

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 4 of 7

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McHale -- Cross

1 camera sits right on the desk just like .
2 that. It's real plain to see.

3 Q Did you tell him that you were
4 videotaping him?

5 A No. I didn't have to.

6 Q Oh. Did you -- did he ever make
7 any remarks about you videotaping him?

8 A Not that I recall.

9 Q Okay. When you say -- I mean it
10 wasn't a video camera sitting out on a
11 tripod, was it?

12 A It was -- it's on a little
13 tripod and it was sitting on my desk.

14 Q Okay. Did you tell him that it
15 was on?

16 A No.

17 Q Okay. And in fact that video
18 camera was recording. Correct?

19 A It could have been. Of course I
20 found out it was afterwards. This is the
21 way it is. The VCR and the monitor is
22 outside of my office. The camera is inside
23 my office. The way it works is if somebody
24 comes in my office, and I worked in internal
25 affairs. We did this for my security as

McHale -- Cross

1 security as well as the people inside. You
2 could monitor it without taping. You could
3 tape without monitoring. Or you could do
4 both. So people outside the office could
5 monitor it. Anybody who would come in to
6 internal affairs could actually monitor and
7 hear what's going on at any time. That
8 protected me as well, and that's the reason
9 we have it in there. In case you're
10 interviewing a female or interviewing like a
11 high profile case, that way of course the
12 investigating officers, the people involved
13 in the case, they could actually sit and
14 listen to whatever was being said inside and
15 they would have -- that way they wouldn't
16 have to go through the tape, if there was a
17 tape, or they could listen to what the
18 things the person said and then follow up on
19 that without having to go through the whole
20 thing again.

21 Q So your testimony is that you
22 did not know that you were being recorded?

23 A I assumed I was. When they
24 asked me before I went in the room -- it is
25 not my practice at the Charleston County

McHale -- Cross

1 Sheriff's Office to videotape my stuff. .
2 When I would do stuff for other agencies, we
3 would always ask the other agencies would
4 you like us to tape this for you, because
5 they don't have the luxury of being right
6 there with us. And that way they can take
7 it back to their agency and they can review
8 it at their leisure. And we give everybody
9 that comes over, guests, we give them that,
10 that option.

11 So I believe they wanted to tape
12 or they brought a tape. I don't recall
13 that, who, who, who had the blank, but once
14 I go into the room I don't know whether it's
15 being taped or not because I'm in the room.
16 But it doesn't matter because I do things
17 the same way all the time.

18 Q So they had a videotape or you
19 don't remember?

20 A There was. There ended up being
21 a videotape because at the end they took it
22 with them.

23 Q Let me ask you this. Prior to
24 the time you met with Mr. Myers or the
25 beginning of meeting with Mr. Myers, did you

McHale -- Cross

1 see a videotape?

2 A When, sir?

3 Q Did you see a videotape?

4 A Could you --

5 Q Prior to meeting with Mr. Myers
6 that Friday.

7 A Did I see a videotape?

8 Q Simple question. Did you see a
9 videotape?

10 A Did I see a videotape? Of what?

11 Q Any videotape?

12 A Of course. I've seen tons of
13 videotape.

14 Q Okay. So you did see a
15 videotape. Did you place it into the
16 recorder?

17 A I. . . You know --

18 THE COURT: Are you asking him
19 did he load the machine?

20 Q Yes, sir. Did you load the
21 machine?

22 THE COURT: All right.

23 MR. KULP: Thank you, Judge.

24 A Not that I recall, no.

25 Q You didn't? You don't recall?

McHale -- Cross

1 A No. Somebody in my office could
2 have assisted them. I don't know. Like I
3 said, I'm in the office. I don't know
4 what's going on out there.

5 THE COURT: It's loaded from
6 remote control?

7 THE WITNESS: From a remote
8 office.

9 THE COURT: Remote office.

10 Q Okay.

11 A I didn't understand.

12 Q Yes, sir. So you can't start or
13 stop it, the camera from where it is?

14 A I could unplug it. I mean
15 that's the only way I could turn the camera
16 off is actually physically unplug it.

17 Q Now, you got information the day
18 before as you testified from detectives that
19 you're not -- at least Detective Clayton,
20 maybe detective -- Lieutenant Cumbee and
21 others, about this case?

22 A Sure.

23 Q And do you recall, what did they
24 tell you?

25 A As I've said twice now, I

McHale -- Cross

1 basically got the facts that there was a
2 murder and an arson and that there was
3 several suspects. They wanted to bring in
4 the first suspect who was the estranged
5 boyfriend.

6 Q They told you that the victim's
7 purse was missing, didn't they?

8 A Yes.

9 Q They told you that --

10 A That wasn't that day, though.
11 You asked me about in a phone call. That
12 was actually when, the next day when they
13 actually brought him.

14 Q Okay. The next day before you
15 started your interview of Mr. Myers, they
16 told you the victim's purse was missing?

17 A That is correct.

18 Q They told you that there was
19 money kept in a cooler that was not gone --

20 A Yes.

21 Q -- or taken?

22 They told you to ask him if he
23 had a key to the bar?

24 A Yes.

25 Q They told you that a wine carafe

McHale -- Cross

1 was the blunt instrument they believe was.
2 used in the murder?

3 A Right.

4 Q Now, they asked you to just,
5 quote, find out if he did it?

6 A Yes, sir.

7 Q And they wanted to make use of
8 your expertise in interrogating people?

9 A Sure.

10 Q Because at that time they had a
11 belief that he was a suspect and had that
12 belief because he was the boyfriend or as
13 you put it, the estranged boyfriend of, of
14 the victim?

15 A That was one of the factors.
16 That's correct.

17 Q Did they tell you that he spent
18 the night with the victim on Monday evening?

19 A He told me that.

20 Q Okay. Now, when you read him
21 his Miranda rights he readily signed the
22 warning acknowledging his rights?

23 A Yes, sir.

24 Q And he readily waived those
25 rights?

McHale -- Cross

1 A Yes, sir.

2 Q And he did so because he told
3 you he wanted to cooperate in any way he
4 could so that he could be discounted as the
5 suspect and the real killer could be found.
6 Isn't that true?

7 A Words to that effect.

8 Q Now, he wasn't under arrest or
9 he wasn't in handcuffs at that point?

10 A No, sir.

11 Q And the purpose as you said in
12 interviewing him was based on the request by
13 the police to see if he did it?

14 A Sure.

15 Q And in pursuit of that goal,
16 there were certainly the possibility that he
17 might say that he did it?

18 A Absolutely.

19 Q And therefore the reason in
20 reading him his Miranda rights was to insure
21 that if he said that, he would, that would
22 be admissible or potentially arguably
23 admissible under the issue of Miranda?

24 A No. That's not correct.

25 Q That wasn't the reason in

McHale -- Cross

1 reading him his Miranda rights?

2 A No.

3 Q Okay. Now, you talked about his
4 analysis of his body language and so forth.
5 And in that video isn't it true that he sits
6 and faces you directly?

7 A Most of the time.

8 Q Isn't it true that he looks you
9 right in the eye?

10 A Most of the time.

11 Q Isn't it true that he did not
12 appear nervous?

13 A No, that's not true. He was
14 very nervous.

15 Q Okay. And isn't it true that he
16 kept eye contact with you during the entire
17 interview?

18 A No, he did not keep eye contact
19 with me most of the interview and eye
20 contact, direct or indirect, is not what
21 everybody thinks it is. I've had people
22 look right in my eye and lie to me as all of
23 you have, too.

24 Q Pardon me?

25 A I said I've had people look me

McHale -- Cross

1 right in my eye and lie to me directly. I'm
2 sure if you have children, they've done that
3 to you. Looking someone in the eye is not
4 necessarily one of those factors. It is a
5 factor along with other, a bunch of other
6 behavioral clusters that you look for. That
7 in and of itself is not necessarily, you
8 know, a factor that somebody could look you
9 in the eye.

10 Q You said that he was, your
11 testimony was that he was articulate?

12 A Yes. When he spoke he could be
13 articulate.

14 Q Okay. And but you had concerns
15 about him having had twenty-four beers in
16 the past twenty-four hours?

17 A Yeah.

18 Q This was the day after his
19 girlfriend was murdered, was it not?

20 A I'm not sure of the date that
21 she was murdered. It was close, close to
22 then. I'm, I'm not sure what the exact date
23 was.

24 Q Okay. This was the fourteenth?

25 A Yes.

McHale -- Cross

1 Q Do you know that his girlfriend
2 was murdered on the thirteenth?

3 A No.

4 Q All right. Now, your testimony
5 is that your contact with him never got I
6 think you said into an interrogation phase?

7 A That's correct. Though, though
8 I set it up to talk to him again, later.

9 Q You told him that sometimes when
10 humans die -- well, let me ask you this.
11 You gave him -- you said the interview, the
12 interview is to acquire information. Isn't
13 that correct?

14 A Yes. That is correct.

15 Q It's not to tell him
16 information? I mean that wouldn't benefit
17 you in any way if your goal is to acquire
18 information. Correct?

19 A An interview does both. When
20 you interview someone, particularly someone
21 who's not been accustomed to hanging around
22 the police or the judicial system, part of
23 my job as an interviewer is to put people at
24 ease and explain to them what is going on.

25 It's, it's very -- for an

McHale -- Cross

1 innocent person it's nerve-racking, much
2 less a guilty person. So of course my goal
3 is to put everybody who comes in the office
4 in, in as much ease as you can be when
5 people are questioning you about murder. I
6 mean, you know, I don't care who you are,
7 whether you did it or not, if you're being
8 questioned about murder, it's pretty
9 intense, just, just the interview part. So
10 there is a give and a take that you have to
11 do to explain things to people to make them
12 understand what's going on. So, yes, I do
13 give information as well.

14 Q Okay. So even though you've
15 been qualified as an expert in this trial,
16 as an expert in the area of interrogation
17 and even though the police officers called
18 you because you had a special skill in that
19 area and they gave you information about the
20 background and aspect of the case, and even
21 though their requested goal was that you
22 find out if he did it, all you did was
23 interview him and you never got into
24 interrogation. Correct?

25 A That's correct.

McHale -- Cross

1 Q Yes, sir. Now, you told --

2 A There's a reason, as I've
3 already stated.

4 Q Yes, sir?

5 A If I had gone on with the
6 interrogation that day, under the condition
7 that he was, based out of his own mouth, "I
8 drank twenty-four beers, I haven't had
9 sleep, I've been taking caffeine pills,"
10 anything that he would say during that
11 interrogation, even though he had his rights
12 read to him, and, and he's intelligent and
13 he could waive them, none of those
14 statements would be allowed into court later
15 on.

16 MR. KULP: I object and move to
17 strike. That's a legal conclusion only
18 the court can make.

19 THE COURT: Go ahead. You're
20 cross-examining him.

21 Q Yes, sir. Is that correct? Is
22 that an issue that a court decides?

23 A Excuse me?

24 Q Is the admissibility of
25 confessions an issue that the court decides?

1:87

McHale -- Cross

1 A It is an issue --

2 Q Or issue they can address?

3 A They can address it. It is an
4 issue the police have to address every
5 single time we interview somebody.

6 Q Okay.

7 A We're required to do certain
8 things and if certain things are said or
9 they're -- the age of a person, the mental
10 capacity of a person, that is a judgment we
11 have to make and we have to back up and make
12 sure we do it appropriate, so it is not just
13 a legal thing. It is something we have to
14 do.

15 Extra-judicial confessions
16 outside courtroom -- if he confessed in
17 here, it would be a judicial confession.
18 Outside of this, it's extra-judicial. So we
19 have to make sure we play by the rules, and
20 we always play by the rules. And that's why
21 we go through the things that we do.

22 So I did not interrogate him
23 that day, though I wanted to, because
24 nothing he would have told me would have
25 been of any value. We couldn't have used

1 it. In fact it would have messed up the .
2 case because, you know, anything he said
3 couldn't be used. So that's why I scheduled
4 him for another day, and told the police
5 exactly how to go about giving him a nice
6 rest, letting him come back refreshed,
7 having eaten, sober, and, and voluntarily
8 come back. So like I said yeah, I did
9 instruct them. But that's, that's the
10 reason.

11 Q Okay. Major McHale, in
12 considering those issues and considerations,
13 the first thing you asked him when he came
14 into the meeting with you was how much have
15 you had to drink, have you taken any kind of
16 caffeine pills or any drugs, and how much
17 sleep have you had. That's the first thing
18 you asked him, right, so you could determine
19 whether or not it would be worthwhile to
20 continue along?

21 A Of course not. As I have
22 stated, when you walk in the room the first
23 thing I'm not going to ask you is "Hey, how
24 much you had to drink?"

25 What I'm going to do for the

McHale -- Cross

1 first twenty minutes or so is I'm going to .
2 talk nice to you, and I'm going to ask you
3 about yourself and your hobbies and all that
4 kind of stuff. I'm going to build a
5 relationship with you.

6 At some point in the interview I
7 am going to ask those questions because I
8 need to know those things for later on. I
9 don't need to know those for part of the
10 interview. It's okay to ask you -- when I
11 interview a person I can interview them all
12 day long, and everything they say is fine
13 during that interview because it's not
14 accusatory. They're not admitting to
15 anything.

16 Q Okay. So you told him --
17 there's a lot of information you told him as
18 well. For example, you told him, "It's
19 sometimes when humans die and they look so
20 fragile, it looks like they're sleeping or
21 something. It's almost like we have this,
22 I've got to figure this out, I don't believe
23 this, how people die so easy. That's the
24 thing about all the murders I've ever
25 worked. The people who committed the

McHale -- Cross

1 murders, whether it was intentional or not
2 intentional, they're amazed at how easy a
3 human dies." You told him that, or words to
4 that effect?

5 A Words to that effect. In a
6 context. It flowed. It didn't just jump
7 out like that.

8 Q Okay. And you told him that the
9 police had several suspects and that he
10 wasn't the only suspect.

11 A That is correct.

12 Q And you told him that they --
13 you had to or the police had to clear him
14 first.

15 A Sure. He's the boyfriend.

16 Q And that was why he was there,
17 so you could clear him.

18 A If he could be cleared.

19 Q You told him that you could
20 build a case against anybody, did you not?

21 A Sure.

22 Q You told him you could build a
23 case against a cop in this building, did you
24 not?

25 A Absolutely.

McHale -- Cross

1 Q And did you also tell him if he
2 was here -- excuse me. "If he were here
3 sleeping last night with his wife in bed I
4 could still make a case against him because
5 his wife can't verify that she knows he was
6 in the bed the whole time." You told him
7 that, didn't you?

8 A Yes. The reason I told him that
9 was because when a person is banking on an
10 alibi, it's important to let them know by
11 way of information your alibi doesn't mean a
12 whole lot unless, you know, you're in
13 another country and you're on videotape
14 somewhere, we know that you were there, you
15 know.

16 If I go home tonight and go to
17 bed with my wife, and this is kind of what I
18 was explaining to him, my wife can only say
19 well, yeah, he went to bed with me and I
20 remember he got up at six in the morning,
21 but unless she got up sometime during the
22 night, she couldn't verify that I was in bed
23 the whole night.

24 So I let them know that because
25 that's one of those things that as you tell

McHale -- Cross

1 people, innocent or guilty, they weigh that
2 over in their mind. And the reason to give
3 information to people like that is to let
4 them weigh it and while they're weighing it,
5 I am observing their behavior, how they
6 respond to it. Innocent people respond one
7 way; guilty people generally respond a
8 different way.

9 Q Okay. And that was one of your
10 intentions, to convey to him that even if he
11 was asleep in bed, like the example you
12 cited, and no one could verify that, that it
13 wouldn't matter any?

14 A Right.

15 Q And wouldn't be of any value?

16 A Right.

17 Q Now you asked him if he'd ever
18 fought with anybody in his whole life and he
19 responded, did he not, "No, sir. I don't
20 like to fight"?

21 A I believe so. I believe he did
22 mention a fight, though --

23 Q Okay.

24 A -- with the deceased.

25 Q And you specifically, during the

McHale -- Cross

1 interview that wasn't interrogation, you
2 said, "Well, this will be the hard stuff.
3 Like I stated, nobody likes to ask people
4 these questions. This is why I get paid to
5 do what I do. I've got to ask you, an
6 obvious question I'm going to ask you first
7 is, 'did you kill her?'"

8 A Sure.

9 Q And he said, "No, sir. I
10 didn't."

11 And you said: "Why wouldn't
12 you?"

13 He said: "I love her and I'm
14 not, I'm not going to kill anybody. I can't
15 kill an animal." Did you say that?

16 A Yes.

17 MR. DURANT: Your Honor, I have
18 a matter of law. I mean basically I
19 have no problem with him asking what
20 he, he told the defendant. I obviously
21 have a problem with the converse
22 because it's hearsay.

23 THE COURT: Go to your room just
24 a minute. I'll get some ground rules
25 here.

McHale -- Cross

1 (The jury leaves the courtroom
2 at 2:46 p. m.)

3 THE COURT: I didn't quite
4 understand. Everything I've heard so
5 far is in that statement.

6 MR. DURANT: It is, your Honor,
7 but, but basically --

8 THE COURT: Tell me what
9 question you objected to.

10 MR. DURANT: I object to him
11 putting this defendant's testimony in
12 through this witness without that
13 defendant having taken the stand, is
14 what I object to. It's totally
15 contrary to State V. Terry which says a
16 defendant cannot get his exculpatory
17 statement in --

18 THE COURT: Did he get into
19 testimony something that wasn't in the
20 statement?

21 MR. DURANT: Pardon me?

22 THE COURT: Just tell me the
23 question that he said.

24 MR. DURANT: He was asking the
25 defendant's responses to questions.

McHale -- Cross

1 MR. KULP: You want me to recite
2 quickly, your Honor?

3 THE COURT: Yeah.

4 MR. KULP: Question was: "Did
5 you say to her" -- and I'll abbreviate
6 it -- "did you kill her?"

7 And his response was: "No, sir.
8 I didn't."

9 And the question was: "Why
10 wouldn't you?"

11 And the answer was: "I love her
12 and I'm not, I'm not going to kill
13 anybody. I can't kill an animal." And
14 that's directly from the transcript.

15 MR. DURANT: And I understand
16 that, your Honor, and I also would hand
17 up State versus Gary Deboise Terry that
18 says a defendant can't prove his case
19 by statements to a third party without
20 taking the stand.

21 MR. KULP: There's a little
22 distinction here, your Honor. Let me
23 please --

24 THE COURT: No. I'm going to
25 allow it.

McHale -- Cross

1 MR. KULP: Yes, sir.

2 THE COURT: Bring in the jury.

3 You can go into anything that's
4 in that, in that statement. Isn't that
5 statement --

6 MR. DURANT: Your Honor, could I
7 just be heard on it?

8 THE COURT: Hold it a minute.
9 Isn't that statement in, in evidence?

10 MR. DURANT: No, sir. Statement
11 is not in evidence.

12 MR. KULP: This witness has been
13 qualified as an expert in the area of
14 interrogation. He is rendering an
15 opinion in this case.

16 MR. DURANT: Which I'm more than
17 happy to --

18 MR. KULP: Excuse me.

19 MR. DURANT: -- let him have an
20 opinion, but that's not what he's
21 asking him. He's asking him, he is
22 getting this man's testimony before
23 this jury without this man taking the
24 stand and being subject to
25 cross-examination with a document which

1 is not in evidence.

2 MR. KULP: Can I finish, your
3 Honor, please? I don't try to
4 interrupt the solicitor.

5 And the point is that what he
6 formed that opinion, what he relied
7 upon to form that opinion, he's
8 testified it to for the past hour, was
9 the way the defendant -- what he said,
10 the way he looked, all the interaction
11 there.

12 THE COURT: All right. I'll
13 listen to you. Go ahead. Tell me what
14 case you're relying on.

15 MR. DURANT: And State versus
16 Terry, your Honor, I'll pass --

17 THE COURT: What does it say?

18 MR. DURANT: It says: "As
19 defendant was attempting to exculpate
20 himself with the confession that tended
21 to reduce the crime from murder to
22 manslaughter, the defendant seeking
23 exculpatory statements must face
24 cross-examination."

25 THE COURT: But didn't you ask

McHale -- Cross

1 this, your witness here, didn't he
2 conduct an interview --

3 MR. DURANT: I asked him --

4 THE COURT: And wait a minute.
5 And you went further than that. You
6 talked about some of the questions that
7 you asked him and how you did it and
8 whether it was an interrogation or not,
9 did you not?

10 MR. DURANT: I didn't ask him
11 any specifics as to --

12 THE COURT: I realize that, too.

13 MR. DURANT: -- as to what the
14 defendant told him.

15 THE COURT: All right, sir.
16 Tell me what Terry says.

17 MR. DURANT: Terry basically
18 says defendant should, who chose not to
19 testify, could not introduce confession
20 as statement against penal interest.
21 This is definitely not against his
22 penal interest. Defendant was not
23 entitled to elicit fact that he had
24 given statement to police in order to
25 demonstrate that he had cooperated with

McHale -- Cross

1 the police.

2 And basically if you read the
3 case, your Honor, it's, it's
4 specifically states that the defendant
5 without taking the stand cannot elicit
6 an exculpatory statement he made to the
7 police because it's a self-serving --

8 THE COURT: This witness is your
9 witness. You put him on the stand.

10 MR. DURANT: I --

11 THE COURT: You elicited to this
12 jury the fact that he had taken a
13 statement from him, and that he asked
14 him questions, and answers, and I'm
15 going to allow it. It's on
16 cross-examination.

17 MR. DURANT: Your Honor, could
18 you at least read the case before you
19 make your decision?

20 THE COURT: No, sir. No, sir.
21 Bring the jury in.

22 MR. DURANT: Your Honor, I would
23 except to your ruling. I believe it's
24 contrary to the law.

25 THE COURT: You don't have to do

McHale -- Cross

1 that. You know --

2 MR. DURANT: I know it doesn't
3 do any good, your Honor.

4 THE COURT: Sure, it's basically
5 just a good expression, but. . .

6 (The jury enters the courtroom
7 at 2:50 p. m.)

8 THE COURT: Go ahead.

9 MR. KULP: Thank you, sir. If
10 it please the Court.

11 Q So, Major McHale, you asked him
12 if he killed her and he said "No, sir. I
13 didn't."

14 A Right. Most everybody always
15 says that when they come in.

16 Q Now, you, you told him, did you
17 not: "But we both know, Wesley, and let's
18 be honest with each other for a minute,
19 okay? It's amazing how you can be a
20 complete stranger and there's no way that
21 you can kill a complete stranger, but people
22 that generally get you the most pissed off
23 in all the world are the people you love.
24 They're the ones who push your button."

25 Did you tell that to him, or

VOLUME FOUR 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.

WESLEY MAX MYERS,

APPELLANT

RECORD ON APPEAL

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McHale -- Cross

1501

1 words to that effect?

2 A Sure. Yes.

3 Q Did you tell him: "My wife,
4 I've been married twenty years. I'm telling
5 you what, I've never thought about divorce."

6 THE COURT: How about approach a
7 minute. Come here, Solicitor.

8 MR. KULP: Yes, sir.

9 (Whereupon, there was an
10 off-the-record bench conference.)

11 THE COURT: Go in your room just
12 a second.

13 (The jury leaves the courtroom
14 at 2:52 p. m.)

15 THE COURT: This State versus
16 Terry, Solicitor, is where the
17 defendant chose not to testify.

18 MR. DURANT: Uh-huh.

19 THE COURT: Then he wanted to
20 get the fact in that he'd given a
21 statement to police.

22 MR. DURANT: Exactly.

23 THE COURT: Just what he's
24 getting out.

25 MR. DURANT: Uh-huh.

McHale -- Cross

1 THE COURT: Now, what are the
2 facts of the case?

3 MR. DURANT: The facts of what?
4 Terry?

5 THE COURT: Yeah.

6 MR. DURANT: Terry I believe,
7 and it's been a while since I read the
8 case, but he was trying to, he had
9 given a confession to the police and I
10 think he had admitted to everything,
11 but I think, I think it was a, maybe a
12 murder-rape and he was trying to say it
13 was consensual sex.

14 THE COURT: It was where the
15 defense was trying to introduce his
16 statement to the police.

17 MR. DURANT: Right.

18 THE COURT: And him not
19 testifying.

20 MR. DURANT: Right.

21 THE COURT: See, this is
22 different. You put this officer up.

23 MR. DURANT: Well, your Honor, I
24 didn't put --

25 THE COURT: And you --

McHale -- Cross

1 MR. DURANT: I didn't put his
2 statement into evidence.

3 THE COURT: I realize you didn't
4 put his statement into evidence. You
5 know when you put somebody up there
6 they can pretty well cross-examine.
7 This man can take care of his self.

8 MR. DURANT: Your Honor, that's
9 what they did in Terry.

10 THE COURT: But -- wait a
11 minute. But you asked him some of the
12 questions that he asked him.

13 MR. DURANT: Your Honor, the
14 only, the only thing I asked him about
15 what the defendant said, to my
16 recollection, and correct me if I'm
17 wrong, was if he would -- did the
18 defendant ever admit guilt to him. And
19 he said no.

20 And I did not try to put any
21 details of this defendant's statement
22 into the record. And quite frankly to
23 allow him to put his defense in front
24 of this jury without having to take the
25 stand and be subject to

McHale -- Cross

1 cross-examination, deprives me of my
2 right to cross-examine the defendant,
3 and, and that is the reason that
4 self-serving declarations of a
5 defendant are not admissible in a
6 trial, because they're not statements
7 against his penal interest.

8 THE COURT: Mr. Kulp's about to
9 have a fit trying to tell me something.
10 What is it?

11 MR. KULP: I'm sorry, your
12 Honor.

13 MR. DURANT: They're not --

14 MR. KULP: I didn't mean to look
15 like the kid on the back row in the
16 school room. Terry was a distinctive
17 case.

18 THE COURT: Right. That was a
19 Lexington County case.

20 MR. KULP: Lexington County
21 case. What happened was while the
22 defendant was being interrogated by
23 police during the investigation he made
24 a statement about his involvement that
25 was inculpatory and then he decided not

McHale -- Cross

1 to take the stand and then when it
2 looked like it was going to go to
3 murder and he wanted to shoot for
4 manslaughter, he then wanted to -- and
5 the State had not put this in through
6 any witness. He wanted to call an
7 officer to whom he'd given the
8 statement to try to show that the
9 murder was committed in the heat of
10 passion to try to justify a
11 manslaughter charge to the jury.

12 Now, that's what that was all
13 about. That's different than this,
14 completely. And as well, Mr. Durant
15 asked him on direct examination only
16 what, or exactly what I'm asking him
17 now. Did he -- did you ask him if he
18 did it and he said no. So where's the
19 harm? There's not even a file.

20 MR. DURANT: The harm is, the
21 harm is, is he is presenting an
22 exculpatory statement to this jury
23 which is hearsay, period. It's not a
24 statement against his penal interest
25 because he's not admitting to anything.

McHale -- Cross

1 To the contrary, he's saying he's not
2 guilty of anything.

3 And if he wants to take the
4 stand and say that, that's fine.
5 That's perfectly within his rights.
6 But he can't do it by statements he
7 makes to third parties.

8 THE COURT: Anything else?

9 MR. KULP: No, sir.

10 THE COURT: I'm going to allow
11 it in, you know. Bring them in.

12 (The jury enters the courtroom
13 at 2:57 p. m.)

14 THE COURT: Go ahead.

15 MR. KULP: Thank you. And may
16 it please the Court.

17 Q So during your interview that
18 was not interrogation, you also asked him,
19 did you not, or rather told him, "My wife,
20 I've been married twenty years. I'm telling
21 you what, I've never thought about divorce
22 but I have sure thought about killing her.
23 You know what I'm saying?" Did you say
24 that?

25 A Yes, I did.

McHale -- Cross

1 Q Is that comical?

2 A I think it is.

3 Q Now, you also said to him --

4 THE COURT: Let me tell this

5 witness. You can explain anything.

6 You can answer yes, no, or I don't

7 know, and then you can explain it if

8 you like. Go ahead.

9 MR. KULP: Thank you, your

10 Honor.

11 THE WITNESS: Thank you.

12 Q You also told him, did you

13 not --

14 A Could I just, like the judge

15 said, could I explain this?

16 Q Yes, sir.

17 A Part of the interview process as

18 I said, giving information, is with a

19 purpose. I'm not telling these stories, you

20 know, to later hear them, you know, and make

21 them sound -- if you take anything out of

22 context it sounds kind of weird.

23 I'm looking for reactions. I

24 am, I am waiting on a person, whether

25 they're in agreement with something I say or

McHale -- Cross

1 disagree with something I say. If I say
2 something completely outlandish to a normal
3 person, who's not done something real bad,
4 they kind of look at me like I'm from
5 another planet, and that's the right --
6 that's the right way to look. If I say
7 something that's kind of serious and they
8 agree with it, they're shaking their head
9 and they're with it, that is a clue that
10 they're trying to buy in with what I'm
11 saying. So everything that I say in an
12 interview, every story I tell, sometimes I
13 would use profanity to get on a certain
14 level with a person, see where their
15 comfortable level is, and it's all to do a
16 behavioral analysis on that person.

17 If they will buy into me that
18 your loved ones are the ones that will push
19 your button, that's normal. We all know
20 that. So I would say something like that.
21 When I say that I might kill her, and a
22 person is just agreeing with me, that sends
23 up a little red flag to me, and it's one of
24 those many things that I take down during a
25 lengthy interview because I'm looking for

McHale -- Cross

1 appropriate responses, not inappropriate
2 ones. Thank you.

3 Q One of the techniques of
4 interrogation is minimalization, isn't it?

5 A Absolutely.

6 Q And what that means, please
7 explain to the jury, but would you agree
8 that what that involves is when the person
9 that you're interrogating as to them, you
10 want to minimize or reduce the seriousness
11 of certain things?

12 A That's in the interrogation
13 part, right.

14 Q Right.

15 A Understand this is an interview,
16 not interrogation.

17 Q Right. And so when you were
18 telling him that you'd thought about killing
19 your own wife, you were -- you were
20 trying -- was it your intention to suggest
21 to him that it was okay to think about
22 killing someone so close to you?

23 A As I said, it was to do several
24 things. To watch his reaction to a very
25 inflammatory type statement, unless you've

McHale -- Cross

1 killed somebody. It's one of those things
2 that we look for. So it is not to minimize
3 the seriousness of these, this offense.
4 What it is, is to gauge this person's
5 perception of it and their reaction to
6 something that hopefully would strike a
7 nerve to most normal people who haven't done
8 something like that.

9 Q Who gets to decide normal, you?

10 A We all do.

11 Q Okay. Now, part also -- you
12 also told him that when you were nineteen
13 and your wife was three months pregnant the
14 first time, "I'd never -- I'd gone out
15 drinking with the sailor boys and I came
16 home and she was all over me like stink on a
17 skunk, in my face at the door, and I took
18 her by the shoulder and I pushed her down on
19 the bed. I mean I pushed her down and she
20 knew and she ain't never got in my face
21 again. In twenty years she still won't get
22 in my face, but I never would have
23 intentionally hurt her but I could have hurt
24 her that night. She could have lost the
25 baby." You told him that?

McHale -- Cross

1 A Absolutely. And --

2 Q Yes, sir. And that was merely
3 for the purpose of interviewing him, to get
4 information about whether he did the crime
5 or not?

6 A Absolutely.

7 Q Yes.

8 A Now, why would we do that? Why
9 would I mention something like that? Couple
10 of reasons. First of all, if the
11 interviewer talks to a person and they seem
12 like they're from another planet, like I'm
13 not a real guy, I don't have real emotions
14 and real feelings, he's not going to connect
15 with me. If I look down at my nose at him
16 the whole time he's in there, "and you would
17 never do such-and-such, would you, and you
18 would never do such-and-such, would you,"
19 you think that guy is going to tell you
20 anything? Of course not.

21 But if, if I relate to him,
22 "Hey, listen. I'm human. I know how
23 husbands and wives, spouses, argue. And I,
24 I've been there."

25 And I will give an illustration.

McHale -- Cross

1 "Hey, listen. Here's what happened."

2 Things happen between
3 relationships, and a lot of times things
4 happen that are accidental.

5 Now, in an interview I'll go the
6 whole route; the "on purpose", "got mad",
7 "did it", in -- you know, "accidental
8 thing", "didn't mean to", "didn't even know
9 you did it".

10 I'll go through different
11 scenarios again to watch how a person
12 responds when I say those things because a
13 lot of times what will happen if you, if you
14 mention one scenario, they don't bite on it,
15 they don't react. Then you mention another
16 one that's maybe closer to the truth, you'll
17 see a different set of reactions from a
18 person.

19 So everything that is said in
20 that room, there's a purpose for it. Every,
21 every story, every seeming aside, there is
22 an actual purpose for it and I am watching
23 this person's behavior so that later on,
24 during an interrogation phase, I can go back
25 and draw on all those things where he

1 reacted and bring them to him and say;
2 "Listen, when I said this, this is what you
3 did."

4 And that generally is how a
5 guilty person acts. And of course that,
6 that is very strong, and, and, and it works.

7 Q So you're able to decide if
8 someone is guilty or not?

9 A Many times, yes, sir.

10 Q Okay. Now, you and of course he
11 was there and we agreed, I think you agreed
12 in your testimony, he was there for the
13 purpose of cooperating with you to enable
14 you or any police officer to exclude him so
15 that the search for the real killer could be
16 under way. Correct? That was your
17 understanding of his understanding.
18 Correct?

19 A My understanding is that
20 Mr. Myers, along with every person that
21 comes in initially who's being asked about
22 murder, wants to cooperate with the police.
23 It sends up a very big red flag if you --
24 the first thing, if they ask you, "Hey,
25 would you talk to us?" And you shut them

McHale -- Cross

1 down, you know you're making yourself look
2 like a suspect. So, yeah, most people
3 cooperate a hundred per cent at first.

4 Q Every, every person or most
5 people?

6 A Most people.

7 Q Okay. Now, did you have any
8 information at the time that the police
9 provided you that they may have had a belief
10 that the victim had been strangled?

11 A I made a note about it. They
12 didn't know, I think at the time it was so
13 new, they did not know what the cause of
14 death was. They know, they know the victim
15 was dead. But not knowing it was one of
16 them kind of things I couldn't get real
17 specific on, but I could ask questions about
18 it.

19 Q Okay. And you asked him or you
20 told him rather, "And the thing is, we've
21 all been angry to the point of just wanting
22 to choke the living snot out of the wife."

23 A I -- that sounds familiar.

24 Q Now you also told him, did you
25 not, or words to the effect that if you had

McHale -- Cross

1 gotten in an argument with her and you ended
2 up hitting her and she ends up hitting you
3 or scratching you or striking you in some
4 way, there's going to be physical evidence
5 tied to that."

6 A I may have said something to
7 that effect.

8 Q Was the purpose of that to
9 suggest to Mr. Myers there was physical
10 evidence against him?

11 A No. As I stated, the purpose of
12 that scenario, which is completely
13 different, is that there could have been an
14 argument. Now, understand, if I'm giving,
15 I'm, I'm giving a whole lot of scenarios in
16 an hour and a half. And as I'm telling
17 stories, relating it to me personally so
18 that there's a connection there, I'm human,
19 this is real life stuff here, here's
20 something that could have happened, in an
21 argument this person may have struck you
22 first. So with a person who maybe that's
23 the scenario and of course, you know, later
24 on he confesses and tells what happened.
25 You find out that many of the things that

McHale -- Cross

1 are said a person relates to, because they
2 then know, hey, listen, even though I did
3 something horrible and horrendous, I'm a
4 normal human being.

5 It's tough to get people to
6 confess to something they've really done if
7 they feel like, you know, they're the only
8 one in the world and nobody -- they're,
9 they're, they're unlike anybody else. But
10 if you let everybody know, listen, this
11 could happen to anybody, and it really
12 could. None of us, you know, are -- and
13 that's why if you explain things to people,
14 they don't feel like such an alien.

15 And of course during this
16 process, it's trying to win this person to
17 tell me stuff. So, yeah, very nice and it's
18 not the purpose as you say to tell them
19 there's physical evidence. It's for the
20 purpose of watching his behavior when I give
21 him certain scenarios to see if he more or
22 less agrees with it or disagrees with it.

23 Q Okay. So the purpose is to make
24 these statements, see his reaction, and then
25 of course he's going to completely forget

McHale -- Cross

1 the suggestion or the comment that you made.
2 Is that correct?

3 A The innocent person forgets most
4 of what you say because it's, it's, it's not
5 relevant. A person who's guilty, they focus
6 in on the particular things that they're
7 guilty of.

8 You know, if I mention certain
9 crimes to anybody there on the jury, you
10 would, you wouldn't give no thought. But if
11 I mention tax evasion or not including
12 income on your taxes, all of a sudden
13 there's this little red flag that is normal
14 to society. So there's certain reactions
15 you look for.

16 Q Okay. So that did you tell him,
17 "You know, unfortunate in this country, but
18 this is the way it is. We side with the
19 woman because she's the weaker person
20 allegedly, but in some marriages if women
21 were just to shut up, they wouldn't get
22 hit"?

23 A Yes.

24 Q And you told him, did you not,
25 or words to the effect that, "And at some

McHale -- Cross

1 point the first hit is the easiest and it's
2 the hardest." You told him that?

3 A I did tell him that.

4 Q And did you tell him, "And like
5 I was telling you earlier, it's so easy to
6 kill somebody when you're angry." Did you
7 tell him that?

8 A Sure. Only takes seven pounds
9 per square inch to break a bone.

10 Q And did you tell him, "If your
11 wife was to tragically die in a car, you
12 would be greatly upset, probably even more
13 upset than I think. She's on the list right
14 now, so maybe she wouldn't. I'd possibly be
15 looking tomorrow for somebody to replace
16 her." Did you tell him that?

17 A Sure. Again --

18 Q And --

19 A Again -- let me explain.

20 Q Go right ahead.

21 A He, Mr. Myers, was trying to
22 display a remorse and sadness and a sense of
23 loss, but it did not -- his nonverbal
24 behaviors did not agree with what he was
25 trying to do. He couldn't work up tears.

McHale -- Cross

1 When a person cries, I mean when it's real,
2 they cry. They boo-hoo. Their snot runs
3 out. You ain't stopping them.

4 When a person is faking, but
5 they know it's appropriate, you know, I
6 should be crying because this is my
7 girlfriend, I love her. What is the normal
8 thing? It's to cry. But it's not to cry
9 and it looks staged.

10 And, you know, you, you've all
11 seen things that, man, that looks funny.
12 You know, it's not real. And it's one of
13 those many, many things.

14 As I'm going through scenarios
15 I'm, I'm doing this little mental checklist.
16 You know, this doesn't, this doesn't sound
17 right, this doesn't feel right, this doesn't
18 look right. And it's another one of those
19 things.

20 So I use myself. I could use
21 somebody else in these scenarios, but the
22 reason I use myself is because I want the
23 person to relate to me, so that when and if
24 I interrogate him, he, he is going to relate
25 to me and know that I understand.

McHale -- Cross

1 And that's my job, you know.

2 And I know it sounds kind of weird listening
3 to that out of context, but anything that's
4 taken out of context could sound pretty
5 weird.

6 Q And some -- one of the things
7 that you're looking at is not just this
8 subjective nonverbal behavior, but as well
9 how he responds in what he says to you.
10 Isn't that correct?

11 A And the way he responds. Yes.

12 Q And when you said, and if you
13 recall saying, "Let me go back there again.
14 I love my wife. I'm not saying I'm going to
15 kill her. I hope I never do. If I ever did
16 kill her, I know it would be an accident. I
17 can't imagine myself ever planning that.
18 Did you kill her and not mean to?"

19 And he responded, "I did not
20 kill Teresa Haught."

21 And you asked him, "Did you get
22 in a fight with her?"

23 "No, I did not."

24 And that was a, an exchange in
25 the course of your interviewing, not

McHale -- Cross

1 interrogation. Correct?

2 A Those, those are questions, as I
3 said, I did not say, "You killed her. I
4 know you did." Okay? That would start an
5 interrogation.

6 Obviously he's in the room and
7 he's there for a reason. You know, he's
8 there for me to ask him did he do this bad
9 thing. Now, of course I've got to ask
10 people. That's, that's why we get paid the
11 way we do. It's very tough to sit in a room
12 with somebody and say, "Hey, did you kill
13 that person you love?" But those questions
14 have got to be asked.

15 It's amazing how many times
16 people, cops have bring, brought me
17 somebody, one of the first questions I asked
18 him, "Hey, did you steal that missing money?

19 "Yep.

20 "Well, why didn't you tell them?

21 "Well, they never asked me."

22 You know, so of course we got to
23 ask them those questions. Those are tough
24 questions to ask somebody if they're not
25 guilty, you know. That's a tough question

McHale -- Cross

1 to ask family members, trust me. I've done
2 it a lot of times. But there's a way that
3 guilty people react versus not guilty
4 people.

5 Q Okay. So in Mr. Myers then
6 saying that he didn't kill Teresa Haught,
7 that suggested to you he was guilty?

8 A That statement in and of itself
9 right at that moment?

10 Q Yes, sir.

11 A No. The totality of the
12 circumstances? Absolutely. I knew he was.

13 Q And did you also recall telling
14 him, "And if you're not guilty, we're still
15 going to be focusing on you as the guilty
16 person and you're going to be wasting
17 valuable time for the police"? Did you tell
18 him that or words to that effect?

19 A You'd have to -- I think the
20 stenographer, whoever you had transcribe it
21 missed a few words. Basically what I was
22 saying, if I can interject, is if you aren't
23 guilty and you're cooperating, we'll be able
24 to eventually clear you. If you don't
25 cooperate now, and I, and I appreciate that

McHale -- Cross

1 you are cooperating now -- I said that to
2 him in there -- that will help us if you are
3 not guilty, to clear you and get on with
4 others, first, after we clear you. But of
5 course in any domestic situation or, and
6 when a person is murdered, the first person
7 we're going to look to is the immediate
8 family or the boyfriend and girlfriend.
9 That's all. And most of the time that's the
10 person who did it.

11 Q And you accused him of lying in
12 this process of gathering -- interviewing
13 him to gather information, you told him or
14 suggested to him that he was lying to you.
15 Correct?

16 A Well, that he was not a hundred
17 per cent truthful with the police.

18 Q Okay. You told him, do you
19 recall telling him this or words to the
20 effect "Don't push this investigation off on
21 you if you didn't do it. We need to know
22 if, know you didn't do it, but we need all
23 the facts here. Trust me when I say that
24 witnesses in a murder case will lie their
25 butts off. People who, who, people who did

McHale -- Cross

1 not do it will lie to us."

2 A Sure. Listen, when we question
3 witnesses, they had nothing to do with the
4 crime, but they don't want, perhaps their
5 spouse to know they were at a bar, or that
6 they saw something. Many people lie about
7 stuff that has nothing to do with the actual
8 crime. But when we talk to them, they're
9 lying. And they look like they're lying.
10 They act like they're lying.

11 And so one of the very first
12 things that we have to do is we have to,
13 "What are you lying about? It's obvious to
14 me that you're lying. Now if you're not
15 lying about this crime, okay. Let's get
16 over it. Let's deal with the issue that you
17 are lying about because you're making me
18 think that you're guilty by the way that
19 you're acting.

20 You know, if you're worried
21 about, you know, your girlfriend is going to
22 find out you were out with another woman,
23 okay. We're not going to tell her that,
24 okay. This is a murder investigation. So
25 people lie about something that has nothing

McHale -- Cross

1 to do with the crime, but they lie. And you
2 know when the police talk to you and you're
3 lying, you know, they're really do know a
4 lot of times that you're lying so they got
5 to weed through that."

6 Basically what I was telling him
7 is you're lying about something that has
8 nothing to do with murder, just tell me.
9 You know, if you're lying about maybe you
10 didn't go home or you lied about because you
11 were, you were somewhere else, you don't
12 want your parents to know, whatever. People
13 lie about all kinds of crazy things.

14 I mean even in a serious murder
15 investigation they lie about stuff and it
16 puts the light on them because we have to
17 look at them. Well, why would this person
18 be lying? Of course when we find out, it's
19 usually something, you know, minor.

20 Q Okay. And you suggested to him
21 that there were fingerprints, possibly his
22 fingerprints found at the scene in the case,
23 didn't you?

24 A I said he'd been in the bar a
25 lot. I said obviously your fingerprints

McHale -- Cross

1 would be all over the bar.

2 Q Well, do you recall telling him,
3 "Is there any reason why we couldn't clear
4 you as far as you've been in the bar many
5 times so your fingerprints are obviously all
6 over the place. Even in a fire, trust me,
7 there's fingerprints, all kinds of little
8 fingerprints there."

9 You, the purpose in that was to
10 suggest to him that there were latent
11 fingerprints of his at the murder scene,
12 wasn't it?

13 A Of course. And of course there
14 are. I -- he'd been in the bar a number of
15 times.

16 Q Could you please identify for me
17 one latent fingerprint of Wes Myers that's
18 been lifted in this case, to your knowledge?

19 A I don't know. I don't know what
20 they lifted. The fact is, he admitted to
21 being in the bar a number of occasions and,
22 and of course that's fine. That is an
23 example. You know, if you'd been in the
24 bar, your fingerprints will be in there.
25 Okay. But is there any reason why we

McHale -- Cross

1 wouldn't be able to clear you other than
2 that? Would there be any other physical
3 evidence that may be not explainable? You
4 know, just take it in the context.

5 Q Okay. Then do you recall
6 telling him that, "Now, they told you they
7 found a hair."

8 And that Mr. Myers said, "It was
9 in her hand, wrapped around her thumb."
10 That they had told him that.

11 You asked him, "Is there any way
12 that hair could be yours?"

13 And he said, "No, sir."

14 And he said, do you recall, "No
15 way. I wasn't there."

16 And you said, "What if the hair
17 was yours?"

18 And he said, "I would freak out.
19 I would freak out, how --"

20 And you interrupted him and say,
21 you interrupted him and do you recall
22 saying, "How would you explain it?"

23 And his response was, "I
24 couldn't explain it because there's no
25 possible way to explain it because I wasn't

McHale -- Cross

1 there." Do you recall that?

2 A Sure. And, you know, that is so
3 ridiculous and what I try to explain to
4 people, it doesn't matter whether the hair
5 is there or not. There's a million ways to
6 get a hair off of somebody's jacket, coat,
7 sweater. Whether it's his hair or anybody,
8 it doesn't matter whose hair it is. It is
9 one of those things I would ask.

10 Anybody who comes in a room, is
11 there any reason why your hair would be
12 there? And of course, you know, an innocent
13 person would say not that I know of, you
14 know. I've never met the person.

15 A person maybe who's less than
16 innocent, they react a little bit
17 differently because they don't want you to
18 think, oh, there's no way that's going to be
19 my hair.

20 So of course it's one of those
21 things you throw out there. Not only hairs.
22 Fibers, footprints. You know, is there any
23 reason why a person would have seen you
24 there? I mentioned that. I'm sure you're
25 going to get to that. Would there be any

McHale -- Cross

1 reason why somebody would have said they saw
2 you there? Now, I didn't say that somebody
3 had seen him there, but would there be a
4 reason why anybody might say that you were?

5 You know, if you're an innocent
6 person and I say would there be any reason
7 why somebody would say they saw you at Don
8 Pablo's last night? You go, there ain't no
9 way. I was home with my husband or wife all
10 night long. And you know, so it's a
11 non-issue to you.

12 But if I said well, what if
13 somebody said that they did see you there?
14 Now, a guilty person's got to be thinking
15 man, I wonder if somebody actually did see
16 me, because they're not a hundred per cent
17 sure because they know they were out. The
18 innocent guy or girl knows I was in my bed
19 all night and they are completely chilled
20 out.

21 I mean, it's so clear when you
22 do this and you do it thousands of times, it
23 is amazing how many things you can pick up
24 from people that just in a, a moment, an
25 innocent person, guilty person. Look at

McHale -- Cross

1 that person. Acted innocent. Look at this
2 person. Acts guilty.

3 Q Okay. And you recall, do you
4 not, that he told you, "My hair is not going
5 to show up there. Nothing. I'm not guilty
6 of this crime." You that recall?

7 A Sure.

8 Q And then he, then he said, "I
9 mean there's no" -- excuse me. You ask him,
10 or said, "I mean there's no way that we're
11 not going to be able to clear you with
12 physical evidence?"

13 And he responded, "You'll be
14 able to clear me." You recall that?

15 A Sure. That speaks to a person's
16 confidence that they either took all the
17 evidence with them. You know, a person, a
18 person who's guilty, a lot of times they're
19 cocky and that's one of the ways we catch
20 them, because they think that there's no
21 witnesses, there's no evidence, no way you
22 going to get me. And it's one of the things
23 that we look for, because an innocent person
24 doesn't really act that way. An innocent
25 person is confident, but they're not cocky.

McHale -- Cross

1 Q Okay. These are some pretty
2 easy rules to follow it seems?

3 A Well, there's lots, there's lots
4 of them and, yeah, they are pretty easy when
5 you've done them. And I --

6 Q You were mentioning a second
7 ago, you suggested to him, "But we have to
8 listen to what people say. If we talk to
9 somebody that says, 'no, I saw such-and-such
10 a person' and described you or describes
11 anybody, if we were to say there was a
12 person who saw you in the bar between one
13 o'clock and three o'clock."

14 Now were you trying to suggest
15 to him by virtue of that, that there were
16 witnesses who could put him in the bar at
17 that time?

18 A I was trying to suggest to him
19 that whoever the guilty person is, okay,
20 somebody could have seen them between this
21 time. And I want to watch that reaction.
22 It's another one of those scenarios. Guilty
23 person is going to act one way. An innocent
24 person is going to act another way.

25 Q That's right. And his response

McHale -- Cross

1 to that which you heard and observed was,
2 "Then they're a liar. They didn't see me."

3 A Yes. There is one of those
4 responses, like I said. That's like looking
5 you right in the eye and telling you you
6 didn't do it, but later on you said you did.
7 So it really wasn't believable.

8 Q Let me ask you this. What else
9 could he say to you in response to that
10 besides, "Then they're a liar. They didn't
11 see me" that would suggest to you he didn't
12 do it?

13 A I wasn't home like I told you.

14 Q He'd already told you that.

15 A And, and he could have
16 reiterated that.

17 Q Because he didn't reiterate it
18 again in that sentence, that suggested to
19 you that he was guilty?

20 A No, Tim. Like I said, it's not
21 one little piece. This, this is a lengthy
22 hour-and-a-half interview. We're talking
23 about many things that this man had said and
24 done and his nonverbal behavior screaming
25 out. He's sitting there reliving this

McHale -- Cross

1 event. He said a couple of times --

2 Q Whoa. Whoa. Whoa.

3 A I can see --

4 THE COURT: Just a minute.

5 MR. DURANT: That door is open,
6 Judge.

7 Q Go ahead. Go ahead. I'm sorry.

8 I withdraw it.

9 A He would say I can, I can see
10 her now. I can see her just fighting. One
11 of the things that we look for is a person
12 reliving an event. You know, if you've
13 never ridden a roller coaster, you really
14 don't know what it feels like. Okay? You
15 can imagine it. You can watch a video, but
16 you don't know what it feels like.

17 When you have lived through an
18 event, particularly a traumatic event, it's
19 in there forever, and we talked about this,
20 Mr. Myers and I. It's in there forever and
21 whenever somebody starts questioning you
22 about it, you tend to relive it.

