A I gave it to the Deputy when I left.

19 Q And after the deputy arrived, how much
20 longer did you stay there on the scene?

21 A Excuse me. I had a five to ten minute
22 conversation with the Deputy. While I was talking to
23 him, I was also talking to my communications center.
24 I -- in an attempt to call two numbers that Mr. Jones
25 had obtained through information. And they were

1 unsuccessful attempts, and at that time I turned the
2 investigation over to the Deputy.

3 Q Did you ever fill out any type of report in
4 connection with the discovery of the car in the
5 woods?

6 A At that time, no.

7 Q Can you tell us why you didn't fill out any
8 type of report?

9 A It was not my obligation nor my duty to
10 investigate it.

11 Q After you left the scene, did anyone leave
12 with you?

13 A Chris Jones.

14 Q Where did you take Mr. Jones?

15 A I dropped him off where I picked him up at
16 his house, he said he had to go to work.

17 Q When you left the scene where the car was
18 located, was the car still in the woods?

19 A Yes.

20 Q When you left Mr. Jones, where did you then
21 go?

22 A I proceeded on my normal patrol and normal
23 activities throughout the night.

24 Q Later that night, did you have an occasion
25 to be at the Cumberland County Sheriff's Department?

1 A Yes, I did.

2 Q Did you make any inquiry into the
3 automobile that you had discovered in the woods
4 earlier that day?

5 A Yes, sir, I did.

6 Q What if any inquiry did you make as to the
7 automobile, the Lexus that you had seen in the woods
8 earlier that day?

9 A I walked by the desk sergeant at the
10 Cumberland County Sheriff's Department and just -- my
11 exact words were what did you all do with Michael
12 Jordan's Lexus. And he told me that it wasn't
13 reported stolen so we just left it there.

14 Q After -- did you have any conversation
15 after that with any of your superiors at the Highway
16 Patrol?

17 A Yes, I did. I had a brief conversation
18 with Sergeant Turnerville, and informed him of what I
19 had found and the fact that the Sheriff's Department
20 left the vehicle in the woods simply because it was
21 not reported stolen.

22 Q Did you ever on August the 5th, 1993, go
23 back to the area where the car had been found?

24 A Not on August the 5th, no.

25 Q On August the 6th of 1993, did you have an

1 occasion to go to Crumpler's Garage in the area of
2 Stedman, North Carolina?

3 A Yes, I did.

4 Q For what purpose did you go the Crumpler's
5 Garage on the 6th?

6 A Put gas in my personal automobile.

7 Q Did you have any conversation with anyone
8 there at Crumpler's Garage about the car that you had
9 seen the day before in the woods?

10 A Yes, I did.

11 Q Who did you speak with?

12 A Richard Crumpler, the owner of Crumpler's
13 Auto.

14 Q What did you tell Mr. Crumpler in that
15 conversation?

16 A We were standing by the gas tanks, I was
17 driving my pickup truck, and told him what I had
18 discovered and the disbelief that I had that it could
19 simply be left in the woods, and told him I was going
20 to ride back down there and see if I could make some
21 attempts to contact the owner myself.

22 Q Did you go back to the area where the car
23 you had seen the car the day before?

24 A Yes, I did.

25 Q Did anyone go with you?

1 A Mr. Crumpler accompanied me.

2 Q When you went back to the area where you
3 had seen the car the day before, was the car still
4 there?

5 A Yes, it was.

6 Q Was it in the same condition on the 6th of
7 August as it was when you first saw it on August the
8 5th?

9 A It appeared to be in the same condition.

10 Q And did you look inside the car at that
11 point?

12 A Yes, I did.

13 Q Did you observe the same .38 caliber bullet
14 in the floorboard area of the back seat?

15 A Yes, sir, I did.

16 Q On August the 6th, did you touch or remove
17 anything from the automobile?

18 A Not from the automobile. I retrieved one
19 piece of paper from the ground.

20 THE COURT: From where, sir?

21 THE WITNESS: From the ground.

22 BY MR. BRITT:

23 Q Can you describe that piece of paper that
24 you retrieved, picked up?

25 A Yes, sir. It's a Lexus inspection

1 certificate.

2 Q And was there information contained on that
3 Lexus inspection certificate?

4 A Yes, sir.

5 Q Did it include any name?

6 A The names on it were of the dealership.

7 Q And what if any dealership's name appeared
8 on the inspection sticker that you picked up?

9 A Bredemann Lexus.

10 Q Was the VIN number for the vehicle listed
11 on that inspection sticker?

12 A Yes, sir, that was the purpose of
13 retrieving this one document, it had the VIN number
14 of the vehicle on it.

15 Q How long did you and Mr. Crumpler -- in
16 your presence did Mr. Crumpler move or touch anything
17 on the vehicle?

18 A No, sir.

19 Q How long did you and Mr. Crumpler stay
20 there in that area where the car was?

21 A Ten minutes, maybe.

22 Q From there, where did you go?

23 A We proceeded to Lorice Hubbard.

24 Q And why did you go to Mr. Hubbard's house?

25 A He was the landowner that the vehicle was

1 sitting on, the property in that area.

2 Q For what reason did you go to Mr. Hubbard?

3 A Well, as I told Mr. Crumpler out there,
4 that the vehicle does not need to be left out to
5 further deteriorate and be stripped of anything else
6 on it. And it being on private property and not
7 being reported stolen, the only person with the
8 authority to have it removed would be the landowner,
9 hypothetically. And that was the purpose of going to
10 his house.

11 Q Did you talk with Mr. Hubbard about having
12 the car moved?

13 A I talked with him about the circumstances,
14 yes.

15 Q You said you went back to get that document
16 that contained the VIN number?

17 A That's correct, I had retrieved nothing
18 from the scene the day before and had nothing to use
19 in an attempt to contact an owner.

20 Q Why were you trying to contact the owner of
21 the vehicle?

22 A I felt it my duty and obligation to do
23 something.

24 Q After your conversation with Mr. Hubbard
25 and Mr. Crumpler, to your knowledge, was the Lexus

1 automobile moved from the area of the woods where it
2 was located by you on August the 5th of 1993?

3 A It was removed.

4 Q And were you present when that vehicle was
5 removed?

6 A I was not.

7 Q Do you know where the vehicle was taken
8 or -- where was the vehicle the next time you saw it?

9 A It was at Crumpler's Auto in Stedman.

10 Q After having a conversation with
11 Mr. Hubbard, where did you and Mr. Crumpler then go?

12 A After talking to Mr. Hubbard, I dropped
13 Mr. Crumpler back off at his service station, and I
14 went home to my residence.

15 Q When you got home on August the 6th of
16 1993, did you make any attempts to locate the owner
17 of that red Lexus that had been found in the woods?

18 A Yes, sir, I started my attempts at that
19 time to contact an owner.

20 Q Specifically, what did you do in an attempt
21 to locate the owner?

22 A I called -- first I called the telephone
23 information and inquired of any numbers to James
24 Raymond Jordan or Michael Jordan in North Carolina.

25 Q As a result of that, did you receive any

1 type of telephone number?

2 A I received several numbers, yes.

3 Q What if any attempts did you make in
4 calling those numbers?

5 A I called all the numbers. Some were a
6 different Jordan family. Others I got no answer.

7 Q Did you make any attempts to contact any
8 other law enforcement agencies on that date?

9 A Yes, sir. Well, I believe it was the
10 following day, I saw I was getting nowhere by using
11 the telephone, so I started trying to go by addresses
12 that I obtained from the VIN number. And I got an
13 address in Mint Hill. And I had a conversation with
14 a trooper working that area. And as a result of that
15 conversation, he went by the address or attempted to
16 find the address that I had given him but was
17 unsuccessful.

18 Q Did you ever attempt to call the numbers
19 that were on the piece of paper that Chris Jones gave
20 you?

21 A That was my last result -- yes, sir, I'm
22 sorry. The numbers he gave me, I tried to call on
23 August the 5th.

24 Q And --

25 A And August -- I had my communication

1 system, telecommunicator try them on August the 5th
2 while we were at the vehicle, and I tried them myself
3 on August the 6th.

4 Q On August the 6th when you attempted to
5 call those -- call individuals at those numbers, were
6 you successful in reaching anyone at those numbers?

7 A No, sir.

8 Q On August the 6th when you called those
9 numbers, did you leave any -- did you -- were you
10 connected to any type of telephone answering machine
11 or system?

12 A On one of the numbers I did get an
13 answering machine and left a message, but it was not
14 related to the Jordan family that owned the vehicle.

15 Q In running the VIN number, were you able to
16 identify the insurer of the vehicle, the company?

17 A Yes, yes, sir.

18 Q Did you attempt to make any contact with
19 any insurance company?

20 A Yes, sir, I ran the serial -- the VIN
21 number, I'm sorry. And by running the VIN number,
22 you can obtain the permanent registration that is
23 assigned to the vehicle. And I done that and ran
24 that and got the insurance code which would give me
25 the insurance company. I thought maybe I could have

1 better luck by going through the insurance company
2 and getting a better address.

3 Q What insurance company, what insurance code
4 came back, and what company corresponds with that
5 code?

6 A The insurance code was E07. And that is
7 Employee's Mutual Casualty Company.

8 Q Did you contact that insurance company?

9 A Yes, I did.

10 Q As a result of that contact with the
11 insurance company, were you able to determine if the
12 car had been reported stolen or missing?

13 A I was able to -- they had had no claims for
14 the vehicle. That was -- excuse me. That was one
15 thing that I wanted to check if any insurance claims
16 had been made for the loss of the vehicle, which
17 there had not been any. And I was not able to obtain
18 a better address to contact anyone.

19 Q The inspection sticker that you had picked
20 up from the ground in the area of the car, did it
21 contain any telephone number?

22 A Yes, sir. After making numerous
23 unsuccessful attempts from August the 5th to August
24 the 10th, I happened to notice on the inspection
25 certificate there was a number at the bottom for

1 roadside assistance. It's a 1-800-25-Lexus.

2 Q Did you call that number?

3 A Yes, I did.

4 Q As a result of calling that number, did you
5 learn where the car had been purchased?

6 A I did. They were not able to give me any
7 information other than the dealership where the
8 vehicle was sold from.

9 Q And what dealership did you learn had sold
10 the vehicle?

11 A Bredemann Lexus in Chicago.

12 Q After learning that the car had been
13 purchased at Bredemann Lexus in Chicago, did you
14 attempt to contact that dealership?

15 A Yes, I did.

16 Q Do you recall on what date that you
17 attempted to contact the dealership?

18 A Tuesday, August the 10th.

19 Q As a result of your attempted to contact
20 the dealership, did you have a conversation with one
21 Martin Bredemann?

22 A I don't have the name of the person I
23 talked with. I asked to speak to the manager.

24 Q When you spoke with the manager, did you
25 describe the car that you had found?

1 A I did.

2 Q Did you provide that individual with the
3 VIN number that had -- that you had found on the car?

4 A Yes, I did.

5 Q As a result of that information, was that
6 person able to -- what if anything did that person
7 tell you as a result of that information?

8 A Well, he immediately knew of the vehicle
9 and stated to me that he remembered when Michael
10 Jordan came in and bought the car for his father.

11 Q Were you able to obtain any personal
12 information about either Michael Jordan or James
13 Jordan so that you could contact them about locating
14 the car?

15 A No, sir. He wouldn't give me any
16 information. He said it was their policy, he was not
17 going to give out any personal information, but would
18 check and see if he could help me in the situation I
19 had. I gave him my home phone number and my office
20 phone number.

21 Q On August the 11th of 1993, were you
22 contacted by anyone in reference to that red Lexus
23 that you had found on August the 5th?

24 A Yes, I was.

25 Q And who were you contacted by?

1 A I was contacted by Gerald Brandon, who
2 identified himself as being an investigator in charge
3 of the Jordan affairs.

4 Q Were you asked questions involving the car?

5 A Yes.

6 Q And as a result of the questions that you
7 were asked involving the car, what information did
8 you give them?

9 A I gave them the information where the
10 vehicle was, the condition it was in. At that time,
11 that's all I gave him.

12 Q During that conversation of August the 11th
13 with the investigator, were you given any information
14 in regard to James Jordan?

15 A Yes. I could tell by the questions that
16 Mr. Brandon was inquiring of me that something was --
17 I wasn't getting the full story from him, and that's
18 when he told me that James Jordan had been missing
19 for several days.

20 Q Did he give you a date as to when
21 Mr. Jordan had been missing?

22 A All I have indicated on the notes that I
23 took was he told me he had been missing for several
24 days.

25 Q After this conversation on August the 11th

1 of 1993, did you then become concerned and contact
2 your supervisors at the Highway Patrol?

3 A Yes, sir, I did.

4 Q And who did you contact?

5 A First Sergeant Ralph Price.

6 Q Why did you contact Sergeant Price?

7 A Well, going on the fact that the vehicle
8 was in the woods, stripped, not reported stolen, the
9 owner had been missing for several days and had not
10 the been heard from, I came to the assumption that
11 foul play was probably involved, and I contacted my
12 supervisor.

13 Q In the area where the car was located, did
14 you see any evidence to suggest to you that there had
15 been any foul play involved?

16 A Just the .38 caliber round in the back
17 seat.

18 Q Did you see any signs of a body or articles
19 of clothing or drops of any substance that would
20 appear to be blood in the area around the car?

21 A No, I did not.

22 Q After you spoke with Sergeant Price, did
23 you do anything else in regard to trying to locate
24 the owner of this car?

25 A No more attempts to locate the owner.

1 Sergeant Price came to my residence and we both went
2 back to where the vehicle was. It had been towed in,
3 but we went to the wooded area where the vehicle was
4 located.

5 Q When you saw the car at Crumpler's Garage,
6 where was it?

7 A It was in the storage lot, visible from the
8 highway.

9 Q And when you say the storage lot, is that a
10 secured area there at the garage, to your knowledge?

11 A To my knowledge, it's unsecured during the
12 day and secured at night.

13 Q Did you ever see the car at any other
14 location at Crumpler's Garage outside the secured
15 lot?

16 A No, sir.

17 Q And while you -- when you saw the car at
18 Crumpler's Garage, did you go over and examine it and
19 look inside it at that time?

20 A No, sir, I saw no need to have any further
21 contact with the vehicle. I had the information that
22 I needed to contact the owner or attempt to contact
23 the owners.

24 MR. BRITT: May I approach the
25 witness?

1 THE COURT: Yes, sir.

2 BY MR. BRITT:

3 Q I'm going to show you what's previously
4 been admitted as State's Exhibit 50, 51, and ask you
5 if you recognize the car that's depicted in those
6 photographs?

7 A Yes, I do.

8 Q How do you recognize the car that is
9 depicted in those photographs?

10 A It's the vehicle that I examined in the
11 woods and got the information from.

12 Q And the vehicle that -- the red Lexus
13 that's depicted in those photographs, is it in
14 substantially the same condition as it was in when
15 you saw it for the first time on August the 5th,
16 1993?

17 A Except for the tires, yes.

18 Q When you say except for the tires, when you
19 saw it on August the 5th, 93 were there tires on the
20 car?

21 A No, it was sitting flat on the ground.

22 Q I'll show you what has been marked as
23 State's Exhibit Number 52, ask you if you can
24 identify that leather pouch?

25 A Yes, I can.

1 Q How are you able to identify that leather
2 pouch?

3 A It's the pouch that Chris Jones had had in
4 his possession the day I spoke with him.

5 Q And the pouch, is it in substantially the
6 same condition it was in when he gave it to you on
7 August the 5th of 1993?

8 A It appears to be. I didn't examine it or
9 go through it at the time.

10 Q And State's Exhibit Number 52, the leather
11 pouch, is that the pouch that you gave to the Deputy
12 there in the area where the car was located on August
13 the 5th of 1993?

14 A Yes.

15 Q Does it appear in substantially the same
16 condition as it was when you gave it to the Deputy?

17 A Yes.

18 Q Mr. Battle, do you recall being interviewed
19 by Special Agent Heffney on August the 24th, 1993?

20 A Yes, sir.

21 Q Where did that interview take place?

22 A At my kitchen table.

23 Q And at that time when you interviewed with
24 Mr. Heffney, you were aware or were you aware that
25 the car that you had located on August the 5th, 1993,

1 actually belonged to James Jordan?

2 A I was aware of that on August the 5th.

3 Q And in your conversation, in your interview
4 with Mr. Heffney, he was talking notes at that
5 interview?

6 A Yes.

7 Q Did Mr. Heffney give you an opportunity to
8 review the notes that he had taken as a result of the
9 conversation that you had with him?

10 A I saw a copy of it a couple of weeks ago, I
11 believe.

12 Q And after reviewing that statement, the
13 information contained in it, does it accurately
14 reflect the conversation you had with Mr. Heffney on
15 August the 24th of 1993?

16 A I didn't read it in its entirety but it
17 appeared to be, yes.

18 MR. BRITT: I don't have any
19 other questions.

20 THE COURT: Any
21 cross-examination?

22 MR. THOMPSON: Yes, sir.

23 CROSS-EXAMINATION

24 BY MR. THOMPSON:

25 Q Good morning, Trooper Battle.

1 A Good morning.

2 Q Trooper Battle, you were interviewed by SBI
3 Agent Heffney back on August the 24th of 1993, is
4 that right?

5 A Yes, sir.

6 Q By Agent Heffney. Now, you indicated that
7 a couple of weeks ago you saw your statement but you
8 didn't read the entire statement?

9 A No, sir.

10 Q Just made a cursory look at the statement?

11 A Yes, sir.

12 Q Now, you were interviewed by SBI Agent
13 Heffney at your home, were you not?

14 A That's correct, yes.

15 Q And you were in the courtroom yesterday
16 when Christopher Jones testified?

17 A Yes, sir.

18 Q And you heard his entire testimony, did you
19 not?

20 A I -- yes, sir.

21 Q Now, on August the 5th of 1993, was it a
22 little after 4:30, between 4:30, 5:00 p.m. when you
23 heard the Cumberland County Sheriffs Department
24 dispatch?

25 A Approximately 4:40 p.m.

1 Q That was on a Thursday, was it not, or do
2 your notes indicate the day?

3 A No, sir.

4 Q You don't recall?

5 A I don't recall. It would have been a
6 Wednesday or Thursday.

7 Q And the dispatch that you heard indicated
8 to you that there was a wrecked car near the woods,
9 and that's why you went there?

10 A A car in the woods, yes.

11 Q And you were advised, or did you hear on
12 the dispatch that the car was on private property in
13 the woods at that time when you first heard the
14 dispatch?

15 A No, sir, had no knowledge of anything other
16 than a car in the woods.

17 Q As you were approaching the woods -- well,
18 as you were driving down Downing Road, Chris Jones
19 flagged you down?

20 A That's correct.

21 Q And Chris Jones got in your vehicle and
22 showed you where the car was?

23 A Yes, sir, that's correct.

24 Q And you went down McNeill Road, which is a
25 dirt road?

1 A Yes.

2 Q McNeill Road, you actually made a left off
3 of Downing Road on to McNeill Road?

4 A Yes, sir.

5 Q And you parked your vehicle there on
6 McNeill Road, you never did go into the path, drive
7 your vehicle into the path there in the woods, is
8 that right?

9 A That's correct.

10 Q Now, Trooper Battle, Chris Jones told you
11 that he had tried to contact the Jordans the day
12 before he took you in the woods, is that correct?

13 A That's correct.

14 Q That would be August the 4th, 1993 when he
15 would have attempted to contact the Jordans, is that
16 correct?

17 A I believe, yes.

18 Q And he told you -- did he give you at that
19 time a number or the numbers that he tried to dial?

20 A Yes, sir, he did.

21 Q What document or paper writing were those
22 numbers on?

23 A Some type of envelope, I believe.

24 Q Do you have that with you or a copy of that
25 envelope?

1 A No, sir, I do not.

2 Q Do you have in your notes the actual
3 telephone numbers that Chris Jones gave you?

4 A I have a number that I obtained from
5 information myself, whether it was the same number he
6 had, I don't know.

7 Q I thought I understood you earlier to
8 testify that you attempted to call the same number
9 that Chris Jones called?

10 A The ones that I had my communicators
11 attempt to call them.

12 Q The numbers that you attempted to call were
13 not obtained from Chris Jones, the numbers, any of
14 the numbers that you attempted to call?

15 A The numbers that I attempted to call from
16 my residence the following day, no, sir. I took
17 nothing from the vehicle or I carried nothing from
18 Chris Jones away from the scene.

19 Q I understand. But now, Trooper Battle, I
20 believe you indicated that you saw an envelope with a
21 number on it?

22 A Yes, sir.

23 Q And --

24 A On August the 5th.

25 Q On August the 5th. And that was the

1 envelope which Chris Jones indicated -- excuse me.
2 The envelope contained a number on it which Chris
3 Jones indicated to you that he attempted to dial, or
4 did in fact dial?

5 A Yes, that's correct.

6 Q Did you record that number down on any
7 memorandum or paper?

8 A No, sir, I did not.

9 Q So then you don't have in your notes the
10 actual number that you saw on that envelope?

11 A No, sir, I do not.

12 Q I believe you told Sergeant Heffney that
13 you noticed a .38 caliber silver casing lead bullet
14 in the back passenger floorboard of the Lexus, did
15 you not?

16 A That's correct.

17 Q And you specifically told SBI Agent Heffney
18 that the bullet was not a hollow point?

19 A That's correct.

20 Q Did --

21 A I told him I believe it was a wad cutter.

22 Q It was a what?

23 A A wad cutter is what the bullet is called.
24 It's just a solid lead projectile.

25 Q Did you specifically tell SBI Agent Heffney

1 that it was not a hollow point?

2 A I don't recall. I specifically remember
3 telling him that it was a wad cutter.

4 Q Do you recall Mr. -- SBI agent asking you
5 specifically if it was a hollow point?

6 A I don't recall, no.

7 MR. THOMPSON: May I approach the
8 witness?

9 THE COURT: Yes, sir.

10 (Defense Exhibit 7 was
11 marked for identification.)

12 BY MR. THOMPSON:

13 Q I hand you what's been previously marked as
14 Defendant's Exhibit Number 7. Is that the document
15 that you saw a couple of weeks ago which contained --
16 purported to be your statement to SBI Agent Heffney?

17 A It appears to be, yes.

18 Q You look through that and make sure that
19 that's a complete statement that you saw a couple of
20 weeks ago.

21 A Appears to be in order, yes.

22 Q Now, of course, Agent Heffney, as you've
23 already testified to -- strike that. You never --
24 the first time you actually saw this statement was a
25 couple of weeks ago?

1 A That's correct.

2 Q And you never signed any statement, any
3 written statement?

4 A I'm not sure whether I did or not.

5 Q SBI Agent Heffney never presented you with
6 any written statement that you signed, did he?

7 A I don't think so.

8 Q And on page two of Defendant's Exhibit
9 Number 7, which is the statement that you gave to SBI
10 Agent Heffney, page 2, the first paragraph there, the
11 statement reads that you stated the bullet was not a
12 hollow point. Does that refresh your memory as to
13 whether in fact you mentioned the words "hollow
14 point"?

15 A I could have, I just said I didn't
16 remember.

17 Q I understand. Now, does it refresh your
18 memory as to whether SBI agent specifically mentioned
19 to you the words "hollow point"?

20 MR. BRITT: Objection to that
21 question.

22 THE COURT: Sustained. Folks,
23 for the purpose of past recollection
24 refreshed or revived, you present it, then
25 you have to take it back and ask him

1 whether it refreshes his memory or revived
2 his memory. You can ask him questions but
3 you can't ask him to refer to the document
4 specifically.

5 BY MR. THOMPSON:

6 Q Now, Trooper Battle, have you had an
7 opportunity to read Defendant's Exhibit 7 in its
8 entirety?

9 A I have not read it in its entirety, just
10 establishing that this is the information I gave.

11 Q Would it assist you in refreshing your
12 memory to read that document, do you feel like it
13 would help you to have a chance to read it in its
14 entirety?

15 A It could possibly, yes.

16 Q And do you feel like it would help refresh
17 your memory about certain matters or conversations
18 between you and SBI Agent Heffney with regard to your
19 statement to the SBI Agent Heffney?

20 A It would probably, yes.

21 Q Well, read the document, Defendant's
22 Exhibit Number 7.

23 A (Witness complies).

24 THE COURT: Mr. Thompson?

25 BY MR. THOMPSON:

1 Q Trooper Battle, are you finished reading
2 Defendant's Exhibit Number 7?

3 A Yes, sir.

4 Q Now, first page, Defendant's Exhibit --
5 THE COURT: You need to come get the
6 document.

7 BY MR. THOMPSON:

8 Q Let me hold Defendant's Exhibit number
9 7?

10 THE COURT: You need to ask him
11 whether or not having reviewed Defendant's
12 Exhibit Number 7 his recollection is
13 refreshed or revived as to what he may have
14 told Mr. Heffney on the date in question.

15 BY MR. THOMPSON:

16 Q Is your recollection refreshed or revived,
17 Trooper Battle, as to what you told SBI Agent Heffney
18 back on August the 24th of 1993?

19 A Yes.

20 Q After having read Defendant's Exhibit
21 number 7?

22 A Yes, sir.

23 THE COURT: Let the record
24 reflect the document is now in the hands of
25 counsel for defendant. Not before the

1 witness. Now you may ask your questions.

2 BY MR. THOMPSON:

3 Q Did you tell SBI Agent Heffney that the
4 dispatcher advised you that the wreck was on private
5 property and the car in the woods was off Downing
6 Road?

7 A Yes.

8 Q So --

9 A Two separate calls.

10 Q I beg your pardon?

11 A Two separate incidents.

12 Q All right. So as you've testified to
13 earlier, when you first received the call from the
14 dispatch, you didn't know it was on private property?

15 A That's correct, I did not.

16 Q And it was later that you found out it was
17 on private property?

18 A That's correct.

19 Q Now, you told -- at some point while you
20 were there in the woods, you saw Deputy Williams
21 approach where you and Chris --

22 A We were not in the woods at that time. We
23 were back at my patrol vehicle on McNeill Road when
24 Deputy Williams arrived.

25 Q You told Deputy Williams that -- this was

1 back on August the 5th -- that the car belonged to
2 Michael Jordan, you told him that?

3 A Yes, or the Jordan family. It was
4 connected with the Jordan family.

5 Q You told Deputy Williams that the car had
6 not been reported stolen?

7 A Is that correct.

8 Q You told -- but you told Deputy Williams
9 that you believed that nevertheless it had been
10 stolen, even though it hasn't been reported stolen?

11 A It was my belief that the vehicle was
12 stolen.

13 Q And you told Deputy Williams that?

14 A That's correct.

15 Q And you told Deputy Williams that you
16 believed that Michael Jordan didn't have any
17 knowledge that the car was even missing?

18 A That's correct.

19 Q Now, is Deputy Williams in the courtroom?

20 A Yes, he is.

21 Q Where is he seated in the courtroom?

22 A Sitting on the front pew in the center.

23 Q In uniform?

24 A Yes, sir.

25 Q Now, when you received the pouch which has

1 been identified as State's Exhibit 52 from -- when
2 you received that from Chris Jones, where were you
3 and Chris Jones?

4 A Sitting in my parole vehicle.

5 Q On McNeill Road?

6 A On McNeill Road.

7 Q And you never looked in the pouch?

8 A No, I had the information I needed. I
9 didn't have any need to look in it.

10 Q I understand. And you and Chris Jones
11 proceeded to the car down the path?

12 A That's correct.

13 Q And you had the pouch though in your hand?

14 A I did not have the pouch.

15 Q You did not. Who had the pouch?

16 A Chris had the pouch. He gave me the pouch
17 when we came back from the vehicle. He showed it to
18 me, said "I found this earlier." I never received
19 the pouch until after I conducted my initial
20 investigation and we proceeded back to my parole
21 vehicle. And then I laid it on the dash.

22 Q Had you ever seen the pouch in his
23 possession?

24 A I saw that he had it, yes.

25 Q You saw that he had it, okay. Now, you

1 told Agent Heffney that when you saw the Deputy,
2 meaning Deputy Williams --

3 A Yes.

4 Q -- that you gave the pouch to the Deputy?

5 A Yes.

6 Q And that was out on McNeill Road?

7 A Yes, sir.

8 Q And you told SBI Agent Heffney that when
9 you gave the folder to the Deputy, the Deputy was
10 walking down the path to the car?

11 A As we were leaving, yes, sir.

12 Q So the Deputy had already been up to the
13 path and observed the car?

14 A Not at that point, no, sir. I never saw
15 the Deputy go to the vehicle. When I was leaving he
16 was walking toward the area where the vehicle was at.

17 Q Well, what path was he walking down?

18 A The dirt, the little, as I described, as a
19 logging trail, that led to where the Lexus was
20 sitting.

21 Q And the logging trail is off to the left of
22 McNeill Road where your vehicle was parked, is that
23 right?

24 A If you're facing the dead end of McNeill
25 Road it's off to the left.

1 Q Well, were you facing the dead end of the
2 road, your vehicle?

3 A I think the front of my vehicle was facing
4 toward the path in which the vehicle was at.

5 Q So you were on McNeil Road, your vehicle
6 was on McNeill Road?

7 A That's correct.

8 Q And the Deputy was walking down the logging
9 path?

10 A As I got ready to leave, I spoke with the
11 Deputy and told him that a vehicle was down there
12 approximately 400 yards.

13 Q Right. And --

14 A I saw no need to go back to it myself.

15 Q I understand. And you told the Deputy,
16 Trooper Battle, that -- excuse me. You told the SBI
17 Agent that you told the Deputy, said something about
18 the Deputy, if he had it, what did you mean by that?

19 A I asked him, did he have it, meaning did he
20 have, was he taking control of the situation.

21 Q Okay. And Deputy Williams acknowledged to
22 you that he was taking control of the situation, did
23 he not?

24 A That's correct.

25 Q And I believe you indicated that you and

1 Deputy Williams, I mean Deputy Williams talked about
2 ten minutes there at the --

3 A There about, approximately, yes.

4 Q And you told him the things that, of
5 course, you've just testified to about you knew that
6 this car belonged to somebody in the Michael Jordan
7 family?

8 A That's correct.

9 Q Now, later that night, that Thursday night
10 on August the 5th, you went to the Sheriff's
11 Department booking room?

12 A That's correct.

13 Q And while at the booking room, you
14 indicated you were naturally curious and you asked
15 the desk sergeant about this vehicle?

16 A That's correct.

17 Q What was the name of the desk sergeant?

18 A I do not remember.

19 Q Is that individual in the courtroom?

20 A No, he is not, to the best of my knowledge.

21 Q And the desk sergeant told you that the car
22 wasn't stolen, so it was left in the woods?

23 A That's correct.

24 Q And I believe you indicated that you had
25 some disbelief about the car, meaning the Cumberland

1 County officials leaving the car in the woods?

2 A That's correct.

3 Q An even later that night, you told your
4 line sergeant, Sergeant Turnerville, about how you
5 found the Lexus earlier in the woods?

6 A That's correct.

7 Q And you expressed to him your disbelief
8 about the Cumberland County Sheriff's Department
9 officials leaving the car in the woods?

10 A That is correct.

11 Q And then on -- and when you had this
12 conversation with your line sergeant was that when
13 you were getting off duty?

14 A Yes, sir, it was about midnight, I
15 believe. It was around midnight when I had the
16 conversation with my supervisor.

17 Q And then, Trooper Battle, on Friday, the
18 next day, you were off duty?

19 A That's correct.

20 Q And it was on a Friday?

21 A On a Friday.

22 Q And that was August the 6th?

23 A That's correct.

24 Q And you went to Crumpler's Garage to gas
25 up?

1 A Yes.

2 Q You were in your own private vehicle?

3 A That's correct.

4 Q Off duty, and you told your friend,
5 Mr. Crumpler about the incident of finding the car
6 the day before?

7 A That's correct.

8 Q Because you were concerned about the car
9 still being out there in the woods?

10 A That's correct, yes, sir.

11 Q And in fact, you and Mr. Crumpler went out
12 in the woods to see the car together?

13 A That's correct.

14 Q He rode in your vehicle?

15 A That's correct.

16 Q And what type vehicle was that?

17 A It's an '86 Ford pickup truck.

18 Q And this was around -- around noon when you
19 and Mr. Crumpler went out to the woods?

20 A I believe it is, yes, sir, around 11:00 or
21 so, somewhere in that area.

22 Q Everything about the car appeared the same
23 as it did the day before, is that right?

24 A That is correct.

25 Q Including the bullet that you saw back in

1 the floorboard of the car?

2 A Yes, sir.

3 Q And the bullet that you saw in the
4 floorboard of the car was in the back floorboard
5 passenger side?

6 A The back right, yes, sir.

7 Q Now, on the day before when you first went
8 out there to observe the car on that Thursday, August
9 the 5th, you didn't see any emblems lying on or about
10 the ground?

11 A No, sir, I did not.

12 Q And when you went back on the 6th, there
13 weren't any emblems lying on or about the ground?

14 A No, sir.

15 Q And it was while you and Mr. Crumpler were
16 there at the Lexus after having walked up the path
17 that you found the VIN number on the inspection
18 sticker?

19 A That, on August the 6thth.

20 Q On that Friday when you were off duty?

21 A That's when I retrieved the document, the
22 inspection certificate document.

23 Q And you retrieved that document because you
24 were concerned in simply trying to locate the owner?

25 A That is correct.

1 Q And you and Mr. Crumpler went over to
2 Mr. Lorice Hubbard's house. First you went over to
3 someone's house there on McNeill Road?

4 A I believe we did.

5 Q And then asked who the property belonged
6 to?

7 A Correct.

8 Q You found out it was Mr. Lorice Hubbard so
9 you proceeded over to his house?

10 A Correct.

11 Q And you when you went to Mr. Hubbard's
12 house, you told Mr. Hubbard about what you had seen
13 the day before and what you and Mr. Crumpler had just
14 observed the car still being in the woods?

15 A That is correct.

16 Q And you told Mr. Hubbard that you were
17 trying to find the owner of that car?

18 A Yes, sir.

19 Q But you would need his permission to have
20 the car also removed from his property?

21 A No, sir, not his permission. I told
22 Mr. Hubbard that I would make attempts to contact the
23 owner of the vehicle, but it being on his property,
24 he was the only person that could have it towed off.
25 And I made it well known to him nor the Highway

1 Patrol had any involvement in the moving the vehicle
2 from the wooded area.

3 Q Mr. Hubbard then gave permission not to
4 have the car moved?

5 A He and Mr. Crumpler made an arrangement to
6 move the vehicle.

7 Q That was in your presence?

8 A Yes, sir.

9 Q And you told Mr. Hubbard that you were a
10 State Trooper?

11 A Yes, sir, I know Mr. Hubbard and his wife
12 personally.

13 Q You knew them?

14 A Yes, sir.

15 Q So he already knew you were a State
16 Trooper?

17 A Yes, sir.

18 Q But you told him that you were doing this
19 simply to try to locate the owner, this had nothing
20 to do with official state trooper work?

21 A I told him exactly that I was going to
22 attempt to contact the owner because the Sheriff's
23 Department was doing nothing about it, and I didn't
24 feel it was right to leave the vehicle out in the
25 woods and not make any attempts to contact the owner.

1 Q You were concerned that the Cumberland
2 County Sheriff's Department, at least it appeared,
3 was doing absolutely nothing about it?

4 A It did concern me, yes.

5 Q After you left the Hubbards' residence, you
6 and Mr. Crumpler went back to his garage?

7 A That's right.

8 Q You dropped him off and you went home?

9 A That's correct.

10 Q About what time would this have been?

11 A I would say --

12 Q Approximately?

13 A About 1:00, maybe.

14 Q Again on this Friday, which would have been
15 August the 6th of 1993, you began to try to make some
16 phone calls to contact the owner, is that right?

17 A That's correct.

18 Q Now, just for the point of clarity again,
19 you never had any numbers or any two numbers, you
20 never received any two numbers from Chris Jones?

21 A Other than August the 5th when I initially
22 spoke with him, he had the two numbers on the
23 envelope. I never recorded those numbers or I
24 never -- like I said earlier, I obtained the numbers
25 I had from information that I got from the telephone

1 company.

2 Q And that's what I understood you to say.
3 So you don't know even if the numbers that you
4 obtained from information contained any of those
5 numbers, contained the two numbers that you had seen
6 on the envelope, you still don't know that?

7 A I do not know that.

8 Q Right. Now, you said you obtained several
9 numbers. About how many numbers did you obtain from
10 information?

11 A Approximately three, I believe.

12 Q The first attempt you made was to
13 information in Carboro, North Carolina, is that
14 right?

15 A Yes, sir, that is correct.

16 Q And you dialed this number, the first --
17 the number that you got, and you got no answer in
18 Carboro?

19 A One of the numbers I got no answer at. I
20 didn't write down specifically which one it was.

21 Q I'm not asking which specific number, but
22 you dialed one number and got no answer?

23 A Right.

24 Q Now, what was the reason you called Carboro
25 information? Was there something that indicated --

1 where did you get that number, something on any of
2 the documents that indicated that the residence may
3 be in Carboro?

4 A I believe I inquired from information the
5 Mint Hill area, which I think -- I'm not for sure
6 whether Carboro is in the Mint Hill area or not. But
7 that was the number I got from information.

8 THE COURT: When you contacted
9 information, what information did you give
10 them to enable them to give you any
11 numbers?

12 THE WITNESS: I gave them the
13 information -- I gave them, I needed a
14 number for a Michael Jordan or James
15 Raymond Jordan.

16 THE COURT: In response to that
17 information, you received numbers from
18 information.

19 THE WITNESS: That's correct.

20 THE COURT: One of the numbers
21 you received from information in response
22 to the information you provided them was
23 the Carboro address.

24 THE WITNESS: That's correct.

25 BY MR. THOMPSON:

1 Q When you called information, I mean, did
2 they ask you which city, do you recall? When you
3 called information, I mean, did you call long
4 distance information or local information?

5 A I believe I called for the Mint Hill area,
6 like I previously stated, because that would
7 correspond with where the vehicle was registered to.

8 Q And then you received from that -- you
9 identified yourself, did you not, to information?

10 A Yes, I did.

11 Q And you received about three numbers?

12 A Yes, sir.

13 Q In any event, this was Friday, August the
14 6th, you ended up calling the police department in
15 Carboro for assistance?

16 A Yes, sir, 11:22 a.m. I called Officer
17 Booker at the Carboro Police Department.

18 Q And you told him the situation, explained
19 the situation to him with respect to the car and your
20 theory related to the car?

21 A That's correct.

22 Q And at some point you told Officer Booker
23 that this related to a car possibly owned by the
24 family of --

25 A Well, I related to Mr. Booker exactly as I

1 testified earlier, to my belief that the vehicle was
2 probably stolen and it was not known that it was
3 gone.

4 Q And Mr. Booker called you back sometime
5 later?

6 A Yes, he did.

7 Q And told you that he was unable to locate
8 anything or anybody that might help you?

9 A That's correct.

10 Q There in the Carboro area?

11 A That's correct.

12 Q One of the numbers that you called in the
13 Charlotte area or Mint Hill area was -- I mean, you
14 received a message on an answering machine, did you
15 recall that?

16 A Yes, sir.

17 Q And you left a message?

18 A Yes, sir.

19 Q About possibly finding an abandoned vehicle
20 of Michael Jordan, James Jordan or Michael Jordan?

21 A I believe it was something to that effect.

22 Q But that Jordan family was not the family
23 of Michael Jordan or James Jordan which you later
24 found out?

25 A That's correct.

1 Q Because that family called you back?

2 A Yes, sir.

3 Q And indicated to you that it was not the
4 NBA star Michael Jordan's resident or his father's
5 residence?

6 A That's correct.

7 Q That was on Friday, all this occurred on
8 Friday, August the 6th of '93, is that right, with
9 respect to these cars?

10 A I believe it was, yes.

11 Q Now, it was the following Monday, which
12 would have been the 9th of August, or Tuesday the
13 10th of August when you contacted a State Trooper in
14 the Mint Hill area?

15 A I don't have the specific date that I
16 contacted the trooper.

17 Q After having read your statement to, that
18 you gave to SBI Agent Heffney, did it refresh your
19 memory as to when you called?

20 A It was --

21 Q The trooper in Mint Hill?

22 A It was around the 9th or the 10th, yes.

23 Q And did you actually talk to a trooper in
24 the Mint Hill area?

25 A Yes, I did.

1 Q What was his name?

2 A I didn't record his name.

3 Q And is it your testimony that that
4 trooper -- you gave that trooper an address?

5 A Yes, I did.

6 Q Is it your testimony that the trooper
7 couldn't find a house or anybody at that address?

8 A Yes, I gave him the address of 215 A West
9 Duncan Road in Mint Hill.

10 Q And did he indicate to you that he
11 proceeded to that address?

12 A As a result of conversation that I had with
13 him, I determined that that address did not exist.

14 Q Just didn't exist?

15 A Didn't exist.

16 Q And where did you get that address from?

17 A That address was from the VIN number of the
18 vehicle.

19 Q It was on the VIN number? I'm sorry?

20 A Yes, sir.

21 Q The address was from the VIN number of the
22 vehicle?

23 A Of the Lexus.

24 Q Okay. And then as a result of that, you
25 called I believe the employees mutual insurance

1 company?

2 A Yes, I did.

3 Q And to inquire as to whether there was a
4 missing car report?

5 A Yes, sir, I called for two reasons, one, to
6 see if they could help me in contacting the Jordan
7 family, and the other to see if there had been any
8 insurance claims filed against the loss of the
9 vehicle.

10 Q Now, at that time, you still observed, had
11 you observed -- strike that.

12 When you called the Employee's Mutual
13 Insurance Company, would that have been sometime
14 around the 10th of August?

15 A I believe so.

16 Q Now, had you observed still the car there
17 at Crumpler's Garage?

18 A Yes, sir, I had seen it.

19 Q Had you talked with Mr. Crumpler about the
20 car?

21 A I'm sure I did at some point, but I
22 don't --

23 Q Had you talked with Mr. Crumpler with
24 respect to anybody from the Cumberland County
25 Sheriff's Department had been out there to inquire

1 about the car?

2 A Yes, sir.

3 Q And did it concern you, were you still
4 concerned or were you still in disbelief that nobody
5 had been out there and talked to Mr. Crumpler about
6 the car?

7 A Well, I still found it hard to believe that
8 the Sheriff's Department was conducting no
9 investigation whatsoever at that point.

10 THE COURT: Well, the question
11 assumes facts not in evidence, and you may
12 want to establish that first, and that may
13 be difficult because it may involve some
14 hearsay.

15 BY MR. THOMPSON:

16 Q Trooper Battle, after finding out from the
17 insurance company no missing claims had been filed,
18 you called a 1-800-25-Lexus number?

19 A That's correct.

20 Q And you've testified that when you called
21 that number, you spoke with someone from Bredemann
22 Lexus?

23 A No, sir, not at that number. They provided
24 me with a number to the Lexus dealership. All they
25 could tell me is where the car was purchased from.

1 Q And you talked to -- well, when you got
2 that number, you eventually called Bredemann Lexus?

3 A Yes, sir.

4 Q Talked to Martin Bredemann?

5 A I spoke with who identified himself as the
6 manager of the business.

7 Q And then on the following day, which was
8 Wednesday, August the 11th of 1993, you received a
9 call from a Gerald Brandon?

10 A No, I received a call from a Gerald Brandt.

11 Q Did you not tell SBI Agent Heffney that you
12 received a call from a Gerald Brandt?

13 A I could have, yes, but I had the name
14 Gerald Brandt from the security agency. There was
15 two people from the security agency, I was talking
16 to. I may have the names reversed.

17 Q How do you spell the name that you referred
18 to as who you talked to, did you get a spelling?

19 A B R A N D T, Brandt.

20 Q And the first name?

21 A Gerald.

22 Q Is that G E R A L D?

23 A G E R A L D.

24 Q And one of the individuals that you talked
25 to told you to go back to the car, did they not?

1 A Yes, they did.

2 Q Told you to go back to the car to look for
3 a body?

4 MR. BRITT: Objection.

5 THE COURT: Sustained.

6 BY MR. THOMPSON:

7 Q To explain subsequent conduct, Your Honor,
8 not for the truth of the matter?

9 THE COURT: Do you want to be
10 heard?

11 MR. BRITT: It's hearsay.

12 MR. THOMPSON: It's not offered
13 for the truth, Your Honor.

14 THE COURT: Time out. Ladies and
15 gentlemen of the jury, there's a matter of
16 law the court must take up. It's now ten
17 minutes after 11. That being the case, I'm
18 going to give you the mid-morning recess at
19 this time. Please reassemble in the jury
20 room. I have no idea at this point how
21 long this might take. I anticipate it will
22 not take very long, so if you will please
23 reassemble in the jury room at 11:35.

24 Please recall it is your duty to abide
25 by all prior instructions of the Court

1 concerning your conduct, everyone else
2 please remain seated, the members of the
3 jury are excused.

4 (Jury out at 11:11 a.m.)

5 THE COURT: Let the record
6 reflect the following being carried on in
7 the absence of the jury. Folks, if you'll
8 bear with me, I need to go back to where we
9 were.

10 I'm at page 78, line nine, the
11 question is, "he told you to go back to the
12 car to look for a body." There was an
13 objection, I sustained the objection.
14 Mr. Thompson then indicated that it was
15 being offered not for the truth of the
16 matters asserted but to explain the
17 subsequent conducted of this witness.

18 That has to be established first,
19 let's do it on voir dire.

20 BY MR. THOMPSON:

21 Q Trooper Battle, one of the persons that you
22 talked to who identified themselves as being part of
23 the security, Michael Jordan's security?

24 THE COURT: Well --

25 MR. THOMPSON: Strike that. The

1 person that you talked to, you said you
2 talked to --

3 A I believe I did, yes.

4 Q How did they identify themselves to you?

5 A They identified themselves as being working
6 with an investigative firm in charge of the Jordan
7 affairs.

8 Q And one of those individuals was named Joe
9 Brennan?

10 A I could be, yes, I just have the other
11 one's name written down.

12 Q And the other individual's whose name you
13 have written down was named Gerald Brandt?

14 A That's correct.

15 Q And one of those individuals told you to go
16 back to the car and look for a body and not tell
17 anyone, is that right?

18 A Well, I don't know if he used those
19 specific words. I assume that's what he meant by the
20 way he was phrasing his questions.

21 Q Do you recall telling the SBI agent that he
22 stated, Joe asked you to go back to the car and look
23 for a body and not tell anyone?

24 A I do remember that, yes.

25 Q So that's what the other person, not Gerald

1 Brandt, but the other person told you to do?

2 A That's correct. May I -- he --

3 Q Sure, go ahead.

4 A He -- I had to get that information from
5 him initially. He initially was asking very
6 suspicious questions pertaining to the vehicle, which
7 I didn't feel at that time would correspond with just
8 simply being a stolen or abandoned vehicle. And I
9 inquired from him what exactly is going on and what
10 do you -- what exactly should I be looking for. When
11 he was telling me, he was asking me about did I look
12 around the vehicle and out in the wooded area around
13 the vehicle, which would be inappropriate for just a
14 stolen or abandoned vehicle.

15 Q And --

16 A At that time, when I asked him what
17 specifically would I be looking for, I believe he
18 told me a body.

19 Q He told you to go out and look for a body?

20 A To go out and look for a body.

21 Q And don't tell anybody?

22 A Don't tell anybody. Well, don't --

23 Q I'm sorry, I didn't mean to cut you off.

24 A Used the words, don't tell anybody, but
25 keep it a low profile, more or less. And that he

1 also instructed me that he was going to get on a
2 plane and meet me in Fayetteville, that he was making
3 arrangements to fly down that night. And not to talk
4 to anybody until he spoke with me.

5 Q Are you through? Is that what he told you?

6 A Yes.

7 Q As a result of that, Trooper Battle, what
8 did you do?

9 A I immediately contacted my supervisor.

10 Q And you went back out at some point to the
11 scene?

12 A Yes, sir.

13 Q And who went with you?

14 A Sergeant Price. At that time, First
15 Sergeant Price.

16 Q But then how long after this conversation
17 with Joe Brennan was it that you and Sergeant Price
18 went back to the scene?

19 A Probably an hour, hour and a half, maybe.

20 Q And what did you look for?

21 A We looked around for a body.

22 Q And where did -- I mean, is that
23 enough?

24 THE COURT: Yes, I think so, for
25 our purposes. The basis of the objection?

1 MR. BRITT: Basis of the
2 objection would be the conversation is
3 hearsay.

4 THE COURT: Yes, sir. Anything
5 else?

6 MR. BRITT: Well, the -- I'm
7 sorry -- the fact that the person on the
8 other end of the line, his identity cannot
9 be authenticated.

10 THE COURT: Anything else?

11 MR. BRITT: No, sir.

12 THE COURT: Relevance to this
13 case in any way?

14 MR. BRITT: Yes, sir, possibly.

15 THE COURT: What has that
16 conversation got to do in terms of
17 relevance in this case?

18 MR. THOMPSON: It has to do with
19 why he went back out there and contacted
20 Sergeant Price.

21 THE COURT: Aside from the fact
22 of whether or not that is helpful or
23 harmful to a particular side, apart from
24 that, how is it relevant?

25 MR. THOMPSON: Besides what?

1 THE COURT: Apart from any
2 considerations of whether that information
3 is helpful or harmful to a particular side,
4 apart from that, what does that have to do
5 with any of the issues involved in this
6 case?

7 MR. THOMPSON: It has to do with,
8 at this point, Your Honor -- I mean, he's
9 telling him to look for a body. At this
10 point, he doesn't know anything except that
11 there's a vehicle, there's been no
12 identification or anything made to his
13 knowledge at this point about a body or
14 James Jordan, and that's relevant. The car
15 is still there with an investigator.

16 THE COURT: Arguably it is
17 relevant. Arguably it's relevant in the
18 sense that it may communicate to the jury
19 that members of the Jordan family or
20 representatives of the Jordan family were
21 concerned about Mr. James Jordan missing
22 and suspected foul play and suspected that
23 he was dead.

24 MR. THOMPSON: It may or may not.

25 THE COURT: Okay. Do you want it

1 in?

2 MR. THOMPSON: Yes, sir.

3 THE COURT: I'm going to let it
4 in, I'm going to give a limiting
5 instruction.

6 MR. BRITT: That's fine.

7 THE COURT: Do you want to note
8 an exception for the record?

9 MR. BRITT: I'll note one.

10 THE COURT: For the record
11 State's exception is noted. I'll indicate
12 that it's being offered for the limited
13 purpose of explaining the subsequent
14 conduct of this witness. They are not to
15 consider the truth of the matters asserted
16 but simply to explain subsequent conduct.

17 MR. THOMPSON: Okay.

18 THE COURT: Okay. We're at
19 ease.

20 (Brief recess.)

21 THE COURT: Let the record
22 reflect that all counsel are present, the
23 defendant is present in open court.

24 Mr. Horne, do we have all members of
25 the jury secured in the jury room?

1 THE BAILIFF: Yes, we do.

2 THE COURT: My matters before we
3 bring the jury back in, folks?

4 Apparently not. Yes, sir, if you'll
5 bring the jury in.

6 (Jury in at 11:37 a.m.)

7 THE COURT: Ready to go forward,
8 sir?

9 MR. THOMPSON: Yes, sir.

10 THE COURT: If you would repeat
11 or rephrase whatever your question is for
12 your last question.

13 BY MR. THOMPSON:

14 Q Trooper Battle, did one of these
15 individuals by the name of Joe Brennan tell you to go
16 back to the car and look for a body and not tell
17 anyone?

18 A Yes.

19 THE COURT: Mr. Battle, before
20 you answer -- I apologize.

21 Members of the jury, the evidence or
22 testimony now being elicited is not being
23 offered for the truth of the matters
24 asserted. And to the extent that the
25 witness now before you, Mr. Battle, may

1 testify as to any statements which he
2 contends were made to him by someone who
3 has not testified as a witness at this
4 trial, you may not consider those matters
5 for the truth of the matters asserted. But
6 you may consider those matters for the
7 limited purpose of explaining the
8 subsequent conduct of this witness,
9 Mr. Battle, and for no other purpose.

10 Mr. Britt, anything further on behalf
11 of the State?

12 MR. BRITT: No, sir.

13 THE COURT: You may answer the
14 question, sir.

15 THE WITNESS: Yes, sir.

16 BY MR. THOMPSON:

17 Q And about what time did this conversation
18 take place on August the 11th, 1993?

19 A It was in the afternoon.

20 Q If you know.

21 A I'm not for sure of the exact time, no.

22 Q As a result of that conversation, Trooper
23 Battle, what did you then do?

24 A I contacted my supervisor, the district
25 supervisor at Fayetteville, at that time was First

1 Sergeant Ralph Price.

2 Q How did you contact your First Sergeant
3 Ralph Price?

4 A I called him on the telephone from my
5 residence.

6 Q And did you relate to your Sergeant Ralph
7 Price what you had just heard or your conversation
8 with Mr. Brennan and Mr. Brandt?

9 A Yes, sir, I told him of the entire events
10 of which I've testified to today.

11 Q And what did you -- did you and your First
12 Sergeant Ralph Price then go back out to the woods?

13 A We went to where the vehicle was found on
14 August the 5th, yes, sir.

15 Q And when you went back out there, what if
16 anything did you look for?

17 A A body.

18 Q Now, where did you look?

19 A The surrounding area where the car was at.

20 Q Now, at some point later on, did your line
21 Sergeant Ralph Price go to see Sheriff Bledso, if you
22 know?

23 A Yes, First Sergeant Ralph Price, yes, sir.

24 Q First Sergeant Ralph Price, yes, sir. What
25 time was that?

1 MR. BRITT: Objection unless he
2 has personal knowledge.

3 THE COURT: Do you have personal
4 knowledge.

5 THE WITNESS: No, it was the same
6 date.

7 THE COURT: Were you present at
8 the time it may have been done?

9 THE WITNESS: No, sir.

10 THE COURT: Do you have personal
11 knowledge that it was done in terms of your
12 personal observations?

13 THE WITNESS: I don't have any
14 personal knowledge that he made contact
15 with him, no.

16 THE COURT: The objection is
17 sustained.

18 BY MR. THOMPSON:

19 Q Now, at any time that you observed the
20 Lexus there in the woods, did you notice any blood
21 inside the vehicle?

22 A No, I did not.

23 Q What appeared to be blood?

24 A No.

25 Q Did you notice what appeared to be blood

1 outside on the vehicle?

2 A No, sir.

3 Q Did you notice what appeared to be blood
4 there in the area where the vehicle was parked or
5 stripped?

6 A No, sir.

7 Q An subsequently, when you and your first
8 sergeant, Mr. Price went back out there looking for a
9 body, did you notice any blood in or about the area
10 where you looked for the body?

11 A No, sir, there was none.

12 Q Now, what you were trying to do in this
13 case, you've testified to, is simply trying to assist
14 in locating the owner of that vehicle?

15 A My sole purpose in the steps that I had
16 taken were simply to locate the owner of the piece of
17 property that had been left in the woods.

18 Q I believe you testified that it was your
19 duty or obligation to try to do that?

20 A I felt it was, yes.

21 Q No so much as a trooper but as a citizen?

22 A As a concerned citizen, yes.

23 Q As a result of your attempt in trying to
24 locate the owner of the vehicle, were you threatened
25 with an indictment for obstructing the investigation

1 of this case?

2 MR. BRITT: Objection.

3 THE COURT: Objection is
4 sustained. Members of the jury there is a
5 matter of law the Court must take up out of
6 the hearing and presence of the jury. I
7 instruct you at this point that you are to
8 disregard the last question of counsel for
9 the defendant, Mr. Thompson. That question
10 is not to take any roll or play any part in
11 your deliberations in this matter in any
12 respect. Each of you understand that
13 instruction? .

14 If you can follow that instruction and
15 if you will follow that instruction, please
16 so indicate by raising your right hands at
17 this time.

18 Let the record reflect all fifteen
19 members of the jury responded
20 affirmatively.

21 Folks, please step to the jury room.
22 Don't worry or speculate about what takes
23 place in the courtroom in your absence.

24 (Jury out at 11:44 a.m.)

25 THE COURT: So that the record is

1 clear, complete your question on voir dire.

2 BY MR. THOMPSON:

3 Q As a result of what you did in attempting
4 to find the owner of the vehicle, were you -- have
5 you been threatened with and indictment by Cumberland
6 County Sheriff's Department or any officials in that
7 department for obstructing an investigation?

