

STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

AUG 16 2013

S.C. Supreme Court

The Honorable Luke N. Brown, Trial Judge
The Honorable R. Markely Dennis, Jr., Post-Conviction Relief Judge

Lower Court Case No. 2005-CP-10-3313
Appellate Court Case No. 2012-213419

Wesley Max Myers, ... Respondent,

v.

State of South Carolina, ... Petitioner.

APPENDIX

VOLUME 1 of 7

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Luke N. Brown, Jr., Special Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WESLEY MAX MYERS,

APPELLANT

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1 IN THE COURT OF GENERAL SESSIONS
2 FOR THE STATE OF SOUTH CAROLINA
3 NINTH JUDICIAL CIRCUIT
4 COUNTY OF CHARLESTON

5 STATE OF SOUTH CAROLINA,

6 Plaintiff,

7 vs.

WARRANT NO.

F339394;

8 WESLEY MAX MYERS,

F339393

9 Defendant.

10 -----

11
12
13 THE FOLLOWING MATTER CAME ON FOR HEARING

14 before The Honorable James B. Gosnell, Jr. on
15 Wednesday, June 18, 1997, commencing at 2:08 p.m.,
16 at the Charleston County Courthouse, 2144
17 Melbourne Avenue, Room 201, North Charleston,
18 South Carolina.

19 REPORTED BY: THOMAS R. BREZINA, RMR, CRR
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COPY

A P P E A R A N C E S

1

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I N D E X

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2		
3	WITNESS: DENVER CLAYTON	
4	EXAMINATION	
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JUNE 18, 1997

1 THE COURT: We're in the preliminary
2 hearing court of the county of Charleston. Today
3 is the 18th of June, 1997. This is the case of
4 the State versus Wesley Max Myers. Mr. Myers has
5 been charged with murder and arson third degree.
6 Will the officer please state his name and agency
7 for the record that will be testifying.

8 THE WITNESS: Denver L. Clayton, North
9 Charleston Police Department.

10 THE COURT: Okay.

11 DENVER L. CLAYTON
12 having been first duly sworn, testified as
13 hereinafter set forth.

14 THE COURT: Are you ready to testify?

15 THE WITNESS: Yes, I am, Your Honor.

16 THE COURT: Solicitor, present your
17 case.

18 EXAMINATION

19 BY MS. CRONE:

20 Q. Please, Officer.

21 A. Okay. On March 13, 1997, at
22 approximately 3:14 in the morning, Patrolman
23 Ashley O'Neal investigated a large amount of smoke
24 around the area of East Montague and Virginia
25 Avenue and found the Mills Inn at 1026 East

JUNE 18, 1997

1 Montague Avenue on fire. Fire was coming out of
2 the front roof.

3 North Charleston Fire Department
4 responded to find a rear door unlocked and
5 slightly opened. One front door was unlocked, but
6 closed. Another front door Captain Cornell from
7 the fire department had to kick open. A body of a
8 white female was found laying in front of the
9 bar. ATF agents and North Charleston Fire
10 Department, Benjamin Norris, investigated the
11 fire.

12 Our crime scene officer, Hallman,
13 responded to process the scene. Coroner Val Brown
14 and the medical examiner, Russell Harley, also
15 responded. While I was there I was instructed by
16 my lieutenant to go interview Rose Marie Myers.
17 That's the defendant's mother. She stated that
18 she went to bed at 9:40 the night before and the
19 defendant went to -- went to bed about 10 o'clock,
20 followed by the father. She claims that she's a
21 light sleeper and did not hear defendant leave,
22 even with the window open.

23 The defendant's vehicle was parked the
24 last truck out in the driveway. We interviewed
25 Margaret Jensen, one of the bartenders at -- at

JUNE 18, 1997

1 the establishment that was working the night this
2 happened. She'd spoke with the victim, who was
3 passed out on the pool table, and asked her if she
4 wanted to close, and they closed around 1:24 a.m.

5 The -- when they closed up, they took
6 the money that they had from the till, and they
7 put it in this refrigerator freezer, and they put
8 the victim's purse in the freezer next to the cash
9 register. Mrs. Jensen locked the front door with
10 the victim passed out on the pool table. At that
11 time Mrs. Jensen and another witness went to the
12 Super K-Mart to buy some things. Before they
13 left, they made sure that the building was secure,
14 and this other witness had indicated that she had
15 also checked the building to make sure it was
16 secured.

17 Q. In other words, that all the doors were
18 locked, sir?

19 A. Yes. All the doors were locked. We
20 interviewed another witness that came out there as
21 good friends with the defendant, and also -- well
22 -- mutual friends with the defendant and also the
23 victim, and he overheard the defendant -- or the
24 defendant told him that he was -- one day he was
25 going to take out Harold Peegler and Larry

JUNE 18, 1997

1 Troutman, who was customers of the bar, and burn
2 the place down. He became concerned, because he'd
3 indicated that the victim had told him that he was
4 -- at one time he'd threatened to pour lighter
5 fluid on it and set it on fire.

6 The victim was found face down in front
7 of the bar approximately 15 feet from the front
8 door by Captain Cornell of the North Charleston
9 Fire Department. The back door was found open by
10 David Bourne, Chief David Bourne, of the fire
11 department. Investigator Benji Norris
12 investigated the fire, and he determined that the
13 fire took place behind the -- the bar and that the
14 materials that was used as paper.

15 THE COURT: Stop just a second. Who is
16 Mr. Norris? An investigator with whom?

17 THE WITNESS: He's a fire chief
18 investigator with the North Charleston Fire
19 Department.

20 THE COURT: Thank you. Okay.

21 A. He'd indicated that the -- the fire took
22 place at about floor level and it was papers and
23 available materials that was used to set the
24 fire. He indicated there was no accidental source
25 of a -- of what caused the fire, found at that

JUNE 18, 1997

1 point. There was no -- no -- no evidence of
2 liquid accelerants.

3 While at the scene, the defendant came
4 up, and he was later interviewed by Officer -- or
5 Detective Payne with the North Charleston Police
6 Department, and a consent to search was obtained
7 from the defendant for blood and body hairs. A
8 consent to body search. He was transported to the
9 hospital, where hairs and blood and other things
10 were taken from him.

11 The -- the hair was taken to the South
12 Carolina Law Enforcement division for analysis.
13 Analysis was done on the hair, and it was compared
14 to the defendant's, and it matched -- it had
15 matching characteristics to the defendant's hair
16 in the back of his head, approximately two days
17 later.

18 Q. That would be the 15th?

19 A. The 15th, yes. Myself and Sergeant
20 Tetanich interviewed the defendant at North
21 Charleston Police Department after their
22 advisement of his rights. He'd been previously
23 interviewed by Detective Payne, who advised him of
24 his rights also, and that he'd gave us a written
25 statement.

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1 Q. Gave to Payne a written statement?

2 A. Written statement.

3 Q. The defendant gave Payne a written
4 statement?

5 A. Gave Payne a written statement, stating
6 that he had been at his house that night and he
7 woke up, and that's when he discovered -- when he
8 went -- he was driving to work, he went by and
9 found the place on fire and that he discovered the
10 place was on fire.

11 Q. Okay.

12 A. On the 15th when Detective Sergeant
13 Tetanich and I interviewed him, he'd indicated to
14 us that he was a very jealous man; that he was
15 jealous of the victim. The victim had did things
16 in his presence to make him jealous. We talked
17 about a -- a prior altercation that took place
18 where the defendant and the victim were arrested
19 the year before on his birthday, and he also
20 indicated that he was very jealous and he
21 suspected her of messing around with one of the
22 employees inside the establishment. Detective
23 Lieutenant Cumbee had come in about this time. We
24 moved from the interview room into Lieutenant
25 Cumbee's office.

JUNE 18, 1997

1 Q. Okay.

2 A. We continued to talk to him, finding out
3 what he did that night, and he kept on -- he told
4 us that he had been at the -- at his residence and
5 that he went to sleep. He told us about being
6 with his son earlier in that evening and that him
7 and his son went and shot the BB gun. Said he'd
8 went to bed at his house.

9 Lieutenant Cumbee left the office. We
10 continued to talk to the defendant. Lieutenant
11 Cumbee later came in, looked at the defendant.
12 The defendant told him that we just received a
13 phone call from South Carolina Law Enforcement
14 division that the -- that the hair matched the
15 back of his head. He started getting teary-eyed,
16 stuck his hands in his face, and stated that -- he
17 said, no, no.

18 And then at that time Lieutenant Cumbee
19 repeated that yes, the hair came from the back of
20 his head and asked him to say he was sorry, and he
21 said he was sorry to the victim and stated that it
22 was an accident.

23 Q. Did he tell you what had happened?

24 A. Yes, he did. He stated that he'd drove
25 to the bar in his pickup truck, parked his vehicle

24

JUNE 18, 1997

1 beside the victim's, which is parked in front of
2 the -- the bar. He went up to the door and
3 knocked on door, and the victim came to the door
4 approximately five to ten minutes later. While he
5 was walking to the door he'd indicated that he'd
6 seen a note on the windshield of the victim's. *note?*
7 He'd got inside the bar, and he found a -- a pink
8 note that was on the bar that was written by one
9 of the employees.

10 THE COURT: Are you --

11 A. He didn't know it was the employees, but
12 it was -- it was a note that was written on the
13 bar, and there was also something written on the
14 windshield of the car.

15 Q. Officer, can you give us the gist of the
16 note? Or the gist of --

17 A. Yes. The note said something he said --
18 that he thought it said.

19 Q. You're not reading it? That's just from
20 memory?

21 A. Right. He said that -- something about,
22 I'll see you later or something. He confronted
23 her about the note.

24 Q. Then what happened?

25 A. He confronted her about the note. She'd

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1 slapped him. A physical altercation took place.
2 At that time she'd grabbed a wine carafe off the
3 top of the bar, and he'd taken the wine carafe
4 from her. At the same time she was telling that
5 she wanted him out of his life; that she didn't
6 want nothing to do with him. Called him a fool,
7 and at that time he struck her in the face with
8 the wine carafe, and they went down to the floor.
9 He said at that time he lost control. That he
10 lost control.

11 Q. Yes.

12 A. And that he was -- he went behind the
13 bar, took a -- a -- some papers from underneath
14 the bar.

15 Q. This is after he had lost control of the
16 wine; correct?

17 A. The wine carafe, right. That he had
18 lost control; that the carafe struck her in the
19 face.

20 Q. Did he say how many times?

21 A. He said at least two times he struck her
22 in the face. He said twice, but then he said, I
23 lost control.

24 Q. Okay.

25 A. He'd went behind the bar, opened up a --

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1 a -- some -- some doors behind the bar, and took
2 paper.

3 Q. This is --

4 A. Other materials.

5 Q. This is in his statement? This?

6 A. Yes.

7 Q. Or this -- I just want to make sure
8 where this information is coming from.

9 A. I was taking notes at the time.

10 Q. Okay.

11 A. He took the papers. He also took a -- a
12 sign like a bar closed or something and used/
13 that. He set it on fire using his lighter. He
14 had stated that all he remembered is feeling like
15 he wanted to die. That he wanted to die. And he
16 stayed there and walked around to the front of the
17 bar with the victim, *held* the defendant -- the
18 victim in his arms until he was consumed by the
19 smoke. Stated that he walked out the back door
20 and around to his pickup truck.

21 One thing I failed to mention is that
22 he'd -- while he was inside the bar, he'd
23 mentioned that -- that the -- that he had taken
24 her purse. The purse was inside the cooler.

25 Q. Yes.

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1 A. And he'd taken her purse, and he went
2 out the back door, went around and threw it behind
3 the seat of his pickup truck. We had never
4 recovered her purse -- her purse. The wine
5 carafe, it was found near the body.

6 Q. Is there anything further?

7 A. No.

8 THE COURT: Is there anything else?

9 THE WITNESS: No, sir.

10 THE COURT: Questions from the state?

11 Q. So crime scene came and secured all the
12 evidence?

13 A. Yes, ma'am.

14 Q. All right. My understanding is that
15 then you have a written confession to both the
16 death of the victim and the fire?

17 A. And also setting the fire.

18 Q. Right. And it's written. Sir, you said
19 the victim was passed out. Is that relevant to
20 anything? Or --

21 A. She'd been drinking earlier in the
22 night.

23 Q. So that's why it took ten minutes for
24 her to open the door?

25 A. I imagine so. She'd been sleeping. It

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1 usually takes a little while for them.

2 Q. Okay. So that the defendant did not
3 have a key? He had to wait for her to open the
4 door?

5 A. I don't believe the defendant had a key.

6 Q. There was no sign of forced entry?

7 A. No, ma'am.

8 Q. Okay. No forced entry. Did you ever ✓
9 find the lighter?

10 A. The what?

11 Q. The lighter? The cigarette lighter?

12 A. No. It wasn't there at the scene. We
13 haven't found it at the scene.

14 Q. And you haven't found the purse?

15 A. We haven't found the purse.

16 Q. But he admitted to taking it out, and
17 you did not first find the purse in the cooler?

18 A. We did not find the purse in the cooler.

19 MS. CRONE: Those are all the questions
20 I have. You have met the elements for the crimes
21 charged. Thank you very much.

22 MR. KULP: I guess you don't need to
23 make any decisions, then, huh?

24 MS. CRONE: No.

25 MR. KULP: Just kidding. Bear with me.

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1 Let me speak to Mr. -- if I may.

2 THE COURT: Take a two-minute recess.

3 Cut my recorder off.

4 (A recess was taken.)

5 THE COURT: Ready?

6 MR. KULP: Yes, sir.

7 THE COURT: Cut my recorder on there.

8 THE COURT: Okay. After about a three,
9 four-minute recess here, Mr. Kulp.

10 MR. KULP: May it please the court?

11 THE COURT: Go right ahead.

12 EXAMINATION

13 BY MR. KULP:

14 Q. Let's see. Detective, there seems to be
15 some confusion about where the body of the victim
16 was found. You've testified that the body was
17 found in front of the bar.

18 A. Yes, sir.

19 Q. All right. You have your file there.
20 Do you have a copy of -- I'll just hand it to you
21 to save flipping around -- a copy of the incident
22 report? Might be the initial incident report.

23 A. Yes, sir. It does say behind the bar,
24 but it was in front of the bar.

25 Q. Okay. Do you know of your own knowledge

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1 or through any source, why it was typed in this
2 report that the body was found face down behind
3 the bar area?

4 A. No, sir. I don't have any reason as far
5 as -- as far as my knowledge, she was in the front
6 of the bar.

7 Q. Okay. Now, who do you say found -- was
8 the first person to find that the burning or
9 burned building contained a human body? Was it
10 Captain Cornell?

11 A. Yes. Captain Cornell.

12 Q. With the fire department?

13 A. Fire department.

14 Q. Okay. And it sounds like -- correct me
15 if I am wrong. You're familiar with -- this
16 report says that Captain Cornell upon checking the
17 location, found the body lying face down behind
18 the bar area.

19 A. Yes, sir.

20 Q. Right. Okay. And that's in a typed
21 report and then as well, in a -- I think a
22 handwritten report of PA O'Neal, Officer O'Neal.
23 That language was also contained there. A body
24 lying face down behind the bar?

25 A. Behind the bar, yes, sir.

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1 Q. Have you personally spoken with either
2 Officer O'Neal or Captain Cornell about why that
3 was noted that way? That being the fact the body
4 was found behind the bar?

5 A. No, sir.

6 Q. Do you have any indication or knowledge
7 of the body being moved by any person?

8 A. No, sir.

9 Q. Okay. Let me ask you if you -- look at
10 your detective supplement. I'm trying to figure
11 out the best way to refer to it. Looks like it
12 starts off as -- I guess it's the longest one.
13 Looks like the longest narrative. I don't see
14 page numbers and so forth. Let me just show it to
15 you. Save you flipping around.

16 A. Okay.

17 Q. Do you recognize that as being part of
18 that supplement? That page I'm handing you?
19 Which is marked for ID as Defendant's Exhibit 1?
20 Court's No. 1.

21 MS. CRONE: And it's from where, sir?

22 MR. KULP: From the discovery, and it's
23 -- I've serialized it with my numbers, but --

24 MS. CRONE: What is it? It's from
25 the --

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Single hair 329

1 THE WITNESS: Sir, I believe this is
2 Detective Roper's supplemental, I believe.

3 Q. Well, that's part -- right. That's part
4 of the file.

5 A. Okay.

6 Q. Do you recognize it as being part of the
7 file?

8 A. I believe it's Detective -- yes, sir. I
9 believe it is.

10 Q. All right. And what I'm asking you,
11 about this language here, that says on 3/13/97 at
12 approximately 0713 hours, this investigator went
13 inside the Mills Inn bar, and this time the body
14 -- and this time the body was moved by officials
15 face up?

16 A. Moved face up? You mean that they
17 turned her over?

18 Q. Right.

19 A. Okay. That may have been crime scene
20 that was in there. Crime scene had found a -- a
21 -- found a single hair that was up under the --

22 Q. And who was --

23 A. When they turned over.

24 Q. We'll get to that in just a minute.

25 Okay. So you don't know if the body was moved by

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1 anyone? Either fire or police or EMS?

2 A. Crime scene may have moved it. Or not
3 crime scene, but medical examiners usually.
4 Usually it's like a team concept. We contact
5 medical examiner and all that, and they're there
6 to collect the evidence. Crime scene, medical
7 examiner, and all that. They may have been moved
8 at that time. Or she had been moved.

9 Q. But you don't have any specific
10 knowledge in your file or of your own knowledge --
11 of your own as to who may have moved her and when
12 and why?

13 A. Well, I tell you, I got a -- a
14 supplemental --

15 THE COURT: Cut it off.

16 (Off-the-record discussion.)

17 THE COURT: We're back on the record.

18 MS. CRONE: It's on the record now.

19 THE COURT: Repeat your question.

20 Q. Who actually -- I think I asked you who
21 actually found the body?

22 A. Who found the body?

23 Q. Right.

24 A. I think we already discussed that.

25 Q. Well, if you remember, go ahead and

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1 answer.

2 A. You're talking about the -- Cornell?

3 Finding the body?

4 Q. Right.

5 A. Okay. And you asked something about the
6 body being moved or something.

7 Q. Right. Right. Right.

8 A. Okay. I got crime scene report here
9 that indicates that the crime scene Officer
10 Hallman and Ray Wooten. The body was laying face
11 down and that they'd found the -- several hairs in
12 her hand, and they secured it with a paper bag.

13 Q. Let me move along. Now, you indicated
14 that the hair -- was it one hair or more than one
15 hair that was found?

16 A. On his report he indicated -- that would
17 be crime scene Officer Hallman -- had reported
18 that it was several hairs.

19 Q. Okay. And where exactly were they found
20 on the victim's hand?

21 A. Okay. Well, the hand was up underneath
22 to protect it from the fire. The victim's left
23 little finger now was -- I'm trying to see.

24 Q. It says in her left hand; right?

25 A. Right.

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1 Q. Okay. Does it say anything --

2 A. Going on memory, my understanding is
3 that the finger -- it was the -- the hair was like
4 wrapped around her finger and up underneath her
5 fingernail.

6 Q. Okay. But he doesn't say that in his
7 report, does he?

8 A. I -- I haven't seen it.

9 MS. CRONE: Whose report, sir? Excuse
10 me.

11 THE WITNESS: This is crime scene
12 Officer Hallman, I believe.

13 Q. Okay. But he was the one who -- who
14 made the -- he's the one who found the hair in her
15 hand; right?

16 A. Yes, sir.

17 Q. All right. What do you mean when you
18 testified as to matching characteristics? What
19 did SLED tell you about --

20 A. I'm not a serologist or hair specialist
21 or anything like that. That it matched the
22 characteristics of his hair.

23 Q. Okay. But you don't know what -- it's
24 your testimony you don't know what those
25 characteristics were?

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1 A. No, sir.

2 Q. Do you know what method Joe Powell at
3 SLED used to conclude that there were matching
4 characteristics?

5 A. No, sir. This is like a preliminary
6 thing that Hallman may have gotten from him.

7 Q. Is it the case those characteristics
8 were that it was blond and that it was long?

9 MS. CRONE: Sir, the state objects.

10 THE WITNESS: I don't --

11 MS. CRONE: He just has the report that
12 says the similar characteristics.

13 Q. So you don't even know that? Whether
14 the matching characteristics --

15 A. Only what Detective -- crime scene
16 Officer Hallman indicated.

17 Q. But you do know there was no DNA test
18 done in that quick of a time frame on the hair
19 sample to compare that to the DNA characteristics
20 of the victim?

21 A. I don't believe --

22 MS. CRONE: The state objects.

23 THE WITNESS: I don't believe so.

24 MS. CRONE: State objects. He doesn't
25 know that. He gives it to SLED, sir.

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1 MR. KULP: Well, he might know whether
2 they did DNA or not.

3 THE COURT: Move on.

4 Q. What exactly did SLED say about the
5 hair? Were you present when they called?

6 A. No, sir. I wasn't -- I wasn't present
7 when Hallman took it to SLED.

8 Q. But a phone call came back, correct,
9 about the hair?

10 A. No, sir.

11 Q. He came back? Mr. Hallman?

12 A. Yes, sir. He came back. He'd indicated
13 that the hair matched characteristics of the
14 defendant's hair.

15 Q. Okay. Did he tell you or anyone else in
16 your presence that the hair of the suspect -- or
17 the questionable hair sample, positively matched
18 the hair of the defendant's?

19 A. Not that I recall.

20 Q. Okay. Do you know if the defendant was
21 told by you or any other person in your presence
22 at any time when he was being interrogated, that
23 it was a positive match to the hair of his head?
24 Was he told that?

25 A. I believe he was told that when

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1 Detective Cumbee came in and said that the hair
2 matched back of his head. Hair from the back of
3 his head.

4 Q. So he was told that the results of the
5 analysis performed that Hallman brought the news
6 back to Charleston of, was that that was his hair
7 and that it matched the back of his head?

8 A. That the hair matched the hair on the
9 back of his head.

10 Q. And he wasn't told that there was just
11 simply some matching characteristics?

12 A. I don't know. I don't believe so.

13 Q. Do you recall if he was told that it was
14 so good of a match that it could be determined
15 exactly where on the back of his head the suspect
16 strand? The question was, was he told that the
17 match was so good or exact that it could be
18 determined exactly where on the back of his head
19 the suspect's strand came from?

20 A. He'd stated that the hair matched the
21 hair that came -- on the back of his head.

22 Q. Okay. And after he was told that
23 matching result, that's when he said that he must
24 have done the murder? Correct?

25 A. He said he must have did it.

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1 THE COURT: Who is he?

2 MR. KULP: The defendant.

3 THE WITNESS: The defendant.

4 Q. Now, a man named Dana Chaples was a
5 suspect in this case; correct?

6 A. Yes. He was only a suspect because he'd
7 came up to the bar at closing time that night.

8 Q. Okay. Now, he had -- Mr. Chaples had
9 also had some run-ins with the victim in the case
10 sometime prior to that; correct? In fact, just
11 about two or three weeks before then?

12 A. I don't have any knowledge of that.

13 Q. Hold on. I'll come back to that in a
14 second. Now, some clothing was taken from Mr.
15 Chaples; correct?

16 A. Yes, sir.

17 Q. And it was taken to SLED; right?

18 A. I can't -- I don't know. It was turned
19 over to -- to crime scene.

20 Q. Okay. And did your investigation reveal
21 that shortly after the murder, or shortly after
22 Mr. Chaples was confronted by the officers, that
23 he shaved some facial hair that he had? Or
24 changed his appearance?

25 A. Some witnesses indicated that they

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1 believed that he shaved his mustache off.

2 Q. And where is Mr. Chaples right now?

3 A. I don't know. I believe he might be in
4 county jail.

5 Q. Is he?

6 A. I don't know.

7 Q. Do you know if he moved to Florida?

8 A. I don't have any idea.

9 Q. Who was interviewed -- now, the reason
10 you got onto Mr. Chaples as a possible suspect was
11 because there were two ladies who worked at the
12 bar, Mrs. Jensen and Mrs. Gonzalez, who said that
13 he had been there about the time of closing
14 correct?

15 A. Yes, sir.

16 Q. And that he had been all drunk up;
17 correct?

18 A. Yes, sir. He'd been drunk.

19 Q. And that he had been trying to kiss up
20 on the victim?

21 A. No. Not on the victim. The victim was
22 inside. Had been locked in, inside of the bar.

23 Q. Okay. And you went to Mr. Chaples, and
24 he provided you with an alibi saying that it
25 couldn't have been him who murdered the victim,

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1 because he was somewhere else at the time;

2 correct?

3 A. He'd indicated that -- at first that he
4 never went by there. He'd been drinking. He was
5 drinking real heavy.

6 Q. And then when you had the information
7 from Mrs. Jensen and Gonzalez, you went back to
8 him, and then he said he'd been there; correct?

9 A. Yes.

10 Q. And then you went back to Mrs. Gonzalez
11 and Mrs. Jensen and told them that he said that he
12 had been there but he couldn't have been there any
13 later than he finally admitted he was?

14 A. I can't recall.

15 Q. Okay. Did you talk to any witnesses to
16 confirm or dispel his alibi that he wasn't there
17 at the time of the murder?

18 A. Yes, sir.

19 Q. Who were they?

20 A. Several witnesses. I can't recall
21 them.

22 Q. Were statements taken from them?

23 A. Yes, sir. There's a few witnesses where
24 statements were taken. He told us what --
25 basically where he'd been all that evening and

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1 what all happened and how he came about, you know,
2 going from place to place drinking and everything
3 like that.

4 Q. So there are recorded or written
5 statements from those people who can verify that
6 he was not at the scene of the murder at the
7 estimated time?

8 A. We don't have anybody who verified that
9 he wasn't at the scene of the murder. The reason
10 why he -- the reason he was going to assist us in
11 the investigation, he'd -- he'd stated that he
12 wanted us to drop the charges. Put him on
13 polygraph and all that, and he said he'd be
14 willing to take a polygraph to prove that he
15 didn't do it. And we don't have anything that --
16 that places him at the scene.

17 Q. Right. Well, he never took a polygraph?

18 A. No, because he wouldn't drop the
19 charges.

20 Q. Well, let's get specific. When you say
21 drop the charges, you mean the gun charge that he
22 was charged with?

23 A. Yes, sir. He was found with the gun
24 with a receipt.

25 Q. When you-all located him, did you-all

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1 happen to see him drive by, or some member of the
2 department did, and detectives or investigators
3 pulled him and spoke with him at that time about
4 the murder; correct?

5 A. Yes.

6 Q. And then you found that he had a .32
7 caliber weapon on him, and he was charged with
8 that; correct?

9 A. Yes, sir.

10 Q. But he also said something interesting
11 then, didn't he? He asked about a hair that was
12 found clasped in the suspect's hand?

13 A. I don't know anything about that.

14 Q. You don't know about that?

15 A. No, sir.

16 Q. Do you have any reason to know if anyone
17 communicated details of the investigation with
18 Dana Chaples prior to the time that he was --

19 A. I don't know.

20 Q. Now, Dana that evening indicated he was
21 driving a vehicle that belonged to Terry Glen. Do
22 you have that information?

23 A. Yes, sir.

24 Q. Let me ask you about the Crime Stoppers
25 tip that came in to the police department shortly

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1 after the murder. In fact, the Crime Stoppers tip
2 that came in on the 14th, which would be Friday,
3 after the murder, in the early morning hours of
4 Thursday. Excuse me. I'm sorry.

5 MS. CRONE: That's all right.

6 Q. And I think you're familiar with it.
7 The Crime Stoppers tip said the victim was
8 murdered because she owed a large cocaine debt.
9 Listed suspects were her partners and probably
10 know about the murder. The sales take place at
11 the Piano Lounge, and the Crime Stoppers tip also
12 indicates the name of Susan Edwards and Lynn Ray.

13 When were those two individuals
14 interviewed?

15 A. I don't recall them being interviewed.

16 Q. Okay. Were any actions taken to pursue
17 that tip?

18 A. No, sir.

19 Q. Okay. Now, the evidence that went to
20 SLED that was taken, in fact -- Mr. Dana Chaples,
21 you-all obtained some clothing from him; correct?

22 A. Yes, sir.

23 Q. And that was taken up to SLED along with
24 other evidentiary items?

25 A. I don't know. You'd have to ask crime

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1 scene.

2 Q. Yes, sir. Now, this Joseph Daniel Perry
3 I think was -- your report indicates the gentleman
4 who came up on the scene the morning of the
5 investigation really started up, who said as your
6 report indicates --

7 A. I didn't take that.

8 Q. Do you have any knowledge of a fellow
9 who showed up and said Mr. Myers had called him
10 and told him to go by the scene?

11 A. Yes.

12 Q. Would that be Mr. Perry?

13 A. Yes, sir, I believe so.

14 Q. And did your investigation reveal that
15 Mr. Perry, in fact, was a fellow that Wesley Myers
16 was working for and also knew the victim?

17 A. I don't know.

18 Q. Okay. Did your investigation reveal
19 that Wesley had called this Mr. Perry to tell him
20 that he wasn't coming to work that day because
21 their friend or acquaintance, Teresa, had been
22 killed?

23 A. I don't recall.

24 Q. You mentioned in your direct testimony
25 that Mrs. Rose Marie Myers was interviewed and a

JUNE 18, 1997

1 statement was taken from her. Was that a written
2 statement?

3 A. Yes, sir.

4 Q. And that statement is part of the file
5 and available?

6 A. Yes, sir.

7 Q. What was the reason for interviewing
8 her, and when did it take place?

9 A. That took place the morning the fire was
10 discovered.

11 Q. And why --

12 A. And the reason why, is because the -- we
13 wanted to know the whereabouts, where the
14 defendant was at the time this took place, because
15 he was close to the victim.

16 Q. And so I assume it would be fair to say
17 that at that time he was a suspect, or otherwise
18 you wouldn't be wanting to confirm or dispel his
19 whereabouts?

20 A. At that time everybody was a suspect. I
21 mean, we was looking for somebody that, you know,
22 might have been close. Might have been a witness
23 to something that can give us some information
24 that may help us out in the case.

25 Q. All right. And let's see here. How did

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1 one or more news media people get to the police
2 station? At the time -- just before the defendant
3 was transported?

4 MS. CRONE: The state objects.

5 A. I imagine they drove a car. Or --

6 Q. I mean, do you know?

7 A. I don't know.

8 Q. Did anybody contact them from the
9 department?

10 A. I don't know.

11 Q. At the time the defendant provided a
12 statement to detectives and investigators, was the
13 victim's family in the area of the police
14 station?

15 A. The victim's family?

16 Q. The victim's family? Were they nearby?

17 A. Yes. They came up there to the police
18 department.

19 Q. Okay. Was the defendant ever taken over
20 to where the victim's family was?

21 A. He was asked by Lieutenant Cumbee, did
22 he want to talk to the victim's family?

23 Q. Okay.

24 A. Yes. He did go over there and talk with
25 them.

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1 Q. And the information the defendant gave
2 to -- in his statement, was that he stood -- is
3 this a correct rough version? That he stood over
4 the body of the victim as the fire was going until
5 he couldn't stand the smoke any longer, and then
6 he fled? Did he indicate something like that?
7 Well, his statement that he provided to you,
8 indicated that he set the fire; right?

9 A. Yes. He set the fire and that he had
10 went around to the other side of the bar, and he'd
11 held her until he was consumed. The thing was
12 consumed by smoke.

13 Q. Thank you. That's exactly what I
14 meant. Do you know if his clothing is being
15 tested for the presence of smoke or any other
16 combustible items?

17 A. Yes, sir.

18 Q. Good. Now, Mr. Allen White, was that
19 the fellow, if you recall, who worked there at the
20 Mill and who the defendant indicated he might have
21 suspected that the victim was having some type of
22 romantic relationship with?

23 A. He suspected Allen --

24 THE COURT: Keep on going.

25 THE WITNESS: -- of having a

JUNE 18, 1997

1 relationship with the victim. When he was
2 indicating that he was real jealous.

3 Q. Was Mr. Allen White ever interviewed by
4 anyone in the investigation?

5 A. Yes.

6 Q. Did he provide a written statement, or
7 was a statement produced from the interview of
8 him?

9 A. I don't recall.

10 Q. Do you know if hair samples were taken
11 from Mr. Chaples? Do you recall?

12 A. No, sir. I don't believe there was.

13 Q. Were hair samples taken from any other
14 person besides Mr. Myers?

15 A. You mean like the victim's hair
16 samples?

17 Q. It's just an open-ended question?

18 A. Yes.

19 Q. Any other male individual?

20 A. Not that I can recall.

21 Q. And let's see. Just a couple more.

22 Now, when you said a carafe, what tips were put
23 into?

24 A. It's a wine carafe. A tip jar.

25 Q. I wanted to get -- I'm confused. Is it

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1 like one of those wine carafes that have kind of a
2 shape to them, or are we talking about a gallon
3 jug kind of jar that pigs' feet and stuff come
4 in?

5 A. I don't know.

6 Q. Okay. Whatever it was, it was broken
7 during the use of it, because broken pieces of
8 glass were found near the body at the scene?

9 A. Yes, sir.

10 Q. Did you have an occasion to examine
11 during his arrest or during the investigation, the
12 body of Mr. Myers for any cuts or bruises or any
13 other injuries?

14 A. Yes, sir. Crime scene Officer Hallman
15 had indicated that he had found some cuts on the
16 face that matched the -- that matched up to the
17 wine carafe.

18 Q. Okay. I meant on Mr. Myers, not on the
19 victim. Excuse me.

20 A. Yes. I believe he had cuts on his
21 fingers and -- when we was interviewing him. Not
22 that day right there, but on Saturday, which is
23 like two or three days afterwards, he had cuts on
24 his hands. Small cuts. He'd stated that he
25 received them at work.

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1 Q. Okay. Is that anywhere the
2 investigative file that you were --

3 A. I -- I don't remember.

4 Q. Were any photographs taken of those
5 injuries to his hands?

6 A. I believe photographs were taken by --

7 Q. Mr. Hallman?

8 A. No. Not Hallman. I can't recall.

9 Q. Poole?

10 A. Or -- Poole.

11 Q. Poole. But you specifically remember
12 that they were taken -- photos were taken of his
13 hands?

14 A. Of his whole body. That's correct.

15 Q. Okay. Very good.

16 A. With his consent.

17 Q. Sure. Did you happen to yourself see
18 where the cuts were on his hand?

19 A. Yes, sir, but I can't recall. I'd
20 indicated in my notes that he had cuts on his
21 hands.

22 Q. Did you find any blood on his jacket
23 that was recovered from his car or truck? Car?

24 A. I don't know if it was blood or not.

25 Q. Was it being forensically examined at

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1 the time?

2 A. Yes.

3 Q. I see you have a SLED report of
4 something there.

5 A. Yes, sir.

6 Q. May I see that?

7 A. I believe you have the same one. You
8 should have.

9 Q. I don't have it.

10 A. Really?

11 Q. I wouldn't have asked if I didn't.

12 Thanks.

13 A. Okay.

14 MS. CRONE: That's just what they

15 submitted.

16 MR. KULP: Okay.

17 Q. And this is a SLED process?

18 MS. CRONE: May I show it to the judge,

19 please?

20 MR. KULP: Oh, sure. Yes, ma'am.

21 THE COURT: Move on.

22 MR. KULP: Thanks.

23 Q. So, in fact -- and I understand that you
24 thought I had it, and I think it just probably is
25 on the way to my office now, but in any event,

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1 that SLED report indicates that no blood or hair
2 was found on the items submitted, and those items
3 that are reflected in that report, indicate or --

4 A. I believe that these items were items
5 that was recovered out of his vehicle.

6 MS. CRONE: Truck.

7 A. I believe.

8 Q. All right. I understand. With that
9 proviso. Do you know if there was any ethanol or
10 alcohol analysis ordered or requested of the blood
11 samples that were drawn from Mr. Myers? Did you
12 all seek to find out how much alcohol was present
13 in his body at the time?

14 A. At the time of what?

15 Q. That the blood was drawn, I guess it
16 would have to be.

17 A. No, sir. I don't -- I don't know if
18 they did that or not.

19 Q. I'm just about finished. Okay. I asked
20 you the wrong question a minute ago about Mr.
21 Chapel. What I meant to ask was, are you aware of
22 an investigation by the North Charleston Police
23 Department that took place on February 28, 1997,
24 13 days before this victim was murdered, of the --
25 based upon a confrontation between two --

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1 THE COURT: Hang on a second.

2 MR. KULP: Sure.

3 (Off-the-record discussion.)

4 THE COURT: Continue.

5 Q. The confrontation at the Mill Inn, and I
6 probably ought to show you this, because I'm -- it
7 looks like I don't have all of it, but --
8 complainant, witness, witness, witness, suspect.
9 Between -- by a fellow named Mr. David McMenamin,
10 M C M E N A M I N. Do you have a copy?

11 A. Yes. I believe I have a copy of that.

12 Q. I'm happy to -- I think I just have one
13 page, but does that relate in any way or -- in the
14 investigation did you pursue Mr. McMenamin or
15 anyone else who may have had some confrontation
16 with people at the Mill 13 days prior --

17 A. I don't have any --

18 Q. There you go. Does that match up?
19 Three of three or something. Right. Wait a
20 minute. Excuse me. I don't know how I could
21 forget this. About a homicide, where Mr. Lawrence
22 Vigus, V I G U S, was the deceased person, and a
23 suspect named Mr. David McMenamin. Does that ring
24 a bell?

25 A. David? I believe he was -- yes. He --

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1 let me see.

2 Q. Do you remember what that's all about
3 without me having to read the entire report?

4 A. Let's see. Yes. It was a landlord -- I
5 believe a landlord-tenant dispute or something,
6 where the victim and him had an altercation, and
7 the -- the -- I believe that the victim was shot
8 and killed inside Lambert Street, but I don't know
9 if it was David or -- or who it was.

10 Q. And --

11 MS. CRONE: The state objects unless
12 this is going toward the defense of this case.

13 MR. KULP: Oh. Sure, it is.

14 Q. And Miss Vault's name, the victim in
15 this murder, is mentioned in that report as a
16 witness? Or what is her involvement in that
17 homicide?

18 A. She was -- she was indicated as being a
19 witness.

20 Q. Okay. In fact, she was the person who
21 told the police who did the shooting? Isn't that
22 true? In other words, she was the one who, as we
23 say, dropped the dime on the suspect that led to
24 his arrest?

25 MS. CRONE: Sir, for the state could you

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1 please -- the state objects unless you can tie
2 this in. Understandable --

3 MR. KULP: Sure.

4 MS. CRONE: Understandably to the state.

5 MR. KULP: Sure. I guess it depends on

6 the answer.

7 Q. I mean, wasn't that the case? Wasn't
8 that the case? That Mrs. Vault, the deceased, had
9 fingered, as we say, a murder suspect 13 days
10 before she was murdered?

11 A. Sir, I was -- on this murder right here,
12 I had came out there for approximately an hour to
13 take a statement. There was actually somebody
14 inside the residence that overheard all this.
15 What I know about it, he was inside the residence,
16 and it wasn't her, and he gave me a statement that
17 -- that he was there when this all took place.

18 Q. Okay. But effectively in the report
19 that you were just reading says they went and
20 spoke with Teresa Vaughn, who stated that she knew
21 both the suspect --

22 MS. CRONE: Sir, the state is going to
23 have to object. Get it how it focuses on this
24 case.

25 MR. KULP: I will at the end of this

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1 sentence.

2 Q. The suspect and Keystad were good
3 friends, and the suspect might be at Keystad's
4 home, and Keystad was one of the -- was, in fact,
5 one of the suspects in the case; right?

6 A. Right.

7 Q. Well, let me just ask you this. Do you
8 know if either -- any of those parties, I'll tie
9 it in now.

10 MS. CRONE: Thank you.

11 THE WITNESS: I believe there was
12 somebody that was interviewed in regards to this.
13 It might have been -- is this the somebody that
14 lives on [REDACTED]? Here. Let's see.

15 MS. CRONE: Sir, the state has been very
16 patient and is trying to understand how this
17 effects --

18 Q. Yes. Keystad. I'll ask the question
19 now. Were any of those people interviewed and
20 statements taken from them to determine whether
21 they might have been involved in the murder of
22 Miss Vault or not?

23 A. With the other witnesses?

24 Q. Anybody whose name is in that report
25 about the murder that she fingered the suspect

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1 in?

2 A. I believe somebody on Buist Avenue was
3 interviewed.

4 Q. Do you know if, in fact, they provided a
5 written statement?

6 A. I can't recall.

7 Q. I think that's about it. Do you know if
8 -- and I only ask this because, like I said, it
9 might be in the mail to me now, but are there any
10 other SLED reports back other than the one we just
11 looked at pertaining to Mr. Myers? Clothing
12 samples taken from his car?

13 A. No. Not that I know.

14 Q. Haven't seen any yet? You know that, in
15 fact, Mr. Myers offered to pay a polygraph
16 examination in the case? Or agreed to?

17 A. Yes, he did.

18 Q. And a poly -- he was taken to a
19 polygraph examiner for Charleston County for that
20 purpose; correct?

21 A. Yes, he was.

22 Q. And when he got there, the polygraph
23 wasn't given? Was not administered? Or he wasn't
24 tested?

25 A. He was never tested.

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1 Q. Do you know why he wasn't tested?

2 A. Because they felt like he wasn't
3 suitable to be tested.

4 Q. For what reasons, if you recall?

5 A. The fact that he was close to the
6 victim. That they should give him a little bit
7 more time to -- to polygraph him. Also the fact
8 that he consumed a lot of alcohol the night before
9 and that he had been taking some type of
10 over-the-counter caffeine pills or something
11 earlier that day, and he didn't want to test him
12 for that purpose.

13 Q. That was Saturday morning?

14 A. That was --

15 Q. Friday?

16 A. Friday.

17 Q. Okay. So that he would -- Friday night?

18 THE DEFENDANT: Yes.

19 Q. So if he had been drinking a lot, it
20 would had to have been during that entire day?
21 Friday? The day? The 14th?

22 A. I don't know. I'm not a polygraph
23 examiner.

24 Q. Had you been with him that day, that
25 Friday, the 14th, off and on throughout the course

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1 of the investigation?

2 A. Yes, I believe.

3 Q. And did you see him drinking any, or did
4 he appear to be drunk to you? During that day?

5 A. No. No.

6 Q. Well, did he appear to be drunk when you
7 were transporting him down to Charleston County
8 for the polygraph?

9 A. No.

10 Q. And I know you're not a polygraph
11 examiner, but you certainly have had people
12 polygraphed before who were close to victims in
13 cases?

14 A. Close to the victims in the cases? Most
15 of the -- I had one, but it -- the time -- the
16 time frame was a lot longer at the time that he
17 was polygraphed.

18 Q. Last question. Do you know of any
19 forensic items other than, say, the broken glass?

20 MS. CRONE: Sir, the state objects.

21 That -- all of that will be in discovery.

22 Q. You don't know of any?

23 A. I -- I don't know.

24 Q. So you don't --

25 THE COURT: Objection overruled.

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1 Q. Do you know of anything other than the
2 pieces of broken glass that were taken?

3 A. I believe there was.

4 Q. Besides the hair, of course?

5 A. The clothes. His clothes. I don't know
6 what -- what all that crime scene sent. I mean, I
7 couldn't answer that.

8 MR. KULP: Okay. Thank you. Appreciate
9 it very much.

10 THE COURT: Redirect?

11 MS. CRONE: Yes, sir.

12 EXAMINATION

13 BY MS. CRONE:

14 Q. Officer, would you tell us about the
15 autopsy of the victim and what it showed? We
16 haven't discussed her -- you know, from your
17 statement.

18 A. Yes. There was -- the -- the front of
19 the face was fractured. The trauma to the head
20 caused the death.

21 Q. And not the fire?

22 A. Not the fire, right. She died as a
23 result of the trauma, not from the fire.

24 Q. All right. You had also spent some time
25 about the purse. How do you know that there was a

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1 purse?

2 A. The reason that we knew, he'd indicated
3 to --

4 Q. He being the defendant?

5 A. The defendant had indicated to Detective
6 Hallman that there -- that they keep the money to
7 the bar inside of -- of a fridge -- freezer and
8 wanted to know if they had the victim's purse.

9 Q. Is that the usual place the purse was
10 kept, or how did the defendant know it was there?

11 A. No. He just wanted to know if we found
12 the purse.

13 Q. So you don't know if it's because he saw
14 it or --

15 A. Usually she keeps the purse with her.

16 Q. In that area?

17 A. He'd indicated that --

18 Q. As a habit? In that area?

19 A. Yes. He'd indicated that to me.

20 Q. All right. And from your findings, you
21 found no attempt for the defendant to pull the
22 victim out when the fire started?

23 A. I don't have any evidence to show that
24 he did.

25 MS. CRONE: I have no other questions.

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1 Thank you.

2 MR. KULP: Just three, Your Honor, very
3 quickly.

4 EXAMINATION

5 BY MR. KULP:

6 Q. Was there a match book found at the
7 scene?

8 A. Yes, there was. There was -- I don't
9 know if it was burnt. I believe it was found at
10 the back door.

11 Q. Was that submitted to SLED for any type
12 of forensic analysis that you know of?

13 A. I don't recall. I don't know.

14 Q. Okay. And Dana Chaples, two quick
15 questions about him. No. 1, do you recall what
16 color hair that he had?

17 A. Brown.

18 Q. And do you recall whether or not he had
19 any marks on his hands or if his hands were
20 photographed?

21 A. I don't recall.

22 MR. KULP: Thank you very much. That's
23 all I have. Thank you, sir.

24 THE COURT: Any motions?

25 MR. KULP: Standard motions, Your Honor.

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1 THE COURT: Bound over.

2 MR. KULP: Thank you.

3 (The hearing was concluded at 3:11 p.m.)

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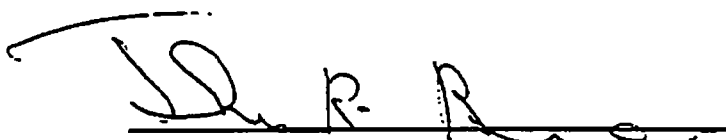
JUNE 18, 1997

REPORTER'S CERTIFICATE

I, THOMAS R. BREZINA, Registered Professional Reporter and Notary Public in and for the State of South Carolina at Large, do hereby certify that I correctly reported the within-entitled matter and that the foregoing is a full, true and correct transcription of my shorthand notes of the testimony and/or other oral proceedings had in the said matter.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 7th day of July, 1997, at Charleston, Charleston County, South Carolina.


Thomas R. Brezina
RMR, CRR
My commission expires
January 10, 2007

1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF CHARLESTON

3
4
5 STATE OF SOUTH CAROLINA)

6 PLAINTIFF,)

7 VS.)

TRANSCRIPT OF RECORD

97-GS-10-4319; 4320

8 WESLEY MAX MYERS,)

9 DEFENDANT.)

ORIGINAL

10
11
12 AUGUST 7, 1997
13 CHARLESTON, SC

14
15 B E F O R E:

16 THE HONORABLE DANIEL F. PIEPER

17
18 A P P E A R A N C E S:

19 AMIE L. CLIFFORD, ASSISTANT SOLICITOR
20 ATTORNEY FOR THE STATE

21 TIMOTHY CLAY KULP, ESQUIRE
22 ATTORNEY FOR THE DEFENDANT

23 HOLLY A. HIOTT,
24 CIRCUIT COURT REPORTER
25

I N D E XPAGE

1

2

3

4 WITNESSDIRECT CROSS REDIRECT RECROSS

5

6

(NO WITNESSES PRESENTED)

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10

E X H I B I T S

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NO. DESCRIPTIONID.

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(NO EXHIBITS PROFFERED)

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1 THE COURT: Okay. Are y'all ready to
2 proceed? Do you need a minute?

3 MR. KULP: Yes, sir, Your Honor, ready.

4 THE COURT: Okay. Go ahead.

5 MR. KULP: If the Court please, we are
6 before the Court today, Your Honor, in the indictment
7 that I assume is captioned by the reporter and the
8 clerk at this time, the State versus Wesley Max
9 Myers. I don't have the indictment number handy, but
10 I will provide it to you.

11 Your Honor, this case -- in the case, the
12 Defendant is charged with a two-count indictment.
13 One indictment charges him with murder and the other
14 with arson of the third degree. This incident took
15 place on March the 13th, 1997. The Defendant was
16 arrested on March 15th, 1997. He is currently in
17 jail on both of those charges and indictments, and
18 his bond is set at \$100,000, I believe, surety on the
19 charge of arson third degree, and no bond has been
20 set on the murder charge. I will get to that in a
21 minute.

22 THE COURT: No bond was set or bond was
23 denied?

24 MR. KULP: Excuse me. Bond was denied.

25 THE COURT: Okay.

1 MR.. KULP: Excuse me. That's correct,
2 Your Honor.

3 THE COURT: Okay.

4 MR. KULP: We filed a Discovery Motion in
5 the case, Your Honor, on March 27th, 1997 with the
6 clerk, served to the Solicitor. We received a first
7 batch of discovery from the Solicitor on June the
8 10th, 1997. However, prior to that time, we filed a
9 motion to -- for the Court to compel compliance with
10 discovery on May 9th, 1997. And then five days prior
11 to the production of that first batch of discovery,
12 which has been catalogued and documented in my file
13 and reported back to the Solicitor for clarity sake
14 as to what was provided, we filed a motion, as I
15 said, on June the 5th to dismiss for failure to
16 comply with discovery.

17 Since that time, Your Honor, as I said,
18 we received a batch of discovery some 125 -- excuse
19 me, 25 (sic) pages of discovery. And then
20 additionally we have received -- I think after we
21 filed or wrote Judge Rawl asking for a hearing --
22 that letter being dated July the 21st -- we received
23 a copy of the autopsy report in the case. I'm
24 happy -- there are a number of things that we think
25 are discoverable that we do not have that we seek the

1 Court's intervention in ordering the State to
2 proceed, and I'm happy to produce along through that
3 however the Court please.

4 THE COURT: Just go through the list.

5 MR. KULP: Yes, sir. Your Honor, I guess
6 the most logical place to start would be at our
7 original Discovery Motion we filed in the case some
8 time ago -- skipping completely over, if you have
9 that before you, Your Honor.

10 THE COURT: I tell you what. I will cite
11 things out, and y'all tell me what the status is.
12 Forensic reports on hair match analysis, have you got
13 that?

14 MR. KULP: We received that, Your Honor,
15 but in that regard, I would offer the Court in terms
16 of the number consideration that report in itself is
17 not sufficient. What I understand, in having a
18 telephone conversation with the agent who conducted
19 the examination, is that it was a microscopic
20 analysis.

21 What is being offered is that the hair is
22 consistent with that with a known hair of the
23 Defendant's, and he indicated in the course of a
24 protocol SLED for that type of examination there are
25 29 different characteristics that are examined. And

1 in my research as to that type of trace evidence
2 analysis, it indicates that opinions are -- rendered
3 as a result of a statistical calculation in terms of
4 the scoring or valuing, valuing of each of those
5 different characteristics.

6 So it's -- it certainly would render our
7 ability to cross-examine him at trial ineffective if,
8 in fact, we have to find out exactly how he did that
9 at the time he takes the stand. It would be
10 impossible to do so effectively. And so I'm sure
11 that in the course of preparing that opinion, he had
12 to have prepared a number of those notes and so
13 forth, and we need to see how he arrived at that
14 conclusion.

15 THE COURT: Is there any other
16 documentation on his conclusion?

17 MS. CLIFFORD: Your Honor, I'm not aware
18 of any. I do know that Mr. Kulp has personally
19 talked to Joe Powell at SLED to explain to him how it
20 was done, what was done. Joe Powell even informed
21 Mr. Kulp that if he so desired it would be possible
22 that we could send the hair -- there was only one
23 hair found in the victim's hand -- up to the FBI lab
24 for DNA analysis, and it was my understanding from
25 the police who talked to Joe Powell, after he talked

1 to Mr. Kulp, that Mr. Kulp did not want that.
2 However, at this point, I will be requesting SLED to
3 do that, to forward the hair to the FBI so we will
4 have DNA analysis.

5 THE COURT: Okay.

6 MR. KULP: For the record, Your Honor,
7 let me reiterate. Number one, for the record, that's
8 an absolute misstatement. Mr. Powell said to me that
9 the only lab in the country that could do it was the
10 FBI, and I did not indicate that we did not want it
11 done. But if they indicate they are, in fact,
12 dispatching it to the FBI for that mitochondrial
13 analysis, that's fine.

14 But as well, Your Honor, there is
15 potential testimony based on the report that we
16 received that he is going to say that the hair was
17 consistent with or exactly the language he used --

18 THE COURT: But he said he is prepared to
19 talk to you.

20 MR. KULP: Well, I know, Your Honor,
21 but -- that's fine if that chat with me includes
22 production. In other words, he didn't just look at
23 the hair and, well, it looks like it ought to be
24 Wesley Myers'.

25 According to the protocol that he briefly

1 explained to me and as is documented in the relevant
2 literature, he has to go through a worksheet, and he
3 has to come up and say, well, you know, strand,
4 diameter, you know -- and we need that to properly
5 cross-examine. So if he's going to provide that,
6 then we would ask the Court to order it.

7 THE COURT: I'll order that it be done.

8 MR. KULP: Thank you.

9 THE COURT: If he has that information,
10 turn it over.

11 A copy of the SLED report stating that no
12 blood was found in the Defendant's pickup truck or on
13 the dash, have you got that?

14 MR. KULP: Your Honor, if I could follow
15 along with you, could you tell me exactly what
16 you're -- are you going over independent notes?

17 THE COURT: Yes.

18 MR. KULP: Yeah.

19 THE COURT: Okay. That's fine. I just
20 wanted to stay in order of these.

21 MR. KULP: Yes, sir. We received, for
22 the record, today in court from the Solicitor a copy
23 of that May 9th, 1997 report.

24 THE COURT: Okay.

25 MS. CLIFFORD: And, Your Honor, he was

1 also handed this during the prelim inquiring to
2 Detective Clayton who was present at the prelim.

3 THE COURT: All right.

4 MS. CLIFFORD: I understand there is a
5 dispute about that, but he at least received it.

6 THE COURT: Hold on just a second. Let
7 me find something. Is -- I just wanted to respond to
8 your question that -- my notes follow the letter that
9 you sent Ms. Clifford.

10 MR. KULP: All right. That's fine. That
11 will help me go along and kind of look ahead, Your
12 Honor.

13 THE COURT: And I think that is kind of
14 the order it generally took. Anyway, go ahead with
15 this -- I'm sorry -- with the SLED request. Go
16 ahead.

17 MR. KULP: Yes, Your Honor. I think
18 there was, as Ms. Clifford indicated, some dispute
19 over when we received it but, I mean the transcript
20 of the prelim indicates that I noticed it in the file
21 at the prelim and examined it at that time, an
22 original form on buff stationery and handed it back.
23 And I did not get a copy at the time. Yeah, yeah, I
24 believe I --

25 THE COURT: So do you have it?

1 MR.. KULP: I have it.

2 THE COURT: Okay. Next one, forensic
3 reports on various items seized from the Defendant,
4 do you have that?

5 MS. CLIFFORD: Your Honor, there are no
6 other forensic reports as of this time from SLED.

7 THE COURT: Okay.

8 MS. CLIFFORD: We will continue to follow
9 up with SLED, and if anything else is analyzed, I
10 will inform Mr. Kulp.

11 THE COURT: Okay.

12 MS. CLIFFORD: I have had discussions
13 with him, which I have relayed to Mr. Kulp today -- I
14 mean with SLED about blood that was found at the
15 scene and whether or not that will be or should be
16 tested because of possible contamination from the
17 water used to put out the fire or the soot or the
18 amino black used.

19 THE COURT: Okay.

20 MR. KULP: Your Honor, if we -- you know,
21 the arrest was in March. We made our request a long
22 time go. I understand the lab is backed up, but I
23 would think that murder cases would take the
24 priority.

25 There was a great deal of trace cerium

1 along with other evidence submitted to the lab, and
2 if we can get some indication as to when we might --
3 I mean I think we certainly are owed the information
4 as to when it is forthcoming because it may be, in
5 fact, the case -- and I will address this in a
6 minute -- that we may want to seek independent
7 analysis of it. I don't think they will let us do
8 that until they finish and issue a report, just for
9 logistical reasons. So is it going to be September?
10 Is it going to be November?

11 THE COURT: Do you have any indication of
12 the date?

13 MS. CLIFFORD: Your Honor, I have no
14 idea. There have been 14 murders so far this year --

15 THE COURT: I understand.

16 MS. CLIFFORD: -- just in North
17 Charleston.

18 THE COURT: Your remedy is just to
19 request the Court to continue in your case if you get
20 the information on a date that doesn't allow you to
21 respond to it.

22 MS. CLIFFORD: We will do everything we
23 can to see that it's done in a timely manner.

24 THE COURT: Okay.

25 MR. KULP: Thank you, Your Honor.

1 THE COURT: Copy of the autopsy report,
2 you have got that?

3 MR. KULP: We received that, Your Honor.

4 THE COURT: Investigation file of David
5 McMenamin?

6 MR. KULP: We haven't received any of
7 that.

8 THE COURT: You have not?

9 MR. KULP: No, sir.

10 THE COURT: What's the State's position.

11 MS. CLIFFORD: Your Honor, I don't even
12 know what that is.

13 THE COURT: Well, that's the allegations
14 of what --

15 MS. CLIFFORD: Your Honor, I'm sorry.
16 That's the -- that may be -- there was a case in
17 which Theresa Haught, our victim, was a witness in.
18 And if that is what he was referring to, he was, in
19 fact, provided a copy of that report in the discovery
20 because I have it here marked with a Rule 5 stamp.
21 And the OCA number that he can look at for that -- it
22 was a murder case in which she was a victim (sic) --
23 I think the last three numbers -- I'm sorry. It is
24 97-005604.

25 And there is a three page -- actually,

1 there's four pages that were forwarded to him. It
2 indicates there was a homicide. The incident date
3 was 2/28/97. The victim's name was Lawrence Vigus.
4 The suspect was David McMenamin, and he was provided
5 with that four page report.

6 THE COURT: Okay.

7 MS. CLIFFORD: If there are other
8 materials that he thinks would be relevant, I can see
9 if I can find those.

10 THE COURT: Okay.

11 MS. CLIFFORD: But he has been provided
12 with that report.

13 THE COURT: Okay.

14 MR. KULP: We would like a copy of that
15 entire investigative file and the Solicitor's file in
16 that regard. I assume the case was over and closed,
17 but the relevancy is for exculpatory reasons --

18 THE COURT: I find it's material. Turn
19 that information over.

20 MS. CLIFFORD: Your Honor, if I may, it's
21 a February 28th, 1997 case.

22 MR. KULP: Excuse me?

23 MS. CLIFFORD: Why would we be giving
24 Mr. Kulp everything in the Solicitor's office file,
25 which we can't even give the defense attorney in that

1 case. I would strongly object to us having to turn
2 over the Solicitor's file. I don't mind turning over
3 to him the Rule 5 material in that case.

4 THE COURT: Anything pertaining to the
5 allegations in this case and Mr. McMenamin --

6 MS. CLIFFORD: Your Honor, there is --

7 THE COURT: -- I think should be turned
8 over.

9 MS. CLIFFORD: Your Honor, there is no
10 relation except for the fact that our victim in this
11 case, Theresa Haught, was a witness in that murder
12 case. That is the only thing.

13 THE COURT: Did the victim not point the
14 finger at Mr. McMenamin?

15 MS. CLIFFORD: Yes.

16 THE COURT: Well, that's no relation?

17 MS. CLIFFORD: That's the only relation,
18 Your Honor. I don't like to --

19 THE COURT: Well, that's a significant
20 relation.

21 MS. CLIFFORD: We will turn over any Rule
22 5 materials. Any Rule 5 materials we will turn
23 over. I don't want to have to turn over work product
24 or anything else like that that the defense attorney
25 in that case couldn't get. But anything that would

1 be exculpatory for Mr. McMenamin or anything that
2 would be Rule 5 material, we will gladly turn over.

3 THE COURT: Okay.

4 MR. KULP: I have a comprise. We would
5 be happy to enter into or be bound by the Court's
6 protective order in that regard for us not to release
7 any of that information to anyone besides my client
8 in confidence and his family and not to disclose it
9 with anyone involved in it.

10 THE COURT: I tell you what. She can
11 give you the information that she has first. And if
12 we need to have a separate hearing in camera or to
13 look at the file, I will do so.

14 MR. KULP: Thank you, Your Honor.

15 THE COURT: Written statement from the
16 Defendant's mother?

17 MR. KULP: Not received.

18 THE COURT: State's position?

19 MS. CLIFFORD: Your Honor, in this case
20 in my letter to Judge Rawl -- I assume you must have
21 gotten that -- there were some statements which have
22 not been copied, and those have been flagged in my
23 report. He will have those by September 1st.

24 I would like to note for the report, as
25 he said, this crime occurred on March the 13th. The

1 Defendant was arrested on March the 16th. He filed
2 his Discovery Motion on March 27th. The warrant was
3 received by our office on March 31st. The incident
4 report, which is almost two or three inches, was not
5 received until June in its entirety -- excuse me
6 until May. It was copied in a timely fashion when it
7 was received and forwarded on to Mr. Kulp. When the
8 autopsy report was received, it was forwarded on. He
9 will have all of the statements, even those to which
10 he would not be entitled to right now under the
11 rules, by September 1st.

12 THE COURT: Okay.

13 MR. KULP: You know, we understand that,
14 Your Honor. But I think -- I can't recall the exact
15 provision of law where it's located but either in
16 statutes or in the case laws. But I think that the
17 police have a duty to give anyone they interview a
18 copy of their statement, and I'm acting on my
19 client's mother's behalf in requesting that that be
20 produced immediately. She has a right to her own
21 statement.

22 THE COURT: She does have a right to her
23 own statement.

24 MS. CLIFFORD: Yes, sir. And Detective
25 Clayton provided her one at the time it was given.

1 THE COURT: Photographs taken in the
2 case?

3 MR. KULP: I have not received, but I
4 have offered to pay for them since March the 27th.

5 THE COURT: State's position?

6 MS. CLIFFORD: Your Honor, that's fine.
7 If he wants to pay for a set, we can get those made.

8 THE COURT: Okay.

9 MS. CLIFFORD: We will have to make some
10 arrangements for the payment.

11 THE COURT: Okay.

12 MS. CLIFFORD: And I will say there
13 obviously are video tapes involved because there was
14 a confession. The State would submit that it was
15 recorded by the three news stations. We have a copy
16 of that. We will have the originals. If he wants us
17 to make a copy, we will do that. He will also again
18 have to make arrangements in terms of providing the
19 video tapes for that to be done.

20 THE COURT: Okay.

21 MR. KULP: As indicated on March 27th, we
22 will pay the bill for any -- for that.

23 THE COURT: Okay. Fingerprint analysis
24 of items seized at the scene?

25 MS. CLIFFORD: Your Honor, as far as I'm

1 aware, there were none because of the fact this was a
2 fire, and the police went in after spraying water.
3 I'm not aware of any. I will double check.

4 THE COURT: Okay.

5 MR. KULP: Sorry, Your Honor. But there
6 was indicated there was fingerprint analysis done.
7 In one respect, page 35 of discovery provided by the
8 State in June indicates that latent fingerprints were
9 taken from the windshield of the victim's vehicle.

10 THE COURT: Okay. Well, the State needs
11 to check on that.

12 MS. CLIFFORD: Okay.

13 THE COURT: Assistance with --

14 MR. KULP: I'm sorry?

15 THE COURT: Assistance with interviewing
16 officers who investigated the crime?

17 MR. KULP: Right. Certainly within the
18 presence of the Solicitor, but we would like to have
19 the opportunity or some assistance in speaking with
20 the officers and investigators who worked the case.

21 MS. CLIFFORD: There's no problem with
22 that. I know they have been talking already.

23 THE COURT: Okay.

24 MS. CLIFFORD: That has never been a
25 problem.

1 THE COURT: Okay.

2 MR. KULP: Well, the reason I put that in
3 there, Your Honor, was because rather than dropping
4 in at the police department and having them say well
5 we need to get in touch with Ms. Clifford and so
6 forth, maybe we can agree to set up a day or a time
7 or something to do it.

8 THE COURT: Do you have any opposition to
9 that?

10 MS. CLIFFORD: We can do that. That's no
11 problem. I do that for defense attorneys regularly
12 anyway.

13 THE COURT: Okay.

14 MR. KULP: Thank you, Your Honor.

15 THE COURT: Still or video photos from
16 drug surveillance cameras around The Mill and Social
17 Club. I think she has already indicated she will
18 give you whatever she has as long as you make
19 payment.

20 MS. CLIFFORD: I'm not aware of any of
21 that. Is there a time period involved? Are we
22 talking about the time of the murder?

23 MR. KULP: Of course, that's why we
24 asked. I mean because I indicate in the paragraph he
25 was told that his car may have been seen on

1 surveillance videos set up to detect drug activity.
2 And if that was an interrogative, deceptive ruse,
3 then fine, then I won't deal with it anymore. But
4 if, in fact, it exists, then I would like to have
5 copies.

6 MS. CLIFFORD: I will check with the
7 narcotics officers.

8 THE COURT: Okay. Names of victim's
9 family members present at jail and times they were
10 present and the details of contact with the Defendant
11 prior to Defendant's confession. I don't -- why
12 can't you get that from the Defendant?

13 MR. KULP: Well, for one, Your Honor, he
14 was in handcuffs at the time. His mobility was
15 restricted. I don't know who was there in tow, who
16 came and went, and it impacts in terms of exculpatory
17 issues as to voluntariness during the interrogation
18 process.

19 MS. CLIFFORD: Your Honor, I've been
20 told, first of all, he wasn't handcuffed when he was
21 being interviewed. I'm not aware of the -- not at
22 the initial interview. I'm not aware of the victim's
23 family being present when he was interrogated or
24 interviewed.