23 And when he was reliving that
24 event, he wasn't crying. And I'm telling
25 you, there's some huge red flags going on

McHale -- Cross

1 when a person does not show proper emotion
2 as he says oh, I'm so in love with this
3 person. Well, you know, act like it.

4 Q The way you want them to act
5 like it?

6 A No. The way normal people act.

7 Q Okay. Now, let me ask you this.
8 Isn't it more accurate and truthful to say
9 that when he said something that you equated
10 that he was reliving the event, that he made
11 reference to the fact that the police had
12 showed him and put out in front of him the
13 photos of the crime and his girlfriend?

14 A Well, he said they showed him a
15 photo. I never saw the photos. I don't
16 know which photo they showed him. I do know
17 he, he, he came to the crime scene that
18 morning so it's not like he didn't see
19 something.

20 Q Major McHale, do you have any
21 reason to believe that Mr. Myers that
22 morning got anywhere near the crime scene?

23 A Well, sure.

24 Q What do you base that on, other
25 than being interviewed in a police car some

McHale -- Cross

1 distance from the actual arson scene?

2 A Well, he didn't say he was from
3 a distance. Mr. Myers told me himself he
4 was there.

5 Q Then let's talk about what
6 "there" means. Do you have any information
7 and, if so, please tell the ladies and
8 gentlemen of the jury the source of that
9 information that Mr. Myers that morning was
10 anywhere near the burned Mill Inn such as
11 inside it?

12 A Mr. Myers told me that on his
13 way to work, it's the way he always goes, he
14 saw the deceased's vehicle parked there. He
15 got out of his vehicle and he went up to the
16 police at the scene and asked what was going
17 on. So, yeah.

18 Q Okay. So that means that he was
19 inside the Mill?

20 A I don't know if he was inside or
21 not. He didn't say that.

22 Q All right. Very well. Now, you
23 asked him if he was -- and at this point you
24 asked him if he was willing to continue to
25 cooperate to exclude, effectively exclude

McHale -- Cross

1 him from consideration so that the real
2 killer could be found. Do you recall that?

3 A Words to that effect.

4 Q And, and he responded by saying,
5 "Anything you all want. I'm telling you, I
6 have nothing to hide." Do you recall him
7 saying that?

8 A Sure.

9 Q So after mentioning all these
10 topics to him in the course of this
11 interview, such as, as you have recognized,
12 choking, a reference to choking, a reference
13 to fingerprints, a reference that we've
14 discussed or you have testified to, to
15 eyewitnesses, a reference I think -- I
16 didn't touch on it, but we can go back to
17 boots -- a reference to physical evidence,
18 at this point consistent with that, you told
19 him, did you not, "I have no reason to doubt
20 what you're saying to me, but I'm saying the
21 police have all this information. Your
22 story is very consistent and I honestly have
23 not found any big problems with your story
24 at all."

25 A And that is a lie.

McHale -- Cross

1 Q Thank you.

2 A Well, and let me just say, the
3 Supreme Court has allowed us in law
4 enforcement, if I told him, "Yeah, buddy, I
5 think, I think that you did it," at that
6 point, really do you think that he would
7 talk to me any more?

8 Of course when we think someone
9 is suspect and they become "the suspect"
10 somewhere along the line, until I'm going to
11 interrogate, I'm not going to say, "Hey,
12 buddy, I think you did it," because at that
13 moment they're going to stop talking to me
14 and my job is to get people to tell the
15 truth. And I want all the truth. It's not
16 to get a confession. It is to get to the
17 truth.

18 So of course I'm not going to
19 call somebody a liar and a murderer and not
20 go on at that point. At this point I knew I
21 was not going to be interrogating him
22 because of his condition that would preclude
23 that from being allowed in. But I wanted to
24 keep him cooperative and keep him as a
25 buddy, and let him know that, hey, listen,

McHale -- Cross

1 I'm on your side. You know, you just keep
2 cooperating.

3 And of course we do that with --
4 that's the way we get people to cooperate
5 with us. Be nice to them. Don't be ugly to
6 them.

7 THE COURT: Any more questions?

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

9 THE COURT: Anything further,
10 Solicitor?

11 MR. DURANT: Yes, sir. I got a
12 few.

13 THE COURT: Go ahead.
14
15
16
17

18 REDIRECT EXAMINATION BY MR.

19 DURANT:

20 Q You stated in cross-examination
21 there were some verbal and nonverbal cues he
22 gave you that indicated to you that he was
23 being less than truthful. Is that correct?

24 A Yes, sir.

25 Q Specifically you told him, "The

McHale -- Redirect

1 truth in this situation may be that somebody
2 actually didn't intend to do it and then got
3 stupid."

4 And his response was, "It got
5 out of hand."

6 A Right. Completely outside
7 anything I say, he, he mentions this. It's
8 one of the verbal cues.

9 Q And you had asked him, "Do you
10 think this was robbery motivated?"

11 He said, "I don't know.
12 Honestly, I think, I think they were trying
13 to rape her and she's a fighter. She and I
14 have had ours."

15 You responded, "I heard.

16 "Mr. Myers: She would put up a
17 fight. Every time I close my eyes, I can
18 see her fighting."

19 A Yes. And there again, that's
20 one of them red flag issues when he is
21 reliving an event and he actually did close
22 his eyes at one point, on several points,
23 and the nonverbal behaviors in the room --
24 you know, when a person sits there and
25 relives an event, you can tell they're,

McHale -- Redirect

1 they're going somewhere in their memory and,
2 and he was greatly --

3 THE COURT: Mr. Kulp -- excuse
4 me. He wants you to tell him the pages
5 and the lines that you asked him
6 questions.

7 MR. KULP: Go back to the first
8 one, please.

9 MR. DURANT: Page thirty-six,
10 and I didn't get that same
11 consideration, your Honor, but page --

12 THE COURT: I realize, but you
13 didn't ask for it.

14 MR. DURANT: Page thirty-six.

15 THE COURT: But I saw him trying
16 to talk to you over there.

17 MR. DURANT: Page nineteen.

18 MR. KULP: Hold on. Let's just
19 do one at a time. What was the first
20 one?

21 THE COURT: Write them down.

22 MR. DURANT: Page thirty-six.

23 MR. KULP: Yes, sir.

24 MR. DURANT: Second one was page
25 nineteen.

McHale -- Redirect

1 Q He also admitted he was jealous,
2 did he not?

3 A Yes, sir.

4 Q Isn't that on page thirty-eight?
5 And he was very jealous of her.

6 A Yes, sir.

7 Q Also he did in fact try to give
8 you an explanation for how this hair could
9 have been on her, too, didn't he?

10 A Yes, he did.

11 Q Told you about how he made love
12 with her and perhaps that hair got on her
13 from that, that incident. Is that correct?

14 A That was just like two days
15 prior and then even though that had occurred
16 they were on the "outs" with each other, so
17 it was -- it was a tumultuous relationship
18 at best.

19 Q And bottom line and was he
20 being, in your opinion, overly interested in
21 the evidence in this case?

22 A Yeah. I made a note of that.

23 It was one of the things I look for.

24 Innocent people really don't care because

25 they know they're innocent. Guilty people,

McHale -- Redirect

1 he was interested about the hair in the
2 hand, blood on his shoes or elsewhere,
3 witnesses. You know, innocent people don't
4 care because they know they didn't do it.
5 Guilty people, they all, they all are
6 concerned about it.

7 Q And is his cooperative attitude,
8 is that necessarily an indicator of
9 innocence?

10 A No. We look for, we look for
11 appropriate cooperativeness. But it really
12 scares me when somebody is really overeager.
13 They want to help me so much and they want
14 to know everything that I know. You know,
15 they're very -- like Columbo used to catch
16 them, I mentioned this in, in the pages with
17 Mr. Myers, Columbo used to catch the bad guy
18 because they're always wanting to help him
19 so much and they're side-by-side with him.
20 And it's amazing how many times that is the
21 case. They're very interested in the
22 evidence.

23 Q You said on several occasions he
24 appeared to be reliving this incident in his
25 head. Can you tell us what you mean by

McHale -- Redirect

1 that?

2 A Like I said, when he, when we
3 got to the part about did you kill her, why
4 wouldn't you, that's a question we always
5 ask somebody when, immediately, because I
6 love her. Well, there are certain ways if
7 you love somebody that you act and there
8 would be what we would think of as normal
9 reactions. When you're sitting there
10 talking to somebody about somebody you
11 really love, brutally murdered, as you -- if
12 you don't -- if you weren't there, you can't
13 relive something. You can't relive
14 something you didn't go through the first
15 time.

16 And it was one of those key
17 things that I look for, and as I explained
18 to him, many people will try to use an
19 excuse like "oh, I must have blacked out. I
20 can't remember it."

21 But it's amazing how many times
22 when you actually deal with those people,
23 their physiology, what goes on inside, their
24 heart rate, blood pressure, pulse, you know,
25 those kinds of things, you'll see the sweat

McHale -- Redirect

1 bead up. As they relive the event, their
2 body is reliving it as well, and so it's one
3 of those indicators that this person is
4 going through something far more than just a
5 memory. They're actually going through an
6 event they have experienced.

7 Q And the bottom line is in this
8 hour-and-a-half interview with this
9 defendant, you asked him three questions
10 relative to his direct involvement in this
11 case. Is that correct?

12 A Yes. And I didn't accuse him.
13 They were questions.

14 Q And those were, "Did you do it?
15 Did you do it and not mean to? And did you
16 get in a fight with her?"

17 A Those are the only three
18 questions you could even take as being
19 negative, I guess you could say.

20 Q I have nothing further.

21 MR. KULP: Your Honor, I'm
22 asking for it. I'd like a brief recess
23 to look at this and make some
24 references to some passages that I
25 can't find in this short period of

McHale -- Redirect

1 time. Five minutes.

2 THE COURT: All right. Five
3 minutes.

4 MR. KULP: Thank you, sir.

5 THE COURT: Five minutes.

6 (The jury leaves the courtroom
7 at 3:33 p. m.)

8 THE COURT: You can come down.
9 Just don't talk to anybody.

10 THE WITNESS: Yes, sir. Thank
11 you.

12 (Whereupon, a recess is taken at
13 3:34 p. m.)

14 (The Judge enters the courtroom
15 at 3:41 p. m.)

16 THE COURT: All right. Ready?

17 MR. KULP: Yes, sir.

18 THE COURT: Bring the jury out.

19 (The jury enters the courtroom
20 at 3:42 p. m.)

21 THE COURT: All right. Go
22 ahead. Re-recross.

23

24

25

McHale -- Recross

1

2

K E V I N T I M O T H Y

3

M c H A L E, previously sworn as a

4

witness in the presence of the jury,

5

resumes the stand and testifies as

6

follows:

7

RECROSS-EXAMINATION BY MR. KULP:

8

MR. KULP: Thank you, your

9

Honor.

10

Q Okay. First off, Major McHale,

11

let me ask you this. You've made reference

12

before the jury to the fact that the

13

inquiries that Mr. or comments that

14

Mr. Myers made about evidentiary issues.

15

Isn't it true that you brought most of those

16

up?

17

A I'm not sure how they came up,

18

but I brought issues up. Basically what I

19

look for is a response, an interest. So I

20

would think I would bring some of them up.

21

Of course he offered up some as well.

22

Q Do you think there might be, do

23

you think there might be a difference

24

between inquiries of a person you were

25

interviewing who had no relationship to the

McHale -- Recross

1 victim versus inquiries by someone who had a
2 close relationship with the victim, whose
3 killer they were wondering was being located
4 or not?

5 A That's a convoluted question,
6 but if I understand what your question is,
7 of course somebody who knows the victim,
8 would completely act differently than
9 somebody who's a stranger to the victim, if
10 that answers your question.

11 Q Now, when you said and
12 acknowledged that Mr. Myers said, "She would
13 put up a fight. Every time I close my eyes,
14 I can see her fighting," there's a sentence
15 after that in the transcript, isn't there?
16 Do you know?

17 "Normally I would have been
18 there and this wouldn't have happened."
19 Didn't he say that after that comment?

20 A Sure. He said a lot of things.

21 Q And when he said "it got out of
22 hand," the question or statement that you
23 made to him immediately prior thereto was,
24 "The truth in this situation may be that
25 somebody actually didn't intend to do it and

McHale -- Recross

1 then got stupid."

2 And he said, "It got out of
3 hand."

4 At that point did you ask, "What
5 got out of hand?"

6 A Absolutely not.

7 Q Right. You understood what his
8 comment was, was that he was agreeing with
9 you, was that "as if it got out of hand"?

10 A I understood exactly what, that
11 he slipped up.

12 Q He slipped up?

13 A Sure he did.

14 Q Okay. So after that did you
15 interrogate him? Would that have been a
16 good precursor to start interrogating him?

17 A I told you I was not going to
18 interrogate him. That's all. I'm gathering
19 information for later. That's one of them
20 major slips up. He knew it and I knew it.
21 That's why later on he did confess,
22 eventually.

23 Q You then say right after that,
24 "Right. Like you say, it could have been a
25 sexual thing. It could have been just a

McHale -- Recross

1 fight. It could have been an attempted
2 robbery. It could have been."

3 That was in the context of his
4 statement, "It could have gotten out of
5 hand"?

6 A Sure. I offered up that it
7 could have been robbery-related. He's the
8 one who offered up that he thought it was
9 rape. You know, I mean how do you go from
10 one to the other like that? Well, there's,
11 there's, there's reasons for that and that's
12 one of those red flags we would look at.
13 Like I said many, many, many red flags
14 during this entire hour-and-a-half.

15 Q Major McHale, he told you that
16 he had looked at photos of the crime scene
17 that the police had showed him, didn't he?

18 A He said that they had showed him
19 a photo.

20 Q No. He said that he had looked
21 at the photos not, not after any confession,
22 but the day before he said looked at photos,
23 didn't he?

24 A I know he said he looked at a
25 photo.

McHale -- Recross

1 Q Okay. Well, and you know of
2 your own knowledge, I'm sure you have, being
3 a part of this case, that one of those
4 photos shows her with her zipper down on her
5 jeans as she lay prostate, prostrate and
6 dead at the scene?

7 A No. I, I haven't ever looked at
8 these photos. I haven't been to the crime
9 scene. That's not necessary.

10 Q And that it showed that her bra
11 was ripped off and her shirt was ripped off?

12 A I already said --

13 Q All right.

14 A -- I haven't seen them.

15 MR. KULP: Okay. Thank you.

16 THE COURT: All right. You can
17 come down.

18 THE WITNESS: Thank you.

19 THE COURT: Call your next
20 witness.

21 MR. DURANT: George Tetanich.

22

23

24

25

Tetanich -- Direct

1

2

G E O R G E W I L L I A M

3

T E T A I C H, having been called as a

4

witness in the presence of the jury, is

5

duly sworn and testifies as follows:

6

DIRECT EXAMINATION BY MR.

7

DURANT:

8

Q Where are you employed, sir?

9

A North Charleston Police

10

Department.

11

Q And how long have you been with

12

North Charleston Police Department?

13

A Little over twenty-one years.

14

Q And what is your -- what are

15

your -- is your current rank and your

16

duties?

17

A I'm administrative lieutenant in

18

charge of communications, training, the

19

evidence room, and duty officers' positions.

20

Q And what were your duties in

21

March of 1997?

22

A I was the sergeant in the

23

detective division in charge of a squad of

24

detectives.

25

Q Okay. And in that capacity did

Tetanich -- Direct

1 you have an opportunity to participate in
2 the investigation of the arson and the
3 murder at the Mill Inn in March of 1997?

4 A Yes, sir, I did.

5 Q When did you go to that scene
6 and how did you happen to get there?

7 A I was notified early Wednesday
8 morning or fresh and early Thursday morning
9 that there'd been an arson or there'd been a
10 fire and they found a body at the Mill Inn
11 and to respond. And that was about four or
12 five o'clock in the morning.

13 And I responded out to the scene
14 and made contact with several other
15 detectives out there and investigators
16 trying to determine what had happened.

17 Q And what did you do upon
18 arriving at the scene?

19 A We got with the other
20 investigators. Talked to Chief Norris, our
21 arson investigator. Made sure it was safe
22 to go into the building and, and look. And
23 we determined that there was a female inside
24 that had succumbed to the fire, and we
25 started our investigation.

Tetanich -- Direct

1 Q Did you happen to have any
2 contact with the defendant, Wes Myers, there
3 that morning?

4 A Yes. Shortly after 6:30,
5 somewhere around 6:30, 6:40, I observed
6 Mr. Myers come down Montague Avenue. He
7 approached me and we had a conversation
8 about the Mill Inn. About the fire at the
9 Mill Inn.

10 Mr. Myers had wanted to know if
11 anybody'd been found in there and I told him
12 that we did have a deceased person in there.
13 And he said that his girlfriend frequently,
14 she worked there and she frequently spent
15 the night there and that it might be her.
16 And he got real upset, fell down on the
17 ground, crying, and, and really, really
18 upset.

19 He then, about thirty seconds
20 later, he got back up and he started telling
21 me about the problems that his girlfriend
22 had told him and that they had told the
23 owner about with the electric in that
24 building, that the owner was aware that
25 there was electrical problems, they'd

Tetanich -- Direct

1 smelled wires burning and that the owner had
2 done nothing about it, and that that was
3 probably what caused the fire.

4 Q Was there anything about his
5 reaction that caused you to be suspicious?

6 A Yes. Like I said before when he
7 fell down on the ground, totally upset and,
8 and I mean really boo-hooing, it seemed like
9 a, a pretty typical reaction to someone
10 who'd just found out that there was a dead
11 person in there that was probably his girl-
12 friend, and but it didn't last. It was only
13 like maybe thirty seconds and he was back
14 up, explaining to me in a calm voice about
15 the fire and how it could start and the
16 origins of it and I thought that was a
17 little suspicious that he wouldn't still be
18 upset in that short a period of time and
19 then he was suggesting ways that the fire
20 could have started in an accidental way.

21 Q Now, did you relay your concerns
22 to anyone?

23 A Yes, I did. I, I left him and
24 went and talked to Lieutenant Cumbee who is
25 the, in charge of the detective division at

Tetanich -- Direct

1 the time. He was at the scene. And I
2 explained to him that Mr. Myers was over
3 there, he was her girl -- the girl's
4 boyfriend and that he, I told him what
5 happened, and I said it was suspicious to me
6 and that he was probably somebody we needed
7 to look at.

8 Q Did you have any other
9 involvement with the defendant on that day?

10 A On that day, no, sir.

11 Q I believe you spent the rest of
12 that day following up some leads with regard
13 to the suspect Dana Chaples. Is that
14 correct?

15 A Yes, sir, I did.

16 Q You went to Mr. Chapels' home
17 that day?

18 A Yes. I'd sent Detective Roper
19 to interview Mr. Chapels. His name had come
20 up from some of the witnesses at the scene
21 as being in that area the night before or
22 early that Thursday morning.

23 Mr. Roper had went and talked to
24 Mr. Chapels and come back and he hadn't
25 gotten a written statement from Mr. Chapels,

Tetanich -- Direct

1 so I went back with Detective Roper and
2 talked to Mr. Chapels and, and accomplished
3 that.

4 Q Okay. Did he also consent to,
5 at that time, to letting you all have the
6 clothes that he was wearing the previous
7 night?

8 A I can't recall for sure.

9 Q Moving onto Friday, which would
10 be March the fourteenth, 1997, did you have
11 an opportunity to run into the defendant,
12 Wes Myers, again that day?

13 A Yes, sir. He came back up to
14 the police department at the headquarters,
15 detective division on Friday morning.

16 Q Do you know why he came there?

17 A He wanted to help in the
18 investigation and he came back up there.

19 Q And do you know what time it was
20 when he got there?

21 A It was sometime in the morning.
22 Around nine or ten o'clock.

23 Q Did you see him that early in
24 the morning or did you see him later in the
25 day?

Tetanich -- Direct

1 A I know it was around lunchtime
2 because we were just getting, I think we
3 were just getting ready to go to lunch.

4 Q Where did you actually see him?

5 A In the detective division.

6 Q And where specifically in the --

7 A In the bay area.

8 Q Was there ever a time when he
9 was in Lieutenant Cumbee's office?

10 A Yes, he was.

11 Q And you say that was shortly
12 before lunch?

13 A Correct.

14 Q What went on in Lieutenant
15 Cumbee -- who, first of all, who all was
16 there?

17 A It was me, Lieutenant Cumbee,
18 Detective Clayton, and I can't remember. I
19 think Benjie Norris was there or he came in
20 later.

21 Q And the defendant was there, of
22 course?

23 A Right.

24 Q What were you all talking about?

25 A We were talking about the case

Tetanich -- Direct

1 and, and a, what we had found at the, at the
2 crime scene in the defendant or, correction,
3 the victim's hand. There'd been a hair
4 recovered and the conversation was, you
5 know, she had this hair in her hand and it
6 hadn't been destroyed by the fire and that
7 probably whoever's hair that was, was going
8 to be the person that killed her.

9 And he agreed with that
10 statement, that that would indeed probably
11 be the one who killed her.

12 Q Were there any discussions
13 concerning whether or not you all believed
14 that the, the killer knew the victim or not?

15 A Yes. We had discussed that
16 because there was really no signs of forced
17 entry and that the fire department had found
18 the, one of the doors unlocked to the
19 building, and the rear door to the Mill Inn
20 had a, had a two-by-four that slid down over
21 two braces from the inside that kind of
22 secured that door, and that two-by-four was
23 off and laying up against the wall so the
24 back door was open for access and this, this
25 side door on the front side of the building

Tetanich -- Direct

1 was opened but that was the door that
2 normally wasn't open. That was, that was
3 the door that was normally shut. They have
4 two set of doors on that side of the
5 building that faces Montague Avenue and
6 usually the patrons use the door that's
7 closer up or closer to Virginia Avenue and
8 closer to the bar area. That's the door
9 they usually use, and that one was still
10 locked.

11 Q Did you all also discuss at that
12 time whether he'd be willing to go talk to
13 Major McHale?

14 A I think they discussed that with
15 him. I don't recall the conversation about
16 that particular trip.

17 Q At any time had you all summoned
18 him to the police department?

19 A No.

20 Q Was he under arrest while he was
21 there?

22 A No, sir.

23 Q You all were just sitting in
24 Lieutenant Cumbee's office talking?

25 A Correct.

Tetanich -- Direct

1500

1 Q Now, was the -- do you remember
2 him being shown any pictures while he was in
3 Lieutenant Cumbee's office?

4 A No. There, there probably was
5 some pictures on Lieutenant Cumbee's desk,
6 but I don't remember anybody showing him any
7 particular pictures that day.

8 Q Do you know that there were
9 crime scene photographs in Lieutenant
10 Cumbee's office that day?

11 A You're correct.

12 Q Did you all make any effort to
13 interrogate him at that time or interview
14 him or ask him any questions about what he
15 had been doing at the time of the murder or
16 anything like that?

17 A No, sir. Not at that time. He,
18 he just wanted to cooperate and help in any
19 way he could. He was genuinely outgoing,
20 concerned, and, and wanting to find the
21 person that was responsible for this, and he
22 said that several times.

23 Q Now, how long did this
24 conversation last?

25 A I'd estimate probably a

Tetanich -- Direct

1 half-hour, maybe an hour at the most."

2 Q And what happened after you all
3 had this conversation?

4 A We were going to go eat lunch
5 and we asked the defendant if he would like
6 to go eat lunch with us, being, us being
7 myself, Lieutenant Cumbee, and some of the
8 investigators that were out working the
9 case. We were going to go eat lunch at the
10 Olive Garden. And we asked him if he wanted
11 to come with us. And he said no. So we
12 just left him at the detective division and
13 went and ate lunch.

14 Q Did you all tell him that he had
15 to stay there until you all got back or
16 anything?

17 A No, sir.

18 Q And what happened while you all
19 were at the Olive Garden?

20 A Well, we went to the Olive
21 Garden, had lunch. And we received a phone
22 call from crime scene Investigator Hallman.
23 Actually I didn't receive the phone call,
24 Lieutenant Cumbee did, at the table while we
25 were eating lunch, and --

1 Q Was this at the time that
2 Officer Hallman had been up in Columbia with
3 Joe Powell with the hair?

4 A Correct. He had, he had left
5 and went to Columbia with the hair that we'd
6 found and some head hair from the defendant
7 for comparison, and while we were at lunch
8 he called Lieutenant Cumbee back and told
9 him that -- well, Lieutenant Cumbee related
10 to us that it was a match, that the hair was
11 a match to Wes Myers or Les Myers.

12 Q Now, when you got back to
13 headquarters after lunch that day, did you
14 have any further involvement with the
15 defendant? In other words, did you, did you
16 go with Detective Clayton when he took the
17 defendant over to see Major McHale?

18 A No, sir, I didn't.

19 Q And they went over there
20 sometime after you all got back from lunch?

21 A Correct.

22 Q Now, were you still present
23 when, when the defendant and
24 Detective Clayton got back from Major
25 McHale's office?

Tetanich -- Direct

1 A Yes, I was.

2 Q And what happened relative to
3 the investigation in the case at that time?

4 A Well, we had discussed
5 interviewing him at the time and presenting
6 him with this evidence to see how he would
7 react, but because of Lieutenant McHale's
8 expertise in interviewing, he had told him
9 that he wouldn't be a good subject to
10 interview today because of his physical
11 condition, that he had been drinking or was
12 intoxicated on some kind of drugs or
13 something, where he wouldn't be a good
14 subject for interview.

15 So we consulted, and finally
16 decided that we wouldn't interview him
17 today, that we would let him go home, get a
18 good night's sleep, and pick him up in the
19 morning and bring him in and then interview
20 him tomorrow.

21 Q And who did you have this
22 discussion with, if you remember?

23 A It was Investigator Clayton,
24 myself. Lieutenant -- I think Lieutenant
25 Cumbee wasn't there. He was working a, a

Tetanich -- Direct

1 part-time job, but I called him and told him
2 and I also discussed it with the chief.

3 Excuse me.

4 Q That would be Chief Caldwell?

5 A Yes, sir. And he, he concurred
6 that we should wait.

7 Q Now, you did -- were there
8 also -- were there also any discussions on
9 Friday as to how you all would approach him
10 regarding this information you all received
11 about the hair?

12 A We had planned to set up an
13 interview with him and just generally
14 discuss background information and, and
15 information pertaining to his and her
16 relationship, and then Lieutenant Cumbee
17 would come in later and, you know, have a
18 conversation with him and then go out and
19 come back and say that he had got a phone
20 call from S. L. E. D. and that the hair was
21 a match.

22 Q Because that was discussed the
23 previous evening?

24 A Right.

25 Q Friday evening.

Tetanich -- Direct

1 Did you all make any effort to
2 question him after he got back from McHale's
3 office or the rest of that evening, Friday?

4 A No. We, we -- excuse me. A
5 little later we left with him and went to
6 his house and executed a consent to search
7 and got permission from his parents who he
8 lived with to search the rest of the house.

9 Q Okay. And I believe you went
10 out there when he was -- left that evening?

11 A Yes, sir.

12 Q And participated in the search
13 at the parents' home?

14 A Yes, sir.

15 Q And he'd also agreed to let you
16 all look in his truck. Is that correct?

17 A Yeah. He had driven the truck
18 there that day and given consent to go
19 through the truck and look for any evidence
20 in there. I think, I can't remember which
21 investigator was processing the truck. I
22 think it was Dusty Poole.

23 Q Now, do you recall what time you
24 all left him at his house on Friday night?

25 A I want to think it was like

Tetanich -- Direct

1 between nine and ten o'clock.

2 Q And when you all left him did
3 you all make arrangements to meet with him
4 the next morning?

5 A Yeah. I'm sorry. Detective
6 Clayton was going to pick him up the next
7 morning because his truck was still at the
8 police department. They were still going
9 through his truck. And Detective Clayton
10 said he would pick him up in the morning and
11 bring him in. And in fact we told Denver to
12 go ahead and pick him up and go take him to
13 breakfast and make sure he had a good
14 stomach, you know, good food in his stomach
15 and all that, and then come on to the
16 station. And I was going to meet him there
17 around ten o'clock.

18 Q Now, you went in the next
19 morning?

20 A Yes, sir.

21 Q And was the defendant there when
22 you arrived?

23 A Excuse me. They were both
24 there. Detective Clayton and the defendant.

25 Q And what did you do after you

Tetanich -- Direct

1 arrived?

2 A We proceeded to the -- there's a
3 small interview room there at the detective
4 division we use to conduct interviews in.
5 We went over there. We sat down and
6 discussed what we were going to do, and then
7 I -- we advised Mr. Myers of his rights, and
8 we started interviewing him.

9 Q Now, at the time did he appear
10 to be fatigued?

11 A No, sir. He was clear-eyed and
12 appeared to be normal to me.

13 Q Did he appear to be under the
14 influence of anything?

15 A No, sir.

16 Q Did he appear to comprehend what
17 was going on?

18 A He knew what was going on.

19 Q Was he still being cooperative
20 with you?

21 A Yeah.

22 Q Now, how did you go about
23 advising him of his rights?

24 A Well, what we got is we have a
25 standard rights form that we give to all the

Tetanich -- Direct

1 defendants before we question them about a
2 crime. That's our advisement of rights
3 form. And we fill that out and go down the
4 rights to him as we read them to him.

5 (Whereupon, marked for
6 identification was State's Exhibit No.
7 23, advisement of rights form.)

8 Q Hand you what's been marked as
9 State's exhibit number twenty-three and ask
10 if you can identify that document?

11 A Yes, sir. This is the North
12 Charleston Police Department advisement of
13 constitutional rights form that we
14 accomplished for Mr. Myers.

15 Q And if you would, just tell the
16 jury how you went about advising him of his
17 rights.

18 A Okay. On this, on this paper we
19 have the top section is just information
20 about the defendant who's being questioned.
21 His name, date of birth, age, what grade he
22 completed in school. And we put his name
23 and say that you've been advised by
24 detective whoever. In this case it's my
25 name, Detective Tetanich of the North

Tetanich -- Direct

1 Charleston Police Department that, and then
2 we read his individual rights under Miranda.

3 Q And, and how far had he gone in
4 school, sir?

5 A I'm sorry. Thirteen, thirteen
6 years he'd told us, which is one year of
7 college.

8 So every time I read a defendant
9 his rights I try to do it the same way so
10 that later on I can testify as to how I did
11 it. And what we do, I'll read each right
12 and have him initial beside that right,
13 asking him if he understands his rights, and
14 he'll say yes and I'll say well, then
15 initial beside it. Then I'll read him the
16 next right. Initial beside it. All the way
17 down, the same process.

18 At the end it's got, "I fully
19 understand each of these rights as explained
20 to me," and then I ask him again do you
21 understand your rights and he says yes, and
22 then he'll sign at the bottom. I'll sign at
23 the bottom. And a witness will sign at the
24 bottom. It's dated and then --

25 Q And did you do that in this

Tetanich -- Direct

1 case?

2 A Yes.

3 Q And did you write -- read him
4 each right as outlined on that paper?

5 A Correct. And he initialled
6 beside each right that he understood that
7 individual right.

8 Q And he also signed an
9 acknowledgement underneath that, that he
10 understood the rights?

11 A Yes. And in fact when we, when
12 we were filling this form out I'd actually
13 made a mistake on the advisement of rights
14 form. I had put the date at 3/14/97 and he
15 corrected me and said no, it's 3/15. Excuse
16 me.

17 And I said you're right. And I
18 crossed out 3/14 and I put 3/15/97 under
19 that date and I had Mr. Myers initial that
20 because if we make any corrections on this
21 form, we make sure that the defendant
22 initials it so there wouldn't be a question
23 later on that we were changing stuff around.

24 So he initialled under the date
25 on the bottom the, the correction that I had

Tetanich -- Direct

1 to make. Then after that, after he
2 understands his rights, the top section,
3 then we ask him, "Having these rights in
4 mind, do you wish to waive these rights and
5 answer questions concerning the charge of,"
6 and in that blank we'll put whatever charge
7 he's going to be charged with, whatever
8 crime we think he committed. In this case
9 we put the charge of murder.

10 "No threats, force, or promises
11 of any kind have been made to me by anyone
12 to cause me to waive these rights and/or to
13 answer questions." Now that's, that's kind
14 of a fancy statement for "you don't have to
15 tell us nothing." But what I tell them is,
16 that means if you want to talk to us about
17 this crime, then you have to sign this
18 document. If you don't want to talk to us,
19 don't sign this document so that they
20 understand that what that means is you don't
21 have to talk to us.

22 A lot of times it gets read kind
23 of fast and they don't quite understand all
24 them words, so I try to make it easy for
25 them by saying if you want to talk to us

Tetanich -- Direct

1 about this crime, I need you to sign right
2 here, so that he understands this is what
3 he's signing. He's signing to say that hey,
4 I'm going to talk to these people about this
5 crime. I know what I'm doing. I'm signing.

6 And he signed it. Then I
7 initialled -- I sign as a witness and then
8 another witness will sign by my name. Then
9 we date it and mark the time.

10 Q And he signed that, the -- both
11 the acknowledgement and the waiver. Is that
12 correct?

13 A Correct.

14 Q That is his signature on exhibit
15 number twenty-three?

16 A Yes, sir.

17 Q And that is your, your
18 signatures and Detective Clayton's
19 signatures as well.

20 A Yes.

21 Q Is that correct?

22 A Yes, sir.

23 MR. DURANT: We would offer
24 State's twenty-three into evidence at
25 this time, your Honor.

Tetanich -- Direct

1 THE COURT: Any objection?

2 MR. KULP: No. As to that

3 document, no, sir.

4 (Whereupon, entered into
5 evidence was State's Exhibit No. 23,
6 advisement of rights form.)

7 Q Oh. One other question. What
8 time, what time did you advise him of his
9 rights and what time did he acknowledge?

10 A Okay. He was advised of his
11 rights at 10:20 in the morning, and
12 acknowledged his rights and stated that he
13 would talk to us at 10:21.

14 Q And that was Saturday morning.
15 Correct?

16 A Yes, sir.

17 Q And after you advised him of his
18 rights, sir, how did the interview proceed
19 from that point?

20 A Well, we started interviewing
21 him, basically getting some background
22 information about him, his girlfriend, how
23 they been getting along. If he was, you
24 know, aware of any kind of problems they
25 were having. Jealousy. Boyfriends. Things

Tetanich -- Direct

1 like that.

2 Q Did he indicate to you that he
3 was, was jealous of anyone?

4 A Yes, he did. And he
5 specifically mentioned Alan White, who's a
6 co-worker of -- that worked with the victim.

7 Q Did you discuss his relationship
8 with Teresa Haught?

9 A You mean Alan White's
10 relationship?

11 Q No. The defendant's
12 relationship --

13 A Yes.

14 Q -- with Teresa?

15 A He said, he said they were
16 boyfriend and girlfriend.

17 Q I don't want any details but,
18 but what was the, the, the gist of your
19 conversation concerning their relationship?

20 A That it was, it was kind of --
21 well, I call it tumultuous. They, they
22 often had confrontations, fought a lot. You
23 know, disagreements, arguments, stuff like
24 that.

25 Q Did you discuss his whereabouts

Tetanich -- Direct

1 at the time late -- well, on Wednesday and
2 Thursday? That would be March twelfth and
3 thirteenth.

4 A We, we asked him where, where he
5 had been. He said he'd been in his mother's
6 house. Later on, afterwards, then he, he
7 told us that he had left his mother's house
8 and come to the bar.

9 Q Well, that was later on down the
10 road?

11 A Right.

12 Q I mean you discussed, you
13 discussed basically his whereabouts all day
14 Wednesday and all day Thursday, did you not?

15 A I don't think I -- I don't think
16 I asked him about all day Thursday, but --

17 Q Well, I mean --

18 A Wednesday. Wednesday he was --

19 Q All day Wednesday and up
20 through.

21 A Right. Wednesday night he was,
22 he was at home.

23 Q And you'd also asked him what he
24 was doing before then on Wednesday. Is that
25 correct? During the day Wednesday and --

Tetanich -- Direct

1 A Correct.

2 Q At this point had you all ever
3 confronted him about anything?

4 A We asked him about Alan White.
5 We asked him about the, the, the writing on
6 the windshield, if he'd seen the writing
7 where Alan White had written on the
8 windshield of her car, kind of a love note
9 in the dew on the windshield of the victim's
10 car.

11 Q Are you talking -- I'm talking
12 about before Mr. Cumbee got there. I'm
13 talking about when you and Mr. Clayton
14 talked to him.

15 A We asked him a lot of, a lot of
16 things about the relationship between him
17 and her. They had mentioned times that,
18 that they had got into different arguments
19 and stuff like that.

20 Q So basically what you discussed
21 was his relationship, where he'd been at the
22 time of the crime. Correct?

23 A Right.

24 Q And his jealousy?

25 A His jealousy. That, that was a

Tetanich -- Direct

1 big issue with him. He was extremely
2 jealous.

3 Q At any time during this
4 interview when you and Mr. Clayton were in
5 there did say, "Wes, we know you killed
6 her"?

7 A No.

8 Q Why weren't you doing that, sir?

9 A Because we knew that when
10 Lieutenant Cumbee got there, that's when we
11 were going to present the hair and see what
12 kind of reaction we could get.

13 Q Okay. Now, what time did
14 Lieutenant Cumbee get to the office?

15 A I want to say it was around
16 lunchtime. Around twelve o'clock.

17 Q And by the way, in this
18 interview room, in the interview room what,
19 what's that like?

20 A It's a --

21 Q What kind of a room is it?
22 Where is it located?

23 A It's, the interview room is
24 basically, it's a, it's a kind of small
25 room. It's probably a little bit bigger

Tetanich -- Direct

1 than a bathroom. It's got a mirror in the
2 wall, a two-way mirror where a person can
3 sit on one side and observe what's going on
4 on the inside and it's got a door that
5 accesses to the detective bay where all the
6 detectives sit. And there's a table and
7 some chairs in there.

8 Q Okay. And at this time it was
9 just the three of you?

10 A Correct.

11 Q Now, what happened after
12 Lieutenant Cumbee got there?

13 A He called us out of the room
14 when he got there, and we all went into his
15 office. We talked a little bit about the
16 hair and how we had said that, you know,
17 whoever's hair it was had to be the killer
18 and, and --

19 Q And where is, where is Detective
20 Cumbee's office located?

21 A It's right there, not far from
22 the interview room. On the same floor with
23 the detective bay.

24 Q And is it just a regular kind of
25 office?

1 A It's an office, probably
2 twelve-by-twelve or that size, with glass
3 windows in the front.

4 Q There's no question but that
5 this time the defendant was a suspect, was
6 he?

7 A Oh, yeah.

8 Q Was he cuffed or anything?

9 A No, sir.

10 Q Did you all at any time when you
11 all had him in the interview room, did you
12 all promise him or threaten or offered
13 leniency to him or do anything to induce him
14 to talk to you?

15 A No.

16 Q And you never accused him of
17 having committed this murder. Correct?

18 A No.

19 Q And he in fact did not admit
20 having committed it?

21 A No.

22 Q Is that true?

23 A That's correct.

24 Q Now, tell us what happened when
25 you got into Lieutenant Cumbee's office.

Tetanich -- Direct

1 A Well, we went in Lieutenant
2 Cumbee's office and basically sat down
3 around his desk. I stood up. I think Lee
4 sat down and the defendant sat down.
5 Lieutenant Cumbee sat on the other side of
6 the desk.

7 And we talked about the hair
8 again, and basically restating our, our
9 belief that we should, you know, whoever's
10 hair this is, is going to be the person that
11 killed her. And Mr. Myers was agreeing with
12 that statement.

13 And we -- Mr. Cumbee left.
14 Lieutenant Cumbee left, and we stood in
15 there for about a minute or two and he comes
16 back and he says, "Well, I got some bad
17 news. That, Wes, it looks like, you know,
18 this hair is a, is a match to your hair."

19 And he just starts breaking
20 down, you know. Puts his head in his hands.
21 You know, crying and going, "No, no, no.
22 You know. I must have, no. It can't be,
23 you know."

24 And he went on from there to "I
25 must have blacked out. You know. How could

Tetanich -- Direct

1 I do this?"

2 And he was -- now he was
3 genuinely upset. Now, he was crying. He
4 was, he was upset now.

5 Q Was his reaction at this point
6 different from the reaction you had
7 encountered at the scene?

8 A Correct.

9 Q On March thirteen?

10 A Yeah. He was, he was definitely
11 upset now because now he, he realized that,
12 that the proof was there that he had, you
13 know, and he himself had said that whoever's
14 hair that is, is going to be the one that
15 killed her. And now when the hair came back
16 to his head or was a match to the hair from
17 his head, then he knew that we weren't just
18 talking to him to be social, sociable now,
19 that we thought he had done it. And we were
20 going to get the confession from him, and he
21 just continued to go on from there, and
22 slowly went downhill and started admitting
23 things and we went on to interviewing him,
24 finishing the interview with him.

25 Q And I believe at some point

Tetanich -- Direct

1 after he acknowledged having done it, a
2 picture was shown to him. Is that correct?

3 A Yes. Lieutenant Cumbee showed
4 him a picture of the victim, one photograph
5 I think from the, from the crime scene.

6 And, and said something to the, to the
7 defendant about apologizing to Teresa or
8 something like that, where -- and he did.
9 He apologized. He was crying. And he was,
10 I mean tears were just flowing. And he
11 said, "I'm sorry. I'm sorry, Teresa. I'm
12 sorry. I didn't mean to."

13 Q After he apologized to this
14 particular picture, did you -- how did the
15 interview proceed or interrogation proceed
16 from that point?

17 A Well, we left Lieutenant
18 Cumbee's office and we went back to --

19 Q Did you get any details about
20 what had happened at that time?

21 A I'm trying to think if we, we
22 got any details in there or if we went back
23 to the interview room and got the details.
24 But I know that me and Detective Clayton
25 continued interviewing him and got and asked

Tetanich -- Direct

1 him exactly what happened, what transpired
2 that night.

3 Q And what did he tell you?

4 A He said that he had left his
5 mother's house about two o'clock to go check
6 on his girlfriend.

7 Q Do you recall, do you recall how
8 he left from his mother's house?

9 A Yeah. He said he went outside
10 and got into his truck, and let it back down
11 the driveway -- they have a hill, a little
12 hill there -- without cranking it up and,
13 and then drove on off to the Mill Inn.

14 He said that once he got there,
15 he saw the writing in the dew on the
16 windshield of the victim's car out in front
17 of the Mill Inn near where he parked. Then
18 he went up to the door and started beating
19 on the door for Teresa to let him in because
20 he knew Teresa was sleeping inside.

21 Q And when you say the writing on
22 the vehicle, you're talking about the "love
23 you, baby; do me later"?

24 A Right. From Alan White. Right.
25 So he was beating on the door for about five

Tetanich -- Direct

1 or ten minutes before the victim came to the
2 door. When the victim came to the door, her
3 pants were unbuttoned at the top. And he
4 came in. They started talking. He
5 challenged her about the note on the
6 windshield. They got into an argument about
7 her wanting to break up with him. And he
8 told her --

9 Q Did he say anything about seeing
10 a note to her from Alan on the inside of the
11 bar?

12 A Yes. He said that, he said that
13 they went over to the bar. There was a pink
14 note on the bar that he read that was from
15 Alan White. And it was similar to the, to
16 the one on the, on the outside. It was like
17 a love note. And that he got infuriated and
18 asked her about the note.

19 And that's when she was saying
20 that she wanted to break up with him and all
21 that. And then he just went into a rage, he
22 said, and picked up a -- she pushed him or
23 something and grabbed the tip jar and he
24 grabbed the tip jar way from her and hit her
25 with it and they went down on the floor

Tetanich -- Direct

1 together. And then he said he just wanted
2 to kill himself, and went around collecting
3 stuff up to build a fire behind the bar, and
4 got a, like the "closed" sign and some other
5 papers together and lit a match. And then
6 he went around and held Teresa for a while,
7 and was sitting there waiting to die with
8 Teresa and the smoke got so bad that he just
9 had to, fear of flight you know, die or
10 flight, so he jumps up and run out. And he
11 ran out the back door, when he took the bar
12 off the door and went out the back door.

13 Q Did he say what door that she
14 had let him in?

15 A He said the, I think he said the
16 front door or the main -- I don't know
17 exactly which door, but it was on the side
18 of Montague Avenue.

19 Q Did you all have any information
20 about this note at the time?

21 A No.

22 Q Did -- were you asked to ever
23 follow up on this note?

24 A Yeah. We -- I didn't know
25 anything about a note. And I asked

Tetanich -- Direct

1 Lieutenant Cumbee, I told him that he was
2 talking about a note, a pink note, and I
3 hadn't seen any pink note in evidence and
4 didn't know anything about a pink note. I
5 knew about the one on the windshield but I
6 didn't know about a pink note.

7 And he told me to check with
8 Hallman to see if he had recovered it from
9 the crime scene or if he'd recovered a
10 charred paper off the bar or something like
11 that that would indicate, you know, some
12 kind of message or note or something.

13 Q Did you --

14 A And later on, I think later on
15 that week, Monday or Tuesday, I saw Hallman
16 and I asked him and he said he hadn't
17 recovered anything like that. So it either
18 burned up or he took it, one or the other.

19 Q Did you ever make any effort to,
20 to check with any of the witnesses,
21 bartenders, Alan White, anything like
22 that --

23 A I didn't --

24 Q Concerning the --

25 A No, sir. I didn't myself, but I

Tetanich -- Direct

1 think they did later on, and confirmed that
2 he had written that note.

3 Q Now, did you all take a written
4 statement from him at that time?

5 A No. We were still interviewing
6 him, getting all the facts down before we
7 started writing. We had asked him about her
8 purse which was missing. Excuse me. Was
9 missing from the Mill Inn.

10 Initially he told us that the
11 purse he had stuck behind the seat of his
12 truck, but it wasn't discovered during the
13 search of the truck so we knew it wasn't in
14 the truck, in his truck.

15 So then he changed his story and
16 said that he had put it in a hollow tree up
17 at Westvaco Park off Virginia Avenue where
18 they had first met or had went out there and
19 first place they'd made love or something
20 like that. So we took him from the police
21 department, drove out to the crime scene,
22 out to the Mill Inn. He showed us where he
23 parked and showed us the door that he come
24 out of and all that and then --

25 Q Did you all actually go inside

Tetanich -- Direct

1 the Mill Inn?

2 A No. It was boarded up still.

3 It was dangerous. It was all -- it'd been

4 burned pretty good. But and then we went

5 down [REDACTED] The park is not too

6 far from the Mill Inn. And we got out at

7 the park and we asked him to show us which

8 tree he was talking about.

9 And he walked over to a hollow

10 tree, and we went over there and we looked

11 and we looked inside the tree. We looked

12 around the tree. We looked all over. You

13 know, in the garbage cans, around the park

14 and stuff, and we didn't find any purse.

15 So I think later after that, he

16 said that he had stuck it down between the

17 wall at his momma's house in the bed and

18 that we had went back later on to his mom's

19 house and looked again in his room and

20 didn't find the purse again, so I don't know

21 what happened to the purse.

22 Then we went back to the police

23 department where we started trying to get

24 this all together and written into a

25 statement. Detective Clayton actually wrote

Tetanich -- Direct

1 the statement.

2 Q And at that time you all took a
3 written statement?

4 A Correct.

5 Q And you were there while that
6 was being done?

7 A Yes, sir.

8 Q And who -- you said Detective
9 Clayton was writing the statement?

10 A Yes, sir. We always give or I
11 always give my people I'm talking to the
12 option of whether they want to write their
13 own statement or if they want me to write it
14 for them. And most of the time they want
15 you to write it for them. They just don't
16 want to write the statement.

17 Q And so the statement -- was the
18 statement reduced to writing?

19 A Yes, it was.

20 Q And did he sign the statement?

21 A Yes, he did.

22 Q And what happened after you all
23 obtained the written statement?

24 A We talked with Lieutenant Cumbee
25 again and he explained to me that the news

Tetanich -- Direct

1 media was going to be there, that they were
2 aware that we had made an arrest in the
3 murder. They'd been calling and calling and
4 calling for the last three days anyway. But
5 he had notified them that we had made an
6 arrest in the, in the murder and that they
7 were going to be outside when we came out
8 with Wes.

9 So we told, we told Mr. Myers
10 that. And when we told him that there
11 was -- that reporters were going to be
12 outside, he said that he wanted to make a
13 statement to them. And I told him and --
14 well, Lieutenant Cumbee told him first. He
15 said, "No, you don't have to talk to them."
16 He said, "They're just -- they're going to
17 be there and they're going to be asking you
18 questions like reporters always do, sticking
19 microphones in your face, but you don't have
20 to say anything."

21 And he said, "Well, I want to
22 tell them. I want to tell the world how
23 sorry I am."

24 And I told him I said man, I
25 said I wouldn't do that. And --

Tetanich -- Direct

1 Q Did he also indicate that he
2 wanted to talk to anybody else?

3 A Yes. He had asked to call the
4 victim's mother and apologize to her. He
5 wanted to apologize to Dixie and he wanted
6 to talk --

7 Q Did he also -- okay.

8 A And he wanted to talk to his own
9 mother so she could get his little boy away
10 from the T. V. when the announcement was on.

11 Q And did he call his mom, too?

12 A I believe so, yes.

13 Q But you weren't present?

14 A I wasn't present when he called
15 his mom.

16 Q Okay. And were you present when
17 he talked to Miss Justice, the victim's
18 mother?

19 A No. I wasn't in the room when
20 he talked to the victim's mom.

21 Q Now, were you with him when he
22 was -- just before you all were taking,
23 ready to take him off to jail?

24 A Yes, sir. He wanted to smoke a
25 cigarette and he couldn't. There's nowhere

Tetanich -- Direct

1 to smoke in the building. It's a city
2 building. So being Saturday morning, myself
3 and Detective Clayton took him down the
4 front staircase outside to the front side of
5 the building, the side where the news media
6 was not.

7 And we allowed him to, to smoke
8 a cigarette and we stood there for about
9 five or six minutes while he smoked a
10 cigarette. Then we talked and I explained
11 to him again that he didn't have to talk to
12 the media. That if he wanted to, we could
13 stay right here. He -- that I would leave
14 Clayton with him and I would go get my car
15 which was parked around back which was why
16 the news media was back there because they
17 knew where my car was parked, and I'd bring
18 the car around front and we'd go to the
19 jail.

20 But he said, "No. I want to
21 talk to them." I says okay.

22 So he finished his cigarette.
23 We walked down the hallway, went out the
24 back door, and there was the media. There
25 was probably three or four cameras and

Tetanich -- Direct

1 reporters and all that and they were all
2 shouting questions and, you know, he stops.
3 Right there there's a little porch at the
4 back door and it drops down about four
5 inches to the pavement. And he, Wesley
6 stops right there at the, at the edge of
7 that porch. And I'm behind him. I think
8 Detective Clayton was beside him.

9 And the news media is shouting
10 questions. "Why'd you do it?" And, you
11 know, la-da-da-da-da, you know, and he just
12 went on to tell them that, you know, "Hey,
13 the police department treated me fair. They
14 treated me good. And I'm sorry for what I
15 did. And I hope Teresa will forgive me. I
16 hope her mother will forgive me." And just
17 went on, you know, apologizing to the world.

