

2013

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

RECEIVED

AUG 16 2013

S.C. Supreme Court

Wesley Max Myers, ... Respondent,

v.

State of South Carolina, ... Petitioner.

APPENDIX

VOLUME 5 of 7

ALAN WILSON
Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General
S.C. Bar # 100269
Post Office Box 11549
(803) 734-3737

ATTORNEYS FOR PETITIONER

JOHN H. BLUME III
Blume Weyble & Norris, LLC
P.O. Box 11744
Columbia, SC 29211

ATTORNEY FOR RESPONDENT

Index

Record on Appeal.....	1
Charleston County Records.....	2814
South Carolina Department of Corrections Records.....	2929
Final Brief of Appellant.....	2933
Final Brief of Respondent.....	3004
Final Reply Brief of Appellant.....	3063
South Carolina Supreme Court Opinion.....	3080
Remittitur.....	3091
United States Supreme Court Opinion.....	3092
PCR Application filed July 21, 2005.....	3093
Applicant's Motion for Leave to Conduct Discovery.....	3117
State's Return.....	3120
Applicant's Memo in Support of Motion for Discovery.....	3161
Order Granting DNA Testing.....	3168
Amended PCR Application filed December 15, 2011.....	3169
Second Amended PCR Application filed December 28, 2011.....	3187
DNA Report dated February 14, 2008.....	3205
Post-Conviction Relief Hearing Transcript.....	3209
Juror White Deposition Transcript.....	3382
Order Granting Post-Conviction Relief.....	3396
State's Rule 59(e) Motion to Alter and Amend.....	3408

Applicant Return to Motion to Alter and Amend.....	3421
Order Denying 59(e) Motion.....	3427
State's Notice of Appeal.....	3429

Norris -- Direct

1 pretty closely and yet there was some
2 burning in that area, most of it appeared to
3 have been from the material of the ceiling
4 material that had dropped down. I also
5 examined very carefully the wooden bar, the
6 overlap of the wooden bar. It was, as most
7 bars are, this, the Bible here was the wall.
8 We got a overhang on the bar like this, the
9 foot area. I looked underneath the bar
10 itself to see if there's any charring, and
11 it was very minimal. What that indicates to
12 me is if there had been any significant
13 burning at floor level, of course this wood
14 bar underneath here would have been
15 significantly burned and charred, and it was
16 not. So that indicated to me there was no
17 significant fire on the opposite side of the
18 bar other than the material that had fell
19 down and around the victim.

20 Q So your opinion with regard to
21 the point of origin was this location behind
22 the bar. Is that correct?

23 A Yes. Behind the bar in front of
24 the area where the cash register had been.

25 Q And referring to State's exhibit

Norris -- Direct

1 number one, could you just roughly point out
2 the area where this pattern was located?

3 A Yes, sir. It was approximately
4 back where this word "bar" is, in the
5 approximate general area.

6 Q Okay. And it was on the bar
7 side, of course, and not on the back wall.
8 Is that correct? The point of origin?

9 A It was at floor level behind the
10 bar.

11 Q Okay.

12 A Between the back wall and the
13 bar.

14 Q Okay.

15 A Not on the top of the bar.

16 Q Okay. And on that rubber mat.
17 Is that correct?

18 A Yes, sir. We located or after
19 we started removing debris, the area was
20 photographed. I photographed the area
21 before we started to remove debris. As we
22 removed debris I found at the very back
23 against the wall of the bar, which was
24 concrete, made of concrete blocks, found an
25 electrical outlet. There was a couple items

Norris -- Direct

1 plugged into the electrical outlet, one of
2 them being a normal, what most people refer
3 to as a surge suppressor. It's a heavy-duty
4 plug plugged in the outlet, sort of like an
5 extension cord, but it's designed for
6 several items to be plugged into it. Most
7 of them have an on and off switch on it, and
8 it does have some added protection, circuit
9 breaker protection built into it.

10 There was one of these at the
11 bottom of that and several items had been
12 plugged into that. Damage I observed, fire
13 damage that I observed on these items was
14 evident to me that the fire burned from the
15 outside. The damage was not as a result of
16 any type of internal electrical heat that
17 burned from the inside, out.

18 Q Was that opinion confirmed when
19 you consulted with someone?

20 A Yes, sir. I consulted with a
21 local electrical engineer who came to the
22 scene and looked at it for me, just to
23 double-check since I am not an electrical
24 engineer, don't pretend to be. But he,
25 absolutely, his opinion was the same after

Norris -- Direct

1 we actually pulled the stuff out and looked
2 at it very carefully, laid it up on the
3 counter, so that pretty much eliminated
4 that. It did eliminate that as a heat
5 source.

6 At that time here again our
7 investigation was continued and everything
8 was pointing to the area immediately in the
9 walkway between the wall and the bar. As I
10 pulled away the paper most was ordinary,
11 what we consider ordinary combustible
12 materials, a Class A fire, mainly paper
13 products, some wood products.

14 I noticed there was a rubber mat
15 that you normally find in businesses
16 particularly around cash register areas
17 where people have to stand a lot, a
18 cushioned mat. And I noticed practically in
19 the middle of that is a hole burned in it.
20 And I think one of the photographs that was
21 introduced earlier had someone who actually
22 picked that up because you really, it was
23 hard to see the hole on the floor itself so
24 we actually picked it up and photographed it
25 where you can actually see the hole where

Norris -- Direct

1 the material had burned through that mat
2 itself.

3 Q Was there any evidence, in your
4 opinion was there any evidence of an
5 accelerant having been used?

6 A No, sir. Based on my training
7 and experience, based on -- and I don't want
8 to confuse you with what I'm going to say
9 here, in my opinion, my experience that is,
10 yes, it was a lot of fire damage to this
11 building, but I seen a lot of buildings with
12 worse fire damage.

13 This fire was discovered pretty
14 early on into the fire. Our fire station is
15 only like three and a half blocks away. It
16 was reported quickly. They responded
17 quickly. This fire was attacked and brought
18 under control before the fire actually had a
19 chance to, and the term that was used
20 earlier, the "flash over" occur of the
21 entire contents.

22 So with a fire, a pre-fire -- a
23 pre-flash over fire you have a lot more
24 evidence as far as patterns to work with
25 than we do a fire we're examining after

Norris -- Direct

1 flash over had occurred.

2 Q Based upon your training and
3 experience as an arson investigator together
4 with your physical investigation of the
5 scene, do you have an opinion as to the
6 cause and the origin of this fire?

7 A Yes, sir.

8 Q And what is that opinion as to
9 its cause?

10 A Based on my examination at the
11 scene it appears that the fire started
12 behind the bar, in an area floor level,
13 immediately in front of the cabinets, where
14 the cash register was sitting on, involving
15 Class A materials, ordinary combustible
16 materials in the form of paper products
17 and/or wooden, wood products primarily was
18 the source of heat, and some type of open
19 flame.

20 Q And do you have an opinion as to
21 whether or not this fire was intentionally
22 or accidentally set?

23 A Yes, sir. It was my opinion
24 that the fire was intentionally set because
25 as I stated earlier the point of origin that

Norris -- Direct

1 we determined to be, there was no accidental
2 heat source there.

3 Q Now, I ask you this question as
4 well. How many fires have you investigated?

5 A In my twenty-seven years,
6 probably in excess of five thousand fires.

7 Q How many?

8 A Five thousand. That's a rough
9 estimate. I don't keep an accurate number,
10 but it's. . .

11 Q And is it possible to do an
12 adequate assessment or an adequate fire
13 investigation without actually attending the
14 scene?

15 A In my opinion there's not. No,
16 sir.

17 Q Now, did you at any time
18 communicate to the defendant, Wes Myers,
19 your opinion as to the cause of this fire?

20 A Not until Saturday afternoon
21 after had he told us how he set the fire and
22 the circumstances involving what had taken
23 place, I told him that I knew he was telling
24 the truth because what he told me he did was
25 basically what I had found, based on the --

Norris -- Direct

1 Q When did you actually arrive at
2 your opinion as to, to the cause of this
3 fire?

4 A Probably definitely sometime
5 Friday. The investigation was continuing
6 Thursday throughout -- we spent most of the
7 day there Thursday. It was probably in the
8 area of 3:30, maybe four o'clock before we
9 even actually left the scene on Thursday.

10 I went home, changed clothes,
11 cleaned up, came back to city hall, met with
12 police detectives. I discussed with them
13 basically what I had found.

14 On Friday morning I went and
15 researched some of my records that we have
16 as far as inspections and all to see if
17 there was anything I needed to be aware of.

18 Q What if anything did that
19 inspection reveal?

20 A The last inspection on that
21 building was like I believe was like in May
22 of '95, and at that point in time there was
23 nothing significant found, no problems
24 found. The problems that had been found --
25 the inspection prior to that was in April.

Norris -- Direct

1 They found a few relatively minor things and
2 the inspector had came back, made a
3 re-inspection in May, and all those items
4 had been corrected.

5 I remember on the inspection
6 report it was written on there to, as a
7 reminder I think more than anything, that
8 the exit doors must remain unlocked during
9 hours of occupancy and while the business is
10 open. I don't know whether the inspector
11 found the doors locked when he made the
12 inspection, but I know, I was inspector at
13 one time and I know bars and public
14 occupancies, we routinely told the people,
15 reminded the people that exit doors had to
16 remain unlocked during normal business
17 hours.

18 Q Okay.

19 A That's the only thing I found,
20 which had no significance to the fire,
21 anything that happened related to the fire.

22 Q Now you mentioned something
23 about being at the police department on
24 Saturday, March the fifteenth, of 1997?

25 A Yes, sir.

Norris -- Direct

1 Q And did you have an opportunity
2 to be present when the defendant was being
3 questioned by Detective Tetanich, Clayton,
4 and Cumbee?

5 A Yes, sir.

6 Q Were you there from the
7 beginning or did you arrive --

8 A I arrived at city hall probably
9 8:30, nine o'clock that morning, and
10 initially Sergeant Poole, Sergeant Poole
11 now, was there to process the defendant's
12 vehicle and I wasn't doing there any,
13 anything particular. Sergeant Poole asked
14 me if I wasn't tied up doing anything else,
15 could I help him, give him a hand. And I
16 said sure, and I did that.

17 And while we was in the process
18 of processing that vehicle, because I know
19 one of the things that Sergeant Poole
20 wanted, he wanted to take the door panel
21 off, I believe it was the drivers's door,
22 and you got several knobs on the door such
23 as the crank for the window which takes a
24 special tool without having to tear,
25 actually damage the panel itself. You want

Norris -- Direct

1 to remove that, you need a special tool that
2 goes down and sort of clips and pulls that
3 off, and we didn't have that. One of our
4 captains I knew had that tool because he
5 does, part-time job he does body work, paint
6 and body work. I made contact with him and
7 asked him could he bring the tools over
8 there that we needed to do that, and he did.

9 Q During this time at some point
10 did you end up upstairs?

11 A Yes, sir. While we was doing
12 this someone came -- we was out back,
13 downstairs in the parking lot. Someone, one
14 of the officers and I don't remember which
15 one, came down and advised me that
16 Lieutenant Cumbee had asked him to ask me to
17 come upstairs, Mr. Myers was, was starting
18 to tell about the, the incident and he
19 thought I needed to be up there. So that's
20 when I went upstairs at that time, back to
21 the detective office.

22 Q And what did you observe when
23 you went to Lieutenant Cumbee's office?

24 A Yes, sir. When I went upstairs,
25 Lieutenant Cumbee, Detective Clayton,

Norris -- Direct

1 Sergeant Tetanich was in Lieutenant Cumbee's
2 office with Mr. Myers. When I walked in,
3 Mr. Myers was real upset. He was -- there
4 was a large picture of the victim that he
5 was looking at and he kept saying, "I'm
6 sorry, Teresa. I'm sorry. I didn't mean to
7 do it. I just lost control."

8 At this point in time I pulled
9 up a chair and I sat there and obviously to
10 me at this point in time he apparently had
11 told them that he had committed this crime.
12 And conversation took place and he was
13 retelling the story about how, you know,
14 what he had did, coming there that night
15 before, around two o'clock, knocking on the
16 door. Five, ten minutes later Teresa came
17 to the door.

18 Q He was --

19 A He came inside.

20 Q Go ahead. I didn't mean. . .

21 A He went inside. He had saw a
22 note written on some type of pink paper on
23 the bar from Alan White. He was questioning
24 her about that.

25 She said, "Well, that's none of

Norris -- Direct

1 your business." Something to this effect.

2 They got in an argument. She
3 picked up a glass container and went to hit
4 him and he grabbed it from her and they was
5 arguing and pushing on each other and then
6 he took the glass container and hit her in
7 the head with it. And they both fell to the
8 ground and he said he just lost control and
9 he hit her several times. He didn't know
10 how many times he hit her.

11 And they was on the ground for a
12 few minutes. I think he said he held her.
13 He was upset. Only thing he thought about
14 doing then, he wanted to die. He realized,
15 he thought she was dead.

16 At this time he got up and he
17 said he went behind the bar. He said he got
18 some papers from the area, where he said he
19 opened up a cabinet, which later on I
20 assumed to be the cabinet where the cash
21 register was because he said in the area of
22 the bar and the cash register. He said he
23 piled papers and cardboard. He said
24 something about some type of "closed on
25 Sunday" sign. I don't know whether there

Norris -- Direct

1 that was a wooden sign or a paper sign. He
2 mentioned something about a "closed on
3 Sunday" sign he put on the floor. He took
4 his cigarette lighter and ignited it.

5 And he also said something about
6 and I don't -- I'm not clear exactly when
7 he, he did it, but he said he took a purse
8 from a cooler. Took her purse from a cooler
9 because he -- that he come up with something
10 about an angel, some type of heart that he
11 had given her that had some type of angel on
12 it, something that -- he wanted that. He
13 thought a lot of that, sentimental reasons.
14 Said he went back around the bar, the fire
15 was burning. Said the only thing he wanted
16 to do was die. His intentions were, were to
17 just die in the fire with her.

18 And the fire started getting
19 bigger and the smoke started choking him and
20 he decided that wasn't the best thing to do
21 and he exited the building out the back
22 door.

23 Q At any of the time that you were
24 in there did you ever hear the police
25 officers promise him anything or threaten

Norris -- Direct

1 him in any way?

2 A No, sir.

3 Q Did you ever hear anyone ask --
4 offer him leniency if he talked to them?

5 A No, sir.

6 Q Hear anybody -- him ever ask for
7 an attorney or infer he wanted an attorney?

8 A No, sir.

9 Q Did anybody tell him things
10 would go easier on him if they talked -- if
11 he talked to them, or anything of that
12 nature?

13 A No, sir.

14 Q Where was the defendant when you
15 went in there --

16 A He was in Lieutenant --

17 Q -- in Lieutenant Cumbee's
18 office?

19 A On Saturday he was in Lieutenant
20 Cumbee's office, sitting on a chair.

21 Q Sitting in the chair?

22 A Yes, sir.

23 Q Was he, was he cuffed or
24 anything?

25 A No, sir.

Norris -- Direct

1 Q After you -- he told you this
2 story, did you ask him any questions about
3 the fire or did you just make a comment to
4 him about the --

5 A I don't believe I asked him
6 anything specific. I did make a comment to
7 him because, as I had stated earlier, that I
8 told him I realized that he was telling us
9 the truth because what he had told us was,
10 it corresponded with what I found as far as
11 the area where the fire started and. . .

12 Q What happened next?

13 A We talked for a while or they
14 talked for a while. Mostly here at this
15 point in time I was an observer, just
16 observing.

17 The question was asked of him
18 where the purse was. He stated that when he
19 left out the building and he took the purse,
20 he went to his, his truck. His truck was
21 parked in front of the building on Montague
22 Avenue. I don't recall exactly which way he
23 said he went after he went out the back, but
24 he went back to the front of the building.

25 He said he put the purse behind

Norris -- Direct

1 the seat of his pickup truck and left. And
2 first he said, "I really don't remember what
3 I did with the purse." Then he started
4 talking about it, said "I could have took it
5 to the old Westvaco Park that's off of
6 Virginia Avenue." And he started talking
7 about a rotted out or hollowed out trunk of
8 a tree. He thinks that's where he may have
9 put the purse.

10 At that point in time I don't
11 remember -- Detective Clayton or Lieutenant
12 Cumbee had left at that time. It was just
13 myself and Detective Clayton and Sergeant
14 Tetanich at that time. Someone asked him,
15 "Could you show us? Would you take -- be
16 willing to take us and show us?"

17 He said, "Sure. Be glad to."

18 And so the three of us along
19 with Mr. Myers left. And the first stop we
20 made, went to the rear of the, the scene of
21 the fire in the rear of the Mill Inn. We
22 got out the car, walked around the back. We
23 did not go inside the building. The
24 building had been boarded up, secured.

25 Here again he recounted some of

Norris -- Direct

1 the story about what he had did on the
2 evening, how he had came out the back door
3 after setting the fire and went to his truck
4 with the purse. We stayed there for a few
5 minutes and we got back in the car, which
6 the alley is directly behind the building
7 which leads directly out to Virginia Avenue.
8 We went to Virginia Avenue, we hang a left
9 on Virginia Avenue, and we go down Virginia
10 Avenue to the old Westvaco Park. There's a
11 new one there now that's on the right-hand
12 side before you get to the Mark Clark
13 Expressway, and the old one was back down
14 across from the paper mill in the Westvaco
15 plant itself. That's where he led us.

16 He showed us, you know, which
17 road to turn on. We went down there, and we
18 got out the car, the four of us got out the
19 car. Mr. Myers here led us to a tree and
20 the side of the tree was sort of hollowed
21 out, rotted out, the trunk of the tree. He
22 says, "To the best of my recollection this
23 is where I put the, put the purse."

24 He did make some statement to
25 the fact that the reason that he came back

Norris -- Direct

1 here was this, this is where they had met
2 before, they had had -- made love there
3 before, and this is sort of like, we got the
4 impression this is sort of like their little
5 secret, secret place they met, I don't know
6 how many times. But we did not find the
7 purse in the, in the tree. It was not
8 there.

9 So that time we walked the
10 entire area, a couple block area along the
11 marsh line, along where the old park was.
12 They used to have a old, a gazebo-type deck,
13 deck-type thing. We walked around there and
14 underneath everything and in the general
15 area.

16 Also right across the road was a
17 small pond. I remember, I know I walked
18 around the pond to see if I could see
19 possibly the purse floating in the pond or
20 in the area of the pond.

21 And bottom line, we didn't find
22 the purse.

23 Q Okay. And you all returned back
24 to headquarters then?

25 A Once we left there we went back

Norris -- Direct

1 to city hall, but on the way back we stopped
2 at McDonald's on Rivers Avenue and several
3 of us -- I think I got something to drink.
4 Maybe some French fries. And Mr. Myers I
5 don't believe got anything. He was offered
6 food or drink.

7 Q And then did you return?

8 A Then we returned to city hall.

9 Q And is that when they took his
10 written statement?

11 A Yes, sir. At that point in time
12 we went back to Lieutenant Cumbee's office.
13 Detective Clayton actually sat down. He
14 started recounting the story again.
15 Detective Clayton was writing it down. That
16 was completed. There was some comments.
17 Mr. Myers said he would like to contact his
18 son, get word to his son. There was some
19 conversation about the news media. He was
20 being told that the news media was at city
21 hall. You know, that the news media was
22 going to be there when they left the
23 building, to expect this.

24 Mr. Myers then stated, "Well,
25 good. I want to talk to the news media."

Norris -- Direct

1 I think Sergeant Tetanich said,
2 "Well, why do you want to do that?"

3 He said, "Well, I just want to
4 apologize. I want to tell everybody how
5 sorry I am."

6 You know, Detective Tetanich
7 told him, "You might want to think about
8 that. That's probably not a good thing to
9 do. You probably don't want to do that."

10 And he kept saying, "Well, yeah.
11 I would like to, if I could. If I possibly
12 could."

13 So there -- there was also some
14 conversation about he, he was wanting to
15 apologize. He wanted to apologize to the
16 victim's mother. He kept saying, "I want to
17 talk to Miss Dixie also."

18 So I don't know the chain of
19 events that -- other than what I've heard
20 here this week, that someone called the
21 victim's mother and told her that he was
22 there, was -- had confessed.

23 Q Well, you don't know who called
24 her?

25 A I don't know, I don't know who

Norris -- Direct

1 called her.

2 Q Were you there when he called
3 his mother?

4 A Yes. I was -- in fact prior to
5 that Detective Clayton had called I believe
6 it may have been his ex-wife's house or her
7 parents' house trying to locate her, or
8 someone advised them, I don't think he got
9 ahold of anybody or left a message.

10 Then he wanted to call his
11 mother. If I remember correctly, I was in
12 the room, Detective Clayton actually called
13 the number and I believe he talked to her
14 first. Said your son is here. He wants to
15 talk to you.

16 He got on the phone, and I
17 remember he used the word "mom" or "mother".
18 He said, "I just want to let you know that I
19 did it. I'm going to jail. I'm sorry. I
20 didn't mean to do it and I want you to know
21 about it." That was the gist of the
22 conversation.

23 Q And you were actually there when
24 he signed this statement?

25 A Yes, sir, I was.

Norris -- Direct

1 Q Was he given an opportunity to
2 read it, make any changes that he wanted to?

3 A Yes, sir, he was.

4 Q Did he in fact make some changes
5 to his statement?

6 A Yes, sir. There was some,
7 couple things. I remember a couple times he
8 kept saying about the word "Teresa" was
9 misspelled, and that was changed. I think a
10 couple other minor, small things was
11 changed.

12 Q Did you also -- were you also
13 out there when he made those statements to
14 the press?

15 A Yes, sir. I, myself, and
16 Special Agent Rich who I had called after we
17 had got back, I called, notified Special
18 Agent Rich what had taken place and he came
19 over to city hall. He got there about the
20 time that they was leaving with Mr. Myers
21 and we were out back prior to Mr. Myers
22 coming out and we were standing there in the
23 parking lot when Detective Clayton and
24 Sergeant Tetanich brought Mr. Myers outside.
25 Mr. Myers had came outside, and

Norris -- Direct

1 several of the local television stations
2 were there and of course they brought the
3 cameras up, started screaming questions, and
4 he just stopped and he had -- I don't
5 remember exactly what he said, but other
6 than "Yes, I'm sorry. I did it. I didn't
7 mean to do it. I want to apologize to the
8 family, particularly to the family. I'm so
9 sorry."

10 He even made a comment, too,
11 about how well he had been treated by the
12 North Charleston Police Department.

13 Q Thank you. Could you please
14 answer any questions Mr. Kulp may have for
15 you.

16 A Yes, sir.

17 MR. KULP: Thank you, sir. Have
18 a few.

19 Your Honor please.

20

21

22

23 CROSS-EXAMINATION BY MR. KULP:

24 Q Now, is it proper to refer to
25 you as Chief Norris?

Norris -- Cross

1 A Yes, sir.

2 Q Yes, sir. Chief Norris, you've
3 been sitting over here during the trial of
4 this whole case. Correct?

5 A Yes, sir.

6 Q You heard everybody testify
7 who's testified for the State. Correct?

8 A Yes, sir.

9 Q And as a matter of fact your
10 role as an arson investigator is kind of a
11 dual role, isn't it? In other words you're
12 a fire employee, but you have police powers
13 as well?

14 A Yes, sir, I do.

15 Q Okay. You have the power to
16 arrest and you have the ability to carry a
17 firearm. Correct?

18 A Yes, sir.

19 Q And you were carrying a firearm
20 on your side that day that you were helping
21 participate with Mr. Myers' interview or
22 interrogation?

23 A No, sir. I was not.

24 Q You weren't?

25 A No, sir.

Norris -- Cross

1 Q You weren't wearing it then?

2 A No, sir.

3 Q Now, you told, you told the
4 police as early as Thursday night that you
5 had determined -- maybe you didn't write it
6 up or anything -- but told them as early as
7 Thursday night that you determined the
8 cause?

9 A The cause?

10 Q I'm going -- the cause of the
11 fire.

12 A The preliminary cause. Yes,
13 sir.

14 Q Preliminary cause, and the
15 preliminary cause was the same thing as the
16 final which you determined, the cause?

17 A It turned out to be. Yes, sir.

18 Q All right. So you told them
19 about that?

20 A Yes, sir.

21 Q All right. And you didn't tell
22 anybody to keep that a secret. Right?

23 A No, sir.

24 Q Right. That wasn't what you
25 could consider coded or private information,

Norris -- Cross

1 something that you wouldn't want to let get
2 out for fear or rather something that, that
3 you wouldn't want to withhold so that if
4 somebody knew about that it might have some
5 meaning because it was kept very quiet?

6 There weren't any efforts to keep it secret?

7 A No, sir. The cause of the fire
8 was not.

9 Q Right. Now --

10 A Can I explain further?

11 Q Yes, you may. Absolutely.

12 A The cause of the fire we
13 discussed with the police department. The
14 very specifics of how the fire was started,
15 what the fuel was burning, I don't think we
16 ever got that far as being specific. I
17 determined and told, I told them that I had
18 determined the cause, that the fire was
19 incendiary in nature, we knew where the fire
20 began, general area of origin, and we didn't
21 find any source of ignition.

22 Q What did you tell them was the
23 source of ignition?

24 A Open flame. Some type of open
25 flame.

Norris -- Cross

1 Q And combustible materials?

2 A Involving -- the fire itself
3 involved ordinarily combustible material.

4 Q Like paper?

5 A Paper products, wood products.

6 Q But there's nothing in the --

7 A Available material.

8 Q There's nothing in the file that
9 indicates that you and Detective Clayton,
10 Detective Tetanich, and Detective Cumbee got
11 together and said "Look, this is a detail
12 that we don't want to let get out. In case
13 we get somebody, we got to interview them,
14 we want to keep it real close to the vest."
15 You didn't do that, did you?

16 A No, sir.

17 Q Now as well, your role in this
18 was the representative of the fire
19 department determining the cause and
20 origin --

21 A Yes, sir.

22 Q -- of the fire?

23 And that's your job as an arson
24 investigator?

25 A Yes, sir.

Norris -- Cross

1 Q But in that duality, that dual
2 role that you have, it's a little bit of a
3 police function, too. Correct?

4 A Actually my title is fire
5 investigator. The police function wouldn't
6 come into account until such time as we
7 determine the fire was arson, a criminal act
8 had occurred. Most of the fires that I
9 investigate turn out to be accidental.

10 Q Yes, sir. And the, that, that
11 Saturday I think you testified that you were
12 just an observer there for the most part
13 during the interrogation?

14 A Yes, sir.

15 Q Well, on direct you, you forgot
16 to tell the ladies and gentlemen of the jury
17 something else that you did during that time
18 period of that Saturday. You made
19 reference --

20 A I did a lot of things Saturday.
21 Yes, sir.

22 Q And one of the things that you
23 did was -- I don't want you to take these
24 out. You know what they are?

25 A Yes, sir.

Norris -- Cross

1 Q You happened to be over there
2 picking up some film over at Exposure Sixty
3 related to the case and happened to just
4 pick up five eleven-by-fourteen color glossy
5 photographs of the victim's face, her head
6 at autopsy, and other extremely graphic,
7 gory photographs. Correct?

8 A Well, no, sir. I didn't just
9 happen to pick them up. I was asked to pick
10 them up when I went over there.

11 Q I'm sorry. I didn't mean to
12 mischaracterize. You were asked to go get
13 them. And who asked you to go get them?

14 A I believe after thinking about
15 it, we discussed this the other day, I
16 believe Sergeant Poole because we were
17 downstairs working and I -- and he's
18 probably the one that took them over there.
19 My car was right there. I had to go pick up
20 some pictures. I believe he just asked me.
21 "Well, hey, by the way, you going over
22 there, would you" -- Exposure Sixty was
23 directly across the street in Charles Towne
24 Square from city hall -- "could you pick
25 these enlargements up that we got over

Norris -- Cross

1 there?"

2 So I went over there, I picked
3 them up, signed for them, brought them back,
4 took -- didn't even open them and look at
5 them. I didn't, I didn't even know what the
6 enlargements were until later on. Took them
7 upstairs and left them with -- I don't
8 remember if I left them with Detective
9 Clayton, Sergeant Tetanich, Lieutenant
10 Cumbee. I gave them to someone up on the
11 third floor. Then I went back downstairs
12 and continued helping Sergeant Poole.

13 Q Okay. So not having looked at
14 them, at what point were you able to see
15 that one of them showed a picture of the
16 victim's face?

17 A When I was called to come back
18 upstairs and I walked in Lieutenant Cumbee's
19 office and they were -- he had them.

20 Q As an observer?

21 A Yes, sir.

22 Q Now, you have had a course in
23 Kodak law enforcement photography. Correct?

24 A Yes, sir.

25 Q You have also had a course in

Norris -- Cross

1 fire scene photography?

2 A Yes, sir.

3 Q And you took photographs there
4 at the scene that day?

5 A Yes, sir.

6 Q And you also took a videotape of
7 the scene that day?

8 A Yes, sir, I did.

9 Q And that was on eight millimeter
10 format?

11 A Yes, sir.

12 Q Yes, sir. And when you took
13 that eight millimeter tape and you copied it
14 over to a V. H. S. format you plugged the
15 photo connection cables over to be able to
16 do that. Correct?

17 A Well, I believe --

18 Q The wiring?

19 A I've got it set up in my office
20 where I have a eight millimeter player
21 that's already prewired to a V. H. S.
22 recorder.

23 Q All right.

24 A So I don't actually have to --
25 it's already hooked up.

Norris -- Cross

1 Q So the problem is the audio
2 cable is not plugged in, is it?

3 A Yes, sir. It's plugged in but
4 it's not --

5 Q So you unplugged it?

6 A I don't have audio on the
7 camera, the camera I had at that time. I
8 have a plug, a switch. I had a plug on it,
9 that, that, that killed, actually kills the,
10 the audio, the microphone, the external
11 microphone on the camera.

12 Q So the, the film that you made
13 at the scene, the film that you made at the
14 scene didn't have the capability to record
15 audio?

16 A No, sir.

17 Q The video, the tape?

18 A No, sir.

19 Q And how is the camera disabled
20 to do that?

21 A On the camera I had at that
22 time --

23 Q Right.

24 A -- it has a jack on it for
25 external microphone.

Norris -- Cross

1 Q Yes, sir.

2 A I had found through experience
3 fire scenes, I don't like to record audio if
4 I could help it, because most of the times
5 you got a lot of background noise, we have
6 generators running, people walking in and
7 out. I just don't like the audio. I'm,
8 I'm, I'm not there to record audio and I
9 will take a blank, what's determined a mini
10 plug, and just plug into that jack and what
11 that does is cut the external microphone off
12 because the way it's wired, I don't know the
13 electronics of it, but it disables the
14 internal microphone on the camera, and I
15 usually kept that in there.

16 Q At the time that you made the
17 videotape of the scene in that area there,
18 the fire was already out?

19 A Yes, sir.

20 Q Okay. And certainly had to be
21 out for all the people who were in there
22 checking the scene to go in safely?

23 A Yes, sir.

24 Q And does the video -- is it --
25 is there a generator nearby that was making

Norris -- Cross

1 a lot of noise?

2 A Yes, sir. There was a generator
3 right at the front door where we had lights
4 strung throughout the building, the
5 florescent, not florescent but the halogen
6 lights on stands. We had a generator
7 sitting right outside the front door on the
8 sidewalk to power those lights.

9 Q Outside?

10 A Yes, sir.

11 Q And, and also the -- not having
12 the sound recording capabilities, you don't
13 pick up any of the conversation -- oh.

14 THE COURT: You all need
15 anything?

16 MR. KULP: I think somebody
17 needs to use the phone, your Honor.

18 THE FORELADY: One of the jurors
19 needs to use the phone.

20 THE COURT: Well, why don't
21 you -- use the phone?

22 THE FORELADY: A phone.

23 THE COURT: Well, why don't you
24 all go to your room.

25 THE FORELADY: Okay.

Norris -- Cross

1 THE COURT: And write a note and
2 my bailiff will call for you. Okay.

3 I'm going to break court as soon
4 as this witness finishes.

5 (The jury leaves the courtroom
6 at 5:43 p. m.)

7 THE COURT: All right. Let's
8 take five minutes. You can come down
9 if you want to, but don't to talk to
10 anybody.

11 THE WITNESS: Yes, sir.

12 MR. KULP: Thank you, your
13 Honor.

14 (A recess is called at 5:48
15 p. m.)

16 (The Judge enters the courtroom
17 at 5:59 p. m.)

18 (The jury enters the courtroom
19 at 6:01 p. m.)

20

21

22

23

24 C H A R L I E B E N J A M I N

25 N O R R I S, previously sworn as a

1 witness in the presence of the jury,
2 resumes the stand and testifies as
3 follows:

4 CONTINUED CROSS-EXAMINATION BY

5 MR. KULP:

6 THE COURT: Go ahead.

7 MR. KULP: May it please the
8 Court.

9 THE COURT: Yes, sir.

10 Q Chief Norris, you -- so I think
11 where we were at that moment was that you
12 were -- we were talking about the video
13 camera and you indicated that you had
14 employed a device to disable the audio --

15 A Yes, sir.

16 Q -- at the time you filmed the
17 crime scene and the people were there.

18 Have you ever thought that it
19 would be or did any of the courses that you
20 took in crime scene photography or
21 videography indicate that it would be
22 valuable to narrate what you're seeing to
23 further document what is fleeting evidence?

24 A I don't remember ever being
25 taught that, but I tried that initially when

VOLUME FIVE 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

ROBERT M. DUDEK
Assistant Appellate Defender

SOUTH CAROLINA OFFICE
OF APPELLATE DEFENSE
1122 Lady Street, Suite 940
Columbia, SC 29201
(803) 734-1330

Attorney for Appellant

HENRY DARGAN McMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

RALPH E. HOISINGTON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Fourth Floor
Charleston, SC 29401
(843) 958-1900

Attorneys for Respondent

(PAGES 2001-2500)

INDEX

INDEX	i
JUNE 18, 1997, PRETRIAL HEARING TRANSCRIPT	1
AUGUST 7, 1997, PRETRIAL HEARING TRANSCRIPT	53
OCTOBER 10, 1997, PRETRIAL HEARING TRANSCRIPT	127
SEPTEMBER 4, 1998, PRETRIAL HEARING TRANSCRIPT	180
OCTOBER 28, 1998, PRETRIAL HEARING TRANSCRIPT	243
DECEMBER 4, 1998, PRETRIAL HEARING TRANSCRIPT	296
MAY 22-23, 2000, PRETRIAL HEARING TRANSCRIPT (<u>JACKSON V. DENNO</u>)	314

VOLUME TWO

TRIAL TRANSCRIPT	529
<i>GENERAL VOIR DIRE</i>	530
ARRAIGNMENT	548
INTRODUCTION OF CASE	550
<i>GENERAL VOIR DIRE CONTINUED</i>	552
JURY SELECTION	577
<u>IN CAMERA</u> HEARING	603
DENVER LEE CLAYTON, II (<u>IN CAMERA</u>)	
Direct Examination by the Defense	634
Cross Examination by the Solicitor	706
Re-Direct Examination by the Defense	714
Re-Cross Examination by the Solicitor	718
Re-Direct Examination by the Defense	719
CHARLES BENJAMIN NORRIS (<u>IN CAMERA</u>)	
Direct Examination by the Defense	721
Cross Examination by the Solicitor	734

GEORGE WILLIAM TETANICH (IN CAMERA)

Direct Examination by the Defense	735
Cross Examination by the Solicitor.....	749
Re-Direct Examination by the Defense.....	753

MELVIN RAYLON CUMBEE, JR. (IN CAMERA)

Direct Examination by the Defense	757
Cross Examination by the Solicitor.....	237
Re-Direct Examination by the Defense.....	768

KEVIN TIMOTHY MCHALE (IN CAMERA)

Direct Examination by the Defense	771
Cross Examination by the Solicitor.....	820
Re-Direct Examination by the Defense.....	822

CHARLES BENJAMIN NORRIS (IN CAMERA - RECALLED)

Direct Examination by the Defense	826

DENVER LEE CLAYTON, II (IN CAMERA - RECALLED)

Direct Examination by the Defense	831

SAUL KASSIN (IN CAMERA)

Direct Examination by the Defense	838
Cross Examination by the Solicitor.....	905
Re-Direct Examination by the Defense.....	930

COLLOQUY	936

MOTIONS (IN CAMERA).....	944

VOLUME THREE

COLLOQUY	1011

OPENING STATEMENT BY THE SOLICITOR	1017

OPENING ARGUMENTS BY THE DEFENSE.....	1029

PATRICK ASHLEY O'NEAL

Direct Examination by the Solicitor.....	1063
Cross Examination by the Defense	1067

KEVIN CORNELL

Direct Examination by the Solicitor.....	1071

IN CAMERA HEARING	1080

KEVIN CORNELL

Direct Examination by the Solicitor continued.....	1082
Cross Examination by the Defense	1086

MARGARET ANN JENSEN WHITE

Direct Examination by the Solicitor.....	1089
Cross Examination by the Defense	1111
Re-Direct Examination by the Solicitor	1134
Re-Cross Examination by the Defense	135

COLLOQUY 1136**TAMYA CURTIS GONZALEZ**

Direct Examination by the Solicitor.....	1139
Cross Examination by the Defense	1151

ROSE MYERS

Direct Examination by the Solicitor.....	1164
Cross Examination by the Defense	1169
Re-Direct Examination by the Solicitor	1178
Re-Cross Examination by the Defense	1182
Re-Direct Examination by the Solicitor	1186

JOSEPH D. PERRY

Direct Examination by the Solicitor.....	1188
Cross Examination by the Defense	1194

HARRY MICHAEL ROPER

Direct Examination by the Solicitor.....	1202
Cross Examination by the Defense	1206
Re-Direct Examination by the Solicitor.....	1212
Re-Cross Examination by the Defense	1214

ALBERT HALLMAN

Direct Examination by the Solicitor.....	1222

IN CAMERA HEARING 1257**COLLOQUY** 1289**ALBERT HALLMAN**

Direct Examination by the Solicitor continued.....	1293
Cross Examination by the Defense	1305
Re-Direct Examination by the Solicitor.....	1350
Re-Cross Examination by the Defense	1356

JOSEPH D. POWELL

Direct Examination by the Solicitor	1360
Cross Examination by the Defense	1398

JEFFREY SCOTT PAYNE

Direct Examination by the Solicitor	1417
Cross Examination by the Defense	1430
Re-Direct Examination by the Solicitor	1443
Re-Cross Examination by the Defense	1444

KEVIN TIMOTHY MCHALE

Direct Examination by the Solicitor	1449
Cross Examination by the Defense	1471

VOLUME FOUR

<u>IN CAMERA HEARING</u>	1501

KEVIN TIMOTHY MCHALE

Cross Examination by the Defense continued	1506
Re-Direct Examination by the Solicitor	1538
Re-Cross Examination by the Defense	1546

GEORGE WILLIAM TETAICH

Direct Examination by the Solicitor	1551
Cross Examination by the Defense	1595
Re-Direct Examination by the Solicitor	1644
Re-Cross Examination by the Defense	1647

COLLOQUY	1649

DENVER LEE CLAYTON, II

Direct Examination by the Solicitor	1657
Cross Examination by the Defense	1716
Re-Direct Examination by the Solicitor	1775
Re-Cross Examination by the Defense	1782

COLLOQUY	1789

MELVIN RAYLON CUMBEE, JR.

Direct Examination by the Solicitor	1792
Cross Examination by the Defense	1819

<u>IN CAMERA HEARING</u>	1831

MELVIN RAYLON CUMBEE, JR.

Cross Examination by the Defense continued	1834

LESTER V. RICH

Direct Examination by the Solicitor	1842
Cross Examination by the Defense	1871
Re-Direct Examination by the Solicitor	1906
Re-Cross Examination by the Defense	1910

MICHAEL DEGUGLIELMO

Direct Examination by the Defense	1914
Cross Examination by the Solicitor	1930
Re-Direct Examination by the Defense	1943
Re-Cross Examination by the Solicitor	1947

CHARLIE BENJAMIN NORRIS

Direct Examination by the Solicitor	1948
Cross Examination by the Defense	1987

VOLUME FIVE**CHARLIE BENJAMIN NORRIS**

Re-Direct Examination by the Solicitor	2023
Re-Cross Examination by the Defense	2025

IN CHAMBERS HEARING	2032

DIXIE LEE JUSTICE

Direct Examination by the Solicitor	2040
Cross Examination by the Defense	2059

<u>IN CAMERA</u> HEARING	2063

DIXIE LEE JUSTICE

Cross Examination by the Defense continued	2064

CARLA LOTHERY

Direct Examination by the Solicitor	2067
Cross Examination by the Defense	2075

RAYMOND ALAN WHITE

Direct Examination by the Solicitor	2081
Cross Examination by the Defense	2090
Re-Direct Examination by the Solicitor	2112
Re-Cross Examination by the Defense	2114

BILLY GENE KING

Direct Examination by the Solicitor	2116
Cross Examination by the Defense	2123

PAUL MCKEITHAN

Direct Examination by the Solicitor	2128
Cross Examination by the Defense	2143

LAURIE VILLALOBOS

Direct Examination by the Solicitor	2147
Cross Examination by the Defense	2162
Re-Direct Examination by the Solicitor	2172
Re-Cross Examination by the Defense	2174

IN CAMERA HEARING 2176**CLAY ALAN NICHOLS**

Direct Examination by the Solicitor	2181
Cross Examination by the Defense	2202
Re-Direct Examination by the Solicitor	2220
Re-Cross Examination by the Defense	2220

MOTIONS (IN CAMERA).....2221**THE STATE RESTS.....**2223**CARL CHAPLIN**

Direct Examination by the Defense	2224
Cross Examination by the Solicitor.....	2226

COLLOQUY 2228**IN CAMERA HEARING**2237**SAUL KASSIN**

Direct Examination by the Defense	2250
Cross Examination by the Solicitor.....	2333
Re-Direct Examination by the Defense.....	2402
Re-Cross Examination by the Solicitor.....	2417
Re-Direct Examination by the Solicitor	2426

GERALD LEROY HURST

Direct Examination by the Defense	2428

VOLUME SIX

GERALD LEROY HURST	
Cross Examination by the Solicitor.....	2505
COLLOQUY	2528
TERRI MELTON	
Direct Examination by the Defense	2538
Cross Examination by the Solicitor.....	2549
<u>IN CAMERA</u> HEARING	2554
THE DEFENSE RESTS	2561
CLOSING ARGUMENTS BY THE DEFENSE.....	2563
CLOSING ARGUMENTS BY THE SOLICITOR	2628
<u>IN CAMERA</u> HEARING	2674
CHARGE TO THE JURY	2681
VERDICT	2709
POLLING OF THE JURY	2710
MOTIONS	2714
COLLOQUY	2721
SENTENCE.....	2737
INDICTMENTS	2740
STATE'S EXHIBIT #3 (STATEMENT OF APPELLANT)	2744
STATE'S EXHIBIT #30 (STATEMENT OF APPELLANT)	2746
STATE'S EXHIBIT #29 (ANGER QUESTIONNAIRE WORKSHEET).....	2748
DEFENDANT'S MOTION TO SUPPRESS CONFESSION AND STATEMENTS	2750
DEFENDANT'S MOTION TO COMPEL THE STATE TO DISCLOSE ALL NOTES OR ANY OTHER MEMORANDA OR DOCUMENTATION PREPARED BY THE POLYGRAPH EXAMINER RELATED TO THIS CASE.....	2774

DEFENDANT'S MOTION TO COMPEL THE STATE TO DISCLOSE THE IDENTITIES OF ALL AGENTS, POLICE OR OTHER PERSONS PRESENT AT ANY TIME THE DEFENDANT WAS PRESENT DURING THE INVESTIGATION OF THESE CHARGES.....	2776
DEFENDANT'S MOTION TO COMPEL THE STATE TO DISCLOSE THE BLOOD TYPE AND GROUPINGS OF THE DEFENDANT'S BLOOD, THE DECEDENT'S, AND ANY OTHERS IDENTIFIED ON ANY OTHER EVIDENTIARY ITEM IN THE CASE	2778
DEFENDANT'S MOTION TO COMPEL THE STATE TO DISCLOSE ANY AND ALL ACTIVITY OF FORENSIC ANALYSIS OF FINGERNAIL SCRAPINGS TAKEN FROM THE DECEASED	2780
MOTION FOR THE COURT'S ORDER COMPELLING THE PRODUCTION OF FORENSIC SAMPLES FROM SUSPECT DANA CHAPLES	2782
DEFENDANT'S MOTION FOR <i>IN CAMERA</i> INSPECTION OF ALL MATERIAL, ITEMS OR EXHIBITS DEEMED BY THE PROSECUTION TO BE EXEMPT FROM DISCOVERY BY THE DEFENSE	2787
DEFENDANT'S MOTION FOR PRODUCTION OF HANDWRITTEN NOTES OF DETECTIVE CLAYTON	2789
DEFENDANT'S MOTION FOR THE PRODUCTION OF RECORDS IDENTIFYING ALL ASPECTS OF THE POSSESSION OF THE STRAND OF HAIR TAKEN FROM THE VICTIM SINCE ITS RECOVERY AT AUTOPSY UNTIL ITS EVENTUAL SUBMISSION TO THE FBI LABORATORY	2793
DEFENDANT'S MOTION FOR INDEPENDENT TESTING OF EVIDENCE	2798
DEFENDANT'S MOTION TO SUPPRESS ALL STATEMENTS OF THE DEFENDANT AND MEMORANDUM OF LAW IN SUPPORT THEREOF	2800
MOTION FOR THE SOLICITOR TO VERIFY THAT NO AUDIOTAPES OR VIDEOTAPES WERE MADE BY THE POLICE DURING ANY INTERVIEW OR INTERROGATION OF THE DEFENDANT BY THE POLICE; OR VERIFY IF ANY AUDIOTAPES THAT WERE SO MADE WERE LOST OF DESTROYED	2821
DEFENDANT'S MOTION TO COMPEL THE STATE TO DISCLOSE THE CURRENT WHEREABOUTS OF THE "CASIO" WRISTWATCH NOTED AS BEING FOUND NEAR THE DECEASED'S BODY	2824
MOTION FOR THE POLICE TO INVESTIGATE THE CRIME STOPPERS REPORT THAT SUSAN EDWARDS AND LYNN RAY ARE AWARE OF THE PERSONS WHO MURDERED THE VICTIM, TERESA HAUGHT	2826

COURT'S EXHIBIT #1 (FBI EVIDENCE DOCUMENTS AND AFFIDAVIT)	2829
SUBPOENA OF LETTERS FROM THE SOLICITOR'S OFFICE (SEALED LETTERS)	2836
VIDEOTAPE OF LT. MCHALE AND APPELLANT (ALL COPIES) - ON FILE WITH THIS COURT FOR CONSIDERATION	
MEDIA VIDEOTAPE (ALL COPIES) - ON FILE WITH THIS COURT FOR CONSIDERATION	
CERTIFICATE OF COUNSEL FOR APPELLANT	2841

Norris -- Cross

1 I first got a video camera and I had so much
2 problems, so much background noise that most
3 of what you was trying to narrate was
4 unintelligible.

5 Q But when you got --

6 A So I discontinued that.

7 Q Sure. But when you got back to
8 your office and you determined that the
9 quality of the audio wasn't quite what you
10 wanted, you always could turn the volume
11 down?

12 A Yes, sir, you could.

13 Q Now, once -- you never, you
14 never indicated that you took the eight
15 millimeter -- well, let me ask you this. Do
16 you still have the original eight millimeter
17 tape?

18 A I probably do, but it's been
19 used over because I'm limited on number of
20 tapes and I would just rotate them --

21 Q You recorded over them.

22 A -- and record over them.

23 Q Okay. Now in terms of your --
24 certainly you mentioned on direct
25 examination the history of the Mill Inn in

Norris -- Cross

1 terms of fire inspections and so forth was
2 something that was kind of standard
3 procedure, to go look at and assess to
4 determine if that might have any kind of
5 relevance to the issue at all?

6 A Yes. Usually any time we have a
7 fire that I'm investigating in a commercial
8 structure, at some point in time I will look
9 at our fire inspection records to see what
10 kind of prior history there is.

11 Q Your testimony was that there
12 were inspections in '95, but that between
13 1995 -- and I think you said the correction
14 of some problems -- and 1997 there weren't
15 any inspections?

16 A We don't have any record of it,
17 so apparently there weren't.

18 Q And in fact when some of the
19 inspections that you mentioned were made in
20 1995, improper or faulty wiring was noticed?

21 A May I refer to my copy?

22 Q Absolutely.

23 A Okay. I'm looking at a letter
24 that was sent to Mr. Hunt, April the fifth,
25 1995. That's what you're referring to? Or

Norris -- Cross

1 the actual sheet the inspector --

2 Q Actual inspection report I
3 think.

4 A It's dated --

5 Q I'm not sure it is dated. In
6 fact it's not dated or there's one that's
7 not dated.

8 A Well, I have in fact what you
9 sent me is what I have in front of me. The
10 last inspection was on 5/10/95 and the only
11 problem there was, which I explained
12 earlier, I don't know if this actually was
13 found, it's just a routine advisement or
14 warning, exit doors must be unlocked during
15 normal business hours. It doesn't say that
16 they actually found the doors locked during
17 normal business hours.

18 But then there's a letter
19 written to Mr. Hunt on April the fifth of
20 '95 from our fire chief indicating
21 approximately eleven violations that was
22 found on inspection of April the fourth.

23 And also you will see that
24 there's checkmarks next to the numbers, and
25 this is what -- the check list when the

Norris -- Cross

1 inspector goes back to reinspect because in
2 this letter it says "found violation that
3 needed to be corrected. Letter is to advise
4 you have twenty working days from the
5 receipt of this letter to correct the
6 violations."

7 So the inspector went back on
8 May tenth of '95 to check to see if these
9 violations had been corrected. And as they
10 go down this list, the ones that's been
11 corrected they will check off. And that's
12 what this indicates.

13 Q Okay. And these were materials
14 that I sent you?

15 A Yes, sir.

16 Q And were there any materials
17 that I sent you that were not materials or
18 did those materials exceed, were they more
19 than the materials that you examined in the
20 part of your investigation?

21 A No, sir. They were just copies
22 of --

23 Q They come from the same source?

24 A Yes, sir. You sent me -- let's
25 see. The date you sent me, this is mailed

Norris -- Cross

1 on January the fifteenth to me, from you.
2 And you asked me to contact you to discuss
3 this with you.

4 I have a note here in my
5 records, actually an envelope that you sent
6 me where I made several attempts to contact
7 you, first being on January twentieth,
8 January twenty-second, twenty-sixth, and
9 twenty-eighth. I was unable to contact you
10 and I left a message or you weren't in, left
11 a message on voice mail, left a message with
12 your secretary or phone operator, and I
13 never heard any more from you, so I didn't
14 try to call you back after that.

15 Q Did you ever write me back?

16 A No, sir.

17 Q Send a letter?

18 A No, sir.

19 Q The -- you have a form that's an
20 inspection report. Correct?

21 A Yes, sir.

22 Q Standard form that the inspector
23 uses?

24 A Yes, sir.

25 Q And so the letter that you were

Norris -- Cross

1 referring to, the letter that you're
2 referring to, are you saying that the
3 inspector goes back -- I mean do you know
4 who made those checkmarks?

5 A Yes, sir. Whoever made the
6 inspection on the tenth.

7 Q Whoever -- what's his name?

8 A Well, hold on. I'll tell you.

9 Q All right.

10 A I believe this sheet here, this
11 handwritten sheet, inspector was, was Candy
12 Johnson.

13 Q Candy Johnson. Well, on these
14 checkmarks here with this, nothing else
15 written on here but 5/10/95, did
16 Miss Johnson sign this thing or sign off on
17 it?

18 A No, sir. This is like a check
19 sheet. She wouldn't have signed it. This
20 is the letter that's sent to Mr. Hunt
21 indicating, so they -- that's what they go
22 by when they make the reinspection to see
23 what was -- the discrepancies that was found
24 in the prior inspection, to go down the
25 list, to check them off. I used to do the

Norris -- Cross

1 same thing when I did fire inspections.

2 Take the prior letter that was sent and go
3 down the list, check them off.

4 Q Do you send them a copy of that
5 letter with the checkmarks?

6 A I don't know if they do or not.

7 Q The business owner?

8 A Yes. I don't know.

9 Q You don't know. Okay. In any
10 event, so the, the Mill Inn had some wiring
11 and extension cord problems and so forth,
12 and they were all corrected in '95?