25 MR. KULP: Like you said, Your Honor, he

1 ought to --

2 MS. CLIFFORD: Your Honor, at one point,
3 he did request to talk to or see the victim's
4 mother. You know, we can go through that and find
5 out. I think if there was any contact or any request
6 it would have been reflected in the incident report.
7 There has been rather extensive details in the
8 report. But we will go through, and I'll double
9 check with officers for Mr. Kulp. Anything that they
10 can remember --

11 THE COURT: Would family members have to
12 sign in if they saw him at the jail?

13 MR. KULP: This was at the police
14 station.

15 THE COURT: The police station we're
16 talking about.

17 MR. KULP: But to cut to the chase, it
18 simply pertains -- he didn't ask that they come
19 there. They were brought there on more than one
20 occasion. At least for an extensive period of time,
21 they had contact with him during the interrogation
22 process.

23 And as to the issue of the voluntariness
24 of the confession, I think it's highly material. So
25 if, in fact, the police invited them there and they

1 were present for the purpose to aid in the
2 interrogation in some respect as a strategic
3 approach, then that is certainly something we need to
4 know about.

5 THE COURT: It can work both ways.

6 MS. CLIFFORD: Yeah, I understand --

7 THE COURT: I agree with the
8 voluntariness. It might go both ways.

9 MS. CLIFFORD: I understand. We don't
10 necessarily agree with what he's saying, but I will
11 provide them. I will talk to the officers, and I
12 will let Mr. Kulp know. I will also make a meeting
13 for all of the officers who were present --

14 THE COURT: Okay.

15 MS. CLIFFORD: -- for the initial
16 interviewing and the interrogation process to meet
17 with Mr. Kulp.

18 THE COURT: Okay. Verbal and written
19 statements of the Defendant?

20 MR. KULP: In the interest of time, Your
21 Honor, that may, in fact, be cleared up because it
22 may be just a typo.

23 THE COURT: Okay.

24 MR. KULP: In fact, because in the sworn
25 Affidavit of the arson warrant, without turning to

1 it, it says based on statements that he -- excuse
2 me -- that he inculpated himself based on -- I will
3 turn to it, specifically, Your Honor. It says, on
4 3/13/97 the Defendant, Wesley Max Myers, gave both a
5 verbal and written statement that after an
6 altercation with victim he went behind the bar, moved
7 the paper, bla, bla, bla (sic) and placed it and set
8 it on fire. And I'm unaware of any statement on 3/13
9 about that because I have two statements, one was
10 taken on 3/13. It's not inculpatory, another was
11 taken 3/15. It is inculpatory. And I'm not aware of
12 a verbal or written statement that is inculpatory
13 that was taken on the 13th so is that a typo?

14 THE COURT: Is that a typo?

15 MS. CLIFFORD: I believe it's a typo.

16 MR. KULP: That's fine. I just -- thank
17 you, Your Honor.

18 THE COURT: Prior record of Dana
19 Chaples?

20 MR. KULP: I have not received, Your
21 Honor.

22 THE COURT: Any opposition of the State?

23 MS. CLIFFORD: Huh-uh.

24 THE COURT: Okay.

25 MS. CLIFFORD: I need to know, you know,

1 all of the information, but no.

2 THE COURT: Okay. Forensic report on box
3 of matches found at crime scene?

4 MS. CLIFFORD: Your Honor, there is none
5 that I'm aware of.

6 THE COURT: Okay.

7 MR. KULP: Well, just for clarity sake is
8 that being conducted at this time, and is the report
9 forthcoming or --

10 THE COURT: If she gets one, she will
11 turn it over to you.

12 MS. CLIFFORD: Your Honor, I don't know
13 what -- I'm checking now with the officers as we are
14 speaking. It's my understanding that the match box
15 was completely saturated and covered with sand. By
16 the time they got in there, the fire department had
17 been there and that it was not sent for forensic
18 examination because of its condition.

19 THE COURT: So it has not been sent?

20 MS. CLIFFORD: Right.

21 THE COURT: Okay. Do you have anything
22 else about that?

23 MR. KULP: I'm sorry, Your Honor?

24 THE COURT: She's saying they have not
25 sent it for a report.

1 MR. KULP: Well, then I need to put that
2 on my list. That's probably one of the items we
3 would like to have access to for independent
4 examination.

5 THE COURT: Okay.

6 MR. KULP: And we would like to be able
7 to draw that same conclusion as to its inability to
8 be tested ourselves.

9 THE COURT: Any problems with that?

10 MS. CLIFFORD: Your Honor, we would like
11 the Court to understand that, obviously, what I will
12 do will be to talk to the SLED people. We may send
13 stuff up so they can just send it back and say,
14 contaminated, can't test -- you know, whatever can't
15 test. And then at that point once they have ruled
16 out any possible examination they might want to do,
17 then Mr. Kulp can have access to it.

18 Now, of course, a concern comes up
19 concerning custody of the items, and we will want to
20 have somebody present from SLED for any independent
21 testing. We will have to make arrangements for that
22 later, but I think we can work that out.

23 MR. KULP: I think we can resolve that.
24 Let's just send it up with the hair.

25 THE COURT: Okay. Well, you see about

1 working that out.

2 MS. CLIFFORD: Okay.

3 MR. KULP: Yes, sir.

4 THE COURT: Prior record -- prior
5 Defendant's record.

6 MS. CLIFFORD: Your Honor, I believe they
7 are contained in the incident report. The one that I
8 haven't had until this morning, the ATF report, I
9 handed him this morning.

10 THE COURT: Okay.

11 MS. CLIFFORD: We'll double check
12 everything again, but I believe he's gotten all of
13 that.

14 THE COURT: Okay.

15 MR. KULP: For accuracy sake, what we
16 have, Your Honor, is what was provided in the 200
17 and -- excuse me 125 pages of discovery, as well as
18 what we were handed today in court, the ATF report.
19 That's the extent of what we have in terms of any
20 fire arson report. If there is anything else, we
21 would like to have it.

22 THE COURT: Okay. Analysis of
23 fingerprints taken from victim's windshield -- we've
24 already been over this.

25 MS. CLIFFORD: Yeah.

1 THE COURT: DNA studies of evidence taken
2 from victim's torn fingernail?

3 MS. CLIFFORD: Your Honor, I believe he
4 must be talking about the hair that was actually
5 along the hand, and we're going to send that up to
6 the FBI lab.

7 THE COURT: Okay.

8 MS. CLIFFORD: Is that what you're
9 talking about, Tim?

10 MR. KULP: What I was talking about, Your
11 Honor, if there was -- we were trying to determine if
12 it's even in the hopper or not being done like we
13 just leaned about the matchbox, which I thought was
14 submitted for analysis, but, in fact, we want -- we
15 want to know if there was any forensic analysis,
16 opinions drawn.

17 THE COURT: You're talking about the hair
18 though?

19 MR. KULP: No, the finger that was
20 severed itself.

21 THE COURT: Okay. The finger. I got it.

22 MR. KULP: In other words, am I going to
23 be faced with an expert coming in here saying we both
24 have in a professional and expert opinion that this
25 occurred X Y and Z. So if there was any examination

1 of it done that leads an expert who is forthcoming to
2 render an opinion, then that's what I want.

3 MS. CLIFFORD: Your Honor, the only --
4 the only testimony I believe we would have as to the
5 finger itself would be from the pathologist as to it
6 being a defense wound -- being -- I mean, that's how
7 the injury occurring (sic).

8 MR. KULP: So for clarity sake, other
9 than the pathologist examination of the finger and
10 the fingernail at autopsy, there is no other
11 examination of that particular part of the deceased
12 body?

13 MS. CLIFFORD: None that I'm aware of,
14 and I will double check.

15 THE COURT: Okay. Documentation of any
16 sexual assault on victim.

17 MS. CLIFFORD: Your Honor, I'm not aware
18 of any.

19 THE COURT: Do you have any indication
20 there was some?

21 MR. KULP: No, Your Honor, we just --
22 since the police report we received indicates that
23 the jeans were unzipped -- that was the condition of
24 the clothing of the body -- we just wanted to make
25 sure and determine if, in fact, there was any sexual

1 assault examination conducted. If there wasn't, then
2 we just want to know that for sure.

3 THE COURT: Okay. She said there was
4 not.

5 MR. KULP: So I guess there was not.

6 THE COURT: That is what she indicated.

7 MR. KULP: Thank you.

8 THE COURT: Notebook found at crime
9 scene?

10 MR. KULP: Have not received it.

11 THE COURT: Any position on that?

12 MS. CLIFFORD: Have not received what?

13 THE COURT: A notebook found.

14 MS. CLIFFORD: A notebook?

15 THE COURT: Some kind of a notebook that
16 was found at the crime scene.

17 MS. CLIFFORD: I don't understand what he
18 wants in relation --

19 THE COURT: What notebook do you want?

20 MR. KULP: Do you have a copy of my
21 letter?

22 MS. CLIFFORD: I didn't bring everything
23 upstairs.

24 MR. KULP: Your Honor, just -- I
25 apologize. I thought you were following along with

1 me. It just says page 35 of discovery indicates that
2 Officer Norris found several assorted notes, who is
3 going to be Benji Norris I guess, and possibly a
4 notebook and photos behind the bar at the crime
5 scene.

6 MS. CLIFFORD: Your Honor, we can allow
7 him visual inspection of that and copying if
8 necessary. I don't know if it's going to be
9 necessary to copy everything, but we can go
10 through -- I don't mind meeting with Mr. Kulp --

11 THE COURT: Okay.

12 MS. CLIFFORD: -- down at The North
13 Charleston Police Department, and we can look and
14 copy what we need to copy.

15 THE COURT: Okay. Documentation
16 pertaining to hair samples from victim's left hand
17 and chest hair?

18 MR. KULP: Your Honor, the left hand, of
19 course, we've addressed. The State has identified it
20 as one strand, and it's going to be forwarded to the
21 FBI for DNA analysis.

22 There was also mentioned in the discovery
23 on page 36 that there were additional hair samples
24 collected from the victim's chest area. We need to
25 know if those were examined. And if not, maybe they

1 can either be sent to the FBI along with the other
2 strand, or we can have them looked at for an
3 examination.

4 MS. CLIFFORD: Your Honor, it's my
5 understanding, I think, as the report that I have
6 given him indicates that those hairs were examined
7 and believed to be hers. If I'm not mistaken, if you
8 look at the report, Tim.

9 MR. KULP: Okay. I will double check.

10 MS. CLIFFORD: I think that's what the
11 report indicates. We will double check that again,
12 too.

13 THE COURT: Okay. Okay. DNA or forensic
14 analysis of victim's clothing?

15 MS. CLIFFORD: Your Honor, you've got the
16 report that was sent up there to trace about blood
17 being detected, and there was no blood detected.

18 MR. KULP: No, Your Honor, that -- I'm
19 sorry. That specifically refers to the defendant's
20 clothing --

21 MS. CLIFFORD: Okay. I'm sorry.

22 MR. KULP: -- taken from his truck. The
23 clothing I understand of the victim was submitted to
24 serological analysis as well, and we just were in the
25 dark about that as well.

1 THE COURT: Do you have any reports on
2 that?

3 MS. CLIFFORD: Your Honor, there are no
4 reports, and, again, this is part of the evidence
5 that I discussed with SLED in terms of contamination
6 because of what was used to put out of the fire.

7 THE COURT: Have you sent it in to see?

8 MS. CLIFFORD: No.

9 THE COURT: Okay.

10 MS. CLIFFORD: But I don't think they're
11 even going to test it. I will talk to them.

12 THE COURT: Okay.

13 MS. CLIFFORD: If there's a question, we
14 can get it tested or sent to SLED to see if there is
15 something to remove any question.

16 THE COURT: Okay. With additional rights
17 of the Defendant to get access.

18 MS. CLIFFORD: Right. Right.

19 MR. KULP: I think this would be a good
20 time for me to make a specific and additional in
21 court request, Your Honor, for a complete
22 comprehensive statement as soon as possible as to
23 what -- and either -- for all of these months they
24 have known could not be tested, was not going to be
25 tested or was of no forensic evidentiary value.

1 Because, you know, we -- I've written letters to
2 SLED, Your Honor. I think we submitted them for the
3 Court or the record. I have got them here in my
4 notebook asking them to preserve it all in the case
5 of independent analysis.

6 We have been in the dark this entire time
7 period. And if all of a sudden, we -- what we're
8 finding out is, well, we didn't think it was of any
9 evidentiary value, maybe you will a week before the
10 trial, or we now find out it was not subject to any
11 analysis, then, you know, I think that -- in the
12 interest of my client's rights to a fair trial and
13 due process -- we have a right to know those kinds of
14 things as opposed to just finding out at some point.
15 Because not only is independent analysis expansive,
16 it is also quite time consuming. Thank you.

17 MS. CLIFFORD: Your Honor, I can meet
18 with Mr. Kulp next Monday, Tuesday or Friday. We can
19 even go up to SLED together if he wants to and look
20 at the evidence. That would be fine with me.

21 THE COURT: Okay.

22 MS. CLIFFORD: I'm not trying to hide
23 anything. We're not trying to conceal anything.

24 THE COURT: Well, y'all get together and
25 make a decision about that.

1 MS. CLIFFORD: Okay.

2 THE COURT: And he should have the
3 independent right of testing if you are not going to
4 proceed to test for any --

5 MS. CLIFFORD: Right.

6 THE COURT: -- inordinate delay.

7 MR. KULP: I'm not suggesting they're
8 trying to hide anything. It's just -- I just need it
9 yesterday.

10 THE COURT: I understand. If I need to
11 set a deadline on that, I will. I will let y'all
12 speak first.

13 DNA and forensic analysis of blood stain
14 tiles at the scene?

15 MR. KULP: I have received nothing.

16 MS. CLIFFORD: Your Honor, it's the same
17 thing, the contamination issue.

18 THE COURT: Okay.

19 MS. CLIFFORD: We can go over that when
20 we talk with the people at SLED.

21 THE COURT: Same ruling in that regard.

22 MS. CLIFFORD: Okay.

23 MR. KULP: Thank you, Your Honor.

24 THE COURT: Toxicology and DNA, blood
25 matches analysis of blood taken from victim's body

1 and autopsy, have you got that?

2 MR. KULP: Your Honor, we have received
3 in the autopsy report an indication as to the Epinal
4 content of the deceased's liver, so we have it in
5 that respect. But, additionally, we do not know
6 about DNA cross match and typing and so forth, but
7 yet that may be something that's being done at SLED
8 in the serological unit. If you will incorporate
9 that within your other stuff --

10 MS. CLIFFORD: Yes.

11 MR. KULP: -- that will be fine.

12 THE COURT: Okay. Photographs of suspect
13 Dana Chaples analysis of shoe prints of that
14 suspect?

15 MR. KULP: I'll just -- Your Honor, in
16 that respect, it's a long paragraph, but all of the
17 things that we've indicated there, we are very
18 interested in, and they have great exculpatory value
19 since he was considered a suspect at the time based
20 on statements of two bartender witnesses who were
21 interviewed who were the last to see the deceased.

22 In that regard, Your Honor, we -- all of
23 that -- and as it says some of it we're not sure if
24 they have or not, but we do know that they took his
25 shoes. We also know that in descriptions in the

1 discovery there were shoe prints found at the scene.
2 So rather than remain in the dark in this issue, if
3 in fact there were some visual comparison made of his
4 shoes against the photographs of the shoe prints and
5 was excluded, then we need to know that. If, in
6 fact -- in other words, everything about him. In
7 short we need to know everything about him in any
8 respect because he was, in fact, considered a suspect
9 at one time.

10 MS. CLIFFORD: No problem with that, Your
11 Honor.

12 THE COURT: Okay.

13 MS. CLIFFORD: In fact, what I will do is
14 Mr. Kulp and I can meet at the -- we can meet
15 downstairs. We can meet at the North Charleston
16 evidence locker, whatever. And we'll actually go
17 through the listing of all of the evidence seized,
18 where it's gone, what's been requested in terms of
19 testing and then if need be go up to SLED together.

20 THE COURT: Okay. Same, I guess, with
21 number 25 about analysis of shoes; is that correct?

22 MR. KULP: I think it would fall within
23 that response, Your Honor.

24 THE COURT: Forensic analysis of
25 two-by-four piece of wood submitted to SLED, has

1 anything come back on that?

2 MS. CLIFFORD: Don't have anything.

3 THE COURT: Has it been sent in?

4 MS. CLIFFORD: Your Honor, at this point,
5 I'm not sure if it has gone up yet.

6 THE COURT: Can you check on that?

7 MS. CLIFFORD: Yeah, we will.

8 THE COURT: If there has been a report,
9 turn it over to him, please.

10 MS. CLIFFORD: There has been no reports
11 because SLED -- North Charleston Police Department
12 communicated with SLED yesterday, and we only have
13 the two reports.

14 THE COURT: Okay. Analysis of
15 fingerprints from the victim's vehicle, have we
16 already covered that?

17 MS. CLIFFORD: Yeah.

18 THE COURT: We've already covered that.

19 MR. KULP: I'm sorry?

20 THE COURT: We've already covered that
21 one.

22 MS. CLIFFORD: Fingerprints from the
23 victim's vehicle of her windshield.

24 MR. KULP: No. This is from Dana
25 Chaples' vehicle.

1 THE COURT: Okay.

2 MR. KULP: I'm sorry, Your Honor.

3 THE COURT: Analysis of Dana Chaples' --

4 MS. CLIFFORD: Your Honor --

5 THE COURT: -- vehicle?

6 MS. CLIFFORD: Okay. Your Honor, in
7 terms of the victim's car though, I don't think those
8 were actually fingerprints. I think it was writing.
9 Dana Chaples' vehicle, I'm not aware of any
10 fingerprints, but I will check into that as well.

11 THE COURT: Okay.

12 MR. KULP: I just didn't know if there
13 were or weren't.

14 THE COURT: Okay.

15 MS. CLIFFORD: We will.

16 MR. KULP: Same thing as before, floor
17 mats, next paragraph.

18 THE COURT: Okay.

19 MR. KULP: In other words, and cigarette
20 butts addressed in the following paragraph as to his
21 car -- if the Court permits to me moving ahead?

22 THE COURT: Yeah, keep going on things
23 y'all can work out or you agree upon.

24 MR. KULP: And as to any vacuum
25 substances, because those -- and all of those

1 paragraphs are related to the towing and subsequent
2 police station analysis --

3 THE COURT: Okay.

4 MR. KULP: -- of his car.

5 THE COURT: Okay.

6 MR. KULP: Number 31 should be pretty
7 easy, Your Honor. We just listed pages and discovery
8 which are illegible, and we've not received readable
9 copies yet.

10 THE COURT: Can you give him that?

11 MS. CLIFFORD: Uh-huh.

12 THE COURT: Okay.

13 MR. KULP: The next indicates, Your
14 Honor, that Dana Chaples' keys were recovered from
15 him. I think that was the language used. I don't
16 know if that means they were kept or if they were
17 tested in any way, and if so we would like to have
18 results of any lay or expert testing of those items.

19 THE COURT: Anything on that?

20 MS. CLIFFORD: I don't believe there was
21 any testing of any keys, but we will check.

22 THE COURT: Okay.

23 MR. KULP: That would also apply, Your
24 Honor, to the dead bolt lock assembly, which was
25 recovered, I believe, from the scene of the crime. I

1 don't know if there was any analysis conducted of
2 that. I think one of the legible ones I have in the
3 file may indicate that it was -- that the dead bolt
4 was sent to SLED, but I can't tell because I can't
5 read it.

6 THE COURT: She can check on that and get
7 back to you.

8 MS. CLIFFORD: Uh-huh.

9 MR. KULP: Your Honor, the next -- may I
10 sit down, Your Honor?

11 THE COURT: Yes.

12 MR. KULP: Thank you. Number 34, the
13 next statement indicates -- paragraph indicates that
14 we're seeking statements from Margaret Jensen and
15 Tammy, which should be Tonya, I guess, Gonzales. And
16 if that -- that may fall within the production
17 deadline that was mentioned by the State of September
18 1, although we would certainly like to have those as
19 soon as possible.

20 THE COURT: Can you give him those by
21 September 1 also?

22 MS. CLIFFORD: I will give him copies of
23 all the statements I have.

24 THE COURT: Okay.

25 MR. KULP: Do we know if those exist

1 because they were referenced in the discovery?

2 THE COURT: Do you know?

3 MS. CLIFFORD: What are the names
4 specifically you're looking for again?

5 MR. KULP: Margaret Jensen and Tonya
6 Gonzales.

7 MS. CLIFFORD: Gonzales is in here.

8 MR. KULP: Your Honor, while she's
9 looking, might I address that issue. I'm not asking
10 the Court to compel the State to respond as to why,
11 but we're a little perplex as to why, particularly,
12 we need to wait another three weeks to get these
13 statements when it has been since March if they are
14 going to produce them on September the 1st. And
15 if -- the sooner the better for us.

16 We have been waiting and anxious to
17 review those to conduct our own interviews and
18 investigations. But if that could be speeded up, if
19 the State could at least at this time or on a
20 subsequent pleading to the Court or in response to
21 our motions just indicate the names of those
22 individuals who -- for whom they have statements that
23 will be released on the 1st so that we might use
24 these three weeks to go and interview them.

25 THE COURT: Can you do that?

1 MS. CLIFFORD: Your Honor, quite
2 honestly, I mean, I have no problems giving him the
3 statements September 1st. I'm asking -- this case is
4 not an old case. He has been given a lot of stuff as
5 soon as we got it. I don't have to, under the rules,
6 give him the stuff until we go to trial and they've
7 already testified on direct.

8 I'm willing to work with Mr. Kulp. I'm
9 trying -- quite honestly, I've got 3- to 400 cases
10 downstairs. I'm trying to get as organize as I can
11 in this case as quickly as possible so I can
12 understand what exactly it is that I've got that I'm
13 giving to him. That's why I asked for September
14 1st. I don't think that's unreasonable under the
15 circumstances at all.

16 MR. KULP: Just --

17 THE COURT: If she can get them to you
18 faster, she will. But I'm not going to --

19 MR. KULP: I know. I only asked --

20 THE COURT: -- tie her hands beyond that
21 day.

22 MR. KULP: And it's simply a situation,
23 Your Honor, of where while it may not be a long time
24 for the State, because these cases do take awhile, it
25 has been a long time for my client because he's

1 sitting in the can.

2 THE COURT: I understand.

3 MR. KULP: As well, Your Honor, we -- in
4 terms of the production of the statements, I do not
5 know if -- and I'm happy to work with Ms. Clifford,
6 but I do not know if it's a situation where we have
7 an open file policy most of the time, and we invoke
8 Rule 5 other times.

9 THE COURT: It seems to me that she's
10 pursuing an open file policy pretty much. I mean
11 she's pretty much giving you everything.

12 MR. KULP: Well --

13 THE COURT: Or she intends to.

14 MR. KULP: Well, she's giving me a lot,
15 but there are a bunch of witness statements, and
16 those are the statements of the witnesses at trial.

17 Thank you, Your Honor. Anyway she could
18 expedite the material --

19 THE COURT: If you can expedite that, do
20 so. If not I'm not going to tie your hands until
21 that day.

22 MS. CLIFFORD: Thank you.

23 THE COURT: Go ahead. I guess the same
24 for 35, the statements taken from Dana?

25 MR. KULP: Dana -- in one place, there is

1 a reference made in the discovery to taking a
2 statement from him or -- oral or written -- and in
3 another place it's not. So I really need to clarify
4 that, or maybe that will fall within the ambient of
5 what she's going to be producing.

6 MS. CLIFFORD: Your Honor, it's in here.

7 THE COURT: Okay.

8 MS. CLIFFORD: And he will get it.

9 THE COURT: Forensic analysis of
10 Defendant's clothing.

11 MS. CLIFFORD: He's got that.

12 THE COURT: Okay.

13 MR. KULP: Your Honor, just to -- we
14 don't -- we have the trace report. I have got it
15 right here in front of me, which was --

16 MS. CLIFFORD: No hair otherwise.

17 MR. KULP: -- by the trace evidence
18 department. And I guess I can call and find out, but
19 if, in fact, they -- they divided the functions up
20 there, but if she's competent to say there is no
21 blood before it gets to serology, then that will
22 suffice, but I just wanted to --

23 MS. CLIFFORD: If there is further
24 testing -- this report indicates no blood and then no
25 hair from the door. If it's sent on to serology, I

1 mean, he will get that report as soon as possible.

2 THE COURT: Okay. SLED long distance
3 phone call directory indicating the time that SLED
4 called the North Charleston Police Department to
5 inform them that the hair sample matched?

6 MR. KULP: Right, Your Honor. In the
7 discovery, it is indicated that on Saturday, March
8 15th, during the interrogation process, that
9 Lieutenant Combee received a phone call from Joe
10 Powell at SLED and that there had been a positive
11 match of the -- of the suspect's sample of hair,
12 stand of hair to that to the known samples of the
13 Defendant.

14 And, Your Honor, we're seeking
15 documentation of that call being placed on that day
16 because it does factor into various aspects of the
17 admissibility, we feel, of the confession statement.
18 And I can tell you, if I had it marked --

19 MS. CLIFFORD: Your Honor, I mean I would
20 object to having to pull all of SLED's phone records
21 and all of the North Charleston Police Department's
22 records. What happened -- and Mr. Kulp knows this
23 and he can confirm it with Powell as well as the
24 officers who were involved in the questioning of the
25 Defendant -- they actually knew the day before that

1 the hair had been transferred. It had been
2 microscopically examined. The final report and the
3 analysis was not done until later, but an initial
4 analysis was done. Powell told the officers. They
5 knew that the day before they actually told the
6 Defendant that.

7 I think he can get that through
8 questioning the witnesses who were actually involved
9 in that, Joe Powell with SLED. He can find out did
10 he, in fact, tell the North Charleston police
11 officers that verbally, when did he do that, under
12 what conditions.

13 To pull the records from SLED and from
14 the North Charleston Police Department -- because I'm
15 not sure who called who on which day -- would just be
16 an extraordinary difficult burden, I think, to put on
17 the State when he can -- I think he should at least
18 first try to get it through the witnesses. And then
19 if there's some problem -- I don't know, the
20 witnesses conflict or something -- then maybe we can
21 arrange that.

22 At that point -- I mean, that's going to
23 be probably a big expense involved, and I would ask
24 that the defendants be -- the defense be burdened
25 with that if they are going to go through with that,

1 but I think that should be our last resort.

2 MR. KULP: Let me just -- very briefly,
3 Your Honor, the discovery says quote Lieutenant
4 Combee later walked into the office and told the
5 suspect that he just received a phone call from SLED
6 about the hair. Lieutenant Combee told him that the
7 hair belonged to the suspect Wesley Myers. The
8 suspect started rubbing his hands and said, no, no,
9 no, and eventually they obtained a confession from
10 him. Immediately --

11 MS. CLIFFORD: Your Honor, that was ruse.

12 MR. KULP: Excuse me. It's a -- pardon?

13 MS. CLIFFORD: There was a ruse. They
14 knew the day before. They had gotten the phone
15 call -- the confirmation the day before. So it was a
16 ruse. In terms of the timing of the notification, it
17 was the day before and not that day.

18 MR. KULP: Okay. So what I have here in
19 the discovery report where it says Lieutenant Combee
20 later walked in the office and told the suspect that
21 he just received a phone call from SLED about the
22 hair, that's a lie?

23 MS. CLIFFORD: That is a ruse used which
24 has been approved by both the US Supreme Court and
25 our State Supreme Court, yes.

1 MR. KULP: Right. But the report doesn't
2 say that it was a ruse that was used. That's why I
3 was confused in trying to determine that.

4 MS. CLIFFORD: Oh, no, the report says
5 what happened.

6 MR. KULP: Excuse me. The report doesn't
7 says it was a ruse. The report says what happened,
8 not that something that wasn't true was employed as a
9 interrogative device. So I'm just trying to find out
10 if Joe Powell did, in fact, call or if it was a ruse.

11 THE COURT: She's saying that that's not
12 what happened. That's not what actually took place.
13 So I don't see the need for that phone call record at
14 this time. I think you should pursue that with the
15 witnesses myself.

16 MR. KULP: All right. Thank you, Your
17 Honor.

18 THE COURT: I mean, she has stated --

19 MR. KULP: At least I know a lot more
20 about its now.

21 THE COURT: She stated what their
22 position is as to that as an Officer of the Court.

23 THE COURT: 38, written statement taken
24 from -- well, I guess that goes -- from the
25 Defendant's boss, I guess that falls under the

1 statement rule.

2 MS. CLIFFORD: I'm sorry. I was talking.

3 THE COURT: Written statement from the
4 Defendant's boss, I guess that is going to be
5 included in your packet.

6 MS. CLIFFORD: What is the name of that
7 person?

8 THE COURT: Mr. Perry.

9 MS. CLIFFORD: Yes. Your Honor, I
10 believe it's in here, and he will get that.

11 THE COURT: Okay.

12 MS. CLIFFORD: And, Your Honor, there is
13 so much, and you can see from here I've kind of
14 tabbed all of the statements. He will get a copy of
15 all of them. So I can't recollect all of the names
16 just off the top of my head.

17 THE COURT: Copies of partially burned
18 notebook and photos of notebook, We've already
19 discussed that?

20 MS. CLIFFORD: We've discussed that.

21 THE COURT: Okay. Logbook of the parties
22 who were present who were at the crime scene, is
23 there any problem with turning that over?

24 MS. CLIFFORD: Your Honor, I think he has
25 that.

1 MR. KULP: Your Honor, we have a partial
2 list. My question seeks to determine if, in fact,
3 the partial list is the only and final list or if
4 there's another one out there, if that's properly
5 filled out.

6 THE COURT: He needs to know if it was a
7 complete list.

8 MS. CLIFFORD: I will try to get -- I
9 don't know if there is any one place where
10 everybody's name that responded to that scene for
11 five seconds or five hours is listed. We will try to
12 get as good of a list as we possibly can.

13 THE COURT: Okay.

14 MR. KULP: There is a form that is used
15 that was provided in discovery for the purpose of
16 documenting, Your Honor, who comes and goes, and it's
17 just not complete.

18 THE COURT: Okay. She'll check on that.
19 I think that covers 41 also.

20 MR. KULP: Yes, sir.

21 THE COURT: 42, statements provided by
22 the Defendant?

23 MR. KULP: Yes, sir. We might as well
24 address this now, Your Honor. We have a -- we're in
25 possession of a -- my client has a copy of a written

1 statement he gave on March the 13th. He also is in
2 possession of a copy of a statement that he signed on
3 March the 15th. Rather than wait until a later time,
4 we're seeking any oral or other than those two
5 written statements of the Defendant which were made.

6 Now, in this regard, we seek the notes of
7 the officers. And in that respect, we're aware of
8 the provisions -- I can't remember the case name
9 right now, but it addresses --

10 THE COURT: I'm aware of it.

11 MR. KULP: Sir?

12 THE COURT: I'm aware of it.

13 MR. KULP: Yes, sir. That addresses the
14 production of the officer's notes. We're not seeking
15 work product, but if, in fact, there is going to be
16 testimony about oral statements of the Defendant that
17 are outside or duplicate those statements that are
18 reflected in this -- in his written statement and
19 there are notes about, well, he said X Y and Z, then
20 I think that those would be distinguishable as apart
21 from notes about other things -- in other words,
22 about what other witnesses said that were later
23 reduced to a written statement or description of the
24 scene, in other words, if those notes reflect
25 statements of the Defendant.

1 THE COURT: Yes, ma'am.

2 MR. KULP: And if they have been
3 destroyed -- if they've been destroyed in the process
4 of making other reports or whatever, we would like to
5 know that as well.

6 MS. CLIFFORD: Your Honor, first of all,
7 he has been given a copy of the incident reports and
8 the defendant's statements. The incident report
9 details in great detail again, which is very unusual,
10 statements made by the Defendant during the course of
11 the investigation in questioning.

12 I believe all of the oral statements that
13 he has made or requested is in there. He's got the
14 written statements. I don't think he is entitled to
15 the police officer's notes. I think the law is very
16 clear from both the US Supreme Court and our State
17 Supreme Court that is work product. That is the
18 police officer's thoughts as they're talking to
19 someone or examining the scene. He, in fact, signed
20 two statements confirming that what was listed on
21 that statement was, in fact, his statement. I don't
22 think he would be entitled to any notes.

23 THE COURT: Uh-huh. I don't.

24 MR. KULP: I think if those notes, Your
25 Honor, say Defendant said killed her X Y and Z and --

1 that's clearly documentations of an oral statement
2 that is inculpatory of the Defendant, and that is
3 distinguished from other -- that is not work
4 product. That's documentation of the statements of
5 the Defendant, which is fully producible under
6 Rule 5.

7 THE COURT: I disagree. There is a case
8 that is right on the subject of an officer's notes.

9 MR. KULP: Okay.

10 THE COURT: You can check into that, if
11 you want to get back to me on that.

12 MR. KULP: Yes, sir.

13 THE COURT: If you want to respond to
14 that, I'll let you do that. We will reserve that
15 one, but I believe the State is correct under its
16 assertion --

17 MR. KULP: Thank you, sir.

18 THE COURT: -- about independent notes of
19 an officer. If those notes are the Defendant's
20 statement, that's one thing. That is a different
21 thing. But if those are just his independent notes
22 to transfer to the statement, I think there's a case
23 that's right on that subject.

24 MR. KULP: Okay. And I mentioned this
25 also, Your Honor, because the interrogation process

1 covered a three-day period, and as well there was --
2 for hours in different increments. We would ask the
3 Court to compel the State to produce those for in
4 camera review to make a determination if, in fact,
5 appropriate.

6 THE COURT: I will be willing to do that.

7 MR. KULP: All right.

8 THE COURT: I will let you look at that
9 case first.

10 MR. KULP: Yes, sir.

11 THE COURT: Where were we at now? Does
12 that take us to number 44?

13 MR. KULP: 43, Your Honor.

14 THE COURT: 43.

15 MS. CLIFFORD: And, Your Honor, just for
16 the record, I want to put down -- and I haven't
17 talked to the officers about this, and I've only got
18 two officers here out of the number of officers that
19 were involved in this case. I honestly don't know
20 from my past dealings with police officers if, in
21 fact, any notes were taken. Some officers keep them,
22 some don't. This is, you know, a long time ago in
23 terms of the number of murders that have happened in
24 North Charleston.

25 I don't think anything that was

1 exculpatory would have been destroyed, but if they
2 were just notes that were later reduced to a
3 supplemental report or an incident report, they may
4 not have kept those, and they are not required to.
5 So I will tell them right now not to destroy
6 anything.

7 THE COURT: Okay.

8 MS. CLIFFORD: But I'm saying I can't
9 guarantee that initial handwritten reports --

10 THE COURT: I understand that. You check
11 into that.

12 MS. CLIFFORD: Okay.

13 THE COURT: Number 43, all statements,
14 notes made by Detective Clayton?

15 MR. KULP: I think we just addressed
16 that.

17 THE COURT: Okay. Number 44.

18 MR. KULP: I haven't received anything
19 indicating --

20 THE COURT: We have talked about forensic
21 analysis of Defendant's clothing, haven't we?

22 MR. KULP: Right. In other words, we
23 haven't produced it for today, or if I do get a copy
24 on that, I'm happy to provide it. I'm confused about
25 that.

1 But in any event, we -- in the report of
2 the examination of the Defendant's clothing of the
3 SLED report, it says no blood detected, no hair
4 found. We're just trying to find out if there's --
5 if SLED has been asked or if they're conducting any
6 analysis of the Defendant's clothing to determine if
7 they can tell or subject to examination to determine
8 if there was -- if there is any smoke or fire or ash
9 or soot residue or anything to that nature.

10 THE COURT: Okay.

11 MS. CLIFFORD: I will ask SLED.

12 THE COURT: Okay.. 45, statements of all
13 witnesses associated with an alibi. I assume that
14 she's still going to give you all of the statements
15 that she has.

16 MR. KULP: Can I beg the Court's
17 indulgence for a second?

18 (Counsel confers with his client.)

19 MR. KULP: Sorry, Your Honor.

20 THE COURT: Hold on just a second.

21 (The proceedings were interrupted.)

22 THE COURT: Yes, sir.

23 MR. KULP: If -- I think you might have
24 said this, Your Honor, but in terms of number 45, if
25 that falls within your purview of the statements that

1 will be produce --

2 THE COURT: She said she is going to give
3 you all of the statements by September 1st.

4 MR. KULP: Okay. And I think 46 would
5 fall under that as well.

6 THE COURT: Okay.

7 MR. KULP: And, for the record, referring
8 to my letter to Ms. Clifford in this regard dated the
9 23rd of July --

10 THE COURT: Okay. 47, about the cut on
11 the Defendant's hands, can you clarify that for me?

12 MR. KULP: Yes, sir. That would fall
13 within our earlier request for copies of all
14 photographs taken by the authorities because my
15 client indicates there were photographs taken as
16 well, not only of the crime scene and other things
17 but of his body and hands and face and so forth.

18 THE COURT: State's position.

19 MS. CLIFFORD: Your Honor, we will do
20 that along with the other pictures that we talked
21 about.

22 THE COURT: Okay. 48, Detective Clayton
23 kept the notes regarding the cuts on the Defendant's
24 hands. You're going to check on that? You're going
25 to check into the notes?

1 MS. CLIFFORD: Your Honor, this is
2 Detective Clayton sitting next to me.

3 THE COURT: All right.

4 MS. CLIFFORD: He doesn't recall any
5 notes. He says he believes he put some information
6 into the report itself about cuts, but we will go
7 through and check that.

8 THE COURT: Okay. He makes reference to
9 page 36 of the transcript reflecting that Detective
10 Clayton kept notes. Check into that, please.

11 MS. CLIFFORD: Okay.

12 MR. KULP: I have got that right here,
13 Your Honor. And it's right in front of me, and it
14 basically says --

15 THE COURT: If those notes exist, do not
16 destroy those notes.

17 MS. CLIFFORD: Yes, sir.

18 THE COURT: That is okay, Mr. Kulp. She
19 is going to check on that.

20 MR. KULP: Yes, sir.

21 THE COURT: 49, notation that the police
22 interviewed someone on ~~East Street~~ as a result of
23 the relationship between the McMenemy murder to the
24 murder of Theresa Haught, H-A-U-G-H-T, copies of
25 statements or investigative results of any contact

1 with someone on Buist Avenue. Do you have anything
2 in that regard?

3 MS. CLIFFORD: No, Your Honor. But he'll
4 have all of the statements here, and I'll be copying
5 the statements with the incident report in the other
6 case. So if there's anything, he will get it.

7 THE COURT: Okay. Anything else?

8 MR. KULP: Yes, sir. Yes, Your Honor,
9 the discovery also indicates, in terms of an item of
10 evidence, that there was a Casio -- the front and
11 back or back of some dissembled parts of a Casio
12 wristwatch, which were found at the scene near or in
13 proximity to the body of the deceased. It may be in
14 those pages that I don't have the copies. But I
15 don't know if that's been submitted for analysis or
16 anything forensically has been done with that as
17 well.

18 THE COURT: Do you know?

19 MS. CLIFFORD: Your Honor, I don't know
20 off the top of my head, but we'll -- no, and I've
21 been told it hasn't, but we will -- that's one of the
22 things we will go over when we go over all of the
23 evidence.

24 THE COURT: Any problem with that,
25 Mr. Kulp, when you meet with her to go over that?

1 MR. KULP: I'll meet with her and then
2 get back to the Court, Your Honor.

3 THE COURT: Okay.

4 MR. KULP: That seems to be a very
5 important item of evidence. As well there was a meat
6 cleaver that was photographed I believe and found at
7 the scene. I don't know if that has been submitted
8 for any type of analysis.

9 THE COURT: Do you know?

10 MS. CLIFFORD: No, it has not. Your
11 Honor, I was informed the Casio watch was completely
12 charred by the fire. I don't know the condition of
13 the knife.

14 THE COURT: Is that one of those items
15 that you --

16 MS. CLIFFORD: That's what he just talked
17 about, but we'll go through -- we will literally, if
18 Mr. Kulp wants to, we can go down there and visually
19 look at all of the items that were taken into
20 evidence -- what's still here, what hasn't been sent
21 up to SLED yet and see what tests have been
22 requested. I will put in a request for test that
23 need to be done that haven't been done, in addition
24 to sending some of the items off to the FBI lab.

25 THE COURT: Okay. Is that satisfactory

1 to you, Mr. Kulp?

2 MR. KULP: I'm ready, willing and able,
3 Your Honor. Yes, sir. We're ready, willing and able
4 anytime to take any of those steps --

5 THE COURT: Okay.

6 MR. KULP: -- personally.

7 MS. CLIFFORD: Your Honor, I would note
8 for the record sending this off to the FBI lab,
9 obviously, we're one of 50 states, not counting any
10 of the territory. And I don't think I will have the
11 authority or the power to put -- have the FBI put us
12 ahead of everybody else.

13 THE COURT: No.

14 MS. CLIFFORD: So there is going to be
15 some lag time, probably more than what we have with
16 SLED.

17 MR. KULP: We understand that.

18 THE COURT: Okay.

19 MR. KULP: Just -- it was addressed a
20 minute ago, I thought, Your Honor, but in terms of
21 our request for production of photographs, I think
22 the Solicitor mentioned there was some video tapes
23 and some of them contained, I think, the Defendant's
24 interrogation process.

25 THE COURT: She's going to give you

1 everything as long as you arrange to pay for copies.

2 MS. CLIFFORD: Right. The videos are
3 copies we got from the TV station of -- you know,
4 which show him making what we consider to be a
5 confession apologizing for what happened. I'm trying
6 to explain what happened.

7 MR. KULP: Right. But -- so for clarity
8 sake, is that -- I'm trying to find out if there were
9 any audio or video tape recordings made of any aspect
10 of the interrogation process.

11 MS. CLIFFORD: No.

12 THE COURT: Okay. Anything else? I
13 notice you have a Motion to Dismiss for failure to
14 comply with discovery. I don't -- unless you've got
15 something that you want to specifically add, I'm not
16 inclined to grant that at this point, Mr. Kulp.

17 MR. KULP: I understand that, Your
18 Honor. My various points in this argument would be
19 that it's based upon the -- whether innocent, and I'm
20 certainly not asserting that anything has been done
21 calculatedly. I understand the representations made
22 by the State, and I'm familiar with them. But it's
23 just that we're -- my client, this is the only case
24 for him, and we're just anxious to have some
25 answers --

1 THE COURT: I understand.

2 MR. KULP: -- and it will help us decide
3 how to proceed, Your Honor, in the economy and the
4 Court's time.

5 THE COURT: Okay. I have reviewed the
6 case law, and I'm denying the Motion to Dismiss.

7 MR. KULP: Okay. Finally, Your Honor, I
8 think we just had a -- we had a motion -- oh, we
9 would like to make an oral motion at this time, and
10 it might be possible the State would agree to it or
11 maybe it's underway in any event for an order -- it
12 might need an order of the Court for the Court to
13 order production of the deceased's bank records.

14 The reason we make this request is
15 twofold. There was a suspect in the case, as we have
16 identify since we've been over these lists, Dana
17 Charles. Our information is that he owed money and
18 that arose as a result of some checks that had been
19 returned by the bank and were unpaid.

20 I think that because of the police
21 identification of this person as a potential suspect
22 it certainly is exculpatory, and if, in fact, that
23 turns out to be the case, it can be documented by
24 bank records. It involves no intrusion on anyone,
25 and if there are concerns and if there is any costs

1 associated, we'll, you know, certainly be willing to
2 pay for it.

3 The other issue, Your Honor, is that the
4 purse of the victim was taken from the scene. It has
5 not been recovered. My client advises me that in
6 that purse was a wallet which contained a number of
7 credit cards. I don't know if the police have
8 checked to find out if those have turned up anywhere
9 or if have been used but that is a significant issue,
10 I feel. If, in fact, those records of those banks
11 who issued those cards have received transaction
12 records indicating the use of those cards, that's big
13 stuff to put it cloacally, and I think that -- I
14 can't see any reason why -- where the State would
15 resist it or any other party.

16 THE COURT: Do have you any opposition to
17 that?

18 MS. CLIFFORD: Your Honor, no, the purse
19 has never been recovered. I have talked to the
20 victim's mother myself in the past. I'm not aware of
21 any credit cards having been used. We don't mind
22 getting the bank records and checking the credit
23 card.

24 THE COURT: Okay.

25 MS. CLIFFORD: Understanding he's offered

1 to pay if there is any costs involved.

2 THE COURT: Okay.

3 MR. KULP: Very good, Your Honor. And
4 then the last issue, of course, is the motion -- I'm
5 sorry to take so long.

6 THE COURT: That's okay.

7 MR. KULP: But the last issue is our
8 motion for bond. In this case, I think we addressed
9 a few issues in our motion for -- setting of bail,
10 rather, that pertain to some of the substantive
11 issues of the case. But in short, Your Honor, I
12 would indicate that my client has no prior record. I
13 received the last page of discovery indicating that.

14 He's charged with a very serious crime as
15 indicated to me by the Lieutenant working the case
16 when I first spoke to him. This case hinges on one
17 strand of hair and as well the confession of -- made
18 by the Defendant after three days of interrogation
19 which, of course, was not video taped, not recorded,
20 and I'm not going to get into this too much. But it
21 is not in his own handwriting and is proceeded by a
22 statement taken by him on the day of the discovery of
23 the murder which is not inculpatory. He --

24 THE COURT: Who denied him bond?

25 MR. KULP: I think he probably appeared

1 before Judge Guedalia at the time. And, you know, I
2 would indicate very quickly, Your Honor, that in.--

3 THE COURT: Who denied bond on the murder
4 charge?

5 MR. KULP: Excuse me one second.

6 THE COURT: I mean it couldn't have been
7 Judge Guedalia.

8 MS. CLIFFORD: You know, I don't know if
9 he's ever been up here for a bond setting. Judge
10 Guedalia probably said he could not set bond because
11 of the possible sentence.

12 THE COURT: So he has not had bond set?

13 MR. KULP: Exactly, Your Honor.

14 THE COURT: Okay.

15 MR. KULP: He's been in jail since March
16 15th and --

17 THE COURT: He's charged with murder and
18 arson.

19 MR. KULP: Yes, sir. Arson third degree.

20 THE COURT: And there's been no bond set
21 on the arson?

22 MR. KULP: The arson has been set for
23 \$100,000 surety, Your Honor?

24 MS. CLIFFORD: \$100,000.

25 THE COURT: Okay.

1 MR. KULP: And very briefly I would
2 indicate to you, Your Honor, very quickly, he has
3 substantial ties to the community. His family has
4 been here with him. They're extremely supportive of
5 him. He has -- he had been residing with them at the
6 time that he was arrested. He has children. He has
7 a boy who is a -- psychologically disabled to a
8 degree and he has regular contact with --

9 THE COURT: All right.

10 MR. KULP: -- and his wife as well. Your
11 Honor, he was gainfully employed at the time at the
12 Texaco Plant. He -- of course, this was, as you
13 know or may know or gathered, this was his
14 girlfriend. I know he is charged with murder, but
15 we're certainly asserting at this time and forthwith
16 his innocence in this regard.

17 THE COURT: How long has he lived here?

18 MR. KULP: All of his life now, all his
19 life.

20 THE COURT: What is his -- does he have a
21 prior record?

22 MR. KULP: No, sir, he does not. And his
23 parents are here and his mother is a principle at a
24 local public school. His father is here who is
25 retired and his sister as well. And they have been

1 visiting him in jail frequently. I've been there
2 scores of times, and I think, Your Honor, the issue
3 of danger to the community -- certainly that issue
4 has to be addressed because of the allegations of
5 this offence. But the flight issue, I believe, is
6 just -- absolutely there's no basis to believe he
7 would flee.

8 In terms of the danger to the community,
9 Your Honor, I would respectfully ask that whatever
10 bond or bail that you would set, in whatever fashion,
11 that it would include electronic monitoring in some
12 respect or -- electronic monitoring to monitor his
13 presence at his house when he's not going to and from
14 work.

15 And as best I can understand, his job
16 would still be available. We haven't confirmed that,
17 but it seems that they would, in fact, hire him again
18 to work.

19 THE COURT: Okay. Yes, the State's
20 position.

21 MS. CLIFFORD: Your Honor, yes. While I
22 know that guilt or innocence is not the issue to be
23 considered necessarily during the setting of a bond,
24 I would note just because of Mr. Kulp's argument that
25 the State has a very, obviously, different opinion of

1 the evidence in this case. He was not interrogated
2 for three days. There was some informal questioning
3 along with some formal questioning and that would
4 come out at trial. He gave an oral confession. He
5 verbally confessed, and he confessed on TV to the
6 news media.

7 Your Honor, to the State's way of
8 thinking this is a solid case. There is no room for
9 doubt in terms of guilt. He does pose a risk to the
10 community by the very nature of this crime. Not only
11 do we have a very heinous murder that was committed,
12 there were defensive wounds noted that occurred
13 obviously before death. And then the establishment,
14 the building in which this occurred, was set on fire
15 in an attempt to cover up the crime.

16 Your Honor, at this point, the State
17 would oppose the setting of a bond in this matter.

18 MR. KULP: Your Honor, if I may respond
19 very briefly. I feel compelled to respond based on
20 the states argument. Number one, the fire was not
21 set to cover up the crime. I interviewed the fire
22 arson captain just the other day who indicated that
23 it was his opinion -- it would be at trial -- that
24 the fire was not set for the purpose of covering up
25 the crime. The fire was set behind the bar for some

1 other reason.

2 As well, Your Honor, the incident -- she
3 makes reference -- the State makes reference to the
4 confession. Well, there are other aspects of it,
5 which I'll briefly touch on. Number one, he gave a
6 statement when he was interviewed at the scene that
7 was not inculpatory.

8 After that, autopsy photographs in large
9 blowup form were thrown in front of him. The
10 victim's family was brought to the police station,
11 and, as well, he volunteered to provide both -- all
12 kinds of -- what they call a GSR kit, samples of his
13 blood. He did everything he could to cooperate in
14 this investigation. He was -- made himself
15 available. He came in every time they called him.

16 He offered to take a polygraph test,
17 which they would not give him when he stated to the
18 polygraph examiner that he didn't do it and the test
19 was cut short. He came in that Saturday.

20 He was, in fact -- elements -- a
21 significant number of aspects of ruse and deception
22 were used, such as the statement to him that the hair
23 found on his head could be matched to one area in the
24 back of his head when the police knew or should have
25 known that that was not forensically possible based

1 on microscopic examination. A ruse was made in terms
2 of the phone call Saturday. He was told a whole host
3 of other things.

4 Then three days later, he is -- this
5 confession they're talking about comes out when they
6 hand write out a statement and get him to sign it in
7 a murder case which isn't audio or video taped, and
8 then they call the police -- excuse me, the local
9 media, let him go smoke a cigarette out in front of
10 the police station, parade him out in the back where
11 the cameras are waiting. Now, that's the
12 confession. Thank you.

13 MS. CLIFFORD: Your Honor, he asked to
14 speak to the press. He was advised not to by the
15 cops. We can get into this back and forth.

16
17 THE COURT: I understand. I don't need
18 to go back and forth with the facts. I've heard the
19 information I need.

20 MS. CLIFFORD: Your Honor, if, in fact,
21 you're inclined to grant a bond on the murder, we
22 would ask that you grant that, in addition, to the
23 \$100,000 surety bond and do it in the rang of 150- to
24 200,000.

25 MR. KULP: Thank you, Your Honor.

1 THE COURT: I'm going to set --

2 MS. CLIFFORD: And, Your Honor, just for
3 the record, I want to put in I didn't realize we were
4 doing the bail motion today. I thought today -- I
5 was given notice it was only the discovery. The
6 victim's family has not been notified, but I will
7 explain that to them.

8 THE COURT: Okay. I want to set a -- I
9 think there is some possible danger to the
10 community. I'm going to set a \$125,000 surety bond
11 consolidated to both charges.

12 MR. KULP: Okay. Thank you, Your Honor.
13 We will -- if need be, I'll report back to you or ask
14 for additional examination of the Court of these
15 issues that we are going to mutually resolve.

16 MS. CLIFFORD: Your Honor, can I ask also
17 that you add --

18 THE COURT: I'm going to --

19 MS. CLIFFORD: -- as Mr. Kulp requested
20 electronic monitoring.

21 THE COURT: I was about to do that.
22 Well, I'm going to just impose that condition about
23 electronic monitoring. The Defendant is to be
24 monitored in regard to being able to leave to go back
25 and forth to work. Okay.

1 MR. KULP: Thank you, Your Honor.

2 MS. CLIFFORD: Your Honor, I'm sorry.

3 Just for clarification, does that mean he's supposed
4 be at home unless he's working?

5 THE COURT: He's supposed to be at home
6 except for when he's going to and from work.

7 MS. CLIFFORD: So house arrest?

8 MR. KULP: Or for visiting with me,
9 should he make bond.

10 MS. CLIFFORD: Okay.

11 THE COURT: He can visit with his
12 attorney also.

13 MS. CLIFFORD: Okay. So house arrest in
14 addition.

15 MR. KULP: Yes, sir. Thank you.

16 THE COURT: Thank you.

17 ---END OF TRANSCRIPT OF RECORD---

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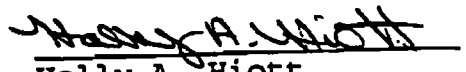
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1 I, the undersigned, Holly A. Hiott, Official Court
2 Reporter for the Ninth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the
4 foregoing is a true, accurate and complete Transcript
5 of Record of all the proceedings had and evidence
6 introduced in the trial of the captioned case,
7 relative to appeal, in the Circuit Court for
8 Charleston County, South Carolina, on the 7th day of
9 August, 1997.

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

12
13 October 29, 1997

14
15 
16 Holly A. Hiott
17 Circuit Court Reporter
18
19
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21
22
23
24
25

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS

5 STATE OF SOUTH CAROLINA)

6) TRANSCRIPT OF RECORD

7 V.)

8 WESLEY MAX MYERS)

9 DEFENDANT.)

10 OCTOBER 10, 1997
11 CHARLESTON, SOUTH CAROLINA

12
13 B E F O R E:

14 THE HONORABLE DANIEL F. PIEPER, JUDGE.
15

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

17 AIMEE CLIFFORD, ESQUIRE
18 ATTORNEY FOR THE STATE

19 TIMOTHY CLAY KULP, ESQUIRE
20 ATTORNEY FOR THE DEFENDANT

ORIGINAL

21
22 STACY L. SHEPPARD
23 CIRCUIT COURT REPORTER
24
25

1 (THE FOLLOWING PROCEEDINGS WERE HELD ON
2 OCTOBER 10, 1997.)

3 THE COURT: OKAY. I UNDERSTAND YOU HAVE SOME
4 DISCOVERY MATTERS YOU WANT TO BRING TO THE ATTENTION
5 OF THE COURT.

6 MR. KULP: YES, SIR, YOUR HONOR. WE WROTE YOU
7 AND A COPY TO THE SOLICITOR RECENTLY ASKING FOR A
8 COUPLE OF THINGS. AND ONE WAS, AS YOU SUGGESTED WHEN
9 WE WERE LAST BEFORE YOU, THE OPPORTUNITY FOR YOU TO
10 REVIEW OR MAYBE ASSIST US IN THE PROVISION OF
11 DISCOVERY IF IT WASN'T ACHIEVED AS INDICATED BY THE
12 STATE AT OUR LAST APPEARANCE BEFORE YOU.

13 WE'RE NOT REALLY GETTING ANYWHERE. AND WE FEEL
14 LIKE WE'RE GETTING JERKED AROUND. IT'S A SERIOUS
15 CASE. AND WE NEED -- WE'VE ASKED FOR THE COURT'S
16 INTERVENTION.

17 THE COURT: WHAT IS IT THAT YOU'RE AFTER THAT YOU
18 FEEL THEY HAVEN'T DONE. USUALLY, MS. CLIFFORD IS
19 PRETTY GOOD ABOUT TURNING OVER EVERYTHING.

20 MR. KULP: AS A RULE -- AND IN THIS CASE WE'RE
21 JUST FRUSTRATED ABOUT WHAT WE'RE NOT ABLE TO GET DONE
22 AND PROCEED.

23 SPECIFICALLY, YOUR HONOR, THE PRIMARY THING IS WE
24 HOPED TO HAVE USED THE TRANSCRIPT FROM OUR LAST
25 HEARING BEFORE YOU AS A CHECKLIST AGAINST THE

1 SOLICITOR'S INDICATIONS OF WHAT THEY WOULD BE WILLING
2 TO DO WITHOUT COURT INTERVENTION AND WITHOUT
3 FURTHER--

4 THE COURT: I REMEMBER WE WENT THROUGH A VARIETY
5 OF ITEMS. I DON'T HAVE ALL THE FORMAT.

6 MR. KULP: RIGHT. AND I WAS NOT TALKING AND
7 MAKING NOTES AS I SPOKE. AND SO I WAS GOING TO USE
8 THE TRANSCRIPT. WE HAD HOPED TO GET THE TRANSCRIPT BY
9 NEXT FRIDAY. HOWEVER, LATE YESTERDAY AFTERNOON, WE
10 RECEIVED AN ORDER INDICATING THAT THE REPORTER WAS
11 EXTENDED UNTIL NOVEMBER THE 11TH, I BELIEVE, BEFORE
12 WE'LL EVER EVEN SEE A COPY OF THAT TO USE AS A
13 CHECKLIST.

14 SO TO ANSWER YOUR QUESTION, YOUR HONOR, IF I HAD
15 THE TRANSCRIPT, I WOULD HAVE BEEN ABLE TO PREPARE A
16 VERY COGENT LIST OF THINGS. BUT LET ME AT LEAST SAY
17 THAT THERE ARE A SUBSTANTIAL NUMBER OF THINGS THAT WE
18 HAVEN'T RECEIVED.

19 AS OF SEPTEMBER THE 19TH, WE PROVIDED THE
20 SOLICITOR'S OFFICE WITH CONSENT ORDERS, HOPEFULLY --
21 HOPING THEY WOULD CONSENT TO THEM SO THEY WOULD HAVE
22 BEEN FILED AND GET SOME OF THESE THINGS DONE LIKE SOME
23 FORENSIC TESTING, PRODUCTION OF BANK RECORDS, WHICH
24 THE SOLICITOR SAID, BACK WHEN WE APPEARED BEFORE YOU
25 BEFORE, THEY WOULD PROVIDE AND SEVERAL OTHER THINGS.

1 THE COURT: WELL, CAN WE JUST -- DO YOU RECALL
2 ANY PRODUCTION OF BANK RECORDS?

3 MR. KULP: WELL, YOUR HONOR, I HAVE ACTUALLY
4 COPIES OF THOSE CONSENT ORDERS IN FRONT OF ME. I SENT
5 THEM TO THE STATE ON THE 19TH. I HAVEN'T HEARD A WORD
6 FROM THEM SINCE EXCEPT THAT THEY DIDN'T HAVE THEM AND
7 WANTED MORE COPIES. THAT THEY MISPLACED THEM. ONE IS
8 TO PRODUCE RECORDS IN THE NORTH CHARLESTON POLICE
9 DEPARTMENT RELATING TO THE POSSIBLE INVOLVEMENT OF AN
10 INDIVIDUAL IN THE MURDER WHO MIGHT BE ASSOCIATED WITH
11 A MOTORCYCLE GANG SUCH AS THE HELL'S ANGELS.

12 THE COURT: AND I THINK, IF I RECALL CORRECTLY,
13 MS. CLIFFORD WAS GOING TO CONTACT SOMEONE JUST TO SEE
14 IF THEY HAD ANYTHING.

15 MR. KULP: I GOT NOTHING.

16 MS. CLIFFORD: YOUR HONOR, IF I MAY, SINCE WE HAD
17 OUR LAST HEARING, NOT ONLY HAS MR. KULP RECEIVED A
18 COPY OF ABSOLUTELY EVERYTHING THAT I HAVE IN OUR FILE,
19 AND THIS IS ONLY A PORTION OF IT, YOU SEE THAT BRIEF
20 CASE, I HAVE ABOUT ANOTHER EXPANDABLE WALLET FULL OF
21 PAPERS. HE'S GOT A COPY OF EVERYTHING THAT I HAVE.

22 HE AND I HAVE GONE TOGETHER TO THE POLICE
23 DEPARTMENT AND WE'VE REVIEWED ALL THE EVIDENCE THAT
24 THEY HAVE IN THEIR POSSESSION. WE HAVE ACTUALLY ASKED
25 THE NORTH CHARLESTON POLICE DEPARTMENT TO SEND MORE

1 EVIDENCE THAT THEY HAD UP TO S.L.E.D. THAT HAD NOT
2 BEEN PREVIOUSLY UP TO S.L.E.D. FOR TESTING OR
3 EXAMINATION. HE HAS PHOTOGRAPHED THOSE ITEMS.

4 I'VE ALSO PROVIDED HIM WITH A COPY OF THE FILE ON
5 THE OTHER INDIVIDUAL. IF YOU WILL RECALL, THERE IS
6 ANOTHER INDIVIDUAL WITH, I BELIEVE, A PENDING MURDER
7 OR ATTEMPTED MURDER CHARGE IN THIS COUNTY. AND
8 TERESA, THE VICTIM, IN THIS CASE WAS A WITNESS. AND
9 WE HAD PROVIDED HIM WITH A COPY OF THAT FILE AS WELL.

10 THERE ARE A FEW THINGS THAT WE HAVE TALKED ABOUT
11 -- BUT I DO HAVE A COPY OF THE FAX FROM SEPTEMBER THE
12 19TH -- THE MOTIONS -- I'M SORRY, THE CONSENT ORDERS
13 THAT HE HAS PREPARED. WE HAVE TALKED ABOUT IT.

14 AND I WILL BE HONEST WITH YOU, I'VE TALKED TO THE
15 POLICE DETECTIVE. HE WAS GOING TO BE LOOKING FOR
16 RECORDS RELATING TO A MOTORCYCLE GANG THAT THIS
17 FELLOW, I THINK, BRIAN IS INVOLVED IN. THAT MR. KULP
18 THINKS THAT SOMEHOW MIGHT BE RELATED TO THE MURDER OF
19 TERESA.

20 AND I TALKED TO DETECTIVE CLAYTON THIS MORNING,
21 UNFORTUNATELY, THERE HAVE BEEN SEVERAL MURDERS IN
22 NORTH CHARLESTON SINCE SEPTEMBER THE 19TH. HE SAYS HE
23 HAS NOT YET FOUND THE FILES, BUT HE HAS LOOKED FOR
24 THEM AND HAS OTHER PEOPLE LOOKING FOR THEM. IF, IN
25 FACT, THEY DO HAVE RECORDS ON THAT, WE PLAN TO TURN

1 THOSE OVER.

2 THERE IS A CONSENT ORDER FOR TESTING OF THE
3 DEFENDANT'S BLOOD BY THE SOUTH CAROLINA LAW
4 ENFORCEMENT DIVISION. I HAVE NOT DONE ANYTHING WITH
5 THAT YET, YOUR HONOR, BECAUSE MR. KULP AND I HAVE BEEN
6 TRYING TO ARRANGE A DATE WHEN WE CAN GO UP TO S.L.E.D.

7 S.L.E.D. HAD INDICATED AT ONE POINT THAT THEY
8 WOULD PREFER WE BOTH COME UP TOGETHER SO THAT NOTHING
9 THEY SAY TO EITHER ONE CAN BE MISCONSTRUED. THAT WE
10 BOTH GET THE SAME MESSAGE AT THE SAME TIME. THEY
11 DON'T HAVE TO DO IT MORE THAN ONCE. THEY ALSO WANT US
12 TO MAKE AN APPOINTMENT IN ADVANCE.

13 UNFORTUNATELY, EVERY TIME SOMETHING -- WE'VE
14 TRIED, SOMETHING HAS COME UP IN ONE OF OUR SCHEDULES.
15 WE HAVEN'T BEEN ABLE TO DO IT YET. BUT WE ARE WORKING
16 TOWARDS THAT.

17 AT THAT POINT I WAS GOING TO ASK THAT S.L.E.D.
18 FORENSIC PEOPLE ABOUT -- THE SEROLOGY PEOPLE -- ABOUT
19 THE TEST THAT HE WANTS THE DEFENDANT'S BLOOD SAMPLE TO
20 SEE IF THE COMPOUND THAT HE'S LOOKING FOR IS PRESENT
21 IN THE DEFENDANT'S BLOOD.

22 THE BANK RECORDS, YOUR HONOR, I DON'T REMEMBER
23 THOSE COMING UP THE LAST TIME. I DON'T NECESSARILY
24 HAVE A PROBLEM WITH THOSE. AND WE JUST HAVEN'T GOTTEN
25 A SEARCH WARRANT. WE CAN'T GET THOSE BY SUBPOENA. WE

1 CAN TRY TO GET THOSE BE SEARCH WARRANT OR A COURT
2 ORDER. I DON'T KNOW IF THERE'S PROBABLE CAUSE TO GET
3 THEM FOR A COURT ORDER. AND THAT HAS BEEN SOME
4 CONCERN ON MY PART. IF, YOUR HONOR, WILL ORDER US TO
5 DO IT BY WAY OF SUBPOENA, WE CAN DO THAT.

6 THE COURT: WHAT ARE THE BANK RECORDS YOU'RE
7 SEEKING AGAIN, MR. KULP?

8 MS. CLIFFORD: THEY'RE VICTIMS.

9 MR. KULP: YOUR HONOR, THE VICTIM'S PURSE WAS
10 TAKEN IN THE CASE AND IT NEVER SURFACED. WE BELIEVE
11 THAT SHE HAD CREDIT CARDS AND OTHER TYPE OF FINANCIAL
12 MATERIAL IN THERE THAT MAY HAVE BEEN USED BY SOMEONE
13 AT SOME FUTURE TIME. WE'D LIKE TO EITHER DETERMINE
14 THAT OR EXCLUDE THAT AS A POSSIBILITY.

15 BUT IF I MIGHT ADDRESS THE SOLICITOR'S RESPONSE,
16 MY CLIENT'S BEEN IN JAIL SINCE MARCH THE 15TH. YOU
17 WOULD THINK THAT WHEN I ASKED FOR THESE THINGS LIKE
18 THE TESTING OF MY CLIENT'S BLOOD, SAMPLES THEY DREW
19 THE DAY AFTER THE MURDER FOR THE PRESENCE OF
20 CARBOXYHEMOGLOBIN ELEVATED LEVELS TO DETERMINE IF HE
21 WAS IN THE PRESENCE OF SMOKE, THEY WOULD RUSH TO DO
22 IT.

