

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Debra R. McCaslin, Circuit Court Judge

RECEIVED

Jun 26 2025

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

THOMAS ERIC MCDOWELL,

APPELLANT

APPELLATE CASE NO. 2024-000226

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RESIDENCE OPEN); and STATE’S EXHIBIT #39 (FBI ANIMATION).**

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2 County of Lexington) Eleventh Judicial Circuit

3
4 State of South Carolina,) Transcript of Record
5 vs.) 2022-GS-32-06096
6 Thomas Eric McDowell,) 2022-GS-32-06097
7 Defendant.) 2022-GS-32-06098

8

9 February 5th-8th, 2024
10 Lexington, South Carolina

11 B E F O R E:

12 The Honorable Debra R. McCaslin, Judge; and a Jury

13

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On behalf of the Defendant

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21 Stacy S. Johnson, RPR
22 Circuit Court Reporter

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24

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1 (The following proceedings were held February 5,
2 2024, beginning at 11:35 AM.)

3 THE COURT: All right. Did you do a head count?

4 BAILIFF: All here.

5 THE COURT: Yay. Okay.

6 All right. Ladies and gentlemen, we are about to
7 begin the trial of the state of South Carolina versus
8 Thomas Eric McDowell.

9 Ms. Abee, would you please call your case.

10 MS. ABEE: Thank you, Your Honor.

11 At this point the State of South Carolina calls
12 Thomas Eric McDowell. That's three indictments. The
13 first is 2022-GS-32-6096, which is a true billed
14 indictment for burglary in the first degree, which
15 alleges that on or about June the 6th of 1986 during the
16 nighttime hours the defendant, Thomas Eric McDowell, did
17 intentionally unlawfully enter the residence located
18 2779 South Lake Drive in Lexington County with the intent
19 to commit a crime therein; to wit, the kidnapping of
20 Jessica Gutierrez, date of birth [REDACTED], in violation
21 of Section 16-11-311, the Code of South Carolina as
22 amended.

23 The next indictment is 2022-GS-32-6097, the
24 indictment for kidnapping, which states that on or
25 about June the 6th of 1986 the defendant, Thomas Eric

1 McDowell, did in Lexington County intentionally and
2 unlawfully abduct and carry away Jessica Gutierrez,
3 date of birth [REDACTED], without authority of law in
4 violation of Section 16-3-910, Code of Laws of South
5 Carolina as amended.

6 Finally, Your Honor, the State calls 2022-GS-32-6098,
7 the State of South Carolina versus Thomas Eric McDowell,
8 a true billed indictment for murder, which alleges that
9 on or about June the 6th of 1986, the defendant, Thomas
10 Eric McDowell, did in Lexington County intentionally and
11 with malice aforethought kill Jessica Gutierrez, date of
12 birth [REDACTED], in violation of Section 16-3-10, the
13 Code of Laws of South Carolina as amended.

14 THE COURT: Thank you, Ms. Abee.

15 MS. ABEE: Your Honor, may I approach with the
16 indictments?

17 THE COURT: You may.

18 All right. Ms. Mauldin, how does your client plead
19 to these charges?

20 MS. MAUDLIN: He pleads not guilty, Your Honor.

21 THE COURT: And is he ready to go forward today?

22 MS. MAUDLIN: Yes, Your Honor, he is.

23 THE COURT: Okay. Thank you.

24 All right. Ladies and gentlemen of the jury,
25 before we select the jury there are several questions

1 (Whereupon, a luncheon recess was taken at 1:36 PM.)

2 (Back on the record at 2:21 PM.)

3 (Court's Exhibit Number 1 through 3 were marked for
4 identification.)

5 BAILIFF: Keep your seats.

6 THE COURT: All right. Is the State ready?

7 MS. ABEE: Yes, Your Honor.

8 If we could just go grab Ms. Weiss real quick. I
9 believe she just went across the hall.

10 THE COURT: Absolutely.

11 BAILIFF: We don't have the clerk either, Your
12 Honor.

13 THE COURT: Oh, we've got to find the clerk.

14 (Pause in proceedings.)

15 THE COURT: All right. Are we ready?

16 MS. ABEE: Yes, Your Honor.

17 THE COURT: Ms. Mauldin, we're ready?

18 MS. MAUDLIN: Yes, Your Honor.

19 THE COURT: All right. Let me go through the
20 State's motions first. I've got motion to exclude
21 third-party guilt evidence.

22 Let me ask first, Ms. Mauldin, are you anticipating
23 introducing any third-party guilt?

24 MR. MAULDIN: Yes, Your Honor. We'd like to talk
25 about the potential guilt of another man named Henry

1 Gordon, Junior.

2 THE COURT: Henry Gordon, Junior.

3 All right. Well, then let me hear from the State
4 on your motion.

5 MS. ABEE: Thank you, Your Honor.

6 At this point in time the State moves to exclude
7 any reference of Henry Gordon, Junior, who's also known
8 as J.R. Gordon, as the perpetrator of this crime.

9 Your Honor, State v. Gregory, 198 S.C. 98 is the
10 citation for that case, Your Honor, specifically lays out
11 what it is that controls whether or not this third-party
12 guilt evidence is, in fact, admissible. Specifically it
13 states that evidence offered by the accused as to the
14 commission of a crime by another person must be limited
15 to such facts as are inconsistent with his own guilt
16 and to such facts as raise a reasonable inference or
17 presumption as to his own innocence. Evidence which
18 could have no other effect than to cause a bare suspicion
19 upon another or to raise a conjectural inference as to
20 the commission of the crime by another is not admissible.

21 Subsequently it goes onto say, Your Honor, that
22 additionally before such testimony can be received there
23 must be such proof of connection with it such as a train
24 of facts or circumstances as tends clearly to point out
25 such other person as the guilty party. Remote acts,

1 disconnected and outside the crime itself cannot be
2 separately proved for such a person, Your Honor -- such
3 a purpose.

4 Your Honor, in this particular case, J.R. Gordon was
5 looked at as a suspect in the beginning of the case. He
6 is the ex-boyfriend of the mother of the victim in this
7 case. So law enforcement did, in fact, look to him;
8 however, there was no DNA evidence of Mr. Gordon found at
9 the scene, no fingerprint evidence of Mr. Gordon found at
10 the scene, no one has ever identified him in a photo lineup
11 or place him as the person that took Jessica Gutierrez
12 from her home that night, Your Honor, and subsequently no
13 one has ever brought forth a confession of Mr. Gordon.
14 Any sort of evidence produced by the defense to state that
15 Mr. Gordon was, in fact, the responsible party is just
16 merely conjecture, Your Honor. It's just there to cast a
17 bare suspicion.

18 This does not limit their ability to say that it
19 wasn't Mr. McDowell, but to say specifically that it was
20 Mr. Gordon or J.R. Gordon would be against the case law
21 established by State v. Gregory, Your Honor, and Holmes
22 versus South Carolina. Therefore, we would move to
23 exclude such a reference.

24 THE COURT: Ms. Mauldin.

25 MS. MAULDIN: Thank you, Your Honor.

1 I disagree with that and I believe that there
2 is significant evidence against Mr. Gordon. And you
3 heard that there was no fingerprint evidence with
4 Mr. Gordon, that's accurate. They believe that they
5 have a fingerprint of our client on the window that
6 police determined was the entry point into this home.

7 THE COURT: Right. I've read that.

8 MS. MAULDIN: They say that there's no DNA of
9 Mr. Gordon. There's no DNA of our client either. There
10 is DNA on some Vantage cigarettes that he smoked that
11 were in the car that he drove and there was a Vantage
12 cigarette butt at the scene, but no one has been able to
13 link his DNA to the scene of the crime.

14 There -- you heard that --

15 THE COURT: Well, does the Vantage cigarette butt at
16 the scene have his -- McDowell's DNA on it?

17 MS. MAULDIN: No, Your Honor. There has been -- they
18 have not been able to say that that is his DNA. They
19 collected some fragments of DNA on three alleles, it was
20 a minimal amount, and they cannot say that it was his.

21 They said that there was no confession by Mr. Gordon.
22 I disagree with that, and this is gonna come up again in
23 my motion to dismiss; however, there was an interview --
24 Mr. Gordon was taken to Columbia to do a polygraph and
25 Investigator Bartlett, who is now deceased, Detective

1 Bartlett of the sheriff's department, drove him back from
2 that interview and during that ride Investigator Bartlett
3 wrote in his report that the suspect had not shown any
4 remorse for the victim, he didn't show any emotions.
5 Suspect did indicate that the possibility existed that he
6 was involved with the abduction.

7 That sound like evidence to me, Your Honor. I've
8 asked the AG if they had the polygraph itself that might
9 have had any questions that addressed this; however, this
10 is a statement that he made to Investigator Bartlett on
11 the way back. We don't have any way to corroborate that,
12 and that's gonna come up in the motion to dismiss, but
13 that is an admission from Mr. Gordon when he says that --
14 he indicated that the possibility existed that he was
15 involved with the abduction, but I think Your Honor needs
16 to hear a little bit more background to kind of understand
17 his connection to the case.

18 He had -- the allegations are that Mr. McDowell had
19 dated Debra Gutierrez, the mother of the child that was
20 taken, so he had dated her back in 1985, had done some
21 work on her house back in 1985, and then in November or
22 December Henry Gordon comes along. He's a washing machine
23 repair guy, his dad owns a rent to own washing machine
24 business, and so he ends up working on her machine and
25 she starts to like him and from November to December --

1 she lets him move in the house with her and the kids in
2 January.

3 THE COURT: Gordon?

4 MS. MAULDIN: Yes. In January. This is according
5 to him. He says he moves in in January and lived with her
6 in the house until June. On June 2nd they broke up and
7 it's not entirely clear why, but that was four days before
8 this little girl was taken, and so his version is that he
9 didn't want to have -- he thought that she didn't want to
10 have sex anymore with him and that she wanted to sleep
11 with other men, and so he's upset. He talks to Detective
12 Bartlett and tells him how much he loved her, how he
13 wanted to marry her. He was extremely suspicious. He
14 talked about how he would smell her underwear to see if
15 she had sex with other men. He was obsessed with her
16 sleeping around on him. He told another witness that she
17 had slept with his own father and with his brother. I
18 mean, something was going on with him. He admitted that
19 he was drinking, he had a drug problem, all that. And
20 so even in the time between when he breaks up and then
21 Jessica Gutierrez goes missing and then a few days after
22 that he is still coming over to the house. At one point
23 he spends the night on the porch because mom won't let
24 him in. He is a man obsessed with this child -- or,
25 excuse me, with the mother. And there is evidence that

1 he was obsessed with the child. He referred to her as
2 Little Debbie, the mom's first name is Debra, and that
3 he liked her better than the other children and he would
4 let her ride on his motorcycle. So he had a connection
5 to the child herself as well. He was living in house,
6 so he's somebody that would have been familiar with the
7 sleeping arrangements in the home, would have known where
8 the girl's bedroom was. There's evidence that the dog
9 didn't bark that night. If he was living there, the dog
10 would have known him and would not have barked. He told
11 the police some other weird things about how he had
12 a picture of the little girl and her family up in his
13 house and he took that picture down because he just wanted
14 to forget about her. Some very strange things. And,
15 again, this will come up in the motion to dismiss, but
16 the officer, Detective Bartlett, made some observations
17 about him and his demeanor, talking about how he was
18 nervous, seemed unconcerned with the victim at one point,
19 didn't seem remorseful. And then there was a Pamper that
20 was found in his house. He doesn't have any children.
21 This was a four-year-old, but that was an odd thing.
22 There's no evidence that that was ever collected, but
23 that was an odd piece of information and it's just --
24 there's a lot that connects him.

25 And, Your Honor, if you'll -- I beg the Court's

1 indulgence very briefly.

2 When the police came out to talk to him, it's said
3 that he asked questions about the incident such as was
4 the complainant okay and how did the subjects get into
5 the home and did they find anything, which sounds a little
6 bit like somebody is checking to see if he's gonna get
7 caught.

8 So, Your Honor, just to sum up, he was clearly
9 involved. The other key part of this is that a big part
10 of the State's case is that my client must have done it
11 because he had access to this child. He knew her mom, he
12 had seen the child, you know, that he had access. He had
13 been to the house, he'd done the work on the house and so
14 to say that he's guilty in part because he had access
15 totally overlooks the fact and is completely unfair to my
16 client that there was somebody else that had a lot more
17 access and a lot more familiarity with the family. So I
18 think it critical that we're allowed to address this.
19 This is all evidence that -- that points away from our
20 client and to this other person.

21 MS. ABEE: Thank you.

22 Your Honor, to go through what the State is
23 attempting to prove or is gonna put into evidence for
24 the guilt of Mr. McDowell is completely in violation of
25 Holmes versus South Carolina where that case specifically

1 states that the true strength of the prosecution's proof
2 cannot be assessed when trying to determine whether or
3 not evidence of third party guilt exists. So to sit here
4 and do this kind of back and forth between fingerprint or
5 no fingerprint and go back and forth is an exact Holmes
6 versus South Carolina because what we have to show or
7 what they have to show is that this isn't just a bare
8 suspicion or a conjectural inference. And, yes, although
9 the actions are suspicious in the -- in the sense that
10 they're strange, right, the various different things
11 that Ms. Mauldin listed, they're not actual evidence that
12 he's someone that committed this crime. They are the
13 definition of conjectural inference, Your Honor. The
14 fact that he was obsessed with Debbie means that he had
15 to have taken her child, that's conjectural, Your Honor.
16 The fact that he was drinking at that time or had a
17 history of doing drugs in no way says, therefore, he went
18 through a window and stole a small child out of her bed
19 in the middle of the night.

20 Specifically, Your Honor, I think what's extremely
21 important is that there was an eyewitness in this case,
22 the little sister was in the bed with the 4-year-old when
23 she was taken, and as Ms. Mauldin stated Mr. Gordon dated
24 the mother. He had been in that house. He was around
25 that house and that 6-year-old never at any point in

1 time, even today in her forties has ever said that it
2 was J.R. Gordon, Your Honor, and she was familiar with
3 him and familiar with the way that he looked and she has
4 never identified him as being the person that came through
5 the window excluding --

6 THE COURT: Did she ID anybody?

7 MS. ABEE: She ultimately ID's Mr. McDowell in a
8 photo lineup, Your Honor, but she, again, is very familiar
9 with the way that Mr. Gordon looks and does not say that
10 it was J.R. Gordon, Your Honor.

11 Additionally, you know, excluding reference to the
12 specific being Tommy McDowell does not exclude them from
13 saying that other people had access to the house or other
14 people were familiar with the house. It just limits them
15 in being able to say specifically that it must have been
16 J.R. Gordon as opposed to Tommy McDowell, Your Honor. So
17 this doesn't transform their rights to present a defense,
18 Your Honor, however, everything that they said is, again,
19 just casting a bare suspicion and a conjectural inference
20 as to J.R. Gordon and there is no actual evidence linking
21 or tying him to the crime.

22 MS. MAUDLIN: Your Honor, if I can respond to that,
23 my reading of Holmes is a little different. My reading
24 of that is that just because the State has a strong case
25 doesn't lessen the defendant's rights to third-party guilt

1 evidence. That's my understanding of it. I don't think
2 it says more than that. I do think it is important to
3 consider the evidence against Mr. Gordon in this case and
4 I do think these things are significant, especially where
5 he says that he might have been involved in the abduction.

6 When you asked about the identification, I've got to
7 give the Court a little bit more information than that.
8 When this child was first interviewed, Detective Bartlett
9 says that the child said it was a black man wearing a magic
10 hat. My client is a white man. That was the initial
11 identification. Eventually the mother talked to a psychic.
12 Mary Green, the psychic told her that it was a man in a
13 cowboy hat and the description changed. No one from the
14 police department took any statements from the little
15 girl, from the mom. There are no statements from back
16 then in this case. They had a video camera. Nobody
17 thought to sit down and take a statement of what this
18 child saw. They didn't do it. They interviewed her in
19 front of her mom. She did make an identification and
20 pick Mr. McDowell out out of a lineup that she looked at
21 in 2007, so decades after she saw this person in her room
22 that she claims.

23 THE COURT: Anything else?

24 MS. ABEE: Your Honor, just for ruling purposes,
25 if we're talking about the black man in a magic hat,

1 Mr. Gordon is also not black, he is also white, just for
2 the Court's knowledge.

3 But, again, we stand on our argument that this is
4 just a bare suspicion being cast upon J.R. Gordon and
5 that there's no evidence actually tying him or no evidence
6 that is inconsistent with the guilt of Mr. McDowell and,
7 therefore, we move to exclude such evidence.

8 THE COURT: All right. I'm gonna take that under
9 advisement and I'll rule on it first thing in the morning.

10 How about this motion to exclude lay opinion
11 evidence?

12 MS. ABEE: Thank you, Your Honor.

13 In this particular case, several people throughout
14 the case file are obviously -- I guess by background,
15 no body of Jessica Gutierrez has ever been found, so in
16 order to just preserve the integrity of the trial we're
17 moving to exclude any sort of questioning about whether
18 or not somebody who's not an expert, whether or not a
19 lay -- a lay witness, but just the mother or the sister
20 believes that she's, in fact, dead, that would invade the
21 province of the jury in trying to make that determination,
22 Your Honor, and it would be unfounded, therefore, we
23 believe that it should be excluded, that line of
24 questioning.

25 THE COURT: Ms. Mauldin.

1 MS. MAUDLIN: Your Honor, we don't have a problem
2 with that if we can also just exclude any opinion
3 testimony that she's not dead -- or that she is dead,
4 both sides.

5 MS. ABEE: Yeah, we don't intend to ask any lay
6 witness you believe she's dead, right. Like we're not --
7 we're not going into that with any sort of lay witness,
8 Your Honor, as to whether or not they believe or have a
9 belief that she is dead.

10 MS. MAULDIN: Or any experts, Your Honor.

11 MS. ABEE: And, Your Honor, I don't think there's
12 gonna be any expert that's gonna testify that she is, in
13 fact, dead. We are going to elicit testimony regarding
14 the probability of finding a body of that size in 2024
15 from the State archeologist about the way and the
16 condition of that body may be in order to show that
17 searches have been done and it's unlikely to find the
18 remains of her in order to help to corroborate what we
19 believe is the fact that she is dead, but there's no
20 expert that's gonna get there and say, yes, in my expert
21 opinion I believe she is dead. So we're not eliciting
22 that type of information either.

23 THE COURT: All right. Well, I'm gonna exclude it.
24 If something comes up or something changes, you-all just
25 make an objection and let me know and we will address it

1 at that time.

2 Motion to exclude reference to polygraph examinations.

3 I don't allow anybody to testify about polygraph.

4 Anybody planning on bringing it up?

5 State?

6 MS. ABEE: No, Your Honor.

7 THE COURT: From the defense?

8 MS. MAUDLIN: Your Honor, we don't plan to get into
9 any information about the results of a polygraph. If
10 there were specific questions that were asked and someone
11 responded, then I think we could probably tailor that if
12 need be.

13 THE COURT: Well, you know, I can't remember if it --
14 what case it was, but, you know, usually after a polygraph
15 there's a different interview totally.

16 Do you have that in this case?

17 MS. ABEE: Your Honor, there do appear to be post --
18 everything's kind of compiled into one document as a pre
19 kind of polygraph and the inserted polygraph questions
20 and then additional information from the report from the
21 FBI.

22 THE COURT: Right. Like usually if somebody fails
23 it, the agent will usually go and talk to them and
24 basically is giving a statement.

25 MS. ABEE: Yes.

1 THE COURT: Do I have that in this case?

2 MS. ABEE: Your Honor, I do believe there would be
3 references throughout and the State wouldn't move to
4 exclude anything that was stated in those examinations or
5 those interviews. We are simply moving to exclude the
6 fact that you asked so and so to take a polygraph or so
7 and so failed a polygraph. We're not specifically talking
8 about the statements made before and --

9 THE COURT: I don't think that you were gonna get
10 into, is it, Ms. Mauldin?

11 MS. MAULDIN: No, Your Honor.

12 THE COURT: Okay.

13 All right. So no mention of a polygraph, however, if
14 there are statements that were given after the polygraph,
15 I'll take those up and probably find those admissible. I
16 guess I'd have to see what they say.

17 Then I've got the use of prior inmate testimony.

18 The State will call a witness who was previously an
19 inmate with defendant, so we've got a statement from an
20 inmate at prison.

21 MS. ABEE: And, Your Honor, these additional matters
22 were to just specifically alert the Court as to things that
23 may come up throughout the course of the trial --

24 THE COURT: They not and might not.

25 MS. ABEE: -- and we were asked to provide -- right.

1 And we were asked to provide that. We do anticipate
2 calling that witness, however, there's no pre-trial motion
3 on behalf of the State in regards to that. Simply just
4 trying to alert Your Honor as to additional things that
5 may arise throughout the course of the trial so your clerk
6 could be prepared and Your Honor.

7 MS. WEISS: And, Your Honor, if I may speak to that
8 as well, that's my witness, and we do intend to ask the
9 Court with the defense to clarify exactly how this Court
10 wants to limit the testimony. Obviously this is a time
11 when these two men were in jail together in Polk County,
12 North Carolina. Not talking about what they were in jail
13 for, but in order to tell the story the two men were in
14 jail in together in a county jail in North Carolina, so
15 we will be bringing that up to the Court, but I know we're
16 not starting witnesses until tomorrow, so we can do that
17 before he testifies or want to do that, but that is a
18 question I'll be bringing to the Court.

19 THE COURT: All right. Is that fine with you.
20 Ms. Mauldin?

21 MS. MAULDIN: Yes, Your Honor.

22 THE COURT: Okay. That takes care of, I think, the
23 State's motions.

24 MS. ABEE: And, Your Honor, we did alert defense
25 counsel that there is a photo identification that we

1 do plan to enter, as well as a 2008 statement from
2 the defendant. It's my understanding that obviously
3 they're gonna object to those, therefore, we do think
4 it appropriate to a Biggers hearing, as well as a
5 Denno hearing at this time.

6 THE COURT: Okay.

7 All right. I'm gonna get to that in just one second.

8 Let me just run through the defense's motions right
9 quick so I know what I need to hear testimony on.

10 We're gonna do a Jackson v. Denno. How about this
11 motion to exclude testimony of Nedra Wilson?

12 MS. MAULDIN: Your Honor, the State has indicated
13 that they no longer intend to call her as a witness during
14 their case in chief. If that's the case, then we don't
15 need to proceed on that.

16 THE COURT: Correct?

17 MS. ABEE: That's correct, Your Honor. We don't
18 intend to call her in our case in chief outside of the
19 defense opening the door to some sort of testimony, which
20 at that point we'd alert Your Honor.

21 THE COURT: Okay. Perfect.

22 All right. The next is a motion to suppress.

23 This is a motion to suppress the 1975 Ford Elite
24 car and it's a motion to exclude the evidence that was
25 found in the car. Also I guess in this case, and correct

1 me if I'm wrong, I found it rather interesting. The State
2 says the car belongs to the mom and Mr. McDowell has no
3 standing to challenge the search warrant to the vehicle.
4 The defense says oh, now wait a minute, part of the search
5 -- the warrant that was taken contains some statements
6 that were obtained when Mr. McDowell as in North Carolina
7 and he told them I want a lawyer and you claim that his
8 Fifth Amendment rights were violated and they used that
9 statement in order to get the search warrant to get to the
10 car.

11 Am I -- am I getting it?

12 MR. MAULDIN: Yes, Your Honor. It's the defense's
13 position that they obtained that statement and obtained
14 some fingerprints from him on that day that -- after he
15 said I'll talk to you with my lawyer. They called his --
16 this is from Bartlett's report.

17 THE COURT: Yeah, they called his lawyer and the
18 lawyer says look, I'm not talking to you. I don't even
19 practice South Carolina law.

20 MR. MAULDIN: And then they go back to him and say
21 okay, do you mind if we talk about this or this and they
22 start talking about --

23 THE COURT: And he reinitiated the conversation.
24 Your client didn't.

25 MR. MAULDIN: That's correct. At least that's what's

1 detailed in Mr. Bartlett's report.

2 THE COURT: I read that report four times. Four
3 times I read it.

4 I'd like to hear from the State on that.

5 First, let's talk about -- because I'm thinking that
6 I might want to proffer how it is that he has no standing,
7 what -- what the deal is.

8 MS. WEISS: Thank you. Sure.

9 So as far as standing, there are two parts to that
10 as you alluded to. The first is did the defendant --
11 that any defendant that wants to bring up -- that wants
12 to suppress evidence taken from a search warrant may do
13 so if they can show that there was not a good faith effort
14 to comply with the search warrant statute. In this case,
15 the good faith effort to comply with the search warrant
16 statute the State believes was met and met exactly as it
17 was intended. An affidavit was provided to the magistrate
18 judge, the magistrate judge considered the affidavit and
19 provided the place and what was to be searched and that
20 was signed off on, which are the requirements of the
21 statute itself.

22 THE COURT: But you see what she's saying? She's
23 saying that affidavit that was attached to the search
24 warrant contained language from an interview with law
25 enforcement in North Carolina in violation of his Fifth

1 Amendment. Correct me if I'm wrong.

2 MR. MAULDIN: Fifth and Sixth, Your Honor.

3 THE COURT: Fifth and -- I mean --

4 MR. MAULDIN: The right to an attorney.

5 THE COURT: I got it. I understand what you're
6 saying, but really it's his Fifth Amendment, Sixth
7 Amendment, too. They're two different things, totally
8 two different things, and a lot of people think that, you
9 know, if you can walk around the Sixth Amendment you don't
10 have to worry about the Fifth. Well, that's not true at
11 all and I have -- have you read that interview?

12 MS. WEISS: Absolutely, Your Honor. And I agree
13 with you. I don't believe it violates Fifth Amendment
14 because I believe that's offense specific and that's why
15 the attorney said I don't represent him on those charges.

16 THE COURT: Right.

17 MS. WEISS: He specifically said I want to talk to
18 my attorney, to that attorney. They contacted that
19 attorney and that attorney said I don't represent him.
20 It is the State's belief at that point it's waiver of
21 the attorney when he says okay because they said will
22 you answer questions -- just a couple of questions on
23 something else. They don't interrogate him about the
24 case it self. They ask him about whether he knows the
25 people. One, that's inevitable discovery. Two, Debbie

1 Gutierrez already knows that she knows who this person
2 is who had done work on her house and who had been
3 there. It was not about the actual case itself. It was
4 specifically about do you know these people and that was
5 information that the law enforcement already knew, that
6 she knew those people.

7 THE COURT: Is that agent around?

8 MS. WEISS: That -- that agent is deceased, Your
9 Honor.

10 THE COURT: Who took the statement?

11 MS. WEISS: Yes, Your Honor. Agent Bartlett.
12 However, if I may, I would argue that if you take out the
13 fact that he said he knew Debbie Gutierrez --

14 THE COURT: Out of the warrant.

15 MS. WEISS: Just take it out of the warrant.

16 THE COURT: Then I need to find and determine whether
17 there's probable cause for that warrant to still go
18 forward.

19 MS. WEISS: And, Your Honor, it would be the State's
20 position that actually based on the case law that the fact
21 that the affidavit was provided in good faith suffices
22 for the actual complying with the statute, but on the --
23 on the other side of that argument, the fingerprint.
24 The defense puts forth in their motion that they believe
25 it is obvious that that fingerprint was taken by the law

1 enforcement after -- as part of that interview.

2 Your Honor, if you look at that fingerprint it was
3 clearly taken by North Carolina Polk County and as it
4 states --

5 THE COURT: It even has written on it file copy.

6 MS. WEISS: Absolutely.

7 THE COURT: I saw it.

8 MS. WEISS: And so -- and so I think that contention,
9 then you'd have the fingerprint, the fingerprint comes
10 back and that matches the fingerprint that was found on
11 the window. I think the fingerprint on the window, the
12 confidential informant, and the fact is you're gonna get
13 that Debbie Gutierrez knows Thomas McDowell whether he
14 says he knows her or not because he did work on her house.
15 I mean, that's just -- in a distant time.

16 THE COURT: But let me ask you this.

17 MS. WEISS: Yes, Your Honor.

18 THE COURT: Even if I agree with Ms. Mauldin and
19 say that officer should have walked away right then and
20 there and these statements don't come in and then I look
21 at the search warrant and I redact that out of the search
22 warrant, isn't it that I need to find -- see if there's
23 still probable cause once it redacted?

24 MS. WEISS: Your Honor, if you are considering
25 whether the search warrant is valid, I would agree with

1 that. I don't believe we have to get there because I do
2 believe the statute --

3 THE COURT: Because he has no standing.

4 MS. WEISS: Because the statute is met and he has
5 no standing. That was his mother's car --

6 THE COURT: Right.

7 MS. WEISS: -- and he had abandoned it for all
8 practical purposes and headed up north leaving South
9 Carolina and stealing two cars along the way and --

10 THE COURT: Well, let me ask you this because
11 believe it or not I read the file that you-all gave me,
12 what little bit I got and usually I walk up here and I
13 don't know anything, but it appears that it's the mother's
14 car.

15 MS. WEISS: Yes, Your Honor.

16 THE COURT: He was a permissive --

17 MS. WEISS: User.

18 THE COURT: -- driver of that car and, honestly, we
19 don't know when the last time he used it. What -- if he's
20 a permissive user, what -- what is unreasonable for him
21 to expect privacy when he does use his mom's car?

22 MS. WEISS: Because there is no evidence, one, that
23 he used it after the June 6th date, but we know he
24 wasn't using it as of August 19th. He was borrowing his
25 brother-in-law's car, Roy Rabon's car. So he wasn't

1 driving that car. He borrowed Roy Rabon's car, drove
2 it to a scene where he breaks into two houses, and I say
3 that because he plead guilty to those charges. He breaks
4 into two houses, leaves the keys on the dresser or on the
5 nightstand, on one of them, or drops them or whatever, so
6 he can't even return Roy's car to Roy. Going back, so
7 then he steals a car. He doesn't then drive back and say
8 hey, Roy, sorry, I left your keys there. He doesn't stay
9 in South Carolina. He leaves in that van and drives up
10 to North Carolina. In one of the statements it says that
11 he saw law enforcement officers, so he didn't stop to get
12 gas, but whatever reason it was he drives until that van
13 runs out of gas. When that van runs out of gas, he gets
14 out of that van, he then goes into another home where he
15 breaks in and rapes a woman in that home and takes then
16 her car. He doesn't then start to drive back to South
17 Carolina. He starts driving north. That is abandonment.
18 He is -- he's taking off up north. He is not headed back
19 to South Carolina, so that car has been sitting there.
20 His mother reported him missing, so we know he hasn't
21 come back to use the car, we know he hasn't returned
22 Roy's car, and he's taken off and so it's her car.

23 THE COURT: So his mother reports Mr. McDowell
24 missing?

25 MS. WEISS: Yes, Your Honor.

1 THE COURT: What date was that?

2 MS. WEISS: August 19th -- August 20th. And he had
3 left the keys with her. She had the keys. So it's her
4 car and that's why I said, you know, in my argument if he
5 had been stopped driving it, we wouldn't have an issue
6 because we know that the person who's in control of the
7 car, he would have an argument for that. If -- but even
8 then during the time that he was the one driving it, he
9 would have -- he might have an argument. But, Your Honor,
10 there is a clear definitive period of time where his
11 mother has the car, his mother has the keys, the car's
12 parked at his mother's house and he has left of that car
13 and so the car belongs to the mom.

14 THE COURT: All right. Ms. Mauldin, let me hear from
15 you.

16 Mr. Mauldin.

17 MR. MAULDIN: Thank you, Your Honor.

18 Number one, we think that a permissive driver would
19 have standing to object. We're stating that for the
20 record. They're talking about this crime spree. It's
21 not unreasonable to think somebody would use a car that
22 they don't normally use to commit a crime so that they
23 wouldn't be identified and so and so on and so forth.
24 We're talking in the space of maybe month or two. I
25 don't know if that's necessarily abandoned property.

1 Obviously he ended up in prison in North Carolina and
2 could not return to South Carolina to retrieve the
3 property, but we would say that he does have standing
4 based on that.

5 Furthermore, we believe if you look at the State v.
6 McKnight case that the State cites in their brief saying
7 he doesn't have a standing, then it says that anyone who
8 -- evidence is being obtained against by the search
9 warrant statute can object under the statute and if you
10 look at the statute, the third paragraph, it talks about
11 a magistrate having to find probable cause before issuing
12 a search warrant and this motion is based on the fact
13 that probable cause shouldn't have been established
14 because evidence that as fruit of the poisonous tree
15 was placed inside the search warrant affidavit. So,
16 therefore, they haven't complied with the statute because
17 there would be no probable cause as required by the
18 statute.

19 So, first, we say he does have standing under the
20 constitutional grounds. Second, we're saying he has
21 standing v. McKnight -- State v. McKnight, 291 S.C 110,
22 and the statute 17-13-140, which requires probable cause
23 for the issuance of an affidavit. Obviously it's our
24 contention this interview on September 3rd of '86 by
25 Investigator Bartlett violated Mr. McDowell's Fifth and

1 Sixth amendment rights when he requested that he would
2 only speak with an attorney, they continued to speak
3 without attorney, and it's our assertion -- I mean, we
4 have no way to prove one way or the other whether that
5 fingerprint card was done that day or taken upon his
6 booking, but I would not, Your Honor, that that card has
7 absolutely no information about his height, his weight
8 and other requirements that are in the card about they
9 would obviously need as far as their booking process;
10 height, weight, eye color, hair color, date of birth,
11 place of birth. All that other information is just
12 blank. It seems like if that was a real booking card
13 for the jail all that information would be filled out.

14 Your Honor, I would like to make this a part of the
15 record. It's two search warrants were objecting to, Your
16 Honor. They did go back the next year and kind of double
17 dip and got more things from the car.

18 THE COURT: One's from November, the other one is
19 from July?

20 MR. MAULDIN: That's correct, Your Honor.

21 And so I have copies of both search warrants here,
22 Bartlett's report of the interview of Mr. McDowell, the
23 fingerprint card from North Carolina, the report that the
24 search warrant was obtained and executed and the report
25 for both dates would be in this packet. We would like to

1 make it a Court's exhibit.

2 MS. MAULDIN: Your Honor, earlier this morning we
3 handed up a packet of materials that included our witness
4 list and our voir dire. I would just ask that all of that
5 be made a Court's exhibit. It includes a copy of this
6 motion and these attachments.

7 Your Honor, I stand correct. He's added to it.

8 MR. MAULDIN: Just the page from the second --
9 execution of the second search warrant with Bartlett's
10 report on that.

11 THE COURT: All right. Do you want what you-all
12 gave me to stand for the record?

13 What did you --

14 MR. MAULDIN: Kenli?

15 THE COURT: I've got -- I'll make this like a Court's
16 exhibit. You-all need to look at this.

17 (Proceedings held at the bench; not reported.)

18 (Court's Exhibit Number 4 and 5 were marked for
19 identification.)

20 MS. WEISS: Your Honor, I do have and I forgot to
21 pull it out, the -- what went with the -- I need to
22 look at the fingerprint card, but we have the booking
23 information with Calvin Atkins, who is the officer on
24 the fingerprint card where it does have the height,
25 weight, the bond, the -- all of that kind of stuff.

1 So, I mean, that's --

2 (Proceedings held at the bench; not reported.)

3 THE COURT: All right. Let me ask what I need to
4 know, too, this statement, I want to be on the record,
5 this statement that was taken from Mr. McDowell --

6 MS. WEISS: Yes, Your Honor.

7 THE COURT: -- is anybody planning on introducing
8 that?

9 MS. WEISS: No, Your Honor. It was merely do you
10 know Debbie Gutierrez, do you know J.R. Gordon.

11 THE COURT: I understand.

12 MS. WEISS: So, I mean, it wasn't a confession or
13 anything. No. And that was information, like we said,
14 that Debbie Gutierrez had that information as well.

15 THE COURT: All right.

16 Anything else you-all would like to add?

17 MS. WEISS: No, Your Honor.

18 Would you like me to get a copy of this to add to
19 this file?

20 THE COURT: Yes, please.

21 MS. WEISS: Okay.

22 THE COURT: All right. On this motion to suppress,
23 Mr. Mauldin, I'm gonna deny the motion to suppress. And
24 it's kind of twofold because, number one, while he might
25 have been a permissive user, I don't think a permissive

1 user is -- he has a continuous reasonable expectation of
2 privacy. I think he might when he drives the car and his
3 mother says yes, you can borrow the car. I think that's
4 reasonable, but at this time he wasn't driving the car,
5 he did leave it, left the state, gave his mom back the
6 keys, so I think the expectation to privacy is no longer
7 reasonable.

8 Now, you know, I'm telling you your motion to
9 suppress caught my eye because I went back to look at
10 everything because I did not like the statement that
11 was taken -- let me find it. Well, it's an exhibit.

12 Okay. I did not like this statement. This was part
13 of the search warrant for the car. I did not like this
14 statement at all by Bartlett who travelled to Columbus,
15 North Carolina to talk to Mr. McDowell. Clearly to me he
16 asked for his lawyer. I don't think it can be any more
17 clear. They tried to contact his North Carolina lawyer,
18 that lawyer said no, I'm not gonna meet with him, I'm not
19 a South Carolina lawyer, I'm a North Carolina lawyer, but
20 then the detective goes back and says would you like to
21 talk to me about some unrelated events and the detective
22 continued that conversation, and that's not how Edwards
23 works. Edwards -- and not to mention Mr. McDowell was
24 in custody. Edwards requires that the only way to get
25 around him asking for a lawyer is that Mr. McDowell

1 himself initiate the conversation. In this case it's
2 clear to me that he did not. And, in fact, this detective
3 didn't continue questioning him due to not wishing to
4 violate his rights, but what he did get out was -- out
5 of the whole conversation that I'm going to not have
6 mentioned in this case is that he knew the victim's mom,
7 that he had been at the complainant's house, he knew
8 that the complainant's -- and he's talking about the
9 victim's mom -- child had been a victim of kidnapping,
10 but he did not know J.R. Gordon, Junior. So even -- even
11 if I thought he had standing and I take that out of the
12 search warrant, I still have the fingerprints, still
13 have the stolen car from Lexington, South Carolina and
14 all the other things that are in there because I've looked
15 at the fingerprint card. And, again, I don't have any
16 testimony to that.

17 Are you planning on presenting testimony?

18 MS. WEISS: No, Your Honor.

19 THE COURT: It states file copy. It looks like
20 there's an attached typed form --

21 MS. WEISS: Your Honor, if I may approach?

22 THE COURT: Yes.

23 -- a typed form by the officer that he took the
24 fingerprints that day. It's not like the agent who
25 travelled from South Carolina took his fingerprints or

1 I'd suppress those. It looks to me under this he says
2 he fingerprinted him, a Mr. Atkins, and it's -- it's a
3 form that he's filled out. It's like a booking form;
4 height, race, date of birth, eye color, scars, marks,
5 tattoos. These are things that the forms are usually
6 filled out upon booking.

7 So I'm leaving the fingerprints. I think the rest
8 of the warrant is fine. I think there's plenty of
9 probable cause in there to have seized the vehicle. So
10 I'm gonna deny your motion for those reasons. I mean,
11 it's kind of a -- it's hard when this case is thirty-five
12 years old, I have an officer who is deceased, and it
13 looks like we're piecing stuff.

14 That's my ruling.

15 All right. Then I have a motion to dismiss.

16 Let me hear from you, Ms. Mauldin.

17 MS. MAULDIN: Your Honor, may I ask the clerk to
18 help me get this machine working?

19 THE COURT: Yes.

20 Well, let's see. Now I'm not real sure the clerk
21 knows, but we do have an IT person.

22 MS. MAULDIN: Judge, I'm gonna go a little deeper
23 on this one. I know that judges think that sometimes
24 lawyers just make motions to hear themselves talk, and
25 I assure you that's not what this is. You know me. I

1 feel very --

2 THE COURT: I've never known you to do that,
3 Ms. Mauldin. Please go ahead and take your time.

4 MR. MAULDIN: But I feel very strongly about this
5 one and -- and I'm dead serious when I make this motion,
6 but this is a motion to dismiss and it's pursuant to the
7 case law outlined in State v. Larry Lee from Aiken. And
8 you've seen the basic motion that just lays out the facts
9 of that case, the delay in that, that it was initially
10 the solicitor's office prosecuting the family court case,
11 several years went by and they investigated -- or, excuse
12 me, at that point they indicted Mr. Lee and the Supreme
13 Court found that he had been denied his due process right,
14 and I think this case is similar, but a lot worse than
15 that case, and so I'd like to go through that one through
16 the -- first of all, the evidence that they have against
17 my client.

18 In this case, the -- one of the main pieces of
19 evidence is that there was a Vantage cigarette butt
20 outside the window where they believe the person got
21 into the home and so that was found on June 6th of '86,
22 so the morning that the little girl -- that the mom wakes
23 up and the little girl's gone, the police come and they
24 find a cigarette butt outside the window. They find a
25 fingerprint on the window of that same home and by

1 October 17th of '86 the police believed that it's Tommy
2 McDowell's fingerprint, so the same year a few months
3 later.

4 They end up doing the first search warrant on that
5 car that you heard us talk about, the Elite, and they
6 find a towel, some hairs and cigarette butts. The
7 cigarette butts are later established as -- the DNA shows
8 that they're his, but the cigarettes butts that night,
9 the significance to law enforcement, is that it's the
10 same brand, Vantage, of the one left outside the window
11 of that home.

12 So that return is -- everything there is done, the
13 stuff is found by November 6th of '86. Then there's
14 information that a police officer had been patrolling the
15 area and it was the night of June 6th, so the same night
16 that the little girl goes missing, and later in February
17 of '87 they realize that that was the same night and they
18 go and talk to this officer and he said yeah, the night
19 of June 6th I was out near the landfill and I saw this
20 white car, it looked like a fancy model of a Torino, I
21 saw a white man, twenties, dark hair, and the car came
22 at me and didn't stop and I lost the car, the car kind
23 of went off the road a little bit on the way out, so
24 they've got that, but they know about that by February of
25 '87, so we're still within a year of the incident date.

1 July 10th of '87 they have interviewed Fowler, who
2 is the snitch in the case. There's another person they'd
3 already interviewed by this time. That man's dead, so
4 he's not relevant to this analysis, but they'd interviewed
5 the second snitch, Fowler, and they had talked to him by
6 July 10th of '87, so now we're right outside of a year.

7 Then in -- on July 29th of '87, they have the return
8 on the second search warrant on the Elite and this time
9 they looked at the floor carpeting and the carpeting in
10 the trunk and this is when they believe that be found
11 human blood in the car. Don't identify it to anybody,
12 can't establish that even going back and looking at it
13 later, they don't know whose blood it was, but they think
14 it's blood, but that is done July -- end of July of '87,
15 and that's the significant evidence in the case. The
16 significant physical evidence that they had.

17 They do go back and talk to witnesses, the lineup
18 that you've already heard about, that happens in December
19 of 2007 when Rebecca, who's now an adult, looks at a photo
20 lineup and picks Mr. McDowell out of it. But, again,
21 that -- she was around -- she had been a witness from the
22 beginning, she gave a different story first about it being
23 a black man in a magic hat, but they've known her as a
24 witness to this, that she was the little girl in the room,
25 since this happened. Like the morning of June 6th is when

1 she tells the police it's a black man, so they've known
2 about her as a witness since then.

3 And then there's some other kinds of things where
4 the police go back and they talk to different people and
5 there's some testimony about yeah, after that time he
6 changed the way he looked and he shaved his head and he
7 cut his beard and stopped wearing a cowboy hat, so
8 there's some evidence like that, but for the most part
9 the evidence that they had against him was from way back
10 then in '86 and '87. That's the primary case that the
11 State has against him.

12 So the prosecutors that were working in the
13 Solicitor's office at the time were Donnie Myers and
14 Knox McMahon and you know that they were some of the
15 blood-thirstiest prosecutors that the State has ever
16 seen and so Donnie prosecuted case in Lexington County
17 for over forty years, he was nicknamed Dr. Death, he
18 had prosecuted over forty death penalty trials, got the
19 death penalty thirty-nine times, so in those he had to
20 cry twice. He even was in a report of America's five
21 deadliest prosecutors, and his whole deal was to use all
22 this emotion. He did the Northcutt case where he came
23 in and bent the baby in half and talked about how it
24 would be open season on babies in Lexington County if
25 they let this man go and he didn't get the death penalty

1 -- well, not if they let him go, but if he didn't get
2 the death penalty. In that case, he brought a shroud on
3 the child's crib and even the sheet from his own child
4 who had passed away.

5 So my point with that is he loved emotional cases,
6 he loved getting cases that were -- where children were
7 targeted. That was kind of his thing. And so for him to
8 decide not to prosecute a case where a child was taken
9 from her bedroom in the middle of night is significant.
10 Judge McMahon, Knox McMahon at the time, was a prosecutor
11 in the same office. He had been with the sheriff's
12 department as their legal advisor in the early eighties.
13 He had come to the Eleventh Circuit as a solicitor by
14 1983. By '86 when this all came around he was a Deputy
15 Solicitor. He prosecuted twenty-five murders, he won
16 awards for prosecution, he had a reputation for being
17 aggressive. When he became a circuit court judge in
18 2006, he was known as a very heavy-handed sentencer, he
19 made his disdain for crimes against children clear to
20 everybody. He talked about stealing children's innocence.
21 He hated crimes against kids. He -- and the juries at
22 the time -- Lexington juries are still known as being
23 extremely conservative and prosecution friendly, but
24 even more so back then in eighties and 1986. So for
25 Donnie Myers and Knox McMahon not to have prosecuted

1 this case was significant. That was a decision that
2 they made and there's evidence of that. It wasn't an
3 oversight, it wasn't an accident at all. It was a
4 conscious decision not to bring the case to trial.

5 And so the first thing I have -- and if you'll
6 indulge me, I've got to go through a lot of documents.

7 THE COURT: No. Go ahead.

8 MR. MAULDIN: But what I have is a report from
9 SLED. This is the agent on the case. There were two
10 main agents on the case. There was Detective Bartlett
11 from Lexington County that you've heard about and then
12 also an Agent Jacobs from SLED. She was the primary SLED
13 agent. So in this one they're talking about how they'd
14 gone and talked to this attorney and they met Mr. McDowell
15 and they talked to him and at the bottom of their report
16 on that is that the same day that -- so the same day they
17 met with Assistant Solicitor Knox McMahon, with the other
18 officers. During that Solicitor Myers was advised of the
19 situation and at 7:00 that night the agents were informed
20 by the Solicitor that the agents could not go back to
21 North Carolina. They were telling them not to go back
22 and investigate.

23 Then we have notes. These are -- I believe they're
24 Bob Bartlett's notes and they reflect a conversation on
25 July 15th of '87 that included Knox McMahon. This is

1 further discussion of the case and this is their discussion
2 with, as you can see, Mike Fowler, the snitch. This is a
3 report that is -- this page is not dated, but it follows
4 this in the discovery, so I think that this is related
5 to the same thing, and this is Agent Jacobs from SLED's
6 report where she talks about how they met with Solicitor
7 McMahon about getting an arrest report. Then she does
8 a progress report on December 15th of '87, this is the
9 second page of that, waiting for a reply from Solicitor's
10 Myers's office. She does another report. This one is
11 in June of '86 -- excuse me, '88. The second page,
12 agent is waiting for reply from Solicitor Myers -- from
13 Solicitor's office in Lexington. We go through to
14 November 7th of '88. She's been advised by Solicitor
15 Myers of Lexington County that the suspect could not be
16 charged at this time until additional information is
17 secured. This agent is considering the case closed.
18 This is from 1989. Until we get additional information,
19 considering the case closed. Then in 1994, this is
20 Officer Bartlett -- Detective Bartlett's report, and at
21 this point other agencies like Missing Children and some
22 alert organizations have gotten wind of the case and
23 they're all involved with it and they're trying to
24 develop leads and like push prosecution, and so these
25 officers meet with -- with folks from one of these

1 organizations and the officers related that they believe
2 sufficient evidence to charge known suspect in this case
3 and found nothing that had not been accomplished to
4 resolve the case, so that is the officers saying that
5 they are done. This is from the missing children people
6 and they talk about how all information has been presented
7 to the county Solicitor who has refused to indict this
8 individual, no explanation has been given and that they
9 thought the sheriff's department displayed genuine
10 willingness to accept meaningful investigative assistance
11 and so they recommended some further steps.

12 So my point with all of this is that again and
13 again and again the solicitors are involved with this.
14 At no time did anybody from the sheriff's department ever
15 go to get a warrant for Mr. McDowell. At no time did
16 anybody from the Solicitor's office ever present this
17 case to the grand jury. There was zero attempt to
18 prosecute the case.

19 Now --

20 THE COURT: But this case isn't with Lexington
21 County, it's with the Attorney General's office. When
22 did it go over there?

23 MS. MAULDIN: It is now, Your Honor, but that
24 happened, I believe, back in 2021.

25 Am I right?

1 MS. ABEE: Your Honor, we were first asked to review
2 the case in 2014 and then we were involved in the FBI
3 deployment in 2021, which is when the charging decision
4 was made.

5 MS. MAULDIN: My point is that nobody ever went to
6 a judge and tried to initiate any sort of prosecution at
7 any point and we had a preliminary hearing on this a
8 couple of years ago after Mr. McDowell was arrested and
9 Officer Pritchard, who's here at the prosecution table,
10 testified that at one point he'd even gone to a magistrate,
11 Judge Whittle, and told him about the case and Judge
12 Whittle told him that he' give him a warrant and yet the
13 sheriff's department never sought a warrant on the case.
14 They never -- never moved on it.

15 So this was a conscious decision not to prosecute
16 the case and so --

17 THE COURT: Yeah, but that's Lexington County. It
18 looks like the AG's office decided there was something
19 there and picked it up.

20 MS. MAULDIN: Your Honor, this is the State. The
21 State is the State, the Eleventh Circuit, the Attorney
22 General Office. The State is the State. You know, this
23 is -- the fact that it's a different prosecution agency
24 I don't think is relevant to the analysis here. It's the
25 State versus Thomas McDowell.

1 And so the next thing that I believe the Court has
2 to consider is the actual prejudice that -- that we face.
3 The first and most significant thing is that the incident
4 location is gone. The mobile home that the family lived
5 in is not there anymore. The -- one of the critical
6 questions in the case is how the person got in and the
7 evidence against my client is primarily his fingerprint
8 on the window of this mobile home. So that mobile home
9 is gone. The police apparently have not been able to
10 find it. We found something that we thought could be it,
11 but it's been extremely modified so that the windows are
12 changed. Our investigator went out and looked at this
13 one. The windows are changed, it's got this huge addition
14 on the front of it, you know, so, number one, we can't
15 even confirm that this is it. Number 2, if it is, it's
16 been modified. The window is so significant that the FBI
17 has done this special animation thing to show how somebody
18 could have got into the window. We don't know how big it
19 was. They've looked at it. The window of this mobile
20 home is not like an ordinary window that slides up and
21 down. It's a window with like three different slats and
22 so they each open up and so there's a question about
23 whether somebody could have fit in through there, we
24 don't know the size of that opening, and so there's no
25 way to go back and look at it and let's see if that's

1 right. We don't have a way to measure it. When the
2 police went to the scene, they took a picture of the
3 window, but nobody put down a tape measurer and
4 photographed or anything like that, so we don't know
5 the size of this window, so the FBI has tried to say
6 well, windows of mobile homes around that time were,
7 you know, the most common size was this, the second
8 most common was this, but we don't know the size of that
9 window. We don't know if there were any other unique
10 features of that window that make that particular window
11 open differently or whatever or the size of the opening,
12 so that's put us at a tremendous disadvantage.

