

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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S.C. Supreme Court

Wesley Max Myers, ...Respondent,

v.

State of South Carolina, ...Petitioner.

APPENDIX

VOLUME 2 of 7

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1 got up and walked out, came back in and told him I got a
2 call from SLED. At that point in time he became very
3 upset and that's when he said he must have done it.

4 Q Now --

5 THE COURT: Mr. Kulp, in fairness to this witness,
6 let's conclude the examination. He is obviously under
7 some strain with his throat.

8 MR. KULP: Fine, Your Honor.

9 Q Do you recall telling Mr. Myers prior to the time
10 that he said I must have done it then, that it was a
11 miracle that the hair was found in the victim's hand and
12 was protected from the fire?

13 A I may have said something to those lines, yes, sir.

14 Q And did you remember telling him that God put it
15 there?

16 A No, sir, I don't remember saying that.

17 Q Have you read the motion to suppress filed in this
18 case?

19 A Yes, I have.

20 Q And as a matter of fact, you told him that you
21 believed it was a sign?

22 A Yes, sir, and I still today feel like it was.

23 Q A sign from whom?

24 A In my personal opinion, I think it was a sign from --
25 I believe in God, I think it was a sign, yes.

1 Q But you didn't tell him that at the time?

2 A I did not tell him God, no, sir.

3 Q Now, after he said I must have did it then and you
4 heard that, he said that to you there in the closed office
5 with the other two detectives, you then told him, quote,
6 Don't you think you need to say you're sorry? That's what
7 you told him?

8 A Yes, sir, that's correct.

9 Q Now, when was this big 11 by 14 photograph put out in
10 front of him?

11 A Sometime after that.

12 Q How long after that?

13 A Probably, I would say no more than three, four, five
14 minutes, probably.

15 Q What was the purpose in putting that out in front of
16 him?

17 A To show the trauma, to show we knew the trauma the
18 victim had sustained to her head and that the front part
19 of her face was not burned, that she was laying face down.

20 Q Just to show it to him?

21 A No, sir, you asked me why I showed it to him and I
22 just explained why I showed it to him.

23 Q Okay. Now, at that point that morning he never
24 mentioned the word lawyer in your presence?

25 A No, sir, he did not.

1 Q He never mentioned the word attorney?

2 A No, sir.

3 Q Never mentioned the word counsel, any form of the
4 profession?

5 A No, sir.

6 Q And after that, Ms. Justis had arrived at some point
7 at the station. How did she get there?

8 A Well, what we did was, after -- I left and a written
9 statement was taken from Mr. Myers. And at some point I
10 came back. He requested to speak with his mother and we
11 let him call. I think we may have dialed the phone for
12 him and let him talk to his mom. I had talked to her --
13 Ms. Justis in stating to her that he wanted to talk to
14 her, to speak with her and that I would call her back,
15 okay? I called her back. When I got back to the station
16 that afternoon, I asked him if he was ready to talk to
17 her.

18 Q And what legitimate law enforcement purpose did that
19 serve in letting him talk to the victim of the mother --
20 the mother of the victim?

21 A To be quite honest with you, I felt sorry for Mr.
22 Myers. His parents were good people. He wanted to talk
23 to her. He seemed very remorseful at this point in time
24 to what he had done and told us he had done. And it was
25 the same way with talking to the media. We told him he

1 didn't have to talk to the media.

2 Q At some point in that afternoon he went into the
3 interview room or the tiny room with the mirror in it,
4 correct?

5 A I'm not aware of that.

6 Q And Mr. Justis was there and was able to view him
7 through the mirror, correct?

8 A I'm not aware of that.

9 Q Do you remember an occasion, Lieutenant Cumbee, when
10 Mr. Myers came out of there and said, Wait a minute, I
11 didn't do this, and asked to retract his statement?

12 A No, sir, I do not remember that.

13 Q That's your testimony?

14 A That is my testimony right here.

15 Q And did he ask to see all this evidence that was
16 supposed to be accumulated against him and you told him
17 the evidence room was closed?

18 Q No, sir, I don't remember. The only evidence that I
19 talked to Mr. Myers about was the hair that matched his.

20 Q You never mentioned to him that there was blood and
21 hair found either in his truck or on his coat behind the
22 seat?

23 A I don't even remember that, no, sir.

24 Q Did you ever hear anyone mention that in your
25 presence?

1 A No, sir.

2 Q Now -- so where exactly in the police station did the
3 conversation between Mr. Myers -- now, all this time you
4 believed after he said I must have did it then that Mr.
5 Myers was the person, he was the defendant, the suspect?

6 A Say that --

7 Q Once he said I must have did it then, he was your
8 guy?

9 A Yes, sir, I believe that.

10 Q All right. Was he wearing a knife at the time, a
11 buck knife on his belt?

12 A I don't remember.

13 Q If he was a person that confessed to murder, you
14 wouldn't want him to have a buck knife walking around in
15 the detective office, would you?

16 A I agree with that.

17 Q Now, where was he when he talked to Ms. Justis?

18 A He was in a room -- he was in a room next to my
19 office.

20 Q Okay. Two of them alone?

21 A I'm sorry?

22 Q Was anybody in there with her?

23 A I was in there and I believe Detective Clayton was in
24 there.

25 Q Did you then urge him to apologize to her, that he

1 needed to do that?

2 A No, sir, he did it on his own. He had stuff he said
3 he wanted to say to her and he did.

4 Q Did you ever tell him that he needed to apologize to
5 feel better about this horrible crime he had done?

6 A The only thing I said that he needed to tell Teresa
7 he was sorry. That he needed to tell Teresa that he was
8 sorry.

9 Q And at that point did you think -- when the real
10 interrogation began that day, before he said he must have
11 did it then, do you think the detectives who had been
12 working the case, yourself included, had gained the trust
13 of Mr. Myers?

14 A Sure.

15 Q Yeah. He believed you. Do you have any reason to
16 believe he didn't believe what you were saying?

17 A Well, he knows what he did, sir.

18 Q I didn't ask you that. I ask you do you have any
19 reason to think he did not believe what you were telling
20 him? Did he ever say I don't believe what you guys are
21 telling me? He never said that, did he?

22 A No, sir, he never said.

23 Q And he never said I don't trust y'all?

24 A He never said that.

25 Q He trusted y'all implicitly, didn't he?

VOLUME TWO OF SIX VOLUMES

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.

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1 A I don't remember saying that.

2 Q Did you make any effort to get him out of there
3 before the media arrived?

4 A No, sir, we had stuff that had to be taken care of.
5 The statement had to be finished and so on and so on. And
6 like I said, he's the one that requested to speak to them.

7 MR. KULP: Beg the Court's indulgence just one
8 second, Your Honor. Just two questions, Your Honor, and
9 I'll put my fingers down as I ask them.

10 THE COURT: I will have mine down, too.

11 Q Did you tell the person you talked to with the media
12 that you were going to walk that suspect that night?

13 A No, sir, the media characterizes it as a walk down is
14 what they call it. Sometimes they do it at the bond
15 hearing, sometimes it's done at our police department.
16 They characterize that as a walk down. That's their
17 characterization or term they use.

18 Q Would you agree -- number two, would you agree that
19 when a person like Mr. Myers is under arrest that you are
20 in charge of the protection of his constitutional rights,
21 yes or no?

22 A Sure.

23 MR. KULP: That's it, Your Honor.

24 THE COURT: Thank you. You may come down.

25 We're going to take a very short break and resume

1 again here in just a minute. Both of y'all come up.

2 MR. DURANT: I would ask Detective Cumbee be excused,
3 Your Honor.

4 MR. KULP: Absolutely.

5 (WHEREUPON, a short break was taken.)

6 THE COURT: Call your next witness.

7 MR. DURANT: The State calls Benji Norris.

8 Charlie Benjamin Norris, 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: Charlie Benjamin Norris, N-O-R-R-I-S.

13 DIRECT EXAMINATION

14 BY MR. DURANT:

15 Q You are the chief of fire investigators for North
16 Charleston; is that correct?

17 A I am the chief investigator for North Charleston, one
18 of the assistant chiefs.

19 Q And you handled the arson investigation in this case;
20 is that correct?

21 A Yes, sir.

22 Q As such, did you participate in the interview of the
23 defendant, Wesley Myers, on Saturday, March 15, 1997?

24 A Yes, sir.

25 Q You were present during much of the time he was being

1 interviewed; is that correct?

2 A Yes, sir.

3 Q At any time during the interview, did you hear -- did
4 you or anyone else in your presence, including any of the
5 detectives with North Charleston, make any threats to the
6 defendant?

7 A No, sir.

8 Q Did they coerce him in any way?

9 A No, sir.

10 Q Did they threaten him with the death penalty?

11 A No, sir.

12 Q Did they threaten his family?

13 A No, sir.

14 Q Did they tell him he couldn't go to have anything to
15 eat or drink or go to the bathroom?

16 A No, sir.

17 Q Did he, in fact, confess to the murder and the arson?

18 A Yes, sir, he did.

19 Q Did he tell you any details regarding how he set the
20 fire?

21 A Yes, sir.

22 Q And did those details he provided to you, were they
23 consistent with what you found at the scene?

24 A Yes, sir.

25 MR. DURANT: I have nothing further. Would you

1 please answer any questions Mr. Kulp has.

2 MR. KULP: Thank you. May it please the Court, Your
3 Honor.

4 CROSS-EXAMINATION

5 BY MR. KULP:

6 Q Since yesterday, have you discussed this case with
7 any person in any way?

8 A No, sir.

9 Q And in the course of the interrogation of the
10 defendant on that Saturday, when was the large photo of
11 the victim shown to him?

12 A The timewise?

13 Q Yes, sir.

14 A I don't remember the exact time. I know I came into
15 it -- I entered Lieutenant Cumbee's office. I was
16 downstairs and Lieutenant Cumbee sent someone to get me
17 and told me that he was -- had confessed and that he
18 needed me to come upstairs. I came upstairs and the
19 defendant then was going over his statement. And it was
20 shortly after that the photograph was shown to him. So it
21 was --

22 Q So you were not present and did not participate in
23 any of the interrogation until the point you just
24 described?

25 A Yes, sir.

1 Q Were you with him at all on Friday?

2 A Yes, sir.

3 Q And by him, I mean Mr. Myers?

4 A Yes, sir.

5 Q Where?

6 A At North Charleston Police Department.

7 Q What time?

8 A It was off and on that afternoon. He was sitting in
9 the detective bay and I was in and out.

10 Q Okay. Did you have any conversation with him?

11 A Not that I remember.

12 Q Okay. Did you ever tell Mr. Myers at any time
13 Thursday or -- Friday or Saturday your opinion about how
14 the fire started?

15 A No, sir, not prior to him telling me what he said had
16 happened.

17 Q But you did tell him your opinion after he told you?

18 A We discussed it. He told me how he set the fire and
19 I told him well, he was telling the truth. It was, in
20 fact, what I had found.

21 Q When did -- during that period of time after you
22 arrived up in the detective office on Saturday, at what
23 point did Mr. Myers ask for a lawyer?

24 A I never heard Mr. Myers ask for one.

25 Q Did you ever hear him mention the word lawyer or

1 attorney at any time?

2 A No, sir.

3 Q Do you ever remember speaking with Mr. Myers and
4 asking him if there was any lighter fluid that he knew of
5 that was stored at that bar?

6 A No, sir.

7 Q So you were not present when Mr. Myers was told that
8 a match had been made from his known hair to the hair that
9 was found in the victim's hand?

10 A At some point in time that -- I don't know if I was
11 there initially when he was told that, but at some point
12 in time, yes, that was discussed.

13 Q Okay.

14 A The hair they found was consistent with his.

15 Q In what way was it discussed?

16 A Just the fact the hair that was found was consistent
17 with his.

18 Q Well, did the discussion include him being told that
19 this meant -- by the detectives to him that this meant he
20 did the crime?

21 A No, sir, I didn't understand it to be that way from
22 what I heard.

23 Q Did you ever -- the topic of blacking out by Mr.
24 Myers ever come up?

25 A No, sir, not in my presence.

1 Q Were any audio, video recordings made of any contact
2 with Mr. Myers as far as you know?

3 A No, sir.

4 Q Did you have your camcorder there at the third floor
5 of the detective office at any time?

6 A No, sir.

7 Q Were you there and present at the precise moment Mr.
8 Myers said I must have did it then?

9 A I don't know if -- he said that in my presence, I
10 don't know if he had already said that prior to my
11 entering the room. At one point in time, yes, I was there
12 when he said he did it.

13 Q Did he say I must have did it then?

14 A I don't remember the exact terms.

15 Q Did he say that more than once?

16 A Yes, sir.

17 Q He said it more than once?

18 A Yes, sir.

19 Q How many times did he say that?

20 A At least twice because I know I heard it initially
21 and then when we -- later on in the afternoon when we went
22 to put it in writing he said it.

23 Q He said it then again, too, later on in the
24 afternoon?

25 A Yes, sir.

1 Q At the time he was making that statement did he
2 appear to be confused or bewildered?

3 A No, sir.

4 Q Did he appear to be upset?

5 A He was upset, said -- he kept saying he was sorry
6 what he had done, how he loved Teresa and he didn't mean
7 to do it.

8 Q Did you make any notes yourself during any
9 interrogation period?

10 A No, sir.

11 Q Did you hear Lieutenant Cumbee tell Mr. Myers that
12 God had put the hair in the hand of the deceased?

13 A No, sir.

14 Q Did you hear him say that it was a sign that the hair
15 had been put in the hand of the deceased?

16 A No, sir, not that I recall.

17 Q Did you hear Mr. Cumbee or any other detective tell
18 Mr. Myers that he needed to apologize and say that he was
19 sorry?

20 A I did not hear them. I heard the defendant say he
21 wanted to apologize to the family because he was sorry for
22 what he did. And he requested to talk to the victim's
23 mother.

24 Q What exactly, if you know, did you or anyone else
25 tell Mr. Myers about the media that was outside waiting on

1 his departure to jail?

2 A He was told that the media was there, that he did not
3 have to talk to them. They would probably be asking him
4 questions when he left the building. At that point in
5 time he said, Well, good, I want to talk to the media and
6 I want to apologize to everybody.

7 Q Said that in your presence?

8 A Yes, sir.

9 Q Was any discussion among the officers or detectives
10 as to how him talking to the media in that regard might
11 benefit the case?

12 A No, sir, not in my presence.

13 Q Did you ever hear any mention -- excuse me. Strike
14 that. Did you ever hear Lieutenant Cumbee tell the media
15 that the police were going to walk that suspect and to get
16 over there to the station house?

17 A No, sir, the media was there most of the day around
18 the building.

19 Q What would you -- do you have a recollection as to
20 what -- as best you can, I know, what time or did you make
21 a note to refresh your recollection as to what time you
22 came in to the detective area on Saturday morning?

23 A I arrived at city hall there probably around 8:30 in
24 the morning. I was in and out the detective area. The
25 crime scene officer came to start the process on the

1 defendant's truck and asked me would I help him. He
2 needed some tools and I made some arrangements to get some
3 tools to help that. I was back and forth, in and out
4 several times.

5 Q When you were up there in the detective area where
6 Mr. Cumbee was, did you ever see Mr. Poole come in, Dusty
7 Poole?

8 A No, sir, he was down -- I was downstairs with Mr.
9 Poole.

10 Q You were?

11 A Yes.

12 Q Was he analyzing or at least reviewing the
13 defendant's truck?

14 A Yes, sir.

15 Q He was going through it?

16 A Yes, sir.

17 Q Did he find anything that he concluded was a hair or
18 blood or any evidentiary value in that truck?

19 A Yes, sir.

20 Q Did he come upstairs to the detective office and
21 convey those findings to Lieutenant Cumbee or anybody
22 else?

23 A I don't recall.

24 Q He may have?

25 A He may have left, I don't remember whether he did or

1 not.

2 Q And do you know then if that information -- do you
3 know if he made -- you were there with him. Did he
4 conclude there was hair, blood or fiber or something in
5 that truck that was of evidentiary value?

6 A He found some that could have been.

7 Q Could have been?

8 A Yes.

9 Q And do you know if that information was conveyed to
10 Mr. Myers at any time during this time frame on Saturday?

11 A No, sir, I don't.

12 Q You don't know. Okay. When you were up there in the
13 detective office on Saturday, did you see any Post &
14 Courier reporters up there in the detective room or any
15 members of the media?

16 A Not that I recall. I know there was some reporters
17 and all outside the building, but being in the detective
18 area itself, I don't remember seeing anyone up there.

19 MR. KULP: Thank you, sir.

20 MR. DURANT: Nothing further.

21 THE COURT: You may come down. Thank you.

22 MR. DURANT: I would ask that he be excused.

23 THE COURT: Yes, I will excuse you. Thank you, sir.

24 MR. DURANT: Very briefly, the State will call Dixie
25 Justis.

1 Dixie Lee Justis, after being duly sworn,
2 testified as follows:

3 THE CLERK: Please be seated. Please state your full
4 name and spell your last name for the record.

5 THE WITNESS: Dixie Lee Justis, J-U-S-T-I-S.

6 DIRECT EXAMINATION

7 BY MR. DURANT:

8 Q You are Teresa Haught's mother; is that correct?

9 A Yes, sir.

10 Q And did you have an occasion to go down to the North
11 Charleston Police Department headquarters on Saturday, May
12 the 15th, 1997?

13 A Yes, sir, I did.

14 Q And how -- why did you go down there?

15 A To speak to Wesley Myers.

16 Q Who called you?

17 A Lieutenant Cumbee called me.

18 Q And he told you what?

19 A That Wesley had asked to see me, wanted me to come
20 down to see him and I did not have to if I didn't want to.
21 And I told him that I would.

22 Q Okay. And you went down there?

23 A Yes, I did.

24 Q Did you talk to Wesley shortly thereafter?

25 A Yes, I did.

1 Q Were you -- you were not waiting at the North
2 Charleston Police Department all day?

3 A No, sir, they escorted me in the back. They were
4 waiting for me. They asked me not to get upset and mad at
5 him if I possibly could help it and not to say anything
6 ugly to him.

7 Q Okay. You were down there by yourself?

8 A My husband at the time was with me, but he did not go
9 in with me.

10 Q Okay. He was not waiting down at the station all
11 day?

12 A No, sir, he did not. He drove me there.

13 Q Now, Mr. Myers was allowed to talk to you, did he
14 not?

15 A Yes, sir.

16 Q And did he mention anything to you concerning wanting
17 to talk to the press?

18 A When I walked in and sat down, Wesley was sitting
19 across from me. And his first words to me was, I killed
20 her, Dixie. I killed Teresa, I'm sorry. And I asked him
21 why? And he said, I deserve the death penalty. I said,
22 Well, Wesley, I don't believe in the death penalty, but I
23 think you deserve it, too. And he could not tell me why
24 he did it. Just that he -- his words to me and he looked
25 at me and said, I killed her.

1 Q Did he say anything about wanting to talk to the
2 press?

3 A Yes, he did. He said that the press was there and he
4 was going to apologize to his mother and father and he
5 wanted to talk to the press and he was going to apologize
6 to everybody over the TV station. I was -- that was the
7 conversation with him that night.

8 MR. DURANT: Thank you, I have nothing further.

9 CROSS-EXAMINATION

10 BY MR. KULP:

11 Q Ms. Justis, just a few questions, I'm not going to
12 take a lot of your time. Do you happen to remember
13 approximately what time that you arrived there that day?

14 A No, sir, it was late in the afternoon. They had
15 called me -- Lieutenant Cumbee called me the first time.
16 He called me the second time and told me to come down
17 there.

18 Q Do you think after 4?

19 A Yes, sir, I believe it was.

20 Q After 5?

21 A It was still daylight.

22 Q Okay. And when he called you, now, what did he tell
23 you?

24 A He told me that Wesley wished to speak to me and he
25 wanted me to come down to talk to me in person. And he

1 told me I did not have to if I didn't want to. And I told
2 him, no, that I would.

3 Q Did he tell you, ma'am, anything about the status of
4 the investigation at that point as it pertained to Mr.
5 Myers?

6 A No, sir.

7 Q When you arrived there in the detective office, who
8 was present?

9 A My husband drove me --

10 Q As best you recall?

11 A There was two policemen, I believe Mr. Clayton was
12 there and I believe Lieutenant Cumbee and there was a lady
13 policeman that escorted me up.

14 Q As you were escorted up, did you see any members of
15 the television media there on your way in?

16 A I believe so. And after I spoke to him and he told
17 me they were waiting -- Mr. Myers told me they were
18 waiting to speak to him, the policeman asked me if I
19 wished to -- that I did not have to talk to them, but they
20 were going to try to speak to me. And I told him I did
21 not want to talk to them so they escorted me right on out
22 the same back door that he went out of.

23 Q And helped you get to your car quickly?

24 A Well, I had my husband with me outside, so they took
25 me to the door.

1 MR. KULP: Thank you very much.

2 THE COURT: You may come down. Thank you.

3 MR. DURANT: I have nothing else, Your Honor. I'm
4 sure you'll be pleased to hear.

5 THE COURT: Do you have any witnesses, Mr. Kulp?

6 MR. KULP: No witnesses, Your Honor.

7 THE COURT: All right. I will be glad now to hear a
8 short statement from you and Mr. Kulp. Do you have any
9 statement to make?

10 MR. DURANT: Well, just very briefly, Your Honor. I
11 think the evidence shows conclusively that he was read his
12 rights under Miranda three times, on the morning of the
13 13th, on the afternoon of the 14th and immediately before
14 he was interrogated on the 15th. I think the evidence
15 shows without contradiction that he was not interrogated
16 concerning this crime until he was Mirandized on the 15th.

17 And the State would acknowledge that a technique to
18 interview was used wherein they feigned the phone call
19 from SLED. But the State would -- denies that any lie was
20 made to the defendant. To the best of their knowledge,
21 the hair they had matched the defendant. The only ruse
22 was the manner they allowed the defendant to believe they
23 acquired that knowledge.

24 THE COURT: All right, sir.

25 MR. DURANT: And he apparently confessed right after

1 that. I think it was freely and voluntarily given after
2 his -- after he was advised of his constitutional rights
3 and his right to counsel.

4 THE COURT: All right, sir.

5 MR. DURANT: With regard to the statements made to
6 the TV, I think the only evidence before you is that they
7 were freely and voluntarily done at his request.

8 THE COURT: All right, sir.

9 Mr. Kulp, the Court has read very carefully your
10 memorandum in support of your motion to suppress. And I
11 thank you for that. This memorandum is going to be made a
12 part of the record for the purposes of this hearing
13 because it adequately in my view and comprehensively
14 expresses your views as to why it should be suppressed.
15 Now, if you have any additional matters to bring before me
16 at this time, I certainly would welcome them. You may
17 proceed. But your objections to these are fully expressed
18 in this memorandum which I am making a part of the record.
19 Now, if you have some additional material to present to
20 me, let me hear it.

21 MR. KULP: Very briefly, Your Honor.

22 THE COURT: All right.

23 MR. KULP: Three areas that were addressed here, one
24 is, of course, the two-page statement. The other is the
25 statements that were made to the media on the video. And

1 thirdly, the statements that were made to Ms. Justis.
2 We've addressed those in the motion as you have said.

3 THE COURT: Yes, sir.

4 MR. KULP: In that regard, Your Honor, I would submit
5 respectfully that the testimony has shown that this
6 interrogation and contact with Mr. Myers over that time
7 period was fully intended to overcome his will, fully
8 intended to get him to a point with deception and ruse and
9 even in terms of the manner which the information was
10 received was used to overcome his will, to render his
11 statement involuntary. I think that his -- their
12 agreement with the nature of his statement when that
13 corner was turned, I must have done it then is
14 self-evident and proof of the fact that it was not
15 voluntary.

16 In terms, Your Honor, of the video aspects, I would
17 argue that there was an absolute denial of my client's
18 constitutional rights to be paraded out there. They can
19 cut it any way they want it, but it was clear, we now
20 learned through the testimony, that a call was made to
21 them and said we've got somebody that wants to talk to
22 you. At that time Mr. Myers was paraded directly before
23 them. They have a duty to him as someone in their charge
24 as an arrested person to protect his constitutional
25 rights. And in that regard could have very easily take

1 him out of the front door as they admitted and avoided his
2 exposure to the press. The question is, in terms of
3 accommodating him, where is the line drawn? I mean, he
4 has a right not to be displayed to the press.

5 Lastly, in terms of the conversation with Ms. Justis
6 at the police station, I would with all respect to Ms.
7 Justis in addressing the issue only, I think there could
8 be no legitimate law enforcement need or aspect shown for
9 that and it is clearly and carefully calculated to be a
10 means of acquiring additional evidence of a
11 self-incriminating nature in a case where there's no
12 physical evidence in order to make the case palatable.
13 Thank you very much, Judge.

14 THE COURT: All right. First, let me say, of course,
15 that the positions that you take are matters that
16 obviously will be for the jury to determine under proper
17 instructions. You raise several issues. First, it's
18 clear to me that he was Mirandized. It's clear to me that
19 he knew the statement that he was making -- as a matter of
20 fact, he corrected it in certain areas. So I have no
21 problems at all with regards to the fact that he was
22 clearly Mirandized appropriately under the state and
23 constitutional mandates.

24 Now, with regards to his voluntary statement to the
25 press, the evidence before me clearly indicates that he

1 was told on several different occasions, you can talk to
2 the press if you want to, you don't have to. Anybody
3 looking at that press, looking at that statement, that
4 clearly shows that he was in his right mind. The
5 statements he made was clearly enunciated. There was no
6 pressure by anybody at that time, including law
7 enforcement officers, to make -- to have him make that
8 statement. The allegations are that he wanted to cleanse
9 his soul. Now whether that's true or not, I don't know.
10 But that's apparently what he was doing and it would be
11 for the jury to determine.

12 Now, you raised a question about an allegation of a
13 ruse. If a ruse occurred -- and I'm not saying it did or
14 did not, that's for the jury to determine. I want to
15 recite to you what the Supreme Court has said in State v.
16 Register, which was my case some years ago in Horry
17 County. And in that case, our Supreme Court said as
18 follows: A statement may be held involuntary if induced
19 by threats or violence or if obtained by any direct or
20 implied promises or if obtained by the exertion of
21 improper influence. However, this Court and the United
22 States Supreme Court has held that misrepresentations of
23 evidence by police, although a relevant factor, do not
24 render an otherwise voluntary confession inadmissible.
25 Although police tactics may influence the suspect's

1 decision to confess, as long as the decision results from
2 the suspect's balancing of competing interests, the
3 confession is voluntary.

4 Our Supreme Court in that case went on to say,
5 Although the misrepresentation of evidence by police is a
6 deplorable practice, the circumstances in this case do not
7 reveal that Register's will was overborne by police so as
8 to render his confession involuntary. The police did not
9 coerce Register or threaten him with adverse consequences
10 if he did not cooperate. The room where Register was was
11 comfortable, as in this case. He was not deprived of
12 necessities, as in this case. And he was repeatedly read
13 his Miranda rights, as in this case.

14 Now, I conclude, therefore, that this tactic was
15 admissible and proper under the decisions of the United
16 States Supreme Court and our Court, though you and I may
17 disagree with whether they are or are not appropriate.

18 Now, as regards to the several confessions and as
19 regard to the confession to the media and as regard to the
20 confession to the mother of the deceased, I make the
21 following findings: I have held a lengthy evidentiary
22 hearing in this matter. And I am convinced beyond a
23 reasonable doubt and so find that the confessions or
24 statements obtained by the defendant and from the
25 defendant was freely and voluntarily given, and that the

1 same was given without duress, without coercion and
2 without undue influence and without any threat,
3 inducements, hope of reward.

4 I further find that the defendant, in compliance with
5 Miranda vs. Arizona, was advised of his constitutional
6 rights; that is the right to have an attorney present with
7 him during the interview and the interrogation; that the
8 Court would appoint an attorney for him if he was without
9 the funds to employ one without cost to him; that he had
10 the right to remain silent; that he had the right to
11 terminate the interrogation at any time and not to answer
12 any questions and that anything the defendant said could
13 be used in evidence against him.

14 I further find that the defendant understood these
15 rights and that he knowingly and intelligently waived such
16 rights under the 5th and 6th Amendments to remain silent
17 and to have counsel present with him at the interview
18 interrogation. I find that the decision to make these
19 statements was a product of the defendant's own unferreted
20 will, finding further that at the time he had the capacity
21 to constitute -- to comprehend the meaning and effect of
22 waiving his constitutional rights.

23 I do not find from the testimony any credible
24 evidence that he at any time asserted his rights to an
25 attorney or that he asserted his rights to a discussion

1 with an attorney. Your memorandum asserts that that
2 occurred. But I do not find any credible evidence to
3 suggest that, in fact, it did.

4 Now, of course, I find that these various statements
5 will be allowed in the trial of this case under a proper
6 instruction by me. The ultimate decision will be for the
7 jury to determine under proper instructions of the Court.
8 And if they conclude that his Miranda rights were
9 violated, if they conclude his will was overborne, if they
10 conclude they should not consider this testimony in any
11 way, or if they conclude that the testimony is not true or
12 the statement is not true, they may in their discretion
13 reject it. And I will give them appropriate instructions
14 on this issue.

15 Anything else from the State?

16 MR. DURANT: Not on the issue of the statements, Your
17 Honor, but there is another issue I would like to address.

18 THE COURT: All right.

19 MR. DURANT: And this is the issue that has basically
20 come up during the Jackson v. Denno hearings as to what
21 extent defense -- the defense is going to be allowed to
22 try Dana Chapels in this case. I think the evidence -- I
23 mean, the case law in this state is clear that a defendant
24 cannot introduce evidence of third-party guilt at the
25 trial of his case unless it's totally inconsistent with

1 his own guilt.

2 THE COURT: I am very familiar with various decisions
3 on --

4 MR. DURANT: Which I don't think he can do given the
5 fact he's confessed.

6 THE COURT: I will rule on that at a later date. Let
7 me deal with the Jackson v. Denno here. Of course, he's
8 got to meet certain standards with regards to third-party
9 guilt. I have no indication from him that he intends to
10 do that. And if he does, we'll have a hearing on it. But
11 he'll have to tell me that's what he proposes to do. But
12 from his inquiry today and from yesterday, I don't
13 understand that he intends to do that. I had not --
14 anything else?

15 MR. DURANT: Nothing at this time, Your Honor.

16 THE COURT: Now, Mr. Kulp, and you, too, from the
17 State, I want to get this clear. I want all other motions
18 disposed of immediately. And I would understand that
19 there may be some last-minute motion that you were not
20 aware of. Mr. Kulp, I would not deny you that
21 opportunity. But any motions that you're aware of, I want
22 to deal with them this week because this case is set for
23 trial and I firmly intend to try it on that date.

24 What is that date?

25 MR. DURANT: June the 19th, Your Honor.

1 THE COURT: Now, I continued this case one time
2 because the State's expert and your expert could not be
3 there. But I am told now that both of you have conferred
4 with them, you have served them with subpoenas and they
5 will be here.

6 Now, Mr. Kulp, is there any reason that you know of
7 today why this case cannot go forward with trial on the
8 date indicated?

9 MR. KULP: No, sir, there's not.

10 THE COURT: Then get ready. Thank you, gentlemen.

11 MR. DURANT: Thank you, Your Honor.

12 MR. KULP: Judge, I would just also, Mr. Durant and
13 I -- couple of issues quickly. One is I think that his
14 witness indicated they would provide a copy of that
15 videotape which we haven't had yet of the -- that was made
16 during the polygraph room.

17 MR. DURANT: Well, Your Honor, I think I could
18 probably get it, but quite frankly I don't think he's
19 entitled to it under the rules. I mean, it's not
20 exculpatory.

21 THE COURT: Give it to him.

22 MR. DURANT: You know, he can have it.

23 THE COURT: Give it to him this week.

24 MR. DURANT: But quite frankly, he's entitled to
25 evidence that I intend to use in trial. And I certainly

1 don't intend to use that.

2 THE COURT: I understand that. This is a murder
3 case. Give it to him.

4 MR. DURANT: He has everything, Your Honor. Believe
5 me, Your Honor, he has been through my office going
6 through my boxes on this case. I have not withheld
7 anything from Mr. Kulp on this case.

8 MR. KULP: I did, but I just didn't see that
9 videotape.

10 THE COURT: What else you got?

11 MR. KULP: Secondly, Judge, Mr. Durant and I, I think
12 in terms of that issue of any remaining motions, can talk
13 together and potentially resolve any possibilities of that
14 and let you know. I might do that this afternoon, get
15 with him.

16 THE COURT: If there's any third party guilt issues,
17 I want to know about that so we can deal with that.

18 MR. KULP: There is going to be, but I need a brief
19 chance to brief it.

20 THE COURT: Yes, sir. Brief it this week and present
21 it to me this week.

22 MR. KULP: Are you going to be here? Is this your
23 only week you're going to be here prior to the 19th?

24 THE COURT: No, sir. Thank you, gentlemen. This
25 concludes this hearing.

1 (WHEREUPON, Court's Exhibit No. 3 was marked for
2 identification only.)
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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

I, Karen Essick, 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 Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Charleston County, South Carolina, on the 23rd day of May, 2000.

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

October 31, 2000

Garen Essick

Karen Essick, Court Reporter

My Commission Expires: 11-16-03

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO. 97-GS-10-4319, 4320

TRANSCRIPT OF PROCEEDINGS

STATE OF SOUTH CAROLINA,

-VS-

WESLEY MAX MYERS,

FEBRUARY 26, 2001

CHARLESTON, SOUTH CAROLINA

Defendant.

BEFORE:

THE HONORABLE LUKE N. BROWN, Judge, and a Jury.

APPEARANCES:

D. BRUCE DURANT, ESQ.
SENIOR ASSISTANT SOLICITOR
FOR THE STATE

TIMOTHY CLAY KULP, ESQ.
FOR THE DEFENDANT

BY: HEATHER GAYLE BURNS, R.D.R.
CIRCUIT COURT REPORTER

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1 THE COURT: Members of the jury
2 panel, give me your attention, please.

3 I've held court in Charleston
4 off and on for twenty years. I
5 practiced law for thirty years before
6 that, so I've been around Charleston a
7 right good bit.

8 For those of you who I have not
9 had the pleasure of meeting, my name is
10 Judge Luke Brown. I am from Jasper
11 County, by way of McCormick County, and
12 until 1991 I was a circuit judge in the
13 fourteenth circuit. But when you get a
14 little age on you they make you retire,
15 so I retired but they got a program
16 that they let you work. So I welcome
17 you to the Court of General Sessions
18 for Charleston County.

19 Now I know most of you would
20 rather be someplace else, but we can't
21 do without a jury. Can almost do
22 without a judge, but. . . And this
23 might be your only opportunity ever to
24 serve on a jury in your lifetime, if
25 you haven't served. How many have

1 never served? Lot of you. How many
2 willing to admit you're a little bit
3 nervous? Well, you don't have to be.
4 You'll get plenty of instructions on
5 things you need to do. You'll enjoy
6 it. I won't keep you in the courtroom
7 unless you're absolutely needed. Do we
8 have a civil jury? I won't keep you in
9 the courtroom unless you're needed.

10 For instance, we're going to
11 qualify you in just a minute or two and
12 then I'm going to excuse you or perhaps
13 I'll draw one jury and then excuse the
14 rest of you all and tell you when to
15 call back. You might never -- might
16 not even get a chance to serve this
17 week. It just -- it kind of depends on
18 the luck of the draw.

19 As you know, your name's in a
20 computer, and you don't have to serve
21 but one time in three years, and that's
22 why I said that you might never get a
23 chance to serve again.

24 I just looked over the list that
25 the solicitor has -- that the clerk has

1 given and asked you, and so if I ask
2 you any of the questions twice, I hope
3 you'll forgive me.

4 Now, any member of the jury
5 panel who served in this level of court
6 in the last three years and who does
7 not want to serve? If so, please
8 stand. You can serve, but you don't
9 have to.

10 (No response.)

11 Is any member of the jury panel
12 who's sixty-five years -- by the way,
13 sixty-five is not very old. And you
14 know when people get to be sixty-five,
15 they got a little -- lot of common
16 sense generally and they make good
17 jurors and most of them really enjoy
18 it. I get letters all the time from
19 people who are over sixty-five who
20 served and who enjoyed it. Learned a
21 lot. And the reason I say learned a
22 lot, because I let you ask questions.
23 If I do something you don't like, I let
24 you stand up and tell me about it. You
25 don't find too many like that. I'll

1 explain anything to you. If there's
2 anything going on you don't understand,
3 you just stand up and ask me. I'll
4 tell you about it. There's nothing
5 goes on in this court, including what
6 goes on back in my chambers that you're
7 not entitled to know.

8 Sometimes I can't tell you
9 exactly at that time you ask the
10 question, but before the weeks's out
11 you ask the question, I'll answer it
12 for you. I'll tell you all about it.

13 Is any member of the jury panel
14 who's sixty-five years of age or older
15 and who does not want to serve? If so,
16 please stand. I didn't think there was
17 anybody back there that old anyway.

18 (No response.)

19 Is there any member of the jury
20 panel connected with the schools? You
21 have an absolute right to be continued
22 and transferred to another term of
23 court or excused if it's necessary. If
24 you connected with schools in any way,
25 that is a student or a teacher or a

1 cook or bus driver, anything, is there
2 any member of the jury panel who's
3 connected with schools in any way that
4 needs to be transferred?

5 And your name, please, ma'am.

6 A JUROR: Carla Creech.

7 THE COURT: Miss Creech, you
8 need to be transferred to another term
9 of court?

10 A JUROR: Yes, sir. I'm finance
11 officer for Charleston County School
12 District.

13 THE COURT: Well, have you been
14 transferred before?

15 A JUROR: No, sir.

16 CLERK OF COURT: No, Judge. No
17 she hasn't, Judge.

18 THE COURT: All right. She
19 hasn't. All right. Tell me when
20 you're going to give me a week.
21 Sometimes I tell -- somebody --
22 sometimes somebody tells me I go to
23 school the whole year.

24 A JUROR: Oh, no. I can stay
25 this week. I thought you meant because

1 it had something to do with the cases.

2 THE COURT: You want to stay
3 with us?

4 A JUROR: Yeah. I'll stay this
5 week. This week is as good as any
6 other week.

7 THE COURT: That's good. Bear
8 with me just a minute. Let me check my
9 list against the clerk's list.

10 Is there any member of the jury
11 panel whose obligation is it to care
12 for a child or children under the age
13 of seven who needs to be home taking
14 care of them? If so, please stand.

15 (No response.)

16 Now, I notice this, the clerk
17 has asked you that question, whether
18 any member of the jury panel has been
19 convicted or pled guilty in a state or
20 Federal court for a crime punishable,
21 not that you got it but you could have
22 gotten more than one year in prison,
23 and whose civil rights have not been
24 restored by pardon or amnesty? I want
25 to remind you so you wouldn't be

1 embarrassed, be sure before I draw a
2 jury that you give us that information.

3 I probably already got it. The
4 clerk explained to you, we've got the
5 criminal record of everybody or access
6 to everybody in the world, for that
7 matter. So be sure before we draw a
8 jury that if that fits you, that you
9 give us that information.

10 Any member of the jury panel a
11 full-time armed services member who
12 needs to be transferred or excused?

13 (No response.)

14 Now, this will be an unusual
15 week for you and you'll enjoy it. But
16 if there's any member of the jury panel
17 who's got a real personal or business
18 problem, you feel you just can't serve
19 this week and you look to be
20 transferred or excused, if so, please
21 stand. And this would also apply to
22 later in the week. If you got some
23 kind of problem, we'll work it out for
24 you. Please, sir. And if I ask you a
25 question and it applies to you and you

1 want to talk to me in person, please
2 feel free to do so.

3 Yes, sir. Your name?

4 A JUROR: My name is Everette
5 Poston.

6 THE COURT: Poston?

7 A JUROR: Yes, sir.

8 THE COURT: Yes, sir, Mr.
9 Poston.

10 A JUROR: About two years ago I
11 had radiation treatment on my throat so
12 I have no salivary glands so my mouth
13 stays tremendously dry. I have to
14 drink something all the time and I know
15 that that's -- I don't think that's a
16 problem, but my biggest problem is that
17 I end up having to go to the bathroom
18 every thirty minutes.

19 THE COURT: Let me tell you,
20 when you get old, you get the same way.
21 If you're drawn on a jury, I'll give
22 you an end seat and I'll let you carry
23 your water or your drink up there --

24 A JUROR: Okay.

25 THE COURT: And if you got to

1 go, you just walk out that door and
2 it's right across the hall.

3 A JUROR: All right.

4 THE COURT: So don't worry about
5 it, but I appreciate your telling me
6 about that. Remind me if I -- about
7 putting you on an end seat there.

8 Anybody else got a problem?
9 Yes? Yes, ma'am. Your name.

10 A JUROR: Mary Delestine.

11 THE COURT: Yes, ma'am.

12 A JUROR: I work third shift and
13 wasn't able to get off because one of
14 my associates, she had a death in the
15 family.

16 THE COURT: What is the third
17 shift, midnight?

18 A JUROR: Yes. Eleven to seven.
19 I hadn't been to sleep yet. I mean
20 can --

21 THE COURT: You been transferred
22 to another, from another time.

23 A JUROR: I've already been
24 transferred once.

25 THE COURT: Well, you got to

1 serve.

2 A JUROR: Yes.

3 THE COURT: And I will not let
4 you work midnight shift and try to
5 work, because people who are charged
6 with a crime are entitled to alert
7 jurors.

8 A JUROR: Right.

9 THE COURT: Now last time when
10 you were transferred, you knew you had
11 to serve this time, so why didn't you
12 make arrangements?

13 A JUROR: Well, I didn't --
14 well, I don't know. Didn't think about
15 it.

16 THE COURT: All right. Let's
17 see. Solicitor, how about you and Mr.
18 Kulp come up here just a second.

19 MR. KULP: Yes, sir.

20 (Whereupon, there was an
21 off-the-record bench conference.)

22 THE COURT: Well, I can't tell
23 you all about it, but I'll tell you all
24 about it before the week's out.

25 I was trying to find out how

1 long the case is going to take to try,
2 when we going to start the case, so
3 that I could tell Miss Delestine where
4 she stands. But we going to draw a
5 jury this morning.

6 Do I have a term of court next
7 week, Madam -- Mr. Clerk?

8 CLERK OF COURT: I think you do,
9 your Honor. Yes, sir, your Honor.

10 THE COURT: All right. Now,
11 Miss Delestine --

12 A JUROR: Yes.

13 THE COURT: Is that the way you
14 pronounce it?

15 A JUROR: Delestine.

16 THE COURT: All right. I'm
17 going to excuse you from this week.
18 But you're to report -- when does the
19 jury report next week?

20 CLERK OF COURT: Nine o'clock
21 next Monday, Judge. This courtroom.

22 THE COURT: Next Monday at nine
23 o'clock I want you here. You can't
24 have worked the midnight shift.

25 A JUROR: I'll talk to them

1 about it.

2 THE COURT: You explain to your
3 employer that you're on a jury. Okay?
4 All right. I'm going to excuse you.
5 You can go.

6 A JUROR: Okay. Thank you.

7 THE COURT: But just remember,
8 don't work that midnight shift next
9 Sunday night.

10 A JUROR: Okay.

11 THE COURT: Yes, ma'am. Your
12 name?

13 A JUROR: Gloria Gailliard.

14 THE COURT: Miss Gailliard.

15 A JUROR: Yes, sir. And I'm a
16 third shift worker, too. I worked from
17 twelve to eight.

18 THE COURT: This morning?

19 A JUROR: Yes, sir.

20 THE COURT: Have you been
21 transferred before?

22 A JUROR: No, sir. This is my
23 first time here.

24 THE COURT: Okay. Then I'm
25 going to do the same thing.

1 A JUROR: Okay. And sometime I
2 work from eight to -- from nine to
3 eight.

4 THE COURT: But let me tell you,
5 next week you can't work at night,
6 okay?

7 A JUROR: Okay.

8 THE COURT: Listen carefully.
9 And you are subject to being here at
10 nine -- from 9:30 to ten o'clock every
11 morning next week, and if you happen to
12 get a shift that's not -- that is that
13 time you can't work that shift.

14 A JUROR: Well, that's my
15 permanent shift.

16 THE COURT: You just be
17 available next week, during the day
18 time --

19 A JUROR: Okay.

20 THE COURT: -- and you cannot
21 work a midnight shift. Okay? Just
22 tell your employer you got a mean old
23 judge up there, white headed so and so,
24 if you want to call me that.

25 A JUROR: All right. Thank you.

1 THE COURT: All right. You got
2 her name?

3 CLERK OF COURT: Yes, sir. We
4 got it.

5 THE COURT: Anybody else got a
6 problem?

7 (No response.)

8 All right. Now I know it's an
9 imposition for you all to be here, but
10 it's just one of the things you got to
11 do to keep a free America. So just
12 bear with us, if you will. What we
13 going to do now, I'm going to finish
14 qualifying then we're going to draw a
15 jury and I'm going to excuse the rest
16 of you all for whatever time we think
17 it takes to try this case, or until
18 after I let you call.

19 A JUROR: Judge Brown?

20 THE COURT: Yes, sir.

21 A JUROR: May I approach, your
22 Honor?

23 THE COURT: Sure.

24 (Whereupon, there was an
25 off-the-record bench conference.)

1 THE COURT: Is Jerry Ladson back
2 there? Come, step here just a minute,
3 Mr. Ladson. Any time we get these
4 things in the computer and we get to
5 think it's father or son or. . .

6 (Whereupon, there was an
7 off-the-record bench conference.)

8 THE COURT: All right. I'm
9 going to excuse Mr. Jerry Ladson.
10 Is Nathaniel Hamilton back
11 there? Can you come here just a
12 minute, Mr. Hamilton.

13 (Whereupon, there was an
14 off-the-record bench conference.)

15 THE COURT: Come here just a
16 minute.

17 (Whereupon, there was an
18 off-the-record bench conference.)

19 THE COURT: All right. I'm
20 going to excuse Mr. Hamilton, Nathaniel
21 Hamilton.

22 Anything else from the State
23 that you can think I could -- that I
24 haven't asked them generally?

25 MR. DURANT: No, sir, your

1 Honor.

2 THE COURT: Mr. Clerk, did I
3 cover all of them that you haven't
4 asked, you think?

5 THE COURT CLERK: Yes, sir, your
6 Honor.

7 THE COURT: Any defense
8 attorneys want to ask any questions,
9 generally?

10 ASHLEY PENNINGTON: No, sir,
11 your Honor.

12 MR. KULP: No, sir, your Honor.

13 THE COURT: Call your first
14 case, Solicitor.

15 MR. DURANT: State would call
16 State versus Wesley Max Myers, your
17 Honor.

18 THE COURT: All right. Pass me
19 the indictment.

20 MR. DURANT: Yes, sir.

21 THE COURT: Mr. Kulp, you want a
22 formal arraignment?

23 MR. KULP: Yes, sir, your Honor.

24 THE COURT: All right.

25 MR. KULP: If the Court please.

1 CLERK OF COURT: If you'll come
2 forward, please, sir.

3 Case number 97-GS-10-4319 and
4 4320, State of South Carolina versus
5 Wesley Max Myers. It's indictments for
6 murder and third degree arson.

7 Mr. Wesley Max Myers, if you
8 answer to that name, hold up your right
9 hand.

10 (The defendant complies.)

11 Put it down. You stand indicted
12 by the name Wesley Max Myers. As to
13 indictment 97-GS-10-4319, at a Court of
14 General Sessions convened on July
15 seventh, 1997 the Grand Jurors of
16 Charleston County present upon their
17 oath that Wesley Max Myers did in
18 Charleston County on or about March
19 twelfth or thirteenth, 1997 wilfully
20 and with malice aforethought kill
21 Teresa Haught by inflicting several
22 blows to her head and that Teresa
23 Haught did die as a proximate result
24 thereof. This is in violation of
25 common law of South Carolina.

1 As to indictment 97-GS-10-4320,
2 at a Court of General Sessions convened
3 on July eleventh, 1997 the Grand Jurors
4 of Charleston County present upon their
5 oath that Wesley Max Myers did in
6 Charleston County on or about March
7 twelfth or thirteenth, 1997 wilfully
8 and maliciously set fire to, burn, or
9 cause to be burned, or aided,
10 counselled, or procured the burning of
11 a building with the intent to destroy
12 or damage the building. This is in
13 violation of South Carolina Code
14 Section 16-11-110 (c).

15 How say you? Are you guilty or
16 not guilty?

17 THE DEFENDANT: I plead not
18 guilty.

19 CLERK OF COURT: How will you be
20 tried?

21 THE DEFENDANT: By God and
22 country.

23 CLERK OF COURT: May they send
24 you true deliverance.

25 Are you ready for trial?

1 THE DEFENDANT: Yes, sir.

2 CLERK OF COURT: Thank you, sir.

3 You may have a seat.

4 THE COURT: All right. Thank
5 you, sir.

6 THE COURT CLERK: Yes, sir.

7 THE COURT: Now, members of the
8 jury panel, give me your attention,
9 please. We're about to begin a trial
10 entitled the State versus Wesley Max
11 Myers. Mr. Myers is the young man
12 standing up here just a moment ago in
13 which he was arraigned. That's not
14 evidence. That's just a formality that
15 gets this case into court.

16 As a matter of fact, I have two
17 indictments in my hands. These are not
18 evidence. These are just pieces of
19 paper that gets this case into court.
20 And Mr. Myers is charged with two
21 offenses, murder and third degree
22 arson.

23 Sitting at that table with his
24 attorney Mr. Kulp, he's just as
25 innocent as you and I unless and until

1 the State of South Carolina, if indeed
2 they can, convince twelve of you of his
3 guilt beyond a reasonable doubt.

4 So I'm going to be asking you
5 some questions. If it applies to you,
6 stand up and tell me about it. If it
7 applies to you and you want to talk to
8 us in person, you feel free to come up
9 here. I can bring the attorneys up
10 here.

11 Now I don't know whether,
12 whether or not this case has been in
13 the news media -- that is T. V., radio,
14 newspapers -- because what we're trying
15 to do is draw a jury that's totally
16 impartial, that nothing outside of what
17 goes on in this courtroom from the lips
18 of these witnesses who testify won't be
19 interfered with by anything that you
20 might have heard, you might have read
21 in the newspaper, or you might have
22 watched T. V., you might have heard it
23 on the radio, newspaper. You might
24 have discussed it with somebody.

25 But don't forget that very often

1 even though we might have good news
2 media, they print what somebody says,
3 so you can get all kind of gossip. You
4 can get hearsay evidence. You get all
5 kind of things. You get erroneous
6 evidence.