13 A Yes, sir. It appears they were.

14 Q Okay. And then there were no
15 other inspections between then and the time
16 of this fire?

17 A No, sir.

18 Q As a matter of fact, like
19 extension cords, some of the faulty problems
20 were things that would come to the attention
21 of the fire inspector were quite obvious.
22 Correct?

23 A Could be.

24 Q For example, you have -- this is
25 State's exhibit number thirty-nine I believe

Norris -- Cross

1 and shows a photograph of that little area
2 that you talked about where the wooden stand
3 was located. Correct?

4 A Yes.

5 Q And that's not a -- certainly
6 not a -- within code for wires coming out of
7 a box to be exposed against concrete wall
8 without some type of covering, piping?

9 A Sir, at the time this building
10 was constructed it was -- probably even met
11 the code.

12 Q It was grandfathered in?

13 A Yes, sir. It was grandfathered
14 in.

15 Q Okay.

16 A We can't go back and make them
17 correct certain violations unless it poses a
18 problem or. . .

19 Q Even if it involves an issue of
20 safety?

21 A Most cases that's true. That's
22 true. Now, like in the fact where the
23 building was damaged by fire, when they had
24 to repair that damage --

25 Q Yes, sir.

Norris -- Cross

1 A -- then they had to meet the
2 code, the current code.

3 Q So once the problem causes
4 something to burn down then when they
5 rebuild it they got to do it the right way?

6 A Yes, sir. That's what happens
7 in older construction.

8 Q Now -- okay. Now, and I don't
9 mean to make absolutely any light of this at
10 all. You say the priority was to deal with
11 the victim and tragically in this case, the
12 victim, the body of the victim you found at
13 the scene was deceased?

14 A Yes, sir.

15 Q And there was other -- after you
16 got -- that emergency issue was resolved and
17 once the fire was out, that emergency issue
18 was resolved as well?

19 A Yes, sir.

20 Q All right. Now, did you testify
21 on direct that the portions of the doors
22 were on that cabinet, or did I not hear that
23 correctly? Portions of the doors on the
24 cabinets? You're very soft-spoken. I might
25 have misheard you.

2016

Norris -- Cross

1 A We found parts of the doors. I
2 don't know what you mean by --

3 Q Parts of the doors? What do you
4 mean by that exactly?

5 A Like a cabinet front. You got
6 like two doors that open up.

7 Q Right.

8 A Some of that wood from those
9 doors was still, was still there. Wasn't
10 totally destroyed. I remember at least one
11 I believe that was part of, that appeared to
12 be part of a cabinet door.

13 Q It was made of wood?

14 A Yes, sir.

15 Q And I mean if we have a little
16 cabinet here like this with a cash register
17 sitting on it, that would be one of the
18 doors to the cabinets?

19 A Yes, sir.

20 Q And the fire was set right here?

21 A Yes, sir.

22 Q Now -- okay. Here we go. I'd
23 like to show you State's exhibit number
24 forty and ask you if you can identify what
25 that photograph depicts.

Norris -- Cross

1 A That's the area behind the bar
2 looking from the rear of the building toward
3 the front of the building.

4 Q Okay. And -- all right. So --
5 trying to get my bearings here. Is that
6 open space there, is that where the cash
7 register was, on the --

8 A No, sir.

9 Q No?

10 A Cash register was down toward
11 the front of the building.

12 Q Down toward here?

13 A In the dark area of the picture.

14 Q Down toward here?

15 A Yes, sir.

16 Q And these glass objects that are
17 up here, can you -- did you ever identify
18 what those were or photograph them more
19 closely?

20 A They were just different
21 glasses. Jars. Drinking glasses.
22 Different glass products.

23 Q What's that little curly thing
24 that's right there? That kind of curly
25 bits?

Norris -- Cross

1 A I really can't be sure in this
2 photograph. It was not close enough. I
3 can't. I don't know.

4 Q It's part of the ceiling or part
5 of the curls that come off the paneling?
6 You don't know?

7 A It could be. I don't know.

8 Q Okay.

9 A Can't see it well enough in that
10 picture. I don't know.

11 Q All right. Let me try to --
12 okay, and hurry here. Let's see. Now what
13 time did the fire start?

14 A We got called around 3:14 I
15 believe it was. Fire probably started,
16 actually started within, within an hour
17 prior to that.

18 Q Was that a guess?

19 A That's a educated guess based
20 on. . .

21 Q And what was the duration of the
22 fire?

23 A What do you mean by duration?

24 Q How long did the fire last?

25 A In the Mill Inn itself?

Norris -- Cross

1 Q Yes, sir.

2 A Let's see. When I arrived on
3 the scene, okay, pretty much had the fire in
4 the Mill Inn was, was just about, not
5 completely out as I had stated earlier. It
6 was a lot of stuff still smoldering, but the
7 fire, but most of the fire, the bulk of the
8 fire inside the Mill Inn was extinguished
9 shortly after my arrival.

10 Q So in terms of time, the
11 duration of the fire?

12 A 3:15 to --

13 Q You have that in your notes or
14 your report?

15 A No, sir. I'm thinking about
16 what time. I got there at 3:30. You know,
17 within twenty, probably twenty, twenty-five
18 minutes our first truck arrived on the
19 scene. The bulk of the fire inside the Mill
20 Inn itself was extinguished. The fire had
21 spread through the roof, up through the roof
22 and spread to the building next door and
23 they had extensive amount of fire in an
24 apartment next door.

25 Q Sir, you have an educated guess

2014

Norris -- Cross

1 of the duration of the fire, in minutes?

2 A From the time it was reported,
3 or from the time --

4 Q From the time the fire started
5 until the time the fire was put out? I'm
6 sorry.

7 MR. DURANT: Both buildings or
8 just the Mill Inn?

9 MR. KULP: Pardon me?

10 MR. DURANT: Both buildings or
11 just the Mill Inn?

12 Q Yes. I'm sorry. Just the Mill
13 Inn.

14 A Just the Mill Inn?

15 Q I'm sorry. The whole fire.

16 From the time the fire started until any
17 flames were -- all flames were extinguished?

18 A In the Mill Inn building or
19 in --

20 Q In any, any building nearby?

21 A We were there fighting the fire,
22 we was there fighting fire two, three hours.

23 Q Until all the flames were
24 extinguished?

25 A Yes, sir.

Norris -- Cross

1 Q Now, you said at one time the
2 Mill Inn was cited as a fire violation for
3 not having the doors unlocked for the egress
4 of people?

5 A No, sir. I did not say that.

6 Q They weren't cited for that?

7 A It was wrote in the report and
8 it appeared to me as a reminder.

9 Q Or a reminder --

10 A To --

11 Q -- to do that?

12 A -- remain, make sure the exit
13 doors were --

14 Q Okay.

15 A -- remain unlocked. It doesn't
16 say that they actually found the exit doors
17 locked. It says --

18 Q Yes, sir.

19 A -- something. I can read it if
20 you want to, but it says in effect, you
21 know, exit doors must remain unlocked during
22 normal business hours.

23 Q It wouldn't be a warning -- it
24 wouldn't make sense to warn them about
25 something wasn't an issue?

Norris -- Cross

1 A Yes, sir. And in a case
2 where --

3 Q Okay.

4 A -- you're dealing with the
5 public occupancy, I used to do it myself.

6 Q Yes, sir.

7 A Whether it was a theater or a
8 restaurant or a bar that had exit doors that
9 were lockable, we always reminded people to
10 make sure those doors remained unlocked from
11 the inside during normal business hours
12 while the public was in that billing.

13 Q Yes, sir. You -- did your
14 investigation reveal what the normal
15 business hours of the Mill Inn were?

16 A It probably did. I don't
17 remember exactly.

18 Q Okay. Now, your testimony is
19 during your observation as an -- or as an
20 observer, that you -- where you from, by the
21 way?

22 A Right here in North Charleston.

23 Q Oh, really?

24 A Yes, sir.

25 Q You have a very -- when I say

2017

Norris -- Cross

1 it's a pleasant accent and a nice soft
2 voice. When you were testifying, using that
3 voice and narrating and telling and
4 testifying to the ladies and gentlemen of
5 the jury what Mr. Myers was telling you that
6 Saturday, I wanted to ask you a couple, a
7 question or two about that.

8 One is in fact you recall that
9 Sergeant Poole was, around or about that
10 time, downstairs going through the
11 defendant's truck. Correct?

12 A Yes, sir.

13 Q And did he find anything that he
14 concluded was a hair or blood or any
15 evidentiary value in that truck?

16 A He found some items that on,
17 like I said, the door panel or I believe it
18 was, pretty sure it was on the passenger
19 door that may have been.

20 Q Okay.

21 A He was concerned, that looked
22 like to him it could be.

23 Q Right. And did he come upstairs
24 to the detective office and convey those
25 findings to Lieutenant Cumbee or anybody

Norris -- Cross

1 else?

2 A I do not know.

3 Q He may have?

4 A He may have. I don't know.

5 Q Okay. Now, while you narrated

6 that story, I want to ask you during -- I

7 mean to characterize it properly, during

8 that story no one interrupted him and, and

9 said things like, "Did you see the writing

10 on the windshield?"

11 I mean -- what I mean is you,

12 your testimony was like as if he sat there

13 and just without interruption narrated that

14 entire story. But that's not the case, is

15 it?

16 A At which time, because he

17 relayed the story to us I know a couple

18 times.

19 Q The first time.

20 A I don't know how much he had

21 relayed to them prior to my arrival in

22 Lieutenant Cumbee's office.

23 Q The first time you heard it. I

24 know you don't, you couldn't know what you

25 didn't hear, but the first time you heard

Norris -- Cross

1 it. There was just beginning to end the
2 story, no interruptions. Right?

3 A Pretty much. But like I said, I
4 think he had already related the story to
5 them prior to my coming upstairs --

6 Q Yes, sir. Right.

7 A -- to Lieutenant Cumbee's
8 office.

9 Q You weren't there for that?

10 A No, sir.

11 Q Okay. So if they may have in
12 fact interrupted him at times and said
13 "Well, you saw the writing on the, the
14 windshield" or other words, or other
15 topics --

16 A I don't know.

17 Q You have no idea. All right.

18 Now, you said when you got out of the car at
19 the Mill in the back, the -- he "recanted"
20 some of this story?

21 A No, sir. He repeated some of
22 this story.

23 Q Oh. He repeated it.

24 A He explained it to us.

25 Q Now, he said, told you where the

Norris -- Cross

1 purse was and you looked for the purse in
2 the hollow tree, and there's something you
3 left out about that, isn't there? Can you
4 think of anything?

5 A No, sir.

6 Q Okay. Well, there's a special
7 little angel or cherub or something which,
8 as you understand the investigation to
9 comprise or indicate, was the basis for him
10 to take the purse. Correct? He wanted that
11 cherub or that angel?

12 A I believe that's what I stated,
13 that --

14 Q All right.

15 A -- he had mentioned something
16 about he had given her a card with a angel
17 on it or something to do with a angel or
18 that meant a lot to him, and he wanted it.

19 Q So when he put, according to
20 you, the purse in the tree although he
21 didn't really remember where he put it, he
22 certainly told you that he took that cherub
23 or angel out before he left it there?

24 A I don't remember whether he did
25 or not, sir.

Norris -- Cross

1 Q Okay. Now, while you were
2 upstairs that Saturday there was also
3 something, there was a reporter up there.
4 Someone had summoned or allowed a reporter
5 to come in to the area in the detective
6 office where the big table is. Correct?
7 You remember that?

8 A No, sir. Not really. I do
9 remember at some point in time there was
10 some reporters at city hall in or about the
11 building.

12 Q Up in the detective office? Or
13 don't you remember?

14 A Here again I don't remember
15 specifically where they were at.

16 Q You were just an observer that
17 day?

18 A More or less.

19 Q All right. And you had a video
20 camera at the scene, but did you happen to
21 have that up in the detective area, the
22 video camera, the eight millimeter, that
23 afternoon on Saturday or any time that
24 day --

25 A No, sir.

Norris -- Cross

1 Q -- with the plug out?

2 A No, sir.

3 Q Let me ask you another thing. I
4 received a copy of your C. V. in this case
5 and I'd like to ask you one last question.
6 I'm only going to use it for a second.

7 You say you've investigated five
8 thousand -- approximately five thousand
9 fires?

10 A Yes, sir.

11 Q And you concluded that three
12 thousand of them are arsons?

13 A Here again, that's
14 approximately.

15 Q So three out of every five fires
16 that you investigated are arsons?

17 A Well, all of these fires are not
18 in the city of North Charleston either. I
19 assist other --

20 Q Well, I don't care where they
21 are.

22 A Yes.

23 MR. KULP: Okay. Thank you very
24 much. I have no further questions.

25 MR. DURANT: Just very briefly.

Norris -- Redirect

1

2

3

4

REDIRECT EXAMINATION BY MR.

5

DURANT:

6

Q Does having audio on your crime

7

scene or fire scene tape have any benefit

8

for you?

9

A No, sir. None whatsoever.

10

Q Do you use it on anything?

11

A I use it on, if, if I'm making a

12

tape for training purposes. A good example

13

would be just last week we had a fire at the

14

flea market up here on Rivers Avenue. When

15

I arrived on the scene I had the video

16

camera in the car. I immediately got out

17

and started videotaping that fire and I

18

played -- it helped a lot. I did that for

19

training purposes. It had a lot of radio

20

conversation on the tape, on the video, as

21

it was taking place where directions were

22

being given and instructions were being

23

given and trucks were doing different things

24

and the radio conversation, that's

25

beneficial. But to the investigation

2024

Norris -- Redirect

1 itself, the words, it has no benefit.

2 Q Are you aware, sir, that the
3 enlargements that you picked up also have
4 enlargements like this that have nothing to
5 do with gory pictures?

6 A I do now. I did not know at the
7 time. I didn't know what --

8 Q So maybe there were other
9 reasons to have these photographs other than
10 just to show them to the defendant?

11 A Oh, yes, sir. I had no
12 knowledge of what the purpose of them was
13 until later on.

14 MR. DURANT: I have nothing
15 further.

16 THE COURT: You can come down.
17 Thank you.

18 MR. KULP: I have just one final
19 question.

20 THE COURT: Go ahead.

21 MR. KULP: Just one, your Honor.
22 I promise this time.

23

24

25

Norris -- Recross

1 RECROSS-EXAMINATION BY MR. KULP:

2 Q Chief Norris, these photos
3 that -- oh, do you have those, Mr. Durant?
4 Those --

5 MR. DURANT: If you want them,
6 we'll put them into evidence.

7 MR. KULP: Okay. Let's put them
8 in. Not -- I meant the ones you showed
9 to him. I'll happy to put those in.

10 MR. DURANT: Just go ahead. Do
11 what you have -- do whatever you want.

12 MR. KULP: Yes, sir.

13 This eleven-by-fourteen, would
14 you mark this.

15 (Whereupon, marked for
16 identification was Defendant's Exhibit
17 No. 30, photograph.)

18 Q Yes. I hand you this photo Mr.
19 Durant was just directing your attention to
20 and -- I guess it's more than one question
21 already, but I'll wrap it up as quickly as I
22 can, Judge.

23 That photo depicts what? Can
24 you recognize that?

25 A That appears to be the tile

Norris -- Recross

1 that's on the, like a footrest or underneath
2 the bar.

3 Q Right. And does this photo have
4 any relationship between a belief that there
5 was a shoe print at the scene and the
6 collection of Mr. Myers' boots from his
7 house?

8 A Sir, I, I don't want to answer
9 that. I don't know. I didn't take the
10 photo. I don't know why the photo was
11 taken.

12 Q Oh, you didn't take this
13 particular one?

14 A No, sir.

15 Q You're sure?

16 A Pretty sure.

17 Q Pretty sure. Is this little
18 foot rail near the head of the victim, the
19 victim's body where the head area was?

20 A I can't tell exactly where it's
21 at.

22 Q You don't know?

23 A No, sir.

24 Q Did you do a crime scene sketch
25 and a sketch of where everything was found

Norris -- Recross

1 at the scene?

2 A No, sir.

3 MR. KULP: Thank you. That's

4 all I have. Thank you very much.

5 THE COURT: Good time to quit.

6 MR. KULP: Yes, sir.

7 THE COURT: All right. You all
8 go back in your jury room, have a
9 little meeting, and we're going to be
10 in chambers. All right.

11 Court's in recess. Tomorrow
12 morning, 9:30. And we will have snacks
13 for you all.

14 (Whereupon, the matter was
15 adjourned at 6:24 p. m.)

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T I O N

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina, on the 1st day of March, 2001.

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

DATED: August 1, 2001

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R.D.R.
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

TRANSCRIPT OF PROCEEDINGS

STATE OF SOUTH CAROLINA,

~~-VS-~~

WESLEY MAX MYERS,

MARCH 2, 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

INDEX

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS

IN PRESENCE OF JURY:

Dixie Lee Justice by Mr. Durant	10			
by Mr. Kulp		29		
Carla Lothery by Mr. Durant	37			
by Mr. Kulp		45		
Raymond Alan White by Mr. Durant	51		82	
by Mr. Kulp		60		84
Billy Gene King by Mr. Durant	87			
by Mr. Kulp		93		
Paul McKeithan by Mr. Durant	98			
by Mr. Kulp		113		
Laurie Villalobos by Mr. Durant	117		142	
by Mr. Kulp		132		144
Clay Alan Nichols by Mr. Durant	151		190	
by Mr. Kulp		172		190
Carl Chaplin by Mr. Kulp	194			
by Mr. Durant		196		

EXHIBITS

No.	Description	Ident.	Evd.
State's 42	Videotape	37	43
State's 43	Photograph	53	54
State's 44	Photograph	53	54
State's 45	Photograph	53	54
State's 46	Photograph	53	54
State's 47	Photograph	53	54
State's 48	Styrofoam skull	158	158
Defendant's 31	Photograph	29	30
Defendant's 32	Photograph	29	30
Defendant's 33	Meat cleaver	178	188
Defendant's 34	Videotape		199

1 (The following took place in
2 chambers at 10:55 a. m.)

3 **THE COURT:** Miss Thompson, have
4 a seat here. Sometimes I want to talk
5 to jurors, sometimes I like to put it
6 on the record so it can help us a
7 little bit. Now give us your full
8 name.

9 **JUROR THOMPSON:** Angela
10 Thompson.

11 **THE COURT:** Miss Thompson, I'm
12 at a little bit of a loss to, to know
13 exactly what you're talking about and I
14 first want to tell you that all of us
15 appreciate jurors giving us information
16 that disturbs them because everybody's
17 entitled to a fair trial, both the
18 State and the defendant, so just the
19 fact that we brought you in here I just
20 want you to be comfortable. I want to
21 let you know we appreciate you coming,
22 telling us this, and that's why I
23 brought you in here so it wouldn't be
24 in public.

25 You told us that you were

1 disturbed about the other jurors
2 talking and, and you said that you felt
3 like everybody -- this is a serious
4 case you told me and you felt like that
5 you'd like to be able to concentrate on
6 this case without having other jurors
7 bringing stuff that you felt wasn't
8 appropriate for the case. Does that
9 pretty well tell me what you said?

10 JUROR THOMPSON: Yes.

11 THE COURT: Okay. And so I
12 thought I'd bring you in so you'd clear
13 up a little something for me because I
14 didn't understand that and I don't
15 think any of us understand really the
16 type things they talking about, so
17 could you be a little more specific and
18 tell me what --

19 JUROR THOMPSON: What I'm saying
20 is that if you work in a lawyer's
21 office --

22 THE COURT: Is there some jurors
23 who work in a lawyer's office?

24 JUROR THOMPSON: Yes.

25 THE COURT: Okay.

1 JUROR THOMPSON: And whatever
2 case that that lawyer is going over or
3 whatever among several cases that that
4 attorney is going over and he's working
5 over, I believe that that should be
6 kept at his office.

7 THE COURT: Yeah, because --

8 JUROR THOMPSON: Not among other
9 people that you don't even know and you
10 don't know who knows who or whatever.

11 THE COURT: You're saying that,
12 that if you go to a lawyer's office
13 you'd like to know that he --

14 JUROR THOMPSON: It's
15 confidential and it's kept there.

16 THE COURT: That that's kept
17 there. Okay.

18 JUROR THOMPSON: And I'm a
19 stranger to everyone there and I
20 believe that information should be kept
21 in his office and not among people that
22 you just met for the first time, or the
23 first week, I mean because you don't
24 know who knows who or --

25 THE COURT: Yes, because

1 somebody might --

2 JUROR THOMPSON: It could be a
3 family member that that attorney
4 represent and here you discussing
5 something in reference to that case
6 that, that should be kept confidential.

7 THE COURT: Can you think of
8 anything else that --

9 JUROR THOMPSON: That's all. I,
10 I felt very uncomfortable because here
11 we working on a case and this is very
12 important and I want to focus on this
13 and get all the details of this case,
14 not to hear anything else referred to.
15 I don't even know about, I don't know
16 the case and I care not to know about
17 it but --

18 THE COURT: Yeah.

19 JUROR THOMPSON: -- I think we
20 don't know each other that well, and we
21 trying to learn to get to know each
22 other and to discuss those type things
23 I don't care for that and I don't want
24 to hear that.

25 THE COURT: Can you think of

1 anything else that is unruly?

2 JUROR THOMPSON: That's --

3 that's --

4 THE COURT: I don't mean the
5 word unruly?

6 JUROR THOMPSON: That's
7 disturbing to me. I don't -- I don't
8 care for it.

9 THE COURT: But that's the only
10 thing so far?

11 JUROR THOMPSON: So far I've --
12 I've gathered, yes.

13 THE COURT: How would you
14 suggest I correct that without, without
15 going in detail? I couldn't -- if I --
16 if I were practicing law and a
17 secretary or somebody working in my
18 office said something and I found out
19 about it, they're fired. I mean I've
20 done it before.

21 JUROR THOMPSON: That's
22 important.

23 THE COURT: It is important.
24 The people feel free to tell attorneys
25 things that are confidential from

1 everybody else. How would you suggest
2 that I correct it?

3 JUROR THOMPSON: I don't know.
4 That's why I brought it to someone's
5 attention because I don't know how.

6 THE COURT: I appreciate you
7 did. Let me think about it a little
8 bit. Let me see what I can do.

9 JUROR THOMPSON: I didn't say
10 anything because I don't know what to
11 say or how to say it, and that's
12 something I don't want to hear when I'm
13 coming in because it kind of confuses
14 me. You trying to listen on to this
15 case and here you discussing other
16 things that I don't know about and I
17 care not to know about.

18 THE COURT: Okay. And also the
19 foreman, forelady was telling us that
20 they didn't -- thought it better not to
21 have people around when you all coming
22 in and I tried to get people in the
23 audience not to be talking about the
24 case when you all go by. Can you think
25 of anything else?

1 JUROR THOMPSON: No. I haven't
2 encountered that. No. I haven't had
3 that problem.

4 THE COURT: Okay. All right.
5 Can you think of anything else?

6 MR. KULP: Those two I wrote.

7 THE COURT: All right. I had
8 already asked you whether anybody is
9 discussing this case yet and you had
10 told me that they weren't.

11 JUROR THOMPSON: I haven't
12 heard --

13 THE COURT: Okay.

14 JUROR THOMPSON: -- anybody.

15 THE COURT: Are anybody
16 discussing other criminal cases?

17 JUROR THOMPSON: I haven't
18 heard.

19 THE COURT: Okay. All right.
20 That's, that's good. I appreciate you
21 bringing this to our attention here and
22 I'm going to try to figure out some way
23 to do it and I haven't figured it out
24 yet.

25 JUROR THOMPSON: Well, I haven't

1 figured it out so I figured maybe I
2 could come to you and maybe somebody
3 else could help me figure it out and I
4 don't know. I just brought it up
5 because --

6 MR. DURANT: Yeah.

7 THE COURT: But the only thing
8 that I know is to give everybody ear
9 plugs. Thank you for coming in,
10 Miss Thompson.

11 JUROR THOMPSON: Okay.

12 MR. DURANT: Thank you, ma'am.

13 MR. KULP: Thank you.

14 (Whereupon, a recess was taken
15 at 10:59 a. m.)

16 (The Judge enters the courtroom
17 at 11:02 a. m.)

18 THE COURT: Bring the jury in.

19 (The jury enters the courtroom
20 at 11:03 a. m.)

21 THE COURT: I could hear you
22 all. You want to know what that old
23 white headed so-and-so is doing, but
24 anyway I promise you we were not
25 telling jokes and drinking coffee, and

1 so we are shortening things, so bear
2 with us if you will. I promise I'll
3 get you all out of here. Someone
4 needed to be out by six o'clock. I
5 need to be out by six, too. I got a
6 grandson's playing ball and I'm an hour
7 and a half from home, so I'll get you
8 home.

9 All right, Solicitor, call your
10 next witness.

11 MR. DURANT: Thank you, your
12 Honor. State would call Dixie Justice.

13

14

15

16 D I X I E L E E

17 J U S T I C E, 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 morning, Miss Justice.

23 A Good morning..

24 Q Would you tell the jury how old
25 you are?

Justice -- Direct

1 A Sixty.

2 Q And are you married or divorced?

3 A Divorced.

4 Q Do you have any children?

5 A Five.

6 Q And one of those children was
7 the victim in this case, Teresa Haught. Is
8 that correct?

9 A Yes, sir.

10 Q Are you working now?

11 A No, sir.

12 Q You -- I believe you're taking
13 care of one of your grandchildren. Is that
14 correct?

15 A Yes, sir, that's correct.

16 Q Now, in March of 1997 you owned
17 a business named the Mill Inn. Is that
18 correct?

19 A Yes, sir.

20 Q How long had you been involved
21 with that business?

22 A I had owned it for thirteen
23 years. I was the manager for one month
24 before I bought it there.

25 Q And do you still own that

2042

Justice -- Direct

1 establishment?

2 A No, sir, I do not. I gave it
3 away.

4 Q You gave it away?

5 A Yes, sir.

6 Q When did you do that?

7 A After the incident, Teresa's
8 murder at the Mill Inn and it was rebuilt, I
9 had a lifetime lease on it and I just, I
10 gave it back to the owner of the land.

11 Q Now, how long -- at some point
12 you turned the Mill Inn over to Teresa for
13 her to work. Is that correct?

14 A Yes, sir.

15 Q Do you recall when that was?

16 A Within a two-year, around a
17 two-year period before she died.

18 Q Where'd she been living before
19 then?

20 A She was living in Virginia.

21 Q And she moved down to Virginia
22 why?

23 A She moved here. My mother was
24 also alive at that time and living with me,
25 and my mother was disabled and Teresa Ann

Justice -- Direct

1 helped me with my mother, so she came down
2 to help me and to help me at the lounge.

3 Q Okay. And her marriage in
4 Virginia had broken up. Is that correct?

5 A Yes, it had. It had broken up
6 in Virginia.

7 Q So you ran the bar for some
8 number of years before Teresa became
9 involved it in. Is that correct?

10 A Eleven years, around there,
11 before she became. . .

12 Q Now, prior to or about the time
13 that Teresa came down and started running
14 the bar for you, had you had any electrical
15 problems at that bar?

16 A I've a few off and on.

17 Q And specifically were, was there
18 an electrical problem brought up with regard
19 to a fire inspection that occurred in April
20 or occurred in 1995?

21 A Yes, sir.

22 Q And what steps did you take to
23 correct those electrical problems?

24 A The landlord, my landlord and
25 myself, he sent someone over and we fixed

1 the electrical problem that the fire
2 department said I had to fix. Part of it
3 was in the ceiling overhead like this
4 ceiling and I had an extension cord running
5 to three drop lights that was over the bar
6 area, and they said I couldn't have the
7 extension cord like that exposed, so we had
8 to put it in conduit and change them, run
9 new wire through there.

10 Q And was any rewiring done around
11 the bar area?

12 A Yes. The rewiring was done.

13 Q And after that rewiring,
14 rewiring was done, was the place inspected
15 again?

16 A Yes, sir, it was.

17 Q And did it pass inspection on
18 that occasion?

19 A Yes, sir, it did.

20 Q And were you ever cited by the
21 fire department for any electrical problems
22 thereafter?

23 A No, sir, not that I'm a -- can
24 recall, no, sir.

25 Q And were you ever aware of any

Justice -- Direct

1 electrical problems there after that time?

2 A No, sir, because that's -- when
3 we changed the wiring I think my husband at
4 the time said pull it, you pull the wire
5 through the, through it. We also changed
6 the electrical box and put a new box and new
7 wiring in that part.

8 Q Now, where was Teresa living
9 when she was down here? Was she living with
10 you?

11 A When she first came down she
12 lived with me.

13 Q And then she got her own place
14 over on [REDACTED]. Is that correct?

15 A Yes, sir.

16 Q And how far is [REDACTED]
17 from the bar?

18 A I would say not over three
19 blocks.

20 Q So it's close enough to walk?

21 A Yes, sir.

22 Q And had you been to her house or
23 did you go to her house frequently?

24 A Yes, sir, I did. She helped me
25 with the children. She helped me with a

Justice -- Direct

1 little boy. She usually kept him for me on
2 the weekends sometimes, mostly all weekends.

3 Q And you would go see her?

4 A Yes, I would.

5 Q At least weekly. Is that
6 correct?

7 A Yes, sir.

8 Q And sometimes more than that?

9 A Sometimes more.

10 Q And would you describe to the
11 jury how the house is laid out? Is it just
12 one house on that lot?

13 A Teresa's house?

14 Q Yes.

15 A It's a big house on the -- in
16 the front next to the street with a very
17 small yard, maybe not even six feet of yard
18 before the house. It's an old Charlestonian
19 home, a two-story, very, very large house.
20 Needed a lot of work to it but -- and it had
21 a -- on the side was a driveway for two cars
22 and directly on the end of the driveway was
23 a apartment that had -- the apartment when
24 you walked in was a dining room, a little
25 kitchen area, a bedroom, and a bath.

Justice -- Direct

1 Q Was she --

2 A And in the back yard was also
3 was a small yard, had a shed building that
4 was her washer and dryer place, and that
5 didn't have a door on it.

6 Q Okay. So was the apartment back
7 behind the house? Was that attached to the
8 house?

9 A No, sir. It was not.

10 Q Was she renting that apartment
11 at the time?

12 A At first she rented it and the
13 renting didn't work out, so --

14 Q Was she --

15 A They --

16 Q Was she renting it at the time
17 of her murder in 1997?

18 A Before, no, she was not.

19 Q What was that apartment used for
20 at the time?

21 A Teresa had borrowed some
22 furniture from me to put in there and I
23 loaned her a bedroom set because I had a
24 king sized -- not a king size, a California
25 king water bed and I had nowhere to put it

Justice -- Direct

1 so she set up the bedroom with that and I
2 gave her a couch and chair for the living
3 room and they sometimes went in there, they
4 had a stereo, a stereo system and a T. V. in
5 there.

6 Q And kids used it?

7 A Kids would go in there with
8 their friends. It was always kids at the
9 house.

10 Q Kind of used it as a play room
11 or play apartment?

12 A To listen to the loud music,
13 actually.

14 Q Do you know whether that
15 apartment was kept open or not?

16 A Yes, sir. It was open.

17 Q And I believe you also said
18 there was a washer-dryer back there. Was
19 that in the same detached apartment or was
20 that in --

21 A No, sir. The apartment is
22 directly behind the driveway. Like I'm
23 going in the driveway here and this is the
24 apartment and the washer and dryer shed is
25 in the little small back yard on this side.

Justice -- Direct

1 Q And there is no door to that?

2 A And there is no door to that.

3 Q So it's not locked?

4 A Right.

5 Q Now, moving on a little bit,

6 were you familiar with the relationship

7 between Teresa and the defendant, Wesley

8 Haught (sic)?

9 A Yes, sir.

10 MR. KULP: Your Honor, may we
11 approach for just one second, please.

12 THE COURT: Yes, sir.

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

15 MR. KULP: Thank you, your
16 Honor.

17 Q Excuse me. I believe I was
18 asking you, do you know the defendant,
19 Wesley Myers?

20 A Yes, sir.

21 Q And you were aware of his and
22 Teresa's relationship.

23 Is that correct?

24 A Yes.

25 Q Do you know how long they'd been

Justice -- Direct

1 going together?

2 A No, sir. I did not know
3 exactly. I know that she had started seeing
4 him when she was staying with me and she had
5 continued seeing him there for a while,
6 while she moved to her own house.

7 Q And did you have -- you
8 continued to have frequent contact with her
9 after her relationship with Wes?

10 A Yes, sir.

11 Q How did, how did their
12 relationship progress?

13 A Their relationship?

14 Q Yes.

15 A At first it, it seemed, it
16 seemed just fine and then it got rocky.
17 Jealousy and, and arguing.

18 Q Do you know why he was jealous?

19 A He was just jealous over, over
20 her, talking to anybody or, or just. . .

21 Q And of course with the nature of
22 her job she talked to a lot of guys. Is
23 that correct?

24 A And she was a "people person".
25 She talked to everybody.

Justice -- Direct

1 Q And how did Wes react to that?

2 A Sometimes he was okay, sometimes
3 he wasn't. And sometimes when he was
4 drinking it was very "not good".

5 Q Have you ever personally
6 observed any difficulties between them?

7 A Yes, sir, I have.

8 Q Have you personally observed any
9 time when they actually had a physical
10 altercation?

11 A Yes, sir, I have.

12 Q And when, when did that occur?

13 A One night I had stopped by there
14 to see, see her for a few minutes. I wasn't
15 going to be in there too long.

16 Q Now was this at the Mill Inn?

17 A This was at the Mill Inn.

18 Q Okay. And when was this in
19 relation to her, her death in March?

20 A The exact date I couldn't tell
21 you, but I know it was after Christmas and I
22 believe it was around, around January, the
23 first part of January.

24 Q This would be 1997?

25 A Yes, sir.

Justice -- Direct

1 Q Any way, what did you observe?

2 A Well, I walked in the back door
3 because we all usually parked in the back so
4 the patrons would park out front. So I
5 walked in the back door and stood there by
6 the end talking to her, talking to one of
7 the customers that was sitting there on the
8 end, and she and Wesley were standing at the
9 stand-up bar which is probably about -- was
10 probably about six feet, seven feet away
11 from me. And I couldn't hear what they were
12 saying. They were talking back and forth.

13 And the next thing, Wesley was
14 choking her with both hands, and I went over
15 there and I grabbed him and I told him don't
16 put his hands on my daughter in front of me
17 again. And there was several men that was
18 in the lounge that pulled them apart and he
19 said he was sorry, that he didn't mean to do
20 it. He was just so jealous over her. I
21 mean that's what he told me.

22 Q You were aware, did they have
23 frequent -- and I believe you already said
24 they had frequent arguments. Is that
25 correct?

Justice -- Direct

1 A Yes, sir.

2 Q Do you know at the end, do you
3 know what the status of their relationship
4 was?

5 A Yes, sir.

6 Q And what was that?

7 A She had been trying to break it
8 off for a while and it was not going too
9 good between them. I had a conversation
10 with Wesley at my house, sitting in my
11 dining room, about their relationship and
12 the, the abuse that was going on, and I
13 talked to her about it.

14 Q So you were familiar with it?

15 A I was very familiar with it.

16 Q Now --

17 A I had spoke to her about it the
18 night of her murder.

19 Q Now, she was of course killed on
20 March thirteen?

21 A Yes, sir.

22 Q Do you remember being contacted
23 by the North Charleston Police Department on
24 Saturday, March the fifteenth?

25 A Yes, sir.

Justice -- Direct

1 Q And how many times were you
2 contacted by the police department?

3 A Twice.

4 Q Do you know who you talked to?

5 A Lieutenant Cumbee.

6 Q And what, what did he tell you
7 the first time?

8 A The first time?

9 Q Yes, ma'am.

10 A The first time I received the
11 phone call all he told me, that someone had
12 confessed to the crime and he told me that
13 it was Wesley Myers. And that was all he
14 told me that time.

15 Q Yes, ma'am.

16 A And the second time he called me
17 was later in the afternoon, and he had said
18 that Wesley had asked him to call me, that
19 he wanted to talk to me and he wanted me to
20 come down to the police station to talk to
21 him.

22 And Lieutenant Cumbee said I did
23 not have to talk to him if I did not want
24 to, that I was under no obligations to go
25 speak to him. And I wanted to.

Justice -- Direct

1 So we set up for me to go down
2 there late that afternoon.

3 Q And did you go down to the --
4 down to headquarters?

5 A Yes, sir, I did.

6 Q And how did you get down there?

7 A My husband drove.

8 Q What happened when you got to
9 the police department?

10 A When we got to the police
11 department someone was waiting for us
12 downstairs, and we went up what they call
13 the back way, and we went upstairs. I think
14 it was to the second floor. We went up, and
15 they escorted me in a room.

16 Q Did they say anything to you?

17 A Yes, sir, they did.

18 Q What did they say?

19 A They advised me not to get angry
20 or upset, no more than I could help, and
21 not, please, not to cuss at Wesley or to go
22 across the bar -- the table after him.

23 Q So they put you in a room. Is
24 that correct?

25 A Yes, sir.

Justice -- Direct

1 Q And was Wesley already in there?

2 A No, sir.

3 Q And what happened then?

4 A That's a very trying time then.

5 I really have to think here.

6 Q Was there anybody else with you?

7 Was your husband with you, for example?

8 A No. He didn't -- he was

9 upstairs, but he was in the outer office.

10 He didn't go in there with me. There was

11 two policemen -- three policemen. Two

12 males, one female.

13 Q Okay.

14 A And Wesley and myself.

15 Q Okay. Did they bring Wesley in

16 after you got in there?

17 A To my recollection, yes, they

18 brought him in. I don't think he was

19 sitting there when I came in. I think they

20 put me in first and then they brought him

21 in.

22 Q And what happened after Wes came

23 in?

24 A It was a long table like this

25 one, in a very small room, and he went

Justice -- Direct

1 around. He was around the opposite side,
2 directly across from me, and his first words
3 to me was "Dixie, I killed Teresa."

4 Q What else did he say?

5 A He said he was sorry that he
6 killed her and he deserved the death penalty
7 and I said, "Wesley, I don't believe in the
8 death penalty," I said, "but in this case I,
9 I agree with you."

10 And I asked him why he did it,
11 and he said he didn't know. That he did it.

12 Q Did he say anything else about
13 apologizing to anyone else?

14 A Yes, sir. There was some
15 people. He said that he had -- was going to
16 talk to the press afterward, after he talked
17 to me, but he wanted to apologize to me and
18 he was going to apologize on T. V. to
19 everyone, his mom and dad, and the friends,
20 and he was going to talk to the press about
21 it and apologize over T. V.

22 The police asked me if I wished
23 to speak to them and I told them no, I did
24 not. That I didn't have to, so I did not.

25 Q Did you say anything to him or

Justice -- Direct

1 do you remember?

2 A To?

3 Q To Wes other than what you've
4 already testified to.

5 A To that, no. That's -- that was
6 our conversation there.

7 Q What did you do after this
8 encounter with Mr. Myers?

9 A They took Wesley out first and I
10 had asked to see the autopsy pictures and
11 they advised me against it.

12 Q And --

13 A But --

14 Q -- you left the headquarters
15 soon after that?

16 A They showed them to me, because
17 if they had showed them to me before he left
18 there, it probably would have been a little
19 different. But they showed me the pictures.

20 Q Could you please answer any
21 questions Mr. Kulp may have for you.

22 A Yes, sir.

23

24

25

Justice -- Cross

1 CROSS-EXAMINATION BY MR. KULP:

2 Q Thank you, ma'am. May it please
3 the Court.

4 We've seen each other in court
5 before. I'm very sorry again about your
6 loss.

7 MR. KULP: Just mark a couple
8 photos.

9 (Whereupon, marked for
10 identification were Defendant's Exhibit
11 Nos. 31 and 32, photographs.)

12 THE COURT: They're marked.

13 MR. KULP: I know.

14 THE COURT: Go ahead.

15 MR. KULP: Thank you, sir. May
16 I approach the witness, please, your
17 Honor.

18 Q Miss Justice, I want to hand you
19 now what's been marked as defendant's number
20 thirty-one and thirty-two, two photographs,
21 and ask if you can identify these, ma'am,
22 what's depicted therein?

23 A One of them is the front of her
24 house with the driveway and the "sort of"
25 apartment in the back. And the other is the

Justice -- Cross

1 apartment and the back, with the door
2 opened.

3 Q All right. And as exhibit
4 number thirty-one indicates, if you pulled
5 and parked in that driveway, so that
6 building is readily visible to you there --

7 A You can see --

8 Q It's not hidden or anything?

9 A No, sir, it's not.

10 MR. KULP: Okay. We'd offer
11 these in evidence at this time.

12 MR. DURANT: I don't think I
13 have any objection, but I haven't seen
14 them yet.

15 MR. KULP: Excuse me.

16 MR. DURANT: Okay.

17 (Whereupon, entered into
18 evidence were Defendant's Exhibit Nos.
19 31 and 32, photographs.)

20 MR. KULP: May I publish them?

21 THE COURT: Yes, sir.

22 Q Now you, Miss Justice, you
23 talked about you owned the bar prior to the
24 time you gave it away after the death of
25 your daughter?

Justice -- Cross

1 A Yes, sir. Yes, sir.

2 Q And you said that, I believe you
3 testified -- now did you have occasion to go
4 to the Mill from time-to-time --

5 A Yes, sir --

6 Q -- prior to the time --

7 A -- I did.

8 Q And among the patrons who would
9 come there, some of the men, did you know
10 Paul? Paul?

11 A I wasn't really, really friendly
12 with Paul but I believe he rented the
13 apartment from her for a little while.

14 Q Okay. And how about a fellow
15 known as Outback Jack or Jack?

16 A I know Jack.

17 Q They pretty good looking fellows
18 or attractive?

19 A Not to me.

20 Q Okay. Now, the incident that
21 you talked about where you testified to the
22 jury that you saw Wesley grabbing Teresa by
23 the throat --

24 A Yes, sir.

25 Q -- were they, I think you said

Justice -- Cross

1 they were, he was drinking at the time?

2 A Yes, sir.

3 Q And do you know if Teresa had
4 been drinking at the time?

5 A She probably was. She had a, a
6 beer.

7 Q And knowing your daughter as you
8 did, would, would, would eighteen beers be
9 an excessive amount of beer for her?

10 A Was she -- would it cause her to
11 be argumentative? No.

12 Q Okay. And how was Wes when he
13 wasn't drinking? He was a likeable, fairly
14 nice fellow, was he not?

15 A Yeah. Wesley, when he wasn't
16 drinking, he was fine. I mean he's been out
17 to my house and we sat down and discussed
18 when he came out of treatment and he told
19 me, you know, that he had -- before he went
20 in treatment that he had hit his mother, his
21 father slept with a gun under his pillow.

22 MR. KULP: Your Honor, I have a
23 matter of law to take up at this time.

24 THE COURT: Go to your room just
25 a minute.

Justice -- Cross

1 (The jury leaves the courtroom
2 at 11:28 a. m.)

3 THE COURT: Yes, sir.

4 MR. KULP: I know it was my
5 question, your Honor, but it certainly
6 wasn't responsive to my question. I
7 asked if he was a pretty nice guy when
8 he was not drinking.

9 THE COURT: Well, you asked the
10 question, you get the answer. You
11 better be more specific if you don't
12 want to get -- this is a lady who you
13 asked how was your client, and she's
14 telling you about the client. And I
15 assume that she got all this
16 information from him, so you better be
17 a little more specific, counselor.

18 MR. KULP: Well, since it wasn't
19 responsive, we would move to strike it
20 as non-responsive to the question.

21 MR. DURANT: Well, your Honor --

22 THE COURT: Wait a minute. Hold
23 it a minute, Solicitor.

24 Tell me the question.

25 (Whereupon, the last question is

Justice -- Cross

1 read back by the court reporter.)

2 THE COURT: Okay. She just
3 expanded on your question, so what you
4 want me to tell this jury if they heard
5 that?

6 MR. DURANT: Your Honor, they
7 always told me not to ask a question
8 that you didn't know --

9 THE COURT: When you win, you
10 ought to be quiet.

11 Tell me what you want me to tell
12 them.

13 MR. KULP: Tell them that --
14 well, tell them nothing. We'll move
15 on.

16 THE COURT: All right. Bring
17 the jury in. Better be a little more
18 specific.

19 (The jury enters the courtroom
20 at 11:32 a. m.)

21 THE COURT: Go ahead.

22 Q May it please the Court, your
23 Honor. Miss Justice, you testified that
24 Mr. Myers was brought in to see you at the
25 police station?

Justice -- Cross

1 A Yes, sir.

2 Q Was he handcuffed at that time,
3 if you recall?

4 A I don't believe so. I can't say
5 for sure, but I don't believe he was.

6 Q Was he wearing a folding knife
7 that you observed on the side of his belt?

8 A I did not see one.

9 Q Now when you testified to the
10 jury that he said he killed her --

11 A Yes, sir.

12 Q -- and that he deserved the
13 death penalty?

14 A Yes, sir.

15 Q And he said, you testified I
16 believe, he didn't know why?

17 A Over his jealousy, but he didn't
18 know why at the time that he did it.

19 Q Well --

20 A He -- oh, may I? Can I, I mean?

21 Q Yes.

22 A He said that he did it but he
23 was very jealous over her and that he didn't
24 know why he did it at the time, but he was
25 jealous.

Justice -- Cross

1 Q And so you now recall that
2 that --

3 A Yes.

4 Q -- that he said that, too?

5 A Well, I said that earlier, that
6 he was very jealous.

7 Q No. I was asking what he said.

8 A Oh.

9 Q And did he say that he was
10 jealous of Alan White?

11 A No, sir, he did not.

12 Q And did you testify on direct
13 examination that he said to you that "He
14 didn't know he did it"?

15 A No, sir. He did not say he did
16 not know. He said he did it.

17 MR. KULP: All right. Thank you
18 very much.

19 MR. DURANT: I have nothing
20 further of this witness, your Honor.

21 THE COURT: You can come down.
22 Thank you.

23 MR. DURANT: Thank you,
24 Miss Justice.

25 THE COURT: Call your next

Justice -- Cross

1 witness.

2 MR. DURANT: State would call
3 Carla Lothery.

4

5

6 C A R L A L O T H E R Y,
7 having been called as a witness, is
8 duly sworn and testifies as follows:

9 DIRECT EXAMINATION BY MR.

10 DURANT:

11 (Whereupon, marked for
12 identification was State's Exhibit No.
13 42, a videotape.)

14 MR. DURANT: Your Honor, could
15 we just approach.

16 THE COURT: Sure.

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

19 Q Good morning, Miss Lothery. How
20 are you?

21 A Fine.

22 Q Could you please -- I believe
23 you already have, tell the jury your name.

24 A Carla Lothery.

25 Q And where are you currently

Lothery -- Direct

1 residing?

2 A I live in Arlington, Virginia.

3 Q And what do you do up in
4 Arlington, Virginia?

5 A I am a media trainer for a
6 production company in Washington, D. C.

7 Q And in March of 1997 where were
8 you employed?

9 A At W. C. S. Channel 5 T. V. here
10 in Charleston.

11 Q And what, what did you do at
12 Channel 5?

13 A I was a news reporter.

14 Q And in your capacity as a news
15 reporter for Channel 5, did you have an
16 opportunity to interview Wesley Myers on
17 Saturday, March fifteen, 1997?

18 A Yes.

19 Q And where did that interview
20 take place?

21 A It was outside the North
22 Charleston Police Department.

23 Q Over on Lacross Road, North
24 Charleston?

25 A Yes.

Lothery -- Direct

1 Q Okay. How did you happen to be
2 at the police department that morning?

3 A It was that evening and --

4 Q Or that evening?

5 A -- and we had a, we received a
6 phone call from Lieutenant Melvin Cumbee
7 letting us know that they had made an arrest
8 in the Hanahan murder or the fire and
9 murder, and he said that you, that the
10 defendant or the suspect may want to make a
11 comment. And we went up to the, to the
12 police department to wait outside.

13 Q Okay. And do you know if your
14 station had called Lieutenant Cumbee
15 previously and made a request to be kept
16 advised of --

17 A Yes.

18 Q -- the status of this case?

19 A As soon as it happened, with
20 most cases of public interest that are
21 slightly different or, or more newsworthy
22 than others, we let police agencies know
23 which cases we're interested in so that they
24 will give us a call when they do make
25 arrests in those cases.

2076

Lothery -- Direct

1 Q Okay. And that's what happened
2 in this case?

3 A Yes.

4 Q And where were you -- you were
5 set up outside the door to the North
6 Charleston Police Department. Is that
7 correct?

8 A Yes.

9 Q And there were cameras there
10 from all three local channels I believe. Is
11 that also correct?

12 A Yes.

13 Q Now, could you describe to the
14 jury just what happened when the defendant
15 came out the back door.

16 A When he came out the door he was
17 escorted by a few officers. And everyone
18 kind of came out, saw us, we saw them, there
19 was a very big awkward pause, and since I
20 was the only reporter there aside from the
21 camera crews, then I just threw out the
22 first question, "Did you do it?" And then
23 just continued to ask questions as, as he
24 answered them.

25 Q Now, did the police stop him in

Lothery -- Direct

1 front of you?

2 A No. It was everybody -- stopped
3 and it was just -- it was a very awkward,
4 awkward moment. But everyone stopped and
5 kind of just looked at each other and, you
6 know, I said okay, well, I'll break the
7 silence and do my job.

8 Q Okay. And so you went up with
9 the microphone. Is that correct?

10 A Yes.

11 Q Were you the only one that asked
12 questions, to your knowledge?

13 A Yes.

14 Q And if you would just relate to
15 the jury what you remember asking and what
16 you remember the defendant responding?

17 A Okay. I asked "how many
18 times" -- and I'm not sure of the order of,
19 of when it all came in, but I know that I
20 asked "how many times did you strike her?"
21 And he said he didn't remember. I asked if
22 he was under the influence of drugs or
23 alcohol. He said no, he was not.

24 I said "how did this all
25 happen?" And it was something to the effect

Lothery -- Direct

1 of it was a part of a break-up and they were
2 arguing.

3 I asked did he talk to -- either
4 did he speak to the victim's family or did
5 he talk to the victim's family. I'm not
6 exactly sure how I worded the question. But
7 he said that he had talked to her mother and
8 said that she was very sorry -- that he was
9 very sorry about the crime that he committed
10 and said it was a terrible thing that he had
11 done. He was just very, very sorry.

12 And I said, "Well, what did she
13 say?" And he said, "She said she felt sorry
14 for me." And that was pretty much it.

15 Q Now, at any time did the police
16 tell you to ask questions of this defendant?

17 A No.

18 Q Did the statements he gave you
19 appear to be voluntarily given?

20 A Yes.

21 Q Did it appear to you in any way
22 that the police were making him talk to the
23 media?

24 A No.

25 Q Now, you previously viewed this

Lothery -- Direct

1 video which has now been marked as State's
2 exhibit number forty-two. Is that correct?

3 A Yes.

4 Q A compilation of the media
5 interview of Mr. Myers on March the
6 fifteenth. And that just contains excerpts
7 from your interview. Is that correct?

8 A Right.

9 Q And does it freely and
10 accurately depict what happened out there
11 that day?

12 A Yes.

13 MR. DURANT: Your Honor, the
14 State would move State's exhibit number
15 forty-two into evidence.

16 THE COURT: Subject to your
17 previous objections.

18 MR. KULP: Yes, your Honor.

19 (Whereupon, entered into
20 evidence was State's Exhibit No. 42, a
21 videotape.)

22 MR. DURANT: Your Honor,
23 permission to publish the tape to the
24 jury.

25 THE COURT: Go ahead.

Lothery -- Direct

1 MR. DURANT: Judge, we need the
2 remote control.

3 THE COURT: Anybody know where
4 the remote control is?

5 MR. DURANT: No. I need. . .

6 Your Honor, could I have a
7 moment to try find the remote control?

8 THE COURT: Go ahead.

9 MR. DURANT: If this jury wants
10 to step out, this would be a good time
11 to do so.

12 THE COURT: They'd rather sit
13 there than have to go back there.

14 (Whereupon, State's Exhibit No.
15 42, videotape, was played for the
16 jury.)