23 IT ALMOST IS STRANGE THAT I AM ASKING IN EFFECT
24 FOR EVIDENCE TO BE PROCESSED IN THE CASE. AND I'M NOT
25 GETTING ANYWHERE. I'M NOT GETTING ANYWHERE. I'VE

1 TRIED TO FILE MOTIONS, CONSENT ORDERS, REQUESTS,
2 EVERYTHING.

3 AND IN TERMS OF GOING OVER TO VIEW THE EVIDENCE
4 IN THE CASE, WE DID SEE THE EVIDENCE. AND, IN FACT,
5 WHAT I SAW WAS EXTREMELY DISTURBING. WHAT I SAW WAS
6 THE FACT THAT THE VICTIM'S BLOODY CLOTHING HAD NOT
7 BEEN SENT TO S.L.E.D. FOR ANALYSIS, WAS SITTING AT THE
8 NORTH CHARLESTON POLICE DEPARTMENT. A MEAT CLEVER
9 THAT THEY DIDN'T KNOW IF IT HAD BLOOD ON IT, IS STILL
10 SITTING THERE. AND THAT THE OTHER SUSPECT IN THE CASE
11 HAD ALREADY HAD HIS CLOTHES RETURNED TO HIM AND NEVER
12 BEEN TESTED BY S.L.E.D. BUT HE DIDN'T PICK UP THE
13 KNIFE THEY TOOK FROM HIS CAR. THEY DESTROYED THAT.

14 I'M SIMPLY TRYING TO GET A FAIR SHAKE IN THIS
15 MATTER. AND I'M SIMPLY TRYING TO HAVE -- AND AT THIS
16 POINT, I'M HERE BEFORE YOU, YOUR HONOR, BECAUSE I
17 THINK THAT THE INTERVENTION OF THE COURT IS
18 NECESSARY. IN TERMS OF GOING TO S.L.E.D. AND SEEING
19 THE EVIDENCE, I HAVE MADE COUNTLESS REQUESTS. I EVEN
20 DROVE TO COLUMBIA ONE DAY AND WAS HALF WAY TO THE
21 S.L.E.D. OFFICE WHEN I GOT A CALL SAYING DON'T GO.

22 YOU KNOW, AND I WENT BACK AND READ RULE 5 AND IT
23 DOESN'T SAY YOU HAVE A RIGHT TO REVIEW SCIENTIFIC
24 EVIDENCE IN THE CASE AS LONG AS THE SOLICITOR'S
25 PRESENT. TIME IS PASSING. CHRISTMAS WILL BE HERE

1 BEFORE YOU KNOW IT. MY CLIENT'S SITTING IN JAIL UNDER
2 A BOND HE CAN'T MAKE.

3 I'M ASKING FOR THINGS I THINK THAT WE'RE ENTITLED
4 TO. IN ALL RESPECT TO MS. CLIFFORD, RESPONSES LIKE,
5 WELL, WE'RE GETTING AROUND TO THAT OR WHATEVER.
6 THAT'S JUST NOT SUFFICIENT FOR THE DEFENSE.

7 NOW, THERE'S NO SPEEDY TRIAL ACT AT THE STATE
8 COURT LEVEL. BUT THESE ARE THINGS THAT I THINK THAT
9 WE HAVE AN ABSOLUTE RIGHT TO HAVE UNDER THE PROVISIONS
10 OF DISCOVERY, COMMON LAW AND RULE FIVE, ITSELF, IN
11 ADDITION TO FEDERAL CASES THAT APPLY.

12 I'VE TRIED TO MAKE IT AS EASY AS POSSIBLE TO
13 ACHIEVE WITHOUT INTERVENTION OF THE COURT BY PROPOSING
14 CONSENT ORDERS. ONE, FOR THE TEST OF HIS BLOOD FOR
15 THE PRESENCE OF ELEVATED LEVELS OF CARBOXYHEMOGLOBIN.
16 ONE, TO DIRECT S.L.E.D. TO GO AHEAD AND EXPEDITE
17 TESTING OF THINGS.

18 THE ONLY TESTS THEY CONDUCTED, THERE ARE TWO
19 TESTS IN THIS MURDER CASE. ONE, IS A MICROSCOPIC
20 VISUAL EXAMINATION OF HAIR SAMPLES THAT WE NOW FIND
21 OUT WERE COMMINGLE WHEN COLLECTED THAT WERE
22 MISREPRESENTED TO MY CLIENT AS BEING POSITIVE MATCH TO
23 HIS HEAD. AND SECONDLY, TEST OF THINGS TAKEN FROM HIS
24 TRUCK THAT HE WAS TOLD WERE COVERED WITH THE VICTIM'S
25 HAIR AND BLOOD, WHICH LATER FOUND OUT TO BE NOT TRUE.

1 THERE ARE TWO PIECES OF EVIDENCE IN THIS CASE. A
2 MICROSCOPIC HAIR VISUAL ANALYSIS AND THE DEFENDANT'S
3 STATEMENT. THAT'S IT.

4 I'M TRYING TO HAVE WHAT I THINK WE HAVE A RIGHT
5 TO AND THAT IS THE TESTING OF THINGS, WHICH MAY VERY
6 WELL PROVE TO BE AGAINST US. BUT THE FACT THAT THE
7 EFFORTS ARE BEING MADE BY THE STATE OR S.L.E.D.'S BUSY
8 OR THEY CAN'T GET TO IT, I THINK WHAT IT MEANS, AT
9 LEAST, IS THAT EITHER -- ACTUALLY BOTH -- IS THAT THE
10 COURT, WE RESPECTFULLY WOULD REQUEST, WOULD ORDER THAT
11 THESE THINGS BE DONE. AND SECONDLY THAT THEY ADDRESS
12 THE ISSUE BOND, WHICH I WROTE YOU ABOUT. THE FORM OF
13 THE \$125,000 BOND. THE--

14 THE COURT: WHAT IS THE ISSUE ABOUT THE FORM OF
15 THE BOND?

16 MR. KULP: YOUR HONOR, RULE 4 (B)--

17 THE COURT: I SET A BOND--

18 MR. KULP: YOU SET A BOND, YOUR HONOR, OF
19 \$125,000 SURETY, A COLLECTIVE BOND WITH CERTAIN
20 PROVISIONS AND CONDITIONS ATTACHED, WHICH I CAN'T,
21 SPECIFICALLY RECITE BECAUSE I DON'T HAVE THE
22 TRANSCRIPT.

23 THE COURT: WELL, WHAT IS THE QUESTION ABOUT THE
24 FORM OF THE BOND, IT'S \$125,000 SURETY?

25 MR. KULP: RIGHT. THE FORM OF THE BOND IS THIS,

1 SPECIFICALLY, YOUR HONOR, WHEN WE APPEARED BEFORE
2 JUDGE COTTINGHAM, WE HAD A VERY SHORT HEARING. AND HE
3 REFUSED TO LOWER THE AMOUNT OF THE BOND, WHICH I WAS
4 MOVING THAT HE DO AT THAT TIME.

5 WHAT I'M ASKING THE COURT TO DO NOW, NOT IN
6 VIOLATION OF RULE 4 (B) OF THE RULES OF CRIMINAL
7 PROCEDURE TO RECONSIDER JUDGE COTTINGHAM'S DECISION,
8 AND, OF COURSE, LET ME SAY AS A SIDE NOTE, THAT WE
9 DON'T HAVE THE RIGHT TO CONTROL WHO WE GO BEFORE WHEN
10 WE FILE A MOTION. THE UNIQUE CIRCUMSTANCE IN THIS
11 CASE -- IN A CRIMINAL CASE IN SOUTH CAROLINA IS THAT
12 ONE OF THE LITIGANTS GETS TO CALL THE CASE. BUT IN
13 ANY EVENT WE--

14 THE COURT: WELL, NOT ONLY WOULD YOU BE ASKING ME
15 TO RECONSIDER JUDGE COTTINGHAM'S DECISION, YOU WOULD
16 BE ASKING ME TO RECONSIDER MINE.

17 MR. KULP: NO, YOUR HONOR, RESPECTIVELY, I'M
18 ASKING -- THE SECOND POINT IS TRUE. I'M NOT ASKING
19 YOU TO RECONSIDER JUDGE COTTINGHAM'S DECISION. I'M
20 ASKING YOU TO RECONSIDER YOUR DETERMINATION OF THE
21 BOND, IN TERMS OF THE FORM. AND THAT IS PURSUANT TO
22 17-15-15 BY DEPOSITING A CASH PERCENTAGE IN LIEU OF
23 BOND UP TO BUT NOT EXCEEDING TEN PERCENT OF THE FACE
24 VALUE OF THE BOND.

25 FOR THE REASON THAT'S THIS, I AM TRYING TO DO

1 EVERYTHING THAT I CAN TO EXPEDITE THIS CASE. I AM
2 TRYING TO TAKE STEPS TO DETERMINE WHETHER OR NOT THE
3 CASE SHOULD BE A TRIAL, A PLEA OR WHATEVER TO SEE IF
4 THERE'S ANY ADDITIONAL INCRIMINATING OR EXCULPATORY
5 EVIDENCE. I DON'T KNOW WHAT ELSE I CAN DO.

6 AND SECONDLY, IN THE MEANWHILE, MY CLIENT SITS IN
7 JAIL. I DON'T THINK THAT HE OUGHT TO BE PUNISHED BY
8 THE FACT THAT THE STATE CAN'T SEEM TO GET AROUND TO
9 DOING WHAT IT IS SUPPOSE TO BE DOING AND SHOULD BE
10 DOING IN A CASE THIS SEVERE. AND I THINK THAT HE
11 NEEDS TO BE OUT. I NEED HIM TO HELP ME TO INTERVIEW
12 THESE NUMEROUS PEOPLE THAT HAVE POPPED UP IN THE
13 SECOND BATCH OF DISCOVERY RECEIVED FOUR OR FIVE MONTHS
14 AFTER REQUESTED. AND I NEED HIM OUT.

15 HE CAN'T MAKE THAT BOND. AND I'M SIMPLY ASKING
16 YOU TO CONSIDER, IN TERMS OF THE FORM OF THE BOND
17 PURSUANT TO THAT STATUTE, TO ALLOW HIM TO PUT UP FIVE
18 PERCENT, TEN PERCENT OF THE FACE VALUE OF THE BOND
19 SUBJECT TO ALL THE CONDITIONS THAT WE DISCUSSED BEFORE
20 IN TERMS OF HOUSE ARREST, ELECTRONIC MONITORING OR ANY
21 OTHER CONDITIONS THE COURT WOULD SEE FIT TO IMPOSE.
22 SO THAT I CAN HAVE HIM WORK WITH ME.

23 BECAUSE I'LL TELL YOU QUITE FRANKLY, AND THIS IS
24 MY LAST COMMENT, YOUR HONOR, THE DEFENSE STATUS IN
25 THIS CASE AT THIS POINT IS THAT I'VE GOT TO GO OUT NOW

1 WITH MY INVESTIGATOR AND I'VE GOT TO TRY TO SOLVE THIS
2 CASE. THERE WERE PEOPLE WHO WERE IDENTIFIED AS
3 SUSPECTS WHO HAVEN'T BEEN INTERVIEWED BY THE POLICE.
4 I'VE GOT TO GO DO THAT NOW. AND I NEED MY CLIENT'S
5 ASSISTANCE IN DOING THAT.

6 THE COURT: WELL, I WOULD BE PRESENTED WITH THAT
7 IN EVERY CASE, MR. KULP. EVERYBODY WILL TELL ME THAT
8 THEY NEED TO BE OUT TO PREPARE THEIR CASE.

9 MR. KULP: CERTAINLY, YOUR HONOR, BUT THE
10 QUESTION IS, HERE WE ARE, YOU KNOW, SEVEN -- SEVEN
11 MONTHS AFTER THE FACT. I WOULD FEEL FOOLISH IN ASKING
12 YOU THAT SAY AFTER THE FIRST MONTH OR SO.

13 THE COURT: I WOULD THINK THAT WOULD BE FOOLISH.

14 MR. KULP: ABSOLUTELY. BUT HERE SEVEN MONTHS,
15 MAYBE IT WOULD BE A BETTER ARGUMENT IF WE COME BACK
16 NEXT MARCH AND THE SOLICITOR HADN'T CALLED THE CASE
17 AND HE'S BEEN IN THERE A YEAR. I MEAN, WITHOUT BEING
18 FACETIOUS, YOUR HONOR, I WOULDN'T DARE TO DO THAT, BUT
19 THAT'S THE POINT. WHERE DO WE DRAW THE LINE ON THE
20 ISSUES? AND THE ISSUE IS SIMPLY NOT SOLELY TO COME
21 AND HELP ME TO PREPARE THE CASE, BUT, AS I'VE
22 ILLUSTRATED IN THE MOTIONS WE FILED, THE LENGTHY
23 MOTION, THERE IS NO EVIDENCE OF ANY FLIGHT AND ANY
24 DANGER TO THE COMMUNITY.

25 THE STATUTE ALLOWS THE COURT TO CONSIDER THE

1 CIRCUMSTANCES OF A CASE WITHOUT TRYING IT. AND THE
2 CIRCUMSTANCES OF THIS CASE WERE SET FORTH IN OUR
3 MOTION. AND THAT IS THAT ARE MANY, MANY, MANY
4 QUESTIONS ASSOCIATED WITH THINGS THE POLICE HAVE NOT
5 DONE THAT COMPRISE THE CIRCUMSTANCES OF A CASE AS TO
6 THE ISSUE OF DANGER TO THE COMMUNITY.

7 AND AGAIN THE DEFENDANT HAS NO PRIOR RECORD.
8 THIS PENDING CHARGE IS THE ONLY CHARGE AGAINST HIM.
9 SO IT'S NOT SOLELY THE FACT THAT I NEED HIM TO HELP ME
10 IN THE CASE, BUT I'VE TRIED IN MY PLEADINGS TO THIS
11 EFFECT TO ADDRESS ALL OF THE ISSUES RELEVANT TO THE
12 ISSUE OF BOND.

13 AND AS WELL, YOUR HONOR, I BROACHED THE ISSUE OF
14 RULE 4 (B) BECAUSE I DO NOT THINK IF YOU WILL JUST
15 REMODIFY THE FORM OF THE DEFENDANT MAKING THE BOND
16 THAT YOU SET, THAT JUDGE COTTINGHAM REFUSED TO LOWER
17 IN TERMS OF AMOUNT, THAT THAT WOULD BE A PROBLEM.

18 AND APART FROM THE BOND ISSUE, YOUR HONOR, I
19 COULD SIT HERE, PROBABLY, AND I WON'T DO IT UNLESS THE
20 COURT REQUESTS IT OR I COULD DO IT BY SUBSEQUENT
21 PLEADING AND DO IT VERY WELL WHEN I RECEIVE THE
22 TRANSCRIPT, TO OUTLINE ALL THE THINGS I'VE BEEN ASKING
23 FOR A COPY OF THE VIDEOTAPE THE POLICE TOOK AT THE
24 SCENE. I HAVEN'T -- I'VE SENT FAXES -- REPEATED
25 FAXES, I GET NO RESPONSE.

1 THE COURT: WHAT IS THE PROBLEM WITH GETTING A
2 DATE? CAN YOU GIVE MS. CLIFFORD A DATE THAT YOU CAN
3 BE AVAILABLE FOR THIS BLOOD TEST?

4 MR. KULP: NO. THEY HAVE THE DEFENDANT'S BLOOD
5 AT S.L.E.D. THEY TOOK IT THE DAY AFTER THE MURDER. I
6 WROTE THEM AGES AGO, IN APRIL, AND TOLD THEM TO PLEASE
7 PRESERVE THAT BLOOD BECAUSE I KNEW THERE WOULD BE SOME
8 SUBSEQUENT FORENSIC TESTING--

9 THE COURT: DIDN'T YOU SAY S.L.E.D. WANTED THE
10 BOTH OF YOU UP THERE FOR THE--

11 MS. CLIFFORD: YOUR HONOR, S.L.E.D.--

12 MR. KULP: THEY WANTED -- EXCUSE ME, YOUR HONOR,
13 THEY WANTED US TO BOTH BE THERE TO BE ABLE TO LOOK AT
14 THINGS, YOU KNOW, AT THE SAME TIME. AND I HAVE TOLD
15 MS. CLIFFORD I'LL GO ANY DAY, I'LL GO SATURDAY, ANY
16 TIME UNLESS I HAVE A FEDERAL COURT APPEARANCE, WHICH
17 WOULD TRUMP THINGS.

18 MS. CLIFFORD: YOUR HONOR, IF I MAY, I WANT TO
19 RESPOND TO A FEW THINGS. AND I GUESS FIRST, GOING
20 THROUGH THE PROPOSED CONSENT ORDERS THAT HE'S
21 PREPARED. ONE OF THEM CONCERNS THE PRODUCTIONS OF
22 RECORDS INVOLVING AN ASSAULT OF THE VICTIM IN THIS
23 CASE BY SOMEONE NAMED BRIAN WHO IS A MEMBER OF A
24 MOTORCYCLE GANG. THE POLICE ARE LOOKING FOR THAT.
25 AND IF AND WHEN WE FIND IT, IT WILL BE TURNED OVER.

1 AND I WILL MAKE SURE THAT DETECTIVE CLAYTON KNOWS THAT
2 THIS HAS A HIGH PRIORITY. HE KNOWS THAT.

3 THE SECOND THING IS THE CONSENT ORDER DIRECTING
4 THE PRODUCTION OF RECORDS OF THE MIMS AMUSEMENT
5 COMPANY AND OF THE WACHOVIA BANK.

6 THE WACHOVIA BANK ASPECT OF THAT DEALS WITH
7 TERESA -- THE VICTIM'S IN THIS CASE'S CREDIT CARDS AND
8 CHECKBOOK. THOSE WERE NOT IN HER PURSE ON THE NIGHT
9 IN QUESTION. THEY WERE IN A BRIEF CASE, I BELIEVE,
10 THAT HER MOTHER HAS. AND HER MOTHER HAD THOSE ITEMS.
11 SO WE KNOW THEY WERE NOT USED. IN FACT, I THINK THEY
12 HAVE BEEN DESTROYED SINCE HER DEATH. THE MOTHER DID
13 NOT KEEP THEM, BUT WE CAN CHECK THAT.

14 MIMS AMUSEMENT COMPANY, HE WANTS TO HAVE DETAILS.
15 -- DETAILED FINANCIAL RECORDS RELATING TO ALL VENDING
16 OR AMUSEMENT MACHINES IN THIS PARTICULAR BAR ON THE
17 NIGHT OF THE MURDER. I FAIL TO SEE ANY RELEVANCE TO
18 THAT AT ALL.

19 THE COURT: WHAT ARE YOU GETTING AT WITH THAT
20 ONE, MR. KULP?

21 MR. KULP: I'VE TOLD THE STATE WHAT THE RELEVANCE
22 IS. THE POINT IS, IS THAT WEDNESDAY THE AMUSEMENT
23 PEOPLE COME BY TO COLLECT THE PROCEEDS OF THE TWO
24 POKER MACHINES. THEY SPLIT HALF AND HALF. HALF GOES
25 TO THE BAR, HALF GOES TO THE COMPANY. THAT MONEY

1 WOULD HAVE BEEN THERE.

2 THEN -- WHAT I NEED TO KNOW IS IF THAT MONEY, WE
3 BELIEVED, THAT SHE WOULD HAVE HAD THAT IN HER PURSE AT
4 THE TIME. AND AS FAR AS ANY INFORMATION ABOUT WHAT
5 WAS IN OR NOT IN HER PURSE, THAT'S THE FIRST I'VE
6 HEARD OF THAT AFTER SEVEN MONTHS THAT IT WAS IN THE
7 BRIEFCASE. SO MY CLIENT INDICATES AS, YOU KNOW,
8 HAVING KNOWN HER FOR A PERIOD OF TIME, THAT SHE
9 USUALLY CARRIED THOSE THINGS IN HER PURSE NOT HER
10 BRIEFCASE.

11 BUT IN ANY EVENT, THESE ARE JUST VERY SIMPLE,
12 EASY TO DO THINGS THAT WOULD EXCLUDE IT AND END THE
13 ISSUE. AND WE CAN MOVE ON THROUGH THE PROGRESS OF THE
14 CASE TO A CONCLUSION.

15 MS. CLIFFORD: YOUR HONOR, THE NEXT ITEM IS THE
16 CONSENT ORDER DIRECTING S.L.E.D. TO PERFORM ADDITIONAL
17 TESTING. I BELIEVE THE ITEMS LISTED HERE HAVE BEEN
18 SENT UP TO S.L.E.D.

19 I DO WANT TO PUT A FEW THINGS ON THE RECORD THAT
20 MR. KULP AND I DISCUSSED WHILE WE WERE AT THE NORTH
21 CHARLESTON POLICE DEPARTMENT. THE TWO BY FOUR BOARD,
22 UNFORTUNATELY, FOR MR. KULP AND MYSELF HAD A BIG THING
23 ON IT, DO NOT TOUCH. MR. KULP DIDN'T SEE THAT UNTIL
24 HE PICKED IT UP. AND I AM CONCERNED -- WE TALKED
25 ABOUT WHETHER OR NOT WE COULD ACTUALLY DO SOME TESTING

1 AND WE CAN DO FINGERPRINT TESTING. HIS PRINTS ARE ON
2 FILE JUST LIKE ANY MEMBER OF THE BAR. WE COULD
3 EXCLUDE THEM.

4 THERE WAS ALSO THE BURNED REMAINS OF THE WATCH
5 FOUND NEAR THE BODY. THAT WAS IN A BAG. THAT BAG WAS
6 OPENED BY MR. KULP AND DUMPED UPSIDE DOWN ONTO A BAG
7 THAT WE HAD LAID ON THE FLOOR TO LOOK AT THINGS. THE
8 WATCH IS INTACT AS IT WAS. IT CAN BE SENT UP TO
9 S.L.E.D. TO BE LOOKED AT.

10 HOWEVER, IF THERE WERE ANY HAIR FIBERS -- I MEAN
11 HAIRS OR FIBERS, THEY MAY HAVE BEEN LOST DURING THE
12 FACT THAT WE LOOKED AT THEM.

13 I DON'T MIND SENDING THEM UP TO S.L.E.D. WE'VE
14 TALKED ABOUT IT. I THINK THEY ARE BEING SENT UP. IF
15 THEY HAVE NOT ALREADY BEEN SENT UP, THEY SHOULD HAVE
16 ALREADY BEEN SENT UP. BUT THEIR EVIDENTIARY VALUE IS
17 QUESTIONABLE AT THIS POINT BECAUSE OF THE FACT THAT WE
18 HAVE, YOU KNOW, HAVE GOTTEN INVOLVED, IF YOU WILL,
19 PERHAPS IN THE CHAIN OF CUSTODY. IN TERMS OF--

20 THE COURT: WELL, ALL OF THOSE ITEMS HAVE BEEN
21 SENT TO S.L.E.D.?

22 MS. CLIFFORD: THEY WERE TO BE SENT NOT THE WEEK
23 WE LOOKED AT THEM, BUT--

24 MR. KULP: WE DON'T KNOW--

25 MS. CLIFFORD: I'LL VERIFY, YES, SIR. WE TALKED

1 WITH MR. HARMON DOWN THERE. AND THEY WEREN'T GOING TO
2 BE SENT UP THAT FRIDAY BECAUSE HE HAD ALREADY BEEN UP
3 TO S.L.E.D. THAT WEEK, BUT THE NEXT FRIDAY.

4 THE COURT: WELL, WHAT'S YOUR OPPOSITION TO
5 SIGNING THAT CONSENT DOCUMENT THEN IF THEY'RE BEING
6 SENT UP?

7 MS. CLIFFORD: YOUR HONOR, I DON'T HAVE AN
8 OBJECTION AS TO SIGNING THIS ORDER. IT DOESN'T SAY
9 WHAT KIND OF ANALYSIS. IT JUST SAYS THEY SHOULD BE
10 ANALYZED. WELL, FINGERPRINT, BLOOD--

11 THE COURT: WHAT KIND OF ANALYSIS ARE YOU LOOKING
12 FOR, MR. KULP?

13 MR. KULP: WELL, LET ME LOOK SPECIFICALLY AS TO
14 THE WAY I PHRASED IT. YOU KNOW, AT FIRST, I WOULD
15 DEFER TO S.L.E.D.'S FORENSIC CAPABILITIES BOTH IN
16 DETERMINING WHETHER A PIECE OF WOOD CAN STILL BE
17 EXAMINED FOR FORENSIC EVIDENCE AFTER SOMEBODY'S
18 TOUCHED IT, WHOSE FINGERPRINTS ARE KNOWN. THAT'S UP
19 TO THEM. AND AS FAR AS A WATCH, THESE WERE ITEMS THAT
20 HAVE BEEN SITTING IN THE POLICE DEPARTMENT SINCE THE
21 DAY OF THE MURDER. WHATEVER THEY FEEL APPROPRIATE
22 TRACE, FINGERPRINT, SEROLOGY.

23 ONE OF THE KEY THINGS IN THE CASE IS A NOTE FOUND
24 BEHIND THE BAR, A PINK NOTE THAT SUPPOSEDLY THE
25 DEFENDANT PICKED UP WITHOUT GLOVES ON. I HAVEN'T SEEN

1 THAT YET. THAT HADN'T BEEN TESTED FOR FINGERPRINTS.

2 I MEAN, IF I WERE TO HAVE AN HOUR HERE TO GIVE
3 YOU AN AFFECTIVE CLOSING ARGUMENT ABOUT THE PROBLEMS
4 IN THIS CASE THAT I WANT TO SEE RESOLVED, STRANGELY
5 ENOUGH AS A DEFENDANT CONSIDERING THE POSSIBILITY THEY
6 COULD ALL COME BACK AND SLAM US, IT WOULD BE
7 SHOCKING.

8 THE WATCH, A MAN'S WRISTWATCH WAS FOUND BY THE
9 VICTIM'S BODY. AND IT'S PROBABLY RIGHT NOW SITTING
10 OVER THERE IN THE NORTH CHARLESTON POLICE DEPARTMENT
11 WITH A SERIAL NUMBER ON THE BACK OF THE CROWN. I JUST
12 WANT REASONABLE--

13 THE COURT: WHAT ARE YOU GOING TO DO IF THEY SEND
14 IT BACK AND SAID WE JUST CONDUCTED THIS ONE TEST? I
15 MEAN, WHAT'S WRONG WITH HER SUGGESTING THAT Y'ALL BE
16 SPECIFIC AS TO THE KINDS OF TESTS YOU WANT PERFORMED?

17 MR. KULP: I'LL BE HAPPY TO SAY TRACE -- THAT THE
18 DEPARTMENTS THEY HAVE TRACE, SEROLOGY, TOOL MARK,
19 TRACE THE SERIAL NUMBER. THERE ARE JUST LOGICAL
20 THINGS THAT -- IN OTHER WORDS, IF WE SENT IT UP TO
21 THEM AND SAID WHAT COULD YOU DO WITH THIS
22 FORENSICALLY? THEY MIGHT SAY, WELL, WE COULD OR
23 COULDN'T DO SEROLOGY. I MEAN, THAT'S WITHIN THEIR
24 PURVIEW.

25 I CAN'T -- LOOKING AT SOMETHING, I MEAN, I DON'T

1 KNOW. AND I WOULDN'T WANT TO SAY SOMETHING AND THEN
2 LEAVE OUT A FORENSIC APPROACH THAT THEY MIGHT KNOW
3 ABOUT THAT THEY DON'T DO BECAUSE WE DIDN'T ASK FOR
4 IT. I MEAN, THEY'RE THE EXPERTS ABOUT WHAT YOU CAN DO
5 WITH A WATCH THAT WAS FOUND BY A BODY.

6 AND AS WELL, LET ME MENTION THIS VERY QUICKLY. I
7 GOT A COPY OF A VIDEO THAT I REQUESTED FROM THE ARSON
8 FELLOWS WITH THE FIRE DEPARTMENT. IT CAME. I
9 REVIEWED IT. THERE'S NO AUDIO ON IT.

10 BUT THERE IS SOMETHING EXTREMELY INTERESTING IN
11 THE VIDEO THAT I HAVEN'T SEEN TO THIS DAY OR HEARD
12 ABOUT UNTIL THIS DAY. AS THEY WERE TURNING THE
13 VICTIM'S BODY OVER, NEXT TO THE BODY ARE A SET OF KEYS
14 AND PEOPLE ARE GOING, GEE, WHAT ARE THOSE? I'VE NEVER
15 SEEN ANY KEYS. HOW THEY MIGHT IMPACT IN THIS MATTER,
16 WHO KNOWS. I DON'T KNOW IF THEY'RE AT S.L.E.D. WE
17 DIDN'T SEE THEM AT NORTH CHARLESTON POLICE
18 DEPARTMENT. WERE THEY EVEN TAKEN OR GIVEN BACK TO
19 SOMEONE?

20 THE COURT: DO YOU KNOW WHERE THE KEYS ARE, MS.
21 CLIFFORD?

22 MS. CLIFFORD: YOUR HONOR, I DON'T KNOW ANYTHING
23 ABOUT ANY KEYS. I GUESS, MAYBE HE COULD READ THEIR
24 MOUTHS WHEN THEY WERE SAYING, GEE, LOOK AT THOSE KEYS,
25 IF THERE'S NO AUDIO. BUT I WILL CHECK INTO THAT.

1 THE COURT: OKAY.

2 MS. CLIFFORD: YOUR HONOR, I DON'T MIND SENDING
3 THESE ITEMS UP. AND I THINK THE WAY WE LEFT IT WHEN
4 WE LEFT THE NORTH CHARLESTON POLICE DEPARTMENT THAT
5 DAY WAS THAT WE WOULDN'T DO ANYTHING WITH THE WATCH
6 BECAUSE ALMOST ALL WATCHES HAVE SERIAL NUMBERS ON IT
7 AND WE DIDN'T KNOW WHAT TO DO WITH IT. ESPECIALLY,
8 SINCE BASICALLY IT WAS IN A SECURED ENVELOPE AND WE
9 OPENED IT. AND IT WAS DUMPED OUT. AND THEN IT WAS
10 TOUCHED BY MR. KULP. SO WE WERE CONCERNED ABOUT WHAT
11 EXACTLY WE WERE GOING TO BE LOOKING FOR.

12 WE CAN SEND THESE ITEMS UP--

13 THE COURT: SEND IT UP.

14 MS. CLIFFORD: WE CAN SEND EVERYTHING UP. MOST
15 OF IT'S BEEN BURNED OR HAD WATER ON IT. WE CAN DO
16 THAT, THOUGH.

17 THE COURT: AND IF THE TESTS ARE INCONCLUSIVE,
18 THEN THEY WILL JUST COME BACK INCONCLUSIVE. SEND THEM
19 UP.

20 MS. CLIFFORD: OKAY. WE'LL DO THAT. I THINK
21 MOST OF THE THINGS HAVE ALREADY BEEN SENT UP. IF THEY
22 HAVEN'T, WE'LL MAKE SURE THEY ARE TODAY OR NEXT
23 FRIDAY, WHENEVER THEY GO NEXT TO S.L.E.D.

24 THE COURT: ALL RIGHT. WELL, Y'ALL GO AHEAD AND
25 GET THAT CONSENT ORDER EXECUTED, THEN.

1 MS. CLIFFORD: OKAY. YOUR HONOR, IN REGARDS TO
2 THE TESTING OF THE DEFENDANT'S BLOOD, THE REASON I
3 WANTED TO WAIT UNTIL WE WENT UP TO S.L.E.D. WAS
4 BECAUSE I DON'T KNOW IF S.L.E.D. DOES THIS PARTICULAR
5 TEST. THERE ARE A LOT OF TESTS THAT S.L.E.D. DOES NOT
6 DO AND WOULD HAVE TO BE -- THE BLOOD WOULD HAVE TO BE
7 SENT OUT SOME PLACE.

8 AND AGAIN, WE CAN CALL S.L.E.D. AND IF THEY DO
9 IT, WE CAN ASK THEM TO DO IT. I DON'T HAVE A PROBLEM
10 WITH THAT. ALTHOUGH, I THINK THAT IT IS ESSENTIALLY
11 IRRELEVANT UNLESS THERE WAS SOME EVIDENCE, AND THERE
12 IS NONE THAT I KNOW OF, TO SHOW THAT THE DEFENDANT,
13 IF, IN FACT, HE IS THE MURDERER, STAYED IN THE BAR
14 AFTER IT WAS SET ON FIRE AND THE SMOKE BUILT UP.

15 YOUR HONOR, IF I COULD, I DON'T KNOW IF YOU HAVE
16 THE FILE IN THIS MATTER FROM THE CLERK'S OFFICE. I
17 WOULD LIKE TO PASS UP A COPY OF THE 17 PAGE -- OH,
18 YOU'VE GOT IT -- THE 17 PAGE MOTION, IT SHOULD BE IN
19 THERE, THAT THE DEFENDANT FILED FOR HIS BOND HEARING
20 ON SEPTEMBER THE 26TH BEFORE JUDGE COTTINGHAM.

21 IF YOU WILL RECALL, YOU SET A BOND IN THIS CASE
22 ON AUGUST THE 7TH OF THIS YEAR. HE WAS ARRESTED ON
23 MARCH THE 16TH. A BOND WAS SET ON AUGUST THE 7TH. ON
24 SEPTEMBER THE 26TH, JUDGE COTTINGHAM ENTERTAINS THE
25 MOTION TO REDUCE THE BOND OR TO RECONSIDER THE BOND.

1 THE 17 PAGE MOTION GOING THROUGH BASICALLY ALL OF
2 THE COMPLAINTS THAT THE DEFENSE HAS, NOT ONLY WITH THE
3 EVIDENCE IN THIS CASE, BUT IN HOW IT WAS GATHERED AND
4 HOW IT WAS BEING TESTED OR NOT BEING TESTED AND THE
5 WAY THE STATE IS COOPERATING OR NOT COOPERATING WITH
6 THEM.

7 IT'S THE STATE'S POSITION THAT HE'S ALREADY HAD A
8 BOND HEARING. NOTHING HAS CHANGED IN TWO WEEKS THAT
9 WOULD JUSTIFY A REDUCTION IN THE BOND. AND REGARDLESS
10 OF WHAT -- HOW YOU WANT TO PLAY WITH THE WORDS,
11 CHANGING A BOND, A \$120,000 BOND FROM A SURETY TO A
12 TEN PERCENT BOND IS CHANGING THE BOND. AND THE STATE
13 WOULD OPPOSE THAT VEHEMENTLY.

14 YOUR HONOR, I ALSO WOULD NOTE THAT THIS CASE, IF
15 YOU WILL RECALL WHEN WE HAD OUR LAST MEETING -- LAST
16 HEARING IN THIS, THERE WAS A REQUEST BY THE DEFENSE
17 THAT WE TRY TO GET THE F.B.I. TO ANALYZE THE HAIRS OR
18 THE HAIR THAT WAS FOUND IN THE VICTIM'S HAND.

19 I HAVE BEEN WORKING WITH THE F.B.I., THE LOCAL
20 OFFICE. AND I THINK THAT'S GOING TO BE ACCOMPLISHED,
21 BUT AS WE SAID AND AS I TOLD, YOUR HONOR, THE COURT
22 AND THE DEFENSE ATTORNEY, AND I BELIEVE YOU WARNED HIM
23 OF THIS, THAT'S GOING TO DELAY THIS CASE A GOOD BIT.
24 BUT THAT IS BEING DONE AS WELL.

25 SO THAT ANY DELAY THAT'S BEING CAUSED BY US NOT

1 BEING ABLE TO FIND THINGS RIGHT AWAY, EVERYTHING THAT
2 HE WANTS, AND QUITE HONESTLY SOME OF THIS I THINK IS
3 EFFICIENT EXPEDITION THAT HE IS ASKING THE STATE TO GO
4 THROUGH ON HIS BEHALF EVEN THOUGH WE'RE WILLING TO DO
5 SOME OF IT, MOST OF IT, ANY DELAY IN THAT IS NOT
6 EFFECTING HIS CLIENT BECAUSE WE ARE GOING TO HAVE TO
7 WAIT ON THE F.B.I. TESTING. AND HOPEFULLY WE'LL HAVE
8 THAT SOON AFTER THE NEW YEAR.

9 MR. KULP: THAT'S NEWS TO ME. THE LAST TIME I
10 TALKED TO THE STATE, THEY SAID THAT S.L.E.D. SAID THAT
11 THE F.B.I. COULDN'T DO IT UNLESS THE CASE WAS MADE
12 INTO A FEDERAL PROSECUTION.

13 I DON'T KNOW WHO'S ON FIRST. AND I THINK UNDER
14 MY CLIENT'S RIGHTS, CONSTITUTIONAL RIGHTS OF DUE
15 PROCESS, WE NEED TO KNOW A LITTLE BIT MORE ABOUT
16 WHAT'S GOING ON.

17 YOUR HONOR, I SUGGEST THAT YOU -- ALL THE
18 PROMISES AND EVERYTHING ARE NOT BEING ACHIEVED. IF
19 THEY WERE BEING ACHIEVED, I WOULDN'T BE BACK BEFORE
20 YOU. I WOULD LIKE TO RESPECTIVELY ASK THAT YOU SET A
21 FOLLOW-UP HEARING IN THIS CASE FOR NEXT FRIDAY, IF YOU
22 HAVE TIME IN YOUR SCHEDULING AND THE ROSTER ALLOWS,
23 FOR US TO SEE IF, IN FACT, IF THESE THINGS HAVE BEEN
24 ACCOMPLISHED.

25 BUT I WOULD LIKE TO MAKE SOME VERY SPECIFIC

1 REQUESTS RIGHT NOW TO THE THINGS THAT I NEED TO SEE
2 AND WOULD LIKE TO HAVE AND I THINK WE HAVE AN ABSOLUTE
3 RIGHT TO BY NEXT FRIDAY. ONE, THE VIDEO TAPE MADE BY
4 THE POLICE AT THE SCENE.

5 THE COURT: ANY PROBLEM WITH THAT, MS. CLIFFORD?

6 MS. CLIFFORD: YOUR HONOR, THERE IS NO PROBLEM.
7 IN FACT, HE DISCUSSED THAT WITH DETECTIVE CLAYTON WHEN
8 WE MET LAST.

9 THE COURT: OKAY. YOU CAN GIVE THAT TO HIM BY
10 NEXT FRIDAY.

11 MS. CLIFFORD: YOUR HONOR, AS I TOLD YOUR
12 SECRETARY, I WILL NOT BE HERE. I LEAVE TOMORROW
13 MORNING AT 6:30 A.M. AND WILL BE OUT OF THE STATE FOR
14 A WEEK AT A DOMESTIC VIOLENCE CONFERENCE. AND I WOULD
15 ASK THAT THIS BE PUT OFF TO FRIDAY THE 24TH.

16 THE COURT: HOW ABOUT THAT, MR. KULP? SHE'S
17 GOING TO BE GONE ALL NEXT WEEK. I CAN'T--

18 MR. KULP: WELL, I'D BE HAPPY, YOUR HONOR, TO
19 HAVE THE FOLLOW-UP HEARING THEN. BUT AS LONG AS, YOU
20 KNOW, BUT I DON'T THINK THERE'S ANY PROBLEM WITH HER
21 NOT BEING -- SHE'S NOT GOING TO PROVIDE THIS STUFF.
22 THE POLICE ARE GOING TO DO IT AND THEY FALL UNDER HER
23 DIRECTION.

24 THE COURT: BUT SHE'S NOT GOING TO BE HERE TO GET
25 IN TOUCH WITH ALL OF THESE PEOPLE ABOUT TELLING THEM

1 TO GIVE YOU THIS OR THAT OR THE OTHER THING.

2 MR. KULP: IT'S STUFF WE'VE BEEN ASKING FOR BY --
3 IN WRITING AND VERBALLY FOR SEVEN MONTHS. THEY'RE --
4 SHE SAID PART OF THE STUFF THEY'RE ALREADY WORKING
5 ON. SHE COULD DICTATE A LETTER TO THEM TODAY.

6 THE COURT: I'LL TELL YOU, YOU GET HIM THE STUFF
7 THE WEDNESDAY THE WEEK AFTER YOU GET BACK.

8 MS. CLIFFORD: OKAY. YOUR HONOR, I DON'T KNOW IF
9 THIS IS THE POINT, I SENT THIS TO YOUR SECRETARY
10 YESTERDAY. I OBJECTED TO THE TIMING OF THIS HEARING.
11 I WAS NOT NOTIFIED OF THIS HEARING UNTIL LATE
12 YESTERDAY AFTERNOON. AND I DON'T THINK THAT IT'S FAIR
13 TO THE STATE, WHILE I UNDERSTAND THAT THIS IS A VERY
14 IMPORTANT CASE AND I DON'T MEAN TO BELITTLE THAT IN
15 ANY WAY IT IS. I HAVE 400 VERY IMPORTANT CASES.

16 MY LIBERTY'S NOT AT STAKE, I UNDERSTAND THIS
17 PARTICULAR DEFENDANT'S IS, AS ARE THE LIVES OF THE
18 DEFENDANTS IN ALL 400 OF THOSE CASES. AND I THINK
19 THAT IT IS AN UNFAIR BURDEN ON THE STATE TO EXPECT AND
20 FOR THAT REASON I COULD NOT HAVE THE DETECTIVE HERE
21 BECAUSE HE WAS OUT ALL NIGHT WORKING ON THE MURDER
22 THAT OCCURRED LAST NIGHT.

23 AND WHILE WEDNESDAY MAY BE SUFFICIENT, IT MAY
24 NOT. BECAUSE I DON'T KNOW IF I CAN GET A LETTER OUT
25 TODAY BECAUSE I HAVE SEVERAL OTHER THINGS THAT HAVE TO

1 BE DONE BEFORE I CAN LEAVE.

2 I WOULD ASK FOR FRIDAY THE 24TH. WE'LL TRY TO
3 GET IT BEFORE THE HEARING, BUT IF NOT--

4 THE COURT: WELL, REPORT BACK TO ME IF YOU HAVE A
5 PROBLEM WITH WEDNESDAY.

6 MS. CLIFFORD: OKAY.

7 MR. KULP: YOUR HONOR, ALSO, WE WOULD LIKE TO --
8 THE SECOND ITEM WOULD BE THE BANK RECORDS. AND MAYBE
9 WE DO NEED -- IF THE STATE WOULD CONSENT TO THAT
10 ORDER, I THINK THE BANK WOULD HONOR THE CIRCUIT
11 COURT'S ORDER TO PRODUCE THOSE RECORDS.

12 THE COURT: ANY PROBLEM?

13 MS. CLIFFORD: YOUR HONOR, IS HE LOOKING FOR JUST
14 THE CHECKING RECORDS? WHAT IS HE LOOKING FOR?

15 MR. KULP: I THINK WE SPECIFIED IT.

16 MS. CLIFFORD: WELL, HE HAS ALL THE CREDIT
17 CARDS--

18 THE COURT: THE CREDIT CARD RECORDS, I BELIEVE,
19 IS WHAT HE WANTS.

20 IS THAT IT?

21 MR. KULP: ANYTHING -- ANY FINANCIAL TRANSACTION
22 THAT OCCURRED AFTER MARCH THE 13TH OF 1997. NONE
23 SHOULD HAVE UNLESS IT WAS SOME CHECKS THAT WERE
24 ALREADY WRITTEN PRIOR TO THAT OR WHATEVER. I DON'T
25 KNOW. THE PURSE IS GONE. SO WE DON'T KNOW IF THE

1 CHECKBOOK WAS IN THERE--

2 THE COURT: SO ANY CHECK OR CREDIT CARD
3 TRANSACTION?

4 MR. KULP: YES, SIR.

5 THE COURT: OKAY.

6 MS. CLIFFORD: AND DO YOU KNOW THE BANKS THOSE
7 WERE AT?

8 MR. KULP: YES, IT'S THE WACHOVIA BANK ON EAST
9 MONTAGUE.

10 MS. CLIFFORD: YOUR HONOR, WE WILL SERVE THEM
11 WITH SUBPOENA, PRODUCE THE RECORDS AT THE HEARING ON
12 THE 24TH. HOW IS THAT?

13 THE COURT: OKAY.

14 MR. KULP: WHAT'S WRONG WITH THE -- I MEAN, THAT
15 MEANS IT'S JUST GOING TO BE ANOTHER TWO TO THREE WEEK
16 DELAY AFTER THAT IF THEY HAVE TO GO LOOK AT THE
17 MICROFILM. WHY CAN'T -- I DON'T UNDERSTAND WHAT'S
18 WRONG WITH--

19 THE COURT: ARE YOU OPPOSED TO THAT AT THIS
20 POINT?

21 MS. CLIFFORD: NO. THE SUBPOENA MEANS THAT THEY
22 GIVE THEM TO US BEFOREHAND OR THEY BRING THEM TO THAT
23 HEARING ON THAT DAY.

24 MR. KULP: NO. WE HAVE A CONSENT ORDER IF THE
25 STATE WOULD CONSENT TO IT. THAT'S JUST DELAYING,

1 DELAY, DELAY, DELAY AGAIN--

2 MS. CLIFFORD: YOUR HONOR, I'M GOING TO OBJECT
3 THEN, I GUESS, BECAUSE I DON'T SEE THE RELEVANCE TO
4 THIS. AND I DON'T KNOW IF THERE'S PROBABLE CAUSE TO
5 BELIEVE THAT A CRIME IS OCCURRING IN TERMS OF GETTING
6 A SEARCH WARRANT ORDER THAT WAY.

7 MR. KULP: WELL, IF THEY'RE NOT GOING TO CONSENT
8 TO IT, MAYBE WE SHOULD ARGUE THE MOTION NOW AND LET
9 THE COURT RULE ON IT.

10 THE COURT: GO AHEAD.

11 MR. KULP: WE WOULD SUBMIT THAT THE VICTIM'S
12 PURSE WAS TAKEN. THAT IT WAS NEVER RECOVERED. THAT
13 SHE DID HAVE, ON INFORMATION OF BELIEF FROM THE
14 DEFENDANT, SHE HAD CREDIT CARDS IN THERE, MAYBE
15 A.T.M., MAYBE, WHAT DO THEY CALL IT, DEBIT CARD,
16 POSSIBLY SOME OTHER THINGS SUCH AS CHECKING RECORDS.
17 THE PURSE, AS I SAID, WAS NEVER RECOVERED.

18 IF, IN FACT, ANY OF THOSE ITEMS WERE USED BY ANY
19 PERSON AT ANY TIME, POSSIBLY NOT NECESSARILY BY AN
20 ASSAILANT, BUT BY SOMEONE DOWN THE LINE THAT COULD BE
21 TRACED BACKWARDS, IT WOULD PROVIDE EXTENSIVE
22 INFORMATION BOTH FROM HANDWRITING SAMPLES AND
23 EXEMPLARS POSSIBLY PRESENCE IN CASHING A CHECK AND USE
24 OF A CREDIT CARD AT A RETAIL ESTABLISHMENT OR A BANK
25 THAT WOULD BE EXTREMELY ILLUSTRATIVE OF ANY OTHER

1 PARTIES INVOLVED.

2 AND AS WELL, WE SEE THAT IT WOULD NOT, IN FACT,
3 VIOLATE -- WE BELIEVE THAT ANY HARM OR EVASIVENESS TO
4 THE BANK OR TO THE DECEASED'S RECORDS IS NOT
5 SIGNIFICANT ENOUGH TO WARRANT DENIAL OF THE MOTION.

6 AND WE THINK AS WELL THAT IT MAY VERY WELL BE THE
7 CASE THAT WHAT THEY RESPOND BY SAYING IS THERE WERE NO
8 TRANSACTIONS OF ANY NATURE. THE CARDS HAVE NOT BEEN
9 USED SINCE THEN. AND, THEREFORE, THEY PRODUCE NOTHING
10 EXCEPT THAT RESPONSE, THERE'S NOTHING THERE.

11 AND THEN LASTLY COPIES WOULD, OF COURSE, BE MADE
12 AVAILABLE NOT JUST TO THE DEFENSE BUT TO THE STATE,
13 TOO.

14 THE COURT: WHY DO YOU FEEL THAT'S NOT RELEVANT?

15 MS. CLIFFORD: YOUR HONOR, BECAUSE I WAS TOLD
16 THIS MORNING FROM TERESA'S MOTHER THAT SHE HAD ALL THE
17 CREDIT CARDS AND THE A.T.M. CARD AND THE CHECKBOOK.
18 AND THAT THEY WERE NOT WITH TERESA AT THE TIME SHE WAS
19 KILLED AND WOULD NOT HAVE BEEN THERE AT THAT BAR.

20 THE COURT: WELL, THEY'RE ENTITLED TO VERIFY THAT
21 KIND OF STUFF. I'M GOING TO ORDER THAT IT BE TURNED
22 OVER. YOU PREPARE ME AN ORDER.

23 MR. KULP: YES, SIR. NEXT, YOUR HONOR, WE -- WE
24 WOULD LIKE TO ASK THE COURT TO -- WELL, ONE OF THE
25 THINGS THAT WE WOULD LIKE TO HAVE PRODUCED AFTER THIS

1 LONG PERIOD OF TIME, SEVEN MONTHS, IS THE NOTE THAT
2 THE DISCOVERY INDICATES SAYS I'LL MEET YOU LATER OR
3 MEET ME LATER. I'LL SEE YOU LATER, I BELIEVE, WHICH I
4 HAVE NOT YET SEEN.

5 AND THAT ALSO THAT THERE BE SOME FINGERPRINT
6 EXAMINATION CONDUCTED, LATENT FINGERPRINT EXAMINATION
7 CONDUCTED OF THAT DOCUMENT.

8 THE COURT: WHAT ABOUT THAT MS. CLIFFORD?

9 MS. CLIFFORD: YOUR HONOR, AS I UNDERSTOOD OUR
10 CONVERSATION WITH DETECTIVE CLAYTON AND MR. HARMON AT
11 THE NORTH CHARLESTON POLICE DEPARTMENT WHEN WE
12 REVIEWED ALL OF THE EVIDENCE, THAT THERE IS SOME
13 CONFUSION ABOUT THAT.

14 I DON'T THINK THERE WAS SUCH A NOTE. I THINK
15 THOSE WERE WORDS WRITTEN ON THE WINDSHIELD OF THE CAR
16 OR ON THE CAR, ITSELF.

17 IF THERE IS SUCH A NOTE IN EXISTENCE THAT THE
18 POLICE HAVE, CERTAINLY IT WILL BE TESTED. YET, NORTH
19 CHARLESTON DOESN'T HAVE IT BECAUSE WE WENT THROUGH
20 EVERYTHING THAT THEY HAD. IT IS NOT LISTED AS A PIECE
21 OF EVIDENCE THAT WAS TAKEN INTO CUSTODY.

22 I WILL HAVE THEM GO BACK AND CHECK AND SEE IF
23 PERHAPS IT'S BEEN SENT UP TO S.L.E.D. AND WE WEREN'T
24 JUST NOTIFIED THAT IT WAS SENT UP TO S.L.E.D. BUT I
25 DON'T THINK SUCH A NOTE EXISTS.

1 I THINK THAT THERE'S SOME CONFUSION ON WHETHER
2 THE WORDS WERE WRITTEN ON THE CARD -- EXCUSE ME -- ON
3 THE CAR, OR WHETHER THERE WAS AN ACTUAL WRITTEN NOTE.

4 THE COURT: CAN YOU REPORT BACK TO THE COURT BY
5 WEDNESDAY ON THAT ISSUE?

6 MS. CLIFFORD: YES.

7 MR. KULP: NEXT, YOUR HONOR, WOULD BE THE -- THAT
8 A FIRM DATE BE SET NOW AND IN ADVANCE AFTER MS.
9 CLIFFORD RETURNS FROM HER TRIP FOR S.L.E.D. TO LET ME
10 SEE WHAT THEY HAVE, DON'T HAVE, WHAT THEY'VE DONE, NOT
11 DONE? IN OTHER WORDS, THAT MS. CLIFFORD CALL, MAKE
12 THOSE INQUIRIES IMMEDIATELY UPON HER RETURN AND A FIRM
13 DATE BE SET FOR THAT TO BE ACCOMPLISHED?

14 THE COURT: YOU MEAN ON THE TESTING?

15 MR. KULP: NO, ON WHAT THEY HAVE -- WE WANT TO
16 SEE WHAT EXHIBITS OR PHYSICAL EVIDENCE THEY HAVE THERE
17 THAT THEY HAVE NOT RETURNED BACK, IF ANY. THEY HAVE
18 GLASS FRAGMENTS SITTING UP THERE WITH POTENTIAL
19 FINGERPRINTS ON THEM FROM A WINE CARAFE THAT WAS
20 PURPORTEDLY USED AS A WEAPON. THEY HAVE--

21 THE COURT: WELL, WHEN Y'ALL GO UP THERE FOR THIS
22 BLOOD TEST, WHY CAN'T YOU JUST TAKE CARE OF IT--

23 MR. KULP: WE DON'T NEED TO GO UP FOR THE BLOOD
24 TEST, YOUR HONOR, THEY HAVE THE BLOOD VIALS TAKEN THE
25 DAY AFTER THE MURDER.

1 THE COURT: BUT THEY ASK THAT YOU BE THERE.

2 MR. KULP: I DON'T THINK THAT--

3 THE COURT: MAYBE I'M MISUNDERSTANDING THAT.

4 MS. CLIFFORD: NO, JUDGE, WHAT THE PROBLEM IS MR.
5 KULP WANTS TO GO UP THERE AND HE WANTS TO TALK TO,
6 ESSENTIALLY THERE ARE TWO S.L.E.D. AGENTS REALLY
7 INVOLVED MAYBE THREE, THE ACTUAL S.L.E.D. AGENTS, THE
8 CHEMIST AND THE OTHER ANALYST, THAT HAVE ACTUALLY
9 EXAMINED THE EVIDENCE THAT S.L.E.D. HAS IN THEIR
10 CUSTODY. HE WANTS TO NOT ONLY TALK TO THEM ABOUT WHAT
11 THEY DID AND THE CONCLUSIONS THEY REACHED BUT WHY. HE
12 WANTS TO LOOK AT THEIR NOTES AND AT THEIR TEST REPORTS
13 AGAIN THAT ARE UP THERE.

14 HE ALSO WANTS TO LOOK AT THE EVIDENCE THAT'S
15 STILL WITHIN THE CONTROL AND CUSTODY OF S.L.E.D. TO
16 SEE WHAT IT IS AND TO SEE WHAT, IF ANYTHING, HAS BEEN
17 DONE TO IT IF THERE MAY BE SOMETHING THAT HAS NOT BEEN
18 ANALYZED.

19 THE DAY THAT HE'S SPEAKING OF HE WAS GOING UP TO
20 COLUMBIA FOR SOMETHING ELSE. HE SAID, WOULD YOU LET
21 THEM KNOW I'D LIKE TO COME BY THERE WHILE I'M UP
22 THERE.

23 I CALLED UP, ONE OF THE S.L.E.D. AGENTS WAS NOT
24 THERE. THE OTHER SAYS, WELL, I WOULD PREFER TO TALK
25 TO BOTH PEOPLE AT THE SAME TIME THAT WAY I DON'T HAVE

1 TO, YOU KNOW, SPEND TWO EXTRA DAYS DOING THIS. WE
2 LIKE APPOINTMENTS SET UP IN ADVANCE. THAT'S OUR
3 NORMAL POLICY.

4 AND SO THAT'S WHY THE MESSAGE WAS RELAYED TO MR.
5 KULP AS HE WAS DRIVING, HEY, DON'T BOTHER GOING BY
6 S.L.E.D. WHEN YOU'RE UP THERE BECAUSE THEY CAN'T DO IT
7 TODAY.

8 I THINK ONE OTHER DAY WE TRIED TO DO IT AND I HAD
9 A CAR ACCIDENT THAT MORNING SO I WASN'T ABLE TO GO
10 ANYWAY.

11 YOUR HONOR, I DON'T MIND TRYING TO GET WITH
12 S.L.E.D. TO SEE IF THERE IS A DAY THAT WE CAN MAKE
13 SURE THAT EVERYBODY INVOLVED IS GOING TO BE PRESENT
14 AND WE CAN GO UP. WE CAN DO THAT.

15 UNFORTUNATELY, AS YOU KNOW BECAUSE THIS IS REALLY
16 OUR FIRST TWO WEEKS OFF IN A WHILE, IT'S BEEN HARD TO
17 GET SOME DAYS WHEN BOTH THAT MR. KULP AND I HAVE BEEN
18 AVAILABLE.

19 MR. KULP: I'M AVAILABLE ANYTIME.

20 THE COURT: OKAY. WELL, THEN YOU JUST GET BACK
21 WITH MR. KULP WITH THE DATE.

22 MS. CLIFFORD: OKAY.

23 MR. KULP: THE NEXT ITEM WOULD BE COPIES OF THE
24 ELEVEN BY FOURTEEN OR ENLARGEMENTS OF PHOTOS OF THE
25 AUTOPSY THAT WERE PLACED IN FRONT OF MY CLIENT DURING

1 THE INTERROGATION PROCESS.

2 THE COURT: COPIES OF THE AUTOPSY PHOTOS?

3 MR. KULP: THEY PUT AUTOPSY PHOTOS IN FRONT OF
4 HIM THAT WERE BLOWN UP EIGHT BY TEN, ELEVEN BY
5 FOURTEEN THAT WERE USED DURING THE INTERROGATION
6 PROCESS.

7 THE COURT: ANY PROBLEM WITH THAT?

8 MS. CLIFFORD: YOUR HONOR, IF SUCH THINGS EXIST
9 AND THEY WERE USED, I WILL GET COPIES FOR HIM.

10 THE COURT: OKAY.

11 MR. KULP: ALL RIGHT. THE NEXT ITEM, YOUR HONOR,
12 WOULD BE -- AND I'M LOOKING FOR A REFERENCE TO THAT
13 PINK NOTE -- NEXT, YOUR HONOR, WE WOULD MOVE THE COURT
14 TO ORDER S.L.E.D. TO IMMEDIATELY CONDUCT THIS TEST FOR
15 PRESENCE OF ELEVATED LEVELS OF CARBOXYHEMOGLOBIN. IN
16 SHORT, THE DEFENDANT'S BLOOD WAS TAKEN THE DAY AFTER,
17 VOLUNTARILY BY HIS CONSENT, THE DAY AFTER OR THE DAY
18 OF THE MURDER, I GUESS.

19 THEY HAVE THAT BLOOD. I HAVE WROTE THEM IN APRIL
20 ASKING THEM TO PRESERVE IT FOR FURTHER TESTING. IT
21 TURNS OUT THAT WHAT THEY, THE POLICE AND THE STATE
22 DETECTIVE AND THE DEFENDANT, HAVE EVEN ADMITTED TO IS
23 HOLDING THE VICTIM IN HIS ARMS UNTIL HE WAS QUOTE
24 OVERCOME BY SMOKE.

25 NOW, WE'VE INTERVIEWED THE FIRE DEPARTMENT PEOPLE

1 IN THE CASE AND THEY INDICATE THAT WHEN THE DEFENDANT
2 APPEARED ON THE SCENE THAT NEXT MORNING AT 6:00 OR
3 6:30, HE DIDN'T SMELL LIKE SMOKE NOR DID HIS CLOTHING
4 NOR DID HE HAVE ANY TELL-TELL SIGNS OF SMOKE RESIDUE
5 AROUND HIS NOSTRILS.

6 NOW, FORENSIC JOURNALS INDICATE AND STUDIES
7 INDICATE THAT THERE WILL BE IF SOMEONE BREATHS HEAVY
8 SMOKE, THE ELEVATED LEVEL OF CARBOXYHEMOGLOBIN IN OR
9 CARBON MONOXIDE IN A PERSON'S BLOOD.

10 NOW, WE WOULD LIKE TO ASK THE COURT TO DIRECT
11 S.L.E.D., APART FROM ANY OF THESE OTHER LIKE WHAT DO
12 YOU DO, YOU KNOW, DO YOU DO LATENT, DO YOU DO TRACE,
13 DO YOU DO SEROLOGY, TO IMMEDIATELY CONDUCT THOSE TESTS
14 OR TELL US NOT TWO MONTHS FROM NOW THAT THEY CAN'T DO
15 IT AND IT NEEDS TO BE DONE ELSEWHERE.

16 IN THAT CASE THEN WHAT WE NEED TO DO IS SEEK THE
17 ORDER FROM THE COURT FOR INDEPENDENT EXAMINATION OF
18 THOSE BLOOD SAMPLES. AND WE NEED TO MAKE ARRANGEMENTS
19 FOR THEM TO BE CARRIED BY ONE OF THE S.L.E.D. AGENTS
20 TO AN INDEPENDENT LAB AND GET THAT DONE. IF, IN FACT,
21 YOUR HONOR -- BECAUSE THE POINT IS WE CAN'T LINE UP AN
22 EXPERT WITNESS TO TESTIFY AT THE LAST MINUTE.

23 AND IF, IN FACT, THERE ARE NO ELEVATED
24 CARBOXYHEMOGLOBIN LEVELS IN THE BLOOD SAMPLES, IN THAT
25 WE FEEL AN EXPERT WOULD SAY -- WOULD MEAN THAT HE

1 COULD NOT HAVE BEEN THERE. AND THAT'S A PRETTY
2 SIGNIFICANT EXCULPATORY ISSUE.

3 SO WE'D LIKE TO ASK THE COURT, WE'LL LOOK INTO
4 IT, GET BACK TO YOU ON THE 23RD OR IN NOVEMBER OR
5 WHENEVER, TO ORDER THAT THEY DO THAT IMMEDIATELY OR
6 TELL US THEY CAN'T DO IT.

7 MS. CLIFFORD: THAT'S FINE YOUR HONOR.

8 THE COURT: OKAY.

9 MR. KULP: I'LL PREPARE AN ORDER.

10 THE COURT: ANYTHING ELSE?

11 MR. KULP: YES, SIR. NEXT, THE SOUND TRACK OR
12 AUDIO PORTION OF THE ARSON VIDEO, WHICH FOR SOME
13 REASON WASN'T ON THE TAPE I WAS PROVIDED. THAT IS
14 ANOTHER ITEM WE WOULD LIKE TO SEE PRODUCED IN THE
15 INTERIM.

16 THE COURT: THE AUDIO PORTION?

17 MR. KULP: YES, SIR. THE TAPE I GOT IS SILENT.
18 THERE ARE PEOPLE WALKING AROUND, TALKING. AND THE
19 AUDIO TRACK ISN'T THERE.

20 THE COURT: ANY PROBLEM?

21 MS. CLIFFORD: YOUR HONOR, I DON'T EVEN HAVE A
22 COPY OF THE A.T.F. VIDEO. BUT I'LL ASK THEM TO GIVE
23 US ONE THAT HAS SOUND. AND WE'LL MAKE A COPY FOR
24 MR. KULP.

25 THE COURT: ASSUMING SOUND IS AVAILABLE.

1 MR. KULP: I'M SORRY?

2 THE COURT: I GUESS THAT ASSUMES THAT THE TAPE
3 DOES HAVE SOUND.

4 MR. KULP: EXACTLY. IF IT'S THERE, BUT I DON'T
5 KNOW -- TO GET A STANDARD CAMCORDER NOT TO RECORD THE
6 AUDIO YOU HAVE TO PUT A DUMMY PLUG INTO THE MICROPHONE
7 JACK TO MAKE IT NOT DO THAT. SO I DON'T KNOW IF
8 THAT'S THEIR STANDARD PROCEDURE OR NOT.

9 I GUESS, YOUR HONOR, JUST SOME INDICATION --
10 WELL, I WOULD LIKE TO KNOW AT LEAST BY THEN OR AS SOON
11 AS POSSIBLE: ONE, IF THE ITEMS, WHICH ARE SITTING AT
12 THE NORTH CHARLESTON POLICE DEPARTMENT EVIDENCE ROOM
13 HAVE BEEN SENT TO S.L.E.D. OR WHEN THEY WILL BE SENT
14 TO S.L.E.D. SINCE WE DON'T KNOW THAT INFORMATION
15 TODAY.

16 THE COURT: ANY PROBLEM WITH THAT, MS. CLIFFORD?

17 MS. CLIFFORD: YOUR HONOR, I WILL CHECK WITH
18 THEM.

19 THE COURT: JUST MAKE A LIST OF WHAT THEY HAVE
20 AND WHETHER IT'S BEEN SENT OR NOT SENT.

21 MS. CLIFFORD: RIGHT.

22 THE COURT: OKAY.

23 MR. KULP: NEXT, YOUR HONOR, IF THE STATE COULD
24 INDICATE TO US IN THE INTERIM OR BY THAT DATE WHEN
25 S.L.E.D. IS INDICATING THAT THEY WILL BE ABLE TO

1 CONDUCT A FORENSIC EXAMINATION, LATENT FINGERPRINT
2 EXAMS FROM LATENT -- EXCUSE ME -- FINGERPRINT
3 EXAMINATIONS FROM LATENTS TAKEN FROM THE WINDSHIELD OF
4 THE VICTIM'S CAR, WHICH ARE READABLE -- COMPARABLE,
5 SEROLOGICAL OR OTHER ANALYSIS OF GLASS FRAGMENTS AND
6 BLOOD STAINED TILES WERE TAKEN FROM THE SCENE. IN
7 ADDITION, THE ITEMS THAT HOPEFULLY WILL BE SENT UP AT
8 SOME POINT, WHICH ARE STILL SITTING AT THE NORTH
9 CHARLESTON POLICE DEPARTMENT.

10 THE COURT: WELL, WHAT IS--

11 MR. KULP: THERE IS ANOTHER BIG ITEM OVER THERE
12 AS WELL AS THAT THEY DIDN'T BOTHER TO SEND UP. THEY
13 DID A FORENSIC VACUUM OF THE VICTIM'S CAR AND ANYTHING
14 THAT WAS PICKED UP, TRACE EVIDENCE WAS CONTAINED IN A
15 FILTER FOR THAT PURPOSE. THAT HASN'T BEEN SENT UP.
16 WE WOULD LIKE TO SEE THAT SENT UP AS WELL. I THINK I
17 MADE REFERENCE TO THAT IN MY PROPOSED CONSENT ORDER.