18 There was a lot of, a lot of
19 friends that him and Teresa had during this
20 investigation, a lot of people that
21 congregate in that one little area there on
22 East Montague in that bar that knew both of
23 them and knew both, knew both families well,
24 and he was just apologizing to everybody.

25 Q Excuse me. Could you please

Tetanich -- Direct

1 answer any questions that Mr. Kulp may have
2 for you.

3 A Yes, sir.

4 MR. KULP: Your Honor, may we
5 approach for a second?

6 THE COURT: Yes, sir. Any
7 questions you ask, either one of you
8 ask be subject to your prior
9 objections. Is that what you were
10 thinking now?

11 MR. KULP: Yes, sir. And
12 another matter as well.

13 THE COURT: Sure.

14 MR. KULP: Thank you.

15 (Whereupon, there was an
16 off-the-record bench conference.)

17 MR. KULP: Beg the Court's
18 indulgence for one second.

19 THE COURT: Any time you all
20 want to take a break be sure to let us
21 know because sometimes these are
22 lengthy examinations. You just let me
23 know, Madam Forelady.

24 MR. KULP: If we're going to
25 continue on, your Honor, could we take

Tetanich -- Direct

1 like five minutes for a restroom?

2 THE COURT: How long has it been
3 since we been to one? You young
4 fellows, something's wrong with you.

5 MR. KULP: That's -- that's --
6 it's his bladder, not mine.

7 THE COURT: Go ahead.

8 MR. KULP: Yes, sir.

9

10

11 CROSS-EXAMINATION BY MR. KULP:

12 Q Lieutenant Tetanich, you, you
13 formed a suspicion in this case pretty early
14 on that Mr. Myers was the killer, did you
15 not?

16 A Yes, I did.

17 Q But you didn't document that
18 until a good period of time after all the
19 reports were filed in the case and, and the
20 investigation was conducted -- completed.

21 Excuse me.

22 A Correct.

23 Q And in fact on 12/9/98, almost a
24 year and a half, a year and nine months
25 after the murder, you submitted to an

Tetanich -- Cross

1 interview by Detective Clayton and gave him
2 a statement about your impressions that
3 morning. Correct?

4 A Yeah. I think it was a
5 statement of what I did, yeah.

6 Q Okay. And it was witnessed and
7 signed and taken by Detective Clayton in the
8 case?

9 A Right.

10 Q Prior to the time that you spoke
11 with Mr. Myers at the scene did you know
12 him? Had you ever met him before?

13 A Never seen him before in my
14 life.

15 Q You had no exposure to how he
16 reacts to anything in his life?

17 A No, sir.

18 Q Now, when you made comments
19 about Mr. Myers -- well, let me go --
20 Mr. Myers questions about the faulty wiring,
21 do you ever know, did you ever check and
22 find out the history of the fire reports or
23 inspections at the Mill?

24 A I was told that, that it was
25 arson.

Tetanich -- Cross

1 Q Okay. I know that. But what
2 I'm telling -- asking you is had you ever
3 checked to find out if the status of the
4 fire safety of the building was, was ever
5 even an issue?

6 A No.

7 Q All right. And you knew that
8 Mr. Myers, because it was his girlfriend's
9 bar that she managed, was there all the
10 time?

11 A I'm assuming he'd be there.

12 Q Right. And therefore he would
13 have had knowledge about whether the lights
14 worked well or the wiring was good or
15 whatever. Correct?

16 A He should.

17 Q And at the time that you talked
18 to him early that morning, nobody really
19 knew then why the building burned down, did
20 they?

21 A Well, it was suspected arson
22 from the beginning.

23 Q Okay. But Mr. Norris, Chief
24 Norris had not concluded or had he concluded
25 that quickly --

Tetanich -- Cross

1 A No.

2 Q -- that it was arson?

3 A No. I don't know if he
4 concluded his investigation, but his
5 preliminary examination at the scene would
6 indicate there had been an arson, just from
7 the origins of the fire and stuff like that
8 to indicate, you know, if it was a wiring
9 problem or where, where the fire started,
10 the burn patterns and all that he would have
11 to testify to, but that's what I was told.
12 It was an arson.

13 Q Yes, sir. Do you remember the
14 exact time that morning on the thirteenth in
15 the area of the Mill that you had the
16 contact with Mr. Myers whereupon you
17 concluded that he was the killer in the
18 case?

19 A I didn't conclude he was the
20 killer.

21 Q You said -- I'm sorry. You said
22 suspect. Pardon me. I didn't mean to say
23 that. You suspected that he was the killer?

24 A I thought he was acting
25 strangely. Suspiciously.

Tetanich -- Cross

1 Q Okay.

2 A Around 6:30 that morning.

3 Q 6:30 that morning. So would it
4 be fair to say that probably the issue of
5 whether it was an arson or not at 6:30 a. m.
6 had not been resolved that quickly?

7 A I don't -- you know, I'm not
8 going to --

9 Q Well --

10 A -- pretend to be an arsonist.
11 I'm not an arson investigator so I'm not
12 going to -- I can't answer that question.

13 Q That's fine. But -- so the
14 answer is you don't know?

15 A Right.

16 Q Okay. But if it hadn't been
17 resolved by then, it might have been the
18 case that police were inquiring of people
19 that they would know, would know, might know
20 as to information about the cause of the
21 fire?

22 A I never asked him about the
23 fire.

24 Q Okay. I didn't ask you that but
25 I mean --

Tetanich -- Cross

1 A You said I might be inquiring
2 about what caused the fire, but I never
3 inquired about what caused the fire, and
4 that's what made me suspicious. I didn't
5 ask him if there was any problems at the
6 Mill Inn with the fire. I didn't ask him if
7 there was any electrical problems. I just
8 told him that there was woman in there. He
9 volunteered this information to me, which
10 kind of made me suspicious.

11 Q Had anyone including yourself
12 told him at the time what the concluded
13 cause of the fire was?

14 A No.

15 Q So nobody knew what the cause of
16 the fire was?

17 A No.

18 Q All right. Good.

19 A Or he didn't -- he didn't know.
20 That's correct.

21 Q All right. You said that he
22 said they had faulty wiring in the Mill Inn
23 and we had told them about it before. So --

24 A Yes.

25 Q -- considering that nobody

Tetanich -- Cross

1 exactly knew how the fire got caused, he did
2 say and give you information that he knew it
3 had faulty wiring and he'd made that comment
4 to someone before?

5 A Correct.

6 Q Okay. So that caused you
7 suspicion?

8 A Well, it was suspicious that, in
9 the way he told me. I'll put it like that.

10 Q Okay.

11 A He went from, he went from
12 upset, crying over the loss of his
13 girlfriend to immediately suggesting an idea
14 on how the fire started.

15 Q Well, there was a lot going on
16 that morning, at that early hour. Correct?

17 A Yeah. I understand. But I'm
18 talking about thirty seconds, you know.
19 It's, it's not a -- it was suspicious to me
20 being a police officer, detective for twelve
21 years, and it just -- it struck me as -- I
22 don't know how he's going to react, but I've
23 seen hundreds and thousands of victims.
24 I've covered hundreds of homicides and I've
25 seen victims and families in tears. That's

Tetanich -- Cross

1 my job as a cop. And his reaction was
2 strange to me.

3 Q But in fact it's the case, is it
4 not, that you interrupted or somebody
5 interrupted in a sense his reaction because
6 I don't think you mentioned this on direct,
7 but you needed his help with something,
8 didn't you?

9 A You talking about the
10 identification?

11 Q Yes, sir. Tell the ladies and
12 gentlemen of the jury about that.

13 A I don't recall if, if we had
14 asked him to identify the body. We may
15 have. We may have told him to stand by
16 until we recovered the body, to see if it
17 was her.

18 Q Okay.

19 A Or asked for a picture or
20 something.

21 Q Or asked for -- okay.

22 MR. KULP: Your Honor, we'd like
23 these marked for identification at this
24 time.

25 THE COURT: Sure.

Tetanich -- Cross

1 (Whereupon, marked for
2 identification were Defendant's Exhibit
3 Nos. 20, 21, and 22 for identification,
4 photographs.)

5 Q Let me hand you what's been
6 marked for identification as exhibits
7 twenty, twenty-one, and twenty-two which are
8 for the record small photographs, colored
9 photographs.

10 I hand them to you and ask if
11 you can identify those photographs or what's
12 depicted therein.

13 A I've never seen these
14 photographs before.

15 Q Okay. Thank you. Now, do you
16 recall asking Mr. Myers, you or -- did you
17 recall hearing anyone in your presence
18 direct him to go to his truck or ask him to
19 get a photograph of his girlfriend for
20 purposes of it being used to determine if in
21 fact it was Miss Haught who was in the fire?

22 A I don't recall.

23 Q Okay. All right. Now, as well
24 on the issue of your suspicion of him, do
25 you recall noting a year and nine months

Tetanich -- Cross

1 after the incident, that after he left --
2 excuse me. "He was" -- he being Myers --
3 "was then taken by Patrolman Payne where a
4 statement was accomplished. After he left I
5 told Lieutenant Cumbee that Myers was acting
6 suspicious and he was probably our suspect."

7 A I wrote that.

8 Q Okay. So you did at least
9 communicate to Lieutenant Cumbee at about
10 6:30 that a. m. or roughly that Myers was
11 acting suspicious and he was probably our
12 suspect?

13 A I -- I --

14 Q I'm sorry.

15 A I didn't know if I used the word
16 probably then or if I used the word -- I
17 know what I told Lieutenant Cumbee at the
18 time was that he was acting suspicious. He
19 was the boyfriend. Anytime you have a death
20 of a girl or a woman and you always consider
21 the boyfriend or the husband, and that he
22 was acting suspicious and he was the
23 boyfriend, he was probably a suspect, yes.
24 But whether I used the word "probably" or
25 not a year and a half later, I couldn't

1 remember if I'd said probably or could be or
2 whatever. But the intent of the statement
3 was to show that I had, I had expressed to
4 him some concern about the way that he was
5 acting.

6 Q Okay. So since you couldn't
7 remember a year and nine months later
8 exactly what you told him, you just went
9 ahead and put down in the police record and
10 file that he was probably our suspect?

11 A I'm just saying that the word
12 probably --

13 Q Yes, sir?

14 A -- was may, may have been used
15 or may not have been used. I don't recall.

16 Q Yes, sir.

17 A But --

18 Q That was your best --

19 A But, but the gist of the -- the
20 reason I was writing it down was to recall
21 the information that I was passing on to
22 Lieutenant Cumbee at the time, that he was
23 suspicious in nature and that we should look
24 at him further.

25 Q So probably "our suspect" is

Tetanich -- Cross

1 your best guess of what actually you told
2 Lieutenant Cumbee back then, a year and nine
3 months prior?

4 A Yeah.

5 Q All right. And, and you noted
6 as well then on December the ninth, 1998, a
7 year and nine months after the crime,
8 tragedy, that that was the first time you
9 had recorded Mr. Myers's actions that day in
10 writing?

11 A Correct.

12 Q All right. Now, did you examine
13 anything that day on March the thirteenth,
14 photograph or anything else, that led you to
15 believe that Mr. Myers had a rat tail in the
16 back of his hair?

17 A I don't recall anything like
18 that.

19 Q Okay. Did you have a chance
20 when you were seeing him there at the scene
21 or do you recall, and I know it's been a
22 while, if he in fact had a rat tail at the
23 time he was there at the scene that day?

24 A I can't recall. I know his hair
25 was longer than it is now, but I don't know

Tetanich -- Cross

1 if he had a rat tail.

2 Q Okay. Thank you. Now, you
3 testified on, that on the fourteenth of
4 March, 1997, at the detective office in
5 Lieutenant Cumbee's office, and please
6 correct me if I mischaracterize your
7 testimony, that there was a -- there were
8 photos that were sitting on Lieutenant
9 Cumbee's desk that Mr. Myers might have
10 examined?

11 A Correct.

12 Q Okay. So let's -- if we can
13 establish a few things. Is it clear and can
14 you agree that photos of the crime scene and
15 the autopsy, to your knowledge, had been
16 processed or film had been processed and
17 prints had been made by the fourteenth?

18 A Correct.

19 Q And that they were a stack of
20 some number, let's say over fifty pictures,
21 fifty photos at least?

22 A I don't know exactly how many
23 there were, but it was a, it was a good
24 stack.

25 Q Okay. And they were sitting on

Tetanich -- Cross

1 the desk in Lieutenant Cumbee's office. Is
2 that correct?

3 A (The witness nods head.)

4 Q And at times at least on one
5 occasion when Mr. Myers was there?

6 A Yeah.

7 Q And you don't recall if the
8 photos were actually shown to him --

9 A I don't --

10 Q -- or how many photos were shown
11 to him?

12 A No, sir.

13 Q Now, you don't know for a fact
14 of your own knowledge if the, if the
15 comments that Mr. Myers made to you about
16 the bad wiring were in fact accurate and
17 true, do you?

18 A No.

19 Q Now, you said that Lieutenant --
20 excuse me. That Mr. Myers came to the
21 police station on Friday morning at about
22 nine or ten o'clock and he just arrived
23 there?

24 A Right.

25 Q And in fact isn't it accurate

Tetanich -- Cross

1 that Lieutenant Cumbee or another person had
2 called his house and left a message there
3 that all of you wanted him to come in?

4 A I don't know if Lieutenant
5 Cumbee did that.

6 Q Do you know if anybody else did?

7 A No.

8 Q So it's your testimony that
9 Mr. Myers just showed up at the police
10 department on Friday?

11 A Correct.

12 Q All right. Now, you testified,
13 and please correct me if I'm wrong, that
14 that day, that Friday, the fourteenth, that
15 you all were there and at one point you were
16 in Lieutenant Cumbee's office. Well, were
17 you in Lieutenant Cumbee's office on the --
18 on Friday that entire time?

19 A Probably not the whole day, but
20 I was in and out.

21 Q And you were discussing with
22 him, I think you testified, some of the
23 evidence in the case that had been found and
24 determined at the scene?

25 A We were discussing the, the

Tetanich -- Cross

1 crime, yeah.

2 Q And one of the things at least
3 that you were discussing with him was this
4 hair found in that Miss Haught's hand?

5 A Correct.

6 Q And you agree, do you not, that
7 the suggestion was made to him that if the
8 person to be identified who contributed that
9 hand to her hair -- excuse me. That hair to
10 her hand, that would be the killer?

11 A I can't recall exactly how it
12 was phrased, whether it was something that
13 Melvin said or something that he said.

14 Q When you say Melvin, you mean
15 Lieutenant Cumbee?

16 A Lieutenant Cumbee.

17 Q Yes, sir.

18 A As to who said it first, I don't
19 remember. But, yeah, that was the
20 conversation, that whoever's hair was in her
21 hand was the one that killed her, since she
22 had it clutched in her hand and, and
23 appeared to, you know, pulled it out of his
24 head or whatever.

25 Q Yes, sir. Right. So you wanted

Tetanich -- Cross

1 him to agree with you about that, that
2 issue?

3 A Oh, yeah.

4 Q All right. And you found that
5 concerning or relevant or of value that he
6 agreed with you that the hair found in her
7 hand would be the killer?

8 A Correct.

9 Q More so than if he said,
10 "There's no way in the world that hair could
11 be the killers"?

12 A He could have said that.

13 Q Yeah.

14 A But he didn't. He agreed.

15 Q Now, you received information
16 that the hair had been a match that, when
17 S. L. E. D. conducted their testing?

18 A Correct.

19 Q And that was related to you
20 gentlemen by Mr. Hallman who was at Columbia
21 who called from Columbia all the way back
22 and told you that?

23 A Called Lieutenant Cumbee and
24 told him.

25 Q Yes, sir. Was that call

Tetanich -- Cross

1 received when you were at lunch?

2 A We were at lunch.

3 Q At the Olive Garden?

4 A Correct.

5 Q And how long have you been in
6 law enforcement, Lieutenant?

7 A Eight and a half years in the
8 Air Force, twenty-one years in North
9 Charleston.

10 Q Okay. And you knew, did you
11 not, during lunch that day that there's no
12 possible way that any DNA testing could have
13 been done on that hair in inside a day?

14 A I know it takes longer than a
15 day to do DNA testing, yes.

16 Q And you knew that the only
17 option at the time existing within forensic
18 science to make any comparison between a
19 suspect hair and a known hair would be
20 microscopic and looking at it through a
21 microscope?

22 A I'm not that familiar with the
23 forensic end of police work or how they
24 match the hairs up. I know that there
25 wasn't enough time for DNA, but I don't know

Tetanich -- Cross

1 what the process they used to match the
2 hair, whether it's chemical or microscopic
3 or --

4 Q Okay.

5 A -- how they do it, to be honest
6 with you.

7 Q All right. So in any event you
8 met that Friday night with Detective Cumbee,
9 Lieutenant Cumbee and Detective Clayton?

10 A Yes.

11 Q And hatched a plan for that
12 Saturday. Correct?

13 A We discussed how we were going
14 to interview the suspect.

15 Q Okay. And what you discussed
16 was how you were going to interview him, or
17 how you were going to interrogate him?

18 A Well, we were going to interview
19 him and then see what his reaction was to
20 the hair, and hopefully we would get the
21 reaction we wanted and it would make it
22 easier for us to get our confession.

23 Q Okay. And during that meeting
24 that Friday night did you discuss the
25 preparation of any enlarged photos blown up

Tetanich -- Cross

1 to eleven-by-fourteen to be used during the
2 interview process the next day?

3 A I didn't discuss that with
4 anybody.

5 Q You have no idea how that, those
6 photos got made, those enlargements?

7 A I'm assuming our I. D. section
8 made them, but I don't know who told them.

9 Q Was Mr. Hallman in on that
10 meeting Friday night?

11 A I don't recall.

12 Q Okay.

13 A For sure.

14 Q And so that morning -- now I
15 think you, you mentioned this on your
16 direct, but part of the approach to
17 Mr. Myers on Thursday and Friday and the
18 morning of Saturday, and you've had a little
19 training in some interrogation techniques,
20 haven't you?

21 A I've been to the I. P. T. M.
22 School of interviews and interrogations in
23 Florida, a week-long school.

24 Q Okay. And one of the approaches
25 to interrogation is to get close to the

Tetanich -- Cross

1 person and to gain their trust. Correct?

2 A Correct.

3 Q Now, Saturday morning part of
4 the plan that was hatched was to go and have
5 Detective Clayton go and pick up Mr. Myers
6 from his parents' house that morning and
7 take him to breakfast at Shoney's?

8 A Correct.

9 Q Okay. And then thereafter to
10 bring him on down to the police detective
11 office for the interviewing process to
12 begin?

13 A Right.

14 Q And the plan was to continue
15 along with that for a while and then to take
16 a drastic turn. Correct?

17 A Yeah. I guess you could, you
18 could say that.

19 Q And part of the plan was faking
20 this telephone call from Mr. Powell, who
21 wasn't at work that day at S. L. E. D., and
22 coming in and presenting Wes Myers with that
23 information. Correct?

24 A Correct.

25 Q And when he was presented with

Tetanich -- Cross

1 that information, was he told -- was
2 Mr. Hallman there?

3 A I don't recall. I don't think
4 so.

5 Q Okay. Was he told that the
6 results of the testing, the comparison, the
7 microscopic testing was that that hair could
8 be considered to be his?

9 A No.

10 Q No. He was told, was he not,
11 that that was his hair. Correct?

12 A We said it was, it matched his
13 hair.

14 Q That that matched his hair?

15 A Right.

16 Q Right. And at that point you
17 have no doubt that he trusted you and what
18 you were telling him as law enforcement
19 officers?

20 A I don't know what he was
21 thinking, but --

22 Q Of course.

23 A -- but I -- that's what we told
24 him.

25 Q Yeah. Did he ever say during

Tetanich -- Cross

1 Thursday, Friday, and Saturday I don't trust
2 you guys?

3 A No.

4 Q Okay. And as well -- let me go
5 back just a little bit. You, you mentioned
6 that you, and I want to see if I have this
7 exactly correct, that you read him his
8 Miranda rights.

9 A I did.

10 Q You also testified that you were
11 trying to get his cooperation in the case?

12 A Correct.

13 Q Wednesday -- Thursday, Friday,
14 and Saturday. And you also testified that
15 you all had advised him that until -- since
16 this boyfriend thing, the spouse, the
17 boyfriend, until he was eliminated as a
18 suspect you really couldn't move on to the
19 other suspects, and you mentioned other
20 suspects in the case, but you had to get him
21 out of the way?

22 A I don't -- I didn't tell him
23 anything like that.

24 Q Okay. But you did ask for his
25 cooperation?

Tetanich -- Cross

1 A Well, yeah. He was cooperating.

2 Q Okay. So at the point you read
3 him the Miranda rights, correct me if I'm
4 wrong, but I thought you said on, in your
5 direct testimony that when you read him his
6 Miranda rights while you were -- but you
7 were asking him to cooperate, you, you said
8 on the other hand if you don't sign this
9 form, we can't talk to you any more. We
10 want you to cooperate, but we can't talk to
11 you unless you sign this form. Right?

12 A Well, actually if you know that
13 you're being charged now --

14 Q I'm sorry. If you just said yes
15 or no and then explained your question. I
16 mean your answer.

17 A Well, I don't know anything
18 about cooperating with him. He did sign the
19 form and I did tell him that if he wants to
20 talk to us he, he has to sign this form. If
21 he doesn't sign it, we won't talk to him.

22 Q Okay.

23 A That's correct.

24 Q Yes, sir. Thank you. And let
25 me ask you a question. Do you have. . .

Tetanich -- Cross

1 I want to ask you this very
2 important question and ask it as clearly as
3 I can. The interview room, to your
4 knowledge in March of 1997 was that room
5 wired for recording, either audio or video,
6 whether visible or not, under oath?

7 A It was -- there was a speaker
8 box in there and a two-way mirror but there
9 was no video recording stuff in there.

10 Q What do you mean by "speaker
11 box"?

12 A There was a speaker box on the
13 other side of the window, in the other room
14 where the glass, where you could look
15 through the glass and see the individual and
16 where we could bring witnesses or whatever
17 to view the suspect or have him say
18 something or, or something like that without
19 them actually seeing the victim. There's a
20 speaker box on the wall and a microphone
21 over on the other side so that the people
22 inside this room can hear what's going on in
23 the interview room and also see through the
24 two-way mirror. But I don't believe that's
25 a recording device. Now --

Tetanich -- Cross

1 Q Do you know?

2 A I don't know, but I know the
3 speaker's in there, in that room where you
4 can hear what's going on, but we have video
5 equipment and stuff in our I. D. section.

6 Q Right. And where's the I. D.
7 section in the department?

8 A It's on the second floor.

9 Q Okay. And you're on the third
10 floor?

11 A Third floor.

12 Q Now, one question was you, you,
13 you expressed information that you acquired
14 about the tumultuous relationship between
15 Wes Myers and the deceased, Teresa Haught?

16 A Correct.

17 Q And would it be fair to say
18 that, sounds silly, married people argue?

19 A Oh, yeah.

20 Q And married people have
21 disagreements?

22 A Sure.

23 Q And married people have fights?

24 A Yep.

25 Q And simply for that reason if

Tetanich -- Cross

1 that occurred doesn't mean that one might
2 kill the other, does it?

3 A No.

4 Q Now, I was just wondering, are
5 spouses or boyfriends or girlfriends or
6 wives or husbands always the suspect, the
7 first suspect in cases? It seems --

8 A No. I wouldn't, I wouldn't say
9 they're the first suspect in the case. If
10 you drove up and there was somebody standing
11 over them with a gun, that's probably your
12 first suspect.

13 Q Yes, sir.

14 A But you, if you don't have a
15 suspect, then we're definitely going to look
16 at them and check their whereabouts and
17 their motives and along with any other
18 suspects who may develop through evidence we
19 acquire at the scene.

20 Q Yes, sir. Now, Alan White, you
21 were aware on that Saturday that Margaret
22 Jensen and Tanya Gonzalez had been
23 interviewed at least a couple of times on
24 that Thursday, the thirteenth?

25 A I knew they'd been interviewed.

Tetanich -- Cross

1 I don't know how many times they'd been
2 interviewed, but I know they had been
3 interviewed.

4 Q Okay. And you knew that they
5 had been interviewed about the writing that
6 was lifted after the fingerprint powder was
7 put on it off the victim's car's windshield?

8 A I can't recall if they were
9 asked those questions or not. I didn't have
10 anything to do with their interview so. . .

11 Q Okay. Now, from about 10:30
12 that day on the Saturday, the fifteenth,
13 until about the time -- well, actually the
14 time that Mr. Myers was taken to jail,
15 during this process of interviewing and
16 contact with him, how many tape recordings
17 were made of what he was saying or the
18 questions or the interviewing that was being
19 proposed to him?

20 A None.

21 Q And how many videotapes or
22 tapings were made of Mr. Myers and the
23 contact with him that day?

24 A Only the ones that the news
25 media did.

1 Q I'm not -- obviously.

2 A Yeah.

3 Q But I mean by you gentlemen.

4 A By us?

5 Q Yeah.

6 A None.

7 Q None. And nothing, you just

8 testified that the I. D. unit or whoever had

9 that equipment down on the second floor,

10 correct?

11 A Yeah, they do.

12 Q Nothing physically prohibited

13 you or any detective from going down there

14 and procuring that equipment for purposes of

15 recording everything that took place that

16 day to play to this jury. Nothing

17 prohibited you from that. Correct?

18 A Other than the fact that we

19 don't do that.

20 Q Okay. Now, isn't it true and

21 accurate that during this process of

22 interview mid-day on Saturday, I think and

23 you, and you, you testified that you, you

24 moved from another room in the interview

25 room into Detective Cumbee's

1 twelve-by-twelve office?

2 A Uh-huh.

3 Q This twelve-by-twelve has
4 furniture in it, desk, file cabinet, chair,
5 some other items, and that the three of you
6 detectives went in there with Mr. Myers at
7 that time?

8 A Yes, sir.

9 Q And that at that time do you
10 happen to recall if that stack of photos was
11 still in there on the desk?

12 A I don't recall.

13 Q Do you recall if there were any
14 eleven-by-fourteen enlarged photographs of
15 the victim's face at autopsy there?

16 A There was, yeah. There was some
17 large photographs there.

18 Q And when, do you recall that
19 when Mr. Myers was confronted with the
20 staged, fake phone call and was told that
21 that hair was a match, his next response was
22 no, no, no?

23 A Correct.

24 Q And that Lieutenant Cumbee then
25 stated yes, it is your hair. And he told

Tetanich -- Cross

1 him that the hair came from the back of his
2 head. Correct?

3 A I don't remember if he said from
4 the back of your head, but I'm sure he --

5 Q Okay.

6 A -- he enforced the fact that it
7 was his hair, yes.

8 Q And then Mr. Myers nodded his
9 head down and stated some very important
10 words for a number of reasons, didn't he?

11 A Yeah.

12 Q He said, "I must have did it
13 then." Correct?

14 A Correct.

15 Q And the very next thing that
16 Lieutenant Cumbee said to Mr. Myers at that
17 moment, that critical moment was, "Don't you
18 think that you need to say you're sorry."
19 Correct, isn't it?

20 A I don't know when -- are you
21 talking about to Teresa?

22 Q I'm sorry?

23 A Are you talking about Teresa?

24 Q Yes, sir.

25 A I don't know if it was right

Tetanich -- Cross

1 then or later on in the conversation, but
2 eventually he did tell him something to that
3 effect, that apologize to Teresa.

4 Q And when he was making that
5 statement, whenever you recall it made, he
6 was taking, he, Lieutenant Cumbee, was
7 taking his finger and pointing at that
8 eleven-by-fourteen gory photo of this man's
9 girlfriend, dead, at autopsy, and saying,
10 "You need to apologize to Teresa", wasn't
11 he?

12 A Yeah.

13 Q And then you began acquiring
14 information from Mr. Myers about the crime
15 that formed the elements of his confession.
16 Correct?

17 A Yes, sir.

18 Q And in that regard you
19 immediately -- you don't audiotape or
20 videotape, but you immediately had him write
21 out a statement about what transpired that
22 evening. Correct?

23 A No.

24 Q You didn't do that?

25 A No.

Tetanich -- Cross

1 Q You realized, did you not, that
2 you had a missing link, you had a missing
3 aspect. Correct?

4 A What missing aspect?

5 Q You realized that you had what
6 you described as the match of this hair, but
7 a purse had been taken from the scene by the
8 killer. Correct?

9 A I don't know who took the purse,
10 but there was a purse missing.

11 Q There was a purse missing. And
12 so it would be very effective to have
13 recovered the purse in the case as evidence?

14 A That, that portion of the
15 interview about the purse didn't come up
16 till later in the interview. We asked him
17 other questions before that.

18 So that wasn't the purpose for
19 asking him or for us conducting the
20 interview because we asked him other
21 questions, too.

22 Q Sure. Now, at that point you
23 and the other detectives knew the following
24 information, didn't you: You knew or
25 suspected, already knew that a piece of wine

Tetanich -- Cross

1 carafe or intact wine carafe at one time was
2 suspected as being the murder weapon.

3 Correct?

4 A Correct.

5 Q And you knew as you just said
6 that a purse was missing from the scene?

7 A Correct.

8 Q And your testimony to this jury
9 is that -- well, you already knew that there
10 had been some etching of some sort on the
11 victim's windshield and that was noticed by
12 Detective Hallman.

13 A Yes, sir.

14 Q But you don't recall if Margaret
15 Tamya Jensen -- Tamya Jensen -- excuse me.
16 Margaret Jensen White and Tammy Gonzalez had
17 been interviewed about that writing on the
18 windshield or about a pink note. You don't
19 know that?

20 A No. I didn't know that then.

21 Q And you began going in to
22 Mr. Myers and you didn't suggest to him
23 anything, you simply just gave him a pencil
24 then and a pad and let him write down his
25 confession. Correct?

Tetanich -- Cross

1 A Well, what we do is we ask the
2 person, you know, tell us what happened.
3 Now, we'll know, we'll know certain facts in
4 the case and we'll know certain indicators
5 to tell us whether he's telling the truth or
6 not. A lot of times people will say, "I
7 killed her." And that's what they'll want
8 to write in the statement, "I killed her."

9 But we'll want to get more
10 details than that, so we'll go, well, what
11 happened, you know, prior to this, or what
12 did you do prior to that.

13 And that's a lot how we
14 conducted this interview is well, tell us,
15 you know, what happened. You know, how'd
16 you get in? What'd you argue over? Or what
17 happened?

18 And he might say we had an
19 argument. And we might say what did you
20 argue over? And then he'd say well, Alan
21 White, or the note, or whatever.

22 But we would ask him questions
23 to further our information, because if he
24 would say things like well, yeah, I, I
25 knocked on the door and she let me in.

Tetanich -- Cross

1 Which door, you know.

2 People don't normally give the
3 kind of details that police officers get or
4 want to get. So when you're having a
5 conversation with somebody, you're going to
6 tell them a story. You tell them one thing,
7 from your side that's, that's the story.
8 Well, maybe somebody else wants to get more
9 information, and the police always want to
10 get as much information as possible, so
11 we'll ask questions also. And in that
12 process you'll talk about this for maybe an
13 hour, maybe an hour-and-a-half before you
14 ever write anything down.

15 And that's just so that we get
16 all the information out in the open, we get
17 it all fresh in his mind or our mind, and
18 then, then we can start writing and go
19 step-by-step through the whole thing and
20 write it all out.

21 Q So you can get all the
22 information exactly the way you want it and
23 then give it to him to sign and approve?

24 A No -- well, he is, is asked
25 every time we write a line, we'll ask him

Tetanich -- Cross

1 what happened next, and he'll tell us. And
2 then we'll write it down.

3 Now, if he forgets something, we
4 might remind him, "Oh, you said that you did
5 this." And he'll go, "Okay. Yeah. That's
6 right. I did that."

7 But that's just us reminding him
8 and he has to agree to it. We just don't
9 write it down and say here, sign this blank
10 piece of paper. And we also read it to him
11 after we've written it before he signs it,
12 so that he understands what he signs.

13 Q Okay. And one of the things
14 that, Lieutenant, that you knew that night
15 or that day, excuse me, that day of
16 Saturday, was that Mr. Myers had been
17 treated for alcoholism or for alcohol abuse?

18 A I didn't know he'd been treated
19 for alcoholism.

20 Q Did you ever remember mentioning
21 to him -- well, were you on the search of
22 the house the night before, of his parents'
23 house?

24 A Right. Friday night.

25 Q Did you remember finding any

Tetanich -- Cross

1 papers there that reflected that he had been
2 at Charter and in the hospital for alcohol
3 abuse?

4 A I saw some paperwork, yeah, from
5 Charter.

6 Q Okay. Do you ever mention,
7 remember mentioning to him on Saturday
8 during this interview anything, or any other
9 detective, anything about the possibility of
10 him blacking out? I think you made
11 reference to that during your direct.

12 A He had -- he had said something
13 about blacking out, not me.

14 Q All right. Now it's very
15 interesting -- you know, do you know what an
16 alcoholic-related blackout is as a, as a
17 phenomenon?

18 A Not as psychiatrist I don't, no.

19 Q No. Do you know, do you have
20 any idea that a, an alcoholic blackout
21 occurs and no one can remember anything
22 about what happens during that period of
23 time? Does that ring a bell?

24 A No.

25 Q So the topic of a blackout came

Tetanich -- Cross

1 up, and your suggestion is and your
2 testimony is that Mr. Myers remembered
3 everything in the case and gave you all
4 these details about things that you already
5 knew about it, except for the dispute over
6 the pink note, and but he just couldn't
7 remember what he did with the purse. And in
8 fact your testimony is that -- well, let me
9 stop for a second.

10 And piecing together some things
11 in the case, part of what he was telling you
12 is your testimony that, using State's
13 exhibit number one, is that he had parked
14 his truck out front of the Mill Inn next to
15 Miss Haught's car. Is that correct?

16 A I know he parked it out front.
17 I don't know exactly where.

18 Q Okay. Did you all ever do
19 any -- I know that -- did Detective Poole do
20 a search and examination of Mr. Myers'
21 truck?

22 A Sure did.

23 Q Do you know if he ever did any
24 tests or Mr. Hallman went out to do any
25 forensic testing out front to see if there

Tetanich -- Cross

1 was any radiator fluid out there?

2 A Not that I know of.

3 Q But, but what you gleaned or
4 gained from Mr. Myers that day was that he
5 fled out the back door and he was carrying
6 something. Correct? And he was carrying
7 her purse, or the purse?

8 A Yeah. He must have been.

9 Q Well, wait a minute. I thought
10 he said that he said he was carrying a
11 purse?

12 A I didn't say he said he was
13 carrying the purse.

14 Q You didn't say that he said he
15 was carrying the purse? You say that he
16 must have carried the purse?

17 A It's missing.

18 Q He didn't say to you, and you
19 were there, "that he found the purse in the
20 cooler and left out the back door"?

21 A He may have said that. It rings
22 a bell now.

23 Q And he stated that he went
24 around the front where he had his truck
25 parked beside the victim's car or -- you

Tetanich -- Cross

1 don't recall exactly where.

2 Now, if he went out that back
3 door it's true, is it not, that if he goes
4 down that alley he has to go all the way
5 down to Virginia because of the contiguous
6 or slam-dunk nature of the buildings there,
7 one up against the other. He goes all the
8 way around. He comes back down, will come
9 down the sidewalk here from Virginia Avenue
10 back to in front of the Mill, past at least
11 a couple businesses?

12 A Correct.

13 Q And when he got -- when
14 Detective Clayton prepared the statement for
15 him to sign about the -- what you recall now
16 about the, about him saying he took the
17 purse, after the careful preparation of the
18 statement before giving it to him to sign,
19 he -- what was prepared for him to sign was
20 that he took "a purse". Not "her purse. "A
21 purse."

22 Now, you said, you testified on
23 direct examination that Mr. Myers said to
24 you all that he wanted to apologize to the
25 victim's mother, Dixie Justice. Isn't it

Tetanich -- Cross

1 true that Lieutenant Cumbee asked Mr. Myers
2 if he would like to tell the victim's mother
3 that he was sorry?

4 A Not that I recall.

5 Q Okay. Now, going back a little
6 bit chronologically, when you went to look
7 for the purse where Mr. Myers recalled it
8 might be after he was with you, and the
9 purse wasn't there, your testimony was that
10 when he tried -- you all asked him to think,
11 think, think, think about where you might
12 have put it. Isn't that correct?

13 A Well, it wasn't in the hollow
14 tree.

15 Q Right. And then you said that
16 he said that the purse might be behind or
17 against, between the wall and his mother's
18 bed?

19 A Or his bed at his mother's
20 house.

21 Q Between the wall and his bed?

22 A Yes.

23 Q Okay. He didn't say anything
24 about being between the mattresses or
25 anything?

Tetanich -- Cross

1 A I don't know. I don't think so.

2 Q Okay. Oh, by the way. Another
3 factor I want to ask you about was that
4 Saturday when you were speaking with him
5 about noon, Detective Officer Dusty Poole
6 had been out doing the crime scene analysis
7 of Mr. Myers' truck. Correct?

8 A I believe so, yeah.

9 Q And he thought we heard Mr -- I
10 think he thought that he had recovered a
11 hair and possibly some blood from the truck?

12 A I don't know what he recovered
13 from the truck.

14 Q Do you know if -- did he ever
15 come back upstairs to the third floor at any
16 time during that segment?

17 A I didn't see him. No.

18 Q Okay. How many
19 eleven-by-fourteen photos were there that
20 you described on Mr. Cumbee's -- on
21 Lieutenant Cumbee's desk?

22 A I don't recall the exact number.
23 Probably three or four.

24 Q Okay. And you testified that
25 Mr. Myers said that he let his truck back

Tetanich -- Cross

1 down the driveway?

2 A Correct.

3 Q Okay. And of course that's a
4 pretty important aspect, a critical fact.
5 Correct?

6 A Correct.

7 Q But that's not in his statement.
8 Correct?

9 A Correct.

10 Q As a matter of fact it's not in
11 any police document in this entire case?

12 A That's correct.

13 Q It wasn't written down?

14 A Right.

15 Q Now, obsession, jealousy.

16 You're suggesting to the jury, are you not,
17 that Mr. Myers killed Teresa Haught because
18 he's obsessed and jealous?

19 A I think that's -- that was the
20 motive I was thinking.

21 Q Okay. And that you now
22 testified that he snuck his truck and rolled
23 it quietly out of the driveway that night?

24 A Uh-huh.

25 Q And that was before the

Tetanich -- Cross

1 allegation that he saw anything on her car?

2 A Yeah.

3 Q All right. Now, then Lieutenant

4 Cumbee called the news media and told them

5 an arrest had been made in this case.

6 Correct?

7 A Correct.

8 Q And he told them, did he not,

9 that you all were going to walk the

10 defendant, that they ought to get up there

11 soon. Correct?

12 A I think he, he told them that we

13 were going to walk the defendant out the

14 back.

15 Q Okay.

16 A Out the back door where the cars

17 were parked.

18 Q Okay.

19 A And that's a common term that's

20 used in the T. V. media business is "the

21 walk". You know, like from the jail to the

22 bond hearing, or from the police department

23 to the car, or whatever it's -- you know,

24 whatever distance you're talking about, and

25 that's what they talk about.

Tetanich -- Cross

1 Q Like a "perp walk".

2 A Yeah.

3 Q You heard that expression?

4 A Uh-huh.

5 Q Yes. And so as well you know

6 that Lieutenant Cumbee told them that

7 Mr. Myers may have something to say?

8 A Yes, because he had requested

9 that.

10 Q Even though your testimony is

11 you all were telling him not to talk to

12 them?

13 A I told him twice and Lieutenant

14 Cumbee told him once.

15 Q All right. And so you were

16 concerned about that?

17 A Yeah, because I, I didn't want

18 him -- first of all I was worried about him

19 knowing whether what he was doing was right

20 or wrong, for himself and for, you know, for

21 us. But, you know, I'm caught between a

22 rock and a hard place.

23 I mean it's good that he goes

24 out and tells the world I did this. I mean

25 I'm not going to say that ain't good for the

Tetanich -- Cross

1 police department. That's good.

2 But I've got to worry about
3 whether that's going to be accepted in the
4 court because I should have warned him, you
5 know, of his rights or whatever. And I'd
6 already read him his rights, so he knows
7 what his rights are.

8 But I was concerned that if I
9 didn't warn him that he didn't have to do
10 this and he did it, that I wouldn't be able
11 to use it. So I warned him possibly out of
12 my own selfishness and for in his regard
13 that hey, listen, you don't have to do this.
14 In fact if I was -- if you had an attorney
15 he'd say don't do this. Twice. Just so
16 that I could be able to sit up here in this
17 stand and testify that I did warn him.

18 Q Okay. So being so concerned
19 about that possible exposure as you just
20 testified --

21 A Right.

22 Q -- when you came out, you went
23 out front?

24 A Uh-huh.

25 Q And you let him smoke a

Tetanich -- Cross

1 cigarette. Was it one or two?

2 A One I think.

3 Q One. Maybe two?

4 A I think it was one. It may have
5 been two.

6 Q All right. And you let him
7 smoke one or two cigarettes out there and
8 you said and have testified here today that
9 you suggested to him that if he wanted it,
10 you could have a cruiser or unit come around
11 and pick him up out front?

12 A Correct.

13 Q Where in this file is that
14 written down, that evidence, that
15 information? It's not, is it?

16 A I don't know if it's written
17 down or not.

18 Q Okay. You're involved in this
19 case?

20 A Correct.

21 Q But in any event, he went -- you
22 then took him back outside, where the -- you
23 knew, you knew that the media was set up?

24 A I knew, he knew, and Detective
25 Clayton knew.

Tetanich -- Cross

1 Q Okay. All three stations?

2 A I'm assuming all three of them
3 were out there, yeah. It was pretty
4 crowded.

5 Q Three cameras. And of course
6 since you were so concerned over his
7 exposure and the possibility that they might
8 stick microphones in his face and ask him
9 about this crime while he was handcuffed and
10 in your custody, you whisked him straight to
11 the patrol car, through the gauntlet to put
12 him in there and rush him off to jail?

13 A I didn't actually have my hands
14 on him at all. I was just walking behind.

15 Q That's right, Lieutenant. You
16 stood right there, next to him or behind
17 him?

18 A I walked --

19 Q Let's --

20 A I walked out behind him.

21 Q Okay.

22 A They walked up.

23 Q And allowed them to ask him
24 questions until they ran out of questions.
25 Isn't that true?

Tetanich -- Cross

1 A I allowed the defendant the
2 right to speak to the media as long as he
3 wanted to.

4 Q Like you said, if he happened to
5 say some things to the media, all the better
6 for the police department?

7 A I'm not going to deny that. If
8 he wants to confess to the world, more power
9 to him.

10 MR. KULP: Thank you, sir.

11 That's all I have.

12 MR. DURANT: I just have a
13 couple, Judge.

14

15

16

17 REDIRECT EXAMINATION BY MR.

18 DURANT:

19 Q Do you know why you gave your
20 statement in December of '98? Were you
21 requested to do so?

22 A Yes.

23 Q By whom?

24 A Detective Clayton.

25 Q And at whose request?

Tetanich -- Redirect

1 A Yours.

2 Q It wasn't mine. I wasn't even
3 involved in the case.

4 A No. I meant -- because there,
5 there was no statement in the file of what I
6 had done.

7 Q You were asked to do that by the
8 prosecutor that handled this case before me.
9 Is that correct?

10 A Right.

11 Q And you all don't record
12 statements in the North Charleston Police
13 Department, do you?

14 A No, sir.

15 Q Never have?

16 A Never have.

17 Q They don't do it with the
18 F. B. I. do they?

19 A I don't know what the F. B. I.
20 does, but we don't.

21 Q As a matter of fact, most law
22 enforcement agencies don't tape --

23 A Correct.

24 Q -- statements. Is that correct?

25 A Correct.

Tetanich -- Redirect

1 Q Are you aware of any in this
2 area that do?

3 A No.

4 Q Defendant doesn't want to give a
5 statement he just, what, doesn't sign it?

6 A Doesn't sign it or puts "refused
7 to sign" or doesn't talk.

8 Q Whose house is back behind the
9 Mill Inn in walking distance?

10 A The victim.

11 Q Teresa Haught?

12 A It's not behind the Mill Inn.
13 It's on the other side of the Mill Inn, the
14 front side.

15 Q But close to the Mill Inn?

16 A Oh, yeah.

17 Q And on the rear side?

18 A Not on the rear of the -- the
19 Mill Inn faces Montague Avenue. Crawford
20 Street is on this side of Montague, so Mill
21 Inn's here, Montague, more buildings, and
22 Crawford right there.

23 MR. DURANT: All right. I have
24 nothing further.

25 MR. KULP: Just a couple

1 questions, your Honor.

2

3

4

5 RECROSS-EXAMINATION BY MR. KULP:

6 Q You testified that -- well, that

7 when Mr. Myers told you how he did the

8 crime, one of the things, you testified on

9 direct one of the things was that he

10 gathered these papers because he wanted to

11 die in there --

12 A Uh-huh.

13 Q -- and that he lit them with a

14 match?

15 MR. DURANT: I believe this is

16 beyond the scope of my redirect, your

17 Honor.

18 THE COURT: I'll let him do it.

19 Go ahead.

20 Q That he lit it with a match.

21 Correct?

22 A I don't know how he lit it, but

23 he lit it.

24 Q All right. We're going to have

25 look at some -- you don't recall that on

Tetanich -- Recross

1 direct testimony you said that he lit it
2 with a match?

3 A I don't think I said he lit it
4 with a match. If I did, it was a mistake
5 because I don't know how he lit it. Match,
6 lighter, or what he used.

7 Q You just don't know. Let me
8 hand you this document and ask if you, if
9 this refreshes your recollection?

10 A In his statement he says he used
11 a lighter.

12 Q Okay.

13 A Correct.

14 MR. KULP: Thank you, sir.

15 THE COURT: You can come down.

16 THE WITNESS: Thank you.

17 THE COURT: How about approach
18 the bench a minute.

19 MR. DURANT: Yes, sir.

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

22 THE COURT: They were telling me
23 that the next witness is longer than
24 that, so I'm going to send you home.
25 Be here at 9:30. Remember my

Tetanich -- Recross

1 admonitions.

2 Have a good night. See you
3 tomorrow morning, 9:30.

4 Everyone else remain seated,
5 please.

6 (The jury leaves the courtroom
7 at 5:30 p. m.)

8 THE COURT: How many more
9 witnesses do you have, Solicitor?

10 MR. DURANT: Your Honor,
11 tentatively four that are probably
12 going to be relatively lengthy because
13 they're the -- excuse me. Three more
14 that are probably going to be
15 relatively lengthy because they all
16 were involved in this confession issue.

17 And one, four, five, six, seven,
18 eight, nine, ten including the medical
19 examiner.

20 THE COURT: And how many do you
21 have?

22 MR. KULP: I have in my case
23 seven, I believe.

24 THE COURT: All right. Get
25 yourself -- get your suitcase because

1 we're going to work right through the
2 weekend. I'll let this church go --
3 I'll let this, let them go to church if
4 they want to, but I'm not going to
5 quit.

6 MR. KULP: Yes, sir.

7 THE COURT: Get ready.

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

9 THE COURT: Can you think of
10 anything I, I can do to shorten it?
11 Let me talk to you all in chambers just
12 a little bit.

13 MR. DURANT: I could, your
14 Honor.

15 (Laughter.)

16 MR. DURANT: I know you could.

17 (Whereupon, Court was adjourned
18 at 5:31 p. m.)

19

20

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22

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24

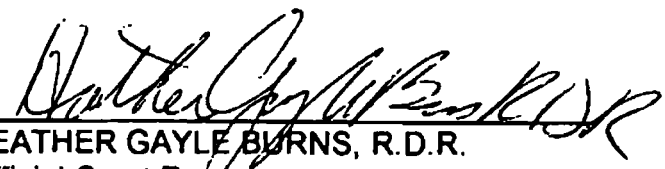
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C E R T I F I C A T I O N

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 28th 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, R.D.R.
Official Court Reporter

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,

MARCH 1, 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 Judge enters the courtroom
2 at 9:42 a. m.)

3 THE COURT: All right. Anything
4 before I bring the jury out?

5 MR. DURANT: Nothing from me,
6 your Honor.

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

8 THE COURT: Bring the jury out.

9 (The jury enters the courtroom
10 at 9:43 a. m.)

11 THE COURT: Madam Forelady, I
12 know those seats are hard, because I
13 got some complaints about them, but
14 it's not unique. I'll tell you, most
15 everybody complains about them. I
16 don't know when they're going to get a
17 new courthouse with better facilities,
18 but I'm always open to suggestions on
19 anything we can do to help you.

20 I first want to tell you that we
21 wasn't just drinking coffee and telling
22 jokes. We have been working, and we're
23 always trying to shorten things. So if
24 the attorneys can get together and
25 agree on something, then it's things

1 that we don't have to go through in the
2 trial, and that's what we were doing.

3 Also I got some questions from
4 you about how long we going to work.
5 Well, it changes from day-to-day, so I
6 can't quite tell you how we stand now,
7 but as soon as I do, I'll let you know.
8 I promise.

9 Also you want to know where
10 those diet biscuits were, and so I
11 showed that to the clerk and the
12 problem was that the establishments
13 won't take the clerk's check. I'd take
14 it. But that's pretty usual.

15 It's only in small towns, you
16 get small towns up yonder in St.
17 George, all those places take the
18 checks. But you get in a big city like
19 Charleston, they don't want to take
20 anybody's check. So, but we going to
21 make some arrangements. If you could
22 just swallow those donuts -- is that
23 what they got today?

24 CLERK OF COURT: Yes, your
25 Honor, but they promised us that they

1 were low fat donuts, sir.

2 THE COURT: You believe it? But
3 we'll go forward and we'll try to make
4 you comfortable, and keep in touch with
5 me and let me know if it's something I
6 could do to make you more comfortable,
7 we'd be glad to do it.

8 All right. Call your next
9 witness.

10 MR. DURANT: Thank you, your
11 Honor. State would call Denver
12 Clayton.

13

14

15

16

17 D E N V E R L E E

18 C L A Y T O N, II, having been called
19 as a witness in the presence of the
20 jury, is duly sworn and testifies as
21 follows:

22 DIRECT EXAMINATION BY MR. DURANT:

23 Q You are employed by North
24 Charleston --

25 A Yes, I am.

Clayton -- Direct

1 Q -- Police Department?

2 How long have you been so
3 employed, sir?

4 A Approximately seven and a half
5 years.

6 Q And what are your current duties
7 with the police department?

8 A I work in internal affairs.

9 Q And what do you do? What does
10 internal affairs involve?

11 A We investigate internal
12 complaints.

13 Q Against police officers?

14 A Yes, sir.

15 Q What were your duties in March
16 of 1997?

17 A I worked in the detective
18 division.

19 Q And in that capacity did you
20 have an opportunity to become involved in
21 the Teresa Haught case?

22 A Yes, sir, I did.

23 Q When did you become involved in
24 the case, sir?

25 A I received a phone call from the

Clayton -- Direct

1 dispatcher approximately seven o'clock in
2 the morning on the thirteenth of March, 1997
3 to respond to the Mill Inn, which is located
4 on Montague Avenue, and I arrived there
5 approximately 8:30.