13 The other thing, and we've gone around this with
14 other motions, but the lead investigator on the case is
15 dead, and Bob Bartlett was with the sheriff's department
16 for years. He passed away in 2019. I've included this,
17 but there's -- there's an obituary that shows when he
18 passed.

19 But this case is unusual for us today because back
20 then he wrote all of the reports about everything that
21 was going on in the case and so today we might have ten
22 officers on a case and each one of them writes a report.
23 In this case, Bob Bartlett wrote the case and he's the
24 one that -- that added the different things and told
25 about what they did. These are not different officers,

1 so he was the case, and so I brought some of the things
2 from his reports that I think are significant. They
3 included his take on witnesses, talking about Gordon
4 appearing to be nervous, having glassy eyes and being
5 unconcerned about the victim, saying that he had gotten
6 up when the woman called him, where he discussed there
7 relationship. That -- talking about how he had, you know,
8 tried to get her to sleep with him and she wouldn't do
9 it, and these are things that we don't have any way to
10 impeach him if he were to testify because we can't call
11 Investigator Bartlett to talk about what he said to him.
12 How he'd ask questions about how the person got in and did
13 they find anything. This one was about Ms. Gutierrez's
14 husband and how he had said that he would come like a thief
15 in the night and steal the children, and the statement
16 that Becky made to the police about this being a black
17 man wearing a magic hat, that was made in the presence of
18 Investigator Bartlett. That she had -- that Debbie had
19 taken two sleeping pills or some sort of pill that made
20 her sleep and the fact about the dog, she didn't hear
21 the dog. The information about finding the diaper at
22 Gordon's house, that's not collected as evidence. We
23 have no other record of this other than Bartlett's
24 mention of it. That J.R. -- another witness that they
25 had talked to that J.R. said he was a drunk or that

1 Wayne said J.R. was a drunk and that Debbie was a lose
2 woman. This is the thing about sleeping with his dad
3 and his brother. That when the police came back to talk
4 to him, he -- Gordon starts talking about how he wants
5 to go to a beer party. A full on description about the
6 relationship, including how jealous he was and how he was
7 suspicious that she was sleeping with other men. He was
8 in love with her, felt like she was having other men over,
9 so this addresses the jealousy he had.

10 Let's see. I think this is a repeat of the other
11 ones, but the sleeping with his brother and dad. And then
12 this came up in the other motion as well when he's coming
13 back from the polygraph he makes these statements in the
14 car to Bartlett, this is Gordon, and admits that he's got
15 a drinking and alcohol problem -- a drinking and dope
16 problem, and says that when he's intoxicated or doped he
17 develops another personality, he became violent, not only
18 physically but verbally as well, and that he admitted that
19 he couldn't remember anything of the incident night. And
20 there's the part about how he had this picture of the girl
21 and her family and he threw it away because he wanted to
22 forget about her and then the thing that I focussed on so
23 much before about -- that Gordon said -- Gordon indicated
24 that the possibility existed that he was involved with
25 the abduction. So, you know, it sounds like a confession

1 from him.

2 So those are all -- we don't have any access to any
3 impeachment evidence with Bartlett for any of those things
4 if anyone is to deny that.

5 Another key witness has also passed away and this
6 is Shirley McDowell. That's Mr. McDowell's mother. She
7 passed away in 1997. And so the significance to her,
8 first of all, she was the one who was the registered owner
9 of the car that you've heard about, that Elite, but she
10 also lived with Mr. McDowell at the time. He was driving
11 up to York County with his father and sister each day for
12 work and his mom lived there and was home with him and so
13 she would be able to testify about his daily activities,
14 possibly even, you know, that day in particular. You
15 know, she could potentially even be an alibi witness for
16 him. We don't know because we can't talk to her. He
17 also had the practice of driving her home from work. She
18 worked at a grocery store back then. The grocery store
19 was Young's Grocery. It's gone. We have no way of trying
20 to get any kind of employment records or anything from
21 them, and so that is a problem for us, too.

22 Blood was found in the car. It's possible that his
23 mother had some sort of explanation for that. We can't
24 get into that. There were phone records that we looked
25 into back then. Interestingly enough they started like

1 June 6th, I believe. I don't think they got anything
2 before that that might have been actually relevant and
3 probably memories aren't a hundred percent with thirty-six
4 years having passed. You know, this is something that in
5 a case where nobody in law enforcement bothered to get any
6 kind of written or recorded statements from witnesses it
7 is very difficult now for people to testify about what
8 they remembered then and some have been interviewed in
9 the meantime, but all much more recently than this case
10 happened. So that -- even, you know, just being able to
11 interview people puts us at a huge disadvantage.

12 I don't think there were any statements prepared in
13 the case at all until after 2006 when Detective Pritchard
14 first got involved with it, but nothing in writing or
15 recorded before that.

16 The witnesses are from the same area. They've had
17 time to talk to each other. These are people that are all
18 connected by blood and marriage, sometimes both, and so
19 they've -- they've had all this time to kind of get their
20 stories straight. So I guess my point is that, you know,
21 that kind of enough is enough with that.

22 The other important issue is that Mr. McDowell has
23 not had assistance of counsel all this time. He is
24 indigent and our office has been appointed to represent
25 him. This is not a situation where he could have hired

1 an attorney when they first came to the jail in North
2 Carolina to talk to him, that he could have hired somebody
3 to defend him on this case because nothing was pending
4 and he didn't -- he didn't have the ability to request
5 that or, you know, be entitled to assistance on that. So
6 he has not had anybody that could take steps to collect
7 evidence or record anything at all.

8 The other thing that's significant is that the police
9 have known where he is while he's been incarcerated,
10 they've been able to find him. When they've gone looking
11 for him, they have found him right away, so this is not
12 any sort of delay that's any fault of his. This is
13 squarely on the State making the decision not to prosecute
14 Mr. McDowell.

15 And, you know, Judge, I'll close with this. He
16 doesn't have -- you know, he has difficulty with his own
17 memory. There have been a number of things that I've
18 asked him about that he can't remember. He can't remember
19 people that might be helpful. He doesn't know where
20 anybody lives. He hasn't even lived in South Carolina
21 since 1986, so -- and he doesn't have the kind of personal
22 effects that people normally would have close to the
23 incident. He didn't have a cell phone back then, but,
24 you know, no receipts or work records or anything like
25 that that he could go back and look at.

1 And lastly, Your Honor, I've got to comment on this.
2 The decision to prosecute now, I understand the sheriff's
3 department feels strongly about this family and they want
4 to help them, but I've got to point out, too, it's an
5 election year and in their annual report there -- on the
6 first few payments, major events, this case. They've
7 made press releases. I'll included these in the Court's
8 exhibit. They've made press releases, they've made a
9 video. They have spoon-fed this to the media. I mean,
10 this is -- I'm not saying that's the only reason they're
11 prosecuting now, but this is -- you know, this is a
12 consideration.

13 So I'm asking Your Honor to take everything into
14 consideration. This is -- to go forward with this case
15 with this delay is just -- it really impairs Mr. McDowell's
16 constitutional rights and it just -- it prevents us from
17 being able to investigate or defend him in a meaningful
18 way and so I'm asking you to dismiss the case and pursuant
19 to the due process clause of the Fifth Amendment and
20 Article 1, Section 3 of the South Carolina Constitution.

21 THE COURT: Thank you, Ms. Mauldin.

22 Ms. Abee.

23 MS. ABEE: Thank you. Your Honor.

24 The United States Supreme Court has actually
25 developed a two-prong inquiry when trying to determine

1 whether a pre-indictment delay is prejudicial and deserves
2 or causes a trial to be dismissed, so that's applied
3 Throughout the Fourth circuit, and then to South Carolina
4 courts in State v. Brazell, Your Honor, and also State v.
5 Lee, which counsel referenced.

6 So it's a two-prong test. First what has to happen
7 is the defendant has the burden of proving that the
8 pre-indictment delay caused substantial actual prejudice
9 to his right to a fair trial. Your Honor, and these
10 cases go through and explain just exactly what that means,
11 and what that means is that he was meaningfully impaired
12 in his ability to defend against the State's charges
13 to such a extent that the disposition of the criminal
14 proceeding was likely affected, right? Your Honor, this
15 means that this prejudice has to be extremely substantial,
16 that it's got to impair his ability to be able to defend
17 his case. And most importantly what it talks about is
18 that this type of information has to be stated with
19 specificity so it's up for the defendant to prove
20 the identity of the witnesses he would have call to
21 demonstrate with specificity the expected content about
22 witnesses' testimony to establish that he made serious
23 attempts to locate the witness and finally to show that
24 the information the witness would have provided was not
25 available by other sources, and I think that's what's

1 really important in this case, Your Honor, is we've got
2 to look at with specificity what it is that they're
3 saying they don't have the opportunity to present.

4 Ms. Mauldin went through a couple of things, Your
5 Honor. She talked about how the incident location itself,
6 the trailer, is no longer there, but what she has to show
7 and what she has the burden of proving in this case is
8 that that evidence isn't obtainable through other means.
9 She referenced the FBI witnesses that we have. Your
10 Honor, there are a litany of people that -- who focussed
11 their entire job on determining the size of things based
12 off photographs, right, and that's what was done here.
13 So the fact that no one was out at the scene that day
14 with a tape measurer measuring, doesn't mean that we
15 can't determine based on mathematics and geometry and the
16 pictures that were obtained in this case the size of that
17 window, and that's the window in question, so that's
18 something that they fail to show isn't obtainable by other
19 means.

20 Your Honor, they referenced J.R. Gordon. Mr. Gordon
21 is still alive. They reference the ex-husband of Debra
22 Gutierrez. He is still alive, Your Honor, was interviewed
23 in 2021, is coincidentally not on a witness list, right,
24 Your Honor, so we don't have the -- or they have failed
25 to show that he's gonna actually have something to testify

1 to that's substantial, right, and they talk about the
2 potential impeachment evidence of him, but he's not on the
3 witness with list in the first place, so that impeachment
4 evidence isn't something that they actually it appears
5 intend to use in this particular case.

6 Your Honor, they talked about Shirley McDowell,
7 the mother of the defendant and how she is deceased,
8 Your Honor, but they can't just say she's deceased.
9 Specifically in this case what it requires is that they
10 state with specificity what it is that she would actually
11 testify to, not just the fact that maybe she would say
12 that she bled in that car that was hers, right, that's
13 not good enough. That doesn't meet the burden that they
14 have to prove here because what they have to show is with
15 that specificity what it is that she actually would have
16 testified to, and they've failed to do that here, Your
17 Honor.

18 And next, Your Honor -- and, again, we talked about
19 the blood evidence in the car. So, Your Honor, we contend
20 that they have failed to meet the first prong of the test
21 that's applied through Brazell and that's specifically,
22 again, that they have the burden of proving that the
23 pre-indictment delay caused substantial actual prejudice
24 to his right to a fair trial and that that evidence can't
25 be obtained throughout other means.

1 Your Honor, if they fail to meet prong number one,
2 we don't even move onto prong number two, however, if
3 you do find that they were able to show that there was
4 substantial actual prejudice that they weren't able to
5 obtain through other means, they then have to show -- or
6 the Court must consider the prosecution's reasons for
7 the delay and balance the justification for delay of any
8 prejudice versus that of the defendant.

9 Your Honor, you've heard that our office became
10 involved in 2014 and was involved with the FBI in 2021
11 as they did what they called a deployment on this case.
12 Your Honor, that deployment itself consisted of over a
13 hundred different interviews that were conducted of
14 various witnesses, some that had previously been spoken
15 to, some that had not been previously spoken to.

16 Also throughout that deployment we were able to
17 obtain buccal swabs of the defendant. That had never
18 previously been done. Your Honor, that buccal swab was
19 used to compare the DNA on the cigarettes, the Vantage
20 cigarettes, found in the car of Shirley McDowell, which
21 showed that the defendant did, in fact, smoke a Vantage
22 cigarette at least at one point in time and, again, that's
23 the cigarette that's found there at the scene. So that
24 buccal swab wasn't obtained until 2021.

25 Again, we were able to work with FBI's operations

1 project unit to develop and determine the size of that
2 window and whether or not somebody the size of Tommy
3 McDowell would be able to enter that, Your Honor. That's
4 the point of entry that we determined and the fingerprint
5 of Mr. McDowell was on that window. So being able to
6 determine all of that was extremely important, Your Honor.
7 And, of course, there's several other things that were
8 developed throughout the course and while none of them are
9 the nail in the coffin for Mr. McDowell, they certainly
10 add up to determining that not only probable cause, but
11 reasonable doubt could be met in this case. And United
12 State versus Lobosco, Your Honor, specifically talks about
13 that, about how the standard for probable cause in law
14 enforcement and the standard to go forward once the State
15 believes they have reasonable doubt are two different
16 things that shouldn't be rushed, Your Honor, and so based
17 on that case law and what you've heard here, Your Honor,
18 we would ask for you to deny defendant's motion to
19 dismiss.

20 MS. MAUDLIN: Your Honor, thirty-six years. I mean,
21 you know, the case seems like something out of Kafka. I
22 mean, I can't impeach any witnesses. Without Officer
23 Bartlett there's no point in serving a subpoena or
24 putting somebody on the witness list that I know I can't
25 impeach. In terms of the father, there's no way I give

1 with specificity the testimony of a dead woman that I've
2 never had an opportunity to find out what her testimony
3 would be, but we know that she was relevant, she would
4 have been a critical witness because she was right then
5 and there. She would have had testimony either bad or
6 good. We don't have the opportunity to investigate her.

7 What you heard has happened recently on the case.
8 Yes, they went out and talked to everybody. They did all
9 kinds of interviews, but you have not heard any significant
10 new information. Yes, they established that his DNA was
11 on the cigarettes in the car that he drove. They knew he
12 drove that car back then.

13 The Attorney General and I talked on the phone not
14 long before the trial and she admitted then there's no
15 significant new information. And this thing about the
16 window, that all comes down to an estimate. I think
17 that's a very significant thing about whether somebody
18 could have gone into this particular window. The
19 estimation that the FBI did is exactly that. They
20 looked at pictures and they estimated based on the size
21 of windows in similar mobile homes, the most common and
22 the second most common, not any specificity as to this
23 particular one that we have a question about, so that's
24 -- I think that's a huge piece of evidence that we just
25 -- it's gone to us.

1 THE COURT: Anything else from the State?

2 MS. ABEE: No, Your Honor.

3 MS. MAULDIN: Your Honor, may I make these a Court's
4 exhibit?

5 THE COURT: You may.

6 (Court's Exhibit Number 6 was marked for
7 identification.)

8 THE COURT: Well, Ms. Mauldin, I would certainly
9 agree thirty-five years is an awfully long time, but
10 they're cold cases and that's what happens I'm sad to
11 say for everybody. But I'm trying to figure out exactly
12 what his -- the prejudice is to the defendant. I mean,
13 he was interviewed immediately afterwards. You tell me
14 the incident location is gone, but, you know, what's a
15 reasonable amount of time to pass by from 1986? You know,
16 he's in another state on another charge. It's not like
17 we could bring him down here and appoint him a lawyer.

18 How long was he up there, Ms. Abee?

19 MS. ABEE: Your Honor, he was convicted up there and
20 was sentenced in prison until I believe the mid nineties.

21 MS. MAULDIN: Judge, I think that the North Carolina
22 Department of Corrections paroled him earlier to South
23 Carolina to come and face the other burglary that he
24 had, so they worked with South Carolina to help him be
25 prosecuted for that and he came down here on that sentence.

1 THE COURT: I mean -- but my point being is that at
2 that time this incident location was long gone anyway. So
3 I'm trying to figure out what the prejudice is. I know
4 that you're telling me that the lead agent has since
5 passed away, but we've got other agents here that worked
6 the case. I saw one agent who's retired and he was the
7 lead agent on the case. I mean, I'm just trying to figure
8 out what exactly is the prejudice to your client. You
9 know, there's no time limit on crime and sometimes -- and
10 it looks and appears to me that the DNA, I don't know how
11 big DNA was back in 1986, but I don't think it was. I
12 started practicing law in the nineties and nobody was
13 messing with DNA then. But, you know, they go back, they
14 get DNA. I mean, they sit on it is what they did trying
15 to figure out what to do with Mr. McDowell is what it
16 sounds like to me. They gathered up their evidence,
17 they've got a fingerprint. Later on they come back,
18 probably not moving as fast as everybody would like them
19 to move, but, you know, I hate to say it sometimes justice
20 -- the justice system is slow, and I hate it. But, you
21 know, they come back. They do the buccal swabs. They're
22 trying to get DNA. They realize, you know, the windows.
23 You know, it's a prejudice to them, too, that the scene
24 is gone. They can't go out and pick up the windows, so
25 they tried to recreate it. I'm assuming that's what

1 they're -- they've told me. But if I look at it, I think
2 it is your burden to prove that your client's prejudiced.

3 And I understand your timeline, I do, and I
4 sympathize with Mr. McDowell. You know, nobody wants
5 to wait thirty-five years, but I also sympathize with
6 the victim's family for having to wait thirty-five years.
7 It's not good for either side. It's just not. But I'm
8 -- this case is gonna go forward.

9 All right. Anything else?

10 MS. ABEE: Your Honor, we still just have the
11 Jackson v. Denno and the Biggers hearing and then we
12 would like to put the plea offer and rejection on the
13 record at the end.

14 THE COURT: Okay. Do I have any other motions from
15 you, Ms. Mauldin?

16 MS. MAULDIN: Your Honor, I think that's it.

17 THE COURT: Okay. I did see a motion to sequester.
18 Is there a motion?

19 MS. MAULDIN: Yes, Your Honor. We would make that
20 motion.

21 THE COURT: Okay. I usually allow the case agent to
22 stay in, the evidence custodian.

23 Do you want to be heard on --

24 MS. ABEE: Your Honor, we're fine with that.

25 We would just also in order to comply with the

1 victims bill of right ask that -- even though the mother
2 of the victim and the sister of the victim are listed
3 on the witness list, that they be allowed to stay in
4 throughout the duration of the trial as well.

5 THE COURT: Any objection?

6 MS. MAULDIN: Your Honor, I guess out of an
7 abundance of caution for the record the home belonged
8 to Mrs. Gutierrez, so that would be -- she would be the
9 victim of that. I don't know that Rebecca Gutierrez is
10 technically a victim. I certainly understand why they
11 would be asking, but for purposes of the record we'd ask
12 to exclude Rebecca.

13 THE COURT: All right. Now is -- could somebody
14 please tell me who Rebecca is?

15 MS. ABEE: Yes, Your Honor. Rebecca is the sister
16 of the deceased, of Jessica Gutierrez. She is a witness
17 in this case. She would be the individual that was in
18 the bed that we're gonna -- who's gonna testify here
19 regarding the photo lineup. But she is the sister of
20 the deceased, a family member. Immediate family member.

21 THE COURT: I understand your objection, Ms. Mauldin,
22 but I'm gonna let the mother and the daughter stay.
23 Everybody else who's a witness other than the case agent,
24 the lead agent in this case.

25 MS. ABEE: Designated as Sergeant Pritchard, Your

1 Honor.

2 THE COURT: Okay. He's gonna stay with us and the
3 custodian of the evidence can stay.

4 MS. ABEE: Yes, Your Honor.

5 THE COURT: Okay. So when it comes time tomorrow
6 morning, please make sure both of you-all to turn around
7 and I'll remind you to make sure that you don't have any
8 witnesses in here.

9 MS. ABEE: And, Your Honor, for the purposes of the
10 Jackson v. Denno and the Biggers hearing, would you like
11 them out of the courtroom for that questioning as well?

12 THE COURT: I would.

13 MS. MAULDIN: Your Honor, may we approach?

14 THE COURT: Yes.

15 (Proceedings held at the bench; not reported.)

16 THE COURT: We're gonna be in recess about
17 five minutes. I'll be right back.

18 (Recess taken at 4:01 PM.)

19 (Back on the record at 4:17 PM.)

20 BAILIFF: Keep your seats. Court come to order.

21 THE COURT: All right. On my break I did go back I
22 want you to know, Ms. Mauldin, just read the -- reread
23 the Lee case and I just want to clarify my ruling on the
24 motion to dismiss for the record.

25 I've read the case. The law states that upon a

1 defendant's claim that pre-indictment delay violated due
2 process, the defendant must prove that the delay caused
3 substantial actual prejudice to his right to a fair trial.
4 The Court must then consider the reason for the State's
5 delay and balance the justification for the delay against
6 the prejudice to the defendant. The defendant must show
7 that he was meaningfully impaired in his ability to defend
8 against the State's charges to such an extent that the
9 disposition of the criminal proceeding was likely affected.
10 I've listened to arguments from both sides, but we've lost
11 the lead investigator in this case. Also the defendant's
12 mother has passed away, but the lead investigator -- we
13 still have other investigators from that time period who
14 are willing and are prepared to testify.

15 There was also the newly discovered evidence of DNA.

16 There was a North Carolina charge that also delayed
17 this case. This Court doesn't believe that the defense has
18 not proven that the criminal -- that the disposition of
19 the criminal proceeding was likely affected by the delay,
20 therefore, I'm denying the motion to dismiss.

21 I just wanted to clarify that for the record so there
22 wasn't any questions.

23 All right. Let's -- which motion would you like to
24 do first, the Biggers hearing or the Jackson v. Denno?

25 MS. ABEE: And, Your Honor, it actually has the same

1 witness for it. So if you'd like, I can call --

2 THE COURT: We'll do both at one time.

3 MS. ABEE: Yes, Your Honor. If that's okay with you.

4 THE COURT: Ms. Abee, call your witness.

5 MS. ABEE: Your Honor, the State calls Sergeant David
6 Pritchard to the stand.

7 (Whereupon, David Pritchard was duly sworn by the
8 Clerk of Court.)

9 THE CLERK: If you'll have a seat on the stand. If
10 you'll state your name and spell your last name for the
11 record.

12 THE DEFENDANT: David Pritchard. P-R-I-T-C-H-A-R-D.

13 MS. ABEE: May it please the Court, Your Honor?

14 THE COURT: Yes, ma'am.

15 DAVID PRITCHARD,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION (In-Camera)

18 BY MS. ABEE:

19 Q. And, if you could, tell us where you're currently
20 employed.

21 A. Lexington County Sheriff's Department.

22 Q. And how long have you been in law enforcement?

23 A. Going on twenty-seven years.

24 Q. And how many of those twenty-seven years have you
25 spent with the Lexington County Sheriff's Department?

1 A. All twenty-seven.

2 Q. Were you working there in 2006?

3 A. Yes, ma'am.

4 Q. Okay. Now this case involved the disappearance of
5 Jessica Gutierrez that took place in June of 1986. Were
6 you working there in 1986?

7 A. No, ma'am.

8 Q. And, if you could, tell us how you got involved in
9 this case and when.

10 A. In 2006, in June of 2006, when I got the case I was
11 currently assigned to our investigative division as a
12 detective and it was the twenty year anniversary of the
13 case and I was asked to -- to review the case to see if
14 there was anything else that could be done with it.

15 Q. And did you have an opportunity to review the full
16 case?

17 A. Yes, ma'am.

18 Q. And I know that there's a lot that you were involved
19 with, but for the purposes of this hearing I want to talk
20 specifically about a photo lineup and a statement of the
21 defendant.

22 At any point in time did you present somebody with a
23 photo lineup in this case?

24 A. Yes, ma'am.

25 Q. Okay. Who did you present a photo lineup to?

1 A. Rebecca Gutierrez.

2 Q. And do you recall approximately when you presented
3 that photo lineup to Rebecca Gutierrez?

4 A. That would have been December of 2007.

5 Q. And, if you could, tell us why you were you presenting
6 photo lineup to Rebecca?

7 A. We had interviewed Rebecca and during the course of
8 that interview it was determined that she was not very
9 familiar with Thomas McDowell and she said she had not seen
10 him, so we decided that we would present her with a photo
11 lineup.

12 Q. Now had you received information prior to this that
13 she was an eyewitness in this case?

14 A. She said she was. Yes, ma'am.

15 Q. You had an opportunity to fully interview her prior to
16 presenting this photo lineup?

17 A. Yes, ma'am.

18 Q. And in your conversation with Ms. Gutierrez, was she
19 able to describe to you what the person looked like?

20 A. Yes, ma'am.

21 Q. And did it appear as if she had a substantial
22 opportunity to see the person that she saw take her sister?

23 A. Yes, ma'am.

24 Q. And did you believe in your conversations with
25 Ms. Gutierrez prior to presenting her this lineup that that

1 identification had been tainted in any way?

2 A. No, ma'am.

3 Q. At this point in time who was developed as a suspect
4 for this photo lineup?

5 A. Thomas McDowell.

6 Q. And talk to us about how you go about compiling a
7 photo lineup.

8 A. We had a form that we filled out and on that form we
9 would put the individual's name, their date of birth,
10 Social Security number and any other information that we
11 had on them. That form would then get submitted to our
12 intel division at which time they would create a photo
13 lineup.

14 Q. Now you told us that you presented this photo lineup
15 in December of 2007, but this crime took place in June of
16 1986. Did that impact the pictures that you pulled at all?

17 A. Yes, ma'am. When I submitted the form to our intel
18 division, I asked them to try to find a photo of Thomas
19 McDowell as close as they could to the timeframe of the
20 incident.

21 Q. And why did you do that?

22 A. Just to try to get as close as I could to what he
23 would have looked like at the time.

24 Q. Did you receive a photo lineup?

25 A. Yes, ma'am.

1 MS. ABEE: Your Honor, I'm approaching the witness
2 with what's been premarked as Court's Exhibit 1. I'm
3 showing opposing counsel the same.

4 MS. MAULDIN: Without objection, Your Honor.

5 THE COURT: Okay. Are we marking this as a Court's
6 exhibit?

7 MS. ABEE: Court's Exhibit Number 1, Your Honor.

8 THE COURT: Thank you.

9 BY MS. ABEE:

10 Q. Sergeant Pritchard, I'm handing you what's been
11 premarked as Court's Exhibit Number 1.

12 A. Yes, ma'am.

13 Q. Do you recognize that?

14 A. Yes, ma'am.

15 Q. And is that a copy of the photo lineup that you just
16 referenced?

17 A. Yes, ma'am.

18 Q. And is that the one you received in this case?

19 A. Yes, ma'am.

20 MS. ABEE: Your Honor, for purposes of this hearing,
21 the State moves Court's Exhibit Number 1 into evidence.

22 THE COURT: It's admitted without objection.

23 (Court's Exhibit Number 1, a photo lineup, was
24 admitted into evidence for pre-trial purposes.)

25 BY MS. ABEE:

1 Q. And is that the photo lineup that you presented to
2 Rebecca Gutierrez?

3 A. This is not the actual one. No, ma'am.

4 Q. Is that a copy of the actual one?

5 A. Yes, ma'am.

6 Q. And, if you could, walk us through your process of
7 presenting a photo lineup to someone.

8 A. Once we have obtained a photo lineup, before
9 presenting it I get with the individual and explain to them
10 exactly what a photo lineup is, and then once I feel like
11 they've got a good understanding I ask them if they would
12 they be willing to look at a photo lineup. As long as they
13 agree to that, then I explain to them what I need them to
14 do, which is look at each one of the pictures individually
15 and give ample time to each one before making a decision,
16 and once they say they understand basically the
17 instructions, then I present to them the photo lineup.

18 Q. Now prior to December the 3rd of 2007, had you
19 presented photo lineups before?

20 A. Yes, ma'am.

21 Q. And is this generally your practice in presenting
22 photo lineups?

23 A. Yes, ma'am.

24 Q. Now once you presented Ms. Gutierrez with that photo
25 line up, tell us what you do as she's reviewing the photo?

1 A. Once I present it to her, I say nothing. I just kind
2 of step back and I give the individual the time that they
3 need to -- to go through the photo lineup.

4 Q. Okay. At any point in time while they're reviewing
5 that photo lineup do you make any verbal sounds?

6 A. No, ma'am.

7 Q. Do you give any physical cues as to who they should
8 select?

9 A. No, ma'am.

10 Q. Prior to present Ms. Gutierrez with this photo lineup,
11 did you mention to her that Tommy McDowell's picture was,
12 in fact, in this photo lineup?

13 A. No, ma'am.

14 Q. Did you mention to her at all what Tommy McDowell
15 looked like?

16 A. No, ma'am.

17 Q. And in front of you did Ms. Gutierrez select the
18 person that she identified as being the perpetrator that
19 night?

20 A. Yes, ma'am.

21 MS. ABEE: I'm gonna approach what's been marked as
22 State's Exhibit Number 2 and I'm showing opposing counsel
23 this as well, Your Honor.

24 MS. MAULDIN: Without objection, Your Honor.

25 THE COURT: Okay.

1 BY MS. ABEE:

2 Q. Sergeant Pritchard, is that a copy of the photo lineup
3 that Ms. Gutierrez identified?

4 A. Yes, ma'am.

5 MS. ABEE: And, Your Honor, move Court's Exhibit 2
6 in for the purposes of this hearing.

7 THE COURT: Without objection.

8 (Court's Exhibit Number 2, a photo lineup, was
9 admitted into evidence for pre-trial purposes.)

10 MS. ABEE: And, Your Honor, permission to publish up
11 on the screen while Sergeant Pritchard's here.

12 THE COURT: Please. Go ahead.

13 BY MS. ABEE:

14 Q. Sergeant Pritchard, I'm putting Court's Exhibit Number
15 2 up here on the display. Is this a copy of that photo
16 lineup that you showed Rebecca Gutierrez?

17 A. Yes, ma'am.

18 Q. Okay. And we see Number 3 circled here. Why was
19 Number 3 circled?

20 A. When we present a photo lineup, we ask the individual
21 to look at each picture and if they see the individual in
22 there in question to circle that number.

23 Q. Okay. And is that the number that you saw Rebecca
24 Gutierrez circle?

25 A. Yes, ma'am.

1 Q. And explain to us what is this RG beside the Number 3.

2 A. That would be her initials.

3 Q. Are those the initials you saw her place?

4 A. Yes, ma'am.

5 Q. Okay. And why are her initials there?

6 A. We have them that they're the ones that picked out
7 that individual and circled the number.

8 Q. And then down here at the bottom, is this your
9 signature?

10 A. Yes, ma'am.

11 Q. And why do you sign the photo lineup?

12 A. As the investigator.

13 Q. Now in looking at these photos, if any of these photos
14 would have stuck out as not looking similar to the others,
15 what would you have done?

16 A. Rejected it.

17 Q. Okay. And were any of these individuals substantially
18 different than that of Number 3, Tommy McDowell, in your
19 opinion?

20 A. No, ma'am.

21 Q. And throughout the time that you were presenting
22 this photo lineup, in any way did you influence Rebecca
23 Gutierrez in who she should pick?

24 A. No, ma'am.

25 Q. What would you have done if she told you that she

1 didn't recognize anyone in this photo lineup?

2 A. Well, I would have removed the photo lineup and then
3 just proceeded on with the investigation.

4 Q. But did that happen?

5 A. No, ma'am.

6 Q. After conducting this photo lineup, did you ultimately
7 have an opportunity to speak to Tommy McDowell?

8 A. Yes, ma'am.

9 Q. Okay. Do you recall where you spoke to him at?

10 A. Wake Forest Police Department.

11 Q. Okay. And why did you speak to him up in Wake Forest?

12 A. He was living up in Wake Forest at the time so we
13 travelled up there to make contact with him.

14 Q. And do you remember approximately when you spoke to
15 Mr. McDowell in Wake Forest?

16 A. It was November of 2008.

17 Q. Did anyone go with you?

18 A. Yes, ma'am.

19 Q. Who went with you?

20 A. It would have been Agent Bill Graham with SLED.

21 Q. And did Mr. McDowell -- at this point in time was he
22 able to come in freely and voluntarily?

23 A. Yes, ma'am.

24 Q. Okay. Did you put him in a police car or handcuff him
25 in any way to transport him and talk to him?

1 A. No, ma'am.

2 Q. And while you were in the Wake Forest Police
3 Department, did you advise him of his rights under Miranda?

4 A. Yes, ma'am.

5 Q. How did you go about doing that?

6 A. Typically what I do is we have a statement form that
7 we use and on that statement form the Miranda rights are on
8 that and I just review that with him before they give a
9 statement.

10 Q. Now prior to going through the rights under Miranda,
11 do you have an opportunity to observe Tommy McDowell or see
12 what he looked like?

13 A. Yes, ma'am.

14 Q. Did he appear to be coherent?

15 A. Yes, ma'am.

16 Q. Did he appear to be under the influence of anything?

17 A. No, ma'am.

18 Q. Alcohol?

19 A. No, ma'am.

20 Q. Did he appear to be under the influence of drugs?

21 A. No, ma'am.

22 Q. Did it appear that he could read and write and
23 understand the English language?

24 A. Yes, ma'am.

25 Q. Now when you went through these rights with him, do

1 you say them out loud or do you just have them read them?

2 A. I read them to them out loud.

3 Q. Okay. And why do you do that?

4 A. Just to make sure that if they do have a problem
5 reading, then I read it to them.

6 Q. And then after you read someone a particular right,
7 what happens?

8 A. I ask them if they understand the right to initial
9 beside it.

10 Q. Did you see Mr. McDowell do that in this case?

11 A. Yes, ma'am.

12 Q. Okay. At any point in time did you coerce him to sign
13 away those rights?

14 A. No, ma'am.

15 Q. Did you threaten him to sign away those rights?

16 A. No, ma'am.

17 Q. Did you interfere in any way with his independent
18 decision to sign away those rights?

19 A. No, ma'am.

20 Q. Okay. And you said you do all of this on a statement
21 form. I'm gonna approach with what's been marked as
22 Court's Exhibit Number 3 and I'm showing opposing counsel
23 the same.

24 MS. MAULDIN: Without objection, Your Honor.

25 THE COURT: Okay.

1 BY MS. ABEE:

2 Q. And, Sergeant Pritchard, I'm handing you what's been
3 premarked as Court's Exhibit Number 3. Is that a copy of
4 the statement that you received from Mr. McDowell?

5 A. Yes, ma'am.

6 Q. And is that the statement form that you were talking
7 about?

8 A. Yes, ma'am.

9 Q. And other than this being a copy, does this to appear
10 to have been altered or changed in any way?

11 A. No, ma'am.

12 MS. ABEE: Your Honor, for purposes of this hearing
13 the State enters Court's Exhibit Number 3.

14 THE COURT: Admitted without objection.

15 (Court's Exhibit Number 3, Advice of Right/Statement,
16 was admitted into evidence for pre-trial purposes.

17 MS. ABEE: Permission to publish, Your Honor?

18 THE COURT: You may.

19 BY MS. ABEE:

20 Q. Sergeant Pritchard, who fills out this top portion
21 here?

22 A. Generally I do.

23 Q. Okay. And why do you fill that out?

24 A. Honestly so it can be legible to read. Yes, ma'am.

25 Q. And we see that this is taken at the Wake Forest

1 Police Department. Did you -- did that interview room
2 have interview capabilities at that point in time to your
3 knowledge?

4 A. I'm sorry? Did it have --

5 Q. Recording capability.

6 A. Recording. I don't recall any. No, ma'am.

7 Q. Okay. And so to your knowledge does an audio or video
8 recording of this statement exist?

9 A. No, ma'am. It does not.

10 Q. Okay. And did the Lexington County Sheriff's
11 Department have body-worn cameras that you were wearing at
12 that point in time in 2008?

13 A. No, ma'am.

14 Q. Okay. And so to your knowledge no audio or video
15 recording exists of this statement?

16 A. That is correct.

17 Q. It would just be the writing here from Mr. McDowell?

18 A. Yes, ma'am.

19 Q. Okay. And then starting here, whose initials are TM?

20 A. Thomas McDowell.

21 Q. And who did you see write those initials?

22 A. Thomas McDowell.

23 Q. And even though you filled in the top portion of
24 Court's Exhibit Number 3, did you fill in these TM's?

25 A. No, ma'am.

1 Q. And did it appear throughout this entire time that
2 Mr. McDowell understood what his rights were as you were
3 explaining them to him?

4 A. Yes, ma'am.

5 Q. Tell us what would happen if you said that he didn't
6 understand something that you were explaining to him?

7 A. As far as the rights go, if he didn't understand it I
8 would try to maybe explain it in a different way to try to
9 get him to understand and if he couldn't understand it,
10 then obviously we would just have concluded the interview
11 at the time.

12 Q. Now was Mr. McDowell in custody when he wrote this
13 statement?

14 A. No, ma'am.

15 Q. Was he free to drink water?

16 A. Yes, ma'am.

17 Q. Was he free to go to the bathroom?

18 A. Yes, ma'am.

19 Q. And was he free to leave if he wanted to?

20 A. Yes, ma'am.

21 Q. Okay. At any point in time did he ask to leave?

22 A. Not until later on when he was ready to go.

23 Q. At any point in time did he ask to take a break?

24 A. Yes, ma'am.

25 Q. Okay. Did you allow him to take a break?

1 A. Yes, ma'am.

2 Q. And then do you speak to him and then have them write
3 the statement?

4 A. Yes, ma'am.

5 Q. Okay. At any point in time as you were speaking to
6 Thomas McDowell, did you coerce him or threaten him to
7 ultimately write the statement?

8 A. No, ma'am.

9 MS. ABEE: Your Honor, I have no further questions
10 for this witness at this time.

11 THE COURT: Ms. Mauldin.

12 MS. MAULDIN: Thank you, Your Honor.

13 CROSS-EXAMINATION (In-Camera)

14 BY MS. MAULDIN:

15 Q. Good afternoon, Detective Pritchard.

16 A. Good afternoon.

17 Q. When you got ready to show the lineup to Rebecca
18 Gutierrez, who was there with you?

19 A. Myself and Agent Bill Graham with SLED.

20 Q. Was anybody else there with Rebecca?

21 A. No, ma'am.

22 Q. Did anybody come to the station with her?

23 A. I don't believe so. No, ma'am.

24 Q. And what were the ages of the men in the lineup you
25 showed?

1 A. Honestly I don't know, ma'am.

2 Q. Okay. And where did you get the photograph of
3 Mr. McDowell?

4 A. It's my understanding it was a Department of Motor
5 Vehicle photo or driver's license photo that intel division
6 pulled up.

7 Q. May I show you this and see if this refreshes your
8 recollection?

9 A. Sure. Okay. It's a booking photo. I'm sorry. I
10 couldn't remember.

11 Q. And it's been a while --

12 A. Yes, it has.

13 Q. -- as we've heard. And what I've just shown you and
14 I think this did jar your memory, this is the -- well, I
15 guess I can't publish yet, but this a booking report that
16 shows the picture of Mr. McDowell?

17 A. Yes, ma'am.

18 Q. And that's the photo that you used in the lineup?

19 A. Yes, ma'am.

20 Q. Okay. And so the booking report reflects what date?

21 A. March 15, 1994.

22 Q. So this photograph is when he's about eight years
23 older than he would have been at the time of the incident?

24 A. Yes, ma'am.

25 Q. And you don't know the ages of the other men?

1 A. No, ma'am.

2 MS. MAUDLIN: Your Honor, I'd like to make this a
3 Court's exhibit.

4 THE COURT: Any objection?

5 MS. ABEE: No objection, Your Honor.

6 THE COURT: Okay. It's admitted.

7 (Court's Exhibit Number 7, McDowell booking photo,
8 was marked and admitted into evidence for pre-trial
9 purposes.)

10 BY MS. MAULDIN:

11 Q. And when you presented this lineup to Rebecca, you
12 were already familiar with Detective Bartlett's reports
13 from 1986?

14 A. Yes, ma'am.

15 Q. And you knew that she had first identified the person
16 as a black man with a magic hat?

17 A. Yes, ma'am.

18 Q. And you knew that she had been hypnotized?

19 A. Yes, ma'am.

20 Q. And your testimony is that you did not believe that
21 her identification had been tainted in any way?

22 A. Correct.

23 Q. And you also knew that her mother had consulted a
24 psychic and that's when the description changed, too,
25 right?

1 A. Yes, ma'am.

2 Q. Okay. And Mr. McDowell certainly is not a black man?

3 A. No, ma'am.

4 Q. And what is your characterization of a magic hat?

5 A. Honestly I didn't know. We -- we were very open to
6 all different types of hats.

7 Q. Okay. So by the time that you showed this lineup to
8 Rebecca Gutierrez, twenty-one years and five months had
9 gone by?

10 A. Yes, ma'am.

11 Q. Okay. And then moving onto the Denno hearing, when
12 Mr. McDowell talked to police you had tricked him to get
13 him there, right?

14 A. I did not. No, ma'am.

15 Q. Law enforcement had tricked him to get him there?

16 A. They had got him there to ask him about some
17 information about some burglaries and my understanding
18 there were some burglaries there, but that was between
19 them.

20 Q. And you wrote a report of that incident of talking to
21 Mr. McDowell?

22 A. Yes, ma'am.

23 Q. And in your report you wrote that she suggested,
24 meaning the other officer that was there --

25 A. Correct.

1 Q. -- that he be contacted and asked to come to the
2 substation under the pretense of assisting with some
3 construction thefts in the area since he did that type of
4 work, right?

5 A. Right. And there -- there were some construction
6 thefts in the area.

7 Q. Okay. But nobody had any intention with trying to get
8 information about those from him because you used the word
9 "pretense".

10 A. I don't know if they asked him or not because we were
11 back in the room when they brought them back there.

12 Q. Would it refresh your recollection if I show you the
13 report where you used the word "pretense"?

14 A. No, ma'am. I understand the report. Yes, ma'am.

15 Q. Okay.

16 A. But I can't say whether or not they actually asked him
17 or not.

18 Q. Right, but the -- the whole idea was to get him there,
19 to fool him, to think that people wanted to talk him about
20 construction thefts when the real goal was to talk to him
21 about what happened in 1986?

22 A. We -- we just asked them if they could get him there.

23 Q. Okay. So when he got there, there was the Wake Forest
24 detectives, right?

25 A. I don't know if they were actually detectives or not.

1 I can't remember. It was some Wake Forest officers. Yes,
2 ma'am.

3 Q. Was that person in uniform?

4 A. As I recall they were.

5 Q. And did he introduce himself to Mr. McDowell as being
6 from Wake Forest?

7 A. Honestly I don't know because we were in a back room
8 when they brought him to us.

9 Q. Okay. Well, Mr. McDowell was at the Wake Forest
10 police station, right?

11 A. Yes, ma'am.

12 Q. And that was an agency that would have had
13 jurisdiction over him and the ability to keep him in
14 custody for anything that had happened there, right?

15 A. Yes, ma'am.

16 Q. Okay. So somebody with legal authority over him?

17 A. Yes, ma'am.

18 Q. Okay. And so then you were and you introduced
19 yourself as being from the sheriff's department?

20 A. In Lexington. Yes, ma'am.

21 Q. And were you in any kind of uniform or were you
22 plainclothes?

23 A. As I recall, myself and Agent Graham were dressed like
24 I am right now.

25 Q. Okay. And then what about Agent Graham?

- 1 A. In a suit also. Yes, ma'am.
- 2 Q. Okay. And then were there any other officers in there
- 3 that we haven't talked about?
- 4 A. During the interview or just at the police department?
- 5 Q. No, during the interview.
- 6 A. No, ma'am. It was just the two of us.
- 7 Q. Okay. And were any or all of you armed with your
- 8 service weapons?
- 9 A. Yes, ma'am.
- 10 Q. Okay. And were those visible to Mr. McDowell?
- 11 A. I'm sure they were.
- 12 Q. Okay. When you went in to do the interview, did you
- 13 shut the door?
- 14 A. Yes, ma'am.
- 15 Q. Did anybody tell him that he could leave?
- 16 A. I don't specifically recall telling him he could.
- 17 Q. And he asked permission to go to the restroom?
- 18 A. Twice. Yes, ma'am.
- 19 Q. And then he asked permission to go outside and smoke?
- 20 A. Yes, ma'am.
- 21 Q. So a grown man who's asking permission to use the
- 22 restroom and smoke probably feels like he's not free to do
- 23 those things on his own or he wouldn't ask for permission,
- 24 right?
- 25 A. I can't tell you what his state of mind was. No,

1 ma'am.

2 Q. He probably didn't feel free to leave.

3 A. Ma'am, I don't know.

4 Q. And then once you got him to talk you asked him
5 several questions about what happened and he said that he
6 vaguely remembered something about the case. He said that
7 he knew Debra and had had a relationship with her about two
8 months, that they had met playing cards, he had done the
9 work and the awning and that he was familiar with her
10 daughter and that he knew about her being missing and he
11 got all of that information out and then you-all read him
12 his rights after that, correct?

13 A. No, ma'am. I read him his rights as soon as he sat
14 down in the room.

15 Q. You read him his rights and had him fill out the
16 rights statement?

17 A. I did all at one time and then I usually push it off
18 to the side and conduct the interview and then have them
19 fill out the -- the statement form at the end.

20 Q. Did you write in your report that you gave him his
21 Miranda warnings when he came in the room?

22 A. I don't think I did. The statement stands for itself.

23 Q. Would it help if I refresh your recollection?

24 A. Sure. Exactly where, ma'am?

25 Q. (Indicating.)

1 A. Okay. So what was the question again, please? I'm
2 sorry.

3 Q. Did you give him his Miranda rights -- did you write
4 in your report that you'd given him his Miranda rights when
5 he came into the room at the beginning?

6 A. I don't have it specifically in that chronological
7 order. No, ma'am.

8 Q. So you asked him several questions about the case and
9 then you said you were re-interviewing him and the next
10 thing is that you pulled out the statement form that had
11 the Miranda warnings, correct?

12 A. You said I re-interviewed him? I'm sorry. I don't
13 understand. Up here?

14 Q. Well, you -- you discuss the case with him and then it
15 says that you then related to him other things and then you
16 pulled out the statement form, right? So this reads like a
17 chronological account, correct?

18 A. Right. I understand what it reads, but I also
19 understand the way I normally do it, too.

20 Q. And this is not recorded in any way?

21 A. No, ma'am.

22 Q. Why was it not recorded?

23 A. I did not have body cam at the time and as I recall
24 there was no recording equipment in the interview room that
25 we were using.

1 Q. You-all went up to Wake Forest to try and talk to him,
2 right?

3 A. Yes, ma'am.

4 MR. MAULDIN: No further questions, Your Honor.

5 MS. ABEE: Redirect, Your Honor?

6 THE COURT: Sure.

7 REDIRECT EXAMINATION (In-Camera)

8 BY MS. ABEE:

9 Q. Sergeant Pritchard, were you clear to Mr. McDowell
10 where you were from?

11 A. Yes, ma'am.

12 Q. Were you clear to Mr. McDowell what you were there to
13 talk to him about?

14 A. Yes, ma'am.

15 Q. And in preparing for this conversation with
16 Mr. McDowell, you reviewed the full file; is that fair?

17 A. Yes, ma'am.

18 Q. Okay. And did you learn whether or not Mr. McDowell
19 had had prior experiences with law enforcement in providing
20 statements?

21 A. Yes, ma'am.

22 Q. And did he have prior experiences in invoking his
23 right to an attorney?

24 A. Yes, ma'am.

25 Q. Okay. And at any point in time in his conversation

1 with you did he do that?

2 A. No, ma'am.

3 Q. And even though he asked for permission to leave, was
4 he still able to leave?

5 A. Yes, ma'am.

6 Q. To go to the bathroom?

7 A. Yes, ma'am.

8 Q. To smoke cigarettes?

9 A. Yes, ma'am.

10 Q. On multiple occasions?

11 A. Yes, ma'am.

12 Q. And ultimately at the end of the interview was he free
13 to walk out?

14 A. Yes, ma'am.

15 MS. ABEE: Your Honor, I have no further questions.

16 MS. MAUDLIN: Your Honor, no further questions from
17 this witness.

18 I beg the Court's indulgence.

19 Your Honor, if I may back up.

20 RE CROSS EXAMINATION (In-Camera)

21 BY MS. MAULDIN:

22 Q. Detective Pritchard, do you remember Mr. McDowell
23 holding his hands out for you to put cuffs on him?

24 A. I don't remember him doing that. No, ma'am.

25 Q. Okay.

1 MS. MAULDIN: Nothing further, Your Honor.

2 THE COURT: Okay. May I let the witness step down
3 then, please?

4 MS. ABEE: We're ready to call our next witness,
5 Your Honor.

6 THE COURT: Okay. Thank you.

7 (Witness excused.)

8 MS. ABEE: Your Honor, the State calls Rebecca
9 Gutierrez to the stand.

10 THE CLERK: If you'd place your left hand on the
11 Bible and raise your right.

12 (Whereupon, Rebecca Gutierrez was duly sworn by the
13 Clerk of Court.)

14 THE CLERK: If you'll have a seat up there. If
15 you'll state your name and spell your last name for the
16 record.

17 THE WITNESS: Sorry. I'm nervous.

18 My name is Rebecca Gutierrez. R-E-B-E-C-C-A.
19 Last name G-U-T-I-E-R-R-E-Z.

20 MS. ABEE: May it please the Court?

21 THE COURT: Yes, ma'am.

22 DIRECT EXAMINATION (In-Camera)

23 BY MS. ABEE:

24 Q. Ms. Gutierrez, I'm gonna ask you couple of questions
25 and this is just about your opportunity to observe a crime

1 and your subsequent selection of someone in a photo lineup,
2 okay?

3 A. (Nods head.)

4 Q. I want to take you back to the night of June the 5th
5 of 1986 in the early morning hours of June the 6th of 1986.
6 Were you an eyewitness to something that night?

7 A. Yes.

8 Q. Okay. And if you could, tell us what it is that you
9 saw happen.

10 A. Me and my sister slept in the same bed and that
11 particular night I let her sleep on the edge. She
12 generally slept against the wall and the window, but she
13 slept on the edge of the bed. Like when you walk in she'll
14 be there and then I'll be on the side. And we went to bed
15 and you know how someone can stare at you and you just feel
16 like someone's there just watching you? I abruptly woke up
17 and I saw someone standing there, just standing there, and
18 I jerked a little bit, but I immediately closed my eyes
19 back but not completely, like squinting my eyes, and at
20 that time I saw a man pick my sister up from the bed, put
21 her up over his shoulder and walk -- walk out with -- with
22 her.

23 Q. Ms. Gutierrez, I'm gonna talk to you a little bit
24 about the setup of that room and where you were, okay?

25 A. Okay.

1 Q. Let's first talk about the light in the room. How
2 much light was there in the room?

3 A. So we have a night light like closer to the floor.
4 We had a nightstand and it was night light there, and then
5 over our bed, mine and Jesse's bed, was a square window
6 and the moon just shines right into that window, so I had
7 the moonlight.

8 Q. Do you recall whether or not there was some sort of
9 like safety or streetlight outside of that window?

10 A. No.

11 Q. Do you recall the moon being out that night?

12 A. Yes.

13 Q. Okay. And so do you believe you had appropriate
14 lighting to see an individual?

15 A. Absolutely.

16 Q. Okay. And did you see somebody?

17 A. Yes.

18 Q. Okay. And how close to the bed did that individual
19 get?

20 A. So when I woke up, like we're laid this way in the
21 bed, and he was not at the doorway but like middle ways
22 down from our bed just standing there.