18 THE COURT: I THOUGHT WE WENT THROUGH THAT AT THE
19 LAST HEARING ON EVERYTHING THAT THEY HAD AGREED TO
20 SEND UP.

21 MR. KULP: WE DID. THEY HAVEN'T DONE IT.

22 MS. CLIFFORD: WELL, YOUR HONOR AT THAT POINT,
23 NO. WE AGREED TO GO TO THE EVIDENCE COMPOUND TO SEE
24 WHAT HAD BEEN SENT UP ALREADY, WHAT HADN'T BEEN SENT
25 UP AND WHAT OTHER STUFF THAT HAD NOT BEEN SENT UP

1 NEEDED TO BE SENT UP.

2 MR. KULP AND I WENT THROUGH AND TOLD MR. HARMON
3 WHAT TO SEND UP AND ACTUALLY HIS LIST IN THIS CONSENT
4 ORDER HAS, I BELIEVE, TWO MORE THINGS THAN WHAT WE
5 AGREED ON THAT DATE, BUT THAT'S FINE.

6 WE NEVER, YOU KNOW, TALKED ABOUT OR AGREED ABOUT
7 THE VACUUMING OF THE VICTIM'S CAR. I DON'T MIND.
8 WE'LL SEND IT UP. I DON'T REALLY SEE THE EVIDENTIARY
9 VALUE ONE OR THE OTHER, BUT WE'LL DO THAT.

10 AND, YOUR HONOR, I DON'T THINK WE CAN REQUIRE
11 S.L.E.D. TO GIVE US DATES UPON BY WHICH THEY WILL HAVE
12 COMPLETED ALL OF THESE TESTS.

13 THE COURT: I THINK THAT YOU CAN PUT IN THE ORDER
14 THAT S.L.E.D. SHOULD REPORT BACK TO THE COURT WITHIN
15 30 DAYS ON THE STATUS OF SUCH TESTING.

16 MS. CLIFFORD: WE CAN DO THAT. BUT AGAIN, I
17 DON'T KNOW IF THAT--

18 THE COURT: I'M NOT GOING TO SIT UP HERE AND
19 PRIORITIZE THEIR TESTING PROCEDURE. I DON'T KNOW THE
20 STATUS OF EVERY CASE IN THE STATE.

21 MR. KULP: YES, SIR.

22 THE COURT: AND I'M NOT GOING TO BE PRESUMPTUOUS
23 ENOUGH TO DIRECT THEM TO DO THIS ONE FIRST. BUT I
24 DON'T MIND ASKING THEM TO SUBMIT PERIODIC STATUS
25 REPORTS AS TO THE PROGRESS OF ANY SUCH TESTING.

1 MS. CLIFFORD: YOUR HONOR, I DON'T MIND THAT. I
2 WOULD ASK THAT WHEN MR. KULP REVISES HIS ORDER AND AS
3 THE ORDER DIRECTING S.L.E.D. TO PERFORM FORENSIC
4 TESTING, I MEAN, OBVIOUSLY TO TAKE OUT LIKE THE STUFF
5 THAT'S IN THE BLOCK ABOUT THE LENGTH OF DAYS THAT THE
6 ITEMS THAT HAVE BEEN IN POSSESSION AND ALL THAT KIND
7 OF STUFF.

8 BUT WE DON'T KNOW IF THE WATCH WAS A MAN'S
9 WATCH. I MEAN, THERE ARE CERTAIN IDENTIFYING THINGS
10 THAT MR. KULP HAS PUT IN THAT I WOULDN'T NECESSARILY
11 AGREE WITH, IN THAT HE BE -- THERE'S ONLY ONE WATCH
12 AND WATCH PARTS THAT ARE OVER THERE IN EVIDENCE IN
13 THIS CASE THAT THAT WOULD BE SUFFICIENT. AND THEN HE
14 CAN ADD THAT THEY PROVIDE, YOU KNOW, THE COURT OR
15 COUNSEL WITH UPDATES IN 30 DAYS.

16 THE COURT: OKAY. ANY PROBLEM WITH THAT?

17 MR. KULP: NO, YOUR HONOR, THAT'S BASICALLY WHAT
18 YOU SAID I THINK THAT THAT WOULD BE FAIR AT LEAST TO
19 LET US KNOW -- FOR THEM TO LET US KNOW WHERE THEY ARE.

20 MS. CLIFFORD: I GUESS, YOUR HONOR, THE ORDER IS
21 GOING TO HAVE TO BE AMENDED BECAUSE SOME OF THIS STUFF
22 IS ALREADY GOING TO BE UP THERE AFTER WE WENT OVER
23 THERE. AND HE'LL HAVE TO DELETE IT FROM THIS LIST
24 BECAUSE THAT WILL JUST CONFUSE THE ISSUE LOOKING LIKE
25 THERE SHOULD BE OTHER STUFF THERE THAT'S ALREADY BEEN

1 SENT UP. WE CAN WORK ON THAT.

2 MR. KULP: WE CAN DRAW UP THE SAME LIST THAT'S
3 BEEN PREVIOUSLY SUBMITTED.

4 MS. CLIFFORD: RIGHT. YOUR HONOR, THE VACUUMING
5 -- THE FILTER FROM THE VACUUMING IS NOT INCLUDED IN
6 HERE THAT WOULD HAVE TO BE ADDED. AND THE MATCHES,
7 THE MATCHES WE'VE ALREADY TAKEN CARE OF THAT, I THINK.

8 THE COURT: OKAY.

9 MR. KULP: ALSO, INCLUDED IN THAT, LET US KNOW
10 WHERE YOU ARE AND WHAT'S GOING ON, WOULD BE ANY LATENT
11 SHOE PRINTS EXAMINATIONS THAT ARE REFLECTED DISCOVERY
12 THAT WERE RELEVANT TO -- FORENSICALLY TO THE CASE.

13 THE COURT: I'M ASSUMING MY COMMENT IN THAT
14 REGARD IS GOING TO APPLY TO ANY TESTING.

15 MR. KULP: THANK YOU, YOUR HONOR. THE LAST THING
16 -- OH, AND AS WELL ONE OF THE ITEMS WILL BE THE MEAT
17 CLEVER, WHICH THE POLICE INDICATED WAS FOUND THE
18 BEHIND THE BAR ON THE FLOOR, WHICH IS EITHER RUSTY OR
19 BLOODY, WHICH NO ONE'S LOOKED YET. THAT'S A PRETTY
20 IMPORTANT ITEM AS WELL ON THAT LIST.

21 MS. CLIFFORD: YOUR HONOR, THAT'S FINE. THERE
22 WERE A NUMBER OF KNIVES. AND I DON'T KNOW IF IT'S
23 ACTUALLY A MEAT CLEVER, AGAIN THAT'S ANOTHER THING.
24 ALL THE KNIVES THAT WERE THERE WE HAVE ASKED TO GO
25 UP. SO THAT'S FINE.

1 MR. KULP: THERE WAS ONE SPECIFIC ONE. AND IT'S
2 THE ONE THE POLICE REFERRED TO. THERE'S ONLY ONE
3 BLOODY, RUSTY--

4 THE COURT: WELL, IF THEY'RE GOING TO SEND ALL OF
5 THEM, THEN YOU'RE COVERED.

6 MR. KULP: YES, SIR. NEXT, YOUR HONOR, THERE WAS
7 A SUSPECT IDENTIFIED IN THE DISCOVERY WHO WAS LATER
8 RELEASED NAMED DANA CHAPLES. WE WOULD LIKE TO ASK THE
9 STATE, THIS IS THE FIRST TIME I'VE ASKED THEM BECAUSE
10 IT STRUCK ME THIS WEEK WHEN I FOUND THIS OUT THAT IT
11 WOULD BE IMPORTANT TO OUR CASE.

12 MR. CHAPLES WAS IDENTIFIED AS A SUSPECT. HE WAS
13 AN INDIVIDUAL VERY QUICKLY WHO INDICATES THAT HE --
14 WITNESSES SAY THAT HE WAS AT THE SCENE OF THE MURDER
15 OUTSIDE 30 MINUTES BEFORE IT OCCURRED. YET, THE NEXT
16 DAY HE DENIED BEING THERE AND HAD SHAVED OFF A LONG
17 SPORTED MUSTACHE.

18 AS WELL, THE -- HE ALSO SAID THAT HE WAS TOLD BY
19 SOMEONE WHO HAD BEEN AT THE BAR THAT NIGHT THAT THE
20 VICTIM WAS PASSED OUT OR ASLEEP ON A POOL TABLE AT THE
21 BAR. THE POLICE VERY CAREFULLY WENT AND INTERVIEWED
22 EVERYONE AND ASKED THEM IF, IN FACT, THEY HAD TOLD HIM
23 THAT CRITICAL PIECE OF INFORMATION HE COULD NOT HAVE
24 OTHERWISE KNOWN. AND THEY SAID THEY HAD NOT.

25 I ALSO HAD INFORMATION THAT AT THE -- THIS

1 GENTLEMAN WAS EVENTUALLY STOPPED. AND IN HIS CAR, A
2 PISTOL WAS FOUND UNDER THE SEAT NOT LAWFULLY STORED.
3 HE WAS CHARGED WITH ILLEGAL POSSESSION OF A PISTOL.

4 HE WAS ALSO IDENTIFIED AS A SUSPECT. AND I HAVE
5 INFORMATION THAT AT THE BOND HEARING ON THE PISTOL
6 CHARGE, THE POLICE THEN ANNOUNCED THAT, WE BELIEVE
7 THAT HE IS THE ONE THAT DID IT. BUT WE CAN'T GET HIM
8 TO CONFESS. NOW, THAT WILL HAVE TO COME FROM
9 WITNESSES.

10 BUT THE POINT IS I CHECKED THE RECORDS WHEN I WAS
11 HERE THE DAY WE WERE HERE BEFORE JUDGE COTTINGHAM.
12 THIS INDIVIDUAL APPEARED ON JULY THE 29TH AND ENTERED
13 A PRO SE PLEA. HE'S BEEN IN JAIL EVER SINCE, I
14 BELIEVE -- NO, NO. HE WAS OUT ON BOND. HE ENTERED A
15 PRO SE PLEA AND GOT A SIX MONTH SENTENCE, CREDIT FOR
16 TIME SERVED. AND HE'S NO LONGER UNDER THE AUTHORITY
17 OF ANY COURT OR -- IN OTHER WORDS, HE MAY BE DIFFICULT
18 TO GET. I HAVE A TELEPHONE NUMBER FOR HIM. AND WE'RE
19 TRYING TO CONTACT HIM NOW FOR A VERY EXTENSIVE
20 INTERVIEW, ASSUMING HE WILL SPEAK TO US.

21 WE WOULD LIKE TO ASK THE STATE TO ISSUE A
22 MATERIAL WITNESS WARRANT FOR HIM, TO HAVE HIM
23 ARRESTED, TO HAVE BOND POSTED SO THAT HIS AVAILABILITY
24 AT TRIAL AS A WITNESS FOR THE DEFENSE OR FOR THE STATE
25 WILL BE ABLE TO BE SECURED. IF NOT--

1 THE COURT: IS HE ON PROBATION RIGHT NOW?

2 MR. KULP: NO, SIR. IF NOT, THEN THE ONLY THING
3 WE KNOW LEFT -- THE ONLY REMEDY WE THINK AVAILABLE IS
4 TO THEN GO TO A MAGISTRATE AND APPLY FOR A WARRANT FOR
5 A MATERIAL WITNESS AND WHICH, I GUESS, I CAN HAVE MY
6 CLIENT SIGN. THEN HAVE IT EXECUTED ON HIM. BUT IT
7 WOULD BE A LOT EASIER IF, IN FACT, THE POLICE COULD DO
8 THAT. AND I THINK THERE'S CLEAR CAUSE FOR THAT AND
9 BASIS BECAUSE OF EVERYTHING IN THE RECORD THAT
10 INDICATES THAT HE IS, IN NO OTHER TERMS, A MATERIAL
11 WITNESS TO THESE CIRCUMSTANCES.

12 MS. CLIFFORD: YOUR HONOR, THE WAY THE STATUTE
13 READS AND THE LAW PROVIDES ONLY THE STATE HAS ABILITY
14 TO GET A MATERIAL WITNESS BOND OR A WARRANT FOR A
15 WITNESS THAT IS MATERIAL TO THE PROSECUTION OF A
16 CASE.

17 I DON'T KNOW WHAT RELEVANCE DANA CHAPLES HAS. I
18 WOULD NOT CONSIDER HIM AT THIS POINT TO BE A MATERIAL
19 WITNESS. IF THE DEFENSE WANTS HIM, THEY NEED TO SERVE
20 HIM WITH A SUBPOENA AND KEEP RESERVING HIM WITH A
21 SUBPOENA.

22 MR. KULP: THERE'S ADEQUATE CASE LAW THAT SAYS
23 THAT I CAN'T SUBPOENA SOMEONE TO A NONEXISTENT COURT
24 DATE.

25 THE COURT: I'M NOT INCLINED TO DO THAT AT THIS

1 POINT UNTIL YOU'VE MADE AN ATTEMPT TO TALK TO HIM
2 FIRST, MR. KULP, AND SEE WHERE THAT TAKES YOU.

3 MR. KULP: YES, SIR. I JUST BEG THE COURT'S
4 INDULGENCE.

5 (PAUSE.)

6 MR. KULP: ONE FINAL THING THERE WAS A DOUBLE
7 EDGED GERBER BOOT KNIFE FOUND IN THE CAR THAT MR.
8 CHAPLES WAS IN WHEN HE WAS STOPPED. WHAT WE LEARNED
9 THE DAY THAT WE WERE AT THE NORTH CHARLESTON POLICE
10 DEPARTMENT IS, AS I SAID THEY RETURNED ALL OF HIS
11 CLOTHING TO HIM, HAD HIM COME AND PICK IT UP, HE DID
12 NOT PICK UP THE GERBER BOOT KNIFE.

13 WE WERE ADVISED THAT THE KNIFE WAS DESTROYED BY
14 THE NORTH CHARLESTON POLICE DEPARTMENT. WE WOULD LIKE
15 TO ASK THE STATE TO PRODUCE RECORDS ASSOCIATED WITH
16 THAT DESTRUCTION SO THAT WE CAN DETERMINE WHEN IT WAS
17 DESTROYED, WHO DESTROYED IT AND SEE IF THAT IS, IN
18 FACT, AN ACCURATE STATEMENT OF THE STATUS OF THE
19 KNIFE. BECAUSE IF IT, FOR SOME REASON, HAS NOT BEEN
20 DESTROYED, THEN WE WOULD WANT THE COURT TO ORDER OR
21 THE STATE TO AGREE THAT IT NOT BE DESTROYED BECAUSE IT
22 MAY BE OF SOME TOOL MARK -- FORENSIC TEST VALUE THAT
23 WE DON'T KNOW ABOUT AT THIS TIME BECAUSE WE HAVE ONLY
24 HAD TWO TESTS CONDUCTED OUT OF 15 DIFFERENT THINGS AND
25 EXHIBITS.

1 THE COURT: IS THAT YOUR UNDERSTANDING THAT IT'S
2 BEEN DESTROYED?

3 MS. CLIFFORD: YOUR HONOR, THAT'S WHAT MR. HARMON
4 TOLD US. THAT IT WAS APPARENTLY PRELIMINARILY
5 EXAMINED AND IT WAS DESTROYED. AND THEY RETURNED ALL
6 HIS PROPERTY AND CLOTHING TO HIM.

7 THE COURT: WAS THAT DONE BY A COURT ORDER?

8 MS. CLIFFORD: IT WAS DONE PURSUANT TO POLICE
9 POLICY. SO WE CAN ASK THEM TO PRODUCE--

10 THE COURT: DO THEY HAVE ANY DOCUMENTATION OF
11 THAT?

12 MS. CLIFFORD: YES. THEY KEEP RECORDS. SO WE
13 CAN HAVE THEM PROVIDE US -- I THINK, IN FACT, HE
14 SHOWED IT TO US WHEN WE WERE THERE. BUT WE CAN ASK
15 FOR RECORDS OF THAT.

16 THE COURT: OKAY. WELL, GET THOSE RECORDS TO
17 HIM.

18 MR. KULP: SO, YOUR HONOR, FINALLY A RECAP, I
19 UNDERSTAND THAT WE'LL GET BACK BEFORE YOU ON THE
20 23RD?

21 MS. CLIFFORD: THE 24TH.

22 MR. KULP: THE 24TH OF NOVEMBER?

23 THE COURT: WELL, ASSUMING YOU WON'T BE BACK
24 BEFORE ME IF SHE DOES WHAT SHE'S AGREED TO DO. BUT IF
25 YOU NEED ME, THEN Y'ALL CAN CALL ME. WE'LL SQUEEZE

1 YOU IN.

2 MR. KULP: YES, SIR. AND, YOUR HONOR, THE LAST
3 THING WOULD BE WHERE -- AND I UNDERSTAND THAT THAT'S
4 NOT CONTROLLED BY THIS COURT, BUT BY COURT
5 ADMINISTRATION AS AN ARM OF THE SUPREME COURT, BUT IF,
6 IN FACT, I THINK IT WILL BE VERY USEFUL TO US TO HAVE
7 THAT TRANSCRIPT OF THAT PRIOR HEARING BEFORE YOU,
8 WHICH OCCURRED SOME TIME AGO, OR IS IT THE CASE, AND I
9 DON'T KNOW AND I'M ASKING THE COURT RESPECTIVELY TO
10 INFORM ME, BUT THAT'S THE END OF THE STORY IF THE
11 ORDER COMES FROM COURT ADMINISTRATION ALLOWING THAT
12 TIME FRAME, THEN I GUESS THAT'S--

13 THE COURT: I THINK WE CAN ASK THAT THINGS BE
14 EXPEDITED, BUT IT'S THAT GLOBAL PICTURE. YOU KNOW, I
15 DON'T HAVE ANY FAMILIARITY WITH HOW THEY WORK IN
16 EVERYBODY'S NEEDS. I THINK THERE ARE PROCEDURES FOR
17 GETTING SOMETHING EXPEDITED. BUT I COULDN'T SET FORTH
18 THOSE PROCEDURES TO YOU. I'M NOT PREPARED TO DO THAT
19 AT THIS POINT ANYWAY HAVING THE STATE BASICALLY HAVING
20 AGREED TO EVERYTHING THAT YOU'VE ASKED FOR. SO I
21 DON'T SEE A NEED FOR THAT.

22 MR. KULP: YES, SIR. BUT SO THAT I CAN PROPERLY
23 AND ACCURATELY PREPARE THE TWO ORDERS THAT WE'VE
24 MENTIONED, COULD WE INQUIRE THE COURT REPORTER HERE
25 TODAY IF, IN FACT, SHE COULD PRODUCE THE TRANSCRIPT OF

1 THIS HERE PROCEEDING WITHIN ANY PARTICULAR TIME?

2 MS. CLIFFORD: IT MIGHT BE EASIER. I'VE BEEN
3 TAKING NOTES AS TO WHO'S SUPPOSED TO DO WHAT. AND
4 I'VE ALSO BEEN WRITING ON THE CONSENT ORDERS THAT MR.
5 KULP HAD PREPARED PREVIOUSLY.

6 I THINK HE AND I CAN PROBABLY DO IT.

7 THE COURT: OKAY. Y'ALL TRY THAT FIRST AND SEE
8 WHAT HAPPENS. OKAY?

9 MR. KULP: YES, SIR. THANK YOU, YOUR HONOR FOR
10 YOUR TIME. OH, BY THE WAY, YOUR HONOR, THE ISSUE OF
11 THE BOND--

12 THE COURT: I'M NOT PREPARED TO RECONSIDER THAT
13 BOND. I'M NOT -- REGARDLESS OF THE LANGUAGE, I'VE
14 CONSIDERED EVERYTHING WHEN I SET THE BOND. I DO
15 RESERVE THE RIGHT IF THE CASE PROCESS SOME THRESHOLD
16 AT SOME POINT DOWN THE ROAD, OF COURSE, TO TAKE ANY
17 AND SUCH ACTION THAT I DEEM APPROPRIATE. BUT I'M NOT
18 PREPARED TO DO THAT AT THIS POINT.

19 THERE'S A BIG DIFFERENCE BETWEEN A TEN PERCENT
20 BOND AND A BOND FOR WHICH THE SURETY IS AVAILABLE.
21 AND IT'S JUST NOT THE MONEY PART OF THE BOND, BUT IT'S
22 ALSO THE PART OF SOMEONE TRYING TO MAKE SURE THAT YOUR
23 CLIENT IS IN COURT. I'M NOT INCLINED TO ADJUST THAT.

24 MR. KULP: WOULD YOU CONSIDER A SPLIT, YOUR
25 HONOR, PART--

1 THE COURT: --PAYMENT. I'M NOT PREPARED TO DO
2 THAT AT THIS POINT, MR. KULP.

3 MR. KULP: YES, SIR.

4 THE COURT: BUT ON YOUR COMMENT ABOUT THE SPEEDY
5 TRIAL LAW, ALTHOUGH WE HAVE NO SPEEDY TRIAL ACT IN
6 THIS STATE, CERTAINLY CONSTITUTIONAL GUARANTEES TO
7 IMPLICATE SPEEDY TRIAL CONCERNS AT SOME POINT, BUT IT
8 WOULD BE INCUMBENT UPON ME, OF COURSE, TO FILE A
9 REQUEST FOR A SPEEDY TRIAL BEFORE ANY SUCH ANALYSIS IS
10 IMPLICATED. OKAY. THANK YOU, VERY MUCH.

11 MR. KULP: WE APPRECIATE THE COURT'S COMMENTS
12 ABOUT COMING BACK BEFORE YOU. AND SHOULD FOR EXAMPLE,
13 YOUR HONOR, THE TEST OF THE DEFENDANT'S BLOOD FOR
14 CARBOXYHEMOGLOBIN COME BACK FAVORABLY THEN THAT'S ONE
15 OF THE THINGS THAT WE WOULD APPROACH YOU. THANK YOU.

16 THE COURT: I WILL USE THIS OPPORTUNITY TO SAY
17 THAT EVERYONE HAS EQUAL ACCESS TO ME. IF YOU'RE
18 PREJUDICED BY SOME LAST MINUTE CALLING, THEN YOU TAKE
19 THAT UP AT THE HEARING. I MIGHT GIVE YOU ADDITIONAL
20 TIME TO RESPOND OR ATTEND TO YOUR NEEDS. BUT JUST AS
21 YOUR OFFICE IS VERY COMFORTABLE IN ASKING US TO SET
22 HEARINGS ON THIS OR THAT OR THE OTHER MATTER, I MAKE
23 MYSELF FREE TO THE BAR TO DO THE SAME THING. AND WE
24 JUST HAVE TO DEAL WITH ANY PREJUDICES AS WE GO ALONG.
25 BUT I WILL BE EQUALLY AVAILABLE TO EVERYONE.

1 THANK YOU.

2 MR. KULP: YES, SIR, THANK YOU.

3
4 END OF PROCEEDINGS

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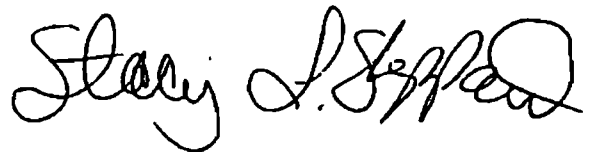
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, THE UNDERSIGNED, STACY L. SHEPPARD, CIRCUIT
COURT REPORTER FOR THE NINTH JUDICIAL CIRCUIT OF THE
STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE
FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT
OF RECORD OF ALL THE PROCEEDINGS HAD AND THE EVIDENCE
INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE,
RELATIVE TO APPEAL IN THE CRIMINAL COURT FOR
CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 10TH OF
OCTOBER, 1997.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

OCTOBER 23, 1997



STACY L. SHEPPARD
CIRCUIT COURT REPORTER

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) COURT OF GENERAL SESSIONS
No. 97 GS 10 4319, 4320

3

4 THE STATE,)

5)

6 versus)

TRANSCRIPT OF RECORD

7)

8 WESLEY MAX MYERS,)

9 Defendant.)

10

Charleston, South Carolina
September 4, 1998

11

12

13 B E F O R E:

14 HONORABLE A. VICTOR RAWL, Judge.

15

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

17 For the State:

AMIE CLIFFORD, Esq.
BRUCE DURANT, Esq.
Assistant Solicitors
Ninth Judicial Circuit

18

19 For the Defendant:

TIMOTHY C. KULP, Esq.
RIESEN LAW FIRM

20

21 Reporter:

LEAH BRUNSON

22

23

HARRIET P. BENNETT
Reporter, Ninth Judicial Circuit
P. O. Box 1575
Mt. Pleasant, S. C. 29465

24

25

1 (Matter came before the Court on September 4,
2 1998, at 1:30 P.M.)

3 THE COURT: All right, Mr. Kulp.

4 MR. KULP: May it please the Court, Your
5 Honor.

6 THE COURT: Certainly.

7 MR. KULP: Thank you for the opportunity to
8 appear before you.

9 I asked if you could assist me in a few issues
10 which I might outline for you in broad groupings.

11 One is to discuss and assist in the resolution
12 of various discovery issues. As well, our request
13 and motion for independent forensic examination of
14 various exhibits and pieces of evidence; to address
15 the issue of consideration of bond and any other re-
16 maining motions.

17 If you would like me to, Your Honor, I can give
18 you a brief overview of the skeletal framework of
19 the chronology in this case.

20 THE COURT: Go right ahead.

21 MR. KULP: My client was arrested on March 15,
22 1997. He was arrested by the North Charleston Police
23 Department, charged with murder and arson, third de-
24 gree.

25 The charges arose from discovery of a fire at

1 the Mill Inn Bar at 1026 East Montague Avenue in th.
2 early morning hours, 3:14 A.M., on March 13, 1997.

3 The patrolman on duty, Mr. O'Neal--Mr. O'Neal
4 was patrolling and observed a fire. The fire depart+
5 ment responded, and after the fire was extinguished
6 the body of Ms. Theresa Haught, my client, Wes Myers',
7 former girlfriend, was found in the bar.

8 An investigation ensued for the next three
9 days, and the discovery indicates that the first sus-
10 pect was a man by the name of Dana Chappel, who would
11 be here today except for the fact that we could not
12 serve him with a subpoena because the Dorchester
13 County Sheriff could not locate him.

14 We made efforts a couple of months ago to have
15 him served with a material witness warrant through
16 Judge Guedalia, but the State opposed that.

17 Mr. Chappel was identified as the primary sus-
18 pect in the murder as a result of the fact that he's
19 the only one who was placed at the scene of the Mill
20 Inn contemporaneous with the last viewing of the
21 victim.

22 Two witnesses place him there at about one
23 thirty A.M., and they believe the time of death of
24 the deceased to have occurred sometime between two
25 and three.

1 He was confronted and he denied being there.
2 He also had shaved a recently-sported mustache that
3 he wore the night before.

4 He was arrested because when he was confronted
5 he had a pistol in the car unlawfully held. It was
6 under the floor mat.

7 In his arrest warrant, they list him as a sus-
8 pect in the murder. They took him to jail and asked
9 for a high bond.

10 The Judge gave him a \$25,000 bond. That was
11 on a Thursday, the 13th.

12 My client, Mr. Myers, appears at the scene be-
13 cause he worked in the area and was on the way and
14 saw all the commotion and went there to the bar.

15 He identified himself as the boyfriend of the
16 decedent. He began being interviewed.

17 He was interviewed by Detective Payne and a
18 non-inculpatory written statement was obtained from
19 him at that time.

20 He indicated his concern, as he would be over
21 the death of anyone in that fashion, and he offered
22 to cooperate in any way he could.

23 He readily gave blood, hair and other bodily
24 fluid samples for examination, and he consented to
25 a search of his truck.

1 He consented to a search of his parents' house
2 where he was living at the time. The investigation
3 continued on through Thursday, Friday and Saturday.

4 On Friday afternoon, about two thirty-two P.M.,
5 Crime Stoppers received a tip related to the North
6 Charleston Police Department, and this is while Mr.
7 Dana Chappel was in jail and while Mr. Myers was
8 cooperating with the police.

9 They received a tip that the deceased was killed
10 over a drug transaction and named two people who worked
11 at a lounge in Ladson. They said--they gave the names
12 and addresses.

13 The police did nothing whatsoever with that
14 lead, never pursued it.

15 On Friday Night, about nine o'clock, Dana
16 Chappel was released from jail on bond. He made a
17 \$25,000 bond.

18 Friday afternoon, about the time the Crime
19 Stoppers tip came in, Mr. Myers volunteered to take
20 a polygraph examination, and he was taken to the
21 Charleston County Sheriff's Department for that pur-
22 pose.

23 Upon arrival there--he had been with the police
24 most of the day and most of the day before--he was
25 taken back on a pretext but brought out. They didn't

1 give him the test.

2 They indicated they thought he was drunk and
3 he was too close to the victim.

4 They took him back to the police department
5 from there. They released him.

6 They picked him up Saturday Morning, took him
7 to have breakfast; they took him to the police station
8 and interrogated him.

9 Now, at this point, what was the physical evi-
10 dence in the case?

11 When he was interviewed by Detective Payne the
12 first morning, on Thursday, the 13th, at the scene,
13 he was advised that there was sufficient and a substan-
14 tial amount of forensic evidence in the case.

15 Not to worry. They would find the person who
16 killed his girlfriend.

17 There were fingernail scrappings under her fin-
18 gernails. There was a hair found in her hand that
19 would be examined. That there were fingerprints at
20 the scene. Further, that they had the murder wea-
21 pon.

22 The primary piece of evidence seemed to be a
23 piece--a single strand of hair that was found, from
24 the report of the police, in the victim's hand that
25 was under her body and was not burned.

1 Most of this I'm taking from the discovery, Your
2 Honor, by reference.

3 So about--so some of the forensic evidence and
4 the single hair were taken to SLED on Friday morning,
5 the 14th.

6 Upon arriving there, Dr. Joe Powell of SLED
7 examined microscopically the hair, and his report
8 which came several months later in July, although he
9 examined it in March, indicated that it was micro-
10 scopically similar to the known head hair of Wes Myers.

11 The police knew that on Friday. At that point,
12 Mr. Myers began being prompted that if they could
13 find the person whose hair could be identified as
14 being that found in the victim's hand, they would have
15 the killer. He agreed.

16 On Saturday when Dr. Joe Powell was not at SLED
17 working yet, a phone call was received when Mr.
18 Myers was at North Charleston from Mr. Powell. It
19 was a lie, a pretext.

20 Detective Cumbee--Lieutenant Combee came in and
21 confronted Mr. Myers and said, bad news; I found out
22 Dr. Powell positively identified that hair as from the
23 back of your head.

24 Now, in addition to a number of other interro-
25 gation techniques that I'll mention, including one

1 that is not really denied, that he was told there was
2 blood and hair found all over his truck and that was
3 going to be tested too--and, of course, this is a
4 proffer and not from the report I referenced, but he
5 was also told that if he wanted a lawyer, he'd get
6 the electric chair.

7 He was also told a number of other things dur-
8 ing the interrogation process.

9 What happened is this, and this is confirmed in
10 black and white verbatim in the police report--he finally
11 said, quote, I must have done it. I must have done
12 it.

13 That was the testimony as well at the preliminary
14 hearing. I must have done it.

15 He was then packed up and put in a police car
16 and driven around to look for the victim's purse which
17 could not be found.

18 He was taken to get something to eat and then
19 brought back to the station.

20 At that point, the victim's family happened to
21 be there, Saturday afternoon, and he was allowed to
22 speak to the victim's family.

23 He was then being transported to jail. However,
24 when they got downstairs at the North Charleston Police
25 Department he was asked if he'd like to go outside,

1 out front, to smoke a cigarette before he went to the
2 jail.

3 Little did he know but at that time, fully--
4 apparently fully briefed on the issue of this confes-
5 sion, three news channels were waiting at the back
6 door.

7 At that time, he was held there. He wasn't rushed
8 and ushered into a police car, but he was held there
9 while he could be interviewed by the news media, at
10 which time incriminating statements were made while he
11 was standing there in custody and in possession of
12 the arresting officers.

13 The State has indicated that it intends to offer,
14 I assume among other things, three primary pieces of
15 evidence.

16 The first item would be the single strand of
17 hair. The second would be the confession obtained that
18 day in a written statement of two pages.

19 There was no video tape made of any of the three
20 day interrogation process. No audio tape made that
21 we know of, and the Defendant was not allowed to write
22 out the statement in his own handwriting.

23 It was written out by the detective taking the
24 statement.

25 The third piece of evidence would be the videotape

1 footage that was obtained by the police pursuant to
2 a North Charleston issued Municipal Court subpoena,
3 which was not proffered but yet nonetheless obtained,
4 wherein cuts of him speaking about the case are of-
5 fered.

6 Now, he has been in jail on a \$125,000 bond set
7 by Judge Pieper since March 15, 1997.

8 Present with him in Court today, Your Honor,
9 are his parents who have been backing him through the
10 entire case, and some other people. His sister and
11 some other people whose faces I don't know who have
12 come here today.

13 We have examined the issue of bond before. We
14 had a hearing before Judge Pieper, Your Honor, in
15 August of 1997. At that time, Judge Pieper set the
16 bond of \$125,000 surety on both charges, by the way.

17 We reappeared before Judge Pieper on October 10th
18 of 1997, and my primary pitch then was for a bond re-
19 duction or for a readjustment or reformatting the
20 bond to a ten percent bond, which the State opposed,
21 and he did not consider that, but said he would re-
22 examine the issue.

23 After that, Your Honor, we filed a motion for a
24 reconsideration of bond and it was held before Judge
25 Cottingham.

1 That matter was based primarily on my argument
2 under Rule Four that in fact we only asked for the bond
3 to be reconsidered because of change in circumstances.
4 The facts were not the same, because the Rule prohibits
5 us from doing so under the same set of facts.

6 Our argument at that time was--in a long and de-
7 tailed filed motion, was that the thing that had changed
8 was what had not changed.

9 The State had not done a primary thing and other
10 things related to discovery and forensic examination
11 of evidence.

12 The hair had not been submitted to the F.B.I.
13 at all for examination.

14 That hearing before Judge Cottingham--I don't have
15 the date in front of me--but thereafter we appeared be-
16 fore Judge Whetstone to attempt to ask him to recon-
17 sider the bond.

18 The victims could not be notified in time. The
19 State made that announcement to the Court, and the
20 Court would not hear the issue.

21 It came back up before Judge Pleicones on a
22 meeting, I suggest, because the Judge told me to be
23 here with Ms. Clifford at 11:00. We came and I did
24 not have my client. I did not know if it was a hearing
25 or a meeting, and nothing really transpired.

1 However, he set it--he said, we'll have this in
2 a full evidentiary hearing sometime in the future,
3 and we withdrew our motion for bond at that time for
4 a variety of reasons.

5 Thereafter, Your Honor, no other proceedings seek-
6 ing a reduction or examination of bond have been sought
7 by us until now.

8 Focusing on the issue of what has not changed,
9 I guess the primary aspect of that would be the hair.

10 Now, it is very important to note that that
11 hair--in a meeting in the Courtroom before Judge
12 Pleicones, the State readily--the issue came up that
13 it was my fault the case was going so long and that
14 my client was sitting in jail, because I asked for
15 examination of the hair.

16 Well, my pitch was then, and I believe that hear-
17 ing was in April of this year--was that it's not our
18 fault. We don't hold the hair. We don't have the
19 hair.

20 We have asked for independent testing of all of
21 the evidence in the case, which has been resisted by
22 the State, and as well they haven't sent it off.

23 I am getting no information about where it is,
24 who has it, when it's to be sent off, how long the
25 testing will take, or anything.

1 I'm not sure that's really correct. I went back
2 in my file and here in discovery is the SLED laboratory
3 evidence sheet from March 14, the day after the murder,
4 indicating the submission was--of the hair was checked.
5 All of the above for traces of blood and hair from
6 victim.

7 If enough blood found, please type and hold for
8 DNA--same for hair.

9 They brought up the DNA issue. I wanted it done
10 and I've told the Court in all the proceedings--I felt
11 kind of silly asking that evidence be tested, whereas
12 in most cases I wouldn't want that done, except my
13 client professes his innocence, despite the two page
14 statement.

15 Well, did they test the hair? No.

16 There were references made in hearings--August
17 7, 1997, Ms. Clifford said, quote,

18 However, at this point I will be request-
19 ing SLED to do that, to forward the hair
20 to the FBI so we will have DNA analysis.

21 In the hearing on October 10, 1997, before Judge
22 Pleicones, she said, quote,

23 I have been working with the FBI at the
24 local office and I think that's going to be
25 accomplished, but as we said and as I told

1 you, Your Honor, there is going to be
2 a delay in this, and that is being done
3 as well.

4 Toward the end of the year, I found out it wasn't
5 being done, and the first of the year I found out it
6 wasn't being done.

7 So on April--I was told the reason it couldn't be
8 --and I think this was expressed in Court by the State--
9 that it couldn't be examined because the FBI didn't test
10 local evidence in State cases.

11 It didn't make sense to me. I've been a former
12 prosecutor and been a lawyer for a while, and I know
13 the FBI. I'm a former agent. They test State evidence
14 in cases.

15 So I know of nothing else to do but to write
16 directly to Louie Free.

17 Oh, there was some mention made by the State that
18 they might be able to accomplish it on a favor that the
19 FBI owed someone.

20 So I wrote to Director Free in Washington and
21 asked him if that was their policy, to test evidence on
22 a favor, and otherwise not test DNA evidence that was
23 collected by State agencies.

24 As you might expect, I heard back from him, and
25 they indicated to me in a letter what their policy is,

1 and clarified it.

2 In 1996, they started the examination of DNA evi-
3 dence, testing according to a mitochondrial or MT DNA
4 protocol.

5 They test federal evidence first. State evidence
6 will be tested, but there is a six months waiting list.
7 So if the State had sent out the evidence in March
8 of 1997, it would certainly have made it to the test-
9 ing process by September, and so on through the calen-
10 dar.

11 The evidence was not submitted to the FBI lab un-
12 til April of this year. What the letter said as well
13 is when they finally get around to the waiting list, and
14 it might come up sooner, there could be a six month delay
15 in getting the results.

16 Meanwhile, my client is in jail.

17 So then I kept calling, and the guy--the fellows
18 at the FBI lab told me--said, well, all we can tell you
19 is we've received the evidence, but there's a problem,
20 and I said, what, and they said that we haven't received
21 the known standards to compare it to, so we're hamstrung;
22 we can't do anything.

23 I was just handed in Court here today as I walked
24 in some documents. I was provided these documents by the
25 State. I'd never seen them before.

1 It appears that on April 22nd of this year, several
2 months ago--and I have been constantly, Your Honor, by
3 correspondence, phone calls, faxes, motions pending since
4 they were filed last year--asking for information and for
5 particularly on the chain of custody of that single strand
6 of hair.

7 This letter dated April 22nd, 1998--the fax looks
8 like it came to Melissa--I can't read the last name--from
9 Steve Lambert, dated 4 22 98, several months ago, saying
10 that in addition--that was the submission of the evidence,
11 and then it appears that there was some other correspond-
12 ence, indicating what I had found out from them, that they
13 had not submitted the actual standard to compare it to.

14 So it appears, Your Honor, that that went up in
15 July of 1998. However, I'm a little confused because
16 there's a cover page to this--I can't read the other
17 letter but maybe it came off the fax that way--that in-
18 dicates that the letter was sent to Mr. Stewart at the
19 FBI on July 6, four or five days after that. I guess it
20 makes sense.

21 There is other correspondence from March 3rd, but
22 the point is here we are and I've been asking for this
23 myself, and they indicated they were going to do it back
24 in March and they are still up there and I have no idea
25 at all when the test results will come back.

1 That, in effect, is just the tip of the iceberg.
2 I'm just trying to move ahead, Your Honor. There are
3 a whole list of items I've been seeking that I haven't
4 received.

5 The murder weapon alleged to be used in the case
6 is a wine carafe such as you would get in a restaurant
7 when you order the house wine. It was used as a tip jar
8 at the bar.

9 The notion is, from the statement of my client
10 which the police obtained from him, that that object was
11 used as the murder weapon.

12 That it was used and grabbed by both my client and
13 the deceased.

14 The top portion of it, which if you're holding it
15 upside down like a club, was found next to the body, the
16 murder weapon piece. The rest of it was shattered.

17 I have never seen it. I don't know where it is.
18 I am not sure--well, in one situation the State advised
19 that they weren't sure where it was.

20 I want it tested. I want to know what finger-
21 print examinations were made from it. Apparently there
22 were some swabs taken of blood found on it at the time,
23 and I want to know the results of those tests, unless they
24 are in the stuff I was just handed today here in the
25 Courtroom.

1 It was indicated in the police report--most of this
2 I get from the discovery--that latent shoe prints were
3 seen at the scene.

4 They searched his house, his parents' house, twice,
5 looking for shoes. They didn't find any that they liked
6 or took.

7 But the police report specifically indicates, and
8 the language I'll quote, Your Honor--is that--I don't have
9 it directly in front of me, but that latent shoe prints
10 were photographed, metered, and photographed again.

11 The State has provided photographs. I don't see
12 any latent shoe prints in there. I've asked scores of
13 times for them over the months.

14 There was a note on the victim's car parked out
15 front. It said, do me later; [REDACTED]

16 It was indicated that in fact it was written in
17 some type of grease pencil. I can't tell what the writ-
18 ing is based on the photographs that were made.

19 We've asked for any prints that were lifted from
20 that windshield and have not received them.

21 We've asked for some acknowledgment about a note
22 that was found behind the bar or on the bar from this
23 person, Allen White, who I haven't been able to locate,
24 and I've been by his house myself a dozen times--
25 who indicated--who the police suggest left the note

1 about seeing the deceased that sparred this act on the
2 part of my client, her boyfriend, and left the note on the
3 windshield.

4 The statement they took from him doesn't corroborate
5 that he left the note there or that he wrote that on the
6 windshield.

7 We asked for the credit report of the victim. We
8 asked for that because of the fact that the purse was taken
9 from the scene and never recovered.

10 My client knows, having known the victim, that she
11 had credit cards in her purse. We did some checking,
12 only to the degree lawfully allowed, and found out that
13 there was some transaction in her credit report after her
14 death.

15 I went and met with Ms. Clifford and asked her if
16 she could get that. I met with her on June 22nd in her
17 office downstairs, to try to resolve some of these is-
18 sues. I have my notes from that meeting.

19 They said they would get the credit report. It's
20 September. I haven't seen it. It would resolve the issue.
21 If my client--if somebody new used it, that could inculcate
22 him, so that's why we are seeking the credit report.

23 There was a gunshot residue test done on my client's
24 hands at the time of the investigation. There is no in-
25 dication that a gun was used, but there was a gun found

1 in Dana Chappel's car. I don't know they are related
2 in any way.

3 I want to see if they still remain, the swabbings or
4 chemicals and test material used in that, because I want
5 it independently tested.

6 In the statement they took from my client, the two
7 page statement, it indicates that after the deceased was
8 hit he remained there holding her, bleeding until he was
9 overcome by smoke.

10 That he left and went back to his parents' house
11 that they searched.

12 Now, if you recall, Your Honor, the hair, the two page
13 statement, and TV footage that was set up for him to
14 walk into--no other evidence.

15 No eye witnesses, no other prints, no fingerprints
16 so far--nothing.

17 In that case, I'd like to know what--I have checked
18 with forensic experts to see if that gunshot residue
19 would indicate the presence of any chemical that might
20 mean someone was exposed to heavy smoke from a fire.

21 We asked for any latent fingerprint evidence off of
22 any object, and we haven't seen a thing.

23 Back last fall, we met at SLED with Joe Powell,
24 and I said, one of the things I need--if all we end up
25 with is the microscopic examination of the single strand

1 of hair and not DNA, for one reason or another, I need
2 to have an expert to challenge or agree with you, so I
3 need to see your lab or bench notes to see what twenty-six
4 characteristics you found similar to render that opinion.

5 He indicated at that time he would provide that to
6 Ms. Clifford. That was last November. I've never seen
7 them.

8 When the deceased was taken to the hospital for
9 autopsy, to the Medical Examiner's office, there were
10 pubic swabbings taken from her. I don't know if a full--I
11 cannot determine if a full rape kit was done, but the
12 way she was found with her upper clothing ripped off and
13 her jeans unzipped down to the bottom of the zipper of
14 her jeans--but they did do swabbings, pubic swabbings.

15 I have written letters to Dr. Clay Nichols asking
16 for those. I have asked in hearings. I've asked in hear-
17 ings, asked in motions.

18 We have filed distinct discovery requests, motions
19 in this regard, and nobody has told me a thing about it.

20 There was an evidence vacuum bag taken from the car
21 Dana Chappel was driving, and they said, well, we're not
22 going to bother to test that.

23 I said, well, I'd like to get it tested. That's
24 one of the things we'd like to have independently tested
25 that they have not done anything with.

1 There was a bloody dollar bill found in the back
2 pocket of the jeans of the deceased. We've been look-
3 ing, asking for any information on that, and we have
4 never seen it.

5 There was another suspect hair that Officer Hallman
6 in the crime scene unit got off of the broken piece of wine
7 carafe at the scene. I don't know anything about it a year
8 and a half later, and I've been asking.

9 There was a blood sample taken from the back room
10 of the bar. I don't know what happened to that.

11 The police indicate in their crime scene summary that
12 there was a videotape taken at the scene, and while we
13 have received it audio-track-less--in other words only the
14 video tape of the crime scene made by the arson investi-
15 gator, I've never seen the video tape from the police al-
16 though they checked it there on their sheet and did not
17 say it's the arson tape.

18 We have asked for clarity about that.

19 There were latent fingerprints lifted from the
20 car Mr. Dana Chappel was driving. I don't know any-
21 thing about those, despite repeated requests.

22 We asked for information regarding a brown hat that
23 was taken from Mr. Chappel's car.

24 There were floor tiles that with the help of ATF
25 and a pneumatic tool were taken from the foot rail of the

1 bar. The deceased was found laying here, and the foot
2 rail was lying here. The blood splatters were all over
3 the place.

4 There is no indication at all of my client slam-
5 ming or harming the deceased in any way in that regard.

6 Those tiles were taken, and swabbings were taken
7 from them. I don't know what was found.

8 We made a request to find out if Mr. Chappel and
9 another--his alibi witness were confidential informants
10 for the North Charleston police or for any other police
11 agency.

12 I have not received any indication whatsoever in
13 that regard.

14 There is a report concerning the source of the
15 fire in the investigation conducted by the fire depart-
16 ment such as they have to file with the Fire
17 Marshall's Department in Columbia. We have not re-
18 ceived those.

19 We broached in earlier hearings and specifically
20 asked for handwritten notes of Detective Clayton made dur-
21 ing the interrogation of my client, not because we think
22 the law allows us to have any police officer's hand-
23 written notes, but because we believe and know--we know
24 that the handwritten notes may have been prepared to
25 write out the statement given by my client, and I think

1 we have a right to properly examine the issue of volun-
2 tariness and other issues of suppression to have those
3 notes that were made.

4 In fact, in a hearing a previous Court advised the
5 State that if they still existed not to destroy them.

6 We've asked for interview logs of the Defendant over
7 those three day periods and have received nothing.

8 We have--during the interrogation, Your Honor,
9 my client tells me that they put two eight by ten or
10 eleven by fourteen glossy color photographs of his girl-
11 friend at the autopsy in front of him and used that as an
12 interrogation device.

13 We have asked for copies, or to see those original
14 photographs. The State has identified them on three and
15 a half by five inch photos--which ones the two were,
16 but I asked specifically to see the ones that were put
17 in front of him or to be told that they were destroyed,
18 Your Honor.

19 We have tried to clarify finally after all this
20 time, if the testimony at the prelim last year is cor-
21 rect, that this Crime Stoppers tip was not pursued by
22 the police in any way to date.

23 We have asked for the disposition of the victim's
24 keys that were found next to her body in the video of the
25 crime scene, which never have showed up on any report of

1 any item of evidence.

2 Mr. Chappel had a Gerber Guardian double-edged boot
3 knife in the car that he was found driving. That knife
4 was taken from him and eventually returned to him.

5 His clothing was taken from him and it was not
6 sent to SLED. It has not been examined.

7 The deceased had a cut in the back of her head
8 that went from ear to ear to the bone. A straight line.
9 There was an earlier belief that the fire did that. I
10 spoke with the Medical Examiner last year, last summer,
11 and the fire didn't do that.

12 We'd like to know why that knife was not turned
13 into evidence by the police until thirty-five days
14 after it was seized, and then thereafter returned to
15 Mr. Chappel.

16 There was a watch found next to the body or in the
17 siftings from the examination of the arson scene that
18 looks like this. May I approach, Your Honor?

19 THE COURT: Sure.

20 MR. KULP: This is a blow-up of a police photo-
21 graph of a watch found at the scene. It stopped at
22 3:14 A.M., the time Officer O'Neal discovered the
23 fire, Your Honor.

24 The police report said a Casio watch was found at
25 the scene. I've been trying to get some clarity from the

1 State as to whether there was another watch. That's a
2 Gitano.

3 Here's a model of it. This was made in Hong Kong
4 for a distributor in New York City.

5 I found that by going to every store in town, and
6 finally Walmart told me to call a one eight hundred num-
7 ber and the lady cooperated by saying this watch, although
8 out of make, would still be made in Hong Kong. She made me
9 one and sent it for free.

10 I asked the State, in meeting with the Solicitor on
11 June 22nd, 1998, if she would get the police to assist me,
12 after I had gone out tacking up reward posters for this
13 watch in the East Montague area, to show this watch to
14 people and find out whose it was or if anybody had any
15 leads. They refused and we've heard nothing else about it.
16 But this is not my client's watch and it is not the
17 deceased's. It's the killer's watch.

18 They did sent the watch to SLED, and it came back
19 and they said it was of no forensic value.

20 We'd like to examine that watch as well. There's a
21 long list of things we'd like to independently examine.

22 This, Your Honor--if I could approach--are two
23 enlarged photographs of the piece I referred to, the
24 wine carafe piece that I've never seen despite repeated
25 requests.

1 This is the murder weapon that was found next to the
2 victim's body.

3 On one occasion Ms. Clifford said in a phone call
4 to my office that she wasn't sure what happened to it;
5 that it might have been broken up by the police for evi-
6 dentiary purposes or otherwise.

7 But that's the murder weapon, whatever they did
8 with it.

9 Ms. Clifford did respond when I presented to her
10 the booking photograph of Mr. Chappel who was arrested
11 on the gun charge on March 13, 1997--I got it from the
12 jail on a FOI request. I tried to have it enhanced but
13 I couldn't.

14 In that photograph which I have here somewhere
15 there are marks on the forehead of Mr. Chappel and there
16 are other things that are hard to detect because of the
17 resolution of the digitized photographs consistently
18 now used.

19 I gave Ms. Clifford on June 22nd a copy of that
20 picture. I gave her a picture of the watch and asked for
21 her help.

22 What I got out of that and trying to seek the inter-
23 vention of the Court was a response that unless I can
24 prove that my client didn't do the murder that they
25 are not going to assist, either the State or the

1 police, in helping me prove some other dude done it.

2 What we're asking for, Your Honor, by way of recap,
3 are several things.

4 We'd like the Court to issue its Order which I'll
5 be happy to prepare for the Court to consider all or some
6 of my requests for production.

7 For the State to immediately--I would ordinarily
8 say within a reasonable period of time--eighteen months--
9 produce these items I've identified from their discovery
10 that we need to prepare a competent defense for my client
11 at trial.

12 We would like some indication of correspondence or
13 documents related to what they identify as the primary
14 piece of physical or forensic evidence sooner than five
15 months after.

16 We would like, Your Honor, the Court to order--I
17 won't go through the list now since some of it is dupli-
18 citous, but order the State to allow us access, and we
19 understand maintenance of chain of custody and preserva-
20 tion of integrity of evidence, but for independent examina-
21 tion of all of these forensic pieces.

22 They don't seem to be concerned about it. Maybe
23 too loudly not concerned about it.

24 We would like to ask you, Your Honor, to rule--
25 we don't have time this afternoon, I don't think--to

1 rule on it. We have thirty motions pending or more--
2 twenty--that I've tried to resolve by a meeting on these
3 issues, and I can tell you very, very briefly as to each
4 one of these items what the State's response was, if I
5 haven't outlined it in a copy of a letter I've given to
6 you.

7 Most of the responses from the State, as late as
8 June of this year, a year and three months after the mur-
9 der, were, I'll look into that; I'll find out; I don't
10 know; we'll see.

11 One was very interesting. I asked her on June
12 22nd if there were--if she was sure that during three
13 days of interrogation there were no audio tapes or video
14 tapes made of my clients when he was being talked to or
15 interrogated, and she said she confirmed it on all fronts
16 but had one remaining detective to ask for sure, and I have
17 not heard anything else from her in that regard.

18 I ring her back and try to stay on these issues. I
19 said, you told me you'd give me this; you told me you'd
20 find this out; you didn't do it; I haven't heard anything
21 after all this time.

22 So, Your Honor, we'd ask you, in considering all
23 these issues--I know I've been long-winded--to not make
24 Mr. Myers suffer for the foot-dragging on the part of the
25 State.

1 They have put us in an untenable situation. By not-
2 ing a need or desire for DNA testing on the single strand
3 of hair as early as March 14, 1997, coupled with our re-
4 quest that it be done, and the back-and-forth delay in
5 getting it done, my client now sits in a position where we
6 are not comfortable in moving for a speedy trial because
7 of the fact that we want to see the DNA results of that
8 hair analysis.

9 We also want to have the opportunity if they aren't
10 going to conduct forensic examination of the murder weapon
11 and other pieces of evidence--we'd like to do so at
12 what expense my client's parents have left.

13 For that, Your Honor, we would ask you to please,
14 based on these facts that did not exist back then, be-
15 cause if they had done it back then we wouldn't have this
16 situation we have now under the rule.

17 There is probably one remaining issue I need you
18 to address. The State has indicated--it won't take a
19 second, Your Honor.

20 The State has indicated that the third piece of evi-
21 dence, the videotape footage of my client being inter-
22 viewed, handcuffed and in custody of the police, with the
23 microphone in his face outside the police department--
24 they intend to offer that as a second confession.

25 It's our theory, and we think it's pretty accurate,

1 that what happened was as soon as they got him to say, I
2 must have done it, and let him be confronted by the vic-
3 tim's family who happened to be there on Saturday after-
4 noon, that they got on the telephone, despite the rule,
5 despite the ethical prohibitions against trial publicity
6 which are applicable to the police under Rule 3.8, which
7 the Solicitor warns them about in January of every year
8 not to do--and they call all the news stations and say,
9 this guy just confessed to the Mill Inn murder; you better
10 get down here to the back door because we're bringing him
11 out.

12 That's why they let him smoke a cigarette out front
13 because they were getting their cameras ready.

14 Now, I want to know who called the media, because I
15 think that goes to the direct issue of voluntariness of
16 that statement and our ability to challenge it in a Jackson
17 v. Deno setting or otherwise.

18 I issued a subpoena to the media. Only one of them
19 was able to be served this week, and Channel Four's rep-
20 resentative is here through their law firm. They have in-
21 dicated they are not going to give up their source.

22 Now, that's a pretty big issue and a whole other kind
23 of thing and that can be addressed another day. I don't
24 want to confuse matters with that, but since they're here
25 today that's why I mention that.

1 Let me mention one second final thing. Since I
2 have had the most confounding, in my entire experience,
3 inability to get information from the State--I'll look into
4 that; I don't know; I'll find out--I had to do something
5 that caused me a great deal of expense, my family, my
6 client, and trouble, and something I've been working
7 on all week and last, and that's--I said, you know what
8 I ought to do so we're in a position where maybe we can
9 get these answers? Why don't I subpoena all of the
10 State's witnesses here so we can get some definitive
11 answers today or they will at least understand they need
12 to provide them and the excuse, I can't get it from the
13 police department, is ended, and that's why all of these
14 people are here, including the Medical Examiner who is a
15 very nice gentleman I worked with in many other cases.

16 I've never heard back about the pubic swabs. If my
17 client's DNA is not on those pubic swabs and she was sex-
18 ually assaulted, then he's been wrongfully incarcerated
19 for a year and a half, despite a two page statement taken
20 under the circumstances that it was.

21 So, Your Honor, lastly I just wanted to explain to
22 the Court why all these people are here who are outside
23 of his family.

24 I only wanted to give you an overview, but I guess
25 I've said my whole piece.

1 Thank you, Your Honor.

2 THE COURT: Ms. Clifford?

3 MS. CLIFFORD: Thank you, Your Honor.

4 I want to first start by noting my objection to
5 this hearing. The first time I heard about it was on
6 Tuesday evening when I came down from a murder trial I
7 was involved with and found a copy of a fax sent from Mr.
8 Kulp to Captain Whitlock at the Jail, Sergeant Simmons
9 here, and Charlie McKinney at our office, asking that the
10 Defendant be brought over for a hearing that had been sche-
11 duled for one thirty today before Your Honor.

12 I had not previously been notified about that hear-
13 ing.

14 Yesterday Your Honor knows that you came down af-
15 ter the Courthouse was closed, and I was sitting in Jack
16 Sinclaire's office with a couple of other people, and
17 you walked in to let us know that you were going to be
18 holding pleas and then you said you were moving the hear-
19 ings up for this afternoon a couple of hours.

20 At that time, I--you indicated to me my hearing
21 as well.

22 I said, well, Judge, I don't even know what the
23 hearing is about, and you said, discovery. That was the
24 extent of our conversation about the hearing.

25 I then went and called Tim Kulp and was unable

1 to reach him. I believe I talked to Jennifer--I'm not
2 sure--and told her that you had come by and said the hear-
3 ing was going to be moved up a couple of hours, so that it
4 would probably be around eleven.

5 I asked her at that point, do you mind sending me
6 something indicating what this hearing is supposed to be
7 about because I have not received anything from him at
8 all?

9 I then tried to contact Detective Clayton to let him
10 know the hearing was going to be at eleven, so he would
11 be here as my case agent.

12 This morning I come into the office and there is a
13 fax that came in at 8:05 this morning from Jennifer.
14 The cover sheet said, Amie, I just spoke with Judge Rawl
15 to confirm time of hearing, and he decided not to move it
16 after all, so it is still at one thirty P.M.

17 I have attached a letter requesting hearing that
18 was sent to Judge Rawl that basically sets out his reasons
19 for wanting the hearing.

20 The letter is dated August 25th and is not copied
21 to me and was never provided to me.

22 The last correspondence I received from Mr. Kulp
23 was a letter of August 21st.

24 So I would object, Your Honor, first of all, to
25 this hearing being held with it being arranged by Mr.

1 Kulp, not saying, Judge, please arrange a hearing, but
2 going into great detail, slamming the prosecution and
3 the police, and setting forth his version of the events.

4 Second of all, Your Honor, inasmuch as you informed
5 me it was a discovery matter, the victim's family is not
6 here, so I would object to having any kind of a bond
7 hearing. We weren't given proper notification.

8 Mr. Kulp knows how it works. He's been practicing
9 law in this area for a long time.

10 A simple phone call to me after I talked to Jennifer
11 would have been sufficient. It didn't happen. My number
12 is listed in the phone book, my home number, and it still
13 didn't happen.

14 Your Honor, this morning I talked to Detective
15 Clayton. He said that a number of police officers had
16 been subpoenaed, and I told him to let them all know it
17 was going to be at eleven A.M.

18 Then when I went up front and got the fax about 8:30
19 and checked my mailbox, I had to call people back and
20 start trying to tell them, no, it's not at eleven but at
21 1:30.

22 So a lot of people were missed and may have come
23 in early.

24 Your Honor, that having been said, I do want to go
25 back into his discovery issues.

1 First of all, Mr. Kulp has been given everything
2 that my office has, including the copy of the incident
3 report in an unrelated North Charleston murder in which
4 our victim in this case, Theresa Haught, was a witness.

5 This is just a portion of what he's been given.
6 He has repeatedly--I've continued to provide him Rule Five
7 material as it becomes available to us.

8 In fact, today two SLED agents were subpoenaed by
9 Mr. Kulp, and when they got here they had some additional
10 information, including a report that was just finalized
11 today.

12 I made copies immediately and turned it over to Mr.
13 Kulp.

14 There are a number of different issues that have
15 come up in a number of different hearings. One of them
16 concerns the hair, and I want to inform Your Honor that
17 back on October 10th, I believe, of 1997, there was a
18 hearing before Judge Pieper.

19 At that time, I indicated that we would try to get
20 the FBI to do the DNA analysis that SLED could not do.
21 At that point, I then talked to an FBI agent here who was
22 attempting to find out how we could get the hair sent up
23 to the FBI lab.

24 He eventually let me know that he had been told
25 that you literally have to make a federal case out of it.

1 I couldn't think of any way to do that. I then
2 talked to, I believe, Steve Lambert, up at SLED. He
3 said, well, I know lots of people, and I probably said,
4 well, maybe they'll do you a favor. I didn't mean that
5 seriously, that they would do this as a favor, but he
6 said, let me talk to some people.

7 He then made arrangements with the FBI lab to
8 accept the hair and to perform the DNA analysis that we
9 needed done.

10 That hair was sent up there earlier this year.
11 Mr. Kulp has been informed--the letter he received
12 back from the FBI confirms what I told him in terms of
13 the policies in regard to the FBI and in terms of tak-
14 ing evidence and how long it takes.

15 Your Honor, I have been informed by Steve Lambert
16 that the FBI--I believe I talked to him either today or
17 yesterday--that it might be as early as two months that we
18 have the results from the analysis. ✓

- 19 I would point out that, unlike Mr. Kulp's, my
20 recollection of our hearing before Judge Pleicones is
21 slightly different. I think something significant did
22 happen.

23 I think the issue concerning the delay in the hair
24 DNA analysis was raised, and that Judge Pleicones said,
25 Ms. Clifford, are you ready to try the case without

1 having the hair sent up to the FBI, and I said, yes,
2 sir. He then turned to Mr. Kulp and said, well, then,
3 Mr. Kulp, it's because the Defense has requested addi-
4 tional testing that the delay has occurred, and I be-
5 lieve he also told Mr. Kulp that his accusations against
6 the State in terms of non-compliance with the rules were
7 not founded.

8 It's true at that point I attempted to have more
9 discovery--I have a whole notebook full of motions
10 that he keeps filing.

11 Your Honor, we attempted to have them set, set, set,
12 but he didn't want to, and I assume it's because he
13 wanted to wait until Judge Pleicones left. I don't know
14 and I'm not going to say that's the reason.

15 But he did withdraw his motion for a bond reduc-
16 tion that day in front of Judge Pleicones.

17 Your Honor, the wine carafe has been in the custody
18 of the North Charleston Police Department. It was not
19 sent to SLED but swabs from it were.

20 We have gone through all the evidence that was
21 taken by the North Charleston Police Department. Some
22 of it did not have testing that Mr. Kulp thought needed
23 to be done.

24 If it didn't and we agreed, it was sent back up
25 to SLED for testing.

1 There were some things that SLED did not want to
2 test because of their policy, and some things we didn't
3 think it was necessary or appropriate.

4 The vacuum cleaner bag is one of them. I believe
5 Joe Powell would state that because of the contamination
6 in that manner of collecting evidence, they as a
7 policy do not analyze vacuum cleaner collection bags,
8 at least the trace part as I understand it.

9 Your Honor, there are some things he has requested
10 that we have just refused. The law does not impose upon
11 us the requirement that we investigate to see if someone
12 else--once the arrest has been made and there is
13 evidence to prove that guilt.

14 The law does not impose upon us the requirement to
15 continue looking to see if there is somebody else out
16 there that might have done the crime.

17 For that reason, there are things like having the
18 detectives go out and talk to every person who was in the
19 bar that night to see if they saw who was wearing this
20 watch--this is no evidence that is related at all to
21 the crime.

22 The watch was found there in the bar when the police
23 went in and the fire department went in. That's the only
24 thing.

25 Your Honor, the--we have tried to find out as much

1 as we can for him about it.

2 The same thing with the credit report. We have given
3 him copies of the--the victim's mother brought some ad-
4 ditional information in with some credit cards that
5 Theresa had that had been cut up. Those were provided to
6 him.

7 The same thing with Dana Chappel, Your Honor. The
8 police made a decision, based upon Mr. Myers' confession and
9 the hair microscopically matching, that Dana Chappel was not
10 a realistic suspect.

11 In fact, that decision may have been made while Mr.
12 Myers was being talked to. In that case, they didn't have
13 an obligation to preserve evidence taken from him and it
14 was returned.

15 Most of what Mr. Kulp has brought up is something he
16 can use in front of the jury, perhaps to attack the
17 police department and their manner of investigation, but I
18 don't think that the State has an obligation to go out
19 and look to see if there is any evidence that is going to
20 clear him.

21 If we have it in our possession, we're going to
22 readily turn it over, and we have turned over everything
23 we have.

24 We are continuing to check--we have given him--he
25 has a copy of the crime scene photos. We have the actual

1 blowups. One was shown to the Defendant, as I under-
2 stand. He requested to see a copy the day before, but he
3 has actually seen the little four by six size with the
4 one indicated that was shown.

5 Your Honor, I would point out that the Defendant
6 was warned about the news media being outside before he
7 was brought out, but I don't really know if that is a
8 matter for now. It's more probably a matter for the
9 trial, a Jackson v. Deno hearing.

10 Your Honor, I think the problem is that we have
11 given him everything that we have. I don't think there
12 is anything left out there that we have not turned over.

13 We are continuing to look and double check. If
14 something looks like we need to do something else, we
15 will send it back up to SLED.

16 We have tried to cooperate with Mr. Kulp, but
17 he is essentially asking us to conduct his investigation
18 and help him prove his fellow didn't do it, although we
19 don't have that burden.

20 He wants us to go out and find other people that
21 could possibly have been the murderer, and we are not
22 required to do that, Your Honor.

23 MR. KULP: Very quickly, Your Honor. I got scared
24 there for a minute about that letter and I'd have to be
25 placed under oath as a Court's witness, but I would never

1 deliver anything to a Judge without copying counsel, and
2 after I took it to your office and left it on Robyn's desk
3 I immediately went downstairs and left it in the Solicitor's
4 window, a brown clasp envelope with her name on it, the
5 same day I delivered it to your office.