8 A Yes.

9 Q When and by whom have you been
10 threatened?

11 MR. BRITT: Objection.

12 THE COURT: It's voir dire. I'm
13 letting him establish a record.

14 THE WITNESS: I don't know the
15 exact date that this allegation of the
16 obstructing the investigation was made or
17 exactly by who. It was filtered down
18 through the office of the Sheriff.

19 THE COURT: Question, need to
20 clarify something for the record. The
21 question is, were you threatened by anyone
22 with an indictment alleging interference
23 with an investigation by anyone? Did that
24 happen specifically and personally to you?

25 THE WITNESS: Not directly to me,

1 no, sir.

2 THE COURT: So no one personally
3 came to you and said an indictment is
4 forthcoming as to you?

5 THE WITNESS: Phrased that way
6 no, sir, it did not.

7 THE COURT: Has anyone personally
8 come to you and indicated anything with
9 regard to an indictment of you as to any
10 charge?

11 THE WITNESS: No, sir, not
12 personally.

13 MR. THOMPSON: May I?

14 THE COURT: Yes, sir.

15 BY MR. THOMPSON:

16 Q Trooper Battle, did you, as a result of
17 what you perceived to be a threat of an indictment
18 obtain --

19 THE COURT: That question
20 "perceived to be" is open to a lot of
21 interpretation. You need to be more
22 specific if you want to establish a record
23 and so that I can rule.

24 MR. THOMPSON: Yes, sir.

25 BY MR. THOMPSON:

1 Q Trooper Battle, how did that information
2 filter down to you about a threat of an
3 indictment?

4 MR. BRITT: Objection.

5 THE COURT: It's voir dire. It's
6 for the purpose of the record. Your
7 objection is noted for the record. It's
8 overruled for purposes of voir dire. You
9 may answer.

10 THE WITNESS: I heard it from
11 First Sergeant Price.

12 BY MR. THOMPSON:

13 Q When did you hear it from First Sergeant
14 Price?

15 A I'm not for sure of the exact date. It was
16 shortly after the press got hold of the six day time
17 lapse before the Sheriff started his investigation.

18 Q As a result of hearing -- what did First
19 Sergeant Price tell you with respect to the threat of
20 an indictment?

21 THE COURT: Court notes for the
22 record that would constitute hearsay, but
23 for the purpose of making an offer of
24 proof, for the purposes of establishing a
25 record, does the State want any noted

1 objection?

2 MR. BRITT: Yes, sir.

3 THE COURT: Objection noted for
4 the record. As previously stated, the
5 objection is overruled. State's exception
6 is noted for the record. You may respond.

7 THE WITNESS: You're going to
8 have to ask it again, please.

9 BY MR. THOMPSON:

10 Q What did your First Sergeant Ralph Price
11 tell you with respect to the threat of an indictment?

12 A He had informed me that he heard from a
13 source at the Sheriff's Department.

14 MR. BRITT: Hearsay within
15 hearsay.

16 THE COURT: Go ahead.

17 THE WITNESS: That they were
18 maybe seeking an indictment from me on
19 interfering with an investigation.

20 THE COURT: With their
21 investigation?

22 THE WITNESS: Right, that hasn't
23 started yet.

24 THE COURT: Pardon me, folks.
25 Yes, sir.

1 BY MR. THOMPSON:

2 Q As a result of that conversation, did
3 you -- what did it cause you to do, did you seek
4 legal advice?

5 A Yes, I did.

6 Q I'm sorry, go ahead.

7 A I obtained attorney Ronnie Mitchell and
8 Eddie Harris, to give me legal advice and represent
9 me if anything like that had occurred.

10 THE COURT: Anything further on voir
11 dire?

12 MR. THOMPSON: No, sir.

13 THE COURT: For the record, so
14 that the record is complete, have you been
15 indicted for any offense?

16 THE WITNESS: No, sir.

17 THE COURT: Have you been charged
18 with any offense?

19 THE WITNESS: No, sir.

20 THE COURT: Mr. Britt?

21 MR. BRITT: I don't have any
22 questions.

23 MR. THOMPSON: Question.

24 THE COURT: Sir?

25 BY MR. THOMPSON:

1 Q Do you know whether your attorneys that you
2 retained communicated at all with any officials
3 within the Cumberland County Sheriff's Department
4 concerning --

5 MR. BRITT: Objection.

6 THE COURT: Personal knowledge,
7 do you have personal knowledge, were you
8 there, did you observe it?

9 MR. BRITT: That would also --

10 THE COURT: Also involves the
11 attorney-client privilege, so THE answer I
12 think takes care of it. He says no, I
13 don't have personal knowledge.

14 BY MR. THOMPSON:

15 Q Did you communicate to anyone within the
16 Cumberland County Sheriff's Department that you had
17 retained an attorney regarding the matter of your
18 possibly being indicted?

19 A No, sir, I did not.

20 THE COURT: Anything further?

21 MR. THOMPSON: That's all.

22 THE COURT: The Court is open to
23 any rule of evidence that you contend would
24 allow this evidence.

25 MR. THOMPSON: Well, Your Honor,

1 perhaps maybe this is -- the investigation
2 in this case with regard to all law
3 enforcement officials and particularly with
4 regard to Cumberland County officials and
5 the quality of their investigation is an
6 issue in this case.

7 THE COURT: Yes, sir. That's
8 your general contention, that's your theory
9 of the case. What I'm asking is AC-1,
10 Rules of Evidence, tell me what rule of
11 evidence this would arguably be admissible
12 under.

13 MR. THOMPSON: Goes to the
14 credibility of the investigation, the
15 quality of their investigation. And
16 particularly with respect to what he -- and
17 I understand now that it was never directly
18 communicated to him, but if in fact it had
19 been and if it is established that the
20 threat was even made, I anticipate that I
21 will be calling him back to try to get it
22 in for credibility. Now, I realize at this
23 point, Your Honor, no Cumberland County
24 officials have testified.

25 THE COURT: What was the good

1 faith basis for asking the question?

2 MR. THOMPSON: Good faith basis
3 for asking the question was that I know
4 that he obtained Mr. Mitchell. I've talked
5 with Mr. Mitchell, attorney Mitchell about
6 this case.

7 THE COURT: If you communicated
8 with his lawyer, then at a minimum you
9 should have known that there was no
10 indictment.

11 MR. THOMPSON: I know there was
12 no indictment.

13 THE COURT: You should have known
14 that no one in the Cumberland County
15 Sheriff's Department specifically indicated
16 to him personally that a threat of an
17 indictment was eminent. So I'm asking,
18 what is the good faith basis for the
19 question?

20 MR. THOMPSON: The good faith
21 basis for the question is --

22 THE COURT: It might be out
23 there, maybe, hopefully, I think,
24 possibly --

25 MR. THOMPSON: Well, I don't

1 expect anybody, and particularly in light
2 of what he's done with respect to retaining
3 an attorney, to come forward and say they
4 said it.

5 THE COURT: No, sir, I'm asking
6 you what the good faith basis was for the
7 question.

8 MR. THOMPSON: That is my good
9 faith basis, what I just stated. I know
10 that he retained an attorney because he
11 felt it necessary because of a threat of an
12 indictment.

13 THE COURT: But you told me on
14 the record that you communicated with his
15 attorney.

16 MR. THOMPSON: I did communicate
17 with his attorney.

18 THE COURT: About this perceived
19 threat of an indictment, presumably.

20 MR. THOMPSON: I communicated
21 with his attorney, first of all, to ask if
22 I could talk with Trooper Battle. Now,
23 Trooper Battle talked to my -- an
24 investigator, and indicated because of an
25 up line person said that he wasn't at

1 liberty to discuss these matters with me,
2 and I respected that. Again, it's a
3 situation where I had a good faith basis to
4 ask the question, the only way I could
5 really --

6 THE COURT: Mr. Thompson, you and
7 I differ as to the meaning of the words
8 "good faith basis."

9 MR. THOMPSON: Yes, sir. But
10 that's my response, Your Honor. I could
11 not directly -- and as I said, I talked
12 with him about it, because he -- and I
13 indicated to Trooper Battle that I would
14 respect his decision and not put him in a
15 compromising position because somebody up
16 line told him not to talk to us.

17 MR. BOWEN: May I be heard,
18 Judge?

19 THE COURT: Yes, sir, I'm going
20 to allow it even though this is a matter
21 that arises out of a question that was
22 asked by Mr. Thompson. I will allow it.

23 MR. BOWEN: Yes, sir. In an
24 explanation for the not only good faith
25 basis but the relevancy, it seems to me it

1 goes right back to Rule 401, any evidence
2 that has a tendency to make existence of
3 any fact that is a consequence that the
4 determination more or less probable --

5 THE COURT: What fact of
6 consequence at issue in this case do you
7 think that that bears on?

8 MR. BOWEN: The fact that there
9 may have been at worst a cover-up by the
10 Cumberland County Sheriff's Department.

11 THE COURT: Any evidence as to
12 that?

13 MR. BOWEN: I think the fact that
14 a law enforcement agency which knows about
15 the existence of an unclaimed car, a very
16 expensive unclaimed car out in the woods,
17 and does not bother for six days to look
18 into the matter and allows a trooper who
19 really has no particular jurisdiction and
20 who's exercising a lot more diligence than
21 they are, I think the jury is entitled to
22 know these things, especially in light of
23 the fact that we now know that a private
24 security agency in Chicago has told the
25 trooper to not say anything or to keep a

1 low profile.

2 THE COURT: Wait a minute, where
3 is that in evidence?

4 MR. BOWEN: Sir?

5 THE COURT: Where is that in
6 evidence?

7 MR. BOWEN: You just heard it.

8 THE COURT: This man testified
9 that a private investigative agency told
10 him to keep a low profile?

11 MR. BOWEN: It is, Your Honor.

12 THE COURT: Where is that in
13 evidence before this jury or before me?

14 MR. BOWEN: It just came in as I
15 recall it when he testified.

16 THE COURT: You've got a
17 computer, roll back and show me where it
18 is.

19 MR. BOWEN: Judge --

20 THE COURT: Roll back and show me
21 where it is, Mr. Bowen.

22 MR. BOWEN: All right.

23 MR. THOMPSON: Starting page 82.

24 MR. BOWEN: Look, Your Honor,
25 please, page 82, line 6. "Answer: This

1 would be" --

2 THE COURT: Let me get there.

3 THE COURT: Okay.

4 MR. BOWEN: Trooper Battle,
5 starting on line seven of page 82.

6 "Answer: At that time when I asked him
7 what specifically I would be looking for, I
8 believe he told me a body.

9 "Question: He told you to go out and
10 look for a body?

11 "Answer: To go out and look for a
12 body.

13 "Question: And don't tell anybody?

14 "Answer: Don't tell anybody."

15 THE COURT: Is that a question or
16 is that an answer, because it goes on to
17 say, well, comma, don't, period. Question,
18 I'm sorry, I didn't mean to cut you off,
19 use the word, don't tell anybody, but keep
20 it in a low profile, more or less, and that
21 he also instructed me he was going to get
22 on a plane and meet me in Fayetteville and
23 he's making arrangements to fly down that
24 night."

25 MR. BOWEN: So he used the word

1 don't tell anybody.

2 THE COURT: Who is he referring
3 to?

4 MR. BOWEN: He was referring to
5 the man that he was talking to.

6 THE COURT: How does that impugn
7 or relate to the Cumberland County
8 Sheriff's Department?

9 MR. BOWEN: That somebody in
10 Chicago is telling this law enforcement
11 officer to keep a low profile or don't tell
12 anybody about a body out there suggests
13 that somebody maybe told him to lay off or
14 not do anything, and in fact, we've got
15 information --

16 THE COURT: Your argument a
17 moment ago was that the Cumberland County
18 Sheriff's Department was putting pressure
19 on him in some sort of cover-up. What
20 you're now pointing to is separate and
21 apart from the Cumberland County Sheriff's
22 Department may have been doing that.

23 MR. BOWEN: Judge, what effect,
24 it resulted in the Cumberland County
25 Sheriff's Department doing nothing for six

1 days.

2 THE COURT: Why is that evidence
3 that anybody associated with any security
4 agency representing Michael Jordan or
5 anybody else contacted anybody in the
6 Cumberland County Sheriffs Department, or
7 is that an assumption on your part?

8 MR. BOWEN: They were contacting
9 him.

10 THE COURT: So therefore, your
11 assumption is because they contacted him,
12 they must have contacted the Cumberland
13 County Sheriff's Department?

14 MR. BOWEN: They may have
15 contacted him.

16 THE COURT: Do you have any
17 evidence of that?

18 MR. BOWEN: That's a good faith
19 expectation if they are contacting people
20 that knew or had to know about that car
21 and telling them not to tell anybody.

22 THE COURT: Folks, according to
23 your definition of good faith basis,
24 anything that is possible, anything that is
25 potential, anything that may have happened

1 falls into that category. That's not the
2 way I read it.

3 MR. BOWEN: No, sir, but there is
4 a reasonable assumption that can be drawn
5 when people are asking highly irregular
6 things of certain --

7 THE COURT: There we go again,
8 that's your commentary, that's your
9 characterization, that's your opinion. You
10 folks are entitled to your opinion. But
11 your opinion has to confirm to the Rules of
12 Professional Responsibility.

13 MR. BOWEN: Well --

14 THE COURT: Let me read something
15 to you folks. And I've read it before, I'm
16 going to read it again.

17 Rule 12 of the General Rules of
18 Practice, Superior and District Court in
19 the State of North Carolina, as well as the
20 Rules of Professional Conduct, and I'm
21 going to come to that in just a moment.
22 "The conduct of the lawyers before the
23 Court and with other lawyers should be
24 characterized by candor and fairness.
25 Counsel shall not knowingly misinterpret

1 the contents of a paper, the testimony of a
2 witness, the language or argument of an
3 opposite counsel or the language of a
4 decision or other authority, nor shall he
5 offer evidence which he knows to be
6 inadmissible."

7 Rule 7.2, which is entitled
8 "Representing the Client Within the Bounds
9 of the Law." In representing a client, a
10 lawyer shall not knowingly --" this is
11 subparagraph two, "-- advance a claim or
12 defense that is unwarranted under existing
13 law, except such lawyer may advance such
14 clam or defense if it can be supported by
15 good faith argument for an extension,
16 modification, or reversal of existing law.
17 A lawyer for the defendant in a criminal
18 proceeding, or the respondent in a
19 proceeding that could result in
20 incarceration, may nevertheless so defend
21 as to require that every element of the
22 case against the client be established."

23 Among the rules involving trial
24 conduct, rule 7.6, subparagraph C, in
25 appearing in his or her professional

1 capacity before a tribunal, a lawyer shall
2 not, one, state or allude to any matter
3 that the lawyer has no reasonable basis to
4 believe is relevant to the case or that
5 will not be supported by admissible
6 evidence.

7 Subparagraph two, ask any question
8 that the lawyer has no reasonable basis to
9 believe is relevant to the case and that is
10 intended to degrade a witness or other
11 person."

12 I think the difficulty here, I'm not
13 alleging misconduct. I'm alleging that
14 there is a much broader interpretation of
15 reasonable -- there is a much broader
16 interpretation of good faith than I think
17 would be supported by the case law.

18 Also, we have had prior discussions
19 off the record or on the record, pardon me,
20 in the absence of the jury where I've asked
21 you folks, same way I've asked the State,
22 if you think there is a potential matter
23 arising that involves issues or questions
24 of good faith, please alert us beforehand
25 so that we can do it in the absence of the

1 jury.

2 Haven't I done that?

3 MR. THOMPSON: Yes, sir.

4 THE COURT: Now, by your own
5 admission, you were looking for information
6 that you suspected may be there, and that
7 may be supported by good faith basis, and
8 that may be relevant, without first
9 informing us and giving us the opportunity
10 to rule on the matter in the absence of the
11 jury.

12 MR. THOMPSON: Your Honor, you're
13 correct, and it was based on an assumption,
14 and the assumption was that if he obtained
15 an attorney, that somebody had threatened
16 him with an indictment. It's also based on
17 the inability to ferret out some of this
18 information, because of people telling law
19 enforcement, don't talk to the defense.

20 THE COURT: If that's the case,
21 Mr. Thompson, then as a matter of basic
22 cautionary ethics, I would say because I
23 don't know an awful lot about the
24 situation, but I suspect there may be some
25 things there, this is one of those

1 occasions when I need to ask for voir
2 dire.

3 MR. THOMPSON: I understand. And
4 Judge, I never would have thought that he
5 was going to say that he didn't know where
6 the threat -- well, he did say he knew
7 where the threat came from, but I didn't
8 know that was built on --

9 THE COURT: Hearsay based on
10 hearsay.

11 MR. THOMPSON: Yes, sir.

12 THE COURT: Folks, that's exactly
13 my point. That's exactly my point.

14 MR. THOMPSON: Yes, sir.

15 THE COURT: I've given the jury
16 their instructions, the jury has indicated
17 they can abide by those cautionary
18 instructions, and curative instruction.
19 Anything on behalf of the State?

20 Folks, I'm going to say again, this
21 applies to the State as well as the
22 defendant. If we come to an area or issue
23 where good faith is ambiguous, or somewhat
24 in doubt, if we come to an area where
25 relevance or the rules of professional

1 responsibility dictate that we have an
2 obligation as officers of the Court to take
3 a precautionary approach, ask for a voir
4 dire. I'll give it to you.

5 MR. THOMPSON: Yes, sir.

6 MR. BRITT: Your Honor, not only
7 do the issues involving the rules of
8 practice are involved in the ethical
9 considerations, the Rule 609 of the Rules
10 of Evidence, specifically, and 608
11 specifically address this very instance.
12 They filed a motion to prohibit me from
13 mentioning the indictment as to their
14 client. Yet they turn around and want to
15 ask a question, did somebody threaten you
16 with an indictment. Clearly it is
17 improper, nor is it relevant.

18 THE COURT: It's what's good
19 faith for one is good faith for the other.

20 MR. BRITT: And the rules of
21 evidence clearly bar such a question. It
22 doesn't go to an issue of his veracity. He
23 hasn't been convicted of any crime.

24 THE COURT: Well, what they are
25 attempting to do is to impeach someone who

1 hasn't testified.

2 MR. THOMPSON: Nobody is
3 attacking his veracity.

4 THE COURT: Discredit someone who
5 hasn't testified by innuendo and by
6 hearsay. And there's no way conceivable to
7 me that a good faith basis could exist
8 under these circumstances, consistent with
9 the Rules of Professional Responsibility,
10 and consistent with the case law.

11 MR. THOMPSON: To discredit an
12 investigation that was clearly conducted by
13 Cumberland County Sheriff's Department and
14 you're right.

15 THE COURT: That's assuming, and
16 you know what they say about the word
17 "assuming."

18 MR. BRITT: Regardless of what
19 this theory is about their defense, they
20 have got to conform it to the rules.
21 Simply because they believe something isn't
22 simply enough to get it before the jury.

23 THE COURT: That's where I have
24 difficulty. I understand you folks are
25 doing the best you can to represent your

1 client. That's your obligation and your
2 duty, as it is Mr. Britt's duty to
3 zealously represent the State of North
4 Carolina, and I don't mean to impinge on
5 anybody's right to provide zealous
6 representation. But that zealous
7 representation has to conform with the
8 Rules of Evidence and Rules of Procedures
9 and our rules as officers of the Court.

10 MR. THOMPSON: And within the
11 bounds of the law.

12 THE COURT: Yes, sir.

13 MR. BRITT: Last thing I want to
14 say, Rule 12, in the paragraph that begins
15 conducts of lawyers which the Court began
16 to read, the last sentence I think is very
17 appropriate for this, "An argument
18 addressed to the court, remarks or
19 statements, should not be interjected to
20 influence the jury or spectators," and I
21 think clearly this line of questioning is
22 an attempt to influence the jury as well as
23 the people in this audience, and the
24 greater audience that a lot of this
25 information is being broadcast to.

1 MR. THOMPSON: Well, now --

2 THE COURT: Yes, sir, I'll give
3 you an opportunity to respond. Yes, sir.

4 MR. THOMPSON: Well, I
5 emphatically deny that. It was asked in
6 good faith.

7 THE COURT: Counsel for defendant
8 contends was good faith.

9 MR. THOMPSON: Exactly. No more
10 than what I contend spraying that spray all
11 over this courtroom was done in good
12 faith. Hey, I didn't smell the clothes.
13 They are spraying the courtroom and all in
14 front of the jury.

15 THE COURT: Anything further,
16 folks?

17 MR. BRITT: No, sir.

18 THE COURT: Why don't we take
19 about ten minutes, we're going to be at
20 ease for about ten minutes.

21 THE BAILIFF: Court stand at ease
22 for approximately ten minutes.

23 (Brief recess.)

24 THE COURT: Let the record
25 reflect all counsel are present, the

1 defendant is present in open court. All
2 members of the jury remain secured in the
3 jury room. The State is asking for a
4 further instruction to the jury?

5 MR. BRITT: Yes, sir.

6 THE COURT: Yes, sir.

7 Specifically what is it you're asking for.

8 MR. BRITT: Your Honor, if I
9 could have an opportunity to go back.
10 Again, I would ask the Court to again
11 instruct the jury in regard to the last
12 question, even though the Court's
13 previously --

14 THE COURT: Simply repeat the
15 instruction given?

16 MR. BRITT: Yes, sir.

17 THE COURT: You folks want to be
18 heard in that respect?

19 MR. THOMPSON: Well, you've given
20 an instruction, but -- and I think he said
21 they indicated they would understand it,
22 but it's up to you.

23 THE COURT: The would arguably be
24 entitled to an instruction that the
25 question was improper. The State is not

1 asking for that. The State is asking only
2 that the earlier curative instruction be
3 given. You folks want to be heard
4 further?

5 MR. THOMPSON: No.

6 THE COURT: The Court will repeat
7 the curative instruction.

8 Now, the danger in a curative
9 instruction is that, human nature being
10 what it is, more times you hear, don't do
11 something, the more likely you may be
12 inclined to do it.

13 MR. BRITT: Then I would, in
14 addition, I would then ask the Court to
15 instruct the jury it was an inappropriate
16 question by counsel.

17 MR. THOMPSON: I object to that,
18 because I think you've already instructed
19 the jury.

20 THE COURT: I haven't instructed
21 them that the question is improper. And
22 simply because I think we need to make a
23 record of this, that suggests, implies or
24 connotes misconduct. On these facts, I
25 think it is appropriate to give that

1 instruction, but any allegation of
2 misconduct not only impacts on counsel but
3 impacts on effective assistance of counsel
4 and impacts on a defendant in a particular
5 case.

6 The Court in its discretion will
7 reinstruct as previously instructed, folks,
8 I think it was improper. But I'm not going
9 to instruct that at this time out of an
10 abundance of precaution.

11 Bring the jury back in, please.

12 (Jury in at 12: 22 p.m.)

13 THE COURT: Members of the jury,
14 the Court has previously instructed you
15 that you are to disregard the last question
16 of counsel for the defendant, specifically
17 the last question asked by Mr. Thompson.
18 The Court again emphatically instructs you
19 that you are not to consider that question
20 in any respect, and that question is not to
21 take any part in your deliberations in this
22 case in any regard.

23 Now, if each member of the jury
24 understands and will follow that
25 instruction, again, please so indicate by

1 raising your right hands.

2 Let the record reflect that all
3 fifteen members of the jury have responded
4 affirmatively. Anything further,
5 Mr. Britt?

6 MR. BRITT: No, sir.

7 THE COURT: Any additional
8 questions of the witness on
9 cross-examination.

10 MR. THOMPSON: Yes, Your Honor.

11 THE COURT: You may proceed,
12 Mr. Thompson.

13 BY MR. THOMPSON:

14 Q Trooper Battle, I believe you testified
15 that on direct examination that Gerald Brandt told
16 you that Mr. James Jordan had been missing several
17 days?

18 A I believe that's what I said, yes.

19 Q He didn't tell you a specific date on which
20 he was missing, did he?

21 A I believe now that my memory has been
22 refreshed. It was the 22nd of July.

23 Q What is your memory being refreshed by
24 what?

25 A I believe I read it on the paper that you

1 handed me.

2 Q You mean the statement?

3 A The statement, yes.

4 Q That you gave to Agent Heffney?

5 A Yes, sir.

6 Q All right. Now, I understand you read it
7 on the statement, but does that mean that you told
8 Agent Heffney that or did you tell Agent Heffney that
9 Mr. Brandt told you had been missing several days?

10 A I told him the date on there, I don't know,
11 you know, the way he could have come up with it.

12 Q So you're assuming there was no way that
13 Mr. Heffney could come up with that date so you must
14 have told him?

15 A That's correct.

16 MR. THOMPSON: That's all.

17 THE COURT: Anything further

18 Mr. Britt.

19 MR. BRITT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. BRITT:

22 Q Mr. Battle, this VIN number that you used
23 to contact your communication, did you write that VIN
24 number or obtain that VIN number?

25 A I obtained it from the inspection

1 certificate and held it in my hand while I verified
2 it was the same number that was present on the VIN
3 plate of the vehicle.

4 Q What VIN number appeared on that VIN plate
5 of the red Lexus that you found in the woods August
6 the 5th of 1993?

7 A J, as in John, T, as in Tom, 8, U, as in
8 union, 230, C as in Charles, 9, N, as in Nora,
9 0011121.

10 Q And the information you received that that
11 VIN number was registered to a car belonging to James
12 Raymond Jordan?

13 A That is correct.

14 MR. BRITT: I don't have any
15 other questions.

16 THE COURT: Mr. Thompson.

17 RECROSS EXAMINATION

18 BY MR. THOMPSON:

19 Q Using that VIN number, Trooper Battle, you
20 obtained an address supposedly for James Jordan?

21 A That's correct.

22 Q And that address again was what, 241
23 Duncan?

24 A West Duncan road, Mint Hill.

25 Q And you were advised by a trooper in Mint

1 Hill area that no such address existed?

2 A That's correct.

3 MR. THOMPSON: That's all.

4 THE COURT: May Mr. Battle be
5 released?

6 MR. BRITT: Yes.

7 MR. THOMPSON: Yes.

8 THE COURT: Thank you, sir,
9 you're free to go.

10 THE COURT: Mr. Britt.

11 MR. BRITT: We call Carol Howard.

12 THE COURT: Yes, sir.

13 CAROL P. HOWARD,

14 being first duly sworn was examined and testified as
15 follows:

16 DIRECT EXAMINATION

17 THE COURT: Please state your
18 full name for the record, ma'am?

19 THE WITNESS: I'm Carol P.
20 Howard.

21 THE COURT: And if you would spell
22 your first and last names for the record?

23 THE WITNESS: C A R O L,
24 H O W A R D.

25 THE COURT: Thank you, ma'am.

1 Mr. Britt.

2 BY MR. BRITT:

3 Q Ms. Howard, by whom are you employed?

4 A I'm employed by the Division of Motor
5 Vehicles with the State of North Carolina,
6 headquarters in Raleigh.

7 Q In what capacity do you work with the
8 Division of Motor Vehicles in Raleigh?

9 A I am director of the vehicle registration
10 section.

11 Q And what are your duties and
12 responsibilities as the director of the vehicle
13 registration section?

14 A I'm directly responsible for the
15 headquarters operation and the state operations
16 across the State. We register and title motor
17 vehicles in North Carolina, that's our primary
18 function. We also maintain the records on a
19 permanent basis of the vehicles and registration to
20 the State of North Carolina.

21 Q And the duties and responsibilities of your
22 office vehicle registration section Department of
23 Motor Vehicles, are those duties and responsibilities
24 that are conferred upon you by law?

25 A Yes, they are.

1 Q And under your supervision, are all the
2 registration records of every motor vehicle
3 registered in the State of North Carolina kept in
4 your office?

5 A They are kept on file or on microfilm in
6 our headquarters division, yes.

7 Q And are those records made and kept in the
8 regular course of the business of Division of Motor
9 Vehicles, vehicle registration section?

10 A Yes, they are.

11 Q In maintaining these records, are these
12 records maintained by vehicle identification numbers
13 commonly referred to as VIN numbers?

14 A Yes, they are.

15 Q Are they also maintained by what is
16 referred to as a title number?

17 A By title number, by license number and by
18 name. There are four index references.

19 Q When you say license number, are you
20 referring to an operator's license or a license plate
21 number assigned to a vehicle?

22 A License plate number.

23 Q And for what purpose does a VIN number
24 serve your office?

25 A It's easiest way to identify a vehicle.

1 That vehicle identification number carries all the
2 characteristics and the prefix to identify that
3 vehicle, production number for each vehicle in that
4 particular classification is unique, so it's a unique
5 number that can identify the vehicle.

6 Q And are your records cross referenced from
7 VIN numbers to title numbers to license numbers?

8 A Yes, they are.

9 Q You were subpoenaed to appear here today?

10 A Yes, sir.

11 Q And to produce certain documents?

12 A Yes, sir.

13 Q Those documents are records pertaining to
14 vehicle registration of a 1992 Lexus 400 SC?

15 A Yes, they are.

16 Q VIN number that appears is
17 JT8UZ30C9N0011121?

18 A Correct.

19 MR. BRITT: May I approach?

20 MR. BOWEN: We need to be heard,
21 Your Honor.

22 THE COURT: Ladies and gentlemen
23 of the jury, it's now 25 until 1:00.
24 There's a matter of law the Court must take
25 up out of the hearing and presence of the

1 jury. Because it's very close to the lunch
2 hour, I'm going to allow the members of the
3 jury to take an extended lunch recess.
4 Please return to the jury room no later
5 than 2:30 and we'll be in a position to go
6 forward at that time.

7 During the lunch recess, I instruct
8 you you're not to talk about this matter
9 with anyone or among yourselves, you're not
10 allowed to have anyone say anything to you
11 or in your presence about this case. If
12 any communicates with you about this
13 matter, or attempts to do so, or anyone
14 says anything about this case in your
15 presence, it's your duty to inform us of
16 that immediately through one of the
17 bailiffs assigned to the courtroom.

18 Don't have any contact or
19 communication of any kind with any of the
20 attorneys, parties, witnesses, prospective
21 witnesses or directly with the Court.
22 Don't allow yourself to be exposed to any
23 media accounts which may exist in
24 connection with this matter. Don't conduct
25 any independent inquiry or investigation or

1 research of any kind.

2 Everyone else please remain seated,
3 the members of the jury are excused until
4 2:30.

5 (Jury out at 12:35 p.m.)

6 (State's Exhibit 54 was
7 marked for identification.)

8 THE COURT: Let the record
9 reflect the following is being conducted or
10 heard in the absence of the jury.

11 Yes, sir, Mr. Bowen.

12 MR. BOWEN: Yes, Your Honor.
13 Mr. Britt, is it Exhibit 54, is that what
14 you have there?

15 MR. BRITT: Yes, sir.

16 MR. BOWEN: If Your Honor please,
17 what I see is Exhibit 54 appears to be
18 photostatic copies of all paperwork
19 relating to the particular Lexus in
20 question. As one moves toward the back,
21 the papers seem to have to do with the
22 papers of ownership regarding Mr. James
23 Jordan, which I can see the relevancy of.
24 Toward the front of the package, however,
25 the papers have to do with the man who is

1 the present owner, I believe perhaps
2 Mr. James Giles, Lyles, here in Robeson
3 County. And as to the present, all the
4 paperwork concerning the pertinent owner, I
5 contend that that is inadmissible to what
6 the State has to show.

7 THE COURT: Mr. Britt?

8 MR. BRITT: Your Honor, this is a
9 public record. It's the complete title
10 history of the car in question, showing its
11 origin with Lexus Motor Division. The
12 initial certificate of origin for the
13 vehicle, to whom it was delivered, that
14 being Bredemann Lexus in Chicago, Illinois,
15 and the first registered owner of the
16 vehicle being James Raymond Jordan. Also
17 shows various transactions which Mr. Jordan
18 did after receiving the car. There were
19 liens placed against the car where he
20 borrowed funds as late as March '93, and
21 then after the car was recovered, the car
22 was sold by the insurance company through
23 the estate of Mr. Jordan, to a body shop
24 here in Robeson County where it was
25 repaired and then sold to the individual

1 who presently owns it. But this is the
2 entire public record as it relates to that
3 car.

4 THE COURT: Two questions: Do
5 you intend to elicit testimony as to all
6 matters related to the vehicle?

7 MR. BRITT: No, sir, I intend to
8 elicit testimony in regard to its origin,
9 where it was originally delivered to,
10 Bredemann Lexus, and who the owner of the
11 vehicle was as of July the 23rd, 1993.

12 THE COURT: Second question, do
13 you intend to publish the exhibit to the
14 jury.

15 MR. BRITT: I would like to be
16 able to.

17 THE COURT: In its entirety?

18 MR. BRITT: Yes.

19 THE COURT: Any strenuous
20 objection by the State as to omitting or
21 deleting reference to any matters after the
22 time period in question?

23 MR. BRITT: As it relates to the
24 admission of the exhibit?

25 THE COURT: Yes, sir.

1 MR. BRITT: I think as a matter
2 of --

3 THE COURT: Rule 106, if you
4 introduce part of it, the opposing party
5 has a right to say the remainder has to be
6 introduced. They are saying they don't
7 want any of that. Is there any relevance
8 to matters not in this case?

9 MR. BRITT: As a matter of the
10 record, she has been subpoenaed to bring
11 the title, the records that they maintained
12 in Raleigh for this particular car.

13 THE COURT: So your position is,
14 the jury is entitled to know from beginning
15 to end what the history of the vehicle is?

16 MR. BRITT: Yes.

17 THE COURT: Yes, sir.

18 MR. BOWEN: Well --

19 THE COURT: Where is prejudice to
20 the defendant?

21 MR. BOWEN: Well, because it just
22 isn't -- what happened after the date in
23 question to this automobile, it seems to
24 me, not relevant at all. They are here.

25 THE COURT: The argument is, it's

1 relevant because it shows the complete
2 history.

3 MR. BOWEN: Knowing the complete
4 history after the dates that are relevant
5 to this case cannot possibly be of any use,
6 and I think it has a tendency to prolong,
7 tendency to confuse.

8 THE COURT: How?

9 MR. BOWEN: I've got a lot of
10 papers, why not limit them to the papers
11 that show James Jordan owned the
12 automobile.

13 THE COURT: If I do that, what
14 happens if the defendant makes an argument
15 in closing says we don't know what happened
16 to the vehicle after the date in question.

17 MR. BOWEN: Because I'm promising
18 you --

19 THE COURT: We don't know whether
20 the Cumberland County Sheriff's Department,
21 the Marlboro County Sheriff's Department
22 SLED, SBI, FBI has engaged in some cover
23 up.

24 MR. BOWEN: That's not going to
25 be possible, they are going to relate what

1 they did with the VIN number of the
2 automobile.

3 THE COURT: Objection --

4 MR. BOWEN: It is relevant what
5 the law enforcement officers did, that
6 particular set of records don't show what
7 law enforcement did. They show that this
8 vehicle was sold by the estate of
9 Mr. Jordan to another person. Now, what I
10 ask is how is that possibly relevant to his
11 showing who owned the car on the date in
12 question?

13 THE COURT: Well, didn't the
14 defendant, through counsel and in numerous
15 pretrial statements, and trial statements
16 to the members of the press, contest the
17 issue of identity?

18 MR. BOWEN: Not of the
19 automobile.

20 THE COURT: Of the decedent.

21 MR. BOWEN: Not the automobile.

22 THE COURT: If the State sold the
23 automobile doesn't that relate to the
24 question of identity?

25 MR. BOWEN: Of the automobile,

1 absolutely.

2 THE COURT: Doesn't it relate to
3 the -- if James Jordan didn't own the
4 vehicle, then how could James Jordan sell
5 the vehicle through his estate?

6 MR. BOWEN: We have never
7 contended that James Jordan owned the
8 vehicle. In fact, we made a stipulation
9 for the State regarding the vehicle, at
10 least as to its value.

11 THE COURT: The objection is
12 overruled, exception is noted for the
13 record.

14 In that regard, there's a matter I
15 wanted to bring to your attention.
16 Pretrial order was entered by Judge Hooks
17 early on governing conduct of counsel under
18 the Rules of Professional Responsibility
19 with regard to the media, 7.7, trial
20 publicity is applicable. You folks are
21 governed by rule 7.7.

22 Court further notes that counsel for
23 defendant filed a motion on 27 August,
24 1993. The defendant's motion is entitled,
25 Motion to Control Prejudicial Publicity.

1 That motion reads in pertinent part as
2 follows. Comes now the defendant by
3 counsel, moves this court pursuant to the
4 Sixth, Eighth, Fourteenth Amendments to the
5 U.S. Constitution and the laws of the
6 Constitution of the State of North Carolina
7 for orders; one, excluding the public print
8 and electronic media from all pretrial
9 hearings. We have dealt with that. Two,
10 prohibiting all attorneys, witnesses, law
11 enforcement personnel and court personnel
12 who are connected with the prosecution or
13 investigation of this case from extra
14 judicially, releasing information in any
15 form to any agent or employee of any news
16 media concerning any aspect of this
17 proceeding except as provided in Rule 7.7
18 of the North Carolina Rules of Professional
19 Responsibility.

20 Now, I understand that Judge Hooks'
21 order deals with this motion by defendant
22 and it's reciprocal applies to all counsel,
23 as does Rule 7.7. I'm putting all counsel
24 on notice that you're bound by Rule 7.7.
25 So I suggest that you read it, I suggest

1 that you look at the commentary, I suggest
2 that you look at the cases that are cited
3 regarding extra judicial comments.

4 Any other matters on behalf of either
5 counsel?

6 MR. THOMPSON: No.

7 THE COURT: Ma'am I apologize for
8 the interruption, you may step down, we'll
9 resume with your testimony at 2:30 this
10 afternoon.

11 THE BAILIFF: All rise, please.

12 (Lunch recess).

13 THE COURT: Good afternoon,
14 folks.

15 MR. BRITT: Good afternoon.

16 THE COURT: Let the record show
17 that all counsel are present, the defendant
18 is present in open court. Mr. Horne, do we
19 have all members of the jury secured in the
20 jury room?

21 THE BAILIFF: Yes, we do.

22 THE COURT: Any other matters
23 before we continue with the testimony of
24 Ms. Howard?

25 MR. BRITT: Mr. Thompson, right

1 before we came back in, requested a copy of
2 all the information contained in State's
3 Exhibit 45. We're making a copy of that
4 now. I don't know if they want to go ahead
5 with the evidence and then get the copy.

6 THE COURT: Do you folks want to
7 hold up until you get the copy?

8 MR. THOMPSON: Yes.

9 THE COURT: In that regard, if
10 you intend publication, it doesn't appear
11 to be fairly long, but 15 copies.

12 MR. BRITT: This is rather
13 lengthy.

14 THE COURT: Well, that, I think
15 is what I'm most concerned about.

16 MR. BRITT: Okay.

17 THE COURT: If we pass one copy
18 of that and it's how many pages long?

19 MR. BRITT: I haven't counted the
20 pages.

21 THE COURT: Pass one copy to 15
22 jurors, it will take them until next week.
23 So what I'm going to propose is that prior
24 to publication, that we make 15 copies.

25 MR. BRITT: When Mr. Thompson's

1 copy is brought back in, I'll send my --
2 person out make additional copies so that
3 we can speed things along.

4 THE COURT: Okay.

5 MR. BRITT: I'm going to step in
6 my office and tell them to go ahead and
7 start doing that.

8 THE COURT: Yes, sir, I
9 appreciate that.

10 MR. BRITT: While we've got this
11 opportunity, let me bring something to the
12 Court's attention that was brought to my
13 attention. I understand that the forecast
14 for tonight is for the temperature to be in
15 the twenties and there's a forecast for
16 rain as well, which may cause conditions to
17 be much worse than they were at the
18 beginning of the week. I understand that
19 Lumberton and Robeson County are on the
20 border of that line, but I am told
21 Fayetteville falls on that line where they
22 are anticipating some pretty severe
23 weather. And in the event that overnight
24 conditions become such that we don't have
25 court, I don't know what kind of

1 arrangements we want to make.

2 THE COURT: That's a practical
3 suggestion. We've got all the jurors'
4 phone numbers.

5 MR. BRITT: Yes, sir.

6 THE COURT: Is there someplace I
7 can call? Is there a contact person in
8 Robeson County that I can reach tonight?

9 THE CLERK: You can call me. We
10 can have the jurors call the answering
11 machine.

12 THE COURT: That's what I was
13 going to suggest. If I can call -- if I
14 have the consent of all counsel and the
15 defendant to call Ms. Gaines, depending on
16 what our situation is, and then she can put
17 a recorder -- now, what I'm going to
18 suggest is -- do you have any information
19 about when that front is expected to hit
20 Fayetteville?

21 MR. THOMPSON: I heard this
22 evening, according to the forecast. If
23 temperature was supposed to get up to the
24 forties today, my opinion that's around
25 freezing, that front is moving in with the

1 anticipation the temperature will dip down
2 into the twenties.

3 THE COURT: My suggestion is that
4 I can call Ms. Gaines and we can tell the
5 jurors before they leave tonight that they
6 are to call the answering service beginning
7 at 7:00 tomorrow morning.

8 MR. BRITT: Know what I did this
9 past weekend, I contacted communications at
10 the Sheriff's Department to find out about
11 road conditions, and then also contacted
12 the Highway Patrol.

13 THE COURT: Can you give me a
14 list of numbers of the Sheriff's
15 Department, Highway Patrol, in this
16 local --

17 MR. BRITT: Yes, sir.

18 THE COURT: Is that agreeable?

19 MR. THOMPSON: Certainly.

20 MR. BOWEN: Yes, sir.

21 THE COURT: So I can consult with
22 them as well about road conditions.

23 MR. THOMPSON: Oh, yes.

24 MR. BRITT: It may not become a
25 problem, but just --

1 THE COURT: Well, in the same
2 vain, we had indicated that should weather
3 conditions permit, we would have a short
4 day tomorrow, so that I can go to Raleigh
5 tomorrow afternoon to the State Board of
6 Elections. If the weather conditions are
7 as anticipated, I'm not going to Raleigh,
8 which means that I'll have to do that on
9 another occasion, and with that in mind, is
10 next Friday afternoon feasible for all
11 counsel?

12 MR. BRITT: That's fine with me.

13 THE COURT: So that we can have a
14 short day. Okay. For the record, I
15 checked yesterday afternoon with folks in
16 the Raleigh area, they said the roads are
17 still difficult, downtown, in and around
18 the area, Morgan Street, which is where the
19 State Board of Elections is located.

20 For the record what has been provided
21 to me by Mr. Britt, following numbers
22 Robeson County Sheriff's Department, with a
23 number for them.

24 MR. BRITT: Yes.

25 THE COURT: State Highway Patrol

1 with an 800 number for them as well.

2 MR. BRITT: Yes, and for the
3 Court's information that number to the
4 Highway Patrol is the radio station in
5 Elizabethtown which covers the southeast
6 section of North Carolina.

7 MR. BOWEN: Judge, I have a
8 matter that needs to be taken up outside
9 the presence of the jury.

10 If Your Honor please, I would like to
11 serve at this time on Mr. Britt a motion
12 for the Court to consider providing funds
13 for an airline ticket for a material
14 witness. This was the matter that I
15 attempted to deal with, Your Honor, ex
16 parte on, and Your Honor felt that was
17 inappropriate. Therefore, I have no --

18 THE COURT: Well, as I indicated
19 to you, I wasn't entirely sure whether it
20 was appropriate under Ake versus Oklahoma.

21 MR. BOWEN: Obviously since it's
22 not an expert.

23 THE COURT: That's the reason I
24 asked an order be prepared to that effect
25 because I don't think it's an Ake number,

1 and again, Ake is A K E.

2 MR. BOWEN: Correct. And
3 therefore, we would make a motion for the
4 Court to provide funds for us to get an
5 airline ticket for Ms. Bitina Jacob, an
6 individual originally on our witness list,
7 material witness. I'll be glad to go in
8 camera and indicate to Your Honor the
9 nature of that. I don't wish to disclose
10 that to the State. But I promise you as an
11 officer of the court, probably one of our
12 most material witnesses, employed as a
13 teacher's assistant in San Jose,
14 California, and has a small child there. I
15 believe the child is such age that the
16 child would fly free.

17 THE COURT: Did you check on the
18 airlines on that?

19 MR. BOWEN: No, I don't know for
20 sure on that, and I frankly don't know the
21 exact age of the child. I understand it's
22 an infant. She says she will honor the
23 subpoena of the defense, she will come but
24 she's not willing to have her child looked
25 after out there. She's got some family

1 here, she can take care of her lodging and
2 stay here, as well as that of the child.

3 THE COURT: What does the order
4 provide for in terms of the number of --

5 MR. BOWEN: The way I've got it
6 worded, provides for round trip airline
7 ticket, coach class, Oriental Airport, San
8 Jose area, that's what I understand she
9 will be flying from, to Fayetteville
10 Regional Airport, Grants Field, North
11 Carolina. Round trip ticket shall be for
12 Batina Jacobs, and infant child; and such
13 type of ticket as can be rescheduled from
14 time to time, prior to these proceedings,
15 may dictate. The ticket shall be of the
16 type that contemplates a stay over the
17 weekend, before returning such that the
18 State can receive any and all discount for
19 such type of ticket as possible.

20 I should also add, she informs me, and
21 I am informed to believe she is not able to
22 afford the ticket and have to be reimbursed
23 later.

24 THE COURT: Yes, sir.

25 Mr. Britt, to the extent that you

1 might be entitled to be heard, do you want
2 to be heard?

3 MR. BRITT: Yes, sir, because if
4 as the motion is captioned, she's being
5 declared a material witness, and there's
6 procedures that must be gone through before
7 anyone is classified as a material witness.

8 THE COURT: Yes, sir.

9 MR. BRITT: I've been trying to
10 find those in 15-A so that I could properly
11 address the issues with the Court.

12 THE COURT: That's what I'm
13 looking for now. May be in 15 or 15-A,
14 that's what I'm looking for. Or 7-A.

15 Look at 15-A, 813. That generally
16 deals, my recollection, instances that I've
17 had occasion to deal with 813, with folks
18 who are being sought as material witnesses
19 on behalf of the State.

20 MR. BRITT: Well, and it's
21 securing their presence.

22 THE COURT: Yes, sir. And that
23 would require communication with the State
24 in which the witness resides and a hearing
25 be held pursuant to statute in that state.

1 This is a different situation in that it is
2 not the State who's contending materiality,
3 and generally the witness has an
4 opportunity to due process essentially, an
5 opportunity to be heard, opportunity to be
6 represented, opportunity to contest the
7 materiality and whether or not he or she
8 ought to be compelled to honor an out of
9 state subpoena.

10 MR. BRITT: Actually, 15-A, 803
11 addresses the issue of material witnesses
12 and address both material witness for the
13 State or for the defense.

14 THE COURT: We've got Mr. Bowen's
15 contention as an officer of the Court she
16 does not contest materiality and that she's
17 willing to come. I feel better if I had an
18 affidavit but I accept your word as an
19 officer of the Court.

20 MR. BOWEN: Moreover, as a
21 practical matter, if she steps on the
22 plane, arrives here, we're going to be
23 there to pick up her with a subpoena. So
24 then the subpoena here is good.

25 THE COURT: I understand that,

1 but what concerns me about that is she's
2 entitled to be heard in the state in which
3 she desires, if there's an issue as to
4 materiality, and to use -- I don't want to
5 use the word subterfuge, but to use the
6 process to get her here and then serve her
7 with a subpoena.

8 MR. BOWEN: No, that's not what's
9 going on, and I'll be happy to get an
10 affidavit.

11 THE COURT: All right.

12 MR. THOMPSON: Your Honor --

13 THE COURT: May I make a
14 suggestion, folks, fax her an affidavit,
15 have her sign that affidavit and send it
16 back. That way you folks are protected.

17 MR. BOWEN: I have a tape
18 recording of the conversation.

19 THE COURT: Look at 803 D,
20 material witness order may be obtained upon
21 motion supported by affidavit showing cause
22 for its issuance. The witness may be given
23 reasonable notice, opportunity to be heard,
24 and to present evidence, and the right of
25 representation by counsel at a hearing on

1 the motion. Counsel for the material
2 witness may be appointed and compensated in
3 the same manner as counsel for indigent
4 defendant. Order must be based on findings
5 of fact supporting its issuance.

6 If you folks indicate by affidavit or
7 otherwise voluntary compliance, that
8 eliminates a lot of problems, because
9 otherwise, she's entitled to be heard in
10 the State of California after notice,
11 opportunity to be heard, and the
12 opportunity to be represented. And before
13 I sign an order to that effect, I would
14 feel better if there's some indication
15 before me that she's willing to comply.

16 As a matter of fact, I'm going to
17 direct that in any communication with her
18 you attach a copy of 15-A 803, attendance
19 of witnesses, and 15-A 813, a copy of any
20 fax or other communication between counsel
21 for defendant and the tentative witness is
22 to be included in any motion and affidavit
23 before this Court.

24 THE COURT: Is that the copy?

25 MR. BRITT: This is the copy that

1 was furnished to me previously, and they
2 are in the process of making those others.

3 THE COURT: Are we ready to go
4 forward?

5 MR. BRITT: Yes, sir.

6 THE COURT: Are you folks ready,
7 Mr. Thompson, Mr. Bowen.

8 MR. THOMPSON: Yes, sir.

9 THE COURT: If you'll bring the
10 jury in. Ms. Howard, if you will please
11 return to the witness stand, and you remain
12 under oath.

13 (Jury in at 2:50 p.m.)

14 THE COURT: Good afternoon ladies
15 and gentlemen.

16 For the record, the objection by
17 counsel for the defendant is overruled,
18 exception is noted for the record. You may
19 repeat or rephrase your question to
20 Ms. Howard.

21 BY MR. BRITT:

22 Q Ms. Howard, the records that you produced
23 here in court pursuant to the subpoena, are they the
24 entire records pertaining to the vehicle registration
25 of the 1992 Lexus 400 SC that bears the VIN number

1 that I asked you about previously?

2 A Yes, that's the complete record.

3 Q And are those records kept in the ordinary
4 course of your regularly conducted business activity
5 at the Department of Motor Vehicles?

6 A Yes.

7 MR. BRITT: Your Honor, at this
8 time I move for admission of State's
9 Exhibit 54 -- if I could.

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q I'll hand you what's been marked as State's
13 Exhibit Number 54, ask you, are those the records
14 that you produced here pursuant to the subpoena?

15 A Yes, they are.

16 Q And that is the entire record as maintained
17 by the Department of Motor Vehicles as it relates to
18 that 1992 Lexus 400?

19 A Yes, sir.

20 MR. BRITT: Your Honor, at this
21 time I ask that State's Exhibit 54 be
22 admitted.

23 THE COURT: You folks want to be
24 heard other than the objection already
25 made?

1 MR. THOMPSON: No, sir.

2 THE COURT: That objection as
3 indicated is overruled. I'm sorry, the
4 number --

5 MR. BRITT: 54.

6 THE COURT: 54 is admitted.

7 BY MR. BRITT:

8 Q Ms. Howard, ask you to turn to the back of
9 State's Exhibit Number 54, the last document in that
10 record, what is that document called?

11 A That's a manufacturers state of origin,
12 furnished from the manufacturer on all new vehicles.

13 Q And the manufacturer in this case was Lexus
14 Motors?

15 A Yes.

16 Q And to whom was the Lexus 400, the 1992
17 Lexus 400 shipped to as indicated by the certificate
18 of origin?

19 A Bredemann Lexus out of Illinois.

20 Q And do your records reflect who Bredemann
21 Motors in Glenview, Illinois sold the car to?

22 A James R. Jordan.

23 Q Does it show a date on which that car was
24 transferred from Bredemann Motors to James R. Jordan?

25 A It was transferred in '92. It was

1 notarized on the 26th day of -- I can't read that.
2 The title application was submitted in January of
3 '92. It was assigned -- first operated in North
4 Carolina 1-7 of '92.

5 Q And as a result of the title application
6 that was filed in the State of North Carolina, did
7 the Department of Motor Vehicles issue a title to
8 James R. Jordan for a 1992 Lexus 400 SC automobile?

9 A Yes, we did.

10 Q When was that title issued?

11 A That title was issued on January the 15th
12 of 1992.

13 Q And is that title reflect a license plate
14 number that was assigned to that particular vehicle?

15 A Yes, it does.

16 Q What if any license plate number was
17 assigned to that vehicle that was titled to James
18 Raymond Jordan?

19 A The special plate issued to this was
20 23UNCAR.

21 Q And is that a commonly referred to as a
22 vanity plate?

23 A Personalized plate.

24 Q Are you familiar with the appearance of
25 those vanity plates?

1 MR. BOWEN: Just a couple. It is
2 Mrs. Howard, is that correct?

3 THE WITNESS: Yes.

4 CROSS-EXAMINATION

5 BY MR. BOWEN:

6 Q The ninth page from the back --

7 A Yes, sir.

8 Q -- now that is a copy of the original title
9 showing one mile on the odometer, correct?

10 A Yes, it is.

11 Q Now, if you'll come forward four more
12 pages, what is that document? The document that you
13 referred to, the prior document that you referred to
14 was the title, the original title issued free and
15 clear of lien.

16 A After that point in time, an application
17 for a lien recording was submitted in February of
18 '92, and that original title was taken up when we
19 recorded the lien to Alliance Federal Credit Union,
20 this is the title that was issued as a result of that
21 lien recording.

22 Q And that title with the lien recordation
23 also reflects the odometer reading of one mile,
24 correct?

25 A Correct.

1 Q Now, for the jury, what does a lien
2 recordation, what does that mean?

3 A It just means that this vehicle title was
4 used as collateral on a lien, funds were borrowed and
5 the vehicle was used as collateral.

6 Q You said on a lien, do you mean on a loan?

7 A On a loan, yes, right.

8 Q You're not able to say from that, merely
9 that lien recordation document, as to how much the
10 loan was --

11 A No, that information is not a part of our
12 records.

13 Q Does it reflect whether that loan was in
14 fact used to purchase the car?

15 A No, it would not have been the loan that
16 was used to purchase the car. This was -- the
17 original title was the bill of sale indicates that
18 the vehicle was paid for in cash. This lien was
19 recorded at a later date.

20 MR. BOWEN: No further questions,
21 Your Honor.

22 THE COURT: Anything on
23 redirect?

24 MR. BRITT: No, sir.

25 THE COURT: May Ms. Howard -- May

1 the witness be released, folks?

2 MR. BOWEN: Yes.

3 MR. BRITT: Yes.

4 THE COURT: Thank you, ma'am,
5 you're free to go.

6 MR. BRITT: Your Honor, at this
7 time -- at an appropriate time I would ask
8 that State's Exhibit 54 be published to the
9 jury. As the Court is aware we're in the
10 process of having copies made.

11 THE COURT: Members of the jury,
12 the delay in starting back this afternoon
13 was we were attempting to have copies of
14 the document just marked as 15 -- strike
15 that, 54, State's Exhibit 54, in this case,
16 the document is fairly long, and rather
17 than having you deal with one copy, we're
18 attempting to make copies of that document
19 for each individual members of the jury.
20 But in the discretion of the Court that
21 will be allowed.

22 MR. BRITT: Thank you, Your
23 Honor. At this time, we would call Deputy
24 Scott Williams.

25 THE COURT: Yes, sir.

1 **SCOTTEN S. WILLIAMS,**
2 being first duly sworn was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 THE COURT: Please state your
6 full name, sir.

7 THE WITNESS: My full name
8 Scotten Samworth Williams.

9 THE COURT: Spell your first
10 name.

11 THE WITNESS: S C O T T E N, last
12 name is
13 W I L L I A M S.

14 BY MR. BRITT:

15 Q Mr. Williams, by whom are you employed?

16 A I'm employed by the Cumberland County
17 Sheriff's Department in Fayetteville, North Carolina.

18 Q How long have you worked for the Cumberland
19 County Sheriff's Department?

20 A Approximately four years.

21 Q When did you begin?

22 A 1992.

23 Q And when you started with the Cumberland
24 County Sheriff's Department was that your first job
25 in law enforcement?

1 A Yes, it was.

2 Q Any prior experience in law enforcement
3 that was through basic law enforcement training?

4 A No, sir.

5 Q You work for any other law enforcement
6 agency?

7 A No, sir.

8 Q In August of 1993, you were working for the
9 Cumberland County Sheriff's Department?

10 A Yes.

11 Q Specifically, August the 5th of 1993, what
12 were your duties and responsibility as a Deputy with
13 the Cumberland County?

14 A August the 5th, my duties as a Deputy was a
15 road patrol officer. I answered the calls that come
16 through the county, as far as traffic violence, so
17 forth, or as in the calls to where the public needed
18 assistance or so forth.