7 So I'll be telling my jury that
8 I draw that's sitting over here to lay
9 aside anything they've heard or
10 discussed with anybody, and bring in a
11 verdict just from what goes on in this
12 courtroom, bring in a verdict that
13 speaks the truth.

14 Now, I'm as I said, I'm going to
15 be asking you some questions. If it
16 applies to you, stand up and tell me
17 about it. If it applies to you and you
18 want to talk to us in person, stand up
19 here and tell me about it.

20 Is any member of the jury panel
21 related by blood or connected by
22 marriage or connected in any social or
23 business way with Wesley Max Myers? If
24 so, please stand.

25 Your name, please, ma'am.

1 A JUROR: Carla Creech.

2 THE COURT: Miss Creech, in what
3 relation?

4 A JUROR: I work with his
5 mother.

6 THE COURT: Okay. I didn't ask
7 that.

8 A JUROR: Blood relation.

9 THE COURT: But I'm glad you
10 gave me that.

11 A JUROR: Yes, sir.

12 THE COURT: You work with his
13 mother. Have you discussed this
14 with -- don't tell me what you did.
15 Have you discussed it with her about
16 the case?

17 A JUROR: No, sir.

18 THE COURT: Are you -- what kind
19 of work do you do?

20 A JUROR: I'm a finance officer
21 for Charleston County School District.

22 THE COURT: And his mother does
23 what?

24 A JUROR: She's a principal at
25 one of our schools.

1 THE COURT: Oh. I understand.

2 Do you know her in a personal way?

3 A JUROR: I knew her to stop and
4 say hello this morning.

5 THE COURT: All right. Do you
6 feel that your relationship to his
7 mother would keep you from giving
8 either side a fair trial?

9 A JUROR: Yes, sir.

10 THE COURT: All right. I'm
11 going to excuse you from this case.
12 Don't discuss it with any of the rest
13 of the jurors, and just have a seat
14 there if you will, please.

15 A JUROR: All right.

16 THE COURT: I know you'd be
17 fair, but all right.

18 Now, does any member -- is
19 anybody else in that category?

20 (No response.)

21 Does any member of the jury
22 panel know anything about this from
23 either the news media or discussing it,
24 discussing it with anyone? If so,
25 please stand.

1 (No response.)

2 Is there any member of the jury
3 panel related by blood or connected by
4 marriage or connected in any social or
5 business way with the solicitor? I'm
6 going to let him introduce himself
7 because this the first time I've had
8 him in court, and I'm going to let him
9 introduce himself and I want to know
10 whether you're related to him or any
11 member of his staff or obviously him.

12 SOLICITOR HOISINGTON: I'm Ralph
13 Hoisington. Solicitor Bruce Durant
14 will be trying this case this week.

15 THE COURT: Anybody connected in
16 any way with the Solicitor's Office?

17 (No response.)

18 I want to know the same thing
19 about Mr. Myers's attorney, Mr. Kulp.

20 A JUROR: I'm sorry.

21 THE COURT: That's okay. Well,
22 I've already excused you so you don't
23 have to stand any more.

24 A JUROR: I don't have to tell
25 that one then. Okay.

1 THE COURT: I want to know the
2 same thing about Mr. Myers's attorney,
3 Mr. Kulp, and he's going to introduce
4 himself and I want to know whether or
5 not you're related in the same way,
6 blood or marriage, business or social
7 with him, or whether you or any member
8 of his staff or office or whether
9 you've ever used him in the past or
10 presently used him as an attorney.

11 MR. KULP: Thank you, your
12 Honor. I practice with the Riesen law
13 firm on West Montague with Paul Gibson,
14 Brad Riesen, Gary Ling, Phillip
15 Berlinski, Jody McKnight, Allison
16 Stoffer, Ellen Howard. And I hope I
17 haven't left anyone out.

18 This is my wife Katy who works
19 with me, and Flo Morris. Thank you.

20 (There is no response.)

21 THE COURT: Now, I'm going to
22 let the solicitor give the name of --
23 here. Is this them, solicitor?

24 MR. DURANT: I've got the
25 witness list here, your Honor.

1 THE COURT: All right. I'll let
2 you call them. Now --

3 MR. DURANT: Would you care to
4 have a copy of them?

5 THE COURT: I've got so much
6 paper up here, but I'll take that.

7 Now the solicitor is going to
8 call the witnesses who he might use in
9 this case. And if they happen to be in
10 the courtroom, I'm going to -- I'm
11 going to ask them to stand up briefly,
12 then they can sit down.

13 And if he doesn't tell who
14 they're with, I want him to tell you if
15 they're with a police department or
16 some medical department or whatever. I
17 want him to tell me who they are. And
18 if you're related by blood or connected
19 by marriage to any of them, just stand
20 up and remain standing until he
21 finishes with the witnesses. Go ahead.

22 MR. DURANT: Thank you, your
23 Honor. We have Jeff Payne with the
24 North Charleston Police Department.

25 THE COURT: Members of the jury

1 panel, some of these people might not
2 be in the courtroom right now, but
3 that's why I want him to tell you who
4 they are. Go ahead.

5 MR. DURANT: Harry Roper with
6 the North Charleston Police Department.

7 Melvin Cumbee with the North
8 Charleston Police Department.

9 George Tetanich with the North
10 Charleston Police Department.

11 Denver Lee Clayton with the
12 North Charleston Police Department.

13 Al Hallman with the North
14 Charleston Police Department.

15 Stacy Brogden, formerly with
16 North Charleston now with the
17 Charleston County Sheriff's Office.

18 Dusty Poole with the North
19 Charleston Police Department.

20 Patrick O'Neal with the North
21 Charleston Police Department.

22 Ray Wooten with the coroner's
23 office.

24 Clay Nichols. He is a medical
25 examiner, a former medical examiner for

1 Charleston County.

2 Joe Powell with the State Law
3 Enforcement Division.

4 Lisa Kizer with the State Law
5 Enforcement Division.

6 Dixie Justice.

7 Tamyra Curtis Gonzales.

8 Raymond Alan White.

9 C. Benjamin Norris with the
10 North Charleston Fire Department.

11 Kevin Cornell with the North
12 Charleston Fire Department.

13 Rochelle Killingbeck.

14 Billy King.

15 Susan Medin Johnson. She's a
16 nurse with Charleston Memorial
17 Hospital.

18 Karlyn Lothery, Lothery,
19 formerly a reporter for one of the
20 local stations and now working in
21 Washington, D. C.

22 Paul McKeithan.

23 Margaret Jenson White.

24 Joseph Daniel Perry.

25 Rose Marie Myers.

1 Steven Lambert with S. L. E. D.

2 And Major Kevin McHale with the
3 Charleston County Sheriff's Office.

4 THE COURT: Now, neither
5 Mr. Myers or his attorney have to take
6 any part in this case if they don't
7 want to because a person is presumed to
8 be innocent. As a matter of fact they
9 could sit right there and do nothing,
10 and it wouldn't lessen the obligation
11 of the State to convince twelve of you
12 of his guilt beyond a reasonable doubt.

13 But he might have some
14 witnesses. If he does, he'll tell you
15 those witnesses at this time, the same
16 thing as the solicitor did, and if they
17 happen to be in the courtroom I want
18 them to stand up briefly, please.

19 I want to know the same thing,
20 whether you're related by blood or
21 connected by marriage or connected in
22 any social or business with them.

23 Mr. Kulp.

24 MR. KULP: Thank you, your
25 Honor. If it please the Court, ladies

1 and gentlemen.

2 Guy Beasley.

3 THE COURT: And tell them who
4 they are, if they have something that
5 you can designate.

6 MR. KULP: Yes, your Honor.

7 Guy Beasley with Beasley
8 Mechanical Contracting. He's not in
9 the courtroom.

10 Mr. Ted Beasley as well.

11 Pat Rose, who is associated with
12 Old Dorchester Club.

13 Saul Kassin, a professor.

14 Michael Deguglielmo. Excuse me.
15 You'll understand when I spell it.
16 Deguglielmo, who is a scientist.

17 James Peacher, who is an
18 investigator.

19 Jim Springs, who is a
20 investigator. Investigator.

21 Jeb Stuart of the F. B. I.

22 Dr. Sandra Conradi.

23 Melissa Sims..

24 Max Myers, who's my client's
25 father, who's here in the wheelchair.

1 Donna Knudson.

2 Neal Knudson.

3 I believe that's everyone, your
4 Honor.

5 THE COURT: Thank you very much.

6 MR. KULP: Thank you, sir.

7 Dr. Gerald Hirst. He's seated
8 in the courtroom. I'm sorry. Thank
9 you.

10 And Dr. Melton. Dr. Terry
11 Melton, a scientist as well.

12 Thank you, your Honor.

13 THE COURT: Is any member of the
14 jury panel connected in any way with
15 law enforcement, blood or marriage,
16 business or social? If so, please
17 stand. Sometimes people have cousins
18 or uncles or sons or -- yes, ma'am.
19 Your name?

20 A JUROR: Pamela Johnson.

21 THE COURT: Miss Johnson. Yes,
22 ma'am.

23 A JUROR: I don't know if you
24 would consider it law enforcement. My
25 husband is a counselor for the Federal

1 Bureau of Prisons.

2 THE COURT: All right. Well,
3 that's, he's connected in some way.
4 The fact that he's a counselor for the
5 Federal Bureau of Prisons, would that
6 keep you from giving either side a fair
7 trial?

8 A JUROR: No.

9 THE COURT: Thank you,
10 Miss Johnson.

11 And your name?

12 A JUROR: Aundrea Salters. I
13 have a brother that's an officer at
14 downtown Charleston.

15 THE COURT: And your name is
16 Saulton?

17 A JUROR: Salters.

18 THE COURT: Salters.

19 A JUROR: Yes.

20 THE COURT: And you have a
21 brother that's with the Charleston
22 Police Department?

23 A JUROR: Yes, sir.

24 THE COURT: Is the Charleston
25 Police Department involved in this

1 case?

2 MR. DURANT: No, sir, your
3 Honor.

4 MR. KULP: No, sir.

5 MR. DURANT: Not the city police
6 department.

7 THE COURT: Thank you. The fact
8 that you have a brother who's with the
9 Charleston Police Department, would
10 that keep you from giving either side a
11 fair trial?

12 A JUROR: No, sir.

13 THE COURT: Thank you so much.

14 Now, this is a crime of
15 violence. Murder. There are a lot of
16 organizations dedicated to fighting all
17 kind of crimes including that, and I
18 just give you an example. Mother's
19 Against Drunk Driving. That's a pretty
20 common one that you hear about.

21 Persons Against Violent Crimes
22 D. A. R. Those type organizations.

23 Any member of the jury panel or
24 any member of your immediate family a
25 member of or contributor to any of

1 those organizations? If so, please
2 stand. Now, did somebody raise their
3 hand?

4 A JUROR: I did.

5 THE COURT: Yes, ma'am. And how
6 about just stand up. And your name,
7 please, ma'am?

8 A JUROR: Andrea Fordham.

9 THE COURT: Miss Fordham.

10 A JUROR: Yes. My mother
11 contributes to the -- what is it?
12 The --

13 THE COURT: Usually Mothers
14 Against Drunk Driving.

15 A JUROR: Parents of Murdered
16 Children.

17 THE COURT: Parents of Murdered
18 Children. Your mother contributes to
19 that. Was that because there was a
20 murder in the family?

21 A JUROR: My brother was
22 murdered.

23 THE COURT: All right. I hadn't
24 got to that question yet. All right.
25 I -- just stand up. I might as well

1 ask you while you're standing up.

2 The fact that your brother was
3 murdered, remember Mr. Myers sitting
4 there is just as innocent as you and I.
5 The fact that you have a brother, had a
6 brother who was murdered, would that
7 keep you from giving either side a fair
8 trial? Are you uncomfortable serving
9 on the jury because your brother was
10 murdered?

11 A JUROR: I really am.

12 THE COURT: All right. I'll
13 excuse you from this particular case,
14 but don't discuss it with any of the
15 attorneys, or with any of the jurors,
16 and I'll give you some instructions a
17 little later because I might need you
18 for the next case. Now thank you very
19 much.

20 Anybody else in that category?

21 (No response.)

22 Now, has any member of the jury
23 panel or any member of your immediate
24 family or close personal friend been a
25 victim of a crime of violence of this

1 type? If so, please stand. Or for
2 that matter arson? If so, please
3 stand.

4 All right. I'll take the
5 gentleman in the back. Your name?

6 A JUROR: Charles Buis.

7 THE COURT: Mr. Buis.

8 A JUROR: I think we have a case
9 in the solicitor's office now where my
10 son was killed by a drunk driver.

11 THE COURT: Okay. Your son was
12 killed by a drunk driver.

13 A JUROR: Correct.

14 THE COURT: The fact that you
15 got a case pending where your son was
16 killed by a drunk driver, would that
17 keep you from giving either the State
18 or Mr. Myers a fair trial?

19 A JUROR: At this point I'm not
20 sure, sir. I don't think so.

21 THE COURT: Are you
22 uncomfortable serving on this jury
23 because you have a child who was killed
24 by a driver under the influence?

25 A JUROR: Because of the

1 violence here, I believe so.

2 THE COURT: All right, sir.

3 I'll excuse you from this particular
4 case. Don't discuss it with the rest
5 of the jurors and I'll talk to you a
6 little later and give you some
7 instructions.

8 Anybody else in that category?

9 Ma'am, your name?

10 A JUROR: Arlene Mcree. I was a
11 victim of domestic abuse about thirty
12 years ago.

13 THE COURT: Domestic violence?

14 A JUROR: Yes.

15 THE COURT: All right. The fact
16 that you were a victim of domestic
17 violence, about thirty years ago, would
18 that interfere with you giving either
19 the State or Mr. Myers a fair and
20 impartial trial?

21 A JUROR: It would not, sir.

22 THE COURT: All right. Thank
23 you so much.

24 Does any member of the jury
25 panel have any type of current

1 relationship or past relationship for
2 that matter in any form, that is
3 whether you were employee or part-owner
4 or customer, of the Mill Inn Bar at
5 [REDACTED]? If so,
6 please stand. This is where the State
7 alleges this murder occurred.

8 (No response.)

9 How many of you have served on a
10 criminal case before? That's where
11 people are on trial for their life or
12 liberty.

13 And your name, please, ma'am?

14 A JUROR: Deborah Messner. I
15 served on a child abuse case in
16 Indiana.

17 THE COURT: You served on a
18 child abuse case. How about step here
19 for just a minute. Let me talk to you.
20 Solicitor, Mr. Kulp.

21 MR. KULP: Yes, sir.

22 THE COURT: I just want to get a
23 little information.

24 MR. KULP: Yes, your Honor.

25 (Whereupon, there was an

1 off-the-record bench conference.)

2 THE COURT: Anything else from
3 the State you want me to ask as far as
4 that proposed juror?

5 MR. DURANT: No, sir.

6 THE COURT: No. Defense?

7 MR. KULP: No, sir. Thank you.

8 THE COURT: Yes. Is there any
9 member of the jury panel for any reason
10 know of, know of any reason why you
11 could not give both Mr. Myers and the
12 State of South Carolina a fair and
13 impartial trial? If so, please stand.

14 (No response.)

15 Anything further from the State?

16 MR. DURANT: Nothing from the
17 State, your Honor.

18 THE COURT: Defense?

19 MR. KULP: No, sir, your Honor.
20 Thank you.

21 THE COURT: Now, members of the
22 jury -- do you have any objection to
23 the clerk drawing the names out of the
24 cylinder, State?

25 MR. DURANT: No, sir.

1 THE COURT: Mr. Kulp, you have
2 any objection to the clerk drawing the
3 names out of that cylinder?

4 MR. KULP: No, sir, your Honor.
5 Thank you.

6 THE COURT: Now, members of the
7 jury panel, when your name is called,
8 come up here, come right through that
9 door right there, that little swinging
10 door, and put your back to this table
11 right here and face the back of the
12 courtroom.

13 Yes, ma'am?

14 DIXIE JUSTICE: Your Honor, I
15 believe one of the jurors up here is a
16 friend of mine at my church and she
17 doesn't know this is our case.

18 A JUROR: That's me, sir.

19 THE COURT: All right. How
20 about standing up. Your name?

21 A JUROR: My name is Margaret
22 Lawrence.

23 THE COURT: Lawrence?

24 A JUROR: Lawrence. Margaret
25 Lawrence.

1 THE COURT: Yes, ma'am.

2 A JUROR: I go to church where
3 she goes to church.

4 THE COURT: All right. And the
5 lady who stood up, is that --

6 MR. DURANT: That's a witness,
7 your Honor. Dixie Justice.

8 THE COURT: All right. The fact
9 that she's a witness, would that keep
10 you from giving either side a fair
11 trial?

12 A JUROR: No, sir.

13 THE COURT: All right. Thank
14 you very much.

15 As I said, when you come up here
16 and you face the back of the courtroom
17 and you happen to look over at either
18 of those tables, boy, they going to be
19 talking about you, I tell you. They've
20 learned everything there is to know
21 about you, and they might say they want
22 you on this particular case. If they
23 do, just come over here and have a seat
24 in this box.

25 If they say they don't want you,

1 don't be embarrassed. I practiced law
2 for thirty years and I can tell you
3 they'll do it for every kind of reason,
4 so don't be embarrassed. Just have a
5 seat back in the courtroom.

6 All right. Ten and five.

7 THE COURT CLERK: Strikes are
8 ten and five. All right.

9 All right. Ladies and
10 gentlemen, if your name is called
11 please come forward and please bring
12 all of your belongings.

13 THE COURT: Anyone got a yellow
14 pad anywhere?

15 CLERK OF COURT: There's one
16 right in front of you, Judge.

17 THE COURT: Who's white stuff is
18 this? Is it yours?

19 MR. KULP: No, sir. We don't
20 use that.

21 THE COURT: Well, I'll steal it.
22 Go ahead.

23 Now, members of the jury panel,
24 one more thing. Yes, ma'am?

25 VICTIM'S SISTER: I'm Teresa's

1 sister and I just noticed that one, the
2 gentleman in the jury. I know him and
3 I don't know if he saw me.

4 THE COURT: All right. And your
5 name is what?

6 VICTIM'S SISTER: I'm her
7 sister, Millie.

8 THE COURT: Who's sister?

9 VICTIM'S SISTER: Teresa's.

10 MR. DURANT: The victim's
11 sister, your Honor.

12 MR. KULP: The victim's sister.

13 THE COURT: You're the victim's
14 sister and you know somebody on the
15 jury?

16 VICTIM'S SISTER: Yes, sir.

17 THE COURT: Who is he?

18 (Victim's sister indicates.)

19 THE COURT: All right. How
20 about --

21 A JUROR: My name is Warren
22 Alston.

23 THE COURT: Yes, sir. How do
24 you know, know him?

25 A JUROR: In the area.

1 THE COURT: Oh, they live in the
2 area.

3 VICTIM'S SISTER: In the
4 apartment.

5 A JUROR: Yes.

6 THE COURT: Well, I said -- it
7 was -- all right. He didn't understand
8 that. And as a matter of fact I
9 didn't, I didn't point that out. I
10 said business or social or personal.

11 VICTIM'S SISTER: Social.

12 THE COURT: And you know him
13 social?

14 MR. DURANT: She's not a
15 witness, your Honor. She's just, you
16 know, a member of the victim's family.

17 THE COURT: She's just related?

18 MR. DURANT: Yes, sir.

19 THE COURT: All right. And what
20 was your name, please, sir?

21 A JUROR: Warren Alston.

22 CLERK OF COURT: Juror number
23 one, your Honor.

24 THE COURT: All right. Number
25 one. All right.

1 And you all live in the same
2 apartment?

3 A JUROR: No. We don't live in
4 the same apartment. We live in the
5 same general area.

6 THE COURT: The fact that you
7 live in the same general area and you
8 know each other, would that keep you
9 from giving either side a fair trial?

10 A JUROR: No, your Honor.

11 THE COURT: All right. Thank
12 you, Mr. Alston. I appreciate you all
13 pointing those out because sometimes
14 jurors don't understand the questions
15 and even though I might not have said
16 it, it's good to know if there's any
17 connection. Both sides are trying to
18 find a jury that's totally impartial.
19 All right.

20 What's number one?

21 THE COURT CLERK: Juror number
22 one eighty-one, Seth Eyson. Right in
23 front of this table, sir.

24 What say you for the State?

25 MR. DURANT: Please present Mr.

1 Eyson.

2 THE COURT CLERK: What say you
3 for the defendant?

4 MR. KULP: Please excuse the
5 juror from the trial of this case.

6 CLERK OF COURT: Mr. Eyson,
7 you're excused from the trial of this
8 case. You can have a seat back in the
9 audience.

10 THE COURT: Now, I'm going to
11 ask you this because I wasn't in here
12 this morning when you told me about
13 what you told the court clerk what you
14 did for a living. I'm going to just
15 ask you what you do for a living. If
16 you -- if you're unemployed, tell me
17 the last place you worked and what you
18 did. And if you're retired, the same
19 thing. If you work for some company,
20 tell me the name of the company and
21 exactly what you do so I'll know a
22 little bit something about it.

23 CLERK OF COURT: Yes, sir.
24 Juror number seventy-six, Pamela
25 Johnson.

1 THE COURT: What number was that
2 first one?

3 CLERK OF COURT: The first one
4 was one eighty-one, Judge. On the
5 transfer list.

6 THE COURT: This is seventy-six?

7 CLERK OF COURT: This is
8 seventy-six, your Honor.

9 Your employment?

10 A JUROR: I'm a family nurse
11 practitioner with Trident Better Health
12 Systems.

13 CLERK OF COURT: What say you
14 for the State?

15 MR. DURANT: Please present Miss
16 Johnson.

17 CLERK OF COURT: What say you
18 for the defendant?

19 MR. KULP: Please excuse the
20 juror from the trial of this case.
21 Thank you, Miss Johnson.

22 CLERK OF COURT: You're excused
23 from the trial of this case.

24 Juror number one sixty-nine,
25 Patricia White.

1 A JUROR: Patricia White.

2 Presently I am retired and a homemaker.

3 I am retired as, from, as an

4 administrative assistant to U. S.

5 Rentals.

6 CLERK OF COURT: Thank you,

7 ma'am. No. Stay. Not yet.

8 What say you for the State?

9 MR. DURANT: Please present Miss
10 White.

11 CLERK OF COURT: What say you
12 for the defendant?

13 MR. KULP: Please present --
14 seat Miss White. Thank you.

15 CLERK OF COURT: Please have a
16 seat, Miss White, in the jury box to
17 the right.

18 Juror number one forty-six,
19 Jawana Stephens. Your employment for
20 the judge?

21 A JUROR: I'm employed with Cape
22 Romaine Fish and Wild Life. I'm a
23 biological science technician.

24 CLERK OF COURT: Thank you,
25 ma'am.

1 What say you for the State?

2 MR. DURANT: Please present Miss
3 Stephens.

4 CLERK OF COURT: What say you
5 for the defendant?

6 MR. KULP: Beg the Court's
7 indulgence one second.

8 THE COURT: Take your time, both
9 of you.

10 MR. KULP: Yes, sir.

11 THE COURT: State, you, and
12 Mr. Kulp.

13 MR. KULP: Please swear the
14 juror, your Honor. Seat the juror.

15 CLERK OF COURT: Miss Stephens,
16 please have a seat in the jury box.

17 A JUROR: Oh.

18 THE COURT: I don't know whether
19 that was relief or happiness.

20 MR. KULP: I don't think so,
21 your Honor.

22 CLERK OF COURT: Juror number
23 five, Elizabeth Babcock.

24 A JUROR: Sales manager for
25 Charlestown Management.

1 CLERK OF COURT: What say you
2 for the State?

3 MR. DURANT: Please present
4 Miss Babcock.

5 CLERK OF COURT: What say you
6 for the defendant?

7 MR. KULP: Please seat the
8 juror.

9 CLERK OF COURT: Miss Babcock,
10 please have a seat in the jury box.

11 Juror number one twenty, Ronald
12 Paxton.

13 A JUROR: I'm an adoption case
14 manager.

15 CLERK OF COURT: Thank you, sir.
16 What say you for the State?

17 MR. DURANT: Please present
18 Mr. Paxton.

19 CLERK OF COURT: What say you
20 for the defendant?

21 MR. KULP: Beg your indulgence.
22 Please seat the juror, your
23 Honor.

24 CLERK OF COURT: Mr. Paxton,
25 please have a seat in the jury box.

1 Juror number ninety-eight,
2 Steven McCart.

3 A JUROR: A minister for
4 children, youth.

5 CLERK OF COURT: Thank you, sir.
6 What say you for the State?

7 MR. DURANT: Please excuse Mr.
8 McCart from the trial of this case.

9 CLERK OF COURT: Mr. McCart, you
10 are excused from the trial of this
11 case. You may have a seat back in the
12 audience. Thank you, sir.

13 Juror number one fifty-six,
14 Angela Thompson.

15 A JUROR: My name is Angela
16 Thompson. I am an analytical chemist
17 for Metropolitan Pharmaceutical in
18 Philadelphia.

19 CLERK OF COURT: What say you
20 for the State?

21 MR. DURANT: Please present Miss
22 Thompson.

23 CLERK OF COURT: What say you
24 for the defendant?

25 MR. KULP: Please seat

1 Miss Thompson.

2 CLERK OF COURT: Miss Thompson,
3 please have a seat in the jury box.

4 Juror number eighty-eight, Diana
5 Lauderdale.

6 A JUROR: I'm a paralegal for
7 Andy Halio.

8 CLERK OF COURT: Thank you,
9 ma'am.

10 What say you for the State?

11 MR. DURANT: Please present
12 Miss Lauderdale.

13 CLERK OF COURT: What say you
14 for the defendant?

15 MR. KULP: Please seat
16 Miss Lauderdale. Thank you.

17 CLERK OF COURT: Miss Lauderdale,
18 please have a seat in the jury box.

19 Juror number forty-two, Sarah
20 Doctor.

21 A JUROR: I'm a cashier for
22 Eckerd Drug Store.

23 CLERK OF COURT: Thank you,
24 ma'am.

25 What say you for the State?

1 MR. DURANT: Court's indulgence.

2 Please present the juror.

3 CLERK OF COURT: What say you
4 for the defendant?

5 MR. KULP: Please seat the
6 juror, your Honor.

7 CLERK OF COURT: Miss Doctor,
8 please have a seat in the jury box.

9 Juror number one eighty-seven,
10 John VonLehe.

11 A JUROR: I'm a doctor at
12 Trident Family Medicine and a lawyer in
13 the Charleston County Bar.

14 CLERK OF COURT: What say you
15 for the State?

16 MR. DURANT: Please present
17 Dr. VonLehe.

18 CLERK OF COURT: What say you
19 for the defendant?

20 MR. KULP: Please excuse
21 Dr. VonLehe from the trial of this
22 case.

23 CLERK OF COURT: Thank you,
24 Doctor. You're excused from the trial
25 of this case.

1 Juror number one thirty-six,
2 Laverne Sherman.

3 MR. DURANT: What's the number
4 again, Mr. Clerk?

5 CLERK OF COURT: One thirty-six,
6 Laverne Sherman.

7 A JUROR: My name is Laverne
8 Sherman. I'm a supervisor for
9 housekeeping, Seabrook Island.

10 CLERK OF COURT: Thank you.
11 What say you for the State?

12 MR. DURANT: Please present Miss
13 Sherman.

14 CLERK OF COURT: What say you
15 for the defendant?

16 MR. KULP: Please seat
17 Miss Sherman.

18 CLERK OF COURT: Miss Sherman,
19 please have a seat in the jury box.

20 Juror number one forty-five,
21 William Steinmeyer.

22 SOLICITOR HOISINGTON: Can we
23 have the number again?

24 CLERK OF COURT: One forty-five.

25 A JUROR: I'm an account manager

1 for Coca Cola.

2 MR. KULP: I'm sorry, your
3 Honor. May I ask for whom?

4 THE COURT: Coca Cola.

5 A JUROR: Coca Cola.

6 CLERK OF COURT: What say you
7 for the State?

8 MR. DURANT: Please present
9 Mr. Steinmeyer.

10 CLERK OF COURT: What say you
11 for the defendant?

12 MR. KULP: Please present
13 Mr. Steinmeyer.

14 CLERK OF COURT: Mr. Steinmeyer,
15 please have a seat in the jury box.

16 Juror number seventy, Commelitha
17 Hicks.

18 MR. KULP: Mr. Clerk --

19 CLERK OF COURT: Number seventy.

20 MR. KULP: How many strikes?

21 CLERK OF COURT: You've only
22 used three. You have seven remaining.

23 A JUROR: I work for Wise and
24 Ways Heating and Electrical in the
25 payroll department.

1 CLERK OF COURT: Thank you,
2 ma'am.

3 What say you for the State?

4 MR. DURANT: Please present
5 Miss Hicks.

6 CLERK OF COURT: What say you
7 for the defendant?

8 MR. KULP: Please excuse
9 Miss Hicks from the trial of this case.

10 CLERK OF COURT: Thank you, Miss
11 Hicks. You're excused from the trial
12 of this case.

13 Juror number one forty-nine,
14 Jill Strasser.

15 MR. DURANT: That's one
16 forty-nine?

17 CLERK OF COURT: One forty-nine.

18 A JUROR: I'm a clinical
19 psychologist.

20 CLERK OF COURT: Thank you,
21 ma'am.

22 What say you for the State?

23 MR. DURANT: Please excuse Miss
24 Strasser from the trial of this case.

25 CLERK OF COURT: Miss Strasser,

1 you're excused from the trial of this
2 case.

3 MR. KULP: Mr. Clerk, would you
4 pause for one second?

5 CLERK OF COURT: Yes, sir.

6 MR. KULP: May I approach the
7 clerk, your Honor?

8 THE COURT: Sure.

9 (Mr. Kulp talks to the clerk.)

10 MR. KULP: Thank you, your
11 Honor.

12 CLERK OF COURT: Juror number
13 one seventy-six, Robert Biggerstaff.

14 A JUROR: My name is Robert
15 Biggerstaff. Retired school teacher
16 and athletic coach.

17 CLERK OF COURT: Thank you, sir.
18 What say you for the State?

19 MR. DURANT: Please present
20 Coach Biggerstaff.

21 CLERK OF COURT: What say you
22 for the defendant?

23 MR. KULP: Please excuse Coach
24 Biggerstaff.

25 CLERK OF COURT: Mr.

1 Biggerstaff, you've been excused from
2 the trial of this case.

3 The defendant has exhausted five
4 strikes. You have five strikes
5 remaining.

6 Juror number eleven, Shirley
7 Bing.

8 A JUROR: Charleston County Food
9 Services.

10 CLERK OF COURT: What say you
11 for the State?

12 MR. DURANT: Please present
13 Miss Bing.

14 CLERK OF COURT: What say you
15 for the defendant?

16 MR. KULP: Please excuse
17 Miss Bing from the trial of this case.

18 CLERK OF COURT: Miss Bing,
19 you've been excused from the trial of
20 this case.

21 Juror number one fifty-three,
22 Leila Tamblyn.

23 A JUROR: I'm a teacher.

24 THE COURT: What grade, by the
25 way?

1 A JUROR: I'm sorry?

2 THE COURT: What grade?

3 A JUROR: Second.

4 THE COURT: Thank you.

5 CLERK OF COURT: What say you
6 for the State?

7 MR. DURANT: Please present
8 Miss Tamblyn.

9 CLERK OF COURT: What say you
10 for the defendant?

11 MR. KULP: Please seat
12 Miss Tamblyn.

13 CLERK OF COURT: Miss Tamblyn,
14 please have a seat in the jury box.

15 Juror number one eighty-three,
16 Barbara Leary.

17 A JUROR: I'm an insurance
18 collector for Medical University.

19 CLERK OF COURT: What say you
20 for the State?

21 MR. DURANT: Please present
22 Miss Leary.

23 CLERK OF COURT: What say you
24 for the defendant?

25 MR. KULP: Please excuse

1 Miss Leary.

2 CLERK OF COURT: Miss Leary,
3 you've been excused from the trial of
4 this case.

5 Juror number sixty, David Goude.

6 A JUROR: I'm a systems
7 technician for Blackbaud.

8 THE COURT: Assistant what?

9 A JUROR: Systems technician.
10 Telephone.

11 CLERK OF COURT: What say you
12 for the State?

13 MR. DURANT: Please present Mr.
14 Goude.

15 CLERK OF COURT: What say you
16 for the defendant?

17 MR. KULP: Please seat
18 Mr. Goude.

19 CLERK OF COURT: Mr. Goude,
20 please have a seat in the jury box.

21 Juror number one seventy-eight,
22 Sandra Burnett.

23 Miss Burnett, can you tell us
24 your occupation?

25 A JUROR: Sandra Burnett and I'm

1 unemployed.

2 CLERK OF COURT: Thank you,
3 ma'am.

4 What say you for the State?

5 MR. DURANT: Please present
6 Miss Burnett.

7 CLERK OF COURT: What say you
8 for the defendant?

9 MR. KULP: Please seat
10 Miss Burnett.

11 CLERK OF COURT: Miss Burnett,
12 please have a seat in the jury box.

13 THE COURT: Two and one.

14 CLERK OF COURT: One alternate,
15 sir?

16 THE COURT: One alternate.

17 CLERK OF COURT: Strikes are two
18 and one.

19 Juror number eighty-nine,
20 Margaret Lawrence.

21 A JUROR: I am a bank teller at
22 Wachovia Bank.

23 CLERK OF COURT: Thank you,
24 ma'am.

25 What say you for the State?

1 MR. DURANT: Please present Miss
2 Lawrence.

3 CLERK OF COURT: What say you
4 for the defendant?

5 MR. KULP: Please excuse
6 Miss Lawrence.

7 CLERK OF COURT: Miss Lawrence,
8 you've been excused from the trial of
9 this case.

10 Juror number thirty-one, David
11 Carlton.

12 MR. DURANT: What's the number
13 again?

14 CLERK OF COURT: Juror number
15 thirty-one.

16 A JUROR: Self-employed web site
17 design.

18 CLERK OF COURT: What say you
19 for the State?

20 MR. DURANT: Please present Mr.
21 Carlton.

22 CLERK OF COURT: What say you
23 for the defendant?

24 MR. KULP: I'm sorry. You said
25 you were employed --

1 A JUROR: I'm self-employed as a
2 web site designer.

3 MR. KULP: Please seat Mr.
4 Carlton.

5 CLERK OF COURT: Please have a
6 seat, Mr. Carlton.

7 THE COURT: Two and one.

8 CLERK OF COURT: Second
9 alternate. Strikes are two and one.

10 Juror number one seventy-seven,
11 Thomas Buist.

12 A JUROR: I'm in commercial real
13 estate.

14 CLERK OF COURT: What say you
15 for the State?

16 MR. DURANT: Please present
17 Mr. Buist.

18 CLERK OF COURT: What say you
19 for the defendant?

20 THE COURT: When you say
21 commercial real estate, are you a
22 salesman or you own that?

23 A JUROR: I'm in sales,
24 industrial real estate.

25 CLERK OF COURT: Thank you, sir.

1 MR. KULP: Please seat

2 Mr. Buist.

3 CLERK OF COURT: Mr. Buist,
4 please have a seat in the jury box.

5 The jury is selected, your
6 Honor.

7 THE COURT: Thank you. Any
8 motion from the State regarding this
9 jury?

10 MR. DURANT: None from the
11 State, your Honor.

12 THE COURT: Defense?

13 MR. KULP: No, sir, your Honor.

14 THE COURT: All right. Thank
15 you.

16 Now, members of the jury, my
17 jury here, don't talk about the case
18 yet. I want to meet with the attorneys
19 for just a few minutes and find out a
20 little more about how long it will take
21 and what we have to do, so I'm going to
22 send you to your room and I'll explain
23 to you why you don't talk about the
24 case when I bring you out.

25 Now, Mr. Carlton, you are my

1 first alternate. It doesn't mean
2 you're any less important. It just
3 means if somebody became incapacitated
4 you would just take their place.

5 And, Mr. Buist, you're my second
6 alternate. You're just as important
7 also, because sometimes we have to use
8 all of you alternates.

9 So I'm going to send you to your
10 room.

11 If I have -- if we have any
12 smokers, don't smoke yet because I'll
13 find out whether I'm going to bring you
14 right back out. But I promise you -- I
15 used to smoke. I quit the hard way.
16 That's the doctor said quit. That's
17 what you mean by the hard way.

18 So if you need anything to make
19 you comfortable back there just ask the
20 bailiffs. But bear with me just a
21 moment or two.

22 Now members of the jury panel
23 not connected with this case, they have
24 a -- just follow the bailiff.

25 (The jury leaves the courtroom

1 at 11:23 a.m.)

2 THE COURT: They have a
3 telephone number already, don't they,
4 Mr. Clerk?

5 CLERK OF COURT: Yes, sir, they
6 do.

7 THE COURT: You all got a
8 telephone number. As the days go by
9 I'll know a little more about this case
10 and a little more about how long I
11 think it will take. So after six
12 o'clock tonight I want you to call that
13 telephone number you got and I'll have
14 a message for you. And that still
15 means you can't work the midnight
16 shift, though.

17 And we'll do what, do whatever I
18 say on the message. I might tell you
19 to come in. I might tell you to call
20 back tomorrow after six o'clock. But I
21 promise you I'll have some little
22 message for you.

23 But if you like to stay in the
24 courtroom, I'll fix the front seat for
25 you. And same thing goes if you got

1 any questions, I'll answer them for
2 you. But if you like to leave, leave
3 at this time.

4 (Whereupon, the members of the
5 jury panel not chosen for the trial are
6 excused.)

7 THE COURT: Now, I'm going to
8 take about -- I'm going to take about a
9 five-minute recess and I'm going to
10 come right back out. Let me talk to
11 the attorneys for just a minute.

12 MR. KULP: Yes, sir, your Honor.

13 (Whereupon, a recess is taken at
14 11:27 a. m..)

15 (The Judge enters the courtroom
16 at 12:01 p. m.)

17 THE COURT: Bring the jury in
18 for me, please, sir.

19 (The jury enters the courtroom
20 at 12:02 p. m.)

21 THE COURT: Where's Mr. Carlton?
22 You're a full time juror now. That
23 poor young lady, she almost had a heart
24 attack, I think. So don't you all get
25 any ideas, though, because I won't be

1 that easy on you.

2 But in any event we've got some
3 legal matters to take care of and
4 there's no use of you all hanging
5 around, so I'm going to excuse you for
6 the rest of the day.

7 Now it's important that you not
8 discuss this case. I told you all a
9 little bit about it when I was talking
10 to you. I told you to lay aside
11 anything you might have heard on the
12 outside or newspapers or T. V. or
13 anything, and I want to specifically
14 tell you there might be some items in
15 the newspaper, might be something in
16 T. V. or radio. Somebody might want to
17 talk to you. If somebody tries to talk
18 to you, tell them immediately "I'm on
19 this jury. Don't talk to me." If they
20 persist, you just see if you can get
21 their name and tell me about it and
22 I'll take care of it.

23 If something comes on the T. V.
24 or radio, newspaper, don't read it,
25 don't discuss this anybody, not even

1 your spouses or your girlfriends or
2 boyfriends and the reason of course is
3 that we want to decide this case on
4 just what goes on in this courtroom.

5 Now, as a matter of fact, back
6 there when you in your jury room don't
7 talk about it. And the reason for that
8 is the same reason. And I'll tell you
9 a little bit more about it when you get
10 here in the morning. I want you to
11 meet me here tomorrow morning at 9:30.
12 Don't hang around the courthouse.
13 Somebody might be talking about the
14 case. Come straight to your jury room
15 where -- he'll show you where you are,
16 and we'll have some kind of little
17 snacks back there. Sometimes the clerk
18 over here, sometimes he gets diet
19 sausage biscuits and ham biscuits and
20 those kind of things. Sometimes it's
21 just donuts and things. I think
22 sometimes they don't get up early
23 enough. Whatever. We'll have some
24 little snack for you back there and
25 some good coffee also. And meet me

1 here at 9:30 tomorrow morning.

2 Anything else from the State
3 you'd like me to tell the jury?

4 MR. DURANT: No, sir.

5 THE COURT: Defense?

6 MR. KULP: No, sir, your Honor.

7 THE COURT: In any event, I'll
8 tell you both the State and the defense
9 told me to turn you loose so you
10 wouldn't have to hang around today.
11 Have a good night. I'll see you
12 tomorrow morning, 9:30, and don't come
13 in the courtroom. We'll be talking
14 about this case.

15 And by the way, Ms. Babcock,
16 where are you? There you are. You
17 ever sat on a jury before?

18 JUROR BABCOCK: Un-un.

19 THE COURT: Well, I can train
20 you like I want you then. I'm going to
21 let you be my foreman.

22 JUROR BABCOCK: Oh, thank you.

23 THE COURT: You'll take the end
24 seat down here when you come out the
25 room tomorrow morning, and the rest of

1 you sit anywhere you want to.

2 (The jury leaves the courtroom
3 at 12:05 p. m.)

4 THE COURT: Now, for the record,
5 Solicitor and Mr. Kulp, there was some
6 question about whether or not we wanted
7 to continue the case so that you'd have
8 a chance to get some of the F. B. I.
9 down here because you had made some
10 motions which I had read and I was
11 sympathetic with you, but you have
12 decided after a recess that you'd like
13 to go forward with the case. But I
14 just want to tell you if there's
15 anything I can do that, to help you,
16 let me know. I don't mind making
17 telephone calls or any kind of rulings
18 you want that might assist you, so just
19 let me know.

20 MR. KULP: Yes, sir, your Honor.

21 THE COURT: Now let's see if we
22 can dispose of some of the issues that
23 we've got before us. Solicitor, why
24 don't we take yours first?

25 MR. DURANT: Well, your Honor,

1 I'd like to start with Mr. Ferarra
2 because he's here by virtue of a
3 subpoena issued by Mr. Kulp --

4 THE COURT: All right.

5 MR. DURANT: -- seeking --

6 THE COURT: Tell me about it.
7 What is it?

8 MR. DURANT: He is seeking a
9 personnel file from one of the
10 detectives in this case, Detective
11 Cumbee from --

12 THE COURT: Okay. And the State
13 objects to it. Well, as a matter of
14 fact, why don't you come on up here and
15 have a seat right here please, sir.

16 MR. DURANT: Actually --

17 THE COURT: Come right over here
18 for me please, sir.

19 MR. DURANT: Are you going to
20 swear him?

21 THE COURT: Yeah. I'm going to
22 swear him.

23 Come put your left hand on the
24 Bible and raise your right hand for me.

25

1 B E R N I E F E R R A R A ,
2 having been called as a witness out of
3 the presence of the jury, is duly sworn
4 and testifies as follows:

5 THE COURT: Your name, please,
6 sir.

7 THE WITNESS: Bernie Ferrara.

8 THE COURT: All right. Have a
9 seat there.

10 Can you afford two of those
11 microphones? All right.

12 And who are you employed by?

13 THE WITNESS: Your Honor, I'm
14 one of the county attorneys for
15 Charleston County. We received a
16 subpoena from the defense attorney and
17 I'm here to move to quash that
18 subpoena.

19 THE COURT: All right, sir.

20 All right, counselor.

21 Counselor, it's your --

22 MR. KULP: Yes, sir, your Honor.
23 We move to enforce the subpoena. I
24 spoke with Mr. Ferrara last week. We
25 had a conversation.

1 THE COURT: Well, tell me why
2 you need a personnel file in the first
3 place. What's the name of the officer?

4 MR. KULP: Lieutenant Melvin
5 Cumbee.

6 THE COURT: All right. I
7 read -- you can have a seat, Mr. Cumbie
8 (sic). Didn't I read -- he was one of
9 the investigating officers, was he not?

10 MR. KULP: Yes, sir.

11 THE COURT: And why do you need
12 his personnel file?

13 MR. KULP: One of the things
14 Mr --

15 THE COURT: That's his
16 employment personnel file kept by the
17 county?

18 MR. KULP: Yes, sir.

19 THE COURT: All right. Go
20 ahead.

21 MR. KULP: Knowing he would be a
22 witness --

23 MR. DURANT: Go ahead. I'm
24 sorry.

25 MR. KULP: Knowing he would be a

1 witness in the case we thought, we were
2 under information and belief, we're
3 seeking matters related to truth and
4 honesty for purposes of impeachment of
5 the witness who's, and as your Honor
6 knows any witness who takes the stand
7 puts his credibility in issue.

8 All right. In fact what Mr.
9 Ferrara suggested was he appear, he'll
10 let you review the file in camera to
11 see if in fact what we were seeking in
12 the subpoena was there. If it's not,
13 that's it. And if --

14 THE COURT: Well, just tell me
15 for the sake of argument, under what
16 law you are proceeding under?

17 MR. KULP: Under the --

18 THE COURT: You know, if a
19 person's been convicted of a crime you
20 can go into it. You've got access to
21 any, any crime files. But under what
22 theory you are asking for this?

23 MR. KULP: If there is something
24 contained therein which, which
25 indicates that there was a

1 misrepresentation of a fact in a
2 setting where that fact was material
3 and of significance.

4 THE COURT: Okay. Now what law
5 are you proceeding under?

6 MR. KULP: Under the rule of
7 evidence, your Honor, and I don't have
8 the number off the top of my head that
9 pertains to impeachment of the
10 credibility of witnesses.

11 THE COURT: Let's see what the
12 solicitor's got to say. Maybe you all
13 can teach me some law.

14 MR. DURANT: Your Honor, I got
15 the rule. It's 6-0-8 (b), your Honor,
16 and 6-0-8 (b), I don't know what's in
17 the file but I know Mr. Cumbee has not
18 been convicted of any crime and under
19 6-0-8 (b) if he's attempting to impeach
20 him with a specific act that's not a
21 conviction of a crime, he wouldn't be
22 allowed to use it to cross-examine him
23 anyway, because he's -- he's bound by
24 the witness's answer.

25 Secondly, your Honor, if there's

1 anything in the personnel file you're
2 talking about a different employer
3 twelve years ago. I believe 1989 was
4 his last date of employment with
5 Charleston County. He's with the North
6 Charleston Police Department now. And
7 are we going to start a precedent where
8 we're going to allow a defense attorney
9 to open up personnel files of every
10 police officer involved in a case?

11 THE COURT: You got some kind of
12 law you looking up over there?

13 MR. KULP: Well, I was just --

14 THE COURT: Frankly, I've been
15 in this business fifty years now and
16 this is the first time anything like
17 this has come up, and so I thought
18 maybe you teach me a little law.

19 MR. KULP: No, sir. I would
20 never --

21 THE COURT: Oh, well, no, sir.
22 I learn something every day.

23 MR. KULP: Well, your Honor, I'm
24 not going to challenge your knowledge
25 in this area and we'll move to -- we'll

1 consent to quash the subpoena. I
2 don't --

3 THE COURT: Thank you.

4 MR. KULP: Thank you.

5 THE COURT: Have a good trip.

6 THE WITNESS: Thank you, your
7 Honor.

8 MR. KULP: Thank you, Judge.

9 THE COURT: What else you got,
10 Solicitor?

11 MR. DURANT: Your Honor, we also
12 have an issue of third party guilt I'm
13 sure that's going to come up in this
14 case.

15 THE COURT: All right, sir.

16 MR. DURANT: And --

17 THE COURT: Well, we talked
18 about it a little bit in chambers. Mr.
19 Kulp said he might be able to summarize
20 it enough to where we could make a
21 ruling on it.

22 MR. DURANT: Yes, sir.

23 THE COURT: And he knows --

24 MR. DURANT: I'd be more than
25 happy to defer to Mr. Kulp.

1 THE COURT: He tells me he's
2 read the latest cases and, you know,
3 it's pretty hard to get information
4 like that in, so why don't you
5 summarize everything and then tell me
6 what law you're relying on and we'll,
7 we'll go down to the wire with it. Go
8 ahead.

9 MR. KULP: Yes, sir, your Honor.
10 And I'm well aware of that and in
11 reading that latest case we talked
12 about, it almost sounds like it has to
13 be enough evidence so that they
14 wouldn't have charged this fellow
15 anyway, if you look at it from that
16 standard.

17 But I do think I need to proffer
18 it into the record, if I could.

19 THE COURT: Take your time now.

20 MR. KULP: Yes, sir.

21 THE COURT: When I said take
22 your time, I don't really mean it.

23 MR. KULP: I know that, your
24 Honor. I was ignoring you only on that
25 issue.

1 You know, your Honor, I think
2 that what would make it very quick and
3 easy is as the officers I'm calling on
4 the other issue, on the confession
5 issue, come up I could simply ask them
6 questions quickly about that third
7 party issue and their answers would be
8 the proffer, and, and we can move on
9 from there --

10 THE COURT: Sure.

11 MR. KULP: -- and kill two birds
12 with one stone.

13 THE COURT: Well, as a matter of
14 fact I don't know of anything you
15 haven't asked -- what's going on before
16 can be a matter of record also.

17 MR. KULP: Yes, sir. With this,
18 this particular issue we haven't even
19 really broached yet and I think Bruce,
20 I mean Mr. Durant really wants to make
21 sure it doesn't affect --

22 MR. DURANT: Well, I mean, I
23 guess what I need to know is the scope,
24 you know, because he could go about it
25 a couple of ways. He could --

1 THE COURT: What is he --

2 MR. DURANT: He could --

3 THE COURT: We can make a ruling
4 on it before we, before we swear the
5 jury.

6 MR. DURANT: Yes, sir.

7 THE COURT: He wants to just do
8 it by adding other things, I suppose,
9 and anything additional you want to do
10 on your Jackson-Denno?

11 MR. KULP: Yes, sir.

12 MR. DURANT: He does -- but if
13 you want me to finish, the only other
14 issue I wanted to bring up at this
15 point is, and I don't know what you
16 sent him, but as you know there are,
17 there are some videos, there are some
18 videotaped statements made to the news
19 media in this case and I had previously
20 had those newscasts edited just to, to
21 include the portion that Mr. Myers was
22 on and I made Mr. Kulp a copy of that.
23 And this is assuming because I know Mr.
24 Kulp also has a motion pending to
25 suppress --

1 THE COURT: Well, you know these
2 things are pretty fast and all I had
3 was the video.

4 MR. DURANT: Well --

5 THE COURT: I don't have
6 anything that's been typed or anything.

7 MR. DURANT: Did you send him
8 the edited copy or the unedited copy?

9 MR. KULP: Unedited. I'm pretty
10 sure. But I thought we sent you the
11 transcript. We did. I remember
12 labeling it myself, your Honor, that we
13 sent you the transcript of the black
14 and white portion of the video. Should
15 be labeled there --

16 THE COURT: Oh. You talking
17 about the -- where the, the news --

18 MR. DURANT: The news part.

19 THE COURT: The media was asking
20 the questions?

21 MR. DURANT: Exactly, your
22 Honor.

23 THE COURT: Oh, yeah. I read
24 that.

25 MR. DURANT: Okay.

1 MR. KULP: Yes, sir. But also
2 we had transcribed the black and white
3 video narrative.

4 MR. DURANT: Okay.

5 THE COURT: I got that also.

6 MR. DURANT: Yes, sir. And my
7 point being is that we have, with
8 regard to the interviews by the T. --
9 by the T. V. personnel, there was an
10 unedited version and an edited version.
11 Now I had the -- I edited that version
12 to cut out all the extraneous
13 information that was coming from third
14 parties and comments made by police
15 officers.