6 One point for clarity. Maybe I can refresh Ms.
7 Clifford's memory by saying this.

8 When Judge Pleicones asked her if she was ready to
9 go to trial, she didn't say yes. She said no. She said
10 no because now that they have raised the issue of the DNA,
11 if it's not complete when we go to trial they will beat us
12 to death with that.

13 So if that refreshes her recollection, then I think
14 that would be--maybe she could join in it.

15 MS. CLIFFORD: Your Honor, I did say that, but be-
16 fore the test was sent up to the FBI we were fine to go,
17 but now obviously we have to wait for the comparisons
18 that were requested by Mr. Kulp.

19 That would be used against the State, that we had
20 proceeded to trial before the test results were known.

21 MR. KULP: May I call Ms. Clifford as a witness in
22 an in-camera proceeding?

23 THE COURT: No, sir.

24 MR. KULP: Thank you, Your Honor. That's all I
25 have, Your Honor.

1 Thank you, sir..

2 THE COURT: Anything further, Ms. Clifford?

3 MS. CLIFFORD: Nothing, Your Honor.

4 MR. KULP: Unless you'd like to hear from the mem-
5 ers of my client's family and other neighbors, friends,
6 relatives that are here today.

7 I would mention--I left this out--he has no prior
8 record.

9 He has been in jail for a year and a half, and as
10 far as I know he hasn't been disciplined or written up for
11 anything during that entire time, sir.

12 He is currently having internal bleeding, which I do
13 not know if it's still going on or not, and he has
14 experienced other medical problems, and what she's saying
15 is maybe two more months.

16 Then I get to go get an expert to see if he can
17 interpret that DNA report, another four months, so maybe
18 it will be six months before it comes back or ten months.

19 I think I'm repeating myself, but thank you
20 very much for the opportunity to appear before you, Your
21 Honor.

22 THE COURT: Has there been any fingerprint testing
23 of the carafe at all?

24 MS. CLIFFORD: Your Honor, no. There were no fing-
25 erprints as I understand it that could be identified at

1 all or developed from anything that was taken from the
2 scene which had not only been subject to a fire but ob-
3 viously the water that put out the fire.

4 THE COURT: That doesn't answer my question. My
5 question was, has it been tested?

6 MS. CLIFFORD: No, sir.

7 THE COURT: Was it submitted for testing?

8 MS. CLIFFORD: Not for print testing. Only swabs
9 from the blood were taken.

10 MR. KULP: If I could bring up one other substantive
11 issue very quickly that I'd like to mention from my list
12 of items.

13 Found at the scene, if I might approach, was a meat
14 cleaver. It is depicted in these photographs. It was
15 found behind the bar, and it certainly looks like it has
16 blood on it.

17 Additionally, when I first met with Dr. Lambert at
18 SLED and Mr. Powell, one or both of them indicated that
19 the photo I showed them indicated it looked like it had
20 blood on it.

21 That was in November and the murder was in March.
22 I demanded and asked--asked and demanded to go with Ms.
23 Clifford to look at the evidence at the North
24 Charleston Police Department. I'm not sure of the date,
25 but I think it was in August or September.

1 We did. We went and looked at it, and I said--I
2 saw that, and I said, gee, has this been sent for examina-
3 tion, and they said no.

4 So I asked that it be sent. I had talked to
5 witnesses who worked at the bar, and they said that
6 knife wasn't at the bar.

7 It was never looked at by the police in any respect
8 and no lead was pursued. It was sent to SLED for examina-
9 tion and they said no blood was found on it, but in
10 these days and times, Your Honor, science has gone a long
11 way, and that could be tested for DNA and a whole host of
12 other things.

13 Thank you, Your Honor.

14 THE COURT: Ms. Clifford, would you be kind enough
15 to do me the favor of discussing with the witnesses who
16 are here that deal with scientific evidence or evidence
17 that was obtained from the scene that is still hopefully
18 available and in their custody, to see whether there is
19 anything else that they intend to test?

20 MS. CLIFFORD: Your Honor, . . .

21 THE COURT: Just ask them. That's all I want to
22 know.

23 MS. CLIFFORD: Your Honor, I think there are still
24 some things up at SLED.

25 THE COURT: What is still up at SLED?

1 MS. CLIFFORD: Well, I think the most recent
2 report we have that was finalized this morning--the
3 SLED chain of custody form, Your Honor, has got a--
4 there are a few things up at SLED. Most of the items
5 are back in North Charleston.

6 THE COURT: Let me make it simple.

7 MS. CLIFFORD: And the . .

8 THE COURT: The chief investigators are here,
9 are they not?

10 MS. CLIFFORD: Yes, sir. The crime scene and chief
11 investigator.

12 THE COURT: Thank you very much. Chief investigator,
13 what is still at SLED that has not been sent back?

14 (No response)

15 You don't have a clue? Thank you.

16 What else?

17 MS. CLIFFORD: Your Honor, it looks like there is a
18 lot of the victim's clothing, and I'm trying to go over the
19 SLED chain of custody sheets.

20 Maybe an envelope with blood swabs, a metal tin
21 containing blood swabs, a bag of broken and blood-
22 stained tiles, hair samples sent to the FBI--all the hairs
23 were sent to the FBI.

24 Blood standards, saliva, one blue door panel it looks
25 like, a victim's--no. Some of the victim's clothing

1 has been returned. Some cuttings are still up there. A
2 swab from the watch piece. The watch pieces have been
3 returned but the swab taken is still up there.

4 I believe except for that most of the evidence
5 should be still at the North Charleston Police Depart-
6 ment or the rest of the evidence should be there.

7 This is incomplete but I was given it this afternoon
8 by the two SLED agents, and they informed me they had
9 just pulled it for their purposes and it may not be com-
10 plete.

11 THE COURT: Thank you. Is the representative from
12 the Medical Examiner's Office here?

13 (Affirmative response)

14 Would you be kind enough to stand for me?

15 Did you do any swabs at autopsy of the vaginal,
16 anal or oral areas of the deceased?

17 DR. NICHOLS: Yes, I did, sir.

18 THE COURT: Do you have that report?

19 DR. NICHOLS: No, sir, I don't. No report was is-
20 sued. In fact, I have made a detailed search of our
21 freezer looking for those swabs. I had an extended conver-
22 sation with Mr. Kulp in January about the swabs, and
23 it appears that a freezer thaw may have wiped out all
24 the biological material from January through April.

25 I was not informed of that until today. Those

1 swabs do not exist.

2 THE COURT: Was a report done of anything in-
3 volving those swabs as part of the investigation,
4 the autopsy report, by your office?

5 DR. NICHOLS: Other than they were taken.

6 THE COURT: No analysis . .

7 DR. NICHOLS: No, sir. They were saved.

8 THE COURT: They were saved, but no report or
9 analysis was done?

10 DR. NICHOLS: No, sir.

11 THE COURT: Thank you, sir. Anything else?

12 MR. KULP: Nothing, Your Honor. Thank you very
13 much.

14 MR. DAVIS: Your Honor, we just have a motion to
15 quash the subpoena. My folks have been here a couple
16 of hours, and I hate to put the issue of ..

17 THE COURT: I can make life real simple. I can
18 quash the subpoena. I can order the City of North
19 Charleston to turn over every single phone record of the
20 City of North Charleston for that particular period of
21 time over that three day period.

22 MR. DAVIS: That would defeat the obligation under
23 the reporter shield statute, Your Honor.

24 THE COURT: Yeah, I thought of that too.

25 MR. DAVIS: Thank you.

1 THE COURT: Anything further? We'll let these
2 folks go about their business.

3 Has anyone in this room who is a witness, investi-
4 gator for either side, been told by anyone not to talk
5 to the Solicitor's Office or to not talk to the Defense
6 Counsel?

7 If so, raise your hand, please.

8 (No response)

9 Thank you very much. I have nothing further at
10 this time. I will speak to the attorneys outside of the
11 presence of anyone else.

12 I will issue an Order shortly. You are free
13 to go about your business, folks. Thank you.

14 You are released from the subpoenas.

15 (Spectators leaving Courtroom.)

16 THE COURT: What evidence do you have to prove
17 this man guilty other than the confession and the
18 hair?

19 MS. CLIFFORD: Other than his confession and the hair,
20 that's it.

21 THE COURT: How are you going to get the confes-
22 sion in?

23 You've got to have the corpus delicti of the crime?
24 You've got nobody to put him there. You've got no
25 evidence other than his confession.

1 MS. CLIFFORD: No, Your Honor. The corpus delicti
2 would be the murder, the body.

3 THE COURT: No. The corpus delicti is the cir-
4 cumstances surrounding the crime that puts him there
5 and deals with it, other than his confession.

6 MS. CLIFFORD: Your Honor, I would respectfully
7 disagree. I think the Courts have been very clear that
8 the corpus delicti would be that a murder has occurred
9 and you have a dead body. When it is obviously not a
10 natural death.

11 THE COURT: In order to get a confession in, there
12 has got to be some evidence of a crime, some evidence
13 he did it.

14 What evidence do you have that he did it, other
15 than the confession?

16 MS. CLIFFORD: We have the hair, Your Honor.

17 THE COURT: Which is what? Microscopically compar-
18 ative to the Defendant?

19 MS. CLIFFORD: At this point, yes, sir.

20 THE COURT: Where was the hair found?

21 MS. CLIFFORD: In her hand, under her body, in the
22 burned bar.

23 THE COURT: Where was the cleaver found?

24 MS. CLIFFORD: Behind the bar.

25 THE COURT: Where was the watch found?

1 MS. CLIFFORD: I don't know where in relation to
2 the body the watch was found.

3 THE COURT: Now, I totally agree with you that
4 law enforcement has absolutely no duty or responsibil-
5 ity to prove the Defendant's case.

6 I will, however, state to you clearly on this
7 record that I am making that a prosecutor does have a
8 duty, and that duty is to represent all citizens, and
9 not just the victim, not just the Defendant, not just
10 law enforcement. All citizens.

11 Now, if in essence you are finished--your peo-
12 ple are finished with the physical evidence available, I
13 am most likely going to grant Mr. Kulp the right to in-
14 dependently test all of it, mainly because if you all
15 have decided to test or not to test--if you have
16 tested, he's got the right to have an independent test.

17 If you all have custody of it and he cannot
18 obtain it any other way except to ask you for it, then
19 in essence I will probably grant him the right to test
20 that type of evidence.

21 Of course, you have the duty and responsibility,
22 the right, to maintain a chain of custody.

23 Now, I've fussed at you enough. I'm going to
24 fuss at you.

25 Why in God's green earth are you in taking materials

1 not requesting an Order of the Court to get the informa-
2 tion that you want?

3 MR. KULP: I'm sorry, Your Honor? Why am I taking
4 . . .

5 THE COURT: If you wanted something from the City
6 of North Charleston, why didn't you ask me to give you
7 an Order for it?

8 If you wanted something from SLED, why didn't
9 you ask for an Order for it?

10 MR. KULP: That's what I've been doing.

11 THE COURT: All right.

12 MS. CLIFFORD: Your Honor, if it would make it
13 easier, what I will do with Mr. Kulp is I will get a
14 printout of all the evidence left in this case and de-
15 termine the location of that evidence and go through
16 with Mr. Kulp what he wants to have independently tested.

17 Then we can figure out a time-table and make the
18 arrangements for that.

19 Then we . . .

20 THE COURT: I detect that there is probably an
21 empasse between the ability of you and Mr. Kulp to dis-
22 cuss this case.

23 MS. CLIFFORD: Your Honor, I don't have a problem
24 with it.

25 MR. KULP: I have a problem because it's the same

1 old thing I've heard, Judge.

2 I mean, I have met--had appearances before Judges
3 and asked for these things. She's cut off my right to
4 get a material witness warrant for the other guy, so he
5 is probably in Phoenix by now.

6 She has fought me on independent testing all
7 along. She has fought me on just getting bank records,
8 a consensual Order.

9 I approached the Court for a consensual Order on
10 bank records and it took us two months to hash that
11 out.

12 The problem is that she doesn't know, and I have
13 asked over and over--I want the wine carafe--I want to
14 see it.

15 You know, I'm getting blamed for trying to
16 simply do my job, and I have asked the Court to inter-
17 vene.

18 The first thing is--the State's response is, well,
19 I've given you this other case and given you what you
20 already would be entitled to or whatever.

21 My requests were very specific, and I think they
22 are meritorious, and what she's saying now is, well,
23 let's get together sometime in the future and I'll get a
24 --it's been eighteen months.

25 I have been asking over and over to the point where

1 everyday I think about this case, saying, look,
2 just tell me.

3 I wasn't trying to be offensive by asking to put
4 her on the stand, but I feel like sometimes I need to,
5 to say, it's a simple question; where is the wine
6 carafe?

7 Is it in one piece? Has there been any testing
8 of it?

9 Have there been any fingerprints?

10 I can't get any answers. It's so confounding.
11 I've never had this before, and I can show you in the
12 record--I don't know; I'll check on that; I'll check
13 on that was happening last August. A whole year ago,
14 a whole year.

15 I don't know what to tell my client and his fam-
16 ily. They keep saying, well, gee, are there any finger-
17 prints? You know, they watch TV and see fingerprints,
18 they see DNA so popular these days, and I say, I'm
19 trying, I'm trying.

20 They just--it's low priority for them. It's high
21 priority for my client, and they just want to kind of
22 look at it and give me a list or something, and, you
23 know, I only get things when I'm here.

24 She just handed me things from April that she--that
25 her agents have had since April.

1 The only way--it's crazy. The only way for me to
2 get anything is to do all this, orchestrate all of this,
3 work hard, get into Court, and then things start coming
4 in.

5 Every time we've had a hearing something has been
6 laid on my desk. Only because we've had a hearing, and
7 I just don't think that's their responsibility under
8 Kyle, under Gullledge, or any of the other cases.

9 If I made a specific request and she, or people
10 within her control, not third parties, have that informa-
11 tion, they have to properly give it to me, or it's sub-
12 ject to suppression or other remedy.

13 And they are just not doing it, and I'm like the
14 low voice on the totum pole and low man, and if it was
15 more evidence--as you said and she had to cooperate and
16 confess, a hair and a two page hand-written confession
17 after three days of tricking--then maybe I wouldn't be
18 so concerned.

19 I wake up in the middle of the night thinking about
20 this case because of the fact that, you know, it's the
21 scariest thing in the world. I represent my client and
22 I'm not the jury, and the notion that he really didn't do
23 it.

24 I mean, I guess I will say that on the record. It
25 freaks me out.

1 I'm not saying anybody else did, but in other
2 cases there is overwhelming evidence. In this case,
3 there is more evidence against Dana Chappel than
4 there is against Wes Myers, apart from the confession.

5 So what they want to do, Your Honor, is they
6 want to go another six months or so while he sits in jail,
7 while I'm out there trying to do the police work, which
8 I don't mind doing--it's my job for my client--while
9 I'm out there trying to solve the crime and do things
10 the police should have done.

11 All of that aside, all I'm asking for is what I
12 think I have the right and the ability to do, and that is
13 to have the tools to do my job.

14 That is, to have answers to simple questions, like
15 can I see the wine carafe, can I have an expert go and
16 look at it?

17 Well, I don't know. It might have been broken up
18 or I'm not sure where it is. The case agent doesn't
19 even know what's going on in this case. It's in the pend-
20 ing and active file.

21 They don't care about this case, and it's a situa-
22 tion where any one of these things I'm asking for
23 could break the case open. Any one thing.

24 If there is a blood splatter there--he has a
25 unique type of blood. If there is one drop of blood on

1 the victim's clothing that is not hers and it's not his,
2 then they've got a problem.

3 They have been stone-walling me on finding that
4 one little thing in an already shaky case that could
5 change it either way.

6 When I stood up originally in Court and asked
7 for DNA and all this testing, I knew I was rolling bones.
8 You don't know your clients all the time, and in fact what
9 happened was I rush to DNA testing and it turns out it
10 was him, then we'd be talking about a plea, getting it
11 off the docket.

12 THE COURT: Mr. Kulp, . .

13 MR. KULP: Yes, sir.

14 THE COURT: . . believe it or not, I know how to
15 practice criminal law.

16 MR. KULP: I'm sorry.

17 THE COURT: Now, this is what I am going to
18 tell you.

19 MR. KULP: Yes, sir.

20 THE COURT: Amie, Tim is going to prepare me a
21 proposed Order, and the proposed Order is going to con-
22 tain those things that he says he absolutely has to
23 have in order to be able to ask his forensics people
24 to test it, or that he has to have your people find,
25 period.

1 He's going to send you a copy of that Order before
2 he sends it to me. It will probably be very similar to
3 the outline he has already given to me.

4 I am not casting stones or aspersions, but I am
5 simply saying that at this point in time I either want
6 agreement or I am going to order what I have to order.

7 And I understand--let me make it clear because I'm
8 speaking on the record--I understand the divisions be-
9 tween the Solicitors and law enforcement, SLED, FBI and
10 everything else.

11 But I also understand that when it gets to my level
12 here, the Solicitor is the most responsible party. They
13 can't truly hide behind, well, I've asked for it but
14 they didn't give it to me, or they're sending me stuff
15 now--and, please, I'm not casting stones.

16 I'm simply saying at this point in time you may very
17 well have to take that to North Charleston or to SLED or
18 whatever and say, you all better start finding this stuff,
19 because the Judge is going to order it.

20 So I'll do that, and I'm going to do it for three
21 reasons. One, so that Kulp can do his job. Two, so there
22 will be an accurate record of what has already happened
23 today, and, three, so that there will be a basis upon
24 which you get stuff in or his keeping stuff out at
25 trial.

1 I don't know of anything else I can do.

2 MS. CLIFFORD: Your Honor, the only thing is, the
3 two SLED agents that were up here talking to me right be-
4 fore everybody else left the Courtroom, they were express-
5 ing to me their policy in regard to independent testing,
6 that it can't be done up at SLED, and probably Tim knows
7 that.

8 THE COURT: Amie, I don't care.

9 MS. CLIFFORD: Well, I . .

10 THE COURT: Listen to me. I don't care. The first
11 thing that I need to do before we get into technicals is
12 what is it, where is it, and do you agree or disagree you
13 are not going to further test it, and have you given him
14 a test on it.

15 I'm making him do some of your work, because you're
16 not going to do it until the case is up for trial, and
17 I understand it, because of time crunches in your office.
18 I'm well aware of that.

19 He's got a client. He's being paid, he's working his
20 fanny off just like you are, and he's going to prepare what
21 he needs and send it to you. That checklist slash Order will
22 then say what he's gotten from you, what you have tested,
23 the reports you have received and what the evidence is on
24 those reports, and, most importantly, that which you intend
25 to do nothing else about which he's entitled to test

1 independently.

2 Okay? That's where I'm coming from.

3 MS. CLIFFORD: That's fine, but when the independent
4 tests are done obviously I would hope maybe a police
5 officer or somebody can be present.

6 THE COURT: Amie, I'll worry about the technical prob-
7 lems later. Right now I'm worried about making sure I can
8 get something reasonable to your office that's going to
9 get this case moved along, and reasonable to Tim's need to
10 represent his client.

11 Now, I'm going to tell you straight-forward, Tim,
12 if you subpoena a police officer to get materials I'm going
13 to order it. Of course, Amie better get a copy of that sub-
14 poena.

15 This business about subpoena-duces tecuming Channel
16 Four, although I'd love to be able to do it--I can't. You
17 know I can't.

18 Now, if you've got something direct, specific, of
19 those law enforcement officers who were involved in his
20 interrogation, and the phone lines they were using are the
21 phone line of the quote-unquote reporter who did the story,
22 I'll get you those records.

23 MR. KULP: Yes, sir.

24 THE COURT: And if you want credit card stuff, all
25 you have to do is come and get an Order from me. You

1 don't need to harrass the Solicitor's Office or harrass the
2 victim's family to get that kind of stuff. That's the kind
3 of stuff I'm fussing about that you have got a right to
4 get, and it's good practice to try to cooperate, both sides,
5 in trying to prepare a case for trial, but you cannot ex-
6 pect the Solicitor's Office to get that stuff for you. I'll
7 get it for you.

8 MR. KULP: Yes, sir.

9 THE COURT: That's the kind of lines I'm trying to
10 draw for you. The thing I'm trying to get across to you is you
11 have to work together and if either side has a problem, come
12 and see me and I'll try to fix it.

13 You can't rely on each other to do everything. You
14 don't control the cops, although I think you probably should
15 to some extent.

16 MS. CLIFFORD: I wish I could.

17 THE COURT: Well, I can help you with that too, Amie,
18 and you know that. If they're giving you grief or hiding
19 stuff from you, it ain't going to be you that's dismissing
20 the case. It's going to be me dismissing the case on their
21 failure to provide you with information on which to make
22 decisions.

23 That's as fair as I can be, as straight as I can be,
24 and I'm saying it to folks I know that are outstanding law-
25 yers and involved in this kind of stuff every day.

1 The world is going to think I cussed you out, but you
2 know I didn't. The bottom line is let's get this thing
3 going and fixed.

4 If he's guilty then he hangs, but if he's not guilty
5 we need to go ahead and get it solved.

6 Thank you very much.

7 MR. KULP: One last issue they're going to ask me about,
8 the issue of bond.

9 THE COURT: I'm not going to deal with the issue of
10 bond. I will rely upon the fact the victims are not here
11 for right now.

12 What I'm going to do is this. When you all prepare
13 that Order and tell me agreement, disagreement, where it is,
14 who has done what reports and so on with a index or attach-
15 ments--notebook or whatever you want to do--when you do
16 that, both sides, then the matter will be ripe for discus-
17 sion as to when the case should be set for trial, I think,
18 and we will set a date for trial. If necessary a day certain
19 to give both sides time to get ready and do what they
20 need to do.

21 At that point in time I'll be glad to deal with the
22 issue of bond. At this time I am not.

23 MR. KULP: Thank you.

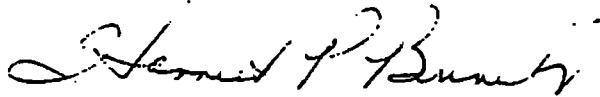
24 -----end of requested Transcript of Record-----

25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Official Court Reporter
3 for the Ninth Judicial Circuit of South Carolina, do
4 hereby certify that the foregoing is a true and correct
5 transcript of record in the captioned matter, prepared
6 to the best of my ability, as heard in the Court of Gen-
7 eral Sessions for Charleston County on September 4,
8 1998.

9 Further, I certify that I am neither of kin, of
10 counsel, nor do I have any interest in the outcome of
11 the within action.

12 

13 September 28, 1998
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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) COURT OF GENERAL SESSIONS

3 The State,)
4)
5)

6 vs)

97-GS-10-4319;4320

7 Wesley Max Myers,)
8)

9 Defendant.)

10 October 28, 1998

11 B E F O R E:

12 The Honorable A. Victor Rawl, Judge

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

14 Amie L. Clifford, Assistant Solicitor
15 Bruce Durant, Assistant Solicitor

16 Timothy Clay Kulp, Esquire
17 Attorney for the Defendant

18 A. Leah Guerry Brunson
19 Circuit Court Reporter
20
21
22
23
24
25

1 THE COURT: This is State Wesley Max Myers.
2 Do you have a caption.

3 COURT REPORTER: Yes, sir.

4 THE COURT: Indictment no. 97-GS-10-4319 and
5 4320; warrants F-339394 and F-339393.

6 These are Charleston County cases. We're
7 here on a continuing discovery, Brady and Rule 5
8 criminal issues.

9 You may proceed.

10 MR. KULP: Thank you, Your Honor.

11 By way of summary, I believe, and would
12 submit we are here for several reasons today.

13 One was for purposes of examining and
14 hopefully resolving the proposed order submitted by
15 the Defense for independent forensic examination of
16 various items or exhibits in this case. By way of
17 review we had proposed -- well the Solicitor's
18 response to the submission of that proposed order was
19 that based on a number of objections the State would
20 like the opportunity to address those to the Court.
21 We tried to arrange that for this week by telephone
22 conference and the State preferred that it be on the
23 record that's why we're here.

24 I had asked for conclusion of that proposed
25 order and so being here also, I guess, is part of my

1 doing as well, at least in terms of wanting to get it
2 done.

3 The second issue would be that I asked for
4 would be dealing with the proposed order -- rather
5 the pending motion to compel Mr. Dana Chaples to
6 provide standards for purposes of forensic
7 comparison, which the State has opposed in the past
8 and I now -- that's secondly -- and I now understand
9 or have been served just today with a copy of the
10 State's motion to vacate this Court's Order that the
11 State respond in writing within 15 days to the
12 Defense motions and proposed order.

13 Additionally, Your Honor, I think while we
14 here - I was just making a few quick notes - that is
15 while I have no idea what the status is of the
16 forensic FBI examination; and I'm also here to let
17 the Court know that in the order that this Court
18 signed directing the medical examiner's office to
19 produce certain information, I have not received any
20 information in that regard. So by way of
21 housekeeping, I mention that to you.

22 So, I guess, in order of matters to
23 undertake the first would probably be the proposed
24 order for independent testing, which we provided the
25 Court on the 15th of October and simultaneously

1 provided an identical copy to the State on that same
2 day.

3 THE COURT: Ms. Clifford.

4 SOL. CLIFFORD: Thank you, Your Honor.

5 I guess maybe it would be easiest to go
6 through the items of evidence that we don't -- we
7 don't object to the Defense having access to at this
8 point in time.

9 And those would be the meat cleaver and
10 that's referred to in the proposed order at page 3.

11 The vacuum bag with its content referred to
12 on page 4.

13 The 2 by 4 piece of wood referred to on
14 page 5.

15 The semtab swabs referred to on page 5.

16 And then the bird watch referred to on page
17 6.

18 And the copies of the photos of any shoe
19 prints referred to on page 9, which I actually
20 believe have already been provided but we don't
21 object to those.

22 The other items and there are six other
23 items that are referred to in the order that we do
24 object to at this point having to turn those over or
25 have available to the Defense for independent

1 examination because we want the opportunity to send
2 these back up to SLED to make sure one more time that
3 we have done everything we possibly could do to
4 reveal anything of evidentiary value on these items.

5 The reasons for that is because of testing
6 or examination by the defense experts may result in
7 the consumption of the evidence itself. Thereby
8 preventing the State from proceeding any further and
9 since the burden of proof is on the State we would
10 like the opportunity to do that.

11 And those items would be the glass
12 fragments referred to on page 3.

13 The burned and bloody one dollar bill
14 referred to on page 6.

15 The hair from the glass piece referred to
16 on page 7.

17 The blood samples from the back room
18 referred to on page 7.

19 The impressions from the victim's car and
20 if those are actually only photographs, which I
21 believe we will turn those over as well with the
22 first group, but those are referred to on 8.

23 And the latent prints removed or lifted
24 from Chapel's car referred to on page 8.

25 Your Honor, I believe the last two items

1 the impressions and the latent prints could probably
2 be available within 30 days for the Defense if not
3 sooner. Those would be expedited.

4 Those would probably be done either at the
5 North Charleston Police Department the examination or
6 up at SLED in separate department from where the
7 blood -- the items with blood or hair would have to
8 go. Those would be expedited a lot quicker than
9 those could.

10 The other items -- I would be hopeful that
11 we would probably have those done within 30 to 60
12 days. I can't pin point because of DNA become
13 necessary -- I don't think it is or would be at the
14 point -- but I think we probably could have those
15 done within 60 days.

16 Your Honor, the State does not think that
17 we're being unreasonable we're trying to make all
18 effort to cooperate. Again, we have given Mr. Kulp a
19 copy of our entire file except for work product and
20 the police officers' notes. Unfortunately the State
21 does bear the burden of proof and we want to make
22 sure we have gone back and processed any and every
23 piece of evidence that may have any bearing on this
24 case; and for that reason we still want to keep those
25 six items of evidence for testing.

1 Your Honor, there are some other objections
2 to the proposed order.

3 Do you want me to stop in terms of that now
4 or go forward?

5 THE COURT: Go ahead.

6 SOL. CLIFFORD: Okay.

7 Beginning on page 10 of the proposed order,
8 the Defense has requested or is asking you to order
9 that we turn over to the Defense the known
10 fingerprint impression or major case print on Dana
11 Chaples, the deceased Teresa Haut (phonetic), The
12 Defendant Wesley Max Myers, and Charles Collin
13 William, Jr. A. K. A. Bubba Williams, and Leroy
14 Gabber.

15 The Defense has also requested that we turn
16 over the DNA profile of Teresa Haut, the deceased,
17 and Wesley Max Myers, the Defendant.

18 Your Honor, first in regards to the
19 fingerprints, the State objects to turning over its
20 major case prints in any case to the Defendant for
21 the main reason that those are kept on file. They're
22 what is used by SLED or any other law enforcement
23 agency that does comparison works. If they leave the
24 custody of SLED or the individual law enforcement
25 agencies, we cannot verify the integrity of those

1 prints quite honestly. And we would object to that.

2 Also, Your Honor, what he has done -- with
3 exception to Teresa Haut and Wesley Max Myers were
4 definitely very relevant to this case. Because Teresa
5 is dead. Wesley Max Myers is charge with her
6 murder. These other people -- he's going on a
7 fishing expedition. He's trying to get the State to
8 find evidence which might prove or show that this guy
9 maybe is not guilty. We're not required to do that.

10 Same thing with the -- initially the DNA
11 profile for Teresa Haut and Wesley Max Myers. If, in
12 fact -- we might be willing to share the DNA profile
13 of the deceased because she is dead. If it can be --
14 Wesley Max Myers he has access to him. Your Honor,
15 the State is not required to financially or otherwise
16 support or condone or facilitate an investigation or
17 an attempt by a defendant to prove his innocence.

18 He's essentially asking that the police and
19 the solicitor's office and SLED work for him to clear
20 him of this crime. We're not required to do so.

21 Moreover, Your Honor, when you look down at
22 page 13, no. 4, it says: Following acquisition of
23 the exhibits by defense experts, the defense experts
24 and the defense are ordered to make known to this
25 court, under seal, unless the defense chooses to

1 introduce such report of examinations and tests as
2 evidence in chief at trial and discloses that intent
3 to the State the names, addresses, and telephone
4 numbers of any and all experts so employed and any
5 information relating to the whereabouts of any of the
6 exhibits possessed by the defense experts.

7 Essentially, he's asking this Court to
8 order that unless he puts a defense expert up that
9 any evidence as to the chain of custody of these
10 items is to be under a seal.

11 The State would submit that just cannot be
12 so. We're responsible for the integrity of the
13 evidence. That includes the chain of custody. We
14 need to have access and have knowledge of exactly who
15 all has touched; what has been done with; and where
16 the items have been located, if, Your Honor, decides
17 to turn them over to the defense.

18 As you heard at the last hearing, we
19 object, we object just for a blanket turnover
20 requiring us to pack things in a box and turn over to
21 Mr. Kulp. We think there has to be some structure
22 whereby the evidence custodian for North Charleston
23 accompanies the evidence, takes it to wherever it's
24 going, then takes it back, then obviously the Defense
25 would have to bear the expense of that employee's

1 time and if there's any travel involved.

2 The State doesn't feel it can afford to in
3 a murder case, a case of this magnitude, to just let
4 evidence go.

5 THE COURT: Mr. Kulp.

6 MR. KULP: Thank you, Your Honor. Very
7 briefly.

8 As you know, Your Honor, this case is over
9 19 months old; and the entire time period my client
10 has been in jail incarcerated.

11 The State has indicated by the response
12 here today that they object to our possession of an
13 independent examination of six items, which we feel
14 among those that are still to be tested or examined
15 are the most important, are among the most important.

16 They further indicate that the fastest time
17 for them to do what they have not chosen to do for
18 over a year and a half is 30 days, and a potential
19 another 30 to 60 days should there be any DNA
20 testing.

21 Well, I would offer to the Court that we
22 know that's a little foolish, I think, on their part
23 of estimating the time because I've been asking for
24 DNA testing since last July. They finally sent it
25 off sometime in April. It's October and we still

1 don't know what's going on with it. So, 30 to 60
2 days is pretty much pushing it. That again would
3 prolong the trial of this case.

4 But the primary crux is, as we've mentioned
5 in the proposed order and all the other pleadings
6 that I've filed and arguments to the Court, is that I
7 have been asking for them to do this. To test these
8 items of evidence, personally with Ms. Clifford, in
9 letters to Ms. Clifford, in pleadings to the Court,
10 in pleadings before other courts, other judges in
11 these matters; and the response when I finally get
12 around to saying, if you're not going to do it or for
13 those things that you have tested and then put back
14 into the locker and have no further interest in, we
15 would like to pay the freight and have them tested.

16 They come back and say, Well, okay. Now,
17 if it looks like because of the preparation of the
18 proposed order for us to do so, it looks like that's
19 going to happen or could happen to some degree
20 depending upon the Court's final decision; now we'll
21 go ahead and test them and further prolong the case.

22 Your Honor, I think if this was six months
23 old even, possibly a year old, considering the work.
24 But the point is, I have before me I'm not going to
25 get into the detail they've provided it to me noted

1 September the 4th the SLED printout of where things
2 are. And most of those things have been sitting at
3 North Charleston, for example, since February of this
4 year with no interest by State whatsoever doing the
5 intervening eight month period to do any of which
6 Ms. Clifford proposes now.

7 In fact some things like the dollar bill
8 she has identified she wants to test, despite two
9 trips over there, I've never seen it. It's never
10 been produced. It's never been photographed. This is
11 news to me about that.

12 Finally, Your Honor, in terms of wanting
13 them to do our work, it's not work for them to
14 provide us with that which would under protective
15 order facilitate our independent analysis of these
16 issues and items.

17 I didn't mean the original fingerprint
18 major case cards just a copy. I don't want to
19 deprive them of the ability to match any person
20 requested with the crime that happens in the future
21 and hamper the prosecution's ability to link them.

22 Additionally, Your Honor, those other
23 people whose prints that I've asked for, those are
24 people who are not charged in this case. And, in
25 fact, we would respectfully submit -- the State has

1 no standing to object to the provision of information
2 about them; certainly under protective order where
3 the information would be guarded and privacy rights
4 would be adhered to. Simply because if those persons
5 want to challenge that that is a glitch that will
6 serve them and they can retain counsel, and ask for
7 appointed counsel to block the provision of that
8 identifying information.

9 Finally, it sounds like Ms. Clifford wants
10 us to go ahead and pay for us to have our client's
11 DNA profile established.

12 Well, there are two problems with that.
13 No. 1, my client voluntarily gave that for what it's
14 worth.

15 No. 2, to convey that information to us
16 would take a ten cents Xerox copy to copy the page or
17 pages associated with that DNA profile. That's how
18 much trouble it is for them to do that.

19 And, thirdly, my expert certainly wants to
20 see the method by which and the identifier that they
21 concluded in terms of any future matching possibility
22 or comparisons. So we're not asking them to go do
23 that. We're done all of this. We've prepared the
24 order. We have carefully reviewed where everything
25 is. Who has it. And consider the passage of time.

1 And respectfully asking this Court as --
2 within the language of the proposed order for the
3 opportunity to test these items with retained experts
4 that we've been contacting all across the country to
5 do these various types of forensic examination.

6 As far as placing that information under
7 seal, of course, I think Ms. Clifford's statement are
8 out of -- aren't relevant to or maybe don't consider
9 the fact that if it's under seal it's there; and the
10 Court could be approached at any time to have that
11 information unsealed for any reason the Court found
12 fit to provide that to her. I put that in the order
13 because I think it would be incumbent for them to
14 know where their evidence is should a need arise.
15 And I'm not trying to hamper their ability to
16 introduce evidence at some future time which they
17 have found at this time is not inculpatory; but yet
18 at the same time, preserving the Defendant's right
19 under -- and responsibilities under reciprocal rule 5
20 request should he deem not to use in his case in
21 chief any results of any independent examine.

22 But -- and in terms lastly, Your Honor, the
23 evidence custodian accompanying someone, we have
24 spent a great deal of money on this case in the 20
25 months that have ensued and we're positioned now

1 where my client's family is willing and committed to
2 spending more money for the tests and the experts
3 necessary to review these items, which the State
4 hasn't bothered to look at over year and a half.

5 And I think -- and I take it as a little
6 barbed to suggest that someone needs to accompany
7 them -- I guess that would mean if we're taking
8 evidence to Life Codes in Connecticut that if we are
9 going to have to buy a \$1200 plane ticket for
10 Mr. Harmon to fly up there for that purpose. I think
11 that the significance of the glass fragments, which I
12 did personally examine and photograph, is there. I
13 do not think there is so little blood, for example,
14 on those items of glass that testing would destroy
15 any remaining possible examinations that the State
16 might now do that they haven't done in 20 months; and
17 if there were any fingerprints, latent ones, to be
18 lifted off of there that have apparently not been
19 done in 20 months; that being the glass fragments
20 held by the killer that, in fact, our expert with --
21 properly qualified. I'm not going to hire someone
22 whose testimony I can't get them to court. If
23 lifting those fingerprints would have those items
24 prepared and secured for their examination by their
25 experts and for potentially our introduction at

1 trial.

2 Finally, Your Honor, I would just say it's
3 interesting as well and I just thought of it that
4 among the items that -- the six items that the State
5 now wants to go ahead and now proceed testing of that
6 we specifically would like the test.

7 No. 1, Ms. Clifford mentioned the glass
8 fragments. I didn't see them the first time I went
9 there last September. When I recently visited there,
10 I did see them.

11 No. 2, the dollar bill I've never seen.

12 The hair that was in fact -- well, I say
13 the bloody two dollar bill. I see -- I might have to
14 correct myself on that, but I don't have my notes of
15 going there in September. But I don't really recall
16 seeing that.

17 The single hair that was -- and the single
18 hair that the State's concerned with is the one found
19 in the victim's hand. All the report says it was
20 several, but there was a single hair noted on the
21 wine craft piece. And that hasn't been tested and
22 it's been sitting up at SLED since February. I've
23 never seen that or any documentation of it other than
24 what's been given.

25 The blood sample. The blood sample from

1 the back room. I've never seen that. I've never had
2 the opportunity to visually see that.

3 Impressions from the victim's car's
4 windshield. In preparing the propose order, I went
5 back and looked at the case for the twentieth time
6 and saw something that was very clear and I put it in
7 the order in a footnote I think and that was not that
8 they saw this impression or wax like marking " do me
9 later, baby " [REDACTED] but that they had actually
10 lifted that in some fashion, which would lead one to
11 believe there was physical evidence of that
12 somewhere. I've never seen that as well. That
13 certainly could be subjected to handwriting analysis.

14 And then lastly, the latent prints from
15 Mr. Chaples's car. The latent prints from
16 Mr. Chaples's car. I never seen those as well,
17 either on white or black backings as lifted prints
18 from that source.

19 And the very final thing is, I keep hearing
20 reference to the shoe print photos. And I have been
21 begging for those to be identified to me, if I
22 already have them or to be produced to me if -- I
23 haven't been given them just for months and that has
24 not been done. So, that is something that we would
25 like to clarify as well.

1 I guess in summary, Your Honor, I just
2 think it's a little late in the game for the State to
3 come in -- it seems a little bit of a knee-jerk
4 reaction if you're now going to test this it's must
5 be some merit to it and that certainly begs a little
6 bit of logic that bothers me to be quite honest.

7 If we're going to all of this trouble and
8 expense for independent testing and the State now
9 runs in and says wait a minute, we don't want to do
10 it for all that time, but now we want to do. It
11 seems like to me that knee-jerk reaction is a
12 recognition of the fact that we might get something
13 out of this; therefore, they want to deprive us the
14 ability to do now, maybe later that hasn't even been
15 addressed by the State. But after whatever extensive
16 time period they do it we will then have the
17 opportunity to do if there's anything left for us
18 then. That's a two-way street. And I think it
19 bothers me a bit, Your Honor, because we know where
20 these things are now. I would like the Court to order
21 that we be allowed to go get them and test them.

22 And without repeating myself, that's
23 basically the crux of our position.

24 SOL. CLIFFORD: Your Honor, if I may very
25 briefly.

1 I guess, I -- and I think Mr. Durant had a
2 different understanding of what was going to happen
3 after our last hearing on September 4th and after
4 reading the transcript of that hearing, I believe,
5 our understanding is substantiated.

6 I understood after that hearing that
7 Mr. Kulp was to prepare a proposed order but more
8 importantly a chart or index of all the evidence that
9 he wanted to have tested or that he had concerns
10 over.

11 He was to then give index or chart or that
12 list to me and Mr. Durant. We were to go through and
13 find out what it was, where it was, what has been
14 done, and what the State still wanted to do with it.
15 We would then come before you and discuss matters if
16 we had disagreements.

17 As I recall at the last hearing is
18 specifically said that we would have the right to
19 come forward and tell you if there was other evidence
20 that we wanted to either have retested or tested for
21 the first time. Again, this is evidence collected by
22 the State for purposes of prosecuting the Defendant
23 in this case or the person the police believed -
24 after they did their investigation - to be guilty and
25 that is the Defendant.

1 If the State is deprived of having the
2 burden of proof of its opportunity to develop its
3 evidence for trial, then we will be prevented from
4 doing our obligation under law; and I think that the
5 State or prosecution has the primary right of
6 accessed evidence collected by the police. And for
7 that reason, I do not think it's unreasonable for us
8 to be able to take these six pieces of evidence and
9 send them back to SLED either for testing or
10 retesting and then they will be forwarded to Mr. Kulp
11 if that's your order.

12 I would note, Your Honor, just because
13 Mr. Kulp keeps bringing this up, this case is about
14 19 months old. It didn't happen -- I believe the
15 arrest was in March of '97.

16 Back in September of '97, the discussion of
17 the mitochondrial DNA analysis of the hair found in
18 the victim's hand first came up at the hearing I
19 believe it was before Judge Pieper.

20 At that time, I informed the Court and
21 Mr. Kulp that I would see what I could find out about
22 that because SLED did not do that kind of analysis.

23 I began talking to a local FBI agent. He
24 said I don't know how you do it. I think literally
25 you have to make a federal case out of it. I'll see

1 what I can find out.

2 Finally, out of frustration, I talked to, I
3 believe it was Joe Powell up at SLED or Steve Lambert
4 and that person was able to make arrangements with
5 the FBI lab to have that hair analyzed. I could not
6 do it.

7 At that point, as soon as the arrangements
8 were made and the FBI agreed to take the hair -- and
9 Mr. Kulp apparently not believing my version of what
10 happened wrote the FBI -- they, in fact, confirmed
11 the fact while they will take evidence from states
12 and from states' investigations to examine that there
13 is a lag time because the amount of work they do and,
14 I guess, the prioritization of the federal case over
15 state. It's up there. It's been up there. When we
16 had the hearing in September we were told by the SLED
17 agents, who had been subpoenaed by Mr. Kulp and were
18 present that day, they thought it would be about two
19 more months. I have not yet received a report.

20 I want to assure the Court and Mr. Kulp as
21 soon as I receive the report about that DNA analysis
22 it would be forwarded to him.

23 THE COURT: Is that hair part of this
24 report?

25 SOL. CLIFFORD: No, Your Honor, that hair is

1 separate. The hair involved in this case is a
2 separate hair.

3 THE COURT: Okay.

4 MR. KULP: The hair involved in this order
5 is in one they didn't choose to in the protective
6 order. Or forensics.

7 THE COURT: What else?

8 SOL. CLIFFORD: Your Honor, the only thing I
9 would say and, of course, you know this having
10 practiced on both sides of the fence and being a
11 trial judge, preparation for a case and case theory
12 is not a steady thing. It changes depending upon
13 what happens along the way. And as was brought up by
14 Judge Pleicones during a hearing we had with him back
15 in May of this year.

16 The State had not intended to send that one
17 hair found in the victim's hand up to the FBI lab
18 because we didn't think it was necessary in light of
19 the evidence we had in this case; however, once it
20 was requested, we could not proceed to trial without
21 doing that. And so we did.

22 In this case, there have been things that
23 may be we have second thought or taken a second look
24 at in light of what has happened along the way. And,
25 again, I don't think that's unreasonable to allow the

1 State to do the investigation that we're charged by
2 law to do.

3 THE COURT: I find as a matter of law that
4 after 19 months of discussion of this matter back and
5 forth for almost a year that the State has
6 voluntarily waived its right to test the matters
7 questioned.

8 They are, however, fully entitled to
9 whatever Defense tests resolve or reveal.

10 Therefore, these matters are ordered to go
11 to Defense with the State to receive a copy of any
12 report generated by the Defense's experts.

13 With regard to chain of custody, the
14 Defense will be getting the material. Period. If in
15 fact, however, the chain of custody is violated by
16 virtue of the Defense or their experts they, of
17 course, will have to deal with that because it will
18 be deemed to be a good chain of custody; and if, in
19 fact, the evidence is lost, the State will be able to
20 provide pictures of that evidence and will be
21 entitled to any inferences drawn therefrom.

22 Now, what else do I have?

23 MR. KULP: I will make those modifications.

24 SOL. CLIFFORD: Your Honor, I guess as to
25 that, the State would ask that you, that you stay

1 your order or grant a supersedeas.

2 THE COURT: No. I'm not going to stay it.

3 I've been involved in this -- this is the
4 third hearing I've had over a period four months.
5 There have been two other judges involved in the
6 exact same matters. I will note for the record the
7 position the State has taken and the position the
8 Defense has taken have vacillated to some extent.
9 But I will note, the last two hearings that I had
10 involved in this case, the State vehemently indicated
11 to me they were not going to do the job for the
12 Defense. They had no interest in this information or
13 this evidence. And they were not going to test it.

14 Today, they come back and say we need more
15 time to test it. They have waived their right to do
16 so by laches or by failure to take action. I'm not
17 going to do anything further at this time.

18 You want a supersedeas, Amie, you're
19 welcome to get it. But I'm not going to stay it.

20 SOL. CLIFFORD: Your Honor, fine. I think
21 just for the record, I will note that I will be
22 filing a Notice of Appeal and contacting one of the
23 supreme court justices today.

24 THE COURT: Go ahead, please, ma'am.

25 SOL. CLIFFORD: Yes, sir.

1 THE COURT: Rule 5 provides that both sides
2 must exchange information. I'm not dealing with
3 exchange of information here. I'm simply saying in
4 order to protect the State's interest, they're going
5 to test it. You're going to get a copy of it.

6 The State bares a very unique burden in the
7 prosecution of anyone. They have to be fair to both
8 sides. They are subject to Brady. They are subject
9 to rule 5. They are subject to speedy trial. They
10 are subject to pay attention to the rights of the
11 Defendant, the victims and everyone else.

12 SOL. CLIFFORD: Yes, sir.

13 Are you finding a violation of rule 5 or
14 Brady?

15 THE COURT: No, ma'am. I am not.

16 I am simply giving a basis for the decision
17 I am making.

18 No, ma'am. I'm not accusing you of that.
19 You know better than that.

20 I'm simply stating that the State's
21 reasoning, right, requirement, authority, and purpose
22 is that.

23 SOL. CLIFFORD: Your Honor, all right, going
24 on to the next point.

25 This proposed order deals with things other

1 than the evidence collected by the State.

2 THE COURT: Correct.

3 SOL. CLIFFORD: And that relates to the
4 fingerprints and major case prints --

5 THE COURT: They're entitled to a copy.
6 They're not entitled to originals.

7 SOL. CLIFFORD: Your Honor, just for the
8 record under State versus Parker and State versus
9 Gregory, the Defense is not entitled to try to
10 introduce evidence at a trial that somebody else has
11 committed the crime the Defendant has been charged
12 with, unless that evidence is totally inconsistent
13 with his or her own guilt.

14 And in this case, again, we not only have a
15 confession to the police, confession to the victim's
16 mother, and the confession, so to speak, to the
17 press. So we, just for the record, we oppose having
18 to give him evidence of people totally unrelated to
19 the investigation of this case. He's just trying to
20 fish for someone else out there he might be able to
21 place in front of the jury.

22 THE COURT: Sit down.

23 SOL. CLIFFORD: Your Honor, what about the
24 DNA evidence?

25 THE COURT: He's entitled to the profile.

1 He's not entitled to the original of anything.

2 SOL. CLIFFORD: Well, I guess that's it for
3 the proposed order.

4 Your Honor, I would also state for the
5 record, I think that in trying to say this
6 judicially, I think that Mr. Kulp in attaching the
7 exhibits he chose to attach to this order has made it
8 appear as if he has been deprived of evidence or
9 access to evidence. While he may not have physically
10 been able to take evidence from the police
11 department, he's been able to see almost everything
12 that wasn't in the file or some place being
13 examined. He's also received a copy of our entire
14 file, except my own work product and the police
15 officers' notes.

16 THE COURT: Ms. Clifford, in all due
17 difference to both sides, I am not pointing fingers.
18 I have no intention of creating, drafting, nor
19 signing an order that says that either the
20 solicitor's office, you, individually, Mr. Durant,
21 individually, law enforcement, individually or the
22 defense, individually, is violating anything.

23 I'm simply trying to say at this point in
24 time certain things are going to happen or not
25 happen.

1 SOL. CLIFFORD: Yes, sir.

2 THE COURT: That's all.

3 SOL. CLIFFORD: Well, I would just ask that
4 these exhibits or attachments to the order they're
5 not necessary. And I think they do give -- perhaps
6 present argument from the Defense to you. I don't
7 know if they are necessarily in the proposed order
8 and I would object to those.

9 I think the evidence can be identified
10 without having everything attached. There's like a
11 14 page order and 47 pages of attachments.

12 THE COURT: Uh-huh.

13 47 pages of attachments, as I understand
14 it, having read the attachments are there to indicate
15 what has happened for the most part for those items
16 of evidence that the Defense is requesting to be
17 tested themselves indicating what SLED has done or
18 not done. I did not see anything in those
19 attachments per se that dealt with what the
20 solicitor's office did or didn't do. I see
21 information contained that indicates where the
22 samples were sent; what was tested; what the results
23 were; what was asked for.

24 Unless I'm incorrect.

25 SOL. CLIFFORD: Your Honor, there's a five

1 page letter from Mr. Kulp in there, dated July 2nd
2 that's unnecessary. My correspondence is not in
3 there, neither is the rule 5, either motions, or the
4 correspondence. And I don't think that's necessary
5 and it gives a very slanted view of the process
6 without having the State's correspondence in it.

7 And if you want, it will take up a whole
8 box you don't need to have all of that in there.

9 If you just remove even that letter it's
10 not necessary.

11 THE COURT: I don't have any problem with
12 ruling on that as far as my order is concerned.

13 The attachments indicate what the State has
14 done, request of what SLED has done; with the data
15 sent forward, I think it is critical to the basis of
16 the order. Not necessarily for the time period.
17 Although it's been 19 months. That's not my main
18 criteria.

19 My main criteria is realistically,
20 logically and in my best recollection, the State's
21 position has been in a nutshell. We're not going to
22 use it. We're not going to do your work for you.
23 You can't have it. It's not Brady.

24 The position now I get today is: We need
25 these informations. We may need it. We're going to

1 have it tested. It's going to take 30 days to 60
2 days plus to get it done.

3 Now that in a nutshell is what I have heard
4 over a period of at least three hearings that I can
5 recall. That's why I'm doing what I'm doing.

6 SOL. CLIFFORD: I understand. Obviously, I
7 disagree with what the State said, but I understand.

8 THE COURT: I understand that.

9 But, I want to make sure that both sides
10 fully understand whether you use this at trial or
11 not; whether you expect to use it in trial or not it
12 is going to go to the other side by virtue of rule
13 5.

14 As far as a custodian travelling with it.
15 Huh-uh. They're not going to pay for that. But they
16 run the risk if they happen to lose it.

17 And none of this that has been identified
18 has been intended to use or indicated to me in two
19 previous hearings that you intended to use in your
20 case in chief.

21 SOL. CLIFFORD: Yes, sir. I would disagree
22 with that.

23 THE COURT: What? What?

24 SOL. CLIFFORD: What I said was: I didn't
25 know if it was necessary for the State to have any

1 further testing done. I never said we weren't going
2 to use this evidence.

3 As I understand it from the last hearing,
4 both before you sent everybody out of the courtroom
5 and after we were in there by ourselves and just
6 talking that you said that we would have the
7 opportunity to come back before you and tell you if
8 there was anything else that we wanted to have tested
9 either again or for the first time.

10 I never said the State was not going to use
11 this evidence.

12 THE COURT: If you intended to use this
13 evidence in your case in chief, you will be allowed
14 to substitute photographs if they lose it. Period.

15 SOL. CLIFFORD: I understand that, Your
16 Honor, but it doesn't help me with the testing.

17 THE COURT: And you have indicated to me, in
18 all due deference, that: No. 1, you weren't going to
19 test it.

20 No. 2, you weren't going to do the
21 Defense's work.

22 And No. 3, now you're going -- you tell me
23 you're going to.

24 SOL. CLIFFORD: Your Honor, what I did tell
25 you was that the State did not have the

1 responsibility to do the Defense's job for them. I
2 certainly did say that.

3 I did not say that this evidence, which may
4 have only been examined for one purpose not another
5 or maybe never examined at all that I did not intend
6 to have it examined. I may not have known, but I
7 never said I never intended to have this evidence
8 tested.

9 And Mr. Durant has the same recollection
10 that I did. Part of it was on the record and part of
11 it was off the record.

12 I recall you telling us specifically that
13 once Mr. Kulp and the two of us got together with
14 this chart or index that we would be able to come
15 back and tell if there was any evidence we wanted to
16 have further tested.

17 And, Your Honor, as unfortunate as it may
18 be, 19 months is not that long of delay; especially
19 when a majority of that delay is as a result of
20 Defense's request that something be further tested.

21 MR. KULP: That's not my fault.

22 SOL. CLIFFORD: We were going to go forward
23 at trial without having that specific type of DNA
24 analysis done. It's at his request. It's gone
25 forward. And it has given everybody, including the

1 Defense a lot more time to look at this case, and
2 look at the evidence to see if there's anything else
3 we can make hay out of.

4 THE COURT: I'll hear you.

5 MR. KULP: Thank you, Your Honor.

6 I can't take that anymore. That kind of
7 attitude, as early as last July, that's why she
8 doesn't want this letter in that order. Last July
9 everything we're looking at now was asked about in
10 there. Including the hair. The fingerprints on the
11 wine craft. The whole thing. Because if she takes
12 this up to Columbia, she doesn't want this in there.
13 I think it should be in there to explain the
14 foundation for the Court's conclusion that they have
15 had enough time and didn't do anything with it.

16 And for her to stand there and say it's my
17 fault that this case has gone this long, I take
18 personal and professional offense to; because of the
19 fact if they had done what I did by writing the FBI
20 last July they would have been told simply there's a
21 waiting list. And if they had done that then, we
22 would have the results now. But they didn't do it.

23 All we kept hearing was: We have to make a
24 federal case out of it. Some body is trying to do it
25 as a favor boom, boom, boom. That's all they'd

1 said.

2 And the real cream on the cake is the fact
3 that in the documents I got on September 4th, I now
4 see the possibility that we don't even need this
5 fancy MT -- or mitochondrial DNA.

6 All the letters we're referring to now are
7 a PCR analysis, which can be done in a couple of
8 weeks because all of a sudden now there's tissue on
9 the hair. Whereas without tissue on the hair that
10 provided a need to do the mitochondrial.

11 So this needs to be in there. I didn't put
12 that in there to slam her. If she wants to put her
13 letters in there, I'm happy to include them. But I
14 think -- the long history it addresses every one of
15 these things. And we're not trying to create smoke.
16 I have never in a case of this magnitude for a year
17 and a half today stood up and asked the State to do a
18 thing to convict my client or gather further
19 evidence.

20 We're not off on a fishing expedition at
21 all. They, by that I mean the police were the first
22 people to identify Dana Chaples as a suspect and put
23 that in his arrest warrant for a pistol. He was the
24 first person that identified this case because he
25 lied about being at the scene. He was the last

1 person to be seen at the scene. And he shaved a
2 mustache off the next day.

3 I'm familiar with the cases that Ms.
4 Clifford has cited. But I'm not trying to say out of
5 three defendants one guy did it who was there of the
6 three who was there -- one guy did it and the other
7 didn't they were sitting in the car. It is the case
8 that our identification of this fellow being involved
9 in the murder is completely and mutually exclusive
10 and inconsistent with the Defendant's guilt.

11 It's no secret to the State. I've been
12 talking about this in this letter and in other
13 correspondence and motions for a year and a half.

14 If -- and, you know, Judge, Your Honor,
15 every time I see resistance from them and
16 particularly after they hear you say in an order that
17 what I find out I have to give to them to still
18 resist. Isn't the goal of this to find out what the
19 truth is? And in a case where forensic evidence can
20 yield the truth, why so much resistance?

21 Just very briefly in terms of the chart
22 prepared for them to take two more months for them to
23 decide that they don't like things on there. That's
24 what I took one week and did. And incite putting 42
25 exhibits to it to back it up. So that some one who

1 is reading the work could go and say that's item No.
2 1.

3 Let me lastly say, in terms of you
4 provision, Your Honor, about a photograph being into
5 evidence as a replacement for any calamity that might
6 happen, I couched the order as well as any expert
7 voluntarily placing himself under the jurisdiction of
8 the Court, which I would include assuming contempt
9 and other remedies; but, as well, we intend to hire a
10 videographer to videograph the entire collection of
11 each and every piece of evidence from its current
12 location with a copy of that being provided to the
13 State filed with the clerk and put in our file so
14 there's no discrepancy about what we -- I don't want
15 to be in that boat. What we take and what we come
16 back with. You know as a record. Opposed to people
17 signing forms, which we will still do.

18 But, Your Honor, I just, I urge you against
19 -- I guess the point is to leave the order with
20 references as they are because I put them in there
21 because they explain why we're at this point and why
22 the things are going on as they are.

23 SOL. CLIFFORD: Your Honor, I don't mind
24 that letter being made a Court's Exhibit. That's
25 fine with me and that will be fine for purposes of

1 Supreme Court.

2 I would probably also want to make a copy
3 of the list of motions filed by the Defense as a
4 Court's Exhibit in the case as well.

5 Your Honor, I would, if I could call your
6 attention to page 59 of the transcript. I don't know
7 if you have a copy here.

8 At page 59, and lines 10 through 14. This
9 is Your Honor speaking: The first thing that I need
10 to do before we get into technical is: What is it;
11 where is it; and do you agree or disagree or wanting
12 to not further test it; and have you given him a test
13 on it.

14 So, Your Honor, that is one of that
15 statements I recall you making indicating we would
16 have the ability to further test evidence if we
17 wanted to.

18 **THE COURT:** Yes, ma'am.

19 **SOL. CLIFFORD:** As soon as we got the
20 proposal order from Mr. Kulp, he gave it to me on the
21 15th. I looked at it as soon as I could on the 16th;
22 sent you a letter because you knew I was going to be
23 out of town for the next week and was protected. And
24 started looking at it again as soon as I got it back
25 this week.

1 THE COURT: All right.

2 SOL. CLIFFORD: So there has not been any
3 dragging of feet.

4 THE COURT: I have no problem with what I
5 said on page 59 of the transcript.

6 And I am doing exactly what I indicated I
7 would do on 59 of the transcript. Because you all
8 had indicated to me in the hearing that was held on
9 September 4th and the hearing prior to that and,
10 quite frankly, if you will take a look at the
11 transcript of the hearing held before Judge Pieper,
12 there was indication that you had no intention of
13 testing anything else. You had no intention of doing
14 the Defendant's job for him. And you were through
15 and ready to go.

16 SOL. CLIFFORD: I believe that was back in
17 September of '97.

18 I believe four or five months after the
19 arrest of the Defendant, at that point, that was --
20 that was when the decision was made we would go ahead
21 and send up this hair to the FBI for DNA analysis.

22 At that point, Your Honor, we were ready to
23 go forward before that hearing began we would have
24 gone forward to trial without any further
25 investigation or analysis.

1 Once, however, that chain of events was set
2 into cycle, we had no choice but to step back and
3 look at our case and our evidence to see if there was
4 anything else we needed to do or have done. And in
5 the interim, there have been a number of things we
6 have had done.

7 Mr. Kulp has been provided with copies of
8 those SLED reports every time we've received them
9 from SLED.

10 THE COURT: I know that.

11 SOL. CLIFFORD: We don't get them in
12 timely. They're not great. Unfortunately, we're one
13 of many circuits they have to deal with.

14 But since that date, criminal prosecutions
15 are ever changing. It depends upon what happens here
16 in (A) whether or not you're going to go forward to
17 (B) or (C).

18 THE COURT: Explain to me one thing, please,
19 ma'am.

20 SOL. CLIFFORD: Yes, sir.

21 THE COURT: How in the world can the State
22 be prejudiced by the Defendant doing tests on
23 evidence and providing the State with a copy thereof,
24 whether it is beneficial or detrimental to the
25 Defendant?

1 SOL. CLIFFORD: Your Honor, I see two ways
2 the State can be prejudiced.

3 THE COURT: Tell me.

4 SOL. CLIFFORD: First, is our financial
5 way. The State is going to have to reimburse Mr.
6 Kulp, if he goes that route, may be he's going to do
7 it all entirely through private funds. If he's going
8 through the Office of Indigent Defense, the State
9 would be paying for that any way and we have got
10 facilities that will do it cheaper.

11 Second of all, quite honestly, we preserve
12 the integrity of the process if we have experts who
13 are recognized state wide for their ability and their
14 integrity in this area or if they use the FBI as we
15 did with the hair. This way we keep things instate,
16 accessible --

17 THE COURT: If the State is willing to tell
18 me they're going to pay the Defendant a reasonable
19 salary and reimburse him for the time he spends in
20 prison awaiting for all of this if, in fact, he's
21 found not guilty?

22 SOL. CLIFFORD: No, sir.

23 THE COURT: Okay. Then that should be an
24 interest to the State also.

25 If the State is interested in Indigent

1 Defense funds.

2 SOL. CLIFFORD: Your Honor, I will tell you
3 it is interesting that Mr. Kulp every time we have a
4 hearing brings up the bond issue. Yet, he has never,
5 ever, except before Judge Pleicones brought another
6 motion for bond reconsideration and he withdrew
7 before Judge Pleicones because the hearing was not
8 going well that day.

9 He has had the opportunity since --

10 THE COURT: I'm not going to accept
11 characterizations on hearings that I did not have.
12 Thank you.

13 I have made my decision on the ruling. I
14 will note for the record attached to Mr. Kulp's order
15 will be the transcript of the Pieper hearing, the
16 Pleicones hearing and all three of the hearings in
17 front of me.

18 Thank you.

19 SOL. CLIFFORD: There is no transcript, Your
20 Honor, unfortunately available for the Pleicones
21 hearing.

22 THE COURT: I'm sorry.

23 SOL. CLIFFORD: And I'm not aware of any
24 transcripts other than the September 4th hearing
25 before you.

1 MR. KULP: No, there are three.

2 I will attach them.

3 Next issue, Your Honor, will be dealing
4 with the motion I just received from the prosecution
5 today in court, which is a motion to vacate -- I put
6 it aside I think -- the Court's order to require them
7 to respond to Defense motions within 15 days and
8 proposed orders.

9 I guess since I'm on my feet right now I'll
10 just very briefly say that the argument presented by
11 the State in that regard is because of the volume of
12 cases they have they don't have time to respond.
13 Well, these 33 motions have been filed over a
14 20-month period.

15 Next is an issue -- I wasn't entirely aware
16 of -- which really puts a concern on my shoulders;
17 and that is that Detective Clayton, the case agent in
18 this case, is gone until November the 20th; and that
19 therefore they can't answer the motions that they
20 have had for that entire time period including a time
21 up until when he left, which, I believe, was
22 September 20th or so to get his assistance in
23 answering the motions.

24 And then, finally, if in fact they need his
25 assistance to answer those motions or to do so in

1 writing, then I think it can't be upsetting if he
2 flies back on a Friday at some point of the thing --
3 or maybe, as I work on Saturdays too, the State can
4 meet with him on a weekend to get answers to the
5 questions they need to be able to respond. But for
6 the most part, the ones that are pending are ones
7 that -- considering our examination of these issues
8 for a period of time involved. It's not my
9 decision. I can't say they should be able to answer
10 them. But I would just be surprised that is now just
11 an excuse. And, as well, you know, I'm just one
12 fellow, but the State is not Ms. Clifford. I mean
13 they have an entire office there, I guess, who can
14 assist in response of pleadings in that regard.

15 I just asked for it and mentioned it and
16 sent a copy of that letter to Ms. Clifford because I
17 thought it would move things along and save court
18 time. If there are some issues that's based on their
19 response, we might be able to hammer out without
20 court intervention.

21 Thank you.

22 SOL. CLIFFORD: Your Honor, perhaps with a
23 list of 33 motions that I have prepared and attached
24 that to my motion, maybe Mr. Kulp, for sake of this
25 argument, can tell us exactly which motions he thinks

1 are still pending.

2 MR. KULP: I've done that. It's an
3 attachment to a letter that I sent to you and the
4 Court.

5 SOL. CLIFFORD: Do you know the date?

6 MR. KULP: A copy of it is sitting in the
7 fax machine in Mr. Gray's office downstairs with the
8 cover page asking to be hand delivered to you and not
9 put in your box.

10 SOL. CLIFFORD: That was one from this past
11 Monday.

12 Your Honor, if I could just get that
13 letter.

14 Your Honor, I guess going to my motion. As
15 you know, on October 13th you signed an order of
16 protection for me because I was planning to be out of
17 town.

18 THE COURT: I did.

19 SOL. CLIFFORD: And on October 15th I
20 received a copy of the proposed order from Mr. Kulp.
21 I told him on that day I didn't think I would be able
22 to look at it until the following day, that Friday,
23 when, in fact, I had my first opportunity. I started
24 reading it and realized it was going to take more
25 time than I had anticipated because the attachments

1 required some going back and forth between the order
2 and the file.

3 I then faxed a letter to both you and
4 Mr. Kulp on the 16th stating that because I was not
5 going to be able to before I had to go out of town
6 that the Court not do anything until after October
7 27th; and that the Court allow us the opportunity to
8 appear before you and discuss it because there were
9 things I could not agree with.

10 When I got back into my office on Monday,
11 the 26th, there actually were three different letters
12 from Mr. Kulp that had been faxed. One of them was
13 dated October 17th by the fax cover sheet and the top
14 of the page indicated it had been fax October 19th;
15 in that letter Mr. Kulp said he was also protected
16 through end of the week until 19. He would be happy
17 to meet with the Court and the State thereafter to
18 review the proposed order.