23 Q. And what size bed are we talking about here?

24 A. Probably a full.

25 Q. Not a king size bed?

1 A. No, our room was small. We had a full size bed me and
2 Jesse slept in and then my sister sleeps in the room as
3 well. She's handicapped and she slept kind of like in a
4 twin size or a cot size, a really small twin size bed.

5 Q. And did you see that individual take Jesse out of the
6 bed?

7 A. Uh-huh.

8 Q. And when he took Jesse out of the bed or that person
9 took Jesse out of the bed, did they get closer to you?

10 A. They walked up -- yeah, they got a little closer
11 because they had to bend over and pick her up.

12 Q. And with the light in the room and how close this
13 person got, were you able to see identifying
14 characteristics of this person?

15 A. Yes.

16 Q. Tell us what you could see.

17 A. I saw a man that had a mustache and beard and he had
18 a hat. I was young. I didn't -- I didn't know like the
19 types of names of hats. I just knew it was a little taller
20 on top and the -- than the brim and I just called it a
21 magic hat because, again, I didn't really know the names
22 of the hats, but he -- he had on a hat and I just remember
23 the mustache and beard and beady eyes and just like kind of
24 a longer face.

25 Q. Did you see this person's face?

1 A. I saw -- it wasn't -- I saw the mustache, I saw the
2 beard, I saw the beady eyes.

3 Q. And then --

4 A. I know it was -- it was a white man. He had the -- he
5 had the hat on and, like I said, I didn't know the names of
6 the hats. I just said it was a magic hat because it was
7 taller -- a little bit taller on top and like the brim.

8 Q. And even though you told us that you squinted your
9 eyes, were you still looking at the individual the whole
10 time?

11 A. Yes.

12 Q. Now I'm gonna jump from 1986 to 2007. Were you
13 presented with a photo lineup in this case?

14 A. I was.

15 Q. And during that timeframe, between '86 and 2007, did
16 anybody show you pictures of Tommy McDowell?

17 A. No. I never ever saw a picture of him and I -- I
18 hated to talk about this. I did not want to talk about
19 this with anyone and me and my mom did not get along and
20 we would not talk about this to one another, we couldn't
21 discuss it because it just -- we'd end up fighting and it
22 was just horrible, and I hate -- I don't even like to talk
23 about it now, but I'd never seen a picture of him. I never
24 wanted to see a picture of him. I was scared for the
25 longest time, but I've never seen a picture of him until

1 the lineup that day.

2 Q. We're gonna talk about that lineup in just a minute,
3 but prior -- and, again, in that time between did your
4 mother influence you in any way into telling you what that
5 person looked like?

6 A. She didn't. Again --

7 Q. Did she try to get you to change your story at all?

8 A. She didn't. And, again, we could never ever talk
9 about it. We just -- she hated me for a period of time
10 because I didn't do anything that night and we just -- I
11 don't -- I don't even talk about this to my closest
12 friends. I just hate talking about this.

13 Q. And, Rebecca, how old were you when you saw this
14 person?

15 A. I was six, seven.

16 Q. Now do you remember Sergeant Pritchard presenting you
17 with a photo lineup?

18 A. Yes.

19 Q. And, if you could, tell us what you remember about
20 what he did in presenting you that photo lineup.

21 A. I received a call one day asking would I come down
22 to Lexington County jail. They wanted to talk to me and
23 possibly do a lineup and I agreed. And I don't remember
24 the exact date, but I went to Lexington County by myself.
25 I drove myself down there. I had two kids at the time, so

1 I believe my mom was watching them or someone was watching
2 them while I went to do this, and I met Detective Pritchard
3 and I can't remember his name, but I remember he's from
4 Chester and I just call him the Chester man or Chester guy.
5 They were in the room. They had me go back into like a
6 little room and they were sitting there and they -- they
7 said -- they had a book and they asked me would I go
8 through it and see if -- if possibly the person I saw that
9 night was -- was in there. They said he may not be in
10 there, he may, we don't know. You -- it's what you saw.
11 You have to go through the book.

12 Q. And, Rebecca, I'm gonna show you what's already been
13 entered for purposes of this hearing as Court's Exhibit
14 Number 2. Do you recognize that?

15 A. (Nods head.) Uh-huh.

16 MS. ABEE: Permission to --

17 A. Yes. I'm sorry.

18 THE COURT: You may.

19 BY MS. ABEE:

20 Q. And, Rebecca, is this the photo lineup you recall
21 Sergeant Pritchard presenting you?

22 A. Yes.

23 Q. And we see a circle here around Number 3. Who made
24 that circle?

25 A. I did.

1 Q. Okay. And what about this RG next to Number 3? Who
2 wrote that?

3 A. Those are my initials. I wrote that.

4 Q. Why did you do that?

5 A. They asked me if this is who I saw for me to please go
6 ahead and just initial and just circle.

7 Q. Okay. And at any point in time while they were
8 presenting to you this photo lineup, did they tell you who
9 to pick?

10 A. No.

11 Q. Did they motion to person Number 3?

12 A. They did not.

13 Q. Did they tell you that Tommy McDowell was in this
14 photo lineup?

15 A. No.

16 Q. Did they provide a description to you of what Tommy
17 McDowell's picture would look like?

18 A. They did not.

19 Q. Did they make any verbal cues or tics or anything like
20 that?

21 A. No.

22 Q. What about any physical pointing?

23 A. No.

24 Q. Okay. And why did you select Number 3?

25 A. Because that's the man that came in there and took my

1 sister. I see him every night before I go to bed.

2 Q. And even though twenty or so years had passed between
3 the time that you first saw this person, are you certain
4 that Number 3 is the person you saw that night?

5 A. You know, the older you get you lose memories and some
6 little pieces here and there I may not quite remember what
7 I said at -- at the time, but that face would never leave
8 my mind. As hard as I tried to forget it, it's just --
9 it's imprinted and it's never gonna go anywhere. And I
10 replay it over my head sometimes, just a different outcome,
11 waking my mother up, screaming, so I can save her. That
12 face is never gonna go out of my mind as hard as I've
13 tried. Even not talking about it. I may not remember a
14 bunch of stuff that I said at the time, but the face I will
15 always remember.

16 Q. And, Rebecca, we've heard that you saw a hypnotist at
17 some point in time.

18 A. Uh-huh.

19 Q. Were you still young when this happened?

20 A. Very much so.

21 Q. Okay. If I said it was 1988, would that ring a bell?

22 A. Not really.

23 Q. Okay. Do you recall it being when you were still a
24 little kid?

25 A. Yes.

1 Q. Okay. And do you have any recollection of anything
2 the hypnotist telling you impacting your decision to pick
3 Tommy McDowell out of this photo lineup?

4 A. No, and honestly I remember going to the hypnotist and
5 I remember laying there. I remember him being in the room
6 and my mom, but other than that I don't even remember what
7 I even said during being hypnotized, the process, I don't
8 even remember, but I remember going. I remember my mom
9 there, being laid down and him asking me to count back,
10 but I just don't remember what was said, the results
11 afterwards, after the process.

12 MS. ABEE: I beg the Court's indulgence, Your Honor.

13 THE COURT: Take your time.

14 MS. ABEE: Your Honor, I have no further questions
15 at this time.

16 THE COURT: Thank you.

17 Ms. Mauldin.

18 MS. MAULDIN: Thank you, Your Honor.

19 CROSS-EXAMINATION (In-Camera)

20 BY MS. MAULDIN:

21 Q. Good afternoon, Ms. Gutierrez.

22 A. Hello.

23 Q. Do you remember that when you looked at the pictures
24 you didn't make an identification at first?

25 A. No, I did. They didn't know I made an identification

1 at first. What happened was when I was just flipping
2 through and I was slowly taking my time, when I got to
3 like maybe the fourth, fifth page I saw him and I started
4 shaking and I started crying and I had recognized him then,
5 and then I asked Pritchard or the Chester guy, I was like
6 let me have a piece of paper. They gave me a piece of
7 paper and I put it -- like covered his mouth up and then I
8 squint my eyes and that was just confirmation that was him,
9 but I initially recognized him. I didn't let them know
10 that because when I saw him I started crying and shaking.

11 Q. Okay. So you saw him and recognized him at first as
12 you looked at each page? Is that what you're saying?

13 A. No, he -- after so many pages, when I flipped to maybe
14 the fourth or fifth page, there he was.

15 Q. So like the pictures were on separate pages?

16 A. Yes.

17 Q. Okay. They weren't all on one page?

18 A. Well, it's multiple pictures on the pages. So the
19 first page had, what, nine, twelve, the next page some more
20 pictures, and it may not have been that many, but it was
21 multiple pictures on different pages.

22 Q. Do you remember how many pages you looked at?

23 A. Like I said, it could have been the fourth, fifth or
24 sixth page, I can't recall, but it wasn't like immediately
25 because I had flipped through several pages before I saw

1 him.

2 Q. Okay. Was this something like a book of photographs
3 or something that you were looking at? Like an album kind
4 of thing?

5 A. Something like that.

6 Q. Okay. And then I think you had commented on one like
7 it's not this person because this is -- this person's
8 overweight or something?

9 A. Yeah, I think I was thinking out loud and may have
10 said some things like that.

11 Q. And do you remember that when the police first came to
12 talk to you back in 1986, that day they were at your house
13 and your mom was there, do you remember that you told them
14 that it was a black man with a magic hat?

15 A. It's a possibility. That day was so crazy and it was
16 so much going on that day and I had talked to so many
17 people and there was so many people at our house and I was
18 -- it was so many questions they asked me and I -- I could
19 recall them saying well, could it have been a black man,
20 could it have been this, and I think at that point I was
21 just saying yes, yes, yes. It was crazy. And as a child
22 you just wanted it to all be over and go away. You just
23 want it to go back to normal and it didn't.

24 MS. MAULDIN: Your Honor, I think I have to renew
25 my motion to dismiss based on the response to that

1 question to Detective Bartlett and other officers.

2 THE COURT: We'll take that up at the end.

3 MS. MAULDIN: Okay.

4 BY MS. MAULDIN:

5 Q. And how old were the ages -- how old were the men in
6 the pictures?

7 A. I don't know.

8 Q. Not sure? Okay. Do you remember the age of the
9 person that you picked out?

10 A. No, I can't -- they never discussed the age. I
11 never asked the age and at the time I probably was in my
12 twenties. I couldn't -- I couldn't just look at a picture
13 and tell you how old they were.

14 Q. Okay. And this was -- if my math is right, over
15 twenty-one years?

16 A. Yeah, because I had my two children at that time.

17 Q. Okay. And do you -- do you remember the hypnosis
18 being recorded?

19 A. I don't remember.

20 Q. Have you ever heard a recording of yourself during
21 that?

22 A. No.

23 Q. Okay. And fairly recently you talked to somebody from
24 the FBI where you went and sat down in a little room and
25 talked about all of this?

1 A. Uh-huh.

2 Q. Have you seen the recording of that?

3 A. Unh-unh.

4 Q. Okay. And you're related to Gail Brakefield?

5 A. My mom says that we're related, so we're related. I
6 saw her a lot at my Aunt Gina's house and, you know, little
7 things like that, but we're related, but I didn't spend
8 much time with her.

9 Q. And she would have had pictures of Mr. McDowell,
10 right?

11 A. I've never saw her or anyone mention that she had
12 pictures of him.

13 Q. Okay. Ever hear anybody talk about Mr. McDowell
14 before this?

15 A. No. His -- his mom. I never knew him. I knew just
16 his mom. She would come to my aunt's house playing poker.
17 They would play poker, play cards, like all -- to the
18 wee hours of morning, but she would always come like by
19 herself, and then -- I can't remember if Gail's husband and
20 Gail came. I can't remember. It was just a lot of people,
21 but she would always come by herself. So I -- I didn't
22 know his mom, but I was around her very few times when she
23 came and played cards with my aunt.

24 MS. MAULDIN: Thank you. No further questions,
25 Your Honor.

1 MS. ABEE: No redirect, Your Honor.

2 All right. May I let this witness step down?

3 MS. ABEE: Yes, Your Honor.

4 (Witness excused.)

5 THE COURT: Any more witnesses?

6 MS. ABEE: Not from the State, Your Honor.

7 Ms. Mauldin, do you have any witnesses?

8 MS. MAULDIN: Yes, Your Honor. I would call

9 Thomas McDowell to the stand for the limited purpose
10 of answering questions about the Denno.

11 THE COURT: Okay. Come around and be sworn,
12 Mr. McDowell.

13 (Whereupon, Thomas Eric McDowell was duly sworn
14 by the Clerk of Court.)

15 THE CLERK: If you'll have a seat up there on the
16 stand. If you'll state your name and spell your last
17 name for the record.

18 THE DEFENDANT: Thomas McDowell. M-C-D-O-W-E-L-L.

19 THOMAS ERIC McDOWELL,

20 having been duly sworn, testified as follows:

21 DIRECT EXAMINATION (In-Camera)

22 BY MS. MAULDIN:

23 Q. Okay. Mr. McDowell, you were interviewed by Detective
24 Pritchard in 2008, correct?

25 A. I was.

1 Q. And you wrote a statement for him? You wrote a
2 statement for him?

3 A. I did.

4 Q. And that happened at Wake Forest?

5 A. It did.

6 Q. Okay. Now did -- while you were there, did you feel
7 like you were free to go?

8 A. Well, the Wake Forest Police Department left a note on
9 my door to have me contact them and when I contacted them
10 they told me that they wanted to talk about some material
11 that had gone missing from the job. They really didn't say
12 that I had a choice. They said we've got an appointment
13 for you to show up and expect to you to be here. I don't
14 know if they said expected to be here, but want you to be
15 here, I forget what day it was, but anyway I showed up.
16 When I got there, they took me back to a room where the two
17 detectives were. And they didn't ask me any questions.
18 They just brought me in. And the detectives introduced
19 themselves to me and they started asking me if I wanted --
20 you know, saying that they wanted to talk about the case
21 and so I -- you know, I started answering questions that
22 they were asking.

23 Q. Okay. And without going into the answers that you
24 gave, when you first came in that room did anybody read
25 your rights to you?

1 A. No.

2 Q. And you eventually filled out a statement form that
3 had the rights on there, correct?

4 A. I did.

5 Q. But you don't remember anybody reading them to you
6 when you came in?

7 A. Initially, no.

8 Q. Okay. And coming back to this, did you feel like you
9 could have just gotten up and walked out at any point
10 during that questioning?

11 A. I did not.

12 Q. And why was that?

13 A. Well, I mean, they called me down there and once --
14 once I was in that room I felt like, you know, I needed
15 permission to leave. I mean, I didn't know if I could
16 leave. When I got up to leave, when they -- I held my
17 hands out, you know, like this. You know, if you're gonna
18 arrest me, go ahead, you know, because that's what I
19 expected basically.

20 Q. Based on the tone of the conversation?

21 A. Yeah.

22 Q. Okay. And you took a couple of breaks?

23 A. I did.

24 Q. And did you just walk out then?

25 A. I asked if I could go to the bathroom and I did. I

1 don't know that I went twice, but -- I mean, if he says I
2 did, maybe I did. I don't remember. We talked. I told
3 him -- I kept telling him look, I've got to go to work,
4 I've got to go to work, and eventually I asked him can I
5 leave and he said, you know, yeah, you know, so I left.

6 Q. Was that -- and I assume from the way you described
7 that, that was after you had written the statement?

8 A. Yes.

9 Q. Okay.

10 MS. MAUDLIN: Nothing further, Your Honor.

11 MS. ABEE: Thank you, Your Honor.

12 CROSS-EXAMINATION (In-Camera)

13 BY MS. ABEE:

14 Q. Mr. McDowell, this all took place in 2008, right?

15 A. Yes.

16 Q. And at this point in time you were living up in North
17 Carolina, weren't you?

18 A. I was.

19 Q. Okay. And you were asked to come into the Wake Forest
20 Police Department, right?

21 A. Yes.

22 Q. Okay. And there you saw Sergeant Pritchard, right?

23 A. Yes.

24 Q. And he introduced himself as being from the Lexington
25 County Sheriff's Department, right?

1 A. Yes.

2 Q. Okay. So you knew he wasn't associated with Wake
3 Forest, right?

4 A. Right.

5 Q. Okay. And he asked if he could talk to you; is that
6 fair?

7 A. Yes.

8 Q. Okay. And you're telling us today that he didn't read
9 you your Miranda rights prior to talking to you, right?

10 A. He -- we talked -- we started discussing the case
11 and then after he, I guess, got enough into it that he --
12 he presented me with the Miranda rights, but not initially,
13 no, he did not.

14 Q. Okay. And I'm gonna put up here what's been entered
15 as Court's Exhibit Number 3. You recognize that, right?

16 A. Yes.

17 Q. Okay. And, Mr. McDowell, you would agree with me that
18 this is your handwriting down here at the bottom?

19 A. Yes.

20 Q. Okay. And then right here, these TM's, that's your
21 handwriting as well, right?

22 A. It is.

23 Q. All right. Now Sergeant Pritchard didn't force you to
24 write those TM's, right?

25 A. No, he did not.

1 Q. He didn't coerce you to do it, right?

2 A. No.

3 Q. Okay. And he didn't sit here and force you to write
4 this statement either, did he?

5 A. No.

6 Q. Okay. But you say that he didn't do this until after
7 you had already talked about the case; is that right?

8 A. Yes.

9 Q. Okay. Now, Mr. McDowell, 2008, this wasn't your first
10 run-in with law enforcement, right?

11 A. No, it was not.

12 Q. You were familiar with law enforcement, weren't you?

13 A. A little bit, yeah.

14 Q. Okay. A little bit. In fact, you had been convicted,
15 right?

16 A. I had.

17 Q. Okay. And, in fact, this also wasn't the first time
18 that someone had come to talk to you about this case,
19 right?

20 A. I think -- well, I might -- there might have been one
21 prior visit, but I'm not sure.

22 Q. Okay. Well, Mr. McDowell, you were in this courtroom
23 today, weren't you?

24 A. Yes.

25 Q. All right. You were sitting right there at that

1 table, right?

2 A. Yeah.

3 Q. And you heard your attorneys argue about you invoking
4 your right to counsel previously, right?

5 A. At -- at the Polk County, yeah.

6 Q. Yeah, the Polk County jail. So this is something you
7 had done before, right?

8 A. Yeah.

9 Q. You knew your Miranda rights, didn't you?

10 A. I did.

11 Q. And you knew that you had the ability to request an
12 attorney, right?

13 A. I didn't know at that time, no. I mean, they came,
14 they started questioning. I'm -- I'm at the Wake Forest
15 Police Department. I didn't know if I could ask for a
16 lawyer. I thought you had to be under arrest and charged
17 before you could ask for counsel.

18 Q. Right. And you weren't under arrest at this point in
19 time, right?

20 A. Well, I mean, I wasn't thinking about that. I mean,
21 honestly.

22 Q. I hear you, Mr. McDowell, but you weren't under arrest
23 at this point in time, right?

24 A. I didn't know, okay?

25 Q. They didn't put --

1 A. They didn't put handcuffs.

2 Q. -- handcuffs on you when you put your hands out?

3 A. No, they didn't.

4 Q. All right. I want to make sure we're not talking over
5 each other so the court reporter can take down everything,
6 okay?

7 When you put your hands out like this, they did not
8 put handcuffs on you, right?

9 A. That was when I was leaving, yeah.

10 Q. Okay. So at the end after you had talked about Jesse,
11 that's when you said you thought you were being arrested,
12 right?

13 A. I didn't know whether or not they were gonna arrest
14 me. I didn't know.

15 Q. Okay. But you didn't think you were gonna be in
16 cuffs in the beginning, right? They didn't put handcuffs
17 on you in the beginning when you walked into that room,
18 right?

19 A. No.

20 Q. And even though you asked permission to go to the
21 bathroom, you were still able to go, right?

22 A. Yeah.

23 Q. And you were still able to go outside and smoke,
24 weren't you?

25 A. I did.

1 Q. Okay. And you had freedom to -- to move about that
2 room? You weren't chained to a chair, right?

3 A. No, but there were officers everywhere. I mean, how
4 you gonna leave when you've got officers everywhere.

5 Q. Okay. But you did leave, Mr. McDowell, didn't you?

6 A. I walked out front. I didn't go -- no, there were
7 officers all around the substation. It was a substation is
8 what it was and there were officers everywhere. There were
9 cops everywhere, so.

10 Q. And after you wrote this statement you did get in your
11 car and leave, didn't you?

12 A. After, yeah, I did.

13 MS. ABEE: Your Honor, I have no further questions
14 for the purpose of this hearing.

15 THE COURT: Anything else?

16 MS. MAUDLIN: No, Your Honor.

17 THE COURT: You can step down, Mr. McDowell, and
18 return to the table, please.

19 (Witness excused.)

20 THE COURT: All right. I'm gonna take these one by
21 one.

22 Let's talk about the Jackson v. Denno hearing. I'll
23 be glad to hear from you.

24 MS. ABEE: Thank you, Your Honor.

25 At this point the State would contend that the

1 statement given by the defendant was given freely
2 and voluntarily. He was advised of his rights under
3 Miranda. This is someone that has prior involvement
4 with law enforcement, understands his Miranda rights,
5 had previously invoked them that we hear about earlier,
6 Your Honor, so this is someone who's not unsophisticated
7 when it comes to his rights under the law. In fact, he
8 had already actually served time and, again, invoked
9 rights previously regarding something else, Your Honor.

10 Law enforcement talked about how he was free to go,
11 that he did leave, that he was able to smoke, that he
12 was able to go to the bathroom, that he left in his own
13 vehicle at the end of the day. Your Honor, there were
14 no coercive tactics used by Sergeant Pritchard or Bill
15 Graham, nor does it appear that he was forced, coerced or
16 threatened in any way to provide the statement and do so
17 freely and voluntarily after signing his name and waiving
18 his Miranda rights; therefore, we would contend that this
19 is appropriate to be entered and used throughout the trial
20 of this case under Jackson v. Denno.

21 THE COURT: Ms. Mauldin.

22 MS. MAULDIN: Your Honor, I would move to admit the
23 report completed by Detective Pritchard as a Court's
24 exhibit. This certainly would be a better account of
25 what happened because it was a report that he wrote back

1 in 2008 than his memory today and he mentioned something
2 about the report not being chronological. The Court can
3 see this. It goes in a chronological order explaining
4 things, you know, Step 1, Step 2, Step 3. There is no
5 mention of reading Miranda when the interview begins,
6 only -- but the section on his rights later is included in
7 the report that went along with the form that he signed.

8 This was a situation where he was tricked into
9 coming down there. He was in the custody of several
10 armed police officers. The report mentions a question
11 about, you know, are you surprised when you saw the
12 sheriff's department from Lexington. He certainly did
13 not feel free to leave. He was not told that he was free
14 to leave. You've heard his testimony that he didn't feel
15 he could get up and go. You heard Detective Pritchard's
16 testimony that he asked permission each time he took a
17 break.

18 And if I may make this a Court's exhibit.

19 THE COURT: What was the date of that interview?

20 MS. MAULDIN: This would have been November 4, 2008,
21 and then the report is written on the 25th, but closer
22 in to the statement than certainly years later today.

23 (Court's Exhibit Number 8 was marked for
24 identification.)

25 MS. MAULDIN: Your Honor, our position is that

1 the statement was not given with Miranda warnings. A
2 recollection of Miranda previously doesn't mean that the
3 police didn't have to re-advise him of his rights, which
4 it sounds like they did not do reading the report, and he
5 was in custody and so we would ask the Court to exclude
6 the statement based on his rights under the Fifth and
7 Fourteenth amendments, Your Honor.

8 THE COURT: Thank you.

9 Anything else from the State?

10 MS. ABEE: No, Your Honor.

11 THE COURT: All right. I'm gonna find that the
12 statement is admissible. I find that the defendant was
13 read his Miranda rights. He initialled on the Miranda
14 form. There was testimony that he was coherent, he was
15 not under the influence of any drugs or alcohol. He did
16 also read his rights. He was allowed to take a break to
17 smoke, go to the restroom. There was no threats, no
18 promises, and, more interesting, this isn't his first
19 time engaging with law enforcement. I just suppressed
20 a statement where he clearly, clearly back in -- 9-4 of
21 '86 requested his lawyer after he was read his Miranda
22 rights.

23 So I believe that the statement was voluntarily
24 given. That's my ruling on Jackson v. Denno.

25 Now I'd like to see the lawyers just for a second

1 before I go into this Biggers hearing.

2 (Proceedings held at the bench; not reported.)

3 THE COURT: All right. Let me ask the State. Any
4 other motions?

5 MS. ABEE: Your Honor, there's no more motions on
6 behalf of the State. We just have two things that we'd
7 like to place on the record.

8 THE COURT: Okay.

9 MS. ABEE: Your Honor, the first one would be the
10 plea offer and rejection and then just a question to
11 defense counsel regarding any concerns for Mr. McDowell's
12 competency.

13 THE COURT: Okay. State the plea record.

14 MS. ABEE: Yes, Your Honor.

15 In this particular case, the State offered a plea
16 offer to murder -- a guilty plea to the charge of murder
17 with a negotiated thirty years, dismissing the other
18 charges in the case, provided upon Mr. McDowell providing
19 information regarding what happened to Jessica Gutierrez.

20 It's my understanding in speaking to defense counsel
21 that that offer has been rejected.

22 THE COURT: All right. Ms. Mauldin, did you relay
23 that offer to your client?

24 MS. MAULDIN: Yes, Your Honor.

25 THE COURT: Did you also relay to him that this

1 charge, murder, I'm not talking about the burglary, but
2 murder carries thirty to life and that is a day for day
3 sentence for what I would give him?

4 MR. MAULDIN: Your Honor, we talked about the fact
5 that --

6 THE COURT: Oh, that's right. He is not day for
7 day. He is -- what is he?

8 MS. ABEE: Parole eligible after twenty years, Your
9 Honor.

10 THE COURT: Parole eligible after twenty years.
11 Did you explain that to him?

12 MS. MAULDIN: Yes, Your Honor.

13 THE COURT: Is the first twenty day for day?

14 MS. MAULDIN: I don't think so, Your Honor.

15 MR. MAULDIN: I think it's your first parole date.
16 It's not a -- it's not your max out or anything like that,
17 Your Honor. It's the first parole eligibility date is
18 after twenty years.

19 THE COURT: Well, that means you've got to spend
20 twenty years to get there, right?

21 MR. MAULDIN: Right.

22 THE COURT: Right?

23 MS. WEISS: Yes, Your Honor.

24 MR. MAULDIN: Balancing the old law and the new law.

25 THE COURT: I know. Because we're under the old law

1 because this case is so old. The new law is more severe
2 and because this crime happened in 1986, he's entitled to
3 the law that was in effect at that time.

4 So you understand that, Mr. McDowell?

5 THE DEFENDANT: I do.

6 THE COURT: And your lawyers explained that to you?

7 THE DEFENDANT: They did.

8 THE COURT: So are you gonna reject the plea offer?

9 THE DEFENDANT: I am.

10 THE COURT: Thank you.

11 All right. For the record, the plea offer's
12 rejected.

13 MS. ABEE: And, finally, Your Honor, during the
14 motions hearing today Ms. Mauldin had referenced that
15 Mr. McDowell's memory wasn't great referring back to
16 1986 and things that may or may not have happened. In
17 speaking with Ms. Mauldin we just wanted to ensure that
18 there are no issues with his competency. I know she has
19 full faith that there are no issues, but just wanted that
20 on the record as well.

21 THE COURT: Ms. Mauldin's been around for a while.

22 Ms. Mauldin, do you have any questions about your
23 client's competency?

24 MS. MAULDIN: None whatsoever, Your Honor.

25 THE COURT: He's been able to talk to you and you've

1 been able to talk to him, go over discovery and does he
2 appear to understand?

3 MS. MAULDIN: Absolutely. He just has trouble
4 remembering things that happened thirty-six years old as
5 any of us would.

6 MR. MAULDIN: I was a freshman in high school.

7 THE COURT: All right. Mr. McDowell, do you have
8 any problems in communicating with your lawyer?

9 THE DEFENDANT: No.

10 THE COURT: Okay. I think that takes care of that
11 issue. We'll go forward.

12 Anything, Ms. Mauldin, from you?

13 MS. MAUDLIN: No, Your Honor.

14 THE COURT: All right. Then this Court is adjourned
15 until 9:00 in the morning.

16 How about the lawyers be here about a quarter till
17 so I can rule and discuss those two motions with you --

18 MS. ABEE: Yes, Your Honor.

19 THE COURT: -- that I have under advisement.

20 (Whereupon, the proceedings were concluded for
21 February 5, 2024, at 5:35 PM.)

22 (The following proceedings were held February 6,
23 2024, beginning at 9:07 AM.)

24 THE COURT: Is the State ready?

25 MS. ABEE: Yes, Your Honor.

1 MS. MAULDIN: Can we have one more --

2 (Off the record discussion still.)

3 THE COURT: All right. Yesterday we heard a
4 Biggers hearing on the identification of the defendant
5 or ID and, of course, you know, we're controlled by the
6 Biggers case and under the totality of the circumstances
7 test is what is used to determine the reliability of
8 that identification.

9 It's my understanding that -- and also from the
10 testimony that the child was six years old when this
11 happened or when she had -- she ID'd him and she says
12 he was a black man with a magic hat. No one has told me
13 the length this of time. I couldn't find any testimony
14 and I ordered a -- I have a rough draft of her testimony
15 that I asked the court reporter to pull for me, but the
16 testimony is that this man walked in, grabbed her sister
17 and walked out, so it appears to be a short period of
18 time.

19 I'm gonna tell you what concerns this Court
20 looking at all these factors is the witness's degree
21 of attention. There's testimony that she squinted her
22 eyes, she really didn't want to look, she didn't want to
23 think about it. She says she's never met this man before
24 and yet she describes him as a black man with a black hat
25 on. Clearly Mr. McDowell is white.

1 The length of time of this identification between
2 when the incident happened and when the photo lineup was
3 presented to the sister, it's Rebecca Gutierrez is who
4 I'm talking about, is twenty-one years. Twenty-one years
5 later she is shown a photo ID. There's also testimony
6 and I worry -- I didn't understand. Let me rephrase that.
7 I didn't understand the testimony of flipping through the
8 pictures because a photo lineup is not a let's look at a
9 book and determine who this person is, see if you can't
10 find them. That's not a photo lineup. A photo lineup
11 is a piece of paper that was introduced as a Court's
12 exhibit. I believe it had six pictures on it. I will
13 tell you I think the photo lineup was very good. It
14 wasn't suggestive at all. All the gentlemen had about
15 the same length of hair, they all had facial hair. I
16 just didn't find the lineup unduly suggestive. I'm just
17 not real sure I know what she thought she was looking at
18 and then the photo that was used was eight years later
19 of the defendant from the time of the incident.

20 I'm just not persuaded from the prior description,
21 the length of time between the incident and the lineup
22 itself, the attention that was given that night of the
23 incident and also her opportunity to view him at the
24 time of the crime. So I'm going to suppress this
25 identification.

1 Now anything from the State?

2 MS. ABEE: No, Your Honor.

3 THE COURT: Anything from the defense?

4 MS. MAULDIN: No, Your Honor.

5 THE COURT: All right. So now let's move onto this
6 third-party guilt. I looked at the case law last night.
7 Clearly the Gregory case is the controlling case law and
8 I think the Holmes case is the controlling case law on
9 third-party guilt.

10 Now I'm gonna tell you just for the record I'm gonna
11 put this on the record any evidence offered by the accused
12 as to the commission of the crime by another person must
13 be limited as such facts that are inconsistent with his
14 own guilt and to such facts raise a reasonable inference
15 or presumption as to his own innocence. Evidence can have
16 no other effect than to case a bare suspicion upon another
17 or to raise a conjectural inference as to the commission
18 of the crime by another is not admissible. But before
19 such testimony can be received there must be such proof
20 of connection with it such as a train of facts or
21 circumstances as tends to clearly point out such other
22 person as the guilty party. Remote acts disconnected and
23 outside the crime itself cannot be separately proved for
24 such a purpose.

25 So I think at this time it is for the defense to lay

1 down their train of tracks as to their connection to this
2 third-party guilt they intend to use and I would like to
3 proffer that testimony now.

4 MS. MAULDIN: Thank you, Your Honor. I'd call
5 Detective Pritchard to the stand.

6 (Whereupon, David Pritchard was duly sworn by the
7 Clerk of Court.)

8 THE CLERK: If you'll have a seat, please. State
9 your name for the record.

10 DAVID PRITCHARD,
11 having been duly sworn, testified as follows:

12 DIRECT EXAMINATION (In-Camera)

13 BY MS. MAULDIN:

14 Q. Detective Pritchard, I'm gonna ask you about one of
15 the reports that Detective Bartlett made on the case.

16 A. Okay.

17 Q. And we've talked about how he was the -- the chief
18 detective, he's the one who wrote the reports about the
19 investigation?

20 A. Yes, ma'am.

21 Q. Okay. And you've reviewed his reports?

22 A. Yes, ma'am.

23 Q. And you're familiar with what he wrote down?

24 A. Yes, ma'am. To the best of my knowledge, yes, ma'am.
25 What I can remember.

1 Q. Okay. And I'm gonna show you two pages from one of
2 his reports and --

3 A. What specifically do you want me to --

4 Q. Okay. And then can you -- can you read that line?

5 A. Read the line you have highlighted?

6 Q. Yes, please.

7 A. It was discussed that suspect did have a drinking, and
8 in parentheses alcohol and dope, problem.

9 Q. And I suppose I should go back to the person that
10 we're talking about and this is after this person has gone
11 to the U.S. Marshal's Office in Columbia for the polygraph
12 and so in your recollection this is J.R. Gordon or J.R.
13 Henry Gordon?

14 A. To my recollection, yes, ma'am, it is J.R. Gordon.

15 Q. Okay. Can you read the next three lines that are
16 highlighted?

17 A. Just this part here?

18 Q. Yeah.

19 A. And that it was apparent that when he was intoxicated
20 of dope that he developed another personality, that also he
21 became violent, not only physically, but verbally as well.
22 Suspect admitted that he became -- I'm sorry, I can't make
23 out that. He became something and that he could remember
24 nothing of incident night.

25 Q. Okay. And then -- okay. And this is a long one, but

1 can you read from the beginning of the highlighted portion
2 down to the bottom of the page?

3 A. Okay. When detective informed and asked why he had
4 no longer a picture of victim, he stated that he did and
5 was very direct and positive about it, whereas he was not
6 direct or positive about -- about the incident and his
7 possible involvement. He stated that he had a picture of
8 victim at his residence, whereas detective advised him that
9 this picture was not observed on the 19th. Suspect stated
10 in order to forget victim he could not give a reason why he
11 wanted to forget victim. Suspect did not show any remorse
12 for victim, nor did he show any emotions. Suspect did
13 indicate that the possibility existed that he was involved
14 with the abduction. Suspect was transported back to LCSD
15 later this date.

16 Q. Okay.

17 MR. MAULDIN: Thank you. I have no further
18 questions for this witness, Your Honor.

19 THE COURT: Okay. Any --

20 MS. ABEE: Thank you, Your Honor.

21 CROSS-EXAMINATION (In-Camera)

22 BY MS. ABEE:

23 Q. Sergeant Pritchard, J.R. Gordon was investigated from
24 your review of the file starting in 1986, right?

25 A. That is correct.

1 Q. And then when you became involved in the case in 2006,
2 you, again, investigated J.R. Gordon, right?

3 A. Yes, ma'am.

4 Q. And then when the FBI deployed in the case in 2021,
5 Mr. Gordon was also looked at then, right?

6 A. Yes, ma'am.

7 Q. Throughout your review of this entire case file, was
8 there ever a single piece of physical evidence that tied
9 J.R. Gordon to the kidnapping, abduction and killing of
10 Jessica Gutierrez?

11 A. No, ma'am.

12 Q. In your review of the file, were you able to review
13 the type of vehicle that J.R. Gordon was driving at the
14 night that Jessica Gutierrez went missing?

15 A. Yes, ma'am.

16 Q. And what was that?

17 A. My understanding the only transportation he had was
18 something like a dirt bike.

19 Q. Okay. And in your review of the entire case file,
20 did anybody say that they heard a dirt bike the night that
21 Jessica Gutierrez was missing?

22 A. No, ma'am.

23 MS. ABEE: Your Honor, I have no further questions
24 for this witness.

25 THE COURT: Any follow-up?

1 MR. MAULDIN: Briefly, Your Honor.

2 REDIRECT EXAMINATION (In-Camera)

3 BY MS. MAULDIN:

4 Q. Henry Gordon, Junior, was the suspect until the
5 fingerprint was determined to be Mr. McDowell's, right?

6 A. He was one of the suspects. Yes, ma'am.

7 Q. He was the main suspect, right?

8 A. From what I could tell of the case file. Yes, ma'am.

9 Q. And --

10 MS. MAULDIN: I beg the Court's indulgence Your
11 Honor.

12 THE COURT: Take your time.

13 BY MS. MAULDIN:

14 Q. There were other witnesses in the case who talked
15 about Henry Gordon coming over to the house at different
16 points after Jessica disappeared, right?

17 A. Correct.

18 Q. And at least one of those witnesses mentioned that he
19 had pushed the dirt bike over without it running, right?

20 A. I believe that's correct. Yes, ma'am.

21 Q. So he walked it along rather than starting the engine
22 that someone would hear?

23 A. Yes, ma'am.

24 Q. Okay. And there was also information in the police
25 reports that Jessica would go for rides on his motorcycle

1 or dirt bike at the time, too, right?

2 A. Yes, ma'am.

3 Q. Okay.

4 MS. MAULDIN: No further questions, Your Honor.

5 MS. ABEE: Nothing from the State, Your Honor.

6 THE COURT: Okay. May I let the detective step
7 down, please?

8 THE WITNESS: Thank you, Your Honor.

9 (Witness excused.)

10 THE COURT: Call your next witness.

11 MR. MAULDIN: Thank you, Your Honor.

12 I call Debra Gutierrez.

13 THE CLERK: If you'll raise your right hand, please,
14 and place your left hand on the Bible.

15 (Whereupon, Debra Gutierrez was duly sworn by the
16 Clerk of Court.)

17 THE CLERK: Thank you. If you'll have a seat over
18 there, please. If you'll state your name and spell
19 your last, please, for the record.

20 THE WITNESS: My name is Debra Gutierrez. D-E-B-R-A.
21 G-U-T-I-E-R-R-E-Z.

22 DEBRA GUTIERREZ,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION (In-Camera)

25 BY MS. MAULDIN:

1 Q. Thank you. Good morning, Ms. Gutierrez.

2 A. Good morning.

3 Q. I'm sorry that you have to be here now. I know that
4 this has been kind of sprung on you and I'm sorry you're
5 up here for this.

6 A. (Nods head.)

7 Q. The -- J.R. Gordon was somebody that you had dated
8 for a while and were in a relationship, right?

9 A. Correct.

10 Q. How long had you been involved with him?

11 A. Almost a year.

12 Q. So when did you first get together?

13 A. I'm not sure on the date. I just know it was almost
14 a year.

15 Q. Okay. So probably summer of '86?

16 A. Summer of '86? No, ma'am.

17 Q. Later than that?

18 A. Later -- earlier than that.

19 Q. I'm sorry. I'm sorry. I meant summer of '85, so --
20 or summer or fall of '85?

21 A. Yeah, it was.

22 Q. Okay. And at one point he came over and worked on
23 your washing machine; is that right?

24 A. That's correct.

25 Q. Is that when you first met him or was that later on?

1 A. That was when I first met him.

2 Q. Okay. So that was in -- that's when you met him in
3 the summer?

4 A. You keep saying summer, but it -- I'm not sure what
5 the season was when I first met him. I rented a washing
6 machine from his parents. It saved me from taking all my
7 kids to the laundromat, so I can't tell you. I had been
8 renting this machine a long time, it broke down, and their
9 services for \$25 a month was to repair the machine or
10 replace it and that's how I met him.

11 Q. Okay.

12 A. He came to work on it.

13 Q. And the reason I'm asking is there was some discussion
14 of that happening in November or December, but you think it
15 that happened earlier than November or December?

16 A. Again, I can't say what season or what month it was.

17 Q. Okay. And so whenever you had met him, in January of
18 1996 he moved into your home?

19 A. No, ma'am. He's never moved into my home. He did not
20 have extra clothes in my home. He did not own a toothbrush
21 in my home. He came by my house pretty regular, almost on
22 a daily because, you know, like I said, he -- he lived down
23 there in Gaston, but, I mean, his parents were in Pine
24 Ridge. But, no, he did not have any personal items in my
25 home whatsoever. He did not live with me. Never.

1 Q. Would he spend the night with you?

2 A. On occasions, yes.

3 Q. Okay. Would he spend of the night when your kids were
4 there?

5 A. When he stayed the night my kids were asleep.

6 Q. Okay.

7 A. Yeah.

8 Q. And at one point you talked to the police about J.R.'s
9 relationship with Jessica, right?

10 A. I don't recall talking to them about a relationship
11 with Jessica because J.R. was not interested in any of my
12 kids. He was solely focussed on me.

13 Q. Okay. Did you not tell the police that about a month
14 and a half before June 6th that he had started taking up
15 time with her?

16 A. No. I said I noticed him talking to -- to Jessica
17 about two weeks prior to her being taken.

18 Q. Okay.

19 MS. MAULDIN: Your Honor, I beg the Court's
20 indulgence.

21 THE COURT: Uh-huh.

22 Can she get her glasses, please?

23 MR. MAULDIN: Oh, yes.

24 THE COURT: I assume those are reading glasses?

25 THE WITNESS: They are.

1 THE COURT: Thank you.

2 BY MS. MAULDIN:

3 Q. Do you remember writing this -- and I don't want
4 to call it a statement, but you just -- it's not on a
5 statement form, but you wrote this document for the police,
6 right?

7 A. I did write this document. I did.

8 Q. Okay. And then do you remember -- does that refresh
9 your recollection as far as what you said about him taking
10 up time with her?

11 A. If I said that it was a month ago, which I -- a month
12 or so, that is my writing. If I said that, that's the way
13 I felt then and, you know, it was -- if you'll go on and
14 look he began to whisper in her ear and I'm telling you
15 what happened two weeks prior to her getting taken.

16 Q. I got you.

17 A. Not like he was taking up time with her for the whole
18 month, I mean, because he was not interested in any of my
19 kids.

20 Q. Okay. Thank you for clarifying that.

21 A. Yes.

22 Q. Okay. So going through this -- and you said that --
23 that he would whisper in her ear frequently?

24 A. No, not frequently. Is frequently down there?

25 Q. Does that refresh your memory?

1 A. Quite.

2 Q. Quite frequently?

3 A. That -- I guess that's just a matter of how I was
4 thinking at that time, but I only witnessed him whisper in
5 her ear that one day and I was alerted to it, I was washing
6 dishes and that time that was it. No, he -- he really
7 wasn't attracted to my children and all.

8 Q. Okay. And so you asked Jessica what he said to her in
9 her ear?

10 A. In fact, I did. Yes.

11 Q. And what did she say?

12 A. She told me -- she said mommy, I can't tell you
13 because it's a secret and I began to think well, how am I
14 gonna deal with this because she was very intelligent and
15 so with her you had to try and get her to bed, so I said
16 well, you don't have secrets from mommy and if you tell me,
17 then he won't know that we had a secret, and she said he
18 said he wanted to take me for a ride on the washing machine
19 truck and I let her know then that she's not to ever go for
20 a ride with anyone.

21 Q. Okay. And then he also referred to her as his Little
22 Debbie?

23 A. He did not refer to her in any manner as being his
24 Little Debbie. He said out of all your children Jessica
25 reminds me more of you. She's like Little Debbie.

1 Q. Okay. And I'm gonna show you your statement again.
2 Does that refresh your recollection about how you described
3 this to the police?

4 A. I don't know why I said he said she was his Little
5 Debbie, but that's not -- that's not exactly how that went.
6 He started calling her little Debbie about a week and a
7 half before Jesse was taken.

8 Q. Okay. So looking back, he had started calling her
9 Little Debbie and he said that she was his Little Debbie?

10 A. No. If I wrote that there, no, he didn't. He was
11 saying that she reminded him of me, her attitude, her --
12 just the way she carried herself, and maybe I didn't
13 explain it quite right there.

14 Q. Okay. But just to be here when you wrote it for the
15 police, you said that he always said she was his Little
16 Debbie because she was so much like him -- or like you and
17 that he called her Little Debbie, right?

18 A. Right, but -- I see how I wrote it there, but I'm
19 telling you that I know that he said in comparison to all
20 my children she was more like me.

21 Q. Okay. Do you remember when you --

22 A. And he didn't constantly called her Little Debbie. He
23 just said that.

24 Q. Okay. Do you remember when you wrote this for the
25 police?

1 A. No. What is the date of that?

2 Q. That's a good question. I don't know. It's with
3 some other statements you made. I can't answer that. I'm
4 sorry.

5 A. I can't either because, I mean, as -- as we all know,
6 it's been so many years ago and if it's not dated, I can't
7 tell you.

8 Q. But this is your handwriting? No question --

9 A. That is definitely my handwriting.

10 Q. -- you wrote this?

11 A. No question about it. I did.

12 Q. Okay. And then -- let's move ahead a little bit. The
13 -- let's see. Okay. So then you broke up with J.R. on
14 Monday, June 2nd, right?

15 A. Yes.

16 Q. Okay. So June 6th, the day that you realized that
17 Jessica was gone, was a Friday and so --

18 A. Friday morning.

19 Q. Okay. So that Monday that you broke up with J.R. was
20 that Monday?

21 A. I actually told him on Sunday, June the 1st of 1986.

22 Q. Okay.

23 A. He was drunk, he was smoked up, and I said you
24 probably won't understand this, but I don't want you to
25 come by my house ever and ever again, I never want you

1 on my property, and then Monday I clarified that and he
2 clearly understood.

3 Q. So you had told him that on Sunday and he still showed
4 up on Monday and you had to explain it more to him to get
5 him to get the message?

6 A. No, ma'am. We were at my sister's house for the
7 birthday of my niece and he had parked his truck at my
8 house. He actually stayed the night there, he was too
9 drunk to drive, and I told him when he awoke the next
10 morning.

11 Q. I see.

12 A. Yes.

13 Q. And so he wasn't happy about the fact that you broke
14 up with him, right?

15 A. Well, I mean, he didn't throw a temper tantrum or
16 anything because I had been warning him. I put my children
17 first --

18 Q. Okay.

19 A. -- and I had been warning him several times. I mean,
20 if I'm not doing what you're doing, then, you know, I just
21 didn't want that around my kids.

22 Q. And he didn't take we're breaking up as a decision
23 right away, he asked you to reconsider and he kind of kept
24 going with you, right? Like he kept trying to get you to
25 stay with him?

- 1 A. Yes, he did. He did.
- 2 Q. Okay. And so on Tuesday you didn't hear anything from
3 him?
- 4 A. Tuesday I believe I got calls from him.
- 5 Q. Okay. So he was still following up with you after
6 this breakup?
- 7 A. Yes, for a few days.
- 8 Q. Okay. And then on Wednesday he came over to his -- to
9 your house?
- 10 A. Uh-huh.
- 11 Q. And he was on his motorcycle that day?
- 12 A. I don't know what he was on. I don't know how he got
13 there. I'm not sure.
- 14 Q. And Jessica had ridden that motorcycle with him?
- 15 A. No, ma'am. I road my kids on the motorcycle myself.
16 I know how to drive a motorcycle.
- 17 Q. Oh, okay. But Jessica had been on the motorcycle?
- 18 A. She had been on the motorcycle, but not with J R.
- 19 Q. Okay. And so that Tuesday he asked you where your
20 children were because they weren't there at that point,
21 right?
- 22 A. The only child that I had there on Tuesday was my son
23 because Jessica had spent the night with my mom I think
24 that Monday night.
- 25 Q. Okay.

1 A. Or one night that week she spent the night with my
2 mom, so there was one night that she wasn't home.

3 Q. Okay. And so he accused you then of sleeping with
4 somebody else?

5 A. But getting back to what you said, you said that he
6 asked where my children were. My son was there. My two
7 daughters were in school.

8 Q. Okay. So he asked about where they were, the other
9 three?

10 A. Well, he knew that the two older ones were in school,
11 yeah, but he -- he didn't ask where my children were.

12 Q. Okay. And then during that conversation he accused
13 you of sleeping with somebody else?

14 A. No. Not at that time, no.

15 Q. And you-all argued?

16 A. Well, we didn't argue. I just -- I just stayed firm
17 on my decision.

18 Q. Okay. And he wanted to have sex with you?

19 A. That -- that particular day?

20 Q. Yes.

21 A. No.

22 Q. Okay. And so -- and you told him no -- well, you've
23 denied that. Let's see.

24 Okay. I want to show you -- this is another page of
25 the same document that you wrote for the police, okay, and

1 does this fresh your recollection about him coming over on
2 the motorcycle?

3 A. Yeah, maybe so.

4 Q. Okay. And then does this refresh your recollection
5 about asking where the kids were?

6 A. No, because he already knew that my two older children
7 were in school.

8 Q. Okay. Did you write down for the police that he asked
9 where your kids were?

10 A. Well, apparently I did, yes.

11 Q. Okay.

12 A. And let's see. Where are we at? I told him that the
13 kids had already left. Jesse and Bubba had spent the night
14 with momma. I don't even think Bubba stayed. It was just
15 Jesse.

16 Q. Okay. And let me see.

17 A. He started accusing me of someone else and we
18 argued --

19 Q. Okay. So he --

20 A. -- if that's what you're referring to, but we weren't
21 fighting and whatnot.

22 Q. But you had an argument with him?

23 A. I wouldn't call it an argument. He was just trying to
24 say are you interested in somebody else, is that why you're
25 doing this.

1 Q. So you wrote for the police that you argued?

2 A. Well, however you want to look at it. I mean, we
3 -- we weren't really like fighting or anything. I guess
4 bickering back and forth.

5 Q. Just arguing like what you wrote?

6 A. More or less, yes.

7 Q. Okay. And then he wanted to have sex with you and you
8 told him no?

9 A. I don't remember that, you know, specifically because
10 if we're arguing or bickering or just talking back and
11 forth, I don't -- I don't believe he'd have had any reason
12 to bring that up.

13 Q. Okay. And I'm gonna show you your statement to
14 refresh your recollection of that to you. Did you write
15 for the police that he wanted you to have sex and you told
16 him no?

17 A. I see that, but, like I said, I don't remember that.

18 Q. Okay. You don't remember it now, but you don't have
19 any doubt that this was what you wrote?

20 A. I don't remember it now, but this is my handwriting
21 and I don't have any doubt that I wrote that. And I was
22 under so much stress that -- again, there's no date on
23 there, you know, but I do know that it's referring prior to
24 her being gone.

25 Q. Okay. And there's no question you were under a lot of

1 stress. I understand that.

2 A. Oh, yeah. Yeah, clearly.

3 Q. So -- and then you -- he ended up leaving that day and
4 you thought that it was strange because he didn't continue
5 to pester you, right?

6 A. Right.

7 Q. Okay. And then you -- going ahead to the night of
8 June 5th, you called your sister on the phone and talked to
9 her for a while?