17 Q That was you asking those
18 questions on that tape, Miss Lothery?

19 A Yes.

20 Q And those were the defendant's
21 responses, obviously?

22 A Yes.

23 MR. DURANT: Could you please
24 answer any questions that Mr. Kulp may
25 have for you.

Lothery -- Direct

1 MR. KULP: May it please the
2 Court. I don't know, are we going to
3 cut the rest of the lights on?

4

5

6 CROSS-EXAMINATION BY MR. KULP:

7 Q Now, when, when -- you said
8 Lieutenant Cumbee called you?

9 A Yes.

10 Q Right. And he told you that
11 they were going to "walk him". Right?

12 A Uh-huh.

13 Q And also he told you, did he
14 not, "He says he has something to say"?

15 A He said he may have -- he said
16 he may want to make a statement.

17 Q Okay. Do you recall testifying
18 in a prior proceeding in this case?

19 A Yes.

20 Q Have you had a chance to look at
21 the transcript?

22 A Yes.

23 Q You have?

24 A Yes.

25 MR. KULP: May I approach the

2070

Lothery -- Cross

1 witness, your Honor.

2 Q Direct your attention here to
3 page 105.

4 A Uh-huh.

5 Q Line twenty-one.

6 A Uh-huh.

7 Q Does that refresh your
8 recollection?

9 A Uh-huh.

10 Q So in fact you did, you did
11 testify that "he says he has something to
12 say." Is that a better, more accurate
13 description?

14 A Yes.

15 Q And now you testified to, to
16 here today that it was a bit awkward?

17 A Yes.

18 Q And, and it was awkward, wasn't
19 it, because that doesn't usually happen,
20 that you have that kind of a news
21 opportunity for a person to be paused there
22 for you to ask him questions?

23 A It wasn't awkward because that
24 was a rare opportunity. It was just -- it
25 was an awkward, just like you have an

Lothery -- Cross

1 awkward silence between people,
2 conversation, or, or whatever. It was just
3 an awkward silence.

4 We get opportunities, as part of
5 the news media, we get opportunities to do
6 that if either a defendant is or a suspect
7 is taken off-guard by us or if because he's
8 not expecting us to be there or for whatever
9 reason. I mean I'm not going to "mind
10 rape", but we do get opportunities like
11 that. It was just an awkward pause.

12 Q And did the police whisk him off
13 to a car as soon as he came out the door?

14 A No.

15 Q It pretty much went as you saw
16 there in the video?

17 A Uh-huh.

18 Q And so much so in fact that
19 you're able to, and the other reporters, ask
20 him any question you wanted until everybody
21 ran out of questions. Correct?

22 A Sure.

23 Q That's when they took him over
24 to the car after that. Correct?

25 A Yes. But I've only seen them

Lothery -- Cross

1 rush defendants or rush suspects to a car in
2 cases of juveniles. I've never seen that
3 happen with an adult. They go at whatever
4 the pace of the person, the suspect is.

5 Q Yes, ma'am. Do you have -- when
6 you worked here did you have a good
7 relationship with the police. Correct?

8 A Yes.

9 Q And that's kind of symbiotic.
10 In other words, they'll cover things for
11 you -- I mean they'll call you about stories
12 and, and you work well with them in terms of
13 getting a scoop and a first exclusive and so
14 forth?

15 A I don't know about a scoop or a
16 first exclusive. It's more of a -- we like
17 to establish a working relationship with
18 them in that we obey their rules when we're
19 covering a crime scene in terms of obviously
20 staying behind police tape, waiting for them
21 to give us the information as opposed to
22 trying to go around them to find
23 information, and in doing so when we request
24 just keep us abreast of certain arrests in
25 X, Y, Z case and so forth, then they often

Lothery -- Cross

1 will do that. There are cases where they
2 don't. There are cases when they do.

3 Q Right. And when you talked to
4 Lieutenant Cumbee did he ever say to you
5 that even though he says he has something to
6 say, we have carefully and dutifully and
7 extensively advised him not to talk to you?
8 He didn't tell that you, did he?

9 A No.

10 MR. KULP: Thank you. That's
11 all I have.

12 MR. DURANT: I have nothing
13 further of this witness. Thank you,
14 Miss Lothery.

15 THE COURT: Can she be excused?

16 MR. KULP: I would ask that
17 she --

18 THE COURT: You can stay or go,
19 whichever you prefer.

20 THE WITNESS: Okay. Thank you.

21 MR. KULP: I may like to speak
22 to her briefly, your Honor, about
23 another matter, evidentiary matter, but
24 we'll release her as soon as we can.

25 THE COURT: Go ahead.

Lothery -- Cross

1 MR. DURANT: In this case?

2 MR. KULP: Pardon?

3 THE COURT: Does it have to do
4 with this case?

5 MR. KULP: Yes, sir.

6 MR. DURANT: State would call
7 Raymond Alan White.

8 THE COURT: Hold just a minute.
9 Do you want to talk to her now?

10 MR. KULP: Yes, sir. I mean
11 I --

12 THE COURT: Well, you don't want
13 to send the jury out?

14 MR. KULP: No, sir. I just
15 wanted --

16 THE COURT: Go ahead.

17 MR. KULP: Sir?

18 THE COURT: Take her in chambers
19 if you want to.

20 MR. KULP: Let's go in chambers
21 again for a minute, your Honor.

22 THE COURT: I thought you wanted
23 to talk to that witness.

24 MR. KULP: Here, I'll tell you.
25 (Whereupon, there was an

Lothery -- Cross

1 off-the-record bench conference.)

2 MR. KULP: Witness can be
3 released, your Honor. No problem.

4 THE COURT: Have a good flight
5 back.

6 MR. KULP: Thank you. I
7 appreciate it. Thank you,
8 Miss Lothery.

9 THE COURT: Call your next
10 witness.

11 MR. DURANT: State would call
12 Raymond Alan White.

13

14

15

16 R A Y M O N D A L A N

17 W H I T E, 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. DURANT:

21 Q Mr. White, how old are you?

22 A Thirty-nine.

23 Q And you go by the name "little
24 Alan" a lot of times, don't you?

25 A Pretty much, yes, sir.

White -- Direct

1 Q Where are you currently
2 employed?

3 A M. U. S. C.

4 Q And what do you do for the
5 Medical University?

6 A Support services.

7 Q How long have you been employed
8 by the Medical University?

9 A Probably four years.

10 Q Now, in March of 1997 where were
11 you employed?

12 A Mill Inn.

13 Q And I want to direct your
14 attention specifically to March twelve of
15 1997, the day before Teresa was killed. Did
16 you work that day?

17 A No. I was working -- no. I was
18 off.

19 Q But did you happen to be at the
20 Mill Inn anyway?

21 A Yes, sir.

22 Q Okay. Do you recall, do you
23 recall writing a note on the victim's car
24 that day?

25 A Yes, sir.

White -- Direct

1 Q And that note was written where
2 on the victim's car?

3 A On the front windshield.

4 Q And that was done some time
5 during the day while you were at the Mill
6 Inn?

7 A Yes, sir.

8 Q Because I believe you, I believe
9 you said you left about seven that evening.
10 Is that correct?

11 A Right.

12 Q Do you recall what the words
13 were that you wrote on her car?

14 A "Love you, baby. Do me later.
15

16 Q Okay. And. . .

17 (Whereupon, marked for
18 identification were State's Exhibit
19 Nos. 43 through 47, photographs.)

20 MR. KULP: No objection, your
21 Honor, once they're marked.

22 THE COURT: All right.

23 MR. DURANT: And I would offer
24 State's forty-three through forty-seven
25 I believe without objection, your

White -- Direct

1 Honor.

2 MR. KULP: That's correct, your

3 Honor.

4 THE COURT: All right.

5 (Whereupon, entered into

6 evidence were State's Exhibit Nos. 43

7 through 47, photographs.)

8 Q Alan, I hand you those State's
9 exhibits. You've seen those previously. Is
10 that correct?

11 A Correct.

12 Q And that is the latent lifts of
13 those words off of the windshield of her
14 car?

15 A Yes, sir.

16 Q And you wrote that?

17 A Yes, sir.

18 Q And you did that when you were
19 there on Wednesday?

20 A Yes, sir.

21 Q Now, later when you found out
22 that -- the next day, Thursday, when you
23 found out that the Mill had burned --

24 A Right.

25 Q -- were you -- did you happen to

White -- Direct

1 be around the area?

2 A Yes, sir.

3 Q I believe a bunch of people were
4 at Shores. Is that correct?

5 A Right.

6 Q Were you one of those folks?

7 A Yes, sir.

8 Q And were the police there
9 talking to a lot of folks?

10 A Yes, sir.

11 Q Okay. Did they -- let me ask
12 you this. You did live at [REDACTED]
13 at the time. Is that correct?

14 A Right.

15 Q Now, were you one of the ones
16 that the police talked to that day --

17 A Yes, sir.

18 Q -- at Shores?

19 As a matter of fact they took a
20 couple of statements from you, did they not?

21 A Yes, sir.

22 Q And I believe one of those
23 statements they took at 7:30 in the morning?

24 A Right.

25 Q And one of those statements they

White -- Direct

1 took about 5:30 that afternoon?

2 A Right.

3 Q Is that correct?

4 A Yes, sir.

5 Q In any, either of those
6 statements did you tell the police about
7 writing this stuff on her windshield, or if
8 you recall?

9 A Well, when they, when they
10 brought that out, I confirmed that that's
11 what I wrote.

12 Q Okay. And how did that happen?
13 Did they come back to see you sometime?

14 A I won't -- I want to say late,
15 late that night, that evening.

16 Q That Thursday night?

17 A Yes, sir. I believe so.

18 Q And tell us what happened.

19 A He brought it out and, and
20 wanted to know if that's what I wrote.

21 Q And what you're talking about
22 are those things we just saw the pictures
23 of?

24 A The pictures.

25 Q Okay. And what did you tell

White -- Direct

1 them?

2 A I said yes, sir, I wrote it.

3 Q Okay. Is that the only thing
4 they asked you about?

5 A That's right.

6 Q And after that -- well, let me
7 ask you this question. Same night you --
8 day you wrote that stuff on her car did you
9 write a note to Teresa that was left inside
10 the bar?

11 A Yes, sir.

12 Q And do you remember what was in
13 the note?

14 A Not right offhand.

15 Q Do you remember the gist or the
16 substance of what was in there?

17 A Pretty much the same thing that
18 was on the, the pictures.

19 Q Same kind of stuff that was on
20 the car?

21 A Yes, sir.

22 Q And where did you leave that
23 note?

24 A Behind the bar.

25 Q And where behind the bar?

White -- Direct

1 A Right there at the cash
2 register.

3 Q Now, and you signed it, to the
4 best of your recollection?

5 A I would say so, yes, sir.

6 Q Now, did the police ever ask you
7 about that note on the Thursday night that
8 they asked you about the writing on the car?

9 A No, sir.

10 MR. KULP: I'm sorry. Please
11 repeat the question.

12 Q I'm asking did the police ever
13 ask you about the note you left inside --

14 A No, sir.

15 Q -- of the bar on the Thursday
16 night when they brought you down to see if
17 that's what you'd written on the note?

18 A No, sir.

19 Q Did they ask you about it on
20 Friday?

21 A No, sir.

22 Q Did they ask you about it on
23 Saturday?

24 A No, sir.

25 Q In fact isn't it true, sir, that

White -- Direct

1 nobody asked you about --

2 MR. KULP: I think the rule of
3 leading is really --

4 MR. DURANT: Okay.

5 Q When did, when were you
6 contacted about the police -- by the police
7 about that note?

8 A April of last year.

9 Q And that was by this man right
10 here?

11 A Yes, sir.

12 Q He took a statement from you.
13 Is that correct?

14 A Yes, sir.

15 Q And what did you tell him at
16 that time?

17 A That I had left a note.

18 Q And prior to him taking that
19 statement from you in April of last year --
20 this would be 2000. Is that correct?

21 A Right.

22 Q Prior to that time had anybody
23 from the police department ever asked you
24 about leaving a note in that bar?

25 A No, sir.

White -- Direct

1 Q Thank you, Alan. Could you
2 please answer any questions Mr. Kulp may
3 have for you.

4

5

6

7 CROSS-EXAMINATION BY MR. KULP:

8 Q Mr. White, since this past
9 Monday, have you talked to anyone about this
10 case in any respect?

11 A No, sir.

12 Q No one?

13 A Well, minor little small. You
14 know, when was I going, when are you going.

15 Q So you talked to other witnesses
16 in this case?

17 A No. Well, they may be a witness
18 but it was nothing for what I would say.

19 Q All right. If they may have
20 been a witness, who were they?

21 A Billy King. Paul McKeithan.

22 Q And who?

23 A Paul McKeithan.

24 Q Anybody else? Talk to any
25 police officers?

White -- Cross

1 A No, sir.

2 Q Well, you're in court now,

3 Mr. White. Will you talk to me now?

4 A Well, I have to now.

5 Q Now, that note or writing that
6 you wrote on the windshield that the
7 solicitor has asked you about that's
8 depicted in exhibits forty-seven, forty-six,
9 forty-five, forty-four, forty-three, as best
10 you can tell in looking at those, those are
11 how what you wrote reads after it was dusted
12 and lifted off the windshield. I mean
13 that's not photographed as it was on the
14 windshield. Correct?

15 A As in?

16 Q What's in those pictures doesn't
17 show what was written on the windshield, on
18 the windshield, does it? Do they?

19 A It was wrote on the windshield.

20 Q No. I'm asking you about the
21 pictures.

22 A Right.

23 Q You see a windshield in those
24 pictures? That's a bunch of paper and tape,
25 isn't it?

White -- Cross

- 1 A Probably so, yeah.
- 2 Q Okay. Now, what did you write,
3 use to write it on the windshield with?
- 4 A Probably like a grease pencil
5 or. . .
- 6 Q You don't specifically remember?
- 7 A Something that would stay on the
8 windshield.
- 9 Q You don't know what it was?
- 10 A I would say a grease pencil.
- 11 Q Okay. Did you have a grease
12 pencil with you?
- 13 A The bar did.
- 14 Q That's what I mean. They did at
15 the bar. Okay. And do you remember what
16 color it was?
- 17 A White. I would say white.
- 18 Q Okay. And what time that day
19 did you write that on the windshield?
- 20 A Probably that evening.
- 21 Q You know what time?
- 22 A Not specific time.
- 23 Q And had you been drinking that
24 day?
- 25 A I'd had a few.

White -- Cross

1 Q What's "a few"?

2 A Four or five.

3 Q Okay. No more than five beers.

4 Now, you lived down at [REDACTED]

5 A Yes.

6 Q Just down the street?

7 A Yes, sir.

8 Q Now, that next morning you

9 responded to the scene. Correct?

10 A Right.

11 Q And normally it was -- I mean
12 that bar opened pretty early in the morning,
13 like seven a. m. Correct?

14 A No. Around nine.

15 Q Around nine. And people
16 sometimes come in there and start drinking
17 in the early hours of the morning, nine
18 o'clock, ten o'clock?

19 A Yes, sir.

20 Q And that's why you had a job and
21 you worked there at that hour. Now when you
22 went in there you had to be up there at
23 seven o'clock, correct, to open up?

24 A On Wednesdays?

25 Q Thursday.

White -- Cross

- 1 A Not at seven o'clock.
- 2 Q What time did you have to be
- 3 there?
- 4 A I didn't have to be there till
- 5 nine.
- 6 Q Okay. What time did you go on
- 7 up there from [REDACTED]
- 8 A I got there around about seven
- 9 o'clock.
- 10 Q Okay. And did you walk up
- 11 there?
- 12 A Yes, sir.
- 13 Q Okay. And did you go up there
- 14 because you heard fire engines or because
- 15 you were heading to work?
- 16 A Well, I'd heard on the radio
- 17 that it was a bunch of commotion, but I
- 18 always went early to clean up and get
- 19 everything done before people started coming
- 20 in.
- 21 Q Okay. And, Mr. White, you had a
- 22 key to the bar, didn't you?
- 23 A Yes, sir.
- 24 Q That's how you would get in?
- 25 A Right.

White -- Cross

1 Q And you left a note saying, "Do
2 me later, baby." Correct?

3 A Yes, sir.

4 Q You refused to talk to me for
5 four years, haven't you?

6 A Yes, sir.

7 Q And when you left that note was
8 it a joke or did you really want Miss Haught
9 to "do you later"?

10 A All it was, was a joke.

11 Q Just a joke, and everybody knew
12 that. Correct?

13 A That's right.

14 Q In fact you were at the bar that
15 day when Wesley came in at lunch time.
16 Correct? Or in the afternoon?

17 A I, I vaguely remember him coming
18 in.

19 Q You saw him there. Now, let's
20 jump on over there from there, to the, to
21 this paper note. Now, you wrote it on -- I
22 assume that was also a joke?

23 A Yes, sir.

24 Q All right. And you wrote it on
25 a -- what kind of paper?

White -- Cross

1 A I would say like a pink or
2 lavender paper.

3 Q Could be lavender. What kind of
4 paper? Like a sticky pad or a --

5 A Like a memo -- memo pad.

6 Q Memo pad. And what kind of pen
7 did you use, you remember?

8 A I would say a regular pen.

9 Q Like a ballpoint, and you put it
10 on the bar or on the cash register or where?

11 A On the counter beside the cash
12 register.

13 Q Okay. And what time did you do
14 that, Mr. White?

15 A Probably Tuesday evening for her
16 to see Wednesday.

17 Q Okay. And so you put it there
18 Tuesday evening?

19 A I would say Tuesday evening for
20 her to see Wednesday morning because I was
21 off Wednesday. I didn't have to be there.

22 Q Okay. Okay. So you didn't put
23 it there Wednesday, Wednesday before you
24 went home at seven. You put it there the
25 day before that?

White -- Cross

1 A The Tuesday before.

2 Q Okay. So it had been there that
3 whole time?

4 A I would say so, yeah.

5 Q So the note had been there since
6 Tuesday night, all the way through
7 Wednesday, and then the fire happened on
8 Thursday or you went back up there at seven
9 o'clock on Thursday morning?

10 A Yes, sir.

11 Q Just to clarify that. Now, do
12 you remember specifically what the note
13 said?

14 A No, sir.

15 Q You remember if you signed it?

16 A I most likely probably did.

17 Q But you're not sure?

18 A I'd say yeah.

19 Q All right. Everybody knows you
20 around there, don't they?

21 A Yes, sir.

22 Q And everybody -- you knew Teresa
23 very well?

24 A Yes, sir.

25 Q Okay. And you had to fill out

White -- Cross

1 forms at the bar before or written her notes
2 before, whatever?

3 A Yes, sir.

4 Q And but you signed your name to
5 the note?

6 A Yes, sir.

7 Q Okay. Do you know if she could
8 recognize your handwriting or not?

9 A If I could?

10 Q Do you know of your own
11 knowledge if she could probably recognize
12 your handwriting?

13 A I would say so, yeah.

14 Q Okay. Right. And having worked
15 there, do you recall there being a cash box
16 that was used for purposes of opening up in
17 the morning?

18 A Yes, sir. Well, not a cash box.

19 Q A what?

20 A Like a zip -- well, any kind of
21 bag she can get a hold to.

22 Q Okay. But not like, you know,
23 like you see these things. I guess people at
24 a flea market or a fair use, a little silver
25 or gray-colored or brown metal kind of box

White -- Cross

1 that opens up?

2 A She did carry a -- a cash -- a
3 box with a -- a cash box.

4 Q Okay. Describe it for the
5 ladies and gentlemen of the jury.

6 A I would, I would say it was
7 gray.

8 Q Gray. Kind of flat?

9 A Couple inches tall.

10 Q I'm sorry?

11 A Couple inches tall.

12 Q Okay. And did it have a little
13 button on the front to open it up with?

14 A Yes, sir.

15 Q Yeah. And it had a tray in
16 there for money or it didn't have a tray?

17 A (The witness nods head.)

18 Q It had a tray. And what was it
19 used for, Mr. White?

20 A For opening up.

21 Q For opening up in the morning.
22 So that was your bank, wasn't it?

23 A Right.

24 Q Okay. So when you got there in
25 the morning, you would go get the bank, open

White -- Cross

- 1 it up, put it in the cash register?
- 2 A On my working days.
- 3 Q Yes, sir. On your working days.
- 4 And where was that bank kept?
- 5 A Most of the time in the freezer.
- 6 Q Okay. Which freezer? The
- 7 freezer in the middle of the bar above the
- 8 refrigerator or the freezer that didn't work
- 9 any more that was used as a storage area?
- 10 A Around the storage area.
- 11 Q Right next to the cash register?
- 12 A No. Around the corner in the,
- 13 in the, in the part that didn't get used.
- 14 Q Okay. Let me show you State's
- 15 exhibit number one. Do you -- take a minute
- 16 and study it. I know you -- have you seen
- 17 this before?
- 18 A No.
- 19 Q Has the solicitor showed this to
- 20 you before?
- 21 A No.
- 22 Q Okay. Take a minute and study
- 23 it and if you kind of orient yourself and
- 24 let me know if in fact you recognize the
- 25 pool table, half-wall, bar as a, as a, not

White -- Cross

1 to scale but a rough layout of the floor
2 plan of the Mill Inn, and when you're
3 talking about this area where that cash box
4 was kept, can you please tell the ladies and
5 gentlemen of the jury, point to where that
6 would have been, where you're talking about
7 when you say freezer.

8 A I'm going to say it was in the
9 ballroom.

10 Q You're not sure? Wait a minute.
11 Let's --

12 MR. DURANT: That's what he
13 said.

14 A Yes, sir.

15 Q I'm sorry. Didn't mean to
16 interrupt him. I apologize. Go right
17 ahead.

18 A In the ballroom.

19 Q In the ballroom. And as a
20 matter of fact, that's what you used to open
21 up every morning?

22 A Right.

23 Q How many mornings had you opened
24 using, rough estimate, had you used that
25 cash box? Fifty? A hundred?

White -- Cross

1 A Good many.

2 Q So out of those times that you
3 had used it, where did you get the cash box
4 from? Surely you remembered every morning
5 when you walked in where you got it from?

6 A From the freezer.

7 Q All right. Point to the ladies.
8 and -- point on the map, on the chart here
9 to the ladies and gentlemen of the jury. I
10 mean the ballroom area is pretty big. This
11 is something you did every morning, right?

12 A There would be a wall and you
13 come around, you going to come around that
14 wall, and the frig -- freezer's going to be
15 there.

16 Q I think he's --

17 MR. DURANT: Let me ask him, if
18 I may.

19 THE COURT: See if you can
20 orient him.

21 MR. DURANT: This is the back of
22 the bar, sir. This is the back side of
23 the bar.

24 MR. KULP: This is the front
25 door, right here.

White -- Cross

1 MR. DURANT: This is, this is
2 the front wall to the bar.

3 MR. KULP: Side wall.

4 MR. DURANT: This is the back
5 wall to the bar. Where would it be in
6 relation --

7 MR. KULP: Right.

8 A I can't picture. These the
9 front doors?

10 Q Okay. I understand. I'll fix
11 it. I didn't know. I thought he had. . .

12 All right. Sometimes it works
13 for people to do like this. How about that?
14 Here's the street. Here's the doors rarely
15 used. Here's the door people used to come
16 in. The bar is here. The stools.
17 Half-wall. Pool table. Pool table. Video
18 poker machines. Dance area. And back door
19 with the two-by-four across it. And maybe
20 another door over here rarely used. Kind of
21 got oriented now?

22 A If you would come in this back
23 door, and you going to be on the same side
24 as the ballroom.

25 MR. DURANT: Maybe you want to

White -- Cross

1 show him State's number eight.

2 Q Okay. Let me show you State's
3 exhibit number eight and ask you if you can
4 identify that?

5 A Can't see.

6 Q You need my glasses? Still
7 confused?

8 A I see a bunch of groceries.

9 Q Pardon me?

10 A Groceries.

11 Q Okay. Thank you. Now, that,
12 that morning you, you spoke with the police.
13 They came in and they took a statement from
14 you, and I believe the first time they took
15 a statement from you was about thirty
16 minutes after you got there.

17 A Probably. Yes, sir.

18 Q And do you recall that Officer
19 or Detective Michael Pancake took your
20 statement?

21 A Yes, sir.

22 Q And in that statement you
23 indicated the time you arrived. Is that
24 correct?

25 A Yes, sir.

White -- Cross

1 Q Excuse me. The day before you
2 indicated the time you arrived and that you
3 stayed there until about six or seven p. m.,
4 or then you left about seven p. m. and that
5 you did not come back until that morning, as
6 you told the ladies and gentlemen of the
7 jury, you came back at seven a. m.

8 A Yes, sir.

9 Q And then the police came back
10 and interviewed you later that day, at 5:30
11 in the afternoon. Correct?

12 A Yes, sir.

13 Q And they took another statement
14 from you?

15 A Yes, sir.

16 Q And at that time you indicated
17 that you'd been talking with Tammy and
18 Margaret there at the scene?

19 A Yes, sir.

20 Q And you did in fact talk with
21 Tammy and Margaret?

22 A I'm sure everybody talked.

23 Q Okay. And you were there at, as
24 a lot of people were, at the scene of the
25 fire from the time you arrived, seven

White -- Cross

1 o'clock, until 9:30 that morning. Correct?

2 9:30 or ten?

3 A Approximately, yeah.

4 Q And after that you went over to
5 Shores bar where a number of people had
6 collected. Correct?

7 A Yes, sir.

8 Q And you had a few beers there,
9 too?

10 A I'm sure I probably did.

11 Q Okay. And there you saw -- you
12 know Dana Chaples?

13 A Yes, sir.

14 Q And saw him come up and get out
15 of his vehicle and he said to you, "I guess
16 you're going to need a job now"?

17 A Yes, sir.

18 Q Okay. And he told you the
19 police had been by his house at [REDACTED],
20 didn't he?

21 A Yes, sir.

22 Q And he didn't talk about the
23 fire at the Mill Inn?

24 A No, sir.

25 Q But he told you you were going

White -- Cross

1 to need a new job?

2 A Yes, sir.

3 Q And you also told the police
4 that you remembered seeing a blue truck with
5 a black in color Tommy lift on the back of
6 it, and you thought to yourself "there's
7 Dana's truck going down [REDACTED]
8 towards Park Circle" and that was
9 approximately 7:30 to 7:45 a. m. that
10 morning?

11 A I would say so. Yeah.

12 Q And the police asked you about
13 something that was very important, didn't
14 they? They asked you, Mr. White, did they
15 not, whether you remember telling Dana about
16 Teresa lying on a pool table when you were
17 over at Shores?

18 A I don't remember telling them
19 that.

20 Q Well, do you remember telling
21 them that you didn't remember telling Dana
22 that she was lying --

23 A I -- I --

24 Q Did you sign the statement?

25 A As, as that statement reads, I

White -- Cross

1 do not remember telling Dana, meaning I
2 didn't mention it to him.

3 Q Correct. And that's what you
4 told the police?

5 A Right.

6 Q And you didn't just volunteer
7 that. They asked you that question.
8 Correct?

9 A Probably so. Yeah.

10 Q All right. Now, and then let me
11 ask you this. On the sixteenth of March,
12 1997 the police came over to your house at
13 1102 Buist -- was that where you were living
14 on the Sunday after the fire?

15 A I was staying there, yeah.

16 Q Okay. And they came over and
17 knocked on your door and they said
18 Mr. White, we need to take a statement from
19 you about a very, very important issue.
20 About this pink note.

21 A No, sir.

22 Q They didn't do that. But they
23 did come over and take a third statement
24 from you on April the twenty-fifth, the year
25 2000, over three years after the incident.

White -- Cross

1 Correct?

2 A If that adds up, yeah. April of
3 last year.

4 Q Okay. And then they asked you
5 about leaving a note at the bar or behind
6 the bar at the cash register, and you told
7 them that you did.

8 A Yes, sir.

9 Q And that you'd written something
10 on Teresa's windshield of her car?

11 A Yes, sir.

12 Q And then you told them, last
13 year, you didn't remember exactly what you
14 wrote. Correct?

15 A Correct.

16 Q But later you came to the police
17 department and a detective showed you a note
18 of the information and by that description,
19 note of the information, do you mean what's
20 in these pictures, State's exhibit
21 forty-seven, forty-five, forty-six, and
22 forty-nine?

23 A In the two or three days after
24 that happened they asked me --

25 Q Wait a minute. Please answer my

White -- Cross

1 question. Judge --

2 MR. DURANT: He's trying to
3 answer your question.

4 THE COURT: What is the
5 question?

6 MR. KULP: The question is --

7 THE COURT: Let me explain
8 something. When he asks you a
9 question, you can say yes or no or I
10 don't know. And then you stop right
11 there. If you want to explain it, you
12 can explain it right then.

13 THE WITNESS: Okay.

14 THE COURT: Okay. Now listen to
15 the question. What's the question?

16 Q Question is State's exhibit
17 forty-six, forty-seven, forty-eight,
18 forty-four, forty-five -- excuse me.
19 Forty-three through forty-seven, the photos
20 that Mr. Durant showed you, was what's
21 depicted therein what was shown --

22 THE COURT: First show him the
23 pictures. Let him look at them.

24 MR. KULP: Got them right here.

25 A That is what I wrote.

White -- Cross

1 Q No. I'm asking you is that what
2 the detective showed you at the station?

3 A Yes.

4 Q Yes. Okay. Now, and then when
5 he showed you those, what had been lifted
6 off the car or those pictures, at that time
7 you identified what was on the windshield,
8 you verified that it was the stuff you
9 wrote?

10 A That's correct.

11 Q And in that statement they took
12 from you a year ago, you didn't mention
13 anything about a pink note or a lavender
14 note, did you?

15 A No, sir.

16 Q Okay. But today and after you
17 just talked of some scheduling, with some
18 scheduling issues with some other witnesses
19 in this case, you recall your testimony and
20 offer it to the jury here today. Correct?
21 This is -- you're testifying to this, your
22 testimony today?

23 A Whatever is going on.

24 MR. KULP: Yes, sir. All right.

25 Thanks, sir.

White -- Redirect

1

2

3

4

REDIRECT EXAMINATION BY MR.

5

DURANT:

6

Q You did in fact tell them you

7

left the note last April. Is that correct?

8

A In April when --

9

Q Last April when this man came

10

and talked to you, you told him?

11

A I told him.

12

Q Okay. He didn't put the color

13

down there. Is that correct? He didn't put

14

the color back there?

15

A No.

16

Q Okay. He didn't -- he didn't

17

ask you the color, did he?

18

A No.

19

Q And just so we'll be clear, the

20

opening up cash was generally left in the

21

freezer in the ballroom. Is that correct?

22

A That's what I'm saying, yes,

23

sir.

24

Q Okay. And that was just a

25

regular kind of up-right freezer that you

White -- Redirect

1 would -- a lot of people would have in their
2 house?

3 A A home, home refrigerator.

4 Q Home refrigerator-freezer?

5 A Right.

6 Q And it would have a bottom part
7 that's a refrigerator and the top part
8 that's a freezer. Is that correct?

9 A Right.

10 Q And you all would keep the money
11 in what part? The top part?

12 A Sometimes it would be the top,
13 sometimes it would be the bottom.

14 Q Okay. But you didn't keep it
15 over there in the bar area, behind the bar
16 itself?

17 A No, sir. I don't believe so.

18 Q And when you saw Dana Chaples at
19 Shores, everybody knew at Shores, knew that
20 the Mill had burned down. Right?

21 A Right.

22 Q That was no secret?

23 A Right.

24 Q That was the gathering place
25 where everybody went and was talking about

White -- Redirect

1 what had happened over at the Mill?

2 A Correct.

3 Q Everybody there, there wasn't a
4 single person there that didn't know that
5 the Mill Inn had burned down, was there?

6 A Correct.

7 Q And Dana Chaples was one of
8 those?

9 A Correct.

10 Q And you didn't see Dana Chaples
11 that morning at 7:30, 7:45, did you? You
12 saw a truck.

13 A I seen his -- what I thought was
14 his truck.

15 MR. DURANT: Thank you very
16 much.

17 MR. KULP: Just a couple
18 questions, your Honor.

19

20

21 RECROSS-EXAMINATION BY MR. KULP:

22 Q On the statement that was taken
23 from you last year, the third statement, who
24 wrote that out? You didn't write out that
25 statement, did you?

White -- Recross

1 A As -- which one?

2 Q The last one you gave, last

3 April --

4 A I don't --

5 Q -- you didn't write out in your
6 own handwriting, did you?

7 A No. Somebody. . .

8 Q The police officer did it?

9 A Yes, sir.

10 Q Okay. You see that police
11 officer in this courtroom?

12 A Which statement?

13 Q The last one, the one you wrote
14 last year, about the note. You see him in
15 this courtroom?

16 A With the note?

17 Q Can you point him out for the
18 record?

19 A The one. . . (The witness
20 indicates.)

21 Q Detective Clayton right here?

22 A Yes, sir.

23 MR. KULP: All right. Thank

24 you. That's all I have.

25 THE COURT: You can come down.

White -- Recross

1 MR. DURANT: Thank you,

2 Mr. White.

3 THE COURT: How long is your
4 next witness?

5 MR. DURANT: Your Honor -- thank
6 you, Mr. White. May this witness be
7 excused?

8 THE COURT: Sure. If he wants
9 to.

10 MR. DURANT: Can we approach?

11 THE COURT: Sure.

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

14 MR. DURANT: Billy King.

15 THE COURT: All right. Thank
16 you.

17

18

19

20 B I L L Y G E N E K I N G,
21 having been called as a witness in the
22 presence of the jury, is duly sworn and
23 testifies as follows:

24 MR. KULP: Can we approach?

25 (Whereupon, there was an

King -- Direct

1 off-the-record bench conference.)

2 THE COURT: You see all this

3 whispering going on? I'll tell you

4 about it later. We trying to ease

5 things, so don't hold it against the

6 parties. Go ahead.

7

8

9 DIRECT EXAMINATION BY MR.

10 DURANT:

11 Q How old are you, Mr. King?

12 A Fifty-one.

13 Q And where were you born?

14 A Here in Charleston.

15 Q And you lived in the

16 Charleston-Summerville area your entire

17 life?

18 A Yes, sir, I have.

19 Q Are you married?

20 A Yes, sir.

21 Q And have any children?

22 A Two.

23 Q Where do you -- where are you

24 currently employed?

25 A With Ecomeld (phonetic)

King -- Direct

1 Lubricants on Virginia Avenue.

2 Q That used to be the Texaco --

3 A Part of Texaco, yes, sir.

4 Q How long have you been with
5 them?

6 A Twenty-eight years.

7 Q And what do you do for them?

8 A I'm a lab technician.

9 Q Now, do you know the -- did you
10 know the victim in this case, Teresa Haught?

11 A Yes, sir, I did.

12 Q And how did you know her or
13 how'd you come to meet her?

14 A When she moved down here from
15 Virginia I used to frequent the Mill Inn
16 when her mother owned it, and I went in
17 there one night and Dixie introduced me to
18 her as her daughter.

19 Q And how would you describe your
20 relationship with her?

21 A We became real good friends.
22 We, we hit it off the first night we were,
23 you know, we met each other. Got to be good
24 friends over time and we real close and
25 confided in each other.

King -- Direct

1 Q She was one of your best
2 friends?

3 A Yes, sir, she was.

4 Q And you knew her about how long
5 before her death?

6 A I think I met her it was
7 probably later '95 or early '96, whenever
8 she moved down.

9 Q Do you also know the defendant
10 in this case, Wes Myers?

11 A Yes, sir, I do.

12 Q And were you aware of the
13 relationship between Wes Myers and Teresa?

14 A Yes, sir.

15 Q And would you describe to the
16 jury what you know, knew about their
17 relationship.

18 A Well, when they first started
19 caring about each other, you know, Teresa
20 was pretty heads-over-heels with him and
21 then as time went by things got sort of, not
22 everything but, you know, sort of hateful.
23 You know, she was trying to break up with
24 him because he got sort of possessive and,
25 and started being mean to her a little bit.

King -- Direct

1 Q Now, do you know why, why he was
2 getting, he'd get angry with her?

3 A No, sir, I didn't. I didn't.
4 They just would have some quarrels about
5 things and I tried not to butt into it
6 because Teresa could take care of herself.
7 Just had some arguments and I'd seen some of
8 them, but I didn't know what they were
9 about.

10 Q Now, you said you'd seen some of
11 them. Where, where had you seen arguments
12 between the parties?

13 A At the Mill Inn as she'd be
14 working or somebody would be in there and
15 I'd be sitting on one end of the bar or
16 something and they'd be on the other end or
17 something, and I'd see them arguing or, and,
18 and, you know, we knew something was going
19 on.

20 And then sometimes Wesley would
21 get pretty loud with her and I'd seen him,
22 you know, grab her from behind and pull her
23 off the stool. And one night he got mad
24 with her and I don't know what the argument
25 was about, but it was a white cooler at the

King -- Direct

1 end of the bar and he put his fist through
2 the top of it, busted it up. And I seen him
3 grab her, you know, snatch her from behind
4 and pull her off the stool and sort of choke
5 her. Not choke her but, you know, had his
6 arms around her where he restrained her.

7 Q Now, would you, would you
8 describe Mr. Myers as a jealous kind of guy?

9 A Toward the end of their
10 relationship he was, he got sort of jealous.
11 And she was trying to break up with him and,
12 you know, he just -- I could see a change in
13 Wesley the last six months, the way he was
14 in his personality during the time she was
15 trying to break up. I'd say yes, he was
16 jealous.

17 Q Now, I want to direct your
18 attention specifically to an incident I
19 believe that occurred a couple, a little, a
20 couple of weeks before maybe the Mill Inn
21 burned down. Did you have a conversation
22 with Wes Myers?

23 A Yes, sir.

24 Q And how did that -- where did
25 that conversation take place?

King -- Direct

1 A I was coming into work one
2 morning about seven and normally if I seen
3 Wesley in the area, he was a contractor
4 working at the plant where, or facility, and
5 if I seen Wesley I would say good morning to
6 him and then I'd talk to him for a few
7 minutes. And one particular morning I went
8 over there and he was working on a pump, and
9 I walked over there to talk to him and we
10 had a conversation going and he said, "Well,
11 my girl," he said, "My girl got drunk again
12 last night. I don't know what I'm going to
13 do with her."

14 And we talked a few more minutes
15 and then he made a comment to me, that if he
16 ever snapped, that he was going to take out
17 four people and burn, and burn the Mill Inn
18 down. And he named Harold Peagler and
19 Frogman. I didn't know the other two. Just
20 named those two people.

21 Q And this occurred when in terms
22 of time to when the Mill Inn actually did
23 burn down?

24 A Close to two to three weeks
25 prior to it.

King -- Direct

1 MR. DURANT: Would you please
2 answer any questions Mr. Kulp may have
3 for you.

4

5

6

7

CROSS-EXAMINATION BY MR. KULP:

8

Q Mr. King --

9

A Yes, sir.

10

Q -- you, you knew Mr. Myers

11

pretty well?

12

A Yes, sir.

13

Q In fact you all were treated

14

together, weren't you?

15

A Yes, sir.

16

Q For substance abuse?

17

A Yes, sir.

18

Q Okay. And you also knew Teresa

19

pretty well, didn't you?

20

A Yes, sir.

21

Q And you ever date her?

22

A No.

23

Q Never dated her. Never spent

24

the night with her?

25

A I spent the night over there.

King -- Cross

1 Q And now, when you talked about
2 quarrels that you observed at the bar, that
3 was when -- well, Teresa, I think you
4 testified to it but she, she unfortunately
5 had a drinking problem. She drank a lot?

6 A Yes, sir, she drank.

7 Q And so most of these quarrels,
8 if not all of them, would take place when
9 either she or Wes or both of them were
10 drinking. Correct?

11 A Yes, sir.

12 Q And the Mill Inn, you wouldn't
13 describe to the ladies and gentlemen of the
14 jury that it was -- I mean it's a -- not a
15 rough place, but it's a place where some
16 real serious drinking goes on. Correct?

17 A Well, just it was a drinking
18 establishment, a bar.

19 Q All right.

20 A So, yeah.

21 Q And it opens early in the
22 morning, stays open late at night, sometimes
23 stays open all night?

24 A Yes, sir.

25 Q Okay. And you said that Teresa

King -- Cross

1 could take care of herself?

2 A Yes, sir.

3 Q Right. And in that regard you
4 ever heard the expression that "she could
5 fight like a man" about her?

6 A I never heard that expression
7 but she, she could take care of her own.

8 Q She could take care of herself?

9 A Yes, sir.

10 Q All right. And you ever seen
11 her throw a punch or anything or --

12 A I saw her slap Wesley one time.

13 Q You did? Pretty hard?

14 A Just with an open hand.

15 Q Okay.

16 A They was having an argument
17 about something and she slapped him.

18 Q So she could leave a mark on
19 somebody without any problem?

20 A Well, I don't know about that.
21 It was just a slap.

22 Q All right. The -- when, when
23 Wes, you testified that Wes made a comment
24 to you about burning the Mill Inn down --

25 A Yes, sir.

King -- Cross

1 Q -- was your testimony, and in
2 fact that when he was talking to you
3 one-on-one, talking with you that day he was
4 fixing the pump or whatever?

5 A Yes, sir.

6 Q All right. And he was pretty
7 upset, wasn't he?

8 A Well, he was concerned about her
9 drinking the night prior to that. Yeah.
10 Yes, sir.

11 Q He didn't say anything about
12 being jealous or anything, did he?

13 A No.

14 Q Not at all. He was concerned
15 about her drinking and the use of drugs
16 there, wasn't he?

17 A He didn't say about drugs. I
18 don't know about drugs.

19 Q He didn't say anything about
20 drugs?

21 A No. He just said that she was
22 drinking.

23 Q He said --

24 A He said she got drunk the night
25 before and he just said, "I don't know what

King -- Cross

1 I'm going to do with our girl."

2 Q But he was upset that -- and he
3 told you he thought that place was, was,
4 was, was a detriment to her?

5 A No. He didn't say that.

6 Q Okay. But it wasn't about
7 jealousy?

8 A That was her business.

9 Q Right. But he wasn't jealous
10 and he didn't indicate that to you?

11 A No.

12 MR. KULP: All right. Thank
13 you.

14 MR. DURANT: Nothing further of
15 this witness.

16 THE COURT: You can come down
17 and be excused if you'd like.

18 MR. DURANT: Can I call one
19 more, your Honor? The State would call
20 Paul McKeithan.

21

22

23

24

25

McKeithan -- Direct

1 P A U L M c K E I T H A N,
2 having been called as a witness in the
3 presence of the jury, is duly sworn and
4 testifies as follows:

5 DIRECT EXAMINATION BY MR.

6 DURANT:

7 Q What's your age, Mr. McKeithan?

8 A Thirty-six.

9 Q And where are you employed, sir?

10 A Westvaco.

11 Q How long have you been with

12 Westvaco?

13 A About eight years.

14 Q And what do you do for them?

15 A Electrician equipment operator.

16 Q Do you know the defendant in

17 this case, Wes Myers?

18 A Yes, sir, I do.

19 Q And how long have you known Wes?

20 A About seven years I guess since

21 I first met him.

22 Q And where did you meet him?

23 A At the Mill Inn.

24 Q Did you also know Teresa Haught?

25 A Yes, I did.

McKeithan -- Direct

1 Q And you knew her from the same
2 establishment, the Mill Inn?

3 A Yes, sir.

4 Q Were you aware that she and Wes
5 were in a relationship?

6 A Yes, sir, I did.

7 Q And how would you describe their
8 relationship?

9 A On again, off again.

10 Q Do you know why that was?

11 A I guess it would be hard for any
12 boyfriend or whatever to, as far as dating a
13 bartender. I mean that's her job as far as
14 the bar, and he seemed to be a little
15 jealous of her relationships with some of
16 the other customers which were perfectly
17 friendly as far as being a bartender, but I
18 think that created a conflict with him.

19 Q And she ran a bar, of course?

20 A Yes. Yes.

21 Q And predominantly what were the
22 customers there, men or women?

23 A Men. Men, mostly.

24 Q And she, of course, tried to
25 keep her customers happy, I would gather?

McKeithan -- Direct

1 A Friendly.

2 Q And how would Wes react to that?

3 A Standoffish. A lot of times
4 he'd be at the far end of the bar, you know,
5 kind of looking back at everybody and things
6 like that, you know. Not necessarily in the
7 group with us at the end of the bar or the
8 regulars that were there. He was always a
9 stool or two over.

10 Q Now, have you ever observed them
11 argue before?

12 A Yes.

13 Q Was it a frequent occurrence?

14 A I'd have to define frequent.
15 You know, normally I would say --

16 Q Have you seen them do that more
17 than once?

18 A Yes. Yes.

19 Q How frequent?

20 A Every other month at least there
21 was always at least something popping up.

22 Q Okay. Now, do you know whether
23 or not Wes would come by the bar often at
24 the end of the night to check on Teresa?

25 A Yes. Yes.

McKeithan -- Direct

1 Q Was that a frequent occurrence?

2 A Yes. He would help her close up
3 and, you know, that kind of thing. That
4 part of town I guess is a little, you know,
5 late at night kind of thing wouldn't be any
6 good for a woman to be walking at night, so
7 I mean it was always -- normally somebody
8 would be coming in late and, you know, help
9 her close up and sweep the floors, things
10 like that.

11 Q Now, were you at the Mill Inn on
12 the day of the fire?

13 A No.

14 Q Not at the point it caught on
15 fire, but the next --

16 A The next day.

17 Q The following day.

18 A The following day. Thursday
19 afternoon.

20 Q After the fire is what I'm
21 talking about. Were you in the area?

22 A Yes, sir.

23 Q Where were you?

24 A Shores. About a half a block
25 away.

McKeithan -- Direct

1 Q And were there a bunch of people
2 out at Shores that morning?

3 A Yes, there were.

4 Q And were in fact most of the
5 folks that were regulars kind of at the Mill
6 Inn at Shores that day?

7 A Yes. It was like a, I don't
8 know if you want to call it a memorial
9 service, but there was quite a good crowd
10 for it to be the middle of the afternoon.

11 Q Okay. Was the defendant one of
12 the people at Shores that day?

13 A Yes.

14 Q And isn't it true that just
15 about everybody at Shores that afternoon
16 knew Wes and Teresa?

17 A Yes. Yes.

18 Q And didn't kind of a -- well,
19 describe to me. I mean what was the crowd
20 like that day?

21 A Mourning, as far as
22 unbelievability as far as what was going on.
23 They were watching people, the firemen tear
24 out, you know, burnt chairs and stuff from
25 the bar and things like that. And it was

McKeithan -- Direct

1 just a really upsetting situation for
2 everybody involved. Lot of, I don't know,
3 second guessing and hostilities and things
4 going on.

5 Q A lot of speculation --

6 A Lot of speculation. Lot of
7 speculation.

8 Q -- going on about what happened
9 over there?

10 A Yes.

11 Q Was there also speculation about
12 who did it?

13 A Yes, there was. Quite a bit.

14 Q And weren't they kind of divided
15 into two camps over at Shores?

16 A In a manner of speaking, yes.
17 People, certain people were in certain
18 groups and certain cliques that were
19 standoffish from others because of their
20 suspicions. I mean I guess everybody, you
21 know, makes up their own mind or has their
22 own suspicion of what they believe.

23 Q Okay. And what were the two
24 groups?

25 A To be blunt, people who believed

McKeithan -- Direct

1 Wesley had something -- or Wes had something
2 to do with it and people who didn't.

3 Q And what group were you in, sir?

4 A The ones that I believed that he
5 didn't.

6 Q Now --

7 A At that time.

8 Q Now, let's go into that a little
9 bit more. He was -- how was he acting at
10 Shores that day?

11 A Extremely upset. Crying. Going
12 through old pictures. Just, you know, I
13 mean mournful I guess. You know, I mean
14 lose-wise upset. I mean he said a few
15 things to me that made me believe that no,
16 he didn't have anything to do with it.

17 Q Okay. Also did you have some
18 concern as to --

19 A Yes.

20 Q -- how he may be?

21 A Yes. He had -- he was -- I had
22 a girlfriend at one time that did a little
23 counseling and things, and he was making
24 statements to me and some other people there
25 that I feared that he may do some harm to

McKeithan -- Direct

1 himself, like he wished he could be with her
2 and things along those lines there.

3 And at the time I really thought
4 that he may do something harmful to himself
5 or something like that. So I made a
6 decision at the time that, you know, I was
7 going to stay with him that night and, you
8 know, hang out with him or whatever and, you
9 know, see him through this or whatever.

10 And, and I did, and at one point
11 or another I even jumped in the back of his
12 truck to keep him from driving off.

13 Q Well, let's, let's talk a little
14 bit about that. What time, what time did
15 the defendant leave Shores that day?

16 A We left probably around dark
17 thirty five -- 5:30, six o'clock maybe.
18 Maybe a little later.

19 Q Okay. You all, you all had been
20 over at Shores for how long by then?

21 A Four, five hours. Well, I
22 got -- we got there about -- well, I got
23 there probably about two o'clock maybe --
24 early -- late -- early part of the afternoon
25 and we were there till, till right at about

McKeithan -- Direct

1 dark before we left.

2 Q And he was there with you the
3 whole time?

4 A Yes.

5 Q Did he want you to go with him?

6 A No.

7 Q And so how did you end up going
8 there?

9 A I jumped in the back of his
10 pickup truck. He, he kept saying things
11 like, you know, he wished he could be with
12 her and he wanted to be alone and stuff like
13 that, and for me that was some signs that I
14 know personal that that's not a good thing
15 for somebody that's grieving and, you know,
16 and emotional and everything else. And I
17 really thought he may do some harm to
18 himself, so I told him I was going to stick
19 to him like a shadow and that was all there
20 was to it.

21 Q So he drove off and you jumped
22 in the back of his truck?

23 A Yes.

24 Q Did you actually ride in the
25 back of his truck?

McKeithan -- Direct

1 A For a short time. I think we
2 went around the block and he came back to
3 Shores and finally he left again and he
4 eventually stopped at a stop sign and put me
5 in the cab, you know. Said well, if you're
6 going to stay, get in.

7 Q All right. Let me ask you this.
8 Anything unusual about his truck while you
9 were riding around in it?

10 A No. It's just an old S -- you
11 know, small, small pickup.

12 Q Truck sound like it didn't have
13 a muffler on it?

14 A No. Wouldn't say it was overly
15 loud. Just a regular little old S-10
16 pickup. I didn't -- I mean I was even in
17 the back of the truck. I didn't really
18 notice it being overly loud. I mean just a
19 truck. Old truck.

20 Q Now, after he let you in the
21 cab, where'd you all go?

22 A Bar hopping is about the only
23 way I can describe it. We stopped at a
24 couple different, you know, bars and had a
25 beer and, you know, talked with different

McKeithan -- Direct

1 people and, you know, played pool, such like
2 that.

3 Q Do you recall how many different
4 bars you went to?

5 A I would say three or four.
6 Stopped on Remount Road at Brenda's and made
7 our way back towards Meeting Street and we
8 ended up at the Jokers Lounge.

9 Q Jokers Lounge, and that's a
10 strip club, right?

11 A Yes, sir, it is.

12 Q Let me ask you this. Did the
13 defendant's demeanor changed any, change any
14 after he got away from Shores?

15 A I would have to say yes.

16 Q In what way?

17 A A little more carefree, a little
18 more less, less upset than he was three or
19 four hours ago. From crying and holding,
20 you know, wrinkling pictures and stuff like
21 that, holding it in his hand; pictures went
22 in the glove box and never saw them again.

23 Q After you all got away from
24 Shores?

25 A Correct.

McKeithan -- Direct

1 Q So he wasn't crying after he
2 left there. Is that correct?

3 A No. I don't believe he shed
4 another tear the rest of the night.

5 Q In fact he was having a pretty
6 good time, wasn't he?

7 A Yeah. It was a little
8 surprising for me. I quit drinking probably
9 around, oh, maybe, maybe midnight, 11:30, or
10 whatever while we were at the Jokers Lounge.
11 And, you know, tipping the ladies and up to
12 the stage and things like that. Didn't --

13 Q Who was, you or him?

14 A Him.

15 Q Where were you?

16 A Sitting at the bar, you know.
17 Far corner of the bar. Probably from here
18 to that corner of the room there from the
19 stage where, you know, where I could still
20 see what was going on.

21 Q And what was he doing?

22 A You know, buying drinks,
23 socializing. You know, tipping the girls.

24 Q Feeding the kitty?

25 A Feeding the kitty. Typical

McKeithan -- Direct

1 strip club, you know, demeanor.

2 Q How was he paying for his
3 drinks?

4 A Cash.

5 Q Did he have a lot of cash on
6 him?

7 A I didn't really pay that much
8 attention as far as the quantity-wise. I
9 mean, you know, I mean he didn't seem to
10 have a problem buying, buying beers here and
11 there. As far as for me, I don't think I
12 bought, I don't think I bought one round the
13 whole night. I may have bought one, but
14 that's about it.

15 Q And were you all at the Joker
16 Club pretty late that night?

17 A Yes, sir, we were. I'm not sure
18 exactly what time it closed, but we got out
19 of there in the wee hours of the morning. I
20 would say 2:30, three o'clock.