6 Q And what did you do upon
7 arriving at the scene?

8 A I talked to Detective Cumbee.
9 He explained to me what, that a white female
10 was found inside the, the bar, and --

11 Q Was the victim still present at
12 the time you arrived?

13 A I don't know. I didn't go into
14 the crime scene.

15 Q Okay. And were you designated
16 as the case agent by Lieutenant Cumbee at
17 that time?

18 A Yes. That was later.

19 Q What happened after you were
20 briefed by Lieutenant, Lieutenant, excuse me,
21 Lieutenant Cumbee, what did you do?

22 A Well, Lieutenant Cumbee gave me
23 some information about the boyfriend and
24 where he lived. And I went to their
25 residence which is in River View Drive in

Clayton -- Direct

1666

1 Hanahan and spoke with the mother.

2 Q And that would be Miss Rose
3 Marie Myers that testified previously in
4 this case?

5 A Yes, sir.

6 Q Did you have an opportunity to
7 go in her house?

8 A Yes, sir, I did.

9 Q And were you able to see where
10 the defendant's bedroom was and where her
11 bedroom was and the driveway was, and all of
12 that?

13 A Yes, sir. I was. I was able to
14 see these things.

15 Q Okay. And where is the mother's
16 bedroom?

17 A It's located in the back left
18 rear of the residence.

19 Q And how about Mr. Myers's
20 bedroom? Did you see where his bedroom was
21 located?

22 A Yes, sir. It's on the front
23 left and it's separated from their bedroom
24 from a separate hallway.

25 Q Okay. Do they share the same

Clayton -- Direct

1 hallway in going to --

2 A No, sir.

3 Q -- their bedrooms?

4 A No, sir.

5 Q Did they share a bathroom?

6 A No, sir.

7 Q In other words, if the defendant
8 were to leave his bedroom in the nighttime,
9 would he have to go by his parents' bedroom
10 to do so?

11 A No, he would not.

12 Q After you obtained the statement
13 from Miss Myers, where did you go?

14 A I went right back to the crime
15 scene.

16 Q And how did the investigation
17 proceed from that point? Did you stay at
18 the crime scene or did you return to
19 headquarters?

20 A I returned back to the police
21 department.

22 Q Okay. I believe at that point
23 you, did you not receive the suspect kit
24 that had been collected by Detective Payne
25 and turned it over to Detective Hallman?

Clayton -- Direct

1 A Yes, sir. Detective Payne came
2 up to me and handed it to me and Detective
3 Hallman was right there in the detective
4 division with us. I turned it over to him,
5 but I'd already signed for the collection
6 kit, the evidence collection kit from the
7 suspect.

8 Q Okay. And you basically just
9 got it from Payne and handed it to Hallman.
10 Is that pretty much it?

11 A Yes, sir.

12 Q Did you alter or tamper with it
13 in any way while it was in your possession?

14 A No, sir.

15 Q Okay. Moving on to the next
16 day, March fourteenth, that would be Friday.
17 Correct?

18 A Yes, sir.

19 Q Did you have an opportunity to
20 have contact with the defendant, Wesley
21 Myers, on that day?

22 A Yes, sir, I did.

23 Q And where was that?

24 A That was at the detective
25 division at North Charleston Police

Clayton -- Direct

1 Department.

2 Q And when did you see him and
3 where?

4 A I seen him inside the detective
5 division. He came to the police department.
6 He drove there. And we met him and went
7 into Lieutenant Cumbee's office.

8 Q And what time was that, would
9 you say?

10 A It was about noon.

11 Q What did you all do? What did
12 you all do in Lieutenant Cumbee's office?

13 A Well, Lieutenant Cumbee talked
14 to him and told him how he believed that the
15 person had did this is close to the victim,
16 and that the victim had hairs in his (sic)
17 hand, and it was trapped up underneath her
18 body and the reason why he thought that the
19 vic -- the victim was close is because there
20 was, there appeared to be no forced entry,
21 anything like that.

22 Q What was the defendant's
23 demeanor during this period of time?

24 A He was very cooperative.

25 Q Did he appear to be interested

Clayton -- Direct

1 in the investigation?

2 A Yes, sir. He said he was going
3 to do whatever it takes to find out who did
4 this.

5 Q So and did you also at this time
6 discuss Major McHale at that time, him going
7 to see Major McHale?

8 A Yes, sir. We talked to him and
9 asked if he'd be willing to take a poly --
10 I'm sorry. We asked him if he'd be willing
11 to --

12 MR. KULP: Your Honor --

13 A -- meet with the --

14 THE COURT: Just a minute.

15 MR. KULP: May we approach?

16 THE COURT: Yes, sir.

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

19 THE COURT: Go to your room just
20 a minute. They can't get together, but
21 it's not their fault.

22 (The jury leaves the courtroom
23 at 10:08 a. m.)

24 THE COURT: Go ahead.

25 MR. KULP: Your Honor, it

Clayton -- Direct

1 appears the witness has mentioned a
2 significant portion of the word
3 "polygraph", I submit that aspect of
4 this case has now been injected into
5 the trial before the jury. Given the
6 most experienced jurist that I know,
7 I've been doing this for a few years
8 and I haven't the foggiest idea how to
9 address it.

10 It seems there are a couple of
11 remedies that immediately come to mind
12 as I stand here on my feet. One is to
13 go ahead and let the jury know that
14 Mr. Myers agreed to take a polygraph,
15 and that they refused to give him one
16 or they decided not to give him one.

17 I have a case, your Honor, I'll
18 have to dig it up, and I think it
19 addressed the issue of mentioning or
20 the injection of polygraph into the
21 case, and the Court found it allowable
22 because the results weren't mentioned
23 or anything like that. It was just not
24 for the truth of the issue of whether
25 the polygraph results meant anything,

Clayton -- Direct

1 and in this particular case we have --
2 we don't have any result. We just have
3 what we've already heard since Monday,
4 that a test was offered, that he was
5 willing to take it, and that they
6 wouldn't give him one.

7 Other -- the only other option I
8 know, your Honor, is to move for a
9 mistrial and I don't even like to -- as
10 far as we've gotten in this case after
11 so long I, I stand here a bit puzzled.

12 MR. DURANT: Your Honor, I have
13 no objection to, and I mean quite
14 frankly like he says, I mean the whole
15 word was not said but, but the fact of
16 the matter is I'd be willing to
17 stipulate to the jury if it's okay with
18 him that his client was -- went there
19 to take a polygraph, was willing to
20 take a polygraph, and one was not
21 administered for the reasons that Major
22 McHale stated on the stand.

23 If -- you know, because I mean
24 we're not talking about results here
25 anyway, because like he says one was

Clayton -- Direct

1 never administered and we tried to stay
2 away from that and believe me, my
3 officers have been instructed not to
4 say the "P" word on the stand and,
5 and --

6 MR. KULP: And right now I'm
7 spending money to have the videotape
8 edited to take that out, which I guess
9 we can call now and say stop the
10 presses.

11 MR. DURANT: Right. So I mean
12 if Mr. Kulp agreed to that, I don't
13 have any, I don't have any problem with
14 that because we're not talking about
15 results.

16 THE COURT: You willing? Why
17 don't you do -- before you do that --

18 MR. KULP: Yes, sir.

19 THE COURT: Go back and read me
20 that portion if you will, Madam
21 Clerk -- Madam Court Reporter.

22 (Whereupon, the last question
23 and answer were read back by the Court
24 Reporter.)

25 MR. DURANT: I don't actually

Clayton -- Direct

1 think he got the "graph" part out, but
2 he definitely said "poly".

3 MR. KULP: It wasn't polygon.

4 THE COURT: Just a minute.

5 MR. KULP: I think he got at
6 least as far phonetically as the "G",
7 your Honor.

8 THE COURT: Well, they know
9 we're not -- we're talking about
10 polygon at this time, so, so make
11 whatever objection you want to, agree
12 to whatever you want, and I'll rule.

13 MR. KULP: Yes, sir. Do you
14 want to do it that way?

15 MR. DURANT: If you want it,
16 I'll just stand up right now when they
17 come back --

18 MR. KULP: I don't have any
19 problem with that.

20 MR. DURANT: Okay. If you don't
21 have any problem with that, I'll just
22 bring it out on the stand right now.

23 THE COURT: All right. Bring
24 the jury in.

25 (The jury enters the courtroom

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Clayton -- Direct

1 at 10:13 a. m.)

2 THE COURT: Don't forget, if you
3 keep your notations before you leave
4 I'll tell you anything that went on,
5 even talk about the diet biscuits.

6 All right. Go ahead.

7 BY MR. DURANT:

8 Q Detective, now that the bag is
9 open, you might as well let the cat out.
10 And why were you all taking him to see
11 McHale?

12 A To take a polygraph.

13 Q And was that -- a polygraph ever
14 administered?

15 A Never. No, sir.

16 Q And that was for the reasons
17 Major McHale testified about yesterday. Is
18 that correct?

19 A Yes, sir.

20 Q But the defendant was willing to
21 submit to the polygraph. Is that correct?

22 A Yes, sir.

23 Q Going back to, so after you all
24 had this discussion at Lieutenant Cumbee's
25 office, what happened?

Clayton -- Direct

1 A After we had -- Lieutenant
2 Cumbee, we went to the polygraph --

3 Q After -- what happened? You
4 said you all talked -- by the way, who was
5 there that afternoon, Friday afternoon, in
6 Lieutenant Cumbee's office?

7 A Sergeant Tetanich and Lieutenant
8 Cumbee.

9 Q And the defendant as well, I
10 believe. Is that correct?

11 A Yes, sir. Yes, sir.

12 Q Do you know whether the
13 defendant saw any pictures while he was
14 there?

15 A There was photographs on
16 Lieutenant Cumbee's desk but I don't know if
17 it's been showed or not.

18 Q Okay. Did you see the photos
19 shown to him?

20 A No, sir. I did not.

21 Q Where were the photographs
22 located in relation to where the defendant
23 was sitting?

24 A It was stacked on the desk in
25 front of the defendant.

Clayton -- Direct

1 Q Okay. Was he -- never mind.
2 What happened after you all talked -- how
3 long did this conversation in Lieutenant
4 Cumbee's office last?

5 A Approximately thirty minutes,
6 maybe up to an hour.

7 Q And what happened after that?
8 Where did you all go?

9 A After that we, myself,
10 Lieutenant Cumbee, and several other
11 detectives, we got together, we was going to
12 go lunch and we offered to take the
13 defendant to lunch at the Olive Garden.

14 Q Did the defendant go?

15 A No, sir, he did not.

16 Q Where -- did you all require him
17 to stay at the police department until you
18 returned?

19 A No, sir, we did not.

20 Q He was not under arrest at that
21 time, was he?

22 A No, sir. He wasn't under
23 arrest.

24 Q And what happened at the Olive
25 Garden?

Clayton -- Direct

1 A While we was at the Olive Garden
2 Lieutenant Cumbee received a phone call, and
3 after he got off the phone he told us that
4 that was Al Hallman. He'd related that --

5 Q He'd gotten the results from --

6 A The results from the hair that
7 was found in her hand.

8 Q And --

9 A And he said that the hair
10 matched the, the defendant.

11 Q Okay. Now, after lunch you all
12 returned back to where?

13 A We, we went back to the police
14 department to pick up the defendant.

15 Q And is that when you took him
16 over to the sheriff's office?

17 A Yes, sir.

18 Q Do you recall who went with you?

19 A No, sir. I don't recall right
20 now. I believe later Detective Hallman

21 showed up.

22 Q Did you participate in the
23 actual interview by Major McHale over at the
24 sheriff's office?

25 A No, sir.

Clayton -- Direct

1 Q Where were you?

2 A I was outside in another room.

3 I was observing it on the monitor.

4 Q Was the interview being taped?

5 A Yes, sir.

6 Q You advised him being -- I mean
7 you observed him being advised of his rights
8 by --

9 A Yes, sir.

10 Q -- McHale?

11 A I observed him being advised of
12 his rights by Lieutenant McHale.

13 Q Once the interview at McHale's
14 office was terminated, where'd you all go
15 next?

16 A We went back to North Charleston
17 Police Department.

18 Q And were you provided any advice
19 by Lieutenant, then Lieutenant McHale about
20 questioning this defendant that day?

21 A Yes. Lieutenant McHale said
22 that he would advise not to, to, you know,
23 to interview or interrogate the defendant.
24 Said that he didn't get a good night's sleep
25 because, you know, of course he'd been

Clayton -- Direct

1 drinking the night prior to this, and had
2 very little sleep. He said that to try to
3 talk to him the next morning.

4 Q And did you later discuss that
5 with others in your department?

6 A Yes, I did. They, they were
7 talking about maybe trying to interview him
8 and I talked to them and said that we need
9 to wait until the morning because we need to
10 play by the rules.

11 Q And was it agreed that that's
12 what you all would do?

13 A Yes, sir.

14 Q Now, what else happened on that
15 Friday relative to this investigation?

16 A We talked to the defendant and
17 asked him for a consent to search of his
18 residence and also his vehicle. And I guess
19 about 8:30, nine o'clock we went over to his
20 residence and did a consent to search of his
21 room.

22 Q Where was his vehicle?

23 A He left his vehicle back at the
24 police department.

25 Q And you all rode him home when

Clayton -- Direct

1 you all went over to look at his house. Is
2 that correct?

3 A Yes, sir.

4 Q And do you recall what was
5 collected at the defendant's home?

6 A We collected some boots, a
7 camouflage hat, a shirt, and some pants.
8 Some oil-soaked pants.

9 Q Why did you collect those
10 particular clothes?

11 A Because the defendant said
12 that's what he was wearing on Wednesday
13 night prior to the, the murder.

14 Q Okay. Now --

15 (Whereupon, marked for
16 identification was State's Exhibit No.
17 24, a hat.)

18 (Whereupon, marked for
19 identification was State's Exhibit No.
20 25, pants.)

21 (Whereupon, marked for
22 identification was State's Exhibit No.
23 26, shirt.)

24 (Whereupon, marked for
25 identification was State's Exhibit No.

Clayton -- Direct

1 27, boot.)

2 (Whereupon, marked for

3 identification was State's Exhibit No.

4 28, boot.)

5 Q Detective Clayton, I hand you
6 what's been marked now as State's exhibits
7 number 24, 25, 26, and 27. Ask if you
8 recognize these items of clothing?

9 A Yes, sir. This is the clothing
10 that the defendant said he was wearing the
11 night of the incident.

12 Q Okay. On Wednesday?

13 A Yes, sir.

14 Q These were collected from his
15 house. Is that correct?

16 A Yes, sir.

17 MR. DURANT: Your Honor, we
18 would offer these into evidence.

19 MR. KULP: Without objection.

20 (Whereupon, entered into
21 evidence was State's Exhibit No. 24, a
22 hat.)

23 (Whereupon, entered into
24 evidence was State's Exhibit No. 25,
25 pants.)

Clayton -- Direct

1 (Whereupon, entered into
2 evidence was State's Exhibit No. 26,
3 shirt.)

4 (Whereupon, entered into
5 evidence was State's Exhibit No. 27,
6 boot.)

7 (Whereupon, entered into
8 evidence was State's Exhibit No. 28,
9 boot.)

10 Q These items were later submitted
11 to S. L. E. D. Is that correct?

12 A Yes, sir.

13 Q And were there any, any findings
14 of evidentiary value connected with their
15 examination of these clothing -- this
16 clothing?

17 A No, sir.

18 Q It was negative for blood and
19 hair. Is that correct?

20 A Yes, sir.

21 Q Did you also collect a document
22 from his house on that occasion?

23 A Yes, sir.

24 MR. KULP: Your Honor, we have a
25 matter of law to take up at this time.

Clayton -- Direct

1 (Whereupon, there was an
2 off-the-record bench conference.)

3 THE COURT: Go to your room.

4 (The jury leaves the courtroom
5 at 10:25 a. m.)

6 THE COURT: All right, Mr. Kulp.
7 Go ahead.

8 MR. KULP: Your Honor --

9 THE COURT: That document seems
10 to be one that has to do with anger
11 management.

12 MR. KULP: Well --

13 THE COURT: And you found it
14 where?

15 MR. DURANT: In his bedroom.

16 THE COURT: All right, sir. Go
17 ahead.

18 MR. KULP: Yes, sir. While
19 animus of the parties might be a basis
20 for some evidence of prior difficulties
21 to come in, I think one thing, your
22 Honor, is this. This is not dated.
23 For all we know, this could have been
24 four years, five years before this
25 time. As well I think that it's

Clayton -- Direct

1 certainly more prejudicial than
2 probative in the case. I think --

3 THE COURT: But didn't in his,
4 in his confession he said he lost it?

5 MR. DURANT: He said --

6 MR. KULP: Lost what?

7 MR. DURANT: He said "I was
8 raged, upset, extremely mad," to quote
9 his statement. Also ties into my theme
10 of the case which this whole thing is
11 about.

12 THE COURT: Go ahead. Anything
13 you want -- else you want to say?

14 MR. KULP: Yes, sir. I mean,
15 your Honor, I think that -- may I
16 approach, your Honor?

17 THE COURT: Yes, sir. Let me
18 see.

19 MR. KULP: That's too
20 prejudicial.

21 MR. DURANT: Of course it's
22 prejudicial, Judge. But it's also very
23 probative.

24 THE COURT: All right. Anything
25 else? I -- under the facts of the case

Clayton -- Direct

1 and under what I've learned so far, I
2 think its probative value exceeds the
3 prejudicial effect, so I'll allow it.

4 Bring the jury in.

5 (Whereupon, marked for
6 identification was State's Exhibit No.
7 29, anger questionnaire.)

8 (The jury enters the courtroom
9 at 10:28 a. m.)

10 THE COURT: Solicitor.
11 Counselor.

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

14 MR. KULP: Yes, sir.

15 THE COURT: Go ahead.

16 BY MR. DURANT:

17 Q Detective, I believe where I
18 was, I was asking you if you had an
19 opportunity to collect any kind of document
20 from the defendant's house?

21 A Yes, I did. We collected a
22 anger questionnaire out of the defendant's
23 bedroom.

24 Q I hand you now what's been
25 marked as State's exhibit number twenty-nine

Clayton -- Direct

1 for identification purposes and ask if you
2 recognize that document, sir?

3 A Yes, sir.

4 Q And where was that located in
5 the house?

6 A It was located in the
7 defendant's bedroom.

8 MR. DURANT: Your Honor, we
9 would move State's exhibit number
10 twenty-nine into evidence.

11 THE COURT: I'll allow it,
12 subject to previous objection.

13 MR. KULP: Thank you, your
14 Honor.

15 (Whereupon, entered into
16 evidence was State's Exhibit No. 29,
17 anger questionnaire.)

18 MR. DURANT: Permission to
19 publish to the jury, your Honor.

20 THE COURT: Yes, sir.

21 Q Do you recall what time it was
22 when you left the home that night?

23 A Approximately ten o'clock that
24 night.

25 Q And at some point you all

Clayton -- Direct

1 discussed interrogating Mr. Myers the next
2 morning. Is that correct?

3 A Yes, sir. It was after we left
4 the residence.

5 Q And what did you all decide and
6 who did, who did you talk to about that and
7 what did you all decide?

8 A It was myself, Sergeant Tetanich
9 or Lieutenant Tetanich, and Lieutenant
10 Cumbee. We discussed that we was going to
11 approach him next morning about the hair
12 that we had taken up to S. L. E. D. the day
13 before and how, how it matched.

14 Q Now, had you arranged to pick
15 him up the next morning when you left him
16 off?

17 A Yes, sir. I was going to pick
18 him up at 8:45 in the morning. We'd already
19 arranged that, him and I and Lieutenant
20 Tetanich.

21 Q And moving on now to Saturday,
22 March the fifteenth, what time did you pick
23 up the defendant?

24 A 8:45. At his residence.

25 Q And where did you all go?

Clayton -- Direct

1 A After that I took him to the
2 Shoney's Restaurant which is located, I told
3 him I was hungry, I offered to buy him
4 something to eat at the Shoney's Restaurant
5 on Rivers Avenue. He said he doesn't eat in
6 the morning. Usually he drinks coffee. We
7 sat there. We talked about our families,
8 things like that. And after that we
9 returned to the police department.

10 Q What time was it when you
11 actually arrived at the police department?

12 A Probably about fifteen till ten.

13 Q How did he appear physically to
14 you at that time?

15 A Appeared to be in good
16 condition. He was good spirited. Seemed to
17 be doing fine. He wasn't under an influence
18 of any alcohol or anything. Didn't appear
19 to be. Didn't smell it on him.

20 Q Did he look like he'd been up
21 all night the night before?

22 A No, sir. He looked like he was
23 well rested.

24 Q What did you all do when you got
25 to the, got to headquarters?

Clayton -- Direct

1 A We went to the -- there's an
2 interview room located on the detective
3 division on the third floor. We went to the
4 interview room where Lieutenant Tetanich
5 advised him of his rights.

6 Q And you observed Sergeant
7 Tetanich advise the defendant of his rights?

8 A Yes, sir.

9 Q And that was about 10:20, I
10 believe?

11 A Yes, sir.

12 Q I hand you what's previously
13 been marked as State's number twenty-three
14 in evidence. Is that the advisement of
15 rights form used by Detective Tetanich?

16 A Yes, it is.

17 Q And is that your signature as a
18 witness on there?

19 A Yes, sir.

20 Q That occurred in the interview
21 room?

22 A Yes, sir.

23 Q Did you all promise Wesley
24 anything to get him to talk to you?

25 A No, sir.

Clayton -- Direct

1 Q Did you make any threats to him?

2 A No, sir.

3 Q Did you offer him any leniency
4 to him if he talked to you?

5 A No, sir.

6 Q Did you accuse him of anything?

7 A No, sir.

8 Q What did you all talk to him
9 about after he was advised of his rights?

10 A We talked to him about what he
11 did the day preceding the murder, the day
12 of, and the day after. We also talked about
13 his prior relationship with the victim,
14 talked about his jealousies, how he was
15 jealous, and he believed that the victim was
16 carrying on a relationship with one of her
17 employees.

18 Q And how long did this last?

19 A This lasted approximately an
20 hour-and-a-half.

21 Q And what happened at the end of
22 this interview? During this time the
23 defendant never admitted --

24 A No, sir.

25 Q -- any involvement in this

Clayton -- Direct

1 crime, did he?

2 A No, sir. And we never asked
3 him.

4 Q He was never asked directly
5 during that time whether he had been
6 involved in --

7 A No, sir. Not that I recall.

8 Q Do you know how far he'd gone in
9 school?

10 A Yes, sir. He had thirteen
11 years. Twelve years high school and one
12 year of college.

13 Q Did he appear to be mentally
14 deficient or retarded or anything of that
15 nature?

16 A Oh, no, sir. No, sir.

17 Q Did he respond appropriately to
18 statements you all made?

19 A Yes, sir.

20 Q Now, what time did Lieutenant
21 Cumbee get there?

22 A I believe that he got there just
23 shortly before noon.

24 Q And what happened when
25 Lieutenant Cumbee got there?

Clayton -- Direct

1 A He asked us if we wanted to move
2 to his office. We asked the defendant if
3 he'd like to step into Lieutenant Cumbee's
4 office so we could talk with him.

5 Q And what was you all's
6 relationship with the defendant at this
7 time?

8 A It was good.

9 Q Were you all still friendly?

10 A Yes, sir. It was friendly.

11 Q He was still cooperative with
12 you?

13 A Yes, sir.

14 Q And presumably you all were
15 trying to be friendly. Right?

16 A Yes, sir.

17 Q And why is that?

18 A Because I always want to treat
19 everybody good. I mean it doesn't matter if
20 they did anything or if they didn't do
21 anything. You, you just want to, you want
22 them to be cooperative.

23 Q Now, tell the jury what happened
24 after Lieutenant Cumbee left.

25 A After Lieutenant Cumbee got

Clayton -- Direct

1 there, we moved into Lieutenant Cumbee's
2 office and at this time we was going to
3 approach him about the hair, but prior to
4 doing all that we had to get him to agree
5 that it was his hair. On two separate
6 occasions he agreed that it was his hair.
7 Sergeant Tetanich talked to him a little
8 bit, asked him what he was doing the
9 morning, that morning when he woke up after
10 the murder occurred, and also he was
11 telling --

12 Q I'm a little bit confused. He
13 agreed what was his hair?

14 A That the, the defendant agreed
15 that the hair that was in her hand was, was
16 his.

17 Q He agreed that?

18 A I'm sorry. I'm sorry. What we
19 was going to do is talk to him and he was
20 going to agree that, that the person that
21 the hair belongs to is his hair.

22 Q How did that -- how did that
23 conversation come up? Just tell me who said
24 what.

25 A The defendant, he stated that

Clayton -- Direct

1 yes, that's going to prove whose hair it
2 belongs to, who it belongs to.

3 Q Who mentioned something about
4 the hair to --

5 A Sergeant Tetanich.

6 Q And what did Sergeant Tetanich
7 tell him?

8 A He asked him did he think that
9 the hair that was found in her hand belonged
10 to the person that did this.

11 Q All right. And that's when the
12 defendant responded "yes"?

13 A Yes, he did.

14 Q Did anybody else ask him about
15 that?

16 A Yes. Lieutenant Cumbee.

17 Q And how did he respond to
18 Lieutenant Cumbee when he said it?

19 A He said that that would be the
20 hair and the person who did this.

21 Q After this conversation took
22 place, what happened?

23 A After this took place Lieutenant
24 Cumbee left the office and then he came back
25 later and told the defendant that he just

Clayton -- Direct

1 received a phone call from S. L. E. D. and
2 that S. L. E. D. said the hair that was
3 found in her hand is from, came from him and
4 it came from the back of his head, that it
5 matched.

6 Q Now, that wasn't true, was it?
7 You all didn't receive a phone call from
8 S. L. E. D.?

9 A No, sir. It wasn't true.

10 Q How about the information that
11 was conveyed to the defendant? Did you all
12 believe that to be true about the hair
13 being, matching the back of his head?

14 A Yes, sir.

15 Q What was the defendant's
16 reaction when confronted with the accusation
17 by Lieutenant Cumbee?

18 A Well, he tilted his head back.
19 His eyes were watering. He was rubbing his
20 hands through the hair. And he says, "I
21 must have did it then."

22 And at that time Lieutenant
23 Cumbee said, "Well, don't you think you need
24 to say you're sorry?"

25 And at that time he said, "I'm

Clayton -- Direct

1 sorry, Teresa. I didn't mean to do it. It
2 was an accident."

3 At that time Lieutenant Cumbee
4 had pulled out a stack of photographs and
5 placed it in front of the defendant and the
6 top photograph which was in the stack was a
7 photograph of the victim. And then he
8 started rubbing the photograph, saying that
9 he was sorry, that he didn't mean to do it.
10 Things like that.

11 Q How long had you all been in
12 Lieutenant Cumbee's office when this
13 occurred?

14 A Approximately ten minutes, but
15 up to the point just prior to that when,
16 when Lieutenant Cumbee came back in we was
17 only in there a couple minutes.

18 Q Did he go on to relate any
19 details about what had happened in the early
20 morning hours of March the thirteenth?

21 A Yes, sir, he did.

22 Q And if you would relate to the
23 jury just what he told you all.

24 A Yes. He said about
25 approximately two o'clock in the morning he

Clayton -- Direct

1 left his residence by way of a side door at
2 his residence and went out to his driveway.
3 His vehicle was the last vehicle that was
4 parked in the driveway.

5 Q Now, excuse me a second. You
6 had been out to his residence previously, is
7 that correct, on two occasions?

8 A Yes, sir.

9 Q Once to talk to his mom and once
10 when you went to search his room. Is that
11 correct?

12 A That's correct.

13 Q Okay. Is there such a side
14 door?

15 A Yes, sir.

16 Q Okay. And I believe you also
17 stated that he does not share a hallway
18 with -- or a bathroom with his parents'
19 bedroom?

20 A That's correct.

21 Q Now, excuse me for interrupting.
22 Go ahead. Continue.

23 A Well, after --

24 Q You were saying that his vehicle
25 was the last.

Clayton -- Direct

1 A After he left his residence
2 through that side door, he went out to his
3 vehicle which was the last vehicle parked in
4 the driveway. He got in his vehicle which
5 is a pickup truck and he drove to the Mill
6 Inn. When he got to the Mill Inn he parked
7 beside the victim's vehicle which is parked
8 right in front of the Mill Inn on Montague
9 Avenue.

10 And at that time he steps out of
11 his vehicle and he's walking toward the
12 door. At this time Lieutenant Tetanich asks
13 him, says, "Did you see the note on the
14 windshield?"

15 And the defendant says, "Yes, I
16 seen the note on the windshield."

17 And so the defendant walks to
18 the front door. He knocks on the front door
19 of the, the Mill Inn, and at that time,
20 about five to ten minutes later, the victim
21 opens up the door. He comes into the, the
22 building. They start arguing. He sees a
23 note on the bar written by Alan White, which
24 is one of the employees at the, the Mill
25 Inn.

Clayton -- Direct

1 When he sees that, they start
2 arguing, pushing back and forth. The victim
3 grabs a, a glass wine carafe and is going to
4 try to hit the -- telling him to get out of
5 his -- her life, he was going to -- she was
6 going to hit him with it. And he grabbed
7 the wine carafe from her and he started
8 hitting her repeatedly, and they fell down
9 to the floor. He said he lost control.

10 At that time he said he went
11 around the counter, found some paper, a
12 Sunday out of, out of business or Sunday
13 sign or something like that, and throws it
14 in, inside the, on the floor, takes a
15 lighter and lights the, the paper.

16 At this time Lieutenant Cumbee
17 asks him, "Did you feel like hurting
18 yourself?" And he said, "Yeah. I felt like
19 dying."

20 And he went around and he held
21 the, the victim. She was laying on the
22 floor. And after he did that he went and
23 found her purse which was located inside of
24 the, a cooler beside the cash register, and
25 he departed out the back door.

Clayton -- Direct

1 Q You mentioned him saying he saw
2 a note inside from Alan White. Did you all
3 find any such a note --

4 A No, sir.

5 Q -- from the crime scene?

6 A No, sir.

7 Q Did you -- had you all heard
8 anything about any kind of note before the
9 defendant told you about it?

10 A I did not.

11 Q And I believe I've already asked
12 them. At some point did you, were you
13 requested by me to go talk to Alan White
14 about that note?

15 A Yes, sir, I was. That was last
16 year.

17 Q That was in April of last year.
18 Is that correct?

19 A That's correct.

20 Q And you took a statement from
21 Mr. White at that time?

22 A Yes, I did.

23 Q Now, what were you doing while
24 he was relating these details to you?

25 A I was writing them down.

Clayton -- Direct

1 Lieutenant Tetanich had throwed -- threw me
2 a yellow note pad and asked me to write this
3 down.

4 Q So you were taking notes,
5 basically?

6 A Yes, sir.

7 Q Now, did you all take a written
8 statement right then, right after he gave
9 you the verbal account of what went on?

10 A No, sir, we did not.

11 Q And why did you not?

12 A Because had he told us about the
13 purse and he believed -- we were trying to
14 find the purse, so we took him to the crime
15 scene. He was also going to tell us about
16 what happened at the crime scene. When we
17 got out there --

18 Q Excuse me. Did he say why he
19 took the purse?

20 A Yes, sir. Because something
21 about a trinket. Lieutenant Tetanich had
22 asked him did he do it to make it look like
23 a robbery, and he said no. And then
24 Lieutenant Cumbee asked him, says, "Did you
25 take it for some trinket or something like

Clayton -- Direct

1 that?" He said something about an angel or
2 something inside the purse and, and that's
3 the reason why he took it.

4 Q But in any event the purse was
5 not found at the scene of the crime. Is
6 that correct?

7 A That's correct.

8 Q And so what did you all do?

9 A Well, at that time we went to
10 the Mill Inn. We didn't go inside the crime
11 scene or anything like that.

12 Q Who all went?

13 A Myself, Lieutenant Tetanich, and
14 also Chief Norris.

15 Q Of the fire department?

16 A Yes. Yes, sir.

17 Q Now, was Chief Norris -- he
18 wasn't with you all when you all first began
19 your questioning the defendant?

20 A No, sir. He came in later.

21 Q But he did come in at sometime
22 during that interview?

23 A Yes, sir. Yes, sir.

24 Q And what did you all do at the
25 crime scene?

Clayton -- Direct

1 A Well, at the crime scene the
2 defendant related what happened as far as
3 with him and the victim during this incident
4 and he also told us that when he was there
5 he was talking about that he remembered he
6 took his, the, the victim's purse, walked
7 around to the other side on Montague Avenue
8 where his truck was parked. He walked from
9 the back door around to where his truck was
10 parked, and he took the purse and threw it
11 in the back behind the, the, the back of the
12 seat.

13 And after that he left there
14 and, and then he said that he went to a park
15 located off of Virginia. It's, it's a
16 Westvaco park and that there is a, a gazebo
17 that they had there that they had sexual
18 intercourse with at one time, and -- the
19 first time they'd ever been together. And
20 he stated that he put it in a hollowed-out
21 tree.

22 With this information we went
23 back, went out to the hollowed-out tree. We
24 didn't -- he, he led us there. We drove
25 there and he showed us where the

Clayton -- Direct

1 hollowed-out tree is. We looked all over
2 the place. Looked in trash cans and things
3 like that. And we didn't find out -- find
4 any purse.

5 Q You never were able to locate a
6 purse?

7 A No, sir.

8 Q Did he sometime later tell you
9 it might have been in a different place,
10 too?

11 A He believed that it was -- he
12 thought it may have been back at his
13 residence, inside his room. But like I
14 said, we already checked the night before.

15 Q What did you all do after you
16 went to west -- the park at Westvaco?

17 A We went back to the police
18 department and we obtained a written
19 statement from the defendant.

20 Q And how'd you go about putting
21 the statement in writing?

22 A Well, we sat down. I got the
23 information as far as his biographical
24 information that you write on the top of
25 the, the statement, and he'd already

Clayton -- Direct

1 previously been advised of his rights so
2 after that, I asked if he wanted to write
3 the statement or if he wanted me to write
4 the statement. He talked about that his
5 handwriting wasn't all that good.

6 Normally our procedure at North
7 Charleston is that we would try to write the
8 statement because the, there, to make sure
9 that it's legible.

10 I sat down and took the
11 statement as he was telling me, and I tried
12 to put it in his own words.

13 Q And so you were writing as he
14 was telling you what to put down?

15 A Yes, sir.

16 Q Did he participate in the actual
17 making of this statement in terms of --

18 A Yes, sir. He was telling me
19 about it and as, as he was telling it, I'd
20 write it. And, and then I'd say then what
21 happened, and then we went through the whole
22 thing like that. He would correct me if I
23 misspelled a name or anything like that.

24 Q And did he, once the statement
25 was completely taken down in writing, was he

Clayton -- Direct

1 given the opportunity to read it?

2 A Yes, sir.

3 Q Were any changes made to the
4 statement?

5 A Yes, sir. He went back or I
6 kept on spelling her name wrong. I put
7 T-h-e-r-e-s-a, which is Theresa, common.
8 But her, her name is T-e-r, so he made those
9 corrections. Also I'd written in there,
10 the, the statement something about that she,
11 you know, he went around the corner, in the
12 statement. He meant to say around the
13 counter, so we made a correction on that.
14 And he initialled it. He initialled all
15 those.

16 Q Okay. And after he read it, did
17 he sign the statement?

18 A Yes, he did.

19 Q And it ended up being a two-page
20 statement. Is that correct?

21 A That's correct.

22 Q Signed it on both pages?

23 A Yes, sir.

24 Q And I believe you and Detective
25 Tetanich witnessed it. Is that correct?

Clayton -- Direct

1 A Yes, sir.

2 (Whereupon, marked for

3 identification was State's Exhibit No.

4 30, two-page statement.)

5 MR. KULP: Subject to --

6 THE COURT: Subject to any

7 previous objection.

8 Q I hand you what's now been

9 marked as State's number thirty for

10 identification purposes, and ask you to

11 identify that document, please.

12 A This is the defendant's

13 statement.

14 Q That is the one you had just

15 testified concerning. Is that correct?

16 A Yes, sir.

17 Q And that is the defendant's

18 statement on the -- signature on that

19 statement?

20 A Yes, sir.

21 Q On both pages?

22 A Yes, sir.

23 MR. DURANT: Your Honor, at this

24 time we would offer State's exhibit

25 number thirty into evidence.

Clayton -- Direct

1 THE COURT: Subject to any
2 previous objections.

3 (Whereupon, entered into
4 evidence was State's Exhibit No. 30,
5 defendant's statement.)

6 Q Could you please publish the
7 written statement to the jury, sir.

8 A Yes, sir. Do you want me to
9 start from the beginning or the, the
10 information at the top?

11 Q Yes.

12 A Okay. It says, "The statement
13 of Wesley Max Myers, date of birth 8/24/59.
14 Age, thirty-seven. Home address, [REDACTED]
15 [REDACTED], Hanahan. Home phone, 747-8190.
16 Business phone is 744-9432. Employer,
17 Midland Mechanical.

18 "This statement" -- there's a
19 reference to an arson death -- "which occurs
20 at 1026 East Montague Avenue, Mill Inn on
21 about 3/13/97 at approximately zero two
22 hundred hours in North Charleston, South
23 Carolina.

24 "This statement is given
25 3/15/97, at 15:30 at North Charleston Police

Clayton -- Direct

1 Department. This statement was written by
2 Detective Clayton as told by me upon
3 request.

4 "On March thirteenth, 1997 at
5 approximately two o'clock a. m. or so I
6 drove to the Mill Inn to check on my
7 girlfriend, Teresa Haught. I parked my
8 truck beside her Mercury parked in front of
9 the Mill Inn. I went to the front door and
10 knocked. Teresa came to the door about five
11 to ten minutes later.

12 "It is not uncommon for me to go
13 by and check on her at closing time. There
14 was no one in there or I don't think there
15 was anyone in there. While I was in the bar
16 I found a pink note on the bar. It was a
17 note signed by Alan White. I think it said
18 that 'I'll see you later' and it was signed
19 by him. I thought that they might have had
20 something going. I had seen Alan pinch her
21 and kiss her on the lips.

22 "I asked her about the note and
23 she said it wasn't any of my business.
24 Teresa pushed me on the -- by the chin and
25 the chest hard. I told her, 'Don't push me,

Clayton -- Direct

1 Teresa.' She hit me in my chest with her
2 fist. Then she pushed me up against the
3 bar. I told her not to hit on me.

4 "Teresa grabbed the glass wine
5 carafe and she told me to get away. I
6 grabbed the wine carafe from her. Then she
7 pushed me in the face. I struck her in the
8 center of the head with the wine carafe.

9 "Both of us went down to the
10 floor. Like a blur. I lost control. I
11 went around the counter behind the bar. I
12 believe I held her for a while on the floor
13 before I went around the counter.

14 "I think I struck her twice. I
15 was raged, upset, real mad. I couldn't
16 believe what she was saying. She called me
17 a fool. I grabbed a 'closed on Sunday' sign
18 and some papers. At that state I grabbed
19 anything around. I piled some papers up
20 behind the bar and lit it with a lighter. I
21 remember I wanted to die. I wanted to burn
22 up in there.

23 "I sat there and closed my eyes
24 and the fire was getting real big. I went
25 on -- I went out the back door and went to

Clayton -- Direct

1 the right. I went around front and got into
2 my truck. I put her purse behind the seat
3 of my truck. I don't remember what I did
4 with the purse. I drove home.

5 "I forgot to mention that I
6 opened up the cabinet behind the bar,
7 looking for something to burn. End of
8 statement."

9 It says, "I have read this
10 foregoing statement or have had it read to
11 me and it is true and correct to the best of
12 my knowledge. I have given this statement
13 freely and voluntary, and have been provided
14 a copy of my statement."

15 Says it's signed Wesley Myers,
16 witnessed by Detective Clayton and Detective
17 George Tetanich.

18 And then it says, "I have been
19 provided a copy of my statement," which the
20 defendant signed where he received a copy.

21 Q Thank you, Detective. Now, at
22 any time that morning or at any time during
23 your entire involvement with Mr. Myers, was
24 he promised anything if he would talk to
25 you?

Clayton -- Direct

1 A No, sir.

2 Q Was he threatened in any way?

3 A No, sir.

4 Q Did you offer him leniency to
5 talk to you?

6 A No, sir.

7 Q Did you make any physical
8 threats to him?

9 A No, sir.

10 Q Did you make any threats to his
11 family?

12 A No, sir.

13 Q Did you withhold food or drink?

14 A No, sir.

15 Q Did you deny him the right to go
16 to the restroom if he wanted to go to the
17 restroom?

18 A No, sir.

19 Q Was he allowed to smoke if he
20 wanted to smoke?

21 A Yes, sir.

22 Q Did he ever ask for an attorney?

23 A No, sir.

24 Q Was he ever given at any -- at
25 any time did he ever ask for an attorney or

Clayton -- Direct

1 infer to you that he wanted an attorney?

2 A No, sir.

3 Q Did he ever indicate to you that
4 he wanted to take back that statement that
5 you just published to the jury?

6 A No, sir.

7 Q After the statement was reduced
8 to writing and he signed it, what happened
9 then?

10 A At that time -- later Lieutenant
11 Cumbee came in there and, and talked to him.
12 I think I may have went to the restroom or
13 something like that. But he came in there
14 and talked to him and asked if he wanted to
15 talk to the, the victim's mother. Sounded
16 like he was already previously agreed that,
17 that they were going to -- he was going to
18 talk to the mother. The victim's mother.
19 I'm sorry.

20 And the -- at that time we went
21 to a conference room where the defendant sat
22 on one side and the mother was on the other
23 side and he started relating to her that
24 he's sorry he did it, you know. "I lost
25 control."

Clayton -- Direct

1 And he said something like, "I
2 deserve the damn death penalty." And, and
3 he was, he was, he seemed to be remorseful
4 about it. He's really upset.

5 Q And what happened after that?

6 A At that time we left there, I
7 remember him telling me something about his
8 son's birthday was the following day and
9 everything, and so I know he had a son. I
10 knew that the, the media was there, okay.
11 And I'm trying to think how the media got
12 involved, but basically we took him
13 downstairs.

14 I tried to contact his family to
15 let the child know or the family know that,
16 that he may be on the media, that he might
17 be on T. V.

18 Q Did he indicate whether he
19 wanted -- to you, did he indicate to you
20 whether or not he wanted to talk to the
21 media?

22 A No. I believe that he talked --
23 I wasn't there at the time when he talked to
24 Sergeant Tetanich and Lieutenant Cumbee.

25 Q Okay. But did you call his

Clayton -- Direct

1 family at his request?

2 A Yes, sir. I did it because like
3 I said I know about his son and everything.
4 I just wanted them to know.

5 We, we left there and we went
6 downstairs. I asked if he wanted to smoke a
7 cigarette, and he said yes. So we went to
8 the front of the North Charleston Police
9 Department, outside, where he smoked a
10 cigarette.

11 And when we was walking out
12 Sergeant Tetanich had mentioned to him that
13 he didn't have to talk to the media.

14 Q You heard, you heard Sergeant
15 Tetanich say that?

16 A Yes, that he didn't have to talk
17 to the media, that they're going to be out
18 there. I want you to understand this, you
19 know.

20 And at that time we stepped out,
21 outside the door and the defendant walked
22 outside. He paused and he talked to the
23 media and told them what happened. Said he
24 was sorry, you know. He was sorry to the
25 family. He's sorry for the crime that he's

Clayton -- Direct

1 committed. Things like that.

2 Q And I believe you later obtained
3 a copy of that tape from the --

4 A Yes, sir, I did.

5 Q -- relevant T. V. stations?

6 A Yes, sir.

7 Q Now, also you're aware that a
8 number of items of evidence were sent to
9 S. L. E. D. for processing in this case, are
10 you not?

11 A Yes, sir.

12 Q And there's been some talk of
13 Dana Chapels in this case. Were his clothes
14 collected in, in this case?

15 A Yes, sir.

16 Q The clothes he said he was
17 wearing the night of the murder?

18 A Yes, sir.

19 Q Were those sent to S. L. E. D.?

20 A Yes, sir.

21 Q Was there any results from their
22 examination of Mr. Chapels' clothes?

23 A There was no evidentiary value.
24 None of them had any blood or anything like
25 that on them.

Clayton -- Direct

1 Q No blood or hair?

2 A Yes, sir.

3 Q I believe some clothing was also
4 collected from Mr. Myers's truck and some
5 other items from Mr. Myers's truck were sent
6 to S. L. E. D. as well. Is that correct?

7 A That's correct.

8 Q Was anything of an incriminating
9 nature found on anything that was sent to
10 S. L. E. D. for processing?

11 A No, sir.

12 Q We've already discussed the
13 clothing there. The victim's clothing was
14 also sent to S. L. E. D. Is that correct,
15 Miss Haught's clothing?

16 A That's correct. Yes, sir.

17 Q What were the results of their
18 examination her clothing?

19 A She had her blood on the -- on
20 everything.

21 Q Was it also tested for -- the
22 clothing tested for the presence of semen or
23 anything of that nature?

24 A Yes, sir. No semen.

25 Q The meat cleaver that has been

Clayton -- Direct

1 brought up in this case. Was that sent to
2 S. L. E. D.?

3 A Yes, sir.

4 Q Was there any evidentiary value
5 from their testing of that?

6 A No, sir.

7 Q It was negative for blood or
8 hair as well?

9 A That's correct.

10 Q How about the Gitano watch. Was
11 that sent to S. L. E. D.?

12 A Yes, sir.

13 Q Was there -- that negative for
14 blood or fiber or anything of that nature as
15 well?

16 A Yes, sir.

17 Q Okay. And finally I believe
18 some swabs were taken from some blood lifted
19 from one of those carafes. Is that correct?

20 A Yes, sir.

21 Q And those were sent to
22 S. L. E. D.?

23 A Yes, sir.

24 Q And I believe human blood was
25 identified. Is that correct?

Clayton -- Direct

1 A That's correct.

2 Q And do you know whether DNA was
3 performed on that blood?

4 A They didn't -- they had an
5 insufficient amount of blood to do DNA at
6 that time.

7 Q Okay. And that was when they
8 were doing R. F. L. P. DNA. Is that
9 correct?

10 A Yes, sir.

11 Q Court's indulgence. And I
12 already asked you about the clothing and
13 that's the clothing you all collected from
14 his house on Friday night. Is that correct?

15 A That's correct.

16 Q Prior to his confession on
17 Saturday?

18 A Yes, sir.

19 Q Could you please answer any
20 questions Mr. Kulp may have for you.

21 A Yes, sir.

22 MR. KULP: Your Honor, I'm happy
23 to start if you want, but I would like
24 to take a little break to go to the
25 restroom.

Clayton -- Cross

1 THE COURT: Let's take a
2 two-puff break. Let me know when
3 you're ready, will you?

4 (The jury leaves the courtroom
5 at 11:06 a. m.)

6 (Whereupon, a recess is called
7 at 11:07 a. m.)

8 (The Judge enters the courtroom
9 at 11:19 a. m.)

10

11

12 D E N V E R L E E

13 C L A Y T O N, II, previously sworn as
14 a witness in the presence of the jury,
15 resumes the stand and testifies as
16 follows:

17 THE COURT: Bring the jury.

18 (The jury enters the courtroom
19 at 11:20 a. m.)

20 THE COURT: Go ahead.

21 MR. KULP: May it please the
22 Court, your Honor.

23

24

25

Clayton -- Cross

1 CROSS-EXAMINATION BY MR. KULP:

2 Q Detective Clayton, you -- let's
3 get right to the anger questionnaire. That
4 was recovered from Mr. Myers' house that
5 evening. Correct?

6 A That's correct.

7 Q And that was recovered when
8 everyone in the house who lived there
9 consented to the search of the house.
10 Correct?

11 A That's correct.

12 Q And you certainly, when you saw
13 that, you recognized that that -- well, did
14 you make an inquiry to resolve, to, to ask
15 or determine what that was related to since
16 it said "adult outpatient treatment manual",
17 like how the document might have been
18 generated?

19 A I don't remember what it said on
20 there, but it was an anger questionnaire.
21 It said anger questionnaire at the top and,
22 no, sir, I didn't inquire what it was about.

23 Q Okay. And did you, did you, did
24 anyone inform you that that document was
25 related to Mr. Myers' hospitalization for

Clayton -- Cross

1 alcoholism?

2 A No, sir.

3 Q Okay. And of course at the
4 bottom of the questionnaire you certainly
5 see the note, and the document speaks for
6 itself, that "most of these answers and
7 feelings was before I got help for my
8 sickness." Correct?

9 A I don't recall that, sir.

10 Q Okay. Do you have any reason to
11 dispute that this was generated when he was
12 being treated a year before this incident,
13 approximately?

14 A Say that again, sir.

15 Q Do you have any reason to
16 dispute that this was, this document was
17 generated almost a year before this
18 incident?

19 A I don't know when it was
20 document -- when it was documented.

21 Q You didn't bother to make that
22 inquiry?

23 A No, sir.

24 Q Now, but you certainly -- I
25 think you testified that when you left his

Clayton -- Cross

1 house that night you took his clothes, you
2 got his clothes and his boots, and some
3 papers, and among the papers this was
4 included, the anger questionnaire sheet?

5 A Yes, sir.

6 Q Now, you testified after that
7 that you had a meeting with Lieutenant
8 Cumbee and Detective Lieutenant -- then
9 Sergeant -- Tetanich. Correct?

10 A Yes, sir.

11 Q And you were planning out the
12 next day about how you were going to
13 confront Mr. Myers and try to get him to
14 confess to this crime?

15 A Yes, sir.

16 Q For which you had no evidence
17 except for the hair found in Miss Haught's
18 hand?

19 A That's correct.

20 Q Now, may I have that --

21 MR. DURANT: The jury has it.

22 MR. KULP: May I borrow it back
23 for a second? Thank you, sir. Thank
24 you, ma'am.

25 Approach the witness, your

Clayton -- Cross

1 Honor?

2 Q Let me have you hold that, and I
3 draw your attention to question number six,
4 and in that sentence number six you see the
5 phrase, without reading the whole sentence
6 unless you want to "I sometimes lie awake at
7 night and think about the things that upset
8 me during the day." Right?

9 A Yes, sir.

10 Q And in number nine you see a
11 reference to, "I get angry with myself when
12 I lose control of my emotions"?

13 A Yes, sir. He answered it yes.

14 Q Okay. And in number twenty-four
15 there's a reference, the last three words
16 there indicate, "Some -- sometimes I feel so
17 hurt and alone I feel like committing
18 suicide"?

19 A Yes, sir. And he answered yes.

20 Q Thank you. Now, referring to
21 State's exhibit number thirty, the original
22 of the statement that you had Mr. Myers sign
23 or Mr. Myers signed, I'd like to flip over
24 to page two and ask you if you can look at
25 five, line five and draw your attention to

Clayton -- Cross

1 the words that indicate do you see "like a
2 blur comma I lost control"? You see that?

3 A Yes, sir.

4 Q Okay. Thank you. Do you
5 have -- did you have -- at the time Friday
6 night, evening, whenever, did you have any
7 indication other than this questionnaire
8 that Mr. Myers had at any time ever in his
9 life thought about committing suicide?

10 A You said other than the
11 questionnaire. Well, on the questionnaire I
12 don't remember reading everything on that
13 questionnaire. I looked at it and saw
14 "anger questionnaire" on the top.

15 Now, what was the second part of
16 your question, sir?

17 Q Well, I'll just make it real
18 simple. The only place that you had to draw
19 information from or source about any issue
20 of suicide was this anger questionnaire,
21 during this time frame?