19 Q Were you assigned to a specific section of
20 Cumberland County?

21 A Yes, sir.

22 Q What area were you assigned to?

23 A The Highway 53 area which we call the other
24 side of the river.

25 Q Does that encompass I-95 as it goes through

1 Cumberland County?

2 A Yes, sir, I-95, Highway 24, so forth.

3 Q Is that area also encompass Downing Road
4 and McNeill Road?

5 A Yes, sir.

6 Q Are you familiar with those areas?

7 A Not real well, but I know where they are.

8 Q On August the 5th of 1993, were you
9 dispatched by the Cumberland County Sheriff's
10 Department communications office to an area off of
11 Downing Road and Maxwell Road area of eastern
12 Cumberland County?

13 A Yes, sir.

14 Q When you received that communication, were
15 you already in the general area or were you in
16 another part of -- some distance away?

17 A I was about eight to nine miles away.

18 Q The information that you received pursuant
19 to the communication, what was that?

20 A I received communications to go to the
21 location which was just indicated in reference to a
22 ten-sixty vehicle, which means suspicious, sitting in
23 the wooded area.

24 Q Were you given any other instructions in
25 that regard?

1 A Not at that time, no, sir.

2 Q And after receiving the communication, did
3 you go in the direction of that location?

4 A Yes, sir.

5 Q When you arrived in the area of Downing
6 Road and McNeill Road, can you describe that area for
7 us as it appeared that day?

8 A Well, it was still daylight and it was
9 sunny outside. It was a wooded location. When I
10 turned off the main portion of the road, it was dirt,
11 and there was just a few homes to the right, but the
12 area on the length of the dirt road was all wooded.

13 Q After you turned off the main portion of
14 the road, went down this dirt road, approximately how
15 far did you travel down this dirt road?

16 A Probably about three-tenths of a mile.

17 Q When you reached the end of this dirt road,
18 did you locate any person or persons at that time?

19 A Yes, sir, as I was pulling up, there was a
20 North Carolina State Highway Patrol sitting in front
21 of me.

22 Q Was there anyone in that car at the time?

23 A Yes, sir.

24 Q And when you arrived that day, did you
25 recognize anyone that was inside of that patrol

1 vehicle?

2 A None other than just the driver, which was
3 a highway patrolman, but not by name.

4 Q When you arrived at that location, did you
5 have a conversation with the trooper?

6 A Yes, sir.

7 Q What if anything was told to you at that
8 time?

9 A When I approached the highway patrolman, he
10 instructed me that there was a car in the wooded
11 area, and he informed me it was down a logging path
12 approximately -- to me it was 150 yards. He had
13 another subject sitting in the passenger seat with
14 him, but I didn't pay him much mind because they have
15 ride alongs sometimes.

16 Q What do you mean by ride along?

17 A Some people sometimes going through
18 criminal justice academy can sign up and ride with a
19 highway patrolman or law enforcement training.

20 Q Did you speak at all to the other
21 individual in the car?

22 A No, sir.

23 Q Did the trooper take you to where the car
24 was or did he point you in a direction to where the
25 car was?

1 A He gave me the location to where it was, he
2 didn't take me, no, sir.

3 Q At the time you first talked with the
4 trooper, did the trooper have anything in his
5 possession or in his car that was later given to you?

6 A As I was speaking to him, I could hear his
7 radio in his patrol car, which was Elizabethtown, him
8 and Elizabethtown was talking back and forth,
9 references to vehicle identification number. He also
10 had a leather bound pack, which was the owner's
11 manual of the car, which we were looking for.

12 Q Did he give you that leather pouch?

13 A Yes, sir, he gave it to me.

14 Q What if anything did you do with that pouch
15 once he gave it to you?

16 A Once he gave it to me, I asked him again
17 which direction the vehicle was in. He told me, and
18 I took the pouch with me up into the woods looking
19 for the vehicle.

20 Q What did you see when you walked into the
21 woods?

22 A I went approximately 150 yards, and I
23 located a vehicle to my left. It was sitting in a
24 clear spot just large enough for a car to fit in. It
25 was a maroon color, a Lexus, it was sitting flat on

1 the ground, no wheels were on it. The windows and
2 sun roof and all was broken out of it. It had a lot
3 of papers on the inside of it and papers on the
4 ground strowed about.

5 Q Had the trooper previously stated to you
6 who the owner of the car may have been?

7 A He stated to me that Elizabethtown informed
8 him that the car come back to a James Jordan, and he
9 informed me that it belonged to the Jordan family,
10 but to me, I didn't recall who that was.

11 THE COURT: Excuse me. You said
12 you didn't recall who that was. Can you
13 explain what you mean?

14 THE WITNESS: Yes, sir, to me
15 James Jordan was just like anybody else,
16 James Jordan. I didn't know it was Michael
17 Jordan's father.

18 BY MR. BRITT:

19 Q You did not associate the name James Jordan
20 with the basketball player Michael Jordan?

21 A No, sir.

22 Q When you walked into the woods to find the
23 car, do you know -- where was the trooper at that
24 time?

25 A Well, when I left him he was sitting at the

1 dead end portion of the road. When I returned he had
2 left, and the subject with him was gone also.

3 Q How long were you in the woods looking at
4 the car?

5 A Probably about 15 minutes.

6 Q Did you touch or remove anything from the
7 car?

8 A I looked inside the vehicle trying to find
9 the license plate for it, but I was unsuccessful. As
10 far as removing anything from it, no, sir. I only,
11 only the owner's manual which I was given by the
12 trooper.

13 Q After you first saw the car there in the
14 woods, did there come a time when you went back and
15 contacted the Sheriff's Department?

16 A Yes.

17 Q Why did you contact the Sheriff's
18 Department about the car in the woods?

19 A I recorded the VIN off of it while I was
20 there on a sheet of paper. I contacted the Sheriff's
21 Department to run the VIN for myself to see whom it
22 come back to on my own. It comes back to a James
23 Jordan. It can come down no 29s which means
24 stolen.

25 THE COURT: You you said no 29s

1 which means stolen.

2 THE WITNESS: Well, means it
3 wasn't stolen. 29 means stolen.

4 BY MR. BRITT:

5 Q Is 29 a code used by the Cumberland County
6 Sheriff's Department?

7 A Yes, sir.

8 Q What is that?

9 A Means it's stolen, but they come back no
10 29s.

11 Q And when you learned through your
12 communication that the car had not been reported
13 stolen, did you have any conversation with any
14 superior officer of yours as to what you should do
15 with the car?

16 A Yes, I left the location, went to a mobile
17 home to use a telephone. Called the Sheriff's
18 Department, spoke with desk sergeant. My lieutenant
19 at the time was in the desk sergeant's office. I
20 spoke to my lieutenant and instructed him to what I
21 had, type of vehicle I had, the condition it was in.
22 And he informed me, he asked me questions about, was
23 it on private property, and I told him yes. And I
24 told him it did not come back stolen. And he asked
25 me did it appear that it was used in any type of

1 crime. To me it appeared it had just been stripped,
2 not used in a crime. I told him no. He said that
3 the North Carolina state law --

4 MR. BOWEN: Object.

5 THE COURT: What is this being
6 offered for?

7 MR. BRITT: I want to explain his
8 conduct.

9 THE COURT: Limiting
10 instruction?

11 MR. BOWEN: Yes, sir.

12 THE COURT: Members of the jury,
13 any testimony to be elicited from the
14 witness now before you as to any statements
15 he contends were made to him by someone
16 else who has not testified as a witness at
17 this trial are not being offered for the
18 truth of the matters asserted, but are
19 being offered to explain the subsequent
20 conduct of this witness. And for the
21 limited purpose of considering that
22 evidence, for the purposes of explanation
23 of the subsequent conduct, then you may
24 consider the evidence to be adduced in that
25 regard, but you may not consider it for any

1 other purpose.

2 BY MR. BRITT:

3 Q What if anything did your superior officer
4 tell you in regard to any state statute and what you
5 were to do with that car?

6 A He instructed me the that the North
7 Carolina state law advised that any vehicle sitting
8 on private property has to be marked and left there
9 for five days. He informed me since the county does
10 not mark the vehicle, the Highway Patrol does, only
11 the owner of the land could have it towed. He
12 informed me to get all the information off the
13 vehicle that I could, bring it in, give it to the
14 desk sergeant at the end of the shift where they
15 could kept trying to contact the owner of the
16 vehicle, which I did.

17 THE COURT: Again, members of the
18 jury you may not consider any statements
19 testified to by the witness for the truth
20 of the matter asserted but only to explain
21 the subsequent conducts for the witness and
22 for that limited purpose only. Anything
23 further Mr. Bowen, Mr. Thompson?

24 MR. BOWEN: No, sir.

25 BY MR. BRITT:

1 Q When you were advised to get all that you
2 could in terms of information related to the owner of
3 the car, what did you do?

4 A I took the VIN which I had written down,
5 the owner's manual, which the highway patrolman gave
6 me, and everything that was in the owner's manual and
7 carried it to the desk sergeant at the end of the
8 shift and gave it to him.

9 Q Do you recall who that sergeant was?

10 A Sergeant Ron Nelson.

11 Q What time did you your shift end that day?

12 A 5:00 in the afternoon.

13 Q Did you make any attempts to inquire
14 further if the car had been reported stolen?

15 A No, sir, at the time I left, I had like 30
16 minutes before 5:00, I had another call to answer,
17 when I left the last call, they called us in.

18 Q On August the 5th of 1993, was that the
19 only contact that you had with the vehicle that you
20 discovered in the woods?

21 A The only contact that I had with it was
22 when the dispatcher sent me to it.

23 Q The pouch that the trooper gave you, did
24 you look inside that pouch at the items contained in
25 it?

1 A Just real briefly.

2 Q What if any items do you recall being in
3 the pouch at the time that you looked at it?

4 A Several forms of pieces of paper, had some
5 emblems off the Lexus, I believe the front emblem and
6 the rear emblem, the gold emblems off the Lexus.

7 Q Did you pick up any other items in the area
8 of the vehicle that may have been parts to the car?

9 A No, sir.

10 MR. BRITT: May I approach?

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q I'll show you what has been marked and
14 previously admitted as State's Exhibit 50, 51, and
15 ask you if you recognize the car that is depicted in
16 those photographs?

17 A Yes.

18 Q How is it that you recognize those cars
19 that are depicted in those photographs?

20 A That's the car that was sitting in the
21 wooded area when I arrived, other than the wheels it
22 had no wheels when I saw it.

23 Q Other than the photograph showing the
24 wheels on the car on it, at the time you saw the car
25 there were no wheels on it, is that correct?

1 A Yes, that's correct.

2 Q Is the car depicted in the photographs in
3 substantially the same condition it was in at the
4 time that you saw it on August the 5th of 1993?

5 A Yes, sir.

6 Q I'll show you what has been marked as
7 State's Exhibit 52, ask you if you can identify that?

8 A Yes, sir, it's the pouch which the North
9 Carolina highway patrolman gave me when I arrived.

10 Q Is that the pouch that you turned over to
11 your desk sergeant at the end of your shift, August
12 the 5th 1993?

13 A Yes, it is.

14 Q Is the pouch itself in substantially the
15 same condition as it was in when you last saw it on
16 August the 5th of 1993?

17 A Yes, sir, it is.

18 Q I'll open State's Exhibit Number 52, ask
19 you to look at the contents that are contained inside
20 of it. Do you recognize any of the items contained
21 inside it?

22 A Yes, sir, the two emblems.

23 Q When you say the two emblems, you're
24 referring to an emblem that spells the word Lexus?

25 A Yes, sir, and it's the decal for some other

1 Lexus come off the front.

2 Q Decal is a gold colored oval or elongated
3 shape which appears to be some type of letter?

4 A Yes.

5 Q Similar to the shape of L?

6 A Yes, sir.

7 Q And do those items that you recognize
8 inside the pouch appear to be in the same condition
9 they were in when you last saw them on August the 5th
10 of 1993?

11 A Yes, sir.

12 Q You testified a moment ago that you were
13 asked if the car had been used in a crime?

14 A Yes, sir.

15 Q Do you recall the answer that you gave?

16 A Yes, sir.

17 Q Your answer was what?

18 A My answer was it did not appear to be. It
19 appeared to just have been vandalized or stripped.

20 Q When you were asked if the car had been
21 used in a crime, how did you interpret that question?

22 A If it had been used as far as like robbing
23 a bank or so forth, that's what I interpreted it as a
24 crime.

25 Q And you informed your superiors that the

1 car had been stripped?

2 A Yes, sir.

3 Q On August the 6th of 1993, did you make any
4 inquiry as to the car?

5 A No, sir, when I returned off of August the
6 5th, end of my shift, I was off for three days.

7 MR. BRITT: I don't have any
8 other questions.

9 THE COURT: Any
10 cross-examination?

11 MR. BOWEN: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. BOWEN:

14 Q Officer Williams, how familiar are you with
15 cars, that is, with nice import cars such as Lexus?

16 A Very well, I knew how much it costs.

17 Q So when you first saw this vehicle, did you
18 have some idea of how new it was?

19 A Yes, sir.

20 Q Can you tell about the model year of the
21 car or the exact model year by looking at it?

22 A Yes, sir.

23 Q And you say that you're familiar enough
24 that you knew what it costs?

25 A Yes, sir.

1 Q Costs a lot of money to you, didn't it?

2 A Yes, sir.

3 Q And that value had been significantly
4 deteriorated by the stripping process that you
5 described, didn't it?

6 A Yes, sir.

7 Q In your mind, you certainly wouldn't have
8 expected an owner to do that to his Lexus, would you?

9 A That's true.

10 Q And when you looked at that situation of
11 the car out there in the woods and the circumstances
12 that it was in, you concluded that somebody had taken
13 that vehicle and vandalized it and stripped it,
14 didn't you?

15 A Yes, sir.

16 Q And at least in your mind, that was a crime
17 in which it was involved, that is, it itself had been
18 probably stolen, and probably vandalized or stripped?

19 A Not in my mind at that time, no, sir.

20 Q Well, under what circumstances did you
21 think or did you suspect, if you did, that that car
22 had gotten there?

23 MR. BRITT: Objection.

24 THE COURT: Calls for speculation
25 and conclusion or conjecture, the objection

1 is sustained.

2 BY MR. BOWEN:

3 Q So you did not form an opinion as to
4 whether that car had been the object of a crime?

5 MR. BRITT: Objection -- I'll
6 withdraw.

7 THE COURT: You may answer.

8 THE WITNESS: Not a crime in the
9 way you're putting it, no, sir.

10 BY MR. BOWEN:

11 Q Well, stripping parts off of a very
12 expensive Lexus automobile would certainly be a
13 crime, would it not?

14 A Yes, sir, but it did not come back stolen.

15 Q I understand. But often there is a time
16 delay between the reporting of a stolen car and the
17 actual fact of its being stolen, isn't that true?

18 A Yes, sir.

19 Q And as you've testified earlier, you
20 certainly wouldn't have expected an owner to place
21 that car out there in that condition, would you?

22 A No, sir, I wouldn't expect the owner to put
23 it there like that, no, sir.

24 Q So then you simply reported to your
25 superiors that the automobile, the Lexus automobile

1 which you saw out there had in your opinion been
2 stripped, correct?

3 A Yes, sir.

4 Q And been abandoned, did you say that?

5 A Yes, sir, I believe so.

6 Q And did you have any -- form any opinion as
7 to how long it had been there?

8 A My opinion of how long it had been there
9 was a day or so.

10 Q On what do you base that opinion?

11 A When I saw it, it had no rust on it as far
12 as to wheels being removed on the brake drum.

13 Q Do you know how long it takes to form rust?

14 A No, sir, not right offhand, no.

15 Q Now, when you went there, you were off, you
16 were answering a call, a radio dispatch, is that
17 correct?

18 A That's correct.

19 Q And you were expecting to meet an
20 individual by the name of Mr. Jones there, who had
21 made a report, is that correct?

22 A Yes, sir, Chris Jones.

23 Q When you got there, you saw Mr. Battle, the
24 highway patrolman?

25 A Yes, sir.

1 Q And he had with him a person who you
2 assumed to be a rider?

3 A Yes, sir.

4 Q Did you later learn that was in fact
5 Mr. Jones?

6 A No, sir, not until today.

7 Q And in your conversation with Trooper
8 Battle, did you ever inquire of the whereabouts of
9 Mr. Jones?

10 A No, sir.

11 Q So then you never actually got to talk to
12 the man who reported the call, correct?

13 A No, sir.

14 Q And you made no effort to do that?

15 A No, sir.

16 Q But then you went on past Trooper Battle
17 and went on and took a look for yourself and you
18 stayed around the scene of the car about how long?

19 A 15 minutes.

20 Q And you say it was getting fairly close to
21 5:00?

22 A About 45 minutes before 5:00, yes, sir.

23 Q And you had one more call to do before you
24 quit that day?

25 A Yes, sir.

1 Q But you did, having look at the car, you
2 did report back what you had seen, is that right?

3 A Yes, sir, to my Lieutenant.

4 Q And that's when your superior told you that
5 the car would have to be left right where it was?

6 A For five days, until it was marked, yes,
7 sir.

8 Q You made it clear to him that in your
9 opinion that car had been stripped and vandalized?

10 A Yes, sir.

11 Q And you furnished him the VIN number of
12 that car?

13 A Yes, sir.

14 Q And it was your information that the
15 Fayetteville -- that the Cumberland County Sheriff's
16 Department determined an owner of that car, is that
17 correct?

18 A From the VIN number, yes, sir.

19 Q To your knowledge, did they make any effort
20 to contact that person?

21 A Yes, sir.

22 Q You knew it was James Jordan but at the
23 time that didn't mean anything to you?

24 A Right, yes, sir.

25 Q And you know that they tried to contact

1 that individual?

2 A The desk sergeant did, sir, yes, sir.

3 Q You heard no more about it?

4 A No more.

5 Q And the Lieutenant's name --

6 A Sarchet.

7 Q I'm sorry?

8 A His name is Lieutenant Sarchet.

9 Q And he was the person who was trying to
10 contact the Jordan family?

11 A No, sir, the desk sergeant that runs the
12 D C I machine.

13 Q Would you please spell Sarchet for the
14 court reporter, if you know?

15 MR. BRITT: It's in his
16 statement.

17 MR. BOWEN: All right.

18 THE COURT: Somebody spell it for
19 the court reporter.

20 MR. BRITT: S A R C A T T.

21 BY MR. BOWEN:

22 Q Did you ever find out whose land it was,
23 that is, to ascertain who was reporting to Officer
24 Sarchet would have had the authority the cause the
25 car to be moved?

1 A No, sir, I didn't.

2 Q Well, so you don't know if the owner was,
3 to your knowledge, the owner was never contacted, of
4 the land that is?

5 A To my knowledge, yes.

6 Q But the last word you got is that that was
7 the individual that could have caused the vehicle to
8 be moved and stored or whatever?

9 A That's true.

10 Q Did your superior tell you not to try to
11 ascertain who owned the land?

12 A No, sir.

13 Q Now, did somebody else take over at 5:00
14 when your shift ends, in that area of the county?

15 A Yes, sir.

16 Q Who was that person?

17 A I have no idea, sir.

18 Q You do not have any communication with the
19 person who takes over as you're going off the shift,
20 if you're in the middle of an investigation?

21 A That zone which I was working that day was
22 not actually the zone that I was assigned to. The
23 person that was assigned to that zone was out sick,
24 so we covered more than one zone that day.

25 Q So you don't know or you didn't know at the

1 time who was to take up the official duties in that
2 zone after you were off?

3 A After I was off, our county, when we do
4 reports as far as vehicles being stolen or so forth,
5 that's the road patrol officer, that's his only
6 duty. He takes a report, fills it out, turns the
7 information in, and then it goes to the detectives
8 that are the investigators.

9 Q Well, would you say that your investigation
10 was complete when it came to be just before 5:00 and
11 you had to go on to your next call and then be
12 through for the day?

13 MR. BRITT: Objection, assumes he
14 conducted an investigation.

15 THE COURT: Overruled. You may
16 answer.

17 THE WITNESS: At that time my
18 Lieutenant instructed me to get all the
19 information off the vehicle which I could,
20 to further see if we could notify the
21 owner. I done as I was instructed and I
22 left the scene, yes.

23 BY MR. BOWEN:

24 Q And you asked no one or your superior to
25 try to follow up and ascertain the owner of the land?

1 A No, sir, I didn't.

2 Q Does Officer Sarchet still work with the
3 department, sir?

4 A Yes, sir, he's still a Lieutenant.

5 Q So your written report of all of these
6 matters and things that you've described here in your
7 testimony, that report went to the detective division
8 at the Cumberland County Sheriff's Department, is
9 that your testimony?

10 A Yes, sir, I believe so.

11 Q Do you have that report?

12 A I've got a written statement which I've
13 turned in. As far as the field report, no, sir.

14 Q What became of the field report?

15 A Once I turned it in to the records room, I
16 have no idea where it goes.

17 Q Do you have that report that you made from
18 the field notes with you?

19 A I've got a copy of a written statement I
20 made.

21 Q Is that with you there on the stand?

22 A Yes, sir, I have that.

23 Q Have you used that report as the basis on
24 which to give your testimony here in court today?

25 A I used it to refresh my memory as far as

1 giving my testimony here today, yes.

2 Q May I see your report?

3 A Yes.

4 MR. BOWEN: May I approach, Your
5 Honor?

6 THE COURT: Yes.

7 (Defense Exhibit 8 was
8 marked for identification.)

9 BY MR. BOWEN:

10 Q Officer Williams, you earlier testified
11 that after you had looked over the scene of the Lexus
12 automobile, that you had about 30 minutes left to go
13 on your shift and you had another call to make, is
14 that correct?

15 A Yes, sir.

16 Q And you said that you had arrived at the
17 scene at about, oh, 4:15, something like that, 4:20?

18 A I arrived at the scene at 4:24.

19 Q And you departed the scene at what time
20 according to your notes there?

21 A 4:30, 4:31.

22 Q So how long earlier did you testify that
23 you were around looking at the area?

24 A I was around the vehicle for about 15
25 minutes.

1 Q Well, now, how can you get there at 4:24?

2 A Correction.

3 Q And leave at --

4 A The time I have here was the time I
5 received the call.

6 Q Yes, sir.

7 A And the ending time is the time I arrived
8 at the scene, it took seven minutes.

9 Q So you got there at 4:31?

10 A Right.

11 Q So then you spent about 15 more minutes, is
12 that right?

13 A Yes, sir.

14 Q So there wasn't 30 minutes left to do your
15 other call, was there?

16 A Not if you go by this.

17 Q And about the pouch that you've identified
18 for Mr. Britt, did you take that pouch anywhere?

19 A I took it to the Law Enforcement Center.

20 Q Who did you turn it over to?

21 A To the Desk Sergeant Ron Mills.

22 Q You hadn't seen that again until today?

23 A Until today.

24 Q Did anybody ask you about that object or
25 talk to you about that within the Cumberland County

1 Sheriff's Department?

2 MR. BRITT: Objection.

3 THE COURT: Sustained as to form.

4 BY MR. BOWEN:

5 Q State's Exhibit Number 52, that would be
6 the pouch.

7 A Yes, sir.

8 Q Did anybody ask you any questions about
9 that pouch?

10 A No, sir.

11 Q Not between the date that you picked it up
12 and today?

13 A None other than bring it to the Law
14 Enforcement Center and give it to the desk sergeant.

15 Q You made no other efforts yourself to
16 ascertain or get in contact with the owner of that
17 vehicle, did you?

18 A I didn't, no, sir.

19 Q Where did you next see that vehicle, if you
20 did?

21 A The next time I saw it was in these
22 pictures he just showed me.

23 Q You never saw it at a salvage yard or an
24 automobile place?

25 A No, sir.

1 MR. BOWEN: That's all, sir.

2 THE COURT: Mr. Britt, anything
3 further?

4 MR. BRITT: No, sir.

5 THE COURT: May the witness be
6 released, folks?

7 MR. THOMPSON: Yes, sir.

8 THE COURT: You're free to go,
9 sir.

10 THE COURT: It's almost 25
11 until. Do we have those copies yet?

12 MR. BRITT: Yes, sir, they are
13 here.

14 THE COURT: Do you have another
15 witness you want to call?

16 MR. BRITT: Yes, sir.

17 THE COURT: How long is that
18 witness?

19 MR. BRITT: I don't anticipate it
20 being very long.

21 THE COURT: Why don't we go
22 through with direct examination.

23 MR. BRITT: Your Honor, at this
24 time we call Richard Crumpler.

25 RICHARD CRUMPLER,

1 being first duly sworn was examined and testified as
2 follows:

3 DIRECT EXAMINATION

4 THE COURT: If you'll take the
5 witness stand, please, sir. Please state
6 your full name.

7 THE WITNESS: Richard Crumpler.

8 THE COURT: Spell your first and
9 last name.

10 THE WITNESS: R I C H A R D,
11 C R U M P L E R.

12 BY MR. BRITT:

13 Q Where you do you work?

14 A Self-employed, I own a business in Stedman
15 Crumpler's Auto, Incorporated.

16 Q How long have you had that business?

17 A I've been there five years, been in
18 business 28 years.

19 Q As part of your business activities, do you
20 run a towing operation?

21 A Yes, sir.

22 Q And were you doing so back in August of
23 1993?

24 A Yes, sir.

25 Q Do you know Trooper Ray Battle?

1 A Yes, sir.

2 Q Did you have an occasion back on August the
3 6th of 1993, to see Mr. Battle there at your
4 business?

5 A Yes, sir.

6 Q And did you and Mr. Battle have any
7 conversation about a red Lexus automobile that was in
8 the woods in the area of McNeill Road in Cumberland
9 County?

10 A Yes, sir.

11 Q As a result of that conversation with
12 Mr. Battle, did you go with him to that location?

13 A Yes, sir.

14 Q What did you see when you went to that
15 location?

16 A A stripped Lexus sitting on the ground
17 there in the woods.

18 Q And after a while there, did you touch or
19 remove anything from the car?

20 A No, sir.

21 Q After you saw the car, did you and
22 Mr. Battle then leave and go to another location?

23 A Yes, sir.

24 Q Do you know Mr. Lawrence Hubbard?

25 A Yes, sir.

1 Q And on August the 6th of 1993, did you go
2 with Mr. Battle to Mr. Hubbard's residence?

3 A Yes, sir.

4 Q Was there a conversation there between
5 Mr. Battle and Mr. Hubbard?

6 A Yes, sir.

7 Q As a result of that conversation between
8 Mr. Battle and Mr. Hubbard, were any requests made of
9 you by Mr. Hubbard?

10 A Yes, he asked me to remove the vehicle off
11 his property.

12 Q August the 6th of 1993, did you do that?

13 A Yes, sir.

14 Q How did you remove the car from where it
15 was located?

16 A At that time I didn't have but two
17 wreckers, little one and a big one. I took the
18 little one. After I went with Mr. Battle up there, I
19 thought about taking a tractor up there and pulling
20 it out, we folded the mirrors back, put it back down
21 there in the woods, pull it out like a baccer drag,
22 hook the big one on it, put the dollies on it --

23 Q When you say you --

24 A We picked the front of it up where it was
25 at. The pine straw was about six or eight inches up

1 there inside. We hooked to it, slid it along --

2 THE COURT: You described

3 something else --

4 THE WITNESS: Pulled it out like
5 a baccar drag.

6 BY MR. BRITT:

7 Q How far did you have to pull it out of the
8 woods, Mr. Crumpler?

9 A I would say probably 150 yards or so.

10 Q After you got the car pulled out of the
11 woods what did you do with it in an attempt to get it
12 back to your shop?

13 A Pull dollies off it, hooked it to the
14 wrecker pulled it to the shop.

15 Q When you pulled the car to your shop where
16 did you put it on the grounds of your shop?

17 A As you go in the gate, I put it right next
18 to the station there, you could see it through the
19 fence there, in other words, my whole back lot is
20 fenced and all, but closest to the road.

21 Q And did you lock that fence during the day?

22 A No, sir.

23 Q Why is that fence not locked during the
24 day?

25 A Because I'm in and out of it all the time.

1 Q You lock it at night when you leave?

2 A Yes, sir.

3 Q Did you do anything in terms of covering
4 the car to the secure it any way other than place
5 it's inside the fence?

6 A No, sir.

7 Q After August the 6th of 1993, were there
8 individuals who came to your shop for the sole
9 purpose of looking at that car?

10 A Yes, sir, you could have sold tickets there
11 for a day or two.

12 Q And when people came to the shop, did they
13 actually go back inside the fenced area and go up to
14 the car?

15 A I would say a few did, but you would be
16 surprised people just standing there looking, I don't
17 know, crazy.

18 Q How long did the car stay at your shop?

19 A I'm thinking about six, eight days, I went
20 at night got it out for Sheriff's Department, six or
21 seven days.

22 Q You went and got it out for which Sheriff's
23 Department?

24 A Cumberland County.

25 Q What if anything did they do with it on

1 that day to your shop?

2 A They hooked it to Cumberland County
3 Sheriff's Department wrecker truck and took it to
4 Fayetteville, said they will put it inside there
5 somewhere.

6 Q Did you ever see the car again after it was
7 removed from your shop?

8 A No, sir.

9 MR. BRITT: I don't have any
10 other questions.

11 THE COURT: Any
12 cross-examination?

13 CROSS-EXAMINATION

14 BY MR. BOWEN:

15 Q Mr. Crumpler, you regularly pull in
16 vehicles at the request of the Cumberland County
17 Sheriff's Department, is that correct?

18 A Sheriff's Department and Highway Patrol.

19 Q And you have an impound there that has a
20 fence around it?

21 A Yes, sir.

22 Q And on this occasion, with regard to this
23 car, did anybody from the Cumberland County Sheriff's
24 Department ever ask you to handle this car in any
25 special way?

1 MR. BRITT: Objection.

2 THE WITNESS: No, sir.

3 THE COURT: Overruled.

4 BY MR. BOWEN:

5 Q So then you put it back in your impound as
6 they had asked you to do, is that right?

7 A Well, I went and got it just like if I go
8 pick one up in the parking lot, you tell me to take
9 it and put it in my place, I'll carry it there.

10 Q People were able to look through the gates
11 and look at it and so forth?

12 A Yes, sir.

13 Q At the time it was back in your impound, it
14 didn't have any glass in part of it, did it?

15 A No, sir, best I know the back glass knocked
16 out, the T top or the sun roof tore out of it.

17 Q Obviously you didn't have personnel
18 standing there watching these folks that were coming
19 and going viewing the car, did you?

20 A No, sir, you don't get paid that much.

21 Q And Cumberland County Sheriff's Department
22 didn't have anybody out there looking at the car or
23 guarding it, did they?

24 A Never seen not one person out there until
25 that night they called me to go down there.

1 Q Now, do you lock your gates at night and
2 they open in the daytime or how does that work?

3 A I lock them up 6:00 in the evening, open up
4 at 5:00 in the morning.

5 Q So folks walk in and out --

6 A That's the way I go in and out any garage
7 area.

8 Q Did you have an opinion as to what year
9 model that Lexus automobile was?

10 A Yes, sir.

11 Q What was your opinion?

12 A It was either stolen or had to be stolen to
13 put in the woods like that.

14 Q Okay. Didn't have any tires on it when you
15 saw it, right?

16 A No, sir.

17 Q Did you look around inside the automobile?

18 A No, sir. Oh, I might have looked at it,
19 but I didn't look at it that much, I didn't care.

20 Q If you looked in it, nothing that you saw
21 in there appeared to be blood, is that correct?

22 A No, sir.

23 Q Did you see anything unusual when you first
24 got to the car that looked like a bullet?

25 A No, sir.

1 Q Had it already, when you went out and
2 got -- Mr. Hubbard, he was the person that owned the
3 land on which the car was found, is that correct?

4 A Yes, sir.

5 Q You knew Mr. Hubbard out there in the area?

6 A Been knowing him all my life. In fact, his
7 wife done work at the bank there. She retired, she
8 done 90 percent of my work for me.

9 Q So it wasn't difficult to find out out
10 there in the community who owned that piece of
11 property?

12 A No, sir.

13 Q And Mr. Hubbard readily gave you permission
14 to move --

15 A He asked -- best I can remember, the way
16 the conversation went, he told me, he said Richard, I
17 want you to move it off my property, best I can
18 remember how it went that night, or that evening down
19 there.

20 Q So you don't -- strike that. When the law
21 enforcement officers, I believe from the Cumberland
22 County, when they finally took custody of the
23 automobile, the Lexus automobile, did they give you
24 any kind of receipt or paperwork, sir?

25 A No, sir, I give -- no, I didn't get nothing

1 then. They called down there three our four days
2 later, wanted me to send them a bill, or might have
3 been longer than that. I told them I didn't have
4 time, I said you out riding around, send one down.
5 That's what they did, I never heard nothing further.

6 Q So they never gave you any paperwork, is
7 that right?

8 A No, sir.

9 MR. BOWEN: That's all.

10 THE COURT: Mr. Britt?

11 MR. BRITT: No other questions.

12 THE COURT: May Mr. Crumpler be
13 released, sir?

14 MR. THOMPSON: Yes, sir.

15 THE COURT: Thank you, sir,
16 you're free to go.

17 THE COURT: We're going to take a
18 break at this time. Ladies and gentlemen
19 of the jury we're going to be at recess
20 until five after, clock on the far wall.
21 Please recall it is your duty to abide by
22 all instructions of the Court during this
23 break.

24 Please remain seated, all members of
25 the jury are excused.

1 (Brief recess.)

2 THE COURT: Let the record
3 reflect all counsel are present, the
4 defendant is present in open court. Mr.
5 Horne, are all members of the jury secured
6 in the jury room?

7 THE BAILIFF: Yes, sir, they are.

8 THE COURT: Mr. Britt, I see you
9 have the copies in hand at this time.

10 MR. BRITT: Yes, sir, I'm
11 counting to make sure they are all here. .

12 There's 16 copies, I've removed one.

13 THE COURT: Is it your intent to
14 publish State's Exhibit 54 once the jury
15 comes back in?

16 MR. BRITT: Yes, sir.

17 MR. THOMPSON: I don't intend to
18 look through all of them, Your Honor, I
19 just want to see one.

20 MR. BRITT: Do you want to
21 examine them?

22 THE COURT: If you'll bring the
23 jury in, please, Mr. Horne.

24 (Jury in at 4:09 p.m.)

25 THE COURT: Mr. Britt.

1 MR. BRITT: Your Honor, at this
2 time I ask that State's Exhibit Number 54,
3 the title history, be published to the
4 jury.

5 THE COURT: Yes, sir. Mr.
6 Horne.

7 Ladies and gentlemen of the jury,
8 please recall it is my instruction, you are
9 to examine any exhibit given to you
10 individually, carefully and without any
11 comment.

12 Folks, so we will know that you have
13 completed, please take whatever time you
14 need, the examination of the exhibit now
15 being given to you. Those of you in the
16 back row, once you have completely reviewed
17 the exhibit, please pass them up to the
18 individual in the front row.

19 Mr. Horne, as the document is passed
20 from the back row to the front row, if
21 you'll retrieve those documents. If those
22 of you have completed them, please
23 indicate, Mr. Horne will pick up the
24 documents. Mr. Horne?

25 Thank you, sir.

1 Mr. Britt.

2 MR. BRITT: Your Honor, at this
3 time the State would Eric Autry.

4 THE COURT: If you'll come up and
5 be sworn, sir

6 ERIC AUTRY,
7 being first duly sworn was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 THE COURT: Please state your
11 full name for the record, sir.

12 THE WITNESS: Eric Autry.

13 THE COURT: Spell your first and
14 last name.

15 THE WITNESS: E R I C, A U T R
16 Y.

17 BY MR. BRITT:

18 Q Where do you live?

19 A Stedman, North Carolina.

20 Q Where is Stedman, North Carolina located in
21 relation to Fayetteville?

22 A Approximately 12 miles down east, Highway
23 24.

24 Q How long have you lived at Stedman, North
25 Carolina?

1 A All my life.

2 Q Are you familiar with --

3 THE COURT: If you could keep
4 your voice raised so all members of the
5 jury can hear you, please.

6 BY MR. BRITT:

7 Q Are you familiar with a business known as
8 Crumpler's Garage?

9 A Yes, sir.

10 Q What do you do for a living?

11 A I work at at Reed-Lallier Chevrolet and
12 dealership.

13 Q How long have you worked?

14 A There about four years.

15 Q What do you do there?

16 A I'm a service technician.

17 Q Would you state again the name of the
18 company you work for?

19 A R E E D dash L A L L I E R.

20 THE COURT: Thank you, sir.

21 BY MR. BRITT:

22 Q On August the 7th of 1993, Mr. Autry, did
23 you have an occasion to go to Crumpler's Garage there
24 in Stedman?

25 A Yes, sir.

1 Q Who did you go there with?

2 A A friend of mine named James Fisher.

3 Q And for what purpose did you go to
4 Crumpler's Garage on August the 7th of 1993?

5 A The main reason was to pick up my brother's
6 car which was there, having worked on to have it
7 repaired.

8 Q Did you go for any other reason?

9 A No, well, yes, sir, a friend, James had
10 told me that they had a car also that was towed in
11 there that he said he had heard was registered or
12 owned by Michael Jordan.

13 Q And when you went to Crumpler's Garage on
14 August the 7th of 1993, -- strike that.

15 Prior to going to Crumpler's, had you been
16 told what type of car it was?

17 A He told me it was a Lexus, I think.

18 Q When you went to Crumpler's Garage on
19 August of 1993, did you see a Lexus automobile of any
20 kind at Crumpler's?

21 A Yes, sir.

22 Q Where did you see this Lexus automobile?

23 A It was -- actually went into the shop to
24 talk to Richard or his son Rich, which I -- one of
25 the two, and then I think me and James walked through

1 the shop, through to the back lot, and saw, I saw the
2 car. As you walk behind the shop and go to your
3 right, the car was on your right.

4 Q What color do you recall that car bag
5 being?

6 A Burgandy reddish color.

7 Q May I approach?

8 THE COURT: Yes, sir.

9 BY MR. BRITT:

10 Q I'll show you what has been marked as
11 State's Exhibit 50, and 51, a photograph. Do you
12 recognize the car that is depicted in that
13 photograph?

14 A Yes, sir.

15 Q And is that the car that you saw at
16 Crumpler's Garage?

17 A Looks like it, other than the wheels on it,
18 it didn't have any wheels on it.

19 Q When you saw the car at Crumpler's Garage
20 were there any tires or wheels on the car?

21 A No, sir.

22 THE COURT: Apologize, the folks
23 on the far end are having difficulty
24 hearing you. If you'll keep your voice
25 raised.

1 BY MR. BRITT:

2 Q When you saw the car at Crumpler's Garage,
3 did it have any wheels or tires on it?

4 A No, sir.

5 Q Were there any windows on the car that was
6 broken out?

7 A From what I can recall, the sun roof was
8 busted out and the back window was busted out.

9 Q And there at Crumpler's, when you walked
10 into the back lot, did you go over to where the car
11 was?

12 A Yes, sir.

13 Q Did you open the car?

14 A Opened the driver's side door.

15 Q Why did you open the driver's side door of
16 the car?

17 A Just to look in the vehicle.

18 Q When you looked around inside the car, what
19 you did you see?

20 A Well, just when I opened the door and
21 looked in, I didn't see anything except for a couple
22 of papers, I think, laying here and there.

23 Q And did you touch or move those papers that
24 you saw?

25 A I think I picked up one paper that was

1 laying in the back seat, on the top of the back seat,
2 and I think it was a gas receipt or something.

3 Q And at the time you opened the door to the
4 car, this was a two-door car?

5 A Yes, sir.

6 Q Did it have bucket seats?

7 A Yes, sir.

8 Q Did you move the seats in any way after you
9 moved opened the car, the car door?

10 A I believe I leaned the driver's seat back
11 forward to look into the back seat and then the
12 floorboard.

13 Q So that I'm clear, you leaned a portion of
14 the driver's seat forward?

15 A Yes, sir.

16 Q Which portion of the seat was that?

17 A The back of the seat.

18 Q Where your back would rest if you were
19 sitting in the seat?

20 A Yes, sir.

21 Q And when you leaned that portion of the
22 seat forward, did you discover anything?

23 A I could see then from, you know, plainer
24 view, I can see into the passenger side floorboard
25 for the rear seat that there was a bullet laying in

1 the floorboard.

2 Q Can you describe that bullet that you saw?

3 A To the best of my knowledge, it was a
4 silver casing bullet that had looked like it hadn't
5 been fired. The lead was still in it.

6 THE COURT: I'm sorry, you said
7 it did or did not?

8 THE WITNESS: Did not look like
9 it had been fired.

10 BY MR. BRITT:

11 Q Are you familiar with guns?

12 A Not much.

13 Q When you saw that bullet on the floor of
14 the car, what did you do?

15 A I picked it up.

16 Q Why did you pick it up?

17 A Out of curiosity, I guess, to see what it
18 was.

19 Q And what did you do with that bullet after
20 you picked it up?

21 A I picked it up and looked at it, and I
22 think -- I think my friend James was standing outside
23 the car, I think I leaned out of the car and showed
24 it to him, said hey, look what I found,, and then I
25 think I haphazardly, wasn't thinking, just stuck it

1 in my pocket.

2 Q After you put the bullet in your pocket,
3 did you ever return the bullet to the interior of the
4 car?

5 A No, sir.

6 Q How long did you stay there at Crumpler's
7 after that?

8 A Probably another ten minutes at the most.

9 Q What if anything did you do with the bullet
10 that you had taken out of the car?

11 A It stayed any my pocket, I didn't think
12 nothing else about it.

13 Q When you went home that evening, was the
14 bullet still in your pants pocket?

15 A Yes, sir.

16 Q What if anything did you do with that
17 bullet when you got home that night?

18 A When I got ready to go to bed that night,
19 when I emptied my pockets, that's what I took it out
20 and put it on the dresser in the living room.

21 Q After you placed it on the dresser in the
22 bedroom of your house, did you ever remove it from
23 there?

24 A Not until approximately four or five days
25 later, I think.

1 Q And what if anything caused you to go back
2 and remove that bullet from your dresser?

3 A Well, at the time, I knew nothing of it and
4 the car had probably been stolen or something, I
5 didn't know, and then a few days later, I heard that
6 James Jordan was -- Michael Jordan's father.

7 MR. BOWEN: Object.

8 THE COURT: Is this being
9 offered --

10 MR. BRITT: Explain the
11 subsequent conduct.

12 THE COURT: Members of the jury,
13 the testimony now being elicited from Mr.
14 Autry as to any information which may have
15 come to his attention outside of this
16 courtroom is not being offered for the
17 truth of the matters asserted, but simply
18 to explain the subsequent conduct of Mr.
19 Autry. You may consider it for that
20 limited purpose and for no other purpose.
21 Anything further?

22 MR. BOWEN: No, sir.

23 THE COURT: Repeat your question,
24 sir.

25 BY MR. BRITT:

1 Q What if anything caused you to go back and
2 remove that bullet from your dresser?

3 A I had heard, approximately, I think it was
4 a few days later afterwards, I heard that Michael
5 Jordan's father was missing, like that evening it was
6 later on in the evening, and then the next day, at
7 work, I had heard that they had found his dad's
8 body. And that -- then I heard that, I called my
9 girlfriend, my wife at the time, she worked at a
10 bank, and the FBI was in the same building that she
11 worked in. And she sort of knew one of the FBI guys
12 that used to come down to the bank. And she was a
13 teller.

14 And I called her and asked her to call the
15 FBI agent, whoever he was, and ask him, tell him what
16 I had found in the car and that I had it, and that if
17 I needed to bring it in for any reason.

18 Q And after you heard that Michael Jordan's
19 father had been found dead, did you look at the
20 bullet in comparing any information that you had
21 heard in regard to his dad?

22 A I think actually my younger brother was at
23 home that day when it was announced that his daddy
24 had been found dead, Michael Jordan's dad, and I
25 think he knew that I had --

1 MR. BOWEN: Object.

2 THE COURT: Objection at this
3 point is stained.

4 BY MR. BRITT:

5 Q Did you do anything with the bullet based
6 on any information that your brother gave you?

7 A My brother --

8 MR. BOWEN: Object.

9 THE COURT: You can't refer to
10 any conversation, but as a result of any
11 conversation you had with your brother,
12 what did you do?

13 THE WITNESS: That's when I had
14 called my wife and told her to contact the
15 FBI agent to see if I needed to bring the
16 bullet in.

17 BY MR. BRITT:

18 Q And the bullet that you had, do you know
19 what caliber bullet it was that you found in the
20 floorboard of that car?

21 MR. BOWEN: Object.

22 THE COURT: If you know of your
23 own personal knowledge you may answer. If
24 you don't, let us know that.

25 THE WITNESS: I remember reading

1 the shell of the casing or the bullet, and
2 it said point three eight caliber.

3 BY MR. BRITT:

4 Q And what if anything did you do with that
5 bullet that you found in the floor of that car?

6 A When?

7 Q After -- did there come a time when you met
8 with a special agent of the FBI by the name of John
9 Strong?

10 A Yes, sir. I believe it was the same day
11 of, I think, that my wife contacted him and he told
12 me to bring it in. I believe it was the same day.
13 Then I took it to him.

14 Q Did you go to the FBI office in
15 Fayetteville, North Carolina?

16 A Yes, sir.

17 Q Did you give Mr. Strong anything while you
18 were there at the FBI office in Fayetteville?

19 A The bullet.

20 Q Did you see what if anything Mr. Strong did
21 with that bullet after you gave it to him?

22 A Best of my knowledge, I think he put it in
23 a little small pouch or like a --

24 MR. BOWEN: Object, unless he saw
25 it.

1 THE COURT: That hasn't been
2 established, but even if it has, there's an
3 argument that it asserts conduct, and it is
4 therefore hearsay, so the objection is
5 sustained.

6 MR. BRITT: I don't have any
7 other questions.

8 MR. BOWEN: Motion to strike.

9 THE COURT: Allowed.

10 MR. BOWEN: Request instruction.

11 THE COURT: Members of the jury,
12 you are to disregard the testimony of Mr.
13 Autry as to what he believed someone else
14 may have done.

15 MR. BRITT: No other questions.

16 THE COURT: Any cross-examination?

17 CROSS-EXAMINATION

18 BY MR. BOWEN:

19 Q When you first saw the Lexus automobile,
20 you say it was out at Mr. Crumpler's place, is that
21 right?

22 A Yes, sir.

23 Q Were you there in the daytime or nighttime?

24 A It was daytime, later on, it was after
25 lunch, I believe.

1 Q And the gates to Mr. Crumpler's impound
2 where the fence surrounds, those gates were open,
3 were they not?

4 A I'm pretty sure the gate to his business
5 was open, but I entered actually through the shop,
6 through the back door.

7 Q So that was another way by which you could
8 get back into the impound, is that right?

9 A Yes, sir, through the shop.

10 Q There were a number of cars back in that
11 area in addition to the Lexus, is that correct?

12 A Yes, sir.

13 Q Now, this Lexus automobile when you saw it
14 was not marked with any kind of sign or yellow tape
15 or anything designating it as police evidence,
16 correct?

17 A Not that I recall, sir.

18 Q Nobody told you not to go about the car,
19 not to open the car or look around or reach into it,
20 correct?

21 A No, sir.

22 Q And the car was unlocked, is that correct?

23 A Yes, sir.

24 Q Did you open the door?

25 A Yes, sir.

1 Q Now, in addition to that, the glass was
2 broken, is that correct?

3 A Not the door glass but the sun roof and the
4 back window were.

5 Q And I didn't mean to imply the door glass,
6 but there was some glass on the car that was broken
7 and some that was not, correct?

8 A Yes, sir.

9 Q So you opened the door and you say that you
10 pulled the front seat forward?

11 A Yes, sir.

12 Q And that was when you saw in the back
13 floorboard --

14 A Yes, sir.

15 Q -- behind the driver's seat --

16 A Behind the passenger seat.

17 Q I'm sorry, behind the passenger seat, this
18 bullet, is that right?

19 A Yes, sir.

20 Q Now you have no idea how that bullet got
21 there, do you?

22 A No, sir.

23 Q You have no idea how long that bullet had
24 been there?

25 A No, sir.

1 Q And it was your conclusion that the car was
2 stolen, is that right?

3 A It appeared to be that, you know, that it
4 might have been stolen.

5 Q And it had no tires on it when you saw it,
6 is that true?

7 A Yes, sir.

8 Q Can you tell the jury what the material
9 that the seats were made out of was?

10 A To the best of my knowledge, they were a
11 leather, like a vinyl leather.

12 Q Now, when you saw inside the car, it was
13 daylight, correct?

14 A Yes, sir.

15 Q And you were getting daylight through the
16 windows, some of which still had glass in them and
17 some did not, is that correct?

18 A Yes, sir.

19 Q You were also getting daylight through the
20 moon roof or sun roof above, is that correct?

21 A Yes, sir.

22 Q So you could see well inside that car,
23 couldn't you?

24 A Yes, sir, pretty much.

25 Q The tone of the seats, would you say the

1 seats and all of the material that made up the seats
2 and the arm rests and the material that was the
3 siding for the doors, can you tell the jury
4 approximately what color or what hue that was?

5 A I'm not sure what color other than I'm
6 almost positive it was a lighter color, it wasn't
7 anything dark.

8 Q Would you say that you looked at both the
9 back seats and the front seats thoroughly?

10 A I don't particularly remember just looking
11 at the seats, but I remember, you know, seeing glass
12 in the seats and in the floorboard.

13 Q Now, did you see anything that looked like
14 blood or any type of bodily fluid in that car
15 anywhere?

16 A No, sir.

17 Q Now, was the bullet where it was there
18 behind the passenger seat in the back floorboard,
19 were there other objects around it, such as glass or
20 was it pretty much by itself on the floor?

21 A There was glass also in the floorboard
22 there.

23 Q Now then, you picked up the bullet in your
24 fingers, right?

25 A Yes, sir.

1 Q You didn't have on any kind of gloves or
2 anything, did you?

3 A No, sir.

4 Q And then you picked up the bullet and then
5 you cupped the bullet in your hand, didn't you?

6 A Yes, sir.

7 Q And after that you put the bullet in your
8 pocket?

9 A After showing it to a friend of mine that
10 was standing around me, I think I did, yes, sir.

11 Q And then after a while you went home and at
12 home you pulled the bullet out of your pockets, is
13 that right?

14 A Yes, sir.

15 Q And you had it fully cupped in your hand at
16 that time, didn't you?

17 A It was in my hand, whether it was fully
18 cupped, I don't know.

19 Q Did you touch it at least with two fingers
20 in order to move it around?

21 A Yes, sir.

22 Q In other words, you made no efforts to
23 preserve any prints that might have been on that
24 bullet, did you?

25 A Not at that time.

1 Q You used your fingers to set it up on your
2 dresser, is that right?

3 A Yes, sir.

4 Q It stayed on your dresser, how long?

5 A Approximately three or four days, however
6 long it was until I contacted the FBI agent.

7 Q And it appeared to you to stay on your
8 dresser in pretty much the same place, didn't it?

9 A Yes, sir.

10 Q How many in your household, sir, or were
11 there at that time?

12 A Older brother, younger brother, and my
13 mother and father.

14 Q So who if anyone, may have -- you didn't
15 stay right around that bullet the whole time during
16 that three or four days?

17 A No, sir.

18 Q Who else might have picked it up, you don't
19 know, do you?

20 A My younger brother stayed in the same room
21 with me, he was the only one that I could think would
22 have touch it other than me.

23 Q You don't know of your own knowledge, that
24 is, from seeing it, whether he picked it up, do you?

25 A I'm pretty sure he did because he told me

1 that he had went and looked at it after he heard the
2 TV broadcast about it.

3 Q So he probably did pick it up?

4 A Probably so.

5 Q And he didn't make any precautions, to your
6 knowledge, to keep intact any prints or any markings
7 on there that might be useful in identification?

8 A Not to my knowledge.

9 Q And then when you were contacted by Agent
10 Strong, did you bring the bullet at his request or
11 did he come to see you?

12 A He told me to bring it to him, but to try
13 not to touch it anymore and to put it in a bag, a
14 plastic bag, which I did.

15 Q And then you turned it over to Agent Strong
16 and told him that which you -- pretty much what
17 you've told today, is that right?

18 A Yes, sir.

19 Q Did anybody give you permission to take
20 that bullet, sir?

21 A No, sir.

22 Q You said in your testimony, Mr. Autry, when
23 the District Attorney asked you if you knew or were
24 familiar with guns, you said not much, is that right?

25 A Yes, sir.

1 Q To your knowledge, are there any
2 handguns -- were there any handguns there in the
3 household where you lived at that particular time
4 when you had the bullet?

5 A My father, he owns a .22 handgun and a .32
6 caliber handgun I believe, and that's it.

7 Q So there were no .38 weapons there in the
8 house when you took that bullet home, is that right?

9 A No, sir.

10 Q What was your purpose for having that
11 bullet?

12 A I just picked it up out of car. I don't
13 see -- I didn't really actually mean to take it, but
14 when I stepped away from the car, you know, I just
15 didn't really think about taking it, putting it back
16 where I found it. I just put it in my pocket.

17 Q Now, you're absolutely sure that you found
18 that bullet in the back floorboard of the car,
19 correct?

20 A Yes, sir.

21 Q Behind the passenger's seat, not the
22 driver's seat, correct?

23 A Yes, sir.

24 Q Is your brother here in the courtroom, sir?

25 A No, sir.

1 MR. BOWEN: That's all.

2 THE COURT: Anything on redirect,
3 Mr. Britt.

4 MR. BRITT: No, sir.

5 THE COURT: May the witness be
6 released, folks?

7 MR. THOMPSON: Yes, sir.

8 THE COURT: Thank you, sir.
9 You're free to go.

10 We've got about 12 minutes, but I
11 think this is probably a good time to stop.

12 MR. BRITT: With the anticipated
13 length of my next two witnesses, I think
14 that's right.

15 THE COURT: Ladies and gentlemen
16 of the jury, I also have some information
17 to give you concerning our schedule
18 tomorrow. As I indicated to you, we
19 anticipate a short day tomorrow, but it has
20 come to, I think, everybody's attention
21 that the weather forecast for this evening
22 indicates that we may be in store for some
23 bad weather this evening and tomorrow
24 morning.

25 As I understand it, the forecast for

1 at least the Fayetteville/Cumberland County
2 area and to some extent the Robeson County
3 area predicts rain and/or ice and/or snow
4 this evening. Because we don't know what
5 the exact conditions will be, I'm going to
6 ask that you do the following:

7 Ms. Gaines is going to provide you
8 with a strip of paper containing the same
9 number which you were provided with during
10 the jury selection process in this case.

11 I'm going to ask that you call that
12 number beginning at 7:00 a.m. tomorrow
13 morning. Should the weather conditions
14 warrant it, a recorded message will be
15 available to you at that time indicating
16 that our status is no court tomorrow.

17 I suggest at 7:00 because otherwise,
18 you folks are directed to report at 9:00,
19 that's a two hour window. Hopefully that
20 will be enough time for everyone, and if
21 it's not, please feel free to let me know
22 that now. But with only 15 people calling
23 that number, I anticipate that all of you
24 will be able to access the number between
25 7:00 and 8:00 at the latest. That gives

1 you an hour leeway to make it to court if
2 conditions permit. Does that pose a
3 problem for anyone?

4 All right. The recorded message will
5 say one of two things. There will be no
6 court today because of weather conditions,
7 is one option, the other is there will be
8 court as scheduled between 9:00 and 1:00
9 p.m. And again that time period may vary.
10 Depending on what our situation is.

11 Any questions about those instructions
12 and that information? Ms. Gaines, if
13 you'll hand those strips to Mr. Horne at
14 this time.

15 Does everybody have a copy of the
16 number? Also for the purposes of your
17 information, and to the extent that I can
18 give you information regarding scheduling,
19 in advance I'll try to do so. One of the
20 reasons that we are intending to have a
21 short day tomorrow is that I have to go to
22 Raleigh. If weather conditions are bad,
23 I'm not going to Raleigh tomorrow
24 afternoon. That will necessitate me
25 rescheduling that for next Friday. So if

1 weather conditions are bad, and if we do
2 not have court tomorrow, then you can count
3 on us having a short day the following
4 Friday. And that would be Friday the
5 19th. Now, how long that day may be is
6 still in question. Yes, sir, do you have a
7 question about that?