21 Q And he had a pretty good bit to
22 drink that day?

23 A We both had. We'd been, you
24 know, been drinking all day.

25 Q Now, where did you all go when

McKeithan -- Direct

1 you left the Joker?

2 A Teresa's house.

3 Q The victim's house?

4 A Correct.

5 Q And what did you all do in the
6 victim's house?

7 A He let us in through the side
8 door and he laid down on the couch in the
9 living room and I was on the staircase.

10 Q Who let you in?

11 A Wes.

12 Q How did he get in?

13 A He had a key.

14 Q And you all -- he let in, let
15 you in through a side door?

16 A Yeah. Right there off the,
17 where you pull up to the house there's a, I
18 guess it's a side door is the only way I
19 know how to explain it, coming out towards
20 the cement patio, car port, driveway.

21 And went on in and he laid down
22 on the couch and I was propped up by the
23 staircase there and eventually we both, you
24 know, talked about this, that, and the
25 other, and went to sleep.

McKeithan -- Direct

1 Q And what time did you all get up
2 the next morning?

3 A About 8:30, nine o'clock. And I
4 went with him to have breakfast at Shoney's.
5 I guess that was about nine, nine, you know,
6 around nine o'clock. We left -- I left
7 there about 9:45, ten o'clock, and he said
8 he was headed to Goose Creek to talk to
9 Teresa's mother. Said her father or
10 something was coming into town and so that's
11 where he was going.

12 And I mean by then we're, you
13 know, clear-headed and such, and I thought
14 he was going to be, you know, I had to go to
15 work and things like that at two o'clock, so
16 I, at that point there, you know, I figured
17 he'd be all right as far as taking his own
18 life or hurting himself in any way or
19 anything and that, that, I think that point
20 was beyond, so I went ahead and went to
21 work.

22 MR. DURANT: Thank you, sir.

23 Could you -- Court's indulgence.

24 Could you please answer any
25 questions Mr. Kulp may have for you.

McKeithan -- Direct

1 THE WITNESS: Sure thing.

2 MR. KULP: Thank you.

3

4

5 CROSS-EXAMINATION BY MR. KULP:

6 Q Good afternoon.

7 A Good afternoon.

8 Q A couple of questions for you,
9 Mr. King (sic). You had a pretty good bit
10 to drink that evening?

11 A Yes, sir.

12 Q Okay. You knew Wes was paid on
13 that Thursday?

14 A No.

15 Q You didn't know that. You also
16 knew that the little area you stayed was a
17 little back house. Correct?

18 A No.

19 Q Down the driveway. Was that
20 Teresa's house?

21 A No. There was a big house and
22 then there's a, a, like a little apartment
23 offset from the house.

24 Q Okay. And your testimony is
25 that he used a key, the door wasn't open?

McKeithan -- Cross

1 A He pulled out his keys and he
2 went on in.

3 Q Were there people there?

4 A No.

5 Q Nobody was in the house?

6 A Nobody was in the house.

7 Q Okay.

8 A To my knowledge. I mean it was
9 three o'clock in the morning but I don't --
10 you know, there was nobody there, not that
11 next morning or -- now as far as the back
12 apartment, I don't know.

13 Q And you were still concerned
14 enough to block his truck then so that he
15 couldn't leave?

16 A No. My truck was at Shores. He
17 drove all night.

18 MR. KULP: Okay. Thank you very
19 much.

20 THE COURT: You can come down.
21 Be excused if you like, or stay.

22 MR. DURANT: This is probably a
23 good time, your Honor.

24 THE COURT: All right. How
25 about if I give you an hour and eleven

1 minutes? Everyone else remain seated.
2 Have a good lunch. Remember my
3 admonitions.

4 (The jury leaves the courtroom
5 at 12:51 p. m.)

6 THE COURT: Counselor, I was
7 asking about your defendant's
8 supplemental discovery motion and the
9 solicitor told you he didn't have
10 anything else.

11 MR. KULP: That's right, your
12 Honor.

13 THE COURT: Except this witness,
14 and we talking about that you both --

15 MR. KULP: Yes, sir.

16 THE COURT: -- are looking into.

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

18 MR. DURANT: Yes, sir.

19 THE COURT: All right. And you
20 think you've located one of the
21 witnesses?

22 MR. KULP: Have we? He's on it
23 right now. I had misinformation. I
24 thought that they had located him, but
25 he's on top of it right now.

1 MR. DURANT: And just out of
2 curiosity, Judge, I mean I'm just kind
3 of curious as to why I have to have
4 that witness to put this witness --

5 THE COURT: You don't have to
6 have that witness. I'm just asking.
7 No. I'll let you put up your witness
8 this afternoon, subject to any motions
9 he might make.

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

12 THE COURT: All right. Court's
13 in recess. Two o'clock.

14 MR. DURANT: Thank you, your
15 Honor.

16 (Whereupon, a recess is taken at
17 12:53 p. m.)

18

19

20 A F T E R N O O N S E S S I O N

21 (The Judge enters the courtroom
22 at 2:12 p. m.)

23 THE COURT: Anything before we
24 bring the jury out?

25 MR. KULP: No, sir.

1 MR. DURANT: I don't believe so,
2 your Honor.

3 THE COURT: All right. Bring
4 the jury out.

5 All right. Be at ease. They
6 tell me I don't have all my jurors.

7 MR. DURANT: Okay. I'm sorry.
8 I didn't, didn't, didn't check jurors.

9 (The jury enters the courtroom
10 at 12:13 p. m.)

11 THE COURT: All right,
12 Solicitor. Call your next witness.

13 MR. DURANT: Thank you, your
14 Honor. State would call Laurie
15 Villalobos.

16

17

18 L A U R I E

19 V I L L A L O B O S, having been called
20 as a witness in the presence of the
21 jury, is duly sworn and testifies as
22 follows:

23 DIRECT EXAMINATION BY MR.

24 DURANT:

25 Q Good afternoon, Miss Villalobos.

Villalobos -- Direct

1 You are here today pursuant to a subpoena.

2 Is that correct?

3 A Yes, sir.

4 Q Now, you are how old?

5 A Forty.

6 Q And where are you employed?

7 A At the International House of
8 Pancakes on Mystic Road in North Charleston.

9 Q And you have a prior conviction,
10 have you not, for possession of a stolen
11 automobile?

12 A Yes, I do.

13 Q And that was in 1990?

14 A Yes, sir.

15 Q Do you know Teresa Haught?

16 A Very well.

17 Q And how do you know Teresa
18 Haught?

19 A From the bar that she maintained
20 on East Montague Avenue.

21 Q And what was the name of that
22 bar?

23 A The Mill Inn.

24 Q And you'd known her from your
25 association with that establishment. Is

Villalobos -- Direct

1 that correct?

2 A Yes, sir.

3 Q Was she a friend of yours?

4 A Very good friend of mine.

5 Q Now, I want to direct your
6 attention back to March of 1997. Was there
7 an occasion -- you were aware of a fire at
8 the Mill Inn on March thirteen of 1997. Is
9 that correct?

10 A Could you repeat that?

11 Q Were you aware of the fire at
12 the Mill Inn on March thirteen, 1997?

13 A Yes, sir, I was.

14 Q And when, when Teresa was
15 killed?

16 A Yes.

17 Q Prior to that, did you have an
18 occasion to have Mrs. Haught or Miss Haught
19 cash a check for you?

20 A Yes, I did.

21 Q Could you please tell the jury
22 how that came about.

23 A I went to her with the check and
24 asked her if she would cash it for me
25 because she cashed checks for people

Villalobos -- Direct

1 whenever they needed it. And she told me
2 that since it was a Credit Bureau check that
3 I would have to wait, she'd give me part of
4 the money and I would have to wait for the
5 remainder until the check cleared through
6 the bank.

7 Q Okay. Now, where did you go to
8 her to talk to her about that?

9 A To the Mill Inn.

10 Q And do you recall how soon or
11 long that was before her death?

12 A Anywhere from four to seven
13 days.

14 Q Now, do you recall how much the
15 check was for?

16 A I believe it was for three
17 fifty, three hundred and fifty.

18 Q And she gave you some of the
19 money when you went to the Mill Inn.
20 Correct?

21 A She gave me ninety dollars I
22 think.

23 Q Now, do you recall what kind of
24 check it was?

25 A Yes. It was a Credit Bureau

Villalobos -- Direct

1 check, the kind you get in the mail. If you
2 cash this and repay us in a certain amount
3 of time they'll be happy to lend you more
4 next time.

5 Q Okay. Now, I want to now direct
6 your attention to the early morning hours of
7 March the thirteenth of 1997. Did you have
8 an occasion on that evening or early that
9 morning I should say to go by the Mill Inn
10 again? This would be the night of the fire
11 or the morning of the fire.

12 A So you're talking about the
13 fourteenth?

14 Q I'm talking about, if you know
15 when the fire was?

16 A Yes.

17 Q I'm talking about the night of
18 the fire.

19 A Yes.

20 Q Okay. In other words, did you
21 have an opportunity to go by the Mill Inn
22 the night of the fire?

23 A Yes. I was at the Mill Inn the
24 night of the fire.

25 Q And where had you been previous

Villalobos -- Direct

1 to going over to the Mill Inn?

2 A I was at a club on Dorchester,
3 somewhere on Dorchester and Montague. I
4 don't recall the name.

5 Q It was one of those bars over at
6 a strip shopping center. Is that correct?

7 A Right.

8 MR. KULP: The rule of course --

9 Q Do you recall the name of
10 that --

11 MR. KULP: -- prohibits leading
12 questions.

13 THE COURT: All right.

14 Q Do you recall the name of that
15 bar?

16 A No, I don't.

17 Q Do you know if that bar is still
18 in business?

19 A I don't believe so.

20 Q Did you call Teresa that night?

21 A Yes, I did.

22 Q And why did you call Teresa?

23 A To ask her if I could come to
24 her and get the remainder of the money she
25 owed me on the check.

Villalobos -- Direct

1 Q And why did you call her then?

2 A Because the bar was closing and
3 I wanted to stay out and I needed it. The
4 Mill Inn would stay open after hours and I
5 assumed she would be there and they would be
6 open.

7 Q And so you called over to the
8 Mill Inn?

9 A Yes, I did.

10 Q And who did you talk to?

11 A I talked to Teresa.

12 Q And did she appear to be
13 intoxicated when you talked to her?

14 A I don't know. It was a phone
15 conversation. I can't clearly say yes or
16 no.

17 Q Now, you'd been drinking, of
18 course. You were at a bar. Is that
19 correct?

20 A Yes, sir. It was my brother's
21 birthday.

22 Q And you had several drinks?

23 A Yes.

24 Q Now, how did you get over to the
25 Mill Inn?

Villalobos -- Direct

1 A I took a taxi.

2 Q Do you know what taxi you took
3 or what kind, the name of the cab company?

4 A I believe it was the North Area
5 Taxi. They were who I usually rode with.

6 Q And where did the cab take you?

7 A To the Mill Inn.

8 Q And when you got to the Mill
9 Inn, was it open?

10 A No.

11 Q Do you know what time this was
12 when you got to the Mill Inn then?

13 A It was somewhere between 1:30
14 and 2:30 in the morning.

15 Q And when you say -- you went to
16 which door? There two doors in the front.
17 Which door did you go to?

18 A The only one that opens.

19 Q Okay. The one closest to the
20 bar?

21 A Yes.

22 Q Did you try to open that door?

23 A Yes, I did.

24 Q Was it locked or unlocked?

25 A It was locked.

Villalobos -- Direct

1 Q And what did you do?

2 A I knocked.

3 Q And did anyone answer?

4 A Took a second and I knocked the
5 second time and then the door was opened and
6 Wesley was inside and he let me in. He said
7 hi.

8 Q Now, when he let you in the bar,
9 where was Teresa?

10 A She was sitting down towards the
11 further end of the bar, in a stool.

12 Q She was awake at the time?

13 A Yes, sir.

14 Q Was she drinking?

15 A Yes, sir.

16 Q And was there anything unusual
17 about her condition at that time?

18 A She was clearly distraught. I
19 could tell she had been crying because her
20 make-up was all over her face, her mascara
21 was running and, you know, when you wipe
22 your eyes and smudge it out.

23 Q Did you say anything to her
24 about it?

25 A I walked up to her and I put my

Villalobos -- Direct

1 arm on her back and asked her if there was
2 anything I can do for her. And she told me
3 no, she could handle it. She'd be okay.

4 Q Did you ask her about the
5 money --

6 A Yes.

7 Q -- at that time?

8 A Yes.

9 Q And did Mr. Myers participate in
10 this conversation in any way?

11 A Well, she mentioned to me that
12 the check hadn't yet cleared and she wasn't
13 sure whether she should give me the money or
14 not until it did. So I was trying to
15 convince her to give me the money. And he
16 mentioned to her that I -- she shouldn't
17 give me the money until she knew the check
18 was good.

19 Q What did Teresa do?

20 A She told him that she believed
21 the check was okay, and she would -- she
22 gave me the money.

23 Q Now, prior to going to the bar,
24 do you know if her car was out there?

25 A No. I don't remember that.

Villalobos -- Direct

1 Q Could it have been out there?

2 A It was possible.

3 Q Did you know what kind of car
4 she drove at the time?

5 A A big ugly thing. I don't know
6 what it was.

7 Q Now, after she gave you the
8 money, what did you do?

9 A I talked to her for about a
10 minute or so, asked her how come they were
11 closed and why are they, you know, because
12 they're usually open late at night.

13 Q There was nobody else in the
14 bar?

15 A No. Nobody.

16 Q And did you stay?

17 A No, I didn't. I could tell that
18 I was in the middle of a bad situation, so I
19 left.

20 Q And when you left, did you leave
21 the cab outside?

22 A No.

23 Q Where did you go when you left
24 the bar?

25 A I walked down the road to Alamo

Villalobos -- Direct

1 Street to my ex-boyfriend's house.

2 Q And his name is?

3 A Carl Chaplin.

4 Q And what happened in

5 Mr. Chaplin's house?

6 A We got into an argument and

7 lasted about thirty, forty-five minutes and

8 he went inside and locked the doors. I

9 couldn't get in, so I walked down to a pay

10 phone and called a cab and went home.

11 Q Now, what happened the next day?

12 A The next day was when I heard

13 about Teresa and the fire.

14 Q Do you recall who you heard

15 about that from?

16 A No, I don't. Just --

17 Q Was it on the news or from a

18 friend or --

19 A It was from a friend at first

20 and then later I saw it on the news.

21 Q And what did you think when you

22 heard that news?

23 A I was -- I was horrified. I'd

24 just seen her.

25 Q Did anyone from the police

Villalobos -- Direct

1 department ever come and talk to you about
2 it?

3 A Never.

4 Q Did you ever go to the police
5 department?

6 A No, I didn't.

7 Q And why?

8 A I guess because I didn't think
9 anybody would believe me. I mean I
10 mentioned it in conversations about the
11 subject and nobody ever said well, that's
12 big news. And then the confession came out
13 and I figured after that there was no
14 relevance.

15 Q So you, you kind of packed it
16 away at that point?

17 A Yes.

18 Q Now, how did you happen to be
19 here today?

20 A I ran into -- I was at a bar
21 yesterday. I had to meet a friend after
22 work to collect some money that he owed me.
23 I got there about 4:15 because I get off at
24 four.

25 And I got there about 4:15 and I

Villalobos -- Direct

1 was sitting there waiting, and he showed up
2 about five o'clock. And shortly after that
3 Tammy walked in and I was so happy to see
4 her. I hadn't seen her in years. And she
5 came over --

6 Q And when you say Tammy, you mean
7 Tammy Gonzalez, this lady in the courtroom?

8 A Yes, sir.

9 Q And how long has it been since
10 you'd seen her?

11 A I'd say since the incident.

12 Q And did you have a conversation
13 with Miss Gonzalez?

14 A Yes, I did. And I mentioned the
15 fact that Wesley's trial was happening, and
16 she told me she'd been in court all week
17 with it and --

18 Q Now, where --

19 MR. KULP: Well, if she could --
20 he's cutting her off. She needs to --

21 MR. DURANT: I'm sorry.

22 MR. KULP: -- finish her answer.
23 Please, sir.

24 MR. DURANT: She could finish
25 her answer. I've got no problem with

Villalobos -- Direct

1 that.

2 A And she said she just left there
3 and she had to be at work at six o'clock and
4 stopped in to have a beer first because her
5 nervous were shot. And we talked a little
6 longer and then she mentioned that Wesley
7 was using as a defense the fact that he was
8 not there that night. And I mentioned that
9 I know that he was, because I was there.

10 And she told me to call you.
11 Gave me the number. And it was very
12 upsetting and I was very nervous and I
13 decided to go home and I'd better discuss
14 this with my boyfriend and find out just
15 what I should do about it.

16 Q Did --

17 A So --

18 Q Did Miss Gonzalez give you a
19 telephone number to get in touch with us?

20 A Yes, she did. Yes, she did.

21 And I went home and I assumed I'd discuss it
22 with him and get his opinion and give you
23 guys a call this morning because I'm off
24 today. I didn't realize you were trying to
25 end your trial today.

Villalobos -- Direct

1 Q And did you call this morning or
2 did you have a chance to?

3 A No. I was called.

4 Q And that would be by Mr. Casey,
5 my investigator. Is that correct?

6 A Yes.

7 MR. DURANT: Could you please
8 answer any questions that Mr. Kulp may
9 have for you.

10 MR. KULP: Thank you, sir. May
11 it please the Court.

12

13

14 CROSS-EXAMINATION BY MR. KULP:

15 Q Villabolos?

16 A Villalobos.

17 Q Villalobos. Thank you, ma'am.

18 Okay. And you said this
19 happened -- you're sure of the date?

20 A Yes. It was my brother's
21 birthday.

22 Q Okay. And you're sure of --
23 well, let me ask you that evening, you'd
24 been out drinking that evening?

25 A Yes, sir.

Villalobos -- Cross

1 Q And how much did you have to
2 drink?

3 A Four or five 7 and 7's.

4 Q Did you have any beer or wine or
5 anything?

6 A No. I don't drink anything but
7 7 and 7's.

8 Q That's all you drink? Okay.

9 And are you sure about the number? Could it
10 have been more or less or --

11 A It's possible.

12 Q Could it have been ten?

13 A No.

14 Q Could have been eight?

15 A No.

16 Q Seven?

17 A About seven I start getting
18 stupid, so it couldn't have been that much.

19 Q Okay. So you had maybe six?

20 A I'd say four or five.

21 Q Okay. All right. Did you have
22 any drugs that evening?

23 A No, I did not.

24 Q Either over-the-counter or
25 prescription drugs?

Villalobos -- Cross

1 A No.

2 Q Or illicit drugs?

3 A No.

4 Q Okay. Now, the time frame this
5 involved, you called -- where did you call
6 the Mill from when you said you called at
7 one o'clock in the morning?

8 A I'm not positive of what time it
9 was, but it was -- I arrived at the Mill Inn
10 between 1:30 and 2:30 in the morning.

11 Q Okay. So your best recollection
12 is that some time within an hour's time
13 frame you arrived at the Mill?

14 A Yes.

15 Q And you arrived -- if it was
16 2:30, did you see anything burning at that
17 time?

18 A No.

19 Q Okay. Now, were you wearing a
20 watch that evening --

21 A Probably. I usually do.

22 Q -- as best you recall?

23 A (The witness nods head.)

24 Q And were you making any notes
25 about the times or anything?

Villalobos -- Cross

1 A No.

2 Q Of course. Now, you said you
3 saw it on T. V. that night. What did you
4 see on T. V. that night? Did you see a
5 picture of Wes or anything on T. V. that
6 evening?

7 A I saw a picture of Teresa and
8 I -- scared.

9 Q Did you see any film footage of
10 Wes that evening?

11 A I don't believe so, no.

12 Q You might have?

13 A It's possible.

14 Q Okay. And let's see, you said
15 that she had her purse on the counter?

16 A Yes, sir.

17 Q Would you please describe that
18 purse for the jury.

19 A It was a big huge sack that she
20 always carried. What color it was, I don't
21 remember. But it was huge. Big.

22 Q Was it kind of a -- was it -- it
23 wasn't -- I'm sorry. It wasn't a leather
24 Aigner or something purse?

25 A I don't know. All I recall of

Villalobos -- Cross

1 her purse is it was big --

2 Q Okay.

3 A -- and I used to tease her about
4 it being so big.

5 Q All right. Was it kind of a
6 tapestry colored or something?

7 MR. DURANT: Your Honor, she's
8 already said she didn't know.

9 THE COURT: Well, she's on
10 cross. If she knows, she'll tell him.

11 Q When we were downstairs
12 talking --

13 A I don't remember what color it
14 was.

15 Q When we were downstairs this
16 morning talking, do you recall what the
17 solicitor --

18 A I told you I think it looked
19 like a carpetbagger.

20 Q Carpetbagger kind of purse?

21 A Yes. With the embroidery and
22 stuff, but I'm not sure.

23 Q Very large. And where was it
24 sitting, where was it when you saw it?

25 A Right next to her on the bar.

Villalobos -- Cross

1 Q Okay. Didn't see it -- it
2 wasn't in any other location?

3 A No.

4 Q And you needed money?

5 A Yes.

6 Q And what did you want money for
7 that evening at 1:30 to 2:30 in the morning?

8 A Because I didn't have any and I
9 thought if they were open I'd stay there a
10 while.

11 Q Okay. Did you need money to buy
12 anything or spend --

13 A No. I was just going to stay
14 out longer.

15 Q Now, your best recollection of
16 when you first went to Teresa with this
17 check was four to seven days prior to that
18 day. Correct?

19 A Yes.

20 Q Do you remember the specific
21 day?

22 A No, I don't.

23 Q And you say that you don't
24 remember seeing her car?

25 A I don't recall seeing her car.

Villalobos -- Cross

- 1 No, I don't.
- 2 Q Okay. And you say it took a
3 couple of knocks before the door was opened?
- 4 A Yes, sir.
- 5 Q You didn't see her car?
- 6 A I don't remember seeing her car.
- 7 Q Okay.
- 8 A When you're facing the door to
9 the Mill Inn the road where you park is
10 behind you.
- 11 Q Right. But the taxicab didn't
12 drive up on the sidewalk and let you out
13 between -- so that you could walk directly
14 to the door?
- 15 A I don't remember seeing her car.
16 No, I don't.
- 17 Q Okay. Now, you're not really
18 clear -- one of the reasons that you never
19 said anything and didn't come forward until
20 here on the fifth day of this trial, almost
21 four years, almost four years later is
22 because you're just not really clear on
23 everything. Isn't that true?
- 24 A I didn't think I would be
25 believed. I mean --

Villalobos -- Cross

1 Q Okay.

2 A -- I -- how can I prove it?

3 Q Okay. Do you recall saying
4 downstairs that the reason was that you're
5 not really clear on everything?

6 A I'm not real clear on everything
7 like seeing her car, but I remember seeing
8 Teresa, I remember seeing Wesley, I remember
9 where her purse was, I know the bar was
10 closed, and I know it was that evening.

11 Q Okay. And when you called
12 Teresa over on the telephone at one o'clock
13 or whenever it was, did you hear anyone in
14 the background there?

15 A I don't remember, no.

16 Q And your testimony is that she
17 did not sound like she was drunk?

18 A I don't think so.

19 Q Did she slur her words?

20 A No. She understood who I was
21 and my reason for calling and spoke to me
22 about it.

23 Q Okay. Did you notice anything
24 unusual about her clothing?

25 A No. I can't say that I did.

Villalobos -- Cross

1 Q I know you say you don't really
2 remember seeing her car or not. Did you see
3 a blue pickup truck parked outside?

4 A I -- I wasn't paying attention
5 to the road. No, I don't.

6 Q Now, you know a man by the name
7 of Carl Chaplin?

8 A Yes, I do.

9 Q And you were going out with him
10 at the time?

11 A We were dating, but we were in
12 the process of separating.

13 Q Okay. And you dated -- you had
14 lots of arguments?

15 A We had our share, yeah.

16 Q Okay. And you dated or at least
17 continued to break up with him for another
18 four to five months after that?

19 A Yes.

20 Q Did you tell Carl after you
21 learned the Mill had burned, did you tell
22 Carl that you walked in the front door and
23 you saw Wes Myers there that evening?

24 A I told him I had just seen
25 Teresa there. I don't remember mentioning

Villalobos -- Cross

1 Wesley.

2 Q And recently you saw Carl again?

3 A Yes.

4 Q Did you mention to him that
5 you'd seen Wes Myers in the --

6 A No, I didn't. The subject never
7 even came up. I asked him to come over to
8 see about replacing the door for me.

9 Q And having seen the confession
10 on T. V., you figured that'd be enough. You
11 didn't really need to get involved?

12 A That's exactly what I thought.

13 Q Now, when you saw Tanya at the
14 bar, that was last night?

15 A Yes, sir.

16 Q And your testimony was that she
17 was going on her way to work, but stopping
18 by to have a beer?

19 A Yes.

20 Q She said she'd been in this
21 courtroom all week watching the trial?

22 A Yes.

23 Q And she was kind of stressed
24 out?

25 A Yes.

Villalobos -- Cross

1 Q And did she say that the trial
2 wasn't going well for the prosecution and
3 she needed your help?

4 A No.

5 Q And did you see anybody else
6 there you recognized at the bar?

7 A No. I mean I know everybody in
8 there but nobody would know about this, that
9 I knew of.

10 Q Okay. How long were you with
11 her?

12 A Five, six minutes.

13 MR. KULP: Okay. Thank you.

14 THE WITNESS: Thank you.

15 MR. DURANT: I have just a
16 couple others I'd like to ask you.

17

18

19 REDIRECT EXAMINATION BY MR.

20 DURANT:

21 Q The money that she gave you that
22 night, where did she get it?

23 A She took a bag out of her larger
24 bag. It was like bank deposit bag. I don't
25 remember the color, no. But she took the

Villalobos -- Redirect

1 money out and she counted it and she had to
2 reach back in there to get me I think it was
3 forty more dollars, and she handed it to me
4 and I told her thank you, and I asked her
5 where everybody was and, and, you know, they
6 were -- there was tension and I just decided
7 I'd better leave.

8 Q Okay. And I'd ask you to take a
9 look at State's exhibit number one, if you
10 would.

11 THE COURT: Orient her now.

12 MR. DURANT: Pardon?

13 THE COURT: Orient her now.

14 MR. DURANT: Okay.

15 Q You've not seen this, have you?

16 A No, but --

17 Q Okay. This is kind of a -- do
18 you recognize this as being kind of a
19 diagram --

20 A Description of the Mill Inn,
21 yes.

22 Q -- like it used to be, and this
23 is East Montague on this side and this is
24 the back side here.

25 It was this door that you came

Villalobos -- Redirect

1 in. Is that correct?

2 A Yes, it was.

3 Q And where was Teresa sitting at
4 the bar?

5 A Right about here.

6 Q Okay. Did she ever get up at
7 any time?

8 A No.

9 MR. DURANT: I have nothing
10 else. Thank you.

11 MR. KULP: Just a couple, your
12 Honor.

13

14

15 RECROSS-EXAMINATION BY MR. KULP:

16 Q Did Teresa ever mention to you
17 that prior to your arrival that she'd been
18 sleeping on the pool table?

19 A No.

20 Q And if when you arrived the time
21 was 1:30, did you see Margaret Jensen White?

22 A There was nobody else in the
23 building but them.

24 Q Did you see Tanya?

25 A No.

Villalobos -- Recross

1 Q Did you see Woody?

2 A No.

3 Q Did you see Dana Chaples?

4 A No.

5 MR. KULP: Thank you.

6 MR. DURANT: Thank you, ma'am.

7 I have nothing else.

8 THE COURT: You're excused if

9 you like or stay, whichever one you

10 want.

11 THE WITNESS: Thank you.

12 THE COURT: Call your next

13 witness.

14 MR. DURANT: State would call

15 Clay Nichols.

16 MR. KULP: Could we take a --

17 can we approach?

18 THE COURT: Sure.

19 (Whereupon, there was an

20 off-the-record bench conference.)

21 THE COURT: Go to your room just

22 a minute. Won't take more than a

23 minute, I hope. You won't have time

24 enough to smoke.

25 (The jury leaves the courtroom

1 at 2:41 p. m.)

2 THE COURT: Go ahead, Solicitor.

3 MR. DURANT: You want me to go
4 ahead and proffer him, your Honor?
5 Well, I can just tell you --

6 THE COURT: Well, why don't you
7 tell me.

8 MR. DURANT: You know --

9 THE COURT: You were telling me
10 that your next witness wants to use the
11 face of the deceased because the
12 testimony that's on an image he's not
13 happy with. Can you tell me a little
14 bit about it and what it is?

15 MR. DURANT: Would you mind the
16 witness telling you? I think he could
17 probably tell you better than I could.
18 All's I know is that, that I think, I
19 believe at the autopsy --

20 THE COURT: What type expert?

21 MR. DURANT: He's a -- he's a
22 forensic pathologist.

23 THE COURT: Oh, all right, sir.

24 MR. DURANT: Okay. He'll
25 testify to the manner and cause of

Villalobos -- Recross

1 death.

2 THE COURT: Oh, all right.

3 MR. DURANT: At the autopsy he
4 was brought, he was brought a carafe
5 top and I believe tried to make some --
6 tried to match that carafe top to, to
7 the -- one of the wounds on the
8 victim's face and, correct me if I'm
9 wrong, if I say anything wrong here, I
10 believe his testimony would be that he
11 thinks that the first blow, and I think
12 was to the right side of the head, was
13 made with the carafe, probably this
14 end. I don't guess he could rule out
15 that side, but probably with this end,
16 with the bottom, and the first blow
17 came to the right side of the forehead
18 and he said the wounds here had kind of
19 a semi-circular pattern that he matched
20 to the piece of or used the piece of
21 wine carafe brought to the autopsy and
22 he fit it into that wound, and it
23 appeared to, to him, to, to match the
24 piece of glass that he had.

25 I'd ask him --

Villalobos -- Recross

1 THE COURT: Let me see the
2 picture. Do you have a picture
3 that's --

4 MR. DURANT: I've got --

5 MR. KULP: While he's --

6 MR. DURANT: I have some that
7 are in black and white and some that
8 are --

9 THE COURT: Come on up here.
10 Let's look at them, counselor.

11 MR. KULP: Yes, sir.

12 THE COURT: Let's see it.

13 MR. DURANT: Okay. I had them
14 do that. I told everybody that the
15 family didn't want to see this.

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

18 MR. DURANT: Dr. Nichols, did
19 you bring a styrofoam skull?

20 DR. NICHOLS: I did.

21 MR. DURANT: Could we see that,
22 too, please.

23 DR. NICHOLS: Yes, sir.

24 MR. DURANT: And what is it
25 about this that you're not satisfied

Villalobos -- Recross

1 with?

2 DR. NICHOLS: I'm not too sure
3 about the exact dimensions of the
4 laceration in the back, but I think
5 it's a reasonable representation of the
6 wounds on her body and I think, unless
7 there're objections, this would be
8 preferable but once again, you know,
9 there's a caveat. I'm not exactly sure
10 what the dimensions are on the back as
11 far as lacerations, but it does go from
12 one side to the other side, your Honor.

13 MR. KULP: Are those photos that
14 I've seen?

15 MR. DURANT: I'm assuming so.
16 You met with him, too. I mean --

17 THE COURT: All right. Let's
18 get on the record. You object to these
19 pictures?

20 MR. KULP: I certainly do.

21 THE COURT: And I sustain the
22 objection, Solicitor. I think --
23 you've looked at them and I've looked
24 at them. I think while it's got a lot
25 of probative value, it also has -- it

Villalobos -- Recross

1 might tend to inflame the jury, so I
2 sustain the objection.

3 But now do you have an objection
4 to him using the, the plastic, the --

5 MR. KULP: No, sir.

6 THE COURT: All right, sir.
7 Let's operate that way.

8 MR. DURANT: Thank you, your
9 Honor.

10 THE COURT: He's withdrawn that,
11 what looks like to me is identical to
12 the pictures, so I think that that
13 would be preferable.

14 MR. DURANT: Okay.

15 THE COURT: Bring the jury in.

16 (The jury enters the courtroom
17 at 2:49 p. m.)

18 THE COURT: All right. Call
19 your next witness, Solicitor.

20 MR. DURANT: Ready, your Honor?

21 THE COURT: Yes, sir.

22 MR. DURANT: State would call
23 Clay Nichols.

24

25

Nichols -- Direct

1 C L A Y A L A N

2 N I C H O L S, having been called as a
3 witness in the presence of the jury, is
4 duly sworn and testifies as follows:

5 DIRECT EXAMINATION BY MR.

6 DURANT:

7 Q Good afternoon, Doctor.

8 A How you doing today?

9 Q Fine. Could you please tell the
10 jury what you do for a living.

11 A I'm a forensic pathologist,
12 which means I perform autopsies on people
13 who die of suspicious or unnatural deaths.

14 Q And where are you currently
15 employed, sir?

16 A Richland Memorial Hospital. I'm
17 in private practice.

18 Q Okay. And what is your title at
19 the Richland Memorial Hospital?

20 A Pathologist.

21 Q Prior to your employment with
22 Richland Memorial Hospital, where were you
23 employed?

24 A At the Medical University of
25 South Carolina.

Nichols -- Direct

1 Q And in what capacity were you
2 employed by the Medical University of South
3 Carolina?

4 A I was a forensic pathologist
5 also there. I was an associate professor on
6 the faculty, teaching pathology and forensic
7 pathology, plus I also acted as the medical
8 examiner for Charleston County.

9 Q And how long were you an acting
10 medical examiner for Charleston County?

11 A Fifteen years.

12 Q Would you just briefly let the
13 jury know what your educational background
14 is in the area of pathology.

15 A I received my bachelor of
16 science degree from the University of
17 Oklahoma in 1981. Following that I received
18 my medical degree also from the University
19 of Oklahoma in 1985.

20 In 1985 I entered a residency
21 program in pathology at the Medical
22 University of South Carolina, completing
23 that in 1989. From 1989 until December of
24 2000 I was on the faculty as an associate
25 professor. I hold an unrestricted license

1 to practice medicine in the State of South
2 Carolina, and I'm board certified by the
3 American Board of Pathology in both anatomic
4 and forensic pathology.

5 Q And in the area of forensic
6 pathology have you had the occasion to be
7 qualified as an expert witness in the courts
8 of this state?

9 A Hundreds of times.

10 Q And you testify, is that in
11 state and federal court?

12 A Yes.

13 MR. DURANT: Your Honor, we
14 would offer Dr. Nichols as an expert in
15 the area of forensic pathology.

16 THE COURT: Any objection?

17 MR. KULP: No, sir.

18 THE COURT: Go ahead.

19 Q Back in March of 1997, in
20 addition to your duties at the Medical
21 University, you were also acting as the
22 medical examiner in Charleston County. Is
23 that correct?

24 A Yes, sir.

25 Q And in that capacity did you

Nichols -- Direct

1 have an opportunity to perform an autopsy on
2 Teresa Haught on March thirteen, 1997,
3 approximately 10:30 in the morning?

4 A Yes, I did.

5 Q Who conducted the autopsy, sir?

6 A It was myself and a resident
7 physician by the name of Melisa Simms. We
8 also had a visiting resident by the name of
9 Claudel.

10 Q And do you know, recall if
11 anybody from the North Charleston Police
12 Department attended the autopsy as well?

13 A I know at least one or two
14 people did. Officer Hallman and perhaps
15 even Dusty Poole.

16 Q Okay. And I believe some
17 property was obtained from the victim at the
18 autopsy and turned over to Investigator
19 Hallman. Is that correct?

20 A Yes, it was.

21 Q And I believe one of those items
22 was a one-dollar bill. Is that correct?

23 A Yes, sir.

24 Q I believe Officer Hallman also
25 collected some hair from the defendant's

Nichols -- Direct

1 (sic) hand?

2 A That's my understanding, yes,
3 sir.

4 Q And did -- Court's indulgence.
5 Now, if you would, did you do an
6 external examination of the body?

7 A Yes, I did.

8 Q You were able to determine the
9 victim's weight, height, and age?

10 A Yes, I was.

11 Q And what was that, sir?

12 A The weight was one hundred and
13 ninety-eight pounds. The height was seventy
14 point five inches. And it appears
15 compatible with her stated age of thirty-six
16 years.

17 Q Okay. Do you recall what she
18 was wearing or do your notes reflect what
19 she was wearing?

20 A The body was clad in one pair of
21 blue jeans and one black shirt which is now
22 in fragments. One white brassiere, one pair
23 of black panties with a sanitary napkin.
24 One pair of gray socks and pair of tennis
25 shoes of indeterminate color.

Nichols -- Direct

1 Q Okay. And what color was her
2 hair, if you recall?

3 A Brown.

4 Q Now, if you would tell the jury
5 what you found with regard to your
6 examination of the head and neck area.

7 A An examination of the head and
8 neck revealed multiple irregular hemorrhagic
9 lacerations extending to the skull -- excuse
10 me. Extending to the skull are present
11 along the forehead and scalp. And an
12 irregular shaped three by one inch
13 laceration was present on the right
14 forehead, partially involving the lateral
15 aspect of the right eyebrow and extending to
16 the skull.

17 What that means is there is
18 roughly a jigsaw puzzle laceration or a tear
19 in the scalp right in this area here,
20 measuring three by one inch in greatest
21 dimensions.

22 In addition there was a
23 horizontal laceration across the posterior
24 aspect of the scalp which extends
25 essentially from the superior aspect of the

Nichols -- Direct

1 right ear to the superior aspects of the
2 left ear with the underlying skull exposed,
3 which means there was a defect in the skin
4 extending from this ear, going all the way
5 around the back, going to that ear.

6 Several irregular shaped
7 hemorrhagic lacerations extending to the
8 skull are present in the front of the ear,
9 measuring from one point five inches to zero
10 point five inch in diameter.

11 Three superficial jagged cuts
12 are present above the left eyebrow, and both
13 eyelids are swollen and are ecchymotic,
14 which means they were severely bruised, and
15 the left is more so than the right.

16 Q Okay. Could you tell the jury
17 what that means.

18 A That meant that there were, in
19 front of the left ear, that there were some
20 cuts that were rather jagged in the scalp on
21 this side. The eyelids also had -- were
22 bruised and swollen as a result of blunt
23 trauma. And there were several smaller cuts
24 below the left eyebrow over in this area.

25 Q And at my request, sir, did you

Nichols -- Direct

1 prepare an exhibit --

2 A Yes, I did.

3 Q -- to roughly show to the jury
4 where these injuries were on the victim's
5 head?

6 A Yes, I did.

7 Q Okay.

8 (Whereupon, marked for
9 identification was State's Exhibit No.
10 48, styrofoam skull.)

11 Q And is this the exhibit that you
12 prepared for the jury's edification?

13 A Yes, it is.

14 MR. DURANT: I would move
15 State's exhibit number forty-eight into
16 evidence if there is no objection.

17 MR. KULP: As a demonstrative
18 exhibit to aid the witness's testimony,
19 we have no objection.

20 MR. DURANT: Thank you.

21 (Whereupon, entered into
22 evidence was State's Exhibit No. 48,
23 styrofoam skull.)

24 Q Would that exhibit assist you in
25 testifying to the jury exactly what you

Nichols -- Direct

1 found?

2 A Yes.

3 Q And if you would like to stand
4 up, that's fine, or if you want to stay
5 there, that's fine as well.

6 A May I get in front of the jury,
7 please, your Honor?

8 Q Sure.

9 THE COURT: Yes, sir. Be sure
10 you talk loud enough so my court
11 reporter can hear you.

12 THE WITNESS: Yes, sir.

13 A The three main injuries are
14 grouped together and demonstrated on the
15 styrofoam skull. The skull's not to scale
16 and the dimensions are approximate.

17 The first laceration I talk
18 about was the one to the right forehead
19 here. You see it looks somewhat like a
20 jigsaw puzzle piece here.

21 The other one is the defect in
22 the skin extending from here to the other
23 side of the ear. If the ears were here,
24 that would be approximately. . . (Witness
25 indicating.) The dimensions, the exact

Nichols -- Direct

1 width I'm not exactly sure about.

2 And the other group of
3 lacerations or cuts that were important are
4 these cuts right here which would have been
5 somewhat in front of the left ear. That is
6 the area you see here and you see on the
7 scalp and roughly in connection, C-shaped.

8 Q In connection with that
9 particular injury, Doctor, did, did
10 Investigator Hallman bring you anything from
11 the, the scene of the crime?

12 A Yes, he did.

13 Q And do you recall what that was?

14 A It was broken piece of carafe.

15 Q And what did you do with that
16 broken piece of carafe?

17 A We matched up the broken ends to
18 this defect right here. The broken ends of
19 the carafe was almost a perfect match where
20 that went in, in that area. So it wasn't
21 actually the sides of the carafe or bottom
22 of the carafe. The carafe had already been
23 broken and the broken edges were the ones
24 that caused the injury to the left side of
25 the head.

Nichols -- Direct

1 Q Okay. Now with regard to the
2 injury on the right forehead, what was the,
3 the, the cause of that injury?

4 A This was due to some degree of
5 blunt trauma. What that means, that there
6 was some sort of dull object that was
7 applied to the forehead and it can be almost
8 any type of object would, would meet that
9 description.

10 However, the fact is you have a
11 broken carafe that was used on one side of
12 the head. In order to get that carafe to be
13 broken, it would not be unreasonable to
14 assume that the carafe was first applied to
15 this side of the forehead while it was still
16 intact, causing this injury and then during
17 the course of this injury the carafe broke
18 and was subsequently used in, in this
19 assault later on.

20 Q Okay. And a broken carafe would
21 account for the second injury you testified
22 to on her left side of her head?

23 A Yes.

24 Q Doctor, I hand you what's been
25 previously marked as defendant's,

Nichols -- Direct

1 defendant's exhibit number seven. Assuming
2 something like this was used as a weapon, do
3 you have any opinion as to which part of
4 this would be used to create that type of
5 injury or can you tell?

6 A No, I can't tell.

7 Q Okay. So it could be this side
8 or it could be wielded like a club, either
9 way?

10 A That's correct.

11 Q Okay. Thank you. Now, I
12 believe you testified as to your opinion as
13 to the wound to the left side of the face
14 and the forehead. What about the wound to
15 the rear of the head?

16 A The wound to the head's a little
17 more, I don't want to say complicated, but
18 it's a little more difficult to describe,
19 that I believe that the split was actually
20 caused by some sort of cutting action with a
21 sharp object. However, at the same time it
22 wasn't a very sharp object in that it's not
23 like a knife edge where you had a very clean
24 edge. Instead it was more irregular and
25 jagged, and it went down to the scalp.

Nichols -- Direct

1 Q Okay. And is it possible,
2 doctor, that, that -- you know, of course,
3 this body had been burned in a fire.

4 A Yes, sir.

5 Q Is that correct?

6 Is it possible in your -- in
7 your opinion, is it possible that the wound
8 to the back of the head could have been an
9 impact wound?

10 A That would be far down on my
11 list of possibilities. It's certainly not
12 impossible, but I would still favor some
13 sort of cutting action to cause that wound.

14 And as far as the thermal
15 injury, it's possible that the shape was
16 exaggerated some degree but was not caused
17 by the fire.

18 Q Okay. And let me get into that
19 a little bit. What do you mean by it's
20 possible that the heat could have
21 exaggerated the shape?

22 A As the, the body was burned heat
23 was applied to the body and as such the
24 tissues would tend to contract as the
25 temperature increased with, with the tissues

Nichols -- Direct

1 and as such it might have become a little
2 more gaping in the back rather than a more
3 normal contour, but the split was not caused
4 by heat.

5 Q So the genesis of the split was
6 not caused by heat, but it could have
7 been -- the size could have been increased
8 by heat?

9 A A little bit, yes.

10 Q Now, directing your attention to
11 your examination of her upper extremities,
12 you noted some sort of injury to her left
13 pinkie finger?

14 A Yes, I did.

15 Q What type of injury was that?

16 A The left hand is not burned but
17 the fingernail of the left fifth finger is
18 partially amputated with exposure of the
19 underlying pharyngeal bone. And what that
20 means is that the, not just the fingernail
21 was removed but pretty much the tip of the
22 finger was peeled back, exposing that bone
23 which is called a phalanx, underneath the
24 finger.

25 Q Was that, in your opinion, was

Nichols -- Direct

1 that injury caused by an incision or, or
2 just how --

3 MR. KULP: What was the nature
4 of the -- if you have an opinion? I
5 mean he's leading the witness, your
6 Honor, and that's against the rules.

7 Q What is your opinion as to the
8 cause of that injury?

9 A It was some sort of blunt trauma
10 where the tip of the finger was torn.

11 Q Okay. And what type of wound
12 would you categorize that as?

13 A As an evulsion. A severe
14 tearing of that tissue revealing the
15 underlying structures.

16 Q Would it be characterized as a
17 defensive wound?

18 A Oh, certainly could, yes. That
19 often times when people are attacked they
20 try to ward off their attacker by putting up
21 their hands, and it's not uncommon to see
22 injuries to either the palms or the back of
23 the hands or the fingers as a result of
24 defensive movements.

25 Q Now, moving on to your

Nichols -- Direct

1 examination of the head and central nervous
2 system, I believe you found a bunch of
3 hemorrhages and subdural, things of that
4 nature. Could you relate to the jury what
5 that is?

6 A Specifically, the brain weighs
7 one thousand, three hundred eighty grams.
8 Subgaleal hemorrhage is present in the left
9 temporal area. And what that means is that
10 during the course of the autopsy, that in
11 order to examine the brain that the scalp
12 itself has to be removed and peeled forward.
13 And that tissue that's between the skull and
14 the scalp is called the subgaleal area and
15 in the left temporal area, excuse me, over
16 here, there was a large degree of underlying
17 hemorrhage which was not necessarily visible
18 from the external surface. In addition,
19 subgaleal hemorrhage -- yes, sir?

20 Q Yes.

21 A Okay. Subgaleal hemorrhage is
22 also present surrounding the scalp
23 laceration in the right temporal area, so we
24 looked underneath this laceration and again
25 saw hemorrhage, which meant that she was

Nichols -- Direct

1 bleeding and alive at the time that these
2 injuries occurred.

3 The dura mater and phalanx are
4 intact. And what that are -- those are
5 coverings of the brain itself.

6 Bi-lateral subdural and
7 subarachnoid hemorrhage is present. And
8 what that means is that there's blood
9 between the thicker covering, which is
10 called the dura, and the brain itself, and
11 the thinner membrane between the, the brain
12 and the, and the dura, called the arachnoid,
13 so there's bleeding below one membrane and
14 below the smaller membrane as well. And all
15 these are indicative of blunt trauma in this
16 particular case.

17 And essentially that was the,
18 the extent of the hemorrhages in the brain.

19 Q Now, going, moving on to your
20 examination of the respiratory system, what
21 were your significant findings?

22 A Specifically, the, the
23 significant finding is that the upper airway
24 is clear of debris and foreign material, and
25 that surfaces were smooth, yellow, and

Nichols -- Direct

1 unremarkable. And if a person died in a
2 house fire or some sort of fire like this,
3 they would breathe smoke and soot and other
4 particles and that would be deposited in
5 your trachea or the upper airway, maybe even
6 into the lungs. And without seeing that we
7 know that the deceased was dead when the
8 fire was started and there was smoke being
9 produced.

10 Q Did you also perform any
11 toxicological examinations or blood tests
12 that would confirm that, that opinion?

13 A Yes, I did. Specifically a
14 carboxyhemoglobin level was --

15 COURT REPORTER: I'm sorry.

16 What --

17 A A carboxyhemoglobin.
18 C-a-r-b-o-x-y-h-e-m-o-g-l-o-b-i-n, okay, was
19 tested for and that revealed a level of two
20 per cent. And essentially people who smoke
21 cigarettes often have four, five, six, maybe
22 even seven, eight per cent carboxyhemoglobin
23 on board, and having a level of two per cent
24 once again indicates that she was dead when
25 the fire was started. People who die in

Nichols -- Direct

1 house fires often have levels in excess of
2 forty or fifty, and sometimes seventy and
3 eighty milligrams per cent.

4 Q So based upon those two factors,
5 what is your opinion concerning the time of
6 her death? Was it before or after the fire?

7 A Well, certainly before the fire
8 was started.

9 Q Now moving on to your
10 examination of the musculoskeletal system
11 and particularly the, the skull, what were
12 your significant findings?

13 A Multiple skull fractures are
14 present in both frontal bones, which are in
15 this -- located here, are fractured as well
16 as the right temporal bone and the left
17 occipital bone.

18 Both sphenoid bones are
19 fractured with fractures of the lesser wing
20 of the sphenoid bone on the left; fractures
21 of the lesser and greater wings of the
22 sphenoid on the right. And what that means
23 is that the skull was fractured not only in
24 what's called the calvarium, which is the
25 top part the brain here, here, and here, but

Nichols -- Direct

1 also on the base of the brain as well there
2 were fractures that resulted from blunt
3 trauma.

4 Q Any fractures to the rear
5 portion of her head?

6 A The left occipital area had a
7 fracture.

8 Q And where is that located?

9 A That would be back in this area.

10 Q How about the condition of her
11 eyes? Were there anything unusual about
12 that?

13 A The eyelids were, of course,
14 bruised and ecchymotic.

15 Q What does that mean?

16 A That means severely bruised.

17 Q Did you perform a toxicological
18 exam on the victim or was toxicology
19 performed on the victim?

20 A Yes, it was. Specifically,
21 ethanol was identified at a level of
22 sixty-three milligrams per a hundred grams
23 of liver. Blood was not available so we
24 used liver instead for this tissue to be
25 analyzed.

Nichols -- Direct

1 Q Could you translate that to a
2 reading, for example, on a breathalyzer or
3 something like that?

4 A It would be less than what would
5 be needed to be considered intoxicated for
6 driving purposes in South Carolina. Usually
7 one hundred milligrams per hundred grams of
8 liver.

9 Q Okay. Would that translate to
10 point zero six?

11 A Yes.

12 Q Was there any evidence of
13 illegal drugs in her system?

14 A No.

15 Q Doctor, based on your training,
16 education, and experience as a medical
17 examiner have you had an opportunity to
18 perform -- arrive at an opinion based upon a
19 reasonable degree of medical certainty as to
20 the cause of death in this case?

21 A Yes, I did.

22 Q And what is that opinion, sir?

23 A Teresa Haught died as a result
24 of blunt force trauma to the head.
25 Essentially her head was beat to the point

1 where she died.

2 MR. DURANT: Could you please
3 answer any questions Mr. Kulp may have
4 for you.

5 MR. KULP: Thank you.

6

7

8

9 CROSS-EXAMINATION BY MR. KULP:

10 Q Good afternoon, Doctor.

11 A How you doing, Mr. Kulp?

12 Q Good to see you again.

13 A Yes.

14 Q The -- a number of things were
15 taken following the autopsy and preserved
16 for possible future examination?

17 A Yes, sir.

18 Q And do you recall me writing you
19 in the pendency of this case and asking you
20 why a rape protocol was not pursued, with
21 the appropriate forensic evidence gathered
22 pursuant thereto? Do you remember me
23 writing you about that?

24 A Yes.

25 Q And as a matter of fact during

Nichols -- Cross

1 the course of the autopsy, was Detective
2 Hallman present that you recall?

3 A Yes, he was.

4 Q And did he -- when you discussed
5 the topic of running a series of rape
6 protocol or criminal sexual assault approach
7 to gathering evidence from Miss Haught, did
8 he indicate to you that he didn't think it
9 was necessary?

10 A I don't think that criminal
11 sexual assault, being in this particular
12 case penetration with ejaculation, was an
13 issue. And still after the investigation I
14 don't think it's an issue.

15 Q Did -- let me try again.

16 A Okay.

17 Q Did you -- did he ask -- did he
18 tell you that he didn't think it was
19 warranted, based on his knowledge of the
20 case?

21 A Yes.

22 Q Okay. Now, in fact after I
23 wrote you and two more times regarding this
24 case, an unfortunate thing happened, didn't
25 it?

Nichols -- Cross

1 A Yes, it did.

2 Q Yeah. The, the freezer at the
3 examiner's office containing some specimens,
4 including the pubic swabbing from Mrs.
5 Haught, was lost because the freezer died?

6 A That is correct.

7 Q Failed, and everything had to be
8 disposed of properly.

9 A Yes.

10 Q And that was before any testing
11 could be done of any pubic swabbing.
12 Correct?

13 A That's correct.

14 Q And you did at least pubic
15 swabbing during the autopsy procedure that
16 day, simply without doing the full criminal
17 sexual assault protocol, just out of
18 abundance of caution?