19 He then added an additional paragraph
20 stating that considering the fact that Ms. Clifford
21 has strong objections to portions of this order that
22 there are many unanswered Defense motions pending
23 resolution. And that I have expended a great amount
24 of time and energy to try to present issues in
25 writing for resolution. Would the Court considering

1 directing that the State to respond to Defense
2 motions and challenges to proposed orders within 15
3 days in writing. I am convinced that would speed up
4 a clarification of concern, reduce the need for
5 meetings, and hearings, as well as provide a running
6 record of the process.

7 The State has not answered one of my
8 motions responsible.

9 On the 19th --

10 THE COURT: I don't need to go any further,
11 Ms. Clifford. In all sincerity, your response to
12 those motions in writing is extended.

13 You're indicating the case agent is coming
14 back when?

15 SOL. CLIFFORD: November 20th.

16 THE COURT: By December the 15th.

17 SOL. CLIFFORD: And, Your Honor, if I may,
18 I'm not sure I have this grid of motions that
19 Mr. Kulp still thinks are outstanding because some of
20 these obviously have been responded to by the State.

21 THE COURT: And some have been resolved,
22 too.

23 SOL. CLIFFORD: Yes, sir, a good number of
24 them have been.

25 THE COURT: Well, I expect you as of Friday,

1 Mr. Kulp, to review your list of motions and
2 eradicate those that have already been responded to
3 your satisfaction or by court order.

4 MR. KULP: Yes, sir.

5 THE COURT: And you have until December 15th
6 to respond to those.

7 MR. KULP: Yes, sir.

8 It was in a letter --

9 THE COURT: It's going to take time to
10 accomplish this order, anyway. I know that.

11 MR. KULP: For the record, Your Honor, it
12 was in a letter of October 22nd to Ms. Clifford and
13 Mr. Durant, which was faxed and there's this grid on
14 there that indicates which motions were -- I'll
15 give you that copy.

16 SOL. CLIFFORD: Your Honor, there's one
17 remaining matter which he wanted heard today and
18 that's the matter relating to Dana Chaples' DNA and
19 samples.

20 THE COURT: This is the issue of whether or
21 not the Court has the right to order Chaples to
22 submit serology and DNA samplings?

23 SOL. CLIFFORD: Yes, sir.

24 MR. KULP: I think that's what most of my
25 argument --

1 THE COURT: I don't need to hear from you.

2 MR. KULP: Yes, sir.

3 SOL. CLIFFORD: Thank you, Your Honor.

4 First of all, Your Honor, for the record
5 just because it's referenced in at least part of the
6 motion and letter. The material witness bond statute
7 has been repealed. It no longer exists. So it cannot
8 no longer be used as a tool by State or Defense.

9 I would also point out that again this is a
10 fishing expedition that the Defense is engaged in and
11 would not be admissible at trial under State versus
12 Parker and State versus Gregory.

13 Moreover, the subject of this motion has
14 not been served with notice either personally or
15 through publication that would be Dana Chaples; and
16 for that reason, we would oppose it.

17 THE COURT: Thank you.

18 Let the record reflect that State has no
19 standing at all to object to the motion since they're
20 not representing Mr. Chaples. Since they have
21 indicated no interest in Mr. Chaples. Since they
22 indicated they are not responsible under this now
23 defunct material witness statute; however, I will
24 note for the record there is no indication whatsoever
25 that Mr. Chaples has been served; and this Court is

1 not interested in executing or issuing ex parte
2 orders against individuals.

3 You served him?

4 MR. KULP: For clarity sake, my request was
5 to determine when we might have a hearing so that I
6 could serve him.

7 THE COURT: You can serve him any time you
8 want to.

9 MR. KULP: Let me finish as well, Your
10 Honor.

11 I have written him and I have had him
12 personally served.

13 I've prepared a motion filed with the Court
14 and had him served by the Dorchester County Sheriff's
15 Department with a copy of that motion, of course,
16 without a time for a hearing and I can introduce that
17 at this time, if I can get my hands on it.

18 THE COURT: Well, I'm running out of time,
19 folks.

20 Put that in the record. You will serve him
21 with a notification of a time that matter will be
22 heard. If law enforcement, solicitor's office is not
23 interested in participating at the hearing that's
24 fine. But they're certainly entitled to notice and
25 they shall receive notice of that date and time.

1 You're going to have to provide with
2 private methodology assuming that I grant you the
3 right to obtain those samples because law enforcement
4 is not interested in doing it. And you better be
5 prepared to argue that.

6 MR. KULP: Yes, sir.

7 THE COURT: What else do I have?

8 MR. KULP: I'll attach those to the exhibit
9 to the notice, both proof of service of the actual
10 motion -- I actually wrote him a letter and sent it
11 certified mail.

12 THE COURT: All right. Notify him of the
13 hearing and -- after you get a hearing scheduled with
14 my law clerk -- notify him by process server.

15 MR. KULP: Yes, sir.

16 THE COURT: Notify Ms. Clifford's office of
17 the date, time, circumstances of that hearing.

18 MR. KULP: Absolutely, Your Honor, by your
19 order.

20 The only remaining thing would be, as I
21 mentioned at the outset, Your Honor, I think, I've
22 dictated a letter today asking Dr. Clay Nichols if he
23 was planning on responding to the Court's order any
24 time soon. And as well, wanted to advise you that
25 I've received, I think the State received as a

1 co-party to that.

2 THE COURT: Rules to show cause for?

3 MR. KULP: Yes, sir.

4 Then, finally, Your Honor, the State was
5 chiding us a minute ago for not making a motion for
6 bond, but I'll be filing a motion for bond
7 reconsideration since we have had trouble on three
8 different occasions getting the victim's family here.

9 THE COURT: Mr. Kulp, since I don't have a
10 bond in front of me or bond request in front of me, I
11 don't want to hear it.

12 MR. KULP: But I'll be filing that. But I
13 just wanted to get the Court's advice --

14 THE COURT: The Court doesn't give advice.

15 MR. KULP: But there's been three occasions
16 before.

17 THE COURT: Bottom line is when you make a
18 motion for bond setting in this case.

19 MR. KULP: Yes, sir.

20 THE COURT: The notice of that motion will
21 be provided to Ms. Clifford. Ms. Clifford will have
22 to notify the victims. If I have it without the
23 victims present, I've got to make a finding of fact
24 on the record the victims had ample opportunity to
25 appear.

1 MR. KULP: Yes, sir.

2 THE COURT: Period.

3 I expect notification to go to Ms.
4 Clifford. If Ms. Clifford has got a problem, she
5 will tell me. If I have got to extend it or grant
6 another time frame, I'll do so. But I'm not going to
7 cross that bridge until you all get it to me.

8 MR. KULP: Yes, sir.

9 THE COURT: What else do I have?

10 MR. KULP: I think that's it, Your Honor.
11 Thank you very much for your time.

12 THE COURT: Do you have anything else for
13 me?

14 SOL. CLIFFORD: I think that's it.

15 THE COURT: Thank you.

16 MR. KULP: Thank you, Your Honor.

17 *****END OF TRANSCRIPT*****
18
19
20
21
22
23
24
25

1 State of South Carolina)

2) Certificate of Reporter

3 County of Berkeley)

4
5
6 I, A. Leah Guerry, Official Circuit Court
7 Reporter for the Ninth Judicial Circuit of the State
8 of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of all of the proceedings had and evidence
11 introduced in the trial of the case, relative to
12 appeal, in the Criminal Court Charleston County,
13 South Carolina, on the 5th day of December, 1998.

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

16
17
18
19 
20 Leah Guerry, CSR

21 Ninth Circuit Court Reporter

22
23 My commission expires June 29, 2003
24
25

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NOS. 97-GS-10-4319 &
97-GS-10-4320

TRANSCRIPT OF BOND HEARING

STATE OF SOUTH CAROLINA,

-VS-

DECEMBER 4, 1998
CHARLESTON, SOUTH CAROLINA

WESLEY M. MYERS,

DEFENDANT

BEFORE:

THE HONORABLE DANIEL F. PIEPER, Judge

APPEARANCES:

DAVID PRICE SCHWACKE, SOLICITOR
BY: BRUCE DURANT, ESQ.
ASSISTANT SOLICITOR
FOR THE STATE OF SOUTH CAROLINA

TIMOTHY CLAY KULP, ESQ.
ATTORNEY FOR THE DEFENDANT

BY: HEATHER GAYLE BURNS, R.M.R.
CIRCUIT COURT REPORTER

1 MR. DURANT: Your Honor, this is a bond
2 reconsideration in the matter of Wesley
3 Myers. He's charged with murder and arson.
4 The bond was originally set at a hundred and
5 twenty-five on the arson, and no bond on the
6 murder. In July of '97 a surety bond of a
7 hundred twenty-five thousand dollars with
8 electronic monitoring.

9 The bond was reconsidered by Judge
10 Cottingham on September twenty-sixth of '97.
11 No reduction was granted.

12 And it was before your Honor once again
13 on October ten of '97. At that time the
14 bond was not modified either.

15 Basically, your Honor, this is a murder
16 charge. We believe that a hundred and
17 twenty-five thousand dollar bond is a
18 reasonable bond under the circumstances and
19 would request that you deny any reduction.

20 THE COURT: All right. Yes, sir,
21 Mr. Kulp.

22 MR. KULP: Thank you, your Honor. Good
23 morning. May it please the Court. May I
24 approach, your Honor? Couple of documents
25 I'd like to hand you. One is a page from

1 the entire transcript. I have, if you like
2 to see it, the entire document. I'll give
3 you a chance to read it.

4 THE COURT: All right. Go ahead.

5 MR. KULP: Yes, sir. That is from, and
6 to let the State know, that's page fifty of
7 the transcript of the October ten hearing.

8 Over a year ago, your Honor, in fact
9 thirteen months ago we appeared before you
10 as the Solicitor indicated, at which time
11 that you reserved the right to address this
12 issue of bond again.

13 One of the primary considerations at
14 that point was the testing of the sole piece
15 of forensic evidence the State possesses in
16 this case. That is a human hair.

17 At that hearing the solicitor indicated
18 that the hair was being transferred for
19 testing to the F.B.I. laboratory in October
20 and that -- and I have that page of the
21 transcript as well, but the results would be
22 expected hopefully by the first of the year,
23 referring to 1998.

24 I've handed a copy of the affidavit to
25 the State, but here is the -- my affidavit

1 as counsel for the defendant indicating that
2 just yesterday or the day before, not having
3 heard anything -- well, let me go back a
4 little bit.

5 It appeared that the hair was not even
6 sent to the F.B.I. in October of 1997, nor
7 until it was sent in March of 1998. There-
8 after nothing could be done with the hair at
9 the F.B.I. laboratory because the standards
10 to compare it to were not sent until July of
11 1998.

12 I just got on the telephone yesterday,
13 not having heard anything about the progress
14 of this, and spoke with the agent in the
15 F.B.I. laboratory who's charged with the
16 testing of this hair and the results of that
17 are reflected in my affidavit wherein he
18 indicated he'd never seen the hair, that it
19 was supposed to be directed to him for
20 analysis. He did not know when he would be
21 receiving it, that if he got it yesterday
22 there would be six months before he could
23 test it.

24 What is also holding this case up as
25 well, your Honor, is an appellate issue. In

1 this case the defendant moved for
2 independent testing of forensic evidence in
3 March of 1998.

4 In October of 1998 Judge Rawl of this
5 circuit signed an order for independent
6 testing that would allow the defense to
7 acquire items of forensic evidence in which
8 the State had expressed no interest or not
9 done some testing on to allow to us to hire
10 experts for the purpose of testing those
11 materials.

12 That order was signed and filed and of
13 course served on the State. A hearing was
14 actually held on the proposed order in
15 Berkeley County.

16 The State took appeal of that order to
17 the Supreme Court. They noticed the intent
18 to appeal and followed that with a petition
19 for a -- an immediate temporary stay of the
20 order for independent testing, and in the
21 same paragraph for a writ of supersedeas,
22 certiorari or other common law writ.

23 The same day that that petition was
24 filed, November the twentieth, 1998, the
25 Honorable Justice Tolt issued an order

1 denying the petition for an immediate stay
2 of the order for independent testing.

3 Following that the State indicated that
4 they wanted to continue with the appeal,
5 which would be the remnants of their
6 petition being for some intervention under
7 the theory of supersedeas, certiorari, or
8 other common law writ. I filed a return to
9 that and asked that it be dismissed.

10 In the interim I appeared with the
11 retained expert witness, a retired S.L.E.D.
12 agent, at North Charleston Police Department
13 for purposes of acquiring the forensic
14 evidence to begin the independent testing as
15 soon as possible.

16 We appeared on Thanksgiving eve in the
17 afternoon. We were told at that time by a
18 representative of the chief, that the --
19 that we would not get the evidence until the
20 chief had a chance to discuss the Circuit
21 Court's order and the Supreme Court's order
22 I assume with the city attorney.

23 So on the following Monday, this past
24 Monday, I appeared. I provided to Judge
25 Rawl a proposed rule to show cause why the

1 Chief of Police should not be held in
2 contempt or why the county police should not
3 be ordered to go acquire the evidence and
4 provide it to us, as ordered by both the
5 Circuit Court and with the stay denied by
6 the Supreme Court.

7 Following that Miss Clifford took a
8 position that her reading of the appellate
9 rules provided that in spite of Justice
10 Tole's order denying the petition for a
11 stay, that Rule 2:30 would stay all
12 proceedings in the lower court, so that a
13 rule would supersede effectively, by way of
14 her argument, a ruling of the Supreme Court,
15 and directed law enforcement agencies
16 including North Charleston Police and
17 S.L.E.D. to give us the evidence under the
18 order. As well, the day that I received a
19 copy of Justice Tole's order on Monday, the
20 twenty-third of November, I was advised that
21 that day the evidence custodian from the
22 North Charleston Police Department,
23 Mr. Larry Holmes, had been fired and that it
24 would be difficult to acquire immediately
25 these items of evidence which were subject

1 to the independent testing order until
2 circumstances were -- were clarified or
3 arranged.

4 Your Honor, my client has been in jail
5 presumed innocent of these charges for six
6 hundred and thirty-one days. During that
7 time period he has abided by the rules of
8 the jail, and I have visited him thirty to
9 fifty times, and we've discussed this case.

10 The State conceded in a hearing before
11 Judge Rawl that this entire case turns on a
12 two-page confession or statement written by
13 the police for my client to sign after three
14 days of interview or interrogation, and that
15 single hair which to this day has not been
16 tested.

17 Now in previous proceedings, the State
18 has taken a position that it's my fault that
19 the case has gone so long because I asked in
20 August of 1997 for the hair to be tested.

21 It's not my fault, your Honor. I have
22 no control. I do not have custody of the
23 hair and, in fact, I can't even get custody
24 and control of those things which the
25 honorable Circuit Court of this circuit has

1 ordered that I get.

2 THE COURT: Did you go back to Judge
3 Rawl? Did you go back to Judge Rawl about
4 the testing issue?

5 MR. KULP: At what juncture in the
6 proceedings? After the Supreme Court ruled?

7 THE COURT: Yes.

8 MR. KULP: Yes. I presented him with
9 the rule to show cause why this should not
10 be directed to provide it.

11 THE COURT: Was anything ever resolved
12 about the stay of the proceedings?

13 MR. KULP: Just the -- no, your Honor.
14 I mean I have the --

15 THE COURT: Were they tendering that
16 argument to them that everything was stayed?

17 MR. DURANT: There's been no hearing on
18 that as of yet, your Honor. That order came
19 down just the Monday before Thanksgiving,
20 quite frankly.

21 THE COURT: All right.

22 MR. DURANT: Mr. Kulp took the position
23 that he was going -- that he was entitled to
24 the evidence immediately. Miss Clifford
25 advised him that the case was under appeal.

1 According to the appellate court rules, the
2 lower court loses jurisdiction as to matters
3 addressed with that order until the matter
4 is heard by the Supreme Court. The appeal
5 is still pending.

6 THE COURT: When does the State plan on
7 taking this case to trial?

8 MR. DURANT: Quite frankly, your Honor,
9 we would try the case without sending the
10 hair to S.L.E.D -- I mean to the F.B.I.
11 laboratory and would still do that.

12 Mr. Kulp was the one that insisted on
13 the testing up in Washington and that has
14 inordinately delayed the proceedings.

15 Right now we have a confession from the
16 defendant, admissions he's made to the
17 victim's family, admissions he's made to the
18 news media, a hair found in his hand -- in
19 the victim's hand at the time her body was
20 recovered that is microscopically consistent
21 with the defendant's.

22 Mr. Kulp was the one that wanted to
23 have the hair sample sent to S.L.E.D. and
24 Miss Clifford did that to accommodate him
25 and it has occasioned a delay.

1 I wouldn't think that the appeal would
2 take that long, your Honor, because it's
3 basically asking for a writ of supersedeas
4 and it's my understanding, if the Court,
5 Supreme Court agrees to hear it at all it
6 should be heard rather rapidly. But, you
7 know, we are pursuing the appeal at this
8 point.

9 MR. KULP: Your Honor, that argument is
10 totally without merit because in fact they
11 had no intentions of testing the hair they
12 could have in August of 1997 said we'll try
13 this case without the hair. If you want to
14 have the hair tested pursuant to DNA
15 protocols because some courts don't admit
16 evidence of microscopic analysis we'll be
17 happy to turn it over to you under court
18 order. They didn't do that, and as well
19 they can't deny the fact that between August
20 of 1997 and March of 1998 they did one thing
21 to send that hair to the F.B.I.

22 As well I asked them now to produce one
23 letter to the F.B.I, to S.L.E.D, to anyone
24 asking for the expeditious testing of this
25 hair. It's not there.

1 The only way that they find out
2 anything about the hair is from me calling
3 the F.B.I. Fortunately, they speak with me
4 about it.

5 And, your Honor, it's just a situation
6 where you know my client has no prior
7 record. He's been in jail six hundred
8 thirty-one days. I have over twenty people
9 here on his behalf, members of his family,
10 people who know him, people who would be --
11 and as you considered or indicated when you
12 set the hundred and twenty-five thousand
13 dollar bond, people would support him under
14 a situation where he was detained in his
15 home, home of his parents under electronic
16 monitoring pending the trial of this case.

17 But I certainly think, your Honor, and
18 I know you know where I'm coming from, I
19 don't think that he ought to be penalized by
20 something that's not my fault. It's not my
21 fault. I'm trying to do everything I can to
22 move this case along.

23 My defense in the case has been
24 broadcast throughout these hearings and they
25 could have -- they're the custodians of this

1 hair and they could have done everything
2 within their power to expedite it being
3 tested and then call the case for trial.

4 Now they have a two-pronged impediment,
5 that is they're appealing the judge's order
6 for independent testing. But, your Honor, I
7 think in terms of likelihood of flight there
8 is none. The State has had no indication
9 whatsoever.

10 In fact he appeared at the police
11 department voluntarily for three days during
12 the period of investigation. They always
13 found him at his house. He gave a consent
14 to search his parents' house where he was
15 living. He consented, he gave them his
16 truck, he gave voluntarily, voluntarily body
17 standards, blood, hair, anything they wanted
18 in an effort to find who did this crime.

19 THE COURT: All right.

20 MR. KULP: He's cooperated in every way
21 whatsoever. If you could please, your
22 Honor, his parents have been paying for the
23 expert witnesses in this case which I can't
24 even employ because of the impediment with
25 the appeal and their resources are limited.

1 If there was some way you could
2 consider, your Honor, as part of a split
3 bond or some percentage of a bond with those
4 strict requirements of home detention.
5 Forget him working right now. If he could
6 just -- his health has deteriorated, and
7 he's had numerous health problems while he's
8 in jail.

9 And I -- and I just -- you know, when
10 the State stands here, your Honor, and says
11 it's my fault, as an officer of this court
12 it upsets me immensely, and I have to say
13 that, because I was the one who came in and
14 asked for DNA testing, and if they didn't
15 want to do it, they could have turned the
16 hair over to me at that time instead of
17 dragging their feet as they did and making
18 up lame excuses about the F.B.I. not testing
19 evidence in a State case, that they had to
20 get it done on a favor, which I resolved by
21 writing Louie Fried (phonetic), the Director
22 of the F.B.I., who responded by saying no,
23 we do test State evidence. Excuse me.

24 It's just outrageous that they could
25 sit here and say there're too many murder

1 cases, we can't get to it, and we'll get to
2 it when we get around to it.

3 At this point forget the appeal, your
4 Honor, respectfully to the Court and the
5 process of that, that proceeding, but if in
6 fact the agent at the F.B.I. right now gets
7 the hair, my client will be in jail in July
8 and in fact the case might not come up until
9 the millennium, your Honor.

10 THE COURT: All right. Thank you. I
11 have some concerns about the timing in this
12 case. I'm not going to adjust the amount of
13 the hundred --

14 MR. KULP: Hundred and twenty-five
15 thousand.

16 THE COURT: Hundred and twenty-five
17 thousand dollar bond. I'll split it.
18 Seventy-five thousand surety and fifty
19 thousand P R.

20 MR. DURANT: Your Honor, would you --

21 THE COURT: Continue the electronic
22 monitoring.

23 MR. DURANT: Your Honor --

24 MR. KULP: Thank you.

25 MR. DURANT: The victim had wanted the

1 opportunity to address you as well if --

2 THE COURT: I'm sorry.

3 VICTIM'S MOTHER: I'm -- I'm the
4 victim's mother, your Honor, and this man,
5 Wesley, called -- had them call me. I came
6 to the jail to see him. He looked me
7 straight in the face and this man told me
8 that he committed this murder, he set her
9 body afire and mutilated her.

10 I don't think that this man needs to be
11 in the street. I'm sorry. I beg you to
12 keep him there. She's thirty-six years old
13 when she died. She didn't get to see her
14 two daughters graduate from school last
15 year, which one is going into agriculture,
16 and the other is going into the police
17 department.

18 I have my whole family here. I have
19 one of her daughters with me.

20 His hands wasn't twisted when he told
21 me this. He told me that he deserved the
22 death penalty. I would ask you to keep this
23 into consideration.

24 THE COURT: All right. Of course
25 everyone in here understands I'm not trying

1 this case. I don't get the opportunity to
2 decide what the facts really are here. I
3 hear what you have to say.

4 I have to decide what manner or what
5 methods I need to put in place to see to it
6 that he shows up to trial.

7 I'm not here to punish him in any way
8 or to try the case and find him guilty. If,
9 you know, that be the case then the jury
10 will have that to consider.

11 VICTIM'S MOTHER: This man has a very
12 bad temper.

13 THE COURT: All right. I'm going to
14 maintain what I indicated. I'll -- the
15 hundred -- I'll keep the level at a hundred
16 and twenty-five thousand, split it
17 seventy-five thousand surety, fifty thousand
18 P R, continue electronic monitoring, and no
19 contact with the family of the victim.

20 MR. KULP: Thank you, your Honor.

21 (Whereupon, the matter was concluded.)

22

23

24

25

C E R T I F I C A T I O N

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the requested proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina, on the 4th day of December, 1998.

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

DATED: December 10, 1998

Heather Gayle Burns RMR
HEATHER GAYLE BURNS, R.M.R.
Official Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

COURT OF GENERAL SESSIONS
99-GS-10-4319, 99-GS-10-4320

THE STATE,)

vs.)

WESLEY MYERS)

TRANSCRIPT OF RECORD

May 22-23, 2000
North Charleston, South Carolina

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, JUDGE.

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

BRUCE DURANT, ASSISTANT SOLICITOR
Attorney for the State

RIESEN LAW FIRM
TIMOTHY CLAY KULP, ESQ.
Attorney for the Defendant

KAREN ESSICK
Official Court Reporter

I N D E XMonday, May 22, 2000

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All exhibits were retained by the Clerk of Court for Charleston County.

1 Monday, May 22, 2000

2 THE COURT: Let the record now reflect that this is
3 in connection with the State of South Carolina vs. Wesley
4 Myers upon his indictment for murder. We are in the
5 process of having a Jackson v. Denno hearing pursuant to
6 request of defendant's attorney.

7 And I'll hear at this time any other motions, Mr.
8 Kulp, that you may have.

9 MR. KULP: Your Honor, we had for the record filed a
10 written motion some time ago which we met with you briefly
11 regarding. There were issues raised in that motion that I
12 would like to now address for the record.

13 THE COURT: That's where you wanted to inquire into
14 the secrets of the grand jury proceeding?

15 MR. KULP: That's right.

16 THE COURT: Yes, sir.

17 MR. KULP: There was also a second issue brought up
18 then pertaining to the loss of evidence. We now
19 understand after consultation with the solicitor that that
20 might need to be revisited factually or whatever and that
21 may not be ripe just today for it being addressed and that
22 may have to be done in a couple of days.

23 THE COURT: That's fine, I'll permit that.

24 MR. KULP: Yes, sir, Judge. And I think there was a
25 third motion in there pertaining to suppression of

1 evidence from the crime scene, if you recall, based on the
2 warrantless search of the crime scene, which I now recall,
3 that we can maybe reserve. I didn't talk about it in
4 chambers. Maybe tomorrow or the next day when we talk
5 about the other issue, we could just address that then.

6 MR. DURANT: Your Honor, I don't think I need any
7 research on that one. That's completely a question of
8 standing in the case. The fire scene occurred at a bar, a
9 public -- this murder and arson occurred at a bar, a
10 public establishment. The case referred to by Mr. Kulp
11 that he cited was that there is no crime scene exception
12 to the search warrant requirement when you are searching a
13 defendant's home which is also the scene of the crime.

14 My only argument to that, Your Honor, is we're
15 talking about a public place here, a bar. Certainly, he
16 has no expectation of privacy in a bar. Certainly, he has
17 no ownership interest in the bar. He was not an employee
18 there. He did not own the bar. He has no proprietary
19 interest in the place. He has no standing.

20 THE COURT: What do you say, Mr. Kulp? This was a
21 public bar.

22 MR. KULP: I don't actually have the motion in front
23 of me, Your Honor, but until I have a chance to look at
24 it, I will abide by the solicitor's -- I don't have the
25 basis -- standing here today to challenge that.

1 THE COURT: I deny that. And with reference to your
2 second motion, of course, we'll hold that in abeyance.
3 With reference to your first motion, obviously, you are
4 not entitled to go into the deliberations of the grand
5 jury.

6 MR. KULP: Thank you, Judge.

7 THE COURT: And I know of no rule of law that permits
8 that, so I would respectfully deny that motion.

9 MR. KULP: Thank you, Your Honor. We'd move to
10 sequester witnesses at this time.

11 THE COURT: Yes, sir, I think that's appropriate. We
12 will do that. I want to sequester yours, too, other than
13 the defendant.

14 MR. KULP: Yes, sir.

15 THE COURT: Do you have any other witnesses as to
16 this?

17 MR. KULP: Just beg the Court's indulgence.

18 MR. DURANT: Your Honor, I would be allowed to keep
19 my case officer.

20 THE COURT: The chief investigating officer will
21 remain in the courtroom.

22 MR. KULP: I think that's the rule.

23 THE COURT: I know it is.

24 MR. KULP: We have no witnesses, Your Honor, that
25 would fall under the rule.

1 THE COURT: Solicitor, please, in accordance with the
2 sequestration, remove your officers other than the chief
3 investigating officer.

4 MR. DURANT: One other issue we need to address.
5 (WHEREUPON, a bench conference was held.)

6 THE COURT: All right, sir. So there will be no
7 question procedurally, as I understand it, there are
8 several alleged confessions that we have got to rule on.
9 And we've agreed that we will take them all together at
10 one time and then put up any reply testimony.

11 MR. KULP: Yes, Your Honor, that's perfectly
12 acceptable.

13 THE COURT: All right. And, Solicitor, for the
14 record, as we do them just designate them number 1, 2, 3
15 and 4 so that I can rule on each one separately, you
16 understand, at the conclusion of all the testimony.

17 MR. DURANT: Yes, sir.

18 THE COURT: That will facilitate matters. You may
19 now proceed.

20 Are you ready to proceed, Mr. Kulp?

21 MR. KULP: One final thing, Your Honor, I know it
22 maybe isn't necessary, but if you would instruct the
23 people in the courtroom not to convey -- so that the
24 sequestration rule has force and effect not to convey the
25 testimony they hear to any other people at any time during

1 the hall.

2 THE COURT: Yes, sir, they would understand that.

3 MR. KULP: Yes, sir.

4 THE COURT: Are we ready?

5 MR. KULP: Yes, sir.

6 THE COURT: Call your first witness.

7 MR. DURANT: State would call Jeff Payne.

8 Jeffrey Scott Payne, after being duly sworn,
9 testified as follows:

10 THE CLERK: Please be seated. Please state your full
11 name and spell your last name for the record.

12 THE WITNESS: Jeffrey Scott Payne, P-A-Y-N-E.

13 MR. DURANT: Your Honor, before I begin and for the
14 record, I'm going to be obviously relying on two or three
15 documents during the course of my Jackson v. Denno
16 hearing. And I would like to -- which are going to
17 consist basically of advisement of rights forms and his
18 written statements. For purposes of this hearing, if
19 there is no objection from Mr. Kulp, I would like to mark
20 the copies as exhibits and use those for questioning
21 purposes as opposed to the originals. Because quite
22 frankly --

23 THE COURT: He agrees with that.

24 MR. DURANT: Because the actual trial is going to be
25 another month down the road and I don't want them to kind

1 of wander off.

2 THE COURT: Mr. Kulp just agreed to it.

3 Thank you.

4 MR. KULP: I agree, yes, sir.

5 MR. DURANT: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. DURANT:

8 Q Please state your full name.

9 A Jeffrey Scott Payne.

10 Q And where are you currently employed?

11 A I'm the regional director of a Sealy dealership and a
12 volunteer at Cathedral of Christ.

13 Q What was your employment in March of 1997?

14 A I was an officer with the North Charleston Police
15 Department.

16 Q And in what capacity were you employed by the North
17 Charleston Police Department?

18 A At that time I was assigned to the juvenile detective
19 division.

20 Q Did you have an opportunity in relation to your
21 employment with North Charleston Police Department to
22 respond to the scene of a fire at the Mill Inn on March
23 13, 1997?

24 A Yes, sir, I did.

25 Q And what time did you arrive at that location?

1 A I believe I got the phone call at 11 minutes after 5
2 a.m. and I arrived at the scene at 5:40 a.m.

3 Q Did you have any contact with the defendant, Wes
4 Myers, that morning at the scene of the crime?

5 A Yes, sir, I did.

6 Q And how did that come about, sir?

7 A I was directed to take a witness statement from him
8 initially, then to transport him to the police department
9 where we obtained some Simtab residue sampling and some
10 fingerprints. And later, he was transported by me to the
11 Charleston Memorial Hospital where some samples were taken
12 from him.

13 Q Now, was he in custody at that time?

14 A No, sir.

15 Q What were the circumstances where you took him to get
16 the Simtabs done and the fingerprints?

17 A At the scene, the supervision there, which was at the
18 time, I believe it was Captain Smith, Lieutenant Cumbee
19 and Sergeant Tetanich, they directed me to take a
20 statement which I did in my car at the scene sitting in
21 the front seat with me.

22 Q And that was just a witness statement, sir?

23 A Yes, sir.

24 Q Was he a suspect at that time?

25 A Not to my knowledge, no.

1 Q And he did not say anything incriminating himself in
2 this case at that time?

3 A No, sir.

4 Q Okay. Continue.

5 A He requested I write the statement for him. I wrote
6 it for him. He -- I read it to him. He read it. He
7 signed agreeing that it was -- contained correct and true
8 information. I was then told to transport him to the
9 police department where we collected the Simtab and the
10 major case prints.

11 Q How did that come about? Did you ask him or did you
12 tell him he had to go?

13 A I asked him if he would accompany me -- if he would
14 allow me to transport him, which he did. He rode in the
15 front seat of my car.

16 Q Was he arrested, in custody, in cuffs or anything?

17 A No, sir.

18 Q And you went to headquarters; is that correct?

19 A Yes, sir.

20 Q And what did you do prior to having Simtab tests done
21 and taking his fingerprints?

22 A He was advised of his constitutional rights using a
23 North Charleston Police Department standard form which was
24 read to him, explained to him. He initialed by each
25 statement indicating that he didn't have any questions, he

1 fully understood it to be --

2 THE COURT: At that time was he in custody?

3 A No, sir, we were about to take fingerprints from him.
4 And I advised him of his rights to let him know that he
5 did not have to consent to that and --

6 THE COURT: Go ahead.

7 MR. DURANT: If we could mark this as an exhibit,
8 please.

9 (WHEREUPON, State's Exhibit No. 1 was marked for
10 identification only.)

11 Q Detective Payne, I hand you what's now been marked as
12 State's Exhibit No. 1 and ask you to look at that document
13 and see if you have seen that before?

14 A Yes, sir, this is his advice of rights.

15 Q That's a copy of the advisement of rights form that
16 you used with Mr. Myers that day?

17 A Yes, sir.

18 THE COURT: May I see that, please?

19 If he wasn't under arrest, why did you see fit to
20 advise him of his rights?

21 A At the time he was advised -- we used that form to
22 let him know that he did not have to consent him --

23 THE COURT: You mean the fingerprinting?

24 A Yes, sir, or the Simtab residue test.

25 THE COURT: Counsel, have you seen this?

1 MR. KULP: I have, Your Honor.

2 THE COURT: Make it a part of the record.

3 Q If you would just explain to the Court how you
4 advised him of his rights?

5 A After his biographical information was placed in the
6 top using the case number, his name and date of birth, I
7 drew a line next to each of the five advisement of rights
8 statements. I read them verbatim to him. After each one,
9 I asked him if he understood.

10 Q Just as they appear on that document?

11 A Yes, sir.

12 Q And then what?

13 A After I read each one and asked him if he understood,
14 I went through each of the five. I again went back to the
15 top and asked him if he read it and understood it to
16 initial next to 1, 2, 3, 4 and then 5. After all five was
17 initialed, I read the statement that says, I fully
18 understand each of these rights --

19 THE COURT: Let the record reflect that I have
20 reviewed the statement and the contents thereof.

21 MR. DURANT: Would the record reflect that those are
22 the Miranda rights?

23 THE COURT: Yes, sir.

24 Q And did he appear to understand his rights?

25 A Yes, sir.

1 Q Did he sign saying that he understood his rights?

2 A Yes, sir, he did.

3 Q That is his signature appearing on State's Exhibit
4 No. 1?

5 A Yes, sir.

6 Q You did not endeavor to interrogate him at that time,
7 did you?

8 A No, sir.

9 MR. DURANT: I have nothing further of this witness
10 at this time.

11 THE COURT: Mr. Kulp, you may cross-examine at this
12 time.

13 MR. KULP: Yes, sir. Beg the Court's indulgence.

14 CROSS-EXAMINATION

15 BY MR. KULP:

16 Q Good afternoon, Mr. Payne.

17 A Good afternoon.

18 Q You indicated in your direct testimony that Mr. Myers
19 was not under arrest when you transported him to
20 Charleston Memorial Hospital, correct?

21 A Yes, sir.

22 Q I believe you had him taken to MUSC first and they
23 wouldn't do it, so you had to go to Charleston, do you
24 recall?

25 A I don't recall going to MUSC.

1 Q In any event, if he hopped out of the car and ran,
2 you would have pursued him?

3 A Not necessarily.

4 Q Now, you indicated that he signed the advice of
5 rights form, which I think -- which is earmarked. And did
6 you ask him to sign the waiver portion of State's Exhibit
7 No. 1?

8 A You're referring to the bottom of the form?

9 Q Yes, sir.

10 A No, sir.

11 Q And that's another officer's signature on the person
12 interviewed waiver line, isn't it?

13 A I'm not sure what you mean by person interviewed.
14 Are you talking about down here at the bottom?

15 Q Yes, sir. Is that Mr. Poole's signature?

16 A That's Corporal Poole's signature.

17 Q That's on the waiver portion?

18 A That's on the bottom part, yes. It's actually where
19 the person being interviewed would sign, not the person
20 doing the interview.

21 Q Right. It's a clerical error of some sort?

22 A Right.

23 Q You were called to the scene that morning to help
24 with the investigation of what was determined to be not
25 only an arson, but a homicide, correct?

1 A Yes, sir.

2 Q And you arrived there at the scene -- you made notes,
3 did you not, handwritten notes about what time you arrived
4 and other details?

5 A Yes, sir.

6 Q Do you have a copy of those with you?

7 A I don't.

8 Q Well, I do if you need to refresh your recollection.

9 A Please.

10 Q Okay. I'm handing you an exhibit we're not going to
11 mark. Do you recognize that as being a photocopy of the
12 notes we were just referring to in your last question?

13 A Yes, sir.

14 Q And having reviewed that, can you tell me what you
15 now recall with the aid of those notes being the time that
16 you arrived there at the Mill Inn crime scene?

17 A 0540 a.m.

18 Q 0540. Now, you, in fact, at that time when you were
19 working with the North Charleston Police Department were
20 pretty much assigned to the juvenile investigative
21 division; is that correct?

22 A Yes, sir.

23 Q But you were called in because of the scope of this
24 and asked to assist in the investigation?

25 A Right, as was the majority of the major crimes, and

1 several detectives can be pulled in from various
2 divisions.

3 Q And when you got there, what were you told to do?

4 A I entered the crime scene and just viewed. I didn't
5 do anything specific inside. I believe it was
6 approximately one hour later, at 6:40 I believe it was,
7 that I was instructed then to take Mr. Myers' statement,
8 if I'm not mistaken.

9 Q Okay. Do you recall what time of day or morning
10 there on the 13th of March, 1997, the fire itself at the
11 Mill was detected by uniformed officers?

12 A No, sir, I don't know right off the top.

13 Q Would you disagree if I told you it was 3:14 a.m.

14 A If that's -- I have no specific knowledge.

15 Q Okay. We'll fill that in later. In any event, at
16 6:40, you were asked to -- who asked you to interview Mr.
17 Myers?

18 A It was the supervisors on the scene, I can't recall
19 if it was Captain Smith or Lieutenant Cumbee or Sergeant
20 Tetanich.

21 Q And at that time do you recall where your car was
22 parked? Was it up near Beasley's Mechanical up there next
23 to Virginia Avenue?

24 A I was parked in the parking lot of Virginia Avenue
25 and East Montague. If you're facing the Mill Inn, my car

1 would have been to your right and kind of behind you.

2 Q Right. Okay.

3 A About 5 o'clock if you will, right there.

4 Q You approached Mr. Myers?

5 A I believe he was already there, yeah.

6 Q But you eventually went to him and said I'd like to
7 take -- how did you approach him, what did you say?

8 A I don't recall specific conversation. We went to my
9 car. He got in the front passenger seat and I got in the
10 driver's seat and I completed the statement.

11 Q Okay. And that was in your police car?

12 A Yes, sir.

13 Q And he sat in the front seat with you?

14 A (The witness nodded.)

15 Q And you took a statement from him -- not only did you
16 read him his rights, but you took an actual written
17 statement from him, right?

18 A I took the statement -- the witness statement first.
19 His rights was not read to him until once he was at the
20 police department.

21 Q Okay. And in that statement which we can offer in a
22 minute, Your Honor, that statement, do you recall the
23 substance of that statement?

24 A It was chronologically really of what had happened.
25 I believe he went into his relationship with the victim,

1 how long he had known her, things like that. The events
2 of the night before I think were in there.

3 Q And there is nothing inculpatory at all in that
4 statement, is there?

5 A Incriminating?

6 Q Incriminating.

7 A No, sir, not that I recall.

8 Q And at that time did he offer any resistance to you
9 whatsoever when you asked him about going to the hospital
10 to provide standards of blood, hair and other evidentiary
11 aspects?

12 A No, sir.

13 Q And after you went from the hospital, you thereafter,
14 and I may have the chronology wrong, you went to the North
15 Charleston Police Department. There he readily agreed to
16 provide you with major case prints, fingerprints, palm
17 prints and so forth?

18 A It was backwards, we went to the police department
19 first and then the hospital.

20 Q Like I said, I thought I had it wrong. And while he
21 was there, he also submitted to a Simtab or gunpowder
22 test, didn't he?

23 A Yes, sir.

24 Q At no time did he offer any resistance or reluctance
25 to do that?

1 A No.

2 Q In fact, his interest, was it not, was in helping you
3 any way he could to try to assist in finding the killer of
4 his girlfriend?

5 A I can't say what his intentions were. He was
6 cooperative.

7 Q Okay. Now, when you were speaking with him in that
8 car and taking that nonincriminating statement that
9 morning at 6:40, did you smell any smoke about him?

10 A Not that I recall, no.

11 Q And did you detect anything about his appearance that
12 would indicate that he had been injured or in a fight such
13 as an injury to the face or hands or any part of his body
14 that you could see knowing that he was clothed at the
15 time?

16 A Not in passing. I didn't make a physical examination
17 of him, but none that were obvious.

18 Q Well, as a matter of fact, I might have any time --

19 THE COURT: How does his physical examination relate
20 to a Jackson v. Denno hearing?

21 MR. KULP: I'm not going to -- I'll tie it up, Your
22 Honor.

23 THE COURT: All right. Let's remember now, this
24 issue is not the trial of this case. We're talking about
25 the voluntariness of an alleged statement and let's

1 confine ourselves --

2 MR. KULP: I understand, Your Honor.

3 THE COURT: -- even on cross-examination to that
4 issue.

5 MR. KULP: Yes, sir. I'm just trying to lay a
6 foundation.

7 THE COURT: All right.

8 Q And as a matter of fact, it may not be that day, but
9 he also submitted to being photographed down to his BVD's
10 at the police station, correct?

11 A I'm not aware of that.

12 Q You don't know?

13 A No.

14 Q In any event, at that time do you recall telling him
15 that there was a great deal of forensic evidence in your
16 opinion or you had been advised at the scene?

17 A No.

18 Q Do you recall telling him, Mr. Myers sitting here,
19 that there were fingernail scrapings that were taken from
20 under the victim's fingernails that would certainly be of
21 forensic value in determining and finding the killer?

22 A No, sir. At the time I wasn't aware of any forensic
23 evidence at all throughout the investigation.

24 Q At that time were you aware -- or did you advise him
25 that a hair had been found in the victim's hand?

1 A No, sir.

2 Q Okay. And, in fact, you advised him, did you not,
3 after you finished doing these details and so forth with
4 him that day that he might as well head on off and go to
5 the lake on a vacation that he had planned that weekend?

6 A No, sir.

7 Q You did not?

8 A No, sir, I don't recall saying anything like that.

9 Q Okay.

10 MR. KULP: Beg the Court's indulgence one second,
11 Your Honor.

12 Q Do you recall mentioning to Mr. Myers that at that
13 time the bartenders were suspects, as you were taking this
14 statement from him in your car?

15 A No.

16 Q How long would you estimate you could tell the judge
17 that you were in your cruiser or patrol car, detective's
18 car, there at the scene with Mr. Myers before you left to
19 go to the hospital or to the station for the major case
20 prints? Approximately, I don't expect you to --

21 A I believe his statement started at 6:40. We arrived
22 at the hospital I have noted at 9:47. I would say he was
23 probably actually in my vehicle doing a statement not more
24 than an hour, however, I can't be specific. I don't know.

25 Q Okay. And do your notes reflect what particular time

1 you finished up with him in terms of these things that you
2 were assigned to do that day?

3 A I don't believe so. At the last page of my notes
4 there, I indicated the time we were going to leave the
5 hospital as 10 something. I left the minute portion of
6 that portion blank and never did fill it in.

7 Q Okay. And --

8 MR. KULP: Thank you, sir. No further questions.

9 MR. DURANT: I have just one on redirect examination.

10 REDIRECT EXAMINATION

11 BY MR. DURANT:

12 Q I'm going to hand you this document that is not
13 marked as an exhibit and ask if you recognize that?

14 A Yes, sir, this is the statement that was prepared.

15 Q By you?

16 A Yes, sir.

17 Q Resulting from the interview in the car; is that
18 correct?

19 A Yes, sir.

20 Q There is a time on this, is there not?

21 A Yes, sir.

22 Q And what is that time?

23 A 0657, which would be a.m., so 7 a.m.

24 Q Okay. And do you know -- if you know, is that the
25 time you actually took the statement? Is that the time

1 you finished the statement?

2 A That's the time the statement started. As I filled
3 the form out, I indicated the time that I came to that
4 particular block and started the statement.

5 Q So that's up at the top of the page --

6 THE COURT: What time is that?

7 MR. DURANT: 6:57 a.m.

8 Q And that's when you started taking the statement from
9 him; is that correct?

10 A Yes.

11 Q So it may have been a little after 6:40 a.m. when you
12 were asked to take the statement; is that correct?

13 A Right.

14 Q It would be closer maybe to 6:55 when you were
15 actually asked to take the statement?

16 A At 6:40 is when I believe Captain Smith, Lieutenant
17 Cumbee and Sergeant Tetanich and I actually met -- we were
18 standing in the street of Montague Avenue. I jotted the
19 time down and then took some notes. Now, we could have
20 been talking for 10 minutes before I actually went and got
21 Mr. Myers to take the statement.

22 Q So it's closer to 6:50 to 6:55 probably before you
23 were asked to take the statement?

24 A Yes, could have been.

25 MR. DURANT: I have nothing further.

1 MR. KULP: Just one briefly on that one singular
2 point, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. KULP:

5 Q The notes that you just refreshed your memory by
6 reading indicate 6:40?

7 A Right, I believe. I don't have them in front of me,
8 but I believe it says 6:40 met with and I've got some
9 badge numbers. And those badge numbers would indicate --
10 I'll read them to you.

11 Q Is there anything in there that indicates what time
12 you were actually told to talk to the defendant?

13 A Here it says 6:40 spoke with W. W., which I believe
14 at the time was Mr. Myers; with car 5, which is Captain
15 Smith; 16, which is Lieutenant Cumbee; and 35, which was
16 then Sergeant Tetanich. 6:40 is the time I spoke with
17 those three officers, my supervisors.

18 Q And --

19 A And I believe Mr. Myers was there present. Then it
20 says, Took statement in my car, transported to N. C. P. D.
21 So 6:40 was when I actually talked on the street with
22 those three officers and the defendant.

23 MR. KULP: Okay.

24 A So the actual statement in my car was taken sometime
25 after 6:40 and between 6:57.

1 THE COURT: You may come down. Thank you.

2 MR. KULP: Thank you, sir.

3 MR. DURANT: Your Honor, can this witness be excused?

4 THE COURT: Yes, sir.

5 MR. DURANT: The State calls George Tetanich.

6 George William Tetanich, after being duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MR. DURANT:

10 Q Please state your full name for the record.

11 A George William Tetanich.

12 Q Where are you employed?

13 A At the North Charleston Police Department.

14 Q How long have you been so employed?

15 A Twenty years.

16 Q And what are your current duties with North
17 Charleston?

18 A Currently, I'm lieutenant in charge of
19 communications, training, duty officers and the evidence
20 room.

21 Q And what were your duties on March 13th of 1997?

22 A I was a sergeant in the detective division,
23 supervising squad of detectives.

24 Q In that capacity, did you have an opportunity to
25 participate in the Teresa Haught murder case?

1 A Yes, sir, I did.

2 Q Could you relate to the Court when you first
3 contacted -- had first contact with the defendant in this
4 case, Wesley Myers?

5 A Yes, sir. I was beeped out of my bed in reference to
6 a fire and a homicide and I responded to East Montague
7 Avenue at the Mill Inn. That was approximately 5 o'clock
8 in the morning. I saw the defendant at approximately, I
9 want to say 6:30 to 6:45 that morning as I was standing
10 out front of the Mill Inn on East Montague.

11 Q And did you know who he was at that time?

12 A No. He had come up asking some questions, there was
13 a lot of bystanders around there. And I mentioned to him
14 that we had a fire. And he said that his girlfriend
15 worked at the Mill Inn and she sometimes slept there. I
16 asked him what his girlfriend's name was and he told me
17 Teresa Haught. And I said, Well, there's somebody in
18 there that's died from a result of this fire. You might
19 want to stand by. And he just started breaking down
20 crying, upset.

21 Q Did he remain that way?

22 A He was very emotional for about a minute. Then he
23 kind of had a change of appearance and attitude. He just
24 started -- just stopped immediately and he went down to
25 the ground. He got up and started talking about the

1 problems that the Mill Inn had had with electrical
2 problems, that the fire was probably started by electrical
3 wiring. They had smelled smoke in there before. And they
4 needed to look at that. And they've told the owner and
5 the owner ain't done nothing about it and that's what
6 probably killed her.

7 Q Did you actually question him that morning?

8 A No.

9 Q Did you tell Detective Payne to take his statement?

10 A I can't recall --

11 Q Or did someone advise --

12 A Yeah, one of us advised Detective Payne to go ahead
13 and get his witness statement.

14 Q Okay. But you didn't have any further contact with
15 him that day?

16 A No, sir.

17 Q And that would be the 13th of March, 1997?

18 A Correct.

19 Q When is the next time you had any contact with the
20 defendant, Wesley Myers?

21 A I believe it was the next day. If I can just check
22 for a second. Yeah, it was Friday the 14th.

23 Q And that would be the 14th of March, 1997?

24 A Yeah.

25 Q And when that day did you have contact with him and

1 how did you come into contact with him?

2 A I was up on the third floor detective division and I
3 believe Lieutenant Cumbee or one of the personnel had
4 asked him to come back in the next day. And it was
5 sometime around lunchtime, 11 o'clock, 12 o'clock,
6 something like that.

7 Q Okay. When -- they'd asked him the previous day if
8 he would come by the station; is that correct?

9 A Correct. He was -- from what I understood, he was
10 very interested in finding the person who had done this
11 and wanted to cooperate and help us try to locate this
12 person.

13 Q And is that when he was told to come into the
14 headquarters the next day?

15 A Right, he come to the police department and I think
16 Lieutenant Cumbee and myself and Detective Clayton had a
17 short interview with him.

18 THE COURT: At that time had you already determined
19 the fire was arson?

20 A I believe that -- yeah, we suspected from what Benji
21 Norris had told us that the fire had been set. Now,
22 whether it had been confirmed at that point, I don't know.
23 But we were under the impression that it was an arson and
24 we knew that we were dealing with a homicide.

25 THE COURT: Proceed.

1 Q Okay. And did you -- at the time that you talked to
2 him, you were aware, of course, that a hair was found in
3 the victim's hand; is that correct?

4 A Correct.

5 Q Were you aware at the time that the defendant came in
6 on March the 14th, that that hair matched him or was
7 told -- or relayed by --

8 A No, sir, in fact, I was in the room when Lieutenant
9 Cumbee mentioned the fact to the defendant that we had
10 found -- recovered a hair that had been held inside the
11 victim's hand under her body. It hadn't been destroyed by
12 the fire. And we had a discussion, he said something
13 about that's a miracle that it wasn't destroyed by fire.
14 And the defendant had made a statement about, well, find
15 out whose hair that is, you're going to find the killer.
16 And we agreed with that. We said, yeah, you're probably
17 right. That's probably going to be the person we're
18 looking for.

19 Q Now, you were talking to the defendant where?

20 A In Lieutenant Cumbee's office.

21 Q And how had he got to the police department?

22 A He drove.

23 Q Was he in cuffs?

24 A No.

25 Q Did y'all tell him he had to stay?

1 A No.

2 Q Under what circumstances was he there?

3 A Voluntarily.

4 Q To do what?

5 A To assist us in our investigation, that's what he
6 told us.

7 Q Okay. Did you interrogate him?

8 A No.

9 Q Did you ask him questions or anything in reference to
10 the actual murder and arson at the Mill Inn?

11 A No, sir.

12 Q And how long did this conversation in Lieutenant
13 Cumbee's office last?

14 A It wasn't too long, maybe half hour, hour at the
15 most. We were getting ready to go to lunch. And we even
16 invited the defendant to go with us. We went to the Olive
17 Garden.

18 Q Okay. And did he go to the Olive Garden with you?

19 A No, he said he would just stand by and wait for us to
20 get back.

21 Q Now, I believe also hadn't the defendant that day
22 agreed to take a polygraph?

23 A Yes, he was going to take a polygraph, I believe,
24 after lunch.

25 Q And that was Detective Clayton that was arranging

1 that; is that correct?

2 A Right, with Charleston County.

3 Q Okay. So he didn't go to eat with you; is that
4 correct?

5 A No, he didn't.

6 Q Where did he go while y'all went to eat?

7 A I don't know. I assumed he stayed at the police
8 department or something, but I don't know for sure.

9 Q Was he left under guard or anything like that?

10 A No.

11 Q Was he cuffed or was he in custody, was he in the
12 jail cell?

13 A No, sir.

14 Q Was he told that he had to stay there until y'all got
15 back?

16 A No.

17 Q Now, what happened at lunch or did y'all learn
18 anything relative to this case at lunch while y'all were
19 out to lunch?

20 A We did. Lieutenant Cumbee had sent Crime Scene Tech
21 Hallman to Columbia with the hair along with some hair
22 samples from the defendant for comparison. And while we
23 were at lunch, he received -- Lieutenant Cumbee received a
24 phone call from Columbia from Al Hallman stating the hairs
25 were a match to the back of the defendant's head.

1 Q And that occurred while y'all were out to eat lunch;
2 is that correct?

3 A While we were at lunch.

4 Q Okay. Did y'all go back and confront him with that
5 information immediately?

6 A No.

7 Q What did you do? Did you have any further contact
8 with the defendant after lunch?

9 A Initially, no. They had -- after lunch, they had --
10 I believe Detective Clayton took him to the polygraph
11 examination at Charleston County. And after that -- I
12 don't believe he took the polygraph. He was brought back
13 to the police station. We --

14 Q Were you there at that time?

15 A Yes.

16 Q Or were you elsewhere?

17 A Yes, when he was returned. At that time, we asked
18 him for consent to search his vehicle and his room at his
19 residence.

20 Q Did he sign consent for both of those?

21 A He signed a consent form and his vehicle was there at
22 the station. So we turned the vehicle over to crime scene
23 to process it. And we gave him a ride back to his
24 residence in Hanahan.

25 Q Once again, at any time did y'all attempt to

1 interrogate him concerning his involvement in this case?

2 A No, sir.

3 Q Did y'all have any discussions about when to
4 interrogate him?

5 A Yes, we had -- coming back from the polygraph
6 examination, Detective Clayton had stated that the
7 examiner at the county police department, the polygraph
8 examiner, had stated that he appeared fatigued or may have
9 been drinking or under the influence or something like
10 that.

11 Q Or had been the night before?

12 A Or had been the night before. He wasn't a suitable
13 subject at that time. So with that in mind and I
14 discussed it and decided that it is best not to interview
15 him now. Let him go home, come back in the morning when
16 he's had some sleep and talk to me then.

17 Q And is that why y'all didn't actually confront him
18 about the hair that day?

19 A Correct.

20 Q And is that what happened, he was taken home that
21 evening?

22 A Yes. Well, we went to his residence. We took him
23 home. And he showed us the clothes that he had wore the
24 night before or two nights before that. And we collected
25 some evidence there. And I asked his parents if they

1 would give us permission to search the rest of the house
2 because it was his parents' house, and they did. They
3 cooperated. And we searched that and didn't recover
4 anything else of value. And we left there, I would say
5 probably about -- it was dark, probably 9 or 10 o'clock,
6 something like that.

7 Q Okay. But he was left at home with his mom and dad?

8 A Yes, sir.

9 Q And had y'all made arrangements to meet with him the
10 next day?

11 A Yes. Detective Clayton was going to pick him up in
12 the morning and bring him in in the morning for an
13 interview. And I think he even took him to breakfast that
14 morning. That would have been Saturday morning.

15 Q Okay. Now, moving on to Saturday morning, this would
16 be now March the 15th of 1997. When did you have contact
17 with the defendant that morning and where?

18 A At approximately, I would say somewhere between 9:45
19 and 10 o'clock in the morning, I arrived at the police
20 department. Detective Clayton and the defendant were both
21 already present in the detective division. We spoke
22 briefly and then we went into the interview room there to
23 interview the defendant.

24 Q Okay. Where is this interview room located?

25 A It's located right there off the detective division

1 open bay area on the third floor of city hall. It's just
2 a basic interview room with a table and two chairs and a
3 see-through mirror.

4 Q Okay. And who was present at this time?

5 A It was myself, Detective Clayton and Wesley Myers.

6 Q And what did y'all do when you got into the interview
7 room?

8 A We got into the interview room --

9 Q By the way, had y'all placed him under arrest or
10 anything by this time?

11 A No, sir.

12 Q Was he in cuffs?

13 A Uncuffed, walked in under his own free will. We -- I
14 advised him of his rights. I filled out an advisement of
15 rights form for Wesley.

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

18 Q Detective Tetanich, I now hand you what has been
19 marked as State's Exhibit No. 2 and ask if you can
20 identify that document?

21 A Yes, this is the North Charleston Police Department
22 advice of constitutional rights form. This is the form
23 that I conducted -- or filled out with Wesley Myers.

24 Q And that is not -- that is a copy of the form he
25 actually signed; is that correct?

1 A Correct.

2 Q And would you please tell the judge what process you
3 went through.

4 THE COURT: May I see that, please?

5 A Yes, sir.

6 THE COURT: This is a copy of the original?

7 A That's correct, Your Honor.

8 THE COURT: Have you seen a copy of this, Mr. Kulp?

9 MR. KULP: Yes, sir, Your Honor.

10 THE COURT: Proceed.

11 MR. DURANT: Thank you, Your Honor.

12 Q Would you just relate how you went about advising the
13 defendant of his rights in this particular case?

14 A Yes, sir, I always do this the same way so I don't
15 have any problems later on. But what I do is I read each
16 individual statement of rights to the accused. And I
17 asked him if he understands it. If he understands --

18 Q Before we get into that and I want to go into that,
19 how did he appear to you that morning? This was at
20 around -- first of all, what time was the advice of
21 rights?

22 A I advised him at 10:20 a.m.

23 Q Okay. And what was his mental condition at the time?

24 A He was alert, coherent, didn't appear to be under the
25 influence of any alcohol or drugs. Pretty talkative.

1 Q Okay. And how did you go about advising him of his
2 rights?

3 A I read him each individual right and asked him if he
4 understood it.

5 Q Did you get any biographical information from him?

6 A Yes. Well, I fill out the top section. You have to
7 ask him his name, date of birth, his age, how many grades
8 he completed in school.

9 Q And how far had he gone in school?

10 A Thirteen grades, so he had been to college, didn't
11 graduate. But then I advised him of his rights. He
12 signs -- after he acknowledges that he understands the
13 individual rights, he will sign to the left of that right
14 with his initials indicating that he understands those
15 rights. And that's what I told him, sign here signifying
16 you understood your rights. And he did that on all five
17 of the rights. Then at the bottom, I read, I fully
18 understood each of these rights as explained to me. And
19 he signed that with his signature and I signed it, dated
20 it and Detective Clayton signed it.

21 Q So that is his signature on both the advisement of
22 rights -- on the advisement of rights; is that correct?

23 A Yes, sir.

24 Q And witnessed by you and Clayton?

25 A Correct, and I even put the wrong date, I put 3/14

1 and he corrected me. And I put 3/15 and he initialed it.

2 Q Okay. Did he understand what you were telling him?

3 A Yeah, and he caught the mistake, I didn't. Then I go
4 on to advise him of the second portion, which states that
5 having these rights in mind, I wish to waive these rights
6 and answer questions concerning the charge of murder. No
7 threat, force or promises of any kind have been made to me
8 by anyone to cause me to waive these rights and/or to
9 answer questions. And I always say, if you want to talk
10 to us about this, you need to sign here and you are
11 waiving your right to silence. And he did.

12 Q Okay.

13 A And then I signed it and dated it and timed it and
14 Detective Clayton signed it.

15 Q And did you read him his rights exactly as they
16 appear on that form?

17 A Exactly.

18 MR. DURANT: Your Honor, I'm not going to go through
19 all the rights.

20 THE COURT: No, sir, the records will again reflect
21 that I have reviewed the form and I note that counsel for
22 the defense has indicated he has also reviewed the form.

23 MR. KULP: That's correct, Your Honor.

24 Q After advising him of his rights, did you begin to
25 interrogate him?

1 A We started off with just trying to get some general
2 information about his background and his background with
3 the victim. What their relationship had been like. How
4 long they had been together, any problems and stuff like
5 that.

6 Q Now, prior to this time, had you ever asked him, sat
7 down and asked him questions about relative to this
8 incident, prior to then?

9 A No.

10 Q Prior to advising him of his rights on the morning of
11 March the 15th of 1997?

12 A No, sir.

13 Q And you cover certain background information; is that
14 correct?

15 A Yes, sir. We covered the relationship between him
16 and the victim, how their relationship was going. We
17 discussed where he had been on the night of the homicide
18 and the day before that, what he had done. Just getting
19 some general background on where he was and what he'd been
20 doing.

21 Q Y'all discuss any prior problems he may have with the
22 victim?

23 A Yeah, we had a report that he had been involved with
24 her in a domestic situation prior to the homicide. And we
25 had asked him about that. And he told us he got into an

1 argument with his girlfriend up in Shores, which is a
2 little place up there.

3 Q But he told you about a prior incident between him
4 and his girlfriend?

5 A Right, where they had gotten into a fight and he had
6 got arrested.

7 Q Did he discuss his jealousy with you?

8 A Yes, he was especially jealous because she -- he
9 indicated that she would always try to make him jealous.
10 She would try to do things to get a reaction from him or
11 whatever and that he was suspicious one of the guys there
12 was dating her. And he had heard that they were sleeping
13 together or dating. And that he was really upset and
14 jealous.

15 Q Do you recall who that person was?

16 A Allen White.

17 Q He was a bartender at the Mill Inn; is that correct?

18 A Right.

19 Q Did he admit any involvement to you and Detective
20 Clayton at that time concerning the murder and arson at
21 the Mill Inn?

22 A No, sir, but he did state that he had seen Allen
23 White kiss his girlfriend and pinch her on the butt which
24 had made him upset several weeks or a month before this.

25 Q Okay. Now, how long did this preliminary interview

1 with the defendant take?

2 A I would say roughly an hour, hour and a half.

3 Q Okay. And what happened at the end of an hour, hour
4 and a half?

5 A Lieutenant Cumbee arrived at the station and spoke
6 with us briefly and asked if we all would come into his
7 office, which we did.

8 Q Now, who all moved into Lieutenant Cumbee's office?

9 A Myself, Detective Clayton, and Wesley Myers and
10 Lieutenant Cumbee.

11 Q And describe his office.

12 A It's a normal-sized office, probably 10 by 12 or
13 about that size, got a desk in it and a cabinet and big
14 glass window out front and doorway.

15 Q And where did everybody sit?

16 A Lieutenant Cumbee sat behind the desk and the desk
17 faced out to the detective bay and he had two chairs in
18 front of the desk. Wesley was sitting in the chair that
19 would be to Lieutenant Cumbee's left. And then prior
20 to -- I was standing behind Lieutenant Cumbee. Lieutenant
21 Cumbee was sitting in his chair. And Clayton, I think was
22 sitting in the chair beside him.

23 Q Was the door open or closed?

24 A Yeah, the door was open.

25 Q Okay. Was he cuffed at that time?

1 A No.

2 Q What happened when y'all got to Lieutenant Cumbee's
3 office?

4 A I asked him about some cuts on his hand. And he said
5 it was a result of a burn or something that happened at
6 work.

7 Q Did he look like he had any recent cuts on him at
8 that time?

9 A He had some cuts on his hand, but I couldn't testify
10 as to how recent they were. I then reminded him about the
11 statement that he had made earlier about the hair being --
12 if we found out who owned the hair that that would be the
13 person who killed her because she had it grasped in her
14 hand like that. And he said, yes, he remembered that and
15 he agreed. And say yeah, that would be the person that
16 killed her. I said okay.

17 So then Lieutenant Cumbee came in -- let's see. He
18 was asking him -- or some question about something and
19 then he got up and left. And then when he come back in,
20 he told Rusty that -- or he had asked him -- I guess he
21 had come in and asked him the same thing I had asked him,
22 which was basically about the hair and the hand and if we
23 found out who the hair belonged to, that would be the
24 person who killed her. And he agreed --

25 Q Did anybody ask him if he had been out drinking the

1 night before?

2 A Oh, yeah, we had asked him when we took him home that
3 night before not to go out drinking and not to get -- and
4 to get a good night's rest and to come in. And he said he
5 did. He said he didn't go out drinking the night before.

6 Q Okay.

7 A And then Lieutenant Cumbee left. He come back a
8 short time later and told Wesley that he had some bad news
9 for him; that we had gotten a call from SLED, that they
10 made a match on the hair that was found in Teresa's hand
11 and it matched head hair pulled from the back of Wesley's
12 hair. He got real emotional, threw his hands up, started
13 putting his hands on his head and just shaking and saying,
14 It can't be or something like that. And then he said,
15 It's got to be. I must have done it. He said something
16 about blacking out or something to that effect.

17 Then we talked to him a little bit more where he was
18 going on about -- we were talking about the hair. We
19 talked about how it matched his head and he was saying,
20 Well, it must be me. It must be me. I must have done it.

21 I must have blacked out or something to that effect. And
22 then we had -- I'm trying to think --

23 Q At that point did y'all go any further into the
24 details or anything of that nature?

25 A We asked him -- we asked him to relate what happened

1 that night. And he told us that he had indeed came to the
2 Mill that night about 2 o'clock. And that he had saw the
3 writing on the car, the dew on the windshield where
4 somebody wrote some words to the effect of meet me later,
5 you know, kind of a love note type thing on the
6 windshield.

7 Q This was on the windshield of whose car?

8 A Her car.

9 Q Okay.

10 A And he had saw that and went up to the door and the
11 door was locked to the Mill Inn. So he beat on the door,
12 he said, for a while. And then Teresa got up, opened the
13 door, he came inside. He confronted her about that. And
14 I can't remember if it was signed by Allen or something
15 like that. Then he said he saw a note, a pink note on the
16 bar or something like that that was from Allen to her,
17 some kind of love note.