22 A I didn't, I didn't read that. I
23 didn't read that whole thing. I read the
24 top that said "anger questionnaire".

25 Q All right. Detective Tetanich

Clayton -- Cross

1 had advised you that Mr. Myers was a suspect
2 from the moment of the discovery of the
3 crime at the scene?

4 A No, sir, he did not.

5 Q All right. You were working
6 together with him and Lieutenant Cumbee and
7 he never told you that he had made a
8 decision or suspicion that Mr. Myers was a
9 suspect, prime suspect?

10 A At what point? Are we talking
11 at the beginning? Are you saying from the
12 beginning when Lieutenant Cumbee said
13 something about that he thought that was the
14 suspect in the crime or something like that,
15 I wasn't even there.

16 Q I know that. But you went back
17 to the scene and then you went back to the
18 station that Thursday?

19 A Yes, sir, I did.

20 Q Right. And you worked with
21 Lieutenant, you're the case, case detective.
22 You were assigned the case by Lieutenant
23 Cumbee there at the scene?

24 A That's correct.

25 Q And so your testimony is that

Clayton -- Cross

1 Lieutenant -- excuse me, Sergeant Tetanich
2 never told you that based on Mr. Myers's
3 failure to show emotion that he thought he
4 should show at the scene and the fact that
5 he was the boyfriend that he was, in
6 Sergeant Tetanich's mind, the prime suspect?

7 A He never told me about that
8 incident where he was talking about, where
9 the defendant came up and talked to him and
10 everything. We believed that he was a
11 suspect from the beginning, and the reason
12 why is because there was no forced entry,
13 the -- we believed that the wine carafe was
14 used, which was located near her head, and
15 because of that we believed that the person
16 that did this was close to the victim. And
17 so, therefore, the first person we're going
18 to look for is the boyfriend or the husband
19 or something like that. Usually that's --
20 that's usually what happens.

21 So, yes, he was a suspect from
22 the beginning. And, and that's the reason
23 why I went over to talk -- over his house to
24 talk to his mother.

25 Q Okay. So he was the suspect

Clayton -- Cross

1 from the beginning?

2 A Yes, he was the suspect from the
3 beginning, but I never had this for
4 information from Lieutenant Tetanich relayed
5 to me until way later.

6 Q Okay. That's fine. I'm just
7 trying to determine. He was the suspect?

8 A Yes, sir.

9 Q And so after forming a belief
10 that he was a suspect, it's your testimony
11 that you went to his parents' house and you
12 recovered an anger questionnaire and you
13 didn't read the whole thing?

14 A No, sir. I glanced over it, the
15 top.

16 Q Okay. And when you had a
17 meeting with Lieutenant Cumbee and Sergeant
18 Tetanich that Friday evening to plan the
19 confrontation and the ruse and lie over the
20 hair, you didn't review this document at all
21 and you didn't see any other detective
22 review that document. Correct?

23 A No, sir. Not that I can recall.
24 I don't remember any other detective looking
25 over it and reviewing it. I remember when I

Clayton -- Cross

1 was at the scene I did glance over it, but I
2 didn't look, look through the whole thing.
3 I know it was an, an anger questionnaire
4 because it was written on the top.

5 Q Okay. So the information
6 contained therein didn't, didn't factor in
7 when you got it and looked at it into the
8 assessment of the suspicion about Mr. Myers?

9 A No, sir.

10 Q Okay. So you didn't consider
11 that to be relevant to the issue who was the
12 suspect. Correct?

13 A It's relevant. I took it
14 because, or myself and Lieutenant Tetanich
15 who was there that night, it was relevant
16 because of the fact of it was an anger
17 questionnaire, so we wanted to know because
18 of their relationship.

19 Q So you did factor it in?

20 A No, sir. We took --

21 Q Well --

22 A We factored it in, are you
23 saying -- we factored it in to, to this
24 right here. I took it because the reason it
25 had anger questionnaire at the top. It's an

Clayton -- Cross

1 anger questionnaire, so we wanted to know
2 that.

3 Q Okay. Let's move on. Now the
4 watch in the case, although the initial
5 report as you're aware indicates it was a
6 Casio watch, a Gitano or Gitano watch was
7 found at the scene. Correct?

8 A Yes, sir.

9 Q Where was it found?

10 A It was found by Detective
11 Hallman when he was sifting through some
12 ashes that was found from inside the, the
13 business, inside the Mill Inn.

14 Q As the case detective, do you
15 know where it was found?

16 MR. DURANT: Your Honor, this is
17 all fine but in interests of speeding
18 this thing along, he had the man up
19 there that found the watch and the jury
20 knows where it was found.

21 THE COURT: He's on cross, so
22 I'll allow it.

23 Q Now, as the case detective, what
24 steps did you take to have the watch
25 examined forensically to determine if it had

Clayton -- Cross

1 any value in the case in identifying or
2 being evidentiary value in the case at all?

3 A Well, as the case detective let
4 me tell you what a case detective does and
5 specifically at North Charleston.

6 Q Could you please just -- I just
7 want you to answer. As the judge will tell
8 you, if you just answer my question you're
9 welcome to explain it afterwards. I'll
10 just -- I'll restate it if you like.

11 A Go ahead.

12 Q What steps if any did you take
13 to determine if the watch was of any
14 forensic value to you in the case?

15 A Later, upon the defense's
16 request the, the watch was sent to be tested
17 for blood and hair.

18 THE COURT: Now you can explain
19 it, if you'd like.

20 THE WITNESS: Well, also as the
21 case detective, what you did, you have
22 other people that's involved in the
23 investigation. They're going around.
24 They're collecting information and
25 they're bringing it back to me and I

Clayton -- Cross

1 put it in a case file. Doesn't mean
2 that I'm ramrodding this investigation.
3 Doesn't mean that I'm going out -- I'm
4 assisting in this investigation. I'm
5 responsible for collecting all this
6 information.

7 As far as the watch, it was
8 later sent, upon the request of the
9 defense.

10 Q Okay. In your investigation did
11 you determine any evidence or information
12 that the watch belonged to Mr. Myers or was
13 worn by him at any time?

14 A No, sir.

15 Q Did you develop any information
16 or evidence that the watch was worn at any
17 time by the victim, Teresa Haught?

18 A No, sir.

19 Q Okay. Did you develop any
20 information from any source that the watch
21 was already at the scene that night prior to
22 the fire or prior to her death?

23 A No, sir.

24 Q Now, let me hand you -- here we
25 go. It's been marked. Let me hand you a

Clayton -- Cross

1 document. I'm handing you State's exhibit
2 number twelve in evidence. Asking you to
3 take a look at that, please, sir.

4 Do you recognize that
5 perspective of the crime scene?

6 A Yes, sir.

7 Q Okay. And I'm handing you
8 another document --

9 (Whereupon, marked for
10 identification was Defendant's Exhibit
11 No. 23, photograph.)

12 -- marked as defendant's
13 twenty-three for identification and ask you
14 if that appears to be an enlargement or
15 larger view of the exhibit that you're
16 holding in your hand?

17 A Yes, sir.

18 MR. KULP: Okay. We would offer
19 it at this time into evidence as --

20 THE COURT: Any objection?

21 MR. DURANT: No objection, your
22 Honor.

23 (Whereupon, entered into
24 evidence was Defendant's Exhibit No.
25 23, photograph.)

Clayton -- Cross

1 MR. DURANT: I mean no objection
2 to the picture, your Honor, but I mean
3 the testimony is this officer has
4 never, never even went into the crime
5 scene.

6 THE COURT: Well, I don't know
7 what the question is going to be, but
8 let's see what the --

9 MR. DURANT: -- and, and given
10 the circumstances I certainly don't see
11 how he can illuminate anything.

12 THE COURT: All right.

13 Q I'm asking you to draw your
14 attention to exhibit number twenty-three,
15 defendant's. You mentioned the photographs
16 in the case. You certainly as the case
17 officer viewed the photographs in the case.
18 I know you didn't go to the crime scene, but
19 during that period of time once the photos
20 were processed and printed, you looked at
21 them, didn't you? That was part of your
22 job?

23 A Yes, sir. I looked at them.

24 Q Okay. And did you -- do you
25 recall that you looked at defendant's

Clayton -- Cross

1 exhibit number twenty-three?

2 A No, sir. I can't recall.

3 Q Okay. Well, look at it now.

4 A Yes, sir.

5 Q Does it appear to be related to
6 this case?

7 A Yes, sir, it does.

8 Q Okay. Well, I like to draw your
9 attention to this bar stool right here and
10 ask you to look at the legs of that bar
11 stool. You see anything on there that as
12 the case detective or agent on the case that
13 draws your interest?

14 A Yes, sir.

15 Q What?

16 A It appears to have something on
17 the legs. It's some type of liquid or
18 something.

19 Q Like what?

20 A Some type of liquid. Maybe
21 possibly blood spatter, is that what you're
22 saying? Or soot, something like that.

23 Q Okay. And the body is all the
24 way -- the body of Miss Haught is all the
25 way over there?

Clayton -- Cross

1 A Yes, sir.

2 Q All right. Thank you.

3 Publish it, your Honor?

4 MR. DURANT: May I see the
5 picture, please?

6 MR. KULP: Yes, sir.

7 Q Was a -- did your investigation
8 reveal or does Mr. Myers' statement indicate
9 that a bar stool was ever used in the
10 confrontation of Mrs. Haught?

11 A No, sir.

12 Q Now --

13 A But in that photograph that you
14 just set -- just showed me, it's on the leg
15 area of that bar stool. And if you look at
16 that photograph, it's near the body of the
17 victim. I mean, I'm sorry, it's near the
18 victim.

19 Q Okay. Now let me ask you about
20 the videotape. Now, you -- let me go back
21 and clarify one thing if I can. That Friday
22 Mr. Myers didn't just appear at the North
23 Charleston Police Department, did he?

24 A He came up to the North
25 Charleston Police Department.

Clayton -- Cross

1 Q Why did he come there? Isn't it
2 true that Lieutenant --

3 A I believe that, I believe that
4 Lieutenant Cumbee may have called him.

5 Q Okay. So he didn't just
6 voluntary -- he didn't just drive up there
7 and come in the front door. Lieutenant
8 Cumbee had called his house, to your
9 knowledge, made a request that he come in?

10 A Not to my knowledge, but I think
11 so.

12 Q You think so. Okay. Very good.
13 Now, that day you spoke with him and at that
14 point at least it was the design and intent
15 of the detectives, was it not, to get
16 Mr. Myers to agree that if the identity of
17 the contributor of the hair found in the
18 victim's hand could be made, that that would
19 be the killer?

20 A Yes, sir. In a sense, yes, sir.

21 Q And so you detectives had never
22 really met him before I think prior to the
23 initiation of the investigation in this
24 case?

25 A I haven't met him till the

Clayton -- Cross

1 fourteenth.

2 Q Yes, sir. But you asked him to
3 go to lunch with you at the Olive Garden and
4 you wanted to take him up there and have
5 lunch with him?

6 A Yes, sir.

7 Q And he said he didn't really
8 care to?

9 A Yes, sir. That's right.

10 Q And he stayed at the police
11 station?

12 A Yes, sir, he did.

13 Q And while he stayed there a, an
14 officer stayed with him who was not in
15 uniform but who was wearing a gun. Correct?

16 A He may have. I don't recall him
17 staying with any officer. He's out at the
18 back door. I believe he was smoking
19 cigarettes.

20 Q With the officer?

21 A I don't recall.

22 Q Okay. So then when you got back
23 from lunch you had received the information
24 about the match of the hair from
25 Mr. Hallman?

Clayton -- Cross

1 A Yes, sir. After lunch.

2 Q All right. And so you then --
3 had you discussed the issue of a polygraph
4 with Mr. Myers prior to going to lunch?

5 A Yes, sir, I did.

6 Q And even before going to lunch,
7 he readily agreed to take a polygraph exam?

8 A Yes, sir, he did.

9 Q And when you got back from
10 lunch -- so then was he asked to wait at the
11 station until you got back from lunch so
12 that you could then go to the polygraph
13 exam?

14 A No, sir. He wasn't asked to
15 wait at the station. He wasn't -- he wasn't
16 told to stay at the station. I mean I don't
17 know what you're asking then.

18 Q Okay. I'll withdraw the
19 question.

20 Okay. In any event, you -- at
21 some point when you got back, you got him in
22 your patrol car or detectives' car and drove
23 him down to Major McHale. Correct?

24 A Yes, sir.

25 Q Did you -- anybody go with you?

Clayton -- Cross

1 A uniformed officer or anyone else?

2 A No, sir. Not that I can recall.

3 Q And as you said you suspected
4 him from the beginning. Excuse me. Pardon
5 me. Do you know what an interview log is?
6 Have you ever heard that phrase or
7 expression?

8 A Interview log?

9 Q Yes, sir.

10 A Yes, sir.

11 Q Did you keep a detailed log of
12 the times of your contact with Mr. Myers?

13 A No, sir. I did not.

14 Q And so therefore you didn't
15 write down exactly who went with you and
16 Mr. Myers down to see Major McHale?

17 A No, sir, I did not.

18 Q When you arrived there -- you
19 had called in advance and spoken to Major
20 McHale, had you not?

21 A Yes, sir, I did.

22 Q That was the evening before?

23 A No, sir.

24 Q It wasn't the evening before?

25 A No, sir, it was not.

Clayton -- Cross

1 Q Did you hear his testimony about
2 that?

3 A I heard his testimony. He's
4 trying -- he was trying to recall.

5 Q Oh.

6 A And yes, sir, I called him that
7 day. I knew, I knew that was going to be a
8 discrepancy that was going to be brought up.
9 I called him earlier that day. In fact when
10 we had the defendant inside the office,
11 is -- at that time I stepped out of the
12 office and I went in there and called
13 Lieutenant McHale.

14 Q Because you needed a specialist?

15 A Yes, sir.

16 Q All right. And at that time,
17 prior to going to the polygraph, Mr. Myers
18 could have seen the stack of color photos of
19 the crime scene and the autopsy because it
20 was on Lieutenant Cumbee's desk?

21 A That's correct.

22 Q So you got down there to see
23 Major McHale and did you take a blank video
24 cassette with you?

25 A No, sir, I did not.

Clayton -- Cross

1 Q And when you got there --

2 A Not that I -- not that I
3 remember. I don't remember going down there
4 with a -- I believe it was there. It was
5 there in the office. Yes, sir.

6 Q Okay. And when did you -- did
7 you know when you went down there that he
8 had the ability or the capability of
9 videotaping?

10 A Yes, sir, I did.

11 Q And so when you got there did
12 you ask him to set up the video recorder to
13 enable recording of the offering of the
14 test?

15 A Sir, what happened is he came
16 out and I knew there was a video recorder
17 there and he said it's not his policy or the
18 police department policy to videotape. He
19 asked me did I want to videotape. I asked
20 if he had any videotapes. He said yes. And
21 I took it and I put it in there, I believe,
22 or he may have. He may have did it.

23 Q Did you make any notes then
24 about what you were doing and who was doing
25 what, what was going on?

clayton -- Cross

1 A No, sir.

2 Q Okay. And so somebody put a
3 videotape in the recorder?

4 A That's correct.

5 Q Do you happen to recall who
6 might have pushed the record button?

7 A No, sir. I would believe it was
8 either him or me. It had to be either one
9 of us.

10 Q Okay. Did you explain to
11 Mr. Myers at any time that he was being
12 videotaped?

13 A No, sir, I did not.

14 Q Did you -- did the topic come up
15 during your discussion with him?

16 A No, sir.

17 Q Okay.

18 A He was inside the room when I
19 did that.

20 Q In order for the specialist, as
21 you indicated, Mr -- Major McHale to do the
22 interviewing of Mr. Myers, you had to
23 provide him certain information about the
24 case. Correct?

25 A Yes, sir, I did.

Clayton -- Cross

1 Q Please tell the ladies and
2 gentlemen of the jury what information about
3 the case you recall giving Major McHale?

4 A I told Lieutenant McHale that he
5 was suspect in the crime and I gave him
6 general information about him, and also
7 about the crime scene.

8 Q Did you tell him there were any
9 eyewitnesses who could place Mr. Myers at
10 the scene?

11 A No, sir, I didn't.

12 Q Did you tell him there was any
13 fingerprint evidence that could put
14 Mr. Myers at the scene?

15 A No, sir, I didn't.

16 Q Okay. You told him about the
17 wine carafe?

18 A Yes, sir, I believe I did. Yes.

19 Q And so you told him that
20 pictures that we've discussed, the stack of
21 pictures, might have been shown to
22 Mr. Myers?

23 A No, sir, I did not.

24 Q Now, those pictures that
25 Mr. Myers might have seen, as you recall

Clayton -- Cross

1 what they exhibit, provide a great deal of
2 information about the case?

3 A It would, sir.

4 Q All right. And one of the
5 things that those pictures showed, did they
6 not, was and tragically the, the, the body
7 of Teresa Haught when she -- at the scene
8 when she was turned over and her jeans were
9 unzipped all the way down to the bottom of
10 the zipper?

11 A Sir, I don't understand what
12 you're asking. We didn't show her, her
13 (sic) any photographs. I didn't see anybody
14 show any photographs. Is that what you're
15 insinuating?

16 Q I'm not -- I'm just asking
17 questions.

18 A Okay. No, sir.

19 Q Let me ask you this. Do any of
20 the photos show, of Miss Haught, show the
21 zipper?

22 A Yes, sir. I'm sure there --
23 they are photographs.

24 Q Now, you then -- you don't
25 recall who you were with then? Another

Clayton -- Cross

1 officer there as you were outside Mr.,
2 Mr. McHale's room?

3 A No, sir. I don't recall. I
4 believe, I believe it may have been Al
5 Hallman came in there later. Yes, sir.

6 Q And, and you sat there with
7 Mr. Hallman at least when he was there and
8 there was a video monitor so that you could
9 see what was going on contemporaneously with
10 what was going on in the closed room with
11 Mr. Myers and Mr. McHale. Correct?

12 A Yes, sir.

13 Q Okay. And at a certain point
14 Mr. McHale came out and talked to you. Left
15 the room?

16 A Yes, sir.

17 Q He came out and talked to you,
18 and he told you that this guy was ready to
19 confess, didn't he?

20 A Yes, sir, he did.

21 Q And he told you that he could,
22 if he had five or ten more minutes he could
23 get him to confess?

24 A Yes, sir.

25 Q But you got on the phone, didn't

Clayton -- Cross

1 you, and you called another officer, another
2 detective? You didn't?

3 A No, sir.

4 Q Okay. But a decision was made
5 there that it might be better to go ahead
6 and let him sleep on it. Correct?

7 A Yes, sir.

8 Q Shift to another subject for a
9 minute. The -- I don't know if you've
10 testified to this or not. I'll wait for you
11 to get a drink.

12 Now the day the fourteenth --
13 thirteenth, the day of the discovery of the
14 murder of Miss Haught, you know as the case
15 detective that officers were sent to her
16 house to conduct a search of her house for
17 evidence. Correct?

18 A No, sir. They didn't go there
19 for evidence.

20 Q Okay. Well, did officers,
21 police officers go to her house?

22 A Yes, sir.

23 Q Were photographs taken at her
24 house?

25 A Yes, sir.

Clayton -- Cross

1 Q Were they restricted in any way
2 from looking at any portion or part of her
3 house?

4 A No, sir.

5 Q Was any evidence collected from
6 her house at [REDACTED] that
7 would, that, that you were to introduce in
8 this case against Mr. Myers?

9 A No, sir. Like you said, they
10 went there to take photographs. It was for
11 an unrelated thing. It had nothing to do
12 with this. It had something to do with the
13 house.

14 Q Okay. Did you take any tire
15 track impressions or know of any tire track
16 impressions being taken in back of the Mill
17 Inn?

18 A No, sir.

19 Q Okay. Now in terms of what -- a
20 negative result or results of investigation,
21 you never developed any eyewitnesses that
22 would place Mr. Myers at the Mill Inn.
23 Correct?

24 A That's correct.

25 Q And as you said, we all know two

Clayton -- Cross

1 eyewitnesses put Dana Chapels immediately
2 outside the bar when the two witnesses left?

3 A Yes. We had two eyewitnesses
4 that saw Dana Chapels when he came up in the
5 car after they closed up the bar and locked
6 it up. He was drunk.

7 Q Now, which side of Ms. Haught's
8 car did Mr. Myers park, according to what
9 you put in, have in his statement?

10 A I don't recall, sir.

11 Q Okay. And did you do any
12 forensic testing there to see if there were
13 any drippings or any type of chemical which
14 could be related to his car in some forensic
15 fashion?

16 A No, sir, I did not.

17 Q Now, you found, did you not, at
18 the scene a, a -- well, you had a chance to
19 look over Miss Haught's car. Correct?

20 A Yes, sir. The crime scene
21 officer did.

22 Q Crime scene officer. Now, when
23 you were -- one second. Ask you a question
24 about that videotape. After the videotape
25 was made and you left Mr. McHale's office or

Clayton -- Cross

1 area that day, you, you took the videotape
2 with you, did you not?

3 A Yes, sir, I did.

4 Q And that was on March the
5 fourteenth, 1997?

6 A That's, that -- yes, sir, that's
7 correct.

8 Q When did you show that to the
9 solicitor?

10 A I showed that to the solicitor I
11 believe just before the Jackson V. Denno
12 hearing because he never, ever mentioned to
13 me anything about the videotape that, that I
14 had. I came to him and I said, "Well, did
15 you get this?" He said, "No."

16 And I said well, we might want
17 to give it to you because I don't know if
18 you have it or not. But I'd taken the
19 videotapes to the crime scene on order of
20 Detective Hallman but -- to have it
21 processed because we needed to make a copy
22 for you and, and I thought that I did that,
23 and since he didn't have it, I thought maybe
24 you didn't have it either.

25 Q Okay. That was what, three

Clayton -- Cross

1 years later, almost?

2 A Yes, sir.

3 Q Over three years later that we
4 got the tape?

5 A Yes, sir.

6 Q Now, you had -- let's see. Now,
7 there was a dollar bill that was recovered
8 in the case as evidence. Is that correct?

9 A Yes, sir.

10 Q And that dollar bill was
11 bloodied or had blood on it?

12 A Yes, sir. It was collected from
13 Detective Hallman.

14 Q Okay. Now, back to the, the
15 fifteenth at the police station that day
16 when the plan was enacted, the plan was
17 contrived even before it was, was enacted
18 and Mr. Myers, the confession of Mr. Myers
19 was sought.

20 Do I understand that you, that
21 you testified on direct that Detective
22 Cumbee told him about the hair and was
23 getting him to agree, getting him to agree
24 that the hair was his?

25 A No, sir. I messed up. I was

Clayton -- Cross

1 nervous. I was sitting here trying to
2 explain it. No, sir.

3 Q Okay. So you want to correct
4 that?

5 A I did. I thought I did correct
6 it.

7 Q Okay. So that was a
8 misstatement that Lieutenant Cumbee was
9 trying to get him to agree that the hair was
10 his?

11 A No, sir. He was trying to get
12 him to agree that the hair belonged to the
13 suspect, the person that did this. See, if
14 he believed that it was the hair and it
15 belonged to him, if he's the, if he did it,
16 he would think that we have the hair, and
17 it, it, it proves that he did it.

18 Q Now, you've been sitting here,
19 you certainly heard the testimony from Major
20 McHale as to his contact with Mr. Myers the
21 previous day, did you not?

22 A Say that again, sir?

23 Q You were here sitting and heard
24 the testimony of Mr -- of Major McHale
25 yesterday?

Clayton -- Cross

1 A Yes, sir.

2 Q All right. And you certainly,
3 do you recall him saying that he told
4 Mr. Myers that it doesn't matter what you
5 say, you know, if we think you're the killer
6 nothing you say will make us believe you, or
7 words to that effect?

8 A No, sir. No, sir, I don't
9 recall that.

10 Q Okay. Now, did you display the
11 video to anyone that night, that Friday
12 night?

13 A No, sir, I did not.

14 Q Okay. So just put it in the
15 file or passed it over to Detective Hallman
16 for processing?

17 A No, sir. I think that came
18 about later that, that, it didn't happen
19 that night. No, sir.

20 Q Do you know, do you know if any
21 other officer or detective looked at that,
22 that tape?

23 A No, sir.

24 Q Did you show it to anyone or did
25 you, when you got back to the station did

Clayton -- Cross

1 the tape find it -- did the tape -- was the
2 tape put into a V. C. R?

3 A No, sir. Not that I recall.

4 Q Okay. Now you made reference to
5 the fact that the clothes, you collected the
6 clothes that he was -- that he indicated he
7 was wearing that Wednesday night?

8 A Yes, sir.

9 Q And those are the ones that have
10 been introduced as his clothes and were
11 tested and had no evidentiary value that
12 would show that he was involved in this
13 crime?

14 A That's correct.

15 Q And you now, the -- did you ever
16 have any -- blood was drawn from Mr. Myers
17 for purposes of a known standard when, on
18 Thursday morning when you went with
19 Detective Payne to the hospital?

20 A Yes, sir.

21 Q Did you ever take any steps to
22 do any type of analysis, toxilological,
23 toxicological analysis of that blood sample
24 to determine the ethanol content or any
25 drugs?

Clayton -- Cross

1 A No, sir.

2 Q Now, you in, you in reviewing
3 the case file to prepare for this case and
4 also since you are the case agent, you
5 certainly have reviewed the statements taken
6 from Tamya Gonzales and Margaret Jensen
7 White?

8 A Yes, sir, I did.

9 Q Okay. And you were also here in
10 the courtroom when they testified and you're
11 well aware that they who had -- those ladies
12 who had direct contact with both Mr. Myers
13 and Alan White didn't take any of his passes
14 seriously because he was a big jokester and
15 so forth?

16 A That's correct.

17 Q Now, I was listening to your
18 direct testimony and of course the record
19 will speak for itself, but did you testify
20 that you had to get him to -- you did. You
21 already addressed that. You had to get him
22 to agree that the hair was his, but you
23 clarified that now?

24 A I clarified it on the stand and
25 I clarified it just a while ago.

Clayton -- Cross

1 Q Thank you, sir. Now, you made
2 some reference to the side door at his
3 residence. Now, where in the two-page
4 statement that you wrote out for Mr. Myers
5 to sign is there any mention about him
6 leaving by the side door?

7 A I didn't write it anywhere.
8 There's a lot of things I may have not
9 written in that report. When you write a
10 report like that you don't -- I mean it's
11 like you can't remember everything at the
12 time. But later on, and you know how the
13 mind works, you're sitting there and you
14 write things down, you remember things.
15 But, no, sir.

16 Q This two-page statement you're
17 offering as a confession to murder, it's not
18 a report. Correct?

19 A Say again, sir?

20 Q This two-page statement that
21 you -- that Mr. Myers signed, that you wrote
22 out, put in front of him to sign, it's not a
23 report. It's a two-page confession to
24 murder, isn't it?

25 A That's correct.

Clayton -- Cross

1 Q And it would be very important
2 to include in there every possible detail
3 that you gathered in the investigation of
4 the case and put it in. Correct?

5 A It would be very important to
6 put this information in there but, again,
7 we're human. We make mistakes. And we, we
8 try to put these things in there. Later on
9 I remembered that and now I'm telling you
10 about it.

11 Q Yes, sir. Where in the file is
12 there a mention written down, typed,
13 handwritten, whatever that he went out the
14 side door?

15 A Nowhere.

16 Q Okay. Now you testified also
17 that he said he drove to the Mill Inn?

18 A That's correct.

19 Q Okay. Did you testify anything
20 about him rolling his truck out of the
21 driveway?

22 A No, sir. I never testified to
23 that because I don't remember that.

24 Q Okay. Is that anywhere in the
25 case file that he rolled out of the

Clayton -- Cross

1 driveway, written down or typed or
2 handwritten?

3 A No, sir. This information came
4 to light when Sergeant or Lieutenant
5 Tetanich testified. He may have said it
6 during the time when I was taking this
7 information down. I was writing this down
8 when I was sitting in the office. I was
9 writing it down just as fast as I can.

10 There may have been some information that I
11 did not get in there, and that's the reason
12 why I may have not gotten that information.

13 Q Okay. Now, you in Mr. Myers's
14 two-page statement that you presented to him
15 for signature, a "closed on Sunday" sign is
16 mentioned. "I grabbed a 'closed on Sunday'
17 sign and some papers."

18 A That's correct.

19 Q Have you had occasion to review
20 the statement of Ms. Tanya Gonzalez in the
21 case file that was taken from her on the
22 thirteenth of March, that first day, 1997?

23 A Yes, sir.

24 Q You recall that in there that
25 the issue came up and was mentioned of the

Clayton -- Cross

1 "close" sign and turning it around. Do you
2 recall that?

3 A No, sir. I don't recall that.

4 MR. DURANT: Your Honor, may we
5 approach the side?

6 THE COURT: Sure.

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

9 THE COURT: Go ahead.

10 MR. KULP: I'll move on, your
11 Honor.

12 Q Now when you got there that day
13 up -- on that Saturday with Mr. Myers, and
14 after you'd taken him to breakfast, had a
15 nice breakfast at Shoney's and you ate.
16 Correct?

17 A That's correct. He wanted to
18 drink coffee.

19 Q He just had a cup of coffee?

20 A Yes, sir. I offered to buy him
21 something to eat but he just drank coffee.
22 Said he usually drinks coffee in the
23 morning.

24 Q Okay. And then from there you
25 went to the station and got there about ten,

Clayton -- Cross

1 10:30, 10:30 or so?

2 A We got there about fifteen till
3 ten. Somewhere around there.

4 Q Okay. And that's when you began
5 simply interviewing him to acquire
6 information about him like the background
7 information and so forth?

8 A Started it about 10:20. That's
9 the time we gave him the advisement of
10 rights.

11 Q Certainly you had in the file
12 then or had on your desk or in your
13 possession a copy of all that background
14 information about Mr. Myers that Detective
15 Payne had taken from him on the first day of
16 the, the investigation. You had that,
17 didn't you?

18 A I believe that Detective Payne
19 did take his statement.

20 Q Okay. And so from that point,
21 quarter of ten and then 10:20 to whatever
22 until noon, no interrogation of Mr. Myers
23 took place?

24 A That's correct.

25 Q And so about twelve o'clock the

Clayton -- Cross

1 ruse of the hair was hatched, presented to
2 Mr. Myers, and in ten minutes he said, "I
3 must have did it then."

4 A There about. Yes, sir.

5 Q Now, as the case officer and
6 working with Mr. Hallman and others, you
7 certainly were aware at that time that there
8 were two top thirds of a wine carafe that
9 were found at the crime scene. Correct?

10 A No, sir. That never came to
11 light to me until I got a crime scene
12 report, and I've only known about one wine
13 carafe. But I got the crime scene report
14 the following week, like on Wednesday.

15 Q Okay. So Mr --

16 A And --

17 Q I'm sorry. Excuse me.

18 A Excuse me. And it never was
19 brought up to me prior to then.

20 Q Okay. So Mr. Hallman didn't
21 come to you and say, "You know, I know this
22 top third of this wine carafe really -- that
23 I took down to the autopsy -- really focuses
24 well in this case, is important, and is
25 probably the murder weapon, and I got

Clayton -- Cross

1 another one, too." He never said that to
2 you?

3 A I believe that I talked to, to
4 Detective Hallman later and he showed me
5 some photographs, how the, the one wine
6 carafe matches up to the defense wound on
7 the, the victim and he, when he was at the
8 autopsy, and he told me about that.

9 Q He told you that he --

10 A But that's the only wine carafe
11 that I know about.

12 Q Okay. Now, when you were
13 meeting there with Mr. Myers, you testified
14 on direct that Sergeant Tetanich there said
15 something, he said -- a question, he said,
16 "Did you see the note on the windshield?"

17 A That's correct, sir.

18 Q Okay. Not, "Did you see
19 anything, Wes, when you got at the scene and
20 went up to the door?" He didn't say that.
21 He said, as you testified, "Did you see the
22 note on the windshield?" Correct?

23 A He said, "Did you see a note on
24 the windshield?" Yes, sir.

25 Q And as well please look at your

Clayton -- Cross

1 supplemental report in order to refresh your
2 recollection. If you don't have it before
3 you we can certainly get you a copy to
4 review.

5 A Yes, sir.

6 Q But as the case officer as well,
7 let's review a few of the issues during the
8 interrogation and this confession. It's
9 true, is it not, that when the hair ruse was
10 presented to Mr. Myers that Mr. Myers said
11 "no, no"?

12 A That's correct.

13 Q And that then "Lieutenant Cumbee
14 stated that, 'Yes. It is your hair.' And
15 told him that the hair came from the back of
16 his head."

17 A What happened is the
18 defendant -- yes, sir. It's true.

19 Q Thank you.

20 A But what happened is the
21 defendant, the defendant, what happened is
22 the defendant at that time was going no, no,
23 and his eyes started watering up and, and
24 then he said yes. He said yes, it's from
25 the back of your head. So I don't want it

Clayton -- Cross

1 to be taken out of context. I want the jury
2 to understand that.

3 Q Sure. And that it was a match?

4 A Yes. He said that the hair --
5 he said that the hair matched the back, back
6 of your head.

7 Q Okay.

8 A Yes, sir.

9 Q You had no reason to believe he
10 didn't trust you at the time?

11 A No, sir. We treated him good.

12 Q You'd been to breakfast with him
13 that morning?

14 A Yes, sir.

15 Q You invited him to lunch the day
16 before?

17 A Yes, sir.

18 Q And while you formed a belief
19 that he wasn't, that he was a suspect in the
20 case from the beginning, you'd been advising
21 him the whole time that he wasn't, up to
22 then. Correct?

23 A No, sir.

24 Q Well, when did you tell him he
25 was a suspect? You don't remember?

clayton -- Cross

1 A What do you mean? When did I
2 tell him he was a suspect?

3 Q No. It's not a complicated
4 question. I'm not being --

5 A Okay.

6 Q -- facetious. When did you tell
7 him he was a suspect?

8 A I did never tell him he was a
9 suspect.

10 Q So but you were eliciting his
11 cooperation and you were telling him at the
12 time that if he didn't cooperate and provide
13 information and assist you, that you
14 couldn't then -- and eliminate him, you
15 couldn't then go find the person that killed
16 his girlfriend?

17 A No, sir. I wasn't.

18 Q Okay. Well, let me ask you
19 this. After he said, "I must have did it
20 then," it's true that thereafter Lieutenant
21 Cumbee asked, "Don't you think you need to
22 say you're sorry?"

23 A Yes, he did. He did say, "Don't
24 you think you need to say you're sorry?"

25 And --

Clayton -- Cross

1 Q Yes, sir. Go ahead. I'm sorry.

2 Excuse me.

3 A And the defendant said, "I'm
4 sorry, Teresa. You know. I didn't mean to
5 do this. I didn't mean to kill you."
6 Things like that.

7 Q Okay.

8 A Yes, sir.

9 Q But he didn't say "I'm sorry" in
10 sequence, which is critical, until
11 Lieutenant Cumbee asked, "Don't you think
12 you need to say you're sorry?" Then he said
13 he was sorry. Correct?

14 A Yes, sir.

15 Q And then thereafter as you said
16 earlier, "Sergeant Tetanich asked the
17 suspect did he see the note on the car."

18 A Yes, sir.

19 Q He didn't say, "Did you see
20 anything unusual?" or "Did you see anything
21 about the car that was unusual?"

22 A No, sir.

23 Q He said, "Did you see the note
24 on the car?"

25 A That's correct.

Clayton -- Cross

1 Q Now, the topic of wanting to die
2 at the fire, that came up as you documented,
3 "Lieutenant Cumbee asked him if he wanted to
4 hurt himself."

5 A That's correct.

6 Q "And then he said, 'I was real
7 upset and I just wanted to die.'" Correct?

8 A Yes, sir.

9 Q And then it's true that
10 "Sergeant Tetanich asked the suspect if he
11 took the purse to make it look like a
12 robbery."

13 A Yes, sir. There about.

14 Q Now, the purse was already an
15 issue, wasn't it?

16 A Yes, sir.

17 Q And everybody out there at the
18 scene that day, the people that collected
19 like Margaret and Tanya, the people that
20 went over to Shores bar to commiserate over
21 the death of Teresa and so forth, they all
22 knew that the purse was taken, didn't they?

23 A I don't know. I can't testify
24 to that. I don't know.

25 Q Well, in any event were you

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Clayton -- Cross

1 present at the prior evening at the station
2 when Mr. Myers was there, the evening prior
3 to Saturday, and Mr. Myers asked or was
4 asked by or had a conversation rather with
5 Captain Smith about the purse?

6 A No, sir. I'm not aware of that.

7 Q Okay. Now, the trinket. It's
8 true, is it not, that "Sergeant Tetanich
9 asked the suspect if he took the purse to
10 make it look like a robbery. He stated no.
11 And then Lieutenant Cumbee asked if there
12 was something important like a trinket."
13 That came out of Lieutenant Cumbee's mouth.
14 Correct?

15 A That is correct.

16 Q And then he stated that "he had
17 an angel in the purse that he gave her and
18 that he told her the angel will watch over
19 her."

20 A Yes, sir.

21 Q But that topic of the trinket
22 came up as a result of the question asked by
23 Lieutenant Cumbee?

24 A Yes, sir. It came up.

25 Q Now, did you, did you testify on

Clayton -- Cross

1764

1 direct that Mr. Myers' car was parked on the
2 other side of Montague or --

3 A Mr. Myers' car? You mean his
4 pick-up truck?

5 Q Truck. Pick-up truck.

6 A It was on direct. I was saying
7 it was parked right beside the victim's.

8 Q Okay. Now, there are some
9 things that you didn't testify to on direct.
10 Bear with me one second, please.

11 Now, you recall that one of the
12 things that Lieutenant Cumbee told Mr. Myers
13 there during that Saturday interview was
14 that the hair being placed in the hand or
15 the hair found in the hand of the victim was
16 a miracle?

17 A Yes, sir. I recall that.

18 Q And that it was a sign?

19 A Yes. It was a sign.

20 Q Now, on the two-page statement
21 if you recall or -- and/or can tell, the
22 corrections that were made on the statement
23 that you testified about were made by you
24 and then you asked him to initial them.
25 Correct?

Clayton -- Cross

1 A Yes, sir, after he already told
2 me that I was misspelling her name and
3 things like that, so I went back and put a
4 line through it. Then I asked him to
5 initial them.

6 Q Okay. Now, in that statement it
7 says the fire got really big and that's when
8 he fled?

9 A Yes, sir.

10 Q You heard the testimony of
11 Captain Carnell, Cornell, Carnell about the
12 fact that his belief was the fire started
13 about three o'clock. You don't have any
14 knowledge when the fire started?

15 A Yes, sir. That sounds correct.
16 It happened sometime later. I don't know.
17 I don't know exactly.

18 Q And it's your testimony that
19 Mr. Myers in his statement, the statement
20 that you prepared, penned for him to sign,
21 held her in his arms until he was overcome
22 by smoke and then he fled because of the
23 smoke?

24 A He held her in her (sic) arms,
25 and after that he got the purse and he left.

Clayton -- Cross

1 Yes, sir.

2 Q Right. So he's running out the
3 door for his life because he decided not to
4 die. He's on the other side of the bar but
5 he goes all the way back around this way or
6 this way to get the purse out of the cooler,
7 because that's where the fire was raging
8 that you say he started, that the statement
9 indicates he started, to grab the purse
10 because he didn't want to die, he ran into
11 the fire to get the purse to run out the
12 back door to leave?

13 A I don't know exactly where the
14 fire was raging but he did go around, grab
15 the purse, and he left out the back door.

16 Q Okay. Now, there were some
17 public swabbings that were taken in the case
18 of the victim but they were never tested.
19 Correct? Correct?

20 A No, sir. That's correct.

21 Q And then they were lost because
22 a freezer died. You know that?

23 A Yes, sir. That's beyond my --

24 Q Yes, sir.

25 A I mean that's -- that's --

Clayton -- Cross

1 Q I mean not your freezer.

2 A I know. It was at the, the
3 Medical Examiner's Office.

4 Q Yes, sir. Now, in the statement
5 as well that you had -- you gave to
6 Mr. Myers to sign it indicates that, "I
7 struck her in the center of the head with
8 the wine carafe." Correct?

9 A That's correct.

10 Q And her injuries to her head are
11 on this side, the right and the left?

12 A That's correct.

13 Q And it --

14 A But -- but prior to that, you
15 see in my notes, he had told us during that,
16 the interview before we'd taken the
17 statement, that he pointed at the left side
18 of the forehead with his finger and but
19 during the statement he said it was the
20 center of his forehead, yes, sir.

21 Q I see. Left side of the
22 forehead just like the picture that he might
23 have seen show where the injury is?

24 A I don't know what pictures he's
25 seen, sir.

Clayton -- Cross

1 Q Okay. Now, "Both of us went
2 down to the floor." That was after he
3 struck her in the head with the wine carafe?

4 A Yes, sir.

5 Q Did Mr. Myers have any injuries
6 to his body from cuts from broken glass or
7 hands or arms or legs or anything --

8 A No, sir, but I noted --

9 Q -- from falling to the floor?

10 A I'm sorry. I didn't, I didn't
11 want to interrupt. Go ahead.

12 Q Apologize. Both doing it.
13 You -- go ahead.

14 A No. The fact is --

15 Q Did he have any cuts at all from
16 falling to the floor?

17 A Did he have any cuts? Well, on
18 the, on that Saturday when we talked to
19 Mr. Myers after he confessed and everything,
20 we did have -- sorry. That was Friday. I'm
21 sorry. On Friday when Mr. Myers was up
22 there he consented to a body search and we
23 did find little burns on his hands and a cut
24 or something like that, but it doesn't -- it
25 didn't look like anything that just

1 occurred.

2 Q Right. And if that had been the
3 case you'd have told the jury about that on
4 your direct examination. Correct?

5 A Yes, sir.

6 Q Right. Now, in fact those
7 photos were taken of Mr. Myers that day at
8 the police station, that Saturday, and he
9 consented and allowed himself to be
10 photographed down to his B. V. D.'s.
11 Correct?

12 A Yes, sir, he, he -- yes, sir.
13 He gave us consent. Yes, sir.

14 Q And you've seen those
15 photographs --

16 A Yes, sir.

17 Q -- have you not?

18 A Yes, sir.

19 Q And those photographs show him
20 from a back view, don't they?

21 A Yes, sir.

22 Q And they show the length of his
23 hair?

24 A Yes, sir.

25 Q And they show that he doesn't

Clayton -- Cross

1 have a rat tail?

2 A I can't recall that, sir.

3 Q Well, then give me a minute,
4 please.

5 A If you show me a photograph I'll
6 let you know.

7 Q Yes, sir.

8 MR. KULP: Can we have those
9 marked for identification, your Honor.

10 (Whereupon, marked for
11 identification were Defendant's Exhibit
12 Nos. 24, 25, and 26, photographs.)

13 Q I hand you those exhibits marked
14 for I. D. twenty-four, twenty-five, and
15 twenty-six and ask you if you can recognize
16 that?

17 A Yes, sir. This is the
18 defendant. This is a back view of the
19 defendant.

20 Q And there's no long rat tail
21 coming from the back of his head, is there?

22 A I don't see one, sir.

23 MR. KULP: We'd offer these in
24 evidence at this time, your Honor.

25 MR. DURANT: No objection.

Clayton -- Cross

1 (Whereupon, entered into
2 evidence were Defendant's Exhibit Nos.
3 24, 25, and 26, photographs.)

4 MR. KULP: May I publish them?

5 Q And you have no information that
6 you developed in the course of your case
7 that would indicate that Mr. Myers cut off
8 any hair between the time he was interviewed
9 by Detective Payne in the car and the time
10 that these photos were taken, do you?

11 A No, sir.

12 Q Now, you made notes in this case
13 that you used to prepare for court and
14 you -- apart from the police report and
15 apart from the two-page statement. Correct?

16 A Yes, sir.

17 Q And in there -- you lost those
18 for a while and then you found them?

19 A Yes, sir, I did.

20 Q In those notes do you recall
21 noting what appears to be, "I don't remember
22 the time. Period. Wesley put the truck,
23 purse in the truck. Period."

24 A Yes, sir, but --

25 Q And then -- excuse me.

Clayton -- Cross

1 A I'm sorry. I'm sorry. You
2 still --

3 Q I'm still --

4 A Okay. But he said --

5 Q Well, let me finish the
6 question. And the second part, you remember
7 that, and the second part is, "Wesley put
8 the purse," and then that's struck through.
9 You want to -- do you need to refresh your
10 recollection?

11 A Yes.

12 Q Sure. "Wesley put the purse in
13 the truck."

14 A Okay.

15 Q You recall that?

16 A Yes, sir.

17 Q And then you wrote, "Wesley put
18 the purse," and then you struck through
19 that?

20 A Yes, sir.

21 Q And then you wrote, "Wesley
22 stated the purse is in the back seat."

23 A Yes, sir. Like I said what --
24 I'm sorry.

25 Q Yes, sir.

Clayton -- Cross

1 A Like I said, when this was all
2 taking place I was trying to write just as
3 fast as I can. In an effort to get finished
4 doing something, I'd be half-way through a
5 sentence and I'd strike it out and then I'd
6 try to write as we was going through. A lot
7 of that may not be in the same order because
8 I was trying to remember what they were
9 saying and then writing it down as fast as I
10 can. And as far as -- could I see that for
11 a second again?

12 Q Sure.

13 A There's another thing about the
14 time.

15 Q Yes, sir.

16 A I know I put down, I know I put
17 down there that "I don't remember" and I
18 struck through "remember" because I spelled
19 "remember" wrong and then I, he, he said he
20 don't remember the exact time but it was two
21 o'clock or thereafter. He says it was right
22 around two o'clock.

23 Q Okay. And considering what
24 you've testified here to today regarding
25 acknowledgement of Sergeant Tetanich asked

Clayton -- Cross

1 him about the writing on the windshield and
2 Sergeant Tetanich or Lieutenant Cumbee
3 raised the issue of the purse and so forth,
4 it, it just really wasn't the case there
5 that day that you gave Mr. Myers a piece of
6 paper and, and said write out what happened?

7 A No, sir. The procedure at North
8 Charleston is normally to sit down and write
9 the report out. If they can write it
10 legible then they could probably do it, but
11 our procedure is there we try to write it
12 out so that way we'll get all the
13 information, we can put it in their words,
14 and also because of the fact that the
15 defendant said he just doesn't write that
16 well.

17 Q Yes, sir. And also the
18 procedure at North Charleston is that if
19 somebody is confessing to murder and arson
20 that you don't audiotape or videotape that
21 statement or that interrogation?

22 A Normally the procedure at North
23 Charleston, I can't remember specifically as
24 far as anybody being videotaped. The only
25 other thing that I can remember as far as

Clayton -- Cross

1 any videotapes done is on another murder
2 case that I'd worked in where I went to the
3 Charleston County Police Department for a
4 polygraph and while I was there he basically
5 told me that they don't do that, but did
6 you, did you want to do that and I put that,
7 that tape in. But outside of that, I don't
8 know any other cases.

9 Q Just don't do it?

10 A I don't remember. I mean as far
11 as they may be detectives that do it. I've
12 never done it.

13 MR. KULP: Thank you, sir. I
14 appreciate your answers.

15 MR. DURANT: Are you done?

16 MR. KULP: Yes, sir.

17 MR. DURANT: Oh. Just a couple.

18

19

20

21 REDIRECT EXAMINATION BY MR.

22 DURANT:

23 Q You don't know, getting to
24 Friday when there, there was a conference in
25 Mr. Cumbee's office, you don't know what if

Clayto -- Redirect

1 any photos the defendant saw. Is that
2 correct?

3 A That's correct.

4 Q You never looked at the photos?

5 A Not at that time.

6 Q You never saw him look at the
7 photos?

8 A No, sir. I never seen him look
9 at the photos.

10 MR. DURANT: Could you mark
11 that.

12 (Whereupon, marked for
13 identification was State's Exhibit No.
14 31, chain of custody report.)

15 MR. DURANT: And I hand you
16 what's been marked as -- your Honor, I
17 now offer State's thirty-one into
18 evidence I believe without objection
19 from Mr. Kulp.

20 Q You recognize that document,
21 sir?

22 A Yes, sir, I do.

23 (Whereupon, entered into
24 evidence was State's Exhibit No. 31,
25 chain of custody report.)

Clayto -- Redirect

1 Q And what is that?

2 A This is a North Charleston
3 Police Department chain of custody sheet.

4 Q And is that the chain of custody
5 sheet for the anger questionnaire?

6 A Yes, sir.

7 Q The anger questionnaire?

8 A Yes, sir.

9 Q Does that show --

10 A I wrote down anger questionnaire
11 work sheet.

12 Q Does that have a date on it?

13 A Yes, sir. On the fourteenth --

14 Q Okay.

15 A -- of March, 1997.

16 Q And does it have a time on it?

17 A Yes. 8:45.

18 Q And at that point is when you
19 turned it into evidence?

20 A Yes, sir.

21 Q So you did not have the anger
22 questionnaire when the defendant was
23 questioned the next day?

24 A No, sir, I did not.

25 Q Regarding these, regarding the

Clayto -- Redirect

1 notes he questioned you about, you made
2 notes of the verbal interview you all had
3 with him before the written statement. Is
4 that correct?

5 A That's correct.

6 Q And these were written down by
7 you at the time he was being talked to. Is
8 that correct?

9 A Yes, sir.

10 Q And you stated that he knocked
11 on the front door five to ten minutes?

12 A Yes, sir.

13 Q Teresa open the door?

14 A Yes, sir.

15 Q Wesley seen the note on Teresa's
16 door?

17 A That's correct.

18 Q No one was in there?

19 A That's right.

20 Q He walked in, arguing about the
21 note on the car and the note on the bar and
22 then you have in parentheses "pink note"?

23 A Yes, sir.

24 Q She got mad and pushed Wesley?

25 A That's correct.

Clayto -- Redirect

1 Q Wesley told her that he loved
2 her?

3 A That's correct.

4 Q He tried to put his arms around
5 me -- pushed him?

6 A Around -- he tried to put her,
7 his, her hand, his arms around her. That
8 was just because I was trying to write so
9 fast.

10 Q Okay. Then he pushed her
11 against the bar?

12 A That's correct.

13 Q Wesley parked truck beside the
14 victim's car?

15 A That's right.

16 Q Wesley asked to take her home?

17 A That's correct.

18 Q She told him that she was going
19 to stay at bar?

20 A That's correct.

21 Q She grabbed the glass decanter
22 and told Wesley to get away from her?

23 A That's correct.

24 Q Wesley grabbed the glass
25 decanter from her and struck her in the

Clayto -- Redirect

1 head?

2 A That's correct.

3 Q Wesley stated why are you doing
4 this to me?

5 A That's correct.

6 Q Before they went to the floor
7 Wesley stated when grabbed the bottle, I hit
8 her beside the head, pointing at her left
9 forehead?

10 A Yes, sir.

11 Q Wesley went behind the bar?

12 A Yes, sir.

13 Q Closed on Sunday sign?

14 A Yes, sir. He said he grabbed
15 the closed on Sunday sign.

16 Q Wesley said I was real upset and
17 I wanted to die?

18 A That's correct.

19 Q Wesley stated before she --
20 before she used him?

21 A Yes, sir. He said -- he said he
22 felt like he was being used and, and, and
23 she used him and played with, played with
24 him, played with his mind.