19 A That is correct.

20 Q Now, you determined that -- you
21 didn't testify on direct, but there was no
22 evidence of any strangulation of
23 Miss Haught?

24 A No. I didn't see any.

25 Q Now, you're a forensic

Nichols -- Cross

1 pathologist and board certified as was
2 brought out when you were qualified. You --
3 I guess everyone's seen and I know you've
4 heard this a hundred times, the Quincy show
5 that was on, and, and part of forensic
6 pathology, is it not, is to from a medical
7 perspective to make an examination of the
8 deceased to try -- in a criminal setting --

9 A Uh-huh.

10 Q And I guess therefore you use
11 the word "forensic", is it not the purpose
12 to try to figure out what happened, for lack
13 of a better description?

14 A Yes.

15 Q As best you can within the
16 science that's available, within the
17 procedures that you can perform, within the
18 material that you can collect, and analyze
19 or have analyzed. Correct?

20 A Yes, sir.

21 Q Now, did you, when Mrs. Haught's
22 body appeared before you for autopsy that
23 day, did you, you were aware, were you not,
24 from Mr. Hallman or otherwise possibly, of
25 some of the facts and circumstances of the

Nichols -- Cross

1 case?

2 A Yes.

3 Q Okay. That she had been
4 assaulted and she certainly presented that
5 way.

6 A Yes.

7 Q And that in fact the -- at least
8 potentially another human was involved?

9 A I think that's a fair
10 assumption, yes.

11 Q Now, the -- did anyone -- did --
12 was it standard protocol and did you take
13 any fingernail scrapings at the time to
14 preserve those for any type of forensic
15 analysis?

16 A I don't recall taking fingernail
17 scrapings.

18 Q Okay. Is there any particular
19 reason why you did not?

20 A No.

21 Q Okay. Now, were you asked to
22 conduct any analysis of blood withdrawn from
23 Mr. Myers for the presence of an elevated
24 level of carboxy -- excuse me. Of carbon
25 monoxide?

1 A Was I asked to do that?

2 Q Yes.

3 A No.

4 Q Okay. Were you aware that blood
5 had in fact that next morning been
6 withdrawn, blood samples had been withdrawn
7 from Mr. Myers?

8 A No.

9 Q Mr. Hallman didn't tell you?

10 A No.

11 Q Okay. Now, did you find glass
12 fragments of any nature in any of the wounds
13 that you've testified to about here today?

14 A No.

15 Q Let me ask you about the
16 incision that you -- or the incision.

17 A Sure.

18 Q On the back of the -- Mrs.
19 Haught's head, and in that regard. . .

20 MR. KULP: Can I have this
21 marked for identification?

22 (Whereupon, marked for
23 identification was Defendant's Exhibit
24 No. 33, meat cleaver.)

25 Q I'm handing you what's been

Nichols -- Cross

1 marked as defendant's number thirty-three
2 for identification and ask you this, and ask
3 you -- now, let me go back a little bit.
4 Detective Hallman brought with him that day
5 a piece of a wine carafe?

6 A Yes.

7 Q And it's your understanding that
8 that was for the purpose of any forensic use
9 that you might deem was worth exploring?

10 A That's correct.

11 Q Now, did he bring with him as
12 well this meat cleaver?

13 A I don't recall a meat cleaver.

14 Q And would you, without cutting
15 yourself, would you check the edge of that.

16 A Yes.

17 Q Fairly sharp?

18 A Sure.

19 Q But not razor sharp. Would you
20 agree?

21 A Correct.

22 Q And did he bring two wine
23 carafes or one wine carafe piece?

24 A He may have brought two. I just
25 remember the one that we compared.

Nichols -- Cross

1 Q That was something you'd write
2 down you think, or note?

3 A Usually, but at that time I just
4 remember the one carafe for comparison, but
5 two may have been there.

6 Q But you're not sure?

7 A No.

8 Q So since you're not sure, you
9 wouldn't know which one you used to compare
10 it to the wounds in the victim?

11 A Probably the one that matched.

12 Q Probably?

13 A Yeah.

14 Q Okay. Well, between the two,
15 probably the one that matched?

16 A The one that matched, yes.

17 Q All right. Now let me ask you,
18 certainly State's -- defendant's exhibit
19 number thirty-three, would that be, could be
20 considered within the range of possible
21 cutting instruments that could have made the
22 incision across the back of the --
23 Mrs. Haught's head?

24 A Possible.

25 Q And as well that's why you

Nichols -- Cross

1 testified -- you're testifying it's possible
2 because it's a clean cut. Correct?

3 A Reasonably so, yes.

4 Q And on your model as a matter of
5 fact -- do we have that? Do you have that?

6 And I can certainly show you
7 some pictures from your procedure but I
8 hope, but if necessary, but you indicated
9 that the, in your testimony, that the, the
10 incision went up above to the anterior
11 portion of her ear?

12 A Right. But I'm placing the ear
13 approximately here. See, that's one of the
14 things that we have problems with, when we
15 start playing with models.

16 Q Okay.

17 A Okay.

18 Q All right. So it, it stopped
19 there?

20 A Right.

21 Q Okay. And stopped on this side,
22 about right here?

23 A Correct.

24 Q So that would be forward of the
25 ear?

1 A A little bit, yes.

2 Q All right. So -- I understand
3 the problem with the use of the styrofoam.

4 A Right.

5 Q Could you, could you take my
6 green pen and just kind of make some kind of
7 notation there in terms of where the
8 location of the ear would be.

9 A (Witness complies.)

10 Q Very good. Okay. Thank you.
11 So this one was not forward of the ear?

12 A It looks a little forward and
13 once again we, we have a non-scale model.
14 I'm just eye-balling it.

15 Q All right. Did you find any
16 glass fragments in that point of -- in the
17 back of the head?

18 A No.

19 Q Okay. Now, as forensic
20 pathologist, did you do or perform any
21 testing with sample wine carafes as to the
22 breakage qualities of the glass to determine
23 where the glass breaks, how it breaks, what
24 thicknesses might affect the breakage of the
25 glass?

Nichols -- Cross

1 A No.

2 Q Okay. Did you rely upon any
3 data in the area of experiments that have
4 been conducted as to glass breakage or
5 objects of that nature?

6 A Into what regards?

7 Q Did you review any data that --
8 and findings that resulted from any test
9 conducted of the use or experimentation with
10 glass wine carafes?

11 A I'm sorry. I'm missing the
12 paint here. You're saying the carafe was
13 not broken or the carafe was broken?

14 Q No, sir. I'm just asking you --
15 let me start back.

16 A See, I don't know what the line
17 is, you know. I was presented with a broken
18 carafe and I matched it up to what I thought
19 were the pertinent injuries.

20 Q Yes, sir.

21 A Now, at what point does testing
22 come into this to see if it, if it matched
23 up or not? I don't see the, the logic here.

24 Q I'm sorry. I'm just trying to
25 ask you some questions.

Nichols -- Cross

1 A Okay.

2 Q And simply --

3 A Yes.

4 Q -- did you do experimentation to
5 determine the breakage aspects of glass?

6 A No.

7 Q Okay. Such as how hard you
8 would have to hit with the glass before it
9 broke?

10 A No.

11 Q Okay. Now, when you were as you
12 testified taking whichever wine carafe piece
13 you used to check against the, the injuries
14 to the victim and in that area of the cuts,
15 did you photograph that procedure to
16 document what you described as the match to
17 record it?

18 A I believe a photograph was
19 taken, yes.

20 Q Do you have it?

21 A No, I do not.

22 Q Where is it?

23 A I have no idea.

24 Q Okay. And now, when, when did
25 the carafe break?

Nichols -- Cross

1 A Before the injury was caused to
2 the left side of the head.

3 Q Okay. When did the carafe break
4 when it was being used as a blunt
5 instrument?

6 A I have no idea.

7 Q In fact other than your
8 testimony about the matching to the wound of
9 the appearance of the contusions, you have
10 no idea at all that a glass carafe was used
11 in this assault?

12 A That's correct. But once again
13 the injuries do match up, so it was used in
14 the assault.

15 Q Well, I think you testified it
16 could have been a blunt instrument?

17 A Well, we, we, I think the
18 injuries to the side of the head are part of
19 the assault. Maybe I'm, you know, out of
20 line here, but clearly we have multiple
21 injuries to the body. A carafe matches up
22 to at least some of those injuries. Some of
23 those injuries occurred during the assault
24 which took her life. And I think the carafe
25 was used in the assault and I think that's

Nichols -- Cross

1 pretty compelling evidence when, when the
2 edges match up.

3 Q Okay. So you're saying and
4 testifying that no other blunt instrument
5 could have been used?

6 A No. I didn't say that either.
7 I said the carafe was used.

8 Q Okay. "Comma, and it could have
9 been some other blunt instrument"?

10 A Absolutely.

11 Q All right. Now, when you said
12 the word "it could be a defensive wound to
13 her little finger" it equally could not be a
14 defensive wound?

15 A That is also true. Yes, sir.

16 Q Now, the -- you testified that
17 the blood alcohol level detected in
18 Mrs. Haught was point zero six?

19 A In her liver, yes.

20 Q In her liver.

21 A Yes.

22 Q The method of testing her liver.

23 Did anyone provide you with any
24 information, did Mr. Hallman tell you that
25 the investigation revealed that she consumed

Nichols -- Cross

1 eighteen beers over a five-hour time period?

2 A That was brought up at some
3 point since the autopsy. I don't remember
4 who told me but, yes, that information was
5 given to me.

6 Q Okay. And you -- how many wine
7 carafes were used in the process of the
8 whole assault of Mrs. Haught?

9 A At least one.

10 Q Okay. Do you know how many?

11 A At least one.

12 Q Okay. Possibly more?

13 A Possibly.

14 Q But you don't know?

15 A No.

16 Q Now, you indicated that a -- for
17 someone who been in a house fire who died,
18 their carbon monoxide level or is it
19 carboxyhemoglobin level?

20 A Right.

21 Q Could be forty, fifty, or so?

22 A Yes.

23 Q Which would mean that before
24 they expired that would be the result of
25 their breathing of smoke and ingesting it

Nichols -- Cross

1 and it being processed and being left that,
2 that metabolite in their blood?

3 A That's correct.

4 Q Okay. And so someone who does
5 breathe smoke for some period of time in
6 their lungs, it is possible to simply
7 examine their blood to determine what that
8 elevated level is?

9 A Yes.

10 Q And in fact at a level of forty
11 or fifty it could well exceed what a smoker
12 might in fact show when measured for the
13 presence of that particular substance?

14 A Oh, yes.

15 MR. KULP: Beg the Court's
16 indulgence for one second.

17 Your Honor, we'd offer, based
18 upon the witness's testimony as a
19 possible instrument that could be used,
20 we'd offer State's exhibit -- excuse
21 me. Defendant's exhibit number
22 thirty-three in evidence at this time.

23 THE COURT: Any objection?

24 MR. DURANT: I don't think
25 there's a foundation been allowed --

Nichols -- Cross

1 laid, but I don't, I don't object to
2 it, your Honor.

3 THE COURT: All right.

4 (Whereupon, entered into
5 evidence was Defendant's Exhibit No.
6 33, meat cleaver.)

7 Q Now, as a forensic pathologist
8 did you have occasion during the -- your
9 involvement in this case to, when the scene
10 was fresh, to go to the scene and make any
11 examination of the premises?

12 A I did not go personally, but a
13 representative of our office went.

14 Q Okay. Did he prepare a report
15 based on his findings?

16 A There is a report in the file.

17 Q From -- really?

18 A Well, there's the scene report.

19 Q Oh. That was performed by Dr --

20 A Simms.

21 Q Dr. Simms went to the scene?

22 A I believe so.

23 Q Are you positive?

24 A I did not go. It could be

25 Dr. Simms or maybe some other representative

Nichols -- Cross

1 from our office.

2 Q So then you're not sure. You
3 don't know?

4 A Well, there's a -- her
5 signature's on the back.

6 Q I know. But where on here does
7 it say she went to the scene? Am I missing
8 something?

9 A It says -- (Witness indicates.)

10 Q Where's that? No. Just says
11 she viewed the body.

12 A Yeah. Well, that's usually what
13 happens, what you do at the scene.

14 Q But "viewed the body" could also
15 be at the morgue?

16 A Well, usually the autopsy takes
17 place.

18 Q Probably or usually?

19 A Usually.

20 MR. KULP: Thank you. No
21 further questions.

22

23

24

25

Nichols -- Redirect

1 REDIRECT EXAMINATION BY MR.

2 DURANT:

3 Q I just have one more, Doctor.

4 Did she have any injuries that would be
5 consistent with her head having hit the hard
6 ground or, or having been beaten on the
7 ground?

8 A Oh, yes. Almost all the skull
9 fractures could be consistent with her head
10 being pummeled into the ground.

11 MR. DURANT: Thank you. I have
12 nothing else.

13 MR. KULP: Just one other
14 question.

15 THE WITNESS: Yes, sir.

16

17

18

19 RECROSS-EXAMINATION BY MR. KULP:

20 Q If someone was holding someone
21 and dropped them or let them fall to the
22 ground --

23 A Uh-huh.

24 Q -- would that create the same
25 trauma to the skull as being pummeled?

Nichols -- Recross

1 A No.

2 MR. KULP: Okay. Thank you.

3 THE COURT: All right. You can
4 be excused if you like, Doctor.

5 THE WITNESS: Thank you.

6 MR. KULP: Thank you.

7 MR. DURANT: Thank you very
8 much, Doctor. I appreciate it.

9 MR. KULP: Thank you, sir. No
10 objection to being excused.

11 MR. DURANT: State would rest,
12 your Honor.

13 THE COURT: All right. Go to
14 your room just a few minutes. Got time
15 enough for the smokers to smoke.

16 (The jury leaves the courtroom
17 at 3:25 p. m.)

18 THE COURT: All right. Are
19 there any motions?

20 MR. KULP: Yes, sir. We move
21 for a directed verdict at this time,
22 directed verdict of not guilty based
23 upon the standard that applies, with
24 which your Honor is very familiar.

25 THE COURT: Why don't you put it

Nichols -- Recross

1 on the record?

2 MR. KULP: Your Honor, we feel
3 that the, the State has presented a
4 case and that there are significant
5 issues of controversy in the case based
6 also on the testimony -- based not only
7 on the testimony of the witnesses and
8 the number of discrepancies in the
9 testimony and confusion, we think that
10 we, we've certainly at this point not
11 offered any testimony regarding the
12 false confession, of course, but we
13 feel that to do so would be to allow
14 the jury to convict the defendant
15 merely based on suspicion and not on
16 sufficient legal basis of proof.

17 THE COURT: All right, sir. I
18 deny that motion. It's a jury
19 question.

20 MR. KULP: Thank you.

21 THE COURT: Any other motions?

22 MR. KULP: Not at this time.

23 I'd like to talk to Mr. Durant at this
24 point just for a second.

25 THE COURT: You can use my

Nichols -- Recross

1 chambers if you like.

2 MR. KULP: Well, if we could
3 speak to you as well.

4 THE COURT: Sure. Court's in
5 recess.

6 MR. KULP: Thank you.

7 (Whereupon, a recess is taken at
8 3:26 p. m.)

9 (The Judge enters the courtroom
10 at 3:45 p. m.)

11 (The jury enters the courtroom
12 at 3:46 p. m.)

13 THE COURT: All right. The
14 testimony is in for the State. Now the
15 defense will have an opportunity to put
16 up their witnesses. We had to dispose
17 of some legal issues is why I kept you
18 back there.

19 All right. Call your first
20 witness.

21 MR. KULP: Yes, sir. We call
22 Carl Chaplin to the stand, your Honor.

23 Please come around and be sworn,
24 Mr. Chaplin.

25

Chaplin -- Direct

1 C A R L C H A P L I N, having
2 been called as a witness in the
3 presence of the jury, is duly sworn and
4 testifies as follows:

5 DIRECT EXAMINATION BY MR. KULP:

6 Q If it please the Court.

7 Mr. Chaplin, where do you
8 reside?

9 A 1014 Alamo Street, North
10 Charleston.

11 THE COURT: Is that microphone
12 close to him?

13 MR. KULP: I'll get it, your
14 Honor. Make sure you're speaking up
15 and the jurors can hear you as well.

16 Q How old are you?

17 A Forty-six.

18 Q Do you know Laurie Villalobos?

19 A Yes.

20 Q Okay. And let me take you back
21 to 1997. Did you know her in March, the
22 month of March of 1997?

23 A I think so.

24 Q Okay. Did you have occasion
25 to -- you were dating her or seeing her?

Chaplin -- Direct

1 A Yeah.

2 Q And did you have occasion to see
3 her for a period of several months after
4 that?

5 A Yes, sir.

6 Q Okay. And do you recall seeing
7 her on the evening of the twelfth of March,
8 1997?

9 A I'm not sure about it. It's
10 been so long ago.

11 Q Okay. After or in the months
12 after March of 1997, did you have -- you
13 were dating her you said so you had occasion
14 to see her. Did she ever mention anything
15 to you about being at the Mill Inn on
16 [REDACTED] on the evening of the
17 twelfth of 1997, March the twelfth, going in
18 there and seeing Wes Myers inside with
19 Teresa Haught?

20 A No, sir.

21 Q Okay. And she never mentioned
22 that to you?

23 A No, sir.

24 Q And I believe you saw her
25 lately, a month or -- did you -- have you

Chaplin -- Direct

1 seen her recently?

2 A Uh-huh.

3 Q Okay. And at that time did she
4 mention anything about having seen Mr. Myers
5 at the Mill Inn on March the
6 twelfth/thirteenth, that passing hour of the
7 midnight, in 1997?

8 A No, sir.

9 Q Okay. Now, Mr. Chaplin, you've
10 been arrested a number of times, been
11 convicted of several offenses?

12 A Yes, sir.

13 Q Okay. Which the solicitor may
14 ask you about. Thank you very much. I have
15 no further questions.

16

17 CROSS-EXAMINATION BY MR. DURANT:

18 Q So you have no recollection of
19 the events of March twelve and March
20 thirteen of 1997. Is that correct?

21 A No, sir.

22 Q And would it be fair to say that
23 you and Mrs. Villalobos had kind of a rocky
24 or tumultuous or heated relationship at
25 times?

Chaplin -- Cross

1 A Yeah.

2 Q Would it be unusual for her to
3 come over to your house in the evening and
4 have arguments with you?

5 A No, sir.

6 Q Okay. Did that happen on more
7 than one occasion, sir?

8 A Yes, sir.

9 Q And usually you would just lock
10 the door and go on about your business?

11 A Yeah.

12 Q And you all broke up fairly soon
13 after this. Is that correct?

14 A Uh-huh. Right.

15 Q And, and you hadn't seen her
16 again until I believe just maybe a couple
17 months ago. Is that correct?

18 A Yes, sir.

19 MR. DURANT: Okay. I don't
20 think I have anything else. Thank you.

21 THE COURT: You can be excused
22 if you'd like.

23 MR. KULP: Thank you, sir.

24 THE COURT: Have a good day.

25 THE WITNESS: Okay.

Chaplin -- Cross

1 THE COURT: Come on, approach
2 the bench a minute.

3 MR. KULP: Yes, sir.

4 (Whereupon, there was an
5 off-the-record bench conference.)

6 THE COURT: Now, we going to
7 start a tape which might be too long
8 for you because I know somebody at
9 least got to get out of here by six
10 o'clock. So we'll -- let's aim for
11 5:30. Is that convenient to you all?
12 Anybody, is that inconvenient?

13 Okay. And I might have to stop
14 that and we'll continue it on Monday.
15 Okay. All right. Go ahead.

16 MR. KULP: It's in evidence.
17 It's already marked as a court exhibit.

18 THE COURT: Yes, sir. This a
19 video recording of a conversation or
20 whatever you want to call it between
21 Mr. McHale, Major McHale and the
22 defendant. Is that correct?

23 MR. KULP: Yes, sir.

24 THE COURT: All right, sir. You
25 know how to operate it?

Chaplin -- Cross

1 MR. KULP: I do, your Honor, but
2 I think that tape may actually be, the
3 court exhibit might be over here. We
4 gave it back to --

5 THE COURT: Go ahead and find
6 it.

7 MR. KULP: Got it right here,
8 your Honor.

9 MR. DURANT: Is it marked? Do
10 you want to mark it or you want to put
11 it into evidence?

12 MR. KULP: I think it's already
13 marked.

14 THE COURT: I think it's marked
15 as a court exhibit, isn't it?

16 MR. DURANT: It hasn't been
17 marked in as a -- it hasn't been
18 introduced in the trial.

19 THE COURT: All right. You can
20 mark it defendant's exhibit.

21 (Whereupon, marked in evidence
22 was Defendant's Exhibit No. 34,
23 videotape.)

24 (At this time Defendant's
25 Exhibit No. 34 is played for the jury.)

Chaplin -- Cross

1 MR. KULP: It's jumping, the
2 tape. I'd like to try another T. V.
3 This thing is jumping all around.

4 THE COURT: Go ahead. How about
5 somebody helping -- is there another
6 T. V. we can get?

7 MR. KULP: In the back. It's
8 not on the thing but I can carry it in.

9 (Whereupon, another television
10 set is brought in and Defendant's
11 Exhibit No. 34 is played for the jury.)

12 THE COURT: Is that all right?

13 A JUROR: Almost too far away.

14 THE COURT: Let me know. We'll
15 move it up for you. Straighten it up.
16 Parallel.

17 A JUROR: That's good.

18 THE COURT: You're not starting
19 over, are you?

20 MR. KULP: No, sir.

21 Is that okay?

22 A JUROR: Jumping up and down.

23 That's better.

24 (Whereupon, Defendant's Exhibit
25 No. 34 continues to be played for the

Chaplin -- Cross

1 jury.)

2 THE COURT: Is that it?

3 MR. KULP: Yes, sir. thank you.

4 That concludes it.

5 THE COURT: That's two minutes
6 past the time. See you Monday morning
7 at nine -- well, let's see. I got a
8 jury coming eleven o'clock. Jury comes
9 in at nine, but I mean eleven o'clock?
10 10:30?

11 MR. DURANT: Eleven o'clock
12 would be fine.

13 THE COURT: I hate to make you
14 wait that long, but come in eleven
15 o'clock.

16 CAPTAIN MCKINNEY: Probably
17 10:45 if you want to, Judge. Whatever
18 you want.

19 THE COURT: Well, I'll make it
20 eleven. Easier to remember.

21 CAPTAIN MCKINNEY: All right.

22 THE COURT: I'll be here at
23 nine, though.

24 Don't watch T. V., don't read
25 the newspapers, and don't let anybody

Chaplin -- Cross

1 talk to you about this case and
2 remember my admonitions.

3 When you come here Monday
4 morning the clerk's got money now so
5 we'll have a little snack for you. I
6 don't know, if it's eleven o'clock I
7 better wait and give you lunch.

8 A JUROR: You just buy us lunch.

9 THE COURT: That sounds good.
10 All right. Go ahead and have a nice
11 weekend.

12 (The jury leaves the courtroom
13 at 5:47 p. m.)

14 THE COURT: Anything before we
15 leave?

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

17 THE COURT: All right, sir.

18 MR. KULP: Have a good weekend.

19 MR. DURANT: See you Monday.

20 THE COURT: All right. This
21 case, eleven o'clock Monday, and I'll
22 start court then but I'll be here at
23 9:30 if anybody needs me.

24 (Whereupon, this matter was
25 adjourned at 5:50 p. m.)

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 2nd day of March, 2001.

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

DATED:

August 2, 2001

Heather Gayle Burns RDR
HEATHER GAYLE BURNS, R.D.R.
Official Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

STATE OF SOUTH CAROLINA,

TRANSCRIPT OF PROCEEDINGS

~~-VS-~~

WESLEY MAX MYERS,

MARCH 5, 2001

Defendant.

CHARLESTON, SOUTH CAROLINA

BEFORE:

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

APPEARANCES:

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

TIMOTHY CLAY KULP, ESQ.
FOR THE DEFENDANT

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

INDEX

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS

IN PRESENCE OF JURY:

Saul Kassin				
by Mr. Kulp	15,34		167,191	
by Mr. Durant		22,98		182
Gerald Leroy Hurst				
by Mr. Kulp	193,220		292	
by Mr. Durant		211,270		

EXHIBITS

No.	Description	Ident.	Evd.
Defendant's 2	Photograph of watch		3
Defendant's 3	Knife and case		3
Defendant's 4	Evidence receipt		3
Defendant's 11	Wine carafe		3
Defendant's 18	Chain of custody sheet		4
Defendant's 19	Report by Hallman		4
Defendant's 24	Photograph		5
Defendant's 25	Photograph		5
Defendant's 26	Photograph		5
Defendant's 27	SLED report		8
Defendant's 30	Photograph		5
Defendant's 35	Crime scene report by Hallman	190	
Defendant's 36	Photograph	221	
Defendant's 37	Photograph	259	260
Defendant's 38	Photograph	259	260
Defendant's 39	Photograph	259	260
Defendant's 40	Photograph	292	292

1 (The Judge enters the courtroom
2 at 11:17 a. m.)

3 THE COURT: All right, sir. You
4 got some housekeeping?

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

6 THE COURT: Go ahead.

7 MR. KULP: I came in this
8 morning and reviewed the exhibits in
9 the trial that have been either
10 identified or admitted and went over
11 the list that Madam Court Reporter
12 provided me, and I met with Mr. Durant
13 after that and there are a few things
14 identified by number that we would move
15 to admit now without objection from the
16 State, that were marked for I. D. only.

17 THE COURT: All right, sir.
18 Give it to her.

19 MR. KULP: First off would be
20 number two, defendant's number two.

21 THE COURT: Go ahead.

22 MR. DURANT: Could you just tell
23 us what they are?

24 MR. KULP: I'm sorry. Sure.
25 Picture of the watch as it was found at

1 the fire scene.

2 Number three is the buck -- not
3 buck, but whatever kind of knife, and
4 the case.

5 And number four is the receipt
6 for that which the witness identified
7 were turned into Wes -- returned to Mr.
8 Myers' father. So that's three and
9 four.

10 (Whereupon, entered into
11 evidence were Defendant's Exhibit No.
12 2, photograph of watch at scene; No. 3
13 knife and case; and No. 4, receipt for
14 evidence.)

15 THE COURT: Go ahead.

16 MR. KULP: Number six -- well,
17 I'll come back to that. Number eleven,
18 your Honor, defendant's number eleven
19 is the other wine carafe which we --

20 THE COURT: All right, sir.

21 (Whereupon, entered into
22 evidence was Defendant's Exhibit No.
23 11, wine carafe.)

24 MR. KULP: Number thirteen and
25 fourteen were the two forms that

1 Mr. Hallman identified as being those
2 he generated, number thirteen and
3 fourteen. Two documents.

4 MR. DURANT: Wasn't that
5 eighteen and nineteen?

6 MR. KULP: No. You're right.

7 MR. DURANT: These I'm not
8 agreeing to.

9 MR. KULP: No. Of course not.
10 I'm sorry. Number eighteen and
11 nineteen, not number thirteen and
12 fourteen.

13 MR. DURANT: So I'm not agreeing
14 to thirteen and fourteen.

15 MR. KULP: I didn't mean that.

16 (Whereupon, entered into
17 evidence were Defendant's Exhibit Nos.
18 18 and 19, reports of Detective
19 Hallman.)

20 MR. KULP: All right. Numbers
21 twenty-four, twenty-five, and
22 twenty-six were the photos of the
23 defendant.

24 MR. DURANT: No objection.

25 (Whereupon, entered into

1 evidence were Defendant's Exhibit Nos.
2 24, 25, and 26, photographs of the
3 defendant.)

4 MR. KULP: Number eighteen and
5 nineteen we addressed. Number thirty
6 was the very large picture of the tile
7 and number twenty-seven was a
8 document -- let's see. It was this
9 document that Mr. Hallman identified
10 during his examination.

11 THE COURT: All right, sir.
12 Anything else?

13 (Whereupon, entered into
14 evidence was Defendant's Exhibit No.
15 30, photograph of tile.)

16 MR. DURANT: Well, I'm --
17 twenty-seven I'm not sure about. I
18 don't remember him asking Mr. Hallman
19 about this. He could have.

20 THE COURT: Let me look at it.

21 MR. DURANT: It was my
22 impression that he asked a different
23 witness about it, but I could be wrong.
24 I just -- a lot of things happened in
25 the last day.

1 MR. KULP: I'll recall Mr.
2 Hallman if I need to.

3 THE COURT: Where is Mr.
4 Hallman?

5 MR. DURANT: He's back here,
6 your Honor.

7 THE COURT: We'll just find out
8 about it.

9 MR. KULP: Yes. And I think
10 that's, that's all, your Honor.

11 THE COURT: All right. Anything
12 else? Can we go forward?

13 MR. DURANT: Your Honor, I'd
14 like to just, just put on the record I
15 know Mr. Kassin is testifying this
16 morning, and I do want to go ahead and
17 put on the record at this point that
18 I'm sure that your Honor will allow him
19 to testify as to general psychological
20 principles and how those may affect the
21 truth or falsity of a confession, but I
22 would object to him telling the jury
23 about other cases that don't involve
24 this particular case and because,
25 number one, it's irrelevant. Unless it

1 is exactly the same facts as we have in
2 this case here, it's completely
3 irrelevant to the, to the issues before
4 this jury.

5 THE COURT: All right. Well,
6 we've already discussed that in
7 chambers. He said he'd take care of
8 it.

9 MR. DURANT: Thank you. Yes,
10 sir.

11 THE COURT: Yes. Anything else?

12 MR. KULP: I'll deal with the
13 witness before he takes the stand.

14 MR. DURANT: Can we substitute
15 this one --

16 MR. KULP: Sure.

17 MR. DURANT: -- because this
18 one's got the officer's name on it,
19 so --

20 MR. KULP: Right.

21 MR. DURANT: And this one
22 doesn't. Is it the same one?

23 MR. KULP: No, it's not.

24 MR. DURANT: Okay.

25 MR. KULP: There are two, in

1 fact.

2 MR. DURANT: Yeah. But they
3 both -- see, I need one that's signed.

4 MR. KULP: Okay.

5 MR. DURANT: If I got one that's
6 signed, I'll --

7 MR. KULP: I know that. Hold
8 on.

9 MR. DURANT: -- stipulate to it.

10 MR. KULP: We worked it out,
11 your Honor.

12 THE COURT: Thank you. Bring
13 the jury in.

14 (Whereupon, entered into
15 evidence was Defendant's Exhibit No.
16 27, S. L. E. D. report.)

17 MR. KULP: Your Honor, while --
18 your Honor, on the issue of the
19 mentioning of testimony by our expert
20 as to other related internalized false
21 confessions, I just spoke with him
22 about that and we might want to go
23 through a little voir dire so just --
24 not -- we don't have to send them out,
25 whatever.

1 THE COURT: Could you hold them
2 just a minute?

3 MR. KULP: Because it's his, his
4 assessment of this matter depends
5 upon --

6 THE COURT: Why don't you go,
7 why don't you go back there and talk to
8 him. You know what to tell him.

9 MR. KULP: I just did.

10 THE COURT: Well, you don't want
11 to do it in voir dire.

12 MR. KULP: All right.

13 THE COURT: Sure. Because if he
14 does the thing he's not supposed to,
15 you know the solicitor is going to
16 object, and you don't want to do that.

17 MR. KULP: Right. But what I'm
18 saying is, is that he's going to
19 mention other examples of internalized
20 false confessions that are factual that
21 he has compared this to in order to
22 make his assessment about the
23 circumstances.

24 MR. DURANT: And that's exactly
25 what I'm objecting to.

1 MR. KULP: Your Honor, that's
2 why I bring that to your attention,
3 your Honor. And I think that he has --

4 MR. DURANT: When he was at the
5 Jackson V. Denno --

6 THE COURT: Well, he --

7 MR. DURANT: -- his testimony
8 was rife with "and take the so-and-so
9 case." You know, he'd relate the facts
10 of that case and so on and so forth
11 that's got nothing to do with this
12 case, Judge.

13 If he wants to testify that he
14 thinks, you know, showing a defendant a
15 picture of a victim could lead to a
16 false confession, that's fine. And he
17 can tell why about that. But he does
18 not have to relate it to specific cases
19 that he may claim that, that are --
20 were false confessions and other people
21 may very well disagree with him.

22 THE COURT: All right.
23 Mr. Kulp's going to give you some law.

24 MR. KULP: Find my peepers.

25 Your Honor, may I be heard?

1 That book may have three errors in it,
2 but this one is indexed about as well
3 as the phone book.

4 Your Honor, the, the rule
5 provides, under 702, that of course as
6 you know that any person who's
7 qualified may give an expert opinion if
8 the opinion would help the jury
9 understand the matter in issue. As
10 well, the proper subject matter, he may
11 offer an opinion in a proper subject
12 matter. Expert opinion is proper when
13 the subject matter is scientific,
14 technical, or other special knowledge.
15 That scientific evidence must be
16 grounded in the methods of science.

17 The scope. . . the standard, of
18 course, is one of whether or not the
19 information provided by the expert
20 witness in the testimony will be
21 helpful to the jury in resolving the
22 issue about which he is testifying so
23 that the jury may make an intelligent
24 decision in interpreting the evidence.

25 THE COURT: Well, if I recall

1 correctly, his, his testimony in
2 general said, you can correct me if I'm
3 wrong, that in different type cases
4 where people have more to lose, things
5 might have a different effect on him.

6 In other words, a person who,
7 who's charged with a minor crime, it
8 wouldn't affect him as much. So when
9 you're talking about murder, you're
10 talking about a different set of facts
11 than with somebody charged with a
12 failure to stop for a blue light or
13 something like that, and he testified
14 to a lot of specifics. Some things
15 didn't have anything to do with this
16 case.

17 MR. KULP: Right, your Honor.
18 But of course in numerous South
19 Carolina cases it's indicated that an
20 expert's opinion may be based partially
21 on information received from others if
22 the information is the type reasonably
23 relied upon by experts in that
24 particular field forming opinions or
25 drawing inferences upon the subject.

1 MR. DURANT: And that I don't
2 object to, your Honor. It's drawing
3 his opinion based upon these case
4 studies. But I do believe, I do object
5 to him testifying to the jury about
6 these case studies.

7 MR. KULP: What I intend --
8 excuse me.

9 MR. DURANT: You know, that's,
10 that's the whole point. He can get his
11 opinion in. I mean if his opinion is
12 that three days of interrogation would
13 put the defendant under so much
14 pressure that he capitulated and, and,
15 and confessed, I think he can certainly
16 put that opinion in if that's his
17 opinion. But not couch it in terms of
18 "and that reminds me of the so-and-so
19 case that happened in California where
20 these police officers interrogated the
21 defendant for five months and sixteen
22 hours a day," and you know, that is
23 irrelevant, and it's that type of
24 testimony I'm objecting to. And his,
25 his testimony during the Jackson V.

1 Denno hearing was rife with it.

2 MR. KULP: Judge, it's
3 impossible for him to explain to the
4 jury what an internalized false
5 confession is if, unless he provides
6 examples to explain what it is, and
7 that is certainly -- I was planning
8 on --

9 THE COURT: Well, let's do --
10 let's operate this way. Just object to
11 those things that you want. I agree,
12 he can't just totally mark everything
13 out, but let's try to keep it as much
14 as you can to something that fits the
15 facts of this case generally.

16 MR. KULP: Yes, sir.

17 THE COURT: Yes, sir. You're
18 not going to find a specific, but if he
19 objects to it, I'll just rule.

20 MR. KULP: Yes, sir.

21 THE COURT: Bring the jury in.

22 MR. KULP: I'll lay the
23 predicate for "it's reasonably been
24 relied upon by experts in the field."

25 THE COURT: All right, sir.

1 (The jury enters the courtroom
2 at 11:21 a. m..)

3 THE COURT: I hope you all had a
4 good weekend. I know you all got
5 problems and I'm working on them so be
6 patient, if you will. I'll try to work
7 things out for you.

8 All right. Call your first
9 witness.

10 MR. KULP: Thank you, your
11 Honor. May it please the Court, we
12 call Professor Saul Kassin to the
13 stand.

14 Please come around and be sworn.
15
16

17 S A U L K A S S I N, having
18 been called as a witness in the
19 presence of the jury, is duly sworn and
20 testifies as follows:

21 DIRECT EXAMINATION BY MR. KULP:

22 MR. KULP: If the Court please.

23 THE COURT: Go ahead.

24 MR. KULP: Thank you.

25 Q Dr. Kassin, what's your current

Kassin -- Direct by Mr. Kulp

1 profession?

2 A I'm a professor of psychology at
3 Williams College.

4 Q And speak up loud enough so all
5 the ladies and gentlemen on the jury can
6 hear you, please, sir, or we need to move
7 that mike a little closer, as we had to do
8 before.

9 Where is Williams College?

10 A Massachusetts. Williamstown,
11 Massachusetts.

12 Q And is that near a major city in
13 Massachusetts?

14 A The closest city actually is
15 Albany, New York.

16 Q I see. And what is your
17 educational background?

18 A I have a Ph.D. from the
19 University of Connecticut in social
20 psychology, and that was followed by two
21 years of the post-doctoral research at the
22 University of Kansas, at Stanford
23 University.

24 Q And prior to becoming a
25 professor of psychology at Williams, what

Kassin -- Direct by Mr. Kulp

1 other positions did you hold?

2 A I was a professor of psychology
3 at Purdue University.

4 Q Okay. And would you please
5 describe any honors that you received in
6 your career.

7 A I received research grants from
8 the National Institute of Child Development,
9 research grants or fellowships at the
10 National Institute of Health, and a U. S.
11 Supreme Court fellowship which, which gave
12 me a judicial fellowship to work at the
13 Federal Judicial Center in Washington, D. C.

14 Q Are you a member of any or
15 affiliated with any professional
16 organizations?

17 A A number. The American
18 Psychological Association, the American
19 Psychological Society, the Society for
20 Experimental Social Psychology, the American
21 Psychology Law Society, and the Society for
22 Personality and Social Psychology.

23 Q Okay. Are you involved with the
24 review and editing of any scholarly
25 journals?

Kassin -- Direct by Mr. Kulp

1 A Yes. I'm on the editorial board
2 of Law and Human Behaviour, which is the
3 flagship journal for the division of
4 psychology and law of A. P. A. and I
5 reviewed articles for several scientific
6 journals.

7 Q Are there any particular
8 research areas in which you have
9 concentrated your professional life?

10 A The past fifteen years or so
11 I've concentrated on the study of police
12 interrogations and confessions.

13 Q What are your primary areas of
14 professional focus?

15 A Well, in general I'm a social
16 psychologist, but my focus in social
17 psychology has always been on influence and
18 social influences of decision-making, and
19 social influences on decision-making in a
20 legal context, and that's where the study of
21 confession evidence arose.

22 Q Are issues of interrogation
23 proceedings and methods a part of that field
24 of study?

25 A Yes.

Kassin -- Direct by Mr. Kulp

1 Q Have you written or edited any
2 books in your field, yourself?

3 A I've written two college text
4 books that are in the third and fifth
5 editions; a number of professional books,
6 including a, a number of books on psychology
7 and law and one on confessions in the
8 courtroom; and a number of research papers
9 that are basically scientific research
10 papers published in journals.

11 Q And of course that would include
12 any articles in professional journals --

13 A Yes.

14 Q -- and so forth?

15 Would you please describe
16 briefly for the ladies and gentlemen of the
17 jury some of those articles that you're
18 referring to.

19 A One, one that, that is often
20 cited is "The Psychology of Confession
21 Evidence" which was published in the
22 American Psychologist, and that summarizes
23 some of my research over the past few years
24 and the research of some others as well, and
25 it describes basically the psychology of

Kassin -- Direct by Mr. Kulp

1 interrogation, the validity of confession
2 evidence, and questions about the effects of
3 confessions on others, like juries and
4 judges and others down the line.

5 Q Do you teach courses addressing
6 the study of interrogation and the
7 statements which arise from them?

8 A Well, I teach a course on
9 psychology and the law, and among the topics
10 we talk about polygraph testing, eyewitness
11 identifications, and we also talk about
12 confessions.

13 Q Now, in the course of your
14 profession as a psychologist specializing in
15 the area of interrogation methodology, have
16 you been called upon to testify as an expert
17 in criminal proceedings?

18 A Yes, I have.

19 Q And what type of subjects did
20 you testify about as an expert witness?

21 A Well, the two, the two subjects
22 that I've testified on primarily it's
23 psychology of confessions and confession
24 evidence, and the other is the accuracy of
25 eyewitness identifications.

Kassin -- Direct by Mr. Kulp

1 Q Have you testified as an expert
2 witness for both the prosecution and the
3 defense?

4 A I've actually testified at trial
5 only for the defense. I was scheduled to
6 testify in one case for the prosecution, but
7 the defense apparently scaled back their
8 testimony and I wasn't needed. But, no,
9 only thus far for the defense.

10 Q And in what states have you been
11 qualified as an expert witness?

12 A New York, Massachusetts, South
13 Carolina, Wisconsin, California, military
14 court, Federal District Court in
15 Massachusetts.

16 MR. KULP: Okay. Your Honor, we
17 would offer Dr. Kassin as an expert at
18 this time in the area of social
19 psychology.

20 MR. DURANT: May I cross-examine
21 him briefly on his qualifications, your
22 Honor?

23 THE COURT: Of course. Yes,
24 sir.

25

Kassin -- Voir dire by Mr. Durant

1

2

VOIR DIRE EXAMINATION BY MR.

3

DURANT:

4

5

6

Q If I wanted to get a degree in the psychology of false confessions, where would I go?

7

8

9

10

11

12

13

14

15

16

A Either to a social psychology program where there are people who do that research, or a cognitive psychology program which again there are people who study the cognitive aspects of false confessions, like the fact that sometimes people develop false memories. So any of the basic programs in psychology. This would become an applied off-shoot, as is the study of eyewitness testimony.

17

18

19

Q But isn't it a fact, sir, that there is no degree in the psychology of false confession?

20

21

22

A No. No. It's a subject matter. Q It is a, it is a sub, a sub-topic of social psychology?

23

24

25

A Yes. That's correct. Q Correct? A That's correct.

Kassin -- Voir dire by Mr. Durant

1 Q And you'd also mentioned that
2 you testified in the area of the accuracy of
3 eyewitness identification. Is that correct?

4 A Right.

5 Q Would you agree that there has
6 been a lot of research done in the social
7 psychology field on that issue?

8 A Yes.

9 Q And has been for a number of
10 years?

11 A Yes.

12 Q And that certain principles and
13 consensus have arisen among many of your
14 brethren, the social psychologists, as to
15 theories underlying that?

16 A Yes.

17 Q Is that correct?

18 A That's correct.

19 Q And isn't it true, sir, that
20 there is no such research in this area?

21 A No. That's not true.

22 Q And to quote your article, the
23 1997 article, "The Psychology of Confession
24 Evidence", and I quote: "The topic of
25 confession evidence has largely been

Kassin -- Voir dire by Mr. Durant

1 overlooked by the scientific community. As
2 a result of this neglect, the current
3 empirical foundation may be too meager to
4 support recommendations for reform or
5 qualify as a subject of scientific
6 knowledge, according to the criteria
7 recently articulated by the U. S. Supreme
8 Court in *Dalbert versus Merrill Dow Chemical*
9 *Pharmaceutical Company.*"

10 Did you write that, sir?

11 A Yes, I did.

12 Q And that was written in '97. Is
13 that correct?

14 A Correct.

15 Q And research has not really
16 developed since then, has it?

17 A It has.

18 Q To my knowledge, sir, you've
19 done one study in this area, one research
20 study?

21 A That's not true. Actually --

22 Q I'm not talking about case
23 studies --

24 MR. KULP: Your Honor, he has a
25 right to answer the question and then

1 explain it.

2 Q Go ahead.

3 A I've done several research
4 studies.

5 Q Okay.

6 A One is published and one is in
7 the process of being published. Two or
8 three others are waiting to be written.

9 Q And there are a couple of folks
10 on the West Coast that are doing similar
11 type of stuff, is that correct, Leo and
12 Ofshe?

13 A Leo and Ofshe, and there are
14 others as well.

15 Q But you would admit that this
16 area of psychology has not been developed as
17 much as the eyewitness identification area?

18 A As much as the eyewitness -- if
19 you're asking me the relative question, no.
20 There is more eyewitness research than there
21 is confessions research.

22 Q And isn't it true, sir, there is
23 no generally accepted theory within the
24 scientific community as to the, or opinion
25 as to what the frequency of false

Kassin -- Voir dire by Mr. Durant

1 confessions are?

2 A Correct.

3 Q And you don't know how frequent
4 they may or may not occur, do you?

5 A That's right.

6 Q And there's been no research to
7 determine how frequent they may or may not
8 occur, has there?

9 A Well, that's not all together
10 true. There is the "Innocence Project"
11 that, that Peter Newfelt (phonetic) and
12 Barry Schecker (phonetic) are involved in.
13 They have recently gone back and tried to
14 use DNA testing to look back at cases in
15 which people have been convicted, and
16 they've now looked at seventy-five cases and
17 out of those they've found fifty-six per
18 cent of them, the DNA exonerated the person.
19 The person was wrongfully convicted. And in
20 their cases twenty-two per cent of them had
21 false confessions.

22 Q How many cases, sir? How many
23 actual cases were there?

24 A Out of the seventy-five,
25 forty-two were -- were cases that were

Kassin -- Voir dire by Mr. Durant

1 involved in wrongful convictions.

2 Q And of those forty-two, how many
3 of them involved eyewitness testimony?

4 A Oh, almost all of them. I mean
5 about ninety per cent.

6 Q Okay.

7 A That is a common form of error.

8 Q And so almost all of those
9 involved eyewitness testimony?

10 A About ninety per cent, yeah.

11 Q So at the most, when you're
12 talking about confession testimony, you're
13 talking about a very small number of cases.
14 Is that correct?

15 A Not to my knowledge. When,
16 when, when, when you -- I, I was surprised
17 to find that twenty-two per cent of those
18 wrongful conviction cases involved
19 confession evidence. I thought that was a
20 large number of errors.

21 Q And over what period of time did
22 these cases -- were these cases drawn from?

23 A Well, these are relatively
24 recent because they still have the stuff
25 necessary for the DNA testing and, and

Kassin -- Voir dire by Mr. Durant

1 they're just starting. They've only now
2 tested seventy-five.

3 Q And over what geographical area?

4 A I believe it's national. I
5 don't, I don't, I don't know if there's a
6 geographical boundary.

7 Q Now, wouldn't it be possible,
8 sir, for you as a social psychologist,
9 social psychologist to perform a study that
10 would identify the incidence of false
11 confession?

12 A I don't think it's possible to
13 perform the perfect study to give you that
14 estimate because we never have a full handle
15 on the data. I think, I think the DNA
16 exoneration cases are giving us a glimpse.
17 They're showing us what the rate of wrongful
18 convictions are in cases where DNA material
19 is available, and within that subset of
20 cases they're showing us how many of those
21 had confessions as evidence which we now
22 know to be false. That twenty-two per cent
23 false confession rate in those cases to me
24 was a large number, but I -- I would have to
25 admit I don't know that that's necessarily a

Kassin -- Voir dire by Mr. Durant

1 representative random sample of cases out
2 there.

3 So, you know, given that I know
4 twenty-two per cent is kind of out there as
5 a possible number, I'm not sure that that
6 reflects what the reality is.

7 Q And the fact of the matter is,
8 sir, you can't be because the only way you
9 can determine the incidence is you have to
10 take every case that has ever been resolved
11 by way of a confession.

12 A No. That, that wouldn't be
13 necessary.

14 Q Or at least the incidence
15 rate --

16 MR. KULP: Your Honor, please
17 ask the solicitor to not cut the
18 witness off, and to allow him --

19 THE COURT: No. He's not
20 cutting him off. Go ahead.

21 Q You would have to take a sample,
22 some sort of sample of all cases that
23 were -- that resulted in confessions and
24 then you would have to, from that sample,
25 you would have to prove what percentage of

Kassin -- Voir dire by Mr. Durant

1 those resulted in false confessions. Is
2 that correct?

3 A I'm not sure I would get the
4 data quite that way. I would look at cases
5 involving wrongful convictions and, again,
6 the problem is not in sampling. The
7 "Innocence Project" and the Justice
8 Department with their DNA exoneration cases
9 are bringing us a sample of these cases so
10 we can get a sense of how often in these
11 cases we get false confessions, but those
12 are not representative samples.

13 You don't need to sample every
14 case. You simply have to get a
15 representative sample of cases.

16 Q And that's just my point,
17 Doctor. Those are not representative cases.
18 Those are --

19 A No, they're not.

20 Q Those are cases that
21 specifically people have questioned the
22 validity of the convictions. Is that
23 correct?

24 A That's correct. And, and there
25 are estimates that are throughout on, on all

Kassin -- Voir dire by Mr. Durant

1 ends, and I don't believe any of them. I,
2 I, I think --

3 Q And the fact of the matter is
4 you may have 99.9 per cent of cases that
5 resulted in convictions from confessions,
6 and have that point -- that one-tenth of a
7 one per cent out there that they're actually
8 performing these DNA tests on. Is that
9 correct?

10 A It's hard to -- that would, that
11 would involve some systematic error.
12 That -- I, I can't imagine the theory that
13 would bring in that kind of systematic
14 error.

15 This may not be a random sample,
16 but there's no reason to believe it's a
17 "systematically biased toward false
18 confession" sample.

19 Q Now, why would you not -- why
20 would I not jump to that conclusion?

21 A Well, what basis would there be?

22 Q Why would they be testing these
23 convictions unless there was some question
24 as to the validity of the convictions to
25 begin with?

Kassin -- Voir dire by Mr. Durant

1 A Well, there are questions on the
2 basis of the fact that these were contested
3 and that these were people who are and, and
4 primarily they're testing people on "death
5 row" who are being tested and part because
6 they're on "death row", and the fact that
7 most of those cases involve eyewitness
8 identifications, some involve confessions,
9 some have alibi evidence. There're a number
10 of different categories of evidence involved
11 in these cases.

12 They didn't screen those cases
13 for the types of evidence present at the
14 trial. They looked after the fact at the
15 types of cases -- at the types of evidence
16 present and again found, I think
17 surprisingly, that twenty-two per cent of
18 them contained confessions in evidence and I
19 say surprisingly because people erroneously
20 believe that confession evidence is so solid
21 you wouldn't get an error rate of that
22 magnitude.

23 Q And we don't know what the error
24 rate is, though. Isn't that just what you
25 told us?

Kassin -- Voir dire by Mr. Durant

1 A We don't, and I don't think we
2 can.

3 Q And you never will.

4 A That is probably right.

5 Q Now, given the fact that you
6 don't know what the scope of this problem is
7 or even if it is a problem, you feel that
8 you're qualified to render an opinion in
9 this area?

10 A I didn't say I didn't believe it
11 was a problem. I said I didn't know the
12 incidence rate.

13 Q Okay. And you believe it's a
14 problem, sir. Is that correct?

15 A I believe in cases where this
16 occurs, those cases are a problem.

17 Q Okay. And you don't really
18 believe that any confession is valid, do
19 you?

20 A Excuse me?

21 MR. KULP: Is what?

22 Q You don't believe any confession
23 is valid, do you?

24 A I believe plenty of confessions
25 are valid.

Kassin -- Direct by Mr. Kulp

1 MR. DURANT: I have nothing
2 further, your Honor. I would have no
3 objections to him testifying as a
4 social psychologist.

5 THE COURT: Thank you.

6 MR. DURANT: I certainly would
7 object to any, any testimony that
8 qualifies him as an expert in false
9 confessions specifically.

10 THE COURT: All right, sir. He
11 didn't ask me for that.

12 Go ahead.

13 MR. KULP: Thank you, sir.

14

15

16 CONTINUED DIRECT EXAMINATION BY

17 MR. KULP:

18 Q Dr. Kassin, what areas of
19 specialization serve as a basis for the
20 study of confessions?

21 A It draws on a lot of areas of
22 psychology. Clearly social psychology,
23 because social psychologists study the
24 processes of social influence. We study
25 conformity; we study compliance; we study

Kassin -- Direct by Mr. Kulp

1 obedience to authority; we study the ways in
2 which people are influenced by others in
3 groups.

4 So we study -- and sometimes
5 very powerful forces of influence. And
6 we've understood, we've come to understand
7 that the situations that we are in have a
8 profound influence on our behavior.

9 So that is the message and theme
10 of social psychology, to look at situational
11 factors that influence us. Sometimes to get
12 us to behave in ways that are maladaptive,
13 not in our own best interests, and, and,
14 and, and certainly not consistent with our
15 own conscience. And so that is the study of
16 social psychology, and that's why that's so
17 relevant to interrogations.