10 A. My sister and I spoke to each other every day, every
11 -- nearly every night before we went to bed.

12 Q. And so that night you did your normal practice and you
13 talked to your sister on the phone?

14 A. I did.

15 Q. And then after that -- well, let me back up. So you
16 talked to your sister until almost twelve?

17 A. No, it was late, but it wasn't almost twelve.

18 Q. And then I'll show you what you wrote for the police
19 just to clarify this detail, too.

20 A. I talked to my sister on the phone until almost
21 twelve.

22 Q. Okay. And then --

23 A. That could be any time. That could be 11:15, that
24 could be 11:20 because I put my children to bed at twelve.

25 Q. Okay. And you made a phone call to J.R. that night

1 after talking to your sister and the phone just rang and
2 rang, nobody picked up?

3 A. No, ma'am. That's not correct. I didn't call anyone
4 after that.

5 Q. Okay. I'm gonna show you this again. If you want to
6 just start reading there and you don't have to read it out
7 loud, but just --

8 A. Where now?

9 Q. (Indicating.) I was curious.

10 A. I don't recall that.

11 Q. Okay.

12 A. I know that -- again, that I wrote that. I don't
13 recall dialing his number because when I'm done, I'm
14 usually done.

15 Q. Okay. And just to clarify because you've read it,
16 but for the Court that night you had -- you wrote in your
17 statement that you had talked to your sister until almost
18 twelve, you tried to call J.R., he didn't pick up the
19 phone, the phone just rang, right?

20 A. That's what's there. Again, I said I can't remember
21 exactly --

22 Q. Okay. And I understand that.

23 A. -- but I did write that, yes.

24 Q. Okay. And then at some point there was -- well, J.R.
25 was a -- could be a violent guy, right?

1 A. I -- I heard you say that again in another thing. He
2 never showed me any aggression. He never talked to me as
3 far as being violent. He was just real dominant, but I'm
4 not a type of person to put up with that, so.

5 Q. Do you remember him throwing an ashtray with a lighted
6 cigarette at you?

7 A. No.

8 Q. Do you remember him saying that he would burn the
9 trailer down after that?

10 A. Definitely not.

11 Q. And do you remember throwing a hammer at him and him
12 throwing it back at you?

13 A. No, no. It's the reverse. He threw a hammer at me
14 while he was sitting in -- fixing to leave in his truck, I
15 dodged the hammer, it hit the plexiglas in the back door
16 and I threw it back at him and clearly missed his head;
17 otherwise, I would have cracked him good.

18 Q. All right. Well, and if you hadn't moved, that hammer
19 would have hit you?

20 A. Yeah. And if I'd have had a good swing, it would have
21 hit him, too. Yeah.

22 Q. That's fair. And did he also run over your fence with
23 his -- one of his dad's vehicles?

24 A. Run over my fence? I don't recall that.

25 Q. Okay. And then -- and he was kind of a jealous guy,

1 he was suspicious that you were sleeping with other men?

2 A. That, in fact, is true.

3 Q. And he'd accused you of doing that?

4 A. Yes, everywhere with who -- strangers, anybody, yeah.

5 Q. Okay. And a lot of these beliefs, they weren't true.

6 He had these ideas that weren't accurate?

7 A. Exactly.

8 Q. Okay. And I don't know how to say this delicately,
9 but he would even smell your underwear to see if you had
10 sex with somebody else, right?

11 A. No, he would say tell me the truth or I'll check your
12 underwear or some crap like that, but I'm not a woman to
13 put up with a whole lot, so. I mean, it just didn't -- a
14 lot of this, his talking, didn't carry out any more action
15 if you know what I mean.

16 Q. And so that's why you had kicked him out in June
17 because you were tired?

18 A. No, the reason that I had -- I kicked him out -- you
19 say I kicked him out, but he never lived with us. He lived
20 on Fish Hatchery Road. He had his own home and he would
21 stop by. Sometime, you know, it would be -- he'd come one
22 day and not the next day. Usually it's by the time I'd
23 done had the kids in, you know, we're in the middle of
24 cooking supper, wouldn't stay long at all, but he did not
25 live with me. He would just stop by.

1 Q. Okay.

2 A. So I didn't have to kick him out of anywhere. I just
3 plainly told him do not ever come by my house again, don't
4 come back on my property.

5 Q. And that's what you told him on June 2nd?

6 A. That is what I told him.

7 Q. And he didn't follow through. He -- he came back.
8 He didn't take your word for it?

9 A. Well, he -- it's like he didn't understand what the
10 reasoning was, you know, like why, and I'm like I've been
11 telling you for the longest why and, I mean, he just did
12 not -- excuse me -- he didn't change.

13 Q. I think --

14 A. He did not change. The alcohol continued, the pot
15 continued, and -- and I just did not want my children
16 around that.

17 Q. Okay. I think these days they call it boundaries.
18 He didn't understand your boundaries at that point?

19 A. He did not understand boundaries, right.

20 Q. But even then, even after Jessica disappeared, he
21 continued to come back over to your house even after that?

22 A. He only showed up one night and there were patrolmen
23 out there and -- but continued to come back, no.

24 Q. Is that the night that he slept on the porch?

25 A. He's never slept on my porch.

1 Q. Okay.

2 A. No one's ever slept on my porch. The dog --

3 Q. Right.

4 A. -- slept on my porch.

5 Q. Okay. And you continued to talk with him on the
6 telephone even after that?

7 A. No, ma'am. Just for those few days and then there
8 was that one day he didn't call at all and I was like wow,
9 there is a God, but, no, he didn't.

10 Q. Okay. And then there was another episode where you
11 went out with him and a man named J.C. Cushman after
12 Jessica?

13 A. Went out with them?

14 Q. Well, you were together with them, I believe it was at
15 J.R.'s house. Does that ring a bell?

16 A. Are you prepared to show me what you have -- thinking
17 about and let me see what it is you're thinking about.

18 Q. Okay. And this is going way back, too. This is back
19 to July 22nd of 1986 and --

20 A. Okay. You want me to --

21 Q. No, you don't have to read it. I'm showing it to you
22 so you see what this document is and then I'll show you
23 your signature.

24 A. Well, hold on a second. I think I know where this is
25 heading, yeah, and let me see my signature, please. I'm

1 sorry.

2 Q. This, page 3.

3 A. Yes.

4 Q. And during this, the following day after you-all had
5 been there, he was accusing you of even being with this
6 Cushman man that night?

7 A. Yeah. Yeah. I mean --

8 Q. And this was on -- it says the date on this is
9 July 16th of '86.

10 A. If that's the date that was there, that's the date it
11 was.

12 Q. Okay. And at that point he was still insisting on you
13 having a relationship?

14 A. Yeah, he was still like asking me to change my mind.

15 Q. Okay. So this is even after you've broken up with
16 him, he's come over and then even over a month later he's
17 still at it?

18 A. At that date that you just talked about, July
19 the 16th, that is well more than a month since my daughter
20 was kidnapped and at that time I'd have done anything to
21 find out where she was, who was involved and any other
22 information I could find.

23 Q. Right. And I'm not -- I'm not going there. I know
24 what you're talking about. I'm not going there.

25 A. No.

1 MS. MAULDIN: Your Honor, that's all I have for this
2 witness.

3 THE COURT: Okay.

4 MS. ABEE: No questions from the State, Your Honor.

5 THE COURT: All right. You may step down.

6 (Witness excused.)

7 THE COURT: Next witness.

8 MS. MAULDIN: No further witnesses, Your Honor.

9 THE COURT: Okay. Do you have anything?

10 MS. ABEE: No witnesses, Your Honor, but obviously a
11 reply to their argument once they make it.

12 THE COURT: Absolutely.

13 Then let me hear from you.

14 MS. MAULDIN: Thank you, Your Honor.

15 Well, you've -- you've heard the evidence. This
16 is a situation where Mr. Gordon talked about having a
17 drinking problem, a dope problem, that he -- he told
18 Detective Bartlett that he could be violent, not only
19 physically, but verbally as well. At first he said that
20 he couldn't remember anything of the incident night,
21 talked about having this picture of Jessica that he had
22 taken down because he wanted to forget about her and the
23 most significant thing about this that means this is
24 more than just conjecture or anything else, he said that
25 the possibility existed that he was involved with the

1 abduction, and that's what he told Detective Bartlett.

2 Then you heard from Ms. Gutierrez today. She talked
3 about his jealousy, she talked about the relationship that
4 he had with this child where he would whisper in her ear.
5 He had this secret with her about going to work with him.
6 She had to tell her daughter never to go with him. That
7 he didn't take no for an answer. She tried to end the
8 relationship and he was obsessed with her. He referred
9 to this child as his Little Debbie and clearly connected
10 the two of them. She's talked about her suspicion about
11 him with the police and he was the police's primary
12 suspect for the months leading up to the time that they
13 initially identified the fingerprint as Mr. McDowell's.
14 He was the suspect or the main suspect that the police
15 had. They were taking phone calls with him. They were
16 looking at him as the main person who had taken Jessica
17 and so, Your Honor, I think this is more than just a
18 bare suspicion or conjectural inference. This is words
19 straight from the -- the man's mouth according to
20 Officer Bartlett, who we cannot put on the stand, that
21 the possibility existed that he was involved with the
22 abduction and, Your Honor, I just -- I think that we've
23 got to be able to get into that. And, again, I said this
24 yesterday, that this case, the State's case is going to
25 focus somewhat on the fact that Mr. McDowell is the guilty

1 party because he had access to the child and had been at
2 the house before and knew about the window being propped
3 up with a window stick and that somehow, you know, that
4 access and that opportunity and that knowledge made it
5 more likely that he did this and in this case those things
6 are all also true, but much truer of Mr. Gordon, who was
7 spending the nights sometime in the house. Maybe he
8 didn't live there, but he was a constant presence there
9 for all of those months until finally Ms. Gutierrez had
10 enough of him. So, Your Honor, I just -- I think we've
11 got to be able to get into him.

12 THE COURT: I'll be glad to hear from you.

13 MS. ABEE: Thank you, Your Honor.

14 What case law tells us is that remote acts outside
15 of the crime itself shouldn't be considered for this. So
16 the fact that J.R. Gordon threw an ashtray or a hammer
17 previously isn't something we consider in this case.
18 The fact that he had a drinking problem, not something we
19 consider. The idea that a four-year-old has gone missing,
20 a four-year-old that he knew about, and he removed the
21 picture so he wasn't staring at that missing child every
22 single day in no way indicates that he's a guilty person,
23 Your Honor, and that he, in fact, did it. It merely shows
24 that he doesn't want to look at a missing child, right,
25 and be constantly reminded of that. I think that's, again,

1 just casting a bare suspicion and is mere conjecture on
2 behalf of the defense to try to connect those to the crime
3 itself.

4 One thing the defense brought up is that J.R. Gordon
5 was obsessed with Debra, right, he was obsessed with
6 her, called her, stayed around her, kept coming back,
7 again, those are remote acts that are outside the crime
8 itself. What that doesn't show is that, therefore, he
9 went through a window and took this child. There is
10 still nothing to associate or connect him to the crime
11 itself, which is what they have to show in order to be
12 able to enter this evidence. Again, this does not hinder
13 their opportunity and ability to put up a defense and to
14 say it wasn't Tommy McDowell. Tons of people had access
15 to that house, it could have been anyone, they're still
16 able to do that without specifically saying it's J.R.
17 Gordon because he loved the mom. The idea that an
18 ex-boyfriend or a spouse is the first person looked at
19 in an investigation is not anything new, Your Honor;
20 however, the fact that they're looked at as a suspect in
21 '86, in 2006 and in 2021 doesn't mean that that burden
22 and threshold has been met to show that they're actually
23 connected to this crime. That's law enforcement doing
24 their job and vetting out suspects, but in vetting him
25 out throughout all these years there's not a single piece

1 of evidence that ties him to the scene or to the crime
2 itself. And, again, all of this evidence just casts a
3 bare suspicion and is mere connection. There is no
4 proof of connection between J.R. Gordon and the taking
5 of Jessica Gutierrez, therefore, we think the defense
6 hasn't met that burden, Your Honor, and we'd ask that
7 that evidence be excluded.

8 MS. MAULDIN: Your Honor, just briefly, the words
9 out of man's own mouth, I don't know what stronger
10 evidence there could be, the words were that he said that
11 -- that he indicated that there was a possibility that
12 he was involved with the abduction. That is some of the
13 strongest evidence you could have of his involvement in
14 the case. We have a situation now where Ms. Gutierrez
15 has not been able to remember certain things and has
16 denied that she's made statements. I need to be able to
17 get into those for impeachment value as well. And,
18 Your Honor, this is -- these are not remote activities.
19 This obsession with Debra continued up -- after the
20 time that she tried to break up with him on June 2nd,
21 it continued in the days leading up to Jessica's
22 disappearance, it followed in the days after that when
23 he continued to come to her house and it followed even
24 as late as July 16th. That is a continuing course of
25 action. These are not remote or unrelated episodes.

1 THE COURT: Okay. I'm gonna exclude it, and I --
2 and the reason being I've read the case law, I do think
3 it's merely speculative. You know, I just listened to
4 the testimony of the mom and it appears that all this
5 violence was really kind of directed towards her, not
6 the child. Mr. Gordon admitted he had a drinking and
7 alcohol problem. In fact, he said he couldn't even
8 recall the night, knew nothing about it. There's no
9 physical evidence tying Mr. Gordon to this scene. I
10 understand this statement, as a matter of fact, I have a
11 copy of it and I've been looking at it, but a lot of it
12 is the officer's own thoughts, you know, when I read it.
13 The suspect did not show any remorse for victim. I don't
14 know that. That's pure conjecture, purely speculative,
15 and never would be allowed in this case as evidence.

16 So I'm not going to rely on that to say that we need
17 to do third-party guilt. I understand that this suspect
18 did indicate that the possibility existed, but it's a
19 possibility, you know, coupled with alcohol, he didn't
20 recall the night, and he didn't -- he didn't live at the
21 address.

22 And, you know, let me also address that, you know, I
23 think there's some back and forth about him living there.
24 The mom said he didn't live there and that this continued
25 on all the way up until the time of her abduction, which

1 was like maybe two weeks beforehand. Well, you know, he
2 was seeing her, he was investigated by the police. They
3 did not find anything tying him to this disappearance, but
4 also let me quote the Burgess case, too. It was one that
5 Judge McMahon heard back in 2012. So, you know, I just
6 don't want anybody putting a time limit on saying just
7 because it was two weeks before the abduction that, you
8 know, this qualifies for third-party guilt because what
9 I've listened to I think everything is kind of speculative
10 and most of everything that Mr. Gordon did was directed
11 towards the mom in this case and not the daughter. But
12 in this case he considered events occurring more than
13 eight months before the murder and even up to two weeks
14 before, so that doesn't convince me at all.

15 I'm just gonna find that there is no evidence
16 inconsistent with -- that's been presented with
17 Mr. McDowell's guilt in this case. I believe what the
18 State's relying on is a fingerprint on a window and I
19 don't know what else, but I'm gonna find that I think
20 it's conjecture and not allow it. I'm gonna exclude
21 it.

22 All right. Anything else that we need to take up?

23 MS. MAULDIN: Your Honor, may we approach?

24 THE COURT: You may.

25 (Proceedings held at the bench; not reported.)

1 THE COURT: Okay. We're gonna go back on the
2 record because Ms. Mauldin has informed the Court that
3 there is another statement that Ms. Gutierrez gave and
4 she would like to make that part of the record. I have
5 read that statement. It does not change my ruling;
6 however, we're gonna make it a Court's exhibit and I'm
7 gonna get Ms. Mauldin to tell me what is that statement.

8 MS. MAULDIN: Thank you, Your Honor.

9 And I found what I was looking for as soon as I sat
10 down at the bench, so thank you for your indulgence for
11 this -- at the table, but the statement is written by
12 Ms. Gutierrez for the police and the State will stipulate
13 to that and --

14 MS. ABEE: Yes, Your Honor.

15 THE COURT: Okay.

16 MS. MAULDIN: -- she told the police in her
17 statement that he had moved into their home at 2779
18 South Lake Drive in late January or early February of
19 1986. So that contradicts her testimony on the stand
20 that he had never lived in the home. And then the
21 statement continues that on Monday, June 3, 1986, that
22 she asked him to leave and that Friday, June 6, 1986,
23 that she awoke to find that Jesse been taken and the
24 point of this is to show that he was living in the home,
25 which gave him knowledge and access and information about

1 the family, and also shows the proximity in time from the
2 time that she kicked him out and the time that Jessica
3 had -- was -- disappeared from the home, and my point
4 with all of this is that he had a motive to try and hurt
5 Debra. He was upset that she had broken up with him and
6 that's why he took Jessica. Not that he had been violent
7 with Jessica in the past, but that he would do this to
8 try and get back at Debra for breaking up with him in the
9 first place.

10 THE COURT: Anything from the State?

11 MS. ABEE: Nothing, Your Honor. We stand on our
12 prior arguments and the case law of South Carolina.

13 THE COURT: Okay. I will note for the record that
14 this statement was written on March 13th of 2008. But
15 we're gonna make it a part of the record. Again, I'm --
16 my ruling's been made.

17 Let's take -- now let me ask the State and the
18 defense, are you-all ready for openings?

19 MS. WEISS: Yes, Your Honor.

20 MS. MAULDIN: Yes, Your Honor.

21 THE COURT: All right. Before openings, let's
22 take a quick break, then we're gonna do openings, and I
23 can get the jury in here.

24 So let's take a quick ten-minute break.

25 MS. ABEE: Thank you, Your Honor.

1 (Court's Exhibit Number 9 was marked for
2 identification.)

3 (Recess taken at 10:14 AM.)

4 (Back on the record at 10:25 AM.)

5 (State's Exhibit Number 1 through 5 were marked
6 for identification.)

7 THE COURT: Okay. Are we ready?

8 MS. WEISS: The State's ready, Your Honor.

9 THE COURT: Okay.

10 Ms. Mauldin, are we ready?

11 MS. MAULDIN: Yes, Your Honor.

12 THE COURT: All right. Let's bring the jury in.

13 (Whereupon, the jury enter the courtroom at 10:26 AM.)

14 THE COURT: All right. Madam Forelady, the jury
15 ready?

16 FOREPERSON: Yes.

17 THE COURT: Thank you. Please be seated.

18 First I'm gonna get the clerk to swear the jury in,
19 please.

20 THE CLERK: If you'll stand and raise your right
21 hand, please.

22 (Whereupon, the jury was duly sworn by the Clerk of
23 Court.)

24 THE CLERK: Please respond by saying I do or
25 I affirm.

1 (Jury responds.)

2 THE COURT: All right. Let me ask the jury. This
3 will be my morning question to you. Has anyone approached
4 you about this case or have you talked to anyone about
5 this case? Have you done any research, read about it on
6 any kind of social media platform at all or listened to
7 it on TV or on the radio? If so, please raise your hand.

8 Perfect. Thank you.

9 All right. Before we begin the actual trial of the
10 case, I thought it might be helpful if I explained to you
11 basically how a trial proceeds. First, the State will
12 make an opening statement. An opening statement is not
13 evidence. It is simply an outline to help you understand
14 what that party expects the evidence will show. The
15 defendant may present an opening statement, but he does
16 not have to for reasons that I will explain.

17 Following the opening statements, you will hear
18 testimony and evidence in the case. This will consist
19 of testimony from State's witnesses, as well as any
20 physical exhibits which will be introduced into evidence.

21 Following the completion of the testimony, the
22 attorneys will, again, have an opportunity to make what
23 is called a closing statement or summarize the case from
24 their respective points of view. Again, these arguments
25 are not evidence.

1 Following the closing statements, I will instruct
2 you on the law of South Carolina as it pertains to the
3 issues that have arisen in the case. When I have
4 completed my instructions to you, you will then be
5 permitted to begin your deliberations in order to reach
6 a verdict.

7 You are now the jury in this case and I want to
8 take a few minutes to tell you something about your duty
9 as jurors and to give you some instructions. At the end
10 of the trial, I will give you more detailed instructions
11 and those instructions will control your deliberations.

12 It will be your duty to decide from the evidence
13 what the facts are. You and you alone are the judges of
14 the facts. You will hear the evidence, decide what the
15 facts are and then apply those facts to the law, which
16 I will give to you. That is how you will reach your
17 verdict. In doing so, you must follow the law whether
18 you agree with it or not.

19 The evidence will consist of witnesses, documents
20 and other things received into evidence as exhibits, and
21 any facts on which the lawyers agree or which I may
22 instruct you to accept. You should not take anything I
23 may say or do during this trial as indicating what I
24 think of the evidence or what your verdict should be.

25 This is a criminal case brought by the State of

1 South Carolina. The State charges the defendant with
2 murder, kidnapping and burglary in the first degree.
3 The charges against the defendant is contained in the
4 indictments. An indictment is not evidence of anything.
5 It is simply the description of the charge made by the
6 State against the defendant.

7 The defendant has pled not guilty to the charges
8 and it presumed innocent unless and until proven guilty
9 beyond a reasonable doubt. Proven beyond a reasonable
10 doubt is proof that leaves you firmly convinced of the
11 defendant's guilt.

12 A defendant has the right not to testify and never
13 has to prove his innocence or present any evidence. The
14 burden of proof is always on upon the State of South
15 Carolina.

16 The following things are not evidence and you must
17 not consider them as evidence in deciding the facts of
18 this case. Statements and arguments of the attorneys,
19 questions and objections of the attorneys, and testimony
20 that I instruct you to disregard.

21 Now evidence may be direct or circumstantial.
22 Direct evidence is testimony by a witness about what
23 that witness personally saw, heard or did.
24 Circumstantial evidence is indirect evidence. That
25 is, proof of one or more facts from which one can find

1 another fact. You are to consider both direct evidence
2 and circumstantial evidence. The law permits you to
3 give equal weight to both, but it is for you to decide
4 how much weight to give any evidence.

5 There are rules of evidence which control what can
6 be received into evidence. When a lawyer asks a question
7 or offers an exhibit into evidence and the lawyer on other
8 side thinks that it is not permitted by the rules of
9 evidence, that lawyer may object. If I overrule the
10 objection, the questions may be answered or the exhibit
11 may be received. If I sustain the objection, the question
12 cannot be answered or the exhibit cannot be received.
13 Whenever I sustain an objection to a question or deny a
14 motion to admit an exhibit into evidence, you must ignore
15 the question or the existence of the exhibit and you must
16 not guess what the answer would have been or what the
17 exhibit would have shown.

18 Sometimes it may be necessary for me to request that
19 you leave the courtroom -- and I can promise you this will
20 happen, it happens in every trial -- while I discuss with
21 the attorneys legal questions that come up during the
22 trial. If that occurs, you should not speculate about
23 our discussions or the reason that you were asked to
24 leave the room. This is simply a procedure that the law
25 requires when certain legal issues arise.

1 There also may be occasions where I ask the
2 attorneys to approach the bench so that I can discuss
3 a legal issue with them. I will do this as often as
4 possible so you will not be required to leave the
5 courtroom more than necessary. Again, if I ask the
6 attorneys to step up to the bench or I ask you to return
7 your to your jury room, please do not think anybody is
8 trying to hide anything from you or keep any evidence
9 from you. This is simply a procedure used by all lawyers
10 and by all courts to determine and decide legal questions.

11 In deciding the facts of this case, you may have to
12 decide which witness to believe and which witness not to
13 believe. You may believe everything a witness says, only
14 part of it or none of it. In deciding what to believe,
15 you may consider a number of factors, including the
16 following. The witness's ability to see, hear or know
17 the things testified to. The quality of the witness's
18 memory. The witness's manner while testifying. Whether
19 the witness has an interest in the outcome of the case or
20 any motive, bias or prejudice. Whether the witness was
21 contradicted by anything the witness said or wrote before
22 the trial or by other evidence. How reasonable was the
23 witness's testimony when considered in the light of other
24 evidence.

25 Until I ask you to begin your deliberations, you

1 must not, and I'm gonna say this probably fifty times
2 before the week's up, you must not discuss this case with
3 anyone, including your fellow jurors, friends, family
4 members or anyone involved in this case. This includes
5 discussions face to face, those by telephone, e-mail,
6 text, blogs, Twitter, Facebook, Google or any other
7 method of communication. You may not use a computer, a
8 cell phone or other electronic device with communication
9 capabilities at any time while in this courtroom or
10 during your deliberations. During your breaks for lunch,
11 certainly you may use your phones, and I know the bailiff
12 takes them up before you go into the jury room. However,
13 you may not at any time use these devices to get or send
14 information about the case. This includes information
15 about a party, a witness, an attorney or a court officer.
16 News accounts about the case, research on any topics
17 raised or any topics you think might be helpful in
18 deciding the case or any testimony presented by any
19 witness.

20 During the trial do not read, listen to or watch
21 any news reports about this case. I already told you
22 yesterday there's been an interest in the media about
23 this case, but I'm asking you not to watch, read or
24 listen to any news reports. That includes anything that
25 may be in the newspapers or on the Internet, radio,

1 television. You must not consider anything you may have
2 read or heard about the case outside of this courtroom.
3 Whether before or during the trial. After the case is
4 submitted to you, you must discuss it only in the jury
5 room with your fellow jurors.

6 I told you also yesterday the attorneys and the
7 parties in this case have been advised that they are not
8 to talk to you at all. So if you see them running when
9 they see you, please don't think they're rude. There
10 just following my instructions.

11 It is important that you keep an open mind and not
12 decide any issue in this case until all of the evidence
13 has been presented, the parties have made their closing
14 arguments and I have instructed you on the law. It is
15 your sole responsibility to determine the guilt or
16 innocence of the defendant and your verdict must be
17 based solely on the evidence as it is presented to you
18 in this trial and on the law as I instruct you during and
19 at the close of trial.

20 Madam Forelady, it will be your added duty to
21 preside in the jury room and be the jury's spokesperson
22 here in court. It will be also be your duty to write the
23 verdict, but I will give you further instructions at the
24 conclusion of the case.

25 If at any time you-all need a break, raise your

1 hand. If there's somebody -- like I told you, if one
2 goes, we all go, okay?

3 In order to preserve everyone's rights, I will give
4 the parties an opportunity to object to anything I have
5 said.

6 Any exceptions from the State?

7 MS. ABEE: No, Your Honor.

8 THE COURT: Any exceptions by the defense?

9 MS. MAULDIN: No, Your Honor.

10 THE COURT: All right. We will now begin the trial
11 of this case.

12 Ms. Abee or Ms. Weiss.

13 MS. WEISS: May it please the Court, Your Honor.

14 THE COURT: Ms. Weiss.

15 MS. WEISS: Thank you, Your Honor.

16 I want to tell you about a mother's worst nightmare,
17 but more than that I want to tell you about a sister's
18 nightmare she can never wake up from. June 5, 1986, was
19 the last day of school. Becky Gutierrez was six years
20 old and was headed into her first day of summer. Becky
21 lived in her house with her mom, her brother, her sister
22 Kim and her little sister Deb -- her little sister Jesse
23 Gutierrez. The little sister was four.

24 In this home where they lived with their dog, the
25 sisters all slept in one room together, and it was a

1 small room. It was a double bed where Jesse and Becky
2 slept and there was a single bed where their sister Kim
3 slept, but it was a small room.

4 Typically Becky, who is six, liked to sleep next to
5 the fan, but this night her sister Jesse wanted to sleep
6 with mom and her brother had an earache, so he got to
7 sleep with mom that night and Becky decided to let Jesse
8 sleep next to the fan, which meant that Becky was then
9 gonna sleep next to the window.

10 Debbie Gutierrez, mom, put her kids to bed a little
11 late. The last day of school. They didn't have school the
12 next day. Hoping maybe they'd sleep in a little bit the
13 next day. So around eleven, 11:30, getting the kids into
14 bed. Becky's closest to the window and Jesse's closest to
15 the fan right next to the door. Kim is just across on the
16 other side of the door in her twin bed.

17 Debbie went around and made sure that all of the
18 windows were open for airflow. They were crank windows
19 about this big, you crank them open, and they'd stay open.
20 Windows were open all throughout the small home that they
21 lived in except the one in the living room because that
22 crank was broken so there was a stick -- and you know
23 these windows, when you crank them, they all rise
24 together, so they're on a lever together, and there was
25 a stick holding up the bottom one which then held up the

1 top two. So all the windows were open and the fans were
2 blowing because this was Lexington in June of 1986.

3 All was quiet in the house. Debbie made a phone
4 call and went to bed and her son was sleeping in the bed
5 with her with her fan going as well on the opposite side
6 of the home, and Becky fell asleep.

7 Sometime while it was still dark, Becky opened her
8 eyes to a dark figure in her room, a man standing right
9 next to her bed. She closed them really quick and then
10 squinted and she watched the man terrified. She had the
11 window she was right next to. Light was coming in the
12 window. The man was standing right in front of where the
13 night light should have been shining and the man leaned
14 over and scooped up Jesse Gutierrez, put her over his
15 right shoulder and walked out.

16 Becky closed her eyes pulled the covers up over her
17 head, one, terrified he was coming back to her and, two,
18 hoping -- hoping beyond hope that this was a bad dream
19 and when she woke up Jesse would be there, but when Becky
20 woke up as the sun came through that window Jesse wasn't
21 there. When she was carried out of the room was the last
22 time that Becky Gutierrez ever saw her sister Jesse and
23 she still wishes she could wake up from that bad dream
24 and have her sister back.

25 Becky got up the next morning and Kim got up and

1 they went into the area where the table was, where their
2 backpacks were, and the dog was inside. Now the dog
3 stayed outside, but the dog was inside. The dog is kind
4 of running around and they pulled out their school stuff.
5 First day without school and the first thing they wanted
6 to do was play school. They're playing school, there's
7 papers everywhere, dog's running around, door's propped
8 wide open, and Becky starts yelling for her mom for
9 breakfast. She wants some cereal.

10 So Debbie Gutierrez wakes up and walks out of her
11 bedroom. She walks into somewhat of chaos. She said
12 why is the dog in the house? Why is the door open?
13 Where's Jesse? And that's the beginning of Debbie's
14 nightmare because she looked on that floor and she saw
15 Kim and she saw Becky, but she was missing one daughter.
16 She was missing her four-year-old, Jesse. And Becky
17 looked up at her mom and said Jesse's gone. What do you
18 mean Jesse's gone? The six-year-old, Jesse's gone. What
19 do mean Jesse's gone? The man with the beard and the
20 magic hat took her. Okay. This is crazy. This is crazy.
21 Where is your sister? Is she hiding? Went into the
22 bedroom, pick up the sheets and the covers, look around,
23 Jesse's not there. She walks out of the bedroom and
24 realizes wait a minute, the front door is propped open.
25 She knew good and well when she went to bed that night

1 that she had locked the doors, front and back, but the
2 door's propped up. The screen door is propped, has a
3 little thing that holds it open, the front door is open,
4 the dog is inside and the window in the living room, it's
5 closed. Not only is that window closed, but the screen,
6 which was on the inside of the window of that -- that
7 particular window, the screen has been knocked out of the
8 window. And the curtains that Debbie had just put up in
9 April have been partially ripped down.

10 Okay. It was -- there were papers and there was a
11 dog, but none of this was making sense. The door's
12 propped open, the window is shut, the screen is out and
13 the curtains are partially down.

14 The hardest fact to believe is the one that's
15 undisputed -- indisputed -- undisputed. That fact is
16 that somebody came through that window, the stick was
17 knocked out onto the porch outside, came through window,
18 knocked through the screen, came into the house. That
19 person propped open the door, that person walked into the
20 bedroom, scooped up Jesse Gutierrez, walked out that
21 propped open door so the dog could run in and out, walked
22 out right out of that door, got into a car and left.

23 Why? I don't know that anybody can answer that
24 question. It doesn't make sense. The one fact that
25 makes the least amount of sense is the one fact that's

1 indisputable. Somebody came in through that window,
2 propped open the door, scooped up Jesse, left with her,
3 put her in the car and drove away.

4 It's a nightmare, but it happened in Lexington
5 County in the late night, early morning hours of June 5th
6 to June 6, 1986.

7 The one question for you ladies and gentlemen is
8 who, not why. Who. Who went through the window, propped
9 open the door, scooped up Jesse, walked her out, put her
10 in a car and drove away. Never to be seen or heard from
11 again.

12 You'll see and hear a lot of evidence in this case,
13 and this is from 1986. So you're gonna hear evidence
14 of the investigation since 1986. You're gonna hear
15 testimony from the stand, you're gonna see pieces of
16 evidence that are introduced and by the end of this
17 trial I believe that when you weigh all of that evidence
18 there's only gonna be one person who can answer that
19 question of who and that person is Thomas McDowell seated
20 right over there at the defense table. That's the only
21 person that answers the who question. Who could have come
22 in that window, propped open that door, scooped up Jesse
23 and taken her out to a car and driven away?

24 At the end of the trial, Ms. Abee is gonna get
25 up here and she's gonna talk to you about all the

1 evidence that you've heard and when you go back in the
2 jury room to deliberate, you look through the evidence
3 and you think through the testimony, we're gonna ask you
4 to find Thomas McDowell guilty of burglary first, for
5 breaking into that house in the nighttime with an intent
6 to commit a crime therein, the kidnapping of Jessica
7 Gutierrez and for the murder of Jessica Gutierrez.

8 When this case is through we believe you will agree
9 that the who is Tommy McDowell and he's guilty of all
10 counts beyond a reasonable doubt.

11 Thank you.

12 THE COURT: Thank you, Ms. Weiss.

13 Ms. Mauldin.

14 MS. MAULDIN: Thank you, Your Honor. May it please
15 the Court?

16 THE COURT: Yes, ma'am.

17 MS. MAULDIN: You've heard that Jessica Gutierrez
18 disappeared in 1986 and that was a very long, long time
19 ago. Back then Thomas McDowell lived in Lexington County.
20 He goes by Tommy. That's what his friend and family know
21 him as. Lived in Lexington County. His mom lived with
22 him and he worked in York County. So each day he and his
23 father and his sister would drive to York County and do
24 construction work there and he knew Debra Gutierrez. He
25 dated her for a little while and he did some work on

1 her home. He had put an awning and had done some other
2 things, an awning over the front porch of her mobile home.

3 There is absolutely no question that Debra and
4 Rebecca and rest of this family has been in pain since
5 June 6, 1986, and it's natural to empathize with them, we
6 all do, but it's important that you not let their pain
7 and their grief shift your focus from your job, which is
8 to weigh the evidence and reach a verdict in the case.

9 When you listen carefully to all of the evidence,
10 you'll hear that there are a lot of problems with this
11 case. You'll hear that there are very simple things that
12 the police could have done that they didn't. This is a
13 case that involved many police agencies and many, many
14 officers. It started with the Lexington County Sheriff's
15 Department and all of the resources that they had, very
16 quickly SLED got involved, their agents came out and
17 investigated and even the FBI has worked on this case, but
18 even with all of the resources that they had available
19 there were some things that they didn't do that would have
20 made your job much easier, that would have given you the
21 information that you needed to evaluate this case.

22 You'll also hear that a number of the witnesses
23 are no longer available. You'll hear that some witnesses
24 have changed their stories and you'll learn that some of
25 them had motivations for telling the things that they

1 have. So when you consider the case, consider the
2 evidence carefully and don't be distracted by the sorrow
3 and the pain of the disappearance of this little girl.
4 Your job is to be here as the jury and to evaluate all of
5 the evidence in the case.

6 The judge will tell you more about this later, but
7 in a criminal trial the State has the burden of proof.
8 That means they have to prove to you what happened. It's
9 not Mr. McDowell's job to prove his innocence and they
10 have the burden of proof beyond a reasonable doubt. That
11 means in order for you to reach a verdict in any criminal
12 trial you would have to find that the person is guilty
13 beyond a reasonable doubt. You'd have to be firmly
14 convinced of the person's list, and I submit that that
15 won't happen in this case.

16 I ask you to consider the case very carefully. I
17 know that jury selection and serving on a jury is an
18 inconvenience. I know that you-all had other things
19 planned and you've had to adjust trial schedules and
20 work schedules. And I know there was joking yesterday
21 being picked and I just want you to remember that serving
22 on a jury is one of the most important ways that you can
23 serve your county, it's one of the most important things
24 that you can do, and I ask that you keep your job in mind
25 and that you weigh the evidence carefully and consider

1 everything that's presented, and I believe that when you
2 do that and when you don't leave your common sense at the
3 door of the jury room, that when you consider everything,
4 you will see that Thomas McDowell is innocent of these
5 charges.

6 THE COURT: Thank you, Ms. Mauldin.

7 Can I see the lawyers just for a second?

8 (Proceedings held at the bench; not reported.)

9 THE COURT: Madam Forelady, there's a matter I need
10 to take up with the lawyers right quick. I'm gonna ask
11 you that you return to your jury room. It will be for a
12 short period of time and the bailiff will bring you back
13 in in just a minute.

14 Remember, no talking about this case.

15 (Whereupon, the jury retire to the jury room at
16 10:59 AM.)

17 THE COURT: Okay.

18 All right. Let's take up the matter of the first
19 witness that needs to be called; is that right?

20 MS. WEISS: Yes, Your Honor.

21 The State calls Michael Fowler.

22 THE COURT: Are we proffering his testimony?

23 MS. WEISS: Well, that's -- I'm not sure. How do
24 we want to do that so we can take up --

25 MR. MAULDIN: Should we approach, Judge?

1 THE COURT: Yeah.

2 (Proceedings held at the bench; not reported.)

3 THE COURT: All right. I'm gonna bring the jury
4 back in and you're ready to call your first witness?

5 MS. WEISS: Yes, Your Honor.

6 THE COURT: Let's bring the jury back in, please.

7 (Whereupon, the jury return to the courtroom at
8 11:06 AM.)

9 THE COURT: All right. Madam Forelady, is the jury
10 ready?

11 FOREPERSON: Yes, ma'am.

12 THE COURT: Okay. Please be seated.

13 All right. The State may call their first witness.

14 MS. WEISS: Thank you, Your Honor. May it please the
15 Court?

16 The State calls Michael Fowler.

17 THE CLERK: If you'll raise your right hand.

18 (Whereupon, Michael Fowler was duly sworn by the
19 Clerk of Court.)

20 THE CLERK: Thank you. If you'll have a seat over
21 there, please. If you will state your name and then spell
22 your last for the record, please.

23 THE WITNESS: My name's Michael Fowler.

24 MICHAEL FOWLER,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MS. WEISS:

3 Q. Good morning, Mr. Fowler.

4 A. Good morning.

5 Q. Would you please introduce yourself to the jury, tell
6 them little bit about who you are, where you live and where
7 you grew up?

8 A. Yeah. My name's Michael Fowler. I grew up in Polk
9 county. I'm a construction worker and --

10 Q. And, Mr. Fowler, I know you might be nervous, if we
11 can slow it down just a little bit so that the jury can
12 hear you and the court reporter can get each of your words
13 down.

14 A. All right. Yeah, I'm a construction worker. I've
15 been on my job for twenty years. I'm a little nervous up
16 here, but I'm here to -- to tell the truth about what I --
17 what I know.

18 Q. Where is Polk County?

19 A. Polk County is a little town below Asheville, between
20 Asheville and Charlotte.

21 Q. And you said you grew up there?

22 A. Yes, ma'am.

23 Q. How many years have you lived there?

24 A. Almost sixty years.

25 Q. I'm gonna take you back a little ways, Mr. Fowler, to

1 the 1980's.

2 A. Okay.

3 Q. Do you remember a time in the mid 1980's when you
4 spent time in the Polk County jail?

5 A. Yes, I do.

6 Q. Did you spend time more than once in the Polk County
7 jail?

8 A. Yes, I have.

9 Q. And I believe the first time you were saying was when
10 you were a teenager?

11 A. When I was a teenager, yes.

12 Q. And tell the jury about that, what you did.

13 A. Well, I got in a little trouble with a guy breaking
14 into a coin operating machine so they got me for accessory
15 to a B & E on a coin operating machine.

16 Q. And that -- no, but before that when you were younger,
17 you ran away from home?

18 A. Yes, I did. Yeah, and I was -- yeah, I was going
19 fishing and my dad wouldn't let me go, so I went to -- I
20 ran away from home and was going down the road and the
21 sheriff happened to see me there and called me over and
22 said where was I going, I said I'm going fishing, he said
23 where's my fishing pole at, I said well, I didn't have one,
24 and so my dad said to take me to the jail and keep me there
25 until I decided to go home.

1 Q. So your dad knew the sheriff?

2 A. Yeah. They was friends, yeah.

3 Q. A small town?

4 A. A small town, yes. So I kind of went to jail and I
5 thought it was pretty cool to be in there, you know, but
6 actually it wasn't.

7 Q. And you went home?

8 A. Yes, I went home later. A lot later.

9 Q. And so you went back a little bit later around late
10 '86?

11 A. '86, '87, yes.

12 Q. Late '86, early '87?

13 A. Uh-huh.

14 Q. And if you would explain to the jury the setup of the
15 Polk County jail back in late '86, early '87.

16 A. Okay. When you first go back where the -- where the
17 men's housed at, it's a -- it's just a long -- it's a long
18 section and you've got sixteen people in there.

19 Q. Okay. So you said the men's section?

20 A. In the men's section, yes. Yeah. So when you go in,
21 you've got all the way to the -- to the far right is a
22 one-man cell, beside that's another one-man cell, then you
23 have a four-man cell and then on up you've got another
24 four-man cell and another one is a four-man and you've got
25 two two-men cells on the end.

1 Q. Okay. And you said that's kind of down a long hall?

2 A. That's what it is, yes. Like a long -- just a long
3 thing.

4 Q. A long corridor, I guess?

5 A. Yeah.

6 Q. And what was -- at the end of that was there a wall,
7 a door?

8 A. There's a -- yeah, there was a door right here that
9 goes -- leads down to the outside.

10 Q. Okay. And is that door locked or unlocked?

11 A. It was locked, yeah. Stays locked.

12 Q. Okay. And so you could not get out of that door?

13 A. Could not get out.

14 Q. And then is there an area that you can congregate in
15 front of that, in front of the cells?

16 A. Yeah, there's -- yeah, there's a TV -- where they've
17 got a TV. It's a little -- a little couch area there, you
18 know.

19 Q. Okay.

20 A. You can watch TV and there's a jailer down here and
21 does what he -- does the sweeping and mopping and bring you
22 canteen or whatever, you know, if you want to get out and
23 use the phone, you can, you know, stand around right there.

24 Q. Okay. And then where would you eat?

25 A. You'd eat in your cell, you know, in the block.

1 Q. Okay. Got you.

2 A. Or you can eat out right there watching TV, yeah.

3 Q. Okay. And as far as the security in the cells, were
4 the cells generally locked?

5 A. Not the -- not the main cells, not where you sleep at,
6 no. They stayed open all the time. Sometimes they leave
7 main door open, you know. It's like -- I'd say it's a
8 little Barney Fife jail, you know.

9 Q. And were there guards there?

10 A. Well, yeah. They stay up front sometimes, a lot of
11 times.

12 Q. Okay. So there was a guard there. It was pretty
13 relaxed?

14 A. Yeah, it was kind of laid back. You could do what you
15 want to in there. People could bring you cakes or
16 whatever, you know. It's not like a jail is today.

17 Q. Okay. And which of those cells were you in, if you
18 remember?

19 A. All the way to the end near the door.

20 Q. Down to the end by the door?

21 A. Yes.

22 Q. Okay. And that was a one-man cell?

23 A. Yes.

24 Q. About how big was that cell?

25 A. Oh, it was like a -- like I could reach out and touch

1 the walls. Not much longer than I am, yeah.

2 Q. And what did you have in that cell?

3 A. Just a bed and a -- and a toilet.

4 Q. Okay. And how would you often sit when you're hanging
5 out in your cell?

6 A. I would just kick back on the wall like this and put
7 me feet up.

8 Q. Sitting on your bed and your feet were on the wall?

9 A. Yeah.

10 Q. And that was about the width of your cell?

11 A. Yes. Yes. Kind of you could say like that, yeah.

12 Q. Did you ever come across a man named -- that talked
13 to you about something that surprised you or that you
14 specifically remember?

15 A. Yes.

16 Q. Okay. And do you remember who that person is -- was?

17 A. Tommy McDowell.

18 Q. And you remember that name?

19 A. Yes.

20 Q. And why is that?

21 A. From what he told me, we don't usually have stuff like
22 that going on where I'm from. So, yeah, that stood out to
23 me, yeah.

24 Q. Okay. And if you think back to that time, do you
25 remember what he looked like?

- 1 A. Yeah, kind of. Yeah.
- 2 Q. Okay. Can you describe him a little bit?
- 3 A. Yeah, he had like -- like a little beard, had kind of
- 4 hair down to here and kind of, you know, just -- you know,
- 5 straight hair. It wasn't curly or nothing.
- 6 Q. Do you know what size he was?
- 7 A. He was skinny and tall, yeah.
- 8 Q. And you how did you get to talk to Tommy McDowell?
- 9 A. We just -- he seemed like he was a loner there and
- 10 just kept walking, pacing back and forth, and just happened
- 11 to stopped by my cell there and we started talking.
- 12 Q. Okay. So he would pace back and forth. Where was his
- 13 cell in relationship to yours?
- 14 A. His was down near the -- the last two.
- 15 Q. Okay. And you said he would pace --
- 16 A. Yes.
- 17 Q. -- kind of the length of all the cells?
- 18 A. Yes.
- 19 Q. And would he ever stop and rest?
- 20 A. Yes, against the wall.
- 21 Q. Okay. And where was that wall?
- 22 A. Near my cell.
- 23 Q. Okay. Did you become instant friends and start
- 24 talking about everything?
- 25 A. No, not instant. No.

1 Q. Okay. Talk to me about that a little bit. How did
2 you start talking to Tommy McDowell?

3 A. Well, we just -- he was just standing there and the
4 next thing I know we started talking and he was wondering
5 about the situation at the police, how it was there and he,
6 you know, wanted to know the area, so I that's how we
7 started talking and I started telling him.

8 Q. Okay.

9 A. He wondered about that door right there, where did it
10 go, and I told him.

11 Q. What did you tell him?

12 A. That it leads to the outside.

13 Q. And did he ask you about anything else?

14 A. Not right then, no.

15 Q. Okay. And that was your first conversation with him?

16 A. Yeah, I think.

17 Q. And did you have a chance to talk to him again?

18 A. Yeah, a little later on. Yeah, we talked, started
19 talking a little bit.

20 Q. Okay. And what did you talk about next, if you
21 remember?

22 A. About what we was in there for and I told him what I
23 was in there for and then he was like -- he wanted to know
24 -- he wanted to know about the door and how I know, you
25 know, how -- did I know everybody that was there and how

1 did I know the situation, you know, what the setup was, and
2 he -- because he was a little -- you know, nervous like.
3 Wanting to get away is what he wanted to do, you know, get
4 out of the jail, yeah.

5 MS. MAULDIN: Objection, Your Honor.

6 THE COURT: Your objection?

7 MS. MAULDIN: 404, Your Honor.

8 MS. WEISS: I'm sorry?

9 THE COURT: I guess she's objecting to his
10 description. Is that what you're saying?

11 MS. MAULDIN: May we approach?

12 THE COURT: Yes.

13 (Proceedings held at the bench; not reported.)

14 THE COURT: All right. Ladies and gentlemen of the
15 jury, I'm gonna ask you to please disregard the last
16 statement, the answer from the witness, please.

17 Go ahead, Ms. Weiss.

18 MS. WEISS: Thank you, Your Honor.

19 BY MS. WEISS:

20 Q. At some point did your conversations start to go on
21 a little bit longer?

22 A. Yes, they did.

23 Q. Okay. And tell the jury about that.

24 A. We was talking about the crimes and whatever and --
25 and, again, he kept asking about that door and --

1 Q. Okay. I'm gonna ask you not to -- we're gonna move on
2 from the door --

3 A. Okay.

4 Q. -- and to the next conversations.

5 A. Okay. What we was in there for, about the crimes, and
6 we was talking about different things.

7 Q. I'm sorry.

8 MS. WEISS: I beg the Court's indulgence.

9 BY MS. WEISS:

10 Q. And so -- sorry. I'll get back on track. And as
11 these conversations continued, were you still talking to
12 him like you were in your cell and he was outside or at
13 some point did you start talking to him sort of together,
14 just the two of you?

15 A. Yeah, we was in my -- in my cell.

16 Q. And so at some point he came in and joined you in your
17 cell?

18 A. Yes, he did.

19 Q. You didn't have a roommate in that cell?

20 A. No, I did not.

21 Q. Okay. And you said you started talking?

22 A. Yes.

23 Q. I believe you started talking first?

24 A. Yes, I did, and then he just opened up and was telling
25 me what he was in there for after I told him what I did and

1 what he told me was pretty devastating.

2 Q. Okay.

3 MS. MAULDIN: Objection, Your Honor.

4 I move for a mistrial.

5 THE COURT: All right. Let me see the lawyers.

6 (Proceedings held at the bench; not reported.)

7 THE COURT: Madam Forelady, I'm gonna ask you-all
8 to return to the jury room just for a few moments while I
9 take up a matter, please.

10 (Whereupon, the jury retires to the jury room at
11 11:21 AM.)

12 THE COURT: All right. Let me get Stacy to play
13 back just the last couple of lines, the last answer or
14 maybe the last two questions.

15 (Whereupon, a portion of the record was read back.)

16 MS. WEISS: Your Honor, and I can clarify and say
17 you don't actually know what he was in there for, you
18 were having a conversation about what he told you he'd
19 done.

20 THE COURT: Well, I mean, we're gonna get to that
21 anyway. That's what he's here to testify to, right?

22 MS. MAULDIN: Well --

23 MS. ABEE: Right, but this -- this individual is not
24 -- Mr. McDowell is not in jail in relation to this crime,
25 that he was in there -- in there on another crime.

1 THE COURT: I didn't know that.

2 MR. MAULDIN: Remember he was arrested for rape.

3 MS. WEISS: And this witness doesn't know about that
4 and I wasn't trying --

5 MR. MAULDIN: Well, they just talked -- he said they
6 talked about what they were in there for, so how does he
7 not know about it?

8 MS. WEISS: Right, but he doesn't -- he doesn't know
9 about Nedra and the rape and the -- that's not -- he's
10 always believed he was in there because of something having
11 to do with that. He just -- I mean, I haven't corrected
12 his memory of what -- if you look back at the statements
13 he always thought he was in there waiving extradition on
14 the murder.

15 MS. MAULDIN: But the problem is that he's just said
16 we talked about what we were in there for. He told me
17 what he was in there for and it was pretty devastating.

18 MR. MAULDIN: And you can't take that any other way
19 and she's got to make a contemporaneous objection and not
20 wait --

21 THE COURT: I don't think it rises to a mistrial.
22 We're gonna fix it. Because, you know, the way I took it
23 was that he was devastated by what he heard. He already
24 testified that it was a small town.

25 THE COURT: So how would you like to handle it?

1 MS. WEISS: Do you want to talk about it for a
2 second?

3 MS. ABEE: Not right now and I do think the order
4 that Stacy just read back is important. We were talking
5 about what we were in there for. I told him what I was in
6 there for, breaking that up, and what I heard was pretty
7 devastating because as they're talking about it, he's
8 tells him what he's in there for and he then tells him
9 about what was really devastating and the fact that he
10 didn't say he told me what he was in there for, it was
11 pretty devastating. I think the break of interjecting
12 him saying what he was in there for I think is a break
13 between connecting devastating to what McDowell said he
14 was in there for and, again, this on believes it was this
15 crime all along. So I do think Heather can lead the
16 witness to --

17 THE COURT: But I don't think how we distinguish that
18 for the jury.

19 MS. ABEE: I think the jury hears what the jury
20 heard. I don't -- I don't think that there needs to be
21 a correction on it.