16 THE COURT: I've got an unedited
17 copy.

18 MR. DURANT: Okay. If your
19 Honor decides that the tape is coming
20 in, I just wanted to make sure that I
21 was intending to introduce the edited
22 version and not the unedited version.

23 THE COURT: Have you had a
24 chance to see his edited version?

25 MR. KULP: I know exactly in

1 terms of what's coming in what he's
2 talking about, and I agree.

3 THE COURT: Okay.

4 MR. DURANT: Okay. And he's not
5 agreeing, of course, that that is
6 admissible.

7 THE COURT: That it would come
8 in.

9 MR. DURANT: Right. But I just
10 want to make sure that if you, if you,
11 if you rule that comes in, I was
12 intending to rely on the edited
13 version --

14 THE COURT: All right, sir.

15 MR. DURANT: -- that Mr. Kulp
16 has been provided with a copy of.

17 MR. KULP: We agree and he's
18 precisely right, your Honor.

19 THE COURT: All right. Anything
20 else?

21 MR. DURANT: I don't believe I
22 have anything else. Oh, excuse me. I
23 do.

24 There is going to be some
25 testimony during the trial of this case

1 as to a tumultuous relationship between
2 the defendant and the victim. Quite
3 frankly, every witness that I've talked
4 to about it has said that it was a
5 rocky relationship, it was a tumultuous
6 relationship. They were frequently
7 arguing. Blah, blah, blah, blah.

8 There's going to be a lot of
9 that type of testimony in the case, and
10 quite frankly I don't even think I can
11 sort it out.

12 I do not intend to introduce any
13 prior arrest or anything like that, but
14 there was a, an incident that occurred
15 at the bar where this, where the murder
16 took place where there -- I think two
17 witnesses saw it; one said he believed
18 it was a couple of months before; the
19 other one said I think it was maybe two
20 weeks or a month before -- where there
21 was an argument and the defendant
22 throttled the victim. Didn't get any
23 further than that. It was broken up.
24 But, but I was intending to introduce
25 that testimony in the case in chief.

1 So I just wanted to bring that
2 to the Court's attention and to Mr.
3 Kulp's attention.

4 MR. KULP: Is that documented in
5 what we've been provided in discovery
6 already or is that something else?

7 MR. DURANT: I think it's -- I
8 think, if I'm not mistaken, I think it
9 is in -- let me look.

10 THE COURT: How about let's find
11 out what he doesn't have that you have.

12 MR. DURANT: Well, I mean --

13 THE COURT: As a matter of
14 fact --

15 MR. DURANT: He has the
16 statement. Is it in Billy King? If it
17 would be in --

18 MR. KULP: I've got the Billy
19 King statement.

20 MR. DURANT: Okay. I don't know
21 if it's in his statement or not.

22 THE COURT: Look it up right
23 quick. Let's see where we stand so
24 he'll be able to respond to it.

25 MR. DURANT: Okay. Hold on.

1 Hold on. Let me look.

2 MR. KULP: Judge, we might be
3 able to look at that during lunch and
4 agree or, or resolve it.

5 THE COURT: All right, sir. He
6 said he'll look at during lunch.

7 MR. DURANT: And the other one
8 I'm sure, the other one I'm sure it's
9 not in the statement, your Honor,
10 because it was in, it was his mom --
11 the victim's mother, Dixie Justice, and
12 it was just something that she told me
13 about when we were sitting talking,
14 getting ready for trial, but it was --
15 number one, she never gave a written
16 statement to the police. She kind of
17 wrote out a statement of her own that I
18 gave to Mr. Kulp regarding what was
19 said to her when the defendant
20 confessed, but, but I don't think --
21 I'm not sure if that was in her
22 statement or not about seeing Wes
23 throttle --

24 THE COURT: Instead of waiting
25 to lunch time, do you have your hands

1 on what's in that, that you gave him?

2 MR. DURANT: I got, yes, sir, I
3 got both of those. I need to look at
4 them. I just don't know if that
5 particular incident is mentioned in the
6 statement, that's what I'm saying.

7 MR. KULP: We actually filed an
8 additional motion, your Honor, asking
9 him if in the result of preparing for
10 trial if there was any information that
11 might fall within the purview of
12 discovery, that he provide us with
13 that. So we wanted to make sure we
14 have that as well.

15 THE COURT: All right. Look at
16 it during lunch.

17 MR. DURANT: Well, my point is I
18 don't have any additional statements.
19 This is just something that came up in,
20 in conversations with witnesses. I
21 didn't take any additional statements,
22 and so like I said, if they're not in
23 these original statements that were
24 already given, given to Mr. Kulp, then
25 there's no new statements that I've

1 taken.

2 THE COURT: All right, sir.

3 MR. KULP: Well, it sounds like
4 to me he was going to tell me what it
5 is so that I could at least be ready.

6 MR. DURANT: I pretty much told
7 you. What it is, is that one incident
8 at the bar where they got in a squabble
9 and --

10 THE COURT: I think what he's
11 asking you to do is tell him what your
12 position is on it.

13 MR. KULP: Yes, sir. Well, our
14 position is, is that we would, we were
15 aware of the law pertaining to prior
16 animus of the parties in a case of this
17 nature. We probably be obligated to
18 move to exclude it because of its
19 prejudicial value.

20 THE COURT: And what would be
21 your position on that, Solicitor?

22 MR. DURANT: Well, you know, I
23 just think it goes --

24 THE COURT: It was about two
25 months?

1 MR. DURANT: According to one, I
2 think one witness said this, this
3 incident occurred in March, March the,
4 March the twelfth, thirteenth 1997. I
5 believe Miss Justice and I don't know
6 if she -- I believe she said it
7 occurred about a month before this, and
8 Mr. King who also saw it, I don't know
9 if it was the same. I think it was the
10 same incident, but his estimate on the
11 timeframe may have been like in the
12 winter or the beginning of the year,
13 maybe two or three months before this.

14 THE COURT: All right.

15 MR. DURANT: And I'm speaking,
16 I'm speaking from memory now, okay?

17 MR. KULP: And as he talks I
18 recall as well, Mr. Kings's statement
19 makes reference to some evidence that I
20 would submit is not admissible and that
21 is because as I recall Mr. King's
22 statement he says "the victim told me
23 that", and that would be barred by
24 hearsay.

25 MR. DURANT: No. I'm not trying

1 to put that --

2 MR. KULP: Okay. Just making --

3 MR. DURANT: Yeah.

4 MR. KULP: Apart from that, any
5 personal observations he had. We
6 think -- we'll clarify with the
7 solicitor, your Honor, but there was an
8 incident where both the deceased and
9 the defendant were arrested in August
10 of 1996.

11 THE COURT: Well, now he's not
12 going to bring that up.

13 MR. DURANT: I'm not trying --
14 no. I'm not trying --

15 THE COURT: That's the one where
16 they were making out, laying out there
17 on the grass or something?

18 MR. DURANT: Yeah.

19 THE COURT: They made -- you
20 stated to Judge -- whatever judge it
21 was at the time, that, that they blew
22 it out of context.

23 MR. KULP: Yes, sir.

24 THE COURT: Yes. All right.

25 MR. KULP: Right.

1 THE COURT: He's not going to
2 bring that up.

3 MR. DURANT: I'm not planning on
4 bringing up anything. This is a
5 completely separate incident I'm
6 talking about.

7 THE COURT: All right.

8 MR. KULP: That was my question.

9 MR. DURANT: Yeah.

10 MR. KULP: Okay.

11 THE COURT: I don't have a law
12 clerk or secretary. I don't need one.
13 But if you got something special as far
14 as law is concerned and you want to
15 give it to me, give it to me. If
16 you're not --

17 MR. KULP: Yes, sir.

18 THE COURT: All right. What
19 else you got?

20 MR. DURANT: That's pretty much
21 it, your Honor. And of course my
22 position on that is, is their
23 tumultuous relationship and together
24 with this incident goes to the very
25 heart of the case because he basically

1 killed her because he was an angry and
2 a jealous and a possessive man.

3 THE COURT: All right. Now,
4 counselor, what you got?

5 MR. KULP: One issue, your
6 Honor, was I have a motion here, I
7 don't know if he's in the courtroom
8 yet. We, we would move into Court to
9 allow the defendant to remain free on
10 bond during the trial of the case.
11 He's been released since December five,
12 1998 and he's --

13 THE COURT: He's out on a
14 hundred and twenty-five thousand
15 dollars bond. Will the bondsman stay
16 on the bond?

17 MR. KULP: Yes, sir. Is he here
18 yet? He should be here any minute,
19 your Honor.

20 THE COURT: I'll let him stay on
21 the bond, but just give me in writing,
22 I want a record that he'll stay on it.

23 MR. KULP: It's secured by his
24 parents' house and he's on electronic
25 monitoring.

1 THE COURT: Sure.

2 MR. KULP: Yes, sir. And then
3 the next issue is this, your Honor. As
4 you can see I've got some things to go
5 through and I don't know when you'd
6 want to break for lunch, but if you
7 could break early and could come back
8 early, then I could really be ready to
9 go and --

10 THE COURT: Whatever.

11 MR. KULP: And kind of move on.

12 THE COURT: We can break for
13 lunch now if you want to.

14 MR. KULP: Yes, sir. That would
15 be wonderful. And I'd also move --

16 THE COURT: And you want to come
17 back when?

18 MR. KULP: Whenever the Court
19 pleases. 1:20?

20 THE COURT: Sure.

21 MR. KULP: Yes, sir.

22 THE COURT: Is that all right,
23 Solicitor?

24 MR. DURANT: It's up to you,
25 your Honor. Do you --

1 THE COURT: Well, let's just
2 take thirty minutes then.

3 MR. KULP: Pardon me? We got to
4 meet during lunch and eat, your Honor.

5 THE COURT: How about, how about
6 1:30?

7 MR. DURANT: That's where we get
8 all our work done is during lunch,
9 Judge.

10 MR. KULP: Yes, sir.

11 THE COURT: And 1:30?

12 MR. KULP: Yes, sir.

13 THE COURT: Is that all right?

14 MR. DURANT: That's fine with
15 me.

16 MR. KULP: And when we come back
17 we'd move to invoke the rule to
18 sequester the witnesses, your Honor, if
19 the Court please.

20 MR. DURANT: You're not --

21 THE COURT: Fact witnesses only.
22 You're not talking about experts?

23 MR. KULP: No, sir. Just fact
24 witnesses. Yes, sir.

25 MR. DURANT: Just so I'll have a

1 clear understanding as to who he's
2 talking to, police officers?

3 MR. KULP: Yes, sir. And we
4 know that Mr -- Detective Clayton is
5 the case officer or detective and he
6 has, under the rule, the right to be
7 here.

8 MR. DURANT: Okay. How about
9 all the civilian witnesses?

10 MR. KULP: No.

11 MR. DURANT: So you're talking
12 about primarily the police officers
13 because --

14 MR. KULP: I think if any -- to
15 be safe, if anyone is a potential
16 witness for the State in the case,
17 rather than having to decide if that's
18 an issue that, that it might be better
19 just to ask them to, if they are
20 potential witnesses for the State, to
21 be excluded from the proceeding.

22 THE COURT: Fact witnesses.

23 MR. KULP: Yes, sir. Fact
24 witnesses.

25 MR. DURANT: Are we talking --

1 MR. KULP: Lay or police.

2 MR. DURANT: Okay. And I would
3 assume that would be mutual.

4 THE COURT: Oh, yes.

5 MR. DURANT: Now, you understand
6 that means his, his mother, the
7 defendant's mother is in all likelihood
8 going to be a witness in this case,
9 too.

10 MR. KULP: That's fine, your
11 Honor.

12 THE COURT: All right.

13 MR. KULP: That's fine.

14 THE COURT: All right. Be sure
15 each of you notify your witnesses
16 what's going on so that -- and don't
17 let them talk. Anything else?

18 MR. KULP: No, sir.

19 THE COURT: All right. Court's
20 in recess until 1:30. Have a good
21 lunch.

22 MR. KULP: Thank you, Judge
23 Brown.

24 THE DEFENDANT: Thank you, your
25 Honor.

1 THE COURT: Is the bondsman on
2 his way up here?

3 MR. KULP: Yes, sir.

4 KATY KULP: Yes, sir. We called
5 his office. He should be on his way.
6 I could double-check.

7 THE COURT: Why don't you
8 just -- you want me to turn him loose
9 in your company then until --

10 MR. KULP: Yes, sir. Or you
11 could have him remain in the courtroom
12 or as the bailiffs see fit.

13 THE COURT: All right. Well, if
14 you going to guarantee his presence --

15 MR. KULP: All right. I'll take
16 responsibility, your Honor.

17 THE COURT: All right. Bring
18 him back here, but give me something in
19 writing on the record for the rest of
20 the week. Okay.

21 MR. KULP: As soon as we start
22 up at 1:30, your Honor, I'll have the
23 bondsman address the Court.

24 THE COURT: In the meantime he's
25 in your custody.

1 MR. KULP: Yes, sir.

2 THE COURT: Yes. All right.

3 All right. Court's in recess.

4 MR. DURANT: Your Honor, one
5 other thing before -- would that
6 include Miss Justice as well, the
7 victim's mother? Or would she be
8 covered by the victim's bill of rights?

9 THE COURT: Well, gosh. Do you
10 know what her testimony is? I don't
11 want you to give away what your trial
12 strategy is.

13 MR. DURANT: You've heard -- you
14 know what her testimony is already,
15 your Honor, is in that Jackson V. Denno
16 transcript, or at least most of it.
17 It's going to be regarding the
18 admission that Mr. Myers made after his
19 confession to the police. And,
20 secondly, if we get into that issue I
21 was telling you about where, where you
22 know she had seen Wes and Teresa in
23 that altercation --

24 THE COURT: She would be covered
25 under that statute so she'd be a

1 witness just like everybody else. All
2 right.

3 MR. DURANT: So she would be
4 excluded is what you're saying? At
5 least --

6 THE COURT: She would not be
7 excluded.

8 MR. DURANT: Okay.

9 THE COURT: All right.

10 MR. KULP: Thank you, your
11 Honor.

12 MR. DURANT: Thank you, your
13 Honor.

14 (Whereupon, a recess is taken at
15 12:26 p. m..)

16

17

18 AFTERNOON SESSION

19 (The Judge enters the courtroom
20 at 1:40 p.m.)

21 THE COURT: Solicitor and Mr.
22 Kulp, did you get a chance to get
23 together on -- you were going to look
24 at something during the lunch hour.

25 MR. DURANT: In terms of what

1 we're talking about the evidence --

2 THE COURT: Yes, sir.

3 MR. DURANT: -- the incident at
4 the bar, I've basically told Mr. Kulp
5 what I intend, what testimony I intend
6 to introduce through those witnesses
7 and I'll leave it up to him as to
8 whether or not he's objected or not.

9 THE COURT: All right, sir.

10 MR. KULP: Informally, your
11 Honor, we did take care of that.

12 THE COURT: All right.

13 MR. KULP: If the Court please,
14 on that issue of bond, your Honor, I
15 didn't think of it but in fact my
16 client's father, Mr. Max Myers, is the
17 surety for his house on the bond and
18 will continue to do so. He's here in
19 the courtroom there, seated on the
20 front row.

21 THE COURT: All right, sir. You
22 want to stay on the bond?

23 MR. MYERS, SR.: Yes, sir.

24 THE COURT: All right. Thank
25 you.

1 MR. KULP: And as well we did
2 bring Mr. Robinson, who has his
3 electronic monitoring. That will
4 continue as well. He's here in the
5 courtroom, your Honor. He was nice
6 enough to come by to make that
7 representation to the Court.

8 THE COURT: All right.

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

10 THE COURT: What else we got
11 pending now?

12 MR. DURANT: I believe I was
13 through, Judge, and we're going to
14 shift over to Mr. Kulp now.

15 THE COURT: All right, Mr. Kulp.

16 MR. KULP: Thank you, your
17 Honor. We call Detective Clayton to
18 the stand, please, sir.

19

20

21

22

23

24

25

Clayton -- Direct

1 D E N V E R L E E

2 C L A Y T O N, I I, having been called
3 as a witness out of the presence of the
4 jury, is duly sworn and testifies as
5 follows:

6 THE COURT: And this is
7 supplemental testimony on the
8 Jackson-Denno?

9 MR. KULP: Yes, sir.

10 THE COURT: All right, sir.

11 MR. DURANT: I would hope so.

12 THE COURT: All right, sir. Now
13 don't forget, I've read in detail. As
14 a matter of fact, I read your
15 Jackson-Denno hearing two times. Both
16 days. So go ahead.

17 MR. KULP: Yes, sir. Thank you,
18 your Honor. May it please the Court.

19

20

21 DIRECT EXAMINATION BY

22 MR. KULP:

23 Q Detective Clayton, are you -- in
24 this particular case you are the case
25 detective --

clayton -- Direct

1 A Yes, I am.

2 Q -- would be a fair description
3 of your role?

4 And in this case, and just like
5 the judge said, I'm not going to certainly
6 rehash all of your testimony or --

7 THE COURT: As a matter of fact
8 you can lead him a little if you want
9 to, if you want to summarize anything.

10 MR. KULP: Yes, sir.

11 THE COURT: From the old
12 testimony.

13 MR. KULP: I see. Well, and
14 I've in fact I think provided a copy of
15 the transcript in advance as well for
16 the witnesses to review. Thank you,
17 your Honor.

18 Q First off, I'd like to ask you
19 during the period of time of your contact
20 with Mr. Myers, that being the thirteenth,
21 fourteenth, and the fifteenth --

22 A I never seen him on the
23 thirteenth.

24 Q I'm sorry. Thanks for that
25 correction. But throughout the period of

Clayton -- Direct

1 investigation, I mean the incident was
2 detected on the thirteenth and responded to
3 and then you saw him on the fourteenth and
4 saw him on the fifteenth?

5 A Yes, sir.

6 Q When were any photos related in
7 any way to the crime shown to Mr. Myers?

8 A The only thing I know about any
9 photos was on, on that Saturday where we
10 showed a photo of the victim and also on
11 Friday there was some photos that were
12 sitting on Lieutenant Cumbee's desk just
13 before we did the polygraph, that was
14 sitting out of its package on top of the
15 desk. I don't know if it was the photos
16 that -- from this case or not. I couldn't
17 see them at my vantage point.

18 But there was some photos that
19 was sitting out on the desk.

20 Q Did you testify about those
21 photos during the Jackson V. Denno hearing
22 last year, the photos that you just referred
23 to as being on --

24 A I don't believe you asked me any
25 questions about that.

clayton -- Direct

1 Q Okay. Beg the Court's
2 indulgence for one second.

3 Where were you when these photos
4 were on Lieutenant Cumbee's desk?

5 A I was -- I think I just came
6 back from trying to call Lieutenant McHale
7 at Charleston County and I saw some photos
8 sitting on Lieutenant Cumbee's desk right in
9 front of the defendant.

10 Q So Mr. Myers was sitting right
11 there?

12 A Yes. They were about six or
13 eight inches in front of the -- like in the
14 middle of the desk of Lieutenant Cumbee's.
15 I didn't see the photos. I couldn't tell
16 what the photos were, but they were sitting
17 in front of the defendant.

18 Q How many?

19 A There were a stack of them. I
20 don't know how many.

21 Q And did you later find out that
22 those, that stack of photos in fact related
23 to this case?

24 A No, sir.

25 Q So still to this day you don't

Clayton -- Direct

1 know if those photos related to this case?

2 A No, sir.

3 Q Since the Jackson V. Denno
4 hearing have you discussed with any other
5 person whether or not Mr. Myers was shown
6 any photos by anybody associated in any way
7 with this case on Friday?

8 A When we were preparing for the
9 case, Mr. Durant asked us -- asked these
10 questions right here. I don't know anybody
11 else's -- as far as any photos or anything
12 like that was found on the desk or seen on
13 the desk.

14 Q Do you have those photos with
15 you today?

16 A What photos?

17 Q I don't mean -- it's not a trick
18 question. Do you have any photos associated
19 with the case with you today, a collection
20 of photos?

21 A Yes, I do. But they're the
22 large photos, the large photos, the ones
23 that on Saturday when we, when we came in,
24 it was one photograph that's in the record
25 right now, but there's other photos that's

clayton -- Direct

1 inside the package there.

2 Q Let me just for a minute focus
3 on the small photos in the case.

4 A Okay.

5 Q Do you have those with you here
6 today?

7 A I didn't see those photos. I
8 couldn't see -- I couldn't say if those are
9 the photos.

10 Q I know, and I apologize. I
11 didn't mean it to be a trick question
12 because I know you said you didn't see
13 those, but do you have the small photos that
14 were associated with this case with you here
15 today?

16 A No, sir, I don't believe I do.

17 Q Where are they?

18 MR.. DURANT: I think I have
19 them.

20 MR. KULP: You have them?

21 MR. DURANT: Yeah. You're
22 talking about the crime scene?

23 MR. KULP: That stack. Yeah.

24 MR. DURANT: I've got several.

25 Q Do you know of any reason -- no.

Clayton -- Direct

1 So it was your testimony that to the best of
2 your knowledge Mr. Myers was not shown any
3 small photos of the crime scene or of
4 anything, the autopsy or anything, on that
5 Friday, to your knowledge?

6 A To my knowledge, no.

7 Q Okay. And many how many sets of
8 those photos do you have, of the prints from
9 the negatives, taken by any person at the
10 criminal scene or the autopsy?

11 A I don't have any idea.

12 Q You don't know?

13 A No, sir.

14 Q Okay. Well, let me hand you --
15 may I approach the witness, your Honor?

16 THE COURT: Yes, sir.

17 Q Not marked, but what the
18 solicitor has handed me for the record is
19 this, several small brown clasp envelopes
20 and a few others. Is that your handwriting?

21 A No, sir, it's not.

22 Q Do you recognize these as being
23 associated with this case, both the crime
24 scene and the autopsy photos?

25 A You want me to look through them

Clayton -- Direct

1 and see if these --

2 Q Sure. Without touching the
3 photos. Just the edge, please. Or you can
4 look in the containers.

5 A I imagine they are. I don't
6 know.

7 Q Okay. Do you know of any other
8 copies of photographs, small photographs,
9 that relate to this case in any way that are
10 in existence and where they are, if there
11 are any?

12 A No, sir.

13 Q All right.

14 A I don't know any others that I
15 could think of.

16 Q All right. So to your
17 knowledge, these photographs have never been
18 examined by Mr. Myers. How about on that
19 Saturday, small photos?

20 A No, sir.

21 Q Okay. So there's no reason in
22 the world why these photos should bear the
23 fingerprints, latent fingerprints of
24 Mr. Myers. Right?

25 A That's right, as far as what I

Clayton -- Direct

1 know.

2 MR. KULP: Just like to use this
3 as a Court exhibit.

4 MR. DURANT: Your Honor, I need
5 those.

6 MR. KULP: I know. But they're
7 going to be just right there for the
8 time being.

9 Q Now --

10 THE COURT: Well, do you want to
11 get them marked?

12 MR. KULP: Yes, sir.

13 THE COURT: I imagine the
14 solicitor is going to use those at the
15 trial.

16 MR. DURANT: Well, I may use
17 some of these at trial, your Honor. I
18 mean --

19 MR. KULP: Well, I don't want to
20 take them out of the pictures. It's
21 just for purposes of identifying them.
22 We may want to have them tested. We
23 have a latent fingerprint examiner on
24 hold to examine those photos to see if
25 they do in fact contain Mr. Myers --

clayton -- Direct

1 MR. DURANT: Your Honor, with
2 all due respect --

3 THE COURT: I'll just leave them
4 laying right there. I'm not going to
5 mark them for the time being.

6 MR. KULP: Yes, sir.

7 MR. DURANT: But, your Honor,
8 just so you know --

9 THE COURT: I haven't ruled yet.

10 MR. DURANT: Those photos have
11 been in my possession for months and
12 they have been handled by everybody in
13 the world. They're not going to have
14 any --

15 THE COURT: Like I say, I'm not
16 making any ruling at this time.

17 That's --

18 Q All right. Now you testified
19 that -- well, let me ask you this. On
20 Saturday, how many eleven-by-fourteen
21 photos, how many eleven-by-fourteen
22 enlargements or blow-ups were shown to
23 Mr. Myers on that Saturday, the fifteenth of
24 March, 1997?

25 A I've only seen one that was

Clayton -- Direct

1 shown to him.

2 Q Now, how many are in existence?

3 A I don't know. Six, eight,
4 something like that. I'm not sure.

5 Q And when did you have them blown
6 up to the size of eleven-by-fourteen?

7 A I don't know. I didn't, I
8 didn't have them blown up.

9 Q Where are they now?

10 A I believe they're right there in
11 my case file.

12 Q May I -- may I see them?

13 MR. DURANT: Are these them?

14 THE WITNESS: Yes. I believe
15 so.

16 MR. DURANT: Both of them or
17 just one? Both, both packages or just
18 one?

19 THE WITNESS: I'm not sure.

20 THE COURT: Hand them both to
21 him and let's, let him give him what he
22 wants.

23 THE WITNESS: I'm not sure. I'm
24 not sure which one it was.

25 Q Which one it was that what?

Clayton -- Direct

1 A I don't know -- what it is, is
2 when he came in there I believe that we
3 had -- when Lieutenant Cumbee came in there,
4 there was only one of these I believe.

5 Q Okay. Well, do you know when
6 the other four appeared?

7 A I don't know if they actually
8 were shown or anything like that as far as
9 any. . .

10 Q Excuse me. Okay. Well, tell
11 the judge what you do remember about the
12 photos that were shown to him.

13 THE COURT: He says it was one
14 photo.

15 MR. KULP: Okay.

16 THE COURT: He just testified to
17 that a minute ago.

18 MR. KULP: All right. I'm
19 sorry.

20 THE COURT: Now do you want him
21 to try to pick it out if it's there?

22 MR. KULP: No. It's actually in
23 evidence.

24 MR. DURANT: It's in the record,
25 your Honor.

Clayton -- Direct

1 THE COURT: Fine.

2 Q Okay. And so it's your
3 testimony that that Saturday no other
4 eleven-by-fourteen photos were shown to
5 Mr. Myers?

6 A Yes. But I want, I want to
7 state something else.

8 Q Okay.

9 A The photos were put out in front
10 of the defendant on the desk, okay, by
11 Lieutenant Cumbee. Okay. They were like in
12 a stack and the only photograph that I know
13 about is the one of Teresa Haught, the
14 facial thing I guess. I believe it was an
15 autopsy photo. I'm not sure what it was.

16 Q Okay. And you were there at the
17 time?

18 A Yes, sir.

19 Q And you never saw -- I mean you
20 described it as a stack.

21 A They were like, he took them
22 out, they were inside the manila folder that
23 you're looking at, and laid down in front of
24 the, the defendant.

25 Q And did Mr. Myers touch any of

Clayton -- Direct

1 them?

2 A I believe he did. The
3 photograph that's in the record.

4 Q So he -- thanks -- and he didn't
5 touch any of the other enlargements to your
6 knowledge?

7 A I mean he may have if he's
8 putting his hands down on them. They were
9 stacked on top of each other. But to my
10 knowledge, no.

11 Q So when they were stacked on top
12 of each other they weren't spread out at
13 all?

14 A No, sir. Not that I recall.

15 Q Okay. But he might have -- he
16 might have touched one of the other ones
17 besides the one that was introduced?

18 A I don't know how many
19 photographs he touched.

20 Q All right. Were you in on the
21 idea to get enlargements made of these
22 gruesome crime scene photos?

23 A No, sir.

24 Q Okay. Who was?

25 A I don't know, sir. I mean I

Clayton -- Direct

1 know it was probably discussed the night
2 before what photographs, what's going to be,
3 you know, taken there, whatever, but I don't
4 know.

5 Q Okay. Well, precisely, the
6 discussion the night before, being the
7 fourteenth on Friday night, which we didn't
8 get into in the Jackson V. Denno hearing
9 before in terms of the plan to interrogate
10 and get a confession from Mr. Myers on
11 Saturday, that discussion included a
12 discussion of which eleven-by-fourteen
13 photographs to have blown up to put in front
14 of him. Correct?

15 A No, sir. Not that I remember.

16 Q Well, what did you -- did you
17 just -- I'm sorry. Did you just say that
18 there may have been a point of discussion
19 the night before?

20 A No, sir. I'm saying that we
21 discussed the night before how we was going
22 to approach Mr. Myers about the hair.
23 That's what I was talking about.

24 Q So you did not discuss which
25 photos would be selected to be blown up? I

Clayton -- Direct

1 mean --

2 A That's what I just said earlier,
3 that we didn't discuss that.

4 Q Okay. Okay. Now, when did the
5 interrogation of Mr. Myers begin?

6 A The interrogation began
7 approximately twelve o'clock on Saturday.

8 Q Okay. And it did not begin
9 prior to then?

10 A No, sir.

11 Q Okay. When did it end on
12 Saturday, to your recollection?

13 A Approximately four o'clock.
14 Somewhere around there.

15 Q All right. If it began at
16 twelve o'clock, when did Mr. Myers as you
17 recall say the turning-point phrase, quote,
18 from the report, I must have did it then?
19 About what time was that?

20 A It was shortly after we came
21 into the office, probably ten minutes. You
22 know, we came in there. We sat down. We
23 talked to him a little bit. And then when
24 Lieutenant Cumbee came in there and said
25 that the hair belonged to him.

Clayton -- Direct

1 THE COURT: See here, Mr. Kulp,
2 I thought this was going to be new
3 testimony.

4 MR. KULP: Well, it is because
5 this is news to me. I didn't know --
6 I'm looking at the transcript but I
7 think the testimony --

8 THE COURT: Well, I read the
9 transcript and you asked and it was
10 answered what time they brought him
11 there and what time he said it or
12 approximately what time he said it and
13 what time they left. All of that's in
14 my transcript.

15 Q Okay. Beg the Court's
16 indulgence just one second, your Honor.

17 THE COURT: And incidentally I
18 didn't receive a pretrial brief. Did
19 you fax it?

20 MR. KULP: No. I mentioned that
21 to the solicitor, your Honor.

22 THE COURT: That's okay.

23 MR. KULP: Yes, sir.

24 THE COURT: And I tell you for
25 what it's worth, Solicitor, a daughter

Clayton -- Direct

1 of mine who works for the post office
2 called me a few minute ago, she was at
3 my wife's house, to tell me those
4 overnight deliveries at Federal Express
5 you gave on Thursday, to deliver to me
6 on Friday, they just got to my house
7 this morning at eleven o'clock. And
8 she tells me, because she works for the
9 post office, that it was probably
10 pretty costly and if you'll go to the
11 post office, they'll give you your
12 money back.

13 MR. DURANT: Thank you, your
14 Honor.

15 THE COURT: But I haven't got
16 any of your stuff, so anything you need
17 for me to have, you better give it to
18 me.

19 MR. DURANT: The only thing I'd
20 sent is this transcript, your Honor,
21 and I'm assuming that you got that from
22 Mr. Kulp, thank God.

23 MR. KULP: Was it positively,
24 absolutely, your Honor, overnight?

25 Q Do you have a copy of the

Clayton -- Direct

1 transcript from the Jackson V. Denno hearing
2 there with you?

3 A No.

4 THE COURT: I have it if you
5 need it.

6 Q All right. Well, page one
7 twenty-two, let me ask you this, if you
8 refer to that for recollection.

9 THE COURT: Here you go.

10 Q Do you recall testifying in that
11 prior proceeding in this case that you
12 arrived at the police department with
13 Mr. Myers on that Saturday about 10:30?

14 A Uh-huh.

15 Q Okay. And so from 10:30 until
16 this time you mentioned of twelve o'clock,
17 no interrogation took place?

18 A Okay.

19 Q That's just what I'm just
20 simply --

21 A What page was that?

22 Q I'm sorry. One twenty-two. At
23 the bottom. Roughly?

24 A Okay. Yes, sir. We talked to
25 him.

Clayton -- Direct

1 Q For about an hour and a half
2 before twelve o'clock?

3 A Yes, sir, we did.

4 Q But that wasn't an
5 interrogation?

6 A No, sir, it was not.

7 Q Okay. Let me ask you this. The
8 day before, Friday, when you took Mr. Myers
9 down to Mr. McHale at the polygraph room,
10 did you stand out -- the tape we've now seen
11 and reviewed. Were you standing outside of
12 that room, watching what transpired on the
13 television monitor?

14 A Yes, sir.

15 Q Okay. When did you tell the
16 solicitor about the recording of that
17 videotape?

18 A The recording of?

19 Q The existence and the fact that
20 Mr. Myers --

21 A I called when Amie Clifford was
22 in office, I told her about that videotape.

23 Q When did you tell Mrs. Clifford
24 about the videotape?

25 A I can't recall.

clayton -- Direct

1 Q Okay. How far -- how long after
2 the case broke in 1997 did you tell her
3 about the videotape?

4 A I'm not sure.

5 Q Did she ever look at it? Did
6 you ever show it to her?

7 A I, I can't recall.

8 Q You don't recall that?

9 A No, sir.

10 Q You watched the tape outside the
11 room on a monitor?

12 A Yes, sir.

13 Q As it was being made?

14 A Yes, sir.

15 Q With Mr. Hallman?

16 A I don't remember if Hallman was
17 there or somebody else was there. I can't
18 recall.

19 THE COURT: You talking about
20 you at the room with the two-way glass,
21 one-way glass?

22 THE WITNESS: No, sir. It was
23 a, it was a monitor. It was a screen
24 on -- like a camera.

25 THE COURT: Okay. All right.

Clayton -- Direct

1 THE WITNESS: And it was on a
2 monitor on, in, in another room.

3 Q Fine. And you knew it was being
4 videotaped at the time?

5 A Yes, sir, I did.

6 Q Through a hidden camera?

7 A I don't know if it was hidden.
8 I believe it was sitting right on top of his
9 desk.

10 Q Did Mr. Myers say anything to
11 you that day, the fourteenth, about the fact
12 that he knew he'd been videotaped while with
13 Mr. McHale?

14 A No, sir.

15 Q He didn't know he was being
16 videotaped, did he?

17 A No, sir, he didn't.

18 Q And -- okay. That's all I'm
19 trying to establish.

20 Now, that day when you went down
21 to take him, and I'm focussing on the issue
22 of interrogation, when you went down to take
23 him that day for the polygraph examination,
24 you met with Mr. McHale before he met with
25 Mr. Myers, didn't you?

Clayton -- Direct

1 A Yes, I did.

2 Q And you told him what you wanted
3 and about the case, didn't you?

4 A Yes, sir. I told him about the
5 case, about, you know, the information from
6 the case, yes.

7 Q And he never had a polygraph
8 exam.

9 A No. He never had a polygraph
10 exam.

11 Q You told Mr. McHale, did you
12 not, details and facts and circumstances
13 about the case in the course of briefing him
14 to be able to run the polygraph on
15 Mr. Myers. Correct?

16 A Yes, sir, I did.

17 Q And you told him some things and
18 issues and asked him to ask Mr. Myers about
19 those, knowing that you were watching and
20 you knew -- you knew you were going to be
21 watching it on videotape when you were down
22 there, didn't you, I mean on the monitor?

23 A Not at that time, but when we
24 got down there that's when I, I decided, you
25 know, I was going to go ahead and videotape

Clayton -- Direct

1 it.

2 Q What was the purpose of
3 videotaping it?

4 A Purpose of the videotape is just
5 other evidence that could be used later on.
6 He asked me if I wanted to videotape and I
7 said sure, go ahead.

8 Q Okay. In any event you asked
9 him to ask Mr. Myers certain things, didn't
10 you?

11 A No, sir. I -- he's the one that
12 constructs the questions and he decides what
13 kind of questions he's going to ask.

14 Q Okay. Well, ask another way.
15 You provided him with facts and details
16 about the case?

17 A Yes, I did.

18 Q And have you had a chance to
19 look over the interview notes -- well, let
20 me ask you this. As you were giving this
21 information to Mr., to Captain McHale, was
22 he writing with a pen and making notes about
23 what the answers to the questions he was
24 asking about the case?

25 A I don't remember that.

Clayton -- Direct

1 Q Did he have a piece of paper and
2 a pen in front of him?

3 A I can't remember. I believe he
4 did have a -- yes, he did. I believe he
5 did.

6 Q In preparation for this trial
7 did you have a chance to look over
8 photocopies of notes he made when you
9 answered questions about the case for him?

10 A No, sir, I didn't.

11 Q Okay. You told Mr. McHale
12 during that pre-test preparation that the
13 victim's purse in the case was missing,
14 didn't you?

15 A Yes, I did.

16 Q You told him that they kept some
17 money in the cooler that was not gone or
18 taken by the perp or the assailant?

19 A I can't recall.

20 Q You told him that an issue that
21 was unresolved at the time was whether
22 Mr. Myers had a key to the bar?

23 A I can't recall.

24 Q You told him that the wine
25 carafe was the blunt instrument used in the

clayton -- Direct

1 homicide?

2 A I said something about the wine
3 carafe.

4 Q And you told him that there had
5 been a conclusion formed at that time that
6 it was arson?

7 A I can't recall that.

8 Q You told him that Mr. Myers had
9 been arrested for criminal domestic violence
10 before, didn't you?

11 A I don't remember that. I
12 remember, I believe he got arrested for
13 public intoxication or something like that. I'm
14 not sure.

15 Q You told him that there was some
16 aspect of this case that involved a heat of
17 the moment or drunk or jealous?

18 A No, sir, I don't recall that.

19 MR. DURANT: Your Honor, with
20 all due respect, he has notes that were
21 prepared by another officer. I don't
22 mind him using those notes to
23 cross-examine him, but I prefer that he
24 use them with the officer that took the
25 notes.

Clayton -- Direct

1 THE COURT: Well --

2 MR. KULP: Your Honor, if I
3 might.

4 MR. DURANT: That officer is
5 here and available to testify.

6 THE COURT: Go ahead. If he
7 knows anything of his own knowledge
8 I'll let him answer it.

9 MR. KULP: Yes, sir. Sometimes
10 he says yes and sometimes he says no.
11 And by the way, for the record, Judge,
12 we moved for the production of these
13 notes about three years ago and they
14 were provided to us on 2/12/01 of this
15 year. There's a written motion that's
16 been filed and a response from
17 Miss Clifford saying that we have been
18 given everything that applied in the
19 case.

20 THE COURT: Go ahead.

21 MR. KULP: Yes, sir.

22 Q Now, you told -- but now in fact
23 you were in this case, related to the last
24 question, Mr -- you never in this
25 investigation developed any information

clayton -- Direct

1 whatsoever, forensically or through
2 interviews that Mr. Myers was drunk on the
3 evening of the thirteenth-fourteenth. Isn't
4 that correct?

5 A Say that again.

6 Q Mr -- you never developed any
7 information that Mr. Myers was drunk on the
8 evening of the murder.

9 A I don't remember.

10 Q Okay. Now, you -- so do you
11 recall during the Jackson V. Denno hearing
12 last year mentioning anything about a stack
13 of five photos, enlargements,
14 eleven-by-fourteen's in your testimony?

15 A Do I recall?

16 Q Yes, sir. Mentioning the number
17 five or -- five or six or whatever?

18 A No, sir.

19 Q Okay. And do you recall
20 testifying, and you have the Jackson V.
21 Denno hearing, hearing transcript there
22 before you, on page one forty-five at line
23 eight.

24 A Yes, sir.

25 Q Okay. And you answered:

Clayton -- Direct

1 "Lieutenant Cumbee did show him a picture of
2 the victim." You see that?

3 A Yes, sir.

4 Q Okay.

5 A I -- and I testified earlier
6 there was five or six photographs. I didn't
7 say showed him five or six photographs.

8 Q I know. But my question is did
9 you say anything then during the Jackson V.
10 Denno hearing about the existence of five
11 eleven-by-fourteen photographs. Your
12 statement is: "Lieutenant Cumbee did show
13 him a picture of the victim."

14 A That's correct.

15 Q All right. And down at line
16 fifteen you said: "And then he stated he
17 was sorry and the picture was shown and he
18 stated again he was sorry."

19 You didn't mention anything on
20 that page, and please take your time, about
21 any five eleven-by-fourteen's. Correct?

22 THE COURT: Well, he said a
23 while ago you didn't ask him about it.

24 MR. KULP: Okay.

25 THE COURT: Earlier. You're

clayton -- Direct

1 talking about just a while ago?

2 MR. KULP: Yes, sir.

3 THE COURT: Not in the
4 transcript.

5 Q You didn't mention anything
6 about a stack of photos is just what I'm
7 trying to say, stack of enlargements?

8 A No. I never, never said
9 anything about a stack of photographs.

10 MR. KULP: All right. Beg the
11 Court's indulgence one second, your
12 Honor.

13 Q Now, when you were watching
14 Mr. Myers' contact with Captain McHale on
15 the closed circuit or monitor T. V. is it
16 your testimony that that was not, in your
17 experience as a detective, an interrogation?

18 A In my experience, no, sir.

19 Q Okay. What was it?

20 A Well, he was psychologically
21 preparing him to take the polygraph. He was
22 talking to him, trying to get him to relate,
23 relive the incident. I don't believe it was
24 anything to try to get him to confess or
25 anything like that. And one of the things

Clayton -- Direct

1 when you getting ready to take a polygraph
2 like that, you're going to ask him did he do
3 it, because that would be probably one of
4 the questions you would want to ask during
5 the polygraph, did you do it? So I didn't
6 think it was an interrogation.

7 Q Captain McHale is with another
8 police department?

9 A Yes, he is.

10 Q And you don't have polygraph
11 devices at your department?

12 A Yes, we do.

13 Q Okay. You knew that Captain
14 McHale had special expertise in
15 interrogation and interview, didn't you?

16 A Yes, I did.

17 Q You knew that he had had classes
18 in that and that those classes possibly
19 included what's known as the "Reid
20 Technique" or some special technique of
21 interviewing and interrogating. Correct?

22 A Yes, sir.

23 Q And that's why you took him down
24 there, isn't it?

25 A Yes, sir. I, I took him down

Clayton -- Direct

1 there because he'd had expertise in those
2 areas, but the reason why I took him down
3 there was the polygraph. Yes, sir.

4 Q He didn't get a polygraph?

5 A That's right. He didn't get a
6 polygraph.

7 Q Now, the reason he didn't
8 because he had a case of beer to drink the
9 night before. Right?

10 A That's correct.

11 Q And he was too close to the
12 victim?

13 A Yes. He was close to the
14 victim. He thinks that that could affect
15 his, his, his responses on the polygraph.
16 Also he said that he'd been drinking, he'd
17 been taking some thin minis or mini thins or
18 something.

19 Q Some caffeine pills?

20 A Caffeine pill and things like
21 that. Had very little sleep.

22 Q Okay. And when you walked in to
23 present Mr. Myers here with -- to Mr. McHale
24 surely you immediately told him as a
25 polygraph examiner well, you know, he's had

Clayton -- Direct

1 a case of beer last night and he had some
2 mini thins and as well he's exhibiting some
3 signs of intoxication so I don't know if
4 this is going to go or not. You told him
5 that, didn't you?

6 A No, sir. He didn't appear to be
7 drunk. He didn't appear to be having any
8 problems like that.

9 THE COURT: See, all this is in
10 the transcript.

11 MR. KULP: Yes, sir.

12 THE COURT: Yes. So let's try
13 not revisit. We got a jury coming back
14 in the morning.

15 MR. KULP: Yes, sir.

16 THE COURT: I don't want to
17 limit you. Please understand that.

18 MR. KULP: I know, Judge.

19 THE COURT: See if you can
20 remember what's in that transcript. I
21 did.

22 MR. KULP: I appreciate your
23 polite reminders, your Honor. Okay.

24 Q So, so the interrogation of Mr.
25 Myers did not begin until noon the next day?

clayton -- Direct

1 A That's correct.

2 Q Now, that night when you -- that
3 night after the polygraph everybody went
4 over to Mr. Myers's parents' house and a
5 search was conducted that Friday night?

6 A Yes, sir.

7 Q Consensual search?

8 A Yes.

9 Q Yes, sir. And at that time, I
10 asked you this during the, the Jackson V.
11 Denno hearing about whether you gave Mr.
12 Myers your business card with a number on
13 the back where he could get in touch with
14 you in case his father was concerned and
15 upset over the fact that Mr. Myers had come
16 back to his house with eight police
17 officers?

18 A No, sir.

19 Q Don't know that?

20 A No, sir. Not that I remember.

21 Q Okay. Let me have this marked
22 for I. D. if I can.

23 (Whereupon, marked for
24 identification was Defendant's Exhibit
25 no. 1, business card.)

Clayton -- Direct

1 Q Let me hand you exhibit just
2 marked and enumerated and let me ask you if
3 you can identify that?

4 A Yes, sir. This is a card from
5 George Tetanich and there's writing on the
6 back with my, my, my beeper number that I
7 had at that time and also my name on it in
8 my writing.

9 Q Your writing?

10 A Yes, sir.

11 Q Okay. So does that refresh your
12 recollection any about that evening or your
13 testimony about giving him --

14 A Sir, I didn't never tell him
15 that he could come over my house. Is that
16 what you're saying?

17 Q No. What I'm asking you is did
18 you give him this card on that Friday night
19 and tell him to call you if his father
20 decided he was going to kick him out of the
21 house because all the police officers --

22 A No, sir, I did not.

23 Q How did Mr. Myers get this card,
24 do you know?

25 A He probably got it because I put

Clayton -- Direct

1 my phone number or my beeper number on there
2 and I don't know, I don't know how he got
3 it, but I didn't say that.

4 Q That is your handwriting?

5 A That's correct. That is my
6 handwriting. That's my -- that's my beeper
7 number at that time.

8 Q Now, I beg the Court's
9 indulgence just one second, your Honor. All
10 right.

11 Now at the time that -- on
12 Saturday, either during the 10:30 to noon
13 time period when you were speaking with
14 Mr. Myers, or at noon or after when the
15 interrogation began, as you testified in ten
16 minutes he said "I must have it did then."
17 Is that correct, that, that part of the
18 question so far?

19 A I -- that's -- I thought you
20 asked me two questions. Could you
21 rephrase --

22 Q I did and I appreciate your
23 stopping me. You spoke with him from 10:30
24 to twelve?

25 A Yes, sir.

Clayton -- Direct

1 Q And from twelve thereon you
2 interrogated him. Correct?

3 A Yes, sir. We came in there, sat
4 down and we talked a little bit. Yes, sir.

5 Q Okay. And then so I want to ask
6 you a few quick questions about what you
7 knew at that moment at noon on Saturday.
8 You knew that there was a pink note behind
9 the bar?

10 A At twelve, no, sir, I did not
11 know that.

12 Q Had you interviewed Mr. Alan
13 White?

14 A No, sir, I did not.

15 Q Well, you're the case detective
16 in the case. Correct?

17 A That's correct.

18 Q Every bit of information that
19 comes into the case should be or is related
20 to you?

21 A It should.

22 Q Okay. You know, since you're
23 the case detective, that someone, if not
24 you, interviewed Alan White on Thursday
25 morning or some time Thursday and that he

clayton -- Direct

1 indicated that he had written some message
2 on the windshield of the deceased's car?

3 A I do know that.

4 Q And that also he indicated that
5 he'd left a note behind the bar.

6 A No, sir.

7 Q You did not know that?

8 A No, sir.

9 Q That was not within your
10 knowledge?

11 A No, sir.

12 Q No note was ever recovered, was
13 it?

14 A No, sir.

15 Q You knew that a wine carafe had
16 been found at the scene on the thirteenth
17 and that it was a belief on the part of the
18 police and the arson investigator that that
19 was the murder weapon and that it was used
20 as a blunt force object?

21 A Yes, I learned that from
22 Lieutenant Cumbee.

23 Q At that time on Saturday, at
24 noon, you had met with -- in fact that day
25 fire investigator Benjie Norris was present,

Clayton -- Direct

1 either at the time of the interrogation or
2 around about that time. Correct?

3 A Yes, sir.

4 Q Okay. And he had prior to that
5 time period, had he not, advised you that it
6 was his opinion that the fire was arson.
7 Isn't that correct?

8 A Yes, sir.

9 Q And that the fire, the cause and
10 origin of the fire was that, as he reported,
11 pieces of paper had been started on fire in
12 an area behind the bar that he identified?

13 A Yes, sir.

14 Q Okay. He also -- you also knew,
15 having been receiving information about the
16 case, you knew at noon on Saturday that the
17 back right door at the Mill Inn bar was
18 found by firemen to be open?

19 A Back right door?

20 Q The rear right door.

21 THE COURT: How about just a
22 rear door?

23 THE WITNESS: A rear door was
24 open, yes.

25 Q Thank you. It was open?

Clayton -- Direct

1 A Yes, sir.

2 Q You also knew that prior to noon
3 on Saturday that a purse, the deceased's
4 purse had been taken?

5 A Yes, sir. It was not in the --
6 it was not in the place, they didn't find it
7 during the search. That's right.

8 Q And you knew that because the
9 two ladies who were bartenders, Miss Jenson
10 and Miss Gonzales, had told you --

11 A Yes.

12 Q -- that they secreted and
13 secured her purse in a cooler when they left
14 her lying on the pool table?

15 A Yes, sir.

16 Q So you already had that
17 information that it was missing?

18 A Yes, sir.

19 Q Okay. And they told you as well
20 that they had secured money, extra money in
21 the freezer area above the refrigerator at
22 the bar?

23 A Yes, sir.

24 Q Did you find -- I didn't ask you
25 this during the Jackson V. Denno -- did you

Clayton -- Direct

1 find at the scene or do you know of your own
2 knowledge knowing the case and being the
3 case detective, if there was a metal cash
4 box for the next day's starting money and
5 till found at the scene or remnants of a
6 burned cash box?