18 Also relevant in this area is
19 the study of cognitive psychology.
20 Cognitive psychologists study thinking.
21 They study thinking, memory,
22 decision-making, what it is that goes on in
23 the mind; consciousness, conscious and
24 unconscious processes. So social
25 psychologists study outward processes.

Kassin -- Direct by Mr. Kulp

1 Cognitive psychologists study the mind.

2 And the relevance there, of
3 course, is that a person in an interrogation
4 situation is in a decision-making situation.

5 And a person sometimes, under some
6 circumstances, is confronted with some
7 confusion of memory and so the psychology of
8 memory becomes a very relevant aspect of it.
9 And so both cognitive and social psychology
10 play a very large role in the study of
11 confessions.

12 Q And is this an area, the study
13 of confessions, that you're familiar with?

14 A Yes.

15 Q And what were you asked to do in
16 this case, as an expert witness in this
17 matter?

18 A In this case, when, when
19 originally you called me and described the
20 case, you asked me to review the materials
21 and, and to examine the confession, and I
22 did. You sent me a number of materials, and
23 I looked them over and asked for some
24 additional materials, and you sent those as
25 well.

Kassin -- Direct by Mr. Kulp

1 Q Are these the kind of materials
2 that someone in your field normally relies
3 upon?

4 A Yes. Yes.

5 Q Are they the type reasonably
6 relied upon by experts in the area of social
7 psychology with a -- and involving the study
8 of confessions?

9 A Yes.

10 Q And are there any materials that
11 you could -- you would imagine or think out
12 there that you would like to have reviewed
13 but could not?

14 A Well, absolutely. When you
15 first sent me the materials, the one thing
16 that, that, that glared at me was that there
17 were several points of dispute about what
18 happened during those three days of
19 interrogation, and you had shown me the
20 videotape of, of, of you driving around with
21 Wes and he described what transpired during
22 the interrogation of the final day.

23 And, and that was instructive,
24 in part it was instructive because a lot of
25 what he described came almost some,

Kassin -- Direct by Mr. Kulp

1 sometimes verbatim out of interrogation
2 manuals, see, and, and, and I knew he hadn't
3 read the manuals. I'd asked. He hasn't
4 read the manuals. He hadn't been
5 interrogated before.

6 So it looked like he had been
7 subjected to these experiences, but there
8 wasn't really much of a record from the
9 detectives who did the interrogations.

10 There was -- there was Detective
11 Clayton's report. There was the statement
12 itself. But there really wasn't a lot else
13 until -- I don't remember how many weeks
14 later that was -- that you told me that
15 there was a videotape of the prior day's
16 session with Lieutenant McHale. And then
17 when you sent me that tape, that tape helped
18 to resolve some of the inconsistencies.

19 And so that tape is, is ideally
20 what we would have. I mean in an ideal
21 world -- and I think, you know, I, I credit
22 Lieutenant McHale for videotaping that
23 interrogation session because they all
24 should have been videotaped so that we can
25 understand what happened to elicit that

Kassin -- Direct by Mr. Kulp

1 statement.

2 Q And in that regard, would it
3 have benefitted you if you had a videotape
4 or some documentation of what transpired
5 between Mr. Myers and the detectives on
6 Saturday, the fifteenth?

7 A Yes.

8 Q Is it true that sometimes people
9 confess to crimes that they don't commit?

10 A Yes.

11 Q And how often would you estimate
12 that this occurs?

13 A That was kind of the dispute we
14 just had.

15 Q Right.

16 A There's no way, I think, and not
17 even a methodology for deriving an estimate.

18 It happens. We know that the
19 cases that are documented and known to be
20 false confessions, proven later to be false
21 confessions, represent the tip of some
22 iceberg, but we really don't know the size
23 of that iceberg. We just can't see it. And
24 there's really not a way to get to it.

25 Q Well, how does one know when a

Kassin -- Direct by Mr. Kulp

1 confession is false?

2 A In a number of ways. There are
3 some cases where somebody confesses to a
4 crime like a murder and then months later,
5 weeks later the victim shows up alive. So
6 in those cases, where the crime clearly had
7 not been committed.

8 Or if somebody -- there, there,
9 there're a couple of incidences of somebody
10 confessing to a "shaking baby" case, when
11 the autopsy report that came in after the
12 confession showed in fact that the child
13 died of other causes. So we know in those
14 cases that the confessions are false because
15 the crime did not happen.

16 There'r other cases where we
17 know that the confession was false because
18 after the person gave the confession
19 somebody else was apprehended, usually for a
20 related crime, and that person then it turns
21 out confesses to the original crime.
22 Sometimes what happens is in that second
23 crime, there're a number of cases where the
24 ballistics evidence shows that it was the
25 same weapon. So it turns out that was the

Kassin -- Direct by Mr. Kulp

1 good, hard evidence that it was the second
2 person and not the first. And so sometimes
3 there is outside exonerating evidence.

4 And then in some of these cases,
5 now that we have DNA testing, the DNA proves
6 people innocent after they have given
7 confessions. So there're a number of ways
8 that we know, and basically those are them.

9 Q Are there different kinds of
10 false confessions?

11 A Yes. We can't, we can't, we
12 can't know how often these all happen, but
13 we do know, if you look through the catalog
14 of false confession cases in history, they
15 seem to fall into three categories. There
16 are voluntary false confessions; what we
17 have called coerced compliant false
18 confessions; and what we have called coerced
19 internalized false confessions. And these
20 are now fairly common taxonomy in the
21 literature and, and, and used by all.

22 Voluntary false confessions are
23 those where people, without any external
24 pressure, come in and hand in a voluntary
25 confession. It happens for crazy reasons.

Kassin -- Direct by Mr. Kulp

1 The Charles Lindbergh case in the 1930's,
2 his baby was kidnapped. Two hundred
3 people -- it was a grand crime. Two hundred
4 people volunteered confessions to that
5 kidnapping.

6 In less grand crimes, you see it
7 often in cases -- and I've been involved in
8 a couple -- where multiple confessions were
9 taken and, in some cases, voluntary.

10 So, yes, we know that voluntary
11 confessions do occur.

12 Q How are police able to tell that
13 these types of voluntary confessions are
14 false?

15 A Typically the way they sort
16 through the confessions is by looking for
17 corroborating evidence. And to the extent
18 that one confession gives them corroboration
19 even in, even, perhaps in the form of
20 details that couldn't possibly have been
21 known, or other types of evidence other than
22 the confession independently suggesting
23 guilt. If they have that, then that enables
24 them to distinguish one confession from the
25 others.

Kassin -- Direct by Mr. Kulp

1 Q What is a coerced compliant
2 false confession?

3 A Coerced compliant false
4 confessions are the ones that probably make
5 the most psychological sense to people.
6 These are cases where somebody is, is
7 basically broken down into submission. They
8 give up. It's -- this is -- these are cases
9 where, as a result of unpleasant
10 interrogation circumstances, a lot of
11 stress, perhaps certain techniques being
12 used that lead people to think that maybe
13 the long term consequence wouldn't be so
14 severe, if you get people in a situation
15 where they're stressed, they're confused,
16 they're socially isolated, they're outside
17 of, of, of the influence of the people in
18 their lives, they're being accused with a,
19 a, a, a degree of certainty, they're not
20 being allowed to mount a defense, it's being
21 suggested or, or implied that there is other
22 evidence that, that in fact they could be
23 prosecuted without a confession, and if
24 there is a promise or the implication of a
25 promise that maybe things wouldn't be so

Kassin -- Direct by Mr. Kulp

1 bad, that maybe the long-term consequences
2 aren't so severe, if you put all those
3 together, what you have is a decision-making
4 situation.

5 And we know in decision-making
6 people -- research that people are much more
7 influenced by short-term gains and losses,
8 short-term costs and benefits than
9 long-term. When you're in a bad situation,
10 sometimes -- and I can think of situations
11 that I've been in like this -- when you're
12 in a very bad situation, you'll do almost
13 anything to get out of it. And if, if that
14 means that in the long-term there're some
15 maladaptive consequence, well, I'll deal
16 with that long-term when I get there. Right
17 now I've got to get out of the situation.
18 So people break down and confess.

19 The way we know these are really
20 compliant confessions -- in other words, we
21 know that they succumb and give a confession
22 but privately they know they're innocent,
23 and we know that because the moment a lawyer
24 comes on to the scene, they say: "I gave a
25 confession, but I didn't do it."

Kassin -- Direct by Mr. Kulp

1 And so those are classic coerced
2 compliant false confessions.

3 Q Why do these types of false
4 confessions occur, the coerced compliant
5 false confessions?

6 A Well, again I think if you look
7 back at interrogation techniques that are
8 used, even techniques that are used in
9 isolation that are not particularly
10 coercive, if you put them in combination,
11 if, for example, you put somebody in an
12 interrogation situation for a prolonged
13 period of time, essentially break that
14 suspect down into a state of despair, one of
15 the -- one of the interrogation techniques
16 that is out there is interrupt all denials.
17 If the subject tries to issue a denial and
18 mount a defense, interrupt. Don't let the
19 suspect deny the crime. The goal here is to
20 break the suspect down into a state of
21 despair so that mounting a defense is really
22 a futile effort. The suspect is basically
23 going to give up. We're not going to accept
24 those statements.

25 If the suspect is there for a

Kassin -- Direct by Mr. Kulp

1 prolonged period of time; isolated from
2 family, friends; not able to make phone
3 calls; is stressed, for whatever reason --
4 who knows what other biological needs they
5 may be -- are not fulfilled -- there're a
6 lot that can contribute at this stage, and
7 now you've got that.

8 And once you've got that suspect
9 broken down, one of the techniques of
10 interrogation often used is to, is to
11 suggest to the suspect that there might be
12 an easy way out. Maybe there's a
13 face-saving alternative. Maybe we can help
14 you along with moral justification. Make it
15 easy for the suspect to confess to something
16 that doesn't seem quite that serious.

17 Now if you've got a suspect who
18 is broken down and, and essentially given up
19 and believes there is nothing I can do to
20 extricate myself from this situation, and
21 some favorable alternative that minimizes
22 the long-term cost comes along, to some
23 extent a confession could be a rational
24 situation.

25 If the person believes there's

Kassin -- Direct by Mr. Kulp

1 no way out of this, they don't believe what
2 I'm saying, and there seems to be long-term
3 benefits to a confession, you often in those
4 cases get confessions.

5 So when you look at those cases,
6 you get people saying things like: "I just
7 wanted to get out of there. I couldn't take
8 it any more. I didn't think that it would
9 be so bad afterward. I wanted to go home."

10 You get a lot of comments like
11 that, showing that what has been manipulated
12 in the interrogation room is their sense of
13 the long-term cost of giving this
14 confession.

15 Q What is a coerced internalized
16 false confession?

17 A Coerced internalized false
18 confessions are the category of confessions
19 where people not only succumb and give the
20 statement -- that is, they don't always say
21 "I did it," but they actually get confused
22 and in some cases come to believe the
23 confession.

24 That is, there are documented
25 instances where people give a confession,

Kassin -- Direct by Mr. Kulp

1 believe in the confession, begin to think
2 they have committed this crime, and then
3 independent evidence later showed they were
4 innocent. And in some cases it took a
5 little bit of debriefing to undo that
6 effect.

7 Q So is it possible to make a
8 person think he was involved in something he
9 was not?

10 A Yes. We know that from these
11 cases. We know it from a wealth of research
12 in the psychology of memory. Experimental
13 psychologists for years have found that if
14 you bring subjects into a laboratory, we can
15 implant false memories using suggestive
16 techniques. We can make them think they
17 read something or heard something they
18 didn't see or hear. Make them think they
19 saw something they didn't see. We can make
20 them think they had an experience in their
21 past, something traumatic that didn't
22 happen, and we can make them think that they
23 may have done something that they didn't do.
24 There are a number of these studies.

25 And in addition to that

Kassin -- Direct by Mr. Kulp

1 laboratory research are the studies that are
2 now coming to light in recent years about
3 the supposed repressed and recovered
4 memories. There is what is known as false
5 memory syndrome. These are people who
6 usually, not in an interrogation situation
7 but in something very much like it in a
8 psychotherapy situation, they're influenced
9 to the point where they come to believe they
10 were abused at some point in life and then
11 later they come to their senses, retract
12 that statement, realizing that it was really
13 the product of influence. And there,
14 there're a number of those cases on record.

15 All of that points to the same
16 thing. Memory is malleable. Memory is, is,
17 comes in fragments. It can be manipulated.

18 And, and coerced internalized
19 false confessions are examples of that,
20 suggestibility effects on memory.

21 Q Are there certain interrogation
22 techniques that are used in law enforcement?

23 A Yes. There are a number of
24 techniques that are used. We know what they
25 are because we, we know what the manuals

Kassin -- Direct by Mr. Kulp

1 advise. The, the key manual I think, the,
2 the main most commonly used manual is by
3 Inbau, Reid, and Buckley. It was first
4 published in 1962. It's now in its third
5 edition. Actually coming out in a fourth
6 edition I think in a couple of weeks.

7 And in fact that was a manual
8 that is so commonly used that in 1966, when
9 the U. S. Supreme Court issued its Miranda
10 ruling, they cited, in terms of trying to
11 know what goes on in the interrogation room,
12 they cited this book because this book is
13 not just read by law enforcement people, it
14 is the basis for the "Reid School Technique"
15 and the Reid School has trained, they say,
16 over a hundred thousand law enforcement
17 people.

18 So we know that there are
19 techniques that are common. We know that
20 they're used. There're observational
21 studies showing that these techniques are in
22 use. And certainly I see these techniques
23 in a, in a, in an array of cases.

24 Q And we'll get into it in a
25 minute, but did you examine certain

Kassin -- Direct by Mr. Kulp

1 literature in reference materials such as
2 the "Reid Technique" book and treatise and
3 other materials in your -- in preparing for
4 your testimony here today?

5 A Yes. The book. They have a --
6 the book. They have a training manual.
7 They have training videotapes. Yes.

8 Q Okay. And are these techniques
9 just a matter of common sense? Is that the
10 guideline?

11 A I wouldn't say they're a matter
12 of common sense and, and, and, and I think
13 that the law enforcement community doesn't
14 believe it's a matter of common sense
15 because people pay hundreds of dollars for
16 the materials, and for the training, and for
17 the workshops that the Reid School offers.
18 And people are specially trained in the use
19 of these techniques. These are, these are
20 psychologically sophisticated techniques and
21 people are trained to use them.

22 Q And how do you know that these
23 techniques are actually used?

24 A Again, there're observational
25 studies and in, in, in the Miranda ruling --

Kassin -- Direct by Mr. Kulp

1 after the Supreme Court's ruling in Miranda,
2 a couple of observational studies were done,
3 looking at interrogations, and they found
4 that these techniques are in fact used.

5 You see it in, in all case
6 studies of confessions. When people
7 scrutinize the material, come into a case
8 like this, look through all the records, all
9 the transcripts, you can see again elements
10 of those techniques across-the-board. You
11 know, the names, the dates, and the places
12 change, but these techniques seem to be
13 fairly constant.

14 And then -- and there's an
15 observational study published in 1996 by
16 Richard Leo where he looked at, either on
17 videotape or alive, a hundred and eighty-two
18 interrogations, and he found that these
19 techniques are -- he found that these
20 techniques are used in interrogations.

21 Q What's the theory behind the
22 technique?

23 A It's -- the "Reid School
24 Technique", it's a nine-step technique. It
25 goes -- you're basically supposed to go

Kassin -- Direct by Mr. Kulp

1 through nine steps. And, and, and, and they
2 say, you know, some people use part of the
3 techniques, some use all of it, but the nine
4 steps basically, if you boil it down, it's a
5 two-step technique. Two things have to
6 happen. First, you've got to break the
7 suspect down. You have to assert the
8 suspect's guilt. We know you did it. You
9 don't allow the suspect to mount a defense.
10 You interrupt denials if you can.

11 When you're in that session, the
12 Reid School is very careful about not
13 recommending some of this, but it's okay,
14 they say, if you imply that you might have
15 evidence against the person, independent
16 evidence against the person in order to
17 produce -- in order to bolster that level of
18 certainty that: "We know you did it. Even
19 if you don't tell us, we have independent
20 evidence."

21 And once you have broken the
22 suspect down, the second thing that goes on
23 as part of those nine steps is what they
24 sometimes call "theme development" or the
25 "development of alternative questions". And

Kassin -- Direct by Mr. Kulp

1 basically here is where, now that you've
2 gotten -- it's kind of the carrot and the
3 stick. Now that you've gotten the person
4 into the state of despair, futility about
5 mounting a defense, you offer some
6 face-saving, moral-justifying alternative.
7 You might suggest, for example, that "Maybe
8 you were provoked. I know this isn't
9 something that you wanted to do or planned
10 to do. You might have done it on the spur
11 of the moment. Maybe you were drinking at
12 the time. Maybe you were provoked. Maybe
13 it was an accident. Maybe you got carried
14 away."

15 There are a number of very
16 specific techniques and very specific
17 paragraphs in fact, verbatim, that they give
18 on how to use this technique. The goal is
19 to provide the person with an easy way out,
20 so that confessing doesn't seem all that
21 onerous.

22 Q And are those techniques
23 discussed throughout, in your knowledge, if
24 you know, these three editions of the Reid
25 book that you referred to?

Kassin -- Direct by Mr. Kulp

1 A Yes. They're basically the same
2 techniques, and they culminate in the taking
3 of a statement. And that's sort of the
4 final, the final leg of this technique.

5 Q What if these techniques are
6 taken to an extreme?

7 A I think the Reid School -- this
8 is my opinion -- I think that the "Reid
9 School Technique" is overly aggressive in
10 some ways. I think in combination some of
11 these techniques are overly aggressive. I
12 particularly think that used in the extreme,
13 these techniques can increase the risk of a
14 false confession. We see these techniques
15 in the extreme in virtually all of these
16 false confession cases.

17 Q Are there certain approaches
18 that concern you or that you worry about?

19 A Absolutely. There are a, a
20 couple that, that concern me. I am, I'm,
21 I'm concerned with because again I see this
22 across-the-board and I know what this does
23 to a person's memory. The issue of
24 presenting a person with false evidence.
25 Not implying "maybe we have evidence against

Kassin -- Direct by Mr. Kulp

1 you," but saying: "We have it. We have
2 independent, objective evidence of your
3 guilt."

4 As soon as you say that,
5 unequivocally that shakes a person's
6 confidence in their own memory for what
7 probably went on that night. "I don't
8 remember doing it. But in fact they have
9 independent evidence and I trust them",
10 because typically in these cases you first
11 gain the suspect's trust, friendship. Often
12 in these cases the suspect thinks he's
13 helping to cooperate in the investigation.
14 And then in they come with the bad news that
15 in fact, you know, we, we, we got
16 independent evidence of your guilt.

17 Now the suspect has a dilemma,
18 as any of us would. You have on the one
19 hand no memory for it. "I don't remember
20 doing it. On the other hand, they have
21 independent, unimpeachable proof that I did
22 it." How do you reconcile the lack of
23 memory from that fact that you've got that
24 independent evidence?

25 And here's where you get into a

Kassin -- Direct by Mr. Kulp

1 technique that the Reid School does not
2 recommend. In fact they say don't do it.
3 But -- and, and it's not a common technique
4 and it's certainly not a recommended
5 technique, but you do see it
6 across-the-board in these false confession
7 internalized cases which is, in order to
8 help the suspect reconcile the lack of
9 memory with this false evidence, you suggest
10 that possibly the suspect blacked out. That
11 blackout hypothesis recurs almost like a bad
12 dream across a whole range of cases in which
13 we later found out those were false
14 confessions.

15 You get that blackout followed
16 by some kind of tentative fragmentary "I
17 guess I did it, I really must have done it"
18 kind of statement, followed by a fuller
19 statement taken.

20 The blackout hypothesis, that
21 blackout technique is not part of the Reid
22 School. The Reid School, they're very --
23 they say "exercise caution in stating that
24 there is hard physical evidence."
25 Unequivocally. They say that's a last

Kassin -- Direct by Mr. Kulp

1 resort technique. And they do not recommend
2 the use of a blackout.

3 And again, but that's what you
4 see across these cases. You see the
5 breaking down, the blackout, the false
6 evidence, and then the way out. The
7 "minimization" as, as we called it.

8 Q How do you know what
9 interrogation techniques are used in a
10 particular case?

11 A We try and get the information
12 in any way that we can. And typically what
13 you get is an account from the defendant.
14 It might be an account given on videotape or
15 in a, in a statement, or sometimes I'll ask
16 the defendant to handwrite something,
17 everything that you can remember, and then
18 of course you have police report or reports.
19 You have testimony that might be given at
20 any hearings from the officers. You may
21 have people who the defendant may have
22 spoken to about the experience. People who
23 may have overheard or, or seen the
24 experience.

25 In an ideal world, and in a lot

Kassin -- Direct by Mr. Kulp

1 of cases you get this, you get videotapes.
2 And so there's no guesswork. You don't have
3 to, in a, in a kind of a "he said, she said"
4 manner try and figure out who is
5 recollecting it correctly and who is, is not
6 recollecting correctly, because in a
7 videotape you get to see everything that is
8 said and everything that is done.

9 Q And is videotaping a common
10 practice in the area of confession?

11 A It's done. The National
12 Institute of Justice did a study a, a few
13 years back, estimating between a third and
14 two-thirds of, of large sheriffs and police
15 departments will videotape, in part or in
16 whole, interrogations and confessions.
17 There are two states that make it mandatory
18 that all sessions have to be videotaped.

19 As to whether it's common, again
20 it's variable from case-to-case.

21 Q Is there any reason why
22 interrogation should not be taped?

23 A None that I can discern. There
24 are, there are no evidence to suggest that
25 it would affect the process in any way.

Kassin -- Direct by Mr. Kulp

1 Q What other ways are there,
2 Dr. Kassin, to record a confession?

3 A If it's not on audiotape, if
4 it's not on videotape, sometimes the suspect
5 will handwrite the statement. And sometimes
6 the suspect will essentially narrate a
7 statement that is handwritten by one of the
8 investigators and then the suspect will sign
9 it.

10 So either you get a videotape,
11 an audiotape, a suspect-written statement,
12 or a, an investigator-written statement that
13 the suspect signs.

14 Q How do you go about evaluating
15 the reliability of a particular confession?

16 A There are a number of things I
17 look for. The first question I, I naturally
18 ask is: "What were, what were the
19 conditions of this statement? What were the
20 conditions under which it was taken? What
21 was this person's stress level? For how
22 long has it been going on? What techniques
23 may have been used to bring this person to
24 this point?"

25 So I look at the, at the, at the

Kassin -- Direct by Mr. Kulp

1 general background of this case to see the
2 conditions under which the statement was
3 given. In cases where, you know, I might
4 get a phone call from a lawyer and, and, and
5 it appears that a confession was given with
6 very little effort, you know, in ten minutes
7 or twenty minutes of conversation, that it
8 contained facts that only the suspect could
9 have known, only the culprit could have
10 known, in cases like that it's fairly clear
11 that that looks like a good confession.

12 So the first thing I look at are
13 the conditions. Then following the
14 conditions, what I'm interested in is, is,
15 is the statement itself. You know, once,
16 once the statement is given. The statement
17 itself. And does that statement present
18 vivid, graphic details that only the culprit
19 could have known by firsthand experience?

20 So, in other words, are there
21 details in there that are unique, that, that
22 the police didn't know? Are there details
23 in there that are accurate and, again, that
24 couldn't have been known from a secondhand
25 source? And, and can this person

Kassin -- Direct by Mr. Kulp

1 importantly lead -- because, again, if the
2 person is guilty, the person should be able
3 to lead the police to evidence not
4 previously known. Does this lead to the
5 generation of new evidence? And so those
6 are some, some of what I look for.

7 If I see a, a statement that is
8 filled with unique and novel, accurate
9 information, and that it doesn't seem
10 possible that the suspect was exposed to
11 external sources of information -- the
12 external sources might be what he hears on
13 the street, what he reads in the newspaper,
14 what he overhears while sitting in a police
15 station, or what he picks up that is
16 sometimes communicated within the body of a
17 question; there're a lot of ways to get
18 information about a case secondhand -- to
19 the extent that those are not a factor,
20 again you can be somewhat confident in that
21 confession.

22 So I think there are certain
23 types of statements that can be used to
24 absolutely corroborate a guilty confession,
25 and that's what I look for.

Kassin -- Direct by Mr. Kulp

1 Q Is there a difference between
2 say, for example, as defined in the Reid
3 materials, between interviewing and
4 interrogation?

5 A Yes. The "Reid Technique" and
6 in fact all techniques are very strongly
7 premised on a separation between
8 interviewing and interrogation. An
9 interview is a fact-finding mission. You've
10 got someone. You've got a few people.
11 You're not sure who's saying what and who's
12 truthful, who's guilty, who's not. And so
13 you essentially ask some open-ended
14 questions. You watch the person in action.
15 You ask them questions about the crime, what
16 they might know about it, their whereabouts.
17 You observe their verbal and nonverbal
18 behavior, and you generate some kind of
19 judgment, whether or not they're guilty or
20 innocent.

21 So it's a nonaccusatorial,
22 relatively laid-back session in which a
23 person is not being accused. They're
24 typically not read their Miranda rights at
25 that point. And the goal here is for the

Kassin -- Direct by Mr. Kulp

1 investigator to get a sense of whether or
2 not the person is telling the truth or
3 lying. That's an interview.

4 If in the judgment of the
5 investigator the person is guilty and lying,
6 then at that point they launch into an
7 interrogation, which is accusatorial, which
8 goes on to use some of these techniques, and
9 which is designed to produce a confession.

10 Q Now, looking at this case,
11 Mr. Myers, how do you know what went on in
12 the interrogation?

13 A Well, we have, we have the
14 videotape early on that, that, that, that
15 Myers gave his account of what went on.
16 And, and that was, again, that was very
17 informative and, and I, I, I always am
18 mindful to take with caution what a
19 defendant tells me happened.

20 What happened in this tape which
21 I, which I, I found informative was that
22 what he described were techniques that came
23 right out of the book, and that's when I
24 asked has he read any interrogation manuals
25 and he said no, of course not. Had you been

Kassin -- Direct by Mr. Kulp

1 interrogated before? Well, no.

2 And so this is the only way he
3 could have gotten that information was
4 through experience, and he did describe some
5 techniques and so I, I had the sense that
6 some of this happened.

7 He also described some other
8 things. He described, for example, being
9 shown photographs which I, I didn't know
10 what to make of that because the police
11 report made no mention of photographs. But
12 he said he was shown photographs, and that
13 was a puzzle. I kind of put that in my --
14 on my list of what I don't really know about
15 this case, because he said he was shown
16 photographs before confessing. There's no
17 mention of it in the police report. So
18 there's really no way for me to figure out
19 what went on.

20 But then the videotape that came
21 in later of the session with Lieutenant
22 McHale showed that in fact he was shown
23 photos. He makes reference to the photos
24 shown. Lieutenant McHale makes reference to
25 photos he was shown. And so it's clear that

Kassin -- Direct by Mr. Kulp

1 he was right. He had been shown
2 photographs.

3 And so basically what I try and
4 do is I try and take the materials from
5 everybody's account, any other additional
6 corroborating evidence like that videotape,
7 and try and piece it together. And in cases
8 where I don't get confirmation, I just kind
9 of put that into my "question mark"
10 category.

11 Q Were certain techniques used on
12 Wes Myers?

13 A Yes.

14 Q Is there anything about those
15 techniques that causes you concern?

16 A Yes.

17 Q What is that? Would you please
18 explain.

19 A Well, he was, he was under
20 suspicion for three days basically and, and
21 was subjected to a number of questioning
22 sessions -- whether you define them as
23 interviews or interrogation; I didn't see
24 them all -- through the Friday and Saturday,
25 and depending on how you total it, it's for

Kassin -- Direct by Mr. Kulp

1 fifteen, sixteen, eighteen, twenty hours of
2 sessions. That, that's kind of irrelevant.

3 But he's questioned for a number
4 of hours, and that all prior to the Saturday
5 where he capitulates and gives a confession.
6 We know from the McHale videotape that he
7 was that afternoon, the Friday afternoon
8 that he was I think very clearly
9 interrogated then because you can see the
10 seeds being planted of some of the
11 interrogation techniques that come out
12 later. And that, that was videotaped.

13 So my sense is that he was
14 subjected to a number of questioning
15 sessions through Thursday and Friday. He
16 was in, in, on the Friday session merely
17 there was just the implication that "what if
18 we had evidence, you know, like a witness
19 who may have seen you?" And a number of
20 those types of techniques were used, but to
21 no avail.

22 Those same techniques were used
23 in a much stronger way on the following day
24 and that is the presentation of false
25 evidence, and the presentation of false

Kassin -- Direct by Mr. Kulp

1 evidence in the form of a hair that had not
2 been tested other than by microscopic
3 observation, and the statement that "in fact
4 we have a match" if, if, I'm paraphrasing.
5 I don't know if that were the statement.

6 That is -- that presentation of
7 false evidence, whether it's true or false
8 at the time, known to be true or false at
9 the time, is clearly a statement that will
10 weigh heavily and shake the confidence of a
11 suspect.

12 And it's, it's interesting that
13 in every false internalized confession that
14 we have, people who at first deny
15 emphatically, they have alibis, they have
16 witnesses, but then through the process of
17 presenting them with false evidence, it
18 might be giving them a polygraph and telling
19 them they failed or saying we have hair
20 samples and in fact it's a match, it's that
21 presentation of false evidence that
22 ultimately breaks the back. That's
23 ultimately what then leads to some type of
24 statement like: "I guess I did it; I must
25 have done it; I don't remember it," at which

Kassin -- Direct by Mr. Kulp

1 point the conversation turns to something
2 about the blackout.

3 And it appears to me that
4 looking at a number of false internalized
5 confessions that are known, that everybody
6 concedes were false confessions where people
7 not only gave statements that "I did it,"
8 but gave textured, detailed statements.

9 So, you know, in, in, in one
10 case, without going into names and details,
11 in one case the statement, the very
12 tentative statement "I guess I really did
13 it" was soon followed by "I did it with an
14 open razor that I used for my model
15 airplanes and then I jumped on her legs."
16 It became a very textured, vivid, detailed
17 statement which tended to match in fact the
18 evidence at the crime scene. This person
19 was later exonerated. Couldn't have been
20 that person as we now know that that person
21 is innocent.

22 You see that script
23 across-the-board. False evidence,
24 conversation about a blackout, confusion,
25 some tentative language like "I must have

Kassin -- Direct by Mr. Kulp

1 done it," followed by a statement filled
2 with details where we now have to try to
3 determine where those details came from.

4 Q What about the fact that Wes
5 apologized after the confession? Does that
6 impact your assessment?

7 A Well, it's part of the same
8 influence process that produces a, a, any
9 influence process that gets a person to sign
10 a confession will get them to issue an
11 apology afterward. I see that really as it
12 was part of the same process of influence,
13 both right afterward in talking to the
14 victim's mother and then certainly I think
15 if, if you look at, at the, at the, at the
16 newsreel of him in front of the press, he
17 kind of parrots the minimization script he
18 was given. Well, yeah, he minimizes, he
19 basically says it was an accident and when I
20 saw that, when I saw that reel that you,
21 that you'd sent me, that again resonated
22 because the accident script is also common
23 across at lot of these false
24 internalization, internalization cases where
25 people not just say "I did it," but the

Kassin -- Direct by Mr. Kulp

1 first way in which they say "I did it" was
2 "it was an accident, I lost control."

3 Again in one case, a matricide
4 case, the kid said: "Yes, she came at me
5 and I had no choice." Turned out not to be
6 true.

7 And so it's important really to
8 know how the statement came about. Not just
9 what's in it, but how it came about.

10 Q How often have you been asked to
11 testify as an expert on false confessions?

12 A I've, I've received upward near
13 three hundred phone calls. I probably --
14 and I've had conversations, about, about
15 that many conversations. I've probably
16 taken a close look, based on follow-up, of
17 about forty or fifty cases.

18 Q Why do you suppose that you
19 receive so many requests?

20 A Well, the work I do, the
21 research that I've done is, is, is
22 published. It's widely cited. It's -- I
23 think it's, it's essentially based on the
24 research that I do.

25 Q How often have you actually

Kassin -- Direct by Mr. Kulp

1 agreed to testify in a case like this?

2 A Out of those calls and out of
3 the checking that I did, I probably agreed
4 about fifteen times.

5 Q And you're a full-time
6 professor?

7 A Yes. And, and that's why,
8 basically. That's -- I'm a professor for a
9 living and not, not a professional witness.

10 Q Would you or have you ever
11 testified for the State in a case with a
12 disputed confession?

13 A I haven't. I was prepared to in
14 one case where, where I thought that the
15 defense expert was, was overreaching and
16 kind of overstating what we knew, but other
17 otherwise, no, I haven't had an occasion.
18 I, I, I would if I felt, because I feel
19 strongly -- when I get a phone call from a
20 lawyer who, who has a client who gives what
21 appears to be a voluntary confession but
22 looking to make a claim of coercion, I have
23 very little interest in that case.

24 I have advised the State, the
25 State attorneys by telephone in a, in a, in

Kassin -- Direct by Mr. Kulp

1 a dozen cases, in cases like that so, but,
2 no, I've not testified for the State.

3 Q Do you find that Wes was
4 interrogated for a long period of time?

5 A It's hard to know. I know, I
6 know the amount of time that he was with
7 investigators that Thursday, through the
8 morning, the afternoon, through the evening
9 when his house was being searched, and I
10 certainly know the time frame of that Friday
11 prior to the giving of the statement, or
12 prior to the giving of the sort of admission
13 "I must have done it," followed by the drive
14 and some other things, and then the
15 statement, so I can't calculate the number
16 of hours with any precision but it's, it's
17 an ordeal of two or three days with some
18 number of hours..

19 Q Was the amount of time unusual?
20 Are there any -- are there any reference
21 materials such as the Reid manual that
22 discusses --

23 A Well, time is a, you know, again
24 if you look at the false confession cases,
25 it's clear one constant across them is false

Kassin -- Direct by Mr. Kulp

1 confessions don't happen in an instant.
2 They take some time. And so those are cases
3 very much like this one, where the
4 interrogation process went on for a number
5 of hours.

6 And yet if you look at what,
7 what does research show us, observational
8 studies of actual interrogations? It
9 appears, looking at Richard Leo's research,
10 he did -- again, looked at a hundred and
11 eighty-two interrogations, he found that
12 only eight per cent of those interrogations
13 exceeded two hours. And his longest that he
14 saw was four-and-a-half hours.

15 And that much more comes closely
16 to what I see in other types of cases, and
17 in fact in, in the Reid School, the, the,
18 the Inbau manual cautions against going much
19 over four hours.

20 So my sense is that
21 interrogations often resulting in
22 confessions don't typically exceed four
23 hours.

24 Q In terms of the reliability of
25 Wes's confession, what's the significance of

Kassin -- Direct by Mr. Kulp

1 the fact that he was given and then waived
2 his Miranda rights, if any?

3 A The Miranda rights issue is, is
4 an interesting one because it turns out
5 reliably that eighty per cent of people who
6 are read their rights waive their rights and
7 agree to talk. We know that.

8 We also know that, and Richard
9 Leo has done in, in, in his field study, he
10 found that people who have never been in
11 trouble before, people who have never been
12 interrogated or in trouble with the system
13 before are more likely to agree at a higher
14 rate. If you've been through interrogation
15 before -- I'm, I'm sorry. A lower rate.

16 If you've been through
17 interrogation before, you've been in trouble
18 before, those people are less likely to
19 agree to talk. It's the people who have
20 never been through the system before that
21 are more likely to give that waiver of the
22 rights and to agree to talk without an
23 attorney.

24 Q Again in terms of the
25 reliability of the confession, is there any

Kassin -- Direct by Mr. Kulp

1 significance to the fact that Wes corrected
2 errors in the written statement?

3 A I noticed that, but then again
4 in, in, again in cases involving false
5 confessions that technique is in there.
6 That is actually a technique. You, you,
7 you, you handwrite the statement and then
8 insert a couple of errors. It's a
9 calculated ploy that comes out of the
10 manual. You insert these errors and you
11 expect that when the suspect is reading
12 through the statement that he'll stop and
13 correct those errors.

14 If he doesn't, you are advised,
15 the investigator is advised, he doesn't stop
16 to correct the errors, you initiate the
17 correction and get him to initial it. The
18 goal, the purpose of that is to make it
19 difficult for the suspect later to distance
20 himself from the statement. He can't say
21 "I didn't read it, didn't agree with it"
22 because, after all, he's corrected errors in
23 it.

24 There is no evidence to suggest
25 that people who have been broken down into

Kassin -- Direct by Mr. Kulp

1 giving a false confession are going to
2 suddenly exercise some right and refuse to
3 make that correction. There's no evidence
4 that false confessors refuse to make
5 corrections whereas true confessors are
6 willing to. There's no evidence of that.
7 So it, it bears no -- you know, I smiled
8 when I saw it because I see it all the time,
9 but it doesn't have any real scientific
10 significance.

11 Q What about the fact that the
12 confession that the police got Wes to sign
13 gave a motive for killing Miss Haught?

14 A You see that again, you see that
15 in, in a number of false confession cases
16 where, where a confession is taken, it's
17 filled with details. In some cases the
18 details are very vivid and, and very
19 persuasive. Sometimes you look at the
20 statement itself and it can be very
21 compelling. You'll have somebody describe
22 not just what he did, how he did it, what he
23 was thinking when he did it, why he did it.

24 This, this one person who killed
25 his mother gave, gave, gave reasons for it.

Kassin -- Direct by Mr. Kulp

1 Another person accused of killing his
2 neighbor gave reasons for it. They gave
3 thoughts that were, that were going through
4 their heads in that statement. And in that
5 regard those statements can be persuasive
6 but, again, those, those are cases with
7 documented false confessions.

8 Q How might it impact, if it does,
9 as to the fact that the detectives in this
10 case drew a quick hunch or, or suspicion
11 that Wes was behaving like he was guilty?

12 A Well, that was -- there were a
13 couple of aspects of, of, of the techniques
14 used that, that I thought were difficult
15 and, and one was, I think it was clear that
16 an impression was formed early on, a
17 presumption of guilt, and that that
18 presumption of guilt closed minds. At some
19 point early on it was decided that he's the
20 main suspect, that we think he did it, and
21 certainly being the boyfriend gives him
22 special status in that regard. But then
23 maybe the way he acted the morning of the
24 discovery of his girlfriend's death may have
25 contributed to it.

Kassin -- Direct by Mr. Kulp

1 But it's clear that an
2 impression was formed. And I say it's clear
3 because if you look at Lieutenant McHale's
4 session with him on that Friday and you look
5 at Wes's -- and this was jarring to me -- if
6 you look at Wes's behavior, verbal and
7 nonverbal, now I know that Lieutenant McHale
8 has because, you know, I saw it in court the
9 other day, has, has the Reid School manual,
10 the, the technique, the, the videotapes.
11 Following the Reid School, you should have
12 walked out of that session saying he's
13 innocent.

14 Q Why would you say that?

15 A There are a number of
16 indications of innocence. Again if you look
17 at the behavioral analysis that the Reid
18 School recommends that you use, and the
19 validity of that is uncertain to me, but if
20 you look at it, because I know that that's
21 the technique being used, they make a number
22 of statements. Comes right out of the book.

23 For example, if the suspect
24 leans forward in an interested and
25 cooperative manner as opposed to kind of

Kassin -- Direct by Mr. Kulp

1 laying back, looking down, holding arms in
2 and such, if the person leans forward in a
3 cooperative demeanor, that's a sign of
4 innocence. Not -- doesn't mean innocence,
5 but it's one of those cues.

6 If you offer a polygraph and the
7 person immediately says sure, I'll take a
8 polygraph, that's an indication of innocence
9 as opposed to guilty. Guilty people are
10 going to be a little more reluctant.

11 They talk about a baiting
12 question. The baiting question is a
13 technique in which you say "what if I were
14 to tell you that somebody saw you there that
15 night?" That kind of question. In fact
16 that kind of question comes right out of the
17 manual. They say the innocent person
18 immediately says: "No. That can't be.
19 That person would be lying."

20 The guilty person has to stop
21 and think "ut-oh, who may have seen me?"
22 And so you get a hesitation, you get some
23 ambivalence.

24 So the baiting question, that
25 was used. Lieutenant McHale very craftily

Kassin -- Direct by Mr. Kulp

1 used the baiting question. And if you see
2 that as one of those tests, Wes passed it.
3 He immediately said: "That wouldn't be
4 true. That would be a lie. I didn't.
5 Nobody could have seen me there. I wasn't
6 there."

7 So there's that. There's the
8 polygraph. There's the baiting question.
9 There's his demeanor, his posture. He makes
10 a number of unhesitating, certain, absolute
11 statements. "I didn't kill her. I wouldn't
12 kill her. I wouldn't have done that. I
13 wasn't there." And a number of statements
14 that are unequivocal -- again, according to
15 the Reid School -- signs of, of innocence.

16 And then a couple of other
17 things that again, right out of the book.
18 The Reid School talks about the punishment
19 question, and this is -- this may be the
20 most diagnostic of them all. What do you --
21 what happens when you ask a suspect: "What
22 do you think should happen to the person in
23 this case, the killer in this case?" And
24 their theory, and I, and I think there may
25 be something to it, is that the guilty

Kassin -- Direct by Mr. Kulp

1 person is likely, knowing that they're
2 talking about him, is likely to hedge, maybe
3 suggest leniency, certainly take a little
4 time to respond and formulate a response.

5 The innocent person, believing
6 this has nothing to do with him, when asked
7 "What do you think, should we punish this
8 person? What do you think should happen?"
9 says: "Absolutely. This person should be
10 punished." Unequivocally. That's how Wes
11 responded to that question.

12 So there's that as well. He
13 responded to the punishment.

14 And then when asked about
15 physical evidence, "Well, what if we were to
16 tell you that we had a hair sample; in the
17 victim's grasp there was hair, wouldn't you
18 agree with the premise that that hair must
19 belong to the killer?"

20 Now, the innocent person who
21 doesn't fear that that hair is his because
22 he doesn't remember being there, is going to
23 say: "Sure. Absolutely. That's -- you
24 find the hair, the owner of the hair, you
25 found the killer."

Kassin -- Direct by Mr. Kulp

1 It's the guilty person who won't
2 accept that premise, according to the Reid
3 School and I think according to common
4 sense.

5 So if you just go down the line,
6 there's a laundry list of things he said and
7 did that an investigator trained in the Reid
8 School should have come out of that session
9 at least, at least wondering whether this
10 person is guilty.

11 Q You mean as opposed to feeling
12 that he was "ripe for confession"?

13 A Yes.

14 Q Now, asking you about the McHale
15 video that's in evidence, did you recall Mr.
16 McHale or Lieutenant McHale, Major McHale
17 addressing the issue of blackouts, and what
18 impact did that have during that
19 one-and-a-half, two-hour session?

20 A Well, again the, the blackout
21 issue was an interesting one to me because
22 in, in Wes's account he talks about the
23 suggestion of a blackout, which again I
24 looked at it and I said oh, you know, all of
25 the false internalized confessions cases out

1 there have this blackout, front and center.
2 Alcoholic blackout. Traumatic psychological
3 blackout. In one case the person was a
4 recovering alcoholic and they suggested he
5 had a dry blackout, and I don't believe
6 there is such a thing as a dry blackout. In
7 one case there was an alcoholic who admitted
8 that he had blackouts, and so they used that
9 against him, the fact that he had blackouts.

10 So that blackout hypothesis, not
11 recommended, not common, but you see it in
12 these false internalized confession cases,
13 so when he mentioned the blackout idea again
14 it showed one of those striking parallels to
15 these false internalized false memory cases.

16 There's no evidence in the
17 reports -- it's hard to tell from, from the
18 detectives' accounts where that blackout
19 notion comes from. It looks like he may
20 have -- Wes may have initiated it, but it's
21 hard to tell. So again I was kind of left
22 without a question.

23 But if you look at Lieutenant
24 McHale's videotape right there and, and it's
25 been transcribed, and right there on page

Kassin -- Direct by Mr. Kulp

1 two of the transcript he starts mentioning
2 alcoholic blackouts and the fact that people
3 often do things they don't remember, and so
4 that notion of a blackout, I had, I had a
5 question as to who, where did it initiate,
6 where did it come from? It came right
7 there. You can see the evidence of it in
8 that first few minutes of that Thursday --
9 I'm sorry, Friday interrogation.

10 Q Is the, the, the task of
11 interviewing for the purpose of the
12 acquisition of information, would that be a
13 fair assessment of what --

14 A Yes. That interview process is
15 supposed to be you bring someone in, he may
16 be the suspect, you're not sure if he's the
17 suspect, you want to find out and so you
18 throw out some open-ended questions, the
19 point of which is to get the person talking.
20 And the reason you want to get the person
21 talking is the more they talk, the more of
22 their behavior you get to watch. You get to
23 hear what they say, how they say it, what
24 they look like when they're saying it.

25 So if you're really interested

Kassin -- Direct by Mr. Kulp

1 in determining truth and deception, you
2 throw out some questions and, and what the
3 sound of an interview is, "short questions,
4 long answers" because, after all, the
5 interrogator is trying, or the interviewer,
6 is trying to get the person to talk and to
7 show behavior.

8 An interrogation, the rhythm
9 flips around. In an interrogation
10 techniques are being used, information is
11 being communicated, and so the -- what you
12 get are very long questions, shorter
13 answers.

14 And so what, clearly what, what
15 I saw in that Friday session was not an
16 interview because there seemed no effort to,
17 to observe the cues that many of them, most
18 of them, all of them were innocence cues on
19 the part of Wesley Myers.

20 In fact the goal was to
21 communicate information, to plant the seed
22 of certain techniques that it turns out come
23 into play later.

24 I think the best, simple,
25 crudest measure of whether or not you're

Kassin -- Direct by Mr. Kulp

1 looking at an interrogation or an interview
2 is who's doing most of the talking. If the
3 investigator wants to determine truth and
4 deception, he gets the suspect talking.

5 In this videotape I observed,
6 Wes is lucky to get words in edgewise every
7 now and then. He does very little of the
8 talking.

9 Q Now were there any comments, in
10 that regard, to the percentage of questions
11 versus statements, were there any particular
12 comments that were of concern to you that
13 were made by Mr. McHale, by Major McHale
14 during his exchange with Myers in the --

15 A Yes.

16 Q -- represented in the video?

17 A Yes. There were, there were,
18 there were some. There were -- certainly
19 there were -- I think the overuse of the
20 minimization technique was present. The
21 minimization technique is that Reid School
22 technique where you try and present
23 face-saving alternatives. "Maybe you didn't
24 mean it. Maybe it was just an accident.
25 Maybe you got lost and out of control."

Kassin -- Direct by Mr. Kulp

1 And that minimization, according
2 to the Reid School, it's very important that
3 you not attach to minimization any statement
4 about the legal consequences of the
5 different admissions.

6 Q Is that right in the book?

7 A Oh, that's in the book.

8 Q All right.

9 A Don't, don't say anything about
10 the legal consequences.

11 Q Do you have the book with you
12 here today?

13 A It's in my briefcase.

14 Q Okay. Go ahead.

15 A Yes. It's in the book.

16 But in fact in this case there
17 was an instance, actually two, but, but one
18 in particular where Lieutenant McHale not
19 only made the suggestion about alternative
20 scenarios, you know, the theme development
21 part of interrogation, but actually
22 distinguished first degree murder which,
23 which brings with it in the State of South
24 Carolina life or death, and manslaughter.
25 The word manslaughter was used, which brings

Kassin -- Direct by Mr. Kulp

1 with it, I forget if he said four years and
2 possibly three months, or three years and
3 possibly four months, but he stepped over a
4 line that is very clear in the Reid School
5 which is don't talk about the specific legal
6 consequences because it runs the risk of
7 implying that there may be leniency
8 forthcoming upon a confession, and so they,
9 they clearly don't recommend you do that.

10 So that was one aspect that
11 jumped at me. And another was, I was found
12 a couple of instances I think of outright
13 intimidation, which, which you don't often
14 see in, in, in these tapes.

15 Q Was there any particular
16 comments regarding Mr. McHale's ability to
17 get someone who is innocent to confess and
18 to present a case against him?

19 A Yes. There was, there was a
20 comment in there. I, I, I, I could pull it
21 out because I have the transcript.

22 Q Please. If you have excerpts
23 from it, or the transcript.

24 A Okay. And it's, it's, you'd,
25 you'd see it on the videotape if you would

Kassin -- Direct by Mr. Kulp

1 watch the tape again.

2 Q Right. But my question is what
3 particular comment caused you concern in
4 that regard to --

5 A Well --

6 Q -- the issue of presenting it?

7 A Okay. And, and here, here's the
8 comment and imagine yourself -- certainly --
9 Major McHale: "I can build a case against
10 anybody. I can build a case against a cop
11 in this building. If he was sleeping last
12 night with his wife in bed I could still
13 make a case against him because his wife
14 can't verify that she knows he was there the
15 whole time."

16 So he's basically saying: "I
17 can build a case against an innocent
18 person." That is an intimidating remark and
19 that is a way that is designed to further
20 break the person's spirit, bring them into a
21 state of despair, as if my defense, my, my
22 denials mean nothing. That in fact you can
23 build a case without it.

24 Does it say I'm going to build
25 it against you? No. Is the inference

Kassin -- Direct by Mr. Kulp

1 clear? I think to maybe who reads this or
2 sees it, yes.

3 Q From your review of the
4 materials, did it appear that Major McHale
5 at the time already knew that there was an
6 issue that applied to Mr. Myers of being at
7 his parents' house that evening instead of
8 being at the scene committing the murder?

9 A I'm not, I'm not following the
10 question.

11 Q From your review of the
12 materials, do you know whether or not
13 Mr. McHale had already been advised by the
14 detectives about an issue of alibi in the
15 case?

16 A I don't recall.

17 Q Okay. Now, beg the Court's
18 indulgence just one second.

19 Did you see any other references
20 by Mr. McHale during that video that would
21 be associated with the issues and methods of
22 interrogation that you discussed?

23 A Well, again, it was, this was
24 not a video session in which he capitulated
25 and gave a confession, but you can see

Kassin -- Direct by Mr. Kulp

1 certainly seed being planted about other
2 evidence, the question about the hair, that
3 seed was being planted.

4 The intimidation factor I, I
5 think was fairly evident in that comment.
6 The minimization technique was used
7 repeatedly when Lieutenant McHale said
8 things like, "you know, sometimes I want to
9 kill my wife" -- again I'm paraphrasing,
10 but -- "sometimes I want to kill my wife.
11 You know how women are. I can understand a
12 guy needing -- getting out of control,
13 wanting to do that." Just a number of
14 statements like that, which are designed to
15 minimize the offense.

16 So essentially what that
17 communicates to a suspect is: "Oh, maybe
18 what they're saying I did, you know, isn't
19 so bad." And the step after that is:
20 "Maybe, therefore, the long-term consequence
21 wouldn't be so severe."

22 And so minimization is used.
23 It's used in excess. It steps over that
24 line when it actually talks about the
25 difference between first degree murder and

Kassin -- Direct by Mr. Kulp

1 manslaughter and the legal consequences of
2 those, and so it, it, it does do that, and
3 it introduces for me the blackout
4 hypothesis. Again I couldn't figure out
5 where the blackout came from, but it comes
6 right there in there, in that Thursday
7 session.

8 And that videotape revealed
9 certainly that, that Wes, as he had said,
10 was shown photographs which, again, if this
11 person is a suspect, I imagine you wouldn't
12 be showing this person photographs of the
13 crime scene.

14 Q Do you know if Major McHale has
15 the treatise that you referred to, you know,
16 if he acknowledged this, the treatise to
17 refer to, the "Reid Technique" treatise to
18 make sure that he was able to comply with
19 that?

20 A Yes.

21 Q Does he?

22 A Yes, he does.

23 Q Now, lastly, let me ask you
24 based on your testimony here today, your
25 assessment of the circumstances and

Kassin -- Direct by Mr. Kulp

1 situation, does this confession give you
2 pause or cause you concern?

3 A Gives me pause. It, it bears a
4 striking resemblance to so many false
5 internalized confessions which at first seem
6 hard to understand, but once you see the
7 script that they run through, the script
8 that the breakdown, the false evidence, the
9 suggestion of a blackout, the confusion, the
10 tentative language "I must have done it"
11 followed by a detailed statement that may or
12 may not contain novel details, yes, it bears
13 a striking resemblance to those cases.