8 JUROR: I'm saying if there's not
9 a problem, you mean we will be in session
10 all day tomorrow?

11 THE COURT: No, tomorrow's
12 schedule is firm. If we have court it's
13 going to be from 9:00 until 1:00, but if we
14 don't have court, because of the weather
15 conditions that will necessitate another
16 short day the following week. And that
17 will be somewhere in the time frame of 9:00
18 to 1:00 as well.

19 Did I confuse everybody? All right.

20 JUROR: No.

21 THE COURT: We're going to stop
22 at this point for the day. Please call the
23 number beginning at 7:00 a.m. tomorrow
24 morning.

25 JUROR: If we should come in

1 Tuesday, we come in at 9:30.

2 THE COURT: Yes, ma'am, that's
3 our plan at this time. And thank you for
4 bringing that up because I neglected to
5 mention that. We will start, if we do have
6 the short day tomorrow or regardless of
7 what our situation is right now, and keep
8 that number, if you will, because we don't
9 know what the weather conditions might be
10 on Tuesday. And it may be that another
11 option with regard to the recorded message
12 will be call back Tuesday morning at 7:00
13 a.m. So thank you for bringing that up.
14 And again, happy birthday.

15 Folks, we're going to stop at this
16 point. Please call the number as directed
17 tomorrow beginning at 7:00, and if
18 necessary, Tuesday, the 16th, at 7:00.

19 During the overnight recess, please
20 don't talk about the case among yourself or
21 with anyone else, including members of your
22 own families. Don't allow anyone to say
23 anything to you or in your presence about
24 this case. If anyone communicates about
25 this matter or attempts to do so, or anyone

1 if you, Mr. Thompson, Mr. Bowen will also
2 write your numbers on this card so I can
3 contact you folks as well. And I'm
4 grateful for the fact the State has given
5 me a long distance calling number.

6 For the court reporters, can I have
7 your number as well, sir so that I can
8 inform you what our status is or give you
9 Ms. Gaines --

10 (Off-the-record discussion.)

11 THE COURT: Anything further from
12 either counsel?

13 MR. BRITT: No, sir.

14 THE COURT: Have a good evening
15 folks. Hopefully we'll see you tomorrow.
16 Otherwise Tuesday, weather conditions
17 permitting.

18 THE BAILIFF: All rise, please.

19 (Court adjourned 4:55 p.m.)

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1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

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12 and

13 WOODBERRY A. BOWEN, Esq.
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15 P.O. Box 846
16 Lumberton, North Carolina 28359

17 (January 12, 1996. Proceedings in open court.)

18 THE COURT: Let the record
19 reflect all counsel are present, the
20 defendant is present in open court. Mr.
21 Horne, for the record, are all members of
22 the jury secured in the jury room.

23 THE BAILIFF: Yes, sir, they are.

24 THE COURT: Any matters from the
25 State before we continue with presentation
of the evidence?

MR. BRITT: No, sir.

1 THE COURT: Any matters from
2 counsel for the defendant?

3 MR. THOMPSON: No.

4 THE COURT: Mr. Horne, if you'll
5 bring the jury in, please, sir.

6 (Jury in at 9:01 a.m.)

7 THE COURT: Good morning ladies
8 and gentlemen of the jury.

9 I hope no one had difficulties in
10 getting here this morning.

11 Okay. Mr. Britt you may call your
12 next witness.

13 MR. BRITT: Your Honor, at this
14 time we call John Strong.

15 THE COURT: If you'll come up and
16 be sworn, please, sir. If you'll place
17 your left hand on the Bible raise your
18 right.

19 JOHN A. STRONG,
20 being first duly sworn was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 THE COURT: If you'll take the
24 witness stand, please. If you'll state
25 your full name for the record.

1 THE WITNESS: John A. Strong.

2 THE COURT: Spell your first and
3 last name.

4 THE WITNESS: J O H N,
5 S T R O N G.

6 BY MR. BRITT:

7 Q Mr. Strong, by whom are you employed?

8 A Federal Bureau of Investigation.

9 Q How long have you worked for the FBI?

10 A Six years.

11 Q Where are you presently stationed with the
12 FBI?

13 A Fayetteville.

14 Q In August of 1993, were you also stationed
15 in the Fayetteville office?

16 A Yes, I was.

17 Q In August of 1993, did you become involved
18 in the investigation surrounding the homicide of
19 James Jordan?

20 A Yes, I did.

21 Q In August of 1993, specifically on August
22 the 13th of 1993, did you have an occasion to meet
23 with one Eric Autry in your office at Fayetteville?

24 A Yes, sir, I did.

25 Q Who was present at that meeting between you

1 and Mr. Autry?

2 A I recall myself and Mr. Autry. He had
3 brought another person with him, but was not -- you
4 know, participating in the interview.

5 Q Prior to your meeting of August the 13th
6 with Mr. Autry, had you had any type of contact or
7 communication with him?

8 A I had spoken to him briefly on the phone, I
9 believe, but before that date, no, I had never it met
10 him before.

11 Q Did you request that he come to your office
12 in Fayetteville?

13 A Yes, I did.

14 Q Did you request that he bring an item with
15 him to your office on that day?

16 A Yes, I did.

17 Q What if any item did you request that
18 Mr. Autry bring with him to your office?

19 A I asked him to bring a .38 caliber round
20 which he had removed from an automobile.

21 Q And do you know specifically what
22 automobile the round had been removed from?

23 MR. BOWEN: Object.

24 THE COURT: For what purposes is
25 this being offered.

1 MR. BRITT: Corroboration.

2 THE COURT: Members of the jury,
3 the testimony now being elicited from the
4 witness before you, Mr. Strong, as to
5 statements Mr. Strong contends were made to
6 him by someone else are being offered not
7 for the truth of the -- I apologize. The
8 statements now being elicited from
9 Mr. Strong as to statements Mr. Strong
10 contends were made to him by the prior
11 State's witness, Mr. Autry, are being
12 offered for the limited purposes of
13 corroboration.

14 Now, as I previously explained to you,
15 the term corroboration means adds, tending
16 to strengthen or support. It is for you
17 the members of the jury to determine what
18 the evidence in this case does show. But
19 to the extent that you find that this
20 testimony does corroborate the prior
21 testimony of the State's witness, Mr.
22 Autry, you may consider this evidence for
23 that limited purposes, and no other
24 purpose. Anything further?

25 BY MR. BRITT:

1 Q Mr. Strong, did Mr. Autry tell you where he
2 had gotten this .38 caliber round?

3 A Yes.

4 Q Where did he tell you he had gotten it
5 from?

6 MR. BOWEN: Object, and request
7 limiting instruction.

8 THE COURT: I just gave one.

9 MR. BOWEN: Okay.

10 THE COURT: Same limiting
11 instruction applies.

12 BY MR. BRITT:

13 Q Mr. Did Mr. Autry tell you he had gotten
14 this .38 round?

15 A He had removed it from a red Lexus sports
16 car which was located at Crumpler's Auto Repair in
17 the Stedman, North Carolina area. He had removed it
18 on August 17th, 19 -- I'm sorry, August 7th, 1993.
19 He had gone to the auto repair shop to check on his
20 brother's car. His brother Will left his car for
21 repair. He had heard earlier that it was Michael
22 Jordan's car.

23 MR. BOWEN: Object to what he
24 heard.

25 THE COURT: Members of the jury,

1 the instruction that I have previously
2 given you remains in effect as to any
3 statements Mr. Strong testifies were made
4 to him by Mr. Autry. You are to consider
5 it for the limited purposes of
6 corroborating Mr. Autry's testimony at this
7 trial and no other purposes.

8 THE WITNESS: The vehicle which
9 he was told was believed to be Michael
10 Jordan's car, as he was -- while he was
11 visiting the auto repair shop, he looked
12 through the red Lexus, just curious, he
13 looked in the back seat area, pushed the
14 passenger front seat forward, the back of
15 the seat forward, and that's when he
16 observed a .38 caliber handgun round laying
17 in the floorboard just below where the back
18 of the seat was. He picked up the round,
19 looked at it. It was unfired, unspent
20 round, still looked like a new round,
21 picked it up, put it in his pocket.

22 BY MR. BRITT:

23 Q Did he tell you where he took it after he
24 placed it in his pocket?

25 A Took it home, I believe, placed it on his

1 dresser.

2 Q Was information given to you about Mr.
3 Autry having this .38 caliber round in his
4 possession?

5 A Yes.

6 Q And from whom did you receive that
7 information, if you recall?

8 A Our office is located in a bank building,
9 down in the bottom floor of our office is a Wachovia
10 Bank. Mr. Autry's girlfriend was a teller there. I
11 knew her when she became aware of Mr. Autry having
12 this round.

13 MR. BOWEN: Object.

14 THE COURT: Do you want to be
15 heard, sir?

16 MR. BOWEN: No.

17 THE COURT: Again, members of the
18 jury, I instruct you that -- Mr. Britt, for
19 what purposes is this being offered.

20 MR. BRITT: Corroborate Mr.
21 Autry's testimony yesterday.

22 THE COURT: Do you have any
23 objection to the limited purposes for which
24 it's offered?

25 MR. BOWEN: We're also objecting

1 because it has to do with something that's
2 in her mind that could not possibly be --

3 THE COURT: Rephrase your
4 question, Mr. Britt.

5 BY MR. BRITT:

6 Q Based upon the information that Mr. Autry's
7 girlfriend gave you, did you give her specific
8 instructions to give to him?

9 A Yes.

10 Q What instructions did you give her?

11 A To get him to go home, get that round and
12 meet me in my office as soon as possible.

13 Q Did you give any instructions in how that
14 .38 round was to be handled from that point
15 forward?

16 A To limit touching it.

17 Q Why did you instruct her to limit the
18 touching of the bullet?

19 A In case there was still any fingerprints of
20 any value on the round.

21 Q On August the 13th, 1993, you testified Mr.
22 Autry came to your office?

23 A Yes.

24 Q And did he have in his possession at that
25 time a .38 caliber round?

1 A Yes, he did.

2 Q Did he have it packaged in any way?

3 A I don't recall.

4 Q Did Mr. Autry give you a .38 caliber round
5 on August the 13th, 93?

6 A Yes, he did.

7 Q What if anything did you do with the .38
8 caliber round that Mr. Autry gave you?

9 A I placed it into a film canister, the type
10 that a new roll of 35 millimeter film would come in,
11 so that it would be preserved for any latent prints.

12 Q And after you placed the .38 caliber round
13 into the film canister, did you seal that canister?

14 A Yes, I sealed it with evidence tape and
15 placed my initials on the evidence tape.

16 Q Why did you seal the canister?

17 A Sealed it to show that no one had been into
18 the canister from the time I sealed it until it is
19 unsealed by someone else.

20 Q After you sealed the canister, what if
21 anything did you do with the canister and its
22 contents?

23 A Three days later, 16th of August, turned it
24 over to Special Agent Heffney.

25 Q Prior to turning the canister and its

1 contents over to Mr. Heffney, did that canister and
2 its contents remain in your sole, exclusive custody
3 until it was turned over to Mr. Heffney on August the
4 16th?

5 A Yes, it did.

6 Q Where did you keep it or store it at that
7 time?

8 A It stayed with me

9 (State's Exhibit 55 was
10 marked for identification.)

11 MR. BRITT: May I approach?

12 BY MR. BRITT:

13 Q I'll show you what has been marked as
14 State's Exhibit 55, which is a clear plastic bag, ask
15 you to examine the bag and tell me what state that
16 bag is in right now, whether it's an opened, closed
17 or sealed bag?

18 A Sealed.

19 Q And as a result of it being a clear plastic
20 bag, can you identify or see what is located inside
21 of it?

22 A Yes.

23 Q And the item that is located inside of it,
24 are you able to read or identify any markings that
25 appear on the object inside that bag?

1 A Yes, I am.

2 Q And for the record, what is contained
3 inside of the clear plastic bag marked as State's
4 Exhibit 55?

5 A That is a black film canister which I
6 placed the round in.

7 Q And how do you identify it as the film
8 canister that you placed the .38 caliber round in?

9 A First of all it is the type of canister
10 that I placed the round into, the black plastic
11 canister, also it is wrapped in FBI white evidence
12 tape, with red writing that says "evidence," but does
13 say Federal Bureau of Investigation, Washington, D.C.
14 on it, also I can recognize my own initials on the
15 tape itself.

16 Q From its appearance as you see it here in
17 court, does it appear in to be in substantially the
18 same condition as it was in after you placed the .38
19 caliber round inside and sealed the container?

20 A Yes, other than the seal has been broken,
21 somebody has been in it since it was turned it over,
22 but yes, everything else appears to be in order.

23 Q Are there additional markings that appear
24 on the canister?

25 A Yes, additional markings and additional

1 tape. The brownish tape on here and the red writing
2 or blue writing, the red writing or blue writing were
3 not placed on there by me. My initials are in black
4 ink.

5 Q And when you delivered the sealed canister
6 to Mr. Heffney, where did that transfer take place?

7 A I'm not sure whether that occurred in my
8 office or down here in Lumberton at the meeting. I
9 remember discussing it with Agent Heffney, it may
10 have occurred in Lumberton at a meeting or my office,
11 I don't recall which place.

12 MR. BRITT: I don't have any
13 other questions.

14 THE COURT: Any
15 cross-examination?

16 MR. BOWEN: Thank you Your Honor.

17 CROSS-EXAMINATION

18 BY MR. BOWEN:

19 Q Agent Strong, you say you first got
20 knowledge about the possibility of this bullet
21 through Mr. Autry's girlfriend, is that correct?

22 A Yes, sir.

23 Q As a result, you called Mr. Autry?

24 A I'm not sure whether I called him or had
25 her call him.

1 Q But in any case you sent word to him,
2 correct?

3 A Correct. He was at work at, I think he
4 worked at Reed-Lallier Chevrolet.

5 Q And you discussed the circumstances of how
6 he acquired this bullet with him, is that right?

7 A There again, I'm not sure whether I
8 discussed that with him before he got to my office.

9 Q All right. In any case, you got word to
10 him to bring this bullet?

11 A Absolutely, yes.

12 Q And when he brought the bullet to you, at
13 least by then you had some discussion with him about
14 how he had acquired it, is that so?

15 A When he got there, that's when I
16 interviewed him when he brought me the round. It's
17 the only time I've talked to him about it.

18 Q And he told you where he had seen this car?

19 A Yes, sir.

20 Q The car in question. And that was at a
21 private impound of a business operation that towed in
22 cars, is that right?

23 A It was a auto repair place, yes.

24 Q Did he tell you that when he went there,
25 that the gates and the access to the area where the

1 car was unlocked?

2 A He didn't state what was you locked or
3 unlocked but did not say he had any problem getting
4 into the car.

5 Q He didn't mention to you that that car was
6 marked with any kind of Sheriff's Department evidence
7 or anything like that?

8 A No, sir.

9 Q Did not indicate that it was sealed with
10 any kind of evidence tape or anything like that, did
11 he?

12 A No, sir, he did not.

13 Q Did he tell you that some of the glass was
14 out of the car?

15 A Yes, sir, he did.

16 Q He was unable to tell you how the bullet
17 had gotten in the car, isn't that correct?

18 A I didn't ask him, he didn't have any -- no.

19 Q And he did tell you that he had handled the
20 bullet?

21 A Yes, sir, he had picked it up with his
22 hand, placed it into his pocket.

23 Q And he told you that his brother may have
24 also handled the bullet?

25 A I don't believe he said his brother had

1 handled the bullet.

2 Q But in any case he told you that he had
3 handled the bullet without taking any special
4 precautions about how he had handled it until he
5 received instruction from you, is that correct?

6 A That is correct.

7 Q And you're really unable to know who
8 handled it or how they handled it except what he told
9 you, is that right?

10 A Up until the point I received it, that's
11 correct.

12 Q Now you, you did not -- you simply
13 preserved the evidence, you did not yourself cause it
14 to be dusted for prints or analyzed in any way?

15 A That's correct, sir.

16 Q Were you able to tell the brand of the
17 round by looking at it?

18 A Yes, sir.

19 Q What brand?

20 A It was a Winchester. It was a .38 Special
21 plus P round.

22 Q You said it was a new bullet?

23 A Well, it was unfired. I mean, I can't tell
24 you the age of it.

25 Q Appeared to be commercially manufactured by

1 Winchester Arms?

2 MR. BRITT: Objection.

3 THE COURT: Well, there's been no
4 foundation, you'll have to establish that.

5 BY MR. BOWEN:

6 Q Are you familiar with guns and ammunition
7 through your training with the FBI, sir?

8 A Yes, sir.

9 Q Do you believe that you had an opportunity
10 to see commercially manufactured Winchester rounds
11 before?

12 A Yes, sir, I have.

13 Q Did that appear to be a commercially
14 manufactured Winchester round?

15 A To me, I had no reason to believe it was
16 anything but a commercially made round.

17 MR. BOWEN: Thank you. That's
18 all.

19 THE COURT: Anything on
20 redirect?

21 REDIRECT EXAMINATION

22 BY MR. BRITT:

23 Q Mr. Strong, in your experience with
24 firearms and ammunition are you familiar with what is
25 called a reload?

1 A Yes, sir.

2 Q What is a reload?

3 A Where you take a spent round, remove the
4 used primer, place a new primer which is the little
5 dot in the back of the bullet for those that don't
6 know about bullet and rounds, you put new powder into
7 it and then a new projectile, the lead part of the
8 bullet that is actually the bullet that comes out,
9 and recrimp it, so that the casing can be used again.

10 Q To your knowledge, are reloads commercially
11 manufactured?

12 A Yes, they are.

13 MR. BRITT: I don't have any
14 other questions.

15 THE COURT: Anything further.

16 RECROSS EXAMINATION

17 BY MR. BOWEN:

18 Q So can you tell by looking at it whether
19 this bullet was a reload or not?

20 A It could have been commercially a reload,
21 yes. I don't have enough knowledge to be able to
22 look at it and say whether it's a reload or not,
23 professionally made. Most home jobs, homemade
24 reloads you can recognize by looking at them, but
25 commercially, you can't tell.

1 Q This did not appear to be a homemade
2 reload, is that what you're saying?

3 A If it was, it was a neat one.

4 MR. BOWEN: That's all.

5 MR. BRITT: No other questions.

6 THE COURT: Thank you, sir.

7 MR. BRITT: May Mr. Strong be
8 released?

9 THE COURT: Do you gentlemen have
10 any objection to that?

11 MR. BOWEN: Releasing him, sir,
12 is that the question?

13 THE COURT: Yes, sir.

14 MR. BOWEN: No, sir.

15 THE COURT: Thank you, sir,
16 you're free to go.

17 MR. BRITT: Your Honor, at this
18 time the State calls Mark McMillan.

19 **MARK MCMILLIAN,**

20 being first duly sworn was examined and testified as
21 follows:

22 DIRECT EXAMINATION

23 THE COURT: Please state your
24 name for the record, sir?

25 THE WITNESS: Mark A. McMillan.

1 THE COURT: Spell your first and
2 last name.

3 THE WITNESS: M A R K,
4 M C M I L L I A N.

5 BY MR. BRITT:

6 Q Mr. McMillan, by whom are you employed?

7 A Robeson County Sheriff's Department.

8 Q In what capacity do you presently work the
9 Sheriff's Department?

10 A Work as a detective for the Sheriff's
11 Department at the present time.

12 Q How long have you been employed by the
13 Sheriff's Department?

14 A Little over four years at this time.

15 Q How long have you worked as a detective
16 with the Sheriff's Department?

17 A Right at seven months.

18 Q Prior to your term as a detective, what
19 capacity did you work with the Sheriff's Department?

20 A I was a patrol officer, a deputy.

21 Q How long were you a patrol officer or
22 Deputy with the Sheriff's Department?

23 A Three years.

24 Q And prior to that did you have any other
25 experience at the Sheriff's Department?

1 A Yes, sir, I worked in the detention center.

2 Q How long did you work in the jail?

3 A 11 months.

4 Q Mr. McMillan, back in July of 1993, were
5 you working in your capacity as a deputy or a road
6 officer with the Sheriff's Department?

7 A Yes, sir, I was a patrol officer.

8 Q Specifically on Sunday, July the 25th,
9 1993, do you recall working that day?

10 A Yes, sir, I do.

11 Q What hours did you work on July the 25th,
12 1993?

13 A From 12:00 a.m. to 9:00 p.m.

14 Q From 12:00 a.m.

15 A From 12:00 noon to 9:00 p.m.

16 Q What were your duties and responsibilities
17 on that particular day?

18 A Answer domestic calls, serve process, serve
19 civil papers, routine patrol.

20 Q On afternoon of July the 25th, '93, did you
21 have an occasion to go back to the Sheriff's
22 Department, be there in the office?

23 A Yes, sir, I did.

24 Q Were in any other deputies there in the
25 area of the office when you returned that afternoon?

1 A Yes, sir, it was two or three of us
2 standing around.

3 Q While you were there in the area of the
4 office on July the 25th, did there come an occasion
5 when some individuals came in to the Sheriff's
6 Department with information that was relayed to you?

7 A Yes, it was.

8 Q Do you recall if they were men, if they
9 were women, did you get any names of the people that
10 came in?

11 A It was three Indian females, but I didn't
12 get any of the names.

13 Q And did you have a conversation with them
14 there at the Sheriff's Department?

15 A Yes, sir, I did.

16 Q What if anything did they tell you and as a
17 result of that, what if anything did you do?

18 MR. BOWEN: Objected.

19 THE COURT: Sustained at this
20 point. Do you want to be heard?

21 MR. BRITT: Yes, sir.

22 THE COURT: Members of the jury,
23 there's a matter of law the Court must take
24 up out of the hearing and presence of the
25 jury. Please don't worry or speculate

1 about what takes place in the courtroom in
2 your absence. Please recall it is your
3 duty to continue to abide by prior
4 instruction of the Court concerning your
5 conduct. If you'll step to the jury room
6 at this time.

7 (Jury out at 9:22 a.m.)

8 THE COURT: Let the record
9 reflect the following is being heard in the
10 absence of the jury. For the record, for
11 purposes is the question, what is the
12 basis?

13 MR. BOWEN: Question has two
14 parts. As a result of the conversations
15 what did he do. I have no objection to
16 that. The conversation itself, I have an
17 objection to. Moreover, in this particular
18 instance, I think that even if Your Honor
19 instructs the jury --

20 THE COURT: First of all, what is
21 the basis of your objection?

22 MR. BOWEN: Hearsay. In this
23 particular case, even if you give the
24 limiting instruction to explain subsequent
25 conduct, as I understand from our discovery

1 that what the substance these three Indian
2 females would have told him was that they
3 saw a red car or red Lexus out at the
4 greenhouse. Isn't that right?

5 MR. BRITT: The substance of the
6 conversation was that one lady had lived in
7 Bob's Landing Mobile Home Park, she had
8 seen a red Porche or fancy red car at that
9 mobile home park that had been parked
10 across from the trailer where the person
11 she had seen driving it lived, and she
12 wanted Mr. McMillan to locate the car. As
13 a result --

14 THE COURT: Why?

15 MR. BRITT: Because it was out of
16 character to be in -- as a result of that
17 conversation.

18 THE COURT: Is that part of the
19 conversation that she thought it was out of
20 character, she suspected it was suspicious
21 in some way.

22 MR. BRITT: Yes, sir.

23 THE COURT: That's her reason for
24 asking him to come out an investigate.

25 MR. BRITT: Yes, sir. As a

1 result of that conversation, he then went
2 to the mobile home park. And there at the
3 mobile home park, looked for the car, had
4 an encounter with the defendant, asked
5 the -- he did not find the car at that
6 time. The defendant told him that the car
7 had been there earlier and that it belonged
8 to his girlfriend in South Carolina.

9 THE COURT: What was said by the
10 Deputy to the defendant about the car
11 specifically?

12 MR. BRITT: We can go into that?

13 THE COURT: Yes, sir.

14 MR. BRITT: Just so the Court
15 has --

16 THE COURT: Voir dire.

17 BY MR. BRITT:

18 Q Mr. McMillan, what if anything did one of
19 the ladies who came to the Sheriff's Department tell
20 you?

21 A One of the ladies stopped me, told me she
22 had me to go out there and check the car because the
23 car didn't fit the mobile home because the car had
24 only been there two or three days. And it only come
25 there at.

1 THE COURT: What if any
2 description was given to you by this
3 unidentified female?

4 THE WITNESS: She said it was a
5 red Porche or red fancy car.

6 THE COURT: That was it?

7 THE WITNESS: Yes, sir.

8 BY MR. BRITT:

9 Q Did she tell you where she lived?

10 A Yes, sir.

11 Q And where did she tell you that she lived?

12 A She had stayed in front of the mobile home
13 that had been burnt in Bob's Landing Mobile Home
14 Park.

15 THE COURT: Did she tell you
16 where she had seen the car?

17 THE WITNESS: Yes, sir.

18 THE COURT: Where?

19 THE WITNESS: She said it was
20 parked behind the Green's mobile home at
21 night.

22 THE COURT: What if anything did
23 she tell you as to when she may have seen
24 driving or in that vehicle?

25 THE WITNESS: She said she had

1 seen a black male in that vehicle.

2 THE COURT: Did she identify that
3 black male?

4 THE WITNESS: No, sir.

5 THE COURT: Okay.

6 BY MR. BRITT:

7 Q As a result of that conversation, did you
8 go to Bob's Landing Mobile Home Park on August 25,
9 1993 to for the purpose of locating that fancy car or
10 red Porche that she had described?

11 A Yes, sir, I did.

12 THE COURT: Where did you go
13 specifically when you got to that
14 location?

15 THE WITNESS: I rode through the
16 mobile home park two or three times because
17 I was unable to locate the car, and third
18 time I went there, the defendant was coming
19 out of the woods and I talked to him about.

20 THE COURT: Prior to your
21 arriving at that location, you indicated
22 that the female you talked to spoke to you
23 about the Green residence?

24 THE WITNESS: Yes, sir.

25 THE COURT: Were you familiar

1 with that residence?

2 THE WITNESS: No, sir, I wasn't.

3 THE COURT: Go ahead.

4 BY MR. BRITT:

5 Q When you saw the defendant coming out of
6 the woods, did you stop the vehicle that you were in?

7 A Yes, sir.

8 Q Did you ask any questions or approach the
9 defendant at that point?

10 A Yes, sir, I asked him where was the Green's
11 residence.

12 Q Were you wearing A uniform?

13 A Yes, sir.

14 Q Did he indicate to you where the Green
15 residence was?

16 A Yes, sir, he advised me his name, he told
17 me his name was Daniel Green and pointed his mobile
18 home out to me.

19 Q Did you have any other conversation with
20 him?

21 A I asked him where he was coming from at
22 that time.

23 Q And where did you ask him that?

24 A Because he had on shorts and no shirt, I
25 didn't -- I was suspicious.

1 THE COURT: What time of day was
2 it?

3 THE WITNESS: Between 1:00 and
4 3:00.

5 THE COURT: A.m., p.m.

6 THE WITNESS: P.m.

7 THE COURT: So the fact that you
8 saw -- what day was this?

9 THE WITNESS: This was on a
10 Sunday.

11 THE COURT: Month and the year?

12 THE WITNESS: Was in '93, July.

13 THE COURT: What was suspicious
14 about somebody wearing shorts in July of
15 '93?

16 THE WITNESS: He was coming out
17 of the woods.

18 THE COURT: What was the locale
19 around the trailer park? Describe the area
20 around the trailer park.

21 THE WITNESS: Well, wasn't nobody
22 else around, he was the only person out
23 there, he was coming out of the woods, I
24 didn't know what was up.

25 THE COURT: Mr. Britt?

1 BY MR. BRITT:

2 Q Did you ask him anything about the red car
3 that you were looking for?

4 A Yes, sir, I did.

5 THE COURT: And what if anything
6 did Mr. Green say when you asked him about
7 the red car?

8 THE WITNESS: He said it was a
9 red Nissan, it was his girlfriend's fancy
10 Nissan because they had just came out and
11 belonged to his girlfriend, and just left
12 15 minutes prior to my arrival.

13 THE COURT: When you talked to
14 the defendant, according to your testimony,
15 what exactly did you say about your
16 purposes in being out there and
17 specifically what did you say about your
18 purposes in connection with any red
19 vehicle?

20 THE WITNESS: I told him that I
21 was out there looking for a red fancy car
22 that hasn't been out there long, and he
23 told me that the car belonged to his
24 girlfriend, it was a new Nissan, had just
25 came out

1 BY MR. BRITT:

2 Q Did you ask him where he had been when you
3 saw him?

4 A Yes, sir, I did.

5 Q What, specifically what if anything did he
6 say?

7 A Told me he had been over there behind the
8 mobile home swimming in a swimming hole.

9 Q Did you make any questions of him at that
10 time?

11 A I asked him to get in the patrol car with
12 me and go show me where he had come from.

13 Q Did he do that?

14 A Yes, sir, he did.

15 Q Did he direct you anywhere?

16 A He directed me to the swimming hole that he
17 had been swimming in.

18 Q Did you observe any other people in the
19 area of the swimming hole?

20 A Yes, sir, when I got back to the swimming
21 hole, it was either four or five Indian males
22 swimming at that time.

23 Q Where was the swimming hole located?

24 A From the mobile home park it was directly
25 behind it, probably about a quarter of a mile behind

1 the mobile home park.

2 Q Were you able to drive back there?

3 A Yes, sir, I was.

4 Q After going to that area, did you stay for
5 a very long period of time there?

6 A I may have stayed probably five to seven
7 minutes because I talked with the males that were
8 back there swimming, told them they didn't need to be
9 back there long because all of them looked underage.

10 Q What did you then do?

11 A Took him back to the residence which was in
12 the mobile home park.

13 Q Did you drop him off at that point.

14 A Yes, sir, I did.

15 Q Did you leave the area?

16 A Yes, sir, I did.

17 MR. BRITT: No other questions.

18 THE COURT: Any questions on
19 behalf of the defendant on voir dire.

20 MR. BOWEN: Yes, Your Honor.

21 BY MR. BOWEN:

22 Q Mr. McMillan, did you sometime after this
23 incident give a statement to Agent Heffney of the
24 SBI?

25 A No, sir.

1 Q Did you give one to Agent Underwood?

2 A Yes, sir.

3 Q And did Mr. Underwood ever show you a copy
4 of the statement that he typed up or wrote up that
5 you had given him?

6 A Mr. Underwood himself didn't, no, sir, I
7 have one but Mr. --

8 Q You have one, is that right?

9 A Yes, sir.

10 Q Well, now -- so you have read over this
11 statement that Mr. Underwood provided to you, is that
12 correct?

13 A Yes, sir.

14 Q Was it an accurate statement of what you
15 told Mr. Underwood?

16 A To the best of my knowledge, yes, sir.

17 Q All right. Do you have that statement with
18 you?

19 A Yes, sir.

20 Q Would you take a look at it please,
21 Mr. McMillan, and I call your attention to the fourth
22 paragraph toward the middle of that paragraph, and I
23 ask you whether or not you related to Mr. Underwood
24 anything other than that the Indian males told you
25 that they had seen a red colored Porche?

1 THE COURT: Indian males?

2 MR. BOWEN: Indian females,
3 excuse me, related anything other than they
4 had seen a red colored Porche?

5 THE WITNESS: It was a red
6 colored Porche that a black male had been
7 driving, parked behind the residence.

8 BY MR. BOWEN:

9 Q So they didn't say anything to you about,
10 or any other kind of fancy sports car, they simply
11 named a red colored Porche, is that correct?

12 A They said fancy car also.

13 Q Well, you didn't tell that to Officer
14 Underwood, did you?

15 A No, sir.

16 Q You also testified a little while ago that
17 you knew which residence the Green's trailer was?

18 A No, sir, I didn't.

19 Q You did not?

20 A No, sir.

21 Q And so you did not know which trailer you
22 were looking for out there, did you?

23 A No, sir, I didn't.

24 Q And while you found it at first suspicious
25 to see Mr. Green in the midday of July with shorts

1 on, you found thereafter that he had in fact been
2 swimming or there was a swimming hole back where he
3 had come from after he told you that he had been
4 swimming?

5 A Yes, sir.

6 Q Did you talk to any of the other swimmers
7 out there?

8 A Yes, sir.

9 Q Did you in fact confirm that Mr. Green had
10 been swimming?

11 A No, sir. I mean, he advised me that he had
12 been swimming, but I didn't ask none of the males had
13 he been back there swimming, no, sir, I didn't ask
14 that.

15 MR. BOWEN: That's all.

16 THE COURT: Anything further?

17 MR. BRITT: No, not for purposes
18 of voir dire.

19 THE COURT: Folks, I see two
20 separate issues. One is the arguably
21 hearsay statements of the identified
22 females. The State offers that to explain
23 subsequent conduct of this witness?

24 MR. BRITT: Yes, sir.

25 THE COURT: The other is the

1 arguably hearsay statement of the
2 defendant. What is the State's position on
3 that admission?

4 MR. BRITT: Admission, and Your
5 Honor, later in the evidence we will link
6 the conversation he had with Mr. McMillan
7 to a conversation that Mr. Green had with
8 Mr. Demery, who our evidence will show was
9 in the trailer on July the 25th, had been
10 asleep, and when Mr. Green came back into
11 the trailer, woke Mr. Demery up and told
12 him that the police had been there looking
13 for the car and that he had moved the car
14 back into the woods and hid it.

15 THE COURT: Also the date is
16 something that is of significance, July
17 25th.

18 MR. BRITT: Yes, sir. And --

19 THE COURT: You folks want to be
20 heard further?

21 MR. BOWEN: No, sir.

22 THE COURT: The objection is
23 overruled. The Court, for the record, is
24 allowing in the officer's testimony as it
25 pertains to any statements made to him by

1 the five or one or more of the five
2 unidentified Indian females to explain
3 subsequent conduct.

4 As to any statements testified to by
5 the officer attributable to the defendant,
6 the Court is allowing them in under 801(d)
7 as exceptions to the hearsay rule,
8 admissions by party. Note the defendant's
9 exception to the ruling in each instance.
10 Are you asking for limiting instructions as
11 to the first?

12 MR. BOWEN: Yes, sir.

13 THE COURT: The Court is not
14 going to mess with the second one in terms
15 of any limiting instruction. That's for
16 you folks to argue. Anything further?

17 MR. BRITT: No, sir.

18 THE COURT: Bring the jury in,
19 please.

20 (Jury in at 9:36 a.m.)

21 THE COURT: Mr. Britt, if you'll
22 repeat your question to Mr. McMillan,
23 please.

24 BY MR. BRITT:

25 Q Mr. McMillan, on July the 25th, 1993,

1 you've testified that three ladies came to the
2 Sheriff's Department, is that correct?

3 A Yes, sir.

4 Q And that you spoke with one or all three of
5 those individuals?

6 A Well, one of them did the talking but all
7 three was standing there.

8 Q The lady that you spoke with, did you ask
9 her her name?

10 A No, sir, I didn't.

11 Q Did you know who she was?

12 A No, sir, I had never seen her.

13 Q What if anything did that lady tell you
14 there at the Sheriff's Department on July 25th,
15 1993?

16 THE COURT: Before you answer
17 sir, the defendant's objection is noted for
18 the record. The objection is overruled.
19 Exception is noted for the record.

20 Members of the jury, I instruct you
21 that the testimony now being elicited as to
22 any out of court statements that he
23 contends were made to him on the date in
24 question by someone who has not testified
25 as a witness at this trial are not being

1 offered for the truth of the matters
2 asserted but are being offered and received
3 for the limited purposes of explaining the
4 subsequent conduct of this witness,
5 Mr. McMillan, and you may consider that
6 evidence for that limited purposes and no
7 other purposes. Anything further on behalf
8 of the defendant?

9 MR. BOWEN: No, sir.

10 THE COURT: You may answer
11 Mr. Britt's question.

12 BY MR. BRITT:

13 Q July the 25th, 1993, what if anything did
14 that lady tell you in the Sheriff's Department?

15 A She asked me was there any way that the
16 Sheriff's Department could go out and check a
17 suspicious car in the mobile home park, she said the
18 car only came to there at night. Whenever the --

19 THE COURT: You need to slow
20 down.

21 THE WITNESS: She said that it
22 was a suspicious red car at the mobile home
23 park, it only came to the mobile home park
24 at night. And when the car did come to the
25 mobile home park it would park behind the

1 mobile home park.

2 BY MR. BRITT:

3 Q What mobile home park did she tell you that
4 she lived in and where she had seen this suspicious
5 car?

6 A She lived in Bob's Landing Mobile Home
7 Park.

8 Q Where is Bob's Landing Mobile Home Park
9 located?

10 A It's just off of 74 behind Fleetwood.

11 Q What road -- are you familiar with Back
12 Swamp Road?

13 A No, sir.

14 Q When you say Fleetwood, are you referring
15 to the mobile home plant along 74?

16 A Yes, sir, I think the name is
17 Sterile's.

18 THE COURT: Mr. McMillan, you
19 indicated in your testimony that the
20 unidentified female told you that she had
21 seen this red vehicle behind the mobile
22 home?

23 THE WITNESS: Right.

24 THE COURT: What mobile home did
25 you mean when you said the mobile home?

1 THE WITNESS: The Green's mobile
2 home in Bob's Landing Mobile Home Park.

3 BY MR. BRITT:

4 Q Did she give you a description of this
5 suspicious red car?

6 A She said it was either a red Porche or a
7 fancy red car.

8 Q Did the lady tell you where she lived in
9 Bob's Landing Mobile Home Park?

10 A Yes, sir, she did.

11 Q Where did she tell you she lived in Bob's
12 Landing Mobile Home Park?

13 A She told me she lived in front of the burnt
14 mobile home in Bob's Landing Mobile Home Park.

15 Q And did she tell you where she had seen
16 this suspicious red car?

17 A She advised me that it was parked behind
18 the Green's residence.

19 Q And did she tell you what time of day, was
20 it daylight or night when she had seen this car?

21 A She said she had seen it there in the
22 daytime but it mostly came at night.

23 Q Did she tell you she had ever seen anyone
24 driving that car?

25 A Yes, sir, she did.

1 Q Did she give you a description of anyone
2 she had seen driving that car?

3 A She said she only seen a black male driving
4 that car.

5 Q As a result of receiving that information,
6 did you go to Bob's Landing Mobile Home Park on July
7 the 25th, 1993?

8 A Yes, sir, I did.

9 Q Do you recall what time of the day that you
10 went to the mobile home park?

11 A It was between 1:00 and 3:00.

12 Q In the afternoon?

13 A Yes, sir.

14 Q Did any other Deputy go with you?

15 A No, sir, they didn't.

16 Q Were you driving a marked or unmarked
17 vehicle at that time?

18 A I was driving a marked vehicle at that
19 time.

20 Q Were you in uniform?

21 A Yes, sir, I was.

22 Q When you went to Bob's Landing Mobile Home
23 Park on July 25th, 1993, what did you do when you got
24 there?

25 A I went out there looking for the red

1 vehicle, I was unable to locate it. It went through
2 the mobile home park two or three times. I think the
3 third time I went back in the mobile home park, I saw
4 a black male coming out of the woods.

5 THE COURT: Coming out of where?

6 THE WITNESS: The woods behind
7 the mobile home park.

8 BY MR. BRITT:

9 Q Did you locate a burned trailer?

10 A Yes, sir, I did.

11 Q And was that burned trailer beside any
12 other mobile homes?

13 A Yes, sir. It was between two mobile homes.

14 Q Did you see this suspicious red car that
15 you went there to find?

16 A No, sir, I didn't.

17 Q You've testified you saw a black male
18 coming out of the woods?

19 A Yes, sir.

20 Q Did you know who that person was at the
21 time?

22 A No, sir, I didn't.

23 Q When you saw that individual coming out of
24 the woods, did you stop and talk with him?

25 A Yes, sir, I did.

1 Q Did you identify yourself?

2 A No, sir, I didn't.

3 Q Did that individual identify himself?

4 A After I asked him.

5 Q And who did the person identify himself as?

6 A He said he was Daniel Green.

7 THE COURT: These folks are
8 having a hard time hearing and
9 understanding.

10 THE WITNESS: He said he was
11 Daniel Green.

12 BY MR. BRITT:

13 Q Did you recognize the name Daniel Green
14 based upon your previous conversation with the lady?

15 A Yes, sir, she said the car was parked
16 behind the Green's residence.

17 Q Did you ask Mr. Green where he lived?

18 A Yes, sir.

19 Q Did Mr. Green point out the trailer where
20 he lived?

21 A Yes, sir.

22 Q Did you ask him any questions about a red
23 car or red Porche or fancy red car?

24 A Yes, sir, I did.

25 Q What questions did you ask him and what

1 answer did he give you?

2 A I asked him had he seen a red Porche or red
3 fancy car out there in the mobile home park. He
4 relied, yes, it was his girlfriend's car and it had
5 left 15 minutes prior to my arrival.

6 Q Did you ask him any other questions?

7 A I asked him where he had come from.

8 Q And what did he tell you?

9 A He said he had been swimming behind the
10 mobile home park.

11 Q At that time did you ask Mr. Green if he
12 would show you where he had been swimming?

13 A Yes, sir, I did.

14 Q And how did you go to that area?

15 A We went -- we had to get back on the
16 highway, I think it was right at -- time you get back
17 on the highway, you had to turn back right, time you
18 got back on the highway you had to turn back right,
19 go up into the woods.

20 Q As you went out of Bob's mobile home park
21 did you turn right or left?

22 A Once I left Bob's, I made a right onto the
23 highway.

24 Q And from the highway you made --

25 A Immediately right back into the woods.

1 Q How far back in the woods did you go?

2 A About a quarter of a mile.

3 Q What if anything did you discover when you
4 went back in the woods?

5 A I discovered four or five Indian males
6 swimming in a swimming hole behind the mobile home
7 park.

8 Q At that point, did you stay there?

9 A Yes, sir, I talked with the males and told
10 them that they didn't need to be down there by
11 themselves because they all looked to be underaged.

12 Q After talking with them did you then leave
13 the area?

14 A Yes, sir, myself and Daniel got back in the
15 vehicle with me, and I took him back to his mobile
16 home, dropped him off.

17 Q Did you have any other contact with him?

18 A No, sir, I didn't.

19 MR. BRITT: I don't have any
20 other questions.

21 THE COURT: Mr. Bowen,
22 Mr. Thompson.

23 CROSS-EXAMINATION

24 BY MR. BOWEN:

25 Q So Mr. McMillan, you went as a result of

1 this conversation that you had at the Sheriff's
2 Department you went out to Bob's Landing Mobile Home
3 Park, is that right?

4 A Yes, sir.

5 Q How quickly did you get out there,
6 sir?

7 THE COURT: You mean after the
8 conversation?

9 MR. BOWEN: Yes, sir, after the
10 conversations, did you go straight away or
11 did you have other duties?

12 THE WITNESS: Well, when I left
13 the Law Enforcement Center I went straight
14 out there, probably approximately 25
15 minutes after I had this conversation.

16 BY MR. BOWEN:

17 Q When you arrived there, you saw no red
18 Porche or any other fancy car, did you?

19 A No, sir, I didn't.

20 Q Now, after your trip out there that you've
21 described, did you come all the way back to the
22 Sheriff's Department or did you ride around in the
23 area?

24 A I didn't go back to the Sheriff's
25 Department, I didn't stay in the area.

1 Q When you first went looking for the car,
2 didn't find it, what time of the day was it?

3 A Like I said, I believe it was between 1:00
4 and 3:00 p.m.

5 Q You say you went back again looking for a
6 car, is that correct?

7 A No, sir.

8 Q You didn't say that you looked three times?

9 A I went through -- I went in and out of the
10 mobile home park when I was there the first time
11 approximately three times.

12 Q So you never came back looking again?

13 A No, sir, I didn't.

14 Q And Mr. McMillan, did you not sometime
15 about the 24th or so of August of 1993, did you not
16 have an interview -- no, no, strike that.

17 Did you not about the 15th day of August,
18 1993 have an interview with SBI Agent Tony Underwood,
19 telling him about this visit to the mobile home park
20 that you've described here in your testimony?

21 A I don't remember the exact date, but I did
22 have an interview with him, yes, sir.

23 Q I believe you've indicated that you have a
24 copy of that typed interview that Mr. Underwood typed
25 up after he had talked with you, is that correct?

1 A Yes, sir, I do.

2 Q You have it with you?

3 A Yes, sir.

4 Q And you reviewed it prior to your testimony
5 today, haven't you?

6 A Yes, sir.

7 Q And you've indicated that Mr. Underwood
8 correctly wrote --

9 THE COURT: That has not been
10 established.

11 BY MR. BOWEN:

12 Q Well, did Mr. Underwood correctly write
13 down what you told him?

14 MR. BRITT: Objection.

15 THE COURT: As to the form,
16 sustained.

17 BY MR. BOWEN:

18 Q Where is this statement that you reviewed
19 before testifying today?

20 A I have it with me.

21 Q May I see it?

22 (Defense Exhibit 9 was
23 marked for identification.)

24 BY MR. BOWEN:

25 Q The statement that we've been talking about

1 Mr. Underwood took from you, is that now marked
2 Defendant's Exhibit Number 9, sir?

3 A Yes, sir.

4 Q And how long after Mr. Underwood did that
5 statement did he give you a copy?

6 A I don't recall.

7 THE COURT: At the time that you
8 gave the statement to Mr. Underwood, was it
9 reduced to writing?

10 THE WITNESS: Yes, sir, but it --
11 I didn't get it right away.

12 MR. BOWEN: Okay.

13 BY MR. BOWEN:

14 Q When you were able to get it and read it
15 over, did you see it as being a correct recitation of
16 what you had told the officers?

17 MR. BRITT: Objection to form.

18 THE COURT: Sustained. Did you
19 review it?

20 THE WITNESS: Yes, sir.

21 MR. BOWEN: Okay.

22 BY MR. BOWEN:

23 Q Now, did you tell Officer Underwood that
24 you cared to make any changes or corrections in the
25 statement after you reviewed it?

1 A No, sir.

2 Q Now, I call your attention to the fourth
3 paragraph of that statement, Officer McMillan, toward
4 the middle of that paragraph where you're referring
5 to the statement of that female that came to the
6 Sheriff's Department, doesn't the statement say that
7 she related that there was a red colored Porche?

8 MR. BRITT: Objection, the statement
9 doesn't say anything --

10 THE COURT: It's
11 cross-examination. You can make it a
12 leading question. You can get into the
13 contents, Rule 106 applies.

14 MR. BOWEN: Okay.

15 BY MR. BOWEN:

16 Q Didn't you say to Officer Underwood that
17 this person that talked to you that day said that
18 there was a red colored Porche that a black male had
19 been driving?

20 A Yes, sir.

21 Q You didn't say or that person didn't say
22 anything to you about another kind of sports car, did
23 she?

24 A Yes, sir.

25 Q So then you're now saying that Officer

1 Underwood's typewritten statement is inaccurate as to
2 what she told you?

3 MR. BRITT: Objection.

4 THE COURT: To the form,
5 sustained. You can ask him whether or not
6 he told Officer Underwood.

7 BY MR. BOWEN:

8 Q Well, you didn't tell Officer Underwood
9 what you're now telling this woman, what you're now
10 telling that this woman said?

11 A I didn't say it word for word.

12 Q Well, the fact is, you didn't tell Officer
13 Underwood anything other than the woman told you
14 there was a red Porche out there, right?

15 A Probably not.

16 Q You also have testified here today that the
17 individuals that talked to you or the individual
18 doing the talking among these three individuals
19 identified the Green's trailer as the place where
20 this red Porche was, is that your testimony today, is
21 it?

22 A Yes, sir.

23 Q But in this report or in this statement to
24 Tony Underwood, you never identified the Green
25 trailer as being the place where this vehicle was

1 anywhere, did you?

2 A No, sir.

3 Q Now, you say you met the person, identified
4 himself -- readily told you who he was, told you he
5 was Daniel Green?

6 A Yes, sir.

7 Q First time you asked him he told you who he
8 was?

9 A Yes, sir.

10 Q You had not known Daniel Green before that
11 time, had you?

12 A No, sir, not to my knowledge.

13 Q And you saw him in shorts?

14 A Yes, sir.

15 Q And it was the middle of the day in July?

16 A Yes, sir.

17 Q And you have said that you found that to be
18 suspicious, haven't you said that?

19 THE COURT: We're confusing
20 matters outside and inside. Ask the
21 question.

22 BY MR. BOWEN:

23 Q Did you consider that to be suspicious that
24 the man had on shorts?

25 A No, not the shorts part, but coming out of

1 the woods, yes, sir.

2 Q And you asked him about that?

3 A Yes, sir, I did.

4 Q And he told you that he had been back there
5 swimming?

6 MR. BRITT: Objection.

7 THE COURT: Overruled.

8 MR. BRITT: Withdrawn.

9 BY MR. BOWEN:

10 Q Correct, he told you he had been back there
11 swimming?

12 A Yes, sir.

13 Q And you checked it out?

14 A Yes, sir.

15 Q And you found a swimming area, correct?

16 A Yes, sir.

17 Q And you found other persons back there
18 swimming, didn't you?

19 A Yes, sir.

20 Q Following that you left?

21 A Shortly afterwards, yes, sir.

22 Q And you didn't go back?

23 A No, sir.

24 Q And you didn't report this matter to
25 anybody, did you?

1 A Well, my communication center was aware of
2 it.

3 Q Well, did you report the matter to anybody?

4 A Can you explain -- I mean --

5 Q Well, in other words, did you cause the
6 area to become under surveillance or anything like
7 that?

8 A Oh, no, sir, we get suspicious of
9 individuals all the time.

10 Q You could have caused the area to be under
11 surveillance, couldn't you?

12 MR. BRITT: Objection to form.

13 THE COURT: Overruled. This is
14 cross-examination.

15 BY MR. BOWEN:

16 Q You could have had other officers watching
17 the area out there, correct?

18 A Well, just explain suspicious vehicle, we
19 would watch the area.

20 Q Did you even make out a report or incident
21 card on this matter?

22 A We couldn't find the car, how could I make
23 a report out?

24 Q When you went with Mr. Green down to the
25 swimming area, was this a river area or was this a

1 pond or what type of body of water was it?

2 A It was more like a pond, somebody had dug
3 up a bunch of dirt.

4 Q And how big would you say it was?

5 A I don't know.

6 Q Would it be bigger than this room, this
7 courtroom here?

8 A Yes, sir.

9 Q Could you -- twice as big, three times,
10 give us some idea.

11 A Just probably just a little bit bigger, I
12 don't know.

13 Q And you pulled your patrol vehicle up near
14 the edge of the pond, is that correct?

15 A No, sir.

16 Q How close did you come yourself to the
17 pond?

18 A Probably about around 12 or 15 feet away
19 from the pond.

20 Q You got within 12 to 15 feet from the pond
21 yourself?

22 A Yes, sir.

23 Q Now where did you park the vehicle, how
24 close did you come to that?

25 A That's where I parked my vehicle, I never

1 got out of my vehicle.

2 Q Now, it was daylight, right?

3 A Yes, sir.

4 Q And you looked all around the pond, I take
5 it?

6 THE COURT: From inside his
7 vehicle?

8 MR. BOWEN: I see your point,
9 Your Honor

10 BY MR. BOWEN:

11 Q Did you get out of your vehicle?

12 A No, sir.

13 Q Nevertheless, did you look around the pond
14 area?

15 A The pond itself, but I couldn't see behind
16 the dirt, I didn't go look behind no dirt or nothing
17 like that.

18 Q Well, you could see the area or the dirt
19 wasn't all the way around the pond, was it?

20 A No, sir.

21 Q Now, did you talk to any of those persons
22 down there at the pond?

23 A Yes, sir, seemed like I called -- all of
24 them came over to my vehicle, yes, sir.

25 Q Did you mention anything to them about a

1 car?

2 A I don't recall.

3 Q Well, did you speak to them about whether
4 or not Mr. Green had been swimming with them?

5 A No, sir, I didn't.

6 Q So you don't know if you even asked these
7 swimmers about whether or not they had seen a car
8 down there near the pond or in the woods or anything
9 like that?

10 A No, sir, I don't recall.

11 Q Well, did any of them to your recollection
12 mention anything to you about an unusual car?

13 MR. BRITT: Objection.

14 THE COURT: Sustained unless you
15 folks want to be heard.

16 BY MR. BOWEN:

17 Q Why did you go down to the pond,
18 Mr. McMillan?

19 A To see was there actually a swimming hole
20 back there.

21 Q Well, now, the pond was in the woods,
22 right?

23 A Yes, sir.

24 Q And Mr. Green had come from the woods?

25 A Yes, sir.

1 Q And you found it suspicious that he was
2 coming from the woods?

3 A Yes, sir.

4 Q But you didn't find anything in the woods,
5 did you?

6 A I found a swimming hole full of four or
7 five Indian males swimming.

8 Q You didn't find the car?

9 A No, sir.

10 Q You didn't see the car around the trailer?

11 A No, sir.

12 Q You didn't see a red car in the trailer
13 park?

14 A No, sir.

15 Q Now, you asked Mr. Green about an Indian
16 male, did you not?

17 A I don't recall.

18 Q You're not denying that you did, are you?

19 A I'm not denying it, but I don't recall.

20 Q And Mr. Green said that the only girls --

21 MR. BRITT: Objection.

22 THE COURT: I'm sorry, complete
23 your question and I'll rule.

24 BY MR. BOWEN:

25 Q Mr. Green told you the only girl who had

1 been in a red car was from South Carolina, is that
2 the way you remember he said it?

3 THE COURT: This is
4 cross-examination, the objection is
5 overruled. You may answer if you can.

6 THE WITNESS: He told me that the
7 red car belonged to his girlfriend which
8 was gone back the South Carolina, left 15
9 minutes prior to my arrival.

10 BY MR. BOWEN:

11 Q You sure he didn't say she had ridden in
12 the car?

13 A Sir.

14 Q You're sure he didn't say she had been
15 riding in a red car?

16 A No, he stated it had belonged to his
17 girlfriend that stayed in South Carolina.

18 Q Now, Mr. McMillan you still have Defense
19 Exhibit Number 9 there before you?

20 A Yes, sir, I do.

21 Q You have earlier testified in this hearing
22 today that you did not ask the individuals back in
23 the swimming hole, you did not ask them anything
24 about seeing a car, that's what you've testified to,
25 is that correct?

1 A Yes, sir.

2 Q All right. Now, I'll ask you to look at
3 the second to the last large paragraph on page two of
4 your statement to Mr. Underwood. And I'll ask you,
5 did you not tell Mr. Underwood that you recalled
6 asking them, that is the swimmers, about the car and
7 none of them claimed to know anything about it?

8 A Yes, sir, that's the statement.

9 Q Now, which is true, what you told Officer
10 Underwood or what you are telling here in court
11 today?

12 A About the statement?

13 Q Yes, sir.

14 A I mean, it's got to be true on the
15 statement because I give it.

16 Q So you did ask those fellows that were
17 swimmers, those people that were back there swimming,
18 you asked them about the car and they had seen none
19 correct?

20 A That's what the statement said.

21 MR. BRITT: Objection.

22 BY MR. BOWEN:

23 Q That's what you told Officer Underwood on
24 the 15th of August, right after this happened, isn't
25 it?

1 A That's what the statement said.

2 Q Is that what you told -- is that what
3 happened with the folks back there swimming in the
4 swimming hole, that you asked them about the car and
5 they had not seen one?

6 A According to the statement.

7 Q Did you tell Officer Underwood that on the
8 15th of August?

9 A It's on the statement, I guess I did.

10 Q You guess you did. Well, is there any
11 reason that you know of that Mr. Underwood would have
12 put it down other than if you told him?

13 A No, sir.

14 MR. BRITT: Objection to the
15 form.

16 THE COURT: Overruled.

17 BY MR. BOWEN:

18 Q You say you've had an opportunity to review
19 that statement and you didn't tell Mr. Underwood of
20 any corrections that you wanted to make, correct?

21 A No, sir.

22 Q And if there had been something wrong with
23 that statement, you would have informed Mr. Underwood
24 that you desired to make a change, correct?

25 A I think I would have.

1 Q So you went down to the pond looking for
2 the car and not only did you not see a car, you
3 talked to some individuals down there that were
4 around the area and they hadn't seen the car either,
5 that's the truth, isn't it?

6 A According to the statement.

7 Q Well, according to you, is that the truth
8 or not?

9 A According to the statement, it is.

10 Q Mr. McMillan, I want you to answer me, if
11 you will, sir, to the best of your knowledge. Is it
12 true that you went down to the pond looking for the
13 car, that you did not see a car, but you talked to
14 the swimmers down there and they told you they hadn't
15 seen the car, is that the truth, yes or no?