22 MS. MAULDIN: Can Stacy repeat that, the last
23 question?

24 Stacy, do you mind?

25 (Whereupon, a portion of the record was read.)

1 (Discussion off the record.)

2 THE COURT: Well, let's proffer it right now and
3 let's see.

4 MS. WEISS: Okay.

5 EXAMINATION (In-Camera)

6 BY MS. WEISS:

7 Q. Mr. Fowler --

8 A. Yes, ma'am.

9 Q. -- you just stated that -- that you were talking to
10 each other about what you were in there for, you told him
11 what you were in there for and then he talked to you about
12 something that was devastating?

13 A. Yes.

14 Q. Did you know specifically why he was in the Polk
15 County jail?

16 A. No, not at the time.

17 Q. Okay. So when he was talking to you, was he talking
18 to you specifically about the charges he was in Polk County
19 for or he was just telling you about something else?

20 A. He was telling me about something else while we was
21 in there, in the jail, and that was pretty devastating to
22 me what he told me.

23 THE COURT: I think that's fine.

24 MS. MAULDIN: Your Honor, for the record, I maintain
25 my motion for a mistrial, that this is improper 404

1 evidence. The witness testified he told me what he was
2 in there for and it was pretty devastating, that implies
3 that he's in jail for something devastating already and we
4 had earlier moved to keep out statements about the North
5 Carolina case and withdrew that motion when the State told
6 us they weren't getting into that. While I don't think
7 this was there intention, my concern is the effect that
8 that may have had on the jury, so I would move for a
9 mistrial at this point.

10 THE COURT: I understand and I'm gonna deny that
11 motion. I think you can clarify it. We just proffered
12 that testimony.

13 MS. WEISS: Yes, Your Honor.

14 THE COURT: I mean, it's almost -- you know, they're
15 both sitting in the Polk County jail in North Carolina.

16 MS. WEISS: Yes, Your Honor.

17 THE COURT: It's hard to -- we do not need to mention,
18 and I'm gonna stress that, we're not gonna get into North
19 Carolina -- why he was in -- the North Carolina sentence
20 that he received, that situation up there. We are not
21 gonna get into that.

22 MS. WEISS: No, Your Honor.

23 THE COURT: We're only here for the South Carolina.

24 MS. WEISS: Mr. Fowler, you understand -- I don't
25 even know if you know all about what he was actually in

1 there for, but you're not gonna talk about --

2 THE WITNESS: Right.

3 MS. WEISS: -- what he did or did not do in Polk
4 County.

5 THE WITNESS: Right.

6 MS. WEISS: We're gonna talk about what he told you.

7 THE WITNESS: I'm just gonna talking about what he
8 told me down here happened.

9 MS. MAULDIN: Your Honor, now he has heard us
10 talking at the bench about what happened in Polk County,
11 so he now has that knowledge.

12 THE DEFENDANT: Well, he knows how to answer.

13 THE COURT: We just told him not to talk about
14 the North Carolina charges. I've already ruled on that.
15 We just want to make sure that he doesn't it and that's
16 why we proffered it. He said he didn't know is my
17 understanding.

18 MS. WEISS: Right.

19 THE COURT: Okay. Anything else?

20 MR. MAULDIN: Your Honor, I think our point is that
21 he heard our bench -- he's within earshot of our bench
22 conference and he heard the attorney generals talking
23 about why that statement wasn't bad and couldn't get in
24 and they basically laid out what he would say during the
25 proffer and he's within earshot of it. That's what --

1 what our issue with the proffer is.

2 MS. ABEE: Your Honor, this witness is under oath,
3 right, and so this witness is under oath to tell the
4 truth. So if he answered to what our proposed answer
5 was or what our explanation to Your Honor was inaccurate,
6 he's risking perjury on that specific charge. The
7 witness --

8 THE COURT: I understand he was under oath, but I
9 think I had my little buzz thing on.

10 MR. MAULDIN: Well, he's like three feet from you,
11 Your Honor.

12 THE COURT: I mean, it's supposed to work, I hope
13 it does, but he is under oath and I had my little white
14 noise on.

15 So we're gonna go forward.

16 MS. WEISS: Thank you, Your Honor.

17 THE COURT: Let's bring the jury back in, please.
18 Let me see you for one second.

19 If you'd come up, please.

20 (Proceedings held at the bench; not reported.)

21 THE COURT: All right. Now you can bring them in.

22 (Whereupon, the jury return to the courtroom at
23 11:32 AM.)

24 THE COURT: All right. Madam Forelady, is the jury
25 ready?

1 FOREPERSON: Yes, ma'am.

2 THE COURT: Please be seated.

3 All right. Go ahead, Ms. Weiss.

4 MS. WEISS: Thank you, Your Honor.

5 CONTINUED DIRECT EXAMINATION

6 BY MS. WEISS:

7 Q. Mr. Fowler, where we just left off, you said that you
8 were telling Mr. McDowell about what you were in the jail
9 for?

10 A. Yes, that's correct.

11 Q. And -- and to be clear, you don't actually know
12 exactly why Mr. McDowell was in the Polk County jail?

13 A. No, I did not. Not exactly.

14 Q. So you talked once or more than one time with
15 Mr. McDowell as he told you about this other incident that
16 you're gonna tell us about?

17 A. More than once.

18 Q. Okay. And if you would, please tell the jury what
19 Mr. McDowell told you that you just characterized as
20 devastating.

21 A. What he had told me, that something happened in South
22 Carolina, he happened to be down this way. Like I say, I'm
23 from a small town up in Polk County and -- and we don't
24 usually have a lot of crazy stuff going on up our way, but
25 he said that -- told me about something that happened down

1 here that he had done and that I wouldn't say anything
2 about it and -- and that's what I'm here for.

3 Q. And he said -- I'm sorry. You said he said you
4 wouldn't say anything about it?

5 A. Yeah, he told me not to say anything, not -- not to
6 mention nothing about it, and so I didn't say anything
7 about it. I was at work one day and --

8 Q. I'm sorry. Tell so -- so if you would, tell the jury.
9 What did he tell you?

10 A. He told me that he had went into a -- a window and
11 broke into a house and took a little girl out and he said
12 that he took her to a logging -- old logging place and he
13 raped her and cut her up with a machete and she had at one
14 point bit him at that time and for me not to tell anybody,
15 and I -- I didn't. I didn't say -- I told -- I told the
16 chief jailer about it and he -- he kind of just didn't say
17 anything else about it to me.

18 Q. Okay. Now I'm gonna take you back through this and I
19 know -- going back remembering what he had told you. You
20 said that -- did he tell you how old the girl was?

21 A. Around four -- four to five years old. He did say
22 that. About four or five years old.

23 Q. And you said that he said he had raped her?

24 A. Yes, he did.

25 Q. Did he get any more specific?

1 A. Yes. He even went -- after he killed her, he even
2 went there.

3 Q. And you said he bit -- she bit him?

4 A. She had -- yeah, she had bit him, yeah, at one point.

5 Q. At what point did she bite him?

6 A. During some oral sex and I think that's pretty --
7 pretty -- pretty bad.

8 Q. And what did he say about that when she bit him?

9 A. That he just went -- went off on her and that was --
10 yeah.

11 Q. Did he happen to mention to you what he was driving?

12 A. Oh, some kind of white car at that point. He had --
13 yeah, I don't know exactly the model. Just like a white
14 car.

15 Q. And did he say what he did with her after he chopped
16 her up?

17 A. He said he dug a little grave and put her in a it and
18 then covered up her with a brush pile because I said
19 something about animals gonna be sniffing, you know, dig
20 her up, and he said he buried -- put brush over her from
21 the logging road where they log at.

22 Q. Okay. And you have some experience with logging,
23 correct?

24 A. Yes, I do.

25 Q. If you could explain to the jury just for those of us

1 who aren't familiar about the logging road and the brush
2 pile. What's a brush pile?

3 A. A brush pile is where you cut all the limbs off of a
4 tree or maybe the top of it and it goes in a big pile.
5 It's something that you don't -- you don't take to the
6 lumber yard. You just take the pulpwood to the lumber
7 yard.

8 Q. And what is pulpwood used for?

9 A. To make paper or wood.

10 Q. And, if you would, describe what a logging road is
11 like, what a logging road is like.

12 A. It's just an old dirt logging road that you go in --
13 travel in and out of while you're getting the logs out.

14 Q. Okay. Are they usually narrow or wide?

15 A. They're narrow, yeah.

16 Q. Did you ever look up this case at any point to see
17 if --

18 A. No.

19 Q. -- there were any facts that matched what he had told
20 you?

21 A. No, I didn't. I was young back then.

22 Q. And you said you told the chief jailer?

23 A. Yes, I did.

24 Q. When was the first time you talked to anyone from
25 South Carolina about what Tommy McDowell told you?

1 A. I had done got out of jail and I was at work and my
2 supervisor come tell me there were two people and said that
3 these two people wants to talk to me, man and a woman, and
4 so I went with them and they said that the reason I was
5 there was because of what I'm down here testifying for now
6 and that somebody in the jail had overheard Tommy telling
7 me this story that I'm just telling you-all and --

8 Q. Did they tell you the details of the story?

9 MS. MAULDIN: Objection, Your Honor.

10 THE COURT: Basis for the objection?

11 MS. MAULDIN: 803.

12 THE COURT: How about rephrase it and move on.

13 MS. WEISS: Okay.

14 BY MS. WEISS:

15 Q. Before you told them what you had heard, did they tell
16 you anything about the case?

17 A. No, they did not. They just said they needed to ask
18 me a few questions about Tommy McDowell and what he had
19 told me.

20 Q. And did you know who Tommy McDowell was?

21 A. Yes, I did.

22 Q. And did you tell them?

23 A. Yes, I did. I told them exactly what he told me.

24 MS. MAULDIN: Objection, Your Honor. 803.

25 THE COURT: Let me hear from you, Ms. Weiss.

1 MS. WEISS: He's testifying -- Your Honor, I'm sorry
2 if I seem confused. He's testifying to what --

3 MS. MAULDIN: May we approach?

4 THE COURT: Sure. Come on up.

5 (Proceedings held at the bench; not reported.)

6 THE COURT: All right. Go ahead, Ms. Weiss.

7 MS. MAULDIN: Your Honor, for the record it's
8 801(d)(1) for the objection.

9 THE COURT: Got it and it's so noted for the record.
10 Go ahead.

11 BY MS. WEISS:

12 Q. Okay. And when they came and talked to you, what was
13 the name of the person that told you this story?

14 A. Excuse me, I don't understand what you're saying.

15 Q. What's the name of the person that told you about the
16 little girl, about taking the little girl, the person who
17 was in jail with you in Polk County?

18 A. Tommy McDowell.

19 MS. WEISS: Thank you.

20 I beg the Court's indulgence.

21 No further questions, Your Honor.

22 THE COURT: Okay. Ms. Mauldin.

23 MS. MAULDIN: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MS. MAULDIN:

1 Q. Good morning, Mr. Fowler.

2 A. Good morning.

3 Q. So you had not met Mr. McDowell before you were
4 incarcerated with him?

5 A. No, I haven't.

6 Q. Do you remember when you met him?

7 A. When I was in the Polk County jail was the only time.

8 Q. More specifically than that do you remember what month
9 or what year?

10 A. Somewhere between '86 and '87.

11 Q. But you don't remember what month it was at the time?

12 A. No, I don't exactly. Maybe November.

13 Q. I'm sorry, did you answer?

14 A. I'm not sure exactly when it was.

15 Q. Not sure?

16 A. Yes.

17 Q. Okay. And how long had you been there before you
18 heard this tale?

19 A. I'm not for sure. It was probably -- I can only
20 remember certain things. I mean, we're talking about
21 forty years ago and I don't -- I don't really want to say
22 because I don't really know.

23 Q. Do you remember which one of you was in the jail
24 first, him or you?

25 A. I think he was in jail before I was.

1 Q. And then how much time passed before you went and told
2 the jailer what you'd heard?

3 A. When I told the jailer?

4 Q. Uh-huh.

5 A. I -- I would say I told the jailer right -- right
6 after he told me that.

7 Q. Okay. And then how long was it between then and the
8 time you talked to the police?

9 A. Oh, lord. I don't exactly remember how long it was.
10 I was out of jail at the time.

11 Q. Days, weeks, months?

12 A. I can't say for sure. Like I say, I can only
13 remember certain -- there are certain things, you know,
14 and that -- that I can remember.

15 Q. And right now you don't remember what kind of car it
16 was that you told the police, right?

17 A. It was a -- well, some kind of white car.

18 Q. Do you remember telling the police it was an Impala?

19 A. I'm not gonna say yes and I ain't gonna say no. I do
20 remember it was a white car.

21 MR. MAULDIN: I beg the Court's indulgence, Your
22 Honor.

23 THE COURT: Take your time.

24 BY MS. MAULDIN:

25 Q. And then you mentioned that he had -- according to

1 this story that he had attacked the little girl with a
2 machete?

3 A. That's right. Yes.

4 Q. And this talking about biting her during oral sex,
5 what was supposed to be the location where he bit her?

6 A. No, she bit him.

7 Q. Excuse me?

8 A. Yes, on his penis.

9 Q. Okay. All right.

10 A. Yes, during that.

11 Q. Mr. Fowler, how did you get in and out of that cell
12 block?

13 A. The door was left open.

14 Q. Okay. The block I mean. Not just your individual
15 cell, but that -- that corridor of cells, the sixteen.

16 A. Sometimes the door was left open on the -- on the
17 regular -- on the main gate. They'd leave it open.

18 MS. MAULDIN: No further questions, Your Honor.

19 THE COURT: Thank you. Any redirect?

20 MS. WEISS: No, Your Honor. And I would ask that
21 this witness be excused from his subpoena.

22 MS. MAULDIN: Without objection, Your Honor.

23 THE COURT: Thank you for coming. You are excused.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 THE COURT: You can call your next witness.

2 MS. WEISS: Thank you.

3 The State calls Patricia Keeler.

4 THE CLERK: If you will raise your right hand,
5 please, and place your left hand on the Bible.

6 (Whereupon, Patricia Keeler was duly sworn by the
7 Clerk of Court.)

8 THE CLERK: Thank you. If you'll have a seat over
9 there, please. If you will state your name, please, and
10 spell your last for the record.

11 THE WITNESS: Patricia Keeler. K-E-E-L-E-R.

12 PATRICIA KEELER,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. WEISS:

16 Q. Good morning, Ms. Keeler. How are you?

17 A. Good. Thank you.

18 Q. If you would, tell the jury a little bit about
19 yourself, where you grew up, what you do now.

20 A. I grew up in Lexington County. West Columbia, Cayce,
21 Gaston area. And I'm an auditor.

22 Q. Ms. Keeler, at some point did you meet Tommy McDowell?

23 A. Yes. Uh-huh.

24 Q. And when was that?

25 A. It was a lot of years ago. I don't know the exact

1 year.

2 Q. How old were you at the time about?

3 A. '76, '77.

4 Q. How old were you?

5 A. Fourteen, fifteen.

6 Q. Okay. And not to get too personal, but what year were
7 you born?

8 A. '62.

9 Q. '62. So if you were '14, that would be about '74,
10 1974?

11 A. (Nods head.)

12 Q. I can't do math. 1976, '78? You were right to begin
13 with. Sorry about that.

14 So you were fourteen and fifteen and how old was
15 Tommy?

16 A. I think he was a couple of years older than me. I'm
17 not exact.

18 Q. Okay. Where did you meet?

19 A. At a flea market on 321, Highway 321.

20 Q. How would you describe -- looking at Tommy McDowell at
21 that point, if you were just looking at him and you were
22 describing him to somebody, how would you describe him?

23 A. He was slender, had like dark blond-ish, maybe dirty
24 blond hair, maybe a little hair on his face. I -- I can't
25 remember if that came later or --

1 Q. Okay. At some point did you start dating Tommy
2 McDowell?

3 A. Yes.

4 Q. About how long did you-all date?

5 A. A year, year and a half. I -- I don't know exactly.

6 Q. Okay. And when you and Tommy would go out, did Tommy
7 drive at that time?

8 A. He did.

9 Q. Did he have his own car at that time?

10 A. No.

11 Q. Okay. So what would he drive when he would take you
12 out?

13 A. His mom's car.

14 Q. Okay. And what would you typically do when you and
15 Tommy would go out?

16 A. We would find somewhere and park.

17 MS. MAULDIN: Without objection, Your Honor.

18 THE COURT: Thank you.

19 BY MS. WEISS:

20 Q. Ms. Keeler, I'm gonna show you what's been marked as
21 State's Exhibit 1, 2 and 3 for identification. If you
22 would take a minute and look at these and see if you
23 recognize those areas.

24 A. It's interesting seeing it here. Maybe it's just --
25 and that's like a frontage road.

1 Q. Uh-huh.

2 A. Here. Yeah. That's -- yeah, back behind -- where the
3 landfill was, there's a park called Bray Park. That's
4 where that is.

5 MS. WEISS: Your Honor, at this time I'd like to
6 introduce State's Exhibit 1, 2 and 3 into evidence.

7 THE COURT: Admitted without objection.

8 (State's Exhibit Number 1, 2 and 3, photographs,
9 were admitted into evidence.)

10 BY MS. WEISS:

11 Q. Now you said that you and Tommy would get in his
12 mother's car and go and park?

13 A. Uh-huh.

14 Q. Did he ever park near the landfill around Bray Park?

15 A. Uh-huh. On the other side of Bray Park near the
16 interstate. There's a little frontage road there.

17 Q. Okay. I'm showing you State's Exhibit 1. I'm gonna
18 hand you a pointer.

19 A. Okay.

20 Q. So if you would, just point out -- let me make sure
21 the pointer's working -- where the baseball fields were for
22 Bray Park.

23 A. These are the fields I think here.

24 Q. Okay. And just for clarification, this is a current
25 map and this is not from back in the late seventies, early

1 eighties. And then you have Interstate 26 right there?

2 A. Yeah.

3 Q. Okay. And so you said that -- where would you drive
4 to go and park?

5 A. Well, we at times would go up into the park area, I
6 guess, but then there's a little -- there's a frontage road
7 that runs right on this side of the Interstate here.

8 Q. Okay. And that frontage road was there back in -- in
9 the late seventies, early eighties?

10 A. Yes. Yes. It's actually still there. I went there
11 the other day to be sure.

12 Q. Okay. I'm gonna show you State's Exhibit 3 --

13 A. Oh, God.

14 Q. -- from 1981. If you would, could you point out the
15 same baseball field -- the same fields.

16 A. This here.

17 Q. Okay. And the frontage road?

18 A. It would have been on this side over here.

19 Q. Okay.

20 A. I --

21 Q. I'm gonna show you State's Exhibit 2. Do you
22 recognize that from where you went the other day?

23 A. Well, from where I went the other day, the Interstate
24 was much higher up so this doesn't look like the same area
25 to me.

- 1 Q. Okay. How would you describe this area?
- 2 A. It looks like a frontage road.
- 3 Q. Okay.
- 4 A. Yeah.
- 5 Q. And the frontage road was next to 26 that you're
- 6 taking about as well?
- 7 A. Yes.
- 8 Q. Where 26 goes up?
- 9 A. It seemed like 26 was up higher. The frontage road
- 10 was there and you go down, you take a left on the frontage
- 11 road and then there's actually another little road that
- 12 runs by it and then you could go this way under the --
- 13 under 26.
- 14 Q. Got you. And did you go to that area more than once?
- 15 A. Yes.
- 16 Q. Did you usually go to the same road at the same place?
- 17 A. It was in that area.
- 18 Q. In the area. But it wasn't necessarily the same road?
- 19 A. Not always, no.
- 20 Q. Okay. And so did Tommy seem familiar with that area?
- 21 A. Oh, yeah.
- 22 Q. So did he seem like he was wandering to find places or
- 23 did he seem like he knew where he was going?
- 24 A. No, he knew where he was going.
- 25 Q. And did you and Tommy eventually break up?

1 A. Yes.

2 Q. But he kept friends, kept hanging around with your
3 family?

4 A. My dad.

5 Q. Kept coming around?

6 A. Yes.

7 Q. And for how many years would you say that he kept
8 hanging around -- kept coming around with your dad?

9 A. I don't know. It was several years.

10 Q. Okay. And do you ever remember a time when Tommy wore
11 a cowboy hat?

12 A. Yes.

13 Q. Okay. I'm gonna show you what's been marked as
14 State's Exhibit 4 for identification.

15 MS. MAULDIN: Without objection, Your Honor.

16 THE COURT: Okay.

17 BY MS. WEISS:

18 Q. Do you recognize this photo?

19 A. I do.

20 Q. What's it a picture of?

21 A. My dad.

22 Q. Okay.

23 MS. WEISS: At this time I'd like to move State's
24 Exhibit 4 into evidence.

25 MS. MAULDIN: Without objection.

1 THE COURT: It's admitted.

2 (State's Exhibit Number 4, a photograph, was admitted
3 into evidence.)

4 BY MS. WEISS:

5 Q. Okay. There we go. Ms. Keeler, can you tell us what
6 this is a picture of?

7 A. That's a picture of my dad.

8 Q. Okay. And do you know about when this picture was
9 taken?

10 A. I don't know exactly, no.

11 Q. Would you say this was -- about what time of your
12 life this would have been? Was it eighties, nineties,
13 seventies?

14 A. Seventies, early eighties maybe, something like that.

15 Q. Okay.

16 A. Within like from the time I met Tommy up until several
17 years later. I mean, so.

18 Q. And what's significant about this picture? Is that
19 your dad's hat?

20 A. No, that's Tommy's had.

21 Q. Okay. And how do you know that was Tommy's hat?

22 A. Because he wore it all the time. It was Tommy's hat.
23 He wore it all the time.

24 Q. And is why is there a picture of your dad wearing
25 Tommy's hat?

1 A. Because my dad thought he looked good in the hat and
2 had a picture taken in the hat.

3 MS. WEISS: I beg the Court's indulgence.

4 Your Honor, I have no more questions for this
5 witness.

6 Please answer any questions the defense may have.

7 THE COURT: All right. Before you do that, let me
8 just make suer I've got that number marked right. They're
9 telling me it's wrong. We have it -- we said 6, but it's
10 really marked as 4?

11 MS. WEISS: That's a 6? It's 4.

12 THE COURT: I've got it down as 4..

13 THE COURT REPORTER: Yeah, you said 4. I have 4.

14 MS. WEISS: I said 4.

15 THE COURT: Okay. All right. I just want to make
16 sure I've got -- I keep track of that.

17 MS. WEISS: Okay.

18 THE COURT: I'm sorry.

19 Go ahead, Ms. Mauldin.

20 MS. MAULDIN: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MS. MAULDIN:

23 Q. Well, good afternoon now, Ms. Keeler.

24 A. Hi.

25 Q. Okay. The frontage road you're talking about, that's

1 right there at the Interstate, right?

2 A. The ballpark, there's some woods and then there's the
3 frontage road and then you can see the Interstate.

4 Q. Okay. And roughly how long is that road?

5 A. I don't think it went back very far.

6 Q. Okay. And were you the person that knew of that place
7 to go in the first place or was Tommy?

8 A. It was Tommy.

9 Q. Tommy knew?

10 A. Yeah. Uh-huh.

11 Q. Okay. You mentioned that he had worked with your dad.
12 Do you remember when he worked with your dad?

13 A. He was friends with my dad. I don't know that he
14 worked with my dad.

15 Q. Okay. Excuse me. You don't know if he ever did work
16 with your dad?

17 A. Not that I know of.

18 Q. Okay. What kind of work did you your dad do?

19 A. My dad was a carpenter.

20 Q. And what kind of work did Tommy do?

21 A. I knew he drove a milk truck at some point when we
22 were together. I can't really recall him doing anything
23 else he did.

24 Q. And back in the -- in that time period, and I noticed
25 your dad had on sort of a Western shirt that kind of went

1 with the hat, right?

2 A. I guess. If you say so.

3 Q. Okay. And so back then that was about the time of
4 the John Travolta movie, the Urban Cowboy and that kind of
5 thing? Not sure?

6 A. No. I worked -- I worked all the time. I wasn't your
7 normal teenager. I worked all the time.

8 Q. Okay. Well, it wasn't uncommon for people to wear
9 kind of western wear in that time period?

10 A. (Nods head.)

11 Q. It was kind of a fad?

12 A. Yeah.

13 Q. Thank you.

14 MS. MAULDIN: No further questions, Your Honor.

15 THE COURT: Any redirect?

16 MS. WEISS: No, Your Honor. Nothing further for
17 this witness and I ask the witness be excused from her
18 subpoena.

19 MS. MAULDIN: Without objection, Your Honor.

20 THE COURT: You can be excused. Thank you for
21 coming today.

22 THE WITNESS: Thank you.

23 (Witness excused.)

24 THE COURT: All right. I'd like to go to one and
25 then let the jury go to lunch at one.

1 MS. WEISS: Absolutely, Your Honor.

2 THE COURT: Can you call your next witness?

3 MS. ABEE: Yes, Your Honor.

4 The State calls Clark Rowe.

5 THE CLERK: If you'll raise your right hand, please.

6 (Whereupon, Clark Rowe was duly sworn by the Clerk
7 of Court.)

8 THE CLERK: If you'll have a seat over there,
9 please. If you'll state your name and spell your last,
10 please, for the record.

11 THE WITNESS: I'm hard of hearing.

12 THE COURT: He's hard of hearing.

13 THE WITNESS: You'll have to speak up.

14 THE COURT: I want you to bring that microphone
15 up a little bit because I want to make sure the jury
16 hears you. And I promise you I think Ms. Abee will talk
17 loud.

18 MS. ABEE: I'll try, Your Honor.

19 THE COURT: Thank you.

20 CLARK ROWE,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. ABEE:

24 Q. Mr. Rowe, if at any point in time you can't hear me,
25 you just let me know, okay?

1 A. Come a little closer, please.

2 Q. All right. I'm happy to do that.

3 Mr. Rowe, why don't you go ahead and introduce
4 yourself to the jury and tell them where you're from.

5 A. Ma'am?

6 Q. Go ahead and tell the jury where you're from.

7 A. From here in Lexington County.

8 Q. Okay. Do you work?

9 A. I do presently.

10 Q. Where at?

11 A. I'm employed with Southern Commercial Development,
12 which works for CSX Railroad.

13 Q. All right. Have you ever been in law enforcement?

14 A. I have.

15 Q. How long were you in law enforcement?

16 A. Almost forty years.

17 Q. App throughout those forty years did you ever work for
18 the Lexington County Sheriff's Department?

19 A. Yes, ma'am.

20 Q. When?

21 A. From about 1978 to 2012, 2013.

22 Q. All right. So you were working there in June of 1986?

23 A. Correct.

24 Q. Do you remember what your position was in June of
25 1986?

1 A. I was the shift supervisor. I held the rank of
2 lieutenant.

3 Q. And tell us what does that mean? What do you do in
4 that road?

5 A. Well, I had several deputies that worked with me, but
6 I supervised them. I was in charged of basically the whole
7 county at night and I had one individual above me, which
8 was like the night watch commander, and at that time it was
9 Major Freeman.

10 Q. So you worked at night?

11 A. Well, at that -- yes, ma'am. Nights, daytime. I
12 rotated around.

13 Q. Okay. And on June the 5th of 1986, do you recall
14 working?

15 A. I was working the nightshift.

16 Q. All right. And I'm gonna show you something that's
17 already been entered into evidence, okay? I'm going to pop
18 it up here on this screen if you want to look up here?

19 I'm gonna show you what's been entered as State's
20 Exhibit Number 3. Do you recognize this area?

21 A. Yes, I do.

22 Q. Okay. And I want to talk to you a little bit about
23 this area, but I'm gonna approach you with what's been
24 marked as State's Exhibit Number 5, okay?

25 MS. ABEE: Your Honor, I'm showing opposing counsel.

1 THE COURT: Okay.

2 MR. MAULDIN: Without objection, Your Honor.

3 THE COURT: Okay.

4 BY MS. ABEE:

5 Q. And, Mr. Rowe, I'm handing you what's been premarked
6 as State's Exhibit Number 5. Do you recognize this?

7 A. Yes, I do.

8 Q. Okay. And what is this?

9 A. It's a map of -- in Lexington County of an area we
10 call the Ballpark Road area. Bray Park has several
11 softball fields in it. Also it shows the landfill.
12 Highway 321 is also in it.

13 Q. And is this a fair and accurate depiction of this
14 area?

15 A. Yes, it is.

16 Q. Okay.

17 MS. ABEE: Your Honor, at this point the State moves
18 State's Exhibit 5 into evidence.

19 THE COURT: Admitted without objection.

20 (State's Exhibit Number 5, an aerial photo, was
21 admitted into evidence.)

22 MS. ABEE: All right. Permission to publish, Your
23 Honor?

24 THE COURT: Yes, ma'am.

25 BY MS. ABEE:

1 Q. All right. Now this area that we're looking at up
2 here, State's Exhibit 3, is that the same area as State's
3 Exhibit 5 that you just talked about?

4 A. Yes, ma'am.

5 Q. All right. I'm gonna use State's Exhibit Number 5
6 because it's a little bit clearer, okay, Mr. Rowe?

7 All right. Now I'm gonna take you back to June the
8 5th of 1986. At any point in time that night were you
9 patrolling this general area?

10 A. I was in that area. Yes, ma'am.

11 Q. Okay. And why would you patrol that area?

12 A. Well, that's a real popular area for teenagers,
13 drinking, whatever, and also Bray Park, the ball fields.
14 They kept putting up chain link fences and once they put
15 up the chain link fence everybody would come along and
16 steal them, so it was put out for us to keep an eye on the
17 area and that's what I was doing that night.

18 Q. All right. And tell us, Mr. Rowe, what you saw that
19 night when you were out there in this area.

20 A. What I saw?

21 Q. Yes. Tell us what happened.

22 A. I had turned off of Highway 321 onto Ballpark Road
23 headed down towards Bray Park, pulled into the ball field
24 area, which is a large area, I can see everything, a nice
25 paved parking lot, circled in and -- and come out of Bray

1 Park -- to Bray Park -- or Ballpark Road, excuse me, and I
2 made a left and that came into the intersection of the
3 frontage road, which ran parallel with I-26 going toward
4 the dead end of the frontage road.

5 Q. And, Mr. Rowe, I'm gonna stop you real quick. I've
6 got a laser pointer for you so you can show us what you're
7 talking about, okay?

8 If you push this button it casts a red dot and you can
9 show us exactly what you're talking about, okay?

10 Do you see that?

11 A. This right there.

12 Q. Right there. Just hold it down. There you go.

13 All right. So tell us the area. I think you said
14 that you were by the ballparks and turned onto a frontage
15 road. Show us that area on State's Exhibit 5.

16 A. This is the Bray Park area and I-26, the frontage
17 road, and I don't see the -- this would be the frontage
18 road that I turned on, but right when I got to the
19 intersection I had switched off my headlights in my patrol
20 car.

21 Q. And why did you do that?

22 A. Because anybody would see me. I was checking the
23 area. Because you could get back behind the ballpark going
24 up this frontage road, get to the dead end part of it, hang
25 a left and that takes you back behind the ball fields. I

1 cut my lights off and I was proceeding up the road and
2 maybe got a little bit up the road, fifty to a hundred
3 feet, and a set of headlights come on. I was still on the
4 roadway and I proceeded up toward the dead end. As soon as
5 the lights come on, I activated my headlights and blue
6 lights on top of the vehicle and proceeded toward the car.
7 The car sped up and headed out towards me and I knew he
8 wasn't gonna stop, so I pulled over towards him to force
9 the driver of the vehicle to stay in the wooded area,
10 hopefully come to a stop without getting back on the
11 highway. We passed each other door by door. As soon
12 as we passed each other, I put my vehicle in reverse.
13 I had no room to turn around where I could also keep
14 observing the driver to see where he was going. I chased
15 the vehicle backwards down the roadway. When I got to
16 the intersection, maybe 500 feet or so, I didn't see which
17 way -- I couldn't tell which way he turned. I was in the
18 process of turning my patrol car around and I just lost
19 sight of him at that time.

20 Q. All right. Mr. Rowe, I'm gonna ask you some
21 additional questions about that, okay? So you indicated
22 this was the road --

23 A. That's correct.

24 Q. -- that vehicle -- describe that road to us. Is it
25 two lanes, one lane? Describe kind of the width of the

1 road and what's on the sides of it.

2 A. It a small two-lane roadway. It's got woods on it.

3 You've got I-26 running down through here and you've got a

4 small wood line that runs down beside the roadway

5 separating I-26 from the road. On the opposite side, you

6 have a pretty decent size wooded area. It's like a barrier

7 between the ball fields and that frontage road. And so,

8 like I said, when the driver turned his lights on, I

9 activated mine and I proceeded up, I saw he wasn't gonna

10 coming out and I moved my patrol car over to the left to

11 try to keep him in the woods preventing him from getting on

12 the road, I didn't want to run into the car, and we just

13 passed side by side.

14 Q. All right. So when you first saw this car, was it on

15 the road or was it more towards the side of the road and in

16 the woods?

17 A. On the side of the road in the woods.

18 Q. Okay. And so then you pulled your vehicle over to the

19 left to try to kind of block him there; is that fair?

20 A. Correct.

21 Q. Okay. And then that car passed you on which side?

22 A. He passed me on the driver's side.

23 Q. Okay. So it came by you on the -- your driver's side?

24 A. Ma'am?

25 Q. He came past you on your driver's side?

1 A. That is correct. I mean, we passed pretty dang close,
2 so.

3 Q. Okay. Tell us about this car. What, if anything, you
4 remember about it.

5 A. It was a large car, medium large car, light colored
6 paint, it could have been a white or blue or something of
7 that nature. That's about all I can remember. I think --
8 I believe there was -- when I was looking at the back of
9 the car before his lights went out, there were taillights
10 on it that were, you know, kind of lengthwise.

11 Q. Okay. So we're not talking about a pick-up truck?

12 A. No, ma'am.

13 Q. Not a minivan?

14 A. Ma'am?

15 Q. Not a minivan?

16 A. No, ma'am.

17 Q. Not like a SUV?

18 A. No, ma'am. It was like a four-door vehicle.

19 Q. Okay. So like a sedan?

20 A. Yes, ma'am.

21 Q. Okay. Were you able to see the driver of the vehicle
22 at all?

23 A. I saw the driver, but I could not recognize him. It
24 was dark. This took place in the matter of a split second.

25 Q. Okay. And so then when you got to the end of the

1 road, I think you told us you had to turn around at some
2 point; is that right?

3 A. Yes, ma'am. I had to spin the car around.

4 Q. Okay. And once you spun your car around could you
5 still see that light colored sedan?

6 A. I did not see it. I mean, he cut his light off.

7 Q. All right. And pointing back up here on State's
8 Exhibit Number 5 were, you-all moving towards this
9 intersection with Dixiana?

10 A. That's correct.

11 Q. All right. And so when you got to the end of this
12 intersection, could you see which way that vehicle went?

13 A. I thought he went to the left, but I -- I do not know.

14 Q. All right. And so you talked about the ball fields
15 are here. What's this area back here? What was it back in
16 '86?

17 A. That's a landfill area, county dump, and you also
18 have a subdivision. It's off the screen. Starmount
19 subdivision, if I'm not mistaken.

20 Q. So I'm gonna show you again State's Exhibit Number 3.
21 Looking back, this is the 1981 aerial, so these are those
22 ball fields that we were talking about; is that right?

23 A. These are what?

24 Q. These are those baseball fields right here where I'm
25 pointing?

1 A. Correct.

2 Q. And so this area right here, that would have been the
3 landfill?

4 A. That would be the landfill area.

5 Q. All right. I'll put back up State's Number 5 to look
6 at.

7 All right. You said you lost the individual here.
8 You said you thought he went left, but you don't know.
9 Tell us what is in this area or what was in that area back
10 in 1986.

11 A. Well, that's mainly a wooded area. Right past that --
12 you have a couple of houses back up in there, but right
13 past that you had one street that turns to the right,
14 that's called Pallet Drive, where they make pallets to sit
15 things on, and that goes back down toward the river. Back
16 then SCE&G owned some property back in there and there's a
17 gate preventing people from going back into SCE&G property,
18 but it does go back there quite a ways.

19 Q. Okay. So back up towards this way. You said Pallet
20 Drive where they make pallets. Is there any wood being
21 cut there or anything like that during that time that you
22 remember?

23 A. Any what?

24 Q. Wood, trees being cut, anything like that. You said
25 that's where they make pallets.

1 A. There's houses. A wooded area, yes, ma'am.

2 Q. Okay. Back in 1986 do you recall if any trees were
3 being cleared out around this area?

4 A. No, it was all woods.

5 Q. Okay. So all woods back here and then back down here
6 you said there's water?

7 A. I said what?

8 Q. There's water? Water. Back here by SCE&G, is there
9 water back here?

10 A. There's a gate that goes back there.

11 Q. Okay. Did you tell us just a couple of minutes ago
12 that that's near water?

13 A. Water?

14 Q. Yes, sir.

15 A. There's a river that runs way back up in there, but
16 that's a good little ways from the -- I don't exactly know
17 how far it's from SCE&G because I always go right to the
18 front of SCE&G and that it. I don't know how far back,
19 but, you know, it's a good little ways off there.

20 Q. All right. But back towards this direction would be
21 the river?

22 A. Ma'am?

23 Q. Back towards that direction's the river?

24 A. Yes, ma'am.

25 Q. All right. And, Mr. Rowe, the night that you saw

1 this vehicle here in this area, did you know that Jessica
2 Gutierrez was missing?

3 A. No, I did not.

4 Q. Okay. Did you find that out later?

5 A. I did.

6 Q. Okay.

7 MS. ABEE: Your Honor, I have no further questions
8 for this witness at this time.

9 THE COURT: Okay. Ms. Mauldin.

10 MS. MAULDIN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. MAULDIN:

13 Q. Good afternoon, Mr. Rowe. Let me know if you can't
14 hear me, okay?

15 A. Okay. I will.

16 Q. So going back, this frontage area was a popular place
17 with teenagers, right?

18 A. Yeah, and thieves.

19 Q. And thieves. Okay. And when you saw this car, this
20 was fifty to a hundred feet away from you to start with?

21 A. Are you talking about when I first saw it?

22 Q. Yes.

23 A. I'm assuming the driver -- I shouldn't say assuming,
24 but I'm sure the driver saw me before I saw him. I was --
25 had my lights off at that time, there was no lights shining

1 up there, and when those lights come on that's when I
2 turned my on. A hundred feet? I would say it would be
3 more than hundred feet from the vehicle when I first saw --
4 when me first saw me or turned his lights on. That road
5 might be a tenth or so mile long.

6 Q. Earlier you said something about fifty to a hundred
7 feet. What was fifty to a hundred feet then?

8 A. Repeat that.

9 Q. Earlier when you were testifying, you said something
10 about fifty to a hundred feet. Can you clarify what you
11 meant by fifty to a hundred feet?

12 A. I believe I was approaching the vehicle. After I made
13 my left turn off of Ballpark Road onto the frontage road
14 and I was driving upward, so I'm guessing before we was --
15 actually started to meet I was probably maybe a hundred
16 feet, but more than a hundred feet when he first turned his
17 lights on.

18 Q. Thank you. And you said that it was a white or blue
19 car?

20 A. Light colored car would be the best way I could
21 describe it.

22 Q. Light. Okay. And you didn't recognize the driver?

23 A. No. All I could see was his silhouette when he turned
24 and looked at me.

25 Q. Okay. And you said it was a matter of seconds and it

1 was dark?

2 A. When we passed like this?

3 Q. (Nods head.)

4 A. It was very quick.

5 Q. Okay. And it was dark out -- outside?

6 A. Pardon me?

7 Q. It was dark that night?

8 A. Very much so.

9 Q. Okay. And you said that when you got out you followed
10 the car and once you got to the intersection you thought he
11 went left, so you went left?

12 A. In order to try to pursue this individual, I was
13 turned in my front seat of my car, so I was facing looking
14 out the rear window of my vehicle while going backwards and
15 I saw him when he entered the intersection. His lights
16 went out, I saw him when he entered the intersection and he
17 turned. To me it was a left turn and so when I got to the
18 intersection, I pointed my car to the left and I saw never
19 saw him again.

20 Q. Okay. And at the time that you saw this car, this
21 wasn't significant enough to write a police report about
22 seeing the car, right?

23 A. No, because I really couldn't classify it as a pursuit
24 because I never made contact with the vehicle other than us
25 passing side by side and it happened, you know, in like a

1 couple of second and that's all it took and he disappeared
2 to me. Nothing to for me to write a report back then in my
3 opinion because I would have had nothing to say. I passed
4 a can and I lost him.

5 Q. Okay. And by the same token, there was nothing that
6 made you want to go and look where the car had been? Like
7 you didn't go and look around where the car was?

8 A. Oh, we looked, but we never come up with anything.

9 Q. Okay. And so when the police started talking to you
10 about this case, you didn't talk to them about seeing this
11 car until February 12th of 1987, right?

12 A. I don't know the date, but it was brought to my
13 attention if I'm not mistaken by Detective Bartlett. He
14 asked me about it.

15 Q. But it was several months after it had happened?

16 A. Correct.

17 Q. Okay. And you mentioned Detective Bartlett and he's
18 passed away since, right?

19 A. Yes, ma'am.

20 Q. Okay. And so you worked for the sheriff's department
21 and he worked for the sheriff's department?

22 A. And he what?

23 Q. You both worked at the sheriff's department at the
24 same time?

25 A. Correct. We were actually hired the same day.

1 Q. Okay. And then at some point they showed you a lineup
2 of suspects and you didn't pick out anybody that was the
3 person you saw that night?

4 A. I did not.

5 Q. Okay.

6 MS. MAULDIN: No further questions, Your Honor.

7 THE COURT: Any redirect?

8 MS. ABEE: No, Your Honor. We just ask that this
9 witness be release from his subpoena.

10 THE COURT: I'm gonna excuse Lieutenant Rowe.
11 Is there any objection?

12 MS. MAULDIN: No, Your Honor.

13 THE COURT: Thank you for coming.

14 THE WITNESS: Have a good day.

15 THE COURT: You, too.

16 (Witness excused.)

17 MS. ABEE: Your Honor, can we approach briefly?

18 (Proceedings held at the bench; not reported.)

19 THE COURT: Madam Forelady, I'm gonna let you break
20 for lunch. If you will be back in the jury room a little
21 bit before a quarter till two we're gonna pick back up.

22 Please remember there is no talking about this case,
23 doing any research or anything else on social media,
24 understand?

25 Thank you. I hope you have a good lunch.

1 (Whereupon, the jury was excused for lunch at
2 12:27 PM.)

3 THE COURT: All right. Unless there's something
4 else, we're gonna be in recess for lunch. We'll start
5 back promptly at a quarter till two.

6 Thank you.

7 MS. WEISS: Thank you, Your Honor.

8 (Whereupon, a luncheon recess was taken at 12:27 PM.)

9 (Back on the record at 1:45 PM.)

10 THE COURT: David, can I see you, and I need somebody
11 from the State.

12 (Proceedings held at the bench; not reported.)

13 (The following proceedings were held in-camera
14 outside of the courtroom.)

15 (Juror Number 199 enters the room.)

16 THE COURT: All right. Good afternoon.

17 JUROR NUMBER 199: Good afternoon.

18 THE COURT: It was brought to my attention that
19 one of the other jurors approached you about trying to
20 talk about this case.

21 JUROR NUMBER 199: No, ma'am. He didn't approach me.
22 He -- first of all, I take this very seriously --

23 THE COURT: Oh, it is serious.

24 JUROR NUMBER 199: -- this is a person's life.

25 THE COURT: Exactly.

1 (State's Exhibit Number 6 through 16 were marked
2 for identification.)

3 THE COURT: Are you-all ready?

4 MS. WEISS: Yes, Your Honor.

5 THE COURT: Did you-all get them numbered?

6 MS. WEISS: Yes, Your Honor.

7 THE COURT: All right. You can call your next
8 witness.

9 MS. WEISS: Thank you, Your Honor.

10 The State calls George Tansil.

11 (Whereupon, George Tansil was duly sworn by the
12 Clerk of Court.)

13 THE CLERK: If you'll state your name and spell your
14 last, please, for the record.

15 THE WITNESS: George Tansil. T-A-N-S-I-L.

16 GEORGE TANSIL,

17 having been duly sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MS. WEISS:

20 Q. Good afternoon, Mr. Tansil. How are you this
21 afternoon?

22 A. Fine, ma'am. How are you?

23 Q. Good.

24 Mr. Tansil, if you would, please introduce yourself
25 to the jury and tell them a little bit about who you are

1 and what your career was like.

2 A. I am seventy-four and a half, retired, and I spent
3 most of my career with a law enforcement agency in one
4 capacity or another. Some of these capacities, even though
5 if it was with a law enforcement agency, some of my
6 capacities were not as a certified police officer. It
7 would have been administrative positions such as a
8 fingerprint examiner or a photographer. I have worked --
9 I have worked with the Federal Bureau of Investigation
10 from 1969 through July, 1972. I worked in the latent
11 fingerprint section and I was a -- I was trained as a
12 Lexington fingerprint photographer.

13 Excuse me. I was next employed with the South
14 Carolina Law Enforcement Division from July of '72 to
15 April of '74. I truly apologize for my voice here. I
16 was employed with SLED both as an agent and yet filling my
17 primary responsibilities as a records -- records clerk
18 and also entering into an internship for fingerprint
19 classification and fingerprint identification.

20 I left SLED in that capacity and went to Lexington
21 County Sheriff's Department in April of '74 through
22 September of 1976. During that time I was a deputy
23 sheriff slash detective. My primary responsibilities
24 was a criminalist working crime scenes and I was also a
25 crime scene identification officer as far as examining

1 fingerprints, taking photographs and things of that nature.

2 Bear with me. I left Lexington County in September
3 of '76 and finished my education at the University of
4 South Carolina. Then in July 1982, I became employed by
5 the South Carolina Board of Medical Examiners. This is
6 gonna be a little bit tricky and I hope I don't lose you
7 hear. The Board of Medical Examiners investigate cases
8 where pursuant to the rules and laws of the South Carolina
9 Medical Board allegations against medical personnel are
10 generated and the investigator -- and as the investigator
11 I was assigned to the South Carolina Attorney General's
12 Office for the purpose of being under supervision of a
13 state prosecutor wherein I investigated these matters,
14 reported to the Attorney General's Office my findings and
15 if legal proceedings were to go forward, that's the process
16 we took. It's very -- very similar to a trial. You go
17 before a tribunal, give evidence, give testimony and they
18 find the findings.

19 What year was that?

20 Q. Let me go ahead and bring you up to -- in 1986, where
21 were you working?

22 A. I should have looked at my notes.

23 Q. Would it help you to look at your notes?

24 A. If you don't mind.

25 Q. Not at all.

1 A. I just don't want -- I don't want to confuse anybody.
2 Hello, Your Honor.

3 THE COURT: Hi.

4 A. Okay. I think that brought us up to September of
5 1982.

6 Q. Okay.

7 A. Okay. In September of '82 through July of 1985, I
8 worked with the South Carolina State Attorney General's
9 Office. I was a special investigator for. My -- the
10 purpose of my capacity was I was assigned to the South
11 Carolina Supreme Court and under the Supreme Court they
12 have a section called the Board of Grievances. Just like
13 the medical examiners, if there -- if a lawyer, a judge or
14 somebody pretending to be a lawyer or judge needs to be
15 investigated, that's what I would do. And, once again, I
16 would be under the supervision and direction of the
17 prosecuting attorney and I would begin an investigation
18 into the allegations. If meritorious, I would write a
19 report, submit it to my supervisor who would determine
20 whether or not we need to go forward with that, and if we
21 did we took that finding before the Board of Grievances,
22 which, again, is part of the Supreme Court, and if they
23 wanted to go forward we would go before a tribunal of
24 lawyers or judges and they would make a finding.

25 In February of '87 --

1 Q. When you left the Supreme Court.

2 A. I missed my date here. Did I start with July '85 or
3 did I start with --

4 Q. You ended at July '85.

5 A. I ended.

6 Q. So after July of '85 when you left the Supreme Court.

7 A. Thank you.

8 Q. Sure. Where did you go from there?

9 A. In July of '85, I was employed, once again, with the
10 South Carolina Law Enforcement Division, mostly referred
11 to as SLED, so if I say that, that's where it was. I was
12 employed as a special agent assigned to the firearms,
13 criminal -- criminal investigations of crime scenes, and
14 I also entered into an internship to pursue further
15 information and education about becoming a fingerprint
16 profiler or fingerprint examiner. So my duties -- my
17 duties for a couple of years varied, but mostly I -- I was
18 assigned to a crime scene somewhere in the state of South
19 Carolina. I would travel to that crime scene and I'm gonna
20 give you a little bit of information here. Each crime
21 scene can be processed by one person or if the need be, if
22 the crime scene is large enough, we have multiple agents
23 who respond to that crime scene. So I can tell you about
24 how I do things at a crime scene, how my agency and my unit
25 worked in concert at a major crime scene and I can allow

1 you to have the understanding of how we go about collecting
2 evidence, marking things, identifying things. What we do
3 at a crime scene, if you have specific -- specific
4 questions -- and where was I?

5 Q. Actually that's just perfect because that brings us
6 right up to where we are -- where we are in this case.

7 A. Did you want me to go further in my jobs?

8 Q. If you -- if you would like to, but I think that
9 really is perfect because that brings us right to this
10 crime -- right to this scene.

11 A. If you would let me get my last two jobs in.

12 Q. Yes, sir. Absolutely. I'd be happy to.

13 A. I won't get you lost. I promise.

14 I left SLED in February and returned to the South
15 Carolina Attorney General's Office as a new investigations
16 coordinator. I was a financial crimes specialist so, once
17 again, what I mentioned a moment ago, receive a complaint,
18 investigate, gather documents and interview witnesses,
19 prepare a prosecutorial summary, go before a tribunal and
20 they make the decision. That was until 1997, September.

21 And in September of 1997, I was retained -- not
22 retained, I was employed by the South Carolina State
23 Supreme Court, who had opened up a new division. They
24 assigned me to the board -- there's so many little names
25 here. Basically it was not the Board of Grievance here, it

1 was the Office of Disciplinary Counsel, who came in and
2 brought in a bunch of new things that the Court wanted to
3 do as far as any investigations. I was employed as a
4 financial specialist with the Supreme Court and in the very
5 same order of business and the flow of investigations,
6 received complaints, went out and talked with people,
7 investigated any documents, subpoenaed things. As a
8 financial specialist, I worked with banks and spreadsheets
9 and things like that. And so I did that until March of
10 2006 when I retired from the Supreme Court.

11 Q. Thank you.

12 A. I'm sorry to keep you like --

13 Q. No, no. Not at all. Thank you very much.

14 We're gonna take you back to 1986 when you were
15 employed with the State Law Enforcement Division and we
16 talked about -- you talked about it, explained exactly what
17 you were doing there when you were doing the internship
18 and you were working for the crime scene investigation
19 unit, okay?

20 A. Yes, ma'am. Am I talking loud enough?

21 THE COURT: You are. I can hear you.

22 Jury, can you hear the witness?

23 They can hear you, so you're good.

24 BY MS. WEISS:

25 Q. Mr. Tansil, in 1986 you would go out to crime scenes

1 when you were assisting other agencies with SLED, correct?