14 But what is particularly
15 problematic here is not just that certain
16 techniques were used that I think were
17 extreme, and not just that it was a
18 prolonged affair, ordeal, but as well that,
19 that there wasn't good recordkeeping. You
20 know, we, we have, we have one videotape of
21 the Thursday session that makes me wonder
22 why there wasn't a videotape of the Friday
23 session as well. That equipment is
24 available. If not videotape, audiotape, and
25 that's too bad.

2330

Kassin -- Direct by Mr. Kulp

1 But in addition, the problem
2 with, the problem with this is there's no
3 way to know as a result of all that where
4 these details come from. When I hear that
5 Wes was shown photographs, that seems so
6 presumptuous to, to, to actually show the
7 suspect photographs that would then
8 contribute to the details of a confession,
9 that I just -- it's, it's hard really to
10 know with the statement itself, given the
11 details that are in there, where those
12 details came from. It just -- I don't know.
13 That's the, the best I can tell you is I
14 don't know.

15 Q Okay. Thank you very much.
16 Please answer any questions Mr. Durant might
17 have for you.

18 MR. DURANT: May we approach one
19 moment, your Honor?

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

22 THE COURT: This is going to
23 take perhaps more than thirty minutes
24 so I'm going to send you to lunch at
25 this time. Remember my admonitions.

1 Be back at 1:30.

2 (Whereupon, the jury leaves the
3 courtroom at 12:03 p. m.)

4 THE COURT: We'll break for
5 lunch now and don't discuss this case
6 with anyone. Have a good lunch.

7 THE WITNESS: Thank you.

8 THE COURT: Court's in recess.
9 1:30.

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

12 MR. KULP: Thank you, your
13 Honor.

14 (Whereupon, a luncheon recess
15 was called at 12:04 p. m.)

16

17

18 A F T E R N O O N S E S S I O N

19 (The Judge enters the courtroom
20 at 1:38 p. m.)

21 THE COURT: For the record, I've
22 got these two letters that were sealed
23 by the Court -- sealed by the clerk
24 with a copy of a letter to Chief
25 Caldwell from David Schwacke dated

1 January the twenty-ninth, 1998. It was
2 a Court exhibit number two. There was
3 one to Chief Caldwell from Annie (sic)
4 Clifford dated July the fifteenth,
5 1999. That's exhibit one.

6 That is work product and as a
7 matter of fact has to also do with
8 other things also, so I want them
9 sealed back up and still mark them as
10 exhibits, Court exhibits one and two
11 for any appeal, if there's an appeal.

12 THE COURT REPORTER: We already
13 have Court exhibit one in this trial.
14 Shall I mark them two and three?

15 THE COURT: You can mark them
16 two and three then.

17 (At this time the two letters
18 are sealed and marked as Court's
19 Exhibits 2 and 3 for purposes of the
20 record.)

21 MR. KULP: Thank you, Judge.

22 THE COURT: All right. Anything
23 before we bring the jury out?

24 MR. KULP: No, sir.

25 MR. DURANT: Not from me.

1 THE COURT: All right, sir.
2 Where's Dr. Kassin? Come
3 around.

4
5 S A U L K A S S I N,
6 previously sworn as a witness, resumes
7 the stand.

8 All right. Bring the jury out.
9 (The jury enters the courtroom
10 at 1:42 p. m.)

11 THE COURT: Thank you. You may
12 examine.

13 MR. DURANT: Thank you, your
14 Honor.

15

16

17

18 CROSS-EXAMINATION BY MR. DURANT:

19 Q Dr. Kassin, you are of course
20 being paid for your testimony here today.
21 Is that correct?

22 A No.

23 Q That's not correct? So you came
24 down here for free?

25 A I've worked on the case to a

Kassin -- Cross by Mr. Durant

1 point where it's taken so many hours I
2 basically stopped counting and I paid for my
3 own plane ticket, and I'm not getting paid
4 for that.

5 Q But you have been paid, sir?

6 A Yes.

7 Q And how much have you been paid?

8 A Paid around six thousand.

9 Q Six thousand dollars?

10 A Yes.

11 Q And that's a pretty good chunk
12 of change, wouldn't you agree?

13 A Yes.

14 Q And we touched briefly on this
15 during your qualification stage, but isn't
16 it true that in your opinion and Mr. Leo and
17 Ofshe in California, that primarily you base
18 your opinions on these cases on false
19 confessions not so much on empirical
20 studies, but in terms of anecdotal accounts
21 of what you all perceive to be false
22 confession cases?

23 A No. That's not true. Certainly
24 not in my case. The "perceived to be" false
25 confession cases are false confession cases.

1 When the DNA exoneration case comes along,
2 that's an exoneration.

3 Q Well, let's get --

4 MR. DURANT: Your Honor, he
5 hasn't had a chance to finish.

6 A And, and in my case in
7 particular, because I'm an experimental
8 social psychologist, I don't look just at
9 the anecdotes and the case studies. What I
10 find interesting in the court is the
11 convergence between what we see out there in
12 those cases and what we know to be true from
13 a hundred years of research and psychology,
14 both social and cognitive, so it's in part
15 general psychological principles and
16 research, it's in part some of the specific
17 research I've done on interrogations and
18 false confessions, and it's in part these
19 case studies which again map, map a category
20 scheme that, that seems to work.

21 Q And with regard to case studies,
22 wouldn't you agree that most of the
23 information you derive your opinions from
24 comes from the case studies?

25 THE COURT: Can you hear all

Kassin -- Cross by Mr. Durant

1 right?

2 A Well, again, if, if you're
3 asking me does my opinion of the case
4 studies come from the case studies --

5 Q I'm saying that much of the
6 information that you've testified to this
7 jury about comes from case studies, not from
8 research studies. Is that correct?

9 A I don't know about most. I, I
10 talked about some research because in fact
11 the principles that we know about which are
12 applicable here, and are certainly -- I, I
13 didn't describe specific studies, although I
14 could, but we know for example in psychology
15 that if you have these coerced false
16 internalized confession cases which, when I
17 first identified fifteen years ago were a
18 bit of a puzzle psychologically, but we now
19 know so much about the implantation of false
20 memories, in fact main stream psychologists
21 on memory who don't do, do research in law
22 now see suggestibility in false memory
23 effects as one of the particular problems
24 with human memory, so that isn't -- these
25 false confessions cases, they reveal a lot

Kassin -- Cross by Mr. Durant

2337

1 about psychology that we already know in a,
2 in a wider area of context, so it's not the
3 cases per se, it's not research per se, it's
4 the convergence of the two.

5 Q And isn't it true, Doctor, that
6 in most of these cases there's a great deal
7 of dispute as to whether or not these
8 confessions are actually false or not?

9 A The false confession cases?

10 Q Yes.

11 A There's no dispute. There's one
12 individual who disagrees with everybody
13 else.

14 Q Are you talking about Paul
15 Cassell?

16 A Yes, I am.

17 Q Okay. Because he did kind of a
18 critical analysis of Leo and Ofshe's study
19 of sixty people, did he not?

20 A He did a critical analysis which
21 I would be more than happy to critique.

22 Q Okay. And just as he critiqued
23 Leo and Ofshe's studies. Is that correct?

24 A Correct.

25 Q Because he disagreed that in the

Kassin -- Cross by Mr. Durant

2338

1 sixty cases that Leo and Ofshe originally
2 identified in this area, that thirty-one of
3 those people were not convicted?

4 A That's correct.

5 Q Okay. And a lot of those
6 thirty-one were not even arrested or
7 indicted?

8 A That's correct. But, but they
9 gave false confessions, which were
10 compelling, up to a point.

11 Q And that may include -- there're
12 a lot of people out there giving false
13 confessions, Doctor, like voluntary false
14 confessions. Right?

15 A None of these were voluntary.

16 Q And so thirty-one of the sixty
17 are out, out the door already?

18 A Why are you tossing out those
19 thirty-one false confessions?

20 Q Because, Doctor, they weren't
21 convicted. If they weren't convicted and if
22 they weren't -- if they weren't arrested or
23 if they weren't indicted for it then that
24 means that they were so obviously false
25 confessions to begin with that they didn't

Kassin -- Cross by Mr. Durant

1 even -- most of them never even got to the
2 jury.

3 A Many of them did get to the jury
4 and they weren't obvious. There were a
5 handful of obvious ones and still those are
6 data points in the study of false
7 confessions. Those are people who, in an
8 interrogation situation, did what most
9 people say they would never do, confess to a
10 crime they didn't commit. Those should not
11 have been tossed from the analysis.

12 Q And isn't it true, sir, that of
13 those sixty there are basically nine of
14 those that all parties agree were false
15 confessions?

16 A The only party that disputes it
17 is Paul Cassell.

18 Q No. That's not true, sir. I
19 mean those others, what you -- they call
20 false confessions were all convicted by
21 juries, were they not?

22 A And then those convictions were
23 overturned upon further analysis.

24 Q That's not true, sir.

25 MR. KULP: It's the form of the

Kassin -- Cross by Mr. Durant

1 question. I don't think the witness
2 can answer the question.

3 THE COURT: All right. He
4 says -- go ahead.

5 A There may be a dispute about
6 some of those confessions, but the vast
7 majority, if you were to do a, a, a, a
8 survey of the consensus in the scientific
9 community, you would find one very large
10 group agreeing that Ofshe and Leo's highly
11 probable, and certain false confessions are
12 just that, and then you'll find Paul
13 Cassell.

14 Q Well, where did, where did Leo
15 and Ofshe derive their opinions on the false
16 confessions from?

17 A From various sources. Both or
18 either of them were involved in some of
19 those cases that they actually had access to
20 transcripts and trial materials and police
21 reports and videotapes. In some cases they
22 read book-long accounts of some of these
23 cases. And in some cases they read media
24 reports of these cases.

25 Q Media reports. Is that correct?

Kassin -- Cross by Mr. Durant

2341

1 A Yes.

2 Q Talking to the defendant?

3 A Excuse me?

4 Q Some of their information came
5 from talking to the defendant?

6 A I'm sure that wasn't excluded.

7 Q Some of the information was
8 provided by organizations like "Friends of
9 the Defendant" or the "Society to Free
10 So-and-so From Prison"?

11 A What they looked at was the
12 evidence in the case.

13 Q And so --

14 MR. KULP: Judge --

15 MR. DURANT: I'm sorry. I --

16 MR. KULP: Your Honor, the rule
17 says --

18 THE COURT: That's all right.

19 MR. DURANT: Judge, I don't know
20 if he's through or not.

21 THE COURT: He's -- he
22 hesitated. Go ahead.

23 A What they looked at was the
24 evidence that they had available, and the
25 purpose of their study was not to rank, to,

Kassin -- Cross by Mr. Durant

2342

1 to ring up a large count of false
2 confessions because they could have rung up
3 a larger count had they tried. The purpose
4 of the study was to look at the differences
5 between those cases in which people gave
6 those false confessions and others where
7 they did not, to look at some of the
8 differences between what they called the
9 certain and probable false confessions and
10 then some -- which they had a category.
11 They honestly said, "We think these are
12 false, but we can't be certain."

13 The purpose of their study was
14 not to try and raise a large count of these,
15 because I think they would agree and
16 certainly I agree and I would think they
17 agree with me, that the numbers of these are
18 almost irrelevant because we don't expect to
19 touch that iceberg. We just know that there
20 is some iceberg there.

21 Q So you can't say that the
22 incidence is one in ten, or one in a
23 thousand, or one in ten thousand, or one in
24 a million?

25 A Or twenty-two per cent.

Kassin -- Cross by Mr. Durant 2343

1 Q Doctor, that is a -- what is the
2 relevance of that?

3 A Well, again, if you look at the
4 wrongful conviction cases, twenty-two per
5 cent of those have false confessions in
6 them. That again, acknowledging that that's
7 not a random sample, that's still a larger
8 number than I would ever have imagined for
9 an incidence of false confessions in cases
10 later overturned.

11 Q And, Doctor, for example and you
12 say to prove a confession is false, you have
13 another person either confessing to the same
14 crime or you have what you call DNA, DNA
15 evidence. DNA evidence does not necessarily
16 mean that a confession is false, does it?

17 A How do you figure if you've got
18 a confession with details to a crime that
19 wasn't committed by the person who gave the
20 confession?

21 Q I would agree, sir, that in rape
22 cases where there's semen in a victim that,
23 that DNA could be pretty conclusive. Would
24 you agree?

25 A Yes. So if an individual

Kassin -- Cross by Mr. Durant

2344

1 confessed to rape and then the semen shows
2 that it wasn't -- didn't belong to that
3 individual, would you call -- I guess I'd
4 call that a false confession.

5 Q Well, then how many of those
6 cases involved rape?

7 A Well, my guess is that few of
8 them involved rape.

9 Q We're not interested in guesses,
10 Doctor.

11 A Well, I don't have an exact
12 count, but they tend to be homicide cases
13 because most of the cases that have gone
14 back over are death penalty cases.

15 Q Take this case, for example.
16 Couldn't it be argued either way, sir,
17 whether the hair was his or the hair was not
18 his, that that proves he's the murderer?

19 MR. KULP: I object. We need to
20 approach, your Honor. I mean that's
21 not -- that's not within the province
22 of this witness. That's for the jury
23 to decide.

24 MR. DURANT: He's just said that
25 DNA evidence proves that whether a

Kassin -- Cross by Mr. Durant

1 confession is false or not.

2 MR. KULP: We move for the form
3 of the hypothetical to be --

4 THE COURT: All right. Let's --
5 let's rephrase that question.

6 Q Couldn't it be argued either way
7 in this case, Doctor, about the hair in the
8 hand?

9 A Be argued that what?

10 MR. KULP: There's no
11 foundation.

12 THE COURT: No, sir. He's on
13 cross. I'll allow it. Go ahead.

14 A Be argued that -- that -- please
15 rephrase the question.

16 Q Assuming that the DNA evidence
17 conclusively established that that hair was
18 this defendant's hair in the victim's hand,
19 that does not conclusively establish his
20 guilt, does it?

21 A That would be compelling enough
22 so that I wouldn't be here if that were the
23 case.

24 Q Well, he was his -- this lady's
25 boyfriend.

Kassin -- Cross by Mr. Durant

1 A Yes.

2 Q He had a sexual relationship
3 with her, according to him, a couple nights
4 before this. Correct?

5 A Yes.

6 Q He had been in that bar on
7 numerous occasions, including that day, had
8 he not?

9 A Yes.

10 Q So the fact that his hair may or
11 may not been in her hand doesn't prove that
12 he's guilty or not guilty, does it?

13 A I guess the circumstance in
14 which the hair was found, which is in the
15 grasp of someone in the middle of a
16 struggle, that, that is --

17 Q There were other hairs in her
18 hand. You were familiar with that, were you
19 not?

20 A Yes.

21 Q Were you familiar that she, she
22 was on the ground?

23 A Yes.

24 Q Presumably crawling around in a
25 public bar?

Kassin -- Cross by Mr. Durant

1 A I don't know about crawling
2 around in a public bar.

3 Q So there are other explanations
4 as to why that hair could get into the hand.
5 Is that correct?

6 A Yes.

7 Q And DNA evidence in this case
8 has nothing to do with whether the
9 confession is true or not, does it, because
10 it could be argued either way?

11 MR. KULP: Your Honor, I'd, I'd
12 like to approach.

13 THE COURT: No, sir. Put it on
14 the record.

15 MR. KULP: The record is -- this
16 is -- he's asking a question assuming
17 facts in evidence and at this point
18 while there may have been some exhibits
19 introduced into the record, those
20 haven't been addressed yet. This
21 witness --

22 THE COURT: All right, sir. He
23 said he studied it, the transcript,
24 studied the evidence, studied the
25 confession, and he's on cross. I'll

Kassin -- Cross by Mr. Durant

1 allow that. Go ahead.

2 MR. KULP: All right.

3 Q Now, according to your theory,
4 there are three types of false confessions.
5 Is that correct?

6 A Correct.

7 Q And I presume just like we don't
8 know what the incidence of false confessions
9 are, you don't know what the breakdown of
10 voluntary versus coerced internalized versus
11 coerced implied?

12 A That's correct. Others have
13 actually gone back over false confession
14 cases to try to do that, but I don't.

15 Q But there's no question that
16 we're not dealing with a voluntary confessor
17 in this case?

18 A No.

19 Q They're usually people with
20 mental illness. Correct?

21 A Or protecting somebody else.

22 Q Or protecting someone or
23 obtaining food and shelter, just want to get
24 inside the jailhouse, or they're publicity
25 hounds. No question we're not dealing with

Kassin -- Cross by Mr. Durant

1 that in this case?

2 A That's right. That's right.

3 Q I am a little bit confused as to
4 where you say this pigeonholes into your
5 analysis, though. Are you saying that this
6 was a coerced internalized confession or a
7 coerced compliant confession?

8 A There're elements of compliance
9 in every internalization, but in this case
10 as in some cases that we see, there actually
11 becomes an element of confusion where he
12 wonders whether or not he committed this
13 crime that he doesn't seem to have a
14 firsthand memory for and, and, and draws the
15 inference that he must have done it. And
16 again the confusion in memory is what's key.
17 In the compliant cases there's no confusion.
18 They simply capitulate. Privately they know
19 they're innocent but they're -- they're
20 giving up.

21 And in this case there is
22 confusion and what varies is whether or not
23 confusion becomes outright internalization
24 and how deep that gets. But, yes, there's
25 some element of confusion.

Kassin -- Cross by Mr. Durant

1 Q So in your opinion in this case
2 if this is a false confession it is a
3 coerced internalized false confession?

4 A Yes.

5 Q And coerced compliant
6 confessions basically are people that
7 confess to avoid adverse questioning or to
8 get some promised reward or to --

9 A Correct.

10 Q -- or to -- people that have had
11 confessions beaten out of them, people that
12 are promised that, you know, "if you confess
13 to us, we'll let you go." Those type of
14 people. Is that correct?

15 A Yes.

16 Q So we're not dealing with those?

17 A Well, we're dealing with some
18 elements of the breakdown. Again it's a
19 process, and the first part of the process
20 requires breaking that suspect down and
21 that's, that's a part of the process
22 necessary for internalization, too.

23 Q Okay. So what we're dealing
24 with in this case is what you referred to as
25 coerced internalized confession where an

Kassin -- Cross by Mr. Durant

1 innocent person actually comes to believe
2 that he committed the crime through
3 suggestive interrogation?

4 A Correct.

5 Q Okay. Brainwashing?

6 A A form of it, yes.

7 Q And so your testimony in this
8 case was that the defendant was brainwashed?

9 A Brainwashing is, is, is a loaded
10 term and it tends to be restricted to
11 situations involving cults or prisoners of
12 war, so I don't see this as brainwashing. I
13 see this as interrogation taken to extreme.

14 Q But excuse me for -- but
15 wouldn't your layman take that definition
16 where an innocent person actually comes to
17 believe he's committed a crime through
18 suggestive interrogation, wouldn't your
19 ordinary person believe that to be
20 brainwashing?

21 A It might be, but psychologists
22 don't have a construct for brainwashing. We
23 don't fully understand it. We do understand
24 the process of memory distortion, and so I'd
25 rather use a less loaded term.

Kassin -- Cross by Mr. Durant

1 Q And would you agree that those
2 are fairly rare?

3 A Like I said before, I don't know
4 the incidence rate.

5 Q And wouldn't you agree that in
6 just about every case of what you consider
7 coerced internalized confessions you're
8 dealing with a vulnerable suspect --
9 subject?

10 THE COURT: You're dealing with
11 what?

12 MR. DURANT: A vulnerable
13 subject.

14 THE COURT: All right, sir. You
15 need to talk a little louder.

16 MR. DURANT: Yes, sir. I'm
17 sorry.

18 THE COURT: I see the people
19 over there holding their hand to their
20 ear.

21 MR. DURANT:

22 A Vulnerable, yes, but not
23 necessarily because of characteristics of
24 the suspect. The situation can make anybody
25 vulnerable, so vulnerability, yes, but not

Kassin -- Cross by Mr. Durant

1 necessarily personal vulnerability. It
2 could be a situational vulnerability.

3 Q And would you agree then there
4 may be certain types of people that are much
5 more conducive to that type of technique or,
6 or they're not?

7 A There is, there is some research
8 to that effect. I haven't done it but, yes,
9 there is some research to that effect.

10 Q Like those that are very young
11 children?

12 A Yes.

13 Q Those that are naive?

14 A Naive is hard to measure, but --

15 Q Those that are unintelligent?

16 A Yes.

17 Q Those that are retarded?

18 A Yes.

19 Q Those that are mentally
20 deficient?

21 A Yes.

22 Q Now, the defendant in this case
23 isn't young, is he?

24 A No.

25 Q And the defendant in this case

Kassin -- Cross by Mr. Durant

1 isn't unintelligent, is he?

2 A No.

3 Q He's well educated, is he not?

4 A Correct.

5 Q Finished high school; had one
6 year of college. Correct?

7 A Correct.

8 Q Six years in the military?

9 A Correct.

10 Q Big strapping guy. Correct?

11 A Correct.

12 Q Wasn't tired when he was -- when
13 he confessed, was he?

14 A No reason to believe that, no.

15 Q Just got home, he went home had
16 a good night's sleep, didn't he?

17 A Correct.

18 Q At whose suggestion?

19 A At whose suggestion? I don't
20 know. I mean they finished searching his
21 house I guess at about ten o'clock the night
22 before and he went to sleep.

23 Q You have no evidence in this
24 case that food or drink or any other
25 necessity was withheld from him at any time,

Kassin -- Cross by Mr. Durant

1 do you?

2 A Withheld, no. It's not clear
3 that he had anything to eat the day -- that
4 Saturday, judging from, from the record. In
5 fact it appears that he hadn't had anything
6 to eat by the time he made the statement
7 which was at two, 2:30, but as to whether or
8 not it was as the result of withholding, no,
9 I wouldn't say that food was, was withheld
10 from him.

11 Q He was not threatened?

12 A No.

13 Q He was not promised anything?

14 A No.

15 Q He was not offered any reward to
16 talk to the police?

17 A Correct.

18 Q He was advised of his
19 constitutional rights under Miranda?

20 A Correct.

21 Q He understood his constitutional
22 rights under Miranda?

23 A Yes.

24 Q And the statement he gave to the
25 police was voluntary?

Kassin -- Cross by Mr. Durant

1 A I wouldn't describe it as
2 voluntary, not given the circumstances of
3 the statement.

4 Q Now, Doctor, it is not normal,
5 it is not human nature, is it, for someone
6 that's confronted with something bad to
7 confess to it, is it?

8 A I would think not.

9 Q The natural human reaction, is
10 it not, sir, is to deny it?

11 A Yes. Well, there is an impulse
12 to confess and that's where those voluntary
13 confessions come from. Not the voluntary
14 false ones, but the voluntary true ones.
15 But, yes, there is also an impulse to deny.

16 Q And most people when confronted
17 in that situation with the choice of coming
18 out and telling the truth or telling a lie,
19 are going to tell a lie. Correct?

20 A To protect themselves, yes.

21 Q Yes. Because they go into this
22 self-protection mode, don't they?

23 A Yes.

24 Q And they like to divert
25 attention away from themselves, don't they?

Kassin -- Cross by Mr. Durant

1 A I don't have any evidence of
2 that. Denial, yes. As to strategies beyond
3 denial, I don't know.

4 Q And do you have children?

5 A Yes, I do.

6 Q Okay. And, for example, like
7 you hear the cookie jar break and you go in
8 there and your child is in the kitchen with
9 the cookie jar broken and nobody else
10 around, and you say "who broke the cookie
11 jar," what's the answer you're likely to
12 get?

13 A My children are too old to give
14 me that answer but, but, yes, for a young
15 child sometimes it's "I didn't do it."

16 Q So you would agree, sir, that in
17 order to get someone to go from that point
18 to telling what they did, that some
19 techniques have to be used?

20 A Yes.

21 Q And knowing that, and also
22 knowing that, would you, would you agree
23 that even though the natural reaction is not
24 to tell the truth, that there is perhaps
25 something in a person that makes him want to

Kassin -- Cross by Mr. Durant

1 confess his wrong-doing?

2 A There seem to be elements of
3 that, yes.

4 Q Okay. Now, would you agree that
5 guilt is a strong incentive for one wanting
6 to, for one to confess, especially when
7 they're dealing with a loved one?

8 A Yes.

9 Q And would you agree that anxiety
10 in that person, particularly with regard to
11 what he thinks the police may have against
12 him, would enter into his decision as to
13 whether or not to confess?

14 A Yes. And I'd say yes for both
15 the guilty and the innocent.

16 Q Well, I'm a little bit confused
17 on that, but I'll get to that a little
18 later. And so you would acknowledge that
19 certain techniques have to be used to give
20 this -- because -- I'll withdraw that.

21 And isn't it basically true,
22 Doctor, that when a person confesses, he
23 comes to an internal decision within his own
24 mind to do what he believes is in his best
25 interest under the circumstances, based upon

Kassin -- Cross by Mr. Durant

1 what he knows and based upon what he
2 believes other people know?

3 A Yes. Primarily there is that.
4 I believe that is correct, but there is in
5 fact that impulse to make the right
6 self-serving decision.

7 Q Now, you've opined that
8 psychologically oriented interrogation
9 techniques increase the risk of false
10 confessions and specifically I believe you
11 are -- reference that with the "Reid
12 Technique" in this case?

13 A Not all techniques and not all
14 elements of the "Reid Technique". No. I,
15 I, I think certain elements of the technique
16 are actually quite effective.

17 Q Well, that was one of my
18 questions. Just what is permissible,
19 Doctor?

20 A The goal of an interrogation
21 should be very simply you've got someone who
22 may be guilty, may be innocent. The goal of
23 interrogation should create, be a creative
24 technique that is something like surgically
25 precise. That is, it is designed to get

Kassin -- Cross by Mr. Durant

1 confessions from those who are guilty but
2 not be so overpowering as to sweep the
3 innocent people along the way.

4 And so to the extent that
5 certain techniques are used, they're
6 perfectly acceptable if you can also
7 demonstrate that you're not also sweeping
8 some of the innocents in with false
9 confessions. And that should be the goal.
10 It is the goal of interrogation.

11 Q So you would admit that the
12 police have to use psychological techniques
13 when dealing with subjects to get them to
14 reach this internal decision or this innate
15 desire to confess?

16 A Correct.

17 Q Now, I believe on direct
18 examination, correct me if I'm wrong, you
19 indicated that the interrogation in this
20 case lasted I believe the figure you
21 mentioned was fifteen to eighteen hours?

22 A That's an estimate. It's
23 between the Thursday from when he first came
24 in through that -- it was a long Thursday,
25 through the Friday, through the statement,

Kassin -- Cross by Mr. Durant

1 there is about that many hours. What I
2 can't do is precisely count how many of
3 those hours were questioning-related and how
4 many were, you know, searching the house.

5 Q Okay. So on Thursday you were
6 aware, of course, that he -- your client
7 showed up -- I mean Mr. Kulp's client showed
8 up at the scene that morning and he was
9 questioned very briefly by Detective Payne
10 as to why he was there?

11 A Correct.

12 Q And he gave a brief statement?

13 A That's right.

14 Q And you've reviewed that
15 statement?

16 A Yes.

17 Q Okay. Do you have any evidence
18 that any of these nefarious psychological
19 techniques were used during that encounter?

20 A No. Seemed relative open-ended.
21 The kind of statement you would take from a
22 witness.

23 Q And it was a relatively brief
24 encounter, too, was it not, sir?

25 A I believe he was there, although

Kassin -- Cross by Mr. Durant

1 that may have included the hospital time for
2 two or three hours, so it may have been an
3 hour long or so statement, yes.

4 Q And probably the actual
5 statement was even less than that, wasn't
6 it?

7 A Yes.

8 Q And do you include the time that
9 he was going to the hospital and getting
10 fingerprints and all that as part of the
11 interrogation as well?

12 A No, not unless he's being
13 questioned along the way but, no, I wouldn't
14 otherwise.

15 Q And you have no evidence that he
16 was being questioned during any of those
17 times, do you?

18 A No. No.

19 Q Other than that brief period of
20 time where he was in Detective Payne's car
21 at the scene of the crime?

22 A That's right.

23 Q Okay. Were you aware that the
24 remainder of that day he was down at the
25 Shores drinking?

Kassin -- Cross by Mr. Durant

1 A Yes.

2 Q And the remainder of that night
3 and morning he was out with Paul McKeithan,
4 drinking?

5 A Yes.

6 Q And he certainly wasn't under
7 the influence of the police during those
8 periods of time, was he?

9 A No.

10 Q And he wasn't -- and are you
11 aware that Mr. McKeithan didn't leave him
12 until about ten o'clock the next morning,
13 Friday morning?

14 A Excuse me?

15 Q Were you aware that
16 Mr. McKeithan didn't, did not leave him, was
17 with him all night, did not leave until
18 about ten o'clock the next morning?

19 A Leave him until? I don't follow
20 the question. I'm sorry, sir.

21 Q Thursday night --

22 A Yes.

23 Q -- were you aware that the
24 defendant and Mr. McKeithan were together
25 the entire night and that Mr. McKeithan did

Kassin -- Cross by Mr. Durant

1 not leave until about ten o'clock on Friday?

2 A I was not aware of that.

3 Q Okay. So he certainly wasn't
4 with the police during that period of time,
5 was he?

6 A No, he was not.

7 Q And you were aware that he
8 showed up at the police department at about
9 noon on Friday?

10 A Yes. I believe it was a little
11 earlier than noon.

12 Q And that there was this
13 conversation in Lieutenant Cumbee's office.

14 A Okay.

15 Q You're aware of that?

16 A Yes.

17 Q And you are aware that he was
18 told about this hair that had been found in
19 the victim's hand at that time?

20 A Yes. Well, actually I'm not
21 sure he was told then. I know he was told
22 at the time of Lieutenant McHale's session.
23 I don't know if he was told then.

24 Q And I believe it was also during
25 this brief conversation in Lieutenant

Kassin -- Cross by Mr. Durant

1 Cumbee's office, which I believe the
2 testimony indicated was about thirty minutes
3 at most, that he was shown or may have seen
4 a picture of the victim?

5 A It appears that he was shown
6 more than one picture.

7 Q Now, Doctor, why would that make
8 an innocent person confess?

9 A That in and of itself would not.

10 Q Yes.

11 A But what it would do, if you can
12 otherwise get an innocent person to confess,
13 is it can provide that innocent person with
14 crime scene details that they should have
15 been able to recite only firsthand.

16 Q That wasn't my question, sir.
17 Why would showing the defendant a picture or
18 any person a picture make an innocent person
19 confess?

20 A That in and of itself would not.

21 Q And just for example, sir, if
22 you were to go home tonight and find your
23 wife or significant other had been murdered
24 and they showed you a picture of her, you
25 wouldn't confess because you saw that, would

Kassin -- Cross by Mr. Durant

1 you?

2 A No.

3 Q So after lunch there was about
4 an hour-and-a-half interview with
5 Mr. McHale. Is that correct?

6 A Correct.

7 Q And you've seen the videotape,
8 sir. Is that correct?

9 A Yes.

10 Q And the jury has seen the
11 videotape of it.

12 Would you agree that
13 Major McHale never accused this man of doing
14 anything?

15 A Not directly, no.

16 Q Would you agree that he never
17 promised Mr. Myers anything?

18 A Correct.

19 Q Would you agree that he never
20 threatened Mr. Myers in any way?

21 A Correct.

22 Q Because as a matter of fact he
23 was very cordial with Mr. Myers throughout
24 the entire interview, was he not?

25 A Cordial was the demeanor of a

Kassin -- Cross by Mr. Durant

1 strong interrogation, so the demeanor
2 certainly was cordial. The words were less
3 than cordial.

4 Q And why is that, sir?

5 A Because when you say to somebody
6 that "I can basically frame an innocent
7 person" or I can -- I can accuse -- I can --
8 I can -- "I can get a, a cop in this station
9 charged with a crime even if he was sleeping
10 with his wife because his wife can't swear
11 that he was there all night," that's a
12 statement of intimidation. And it may
13 certainly scare the guilty person, but it's
14 also, non-surgical, going to scare the
15 innocent person.

16 Q And so that in your opinion is
17 an example of intimidation?

18 A Yes.

19 Q And I believe at one point in
20 the report you even mention the fact that
21 Mr. Clayton or Detective Clayton, who is a
22 detective, and had a gun on, that that was
23 intended to intimidate the defendant, too.

24 A Well, the jacket removed and the
25 gun visible clearly against, against what

Kassin -- Cross by Mr. Durant

1 even, even the manuals would recommend so,
2 yes. I wouldn't say that that's a strong
3 form of intimidation because in fact the
4 defendant has recorded other, you know, more
5 intimidating things as well. But, but
6 that's it on that videotape.

7 Q But the fact of the matter is
8 you, you don't know that the detective had a
9 coat on at any time during that day, do you?

10 A I have no idea.

11 Q Presumably he rode over there
12 with Mr. Myers, did he not?

13 A The interrogation manual says
14 specifically keep your coat on, don't,
15 don't, don't show a weapon, so whether,
16 whether it was there for the whole day or
17 for just a piece of the day is almost an
18 irrelevancy. I'm not sure which would be
19 worse.

20 Q How many interrogations have you
21 performed?

22 A Performed?

23 Q Yes.

24 A None.

25 Q And isn't it true in that hour,

Kassin -- Cross by Mr. Durant

1 hour-and-a-half interview, which you call
2 interrogation, he basically asked the
3 defendant three questions relative to his
4 involvment?

5 A I didn't count them.

6 Q Did he do it? Did he do it and
7 not mean to? And did he have a fight with
8 her?

9 A Okay. And again, according to
10 the manuals, the issuing of those questions
11 alone is sufficient to call that an
12 interrogation. It was a classic
13 interrogation.

14 Q Sir, he was over there for a
15 polygraph.

16 A Which is not a --

17 Q Do you know anything about
18 polygraphs?

19 A Yes, I do.

20 Q And is it possible, sir, for
21 someone to be given a polygraph without
22 first having been presented with the
23 questions that are going to be asked in the
24 polygraph?

25 A What I saw in that videotape was

Kassin -- Cross by Mr. Durant

1 not a polygraph pretest interview. I can, I
2 can describe a polygraph pretest interview.
3 That was not it.

4 Q Oh, you're a certified polygraph
5 examiner, too?

6 A I've, I've -- I know a good deal
7 about polygraph.

8 Q Yes or no, sir, then you can
9 explain.

10 A No, I'm not a certified
11 polygraph examiner.

12 Q And didn't in your own
13 definition of interrogation that you
14 presented in direct testimony for the
15 differentiation that you noted in police
16 techniques requires that accusatory stage?

17 A I don't follow.

18 Q In other words, sir, didn't --
19 you were asked this question on direct, and
20 correct me if I'm wrong, whether there's a
21 difference between interrogation --

22 A Yes.

23 Q -- and interview and
24 interrogation?

25 A Yes.

Kassin -- Cross by Mr. Durant

1 Q And you said yes, that -- and I
2 believe you said that police are taught that
3 the difference is the interview is
4 information gathering?

5 A Correct.

6 Q And interrogation is actually an
7 accusatory type of mode?

8 A Yes. Working the techniques.

9 Q Okay. And would you
10 acknowledge, sir, that Lieutenant McHale was
11 never accusatory?

12 A Not directly. But there were
13 accusatory remarks in there, and if you look
14 even at again at what I think is an overly
15 aggressive manual, the "Reid Technique"
16 manual, they were defining an interrogation,
17 they do define an interrogation as any time
18 you have a session where you exert the
19 person to tell the truth, or ask the person
20 if they actually committed the crime, that
21 is a criteria for interrogation. That's an
22 interrogation.

23 Whether you use the full "Reid
24 Technique" or not, you are interrogating
25 that individual.

Kassin -- Cross by Mr. Durant

1 Q But that doesn't take into
2 consideration this was also a pre-interview
3 for a polygraph, does it?

4 A Correct. But you certainly
5 wouldn't make an accusation for a polygraph
6 pretest.

7 Q Now, so we had about an hour,
8 hour in the car with Payne on Thursday, and
9 about an hour-and-a-half with Mr. McHale on
10 Friday. Correct?

11 A And some questioning that
12 precedes that.

13 Q Yes. And so far is that your
14 understanding of the police contact with him
15 in this case?

16 A Yes.

17 Q And maybe thirty minutes in
18 Mr. Cumbee's office prior to the taking him
19 over to McHale.

20 A I'd, I'd have to go back over my
21 notes, but I have a sense that it was more
22 than thirty minutes.

23 Q Okay. And then you have a
24 period of between about 10:30 on -- moving
25 to Saturday, you have a period of between

Kassin -- Cross by Mr. Durant

1 about 10:30 in the morning and about twelve
2 o'clock noon where Detectives Clayton and
3 Tetanich talk to him?

4 A Well, Detective Clayton met him
5 for breakfast at 8:45. That's, they're
6 having a conversation. That, that's part of
7 being "on". It's not an interrogation, but
8 that's part of the contact. And those
9 contact hours begin at 8:45 and I think they
10 get to the station earlier than ten.

11 Q So now just contact with the
12 police does constitute interrogation?

13 A No. That's not interrogation.
14 That's not an interrogation, but that is
15 part of the process. This process is an
16 ordeal that includes some innocent
17 questioning, some interrogation, some
18 testing, some printing, some searching of
19 the house. For this period of time he knows
20 that he's a suspect. He's under suspicion.

21 Is it all interrogation? No.
22 Of course not. And absent the videotape
23 it's hard, really, to define what is and
24 what isn't interrogation.

25 Q And so I'm still confused,

Kassin -- Cross by Mr. Durant

1 Doctor. Contact with the police,
2 interrogation or not?

3 A No.

4 Q And so he was in there with
5 Detectives Tetanich and Clayton for about an
6 hour-and-a-half on Saturday morning.
7 Correct, to the best of your knowledge?

8 A Yes.

9 Q And you're aware that they
10 talked about his prior relationship with
11 Miss Haught?

12 A Yes.

13 Q And they talked about the prior
14 difficulties that the parties had had in the
15 past?

16 A Uh-huh. Yes.

17 Q And they talked about where
18 he -- his whereabouts --

19 A Yes.

20 Q -- on -- at the time of the
21 crime. Is that correct?

22 A As far as I can tell. All I
23 have to go on is, is, is his accounting and
24 the report.

25 Q Okay. And there's no evidence

Kassin -- Cross by Mr. Durant

1 of anything accusatory going on during that
2 period of time, is there?

3 A There's no evidence because
4 there's no taping of the sessions.

5 Q And you have no evidence of any
6 promises or threats or anything of that
7 nature being made during any of that time,
8 do you?

9 A In the absence of, of
10 recordkeeping about those sessions, I do
11 not.

12 Q The fact, sir, is you don't have
13 any evidence of it. Is that correct?

14 A I have --

15 Q Whether you have a tape or
16 something or not doesn't make, make any
17 difference as to whether it happened or not,
18 does it?

19 A No. I have, I have, I have an
20 accounting of the defendant who describes
21 techniques that are interrogation
22 techniques, as if he had read the manual. I
23 assume he had the experience because he
24 reported those techniques.

25 Q Now, and when he was actually

Kassin -- Cross by Mr. Durant

1 confronted with this evidence about the
2 hair, would you agree that he broke down
3 pretty quickly after that occurred?

4 A No. Everybody agrees that he
5 broke down. As far as how much time then
6 took place before he capitulated from the
7 breakdown to saying, "Well, then I guess I
8 must have done it," and giving a statement,
9 that's a matter of dispute. His accounting
10 certainly doesn't look like their
11 accounting.

12 Q Did Mr. Kulp provide you with
13 this man's notes that he took during that
14 interview at twelve o'clock where
15 Mr. Wes Myers gave him details of what he
16 did and testified to?

17 A Yes, he did.

18 Q So you're aware that he gave
19 details during that period of time of what
20 he did?

21 A Yes. Well, details were given.
22 Where they came from, I don't know.

23 Q Oh, so now the police are lying
24 about that?

25 A I don't know where the details

Kassin -- Cross by Mr. Durant

1 came from. Again there is fairly shoddy
2 recordkeeping and so it's hard to know where
3 the details of the statement came from.

4 Q What implication you are trying
5 to raise, sir?

6 A About what?

7 Q About your statement just now.
8 "They say that he said that." Are you, are
9 you accusing the police of lying?

10 A It's not a question of lying.
11 There is not clear recordkeeping and so
12 there may be misrecollections, failures to
13 recollect. It's hard to know. When the
14 defendant describes almost out of the book
15 techniques that were used and I know he
16 didn't read the book, something in me says
17 he had some experience of those techniques.
18 The police report doesn't report
19 on a lot of what I was looking for. There
20 simply isn't the recordkeeping. So as any,
21 as any investigator would do, I've got one
22 accounting here, one accounting here, and
23 nothing else to solve the problem. However,
24 much of what he reported, much, many of the
25 techniques he reported, in fact you can see

Kassin -- Cross by Mr. Durant

1 the beginnings of them, seeds being planted
2 in Lieutenant McHale's session. You can see
3 these themes being introduced at that point.

4 Q Sir, would you agree, without
5 hedging, that the police said he gave them
6 this detailed confession, or he did not.
7 Either one of the two had to have happened.
8 Is that correct?

9 A It's not clear where the details
10 came from. For example, in Detective
11 Clayton's report there is -- in
12 Detective Clayton's report, "We asked Wes
13 'X' about the note on the windshield, and he
14 said yes." Well, that tells me that the
15 information about that item stemmed from
16 them, not from him.

17 The very fact that he was shown
18 photographs tells me that there wasn't the
19 level of vigilance that there should have
20 been to protect who they thought to be the
21 suspect from seeing crime scene facts that
22 could later be incorporated into a
23 confession.

24 So while I don't know completely
25 what went on, the little bit that I do have,

1 has to make you wonder.

2 Q And you've also opined that this
3 defendant's conduct was indicative of his
4 innocence, such as his cooperativeness to
5 take the polygraph. That was one thing
6 mentioned.

7 A Yes.

8 Q What is the converse of that?

9 A The refusal to take the
10 polygraph or the, or the request to have a
11 lawyer present?

12 Q Exactly. What kind of
13 impression is that going to give the police
14 if he refuses to take the polygraph or he
15 refuses to cooperate with the police in this
16 investigation?

17 A I don't know what impression,
18 but according to the "Reid School
19 Techniques" the willingness to take a
20 polygraph is an indication of innocence. In
21 fact I would add not only was he willing to
22 take it, but then when Lieutenant McHale
23 suggested he won't be administering it, on
24 two occasions Wes said, "No, I'm really
25 fine. I'm okay." He was visibly upset at

Kassin -- Cross by Mr. Durant

1 not being able to take it. He wanted to
2 take the polygraph.

3 Q I'll ask the question again,
4 Doctor. What impression would this man have
5 given the police if he said, "I'm not going
6 to take the polygraph; I'm not going to
7 cooperate with you; I'm not going to talk to
8 you"?

9 A Probably a negative impression.

10 Q Exactly. And we agree, don't
11 we, that someone that is trying to hide
12 their involvement from the police would not
13 want to give that kind of impression to
14 them, would they?

15 A Again, the books say that the
16 person willing to take the polygraph --

17 Q Doctor, I'm asking you as a
18 psychologist, not as a -- what the book
19 says.

20 A As a psychologist, I would infer
21 that the person willing and eager to take
22 the polygraph is the person who thinks the
23 polygraph will prove them innocent.

24 Q And it has nothing to do with
25 the fact that he doesn't want to look guilty

Kassin -- Cross by Mr. Durant

1 to the police?

2 A There may be an element of that,
3 but he was eager to take it. He went beyond
4 simply agreeing. He wanted to take it.

5 Q How about his unsolicited
6 opinions as to how this fire started?

7 A Again, according to the,
8 according to the book, when you ask a
9 suspect for his opinions about who the
10 killer might be, it's the guilty suspect who
11 won't offer an opinion. It's the innocent
12 suspect they say who will be cooperative and
13 try to volunteer suspects. And again that
14 comes right out of the manual that trains
15 most law enforcement people.

16 Q How about his inquiry of
17 Detective Hallman Thursday morning as to
18 whether or not they found the purse, when
19 the police didn't even know the purse was
20 gone yet?

21 A I don't know anything about
22 that.

23 Q How about the defendant calling
24 Danny Perry and asking him to check on his
25 girlfriend when presumably this man is

Kassin -- Cross by Mr. Durant

1 standing right across the street from the
2 fire?

3 A You're, you're asking me about
4 cues that are not, that they're not training
5 cues, they're not psychological cues.

6 Q It was not information that was
7 provided to you.

8 And I believe you've already
9 said there was nothing about someone seeing
10 a, a photograph that would make them confess
11 to something they didn't commit?

12 A By itself, no.

13 Q What is there about what you
14 call false evidence that would make a person
15 do that?

16 A Well, if a person's confidence
17 is being shaken because they are first of
18 all being accused in a very persistent way
19 and, and it seems that, you know, again on
20 to the second or third day and he's still
21 the prime suspect and he's socially isolated
22 at this point, he's surrounded by three
23 detectives, maybe a fourth at some occasion,
24 but clearly three detectives on that
25 Saturday and they're accusing him and, and,

Kassin -- Cross by Mr. Durant

1 and he is socially isolated and he is
2 getting confused because they've got him
3 agreed to the premise that this hair will
4 identify the killer, and then they stage
5 this ruse in which they identify him as the
6 owner of that hair.

7 He immediately has to wonder, "I
8 don't have a memory. They've got objective
9 proof. How can I reconcile that?" And
10 that's where this blackout hypothesis
11 becomes the piece that fills the two gaps.

12 Q Okay. Let me ask you this then.
13 I'm saying, hypothetically, you go home.
14 Your wife is dead, brutally murdered. The
15 police tell you, "We know you did it. Your
16 hair was in her hand."

17 Is that going to make you
18 confess to killing your wife if you didn't
19 do it?

20 A In all likelihood it won't have
21 that effect on me. I study --

22 Q Well --

23 A I study interrogations. I know
24 the techniques. However, the backdrop here,
25 and it's a very important backdrop, is that

Kassin -- Cross by Mr. Durant

1 the backdrop for giving that hair disclosure
2 was a backdrop of friendship, taking him to
3 breakfast; trust, having gained his trust.
4 In fact he was assisting in the
5 investigation as they understood his
6 understanding to be.

7 So when the tables turn and
8 those you trust come in with objective
9 proof, it does have to make an individual
10 wonder, "Is it possible I could have done
11 this and not recalled it?" And then in
12 comes the blackout hypothesis.

13 Q But you won't have done that?

14 A I don't think so, but I have to
15 tell you I've had conversations with my
16 children about it.

17 Q And what is this blackout
18 hypothesis?

19 A Well, the blackout hypothesis is
20 a way to help somebody reconcile their lack
21 of memory with the fact that there seems to
22 be infallible proof of their guilt. And so
23 in cases involving coerced internalized
24 false confessions, in all of these cases,
25 there's one in Florida where after

Kassin -- Cross by Mr. Durant

1 presenting some polygraph, phoney polygraph
2 evidence and again accusatory, isolated,
3 they finally said the hair sample came in,
4 they told him that the hair suggested he was
5 guilty, that made him crumble. That was the
6 point at which he capitulated, said "that
7 can't be. I don't remember it."

8 They said, "It looks like you
9 must have had one your alcoholic blackouts,"
10 because he had had those before. In that
11 case he says, "Well, then I guess that's
12 it." At which point he concocted a
13 confession, which turns out to be false.

14 Q Isn't it true, sir, that the
15 McHale interview and the context of which
16 that word was mentioned, "blackout", he
17 wasn't counselling the defendant to say that
18 he blacked out, he was warning him against
19 it, wasn't he?

20 A Well, I don't know. It, it was
21 out of context. It certainly was the first
22 mention of a blackout and that tells me that
23 it was in the air on Friday, prior to
24 Saturday.

25 Q Major McHale said: "You know

Kassin -- Cross by Mr. Durant

1 what I'm saying. I've dealt with plenty of
2 people who are drinking and said they
3 blacked out while this happened. They
4 still, when they came in to take the
5 polygraph test, even though honestly they
6 said they didn't remember it, we actually
7 had a couple of people put under hypnosis
8 and told the whole story, but they're trying
9 to block it out. So when they're sitting
10 here in this chair, they're relivid" --
11 "they're reliving the experience. There's
12 no way you can be reliving an experience
13 that you have not been through. It doesn't
14 matter if you've seen it on film or not."

15 He wasn't telling, suggesting to
16 him to, to black something out. He was
17 advising him against it, if anything, wasn't
18 he?

19 A He was letting him know that it
20 is possible for people to black things out
21 like that. Important events like that. He,
22 he raised the suggestion that it is possible
23 to do something like that and black it out
24 and advising him --

25 Q Or, if the alternative

1 explanation --

2 MR. KULP: Please. I don't have
3 to do this, but the rule says the
4 witness may finish his explanation. I
5 object.

6 A The presentation of that
7 blackout statement is not a common one. You
8 don't see it in a lot of interrogations.
9 You see it in virtually all internalized
10 false confessions. It doesn't come out of
11 the book. In fact the people who wrote the
12 books advise against it.

13 It is so out of context that it
14 tells me, yeah, in light of having seen the
15 defendant's account of where he says it and
16 then they suggested a blackout, again I, I
17 recognize that from other cases. Then I see
18 on this tape mention of a blackout, not from
19 Wes, but from his investigator.

20 Q But in the context that he was
21 told that, isn't, isn't it equally plausible
22 that he was telling the defendant, "Don't
23 come in here and think you can beat this
24 polygraph test by saying you blacked out"?

25 A He raised the suggestion that

Kassin -- Cross by Mr. Durant

1 it's possible to black it out.

2 Q Minimization. How many
3 confessions have you read?

4 A Excuse me?

5 Q How many confessions have you
6 read?

7 A Have I --?

8 Q How many confessions have you
9 read?

10 A Read? A hundred. Hundred and
11 fifty. Two hundred.

12 Q And would you agree, sir, that
13 defendants often minimize in their
14 confessions?

15 A Yes.

16 Q They want to put themselves in
17 the best light?

18 A Yes.

19 Q They want to make the victim
20 look to be the bad guy?

21 A Sometimes.

22 Q They may want to protect
23 somebody else?

24 A Possibly.

25 Q A lot of times, especially in

Kassin -- Cross by Mr. Durant

1 co-defendant cases -- have you read any
2 co-defendant confessions?

3 A Yes, sir.

4 Q It's always the other guy that
5 did all the bad stuff, isn't it?

6 A Yes.

7 Q Not me. I was just there. The
8 other guy did the bad stuff. And isn't it
9 true that in a lot of confessions a person
10 will admit to being there but doesn't,
11 doesn't want to really admit doing the bad
12 things?

13 A That happens.

14 Q All right. They may admit to
15 burglary but they won't admit to rape?

16 A Yes.

17 Q And isn't it true in a lot of
18 these occasions they will try to give the
19 police the impression that when it got to
20 the point where they really did the bad
21 thing, that they lost control?

22 A Sometimes. Sometimes yes,
23 sometimes no.

24 Q Don't remember what they were
25 doing. That's not uncommon at all, is it?

Kassin -- Cross by Mr. Durant

1 A It's not uncommon.

2 Q So given a choice most, most, in
3 murder cases for example, given a choice
4 most people are going to come with -- will
5 more likely admit that they killed somebody
6 by accident than they killed somebody just
7 because he was an S. O. B. and I wanted to
8 kill him?

9 A I'm, I'm not sure. I would --
10 common sense would tell me that that's more
11 likely true.

12 Q And you don't need anybody to
13 tell you that to come up with that, do you?

14 A No.

15 Q And what you call in this case
16 presentation of false evidence, you have no
17 knowledge, do you not, that the police at
18 the time they confronted Mr. Myers about
19 this hair, believed that the information
20 they were providing him was false?

21 A There's no reason to believe
22 they believed it was false, but they
23 certainly knew the limitations of the
24 information they had.

25 Q Are you aware they had no

Kassin -- Cross by Mr. Durant

1 written report at the time from the State
2 Law Enforcement Division?

3 A Uh-huh.

4 Q They were acting based upon what
5 they had been told?

6 A Correct.

7 Q And you are aware that they were
8 told that the hair microscopically matched
9 the back of the defendant's head?

10 A Or had some similarities to it.
11 I'm not sure --

12 Q No. The testimony in this case
13 was that they were told that it
14 microscopically matched the defendant's
15 hair.

16 A Correct. Okay. Correct.

17 Q And that they confronted
18 Mr. Myers with that precise information?

19 A Right.

20 Q And as you say, do you, and I
21 quote, "The perceived strength of evidence
22 is a strong predictor of whether people
23 decide to confess"?