7 A I can't recall that.

8 Q Would that have been an
9 important issue to determine if robbery of a
10 purse was suspected?

11 A I don't remember a cash box.

12 Q Do you remember asking or
13 anybody under your supervision asking
14 Miss Gonzales or Miss Jenson?

15 A I don't remember.

16 Q You don't have any knowledge.

17 Now, in terms of the -- you were
18 present when Mr. Myers on Saturday at noon
19 said "I must have did it then" and then as
20 you said the interrogation continued until
21 four o'clock that afternoon and we all know
22 what happened and what was involved.

23 Let me ask you if at any point
24 did you ask him in the course of securing
25 his acknowledgement of complicity in the

Clayton -- Direct

1 homicide, did you ask him how he snuck in
2 and out of his parents' house undetected?

3 A Yes. He told us.

4 Q How did he tell you?

5 A He told us he went out a side
6 door at the house. The side door. It's
7 located I guess near a, the, the laundry
8 room or something like that.

9 Q This homicide occurred on March
10 thirteen, 1997?

11 A Yes, sir.

12 Q You got your entire case file
13 here?

14 A Yes, sir.

15 Q Where in that case file does it
16 say that Mr. Myers told you that he went out
17 of a side door at his parents' house and
18 left?

19 A It doesn't say that.

20 Q Did you ask Mr. Myers how he
21 cleaned up after holding the victim, who was
22 bleeding profusely, until he was overcome by
23 smoke?

24 A No, sir, I did not.

25 Q Did you ask him what he did with

Clayton -- Direct

1 the clothing that he was wearing during the
2 murder?

3 A Yes, sir. We recovered clothing
4 that he said he was, he was wearing at the
5 time. I mean he didn't tell us at that
6 time. The day before we had a polygraph and
7 during the polygraph he had mentioned the
8 clothes that he was wearing.

9 Q And you secured those clothes
10 during the consensual search of his parents'
11 house. Correct?

12 A Yes, sir. Which was the day
13 before he confessed.

14 Q And those clothes that you
15 secured eventually tested out to have no
16 forensic value associating Mr. Myers with
17 this murder?

18 A That's correct.

19 Q Did you ask Mr. Myers how he cut
20 or the cut occurred from the back of the
21 victim's head from ear to ear, to the front
22 of each ear?

23 A I don't know anything about as
24 far as the cuts and all. That had happened
25 during the autopsy at that time.

Clayton -- Direct

1 Q You're the case detective in
2 this?

3 A Yes, sir, I am the case
4 detective.

5 Q Have you looked over the
6 photographs that are generated from the
7 autopsy and from the crime scene?

8 A At that time, I don't remember
9 if I did or did not.

10 Q Well, you had some enlargements,
11 five enlargements -- well, someone had five
12 enlargements made.

13 A Yes, sir.

14 Q You looked at those?

15 A Yes, sir.

16 Q Even though the ones in front of
17 Mr. Myers were on a stack, you had looked
18 through all blowups. Is your answer yes?

19 A Ask the question again, sir.

20 Q Did, did you look at the
21 enlargements that Saturday yourself?

22 A Yes, sir.

23 Q All right. Did you ask
24 Mr. Myers how he cleaned up his truck to, to
25 destroy any evidence that might have been

Clayton -- Direct

1 transferred there --

2 A No, sir, I did not.

3 Q -- by his clothing or by his use
4 of the truck?

5 Did you ask him how he drove
6 home?

7 A How he drove home?

8 Q From the murder scene.

9 A No, sir -- yes, sir. He told us
10 after he left there where he went, as far as
11 going to take the purse, and went back to
12 his house and stuff like that, after he went
13 to the, the park there off of Virginia
14 Avenue.

15 Q Where in your report or file
16 does it indicate that he told you that he
17 drove back to his parents' house?

18 A It doesn't.

19 Q It's not there?

20 A I don't think he does.

21 Q Now, did -- did you ask him if
22 he wore a watch that he dropped at the
23 scene? I mean you knew at the time you were
24 interrogating him on Saturday at noon a
25 watch had been found at the scene, a wrist

Clayton -- Direct

1 watch or remnant of a wrist watch?

2 A No, sir. I don't remember that
3 at that time.

4 Q You didn't know that?

5 A No, sir.

6 Q You had no knowledge of that?

7 A I don't believe I knew at the
8 time.

9 Q You don't believe you did?

10 A That's right.

11 Q Well, during the course of your
12 investigation did you determine if the
13 victim wore a watch?

14 A No. I never determined that.

15 Q Or if Mr. Myers, if you could
16 identify that Mr. Myers wore a watch?

17 A No, sir.

18 Q Let me hand you this and ask you
19 if you can identify. We would mark it as
20 defendant's for I. D. number two.

21 (Whereupon, marked for
22 identification was Defendant's Exhibit
23 No. 2, a photograph.)

24 Q I'm handing you defendant's
25 number two for identification. I want to

Clayton -- Direct

1 ask you if you can identify what's depicted
2 in that copy of a photograph?

3 A It's a picture of a watch. It's
4 actually the watch face and the back of the
5 watch.

6 Q Okay. And does that appear to
7 you to be the burned watch that was found at
8 the scene?

9 A I wasn't at the scene. I didn't
10 see the watch at the scene. I know that he
11 took this right here in a photograph when we
12 went to the, the evidence room.

13 Q Okay. You know that there's a
14 watch, a remnant of a watch that looks just
15 like that that's in evidence in this case?

16 A Yes, sir. As far as crime scene
17 officer Hallman's report, he'd indicated
18 that he'd sifted through some ashes and
19 found the watch.

20 Q Okay. And he noted or someone
21 noted, to your knowledge, that it was a
22 Casio watch?

23 A Yes, sir. As far as I think on
24 the evidence sheet or something. I'm not
25 sure. You'd have to show me the evidence

clayton -- Direct

1 sheet.

2 Q But it's a Gitano or Gitano
3 watch.

4 A Yes. And this right here says
5 Gitano.

6 Q Can you detect what time that
7 watch stopped or what time it bears on it?

8 A Yes, sir. I, it looks like a
9 second hand and it has a -- no, sir, I
10 can't. I see, I see a minute hand here.

11 Q Right. And you see the hour
12 hand, the tip of like a Rolex right there?

13 A I can't.

14 Q Okay. So you can't. Can you
15 dispute that the watch says 3:14? Do you
16 have any reason to think it doesn't exhibit
17 3:14?

18 A I can't tell if that's even the
19 hour hand or not.

20 Q Okay. Very good. What time did
21 Officer O'Neal discover the fire burning?

22 A He discovered it at 3:14 in the
23 morning.

24 Q Okay. Now, did you ask Mr., you
25 knew that Mr. Myers on Friday night

Clayton -- Direct

1 consented to the search of his truck?

2 A Yes, sir.

3 Q And that you all, the police
4 kept it over night till Saturday?

5 A Yes, sir.

6 Q And, and that Mr. Poole,
7 Detective Poole, Investigator Poole had done
8 a thorough search of the truck to see if
9 there was any evidence there of any value?

10 A Yes, sir.

11 Q And you reviewed a photograph of
12 the exhibits or the things that were found
13 in the truck?

14 A Say again? I don't. . .

15 Q Did you review a photograph or
16 did you know what Mr. Poole took out of the
17 truck? Do you know that it included a
18 flare?

19 A I couldn't answer that, sir.

20 Q Now, during Mr. Myers'
21 investigation -- oh, goodness. There's an
22 exhibit that I need, your Honor, that -- it
23 was a knife so I gave it to the security
24 officer coming in and I didn't want to bring
25 it in the courthouse and I think --

Clayton -- Direct

1 THE COURT: Can I get one, any
2 bailiff, anybody can get it?

3 MR. KULP: It's in a blue
4 zippered bag. They may have secured it
5 with the clerk. And I'll come back to
6 that. All right, sir.

7 Q Now you've testified today that
8 Mr. Myers told you that he went, that he
9 came out of a side door of his parents'
10 house?

11 A That's right.

12 Q Did you ask him what he drove to
13 the murder scene?

14 A Yes, sir.

15 Q Did he tell you?

16 A Yes, sir. His pickup truck.

17 Q Did he tell you anything unusual
18 about that pickup truck?

19 A No, sir.

20 Q Did he tell you that he had
21 owned that truck --

22 THE COURT: Are you talking
23 about before he said he did it, because
24 that's all in that transcript, about
25 said he parked it outside his house and

Clayton -- Direct

1 said he didn't -- it was loud, and all
2 of those things are already in the
3 transcript. I read them.

4 MR. KULP: Yes, sir.

5 THE COURT: Now, are you asking
6 him did he tell him before he said he
7 did it or after he said he did it,
8 because you've covered all this before.

9 MR. KULP: Well, not actually,
10 your Honor. Let me maybe state the
11 question again and please --

12 THE COURT: Well, I can tell you
13 it was loud, it didn't have a key, and
14 I can tell you who all had been using
15 it. All of that's in the transcript.
16 I'm just trying to remind you what you
17 already got.

18 MR. KULP: Yes, sir.

19 THE COURT: Go ahead.

20 MR. KULP: All right. Thank
21 you, Judge.

22 I beg the Court's indulgence
23 just one second.

24 THE COURT: He's nodding his
25 head. He knows it's in there.

Clayton -- Direct

1 Q Did he tell you anything unusual
2 about his truck? I'm pausing, your Honor,
3 because I don't remember seeing that.

4 THE COURT: Well, it didn't have
5 a key. Right?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: It's in there,
8 because I wouldn't know it and I can
9 even tell you his boss drove it some
10 time, the deceased drove it some time,
11 and the rest of the people drove it
12 some time.

13 MR. KULP: Oh. Oh. Oh. Oh. I
14 know. You're looking at the transcript
15 of the black and white video.

16 THE COURT: No.

17 MR. KULP: I don't -- do you
18 have -- I know the case pretty well,
19 Judge.

20 MR. DURANT: That's in McHale's
21 transcript I think.

22 MR. KULP: Yeah. Of the video.
23 Right.

24 MR. DURANT: Yeah.

25 MR. KULP: Okay. I understand

Clayton -- Direct

1 where we are.

2 THE COURT: All right.

3 MR. KULP: I understand it.

4 MR. DURANT: So in other words
5 he doesn't --

6 MR. KULP: Yeah. Okay.

7 THE COURT: I'm just trying to
8 let you shorten things a little bit.

9 MR. KULP: Okay. When you said
10 transcript, your Honor, I thought you
11 meant Jackson V. Denno transcript.
12 That's why I was pausing. I don't
13 remember that. But during the
14 transcript that we had prepared of the
15 audio of the black and white --

16 THE COURT: Go ahead. You don't
17 have to tell me.

18 Q So then I'll ask it another way.
19 And on Saturday -- you were present and
20 watched Mr. McHale ask questions of Mr.
21 Myers on the closed circuit T. V.?

22 A Yes, sir.

23 Q So you saw him say things about
24 his truck to Mr. McHale?

25 A I can't remember what he said

clayton -- Direct

1 about the truck. If I had a copy of your
2 transcript or something like that I could
3 probably try to recall it, but, no, sir, I
4 don't recall as far as --

5 THE COURT: You can bring it up
6 and put it on his desk. It will be all
7 right, Mr. Bailiff. Thank you.

8 MR. KULP: Thank you, sir.

9 Q Now, but I think we're
10 getting -- need to clarify this. Very
11 important, your Honor. You -- where -- my
12 question -- let's go back to the question.
13 Other than Mr. Myers talking about things to
14 do with his truck or whatever with
15 Mr. McHale as recorded on the black and
16 white video where he didn't confess to
17 murder, right, where other than that did he
18 tell you anything unusual about his truck
19 and how he got home or how he left the house
20 and got there? That's what I'm asking.

21 A Okay. Could you ask those
22 questions one at a time? You asked me like
23 four questions.

24 Q Okay.

25 A Let's start one at a time.

Clayton -- Direct

1 Q Okay. You know that Mr. McHale
2 interviewed Mr. Myers on Friday afternoon?

3 A Yes, sir.

4 Q You know that it was recorded on
5 video?

6 A Yes, sir.

7 Q You watched it?

8 A Yes, sir.

9 Q You know that during that
10 conversation, he talked about everything
11 under the world?

12 A Yes, sir.

13 Q You know that during that
14 conversation Mr. Myers said repeatedly he
15 did not do it, he didn't kill Teresa Haught?

16 A He was saying that.

17 Q Yes.

18 A He was saying that he didn't do
19 it.

20 Q Okay. And you know during that
21 time period they had -- this round-about
22 discussion touched on certain things
23 potentially as the judge indicated about his
24 truck?

25 A No, sir. I don't remember as

clayton -- Direct

1 far as what he said about his truck.

2 Q Okay. Well, then let me shift

3 over to Saturday. Back to my question.

4 That Saturday during that interrogation or

5 thereafter, what I'm asking you, did you ask

6 or did Mr. Myers tell you -- just a simple

7 question -- the details of how he got out of

8 his parents' house undetected, committed a

9 murder and went back into the house

10 undetected under the circumstances of the

11 aspects of the homicide? Did he tell you

12 that? That's all I'm asking, because I

13 don't see it in the file.

14 A Yes, sir. It's not in the file.

15 Q Okay. That's all I'm looking

16 for.

17 A Okay. He said that he went out

18 the side door. He slipped out the side

19 door. His truck was parked the last truck

20 in the driveway, and he took off in his

21 truck, and he went to the Mill Inn.

22 After he was finished there he

23 went to the -- he took the purse. He went

24 over to the, the park there off of Virginia

25 Avenue, some hollowed-out tree or something

Clayton -- Direct

1 like that. He tried to put the purse in
2 there and after that he went home.
3 Something like that.

4 Q No. That's not what he said, is
5 it?

6 A That's what?

7 Q He was -- the supplemental
8 reports in this case indicate that he said
9 he didn't know where he put the purse when
10 Lieutenant Cumbee asked him where the purse
11 was. Isn't that true? It's in the black
12 and white of the supplemental. Would you
13 like to read it?

14 A Yes, sir.

15 THE COURT: Well, he told him he
16 put it somewhere first, the purse.

17 THE WITNESS: He told -- he
18 said --

19 THE COURT: Just one minute.
20 Counselor? And then he said no, he
21 believed he put it in the, in that
22 tree.

23 MR. DURANT: It's in there,
24 Judge. I mean it's in the, it's in the
25 transcript.

Clayton -- Direct

1 THE COURT: Sure it's in there.

2 I wouldn't know it if it wasn't.

3 MR. KULP: Judge, what I'm
4 referring to, if you bear with me,
5 please, one second.

6 THE COURT: And said they went
7 down to the park and couldn't find it,
8 and they never found it, and all of
9 that's in there, counselor. Told him
10 two stories about the purse.

11 MR. KULP: I'll have to find it,
12 your Honor. I don't want to take the
13 time.

14 Q The, the -- let's cut the
15 question in half. Forget the purse for a
16 minute. What my question is, is where did
17 you document prior or where did you document
18 at all his description about going out the
19 side door, or other than later in the
20 afternoon of the Saturday when the
21 discussion of the purse came up, what he did
22 when he left the scene?

23 A I document -- see, you're asking
24 me two questions.

25 Q Okay.

Clayton -- Direct

1 A Would you ask the first question
2 first and then. . . I think you're asking me
3 two questions, and it's just kind of
4 confusing to me.

5 Q You didn't write down the fact
6 that he said he went out the side door of
7 his parents' house?

8 A No, sir. I don't recall writing
9 it down.

10 Q Did you put that in the
11 confession that you had him sign, the
12 two-page written confession?

13 A No, sir, I did not.

14 Q Was that an important issue?

15 A Yes, sir, it was important.

16 Q But you didn't put it in?

17 A No, sir.

18 MR. KULP: Beg the Court's
19 indulgence just one second, your Honor.
20 I'm going to flip right to, hopefully,
21 to something.

22 Q Okay. Let me ask you this.
23 Once he said "I must have it did then" is it
24 your testimony that he recalled everything
25 that happened that evening associated with

clayton -- Direct

1 the homicide? Yes or no?

2 A Yes, sir.

3 Q But your testimony is that he
4 didn't recall what he did with the purse?

5 A Yes, sir. Yeah. I testified
6 that he didn't know what he did with the
7 purse. He told us about the hollowed-out
8 tree, went to the residence, okay. There
9 was no purse there. Okay. We never
10 recovered the purse.

11 Q But my question was, do you
12 remember everything about the -- he
13 remembered everything about the crime except
14 for what happened to the purse?

15 A He thought he put it in a tree.

16 Q Okay. Do you know why he was
17 fuzzy on that?

18 A No, sir, I, I don't.

19 Q Did you ever suggest to him or
20 did he ever suggest that he might have had
21 an alcoholic blackout?

22 A I don't remember anything about
23 an alcoholic blackout.

24 Q Now, on the search the night
25 before at his parents' house on Friday, did

Clayton -- Direct

1 you participate in that?

2 A Yes, sir.

3 Q Okay. And based on some
4 documents that you found there, you
5 determined that Mr. Myers had in fact been
6 at Charter Hospital in 1996 and treated for
7 alcoholism?

8 A I don't know if it said 1996.
9 There was an anger questionnaire.

10 Q You knew he'd been treated for
11 alcoholism?

12 A I don't recall.

13 Q You don't recall?

14 A I don't recall if he's -- I
15 remember there being a questionnaire, if
16 that's what you're asking about that
17 question.

18 MR. KULP: Okay. Let me have
19 this marked as defendant's three.

20 (Whereupon, marked for
21 identification was Defendant's Exhibit
22 No. 3, case and knife.)

23 Q Let me hand you defendant's
24 number three and ask if you can identify
25 this.

clayton -- Direct

1 A No, sir.

2 Q Okay. Never seen it?

3 A I don't recall ever seeing it.

4 Q Did you check the, Mr. Myers for
5 weapons when you were interrogating him or
6 had contact with him that Saturday?

7 A I don't remember, sir.

8 Q Do you know if he could have
9 been wearing exhibit number three on his
10 belt as you were talking to him?

11 A He may have. I don't know, sir.

12 Q Okay. That knife, folding
13 knife? Did you ever ask him if he used that
14 knife in the murder?

15 A No, sir. I don't, I don't
16 remember the knife.

17 Q Did you take him to the county
18 jail?

19 A Yes, sir, I did.

20 Q And he got there and when he was
21 booked in, did he turn in that knife or a
22 folding knife off of his belt?

23 A I don't remember, sir.

24 THE COURT: That's on page one
25 twenty-five, about the first part.

Clayton -- Direct

1 MR. KULP: I've got the note in
2 there. Yes, your Honor.

3 THE COURT: About the middle of
4 the page and then he goes into the next
5 page. Said he might have put it under
6 the bed. Three places.

7 MR. KULP: Okay. That, that
8 question that I was asking may not be
9 proper for this witness. It may be
10 better for another.

11 THE COURT: That's all right.
12 Go ahead.

13 MR. KULP: Thank you.

14 Q When you -- when you booked
15 Mr. Myers in jail, you collected some things
16 from him or the jail turned some things over
17 to you?

18 A Yes, sir.

19 Q And, as a matter of fact, you
20 returned certain things to his father.
21 Correct?

22 A Yes, I did.

23 Q And you got a receipt from his
24 father for those items, which included some
25 money?

Clayton -- Direct

1 A Yes, sir.

2 Q And do you recall one of those
3 items included a knife?

4 A I don't recall.

5 MR. KULP: Beg the Court's
6 indulgence one second. Okay. Let me
7 approach the court reporter and have
8 this marked as defendant's four.

9 (Whereupon, marked for
10 identification was Defendant's Exhibit
11 No. 4, evidence receipt.)

12 Q Now, Detective Clayton, I'll
13 hand you number four and ask you if you can
14 identify that bad photocopy of that
15 document. I can probably get up a better
16 one.

17 A I didn't --

18 Q Yes. But what is that?

19 A This is a chain of custody sheet
20 where I released six items I believe to
21 Mr. Max Myers.

22 Q That gentleman seated at the
23 back, which is his dad?

24 A Yes.

25 Q And what's the first item on

Clayton -- Direct

1 that list?

2 A It's a pocket knife in a brown
3 case.

4 MR. KULP: Thank you.

5 MR. DURANT: Your Honor, this is
6 all very interesting but I got to find
7 myself in the position I was the last
8 time we did this. What does this got
9 to do with the voluntariness of the
10 statement?

11 THE COURT: Well, I thought
12 what, what he tried to do, I thought
13 you wanted to re-examine these
14 witnesses in the light that you had
15 discovered they hadn't given you that
16 videotape. Isn't that correct?

17 MR. KULP: Yes, sir.

18 THE COURT: Okay. And you're
19 far afield.

20 MR. KULP: Well, one of the
21 thoughts I had, your Honor, was and I,
22 I didn't think that the Court, having
23 viewed the videotape, wanted me to go
24 through the laborious process of
25 playing it segmentally for the

Clayton -- Direct

1 witnesses or for Detective Clayton and
2 going through it. I see you shaking
3 your head and I know you, I knew you
4 wouldn't want to do that since you had
5 in fact reviewed it and the transcript.

6 I'll try to address my questions
7 there and I'll move on, your Honor, to
8 try to proffer very briefly any
9 evidence about third party guilt so
10 that I get that in the record, and move
11 on.

12 THE COURT: Sure.

13 MR. KULP: Yes, sir.

14 Q Detective Clayton, as the case
15 agent or detective in this matter you're
16 aware, are you not, that a gentleman by the
17 name of Dana Chaples was identified as being
18 the last person to be seen at the Mill Inn
19 when the two ladies, Miss Gonzales and Miss
20 Jenson, closed it that evening leaving --

21 A Yes. They closed, they closed
22 the door and he was out in the parking lot
23 there and they met him, yes.

24 Q They talked to him?

25 A Yes.

Clayton -- Direct

1 Q And in fact he tried to, for
2 lack of a better expression, "hit up" on
3 Miss Gonzales?

4 A Yes, I think so.

5 Q And she rebuked him and the two
6 ladies left with an older gentleman named
7 Woody?

8 A For the purposes of this, am
9 I -- I'm testifying to what I'm reading off
10 of -- I don't know this personally. I'm
11 reading this off of as far as like incident
12 reports and stuff like that. Is that what
13 we're doing?

14 I don't know this personally. I
15 know this from a statement that was given
16 us, Tammy Gonzales and --

17 Q Okay.

18 A Yes.

19 Q What, as the case detective,
20 what did you do to dispel Mr. Chaples as
21 being a suspect in the case?

22 A Well, we, we interviewed him,
23 tried to get him to consent to a body
24 search, and stuff like that. You know.
25 Took a statement from him.

701

Clayton -- Direct

1 Q Okay.

2 A We tried, we tried to verify or
3 dispel the fact that if he -- if his alibi,
4 where he was at the time, things like that.

5 Q And you learned that he had
6 shaved his mustache off, according to
7 witnesses?

8 A According to the witnesses.

9 Q Between the time he was last
10 seen at the Mill Inn at 1:30 a. m. and when
11 the witnesses were taken for a show-up to
12 identify him the next morning, he had shaved
13 his mustache off.

14 A Or afternoon. Something --

15 Q Or afternoon. The next day.
16 That same day.

17 A Yes. They -- when Miss Gonzales
18 and Jenson, they came down there and said
19 that he'd shaved his mustache off.

20 Q Okay.

21 THE COURT: Well, now who
22 said -- who told you that he'd shaved
23 his mustache off?

24 THE WITNESS: On the, on some
25 statements, it was written statements

Clayton -- Direct

1 that they'd written. And also I
2 think --

3 THE COURT: The people who were
4 looking at the show-up?

5 THE WITNESS: Yes. They're the
6 ones that --

7 THE COURT: What I'm trying to
8 find out is --

9 THE WITNESS: -- we took into
10 the room and --

11 MR. DURANT: Your Honor, he
12 never interviewed either one of these
13 witnesses. That's coming --

14 THE COURT: Well, I don't
15 mind --

16 MR. DURANT: That's coming from
17 a statement they gave.

18 THE COURT: All right.

19 THE WITNESS: Yes.

20 THE COURT: What I was trying to
21 find out is did he tell any officer
22 that he had shaved his mustache off is
23 what I was trying to find out?

24 MR. DURANT: You're talking
25 about Chapels now?

Clayton -- Direct

1 THE COURT: Yes, sir.

2 MR. DURANT: I believe in his
3 statement he said he'd shaved it off
4 about -- he had a beard and a mustache.
5 He shaved it off like two or three
6 weeks before this happened.

7 THE WITNESS: Yes.

8 Q Okay. And you know, and if you
9 really just have no idea I'll ask someone
10 else, but if you know please help the judge,
11 you know, because the jury's not here. You
12 know that Miss Gonzales and Miss Jenson said
13 that he did have a mustache when he
14 confronted them on the sidewalk that night?

15 A I believe it was in an answer or
16 recorded by one of the officers that had
17 written it, yes.

18 Q And Mr. Chaples denied being at
19 the Mill at 1:30 and that's why the two
20 ladies were taken over in a show-up to look
21 at him. Correct?

22 A Yes, sir. He denied it.

23 Q Okay. And did you have occasion
24 to look at the, the photographs, and
25 Mr. Chaples was later stopped, when, when --

Clayton -- Direct

1 let me start again. Hold on. Thanks.

2 In fact once the ladies said
3 that that was him, that he was there and
4 that he shaved his mustache, officers or
5 detectives went to talk to him again. Isn't
6 that correct?

7 A I can't recall.

8 THE COURT: You're talking about
9 the time they found the pistol?

10 MR. KULP: Yes, sir.

11 Q And then they found the pistol
12 and they stopped him and interviewed him and
13 he had a, a boot knife, a double-edged boot
14 knife in his console of his car.

15 A I can't recall, sir.

16 Q Okay. You didn't participate in
17 the stop of him?

18 A No, sir. No, sir.

19 Q All right. Now, he, in the
20 arrest warrant for the knife -- excuse me.
21 In the arrest warrant for the pistol charge
22 for Mr. Chapels it was mentioned that he was
23 a suspect in the homicide of Teresa Haught.
24 Isn't that true?

25 A I didn't do the warrant. It was

Clayton -- Direct

1 done by somebody else.

2 Q Okay. And you took clothing,
3 you or someone else in the department took
4 clothing from Mr. Chaples for purposes of
5 testing. Correct?

6 A Yes, sir.

7 Q And clothing was never tested?

8 A I believe the clothing was
9 tested, yes, sir.

10 Q The clothing was eventually
11 returned to him. Isn't that correct?

12 A I don't recall, sir.

13 Q Okay. Let me ask you -- one
14 thing I just want to clarify, lastly, is
15 the, this one statement that you've
16 testified here today about, that Mr. Myers
17 told you that he came out of a side door at
18 his parents' house. I'm not rehashing, but
19 you said that wasn't in any police document
20 that was recorded?

21 A No, sir. I don't believe it
22 was. I've reviewed the report and
23 everything.

24 Q Nor did you mention it during
25 the Jackson V. Denno hearing?

Clayton -- Direct

1 A I don't remember mentioning it.

2 MR. KULP: Okay. Thank you,

3 your Honor.

4 THE COURT: Anything else?

5

6

7

8 CROSS-EXAMINATION BY MR. DURANT:

9 Q Were you asked about it --

10 A I don't remember being asked.

11 Q -- in the Jackson V. Denno

12 hearing?

13 I just have a couple, couple of

14 questions. I'm kind of confused about the

15 enlarged photos. I'm talking on Saturday

16 now, you said there were some in a stack --

17 A Yes.

18 Q -- that he saw?

19 A Yes.

20 Q Did he go through the stack?

21 A I don't remember him going

22 through the stack. I remember there being

23 one photograph.

24 Q On top?

25 A On top.

clayton -- Cross

1 Q And he -- that's the photograph
2 he looked at?

3 A Yes. I don't remember him
4 picking it up or anything. He put his hands
5 down on the top of it.

6 Q But they were spread out so he
7 could not have seen any of the other
8 photographs?

9 A I don't remember them being
10 spread out, no.

11 Q Okay. Now, you are now a
12 polygraph examiner yourself?

13 A Yes, I am.

14 Q You've been trained as a
15 polygraph examiner since this time. Is that
16 correct?

17 A Yes, I am.

18 Q As a polygraph examiner, do you
19 draw any distinction between an interview
20 and an interrogation?

21 A Yes, I do.

22 Q And what is that, sir?

23 A When -- well, when you become
24 accusatory, when you start, start asking
25 questions about the crime.

Clayton -- Cross

1 Q Okay. Now, now at any time were
2 you all ever accusatory with Mr. Myers.
3 before confronting him with that hair at
4 around noon on Saturday?

5 A No, sir.

6 Q Specifically, the interview,
7 specifically the interview at McHale's
8 office?

9 A That's right. He wasn't
10 interrogated.

11 Q That was videotaped.

12 A Yes.

13 Q Did he interrogate Mr. Myers?

14 A No, sir.

15 Q Did he ever at any point in that
16 interview accuse Mr. Myers of having
17 committed this crime?

18 A No, sir. Not that I recall.

19 Q In the hour, hour and a half
20 that you and Lieutenant Tetanich spent with
21 him before Detective Cumbee got there, did
22 you all in any way accuse him of committing
23 the murder during that period of time?

24 A No, sir.

25 Q Did you even ask him if he

Clayton -- Cross

1 committed the murder?

2 A No, sir.

3 Q The allegation's been made that
4 you intentionally withheld this McHale
5 videotape from defense counsel. Is that
6 true?

7 A I don't know if he was -- I
8 don't know if he's obligated --

9 MR. KULP: I object.

10 Mischaracterization. I just -- I
11 didn't use that word.

12 Q Did -- why did you not --

13 THE COURT: He testified about
14 it in here. The question was asked
15 him. Did he give a copy to the
16 solicitor. He said he thought he did.

17 Q And is that still your
18 testimony?

19 A I thought I did because what
20 happens is if you look over there, there's a
21 brown thing and it contains the videotapes,
22 and I took that to Detective Hallman and I
23 believe that that tape was inside that
24 package right there where, where we was
25 getting copies.

Clayton -- Cross

1 THE COURT: Looks like everybody
2 got a copy of it except you, Mr. Kulp.

3 MR. DURANT: That's not true
4 because I didn't get a copy either,
5 Judge.

6 THE COURT: Well, just trying to
7 make him feel better because he's
8 complaining a whole lot more than you
9 have.

10 Q Now, you were taking Mr. Myers
11 to McHale for a polygraph. Is that correct?

12 A Yes, sir.

13 Q And -- okay. And you are now a
14 polygraph examiner?

15 A Yes, I am.

16 Q Can you conduct a polygraph on
17 someone without knowing some basic details
18 about what you're asking them about?

19 A Say again?

20 Q Excuse me. That was a bad
21 question. As a polygraph examiner, can you
22 polygraph someone about an incident without
23 knowing anything about the incident you're
24 polygraphing them about?

25 A That's right. You have to know

clayton -- Cross

1 all the information about the case as far as
2 for the polygraph purpose.

3 Q So you had to give then
4 Lieutenant McHale now Major McHale some
5 information about the case itself. Is that
6 correct?

7 A That's true.

8 Q Did you in any manner suggest to
9 McHale what he should ask the defendant?

10 A No, sir. Not that I recall.

11 Q And in fact it was McHale who
12 developed this information from the
13 defendant about he'd been drinking all night
14 the night before and hadn't had much sleep
15 and was taking caffeine pills. Is that
16 correct?

17 A Yes, sir.

18 Q That all came out in the
19 pre-polygraph interview. Correct?

20 A Yes, sir.

21 Q One other point. You mentioned
22 the clothing that you collected from the
23 defendant's house. Do you know that was the
24 clothing he was wearing on the night that
25 Teresa Haught was murdered?

Clayton -- Cross

1 A No, sir. I don't know that to
2 be the clothing.

3 Q In fact those are work clothes,
4 are they not?

5 A Yes, they are.

6 Q Was a T-shirt, oil-stained
7 pants, and work boots. Is that correct?

8 A Yes. And a hat.

9 THE COURT: See, all of that's
10 in here also. I tell you just like I
11 told Mr. Kulp --

12 MR. KULP: Okay.

13 THE COURT: You know, you don't
14 have to revisit all of that.

15 MR. DURANT: Okay.

16 Q Now, one other question and I'll
17 sit down, or a couple other questions about
18 Mr. Chaples. The information you all had on
19 Mr. Chaples was that he was the last person
20 there, correct, at the Mills Inn, that
21 night?

22 A Yes, sir.

23 Q And you had information from two
24 witnesses that he shaved off a mustache --

25 A Yes, I did.

Clayton -- Cross

1 Q -- since then. Okay.

2 Did Mr. Chaples ever confess to
3 this crime?

4 A No, he did not.

5 Q Did you have any forensic
6 evidence linking Mr. Chaples to this crime?

7 A No, sir.

8 Q Specifically at one point there
9 was a, what was described as a long blond
10 hair found in the victim's hand. Does
11 Mr. Chaples have blond hair?

12 A No, sir.

13 Q So at some point Mr. Chapels was
14 no longer a suspect. Is that correct?

15 A That's correct.

16 Q And why is that?

17 A He's no longer a suspect because
18 he never confessed to the crime. He never,
19 he never -- the clothes didn't come back
20 with any evidence on them, or anything like
21 that.

22 MR. DURANT: Thank you. I have
23 nothing else.

24 MR. KULP: Four quick ones, your
25 Honor.

Clayton -- Redirect

1 REDIRECT EXAMINATION BY MR.

2 KULP:

3 Q Mr. Chapels, no forensic tests
4 were done for Mr. Chapels because he revoked
5 his consent for standards. Isn't that true?

6 A He revoked them because -- he
7 revoked his consent because we would not
8 drop the charge on the gun charge.

9 Q And in fact the State has
10 opposed my motions to your knowledge, if you
11 know, trying to get standards from
12 Mr. Chaples for four years?

13 A I, I don't know about that,
14 Mr. Kulp.

15 Q The clothes, did -- if those
16 clothes -- if you didn't know that those
17 clothes you recovered from his house were
18 the ones he was wearing that night, did you
19 ask him what he did with the clothes he was
20 wearing that night? Did you ever mention
21 that either in the report or in the Jackson
22 V. Denno hearing or at any time? I mean
23 what happened to those clothes?

24 A He, he told us that that was the
25 clothes on Friday night that he was wearing

clayton -- Redirect

1 when this occurred.

2 THE COURT: And that's in the
3 transcript.

4 MR. KULP: All right. Thank
5 you, your Honor.

6 THE WITNESS: What I'm trying to
7 say is that he's, he told us on Friday
8 night as far as what clothes he had, we
9 recovered and in the consent before he
10 confessed to the crime on Saturday,
11 what clothes he was wearing during the
12 time as far as -- he gave us an alibi
13 and everything as far as the time that
14 this is supposed to have occurred.

15 Q Other than his confession, how
16 did you dispute his alibi?

17 A Explain what you're saying. How
18 do you dispute it?

19 Q How do you take him out of his
20 house except for the confession?

21 A Because he told us, he told us
22 about it. He told us that he went out --

23 Q Did you interview the neighbors
24 and canvass the neighborhood to see if they
25 heard him leave that night?

Clayton -- Redirect

1 A No, sir.

2 Q When Mr. Durant asked you, when
3 Mr. Durant asked you about the polygraph
4 examination and the identification of the
5 factors that would prohibit the test,
6 whether you want to call it pre-polygraph or
7 pre-test or whatever, he didn't ask those
8 questions -- you were there. He didn't ask
9 those questions till the end of the tape or
10 almost the end of the tape. Isn't that
11 true?

12 A I can't remember at what time
13 that he started as far as asking all those
14 questions.

15 Q All right. And one last, one
16 very last question.

17 A I think it was probably
18 somewhere in the middle. I'm not sure.

19 Q I know it's been four years but
20 did you, have you read over the transcript
21 of the McHale videotape?

22 A I've read over some of it, not
23 all of it.

24 Q Some of it. And it's your
25 testimony that there's nothing in here at

Clayton -- Redirect

1 any time that occurs where Mr. McHale is
2 accusing or suggesting that Mr. Myers
3 murdered Miss Haught?

4 A As far as what I'm looking at
5 and using -- me being a polygraph examiner.

6 Q Yes, sir.

7 A Those are questions that they're
8 going to ask on the test anyways.

9 Q Okay. So if it's in a polygraph
10 setting it's not interrogation, but if those
11 same accusations were made in a
12 non-polygraph setting, it's interrogation?
13 Is that what you're telling the judge?

14 A What I'm telling you right now
15 is what, what I'm saying is that when
16 somebody comes in there to take a polygraph,
17 you have to talk to them to try to get them
18 to relive what's going on as far as the
19 incident, so you have to find out the
20 details of the incident.

21 Q Thank you, sir.

22 A And you ask those questions.

23 Q Yes, sir.

24

25

Clayton -- Recross

1 RECROSS-EXAMINATION BY MR.

2 DURANT:

3 MR. DURANT: And, Judge, I hate
4 to belabor this point, but I'm confused
5 now.

6 Q When you went over to collect
7 the clothing on Friday --

8 A Yes.

9 Q -- he had not confessed.
10 Correct?

11 A That's correct.

12 Q You didn't know -- at that time
13 as far as you knew he was at home sleeping
14 with mom?

15 A Yes.

16 Q So you don't know, he did not
17 tell you these were the clothes that he was
18 wearing during the murder, did he?

19 A That's correct.

20 Q Those either had to be the
21 clothes he was wearing on Thursday or the
22 clothes he was wearing on Wednesday. Is
23 that correct?

24 A That's correct.

25 Q But he at no time told you that

Clayton -- Recross

1 these were the clothes that I wore when I
2 went into the bar at two o'clock on, in the
3 morning --

4 A At no time.

5 Q -- on March thirteenth?

6 A No, sir. No, sir.

7

8

9

10 REDIRECT EXAMINATION BY MR.

11 KULP:

12 Q Fine. So when did, when did you
13 ask him what he did with those clothes that
14 were -- he wore when he held her in his
15 hands until he was overcome by smoke and
16 went out the door?

17 A I don't remember.

18 Q Wasn't that real important --

19 A Yes.

20 Q -- what he did with the clothes
21 that would have had blood, her blood all
22 over them, under the theory of the
23 confession, and smoke from the fire?

24 A I don't remember.

25 Q All right. Thank you.

Clayton -- Redirect

1 THE COURT: You can come down.

2 Call your next witness.

3 MR. DURANT: Your Honor -- do
4 you need five minutes?

5 MR. KULP: Yes, sir. I would,
6 too.

7 MR. DURANT: Your Honor, would
8 you consider a five-minute break?

9 THE COURT: Sure. I'll sit
10 right here. Go ahead.

11 MR. KULP: Thank you, your
12 Honor.

13 (Whereupon, a recess was taken
14 at 3:04 p. m.)

15 (Court resumes at 3:11 p.m.)

16 MR. KULP: Thank you, your
17 Honor.

18 THE COURT: All right. Call
19 your next witness.

20 MR. KULP: We would call arson
21 investigator Norris.

22 THE COURT: Thank you.

23

24

25

Norris -- Direct

1 C H A R L E S B E N J A M I N

2 N O R R I S, having been called as a
3 witness out of the presence of the
4 jury, is duly sworn and testifies as
5 follows:

6 DIRECT EXAMINATION BY MR. KULP:

7 Q May it please the Court, your
8 Honor.

9 THE COURT: Go ahead.

10 Q First off, Mr. Norris, have you,
11 since we got back from lunch, have you
12 discussed your testimony with anybody here
13 today?

14 A No, sir.

15 Q Or anyone's testimony?

16 A No, sir.

17 Q Thank you. Now, the -- in
18 this -- first question I wanted to ask you
19 was in this case and kind of cutting right
20 to the chase, on Friday, you know about the
21 polygraph afternoon with Captain McHale when
22 an attempt was made to take a polygraph exam
23 of Mr. Myers?

24 A Yes, sir.

25 Q Okay. Were you present there at

Norris -- Direct

1 the county police department for that?

2 A No, sir.

3 Q Very good. Now, shifting over.

4 The eleven-by-fourteen photos, one of which
5 was admitted in evidence during the Jackson
6 V. Denno hearing last year, what's your
7 recollection of how many photos of that size
8 were shown to Mr. Myers on the Saturday, the
9 fifteenth?

10 A I only know of one photo that
11 was shown to him.

12 Q All right. Were there any other
13 eleven-by-fourteen photos that were shown to
14 him?

15 A Yes, sir. There were several of
16 them.

17 Q There were several of them.
18 Where did they come from?

19 A I do not know, sir. I don't
20 know who obtained them.

21 Q Okay. How many were there?

22 A I don't know the exact number.

23 Q What was the purpose and the
24 use, and the use of those photos as you
25 understood it being present during the

Norris -- Direct

1 interrogation?

2 A I really don't know. They were
3 already there when I arrived, and at some
4 point in time he was shown one, one of the
5 photographs. I had no knowledge of why they
6 were there or why they were enlarged.

7 Q Did you eventually see them or
8 flip through them and see what they were?

9 A Yes, sir.

10 Q They were gory photographs of
11 the deceased?

12 A They were autopsy photographs.

13 MR. KULP: Autopsy photographs.
14 Just beg the Court's indulgence one
15 second.

16 (Whereupon, marked for
17 identification was Defendant's Exhibit
18 No. 5, receipt for photograph
19 developing.)

20 Q Approaching the witness, I hand
21 you defendant's five for identification, and
22 asking you if you can identify that
23 document, possibly?

24 A Yes, sir. It's a receipt from
25 Exposure Sixty. Photo processing company

724

Norris -- Direct

1 that we do business with.

2 Q And what does -- does it bear a
3 date?

4 A Yes, sir.

5 Q What date is that?

6 A March fifteenth, 1997.

7 Q March fifteenth. Does it bear a
8 signature on it?

9 A Yes, sir.

10 Q Do you recognize the signature?

11 A Yes, sir.

12 Q Who's signature is on it?

13 A My signature.

14 Q That's your signature?

15 A Yes, sir.

16 Q Does that refresh your
17 recollection about who picked up or who
18 acquired the photographs --

19 A Yes.

20 Q -- eleven-by-fourteen. What do
21 you now recall?

22 A I had some photographs over
23 there at Exposure Sixty also at the time
24 that I took the time of the fire. I believe
25 I was going to pick them up and somebody

Norris -- Direct

1 mentioned how about picking these
2 enlargements up, we got those enlargements
3 over there. How about grabbing them while
4 you're over there? I forgot that I had
5 gotten them.

6 Q Okay. And having refreshed your
7 recollection with that document, do you
8 recall when you picked them up, where you
9 brought them?

10 A To the detective office.

11 Q You recall who called you and
12 told you to pick them up?

13 A No. I don't think anybody
14 called me. I was at the detective office.

15 Q Oh.

16 A And I mentioned, somebody was
17 talking about the photographs because I had
18 to run across the street because this is
19 directly across, directly across from city
20 hall, and pick up some photographs from the
21 fire scene, and I don't remember who asked
22 me: "Well, while you over there we got some
23 enlargements. How about picking them up
24 while you're over there." I don't recall
25 who, specifically.

Norris -- Direct

1 Q When you picked, when you picked
2 them up you brought them back to the police
3 station?

4 A Yes, sir.

5 Q What'd you do with them?

6 A I gave them to someone. I don't
7 remember or recall who. It was either
8 probably Lieutenant Cumbee or Detective
9 Clayton.

10 Q Okay. And from that -- but now
11 you recall there were five
12 eleven-by-fourteen's. Right?

13 A I don't remember. According to
14 this, yes, sir. But I don't remember.

15 Q The defendant was shown one of
16 those?

17 A Yes, sir.

18 Q What happened to the other four
19 when the defendant was shown one of them?

20 A I do not know, sir.

21 Q Do you know where they were when
22 the defendant was shown one of them?

23 A They were all in a large
24 envelope. Could have been couple large
25 envelopes. I don't recall. I remember

Norris -- Direct

1 there was one large one.

2 Q All right. Did you have
3 occasion to see Mr. Myers on Friday of the
4 period of investigation Thursday, Friday,
5 Saturday?

6 A Yes, sir.

7 Q Did you see him at the North
8 Charleston detective office?

9 A Yes, sir.

10 Q And you knew, you just testified
11 that you had picked, you were picking up
12 some photos on Saturday, the next day, but
13 did you see, yourself, any small-sized
14 photographs associated with the case on
15 Friday at the North Charleston Police
16 Department?

17 A I probably did. I don't
18 specifically remember, but I remember there
19 was quite a number of photographs.

20 Q Do you know if any of those were
21 exhibited to Mr. Myers?

22 A No, sir. I have no -- don't
23 have any knowledge, firsthand knowledge that
24 they were or they weren't.

25 Q You participated in the

Norris -- Direct

1 investigation of the fire and arson, the
2 cause and origin aspects of this?

3 A Yes, sir.

4 Q And you concluded that it was,
5 that it was arson, that it was not
6 accidental?

7 A Yes, sir.

8 Q When did you make that
9 conclusion?

10 A Late Thursday afternoon, the day
11 of the fire.

12 Q Okay. And what did you base
13 that conclusion on?

14 A Based it on the conclusion that
15 we found the -- located the point and area
16 of origin.

17 Q I'm sorry. I can barely hear
18 you.

19 A We located the origin, the area
20 of origin, point of origin of the fire, and
21 in that location there was no accidental
22 source of ignition found.

23 MR. DURANT: Your Honor --

24 THE COURT: Yes.

25 MR. DURANT: With all due

Norris -- Direct

1 respect, it's getting into the
2 substance of what he is going to be
3 testifying about. What does this got
4 to do with Jackson V. Denno and
5 voluntariness?

6 MR. KULP: All right. I'll move
7 on, your Honor.

8 THE COURT: Go ahead.

9 MR. KULP: Yes, sir.

10 Q Did you tell the detectives --
11 when did you tell the other detectives, the
12 detectives looking into this case that you
13 concluded it was arson?

14 A Could have been late Thursday
15 evening or Friday morning.

16 Q And -- yes, sir. When you told
17 them that, did you tell them -- surely you
18 told them how you concluded the fire
19 started?

20 A I did not go into any specifics
21 other than then we've located the point of
22 origin and found no accidental source of
23 ignition, and appeared to just involve
24 ordinary combustible materials.

25 Q And in fact you concluded that

730

Norris -- Direct

1 there was no accelerant found at the point
2 of origin of the -- that you determined of
3 the fire?

4 A Yes, sir. We concluded. We
5 found no evidence indicating any type of
6 liquid accelerant.

7 Q So what started the fire? When
8 you concluded Thursday night that it was
9 arson --

10 MR. DURANT: Once again, your
11 Honor, this may be appropriate in the
12 trial, but what does this got to do
13 with Jackson V. Denno?

14 THE COURT: Well, I'm going to
15 let him get into this part of it. I'm
16 interested myself. Go ahead.

17 A Concluded that open flame
18 applied to ordinary combustible material in
19 the form of paper.

20 Q You concluded that?

21 A Yes, sir.

22 Q That was the whole -- part of
23 your whole assessment as an arson specialist
24 about the crime scene or the fire scene?

25 A Yes, sir.

Norris -- Direct

1 Q And you told that, like you
2 said, to the detectives working the case?

3 A Yes, sir. I'm sure I did. I
4 don't specifically remember who or when, but
5 I'm sure such came up.

6 MR. KULP: Yes, sir. One of the
7 things that I need to do and I don't
8 really want to do it, but very
9 dramatically because there are a lot of
10 people in the courtroom, but what I'd
11 like to do, your Honor, since the jury
12 is out is to simply proffer or have
13 those other four now brought forward,
14 eleven-by-fourteen's marked for the
15 record.

16 THE COURT: Sure.

17 MR. KULP: And if you -- you
18 know what I mean, without --

19 MR. DURANT: Court's exhibits
20 or --

21 MR. KULP: Yeah. At this time.
22 I mean I don't want to hand them --

23 THE COURT: You want to have him
24 identify them?

25 MR. DURANT: I don't even know

Norris -- Direct

1 if he's seen them.

2 Q Okay. All right. Kind of keep
3 it to yourself. You've seen these photos
4 before involved in this case. Is that one
5 of the photos that you picked up?

6 A Yes, sir.

7 Q Okay. Is that one of the photos
8 you picked up?

9 A I believe it was, yes.

10 Q Is that one of the photos you
11 picked up?

12 A Yes, sir.

13 Q Is that one of the photos you
14 picked up?

15 A I believe it was. I don't
16 specifically remember that one, but it's the
17 size and consistent with the other photos.
18 But I did not look at the photos until later
19 on.

20 Q Is that one of the photos?

21 THE COURT: He says they're the
22 right size.

23 A Yes, sir.

24 Q Okay. Is that one of the
25 photos?

Norris -- Direct

1 A Yes, sir.

2 Q They all are?

3 A Yes, sir. Appears to be.

4 Q All right. I'll just put this
5 aside for marking. Thank you. I just. . .

6 When you were participating in
7 the interrogation of Mr. Myers on Saturday,
8 were you aware that he'd been interviewed
9 for an hour or almost an hour in a closed
10 police car with Detective Payne virtually
11 anywhere from three to four hours after the
12 fire when Detective Payne took a
13 non-inculpatory statement from him and
14 Detective Payne did not report that he
15 smelled smoke or saw any other signs of
16 involvement of Mr. Myers? Were you aware of
17 that?

18 A I knew that Detective Payne had
19 interviewed the defendant but whether he was
20 in a car or standing outside, I do not know.

21 Q So that Saturday you didn't know
22 that Detective Payne had taken a statement
23 from him, sitting in a car, that day of the
24 discovery of --

25 A I knew that he had interviewed

Norris -- Direct

1 him and taken a statement, but I did not
2 know whether he was sitting in a car,
3 standing outside the car. I knew he was on
4 the scene of the fire.

5 Q Okay. Thank you.

6 That's all I have, your Honor.

7 THE COURT: Any questions?

8 MR. DURANT: I just have one.

9

10

11 CROSS-EXAMINATION BY MR. DURANT:

12 Q You mentioned something on
13 direct and I couldn't hear your answer. You
14 said you didn't look at the photos until
15 when?

16 A Until we got back to the police
17 station and they were opened up later on. I
18 didn't immediately look at them in my travel
19 across the street. I did not open them up.

20 Q Okay. But your testimony is the
21 defendant and you, at least when you were in
22 the room, was shown one photograph?