16 A According to the statement.

17 THE COURT: What he's asking you,
18 Mr. McMillan, is, do you recall that?

19 THE WITNESS: No, sir.

20 THE COURT: Do you recall saying
21 that?

22 THE WITNESS: No, sir, I don't
23 recall saying that.

24 BY MR. BOWEN:

25 Q So the best recollection that you would

1 have would be that recollection which was refreshed
2 by your reading of defense Exhibit Number 9, the
3 statement that you gave to officer Underwood?

4 MR. BRITT: Objection.

5 THE COURT: Sustained. There's
6 no foundation for past recollection
7 refreshed or revived. There is another
8 exception.

9 BY MR. BOWEN:

10 Q You have had State's Exhibit Number -- you
11 have had State's Exhibit Number 9 -- I'm sorry,
12 Defense Exhibit Number 9 in your care, custody and
13 control, about how long, sir?

14 A I just got it out of my files yesterday.

15 Q So you've been keeping an official file on
16 this case, is that correct?

17 A No, sir, just on the statement.

18 Q So you have a file on this particular
19 statement?

20 A No, sir, I don't have a file, I just had
21 this statement in my file cabinet.

22 Q But that's part of your official records as
23 an officer, is that correct?

24 A I mean it's --

25 THE COURT: He didn't prepare the

1 statement, Mr. Bowen.

2 MR. BOWEN: But it's become part
3 of his records.

4 THE COURT: That's not the
5 exception.

6 MR. BOWEN: All right.

7 BY MR. BOWEN:

8 Q Now, on the 15th of August, did you see
9 Mr. Underwood writing while you were talking and
10 telling him these things that now have appeared in
11 your statement, Defense Exhibit Number 9?

12 A Yes, sir.

13 Q Did --

14 A I don't remember the exact date.

15 Q Did he read it back to you?

16 A Yes, sir.

17 Q He did. And when Mr. Underwood read it
18 back to you, you didn't have any corrections or
19 anything of that nature to suggest, did you?

20 A No, sir.

21 Q And then when you got the final copy
22 sometime later, you say you did not suggest any
23 corrections, is that correct?

24 A No, sir.

25 Q And you say that you read over the

1 statement before you came to testify here today?

2 A I just got the statement out of my files
3 yesterday, yes, sir.

4 Q Did you read it over before you testified
5 here today?

6 A I read it over but I didn't study it.

7 Q And have you used this statement to testify
8 here today, that is Defense Exhibit Number 9?

9 A Well, somewhat.

10 Q Somewhat.

11 THE COURT: Anything further,
12 Mr. Bowen?

13 MR. BOWEN: No, sir.

14 THE COURT: Anything further
15 Mr. Britt?

16 MR. BRITT: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. BRITT:

19 Q Mr. Mcmillan, you have an exhibit that was
20 marked as Defendant's Exhibit Number 9 in front of
21 you, I believe it's number nine, is that correct?

22 A Yes, sir.

23 Q On the second page of that document,
24 beginning with the first -- excuse me, the second
25 full paragraph that begins with the word "McMillian"?

1 object, and if he's going to have --

2 THE COURT: How do you object to
3 Rule 106.

4 MR. THOMPSON: If he's going to
5 introduce a portion of the statement, then
6 when it --

7 THE COURT: His argument is he's
8 entitled to do it because you did it under
9 Rule 106, the rule of complete list. That
10 rule generally only applies where one party
11 introduces part of a writing, and the other
12 side contends that in fairness to that
13 other side, the writing ought to be
14 introduced in its entirety or pertinent
15 parts ought to be introduced in it's
16 entirety as a matter of fundamental
17 fairness. They have not introduced parts
18 of -- although there's an agent they may
19 have, because they referred specifically to
20 contents, that's why I was suggesting it's
21 cross-examination, you can impeach, didn't
22 you say. So their argument is if you went
23 beyond impeachment and introduced parts of
24 the writing by referring specifically to
25 language, and under the rule of

1 completeness they are entitled to have
2 pertinent parts considered by the jury.

3 MR. BOWEN: That's fine, because
4 what we say is, let's just bring the whole
5 thing in. That's been our position all
6 along.

7 THE COURT: You're entitled to do
8 that during your case. I mean, you can
9 have it marked, identified, you can use it
10 for purposes of impeachment now and then
11 later on you can offer it. But if you
12 offer it, for what purposes would it be
13 offered by the defendant?

14 MR. BOWEN: We'll get back to
15 where we are now, what I recall is that
16 when we started actually reading the
17 document, the objections were sustained and
18 we had to drop back and go into --

19 THE COURT: Wasn't there some
20 later reference to the second page full
21 paragraph where you read part of it?

22 MR. BRITT: Yes, sir.

23 MR. BOWEN: I don't know. And
24 prior inconsistent statement, why would we
25 not be able to read a portion? Did you not

1 say --

2 THE COURT: Because then you run
3 the risk that they are going to stand up
4 and say under the rules of completeness,
5 we're entitled to have other parts read.

6 MR. BOWEN: I agree, and
7 therefore, it ought to be in.

8 THE COURT: But you can't make
9 them move that it ought to come in. This
10 is their case in chief, and you can't
11 compel them to move that it be offered.

12 Now, the State can offer it for
13 corroborative purposes, you can use it for
14 impeachment purposes. You were trying to
15 lay a foundation for past recollection
16 refreshed or revived. There is another
17 foundation for past recollection recorded
18 in which the document becomes the evidence
19 as opposed to the oral testimony which is
20 gained from refreshed or revived. In that
21 later, the oral testimony is the evidence,
22 in the former instances, past recollection,
23 the document is the evidence that's
24 introduced but the foundation has to be
25 laid.

1 MR. BOWEN: Yes, sir.

2 THE COURT: Your argument is
3 under 106.

4 MR. BRITT: Yes, sir, they also
5 opened the door.

6 THE COURT: What is it about that
7 portion of the document that you're
8 referring to contends applies to Rule 106.

9 MR. BRITT: In regard to the
10 question that there were specific -- back
11 up. As to the contents of the document
12 itself, they question Mr. McMillan about
13 doesn't the statement say or didn't you say
14 in the statement to Mr. Underwood that you
15 recall asking them about the car, and none
16 of them claimed to know anything about the
17 car. It would be my position that as a
18 result of their line of examination on --

19 THE COURT: Read the portion you
20 want introduced under 106.

21 MR. BRITT: "McMillan said they
22 then recognized Green as being the same
23 name that the Indian female had given to
24 him. McMillan told Green that somebody had
25 called and said he was driving a Porche

1 around there. Green said it was red
2 colored Nissan that belonged to his
3 girlfriend. He further said his girlfriend
4 had gone back to South Carolina."

5 THE COURT: Portions of that are
6 not corroborative according to my
7 recollection, or I'm getting senile, I'm
8 not sure anymore. I don't remember him
9 saying anything about anybody called and
10 reported Green was driving that vehicle.
11 My recollection of his testimony, three
12 Indian females, and I earlier referred to
13 five, there were three, told him, that they
14 had seen a black male driving the vehicle
15 and that they had seen the vehicle parked
16 behind the Green residence. Am I wrong?

17 MR. BRITT: No, you're not wrong
18 in that. But I also asked him when the
19 defendant identified himself if he
20 recognized the name Daniel Green, and that
21 he recognized it as being the person he
22 said was driving the car.

23 THE COURT: How does that apply
24 under the rule of completeness in terms of
25 what they offered, how does that make it

1 more complete?

2 MR. BRITT: Not under 106, but
3 it's my contention they have opened the
4 door to the contents of this statement.

5 THE COURT: Well, I mean Rule 106
6 doesn't mean that everything comes in in a
7 document. It means that matters that are
8 relevant in terms of completeness and
9 fairness come in.

10 MR. BRITT: Also goes to the
11 issue Mr. Bowen tried to harp on the fact
12 that he went back there looking for the
13 car, he said he went back in -- he saw the
14 defendant coming out of the woods and was
15 suspicious of that, but in that statement,
16 it explains why there's no reason for him
17 to go back in the woods to look for the car
18 because the defendant, one, did not deny
19 the fact that he had been driving the car,
20 which is an admission by silence, I would
21 contend, and, two, that he told him the car
22 was not there at the time.

23 THE COURT: Well, it's an
24 admission by silence only if this officer
25 said, I received information that you were

1 driving the suspicious vehicle. That's not
2 in evidence. I believe what he's testified
3 to is that he asked Mr. Green if he knew
4 anything about a red vehicle. That's a
5 difference.

6 MR. BRITT: Can I have an
7 opportunity to go back?

8 THE COURT: Yes, sir. Escape.

9 THE COURT: Folks, State can
10 introduce this for corroborative purposes
11 anyway with an appropriate instruction.

12 MR. BRITT: I stand corrected.
13 On page 44, just so -- the question was
14 asked, did you recognize the name Daniel --

15 MR. THOMPSON: What line.

16 MR. BRITT: Page 44, line 13.
17 Says, "Did you recognize the name Daniel
18 Green based upon your previous conversation
19 with the lady?"

20 "Answer, yes, sir, she said the car
21 was parked behind the Green residence.

22 "Did you ask Mr. Green where he
23 lived?"

24 "Yes, sir, Mr. Green pointed out the
25 trailer where he lived, no, sir."

1 So I stand corrected.

2 THE COURT: Does the State want
3 to introduce for corroborative purposes?

4 MR. BRITT: Yes, sir.

5 THE COURT: You folks want to be
6 heard about that?

7 MR. BOWEN: That's fine with us.

8 THE COURT: Are you asking for a
9 limiting instruction?

10 THE COURT: Is the State going to
11 publish it.

12 MR. BRITT: No, sir.

13 MR. BOWEN: Hold on, Your Honor,
14 may we consult?

15 THE COURT: Actually, the
16 foundation is not really complete for
17 corroborative purposes because we need
18 testimony from the officer who took the
19 statement. Might be more appropriate to do
20 it then.

21 MR. BRITT: I agree.

22 THE COURT: He can identify it
23 and testify as to the accuracy based upon
24 his recollection, now, but I think he's
25 done that.

1 MR. BRITT: Yes, sir, he has.

2 THE COURT: He is not going to
3 introduce it now, he's going to when he
4 puts the officer on the stand.

5 MR. THOMPSON: Okay. At this
6 time he's not introducing it.

7 THE COURT: If it's offered for a
8 limited purposes, whether you ask for it or
9 not. It's my obligation, generally I'll
10 ask you. You folks have a right to object
11 to any instruction that I give but I would
12 give a limiting instruction because it's
13 been offered for a limited purposes.

14 If you'll bring the jury back in, Mr.
15 Horne.

16 (Jury in at 10:21 a.m.)

17 THE COURT: Mr. Britt, am I
18 correct that you're withdrawing your last
19 question?

20 MR. BRITT: Yes, sir.

21 BY MR. BRITT:

22 Q Mr. McMillan, when you went to Bob's
23 Landing Mobile Home Park August the 15th, 1993, and
24 you saw the defendant, did the defendant deny that a
25 fancy red car had been parked behind his trailer?

1 A No, sir.

2 Q Did the defendant deny ever driving a fancy
3 red car?

4 A No, sir.

5 MR. BOWEN: Object, move to
6 strike, unless he asked --

7 THE COURT: The objection is
8 sustained. Motion to strike is allowed.
9 Predicate questions need to be asked.

10 Members of the jury, you're not to
11 consider either the last question asked by
12 Mr. Britt or the answer given by
13 Mr. McMillan if any answer was given.
14 Those matters are not to take any part in
15 your deliberations in this case in any way.

16 BY MR. BRITT:

17 Q When you went into the woods with the
18 defendant, were you looking for the car?

19 A My purposes for going in the woods at that
20 time was to see where he was actually coming from.

21 Q Had previously -- prior to going into the
22 woods, had the defendant told you where the fancy red
23 car was at that time?

24 A He said it was -- had left 15 minutes prior
25 to my arrival and it was on its way back to South

1 Carolina.

2 Q At the time when you saw the defendant
3 coming out of the woods, you said he was dressed in a
4 pair of shorts only?

5 A Yes, sir.

6 Q Did he appear to be wet?

7 A No, sir.

8 Q Did his clothes appear to be wet?

9 A No, sir, not at that time.

10 MR. BRITT: I don't have any
11 other questions.

12 THE COURT: Mr. Bowen,
13 Mr. Thompson.

14 RECROSS EXAMINATION

15 BY MR. BOWEN:

16 Q Did you ask the swimmers if he had been
17 back there with him?

18 THE COURT: That's already been
19 asked.

20 BY MR. BOWEN:

21 Q And you were there to do a full vehicle
22 investigation, weren't you?

23 A I was there looking to a suspicious
24 vehicle.

25 Q Mr. Green came from the woods, you went

1 back in the woods?

2 A Yes, sir.

3 Q Never saw a vehicle of any kind back there,
4 did you?

5 A No, sir.

6 MR. BOWEN: That's all.

7 THE COURT: Mr. Britt.

8 MR. BRITT: No other questions.

9 THE COURT: May Mr. McMillan be
10 excused?

11 MR. THOMPSON: Yes, sir.

12 MR. BRITT: Your Honor, at this
13 time can we take a recess?

14 THE COURT: Twenty minutes?

15 MR. BRITT: That would be fine.

16 THE COURT: Ladies and gentlemen
17 of the jury, we're going to be at recess.
18 I've got almost five until, so if you'll
19 reassemble in the jury room at 15 after by
20 the clock on the wall. Is that closer to
21 ten or five from where you sit?

22 MR. BRITT: Closer to five.

23 THE COURT: If you'll reassemble
24 in the jury room at 15 after 11:00.

25 JUROR: 15 until.

1 THE COURT: Folks, I got up 5:00
2 to check the weather. I apologize. 15
3 after 10:00.

4 JUROR: 15 until.

5 MR. BRITT: Quarter to 11.

6 THE COURT: I'm looking at it and
7 reading something else. Quarter till.
8 Thank you very much. Please recall it is
9 your duty to abide by all prior instruction
10 by the Court. I'm sorry, folks.

11 (Jury out at 10:24 a.m.)

12 (Off-the-record discussion.)

13 THE COURT: We're at ease until
14 15 until.

15 (Brief recess.)

16 THE COURT: Let the record
17 reflect all counsel are present, the
18 defendant is present in open court. All
19 members of the jury secured in the jury
20 room.

21 Immediately following the recess this
22 morning, Mr. Horne, the bailiff, indicated
23 that he had observed one of the jurors, is
24 that number four, Ms. Paula Locklear, who
25 appeared to be walking with extreme

1 difficulty and appeared to be in pain. He
2 indicated to me that the door apparently
3 was opened by another member of the jury
4 just a moment ago.

5 THE BAILIFF: They had brought it
6 to my attention.

7 THE COURT: One of the members of
8 the jury brought it to the attention of Mr.
9 Horne that Ms. Locklear apparently is in a
10 great deal of pain apparently with her
11 back, which I can certainly understand and
12 relate to, and she's in so much pain that
13 she's in the jury room in tears. It's my
14 intent to -- I hate to impose but I don't
15 know any other way to do it except to bring
16 her in and ask if she's in a condition to
17 continue or whether we need to stop at this
18 point.

19 MR. THOMPSON: Right, I think
20 that's the appropriate thing to do.

21 THE COURT: All counsel are
22 present, the defendant is present in open
23 court. All members of the jury are secured
24 in the jury room. Mr. Horne, if you'll ask
25 Ms. Locklear to come in, tell her to take

1 her time. As a matter of fact, is there
2 any objection if we put a chair right there
3 for that purpose?

4 MR. THOMPSON: To have her sit
5 down?

6 THE COURT: Yes, rather than have
7 her walk all the way over here if she's in
8 pain.

9 (Juror Locklear enters the courtroom
10 at 10:35 a.m.)

11 BY THE COURT:

12 Q Ms. Locklear, is sitting or standing easier
13 for you right now?

14 A A little of both.

15 Q My purpose in asking you to come in, ma'am,
16 is that it has been brought to my attention that
17 you're having some physical difficulties, some pain?

18 A Yes.

19 Q We don't mean to pry, and we don't mean to
20 ask you to give us any specific information, is that
21 pain in your back?

22 A Yes.

23 Q I understand.

24 I take it from what I am able to observe
25 that you are in extreme discomfort suffering extreme

1 pain right now?

2 A Yes.

3 Q Ma'am, we're going to stop at this point.
4 We're going to bring the other members of the jury
5 in, well stop, we'll reconvene at 9:00 or 9:30 on
6 Tuesday morning. Will you be able to seek medical
7 assistance in that time period?

8 A Yes.

9 Q You can either sit where you are or stand
10 where you are, you don't need to go back into the box
11 for our purposes right now, whatever is more
12 comfortable to you?

13 Does the state want to be heard?

14 MR. BRITT: No, sir.

15 THE COURT: Counsel for
16 defendant?

17 MR. THOMPSON: No, sir.

18 MR. BOWEN: No, sir.

19 THE COURT: If you'll bring the
20 other members of the jury in, please.

21 (Remaining jurors enter the courtroom
22 at 10:38 a.m.)

23 THE COURT: Are there any other
24 members of the jury outside, sir?

25 JUROR: Yes, sir.

1 THE COURT: If you'll ask them to
2 come inside, please.

3 JUROR: They are down below.

4 THE COURT: I'm sorry, you folks
5 can have a seat, we'll take care of it.

6 We're short two.

7 JUROR: They are down making a
8 phone call, bottom level.

9 THE COURT: Ms. Locklear is over
10 at my left.

11 JUROR: Okay.

12 THE COURT: Ladies and gentlemen,
13 I apologize for the brief recess. One of
14 the members of the jury is experiencing
15 some physical pain. We're going to stop
16 the proceedings at this point. We're going
17 the recess at this point until 9:30 on
18 Tuesday.

19 During the recess, which will be
20 extended because of the holiday on Monday,
21 it's especially important that you continue
22 to abide by all prior instructions of the
23 Court concerning your conduct.

24 Again, I'm obligated to instruct you
25 that you're not to talk about this matter

1 among yourself or anyone else, including
2 members of your own families, not allowed
3 to have anyone say anything to you or in
4 your presence about this case. If anyone
5 does or attempts to do so, it's your duty
6 to inform us of that immediately. Also, if
7 anyone says anything about the case in your
8 presence, it's your duty to inform us of
9 that immediately.

10 Don't form or express any opinions
11 about this matter. No contact or
12 communication of any kind with any of the
13 attorneys, parties, witnesses, prospective
14 witnesses, don't allow yourselves to be
15 exposed to any media accounts which may
16 exist in this matter. And don't conduct
17 any independent inquiry or research of any
18 kind.

19 Be careful going home. We will see
20 you 9:30 Tuesday morning, January the
21 16th. Thank you all. Members of the jury
22 are excused, everyone else please remain
23 seated.

24 (Jury out at 10:43 a.m.)

25 JUROR: I'm sorry.

1 THE COURT: Don't worry about
2 it. That's okay. Do you need any
3 assistance in getting home, ma'am,
4 driving?

5 MR. BOWEN: I haven't thought
6 about that.

7 THE COURT: I'm sorry.

8 JUROR: I can call someone.

9 THE COURT: Are you sure? If you
10 need any assistance, please indicate that
11 to Mr. Horne.

12 THE BAILIFF: One of the jurors
13 said she would help her get home.

14 THE COURT: Ma'am, for what it's
15 worth, there's a heat pack that you can buy
16 for about ten dollars.

17 JUROR: I've got one.

18 THE COURT: Yes, ma'am. I hope
19 everything is okay. If you have any
20 difficulties in terms of reporting on
21 Tuesday, don't hesitate to call us and let
22 us know. If you'll call the number that's
23 been provided to you.

24 JUROR: Okay. Thank you.

25 THE COURT: Anything on behalf of

1 either counsel?

2 MR. BRITT: That wasn't a
3 commercial endorsement, was it?

4 THE COURT: I didn't say brand
5 name but it wouldn't matter to me.

6 Before you leave today, there is a
7 matter involving a writ I need to approach
8 you. Involved in this case.

9 MR. BRITT: Yes, sir, there's one
10 you signed earlier. We are going to return
11 that individual to the department of
12 corrections, we need a new writ for next
13 week. That's been prepared at this time.

14 THE COURT: Simply out of an
15 abundance of caution, because I don't think
16 -- I don't want to do anything that would
17 create a delay, if it becomes necessary for
18 Ms. Locklear to be transported from the
19 Robeson County courthouse to her place of
20 residence, is there any objection on behalf
21 of the defendant?

22 MR. THOMPSON: Transported by
23 who? I mean, what did you say?

24 THE COURT: Robeson County
25 Sheriff's Department.

1 MR. THOMPSON: I'm sorry, I
2 didn't hear that, no, sir.

3 THE COURT: Mr. Green, do you
4 consent to that if it becomes necessary.

5 MR. GREEN: Yes, sir.

6 THE COURT: If that becomes
7 necessary, if it is done, the Court directs
8 that any officer, agent or official with
9 the Robeson County Sheriff's Department is
10 to simply transport Ms. Locklear from the
11 Robeson County courthouse to her place of
12 residence, with absolutely no discussion
13 about this case. If that does occur, then
14 the Court will require the transporting
15 officer to appear in court on Tuesday,
16 January 16th, 1996 for the purposes of
17 making a record.

18 MR. BOWEN: Well, we request that
19 the transporting officer not be a witness
20 or whatsoever in this case.

21 THE COURT: I'm sorry. I assumed
22 that would be the case. That's a bad
23 move. So the Court directs that any
24 transporting officer not be anyone who has
25 been, will be, or may be a witness in this

1 case.

2 Okay. Anything further from either
3 counsel?

4 MR. THOMPSON: No, sir.

5 THE BAILIFF: Jurors are
6 requesting slips for this week to take to
7 their employers.

8 THE COURT: We can accommodate
9 them, Ms. Gaines can do that. I'm going to
10 ask once we have recessed, once Mr. Green
11 is cleared.

12 THE BAILIFF: Yes, sir.

13 THE COURT: If you see that he
14 remains until Mr. Green is cleared. Then
15 we'll bring them into the jury room. If
16 you tell them to remain and we'll assist
17 them in that regard.

18 MR. BRITT: At this time I want
19 to return Defendant's Exhibit Number 9,
20 Mr. McMillian had it on the stand when he
21 concluded his testimony and he brought it
22 back in.

23 THE COURT: Thank you, sir.

24 THE BAILIFF: She is not able to
25 go any further, and we're going to try to

1 get a wheelchair up here to get her
2 escorted to the hospital. She got to the
3 hallway, that's as far as she got. I have
4 all the jurors, with the exception of one
5 who is with her in the back hallway.

6 THE COURT: Who is in the back
7 hallway, all the jurors or the one with
8 her.

9 THE BAILIFF: All the other
10 jurors are in the jury room with the
11 exception of Ms. Pauline and the little
12 short lady, I can't think of her name.

13 MR. BRITT: Jury number two.

14 THE COURT: Two members of the
15 jury are in the back hallway?

16 THE BAILIFF: Yes, sir. Do you
17 wish for the Sheriff's Department to
18 transport her to the hospital?

19 THE COURT: Yes, sir. The Court
20 directs that any transporting officer be
21 someone who has not been, will not be,
22 and -- anyone who is connected with this
23 case is prohibited. Ma'am, can you
24 transport?

25 THE BAILIFF: I'm with Daniel,

1 I'll have to ask the Major.

2 THE BAILIFF: We'll take care of
3 that.

4 THE COURT: Well, we need to make
5 a record.

6 THE BAILIFF: Let me get the
7 Major.

8 THE COURT: Yes, sir, bring the
9 Major in.

10 For the record, Major Watkins, we need
11 the name of any officer who you would
12 charge with the responsibility of
13 transporting Ms. Locklear to the hospital.

14 THE BAILIFF: Deputy Locklear.

15 THE COURT: Who is Deputy
16 Locklear? That is a problem because she is
17 one of the deputies assigned to guard
18 Mr. Green.

19 THE BAILIFF: Let me get
20 somebody.

21 THE COURT: I need a name so we
22 can put that name into the record. We
23 can't move her until we do that, so there's
24 some expediency here.

25 THE BAILIFF: Let me do that.

1 THE BAILIFF: Judge, you mean
2 that she's in charge of Mr. Green is the
3 reason she can't go.

4 THE COURT: She's involved in
5 this case to the extent that she has been
6 involved in transporting, and a bailiff in
7 this courtroom, we need someone who has not
8 been a witness, will not be a witness, and
9 is not involved in this case in any way.

10 MR. BRITT: At some point I'm
11 sure we will address her condition in terms
12 of her ability to continue.

13 THE COURT: That's a matter that
14 is premature, something we need to be
15 thinking about. I appreciate you bringing
16 it up, but because she is a member of the
17 original panel of 12 may give rise to a
18 situation where we're talking about
19 substitution of an alternate next week.
20 For the record, first alternate is --

21 MR. BRITT: Mr. McGirt.

22 MR. THOMPSON: May I be excused?

23 THE COURT: No, sir, I
24 apologize. But until we get her situation
25 cleared up, everybody needs to stay here.

1 I apologize.

2 If you're out, and they come back,
3 we've got to wait. Anytime you got more
4 than two lawyers together, getting two of
5 them in the same courtroom is always a
6 problem. As soon as one steps out, the
7 other one steps in.

8 MR. BOWEN: We have seminars on
9 that, learn how to do that.

10 THE COURT: On obstruction 101?

11 MR. BRITT: May I approach?

12 (Off-the-record discussion.)

13 THE COURT: Folks, might be
14 quicker to call -- at this rate. You folks
15 are familiar, local hospital is how far.

16 MR. BRITT: Right down the
17 street.

18 THE COURT: What is the response
19 time for ambulance calls in Robeson County.

20 MR. THOMPSON: Varies, Your
21 Honor, they come down here quite often.

22 THE COURT: That may be the best
23 course of action for a lot of reasons.
24 Ma'am, if you'll call the -- although I am
25 reluctant to do that, because that

1 necessarily may impose an expense or
2 hardship on her without her consent.

3 THE BAILIFF: Deputy Scotting.

4 THE COURT: State your name
5 please, sir.

6 THE BAILIFF: James Edward
7 Scotting.

8 THE COURT: You have no
9 connection at all --

10 THE BAILIFF: No knowledge at
11 all.

12 THE COURT: Not a witness as far
13 as the State or the defendant?

14 THE BAILIFF: No, sir.

15 THE COURT: Not involved in any
16 investigative aspect of this case?

17 THE BAILIFF: No, sir.

18 THE COURT: With the consent of
19 counsel for the State.

20 MR. BRITT: Yes, sir.

21 THE COURT: With the consent of
22 the counsel for the defendant?

23 MR. BOWEN: Yes, sir.

24 THE COURT: With the consent of
25 the defendant, Mr. Green?

1 MR. GREEN: Yes, sir.

2 THE COURT: With consent of
3 counsel to transport Ms. Locklear to the
4 hospital. You're not to discuss with her
5 any aspect of this case. You understand
6 those instructions?

7 THE BAILIFF: Yes, sir.

8 THE COURT: I'm also going to
9 instruct that you report to this courtroom
10 Tuesday among, January 16th, '93 so we can
11 make a record if that becomes necessary.

12 THE BAILIFF: Yes, sir.

13 THE COURT: Thank you very much,
14 if you'll attend to Ms. Locklear, please.

15 THE BAILIFF: Yes, sir.

16 THE COURT: Mr. Thompson, do you
17 want to step out for a moment?

18 MR. THOMPSON: You told them to
19 report back January 19th.

20 THE COURT: 16th, I thought I
21 said, 1996. The hearing goes after the
22 eyes go.

23 MR. THOMPSON: Yes, sir, right.

24 THE COURT: Yes, sir.

25 MR. THOMPSON: I'll wait.

1 (Off-the-record discussion.)

2 THE COURT: This is, for the
3 record, Ake matter. Is it agreeable that I
4 look this over because I'm obligated --

5 MR. THOMPSON: Certainly. Not
6 only, but hopefully before you leave.

7 THE COURT: I was thinking more
8 in terms of Tuesday morning.

9 MR. BRITT: I don't have any
10 objection to that.

11 MR. THOMPSON: It's not that
12 long, Judge. I mean, I'll need to approach
13 you, you know --

14 THE COURT: So the hallway is
15 secured.

16 THE BAILIFF: Right. Everybody
17 is in the jury room.

18 THE COURT: All members of the
19 jury are in the jury room.

20 THE BAILIFF: Right.

21 THE COURT: If you folks would
22 make sure Mr. Green is transported.

23 Before Mr. Green leaves, any other
24 matters we need to take up on the record?

25 MR. BRITT: No, sir.

1 THE COURT: Formally recess at
2 this time until 9:30 on Tuesday morning.

3 THE BAILIFF: All rise, please.

4 (Court adjourned at 11:09 a.m.)
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1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3

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13

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14

15 (January 16, 1996. Proceedings in open court.)

16

THE COURT: Good morning, folks.

17

If you'll bear with me one second.

18

19 Let the record reflect that all counsel are
20 present, the defendant is present in open
21 court. Mr. Horne, do we have all members
of the jury secured in the jury room?

22

THE BAILIFF: Yes, sir, they are.

23

24 THE COURT: Folks, as I think
everybody is aware, we had a situation
25 develop with regard to juror number four,

1 Ms. Paula Locklear. I understand she is
2 present in the jury room.

3 As you folks will notice, she has a
4 cushion on the back of her seat. Is there
5 any request on either the part of counsel
6 for the State or counsel for the defendant
7 to make inquiry of Ms. Locklear
8 individually?

9 MR. BRITT: Your Honor, I think
10 it might be appropriate just to inquire as
11 to her condition and whether she believes
12 she's in a position to continue.

13 THE COURT: I agree. Also, we
14 have present Officer or Deputy Scoggins who
15 transported Ms. Locklear to the hospital.
16 It's my intent to ask him some questions
17 and then allow counsel for the State and
18 defendant to ask any questions you folks
19 want to.

20 Mr. Scoggins, pursuant to the Court's
21 order, you transported Ms. Locklear to the
22 hospital.

23 THE BAILIFF: Yes, sir.

24 BY THE COURT:

25 Q If you'll state the name of the facility

1 that she was taken to, please, sir?

2 A Southeastern Regional Medical Center.

3 Q Upon your arrival at Southeastern Medical
4 Center, what if any instructions did you give any
5 healthcare providers who maintained --

6 A I instructed the entire staff to treat her
7 professionally and medically and no other discussion
8 to take place.

9 Q By no other discussion, you're referring to
10 no other discussion about this matter?

11 A Yes, sir.

12 Q Were you present during the entire time
13 that she was undergoing treatment at Southeastern?

14 A Until noon.

15 Q I understand that she was released sometime
16 after from Southeastern?

17 A Yes, sir.

18 Q Did you arrange for a transport for
19 Ms. Locklear from the hospital to her residence?

20 A Her husband was present.

21 Q Okay. Any questions on behalf of the
22 State, Mr. Britt.

23 MR. BRITT: No, sir.

24 THE COURT: Any questions on
25 behalf of counsel for defendant of Deputy

1 Scoggins?

2 MR. THOMPSON: No, sir.

3 THE COURT: May the Deputy be
4 released?

5 MR. BRITT: Yes, sir.

6 THE COURT: Mr. Horne, if you'll
7 ask -- set that chair there for the
8 moment. Is that agreeable with counsel for
9 State.

10 MR. BRITT: Yes, sir.

11 THE COURT: Agreeable with
12 counsel for the defendant for our purposes
13 right now.

14 MR. THOMPSON: Yes.

15 THE COURT: If you'll ask
16 Ms. Locklear to come in, please, sir.

17 (Juror Locklear comes into the
18 courtroom).

19 THE COURT: Good morning ma'am.

20 BY THE COURT:

21 Q Ms. Locklear, my purpose in asking you to
22 come in is, first of all, to inquire how you're
23 doing?

24 A A whole lot better.

25 Q Are you satisfied, ma'am, that nothing has

1 occurred in terms of your physical situation or
2 condition which would affect your ability to serve as
3 a member of the jury in this case fairly and
4 impartially and objectively? Are you satisfied of
5 that?

6 A Yes.

7 Q Let me emphasize to you if at any time
8 there's anything affecting your comfort or your
9 convenience, don't hesitate to let us know that.
10 Specifically, if you need a break, don't hesitate to
11 raise your hand and let us know that, and we will do
12 the best we can to accommodate you.

13 Mr. Britt, any questions?

14 MR. BRITT: No, sir.

15 THE COURT: Mr. Thompson,
16 Mr. Bowen.

17 MR. THOMPSON: No, sir.

18 MR. BOWEN: No, sir.

19 THE COURT: Thank you, ma'am,
20 we're glad you're feeling better. Folks,
21 appearing that Ms. Locklear's condition
22 will not effect her ability to serve in
23 this case, and specifically will not
24 affected her ability to serve fairly and
25 objectively, and impartially, it's my

1 intent to allow her to remain a member of
2 the jury. Does the State want to be
3 heard?

4 MR. BRITT: No, sir.

5 THE COURT: Counsel for the
6 defendant want to be heard?

7 MR. THOMPSON:

8 MR. BOWEN: No, sir.

9 THE COURT: If the situation
10 changes, we'll inquire further.

11 I've had a brief discussion with both
12 Mr. Bowen and Mr. Britt this morning. I've
13 asked both counsel to look at 15-A 1051 et
14 seq. through 1055, as it may relate to this
15 case. 1052 and 1054 in particular I think
16 are pertinent. There was some discussion
17 during voir dire on the part of counsel for
18 the defendant in particular about the issue
19 of immunity. And it's it my intent that
20 the record reflect what if any agreement
21 may exist between the State of North
22 Carolina and any witness called to testify
23 on behalf of the State pursuant to 1052 and
24 1054 so that we can make a determination as
25 to exactly what our status is under those

1 statutory provisions.

2 Anything further on behalf of the
3 State, Mr. Britt?

4 MR. BRITT: No, sir. And in
5 complying with the statute, I put them on
6 notice, and filed that with the clerk
7 stating -- and attached as a copy of that
8 notice the agreement that was entered into
9 with Mr. Demery.

10 THE COURT: The reason that I
11 asked you folks to look at the statute is
12 1052 deals with what might be called pure
13 immunity. And there's certain procedural
14 requirements, for example, notice has to be
15 given to any affected defendant and his
16 counsel. Application, notice has to be
17 given to the Attorney General's office,
18 application has to be made to the Court for
19 the Court to enter an order. Ordinarily
20 that arises in a situation where it is
21 contemplated or anticipated that a witness
22 may assert his or her Fifth Amendment
23 rights, and the prosecution may seek to
24 have the Court issue an order of immunity
25 under 1052.

1 1054 deals with what is, you've
2 mistakenly a called quasi imunity
3 situation, which is, sentence reduction,
4 charge reductions. Argument might also be
5 made that agreement in this case depending
6 on what that agreement is as reflected in
7 the record covers both of those
8 situations. If you look at the pattern
9 jury instruction, the alternative set out
10 in the pattern jury instructions deals with
11 situations of both imunity and quasi
12 imunity. So I think we need to clarify for
13 the record exactly what our status is, what
14 is appropriate and may not be appropriate.

15 1054, for example, says that the
16 scrutiny instruction which is is mandated
17 by 1052 doesn't necessarily have to be
18 given under 1054 situation. So we need to
19 clarify that before problems develop.

20 Okay?

21 Any other matters before we bring the
22 jury in?

23 Mr. Horne, if you'll bring the jury
24 in, please, sir.

25 (Jury in at 10:40 a.m.)

1 THE COURT: Good morning, ladies
2 and gentlemen of the jury.

3 Ladies and gentlemen, so that all of
4 you will be aware of our schedule, it is my
5 intent to have a short court day on
6 Friday. Again, let me inquire of all
7 members of the panel, would it
8 inconvenience or cause any difficulty for
9 anyone if we were to start at 9:00 on
10 Friday and recess court at approximately
11 1:00 on Friday? That's the schedule we
12 will keep then.

13 Mr. Britt, are you ready to go
14 forward.

15 MR. BRITT: Yes, sir, Your Honor,
16 at this time we call Louie Murray.

17 THE COURT: If you'll come up and
18 be sworn, please, sir.

19 If you'll place your left hand on the
20 Bible, raise your right and face Ms.
21 Gaines, please.

22 LOUIE DANIEL MURRAY, JR.,
23 being first duly sworn was examined and testified as
24 follows:

25 DIRECT EXAMINATION

1 THE COURT: For the record, if
2 you will state your full name.

3 THE WITNESS: Louie Daniel
4 Murray, Jr.

5 THE COURT: If you'll spell your
6 first and last name for the record?

7 THE WITNESS: L O U I E,
8 M U R R A Y.

9 THE COURT: Mr. Britt.

10 BY MR. BRITT:

11 Q Mr. Murray, by whom are you employed?

12 A Bell Atlantic Mobile.

13 Q What is your position with Bell Atlantic?

14 A I'm a small claims specialist.

15 Q And as a small claims specialist, what are
16 your duties and responsibilities?

17 A Duties and responsibilities are, on all
18 subpoenas, I keep the records for bill copies for the
19 company.

20 Q What is the business Bell Atlantic Mobile?

21 A We are a cellular telephone company.

22 Q And where is your business located?

23 A We're located at 80 International Drive,
24 Greenville, South Carolina.

25 Q How long have you been employed with Bell

1 Atlantic?

2 A Two and a half years.

3 Q How long have you worked as a small
4 claims specialist?

5 A Two and a half years.

6 Q You testified that you honor all subpoenas
7 that are issued to the company in regard to phone
8 bills?

9 A That's correct.

10 Q And is it part of the regular course of
11 Bell Atlantic's business to maintain cellular phone
12 records on each of its accounts?

13 A That's correct.

14 Q And are the records that are maintained by
15 Bell Atlantic are they made at or near the time of
16 the circumstances described in those phone records?

17 A Yes, sir.

18 Q Mr. Murray, can you tell us how the phone
19 records are made in regard to the use of a cellular
20 telephone?

21 A We keep the records recorded, they record
22 the calls, the time of the calls made, the dates, and
23 time.

24 Q And are those records made as a result of
25 calls that are made from a particular phone?

1 A That's correct. Each mobile phone has an
2 ESN, electronic serial number, and the calls that are
3 made from that electronic serial number are recorded.

4 Q And if recordation of those cellular phone
5 calls, are they made simultaneously of the making of
6 each phone call as reflected on the record?

7 A That's correct.

8 Q You were issued a subpoena to produce
9 certain documents here in court, is that correct?

10 A That's correct.

11 Q Do they involve the subpoena requested that
12 you produced phone records involving the account of
13 James Jordan as maintained by Atlantic mobile?

14 A That's correct.

15 Q For the periods of July and August of 1993?

16 A That's correct.

17 Q Did James Jordan have an account with Bell
18 Atlantic Mobile?

19 A Yes, he did.

20 Q What was the account number?

21 A The account number, 10173763.

22 Q And what if any telephone number was
23 assigned to correspond with that account number?

24 A Mobile number area code 704, 577-5523.

25 Q And previously you have referred to what is

1 commonly called an ESN number?

2 A That's correct.

3 Q Electronic security number?

4 A That's correct.

5 Q What if any electronic security number was
6 assigned to correspond to the account number for
7 James Jordan?

8 A I have that information, it will just take
9 me a second to locate it. 823A as in apple, C as in
10 cat, F as in Frank, 4, F as in Frank.

11 (State's Exhibit 56 was
12 marked for identification.)

13 MR. BRITT: May I approach the
14 witness?

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q May I see the records that you've brought
18 with you to court pursuant to the subpoena that was
19 issued.

20 And the record you've produced here in
21 court are the complete records as maintained by
22 Bell -- excuse me, Bell Atlantic Mobile for the
23 periods of June, July, August of 1993?

24 A That's correct.

25 Q Account of James Raymond Jordan?

1 A That's correct.

2 Q Are those records maintained in the
3 ordinary course of business of Bell Atlantic Mobile?

4 A Yes, they are.

5 Q Mr. Murray, I'm going to show you what has
6 been marked as State's Exhibit 56. Are these the
7 documents that you've produced here in court pursuant
8 to the subpoena that was issued?

9 A Yes.

10 Q And are those phone records made in the
11 regular course of business at or near the time of the
12 transactions recorded therein?

13 A Yes, sir.

14 Q Are these records kept in the regular
15 course of conducted business of Bell Atlantic Mobile?

16 A That's correct.

17 MR. BRITT: Your Honor, at this
18 time, I move that State's Exhibit 56 be
19 admitted.

20 I move that State's Exhibit 56 be
21 admitted.

22 THE COURT: You folks want to be
23 heard?

24 MR. BOWEN: No, sir.

25 THE COURT: Admitted without

1 objection.

2 MR. BRITT: May I approach the
3 witness again?

4 THE COURT: Yes, sir.

5 (State's Exhibit 56-A was
6 marked for identification.)

7 MR. BRITT: May I approach the
8 witness?

9 THE COURT: Yes, sir.

10 BY MR. BRITT:

11 Q Mr. Murray, in State's Exhibit 56, the
12 records that you've produced here in court, I ask you
13 to look at State's Exhibit 56-A, ask you if you can
14 identify this chart and ask you to compare 56-A with
15 State's Exhibit 56 which are the records maintained
16 by Bell Atlantic Mobil, and tell me if the
17 information contained in 56, a portion of 56 is
18 accurately reflected on 56-A?

19 A All right.

20 Q First, can you identify 56-A?

21 A Yes, I can.

22 Q How are you able to identify it?

23 A By the cellular phone number area code 704
24 577-5523. Electronic serial numbers 823 apple,
25 kappa, F4F, account numbers 1017376, and key name is

1 James Jordan.

2 THE COURT: Excuse me for the
3 interruption. You were identifying what is
4 depicted on 56-A under the heading ESN.
5 Would you read those numbers again, please,
6 sir?

7 THE WITNESS: 823, apple, cat,
8 fly, 4, fly.

9 THE COURT: There was reference
10 there to kappa, I wanted to make sure that
11 was cat and not kappa?

12 THE WITNESS: That's correct.

13 BY MR. BRITT:

14 Q And State's Exhibit Number 56-A, is that an
15 enlargement of a portion of the records that are
16 included in State's Exhibit Number 56?

17 A That's correct.

18 Q Is all the information contained on 56-A
19 the same information that appears on State's Exhibit
20 56, in that pertinent portion?

21 A Correct.

22 MR. BOWEN: We're going to object
23 and want to be heard at the appropriate
24 time on that.

25 THE COURT: Well, is this the

1 appropriate time?

2 MR. BOWEN: I think so.

3 THE COURT: Ladies and gentlemen
4 of the jury, there's a matter of law the
5 Court must take up at this time out of the
6 presence of the hearing of the jury.
7 Please recall my instruction in that
8 regard. Don't worry or speculate about
9 what takes place in the courtroom in your
10 absence. If all members of the jury would
11 step to the jury room, please.

12 (Jury out at 9:54 a.m.)

13 MR. BOWEN: May I approach the
14 witness, Your Honor?

15 THE COURT: Yes, sir.

16 First of all, what's the basis of the
17 objection.

18 MR. BOWEN: I object, Your Honor,
19 to State's proposed exhibit 56-A as to only
20 part of that exhibit. That part being a
21 notation of the three words "last local
22 call" and they appear below an entry --

23 THE COURT: So you're objecting
24 to the handwritten language which reads
25 "last local call".

1 MR. BRITT: No, sir, that was made
2 as a result of the investigation, in
3 making, in checking on each of the phone
4 calls, but that's no problem.

5 THE COURT: The objection in that
6 regard is sustained at this point. If
7 there's evidence to support it, it may be
8 placed on the chart. The chart would be
9 offered for both substantive and
10 illustrative purposes. At this point, the
11 objection is sustained.

12 The objection is to the handwritten
13 language. I haven't heard an objection to
14 the circling of any information contained
15 on State's Exhibit 56-A.

16 MR. BOWEN: Well, he has a virgin
17 exhibit, although it is a smaller one, and
18 my notion would be that the witness has
19 testified that this large blow up is an
20 identical copy or in essence a blow up of
21 the original exhibit. It is not, and it is
22 not as far as the three words added, it is
23 not as far as the circling material. I
24 would move at this point that we strike
25 this exhibit and that the original be used.

1 accordingly. I understand the position,
2 it's a valid position, and do we have any
3 white-out?

4 MR. THOMPSON: Your Honor, he's
5 testified to it, and --

6 THE COURT: One additional
7 question to clear that up.

8 MR. THOMPSON: Yes, sir. I mean,
9 I don't know what the jury has seen, when
10 you pick up something that big, you know.

11 THE COURT: Well, for the record,
12 the exhibit was facing the witness in the
13 court. Mr. Britt was holding the exhibit
14 from behind his body and the back of the
15 exhibit was all that in my view was
16 apparent to the jury or visible to the
17 jury. Any other matters that we need to
18 address while we have this opportunity?

19 MR. THOMPSON: No, sir.

20 THE COURT: Are you satisfied
21 with the correction as to 56-A that the
22 State has made at this point?

23 MR. BOWEN: Yes, sir.

24 THE COURT: If you'll bring the
25 jury back in. Mr. Britt, so the record is

1 clear, if you'll show the exhibit again to
2 the witness and lay foundational questions.

3 MR. BRITT: Yes, sir, the record
4 will reflect that the exhibits are
5 positioned such that the jury will not be
6 able to examine them when they re-enter the
7 courtroom.

8 THE COURT: Yes, sir.

9 (Jury in at 10:04 a.m.)

10 THE COURT: The objection is
11 sustained. But you may ask additional
12 foundation questions.

13 MR. BRITT: Yes, sir.

14 BY MR. BRITT:

15 Q Mr. Murray, again, I'm going to show you
16 State's Exhibit 56-A, which is a photo enlargement of
17 a portion of State's Exhibit Number 56, is that
18 correct?

19 A That's correct.

20 Q Does State's Exhibit 56-A contain the
21 identical information as State's Exhibit Number 56 as
22 it relates to that pertinent portion of the record?

23 A That's correct

24 (State's Exhibit 56-B was
25 marked for identification.)

1 BY MR. BRITT:

2 Q I'll show you what has been marked as
3 State's Exhibit Number 56-B, ask if you can identify
4 it.

5 A Yes, I can.

6 Q How are you able to identify it?

7 A By the cellular number, area code 704
8 577-5523.

9 THE COURT: Mr. Murray, I
10 apologize. You need to keep your voice up,
11 please.

12 THE WITNESS: By the cellular
13 phone number, area code 704, 577-5523.
14 Electronic serial numbers 823 apple, cat,
15 Frank, 4, Frank, account number, 10173763.
16 And the key name James Jordan.

17 BY MR. BRITT:

18 Q And State's Exhibit Number 56-B is a
19 photograph enlargement of a portion of the records
20 that you've produced here in court?

21 A That's correct.

22 Q Does it contain the identical information
23 as does State's Exhibit Number 56 in the pertinent
24 portion of the record?

25 A Yes, it does.

1 (State's Exhibit 56-C was
2 marked for identification.)

3 BY MR. BRITT:

4 Q I'll show you what has been marked as
5 State's Exhibit 56-C, ask if you can identify it?

6 A Yes, I can.

7 Q How are you able to identify State's
8 Exhibit 56-C?

9 A By the cellular phone number, area code 704
10 577-5523. The electronic serial number 823, apple,
11 cat, Frank, 4, Frank, account number 10173763, and
12 the key name James Jordan.

13 Q State's Exhibit Number 56-C is a photograph
14 enlargement of a portion of the records that you've
15 produced here in court?

16 A Yes, they are.

17 Q Does State's Exhibit 56-C contain the
18 identical information as to that pertinent portion of
19 the record that you produced here?

20 A Yes, it does.

21 (State's Exhibit 56-D was
22 marked for identification.)

23 BY MR. BRITT:

24 Q Show you State's Exhibit 56-D, ask you if
25 you can identify it?

1 A Yes, I can.

2 Q How are you able to identify 56-D?

3 A By the cellular mobile number 704 577-5523,
4 electronic serial number 823 apple, cat, Frank, 4,
5 Frank, account number 10173763 and the key name James
6 Jordan.

7 Q And State's Exhibit 56-D, is it a
8 photograph enlargement of a pertinent portion of the
9 record that you produced here in court?

10 A Yes.

11 Q Does it contain the exact information as is
12 contained in the records that you've produced here in
13 court?

14 A It does.

15 (State's Exhibit 56-E was
16 marked for identification.)

17 BY MR. BRITT:

18 Q I'll show you what has been marked as
19 State's Exhibit 56-E, ask you if you can identify it?

20 A Yes, I can.

21 Q How are you able to identify it?

22 A By the cellular phone number, area code 704
23 577-5523, electronic serial number 823 apple, cat,
24 Frank, 4, Frank, account number 10173763, and the key
25 name James Jordan.

1 Q State's Exhibit 56-E is a photograph
2 enlargement of a pertinent portion of the record that
3 you've produced here in court?

4 A Yes, it is.

5 Q Does 56-E contain the exact information as
6 that pertinent portion of the record that you've
7 produced here and it's been accepted as State's
8 Exhibit 56?

9 A It does.

10 Q State's Exhibit 56-A through E are
11 enlargements of the records maintained by Bell
12 Atlantic Mobile?

13 A That's correct.

14 MR. BRITT: Your Honor, at this
15 time I move for admission of 56-A through
16 56-E.

17 THE COURT: 56-A through 56-E?

18 MR. BRITT: Yes, sir.

19 MR. BOWEN: No objection.

20 THE COURT: They are admitted
21 without objection.

22 MR. THOMPSON: Your Honor, may we
23 get in a position where we can see?

24 THE COURT: Yes, sir.

25 MR. BRITT: May Mr. Murray step

1 down?

2 THE COURT: Certainly.

3 BY MR. BRITT:

4 Q I'm going to ask you to stand to this
5 side.

6 MR. BRITT: If the record will
7 reflect, I'm placing State's Exhibit 56-A
8 onto an easel to be displayed to the jury.

9 THE COURT: Yes, sir.

10 BY MR. BRITT:

11 Q If you could ask the Court to inquire if
12 all members of the jury are able to see the
13 exhibit?

14 THE COURT: Mr. Murray, this is a
15 very confining area, and in order for all
16 members of the jury to be able to see the
17 exhibit, you're going to have to stand to
18 one side or the other as you refer to
19 anything you may be asked about concerning
20 that exhibit.

21 Yes, sir.

22 BY MR. BRITT:

23 Q I'm going to hand you this pointer.
24 State's Exhibit 56-A, a photocopy enlargement of the
25 records maintained by Bell Atlantic, for the purposes

1 of the record, what is the beginning date that
2 appears on State's Exhibit 56-A?

3 A 7-18.

4 Q And what is the last date that appears on
5 that record?

6 A July 21st.

7 Q Is it fair to say that 56-A reflects phone
8 calls that were made on the phone that was the
9 account in the name of James Jordan from July the
10 18th, 1993 through July the 21st, 1993?

11 A That's correct.

12 Q Mr. Murray, are you able to determine if
13 based on the record, if there were what are referred
14 to as local calls or roaming calls that are displayed
15 on 56-A?

16 A Yes, they are roaming calls, calls made to
17 Rock Hill, two calls to Rock Hill, like Highland
18 Park, Illinois, and three calls to Matthews.

19 Q What is the difference between a local call
20 and a roaming call?

21 A A local call is out of your home base and
22 roaming calls are made from like if you are traveling
23 from one state to another state, then the roaming
24 calls are picked up through the cell sites, cell
25 sites that we have.

1 Q Are you familiar with the number of
2 cellular phone service providers in the State of
3 North Carolina?

4 A I'm not familiar with the number that we
5 have, no.

6 Q Did Bell Atlantic Mobile provide cellular
7 telephone service on a local basis there throughout
8 the State of North Carolina?

9 A Most of North Carolina, yes.

10 Q You've used a term called home base, what
11 is meant by that?

12 A Your home base is like your local area like
13 Charlotte, Gastonia, if you -- that's your home area.

14 Q Does the home base cover a specific region?

15 A Yes.

16 Q What happens if an individual whose home
17 base, for example, is Charlotte, leaves that home
18 base area?

19 A Then he would be roaming, it would be
20 picked up on cell sites.

21 Q And when you say it would be picked up on
22 cell sites, what are --

23 A When a call is placed on the cellular
24 phone, once you leave your home area, your home base,
25 then the cell sites pick up that call and that's

1 called roaming.

2 Q What is a cell site?

3 A It's a tower that -- you see the towers.

4 Q Are the cellular telephone calls that are
5 made, the signal sent from the phone that's made from
6 a tube to the tower then relayed to another telephone
7 number or another location?

8 A That's correct.

9 Q And works in the opposite direction when a
10 call is made to that telephone, that's correct?

11 A That's correct.

12 Q The record will reflect I'm placing State's
13 Exhibit 56-B on the easel.

14 THE COURT: Yes, sir.

15 BY MR. BRITT:

16 Q Mr. Murray, referring to State's Exhibit
17 56-B, the beginning date that appears there is what?

18 A July 22nd.

19 Q What is the ending date that appears for
20 the top portion of State's Exhibit 56-B?

21 A July 22nd.

22 Q And there is another -- two other areas of
23 information as it relates to the use of that
24 telephone, is that correct?

25 A That's correct.

1 Q And they appear to be -- they appear at the
2 lower half of State's Exhibit 56-B?

3 A That's correct.

4 Q And the first section of information that
5 appears after the top portion is dated July 23rd?

6 A That's correct.

7 Q An ends July the 25th?

8 A That's correct.

9 Q And then the third portion of information
10 on State's Exhibit 56-B shows a date beginning July
11 the 25th?

12 A That's correct.

13 Q And in the section of State's Exhibit 56-B,
14 dated July 22nd, 1993, the information contained on
15 the second line -- information that says billed
16 roamer call detail, what does that mean?

17 A These, they were outside of the home base,
18 and these were calls that were placed in Cellular
19 One, which is a roaming company, another carrier
20 picked up these calls that were made on July 22nd,
21 and this is a SID number, this is the 00599, which
22 was located in Wilmington, North Carolina.

23 Q When you say it's -- what is located in
24 Wilmington, North Carolina?

25 A This cell site that picked -- this Cellular

1 One.

2 Q That would be Cellular One tower?

3 A That's the carrier.

4 Q And the fact that the name Wilmington
5 appears on that portion of the bill, what if any
6 significance does that have?

7 A That's where these calls were generated
8 from.

9 Q Ask you to move to the second portion, the
10 middle portion of State's Exhibit Number 56, where
11 the dates begin July the 23rd and July the 25th.
12 Again, the information billed roamer appears. Does a
13 cellular telephone service provider's name appear in
14 that portion?

15 A Yes, U.S. Lumberton, North Carolina, and
16 this is the SID number 01537. They were outside of
17 the home area, these calls were placed -- they were
18 roaming calls.

19 Q And the phone calls that appear in
20 section -- the second section of State's Exhibit
21 56-B, shows that that cell site was located here in
22 Lumberton?

23 A That's correct.

24 Q And the third section that has the date
25 July the 25th, does it -- it also contains

1 information, billed roamer call?

2 A Yes, it does. Shows again that the calls
3 were went through U.S. Lumberton -- U.S. Lumberton,
4 and the SID number 01537. And these calls were
5 placed in Lumberton.

6 Q State's Exhibit Number 56 indicates the
7 time and the phone number and the city location of
8 each phone call?

9 A Yes, it does.

10 Q And the phone calls that were made from
11 Wilmington, North Carolina as reflected on State's
12 Exhibit 56, at what time --

13 THE COURT: 56.

14 MR. THOMPSON: 56-B.

15 MR. BRITT: Excuse me, State's
16 Exhibit 56-B.

17 BY MR. BRITT:

18 Q Did the records reflect when those phone
19 calls began and when did they end on July the 22nd?

20 A They started at 9:40, and ended at 19:47.

21 Q The time that's reflected on the records,
22 that's military time?

23 A Yes.

24 Q 9:40 would be 9:40 a.m.

25 A That's correct.

1 Q And 19:47 is reflected, would be 7:47 p.m.,
2 is that correct?

3 A That's correct.

4 Q In the second portion where it shows the
5 calls placed on U.S. Lumberton, beginning July the
6 23rd and ending July the 25th, at what time did those
7 phone calls begin?

8 A 10:36 a.m., and --

9 Q When was the last recorded phone call?

10 A 19:02.

11 Q Which would have been --

12 A 7:02.

13 Q 7:02 p.m.

14 A That's correct.

15 Q Last phone call that appears on the
16 document dated 7-25, U.S. Lumberton, at what time was
17 that phone call placed?