2 A. Yes, ma'am.

3 Q. And that included the Lexington County Sheriff's
4 Office?

5 A. Yes, ma'am.

6 Q. Okay. And did you go out to the Lexington County
7 Sheriff's Office for a search warrant on a vehicle?

8 A. No, ma'am.

9 Q. Did you go out to process a search warrant on a
10 vehicle --

11 A. No.

12 Q. -- for the Lexington County?

13 A. The sheriff's department had served the vehicle on
14 one day, I came to their office the next and processed the
15 vehicle along with another SLED agent and we in concert
16 processed the car and pulled out whatever exhibits -- not
17 exhibits, but evidence.

18 Q. Okay. I'm gonna show you what's been marked as
19 State's Exhibit 6 through 14 and see if you recognize these
20 photos?

21 A. Thank you, ma'am.

22 May I state that I do not have an independent
23 recollection of processing this crime scene back in 1986,
24 but I have examined exemplars, which has refreshed my
25 memory in some cases, but more importantly allows me to

1 recognize these items in these pictures. It allows me to
2 see evidence bags, which has my script on there, my name,
3 my initials, and it allows me to tell you how I work in
4 concert with another agent.

5 Q. Okay.

6 A. And your question? I'm sorry.

7 Q. So based on the information that you've been able to
8 look at to refresh your memory, were you taking photographs
9 back in 1986? Was that one of your duties?

10 A. Yes, ma'am.

11 Q. Okay. And did you take these photographs?

12 A. Yes, ma'am.

13 Q. Okay. And if you would look through and just make
14 sure that they all go with the same -- same set of
15 pictures.

16 A. These are the same -- the same pictures that I have
17 examined this morning and I can identify each of them.

18 Q. Okay.

19 MS. WEISS: Your Honor, at this time I would like
20 to admit State's Exhibit 6 through 14 into evidence.

21 THE COURT: Any objection?

22 MS. MAULDIN: No, Your Honor.

23 THE COURT: Very well.

24 (State's Exhibit Number 6 through 14, photographs,
25 were admitted into evidence.)

1 MS. MAULDIN: Your Honor, may we approach?

2 THE COURT: You may.

3 (Proceedings held at the bench; not reported.)

4 MS. MAULDIN: And, Your Honor, for the record we
5 have an objection that Your Honor has given us permission
6 to put on the record more fully later.

7 THE COURT: Yes, ma'am. That's correct.

8 (State's Exhibit Number 17 through 19 were marked
9 for identification.)

10 BY MS. WEISS:

11 Q. Okay. Mr. Tansil, you said that you were able to
12 review some things that refreshed your memory that you were
13 actually at this crime scene and that you took these photos
14 and that you took part collecting the evidence from this
15 car?

16 A. That is correct.

17 Q. Okay. I'm gonna show you what's been marked as
18 State's Exhibit 17 for identification. Do you recognize
19 what this is?

20 A. This is a form from the South Carolina Law Enforcement
21 Division wherein I turned over two rolls of Kodak film to
22 our supervisor in the photography lab for processing.

23 Q. Okay. And is that for this case?

24 A. Yes, ma'am.

25 Q. Okay.

1 MS. WEISS: Your Honor, at this time I'd like to
2 enter in State's Exhibit 17.

3 THE COURT: Any objection?

4 MS. MAULDIN: No objection to that one.

5 THE COURT: All right. It's admitted.

6 (State's Exhibit Number 17, an evidence receipt, was
7 admitted into evidence.)

8 THE WITNESS: May I see that again?

9 MS. WEISS: Absolutely.

10 THE WITNESS: I meant to give you the date, which is
11 11-5-86.

12 MS. WEISS: Thank you.

13 BY MS. WEISS:

14 Q. I'm gonna show you what's been marked as State's
15 Exhibit 19 for identification. Do you recognize any
16 markings on that picture?

17 A. Do you have a magnifying glass?

18 Q. I have reading glasses. See if that will help.
19 Specifically to that marking right there.

20 THE COURT: I have a magnifying glass in my office.
21 She's gonna get it or better yet, you know, your phone
22 has --

23 MS. WEISS: And that's what they were just saying,
24 that I should use my phone.

25 THE COURT: (Handing.)

1 THE WITNESS: Okay. Thank you.

2 BY MS. WEISS:

3 Q. And that right there?

4 A. I can go across the page if you'd like?

5 Q. Just do you recognize --

6 A. Yes. This is my handwriting and my initials on the
7 cool pack.

8 Q. Okay. And what does it that mean?

9 A. That means that I took this from the crime scene,
10 made my markings on it, put it in some container, probably
11 a paper container, and removed it from the vehicle and
12 processed it at SLED headquarters in my lab.

13 Q. Okay.

14 A. Do you want your glasses back?

15 Q. Sure. And I'm gonna show you what's been marked as
16 State's Exhibit 18 for identification. Do you recognize
17 this form?

18 A. I have seen a photocopy I believe of a form very
19 similar to this within the last week.

20 Q. Okay. And does that form have your name on it?

21 A. Yes, ma'am. It is the second full name in the upper
22 right corner.

23 Q. Okay. And what is the date on that form?

24 A. This form says arrival date November 4th of '86 at
25 around 9:00 in the morning.

1 Q. And does it -- does it mention anybody else that you
2 worked with in the lab or within the crime scene unit that
3 you would have processed that scene with?

4 A. Well, let me back up one step.

5 Q. Okay.

6 A. In addition to my name being in the upper right
7 corner, there appears to be the name and initial George T,
8 which is probably me.

9 Q. Okay.

10 A. And what was your question?

11 Q. Is there a name of somebody else on that form that
12 worked with you that would have processed the scene with
13 you?

14 A. There's a first name of Ken, and I did work with a
15 Ken. There's a first name of Jeff, and I did work with a
16 man named Jeff. And that's all the names I can identify.
17 There is another name on there, which I don't know. Jacob.

18 Q. And with Ken, there's a signature down here. Do you
19 recognize that signature of being the Ken or Ken Haben?

20 A. I cannot tell you as a document examiner that it's one
21 and the same, but that's pretty much the way Ken wrote his
22 name.

23 Q. Okay. And Ken Haben is the name of the person you
24 worked with?

25 A. Yes, ma'am.

1 Q. Okay. And would it be common for you to work --
2 would it be uncommon for the two of you to go out and work
3 a scene together?

4 A. No, ma'am. We had a policy, I'm not sure when it was
5 instituted, but if I were called out and assigned to a
6 crime scene oftentimes, but not each time, a representative
7 from one of our other laboratories would either meet me
8 there, ride with me, but that's another illustration --
9 thank you -- of how we worked in concert both doing things
10 at the same time every time or being separated by a few
11 feet or being separated by a few cars before we arrive at
12 the crime scene, so we work in concert with each other from
13 different laboratories.

14 Q. Okay. And if this is Ken's name on this form, when
15 you collected something would you give it to Ken?

16 A. I would either -- well, if he were with me --

17 Q. Uh-huh.

18 A. -- I would have been present at the time of his
19 collection with it and I would have been knowledgeable of
20 it, particularly since I bagged up all the evidence in a
21 big box and threw it in the car.

22 Q. Okay. I'm gonna show you what's been marked as
23 State's Exhibit 16 for identification. There's a couple
24 of different pieces to it, but I'm gonna show you. Do you
25 recognize this envelope? And would you like a magnifying

1 glass?

2 THE COURT: I just cleaned it. So you're good to go.

3 THE DEFENDANT: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 THE WITNESS: You asked me about what?

6 BY MS. WEISS:

7 Q. Do you recognize that container, that envelope?

8 A. I don't have any independent recollection of this
9 envelope, but it contains information on here that leads
10 me to believe the date 11-4-86 is important and if this
11 envelope and the contents therein are important to 11-4 of
12 '86 from Lexington County, then I'm familiar with that.

13 Q. Okay. Are you familiar with this being a SLED
14 envelope?

15 A. Yes, ma'am.

16 Q. And were these the types of envelopes you-all used in
17 1986?

18 A. Yes, ma'am.

19 Q. Okay.

20 A. We had multiple, but that's one.

21 Q. Okay. And can you read what it says right here?

22 A. Where?

23 Q. Right here.

24 A. It's an abbreviation, C-I-G, for cigarette and
25 cigarette butts. Below that it says ashtray.

1 MS. MAULDIN: Objection. Hearsay.

2 THE COURT: I'll be glad to hear from you.

3 MS. MAULDIN: And it's not in evidence.

4 THE COURT: It's not in evidence.

5 MS. WEISS: Your Honor, I was just trying to have
6 him identify what it was in order to be able to put it
7 into evidence -- submitted into evidence.

8 THE COURT: Well, have him --

9 MS. WEISS: Read it to himself?

10 THE COURT: That's exactly right.

11 THE WITNESS: I'm sorry.

12 MS. WEISS: That's okay. No.

13 BY MS. WEISS:

14 Q. If you can just read it and see if you recognize -- if
15 you recognize what it was from reviewing the evidence from
16 the scene?

17 A. It's -- it is a SLED evidence folder and the outside
18 marking cigarette butts.

19 Q. Okay. Don't -- don't read what it says. Just do you
20 recognize it?

21 A. Yes. I apologize. I didn't understand your question.

22 Q. That's okay. And do you recognize who signed it?

23 A. Unless I'm overlooking it, I don't see a signature.

24 Q. Okay. I'm gonna show you again what was marked as
25 State's Exhibit 18 for identification and who filled out

1 the form for State's Exhibit 18?

2 A. I do not know.

3 Q. Who's signature is at the bottom?

4 A. Ken Haben's.

5 Q. Okay. And you testified that anything that he
6 collected you were on the scene and you would have been
7 part of collecting it as well on that -- collecting -- that
8 search warrant, that car?

9 A. If he were picking up something, I wouldn't try and
10 pick it up at the same time, but as he picked it up and
11 stored it in whatever I would see that or he would show
12 it to me. So between the two of us we had a visual on
13 whatever it was he picked up.

14 Q. Okay.

15 All right. And you -- this is State's Exhibit 8 that
16 you identified. Do you recognize what is in your picture,
17 in the very center of your picture.

18 A. It appears to be a steering wheel.

19 Q. Well, in between the steering wheel right here?

20 A. Oh, thank you. It appears to be a cigarette butt.

21 Q. Okay. And do you know if those cigarette butts were
22 collected?

23 A. Cigarette butts were collected.

24 Q. Okay. And those are photos of the cigarettes butts?
25 That was a photo of the cigarette butts?

1 A. Yes, ma'am.

2 Q. Okay.

3 MS. WEISS: Your Honor, at this time I would move to
4 enter in State's Exhibit 16 into evidence.

5 THE COURT: Any objection?

6 MS. MAULDIN: Yes, to foundation.

7 THE COURT: All right. Let me see the lawyers for
8 a second.

9 (Proceedings held at the bench; not reported.)

10 THE COURT: All right. I'm gonna let you continue,
11 Ms. Weiss.

12 BY MS. WEISS:

13 Q. Okay. And I know we showed it on the screen, but if
14 you could look right there?

15 A. Yes, ma'am.

16 Q. Can you see what that's a picture of?

17 A. It appears to be a cigarette butt.

18 Q. Is there a container of any sort?

19 MS. MAULDIN: Objection, Your Honor. Leading.

20 THE COURT: It probably is leading.

21 Can you rephrase that please, Ms. Weiss?

22 BY MS. WEISS:

23 Q. What is -- where is the cigarette?

24 A. Where you pointed to.

25 Q. Okay. And do you see anything else in that photo in

1 the center -- in the center console of that photo?

2 MS. MAULDIN: Objection. Leading, Your Honor.

3 MS. WEISS: I'm moving on.

4 THE COURT: Okay. She's moving on.

5 Ask another question.

6 THE WITNESS: Let me understand exactly what you're
7 pointing toward so I can --

8 BY MS. WEISS:

9 Q. Well, I was pointing toward right there.

10 A. Right here?

11 Q. Yes. Do you see any -- and right there.

12 A. I can't say with certainty, but it appears to be a
13 center console. I'm not sure that it is part of the
14 original manufacturing things here. It could be a -- a
15 separate console that's purchased and then stuck -- stuck
16 in the car like.

17 Q. And do you see anything in that console?

18 A. Here?

19 Q. Uh-huh.

20 A. It appears to be a crumpled paper item and it's
21 similar to one of the pictures you showed me earlier, a
22 cigarette pack.

23 Q. Okay. And if a cigarette pack was collected -- if
24 that cigarette pack was collected, would you have seen that
25 cigarette pack collected?

1 A. Yes, ma'am.

2 Q. I'm gonna show you what's been marked as State's
3 Exhibit 15 along with this. Do you recognize what this
4 is, what this -- do you recognize this bag? Is that the
5 type of bag that was used by crime scene to collect
6 evidence?

7 A. It was one of the type of bags. And I can't state
8 that I recognize this bag individually.

9 Q. Do you recognize that piece of paper or can you see
10 what's on that piece of paper?

11 A. Yes, ma'am.

12 Q. Okay. Is that consistent with how things would be
13 identified?

14 A. Well, not necessarily identified, but just a brief
15 description so we can separate, say, one of these cigarette
16 packs and write a brief description about it and then put
17 another note in the next pack and whatnot.

18 Q. Okay. So --

19 A. And that is my handwriting.

20 Q. That is your handwriting. Okay. So can you say that
21 you collected these items?

22 A. Either I collected them or they were collected in my
23 presence, but, yeah.

24 MS. WEISS: Your Honor, I'd like to admit State's
25 Exhibit 15 into evidence.

1 THE COURT: Any objection?

2 MR. MAULDIN: Yes, to foundation, and also subject
3 to our pre-trial objections and motions.

4 THE COURT: All right. Let me see counsel just for
5 a second, please.

6 (Proceedings held at the bench; not reported.)

7 MS. WEISS: Your Honor?

8 THE COURT: Go ahead.

9 MS. WEISS: At this time the State moves State's
10 Exhibit 15 into evidence.

11 THE COURT: 15, and that is the cigarette?

12 MS. WEISS: Packs.

13 THE COURT: Cigarette packs he testified was
14 crumpled in the console.

15 MS. WEISS: Yes, Your Honor. From State's Exhibit 7,
16 the picture.

17 THE COURT: Right, and I understand there's an
18 objection from the defense.

19 MS. MAULDIN: Yes, Your Honor.

20 THE COURT: All right. That objection is so noted
21 for the record, but I'm gonna allow it to be admitted.

22 (State's Exhibit Number 15, a cigarette pack, was
23 admitted into evidence.)

24 BY MS. WEISS:

25 Q. And if you would, can you identify what type of

1 cigarette the cigarette pack is from?

2 A. Vantage Ultra Lights.

3 Q. Thank you.

4 MS. WEISS: I have no further questions for this
5 witness.

6 Thank you. And please answer any questions the
7 defense may have.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Ms. Mauldin.

10 MR. MAULDIN: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. MAULDIN:

13 Q. Good afternoon, Mr. Tansil.

14 A. Ms. Mauldin.

15 Q. Now you've talked about how you didn't remember taking
16 these photographs based on your own recollection, right?

17 A. Yes, ma'am.

18 Q. And it's unusual for you to have to come to court and
19 testify about a case you worked on more than thirty years
20 ago?

21 A. Yes, ma'am.

22 Q. And when you testified more often, it would have been
23 more normal for you to testify in cases that were months or
24 years old, not anything like thirty, correct?

25 A. Well, thirty seems to be the limit. Yes, ma'am.

1 Q. All right. Now you indicated that you submitted two
2 rolls of film; is that right?

3 A. Yes, ma'am.

4 Q. And would this --

5 A. According to the document.

6 Q. Okay. And back then would you have been using like
7 35 millimeter film?

8 A. Yes, ma'am.

9 Q. And how many images would be on a role of film?

10 A. Thirty-six.

11 Q. Thirty-six. So you would have taken two rolls of
12 thirty-six images?

13 A. Yes, ma'am.

14 Q. And --

15 A. Ma'am, let me restate that. I used rolls that had the
16 capacity of thirty-six images. I may not have used each
17 and every image, so it may have been twenty-seven images on
18 a thirty-six image roll.

19 Q. Okay.

20 A. Does that make sense?

21 Q. It does. And if you went to view a particular item of
22 interest, would you take part of the roll and then take the
23 roll out and start a new roll or would you finish one roll
24 and then start the next?

25 A. Finish one roll followed by the next and that's our --

1 that's normal process.

2 Q. Okay. So there's no reason that you remember in
3 this case that you would have taken fewer than thirty-six
4 pictures if you submitted two rolls?

5 A. I cannot state with certainty as you say after thirty
6 years how many photographs I took on each roll. If we had
7 the rolls or the negatives, I could look at them and tell
8 you how many I exposed on each roll.

9 Q. Okay. And in preparation for this case nobody has
10 shown you rows of negatives to see which ones you took or
11 how many you took?

12 A. No, ma'am.

13 Q. Okay. And so it would be unusual -- if you went over
14 into a second roll, it would not have been your normal
15 practice not to have filled up that first one, right?

16 A. Let me think just a second. Under normal processing
17 procedures, I can't think of a situation where I would have
18 pulled a role of film out. If -- and this is hypothetical,
19 purely hypothetical, if in the process of taking pictures,
20 say, the camera broke, I'd pick up a second camera, then I
21 would not transfer that roll of film out of the first
22 camera to the new camera which has a role in it. That's --
23 that's about the only scenario I can offer you for your
24 question.

25 Q. Okay. And there's nothing that you remember that

1 indicated that's what happened in this situation?

2 A. I don't recall any situation like that, ma'am.

3 Q. Okay. And what you've testified to was all related
4 to the search warrant in November of 1986, right?

5 A. Yes, ma'am.

6 Q. Okay. And you -- none of what you did that day was
7 related to a second search warrant the next year, correct?

8 A. As far as I know that's the only year that I was
9 involved in processing evidence.

10 Q. Okay. And then you also testified about being a --
11 you were trained in photographing fingerprints at SLED,
12 right?

13 A. Yes, ma'am.

14 Q. And did you say you also worked as a fingerprint
15 examiner at SLED?

16 A. That was the internship I was working toward becoming
17 a certified fingerprint examiner and SLED allowed me that
18 opportunity with the internship.

19 Q. Okay. And when you're talking about certification,
20 is that certified by whom? By SLED or some certifying body
21 outside of SLED?

22 A. SLED would be the training organization. The
23 certifying people who allow to you put forth information
24 about a fingerprint match or no match is typically the
25 circuit court judge in county cases or state cases, the

1 -- the presiding judge in a Federal case where I was
2 providing information and testimony, so the fed -- the
3 judge presiding on that case would deem me either fit or
4 not fit to give testimony as an expert, so.

5 Q. Okay. And what was the highest level of qualification
6 that you ever earned at SLED in fingerprint examination?

7 A. There's no number or level as to that.

8 Q. Just certified or not certified?

9 A. Yes, ma'am.

10 Q. Okay. And you just refer to that as being certified.
11 Is that the right terminology?

12 A. Yes, ma'am.

13 Q. Okay.

14 A. You can -- you can be a fingerprint examiner, but
15 not a certified until you're done -- until you have given
16 testimony in court.

17 Q. Okay.

18 MS. MAULDIN: No further questions, Your Honor.

19 THE COURT: Any direct?

20 MS. WEISS: No, Your Honor.

21 May Mr. Tansil please be excused from his subpoena?

22 THE COURT: Yes.

23 Mr. Tansil, thank you for coming. You're excused.

24 THE WITNESS: Thank you so much, ma'am. And here's
25 your magnifying glass.

1 THE COURT: Thank you.

2 (Witness excused.)

3 THE COURT: You can call your next -- wait a minute.

4 Let me ask, Madam Forelady, the jury okay? Can we
5 go through another witness? Everybody all right?

6 You need a break?

7 MS. MAULDIN: Yes, Your Honor.

8 THE COURT: Let take a 10-minute break.

9 Madam Forelady, when one goes, we all go.

10 Now, please, let me instruct you there is to
11 absolutely no discussing this case while in the jury
12 room even amongst yourselves, okay?

13 Thank you. Ten minutes.

14 MS. MAULDIN: Thank you, Your Honor.

15 (Whereupon, the jury retires to the jury room at
16 3:41 PM.)

17 (Recess taken at 3:42 PM.)

18 (Back on the record at 3:54 PM.)

19 THE COURT: All right. We ready to get back to
20 work?

21 MS. MAULDIN: Yes, Your Honor.

22 MS. ABEE: We're ready, Your Honor.

23 THE COURT: All right. Let me tell the lawyers
24 before we get back, would you-all like to put your
25 objection on the record?

1 MR. MAULDIN: That's correct, Your Honor.

2 When the State was introducing the photos,
3 Ms. Mauldin was originally not going to object, then she
4 asked for a sidebar and we did register an objection at
5 the sidebar. Our objection was based, again, foundation
6 and our pre-trial objection to the search warrant and
7 Your Honor overruled our objection.

8 THE COURT: Right. And let me -- and let me tell
9 you why. Because a lot of stuff that they tried to get
10 in, I didn't let in, but as far as the pictures were
11 concerned he ID'd the film, he took the pictures. And
12 also the cigarette pack. He ID'd his own signature.
13 While he didn't ID the envelope from SLED itself, he ID
14 the -- and when I say the envelope from SLED, it's the
15 outer envelope he couldn't ID, he didn't recognize it,
16 but he did recognize his signature on the inner envelope
17 and he also, I guess, had a partner who said if that
18 evidence was collected and even if Mr. -- tell me the
19 other officer's name.

20 MS. WEISS: Haben.

21 THE COURT: Haben collected it, he was there with
22 him, that was his partner that they did and worked crime
23 scenes together. He did recognize his signature, he
24 did recognize his partner's name and probably, more
25 importantly, he recognized the date of the crime scene

1 and associated it with this case. So I let those
2 two pieces of evidence in.

3 I did not let the other evidence in because I was
4 not satisfied from the testimony that a foundation -- a
5 proper foundation had been laid.

6 MS. WEISS: Your Honor, if I may just clarify just
7 for the record that he recognized his handwriting inside
8 the envelope, the cigarette pack --

9 THE COURT: Right.

10 MS. WEISS: -- the writing inside. His signature
11 was on something --

12 THE COURT: It wasn't on the outside, he didn't
13 recognize that, but it was inside.

14 MS. WEISS: Handwriting.

15 THE COURT: Handwriting. That was his own.

16 MS. WEISS: Correct.

17 THE COURT: And that's the only reason I'm letting
18 those in, not just because of the handwriting, but for
19 the other things that I stated about the partner, the
20 date. I believe that's the foundation to get through.
21 The others I did not feel met the foundation required.

22 Anything else?

23 MS. ABEE: Not from the State, Your Honor.

24 MS. MAULDIN: No, Your Honor.

25 THE COURT: All right. Now I'm gonna tell you-all

1 I'm bringing -- because I want to try to stay on schedule.
2 I'm bringing the jury in lunch tomorrow, so we're gonna
3 have a working lunch. Just to kind of let you-all know
4 if you-all wanted to bring lunch and be prepared to go
5 because I'm gonna tell the jury I'm bringing you lunch,
6 knock on the door when your finished and we're gonna get
7 back to work. I only do that when I feel like we're not
8 gonna make the week's time limit. And, you know, if we
9 go over, we go over, but I try to keep it within the week,
10 so I'm going to do that.

11 All right. Let's bring the jury in.

12 BAILIFF: Yes, ma'am.

13 (State's Exhibit Number 20 through 23 were marked
14 for identification.)

15 (Whereupon, the jury return to the courtroom at
16 3:59 PM.)

17 THE COURT: Madam Forelady, the jury ready?

18 FOREPERSON: Yes, ma'am.

19 THE COURT: Please be seated.

20 Call your next witness.

21 MS. ABEE: Your Honor, the State calls Rebecca
22 Gutierrez.

23 (Whereupon, Rebecca Gutierrez was duly sworn by the
24 Clerk of Court.)

25 THE CLERK: If you'll have a seat and state your

1 full name and spell your last, please, for the record.

2 THE WITNESS: My name is Rebecca Gutierrez.

3 G-U-T-I-E-R-R-E-Z.

4 REBECCA GUTIERREZ,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. ABEE:

8 Q. Do you go by Rebecca?

9 A. Yes.

10 Q. Rebecca, how old are you?

11 A. I'm sorry. Forty-four.

12 Q. And when's your birthday?

13 A. [REDACTED] [REDACTED]. Sorry. I may be off a year
14 or two. I was born in Mexico and my birth certificate is
15 '79, but when I got my driver's license they made a mistake
16 and put 1978 and so I teeter between '78 and '79 because it
17 hasn't been changed until this day.

18 Q. You said you were born in Mexico. Have you ever lived
19 in Lexington County?

20 A. Yes.

21 Q. Okay. How long have you lived in Lexington?

22 A. Forty years, forty-one. I think I was three when I
23 came back here.

24 Q. Okay. So since you were three you've pretty much
25 lived here in Lexington County?

1 A. Yes.

2 Q. All right. Rebecca, do you have any kids?

3 A. I do. I have three kids.

4 Q. And tell us a little bit about your family, okay? I
5 want to ask, what's your mom's name?

6 A. Her name is Debra. She has been my mother and
7 father my entire life, a strong woman, very strict. We --
8 we didn't have much. We were I guess you would consider
9 poor. She did the best she could and it was her, I have
10 an older sister, my brother and then my younger sister
11 Jesse.

12 Q. All right. So you said you had older sister. What's
13 her name?

14 A. Her name is Kimberly. She was born with cerebral
15 palsy, so that was a big struggle for my mom. She just --
16 whatever came my mom's way, she just took care of us and
17 did the best she could.

18 Q. Okay. So Kim and then are you next in the birth
19 order?

20 A. Yes.

21 Q. Okay. And who is after you?

22 A. Baby brother and baby sister Jesse. So myself, my
23 brother and Jesse are all like one year apart. Well,
24 technically I'm one year apart from my brother and I'm two
25 years apart from my little sister.

1 Q. Jesse. Okay. And what's your brother's name?

2 A. David. We call him Bubba.

3 Q. All right. And what do they call you or what did they
4 call you?

5 A. They called me Becky when I was younger.

6 Q. Now I'm gonna take you back to June of 1986. Do you
7 recall where you were living at this point in time?

8 A. We were living -- I guess it was Edmond, but we stayed
9 in a mobile home. Small. It -- it was home to us. I
10 think that's Edmund Highway. I -- I can't remember the
11 physical address.

12 Q. Okay.

13 MS. ABEE: Your Honor, I'm showing opposing counsel
14 what has been premarked State's Exhibit Number 20.

15 MS. MAULDIN: Without objection, Your Honor.

16 MS. ABEE: And approaching the witness.

17 THE COURT: Yes, ma'am.

18 BY MS. ABEE:

19 Q. Rebecca, I'm handing you what's been premarked as
20 State's Exhibit Number 20. Do you recognize this?

21 A. This was our home.

22 Q. Okay. Is this the mobile home that you were living in
23 in June of 1986?

24 A. Yes, it is.

25 Q. And this is picture a fair and accurate representation

1 of that mobile home?

2 A. Yes, it is.

3 MS. ABEE: Your Honor, at this point the State moves
4 State's Exhibit 20 into evidence.

5 THE COURT: Without objection.

6 (State's Exhibit 20, a photograph, was admitted into
7 evidence.)

8 MS. ABEE: Permission to publish, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. ABEE:

11 Q. Rebecca, I'm just gonna put this up here on the screen
12 so we can see. So this is State's Exhibit Number 20. Is
13 this the mobile home you recall living in?

14 A. That's correct.

15 Q. Okay. And tell us a little bit about this mobile
16 home. What do you remember the layout being?

17 A. We have that porch, we had -- I'm not sure if you can
18 see it, but it's a swing like at the very back of the
19 porch. Like when you walk up, it's facing this way, you
20 swung on it. We had a swing there. It was a window close
21 to the swing at -- before the porch ended. So you see
22 where the deck of the porch is and then there was a swing
23 and there's a window that you could look in and when you
24 looked in our living room was right there.

25 Q. Rebecca, I'm gonna hand you a laser pointer if you

1 need to point out anything. You just simply push that
2 button right there and hold it down and it will make the
3 light go, okay?

4 All right. You said when you looked through the
5 window you saw the living room?

6 A. Yes.

7 Q. So tell us the layout once you walked into that
8 trailer.

9 A. So this was a very small mobile home. When you walked
10 you'd in, you immediately was in our living room. To the
11 left was the kitchen and then if you went right you were in
12 the living room and if you went straight to the back was
13 our bedroom. Me, Jesse and Kim slept in that room. If you
14 went to the right past the kitchen, you went down the
15 hallway, to the left was like the laundry room area, the
16 bathroom, and then straight back was my mom's room and
17 where my brother slept.

18 Q. All right. Now we've heard about your two sisters and
19 brother. Tell us about the standard sleeping arrangements.
20 This room when you walked into the right, who usually slept
21 in that bedroom?

22 A. So when -- the room off to the living room, it was
23 mine, Kim and Jesse's room. When you walked into the room,
24 you would immediately see a window above, like a -- it was
25 very small, a full-size bed, and then if you turned to

1 facing this way my sister slept in like a twin-size or
2 cot-size, very small bed, and her bed was up against that
3 wall and ours was up against that wall, and then we had
4 just a very small toilet and sink in the -- how do I --
5 like it's -- when you walk in the room, our bed, my
6 sister's bed and then a very small, almost like
7 closet-like, was the toilet and the sink.

8 MS. ABEE: Your Honor, I'm showing opposing
9 counsel what's been premarked as State's Exhibit
10 Number 21 and 22.

11 BY MS. ABEE:

12 Q. As a matter of fact, I'm showing you what's been
13 premarked State's Exhibit Number 21 and 22. Do you
14 recognize these?

15 A. Uh-huh.

16 Q. Okay. What are these?

17 A. This is -- this is exactly our room. This is our bed,
18 that's our fan, that was our little side table, but it was
19 like a little bench at the bottom and a crate that we set
20 the fan on and beside that was a night light and you could
21 see my sister's bed right here.

22 Q. Okay. We're gonna go through them, but are these a
23 fair and accurate picture of that way your room looked back
24 then?

25 A. Absolutely.

1 MS. ABEE: And, Your Honor, the State moves State's
2 Exhibit 21 and 22 into evidence.

3 MR. MAULDIN: Without objection.

4 THE COURT: They're admitted.

5 (State's Exhibit Number 21 and 22, photographs were
6 admitted into evidence.)

7 MS. ABEE: Permission to publish, Your Honor?

8 THE COURT: Yes, ma'am.

9 BY MS. ABEE:

10 Q. All right. Rebecca, you were just talking about it,
11 so I'm gonna put it up here for the jury to see, okay, and
12 you've got that laser pointer up there with you. If you
13 could, describe to us what we're seeing in this photo?

14 A. So when you walk in, this bed right here was mine and
15 Jesse's bed and if you look up there, there's a window that
16 was above our bed. This is our fan, night -- made-up
17 nightstand, and you can't see it because I think the door's
18 covering it, but it was plug, we had a night light there,
19 and this is where my sister Kimberly slept, in this bed.
20 And you wouldn't think there was a walkway in between the
21 two beds from the picture, but we had enough space as the
22 walkway to where you went kind of straight and
23 catty-cornered, and that was the bathroom.

24 Q. And, Rebecca, I'm gonna show you State's Exhibit
25 Number 21 and is this that bed that you and Jesse slept in?

1 A. Absolutely.

2 Q. Okay. And up here, what I'm pointing to at the top of
3 State's 21, is this the window that you were talking about
4 above your bed?

5 A. Absolutely.

6 Q. All right. And, Becky, if you could, tell us how much
7 space is between the bed and the wall right here?

8 A. It's no sleep. Like if someone slept there you
9 couldn't fall in between. The bed is completely slid up
10 against that wall.

11 Q. And typically who slept on what side of the bed?

12 A. Typically I would sleep on the edge of the bed and
13 Jesse would sleep up underneath the window to the wall.

14 Q. And I'm gonna take you back to June the 5th of 1986.
15 If you could, tell us what, if anything, you remember about
16 that day.

17 A. We -- about the day, I can tell you about the
18 timeframe. We had probably just got out of school a couple
19 of days before. Summertime. I can't -- as I get older,
20 the little things I can't recall typically about the day,
21 but we had ate dinner and just hung around the house.
22 Again, it was a couple of days -- we had already, you
23 know, when you're released at the end of the school, like
24 kindergarten, we had just got out of school three days
25 prior and we probably were just staying up a little bit

1 later just enjoying our time and we played with like the
2 papers that they give you at -- like at the end of the
3 school. They give you back everything you've done.

4 Q. And I want to talk a little bit about that night.
5 What were the sleeping arrangements that night on June
6 the 5th?

7 A. That night we were in the living room and Jesse asked
8 to sleep with my mom that night and my mom wouldn't let her
9 because my brother was sick. She allowed my brother to
10 sleep with her instead of Jesse and Jesse was a little sad
11 and I told her well, since -- since you're not able to
12 sleep with momma, you can sleep on the edge of the bed
13 because she never sleeps there, and I said I'll sleep up
14 underneath -- like up underneath the window to the wall.
15 And I let her sleep on the edge of the bed that night and
16 she never sleeps there, never, and I let her that night.

17 Q. So referring back to State's Exhibit Number 21,
18 typically you slept closer to the fan; is that right?

19 A. (Nods head.)

20 Q. Okay.

21 A. That's correct.

22 Q. But on this particular night Jesse slept here closer
23 to the fan; is that right?

24 A. Yes. I thought it would cheer -- cheer her up. Yeah,
25 that's where she slept.

1 Q. Okay. Now we talked about the fan in the room and I
2 think you mentioned a night light. Was there typically a
3 night light on in the room?

4 A. Yes, that's correct.

5 Q. And then these windows that we see here in State's 21,
6 did they look like that, no sort of shades over them or
7 anything like that?

8 A. No, they were -- they never had shades on them and as
9 you can see just by taking the picture how dark it is you
10 can see how much sunlight comes through there, you can see
11 it on the bed, but there's pretty good light coming through
12 those windows.

13 Q. And, Becky, if you could tell us all what happened
14 when went to bed that night.

15 A. So Jesse was upset that she couldn't sleep my mom and
16 I thought I would cheer her up and -- and told her that
17 she could sleep on the edge of the bed, and so we went to
18 sleep. And -- and I got a feeling. If you ever feel like
19 someone's staring at you or watching you, you -- you just
20 get this instinct like someone's over you and watching you,
21 and that's what I felt. And I woke up and there was a
22 figure. I didn't immediately know -- like I didn't know,
23 but it was a figure standing just staring over me and my
24 sister just watching us, and I just jumped a little bit and
25 I -- I didn't close my eyes completely because I didn't

1 know what was going on and I squinched my eyes, but I
2 didn't close them because I wanted to see who this person
3 was, what -- what are they doing in our room, and it was a
4 man. And he stood there for a second. I don't know if --
5 till this day I -- I want to know if he knew I -- I woke
6 up. I tried to pretend like I was going back to sleep, but
7 I didn't. I wanted it see like what was going on. And it
8 was a man standing over me and my sister and, like I said,
9 he had to have been standing there for a minute because I
10 had this instinct like someone was there. That's what
11 caused me to wake up. And then shortly after I jumped a
12 little bit and then squinched my eyes thinking it would go
13 away, and it didn't. This man walked maybe a step or two,
14 bent over, grabbed my sister and put her over his shoulder
15 and he walked out with her, and I didn't -- and I didn't
16 stop him, and that's the last time we saw her.

17 Q. Rebecca, when you saw this man take your sister over
18 his shoulder, which sister are you referring to?

19 A. Jesse.

20 Q. Okay. So the sister that was sleeping in the bed with
21 you?

22 A. Yes.

23 Q. How old were you when this happened?

24 A. I was six.

25 Q. And did you hear this person say anything?

1 A. Didn't say a word.

2 Q. Did you see whether or not Jesse woke up?

3 A. She was still asleep. He just put her right over his
4 shoulder and walked out with her.

5 Q. Do you remember which shoulder he put her over?

6 A. I want to say it was his right shoulder and he walked
7 out with her. I --

8 Q. Now -- ago head.

9 A. As I get older, it's hard to remember little things,
10 but from the time I opened my eyes until the time I -- I
11 close them at night, that man coming into my room, picking
12 up my sister --

13 MS. MAULDIN: Objection.

14 THE COURT: Hold on. We have an objection.

15 MS. MAULDIN: Victim impact.

16 THE COURT: Excuse me?

17 MS. MAULDIN: Victim impact.

18 MS. ABEE: Your Honor, I'm happy to move on.

19 THE COURT: Yes. Okay.

20 And don't answer that question and you can move on.

21 Thank you.

22 MS. ABEE: Thank you.

23 BY MS. ABEE:

24 Q. Rebecca, we do have a question. You know, you saw
25 this man walking out of your bedroom with Jesse over her

1 shoulder. Why didn't you scream?

2 A. I was six years old. This is something I have to live
3 with for the rest of my life and being in court and hearing
4 things that I have guilt that's never gonna go away.

5 Q. Rebecca, I'm not gonna ask about that. I'm asking you
6 about that night specifically. Why didn't you scream?

7 A. I felt like a boulder was on my chest. I couldn't
8 move. I felt like he heard my heart beat. My heart was
9 beating so hard and fast. It was the loudest thing in the
10 room. I couldn't move. I felt like something -- like a
11 skyscraper was on me. I was so scared. I couldn't move.
12 I couldn't say anything. I just wanted it to go away. I
13 was hoping I'd wake up and it was just a bad dream, but it
14 wasn't.

15 Q. And why didn't you go get your mom?

16 A. I was scared. It's something I ask myself all the
17 time. I was so scared. I couldn't move. I froze. Even
18 if I tried, I couldn't move. I felt like a skyscraper or
19 boulder was on me. I even thought it was -- it was gonna
20 alert him. That's how loud my heart was pounding. I
21 thought he could hear my heart. That's all I could -- my
22 body froze. I couldn't do anything.

23 Q. And, Rebecca, you told us about this fan here in
24 State's 21. Did you usually turn on that fan at night?

25 A. Yeah, it was hot.

1 Q. And then we talked about these windows. Was there any
2 light coming through those windows that night?

3 A. The moon. The moon. Tons of moonlight comes through
4 those windows.

5 Q. And you told us, Rebecca, that you saw this man scoop
6 up your sister. Tell us what, if anything, you saw about
7 that person, any features.

8 A. This man, he was a white man. He had a beard, a
9 mustache and he had a hat.

10 Q. Describe this hat to us. How did you refer to it back
11 then?

12 A. Back then I called it a magic hat. I was six years
13 old. I wasn't familiar with the different types of hats.

14 Q. Outside of that, just tell us what you remember about
15 the characteristics of this hat.

16 A. The chara -- the top was higher, like a higher top,
17 and then it had like a brim around it, but it was -- it sit
18 higher. That's why I called it a magic hat. I couldn't
19 think of anything. Magic hats typically have a higher top,
20 but I couldn't think of the word. Like as a six-year-old,
21 that's all I could think of to describe it. It looked
22 similar to that.

23 Q. And what about the brim of the hat? What did that
24 look like? What could you see?

25 A. Nothing. It was -- it was out, it was shorter,

1 because this overshadowed the shortness of the brim. He
2 -- it was a brim, but this -- the top was taller than a
3 regular normal hat.

4 Q. And you talked about how you didn't scream or you
5 didn't go get your mom that night. Tell us what happened
6 the next morning.

7 A. The next morning me and Kim got up and I went and
8 acted like nothing happened. Like I got in the living room
9 and I pulled out all the papers the school had sent me home
10 with and we were in the middle of the floor, me and my
11 sister Kimberly, and we were just playing school. And then
12 my mom got up. She was like what are you-all doing and
13 it's a mess everywhere because she kept a clean house. And
14 then she's like where is Jesse and then it hit me because I
15 almost forgot about it. I just -- it scared me so bad I
16 didn't want to think about it and I -- I told her. I said
17 a man took her last night and she was like what. I said
18 momma, a man with a hat took her last night, and she just
19 -- she jacked me up and she shook me and she drug me into
20 the room and she started slinging me, the blankets were off
21 and she was looking under the bed screaming for Jesse's
22 name. She drug me outside and we ran around the house.
23 She just lost it.

24 Q. And, Rebecca, did you ever see Jesse again?

25 A. Never.

1 Q. Now I'm gonna switch just slightly. Rebecca, did you
2 know who Tommy McDowell was back when you were six?

3 A. Not when I was six, no.

4 MS. ABEE: Your Honor, I beg the Court's indulgence.

5 THE COURT: Take your time.

6 MS. ABEE: Your Honor, I have no further questions
7 for this witness at this time.

8 THE COURT: Ms. Mauldin.

9 MS. MAULDIN: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. MAULDIN:

12 Q. Good afternoon, Ms. Gutierrez.

13 A. Hi.

14 Q. Okay. So you had -- you were six years old at the
15 time. What grade had you just finished up?

16 A. I don't remember. Maybe kindergarten, first grade.

17 Q. Okay. And you -- you could read and write some?

18 A. Uh-huh.

19 Q. Okay. The police back then in 1986 never asked you to
20 write down what happened, did they?

21 A. I don't recall. I know that I was bombarded with tons
22 of questions -- questioning, but I don't remember writing
23 down anything.

24 Q. Okay. Do you remember seeing officers carrying around
25 a videocamera that day?

1 A. I believe so.

2 Q. Did they at any point tell you that they wanted to
3 take a video of you telling what happened?

4 A. I don't recall, but it's -- it's a possibility. It
5 was -- as a six-year-old, it was a circus. It was so many
6 officers, people coming in and out, and I just wanted to
7 go back normal, like I wanted everybody to go away and my
8 sister back, and it was just a lot.

9 Q. Okay. And do you remember that you told the police
10 back then that it was a black man?

11 MS. ABEE: Objection, Your Honor. Hearsay.

12 THE COURT: Let me hear from you.

13 MS. MAULDIN: Your Honor, I can ask her the question
14 if he she said that and if she denies, then --

15 THE COURT: I agree. I'm gonna allow it.

16 Go ahead, Ms. Mauldin.

17 BY MS. MAULDIN:

18 Q. You told the police that it was a black man that had
19 come into the room and taken Jessica?

20 A. My recollect -- recollection was -- I was six and they
21 asked me so many questions. I know it was a white man.
22 After being questioned over and over and suggested well, it
23 was dark, how could you see him, could he have been black.
24 At that point I have been questioned several days back to
25 back. I wanted it to all go away and I was saying yes,

1 yes, yes, but it was a white man, beard, mustache and the
2 hat.

3 Q. And let me clarify the question. What I'm asking is
4 when the police came out that same day, so I'm not talking
5 about days later and other questioning. I'm talking about
6 that day, June 6th, did you tell the police it was a black
7 that man?

8 A. I don't recall that, no. I -- it's been a white man.
9 When I -- they were asking me could it have been this, they
10 almost -- it's as if they didn't want to believe what I saw
11 and they said well, could it have been this, could it have
12 been this, what about this, how are you sure that you were
13 able to see him, it was dark. I could have said yes, yes,
14 yes. As a six-year-old, I wanted it to all end. I wanted
15 everybody out of my house. I didn't want to talk about it
16 anymore. I just wanted to be a kid, so.

17 Q. And do you remember that an officer who came out that
18 day was Investigator Bob Bartlett?

19 A. At the time I don't remember anybody's names. I don't
20 remember who I spoke with. I just knew what I saw that
21 night. As I got older, I knew who Bartlett was, I knew who
22 other people were, but at that particular time I didn't
23 know whose names were who. I don't know who I was speaking
24 with. I was speaking to tons of officers, tons of people.
25 My mom still asking me tons of questions. I was getting

1 bombarded by all these adults and I got tired and after a
2 while I didn't want to talk about it anymore. I tried to
3 forget it.

4 Q. Okay. And I don't mean to dwell on this, but I've
5 got to get an accurate answer. You testified in court
6 yesterday --

7 A. Uh-huh.

8 Q. -- and I asked you the same question and you answered
9 that with everything going on that day there was a
10 possibility that you said --

11 A. Yes, a possibility. I said yes, yes. After a while
12 I wanted them to leave me alone. And, again, they were
13 asking me how are you -- are you sure, it was dark, are you
14 sure he wasn't a black man, are you sure this, are you sure
15 that. It's a possibility after a while I said yes to just
16 about anything that they asked me. I'm telling you from
17 the time I close my eyes until the time I wake up I know
18 who I saw. This is never gonna go away. This is something
19 I have to live with every single day and with regret and
20 grief that I did not save my sister.

21 MS. MAULDIN: And, Your Honor, with that I will renew
22 my pre-trial motion on the case.

23 THE COURT: So noted for the record.

24 BY MS. MAULDIN:

25 Q. And going back again to that time back in 1986, at

1 that point it was you and your mother, your older sister
2 Kim, your brother Bubba and your little sister Jessica,
3 right?

4 A. That's correct.

5 Q. And that was the living situation on June 6th, the day
6 that you woke up and before that a man named J.R. Gordon
7 had lived in your home, too, right?

8 A. He's never lived there. He dated my mom, but he's
9 never lived there.

10 Q. Okay. He didn't live there from January until June?

11 A. He's never lived there. He dated my mom.

12 Q. Okay. And that night before anything had happened,
13 do you remember what you-all had for dinner that night?

14 A. I don't remember. I remember us all being in the
15 living room that night with our pajamas. We had already
16 ate, had a bath and my mom painted Jesse's fingernails and
17 we sat around the room and -- and shortly after that we
18 went to bed.

19 Q. Okay. And the bedroom that you've described you've
20 talked about how the bed was -- it was not a large room and
21 so the bed was close to the wall, right?

22 A. That's correct.

23 Q. And there was not room for anybody to walk on that
24 side between the bed and the wall?

25 A. No.

1 Q. And so how would you and Jessica or you and Bubba get
2 into the bed?

3 A. Okay. You couldn't -- the bed is all the way moved to
4 the wall, but in between my bed and Kim's bed is a walkway.
5 You walk -- that's how we got in from that side or we could
6 get in from the foot of the bed or the side of the bed,
7 it's a walkway, and Kim got in her bed and then there was
8 the bathroom. So there is a walkway, but not on the left
9 side that was pushed all the way against the wall.

10 Q. So whoever was gonna sleep up against the wall would
11 have to get the other side and slide over or get in at the
12 foot of the bed?

13 A. That's correct.

14 Q. And the way the arrangements in the house were, you
15 had the bed that would hold two people in your room and
16 then Kim's bed where she slept by herself and then your mom
17 in the other bedroom and then she had a got in that room?

18 A. Uh-huh.

19 Q. And so sometimes Jessica would sleep on that cot in
20 your mom's room and sometimes Bubba would sleep in the cot
21 in your mom's room, right?

22 A. Yeah, but Jesse mostly slept in the bed with me.
23 There was times when Jesse did sleep there, but mostly me
24 and her slept together in that bed.

25 Q. Okay. But it wasn't a settled thing. Sometimes one

1 would be there and then sometimes the other?

2 A. Yeah, it was, but she slept mainly in my bed. She
3 would go in there and sleep with my mom sometimes, but it
4 was set that me and Jesse was in that bed.

5 Q. Okay. And it was unusual for her to sleep on the
6 edge. Normally that's where you slept and so it was
7 unusual that night that she slept on the edge by the
8 walkway?

9 A. She -- yes, that's correct. I always slept on the
10 edge.

11 Q. And so when the man came in -- do you remember talking
12 to Detective Pritchard with the sheriff's department, and
13 this would have been in 2007?

14 A. That's correct.

15 Q. And you remember writing a statement for him?

16 A. I believe so.

17 Q. Okay. And you told him that when the -- when you
18 first saw the man and you jumped you then closed your eyes
19 to the point that your eyelashes were touching?

20 A. They were squinted like this. I was hoping that he
21 thought that I went back to sleep, but they never closed
22 because I wanted to see like who is in our room, who's this
23 person, is it my mom. Like, I didn't know who it was. So
24 I wanted to see like what -- like it just was scary. I was
25 like -- and so I wanted to see what was happening.

1 Q. Would it help you remember if I showed you your
2 statement, the way you characterized it back then?

3 A. Yeah.

4 Q. (Handing.)

5 A. Yeah. What I said is that I quickly shut my eyes to
6 where my eyelashes were touching, squinting my eyes so I
7 could see. I believe that's kind of like squinting -- when
8 you squint your eyes where both of your eyelashes are
9 touching.

10 Q. Okay.

11 A. I believe that's the same thing and I wrote that to
12 say it was squinting. That's -- they were never completely
13 closed. When he walked out with her -- when I saw him walk
14 out with my sister, that's when I closed my eyes and put
15 the blanket over my head wishing and hoping that it was not
16 real.

17 Q. And you mentioned that the night light that you had
18 was off in the room?

19 A. I think that came out when -- I think it was off. I
20 think it could have been unplugged. I think I recall
21 saying that.

22 Q. Okay. And so you talked to Detective Pritchard back
23 in 2007?

24 A. Uh-huh.

25 Q. And then a couple of years ago you talked to somebody

1 when the FBI got back involved, right?

2 A. That's correct.

3 Q. And you sat in the little room with the two chairs and
4 talked to the woman one on one about what happened?

5 A. Yeah, that's correct.

6 Q. Okay. And you talked quite a bit with her about the
7 night light, right?

8 A. Uh-huh.

9 Q. And it was clear that you -- you remembered that when
10 you woke up the night light was not on, right?

11 A. That's correct.

12 Q. Okay. And you mentioned moonlight, but there was no
13 light coming from a night light at that point?

14 A. That's correct.

15 Q. Okay. And going all the way back now to 1986, you
16 don't -- you didn't mention the night light or anything
17 then, it wasn't something you were really thinking about?

18 A. I want to say it may have come up when they did the
19 hypnosis thing. As you get older, there's a lot of things
20 -- little things that you can't recall, and I believe it
21 was unplugged or it wasn't working or whatever I said.

22 Q. Okay.

23 A. Because that's when I was older.

24 Q. But your recollection when you talked about this with
25 the FBI when somebody asked you directly about the light in

1 the room was that there was no light from a night light,
2 correct?

3 A. I believe that's correct.

4 Q. It was the moon coming in?

5 A. Absolutely.

6 Q. Okay. And then that night -- do you remember telling
7 that same person when the FBI came through that it had been
8 like an hour or two that you were asleep and then you were
9 aware of this presence in the room?

10 A. Now that I don't recall saying how long I was asleep.
11 I don't remember. I don't know if it was an hour or two or
12 three hours. I know that we were asleep. I don't know how
13 long we had been asleep before he woke me up just standing
14 there.

15 Q. But it wasn't right after you went to bed?

16 A. I don't think so.

17 Q. Do you remember telling Detective Pritchard that it
18 was a dark hat?

19 A. I believe -- I believe I did.

20 Q. Okay. And when the man walked out of the room, you
21 never heard the door squeak or creak?

22 A. The only thing I could hear was my heartbeat.

23 Q. Okay.

24 A. That was the loudest thing in that room.

25 Q. And you told that investigator from the FBI that the

1 next day somebody had propped the door open?

2 A. That is correct.

3 Q. And you described that as being a tab that looks like
4 a bread tie that holds the door open?

5 A. Yeah. If you -- if you have a screen door, it's
6 almost like a bread tie. When you open it and you want to
7 keep it open or like you're bringing in groceries and you
8 need it to stay open for a while, at the very top is like
9 -- it's a metal. It almost looks like a bread tie, but you
10 push it all the way back for the door to stay open.