23 A Yes, sir.

24 Q Thank you. I have nothing
25 further.

Norris -- Direct

1 THE COURT: You can come down.

2 THE WITNESS: Thank you.

3 THE COURT: Call your next
4 witness.

5 MR. KULP: Thank you, your
6 Honor.

7 We would call Detective Sergeant
8 Tetanich, please, sir.

9 THE COURT: Come around,
10 Lieutenant. It's been so long. Are
11 you a captain now?

12 THE WITNESS: No, sir.

13 THE COURT: Put your left hand
14 on the Bible and raise your right hand
15 for me.

16

17

18

19 G E O R G E W I L L I A M

20 T E T A N I C H, having been called as
21 a witness outside the presence of the
22 jury, is duly sworn and testifies as
23 follows:

24 THE COURT: You are George
25 William Tetanich?

Norris -- Direct

1 THE WITNESS: Yes, sir.

2 THE COURT: That's

3 T-e-t-a-n-i-c-h?

4 THE WITNESS: Yes, sir.

5 THE COURT: Have a seat. You
6 may examine.

7 MR. KULP: Thank you. May it
8 please the Court.

9

10

11 DIRECT EXAMINATION BY MR. KULP:

12 Q Lieutenant, you -- my questions
13 are with regard to this case. Were you at
14 the Charleston County Sheriff's Department
15 on Friday afternoon, the fourteenth of
16 March, with Detective Clayton when a
17 polygraph examination was undertaken?

18 A No, sir.

19 Q Did you ever thereafter view the
20 videotape made of that polygraph
21 examination?

22 A No, sir.

23 Q You never seen it?

24 A No, sir.

25 Q Okay. Did you ever know of its

Tetanich -- Direct

1 existence?

2 A No, sir.

3 Q On Friday -- excuse me. Do
4 you -- were you participating in the
5 investigation of this case on Friday, the
6 fourteenth of March?

7 A Yes, sir.

8 Q Did you have contact with
9 Mr. Myers that day?

10 A Yes, sir.

11 Q You're aware, are you not, that
12 there were a series of photos from the crime
13 scene and autopsy, small photos, that
14 were -- that are involved in the case; did
15 you see them on Friday, any small photos
16 associated with this case?

17 A I can't recall for sure. I've
18 seen photos from the case file, but I can't
19 recall what day I've seen them.

20 Q Do you know if Mr. Myers was
21 shown any photos on that Friday?

22 A No, sir.

23 Q On Saturday, the fifteenth, you
24 were at the police station and participated
25 in the interrogation of Mr. Myers?

Tetanich -- Direct

1 A Yes, sir.

2 Q And at that time, not to rehash,
3 but in the Jackson V. Denno hearing last
4 year, one eleven-by-fourteen enlargement was
5 introduced into evidence at that time. Do
6 you recall that?

7 A A --

8 Q A photograph.

9 A I know there were some larger
10 photographs made, yes, sir.

11 Q Okay. Let me -- how many of
12 those, you mentioned several made, how many
13 of those were shown to the defendant at any
14 time on Saturday?

15 A Just one, I think.

16 Q And were any of the others ever
17 shown to him?

18 A No.

19 Q Where were they? What happened,
20 when he looked at one of them, where were
21 the others?

22 A I believe they were in a big
23 manila envelope.

24 Q And nearby the one that was
25 shown to him or another room, or do you

Tetanich -- Direct

1 recall?

2 A I don't recall exactly where.
3 they were at.

4 Q Were they ever out of that
5 envelope?

6 A In the presence of the victim?
7 I don't believe so.

8 Q No. Presence of Mr. Myers.

9 A I mean Mr. Myers. No, sir. I
10 don't believe so.

11 Q Did you ever see them stacked up
12 in front of him?

13 A No, sir.

14 Q Okay. Beg the Court's
15 indulgence just one second.

16 Now, that one photograph -- you
17 testified in the Jackson V. Denno hearing,
18 that that one photograph that you recall,
19 that's the enlargement -- when I say
20 photograph I mean the enlargement -- that
21 was shown to Mr. Myers after he confessed?

22 A Yes.

23 Q And how long after he confessed
24 was he shown that photo?

25 A I don't know the exact time.

Tetanich -- Direct

1 That day. The same day of the test.

2 Q And what was the law enforcement
3 or the police purpose in showing him that
4 photo, enlarged photo?

5 A I don't recall. I think
6 Lieutenant Cumbee showed it to him.

7 Q Okay. And do you know why those
8 enlargements were made from the negatives of
9 the photos?

10 A No, sir. I didn't request that
11 so I don't know why.

12 Q You participated, I believe you
13 testified, in, on Friday night in a
14 discussion about getting or interrogating
15 Mr. Myers on Saturday --

16 A Right.

17 Q -- to get a confession from him.
18 And in that discussion did you discuss
19 display of photographs or large photographs
20 among the people present?

21 A I don't recall any, any of that.
22 I think we were talking more about his
23 physical condition.

24 Q Well, I mean in terms of
25 planning for Saturday?

Tetanich -- Direct

1 A Oh, no. No.

2 Q Okay. Who was present at that
3 meeting and that plan for Saturday?

4 A I. . . I don't recall exactly.

5 I know it was -- it was probably me,

6 Lieutenant Cumbee, and Denver.

7 Q Okay.

8 A But. . . I don't know if anybody

9 else was there.

10 Q Yes, sir. You were active on
11 Saturday in the investigation of this case,
12 particularly Saturday mid-day and afternoon.
13 Correct?

14 A Yes.

15 Q And you -- do you recall -- did
16 you -- did you or in your presence any other
17 detective ask Mr. Myers about how he left
18 his parents' house in the wee hours of the
19 morning?

20 A I think, I think we did ask him
21 something about that. I think he, he may
22 have mentioned. I'm trying to remember.
23 It's been a while. But I think he said he,
24 he either let his car back out or pushed it
25 out or let it roll out of the driveway.

Tetanich -- Direct

1 Q Okay.

2 A Because I think his mother said
3 something about she would have heard the
4 truck if it cranked up on the driveway, or
5 something to that effect.

6 Q Where in any police document
7 that you have reviewed or are familiar with
8 in this case is that recorded or mentioned,
9 that he let out his truck?

10 A I don't think it is, because I
11 remember we had discussed that, you know,
12 later, you know, that he had said that but
13 we hadn't really actually documented that in
14 his, in his statement and is probably an
15 oversight on our part, but when you give a
16 statement like that you can't put
17 word-for-word-for-word everything that he's
18 got. You know, everything he said.

19 Q You were with them that day from
20 roughly, I'm not trying to, trick question,
21 but ten, 10:30 until the time that he was
22 taken to jail, five, six o'clock?

23 A Yes. Yes, sir.

24 Q And during that time is it your
25 testimony that during that multiple-hour

Tetanich -- Direct

1 period that you didn't have the time to put
2 all of those details and specifics into the
3 statement that you had him sign later that
4 afternoon?

5 A Well, if -- the investigation
6 that day really went in stages, like I told
7 you before. We initially sat down, we
8 interviewed him, got a little background
9 history on himself and the victim. Talked
10 something about what he'd been doing that
11 day and the day before.

12 And then we, we stopped in the
13 middle of that and Lieutenant Cumbee came in
14 and we talked some with him, and then we
15 talked about the hair and went back in, did
16 another interview, verbal interview.

17 Then he related some information
18 about stuff that we wanted to check out,
19 which the purse and the other stuff, so we
20 left the building. We went to the scene of
21 the crime, we went to the park, we went to,
22 you know, we went all around, tracking down
23 his leads he gave.

24 And then we come back to the
25 station, and so, you know, there's a time we

Tetanich -- Direct

1 haven't even started writing yet, so you
2 know, you got this thing spread out over the
3 whole day, so by the time we get back and
4 start reviewing and writing, you're not
5 going to remember every single detail that
6 he told you four hours ago, five hours ago,
7 and if he doesn't add it when you're writing
8 the statement, you know, do you want to add
9 anything to this or do you want to change
10 this, then you just write it out. You know,
11 we'll just write it out. Is this what
12 happened? Yes. Is this what happened?
13 Yes. And on down the line.

14 But when you've got four hours
15 between the first time you're talking to him
16 and the second time you're talking to him,
17 you know, you're going to tend to forget
18 every minor little detail that maybe later
19 on you say well, man, I should have put that
20 in the statement, but you forget to do it.

21 Q Okay. How about as opposed to
22 from his statement, did you put it in a
23 supplement report?

24 A Well, if you remember it at the
25 time you can put it in a supplemental. If

Tetanich -- Direct

1 it -- like before, if there's been a time
2 frame that you don't remember a particular
3 thing, and it doesn't strike you that time,
4 you don't put it in a supplemental. But
5 then somebody mentions something to you
6 maybe even after that and you're going,
7 "Man, yes, he said that." Or "Yeah, he did
8 that." And it clicks in your memory,
9 something jogs your memory. Then you'll
10 remember and you'll say "Man, yeah, you're
11 right. He did say that or he did do that.
12 But I forgot to make a note of it or I
13 forgot to put it in the statement. But
14 you're right." And that happens sometimes.

15 Q When did you remember that he
16 had told you that he rolled his truck out of
17 the driveway?

18 A I want to think it was either at
19 a pretrial or, or some other kind of meeting
20 that we had, or either a conversation with
21 Detective Clayton or somebody that I
22 remember, recall that, that they had
23 mentioned it and I said "Yeah, that's right.
24 He mentioned that but I forgot that and
25 you're right."

Tetanich -- Direct

1 Q Did you then put it into a
2 recorded document for the file, for the
3 police file once you recalled it?

4 A I don't, I don't think I wrote
5 it up on any official document, no.

6 Q Okay. However, you did have the
7 occasion to go back and file a supplement on
8 the case about another issue that came up
9 later on?

10 A Yeah.

11 Q Did you ask Mr. Myers what he
12 did with the clothes that he was wearing the
13 night of the murder?

14 A I think we asked him at his
15 house and when we were at his house
16 conducting the search and he, he gave us
17 some clothes that he said he was wearing.

18 Q Okay. But and did you, did you
19 ask him if those were the clothes?

20 A I believe, I don't believe I
21 asked him at all. I think Detective Clayton
22 or somebody else may have asked him where
23 the clothes that you were wearing the night
24 of the murder, and he said these are them or
25 something in his room, and they were picked

Tetanich -- Direct

1 up and taken. I don't recall.

2 THE COURT: All this is in his
3 transcript if you want to read it,
4 okay.

5 Q Did you have any contact on the
6 thirteenth, the day of the initial
7 investigation in the case, with Dana
8 Chaples?

9 A Is that -- yes, sir.

10 Q What was that contact that you
11 had with Mr. Chaples?

12 A I believe I went over to his
13 house with another investigator, Detective
14 Roper. I'd initially sent Detective Roper
15 over to interview him based upon some
16 information that we'd received that he was
17 in the area the night of homicide and that
18 he had come back and, and I was unsatisfied
19 that he didn't get a written statement from
20 him and all that, and we went back to try to
21 talk to him.

22 Q And what was the source of the
23 information that he'd been at the scene?

24 A Two of the witnesses who had --
25 had left the bar had said they had spoke to

Tetanich -- Direct

1 him outside and they told him the bar was
2 closed.

3 Q Okay. Were they taken at some
4 point to your knowledge to look at him to
5 insure that that was -- once he was stopped
6 at a traffic stop, to insure that that was
7 the fellow they described?

8 A I don't, I don't know if they
9 were taken to, to identify him or not. They
10 may have been. But it was the same person
11 in the car as far as we could determine.

12 Q Had his appearance changed any,
13 according to the witnesses?

14 A Yes.

15 Q In what way?

16 A He had shaved off his mustache I
17 think.

18 Q Okay. And despite the two
19 witnesses indicating that he was present at
20 closing, did he tell police officers that he
21 wasn't at the Mill?

22 A Correct.

23 Q Did you, when Mr. Myers told you
24 that he rolled out of his driveway as you've
25 testified, did you go do a canvass of the

Tetanich -- Direct

1 neighborhood and check with any neighbors to
2 see if they in fact heard anything or
3 noticed anything that night? No?

4 A No, sir.

5 MR. KULP: Thank you. That's
6 all I have.

7 THE COURT: Any questions,
8 counselor?

9 MR. DURANT: Just a couple, your
10 Honor.

11

12

13

14

15 CROSS-EXAMINATION BY MR. DURANT:

16 Q You answered a question a while
17 ago and I wasn't sure what your answer was.
18 You were asked this question: "Do you know
19 whether Myers was shown the photos on
20 Friday?"

21 And you said, "No, sir."

22 Did that mean "no, sir, he
23 wasn't shown photos" or "no, sir" or "no,
24 sir, you don't know whether he was shown
25 photos"?

Tetanich -- Cross

1 A No, sir. He wasn't shown any
2 photos, to my knowledge.

3 Q Okay. Did you see anybody show
4 him photos?

5 A No.

6 Q Now, were you, were you in the
7 office Friday -- I'm talking about Friday
8 now, not Saturday -- were you in the office
9 when, with Cumbee, Clayton, and the
10 defendant before you all went out to the
11 Olive Garden?

12 A Sure.

13 Q Okay. Do you know whether there
14 were any photographs on Lieutenant Cumbee's
15 desk at the time?

16 A There may have been.

17 Q Okay. So there may have been,
18 there may not have been, you just don't
19 remember?

20 A I don't, I don't recall. There
21 could have been photographs from the case on
22 his desk. I remember looking at some
23 photographs, but I can't recall where I
24 looked at them at.

25 Q Okay. Is it possible that Mr.,

Tetanich -- Cross

1 if, assume there were photographs in
2 Lieutenant Cumbee's office, is it possible
3 that Mr. Myers could have seen them?

4 A Sure.

5 Q Now, the clothing you said you
6 collected, how many times did you go out to
7 Mr. Myers's house, do you recall?

8 A I think we only went out once.

9 Q Okay. Do you know if you went
10 back out -- now Friday night, after he got
11 back from the polygraph, you all went out
12 there. Is that correct?

13 A Yes, sir. That's when we did
14 the consent to search.

15 Q Now at that time obviously, and
16 I think this is where Mr. Kulp's question is
17 coming from, at that time he had not
18 confessed. Is that correct?

19 A Correct.

20 Q You all, but you all collected
21 some clothing out at his house that night?

22 A Yes, sir.

23 Q And that was clothing I presume
24 he had either said he was wearing on
25 Wednesday or Thursday?

Tetanich -- Cross

1 A Right.

2 Q I think Mr. Kulp's question was
3 did you all ever, after he confessed, did
4 you all ever ask him if that was the
5 clothing he was wearing at the time the, the
6 incident actually occurred, if you know?

7 A You mean in the interview,
8 Saturday?

9 Q In the interview Saturday or any
10 time after that.

11 A I don't think so.

12 Q Okay.

13 A But we did ask him if that was
14 the clothes he was wearing that night when
15 we took him.

16 Q Okay.

17 A But not in the interview. Later
18 on.

19 Q Okay. So you don't know -- do
20 you know if that was Wednesday night or
21 Thursday night he was referring to?

22 A You mean he was referring to,
23 Wesley Myers?

24 Q Well, you were over there Friday
25 night.

Tetanich -- Cross

1 A Yes.

2 Q And he said those are the
3 clothes he was wearing that night. We have
4 an incident that occurred two o'clock in the
5 morning, three o'clock in the morning.

6 A Right.

7 Q Do you know whether he gave the
8 clothes he was wearing Thursday during the
9 day or Wednesday during the day?

10 A I don't know what clothes he
11 gave, but we were asking for the clothes
12 that he might have wore Wednesday night.

13 MR. DURANT: Okay.

14 MR. KULP: Very briefly.

15

16

17

18

19 REDIRECT EXAMINATION BY MR.

20 KULP:

21 Q Lieutenant Tetanich, you went
22 there that Friday night, you went to his
23 parents' house to search for evidence of a
24 crime that would link Mr. Myers to the
25 homicide.

Tetanich -- Redirect

1 A Correct.

2 Q Okay. You looked through every
3 room in the house. Correct?

4 A Yeah.

5 Q His parents were present.

6 A Yes, sir.

7 Q They asked to go with you as you
8 went from room to room.

9 A Yes.

10 Q You had how many officers
11 searching the house as you recall? More
12 than six?

13 A I thought it was three or four
14 of us, but it may have been more. I don't
15 know.

16 Q May have been more. At that
17 point other than this hair found in the
18 victim's hand you had no other forensic
19 evidence or physical evidence in the case,
20 correct, that would link Mr. Myers to the
21 murder?

22 A No.

23 Q So you were looking in the
24 house, were you not, for something that
25 would link him to the murder. Correct?

Tetanich -- Redirect

1 A I think we were trying to secure
2 anything before it was destroyed.

3 Q Of course.

4 A Yes.

5 Q I mean you were looking for
6 evidence of a crime. That's the purpose in
7 searching someone's house, isn't it?

8 A Yes.

9 Q And at that time you knew that
10 the victim in the case had been badly cut or
11 beaten and bled a great deal. Correct?

12 A I don't know how bad, how badly
13 she bled. I mean I know that the victim had
14 been beaten and been cut, but. . . I could
15 testify to that.

16 Q Okay. And you knew there was a
17 fire at the scene?

18 A Correct.

19 Q Okay. And as -- and you knew
20 that the fire was deemed to be arson?

21 A Yeah.

22 Q Okay.

23 A By Benjamin.

24 Q So your purpose in going
25 throughout Myers' home was to collect

Tetanich -- Redirect

1 evidence that would link Mr. Myers to the
2 crime?

3 A If we could find it, yeah.

4 Q Right. And so you were looking
5 for things like bloody clothing or
6 soot-covered clothing or burned clothing or
7 whatever, weren't you?

8 A Right.

9 Q You didn't find a thing?

10 A (The witness shakes head.)

11 Q Is that yes?

12 A Yes -- no. We didn't find
13 anything that I know of, soot-covered
14 clothing.

15 MR. KULP: Okay. Okay.

16 MR. DURANT: Nothing further.

17 THE COURT: You can come down.

18 Thank you.

19 Call your next witness.

20 MR. KULP: Melvin Cumbee.

21

22

23

24

25

Cumbee -- Direct

1 M E L V I N R A Y L O N

2 C U M B E E, J R., having been called
3 as a witness outside the presence of
4 the jury, is duly sworn and testifies
5 as follows:

6 THE COURT: Have a seat, please.
7 After you're seated, give us your full
8 name and spell your last name.

9 THE WITNESS: These seats don't
10 move very far, do they? Melvin Raylon
11 Cumbee, Junior. You need the spelling?

12 THE COURT: Yeah. Spell that
13 for me, Mr. Cumbee.

14 THE WITNESS: Melvin,
15 M-e-l-v-i-n; Raylon, R-a-y-l-o-n;
16 Cumbee, C-u-m-b-e-e.

17 THE COURT: Junior?

18 THE WITNESS: Yes, sir.

19 THE COURT: Go ahead.

20

21

22 DIRECT EXAMINATION BY MR. KULP:

23 MR. KULP: May it please the
24 Court, your Honor.

25 Q Lieutenant Cumbee, you, do you

Cumbee -- Direct

1 know if any small-sized photographs were
2 shown to Mr. Myers on Friday, the
3 fourteenth?

4 A I didn't show him any
5 photographs, sir.

6 Q Okay. Do you know if anyone
7 else showed him any photographs on Friday,
8 the fourteenth?

9 A No, sir, I do not know.

10 Q Okay. On Friday you played an
11 active role in the investigation in this
12 case, did you not?

13 A Yes, sir.

14 Q And you were with Mr. Myers
15 frequently that day?

16 A Yes, sir.

17 Q Okay. Did you go down to
18 Captain McHale's office for the purpose of
19 the polygraph exam?

20 A No, sir, I did not.

21 Q Okay. You know now a videotape
22 was made by Captain McHale of that event
23 that transpired. Correct?

24 A No, sir.

25 Q You have no knowledge of a

Cumbee -- Direct

1 videotape?

2 A Un-un.

3 Q Okay. Now, the -- when -- on
4 that date, the fifteenth, when you were
5 participating in the investigation and
6 interrogation of Mr. Myers, did you have the
7 occasion to see him exhibited or shown an
8 eleven-by-fourteen enlarged photograph of
9 either the autopsy or the victim at the
10 crime scene as she was found?

11 A I don't know exact, what exact
12 size. You mean a bigger --

13 Q Yes, sir.

14 A Not the small --

15 Q Yes, sir.

16 A Yes, sir.

17 Q And how many of those were shown
18 to Mr. Myers?

19 A I remember one.

20 Q Do you know if there were others
21 that were in existence at that time?

22 A There were a lot of pictures
23 that our crime scene had taken the day of
24 the incident, and there could have been some
25 other ones. I remember the one but I'm not

Cumbee -- Direct

1 going to say there's not any other ones, the
2 bigger ones that exist.

3 Q I believe you testified that
4 there was a plan on that Friday night to
5 confront Mr. Myers and attempt to get a
6 confession out of him on Saturday?

7 A Myself and Lieutenant Tetanich
8 and Detective Clayton had talked on Friday
9 night and we were going to talk to him that
10 night and it was decided that we would talk
11 to him on Saturday morning.

12 Q Okay. And as part of that plan
13 was some enlargement, enlarged photos made
14 or was that part of the plan that was
15 considered?

16 A I don't --

17 Q You -- do you know how those
18 photos got ordered or paid for or how the
19 negatives were put in?

20 A Our crime scene, our crime scene
21 unit, if you look at the smaller pictures,
22 on some of the smaller pictures it's harder
23 to see the detail. If you blow the pictures
24 up it's easier for us to see the detail.

25 Q Okay. And what was the purpose

Cumbee -- Direct

1 in showing that enlarged photograph to
2 Mr. Myers?

3 A Well, the victim had sustained
4 trauma to her face and at that point in time
5 we were showing him that we knew that she
6 had sustained trauma with what he had told
7 us in his confession that he had given.

8 Q So the purpose was to show him
9 that she had sustained trauma?

10 A That we knew that she -- in
11 other words, we knew he was telling the
12 truth in what he'd told us that he'd done.

13 Q Okay. But you already knew that
14 she sustained trauma. I mean you, you
15 saw -- you went in with the crime scene, you
16 saw the recovery of the body and so forth?

17 A Yes, sir.

18 Q Right. And --

19 A I didn't say it was done for me.
20 We showed him.

21 Q Right. Oh, I know that, but
22 that was something that you already did.

23 A Okay.

24 Q Now, the, the, this
25 eleven-by-fourteen photograph that you

Cumbee -- Direct

1 recall being shown to him was shown to him
2 after he made the statement "I must have did
3 it then"?

4 A Yes, sir.

5 Q Okay. And you recall saying to
6 him, as you reported in your, in your
7 supplemental, "You need to apologize to the
8 victim" and you were pointing at the photo?

9 A I had said that I needed -- that
10 he had needed to apologize to Teresa, yes,
11 sir. I don't remember pointing to the photo
12 saying that.

13 Q Were there any other enlarged
14 photographs nearby at that time?

15 A There could. Like I said, there
16 could have been. I don't know what, what
17 photographs were. I do remember that one,
18 but I don't know if any other ones were
19 enlarged.

20 Q Could they have been visible to
21 Mr. Myers?

22 A If there were some other
23 enlarged photos? Yes, sir. That's, that's
24 a possibility.

25 Q That could have been. Okay.

Cumbee -- Direct

1 Beg the Court's indulgence.

2 So do you know being involved in
3 the case if any photos of any size, shape,
4 or whatever were shown to Mr., associated
5 with this case were shown to Mr. Myers on
6 Friday?

7 A As I stated, I personally did
8 not show him any pictures. There were
9 pictures Friday, because at one point in
10 time I had them on my desk in my office so
11 there were pictures Friday, but I personally
12 did not show him any pictures. Someone else
13 could have shown him pictures. He may have
14 seen the pictures on my desk. I had the
15 pictures Friday, the smaller ones, on my
16 desk.

17 Q So you don't know if he had the
18 opportunity to look at any pictures?

19 A No, sir.

20 Q Okay. Did you participate in
21 the search of his parents' house on Friday
22 night?

23 A No, sir. I did not.

24 Q You weren't there?

25 A No, sir.

Cumbee -- Direct

1 Q You participated in his
2 interrogation on Saturday?

3 A Yes, sir.

4 Q Okay. Did you ever ask him in
5 the case as part of the case how he left his
6 parents' house and how he went back after
7 the crime and got cleaned up and so forth?

8 A No, sir. I did not.

9 Q Didn't ask him that?

10 A No, sir.

11 Q Didn't have any wonder about how
12 he was able to dispose of any incriminating
13 evidence?

14 A Well, oh, sure.

15 Q You had an interest in that?

16 A Oh, absolutely. But you asked
17 if I asked him. I didn't ask him any of
18 those questions.

19 Q Okay. Did you hear anybody else
20 ask him that?

21 A No, sir.

22 Q Okay. You don't have any --
23 there's no forensic evidence in this case to
24 tie Mr. Myers to the murder, that you're
25 aware of?

Cumbee -- Direct

1 A That I'm aware of as we sit here
2 today.

3 Q Four years later, as we sit here
4 today. None?

5 A (The witness shakes his head.)

6 MR. KULP: Okay. Thank you.

7 That's all I have.

8 For the record, you don't know
9 of any?

10 A I'm sorry. Of the forensic
11 evidence?

12 Q Yes.

13 A Yes. That's correct.

14 Q Okay. Beg the Court's
15 indulgence one second.

16 You're -- briefly. You recall
17 Dana -- you know Dana Chaples? You know the
18 name?

19 A I remember the name, yes, sir.

20 Q You ever had any association
21 with him prior to this incident in any
22 respect?

23 A Not that I know of.

24 Q Do you know if he's ever been
25 involved in any police matters prior to this

Cumbee -- Direct

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1 incident of any nature?

2 A I'm not aware. I'm not saying
3 he's not. I'm not aware.

4 Q You know that he was a suspect
5 in this case?

6 A Early on, yes, sir.

7 Q That was because he was seen at
8 the bar, the last person to be seen at the
9 bar?

10 A Yes, sir.

11 Q Okay. And that he shaved his
12 mustache off. You know that?

13 A I understood that, yes, sir.

14 Q And other than Mr. Myers'
15 confession, do you have any evidence in the
16 four years that this case has been pending,
17 apart from that statement that, that was
18 procured that Saturday, to put Mr. Myers
19 that evening of the thirteenth anywhere
20 other than at his parents' house, asleep in
21 his bed?

22 A No, sir.

23 MR. KULP: Thank you. That's
24 all I have.

25 THE COURT: Any questions,

Cumbee -- Direct

1 Solicitor?

2

3

4

5 CROSS-EXAMINATION BY MR. DURANT:

6 Q You may have answered this and I
7 just didn't hear because I was being
8 buttoned over from behind, but Friday, I'm
9 talking about Friday the day before he
10 confessed --

11 A Yes, sir.

12 Q -- did you have photos in your
13 office on that --

14 A Yes, sir. Yes, sir.

15 Q And you'd met with him briefly
16 in your office before you all went to the
17 Olive Garden. Correct?

18 A Correct.

19 Q Could he have seen
20 photographs --

21 A As I stated to Mr. Kulp, he
22 could have seen photographs on, on my desk.
23 I know the photographs were on my desk.

24 Q If he'd, if he'd asked you to
25 see the photographs, would you have let him?

Cumbee -- Cross

1 A Yes, sir, I would have.

2 MR. DURANT: I don't have
3 anything else.

4 MR. KULP: Just a couple, your
5 Honor.

6

7

8 REDIRECT EXAMINATION BY MR.

9 KULP:

10 Q He -- you know that Detective
11 Tetanich, Lieutenant Tetanich has testified
12 that he developed a feeling that Mr. Myers
13 was the killer of the victim that morning of
14 the discovery of the crime. Correct?

15 A He had a feeling about it, is
16 what he stated to me. That's what I
17 remember him saying to me that morning.

18 Q Yes, sir. And --

19 THE COURT: You've been over
20 this in detail also.

21 MR. KULP: I'm going to tie it
22 up, your Honor, very quickly.

23 Q And, and, and so that, the focus
24 of the investigation, fell on Mr. Myers from
25 that early point?

Cumbee -- Redirect

1 A No, sir.

2 Q Okay. Was he, Mr. Myers, ever
3 left alone in your office?

4 A He could have, he could have
5 been.

6 MR. KULP: Okay. Thank you.

7 That's all I have, your Honor.

8 THE COURT: You can come down.

9 Thank you.

10 Would you like to take five
11 minutes?

12 MR. KULP: Yes, sir.

13 MR. DURANT: Yes, please.

14 THE COURT: All right. Let's
15 take five minutes. Five minutes.

16 (Whereupon, a recess is taken at
17 3:54 p. m..)

18 (The Judge enters the courtroom
19 at 4:06 p.m.)

20 THE COURT: All right. Call
21 your next witness.

22 MR. DURANT: Jim, that's you.

23 MR. KULP: I'm sorry. We call
24 Captain McHale to the stand, your
25 Honor.

Cumbee -- Redirect

1 MR. DURANT: Actually, he's a
2 major.

3 MR. KULP: Major. Excuse me. I
4 knew that.

5 THE COURT: Come around, Major.
6 Put your left hand on the Bible and
7 raise your right hand for me.

8

9

10

11 K E V I N T I M O T H Y

12 M C H A L E, having been called as a
13 witness outside the presence of the
14 jury outside the presence of the jury,
15 is duly sworn and testifies as follows:

16 THE COURT: Thank you, sir.

17 MR. KULP: If it please the
18 Court, your Honor.

19 THE COURT: Go ahead.

20 MR. KULP: Thank you.

21

22

23

24

25

Cumbee -- Redirect

1 DIRECT EXAMINATION BY MR. KULP:

2 Q Major McHale, you received a
3 subpoena to appear in this case?

4 A Yes.

5 Q And the subpoena was duces tecum
6 for you to bring with you copies of all --
7 well, do you have a copy of that? All your
8 treatises, instructional materials,
9 everything dealing with your training and
10 experience in interrogation. Did you bring
11 those with you?

12 A No.

13 Q Why not?

14 A My office is in this building
15 and it would take a truck to bring over all
16 the things you asked for.

17 Q Okay. Did you respond to that
18 subpoena to let me know that, so I could
19 have chance to review those materials prior
20 to today?

21 A No. The subpoena that I got
22 said that the person who brought it to me, I
23 could give him copies at that time and I
24 would have explained to that person but I
25 got it by way of a third party, so I didn't

Cumbee -- Redirect

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1 need to explain that.

2 Q Okay. Would it be fair to say
3 that you have extensive documentation,
4 training materials, educational materials,
5 reference materials on the art of
6 interrogation?

7 A Yes.

8 Q Okay. What formal training have
9 you received in interrogation, if you can
10 outline it very quickly for the judge.

11 A Besides college, first of all,
12 and pastoral counseling and those kinds of
13 courses that talk a lot about interviewing
14 and not necessarily interrogation. Some
15 people would call it that.

16 Q Call pastoral counseling
17 interrogation?

18 A Sure.

19 Q Okay. Go ahead, please.

20 A I wouldn't call it
21 interrogation.

22 Q Right.

23 A Like I'm saying, some of the
24 terms I've heard, you all go back and forth.
25 You don't realize the difference between

Cumbee -- Redirect

1 interviewing and interrogation.

2 Police academy training, basic.

3 Polygraph school. Interviewing and

4 interrogation techniques. "Reid Techniques"

5 in particular. Kinesic interviewing.

6 Advanced training at the F. B. I. Academy.

7 And thousands and thousand of interviews and

8 interrogations.

9 Q Just one second, please. What
10 is the "Reid Technique"?

11 A It is a technique invented by a
12 fellow just to basically get to the point
13 quicker and bring somebody around to getting
14 the truth out of a person.

15 Q Does -- you've had training in
16 the "Reid Technique"?

17 A Yes.

18 Q What did that training consist
19 of?

20 A Well, the class that I took in
21 particular was a forty-hour block of
22 instruction that you go through. It's a
23 particular course. I went through it during
24 polygraph training.

25 Q I see. And where was that?

Cumbee -- Redirect

1 A In Atlanta, Georgia.

2 Q Yes, sir.

3 A Art Wright International.

4 Q Okay. And so you are a graduate
5 of a training program in the "Reid
6 Technique"?

7 A Yes.

8 Q You hold a certificate from
9 them, from the "Reid Technique" people?

10 A Yes.

11 Q Yes. What -- and the "Reid
12 Technique" is -- has certain guidelines and
13 steps and procedural approaches that are
14 important in using the technique. Isn't
15 that correct?

16 A If you use it the way it's
17 taught, correct.

18 Q All right. And in fact the Reid
19 people themselves advise that if the
20 technique is used incorrectly it can in fact
21 produce what's known as false confessions.
22 Isn't that true?

23 A No.

24 Q They cannot?

25 A I'm sure any technique can be

Cumbee -- Redirect

1 used improperly. But, no, they don't say
2 that in their writing or their teaching.

3 Q Okay. So it's your testimony
4 that the "Reid Technique", the principles
5 and procedures of which have been published
6 and used in instructional classes which
7 you've taken, do not indicate that the
8 technique can be misused if not used
9 properly?

10 A Of course. Any technique can be
11 misused.

12 Q Okay. So your answer is yes, if
13 it's not used properly, it can be misused?

14 A Any technique can be misused.

15 Q And if misused, it can produce
16 what's known as a false confession. Isn't
17 that true?

18 A I don't agree with that.

19 Q Is that what the "Reid
20 Technique" people and the program --

21 A It's not what I was taught, no.

22 Q Pardon me?

23 A It's not what I was taught nor
24 is it what I have read.

25 Q Okay. So is -- therefore, your

Cumbee -- Redirect

1 testimony would be that the "Reid Technique"
2 and the method of using it can never produce
3 a false confession?

4 A No. That isn't my testimony.
5 That's what you're saying. If you would
6 just listen to what I'm saying, any
7 technique can be misused.

8 Q No. I'm sorry. I'm asking the
9 questions.

10 A Any technique -- well --

11 Q The question is, is it your
12 testimony that the use of the "Reid
13 Technique" in any fashion can never produce
14 a false confession?

15 THE COURT: Now let me -- let
16 me --

17 MR. KULP: Yes, sir. Maybe you
18 can ask it.

19 THE COURT: Yes. He's going to
20 ask you questions. You can answer yes
21 or no or I don't know. Once you
22 answered, you can explain it.

23 Now ask the question.

24 Q Yes, sir.

25 Is it your testimony, yes or no,

Cumbee -- Redirect

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1 that the use of the "Reid Technique",
2 whether it's used correctly or incorrectly,
3 pursuant to the procedures that are
4 promulgated within the technique, can never
5 produce what is known as a false confession?

6 A I don't know.

7 Q Okay. And so it's your
8 testimony that the issue of a false
9 confession was never addressed during your
10 training in the techniques of the "Reid
11 Technique"?

12 A Sure.

13 Q It was addressed?

14 A False confessions are addressed,
15 yes.

16 Q And a concern, is it not, of the
17 use of the "Reid Technique" is that it might
18 produce a false confession under certain
19 circumstances? Isn't that true?

20 A Not the "Reid Technique" in
21 itself. A -- one of the by-products of
22 interrogation can be a false confession.
23 And any, and in any interrogation setting.
24 It's not just the "Reid Technique". Any
25 techniques can be misused and false

Cumbee -- Redirect

1 confessions can be made.

2 Q Right. In fact I think in the
3 videotape that was produced in this case, at
4 a certain juncture you indicate in there to
5 Mr. Myers when you had him with you that you
6 could get anybody to confess to anything?

7 A Well, things that aren't
8 serious. Now, I didn't say I could get
9 somebody to confess to anything, and there
10 are techniques you use in the same way to
11 make sure that the confession that you get
12 is valid.

13 Q Okay. And what are those
14 techniques that you use to get people to
15 falsely -- that you can use to get people to
16 falsely confess in minor things?

17 A Well, some of the research that
18 you're well aware of because of the doctor
19 that you subpoenaed. Hitting a wrong typing
20 key. Who cares about if somebody hit a
21 wrong typing key? But if they want to get
22 out of the pressure of the moment, they will
23 tell you just about anything to get out of
24 pressure. It's like a child who confesses
25 to breaking something when they really

Cumbee -- Redirect

1 didn't, just to get out of the pressure of
2 the moment.

3 Employees do it all the time,
4 working in disciplinary cases, they will
5 confess to things that aren't serious in
6 nature because what they're getting for
7 confessing is less than what they feel at
8 the moment that pressure that is going on.

9 I've never gotten a false
10 confession for a murder, I can tell you
11 that.

12 Q Okay. I wasn't really
13 following. You're saying that sometimes
14 people will falsely confess to things they
15 did, but it's not as serious as what they
16 really did, or what?

17 A No.

18 Q I'm confused.

19 A People will confess to something
20 they did not do if it was not serious, if
21 they perceive that the consequences of that
22 aren't going to be as great as what they're
23 feeling at the moment.

24 Q Okay. What are some of the
25 techniques that are used in the "Reid

Cumbee -- Redirect

1 Technique" when you're interrogating
2 someone?

3 A I'm not -- it is a technique.
4 I'm not sure what you're asking.

5 Q Okay. What are the steps or the
6 principles of the -- how do you use the
7 technique other than like a regular asking
8 someone questions, like "did you kill the
9 person?" What are some of the techniques
10 that are employed?

11 I mean anybody knows how to
12 ask -- any police officer carrying a badge
13 knows how to ask somebody if they killed
14 somebody or not.

15 A Sure. Well, I mean there's --
16 there's -- they have nine steps. Over the
17 years what ends up happening with this
18 technique is you take on some of its
19 features. Each person actually --

20 Q Excuse me. I'm sorry. What do
21 you mean by that?

22 A Each person takes it on and
23 personalizes it. I don't go through the
24 nine-step Reid process as it is taught.

25 Q So you use some hybrid or form

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1 of that?

2 A Sure. And everybody, everybody
3 does.

4 Q So what, what, what's the source
5 of that hybrid if it's not the "Reid
6 Technique"?

7 A Experience.

8 Q Okay. Your personal experience.

9 A Sure.

10 Q Okay. So you're using part of
11 the "Reid Technique" and part of your
12 personal experience in the course of
13 interrogation?

14 A Part of the way the F. B. I.
15 does things, part of the way the --

16 Q I just asked you if you did, not
17 what the F. B. I. --

18 A Well, no, because that's part of
19 my training and experience, so yes, I've
20 personalized my training.

21 Q Yes. Okay. And so is it
22 written down anywhere, this hybrid of the
23 "Reid Technique"?

24 A Of course not.

25 Q You just do it from the gut?

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1 A Absolutely.

2 Q Okay. Is that scientific, just
3 from the gut?

4 A It produces great results.

5 Q Obviously. You're aware that
6 sometimes people falsely confess and you
7 read about that in the literature. Correct?

8 A Sure.

9 Q You're aware of the case out
10 west where a gentleman was -- a confession
11 was obtained from him that he killed a woman
12 and the woman turned up in another city
13 several weeks later, alive?

14 A No.

15 Q Not familiar with that?

16 A No.

17 Q Are you familiar with the
18 Phoenix Temple murders in Tucson, Arizona?

19 A I'm sure I've read about them in
20 the past. The name sounds familiar, but I'm
21 not familiar with it.

22 Q Well, if you've read about them
23 you'll remember that five -- three people
24 were -- confessed to the crime of multiple
25 murders of, some murders of multiple

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1 Buddhist monks and that later when they did
2 a firearms examination of a twenty-two
3 rifle, it was determined that in fact two
4 young men had killed the Buddhist monks and
5 that the three people that they got to
6 confess did not do it. You read about that,
7 haven't you?

8 A I don't recall that, but --

9 Q Okay.

10 A But I don't see that it has any
11 bearing.

12 Q Okay. Well, you have and the
13 solicitor as well, you're going to be
14 offered in this case as an expert in the art
15 of and science of interrogation. Is that
16 correct?

17 A That's correct.

18 Q Well, then I need to ask you
19 questions about the basis of your expertise.

20 A Sure.

21 Q What have you read, what is in
22 your library here and your reference
23 material about false confessions?

24 A Pretty much everything I get my
25 hands on I read. Now, when you, when you

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1 talk about false confessions, I'm looking at
2 it from how to avoid false confessions, and
3 looking at it from the educational level of
4 a person, the condition that they are in
5 when you're talking with them, motives.

6 You know, I'm looking at it from
7 a complete law enforcement standpoint. I'm
8 not looking at it from a professor in
9 college in experimental -- the models that
10 they use for their research are not real
11 life. You cannot duplicate what a person
12 feels when they have murdered somebody by a
13 classroom setting. So I find that those
14 kinds of materials are invalid.

15 Q They're invalid and what's more
16 valid is a person's gut instinct based on
17 personal experience and some form of a
18 technique they learned during a week's
19 training. Is that your testimony, yes or
20 no?

21 A No. That is not my testimony.

22 Q Okay.

23 A Okay. If you want to take the
24 words and twist them around what is --

25 Q I'm just asking a question. If

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1 you don't understand -- listen. Let me tell
2 you one thing. If you don't understand the
3 question, there's another witness today who
4 stopped me and said I was asking too many at
5 one time. I'm happy to do that. If you
6 don't understand it, please stop me and I'll
7 restate it.

8 Please go ahead, if you remember
9 the question.

10 MR. DURANT: Your Honor, I
11 believe he was doing what you told him
12 to do. He answered yes or no and was
13 about to explain his answer when
14 Mr. Kulp cut him off.

15 THE COURT: Go ahead and answer
16 the question. He knows that he can
17 explain anything that he answers. Go
18 ahead.

19 A No. That is not my testimony.
20 What is important is the fact that when a
21 person does confess to a crime that you make
22 sure it is a valid confession, and you do
23 that by verifying the information that only
24 the guy who did it would know.

25 Q Okay. And also through the

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1 corroboration aspect of forensic and
2 physical evidence?

3 A Absolutely.

4 Q And the testimony of
5 eyewitnesses?

6 A I don't hold a lot of stock in
7 eyewitnesses.

8 Q You mean if somebody saw someone
9 shoot someone then you don't have a lot of
10 credence in that?

11 A I personally do not hold a lot
12 of stock in eyewitnesses.

13 Q Okay. And what -- let's go to
14 the particular day. You became involved in
15 this case, did you not, when you received a
16 phone call from someone at the North
17 Charleston Police Department. Correct?

18 A Yes.

19 Q And who did you get called by?

20 A I believe Clayton.

21 Q Detective Clayton?

22 A Detective Clayton.

23 Q And what did he tell you?

24 A Told me they were working a
25 murder case and they had several people that

1 they wanted to chat with and the first and
2 foremost was Mr. Myers. They wanted to test
3 him, see if he did it.

4 Q And during that phone call did
5 they give you the background information on
6 the case?

7 A Sure.

8 Q What did they tell you about it?

9 A Only the basics. When they come
10 in for the actual polygraph is when I sit
11 down with the investigator before I actually
12 talk to the person I'm going to talk with.
13 So I would get the basics about, if it was a
14 murder, the guy had been arrested before,
15 did he ever take a polygraph before, some of
16 the basic stuff like that.

17 I don't get into the real
18 details. I just set the appointment up.

19 Q And you made no notes about that
20 telephone conversation?

21 A I may have at the time, but I
22 didn't keep those notes.

23 Q Didn't retain them. But once
24 they arrived, you made -- you had an
25 interview with Detective Clayton to get the

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1 details about the background in order to do
2 your job effectively?

3 A Yes.

4 Q Okay. Now, you made notes about
5 that?

6 A Yes.

7 Q Okay. And as well -- let me ask
8 you a question to clarify for the judge.
9 Was this -- we've been talking about
10 interrogation. Was this for purpose of a
11 polygraph exam or was this for purpose of
12 interrogation or both?

13 A Polygraph examination.

14 Q Okay. No interrogation was
15 intended?

16 A Of course. I, I intend to
17 interrogate anybody who would fail a
18 polygraph.

19 Q Well, that's not what I asked
20 you. When he came down and before -- a
21 polygraph was never given. Right?

22 A In this case there was not one
23 given.

24 Q Right.

25 A And there was no interrogation

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1 given as well.

2 Q Okay. No interrogation at all
3 in the case?

4 A No. Not by me.

5 Q Okay. So when Detective Clayton
6 came down and he told you the background
7 about the case, you made some notes, did you
8 not?

9 A Yes, I did.

10 Q Okay. And you made notes and I
11 believe you have a copy with you there?

12 A Yes.

13 Q Okay. Can you refresh your
14 recollection with that if you don't
15 independently recall and tell the judge what
16 things he told you about the case, that was
17 even prior to the time you met Mr. Myers
18 unless he was just sitting in your office
19 drinking a cup of coffee. Correct?

20 A Yeah. He was sitting outside.

21 Basically that they had a murder
22 at the location. I didn't even write the
23 location down because it's not important.
24 It was some kind of bar. The victim's purse
25 was missing. They kept money in the cooler.

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1 It was not gone. There was a key. They
2 don't know if somebody had a key to the bar.
3 They didn't know about forced entry. Said
4 something about the wine carafe being a
5 blunt instrument. That she was dead before
6 the fire.

7 At the time that we talked I
8 didn't write down a cause of death because I
9 don't think they had the results back from
10 the autopsy. She had a defense wound on top
11 of her finger. And he gave me the layout of
12 the bar basically.

13 And I just asked a few basic
14 questions other than that. What I try to do
15 is I try to, and sometimes you need more
16 details about the actual event. Other times
17 I like to get the details from the actual
18 person, untainted from, from what I'm
19 hearing.

20 So, each case is a case-by-case
21 basis.

22 MR. KULP: Your Honor, could I
23 sit down? My back is really kind of
24 bothering me a little bit, in my chair?

25 THE COURT: Of course.

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1 MR. KULP: Thank you.

2 Q Now, you -- did he as well,
3 referring to that document, did he, did he
4 ask you anything, did he ask you to ask
5 Mr. Myers anything?

6 A Yeah. I mean he -- we were -- I
7 worked a lot with the North Charleston
8 Police Department and basically they trust
9 me to ask the right things. But did he kill
10 her, did he have any help killing her, that
11 kind of thing. How did he set the fire.
12 How did they set the fire.

13 Q Okay. So those questions, is it
14 your testimony that those questions, the few
15 that you just recited, are not, cannot be
16 considered interrogation?

17 A No. Asking questions is never
18 interrogation.

19 Q What is interrogation if it's
20 not asking questions?

21 A It is accusing someone of doing
22 something. That's when an interrogation
23 begins. And that's Webster's definition of
24 it as well.

25 Q Is anything, is anything during

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1 this black and white videotape where you
2 stated that you believed that he killed her?

3 A No.

4 Q Okay. Not in any way?

5 A No. Never.

6 Q How about that he was a suspect
7 in the case? Never told him that?

8 A Sure. No. Of course I did. I
9 told him everybody was a suspect.

10 Q Who else?

11 A There was a couple of the police
12 there, but besides those, pretty much
13 everybody in general is a suspect.

14 Q Okay. So your testimony is that
15 you knew that the police officers, you work
16 with them a lot and they needed some other
17 information which would be good to get while
18 you were there doing the polygraph pre-test.
19 Correct?

20 A Sure. If he's not the bad guy,
21 it's always nice to get information that
22 people will not necessarily remember at the
23 time they're being questioned, plus I, my
24 interviews are kind of in-depth. I get a
25 lot of information that they don't take the

1 time to get because they don't have the time
2 when they're working. I, I make the time.

3 Q So they identify for you things
4 they want you to ask like, for example, top
5 of the list, did you kill her, and you agree
6 to do that, and you ask him that during the
7 pre-test, but that's not interrogation?

8 A Absolutely.

9 Q Okay. Now, did you tell
10 Mr. Myers -- how did the topic of
11 videotaping come up? Where'd that come
12 from?

13 A Well, the way that the office
14 was designed, I had a camera set up in that
15 office, and the monitor and the V. C. R. are
16 outside of that office, so anybody in the
17 outer office, that was the internal affairs
18 office, anybody who worked in my office
19 actually had control over either the monitor
20 or the tape. So when I was inside I didn't
21 know if somebody was taping me or watching
22 me or whatever. That helps for my security
23 as well as the security of the other people
24 in there.

25 At night what I do is when

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1 people come over with cases like that I will
2 ask the people, "Would you like this
3 videotaped? That there are means to do that
4 if you choose to do that." That's up to
5 them.

6 I personally don't videotape my
7 own stuff. But when I'm doing -- when I do
8 tests for other agencies I would ask them if
9 they wanted a copy of the videotape. I
10 actually gave them the original.

11 Q Now, during this
12 non-interrogation pre-test polygraph --

13 A Interview.

14 Q -- interview that you had with
15 Mr. Myers, that was -- did you tell him it
16 was videotaped?

17 A Probably not.

18 Q Okay. So you did not.

19 A No. I don't recall, but. . .

20 Q Okay. And, and so during the
21 period of time you had contact with him, the
22 tape was running. Who was monitoring it on
23 the monitor you just described wired up
24 there in the police offices?

25 A Whoever was --

1 Q Pardon me?

2 A Whoever was in the outside
3 office.

4 Q Okay. Do you know who that was?

5 A I know there were a couple of
6 law enforcement officers out there but
7 pretty much anybody who had access to the
8 internal affairs office could come in.

9 Q Just anybody walking through?

10 A Sure.

11 Q And during this pre-test
12 interview that wasn't interrogation, if
13 Mr. Myers in response to your assertion that
14 he had killed her, had said --

15 A You're incorrect.

16 Q May I finish the question,
17 please? Had said that he had killed Teresa
18 Haught, looked you right in the eye like he
19 was sitting there three feet from you and
20 said "You're right, I killed her", that
21 videotape would be preserved by you for
22 introduction at his trial, wouldn't it?

23 A No.

24 Q Okay. Would it be destroyed?

25 A No. It would be handed over to

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1 the agency that asked me to do the
2 interview, as it was in this case.

3 Q Okay.

4 A And I did not ever assert that
5 he killed her as you just said I did. The
6 question was incorrect.

7 Q Said -- well, he was telling you
8 repeatedly during that videotaping in your
9 interview with him that he did not kill her.
10 Correct?

11 THE COURT: But your answer
12 to -- the question to him was when he
13 says he killed her. You didn't mean
14 that, but that's what you asked him.

15 MR. KULP: Thank you, your
16 Honor, for that correction.

17 THE COURT: Sure.

18 Q If, if he had said that.

19 A Yes. Firstly, I did not assert
20 that he did and then, secondly, he never
21 said that he did.

22 Q Okay. You never asserted in any
23 way?

24 A No. I asked him questions that
25 if I ask everybody in this room the same

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1 question, would it be interrogation? Only
2 the person who is guilty would feel like it
3 was.

4 Q What's that based on?

5 A Well, training, truth, life.

6 Q When you talked about these
7 models that these professors used to examine
8 this area of social psychology, of false
9 confessions, these models, as I'm sure you
10 know having read the literature, are actual
11 cases that occurred in criminal
12 circumstances.

13 A Some are. Some are just
14 experiments that they dream up for a
15 classroom setting because you don't bring
16 people who committed crimes to go through
17 these, and the students themselves cannot
18 really relive an event that they never lived
19 through.