18 A 7:03 p.m.

19 Q The record also reflects where each phone
20 call was made to?

21 A That's correct.

22 Q And in the phone calls on July the 22nd as
23 reflected in State's Exhibit 56-B, what cities are
24 reflected in that record?

25 A Hickory, Rock Hill, New York, Castle.

1 Q Three letters that appear after the word
2 Castle?

3 A Correct.

4 Q For the record, can you state those three
5 letters that appear?

6 A H Y N, North Carolina. There are three
7 calls made. Call Charlotte, another call at Castle
8 Haven, I guess that's what it is.

9 MR. THOMPSON: Well, I object to
10 what it is.

11 THE COURT: You may not
12 speculate. You can state what is on the
13 exhibit.

14 THE WITNESS: H Y N, call that
15 was placed to Philadelphia, and we had an
16 incoming call.

17 BY MR. BRITT:

18 Q On the calls that were made from July the
19 23rd through July the 25th, in that portion of the
20 bill, what towns are listed there?

21 A Pembroke, High Point, Fayetteville,
22 Wilmington, two calls in Marion, Fayetteville, three
23 calls in Marion, Fayetteville, Marion, an 800 number
24 call, and then a call to Marion.

25 Q And the last phone call that appears on the

1 State's Exhibit 56-B was made --

2 A To Marion, South Carolina.

3 MR. BRITT: The record will
4 reflect I've removed State's Exhibit 56-B
5 from the easel and replaced it with 56-C.

6 BY MR. BRITT:

7 Q Referring to State's Exhibit 56-C, again,
8 the information billed roamer call appears. And
9 there is a cellular telephone service provider that's
10 listed there?

11 A That's correct.

12 Q What provider is listed there?

13 A U.S. Cellular, SID number 01643, and it's
14 out of Chesterfield.

15 Q And what dates are covered by State's
16 Exhibit 56-C?

17 A July 23rd through July 26th.

18 Q And what times are reflected on State's
19 Exhibit 56-C as to when phone calls were made?

20 A 7:05 a.m. through 12:06 p.m.

21 Q The phone call at 7:05 a.m. occurred on
22 July 23rd?

23 A That's correct.

24 Q And the phone call at 12:06 a.m. occurred
25 on July the 26th, that's correct?

1 A That's correct.

2 Q The numbers are reflected on State's
3 Exhibit 56-C?

4 A Yes.

5 Q And the cities that were called are also
6 reflected?

7 A Yes, sir.

8 Q What cities does the record reflect were
9 called on State's Exhibit 56-C?

10 A Had an 800 call, one call was placed to
11 Lumberton, Fayetteville, Marion, Philadelphia,
12 Rowland, Lumberton, three calls to Rowland and one
13 call to Fayetteville.

14 Q The record -- State's Exhibit 56-C, the
15 phone call that was made to the 800 service, at what
16 time does the record reflect that phone call was
17 made?

18 A 7:05.

19 Q What date?

20 A July 23rd.

21 Q And the phone call that was made to
22 Lumberton that occurred on July 23rd, at what time
23 was that phone call made based upon the record?

24 A 22:03.

25 Q Which would have been what time? 7:03 p.m.

1 A That's correct. Wait --

2 Q Excuse me, 10:03 p.m.

3 A That's correct.

4 Q 24 hours in a day?

5 A That's correct. Lumberton, North
6 Carolina.

7 Q The record will reflect I've removed
8 State's Exhibit 56-C from the easel and replacing it
9 with 56-D.

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Mr. Murray, again, referring to State's
13 Exhibit 56-D, the -- there's the letters billed
14 roamer appear?

15 A Yes.

16 Q And there also is a cellular phone service
17 provider listed?

18 A Uh-huh.

19 Q What is the company as reflected on the
20 record?

21 A Vanguard, SID number 01645 out of Myrtle
22 Beach, South Carolina.

23 Q And what dates are covered in that portion
24 of State's Exhibit 56-D?

25 A July 19th through July 24th.

1 Q And the hours that are covered beginning
2 July the 19th and ending on July the 24th?

3 A 12:30 to 12:07.

4 THE COURT: Both of those times that's
5 testified to p.m. or a.m. or can you clarify?

6 THE WITNESS: 12:30 a.m. to
7 12:07 p.m..

8 BY MR. BRITT:

9 Q And the cities that are reflected on the
10 record?

11 A Rock Hill, and there was a local call,
12 there was a call to Charlotte, two calls to Marion,
13 one call to Lumberton, Marion, call to Fayetteville,
14 call to Marion, call to Lumberton, four calls to
15 Marion.

16 Q The first phone call to Marion, what date
17 and time are reflected by that phone call?

18 A The date was July 23rd. This is at 11:06
19 p.m.

20 Q In the next section of information that
21 appears on State's Exhibit 56-B, there is also the
22 information, billed roamer appears?

23 A Yes, does.

24 Q And there is a cellular telephone services
25 provider who's listed there?

1 A Yes.

2 Q What company is listed there?

3 A Again, Vanguard. SID number 01645, out of
4 Myrtle Beach.

5 Q What are the dates and times of phone calls
6 that appear in that section of State's Exhibit 56-D?

7 A July 24th through July 24th. At 12:28
8 p.m. -- a.m., I'm sorry. 21:40 p.m.

9 Q And the cities that are reflected in that
10 portion of the bill?

11 A Yes.

12 Q What cities are reflected?

13 A Marion, four calls to Marion, one call to
14 Lumberton, two calls to Marion.

15 Q And the third section of information that
16 appears on State's Exhibit 56-D, the information
17 billed roamer appears and there's also a cellular
18 telephone services provider that's listed there?

19 A That's correct.

20 Q And what company is listed there?

21 A Bell Atlantic Mobile. SID number 01857 and
22 this is Anson County, North Carolina.

23 Q What are the dates that are reflected in
24 that section?

25 A July 24th through July 25th.

1 Q And the times and the cities that are
2 listed?

3 A 7:16 p.m., through 8:04 p.m.

4 Q And the locations that were called?

5 A Two calls to Brooklyn, New York, one call
6 to Huntington, New York.

7 MR. BRITT: The record would
8 reflect I've removed State's Exhibit 56-D
9 and replaced it with 56-E.

10 THE COURT: Yes, sir.

11 BY MR. BRITT:

12 Q Mr. Murray, State's Exhibit 56-E again, the
13 information billed roamer appears, and there is a
14 cellular telephone company service provider that's
15 listed. What provider is listed?

16 A GTE Mobile Communication, SID number 00349
17 out of Fayetteville, North Carolina.

18 Q And the dates that are reflected in that
19 portion of State's Exhibit 56-E are what?

20 A July 25th through July 26th.

21 Q And the numbers and location that were
22 called are also listed there?

23 A Yes.

24 Q The times as well are listed? What times
25 are covered in that portion of State's Exhibits 56-E?

1 A 1:17 p.m., 1:37 a.m.

2 Q And the phone calls of July the 25th that
3 are reflected on State's Exhibit 56-E, to whom are
4 those phone calls placed as reflected by the record?

5 A Two calls placed 411 directory
6 assistance -- you said on the 25th?

7 Q Yes.

8 A Just those two calls.

9 Q Beginning on the 26th, the record reflects
10 there were phone calls made to other locations?

11 A Yes.

12 Q What other locations are listed there?

13 A Marion, Fayetteville, two calls to
14 Fayetteville, California, and Fort Bragg.

15 Q In the second section that appears on 56-E,
16 again, the information billed roamer appears, and a
17 cellular telephone service provider is listed. What
18 cellular telephone service provider is listed in the
19 that portion?

20 A GTE Mobile Communication SID Number 00377
21 out of Florence, South Carolina.

22 Q What dates appear in that section of 56-E?

23 A July 24th through July 24th.

24 Q What are the times that are reflected in
25 that section of 56-E?

1 A 11:34 p.m., 12:15 p.m. -- a.m., I'm sorry.

2 Q And the location that the calls were made
3 to?

4 A Have six calls to Marion, South
5 Carolina.

6 MR. BRITT: Ask you to return to
7 the stand.

8 THE WITNESS: (Witness complies).

9 BY MR. BRITT:

10 Q The information that's maintained by Bell
11 Atlantic and is reflected in the records that you've
12 provided us today, Mr. Murray, they do not reflect
13 who made each of those phone calls, do they?

14 A No, they don't.

15 Q And they do not reflect who received any
16 phone call that was made during that time period, do
17 they?

18 A No.

19 MR. BRITT: Thank you. I don't
20 have any other questions.

21 THE COURT: Any
22 cross-examination?

23 MR. BOWEN: Yes, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. BOWEN:

1 Q Mr. Murray, this series of large
2 enlargements that appear to be about 24 by 36 in
3 size, who made these enlargements, sir?

4 A I don't have any idea who made those.

5 Q You turned -- what you turned over to the
6 State was what is now marked State's Exhibit Number
7 56, is that right?

8 A That's correct.

9 Q As far as you know, they made these, is
10 that correct?

11 A As far as I know.

12 MR. BRITT: Objection.

13 THE COURT: The objection is
14 sustained as to "they".

15 BY MR. BOWEN:

16 Q I want you to look, if you will,
17 Mr. Murray, at State's Exhibit 56-B. Can you see it
18 okay where I have it here?

19 A Uh-huh.

20 Q There's an entry here on July 23rd at 10:36
21 in the morning to a telephone number 521-3365 in
22 Pembroke, North Carolina, is that what your official
23 Bell Atlantic record reveals?

24 A It was on 7-23? That's correct.

25 Q Now, then I believe elsewhere on another

1 exhibit, you have accounted for an 800 call that
2 occurred about 7:30 in the morning, is that correct,
3 7:00 in the morning of July 23rd, 1993?

4 A 7:05, yes.

5 Q Then, except for that 800 call, do your
6 records show that between 19:47, that is, between
7 7:47 in the evening on the 22nd of July, and 10:36 in
8 the morning, no calls were made except for that one
9 800 call about 7:00 in the morning of 7-23 from the
10 Jordan phone?

11 A That's correct.

12 Q So the calls from the Wilmington, North
13 Carolina area ceased at 7:47 p.m., from the Jordan
14 phone, is that correct?

15 A Okay, on the 22nd.

16 THE COURT: I'm sorry.

17 BY MR. BOWEN:

18 Q They ceased on July 22nd from the
19 Wilmington area just before 8:00 in the evening,
20 that's correct?

21 A Correct.

22 Q And no call was placed until that 800 call
23 that was placed in the Lumberton roaming area about
24 7:00 the next morning?

25 A That's correct.

1 Q On the 23rd?

2 A That's correct.

3 Q And then this number to Pembroke comes at
4 10:36. Now, do you know --

5 THE COURT: On what date?

6 BY MR. BOWEN:

7 Q On the 23rd of July, 10:36, correct?

8 A That's correct.

9 Q Do you know who has this number, 523-3365
10 in Pembroke, North Carolina?

11 A No, I don't.

12 MR. BOWEN: That's all.

13 THE COURT: Anything on
14 redirect?

15 MR. BRITT: No, sir.

16 THE COURT: May the witness be
17 released, folks?

18 MR. BRITT: Yes, sir.

19 MR. THOMPSON: Your Honor, may I
20 have a moment?

21 MR. BOWEN: That's all.

22 THE COURT: May the witness be
23 released?

24 MR. THOMPSON: Yes, sir, Your
25 Honor, in the State's opinion --

1 THE COURT: Thank you, sir,
2 you're free to go.

3 Mr. Britt.

4 MR. BRITT: Your Honor, at this
5 time we call Jovan Carter.

6 THE COURT: Place left hand on
7 the Bible, raise your right, face the
8 clerk.

9 JOVAN CARTER,
10 being first duly sworn was examined and testified as
11 follows:

12 DIRECT EXAMINATION

13 THE COURT: If you'll state your
14 full name for the record, please, sir.

15 THE WITNESS: Yes. Jovan
16 Carter. J O V A N, C A R T E R.

17 THE COURT: Mr. Carter, you're
18 going to have to keep your voice up so all
19 members of the jury and counsel for the
20 defendant are able to hear you. Speak
21 directly into the microphone.

22 BY MR. BRITT:

23 Q Jovan, if you'll pull close, the chair
24 closer to the mike.

25 Where do you live?

1 A Route 16, Box 67 Downing Road Extension --

2 THE COURT: They can't hear you,

3 sir.

4 THE WITNESS: Downing Road

5 Extension.

6 BY MR. BRITT:

7 Q Where is Route 16?

8 THE COURT: What city?

9 THE WITNESS: Fayetteville.

10 BY MR. BRITT:

11 Q Are you familiar with the area of Stedman
12 and Vander which are east of Fayetteville in
13 Cumberland County?

14 A Yes, sir.

15 Q Is that the area near where you live?

16 A Yes, sir.

17 Q How long have you lived there?

18 A I say for like three or four years now.

19 Q Where did you go to high school?

20 A Cape Fear High School.

21 Q And when did you last go there?

22 A I believe it was like in '93.

23 Q Did you graduate?

24 A No, sir.

25 Q Do you work?

1 A No, sir, not right now.

2 Q What type of work have you done in the
3 past?

4 A I did maintenance work at Holiday Inn on
5 I-95, 53, and I worked at TDM Pallets.

6 Q Who do you live with on Downing Road?

7 A My aunt.

8 Q How long have you lived there with her?

9 A For about, I say, for like two years.

10 Q In July of 1993 were you living in the area
11 of Downing Road in Cumberland County?

12 A Yes.

13 Q July the 26th of 1993, did you have an
14 occasion to see a red Lexus automobile there at your
15 residence?

16 A Yes.

17 Q Where in the area of your residence did you
18 see that red Lexus automobile?

19 A It came to my house.

20 Q And at the time you first saw it, were you
21 inside or outside the house?

22 A Outside.

23 Q Was anyone there with you?

24 A Yes, sir.

25 Q Who was there with you?

1 A My aunt.

2 Q Who if anyone did you see driving the red
3 Lexus automobile when it came to your house on July
4 the 26th of 1993?

5 A It was the Indian male.

6 Q Did you know any of the people inside the
7 car?

8 A No, sir.

9 Q How many people were inside the car at that
10 time?

11 A There was two.

12 Q Can you describe the two people that you
13 saw inside that car?

14 A It was the Indian male and Daniel Green.

15 Q You've gestured to the defendant?

16 A Yes, sir.

17 Q Had you ever seen either the Indian male
18 who was driving the car or Daniel Green prior to that
19 date?

20 A No, sir.

21 Q Did any other vehicle come to your house at
22 the same time that the red Lexus did?

23 A Yes, sir.

24 Q What other kind of car or vehicle came to
25 your house at the time the red Lexus did?

1 A It was a Blazer.

2 Q Did you recognize anyone in the Blazer?

3 A Yes.

4 Q Who did you recognize inside the Blazer?

5 A My friend Rick.

6 Q And what is Rick's last name?

7 A Hales.

8 Q Was anyone else inside that Blazer at that

9 time?

10 A Yes.

11 Q Did you know that individual?

12 A I didn't know him, but I know what he

13 looked like.

14 Q Who was driving that Blazer?

15 A The other guy that I don't know.

16 Q When the Blazer and the Lexus got to your

17 house, did anyone get out of the vehicles?

18 A Yes.

19 Q Who got out of the vehicles?

20 A Daniel, he got out, and the other guy,

21 Larry, and the other guy that was driving the Blazer,

22 and Rick.

23 Q Were you introduced to the defendant and

24 the Indian male who was driving the Lexus at that

25 time?

1 A Yes.

2 Q Who introduced you to them?

3 A If I'm not mistaken, I believe it was Rick.

4 Q After you were introduced to the defendant
5 and the Indian male driving the car, was there any
6 conversation there in your yard?

7 A No, sir.

8 Q Was there any talk about the red Lexus?

9 A No, sir.

10 Q At any point did you look inside the car?

11 A Yes, sir.

12 Q When you looked inside the car, who if
13 anyone showed you the features of the car?

14 A Well, didn't nobody show me the features,
15 we were just looking at the car.

16 Q At the time you saw the car, can you
17 describe the condition it was in?

18 A It was in good condition.

19 Q Any windows broken?

20 A No, sir.

21 Q Did you ever look in the trunk of the car?

22 A Yes, sir.

23 Q And when you looked in the trunk of the car
24 where were you when you did that?

25 A I was at my house.

1 Q What if anything did you see when you
2 looked into the trunk of that car?

3 A I seen two pair of golf clubs and it was
4 like a shirt and pair of pants and some golf shoes.

5 Q Were any -- at that time were the golf
6 clubs taken out of the trunk?

7 A No, sir.

8 Q Did there come a time later when the golf
9 clubs were taken out of the trunk?

10 A Yes, sir.

11 Q How long did the car stay there at your
12 house?

13 A I say probably like two -- an hour or two
14 hours, something like that.

15 Q At any time did you get inside the red
16 Lexus and drive off anywhere?

17 A Yes, sir.

18 Q Who was driving when you got in the red
19 Lexus?

20 A You're talking about when we left my
21 house?

22 Q Did there come a time when you left your
23 house?

24 A Yes.

25 Q When you left your house, what car or

1 vehicles were taken?

2 A The Lexus.

3 Q And who was inside the Lexus?

4 A Larry and Daniel.

5 Q Where were you?

6 A I was in there with them.

7 Q Who was driving?

8 A I was.

9 Q And where did you drive?

10 A Went to the store and then came back to my
11 house.

12 Q And what store did you go to?

13 A To Vander Food Mart.

14 Q For what purposes did you go to the Food
15 Mart?

16 A Went in there and bought some candy.

17 Q After you went to the Vander Food Mart,
18 where did you go?

19 A Then that's when we had left and went to
20 T's house.

21 Q Who is T?

22 A A friend of mine.

23 Q And what is his name?

24 A Terrellis Teasley.

25 Q And why did you go to Terrellis Teasley's

1 house?

2 A We had just rode over there.

3 Q And at that time, where was T living?

4 A I believe it's Murphy Road, something like
5 that.

6 Q Did anyone else go with you, when you say
7 that you -- well, who went with you to T's house?

8 A Daniel, Larry, Rick, and the other guy that
9 was driving the Blazer.

10 Q Was the Blazer taken to T's house?

11 A Yes.

12 Q Who rode in the Blazer?

13 A Rick and the other guy.

14 Q And when you got to T's house, what
15 occurred there?

16 A We had started going through the car and
17 looking at the stuff in the car, and we noticed that
18 when we were looking at the stuff in the car that
19 James Jordan's name came up on some papers in the
20 car, and by that time, we said that this is Michael
21 Jordan's car, and there was like, no, it isn't, not
22 his car.

23 THE COURT: You have to identify
24 who we is, and who they might be.

25 THE WITNESS: Both of the guys

1 who had the car. Larry --

2 THE COURT: You said that you
3 said -- someone said something about who
4 the car belonged to. Is that right?

5 THE WITNESS: Uh-huh.

6 THE COURT: Who said that?

7 THE WITNESS: I believe it was --
8 I can't remember, I believe it was
9 either --

10 MR. THOMPSON: Well --

11 THE COURT: Let him complete his
12 answer.

13 THE WITNESS: I can't remember
14 right now. I believe -- all of us was like
15 it was Michael Jordan's car.

16 THE COURT: You can testify to
17 what you said. What if anything did you
18 say at the time that you testified that you
19 went through the car?

20 THE WITNESS: Say that again?

21 THE COURT: You indicated that
22 you went through the car. You found some
23 papers. What was on those papers, if
24 anything?

25 THE WITNESS: Just had his name,

1 James Jordan's name on its.

2 THE COURT: Did you see that?

3 THE WITNESS: Yes.

4 THE COURT: When you saw that,
5 what if anything did you say?

6 THE WITNESS: I just said was
7 this Michael Jordan's dad?

8 THE COURT: Who did you say that
9 to?

10 THE WITNESS: To my friend.

11 THE COURT: Then you said someone
12 else said something in response to your
13 statement. Who was that someone else who
14 responded to your statement?

15 THE WITNESS: I believe it was --
16 I don't remember right now.

17 THE COURT: Listen to the
18 questions.

19 MR. BOWEN: Your Honor, may we
20 have his response for the record.

21 THE COURT: He said he can't
22 remember right now.

23 THE COURT: You need to speak up
24 and speak into the microphone.

25 BY MR. BRITT:

1 Q Jovan, what type of paperwork did you see
2 the name James Jordan on?

3 A It was like something like a receipt or
4 something, I don't know what kind.

5 Q How did you connect the name James Jordan
6 with Michael Jordan?

7 A It was just somebody there that said that
8 they knew, that they knew it was --

9 MR. THOMPSON: I object.

10 THE COURT: What is this offered
11 for?

12 MR. BRITT: This is offered for
13 substantive evidence.

14 THE COURT: The objection is
15 sustained.

16 MR. THOMPSON: Move to strike.

17 THE COURT: Motion to strike is
18 allowed.

19 MR. THOMPSON: Request
20 instruction.

21 THE COURT: You have to ask for
22 it.

23 Members of the jury, disregard the
24 last statement of Mr. Carter as to what
25 someone else may have said or someone else

1 may have thought, that is not to take any
2 part in your deliberation in that matter in
3 any respect.

4 BY MR. BRITT:

5 Q Jovan, did you ever see the name Michael
6 Jordan on any objects or items that came out of the
7 car?

8 A Yes.

9 Q On what items did you see the name Michael
10 Jordan?

11 A It was on the golf clubs.

12 Q When you say it was on the golf clubs, was
13 it on the clubs themselves or a bag or items from
14 inside the bag?

15 A I believe it was like on the golf clubs and
16 like on the bag.

17 Q When you connected the name James Jordan
18 with Michael Jordan, what if anything did you say and
19 to whom did you say it to?

20 A I believe it was my friend, Rick, I had
21 said it to.

22 Q Was the defendant --

23 MR. THOMPSON: Well, I object as
24 to what --

25 THE COURT: Let him complete your

1 question.

2 BY MR. BRITT:

3 Q Was the defendant, Daniel Green, present
4 when he said this was Michael Jordan's car?

5 A Yes, he was.

6 THE COURT: Overruled.

7 BY MR. BRITT:

8 Q Did Daniel Green say anything in response
9 to your statement that this was Michael Jordan's car?

10 A Well, he was like it's not -- that's not
11 his car.

12 Q Was there a telephone in that red Lexus?

13 A Yes, it was.

14 Q During the time that you were inside the
15 red Lexus, did you or anyone else make any phone
16 calls?

17 A I didn't make no phone calls.

18 Q Did anyone else that was riding in the car
19 make any phone calls?

20 A No, sir.

21 Q While you were at Terrellis's house, were
22 any of the items from inside the car or the trunk
23 taken out?

24 A Not while we were at T's house.

25 Q How long did you stay at T's house?

1 A I would say for like, about an hour, hour
2 and a half.

3 Q Was there any conversation about what was
4 to be done with the car?

5 A No, sir.

6 Q Did there come a time when there was a
7 conversation about doing something with the car?

8 A Yes.

9 Q Where did that conversation take place?

10 A When everything started coming up that
11 whose car it was.

12 Q And when you say when everything started
13 coming up as to whose car it was, what do you mean by
14 that?

15 A When they found out it was Michael Jordan's
16 father's car.

17 MR. THOMPSON: I object as to the
18 date, move to strike.

19 THE COURT: Motion to strike is
20 allowed. Members of the jury, don't
21 consider the last statement of Mr. Carter,
22 it's not to take any part in your
23 deliberation.

24 Stain when the conversation took
25 place, who was present.

1 BY MR. BRITT:

2 Q Who was there during the conversation about
3 doing something with the car once it was connected to
4 Michael Jordan?

5 A Me, Rick, T, and Daniel, and Larry.

6 THE COURT: Where were you at the
7 time you testified that this conversation
8 took place?

9 THE WITNESS: Where was I at?

10 THE COURT: Where were you?

11 THE WITNESS: At T's house.

12 BY MR. BRITT:

13 Q As a result of that conversation, what if
14 anything was done with the car?

15 A We had left, left from there -- well, I
16 drove the car from there --

17 Q Who rode with you?

18 A Larry and Daniel.

19 Q Where did you go?

20 A We took the car to McNeill Road, and I
21 drove it down into the band of woods.

22 Q Who was with you when you drove the car
23 down into the woods?

24 A Daniel and Larry.

25 Q And specifically, where did you drive this

1 car? Is McNeill a dirt or paved road?

2 A Dirt road.

3 Q Is it a dead end road or does it go through
4 and intersection with another road?

5 A Dead end road.

6 Q At the end of McNeill Road, what if
7 anything is located there?

8 A It's like a little road that bears off to
9 the left, goes --

10 Q Why did you take the car to the area of
11 McNeill Road?

12 A Well, they was trying to find out a place
13 to get rid of it.

14 Q Who was trying to find a place to get rid
15 of the car?

16 A Daniel and the guy.

17 THE COURT: You say "the guy".

18 THE WITNESS: Larry.

19 THE COURT: You need to be
20 specific.

21 BY MR. BRITT:

22 Q When you say they were trying to find a
23 place to get rid of the car, did the defendant tell
24 you why he wanted to get rid of the car?

25 A No, sir.

1 Q Did anyone follow you to the end of the
2 dirt road?

3 A Yes.

4 Q Who followed you?

5 A Rick and -- I don't know the other guy's
6 name in the Blazer.

7 Q And when you got to the end of McNeill Road
8 and turned onto this path, where did you take the
9 car?

10 A I took it up in there a little ways, and it
11 was like a road, like cut back in the woods, and I
12 just parked it in there, and backed it in there.

13 Q Who was with you when you drove the car
14 into the woods?

15 A Larry and Daniel.

16 Q Where were Rick and the other guy in the
17 Blazer?

18 A They were behind us.

19 Q After you drove the car into the woods,
20 what then happened?

21 A After that, after I drove the car into the
22 woods, Larry and them -- well, Larry and Daniel took
23 the golf clubs out of the car.

24 Q What did you see them do with the golf
25 clubs?

1 A They put them in the back of the Blazer.

2 Q Was anything else taken out of the car at
3 that time?

4 A And a black bag, all I know.

5 Q Can you describe this black bag and who had
6 the black bag?

7 A Daniel.

8 Q I'll ask you describe to the black bag for
9 us?

10 A It was like a tote bag, carrying bag.

11 Q How large was it?

12 A I would say it was about like this or
13 something (indicating).

14 Q You've gestured with your hands, indicating
15 the size?

16 A Yes.

17 Q Can you approximate the length of the bag
18 as you've gestured with your hands?

19 A It was about like (indicating).

20 THE COURT: In inches or feet?

21 THE WITNESS: I say feet.

22 BY MR. BRITT:

23 Q How many feet?

24 A I say maybe like four, four or five feet.

25 Q Was it shaped, was it square, was it round?

1 A It was like -- it was square, I believe.

2 Q Who did you observe with that black bag?

3 A Daniel.

4 Q And how did you see him carry it?

5 A Just carried it by the handle.

6 Q Did he throw it, was it over the shoulder,
7 in his hand?

8 MR. THOMPSON: Object, leading.

9 THE COURT: Sustained.

10 BY MR. BRITT:

11 Q What did you see him do with the bag?

12 A He just took it with him when he left.

13 Q Prior to leaving earlier when you were in
14 the car, did you see the black bag in the car?

15 A Yes.

16 Q Who had the black bag earlier when you saw
17 it inside the car?

18 A Daniel.

19 Q Was the bag ever opened while you were in
20 the car?

21 A No, sir.

22 Q While you were in the car, did the
23 defendant ever show you any item that was there
24 inside the car?

25 A Not at that time, he didn't.

1 Q When you say not at that time, when you
2 drove into the woods?

3 A He didn't show nothing to me at that time.

4 Q What about prior to that, before that?

5 A Before he did.

6 Q What if anything did he show you that was
7 inside the car prior to driving it into the woods?

8 A He had showed me a handgun.

9 Q Did can you describe the gun that he
10 showed?

11 A Yes.

12 Q Describe it for us please. It?

13 A It was like on the barrel it was rusty, and
14 had like a brown wooden handle.

15 Q Was it a small -- how would you describe
16 the size of it?

17 A I say it was probably about -- about that
18 length (indicating).

19 Q Again, you've gestured with your hands.
20 Approximately the size of it, in terms of inches or
21 in terms of a foot?

22 A About, say about four, four inches.

23 Q Where did you see him get this gun?

24 A He had pulled it from up under the seat.

25 Q At that time were you familiar with guns?

1 A No, sir.

2 Q In terms of whether the type of gun it was,
3 was it a .44, .357, .38, .32, .22?

4 A No, sir.

5 Q What did you see him do with the gun after
6 he showed it to you?

7 A He had just -- he had put it back in the
8 bag, put it up under the seat.

9 Q Did you ever see that gun again?

10 A No, sir.

11 Q When you got ready to leave the location
12 where the car was taken in the woods, what if
13 anything did you do with the car?

14 A Nothing.

15 Q Were the doors locked, windows rolled up?

16 A Yes, the doors and stuff was locked.

17 Q What if anything did you do with the key to
18 that car?

19 A I gave the key to Daniel.

20 Q What if anything did you see him do with
21 the key?

22 A I don't know what he did with it after I
23 gave it to him.

24 Q And after the car was parked there in the
25 woods, where did you go?

1 A They took me home.

2 Q When you say they took you home, who were
3 you referring to?

4 A The guy driving the Blazer, and Rick, and
5 Larry, and Daniel.

6 Q Did you stop anywhere before -- did they
7 stop anywhere before reaching your house?

8 A No, sir.

9 Q When you left the car in the woods, in what
10 shape was it in?

11 A It was in good condition.

12 Q Any windows broken?

13 A No, sir.

14 Q Tires still on it?

15 A Yes, sir.

16 Q You said earlier that the golf clubs had
17 the name Michael Jordan on them?

18 A Yes.

19 Q How did you see the name Michael Jordan was
20 on those golf clubs?

21 A Because earlier when we were at T's house
22 we had took the golf clubs and stuff out, and some of
23 us had shot golf with them.

24 THE COURT: Excuse me, shot the
25 golf clubs?

1 THE WITNESS: Yes.

2 THE COURT: What do you mean shot
3 them.

4 THE WITNESS: You know --

5 MR. BRITT: Swinging the golf
6 clubs.

7 MR. THOMPSON: Object to leading.

8 THE COURT: Overruled.

9 BY MR. BRITT:

10 Q Was that the last time you saw the car is
11 when you left it in the woods?

12 A Yes.

13 Q At any time did you go back to the area
14 where the car had been left?

15 A No, sir.

16 Q Were you involved in the vandalism or the
17 stripping of the car?

18 A No, sir, I was just involved in the
19 possession with a stolen vehicle.

20 Q In August of 1993, you were charged with
21 possession of that 1992 red Lexus, were you not?

22 A Yes.

23 Q And at that time, you were interviewed by
24 members of the Cumberland County Sheriff's
25 Department?

1 A Yes.

2 Q As a result of being charged with
3 possession of that 1992 red Lexus, what if anything
4 happened to you when you went to court?

5 A What do you mean?

6 Q Did you go to court as a result of being
7 charged with possession of that car?

8 A Yes.

9 Q And in court, were you convicted of
10 possession of that car?

11 A Yes.

12 Q What if any sentence did you receive as a
13 result of that charge?

14 A Four years.

15 Q Was that active or suspended?

16 A Huh-uh, it was active.

17 Q You actually went to prison as a result of
18 being charged with possession of that stolen vehicle?

19 A Yes, but I had other --

20 Q You had other charges?

21 A To it.

22 Q What other charges did you have at that
23 time?

24 A Probation violation, that's all.

25 Q When you were dropped off at your house

1 after the car had been parked in the woods, do you
2 know whether the golf clubs were still in the Blazer?

3 A You're talking about when we left?

4 Q When you left and they took you home?

5 A Yes, they were still in them.

6 THE COURT: Excuse me, is that --
7 to his home or after they arrived at his
8 home.

9 BY MR. BRITT:

10 Q When the car was -- I'll clarify. When the
11 car was parked in the woods, and you were taken to
12 your home in the Blazer, do you know whether or not
13 the golf clubs were in the Blazer at that time?

14 A Yes, they were.

15 MR. BRITT: Your Honor, may we
16 take our morning recess at this point? I
17 need to bring some items into the
18 courtroom.

19 THE COURT: Yes, sir.

20 Members of the jury we're going to
21 take our morning recess until 11:25 by that
22 clock, please recall it is your duty to
23 abide by all prior instruction of the Court
24 concerning your conduct during this recess,
25 and please reassemble in the jury room at

1 that time. Thank you.

2 Everyone else, please remain seated.

3 (Jury out at 11:05 a.m.)

4 THE COURT: You may step down,
5 thank you. We're at ease until 11:25.

6 (Brief recess.)

7 THE COURT: Let the record show
8 that all counsel are present, the defendant
9 is present in open court. Mr. Horne, are
10 all members of the jury secured in the jury
11 room?

12 THE BAILIFF: Yes, they are.

13 THE COURT: Mr. Britt, are you
14 ready to go forward?

15 MR. BRITT: Yes, sir.

16 THE COURT: If you'll bring the
17 jury in, please, sir.

18 Mr. Carter if you'll return to the
19 witness stand, please. You remain under
20 oath.

21 (Jury in at 11:25 a.m.)

22 (State's Exhibit 57 was
23 marked for identification.)

24 THE COURT: Mr. Britt?

25 MR. BRITT: May I approach the

1 witness?

2 THE COURT: Yes, sir.

3 BY MR. BRITT:

4 Q I'll show you what has been marked as
5 State's Exhibit Number 58. Do you recognize this
6 bag?

7 A Yes.

8 Q And are you able to identify it? How are
9 you able to identify what has been marked as State's
10 Exhibit Number 57?

11 THE COURT: 57?

12 MR. BRITT: Yes, sir, excuse me.

13 THE WITNESS: Because of the name
14 on the side.

15 BY MR. BRITT:

16 Q And what name appears on the side of
17 State's Exhibit Number 57 that you recognize?

18 A Michael Jordan.

19 Q And is State's Exhibit Number 57 in
20 substantially the same condition as when you last saw
21 it on July the 26th, 1993?

22 A Yes, sir.

23 Q When you last saw State's Exhibit Number
24 57, where was it?

25 A It was in the back of the Blazer that was

1 the last time I seen it.

2 Q Last time you saw State's Exhibit Number 57
3 were there golf clubs contained inside of it?

4 A Not -- I can't remember right now if there
5 was any.

6 (State's Exhibit 58 was
7 marked for identification.)

8 BY MR. BRITT:

9 Q I'll show you what has been marked as
10 State's Exhibit Number 58. Do you recognize this?

11 A Yes.

12 Q And how are you able to recognize State's
13 Exhibit Number 58?

14 A I just recognize the bag.

15 Q And when was the last time you saw State's
16 Exhibit Number 58?

17 A When it was in the Blazer.

18 Q Who at that time was in the Blazer when you
19 last saw State's Exhibit Number 58?

20 A Larry, Daniel, me, Rick, and the other guy.

21 Q I'm going to remove what is commonly
22 referred to as a putter from inside of State's
23 Exhibit Number 58, ask you if you recognize any
24 markings that appear on the putter that was
25 removed?

1 MR. THOMPSON: Object, unless
2 it's marked, Your Honor.

3 THE COURT: We can do that at the
4 appropriate time.

5 That came from --

6 MR. BRITT: State's Exhibit
7 Number 58.

8 THE COURT: Are you going to mark
9 that as 58-A?

10 MR. BRITT: Yes, sir.

11 THE COURT: All right.

12 (State's Exhibit 58-A was
13 marked for identification.)

14 BY MR. BRITT:

15 Q I'm going to show you what's been marked as
16 State's Exhibit Number 58-A. Do you recognize it?

17 A Yes.

18 Q How are you able to recognize State's
19 Exhibit 58-A?

20 A Because it has Michael Jordan's name on it.

21 Q And where on State's Exhibit 58-A does the
22 name Michael Jordan appear?

23 A Right here.

24 Q You're referring to the shaft?

25 A Yes.

1 MR. THOMPSON: Well -- that's all
2 right.

3 BY MR. BRITT:

4 Q Is it in substantially the same condition
5 it was in when you last saw it?

6 A Yes.

7 MR. BRITT: May we approach the
8 bench, please?

9 THE COURT: Yes, sir.

10 (Whereupon a bench conference ensued
11 as follows.)

12 THE COURT: Let the record
13 reflect present at this bench conference is
14 counsel for the State, Mr. Britt, counsel
15 for the defendant, Mr. Thompson, Mr. Bowen.
16 Also present is the defendant, as well as
17 the court reporter and the presiding Judge.

18 MR. BRITT: For purposes of
19 clarity of the record, the exhibit I'm
20 about to mark as State's Exhibit Number 59
21 was previously marked as a state's exhibit
22 in a hearing involving Mr. Demery, and
23 there is an identification tag that bears
24 State's Exhibit 2 on it. Just so the
25 record is straight, I'm going to place the

1 Exhibit Number 59 beside this.

2 THE COURT: So it will reflect --
3 describe the container.

4 MR. BRITT: It's a plastic --
5 large plastic bag, clear plastic bag,
6 containing various markings. Inside that
7 plastic bag is a .38 caliber pistol.

8 THE COURT: That bag now bears
9 Exhibit Number 2?

10 MR. BRITT: Yes, sir.

11 THE COURT: From a prior hearing
12 involving Larry Martin Demery?

13 MR. BRITT: Yes, sir.

14 THE COURT: Your intent is to
15 place State's Exhibit Number 59 beside the
16 exhibit number now reflected on it?

17 MR. BRITT: That's correct.

18 MR. THOMPSON: Well, that's fine.
19 That's fine.

20 THE COURT: Okay. Any other
21 matters?

22 MR. BRITT: No, sir.

23 MR. THOMPSON: No, sir.

24 THE COURT: This concludes the
25 bench --

1 MR. BRITT: Your Honor, before --
2 I was just going to suggest that he put 59,
3 State's Exhibit 59, but it will also
4 indicate Green.

5 THE COURT: If you'll write the
6 name "Green" on there.

7 MR. BRITT: Yes, sir.

8 THE COURT: Any other matters?

9 MR. BRITT: No, sir.

10 (Bench conference concluded.)

11 (State's Exhibit 59 was
12 marked for identification.)

13 MR. BRITT: May I approach the
14 witness?

15 THE COURT: Yes, sir.

16 BY MR. BRITT:

17 Q Jovan, I'll show you what has been marked
18 as State's Exhibit Number 59. And it bears the name
19 Green underneath that number. It's a plastic, large
20 plastic bag, is that correct?

21 A Yes.

22 THE COURT: You're going to need
23 to speak up. What was your answer to his
24 question.

25 BY MR. BRITT:

1 Q Is this a large plastic bag?

2 A Yes, sir.

3 Q A clear bag?

4 A Yes.

5 Q Are you able to see the contents of the

6 bag?

7 A Yes.

8 Q Ask you to look at the contents of that bag

9 and tell me if you can identify what is contained

10 inside what's been marked as State's Exhibit Number

11 59?

12 A Yes, that's the gun that Daniel showed.

13 Q And is that gun in substantially the same

14 condition it was in when the defendant showed it to

15 you on July the 26th, 1993?

16 A Yes.

17 Q This is the gun that he showed you while

18 you were in the 1992 red Lexus that you drove and

19 rode in in the area of Fayetteville?

20 A Yes.

21 MR. BRITT: I don't have any

22 other questions.

23 THE COURT: Any

24 cross-examination?

25 MR. THOMPSON: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. THOMPSON:

3 Q Good morning, Mr. Carter.

4 A Good morning.

5 Q Mr. Carter, you were interviewed by
6 Sergeant Don Smith of the Cumberland County Sheriff's
7 Department back in August of 1993, is that right?

8 A I can't remember his name.

9 Q Okay. Well, the first time you were
10 interviewed concerning the matters that you've
11 testified to today, where did that interview take
12 place?13 A Downtown at the Cumberland County Sheriff's
14 Department.15 Q How many officers or persons were present
16 when the interview took place?17 A I would say like two or three, like two or
18 three.19 Q Do you recall whether a Lieutenant Henley
20 was one of those officers?

21 A Yes, he was.

22 Q Do you recall whether a Detective Ray Wood
23 was one of those officers?

24 A Yes, he was.

25 Q Do you recall that a Sergeant Don Smith was

1 also one of those officers?

2 A I can't remember.

3 Q Just don't remember the third officer?

4 A I don't remember.

5 Q Did they identify themselves as all being
6 officers with the Cumberland County Sheriff's
7 Department?

8 A Yes.

9 Q And that interview -- in that interview
10 which took place on -- was it on or about August the
11 14th of 1993, does that sound about right, the date?

12 A Yes, I believe it was around there.

13 Q And was that interview recorded by an
14 audiotape recording device?

15 A Yes, it was.

16 Q Was the -- during the interview, did the
17 officers also make notes concerning statements that
18 you gave?

19 A Yes, they did.

20 Q And did you sign, Mr. Carter, a copy of any
21 statement which you purportedly gave during that
22 interview, did you sign a copy, a written copy of any
23 written statement?

24 A I believe -- yes, I did.

25 Q Did you sign it on the same day that you

1 initially gave the interview or did you sign it
2 sometime later?

3 A On the same day.

4 Q And did you read a copy of that before you
5 signed it?

6 A Yes, I did.

7 Q Who presented you the paper writing which
8 you signed? Do you remember which officer?

9 A I can't remember which officer it was.

10 Q And are the things that you told the
11 officers back there on August the 14th of 1993 there
12 at the Cumberland County Sheriff's Department
13 substantially the same things that you've testified
14 to today?

15 A Yes.

16 Q And was your memory with respect to
17 recalling the events as they occurred better back on
18 August the 14th, 1993 as opposed to how you've
19 testified to today?

20 A Say that --

21 Q Well, was your memory, the statement,
22 whatever you told the officers back on August the
23 14th of 1993, with respect to the events as you
24 understood them or had knowledge to occur, was your
25 memory better as to those events back then as opposed

1 to now as you testified here today?

2 A No, I can remember, what you know --

3 Q Did you have an opportunity to review any
4 statements or a copy of any statement that you
5 purportedly made to any of the officers back on
6 August the 14th of 1993 prior to your testifying
7 today?

8 A Yes.

9 Q And when did you review that statement?

10 A I believe it was like last week sometime.

11 Q Where were you when you reviewed the
12 statement?

13 A Here.

14 Q Here in this courthouse in the District
15 Attorney's office?

16 A Yes.

17 Q Now, Mr. Carter, back on August the --
18 well, at first, back -- we're talking back on August
19 the 14th when you initially had the interview with
20 the officers of the Cumberland County Sheriff's
21 Department, you at that time denied even driving the
22 car at first, is that right?

23 A Yes.

24 Q You denied going down into the woods where
25 the car was supposedly parked?

1 A Yes.

2 Q Now, you described the individual with your
3 friends, Ricky Hales as being a short guy, is that
4 right?

5 A Yes.

6 Q And this individual was a black or an
7 African American, is that right?

8 A Yes.

9 Q You indicated then, as you've testified to
10 now, that you didn't make any telephone calls on the
11 telephone, is that right?

12 A Yes.

13 Q Specifically, you didn't call T?

14 A No, sir.

15 Q And T, what is his real name, or whole
16 name, do you know?

17 A Terrellis Teasley.

18 Q And you knew Terrellis Teasley prior to
19 August of 1993, is that right?

20 A Yes.

21 Q Considered him a friend?

22 A Yes.

23 Q Now, at the time he was living there in the
24 neighborhood off of Downing Road Extension, is that
25 right?

1 A He stayed off of Murphy Road.

2 Q Okay. And you indicated that your
3 friend -- well, your friend Ricky Hales came to your
4 house in a Blazer and this short guy was driving the
5 Blazer, is that right?

6 A Yes.

7 Q Now, we're talking about sometime back in
8 July of 1993?

9 A I guess so.

10 Q Whatever you have testified to today, I
11 believe you indicated that was Monday, or do you
12 recall?

13 A I can't remember.

14 Q You don't really remember even today what
15 day it was exactly, do you?

16 A Huh-uh.

17 Q Is that right?

18 A Yes.

19 Q And in any event, the individual whom
20 you've identified as Larry Demery was driving the red
21 Lexus?

22 A Yes.

23 Q And you've referred to him today as an
24 Indian. Back in July of 1993 or August of 1993 when
25 you gave your statement, I believe, did you refer to

1 him as a white male?

2 A I believe I said he was an Indian male.

3 Q Now, back there in July of 1993 when your
4 friend Ricky Hales and this individual Larry Demery
5 that you referred to came over to your house driving
6 a car, were you -- had you had anything to drink that
7 day?

8 A No, I didn't.

9 Q Well, during the day, you had something to
10 smoke, did you not?

11 A Yes, I did.

12 Q And what is called a blunt, you had some
13 blunts maybe?

14 A Yes.

15 Q Just describe what a blunt is?

16 A It's just a cigar, basically give you, take
17 all the tobacco out of it.

18 Q And when you take all the tobacco out of it
19 do you put anything in it?

20 A Yes.

21 Q What do you put in it?

22 A Marijuana.

23 Q And it's about -- how long is that cigar?

24 A Just like a regular cigar, I don't know.

25 Q Okay. And how many of those blunts did you

1 smoke back then on the day that your friend Ricky
2 Hales came over to see you?

3 A It was one.

4 Q Okay. Now, you drove the Lexus from --
5 well, first of all, when they came over to your
6 house, they stayed over there about a couple of
7 hours, is that fair to say?

8 A Yeah.

9 Q Do you recall Larry, which one -- strike
10 that.

11 Now, how long had you known Ricky Hales?

12 A I knowed him a long time.

13 Q Was it Ricky Hales, wasn't it, that first
14 approached you about trying to get rid of the car or
15 knowing anybody about getting rid of the car?

16 A No.

17 Q This other short guy whom you described as
18 driving the Blazer, did he approach you or ask you
19 anything about getting rid of the car, certain items,
20 whether you wanted to purchase certain items?

21 A No.

22 Q Now, you stayed over at your house about
23 two hours, and about what time in the day was this,
24 would you say, when they arrived to your house,
25 meaning Ricky Hales, the other individual, short guy

1 driving the car, and the red Lexus whom you described
2 as Larry Demery driving?

3 A I believe it was like around like three,
4 three or two, something like that.

5 Q In the afternoon?

6 A Yeah.

7 Q And you stayed around there about two hours
8 and then at some point you left driving the red Lexus
9 going to Vander Grill, is that right?

10 A Yeah.

11 Q Larry Demery was in the front passenger
12 seat?

13 A No, I believe he was sitting in the back.

14 Q You were driving?

15 A Yes.

16 Q Do you recall at any point during that trip
17 to Vander Grill or on the way back U'Allah, whom
18 you've also referred to as Daniel Green, falling
19 asleep?

20 A Not as I know of.

21 Q Okay. Now, when you left Vander Grill,
22 Mr. Carter, you went back to T's house, you went --
23 where did you go?

24 A We went back to my house.

25 Q Prior to then, you never been over to T's

1 is that right?

2 THE COURT: Well --

3 BY MR. THOMPSON:

4 Q You hasn't gone over to T's house prior to
5 going to Vander Grill?

6 A No.

7 Q You left Vander Grill, went back to your
8 house, how long did you stay?

9 A I say maybe about an hour, hour and a half.

10 Q And it was there that you started going
11 through the trunk of the red Lexus, is that right?

12 A No, not at my house, we didn't.

13 Q Okay. Now, when you left your house --
14 well, while you were there at your house were you
15 smoking any of that blunt?

16 A Yes.

17 Q When you left your house, you went over to
18 T's house?

19 A Yes.

20 Q That's Terrellis Teasley, and you were
21 driving the red Lexus?

22 A Yes.

23 Q All right. Ricky Hales and this other
24 short guy, they were driving the Blazer?

25 A Yes.

1 Q They were following you?

2 A Yes.

3 Q To T's house. And T's house was then
4 located on Murphy Road?

5 A Yes.

6 Q How far is that from where you were living?

7 A I say probably about a mile.

8 Q Now, you never observed Mr. -- you never
9 observed U'Allah with any rings on?

10 A No, sir.

11 Q You never observed him with any jewelry on?

12 A No, sir.

13 Q And you specifically told the officers
14 during your interview back on August the 14th of 1993
15 you never observed him with a Michael Jordan watch
16 on?

17 A Yes.

18 Q All right. Now, do you recall one of the
19 officers during your interview back in August of 1993
20 asking you about somebody by the name of Jay Rock or
21 Brian, or Simmons, do you recall that conversation?

22 A Yes.

23 Q Did you ever ascertain who they were
24 talking about? Did you know who they were talking
25 about?

1 A Yes.

2 Q Who were they talking about?

3 MR. BRITT: Objection.

4 THE COURT: I'm sorry, repeat
5 your question, Mr. Thompson.

6 BY MR. THOMPSON:

7 Q Did you know who they were referring to --

8 THE COURT: Who is "they"?

9 BY MR. THOMPSON:

10 Q Meaning the officers there during the
11 interview back on August the 14th?

12 THE COURT: Objection is
13 sustained.

14 BY MR. THOMPSON:

15 Q Let me ask you this. Do you know anybody
16 by the name of Jay Rock?

17 MR. BRITT: Objection,
18 relevance.

19 THE COURT: Overruled. You may
20 answer it.

21 THE WITNESS: Yes.

22 BY MR. THOMPSON:

23 Q Prior to going to Terrellis Teasley's
24 house, did you go to Jay Rock's house?

25 A No.

1 Q What about somebody -- strike that. When
2 you went to the trunk and you saw some golf clubs in
3 the trunk of the Lexus, is that right?

4 A Yes.

5 Q Now, that was at Terrellis Teasley's house?

6 A Yes.

7 Q Whom we've referred to as T?

8 A Yes.

9 Q Do you recall at the time that you went to
10 the trunk there looking at the golf clubs, that
11 U'Allah was in the vehicle with the windows rolled
12 up, asleep, at the time you observed the golf clubs
13 in the trunk at T's house?

14 A At this point, I can't remember that he was
15 asleep.

16 Q When you got out -- well, whenever you
17 observed, first observed the clubs in the trunk, who
18 was there at the back of the car where the trunk is
19 located, where you observed the clubs?

20 A It was me, Rick, T, and the other guy.

21 THE COURT: Now --

22 THE WITNESS: I don't know his
23 name.

24 THE COURT: The other guy.

25 THE WITNESS: Who was driving the

1 Blazer.

2 BY MR. THOMPSON:

3 Q Where was Larry Demery?

4 A He was standing out there.

5 Q So it was you, Rick Hales, Larry Demery,
6 and T, as well as this short guy whom you've
7 testified to as driving the Blazer who were at the
8 trunk of the car when you first observed the golf
9 clubs, is that right?

10 A Yes.

11 Q Now, how long did you stay over there at
12 T's house?

13 A About, I say, for about hour and a half,
14 two hours, something like that.

15 Q As a result -- or after going through the
16 trunk, I believe you indicated you also saw some
17 papers or a paper writing with the name -- a name on
18 it?

19 A Yes.

20 Q And that name was James Jordan?

21 A Yes.

22 Q Did you see any other papers there in the
23 trunk with James Jordan's name on it?

24 A No.

25 Q Did you see any other papers there in the

1 trunk with Michael Jordan's name on them?

2 A No.

3 Q And at the time you were going through the
4 trunk -- you and the others were there at the trunk
5 looking at the golf clubs, that was when you first
6 said anything about this being Michael Jordan's car,
7 is that right?

8 A Yes.

9 Q When you first observed the golf clubs
10 there at the trunk, now -- is that right?

11 A Yes.

12 Q And as a result of that, Mr. Carter, there
13 was a conversation there with you and the other
14 individual standing there at the trunk about who
15 James Jordan was, is that right?

16 A Yes.

17 Q As a result of that conversation, you ended
18 up driving the car to the woods?

19 A Yes.

20 Q That's the woods located off of McNeill
21 Road, is that right?

22 A Yes.

23 Q And where was Mr. Demery located at that
24 time in the vehicle?

25 A In the vehicle, he was in the back seat.

1 Q And at that time, then, U'Allah was in the
2 front passenger seat?

3 A Yeah.

4 Q Where he had been there on the trip to the
5 Vander Grill, is that right?

6 A Yes.

7 Q Do you recall now, Mr. Carter, that when
8 you all had the discussion about the car and/or who
9 the items belonged to there at the trunk, that
10 someone went and got U'Allah out of the front
11 passenger seat of the car?

12 A I can't remember that.

13 Q But you don't remember him being there
14 initially with you and the other individuals that
15 you've just testified to?

16 A Huh-uh.

17 Q But at some point, U'Allah showed up after
18 you all started discussing the items there in the car
19 and the car perhaps being related or owned by Michael
20 Jordan, is that right?

21 MR. BRITT: Objection.

22 THE WITNESS: Yes.

23 THE COURT: Do you want to be
24 heard on your objection?

25 MR. BRITT: No, sir.

1 BY MR. THOMPSON:

2 Q At any rate --

3 THE COURT: Overruled.

4 BY MR. THOMPSON:

5 Q At any rate, you ended up driving the car
6 to the woods, is that right?

7 A Yes.

8 Q The Lexus. And Ricky Hales and this other
9 individual, the short African American individual,
10 followed you to the woods?

11 A Yes.

12 Q Now, at some point you indicated that you
13 saw U'Allah with a gun, is that right?

14 A Yes.

15 Q And it was rusty on the barrel, is that
16 right?

17 A Yes.

18 Q With a brown handle. And that's what you
19 told the officers?

20 A Yes.

21 Q Back on August the 14th of '93?

22 A Yes.

23 Q And you were handed what has been marked as
24 State's Exhibit Number 49, actually a plastic
25 bag?

1 THE COURT: 59.

2 BY MR. THOMPSON:

3 Q Had you seen that --

4 THE COURT: Mr. Thompson, 59.

5 BY MR. THOMPSON:

6 Q Strike that. You were shown what has been
7 marked as State's Exhibit Number 59, the plastic bag,
8 containing the gun. Had you seen that -- the gun in
9 that plastic bag prior to today?

10 A Yes.

11 Q When was that?

12 A When I came here.

13 Q When was that?

14 A I forgot what day it was.

15 Q Last week?

16 A Yeah, I know it was last week sometime.

17 Q In the D A's office?

18 A Yes.

19 Q Who showed it to you?

20 A Kim.

21 Q Kim Heffney, SBI Agent Kim Heffney, seated
22 there at the State's table?

23 A Yes.

24 Q And it was in the plastic bag. And that's
25 the gun that you've testified to that was the gun

1 that you saw U'Allah with?

2 A Yes.

3 Q Did you hold the gun?

4 A No, sir.

5 Q Did you notice any unique markings on the
6 gun? We're talking about back in August of 1993?

7 A No, sir.

8 THE COURT: July.

9 MR. THOMPSON: I beg your
10 pardon?

11 THE COURT: July.

12 MR. THOMPSON: July of 1993,
13 thank you, Your Honor.

14 BY MR. THOMPSON:

15 Q Your answer, did you notice any unique
16 markings?

17 A No.

18 Q Did you put any markings on the gun
19 yourself or scratch anything on the gun yourself so
20 that you could identify it?

21 A No, sir.

22 Q Now, did you know -- do you know the serial
23 number on that gun?

24 A No, sir.

25 Q Did you ever observe seeing the serial

1 number on the gun?

2 A No, sir.

3 Q Now, Mr. Carter, you testified that you
4 have been convicted of possession of a stolen
5 vehicle?

6 A Yes.

7 Q That was regarding this vehicle, was it
8 not? Was it a different vehicle than the 19 --

9 A No, it was this vehicle.

10 Q And you indicated you had also been
11 convicted of probation violation?

12 A Yes.

13 Q But you've also been convicted of
14 possession with intent to sell and deliver cocaine,
15 have you not?

16 A Yes.

17 MR. BRITT: Objection.

18 THE COURT: Do you want to be
19 heard, sir?

20 MR. BRITT: Put it within the
21 relevant time frame.

22 THE COURT: Question is improper
23 as phrased. The objection --

24 MR. THOMPSON: Other than -- yes,
25 sir.

1 THE COURT: If you'll bear with
2 me. Members of the jury, disregard both
3 the question asked by Mr. Thompson and the
4 answer if one has been given. You may not
5 consider either the question or any answer
6 that may have been given in your
7 deliberations in this manner in any
8 respect. But you may rephrase.

9 MR. THOMPSON: Let me back up.

10 BY MR. THOMPSON:

11 Q Mr. Carter, what have you been tried and
12 convicted of in the last ten years that carries terms
13 of imprisonment of more than sixty days, sir?