25 Q She kept pushing him and telling

Clayto -- Redirect

1 him get out of my life?

2 A Yes, sir.

3 Q Wesley said the time was one or
4 two a. m. I don't remember time?

5 A That's right. And what he meant
6 was that he didn't remember the exact time.
7 He said he believed it was after two.

8 Q Wesley put the purse in the
9 truck?

10 A Yes, sir.

11 Q Wesley stated the purse is in
12 behind the seat?

13 A Yes, sir.

14 Q Wesley remembers looking in the
15 cabinet for something that can burn?

16 A Yes, sir. He said he went
17 behind the counter and there was some
18 cabinets, that he reached down and he opened
19 them up and he got some paper out of the
20 cabinets.

21 MR. DURANT: Nothing else.

22 MR. KULP: Just three questions,
23 your Honor.

24

25

Clayton -- Recross

1

2

RECROSS-EXAMINATION BY MR. KULP:

3

Q What Mr. Durant was examining

4

you from were your notes that you lost and

5

then you found. Correct?

6

A Yes, sir. Let me explain that.

7

What happened, when I was in the detective

8

division --

9

Q Okay.

10

A -- I got moved five times, the

11

time while I was in the detective division

12

just because they wanted maybe somebody a

13

little bit more experienced on a different

14

squad or something like that. But during

15

this time I moved from different desks and I

16

would, I would move from one place --

17

normally, normally a detective would do

18

their notes, get rid of the notes, just tear

19

them up, whatever and then, and then they

20

would write this down on a supplemental.

21

Okay.

22

But I kept my notes and I know I

23

kept my notes, and so anyways when I was

24

moving finally I got assigned to internal

25

affairs and I was assigned to go off to a

Clayton -- Recross

1 school, and I was gone for about ten weeks.
2 At that time I had to give up my desk and I
3 took everything and I packed it up in a box,
4 and during this time I also bought another
5 house and when I, I, I took this information
6 with me, put it in a box, took it to my
7 house. And then after that what I did is I
8 was trying to locate it. I couldn't find it
9 because I'd moved into another house, and I
10 was trying to locate the box. Finally I
11 found it and then I made sure that he got a
12 copy of my notes, so he has everything.

13 Q All right. And that was two
14 years and three months after the incident?

15 A Yes, sir. But what happened
16 also is that solicitor's office, he was
17 asking for my notes and there was like
18 bickering back and forth as far as what they
19 going to do about getting my notes. And
20 finally I, I was, I was supposed to give
21 them up and it may have been -- I don't know
22 how long after that's when I found my notes,
23 but he has my notes, too.

24 Q Okay. And you didn't put these
25 notes in the permanent file of the murder

Clayton -- Recross

1 case along with all the other information,
2 or give them as evidence --

3 A Yes, sir.

4 Q -- to the evidence custodian --

5 A I'm sorry. Go ahead.

6 Q Or give them to the evidence
7 custodian like you did the anger
8 questionnaire?

9 A No, sir. What I did is I did
10 put them in my case file. They were in my
11 case file when I brought them in here.
12 They've been in my case file ever since I
13 gave the notes to you.

14 Q They're in the case file where
15 the videotape was?

16 A That's correct. Now, the
17 videotape is also contained -- I don't know
18 if you can see it but there is a, a big
19 brown envelope and there were several
20 videotapes there. The three -- video -- I'm
21 sorry. I don't know if I can say that, but
22 there was several tapes that was in there,
23 and along with the polygraph tape.

24 Q You -- when Mr. Durant was
25 questioning you about these notes and your

Clayton -- Recross

1 recording of this information, you said
2 "Wesley seen the note on Teresa's door."
3 There was no note on a door, was there?

4 A I meant the windshield.

5 Q Oh. And what was that -- you
6 recall what was scratched out in the upper
7 corner up there? You recall that?

8 A No, sir. I can't recall that.

9 Q And as well, do you know any
10 explanation for the -- and I don't want to
11 get too technical so I'm not sure what I'm
12 really talking about. I don't have the
13 expertise, but pronoun transition.

14 "She got mad and pushed Wesley.
15 Wesley told her that he, he loved her.
16 Tried to put her arms around me." I mean --
17 well, do you recall that? You were just
18 writing fast?

19 A Yes, sir. What happened, sir,
20 is that he was explaining and I was trying
21 to write it as fast as I can and I wrote
22 down "me" instead of --

23 Q Okay. And lastly, let me ask
24 you this. So --

25 A I'm not, I'm not an English

Clayton -- Recross

1 major either.

2 Q Nor am I.

3 A You have to excuse me.

4 Q Yes, sir. But later that
5 afternoon or actually the statement was
6 signed 15:30 military time, 3:30?

7 A Yes, sir.

8 Q Statement is given at 3:30, and
9 I -- in any event, well, at that point
10 certainly the suspicion is over. Correct?
11 He had signed a statement indicating that he
12 committed this murder. Correct? This
13 horrible murder?

14 A Yes, sir.

15 Q Tragic. Let me hand you what's
16 been marked as defendant's exhibit number
17 three and has an blue tag. Is that I. D.
18 or --

19 MR. DURANT: Your Honor, this
20 has gone beyond what I asked him on
21 redirect. I mean I, I, I know --

22 THE COURT: I think he's going
23 to quit now because it's lunchtime, but
24 go ahead.

25 MR. KULP: Yes, sir.

Clayton -- Recross

1 Q Do you, do you recognize this
2 knife and this sheath?

3 A No, sir. I don't recognize it,
4 but I found out that it is the defendant's.

5 Q All right.

6 A Okay.

7 Q And after he signed that
8 statement he, at the North Charleston Police
9 Department, walked around with that on his
10 belt and even when he talked to Mrs. Justice
11 and even when he went out the door and
12 paused there to talk to the reporters, and
13 you didn't take it off him until you got to
14 the jail and he was booked in. Correct?

15 A I don't, I don't remember
16 exactly what time that I taken it off of
17 him. I did do a chain of custody sheet and
18 I'd indicated on that, he asked me to take
19 that, that knife along with a hundred and
20 fifty-five dollars and a bunch of other
21 things to his parents. The hundred and
22 fifty-five dollars was supposed to go to his
23 son.

24 Now, that knife right there, I
25 may have taken the knife prior to that. I

Clayton -- Recross

1 just, I just don't recall. It's been four
2 years.

3 Q He asked you to take it from
4 him, give it back to his dad so he wouldn't
5 lose it in jail. Is that what you're
6 saying?

7 A No, sir. He asked me to turn it
8 over to him. I mean all of his items that
9 he had on him.

10 Q Okay.

11 A I mean as far as like a lot of
12 things that -- I went back to the parents
13 and I gave it to them, plus his son's
14 birthday was the next day. He wanted to
15 make sure his son got the hundred and
16 fifty-five dollars.

17 MR. KULP: That's all I have.

18 Thank you, sir.

19 THE COURT: Good time to quit.

20 How about lunch? Can you be back at a
21 quarter of two? That will give you an
22 hour and fourteen minutes. Remember my
23 admonitions. Have a good lunch.

24 Everyone else remain seated for
25 a moment, please.

1 You can come down. Thanks.

2 (The jury leaves the courtroom
3 at 12:35 p. m.)

4 THE COURT: Now, how many more
5 witnesses do you have, Solicitor?

6 MR. DURANT: Well, your Honor,
7 at this rate I should be through by
8 this time next week. I got --

9 THE COURT: Well, tell me this.
10 How much longer do you think it will
11 take to put your case up the way it's
12 going?

13 MR. DURANT: I got, I got one
14 more actually two more witnesses on
15 confession, your Honor. I'm sure we
16 going to have to go through all of this
17 again with both of them. Then I got
18 two arson investigators. One, two --
19 that's four. Five, six --

20 THE COURT: That's all right.

21 MR. DURANT: -- seven.

22 THE COURT: I don't have a thing
23 to do. I was going fishing, but you
24 know. I think I ought to ask the jury
25 whether they want to work --

1 MR. DURANT: That's going to
2 have to come at some point. I mean
3 it's apparent we are not going to
4 finish this week and either -- I've
5 told you either way is fine with me.
6 Work through the weekend --

7 THE COURT: Well, I have to let
8 Court Administration know because I
9 have to be in Orangeburg next week.

10 Let me see the two of you all in
11 chambers for just a minute.

12 Court's in recess. Quarter of
13 two.

14 (Whereupon, a recess is taken at
15 12:37 p. m.)

16

17

18

19 AFTERNOON SESSION

20 (The Judge enters the courtroom
21 at 1:55 p. m.)

22 THE COURT: All right. Anything
23 before we bring the jury in?

24 MR. KULP: No, sir.

25 MR. DURANT: Not from me, your

1 Honor.

2 THE COURT: Okay. Bring the
3 jury in.

4 (The jury enters the courtroom
5 at 1:56 p. m.)

6 THE COURT: All right. Thank
7 you. You all comfortable? Is it too
8 cold in here to you?

9 THE FORELADY: Little chilly.

10 THE COURT: Little chilly.

11 CLERK OF COURT: Yes, sir. It's
12 either this or extreme heat. I think
13 they'd rather have the cold than have
14 it hot in here.

15 THE COURT: All right.

16 MR. DURANT: Remember, we have
17 to call Myrtle Beach.

18 CLERK OF COURT: Myrtle Beach
19 has the controls.

20 THE COURT: Really? One time, I
21 think I told you all, one time I was
22 holding court in Darlington,
23 complaining, and they said well, the
24 controls are in Richmond, Virginia. So
25 I came back about a month or two later

1 and held court and it was great. I
2 said well, what happened? They said
3 well, we moved the controls to Atlanta.

4 Call your next witness.

5 MR. DURANT: Thank you, your
6 Honor. The State would call Melvin
7 Cumbee.

8
9
10 M E L V I N R A Y L O N
11 C U M B E E, J R., having been
12 called as a witness in the presence of
13 the jury, is duly sworn and testifies
14 as follows:

15 DIRECT EXAMINATION BY MR.

16 DURANT:

17 Q Where are you employed?

18 A North Charleston Police
19 Department.

20 Q How long have you been with
21 North Charleston, sir?

22 A Approximately nine years.

23 Q And what is your current rank
24 and what do you do there?

25 A At this present time I'm a

Cumbee -- Direct

1 lieutenant and I supervise the North
2 Charleston narcotic division.

3 Q And what were your duties on
4 March thirteen of 1997?

5 A I was a lieutenant and in charge
6 of the North Charleston Detective Division.

7 Q Did you have an opportunity to
8 respond to the Mill Inn on March thirteen,
9 1997?

10 A Yes, sir, I did.

11 Q And do you recall what time it
12 was you arrived there?

13 A I received a call at my house
14 early that morning. I probably got there
15 five o'clock, 5:30, somewhere there that
16 morning.

17 Q And what did you find upon your
18 arrival?

19 A The dispatcher had notified me
20 via phone that there was a fire at the
21 location, the Mill Inn, and that a body had
22 been found inside the building. Suspicious
23 in nature.

24 At my arrival the fire
25 department was on the scene, and I parked on

Cumbee -- Direct

1 the back side of the establishment and at
2 some point in time went into the location.

3 Q And what did you observe inside
4 the establishment?

5 A I observed the interior of the
6 establishment was, was burned very badly
7 inside. There was a lot of water dripping
8 from the ceiling. There was water all over
9 the floor. I believe the insulation was
10 out. And then the victim's body was laying
11 on the floor.

12 Q Were you in charge of the
13 investigation at that point?

14 A Yes, sir, I was.

15 Q And what did you do?

16 A Well, we had crime scene
17 respond, which I believe they were already
18 on the way. A crime scene unit, what they
19 do is collect evidence at the scene. We had
20 other detectives respond also to the scene
21 so we felt, also, that the body was
22 suspicious in nature.

23 Q Did you have an opportunity to
24 examine the body yourself?

25 A Yes, sir.

Cumbee -- Direct

1 Q Did you notice any visible
2 injuries?

3 A Yes, sir. To the victim's face
4 there was some injuries.

5 Q Did you have any contact with
6 the defendant, Wes Myers, that morning?

7 A Yes, sir, I did.

8 Q And tell the jury about that.

9 A I was notified that the victim's
10 boyfriend had arrived on the scene. He had
11 parked his truck at I believe it was
12 Virginia Avenue and Montague Avenue in a
13 little lot right there. I was notified of
14 that, and I walked down to the defendant and
15 spoke with him.

16 Q And what did you speak to him
17 about?

18 A He asked what was going on, what
19 had happened. He could see from where he
20 was at that it was the Mill Inn, the
21 building right there. I stated that there
22 was a body that was found inside. He first
23 stated his girlfriend worked inside the bar.

24 Q How long did you talk to him
25 that morning?

Cumbee -- Direct

1 A Just, just a few minutes. At
2 that point in time we walked, myself and
3 him, and maybe one other detective walked.
4 He wanted to go down to the location, closer
5 into the location.

6 Q Okay. And what happened when
7 you got back to the location?

8 A We walked down there. He was
9 told that we believed that his girlfriend,
10 that it was his girlfriend was deceased
11 inside. He became visibly upset. At that
12 point in time I turned and walked away and
13 Lieutenant Tetanich spoke with him from then
14 on.

15 Q Did you later have a
16 conversation with Detective Tetanich
17 regarding his conversation with the
18 defendant?

19 A Lieutenant Tetanich came to me
20 while I was on the sidewalk out in front of
21 the establishment, and he stated that he had
22 a feeling about Mr. Myers, the defendant.

23 Q And what did you do when he told
24 you that?

25 A I got with Detective Payne at

Cumbee -- Direct

1 that point in time and asked Detective Payne
2 if he would take a statement from Mr. Myers.

3 Q Now, did you also give Detective
4 Payne any instructions regarding
5 fingerprints, sem-tabs, that type of thing?

6 A Yes, sir. We, at that point we
7 did not know what the cause of the death was
8 to the body, what caused the death. And I
9 asked Detective Payne if he would get
10 fingerprints and also the sem-tab test for
11 gun powder residue.

12 Q Now, at some point later did you
13 also contact Detective Payne about inquiring
14 whether the defendant would consent to
15 giving hair and blood samples?

16 A Yes, sir. That was some time
17 after, after he had already went to the
18 station with him to take a statement.

19 Q And why did that come up?

20 A There was a hair found in the
21 victim's hand, so we felt it necessary at
22 that point in time to see if the defendant
23 would consent to a hair sample.

24 Q Now, be fair to say the
25 defendant was a suspect at that time?

Cumbee -- Direct

1 A I'm sorry, sir?

2 Q Would it be fair to say that the
3 defendant was a suspect at that time?

4 A Yes, sir.

5 Q Moving on to Friday, March
6 fourteen, did you have any contact with the
7 defendant that day?

8 A Yes, sir. The defendant came up
9 to the police station at which time myself,
10 I believe Detective Clayton, and the
11 defendant walked into my office. He was
12 extremely inquisitive, where we were at with
13 the case, and, and if we knew anything about
14 the fire. He had stated that --

15 Q Do you know how he came to be at
16 the station? Had you contacted him and
17 asked him to come or --

18 A No, sir. I don't know if he
19 drove to the station or somebody dropped him
20 off or, or, I just know he was at the
21 station.

22 Q Okay. And this was about
23 mid-day some time?

24 A Yes, sir.

25 Q So what happened when you all

Cumbee -- Direct

1 went into your office?

2 A Like I said the defendant --

3 Q Who all was there, first?

4 A Myself, Detective Clayton, I
5 think Lieutenant Tetanich may have been in
6 and out of the office at some point in time.
7 Detective Clayton may have left out of the
8 office and came back in.

9 Myself and Mr. Myers, he was
10 inquisitive on if we had found who did this
11 to his girlfriend. He was also stating
12 about the electrical problems that the Mill
13 Inn had and that these electrical problems
14 were supposedly made aware to the
15 management, and he believes that's what
16 started the fire at the location. We
17 further talked about the hair. We had found
18 a hair in the victim's hand and we talked
19 about that.

20 Q And do you recall specifically
21 what you all talked about concerning the
22 hair?

23 A I told him I believed that
24 whoever the hair belonged to, was the one
25 who committed the murder, the person who

Cumbee -- Direct

1 committed the murder.

2 Q What was his response to that?

3 A He agreed with that.

4 Q Did you have any discussion

5 concerning what you believed the

6 relationship between the murderer and the

7 victim was?

8 A Well, we believed that it didn't

9 appear to be any forced entry at the

10 location, the Mill Inn, and we had talked

11 about it, and we believed that the, the

12 victim had knew who her killer was.

13 Q And this was also when you asked

14 him about going to see Major McHale?

15 A Yes. I asked him that if he

16 minded talking to Major McHale who's in the

17 courtroom, and he works over at the

18 Charleston County Sheriff's Office.

19 Q How long did this conversation

20 in your office last?

21 A Fifteen minutes maybe. Ten

22 minutes. Not very long.

23 Q Do you recall if you had any

24 crime scene photographs in your office from

25 this case at that time?

Cumbee -- Direct

1 A Yes, sir. I had some crime
2 scene photographs on my desk.

3 Q Okay. Did you show him some or
4 did he see any, or do you know?

5 A I don't know personally if he
6 saw them. I did not show them to him. I
7 don't recall showing any photos on Friday
8 whatsoever. They were, they were on my
9 desk, though.

10 Q Those were just regular
11 five-by-eights?

12 A Five-by-eights, yes, sir. The
13 small ones.

14 Q They were on your desk in what,
15 a stack or --

16 A They were, they had been pulled
17 out because we had looked at them numerous
18 times and, and just stacked up on the side.

19 Q After this conversation, where
20 did you all go?

21 A We went to lunch. I asked
22 Mr. Myers if he wanted to go to lunch with
23 us and he stated no. At that point in time
24 we went up to the Olive Garden, one of my
25 favorite restaurants.

Cumbee -- Direct

1 Q And while you all were eating at
2 the Olive Garden did you receive a call from
3 anyone?

4 A I received a call from Detective
5 Hallman, who was on his way back from
6 S. L. E. D., South Carolina Law Enforcement
7 Division, on -- he was on a cell phone and I
8 was on either my cell phone or the captain's
9 cell phone.

10 Q And what information was related
11 to you by Detective Hallman?

12 A The information was relayed, the
13 hair that was taking, taken from the body
14 that morning was sent to S. L. E. D. for
15 analysis. At that point in time the
16 analysis had been done. Detective Hallman
17 notified me that the hair belonged to the
18 defendant, Mr. Myers.

19 Q Now, did -- where did you all go
20 after you finished at the Olive Garden,
21 eating lunch at the Olive Garden?

22 A I went back to the headquarters
23 which is on Lacross Road for just a short
24 while, and at that point in time I left. I
25 had a off-duty job at the coliseum that

Cumbee -- Direct

1 night and I left and went home to get ready
2 for that.

3 Q Now, did you have any
4 conversations on the phone that night with
5 detectives Clayton and/or Tetanich regarding
6 questioning the defendant?

7 A Yes, sir. Lieutenant Tetanich,
8 myself and him, we talked on the phone while
9 I was at the coliseum and it was decided
10 that we would not interview the defendant,
11 Mr. Myers, that night, that we would let him
12 get some rest and interview him that
13 Saturday, the day after.

14 Q Do you know why that was? Do
15 you know why, why you all -- why it was
16 suggested you all wait until Saturday?

17 A I believe Lieutenant Tetanich
18 and them had talked to Major McHale and he
19 advised that them to -- we needed to wait to
20 interview him.

21 Q Did you also have any
22 discussions at any time that evening as to
23 how you were going to approach this
24 interview with the defendant in the morning?

25 A Yes, sir.

Cumbee -- Direct

1 Q And what, what did you all
2 arrive at?

3 A What the plan was, was the
4 defendant would come in that next morning,
5 we would talk to the defendant, and at that
6 point in time I would get up and leave my
7 office, acting like I had received a phone
8 call from S. L. E. D., the Law Enforcement
9 Division, stating that the hair was his.
10 This was previous information that we
11 received the day before.

12 Q Now, moving on to the next day,
13 Saturday, what time did you arrive at the
14 station on Saturday, the fifteenth?

15 A Around twelve, somewhere in
16 there.

17 Q And was the defendant already
18 present at that time?

19 A Yes, sir. He was in the -- an
20 interview room in the detective division.

21 Q And who was in there with him?

22 A Detective Clayton and Lieutenant
23 Tetanich.

24 Q And had he already been advised
25 of his constitutional rights at that time?

Cumbee -- Direct

1 A Lieutenant Tetanich advised me
2 that he had been advised of his
3 constitutional rights, yes, sir.

4 Q What did you do after you got
5 there?

6 A Stuck my head into the interview
7 room where Mr. Myers was and asked him if he
8 minded coming to my office and talking, and
9 he was cooperative in that, and he came to
10 my office and we sat down. Myself,
11 Detective Clayton, and Lieutenant Tetanich.

12 Q And where were you sitting?

13 A I was sitting behind my desk.
14 Mr. Myers was sitting right to the left of
15 me, right there.

16 Q On the other side of you there?

17 A Yes.

18 Q Was he -- had you all placed him
19 under arrest --

20 A No, sir.

21 Q -- or anything of that nature?

22 A No, sir.

23 Q What happened after he was
24 brought into your office?

25 A We talked about the hair again.

Cumbee -- Direct

1 Myself and Mr. Myers talked about the hair
2 again. Once again he stated that he
3 believed that the hair belonged to the
4 person who had killed the victim. I stated
5 the same thing again, more or less what I
6 had said Friday, the day before.

7 Q And once again Mr. Myers agreed
8 with you. Is that correct?

9 A Yes, sir.

10 Q And then what happened?

11 A At that point in time I got up,
12 walked out of my office, stayed gone out of
13 my office for approximately maybe fifteen to
14 thirty seconds. It wasn't very long. And
15 then I came back into my office and told
16 Mr. Myers I had some bad news for him.

17 Q And what else did you tell him?

18 A I told him that I had some bad
19 news for him, that S. L. E. D. had
20 identified the hair that was taking -- taken
21 from the victim's body as the defendant,
22 Mr. Myers's, hair.

23 Q Did you tell him anything
24 specifically about where the hair had --
25 what part of his head the hair matched?

Cumbee -- Direct

1 A The S. L. E. D., S. L. E. D. had
2 said that the hair had come from the back of
3 his head.

4 Q How did he physically react at
5 that?

6 A At that point in time started to
7 break down. He said no, no, no. He began
8 to clench his fists. He began crying. He
9 ran his fingers through his hair, and just
10 started breaking down.

11 Q Do you recall what he said?

12 A He said that, "I must have done
13 it."

14 Q At some point you showed him a
15 picture after that. Is that correct?

16 A Yes, sir.

17 Q Could you tell the jury how that
18 came about.

19 A We had a picture that was blown
20 up of the victim's face, and I showed him
21 that picture. This was after he told us
22 that he had, had did it. I sat behind my
23 desk and held the picture up to where he was
24 at there.

25 Q And what did he do?

Cumbee -- Direct

1 A I told, I told Mr. Myers, the
2 defendant, that we knew that she had
3 sustained trauma to the face. It's clear in
4 the picture that, that she had sustained,
5 the victim had sustained quite a bit of
6 trauma. At that point in time I told him
7 that he needed to tell her he was sorry.

8 Q And what did he do?

9 A He reached out to the picture,
10 his hand was shaking, he was crying, and he
11 rubbed the picture, he kept rubbing it, and
12 he said "Teresa, I'm sorry, I'm sorry, I'm
13 sorry."

14 Q Do you know why you all had
15 those pictures?

16 A The -- I don't know the exact
17 measurements, but the pictures that we have
18 are, are small that we originally took when
19 they're developed, and we had blown this
20 picture up. It showed more detail and we
21 had -- we, we blew them up -- it was still
22 an unsolved murder. It should showed us --
23 we were able to look at more detail in the
24 picture than the five-by-eight, I guess.

25 Q And you also had some pattern

Cumbee -- Direct

1 wounds on the face, on the victim's face?

2 A Yes, sir. You're talking about
3 the trauma?

4 Q Yes, sir.

5 A Yes, sir.

6 Q And did you also not at that
7 time have a suspected murder weapon that had
8 been used in the case?

9 A Yes, sir.

10 Q After this, after he ran his
11 fingers through his hair and started crying,
12 did you all ask him any details about what
13 had happened?

14 A Yes, sir. We asked the
15 defendant, Mr. Myers, as you asked, what had
16 happened. He stated that he went to the
17 location that, early that morning and parked
18 in front of the location. That he saw the
19 victim's car also parked in front of the
20 location and saw a note that was I believe
21 written maybe in the dew on the windshield
22 of the, of the victim's vehicle.

23 Q And what else?

24 A At that point in time he read
25 the note. It made him quite angry. He went

Cumbee -- Direct

1 to the front of the location and went to the
2 door and knocked on the door for quite a few
3 minutes because he believed that she was in
4 there with somebody.

5 Q And did she respond?

6 A Did she respond?

7 Q Yes, sir.

8 A At, at some point in time after
9 how many minutes went by, he said that she
10 came to the door. Her pants were unbuttoned
11 and that he wanted to come in and talk to
12 her. She didn't really want him there. He
13 felt like there was somebody else, another
14 man or whatever inside with her. He
15 somewhat pushed his way in and went inside.

16 Q Did he say what he saw when he
17 went inside the building?

18 A He told us that they had began
19 to argue, that she didn't want him there,
20 and that he had went to the bar area and
21 had, he found a note by the cash register.

22 Q And who did he say the note was
23 from?

24 A I believe, Mr. White I believe.

25 Q And what did he do when he found

Cumbee -- Direct

1 that note?

2 A The note and the, the note and
3 the note on the car was of similar, of
4 similar content. He became even more angry
5 and told us that he asked her, you know, why
6 was she doing, why are you doing this to me?
7 Why are you doing this to me?

8 At some point in time he told us
9 that they got into a shoving match, that she
10 picked the wine carafe up and he took it
11 from her and hit her about her head, and
12 they went down to the floor and he just said
13 he lost it.

14 Q And what did he say happened
15 after that?

16 A After that, while she was down
17 on the floor, he didn't believe that she was
18 still living, so he went around behind the
19 bar and got some papers and set a fire. At
20 that point in time he stated that he left
21 from behind the bar, came back to where the
22 victim's body was located, and held her and
23 wanted to die with her.

24 Q And what happened after that?

25 A He said that the heat and the

Cumbee -- Direct

1 smoke became too much for him. At that
2 point in time he got up and ran to the
3 freezer in the back area of the bar, got her
4 purse out, and that point in time he exited
5 the rear door of the establishment.

6 Q Do you remember asking him why
7 he got the victim's purse?

8 A Yes, sir.

9 Q Do you recall what his response
10 was?

11 A That she had some little
12 trinkets, personal things that meant
13 something to him that he wanted to, to hold
14 on to.

15 Q Did you all know anything about
16 a note from little Alan White to the victim
17 prior to talking to the defendant that
18 morning, that day?

19 A No, sir.

20 Q Was one --

21 A You're talking -- so I'm
22 correct, you're talking about the note at
23 the cash register?

24 Q The note inside, near the cash
25 register.

Cumbee -- Direct

1 A That's correct. No, sir.

2 Q Did you later ask anyone to
3 follow up on that?

4 A I talked to Lieutenant Tetanich
5 to get with our crime scene unit, Detective
6 Hallman, to see if he had recovered that
7 item or an item like that at the crime
8 scene.

9 Q To your knowledge had one ever
10 been recovered at the crime scene?

11 A No, sir. Not to my knowledge.

12 Q After -- and I know that you
13 said that you and Detective Tetanich and
14 Detective Clayton were there, did anybody
15 else come in during the time that you were
16 talking to the defendant -- I mean -- yes,
17 the defendant?

18 A Not at that time.

19 Q Was Chief Norris ever there?

20 A Oh, oh, I'm sorry. Yes. From
21 the fire department. Benjie Norris.

22 Q Yes, sir. Was he there at the
23 beginning or did he come in sometime during
24 the --

25 A He came in sometime and then,

Cumbee -- Direct

1 and then left and came back because I left
2 out of my office.

3 Q What did you do after he had, he
4 had given the, the verbal statement to you
5 all?

6 A At that point in time I left and
7 I believe it was Detective Tetanich and
8 Clayton took Mr. Myers's statement.

9 Q Do you know if they took it then
10 or did they go somewhere with the defendant?

11 A You're talking about if they
12 took it right then?

13 Q I'm talking -- the written
14 statement right then. Do you know whether
15 they took the written statement right then
16 or did they --

17 MR. KULP: The rules don't allow
18 for leading questions, your Honor.

19 MR. DURANT: Okay.

20 A The statement was taken during
21 that day. Before they took the statement I
22 believe Detective Clayton and Lieutenant
23 Tetanich took Mr. Myers I believe where he
24 said that he had maybe dumped the purse or
25 something. They were looking for the other

Cumbee -- Direct

1 evidence.

2 Q But you weren't with them --

3 A No, sir.

4 Q -- when that was happening?

5 A No, sir.

6 Q Now, did you call the media that
7 day?

8 A Yes, sir.

9 Q Relative to this case?

10 A I had spoke with the media quite
11 a few times throughout this case. Many,
12 many, many times.

13 Q Were they advised that an arrest
14 had been made?

15 A Yes, sir.

16 Q Did you tell them anything else?

17 A At the point in time that I,
18 that I had called for the media, the
19 statement had already been taken. I came
20 back to the station, okay, and talked with
21 the media. Mr. Myers had requested to speak
22 with the media and two other people.

23 Q And who were the two other
24 people?

25 A The two other people was his

Cumbee -- Direct

1 mother, who's in the courtroom, and the
2 victim's mother, Miss Justice, who's in the
3 courtroom also.

4 Q Did you allow him to, to contact
5 his mother?

6 A Yes, sir, we did.

7 Q Was Miss Justice there at the
8 time?

9 A I had called Miss Justice at her
10 house and advised her that Wesley wanted to
11 apologize to her. That was also the reason
12 that he wanted to call his mother. And at
13 that point in time she was not at the
14 station. She had to drive to the station.

15 Q She was at her home at the time?

16 A That's correct, sir.

17 Q And did she drive to the
18 station?

19 A She drove to the station and met
20 with Mr. Myers.

21 Q And were you present during that
22 meeting?

23 A Yes, sir.

24 Q During the whole meeting or --

25 A No, sir, not during the whole

Cumbee -- Direct

1 meeting. I had walked out.

2 Q Do you recall anything that was
3 said in that meeting?

4 A Mr. Myers's first words to
5 Miss Justice was, "Dixie, I killed Teresa."

6 Q And what did you tell -- do you
7 know what -- I may have asked, did you allow
8 him to call his mother, too?

9 A Yes, sir. That actually was the
10 first thing that, that he wanted to do was
11 to call his mother.

12 Q Now, what did you tell him
13 regarding the -- he had told you that he
14 wanted to talk to the media? Is that what
15 you said?

16 A He wanted to apologize. The
17 reason he wanted to call his mother was to
18 apologize to the family before they would
19 see it on T. V. He'd already requested to
20 speak to the news stations.

21 And I advised Mr. Myers,
22 Lieutenant Tetanich advised Mr. Myers that
23 he did not have to talk to the media. As a
24 matter of fact, we didn't think it was a
25 good idea he talk to the media. And that if

Cumbee -- Direct

1 they asked him any questions, he did not
2 have to answer those questions.

3 Q At any time while you were in
4 the, the room with the defendant and he
5 confessed to you, did you promise him
6 anything?

7 A No, sir, I did not.

8 Q Did you ever threaten him?

9 A No, sir, I did not.

10 Q Did you promise him leniency?

11 A No, sir, I did not.

12 Q Did he appear to be well rested?

13 A Oh, yes, sir.

14 Q Did he appear to be under the
15 influence of anything?

16 A No, sir.

17 Q Did he ever tell you or suggest
18 to you that he wanted a lawyer?

19 A No, sir.

20 Q Did he ever tell you at any time
21 that he wanted to recant his statement or
22 retract his statement?

23 A No, sir. Never.

24 Q Would you please answer any
25 questions Mr. Kulp may have for you.

Cumbee -- Direct

1 A Yes, sir.

2 MR. KULP: Thank you, sir. May

3 it please the Court.

4

5

6

7

CROSS-EXAMINATION BY MR. KULP:

8

Q Let me -- may I approach the

9

witness, your Honor?

10

(Whereupon, marked for

11

identification was Defendant's Exhibit

12

No. 27, S. L. E. D. report.)

13

Q Lieutenant, I'm handing you--

14

I'm sorry. Excuse me.

15

MR. DURANT: May I see the

16

document?

17

MR. KULP: Sorry.

18

Q I hand you defendant's exhibit

19

twenty-seven for identification and ask if

20

you can identify the copy of that document.

21

A This is the first time I've seen

22

this and it appears to be a S. L. E. D.

23

laboratory forensic service request.

24

Q Okay. Was there a belief in

25

this case that the assailant, the subject,

Cumbee -- Cross

1 the suspect, the defendant was bleeding?

2 Not, not the victim. The suspect?

3 A Not necessarily.

4 Q That form give you any other
5 indication that you recognize?

6 A You're speaking of the wine
7 carafe?

8 Q No, sir. I'm -- to answer your
9 question, I'm speaking -- was the subject
10 bleeding?

11 A Okay. It says "yes". It's
12 circled "yes".

13 Q Okay. Thank you.

14 MR. KULP: Your Honor, we'd
15 offer that at this time.

16 MR. DURANT: Well, I don't
17 believe a foundation has been laid at
18 this point, your Honor, since --

19 MR. KULP: Okay.

20 THE COURT: All right, sir.

21 MR. DURANT: -- he's never seen
22 the document.

23 THE COURT: I'll sustain the
24 objection.

25 That's not a form you filled

Cumbee -- Cross

1 out?

2 THE WITNESS: No, sir.

3 Q All right. We'll tie it in.

4 The -- you say that you, you

5 just don't know how it came about that

6 Mr. Myers appeared at the police station on

7 Friday?

8 A If you're asking me how I knew

9 he got there? Is that what you're asking

10 me?

11 Q Yes, sir.

12 A No, sir, I don't.

13 Q Did you call his parents' house?

14 Did you make a telephone call to anybody in

15 his family and ask you -- and ask them to

16 relay a message to him to come into the

17 police station?

18 A On Friday?

19 Q Yes, sir.

20 A No.

21 Q No, sir. At any time. At any

22 time?

23 A No, sir. I don't remember doing

24 that.

25 Q And that would be the kind of

Cumbee -- Cross

1 thing that you would remember?

2 A Well, I'm human.

3 Q Yes, sir. Now, he was extremely
4 inquisitive about the facts and
5 circumstances of the case you testified --

6 A Yes, sir.

7 Q -- did you not?

8 A Yes, sir.

9 Q And that certainly, would you
10 agree, would be natural coming from someone
11 whose girlfriend had been murdered?

12 A I think it would be. Yes, sir.

13 Q And as to the issue of
14 electrical problems did you ever, as part of
15 your investigation, make any efforts to
16 research the files that the fire department
17 had for inspections of the place to
18 determine if there was some merit to that,
19 that there had been some problems with the
20 risk of fire in the building?

21 A That, that would not have been
22 our job. That would have been Chief
23 Norris's job. He's the arson investigator
24 and that would have been his job to have
25 done that.

Cumbee -- Cross

1 Q Now, that Friday when you had
2 contact with Mr. Myers and you discussed the
3 hair with him --

4 A Yes, sir.

5 Q -- and you got him to agree that
6 the hair found in her hand, if identified,
7 would be or show the killer?

8 A I don't think I got him to
9 agree. I told him what my opinion was of
10 the hair. He agreed with that.

11 Q Okay. And you said that you
12 showed him where the hair was found?

13 A In -- on -- you're talking about
14 the, the body?

15 Q Well, I'm just asking you if
16 your testimony on direct was that you showed
17 him where the hair was found?

18 A Not at that point in time.

19 Q Okay. Now, you seem to be or to
20 give a great deal of credence to his
21 response that he agreed with you when you
22 expressed your opinion to him about what it
23 would mean if he identified that hair?

24 A I'm sorry. Repeat that.

25 Q You found it important that he

Cumbee -- Cross

1 agreed with you about the hair, or
2 significant?

3 A That's what I believed.

4 Q Right. Would you have found it
5 even more perplexing if he said I'm
6 absolutely sure that cannot ever possibly be
7 the hair of the killer?

8 A No, sir. That would be his
9 opinion.

10 Q Okay. Now, there weren't just
11 one -- there wasn't just one
12 eleven-by-fourteen photo that was made and
13 processed by the team working on this case,
14 there were five. Right?

15 A I don't know how many there
16 were.

17 Q Were they ever on your desk?

18 A The, the five-by-eights were on
19 my desk on Friday.

20 Q Those are really
21 three-and-a-half-by-five or four-by-six?

22 A I don't really know.

23 Q Okay.

24 A If you show me, I can -- I can
25 show you.

Cumbee -- Cross

1 Q Yeah. Here's, for example,
2 defendant's number twelve. Excuse me.
3 State's number twelve.

4 A Yes.

5 Q That size?

6 A Yes, sir. Yes, sir.

7 Q Okay. Just wanted to clarify
8 that.

9 A Yes, sir.

10 Q But is it your testimony that
11 there were never at any time five
12 eleven-by-fourteen photographs either, A, on
13 your desk --

14 A On what day?

15 Q Saturday.

16 A Saturday, yes, sir. There could
17 have been more than -- more than one there.
18 Yes, sir.

19 Q There could have been more. And
20 were they in a stack or were they splayed
21 across the desk or were they tucked into an
22 envelope?

23 A I don't remember. I know the
24 one that I had and showed Mr. Myers, I know
25 where that one was at. I don't know where

Cumbee -- Cross

1 the others were.

2 Q And those photographs you had
3 specifically -- someone had specifically
4 made?

5 A As I stated before when Mr.
6 Durant asked, those photographs were made
7 because it blows the picture up and we can
8 see more detail.

9 Q Okay. And that was a shot of
10 Miss Haught's face, not at the crime scene,
11 but after the autopsy or at or after the
12 autopsy. Correct?

13 A I remember the picture I showed
14 him, her body was at the scene.

15 Q Okay. Well, suffice it to say
16 these enlargements were extremely graphic
17 and gory?

18 A Sir, I've, I've worked quite a
19 few murders, and every murder I've worked
20 has been gory.

21 Q Yes, sir. I'm not talking about
22 every murder, Lieutenant. I'm just asking
23 you about these particular photos. And so
24 the answer is yes, they were?

25 A Absolutely.

Cumbee -- Cross

1 Q All right. That you caused to
2 be made from the many negatives that had
3 been shot at the scene and the autopsy?

4 A As I told you, as I explained to
5 you before why the pictures were made.

6 Q All right. Let me try that one
7 more time. That were made -- were they
8 made, to your knowledge, from the photos,
9 the many negatives that were exposed --

10 A Those?

11 Q That's all I'm asking.

12 A Yes, sir. Yes, sir. I'm sorry.
13 I misunderstood you.

14 Q No problem. Any time you don't
15 understand the question, please ask me and
16 I'll restate it.

17 Now, when you got the call about
18 the hair from Mr. Myers, your testimony on
19 direct or as to the testing, the microscopic
20 testing, was that it belonged to him?

21 A That's what crime scene
22 Investigator Al Hallman said that the
23 chemist at S. L. E. D. had told him.

24 Q Okay. And you certainly then
25 knew that within your experience and law

Cumbee -- Cross

1 enforcement expertise these DNA testing
2 couldn't be done in a day?

3 A No, sir. I didn't know what
4 test S. L. E. D. had done or what test they
5 had not done at that point in time. As I
6 stated, he told me that it was his hair,
7 that was the opinion of the chemist, and
8 that it came from the back of his head.

9 Q Yes, sir. And have you ever
10 seen the videotape of Mr. Myers's contact
11 with Mr. McHale?

12 A No, sir.

13 Q Never seen that?

14 A No, sir.

15 Q The -- you certainly would
16 recognize there were other suspects in the
17 case?

18 A Up until the point that he
19 confessed.

20 Q I didn't -- let me clarify that.
21 You're right. It wasn't fair. At any time
22 were there any other suspects in the case?

23 A Yes, sir.

24 Q Who were they?

25 A A gentleman by the name of Dana

Cumbee -- Cross

1 Charles.

2 Q Anybody else?

3 A Not that I remember.

4 Q Okay. And of course in trying
5 to determine who might among those suspects
6 be the true killer, one of the things that
7 you certainly did or instructed those under
8 you to do or observe them do was to check
9 back and see if there'd been any break-ins
10 and any problems at the Mill Inn in the
11 past. Correct?

12 A I could have. I don't remember
13 if I did that or not.

14 Q Okay. And if, if in fact it had
15 been that there had been a break-in at the
16 Mill Inn in the past, that would be
17 something that would be important to
18 consider in trying to get a better handle on
19 what happened?

20 A Well, in this case --

21 Q -- wouldn't it?

22 A Well, let me say this to you.
23 In this case we found no forced entry, so
24 that really wouldn't be so pertinent to this
25 case because there was no forced entry.

Cumbee -- Cross

1 Q Mr. Cumbee, I didn't say forced
2 entry, did I?

3 A You said break-in, sir.

4 Q I'm sorry.

5 A And I, I consider a break-in
6 forced entry.

7 MR. KULP: Okay.

8 (Whereupon, marked for
9 identification was Defendant's Exhibit
10 No. 28, police report.)

11 MR. DURANT: May I see the
12 document?

13 MR. KULP: Excuse me.

14 MR. DURANT: Thanks.

15 Your Honor, I would like to --
16 may we approach?

17 THE COURT: Sure.

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

20 THE COURT: Would you go to your
21 room just a minute. Don't get settled.
22 Don't even sit down.

23 (The jury leaves the courtroom
24 at 2:41 p. m.)

25

Cumbee -- Cross

1 THE COURT: Counsel, what you --
2 what you're talking from or what you
3 want to introduce I suppose is a, is a
4 break-in at this same place eighteen
5 months before. What does this have to
6 do with it? Most of the time I let
7 everything in, but the solicitor
8 objects to it. Tell me, what does this
9 have to do with it?

10 MR. KULP: Your Honor, by the
11 tone of your voice I'm not sure I want
12 to continue or respond. I, I
13 understand your concern about the
14 timing, but I only suggest and offer it
15 because as to the issue of the extent
16 to which they conducted the
17 investigation, under Kyles versus --

18 THE COURT: Well, how -- you're
19 not going into how this was conducted,
20 are you?

21 MR. KULP: No. I simply want to
22 ask him if in fact there was a prior
23 break-in there, where she was asleep on
24 the table, and if they looked into that
25 and considered it in the entire

Cumbee -- Cross

1 investigation, and move on.

2 THE COURT: That's exactly what
3 you want to ask him? You want to just
4 ask him wasn't there a break-in before
5 and did you investigate it?

6 MR. KULP: Yes, sir.

7 THE COURT: And did he
8 investigate it?

9 THE WITNESS: No, sir.

10 MR. KULP: I don't know if he --

11 THE COURT: All right. Now he
12 said he didn't investigate it.

13 MR. KULP: All right. We'll
14 call the officer that took the report.

15 MR. DURANT: Your Honor, my
16 objection would be that unless he can
17 tie this --

18 THE COURT: Well, let me tell
19 you something --

20 MR. DURANT: -- up some way to
21 this, to this case it's completely
22 irrelevant. So what if the place had
23 been broken into ten years before?

24 THE COURT: Just tell me, what
25 does it have to do with it?

Cumbee -- Cross

1 MR. KULP: I'll withdraw it.

2 I'm not going to argue it. I mean I
3 wouldn't argue it. We'll continue
4 along, your Honor.

5 THE COURT: Trying to save a
6 little bit of time.

7 MR. KULP: I understand.

8 THE COURT: All right. Bring
9 them back. They ought to be standing
10 up.

11 CLERK OF COURT: They're
12 standing.

13 THE COURT: Well, they're
14 trusting.

15 Would you get me one copy of
16 this?

17 THE BAILIFF: One is in the
18 restroom.

19 THE COURT: When you lose them
20 like that, there's always one goes to
21 the bathroom. That's Murphy's law.

22 (The jury enters the courtroom
23 at 2:45 p. m.)

24 THE COURT: All right, sir. Go
25 ahead.

Cumbee -- Cross

1 MR. KULP: Thank you, your
2 Honor. May it please the Court.

3 Q Lieutenant, you testified on
4 direct examination that Mr. Myers told you
5 that her pants were unbuttoned, I think you
6 said.

7 A Yes, sir.

8 Q Well, she was wearing jeans as a
9 matter of fact and they had a zipper.
10 Correct?

11 A I believe they did, yes, sir.

12 Q Where is it noted in his
13 statement or in any other part of this file
14 that you have that he said that day that her
15 pants were unbuttoned?

16 A I don't know if it's noted or,
17 or if it's not noted.

18 Q And in the same vein where in
19 his statement or in any other police
20 document in the file is it stated that
21 Mr. Myers said he didn't believe that she
22 was still living before he went around to
23 the bar?

24 A I would have to look at his
25 statement, if that's in there. I don't -- I

Cumbee -- Cross

1 don't know if it's in any of the case file
2 or not, sir.

3 Q You don't know if it's -- all
4 right. Here. I'm handing you exhibit
5 thirty, State's exhibit.

6 A This is his statement?

7 Q Yes, sir.

8 A I don't see it in the statement,
9 sir.

10 Q Okay. Thank you. And you
11 testified on direct that Mr. Myers during
12 this Saturday told you that he ran to the
13 freezer in the back area of the bar and got
14 her purse out?

15 A Yes, sir.

16 Q In the back area of the bar.
17 Let me show you, I draw your attention to
18 exhibit, State's exhibit number one. Sorry.
19 Recognize the -- what it -- the diagram
20 depicts?

21 A Yes, sir.

22 Q It depicts -- take some time to
23 familiarize yourself with it, please.

24 A Yes.

25 Q Okay. And the freezer area is

Cumbee -- Cross

1 back here, correct, above the refrigerator?

2 A In the back area of the bar.

3 Q Okay. Thank you.

4 And now, let me ask you just a
5 few questions about -- you're familiar with
6 the file and reviewed a little, a bit of it?

7 A I've reviewed some of it, yes,
8 sir.

9 Q Okay. Now, now, you started
10 discussing that day, that Saturday, the case
11 with Mr. Myers?

12 A Saturday.

13 Q Yes, sir.

14 A Yes, sir.

15 Q And you stated that, I think you
16 mentioned this on direct, that you believed
17 that the victim knew the suspect because
18 there was no forced entry?

19 A That was -- that was -- yes,
20 sir.

21 Q That's what you stated.

22 A I don't, I don't know if I told
23 Mr. Myers because there was no forced entry.
24 It's just that that is why we believed that
25 the victim knew the suspect.

Cumbee -- Cross

1 Q But you stated that?

2 A As I say, I don't know if I told
3 Mr. Myers that there was no forced entry,
4 but that we believed that the victim knew
5 the suspect.

6 Q Right. And you've certainly
7 seen the, the narrative of the supplemental
8 report in this case?

9 A Right.

10 Q Right.

11 A Now --

12 Q Does that refresh your
13 recollection? Right -- starting right here.

14 A Right. But I don't know if this
15 was said to the -- to the defendant is what
16 I'm saying.

17 Q Was he there at the time?

18 A At the time that I told him that
19 we believed that --

20 Q Right.

21 A Yes, sir.

22 Q Okay. And you also stated this,
23 you told him or stated when he was there
24 that "it was a miracle that the hair was
25 found"?

Cumbee -- Cross

1 A Yes, sir.

2 Q And protected from the fire and
3 that you believed that it was a sign?

4 A Yes, sir.

5 Q And you told him that God put it
6 there, didn't you?

7 A I don't -- I am a God-fearing
8 person. I don't remember saying "God" but I
9 may have.

10 Q Okay. Then you left the office?

11 A On -- you're talking about
12 Friday?

13 Q No. Saturday.

14 A Saturday?

15 Q Yes, sir.

16 A Yes, sir.

17 Q You later walked in the office
18 and told him that you received a phone call
19 from S. L. E. D. about the hair, and you
20 mentioned that on direct.

21 A Yes, sir.

22 Q And that's when he -- you did
23 these things with the hair and the phone
24 call, and I think you testified on direct he
25 said "no, no," and right after he said "no,

Cumbee -- Cross

1 no" you said "Yes. It is your hair." You
2 told him that.

3 A I told --

4 Q That's a "yes"?

5 A I told him that before he said
6 "no, no," that S. L. E. D. said it was his
7 hair.

8 Q Okay. But I mean after he said
9 "no, no" you then said, "It is your hair"?

10 A I may have said that, yes, sir.

11 Q All right. Then he said, "I
12 must have did it then"?

13 A Yes, sir.

14 Q And then you asked him -- I mean
15 he didn't say I want to apologize next. You
16 said to him, didn't you, "Don't you think
17 you need to say you're sorry"?

18 A Yes, sir.

19 Q Okay.

20 A Absolutely.

21 Q And you were the person that
22 asked him if he wanted to hurt himself in
23 the course of the events of the evening?

24 A I remember him telling us -- are
25 you talking about during the fire that he

Cumbee -- Cross

1 set?

2 Q No. I'm talking about what he
3 said, you say he said during the interview.

4 A I'm sorry, Mr. Kulp, I'm
5 confused.

6 Q You brought up the issue -- you
7 brought up the issue about suicide?

8 A I remember the defendant,
9 Mr. Myers, telling me that he didn't want to
10 live any more, that he wanted to die with
11 her.

12 Q Okay. But did you put that in
13 the report or see that it was put in the
14 report where it says "Lieutenant Cumbee
15 asked him if he wanted to hurt himself"?

16 A I believe, I believe Detective
17 Clayton may have put that in there.

18 Q Pardon me?

19 A Is this -- this may be Detective
20 Clayton. That's -- yeah.

21 Q Yeah. So it was kind of a
22 sequence. You asked him if he was -- if he
23 wanted to hurt himself and then he stated "I
24 just wanted to die"?

25 A That's fair enough.

Cumbee -- Cross

1 Q Okay. And then you brought up
2 the issue about the trinket?

3 A I asked him why, about the
4 purse, if there was something in the purse
5 that he wanted.

6 Q And I know --

7 A It seemed odd to me -- let me
8 finish my answer.

9 Q Sure. Sure. Sorry.

10 A It seemed odd to me that he's
11 just set a fire, as he told us he did, and
12 that the fumes, the smoke, and heat had
13 overcome him, yet he's going to take time to
14 go to the freezer and get her purse. I mean
15 that seems. . .

16 Q Were you in the courtroom during
17 the last -- when the last witness testified?

18 A You had me sequestered, sir.

19 MR. KULP: That's right. That's
20 all I have. Thank you.

21 MR. DURANT: I have nothing
22 further.

23 THE COURT: Come down.

24 THE WITNESS: Thank you, your
25 Honor.

Cumbee -- Cross

1 MR. DURANT: State calls Lester
2 Rich, your Honor.

3

4

5

6

7

8

9

 L E S T E R V. R I C H ,
 having been called as a witness in the
 presence of the jury, is duly sworn and
 testifies as follows:

10 DIRECT EXAMINATION BY MR.

11 DURANT:

12 Q Good afternoon, sir.

13 A Good afternoon.

14 Q Let me find where you are.

15 Agent Rich, where are you

16 employed?