20 You can watch all the videotapes
21 you want, but your physiology does not
22 change, your heart rate doesn't go up just
23 because you watch a videotape.

24 Q Okay. Well, let's get back to
25 the . . . you, now this wasn't an

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1 interrogation, it was for purposes of a
2 polygraph, so the first thing you asked
3 Detective Clayton when he brought Mr. Myers
4 into your office was some preliminaries.
5 Did you stay up all night? Do you have
6 any -- is there a lack of sleep? Has he
7 been drinking? Has he taken any medication?
8 You ask him that. Right?

9 A Yes. First of all it was not an
10 interrogation, as I said again. It was an
11 interview. It was called a pre-test
12 interview. Not a pre-test interrogation.
13 You don't test people after you interrogate
14 them.

15 Q Okay.

16 A Just to get your question --

17 Q I'm sorry. I didn't --

18 A And, yes, I did ask those kind
19 of things and I always ask those kind of
20 things.

21 Q Of Mr. Clayton?

22 A Well, I asked Mr. Clayton about
23 him but I actually asked Mr. Myers.

24 Q At the end of the pre-test
25 interview?

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1 A No. During the pre-test
2 interview.

3 Q During, during it but closer to
4 the end -- forget that.

5 Did you ask him that? Did you
6 ask Mr. Clayton or Mr. Myers about his
7 suitability for a polygraph examination when
8 you first met either Detective Clayton or
9 Mr. Myers?

10 A I asked them both.

11 Q Is that on the videotape, your,
12 your inquiry of Mr. Myers --

13 A Yes.

14 Q -- about his suitability?

15 A Yes.

16 Q At the beginning?

17 A No. It's during the interview,
18 as I said.

19 Q I didn't ask you that. I'm not
20 mincing words. Is it at the beginning of
21 the tape?

22 A No. It's during the tape.

23 Q Thank you. Did you ask
24 Mr. Clayton about his suitability for
25 polygraph in terms of the issues of his

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1 physiology or physical condition at the
2 time?

3 A Yes.

4 Q What did he say?

5 A As far as he knew, he was fine.

6 That's why he brought him over. He wouldn't
7 have brought him over if he didn't.

8 Q Did he look drunk to you?

9 A No, he didn't.

10 Q Did he look overly fatigued?

11 A To me he did.

12 Q He did. So that's why you
13 discontinued the interview at the beginning?

14 A No.

15 Q Okay. And did he look anything
16 other than lucid to you during that
17 interview?

18 A No. He was very lucid.

19 Q Okay. And you talked about the
20 kinesic method of interrogation a while ago,
21 at the beginning of your testimony?

22 A Kinesic?

23 Q Did you talk about it, make
24 reference to the kinesic methods?

25 A It's not a method but, yeah, I

1 mentioned kinesic, yes.

2 Q What is kinesics?

3 A Body movements.

4 Q Okay. All right. And have you
5 had training in that?

6 A Yes.

7 Q Okay. And where was your
8 training and when was it?

9 A F. B. I. National Academy,
10 polygraph training.

11 Q Okay. And do you follow that by
12 the letter or do you have a hybrid
13 application of that based upon your gut and
14 personal experience?

15 A Everything that everybody gets
16 is hybrid.

17 Q Okay. Now, so at the beginning,
18 so it appeared that Mr. Myers would be a
19 suitable candidate for polygraph exam?

20 A In very beginning --

21 Q Yes, sir.

22 A -- I have to assess that. But
23 when he first walked in the door, he was
24 able to walk. He was able to speak. So
25 yes, I continued the interview.

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1 Q Okay. Now, and the interview,
2 I'm not going to rehash. The Court has a
3 transcript of it and the video itself. We
4 may play a couple of portions if that camera
5 is up here by now, selected portions, but in
6 any event, the -- you continued along and
7 there's one question that you asked
8 Mr. Myers that I just want to focus on. You
9 told him that if he denied killing Miss
10 Haught, that that would make the detectives
11 think he did it and therefore they would
12 focus on him and not go out and find the
13 real killer. Correct?

14 A No.

15 Q You didn't say that?

16 A If he said he did not do it?

17 Q Hold on. What exactly -- do you
18 recall that passage and your contact with
19 him?

20 A Not verbatim but, yes, I do
21 recall the generics. I said if you really
22 did do it, I did not say now that it would
23 prolong what was going on and make them look
24 for people that they didn't need to be
25 looking for and if he did it, just go ahead

1 and say, basically.

2 Q "If you're not guilty we're
3 still going to be focussing on you as the
4 guilty person and you're going to be wasting
5 valuable time for the police."

6 A Like I said, take it in context.
7 I just told you what the context was and
8 there are, there are a ton of errors in
9 whoever typed that up.

10 Q Did you bring that to my
11 attention when you first reviewed a copy or
12 to the court reporter?

13 A I just got a copy of it Friday.

14 Q Okay.

15 A First I've seen it.

16 Q Well, the tape certainly speaks
17 for itself as a source document.

18 You in the course of that, a
19 part of the "Reid Technique" or your hybrid
20 technique is to, one, make Mr. Myers feel
21 comfortable. Correct?

22 A Sure.

23 Q To make him feel like he can
24 trust you. Correct?

25 A Absolutely.

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1 Q To gain his confidence.

2 Correct?

3 A Yes.

4 Q To make him think that you could
5 be relied upon to tell him the truth?

6 A Absolutely.

7 Q That's part of the technique,
8 isn't it?

9 A That's part of every law
10 enforcement job's technique, to get to the
11 truth.

12 Q You want him to believe that
13 everything you are telling him was the
14 truth. You suggested some things to him
15 that weren't the truth, didn't you?

16 A I don't think so.

17 Q You suggested to him that there
18 was other evidence in the case that would
19 point to him, didn't you?

20 A I was led to believe there was
21 other evidence.

22 Q You suggested to him that there
23 were witnesses who could place him at the
24 scene, didn't you?

25 A No. I asked him if there was

1 other witnesses. See, the -- when people
2 commit a crime, they don't know what's out
3 there. The guilty person really feels
4 scared about it. An innocent person
5 doesn't. If I tell an innocent person,
6 "What if I tell you I got a witness who saw,
7 saw you there at eleven o'clock?

8 "I'd say they were lying."

9 An innocent person doesn't worry
10 about it because an innocent person knows
11 they didn't do it. A guilty person takes on
12 all of that, and they relive the event and
13 they feel guilt and it comes out.

14 Q Like it did during the
15 one-and-a-half, two-hour period you spent
16 with Mr. Myers?

17 A Absolutely. I was convinced he
18 did it.

19 Q No. I mean if we take someone
20 and they look at that video or they read the
21 incorrect transcript, what in there apart
22 from your hybrid technique of the "Reid
23 Technique" would suggest to them that
24 Mr. Myers committed this murder?

25 A All of his nonverbal behaviors,

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1 his verbal indicators, his reliving the
2 event, the remorse that he felt. Some of
3 his verbal cues clearly indicated that he
4 wanted to tell me and he was remorseful and
5 I believe that night, if I pursued it, and I
6 wouldn't because it wouldn't have been a
7 good confession because of his condition,
8 and it would never have gotten into court,
9 you know, we play by the rules, believe it
10 or not and when we go after the truth, we
11 are looking after that person as well as the
12 victim. So we have a victim we have to
13 worry about, justice being done, but we're
14 also making sure we don't violate the rules
15 and his rights.

16 And he was innocent when he
17 walked in there. He was innocent. He's
18 innocent today, until proven guilty. And
19 that's the way we -- even though you don't
20 think that, that's the way we approach it.

21 Q And, sir, you have a heart-felt
22 belief in that. Correct?

23 A Absolutely.

24 Q Yeah. That's why you put on one
25 of the documents you penned at that time --

1 A He's guilty.

2 Q -- the following: "Subject is
3 guilty. Dash. Would have 'fessed up within
4 five minutes of interrogation. I did not
5 push him due to his condition.
6 Investigating officers were advised of
7 same."

8 And that's what you put in your
9 notes.

10 A Absolutely.

11 Q And you went to these detectives
12 and you said based upon everything you just
13 reviewed, these techniques or these
14 feelings, that, that this man committed this
15 crime.

16 A Absolutely.

17 Q Okay. Now, you are aware now,
18 are you not, that there's no forensic
19 evidence in this case to link him to the
20 crime?

21 A No. It doesn't matter.

22 Q And that doesn't affect your
23 opinion about his guilt one iota, does it?

24 A No, sir.

25 Q All right. And you also -- are

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1 you aware that the -- a hair that was found
2 in the victim's hand has been tested for DNA
3 and shown not to be his?

4 A No. I'm not aware of that.

5 Q Would that affect your opinion?

6 A No, it wouldn't.

7 Q Okay. What if he was shown by
8 four eyewitnesses to be in Phoenix at the
9 time. Would that change your opinion?

10 A No, it wouldn't. As I said, I
11 don't hold much stock in eyewitnesses. I
12 believe he is the best witness, though, and
13 I believe he, he said it repeatedly, he did
14 it. And he's told investigators things that
15 only the bad guy would know. And it's clear
16 he did it.

17 Q Okay. So your opinion was if
18 you had five more minutes with the guy, with
19 Mr. Myers, that you could have gotten him to
20 confess?

21 A Sure. I really believe that.

22 Q And you had a videotape running
23 that would have recorded that confession.
24 Correct?

25 A Yes.

1 Q And that videotape would have
2 been the evidence, the visual, pictural
3 evidence of his admission. Correct?

4 A Yes, but it would never have
5 gotten into court because of the condition
6 he was in.

7 Q Okay.

8 A We don't go try to get
9 confessions out of people who said they
10 drank twenty-four beers in the last
11 twenty-four hours, or a person who has been
12 deprived of sleep because of the way he was
13 feeling, not because of anything the police
14 have done, been up all day, you know, we
15 don't get confessions out of people that
16 aren't in a fit condition because we know
17 what the laws and the rules of the court
18 are.

19 Q Okay. So if he -- you had done
20 it for another five minutes -- nothing
21 prohibited you from going another five
22 minutes. Right? Physically.

23 A Could have went another two
24 hours.

25 Q Sure. And in fact what would

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1 also be, if he had confessed on that
2 videotape, if he had, what would also be on
3 there was what's already on there, his
4 affect, his appearance, his lucidity, the
5 way he answered questions, would be on there
6 as well.

7 A Sure.

8 Q And that would be available for
9 you to show if his confession was attacked
10 that it would have been voluntarily and
11 freely given. Correct?

12 A No, because I think the judge
13 would say look, the guy's already told you
14 he drank all this stuff. That's why we did
15 not proceed that night. That's why the
16 police were told let him get a good night's
17 sleep. Let him get something to eat. When
18 he comes back and he's fresh, talk to him.
19 He's remorseful. He wants to tell you the
20 truth, and he did.

21 Q Okay. Well, let me ask you
22 this. You told them to hit him tomorrow?

23 A Yes.

24 Q Okay. And you said go ahead and
25 let him have a good night's sleep and go

1 home and come back in the morning, then you
2 hit him, he'll crack, and the confession
3 will be admissible. Right?

4 A Absolutely.

5 Q Did you suggest to them they
6 ought to audiotape it or videotape it to
7 preserve it as evidence in the case?

8 A No, sir.

9 Q But you were videotaping him
10 during the polygraph pre-test. Correct?

11 A Sure.

12 Q Okay. Now, so that was an
13 important factor, that he be fresh.
14 Correct?

15 A I think it's always an important
16 factor.

17 Q Now, you know that when they
18 sent him home that night, back to his
19 parents' house -- well, excuse me. You know
20 when they left they went and searched his
21 parents' house? You know that now?

22 A No.

23 Q You don't know that now?

24 A No, I don't.

25 Q Okay. But you know that night

Cumbee -- Redirect

1 that when he went to his parents' house a
2 police officer stayed with him that night to
3 insure that he didn't drink any alcohol and
4 that he got a good night's sleep and he
5 didn't take any pills, and so forth? You
6 know that they did that to preserve
7 integrity of the confession that you're sure
8 they were going to get the next day?

9 A I'm sure, I'm sure they told him
10 what to do.

11 Q Okay. But do you know of
12 anything that prohibited him from being in
13 the same condition that you thought was so
14 prohibitive to get a confession from --

15 A Of course not.

16 Q -- the next day?

17 A This is America.

18 Q Okay. In any event, you, you
19 talked to him, you interviewed him for this
20 period of time, you eventually get to the
21 question as you say in the course of the
22 interrogation, interview, where you were
23 able to conclude that he was not suitable
24 for a polygraph examination. Correct?

25 A That is correct.

Cumbee -- Redirect

1 Q Okay. And that was based upon
2 the fact that he consumed twenty-four
3 hours -- twenty-four beers in the
4 previous -- excuse me. A case of beer in
5 the previous evening or whenever?

6 A Within the last twenty-four
7 hours.

8 Q All right. Over what period of
9 time?

10 A Twenty-four hours.

11 Q What's his tolerance?

12 A I have no idea what his
13 tolerance is. I know what mine is, and I
14 would not want to come into court and tell
15 this judge that the guy drank a case of beer
16 and I went ahead and tried to get a
17 confession out him.

18 Q Did you suggest anything there
19 at the police department like putting him on
20 a breathalyzer exam or Datamaster to see if
21 he had -- if he was in fact intoxicated?

22 A Just because a person blows a
23 certain rate doesn't mean that they're not
24 intoxicated.

25 Q Boy, I'd like to have that, a

Cumbee -- Redirect

1 copy of that.

2 A That's why the law has changed
3 about driving under the influence.

4 Q Yes, sir. In any event, you,
5 you then concluded and told him that he
6 wouldn't be suitable for a polygraph exam?

7 A That's correct.

8 Q Now --

9 A I did reschedule it, though.

10 Q When he -- but you said "if it's
11 necessary"?

12 A Absolutely. I didn't think it
13 would be, and it wasn't.

14 Q Now, when he came in to see you
15 that day, that Friday, was he "ripe" for
16 confessing?

17 A He didn't come to see me.

18 Q I'm sorry. When he was brought
19 to you that afternoon and for the polygraph
20 pre-test interview that was not an
21 interrogation, was he "ripe" for confession
22 or, or as you put it in your notes --

23 A No. I think I got to him,
24 though. I think I -- I think I helped him
25 mature.

Cumbee -- Redirect

815

1 Q Okay. So there's a difference
2 between the time he came in the door of your
3 office and was videotaped and interviewed by
4 you, and when he left. Correct?

5 A Absolutely.

6 Q And that difference was a result
7 of your contact with him. Correct?

8 A Yes, sir.

9 Q Beg the Court's indulgence just
10 one second, your Honor.

11 Now, you knew, of course, at the
12 time that you began this segment with
13 Mr. Myers, you knew that the police knew
14 that she had been violently or horribly
15 murdered, a, a victim. They didn't know her
16 name. Okay?

17 A Okay.

18 Q You knew that a purse was taken
19 by the assailant from the scene.

20 A I knew her purse was missing.

21 Q They told you that?

22 A They said the purse was missing.
23 I don't know if it was stolen or not.

24 Q You ever heard of the -- strike
25 that, please.

Cumbee -- Redirect

1 You ever heard of the -- you --
2 the application that you use in these -- I'm
3 a little confused. You say you use these
4 techniques, which are interrogation, but it
5 was just an interview. Correct?

6 A Yeah. When I interrogate people
7 I use some of the steps of the "Reid
8 Technique".

9 Q But it's still an interview?

10 A When I interrogate them. When I
11 interview, I just interview.

12 Q Did you use any of the "Reid
13 Techniques" during this interview?

14 A No. The "Reid Techniques" is
15 interrogation. I only interviewed.

16 Q Well, you agreed a minute ago
17 that part of the "Reid Technique" is getting
18 confidence of the client -- of the person.
19 Their trust.

20 A It's not one of the nine steps.
21 If you want to take the whole technique,
22 it's part of the interviewing and
23 interrogation.

24 Q Okay. There's a difference
25 between when he came in and when he left and

Cumbee -- Redirect

1 that was because of your involvement and the
2 contact with him. Correct?

3 A Sure.

4 Q Okay. Why didn't it make any
5 difference in terms of your influence on him
6 that he had had a case of beer the night
7 before, had been taking caffeine pills, and
8 was not suitable for a polygraph exam by
9 machine, why was it then okay to, to deal
10 with him the way that you did in this case?
11 Why did that condition not play a role?

12 A Because I never interrogated him
13 and I was not going after a confession.
14 What I was doing during that time was
15 learning about him, getting all the
16 information I could about him, to be able to
17 properly assist the police in their
18 investigation.

19 Q Okay. You told him that it
20 would be -- that women are hard to live
21 with?

22 A Sure.

23 Q You told him that you'd pushed
24 your wife down when she was pregnant and
25 that she never got in your face again, as if

Cumbee -- Redirect

1 that was okay. Part of the technique is
2 giving him permission to do things like that
3 to women since you knew a woman was involved
4 in this case. Correct?

5 A Sure. That's what I'm -- I'm
6 minimizing it.

7 Q Okay. And you also told him
8 that sometime people, when they're asleep
9 they look like they're dead, and dead when
10 they're asleep?

11 A Yes.

12 Q And that's just getting
13 information from him to determine if he's a
14 suitable candidate for a polygraph
15 examination?

16 A No. That's, that's setting him
17 up.

18 Q Okay.

19 A I would have told you the same
20 thing, though.

21 Q I'm sorry. What was the
22 question?

23 A If you were brought in there I
24 would have told you the same thing.

25 Q Another thing that you got into

1 was to tell him that if you ever killed your
2 own wife, you know it would be an accident.
3 Correct?

4 A That's what I said.

5 Q Part of your technique was to
6 suggest to him to try get him to say he did
7 it, was that it might have been an accident.
8 Isn't that true?

9 A Absolutely. Something to think
10 about. A person generally does not confess
11 to a cold-blooded murder the first thing
12 they walk in the door. It's a lot easier to
13 confess to people that you did something in
14 self-defense or by accident, much more
15 palatable.

16 And then of course once they
17 open the door on that, then we go further
18 with those kinds of admissions. It's very
19 difficult to speak the truth when you've
20 done something very, very bad.

21 Q And, Major McHale, in this
22 setting as your testimony applied, you get
23 to and got to decide what the truth was
24 here. Isn't that true?

25 A No. The truth is what it is.

Cumbee -- Redirect

1 MR. KULP: Okay. Thank you,
2 sir.

3 MR. DURANT: I have very little,
4 your Honor.

5 THE COURT: That was short. Now
6 you sure you want to ask questions?
7
8
9

10 CROSS-EXAMINATION BY MR. DURANT:

11 Q You only asked him three
12 questions in that hour-and-a-half interview
13 that were relative to his involvement in
14 this case. Is that correct?

15 A For the most part, yes.

16 Q Did he do it? Did he do it by
17 accident? And did he have a fight with her?
18 Those are the only three questions you asked
19 him in this entire process where it directly
20 related to whether or not he did it?

21 A That is correct.

22 Q And were those three questions
23 that you would have had to ask him on the
24 polygraph?

25 A Yes.

1 Q Other than that, you read him
2 his rights? Excuse me. You read him his
3 rights?

4 A First thing.

5 THE COURT: I've seen it.

6 MR. DURANT: Okay.

7 THE COURT: I've seen the video.
8 and I've read that transcript and he
9 gave him his Miranda versus Arizona
10 rights.

11 Q Did you promise him anything?

12 A No, sir.

13 Q Did you threaten him in any way?

14 A No, sir.

15 Q Did you offer him any reward to
16 talk to you?

17 A No, sir.

18 Q Did you accuse him of anything?

19 A Never.

20 MR. DURANT: I have nothing
21 further.

22 MR. KULP: Solomente. Singular.
23
24
25

McHale -- Redirect

1 REDIRECT EXAMINATION BY MR.

2 KULP:

3 Q I'm just wondering something.

4 You asked him if he was wearing his boots

5 that night and you asked if he'd washed

6 them. What would be the reason -- every

7 question you ask has a reason for it.

8 Correct?

9 A Absolutely.

10 Q And the reason you asked him

11 that is because the police had told you they

12 had some shoe prints at the scene they

13 wanted to match up. Correct?

14 A I didn't have any notice of

15 that, but generally speaking I would always

16 ask what they wore that night and the last

17 thing a person remembers is about their

18 shoes. Most people will throw everything

19 else away but they always keep their boots.

20 Q Is that another rule of life,

21 too?

22 A Absolutely.

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

24 your Honor.

25 THE COURT: Be excused if you

McHale -- Redirect

1 like.

2 THE WITNESS: Thank you, sir.

3 THE COURT: Unless you need him,
4 either one of them.

5 All right. Call your next
6 witness.

7 MR. KULP: Your Honor, I'm
8 waiting on him to arrive any moment.

9 THE COURT: All right. You got
10 someone at the airport?

11 MR. KULP: Yes, sir.

12 THE COURT: He's supposed to
13 come in right now?

14 MR. KULP: Yes, sir, but I have
15 someone waiting there with engine
16 running, so if we could take a short
17 recess I will get on the -- see if this
18 cell telephone works.

19 THE COURT: Do we have anything
20 else we can be doing?

21 MR. DURANT: I don't think so,
22 your Honor. I think we pretty much --
23 well, we do have the -- you filed
24 another motion on the statement, the
25 videotape.

McHale -- Redirect

1 THE COURT: Have you got all the
2 testimony you want in? Yes, you have,
3 on third party. Let's dispose of that
4 now.

5 MR. KULP: Yes, sir.

6 THE COURT: Or would you like to
7 gather your thoughts?

8 MR. KULP: Yes, sir, I would.
9 If the Court please. I've got very
10 little left.

11 THE COURT: All right. Anything
12 else?

13 MR. DURANT: This has been
14 mind-numbing. Yeah. Could we have a
15 few minutes? I could use a few minutes
16 to gather my thoughts, too.

17 THE COURT: All right. Court's
18 in recess. Let me know when you're
19 ready, will you? I don't have a law
20 clerk.

21 MR. KULP: Yes, sir. I'll knock
22 on your door.

23 THE COURT: Let's not wait for
24 that other witness to get here.

25 MR. KULP: Yes, sir, your Honor.

McHale -- Redirect

1 (Whereupon, a recess is taken at
2 4:54 p. m.)

3 (The Judge enters the courtroom
4 at 5:20 p.m.)

5 THE COURT: You have your
6 witness?

7 MR. KULP: Yes, sir. May it
8 please the Court, prior to calling Saul
9 Kassin, your Honor, Professor Kassin --

10 THE COURT: Yes, sir.

11 MR. KULP: Yes, sir. We would
12 call fire investigator Norris to the
13 stand, briefly.

14 THE COURT: All right, sir.
15 Well, now you already had him on the
16 stand.

17 MR. KULP: Very, very brief. In
18 fact --

19 THE COURT: What do you call
20 brief?

21 MR. KULP: One or two questions.

22 THE COURT: Two?

23 MR. KULP: Two.

24 THE COURT: Well, I won't limit
25 you to two, but he's already been

McHale -- Redirect

1 sworn.

2 MR. KULP: Yes, sir.

3 THE COURT: Come on up here.

4

5 C H A R L E S B E N J A M I N

6 N O R R I S, previously sworn as a

7 witness out of the presence of the

8 jury, resumes the stand and testifies

9 as follows:

10 CONTINUED DIRECT EXAMINATION BY

11 MR. KULP:

12 Q Yes, sir. Chief Norris --

13 A Yes.

14 Q -- did you -- you investigated

15 the arson aspects of this case?

16 A Yes, sir.

17 Q Did you also go to the crime

18 scene?

19 A Yes, sir.

20 Q Did you see the evidence that

21 was collected related to the murder or the

22 homicide?

23 A Whatever, sir, you're referring

24 to --

25 Q Did you take the photos at the

1 crime scene?

2 A Yes, sir.

3 Q Okay. You're aware that the
4 biggest piece of glass remnant that was
5 taken from the crime scene was the top third
6 of a wine carafe?

7 A I know there was several pieces
8 of glass taken from the scene.

9 Q Okay. If I may approach, your
10 Honor, very quick. I'm approaching with an
11 unmarked -- do you recognize that photo?

12 A Yes, sir. That's a photo of the
13 scene.

14 Q Okay. And we also subpoenaed I
15 think for today Detective Hallman, with all
16 the evidence in the case. I don't know if
17 it's here sitting in the courtroom. I can
18 go ahead if it's not here.

19 THE COURT: What are you looking
20 for, the piece of glass?

21 MR. KULP: Yes, sir.

22 THE COURT: You got it over
23 there?

24 MR. DURANT: I think it may be
25 downstairs. I don't know if it's in

Norris -- Contd. Direct

1 the same condition or not. I was just
2 going to use a photo of the --

3 Q Well, anyway, you see that top
4 third right there?

5 THE COURT: Do you want it up
6 here?

7 MR. KULP: Yes, sir.

8 THE COURT: Get it for him.

9 Q Do you see the top third?

10 A Yes, sir.

11 Q All right. And is it your
12 understanding in the case that, that the
13 object was a standard glass wine carafe such
14 as used for house Chablis or wine or
15 whatever?

16 A I don't know the exact type of
17 container it was. I know it was some type
18 of glass container, water carafe, being used
19 as a tip jar.

20 Q Okay.

21 A I don't know the exact shape of
22 it.

23 Q Is it your understanding that it
24 was held and used like a mallet, upside
25 down?

1 A No, sir.

2 Q It's not your understanding?

3 THE COURT: Now, wait a minute.

4 He did not investigate the case. He
5 investigated the arson part of it. All
6 of this you've asked him before, except
7 the glass part of it.

8 MR. KULP: Yes, sir.

9 THE COURT: And so why don't you
10 just lead him, if you want to.

11 MR. KULP: Okay.

12 Q How many pieces of glass -- you
13 found one top third of a wine carafe at the
14 scene. Correct?

15 A Yes, sir. That was -- at least
16 one.

17 Q How many did you find at the
18 scene?

19 A I don't remember, sir.

20 MR. DURANT: Your Honor, once
21 again he didn't --

22 THE WITNESS: I did not collect
23 the glass.

24 THE COURT: Wait a minute.

25 MR. DURANT: -- process the

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Norris -- Contd. Direct

1 crime scene. Al Hallman processed the
2 crime scene. He doesn't know how many
3 pieces of glass were collected.

4 THE COURT: Well, I'll let him
5 ask. He says he doesn't know.

6 A No, sir, I do not know how many
7 pieces of glass.

8 MR. KULP: All right. Step
9 down, please, unless the solicitor has
10 anything.

11 MR. DURANT: I don't have
12 anything.

13 MR. KULP: Fine.

14 THE COURT: All right.

15 MR. KULP: Recall Detective
16 Clayton, please.

17 THE COURT: All right. Already
18 been sworn.

19

20

21

22

D E N V E R L E E

23

C L A Y T O N, previously sworn as a

24

witness outside the presence of the

25

jury, resumes the stand and testifies

1 as follows:

2 CONTINUED DIRECT EXAMINATION BY

3 MR. KULP:

4 Q Detective Clayton, I'm asking
5 you questions regarding the wine carafe. Is
6 it your understanding that a carafe, that
7 the suggestion is that your investigation
8 reveals that what Mr. Myers's two-page
9 statement indicates is that a carafe was
10 used?

11 A Yes. A wine carafe.

12 Q To inflict the injury to the
13 victim?

14 A Yes, sir.

15 Q And that was used to, as a
16 mallet or like to inflict blunt force
17 injury?

18 A It was used to inflict injury.

19 Q And in fact you saw the evidence
20 in this case. In fact you saw the evidence
21 at one point when I came over to look at it
22 at the police department and photograph it?

23 A Yes, sir, but I don't recall
24 now.

25 Q Recall what?

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Clayton -- Contd. Direct

1 A I don't recall as far as when
2 you --

3 Q Okay.

4 A -- photographed it and
5 everything.

6 Q Well, you're familiar with the
7 evidence in this murder case as the case
8 detective?

9 A Yes, sir, I'm familiar.

10 Q Okay. And the murder weapon?

11 A Yes, sir.

12 Q And it is what's -- the biggest
13 remnant of that is a piece of the top of the
14 carafe that's jagged on the top. Correct?

15 A I can't recall, sir. I can't
16 recall. I'm familiar with it, but I can't
17 recall what it looked like.

18 Q Is it a -- well, it will be up
19 here in a minute. But is it a piece of --
20 Mr. Myers' confession that you elicited from
21 him says that he took a wine carafe from the
22 victim. Correct?

23 A Yes, sir.

24 Q And he struck her in the head
25 with it. Correct?

1 A Yes, he did.

2 Q And to, to your suggest -- and
3 when you examined the crime scene and you
4 walked through it as you did on that
5 Thursday, you saw near her body the top
6 third of a wine carafe. Correct?

7 A I didn't examine the crime
8 scene. I didn't walk through there while
9 the body was there. I didn't get there
10 until approximately 8:30 in the morning.

11 Q Okay.

12 A And I did not see the wine
13 carafe.

14 Q Since then you've examined the
15 photos in the case, since the day you
16 weren't there, that afternoon, the next day
17 when they were processing --

18 A I can't recall. I can't recall
19 examining the photographs.

20 MR. DURANT: What are you trying
21 to get at? Maybe I could agree to it.

22 THE COURT: Solicitor wants to
23 know what you're trying to get at.
24 He'll get the witness here.

25 MR. DURANT: As far as I know I

Clayton -- Contd. Direct

1 have not opened the bags that your guy
2 sent back to us. I don't know if it's
3 in that same condition or not but, yes,
4 we have discussed it, to be completely
5 honest about it.

6 MR. KULP: Sure. My question --

7 MR. DURANT: And as far as, see,
8 I've never even looked at it myself.
9 But I know this was the condition it
10 was found in. I don't know if that's
11 the same condition now, is what I'm
12 saying.

13 MR. KULP: Okay.

14 Q Is it your -- you've read the
15 two-page statement that you had Mr. Myers
16 sign?

17 A Yes, I did.

18 Q Okay. And in there it says that
19 the victim grabbed a wine carafe?

20 A Yes, sir.

21 Q That he took it from her, and
22 that he hit her with it?

23 A Yes, sir.

24 Q Okay. Now, if you, you saw,
25 you -- we're going to have the -- I think we

Clayton -- Contd. Direct

1 need to have it come up here.

2 Did he mention anything about
3 using more than one carafe in his statement
4 and mention that --

5 A No, sir, he did not.

6 Q He did not?

7 A No, sir.

8 MR. KULP: That's fine.

9 THE COURT: Thank you very much.
10 Now what you need?

11 MR. KULP: I need the evidence,
12 your Honor.

13 THE COURT: Well, it's coming.

14 MR. DURANT: It's coming.

15 THE COURT: You need the
16 evidence in argument or you going to
17 ask somebody else a question?

18 MR. KULP: I'll tell you exactly
19 what it is. The, this picture, if I
20 might approach, your Honor.

21 THE COURT: Sure.

22 MR. KULP: Well, I think I have
23 a larger picture.

24 THE COURT: Is this an
25 argument -- how about opening that up

1 and see what it is?

2 Is this an argument that has to
3 do with the Jackson-Denno?

4 MR. KULP: Yes, sir.

5 THE COURT: Now not the
6 confession itself but, but whether the
7 confession was free and voluntary.

8 MR. KULP: Yes, sir.

9 THE COURT: And this has
10 something to do with it?

11 MR. KULP: Yes, sir. Well, your
12 Honor, like you said, you've read
13 everything. I'll just cut to the chase
14 and tell you.

15 THE COURT: That's right. I
16 read everything twice.

17 MR. KULP: Your Honor, as
18 Detective Clayton just testified --

19 THE COURT: You want to show me
20 what that, what that is?

21 MR. KULP: Yes, sir.

22 THE COURT: You want your
23 fingerprints on it?

24 MR. KULP: Yes, sir. Oh.
25 Should I open it in the courtroom? You

1 have any problem?

2 MR. DURANT: I don't have any
3 problem with it.

4 MR. KULP: I'll just set this
5 right here, your Honor. I want to show
6 you, your Honor, we offer into
7 evidence -- I don't know if the State's
8 going to object since it's in their
9 possession -- two top thirds of what
10 appear to be wine carafes.

11 THE COURT: Well, what would
12 that have to do with Jackson-Denno?

13 MR. KULP: That I'll have to
14 argue at the appropriate time.

15 THE COURT: Oh, okay.

16 MR. KULP: I just wanted to
17 bring this to your attention.

18 THE COURT: Wasn't this a bar?

19 MR. KULP: Yes, sir.

20 THE COURT: Well, all the bars
21 I've been in had a lot of them.

22 MR. KULP: Yes, sir.

23 THE COURT: But I'll listen.

24 MR. KULP: Thank you.

25 THE COURT: All right.

1 MR. KULP: All right. We would
2 at this time, your Honor, call
3 Professor Saul Kassin around to be
4 sworn.

5 THE COURT: All right. Come
6 around, Doctor.

7
8
9
10 S A U L K A S S I N, having
11 been called as a witness outside the
12 presence of the jury, is duly sworn and
13 testifies as follows:

14 DIRECT EXAMINATION BY MR. KULP:

15 THE COURT: I got the doctor's
16 report and I read it.

17 MR. KULP: Yes. Okay. There's
18 one document I need, your Honor. It's
19 right in front of me.

20 Q Professor Kassin, please state
21 your full name for the record. I think the
22 judge has asked you already, but please do
23 so again.

24 A Saul Kassin, K-a-s-s-i-n.

25 Q And where do you reside?

Kassin -- Direct

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1 A Bloomstown, Massachusetts.

2 Q And what is your -- where are
3 you employed? What do you do?

4 A Williams College. I'm a
5 professor of psychology at Williams College.

6 Q And how long have you been
7 there?

8 A Twenty years.

9 Q What is your educational
10 background?

11 A I have a Ph.D. in social
12 psychology.

13 Q And where did you attend school?

14 A I got a Ph.D. at the University
15 of Connecticut and after that I took a
16 post-doctoral research fellowship at the
17 University of Kansas. Took another
18 post-doctoral research fellowship at
19 Stanford University.

20 And I have a fellowship at the
21 U. S. Supreme Court. I did a --

22 Q Okay. Please be sure to speak
23 up.

24 THE COURT: Slide your chair
25 over a little bit and move that

Kassin -- Direct

1 microphone over.

2 How about fix that for him?

3 THE WITNESS: Chair is fixed.

4 THE COURT: Boy, I tell you. I

5 don't know how they design these

6 courtrooms. Go ahead.

7 Q All right. Have you had any,
8 held any other positions? I think said you
9 worked at the federal judicial center?

10 A Correct. I was at the federal
11 judicial center on a Supreme Court
12 fellowship. I have -- was at the University
13 of Kansas and Stanford University on
14 research fellowships. And I, previous to
15 Williams College, taught at Purdue
16 University.

17 Q Okay. Have you ever received
18 any honors, awards, or grants, had the
19 occasion to work at the United States
20 Supreme Court or --

21 A Well, I've --

22 Q -- under the auspices of the
23 Supreme Court?

24 A Yes. I had a Supreme Court
25 fellowship and I received grants from

Kassin -- Direct

1 National Institute of Health, National
2 Institute of Child Development.

3 Q Do you have any professional
4 affiliations to which you belong?

5 A I'm a member of a number of
6 organizations. Society for Personality and
7 Social Psychology, the American Psychology
8 and Law Society, Society of Experimental and
9 Social Psychology, the American
10 Psychological Association, and the American
11 Psychological Society.

12 Q What sort of editorial or
13 writing experiences have you had?

14 A I've written several books,
15 several research papers, research articles,
16 book reviews, book chapters, editorial -- in
17 terms of editorial experience I've also
18 served on -- I'm on the editorial board of
19 Law and Human Behaviour, which is a flagship
20 journal for people who do research in
21 forensic psychology.

22 And I've done reviews for the
23 National Science Foundation, National
24 Institute of Health.

25 Q All right. And have you had any

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1 experience consulting in matters of
2 litigation?

3 A Yes.

4 Q What are those, please? Tell
5 the judge.

6 A For about fifteen years now I've
7 been studying the process of interrogation
8 and confessions and have served as an expert
9 witness in a number of trials, military,
10 state trials, on that topic. I've also
11 served as an expert, in a couple of
12 instances, on the topic of eyewitness
13 identifications.

14 Q All right. And do you have a --
15 you provided me with your C. V. You have a
16 number of books listed here on it. I
17 might -- I don't have a spare copy but I can
18 make one for you.

19 MR. DURANT: Your Honor, in
20 order to speed things up, I have no
21 intention of contesting his
22 qualifications for the purpose of this
23 hearing. I have none.

24 THE COURT: All right.

25 MR. DURANT: I would reserve my

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1 right to cross-examine him on his
2 qualifications at such time as your
3 Honor decides he could testify in front
4 of the jury.

5 THE COURT: Do you have a copy
6 of this?

7 MR. DURANT: No, sir, your
8 Honor.

9 THE COURT: Well, would you like
10 to have it?

11 MR. KULP: It's his report.

12 MR. DURANT: Oh, his report.
13 Yes, sir. I have his report. I
14 thought he meant the C. V.

15 MR. KULP: This is his C. V.,
16 your Honor, and we'll make a copy for
17 the solicitor as soon as we can.

18 THE COURT: Thank you.

19 MR. KULP: Thank you, your
20 Honor.

21 THE COURT: Well, here. Let's
22 give it to the solicitor.

23 MR. KULP: Yes, sir. Thank you.
24 Beg the Court's indulgence one second.

25 THE COURT: Mr. Solicitor, if

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1 you like, you can waive your
2 cross-examination of his qualifications
3 until the case in chief.

4 MR. DURANT: That's what I meant
5 to convey, your Honor.

6 THE COURT: Yes.

7 MR. DURANT: In terms of I would
8 concede that he's, he's, he's able to
9 testify at this hearing but I would
10 reserve my right to cross-examine him
11 on his qualifications later.

12 THE COURT: All right. If you
13 like, counselor, because you've been
14 standing up all day, and I know, you
15 said you had problems with your back,
16 you can sit down if you want.

17 MR. KULP: Thank you, your
18 Honor. I got it. Thank you.

19 THE COURT: I never could talk
20 sitting down.

21 MR. KULP: I seem to get up when
22 I. . .

23 Q Are you currently involved in
24 teaching activities at Williams College?

25 A Yes.

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1 Q And what does that entail?

2 A It entails teaching courses. I
3 teach social psychology, introductory
4 psychology, usually once or twice a year I
5 teach a course on psychology and the law
6 which is in forensic psychology of course.

7 Q Have you ever been called upon
8 to appear or testify as an expert witness in
9 a criminal case, proceedings and matters?

10 A Yes.

11 Q And with regard to what subjects
12 did you testify as an expert witness?

13 A Interrogations and confessions
14 is one. And eyewitness identifications is
15 another.

16 Q Have you had the occasion to
17 testify for both the prosecution and the
18 defense in criminal matters?

19 A I have worked for the
20 prosecution, was not needed, so never
21 testified. So, no, I've not testified for
22 the prosecution. I've testified for the
23 defense eight or ten times.

24 Q What states have you been -- in
25 what states have you been qualified as an

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1 expert witness?

2 A New York, Massachusetts,
3 Connecticut, Wisconsin, California, South
4 Carolina, military court, federal court.

5 Q All right. And we've handed up
6 to the Court a copy of your C. V. and the
7 solicitor is reading it now.

8 Your Honor, we would offer it in
9 evidence at the appropriate time.

10 THE COURT: All right.

11 MR. KULP: Your Honor, at this
12 time we would, based on his
13 qualifications and testimony he's
14 therefor or as to his qualifications --

15 THE COURT: For the purpose of
16 this hearing the solicitor says he has
17 no objection to qualify him as an
18 expert..

19 MR. KULP: Yes, sir. Thank you,
20 your Honor.

21 Q Did you -- this is, as you know,
22 Professor Kassin, the case of the State of
23 South Carolina versus Wesley Max Myers. Did
24 you have occasion to become involved and to
25 review this case and become --

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1 A Yes.

2 Q And was that after I contacted
3 you?

4 A Yes.

5 Q All right. And have you had the
6 occasion to produce a report in this case?

7 A Yes.

8 Q Does that report reflect your
9 opinion or your findings in reviewing this
10 matter?

11 A Yes.

12 Q What material did you review in
13 making an assessment of the circumstances in
14 this matter?

15 A I think I listed them on the
16 report. Various police reports, interviews.
17 Defendant's two statements. A videotape of
18 the defendant recounting what happened
19 during the interrogation sessions.
20 Videotape of press, the T. V. camera, the --
21 where the defendant made an apology.
22 Videotape of the Lieutenant McHale session.
23 Jackson V. Denno hearing testimony. Jackson
24 V. Denno hearing order. Several forensic
25 lab tests.

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1 Q And as a result of your review
2 of those documents you prepared your report,
3 a copy of which I said has been provided to
4 the Court and the solicitor.

5 Are these the sort of materials
6 that you usually rely upon in, in rendering
7 an opinion or making an assessment of
8 incriminating statements as they occur in,
9 may occur in criminal cases?

10 A Yes. Yes. This is somewhat
11 typical.

12 Q Excuse me, your Honor. What
13 areas of specialization, Dr. Kassin, serves
14 as a basis for the study of confessions?

15 A Various areas of psychology.
16 Primarily I would say social and cognitive
17 psychology are the primary areas.

18 Q And what is the subject matter
19 of social psychology?

20 A Social psychology deals with the
21 topics of social influence; conformity,
22 compliance, obedience to authority; behavior
23 in groups with influences; judgment; human
24 judgments about each other. It's basically
25 about people's social behavior.

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1 Q What's the subject matter of
2 cognitive psychology?

3 A Cognitive psychology deals with
4 the way people think. It has to do with
5 thinking, language, memory, communication,
6 decision-making, the factors that influence
7 decision-making, and memory. Basically
8 deals more with, with the mind as opposed to
9 the outward social behavior.

10 Q Is the study of confessions an
11 area that you're familiar with?

12 A Yes.

13 Q And what were you asked to do in
14 this case?

15 A Basically to review the
16 materials, and, and give you some kind of an
17 assessment as to whether or not the
18 statement was, was one that should be
19 treated with caution or, or as reliable.

20 Q Are there any materials that you
21 would like to have reviewed but could not?

22 A Because they're not available.
23 I would like to have seen or heard the tape
24 of all the sessions involving the
25 interrogators and the defendant.

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1 Q Would that be occurring on the
2 Saturday, March the fifteenth?

3 A The Saturday, the Friday, the
4 Thursday. In any case where there was an
5 interrogation, yes.

6 Q Is it true that people sometimes
7 confess to crimes that they do not commit?

8 A Yes.

9 Q How often would you estimate
10 that that occurs?

11 A There's, there's really no way
12 to know. There's a dispute among, among
13 scholars as to what that number is and, and
14 the honest truth is there's no way
15 statistically to come up with a precise
16 number.

17 We know, for example, with the
18 DNA exoneration cases that some reasonable
19 number of those, about twenty or twenty-five
20 per cent, are coming in. Those exoneration
21 cases had confessions and evidence, so we
22 know that there were those false
23 confessions. But that doesn't tell us the
24 number and honestly I don't think there is
25 even a methodology for coming up with an

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1 estimate.

2 When somebody confesses the
3 typical disposition is they are in prison
4 and never heard from again and if that
5 confession is false nobody would ever know
6 it.

7 These DNA exoneration cases are
8 giving us a look, but there's no reason to
9 believe that those are a random sampling of
10 cases out there, so you couldn't use it to
11 derive an estimate.

12 Q How, how does one know when a
13 confession is false?

14 A There a number of ways in which
15 these things have been documented. In some
16 instances, for example, somebody will
17 confess to a crime and it turns out the
18 crime hadn't been committed. So -- there
19 was an individual by the name of Billy Gene
20 Davis in Austin, Texas who confessed to the
21 murder of his ex-girlfriend when she had
22 disappeared and after his confession she
23 showed up alive in Tucson, Arizona. So that
24 was a false confession.

25 There are cases where the person

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1 is exonerated independently. For example,
2 by DNA evidence, afterward. And there are
3 cases where the actual culprit is then later
4 found. So, for example, there was a case in
5 New York where a man by the name of Robert
6 Moore confessed to an armed robbery-murder
7 but then ballistics evidence on another
8 crime after had he confessed to it showed it
9 was with the same weapon, and then that
10 second person turned out to plead guilty.

11 So there a number of ways and,
12 again, there a number of these documented
13 false confessions.

14 Q Are there different kinds of
15 false confessions?

16 A Yes.

17 Q What are the different kinds?

18 A While it's clear that we don't
19 know how often, you know, what the incidence
20 rate, what the prevalence rate is, how often
21 this happens, we do know that when it does
22 happen, it comes in different types. There
23 are some instances, for example, where
24 people will step forward and without any
25 outside pressure voluntarily give a

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1 confession. These voluntary false
2 confessions have a long history. A classic
3 example was in the 1930's when Charles
4 Lindbergh's baby was kidnapped, two hundred
5 people volunteered confessions to that
6 kidnapping.

7 You see it today in a number of
8 cases. In the federal case I was involved
9 in a few years ago, the police had to sift
10 through three or four suspects, all of whom
11 had confessed, and to their credit what they
12 did was they looked at other evidence that
13 corroborated or didn't corroborate those
14 confessions. So we know that voluntary
15 false confessions occur.

16 Q Why would an innocent person
17 give a false confession?

18 A A voluntary one is, is somewhat
19 hard to explain. The reasons seem to vary.
20 Sometimes people will voluntarily confess to
21 protect someone else. Maybe a loved one.
22 Sometimes they'll voluntarily confess
23 because they have some pathological need for
24 fame or attention or recognition or get
25 their name in the newspapers. And there are

1 some, there are some, some, some people out
2 there that are just known to the authorities
3 as, as stepping forward when there's a high
4 publicity crime.

5 So those are some of the reasons
6 and, again, they probably fall more within
7 the purview of a clinical psychologist as to
8 why somebody would exhibit that type of
9 pathology in the absence of outside
10 pressure.

11 Q How are the police able to tell
12 that these voluntary confessions are false?

13 A Typically by, and again in cases
14 where there are multiple -- and I've been
15 involved in a couple of cases where there
16 have been multiple confessions -- they'll
17 compare the statement to the evidence to see
18 who knew more, who was able to give a more
19 accurate, complete statement on their own
20 and, and typically sift through it that way.

21 Q What is a coerced compliant
22 false confession?

23 A In contrast to those voluntary
24 confessions, there are cases where people
25 confess in response to the pressure of

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1 interrogation. The coerced compliant is a
2 confession where basically somebody succumbs
3 to the pressure. They, they get broken
4 down. They, they, they capitulate. They
5 give a confession. They privately, these,
6 these are when innocent people confess,
7 privately they know they're innocent. They
8 never waiver on that question about being
9 innocent. But for a variety of reasons,
10 having to do with the fatigue of the
11 situation, how unpleasant the situation is,
12 what they think it will take to escape from
13 that situation, and the way in which their
14 sense of the consequences, "what would
15 happen to me if I confess; what would happen
16 to me if I didn't", that decision-making
17 calculus tends to lead sometimes innocent
18 people to confess to crimes they didn't
19 commit. Again they kind of do a cost
20 benefit analysis. They want to get out of
21 the situation, whatever it takes, and in
22 many of these cases they just don't perceive
23 the long term negative consequence as being
24 that severe.

25 Q Are there documented instances

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1 of coerced compliant false confessions that
2 you're aware of?

3 A Yes. There are many of those.

4 In, in, in one well-known case, and this is
5 well known because of, because of a
6 particular detail which is in Arizona
7 several years ago, one individual -- there
8 was a massacre in a Buddhist, Thai-Buddhist
9 monk temple and one individual phoned in a
10 voluntary confession and implicated three
11 others. Those others were then
12 interrogated, and within a day or so they
13 had all independently confessed to that
14 crime. Sitting in jail for seventy, eighty
15 days another crime is committed. Ballistics
16 weapon shows it was the same weapon. Those
17 people then confessed. So we know that in
18 that one case, there were three coerced
19 compliant false confessions.

20 Q Why do those type of false
21 confessions occur?

22 A There's -- it's hard to -- it's
23 hard to understand the psychology of
24 interrogation unless you're in it or watch
25 it or watch somebody go through it, but if

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1 you can imagine an innocent person who is in
2 a situation that just doesn't seem to end,
3 and they're being accused of guilt and there
4 doesn't seem to be anything they can say or
5 do to change anybody's mind. On top of that
6 it is being suggested that there is
7 independent, overwhelming evidence of their
8 guilt, whether or not they cooperate and
9 then on top of that is being suggested if
10 they did cooperate maybe this wouldn't --
11 maybe the long term negative consequence
12 wouldn't be so severe.

13 So if you make the situation
14 anxiety-provoking enough, kind of the
15 situation that people just want to get out
16 of, and we all have experiences of sometimes
17 just doing whatever it takes to get out of a
18 bad situation, and we know this about people
19 as decision-makers.

20 We are very influenced by short
21 term immediate benefits and, and gains in a
22 situation, and the long term negative cost,
23 they kind of fade into the background, which
24 is we're less concerned about later than we
25 are about now, and so if the situation

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1 becomes anxiety-provoking enough, if you
2 become convinced enough that with or without
3 your cooperation they're going to prosecute
4 and convict you anyhow and, by the way, if
5 you do cooperate maybe the long term
6 consequences aren't so bad, then again the,
7 the, the, almost a rational response to that
8 might be to cut your losses and confess.

9 So it's a combination of
10 breaking somebody down and then providing a
11 palatable alternative.

12 Q When you talk about coercion,
13 can that coercion be subtle?

14 A Yes. Well, I mean we're not
15 talking about physical coercion as, as, as
16 you might have a hundred years ago. We're
17 talking about psychological factors, the
18 psychological techniques that in fact that
19 detectives are often trained to use and yes,
20 the, the pressures can be quite subtle.

21 And again, as an outsider, it's
22 hard sometimes to appreciate the impact of
23 that pressure.

24 Q What is a coerced internalized
25 false confession?

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1 A The coerced internalized false
2 confession and in a number of cases that fit
3 this bill, is in some ways psychologically
4 the most interesting and in some ways
5 psychologically the most difficult to
6 understand, though it's less difficult today
7 than it was a few years ago because we now
8 have a wealth of psychology literature on
9 the implantation of false memories.

10 We now know that people can have
11 false memories. What a coerced internalized
12 false confession is, it's a situation in
13 which as a result of some level of
14 vulnerability, either, either inherent in a
15 person or as a result of a situation they're
16 in and certain interrogation, highly
17 suggestive interrogation techniques, we get
18 a situation where the suspect not only gives
19 a confession, but actually comes to believe
20 that he committed the crime.