14 A Nothing.

15 Q Within the last ten years? What have you
16 been tried and convicted of within the last ten years
17 that carries a punishment of more than sixty days?

18 A I was charged with -- altogether --

19 THE COURT: Charged is not
20 appropriate. You indicated you were on
21 probation?

22 THE WITNESS: Yes.

23 THE COURT: At the time you pled
24 guilty to possession of a stolen vehicle?

25 THE WITNESS: Yes.

1 THE COURT: What were you on
2 probation for?

3 THE WITNESS: With the intent to
4 sell.

5 THE COURT: Mr. Thompson.

6 BY MR. THOMPSON:

7 Q Possession of cocaine with intent to sell?

8 A Yes.

9 Q Mr. Carter, the possession of the stolen
10 automobile, more specifically, the Lexus, when were
11 you convicted of that?

12 A I can't remember.

13 Q Okay. Was it -- well, do you recall, was
14 it the same year, meaning 1993, the fall of 1993, or
15 the following year?

16 A No, it was the same year.

17 Q You pled guilty to that, did you not?

18 A Yes.

19 Q And did you discuss with anyone prior to --
20 you were represented by counsel, were you not,
21 meaning by an attorney?

22 A Yes.

23 Q Other than your attorney, Mr. Carter, did
24 you discuss with any of the officers involved or any
25 District Attorney or assistant District Attorney

1 about testifying?

2 THE COURT: Is this one of those voir
3 dire situations, Mr. Thompson?

4 MR. THOMPSON: Yes, sir, I can
5 ask for a voir dire, yes, sir.

6 THE COURT: Okay. Ladies and
7 gentlemen of the jury, there's a matter of
8 law that must be taken up by the Court out
9 of the hearing and presence of the jury.
10 Please recall my instructions in that
11 regard. Don't worry or speculate about
12 what takes place in the courtroom in your
13 absence, and if all members of the jury
14 would step to the jury room, please.

15 (Jury out at 12:05 p.m.)

16 THE COURT: Folks, if you'll --
17 if you've got 15-A, pull out 15-A, section
18 1054, you're entitled to explore that. But
19 I'm assuming you don't know anything
20 specifically of record.

21 MR. THOMPSON: And that's true.

22 THE COURT: So there is nothing
23 of record in your inquiring into this at
24 this point to determine if anything exists
25 outside the record.

1 MR. THOMPSON: That's right. And
2 I need to voir dire.

3 THE COURT: Yes, sir.

4 MR. THOMPSON: Thank you, Your
5 Honor.

6 THE COURT: Yes, sir.

7 BY MR. THOMPSON:

8 Q Mr. Carter, did you discuss with anyone
9 prior to entering your plea of guilty to the charges
10 of possession of a stolen vehicle in Cumberland
11 County, did you discuss with anyone about testifying
12 in this case against either U'Allah or Larry Demery?

13 MR. BRITT: Objection. The
14 original --

15 THE COURT: Sustained.

16 BY MR. THOMPSON:

17 Q Did you discuss, Mr. Carter, with anyone --
18 other than your attorney, prior to the entry of your
19 plea in Cumberland County to possession of stolen
20 goods, your testifying in this case against U'Allah
21 or Mr. Demery?

22 A No, not as I know of.

23 Q Well, when you say not as you know of --

24 BY THE COURT:

25 Q Let's simplify this. Mr. Carter, did you

1 talk with -- you indicated that you were interviewed
2 by three officers, is that correct?

3 A Yes.

4 Q You recognize one of those officers to be
5 Lieutenant Hemming?

6 A Yes.

7 Q You recognize the other officers as being
8 Detective Ray Wood?

9 A Yes.

10 Q You don't recall the name of the third
11 officer?

12 A No, sir.

13 Q Did any of those officers talk with you
14 about any promises or any agreement in exchange for
15 any testimony you might give as to Mr. Green?

16 A No, sir.

17 THE COURT: Do you want to follow
18 up on that?

19 MR. THOMPSON: Yes, sir.

20 BY MR. THOMPSON:

21 Q Do you recall ever being threatened by any
22 of these officers who interviewed you with being
23 charged with an accessory after the fact?

24 MR. BRITT: Objection to the
25 form.

1 THE COURT: Well, for voir dire
2 purposes I'm going to allow it. You may
3 answer the question.

4 THE WITNESS: No, sir.

5 MR. THOMPSON: That's all. Just
6 a second.

7 BY MR. THOMPSON:

8 Q With regard to, Mr. Carter, the charges
9 that arose out of this incident that you talked --
10 that you've testified to today, what were you -- were
11 you charged with anything initially in addition to
12 possession of a stolen vehicle?

13 A No.

14 Q You indicated that you received a four-year
15 sentence on the possession of stolen vehicle charge?

16 A Yes.

17 Q Did that sentence, do you recall what you
18 received on the probation violation?

19 A It was five years.

20 Q And did that sentence run concurrent with
21 your -- meaning the probation violation sentence run
22 concurrent with the sentence of possession of a
23 stolen vehicle?

24 A Yes, it did.

25 Q Did you know when you pled guilty to the

1 possession of the stolen vehicle that your sentence
2 on the probation violation would run concurrent with
3 the sentence that you received on the possession of
4 stolen vehicle charges?

5 A No, I didn't.

6 Q So there was no plea bargain with respect
7 to it running concurrent?

8 A No.

9 Q Well, let me ask you this. If I may ask
10 him a few additional questions.

11 You received a four-year sentence and a
12 five-year sentence, is that correct?

13 A Yes.

14 THE COURT: You need to establish
15 whether the original judgment underlying
16 the probation was a five-year judgment.
17 Probationary judgments may be modified.

18 MR. THOMPSON: I understand.

19 THE COURT: You indicated in your
20 question, and he indicated in his response
21 that on the underlying probationary matter
22 he received a five-year sentence.

23 MR. THOMPSON: Yes, sir.

24 THE COURT: Was that the original
25 sentence imposed with intent to --

1 BY MR. THOMPSON:

2 Q Was that the original sentence imposed with
3 your intent to sell and deliver cocaine, a five-year
4 sentence?

5 A Yes.

6 Q Now, the five-year sentence and the
7 four-year sentence ran together, is that right?

8 A Yes.

9 Q How many days did you serve of that
10 sentence?

11 THE COURT: You know that's not
12 relevant. You know that's not admissible.

13 MR. THOMPSON: Well, I know it's
14 not admissible. I do know it's not
15 admissible.

16 THE COURT: Is it relevant?

17 MR. THOMPSON: So therefore it's
18 not relevant?

19 THE COURT: No.

20 MR. THOMPSON: I just wanted to
21 know.

22 THE COURT: Even on voir dire,
23 folks.

24 MR. THOMPSON: I understand.

25 THE COURT: Any other matters?

1 MR. THOMPSON: That's all.

2 THE COURT: In addition to being
3 not relevant and not admissible, tactically
4 it could come back to haunt you as to any
5 argument that might be relevant to your
6 client.

7 MR. THOMPSON: I wasn't going to
8 ask the question in front of the jury, I
9 knew that wasn't admissible.

10 THE COURT: Any questions --

11 MR. BRITT: No questions on voir
12 dire.

13 THE COURT: Any other matters
14 before you bring the jury back in or do you
15 want to be heard further as to your
16 objection?

17 MR. THOMPSON: No.

18 MR. BRITT: I don't need to be
19 heard.

20 MR. THOMPSON: Thank you, Your
21 Honor, I thank you for alerting me for the
22 voir dire before we got into that.

23 THE COURT: Hopefully I don't
24 have to in the future. Yes, sir.

25 MR. THOMPSON: We have nothing

1 else.

2 THE COURT: If you'll bring the
3 jury back in, please, Mr. Horne.

4 (Jury in at 12: 13 p.m.)

5 THE COURT: If you'll bear with
6 me one second, please, Mr. Thompson.

7 Mr. Thompson, are you withdrawing your
8 last question, sir?

9 MR. THOMPSON: Yes, sir.

10 THE COURT: The question is being
11 withdrawn. Any additional matters for
12 Mr. Carter?

13 Members of the jury, since
14 Mr. Thompson's last question is being
15 withdrawn, I instruct you that you're not
16 to consider it, not to take part in your
17 deliberations in this case in any respect.

18 BY MR. THOMPSON:

19 Q Mr. Carter, on the possession of stolen
20 vehicle charge, I believe you indicated you received
21 a four-year active sentence, is that right?

22 A Yes.

23 Q And on the possession -- I mean on the
24 probation violation charge, you received a five-year
25 sentence?

1 A Yes.

2 Q And the four-year sentence and the
3 five-year sentence that you received, they ran
4 together or concurrent, is that right?

5 A Yes.

6 Q Were they imposed on the same day, in other
7 words, was the possession of the stolen vehicle
8 judgment and the probation violation judgment imposed
9 on the same day?

10 A No.

11 Q When -- you indicated that the possession
12 of the stolen vehicle judgment, you pled guilty to
13 it, was sometime in 1993?

14 A Yes.

15 Q And that would have been the fall of 1993?

16 A Yes, I believe.

17 Q And the probation violation that you
18 admitted to, the probation violation, I take it?

19 A Yes.

20 Q And was that in '93 or was that '94?

21 A I believe it was in '93.

22 Q But it was after you pled guilty to the
23 possession of the stolen vehicle?

24 A Yes.

25 Q And it was after you talked to the officers

1 and gave statements in this case related to this
2 case, is that right?

3 A Yes.

4 Q Now, other than the statement that you've
5 just testified to in the interview that we've been
6 talking about back in August of 1993, have you given
7 any other statements to any law enforcement officers?

8 A No, sir.

9 MR. THOMPSON: That's all. Thank
10 you.

11 THE COURT: Anything on redirect,
12 Mr. Britt?

13 MR. BRITT: Yes, sir.

14 REDIRECT EXAMINATION

15 BY MR. BRITT:

16 Q When you were introduced to this Indian
17 male you referred to as Larry, and the defendant,
18 which of the two of them did you observe doing most
19 of the talking?

20 MR. THOMPSON: Object.

21 THE COURT: To the form,
22 sustained.

23 MR. BRITT: Did you observe the
24 defendant talking --

25 THE COURT: Put it in a time

1 frame.

2 MR. BRITT: Yes, sir.

3 BY MR. BRITT:

4 Q On July the 26th, 1993 when you were
5 introduced to the defendant and to this Indian male
6 as Larry, did you observe either of them talking to
7 anyone there in your presence?

8 A No.

9 Q Did either of them talk directly to
10 you?

11 THE COURT: At your home is what
12 you're asking?

13 MR. BRITT: Yes, sir.

14 THE WITNESS: Yes, Daniel, he
15 talked to him, he spoke to him.

16 BY MR. BRITT:

17 Q Now, you told Mr. Thompson that you had
18 smoked a blunt. Did anyone else smoke that blunt
19 with you on July the 26th, 1993?

20 A Yes.

21 Q Who else smoked that blunt?

22 A Daniel.

23 Q Did anyone else?

24 A I can't recall. I believe it was just me
25 and him.

1 Q Over what period of time did you and the
2 defendant smoke that blunt?

3 A Well, when we had went back to my house.

4 Q As a result of smoking that blunt, did you
5 get high or did you get stoned?

6 A Got high.

7 THE COURT: We need to clarify.
8 You indicated that what you've just
9 testified to occurred when you went back to
10 your home?

11 THE WITNESS: Yes.

12 THE COURT: What exactly are you
13 talking about? Are you talking about after
14 you left the Vander Grill?

15 THE WITNESS: Yes.

16 THE COURT: And returned to your
17 home?

18 THE WITNESS: Yes.

19 THE COURT: Okay.

20 BY MR. BRITT:

21 Q You smoked that blunt before the car was
22 taken to the woods, is that correct?

23 A Yes.

24 Q The gun that Daniel Green showed you on
25 July the 26th, 1993, did you ever actually hold it in

1 your hands?

2 A No, sir.

3 Q Did you ask him to let you hold it?

4 A No, sir.

5 Q Who had the gun on July the 26th, 1993?

6 A Daniel.

7 Q Did you ever see anyone else with that gun
8 in their hands on July the 26th, 1993?

9 A No, sir.

10 Q Did you ever see Larry Demery handle this
11 gun on July the 26th, 1993?

12 A No, sir.

13 Q When you saw the defendant with the gun,
14 where did he pull it from?

15 A Up under the passenger side seat.

16 Q Was that where the defendant was seated
17 when you saw him on the car on July 26th, 1993?

18 A Yes.

19 MR. BRITT: I don't have any
20 other questions.

21 THE COURT: Any additional
22 cross?

23 RECROSS EXAMINATION

24 BY MR. THOMPSON:

25 Q Mr. Carter, that gun you described was in

1 the four foot bag, is that right?

2 A Yes, it was in a black bag.

3 Q And it was under the car seat?

4 A Yes, it was.

5 Q You don't know -- Mr. -- U'Allah never
6 discussed with you where this gun came from?

7 MR. BRITT: Objection.

8 MR. THOMPSON: Strike that.

9 MR. BRITT: Wait a minute --

10 MR. THOMPSON: I'll withdraw the
11 question. You never --

12 BY MR. THOMPSON:

13 Q Mr. Carter, you just saw him pull the gun
14 from under the car seat?

15 A Yes.

16 Q And it was in a black bag?

17 A Yes.

18 Q And you saw him at some point put the gun
19 back in the black bag?

20 A Yes.

21 Q And was placed under the car seat?

22 A I don't know what he did with it after he
23 put it in the, you know.

24 Q Now, you've testified that U'Allah was
25 smoking a blunt?

1 A Yes.

2 Q That was over at whose house?

3 A At my house.

4 Q And where were you when you -- he was --
5 where was he when he was smoking the blunt?

6 A He was in the yard.

7 Q Who was in the yard?

8 A Me, him, and Larry.

9 Q Where was Ricky Hales?

10 A They had left, him and the other guy had
11 left in the Blazer.

12 Q And at some point Ricky Hales and the other
13 guy came back, is that right?

14 A Yes.

15 Q And that's -- and at that point, some point
16 after that, that's when you went to the trunk of the
17 Lexus, is that right, and saw the golf clubs?

18 A Yes.

19 Q Over at T's house?

20 A Yes.

21 Q After you had gotten to T's house?

22 A Yes.

23 MR. THOMPSON: That's all.

24 THE COURT: Anything further?

25 MR. BRITT: No, sir.

1 THE COURT: May Mr. Carter be
2 released, folks?

3 MR. THOMPSON: Yes.

4 THE COURT: Thank you,
5 Mr. Carter, you're free to go.

6 Mr. Britt.

7 MR. BRITT: Your Honor, at this
8 time we call Rick Hales.

9 THE COURT: Okay. Place your
10 left hand on the Bible raise your right,
11 face Ms. Gaines

12 DOMINIQUE HALES,
13 being first duly sworn was examined and testified as
14 follows:

15 DIRECT EXAMINATION.

16 THE COURT: If you'll take the
17 witness stand, please. Please state full
18 name for the record.

19 THE WITNESS: Dominique En'Rico
20 Hales.

21 THE COURT: If you will spell
22 your first and last name?

23 THE WITNESS: D O M I N I Q U E,
24 H A L E S.

25 THE COURT: For the benefit of

1 the court reporter, also, if you would
2 spell your middle name.

3 THE WITNESS: E N' R I C O.

4 THE COURT: Thank you, sir.

5 BY MR. BRITT:

6 Q Where do you live?

7 A Rout 16, Box 118, Fayetteville.

8 Q And what is that area referred to as?

9 A Vander.

10 Q How long have you lived in Vander?

11 A Around say about six, about six years.

12 Q How old are you?

13 A 23.

14 Q Who do you live with there in Vander?

15 A Myself.

16 Q Do you know an individual by the name of

17 Eric Thompson?

18 A Yes.

19 Q How long have you known Eric Thompson?

20 A Since I was in elementary school.

21 Q And on July the 26th of 1993, did you have
22 an occasion to see Eric Thompson?

23 A Yes, when he came to my house.

24 Q When Eric Thompson came --

25 THE COURT: Mr. Hales, those

1 folks aren't able to hear you, sir. If
2 you'll keep your voice raised, please.
3 Repeat your answer, please.

4 MR. BRITT: I'm sorry.

5 THE WITNESS: Yes.

6 BY MR. BRITT:

7 Q When Eric Thompson came to your house on
8 July 26th, 1993, what if any kind of car or truck was
9 he driving?

10 MR. THOMPSON: Object to the form
11 of the question.

12 THE COURT: Sustained. It
13 assumes facts not in evidence.

14 BY MR. BRITT:

15 Q Was he driving a vehicle?

16 A Driving a Blazer.

17 Q What color Blazer?

18 A If I'm not mistaken it was blue.

19 MR. THOMPSON: Object.

20 THE COURT: Do you want to be
21 heard?

22 MR. THOMPSON: No, sir.

23 THE COURT: Overruled.

24 BY MR. BRITT:

25 Q When he came to your house on July the

1 26th, 1993, were there any other people with
2 him?

3 MR. THOMPSON: Object to him
4 coming to his house, Your Honor.

5 THE COURT: Ask the question,
6 sir.

7 BY MR. BRITT:

8 Q On July the 26th, 1993, did you see Eric
9 Thompson at your house?

10 A Yes.

11 Q And on July the 26th, 1993 was Eric
12 Thompson driving a blue Blazer?

13 A Yes.

14 Q On July the 26th, 1993, did any other
15 people come with Eric Thompson to your house?

16 A Yes, sir.

17 Q Did you know those other people?

18 A No, sir.

19 Q How many other people came with Eric
20 Thompson to your house on July the 26th, 1993?

21 A Two.

22 Q Was there another vehicle that came to your
23 house on July the 26th, 1993?

24 A Yes.

25 Q What other vehicle came to your house on

1 July the 26th, 1993?

2 A Red Lexus.

3 Q Did you see that red Lexus when it pulled
4 into your driveway or yard?

5 A Yes, I did.

6 Q Were the two people with Eric Thompson
7 occupying or inside that red Lexus at the time it
8 came into your yard?

9 A Yes, they were.

10 Q Can you describe the person for us who was
11 driving the car, the red Lexus on July 26th, 1993?

12 A Daniel Green, sitting right there, and
13 Larry Demery.

14 Q Now, who was driving the car?

15 A Daniel.

16 Q And had you ever met Daniel Green prior to
17 July 26th, 1993?

18 A No, sir.

19 Q Did Eric Thompson introduce you to Daniel
20 Green and Larry Demery?

21 A Yes, sir.

22 Q After you were introduced to the defendant
23 and to Larry Demery, did Eric Thompson ask you any
24 questions in regard to what could be done with the
25 car?

1 A Yes.

2 Q As a result --

3 MR. THOMPSON: Object.

4 THE COURT: Repeat your question.

5 BY MR. BRITT:

6 Q As a result of your conversation with Eric
7 Thompson, did you tell him anything as to where the
8 car could be taken?

9 A No, sir.

10 THE COURT: Do you want to be
11 heard further?

12 MR. THOMPSON: Well, that wasn't
13 the question, but that was a different
14 question. No, I don't want to be heard on
15 that.

16 THE COURT: Do you want to be
17 heard without commentary?

18 MR. THOMPSON: I don't desire to
19 be heard.

20 THE COURT: The objection is
21 overruled. Yes, sir.

22 BY MR. BRITT:

23 Q Was anyone else present at your house that
24 day when Larry Demery and Daniel Green were there?

25 A My girlfriend and my brother.

1 Q What is your brother's name?

2 A Mario.

3 Q Was your brother in the yard while the car
4 was there?

5 A He came outside.

6 Q As a result of your brother coming outside,
7 did he say anything about the car being there in the
8 yard?

9 A Yes, he did.

10 Q What if anything did he say about the car
11 being in the --

12 MR. THOMPSON: Object.

13 THE COURT: For what purposes --

14 MR. BRITT: Being offered to
15 explain his subsequent conduct.

16 THE COURT: Do you want an
17 opportunity to be heard further or limiting
18 instruction?

19 MR. THOMPSON: Limited
20 instruction.

21 THE COURT: Members of the jury,
22 the testimony now being elicited from the
23 witness who is before you as to any
24 statements the witness contends were made
25 to him by someone else, specifically

1 someone identified as Mario, are not being
2 offered for the truth of the matters
3 asserted, but are being offered to explain
4 the subsequent conduct of this witness.
5 And this evidence is being received for
6 that limited purpose. You may consider
7 this evidence for that limited purposes and
8 for no other purposes.

9 Anything further Mr. Thompson?

10 MR. THOMPSON: No, sir.

11 THE COURT: Yes, sir.

12 BY MR. BRITT:

13 Q Mr. Hales, what if anything did your
14 brother Mario say upon seeing the car there in the
15 yard?

16 A He came outside and said, get that M F car
17 out of my yard.

18 Q As a result of anything that your brother
19 said, what did you do?

20 A Got in the Blazer with Eric and left.

21 Q And where did you go?

22 A To Jovan's house.

23 Q Prior to leaving to go to Jovan's house,
24 had you told them anything about where the car could
25 be stashed?

1 A No, sir.

2 Q Did you tell them who might know where the
3 car might be stashed?

4 MR. THOMPSON: Object Your Honor,
5 he is leading the witness.

6 THE COURT: There's some factual
7 matters that -- we're missing some gaps.

8 BY MR. BRITT:

9 Q After your brother came out and made the
10 statement that he did, were you present?

11 A Yes.

12 Q Was the defendant present?

13 A Yes.

14 Q Was Eric Thompson present?

15 A Yes.

16 Q As a result of your brother's statement,
17 did you say anything to Eric Thompson and to the
18 defendant about leaving your house?

19 A Leave, yes.

20 Q And when you told them to leave, did you go
21 with them?

22 A Yes.

23 MR. THOMPSON: Object.

24 THE COURT: Overruled.

25 BY MR. BRITT:

1 Q Where did the two, you and Eric Thompson go
2 and who if anyone went with you?

3 A Got in the Blazer with Eric, Daniel drove
4 the Lexus, went down to Jovan's house, stayed like a
5 quarter of a mile from me.

6 Q When you got to Jovan's house, what did you
7 do?

8 A Well, got out of the Blazer, went around
9 the back where Jovan was, he came out, we all
10 standing around the car for a while, talking, he was
11 showing a little features of the car.

12 THE COURT: Who was?

13 THE WITNESS: Daniel. Showing
14 the features of the car. Then we had left,
15 me and Eric had left and went to the store.

16 BY MR. BRITT:

17 Q What vehicle did you leave in?

18 A Left in the Blazer.

19 Q Now, when the defendant was showing you the
20 features of the car, what was he showing you?

21 A The CD player, CD changer in the trunk,
22 showed us where the phone was in the car, how the
23 steering wheel of the car comes in and out, and
24 that's basically about it.

25 Q Where do you recall the phone being located

1 in that car?

2 A It was up under the arm rest.

3 Q The front or the back seat of the car?

4 A The middle, between the front and the
5 middle.

6 Q Between the drive's seat and the passenger
7 seat?

8 A Yes.

9 Q At any time did you use that telephone or
10 did you see anyone else use that telephone?

11 A Not to my knowledge.

12 Q And after the defendant showed you these
13 features of the car, you testified you and Eric left?

14 A Yes.

15 Q Where did you and Eric go?

16 A To the Vander Grill.

17 Q Did anyone go with you?

18 A Just me and Eric.

19 Q How long did you stay at the Vander Grill?

20 A I say about ten or 15 minutes.

21 Q After you went to the Vander Grill, did you
22 go back to Jovan Carter's house?

23 A Yes.

24 Q Was the red Lexus still there?

25 A Yes, sir.

1 Q Was the defendant still there?

2 A Yes, sir.

3 Q Was Larry Demery still there?

4 A Yes, sir.

5 Q Was Jovan still there?

6 A Yes, sir.

7 Q Did you ever see a license plate on that
8 red Lexus?

9 A Yes, when we got the Terrellis Teasley's
10 house.

11 Q What was the license plate that you saw
12 honest that car?

13 A Said UNC 23.

14 Q Had you looked at any of the items that
15 were inside the car, inside the trunk prior to seeing
16 the license plate?

17 A Yes, before I seen the license plate.

18 Q Where were you when you saw those items
19 that were in the trunk of the car?

20 A In the back of the car, the back, the
21 trunk.

22 Q Where was the car at at that time?

23 A At Terrellis Teasley's house.

24 Q When you looked into the back of the car,
25 the trunk, do you recall what you saw?

1 A Yes.

2 Q What did you see?

3 A Seen a duffle bag, the golf clubs, and some
4 papers.

5 Q Did you see any writing on any of the
6 papers?

7 A Yes.

8 Q What writing did you see on the papers?

9 A James Jordan.

10 Q And when you saw the writing on the papers
11 with the name James Jordan on them, did that make any
12 connection with you?

13 A Yes, sure did.

14 Q What connection did it make with you when
15 you saw the name James Jordan on those papers?

16 A Something just wasn't right.

17 Q When you say something just wasn't right,
18 what do you mean by that?

19 A Something, I mean, something is wrong, I
20 mean.

21 THE COURT: What he's asking you
22 sir, what if anything did the name James
23 Jordan mean to you?

24 THE WITNESS: Oh, meaning that it
25 had something to do with the Jordan family.

1 BY MR. BRITT:

2 Q Did you connect the name James Jordan with
3 Michael Jordan?

4 A Yes, I sure did.

5 Q Were there items that you saw in the truck
6 of the car that had Michael Jordan's name on them?

7 A Yes, sir.

8 Q What items in the trunk of that car had
9 Michael Jordan's name on them?

10 A A bag and a name on a golf club.

11 MR. BRITT: May I approach?

12 THE COURT: Yes, sir.

13 BY MR. BRITT:

14 Q Mr. Hales, I'll show you what has been
15 marked as State's Exhibit Number 57. You referred to
16 a bag that had Michael Jordan's name on it?

17 A Yes.

18 Q Can you identify State's Exhibit Number 57?

19 A Yes, this.

20 Q Is this the bag that you saw in the trunk
21 of that car that had the name Michael Jordan on it?

22 A Yes, sir.

23 Q Is it in the same condition now as it was
24 then?

25 A As I remember, yes, sir.

1 Q Is it also your testimony that you saw golf
2 clubs that had the name Michael Jordan on them?

3 A Yes, sir.

4 Q Where were you when you saw those golf
5 clubs with the name Michael Jordan on them?

6 A At Terrellis Teasley's house.

7 Q Had those golf clubs been removed from the
8 bag or bags that they were in?

9 A Yes, sir.

10 Q Who had the golf clubs out?

11 A Daniel, T, me, and Jo. Jo, as in
12 Jovan.

13 THE COURT: If you'll state that
14 so the jury can hear you.

15 THE WITNESS: Jo as in Jovan.

16 BY MR. BRITT:

17 Q After the defendant showed you the features
18 of the car there at Jovan's house, did he show you
19 any other item that he took out of the car?

20 A He showed me the gun before we had left
21 Jovan's house.

22 Q Can you describe for us the gun that the
23 defendant showed you?

24 A Looked like a .32 or .38 rusted brown
25 handle, barrel on it about 3 inches long.

1 Q And did you see from where he had gotten
2 that gun?

3 A From the driver's side, front. I don't
4 know exactly where, but I know it was on the driver's
5 side.

6 Q Did you see anyone else with a gun on July
7 the 26th, 1993 other than the defendant?

8 A No, sir.

9 Q Did you ever see Larry Demery with the gun
10 on July the 26th, 1993?

11 A No, sir.

12 MR. BRITT: May I approach?

13 THE COURT: Yes, sir.

14 BY MR. BRITT:

15 Q Mr. Hales, I'll show you what has been
16 marked as State's Exhibit Number 59, clear plastic
17 bag containing an item. Do you recognize what is
18 contained inside that clear plastic bag?

19 A Yes.

20 Q How do you recognize what is contained
21 inside that clear plastic bag?

22 A Same gun that Daniel had showed me.

23 Q After he showed you this gun, did you see
24 him do anything with it?

25 A No, sir.

1 Q Did you ever see it again in the
2 defendant's hands on July the 26th, 1993?

3 A No, sir.

4 Q On July the 26th, 1993, did you ever touch
5 the gun that the defendant showed you?

6 A No, sir.

7 Q From Jovan Carter's house, where did you
8 go?

9 A To Terrellis' house.

10 Q Who went with you?

11 A Me and Eric.

12 Q What car did you go in?

13 A Blue Blazer.

14 Q Where was the red Lexus?

15 A Still at Jovan's house, but I don't
16 remember if it was in front of us or behind us, I
17 don't remember.

18 Q Did you see that red Lexus at Terrellis
19 Teasley's house?

20 A Yes.

21 Q Who drove the car from Jovan's house to
22 Terrellis Teasley's house, if you remember?

23 A I don't remember.

24 Q When you got to T's house, was the
25 defendant in the red Lexus?

1 A Yes.

2 Q You need to speak up so everybody can hear
3 you, sir.

4 At Terrellis Teasley's house, did everyone
5 get out of the red Lexus?

6 A Yes.

7 Q And at Terrellis Teasley's house, is that
8 where the golf clubs were removed from the back?

9 A Yes, sir.

10 Q After the golf clubs were taken out, were
11 they placed back inside the trunk at some point?

12 A No, a few --

13 Q I'm sorry?

14 A Putted, putted golf.

15 Q Who do you recall having golf clubs in
16 their hands?

17 A I can't remember.

18 Q After the golf clubs were taken out and
19 some people played with them, were they placed back
20 inside the Lexus?

21 A Yes.

22 Q Do you know who had the keys to the Lexus
23 at that time?

24 A Yes.

25 Q Who?

1 A Daniel Green.

2 Q How do you know Daniel Green had the keys
3 to the Lexus?

4 A Because he was showing how the car cranked
5 up with the key.

6 Q What do you mean?

7 A It was some little black thing on the key,
8 mash the button, it cranks the car up.

9 Q Like a remote control?

10 A Yes.

11 Q And after he showed you how the car would
12 start with the remote,, what happened?

13 A I believe that was -- that was before then,
14 I've seen with the tags on the car, and then at that
15 time, that's what I had told Eric, take me home.

16 Q Why did you tell Eric to take you home?

17 A Because I don't want to have nothing to do
18 with anything.

19 Q And did Eric take you home?

20 A Not right then.

21 Q Did there come a time later when you were
22 taken home?

23 A Yes.

24 Q After you requested Eric Thompson to take
25 you home, did you go back to the area of the Vander

1 Grill?

2 A I think so.

3 Q Do you know where the defendant, the red
4 Lexus and Larry Demery and Jovan and Eric were at
5 that time?

6 A They were still at T's house.

7 Q After leaving and going to the store, did
8 you return to Terrellis Teasley's house?

9 A I think we met them on the way.

10 Q Do you recall where you met them?

11 A On Baywood, off of Murphy road.

12 Q Who at that time was driving the red Lexus?

13 A I don't remember.

14 Q After -- how many people were in the Lexus?

15 A Three.

16 Q Who was in the Lexus?

17 A Jovan, Daniel, Larry.

18 Q After you met them near Murphy Road, where
19 did you and Eric Thompson go in the Blazer and where
20 did you see the red Lexus go?

21 A Okay, went down old -- I mean, Downing Road
22 Extension, runs on through Baywood, and then I say
23 like eighth of a mile, quarter of a mile down the
24 road, like a dirt road on the side, bears off from
25 the Downing Road Extension, and they drove -- whoever

1 was driving down drove on down the dirt road, put it
2 back there in what is like a side road at the end of
3 the dirt road. And followed them there and picked
4 them up at the entrance, the dead end road, like an
5 entrance, picked them up at the entrance right there.

6 Q Who did you pick up?

7 A Jovan, Larry and Daniel.

8 Q When the three of them came back to the
9 Blazer, where you were, was anyone carrying anything?

10 A Yes, but I don't know which one.

11 Q What was being carried?

12 A I can't remember.

13 Q Did you ever see the golf clubs at any
14 point after you saw them at Terrellis Teasley's
15 house?

16 A In the back of the Blazer.

17 Q Do you recall who put the golf clubs in the
18 back of the Blazer?

19 A No, sir.

20 Q Once the Lexus was taken into the woods,
21 did you ever see it again?

22 A No, sir.

23 Q And after the Lexus was taken into the
24 woods, who got into the Blazer where you and Eric
25 Thompson were?

1 A Jovan, Larry and Daniel.

2 Q Where did you go once those three got in?

3 A Dropped Jovan home and they took me home.

4 Q At any point after the golf clubs were put
5 into the Blazer, and before you got out of the Blazer
6 at your home, were those golf clubs ever taken out of
7 that Blazer?

8 A No, not that I remember.

9 Q After they dropped you off at your house,
10 what did you do?

11 A Called my mother.

12 Q Why did you go call your mom?

13 A Because I knew something wasn't right about
14 the car, two young kids like that --

15 MR. THOMPSON: Object.

16 THE COURT: This is to explain
17 conduct.

18 MR. BRITT: Yes, sir.

19 THE COURT: Overruled.

20 BY MR. BRITT:

21 Q Why did you call your mother?

22 A Because two kids, two young kids with a car
23 like that, ain't no way possible.

24 Q After talking with your mother, did you do
25 anything beyond that?

1 A No, because my brother had already
2 contacted my mother from the time that I left the
3 house when they first came that morning.

4 Q And did you associate that license plate,
5 UNC 0023 with Michael Jordan?

6 A Yes.

7 Q And did that raise any suspicions in your
8 mind at that time?

9 A Yes, sure did.

10 Q What if any suspicions did it raise?

11 MR. THOMPSON: I object.

12 THE COURT: Sustained to the form
13 of the question.

14 BY MR. BRITT:

15 Q Were you concerned about the license plate?

16 A Yes.

17 Q Why were you concerned about the license
18 plate?

19 MR. THOMPSON: Object.

20 THE COURT: Sustained to the form
21 of the question.

22 Did UNC 23 mean anything to you?

23 THE WITNESS: Yes.

24 BY MR. BRITT:

25 Q What did it mean to you?

1 MR. THOMPSON: Object, Your
2 Honor, been asked and answered.

3 THE COURT: Overruled. He may
4 answer if he knows.

5 BY MR. BRITT:

6 Q After you were dropped off at your home
7 July the 26th, 1993, did you have any other contact
8 with Daniel Green or Larry Demery?

9 A No, sir.

10 Q At the time, the last time you saw that red
11 Lexus, can you describe the condition that it was in?

12 A It's was in good condition.

13 Q Did you have any role in vandalizing that
14 car?

15 A No, sir. I had just got out of the
16 hospital.

17 MR. THOMPSON: Well, I object as
18 to that last comment, Your Honor, move to
19 strike.

20 THE COURT: Overruled. Denied.

21 BY MR. BRITT:

22 Q You said you just got out of the hospital,
23 when did you get out of the hospital?

24 A Got out of the hospital June 25th or 26th.

25 Q What if anything had hospitalized you?

1 A Excuse me?

2 MR. THOMPSON: I object, Your
3 Honor.

4 MR. BRITT: Can we be heard?

5 MR. THOMPSON: That's all right.
6 I withdraw the objection.

7 THE COURT: Okay. It's
8 withdrawn. You may answer.

9 BY MR. BRITT:

10 Q What had hospitalized you?

11 A What had -- gunshot wound.

12 Q On July the 26th, were you still under a
13 doctor's care?

14 A Yes.

15 Q Were you having to wear any type of bag or
16 apparatus?

17 A I had a stomach colostomy bag.

18 Q How long did you wear that?

19 A Seven months.

20 Q On July the 26th, 1993, did you ever give
21 the defendant \$50.00?

22 A What.

23 Q On July the 26th, 1993, did you give Daniel
24 Green \$50.00?

25 A No, sir.

1 Q Did -- were you expecting that car to be
2 delivered to your house?

3 A How could I? I was in the hospital.

4 Q Did you ever have a conversation with
5 Daniel Green that they could blame you for bringing
6 that car to his house?

7 A No, sir.

8 Q Had you ever had any conversation with
9 Daniel Green at any time prior to July 26th, 1993?

10 A No, sir.

11 Q Had you ever had any conversation with
12 Larry Demery at any time prior to July the 26th,
13 1993?

14 A No, sir.

15 Q Have you ever been to the defendant's
16 house?

17 A No, sir.

18 Q Do you know where Bob's Landing Mobile Home
19 Park is located here in Robeson County?

20 A No, sir.

21 Q Were you working for or working with a dark
22 haired Arab guy in July of 1993?

23 A Was --

24 Q Were you working for an Arab man with dark
25 colored hair in 1993?

1 A No, sir.

2 Q Do you know anybody of Arab descent or did
3 you know of anyone of Arab descent in July of 1993?

4 A No, sir.

5 Q Did you ever ask the defendant how he got
6 that red Lexus automobile?

7 A Yes, sir.

8 Q And what did he tell you?

9 A He said he rented it.

10 MR. THOMPSON: Object.

11 THE COURT: Do you want to be
12 heard?

13 MR. THOMPSON: Yes, sir.

14 THE COURT: Members of the jury,
15 there's a matter -- well, it's ten until
16 one. I'm going to release you folks until
17 2:30 for the lunch recess. Please recall
18 it is your duty to abide by all prior
19 instruction of the Court concerning your
20 conduct. I'm obligated again to instruct
21 you not to talk about this matter among
22 yourself or anyone else, do not allow
23 anyone to say anything to you or in your
24 presence about this case. If anyone does
25 communicate with you about this matter or

1 attempts to do so, or says anything about
2 the case in your presence, it's your duty
3 to inform us of that immediately.

4 Don't form or express any opinions
5 about this matter. Don't have any contact
6 or communication of any kind with any of
7 the attorneys, parties, witnesses,
8 prospective witnesses or directly with the
9 Court. Don't allow yourself to be exposed
10 to any media accounts which may exist in
11 connection with this matter, and don't
12 conduct any independent inquiry or research
13 or investigation of any kind. Everyone
14 please remain seated, the members of the
15 jury are excused until 2:30.

16 (Jury out at 12: 49 p.m.)

17 THE COURT: For the record, the
18 following is being heard in the absence of
19 the jury.

20 Folks, I'm on page 145, line 30,
21 question is by Mr. Britt:

22 "And what did he tell you?

23 "Answer: He said he rented it."

24 After the answer was given, there was an
25 objection and I inquired whether you folks

1 wanted to be heard?

2 MR. THOMPSON: Yes, sir, I'm
3 going to move to strike that answer. Your
4 Honor, at the -- first of all, that's a
5 statement of the defendant supposedly.

6 THE COURT: It's attributed to
7 Mr. Green.

8 MR. THOMPSON: Yes, sir. Your
9 Honor, first of all under the -- we've not
10 gotten a copy of any statement --

11 THE COURT: 903, you've not been
12 provided with a copy of any substance of
13 this statement?

14 MR. THOMPSON: That's correct.
15 We're going to ask the Court, under 903
16 we're entitled to at least -- we've not had
17 any knowledge of this statement, and in
18 light of all the assertions by the State or
19 the District Attorney that he's had the
20 open file discovery --

21 THE COURT: All right. Is the
22 statement which the witness attributed to
23 Mr. Green contained in any written
24 statement attributable to this defendant or
25 memorandum attributable to this defendant?

1 MR. BRITT: No, sir, it's not.
2 And I was under the impression that it
3 was. Mr. Hales was interviewed last Friday
4 afternoon. We had a hard time identifying
5 exactly who he was because -- and as the
6 Court is aware, there are statements made
7 by Mr. Green that he says an individual by
8 the name of Rick with a bag brought the car
9 to his house.

10 THE COURT: Yes, sir.

11 MR. BRITT: We could not identify
12 who Rick was for a very long, long period
13 of time.

14 THE COURT: Is this witness that
15 you put a -- what is -- Court Exhibit 12 or
16 13.

17 MR. BRITT: Yes, sir, we filed
18 what is entitled an additional discovery
19 notice on January 12th, 1995 at 3:46, that
20 was placed in Mr. Thompson's box which is
21 maintained.

22 THE COURT: Also entered into the
23 record in open court.

24 MR. BRITT: Yes, sir. No, not in
25 open court. Filed with the Clerks's

1 offices after court concluded the other
2 day.

3 THE COURT: So it's not a Court's
4 exhibit or defense exhibit.

5 MR. BRITT: No, sir, we've
6 established a practice in the offices that
7 when we provide discovery, we attach a
8 letter in response to the request for
9 discovery, and also file a reciprocal
10 discovery motion. That is filed with the
11 Clerk's office there as a matter of record.

12 THE COURT: May I see what you've
13 got?

14 MR. BRITT: Yes.

15 THE COURT: Is this what was
16 provided to counsel for defendant in its
17 entirety.

18 MR. BRITT: This is a portion.
19 This is a notice, and also a copy of
20 Mr. Hales' statement was attached to their
21 notices in regard to any additional
22 discovery that was made.

23 THE COURT: Okay.

24 Is that --

25 MR. THOMPSON: I don't have a

1 copy of it.

2 THE COURT: Is that downstairs?
3 Is it with the Clerk's office or has it
4 been removed from the Clerk's office to the
5 Court's office.

6 MR. BRITT: January the 20th,
7 1995, 3:46, we filed with the Clerk of
8 Superior Court a document that is entitled
9 Additional Discovery. It was directed to
10 Mr. Thompson in the case of Daniel Andre
11 Green, the case file number, dated January
12 the 12th, certificate of service that I
13 signed, where -- and the practice here is
14 to place the discovery in the boxes that
15 are maintained by the different attorneys,
16 including the Public Defender's office in
17 this district and that was done on Friday.

18 THE COURT: I need to check and
19 see what is of file on record.

20 MR. BRITT: Yes, sir.

21 MR. THOMPSON: Your Honor, for
22 the record, he's saying January -- I think
23 he's saying --

24 MR. BRITT: Excuse me, should be
25 '96.

1 MR. THOMPSON: January the 12th.

2 MR. BRITT: Of 1996.

3 MR. THOMPSON: 1996.

4 MR. BRITT: Which would have been
5 Friday.

6 THE COURT: Did you all get it?

7 MR. THOMPSON: I don't have it.

8 And I -- no, sir.

9 MR. BOWEN: I --

10 THE COURT: What is in the file
11 is a form from the District Attorney's
12 office based on the letterhead, indicating
13 Angus Thompson as attorney, defendant
14 Daniel Andre Green, case numbers reflecting
15 these case numbers, and the following
16 language is contained on the form.
17 "Attached is additional," with additional
18 being capitalized, "discovery known and
19 available to this office that would be used
20 in the trial of this case."

21 There's a certificate of service
22 indicating that the foregoing additional
23 discovery has been duly served by
24 depositing a copy in box belonging to and
25 inserted by hand on the form that is the

1 name Angus Thompson, and picking up with
2 the language of the form, "In the Robeson
3 County Clerk of Superior Court's office,
4 this the 12th day of January, 1996, but
5 there's nothing else in the file.

6 MR. BRITT: No, sir, and what
7 is -- what is not filed with the Clerk is
8 the statement, what is provided to counsel
9 is a copy of the statement.

10 THE COURT: Okay.

11 MR. BRITT: And for matters -- I
12 mean, this is a very lengthy file, thick
13 file, it concerns about matters being made
14 part of the public record.

15 THE COURT: As an officer of the
16 Court, you're indicating that the
17 additional discovery was attached to the
18 notices form that I've just read.

19 MR. BRITT: Yes, sir, that was
20 placed in Mr. Thompson's box on Friday
21 afternoon.

22 MR. BOWEN: Well, and the other
23 thing, too, is Your Honor, I have a box
24 there, too, under Bowen and Byerly, and I
25 got no such document.

1 THE COURT: He's only got to give
2 notices to one counsel.

3 MR. BOWEN: But the interesting
4 thing is, last time we got a handout from
5 Mr. Britt, it concerned Brady material, and
6 that was handed to us here at the table
7 here in the courtroom. The other thing I
8 need for Your Honor to know is that when I
9 watched my morning news this morning from
10 WECT, the interesting thing was that the
11 newscast had to do with expected surprises
12 that the State was going to have for us,
13 and I take it that this is one of them.

14 THE COURT: Is that for my
15 information or is that for consumption of
16 the press?

17 MR. THOMPSON: For you.

18 MR. BOWEN: I think you should
19 know that, who they have gotten it from --

20 MR. THOMPSON: And for the
21 record.

22 MR. BOWEN: The press is
23 reasonably reporting what they hear, and
24 they had to have gotten this from the
25 State. And it certainly, in fact, is a

1 surprise to both Mr. Thompson and me.

2 THE COURT: Have you all checked
3 your box?

4 MR. THOMPSON: I haven't
5 personally checked my boxes, no, sir. I
6 haven't personally checked them.

7 THE COURT: So we can make our
8 record before the lunch hour has expired,
9 can you ask one of the Clerks at your table
10 to go down and check the box? There's a
11 threshold determination. He's asserted for
12 the record as an officer of the Court
13 that's where it was placed, but before I
14 can make the record complete, we need to
15 know what if anything might be in the box.

16 For the record, while we are waiting
17 for Mr. Locklear to return, let the record
18 continue to show that present at this time
19 are counsel for the State, counsel for the
20 defendant, and the defendant. Do you want
21 to ask the witness any questions -- or do
22 you want to ask the witness any questions
23 about when he may have been interviewed by
24 either Mr. Britt or any law enforcement
25 officer?

1 MR. THOMPSON: Yes, sir. I want
2 a copy of his statement.

3 THE COURT: Yes, sir. His
4 point -- my point is, he said he gave you
5 notices on the 12th. If, for example, this
6 witness was interviewed on the 9th, the
7 8th, the 10th, that may have a bearing on
8 duty to disclose and when it arose. Do you
9 want to ask the witness.

10 MR. THOMPSON: Yes, sir.

11 THE COURT: Yes, sir.

12 MR. BOWEN: All right.

13 Mr. Thompson is asking that I conduct --

14 THE COURT: That's fine.

15 MR. BOWEN: May I, Your Honor?

16 THE COURT: That's fine.

17 CROSS-EXAMINATION

18 BY MR. BOWEN:

19 Q When did the State's officers first talk to
20 you, if you recall?

21 A The 11th, around 7:15.

22 THE COURT: A.m. or p.m.?

23 A P.m.

24 Q Did you say the 7th?

25 A The 11th.

1 Q Of this month?

2 A Yes.

3 Q Now, between July of 1993, and the 11th of
4 this month, nobody had come and talked to you about
5 this case?

6 A Yes, one time around four, I say around
7 four months ago, officer -- probably investigator Jim
8 Hensley, he called me at my house.

9 Q Did you say private investigator, Jim
10 Hensley?

11 A Yes.

12 Q Did Mr. Hensley say who he worked for?

13 A No, he didn't, because it's -- okay. I
14 used to work with Mr. Hensley on a DARE program, I
15 used to go talk with kids with Mr. Hensley.

16 THE COURT: You said DARE.

17 THE WITNESS: A DARE program.

18 And I go with him to the VA hospitals and
19 stuff, talked with kids, bring out his
20 little legends card because he use to raise
21 cars. So I go to schools and stuff with
22 him, talked to the kids, what happened to
23 them. So then he was working for my
24 lawyer, okay, then he calls me one night,
25 and out of the blue, I mean, I ain't say

1 anything to him. Yes, yeah, uh-huh, that
2 was it. Next morning I went and talked to
3 my lawyer.

4 THE COURT: What if anything did
5 Mr. Hensley talk to you about?

6 THE WITNESS: He asked me did I
7 know anything about the Jordan case. And I
8 said yes. He said, did he know Daniel
9 Green? I said, yeah, I know him. He said,
10 well, he's trying to say that you gave him
11 the gun. I was like, man, get out of
12 here.

13 THE COURT: Now you say this
14 conversation took place about when?

15 THE WITNESS: If I'm not
16 mistaken, around -- let's see, either
17 between November and October, because I
18 went to court in October.

19 THE COURT: That would have
20 been --

21 THE WITNESS: Either between
22 November and October.

23 THE COURT: What year?

24 THE WITNESS: '95.

25 THE COURT: Okay. Anything

1 further, folks?

2 BY MR. BOWEN:

3 Q Now, you say that you went to court on your
4 case somewhere in the fall of '95, is that correct?

5 A Yes.

6 Q And Mr. Hensley talked to you because he
7 was working for your lawyer?

8 A No, he talked to me because he said he was
9 down here.

10 Q Oh, here in Robeson County?

11 A Yes.

12 Q Did he tell you he was working on the
13 Jordan case?

14 A No, he didn't tell me nothing like that.

15 Q And who is your lawyer, sir?

16 A Excuse me.

17 Q Who was your lawyer?

18 A Brady and Brady.

19 Q I'm sorry?

20 A Brady and Brady.

21 Q Okay. The specific lawyer?

22 A Edward T. Brady.

23 Q Okay. Now, to your knowledge, did
24 Mr. Hensley talk to your lawyer?

25 A No, sir.

1 Q Do you know how Mr. Hensley knew to get up
2 with you?

3 A Because I was working with him in the DARE
4 program.

5 Q Okay. But I mean, do you know why he had
6 brought up the question to you as to whether or not
7 you knew anything about the Jordan case?

8 A No.

9 Q You just know he brought that up?

10 A Yes.

11 Q And you told him these things. Did anybody
12 other than Mr. Hensley thereafter contact you?

13 A No, sir.

14 Q Now, when you were contacted to -- first of
15 all, when were you subpoenaed in this case, if you
16 were?

17 A I was subpoenaed little after January of
18 '95.

19 Q And who first came and made contact with
20 you?

21 A Mr. Kim.

22 THE COURT: By Mr. Kim, who you
23 are referring to, sir?

24 THE WITNESS: The young man
25 sitting right there in front of me, to your

1 left.

2 MR. THOMPSON: For the record,
3 Mr. Kim Heffney?

4 THE WITNESS: Yes.

5 BY MR. BOWEN:

6 Q Now, did he explain to you that he had ever
7 had any contact or discussion with Mr. Hensley about
8 you?

9 A No, he sure didn't.

10 Q Did he tell you why it was that he came to
11 see you?

12 A Yes, he did.

13 Q Did he tell you why he knew to come to see
14 you?

15 A No, he didn't.

16 Q What were his remarks, if any, to get you
17 to talk about the Jordan case?

18 A Excuse me?

19 Q How did he open up talking with you about
20 the matter?

21 A Well, he just came to me, asked me did I
22 know anything about it. Then he introduced himself
23 to me. Right then I didn't say nothing else. I went
24 straight in the house, said wait a minute, let me go
25 cut my car off, cut the lights off, got on the phone

1 called my mother. He talked to my mother, that was
2 it.

3 Q Mr. Heffney talked to your mother?

4 A Yes.

5 Q So you didn't talk to Mr. Heffney?

6 A Well, talked to him when he was serving me
7 the papers, but he just told me to be ready in the
8 morning to go.

9 Q So you didn't give Mr. Heffney a statement
10 about the things that you had previously talked to
11 Mr. --

12 A Excuse me?

13 Q You didn't tell Mr. Heffney on the 11th the
14 things that you had previously talked to Mr. Hensley
15 about?

16 A I didn't give him that statement until
17 January the 12th of '95.

18 Q All right. Okay. So then you didn't talk
19 about the matter when the -- they served the
20 subpoena, you talked about it when you got up here
21 pursuant to the subpoena?

22 A Exactly.

23 Q And who did you talk about it with?

24 A With Mr. Heffney and Mr. Britt.

25 Q And how did they bring up the issue about

1 the Jordan case?

2 A What do you mean how did they bring up the
3 issue about the Jordan case?

4 Q What did they say first that caused you to
5 tell them what you've told here in the courtroom?

6 A They didn't have to tell me nothing,
7 because I knew right then what it was, I just told
8 them the truth, what, you know, they didn't have to
9 tell me nothing.

10 Q Did they tell you how they knew?

11 A Huh?

12 Q Did they tell you how they knew that you
13 knew?

14 THE COURT: What he's asking you,
15 did they explain to you how you came to be
16 subpoenaed as a witness in this case?

17 THE WITNESS: Yes.

18 BY MR. BOWEN:

19 Q What did they say?

20 A That Daniel was saying he got the car from
21 me.

22 THE COURT: Anything further?

23 MR. BOWEN: Yes, while we are on
24 voir dire, Your Honor.

25 BY MR. BOWEN:

1 Q I would like to ask you -- one moment,
2 please.

3 BY MR. BOWEN:

4 Q Sir, what if anything have you been
5 previously convicted of that carries --

6 A I don't have to -- I refuses to answer
7 that.

8 THE COURT: Well, bear with me.

9 We'll come to that in a moment. Right
10 now, what's has that got to do with the
11 scope of voir dire as to the issues arising
12 under discovery.

13 MR. BOWEN: Well, because, Your
14 Honor, since we didn't know about this man
15 until today, we have not had an opportunity
16 to review his record and ask a good faith
17 question about his prior record.

18 Therefore, I thought while we are on voir
19 dire, it would be an appropriate time to
20 find out whether or not he has this kind of
21 record, so that we would behave properly in
22 front of the jury. If I had it, if I had
23 had the information before, I would have
24 investigated it.

25 THE COURT: What you're saying is

1 procedurally reasonable and logical, I
2 appreciate the fact you brought it up on
3 voir dire, I understand your reasons for
4 asking the question.

5 Now, you have to answer the question
6 if it is appropriately phrased. What he's
7 asking you is not what you've been charged
8 with, not what you may have gone to Court
9 for, he's asking you what you may have been
10 convicted of -- convicted means found
11 guilty or pled guilty to -- within the
12 last ten years, which could have been
13 punishable by a term in prison, of
14 imprisonment of more than sixty days. Do
15 you understand?

16 THE WITNESS: Yes.

17 THE COURT: And your answer.

18 THE WITNESS: Yes, pleaded
19 guilty.

20 THE COURT: To what?

21 THE WITNESS: Sell and deliver?

22 THE COURT: When?

23 THE WITNESS: October 16th, on my
24 birthday.

25 THE COURT: What year?

1 THE WITNESS: '95.

2 THE COURT: Sale and delivery of
3 what?

4 THE WITNESS: Cocaine.

5 THE COURT: Anything else?

6 THE WITNESS: Trafficking.

7 THE COURT: When?

8 THE WITNESS: October the 16th.

9 THE COURT: So that was one
10 judgment or two judgments, two separate
11 offenses or one offense?

12 THE WITNESS: One offense --
13 well, the sell and delivery came at one
14 time, and then I got a separate indictment,
15 so I don't know how --

16 THE COURT: What I'm asking you,
17 did you plead guilty to two criminal acts
18 occurring on two separate days?

19 THE WITNESS: I pleaded guilty,
20 yes.

21 THE COURT: One count of
22 possession with intent to sell and delivery
23 or delivery?

24 THE WITNESS: Both charges.

25 THE COURT: Second case?

1 THE WITNESS: Pled guilty.

2 THE COURT: Was what?

3 THE WITNESS: Trafficking.

4 THE COURT: In what?

5 THE WITNESS: Cocaine.

6 THE COURT: Anything else?

7 THE WITNESS: That's it.

8 THE COURT: Yes, sir.

9 MR. BOWEN: That's all. That's
10 all along that line. Just a moment, Your
11 Honor.

12 MR. THOMPSON: Your Honor, for
13 the record, it appears from what my
14 investigator handed me, a document dated
15 January 12, 1993, entitled "Additional
16 Discovery," and attached to it is a
17 certificate of service, as indicated by
18 Mr. Britt, that a copy of the foregoing and
19 attached discovery was served by depositing
20 a copy in the boxes, in the box belonging
21 to me. It was stamped and received in my
22 office on January 12th of 19 --

23 THE COURT: In your office?

24 MR. THOMPSON: It has my stamp,
25 that's right on it.

1 THE COURT: In the Public
2 Defender's office?

3 MR. THOMPSON: Yes.

4 THE COURT: Does it bear a Clerk
5 of Superior Court filing date?

6 MR. THOMPSON: It was filed
7 January 12th, 3:46, in the Clerk's office.
8 My office, somebody in my office stamped it
9 January 12th, 1996, as having been
10 received.

11 THE COURT: By your office?

12 MR. THOMPSON: By my office.

13 THE COURT: Okay.

14 MR. THOMPSON: And so it appears
15 that it was in my office as Mr. Britt has
16 indicated. For the record, as of court --
17 now, now, but that be the case, and it's
18 not an excuse, this is the first time I had
19 knowledge of it, and, you know, Your Honor
20 it was -- we got out of court early on
21 Friday, actually, notwithstanding that I
22 came to this office along with Mr. Bowen
23 and Mr. Locklear this weekend on a number
24 of occasions, and worked, we were not aware
25 that this document was in my office.