11 Q. Okay. And that door creaked normally, but you didn't
12 hear a creak?

13 A. It probably did creak, but, again, that night I didn't
14 hear anything. I was awoken by just someone -- just I
15 felt like someone's presence, being stared at, and when he
16 walked out with her the only thing -- I just froze, I was
17 paralyzed, and my heartbeat was the loudest thing in that
18 room and that's all I heard.

19 Q. Okay. And I know this is a difficult thing to answer,
20 but just to be clear, the man left your room and you didn't
21 wake up your sister Kim and you didn't wake up your mom?

22 A. (Shakes head.)

23 Q. And so the -- the way this came to light was when your
24 mom came in the following morning and -- and didn't see her
25 there?

1 A. That's correct.

2 Q. Okay.

3 MR. MAULDIN: Your Honor, I beg the Court's
4 indulgence.

5 THE COURT: Take your time.

6 BY MS. MAULDIN:

7 Q. Just briefly, do you remember what time you-all went
8 to bed that night?

9 A. I don't know the exact time. I know my mom let us
10 stay up a little bit later because, you know, school was
11 out. Again, she was very strict, so we had a bedtime when
12 we were in school, but school had just let out three or
13 four days prior and she let us stay up a little bit later
14 that night, but I can't remember the time.

15 Q. Do you remember what your normal bedtime would have
16 been?

17 A. Maybe 7:30, 8:00.

18 Q. Okay. And so if she let you stay up later --

19 A. Yeah, because school was out. It was the summer.

20 Q. Would it have been, you know, an hour later or do you
21 have any idea beyond that?

22 A. No. I was six.

23 Q. All right. And when -- I know this is tough to talk
24 about, too, but when your mom came and -- and realized that
25 Jessica was not there, she was pretty rough on you, right?

1 A. (Nods head.)

2 Q. And she was physically jerking you around the room and
3 I think you used the room dragging you around the yard and
4 she was raising her voice and yelling at you?

5 A. She did.

6 Q. And -- and since this has happened there has been
7 difficulty in your relationship with your mom because --

8 A. We've can't even talk about -- we could never talk
9 about this. We -- I felt like she hated me for years, she
10 said it was one or two, but that's not how I felt, and we
11 didn't even discuss this case. I didn't even want to talk
12 about it anymore. I didn't even want to talk about this
13 with my friends. This is just hard. I blame myself every
14 day for not doing anything, but between me and her we could
15 not talk about this. Even now I don't -- I just -- we've
16 finally got a good relationship and -- and just still don't
17 want to talk about this with her. I don't want to ruffle
18 any feathers. I just -- she has what's she's been through
19 and I have what I've been through. This is my story and
20 she has a story.

21 Q. Okay.

22 MS. MAULDIN: Thank you.

23 No further questions, Your Honor.

24 THE COURT: Any redirect?

25 MS. ABEE: Briefly, Your Honor.

1 REDIRECT EXAMINATION

2 BY MS. ABEE:

3 Q. Rebecca, opposing counsel had you read from your
4 statement where you talked about your -- your eyelashes
5 touching.

6 A. Yeah.

7 Q. I'm gonna bring your attention back to that. Right
8 here where you said your eyelashes were touching, can you
9 read that very next line for us, please?

10 A. It says I did not close them because I wanted to -- to
11 see what was going on.

12 Q. Okay. So you stating that you had never fully closed
13 them --

14 A. I never closed them.

15 Q. You stated that back then, too?

16 A. Absolutely.

17 Q. That's not something new you're saying now?

18 A. I squinted them. I never ever closed my eyes until he
19 walked out that door with my sister and I put the blanket
20 on my -- over my head to go to sleep.

21 Q. Thank you.

22 MS. ABEE: Your Honor, thank you. No further
23 questions.

24 THE COURT: Okay. Thank you.

25 Can I let the witness step down?

1 MS. MAULDIN: Yes, Your Honor.

2 THE COURT: All right. You may be excused. Thank
3 you.

4 (Witness excused.)

5 MS. ABEE: Your Honor, we ask her to be excused from
6 her subpoena.

7 MR. MAULDIN: No objection, Your Honor.

8 THE COURT: All right. She's excused from her
9 subpoena.

10 Let me see the lawyers right quick.

11 (Proceedings held at the bench; not reported.)

12 THE COURT: Madam Forelady and Members of the Jury,
13 we have a witness we would like to get in today. It
14 might take us about an hour, maybe a little bit longer.

15 Are you-all okay with that? Do you want to -- do
16 you-all want a quick break before we put that witness on
17 the stand?

18 FOREPERSON: We're good.

19 THE COURT: Okay. Everybody good?

20 FOREPERSON: Yes, ma'am.

21 THE COURT: If at any time you need to take a break,
22 just raise your hand. I promise I'll catch it.

23 Let's call your next witness.

24 MS. ABEE: Thank you, Your Honor.

25 The State calls Debra Gutierrez to the stand.

1 (Whereupon, Debra Gutierrez was duly sworn by the
2 Clerk of Court.)

3 THE CLERK: If you'll have a seat, please. State
4 your name and spell your last for the record.

5 THE WITNESS: My name is Debra Gutierrez.
6 G-U-T-I-E-R-R-E-Z.

7 DEBRA GUTIERREZ,
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. ABEE:

11 Q. Ms. Gutierrez, do you go by Debbie or Debra?

12 A. Debbie.

13 Q. Debbie. All right. Debbie, how old are you?

14 A. I'm sixty-six.

15 Q. And where have you lived the majority of your life?

16 A. Here in South Carolina.

17 Q. Okay.

18 A. Lived around, but here in South Carolina.

19 Q. Does that include Lexington County?

20 A. Yes.

21 Q. Yes? You've got to make sure you answer out loud so
22 the court reporter can take everything down, okay?

23 A. Okay.

24 Q. And, Debbie, do you have any kid?

25 A. I do.

1 Q. Okay. Tell us theirs names and the birth order.

2 A. I have Kimberly Ann. She's forty-eight now. I have
3 Rebecca, forty-four. David Junior, forty-three. And
4 Jessica just turned forty-two December the 3rd.

5 Q. And we've been talking about Jesse. Is that Jessica?

6 A. It is.

7 Q. And you said she would have just turned I believe --
8 what did you say, forty-three?

9 A. Forty-two.

10 Q. Forty-two?

11 A. December -- this past December 3rd.

12 Q. Okay. How old was she the last time you saw her?

13 A. Four years old. Four, close to four and a half.

14 Q. And what month was that that you last saw her?

15 A. June of 1986.

16 Q. And I want to talk a little bit about June of 1986.

17 Where were you living at that point in time?

18 A. 2779 South Lake Drive, Lexington, 29073.

19 Q. And is that in Lexington County?

20 A. It is.

21 Q. Here in South Carolina?

22 A. Yes.

23 Q. Okay. And I'm gonna approach and show you up here
24 what's already been entered into evidence as State's
25 Exhibit Number 20. Do you recognize this?

1 A. I do.

2 Q. Okay. And is this that trailer that you were living
3 in back in June of 1986?

4 A. Yes, ma'am.

5 Q. Okay. Now I'm gonna have you walk through kind of
6 this house with us a little bit, okay? Now we see this
7 front porch and awning on this house. Is the front door
8 located through here as well? The picture is kind of dark.

9 A. The picture is kind of dark. I believe if you'll look
10 through the trees there you'll see that's the kitchen
11 window over to the left there. It was a small window --

12 Q. Here?

13 A. -- over the kitchen sink, yes.

14 Q. Okay.

15 A. And then between that window there was some vinyl
16 siding and then right there is the door where you see next
17 clear path of the limbs on the tree.

18 Q. Okay. And then do we also see a window over here?

19 A. No, that's the glare I think of the underpinning.
20 The window is actually -- go over to the top right. Whoa.
21 Back.

22 Q. How about, Debbie --

23 A. It's in between that third -- it's in between that
24 third --

25 Q. Debbie, you've got a laser pointer. I'm gonna let you

1 point it out for us, okay? Just push the button on the
2 bottom.

3 A. Which bottom?

4 Q. There you go.

5 All right. Tell us about this house.

6 A. Do I have to keep my finger on it?

7 Q. You do.

8 A. Okay. Here's -- here's the window --

9 Q. Okay. And Debbie --

10 A. -- and here's the shutters by the windows you'll see.

11 Q. And I'm gonna approach you with a photo so you can get
12 a better view of it, okay? State's Exhibit Number 20.

13 A. You can clearly see the window in this picture --

14 Q. Okay.

15 A. -- a lot better than this, yes.

16 Q. Okay. So it's a little bit clearer here?

17 A. Uh-huh.

18 Q. All right. And, if you could, just tell us about the
19 types of windows that were on that trailer. Were they your
20 standard up and down windows?

21 A. No.

22 Q. Okay. Tell us about them.

23 A. Okay. I don't remember the year of the mobile home
24 because I actually lived on this land prior to this mobile
25 home in a new mobile home when I bought the land. I've

1 also -- also bought a new mobile home, so I don't remember
2 -- I lost that one to fire, so I don't remember the year of
3 the mobile home, but the -- this particular mobile home is
4 an older mobile home. Like back in -- in years past they
5 would make the screens on the inside of the mobile home --

6 Q. Okay.

7 A. -- and it would be a thin piece of what I call more
8 like paperboard instead of like, you know, plywood or
9 something, you know, to frame it out. It's real thin. And
10 in the corner on the right there's a handle that goes in
11 and it's a crank handle and that crank operated all four
12 panes of those windows, but when that crank broke I could
13 no longer roll it out and I could no longer roll it in. So
14 if I needed it in wintertime to be shut, I would have it
15 shut and probably taped down. In the summer, that was --
16 we called that the tattletale window for a reason, but in
17 the summer I couldn't open that without putting a stick in
18 the bottom one because just like the crank, when you crank
19 it open, it opens all of the windows. All of them open.
20 When you close it, all of them close.

21 (State's Exhibit Number 24 was marked for
22 identification.)

23 MS. ABEE: Your Honor, I'm showing opposing counsel
24 what's been premarked as State's Exhibit Number 24.

25 BY MS. ABEE:

1 Q. Debbie, do you recognize this?

2 A. Yes, I do.

3 Q. Okay. Is that the windows that we were talking about?

4 A. Yes, ma'am, it is.

5 Q. And is this a fair and accurate depiction of those
6 windows that were on your trailer in June of 1996?

7 A. Yes, ma'am. Because if you'll notice, this is -- this
8 is when the screen has already been removed here.

9 MS. ABEE: Your Honor, the State moves to enter
10 State's Exhibit 24 into evidence.

11 THE COURT: Any objection?

12 MS. MAULDIN: No, Your Honor.

13 THE COURT: It's admitted.

14 (State's Exhibit Number 24, a photograph, was
15 admitted into evidence.)

16 MS. ABEE: Permission to publish, Your Honor?

17 THE COURT: Yes, ma'am.

18 BY MS. ABEE:

19 Q. All right. Debbie, you just described this to us.
20 I'm gonna pop up the picture so we can get a better
21 understanding, okay?

22 A. Uh-huh.

23 Q. So on State's Exhibit 24, what we see here are -- are
24 multiple panes in this window, right?

25 A. Right.

1 Q. All right. You're telling us that there's a crank
2 inside that's typically on those windows when you crank it
3 that's what opened them and shut them?
4 A. Right.
5 Q. Okay. Now do you recall was this window on -- where
6 was this window on your house?
7 A. It was right at the very -- like close to the end
8 right where I had the wooden swing. It's a swing glider.
9 And anyway a swing glider, I had an ashtray sitting on the
10 right-hand side of that arm swing glider and then this
11 window was right there.
12 Q. Okay. And you said that --
13 A. And that's the living room window.
14 Q. Okay. So this goes into the living room?
15 A. Yes.
16 Q. All right. And the screen is not on the outside of
17 the window, but on the inside?
18 A. On the inside. That's correct.
19 Q. And you said that this particular crank was broken,
20 so what -- how would you get this window open?
21 A. Well, this window is something. I went outside and
22 got a stick and just pulled the bottom pane and when I did
23 it opened all the panes and so it was just propped open.
24 Q. Okay. So similar to what we're seeing here. When you
25 lift one open, it opens all three; is that fair?

1 A. Yes. You -- the bottom window you lift it opens all
2 of them.

3 Q. Okay. And typically you would put a stick in there,
4 right?

5 A. Yes.

6 Q. All right. Would that allow air to come into the
7 home?

8 A. It would.

9 Q. Okay. Now I'm gonna approach you with what's been
10 marked as State's Exhibit Number 23.

11 MS. ABEE: And, Your Honor, I'm showing opposing
12 counsel as well.

13 THE COURT: Okay. Thank you.

14 BY MS. ABEE:

15 Q. And Debbie, at any point in time were you asked to
16 create a layout of the house?

17 A. Yes.

18 Q. Okay. And is this the layout you created?

19 A. It is.

20 Q. And is this a fair and accurate depiction of the
21 layout of your house in June of 1986?

22 A. It is, but now I didn't -- I think I put like TV or
23 something over there. I did not put -- I had a table right
24 there by that, that lamp on it, and I think a few whatnots,
25 but that is it, yeah.

1 Q. Okay.

2 MS. ABEE: Your Honor, the State moves State's
3 Exhibit 23 into evidence.

4 MS. MAULDIN: Without objection, Your Honor.

5 THE COURT: It's admitted.

6 (State's Exhibit Number 23, a scene diagram, was
7 admitted into evidence.)

8 MS. ABEE: And permission to publish?

9 THE COURT: Yes, ma'am.

10 BY MS. ABEE:

11 Q. Okay. Debbie, you created this diagram of the house;
12 is that right?

13 A. Uh-huh.

14 Q. Okay. And so the area that we've been talking about
15 with the window that was broken, is that this window right
16 here by the front door?

17 A. That's the porch out front. It's that one at the end
18 there, yes. No, wait a minute. There's a little one that
19 was at their bathroom. Is that one noted up there?

20 Q. It is. That's note right here.

21 A. Okay. Well, then the next one is that window.

22 Q. Okay. So the window would roll out right next to the
23 front storm door?

24 A. Yes.

25 Q. All right. Now when you walk into this trailer, which

1 side of the house did the girls usually sleep in?

2 A. You walk into the front door, it's the living room and
3 then there's a door off of the living room and my girls
4 slept in there because it had a half bath.

5 Q. And then where was your bedroom?

6 A. My bedroom's all the way at the very end down here
7 where you see the two little boxes I made, those are the
8 two longer, you know, yay wide and about -- I don't know.
9 I guess -- I'm not good at measurements. About like five
10 feet high, three feet wide windows, but I -- I kept those
11 shuttered.

12 Q. Okay. So you kept these windows shut and then I see
13 that you drew windows here beside the bed.

14 A. Yes.

15 Q. Is there a window there as well?

16 A. Yeah, over Jesse and Becky's bed, there's a window
17 there as well.

18 Q. Okay. And then what about right here?

19 A. And over to the side -- I kept the bed pushed up
20 because Jesse was the smallest. I didn't want her to fall
21 off the bed, so it was pushed up against there, but there
22 were two double windows at the very end also of that, but
23 the moonlight didn't come in through there, it came from
24 that end that night.

25 Q. And then I see that you've got some things marked on

1 the outside. What is this where it says night light
2 outside of the house?

3 A. There was a night light outside.

4 Q. When you say night light, describe that to us.

5 Because I think of a night light as a thing you plug into
6 the wall, so.

7 A. No, it was a pole, a pole with a light.

8 Q. Okay. So a pole with a light on it?

9 A. Yes.

10 Q. Okay. And that was outside what would be the upper
11 right-hand side of this diagram?

12 A. Like diagonally like across from their window.

13 Q. Okay. And was that light to your knowledge
14 functioning and working?

15 A. Yes.

16 Q. Okay.

17 All right. Thank you, Debbie, for going through all
18 of that with us.

19 A. You're welcome.

20 Q. And I'm gonna move on a little bit now to talk about
21 the night of June the 5th of 1986. Do you remember that
22 day?

23 A. Like it was today.

24 Q. Okay. And, if you could, tell us what you remember
25 about that day.

1 A. That was the last day of school. Becky and Kim were
2 in school. Bubba and I had been outside. I normally
3 worked outside in the yard lot. I was outside a lot with
4 my kids. And I had bought a crepe myrtle tree and she was
5 really excited to help me plant it. So we planted a tree
6 that day. The girls came in later from school. I told
7 them to put their book sacks away and as you know time
8 lasts longer in the summer or spring days, so we stayed out
9 a little bit longer and I knew that they didn't have school
10 the next day. And anyway we planted the tree, the kids
11 played with Wendy next door and I was out there and I was
12 like, you know, I'm really tired, I'm not gonna cook
13 anything, I think we're gonna have BLT's, and the first
14 person to complain about that was Jessica. She said she
15 didn't want BLT's and I'm like well, that's what we're
16 having. So usually when we came in like they would want
17 to, you know, watch TV and all and I would, you know, start
18 dinner and then, you know, I'd say you-all go get your
19 clothes for bath, you know, right before we finished and
20 all, but just a typical night. Just a typical night. And
21 then they were wanting to stay up later and, yes, I had
22 talked to my sister, you know, and --

23 Q. All right. Did you allow them to stay up a little bit
24 later that night?

25 A. I definitely did. Way past their bedtime normally.

1 Q. Why?

2 A. Well, because we were just having family time and
3 enjoying each other and then Jessica said will you patient
4 my fingers and I said give me your crusty fingers and then
5 I said I'm gonna paint your crusty toes as well.

6 Q. You painted Jessica's fingernails and toenails that
7 night?

8 A. Yes, ma'am.

9 Q. Now talk to us about the sleeping arrangements that
10 you remember on the night of June the 5th.

11 A. Well, while I was painting her nails and toes, my son
12 started crying and said that his ear hurt and I looked and
13 it was red, you know, and I thought to put a cotton ball in
14 it. We -- you know, we didn't have a whole lot, you know,
15 but I did the best I could as far as taking care of their
16 health, so I told him, you know, that he -- he could sleep
17 with me because I needed to monitor his temperature and
18 watch his ear and, you know, stuff like that, and she was
19 wanting to sleep with me. Regretfully, I told had her that
20 she slept with me the night before so she had to sleep with
21 Becky, you know, go to her own bed. Kim had a twin bed.
22 It wasn't a cot. They had a double bed. I had a double
23 bed. Then she decided she would start to arguing with
24 Becky, you know, about the fan. She was like well, I'm
25 gonna sleep by the fan, and Becky did -- she did end it,

1 but I was like, you know, thank God she was helping me
2 along because she's like -- you know, I asked Becky can
3 you -- can you just let her sleep by the fan tonight and,
4 Jesse, tomorrow we'll go back to the regular routine, you
5 know, because she was tiny. She was small.

6 Q. Okay. And tell us about that. You said she was tiny
7 and small. Was she a big four-year-old or was she smaller?

8 A. She was smaller, bossy. Bossy. She was the biggest
9 voice out of all of them.

10 Q. And on this night she had asked to sleep with you, but
11 you told her no because of --

12 A. Well, they would have been horse playing. You know,
13 wherever you saw one of those children, I saw the other
14 one. If I was hunting my son, I could -- they were always
15 together. Both of them were always together until that
16 unfortunate night.

17 Q. And do you remember approximately what time Jesse and
18 them went to bed?

19 A. Yeah, it was right before twelve. I think by the
20 time I got through telling them lights out in the barnyard,
21 that's what we said every night and, you know, got the --
22 the calmness down, go ahead and let her sleep by the fan,
23 it was -- it was like 12:07 I think, yeah.

24 Q. Tell us what you remember happening after that.

25 A. I remember telling my son to go get in my bed and

1 anyway I was getting ready for bed, too, so I turned the
2 TV off and I started cutting the lights out and I went to
3 the kitchen to turn the light out and as I turned the
4 kitchen light out, and I'm not gonna lie, this took me
5 years to figure this out because I've been tormented for
6 almost forty years, but as I cut -- I'm so sorry -- as I
7 cut the kitchen light out, mind you now the screen's on the
8 inside, and I see fire. Someone had just -- and I smoke
9 myself and I -- I just seen somebody take a big long drag
10 off of a cigarette, highly red, highly lit because, I mean,
11 they're dragging on it, and I couldn't believe what I seen.
12 So I turned sideways and jumped on top of the sink, I put
13 my face up to the screen, you know, because the porch light
14 wasn't on. I don't even recall if I had it on that night.
15 I just know it wasn't on at that time, but I put my face
16 there and I kept waiting and looking and waiting and
17 looking. Nothing moved. The dog wasn't barking. I didn't
18 see anything. I think I waited there maybe fifteen
19 minutes, maybe seventeen minutes. I waited there a good
20 long minute and I -- my gut started talking me out of it,
21 you know, like nah, you know, it couldn't have been anybody
22 or whatever. So after I couldn't see anybody, instead of
23 going, you know, and cutting the light on and looking, I
24 just went along with passing it off.
25 Q. Did you go to bed after that?

1 A. Ma'am?

2 Q. Did you go to bed after that?

3 A. Yes, ma'am. I went to my room and got dressed for
4 bed.

5 Q. All right. And one thing we didn't talk about was
6 the doors of your house, okay? How many doors were at the
7 house to the outside?

8 A. To the outside, two -- no, three if you count the
9 storm door in the front.

10 Q. Okay. So front storm door and front door; is that
11 fair?

12 A. Yes.

13 Q. Okay. And then where's the other door located?

14 A. It's at the back right next to my bedroom and straight
15 across from that would be the bathroom and also a
16 washer/dryer area like in the hall.

17 Q. Did you lock those doors at night?

18 A. Yes.

19 Q. And specifically about the front door, what were the
20 looks like on the front door?

21 A. Well, I had the storm door that I would lock first, it
22 has a little lock, and then shut the main -- the main door
23 to the house. The first knob is gonna be your -- your
24 house door, so I locked that. The second lock that I
25 locked was I turned the deadbolt. The third lock that I

1 locked was the night latch that was way up high.

2 Q. Okay. And so this night latch, where's it located on
3 the door?

4 A. It's -- it's not all the way at the tiptop of the
5 door, but it's probably this far from there, and I put it
6 like that to keep my kids from opening the door, but they
7 knew not to open the door. Like if we went to sleep and
8 somebody knocked on the door early in the morning, they
9 knew not to open the door. So to get that night latch off,
10 they would have had to get on a kitchen chair.

11 Q. Okay. So none of your kids were tall enough to reach
12 that night latch by themselves?

13 A. No. And Kim, even if -- she was probably the closest
14 one to maybe try and reach it, she on crutches and she
15 cannot even stand with one crutch, you know, and she can't,
16 you know, operate one hand and one crutch, you know, she
17 would fall.

18 Q. Now we're talking about June in Lexington County, all
19 right? Was it warm in the house?

20 A. It was warm and we did have an air-conditioner, but,
21 I mean, it wasn't like an August night, you know, where
22 it's really, really hot. Yeah, it was warm, but I didn't
23 -- I wasn't using the air-conditioner at that time.

24 Q. Okay. And if you weren't using the air-conditioner,
25 how were you letting air circulate through the house?

- 1 A. Well, the other one, if they had a broke crank, I
2 didn't -- surely I didn't go around putting sticks in all
3 of them, but I had that one window in the living room that
4 was open and the -- the window that looks like over their
5 beds, when you go in the door the one to the left that was
6 over the headboard there, that -- that one I had open.
- 7 Q. So there were some windows that you kept open?
- 8 A. Yeah. Yeah.
- 9 Q. Okay. And that includes that broken window that you
10 said with the stick?
- 11 A. Definitely. With the stick.
- 12 Q. And did you sleep with a fan?
- 13 A. Yes.
- 14 Q. And do you recall your fan being on that night?
- 15 A. My fan was on that night. The children's was as well.
- 16 Q. And are we talking about an overhead fan or like a fan
17 beside the bed? We saw earlier with Becky kind of the side
18 table fan. What kind of fan did you have?
- 19 A. That's was it was. It was a side table fan, like an
20 osculating fan, that it was only fair to put it on osculate
21 where it would get my two daughter's and then over to Kim
22 and then back.
- 23 Q. And is that what yours was like?
- 24 A. Mine was exactly the same.
- 25 Q. And did you hear anything that night while you were

1 sleeping?

2 A. Unfortunately, no.

3 Q. Do you recall the next morning?

4 A. Clearly. Yes.

5 Q. Tell us what happened the next morning.

6 A. I didn't set the clock the night before. I recall
7 looking down through the hallway because it was a small
8 mobile home, two bedroom, a bath and a half, and I looked
9 down the hallway and I said gosh, that room is unusually
10 bright tonight, and the next thing I did was I picked up
11 the cough syrup. I didn't even go back to the kitchen. I
12 unscrewed the cap, took a sip out of it or a swallow, swig,
13 whatever you want to call it, capped it back up and put it
14 down because I caught a cold from the previous day from my
15 sister's pool, and then laid down, made the comment in my
16 mind about the room being unusually bright, and at some
17 time I went to sleep.

18 Q. What happened the next morning?

19 A. Yes, back to -- the next morning I was still asleep.
20 I didn't set the clock the night before, they didn't have
21 any school, and about that time I hear momma, momma, and I
22 like opened one eye and I thought you have got to be damn
23 kidding me. That was my exact words. And I looked then,
24 you know, with two eyes and it's saying, you know, about
25 8:00 and I said dang, you would have thought that they

1 would have slept longer, you know, staying up so late.
2 They were not accustomed to staying up late. And I said
3 what and Becky said can we fix us some cereal. Well, then
4 my eyes really get open then because I had at that time OCD
5 really bad, so I was think oh, no, you know. I said no,
6 I'm coming. So I get up. My son is still in the bed
7 asleep. And, like I said, the hall's not very long at all,
8 it's a short hall, and as I get through the hall I'm
9 walking in the kitchen and it's just like bam, bam, bam,
10 and I'm like what in the hell is going on here and with the
11 bam, the bam, the bam, it's -- all the doors are wide open.
12 Who let the dog in the house? Who tore the curtains off
13 the wall? My God, who ripped down the screen? Why in the
14 hell did you pull out all these papers and then I said
15 where's Jesse and then the whole room just started going
16 whoop, whoop like a tornado was in there, and that's when
17 Becky said momma, the man with the beard, the mustache and
18 the magic hat took Jesse last night. I just got
19 hysterical, really hysterical, and I was like what in the
20 hell are you talking about? I was so mad that all I could
21 think about was who in the hell would come in here, tear
22 all this place up to get to my baby, take her out the door
23 and wear a magic hat, one I'm thinking that you pull a
24 rabbit out of, right? And it just drove me crazy. I never
25 heard something so stupid in all my life and I immediately

1 told her you-all get every bit of this mess up, you put
2 every damn thing back where it was. And so they're crying,
3 you know, and Kim, she can't sit up, she still can't sit up
4 straight to this day, she was actually laying out on the
5 floor and she started gathering papers I noticed and just
6 shoving them under her because she couldn't get up fast
7 enough to take them to the can. And, like I said, I wasn't
8 mean to my children, but I had OCD really bad. Everything
9 had a place and it needed to be in it. Even their toys,
10 when they got through playing with it, put the toys back
11 where you had it, and don't pull out more toys than you
12 can't play with, you know, because kids will pull them out
13 and then they don't want to put them back, but it was
14 just --

15 Q. Debbie, I want to stop you just real quick just so I
16 can ask you about some of those things that you just said,
17 okay?

18 A. Okay.

19 Q. So you walked in and that's when it was kind of like
20 bam, bam, bam, things that you're noticing?

21 A. Yes.

22 Q. What was the state of that front door? Let's start
23 there. What did the front door look like?

24 A. The front door, someone had opened the storm door, so
25 they -- they opened it up and they -- the latch was not at

1 the top, it was at the bottom. They moved the little key
2 hook up so you could prop it open as if you're going in
3 toting out groceries. It was left open. The door swung on
4 the inside of the mobile home. That house door, all those
5 three locks had been unlocked and they had left it wide
6 open and the dog was running around in the house.

7 Q. Okay. And did the dog typically stay inside or
8 outside?

9 A. Outside on the porch.

10 Q. Okay. Where was the dog when you woke up this
11 morning?

12 A. This morning?

13 Q. On the particular morning that --

14 A. Oh, on that particular morning, he was in the house
15 and I was upset because I said and who -- that's was the
16 bam, bam, bam, one thing after another, and who let the dog
17 in, yeah.

18 Q. Now before you went to bed that night did the door
19 look like that?

20 A. Absolutely not. I locked all of that.

21 Q. Was the dog inside before you went to bed?

22 A. No, ma'am. He didn't stay in the house.

23 Q. And now I want to turn and talk about that window, the
24 window you said you saw the screen down.

25 A. The screen was -- the screen is on the inside of the

1 -- of the home, not on the outside. The whole screen was
2 like pushed out from -- from its surrounding the frame of
3 the window, pushed out. Some of -- even some at the top
4 like was over, you know, like half of it was tumped over,
5 and like one whole side of the curtains was knocked down.
6 It was all just in a disarray.

7 Q. Was this the window that's broken?

8 A. This was the window on the porch that had the little
9 stick in it and it had been left open.

10 Q. Was the stick still propped open when you saw it the
11 next morning?

12 A. No, the stick was out there on the porch on the
13 ground.

14 Q. So that window then was shut?

15 A. Yes, it was -- it was then shut.

16 Q. Okay. And that pulled down screen, pulled down
17 curtains, shut windows, did it look like that before you
18 went to bed that night?

19 A. No.

20 Q. So once Becky tells you about the man in the magic hat
21 taking Jesse, what do you do?

22 A. Do I really have to tell what I did? I don't know
23 who I became because I went crazy and I started screaming
24 for her name, calling Jesse out. I went into the room and
25 I picked up the covers and I was pulling them off the bed

1 thinking that maybe she's hiding, I don't know. I was
2 looking under the bed, I looked in the closet, I looked
3 in the half bath. I went all through my home calling my
4 daughter. My son had woken up at this time and I'm not
5 sure if he knew what was going on or not because, you know,
6 he just started following me, you know, and -- and I didn't
7 have time for that, you know. So I'm looking all around,
8 looking all around. I even crawled under the mobile home.
9 I'd go to the edge of the woods, I'm looking everywhere,
10 and I was -- something just snapped in inside of me and all
11 I could hear was her saying momma, the man with the beard,
12 the mustache and the magic hat took Jesse last night. So
13 when I couldn't find her, I go back to her and they're
14 trying to do as fast as they can pick up the papers and the
15 mess, and I picked her up from the floor and I just started
16 shaking her, you know, because what she told me was not
17 what I wanted to hear, and it made no sense to me. It made
18 absolutely no sense. But she would not change her story.
19 She said again the man with the beard, the mustache and the
20 magic hat. I started yelling at her and I asked her did
21 she know how damn crazy that was. That's crazy. Who in
22 the hell would come in here with a top hat on, you know,
23 like you pull rabbits out of, and she said momma, I don't
24 know, but he had a beard, a hat and a mustache. And I was
25 so enraged I shook her. I picked her up again and I

1 already had her shaking around, but, I mean, I literally
2 picked up her with her shoulders and just marched her, slam
3 into the wall, and I slammed her in that wall again and I
4 slammed her in the wall again, and I don't know how many
5 times I slammed her in the wall. When I let her go, she
6 just fell limp in the floor and she's crying and I grab her
7 again and I'm like shut up, you've got to tell me who it
8 was, and this is where she got the black man thing, and
9 she's like I don't know momma, maybe I didn't see anybody,
10 maybe it was a black man, I don't know, I don't think I
11 seen anybody. It took me years, years, to know that she
12 seen somebody, she seen somebody, and yet I had treated my
13 daughter like that. I didn't realize she was six years
14 old. I lost my mind. I have lost my mind.

15 Q. Debbie, did you ever see Jesse again?

16 A. No, I did not. No, ma'am. No, ma'am.

17 Q. And, Debbie, throughout this you've talked about --
18 I think you've referenced you had OCD, right? You were
19 compulsive with cleaning?

20 A. I did. I did. I did have bad OCD.

21 Q. And earlier you referenced this window here in
22 State's 24 was the tattletale window. Why did you call
23 this the tattletale window?

24 A. I spent a lot of days outside with my children. The
25 little girl next door would play, Katie would bring Badger

1 and they would play, and I'd be working, I'd overhear them
2 and all, but also I had to do housework, so I would let
3 them play before I came out. So I was in there doing
4 housework. So in the meantime, Jesse was outside bossing
5 everybody around and the next to the oldest was Wendy
6 Floyd, the next door neighbor. She was eight, you had Kim
7 ten. Kim was outside with her crutches playing as well.
8 And then all these kids, just not at one time, but every
9 day it would be come to the window, they'd grab bottom
10 pane, push their head against the screen, momma, Jesse done
11 this and Jesse done that, and I was like it's just the
12 tattletale window every day, and then when I would go
13 outside I would be like well, what's going on and well, she
14 done this and she done that and you need to spank her, and
15 I was like, you know what, I really need to tear all of
16 you-all's butts up because you're letting a four-year-old
17 tell all of you-all what to do. Even the neighbor's kid,
18 eight years old, complained about her and I'm like you-all
19 are the ones doing what shes you to do. And I even
20 overheard one day for myself, I was washing dishes at the
21 kitchen and Wendy's like we're gonna play house, I'm gonna
22 be the aunt and she would tell Becky, Bubba, all the other
23 kids what they're gonna be, and she would go to Jesse and
24 she'd say what are you gonna be? In other words, she would
25 tell them what they were gonna be, but she would tell Jesse

1 what do you want to be, and she'd say just call me baby,
2 and I'd be like what? Baby?

3 Q. So, Debbie, tell us how that impacted how often you
4 cleaned that window.

5 A. How often I cleaned that window is because like I told
6 you it's the tattletale window and I -- my son to this day
7 will tear up a jar of peanut butter in a heartbeat, peanut
8 butter and jelly, and when I made lunch, you know, I'd let
9 them sit on the porch and eat it. They had Kool-Aid,
10 popsicles. They also had the Kool-Aid in the bottles, they
11 would spill it on the porch and then the sugar ants would
12 come up there, but peanut butter, ham and cheese, the
13 sticky popsicles, you know, freeze pops, the Kool-Aid
14 drinks and all would be all over the window and every night
15 when I told them -- and you'd have to be living with me to
16 know my routine, but every night after dinner when I got
17 the dishes done and tell them get your pajamas, go get your
18 bath, you know, that would be when I had finished up the
19 dishes and I'm going to clean this window and the storm
20 door window because they were just covered in prints.

21 Q. So this window is a window you cleaned frequently?

22 A. Every night, yeah. In the summer now. The winter
23 wasn't so bad, but every night.

24 Q. And talk to us about -- I think you mentioned that
25 there was an ashtray somewhere on a glider on that porch.

1 A. Yes.

2 Q. How frequently did you pick up cigarette butts around
3 the property?

4 A. I personally didn't throw them around the property.
5 If I did, I was out there raking and I would step on it and
6 get it right then, yeah.

7 Q. Okay. So cigarette weren't something that you threw
8 on the ground or anything like that?

9 A. No, because I'd even come home before and be like who
10 was over here? Who throw these cigarettes butts down?

11 Q. And if you saw cigarettes butts on the ground, would
12 you leave them there or would you pick them up?

13 A. No, I would pick them up.

14 Q. And what type of cigarettes did you smoke?

15 A. Marlboro reds.

16 Q. Now, Debbie, prior to June of 1986, did you know Tommy
17 McDowell?

18 A. Yes, I did.

19 Q. Had he ever been to your property?

20 A. Prior to June of 1986?

21 Q. Yeah. Had he ever been out to your house before?

22 A. No, he had not been to my property prior to that. No.

23 Q. Had he ever built anything for you or done anything to
24 this house?

25 A. Oh, you're talking prior to June, to Jesse being gone.

1 Q. Right.

2 A. He had.

3 Q. Let's try that again. Let me ask again to clarify,
4 okay?

5 A. Please do.

6 Q. Jesse went missing in June of 1986. Before that had
7 Tommy McDowell ever been to this property, to this trailer?

8 A. Yes.

9 Q. Okay. Why was he there?

10 A. I asked his mom one night when we were playing poker
11 if she -- if she would ask him if he could put this -- I
12 had just gotten -- not been long gotten this trailer and
13 asked if he could put the awning up over it and if he could
14 put up a building, a Lowe's like little building out back
15 because my mom cosigned to me. And I put new carpet in
16 there, those are actually new curtains. And, anyway, I
17 gave her my number and she -- you know, she took it to him,
18 he called and he said yeah, he could do it. So he was on
19 my property for two days.

20 Q. Do you remember approximately when that was?

21 A. That I'm -- well, to the best of my knowledge, the
22 trailer, the mobile home, the brand new one that I had
23 there, it burnt either mid late '83 or '84. As a matter
24 of fact, the State newspaper -- and I just thought of this
25 last week or two. The State newspaper put it in there. It

1 said mobile home destroyed in Edmund.

2 Q. And so --

3 A. So I would say '83, '84 is when he -- he was there.
4 He was there a year and a half prior to Jesse being gone
5 for sure.

6 Q. Okay. So to your knowledge he hadn't been on your
7 property in at least a year?

8 A. More than a year.

9 Q. Okay. And this shed that you're talking about that he
10 built out back, is that what you marked here?

11 A. Yes.

12 Q. Okay. And then the awning, I'm gonna show you again
13 State's Exhibit Number 20, is that awning what he attached
14 to your house?

15 A. Yes, and when -- when those mobile home -- when the --
16 I bought that from a lady going toward Chapin. When the
17 movers brought it, they brought that whole top section
18 together, it wasn't -- it wasn't broke down. The rails
19 there were down, but the whole top section was up, and I
20 guess to assemble it he probably had to take off so many
21 sections to get it back up there. My brother and his
22 friend actually built the deck.

23 Q. Okay. And so between the time that you last remember
24 Mr. McDowell being at your home and the time that Jesse
25 went missing, had you washed that window?

1 A. Yes, I did. I did.

2 Q. And I want to talk a little bit about the time that
3 Mr. McDowell was at your house.

4 A. Uh-huh.

5 Q. I believe you said he was there for two days?

6 A. Two days.

7 Q. Okay. And was there anything that happened that would
8 lead you to believe that Mr. McDowell knew that that window
9 was broken?

10 A. He knew.

11 Q. Okay.

12 A. He clearly knew. He was standing on the porch when I
13 had to climb through it.

14 Q. That's what I want to talk about. Tell me about that
15 instance. What happened there?

16 A. Okay. When he got through at the back, he came and
17 knocked on the front door. He came in. He said I'm
18 finished and he said -- I said well, I need to get my
19 supper turned off and told the kids, I said get your --
20 get your shoes and all on, we've got to take him home.
21 And I told the kids, I said get my pocketbook. Well, at
22 the back door I had a key thing, you know, like a key
23 holder. Well, they did get my pocketbook and everything,
24 we walked out and turned everything off on the stove, we
25 walked out the front door and that's when I was like well,

1 damn, my keys aren't in my pocketbook, they're actually at
2 the back door, but me and the children accessed the back
3 door more so than the front. So I had to climb through the
4 window and go in the house, but, of course, me climbing
5 through my own little mobile home, I'm not gonna be tearing
6 the curtains and the screen down. I would have to push
7 easily around the corners, you know, and get up like mid
8 ways and get it loose because it only had a few nails in it
9 and, like I said, very cheap made, and I climbed through
10 there, I got my keys, we went to take him home.

11 Q. And show I'm showing you State's Exhibit 24. So in
12 front of Mr. Tommy McDowell you went through the bottom
13 pane of this window?

14 A. Yes.

15 Q. Okay. And was he standing by you when you did this?

16 A. He was standing there right on the porch, yes.

17 Q. And, Debbie, did you ever give Tommy McDowell
18 permission to enter your house between June the 5th of 1986
19 and June the 6th of 1986?

20 A. No, ma'am. No, ma'am.

21 MS. ABEE: I beg the Court's indulgence, Your Honor.

22 THE COURT: Take your time.

23 MS. ABEE: Your Honor, I have no further questions
24 of this witness.

25 THE COURT: Okay. Ms. Mauldin.

1 MS. MAULDIN: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MS. MAULDIN:

4 Q. Good afternoon, Ms. Gutierrez.

5 A. Good afternoon.

6 Q. Let's go back to the beginning with some of this
7 stuff. Becky was actually born in Mexico?

8 A. Yes.

9 Q. And her husband was David Gutierrez and he was from
10 Mexico?

11 A. Becky was born in Mexico.

12 Q. Excuse me. Her father.

13 A. I'm her mother. Her father is Mexican, yes.

14 Q. And he's David Gutierrez?

15 A. He is.

16 Q. Okay. And when this all happened with Jessica, you
17 and David had been divorced and he was in California at the
18 time?

19 A. I divorced him in 1982 when we were living in Pelion,
20 yes.

21 Q. Okay. And how long had you-all been living in the
22 U.S. when this happened? Like --

23 A. I've been living in the U.S. my whole life, so I'm not
24 sure when he -- he started living in the U.S., but I was
25 been right here in Columbia, South Carolina.

- 1 Q. Okay. So Becky was born in Mexico?
- 2 A. She was born in Guadalajara, yes.
- 3 Q. Okay. And so you were her mother, you spoke English
- 4 and has Becky always spoken English?
- 5 A. Yeah, Becky speaks English. Yes.
- 6 Q. Right. And that's always been her natural language?
- 7 A. That is our first language, yes.
- 8 Q. Okay. Thank you. Now this case -- as soon as Jessica
- 9 disappeared, the -- there were a number of law enforcement
- 10 agencies involved, right?
- 11 A. There was what?
- 12 Q. A number of law enforcement agencies involved, right?
- 13 A. Maybe so, but maybe I didn't actually meet them or
- 14 maybe they didn't all be at my house at one time, but I'm
- 15 -- I'm assuming so, yes.
- 16 Q. Okay. Well, you know the sheriff's department was
- 17 involved?
- 18 A. Yes. I know that.
- 19 Q. That was Detective Bob Bartlett that led that
- 20 investigation?
- 21 A. Right.
- 22 Q. And he's passed away now, right?
- 23 A. Right.
- 24 Q. And then SLED was involved that same day, right?
- 25 A. Uh-huh.

1 Q. And then the following day the FBI got involved,
2 right?

3 A. I'm not certain when the FBI got involved.

4 Q. Okay. But at some point they did --

5 A. They did.

6 Q. -- and they've kind of gone back with different
7 versions of the investigation over the years, over the
8 years, right?

9 A. Right.

10 Q. Okay. And this -- also because this was a case with
11 a missing child got a lot of media attention right away?

12 A. No, ma'am. It didn't.

13 Q. There weren't newspaper reports and --

14 A. Excuse me?

15 Q. There weren't newspaper reports about the
16 disappearance?

17 A. Yeah, it -- there was some, but, I mean, not like
18 the summer prior when it was Sherry Smith. That's where
19 Sheriff Metz and I had our disagreement. But, no, Jessica
20 didn't get that much publication or media coverage and,
21 again, we're talking about 1986. Thankfully we have Amber
22 alerts and things like that today and home security cameras
23 that we didn't have back then.

24 Q. Well, you mentioned Amber alerts and part of the goal
25 was to get information about this out in case somebody knew

1 something, right?

2 A. Yes.

3 Q. So there were some newspaper articles and that kind of
4 thing?

5 A. Yes.

6 Q. Eventually Unsolved Mysteries and the Missing Child
7 Network and all of that?

8 A. Like you said eventually. Eventually.

9 Q. Right. But at the time reports went out pretty quick
10 and this started showing up in the newspaper?

11 A. Yes.

12 Q. People knew about what happened, right?

13 A. Yes.

14 Q. Okay. Now -- and then I'd like to go back, too. So
15 at the time this happened the children had just finished
16 out the year of school. What grade had Becky finished?

17 A. Let's see Kim was ten and Kim is -- she was in IEP
18 classes, like she's delayed learning, so I couldn't tell
19 you what level she was on. Becky went to five-year-old
20 kindergarten and she went to six-year-old, so she was in
21 first grade.

22 Q. Okay. So she had finished her first grade year?

23 A. And my son was in five-year-old kindergarten, yes.

24 Q. Okay. And Jessica wasn't in school yet because she's
25 too little?

1 A. Yes, but that was the first year that they were
2 deciding to have four-year-old kindergarten and they sent
3 me a letter and said that she could go and she was excited
4 because she wanted to go with her brother. So we went in
5 April of 1986 and got her shot at the clinic. That was her
6 last shot and she was prepared to go to school when she got
7 back in.

8 Q. Okay. The -- and Jessica was a small child, right?

9 A. Small and bossy, yeah.

10 Q. Okay. And she was she was four?

11 A. Yeah.

12 Q. About how tall was she?

13 A. Maybe three, three-one, something like that. She
14 wasn't very tall.

15 Q. Okay. And then what about Becky? How tall was she?

16 A. Becky was just average. I mean, I can't -- I can't
17 say because, I mean, it's not like I could afford to take
18 my children to pediatricians. Again, we visited the health
19 department, so if they documented that I really can't tell
20 you. I don't -- I'm not sure how tall Becky was, but she's
21 not too tall. I mean, she was average height.

22 Q. Okay. And then what was your -- how tall were you at
23 the time?

24 A. I'm between -- I'm thinking five-two.

25 Q. Okay. And personal question, but how much did you

1 weigh?

2 A. I've always been overweight. At that particular
3 time, I think I was in probably I would say a fourteen,
4 yeah.

5 Q. Thank you. And you -- and I'm gonna jump around a
6 little bit and you talked about that night and going into
7 the evening before Jessica disappeared. Did you -- do
8 you remember telling the police that you had taken some
9 Tranxene tablets?

10 A. No, ma'am. You'd have to show me that. No.

11 Q. You don't recall anything about taking those?

12 A. No. No.

13 Q. Okay. And you remember it being some Robitussin cough
14 syrup?

15 A. I think it was Robitussin because whatever it was not
16 only I could take it, my kids could take it. I couldn't
17 afford kid's cough syrup and me cough syrup, too, so I'm
18 sure it was house friendly.

19 Q. Okay. And then you -- you said that the moon came
20 in that night and you said that you remembered it being
21 unusually bright?

22 A. That was my very last thought of the night. Their
23 night light was on and the moonlight was shining in the
24 window as you go in the door right over Becky and Jesse's
25 bed, and I said wow, that room is unusually bright tonight.

1 Q. Because of the moon?

2 A. Because of the moon and the night light also, yeah.

3 Q. Okay. But when you say unusually, I assume the night
4 light was every night?

5 A. Well, unusually because you've got nights that the
6 moon is -- is either a crescent moon or maybe the moon has,
7 you know, the rain in it and it's not so bright. It was
8 just a beautiful moonlight shining through.

9 Q. All right. And you talked about the next morning that
10 Becky is the one who even before the police came used the
11 phrase that this was possibly a black man in the home?

12 A. She didn't say that in the beginning. She did not
13 say that until I almost killed her and I do believe with
14 my whole heart that she would have said anything to make
15 me stop.

16 Q. But you weren't telling her --

17 A. She's a child.

18 Q. You weren't telling her it was a black man, it's a
19 black man and she said yes?

20 A. No, I was physically violently attacking my
21 six-year-old daughter because the answers she was giving
22 me was not what I wanted to hear and if you can agree with
23 me does that not sound absurd?

24 Q. I'm questioning the jump to black man and where that
25 came from.

1 A. Again, that came from me physically abusing my
2 daughter violently, very violently.

3 Q. But you didn't say to her hey, this was a black man,
4 this was a black man?

5 A. No, ma'am. Again, no, ma'am, I did not.

6 Q. Okay. Now you also mentioned today that I think you
7 said that the children went to bed around 12:07; is that
8 right?

9 A. I started heading toward the bed about 12:07.

10 Q. Okay. What time did they go to bed?

11 A. About twelve midnight.

12 Q. Okay. So twelve midnight the children go to bed?

13 A. Uh-huh.

14 Q. And their normal bedtime was a lot earlier than that?

15 A. Oh, yeah. Because the other two were in school.

16 Q. And you mentioned that you saw the lit cigarette
17 outside?

18 A. Yes.

19 Q. And that really got your attention at the time?

20 A. It did at the time, yes.

21 Q. Okay. And you didn't stay awake to just make sure
22 that everything was okay. You, knowing that, went to bed?

23 A. No, no. I didn't say that. I literally had to
24 turn sideways, wearing my pajamas, jump on the counter,
25 and I put my hands up to the screen and I was there for

1 approximately fifteen minutes because I know what I saw
2 and that's what I saw.

3 Q. And then after that you didn't report that to anybody?

4 A. I didn't call anybody because I passed it off as --
5 you would have to know me, I guess really know me, because
6 I'm the type of person -- I was raised in an environment if
7 somebody hits you, you hit them back, and I was pretty
8 bossy, so I was thinking nobody's gonna come in here, you
9 know, and mess with me or my kids.

10 Q. Okay. And you gave a few statements in this case --
11 well, let me back up. So law enforcement comes out on
12 June 6th that morning?

13 A. Yes.

14 Q. And they interviewed you and they interviewed -- or
15 they talked to Becky during the day, too, right?

16 A. I don't recall them talking to Becky that much, but
17 they did speak with Becky, yes. They mainly were speaking
18 with me, you know, and I told them what had happened, you
19 know, what I did, you know, and what had happened. She
20 spoke with them at that time as well.

21 Q. And at no point did they ask you to write down what
22 happened?

23 A. At that day?

24 Q. Right.

25 A. No. No.

1 Q. Okay. So you didn't do a written statement for the
2 police that day?

3 A. No. No, ma'am, I couldn't.

4 Q. And they had a videocamera there?

5 A. I -- I think so, but I --

6 Q. And they didn't record you telling what happened?

7 A. Well, you're saying all this, but I wasn't -- I wasn't
8 here up here. I was gone.

9 Q. Okay. But you've remembered other videos --

10 A. I do because --

11 Q. -- but you don't remember a video being taken of you
12 and explaining what went on?

13 A. No, ma'am, I don't because a video is a video and any
14 other person that was there at my house I have not -- know
15 recollection of who all -- all of a sudden people started
16 coming. Right now my daughter's gone. That's the only
17 person I'm concerned with and I literally lost my shit.
18 I'm not thinking of nobody. I can tell you right now
19 today I don't even know if my kids ever got any cereal.
20 If they did, I don't know who fixed it. I'm gone, ma'am.
21 I'm literally gone. I tell you the whole room started
22 spinning and I was consumed in all of this unbelievable,
23 unimaginable horror. That's how it was. And I don't mean
24 to sound -- I'm angry naturally, but I'm not trying to
25 attack you. I'm just telling you I'm not accountable for

1 whatever else was going on. I can't tell you what time
2 they got there, I can't tell you what time they left.
3 You're asking me things I have no way of being specific
4 about that, but what has taken place, even though it's
5 forty years, and I'm upset, you know. I'm -- there's a lot
6 of people that's thinking my God, forty years, yeah, but I
7 relive this every day and so does my daughter. No, we
8 can't as a family talk about this. We cannot. We cannot.
9 But I know what I know and I know that the doors were
10 locked, I know that I cleaned those windows. Every day
11 that my kids got on that porch with the peanut butter, even
12 the neighbors, all of them -- and to tell you the truth,
13 the print is missing one hundred more prints if that makes
14 any sense if I had not cleaned the windows. It's missing
15 one hundred prints.