21 And there're a number of these
22 documented instances on record where
23 somebody confessed, believed it for a period
24 of time that they were guilty, only later to
25 be exonerated, and there a number of those

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1 cases. And again, those cases are, are
2 easily explainable by what we know about the
3 implantation of false memories.

4 Q So is it possible to make a
5 person think he was involved in something
6 that he was not?

7 A Yes.

8 Q How do you know that that can
9 occur?

10 A Well, again there are documented
11 instances of, of people who have confessed.
12 There is, again I'll give just one example,
13 but, and, and it's interesting because the
14 names, dates, and places change but the
15 script is always about the same. There was
16 a boy in Connecticut several years ago by
17 the name of Peter Reilly who came home, his
18 mother was dead on the floor. He called the
19 police. He thought he was helping the
20 police in the investigation. He was
21 befriended by them. He -- they had gained
22 his trust and at that point he was informed
23 that -- he had taken a polygraph and he was
24 informed that he had failed the polygraph
25 and that the test was infallible. He said

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1 that can't be. He went through an -- in
2 fact there are transcripts available which
3 are, which are quite eye-opening because
4 what you see is he goes through a period of
5 transition from certainty that he didn't do
6 it, to a question, to a point where he's
7 actually wondering is it possible that I
8 could have done that, to the point where he
9 actually wonders could I have done it and
10 not known it, at which point his
11 interrogator said, "Yes. That happens all
12 the time. People black out these sorts of
13 things."

14 He then said, "Well, then I
15 guess I must have done it." And he gave a
16 confession.

17 To make a long story short, he
18 was tried, convicted, and then on appeal he
19 was released and not retried because
20 apparently there was exonerating evidence
21 that was available at that point. But he
22 had actually come to believe his own
23 confession.

24 And we now know that it's, it's,
25 I won't say it's easy, but it's not that

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1 hard to get people to believe they did
2 certain things. They saw certain things.
3 Whether it's, you know, we can create false
4 memories for words on a list or for
5 something you've seen or heard, experiencing
6 that. Or it was some trauma you
7 experienced.

8 And so it's really an extension
9 of that phenomenon.

10 Q What makes people vulnerable to
11 this type of memory alteration?

12 A If you look at all of these
13 cases, what they have in common is you have
14 an individual who is vulnerable either
15 because he's young or was sedated or on
16 alcohol or on drugs at the time of the crime
17 and doesn't really remember it, or is
18 sleep-deprived or fatigued or stressed or
19 has simply been put through an exhausting,
20 fatiguing situation. That person is then
21 rendered vulnerable.

22 The technique that is always
23 implicated in all of these internalized
24 false confessions cases is the presentation
25 of false evidence.

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1 When you take a person who is in
2 a state of vulnerability and you say we have
3 independent evidence that corroborates your
4 guilt, whether, whether you say you did it
5 or not, we have independent objective
6 forensic test evidence, once you do that,
7 the burden shifts to that person who then
8 says well, then I have to figure out how it
9 is I might have done that. So you have the
10 presentation of false evidence implicated in
11 all these cases.

12 Also implicated in these cases
13 is the notion that people may then have done
14 it and blacked out. There is absolutely no
15 scientific evidence that people have ever
16 committed something like a murder and didn't
17 remember it. There is no evidence of that.

18 And yet that is a technique that
19 is used often, repeatedly in these false
20 internalized confession cases. And so what
21 you do there is you're basically giving a
22 mechanism. You say, "We have independent
23 evidence. You may not remember it first
24 hand, but we have the evidence that says you
25 did it and, oh, by the way, it's possible

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1 you don't remember it because you blacked
2 out." And that then ties all the loose
3 pieces together.

4 And then you have in these cases
5 where the defendant usually says something
6 kind of fragmentary or tentative like, "then
7 I guess I must have done it", at which point
8 they begin to fill in some details. That's,
9 that's a fairly classic script.

10 Q Are there certain
11 interrogation -- are these -- excuse me.
12 Are there certain interrogation techniques
13 that are used in law enforcement?

14 A Yes.

15 Q And what are they?

16 A There're a number of different
17 techniques. The most common and, and the
18 way we know what the techniques are is that
19 there are books that are published, manuals
20 that train people on how to conduct -- law
21 enforcement people on how to conduct
22 interrogations. The most popular manual is
23 the manual by Inbau, Reid, and Buckley which
24 was originally published in 1962. It's now
25 in the third edition, 1986. In fact it

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1 was -- it was the manual that the U. S.
2 Supreme Court cited in Miranda in terms of
3 what -- they wanted to know what goes in the
4 interrogation room. They cited this book as
5 evidence for what interrogators are being
6 trained to do.

7 And there's some observational
8 data, research, that suggests that in fact
9 those techniques are used. The Reid School
10 that that book has given rise to, the Reid
11 School which trains interrogators, they say
12 they trained more than a hundred thousand
13 law enforcement people in the country over
14 the years, so we know that these techniques
15 are used.

16 Q Are these techniques just a
17 matter of common sense?

18 A No. And that's why they require
19 special training and the Reid School
20 basically, they're very clear about two
21 things. They first distinguish between an
22 interview and an interrogation and then once
23 they -- and, and they have mechanisms and
24 techniques for conducting the interview in a
25 way that would enable them to determine

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1 whether the person they're interviewing is
2 telling the truth or lying. That's the goal
3 of the interview. Information gathering.
4 Let's try and figure out if this person is
5 guilty or telling the truth or lying.

6 Then they, if, if in fact that
7 person is deemed to be lying, then they
8 launch into the second phase, which is
9 interrogation, and that comes in nine steps.
10 There's a nine-step sequence interrogation.

11 Q Where do these techniques come
12 from?

13 A I'm not sure originally. There
14 are a number of manuals. I suspect that
15 some of this was basically experience based
16 over the years. It's certainly moderated
17 somewhat by what, by what case law suggests
18 is, is possible and is legal.

19 But, but these, these techniques
20 which come out of the Reid School or out of
21 the manual, again they're very widely known
22 and, and you see it, from, across cases you
23 see it in a number of these cases, the same
24 techniques are used.

25 Q How do you know that these

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1 methods are actually used?

2 A Well, again there are some
3 observational studies. One observational
4 study that was done after the Miranda
5 decision, published in the Yale Law Journal,
6 showed that these techniques are in use.

7 Richard Leo, a sociologist at
8 the University of California at Irvine
9 recently did an observational study of about
10 a hundred and eighty or a hundred and
11 eighty-five interrogations and he found that
12 these techniques were used. And again, the,
13 the training, that -- we know that the
14 number of people being trained, we have
15 those observational studies. My own
16 experience across a number of observations,
17 case-study type observations is that these
18 techniques are widespread.

19 Q What's the theory behind these
20 techniques?

21 A The theory is that you want to
22 make it -- you want to increase the anxiety
23 associated with, quote-unquote, deception or
24 denial, and you want to make it more
25 attractive to give a confession. And so you

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1 basically break the person down.

2 The technique requires first,
3 and, and very important to realize, the
4 "Reid School Technique" is based on the
5 notion again, they distinguish interviewing
6 and interrogation. You don't conduct an
7 interrogation until you have some degree of
8 confidence of guilt because the
9 interrogation is a very guilt-presumptive,
10 very aggressive approach, very resistant
11 approach to interrogation.

12 And so they conduct an
13 open-ended interview, make an initial
14 determination. If their determination is
15 that the person is lying, they go into this
16 interrogation which begins with a positive
17 direct confrontation. "You're guilty. We
18 know you're guilty." The suspect is
19 basically not allowed to issue denials.
20 They try to interrupt those denials. And
21 key in all of that is to convince the
22 suspect, basically to break the suspect down
23 to a state of despair. Denial is a, is a
24 futile exercise because we don't accept it.
25 We don't listen to those denials.

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1 Once you've led the suspect down
2 into that state of despair and you've
3 created a somewhat unpleasant physical
4 environment, the person is isolated. You
5 don't allow friends and relatives into the
6 room. The person is physically isolated.
7 The person is, again, away from home and in
8 a separate setting.

9 In that situation you then
10 conduct that, that positive confrontation,
11 and then once you feel as if you've got that
12 suspect broken down into a state of somewhat
13 despair the goal there is to now present
14 alternatives, and alternative possible
15 confession scenarios. The goal here is to
16 make it more palatable to confess, to
17 provide what I call minimization, but
18 basically moral, moral justification,
19 face-saving excuses, make the crime sound
20 not so bad, which makes the confession that
21 much easier to conduct.

22 Q What if these techniques are
23 taken to the extreme?

24 A I personally think that the
25 "Reid Technique" in some ways, not in all

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1 ways, but in some ways is overly aggressive,
2 but the "Reid Techniques" does exhibit
3 limits and they're -- and they're sometimes
4 very clear about those limits.

5 It can be taken to extreme and
6 if taken to extreme I think it's dangerous.
7 I think it increases the risk of a false
8 confession. We see the techniques taken to
9 extreme present in a number of these false
10 confession cases.

11 Q How do you know what
12 interrogation techniques were used in a
13 specific case?

14 A Hopefully you've got videotape
15 or audiotape, and a number of many large
16 sheriff's departments and police precincts
17 will, will do that routinely. In some
18 states it's actually mandatory for every
19 contact with a defendant.

20 Typically you'll have a little
21 less than that. You'll have a piece, maybe
22 some audiotape or videotape material, but
23 typically what you have to do is kind of
24 piece it together. You, you get, you get
25 the defendant's recounting of what

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1 transpired during those hours. You get the
2 hopefully testimony or interviews from the
3 detectives who conducted the sessions and
4 you try and piece together as best you can
5 what likely happened.

6 Q Is videotape or audiotaping a
7 common practice?

8 A The National Institute of
9 Justice did a study a few years back where
10 they estimated that about a third to
11 two-thirds of all large police and sheriff's
12 departments will videotape.

13 Q Do you know of any reason why an
14 interrogation should not be taped or
15 recorded?

16 A No. I, I, I can't imagine a
17 reason and in fact, in fact while, while
18 legal scholars often dispute whether or not,
19 you know, whether or not Miranda is a, is a
20 worthy exercise, there's almost no dispute
21 about videotaping as a means of protection.
22 It protects a defendant from coercion. It
23 protects the police from false claims of
24 coercion, which happen.

25 And so I, I think -- and it

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1 preserves, really preserves the evidentiary
2 record for everybody to see.

3 Q What other ways are there to
4 record a confession?

5 A If lacking videotape or
6 audiotape, you'll typically get a written
7 statement. Either the defendant will
8 handwrite it out or the defendant will
9 recite it and it will be typed out or
10 handwritten and then the defendant will sign
11 it. There a number of ways of committing
12 that first admission to paper.

13 Q How do you go about evaluating
14 the particular reliability of a confession?

15 A It's, it's a little tricky but
16 basically what it involves is you need to go
17 back and ask yourselves a series of
18 questions, and the first set of questions is
19 under what conditions was the statement
20 taken? That is to say, were these
21 conditions voluntary? How coercive? Were
22 there certain -- I look for certain factors
23 present. If there were extreme minimization
24 use, when I say extreme minimization I mean
25 to the point where leniency is being if not

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1 said, strongly implied as something that
2 follows a confession. If I see that, that's
3 a red flag. The presentation of false
4 evidence clearly implicated in a lot of
5 these problem cases.

6 So I look for the circumstances,
7 the conditions under which the defendant
8 gave the statement. Was this the first hour
9 of contact? Was this after two days of
10 contact? Those are certainly very different
11 situations because a defendant after two or
12 three days is starting to get the sense that
13 there's no way to extricate himself from the
14 situation. After an hour you don't get that
15 same sense.

16 So I look at the circumstances,
17 the techniques that were used, and I, and I
18 try and make an initial determination as to
19 whether or not this was voluntary. If it
20 wasn't voluntary, then I ask another set of
21 questions. Is what we have simply an
22 admission? I did it. It's easy to get
23 somebody to say "I did it" believe it or
24 not. It's not so easy to get the "I did it"
25 follow-up by a post-admission narrative that

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1 describes what actually happened.

2 And so the question is, is there
3 just an admission, which is, is, is a weak
4 form of evidence, or is there also
5 post-admission narrative. If there is a
6 post-admission narrative, now you ask
7 yourself another set of questions.

8 Specifically is that narrative consistent?
9 That is, if, if, if more than one story is
10 told, if more than one statement is told, is
11 that statement consistent from one telling
12 to the next? Is that statement consistent
13 with physical evidence as we know it? And
14 does that statement contain errors or is it
15 incomplete? So we basically do a comparison
16 of the statement with what is known to be
17 true from the evidence.

18 That is the next step. The
19 final step, and this is an important final
20 step, is if you do have a statement that was
21 voluntary and if you do have a -- appears
22 voluntary -- and if you have a statement
23 that appears to have some details that
24 reflect an actual crime scene, some details,
25 the next question you have to ask is whether

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1 or not those details were knowable only by
2 firsthand experience by the culprit, or
3 could those details, those same details have
4 been derived elsewhere from other sources,
5 whether it's street talk, newspapers,
6 questions or overhearing of information in
7 the police station, whatever that might be,
8 the next thing you need to know is whether
9 or not those details came out of, out of the
10 person's own personal experience.

11 And so it's important -- or, for
12 example, to know then details that are
13 inserted that the police did not already
14 know about, that could not have been in some
15 way advertently or inadvertently
16 communicated to the defendant, and so that
17 would be the final leg of that analysis.

18 And if I might just --

19 Q Sure.

20 A The reason this is important is
21 there a number of, number of documented
22 false confessions cases that we know about
23 filled with graphic, vivid details that
24 sound like they have to come from the
25 personal memory bank of the culprit, only to

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1 find out that those details were later, upon
2 testing, inaccurate.

3 So, for example, there was a
4 confession taken in Indiana by a guy named
5 Edgar Garrett. He was accused of killing
6 his daughter, throwing the body in the lake.
7 He said, "I, I, I took her to the park. I
8 clubbed her to death and threw the body into
9 the lake." That was the confession he gave.
10 It was very consistent with what was known
11 about the crime at the time. Well, when the
12 body was finally taken out, recovered and
13 analyzed, it turns out it wasn't clubbed to
14 death, it was stabbed. And if you looked at
15 the crime scene, somebody had dropped the
16 body out of a car and dragged it through
17 snow because you can see blood marks across
18 snow. So his actual confession didn't match
19 what finally turned out to be the facts of
20 that case and it would look like a very
21 persuasive and vivid confession, but again
22 it didn't match the facts. So it's
23 important, it's important to do that type of
24 analysis.

25 Q So looking at this case and Wes

1 Myers' circumstances, how do you know what
2 went on in the interrogation?

3 A It's, it's not that easy in this
4 case because there are a number of
5 conflicting accounts. When I -- when you
6 first sent me the information which you sent
7 me, I had a videotape of Wes recounting to
8 you what went on in those days and then I
9 read the police reports where certain
10 important details were very different. And
11 so what I do in that case is I simply kind
12 of make a list of what the defendant said
13 had happened, what the, what the, what
14 others had said had happened, try and piece
15 together the points of commonality because
16 when the, when there's a certain point of
17 agreement it's something you can count on.

18 And then hopefully sometimes you
19 get other evidence. Maybe the defendant
20 told somebody. Maybe somebody else at the
21 station overheard what was going on. Maybe
22 there are independent sources of evidence.

23 In this case, I was confronted
24 with two very different accounts in some
25 respect of what happened. And then after I

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1 had read all of that, you sent me a
2 videotape of a, of a, of a date earlier of
3 Lieutenant McHale's interrogation of Wes
4 Myers, and that revealed the use of certain
5 techniques that Wes had said had actually
6 been conducted.

7 Q Considering this issue of
8 knowledge of other information, have you
9 found that it's important for an
10 investigating police department to keep
11 close tabs on certain facts and details
12 about the case if they don't have a suspect
13 and are looking toward interrogation of a
14 number of suspects?

15 A Yes. I'd certainly withhold
16 information from the press, from the suspect
17 so that we can get that kind of unambiguous
18 information.

19 Q What do you do when the parties
20 disagree in their recollection of what
21 happened?

22 A Well, again you, you, you, I, I
23 make no a priori assumption that one party
24 is right or wrong. You know certainly when
25 I, when I, if I interview a defendant, the

1 defendant has a clear self-serving motive to
2 present certain factors as, as present. But
3 in cases where you have some type of
4 objective third party evidence, that's what
5 I look for. And in this case we actually
6 have that.

7 Q Were there such disagreements in
8 this case and how did you resolve that?

9 A The disagreements again were on
10 some I think very important facts. There
11 was at first, the first thing that jumped at
12 me was a disagreement between Wes's account
13 that he was shown photographs of the victim
14 prior to giving an admission or confession,
15 and the reports saying nothing about
16 photographs. And that was one of those
17 details that I was just going to kind of
18 file away as something that couldn't be
19 reconciled as to whether or not he had seen
20 photographs.

21 But if you look at Lieutenant
22 McHale's session with Wes, you see more than
23 one reference to photographs that he had
24 seen. Wes makes reference to photographs he
25 had seen. Lieutenant McHale makes reference

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1 to photographs he had seen. So it's clear
2 that he had seen those photographs and, and,
3 and that's the kind of objective evidence
4 that I look for.

5 In fact that session with
6 Lieutenant McHale in and of itself was a
7 source of dispute because my understanding
8 from Wes's account is that when he confessed
9 that was not the first session he'd been
10 involved in. And yet if, if my reading of
11 the detectives' reports was correct, he had
12 not been interrogated until that Saturday --
13 he had not been interrogated until the
14 Friday, and yet he had been, and the tape
15 shows that interrogation.

16 Q Were certain techniques used on
17 Wes Myers?

18 A Yes. It wasn't the full "Reid
19 Technique" but there are certainly very
20 strong elements of the "Reid Technique" that
21 were, that were used.

22 Q Is there anything about the use
23 of these techniques or these techniques that
24 causes you concern in this case?

25 A In that particular, in that

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1 particular session what causes me concern is
2 that -- I mean you mentioned earlier
3 techniques being used to extreme.
4 Certainly -- and the photographs revelation
5 had nothing to do with that session. That
6 simply came out of that session.

7 But it's clear, it's clear that
8 in that session certain techniques were
9 used. There was, for example, the planting
10 of the seed which we see later whereby false
11 evidence would be presented. There is a
12 hint of an eyewitness who had seen Wes at
13 the bar that night. It's not explicitly
14 stated but it's certainly implied enough so
15 that Wes came right out and said "If, if
16 anybody said they saw me there, it's a lie."
17 And so he had to address that. So it's
18 clear you can see the beginnings of false
19 evidence.

20 You can see the beginning, and
21 again this was an important detail. I
22 mentioned in these coerced false
23 internalized cases there's always this
24 notion that the person who doesn't have the
25 memory but is told there's independent

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1 evidence may have blacked it out. If you
2 read closely, Wes's accounting says, "They
3 suggested that maybe I blocked it out."

4 The reports from the detectives
5 suggested that that indication of a blackout
6 came from Wes. And yet if you look at
7 Lieutenant McHale's session, on the first
8 page of the transcript of that session he
9 set into motion the notion of an alcoholic
10 blackout and then repeats it one more time
11 later. So you can begin to see false
12 evidence being used, the blackout scenario
13 being used, minimization is being used, the
14 face-saving alternative repeatedly through
15 that session. There are -- there's this
16 technique which comes right out of the Reid
17 School by which the defendant, the suspect,
18 is suggested that "maybe what you did isn't
19 so bad. You know, you did the kind of thing
20 that anybody might have done. You had the
21 kind of impulse anybody might have had.
22 Maybe you just lost control. Maybe it was
23 an accident." In fact the word "accident"
24 was actually used.

25 Now, those are classic Reid

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1 School techniques and I think that in some
2 cases, not used alone, but used in
3 conjunction with false evidence and some
4 other things, that technique poses a risk of
5 increasing the false confession.

6 What was particularly
7 troublesome about this case is that not just
8 minimization, that is not just the
9 implication that maybe what you did wasn't
10 so bad and so that what typically happens is
11 people say, oh, well, then maybe the
12 consequences wouldn't be so severe.

13 The Reid School, in if you look
14 at their web site, you'd see that they
15 actually have an admonition right there.
16 The Reid School is very careful to say
17 "whatever you do when using this technique,
18 don't talk about specific legal
19 consequences." And yet specific legal
20 consequences were described in that session
21 by Lieutenant McHale. Specifically
22 distinguished between first degree murder
23 and talked about that having the consequence
24 of life or even death, or manslaughter which
25 has the consequence -- I forget. It was

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1 three or four years. And then he said
2 something about maybe even just three or
3 four months in South Carolina.

4 So that's -- that, that steps
5 over the line that even the Reid School
6 which I think has an aggressive approach to
7 interrogation, even the Reid School would
8 see that as over the line.

9 And so again when you look at
10 the blackout scenario, the false evidence,
11 the, the just not letting him mount a
12 defense, and the use of minimization coupled
13 with some fairly explicit mention of legal
14 consequences, that's a, that's a fairly
15 aggressive interrogation.

16 MR. KULP: May I approach the
17 witness, your Honor?

18 THE COURT: Sure.

19 (Whereupon, marked for
20 identification was Defendant's Exhibit
21 No. 6, Reid School literature.)

22 Q Dr. Kassin, let me hand you
23 what's been marked as defendant's exhibit
24 six and ask if you can identify that?

25 A Yes. This a, a, a page off the

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1 John Reid and Associates web site. Monthly
2 investigator tip for August 1999, legal
3 considerations in asking alternative
4 questions.

5 Q Okay. And is that what you're
6 just referring to in terms of that
7 consideration?

8 A Yes.

9 Q Well, does that particular
10 document -- is that available on the
11 internet?

12 A Yes.

13 Q And did you yourself print,
14 download and print that?

15 A Yes. Yes.

16 Q That is -- and please identify
17 it a little bit further. That's from -- the
18 heading indicates?

19 A This comes off of the John Reid
20 School -- this is the Reid School that
21 trains in the technique, and they admonish
22 here, "the alternative question should not
23 make any mention of legal charges." And
24 they're actually very specific.

25 "An alternative question that

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1 violates this guideline is therefore
2 improper is 'Did you plan on killing her?'
3 in which case it will mean first degree
4 murder or life in prison or 'did this just
5 happen in the heat of passion?' which would
6 just be manslaughter."

7 They don't mind the use of that
8 alternative between mans -- between, between
9 passion, the heat of passion, is it just
10 something that happened on the spur of the
11 moment, but not to then identify it with
12 actual crimes and legal consequences.

13 Q What about the fact that Wes
14 apologized after confessing?

15 A Depending on how you look at the
16 confession. If you see the confession, as I
17 do, as something that was the product of
18 some fairly coercive sets of influences,
19 then that just follows on the -- that's
20 just, that's just more of the same,
21 basically. It's the same sets of influences
22 that produced the confession will produce
23 the follow-up apologies.

24 Q And what is the basis for that?

25 A Well, at this point he's been

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1 essentially -- I don't want to say beaten
2 down because there's nothing obviously
3 physical here, but at this point he has, he
4 has given up and he is entertaining actually
5 to get the sense of some of these
6 internalized false confession cases, is
7 actually beginning to wonder whether or not
8 he committed this crime. He has no direct
9 memory. He comes right out at some point
10 and says, "I must have done it," which is an
11 interesting non-defensive concession. If he
12 were a guilty person seeking to evade
13 prosecution, he would never have said "I
14 must have done it." He would continue to
15 defend.

16 But he didn't. He stopped. He
17 said, "Oh, my God. You've got this
18 evidence. How do I reconcile this with my
19 lack of memory? I must have done it." And
20 that's where this blackout notion comes in.

21 You see, and, and you can see
22 this in actual experiments. I did a, a, a
23 simple laboratory experiment where I
24 convinced people that they broke a computer
25 that they didn't break. And afterward, and

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1 in fact there was some producers from the
2 "Learning Channel" came to re-enact this
3 experiment to, to show on, show on their
4 show on false memories. And the producer
5 gasped about, about something that I see all
6 the time, which is I got these college
7 students, very smart college students to
8 think they had broken this computer, after
9 which they apologized, said "I'm so sorry I
10 did that. I, I, I really regret that I had
11 done that. I hit some key I wasn't supposed
12 to hit." When in fact they hadn't done it.

13 So the apology again is simply
14 more of the same. Once, once the defendant
15 becomes if not convinced, certainly playing
16 with the idea that he may have done it,
17 whether he has a memory, direct memory or
18 not, the apology follows. "If I must have
19 done it, I must apologize."

20 Q What if the suggestion to
21 apologize comes from the police who are
22 present at the time of the contact?

23 A Well, that again would just be
24 more of the some type of influence. It
25 wouldn't -- it wouldn't -- I should say it

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1 wouldn't surprise me if that impulse to
2 apologize didn't come from the accused after
3 he becomes convinced he had done what he is
4 accused of doing.

5 Q How often have you been asked to
6 testify as an expert on false confessions?

7 A I, I probably got hundreds of
8 phone calls and I, and I tend not to take
9 the cases. I probably looked closely at
10 forty or fifty and agreed to testify in a
11 dozen, or fifteen cases.

12 Q Why do you suppose that you
13 receive so many requests?

14 A The research that I publish is,
15 is out in the literature and I've written
16 extensively on the, on the topic.

17 Q How often have you actually
18 agreed to testify in a case like this?

19 A About twelve or fifteen times.
20 I tend, I tend not to. Exceptional
21 circumstances, I, I take the case.

22 Q In cases where you agree not to
23 testify, can you tell the Court why.

24 A Sometimes it's simply time. My
25 own, my own schedule because this is not

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1 what I do for a living, testify as an expert
2 witness. And sometimes it's because of the
3 nature of the case. I'll always when I get
4 a phone call, I'll always listen to the
5 facts of the case and if, for example, I
6 hear that there's corroborating evidence of
7 guilt, I won't take the case, whether it's a
8 coercive interrogation or not. I might, I
9 might refer the, the attorney to another,
10 another expert but, but I won't take that
11 case.

12 And so one of the pre-conditions
13 of my accepting the case is I want to see
14 the evidence and I want to get a sense of
15 what other corroborating evidence there is.
16 And then the other thing I look for is
17 whether or not certain exceptional
18 circumstances surrounded this confession.
19 Is it to me a particularly troubling
20 confession?

21 And again because time is an
22 issue for me I, my most likely response is
23 to refer to other experts, but I do and
24 that's usually why I'll, why I'll reject a
25 case.

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1 Q Would you or have you ever
2 testified for the State in a case with a
3 disputed confession?

4 A I've never actually testified.
5 I was called by the State, by the U. S.
6 Attorneys Office in one case where the
7 defense had an expert who I thought was
8 preparing to overreach and overstate the
9 science in terms of what an expert can do
10 and say in false confessions, and, and so I
11 agreed to testify there, if that defense
12 expert were in fact to overreach that I
13 would agree to testify for the State. But
14 that never happened because he scaled back
15 his, his testimony.

16 Q Examining your report, which the
17 Court has, do you have any additional
18 comments to make regarding the following
19 issues: For example, the length of
20 interrogation in this particular case?

21 A This is, it's a, it's a
22 three-day event. This a three-day ongoing
23 event. This not a one-day Saturday affair.
24 This is -- he didn't walk in Saturday
25 morning starting from scratch. There was a

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1 backlog of accusation, a backlog of testing
2 and, and, and almost testing, and certainly
3 questioning and interrogation that had
4 preceded it, so this is an ongoing three-day
5 event. It's, it's hard to put on the time
6 continuum because it's broken up in time,
7 but it's a three-day deal as far as I can
8 tell.

9 Q What about the guilt-presumptive
10 approach to an interrogation?

11 A Yes. Again according to the
12 Reid School, you launch into the
13 interrogation acknowledging that these are
14 fairly aggressive techniques when you have
15 decent reason to believe that the person is
16 guilty. "Decent reason" meaning you have
17 some external, corroborating evidence of
18 guilt, or you have such a strong suspicion
19 on the basis of your kind of interview
20 analysis, they talk about doing an analysis
21 of verbal and nonverbal behavior during the
22 interview, that you're so convinced in guilt
23 that you then launch into the interrogation.

24 In this case my sense is that
25 guilt was presumed at the outset. In fact

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1 my reading of, of Detective Tetanich, if I'm
2 pronouncing it correctly, having said that
3 in fact he suspected from 6:30 or 6:40 that
4 first morning of the crime he had
5 suspicions, and when I looked at the news
6 reports, that, that, where he, where he
7 apologized to the news media, the voice-over
8 on one of those reports said, "Police say
9 they suspected him right from the start."
10 And so it's clear that there wasn't that
11 inquisitive investigative mode first. There
12 was a presumption of guilt and that
13 presumption of guilt produced, as it does, a
14 very aggressive form of interrogation.

15 Q In regarding, regarding the
16 interrogation techniques that were used
17 regarding Mr. Myers, did you make findings
18 regarding the presentation of the
19 photographs to him?

20 A Yes. Well, again, one of those
21 disputes that came up early was whether or
22 not he had been shown photographs, which is,
23 which is a, a, a patently terrible procedure
24 because again you're trying to preserve --
25 once, once you get a person to make an

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1 admission you want them to then give you a
2 statement that describes the scene to the
3 best of their knowledge without having seen
4 the scene. And so the presentation of
5 photographs becomes a contaminant. It
6 becomes a contaminant because now you've
7 shown him the body and what it looked like
8 and, and, and he knows what information can
9 come from the photographs.

10 At first I have no assumption
11 about whether in fact he had seen photos,
12 but again he then made reference to the
13 photos on the Friday session with Lieutenant
14 McHale, so he had seen photos early on, well
15 before Saturday. Early Friday at least.

16 Q What about the use of
17 intimidation in this case?

18 A Again, it's one -- and, and, and
19 this is a hard one. Defendants will often
20 try and overstate how coercive a situation
21 was, and one of the things that, that, that
22 was said which, which you often see said is
23 that he was threatened with the death
24 penalty, and there's no way to corroborate
25 whether or not that in fact had happened.

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1 But the death penalty was
2 mentioned in that Friday session as an
3 alternative, as a, as a, as a possible
4 consequence of first degree murder. And
5 another aspect of that Friday session was
6 when Detective Clayton came in at one point
7 later in the session with a gun visible.
8 And again the Reid School, even the
9 aggressive Reid School would say you don't
10 present a gun in front of the accused.

11 Q And regarding the presentation
12 of false evidence, has it impacted
13 particularly, I mean into this case?

14 A The presentation of false
15 evidence, everybody agreed -- and this was,
16 this, this one I could hang my hat on early
17 on -- everybody agreed that there was this
18 ruse by which, by which supposedly a phone
19 call came in from S. L. E. D. saying that
20 the hair matched. Everybody agreed with
21 that.

22 There is some indication from
23 Wes that that was not the first or only time
24 he had been presented with false evidence,
25 but it was all I could derive from

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1 everything else that I read. Until again
2 looking at that videotape which came in
3 relatively late to me, where the
4 presentation of false evidence begins with
5 the implication that there might have been a
6 witness, you can see that seed being planted
7 and Wes being set up with this notion that
8 there was hair in the victim's grasp and
9 "wouldn't you agree with the premise that if
10 we find the person who owns that hair we
11 find the, the killer?" And so there's
12 clearly this being set up now, this
13 presentation of false evidence at this
14 stage.

15 There's also some indication I
16 just said by Wes's recounting that to
17 supplement, to bolster that, that hair
18 analysis he was told that there was blood
19 found in his truck. Nobody quite recalls
20 whether or not he was told that but by
21 coincidence, in fact his truck was being
22 examined for blood at about that time, and
23 in fact there was a tentative conclusion,
24 preliminary, that there may have been blood.
25 So whether he was actually told or not, I

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1 don't know. But there certainly is an
2 indication that that was the suspicion, and
3 it was at a time when false evidence was
4 being presented.

5 Q Do you consider this, the black
6 and white videotape surreptitiously made of
7 Mr. McHale's contact with Mr. Myers, a
8 valuable tool in forming your opinion, in
9 making your assessments about false
10 confession aspects of this case?

11 A Yes. Well, it certainly reveals
12 the use of techniques that wouldn't have
13 been revealed otherwise and it shows that he
14 was interrogated the day earlier, a day
15 earlier than we were led to believe.

16 Q Let me ask you a question about
17 that. Does the Reid School or the "Reid
18 Technique" address the issue of interview
19 versus interrogation in terms of definition
20 or description of what those two things are?

21 A Yes. They're separate, they're
22 separate events. They may not be separated
23 in time. You may slide from one into the
24 other, but the interview is very
25 specifically a fact-finding mission. You've

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1 got a defendant. You may not have a lot of
2 corroborating evidence, and so the goal here
3 is to ask the defendant some questions, get
4 the defendant basically talking, get the
5 defendant talking in a way that you can then
6 analyze his verbal and nonverbal behavior
7 and make some judgment about whether he's
8 telling the truth or being deceptive.
9 That's an interview.

10 What I saw in that tape was not
11 an interview and if, if you want a very
12 simple metric of why that wasn't an
13 interview, the simple goal of an interview
14 is to throw out something, inquisitory
15 questions and to get the suspect talking so
16 that you can observe behavior, verbal or
17 nonverbal behavior.

18 If you look at that tape, I
19 haven't actually done a word count, but I
20 would estimate that Lieutenant McHale did
21 ninety-nine per cent of the talking, and in
22 fact at times Wes couldn't even get a word
23 in edgewise. This was clearly a session in
24 which the goal was to communicate
25 information to the suspect, not get

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1 information from the suspect.

2 If you're trying to get
3 information from the person, you let them
4 talk, you hear what they have to say, and
5 you observe. That was not what was going on
6 here.

7 This was an interrogation. The
8 goal here was to use techniques, to
9 introduce these techniques.

10 Q Does -- do -- are there specific
11 references in the "Reid Technique" manual to
12 the distinction between interview and
13 interrogation?

14 A Yes. And, and, and this by the
15 Reid criteria would qualify as an
16 interrogation.

17 Q Do you know Mr. Reid?

18 A No. I, I, I've met Joseph
19 Buckley, who's the president of the Reid
20 School.

21 Q Okay. Were there any -- in your
22 observation of the McHale contact with
23 Myers, that's documented in the videotape,
24 did you see any techniques used in there
25 that even the Reid people or the "Reid

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1 Technique" or approach would find
2 problematic?

3 A The Reid people specifically
4 admonish against this blackout hypothesis.
5 It's one thing to get a defendant to tell a
6 story that minimizes or justifies what he
7 did, but don't ever suggest they say that
8 you may have done it and blacked it out.
9 They specifically advise against the mention
10 of legal consequences, and they specifically
11 advise against showing the defendant actual
12 evidence as, as, as in the case of
13 photographs, although again photographs
14 wasn't shown in that session. But, but yes,
15 it, it, it pushes the envelope.

16 Q Your report addresses the
17 Myers's statements and you -- it also sets
18 forth a number of your assessments about
19 that, and could you testify regarding those
20 assessments in that regard?

21 A About the statement itself?

22 Q Yes.

23 A One --

24 Q An overview. The judge has it.
25 But if you would just very quickly or

Kassin -- Direct

1 summarily review the problems that exist,
2 unless you've already testified to --

3 A Well, the main problem as I see
4 it is that again if you, if you skip ahead
5 to that fourth leg of my analysis, now
6 you've got a post-admission narrative. He
7 tells the story about what went on that may
8 or may not match the scene. And in, in this
9 case in general terms it matches the scene
10 of the crime. But of course he'd already
11 seen photographs so it was contaminated and
12 we don't have a, a clear record of what
13 other things were said or done. We know he
14 was driven to the scene before giving the
15 confession to the -- and so again those
16 kinds of things were done that shouldn't
17 have been and contaminate the inquiry and
18 what it does is it makes it difficult to
19 know where he got the information that's in
20 the statement.

21 Q Did the statement, "I must have
22 did it then, must have done it," did that
23 indicate anything about his state of mind at
24 the time?

25 A That kind of tentative

Kassin -- Direct

1 fragmentary qualified language is what you
2 see in these coerced internalized false
3 confessions. If you think about the way we
4 use language in general, we never say that.
5 When we're recollecting an actual
6 experience, "I must have gotten on the plane
7 this morning." No. I say "I got on the
8 plane this morning."

9 To say "I must have done it" is
10 one of those catchalls that you look for in
11 these cases because it suggests that he's
12 about to recount something that he doesn't
13 have a firsthand memory of. He's guessing.
14 He's creating a theory. He's inferring what
15 must have happened given that all this
16 evidence is presented to him.

17 So what you see in the "must
18 have" language is, "Okay, I'm about to
19 embark on a theory, an inference, make a
20 guess as to what happened, but this isn't a
21 firsthand memory."

22 And that, that language is
23 something that you see, you saw it in the
24 Peter Reilly case. You see it in a lot of
25 these coerced internalized false confession

Kassin -- Direct

1 cases.

2 Q Did you make any -- finally
3 after all of your review of this and
4 considering your background, did you make a
5 conclusion about this circumstance of Wes
6 Myers's confession, considering your
7 experience and knowledge of the area of
8 false confession?

9 A My sense is that the techniques
10 used were extremely strong and extremely
11 suggestive. It's hard to know from his
12 statement itself and the circumstances
13 surrounding it, given the information I
14 have, just how much of that statement does
15 he produce that wasn't already known by
16 those he gave it to? It's hard for me to
17 know that and again in part because he was
18 contaminated by having been given
19 information.

20 And so my, my sense in the end,
21 yeah, I don't, I don't pretend to be able to
22 tell the difference between a true
23 confession and a false. I think nobody can
24 do that. I, in fact when I talk about when
25 I was preparing to testify for the U. S.

Kassin -- Direct

1 Attorneys Office once it was to that point.
2 I don't think anybody, and that includes a
3 psychologist in this area, can look at a
4 statement and determine whether or not it's
5 true or false, based on the statement
6 itself.

7 But if you compare the statement
8 to other things that you know about the
9 case, again it's my, my, my general
10 conclusion is that this is a statement that
11 I would treat with a good deal of caution.
12 A post-admission narrative, if it's right,
13 can absolutely corroborate a guilty person's
14 confession. If this person gives details
15 the police didn't know or leads the police
16 to evidence they didn't know they had, that
17 absolutely corroborates the true confession.

18 I don't believe -- some experts
19 do -- I don't believe you can ever prove the
20 confession is false but I believe that this
21 statement fails to prove that it's true.

22 Q Thank you, Dr. Kassin. Please
23 answer any questions that Mr. Durant may
24 have.

25 MR. DURANT: I'll be much

Kassin -- Direct

1 briefer, this time.

2

3

4

5

6

CROSS-EXAMINATION BY MR. DURANT:

7

Q There's no question this

8

defendant was read his rights?

9

A As far as I know, yes.

10

Q You sat there and saw it on

11

videotape.

12

A I saw it on video.

13

Q McHale read him his rights?

14

A Right.

15

Q You know he was read his rights

16

by Detective Payne on the day before?

17

Correct?

18

A Yes.

19

Q You know he was read his rights

20

by Sergeant Tetanich on the Saturday before

21

he confessed?

22

A Yes.

23

Q So he's advised of his rights,

24

constitutional rights under Miranda --

25

A Correct.

Kassin -- Cross

- 1 Q -- at least three different
2 times. Correct?
- 3 A Correct.
- 4 Q No question about that?
- 5 A I have no question about that.
- 6 Q He's not an idiot, is he?
- 7 A Excuse me?
- 8 Q He's not an idiot?
- 9 A No. I don't think he's an
10 idiot.
- 11 Q He's not a moron?
- 12 A No.
- 13 Q He's not a child?
- 14 A Right.
- 15 Q He wasn't drunk at the time, was
16 he?
- 17 A Right. No.
- 18 Q He understood what was going on?
- 19 A Uh-huh.
- 20 Q Has thirteen years of education?
- 21 A Correct.
- 22 Q Twelve years of high school, one
23 year of college. Correct?
- 24 A Correct.
- 25 Q He's not what you would consider

Kassin -- Cross

1 vulnerable? He's not young?

2 A Correct.

3 Q Certainly understood his rights,
4 didn't he?

5 A I would assume so.

6 Q What promises were made to him?

7 A I don't -- I have not heard that
8 any specific promises were made to him. I
9 have no reason to believe that promises were
10 made.

11 Q You saw the Major McHale
12 videotape?

13 A Yes.

14 Q What was he promised on that?

15 A He was promised nothing.

16 Q And what threats did McHale make
17 to him?

18 A There were no threats made.

19 Q And to your knowledge from any
20 other source, excluding Mr. , Mr. Myers --

21 A Right.

22 Q -- who hasn't testified in this
23 hearing, who else threatened him?

24 A I have no indication of threats,
25 except for what his account was.

Kassin -- Cross

1 Q Do you have any indication of
2 any threats being made to anybody in his
3 family?

4 A No.

5 Q Any promises being made to
6 anybody in his family?

7 A No.

8 Q So your testimony for purposes
9 of this hearing is that he was read his
10 rights?

11 A Correct.

12 Q He understood his rights?

13 A Correct.

14 Q And he was not threatened or
15 promised anything, to your knowledge?

16 A Correct.

17 Q Now, and you're aware, of
18 course, that, that in the actual
19 interrogation where this defendant confessed
20 in this case, they never used the "Reid
21 Technique"?

22 A Correct. Well, I don't know
23 what techniques were used or not used.

24 Q But the only technique that
25 you've been provided with was, was this

Kassin -- Cross

1 issue regarding the hair but you, as you
2 say, the "Reid Technique" is a very specific
3 technique.

4 A Right.

5 Q Nine steps.

6 A Right.

7 Q Usually involves one
8 interrogator, one defendant?

9 A Right.

10 Q Usually in a room with two
11 chairs, a table, nobody else present. To
12 your knowledge none of that happened in this
13 case where he actually confessed. Is that
14 the case?

15 A That's right.

16 Q So at the time where he actually
17 had made this admission, you would say that
18 the "Reid Technique" to the best of your
19 knowledge was not even being utilized?

20 A In that session, correct.

21 Q Now you would say that the "Reid
22 Technique" was utilized by Major McHale. Is
23 that correct?

24 A Elements of it. I wouldn't, I
25 wouldn't exclude elements of the "Reid

Kassin -- Cross

1 Technique" in the Saturday session either.

2 Q I understand that but, but the
3 "Reid Technique" when you said -- the "Reid
4 Technique" is a very specific nine-step
5 technique.

6 A Yes.

7 Q It could -- just kicks in what
8 we call the interrogation stage?

9 A Although this is now the third
10 day of a, of a session, so this not also in
11 a classic Reid form.

12 Q Okay.

13 A An initial context.

14 MR. KULP: He didn't answer the
15 question.

16 Q Okay.

17 MR. KULP: Don't cut him off,
18 please.

19 MR. DURANT: Okay.

20 Q Are you through?

21 A Yes. Yeah.

22 Q Tell me how he was interrogated
23 the first day.

24 A The first day all I know is that
25 he gave a statement in a car. I don't have

Kassin -- Cross

1 any indication that there was techniques
2 used in that statement. I do know that
3 there was a presumption of guilt surrounding
4 that, but, but as far as I know that was not
5 used at that time.

6 So on day one I have no
7 indication that there was what you'd call an
8 interrogation.

9 Q Now, why do you say there was a
10 presumption of guilt when Detective Payne
11 took the statement?

12 A Well, my reading of, of the
13 Jackson V. Denno hearing is that Detective
14 Tetanich had told Detective Payne that "we
15 have the person I think is the suspect."

16 Q Now I believe he told that to
17 Detective Cumbee and then Detective Cumbee
18 instructed Payne later to take his
19 statement.

20 A Okay. And again the news report
21 that had the voice-over that suggested the
22 police believed right up front that he
23 was --

24 Q And we all know that -- and we
25 all know that if a T. V. reporter says it,

Kassin -- Cross

1 it must be true?

2 A They said "police said."

3 Q Now, you keep talking about
4 false evidence in this case as well. Is
5 that correct?

6 A Correct.

7 Q Did this man ever say that the
8 police had any false, any what you call
9 false evidence against the defendant?

10 A The implication was clear.
11 Clear enough to jolt the -- to, to jolt Wes
12 into a defense that any witness would --
13 that the witness must be lying.

14 Q He never even -- he never even
15 told this defendant, he couched the question
16 in terms like this, and, and if I'm -- and
17 correct me if I'm wrong. "Is there any
18 reason why someone would have seen you there
19 that night?"

20 A There was a -- there was a
21 follow-up to that. I don't recall the
22 wording, but --

23 Q Okay.

24 A -- it's also important to
25 understand about the psychology of

Kassin -- Cross

1 communication. We have known this for
2 years. People give messages and the "take
3 home" message for the person listening is
4 not what is said but what's implied. And it
5 was clear what was implied from Wes's
6 standpoint because of his response, he
7 responded as if there was an actual witness
8 being cited.

9 Q Did this man directly ever tell
10 Wes Myers that there was evidence against
11 him?

12 A He implied it. He did not say
13 it.

14 Q He didn't -- he never told him
15 specifically that "we have a witness that
16 saw you there"?

17 A That's right.

18 Q And that "we have hair there".
19 He was never told anything specifically
20 along those lines during that entire
21 interview.

22 A That's right.

23 Q Isn't that correct?

24 A That's right.

25 Q And in an hour-and-a-half

Kassin -- Cross

1 interview, he was not one time accused of
2 committing this crime, was he?

3 A Not actually accused but again
4 he had to defend himself as if he were under
5 suspicion.

6 Q You have that transcript. You
7 show me one -- seventy pages long, hour and
8 a half, you show me one place in there where
9 this man accused Wes Myers of doing
10 anything.

11 A Again, you -- when people
12 communicate it's -- and, and, and in fact
13 I've, I've got research that shows this,
14 that when you use minimization-like
15 techniques --

16 Q Well, let me --

17 MR. KULP: Let him finish the
18 question. Please don't cut him off.

19 MR. DURANT: Let me do what --

20 MR. KULP: He didn't finish --

21 MR. DURANT: No. Let me do
22 what --

23 THE COURT: Hold it just a
24 minute. Let me get it straight. He's
25 going to ask you the question. You can

1 answer yes, no, or I don't know, and
2 then you can explain it.

3 Okay. Now ask him the question.

4 Q Is there anywhere in that
5 transcript?

6 A Not explicitly, no.

7 Q Now you may explain.

8 A Not explicitly, but part of the
9 technique of interrogation is to draw
10 inferences or to lead the suspect to draw
11 inferences, and so you might imply there's
12 evidence without actually stating it. You
13 might imply that there is leniency
14 forthcoming without actually stating it.

15 And research shows people --
16 it's classic studies, for example, show if
17 you, if you, if you tell somebody a story
18 about a burglar who goes up to a door and
19 then you ask him to recount the story a day
20 later, they will say to you the burglar went
21 up to the door and through it. They will
22 fill in the missing hole. That's how people
23 process information between the lines.

24 And one of the, I think one of
25 the, one of the skills of a good

Kassin -- Cross

1 interrogator --

2 THE COURT: Now, wait a minute.

3 Let's just talk about this one.

4 THE WITNESS: Yes.

5 THE COURT: He asked you a
6 specific question. Just answer that
7 question.

8 The question was: Where in that
9 transcript, in that transcript did you
10 read that he accused him of it?

11 THE WITNESS: No. There is no
12 accusation. There's no explicit
13 accusation. But there is the
14 implication of a witness which has Wes
15 jumping to his own defense, and there
16 is certainly the implication of
17 leniency in a very specific statement
18 about the difference between first
19 degree murder and manslaughter.

20 Q And in these implications you
21 say, he never even related those
22 specifically to Mr. Myers, did he? He just
23 asked questions like is there, is there any
24 reason why a witness would see you there?
25 Is there any reason why someone would drive

Kassin -- Cross

1 your car? Those -- he couched them in terms
2 of, of those type of questions.

3 A Right.

4 Q Is that correct?

5 A Right.

6 Q And you would acknowledge he
7 never accused Mr. Myers --

8 A That's right.

9 Q -- at any time?

10 A That's right.

11 Q And you would also acknowledge
12 that by virtue of Reid's definition of
13 interrogation, that wasn't an interrogation?

14 A Oh, it was an interrogation by
15 every definition of the Reid School.

16 Q Excuse me. Didn't, didn't you
17 just say that the difference between
18 interview and interrogation was the
19 accusation?

20 A The positive confrontation. But
21 again if you -- you seldom will see the full
22 "Reid Technique", all nine steps, in a
23 single case. But it's clear there are
24 elements of the "Reid School Technique" and
25 I, I noticed on the desk all of the Reid

Kassin -- Cross

1 School materials. So that's --

2 Q That's because Mr. Kulp
3 requested them.

4 A But -- yes.

5 Q Now, in your report you suggest,
6 for example, that the police were being less
7 than honest about him seeing pictures on
8 perhaps Friday.

9 A Well, I don't know if it's less
10 than honest or, you know, recollections are
11 funny and particularly over a three-day
12 event it's hard to sometimes pinpoint time.
13 It's -- there was a dispute about that.

14 It was hard for me prior to
15 seeing the videotape to figure out at what
16 point -- there was no question I think that
17 he saw photos. The question was at what
18 point did he see photos?

19 And, yeah, that was in dispute.

20 Q And I quote: "What is uncommon
21 and disturbing in this case is that there
22 is "-- that "when, where independent
23 evidence is available, it often supports the
24 defendant's account, contradicting the
25 recollections of the detective."

Kassin -- Cross

1 A Correct.

2 Q What is your basis for that
3 statement?

4 A The basis for -- I have a number
5 of bases for it. One is the, the fact that
6 he was interrogated prior to Saturday.

7 Q This is specifically under
8 presentation of photographs.

9 A Oh, the presentation of
10 photographs was -- the issue was that -- let
11 me -- my sense of the detective's
12 recollections of what went on was that after
13 his giving his initial admission and
14 confession, he was shown a photograph.

15 Q All of them agree to that.
16 Correct?

17 A Everyone agreed to that.

18 Q Okay.

19 A And so it looked to me not a
20 dispute over the facts so much as the timing
21 of those facts.

22 Q And you've read this entire two
23 hundred and some page transcript.

24 A Yes.

25 Q Is that correct?

Kassin -- Cross

1 A The Jackson V. Denno, yes.

2 Q Can you show me one place in
3 this entire transcript where any of these
4 police officers said that he did not see
5 pictures on Friday?