1 THE COURT: Now, Mr. Thompson, I
2 don't mean to interfere, but you appeared a
3 little bit disgruntled when I suggested
4 that we could go forward with questioning
5 on voir dire of this witness while we're
6 waiting for that. My purpose was not to
7 interfere. My purpose was there were other
8 matters related to the discovery issue and
9 notice.

10 MR. THOMPSON: Exactly.

11 THE COURT: That can be explored
12 while we were waiting.

13 MR. THOMPSON: I understood, I
14 just didn't want to give up anything.

15 THE COURT: You don't have to
16 give up anything.

17 MR. THOMPSON: Or waive anything.

18 THE COURT: -- once you receive
19 the material, to go back into additional
20 matters, I'll give you that opportunity.

21 MR. THOMPSON: That's exactly
22 what I was concerned about. Thank you,
23 Your Honor.

24 THE COURT: Yes, sir. Any other
25 matters on voir dire?

1 MR. THOMPSON: No, sir. Not at
2 this point. We'll take the recess.

3 THE COURT: I suggest the
4 appropriate way to deal with this is give
5 you an opportunity to review the additional
6 discovery, come back and hear any argument
7 you folks might make under the provision
8 903, 910, and anything else, at 2:30.
9 Okay? Is that agreeable?

10 MR. BRITT: That's fine.

11 MR. THOMPSON: Yes.

12 THE COURT: Any questions you
13 want to ask of the witness on voir dire at
14 this time?

15 MR. BRITT: No, sir.

16 THE COURT: That's without
17 prejudice to your right to ask additional
18 questions as it is without prejudice of the
19 right of the defendant to ask any
20 additional questions on any additional voir
21 dire.

22 Thank you, sir. You may come down.

23 We're at ease until 2:30.

24 (Lunch recess.)

25 THE COURT: Good afternoon,

1 folks. We're waiting for Mr. Thompson.

2 Let the record reflect all counsel are
3 present, the defendant is present in open
4 court. Mr. Sessions, do we have all
5 members of the jury secured in the jury
6 room?

7 THE BAILIFF: Let me check, Your
8 Honor.

9 Yes, sir, they are secured.

10 MR. BRITT: Before the jury comes
11 back, let me bring a matter to the Court's
12 attention.

13 THE COURT: We've got to go back
14 into this matter first.

15 MR. BRITT: Let me bring another
16 matter to the Court's attention. This
17 morning, when Mr. Louie Murray left to go
18 back to Greenville, South Carolina, he --

19 THE COURT: Took records.

20 MR. BRITT: Yes, sir, we have
21 made contact with him, he was in Columbia,
22 South Carolina when we made contact with
23 him. He is going to overnight this
24 exhibit. Should be there here at 10:00.

25 MR. THOMPSON: That's not a

1 problem.

2 THE COURT: I take it there's an
3 objection you folks want to make to what
4 has been said.

5 MR. BOWEN: Judge, back on the
6 part we're here, the jury is still out, we
7 have had some conferences over lunch about
8 this matter, done some research, and in
9 light of what we have discovered, we're
10 asking the Court in its discretion to
11 allows us a few more questions of the
12 witness. I suspect it won't even be five
13 minutes.

14 THE COURT: Yes, sir. If you'll
15 come back up, Mr. Hales, please, and you
16 remain under oath, sir.

17 BY MR. BOWEN:

18 Q Mr. Hales, when you were injured, I believe
19 it was in 1993, is that correct?

20 A Yes.

21 Q Were any charges brought against anyone
22 arising out of this incident?

23 A No, sir.

24 Q Were there any civil actions filed as a
25 result of that incident?

1 THE COURT: Did you sue anybody
2 as a result of being shot?

3 THE WITNESS: No, sir.

4 BY MR. BOWEN:

5 Q All right, sir. Now, do you presently have
6 any other charges pending against you anywhere?

7 A No, sir.

8 Q Now, did I understand when you were
9 relating your record to His Honor earlier that you
10 have been convicted of one trafficking charge for
11 cocaine?

12 A Yes, sir.

13 Q And do I understand that you have been
14 convicted of one possession of cocaine with intent to
15 sell?

16 A Seven counts of selling and delivering.

17 Q Seven?

18 A Seven.

19 Q But only one count of trafficking?

20 A Yes.

21 Q And what was your sentence?

22 A 180 years.

23 Q Where are you presently housed?

24 A Excuse me?

25 Q Where do you live now?

1 A I live by myself.

2 Q Where?

3 A Route 16, Box 118.

4 Q As a consequence of your having been
5 sentenced back in October of 1995, did you enter the
6 Department of Corrections?

7 A No, I had a plea.

8 Q All right. You made a plea bargain. All
9 right. Are you familiar with the term substantial
10 assistance?

11 A Excuse me?

12 Q Are you familiar with the term substantial
13 assistance?

14 A Rather not answer that question.

15 Q Sir?

16 A Rather not answer that question.

17 THE COURT: We're getting into a
18 matter that may be problematic in terms of
19 a number of other issues. And to the
20 question as phrased, is there an
21 objection?

22 MR. BRITT: Yes, sir.

23 THE COURT: To the question as
24 phrased, the objection is sustained.

25 BY MR. BOWEN:

1 Q Now, when you spoke to Mr. Hensley,
2 reference to what you've testified to here before the
3 jury this morning, was that before or after you
4 received your sentence that allows you to go home and
5 not go to jail?

6 A Before.

7 Q It was before. Do you know how that
8 statement that you gave to Officer Hensley --

9 THE COURT: That assumes facts
10 not in evidence. Not been established that
11 a statement was given to Officer Hensley.

12 BY MR. BOWEN:

13 Q Did you make a statement to Officer Hensley
14 about these matters that you've testified to before
15 the jury today?

16 A No, sir.

17 Q Now, you talked about with Officer Hensley
18 your willingness to come forward and testify in this
19 case, is that correct?

20 A No, sir.

21 Q And you don't know how anybody knew to
22 subpoena you, that is, how these folks sitting over
23 there with the State's prosecutor knew how to
24 subpoena you, is that correct?

25 A No, sir.

1 Q But as a result of all the charges that you
2 faced back in October, those charges, some of them
3 going back to 1994, you did not serve a day in prison
4 after your sentence, did you?

5 A No, I had time served.

6 Q How much time had you served?

7 A At first, I did time served in Florida, so
8 I had to sit and wait there 30 days until they
9 extradited me back. So then they came like the 28th
10 day of that month, then I stayed in the county for
11 like another month, about two months.

12 Q Did you serve any time anywhere else?

13 A No, sir.

14 Q So for the seven counts of possession with
15 intent to sell and selling cocaine and the at least
16 one trafficking count, you have served a total of 28
17 days?

18 A Yes, you could say that.

19 Q Are you certain that it wasn't two
20 trafficking counts, sir?

21 A I'm not for sure, and what has that got to
22 do with this?

23 THE COURT: If you'll answer his
24 questions, please.

25 THE WITNESS: All right.

1 BY MR. BOWEN:

2 Q Didn't you plead guilty to conspiracy to
3 traffic cocaine as well as trafficking cocaine?

4 A Yes.

5 Q Were you merely picked up in Florida or was
6 there a violation of the law in Florida?

7 A A violation, trafficking violation.

8 Q In Florida?

9 THE COURT: Is that traffic
10 violation or trafficking violation?

11 THE WITNESS: No, it's like
12 driving license revoked or something like
13 that.

14 BY MR. BOWEN:

15 Q So that's where you were picked up?

16 A Yeah.

17 Q Now, since 1994, where have you lived?

18 A On my own, same address.

19 Q Can you give me the address?

20 A Route 16, Box 118. Oh, sorry, when I made
21 bond, I went and stayed with my mother, because I was
22 on pretrial release.

23 Q You were not living in Florida?

24 A Huh?

25 Q When you were living in Florida --

1 A Yes, I was living in Florida, I lived in
2 Florida, back here, Florida, back here, back and
3 forth.

4 Q What was your address?

5 A 500 Erie Place.

6 Q 500 Erie Place?

7 A West Palm Beach, Florida, 33044. Phone
8 number?

9 Q Did you --

10 A 407-640-0961.

11 Q Does did you have a job down there?

12 A Disability.

13 Q Now, is the disability as a consequence of
14 your injury, being shot?

15 A Yes.

16 Q Did you first meet Officer Hensley in
17 connection with the DARE program or some other way?

18 A Some other way.

19 Q How was that?

20 A He was on -- he was on my case.

21 Q In other words, your cocaine case?

22 A Yes.

23 Q When were you originally charged with those
24 cocaine cases?

25 A I can't remember.

1 Q Was it before August of 1993 -- I'm sorry,
2 July of 1993?

3 A I didn't --, no, not -- no, they were but I
4 didn't know then until they got me in Florida, I
5 didn't know then.

6 THE COURT: Where were you
7 initially charged with the counts that
8 you've told us about, the trafficking
9 counts and the trafficking with intent to
10 sell and deliver?

11 THE WITNESS: I was charged here
12 when they extradited me back.

13 THE COURT: So that there's no
14 confusion, were you served with any
15 warrants or bills of indictment?

16 THE WITNESS: No, sir.

17 BY THE COURT:

18 Q In North Carolina?

19 A No, sir, not until I came back.

20 Q So you were picked up in Florida on a
21 fugitive warrant?

22 A Yes.

23 Q Extradited from Florida to the State of
24 North Carolina?

25 A Yes.

1 Q Once you returned to State of North
2 Carolina on the fugitive warrant you were then served
3 with bills of indictment on the intent to sell and
4 deliver, sale of cocaine and the trafficking counts?

5 A No, I got served an indictment like a month
6 after the seven counts.

7 Q What were you brought -- what were you
8 extradited from Florida to North Carolina for?

9 A Seven counts of selling and deliver.

10 Q Then you were served with the bills of
11 indictment as to those charges?

12 A Yes.

13 Q As well as the trafficking charges?

14 A Yes.

15 Q Were you served with bills of indictment as
16 to all charges at one time?

17 A Other than the trafficking, the traffic
18 charge.

19 Q Explain that to me.

20 A I got an indictment on the trafficking
21 charge, didn't have an indictment on the selling and
22 deliver.

23 Q So you were first served with bills of
24 indictment on the trafficking charge?

25 A Uh-huh.

1 Q And later?

2 A Conspiracy.

3 Q Later with bills of indictment on what?

4 A Conspiracy.

5 Q What about possession with sale and intent
6 to deliver, when were you served with bills of
7 indictment on them?

8 A When they transferred, you know, extradited
9 me.

10 Q So that we can be clear, you can be
11 extradited on a fugitive warrant?

12 A Yes.

13 Q What did that allege in terms of any
14 charges pending in North Carolina?

15 A Seven counts of selling and delivering.

16 Q That was what you were brought back on?

17 A Yes.

18 Q Those were the first bills of indictment
19 you were served?

20 A Yes.

21 Q Next one was on the trafficking count?

22 A Conspiracy charge.

23 Q That was the second one?

24 A Yes.

25 Q And the third one was on the trafficking

1 charge itself?

2 A Yes.

3 THE COURT: Anything further?

4 BY MR. BOWEN:

5 Q Now, do you know who Officer Hensley was
6 working for when he talked to you, was he working for
7 law enforcement or working for your lawyer, Mr.
8 Brady?

9 A If I'm not mistaken he was working for my
10 lawyer.

11 Q Mr. Brady, is that what he told you?

12 A No, that's what I assumed, because when I
13 was first introduced --

14 Q So you don't know?

15 A I don't know for sure.

16 Q Did your lawyer introduce Mr. Hensley to
17 you?

18 A Yes.

19 THE COURT: In the context of
20 what, folks, the DARE program or what?

21 BY MR. BOWEN:

22 Q Well, did he -- did he introduce
23 Mr. Hensley in the context of the DARE program or in
24 the context of being an investigator on your case?

25 A Investigator on my case.

1 Q You're talking about your drug cases?

2 A Yes.

3 Q That's right. Did you know at that time
4 Mr. Hensley had been an investigator on this case
5 against Mr. Green and Mr. Demery?

6 A No, sir.

7 THE COURT: Anything further?

8 MR. BOWEN: That's it, Your
9 Honor.

10 THE COURT: Any questions on
11 behalf of the State of Mr. Hales on voir
12 dire?

13 BY MR. BRITT:

14 Q Mr. Hales, when you pled guilty to the
15 conspiracy charges and the seven counts of selling
16 and delivery of cocaine, had you had any contact with
17 either Mr. Heffney or myself at that point?

18 A No, sir.

19 Q And when you were first contacted by
20 Mr. Heffney was last Thursday night?

21 A Yes, sir.

22 Q Was Jovan Carter with him when he came to
23 your house?

24 A Yes, sir.

25 Q Did you learn that Jovan Carter was the

1 person responsible for bringing Mr. Heffney to your
2 house?

3 A Yes, sir.

4 Q In terms of pointing out where you lived?

5 A Yes, sir.

6 Q When Mr. Heffney came to see you last
7 Thursday night he gave you a subpoena?

8 A Yes, sir.

9 Q Told you to be in court here in Lumberton
10 the following morning?

11 A Yes, sir.

12 Q And on Friday, January the 12th, 1996 was
13 the first time you were ever interviewed as to your
14 knowledge involved in the James Jordan murder case?

15 A Yes, sir.

16 Q And that interview took place in my office?

17 A Yes, sir.

18 Q And did Mr. Heffney and Mr. Thompson and
19 Special Agent Berry Lee of the SBI conduct that
20 investigation?

21 A Yes, sir.

22 Q During the time that you were actually
23 interviewed by Mr. Heffney, Mr. Thompson, Mr. Lee, I
24 was not present, is that correct?

25 A Yes, sir.

1 Q Mr. Heffney wrote down, made notes of what
2 you told him?

3 A Yes, sir.

4 Q And then after the interview was completed
5 with Mr. Heffney I came back into the office?

6 A Yes, sir.

7 Q And we talked briefly?

8 A Yes, sir.

9 Q And then you left to go back the
10 Fayetteville?

11 A Yes, sir.

12 Q With instructions to come back to court
13 this morning?

14 A Yes, sir.

15 Q And at no time has anyone connected with
16 the investigation of the James Jordan murder case
17 intervened on your behalf in regard to any charges
18 that you have pending in Fayetteville, is that
19 correct?

20 A Yes.

21 MR. BRITT: I don't have any
22 other questions.

23 THE COURT: Anything further,
24 folks?

25 MR. BOWEN: That's all.

1 BY THE COURT:

2 Q Mr. Hales, for the purposes of clarity in
3 the record, you indicated that several months back
4 Mr. Heffney contacted you by telephone?

5 A Yes.

6 Q And that he at that time talked with you
7 about any information or knowledge you might have
8 about the matters which are now before the Court
9 involving this defendant?

10 A Yes.

11 Q Was that the first time anyone talked with
12 you about any information you may have about this
13 case?

14 A Yes, sir.

15 Q All right. You indicated that when
16 Mr. Hensley talked with you on the telephone, he
17 asked you specifically what involvement you may have
18 had or any information or knowledge you may have had
19 about the facts which are now before us. You
20 indicated your response was, I played him off or
21 words to that effect, and just said yeah, yeah, yeah,
22 yeah. Did you give Mr. Hensley any statement during
23 that telephone conversation about any information,
24 knowledge, or involvement you may have had in the
25 matters which are now before the Court?

1 A Other than I know something, you know, I
2 heard about on, you know, been seeing about, heard
3 what was going on.

4 Q Did you discuss any details or any
5 specifics about what you may have known?

6 A No, sir.

7 Q You don't know, according to what you
8 testified, what caused Mr. Hensley to call you?

9 A No, sir.

10 Q Is that correct?

11 A Yes, sir.

12 Q Was there ever any follow up by Mr. Hensley
13 or anyone else regarding that telephone conversation?

14 A No, sir.

15 THE COURT: Anything further,
16 folks?

17 MR. THOMPSON: Not of this
18 witness, sir.

19 THE COURT: Yes, sir.

20 MR. THOMPSON: Your Honor, we're
21 going to ask the Court for leave to grant a
22 recess in light of --

23 THE COURT: For the record, state
24 your reason.

25 MR. THOMPSON: Yes, sir. Your

1 Honor, of course this information and --
2 assuming it was served, appears that it was
3 served on the defense at least Friday by
4 3:46 p.m.

5 THE COURT: So there's no
6 contention, just so we're clear, that the
7 State has violated 903(1).

8 MR. THOMPSON: Not with respect
9 to service, yes, sir, no contention with
10 respect to that. What we're asking for,
11 Your Honor, in light of the fact that it's
12 just come up at this point, we're saying
13 there's no contention that they have
14 violated nine -- you said.

15 THE COURT: 903(a)(1) which
16 requires the State to provide counsel for
17 defendant with the substance of any
18 statements attributable to the defendant in
19 a timely fashion.

20 MR. THOMPSON: Well --

21 THE COURT: Well, let's --

22 MR. THOMPSON: I don't want to
23 necessarily concede that. What I do
24 concede is that they filed the document
25 when in fact the State is contending they

1 filed it.

2 THE COURT: That would mean
3 there's no violation of 903(a)(1), unless
4 there's an argument that information which
5 may be attributable to Mr. Hensley based on
6 earlier conversation somehow made its way
7 to the State. And there's no evidence of
8 that.

9 MR. THOMPSON: I understand.
10 We've got an opportunity, we need the time
11 to investigate this matter. Your Honor, we
12 need time to go to Cumberland County to
13 investigate some files regarding the
14 matter, and we think we can --

15 THE COURT: I'm going to give you
16 that time for this reason. One is that it
17 was provided during trial. It appears
18 based on what is now before me that it was
19 provided by the State in a timely fashion.
20 As soon as the State came into possession
21 of that information. Which is what is
22 required under 903(a)(1). Other
23 information may come into play which causes
24 us to reexamine. I don't know. But I'm
25 concerned because some of the questions

1 asked by Mr. Bowen seem to indicate that
2 there is some intent to pursue lines of
3 questioning as to this witness as to other
4 charges which is permissible under 609, if
5 it applies under 609, but there was some
6 discussion about plea arrangements that may
7 or may not be relevant.

8 MR. THOMPSON: That's right.

9 THE COURT: Okay. And it will
10 require an opportunity on your part to
11 examine the Court files.

12 MR. THOMPSON: Exactly.

13 THE COURT: As to those matters
14 in Cumberland County, examine any
15 transcripts of plea, and to investigate
16 anything related to any arrangements or
17 concessions that might be applicable. So
18 I'm going to allow you that. Now what do
19 you folks contend is reasonable, 9:30
20 tomorrow morning?

21 MR. THOMPSON: Yes, sir, we're
22 going to be heading to Fayetteville,
23 somebody will, as soon as we get out of
24 here.

25 THE COURT: Do you want to be

1 heard in response?

2 MR. BRITT: No, sir, and you have
3 not seen the statements now being marked
4 as -- for purposes of any hearing, I would
5 like to opportunity to mark that, because
6 the date and time the statements were taken
7 appear on that statement.

8 For the record, he was interviewed on
9 January 12th, 1996, again 12:24 p.m. which
10 was immediately after we had recessed the
11 Court, and there is a reference in the
12 statement to Mr. Brady, for the Court's
13 information, and so that the matter is
14 complete, Mr. Hensley is the one who
15 identified Mr. Hales at this time some four
16 months ago, informed me that Mr. Brady did
17 represent Mr. Hales. In an attempt to
18 locate Mr. Hales, we contacted Mr. Brady's
19 office. Mr. Brady wanted a letter of
20 immunity or grant of immunity from
21 Mr. Hales without revealing any information
22 that he had. I was not willing to do that
23 at that time.

24 THE COURT: So that the record is
25 clear, did you know Mr. Hales' whereabouts

1 at the time you had these discussion with
2 Mr. Brady?

3 MR. BRITT: No, sir.

4 THE COURT: Did Mr. Brady give you
5 any indication?

6 MR. BRITT: He specifically said
7 he did not want us talking to Mr. Hales
8 while he had a matter pending in Cumberland
9 County Superior Court. The rules of
10 professional responsibility would have
11 prevented me from having any contact with
12 Mr. Hales while he was represented by
13 counsel.

14 THE COURT: Without counsel's
15 consent.

16 MR. BRITT: Yes, sir. His
17 matters were, I believe, complete. His
18 case in Cumberland County were complete
19 sometime in October or November which ended
20 that relationship, between he and Mr. Brady
21 in terms of the representation. And then
22 we had contact, our first contact with
23 Mr. Hales Thursday, January the 11th, 1996.

24 THE COURT: Are you stating for
25 the record, Mr. Britt, that there was no

1 agreement or plea arrangement between your
2 office, this prosecutorial district, with
3 this defendant as to any charges that may
4 have been pending? I understand we've got
5 jurisdictional problems in Cumberland
6 County.

7 MR. BRITT: No, there's absolutely
8 no agreement between my office, District
9 Attorney's office 16 B and what occurred in
10 Cumberland County.

11 THE COURT: Are you also stating
12 for the record no conversation between your
13 office, 16 B, and the prosecutors in
14 Cumberland County, 12th Judicial District
15 12 regarding any pending charges that this
16 witness may have had in Cumberland County.

17 MR. BRITT: That's correct.

18 THE COURT: So that's clear on
19 the record.

20 MR. BRITT: Yes, sir.

21 THE COURT: Do you want to be
22 heard?

23 MR. THOMPSON: No, sir, except
24 for the --

25 THE COURT: Recess.

1 MR. THOMPSON: For the recess.

2 THE COURT: I'm going to allow
3 that recess. State want to note, take any
4 position as to that.

5 MR. BRITT: No, sir, I think
6 under the statute they are entitled to it.
7 It's discretion of the Court.

8 THE COURT: In the discretion of
9 the Court in the interest of justice and
10 fundamental fairness, the request for
11 recess will be allowed until 9:30 tomorrow
12 morning. I'm going to bring the jury in
13 and inform them accordingly. Simply tell
14 them we are going to be at recess because
15 of the matter of law that is before them.
16 Yes, sir. Mr. Carter you may --

17 THE WITNESS: Mr. Hales.

18 THE COURT: I apologize, you may
19 step down.

20 THE WITNESS: Thank you.

21 (Jury in at 2:53 p.m.)

22 THE COURT: First of all, good
23 afternoon, folks.

24 Ladies and gentlemen, because the
25 matter of law which is now before the Court

1 requires a recess at this time, I'm going
2 to excuse you until 9:30 tomorrow morning.

3 Now, during this recess, please recall
4 it is your duty to continue to abide by all
5 prior instructions of the Court concerning
6 your conduct. Again, instruct you that
7 you're not to talk about this matter among
8 yourself or anyone else including members
9 of your own families, not allowed to have
10 anyone say anything to you or in your
11 presence about this case. If anyone
12 communicates with you about this matter or
13 attempts to do so, or anyone says anything
14 about the case in your presence, it is your
15 duty to inform us of that immediately
16 through one of the bailiffs assigned to the
17 courtroom. Don't form or express any
18 opinions about this matter, don't have any
19 contact or communication of any kind with
20 any of the attorneys, parties, witnesses,
21 prospective witnesses, or directly with the
22 Court. It's extremely important, as is
23 always the case, that you avoid any
24 exposure to any media accounts which may
25 exist in connection with this matter, and

1 you're not to conduct any independent
2 inquiry or investigation or research of any
3 kind.

4 I've said this a number of times, but
5 it is absolutely imperative that the
6 verdict of a jury in any case be based only
7 on evidence which is brought out in the
8 courtroom under oath and subject to
9 cross-examination. Unless that does occur,
10 neither the State nor a particular
11 defendant can be assured of absolute
12 fairness and impartiality, and in any case,
13 both the State as well as that particular
14 defendant are entitled to nothing less, and
15 it remains your duty throughout the time
16 you're involved in this case to abide by
17 all prior instructions of the Court
18 concerning your conduct. Everyone else
19 please remain seated, the members of the
20 jury are excused until 9:30 tomorrow
21 morning. Thank you, folks.

22 (Jury out at 2:56 p.m.)

23 THE COURT: Folks, let me simply
24 say this so that I hopefully we will avoid
25 any additional problems in this regard.

1 What is of concern to me is what is
2 appropriate by way of cross-examination of
3 Mr. Hales. Obviously, anything that is
4 admissible under 609 comes into play.
5 Potentially we're dealing with 608 under
6 the Rules of Evidence, potentially we're
7 dealing with the possibility of both 1052
8 and/or 1054 applying in this case. And
9 we're dealing with the common law bases for
10 impeachment and/or cross-examination.

11 And I hope that this recess will allow
12 everybody to focus on what is there and
13 what's not so that we can minimize the
14 number of times we have to send the jury
15 out.

16 MR. THOMPSON: Yes, sir.

17 THE COURT: Okay.

18 MR. THOMPSON: Your Honor --

19 MR. BRITT: Go ahead. I just
20 need to find out what my next voir dire
21 number would be.

22 MR. THOMPSON: Go ahead.

23 THE COURT: Why don't we mark it
24 as a Court's exhibit.

25 THE CLERK: 14.

1 THE COURT: Marked as Court's
2 Exhibit 14. We can just put a sticker on
3 top of that.

4 MR. BRITT: That would be fine.

5 THE COURT: If you'll mark it
6 Court's Exhibit 14 for the purposes of voir
7 dire. Yes, sir.

8 MR. THOMPSON: Your Honor, I've
9 just instructed my investigator to get a
10 subpoena for Mr. Carter in light of what
11 has been said on this voir dire of
12 Mr. Hales. I'm going to want to talk to
13 Mr. Carter, I don't know that he's going to
14 be willing --

15 THE COURT: Mr. Hales?

16 MR. THOMPSON: What did I say?

17 THE COURT: Mr. Carter.

18 MR. THOMPSON: In light of the
19 voir dire of Mr. Hales, I'm going to, or
20 have my investigator talk to Mr. Carter
21 just concerning the part of the
22 testimony --

23 THE COURT: Relating to him.

24 MR. THOMPSON: Relating to Mr.
25 Hales, not what he's already testified to.

1 THE COURT: You know what the
2 rules are, you're entitled to the
3 opportunity. He's entitled to the right to
4 say yes or no.

5 MR. THOMPSON: Right. And
6 because of that, if he says no, we want him
7 under subpoena in case we need him. And
8 that's why I sent him up there. If he says
9 yes based on that conversation, he can go
10 and he can make -- you know, what I'm
11 asking Your Honor is, it will be a minute
12 or so that he'll be down here with a
13 subpoena.

14 THE COURT: Mr. Carter, if you'll
15 remain with us for a few moments. Mr.
16 Hales, if you'll remain with us for a few
17 moments. You folks intend to subpoena both
18 Mr. Carter and Mr. Hales?

19 MR. THOMPSON: Mr. Hales is going
20 to be back, but yeah, we're going to need
21 to subpoena him, too, yes, sir, that's
22 right.

23 THE COURT: Anything further?

24 MR. BRITT: No, sir.

25 THE COURT: All right.

1 MR. BRITT: I would just, by way
2 of information, so they will know,
3 Mr. Carter does not have transportation
4 from Cumberland County. We've been
5 providing him a ride to and from court. So
6 if it becomes necessary for them to call
7 him as a witness, they need to know, they
8 need to make arrangements to get him here.

9 THE COURT: Okay.

10 MR. THOMPSON: Yes, sir.

11 THE COURT: Anything further from
12 either counsel?

13 MR. THOMPSON: No, sir, Your
14 Honor. Just if you've instructed them to
15 stay until we can get these subpoenas
16 served.

17 THE COURT: Yes, sir. We're
18 at -- if you'll recess us until 9:30
19 tomorrow morning.

20 (Court adjourned)

21

22

23

24

25

1 APPEARANCES OF COUNSEL:

2 On Behalf of the State of North Carolina:

3 LUTHER JOHNSON BRITT, III, Esq.
4 District Attorney
5 16-B Prosecutorial District
6 Lumberton, North Carolina 28358

7 On Behalf of the Defendant:

8 ANGUS B. THOMPSON, Esq.
9 Public Defender
10 16-B Prosecutorial District
11 Lumberton, North Carolina 28358

12 and

13 WOODBERRY A. BOWEN, Esq.
14 Bowen & Byerly
15 P.O. Box 846
16 Lumberton, North Carolina 28359

17 (January 17, 1996: Proceedings in open court.)
18 (9:30 a.m.)

19 (Whereupon an in-camera proceeding ensued
20 as follows.)

21 THE COURT: Let the record
22 reflect that this is an in-chambers
23 conference. Present at this time are the
24 presiding Judge, the court reporter,
25 counsel for the State, Mr. Johnson Britt;
counsel for the defendant, Mr. Angus
Thompson, Mr. Woodberry Bowen. Also

1 present at this time is the defendant
2 Daniel Green, also known as U'Allah.

3 Mr. Britt, you indicated there was a
4 matter we need to take up in chambers.

5 MR. BRITT: Yes, sir. Yesterday
6 after court recessed, I received a call
7 from an individual who I know but who
8 wishes to remain anonymous, that he was
9 here yesterday and indicated he had
10 overheard a conversation that involved one
11 of the jurors. The subject of the
12 conversation was that another juror had
13 made a comment that they were going to have
14 to deliberate for a long time about this
15 matter because Mr. Green was, as was quoted
16 to me, was one of the guys. That comment
17 was alleged -- that statement was
18 attributed to Juror Number 9. The --

19 THE COURT: So that I can make
20 sure the record reflects what it is that
21 we're talking about, we can all understand
22 completely what we are talking about, you
23 are indicating an anonymous source, a
24 person who wishes to remain anonymous,
25 called you?

1 MR. BRITT: Yes, sir.

2 THE COURT: You know the identity
3 of that person?

4 MR. BRITT: Yes, sir.

5 THE COURT: That person wishes to
6 remain anonymous?

7 MR. BRITT: Yes, sir.

8 THE COURT: That person gave you
9 information?

10 MR. BRITT: Yes, sir.

11 THE COURT: The information that
12 he gave you was that he overheard a
13 conversation between two jurors?

14 MR. BRITT: No. Well, I don't
15 know if it was two. Overheard a
16 conversation with one of the jurors, stated
17 that Juror Number 9

18 THE COURT: Who did he make that
19 statement to?

20 MR. BRITT: I don't know if it
21 was another juror or other individual.

22 THE COURT: This occurred in a
23 hallway, he heard Juror Number 9 say what?

24 MR. BRITT: Made a comment they
25 were going to have to deliberate a long

1 time about this case because, in quotes,
2 Mr. Green was one of the guys, end quote.
3 That in addition to that portion of the
4 conversation was that another juror was
5 upset about the comment.

6 THE COURT: This is still the
7 same juror that is speaking?

8 MR. BRITT: Yes, sir, another
9 juror was upset about that comment and did
10 not know what to do, and that she was
11 thinking about bringing that information to
12 my attention, which any contact with me
13 would be clearly improper.

14 THE COURT: Did he identify the
15 juror who was speaking, who was making
16 these assertions?

17 MR. BRITT: Yes, sir.

18 THE COURT: Who did he identify?

19 MR. BRITT: That would be
20 Alternate Number 3.

21 THE COURT: He said he overheard
22 Alternate Number 3 make comments in
23 reference to Juror Number 9?

24 MR. BRITT: Yes, sir.

25 THE COURT: And also make

1 comments in reference to the fact that
2 Juror Number 9's purported statement had
3 had on another juror who is yet
4 unidentified?

5 MR. BRITT: That's right.

6 THE COURT: Two things first come
7 to my mind. I don't think -- I don't know
8 that this source can remain anonymous,
9 because in order to make the record, that
10 person would have to come in and testify
11 under oath at a hearing. Without that,
12 what we're dealing with is a hearsay
13 problem.

14 MR. BRITT: Yes, sir.

15 THE COURT: That doesn't lend
16 itself to a complete record. If that
17 person testifies, then obviously at a
18 minimum we would have to call Juror Number
19 9 as a witness and inquire further, which
20 may necessitate calling additional members
21 of the jury. But the threshold matter or
22 threshold issue is to bring in the source.

23 What I suggest is, I mean, you've got
24 two options now that I see it. One option
25 is we can honor that person's wishes and

1 not reveal that person's name to the Court,
2 counsel for the defendant or defendant, or
3 make that person's name a part of the
4 record in this case. If you elect to do
5 that, I'm not sure where that leaves us in
6 terms of making a record.

7 MR. BRITT: Right.

8 THE COURT: Other than what we're
9 making right now. The other option is for
10 you to contact that person, indicate that
11 you passed the information on to the Court,
12 counsel for defendant and the defendant,
13 that the Court has advised you that we need
14 that person to come forward for the
15 purposes of making a record, and go from
16 there.

17 MR. THOMPSON: For the record,
18 who is that Number 9?

19 MR. BRITT: I don't know her
20 name, it's a lady on the front row.
21 It's --

22 THE COURT: We can find out once
23 we get to that.

24 MR. THOMPSON: Okay. Ms. Sicilia
25 Ellerbe.

1 THE COURT: So that's Number 9
2 who he says he overheard making statements.

3 MR. BRITT: No, he said he
4 overheard the third alternate in the
5 conversation.

6 THE COURT: I apologize.

7 MR. BRITT: Ms. Locklear, I
8 believe her name is.

9 MR. THOMPSON: Right.

10 THE COURT: So at a minimum we're
11 looking potentially at the source, third
12 alternate and Juror Number 9 and
13 potentially other jurors.

14 MR. BRITT: Yes, sir.

15 THE COURT: You folks see
16 anything different? That needs to be done
17 as quickly as possible, so if you'll
18 contact that person this morning.

19 MR. BRITT: All right.

20 THE COURT: With a view toward,
21 it may be that we can use Friday morning
22 for that purpose, not have the jury come in
23 at all on Friday, since it's a short day
24 anyway, go forward with that depending on
25 what we have available. Is that

1 agreeable?

2 MR. THOMPSON: Okay.

3 THE COURT: As to the matter that
4 we concluded on in open court yesterday,
5 anything that we need to deal with in that
6 respect while we're in chambers?

7 MR. THOMPSON: Yes, sir.

8 THE COURT: Tell us about it.

9 MR. BOWEN: We have received
10 substantial additional information and
11 documentation which we believe in the
12 context of the way Your Honor likes us to
13 proceed in these matters, would require
14 additional voir dire.

15 THE COURT: Of whom?

16 MR. BOWEN: Mr. Hales. They
17 raise questions to which we don't know all
18 the answers, but we would like to.

19 THE COURT: Is Mr. Hales here
20 this morning?

21 MR. BRITT: Yes, sir.

22 THE COURT: For the record, since
23 we're going to be going on voir dire, tell
24 me what it is that you've got that you
25 intend to inquire of him.

1 MR. BOWEN: Well, we know at this
2 point that Mr. Hales was convicted of seven
3 counts of possession with intent to sell
4 and deliver, the conspiracy count, over --
5 the count was greater than 400 grams of
6 cocaine. We now know that he received
7 credit for 23 days of time served, 72 hours
8 of community service, and otherwise got
9 intensive probation in the matter.

10 THE COURT: So what you're
11 talking about essentially is you've got
12 information that he pled to at least one
13 trafficking offense?

14 MR. BOWEN: Yes, sir.

15 THE COURT: That offense carried
16 a mandatory minimum of 35?

17 MR. BOWEN: Yes, sir.

18 THE COURT: Mandatory fine of,
19 what is, it.

20 MR. BRITT: \$250,000.

21 MR. BOWEN: And --

22 THE COURT: And that there was a
23 departure downward from the mandatory
24 sentence?

25 MR. BOWEN: Yes, sir.

1 THE COURT: Which suggests or
2 implicates substantial assistance. What
3 have you got in terms of substantial
4 assistance?

5 MR. BOWEN: That is in a sealed
6 envelope.

7 THE COURT: Where is that
8 envelope?

9 MR. BOWEN: In the file which we
10 have subpoenaed and the Clerk's office in
11 Cumberland County should be bringing that.

12 MR. THOMPSON: Mr. Griffin just
13 called --

14 MR. BOWEN: We're not necessarily
15 going to get into that, but what we do want
16 to get into is there are 22 coconspirators
17 on that list, and we are informed, well, we
18 are certain from other trips --

19 THE COURT: You've got copies of
20 the indictment?

21 MR. BOWEN: Yes, sir.

22 THE COURT: Then you know who the
23 coconspirators are?

24 MR. THOMPSON: Yes, sir.

25 MR. BOWEN: And among them are

1 Jovan Carter's mother.

2 THE COURT: What has that got to
3 do with this case?

4 MR. THOMPSON: Well -- do you
5 want to --

6 MR. BOWEN: Another person on the
7 list called Baby Boy Carter, I don't know
8 whether he is connected to Jovan.

9 THE COURT: Assuming that
10 separate and apart he was indicted with
11 Jovan Carter, what has that got to do with
12 anything in this case?

13 MR. THOMPSON: Can I pick up on
14 that? Dorothy Johnson Carter appeared
15 during the initial interrogation of Jovan
16 Carter.

17 THE COURT: According to the
18 transcript.

19 MR. THOMPSON: According to the
20 transcript. Jimmy Henley was present.

21 THE COURT: I understand where
22 you folks are going, but there has got to
23 be a link.

24 MR. THOMPSON: I understand,
25 Judge. We're trying to find if there is a

1 link.

2 THE COURT: That's why you're
3 asking for the voir dire?

4 MR. THOMPSON: Yes, sir. Now,
5 the implications to me, quite frankly,
6 are --

7 THE COURT: You all are
8 speculating that there's some connection
9 between the law enforcement investigation
10 into this case, and some coercion,
11 influence of some officers, or some of the
12 same officers being involved in a separate
13 matter.

14 MR. THOMPSON: Yes, sir,
15 particularly Mr. Henley, who employed
16 himself --

17 THE COURT: I understand all
18 that, but there's got to be a link between,
19 you've got to be able to show through
20 testimony, through documentation or other
21 evidence that one of the officers or some
22 District Attorney in Cumberland County or
23 some District Attorney acting in
24 cooperation with the District Attorney's
25 office here agreed to some concessions in

1 those matters because of his testimony in
2 this case. That's what you got to show.
3 Do we disagree on that?

4 MR. THOMPSON: I understand that
5 we've got to show the link, and I'm quite
6 clear on that. My problem is, you know,
7 you asked us how long it was going to take,
8 and we got -- with the help of Paul, he
9 went down and copied some things, my
10 investigator went down and picked them up,
11 Tommy Griffin is serving subpoena for the
12 entire file, he's bringing them and
13 bringing certified copies.

14 THE COURT: All I'm asking for is
15 a ballpark figure, how long do you think
16 you're going to need, two hours, three
17 hours?

18 MR. THOMPSON: Well, you know,
19 this would be helpful in my
20 cross-examination, a complete investigation
21 by us. I know it may not lead to anywhere,
22 and that -- I don't want to impinge on the
23 Court's time, but at the same time --

24 THE COURT: Mr. Thompson, I don't
25 have any problem with you folks exploring

1 to see what is there. I don't have any
2 problem in giving a voir dire on this. I
3 think you're entitled to it. I'm going to
4 give it to you. All I'm asking you, I've
5 got 15 jurors in there. Do I tell them to
6 come back at 11:30, 12:30, do I tell them
7 to come back at 2:00?

8 MR. BOWEN: It's almost 10:00
9 now. I would tell them noon.

10 MR. THOMPSON: Might as well
11 come -- if they are going to come back at
12 noon and go --

13 THE COURT: Why don't we just
14 have them come back at 2:00.

15 MR. THOMPSON: That's what I
16 would think.

17 THE COURT: Is that agreeable?

18 MR. BRITT: That is fine.

19 THE COURT: That would give you
20 folks --

21 MR. THOMPSON: -- time for voir
22 dire.

23 THE COURT: And to think about
24 what you're doing.

25 MR. THOMPSON: And we thought it

1 would be better to do it this way.

2 THE COURT: I appreciate it.

3 MR. THOMPSON: Than be accused
4 of --

5 THE COURT: I appreciate it. I
6 don't have any problem with it. I don't
7 mind us losing a couple of hours here to
8 help us down the road. And my bottom line
9 is, I'm going to give both of you folks a
10 fair trial, okay.

11 MR. THOMPSON: I understand
12 there's got to be a link to be relevant.

13 THE COURT: I understand you're
14 trying to explore to see if there is a
15 link, and I don't have any problem with
16 that under the circumstances.

17 MR. THOMPSON: The other problem,
18 Judge, is under the issue of credibility, I
19 know 608, you told us to look at 608.

20 THE COURT: And 611.

21 MR. THOMPSON: Right. And 608
22 extrinsic evidence, only admissible in
23 discretion of the Court when it goes to
24 truthfulness.

25 THE COURT: No, the questions

1 are -- the cross-examination questions come
2 in if they go to truthfulness or
3 untruthfulness, but extrinsic evidence --

4 MR. THOMPSON: I understand. But
5 even questions concerning those matters
6 would have to be --

7 THE COURT: There's a case, State
8 versus Williams, under 611, Williams as I
9 remember, it may be in 311, NC Reporter,
10 Williams dealt with a situation where the
11 appellate courts found that it was err not
12 to allow cross-examination of a key
13 prosecution witness as to his drug usage
14 and drug history.

15 MR. THOMPSON: See --

16 THE COURT: As it bears or bore
17 on the issue of credibility.

18 MR. BRITT: His ability to
19 recall.

20 THE COURT: Yes. But it has to
21 be related to something of relevance in the
22 case.

23 MR. THOMPSON: Exactly. Now, the
24 other thing is that we've not, and we're
25 going to be -- we've got some folks who can

1 do this, but -- well, we understand that,
2 we'll get that as we investigate, we think
3 that, yeah, but we understand.

4 THE COURT: I'm going to give you
5 folks the opportunity to decide, is there a
6 basis for me to ask this question under 609
7 or 608-B, is there a basis for me to ask
8 this question under 611 or any other rule
9 of evidence that might apply.

10 MR. THOMPSON: That's right.

11 THE COURT: I'm going to give you
12 the opportunity to try to make the link
13 under the circumstances because of the
14 notice being given, and the State in my
15 view gave the notice promptly based on what
16 is now before me.

17 MR. THOMPSON: Under 903.

18 THE COURT: Right. Anything else
19 before we go back in court? I'm going to
20 bring the jury in and excuse them until
21 2:00.

22 MR. BRITT: I would like to
23 inform everyone that I've received what was
24 accepted as State's Exhibit 56, the phone
25 records, this morning.

1 THE COURT: That will be turned
2 over to the Clerk as custodian. Anything
3 else?

4 MR. THOMPSON: No, sir.

5 THE COURT: This concludes this
6 in-chambers conference.

7 (End of in camera proceeding.)

8 THE COURT: Good morning, ladies
9 and gentlemen. Let the record reflect that
10 all counsel are present, the defendant is
11 present in open court.

12 Mr. Horne, are all members of the jury
13 secured in the jury room?

14 THE BAILIFF: Yes, sir, they are.

15 THE COURT: Let the record
16 further reflect that a recorded in camera
17 hearing was just held, that in camera
18 proceeding is a part of the record in this
19 case, and is directed to be made a part of
20 the record in this case regarding
21 scheduling administrative matters and
22 evidentiary matters which are now before
23 the Court.

24 Based on that in-chambers conference,
25 it's my intent after consultation with

1 counsel for the State, counsel for the
2 defendant and the defendant, to bring the
3 jury in and excuse them until 2:00 so that
4 we can go forward with the voir dire and
5 matters connected with that voir dire which
6 are now before the Court.

7 Let the record further reflect that
8 after consultation with all counsel and we
9 did defendant, the Court has been informed
10 by counsel for the defendant that certain
11 records have been subpoenaed from the Clerk
12 of Superior Court of Cumberland County,
13 that subpoena having been issued and
14 served this morning. Is that correct?

15 MR. THOMPSON: Yes, Mr. Griffin
16 is on his way, Clerk of Court of Cumberland
17 County.

18 THE COURT: With those records,
19 is that accurate?

20 MR. THOMPSON: Yes.

21 THE COURT: Also part of voir
22 dire now before the Court, those records
23 are necessary, counsel for the defendant as
24 well as counsel for the State need an
25 opportunity to examine those records. It

1 may be necessary, based on information
2 provided to the Court, for the Court to
3 conduct an in camera review as to certain
4 matters in the record, which the Court has
5 been informed are sealed matters. Is that
6 accurate?

7 MR. THOMPSON: That's correct.

8 THE COURT: Based upon the
9 foregoing, any comments from counsel for
10 the State or counsel for the defendant
11 before we bring the jury in and excuse them
12 until 2:00? Mr. Britt?

13 MR. BRITT: Not as relates to
14 this matter. I just wanted to bring to the
15 attention of the Court, Mr. Thompson,
16 Mr. Bowen, last night, Mr. Anthony Thompson
17 we did Sheriff's Department contacted me at
18 home, he received a telephone call from an
19 individual who identified herself as Eugene
20 Lee who was a counselor at Hoffman --
21 excuse me -- Gene Lee works for the
22 Sheriff's Department, Barbara Jackson from
23 the Hoffman Correctional Unit that had
24 contacted the Sheriff's Department in
25 regard to the Jordan case in matters that

1 were relayed to her by an inmate there by
2 the name of Angelo Thompson. Potentially,
3 I view it as being exculpatory. At the
4 same time it may be inculpatory, but to
5 make it a matter of record and provide
6 them --

7 THE COURT: You're filing what it
8 is that you received.

9 MR. BRITT: This is the substance
10 of Mr. Thompson's interview with
11 Ms. Jackson over the telephone. We intend
12 at -- quickly as we can, to have
13 Mr. Heffney or Mr. Thompson go to Hoffman
14 and interview her, interview this Angelo
15 Thompson in regard to information.

16 THE COURT: Any subsequent
17 interview results will also be turned over
18 to counsel for the defendant.

19 MR. BRITT: Yes, sir.

20 THE COURT: What you're turning
21 over now is the information that you just
22 received?

23 MR. BRITT: Yes, sir.

24 THE COURT: Let the record so
25 show.

1 MR. BRITT: Consistent with what
2 we did earlier, I would like one marked as
3 a Court's Exhibit. Is it 15?

4 THE CLERK: Yes.

5 THE COURT: Mark that as Court's
6 Exhibit 15, and let that be placed into the
7 record as well.

8 Let me give you folks an opportunity
9 to review it. If you want to be heard I'll
10 hear you.

11 MR. THOMPSON: I'm sure they are
12 going to -- we're going to want to
13 interview them and we'll have our folks
14 attempt to. I don't think it will cause a
15 delay in these proceedings.

16 MR. BRITT: No, should not.

17 THE COURT: Any other matters
18 from counsel for the State before I bring
19 the jury in and excuse them until 2:00?

20 MR. BRITT: No, sir.

21 THE COURT: Anything from counsel
22 for the defendant?

23 MR. THOMPSON: No, sir.

24 THE COURT: Mr. Horne, if you'll
25 bring the jurors in, please.

1 (Jury in at 9:49 a.m.)

2 THE COURT: Good morning, ladies
3 and gentlemen of the jury. Ladies and
4 gentlemen, additional matters have
5 developed which raise additional questions
6 of law which are now before the Court. As
7 I explained to you during the jury
8 selection process, and periodically
9 throughout the trial of this case, up until
10 this point, when issues of law are raised,
11 it is the responsibility of the Court to
12 deal with those issues of law. Each of us
13 has different responsibilities in the
14 context of this case.

15 The responsibility of the jury is to
16 serve as judges of the facts. And in that
17 regard, it is your exclusive province, your
18 province alone to determine what the facts
19 are based on the evidence that is presented
20 in the courtroom.

21 On the other hand, as presiding Judge,
22 it is my responsibility to deal with issues
23 of law that are raised, to rule on
24 evidentiary matters, and to provide the jury
25 with instructions on the applicable law in

1 a particular case.

2 Now, because it appears that those
3 issues of law before the Court will take
4 some additional time, rather than keeping
5 you confined in the jury room, I'm going to
6 release you at this point and ask you that
7 you return at 2:00 this afternoon.
8 Hopefully, that will give us enough time to
9 deal with the issues of law which are now
10 before the Court.

11 Now, folks again, you shouldn't worry
12 or speculate about what takes place in the
13 courtroom in your absence. I instruct you
14 that we will merely be considering issues
15 or questions of law that are required to be
16 heard in the absence of the jury. And I
17 instruct you, and I assure you that all the
18 competent and admissible evidence in this
19 case will be presented while you are
20 present in the courtroom.

21 Now, during this interval, it is your
22 duty and responsibility to continue to
23 abide by all prior instructions of the
24 court concerning your conduct.

25 I instruct you again that you are not

1 to talk about this matter among yourselves
2 or with anyone else, you are not to allow
3 anyone to say anything to you or in your
4 presence about this case.

5 If anyone communicates with you about
6 this matter or attempts to do so, or if
7 anyone says anything about the case in your
8 presence, it's your duty to inform us of
9 that immediately through one of the
10 bailiffs assigned to the courtroom.

11 Don't form or express any opinions
12 about this matter, don't have any contact
13 or communication of any kind with any of
14 the attorneys, parties, witnesses,
15 prospective witnesses, or directly with the
16 Court.

17 Now, folks as I have previously
18 instructed you if there is any matter at
19 all that you want to bring to our
20 attention, the means by which you would do
21 so would be to contact one of the bailiffs
22 assigned to the courtroom and indicate to
23 that bailiff that there's a matter you want
24 us to address.

25 Now, preferably you would do so in

1 writing so that we are clear about what it
2 is that you want communicated to us by way
3 of information, and we will hopefully then
4 be in a position to better address any
5 matters that you want us to address.

6 I instruct you that you are not allow
7 yourself to be exposed to any media
8 accounts which may exist in connection with
9 this matter. And not to conduct any
10 independent inquiry or investigation or
11 research of any kind. Again, it is your
12 solemn duty and responsibility to base any
13 verdict reached in this case only on the
14 evidence presented in the courtroom under
15 oath and subject to cross-examination and
16 in accord with the Court's instructions on
17 the law.

18 Everyone else please remain seated,
19 the members of the jury are excused at this
20 time until 2:00. We'll see you at that
21 time. Please report directly to the jury
22 room. Thank you, folks.

23 Folks, before you leave, so that
24 there's no confusion about your parking
25 spaces, Sergeant Meares, if you will

1 contact the City of Lumberton Police
2 Department and make sure that arrangements
3 are made to have those parking spaces
4 available for the jury at 2:00.

5 Thank you, you're free to go.

6 (Jury out at 9:55 a.m.)

7 THE COURT: Is it your position,
8 folks, that you need to review the records
9 that are en route from Cumberland County
10 before we go forward.

11 MR. THOMPSON: Yes, sir.

12 MR. BOWEN: Yes, sir.

13 THE COURT: I certainly
14 understand that. Did Mr. Griffin in the
15 Cumberland County Superior Court's office
16 give you any indication about what time he
17 is expected to arrive or someone from his
18 office to arrive?

19 MR. THOMPSON: I talked to him
20 about 8:20, he told me he was copying
21 everything and he would be here. Then my
22 assistant just came down prior to us going
23 in chambers and said Mr. Griffin called,
24 said he was on his way. So I suspect in
25 the next thirty minutes he should be here.

1 THE COURT: If you folks will let
2 me know when you're ready to go forward. I
3 want to give you the opportunity to examine
4 any records. If there are any sealed
5 matters in the records, the Court directs
6 that they remain sealed pending in camera
7 review by the Court, and further
8 opportunity for all counsel and all parties
9 to be heard.

10 MR. THOMPSON: Yes, sir.

11 THE COURT: All right. We're at
12 ease.

13 (Court recessed.)

14 (Whereupon an in camera proceeding
15 ensued as follows.)

16 THE COURT: Let the record
17 reflect that this is an in camera
18 proceeding being held in chambers. Present
19 at this time is the presiding judge, court
20 reporter, counsel for state, Mr. Britt;
21 counsel for the defendant, Mr. Angus
22 Thompson and Mr. Woodberry Bowen. Also
23 present at this time is the defendant
24 Daniel Green, also known as U'Allah.
25 For the record, folks, I understand

1 Mr. Thompson, Mr. Bowen, that you folks
2 have received the complete files relating
3 to Mr. Hales from Cumberland County, and I
4 further understand that in those files,
5 which are eight in number, was contained a
6 sealed envelope. Is that correct?

7 MR. THOMPSON: Yes.

8 THE COURT: You've received
9 everything from the files with the
10 exception of the sealed envelope and the
11 contents thereof?

12 MR. THOMPSON: Yes, sir.

13 THE COURT: For the record, the
14 Court has examined the file containing the
15 filed -- sealed envelope, pardon me. That
16 sealed envelope contains the file number 93
17 CRS 43608. The envelope was marked sealed
18 by order of Judge Brewer, the Senior
19 Resident Superior Court Judge in Cumberland
20 County.

21 The Court opened that file, removed
22 the contents from that file, and in the
23 presence of Mr. Griffin, made copies of
24 both the sealed envelope and the contents
25 of the file from 93 CRS 43608. The Court

1 has placed the contents from the sealed
2 envelope along with a copy of the sealed
3 envelope into another manila envelope which
4 bears the following written notation:

5 Copy of sealed envelope and contents
6 from file number 93 CRS 43608, received
7 from Honorable Tommy Griffin, Clerk Of
8 Superior Court, Cumberland County, 1-17-96,
9 10:42 a.m., signed by the Presiding Judge
10 Gregory A. Weeks.

11 There appears the following
12 handwritten language -- and this language
13 does not apply as of right now, but will
14 apply at some subsequent time -- sealed by
15 order of Judge Gregory A. Weeks pending
16 further order of the Court. I also intend
17 to add the language, "or appellate review."

18 Okay. Now, I have examined the
19 contents of the file -- strike that. I
20 have examined the contents of the sealed
21 envelope coming from file number 93 CRS
22 43608. It appears from documents in the
23 file which are not sealed, as well as
24 documents contained in the sealed envelope,
25 that the prosecuting attorney in Cumberland

1 County was Elaine Kelly. It's my view that
2 for the purposes of expediting this
3 proceeding, Elaine Kelly needs to be called
4 as a witness.

5 MR. THOMPSON: Thank you.

6 THE COURT: She can testify as to
7 the nature of any agreements in a general
8 sense, but to the extent that there are
9 statutory provisions requiring that the
10 identity of an informant be kept secret
11 absent some compelling circumstances,
12 that is a consideration. I think questions
13 along the line of, does any agreement that
14 you entered into in any of these numbered
15 cases relate to the defendant's giving
16 truthful testimony in the matter which is
17 now before us.

18 MR. THOMPSON: Well, I think --

19 THE COURT: If the answer to that
20 is no, the file contents -- envelope
21 contents become irrelevant. Now, having
22 examined in camera the contents of the
23 sealed envelope from 93 CRS 43608, it
24 appears that part of the agreement
25 involving testimony by Mr. Hales against

1 may be some matters that can be developed
2 in open court.

3 MR. THOMPSON: Exactly.

4 THE COURT: But there are
5 provisions in 15-A relating to discovery,
6 specifically under 903. Let me find --

7 MR. BRITT: With regard to --

8 THE COURT: With regard to
9 exposing the identity of an informant.

10 MR. THOMPSON: I understand. And
11 I think that --

12 MR. BOWEN: We can stay away
13 from --

14 MR. THOMPSON: Hey, you know,
15 you're talking about somebody whose life --
16 you know.

17 MR. BRITT: I've been talking
18 with Mr. Hales, and just to give you an
19 idea of what his testimony would be, I've
20 never seen the transcript, but he tells me
21 he knew going in to court what --

22 THE COURT: You all have a copy
23 of the transcript?

24 MR. BOWEN: Yes.

25 MR. BRITT: -- what the agreement

1 was. I asked him if he knew what the
2 contents of the sealed envelope were in the
3 court file. He does not recall if it was a
4 statement that he made that was presented.
5 As the Court -- according to Mr. Hales'
6 condition of his plea, the condition of his
7 plea was that he cooperate and testify
8 against other coconspirators that were
9 charged with him. His testimony was never
10 required. He was never called to testify.
11 That as a result of a number of the
12 coconspirators that were alleged were
13 family members of his, he was interviewed
14 by Mark Francisco of the FBI as relate to
15 the drug charge. Mr. Henley, Jimmy Henley,
16 formally with the Cumberland County
17 Sheriff's Department, was present because
18 Mr. Henley had been retained by Mr. Brady
19 through the Court.

20 THE COURT: So in effect he was
21 acting as an investigator for Mr. Hales?

22 MR. BRITT: For -- yes, sir,
23 that's correct. During that interview with
24 Mr. Francisco, that at no time was this
25 case, the Jordan murder case, ever