18 And then he got upset, physically upset and that she
19 tried to hit him with the tip jar, which is a big glass
20 wine carafe on the bar there for the bartender and
21 waitresses to get their tips. And he took it away from
22 her and hit her with it and that they went down to the
23 floor and they fought some more. He couldn't recall how
24 many times he hit her, he just kind of said he lost
25 control.

1 And when he got done, he got up, felt real bad,
2 wanted to kill himself, started looking around the place
3 to find something to burn. Said he got some papers from
4 back behind the cabinet and the closed on Sunday sign and
5 some other stuff and piled it up behind the bar and lit it
6 on fire. Then he went back around to the front of the bar
7 where she was laying and held her until the smoke got to
8 the point where he couldn't stand it anymore and he
9 finally just ran out the back door. He took the bar off
10 the door, it was a two-by-four board, and went out the
11 back of the Mill Inn.

12 Q Okay. Did y'all write all that down at that time?

13 A No. We were doing this verbally first and then we go
14 back through it again and write it.

15 Q Did y'all go back and write it immediately or did
16 y'all go some place?

17 A No, in further discussion with him, we knew that her
18 purse was missing from the bar. And he admitted that he
19 took the purse. Initially, he said he put it behind the
20 seat of his truck. But we checked the crime scene, they
21 didn't find a purse in the truck when they inventoried it.
22 So we asked him what he had done with the purse. And he
23 changed his story and said that he had took it to a park
24 up off of Virginia Avenue across from Westvaco where him
25 and her had first made love. And he put it in a hollow

1 tree at this park. So we drove the suspect to the
2 Westvaco Park and had him show us the tree that was there.
3 But there was no purse at the tree.

4 Q Did y'all go by the Mill Inn before you went to the
5 park?

6 A Yeah, we stopped by the Mill Inn and he explained to
7 us in detail how he had went in and come out the Mill Inn.
8 You couldn't really go in the Mill Inn because it was
9 burned and it was, you know, dangerous to go inside.

10 Q Was it boarded up at the time?

11 A Right. So he just showed us at the scene the way he
12 come in and the way he come out.

13 Q And who was with y'all at that point when y'all went
14 to the scene and out to Westvaco Park?

15 A It was me and Detective Clayton and Wesley Myers.

16 Q And who?

17 A Wesley Myers.

18 Q Was Chief Norris there at that time?

19 A I can't recall, I don't believe so, but I don't
20 recall.

21 Q Was Chief Norris there during some of the interview
22 with the defendant or do you recall?

23 A Yeah, he came in shortly after the defendant had
24 confessed. He had been outside prior to that. But he
25 come up there about -- shortly before Lieutenant Cumbee

1 showed him the pictures.

2 Q Okay. Now that you have mentioned that, you
3 mentioned and I will get into this with Lieutenant Cumbee
4 in more detail, where -- were some pictures or a picture
5 shown to the defendant sometime during the interview
6 process?

7 A Yes, one picture.

8 Q Was that before or after he had already admitted
9 killing Teresa Haught and setting --

10 A It was after he had already confessed.

11 Q Now, y'all -- after the trip to the scene in
12 Westvaco, y'all went back to headquarters, is that the
13 case?

14 A Yes, sir.

15 Q What happened after you got back to headquarters?

16 A We commenced to writing the statement and going over
17 his statement again with him.

18 Q And you reduced the statement to writing at that
19 time?

20 A Correct.

21 THE COURT: Mr. Kulp, reference has been made to a
22 statement. Have you had an opportunity to review it?

23 MR. KULP: I have, Your Honor. Thank you.

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

1 Q I hand you what's been marked as State's Exhibit No.
2 3. Is that the statement that was reduced in writing
3 that -- to writing at headquarters?

4 A Yes, this is a copy of it.

5 Q And that is your signature as witness?

6 A Yes, sir.

7 MR. DURANT: I will get back to that later with
8 another witness, Your Honor.

9 THE COURT: You have identified that document as No.
10 3 for my purposes here? Is that statement No. -- alleged
11 statement No. 1?

12 MR. DURANT: No, Your Honor, I'm -- quite frankly,
13 this is the only statement I'm putting in for purposes of
14 this hearing.

15 THE COURT: Okay.

16 MR. KULP: We'd offer the other one then, Your Honor.

17 THE COURT: Pardon?

18 MR. KULP: We'd offer statement No. 1 -- for clarity,
19 the other statement as statement No. 1 and that one as
20 statement No. 2 for clarity's sake.

21 Q And the statement was reduced to writing; is that
22 correct?

23 A Correct.

24 Q Defendant signed it?

25 A Yes.

1 Q You witnessed him sign it?

2 A Yes.

3 Q Now, at any point up to this time, I'm talking about
4 on the 13th of March, the 14th of March or the 15th of
5 March when he actually confessed and gave you the
6 statement, was he ever promised anything in order to get
7 him to talk to you or to confess?

8 A No.

9 Q Was he offered leniency in order to talk to you or to
10 confess?

11 A No.

12 Q Did you make any direct or indirect threats to him or
13 his family in order to get him to talk to you and confess?

14 A Certainly not.

15 Q Did you at any time threaten him with the death
16 penalty?

17 A No.

18 Q Did he at any time invoke his right to counsel, ask
19 to see a lawyer?

20 A No.

21 Q Did he ever say anything that would be equivocal that
22 would indicate to you that maybe he wanted a lawyer, like
23 maybe I should talk to a lawyer or anything of that
24 nature?

25 A Not to my knowledge.

1 Q Did he ever mention anything about a lawyer during
2 the time y'all questioned him?

3 A No, all he said was he wanted to cooperate.

4 Q Did y'all withhold food or drink or bathroom trips or
5 anything of that nature from him during the interrogation
6 process?

7 A No. In fact, I forgot to mention, but on our way
8 back from Westvaco Park, I went by McDonald's and asked --
9 offered to buy him lunch at McDonald's and I think I
10 bought him a soda. He didn't want lunch.

11 Q To your knowledge, was he ever showed a photograph of
12 the victim's dismembered body from the autopsy?

13 A No, not that photo.

14 MR. KULP: I'm sorry, what?

15 A Not that photograph.

16 Q Was he told that the victim's hair and blood were
17 found all over his truck?

18 A I never heard that.

19 Q Was he told that his coat was covered with the
20 victim's blood?

21 A No.

22 Q Was he told that his blood was in fingernail
23 scrapings taken from the victim's fingers?

24 A No.

25 Q Was he told that he had been caught on surveillance

1 cameras at the scene of the crime?

2 A Not to my knowledge.

3 Q Did y'all at any time suggest to him that he had a
4 blackout when this occurred?

5 A No, he mentioned that shortly after Lieutenant Cumbee
6 told him it was his hair. He mentioned that.

7 Q Did the victim's parents ever come to the police
8 station and berate him in your presence or anyone else's
9 presence to your knowledge?

10 A No, I was there when he asked Lieutenant Cumbee to
11 make some phone calls. He asked to call his mother to let
12 her know. And he also wanted to talk to Dixie, Teresa's
13 mother, to apologize to her.

14 Q And did he call his mother?

15 A Yeah, I believe so.

16 Q Did you hear him call his mother?

17 A No, I wasn't there when he made the calls.

18 Q Okay. Now, at some point -- and if you weren't
19 there, fine, just tell me. At some point there was a
20 meeting between the defendant and the victim's mother,
21 Dixie Justis, too; is that correct?

22 A Correct.

23 Q Were you present at that meeting?

24 A I wasn't present in the room with her, but I seen her
25 on the third floor in the detective bay. And I knew that

1 they were meeting.

2 Q Okay. Do you know how that meeting came about or was
3 that not --

4 A He -- like I said before, he had requested to talk
5 to -- or to apologize -- what he said apologize to Dixie.
6 And later on, Melvin had asked him again, Lieutenant
7 Cumbee, if he wanted to call Dixie to apologize and he
8 said yeah. So I think Melvin -- Lieutenant Cumbee called
9 Dixie to the station.

10 Q Okay. But you weren't there when that call was made?

11 A No.

12 Q Now, you're also aware that on that same morning or
13 same afternoon, I should say, were you present when he was
14 asked questions by the media?

15 A Yes, I was.

16 Q And where did that take place?

17 A That took place at the rear door of city hall, first
18 floor, where the police car was parked.

19 Q And do you know how that came about?

20 A Yes, we had been interviewing him and investigating
21 this homicide for three days. And it was an especially
22 gruesome-type homicide. So the news media was heavily
23 involved in tracking the case and seeing how our progress
24 was. And they would call to see if we had any leads or
25 suspects or if we solved the case, let them know so they

1 could tell everybody -- or let the public know that we had
2 solved the case. So I believe Lieutenant Cumbee had
3 informed the media that he had made an arrest in the case
4 and that we would be taking him over to the county jail
5 later that afternoon.

6 Q For what purpose?

7 A For the bond hearing.

8 Q Okay. And did you have any discussions with the
9 defendant directly concerning this?

10 A We did. We had explained to him that the news
11 media -- we couldn't stop the news media from taking
12 pictures or asking questions and that they were going to
13 be outside. Lieutenant Cumbee told him this.

14 Q In your presence?

15 A In my presence. And that he didn't have to answer
16 any of their questions, he didn't have to say anything to
17 them at all. And he understood that. And he said, I want
18 to tell them, I want everybody to know I'm sorry. And I
19 told him myself in that same room shortly thereafter that
20 he don't need to talk to the media. That we're going to
21 walk out the back door, go over to my car, get in and
22 drive off and let them take their pictures. You don't
23 need to tell them nothing. And it would be best for him
24 not to say anything to the media. And he said, Well, I
25 want them to know. I want everybody to know I'm sorry.

1 So when they went to take him downstairs, he knew the
2 cameras would be out back. The media knew we were coming
3 out that door because that's where the car -- my car was
4 parked and we were going to use it to go over to the bond
5 hearing. And he asked to smoke a cigarette first. So we
6 went to the front of the building, out the front door of
7 city hall. It was Saturday, there was nobody there. We
8 went out in the front part of the building away from the
9 media. There was no media over there and let him smoke
10 his cigarette.

11 We then walked back through the hallway in city hall
12 to the back door. And before we went out the back door, I
13 turned to Wesley and I said, Listen, the media is out
14 there. They've got cameras. They're going to yelling.
15 They're going to be asking you a bunch of questions. And
16 I advised him again, I said, Remember, you don't have to
17 say nothing to the media. You don't have to answer their
18 questions. I said, In fact, it would be better if you
19 don't answer questions. And a lawyer will tell you don't
20 talk to the media. And I even mentioned, Your lawyer
21 would say don't talk to the media. But he was bound and
22 determined to clear his conscience or whatever, to make it
23 known that he was sorry for what happened.

24 We walked out the door, Detective Clayton was in the
25 lead with Wesley beside him and I was behind him. And we

1 walked out the door and in the back area, there was a
2 group of about 5 or 6 newspeople with cameras and all.
3 And they started asking him questions. And Wesley stopped
4 and started answering their questions and made a statement
5 about the North Charleston Police Department had treated
6 him fairly and I'm sorry for what I did and I hope you'll
7 forgive me and things like that. And then we went to my
8 car and went to the bond hearing.

9 MR. DURANT: Court's indulgence. Nothing further of
10 this witness at this time.

11 THE COURT: Let's take a short break at this time
12 prior to cross-examination. We'll be back -- just a short
13 10-minute break.

14 (WHEREUPON, a short break was taken.)

15 THE COURT: You may resume your cross-examination.

16 CROSS-EXAMINATION

17 BY MR. KULP:

18 Q Detective Tetanich, you are schooled in the Reid
19 technique of interrogation, are you not?

20 A I used to be.

21 Q You've taken the course?

22 A Yeah.

23 Q And you know that -- or would you agree that it is a
24 course and a method designed to get a person to confess to
25 something that they will not readily admit to doing?

1 A It's designed to get somebody to confess to a crime,
2 yeah.

3 Q Right. When they won't readily say they did it?

4 A Most people won't.

5 Q That's not my question.

6 A I know.

7 Q In other words, if they come in to confess, you don't
8 need it?

9 A Right.

10 Q If they won't confess and you wanted them to confess,
11 the Reid technique is useful, isn't it?

12 A It's helpful.

13 Q Do you happen to recall and could you tell the judge
14 what the nine principals or ten steps of Reid are?

15 A I haven't interviewed anybody in two and a half
16 years, I couldn't remember.

17 Q You had occasion, did you not, on December the 9th of
18 1998 to file an additional or supplemental -- or your own
19 statement in this case, didn't you? Do you recall or do I
20 need to -- just a little two-page statement?

21 A Yeah.

22 Q You recall that?

23 A That's right.

24 Q So this crime took place on March the 13th, 1997,
25 correct.

1 A (The witness nodded.)

2 Q So on December the 9th, 1998, almost a year and a
3 half later, you filed a witness statement with you being
4 the witness, did you not?

5 A I did.

6 Q And in there, what you indicated, among other
7 things -- and I believe let the record reflect you have
8 had an opportunity to review a photocopy of that
9 statement. You indicate in there pretty much what you
10 just testified to this morning in the respect of your
11 contact with Mr. Myers that morning?

12 A Correct.

13 Q That he acted unusual or I don't mean to
14 mischaracterize your testimony, please correct me, but
15 about -- or that he stopped being excited about the death
16 of his girlfriend?

17 A (The witness nodded.)

18 Q And in that statement, you indicated that after he
19 left, he being Mr. Myers, to go with Mr. Payne down to the
20 hospital or to get major case prints and so forth, that I
21 told Lieutenant Cumbee that Myers was acting suspicious
22 and he was probably our suspect, correct?

23 A I made that statement, yeah.

24 Q Okay. This is the first time I have recorded his
25 actions that day in writing. So that morning that you

1 encountered him would be the day -- March 13, the day of
2 the homicide, correct?

3 A Correct.

4 Q And so you encountered him -- I don't think you can
5 remember to pinpoint it, but sometime -- I think we at
6 least know that at 6:40 a.m., were you at the scene that
7 early?

8 A No, I was earlier than that.

9 Q But we heard from Mr. Payne that he was there with
10 you and Mr. Cumbee I think on or about the time that Mr.
11 Myers was taken by Mr. Payne to the car for an interview.
12 So you saw Mr. Myers at about 6:40?

13 A It might have been a little earlier than that, but
14 somewhere around there.

15 Q I'm not trying to pin you down, but roughly that
16 time?

17 A Yeah.

18 Q You recall from your case report that the fire was
19 noticed by a passing patrolman at 3:14 a.m., do you not?

20 A I didn't do --

21 MR. DURANT: That's not something he'd have personal
22 knowledge about.

23 A I just read the officer's report.

24 Q Okay. So at the time you saw Mr. Myers, you had the
25 occasion as you said to have a conversation with him?

1 A Right.

2 Q And you were close enough to him to have -- discuss
3 incidents about what was being found there?

4 A Correct.

5 Q Did you observe anything about him that, in addition
6 to his reaction as you described it, led you to believe
7 that he was a suspect?

8 A What I was saying and that comment that you quoted
9 there, that was just something that I said to Lieutenant
10 Cumbee. He's probably our suspect. Not knowing that he
11 was a suspect, but the way he was acting was just kind of
12 something was wrong with him.

13 Q Okay. So -- and I mean roughly at this point, in
14 your mind you considered that he was the -- I think you
15 said our suspect?

16 A I said probably.

17 Q Probably?

18 A And like I was saying before, I explained -- when I
19 made that statement it wasn't in the statement that that's
20 the guy. But he was acting funny, so, you know,
21 something's not right here.

22 Q Okay. So when you characterize him as being with you
23 for this three-day period to assist you in the
24 investigation, you certainly would concede, would you not,
25 that as early as three hours -- roughly three hours after

1 the fire, in your own mind, you had concluded and conveyed
2 to the case officer that he was probably a suspect,
3 correct?

4 A I conveyed that he was acting suspicious and was
5 probably a suspect, yes.

6 Q Probably -- your words are probably our suspect?

7 A Right.

8 Q Okay. Now, at that point, you're a 20-year veteran
9 in the police department, a trained investigator. If you
10 indicated to the case officer that was your suspect,
11 you're going to take certain action in that regard,
12 correct? Investigative action?

13 MR. DURANT: With all due respect, Your Honor,
14 Detective Clayton is the case agent. He wasn't even there
15 that morning. So I mean, I just prefer he address his
16 comments or couch his questions in terms of what is
17 actually the truth.

18 MR. KULP: Who wasn't there that morning?

19 MR. DURANT: Detective Clayton was not at the scene
20 of the crime that morning.

21 MR. KULP: Well, I'm cross-examining Lieutenant
22 Tetanich.

23 Q In any event, you received that information and as a
24 trained investigator, that's somebody you would continue
25 to pursue to develop if you were right or wrong, correct?

1 A If I had evidence believing that, yes.

2 Q Right. So at that point -- but you knew then Mr.
3 Payne was taking him down to get standards, correct?

4 A No, I didn't know he was getting standards. I knew
5 that he was going to get a witness statement from him on
6 his activities or what he knew.

7 Q Okay. So you knew Payne took a statement from him.
8 And, of course, I would assume and tell me if I'm wrong,
9 that you would check with Payne or at least check with
10 somebody to find out if the statement that Payne took from
11 Mr. Myers was incriminating or not so you would know if
12 your suspicions were correct, right? In other words, did
13 you check with anybody to find out if Mr. Payne had
14 obtained a confession from him?

15 A No.

16 Q You did not?

17 A No.

18 Q Who did you think was a suspect if you weren't
19 looking at him?

20 A Right then, I didn't know for sure who the suspects
21 were.

22 Q Well, in fact, you'd identified someone else at the
23 time you believed to be a suspect?

24 A Yeah, there was some information that was developed
25 from some other investigators who were interviewing some

1 people of a Dana Chapels and that's where my attention
2 went shortly after he left and went towards this other
3 person.

4 Q Because the ladies who closed the bar who left the
5 victim there asleep or passed out on the pool table told
6 investigators that Dana Chapels was on the sidewalk or the
7 area in front of the bar when they left and left her
8 locked up in there, correct?

9 A Correct.

10 Q Nobody told you they saw Mr. Myers around there?

11 A No.

12 Q And for that reason, he was apprehended and he was
13 determined to have a pistol in his car and he was arrested
14 and taken to the jail, correct?

15 A He wasn't arrested for the murder. He was arrested
16 because when we stopped him he had a pistol in his car.

17 Q All right. Okay. So he was taken onto jail, but he
18 was taken by North Charleston detective office and
19 interviewed for a while, wasn't he?

20 A Right.

21 Q Okay. Now, during this time period, I think you're
22 aware -- you're aware, are you not, that Mr. Myers was
23 given his standards --

24 A I didn't know -- see, when you get to a murder scene,
25 you have got probably four or five, six investigators

1 there, everybody's off doing something different. Okay?
2 Payne took him to the station to get his statement. I
3 didn't know anything about any hair samples or any kind of
4 standards. If Lieutenant Cumbee told him that, I didn't
5 know it.

6 Dana Chapels' name come up. I sent Harry Roper over
7 to interview Dana Chapels. He came back and said Dana was
8 denying being at the club. We had two witnesses saying he
9 was there. So I left and went with Roper back to
10 interview Chapels because I wanted to get to the bottom of
11 it because Harry didn't get a written statement from him.
12 He just got kind of a verbal statement about his
13 whereabouts. That's what I'm saying, I was off doing
14 something else when some of this stuff was going on.

15 Q You were looking after the Dana angle?

16 A Right.

17 Q At that point you determined, did you not, that Mr.
18 Chapels was nervous, that he was uncooperative in a
19 sense --

20 MR. DURANT: Your Honor, this is all very
21 interesting, but what has it to do with the voluntariness
22 of the statement?

23 THE COURT: We're in a Jackson v. Denno hearing. You
24 can cross-examine him for the benefit of a jury who's not
25 here today.

1 MR. KULP: But I'm not going to spend a lot of time.

2 MR. DURANT: I have this same issue to address when
3 we get through with the Jackson v. Denno because this is
4 what he's going to attempt to do at the trial of the case,
5 but the case law specifically says he can't do this.

6 THE COURT: Let's focus on the Jackson v. Denno
7 issue.

8 MR. KULP: I intend to, Judge.

9 THE COURT: Well, you're going a little afar afield.

10 Q In any event, without belaboring and getting into the
11 details, Dana was a suspect, correct?

12 A Correct.

13 Q And, in fact, you or someone put that in the
14 affidavit for his pistol warrant?

15 A Uh-huh.

16 Q A suspect of the murder of Teresa Haught?

17 A Uh-huh.

18 Q So at some point, though, moving ahead, he was
19 discounted and determined not to be the killer, correct?

20 A Uh-huh.

21 Q When did that happen?

22 A To the best of my recollection, I think after they
23 got the information on the hair match.

24 Q Okay.

25 A That was pretty conclusive.

1 Q Now, Mr. Hallman, Investigator Hallman ran all that
2 stuff up to SLED early Friday morning, correct?

3 A Correct.

4 Q The 14th. So prior to that time, no one had any
5 information?

6 A Huh-uh.

7 Q Let me ask you a question. At this time you were
8 aware that a single hair had been found in her hand, the
9 victim's hand, were you not?

10 A I don't think I knew that piece of the puzzle yet
11 when I was talking with Chapels.

12 Q Okay. Let's just look at this day, up until midnight
13 on the 13th. What evidence did you know as someone
14 working the case, either as to Mr. Chapels or Mr. Myers,
15 existed to show that either one of them was the killer?

16 A The only thing we had at that time was suspicions.
17 And we were following up leads on suspicious people.

18 Q So then the next day, Mr. Hallman goes off to SLED,
19 he takes a number of forensic items in the case. He goes
20 up there and he sees Agent Powell who conducts, does he
21 not, a visual microscopic --

22 A I don't know what kind of examination.

23 Q In any event, Mr. Hallman called back and said as you
24 testified on direct, there's a match to the hair?

25 A Right.

1 Q And you later found out what he really meant by that
2 in the pendency of this case over the past three years is
3 that Mr. Powell at SLED can only say that he cannot
4 exclude Mr. Myers as being someone associated with that
5 unknown hair.

6 Q I don't know that part of it, I just know he called
7 and said there was a match.

8 Q Mr. Hallman did?

9 A Right.

10 Q Do you know or -- did you or do you know if Detective
11 Cumbee or Mr. Clayton spoke with Mr. Powell directly on
12 Friday?

13 A I don't know.

14 Q So at this period of time, you're having, as you
15 outlined, contact with -- the detectives are with Mr.
16 Myers, correct?

17 A Correct.

18 Q And at this time as you testified, he's there at the
19 police station up in the detective office with all of you
20 assisting in finding the true killer?

21 A Correct.

22 Q And that's why y'all are allowing him to be there.
23 He's almost like a junior deputy?

24 A I wouldn't go that far, but --

25 Q At this point when he's here the second day assisting

1 you, he has given blood standards, hair standards, he's
2 given full major case prints?

3 A (The witness nodded.)

4 Q He's had a voluntary statement taken from him. And
5 here he's helping you with the investigation?

6 A (The witness nodded.)

7 Q Isn't it true that from the get-go as you said right
8 here, he was a suspect in the case?

9 A I would say --

10 Q He was the suspect?

11 A No, he wasn't the suspect. He was a suspect as would
12 any -- in any homicide involving a female, the husband or
13 boyfriend would be a suspect in the eyes of the
14 investigators as somebody you would want to interview, not
15 somebody that you would consider had done it. You just
16 want to make sure they hadn't done it. You would want to
17 eliminate them.

18 Q Right. As a matter of fact, in that regard, you
19 know, do you not, that nonverbal communication by a
20 witness -- nonverbal signs should not be associated with
21 guilt but are more indicative of nervousness. Have you
22 ever seen the general order from your own department that
23 speaks about those things?

24 A Uh-huh.

25 THE COURT: Mr. Kulp, I still tell you now, focus on

1 the Jackson v. Denno issues which is the voluntariness of
2 the confession.

3 MR. KULP: I am, Your Honor. But in the process of
4 his --

5 THE COURT: Whether or not he was a suspect or not,
6 what's that got to do with the voluntariness?

7 MR. KULP: I'm going to link it up from 6 a.m. to 5
8 p.m. Saturday.

9 Q So at this point, Myers is the suspect was based upon
10 suspicion or the way he acted at the scene, the fact that
11 he was the boyfriend, correct, to your knowledge?

12 A In my mind, initially, that was a reason to talk to
13 him. But my attention was deflected from him by other
14 witnesses saying that this guy, Dana Chapels, was there.
15 He was acting -- you know, we need to go talk to him. He
16 was outside the bar when we left, blah, blah, blah. So I
17 pushed him from my mind. He left my mind and I started
18 concentrating on Dana Chapels.

19 And then I went and interviewed Dana Chapels and
20 found out he had lied about coming up to the Mill Inn and
21 had done some other things which were suspicious which
22 indicated to me that he was a better suspect than he was
23 at the time. Do you know what I'm saying? So I wasn't
24 even thinking about Wesley Myers during this whole day
25 except that initial impression that I got when he changed

1 his attitude and started giving reasons why the fire could
2 have happened accidentally.

3 Q Yes, sir. As a matter of fact, just for clarity's
4 sake, Mr. Myers, you didn't develop that he had any
5 relationship or association with Mr. Chapels at that time
6 or any other?

7 A No.

8 Q They are totally different?

9 A No.

10 Q Weren't acting in concert?

11 A No.

12 Q So at this point -- you testified a minute ago that
13 when you found out about the hair and Mr. Hallman's call
14 back, I believe it was a telephone call from SLED back to
15 the detective office?

16 A No, he --

17 Q That Thursday, radio?

18 A He called -- he called us at lunch, I think.

19 Q Okay. Now, this is the lunch you're talking about on
20 Thursday when y'all went to the Olive Garden and invited
21 Mr. Myers to go along with you because he was --

22 A Friday.

23 Q Excuse me. I'm thinking -- I mean Friday, on Friday.
24 You invited him to go to lunch with you because, I mean,
25 he was assisting you in the case?

1 A (The witness nodded.)

2 Q But he chose to remain at the police station?

3 A Correct.

4 Q And do you recall that a uniformed officer sat there
5 who was armed with him during that period of time up in
6 the detective office?

7 A I wasn't there, I don't know.

8 Q Okay. But part -- so here is Mr. Myers assisting.
9 So at some point at lunch information is received from Mr.
10 Hallman that there is a match. So at this point we have
11 the match of the hair, at least related by Mr. Hallman.
12 We have suspicion because of the boyfriend. We have
13 suspicion because of the actions at the scene. And your
14 testimony is that at that point you didn't want to relate
15 to Mr. Myers when you got back to the station that there
16 was a match to his hair? And you let him go on home that
17 afternoon in this murder and arson?

18 A That wasn't my decision.

19 Q Okay. Now --

20 A I'm just saying that made me feel he was a stronger
21 suspect than Dana was.

22 Q I understand. At this point what hard or forensic
23 evidence had been -- aside from this hair, telephone call
24 or Mr. Hallman's revelation, there was no forensic
25 evidence at this point linking him, such as an immediately

1 easily identified fingerprint, didn't have any forensic
2 evidence linking Mr. Myers to the crime, did you?

3 THE COURT: What has that got to do with the
4 voluntariness of a confession now? You're trying to try
5 this case without a jury.

6 MR. KULP: No, I'm not, Your Honor.

7 THE COURT: What forensic evidence may or may not
8 exist has nothing to do with whether or not the alleged
9 statement was voluntarily given, Mr. Kulp.

10 MR. KULP: It does, Your Honor.

11 THE COURT: Tell me how and then I'm going to let you
12 proceed. Tell me how absence or lack of evidence,
13 forensic evidence has anything to do with the
14 voluntariness of the confession.

15 MR. KULP: If you'll excuse the witness, I'll be
16 happy to, Your Honor, but it's part of my strategy in
17 cross-examining this witness to develop that.

18 THE COURT: Yes, sir, but that's for trial. That's
19 not for Jackson v. Denno.

20 MR. KULP: Your Honor, if you would please indulge me
21 four or five more questions, I'm going to explain --

22 THE COURT: Go ahead with the four or five. You told
23 me 10 minutes ago you were through on that issue. I'm
24 trying to be indulgent with you, but I'm not going to let
25 you try this case in a Jackson v. Denno hearing.

1 MR. KULP: I'm not trying to, Your Honor.

2 THE COURT: Well, you're doing a pretty good job of
3 it.

4 MR. KULP: I'll explain it.

5 THE COURT: Take your four or five questions and then
6 move on.

7 MR. KULP: Your Honor, let me answer your question.
8 This entire process was a three-day event.

9 THE COURT: I understand that.

10 MR. KULP: And what I'm trying to do is develop
11 testimony from the witness about the process of volition
12 in terms of how they approached Mr. Myers, the methods
13 they used, the method they employed, and why it's
14 illogical and it's subject to attack by me to present it
15 to the Court.

16 THE COURT: You can do that before the jury, but not
17 in the Jackson v. Denno. Now, go ahead and let's follow
18 the rule here. I understand that you would do that to
19 question the voluntariness before a jury. But I'm not
20 sitting here with the jury. I've been around the block.
21 I know what a Jackson v. Denno hearing is and so do you.
22 Please follow the cases now.

23 Q You got the information about the match, Lieutenant?

24 A Correct.

25 Q At that point that afternoon, Mr. Myers --

1 MR. KULP: So this isn't brought out on direct.

2 Q Mr. Myers was taken -- he volunteered to take a
3 polygraph, didn't he?

4 A He was asked.

5 Q But he didn't resist?

6 A No, but he didn't volunteer, he was asked.

7 Q But he was taken down there for that purpose and he
8 had been with members of the police department a greater
9 part of the day before he was taken down there, correct?

10 A From sometime that morning until that afternoon,
11 yeah.

12 Q And did -- you had a chance to see him?

13 A Uh-huh.

14 Q Did he look drunk to you?

15 A Not especially.

16 Q Okay. And, of course, no one could have taken him
17 for a polygraph exam if he had been drunk?

18 A Correct.

19 Q So he gets down for a polygraph exam, he went in
20 there to take it and the operator wouldn't give it to him,
21 correct, because he then said he thought he was drunk or
22 had been drinking or was too close to the victim.

23 A I think he -- they do an interview or pre-thing and
24 he may have told the polygraph operator that he had been
25 drinking and that would disqualify him from taking the

1 test.

2 Q Friday night or Friday afternoon, he consented to a
3 search of his parents' house?

4 A Correct, his room.

5 Q His room of his parents' house, but the entire house
6 was searched?

7 A But not with his consent. He consented to his room
8 and his car.

9 Q Nothing was found? I'm not raising a search issue
10 about that, but the entire house was gone through?

11 A Correct.

12 Q At that point nothing was found, correct, of
13 evidentiary value?

14 A I think they did recover some items from his room,
15 but I don't know what the evidentiary value was.

16 Q Clothing or whatever. Now, he's let go and he's sent
17 home. He was not arrested?

18 A He was at home.

19 Q He was at home then. He was left there, wasn't
20 arrested?

21 A Correct.

22 Q Saturday morning, Mr. Clayton picks him up and takes
23 him to Shoney's for breakfast because -- not to arrest
24 him, but because he's assisting in the investigation,
25 correct?

1 A Correct. He wasn't going to arrest him.

2 Q Now -- so at about -- after breakfast, a pleasant
3 breakfast, everyone goes to North Charleston Police
4 Department where Mr. Myers is then confronted. And as a
5 matter of fact, wasn't he shown photographs of his
6 girlfriend, the deceased, sometime on Thursday or do you
7 know?

8 A No, not to my knowledge. And also on Friday we had
9 made a determination after the polygraph examiner had told
10 us about his physical or possible intoxicated condition
11 not to interview him. Even though we -- I probably would
12 have interviewed him that night and not let him go home.
13 But because of his condition, it would have been unfair to
14 him to interview him in that kind of condition. So we
15 made the determination to wait until he was sober and
16 alert.

17 Q You just told me you were with him most of the day
18 and you didn't detect he was intoxicated?

19 A That's right, and I didn't. But when the polygraph
20 examiner came back with his results, I didn't question
21 him. I didn't ask him what he had to drink. But once the
22 polygraph examiner said he wasn't going to test him, then
23 it would be foolhardy for me to go ahead and try to elicit
24 a statement at that time because they would throw it out
25 saying he was drunk or too fatigued or whatever. So we

1 decided to wait until the next day when he was
2 clearheaded.

3 Q And, of course, considering a vicious murder and
4 arson, a police car sat at his parents' house that night
5 to make sure he didn't leave?

6 A No.

7 Q So back to this morning. So he comes back at this
8 point and here he is again cooperating, helping trying to
9 find the true killer?

10 A Correct.

11 Q Now, it's your testimony that he never in this
12 process asked for a lawyer?

13 A Nope.

14 Q He never mentioned the word lawyer?

15 A Not to me.

16 Q Never mentioned the word attorney?

17 A No.

18 Q To your recollection, did he mention it to anyone
19 else?

20 A Not that I know of.

21 Q In your presence, did you hear him utter the words to
22 anyone, lawyer, attorney, anything?

23 A Not that I recall.

24 Q So then Friday morning, you testified on direct that
25 you started off the process of interviewing him by getting

1 background information to fill that in?

2 A Well, I started off with the advisement of rights.

3 Q Excuse me. I'm not trying to trip you up.

4 A Okay.

5 Q As a matter of fact, at that point -- had you read
6 Mr. Payne's statement which gave a pretty detailed -- I
7 mean the statement Mr. Payne took giving a pretty detailed
8 description of background information and the relationship
9 with his girlfriend?

10 A I think I had by that time.

11 Q At this point when you started the Miranda, what --
12 and this will all tie in, Your Honor, simple yes or no,
13 what -- did you have any physical evidence at that point
14 besides the hair, forensic hard evidence to link Mr. Myers
15 to the crime?

16 A Not that I know of.

17 Q Now, in the course of speaking with him, you -- the
18 issue of jealousy came up as you testified on direct?

19 A Correct.

20 Q Now, have you ever seen little Allen White? Did you
21 ever have a chance to meet him or see him?

22 A I can't recall. I may have seen him at the scene and
23 not known who he was, but I have never met him.

24 Q Do you recall Mr. Myers telling you directly that
25 little Allen White was not the kind of person, type of

1 person, appearance of a man who he would be jealous about
2 with his girlfriend?

3 A No, I think he was trying to imply that Allen White
4 might have killed his girlfriend.

5 Q Well, Allen White worked there at the Mill, correct?

6 A Right.

7 Q Allen White --

8 A I think that's more of what he was trying to say,
9 more trying to cast shadow or doubts onto Allen White.

10 Q Well, he came --

11 A That's the impression I got.

12 Q Okay. Now, so you started the interrogation
13 mid-morning or so, towards lunch on Saturday. Now, do you
14 remember anything about the Reid technique? Bits and
15 pieces?

16 A If it's the same technique that I learned in the
17 interview school, it's basically you want to get in close
18 with them, bring up stuff that might be of -- not
19 emotional, but stuff that would get him to start to feel
20 for his victim and get close to him and get him to say
21 things that would lead to a statement.

22 Q Okay. And also, under the principals of Reid is the
23 detectives are to get close to the interviewee?

24 A Right.

25 Q Take him to lunch, buy him breakfast, make him feel

1 like he's a part of the team?

2 A I don't recall anything about that. By close I meant
3 close physical contact. In other words, not close
4 personal, but -- you get close personal, too, but you
5 don't -- you've got to get in close with him. In other
6 words, when you get -- make him feel like you're there to
7 help him, make him feel like you're a friend. That's all
8 part of the Reid technique. But you have to be close
9 there with him to have contact with him so that he can
10 empathize with you and you can empathize and he'd be more
11 willing to talk.

12 Q You want to engender trust?

13 A Right.

14 Q Trust relationship. So that what you tell the person
15 being interviewed, he accepts as the truth. It's a
16 technique, isn't it?

17 A (The witness nodded.)

18 Q Now, at this point is it your testimony that Mr.
19 Myers had not been confronted at all on Friday or
20 Wednesday -- or Thursday directly with an accusation of
21 being the murderer?

22 A No, he had not.

23 Q So at this point things step up a bit. At this point
24 you're convinced, are you not, as you just testified that
25 he is not under the influence of any alcohol? He's fresh,

1 he's ready and, by jove, he didn't leave town, he's here,
2 he's ready to be interviewed. Let's put the heat on him
3 now. Wasn't that a conscious decision made by the
4 interviewing detectives?

5 A We had decided to interview him that morning, yeah,
6 because we felt he would be in better condition.

7 Q And the purpose of that interview was to get him to
8 confess, wasn't it?

9 A That's the purpose of every interview.

10 Q Right. And at that point had he not confessed, you
11 wouldn't have a pot to throw a penny into against him,
12 would you?

13 A I don't think -- if he hadn't have confessed, we
14 still would have charged him with murder, I believe.

15 Q Okay. So your testimony --

16 MR. KULP: Do you have that photograph I subpoenaed?

17 MR. DURANT: What photograph?

18 MR. KULP: I'm trying to get the photo the witness
19 referred to.

20 THE COURT: Ask him if he's seen it.

21 Q Do you know the photo I'm talking about?

22 A Yes.

23 Q Have you --

24 THE COURT: Have you ever seen it?

25 A Yes, sir.

1 THE COURT: Hand it to him.

2 Q This is the photo --

3 MR. KULP: I want to have it marked at this time.

4 (WHEREUPON, Defendant's Exhibit No. 1 was marked for
5 identification only.)

6 Q Defendant's Exhibit No. 1, do you recognize that as
7 being the photo that was exhibited to Mr. Myers during the
8 course of his interrogation?

9 A Yes, sir.

10 THE COURT: Seal it back up.

11 Q And the purpose in exhibiting that to him was
12 consistent with trying to get him to confess, correct?

13 A That picture wasn't shown to him until after he
14 confessed.

15 Q Let me ask you this about the telephone call. One of
16 the techniques that you gentlemen employed was to fake the
17 telephone call from SLED? Lieutenant Cumbee did that in
18 your presence, faked a telephone call, came back in to Mr.
19 Myers who was sitting there, who had not yet indicated he
20 had anything to do with this?

21 A Correct.

22 Q And he was told, Wes, the worst thing has happened,
23 why that was Joe Powell from SLED on the phone. And that
24 was a lie, wasn't it?

25 A I don't think he said it was Joe Powell from SLED. I

1 think he said we heard from SLED and the hair was yours.
2 We got the call from SLED. But I don't think he said we
3 got the call right then from Joe Powell. He said we got
4 the call from SLED stating that hair matched the hair on
5 the back of your head. Which we did, we received a call
6 from SLED, but we received it a day earlier from Mr.
7 Hallman.

8 Q But Mr. Powell wasn't working on that Saturday as far
9 as you know?

10 A I don't know.

11 Q And at that point he was told, was he not, that
12 Dusty, the forensic technician -- the detective,
13 Investigator Rhodes?

14 A I don't know Dusty Rhodes.

15 Q Not Dusty Rhodes -- give me a hand. Poole, excuse
16 me. Dusty Poole. That he had been -- when Mr. Myers came
17 back on Friday, he had given total permission for everyone
18 to look in his truck, correct?

19 A (The witness nodded.)

20 Q And on this day, Mr. Poole came in, or at least
21 related -- or information was related to Mr. Myers that
22 Mr. Poole had found hair and blood on the door panel in
23 the truck, correct?

24 A I don't recall if he said he found hair or blood or
25 that he would be looking for hair or blood in his truck.

1 Because I think we did tell him that we'd be searching his
2 car for her hair, blood and all kind of stuff that would
3 link him to that crime.

4 Q And so Mr. Myers, is it your testimony, said -- well,
5 Mr. Cumbee and others were telling him that they believed
6 he did it at that time right here, correct?

7 A We were telling him that his hair was a match.

8 Q But you were also telling him, all of you in Mr.
9 Cumbee's office at this point, you were all sitting around
10 him, all three of you in some array of chairs?

11 A Well, Cumbee was across the desk from him.

12 Q All right.

13 A Clayton was sitting beside him and I was standing up,
14 so we weren't all crowded around him.

15 Q Okay. But the purpose was to put heat on him to get
16 him to confess, correct?

17 A Well, I wouldn't describe it as heat. I would say it
18 was a technique to elicit a response from him, yes.

19 Because when you tell somebody whose been telling you if
20 we find the owner of this hair then we found the murderer
21 and you tell that person that owns that hair it's you,
22 then you expect to get some kind of reaction from him.

23 Q And your testimony is that he said, well, could I
24 have blacked out?

25 Q No, he said -- at first, he put his hand to his head

1 and he went, Oh, no, no, no, and shook his head. And then
2 he said, It must have been me. He agreed with what he had
3 said earlier and what we had said, that whoever the hair
4 belonged to in her hand was the person that killed her.
5 That's what he had been telling us.

6 Q Okay. And, in fact, what he said was, as is recorded
7 in the investigative summary that you have there, Well, I
8 must have did it then?

9 A Yeah.

10 Q In other words, his statement in that regard was a
11 direct product of the representation to him that the hair
12 in the hand was matched to him. It was a one/two punch,
13 correct?

14 A I'm sure he believed that it was his hair. We told
15 him it was his hair.

16 Q You told him it was his hair?

17 A Yeah.

18 Q You told him he was the killer?

19 A No, we told him it was his hair. And if what he had
20 said earlier about the killer being the person with the
21 hair, then who is -- who else could it be.

22 Q Well, he's cooperating, helping you with this case.
23 Y'all are the police in terms of whose hair is in the hand
24 and what that means. But --

25 THE COURT: Mr. Kulp, you're still conducting this

1 cross-examination as if this jury was here and they're not
2 here. Now, move on with this issue.

3 Q Now, at this point you rolled out the audio tape and
4 the video tape so that you could get his statement in a
5 fashion that could be recorded forever, correct?

6 A We don't use audio/video tapes.

7 Q Well, in fact, you didn't even take his statement
8 then? You went out driving around with him looking for a
9 purse as is the description in the statement that was
10 eventually obtained from him, correct?

11 A Yeah, he verbally told us about his actions and the
12 location of the purse and we went to look for it, yes.

13 Q Okay. Was there any technique used in the
14 interrogation such as this, if you did it, Wes, how would
15 you have done this or that? Was that used?

16 A No.

17 Q Not at all?

18 A I didn't suggest anything to him if that's what you
19 mean by that.

20 Q Do you recall him raising his right shoulder and
21 indicating that he has dislocated and rotator cup problem,
22 that he couldn't raise his hand this high. That that was
23 being a problem in this interrogation process?

24 A I never remember him complaining of any injury.

25 Q Not -- something he had already, not that he was

1 injured during the interrogation process.

2 A No, I didn't -- I don't recall him saying anything
3 about any discomfort or injuries or --

4 Q Or inability to raise his hand?

5 A Anything that would require medical treatment or
6 anything.

7 Q No, that would have prohibited him from slinging a
8 weapon with his right hand? Doesn't ring a bell?

9 A I don't understand the question. I mean, I don't
10 recall him saying anything about his shoulder, no.

11 Q Nor calling Mr. Cumbee over to see it as well?

12 A (The witness shook his head.)

13 Q So, after going to McDonald's, coming back around,
14 the decision was made to reduce his confession of I must
15 have done it to writing, correct?

16 A Well, he had told us a lot more than he must have
17 done it by then.

18 Q Okay.

19 A He had given us a blow-by-blow description of what
20 happened.

21 Q So it was then that you showed Defense Exhibit No. 1
22 to him?

23 A I didn't show anything to him.

24 Q Someone showed defense -- the photograph?

25 A Right.

1 Q And so when he came back, was he given an opportunity
2 to write out the statement in his own hand?

3 A I don't want you to think he was shown that after he
4 got back. He was shown that picture before he left, I
5 believe.

6 Q But as you testified, after he said I must have done
7 it?

8 A After his confession, correct.

9 Q And so when you got back, though, the purpose was to
10 take his statement down and reduce it to writing?

11 A Correct.

12 Q Did anyone give Mr. Myers an opportunity to write out
13 his statement?

14 A No.

15 Q I thought your department requires that you do that?

16 A No, what I did was -- what I do in all cases, I ask
17 the defendant if he wants to write his own statement.
18 Okay? If he doesn't want to write it, then I offer to
19 write it for him which I did in this case. But I didn't
20 write Mr. Myers' statement. Okay? I was there, but I
21 didn't write it. So what Mr. Clayton did -- I don't
22 recall as far as whether he offered to let him write his
23 own statement or whether he used the same technique that I
24 use where I ask the defendant if he wants to write it and
25 nine times of out of ten, they'll ask me to write it

1 because they just don't want to write it.

2 Q And during the course of the interrogation, did you
3 tell him a pink note was found on the bar from Allen
4 White?

5 A No, I think he told us about the note.

6 Q Did you find a note?

7 A No.

8 Q Did you tell him about the message that was written,
9 Do me later, baby, that was written in some fashion on the
10 windshield of the victim's car.

11 Q Yeah, I believe I told him or asked him if he had saw
12 that on her windshield when he got to the bar and he said
13 yes.

14 Q Said that he did. Now, the statement that -- the --
15 MR. KULP: I'm sorry, Your Honor, I was waiting on
16 you.

17 THE COURT: Go ahead.

18 Q Do you have an interview log for the interviews of
19 Mr. Myers during this three-day period?

20 A I don't know what you're talking about.

21 Q A log of the dates and times and people present when
22 he was being interviewed or interrogated?

23 A You mean like a written log?

24 Q Uh-huh.

25 A No.

1 Q Do you recall a discussion during the interrogation
2 process about religion with Mr. Myers?

3 A Sir, I think -- the only thing I can remember about
4 religion or might be religious would be I think Lieutenant
5 Cumbee made mention that it was providence or a miracle
6 that the hair had survived the fire under her body. That
7 that was a miracle or providence or a sign or something
8 like that.

9 Q Now, do you recall Mr. Myers being real religious
10 about that time and he had been reading the Bible a lot
11 lately and that was becoming a big part of his life?

12 A I don't remember him saying anything about reading
13 the Bible.

14 Q You don't? Well, did Lieutenant Cumbee tell him that
15 if he confessed and apologized to the victim's family that
16 it would make things better for him?

17 A No, I think he -- I think he may have said something
18 to him about apologizing to the victim or -- anyway, I
19 know he made an apology to the victim after his
20 confession. When they showed him the photograph, he
21 apologized to Teresa. And that it would make him feel
22 better or something if he apologized to her.

23 Q But that was after --

24 A And after that is when he, I guess, requested to talk
25 to Dixie to apologize to her.

1 Q Okay. Just to clear something up in terms of the
2 cuts on his hand that was brought out on direct, I think
3 it's indicated in the case file there were no cuts on Mr.
4 Myers' hand at the time he was interviewed by Mr. Payne?

5 A I don't know.

6 Q You don't know? Okay. Did anything there prohibit
7 the detectives from tape recording or videotaping Mr.
8 Myers' interrogation? Do you have cameras and equipment
9 there?

10 A Well, I'm sure if we went to ID and asked them for a
11 camera, they've got cameras.

12 Q Do you recall Mr. Myers, after a point when he said I
13 must have done it, being put in a little interrogation
14 room, a little view room?

15 A That's where we took his written statement, yeah.

16 Q Okay. And --

17 A And that's where he was prior to going to Melvin's
18 office, same room.

19 Q Do you recall him coming out of there and saying,
20 What did I do? I didn't do this?

21 A I don't recall him saying that.

22 Q Asking to see the evidence that had been -- he had
23 been told existed? You don't recall that?

24 A (The witness shook his head.)

25 Q You don't recall Mr. Cumbee telling him, I'm sorry,

1 it's all locked up now?

2 A I'm sure that would be the answer, but I don't
3 recall. He may have said that to Cumbee, I don't know.

4 Q So at that point, as you testified, the reason that
5 the victim's family came to the North Charleston Police
6 Department was because Mr. Myers asked somebody to bring
7 them there?

8 A He wanted to apologize to Dixie.

9 Q They weren't already there --

10 A No.

11 Q -- during the interrogation process?

12 A No.

13 Q Now, was there a reporter present from the Post &
14 Courier in the detective area?

15 A I don't recall. It's not uncommon to see them there
16 every now and then, but I don't recall one on that day.

17 Q In the controlled area of the detective office?

18 A In Melvin's office? No.

19 Q No, in the detective area, outside Mr. Cumbee's
20 office?

21 A I don't know if they came up there or if there was
22 anybody up there, what they were doing up there.

23 Q Okay. So when we get to the media part, Mr. Myers
24 didn't ask someone -- like your testimony is, asked
25 someone to contact Ms. Justis, Mr. Myers didn't say could

1 you please get the media here, that's not the case?

2 A No, he didn't request the media be present. But once
3 he was informed that they were here and they were going to
4 take his picture when he left the building, then he wanted
5 to make a statement. And we told him, You don't need to
6 do that, you shouldn't do that, but he still wanted to
7 make a statement. And I know Melvin warned him one time
8 and I told him twice. Right before we went out the door
9 the last time that he did not have to make a statement.
10 That it would be in his best interests not to make a
11 statement and if he had a lawyer they would tell him no,
12 don't talk to the media. And that's what I told him right
13 before we went through the door.

14 Q In about that time frame or when Mr. Myers -- did you
15 ever hear Mr. Myers say that he wanted to retract his
16 statement?

17 A No.

18 Q Did you ever hear anyone say to him if you do, we'll
19 be sure you get the death penalty?

20 A No.

21 Q Never heard that?

22 A No, sir.

23 Q So when the media is there, Mr. Myers is taken
24 downstairs from the detective area to be put in the car
25 and taken to the jailhouse?

1 A Correct.

2 Q Y'all know the media is there?

3 A Right.

4 Q You take him downstairs, your testimony is you are
5 telling him do not, do not, do not, do not talk to the
6 press?

7 A Correct.

8 Q You get downstairs, Mr. Myers asked to smoke a
9 cigarette?

10 A Yeah.

11 Q So you take him out front?

12 A Uh-huh.

13 Q No press out there?

14 A No press.

15 Q No one could bring a car around, pick him up and take
16 him to the jail and scoot him out without seeing any of
17 the press? What prohibited someone from doing that?

18 A I don't know.

19 Q And as a matter of fact, when he was brought down and
20 brought out the back door when the press was there, he was
21 paused. There was no effort to try to hustle him into the
22 patrol car, you know, like -- to get him there and out of
23 there before some media person could say did you do it?

24 A I don't think you understand the picture. The back
25 door is a regular-sized door. It leads out into the back

1 parking lot. The -- coming out the door, it's hard for
2 two people to get out of the door side by side. But I was
3 behind him, Clayton was beside him and they walked out the
4 door. Now, there's a little porch area that's covered and
5 then you step down a step and you go out into the parking
6 lot. That media was all around that front porch. There
7 wasn't no walking through them. I mean, they were just --
8 it was right there. I mean, when you walked out the door,
9 it was less than three, five feet away. It wasn't like
10 they were way away where we could make a run for it or
11 something like that. And as far as him stopping, I didn't
12 see him stop Wesley. I seen Wesley stop on his own. And
13 what happened was the door opened and they started firing
14 questions as soon as the door opened. And he stopped and
15 started answering.

16 Q He was in handcuffs at the time?

17 A He was.

18 Q You were in charge of him because he was an arrested
19 person, correct?

20 A Detective Clayton and myself, yes, sir.

21 Q You can be seen on the video, you are present?

22 A Yeah, I'm there.

23 Q And on the video, you can see you're standing?

24 A Right.

25 Q You're not making any action to get through the

1 gauntlet?

2 A I wasn't saying anything, I was giving him what he
3 wanted.

4 Q Now, wait a minute, wait a minute. You were giving
5 him what he wanted, a chance to talk to the media?

6 A He requested to talk to them. I told him not to.

7 Q Wait a minute. That's a little inconsistent,
8 wouldn't you agree?

9 A No.

10 Q You said you advised him not to speak to the media
11 and yet you are giving him the opportunity he wanted?

12 A I'm not going to deny him his opportunity. I can
13 warn him, but I can't tell him what he can do and can't
14 do.

15 Q But you could have taken him out the front door,
16 correct?

17 A Sure, I could have took him out the front door, but
18 he wanted to talk to the media.

19 Q Okay. Didn't hurt your case any to allow him to do
20 that?

21 A Certainly not.

22 Q Okay. Let me ask you this --

23 THE COURT: Counsel, let me say again, whether he
24 took him in the front door or out the back door might be
25 of interest to the jury, but it's of no interest or

1 consequence to me.

2 MR. KULP: I'm moving on, Your Honor.

3 Q How did the press people who questioned him to elicit
4 incriminating statements from him on the video know that
5 he had confessed, how did they know that?

6 A They knew he had been arrested. I don't know if they
7 knew he had confessed.

8 Q Did you tell them he had confessed?

9 A No.

10 Q Did Lieutenant Cumbee tell them he had confessed?

11 A I don't know.

12 Q You think that -- you were there, were you not, when
13 the statement, written statement was made out by Mr.
14 Clayton, by Detective Clayton and Mr. Myers signed it?

15 A Correct.

16 Q And in doing so -- per SOP or standard operating
17 procedure, he has the form and he sits and writes it out.
18 Was Mr. Myers sitting there at the time?

19 A Yeah.

20 Q And did you have a chance to read the statement at
21 that time or have you read it since, the two-page --

22 A I don't know if I read it at the time. I witnessed
23 him writing the statement and what they were talking
24 about, so I knew what was on the paper.

25 Q And so you were there when Mr. Clayton was eliciting

1 the details to put into the statement?

2 A Yeah.

3 Q What did you or any of the other detectives ask him,
4 Mr. Myers, about how he -- what he did after the crime --
5 let me go back a little bit. The statement says, does it
6 not, that Mr. Myers -- the statement, the confession says
7 that he -- and you've seen the degree to which the victim
8 was injured, that he held her in his arms, correct, and
9 that he set the place on fire until he was overcome by
10 smoke?

11 A Uh-huh.

12 Q And then he left. He didn't go out the front door,
13 which was found to be unlocked, he went out the back door
14 all the way around, but his car was parked in front next
15 to hers; isn't that correct?

16 A Yes -- well, we didn't find it there. He said his
17 car was parked next to hers.

18 Q Did you ask him during this interrogation process
19 when the statement was being made what he did with his
20 clothes or what he did to cover up any of the evidence
21 that was involved in the three-hour gap between the time
22 he left and the time -- or four-hour gap and the time he
23 showed back up?

24 A Yeah.

25 Q What did he say?

1 A He told me he took the purse -- initially, he said he
2 took the purse and put it in his truck. And we had
3 already been to his room and searched for the clothing.
4 But I think he told us that the clothing was in his room,
5 too, and we went and looked and it wasn't there. And what
6 he did with it, I don't know. But the purse, he changed
7 the story on that and said that he put it in a hollow tree
8 out at Westvaco Park. And we drove out there and looked
9 for it there and didn't find it. So --

10 Q What did he tell you he did with his clothing and
11 what he was wearing, got it cleaned up?

12 A I don't recall.

13 Q You didn't ask him, did you?

14 A I can't remember every question and every statement
15 that I made to a defendant in an interrogation or an
16 interview. You know, we may ask something that I won't
17 remember, but he may remember it. I don't remember it.

18 Q I understand.

19 A And what we put down is the facts of the case and
20 what's relevant.

21 Q Wouldn't you think it would be of great forensic
22 value, though, to ask him what he had done with the
23 clothing since he was being so cooperative --

24 MR. DURANT: Judge, I have put up with this as long
25 as I can possibly do it.

1 THE COURT: He's going far afield. He keeps saying
2 he's not going to do it and you continue to do the same
3 thing. I've admonished you about this, Mr. Kulp. You're
4 violating the rule in a Jackson v. Denno. And you
5 continue to do it even though you say you're not going to
6 do it. I'm trying to be lenient with you here, but you've
7 gone far beyond the rule here.

8 MR. KULP: Beg the Court's indulgence one second,
9 Your Honor.

10 Q Detective Tetanich, you were there, you participated
11 in the investigation. Do you think or have an opinion as
12 to whether or not Mr. Myers would have confessed if he had
13 not been presented with all of this --

14 MR. DURANT: I object to this question. His opinion
15 has no relevance whatsoever.

16 THE COURT: I sustain that.

17 MR. KULP: Beg the Court's indulgence one second,
18 Your Honor. That's all I have, Your Honor.

19 MR. DURANT: Just a couple of redirect, Your Honor.

20 THE COURT: If they're necessary. You know your
21 couple on redirect is going to get another thousand from
22 him. If they're not necessary, don't do it.

23 MR. DURANT: No.
24
25

REDIRECT EXAMINATION

BY MR. DURANT:

Q Is it safe to say, Detective Tetanich, with all this flow chart that Mr. Kulp is so fond of, you advised him of his rights at 10:30 and by about 12:30 he had already -- on Saturday now, he had confessed; is that correct?

A Right.

Q So you interrogated him all this time, you interrogated him about two hours before he confessed?

A Correct.

Q And one other question. At the time he was told about the hair on Saturday morning, that it matched him, that was the truth to the best you knew, wasn't it?

A Correct.

Q Y'all had been told by Hallman that the hair did match?

A Right.

Q And you believed the hair was a match?

A Yes.

THE COURT: Now, you're asking questions as if a jury was here the same way that I complained about him.

MR. DURANT: Okay.

Q So the fact of the matter is you were not lying to him on Saturday when you told him that the hair matched?

A No, sir.

1 Q And one last question, he was allowed to make a phone
2 call, was he not?

3 A Yes.

4 Q And who did he call?

5 A He called his mother.

6 Q And what did he tell his mother?

7 A He was sorry.

8 Q About what?

9 A About killing her.

10 Q He told that to his own mother?

11 A (The witness nodded.)

12 MR. DURANT: Nothing further.

13 MR. KULP: Two questions.

14 RECROSS-EXAMINATION

15 BY MR. KULP:

16 Q What exactly -- do you recall verbatim what he said
17 to his mother?

18 A No, just words to that effect.

19 Q Secondly, very quickly, do you recall when the first
20 time a conversation was held with Mr. Myers about this --
21 well, the single hair was the only piece of real evidence
22 to work with, correct?

23 A I don't know what all evidence they have got in the
24 case, but that's one of the primary evidence.

25 Q Do you recall the first time that Mr. Myers -- anyone

1 in your presence or you had a conversation with Mr. Myers
2 about the single hair in the victim's hand and what a
3 great evidentiary value it would be? It wasn't just this
4 morning, was it?

5 A No, it wasn't that morning. I think it was Friday
6 that we told him about the hair.

7 Q Friday. Thank you. I think your testimony is that
8 you didn't tell him about it, but you talked about if we
9 find out whose hair this is --

10 A No, they told him they had recovered a hair in her
11 hand.

12 Q Friday?

13 A Friday.

14 Q Okay.

15 MR. KULP: That's it.

16 THE COURT: You may come down. Thank you.

17 MR. DURANT: Judge, I know -- I've got a witness here
18 from out of town which I hope will be a shorter one.
19 Could I try to get her up today?

20 THE COURT: Yes.

21 Karlyn Lothery, after being duly sworn,
22 testified as follows:

23 THE COURT: Limit your questions to the issues
24 involved here so this witness can get on back to her
25 business.

1 MR. DURANT: May I lead a little bit in that regard?

2 THE COURT: For a Jackson v. Denno, certainly. Go
3 ahead.

4 DIRECT EXAMINATION

5 BY MR. DURANT:

6 Q Your name is Karlyn Lothery; is that correct?

7 A Yes.

8 Q And you're a newspaper reporter?

9 A Television reporter.

10 Q Television. You work in North Augusta now, I
11 believe?

12 A Yes.

13 Q And in March of 1997, you were employed in
14 Charleston?

15 A Yes.

16 Q By Channel 5; is that correct?

17 A Yes.

18 Q Did you have an opportunity to interview the
19 defendant, Wes Myers, on March 15, 1997?

20 A Yes.

21 Q At the North Charleston Police Department?

22 A Uh-huh.

23 Q And do you know how you came to be at the North
24 Charleston Police Department that morning?

25 A Yes, I do.

1 Q And how did that occur?

2 A We make a series of what we call beat checks where
3 you check with all law enforcement agencies about three
4 times a day to find out if there have been any arrests in
5 cases we're interested in. When they do make an arrest,
6 they give us a call back. Lieutenant Melvin Cumbee called
7 us back that evening and said that they had made an arrest
8 in the arson case they were investigating. And that they
9 were going to walk the suspect they had arrested that
10 night. And so we grabbed a photographer and headed up to
11 the North Charleston Police Department.

12 Q Okay. So you had called -- your station had called
13 Cumbee previously to request to be provided with that
14 information?

15 A Yes.

16 Q Is that correct?

17 A Yes.

18 Q Did he say anything -- did Detective Cumbee say
19 anything to you about this defendant wanting to say
20 anything?

21 A He said, He says he has something to say. And that
22 was the extent of -- and we didn't know what that would be
23 or how detailed it would be. We just went up there to
24 hear it.

25 Q But you were advised by Cumbee that this defendant

1 had something to say to the press?

2 A Yes.

3 Q One other thing, you were the one that actually asked
4 the defendant questions when he came out the door?

5 A Yes, I was.

6 Q And would you describe to the Court how that came
7 about? How that physically happened?

8 A Okay. He came out in handcuffs with the
9 investigators or the officers who were transporting him,
10 I'm not sure exactly what they were. And when they came
11 out the door, Mr. Myers stopped in front of us. And it
12 was kind of a big awkward pause. And then when we all --
13 my job is to ask questions so I just said, Well, are you
14 remorseful for what you did? And he answered, I'm really
15 sorry. It was a terrible crime that I committed. And
16 then I asked just a couple other things that I knew about
17 the victim in terms of how the victim died, police told us
18 that she had been beaten. So I said, How many times did
19 you strike her? He said he didn't know. I asked if he
20 had been under the influence of drugs or alcohol at the
21 time? He answered no. And when I ultimately -- I said,
22 What led up to it? And he said they were breaking up and
23 had an argument and things got out of hand.

24 And when I ran out of questions, and there were no
25 other reporters there -- there were two other cameras

1 there, but there were no other reporters there, so they
2 didn't have any questions either, then he proceeded to go
3 get in the back of the police car along with the
4 investigators.

5 Q Now, did he stop or was -- or did the police stop him
6 for you?

7 A No, he stopped. He came out the door and stopped
8 right in front of us. And just kind of -- we all looked
9 at each other not knowing what to expect. And so our job,
10 as we are told and we get in trouble for not doing it, if
11 we go up and see someone who has been arrested, our job,
12 the first question -- if our news director looks at our
13 tape and we are not -- he does not hear the question, did
14 you do it, or how did you feel about doing it, why did you
15 do it, then we get in trouble so we have to ask those
16 questions when we go up there.

17 Q But you weren't told that by the police to ask those
18 questions?

19 A Oh, no, no, no.

20 THE COURT: Let me ask you this, were the detectives
21 who had him in custody encouraging him to talk in any way?

22 A No. He was not even -- they didn't have -- they
23 weren't holding onto him at all because I was standing
24 right next to him within, I guess, a foot or so.

25 Q Did he stop voluntarily there to answer your

1 questions or did they assist him in any way?

2 A No, he stopped. He came out and he stopped and he
3 looked at us and just kind of waited.

4 Q Did you get the impression that the interview he had
5 was his freely and voluntarily?

6 A Yes.

7 Q Unassisted by the detectives who had him there?

8 A Yes.

9 THE COURT: All right. You may cross-examine.

10 CROSS-EXAMINATION

11 BY MR. KULP:

12 Q I didn't catch your last name.

13 A Lothery.

14 Q Lothery?

15 A Yes.

16 Q Sorry. Ms. Lothery, do you recall that Mr. Myers was
17 handcuffed when you saw him?

18 A Yes.

19 Q And he was in police custody and that appeared
20 obvious to you, did it not?

21 A Yes.

22 Q Did the police do anything that you observed to hurry
23 and rush him into the car like they sometimes do to get
24 him out of there and get him to the jail?

25 A No, but I have never in just in a few cases that I've

1 seen, unless it's children involved, they don't often rush
2 you to a car.

3 Q Okay. Well, I was just asking what you observed that
4 day.

5 A Okay, I'm sorry.

6 Q Was he shackled, do you recall?

7 A I don't recall his feet, I'm sorry.

8 Q Now, you spoke directly with Lieutenant Cumbee you
9 testified on direct exam?

10 A Yes.

11 Q He told you they had made an arrest?

12 A Yes.

13 Q And he asked you to come by there?

14 A No. He said, We're going to walk him were the words
15 that he used, meaning take him out of the building and put
16 him in the police car and transport him to the jail. And
17 he said -- I don't remember the time frame he gave me, but
18 he said we were going to walk him. So then we -- because
19 we were interested in the case and had been following on
20 that, we went up there and camped out where we do in those
21 cases.

22 Q Right. And they didn't say anything like we made an
23 arrest and the bond hearing will be at 6:30 over in Judge
24 Guedalia's office?

25 A We were told the bond hearing would be the next

1 morning, but he didn't say --

2 Q Right. But he told you -- they were going to quote,
3 walk that suspect?

4 A They were going to walk --

5 Q Have you ever heard the expression perp walk?

6 A Uh-huh.

7 Q You have? So was it your understanding in speaking
8 with Detective Cumbee that he was allowing y'all to get
9 there for the purposes of filming and speaking with him,
10 Mr. Myers, being him?

11 A He had -- I know he mentioned that they had a few
12 more things to take care of. I don't know what those
13 things were. But he said he had a few more things to take
14 care of and then they were going to walk him. And we're
15 not far from -- it only takes us about seven minutes to
16 get there.

17 Q Okay. Now, did Mr. Cumbee -- Detective Cumbee tell
18 you anything in that conversation after he said we were
19 going to walk that suspect, such as now we have advised
20 him not to say anything to you people, did he tell you
21 that?

22 A No.

23 Q Did he tell you that he might be saying something
24 when he comes out?

25 A They said, He says -- he says he may want to say

1 something.

2 Q Okay. Did Mr. Myers contact your station --

3 A No, he didn't.

4 Q -- by telephone? You said when you ran out of
5 questions, and you were the only reporter there, but there
6 were other camcorders from both Channel 2, Channel 4 and I
7 believe you were with 5?