17 A I'm employed as a special agent,
18 certified fire investigator for the Bureau
19 of Alcohol, Tobacco and Firearms. I'm
20 stationed here in Charleston, South
21 Carolina.

22 Q That is a federal agency. Is
23 that correct, sir?

24 A Yes, sir.

25 Q How long have you been a special

Rich -- Direct

1 agent with A. T. F.?

2 A Since February of 1989.

3 Q What's your present assignment?

4 A Special agent, certified fire
5 investigator.

6 Q And what are your primary
7 duties?

8 A Primarily my duties are involved
9 with the determination of the origin and
10 cause of fires. Also do explosives work for
11 the Bureau. I'm an explosives specialist.
12 And then will assist other agents with
13 investigations that they have going on in
14 the office.

15 Q Prior to your employment with
16 the A. T. F. what was your -- what did you
17 do for a living?

18 A I was fire investigator for the
19 City of Charlotte Fire Department.

20 Q And do you have any experience
21 as a firefighter as well?

22 A Yes, sir, I do.

23 Q And where was that?

24 A I've been a volunteer
25 firefighter since unofficially I was sixteen

Rich -- Direct

1 and officially since I was eighteen, with
2 the fire department in my home town, which
3 was in Asheboro, North Carolina, and then I
4 attended Appalachian State University and I
5 was a volunteer firefighter in Boone during
6 that time frame also.

7 Q Would you relate to the jury
8 your formal education.

9 A I'm sorry, sir?

10 Q What is your formal education?

11 A I have a bachelor of science in
12 criminal justice from Appalachian State
13 University.

14 Q Do you have any fire science
15 courses?

16 A Yes, sir. I've taken as part of
17 the training that A. T. F. provides, I have
18 taken courses through the University of
19 Maryland, University College which were fire
20 dynamics, incendiary fire analysis classes.

21 Q Do you have any specialized
22 training relative to fire and explosion?

23 A Yes, sir, I do. I completed --
24 A. T. F. is a little unique in the federal
25 agencies in that we have or in the bureau

Rich -- Direct

1 they have a certified fire investigator
2 program that agents may apply to. That's a
3 two-year program which requires you to
4 examine a hundred fire scenes, attend
5 classes at the University of Maryland or
6 these classes I referred to earlier.
7 Additionally they bring you up to the
8 university and put you through about four
9 weeks of -- they're basically fire
10 engineering courses but they're shortened
11 and condensed for that time frame.

12 Then you have to attend
13 hazardous material training and then write a
14 research paper of some sort.

15 Q So that was a two-year course of
16 study?

17 A Yes, sir, it was.

18 Q I believe you also attended the
19 National Fire Academy in Emmitsburg,
20 Maryland?

21 A Yes, sir.

22 Q The New York State Fire Academy?

23 A Yes, sir.

24 Q Have you attended any other
25 specialized seminars and courses?

Rich -- Direct

1 A I have attended some explosives
2 classes through the -- that the Bureau of
3 Alcohol, Tobacco and Firearms provides, and
4 I also attend seminars put on by the
5 International Association of Arson
6 investigators or, for example, Interflame,
7 which is a fire conference that was held in
8 Scotland three years ago.

9 Q Have these courses in education
10 you obtained include training on accidental
11 and intentional causes of fires and
12 explosions?

13 A Yes, sir. We cover both
14 aspects.

15 Q Based on this training, is it
16 possible to determine the origin and cause
17 of a fire or explosion?

18 A Yes, sir. Much of the time, it
19 is.

20 Q Do you -- do you do any teaching
21 or lecturing in this area?

22 A Yes, sir, I have.

23 Q How many times have you done so?

24 A It's tough to say. I've
25 lectured several times this year and in fact

Rich -- Direct

1 I've an explosives class scheduled for in
2 the morning, so it's, it's kind of an
3 ongoing part of my duties with the bureau.

4 Q Have you previously been sworn
5 or been qualified as an expert witness in
6 the area of arson investigation?

7 A Fire cause determination, yes,
8 sir.

9 Q And in what jurisdictions?

10 A That would be in the Superior
11 Courts for North Carolina and in the federal
12 court system here, the judicial district of
13 South Carolina.

14 Q And on how many occasions have
15 you so testified, sir?

16 A Twice with the federal system
17 and then once in North Carolina.

18 Q Do you belong to any
19 professional organizations?

20 A Yes, sir, I do. I belong to the
21 International Association of Arson
22 Investigators which has chapters also that
23 are subchapters of that organization. I
24 belong to the North Carolina and the South
25 Carolina chapter primarily because my duties

Rich -- Direct

1 with the Bureau take me into North Carolina
2 to investigate fires also.

3 And I belong to the National
4 Fire Protection Association as well as the
5 International Association of Bomb
6 Technicians and Investigators.

7 Q Are you a member of any
8 specialized teams?

9 A Yes, sir. Currently I'm a
10 member of A. T. F.'s national response team
11 which is a -- it's really four subteams that
12 go under the same name and we respond or
13 A. T. F. will respond this team to the sites
14 of large scale fire loss or explosives
15 incidents like the Oklahoma City bombing or
16 the MacFrugal's (phonetic) fire, which was a
17 large commercial fire down in New Orleans.

18 Q And finally, sir, do you hold
19 any certifications?

20 A Yes, sir. I am certified by the
21 Bureau of Alcohol, Tobacco and Firearms as a
22 fire investigator. As a portion of that
23 certification we also apply to the
24 International Association of Arson
25 Investigators, and I was tested to their

Rich -- Direct

1 certification standards and met those and
2 was certified by the IAAI, and as a --
3 subsequent to that standard I was certified
4 by the National Board on fire -- National
5 Board of Professional Fire Service
6 qualifications.

7 Q How many fire and explosive --
8 fire and -- excuse me. How many fire and
9 explosion scenes have you investigated?

10 A A little over five hundred, sir.

11 Q These investigations actually
12 involved going to the scene of these places,
13 digging through debris, things of that
14 nature?

15 A Yes, sir. Absolutely.

16 Q And is it necessary, sir, to --
17 when you're trying to establish the cause
18 and origin of a fire for you to do that?

19 A Yes, sir. I believe it is.
20 It's good to be there and see what's going
21 on.

22 Q Is it possible to make such
23 determination by looking at pictures?

24 A Some people will do that, sir.
25 I have not done that.

Rich -- Direct

1 Q And why would you recommend
2 against that?

3 A You might can do that but, but
4 it seems to me that you're better off to be
5 at the fire scene and see the
6 three-dimensional aspects of the fire scene
7 and it's, it's easier to investigate the
8 fire the closer to the time that it started,
9 so the, the more you can see and be in that
10 building, I think the better, the better
11 your chances are for coming up with a
12 correct determination.

13 MR. DURANT: Your Honor, we
14 would offer Agent Rich as an expert in
15 the area of arson investigation.

16 THE COURT: Any objection?

17 MR. KULP: No, just -- I think.
18 No. None, your Honor. But I think it
19 was in the area that he had indicated,
20 which was cause.

21 THE WITNESS: Fire cause
22 determination.

23 MR. KULP: Fire cause
24 determination.

25 THE WITNESS: Or cause and

Rich -- Direct

1 origin of determination.

2 MR. KULP: Thank you, your

3 Honor.

4 THE COURT: Is that what you
5 want?

6 MR. DURANT: That's fine with
7 me.

8 THE COURT: He says he has no
9 objection.

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

12 Q Could you tell the jury what
13 procedure you used to determine the cause
14 and origin of fires?

15 A Yes, sir. It, briefly, it's
16 kind of like putting a puzzle together. I
17 start on the outside with the edges and then
18 work your way back to the end. There's a
19 few principles of fire behavior that kind of
20 come into play. The most common one that
21 people are familiar with is smoke rises.
22 That's because it's buoyant. The heat,
23 light heat. It rises until it hits
24 something and then it spreads out.

25 Fire will do the same thing.

Rich -- Direct

1 Fire burns up and out unless some other
2 effect changes it or moves it or pushes it
3 in another direction or causes it to veer
4 off. But generally fire burns up and out,
5 and generally fire burns -- where the fire
6 starts is the area that's going to have the
7 most damage.

8 Now often times that, or
9 sometimes that's not the case. If the fire
10 department didn't put out a fire on one side
11 of the building and the fire started on the
12 other side, that could have more damage.
13 But those are some of the general principles
14 that you look for as you go in to start
15 narrowing down where this fire occurred.

16 Q Is there anything else that you
17 do to determine what occurred in a fire
18 scene?

19 A I will talk with people if
20 they're there. Obviously if they're
21 witnesses who may have seen something or, or
22 saw a window break out. The first-in
23 firefighters, you might want to talk to them
24 also. You know, what did you see? What was
25 actually burning when you got there? Those

Rich -- Direct

1 are kind of the general steps that you go
2 through at each fire scene.

3 Q Do you ever consult with other
4 specialists, experts, electricians, things
5 of that nature?

6 A Yes, sir. Absolutely. In fact
7 the Bureau has a fire prevention engineer on
8 the staff that's there for that purpose. If
9 we have a question or some unique situation
10 comes up we can -- we have our own people
11 that we can consult with.

12 Q Now, I'd like to direct your
13 attention to March thirteen, 1997 when an
14 incident occurred at 1026 East Montague
15 Avenue in the City of North Charleston,
16 establishment known as the Mill Inn. Did
17 you have an opportunity to respond to the
18 scene of that fire?

19 A Yes, sir, I did.

20 Q And how -- can you tell us how
21 you became involved?

22 A Yes, sir. As I alluded to
23 previously, the Bureau has certified fire
24 investigators and this is a program that
25 A. T. F. has developed based on our previous

Rich -- Direct

1 investigation of explosive and arson
2 incidents, and what the Bureau has done is
3 they've taken and trained about eighty,
4 eighty-seven investigators across the
5 country, and they basically offer us out to
6 state and local agencies, other governmental
7 agencies to investigate fires and see if we
8 could determine the origin and cause of the
9 fire.

10 So as part of that, as my
11 duties, you develop working relationships
12 with other fire departments in the area,
13 like we have with the City of North
14 Charleston. So the City of North Charleston
15 will request for me to come out and assist
16 with the fire investigation.

17 Q And they did so in this case,
18 sir?

19 A Yes, sir.

20 Q What did you do at the scene?

21 A I primarily went through the
22 scene looking for fire damage, burn
23 patterns, smoke damage, heat damage, trying
24 to work with Chief Norris and assist in the
25 actual determining of where this fire

Rich -- Direct

1 started. And once that was determined, what
2 were the possible causes that were there
3 that we could look for, that, that may have
4 resulted in this fire.

5 Q Were you able to determine an
6 area of origin of the fire?

7 A Yes, sir, I was.

8 Q And where was that?

9 A That --

10 Q And -- where was it and how were
11 you able to make such a determination?

12 A The area of origin was
13 determined to be behind the bar in an area
14 between two beer coolers, two horizontal
15 coolers, and I was able to determine that
16 based on observations that I made inside the
17 building; ceiling damage, burn patterns that
18 were left on the wall and then the actual
19 burn debris that we discovered on the floor.
20 This fire was a little different than some
21 that I've investigated because this fire
22 never progressed to the point where flash
23 over occurred.

24 Q Now, what is "flash over"?

25 A Flash over is a point in a fire,

Rich -- Direct

1 let's say it's your living room is burning.
2 If a chair is burning in the corner of your
3 living room, that's creating a smoke layer
4 throughout the room. It's putting off heat.
5 It's radiating heat. And as that fire grows
6 the other things in that room -- the couch,
7 the carpeting, the paneling -- will begin to
8 give off vapors. They're heated up and they
9 start releasing smoke and vapors.

10 And at some point in the fire
11 everything that's not burning in the room
12 ignites, and that's called flash over. And
13 once that occurs, that's a fairly critical
14 point in fire investigation because once
15 that occurs, when all, everything starts
16 burning, that will begin to or it may begin
17 to eliminate some of the patterns and the
18 burn pattern analysis and so that's stuff
19 that you can do prior to that because once
20 flash over occurs it's a very vigorous,
21 rather spectacular fire that results.

22 Q And were you able to determine a
23 cause of the accident in this case?

24 A I'm sorry? Determine the cause
25 of the fire in this case?

Rich -- Direct

1 Q Cause of the fire.

2 A Yes, sir. My determination was
3 that this fire was the result of the
4 application of open flame to materials that
5 were found there behind the bar or available
6 materials is the kind of common lingo.

7 Q And why did you arrive at that
8 conclusion?

9 A Well, I, in looking at this area
10 between the two coolers and examining the
11 content on the floor, looking at the burn
12 patterns, that was the -- the other things
13 were eliminated. There was some electrical
14 components behind the cash register. Those
15 were eliminated as potential --

16 Q Were those -- were those
17 inspected by you?

18 A Yes, sir. Yes, sir. By myself
19 and an electrical engineer that was brought
20 into the scene, and neither believed that
21 those contributed to the cause of the fire,
22 primarily due to some physical evidence that
23 was there with them.

24 And, and they were -- the fire
25 actually started in front of the cabinets

Rich -- Direct

1 that held the cash register -- it was a
2 wooden cabinet -- whereas these items were
3 located behind the cabinets in a somewhat
4 protected area that survived the fire.

5 Q Were you able to determine if
6 any accelerants had been used?

7 A I did not collect any samples
8 for laboratory analysis. It did not appear
9 to me from the burn patterns from the fire
10 that I had in front of me, it did not appear
11 that there were any accelerants used.

12 Q Do fires that are started with
13 accelerants differ, generally have a
14 different type of burn pattern?

15 A Yes. There will occasionally be
16 characteristics of an accelerated fire that
17 differ from an available materials fire.

18 Q Okay. Were you aware where the
19 body was found in the building?

20 A Yes, sir. I did observe the
21 victim upon my entry into the building.

22 Q Was the victim still there?

23 A Yes, sir.

24 Q Was there any evidence that any
25 type of accelerant had been used around or

Rich -- Direct

1 about the victim?

2 A As I said, I didn't collect any
3 samples from the victim but based on my
4 observation of the victim, it appeared to me
5 that, that the, the victim's body was sort
6 of uniformly affected by the heat and that
7 would be radiant heat coming down from the
8 smoke layer in the ceiling. As I recall,
9 some of the light-weight fabric was burned,
10 but some of the heavier fabric wasn't. But
11 it was somewhat of a uniform effect to the
12 heat to the back of the body.

13 Q Would that have been the case if
14 an accelerant had been used?

15 A I would not have expected that.
16 I would have expected more localized burning
17 on one spot or the other. As I said it
18 was -- the radiant heat coming down from the
19 ceiling or the smoke layer kind of had
20 uniformly affected all of the, all of the
21 materials, including the victim, that were
22 in this area.

23 Q And based upon your training,
24 education, and experience were you able to
25 determine or form an opinion as to whether

Rich -- Direct

1 or not this fire was started by intentional
2 or accidental causes?

3 A I believe this was an
4 intentionally set fire, sir.

5 (Whereupon, marked for
6 identification were State's Exhibit
7 Nos. 32 through 40, photographs.)

8 Q Agent Rich, I hand you what's
9 been marked as State's thirty-two through
10 forty. Ask if you've seen those photographs
11 before, sir?

12 A Yes, sir, I have.

13 Q And do those photographs in any
14 way assist you in explaining your testimony
15 to the jury?

16 A Yes, sir. They might very well.

17 Q Okay. Unfortunately I don't
18 have my projector here today, your Honor.

19 THE BAILIFF: It's in the back.

20 MR. DURANT: You can bring it
21 out. We'll go ahead and get started
22 anyway.

23 We would offer State's
24 thirty-two through forty into evidence,
25 if there's no objection.

Rich -- Direct

1 THE COURT: Any objection?

2 MR. KULP: No, sir.

3 THE COURT: All right.

4 MR. KULP: Thank you, your
5 Honor.

6 (Whereupon, entered into
7 evidence were State's Exhibit Nos. 32
8 through 40, photographs.)

9 Q Could the witness come on down.
10 Are there any particular order
11 that you want to go through these in?

12 A It might be helpful to the jury.

13 Q If so, just go ahead put them in
14 the order you'd like.

15 This is what's been marked as
16 State's exhibit number thirty-three. And if
17 you would, here's a laser pointer if you
18 need it, right there. See if I can focus it
19 a little better. That's about good as we're
20 going to get.

21 A Okay. This photo is from an
22 interior portion of the bar, looking back
23 into this darkened area which actually is a
24 little clearer on this photo. The bar was
25 back here in this area and this is somewhat

Rich -- Direct

1 important for what I was talking about a
2 while ago. This little wall that hangs
3 down, that helped keep some of the smoke and
4 create a layer over the bar and the victim
5 from the radiant heat I was talking about.

6 Q So referring to State's exhibit
7 number one, could you just relate to the
8 jury kind of -- of what area?

9 A Yes, sir. This photo would be
10 standing back -- I'm sorry, Mr. Durant.
11 Would be standing back in this area, looking
12 towards the bar location. And the -- I
13 believe there's actually, there may actually
14 be two of those small walls. This divided
15 area here also has one of these drop down,
16 about a foot wall, that kind of separated
17 these two areas from the bar.

18 Q So most of the fire damage was
19 concentrated on the bar side of the fire?

20 A Yes, sir. It was, as you can
21 see there, the roof is still -- I mean the
22 ceiling material is still up so the fire was
23 just beginning.

24 Q In the far side of the bar I
25 guess I should say.

Rich -- Direct

1 A Yes.

2 Q This is State's exhibit number
3 thirty-five.

4 A Yes.

5 Q Goes this way?

6 A This photograph is looking down
7 the bar this way towards the -- this back
8 wall would be the Montague side of the
9 interior of the building. As you can see,
10 this is the sink area here. The cooler's
11 down this way. And the fire origin, these
12 are published to the jury, it's a little
13 clearer. You can start to see some pattern
14 is developing back here on the back wall.
15 This photo you can also see the ceiling
16 material on the bar was a light-weight
17 paneling material so when the fire
18 eventually got going, that began to be
19 consumed in the fire and added to the smoke
20 production and the fire load.

21 Q Okay. This is State's exhibit
22 number forty.

23 A Okay. This is, this is another
24 photo. Now you're behind the bar, looking
25 back down. This would be the, the mini

Rich -- Direct

1 bottle area. The sinks were over here. The
2 area of origin unfortunately has disappeared
3 on us but it's back here in this darkened
4 area on the photo. As you look at it here
5 you can also see that there's a trash can
6 back up under the corner of the bar that's
7 beginning to exhibit some heat effects where
8 it's being hit by radiant heat.

9 Q Okay. I'll just pass these to
10 the jury once we've looked at them. Now,
11 showing you what's been marked as State's
12 exhibit number thirty-seven.

13 A This is kind of a medium range
14 or little bit more close-up area of the
15 actual origin of the fire, the area of
16 origin as we would call it.

17 This is one of the horizontal
18 coolers. This would be the other one.
19 You're actually -- you've walked past the
20 area of origin, kind of looking back. This
21 is the back of the wall. The bar was
22 concrete block. The back of the wall was
23 concrete block.

24 Q Which side is the bar on in this
25 picture?

Rich -- Direct

1 A Right across this top corner is
2 the --

3 Q Okay.

4 A It would be to your left as
5 you're looking at this photo.

6 Q This is behind the bar and those
7 coolers are behind the bar. Is that
8 correct?

9 A Yes, sir. And, and there used
10 to be some sort of wooden cabinet or table
11 here that's been consumed by the fire. And
12 you can also see that this material is
13 spilled out here on the floor, and there
14 also a couple of good markings on the side
15 of this metal because as the fire attacked
16 that cabinet from the front and started to
17 whip around the sides, it created this heat
18 damage on both sides and there's a reverse
19 angle here also. But you can see it created
20 this damage on both sides of the, of the
21 cooler.

22 Q Where was the, the cash register
23 located?

24 A The cash register has actually
25 fallen over and was, was in between these

Rich -- Direct

1 two. It's -- we moved it over and there is
2 a photo of it in here and you can --

3 Q We'll get to it a little later.

4 A Okay.

5 Q This is State's exhibit number
6 thirty-two.

7 A Yes, sir. This is a reverse
8 angle, if you will, of what we were just
9 looking at. This is that cooler on the
10 opposite side. You can once again see
11 you're getting -- it's almost like a mirror
12 image of the patterns on either side as the
13 fire is affecting it and working its way up
14 and across these coolers. And at the same
15 time this fire is, is beginning to heat up
16 this wood that's directly opposite, the
17 radiant heat like you would feel the sun,
18 radiant heat is beginning to go across this
19 aisle way and start to heat up these --

20 Q And burn stuff on the back side
21 of the bar?

22 A Yes, sir.

23 Q And State's exhibit number
24 thirty-four.

25 A Yes, sir. This is, this is a

Rich -- Direct

1 fairly good photo, after this area was
2 excavated or combed out to see what remains.

3 Q And this has been cleaned out?

4 A Yes, sir. This has been cleaned
5 out. I apologize to the Court again. It's
6 a little bit clearer in the, in the photo,
7 but what you have here is the remains of the
8 back portion of that wooden cabinets.

9 There's a little piece of the back corner
10 here. There's a little bit of the back leg
11 and across the back there is a, a little
12 strip of wood that remains the same on this
13 side.

14 As you can see, the patterns
15 match up or the fire damage matches up with
16 the part of the cabinets that's missing out
17 here in the front, the fire going back both
18 ways. This is what creates back here what
19 we call a protected area or there's
20 something between the fire and the, and the
21 wall.

22 I believe in the next photo it
23 shows there's an electrical outlet right
24 here. I believe in the next photo you can
25 see it and if you'll put that up. Yes, sir.

Rich -- Direct

1 I believe this is better.

2 Q Okay. This is State's exhibit
3 number thirty-nine.

4 A This is sort of a photo looking
5 straight down and at the back of that
6 cabinets and you can see there's an outlet
7 here on the wall. Below the outlet is a, is
8 a power strip that has been damaged by the
9 heat. However, that's not what caused the
10 fire because this material that surrounds
11 it, the wood, is still there. It has not
12 yet been consumed. You can see that there's
13 paint, although it's sooted, it's just
14 starting. This is -- the concrete blocks
15 here are just starting to blister.

16 So a fire did not start behind
17 this cabinets and then progress out to the
18 front by some sort of electrical failure.
19 The fire started on the other side of the
20 cabinet and progressed into it.

21 Q Towards the back?

22 A Yes, sir.

23 Q And this was verified by the
24 electrical engineer as well?

25 A Yes, sir. He did examine these

Rich -- Direct

1 components and look at some of the building
2 wiring here.

3 That's the cash register there.

4 Q This is State's exhibit number
5 thirty-eight.

6 A This is, this is the cash
7 register right here. It's a little clearer
8 on the photo, but you can see there's still
9 plastic remaining on the cash register and
10 if you look along this leading edge you can
11 see where it looks like the fire has
12 attacked that leading edge. It looks to me
13 as if there's more damage here to the
14 exterior or there is more damage to this
15 side of the cash register than some of these
16 back portions of the cash register. Again,
17 that's another indicator that the fire
18 attacked it from the front as opposed to the
19 back.

20 Q Was this cash -- cash register
21 sitting on the, the table or cabinets that
22 got burned --

23 A Yes, sir.

24 Q -- and consumed in this fire?

25 A Yes, sir. That is correct.

Rich -- Direct

1 The last photo here --

2 Q I don't know how much you'll be
3 able to see.

4 A Okay.

5 Q This is State's exhibit number
6 thirty-four.

7 A Okay. It's, it's basically a
8 rubber mat that was behind the bar, and this
9 area that's burned away here was lined up
10 with the cash register table is basically
11 what that shows.

12 Q That was right in front of the
13 cash register table?

14 A Yes, sir. It's actually -- in
15 this photograph I believe it's being held up
16 so that you can see that it's burned away
17 because the dark floor, it wasn't showing
18 up.

19 You can also see in this photo,
20 this is the back, the back side of the bar
21 that this fire has begun to attack, these,
22 the shelving material back here also.

23 Q So in your opinion, sir, someone
24 has pulled paper out of the cabinet and set
25 it on fire, basically, in front of the, in

Rich -- Direct

1 front of the cabinet. Is that correct?

2 A Yes, sir. That's correct. As I
3 described, it was available materials.
4 Whatever happened to be in that cabinet
5 was -- or, or in that vicinity was ignited
6 and the characteristics that I observed at
7 this fire are that of a steady growing fire
8 in some sort of ordinary combustible
9 material.

10 Q Could you please answer any
11 questions that Mr. Kulp may have for you.

12 A Yes, sir.

13

14

15

16

17

18 CROSS-EXAMINATION BY MR. KULP:

19 MR. KULP: Thank you, sir. Your
20 Honor, please.

21 THE COURT: Yes.

22 Q You, as a result of your
23 involvement there at the fire that day, you
24 prepared a report?

25 A Yes, sir.

Rich -- Cross

1 Q I think a three-page report?

2 A I believe it was three. Yes,
3 sir.

4 Q All right. And you prepared
5 that twelve days after the fire?

6 A Yes.

7 Q And you reference in there, in
8 your report, do you not, that: "On March
9 fifteen, Wesley Max Myers made a written
10 confession to North Charleston Police
11 Department and that the confession indicates
12 that after committing the homicide with a
13 glass wine carafe, removed paper and other
14 materials from the wood cabinet, piled the
15 contents in front of the cabinet and lit
16 them with a lighter. He waited to be
17 overcome by the smoke but at the last minute
18 fled the building."

19 Now, that was information that
20 was provided to you by the North Charleston
21 Police Department?

22 A That is correct.

23 Q And it had to be provided to you
24 after the fifteenth because it didn't occur
25 and none of that was -- the confession

Rich -- Cross

1 wasn't signed until the Saturday, the
2 fifteenth, to your knowledge?

3 A Yes, sir. That, that report was
4 prepared several days later.

5 Q Right. Now, in the pictures,
6 and I don't know if I have them handy, but
7 the A. T. F. van, the Alcohol, Tobacco and
8 Firearms van that rolled up to the scene was
9 a big truck. Right?

10 A Yes, sir.

11 Q And it's white and it's got
12 markings on it, and there's a lot of
13 equipment inside, isn't it?

14 A Yes, sir. There is.

15 Q Like, without revealing the
16 entire inventory of the van, would you tell
17 the ladies and gentlemen of the jury what
18 type of equipment or sensors or instruments
19 or whatever are located therein.

20 A Yes, sir. Ladies and gentlemen,
21 primarily that is a -- in fact it was one of
22 our old national response team vehicles, and
23 what that vehicle is designed to do, and
24 for -- if you didn't see it, it basically
25 looks like an ambulance. It's that type of

Rich -- Cross

1 chassis, an old pickup chassis with a box
2 body. And what that vehicle is designed to
3 do is to bring equipment to the scene that
4 you need to do a fire scene investigation.
5 It has shovels, plastic bags, evidence cans,
6 sifting screens, that type of stuff.
7 Flashlights. A generator. Lights. Those
8 materials. It doesn't have any sort of
9 mobile laboratory analysis capability or
10 anything like that.

11 Q Okay. And it has some
12 photography equipment, if you haven't
13 mentioned that already?

14 A Yes, sir. It does have
15 photography equipment.

16 Q Video equipment?

17 A At the time -- it did, but there
18 was problems with that video camera. I'm
19 not sure if it was on the truck the day that
20 it rolled to this, to this scene or not, but
21 normally there would be video capabilities.

22 Q And do you have any devices to
23 detect the presence of an -- something used
24 to inflame the fire, like petro-based,
25 petro-chemical based substances?

Rich -- Cross

1 A Not on that vehicle. No, sir.

2 Q Now, do you have also devices or
3 things to use to collect evidence?

4 A Yes, sir. There's --

5 Q Labeling bags, tagging bag
6 equipment?

7 A Yes, sir.

8 Q Yes, sir. Now, did you take any
9 photographs there at the scene?

10 A No, sir. I don't believe I did.
11 I believe Chief Norris was taking the
12 photographs.

13 Q Okay. Do you need, to make
14 sure, to look at your report or you pretty
15 sure?

16 A No, sir.

17 Q Okay.

18 A I'm confident I didn't take any
19 photographs.

20 Q Did you take any videotapes
21 there at the scene --

22 A No, sir.

23 Q -- there at the scene?

24 A No, sir.

25 Q Did you collect any samples of

Rich -- Cross

1 anything?

2 A No, I did not collect any
3 samples.

4 Q Did you take any sampling from
5 the victim's clothing or in the surrounding,
6 areas surrounding her body?

7 A No, sir.

8 Q Did you take any sampling from
9 the area of the bar behind the bar where you
10 determined that the cause of the fire was?

11 A No, sir.

12 Q Okay. And without sounding
13 silly, nothing prohibited you from taking
14 any samples at all --

15 A Oh, no, sir.

16 Q -- if you'd chosen to do that?

17 A That is correct.

18 Q Now, sir, you indicated that you
19 had an opinion or expressed a comment about
20 the ability to make a determination about a
21 fire based upon examination of photographs.
22 Correct?

23 A Yes, sir.

24 Q And that's what we've been
25 examining over the projector here --

Rich -- Cross

1 A Yes, sir.

2 Q -- for a few minutes?

3 A Yes, sir.

4 Q And, and you said there was no
5 flash over?

6 A That's correct, sir. In this
7 particular fire it did not reach flash over.

8 Q Now, you indicated in paragraph
9 seventeen of your report that Mr. Myers
10 waited to be overcome by the smoke.
11 Correct?

12 A I was told that. Yes, sir.

13 Q I'm sorry. You were told that.
14 Right.

15 A But, yes, it is in my report.

16 Q Yes. Please tell the ladies and
17 gentlemen of the jury the effect or the
18 role, relationship between carbon monoxide
19 and people who are explode -- exposed to --
20 is it carbon monoxide or carbon dioxide?

21 A If you're referring to the
22 affinity of carbon monoxide to be absorbed
23 by the body?

24 Q Yes.

25 A Yes. It's carbon monoxide.

Rich -- Cross

1 Q Carbon monoxide.

2 A Predominantly is what kills
3 people in fires.

4 Q Sure. Tell the ladies and
5 gentlemen of the jury, the, the role that
6 that plays in an investigation as far as
7 people who are exposed to smoke? Well,
8 let's --

9 A As far as carbon monoxide will
10 incapacitate you or --

11 Q No, sir. It's true, is it not,
12 that the people are exposed to smoke when
13 they inhale it and breathe it?

14 A Yes, sir.

15 Q That shortly thereafter their
16 blood could be tested and it can be tested
17 for elevated levels of carbon monoxide?

18 A Yes, sir. That is correct.

19 Q You're aware that blood was
20 drawn from the defendant in this case on the
21 day after the -- or the day of the discovery
22 of the fire?

23 A I'm aware of that because I've
24 heard the testimony, but I was not aware of
25 that at the time.

Rich -- Cross

1 Q Did you play any role in seeing
2 that his blood was tested for the presence
3 or the fact of the elevated level of carbon
4 monoxide?

5 A No, sir, I didn't. But one
6 additional aspect of the carbon monoxide
7 testing, if the defendant was a smoker, he
8 may have elevated levels of carbon monoxide
9 in his blood just as we walk around. That's
10 sometimes an issue once -- particularly with
11 a victim of a fire. If the victim has
12 elevated levels of carbon monoxide and
13 they're a smoker, sometimes it's tough to
14 determine if that's the result of the fire
15 or in fact if they just walk around with
16 elevated levels, because often times people
17 who smoke will have elevated levels.

18 Q But we don't know the impact of
19 that because we don't have any values to
20 examine?

21 A That's true. That's correct.

22 Q And in fact --

23 A I'm not aware of any.

24 Q I'm sorry. Someone who's
25 exposed to a great deal of smoke, they might

Rich -- Cross

1 have such an elevated level of carbon
2 monoxide that might exceed what would be
3 detected for a smoker. Correct? If you
4 know.

5 A If they're exposed to smoke
6 their level of carbon monoxide may be
7 elevated above that --

8 Q Right.

9 A -- if they were a smoker? Or
10 that which you expect to find in a body
11 if -- yes, sir. Yes, sir.

12 Q All right.

13 A I'm sorry. I had to work
14 through that one.

15 Q That's all right. It wasn't
16 asked clearly, and I apologize.

17 Now, you talked about the area
18 of the origin of the fire and the cash
19 register. Was there -- is -- were you able
20 to determine that the cash register was on
21 top of a wooden cabinets?

22 A Yes, sir. It was elevated in
23 its placement at the initial part of the
24 fire.

25 Q Okay. And on the right side of

Rich -- Cross

1 the cash register and the wooden stand there
2 was a metal object that is not a source of
3 fuel for fire?

4 A That's correct.

5 Q Metal doesn't burn real well?

6 A That's correct.

7 Q And on this side there was also
8 metal and that was not a source of fuel for
9 fire?

10 A That's correct.

11 Q And right in front of the
12 cabinets there was a rubber mat. Correct?

13 A Yes, sir.

14 Q And rubber mats are pretty good
15 sources of fuel for fire. Correct?

16 A Yes, sir, depending on its
17 configuration --

18 Q Of course.

19 A -- and how it's made.

20 Q Polyurethane or plastic garbage
21 cans are pretty good sources of fuel for
22 fire?

23 A Yes, sir.

24 Q Now, you said that you
25 determined that -- how about bags of potato

Rich -- Cross

1 chips? Are potato chips that contain fat --

2 A Yes, sir. They will burn.

3 Q They will. In fact they burn
4 pretty well, don't they?

5 A Relatively speaking, yes, sir,
6 they do.

7 Q Right. You have any reason to
8 disagree if I suggested if you took a dollar
9 bag of potato chips, not the baked kind --

10 A Right.

11 Q -- but regular potato chips and
12 lit the bag on the floor that it would burn
13 for over ten minutes with flames?

14 A I couldn't -- I don't know about
15 your time frame --

16 Q And the size of the chips
17 were --

18 A But yes, it would. Lay's potato
19 chips, the regular greasy kind. Yes, if you
20 light the bag, the bag will lay there and
21 burn like a wick.

22 Q Right.

23 A So to speak.

24 Q And in fact in the course of
25 your studies and training and investigation

Rich -- Cross

1 with A. T. F., Alcohol, Tobacco and
2 Firearms, there's some indication that
3 that's a pretty good device for people to
4 use who start fires, of late?

5 A I don't know about "of late", as
6 in you're talking about recent fires, or --

7 Q No. I mean -- all right.
8 Forget "of late".

9 A Okay. But, yes, I do know that
10 that is a taught, in a lot of the fire
11 investigations classes, that is a taught
12 method or potential source for ignition --
13 not a source of ignition, but a potential
14 initial fuel package. In other words, the
15 first thing that was ignited.

16 Q And when you tell people that,
17 are they surprised when you tell them --

18 A Till they see them burn.

19 Q -- in the class? Pardon?

20 A Till they see them burn. And
21 then they're not surprised.

22 Q Till they see them burn. And
23 then they're not surprised and it doesn't
24 sound crazy to say that potato chips are a
25 good starter?

Rich -- Cross

1 A That is correct, sir.

2 Q Right. Now, you said it was the
3 application of open flame in that area that
4 led you to believe that that was the source
5 or the origin of the fire. Now what was the
6 source of the open flame, apart from what
7 you learned after the fifteenth?

8 A Right. I do not know what the
9 source of the open flame is.

10 Q You have no idea?

11 A No, sir.

12 Q Now, accelerants you said have
13 different kinds or show different kinds of
14 burn patterns. Correct?

15 A Generally.

16 Q Okay. And in fact I think you
17 said that localized burning indicates the
18 presence of -- can indicate the presence of
19 an accelerant?

20 A Yes. It could. It -- you
21 wouldn't rely on that by itself, but that's
22 possible. That could be an indicator.

23 Q And I think you made the or
24 testified that there was an aspect of
25 radiant heat coming down from the ceiling?

Rich -- Cross

1 A Yes, sir.

2 Q Okay. And in fact what was the
3 substance or the make-up of the ceiling
4 panels that were in there? Did you
5 determine that?

6 A No, sir, I did not determine the
7 actual physical make-up, but I could tell
8 from looking at the ones over the bar and
9 what remained, it's some sort of light
10 weight wood paneling-type material.

11 Q Okay. And are there some
12 paneling materials that are more inflammable
13 than others? Inflammable or flammable?

14 A Support combustion better than
15 others?

16 Q Yes, sir. Support combustion.

17 A Yes. Yes.

18 Q And in fact you said heat rises.
19 Right?

20 A That is correct.

21 Q Fire goes up, burning goes down.

22 A Unless it's drawn or cold air or
23 somehow --

24 Q Source of air?

25 A Cold air.

Rich -- Cross

1 Q Or blown?

2 A Right.

3 Q Right. And so once that ceiling
4 catches fire the fire, since the heat goes
5 up, spreads over the whole room. Correct,
6 or can?

7 A Yes, sir. It will attempt to do
8 that.

9 Q Regardless of where the source
10 or the origin of the fire is, that's a
11 phenomenon, once it hits the ceiling, that
12 could occur, that spread the --

13 A It begins to spread laterally.
14 Yes, sir, it will. Until it finds some
15 other opening and then it will begin to rise
16 again.

17 Q Right. Now, what are the
18 general burning qualities of paper, say
19 compared to a bag of potato chips? Well,
20 let me ask you this.

21 A I'm not exactly sure how to
22 answer that.

23 Q Let me rephrase it. Is it --
24 what's more likely to be a better source of
25 flame, of open flame, this piece of paper or

Rich -- Cross

1 a crumbled piece of paper?

2 A Well, I know you're not trying
3 to trick me, but the orientation that you
4 held that piece of paper in, horizontal, is
5 not going to be as good as a flat
6 orientation for that to burn. If you had
7 held that piece of paper vertically, that's
8 a better orientation for that fuel package
9 to burn.

10 Q Right.

11 A Crumpled up like that, it's
12 going to burn slower and the fire is going
13 to progress into the piece of paper. Flat,
14 held up, it's going to burn faster. The
15 fire is going to spread across it because,
16 if I may substitute --

17 Q Go right ahead.

18 A -- if you hold it like this and
19 the fire starts at the bottom, that smoke,
20 that buoyant column we were talking about is
21 preheating --

22 Q Right.

23 A -- this paper in front of the
24 flame front. If you turn it this way, it's
25 having to burn across it.

Rich -- Cross

1 Q Sure. But I guess what I'm
2 trying to illustrate is and seeking to
3 prove, if when we take paper and stuff it up
4 under the fireplace to get the fire going,
5 we crumple it up?

6 A Yes, sir.

7 Q It's a better burning effect?

8 A I shred mine in strips but, yes,
9 sir, most people crumple it. I can't
10 disagree with that.

11 Q That's a lot of work, but I'll
12 take that home with me.

13 Now, also cardboard has kind of
14 a less burning desirability or quality than
15 paper?

16 A Perhaps what you're asking me is
17 the ease with which it's ignited or the --
18 yeah. Cardboard is harder to get ignited,
19 but once it is it's going to provide a more
20 robust fire than a piece of paper.

21 Q If it finishes burning across
22 the surface of the substance?

23 A Right. There're, there're
24 different characteristics because they're
25 different materials. They're both paper,

Rich -- Cross

1 but it has a lot to do with configuration of
2 the fuel.

3 Q Right. Now, I just want to --
4 are you familiar with the NFP -- NFPA-921?

5 A Yes, sir.

6 Q The guide for fire and explosion
7 investigation?

8 A Yes.

9 Q Is this considered kind of, sort
10 of a Bible of the trade, of cause and
11 origin?

12 A No, sir.

13 Q What is it?

14 A It's a guide, it's an
15 investigative guide. There are people who
16 think it is the Bible of fire investigation.
17 I happen to not think that. It's, it's one
18 of several reference materials that are out
19 there about how to investigate fires.

20 Q Is this used in any way to form
21 the basis for reference material for
22 certification exams or training or anything?
23 I mean it's used. You may not agree --

24 A Yes, sir.

25 Q -- but it's used?

Rich -- Cross

1 A Yes, sir. That's correct.

2 Q Sure.

3 A It's not a -- it's not a -- it's
4 not a Bible. It's a guide.

5 Q Maybe "the Bible" wasn't the
6 right word.

7 A Okay. It's not a --

8 Q I hope no one is offended by my
9 use.

10 A I'm trying to think of the legal
11 word. A treatise or --

12 Q It's a treatise that's used by a
13 large number of people to set the standards
14 and procedures and so forth for fire cause
15 and origin and explosion investigation?

16 A Right. Yes, sir.

17 Q Okay. Now, I'd like to ask --
18 well, first before we get into these
19 pictures, and I really appreciated, I noted
20 your candor, but Mr. Durant asked you and so
21 you concluded that someone pulled papers
22 out, lit them on fire, and I know your
23 answer didn't really say yes, but, but you
24 couldn't tell that if someone pulled papers
25 out and set them on fire?

Rich -- Cross

1 A Well --

2 Q As a result of what you examined
3 at the scene there that morning?

4 A There was in the debris, there
5 was what appeared to be remnants of paper or
6 cardboard in the debris. That's why I
7 stated my answer that way.

8 Q Right. And that was where you
9 determined the cause of the fire to be and
10 you found some paper there?

11 A Right.

12 Q Okay. Now, let me ask you a few
13 questions. When you were -- let me hand
14 you -- well, let me hand you State's exhibit
15 number seventeen, a piece of wine carafe and
16 ask if you can identify that. Have you ever
17 seen that before?

18 A I believe it was from the fire
19 scene because I remember there was some
20 glass around the victim, but I didn't
21 collect it.

22 Q Okay. Now, let me ask you this.
23 Of course one of the things you do when you
24 go to a fire scene is to draw a very
25 detailed diagram of where everything is.

Rich -- Cross

1 Correct? That's kind of a standard
2 procedure.

3 A To draw a sketch of the scene,
4 yes, sir.

5 Q Sketch of the scene. Has some
6 meaning to it?

7 A Right.

8 Q It has some dimensions and so
9 forth. And in fact I think you did that at
10 this scene, didn't you?

11 A I drew a rough sketch in my
12 notes. Yes, sir.

13 Q A rough sketch. In any event,
14 and also it's important to do one thing that
15 you were doing here looking at the photos
16 today, and that's see that photos are taken
17 and notation is made about the perspective
18 of the camera so you know where you will
19 look, what you're looking at, because you
20 know where the picture was taken from.

21 Correct?

22 A Yes, sir. That's reasonable.

23 Q Now, you were at the scene that
24 morning?

25 A Yes.

Rich -- Cross

1 Q And participated in the review
2 of the area and what was there and wasn't
3 there and played a role with Mr. Norris in
4 the investigation, or Chief Norris?

5 A Yes, sir. I had a very limited
6 participation in the crime scene or really
7 no participation as far as the body was
8 concerned or, or that processing.
9 Mr. Norris or Chief Norris decided that, and
10 as I agree with, it's better to go ahead and
11 take care of the homicide scene first and
12 then work the fire scene because they were
13 in fact separate in this case. Sometimes
14 the body's in the fire scene and you can't
15 do that.

16 Q Right. But you did see this.
17 You don't recall exactly where you saw it?

18 A Yes, sir. I recall seeing one
19 or the other. I do not remember seeing two
20 pieces of carafe lids --

21 Q Okay.

22 A -- but I do know there was
23 broken glass in the area..

24 Q All right. Do you know which
25 one was closest to Miss Haught's body?

Rich -- Cross

1 A No, sir. I can't tell you that.

2 Q All right. Let me ask you a
3 couple of questions. I'm going to have you
4 look at some photographs again and have you
5 look at. . .

6 All right. These -- did you see
7 any matches outside the back door?

8 A Yes, sir. I did see that box.
9 I don't know if there were matches in it.

10 Q Okay. You didn't look inside?

11 A No, sir.

12 Q Did you collect those and send
13 them off to Washington or wherever for
14 testing to see if they had any value in the
15 case?

16 A No, sir. I collected no
17 evidence in this particular investigation.

18 Q Okay. Let me show you State's
19 exhibit number two.

20 Can I use the thingamabob?

21 MR. DURANT: I don't care.

22 MR. KULP: Thanks.

23 MR. DURANT: You know how to
24 work it?

25 MR. KULP: No.

Rich -- Cross

1 Q Agent Rich, I want to ask you a
2 question about this photo which is State's
3 exhibit number two. Can you see it from
4 there?

5 A Yes, sir. I believe I can.

6 Q All right. This, in this photo
7 that's the back door area of the bar. Do
8 you recognize it as that?

9 A Yes, sir. That would be the,
10 that exit door going out the back.

11 Q Is there any significance to
12 this line right here where we have paneling
13 that's not burned or not as burned as this?

14 A The significance to that would
15 be that shows the smoke and/or heat. It's
16 called a line of demarkation. In other
17 words, if you think of, I guess the best way
18 to describe it would be if you took a shoe
19 box that was the room and you held it upside
20 down and started filling it with sand,
21 that's the way the smoke is going to fill a
22 room. It's going to rise, it's going to hit
23 the ceiling, fill laterally as far as it can
24 go, and then it's going to start banking
25 down. And as it banks down it will often

Rich -- Cross

1 time leave marks on the wall.

2 As the smoke layer gets lower,
3 the heat layer that follows it will then
4 begin to char the, the wall materials and
5 the ceiling materials for that matter. Yes,
6 sir.

7 So, and I believe as you're
8 looking in that photo, that is -- the line
9 that you illustrated to me is, is probably
10 the heat or smoke demarkation lines it would
11 be called.

12 Q All right. Well, we'll deal
13 with that.

14 Now the next photo I'd like to
15 show you is State's exhibit number ten. Do
16 you know if it can be focussed?

17 A That one I'm going to have come
18 look at.

19 Q I think you are. Now, do you
20 notice that this is the area where the
21 victim's body was found?

22 A Yes, sir.

23 Q All right. And do you know for
24 a fact that the State's exhibit number
25 seventeen I think, the blackened and burned

Rich -- Cross

1 wine carafe, that it was found right here
2 against the foot rail by the victim's body?

3 A Okay.

4 Q All right. Now, there's a lot
5 of damage right here in this area of the
6 bar, and is that from the fact that the
7 ceiling was falling down onto the top of the
8 bar?

9 A Can I look at the other photos a
10 second?

11 Q If you want to look at the other
12 photos also.

13 A If I may, also.

14 Q Sure.

15 A Yes, sir. That's, that's a
16 combination I think of, of damages, or two
17 effects. One, that's the radiant heat from
18 the smoke layer radiating heat down in
19 straight lines down onto the bar. And
20 additionally, yes, probably some of that is
21 falldown from the ceiling materials.

22 Q And let me ask you this. I'm
23 not going to put this on the thing, but this
24 is State's exhibit number fifteen, and the
25 jury has already seen it and it's not

Rich -- Cross

1 pleasant, but do you see that this depicts
2 the victim's body here?

3 A Yes, sir.

4 Q And do you see -- right over
5 here. Thank you.

6 Well, let me ask you this, and
7 I'll show you another photo in a minute that
8 depicts the wine carafe, the piece, the
9 black piece, State's exhibit number
10 seventeen, being just over here?

11 A Okay.

12 Q Now, do you -- does it indicate
13 to you that the burning -- the victim's body
14 is burned more on the top area here than
15 back here?

16 A There is in fact a piece of
17 ceiling material I believe right here on the
18 victim's back, but that's -- I would
19 consider that to be a uniform burn across
20 the top of the back of the victim. You can
21 see on the sides and the arms is not severe,
22 as severely burned, so as I said that's, to
23 me that's an indication of radiant heat
24 uniformly affecting that area.

25 Q Okay. That would be uniform and

Rich -- Cross

1 that would come from like you said ceiling,
2 pieces of ceiling dropping potentially on
3 her body and her back?

4 A Yes, sir. That would happen and
5 also the smoke itself is hot and the smoke
6 layer, if you fill this room with smoke and
7 put a one or two-foot thick layer of smoke
8 up here, that smoke is radiating heat just
9 like if you stand out in the sun and look
10 up. It's radiating heat down to the
11 contents of the room or in this case the
12 victim.

13 Q Okay. All right. Please take
14 your chair. Thank you.

15 Now, the -- here. I hand you
16 State's exhibit number fourteen and ask you
17 if you can peruse that.

18 A Yes, sir.

19 Q All right. And do you recognize
20 that as being the area that I was trying --
21 I wish there were two photos together --
22 near the victim's body?

23 A Yes, sir. The victim would be
24 back here off the lower corner.

25 Q Very good.

Rich -- Cross

1 A Okay.

2 Q And that's the wine carafe,
3 State's exhibit number seventeen I believe,
4 that's right here?

5 A Yes, sir. That, that looks like
6 it.

7 Q All right. Now, you
8 indicated -- now, this is the bar, by way of
9 illustration. Correct?

10 A Okay.

11 Q Runs over here. Your indication
12 is that the fire was started behind the bar
13 in the area of the cash register?

14 A Yes, sir.

15 Q And that once the flames went
16 up, that that fire or the smoke would -- the
17 ceiling would play a role as you mentioned
18 in the catching on fire, depending upon the
19 make-up or the substance of the ceiling
20 panels, and like you said it would drop
21 uniformly?

22 A Well, pieces are going to come
23 off.

24 Q Pieces are going to fall?

25 A Yes, sir.

Rich -- Cross

1 Q Right.

2 A The radiant heat effect would be
3 uniform, I believe.

4 Q Right. Now, if I could find the
5 photo, are you aware that there was another
6 wine carafe found some distance down the bar
7 that was, that was also against the foot
8 rail?

9 A I was not aware of the second.

10 Q In your investigation?

11 A No, sir. I did not see that in
12 my investigation.

13 Q And it's clearly this, this
14 State's number sixteen is burned more than
15 defendant's exhibit number eleven. Correct?

16 A Yes, sir. I would agree with
17 that.

18 Q There's been exposure -- it's
19 been a greater exposure to fire?

20 A Yes, sir.

21 Q And let me ask you this. Did
22 you take any samplings from the area around
23 where the victim's body was?

24 A No, sir. As I said, I had
25 little or no hand in the processing of that,

Rich -- Cross

1 that whole side of the bar actually.

2 Q So the fire or the burning that
3 was over here, the fire catches on fire, it
4 goes up from here as you said, and then it
5 gets -- the ceiling plays a role and may
6 create things dropping down, but fire
7 doesn't do this, does it? Fire doesn't come
8 over the bar and go down? Heat goes up.
9 That's the first thing you said.

10 A Right. Yes, sir. Yes, sir.
11 That's correct.

12 Q Right.

13 A Yes, sir. No. No. The fire
14 wouldn't have, if I -- I think I understand
15 your question. If it's burning up here it's
16 not going to turn and then go down on the
17 other side.

18 Q Let me look for one photograph.
19 Now, let me draw your attention
20 to State's exhibit number eleven. Okay?

21 A Yes, sir.

22 Q Now, pay attention, draw your
23 attention to the chairs, the bar stools that
24 are sitting here.

25 A Right.

Rich -- Cross

1 Q Right?

2 A Yes, sir.

3 Q And the one on the right looks
4 pretty cooked. Correct? Or is more cooked
5 than the one on the left. I don't think
6 "cooked" is the right word. More burned.
7 It's blacker at least?

8 A Well, it is blacker. It looks
9 like there may be some charring to this foam
10 material here, and I can't tell from the
11 photo if that's painted black or if it's
12 black from soot or if it is in fact charred.
13 It kind of looks shiny to me.

14 Q That's fair. I appreciate it.
15 And this here, on this bar stool here, the
16 exposure to the fire is on the side here and
17 not on the back side. Correct?