24 A Correct.

25 Q Because, without that, you're

Kassin -- Cross by Mr. Durant

1 back at where you were before with that
2 "I've got to hide this stuff from the
3 police"?

4 A Correct.

5 Q But that doesn't mean you will
6 falsely confess, does it?

7 A Not necessarily. But again
8 those same forces that, when you present
9 infallible proof to a guilty person, that
10 person basically says to himself "oh, well,
11 they've got me," and so you get a
12 confession.

13 When you present false evidence
14 to an innocent person, that person also says
15 "oh-oh", not that they got me but
16 "something's wrong here, and I'm in a trap I
17 can't seem to get out of."

18 And so the problem with false
19 evidence as a technique is that it's not
20 surgically precise and it will get you an
21 awful lot of confessions from guilty people
22 and it will put innocent people at risk.

23 Q Would you agree that the
24 defendant's interview with Mr., with
25 Lieutenant McHale, now Major McHale, got the

1 defendant thinking about what he did for the
2 first time?

3 A What he did? Are you asking me
4 for my opinion of what I think he did?

5 Q I'm just saying that, that
6 assume for purposes of the argument, that
7 the defendant is guilty. Would the way
8 Lieutenant McHale approached him get him to
9 start thinking about what he had done?

10 A If Lieutenant McHale uses that
11 technique on a guilty person, yes, it could
12 get that person thinking about what he had
13 done and certainly thinking about ways out,
14 i. e., confession.

15 If Lieutenant McHale uses that
16 same tactic on an innocent person, it also
17 gets that innocent person thinking, but it
18 gets them thinking a different train of
19 thought. It gets them thinking, "I wonder
20 if I can extricate myself from this bad
21 situation, short of confession."

22 Q And there's no question but that
23 whatever happened in McHale's office, this
24 defendant had the opportunity to go home and
25 get a good night's rest?

Kassin -- Cross by Mr. Durant

1 A Yes.

2 Q Don't have any indication he was
3 drinking that night or anything?

4 A Correct.

5 Q Came back in and was fresh when
6 he was confronted the next day?

7 A Correct.

8 Q Now, you would acknowledge that
9 the defendant's confession in this case
10 generally fits the facts of the crime as
11 found by the police?

12 A Yes.

13 Q And you explained that in this
14 case by saying, "Well, the police knew all
15 the facts."

16 A Well, again, it's important to
17 know what facts in the statement were not
18 known, that is were uniquely known to the
19 defendant, and that's, that's an important
20 part of the statement, yes.

21 Q But isn't that what you said in
22 your report?

23 A Yes, I did.

24 Q The fact that -- that -- the
25 facts or the details they got from Mr. Myers

Kassin -- Cross by Mr. Durant

1 generally fit the facts as they found them
2 at the scene of the crime?

3 A Correct.

4 Q And you go on to discount that
5 by saying "but the police knew most of these
6 facts."

7 A Correct.

8 Q And isn't that always the case?

9 A No.

10 Q It's just about always the case
11 that the police are aware of the facts
12 existing at the scene of the crime when they
13 interrogate a suspect?

14 A Yes, but not all facts. For
15 example, if you have a person who is, who is
16 guilty and if you get that person to
17 confess, that person should be able to lead
18 you to some of the evidence that seems to be
19 missing from the scene like a purse, and to
20 the extent that the person can do that,
21 you've got an absolute corroboration of the
22 confession to --

23 Q And let's assume -- excuse me.
24 I thought you were through.

25 A To the extent the person cannot

Kassin -- Cross by Mr. Durant

1 do that, we have doubt.

2 Q And that assumes that the person
3 is being honest about the purse, too?

4 A At that point, that was a point
5 at which I saw an individual on the newsreel
6 that had thrown in the towel. When I saw
7 the newsreel, Wes being escorted out, and he
8 said, "I'm sorry. It was an accident." He
9 looked so broken down. He looked so out of
10 it.

11 It didn't look to me like an
12 individual who now being asked to produce
13 new evidence was going to resist. My take
14 on that individual is that if there was a
15 purse and he knew where it was, that
16 individual at that time was going to produce
17 the purse. The fact that he couldn't tells
18 me that he couldn't.

19 Q If the defendant was aware that
20 someone had seen him at the crime scene that
21 night, with the victim, after hours, after
22 the place had been locked up, would that
23 increase his anxiety?

24 A Increase his anxiety?

25 Q If he knew there was an

Kassin -- Cross by Mr. Durant

1 eyewitness that could put him at the scene
2 of the crime right before the victim was
3 murdered, would that increase his anxiety?

4 A No. The anxiety produced by
5 being a suspect in a, in a criminal murder
6 is, is, I'm not sure -- there's likely a
7 ceiling effect.

8 Is it anxiety provoking? Yes.
9 Is he already so anxiety-provoked it's hard
10 to imagine more of it? Probably.

11 Q And you go on to say, "When a
12 suspect offers without external sources of
13 information details that only the
14 perpetrator could have known or that lead to
15 discovery of evidence, then his narrative
16 can, quote, absolutely corroborate a guilty
17 confession." Is that true?

18 A Yes.

19 Q Are we talking about the pink
20 note in this case?

21 A Are we talking about the pink
22 note?

23 Q Yeah.

24 A I have no evidence to suggest
25 that the pink note started with Wes, that

Kassin -- Cross by Mr. Durant

2398

1 that information emanated from Wes.

2 Q You saw it in his written
3 statement, did you not?

4 A Yes, I did.

5 Q Were you aware that the police
6 never found a pink note at the crime scene?

7 A I was aware the police were told
8 about a pink note.

9 Q They were told about a pink note
10 from Mr. Myers. Where, where, where else
11 were you, are you aware that they were told
12 about a pink note?

13 A It was either in Detective
14 Clayton's report or, or in, or in Officer
15 Callahan's or Hallahan's (sic) report that
16 there was a statement about, and I don't
17 remember how it was put, but it was put in a
18 passive form, it was "we learned that there
19 was a pink note," in a very odd way. It did
20 not say, "The defendant told us about a pink
21 note." It said, "We learned about."

22 There's no indication from that
23 statement that that statement, that
24 indication, came from the defendant.

25 Q It said "later learned," sir --

1 A Yes.

2 Q -- did it not? It didn't say
3 they learned at the morning of the scene of
4 the crime.

5 A That's correct.

6 Q Okay. Are you aware that Allen
7 White, the person that wrote the note,
8 testified that he was never asked about the
9 note by the police until April of last year?

10 A I -- if he testified that here,
11 I haven't read that testimony.

12 Q Are you aware that he
13 specifically denied ever having been asked
14 about a note, that note by the police?

15 A Again, if that happened here, I
16 don't know that.

17 Q Are you aware that he
18 specifically denied ever having told the
19 police about that note?

20 A Okay.

21 Q And as a psychologist, sir, why
22 would he tell the police about this note?

23 A He may have been asked the
24 question. He may have been --

25 Q Why would -- in the absence of

Kassin -- Cross by Mr. Durant 2400

1 the defendant telling them about the note,
2 why would they know to ask the question,
3 sir?

4 A Somebody else at the bar may
5 have seen a note, may have made mention of a
6 note. I don't know.

7 I do know that there is no
8 evidence that that information comes from
9 Wes. And in fact it's actually, when you
10 mentioned it was later, it later came to our
11 attention, it was later we learned, it's
12 actually quite interesting. If the
13 defendant had given them that information,
14 you have to believe that's how that would
15 have been put into that report. But it
16 wasn't. It was not attributed to Wes.

17 Q It was put in his statement,
18 sir.

19 A It was not attributed -- that's
20 right. That's right.

21 Q It was in his statement.

22 A That's right.

23 Q Do you agree, it was in his
24 statement?

25 A That's right.

1 Q And if the jury is satisfied
2 that that information came from no other
3 source than Wes Myers, that the police had
4 no other access to that information but
5 through the statement of Wes Myers, is that
6 the type of evidence you're talking about
7 that would corroborate his confession?

8 A Yes.

9 Q Thank you.

10 MR. KULP: Can we take a break
11 now, your Honor, or would you like me
12 to start?

13 THE COURT: Go ahead.

14 THE FORELADY: I have some
15 jurors who want to take a quick break.

16 THE COURT: All right. Let me
17 know when you're ready.

18 MR. KULP: Thank you, your
19 Honor.

20 THE COURT: You can come down.
21 Just don't talk to anybody.

22 (The jury leaves the courtroom
23 at 2:45 p. m.)

24 (Whereupon, a recess is taken at
25 2:46 p. m.)

Kassin -- Redirect by Mr. Kulp

1 (The Judge enters the courtroom
2 at 3:04 p. m.)

3 THE COURT: All right. Bring
4 the jury in.

5 (The jury enters the courtroom
6 at 3:05 p. m.)

7 MR. KULP: May it please the
8 Court, your Honor.

9
10
11 S A U L K A S S I N,
12 previously sworn as a witness, resumes
13 the stand.

14 REDIRECT EXAMINATION BY MR.

15 KULP:

16 Q Dr. Kassin, let me ask you a few
17 questions in response to Mr. Durant's
18 questions, questioning of you. In terms of
19 fees and costs, how many times have you been
20 down here for this trial proceeding?

21 A This is my second.

22 Q Second?

23 A Second time.

24 Q Please speak up so the --

25 A Yes.

Kassin -- Redirect by Mr. Kulp

1 Q And did you have occasion to
2 come last week?

3 A Yes.

4 Q For a pretrial matter?

5 A Correct.

6 Q And did you come on short
7 notice?

8 A Yes.

9 Q Did you buy a short notice
10 ticket?

11 A Yes.

12 Q To fly?

13 A Yes.

14 Q And did that come out of the
15 figure that you mentioned?

16 A I paid for it.

17 Q You paid for it. Now, also, how
18 many hours do you estimate that you put into
19 this case?

20 A I stopped recording. I'd say
21 forty hours.

22 Q Now, Mr. Durant asked you in his
23 cross-examination about anecdotal evidence
24 of false, false confessions. Will you
25 please tell the jury some of the more

Kassin -- Redirect by Mr. Kulp

1 anecdotal examples of false confessions.

2 A The ones in particular that
3 again I, I, I keep saying that this case
4 bears such striking resemblance to other
5 coerced internalized --

6 MR. DURANT: Your Honor, this is
7 the issue we raised before.

8 MR. KULP: It's a matter on
9 redirect. It was brought up on
10 cross-examination.

11 THE COURT: I didn't understand
12 that. I think he volunteered that. I
13 heard, I heard that one thing, but he
14 volunteered that and so my original
15 ruling stands.

16 MR. KULP: Your Honor, he asked
17 him about case studies, about anecdotal
18 case studies that he was familiar with.

19 THE COURT: No, sir. I'm not
20 going to allow it, unless you got a
21 case exactly like this.

22 Q Do you have in mind a case of --

23 THE COURT: Well, now that's
24 what he said. It was similar to this,
25 in Florida.

Kassin -- Redirect by Mr. Kulp

1 MR. KULP: I thought that's what
2 he was starting to testify to, which
3 would meet the standards imposed by the
4 Court.

5 THE COURT: Well, are you trying
6 to go back into more details, the case
7 he's talking about?

8 MR. KULP: I asked the question,
9 your Honor, and the response from the
10 witness was, "In fact there is a case
11 that's" -- and I'm paraphrasing --
12 "remarkably similar to this one."

13 THE COURT: Well, are you
14 talking about a case you've already
15 told us about in Florida?

16 THE WITNESS: That -- yeah. The
17 Florida case is similar. There's a
18 case in Indiana that's very similar.
19 There's a case in Connecticut. I mean
20 there's a whole litany of cases just --

21 MR. DURANT: Same objection
22 stands, your Honor. I never inquired
23 into any specific case.

24 THE COURT: All right, sir.

25 MR. KULP: I'll move on.

Kassin -- Redirect by Mr. Kulp

1 THE COURT: Thank you.

2 BY MR. KULP:

3 Q Now, you, you -- Mr. Durant
4 asked you about this Mr. Cassells. Am I
5 pronouncing his name correctly?

6 A Paul Cassell.

7 Q Cassell. And in fact he's a
8 rather opinionated fellow?

9 A Yes.

10 Q And now since Mr. Durant asked
11 you about that, please tell the ladies and
12 gentlemen, does he have any active role in
13 reconsideration of the application of the
14 Miranda law or principle?

15 A Yes. Paul Cassell is a, is a
16 law professor. He's not a, a researcher.
17 He's a law professor, and last year he
18 argued to the U. S. Supreme Court that the
19 police should not be required to give people
20 their Miranda warnings, rights to silence,
21 an attorney, and so on.

22 So he, he comes with an
23 ideological bent in that direction and again
24 in, in looking at cases involving known
25 false confessions, the weight of the

Kassin -- Redirect by Mr. Kulp

1 scientific community falls on one side.

2 There's, there's no question
3 about some of these cases. And, and, and
4 he, he stands pretty much alone on the other
5 side.

6 Q How long have you been studying
7 false confessions, Dr. Kassin?

8 A Twenty years.

9 Q Now, Mr. Durant asked you about
10 your assessment of this false confession
11 that you noted, you've testified you have
12 some concern over, or Mr. Myers' confession,
13 and I'd like to ask you this. Did the
14 following things buttress your assessment of
15 concern about the nature of this confession?
16 How about, since we're reviewing issues, how
17 about that a bloody one-dollar bill was
18 tested and found not to have the DNA of
19 Mr. Myers on it? Would that be something
20 that would buttress or be significant in
21 your assessment about the false confession?

22 A Yes. Well, again, as I, as I
23 think I, I, I said earlier in reference to
24 the hair, if it were my understanding in
25 reviewing the materials for this case that

1 that, that kind of evidence were available,
2 I wouldn't be here right now.

3 Q Okay. How about DNA testing
4 which excluded Mr. Myers as a contributor of
5 the hair? Would that be something that you
6 would consider relevant to the issue of your
7 assessment of this confession?

8 A Yes.

9 Q How about that no forensically
10 tested evidence in this case for a four-year
11 period has been identified to link Mr. Myers
12 to this crime? Would that be something you
13 would find relative to your assessment of
14 this confession?

15 A Yes.

16 Q How about that an eyewitness
17 appeared on the fifth day of trial and
18 identified Mr. Myers as being at the scene
19 and testified that she had not told anyone
20 that she saw Mr. Myers, not another human
21 being, for the entire time period? Would
22 that be something that you would factor in,
23 in objectively assessing?

24 A Well, I've not read that
25 testimony, but. . .

Kassin -- Redirect by Mr. Kulp

1 Q How about the fact, based upon
2 your review of the two-page confession and
3 what's contained therein and the statement,
4 that there was no blood found on Mr. Myers'
5 clothing or boots or shoes? Would that be
6 something you'd consider in assessing the --
7 your, your apprehension about this
8 confession?

9 A Yes.

10 Q How about the ability to
11 remember all the details of the crime in a
12 context of being totally compliant with the
13 officers, except location of the purse? I
14 think you testified about that already,
15 didn't you?

16 A Correct. Well, there was even
17 more than that, actually. Because there was
18 a moment again, and, and the newsreel shows
19 it, where I think we're looking at a
20 somewhat broken down man. At that point he
21 has no resistance left. He's showing no
22 resistance. He's signing a confession,
23 making the corrections, apologizing, saying
24 it was an accident.

25 And, and then, then I, I, I

Kassin -- Redirect by Mr. Kulp

1 remember in one of those, a reporter asked:
2 "Well, how many times did you hit her?" And
3 he said, "I don't know." That wasn't the
4 detail that, that was there for him.

5 Q How about your review of what
6 the jury is now seeing in evidence we call
7 the McHale video? Would that be something
8 that you would consider in assessing your
9 concern about this confession?

10 A To the extent that I worry about
11 certain types of interrogation techniques
12 gone extreme, yes.

13 Q How about the fact that the
14 police made little effort to contain vital
15 facts and details about this case?

16 A In the end, for me, the most
17 disturbing part of this was that when it
18 comes time to evaluate the statement, it's
19 one thing to evaluate what are the facts
20 that are consistent with the scene. The
21 problem is I had no idea where those facts
22 came from. And the reason I have no idea is
23 once the suspect is shown photographs of the
24 victim in the crime scene, that statement,
25 that narrative is so contaminated and it,

Kassin -- Redirect by Mr. Kulp

1 and it makes me wonder what other things he
2 may have overheard. He may not even have
3 been given information but if he's in the
4 station for a period of time he may be
5 overhearing stuff.

6 But what the photographs
7 exposure tells me is that there just wasn't
8 a level of vigilance about shielding him
9 from information that later would factor
10 into a confession.

11 Q How about that another suspect
12 was identified by the police and not
13 investigated further?

14 A I, again, one of the concerns I
15 had about this case is it seemed an opinion
16 formed and hardened very, very quickly, so
17 quickly that by the time Wes got into
18 Lieutenant McHale's session and exhibited a
19 long list of "innocence indicators," nobody
20 was there to pick it up. Nobody was there
21 to even be guarded about it. And so the
22 presumption of guilt persisted beyond a
23 whole number of things he did that should
24 have indicated innocence to somebody paying
25 attention.

Kassin -- Redirect by Mr. Kulp

1 And so my sense is that the
2 presumption of guilt followed him, probably
3 from that first day on.

4 Q How about in the Lieutenant
5 McHale video that Mr -- that Major McHale
6 indirectly suggested to Mr. Myers that there
7 were eyewitnesses? Would that be something?

8 A Correct.

9 Q That Wes had lied to the police.
10 Would that be something?

11 A Correct.

12 Q That there were fingerprints.
13 Would that be something you would consider?

14 A I don't recall fingerprints
15 being mentioned.

16 Q How about the fact that the
17 McHale video didn't surface for three years?

18 A Well, again what, at a time when
19 you had sent me two disparate sets of
20 materials, one from, one from the police and
21 one from Wes, the revelation that you have
22 that there was this video came as, as news
23 to me and, and it was welcome news.

24 But, you know, it's bothersome
25 for two points. It, it's, it's not

Kassin -- Redirect by Mr. Kulp

1 bothersome that you -- it's bothersome that
2 you got it late, but the whole thing should
3 have been videotaped and we wouldn't, we
4 wouldn't have some of these disputes if the
5 sessions had been videotaped on Saturday as
6 well as Friday.

7 Q How about even though it was an
8 interview, or pretest polygraph interview,
9 how about the fact of the officers
10 indicating that they took Wes to another
11 department to McHale for purposes of
12 "cracking him," even though it was an
13 interview? Would that factor in, that
14 factor be considered by you in your
15 assessment of the confession?

16 A Again it's just -- it's part of,
17 it's part of the ongoing experience.

18 Q Okay. Now, in terms of Mr.
19 Durant's questions of you about how much
20 contact the police had with Mr. Myers during
21 this three-day period, has anyone been able
22 to or has anyone provided you with an
23 interview log, a log noting who was with
24 Mr. Myers, when, as to time and date?

25 A No.

1 Q Okay. Is that ever referenced
2 in this treatise pertaining to -- that
3 are -- that is edited or published by
4 Mr. Reid and so forth on interrogations?

5 A About keeping a log?

6 Q Yes.

7 A They do recommend keeping a log.
8 They don't recommend videotaping these
9 sessions.

10 Q Oh. Now, and just to clarify
11 this, it's, it's your understanding, is it
12 not, or is it your understanding that in the
13 McHale video reference is made to pictures
14 as plural and not "a picture"?

15 A Correct.

16 Q Now, Mr. Durant asked you about
17 the effect of minimization. What aspect,
18 and within your knowledge and review, of the
19 two-page confession and statement of Mr.
20 Myers, minimizes the crime?

21 A There's nothing actually in the
22 statement that minimizes the crime. It's,
23 it's in the subsequent apologies and, and,
24 and statement to the press.

25 Q Is the mention of the loss of

Kassin -- Redirect by Mr. Kulp

1 control in Myers' statement associated with
2 an ability to remember the whole event?

3 A I'm not following your question.
4 I'm sorry.

5 Q Is the mention of loss of
6 control that Mr. Durant asked you about in
7 the two-page statement, is that associated
8 with an inability for Mr. Myers to remember
9 the whole event?

10 A Well, this is one of the
11 problems with these false internalized
12 confessions cases. You begin with a
13 blackout and you move from the blackout to
14 vivid details. I don't know how you get
15 from point A to point Z.

16 Q You can't have it both --

17 A No.

18 Q -- ways?

19 You had, have you not, a great
20 deal of exposure to police and law
21 enforcement through your career?

22 A Yes. Yes.

23 Q How many police officers do you
24 know who think that DNA could be done in
25 half-a-day? Can you name any?

Kassin -- Redirect by Mr. Kulp

1 A I don't believe that is common
2 knowledge.

3 Q Now, were you aware that this
4 information about the pink note, that this
5 gentleman, Allen White, revealed that three
6 years later?

7 A No. I'm not, I'm not aware of
8 when that was revealed.

9 Q Okay. Excuse me. That
10 Detective Clayton went to him to get
11 confirmation of the note three years later.

12 A Yes.

13 Q Are you aware of that?

14 A Yes.

15 Q Are you aware that at first
16 Ms. Jensen who was there that night said
17 that she told the police about the note?

18 A Yes.

19 Q Thank you.

20 A And, and I believe that the note
21 was there.

22 Q Pardon?

23 A That the note was there earlier.

24 Q She said it was there earlier?

25 A Yes.

1 MR. KULP: Thank you. That's
2 all I have.

3 MR. DURANT: I have just a
4 couple.

5

6

7

RECROSS-EXAMINATION BY MR.

8

DURANT:

9 Q Were you provided with witness
10 statements in this case?

11 A Not from this trial.

12 Q I'm talking about the witness
13 statements that were taken by the police --

14 A Oh.

15 Q -- at the beginning of this
16 case.

17 A Yes.

18 Q The statements, sir. First of
19 all, when are they dated? Take a look at
20 them.

21 MR. DURANT:

22 A 3/13. 3/13.

23 Q There're two different

24 statements. Is that correct?

25 A Correct.

Kassin -- Recross by Mr. Durant

1 Q Both of them dated on 3/13?

2 A Correct.

3 Q What time is the first
4 statement?

5 A 10:20 a. m.

6 Q What time is the second
7 statement?

8 A 17:45.

9 Q Read those statements, sir, and
10 tell me where there is any mention of a pink
11 note in those statements.

12 A There are no mentions in these
13 reports.

14 Q Pardon me, sir?

15 A I don't see any mentions in
16 these reports.

17 Q Okay. Hand you what's -- have
18 you seen these, Ray White's statements, two
19 statements he gave on March the thirteenth
20 as well.

21 MR. KULP: Thank you.

22 Q Hand you what -- statements
23 taken from Raymond Allen White on March
24 thirteen of 1997. Those two statements,
25 too, sir.

Kassin -- Recross by Mr. Durant

1 A No. No mention.

2 Q Can you think of any reason why
3 that pink note might have even been of
4 interest to the police prior to the
5 defendant having mentioned something about
6 it?

7 A Why would it have been? Because
8 allegedly on that pink note there was a
9 jealousy motive.

10 Q But we already have established,
11 sir, that the note wasn't found in the fire,
12 have we not?

13 A That's correct.

14 Q Now --

15 A But you asked me the relevance.

16 Q My question being this: With
17 the -- why would the police even ask about a
18 note without having some knowledge that
19 there was a note in the bar?

20 A Because I assume they were
21 trying to establish motive.

22 Q And if you think that's the
23 case, don't you think they would have asked
24 these witnesses about a note? Why would
25 they ask these witnesses about a note in the

Kassin -- Recross by Mr. Durant

1 bar, not from this guy, but from Allen White
2 to the victim?

3 A I can't, I can't crawl into
4 their heads to understand how they went
5 about --

6 MR. KULP: Your Honor, the
7 question calls for speculation.

8 A -- trying to establish motive.

9 THE COURT: No, sir. He's on
10 cross. Go ahead.

11 Q Why don't you tell this jury why
12 that note, up until Saturday morning when he
13 told them about it, why that note should
14 have even -- the police would have even
15 known about it?

16 MR. KULP: He's --

17 MR. DURANT: I'm doing what you
18 do.

19 THE COURT: No, sir. I'm going
20 to allow it. If he knows, he'll tell
21 him. If he doesn't know, he'll tell
22 him he doesn't know.

23 A No. I don't know why they would
24 have not gotten information from the note in
25 those reports. Whether they got information

1 about a note from people that are not --
2 either they haven't given a report or that
3 they spoke to Wes formally, got the
4 information from someone else, I don't know.

5 Q Sir, you've seen the report.
6 You've seen the statement of every witness
7 taken by the police in this case, have you
8 not?

9 A Yes. It's been a while.

10 Q And there's not a single mention
11 in any of those statements concerning this
12 note, is there?

13 A Not that I recall.

14 Q And at that time you would have
15 to acknowledge, sir, that the police had no
16 reason to ask about a note prior to being
17 told by the defendant that there was a note?

18 A Correct. Although it is my
19 understanding that the note didn't appear on
20 Thursday for the first time.

21 Q And finally, sir, you would
22 acknowledge that no witness would have any
23 reason to tell about -- the police about
24 something as innocuous as this note unless
25 they were specifically asked about it?

Kassin -- Recross by Mr. Durant

1 A Correct.

2 Q And the fact of the matter is
3 the defendant did minimize extensively in
4 his statement, didn't he?

5 A I don't see a mention of an
6 accident in the statement as I did in the
7 post-statement press.

8 Q He said he went there. He
9 mentioned loss of control.

10 A Right.

11 Q Just got her on the ground and
12 he lost it, lost control. Right?

13 A Right.

14 Q Didn't remember what he did
15 then. "She called me a fool. She pushed me
16 on my chin."

17 A Right.

18 Q "She picked up the wine carafe.
19 I picked -- I pulled it out of her hand."

20 He waited there to be overcome
21 by smoke because he loved her so much and he
22 was holding her in his arms and he loved her
23 so much that he just sat there and held her
24 until he became overcome by the smoke and
25 left. That's not minimizing?

1 A No. Minimizing would imply a
2 lesser punishment. It doesn't imply a
3 lesser -- none of that implies a lesser
4 punishment.

5 Q Maximizing would be, would be,
6 "I came in there. I beat her to death. I
7 set the place on fire to cover my tracks and
8 left." Right?

9 A Minimization is an interrogation
10 technique. It's not a, it's not a feature
11 of a statement given by a defendant.

12 Q Doctor, we just went through
13 this on cross-examination, how defendants
14 often minimize in their statements to make
15 themselves look better, and you agreed with
16 me.

17 A That's a different use of the
18 term minimization. Minimization is an
19 interrogation technique.

20 Q Well, that's --

21 MR. KULP: Let him speak.

22 THE COURT: Wait a minute.

23 Everybody can't talk at once.

24 A Minimization is an interrogation
25 technique, so if you're going to use the

Kassin -- Recross by Mr. Durant

1 term in a second way, we should make that
2 distinction.

3 Q Okay. That's the way I'm using
4 it.

5 A Okay.

6 Q And using it in that way, isn't
7 it in fact, isn't it a fact the defendant
8 used minimization, in that sense, very much
9 during his statement?

10 A Loss of control is a small form
11 of minimization. It doesn't result in
12 leniency in any way. Not, for example, as
13 an accident.

14 Q Right. Placing blame on the
15 victim.

16 A I didn't see blame on the
17 victim.

18 Q Okay. I'll let the jury draw
19 their own conclusions.

20 And you speak of Paul Cassell
21 like you're not an opinionated fellow?

22 A Excuse me?

23 Q I said you say Paul Cassell is
24 an opinionated fellow. You act like you're
25 not an opinionated fellow. You have very

Kassin -- Recross by Mr. Durant

1 strong opinions, too, don't you?

2 A Yes.

3 Q And you're not reticent at all
4 about sharing those opinions with others,
5 are you?

6 A Depends on whether I feel
7 strongly about them.

8 Q And the fact of the matter is,
9 you can't say the defendant's confession in
10 this case is false, can you?

11 A You can never say that.

12 MR. DURANT: Thank you.

13 MR. KULP: Briefly, your Honor.

14 THE COURT: Briefly. All right.

15 MR. KULP: I'd like to mark this
16 as defendant's next successive exhibit
17 for identification at this time.

18 (Whereupon, marked for
19 identification was Defendant's Exhibit
20 No. 35, statement.)

21 MR. KULP: May I approach the
22 witness?

23

24

25

Kassin -- Redirect by Mr. Kulp

1 REDIRECT EXAMINATION BY MR.

2 KULP:

3 Q I'm handing the witness
4 defendant's exhibit number thirty-five for
5 I. D. identified as a -- previously
6 identified in the testimony of another
7 witness as the crime scene unit report by
8 crime scene technician A. R. Hallman.

9 I draw your attention to the
10 last paragraph and the last sentence in the
11 last, next-to-last paragraph and ask if you
12 just read that out loud to the jury. Have
13 you seen that before?

14 A Yes.

15 Q Read that out loud.

16 A "It was later --"

17 MR. DURANT: Your Honor --

18 THE COURT: Just a minute.

19 MR. DURANT: Not his report, not
20 a witness. He can ask him if it's in
21 there or not.

22 THE COURT: Well, I know, but
23 you handed him all those statements.

24 I'll let him do it.

25 MR. DURANT: Besides, we've been

Kassin -- Redirect by Mr. Kulp

1 through this before.

2 THE COURT: Go ahead.

3 A "It was later learned that a
4 suspect going by the name of 'Little Allen'
5 had admitted to writing the messages on the
6 victim's windshield and had also written a
7 similar note and had put it on the cash
8 register inside the business."

9 Q Now, two more questions. One --

10 THE COURT: Only two?

11 MR. KULP: Two.

12 THE COURT: What's one?

13 MR. KULP: Two.

14 THE COURT: No -- yes, sir.

15 Two. But what's number one?

16 Q Number one is: Does it say
17 anything there in that section of the
18 paragraph about a statement obtained on
19 4/25/2000 from Allen White, that you can
20 see?

21 A No.

22 THE COURT: Two.

23 Q Turn the page, please. What's
24 the date of that document?

25 A March thirteenth, 1997.

Kassin -- Redirect by Mr. Kulp

1 MR. KULP: Thank you.

2 THE COURT: You can come down.

3 Be excused if you like.

4 THE WITNESS: Thank you. Yes,
5 sir.

6 THE COURT: Call your next
7 witness.

8 MR. KULP: At this time we call
9 Dr. Gerald Hurst to the stand.

10

11

12

13 G E R A L D L E R O Y

14 H U R S T, having been called as a
15 witness in the presence of the jury, is
16 duly sworn and testifies as follows:

17 DIRECT EXAMINATION BY MR. KULP:

18 Q Dr. Hurst, where do you live?

19 A I live in Austin, Texas.

20 Q And you married?

21 A Yes, I am.

22 Q What's your wife's name?

23 A Gay.

24 Q How old are you?

25 A Sixty-three.

Hurst -- Direct

1 Q You have children?

2 A Well, they're not children any
3 more. I have three boys, ranging from
4 thirty-four to forty-two.

5 Q And do they have children?

6 A They have children, yes.

7 Q Please tell the ladies and
8 gentlemen a little bit about your
9 background. Where -- do you have -- do you
10 have a college degree or a bachelor's
11 degree?

12 A I've a bachelor's degree from
13 Central State in Oklahoma in chemistry and a
14 Ph.D. from Cambridge University in England,
15 also in chemistry.

16 Q Now, beg the Court's indulgence
17 one second.

18 Please tell the ladies and
19 gentlemen if you will a little bit about
20 your career, immediate career following your
21 being awarded the Ph.D. in chemistry at
22 Cambridge.

23 A When I graduated from Cambridge
24 it was during the height of the moon race
25 and I had been studying combustion

Hurst -- Direct

1 chemistry, the physical chemistry of high
2 energy reactions and so my first job was
3 doing aerospace research, rocket propellant
4 research for a couple of different
5 corporations that operated under government
6 contracts, the Advanced Research Projects
7 Agency and other space agencies.

8 At about this time the space
9 race started to wind down during this same -
10 period and Vietnam began to heat up and so
11 they put me in charge of a fledgling group
12 at Aerojet General working on covert warfare
13 techniques for operations behind enemy
14 lines, primarily explosives and incendiary
15 devices, arson methods, research in the
16 field of arson as seen from the viewpoint of
17 the person wanting to commit arson and hide
18 it.

19 Vietnam war continued. I became
20 chief scientist of Explosives Corporation of
21 America, which was a subsidiary of Rocket
22 Research, and there we did strictly covert
23 warfare work, all in incendiaries,
24 explosives, either blowing things up or
25 burning them down.

Hurst -- Direct

1 Q I would imagine there's a lot of
2 that that you can't talk about.

3 A Well, I probably could now. It
4 was all classified information at that time,
5 but it's expired. It's been a very long
6 time, though. I've been doing
7 combustion-based work for just about forty
8 years now.

9 Q Okay. And after those
10 experiences professionally, what did you
11 thereafter pursue or do?

12 A I became -- I founded a or
13 co-founded an explosives manufacturing
14 corporation based on one of my explosive
15 inventions in Dallas about 1969, and from
16 that point forward my agreement with that
17 corporation and later corporations who
18 bought out our assets was that I would
19 provide technical consulting for them,
20 working at a minimum of ten hours a week,
21 and was free to do what I wished with the
22 rest of my time.

23 So beginning in the early
24 seventies I began consulting in matters
25 dealing with the cause and origin of fires

Hurst -- Direct

1 and explosions. I've been doing it, that
2 same thing ever since.

3 Q Okay. Have you had the occasion
4 to be qualified in a court of record as an
5 expert witness in the area of the cause and
6 origin of fire and combustible materials?

7 A Yes, sir. I've been qualified
8 in a number of different states and federal
9 courts as an expert in the cause and origin
10 of fires.

11 Q Do you recall how many times you
12 testified? Do you testify frequently?

13 A No. I do more consulting than
14 testifying. I've probably testified to
15 cause and origin perhaps fifteen times,
16 maybe twenty times in a period of thirty
17 years.

18 Q And do you have occasion to work
19 with an insurance industry, for example, on
20 insurance industry cases?

21 A I've done quite a bit of work
22 for the major industrial insurers of
23 companies like Sony, Tokyo Electric,
24 Toshiba, and, and people like that over
25 the -- and also American corporations,

Hurst -- Direct

1 mainly in the context of civil litigation
2 where there is a dispute as to the cause and
3 origin of a fire and responsibility needs to
4 be established, whether it was an electrical
5 fire or a gas leak or arson. That sort of
6 thing.

7 So I've done a lot of consulting
8 and still do in that area. A lot more
9 consulting than I do testifying.

10 Q Do you have occasion or have you
11 had occasion to consult and testify in
12 matters of a criminal nature, criminal law?

13 A Yes. I have. I've -- I have a
14 running case load of arson cases, about
15 fifteen of them currently that I'm looking
16 at, and I track a far greater number of
17 arson cases. And by "track" I mean I obtain
18 information about the, about the cases from
19 the experts who are involved in them, read
20 trial transcripts, follow all of the
21 technical aspects of arson, and try to stay
22 as close as I can to the cutting edge of
23 anything new that comes out that, that helps
24 us determine whether a fire really is arson
25 or not.

Hurst -- Direct

1 Q Okay. And have you been here
2 virtually for this whole trial?

3 A Yes. I've, I've missed only a
4 few minutes of the trial.

5 Q And do you accept fees for
6 consulting and testifying in civil cases?

7 A Yes, I do.

8 Q Are you being paid a fee to come
9 here today other than traveling?

10 A No, I'm not.

11 Q Why is that?

12 A My policy is that if a case
13 involves money, which most cases do in civil
14 lawsuits, then I charge two hundred dollars
15 an hour for consulting or testifying or
16 traveling or whatever I'm doing. But if it
17 involves proof or disproof of criminal
18 activities, if anything criminal is involved
19 in it then I don't look at the money. I
20 just look to see if I could have any
21 valuable input into the case. And so most
22 of the work that I do in criminal cases is
23 pro bono.

24 Q Have you had the occasion to be
25 consulted or be involved in litigation when

Hurst -- Direct

1 contacted by prosecution or district
2 attorneys or whoever or police officers?

3 A I occasionally get, am contacted
4 informally by police investigators, but the
5 last time anyone asked me on a formal basis
6 was about 1972 when I testified before the
7 prosecution in a bombing case in western
8 Oklahoma. So I render some aid, but it's
9 not official.

10 I don't care who wants me to
11 look at a fire. If it were a judge that
12 would be fine or if it's a prosecutor that's
13 all right or a defendant. But the vast
14 majority of the cases I look at began when a
15 defendant, somebody who's recently been
16 charged with arson usually for torching
17 their own house or their own business, finds
18 out about my existence and gives me a call
19 with a plea for help.

20 And then if I can, I will
21 consult with his attorney and look at the
22 facts in the case and see if in my
23 estimation there really is proof of arson or
24 whether there's doubt about it.

25 Q Okay. Have you had the occasion

Hurst -- Direct

1 to be involved in noteworthy or -- cases or
2 ones that rose to the level of public
3 interest? If so, what cases?

4 A I've worked on a few. I did the
5 review of the analyses in the Branch
6 Davidian case and I was the expert for
7 Imperial Chemical Industries in the civil
8 lawsuit that arose out of the Oklahoma City
9 bombing. I was their explosives expert.

10 Q Okay. When were you most --
11 when were you most recently qualified as an
12 expert witness in the area of cause and
13 origin of fire?

14 A I had -- it would be about a
15 month ago. I had two back-to-back federal
16 arson cases, one in Austin and one in
17 Wheeling, West Virginia.

18 Q Okay. Are you a C. F. I. or
19 certified fire investigator?

20 A No, I'm not. It's not the sort
21 of credential that would apply to the kind
22 of work I do. My work is primary, primarily
23 analytical. That is I do not run out to
24 fire scenes and look at thousands of fires.
25 I work on far fewer fires than a C. F. I.

Hurst -- Direct

1 would, but spend far more time per fire.

2 A C. F. I. may do five or ten
3 thousand fires in his career. If I live
4 another ten years I will probably have done
5 three or four hundred cases at the most, but
6 put a lot of time into each case.

7 So the C. F. I. is actually
8 intended for people who just run out and
9 investigate fires on a routine basis. And
10 of course in any city you get fires just
11 about every day and they run out and look at
12 them. I don't do that.

13 Q How does your doctorate in
14 chemistry aid you, if it does, in the
15 investigation or assessment of cause and
16 origin of fire in given cases?

17 A You have to understand, it's
18 important to understand that fire
19 investigation is, is a form of science but
20 it's kind of the "poor stepchild" of
21 forensic science. Most forensic scientists
22 have degrees and a great number of them have
23 advanced degrees and they work at
24 laboratories and they follow scientific
25 principles.

Hurst -- Direct

1 In fire investigation there are
2 two big -- a big school of arson
3 investigators who maintain that fire
4 investigation is not a science. It should
5 be treated as an art, based strictly on
6 experience with no technical education
7 required, and no adherence to scientific
8 methods. In other words you don't need the
9 scientific methods to analyze fires.

10 I am a scientist. My approach
11 is strictly scientific. I don't subscribe
12 to that at all, and that is the basic
13 philosophy behind the C. F. I.

14 C. F. I. is awarded by a private
15 company. It's not a governmental thing.
16 And that is the International Association of
17 Arson Investigators who are mainly people
18 who are looking for arson, making a career
19 out of it.

20 I don't look for arson. I don't
21 look for accidental fires either. I'm an
22 analyst, and I just look at whatever facts I
23 can get, and let the chips fall where they
24 may.

25 Q Have you had laboratory

Hurst -- Direct

1 experience during your long career as a
2 chemist?

3 A Yes. I did many, many years of
4 research and development in high energy
5 physical chemistry, did a lot of work on the
6 investigation of arson methods and the kind
7 of telltale signs that arson leaves behind,
8 in addition to a fair amount of early work
9 on harnessing that energy in the form of
10 rocket propellants. But that ended with the
11 moon race and this other is still ongoing.

12 I still conduct experiments,
13 sometimes full-scale experiments where we
14 set fires and look at the patterns that are
15 created, see how the fire burns, how
16 materials react to fire. And most of my
17 experiments are of that sort. Finding out
18 what a material does when it's burned, how
19 much heat it takes to burn it, what kind of
20 products it produces.

21 And I also read chromatograms.
22 That is when somebody has analyzed the scene
23 after a fire I can interpret the
24 chromatograms to see if there is evidence
25 that an accelerant was used.

Hurst -- Direct

1 Q I see. Are there any
2 limitations that you're aware of that you
3 don't feel comfortable with that apply to
4 certification as a certified fire
5 investigator?

6 A Yes. The organization that
7 issues the C. F. I. has taken an official
8 position with the courts. They wrote an
9 amicus brief recently in one of the cases
10 that came from the original Daubert rule.
11 Daubert was a rule that let judges be
12 gatekeepers to keep unscientific testimony
13 from, from passing as scientific. And they
14 took the official position that, that fire
15 investigators should not have to be
16 responsible for backing up their claims with
17 accepted science. That they should be able
18 to simply more or less say, "Trust me. I've
19 had a lot of experience. I can tell by
20 looking." And I really don't approve of
21 that at all. And, and so I don't subscribe
22 to their, their C. F. I.

23 Q Okay. Do you, in terms of what
24 you do, adhere to, is there a particular
25 treatise or reference material or volume or

Hurst -- Direct

1 book that you do in your work and in your
2 consulting consider to be that which is a
3 fair representation of investigative aspects
4 of cause and origin of fire?

5 A Yes, there is, and only
6 recently. As of -- beginning in about -- up
7 until 1992 there was nothing, not even a
8 colorable standard reference for fire
9 investigation. Now, no one and no committee
10 and no number of people can write a
11 comprehensive book that tells you how to
12 investigate a fire. There too many
13 variables. You can't anticipate every
14 situation. So very often you have to go
15 back to scientific principles. But it is
16 possible to write a treatise on fire that
17 warns people what not to do in a fire
18 investigation. In other words, that warns
19 about common pitfalls that investigators
20 fall into by making false assumptions about
21 how much they can tell from looking at a
22 fire scene, with or without instrumentation.

23 In order for a work to gain the
24 status of a learned, a true learned
25 treatise, it has to be peer-accepted and it

Hurst -- Direct

1 has to be a document that is created by
2 consensus. That is, a document which before
3 it is published is subjected to scrutiny by
4 a broad cross-section of those people that
5 are involved in fire investigation. And in
6 order to construct a document like that, you
7 have to allow these people to enter their
8 objections and their suggestions for other
9 chapters that are needed, other paragraphs
10 that are needed, or the exact working of
11 warnings.

12 Beginning in 1992 there was the
13 genesis of just such a document, which is a
14 de facto standard in fire investigation. It
15 is not a standard per se because there are
16 many non-scientific investigators who would
17 rather see this volume destroyed and would
18 never admit that it is authoritative. But
19 it is a document that's been put together by
20 a committee of over thirty very well known
21 and well-educated fire investigators, and
22 has been published in advance where it could
23 be read by all ten thousand investigators in
24 this country if they wished to, and their
25 objections would be taken into account.

Hurst -- Direct

1 And that now exists in the
2 NFPA-921, a publication by the National
3 Fire Protection Association, which is the
4 largest organization in the country dealing
5 with fire. Has about seventy thousand
6 members.

7 Q Okay. And are you a member of
8 that association?

9 A I am.

10 Q And is that a volume or treatise
11 upon which you have relied and referred to
12 in your work that, that we're going to get
13 into in a minute, that pertains to this
14 case?

15 A Yes, it is. And let me explain,
16 that what I do is take the volume literally
17 in its warnings. In other words, if I -- if
18 it discourages let's say the interpretation
19 of a burn on a rug as -- if it discourages
20 your calling that a liquid accelerant burn,
21 then I take that to heart, and if I testify
22 that I believe something is caused by a
23 liquid accelerant on a carpet, for instance,
24 I will point out that I'm basing it on my
25 own experience, not by something that has

Hurst -- Direct

1 been formalized by being recognized.

2 The volume does not cover all
3 situations and so sometimes you have to go
4 back and rely on more fundamental science or
5 more general principles, but there should
6 always be a reason for anything that a fire
7 analyst or a fire investigator relies on and
8 nobody should ever do anything where there's
9 a specific warning against it in NFPA-921.

10 I'm using the 1998 version right
11 now. The 2000 version will be out in April.
12 We've been working on that volume now since
13 1998. And all of this material is available
14 on the Internet, all of the objections, all
15 of the suggestions that were overruled, all
16 of the votes of the committee and so on and
17 so forth are open for public scrutiny.

18 Q Okay. And have you had, while
19 you're here for the trial have you had, have
20 you had the occasion to hear the testimony
21 of Chief Benjamin Norris?

22 A Yes.

23 Q Have you had the occasion to
24 hear the testimony of A. T. F. Agent Lester
25 Rich?

Hurst -- Direct

1 A Yes, I have.

2 Q Okay. As well have you had
3 occasion to review the material that I sent
4 you in this case to review, can you estimate
5 the number of pages that you have reviewed
6 that pertain to this file?

7 A It's a lot. I don't know the
8 number of pages, but the stack is about that
9 thick.

10 Q Okay. And have you reviewed
11 those portions of that collection of
12 documents that pertain to the issues of
13 cause and origin of this, of the fire at the
14 Mill Inn?

15 A Yes, I have.

16 Q Have you also had the occasion
17 to review any photographs associated with
18 the fire at the Mill Inn on 3/13/97?

19 A Yes. I've looked at a large
20 number of photographs and also a video of
21 the post-fire scene and a video of the
22 pre-fire scene as seen about a year before
23 the fire occurred.

24 Q On a given day?

25 A Yes. On a given day in April of

Hurst -- Direct

1 1996.

2 MR. KULP: Your Honor, we would
3 offer Dr. Hurst as an expert at this
4 time in the area of cause and origin
5 analysis of fire and explosion.

6 THE COURT: Any objection?

7 MR. DURANT: Can I be heard?

8 THE COURT: Of course.

9 MR. DURANT: Or just ask him a
10 couple of questions.

11

12

13 VOIR DIRE EXAMINATION BY MR.

14 DURANT:

15 Q I'm a little confused. What do
16 you do for a living? Do you have a regular
17 job?

18 A Well, I'm -- I used to have a
19 regular job. I'm sixty-three years old.
20 Talk about regular living, I suppose I'm
21 retired.

22 Q How long, how long has it been
23 since you had a regular job?

24 A Since I had what you would --
25 you mean like a nine-to-five job?

Hurst -- Voir dire

1 Q Yeah. Like a nine-to-five type
2 of job.

3 A Oh, I became independent in my
4 mid-thirties and so I guess I haven't had a
5 nine-to-five job since then, although I do
6 tend to work seven days a week and many,
7 many hours per day.

8 Q And you became independent in
9 your mid-thirties from your inventions or
10 patents or is that what you, what you live
11 off of?

12 A That's correct. I had a number
13 of successful inventions.

14 Q Like White-out?

15 A Liquid Paper. I did the modern
16 versions of Liquid Paper in the early
17 seventies. I invented a two-component
18 explosive called the "Kinepak" which -- in
19 about 1970. It's still in use. It's used
20 by people like the A. T. F. and used for
21 construction and what have you. It's what
22 you call a binary explosive. They're two
23 non-explosive ingredients. You pour one
24 into the other and --

25 THE COURT: Let's not --

Hurst -- Voir dire

1 MR. DURANT: Yes, your Honor.

2 MR. KULP: His qualifications --

3 THE COURT: He's got income.

4 Q And Mylar balloons. Is that
5 correct?

6 A I invented the Mylar balloon as
7 a spin-off of some --

8 THE COURT: Let's don't talk
9 about any other invention unless it has
10 to do with this.

11 Q Okay. And so for the past
12 thirty years or so you've been kind of an
13 arson crusader. Right?

14 A No. No. I, in fact I didn't
15 become really interested or I shouldn't say
16 interested, involved in arson until about
17 six or seven years ago. I'd done civil
18 lit -- work up until then usually involving
19 disputes between insurance companies,
20 manufacturers, that sort of thing, but it
21 was cause and origin work.

22 And about six or so years ago, I
23 got a look at my first criminal arson case
24 since the seventies when I'd worked once for
25 the prosecution, and I realized that there

1 was -- that they didn't have some of the
2 high paid experts that are used in civil
3 litigation were not making appearances in
4 criminal litigation and that there were a
5 lot of old wives' tales and what have you
6 and that it, it needed somebody to help out
7 a little bit.

8 Q So you have no formal training
9 in arson investigation. Is that correct?

10 A I have a great deal of formal
11 training related --

12 Q I didn't ask you --

13 A -- to arson investigations.

14 MR. KULP: Let him answer.

15 MR. DURANT: I'm sorry.

16 MR. KULP: Please continue.

17 A Yes. I mean I did formal
18 research and development on arson. That's
19 about as formal as it can get. You run
20 projects, you burn things down, you observe
21 the patterns and you develop a basis of
22 understanding of these things and you write
23 reports and you submit them to the agencies
24 that have hired you to do it. It doesn't
25 get much better than that.

Hurst -- Voir dire

1 Q And what agencies were those?

2 A Well, some of them were
3 cloak-and-dagger agencies in those days.
4 Some of them didn't actually give their
5 names. Sometimes we worked with the Air
6 Force or with the Marines, with the Navy,
7 with the Army, with arsenals, Picatinney
8 Arsenal for instance, Eglin Air Force Base.

9 We did, just as an example, with
10 Eglin Air Force Base we did the retro-fitted
11 napalm bombs ignition systems for making
12 napalm bombs more efficient in the Vietnam
13 war. But we also did a lot of behind enemy
14 lines things.

15 Since that time I've stayed
16 abreast of arson literature. I read
17 constantly. I am in consent communication
18 with the best arson investigators in the
19 country, and I try to stay right on top of
20 everything. That, I've done this since I
21 was a -- since I graduated, starting just a
22 few years after I got my Ph. D.

23 Q Were you a spy?

24 A No.

25 Q Did you ever actually go behind

Hurst -- Voir dire

1 enemy lines and do this kind of stuff?

2 A No.

3 Q And when I say formal training
4 I'm saying like arson schools. You haven't
5 been to any arson schools and you don't
6 agree with those, do you?

7 A Well, it's not that I don't
8 agree with them. Some of them are better
9 than others. I read their materials. I
10 know their tests and I know their booklets.
11 I collect them. So I know what's taught
12 there and I've read these things.

13 But arson is taught on a basis
14 of about a seventh grade level arson
15 investigation is taught. You don't need any
16 technical background and you could finish,
17 an ordinary reader could probably finish the
18 content of the typical two-week seminar in a
19 few hours of reading. You could absorb
20 everything that's in there.

21 Q So could I read your learned
22 treatise and become an arson investigator?

23 A If you let -- if you read
24 NFDA-921, and not just reading through it,
25 but if you studied it well, you would not be

Hurst -- Voir dire

1 able to investigate arson because you need
2 some hands-on for that. But what you would
3 be able to do is read other people's arson
4 investigation reports and spot the most
5 obvious errors.

6 Q But you need some hands-on?

7 A Oh, you definitely need
8 hands-on.

9 Q I would guess that includes
10 actually going out to a fire scene?

11 A Oh, of course it includes going
12 to fire scenes. Certainly.

13 Q Okay. Is that beneficial or
14 not?

15 A Going to fire scenes?

16 Q Yes, sir.

17 A Yes. It is beneficial to go
18 out. You need to see some actual fires. It
19 helps to go and look at least, you know,
20 fifty fires or a hundred fires, something
21 like that. Certainly you could benefit from
22 it.

23 Q Okay. And would you admit that
24 going to the actual fire scene is important
25 in determining cause and effect?

Hurst -- Voir dire

1 A If it's possible at all,
2 absolutely. I mean there's no substitute
3 for getting there yourself and being able to
4 look around because you don't have a
5 guarantee that somebody is going to
6 photograph everything that needs to be
7 photographed or is going to report
8 everything that's reported. Sure. If you
9 can get to a live fire scene, by all means.
10 That's the best way to investigate a fire.

11 Q Do you believe when there's a
12 fatal fire and someone survives that the
13 survivor is always going to be charged with
14 arson and murder?

15 A Nearly always. Some people are
16 not -- if there are enough witnesses to
17 exonerate them, but it's generally true that
18 if you have a house fire and you have a
19 survivor and somebody dies in there that
20 maybe not, not always. Nothing really
21 happens always. But by and large you can
22 expect to become a suspect and be charged
23 with arson and murder. It's a very, very
24 frequent occurrence.

25 Q And you heard I believe, I