6 A I can show you where they say
7 that they didn't show him a photograph till
8 after he confessed, yes.

9 Q Okay.

10 A Well, how am I going find it
11 with. . .

12 This may take a little while.

13 Q Well, take as long as need.

14 THE COURT: What's he looking
15 for now?

16 THE WITNESS: Can I get my copy?

17 MR. KULP: Yes.

18 MR. DURANT: You can get your
19 copy.

20 THE COURT: He's looking for the
21 place where the officers said that --

22 MR. DURANT: Where the officers
23 said specifically that the only picture
24 this defendant was shown was at the
25 interrogation on Saturday.

Kassin -- Cross

1 THE COURT: After the
2 confession?

3 MR. DURANT: After the
4 confession.

5 THE COURT: And that's in the
6 Jackson-Denno hearing?

7 MR. DURANT: According to him.
8 Not the one I read.

9 A Okay. I've got a couple of
10 points where you're referring to.

11 Q Okay. Can you point them out to
12 me, sir?

13 A Yes.

14 THE COURT: Page?

15 THE WITNESS: Page eighty-two.
16 Somewhere in the middle.

17 THE COURT: What line?

18 THE WITNESS: Oh, it's about
19 directly in the middle. That picture
20 wasn't shown to him until after he
21 confessed. That was one reference to
22 the photograph.

23 Q They're referring to the blowup
24 photo that all the parties acknowledge he
25 was shown at the time he confessed.

Kassin -- Cross

1 A Yes.

2 Q We're not talking about that.

3 We're talking about Friday, sir.

4 A Well, there is no indication in
5 any of the police reports that I read about
6 the situation that he was shown any
7 photographs.

8 Q Sir, in the Jackson V. Denno
9 hearing you read, all three detectives said
10 he was shown a big eleven-by-fourteen
11 blowup --

12 A After he confessed.

13 Q -- of, of the victim after he
14 confessed. That's what this refers to.

15 A Right. But there's no mention
16 in any of the reports of showing him
17 photographs which is, of course, a relevant
18 detail and that detail is missing.

19 Q My question is this, sir. Show
20 me where in this transcript where any police
21 officer represented to the Court that the
22 defendant -- affirmatively represented to
23 the Court that the defendant absolutely did
24 not see any photographs prior to those on
25 Saturday?

Kassin -- Cross

1 A I'm not -- I, I won't claim that
2 that is in this transcript if that's what
3 you're asking.

4 Q It's not in that transcript,
5 sir.

6 A Right.

7 Q I can, I can allege --

8 A I wouldn't, I wouldn't, I
9 wouldn't assume that it is in here.

10 Q So what is your basis for
11 claiming that they were being less than
12 truthful then?

13 A No. It's not necessarily less
14 than truth. Sometimes a lack of
15 recollection is simply a failure of memory.
16 And it might be a failure of memory about
17 what happened or it might be a failure of
18 memory about when it happened.

19 It's not -- what's disturbing to
20 me is when you have less than a complete
21 record of the facts, you have a sketchy
22 account and then you have disputes, it's
23 hard to know what transpired.

24 But in this particular case I
25 never implied and I don't think I even

Kassin -- Cross

1 thought that this was a matter of
2 dishonesty. But human memory being what it
3 is and eyewitness fallibilities is one of
4 the things I study, what's disturbing is
5 that it doesn't appear in any of the
6 accounts that he was shown any photographs
7 prior to this.

8 Q The only account you read was
9 Detective Clayton's account?

10 A Right.

11 Q Didn't read Detective Tetanich's
12 account or Detective Cumbee's account --

13 A Right.

14 Q -- because there was none.

15 A Right. So it's not --

16 Q But --

17 A Yes.

18 Q But you did read their
19 testimony, sir?

20 A Yes.

21 Q And you would acknowledge that
22 in the testimony in the Jackson V. Denno
23 hearing that they never represented to the
24 Court or to Mr. Kulp that this defendant had
25 not seen pictures on Friday?

Kassin -- Cross

1 A No. I don't believe they were
2 even asked that question.

3 Q They weren't asked that
4 question.

5 A Right. Right.

6 Q So certainly there was no police
7 dishonesty involved in that?

8 A No. No.

9 Q And you're also aware, of
10 course, that with regard to Mr. McHale's
11 interview, that Mr. Cumbee and Mr. Tetanich
12 were not present during that time?

13 A Correct.

14 Q And they had not seen the
15 videotape of that?

16 A Well, I don't know if they saw
17 the videotape, and again nobody asked the
18 question.

19 Q Well, they testified earlier
20 that they had not seen the videotape.

21 So -- and you would also
22 acknowledge, sir, would you not, that there
23 may be a difference of opinion between you
24 and somebody like Major McHale as to whether
25 or not what happened on Friday constituted

Kassin -- Cross

1 an interrogation?

2 A I don't see that as a matter of
3 dispute. I, I, I think any expert who
4 studies interrogation would identify that
5 as -- that session as an interrogation.

6 Q Well --

7 A Whether it's, whether it's
8 strictly Reid or, or simply elements of Reid
9 is another question, but --

10 Q Sir, by the definition you gave,
11 Reid's definition at the beginning, the
12 beginning of your testimony, that did not
13 constitute interrogation because you said
14 that by Reid's definition of interrogation
15 it requires an accusation, and you've
16 already said that this man made no
17 accusations.

18 A If, if, and we don't, I didn't
19 bring it, but if you look at the Reid
20 manual, I've actually isolated the pages in
21 that manual, the book, for the
22 interrogations and confessions, where if you
23 read the criteria for what constitutes
24 interrogation --

25 Q Did you or did you not testify

Kassin -- Cross

1 on direct just several minutes, several
2 minutes ago that an interrogation requires
3 accusation?

4 A I did not say it requires
5 accusation. That's if you're taking a very
6 straight line Reid approach. That doesn't
7 mean that you can't have an interrogation
8 absent a direct positive confrontation. I
9 never said that.

10 Q Once again, taking up, out what
11 this man told you, do you have any
12 information of any false evidence these
13 police officers gave to this man at the time
14 he testified, at the time he confessed other
15 than telling them that they just got the
16 phone call from S. L. E. D. regarding the
17 hair, as opposed to having received it the
18 day before?

19 A No. That's the key one. As to
20 whether he was told about blood on his truck
21 is again there's, there's an indication but
22 you can't prove it.

23 Q But the only, the only one
24 that --

25 A That's right.

Kassin -- Cross

1 Q -- the police acknowledge.

2 A That's right.

3 Q Now, what is your evidence that
4 at the time the police told him that, they
5 knew that information to be false?

6 A It doesn't matter if they knew
7 it to be false. The effect on the suspect
8 is not whether they believe it to be true or
9 false. The effect is on whether he believes
10 it to be true or false.

11 Q But you, you present to the
12 Court as though these police officers are
13 intentionally presenting this man with false
14 evidence.

15 A No.

16 Q You call it false evidence.

17 A No, because, because I've read
18 the -- because I've read the forensic tests
19 that came back and the evidence is false.
20 The hair is not a match.

21 Q So you would acknowledge --
22 well, that's a whole different ball game.

23 A Well, but I wouldn't be here if
24 that hair was a match.

25 Q And you obviously don't know all

1 the travails that hair has been through in
2 the last four years.

3 A I've, I've heard a little bit
4 about it, but, but I would not be here if
5 that hair came back a match.

6 Q And --

7 A And again -- let me just
8 clarify -- I'm not saying this was a matter
9 of dishonesty. It's not a question of
10 whether they believed it to be true or
11 false, or whether they had a right based on
12 the evidence to have as much faith in it as
13 they claimed to have.

14 The question of false evidence
15 has to do with the impact on the suspect who
16 believes it is false, not on the people who
17 present it to him.

18 Q The bottom line -- I'm, I'm not
19 going to spar with you any more today. I
20 look forward to doing --

21 THE COURT: He's not accusing
22 the police.

23 Q But the bottom line is the man
24 was read his rights?

25 A Yes.

Kassin -- Cross

1 Q He understood his rights?

2 A Yes.

3 THE COURT: You don't have to
4 repeat all those. I heard those.

5 Q And whatever he told them, he
6 told them knowing what he was doing?

7 A Yes. Given the information that
8 he had.

9 Q And you don't know whether the
10 confession is true or false?

11 A That's right.

12 Q You know -- and you're no better
13 at that than anybody else in the world is?

14 A That's exactly right.

15 MR. DURANT: Thank you. I have
16 no further questions.

17

18

19

20 REDIRECT EXAMINATION BY MR.

21 KULP:

22 Q Dr. Kassin, does the reading of
23 Miranda to a person who's being
24 interrogated, who gives a false confession,
25 does that cleanse or cure the aspects of a

1 false confession?

2 A Not particularly. Eighty per
3 cent of suspects waive their Miranda rights.
4 And the very -- interesting part of that
5 statistic is that those who are innocent are
6 more likely to waive it than those who are
7 guilty. Those who fear nothing and have
8 nothing to hide are more likely to waive
9 their rights.

10 Q Would it have any impact into,
11 into this, your assessment of these
12 circumstances if in his presence, in Myers'
13 presence, his family was told that he was
14 not a suspect on the night before he
15 rendered this false confession --

16 A Say that again.

17 Q -- by the police?

18 A This is when the search of the
19 house --

20 THE COURT: Wait a minute now.
21 What is this?

22 MR. DURANT: I would appreciate
23 it if Mr. Kulp would not characterize
24 this confession as a false confession
25 because he doesn't know any more than

Kassin -- Redirect

1 Mr. Kassin does.

2 THE COURT: Go ahead.

3 MR. KULP: Be happy to do that,
4 your Honor.

5 Q Would it impact your assessment
6 of these circumstances in terms of Wes's
7 state of mind on that Saturday if the prior
8 evening at his parents' house with police
9 there, anywhere from three to four or more,
10 they were advising him in his presence,
11 where he heard it, that he was not a suspect
12 in the case?

13 A It's possible because again you,
14 you see a lot of these cases where gaining
15 the suspect's trust and making the suspect
16 think that he's part of the, helping in the
17 investigation as opposed to a suspect is a
18 way to kind of impact and, and maximize the
19 impact of the false evidence.

20 But, you know, whether I could
21 speculate that it may have had an effect,
22 but, but there's no, you know, there's no
23 hard evidence of that.

24 Q Okay. What if anything that you
25 are aware of cleansed or cured the effect of

Kassin -- Redirect

1 Mr. McHale's contact with Mr. Myers that
2 Friday afternoon between the time of that
3 contact that we saw in the video and the
4 next day around noon?

5 A I don't see anything cleansing.
6 Again I, I see this as an ordeal.

7 There's -- there're an awful lot
8 of hours, I haven't completely totalled them
9 up, over the course of three days in which
10 he is tested and questioned and searched and
11 so on, and it's part of an ongoing ordeal.

12 The fact that the rights were
13 read, you know, I think three different
14 points in time is, is a good thing, but
15 again the fact that he waived his rights as
16 the fact that he agreed to take a polygraph
17 as the fact that when asked about the
18 implication of the hair, and again it's
19 interesting about the, the "Reid Technique".

20 If, if you're looking at what
21 Reid looks at as verbal indicators of
22 innocence when he's asked, "Well, wouldn't
23 you agree with the premise that the person
24 whose hair this is, is probably the killer,"
25 the killer is not going to so readily agree

Kassin -- Redirect

1 with that premise. He may, he may evade
2 that premise a little bit. In fact he went
3 right ahead. He said "Absolutely."

4 And "don't you agree that the
5 person -- what do you think should happen to
6 this person? Should it be a severe
7 penalty?"

8 He said, "Absolutely. It should
9 be tough on him."

10 He agreed to take the polygraph.
11 He agreed to have everything searched, from
12 his house to his truck. He showed no signs
13 of defensiveness or fear. And so I would
14 suspect that he didn't believe he was a
15 suspect at that time. Or if he did, he had
16 an awful lot of faith in the fact that the
17 evidence would bear out his innocence,
18 because he essentially opened up to all of
19 that evidence and the implications.

20 Q What would be -- couple more
21 questions. What would be the effect of, of
22 the impact of -- and this is kind of a
23 two-part question -- of, of Myers being told
24 that he was assisting in the investigation,
25 and part B is that we can't go find the real

Kassin -- Redirect

1 killer until you participate and are
2 excluded from consideration?

3 A I can't comment specifically on
4 that as tactic, but again in terms of
5 maximizing the presentation of false
6 evidence, it helps if he believes he is
7 friend rather than foe at the point at which
8 his interrogators present that evidence. It
9 increases its credibility.

10 Q And I think we need clarity
11 here, and this is the last question I have,
12 when you say "false evidence", you, you
13 touched on it a minute ago and I don't know
14 if you made it clear enough, but false in
15 the person hearing it -- I mean you weren't
16 suggesting that the evidence was contrived
17 or that the, the hair came out of --

18 A No. No. No.

19 Q And I, I'm sure the judge
20 understood this as well, but only to make
21 sure, that you're saying that in the person,
22 Myers, hearing the presentation of this
23 evidence that in his mind it, it is received
24 and, and, and accepted as being false. Is
25 that, is that what you're saying?

Kassin -- Redirect

1 A If you're an innocent person and
2 you're presented with what seems from
3 sources you trust unimpeachable evidence,
4 the burden shifts to you, the suspect, to
5 try and figure out how is it that that
6 evidence, and I agreed with the premise that
7 that must be the killer, how is it that my
8 hair ended up in her grasp? And again he
9 then has to struggle with dealing or
10 creating a memory.

11 MR. KULP: Thank you.

12 THE COURT: You can come down,
13 Doctor. Thank you.

14 THE WITNESS: Thank you.

15 THE COURT: Call your next
16 witness.

17 MR. KULP: Beg the Court's
18 indulgence for about two minutes, your
19 Honor.

20 THE COURT: All right, sir. No.
21 One minute.

22 MR. KULP: One minute.
23 That concludes our witnesses.

24 THE COURT: Anything further?

25 MR. DURANT: Lord, no.

Kassin -- Redirect

1 THE COURT: I don't have a thing
2 in the world to do. I can hear you,
3 your argument now, or you can gather
4 your thoughts and do it in the morning.
5 Whichever you prefer.

6 MR. DURANT: I just as soon go
7 right now, Judge.

8 THE COURT: All right.

9 MR. KULP: I just as soon do it
10 in the morning. I've been up too long,
11 your Honor, and --

12 THE COURT: Can we do it at nine
13 o'clock?

14 MR. KULP: Oh, yes, sir. Do it
15 at 8:30.

16 THE COURT: Solicitor, nine
17 o'clock?

18 MR. DURANT: I'm out-voted.

19 THE COURT: Well, not
20 necessarily. Well, why would you want
21 to go forward now?

22 MR. DURANT: Well, quite
23 frankly, your Honor, I hadn't heard a
24 thing today that has changed my opinion
25 one whit on the voluntariness.

Kassin -- Redirect

1 THE COURT: Well, it's not you
2 that will decide this, so don't worry
3 about it.

4 MR. KULP: I was thinking the
5 same thing.

6 MR. DURANT: You know, in terms
7 of the Jackson V. Denno issues, you
8 know, was he read his rights and, and
9 was the statement freely and
10 voluntarily given.

11 THE COURT: Well, I know --

12 MR. KULP: That's all right.

13 THE COURT: I've read the
14 voluminous record and listened to all
15 these witnesses, and I'm afraid to tell
16 him to do it tonight.

17 MR. DURANT: That's fine, Judge.
18 I'll come back tomorrow.

19 THE COURT: I say that --

20 MR. DURANT: I got to be here
21 anyway.

22 MR. KULP: Thank you.

23 THE COURT: I'll give you all
24 the time you want, so. . .

25 MR. KULP: Thank you.

Kassin -- Redirect

1 THE COURT: All right. Let's,
2 let's recess to tomorrow morning. Nine
3 o'clock, if that's convenient.

4 Is that convenient, Solicitor?

5 MR. DURANT: Your Honor, I'm
6 here for your convenience as well.

7 THE COURT: What time do you get
8 here?

9 MR. DURANT: I get here probably
10 a quarter till eight.

11 THE COURT: That's all right.
12 And is that convenient to you, Madam
13 Court Reporter?

14 COURT REPORTER: Yes, sir.

15 THE COURT: Nine o'clock. Have
16 a good night.

17 MR. KULP: Thank you, Judge.

18 MR. DURANT: Thank you, your
19 Honor.

20 (Whereupon, the matter was
21 adjourned at 7:41 p. m.)

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 proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina, on the 26th day of February, 2001.

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

DATED: July 31, 2001

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R.D.R.
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
DOCKET NO. 97-GS-10-4319, 4320

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS

-VS-

WESLEY MAX MYERS,

FEBRUARY 27, 2001

Defendant.

CHARLESTON, SOUTH CAROLINA

BEFORE:

THE HONORABLE LUKE N. BROWN, Judge, and a Jury.

APPEARANCES:

D. BRUCE DURANT, ESQ.
SENIOR ASSISTANT SOLICITOR
FOR THE STATE

TIMOTHY CLAY KULP, ESQ.
FOR THE DEFENDANT

BY: HEATHER GAYLE BURNS, R.D.R.
CIRCUIT COURT REPORTER

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1 (The Judge enters the courtroom
2 at 9:02 a. m.)

3 THE COURT: All right.
4 Counselors, you get a good night sleep?

5 MR. KULP: Yes, sir, your Honor.

6 MR. DURANT: Yes, sir, your
7 Honor.

8 THE COURT: Both together. All
9 right. We left off yesterday with your
10 motion.

11 MR. KULP: Yes, sir, your Honor.

12 THE COURT: All right, sir.

13 MR. KULP: Your Honor, the -- we
14 of course, as you know, move to
15 suppress all inculpatory statements,
16 confessions, statements of the
17 defendant and that the State intends to
18 offer in the trial of this case. We
19 filed motions with the Court in that
20 regard. You reviewed every one of
21 them, your Honor, as you've indicated,
22 and heard testimony yesterday to
23 supplement those pleadings.

24 Your Honor, the, it's clear that
25 there was deception involved to some

1 degree in the case and of course State
2 versus Register recognizes that that is
3 not constitutionally permissible.

4 State versus Register also mentions
5 that the Court can consider the
6 totality of the circumstances involving
7 the issue of voluntariness and as well
8 the reliability of the statement.

9 The, the issue I think, your
10 Honor, like we mentioned yesterday, no
11 need to rehash everything that
12 transpired, but I would simply by way
13 of summary suggest to the Court as
14 Dr. Kassin said, this, these statements
15 and the two that stem from the initial
16 statement that the police acknowledge,
17 in quotes or accurately, "I must have
18 did it or done it then", are totally
19 unreliable. That based upon all the
20 facts and circumstances of the case, of
21 the obvious confusion in some parts of
22 the testimony, Dr. Kassin's very astute
23 testimony about the dynamics of this
24 and coupled with some of the, and I say
25 this respectfully to Major McHale, some

1 of the confusing testimony that he
2 offered, I think in terms of the, his
3 gut feelings about things which I would
4 submit have, don't really have a place
5 in the world of science, and the
6 science of and study of the nature of
7 confessions.

8 Your Honor, maybe as Mr. Kassin
9 says well, if there was a significant
10 amount or even in this particular case
11 as it stands here today four years
12 after, almost four years after the
13 horrible event, there was some
14 objective forensic or eyewitness or
15 reliable independent corroborative
16 testimony or evidence that would tend
17 to yield believability or accuracy to
18 the statements, then we wouldn't think
19 we would have such an effective
20 argument, Judge. But in this case the
21 police as we know have had four years
22 and I have been very open about the
23 issues in the case with them and I have
24 identified issues, in addition to the
25 alibi, of places where I thought that

1 evidence -- we ran the risk, of course,
2 of asking that evidence be tested, that
3 it could have very well come back to
4 definitively been Mr. Myers under the
5 theory of the State's case that he did
6 it and that he confessed to doing it,
7 and none of that came back, your Honor.

8 And as you will see during the
9 trial of this case and as the State has
10 indicated to you, the primary piece of
11 evidence in the case which was
12 integrally involved in the confession,
13 in the interrogation on Saturday, the
14 fifteenth, turned out by testing of the
15 State pursuant to mitochondrial DNA
16 protocol to not be able to be
17 identified as the hair of Mr. Myers, as
18 was the consistently placed theory by
19 the police throughout that whole
20 three-day period, both in terms of
21 getting him to agree that if we find
22 the identity of the contributor of the
23 hair that was in her hand, we will have
24 the killer.

25 Other elements of the confession

1 in the two-page statement, your Honor,
2 that I think you mentioned yesterday we
3 have not given to you which I think we
4 probably should allow you to read that,
5 it's a two-pager, in terms of -- before
6 you actually make a decision in this
7 case, Judge. The elements of that we
8 would submit to the Court entail or
9 include aspects that were already known
10 by the police and would therefore fall
11 within the purview of that which could
12 have been suggested to Mr. Myers during
13 the course of this three-day period of
14 contact with him.

15 As well I will submit to the
16 Court that in the -- as the evidence
17 proceeds in the case there are
18 witnesses the State will call, lay
19 witnesses, who would indicate that the
20 details and facts and circumstances of
21 the case were not withheld closely by
22 the police. There were people at a bar
23 that Thursday afternoon who were told
24 many things about the case. That in
25 retrospect may not exactly be done that

1 way again by the police, I don't know,
2 but where the, the deceased was found,
3 certain evidentiary aspects, so forth
4 and so on.

5 Your Honor, I submit that all of
6 those issues ranging through the
7 elements of the confession are things,
8 the wine carafe, they knew about that.
9 They knew about the method, they
10 believed, the nature of the assault.
11 They knew that the back door was open;
12 they discovered that when they came in.
13 They knew that the money was contained
14 in the freezer that the -- that was
15 found there, although the purse was
16 missing. They knew that from the two
17 bartender ladies who were working
18 there. They knew that the purse had
19 been placed in the cooler for securing
20 it. They knew all of those sorts of
21 things and they did not make any secret
22 about it.

23 The -- we would submit and I
24 think that the Court will see in
25 eventual testimony that Mr. Myers, when

1 he was interviewed by
2 Detective Payne -- he did not testify
3 before you today but he did testify in
4 the Jackson V. Denno which you've read,
5 he indicated, your Honor, something
6 that I think would fall within the
7 purview of the totality of the
8 circumstances which I think as well
9 might also retrospectively include
10 these DNA findings.

11 Detective Payne indicated that
12 he spoke with Mr. Myers there at the
13 scene early that morning. I think the
14 time frame was approximately 6:40. He
15 did so in a car. He spoke with him.
16 That would have been approximately
17 anywhere from three to four hours after
18 looking at the -- and looking at the
19 statement itself would mean that at the
20 time that Detective Payne was sitting
21 in that Crown Victoria Ford talking to
22 Mr. Myers and interviewing him about
23 his knowledge of the crime and as to
24 the background and the information
25 about the victim, he did not detect the

1 odor of smoke or any appearance of
2 soot, any injury whatsoever to
3 Mr. Myers about the hand area, about
4 his face, and the elements of the
5 confession, the starting point in the
6 series of statements and apologies was
7 in fact that, that occurred on the
8 Saturday that started the whole ball
9 rolling, included elements that would
10 be very -- when compared to what
11 Detective Payne observed in the car --
12 very, very important.

13 The suggestion is that, that
14 Mr. Myers went in there, that he saw a
15 note behind the bar and he saw a note
16 written on the windshield of the
17 victim's car, that he banged on the
18 door, that the victim then who had --
19 the testimony will be -- sixteen beers
20 or eighteen beers between five o'clock
21 and eleven or 12:30 that evening, was
22 passed out on the pool table, got up to
23 come to the door and let him in. When
24 letting him in, according to the, the
25 two-page statement, they then had an

1 argument. After he went behind the bar
2 there in assumedly the darkness of the
3 bar and found a note that has never
4 been produced from this man Alan White
5 that says something about meet me later
6 or whatever at an address, that was
7 supposedly signed by him, he then had
8 an argument with the deceased.

9 In the course of that argument
10 the deceased picked up a wine carafe,
11 such as this, the tops of which were
12 recovered by the police, grabbed it,
13 according to his statement, in some
14 fashion, assumedly and logically like
15 this, tried to hit him. He grabbed it
16 from her and hit her in the center of
17 the head. That's what the confession
18 says. The center of the head. The
19 autopsy and forensic analysis of the
20 deceased indicates that she had a
21 fracture and a blow here and here, and
22 as well an ear-to-ear incision that
23 runs in the back of her head that's a
24 clean cut all the way across to the --
25 to in front of the ear. That he then

1 doesn't know how he lost control.
2 Things were in a blur. He doesn't know
3 what happened. But that he then, and I
4 think the testimony would be that the
5 victim's injuries at that time produced
6 a great amount of blood is what was
7 found at the scene, that he then went
8 behind the bar and he started the fire
9 to commit suicide there in the bar with
10 some papers, a "closed on Sunday" sign
11 and some papers that were there in the
12 bar.

13 That he then went back around
14 and held the victim in his arms as she
15 was hemorrhaging, until the fire got
16 real big and he was overcome by smoke.
17 He therefore then assumedly dropped her
18 and went out the back door.

19 Now, as well the confession
20 indicates that he had parked his truck
21 out front, next to her car, at that
22 time of night on that evening and in an
23 area where the evidence will show there
24 are other bars that are open till the
25 wee hours of the morning. The evidence

1 will show that his truck is one he's
2 had since 1985 I think or '87, an S-10
3 truck that has never been painted, the
4 same color, jumped up, and everybody
5 around there knows it's Wes Myers'
6 truck. There's no evidence to show
7 that it was parked in the back.

8 That he then went out the back
9 door as the flames or, or the fire was
10 so overwhelming that he had to leave,
11 that he went around the end of the
12 street, down to Virginia Avenue, walk
13 all the way back up, carrying a purse
14 and the confession itself doesn't say
15 her purse. Interestingly it says "a
16 purse". Walks down the sidewalk, gets
17 in his truck, cranks up, and we heard
18 some annotations to the information
19 yesterday about what happened but no
20 details are then elicited from him
21 during that 10:30 a. m. to six o'clock
22 p. m. time on Saturday that would be
23 critical to the case about what he did
24 with the clothing -- they asked him
25 about the purse; they knew it was

1 missing -- but what he did with the
2 clothing, to recover it to have it
3 tested.

4 Now, as well, your Honor, we
5 know a number of other things. We know
6 that the suggestion yesterday, and I
7 respectfully say that's the first time
8 I've heard anything about rolling out
9 of the driveway in four years of this
10 case almost, or out the side door, and
11 I say that as an officer of the Court.
12 I've never heard of that until
13 yesterday. The police did not make any
14 effort to go and canvass the
15 neighborhood to find out if in fact, in
16 fact he -- anyone could say that they
17 heard his truck leave or saw his truck
18 leave.

19 We also have all the other
20 evidence. He consented to the
21 collection of all standards immediately
22 that morning and went with Detective
23 Payne down to the hospital to have them
24 withdrawn. They photographed, your
25 Honor, his body -- not on I think

1 Thursday but on Saturday -- down to his
2 skivvies, to see if he had any injury
3 on him.

4 In the statement, the two-page
5 statement, it indicates that he -- what
6 they got him to sign that he didn't
7 write out by himself, states that "she
8 pushed me when we were struggling, she
9 pushed me in the -- don't push me, she
10 hit me in the chest, in my chest with
11 her fists," and this is the handwriting
12 of Detective Clayton. "Then she pushed
13 me up against the bar."

14 He was photographed and
15 examined. She was a -- not a petite
16 woman and there are witnesses who we
17 believe will agree that she -- it was
18 known that she could "fight like a man"
19 and had fought in fights before in that
20 area of that bar, in East Montague, and
21 Myers was not detected nor has been
22 offered in four years that he showed up
23 with any bruises at all or any injuries
24 that would be suggestive of the fact
25 that he had -- and you got a glimpse of

1 those photos yesterday -- that he had
2 taken one, and the statement says "a
3 wine carafe" and beaten her with it and
4 done what was done. Not one injury to
5 his hand, from smashing it and ending
6 up with one of those two pieces -- we
7 don't know which one -- that, that has
8 a shard down through an area that would
9 have been in the hand.

10 As well, your Honor, the
11 forensic examination of all of these
12 pieces yielded no fingerprints.
13 Although the victim picked up the wine
14 carafe and he took it from her, there's
15 no assertion whatsoever that Mr. Myers
16 was ever wearing gloves. That never
17 came into the picture. No
18 fingerprints, latent fingerprints were
19 pulled from any piece of, of glass or
20 wine carafe piece during the
21 investigation of the case.

22 As well, the -- what we did,
23 your Honor, and I've mentioned this
24 before to you, but in the middle or as
25 this case came in and as we started to

1 get statements of witnesses and so
2 forth, my client and I met and we
3 talked. He was in jail for almost two
4 years. I advised him -- he professed
5 his innocence to me, innocence to me
6 and recanted the confession. I said to
7 him well, what we need to do in that
8 regard is to have the evidence tested.

9 We began, and the records and
10 transcripts indicate then that in -- as
11 late -- as early as the summer of 1997
12 we began moving and asking the State,
13 going, looking at the evidence, asking
14 them to please send this evidence off
15 to be examined forensically. We asked
16 that the hair be tested at the F. B. I.
17 knowing that it had only been
18 microscopically examined by Agent
19 Powell at S. L. E. D.

20 The State was not -- did not
21 cooperate. It wasn't Mr. Durant, but
22 the State did not cooperate in that.
23 Call our bluff. Shut me up. Test the
24 evidence and get it, results that might
25 in fact corroborate elements of the

1 confession.

2 So in fact we went through a
3 laborious process. We appeared before
4 Judge Rawl and got an order for
5 independent testing to try to get
6 possession of all of these things, the
7 glass fragments, anything that had not
8 been tested, to go test it. To, to
9 call our bluff or to show exonerative
10 evidence.

11 We got that and what did the
12 State do? The State took appeal of
13 that order to the Supreme Court, as an
14 interlocutory appeal seeking
15 extraordinary writ, and the Supreme
16 Court denied that and upheld the order
17 for independent testing.

18 We went and we got all of those
19 things they didn't want to test. A
20 small meat cleaver found at the scene
21 that in the photograph looks like it
22 has blood but was tested by S. L. E. D.
23 on our request with a small spot of
24 chemical on it and determined not to
25 have blood on it. We got all the glass

1 pieces. We got all the latent
2 fingerprints. We got everything. We
3 hired a gentleman, Jim Springs, retired
4 from S. L. E. D. We had him look at
5 everything. He is primarily an expert
6 in the area of fingerprint examination.
7 He looked at everything and he could
8 not come up with anything that could be
9 tested.

10 One of the items, your Honor,
11 was a bloody one-dollar bill that is
12 suggested to have been found -- and the
13 State has some confusion -- but it was
14 collected by the police, Mr. Hallman,
15 at autopsy performed by Dr. Nichols on
16 the thirteenth or fourteenth. I think
17 on the thirteenth.

18 MR. DURANT: Thirteenth.

19 MR. KULP: Thirteenth.

20 THE COURT: At one place in
21 there somebody said a two-dollar bill,
22 but it ended up to be a one-dollar
23 bill?

24 MR. DURANT: It was a one-dollar
25 bill.

1 MR. KULP: It's a one-dollar
2 bill.

3 THE COURT: Go ahead.

4 MR. KULP: Yes, sir. And the
5 one-dollar bill, the State's position
6 is that it's burned from the fire and
7 it's not bloody. But we have two
8 references that we have found in the
9 discovery material where Detective
10 Clayton's handwriting and another
11 notation is -- pardon? And Hallman's,
12 that it was bloody.

13 We had that dollar bill.
14 Mr. Springs sent it to Michael
15 Deguglielmo in Nashville, Tennessee I
16 think with Micro Diagnostics and he
17 tested that dollar bill under P. C. R.
18 DNA standards and he concluded that
19 there was a mixture of DNA on that
20 dollar bill. The male mixture was not
21 Mr. Myers.

22 We have done everything we can,
23 which is confusing I know, but to try
24 to corroborate this confession with
25 objective evidence apart from, and

1 again respectfully to Captain McHale,
2 "gut feelings". It has not surfaced.
3 It has absolutely not surfaced and what
4 has in fact surfaced was the State's
5 mitochondrial testing of the hair that
6 indicated that it could not be found to
7 be Mr. Myers.

8 We have a case, your Honor, with
9 this colored and questionable
10 confession or statement to the police
11 that is entirely within the context of
12 what Dr. Kassin talked about. "I guess
13 I must have done it then." That is
14 directly in the police supplemental.
15 "I guess or I must have done it then."
16 I don't want to misquote the report.

17 So, your Honor, based on
18 everything, the totality of the
19 circumstances, we submit to the Court
20 that the, that all aspects of this, and
21 I'm kind of bridging also, we can do it
22 in a minute, into the motion we filed
23 about suppression of the videotape
24 evidence, which is a related issue.

25 But what we have, your Honor, is

1 the statement that was taken and then
2 we have very unusual activities by the
3 police. It seems that that day, once
4 they got Mr. Myers to say "I must have
5 did it or done it then", an issue came
6 up of concern. Other than Joe Powell
7 saying this hair in the hand was
8 similar, we don't have any other
9 evidence and they admitted that during
10 the Jackson V. Denno hearing. We need
11 some corroborative evidence. They knew
12 the purse was missing. They didn't
13 find it at the scene in the cooler and
14 the bartender ladies told them they put
15 it there.

16 So they approached Mr. Myers
17 about going to get the purse. "What
18 did you do with it?"

19 Now despite this issue of
20 blackout or not blackout or whatever,
21 we would submit that that was a
22 technique and tool used that Saturday.

23 They found papers at his house,
24 reluctantly admitted, that meant that
25 he had in fact and -- been involved at

1 Charter Hospital in alcoholic
2 treatment. In that regard, that is
3 what they presented to them. They
4 hedged on that a bit during the Jackson
5 V. Denno because a very logical issue
6 came up, and as I was standing right
7 here on my feet and cross-examining the
8 officers, I said "Now, let's talk about
9 that blackout."

10 I think the officers realized at
11 the same time how important that issue
12 was. I realized that if the suggestion
13 was, by them, that Mr. Myers blacked
14 out in an alcoholic blackout, which
15 every expert will say is something that
16 the person is like, it's like "the
17 lights are on, but nobody's home."
18 People are there and active, but they
19 don't remember anything about it. They
20 don't remember parts and pieces. They
21 don't remember anything about it.

22 "You were at the party. You
23 were having a lot of fun.

24 "I don't remember that.

25 "We drove you home."

1 In this case the logical
2 question that came up was well, wait a
3 minute. If you say you had a blackout
4 and he didn't remember what he did with
5 the purse, how did he remember all this
6 other stuff that you already knew and
7 that other people already knew, that
8 was broadcast around the community that
9 morning. And of course it was -- I'm
10 not so -- the testimony speaks for
11 itself.

12 But what happened after that
13 was, was the purse hunt and I think
14 that at that point the narrative in the
15 supplemental indicated that Myers,
16 Mr. Myers said, "I don't know what I
17 did with the purse." And they took him
18 on the hunt. They took him by the bar
19 to help refresh his recollection. That
20 didn't help. They took him around
21 by -- he said, "Maybe I put it or maybe
22 I must have put it maybe near in the
23 hollow tree where we first made love."

24 They went over there and looked.
25 No purse. That was the end of the

1 story. Back by McDonald's and back to
2 the police station. I think I have the
3 sequence of events right.

4 Then not having discovered the
5 purse, what's the next step of the
6 police? No other corroborative
7 evidence. Contact the victim's mother,
8 have her come to the police station,
9 let Mr. Myers who's there, and at this
10 point whether handcuffed or not,
11 clearly under arrest. There's no way
12 that anyone on the other side of this
13 case could say they would have let him
14 walk out of that building that morning,
15 the police station.

16 And while he appears to be
17 wearing -- which is a bit nonsensical
18 and I, and I submit creates a question
19 about the whole circumstance, he's
20 wearing we submit the buck knife that
21 we finally found out by documentation
22 of what was returned to his dad, he had
23 all the way to the jail -- talked to
24 the victim's mother. For what purpose?
25 It says in the supplemental just after,

1 the next sentence after "I guess I must
2 have did it then or I must have did it
3 then, you need to apologize to Teresa."

4 Now, what else? At that very
5 moment at least the officers can see
6 that one, at least one, which is in
7 evidence from the Jackson V. Denno
8 hearing, gruesome shot of the victim,
9 his girlfriend, is on the desk. Forget
10 whether they were in a stack or not,
11 forget whether they were in an
12 envelope, but at least one
13 eleven-by-fourteen that was
14 calculatedly made from the negatives.
15 For what purpose? No other legitimate
16 law enforcement purpose than to show it
17 to him. For what purpose? "You need,
18 you need to apologize to Teresa."

19 That I submit fits within the
20 whole specter of what Dr. Kassin is
21 talking about, what happens after the
22 corner is turned on "I must have did it
23 or done it then."

24 So then he's presented, "You
25 also need to apologize to Teresa's

1 mother." At that point he's broken.
2 He's crossed that line that Dr. Kassin
3 talked about between where he doubts
4 his own truth, and that clarification
5 we made of what's false evidence, all
6 of this concrete evidence that is
7 there, we have -- and I'm digressing a
8 little bit -- the notion that they were
9 collecting evidence, which is still
10 gray, from his truck. They did lift
11 what they thought was blood. Didn't
12 turn out to be. And I submit that it's
13 plausible that that was another factor
14 that came into the stew pot of that
15 system and, and circumstances of
16 interrogation.

17 "I'm sorry." Apologizes to the
18 victim's mother. That's not enough.
19 Let's do something else. And at this
20 point before you make your decision,
21 your Honor, particularly on our motion
22 about the videotape, it's sealed in the
23 record but I heard you to open and
24 review the letter that was sealed that
25 we submit was written by the previous

1 solicitor to the North Charleston
2 police admonishing them about the
3 ethical responsibilities of trial
4 publicity. Nonetheless, the record is
5 clear, black and white in the Jackson
6 V. Denno, from the reporter. We didn't
7 call that reporter as a witness. They
8 did, and it blew up.

9 They put that lady on the stand
10 and what did she say? She said this.
11 "Detective Cumbee called me. Said we
12 made an arrest and, and he'll have
13 something to say." I'm not quoting.
14 I'm trying to remember from the top of
15 that page. "He has something to say"
16 or "he'll be saying something. You
17 better get up here."

18 They lock and load. Get the
19 truck. Roll up to the police
20 department. Their testimony was
21 that -- it's inconsistent. They told
22 Mr. Myers, "Well, the press are coming.
23 You need to apologize to the world.
24 Come in here and when the cameras are
25 there, you know -- well, wait a minute.

1 You need to apologize to the world, but
2 you shouldn't really talk to them
3 because that could really hurt you.
4 We're advising you not to talk to
5 them." It's inconsistent.

6 They bring him downstairs then
7 and do they take him out the back door
8 and put him in the car and take him to
9 jail? No. They take him out the front
10 of the police station and not one
11 cigarette, they let him smoke two
12 cigarettes because I submit the
13 argument is plausible and believable
14 that the cameras are setting up,
15 they're staging. Three news stations.
16 Then they come through and take him out
17 the back door.

18 In the Laurel (phonetic) case
19 they talk about this, and I am bridging
20 over a little into the issue of the
21 videotape, but it is the whole picture.
22 They take him there and, granted,
23 there's no responsibility on the part
24 of the police to do what you see
25 frequently is necessarily cover his

1 face. They don't have to do that.
2 They don't have to hurry and rush him
3 to the car so he isn't seen by the
4 cameras that happen to be there maybe,
5 but in this case it was entirely
6 calculated and contrived as a part of
7 the case to fill the gap that they had
8 that occurred and still exists to this
9 very day, almost four years later, of a
10 lack of corroborative evidence to tend
11 to support the believability that what
12 they got out of Mr. Myers when that
13 corner was turned in that two-page
14 statement was the truth. And they took
15 him out there. They seemed to suggest
16 that he did whatever he wanted.

17 But they're in his charge at
18 that point. He's arrested. If he
19 starts to have a heart attack they got
20 to take him to the hospital. He is
21 their charge and their responsibility,
22 and they stand him there and they stand
23 behind him and make no effort
24 whatsoever to take him to the police
25 car.

1 And I asked the reporter on
2 cross-examination at the Jackson V.
3 Denno hearing, "Well, how long did this
4 go on?"

5 And she said, right out of her
6 mouth, "Until no one else had any more
7 questions."

8 And that, your Honor, is why I
9 sent you the entire tape, so that you
10 can see the extent to which they were,
11 that, that the police presented
12 Mr. Myers to the media.

13 And throughout this whole case
14 the pitch has been made to me as I
15 professed his innocence during the
16 entire almost four-year period, that
17 "he confessed on television. He
18 confessed on television."

19 There's no way in the world you
20 can give weight to that at all unless
21 you look at it within the whole picture
22 and what the police went through to
23 make the case.

24 Now, could other things have
25 been done? Of course other things

1 could have been done. The police have
2 a difficult job day-to-day. It's, it's
3 difficult to go out to work any kind of
4 case. But in this case I submit that
5 there were a significant number of
6 other things.

7 I don't buy, and I submit the
8 Court may have difficulties, we went
9 through a tirade, and I apologize for
10 the time it took, about his clothes and
11 it seemed the gist of that was, "Well,
12 we asked him for his clothes on that
13 Friday night and he gave us some
14 clothes and said these were the ones he
15 was wearing." That, that, they
16 searched that house and they knew at
17 that point that there had been a fire.
18 They had the top third of the wine
19 carafe used as a mallet that was broken
20 around the edge of the hand. They knew
21 that the victim bled profusely and they
22 were looking in that house. They took
23 his boots. They took his clothes.
24 They tossed the entire house.

25 And his testimony would show he

1 gave consent to search his room,
2 another readily thing -- voluntary
3 thing he did. When he got there his
4 parents, wanting to clear him of this,
5 went ahead and consented to the rest --
6 search of the rest of the house, and
7 just asked to walk along with them
8 because they valued their possessions
9 and there were three to four to more
10 police officers there going through the
11 house in a murder case, looking for
12 evidence, as they should, under the
13 auspices and authority of a consensual
14 search. But they didn't find anything.
15 What they found, they took. No one
16 objected to anything they took.

17 And why was everybody
18 cooperating in this case? It was
19 because the police told his parents
20 sitting right there and his
21 brother-in-law and sister when they
22 were all present there that Friday
23 night, they told them this: "He's not
24 a suspect." And they will testify to
25 that. "We got to clear him first."

1 And he heard that. "We got to clear
2 him first so we can get to the real
3 killer." And that's exactly that mumbo
4 jumbo that Major McHale told him on
5 that videotape that you reviewed.

6 And I submit that while I may
7 have not expressed the question to him
8 verbatim, the gist of it is exactly
9 that. What I felt was the hallmark of
10 the whole thing in terms of the "mind"
11 aspect of this. That is, if you tell
12 us you didn't do it and you keep doing
13 it like you been doing it this
14 afternoon, then we're really going to
15 focus on you, and we'll never find the
16 real killer.

17 Now, let's look at that
18 backwards. If you tell us you did it,
19 then we'll go look for the real killer.
20 That doesn't make sense. That is --
21 that is, everything that Major McHale
22 said is consistent with our position
23 that that one-and-a-half to two-hour
24 window he spent with Mr. McHale
25 accomplished what it was designed to

1 do, to set up the false confession. He
2 himself admitted, Major McHale, that
3 when Mr. Myers came in that room that
4 afternoon he wasn't ripe for the
5 confession, as he started talking to
6 him. I didn't ask him about this but
7 you can see, your Honor, in the body
8 language. He's sitting there before
9 McHale like this. Answering questions.
10 He's lucid. Everything about his
11 interview or interrogation at that
12 point, his contact with Mr. McHale
13 indicates that he wanted to do what he
14 said he wanted to do.

15 Questions come up. Why did he
16 sit there through all of that? Because
17 they were telling him they couldn't
18 move on until, to find the person that
19 killed his girlfriend until they got
20 him out of the way. That's why he sat
21 there and endured that, and through
22 that whole time he repeatedly said,
23 despite every technique used by
24 Mr. McHale, boom, boom, boom,
25 minimizing, you know, dead people, when

1 they're dead they look like they're
2 asleep, we know that, Wes, and when
3 they're sleeping they look like they're
4 dead. You know, sometimes you can't
5 live with women, you can't live without
6 them. You know, I mean I had to, I had
7 to push my wife down on the bed when
8 she was pregnant because she got in my
9 face and I could have killed the baby
10 but she didn't get in my face any more.
11 And, you know, sometimes when people
12 kill people it's an accident and they
13 didn't really mean to do it. I mean
14 jeeza manetti, I mean it's, it's like
15 it's a C. I. A. kind of interrogation.

16 That entire process goes through
17 and what happens at the end? There's a
18 change. From the time he walks in that
19 room with, with Major McHale until the
20 end of that two-hour period, some big
21 change happened. He came in not being
22 ripe for confession and he came out of
23 there being ripe for confession,
24 despite the fact that during that
25 entire window, what did he say? He

1 said "I didn't do it."

2 What did he say during the two
3 or three per cent of the time that he
4 was able to talk, as Dr. Kassin said,
5 that confirmed any of the suspicions?
6 Zero. What was he told then? He was
7 suggested there might be eyewitnesses
8 who saw him. He was suggested that
9 there might be other evidence. He was
10 told that there was a belief that he
11 might be lying to the police because he
12 was cooperating and trying to help them
13 identify the real killer. All of
14 that's there. Thank goodness. Thank
15 goodness that tape came out. And when
16 it did on the stand, I just stumbled
17 into it. I was asking Detective
18 Clayton, "You, come on, you had a
19 videotape, you had a audiotape, you
20 could have recorded part of that
21 Saturday exchange from 10:30 till six
22 in that department, million dollar
23 apartment -- department.

24 "No.

25 "You have any videotapes?

1 "The one at the polygraph.

2 "Pardon me?

3 "The one at the polygraph."

4 That's when it came out. That's
5 the most critical piece of evidence in
6 addition to everything else that
7 Dr. Kassin looked at, that pertains to
8 this issue of the false confession.

9 What happens after that? Is it
10 credible, is it believable that they
11 didn't want to spend five more minutes
12 to crack him or was it, your Honor, the
13 case that they wanted him to go home
14 and sleep on that two hours with Major
15 McHale of those suggestions and the
16 minimization and almost the giving of
17 permission to say he did it? As well
18 there was a suggestion they couldn't do
19 it then because he needed to be fresh
20 the next morning.

21 But no police officers sat
22 outside his house. Other than saying
23 "Hey, don't go drink another case of
24 beer", they sent him home. Still
25 wanted to cooperate. They picked him

1 up at 8:30. Part of the entire period
2 of trust.

3 I asked every, almost every
4 detective at the Jackson V. Denno, "Did
5 you ever have any thought or belief
6 that this man didn't trust you that
7 Saturday? Did he ever say, 'I don't
8 trust you guys?'" He trusted them.

9 What you're going to hear in the
10 testimony, your Honor, is the reason
11 why he trusted them, and I would submit
12 this by way of, of argument to the
13 Court by proffer.

14 Wes's uncle was a decorated war,
15 war veteran in Vietnam. He did three
16 tours in Vietnam. He was the chief of
17 police in Fountain Inn, South Carolina.
18 He's deceased. That man, to every
19 member of this family, was an icon. He
20 was a hero. He served his country
21 well. He did so in violent times and
22 he worked in the police department.
23 Wes grew up thinking that man walked on
24 water. He thought police walked on
25 water. We're not talking about a

1 fellow who has a prior record. He got
2 arrested for disorderly conduct and
3 public drunk with the deceased the
4 summer before. No assault charges.
5 And it was dismissed. That's the
6 extent of his record.

7 He'd never been in a situation
8 like that before, three days of -- with
9 the police, saying you're not a suspect
10 but then coming in and filing papers
11 later saying, "I knew he was a suspect
12 that day at the scene. Why, I walked
13 up there, I looked at him, and I said
14 that's it. He's the guy." Gut
15 feeling. Gut feeling. No evidence.
16 DNA saying it's not him.

17 Your Honor, I submit
18 respectfully to the Court it is
19 impossible for you to decide the issue
20 of admissibility of this confession
21 without considering all of these facts
22 and circumstances.

23 I have told people before that
24 it is absolutely -- I don't see in my
25 years of doing all this how someone

1 could have gone into that scene, done
2 what this confession says was done, and
3 not take away more evidence or leave
4 more evidence. It's just my opinion,
5 but I just don't see it. I just don't
6 see it.

7 He gets in his truck and drives
8 home. They searched his truck.
9 Pictures of his truck show that it's
10 covered in junk, clothing, tools. This
11 is not a neat kind of a -- the old
12 taxicab seat with plastic cover on it
13 that you could clean very easily. It's
14 junk.

15 If he carried blood on his
16 clothes, if he had smoke and soot on
17 his clothes, if he was bleeding from a
18 cut on his hand or any other part of
19 his face, it would be in that truck.
20 They said can we search your truck
21 Friday night? That was another
22 attempt. Oh, gee, well, okay. Maybe
23 we can get a confession out of him.
24 Have the camera running. Let's go to
25 his parents' house if we find anything.

1 "Wes, can we keep your truck
2 over Friday night? We weren't able to
3 get to it.

4 "Yes, sir." Parked it out in
5 front of the police station. Searched
6 it that next Saturday morning. Did
7 they find anything? No. Nothing.

8 Did they ever ask him where he
9 cleaned up? I tried to get that out of
10 them. It was kind of -- it was
11 difficult. No. Was that an essential
12 element? Yes. Did you go home?
13 How'd, how'd you go back in your
14 parents' house at anywhere around three
15 o'clock, between two and three, sneak
16 back in that we found out about
17 yesterday, run the shower, hide your
18 clothes.

19 We went and talked to the
20 firemen, your Honor, who responded to
21 this case, in the early part of the
22 case. And they looked, when he came up
23 on that scene, but he was driving
24 nearby because he worked nearby, saw
25 the fire hoses, went straight over to

1 Teresa's house to see if she was okay,
2 knowing that she did weird things like
3 pass out and sleep at the bar. He came
4 over. He dropped to his knees when he
5 heard. They were talking to him. They
6 looked. Characteristic soot around the
7 nose if he'd been there. They'd smell
8 any smoke on him. All of these things.

9 And, and, and, you know, I ran
10 the risk as a lawyer, as a lawyer
11 representing this man that entire time
12 period. As a criminal defense lawyer
13 sometimes you don't want evidence
14 tested. You don't necessarily want
15 issues to be reviewed. But in this
16 case the risk I ran was that any
17 suggestion of any of the testing of any
18 of the evidence was suggestion of --
19 testing of the evidence could in fact
20 close the door, nail it shut on Wes
21 Myers in this case.

22 I think that this, this entire
23 issue is unique to this case, your
24 Honor. I think it's unique to all the
25 facts and circumstances of it.