8 A Right.

9 Q You were the only live reporter there?

10 A Right.

11 Q All the others were just filming?

12 A Uh-huh.

13 Q But when you ran out of questions, that's when they
14 took him to the car?

15 A He looked back at the investigators behind him and
16 they all started walking.

17 Q Okay. So the investigators that he looked back to
18 were just standing there?

19 A Uh-huh.

20 MR. KULP: That's all I have. Thank you, Your Honor.

21 THE COURT: Thank you. You may come down.

22 This witness is relieved.

23 MR. DURANT: Thank you, Your Honor.

24 Thank you for coming, Ms. Lothery.

25 THE COURT: Do you have anything else this afternoon?

1 MR. DURANT: Your Honor, I think the next witness is
2 going to be rather lengthy.

3 THE COURT: How about the tape? When are you going
4 to show this tape? If you agree with the redacted part,
5 that suits me.

6 MR. KULP: I'll be happy to speed along to watch
7 Bruce's copy and tell you that we don't.

8 MR. DURANT: Do you want me to play the redacted
9 copy?

10 THE COURT: Yeah, yeah, if he agrees to it. The
11 other has no bearing on this issue; is that right, Mr.
12 Kulp?

13 MR. KULP: Just tell me what you've got.

14 MR. DURANT: I have provided Mr. Kulp with a copy of
15 this, Your Honor, but he has not had an opportunity to
16 observe it. So this is the redacted copy --

17 THE COURT: We can play it here. The jury's not
18 here. Go ahead and play it.

19 MR. KULP: Your Honor, exactly.

20 THE COURT: The original had some other extraneous
21 material.

22 MR. DURANT: I don't think the nature of his
23 objection is going to be the part that was redacted out to
24 tell you the truth.

25 THE COURT: Let's play it.

1 MR. KULP: I will do it on the fly.

2 THE COURT: The jury's not here. Go ahead.

3 (WHEREUPON, the videotape was played for the Court.)

4 THE COURT: Of course, now, Mr. Kulp, at the trial of
5 the case, you review it and see if you want the whole
6 tape. As I understand, there is some extraneous matters.

7 MR. KULP: Thank you, Judge.

8 THE COURT: All right. I think then we'll adjourn
9 this hearing to begin again at 9:30 in the morning.

10 MR. KULP: May I approach, Your Honor?

11 THE COURT: Yes, sir.

12 (WHEREUPON, a bench conference was held.)

13 THE COURT: Before we go now, let the record just
14 reflect here that you had previously subpoenaed a copy of
15 a letter to Chief Caldwell from Amy L. Clifford. I
16 conclude that is a work product of the then solicitor's
17 office and I decline to release that. I am making it --
18 that letter a Court's Exhibit under seal and do so at this
19 time.

20 (WHEREUPON, Court's Exhibit No. 1 was marked for
21 identification only.)

22 THE COURT: You had also requested a letter to Chief
23 Caldwell from David Schwacke dated January 29th, 1998. I
24 have reviewed that letter and in my opinion, it is clearly
25 work product of the solicitor's office and is not

1 discoverable by you. However, I am making it part of the
2 Court's Exhibit under seal. And do so at this time.

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

5 MR. KULP: Thank you, Judge.

6 THE COURT: All right. Now, we will resume this
7 matter at 9:30 in the morning and I'm going to get -- I
8 want to be through with it by noon, by lunchtime.

9 MR. KULP: Yes, sir.

10 (WHEREUPON, the proceedings were concluded for the
11 day to be reconvened on Tuesday, May 23, 2000.)
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1 Tuesday, May 23, 2000

2 THE COURT: State ready to proceed with Jackson v.
3 Denno?

4 MR. DURANT: Yes, sir, Your Honor.

5 THE COURT: Where is the defendant?

6 MR. KULP: Right here, Your Honor.

7 THE COURT: Mr. Kulp, are you ready?

8 MR. KULP: Yes, I am, Judge.

9 THE COURT: Let the record reflect this is a
10 continuation of the Jackson v. Denno hearing that was
11 recessed at approximately 5:30.

12 Call your next witness.

13 MR. DURANT: The State would call Denver Clayton.

14 Denver Lee Clayton, II, after being duly sworn,
15 testified as follows:

16 THE CLERK: Please state your full name and spell
17 your last name for the record.

18 THE WITNESS: My full name is Denver Lee Clayton, II.
19 And spelling of the last name is C-L-A-Y-T-O-N.

20 DIRECT EXAMINATION

21 BY MR. DURANT:

22 Q You are a detective with North Charleston Police
23 Department, correct?

24 A Yes, I am.

25 Q And you were so employed on March 13th of 1997?

1 A Yes, I was.

2 Q You were the case agent in the case involving the
3 murder of Teresa Haught; is that correct?

4 A Yes, I was.

5 Q Did you have an opportunity to come in contact with
6 the defendant, Wesley Myers, on Friday, March 15th --
7 excuse me, March 14th, 1997?

8 A Yes, I did, March the 14th.

9 Q And where would that be? Where did you see him?

10 A That was at the detective division at the North
11 Charleston Police Department.

12 Q And do you recall what time of the day it was?

13 A Approximately 12 o'clock, noon.

14 Q And was the defendant questioned on that occasion?

15 A No, he was not.

16 Q What happened, briefly?

17 A He came to the police department. Lieutenant Cumbee
18 talked with him. He, you know, talked to him about the
19 hair, that there was a hair found in the victim's hand.
20 And that the -- that he believed that the hair belonged to
21 the victim. And on two occasions, the defendant, he had
22 stated that he believed that the hair that was found in
23 her hand belonged to the suspect or the person that
24 committed the murder.

25 Q Was any effort made to -- well, at that time y'all

1 were aware that hair had been found; is that correct?

2 A No, sir, we was not.

3 Q No, I mean, you, being the police, were aware that a
4 hair was found, correct?

5 A Yes, I knew that the hair was found.

6 Q At that time did y'all know that the hair matched the
7 defendant?

8 A No, we didn't, not at that time.

9 Q Okay. I believe you went to lunch that day?

10 A Yes, we did.

11 Q What did y'all learn at lunch?

12 A We learned that the hair -- we received a phone call
13 from Al Hallman, who is the crime scene officer. He
14 transported the hair to Columbia and SLED had said that
15 the hair matched --

16 THE COURT: Now, wait, let me interrupt. You
17 understand this is hearsay testimony.

18 MR. DURANT: I understand, Your Honor.

19 THE COURT: I am letting it in solely for the Jackson
20 v. Denno. Obviously, this would not come in at the trial
21 of the case.

22 MR. DURANT: I understand that, Your Honor. I'm
23 aware of that, Your Honor.

24 THE COURT: Counsel, you agree this hearsay shall
25 come in for the purposes of this hearing?

1 MR. KULP: I agree if I objected I wouldn't be
2 sustained. The objection would not be sustained.

3 THE COURT: All right.

4 Q And when you got back to the station after lunch,
5 what did you do?

6 A When we got back from the station --

7 Q When you went back after lunch?

8 A Yes, we transported the defendant for a polygraph
9 that was scheduled for 3:30 that afternoon.

10 Q Okay. You had arranged for the polygraph
11 examination?

12 A Yes, I did.

13 Q And where did you take the defendant?

14 A Charleston County Police Department.

15 Q And who was to administer the polygraph examination?

16 A At that time it was Lieutenant Mikel (ph) with the
17 Charleston County Police Department.

18 Q And what happened? Did Mikel meet with the
19 defendant?

20 A Yes, he did.

21 Q And what did he do initially when he met with the
22 defendant?

23 A Initially, he talked to the defendant and everything
24 and told him that, you know, he's free to leave; that he
25 doesn't have to take the polygraph. And later on he

1 administered the Miranda rights. He explained the Miranda
2 rights to him which he said he stated that he understood.

3 Q What rights did he explain to him at that time?

4 A He stated that he had a right to remain silent -- he
5 actually explained them saying that you can leave any time
6 you want to. I'm not going to ask you to stay or
7 anything. We don't want you to do anything against your
8 self-interest. And then he said anything you say can and
9 will be used against you in a court of law. You have the
10 right to an attorney. If you are unable to afford an
11 attorney, one will be appointed for you. Any time during
12 questioning, you can stop answering questions at any time
13 until you talk to a lawyer. Things like that.

14 Q And you observed this process?

15 A Yes, I did. I observed it on a monitor, a TV
16 monitor.

17 Q Okay. The defendant appeared to understand what he
18 was being told?

19 A Yes, he did.

20 Q Was a polygraph administered that day?

21 A No, there wasn't.

22 Q And why was that?

23 A The reason why is because he had told the polygraph
24 examiner that he had drank -- consumed a lot of beer the
25 night before and that he had very little sleep, like a

1 couple hours.

2 Q So what did you do then?

3 A At that time I transported him to the police
4 department -- or gave him a ride to the police department.
5 And we talked to him about getting a consent to search,
6 you know, his residence or his room. We asked him, also,
7 if he'd --

8 Q Was any effort made to interrogate him that day,
9 being Friday the 14th of March?

10 A We had discussed that we was going to interrogate
11 him, but it was pretty much my decision that we would not
12 given the fact that he had very little sleep and also the
13 fact that he had been drinking all night the night before.

14 Q And what time did y'all leave him at his home that
15 night?

16 A We left him at his residence approximately 10 o'clock
17 p.m.

18 Q And what time did you pick him up the next morning?

19 A 8:45, at his residence.

20 Q And what kind of shape did he appear to be in at that
21 occasion?

22 A He appeared to be good spirited. He wasn't
23 intoxicated or anything like that. He said he felt fine.

24 Q Where did y'all go?

25 A We went to Shoney's. I told him I was hungry. I

1 offered to buy him breakfast. We went there, we sat
2 around talking, just basically about our families and
3 stuff like that.

4 Q Did he eat?

5 A No, he didn't. He drank coffee. He said that's
6 normally what he does in the morning, he drinks coffee.

7 Q Where did you go afterwards?

8 A We went to the North Charleston Police Department.

9 Q And who did you meet at the North Charleston Police
10 Department?

11 A We -- well, when we got there, we waited on
12 Detective -- Sergeant Tetanich to get there, which he got
13 there shortly after I got there. And we went into the
14 interview room to discuss the case with them.

15 Q And what happened when y'all got into the interview
16 room?

17 A Sergeant Tetanich had advised him of his rights.
18 First, he went over getting biographical information from
19 the defendant, advised him of his rights. The defendant
20 stated that he understood the rights, signed that. And
21 also he read him his waiver of rights and that was signed
22 also in my presence.

23 Q I hand you what's previously been marked as State's
24 Exhibit No. 2 and ask if you can identify that document?

25 A Yes, this is advisement of constitutional rights for

1 the defendant.

2 Q And you observed the defendant sign this document?

3 A Yes, I did.

4 Q Both on the advisement of rights and on the waiver of
5 rights; is that correct?

6 A Yes.

7 Q He also initialed his rights individually where they
8 were explained to him?

9 A Yes, sir.

10 MR. DURANT: Your Honor, if I have not introduced it,
11 I would for purposes of this hearing.

12 THE COURT: I think it was introduced yesterday. And
13 I personally took a look at it.

14 MR. KULP: Yes, sir, that's correct.

15 THE COURT: You indicated yesterday that you had a
16 copy of that.

17 MR. KULP: I do, Your Honor.

18 THE COURT: All right.

19 Q Now, how did the statement progress from that point,
20 sir, just briefly?

21 A The statement --

22 Q Or how did the interview go from that point?

23 A Okay. The interview, we basically talked to him,
24 okay? We talked about his past relationship with the
25 victim. We talked about what happened the day before, the

1 night of, the next morning and things like that. And that
2 was just before lunch.

3 Q And how long did that process take?

4 A About an hour and a half.

5 Q And this was in the interview room in the detective
6 division, correct?

7 A Yes, it was.

8 Q And what happened at around 12?

9 A At approximately 12 o'clock, Lieutenant Cumbee came
10 in and asked him if we could move to his office which is
11 located right off the side of the detective division.
12 Myself, Sergeant Tetanich and the defendant and Lieutenant
13 Cumbee moved into Lieutenant Cumbee's office.

14 Q Were y'all in there with the doors shut or open?

15 A We left the door open.

16 Q And where was the defendant?

17 A He was -- I was sitting inside the door or actually
18 just this side of the door to the right of the door. And
19 he was right beside me. And Lieutenant Cumbee was
20 positioned on the other side of the desk. And I believe
21 Sergeant Tetanich was standing up on the other side of the
22 desk.

23 Q And what happened when you got into Lieutenant
24 Cumbee's office?

25 A We talked to him. He stated that -- actually,

1 Sergeant Tetanich had told him that we believed the hair
2 that was trapped underneath belonged to the person that
3 committed the offense. And also Lieutenant Cumbee said
4 that the defendant agreed he believed that it's going to
5 prove the person guilty that committed the offense. And
6 we -- at that time we -- Lieutenant Cumbee had left, came
7 back in, told him he just received a phone call from SLED
8 saying that the hair came back as a match and it matched
9 the hair in the back of his head.

10 Q What did the defendant do at that point?

11 A At that time he stated that, No, no. He started
12 rubbing his hands through his hair, his eyes started
13 watering. He said he was sorry, you know, that he is
14 sorry. Lieutenant Cumbee mentioned, you know, that the --
15 that yes, the hair is yours. He said he was sorry that he
16 did it. That, you know, it was a mistake, an accident.

17 Q Did he go on and give you details as to how it had
18 occurred?

19 A Yes, he did.

20 Q Do you recall those details, sir?

21 A Yes, he stated that he'd went there approximately 2
22 o'clock in the morning at the Mill Inn located on Montague
23 Avenue, stated that he parked his car beside the victim's
24 car. He'd -- when he was walking in -- at that time
25 Sergeant Tetanich said, Did you see the note on the

1 windshield? He said, Yes, I seen the note on the
2 windshield. When he went into -- or actually he went to
3 the door and knocked on the door five to ten minutes.

4 And at that time the victim came over and opened the
5 door for him. They got inside. They got in an argument,
6 basically about a note that was up on the bar, started
7 arguing, pushing each other. She grabbed the glass
8 decanter or wine carafe that's a tip jar and went to go
9 hit him. He took it from her, said he started hitting
10 her, he lost control and they went down on the ground or
11 on the floor inside the Mill Inn in front of the bar. And
12 then after that, he went behind the bar and set the Mill
13 Inn on fire using available paper and a lighter.

14 Q After he revealed this to you, did y'all go anywhere
15 with him?

16 A Yes, we left there, went to the crime scene. We
17 didn't actually go into the crime scene. He explained to
18 us what had happened. He mentioned earlier about taking
19 her purse. We was interested in where the purse was.
20 When we got to the scene, he explained what happened
21 there. We was trying to find the purse. He said he went
22 around the building and threw the purse in the back of his
23 pickup truck, actually behind the seat.

24 And from there, we went to the Westvaco Park. He
25 said that he believed he may have put it in a hollowed out

1 part of a tree at Westvaco Park. We didn't find it there
2 either. He showed us, he said it was the first time that
3 him and the victim ever made love and it was at the gazebo
4 there that used to be there.

5 And after that, we went to his residence where he
6 said he may have put the purse up under his bed or
7 something like that. And we went to McDonald's, got
8 something to eat. I offered him something to eat and
9 something to drink. He only -- I think he got some type
10 of drink. I don't know what it was. And at that time
11 went back to the police department.

12 Q And what did you do when you got back to the police
13 department?

14 A I received a signed written statement from him.

15 Q And explain to the Court how that process took place.

16 A I sat him down, I took down biographical information
17 on the top part of the statement.

18 Q Who was there at the time?

19 A At that time it was Benji Norris and I think Sergeant
20 Cumbee -- not Cumbee, but Tetanich was there. Okay. And
21 what happened then, I asked him if he wanted me to write
22 the statement for him. He agreed. As I was writing the
23 statement, I started off, This statement is written by
24 Detective Clayton upon request or something like that.
25 And he started relating the events that took place. And

1 he explained to me basically what I explained earlier
2 about that he went to the bar, was there five or ten --
3 knocked on the door five to ten minutes. She opened up
4 the door. They got in an argument --

5 Q Okay. But roughly the same details that you just
6 related to us?

7 A Yes.

8 Q I hand you what's previously been marked State's
9 Exhibit No. 3 and ask if you can identify that document,
10 sir?

11 A Yes. This is his statement.

12 Q And once you reduced it to writing did you give the
13 defendant an opportunity to read it?

14 A Yes, I did. He was actually reading it as I was
15 writing it and he corrected me a couple of times.
16 Apparently, I was spelling her name wrong. Apparently,
17 instead of being T-H, it's actually T-E-R-E-S-A.

18 Q Did he make more than one correction to the
19 statement?

20 A Yes, he did. Actually, tried to get him to sign, he
21 mentioned something about right here that he believed that
22 he held her on the floor before he went around the corner,
23 he actually meant the counter. He made a correction --
24 well, I put a line through it and wrote counter on top and
25 asked him to initial it.

1 Q And he initialed everywhere that he made a change in
2 the statement?

3 A Yes, everywhere that I had crossed out. Yes, he had
4 read it also and made any corrections.

5 Q Was he provided with a copy of the statement?

6 A Yes, he was.

7 Q Is that his signature on this statement?

8 A Yes, it is.

9 Q First and second pages?

10 A Yes, it is.

11 Q Did you observe him -- did you observe him sign the
12 statement?

13 A Yes, I did.

14 Q And it was witnessed by Detective Tetanich; is that
15 correct?

16 A Yes.

17 MR. DURANT: Your Honor, we would offer this as
18 Court's Exhibit as well.

19 THE COURT: All right, sir. You have a copy of this?

20 MR. KULP: I thought that was in already.

21 MR. DURANT: I don't think I actually offered it
22 yesterday. But I'm offering for the purposes of this
23 hearing.

24 MR. KULP: Correct, reserving all of my rights.

25 THE COURT: I think it's already in. All right, sir.

1 Q Now, Detective Clayton, was the defendant
2 interrogated in your presence concerning his involvement
3 in this murder at any time on Friday?

4 A No. No, sir.

5 Q And the interrogation actually began on Saturday
6 morning; is that correct?

7 A Yes, sir.

8 Q At any time in your presence or to your knowledge did
9 he ask for a lawyer?

10 A No, sir.

11 Q Did he say anything to you that would give you an
12 indication that he wanted legal counsel?

13 A No, sir.

14 Q Did you withhold food or drink or trips to the
15 restroom or anything of that nature?

16 A No, sir.

17 Q Did you promise him, make any promises of leniency to
18 him if he would talk to you and tell you what happened?

19 A No, sir, I did not.

20 Q Did you threaten him physically or in any other way
21 to induce him to talk to you and give you this statement?

22 A No, sir.

23 Q He did not appear to be under the influence at the
24 time; is that correct?

25 A That is correct.

1 Q He appeared to understand what you were telling him?

2 A Yes, sir, he did.

3 Q He had at least 13 years of education; is that
4 correct?

5 A Yes, sir.

6 Q He was not threatened with the death penalty?

7 A No, sir.

8 Q Was he -- now, at some point during the interrogation
9 process, Lieutenant Cumbee left the room and came back in;
10 is that correct?

11 A Yes.

12 Q And told him he received a call from SLED?

13 A Yes, sir.

14 Q And that was not true, was it?

15 A No, sir, it wasn't.

16 Q Y'all had actually heard from SLED the previous day?

17 A Yes, sir, it was the day before.

18 Q Other than that ruse, did y'all lie to him in any
19 other regard or not tell him the truth in any other
20 regard?

21 A Not that I recall.

22 Q And, in fact, y'all were told by Hallman that SLED --
23 that the hair matched, were you not?

24 A Yes, sir, we did.

25 Q So when you conveyed that information to the

1 defendant, you were not lying to him; is that correct?

2 A That's right.

3 Q Did you tell him at any time that -- did you tell him
4 at any time that y'all had found the victim's hair and
5 blood in his truck?

6 A No, sir, not that I recall.

7 Q Did you tell him at any time that y'all recovered his
8 coat and found the victim's blood on his coat?

9 A No, sir.

10 Q Did you tell him at any time that fingernail
11 scrapings taken from the victim's fingernails matched his
12 blood?

13 A No, sir, I did not.

14 Q Did you ever suggest to him -- suggest an answer to
15 him during the time you were questioning him specifically
16 regarding a blackout?

17 A I don't remember that specifically about the
18 blackout.

19 Q You don't remember him saying anything about a
20 blackout or you don't remember --

21 A I remember him saying that he lost control, that
22 could probably be taken as a blackout. That he doesn't
23 really recall exactly how many times he hit her.

24 Q Now, at some point you were with the defendant when
25 he was being taken from the police station to the jail; is

1 that correct?

2 A Yes, I was.

3 Q And he was approached by reporters at that time?

4 A Yes, he was.

5 Q Did you ever hear Lieutenant Cumbee tell him anything
6 regarding the press outside?

7 A Yes. He mentioned I know on one occasion just before
8 we walked out the door that he said that he didn't have to
9 talk to the press or anything like that. You know, if he
10 wants to do it, he could do it. And that's pretty much
11 all I heard.

12 MR. DURANT: Court's indulgence. Nothing further of
13 this witness, Your Honor.

14 THE COURT: Mr. Kulp, you may cross-examine.

15 MR. KULP: Thank you, Your Honor. May it please the
16 Court?

17 CROSS-EXAMINATION

18 BY MR. KULP:

19 Q You are the case agent or officer in this case,
20 correct?

21 A Yes, I am.

22 Q Therefore, you concurrently have the responsibility
23 of knowing the case file and maintaining the case file?

24 A Yes, I do.

25 Q Now, in the case file, you are aware that there is a

1 statement -- well, you were sitting in yesterday and that
2 I asked Lieutenant Tetanich about in terms of that he
3 filed in December of 1998, indicating that he told
4 Lieutenant Cumbee that early morning on the 13th at some
5 specific time that he -- excuse me, that Myers was acting
6 suspiciously and he was probably our suspect. Now, you --
7 did you have any involvement on the 13th at the crime
8 scene with the investigation of the case?

9 A Yes, sir, I got there about 8:30 that morning.

10 Q Okay.

11 A And as far as the crime scene, I -- I was directed to
12 go over to the defendant's mother and father's house to
13 interview them.

14 Q But you became involved in the investigation about 8
15 o'clock?

16 A Yes, I did, 8:30.

17 Q And were named by Lieutenant Cumbee as the case agent
18 officer?

19 A Yes, but that came later on that day.

20 Q Very good. Did you see Mr. Myers early on that
21 morning?

22 A No, I did not.

23 Q Did you have a chance to speak with Detective
24 Tetanich any time that day?

25 A Yes, sir, I'm sure I have.

1 Q And did he tell you as he has indicated he told
2 Lieutenant Cumbee that he believed that Myers was our
3 suspect?

4 A No, sir, he did not.

5 Q Did Lieutenant Cumbee tell you that conversation and
6 say that he believed that Myers was our suspect?

7 A No, sir.

8 Q Okay. Now, you were aware -- and you sat here as I
9 went through this and I'm not going to rehash it, that Mr.
10 Myers was with Detective Payne on that Thursday morning?

11 A I later found out later on that day, sir.

12 Q And that he, in fact, gave a statement, a
13 nonincriminating statement to Detective Payne?

14 A I received that statement later on.

15 Q Okay. But that he was with police and did all the
16 things that he did on that Monday?

17 A Yes, sir.

18 Q And also on Friday that he was called to the police
19 station, I believe, by a message that Lieutenant Cumbee
20 left at his parents' house to come back in?

21 A I don't know, sir, about that.

22 Q Do you know if he was at the police station on
23 Friday?

24 A Yes, sir, he was.

25 Q He was there, too. And he stayed there at least

1 through lunch, y'all invited him to go to the Olive
2 Garden?

3 A Yes, sir, we did.

4 Q And he stayed there after and y'all later ran him
5 down to the polygraph?

6 A Yes, sir, I did.

7 Q And after that, you dropped him off at a bar?

8 A Yes, sir.

9 Q Or had someone drop him off?

10 A No, sir, I can't say that. Dropping him off at a
11 bar?

12 Q At the Shores?

13 A No, sir, not me, I don't believe.

14 Q I'm not implying that was anything improper, but he
15 was with the police pretty much all day on Friday, too,
16 with the officers investigating the case, Mr. Norris, Mr.
17 Tetanich, Mr. Cumbee and yourself?

18 A Yes, sir, he was.

19 Q And during that time period, I think you mentioned in
20 direct testimony that the issue of this single hair that
21 was found was mentioned to Mr. Myers?

22 A Yes, sir, it was.

23 Q And on Friday, he -- and you had discussions with him
24 about that, correct?

25 A Yes, sir, we did.

1 Q Now, he was there -- he wasn't there as a suspect at
2 that time on that Friday, was he?

3 A No, sir, he wasn't.

4 Q He was there as somebody assisting and cooperating
5 with you to help find the true killer of his girlfriend,
6 correct?

7 A Yes, sir.

8 Q And none of all who were looking into the case,
9 including yourself, had any suspicion that Friday that
10 this was your man?

11 A Yes, sir, we had a suspicion when we found out about
12 the hair.

13 Q Yes, you did. So what you did was started a pattern
14 and a process of obtaining his trust, correct?

15 A No, sir. If you're -- I don't know what you're
16 referring to. No, sir, we weren't.

17 Q Okay. But in the course of those events, you were
18 getting close to him, correct? You were being nice to
19 him. You were inviting him to lunch. You, in fact --

20 A No, sir, the reason why that we invited him to lunch,
21 okay, is at that time, you know, when we asked him to go
22 to lunch is just because, you know, instead of him sitting
23 around not doing anything, he can go to lunch with us.

24 Q Right. But you said he was a suspect in the
25 murder/arson of Ms. Haught?

1 A He later --

2 Q Since he didn't have anywhere else to eat, you wanted
3 to take the suspect in a murder and arson out to lunch
4 with you?

5 A Yes, sir, I did.

6 Q And when you got back from lunch, you also offered to
7 have him take a polygraph exam and he agreed to do that?

8 A Yes, sir, he did.

9 Q And he readily went down there with you?

10 A Yes, sir, he did.

11 Q At that time did you have any belief that he was
12 drunk, under the influence or was so fatigued that it was
13 apparent?

14 A No, sir.

15 Q Now, when you had those discussions about the hair on
16 that Friday, the topic of conversation was, as I think you
17 said on direct exam, the conversation with him was Gee,
18 Wes, don't you agree if we find out who owns that hair
19 that was in her hand that was up under her body, we'll
20 have our killer, correct?

21 A Yes, sir.

22 Q So that process was started on Thursday. Now, about
23 noon, you got --

24 A That was on Friday, sir.

25 Q I'm sorry, I apologize. I'm thinking Thursday,

1 Friday, Saturday. On Friday. I stand corrected. Now,
2 about noon there or sometime, you got a call from Mr.
3 Hallman?

4 A At noon? No, sir, it was not noon. It was
5 approximately 2 or 3 o'clock because that was at the time
6 we went to lunch.

7 Q At lunch?

8 A Yes, sir.

9 Q I'm not trying to trip you up. Feel free to do that,
10 to correct your response.

11 A I will.

12 Q So sometime that early afternoon after lunch, Mr.
13 Hallman called and was he at SLED or on the way back? Do
14 you recall?

15 A I believe he was on the way back.

16 Q And he said to you --

17 A No, sir, not to me.

18 Q Do you know what he said to someone else?

19 A Yes, sir.

20 Q What did he say to someone else and who did he say it
21 to?

22 A I believe it was to Lieutenant Cumbee. He stated
23 that the hair matched the defendant's hair that came from
24 the back of his head.

25 Q Now, at that time you knew that it wasn't really a

1 match, didn't you?

2 A No, sir, I mean, I'm not a forensic expert or
3 anything like that.

4 Q I understand that. But you knew that DNA couldn't be
5 run in a period of a few hours, correct?

6 A That's correct.

7 Q And you knew that a microscopic examination was being
8 conducted on an emergency basis at Mr. Hallman's request
9 to Agent Joe Powell of SLED; is that correct?

10 A That's correct.

11 Q And, in fact, if you have it with you or I could hand
12 it to you, in your affidavit for the murder which you
13 filed and swore to on -- in this case at the time of Mr.
14 Myers' arrest, you indicated, did you not, that the
15 unknown hair was compared to hair samples taken from the
16 defendant through a consent to search authorized by the
17 defendant and it was determined to have good matching
18 characteristics to the known hair sample of the defendant.
19 It is the overall opinion of S. A. Powell that the unknown
20 hair did come from the defendant's head?

21 A That is correct.

22 Q Okay. And then you read later his report that said
23 it had similar characteristics and he wouldn't commit to
24 anything more than that pursuant to the microscopic exam?

25 A That day?

1 Q You later read that?

2 A Yes, sir, not that day.

3 Q Okay. So after that day, as you said, that day being
4 Friday, y'all searched his parents' house, correct?

5 A Yes, sir.

6 Q By consent, his consent for the room as we
7 straightened out yesterday, and you hadn't found anything
8 of evidentiary value that's going to be introduced in the
9 trial of this case against Mr. Myers?

10 A No, sir.

11 Q All right. And at that point, in fact, other than
12 this hair that we just discussed, there was no other
13 forensic evidence that had been found that is going to be
14 offered at trial in the evidence against Mr. Myers,
15 correct?

16 A That's correct.

17 MR. DURANT: Your Honor, this is all very
18 interesting, but we plowed this ground yesterday and it's
19 not relevant to the voluntariness of the statement.

20 THE COURT: Over and over and over again. I remind
21 you again, sir, this is a Jackson v. Denno hearing.

22 MR. KULP: Yes, sir, Your Honor.

23 THE COURT: And these questions would relate very
24 appropriately if a jury was here, but not before me for
25 Jackson v. Denno.

1 MR. KULP: Yes, sir.

2 THE COURT: Go ahead.

3 Q That Friday night after the search was finished, did
4 you indicate to Mr. Myers if his parents were upset over
5 the search that he could come stay at your house?

6 A No, sir, I did not.

7 Q Now, the next day on Saturday, you made the conscious
8 decision, I think you testified, not to go ahead and
9 having the information about the hair to start the formal
10 interrogation process of Mr. Myers Friday night?

11 A That's right, I decided not to.

12 Q Decided to come back the next morning, everybody is
13 fresh. Did you ask him not to leave the city or anything?

14 A No, sir, I did not.

15 Q So you came in that Saturday morning and for two days
16 up to this point, he had not confessed to this crime?

17 A That's correct.

18 Q And he had been with y'all a lot? Friday?

19 A Yes, sir.

20 Q Thursday?

21 A He was very cooperative.

22 Q He was very cooperative trying to help you find the
23 true killer. Did he appear to you during that two-day
24 time period, Thursday and Friday, to be capable of
25 exercising his own will?

1 A I didn't talk to him on Thursday.

2 Q On Friday, did he appear to be someone on Friday,
3 someone who's capable of exercising his own will?

4 A I don't know. I know when he went to the polygraph,
5 he indicated that, you know, he had very little sleep, you
6 know, two hours of sleep and that, you know, he had been
7 drinking really heavy the night before. He had 24 beers.

8 Q Did he indicate -- but the question is simple. Did
9 he appear to you that he was able to exercise his own
10 will?

11 A I don't understand what you're asking.

12 Q Okay.

13 A What do you mean by will?

14 Q Did he have the ability to do things voluntarily?

15 A He was able to answer all of our questions.

16 Q Okay. And he exercised his will, didn't he? He
17 exercised his will to agree to take a polygraph exam?

18 A Yes, sir, he did.

19 Q He was in control of himself?

20 A Yes, sir.

21 Q But that changed on Saturday, didn't it?

22 A No, sir.

23 Q On Saturday you met, did you not, with the other
24 detectives and you calculated a plan to get him to confess
25 to this crime, is that not true?

1 A We discussed the day before that we was going to
2 approach him about the hair.

3 Q How -- tell the judge how y'all discussed you were
4 going to get him to admit that he killed his girlfriend
5 and set the place on fire?

6 A We was going to talk to him and approach him about
7 the hair. He admitted that the hair would be the
8 suspect's hair. And at that time we would approach him
9 about the hair. We would get a phone call and SLED would
10 say it was his hair.

11 Q Okay. So you agreed to fake or feign that phone call
12 in his presence or nearby to let him think that SLED had
13 just called and said, boom, here's the results?

14 A That's right.

15 Q Okay. Now, he got there and you Mirandized him at
16 10:22, I think, on your form or 21, whatever the form
17 indicates?

18 A Yes.

19 Q So you indicate then about noon he began to express
20 some indication that he must have did it or made that
21 statement?

22 A Yes, sir, he said, I must have did it.

23 Q Tell the judge between 10:21 and 12 o'clock what you
24 or any other detective in your presence told him in the
25 course of what you were trying to do which you just

1 testified was to get him to confess besides this ploy
2 about the hair. What else?

3 A Nothing that I recall as far as the hair. But when
4 we moved to Lieutenant Cumbee's office, he agreed -- I
5 already mentioned that earlier about Sergeant Tetanich
6 saying, Do you believe that the hair belongs to the person
7 who committed the crime and also Lieutenant Cumbee?

8 Q So you reiterated that?

9 A Yes, sir.

10 Q To get him to agree that if the hair could be
11 identified that would be the killer?

12 A Yes, sir.

13 Q Okay. Now, do you feel at that time that he trusted
14 you? Did you have any reason to think being with him then
15 that he did not trust you?

16 A No, sir.

17 Q He never said I don't trust you guys? He never said
18 that, did he?

19 A No, sir.

20 Q And you also put a photograph out in front of him
21 that we're not going to break out, but the photograph
22 that's been marked. You put that out in front of him,
23 didn't you?

24 A No, sir, I did not.

25 Q Did you refer to that during your preliminary hearing

1 testimony?

2 A I don't recall. I believe I did.

3 Q Okay. And so it's your testimony that you did not
4 place that horrible photograph --

5 A I did not. You're asking me specifically, yes, sir,
6 I did not.

7 Q I'm sorry.

8 A Lieutenant Cumbee did show him a picture of the
9 victim.

10 Q So prior to the time he said I must have done it, one
11 of the tools that you used in terms of getting --

12 A Not prior to.

13 Q It was afterwards?

14 A It was actually he had stated he must have did it.
15 And then he stated that he was sorry and the picture was
16 shown and he stated again he was sorry.

17 Q And you got to a point where you were wanting to be,
18 where you had gotten him to after this period of time say
19 something that was incriminating, correct?

20 A Sir, we weren't putting words in his mouth.

21 Q I didn't ask you that. You got to a point you wanted
22 to be at, didn't you?

23 A Yes, sir.

24 Q You wanted a confession?

25 A Sir, we wanted him to tell us the truth.

1 Q And if the truth happened to be a confession all the
2 better, correct?

3 A That's correct.

4 Q Now, prior to him saying that statement that you have
5 indicated in your report confirms, I must have did it
6 then, did he say anything prior to that moment that was
7 incriminating indicating that he was involved in the
8 murder and arson of Ms. Baught?

9 A No, sir.

10 Q That's when you broke him, isn't it? And that
11 comment by him followed the ruse about the phone call from
12 SLED, didn't it?

13 A Could you explain that again? Ask the question.

14 Q Yes, sir, I'll be happy to. His statement I must
15 have did it then came immediately after the faked phone
16 call from SLED and Lieutenant Cumbee telling him, Wes, the
17 worst thing has happened. That was Joe Powell from SLED
18 and they have made a positive match of that hair to the
19 back of your head and can even tell what area of the back
20 of the head that hair came from. Isn't that true?

21 A He didn't say worst thing ever happened. He stated
22 that the hair found in the hand belonged to him because it
23 matched the backside of his hair.

24 Q And that's when he broke down and that's when he said
25 immediately thereafter I must have did it then?

1 A I must have did it.

2 Q And that's when Lieutenant Cumbee shoved that picture
3 in front of him and said --

4 A No, sir.

5 Q How much time elapsed?

6 A It was about a minute or two.

7 Q Okay. So a minute went by, then he shoved it in
8 front of him?

9 A No, sir, at that time when he said that, he said he
10 was sorry.

11 Q Right.

12 A The defendant stated that he was sorry. And that,
13 you know, he didn't mean to do it. It was an accident.
14 And at that time that's when Lieutenant Cumbee put it out
15 there and at that time he was rubbing the picture saying
16 he was sorry. The defendant was rubbing the picture
17 saying he was sorry.

18 Q Okay. Do you have a copy of your -- can you turn to
19 page 10 of your case report that has the supplemental
20 typed language, it has page 10 at the bottom?

21 A Okay.

22 Q Do you see that?

23 A Okay.

24 Q Do you see up at the top, isn't it the case and
25 doesn't your report indicate, as you can read for yourself

1 there at the top the first two lines, which kind of end
2 with the sentence must have did it then, in quotes, which
3 is what the report says Mr. Myers said. Then it says the
4 suspect began crying. Then -- it doesn't say then, but
5 Lieutenant Cumbee asked quote, Don't you think you need to
6 say you're sorry?

7 A That's exactly right.

8 Q So prior to Lieutenant Cumbee saying, Don't you think
9 you need to say you're sorry, not mentioned in the report,
10 did he say I want to tell them I'm sorry?

11 A Tell who, sir?

12 Q Anybody?

13 A No, sir.

14 Q Right, the idea about apologizing was put in his head
15 by Lieutenant Cumbee, correct, who put that photo in front
16 of him? Isn't that true?

17 A He did state that don't you think you need to say
18 you're sorry, say you're sorry about doing this.

19 Q Lieutenant Cumbee told him in your presence if he
20 apologized he would get right with God, didn't he?

21 A No, he didn't.

22 Q And he told him that if he apologized that was the
23 way that this was all going to be made better, isn't that
24 true?

25 A No, sir.

1 Q And at that point, you began -- was any of that tape
2 recorded or videotaped?

3 A No, sir.

4 Q Not at all?

5 A No, sir.

6 Q There are no videotapes or tape recordings of
7 anything that Mr. Myers said in this case?

8 A Yes, sir, there is. There is a polygraph tape, the
9 videotape from the polygraph.

10 Q How long have you known that existed?

11 A Since the beginning of the case.

12 Q Have you turned it over to the defense?

13 A I thought I did.

14 Q Do you think you can get us a copy of that tape?

15 A Yes, I can.

16 Q Thank you. Now, so thereafter, you went out -- you
17 didn't get a written statement right then. You put him in
18 the car in an attempt to find the purse, correct?

19 A Yes, sir.

20 Q Now, at that point, he had also consented to the
21 search or actually y'all taking his pickup truck to search
22 it and look and examine it forensically and otherwise,
23 correct?

24 A Yes, sir, he consented to the search.

25 Q So you went to try to find the purse because you

1 didn't have any -- other than the hair, any forensic
2 evidence and it would have been nice to have additional
3 physical evidence to corroborate his confession?

4 A Yes, sir.

5 Q Because that is standard police procedure?

6 A Yes, sir, it is standard.

7 Q And so -- did you ever use in the course of your
8 interrogation techniques with Mr. Myers a technique of
9 saying -- well, let me go back a little bit. That morning
10 before he said I must have did it then, he denied doing
11 it, didn't he?

12 A Yes, sir, he did.

13 Q He denied it for how long, from 10:21 until 12?

14 A No, sir, we weren't -- we were just talking to him at
15 that point.

16 Q Right. And, in fact, the form he signed at 10:21
17 clearly identified to him that he was a suspect, if he
18 hadn't figured that out already, correct?

19 A Yes, sir, he was a suspect.

20 Q So at that point he told you he wanted a lawyer,
21 didn't he?

22 A No, sir, he did not.

23 Q And at breakfast that morning, he asked -- at
24 Shoney's that Saturday morning he asked you if he needed a
25 lawyer, didn't he?

1 A No, sir, he did not.

2 Q You didn't say to him, If you're innocent, why do you
3 need a lawyer?

4 A No, sir, I didn't.

5 Q Okay. So you got there at that point and you just
6 testified after he's advised of his rights before he said
7 I must have did it then, he was saying I didn't do it,
8 correct?

9 A That's correct.

10 Q Where in this report does it say that? Where in this
11 report does it say after he was advised of his rights that
12 he said he didn't do it to you gentlemen interviewing him?

13 A We didn't ask him specifically if he did or didn't do
14 it.

15 Q That's not the question. The question is where in
16 the report does it say that he said, whether you asked him
17 or not, I didn't do this crime?

18 MR. DURANT: Once again, Judge, what's the relevance
19 of this?

20 THE COURT: It has none, but I'm going to let him go
21 on just a little bit. I have tried to bring him in four
22 different times.

23 Go ahead.

24 Q Is it in there?

25 A No, sir, I don't see anything in there.

1 Q But he did say he didn't do it?

2 A Yes.

3 Q When he said he didn't do it, did you employ a
4 technique of interrogation in terms of his free will and
5 his voluntariness of saying, But, Wes, if you did it, how
6 would you have done this, like setting the place on fire?

7 A No, sir.

8 Q Never did?

9 A No, sir.

10 Q In any respect?

11 A No, sir.

12 Q Did he ever tell you in that course of that
13 conversation, Well, if I'd set the place on fire, heck, I
14 worked there, I was there all the time, I would have used
15 acetylene tanks or the gas tanks back there to blow the
16 place up. Did he tell you that?

17 A No, sir.

18 Q You didn't hear him say that?

19 A No, sir, I did not.

20 Q At any time did he just blurt out in any setting
21 during this entire period of time, I killed my girlfriend
22 and burned her up?

23 A No, sir.

24 Q That wasn't responsive to the trick or the
25 interrogation?

1 A Say that again.

2 Q Any time during Saturday, any day before that of
3 which you have knowledge, did he --

4 A No, sir, not before Saturday.

5 Q On Saturday then, did he just turn to you voluntarily
6 without being tricked about the hair and say, I did this
7 crime? He never did that, did he?

8 THE COURT: Mr. Kulp, what day was it the TV
9 interview was held that I saw yesterday? Wasn't that
10 Saturday?

11 MR. KULP: Saturday, Your Honor.

12 THE COURT: Okay.

13 A No, sir.

14 Q Now, Lieutenant Tetanich testified he had some
15 doubts -- yesterday he did on direct, I think, about some
16 doubts about different suspects in the case in the
17 beginning of case; and that's kind of why even though he
18 thought Mr. Myers might have been a suspect at the scene
19 based on his actions --

20 MR. DURANT: Objection, relevance as to why Tetanich
21 thinks that he's a suspect.

22 THE COURT: The fact that they may have another
23 suspect, what's that got to do with the narrow question,
24 the voluntariness of his statement and was he Mirandized?
25 The fact that they may have another suspect out there,

1 that has nothing do with a Jackson v. Denno issue, Mr.
2 Kulp.

3 MR. KULP: Well, the question was -- that I was going
4 to pose, Your Honor, was did the fact that you knew of
5 that was that a reason in any way for your delay in not
6 hitting the interrogation of Mr. Myers until Saturday from
7 Friday night?

8 A Say that again, sir.

9 Q This Dana Chapels thing, did it have anything to do
10 with your decision to wait from Friday night to Saturday
11 to talk to Mr. Myers?

12 A The decision to do that, sir, is because if we did
13 obtain a confession from him the next morning, which was
14 Saturday, is because he admitted that he only had a couple
15 hours of sleep that day. He had been drinking the night
16 before. And I don't want that to affect the voluntariness
17 of his statement when we brought him in Saturday to talk
18 to him about the case and about our finding the hair.

19 Q So you wanted to do it exactly by the book?

20 A Pretty much.

21 Q Make it bullet proof?

22 A Yes. I wanted to make sure that I didn't violate his
23 rights.

24 Q Okay. And also by videotaping and audio taping what
25 he said?

1 A Sir, that's not the procedure at North Charleston. I
2 have never did it at North Charleston as far as
3 videotaping or anything like that.

4 Q Okay.

5 THE COURT: Mr. Kulp, you know you're not required to
6 ask anymore questions.

7 MR. KULP: What's that rule? Just a couple more,
8 Judge.

9 Q Just quickly, did you have any information that that
10 Friday afternoon Mr. Myers had taken any caffeine pills?

11 A Yes, sir, I did.

12 Q Did he tell you that?

13 A No, sir, I heard it on the monitor. He was being
14 videotaped.

15 Q So there was never occasion between 10:21 and 12 on
16 Saturday or during that time frame when Mr. Poole or
17 anyone else came forward and had some information that you
18 advised Mr. Myers of about blood or hair being on his
19 truck or coat? That just didn't happen?

20 A No, sir, not that I recall.

21 Q Did you ever remember telling any members of Mr.
22 Myers' family like a sister or his family that, in fact,
23 hair and blood had been found on the truck?

24 A Not that I recall.

25 Q Now, you eventually got back to the police station

1 approximately 3 o'clock on Saturday or so?

2 A Yes, sir.

3 Q And the purpose then was to go back into the station
4 and to take a formalized thing, to take a written
5 statement from Mr. Myers?

6 A Yes, sir.

7 Q As you indicated, your testimony is he asked you to
8 write that out for him?

9 A Yes, sir.

10 Q And you did that there as you said right in front of
11 him and also, I think, with one or more other -- was Mr.
12 Norris there, Mr. Benji Norris?

13 A Yes, sir.

14 Q And Mr. Tetanich?

15 A Yes.

16 Q And it is real important, would you agree,
17 considering the gravity of that document to get down
18 exactly and accurately what you say Mr. Myers was telling
19 you then?

20 A It is important that I get his words on the
21 statement.

22 Q Accurately. Have you had -- and that certainly is a
23 very important part of the issue of confession is that it
24 is accurate from what he told you. In other words, you
25 want to make sure that what goes down --

1 A I want to get his statement, sir.

2 Q Now, have you had occasion to examine say page 10
3 again, you just had it before you, of your investigative
4 report? Got that before you?

5 A Yes, sir.

6 Q Okay. In there, as the case agent, it's a little
7 narrative at the top of what Mr. Myers said to you
8 gentlemen shortly after he said I must have did it then.
9 Do you see that narrative?

10 A No, sir.

11 Q Let me see if we are on same page as they say?

12 A No. 10?

13 THE COURT: Mr. Kulp, are you now going into the
14 accuracy of the statement or the voluntariness of it? You
15 can argue to the jury whether it was accurate or not what
16 was said. We are concerned with was it voluntary,
17 whatever was said.

18 MR. KULP: I am focusing on the voluntariness.

19 THE COURT: Well, let's don't focus on whether it was
20 accurate or not. The question is whatever he said, was it
21 voluntary and had he been Mirandized.

22 Q Let me ask you this, is everything that he told you
23 voluntarily as you testified --

24 A It was voluntary.

25 Q -- about his involvement in this crime reflected in

1 the statement?

2 A Not everything, sir.

3 Q There are other things?

4 A I was only writing what he was telling me. As we was
5 writing the statement, he was telling me about it and I
6 started filling out the statement exactly how he was
7 telling me.

8 Q Okay. And so there are, in fact, discrepancies
9 between other -- there is another version of what he said
10 in terms of what happened?

11 A There may be, I don't know.

12 Q Now, how did Ms. Justis, the mother -- the victim's
13 mother arrive at the police station?

14 A I guess she drove. I don't know, sir.

15 Q You got me on that on the prelim. Assuming that she
16 did drive a car there, but I mean, do you know how she
17 came about to arrive there in a car?

18 A No, sir.

19 Q You don't have any knowledge of that?

20 A I don't know personally how she --

21 Q What time did you first see her at the station?

22 A Approximately 4 o'clock, 4:30, something like that.

23 Q Where was she when you saw her?

24 A She was in the detective division.

25 Q Is that an area open to the public?

1 A No, sir.

2 Q Now, did Chief Caldwell in your presence ever come in
3 any time Friday night or otherwise that you saw him, thank
4 Mr. Myers and shake his hand for his cooperation in
5 assisting you fellows?

6 A He may have, I don't know.

7 Q May have?

8 A I know he was there Friday night.

9 Q Did you have the occasion to see yourself, see Mr.
10 Myers speak to Ms. Justis?

11 A Yes, I did.

12 Q And how did that come about?

13 A She came into the -- there is a little conference
14 room there. She came in there, sat down and he told her
15 about what happened, said he was sorry.

16 Q Okay. What was the legitimate police objective in
17 having that occur? None?

18 A I don't know what you're asking. You mean, did I set
19 this up? Did I -- I don't understand what you're asking.

20 Q Okay. Was Mr. Myers ever put into the little window
21 mirrored room and the victim's father allowed to look at
22 him through the window?

23 A No, sir.

24 Q Do you ever remember later that afternoon, about that
25 time period, Mr. Myers saying wait a minute, I didn't do

1 this?

2 A No, sir.

3 Q Do you ever remember him making the statement,
4 following that comment, that he wanted to actually see
5 this evidence that was against him?

6 A No, sir.

7 Q Now, at a certain point the media issue arose,
8 correct?

9 A Yes, sir.

10 Q And you've testified -- oh, by the way, on direct
11 examination, the case agent -- Mr. Durant asked you about
12 any fingernail scrapings taken off the victim. Were there
13 any in the case?

14 A I don't know.

15 MR. DURANT: There weren't when I asked him, so I
16 don't guess there are now.

17 THE COURT: He must not have heard your question and
18 the answer.

19 MR. KULP: I think it's important enough to ask again
20 as time may tell.

21 THE COURT: I thought you said about 30 minutes ago
22 you were nearly through with this cross-examination.

23 MR. KULP: Very last portion, Your Honor. Only
24 focusing now on the media.

25 THE COURT: What does the last portion mean timewise?

1 MR. KULP: Five minutes.

2 THE COURT: All right.

3 Q Mr. Clayton, are you aware the media -- you heard all
4 the testimony yesterday, I'm not going to rehash it. But
5 did they call about the case because they had an interest
6 in it?

7 A I don't know personally.

8 Q You don't?

9 A No, sir.

10 Q You were involved, were you not, in taking the
11 defendant downstairs to the car to take him out?

12 A Yes, I was.

13 Q And did you hear a conversation between Detective or
14 Lieutenant Cumbee and Ms. Karlyn or the lady who testified
15 from the media, did you hear that?

16 A No, sir.

17 Q Do you know what walk that suspect means as a phrase?

18 A Walk that suspect, no, sir.

19 Q And --

20 A I've heard it before, not during that time, but after
21 that, what that means.

22 Q After that. Okay. And --

23 MR. KULP: Beg the Court's indulgence.

24 Q Describe for me how you took him out the door and he
25 was exposed to the media. What's your personal

1 recollection of how that happened?

2 A I believe that we -- him and I walked out the door
3 together and he went out and he paused for the media and
4 told them about what happened. They started asking him
5 questions.

6 Q Okay. So he paused?

7 A Yes, sir.

8 Q And it was his decision to do that?

9 A Yes, sir.

10 Q And he was in shackles and handcuffs?

11 A He was in handcuffs. I don't remember if he was in
12 shackles or not.

13 Q Okay. And y'all stood there and let him be
14 interviewed by the media until the media didn't have any
15 other questions, correct?

16 A No, sir, I believe I may have grabbed his arm or
17 something like that, but they asked their questions.

18 Q Did you make any effort to hustle him to the car?

19 A No, sir, I did not.

20 Q Did you yourself give him any advice about the media
21 and the fact that it might be a good idea not to speak
22 with them?

23 A No, sir, but Sergeant Tetanich did and Lieutenant
24 Cumbee did prior to that.

25 Q Okay. What prohibited y'all from taking him out the

1 front door where he smoked a cigarette where there wasn't
2 any media?

3 A My car was parked on the same side as where the --
4 where we were taking him out.

5 Q Okay. So nothing prohibited you from sending a
6 uniformed officer to bring it around so y'all could get
7 away from there without contacting the media?

8 A No, sir, I was going to take him to jail. I --
9 actually, I wanted to stop off and get him something to
10 eat, which I did.

11 Q Did you think that exposing him to the media and
12 letting them ask him questions would aid in your case?

13 A It may.

14 Q I'm over here.

15 A Okay.

16 Q It would?

17 A It may help.

18 Q Okay. It may. And what was the legitimate law
19 enforcement purpose in allowing him to be interviewed by
20 the media?

21 A I don't know. See, Mr. Kulp, you're asking me. I
22 didn't arrange this. I didn't talk to anybody. It's not
23 in our policy for me to talk to the media. You're asking
24 me a bunch of questions that I don't know about, okay? I
25 didn't set this up. I didn't take him out the back door

1 for that purpose. I took him out to give him a ride to
2 the jail.

3 Q I understand. Who set it up?

4 A I don't know. I mean --

5 MR. KULP: That's all I have, Your Honor. Thank you.

6 THE COURT: All right, sir. You may come down.

7 Do you have any other witnesses?

8 MR. DURANT: Yes, sir. I'm going to go ahead and
9 call him at the risk of us being here forever. But --
10 could I have just a moment?

11 THE COURT: Come forward, both of you.

12 (WHEREUPON, a bench conference was held.)

13 MR. DURANT: The State calls Lieutenant Melvin
14 Cumbee.

15 Melvin Rayland Cumbee, Jr., after being duly
16 sworn, testified as follows:

17 THE CLERK: Please be seated.

18 THE COURT: Gentlemen, I want to advise both of you
19 one more time and this is the last time, constrain
20 yourself to the issues involved in Jackson v. Denno. This
21 is not a preliminary hearing. This is not a trial of the
22 case. And I've been very indulgent, but I'm through with
23 it. Now, I'm going to keep you narrowly confined to the
24 issues in Jackson v. Denno.

25 And, Mr. Kulp, we're not having a preliminary hearing

1 here and we are not having a trial.

2 MR. KULP: Yes, sir, Your Honor.

3 THE COURT: You are a good lawyer and you know the
4 issues in Jackson v. Denno. Stay with them.

5 MR. KULP: Yes, sir.

6 THE COURT: Now, proceed.

7 THE CLERK: Please state your full name and spell
8 your last name for the record.

9 THE WITNESS: Melvin Rayland Cumbee, Jr. Last name
10 spelled, C-U-M-B-E-E.

11 THE COURT: Are you having some difficulties?

12 THE WITNESS: Yes, sir, I'm sick.

13 DIRECT EXAMINATION

14 BY MR. DURANT:

15 Q You're a detective with North Charleston Police
16 Department?

17 A Yes, sir, I am.

18 Q And you were so employed on March 15, 1997?

19 A Yes, sir.

20 Q That is correct?

21 A Yes, sir.

22 Q And were you at the police department at about 12 --
23 around 12 noon on Saturday the 15th of March?

24 A Yes, sir, I was.

25 Q You came in on that occasion and the defendant was

1 there, correct?

2 A Yes, sir.

3 Q He was -- where was he taken?

4 A He was in an interview room that we have. I asked
5 him if he would step into my office.

6 Q And he stepped into your office?

7 A Yes, sir.

8 Q Along with Tetanich and Clayton; is that right?

9 A That's correct, sir.

10 Q Was the door open or closed?

11 A The door was closed.

12 Q Okay. At that time you talked to him about the hair;
13 is that correct?

14 A That's correct, sir.

15 Q And had him acknowledge that whoever that hair
16 belonged to was probably the killer; is that correct?

17 A That's correct, sir.

18 Q What did you do after that?

19 A I got up and walked out of the office for probably
20 three or four minutes, not very long at all. Then I
21 returned back into the office.

22 Q And you -- this was part of a strategy y'all had
23 previously discussed; is that correct?

24 A Yes, sir, that's correct.

25 Q And at that time y'all told the defendant that you

1 received a phone call from SLED?

2 A That's correct, sir.

3 Q Now, that wasn't correct?

4 A You're correct.

5 Q You found out about the hair the previous day?

6 A That's correct.

7 Q But that was your strategy for interrogating the
8 defendant; is that correct?

9 A Yes, sir.

10 Q After he was confronted with that information, I
11 believe he confessed; is that correct?

12 A Yes, sir.

13 Q Now, did you believe -- at the time that you told him
14 the hair matched, what was your belief concerning that
15 match?

16 A I believed the hair matched.

17 Q Still believe the hair matched?

18 A I still believe the hair matched today, sir.

19 Q Now, other than that ruse concerning the phone call,
20 did you threaten him, coerce him in any way to get him to
21 talk to you?

22 A No, sir.

23 Q Did you promise him or threaten him in any way?

24 A No, sir.

25 Q Did you threaten his family?

1 A No, sir.

2 Q Did you tell him that other evidence existed against
3 him which did not exist?

4 A No, sir.

5 Q Did you withhold food or water or bathroom or
6 anything of that nature?

7 A No, sir.

8 Q Now, did you call the press in this case?

9 A I had talked to the press numerous times throughout
10 the investigation. That was one of my jobs at the police
11 department.

12 Q Okay. And did you contact the press regarding this
13 particular case?

14 A Yes, sir.

15 Q And why did you do that, sir?

16 A They were calling me throughout the morning of the
17 homicide and on. As we do with any of --

18 May I move this, Your Honor?

19 THE COURT: Yes.

20 A As we do with our homicides, they call, they want to
21 know if and when we make an arrest. Some of them we tell
22 we will call when we make an arrest and they leave us
23 alone. Other of the medias continuously just -- they
24 disregard that and they continue to call. In this case,
25 they were called on Saturday and told that we had made an

1 arrest in the case.

2 Q Did you -- did the defendant indicate anything to you
3 about talking to the press?

4 A Yes, sir. He indicated that he wanted to speak to
5 the media. We advised him against that, told him he did
6 not have to do that. He also indicated that he wanted to
7 speak to his mother and also wanted to speak to the
8 victim's mother.

9 Q Did he speak to his mother?

10 A Yes, sir.

11 Q How, on the phone?

12 A On the phone, yes, sir.

13 Q Were you present during that conversation?

14 A No, sir, I had walked out of the office.

15 Q Okay.

16 Q Did he speak to the victim's mother?

17 A Yes, he did, sir.

18 Q And how did that come about, sir?

19 A He had told us that he wanted to speak to her. At
20 that point in time I called her, got in touch with her,
21 told her that we had made an arrest, that he had confessed
22 to the murder and that I would be calling her back at some
23 time to give him the opportunity to speak to her.

24 Numerous hours went by. At some point in time he was
25 asked if he was ready to speak to her and he said yes.

1 And I knew she did not live right there at the police
2 station and it would take her a few minutes to get down
3 there. So I placed a call to her and told her to come on
4 down to the station, he was ready to talk to her.

5 Q And was she there late Saturday afternoon?

6 A I can't remember what time. She got there later that
7 afternoon, yes, sir.

8 Q Okay. But she wasn't down at the police station all
9 day?

10 A No, sir.

11 MR. DURANT: I have got nothing else, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. KULP:

14 Q Lieutenant Tetanich came up to you on the morning of
15 the 13th in the early hours, around 6 a.m., and told you
16 that he thought Mr. Myers was your suspect, correct?

17 A Not in those exact words, but he indicated he had a
18 feeling about Mr. Myers, yes, sir. I don't know exactly
19 if it was 6 o'clock, but it was somewhere around that
20 time, yes, sir.

21 Q Okay. And did you take him at face value? You
22 appreciate his opinion?

23 A Well, he had more experience working homicides than I
24 did and he was pretty experienced at that type of stuff.
25 At that point in time I didn't give a whole bunch of

1 thought to it.

2 Q Okay. Well, you at least knew that had been broached
3 to you?

4 A Yes, sir.

5 Q Early Thursday morning?

6 A Yes, sir.

7 Q So you knew Mr. Myers -- when you came in Saturday
8 morning, you knew he had been a suspect of some sort since
9 Thursday morning?

10 A Let me say this to you, Mr. Kulp --

11 Q Let me just ask you, did you, yes or no?

12 THE COURT: No, sir, let me answer the way that --
13 you don't cut him off now. Let him -- you go ahead --

14 MR. KULP: I think he has a right to fully explain
15 his question after he answers it.

16 THE COURT: No, let him explain his answer.

17 A When I felt like Mr. Myers was a suspect is when I
18 got the call stating that that was Mr. Myers' hair in the
19 victim's hand, that SLED had looked at the hair. That's
20 when I felt that Mr. Myers was a suspect.

21 Q Okay. When did you get that call?

22 A Sometime Friday afternoon.

23 Q Do you need some water?

24 A Yes, sir. Sometime Friday afternoon, we were at
25 lunch when I received the call.

1 Q From whom?

2 A Detective Hallman, who was our crime scene guy, one
3 of our crime scene guys.

4 Q Where was he calling from?

5 A I believe he was calling from his mobile phone. He
6 was on his way back from Columbia.

7 Q What did he tell you?

8 A He told me that the hair that they had analyzed
9 matched Mr. Myers' hair and that it had come from the back
10 of his head.

11 Q You knew they cannot do DNA during that short time
12 period, didn't you?

13 A Actually, no, sir, I didn't. I didn't know what test
14 had been done. I just went by what Detective Hallman told
15 me that the hair matched Mr. Myers.

16 Q So you didn't ask nor did he tell you what method was
17 used to come up with that assessment of the match?

18 A No, sir, he just told me that the chemist, whoever
19 analyzed the hair, said it was a match.

20 Q Okay. Now, so you -- did you have any involvement
21 with Mr. Myers on Friday afternoon the 14th?

22 A Yes, sir.

23 Q What was your involvement Friday afternoon?

24 A I talked to him, asked him if he would take a
25 polygraph, okay? Which he stated yes, he would. He

1 didn't have a problem doing that. And me and Mr. Myers
2 walked in my office. I believe Sergeant Tetanich was in
3 there and we talked about the hair. Now, that was prior
4 to me knowing that it matched -- that was before we went
5 to lunch.

6 Q I see. So before -- even before you went to lunch,
7 you were talking to Wes, to the defendant about the hair
8 and the impact it might have in the solution of the case,
9 correct?

10 A Yes, sir.

11 Q In other words, you were asking him and getting him
12 to agree that if the identity of the hair contributor in
13 the victim's hand could be determined, that would identify
14 the killer?

15 A I wouldn't say I was getting him to agree. He has
16 the right to his own opinion. I believed that whoever
17 that hair belonged to was possibly the killer.

18 Q And you told him that belief and opinion?

19 A Yes, sir.

20 Q And he agreed with you that was, in fact, a
21 reasonable opinion?

22 A He agreed wholeheartedly.

23 Q And how many times was that discussed during that
24 day, Friday, with him?

25 A With me and Mr. Myers, I just remember that one time

1 because we went to lunch shortly after that.

2 Q Okay. And at that point you had not developed, other
3 than the hair, any forensic physical evidence against Mr.
4 Myers; is that correct?

5 A That's correct. If there was, I don't know about it.

6 Q Okay. And then Friday night, a consensual search was
7 made at his parents' house where he had a room and was
8 staying at?

9 A I wasn't there Friday night. I had an off-duty job
10 that I went and worked at the coliseum.

11 Q Very good. Now, Saturday morning, you were notified
12 to come in -- or what time did you arrive at the station?

13 A I arrived at the station probably about 12 -- some --
14 12, 12:30, somewhere in there, give or take 30, 45
15 minutes, an hour, I guess.

16 Q Okay. And you testified on direct that there was a
17 plan or an agreement as to how to go about the
18 interrogation of Mr. Myers, correct?

19 A That's correct.

20 Q And that was an agreement between you and who else?

21 A That was an agreement between myself, Sergeant
22 Tetanich and Detective Clayton.

23 Q When did you discuss that agreement?

24 A Sergeant Tetanich had talked to our chief on Friday
25 night. He called me at some point Friday night because I

1 was working the coliseum. And I wanted to interview Mr.
2 Myers that night. And they had decided that it would be
3 better to do it after he had some sleep and all the next
4 morning.

5 Q Okay. Did you have anyone watch his house that night
6 at his parents to make sure he didn't leave?

7 A I'm not aware of that.

8 Q Okay. So the next morning -- tell the judge what the
9 elements or aspects of the agreed upon plan were?

10 A As far as what?

11 Q As far as telling him about the hair, faking the
12 phone call from SLED and getting him to confess. What
13 were the methods and mechanics that you agreed upon to
14 achieve that goal?

15 A Well, Your Honor, we had discussed not to interview
16 him that night, to interview him the next morning once he
17 had some sleep. And simply, I was going to go out of the
18 room, act like I had received a phone call from SLED and
19 then come back in, which I did, and tell him that the hair
20 belonged to him. I said the hair matched him.

21 Q Okay. And you said to him, Wes, the worst has
22 happened?

23 A I don't remember saying that. I think I may have
24 said something, I've got some bad news is what I remember
25 saying.

1 Q Okay. Now, prior to that time and your knowledge and
2 recollection, had he ever just said, I killed my
3 girlfriend and set the place on fire, voluntarily, just
4 blurted it out?

5 A No, sir, not at that point, not before that point.

6 Q As a matter of fact, during the discussions about --
7 on Friday that you indicated occurred about the single
8 hair and the ability that it would -- identification of
9 the contributor would have on solving the case, did Mr.
10 Myers say anything about being involved and incriminating
11 himself in the crime?

12 A No, sir, he did not.

13 Q So the plan was hatched and it began on Saturday
14 morning?

15 A Yes, sir.

16 Q Okay. Now, at the time that you came back in and
17 told him there had been a match to his hair --

18 A Yes, sir.

19 Q -- what else had he been told within your knowledge
20 between 10:21 and that -- about what time was that that
21 you came back in and said, okay --

22 MR. DURANT: Your Honor, he's asking him a question
23 he had no personal knowledge of because he said he didn't
24 get to the station until 12 o'clock.

25 THE COURT: The time or whether he got to the station

1 or not, again, is irrelevant to any issue that I've got
2 before me.

3 MR. KULP: I understand. I'm just trying to move it
4 along, Judge.

5 THE COURT: I understand. I don't understand why and
6 haven't understood for the last hour some of these
7 questions. And this whole scenario has been developed
8 about three different witnesses. But go ahead, Mr. Kulp.

9 Q Were you present when Mr. Myers said, quote, I must
10 have did it then?

11 A Yes, sir.

12 Q Okay. So you were there when that statement was
13 made?

14 A When that statement was made, I was in my office.
15 That's right after I told him about the hair.

16 Q Was right after you told him about the hair right
17 after you arrived at the station?

18 A Yes, sir, I arrived -- to go back through, I arrived,
19 Detective Clayton, Sergeant Tetanich was in the interview
20 room.

21 Q Yes, sir.

22 A I knew they were in there. I knocked on the door,
23 asked Mr. Myers if he minded speaking to me? He said he
24 didn't have a problem. We walked in my office, stayed in
25 there, we talked about the hair for a few minutes. Then I