18 A Yes, sir. That is -- that's an
19 example of the effect of radiant heat
20 hitting that stool leg.

21 Q Right. But, but her body wasn't
22 a, you know, I mean it wasn't the, a source
23 of fuel such as wood or, or other type of
24 fuel?

25 A Well, it can be. Yes, sir.

Rich -- Cross

1 Q Okay. Well, let me ask you
2 this.

3 A Or the clothing on the body can
4 be or hair.

5 Q Sure. But it's not going to be
6 a significant source of fuel?

7 A I don't know that I could agree
8 with that because the, the, the fact is the
9 muscle in the human body will burn.

10 Q Okay. Well, let me ask you. In
11 terms of this, so therefore the burning on
12 the legs of that stool had to be the result
13 of uniform dropping pieces of the ceiling to
14 burn it like that or from some source of
15 fire near the body?

16 A Well, I expect it's a
17 combination of material falling from the
18 ceiling, because it's going to break off in
19 pieces maybe this small or maybe larger
20 pieces of paneling.

21 Q Yeah. And uniformly burn the
22 legs down the side like that?

23 A Well, it's going to fall and
24 then once it hits the floor and begins to
25 burn, it's radiating heat out in all

Rich -- Cross

1 directions, so it will cause that effect.

2 Q You see -- burn this debris down
3 here, right in front of those legs?

4 A No. It wouldn't have to be
5 right in front of them.

6 Q Okay.

7 A But, but yes, sir, right in that
8 area, certainly.

9 Q All right. And you, I think you
10 said you didn't take any -- you didn't -- so
11 at the time there you didn't see or know
12 this, that State's exhibit seventeen was
13 proximate to the body and was charred like
14 that?

15 A I believe I saw one of them,
16 yes, sir. As I said, I looked at the body.
17 I saw that it was there and then they began
18 their, their processing of that area.

19 Q Thank you very much. I
20 appreciate it very much.

21 MR. DURANT: Are you done?

22 MR. KULP: Yes, sir.

23

24

25

Rich -- Redirect

1

2

REDIRECT EXAMINATION BY MR.

3

DURANT:

4

(Whereupon, marked for

5

identification was State's Exhibit No.

6

41, photograph.)

7

Q I hand you what's been marked as

8

State's exhibit number forty-one. Ask if

9

you can identify that photograph.

10

A Yes, sir. That, that is the

11

victim from looking at the area from her

12

feet back towards the bar.

13

Q And it shows a great deal of

14

debris on top of her. Is that correct?

15

A Yes, sir. There's, there's a

16

portion of the air handling unit, some more

17

ceiling material, and generalized fire

18

debris.

19

Q Obviously a bunch of stuff had

20

fallen from the ceiling in this case. You

21

got something over here, something over

22

here, something on top of the victim. Is

23

that correct?

24

A Yes, sir. That's materials.

25

Q Also at the time of this fire

Rich -- Redirect

1 you had three fire trunks out there pumping
2 water into this billing, didn't you?

3 A Yes, sir.

4 Q And before this fire was put
5 out. Correct?

6 A Yes, sir.

7 Q And you had firemen stomping
8 through this fire after it was put out,
9 checking the inside.

10 A Yes, sir.

11 Q Is that correct?

12 A That's correct.

13 Q And with regard to State's
14 exhibit number seventeen, there's no telling
15 where that was at the time before the fire
16 started, is there?

17 A No, sir. I would think that
18 there was a -- there's a potential that it
19 was moved, yes, sir, during that operation.

20 Q Could it have been on top of the
21 bar?

22 A Yes. It could have been.

23 Q It could have been lots of
24 places with all the disturbance that had
25 been done to that crime scene, couldn't it?

Rich -- Redirect

1 A Yes, sir.

2 Q So you know where it was when
3 you saw it that morning. You don't know
4 where it was at the time the fire started.
5 Correct?

6 A Yes, sir. That's, that's a fair
7 assessment.

8 Q Did you find any potato chips in
9 the debris?

10 A No, sir, I did not.

11 Q And the defendant's carbon
12 monoxide level would depend on, number one,
13 whether he was a smoker. Right?

14 A That would, as I understand it
15 from the medical community, that would
16 affect your base.

17 Q That would be one bearing. Is
18 that correct?

19 A Right. Yes, sir.

20 Q And his carbon monoxide level
21 would also depend on whether he really in
22 fact stayed in there to be consumed by fire,
23 too, wouldn't it?

24 A Yes, sir. He would have to have
25 been able to be exposed to the products to

Rich -- Redirect

1 have it in his system. Yes, sir.

2 Q In other words, he could have
3 just started the fire and gone out the back
4 door and he wouldn't have any problem with
5 carbon monoxide levels?

6 A That, that's correct.

7 Q You said you didn't take any --
8 he asked you if you took any samples in this
9 case and you said no. Why didn't you?

10 A I just -- I didn't feel it was
11 necessary based on the fire growth and
12 development that I observed at the scene. I
13 also thought that -- I could have. I just
14 didn't.

15 Q And what if you had thought that
16 there was any --

17 A If I --

18 Q -- possibility of an accelerant
19 being used, sir, would you have taken
20 samples?

21 A Yes, sir. If I had seen fire
22 damage that perhaps led me to believe that
23 some accelerant was used or if there was
24 more localized damage or I believe the
25 fire's where it's fairly obvious an

Rich -- Redirect

1 accelerant was used and absolutely would
2 take samples, and sometimes you can smell it
3 before you even get in the building. But
4 the way this fire grew and developed, it did
5 not seem in my professional judgment that I
6 needed to take a sample there because I
7 didn't think it was an accelerant there.

8 Q And if in your professional
9 judgment you thought there was, you would
10 have taken samples. Correct?

11 A Yes, sir. That's correct.

12 Q And given everything that
13 Mr. Kulp has asked you, has your opinion as
14 to the cause and origin of this fire
15 changed?

16 A No, sir.

17 Q Nothing further.

18 MR. KULP: A few, your Honor.

19

20

21

22

23 RE CROSS-EXAMINATION BY MR. KULP:

24 Q While we're speculating and
25 since we're speculating, just as equally as

Rich -- Recross

1 this piece, State's exhibit number
2 seventeen, could have been moved by firemen
3 or whatever, it could have equally just been
4 where it was when it was shown in that
5 picture?

6 A Yes, sir.

7 Q That's only logical?

8 A I can't argue with that.

9 Q And as well, the -- I'm glad --
10 you have that photo?

11 A That may be it right here.

12 Q Yeah. State's exhibit
13 forty-one. Let me draw your attention to
14 that again. Did you find any significance
15 to this darkening area of the horizontal
16 part of that foot rail there? Did you find
17 any significance to that, right next to the
18 victim's body?

19 A No, sir, other than that may be
20 the effect of heat from the victim or from
21 this material that's fallen down on the
22 victim.

23 Q From a localized fire?

24 A Yes.

25 Q And you said if you had seen any

Rich -- Recross

1 evidence of a localized fire, you might have
2 taken some samples --

3 A Yes, sir.

4 Q -- is what you said just a
5 minute ago?

6 A Yes, sir.

7 Q And then lastly, since we're
8 speculating, based only on your
9 investigation, nothing to do with the
10 confession, just what you observed in the
11 fire scene --

12 A Right.

13 Q -- in terms of going out the
14 back door, whatever, it's just as possible,
15 based on what you saw there, that Mr. Myers
16 couldn't have done it? Nothing you saw,
17 forget --

18 A Right.

19 Q -- apart from the confession,
20 would suggest that Mr. Myers committed the
21 crime?

22 A Yes, sir. That's correct. I
23 have no physical evidence --

24 Q Right.

25 A -- that I recovered from this

Rich -- Recross

1 fire scene that would connect him to that
2 fire.

3 Q So just as equally --

4 A As I --

5 Q Just as equally as he running
6 out the door possibly, which doesn't --
7 isn't what his statement says, without
8 getting a bunch of carbon monoxide in him,
9 he also equally could have not done it?

10 A I didn't discover any physical
11 evidence in the fire scene that directly
12 relates the defendant to this fire.

13 Q Thank you, sir.

14 THE COURT: Good time to take a
15 break. Let me know when you're ready.
16 Smokers can smoke.

17 (The jury leaves the courtroom
18 at 4:02 p. m.)

19 THE COURT: Court's in recess.

20 (Whereupon, a recess is taken at
21 4:03 p. m.)

22 (The Judge enters the courtroom
23 at 4:23 p. m.)

24 (The jury enters the courtroom
25 at 4:24 p. m.)

Rich -- Recross

1 THE COURT: Madam Foreman and
2 ladies and gentlemen, Mr. Kulp has a
3 witness from out of town who he wants
4 to take out, take testimony out of
5 order. The Solicitor says he has no
6 objection, and so this witness
7 ordinarily would be in line of where
8 he'd want to put up his witnesses, so
9 we going to take it at this time.

10 Counselor, call your witness.

11 MR. KULP: Thank you, your
12 Honor. We call Michael DeGuglielmo.

13

14

15

16 M I C H A E L

17 D E G U G L I E L M O, having been
18 called as a witness, is duly sworn and
19 testifies as follows:

20 DIRECT EXAMINATION BY MR. KULP:

21 Q Thank you, sir.

22 Mr. DeGuglielmo, do you -- where are you
23 employed?

24 A A laboratory in Nashville,
25 Tennessee called Micro Diagnostics.

DeGuglielmo -- Direct

1 Q And did you fly here today at my
2 request?

3 A Yes, sir.

4 Q And what do you do?

5 A I'm the director for the
6 laboratory there. Title is the director of
7 forensic analysis.

8 Q And what type of analysis does
9 that cover?

10 A Well, we test basically in three
11 different areas. We do a lot of paternity
12 testing, cases of disputed parentage for --
13 some for social services offices, others
14 just for people who want to know if they're
15 related. We forensic case work and criminal
16 investigations and we also do convicted
17 felon data basing where we do contract work
18 for different state agencies to establish
19 data bases for convicted felons.

20 Q Is that within the state of
21 Tennessee or Tennessee and other states as
22 well?

23 A Tennessee, Tennessee and other
24 states as well and including South Carolina
25 is one we contract with.

DeGuglielmo -- Direct

1 Q Please tell the ladies and
2 gentlemen of the jury a few details about
3 your educational background and
4 qualifications associated with your field of
5 expertise.

6 A Sure. I have a bachelor of
7 science degree in biology, a master of
8 science degree in microbiology and genetics,
9 post graduate work in DNA analysis,
10 radioisotope techniques and experimental
11 statistics.

12 When I finished graduate school
13 I went to work with the North Carolina State
14 Bureau of Investigation, which is basically
15 the same thing as S. L. E. D. here in South
16 Carolina, and I went there to set up a DNA
17 testing lab in 1987. I was there for about
18 three years and we did set up a laboratory
19 and do case work.

20 I went to work, I went to work
21 with a private lab in Greensboro, North
22 Carolina called Genetic Design to do
23 essentially the same thing. Was there for
24 about seven years. And when the -- well,
25 Genetic Design was owned by a larger

DeGuglielmo -- Direct

1 corporation out of Massachusetts, the
2 company was sold and I chose to go to work
3 with a smaller company in Tennessee, Micro
4 Diagnostics, four and a half years ago.

5 Q Are you married?

6 A Sir?

7 Q Are you married?

8 A Yes.

9 Q You have children?

10 A One.

11 MR. KULP: Thank you. The
12 solicitor has indicated that he would
13 agree to stipulate to your
14 qualifications therefore, your Honor,
15 we would move that this witness be
16 qualified in the area of DNA analysis.

17 THE COURT: Any objection?

18 MR. DURANT: Your Honor, we have
19 some familiarity with Dr. DeGuglielmo
20 and we would certainly stipulate that
21 he's an expert in that area.

22 THE COURT: Go ahead.

23 MR. KULP: Thank you, your
24 Honor.

25 Q Mr. DeGuglielmo, did you have

DeGuglielmo -- Direct

1 occasion to be contacted by me during the
2 year 2000?

3 A Yes, sir.

4 Q And was it associated with the
5 case of the State of South Carolina versus
6 Wesley Max Myers?

7 A Yes, sir.

8 Q And at that time did I make a
9 request of you and implore you to conduct a
10 review of certain items of evidence that
11 were shipped to you?

12 A Yes, sir, you did.

13 Q Okay. And in that regard did
14 you have the occasion -- what, what items
15 did you receive? What items were shipped to
16 you?

17 A Sure. I received a meat
18 cleaver, several pieces of wine carafe or I
19 should say, be more technically correct wine
20 carafes in that there were apparently two
21 necks to the carafe so it would require more
22 than one carafe. I also received a sample
23 from Mr. Myers, and I received a cutting
24 from the victim's bra to be used as a
25 standard for the victim.

DeGuglielmo -- Direct

1 Q Okay. And did you perform any
2 analysis of those items? If so, please tell
3 the ladies and gentlemen of the jury what
4 analysis you performed on what collection of
5 samples and so forth.

6 A Sure. The analysis which we
7 performed was what's called a P. C. R.
8 analysis and in DNA testing there are
9 basically two types of testing that we've
10 done historically in forensic cases. One of
11 them's been used a little longer than the
12 other and was the first type which was
13 attempted by S. L. E. D. in this, in this
14 case. I have reviewed some analysis of
15 that.

16 The second type of testing,
17 which we used in this case and which
18 S. L. E. D. has used as well later on, is
19 called P. C. R. It stands for polymerase
20 chain reaction.

21 Basically the only significant
22 difference between those types of testing is
23 the amount of DNA that is required. The
24 older type of testing that we've used a
25 little bit longer requires a lot more DNA

DeGuglielmo -- Direct

1 and as a result some items don't have enough
2 DNA present for us to do the test. The
3 P. C. R. testing which we're using can be
4 used on just about all items of evidence
5 unless something is, the item has been
6 subject to something which would cause the
7 DNA to be damaged so that we can't get a
8 result from it.

9 The type of testing that we've
10 done, this P. C. R. testing, includes a
11 number of different genetic tests. To give
12 you a little bit of background so you'll
13 understand how, how these results actually
14 are obtained, DNA itself is, is really
15 nothing more than a chemical, a complex
16 chemical that's found in any living
17 organism. If you remember back to when you
18 took biology in high school or college
19 you'll remember your teacher talking about a
20 cell, the basic building block of any living
21 organism. Now those cells are made up of
22 different types of compounds; proteins,
23 fats, and nucleic acids, of which DNA is
24 one.

25 We get half of our DNA from our

DeGuglielmo -- Direct

1 mother and we get half of our DNA from our
2 father, basically making us genetic
3 composition of our parents.

4 That DNA codes for everything
5 about us. It codes for the color of our
6 hair, color of our eyes, how tall we are,
7 and it codes for a lot of other things that
8 we can't see as well.

9 When we are interested in
10 looking at people for comparison sakes, we
11 want to look at pieces of DNA that differ,
12 and I say that because about ninety-nine per
13 cent of the DNA is exactly the same from
14 person to person. And if you think about
15 that, that makes a lot of sense. For the
16 most part people are the same. Everybody
17 has one head, two hands, two eyes, and the
18 ways in which our body functions is exactly
19 the same as well.

20 The things that make us
21 different from each other are much less than
22 the things that are similar, so we're
23 interested in looking at small parts of that
24 one per cent of the DNA that's exactly the
25 same -- that it is not exactly the same from

DeGuglielmo -- Direct

1 person to person.

2 When we do these tests, we test
3 these different genetic markers, as we refer
4 to them, looking for differences. We want
5 to test, like in this case, items of
6 evidence we tested, a blood sample found on
7 one of the carafes. And we tested a blood
8 sample as well as -- I failed to mention
9 that we had also received a partially burned
10 one-dollar bill that we tested a sample
11 from.

12 We want to develop, first of
13 all, a DNA profile from the samples on those
14 items of evidence. And then we want to
15 compare that to the people who are involved
16 in the case to see if one of those samples
17 is consistent or not consistent with the
18 people who are involved in the case.

19 We test looking for something
20 that is not consistent. When we compare a
21 sample to you, we look for something that is
22 different because if we find something that
23 is different, even with one of the tests we
24 do, we say that's an exclusion. In other
25 words, that sample could not have come from

DeGuglielmo -- Direct

1 the person we're testing. If we fail to
2 find an exclusion, in other words if every
3 test we do shows a profile that's consistent
4 with the particular person, we then say that
5 that sample is consistent with the DNA
6 profile from that person and we make a
7 statistical calculation to say what that
8 likelihood is or what those odds are in, in
9 a, a case where that could be useful or
10 meaningful.

11 Q Okay. And in this particular
12 case, among the items that you tested did
13 you conduct any -- did you lift any samples
14 or -- that you could use for the purpose of
15 DNA testing from the items?

16 A Well, there were, there were
17 several items that we tested, the ones I
18 mentioned earlier. We don't actually test
19 the item itself. We would try to remove the
20 sample from the item so that we can test it.
21 We have to work with a very small amount and
22 something the size of the piece of glass you
23 saw earlier or a meat cleaver is too large
24 to be tested, so we'll remove a portion of
25 the sample from those items.

DeGuglielmo -- Direct

1 We did remove or I should say I
2 removed in this case samples from both the
3 meat cleaver and the wine carafe. I also
4 took cuttings from the dollar bill, the
5 stained areas of that, to be tested as well
6 and developed DNA profiles from those or
7 attempted to develop DNA profiles from those
8 items.

9 We did obtain DNA profiles from
10 the, the blood sample on the wine carafe and
11 from the blood on the dollar bill, however
12 the blood sample on the meat cleaver did not
13 produce any result. In other words we had
14 just basically nothing from that.

15 Q All right. And did you find,
16 make any findings as a result of your
17 analysis of the cuttings from the dollar
18 bill?

19 A Yes, sir.

20 Q And what were those findings?

21 A Well, the DNA which we obtained
22 from the dollar bill gave us a result that
23 showed more than one type of DNA. In
24 essence it showed us what we would consider
25 to be a mixture.

DeGuglielmo -- Direct

1 A few minutes ago I told you
2 that you everybody gets half of their DNA
3 from their mother and half of their DNA from
4 their father. I mentioned that for a very
5 specific reason. That means that for any
6 genetic marker we test, you have two copies
7 of that particular gene, the one you got
8 from your mother and the one you got from
9 your father.

10 Now, it's possible for you to
11 get a different result from your parents,
12 from each of -- from each of your two
13 parents, or it's possible for you to get the
14 same result.

15 Let me give you an example.
16 With a genetic trait like eye color, you'll
17 find people who have blue eyes, people who
18 have brown eyes, people who have green eyes.
19 Maybe a couple of other variations. You
20 have a gene or form of the gene that codes
21 for each of those different colors, and you
22 get a copy of that gene from each of your
23 two parents. It's possible to get the same
24 form of the gene from both parents, or it's
25 possible to get a different form of the gene

DeGuglielmo -- Direct

1 from both parents. In other words, you can
2 get one copy of the gene for blue eyes from
3 your mother and one for brown eyes from your
4 father. Or you can get a copy of the gene
5 for brown eyes from both of your parents.
6 They're just different forms of that gene
7 that we get, we obtain from our parents.

8 The importance of that is that
9 for any DNA testing result we look at,
10 you're going to have either one or two
11 results for each person. One if you obtain
12 the same copy of the gene from both of your
13 parents and two if it were different. So
14 whenever we see more than two results
15 present, we know that there's a mixture of
16 DNA from more than one person there.

17 On the sample from the dollar
18 bill, we did see a mixture of DNA. One of
19 those two that we're looking at is in
20 essence consistent with the profile that we
21 would see from the victim. And what I mean
22 by that is that the, the DNA profile of the
23 victim is contained in this mixture of DNA
24 that we saw from the dollar bill.

25 There was also a second DNA

DeGuglielmo -- Direct

1 profile that is not from the victim, but
2 that we know is from someone who is male.
3 One of the tests that we do is a sex-typing
4 marker called amelogenin. That marker shows
5 us the presence of both X and Y chromosomes,
6 and since there's a fainter Y chromosome
7 present in the sample, we know that there is
8 a -- contained in that mixture is DNA from
9 at least one person who's male. The victim
10 being female, that second profile that we're
11 looking at obviously is not from the, the,
12 the victim.

13 This second DNA profile that
14 we've looked at is also not consistent with
15 the DNA profile of Wesley Myers. In other
16 words, it's a DNA sample that is from
17 someone other than him.

18 The other item we tested that we
19 obtained a result from was the DNA from the
20 broken wine carafe, from the blood sample.
21 The profile which we obtained there is
22 consistent with the DNA profile that we have
23 from the victim in the case.

24 MR. KULP: Okay.

25 (Whereupon, marked for

DeGuglielmo -- Direct

1 identification was Defendant's Exhibit
2 No. 29, dollar bill.)

3 Q Approaching the witness, your
4 Honor. I'm handing you defendant's exhibit
5 twenty-nine and ask you if you can review
6 that item, that exhibit.

7 A Yes, sir.

8 Q And do you recognize that
9 exhibit or do you have to open it to --

10 A No, sir. It -- it's a dollar
11 bill which we had tested. There's a section
12 where we removed a cutting from it and you
13 can see the small cut portion of it. It's
14 removed in two areas. One down here on the
15 bottom left-hand corner and the other just
16 to the left side of George Washington.

17 MR. KULP: Okay. Thank you. I
18 move to --

19 MR. DURANT: I have no objection
20 if you want to introduce it.

21 MR. KULP: Okay. Thank you.
22 We'd offer it at this time, your Honor,
23 as --

24 THE COURT: Without objection.

25 MR. KULP: -- defendant's number

DeGuglielmo -- Direct

1 twenty-nine.

2 (Whereupon, entered into
3 evidence was Defendant's Exhibit No.
4 29, dollar bill.)

5 Q On any of the other items --
6 well, you had a standard -- I mean a
7 standard was provided to you from which you
8 could develop the DNA marker or I. D. for
9 Mr. Myers?

10 A That's correct. Yes, sir.

11 Q And did you use that
12 developed -- what's the proper phrase to
13 say?

14 A There're -- there're a number of
15 them. You can call it a DNA profile.

16 Q All right. DNA profile.

17 A That's fine.

18 Q And did you use that DNA profile
19 in the course of your analysis and
20 comparison to the swabbings or the
21 collections that you took from the items
22 that were sent to you?

23 A We, we used the, that DNA
24 profile for comparison to the, the profiles
25 we obtained from those items. Yes, sir.

DeGuglielmo -- Direct

1 Q All right. And did you -- among
2 the items that were sent to you and the
3 samples that you took from those items did
4 you make any matches or comparisons or
5 identifications between any of those
6 collections and Wesley Myers?

7 A No, sir.

8 Q Okay. Thank you. Please answer
9 any questions Mr. Durant may have for you.

10 A Sure.

11

12

13 CROSS-EXAMINATION BY MR. DURANT:

14 Q Good afternoon, Doctor.

15 A Hi.

16 Q So bottom line, the blood you
17 found on the wine carafe was the victim's
18 blood?

19 A Yes, sir. That's correct.

20 Q Do you recall which piece of
21 carafe it came from? I believe we have two
22 in evidence.

23 A Correct.

24 Q One is darker, one is lighter.

25 Do you know which one?

DeGuglielmo -- Cross

1 A I'll have to go back to my
2 notes.

3 Q Okay. Or do you know if it even
4 came from those necks themselves?

5 A Yes. The, the item which we
6 tested --

7 Q Because you were sent a bunch of
8 broken pieces of glass.

9 A Yes, sir. There were a bunch of
10 them and I guess the best way for me to
11 describe them to you from my notes here, one
12 of the bags had three pieces of glass in it.
13 At least at the time we, we had received it.
14 There was the unbroken top from the neck of
15 the carafe. Two other smaller pieces of
16 glass, one of which to me looked like it
17 might have been part of the carafe, the neck
18 of the carafe had been broken off. We
19 sampled the portion of the unbroken neck of
20 the carafe from this particular item.

21 The other bag which contained a
22 neck of a carafe, there were only two pieces
23 of glass in that bag and we did not test
24 that.

25 There was another bag that

DeGuglielmo -- Cross

1 contained --

2 Q Now, why didn't you test the,
3 the piece that had just the two broken
4 pieces of glass?

5 A No, no real reason. It looked
6 to me like the other blood samples that I
7 saw on the glass. The one we chose was the
8 better one to test. It looked like a larger
9 and thicker stain. Seeing that there'd been
10 a fire, heat can have a negative effect on
11 DNA and I thought I had a better chance of
12 getting a result there.

13 Q Okay. Do you know where from
14 the -- if you're not sure which wine carafe
15 you tested, are you sure where the blood
16 came from, the interior or the exterior of
17 the wine carafe?

18 A Sure. Yeah. The portion of it
19 which we tested from the wine carafe came
20 from the narrow end of the carafe. If you
21 were to hold it, you'd see there's a thicker
22 and a more narrow end to that.

23 Q You're talking about the, the
24 actual carafes themselves now?

25 A Right.

DeGuglielmo -- Cross

1 Q Yeah.

2 A All right. The narrow end down
3 where it is broken is the portion which we
4 had tested. There was a blood stain.

5 Q On the exterior or the interior?

6 A On the exterior.

7 Q Exterior of the wine carafe.

8 Okay.

9 THE COURT: Did you ever -- did
10 he ever say which one of those?

11 MR. DURANT: Well, I'm not sure
12 which one because they got out of the
13 box. I believe this one came out of
14 the, the bag with two broken pieces and
15 I believe the other one came out of the
16 bag with three broken pieces.

17 A Right. It would have been --
18 the best of my recollection, you're correct,
19 the one that is a little smaller and not as
20 charred, where we saw the more definitive
21 stain that was tested.

22 Q Okay. So you did no testing on
23 this one then, the one that was -- that
24 looked to be the more burned?

25 A That's correct.

DeGuglielmo -- Cross

1 Q And of course you found no blood
2 on the meat cleaver. Is that correct?

3 A I don't want to say for sure
4 that I found no blood. We did not test
5 actually for blood.

6 Q Well, you didn't, you didn't
7 find any DNA on the meat cleaver?

8 A Correct. Yes, sir.

9 Q And if there'd been blood on the
10 meat cleaver you'd found DNA. Correct?

11 A Probably so. I can't -- once
12 again I can't say for sure. The -- since
13 there was a fire, with those, that object
14 being metal, the DNA could be denatured. It
15 also could be that what we were looking at
16 on the meat cleaver were just stains of dirt
17 or rust as well.

18 Q And what you didn't do and
19 weren't asked to do, because you weren't
20 asked to do, was serology on this one-dollar
21 bill?

22 A Well, that's partially true. We
23 also don't do serological testing. We do
24 initial identification for the presence of
25 semen in sexual assault cases, but not blood

DeGuglielmo -- Cross

1 identification.

2 Q Okay. But you didn't do any
3 serology on this one-dollar bill?

4 A No, sir.

5 Q Okay. And are you aware that
6 S. L. E. D. never did serology on that
7 one-dollar bill either?

8 A No, sir. As I mentioned to you
9 earlier, the only thing that I was aware of,
10 just like for the blood on the carafe, they
11 appeared to be blood stains, and I, I had a
12 letter from S. L. E. D. talking about blood
13 on the one-dollar bill. That's my only
14 knowledge of it.

15 Q But you'd never seen any report
16 from S. L. E. D. saying that they'd done
17 serology on this one-dollar bill and
18 determined there to be blood?

19 A No, sir, I haven't.

20 Q Are you aware, sir, that
21 S. L. E. D. did no serology on this
22 one-dollar bill?

23 A Not other than your mentioning
24 it to me, no, sir.

25 Q Okay. Do you dispute that?

DeGuglielmo -- Cross

1 A I can't dispute it. I don't
2 know it.

3 Q And isn't it a fact, sir, that
4 in the absence of doing serology, you can't
5 tell that there was any blood on this
6 one-dollar bill?

7 A I know what you're asking. I
8 don't, I don't know that I necessarily agree
9 with the way you're asking it. Over the
10 last fourteen years I've looked at an awful
11 lot of, of stains. I also think there was
12 blood on the wine carafe and no one seems to
13 be objecting to that, but I didn't test that
14 either. I can't tell you positively there
15 were blood stains on either one because we
16 didn't test them, but --

17 Q I understand. I'm not trying to
18 trick you, sir, but the thing is your
19 testing is not substance specific, is it?

20 A No, it's not. That's correct.

21 Q You can't tell blood from DNA
22 testing from saliva. Correct?

23 A That's correct.

24 Q From sweat?

25 A That's correct, with the

DeGuglielmo -- Cross

1 exception of the, the quantity of DNA that
2 we wind up dealing with. Sweat being a
3 secretion rather than actual fluid, you're
4 only going to have a very small amount of
5 DNA because of the --

6 Q But you --

7 MR. KULP: Let him finish,
8 please.

9 MR. DURANT: Excuse me. Go
10 ahead.

11 A You'll have a much smaller
12 amount because of the lack of direct
13 presence, the direct presence of cells. The
14 way we obtain DNA usually from sweat is from
15 a garment or something that comes in direct
16 contact with your skin. We'll test
17 sweatbands, hatbands from hats, things of
18 that nature.

19 Q And you can actually deposit
20 DNA, sir, on cash from handling it, can't
21 you? Skin cells?

22 A Theoretically, yes, sir, if
23 it's -- if there's a reason for it to, to
24 stick to it. If it were wet or something.
25 Just casual contact with, you know, you

DeGuglielmo -- Cross

1 handling money out of your billfold, I don't
2 believe that the level of sensitivity that
3 we test, our tests are specifically designed
4 not to be sensitive enough to pick up just
5 casual contamination or casual contact
6 because we don't want to pick up everything.

7 Q Say, Doctor, if I count my money
8 like this, my DNA is going to be on every
9 piece, on every dollar bill I count, isn't
10 it?

11 A It is. It is possible. I can't
12 tell you that it will be a level that would
13 be detected by the test we're doing, though.

14 Q We're not asking for certainty,
15 Doctor. I'm saying that any human fluid
16 that is deposited on any dollar bill from
17 the time it is minted to the time it was
18 collected and tested by you can give DNA
19 results. Is that correct?

20 A That's correct.

21 Q And it could be saliva?

22 A It could be.

23 Q It could be blood?

24 A That's correct.

25 Q Could be semen?

DeGuglielmo -- Cross

1 A I think I can pretty --
2 pretty -- I don't believe it could be a
3 seminal sample, to be honest with you.

4 Q Could be sweat?

5 A The cells that came in contact
6 with some -- if somebody who were sweating
7 took a dollar bill and rubbed it on their
8 head or rubbed it on their, their back or an
9 area where you would slough off cells, yes,
10 that's correct.

11 Q And chances are, Doctor, you
12 could take any dollar bill out of my pocket
13 right now and find somebody's DNA on there,
14 couldn't you?

15 A I honestly have never done that.
16 It's possible. If you'd like us to try,
17 we'll be happy to, but I'd prefer something
18 bigger than a single if you're going to send
19 it to our lab.

20 Q It's probably more probable --
21 possible, isn't it, Doctor? It's probably
22 likely, isn't it?

23 THE COURT: He wasn't talking
24 about the fee, Doctor, he's talking
25 about --

DeGuglielmo -- Cross

1 A I honestly don't know. I've
2 never done that and I don't know of anyone
3 who has or I'd be happy to tell you.

4 Q And obviously there was a
5 mixture on there?

6 A Yes, sir, it was.

7 Q And all you can say in -- you
8 can't say except that there was mixture of
9 someone that was also male, you can't say a
10 mixture of how many types or person's DNA,
11 can you?

12 A I believe in this case I can.
13 Given the profiles that we're looking at and
14 the relative intensities of the different
15 types that we get, in other words the
16 quantity of DNA from each of those samples,
17 we're able to get a pretty good idea.

18 The number of results that I
19 see, if you remember a little bit ago when I
20 talked about the fact that you do have a
21 copy from each of your parents, one from
22 your mother and one from your father, we can
23 see up to two types per person.

24 If I had more than three people
25 in there I would expect to see across some

DeGuglielmo -- Cross

1 of this profile at least one type where
2 there were more than four results. I don't
3 see that, so I'm pretty sure it's two.

4 Q And you test on nine loci. Is
5 that correct?

6 A We did in this test. Yes, sir.

7 Q Okay. And whatever stain on
8 that one-dollar bill did match to Wesley
9 Myers at at least one loci, didn't it?

10 A To Mr. Myers at one, at one of
11 the particular tests?

12 Q Yes. At D21S11?

13 A Well, not exactly. Mr. Myers'
14 type is contained in there, but what you've
15 got to take into account is the victim's
16 type is also there so if we do like we do
17 with every other genetic marker and subtract
18 the victim's type, the portion that we'd be
19 looking for would be a 29, 30. And --

20 Q Well, it's --

21 A And --

22 Q Excuse me. And I'm -- I just
23 want to make sure I'm looking at the same
24 place.

25 A Sure.

DeGuglielmo -- Cross

1 Q You have a D21S11?

2 A Yes, sir.

3 Q You have her, her type as being

4 31 and 31.2?

5 A Right. The same as Mr. Myers.

6 Q And Mr. Myers as being 31 and

7 31.2?

8 A Correct.

9 Q That would mean they match at

10 that loci?

11 A They do.

12 Q Okay. That's what I was asking.

13 A Okay.

14 Q And also at D38, 38, 13, 58

15 right below that she's a 15, Wesley Myers is

16 also a 14, 15 there?

17 A Yes, sir.

18 Q Then B. W. A. she's a 17.

19 Wesley Myers is a 16, 17?

20 A That's correct.

21 Q So bottom line, you think

22 there's more and then when we get over to

23 the cutting from the dollar bill, you have

24 29, 30, 31, 31.2 at one loci. 12, 13, 14,

25 18 at one loci. And you say the most you

DeGuglielmo -- Cross

1 can ever have for one individual is two. Is
2 that correct? It's going to be either one
3 or two of those numbers?

4 A Barring a couple of rather
5 unusual genetic events, yes, sir.

6 Q Okay. I don't think I have
7 anything else, Doctor. Thank you.

8 A Sure.

9 MR. KULP: I do.

10

11

12 REDIRECT EXAMINATION BY MR.

13 KULP:

14 Q Okay. Can a determination and
15 comparison or identification be made from a
16 similarity of one locus?

17 A Well, you can -- you can make a
18 comparison with any, any number that you
19 want to, but I guess the point that, that
20 you want to take home from that is that it
21 really would have no bearing. All it takes
22 is one exclusion for a sample not to come
23 from somebody. Individual, tested
24 individual and genetic markers are, are
25 always going to have something in common.

DeGuglielmo -- Redirect

1 It would be -- I would find it
2 very unusual if I would test any two people
3 in this courtroom and not find at least two
4 or three genetic markers where they would
5 share one allele in common. It's what we
6 just consider to be the normal, just a
7 normal distribution of these different
8 genetic markers in the population.

9 There's a finite number. It's
10 not unique for each different genetic test.
11 For most of these markers there are only
12 somewhere in the neighborhood of ten to
13 fifteen different possible answers.

14 The power of the test comes in
15 from doing multiple tests and creating a
16 profile. If we have only ten or fifteen
17 different possibilities for a particular
18 genetic test then we know we're going to see
19 each of those results on the average one out
20 of every six to ten people.

21 But when you consider there are
22 two copies of each different gene for each
23 marker and we look at a profile of nine
24 different markers, the possibility of
25 finding all of those in common becomes very,

DeGuglielmo -- Redirect

1 very significant.

2 So when we look at a profile
3 we're looking for something that's
4 different. And if I find something that's
5 different from Wesley Myers compared to the
6 profile at even one genetic marker, that
7 means the sample didn't come from him.

8 Q Thank you. And can you say that
9 the mixture that you took a sample from on
10 the dollar bill did not contain blood?

11 A No, I can't.

12 Q Now, you know Dr. Lambert at
13 S. L. E. D. You have a professional
14 relationship with him?

15 A Yes. And, to be fair, we're
16 friends as well.

17 Q I'm sorry?

18 A To be fair, we're friends as
19 well.

20 Q Did the defense direct what
21 sampling you would do with, with the pieces
22 that you -- that you were sent?

23 A We discussed it, as I'm sure
24 you'll remember from one of our phone calls,
25 just to the extent of basically describing

DeGuglielmo -- Redirect

1 what was there. And I believe your, your
2 instructions were just to pick the one that
3 I thought was the best or give me the best
4 likelihood as far as the, the carafe went
5 and test that.

6 Q Did I indicate to you that I
7 knew anything more than the average person
8 about DNA or sampling?

9 A No, sir. I wouldn't say so.

10 Q Now, are you aware of any
11 efforts by the State in the pendency of this
12 case to test and determine the presence of
13 blood on the dollar bill, of your own
14 knowledge?

15 A No, sir, I'm not.

16 Q Okay. And if the police had
17 documented for some strange reason that the
18 dollar bills in Mr. Durant's wallet had
19 blood on them, would that be a factor that
20 you would take into consideration?

21 A Before I tested them?

22 Q Yes.

23 A Well, yes, sir. If someone told
24 me a dollar bill had blood on it out of his
25 billfold I would -- given the choice, if

DeGuglielmo -- Redirect

1 someone told me that one of them had blood
2 on it and I were testing all of them, I
3 would certainly pick the one that had the
4 stain on it.

5 MR. KULP: All right. Thank you
6 very much.

7

8

9

10 RECROSS-EXAMINATION BY MR.

11 DURANT:

12 Q And I just have one question,
13 and your testing is not substance specific.

14 A That's correct.

15 Q If there is -- there is blood
16 stain deposited right on top of a saliva
17 deposit, it's going to give you a mixture of
18 DNA?

19 A Provided there's enough DNA from
20 both of those stains to, to get a result,
21 yes, sir.

22 Q Period?

23 A That's correct.

24 MR. DURANT: Thank you.

25 THE COURT: You can come down.

DeGuglielmo -- Recross

1 MR. KULP: Thank you, sir.

2 THE WITNESS: Thank you.

3 MR. KULP: Can the witness be
4 excused, your Honor?

5 THE COURT: Have a good trip
6 back.

7 THE WITNESS: Thank you very
8 much.

9 THE COURT: Call your next
10 witness.

11 MR. DURANT: State would call
12 Benjamin Norris.

13

14

15

16 C H A R L I E B E N J A M I N

17 N O R R I S, having been called as a

18 witness in the presence of the jury, is

19 duly sworn and testifies as follows:

20 DIRECT EXAMINATION BY MR.

21 DURANT:

22 Q Good afternoon, Chief Norris.

23 A Good afternoon.

24 Q Would you please tell the jury

25 where you're employed.

Norris -- Direct

1 A I'm employed as the chief
2 investigator, chief fire investigator with
3 the North Charleston Fire Department.

4 Q And how long have you been with
5 the fire department?

6 A Twenty-seven years.

7 Q And how long have you been in
8 your position as chief arson investigator,
9 sir?

10 A I've been a chief officer since
11 1987. I've been doing fire investigation
12 since about 1977.

13 Q What training have you had in
14 the area of fire and arson investigation?

15 A I've had extensive training, in
16 excess of three to four thousand hours of
17 training on different subjects and in all
18 aspects of fire investigation, fire cause
19 determination.

20 Q And these are schools all over
21 the country?

22 A Yes, sir. These schools are
23 conducted by different organizations,
24 different groups, A. T. F., F. B. I.,
25 different colleges, different organizations,

Norris -- Direct

1 and professional organizations.

2 Q Do you teach in, teach in any
3 area of fire investigation and arson
4 investigation?

5 A Yes, sir. I am a certified
6 instructor with the National Fire Academy in
7 Emmitsburg, Maryland as a contract
8 instructor ~~and a general~~ instructor with
9 them. I'm also certified by South Carolina
10 Fire Academy as an instructor of fire
11 investigation. I've also taught classes
12 also at the South Carolina Criminal Justice
13 Academy in fire investigation.

14 Q All right. Are you a member of
15 any professional organizations?

16 A Yes, sir. I'm a member of a
17 number of organizations particularly related
18 to fire investigation, along with different
19 fire service organizations. I'm a member of
20 the International Association of Arson
21 Investigators. I'm also a member of the
22 South Carolina chapter of that organization
23 which I am the senior member of the board of
24 directors. I have been a member of those
25 organizations since the late seventies. I

Norris -- Direct

1 have been a member of the board of directors
2 of the state chapter since 1985, 1986.

3 Q And do you hold any
4 certifications in this area?

5 A Yes, sir. I am a certified fire
6 investigator for the International
7 Association of Arson Investigators. Also
8 certified through the National Board of Fire
9 Service Professional Qualifications. I am
10 the test proctor, C. F. I. coordinator and
11 proctor for the State of South Carolina
12 through the I. A. A. I. What that means is
13 anyone that goes to be certified in South
14 Carolina, I'm the only one in the state that
15 has the authorization to administer that
16 exam to them. I've done this for five or
17 six years now, and I coordinate the
18 certified fire investigator program in the
19 entire state for the I. A. A. I.

20 Q Finally have you been qualified
21 as an expert witness in the area of fire and
22 arson investigation?

23 A Yes, sir.

24 Q On how many occasions, sir?

25 A Probably in the neighborhood,

Norris -- Direct

1 not knowing exactly, six to ten times.

2 Q And in what courts?

3 A The state court and also federal
4 court.

5 MR. DURANT: Your Honor, we
6 would offer Chief Norris as an expert
7 in the area of arson and fire
8 investigation.

9 THE COURT: Any objection?

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

11 THE COURT: Go ahead.

12 Q In your capacity as a chief
13 investigator for the fire department, did
14 you have an opportunity to respond to the
15 fire at Mill Inn on Montague Avenue on March
16 thirteenth of 1997?

17 A Yes, sir, I did.

18 Q And what time did you get there?

19 A I was notified shortly -- I
20 believe the fire was reported around 3:15.
21 Our protocol calls for once a truck is on
22 the scene, we have a working commercial fire
23 at a commercial structure, the dispatcher
24 and our standard protocol is I am to be
25 notified. So I was notified shortly after

Norris -- Direct

1 the first truck arrived on the scene and
2 reported the working structure fire, so it's
3 probably five minutes after that. We're
4 looking at 3:20. Probably took me
5 approximately ten minutes to get dressed and
6 start that way, and I was probably five to
7 ten minutes from the scene, so within,
8 within probably twenty, twenty-five minutes
9 of the notification of the fire I was on the
10 scene.

11 Q And was the fire still --

12 A Yes, sir.

13 Q Was the fire still ablaze at
14 that time?

15 A Yes, sir. The fire was still
16 heavily involved. In fact the fire had
17 spread from the Mill Inn to the adjacent
18 building on the right side of the Mill Inn.
19 The fire had spread into an upstairs
20 apartment over that building.

21 Q And you obviously can't start
22 your investigation while the fire is still
23 going, so did you remain there or did you
24 come back the next morning?

25 A No, sir. I remained there. At

Norris -- Direct

1 this time I knew we had a working structure
2 fire. It was going to be rather intense. I
3 notified at this time Special Agent Rich who
4 testified earlier, notified him of the fire
5 and asked him if he would like to respond.
6 As he explained earlier, our working
7 relationship. He did respond, and mainly at
8 that point in time we both just surveyed the
9 area, watched the firefighting activity
10 going on. And as one of the assistant
11 chiefs in the department I was actually
12 somewhat involved and directed some of the
13 firefighter, firefighting operations while
14 the fire was being extinguished.

15 Q And what did you do once the
16 fire got extinguished?

17 A Well, myself and Agent Rich and
18 actually a couple other people that I had
19 called, couple other certified fire
20 investigators was on the scene, and we had
21 discussed working the scene. There was
22 still a lot of smoldering debris inside the
23 buildings. We knew that it was going to be
24 quite some time before we could actually go
25 inside the building and render the building

Norris -- Direct

1 safe enough for us to go in and conduct an
2 investigation. And we was parked about a
3 block actually from the scene and we
4 discussed, here it was still four, four
5 something in the morning, 4:30 in the
6 morning, actually us leaving and then coming
7 back a couple hours later when the sun
8 started to come out. And we knew by then
9 that the fire would be completely
10 extinguished.

11 While we was discussing that I
12 was called on the radio by one of our
13 battalion chiefs to meet him in the rear of
14 the building. He had some information for
15 me. And I did that. Went to the rear of
16 the building. That's when I was informed by
17 Battalion Chief Borne that they had just or
18 one of our captains had just discovered a
19 body on the floor inside the building.

20 Q Did you enter the scene at that
21 time?

22 A Yes, sir, I did.

23 Q And what was the condition of
24 the interior of the building?

25 A The fire, the fire had heavily

Norris -- Direct

1 damaged the interior portion of the
2 building, particularly behind the bar area.
3 I observed the, the victim on the floor in
4 front of the bar. There was still what we
5 refer as to hot spots, smoldering areas
6 about. Still some fire burning in the
7 building. But majority of the fire had been
8 extinguished inside the Mill Inn. Our
9 firefighters was still fighting the fire in
10 the other building, in the adjacent building
11 upstairs.

12 Q And what causes hot spots?

13 A As fire burns and it is
14 extinguished you got air -- you don't have
15 complete extinguishment. You still have
16 areas in remote, remotely around the
17 building could still be smoldering. And we
18 go through a process that what is known as
19 overhaul where our people go back in and
20 remove burning debris and put additional
21 water on the areas that's, where these hot
22 spots are, completely extinguish them.

23 Q And was that done in this case
24 as well?

25 A Yes, sir, it was.

Norris -- Direct

1 Q Okay. Does the process of
2 firemen going in there and putting out hot
3 spots affect the debris and things of that
4 nature that are in the building?

5 A Yes, sir. Not only putting out
6 the hot spots. In the initial attack of the
7 fire which was made from the front of the
8 building, hose lines were taken into the --
9 hose lines were taken inside the building.
10 Heavy streams of water were, were directed
11 throughout the building which could disturb
12 the stuff that was on the tables, stuff that
13 was on the bar top, the debris, things of
14 this nature. Sure. These hose lines we use
15 are under approximately a hundred pounds of
16 square inch pressure. Yes, items do get
17 moved around regularly.

18 Q Did you begin your investigation
19 prior to the removal of the body in this
20 case?

21 A As far as the, what I did at
22 that time when I observed the body, I used
23 my flashlight and took a close look at the
24 body. I was -- observed what appeared to be
25 some traumatic injuries around the face and

Norris -- Direct

1 head. There was a quantity of blood around
2 the head. And the injuries appeared to me
3 to be other than burns. Appeared to be, you
4 know, some type of blunt force trauma
5 injuries. And I thought that was suspicious
6 at the time and so, you know, I didn't
7 really know, couldn't tell whether these
8 were cuts or whether this was a gunshot
9 wound or what type of wounds they were other
10 than appeared to be wounds other than
11 something caused other than just by the
12 fire.

13 I, at that time I went outside
14 and notified one of the police supervisors,
15 sergeant that was on the scene what I had
16 found. And then, you know, this could
17 possibly be a death involving something
18 other than the fire. Probably the detective
19 office or detective division also needed to
20 be notified of this incident.

21 Q And when you observed the victim
22 she was facedown --

23 A Yes, sir.

24 Q -- on the floor. Is that
25 correct?

Norris -- Direct

1 A Yes, sir.

2 Q What was the condition of the
3 back of her body, her back side or the side
4 that she was not lying on?

5 A She had considerable amount of
6 burns on her clothes, on her back. There
7 was a good bit of burning debris that was in
8 and around on top of her and around her and
9 came from either the top of the bar or the
10 ceiling, different areas.

11 Q Now, once they processed the
12 crime scene, how did you go about conducting
13 your investigation concerning --

14 A Okay.

15 Q -- the fire?

16 A Once we discovered, and we do
17 this routinely in any fire fatality that we
18 have, once we discover a victim in a fire
19 scene as far as the origin and cause of the
20 fire, that's sort of put on the back burner.
21 Our priority at that point in time is to
22 deal with that victim, do whatever has to be
23 done to protect the victim's body from any
24 further injury, and to notify the
25 appropriate authorities, coroner, the

Norris -- Direct

1 medical examiners, and to remove that body
2 from that scene before we start any other
3 extinguishing. You know, we got the fire to
4 the point where it's safe to be in there.
5 Yes, we still had some smoldering areas but
6 we did not need to come in there and do a
7 complete overhaul at that time.

8 And so basically as far as
9 origin and cause investigation, that stopped
10 until such time as the police, the medical
11 examiner, the coroners arrived on the scene,
12 the body was processed, and the body was
13 removed from the scene.

14 Q And once that process had been
15 completed how did you go about conducting
16 your investigation?

17 A What we do then, and our normal
18 process is, we look at the building and we
19 start from the exterior of the building.
20 And we look completely around the building,
21 all four sides of the building. We look at
22 areas where there's damage. Where there's
23 not damage.

24 In most cases we start looking
25 at the areas of least amount of damage. And

Norris -- Direct

1 we work our way toward the area of most fire
2 damage. Most cases, this will lead us to an
3 area that's most probably going to be the
4 area where the fire started or what we would
5 refer to as the area of origin.

6 When I did this, this led us
7 from the outside to the interior of the
8 building. And in doing the patterns, the
9 smoke and burn char patterns, led us to an
10 area behind the bar. We had some patterns,
11 some burning at floor level. This area was
12 examined. I determined that there had been
13 a wooden cabinets between the two coolers,
14 and the top of this cabinet there was a --
15 where the cash register sat and that was
16 burned rather heavily and most of that was
17 consumed. I did find some portions of the
18 doors; apparently was on the cabinets. I
19 remember the cash register itself had slid
20 down. I actually picked that up and moved
21 that out the way so that we could see
22 better.

23 I noticed the back of the bar,
24 the back on the wall side we noticed some
25 patterns burning up from the wall. Fire

Norris -- Direct

1 normally burns upwards and outwards, so we
2 looked carefully for what we call
3 "V patterns". The fire normally burns
4 upward and outwards, and a lot of times we
5 can identify these V patterns, it will sort
6 of point us toward the area where the fire
7 began.

8 And on this back wall between
9 the two buildings behind the bar, we could
10 somewhat see a V pattern going up this wall,
11 this wooden paneled wall, which led us back
12 to this area at the floor level in front of
13 where the cash register was.

14 Removing some of the top debris
15 at this area I noticed debris such as burned
16 cardboard, burned paper products. If I
17 remember correctly it was, it was cardboard,
18 like paper bags. In fact I even think there
19 was part of what appeared to be a phone book
20 that was burned.

21 Q Was there a trash can in the
22 immediate vicinity of the point of --

23 A There was actually two trash
24 cans behind the bar that I remember.
25 Neither one of them was at that point. One

Norris -- Direct

1 was up toward the front of the building,
2 sort of where the bar makes a turn, and the
3 trash can sitting there that was a plastic
4 trash can that had started to melt and burn
5 on the side facing where the fire travelled
6 from.

7 Also there was another trash can
8 toward the rear of the bar. In fact if I
9 remember correctly, when I first went around
10 the bar I actually had to move the trash
11 can, slide the trash can over a little bit
12 to get by. And this, here again this was
13 another plastic trash can, and if I remember
14 correctly it was mostly full of aluminum
15 beer cans. It had started to melt and burn
16 on one side, pointing toward the area where
17 we suspected the origin of the fire to be.

18 Q Was there any evidence upon your
19 going into the building of a second area of
20 origin?

21 A No, sir.

22 Q Specifically was there any
23 evidence of any second fire that had been
24 started where the victim's body was?

25 A No, sir. We examined that area