16 Q. Okay. And I don't feel like you're attacking me.

17 A. Okay. I hope not.

18 Q. I understand that --

19 A. I hope not.

20 Q. -- the loss of your daughter was a horrible thing.

21 A. Yes, it is.

22 Q. And I hope that you know that -- that I have to ask
23 these questions --

24 A. I understand that. I do.

25 Q. -- and I'm sorry that they are difficult to answer --

1 A. They are very difficult, they are.

2 Q. -- and I'm sorry that you have to talk about it today.

3 A. They are.

4 Q. And I'm gonna go back, and I'm not trying to beat
5 you up with this, but so when you talked to the FBI you
6 were able to answer a lot of their questions about the
7 sensations you had that day and feeling like there were all
8 these people in your home and you just wanted to clean up
9 your home and get it back to normal because everything had
10 been thrown so out of whack and it was so chaotic, right?

11 A. I didn't tell that to FBI. It was actually Lexington
12 County Sheriff's Department because I talked to the
13 sheriff's people on Friday. If I'm not mistaken, James
14 Metz, the sheriff was in Reno, Nevada. He just came back
15 very next day, which was Saturday. I was told the sheriff
16 wanted to meet me, they came and picked me up and took me
17 to the station. I had so many people in my home, I hadn't
18 slept for days. I can't tell you when I ever got to sleep.
19 I didn't eat, I didn't sleep, so I don't know, you know,
20 specific times and dates and things like that, but I don't
21 recall talking to FBI first. I talked to law enforcement
22 and I talked to SLED. I think FBI come in sometime later.
23 Q. And I may have asked that badly, but my point is when
24 the FBI talked to you fairly recently you were able to
25 remember details about that day and how difficult it was

1 for you and how you, you know, had those feelings of
2 wanting everybody out and being kind of overwhelmed and all
3 of that.

4 A. Yeah, I told you on the stand earlier today is
5 June the 6th, 1996, for me. Every day is that day. My
6 memory is very vivid.

7 Q. All right. Now and you -- so you don't recall writing
8 any statements for the police on June 6th?

9 A. I don't recall writing anything like that.

10 Q. Well, for years after that, right?

11 A. I've -- I've wrote statements before, but I can't give
12 you dates.

13 Q. Okay. Well -- and let me ask a better question. So
14 you ended up writing a statement for Detective Pritchard;
15 is that right? Do you remember that?

16 A. Yes, I do.

17 Q. And the officer that's sitting here at the prosecution
18 table?

19 A. Yes.

20 Q. And that would have been in the 2007 -- excuse me,
21 2006 range, right?

22 A. Without seeing the letter I can't -- I can't verify
23 that.

24 Q. And that's fair. Let me refresh your recollection
25 with that.

- 1 A. Okay.
- 2 Q. Okay. So this is -- go ahead.
- 3 A. Thank you. Okay.
- 4 Q. Okay. And --
- 5 A. What now?
- 6 Q. Okay. Do you recognize that as the statement that you
7 wrote for Detective Pritchard?
- 8 A. Uh-huh. This is my handwriting, yes.
- 9 Q. And that was back in 2006?
- 10 A. That's what it says, yes.
- 11 Q. Okay. And can you tell us where in there you talked
12 about this -- this lit cigarette that you saw?
- 13 A. I didn't. I didn't.
- 14 Q. You didn't?
- 15 A. No, I did not.
- 16 Q. Okay. And this is -- just to be clear, this is a
17 seven-page statement that you wrote, right?
- 18 A. Yes. Uh-huh.
- 19 Q. And it's single spaced. You talked about a lot of
20 things in there.
- 21 A. A lot of things.
- 22 Q. But you didn't mention this -- this cigarette?
- 23 A. No.
- 24 Q. Okay. You wrote another statement that you gave to
25 him regarding Tommy McDowell and Henry Gordon, right?

1 A. Let me see that.

2 Q. Okay. And let me ask you about Mr. Gordon. He had
3 lived with you from January of '86 up until June, correct?

4 A. Ma'am?

5 Q. Henry Gordon, Junior had lived with you from January
6 of '86 up until June, four days before Jessica disappeared,
7 right?

8 A. I think you're referencing back to the letter that
9 you had shown me earlier where it said J.R. moved in or
10 whatever. J.R., again, never moved into my home with me.

11 Q. And that's exactly what I'm asking. This is the
12 statement that you wrote for the police.

13 A. Right. Okay. And I said that he was living with me?
14 Where? Okay. Moved in our home in late January. He did
15 not move in though. He was wanting to move in. He did not
16 move in.

17 Q. Okay. So you told the police that he moved in your
18 home in January?

19 A. He did not bring anything with him, no clothes, he had
20 no tooth brush there, no extra set of shoes. No, nothing.
21 My children even know that.

22 Q. Okay. And then in June -- and you said on here the
23 3rd you asked him to leave.

24 MS. ABEE: Objection, Your Honor. Relevance.

25 THE COURT: Well, let me hear from you.

1 MS. MAULDIN: Your Honor, we've had --

2 THE COURT: Don't answer yet, please.

3 MS. MAULDIN: We've had testimony from Becky about
4 who was living in the home up until then, and this goes
5 to her credibility as well as Ms. Debra {sic} Gutierrez's
6 credibility about living in the home.

7 THE COURT: I find it to be relevant.

8 THE WITNESS: Being at the home and living in the
9 home is two different things.

10 BY MS. MAULDIN:

11 Q. Okay. And when we're talking about what you told the
12 police back then, you said that he moved into your home,
13 right?

14 A. Well, ma'am, I also tried to commit suicide three
15 times and I have very, very bad --

16 THE COURT: You need to answer the question.

17 A. If that's what it says there, yes. But, again, he
18 never really moved into my home.

19 Q. But that's what you told the police?

20 A. Yeah, apparently so on this paper.

21 Q. Okay. And you also -- today you testified that
22 Mr. McDowell had not been there in over a year?

23 A. Right.

24 Q. Okay. And so this is the same statement that you
25 wrote to the police. Does this refresh your recollection

1 about what you told the police?

2 A. I seen that, too, October -- or no, in August of '85.

3 That may have been when it was because it was like

4 springtime. When he put the awning and the shed up, my

5 kids had on shorts and were running around barefooted.

6 Q. Well, August is not springtime.

7 A. It is in South Carolina. Early August is very hot

8 and -- and it's summer.

9 Q. Okay. And then you also said that the last time he
10 visited was in October, right?

11 A. He didn't come back to finish up any small things. I
12 don't know how I wrote this. I'm telling you he was only
13 there for two days and I -- I'm very certain of that.

14 Q. But to be clear --

15 A. But to be clear --

16 Q. -- you told the police --

17 A. -- it says that he was there in October of '85.

18 Q. And August of '85.

19 A. And August of '85.

20 Q. And earlier you mentioned springtime then?

21 A. Yeah, summer.

22 Q. Okay. But both of those are more recent than a year,
23 which is what you testified to on the stand earlier today?

24 A. Uh-huh. That's fair.

25 Q. And you wrote another statement for the police as

1 well, correct?

2 A. Well, I'd have to see that one again.

3 Q. I'll show it to you. Let's see.

4 A. Yeah. Let's see. That is my writing.

5 Q. And this one doesn't appear to have a date, so I can't
6 ask you --

7 A. I don't know why it doesn't have a date.

8 Q. Okay. But at any rate that's a statement that you
9 wrote for the police?

10 A. Apparently so.

11 Q. Okay. And in this statement you, again, discussed
12 things that happened. You didn't mention anything about
13 the man with the cigarette in this statement, did you?

14 A. Unh-unh.

15 Q. And you're welcome -- do you need to see it?

16 A. Unh-unh.

17 Q. Okay. And then -- or the lit cigarette. The -- in
18 this one you told the police that you had talked to your
19 sister on the phone until almost midnight.

20 A. We did talk on the phone that night, yes.

21 Q. And which sister was that?

22 A. My only sister.

23 Q. And what's your sister's name?

24 A. Jeannie Ruth.

25 Q. Okay. So you talked to her until almost midnight and

1 after that you tried to called J.R. on the phone?

2 A. I told you earlier that if I did, I -- I don't
3 remember trying to call him on the phone.

4 Q. Okay. Well, if you'll look --

5 A. It says that there again. Right.

6 Q. And so for the jury you wrote that you had tried to
7 call him?

8 A. Yeah, it does say that there. Yes, it does.

9 Q. Okay. And the phone just rang and you weren't -- he
10 didn't pick up?

11 A. I read that that's what it says there, yes.

12 Q. Okay. And that was a statement that you wrote and you
13 agree with that?

14 A. Yes.

15 Q. Okay. I believe you said earlier that when you think
16 of magic hat you think of one like a magician would have
17 that you pull a rabbit out of?

18 A. That morning that's what I was thinking when she was
19 telling me that.

20 Q. And you mentioned also that you're dog was running
21 around in the house when you got up?

22 A. Yes. Yes.

23 MS. MAULDIN: Your Honor, I beg the Court's
24 indulgence.

25 THE COURT: Take your time.

1 MS. MAULDIN: No further questions, Your Honor.

2 THE COURT: Any redirect?

3 MS. ABEE: One question, Your Honor.

4 THE COURT: Sure.

5 REDIRECT EXAMINATION

6 BY MS. ABEE:

7 Q. Ms. Gutierrez, assuming that Mr. McDowell had been at
8 your house in October of '85, had you washed that window
9 between October of '85 and June of '86?

10 A. Yes, I did. I pressure washed it like manual like
11 with a bucket Clorox and a big brush. I cleaned the whole
12 trailer like that because I couldn't afford a pressure
13 washer and then that was the last thing I did that night
14 before settling in with them to watch TV was clean that
15 particular set of windows and that particular storm door.

16 MS. ABEE: No further questions, Your Honor.

17 RECROSS EXAMINATION

18 BY MS. MAULDIN:

19 Q. You had taken out -- and, again, I'm sorry about the
20 personal question, but you had taken out some loans for new
21 furnishings in the home and for improvements to your house?

22 A. Loans or a loan?

23 Q. Okay.

24 A. A loan.

25 Q. Okay. And when did you do that?

1 A. I don't recall the date. My mom cosigned for me.

2 Q. And what improvements did you make with that?

3 A. What improvements did I make with that?

4 Q. Yes.

5 A. I put down new carpet, new curtains and got the
6 materials, you know, to do the stuff in the house with.

7 Q. Okay.

8 MS. MAULDIN: Thank you. No further questions,
9 Your Honor.

10 THE COURT: Okay. May I excuse the witness, please?

11 MS. ABEE: Please, Your Honor.

12 THE COURT: You're excused. You may step down.
13 Thank you.

14 THE WITNESS: All right. Thank you.

15 (Witness excused.)

16 MS. ABEE: And, Your Honor, we ask that she's
17 released from her subpoena as well.

18 MS. MAULDIN: No objection, Your Honor.

19 THE COURT: She's released from her subpoena.

20 All right. Ms. Foreman and Ladies and Gentlemen of
21 the Jury, I'm gonna let you go today. We're gonna start
22 again at 9:00, so I need you in the jury room at 8:45.
23 We're bringing in lunch for you tomorrow because we're
24 gonna have a working lunch. So don't think that you're
25 gonna leave tomorrow at lunch. What we're gonna do is

1 have lunch and that's all of us have lunch and then when
2 you're finished I'm gonna have you knock on the door and
3 we'll get back to work. I'm just trying to keep on
4 schedule on this case.

5 Now before I let you go, please do not read the
6 newspaper, watch the TV, do any research on this case.
7 I've said this about ten times and I told you I always
8 find out about it, and I do. Please don't do it. Do
9 not talk about this case with anyone, not even amongst
10 yourselves, and I'm gonna ask you if you have when you
11 come in the morning. Stay off of the Internet. You're
12 not allowed to hear anything about this case unless it
13 comes from this courtroom.

14 Let me ask before I let the jury go. Anything else
15 as far as instructions go to the jury from the State?

16 MS. ABEE: No, Your Honor.

17 THE COURT: From the defense?

18 MS. MAULDIN: No, Your Honor.

19 THE COURT: Okay. I hope you-all have a good
20 evening and I'll see you in the morning.

21 (Whereupon, the jury was excused for the day at
22 5:55 PM.)

23 THE COURT: All right. Let me talk to the lawyers.

24 Is there anything we need to put on the record or
25 anything before I let everybody go for the day?

1 MS. MAULDIN: No, Your Honor.

2 THE COURT: I think we've put all objections on the
3 record, right?

4 MS. WEISS: Right. I think so.

5 THE COURT: Mr. Powell, I'll see you at 8:45 in
6 the morning.

7 MR. POWELL: Yes, ma'am, you will.

8 THE COURT: You may be excused.

9 MR. POWELL: Yes, ma'am.

10 THE COURT: All right. Court's adjourned. I'll
11 see everyone -- court will start promptly at 9 AM.

12 (Whereupon, the proceedings were concluded for
13 February 6, 2024, at 5:56 PM.)

14 (The following proceedings were held February 7,
15 2024, beginning at 9:15 AM.)

16 (State's Exhibit Number 25 through 40 were marked
17 for identification.)

18 THE COURT: All right. I'm bringing the jury in.
19 It's time to go to work.

20 (Whereupon, the jury enter the courtroom at 9:15 AM.)

21 THE COURT: All right. Madam Forelady, the jury
22 ready?

23 FOREPERSON: Yes, ma'am.

24 THE COURT: Okay. Let me ask my morning question.
25 You-all can be seated.

1 Have you talked to about this case with anyone, has
2 anyone tried to approach you about this case, have you
3 done any research on the Internet, computer about this
4 case or anyone involved in this case? If so, please
5 raise your hand?

6 All right. We are down a juror. She called in sick
7 with the flu.

8 So Mr. Parsons?

9 JUROR NUMBER 199: Yes, ma'am.

10 THE COURT: You've been moved up. You are now part
11 of the original jury.

12 JUROR NUMBER 199: Understood.

13 THE COURT: Thank you.

14 All right. Let me ask the State are you ready to
15 call your first witness?

16 MS. ABEE: Yes, Your Honor.

17 The State --

18 THE COURT: Or you-all wanted to do the judicial
19 notice now?

20 MS. MAULDIN: Yes, Your Honor.

21 THE COURT: Okay. Let me tell the jury one more
22 thing. I am going to take judicial notice of the
23 following facts. When I take judicial notice of
24 something, that means it's true. It is a true fact
25 for you to consider, okay?

1 On June the 5th, 1986, the moon set at 7:09 PM.
2 The moon was waning towards a new moon on June 5th of
3 1986. The new moon was June the 7th of 1986. Five
4 percent of the moon was visible on June the 5th, 1986,
5 okay?

6 Thank you.

7 Again, by taking judicial notice, it is a true fact.

8 (Court's Exhibit Number 10 was marked for
9 identification.)

10 All right. Let's call your witness.

11 MS. ABEE: Thank you, Your Honor.

12 The State calls Richard Freeman.

13 THE CLERK: Good morning. Would you, please, raise
14 your right hand and place your left on the Bible.

15 (Whereupon, Richard M. Freeman was duly sworn by the
16 Clerk of Court.)

17 THE CLERK: Thank you. Would you, please, state
18 your full name and spell your last for the record.

19 THE WITNESS: Richard M. Freeman. F-R-E-E-M-A-N.

20 MS. ABEE: May it please the Court, Your Honor?

21 THE COURT: Yes, ma'am.

22 RICHARD M. FREEMAN,

23 having been duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MS. ABEE:

1 Q. Good morning, Mr. Freeman.

2 A. Good morning.

3 Q. And if you could, tell the jury what you do for a
4 living?

5 A. Well, for fifty years I was a police officer. I
6 started off with the Federal Bureau of Investigation in the
7 identification division and got enough of Washington after
8 about two years, so I came home and went to work with the
9 Richland County Sheriff's Office. In 1978, I transferred
10 over to Lexington County and I retired from there after
11 twenty years and then went to work with the Drug
12 Enforcement Administration, U.S. Department of Justice, and
13 retired from there about two years ago.

14 Q. All right. So during your fifty years in law
15 enforcement, you stated that you spent a significant
16 amount of that time with the Lexington County Sheriff's
17 Department?

18 A. I did about twenty years, yes.

19 Q. Is that who were you working for in 1986?

20 A. Exactly I was.

21 Q. And, if you could, tell us what your job or position
22 was in 1986.

23 A. At that time I was an identification officer. There
24 weren't but one -- well, two of us in the identification
25 division and our primary duties were to process -- was

1 to process crime scenes, collect evidence, videotape,
2 still photographs of crime scenes, dust for fingerprints,
3 whatever -- collect body fluids or whatever was needed.

4 Q. And, if you could, tell us a little about bit about
5 the training you received in order to be able to process a
6 crime scene?

7 A. Well, I was -- with the exception of, of course, the
8 two years I spent with the FBI, I've probably examined over
9 a hundred thousand fingerprints. Then when I came home and
10 went to the criminal justice academy, there was a course in
11 processing crime scenes and things like that.

12 Q. And does this include specialized training in what's
13 called lifting a fingerprint?

14 A. Oh, yes, ma'am.

15 Q. Okay. And explain that for us. What does it mean to
16 lift a fingerprint?

17 A. Well, first, depending on the surface that the print
18 is suspected, you would initially dust it using a dust of
19 graphite and charcoal. If it's a light surface, then I
20 would use that type of dust and if it's a dark surface,
21 then I use a mixture of light gray colored powder and I'd
22 dust this over the surface and as the print developed, then
23 I'd use a lift -- a transparent lift to smooth the adhesive
24 part over the print and pull it up and apply it to another
25 surface so it could be transported.

1 Q. And, Mr. Freeman, in your roughly fifty years in law
2 enforcement, how many fingerprints do you think you've
3 lifted in your career?

4 A. A thousand. More than a thousand.

5 Q. And, Mr. Freeman, were you involved in any way into
6 the investigation of the disappearance of Jessica Gutierrez
7 in June of 1986?

8 A. Yes, ma'am.

9 Q. Okay. What was your specific role in that case?

10 A. I received a call -- well, I was told to go out to a
11 trailer off of South Lake Drive, I believe, and that a
12 young child was missing and it was believed to be abducted,
13 and so I went there and I explained -- the situation was
14 explained to me that the child was believed to have been
15 taken through the window of the trailer.

16 MS. ABEE: And, Your Honor, may I approach to recover
17 some evidence?

18 THE COURT: You may.

19 BY MS. ABEE:

20 Q. And, Mr. Freeman, when you went out to that scene, did
21 you take photos as will?

22 A. Yes, ma'am. I took video and still photographs.

23 Q. And I'm gonna show you what's already been admitted
24 into evidence as State's Exhibit Number 20. Do you
25 recognize this as being the residence that you responded

1 to?

2 A. I do. Yes, ma'am.

3 Q. And, Mr. Freeman, when you were there at the scene,
4 you talked to use about how you could dust and lift latent
5 prints, did you dust and lift a latent print in this
6 particular case?

7 A. I was pointed to -- I was shown different surfaces
8 that could have been touched by whoever came in and -- and
9 grabbed -- kidnapped the child, yes.

10 Q. And did you find or locate a latent print anywhere?

11 A. I did. Yes, ma'am.

12 Q. Okay. And do you recall what type of surface this
13 was?

14 A. The only legible print that I -- after I dusted the
15 only legible print that I saw was on the lower left corner
16 of the aluminum frame of the glass window. It was on the
17 outside of the -- of the window.

18 Q. And you said you saw this legible print. Did you lift
19 it?

20 A. I did. Yes, ma'am.

21 Q. Mr. Freeman, I'm approaching you with what's been
22 premarked as State's Exhibit Number 25, and I'm showing the
23 same to opposing counsel.

24 THE COURT: Please tell me that wasn't a cell phone.

25 THE DEPUTY: It's off now.

1 THE COURT: Thank you.

2 MS. ABEE: May I approach, Your Honor?

3 BY MS. ABEE:

4 Q. Mr. Freeman, I'm handing you what's been premarked
5 as State's Exhibit Number 25. Do you recognize the
6 handwriting on this?

7 A. Oh, yes. Yes, ma'am, I do.

8 Q. Okay. Whose handwriting is that?

9 A. The labeling on the front is mine. It says latent
10 from window to right of front door, 6 June 1986, RMF.

11 Q. Okay. So the 6th of June of 1986, is that when you
12 responded to that trailer?

13 A. Yes, ma'am.

14 Q. Okay. And you said it said RMF. Are those your
15 initials?

16 A. They are, yes.

17 Q. Okay. Mr. Freeman, if could you look inside and let
18 us know if you recognize what is inside of that envelope?

19 A. Yes, ma'am, I can.

20 Q. Okay. And what is that?

21 A. It's the latent I lifted from the outside of the
22 bottom pane of the window, which was located to the right
23 of the door to the trailer.

24 Q. Okay. And how do you know that that's the print you
25 lifted?

1 A. My initials are right here on the card.

2 Q. Okay. And is this the print that you actually lifted?

3 A. Yes, ma'am.

4 MS. ABEE: Your Honor, at this point the State moves
5 State's Exhibit 25 into evidence.

6 MR. MAULDIN: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (State's Exhibit Number 25, a latent print card, was
9 admitted into evidence.)

10 MS. ABEE: Permission to publish?

11 THE COURT: Yes, ma'am.

12 BY MS. ABEE:

13 Q. Mr. Freeman, I'm gonna show the jury what you and I
14 just looked at. This is that envelope that we talked about
15 on State's Exhibit 25, the latent from window to right of
16 front door 6 June 1986 and you said this RMF, that's your
17 initials?

18 A. Yes, ma'am.

19 Q. Okay. Now inside of that envelope was this and so is
20 this the latent print that you were able to lift off that
21 window?

22 A. It is. Yes, ma'am.

23 Q. And once you lift that latent print, what do you do
24 with it, Mr. Freeman?

25 A. It was in my custody until I was requested to send it

1 to the FBI for identification.

2 Q. And so we talked about the latent print that you
3 lifted. What else do you recall processing or doing at the
4 scene?

5 A. I remember picking up several other objects, one of
6 which was a cigarette butt and a cigarette package, empty
7 cigarette package.

8 Q. And, Mr. Freeman, you talked about how part of your
9 duties were also to create videos. Did you create a video?

10 A. I did. Yes, ma'am.

11 MS. ABEE: Your Honor, I'm showing opposing counsel
12 what's been marked as State's Exhibit Number 26.

13 THE COURT: Any objection?

14 MR. MAULDIN: No, Your Honor.

15 THE COURT: It's admitted.

16 (State's Exhibit Number 26, a video recording, was
17 admitted into evidence.)

18 BY MS. ABEE:

19 Q. And, Mr. Freeman, I'm handing you this disk. Is that
20 your initials on it?

21 A. Yes, ma'am.

22 Q. Okay. And were you able to view the contents of that
23 disk?

24 A. I did, yes.

25 Q. Okay. And what is on that disk?

1 A. This is the disk that was made from the -- at the time
2 we were using Beta format -- VHS or Beta format tapes and
3 the images on that tape were transferred to this disk.

4 Q. And you've been able to see that that is the actual
5 video that you took?

6 A. Yes, ma'am.

7 MS. ABEE: And, Your Honor, just confirming that
8 State's 26 has been entered without objection?

9 THE COURT: It has been.

10 MS. ABEE: Permission to publish to the jury, Your
11 Honor.

12 THE COURT: Yes, ma'am. Go ahead.

13 BY MS. ABEE:

14 Q. Mr. Freeman, I gonna play that video for the jury.

15 (State's Exhibit Number 26 was played.)

16 Mr. Freeman, when you are there on the scene, is your
17 specific role to document it?

18 A. Correct. Yes, ma'am.

19 Q. And to collect evidence?

20 A. Right.

21 Q. It's fair to say you weren't like the lead
22 investigator on the scene, right?

23 A. No.

24 Q. You weren't there to question witnesses or anything
25 like that?

1 A. No, ma'am.

2 Q. Okay. And so you told us that you collected the
3 latent print and you took the video and as we're watching
4 that video we see you zoom in on a window. Why are you
5 zooming in on that front porch window?

6 A. That was where it was pointed out to me that the
7 kidnapper apparently came -- came from, went into or took
8 the child out.

9 Q. And you also I saw video'd the inside of that window
10 as well. Did we just see that in that video?

11 A. I did. Yes, ma'am.

12 Q. Okay. I'm gonna approach you with what's been marked
13 as State's Exhibit 27, 28 and 29.

14 MS. ABEE: And showing the same to opposing counsel,
15 Your Honor.

16 BY MS. ABEE:

17 Q. Mr. Freeman, if you could look through State's 27
18 through 29 and let me know if you recognize those, please.

19 A. Yes, ma'am.

20 Q. Okay. Are those a fair and accurate depiction of the
21 crime scene as you saw it that day?

22 A. They are, yes.

23 MS. ABEE: The State moves State's 27 through 29
24 into evidence.

25 MR. MAULDIN: No objection.

1 THE COURT: They're admitted.

2 (State's Exhibit Number 27, 28 and 29, photographs,
3 were admitted into evidence.)

4 MS. ABEE: Permission to publish, Your Honor.

5 THE COURT: Yes, ma'am.

6 BY MS. ABEE:

7 Q. Mr. Freeman, I'd like to go through these with you.

8 A. Excuse me?

9 Q. I'd like to go through these with you, if that's okay?
10 If we could look up here together.

11 A. Sure. All right.

12 Q. State's Exhibit Number 27, is this the window that you
13 dusted and lifted that latent print off of?

14 A. Yes, ma'am.

15 Q. Okay. And do you recall this being on the front of
16 the house or the back of the house?

17 A. It's on the front.

18 Q. I'm gonna show you what's already been admitted into
19 evidence as State's Exhibit Number 24. Is this that same
20 window?

21 A. Yes, ma'am.

22 Q. Okay. And you told us you lifted that print off of
23 one of these panes?

24 A. The lower -- lower window.

25 Q. And so would that be this pane right here?

1 A. Yes, ma'am. Correct.

2 Q. Okay. And did you lift that print from the left side
3 or the right side?

4 A. Left side.

5 Q. Left side?

6 A. Left lower corner, yeah.

7 Q. Okay. So is my laser pointer pointing in the correct
8 area?

9 A. It is, yeah.

10 Q. Okay. The left lower corner.

11 I'm gonna show you now State's Exhibit Number 28.

12 It's a little difficult to see, but we just got to see it
13 on the video as well. Is this the inside of that same
14 window?

15 A. Yes, ma'am.

16 Q. Okay. And do you recall whether or not that screen
17 was attached to the window or whether it was off?

18 A. There was no screen attached to the window when I got
19 there.

20 Q. Okay. And then the curtains, is that what they looked
21 like when you arrived as well?

22 A. Right.

23 Q. Okay. And, Mr. Freeman, when you're there at the
24 crime scene, do you manipulate any of the scene itself or
25 take down curtains or screens or anything like that?

1 A. No, ma'am.

2 Q. You didn't do that in this particular case?

3 A. I did not.

4 Q. And finally I'm gonna show you State's Exhibit
5 Number 29 and we saw you zoom in on this on the video as
6 well. What is this that we're seeing here in State's 29?

7 A. That's a stick, a wooden piece of a board or
8 something, but it was pointed out to me it was possibly
9 used to open -- to prop open the window for some particular
10 reason.

11 Q. Okay. And when you got there on the crime scene, was
12 this the location of where it was on the porch?

13 A. Yes, ma'am.

14 Q. You didn't place it there or anything like that?

15 A. No. No, ma'am.

16 Q. And when you got there, Mr. Freeman, was that window
17 shut like we saw originally in State's Exhibit Number 27?
18 Is that what it looked like?

19 A. Exactly. Yes.

20 Q. Okay. And, Mr. Freeman, you took the video, you
21 lifted the latent print and then I believe you told us you
22 also gathered some other pieces of evidence; is that right?

23 A. Yes, ma'am. Right.

24 Q. And when you gather pieces of evidence, Mr. Freeman,
25 what do you do with them?

1 A. I keep them in -- I log them into evidence and they're
2 -- maintain custody of it until they're sent to wherever
3 they may be sent, either to the FBI or SLED or wherever.

4 Q. And do you create any sort of a receipt or something
5 like that when you check something into evidence?

6 A. I did. Yes, ma'am.

7 Q. Okay.

8 MS. ABEE: Your Honor, I'm showing opposing counsel
9 what's been premarked as State's Exhibit Number 30.

10 BY MS. ABEE:

11 Q. Mr. Freeman, I'm gonna hand you what's been premarked
12 as State's Exhibit Number 30. Is this one of those
13 receipts?

14 A. Yes, ma'am. It is.

15 Q. Okay. And is this one of those receipts that you
16 created for this case?

17 A. It is, yes.

18 Q. And how do you know that?

19 A. Well, my signature is in two places on it and then
20 also I've initialled up in the upper right-hand corner and
21 I typed my name in.

22 MS. ABEE: All right. Your Honor, the State moves
23 State's Exhibit 30 into evidence.

24 THE COURT: Any objection?

25 MR. MAULDIN: No objection, Your Honor.

1 THE COURT: It's admitted.

2 (State's Exhibit Number 30, an evidence log/home,
3 was admitted into evidence.)

4 MS. ABEE: Permission to publish, Your Honor?

5 THE COURT: Yes, ma'am.

6 BY MS. ABEE:

7 Q. And, Mr. Freeman, I'm gonna go through this evidence
8 that you stated you received in this case just to make sure
9 we're looking at all of it.

10 All right. I see number one, one videotape. Would
11 that be the video that we just watched?

12 A. Yes, ma'am.

13 Q. Okay. And then number two we see latent print from
14 window located to the right of the front door, first pane
15 of glass from bottom of the window. Is that the latent we
16 looked at?

17 A. Yes, ma'am.

18 Q. Okay. Then numbers three, four, five. Three says
19 piece of wood used to prop open the window found on the
20 porch below the window. Is that the pictures we just
21 looked at?

22 A. It is. Yes, ma'am.

23 Q. Okay. Number four says one Vantage cigarette butt
24 found on the ground beneath the window from which the
25 latent was lifted. Tell us a little bit about that.

1 A. Wait a minute. Let me -- let me understand again.

2 Q. Okay. So number four says one Vantage cigarette
3 butt --

4 A. Oh, okay.

5 Q. -- was located found on the ground beneath the window
6 from which the latent was lifted.

7 A. Right. Yes.

8 Q. Tell us about that.

9 A. Well, it was pointed out to me that this cigarette
10 butt that was laying on the floor could have been dropped
11 by whoever kidnapped the child and so I took that into
12 custody for possible -- I don't know if DNA was -- was used
13 that much back then in 1968, but possibly, you know, a
14 latent print may have been taken off the cigarette, I don't
15 know, but I picked it up.

16 Q. You collected it?

17 A. Yeah.

18 Q. Okay. And then number five says empty Vantage
19 cigarette pack found in the fork of the tree in the front
20 yard. Do you recall collecting that as well?

21 A. Yes, ma'am.

22 Q. Okay. And I'm gonna approach you with what's been
23 premarked as State's Exhibit 34, 35 and 36?

24 MS. ABEE: And I'm showing same to opposing counsel.

25 BY MS. ABEE:

1 Q. Mr. Freeman, I'm handing you State's Exhibit 34, 35
2 and 36 -- or what's been premarked as those exhibits. Do
3 you recognize the information contained within these
4 packages?

5 A. Yes, ma'am.

6 Q. Okay. Is what's contained in here what we just talked
7 about on the evidence receipt?

8 A. Correct. Yes.

9 Q. Okay. And it doesn't appear that we've altered it or
10 switched it out or anything like that?

11 A. Yeah. Sure.

12 MS. ABEE: Your Honor, the State moves State's 34, 35
13 and 36 into evidence.

14 THE COURT: Any objection?

15 MR. MAULDIN: No objection, Your Honor.

16 THE COURT: It's admitted.

17 (State's Exhibit Number 34, a piece of wood,
18 State's Exhibit Number 35, empty Vantage cigarette pack,
19 and State's Exhibit Number 36, cigarette butts, were
20 admitted into evidence.)

21 BY MS. ABEE:

22 Q. So first, Mr. Freeman, we have State's Exhibit
23 Number 34. Now on the internal package, whose initials
24 are those?

25 A. They're mine.

1 Q. Okay. And can you read to us the what this label says
2 that this is?

3 A. The label -- this white label here?

4 Q. This bottom label right here as to what --

5 A. Piece of wood used to prop up the window.

6 Q. Okay. And is that that piece of wood you found there
7 that day on the porch?

8 A. Yes, ma'am. Yeah.

9 MS. ABEE: I'll go ahead and have evidence open this
10 bag for us.

11 BY MS. ABEE:

12 Q. Mr. Freeman, I'm gonna publish State's Exhibit
13 Number 34. Is this that piece of wood that we saw in your
14 video on the front porch?

15 A. Yes, ma'am.

16 Q. Okay. And is this the piece of wood that was actually
17 on the front porch when you got there?

18 A. Yes, ma'am. It is.

19 Q. Now, Mr. Freeman, I'm gonna open up State's Exhibit
20 Number 35, the empty Vantage cigarette pack, and is that an
21 empty Vantage cigarette pack?

22 A. Yes, ma'am.

23 Q. Okay. And you found, I believe what the evidence
24 receipt says, this by a tree in the house?

25 A. I'm sorry?

1 Q. I believe the evidence receipt says the empty Vantage
2 cigarette pack was found in fork of tree in front yard; is
3 that right?

4 A. That's correct. Correct.

5 Q. And then finally, Mr. Freeman, I'm gonna publish --
6 put up here State's Exhibit Number 36, okay? And this
7 Vantage cigarette butt, is that the cigarette butt you were
8 telling us was found underneath the window?

9 A. Yes, ma'am.

10 MS. ABEE: Your Honor, I have no further -- I beg the
11 Court's indulgence. Your Honor, I have no further
12 questions for this witness at this time.

13 THE COURT: All right.

14 Mr. Mauldin.

15 CROSS-EXAMINATION

16 BY MR. MAULDIN:

17 Q. Morning.

18 A. Good morning, sir.

19 Q. Now, Mr. Freeman, did -- did you prepare any kind of
20 report detailing your activities on that morning of where
21 you searched?

22 A. Did I prepare what?

23 Q. A report. Did you type out or write out a report?

24 A. Other than the evidence intake sheets, no, sir, I
25 don't believe I did.

1 Q. Okay. So there's no kind of report detailing your
2 activities that day and that was thirty-six years ago; is
3 that right?

4 A. Correct. Yes.

5 Q. And you retired two years ago; is that right?

6 A. I retired --

7 Q. From -- well, sorry. You retired two years ago; is
8 that right from the DEA?

9 A. I retired from the Drug Enforcement Administration
10 two years ago, yes.

11 Q. So thirty-six minus two is thirty-four years, right?

12 A. Right.

13 Q. So that's thirty-four years of cases you've been
14 dealing with since then; is that right?

15 A. Yes, sir.

16 Q. Did you document the location of the fingerprint by
17 taking a photo of it or a video?

18 A. Other than the video, no, I didn't. I did not.

19 Q. Was the fingerprint on that video?

20 A. I'm sorry?

21 Q. Was the fingerprint, the dust, on that video?

22 A. Yes, sir.

23 Q. Okay. Now I know you testified that you got the
24 fingerprint from the lower left frame of the window, the
25 aluminum frame I believe you said; is that right?

1 A. That's correct. Yes.

2 Q. And looking at State's 30 here, the document you
3 prepared thirty-six years ago, it says that you got the
4 latent print from the first pane of glass from the bottom
5 of the window. Is that what is written there?

6 A. Can I see that report again? I mean, the evidence
7 sheet.

8 Q. Yes, sir.

9 A. Yes, sir. It says first pane of glass from bottom of
10 the window.

11 Q. Okay. So would it have been on the glass or the
12 frame?

13 A. My memory says it was on the frame.

14 Q. Okay. But your documentation says it was on the
15 glass; is that right?

16 A. Yes, sir.

17 Q. Okay. So from your documentation it doesn't say what
18 -- where on the glass the print was found, does it? It
19 just says it was found on the glass; is that right?

20 A. It -- according to my memory, it was on the aluminum
21 frame of the window.

22 Q. But Mr. Freeman's memory back in 1986 said it was on
23 the glass or else he wouldn't have put it on a report,
24 would he?

25 A. I tell you, there are some crimes that stick in your

1 memory, the facts stick in your memory. I was surprised
2 when I found -- after dusting I found a legible print on
3 the aluminum because normally aluminum does not -- it's
4 kind of oxidized, I guess, or something and it does not --
5 does not give a good print. Finding it on the glass would
6 have probably been a lot easier, but there's no doubt in my
7 memory that it was found on the frame of the window.

8 Q. Okay. Well, if it was such an important case it would
9 be important for you to document it correctly, wouldn't it?

10 A. I didn't describe it fully on the evidence sheet.

11 Q. Did you take a picture of where you found the
12 cigarette butt on the ground?

13 A. No, sir. I did not.

14 Q. It wasn't on the porch, it was on the ground; is that
15 right?

16 A. You'll have to speak up a little bit.

17 Q. It wasn't on the porch, it was on the ground?

18 A. It was on the ground.

19 Q. Okay. And the cigarette pack, did you take a picture
20 of which tree you found that in?

21 A. No, sir. I did not.

22 Q. So we don't know which tree it was found in?

23 A. No, sir.

24 Q. It just says the front yard?

25 A. Yes, sir.

1 Q. Okay. You said that you were told various locations
2 the suspect may have touched that you dusted. What were
3 those various locations besides the window?
4 A. Well, anything on the interior of the house, the room,
5 the bedroom on the inside, and around the -- the window.
6 Q. Okay. So you dusted the bedroom and the window?
7 A. I did not, no.
8 Q. Okay. You didn't dust the window?
9 A. I dusted the exterior of the window, but not the
10 inside.
11 Q. Okay. You didn't dust anything on the inside?
12 A. No, sir, I did not.
13 Q. And that would include the inside of the door, the
14 door -- the door to the trailer, you didn't dust on that?
15 A. No, sir.
16 Q. So if that door had three locks, you didn't dust any
17 of those locks?
18 A. No, sir.
19 Q. And you didn't dust the handle of the door?
20 A. No, sir.
21 Q. And you were there to document the scene with the
22 video. You weren't the lead investigator; is that right?
23 A. You're gonna have to speak up.
24 Q. I'm sorry. You weren't the lead investigator --
25 A. No, I was not.

1 Q. -- your purpose with the video was to document the
2 scene?

3 A. Right.

4 Q. Okay. And the video lead investigator didn't ask you
5 to videotape his interviews with Debra or Becky Gutierrez,
6 did he?

7 A. No, sir. He did not.

8 Q. Did you measure the window?

9 A. No, sir. I did not.

10 Q. Did you measure the opening between the slats to
11 determine what the dimensions were of the opening --

12 A. No, I did not --

13 Q. -- of one of those slats?

14 And looking at State's 27, it appears that there is
15 a lattice fence here on the porch; is that correct?

16 A. Yes, sir.

17 Q. And that's a little -- almost halfway between the
18 width of the window; is that right?

19 A. Yes, sir.

20 Q. Okay. And you said those prints that you had, they
21 were in your custody until they were sent to the FBI for
22 examination; is that correct?

23 A. Yeah.

24 MR. MAULDIN: No further questions.

25 THE COURT: Any redirect?

1 MS. ABEE: No, Your Honor. We just ask that this
2 witness be excused.

3 THE COURT: Thank you.

4 (Witness excused.)

5 THE COURT: Madam Forelady, the jury okay?

6 FOREPERSON: Yes, ma'am.

7 THE COURT: Call your next witness.

8 MS. ABEE: Your Honor, the State calls James Hickman.

9 THE CLERK: Would you, please, raise your right hand
10 and put your left on the Bible.

11 (Whereupon, James L. Hickman was duly sworn by the
12 Clerk of Court.)

13 THE CLERK: Would you, please, have a seat in the
14 witness box. State your full name and spell your last
15 for the record.

16 THE WITNESS: It's James L. Hickman. H-I-C-K-M-A-N.

17 MS. ABEE: May it please the Court, Your Honor?
18 May I proceed?

19 THE WITNESS: Ma'am?

20 THE COURT: Yes. Yes.

21 JAMES L. HICKMAN,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MS. ABEE:

25 Q. Mr. Hickman, are you currently employed?

1 A. Yes, ma'am.

2 Q. Where at?

3 A. Lexington County Sheriff's Department.

4 Q. And what's your role there?

5 A. I'm a -- fingerprint analysis.

6 Q. And how long have you been in law enforcement?

7 A. Sometime around forty-nine years.

8 Q. All right. And of those forty-nine years, how many
9 years have you worked for the Lexington County Sheriff's
10 Department?

11 A. Somewhere around thirty-five years.

12 Q. And what's your current title?

13 A. I'm a fingerprint -- latent print examiner.

14 Q. Okay. And tell us a little bit about your educational
15 and training background as a latent print examiner.

16 A. I attended the South Carolina Criminal Justice Academy
17 and graduated from it. I have an associate's degree in
18 police administration, which I received from Midlands Tech.
19 I have completed a fingerprint recognition course with
20 Midlands Tech, also completed a basic latent print
21 comparison course with South Carolina Criminal Justice
22 Academy. I attended the advanced latent print
23 certification at the South -- at the Law Enforcement
24 Academy also. I also attended an advance administrative
25 latent print course with the FBI in Quantico, Virginia.

1 I've also graduated from the Institute of Applied Science
2 out of Chicago with a degree in criminal investigations.
3 I'm a certified AFIS operator by SLED, I have taught to our
4 citizens academy fingerprints comparisons or latent prints.
5 I also teach all of our employees that come into the
6 sheriff's department on how to collect and turn in latent
7 prints. I also teach classes. I've taught I think two
8 classes to the employees of Lexington County Sheriff's
9 Department in latent print comparison. I've testified in
10 court -- this court for I think about ten times now as far
11 as comparisons. I've been -- started my career with
12 Orangeburg Police Department, left there, came here, stayed
13 here about a year, almost two years, then went to Camden
14 Police Department as a lieutenant. I didn't like that, so
15 I came back home and I finally retired in 2009 and then
16 doggone-it I came back in 2012, and I've been here ever
17 since then.

18 Q. All right. And as you were telling us all of kind of
19 your background, you said the word AFIS. Tell us what AFIS
20 is.

21 A. That's the Automated Fingerprint Identification
22 System.

23 Q. Okay. So something else dealing with fingerprints?

24 A. Yes, ma'am. It's a system where the fingerprints --
25 latent prints are put into the computer and the computer

1 researches those into all latent -- all rolled prints
2 or all prints that's in their system and makes an
3 identification.

4 Q. And you told us that you've testified in court
5 regarding latent print examinations about ten times. Were
6 you qualified as an expert during those ten times?

7 A. Yes, ma'am.

8 Q. And tell us a little bit -- how many latent print
9 examinations do you think you've conducted?

10 A. Well, I'll give you an example. The advanced
11 fingerprint school that I went to at the FBI was
12 three weeks long. We had -- in that course alone, I
13 probably analyzed and compared ten to twenty thousand.

14 Q. So is it fair to say that the number of latent print
15 examinations you've conducted in your forty-nine years in
16 law enforcement is in the thousands?

17 A. Oh, yes, ma'am.

18 Q. Okay. And these examinations or analyses that you
19 conduct, are they peer reviewed?

20 A. Yes, ma'am.

21 Q. Okay. And explain to us what that means, something
22 being peer reviewed.

23 A. I will take the fingerprint and make my analysis on
24 it, make my report and do everything I need to, then I'll
25 give it to another examiner with the sheriff's department

1 and they will do the same thing, which is go over my
2 information, make sure it's correct. If it's not correct,
3 then we've got a problem and we discuss it out and
4 determine what is it and most of the time it's a -- we make
5 a non-identification on that, but they have to agree with
6 everything that I did.

7 MS. ABEE: Your Honor, at this time the State moves
8 James Hickman in as an expert in latent print examination
9 and analysis.

10 THE COURT: Any objection?

11 MS. MAULDIN: No, Your Honor.

12 THE COURT: All right. Ladies and gentlemen of the
13 jury, normally a person cannot testify or give opinion
14 testimony, okay? Usually they testify to what they saw,
15 heard, did, sensed, smelled, something like that. But
16 because of education and experience someone gets qualified
17 as an expert and that's an exemption to the rule.

18 So in this case Mr. Hickman is qualified as a latent
19 print examiner and analysis?

20 MS. ABEE: Yes, Your Honor.

21 THE COURT: And he's gonna be allowed to give his
22 opinion to you. Now what you do with it is up to you.
23 You can give it the weight you feel it deserves, okay?

24 MS. ABEE: Thank you, Your Honor.

25 BY MS. ABEE:

1 Q. And before we get into your fingerprint analysis in
2 this case, did you ever receive a separate piece of
3 evidence or sign for a piece of evidence to be received
4 in this case?

5 A. Yes, ma'am.

6 Q. Okay. And we previously just heard from Mr. Freeman
7 and Richard Freeman showed us kind of an identification
8 receipt. Do you recall being on one of those in this case?

9 A. Yes, ma'am.

10 Q. Okay.

11 MS. ABEE: Your Honor, I'm showing opposing counsel
12 what's been premarked as State's Exhibit 33.

13 BY MS. ABEE:

14 Q. And I'm approaching you with what's been premarked as
15 State's Exhibit Number 33. Do you recognize this?

16 A. Yes, ma'am.

17 Q. Okay. And what is this?

18 A. This is an evidence report where we log evidence into
19 Lexington County Sheriff's Department.

20 Q. Okay. And who received this piece of evidence?

21 A. I did.

22 Q. Okay. And how do you know that?

23 A. That's my signature down here that says chain of
24 custody to and from.

25 Q. Okay. And then the date in the upper portion, what

1 was the date that you received this?

2 A. 7-21-87.

3 Q. Okay. And does it appear that this has been altered
4 in any way?

5 A. No, ma'am.

6 MS. ABEE: Your Honor, the State moves State's 33
7 into evidence.

8 THE COURT: Any objection?

9 MS. MAULDIN: Objection, Your Honor.

10 THE COURT: All right. Let me see the lawyers.

11 (Proceedings held at the bench; not reported.)

12 THE COURT: I'm going to allow it.

13 Go ahead.

14 (State's Exhibit Number 33, an evidence log/vehicle,
15 was admitted into evidence.)

16 MS. ABEE: Thank you, Your Honor. Confirming
17 State's 33 has been entered?

18 THE COURT: Yes.

19 BY MS. ABEE:

20 Q. And, if you could, Mr. Hickman, just tell us what was
21 actually received by you in '87?

22 A. It was 1975 Ford Elite with South Carolina tag OMJ711.
23 It was white in color. It had no keys with it and no
24 wheels.

25 Q. Thank you.

1 All right. Now, if you could, just explain to all of
2 us the process of identifying and comparing fingerprints.
3 A. Okay. Comparing a fingerprint is just a one to one.
4 You look at something and then you compare it to something
5 else and see if it's identical. Fingerprints we look at
6 the fingerprints itself. Everybody has them on their
7 hands, there's no people that doesn't have any, and they're
8 classified in different -- broken down into different
9 categories, which is whirls, arches, loops, and you look at
10 the fingerprint when you get it to see if these to match
11 what you're comparing it to, does it look like the same.
12 If it looks like the same, we go onto the next step and
13 determine, you know, if we can see the classification, in
14 other words, a whirl, loop or whatever. You know,
15 comparing a whirl to a loop, that's not identification, so
16 you stop there. You just make sure that is correct. And
17 once -- then you go onto another step, which you actually
18 identify what we called minutia points, and these are
19 bifurcations where ridges fork, ridge endings, low islands
20 where the ridges circle and make a little island and things
21 like that. We start checking those and we determine if,
22 say, a ridge end -- this ridge ending is in the same
23 location as it is on the known. They've got to be the
24 same. They can't be one ridge off or plus or minus two.
25 They have to be the same. And we go on until we've

1 determined that there's enough of the minutia points to
2 convince me that it's the same and once it's the same, I
3 sign it off as an identification and then send it onto the
4 verification officer, and they do the same thing.

5 Q. All right. I want to break that down a little bit.
6 So the two things you're comparing, is it that the lifted
7 print and the known print?

8 A. Yes, ma'am. It's the known and unknown. The
9 unknown would be the latent print, the known would be
10 the fingerprint card of the person, the suspect.

11 Q. All right. And the first thing you look at is to see
12 if they match in class; is that right?

13 A. Yes. Yes, ma'am. Just look at things to see if they
14 match.

15 Q. All right. And when you're telling us class, I think
16 you keep saying loops, whirls. Kind of explain to us what
17 are those various classes are.

18 A. There are just different classes. A loop is where the
19 ridges -- on your fingers you have the ridges. They're the
20 raised portions on your fingers. Those are the ones your
21 kids leave on the refrigerator and track everywhere and you
22 fuss at them all the time about cleaning it up. Those are
23 the ones that if you look at your rearview mirror you see
24 your fingerprints up there. Those raised portions -- or
25 the darker portions are the raised portions. In between

1 them are what's called the furls, then on the ridges is
2 where your sweat pores are at. So when your hand touches
3 something you leave image of that there. The fingerprints
4 are classified so we can -- it's like an alphabet or
5 whatever you want to call it so you can determine what it
6 is. A whirl is like a target. Everybody's seen what a
7 target is with a circle in the middle. A loop is one where
8 the ridges start on one side, come in recurve around and go
9 out the other side. And then each one of those is broken
10 down into different classifications. A arch is just like a
11 wave coming in. The arches go like a wave coming in.

12 Q. All right. So once you realize that the latent print
13 and known print are of the same class, then you move on and
14 look for kind of this minutia?

15 A. Yes, ma'am.

16 Q. All right. And does everybody have the same type of
17 minutia?

18 A. The minutia is the identification points which is
19 ridge and -- yeah, everybody has a ridge ending somewhere
20 on their hand, on their fingers. They also have
21 bifurcations, which is a ridge coming in and forking. And
22 I'm sure everybody's got an island on theirs. Some people
23 may not have them, some people will have them.

24 Q. Now are everybody's the same?

25 A. No, ma'am. They may -- you may have bifurcations, you

1 may have ridge endings, but they're in different locations
2 than what somebody else is. They have to be in the same
3 location. In other words, if you've got a ridge ending
4 here and on yours, which is the known, and the unknown has
5 a ridge ending, there has to be the same number of ridges
6 between each one of them.

7 Q. And so when you're looking at the latent print and the
8 known standard, you're not just looking for one thing that
9 matches; is that fair to say?

10 A. No, ma'am.

11 Q. You're trying to find lots of different minutia that
12 matches?

13 A. Yes, ma'am.

14 Q. Okay. What qualifies as an actual match?

15 A. When I'm satisfied it is.

16 Q. Okay.

17 A. There's no -- there's no set thing that tells me okay,
18 when I get to here it's a match. It's just whenever I feel
19 comfortable with it.

20 Q. Okay. And what gets you do that the level of
21 comfortability?

22 A. Most of the time it's the number of minutia points,
23 however many it is, whether ten, fifteen, twenty, thirty.

24 Q. So once you have enough minutia, these tiny little
25 distinctions that match, then you comfortable stating that

1 there's a comparison there?

2 A. Yes, ma'am.

3 Q. All right. Now talk to us about the process of
4 leaving fingerprints. Do we always leave fingerprints
5 every time we touch something?

6 A. I would say, yes, but it's a little bit hard sometimes
7 to find them. There's some people that sweat a lot and
8 they're easy to leave fingerprints and some people that
9 have dry skin, it's a little bit harder, and it depends on
10 what you touch, it depends on the atmospheric conditions
11 and everything else, but generally speaking, yeah, you'll
12 leave one.

13 Q. And is it fair to say that even if a fingerprint is
14 left, a fingerprint isn't always suitable for comparison?

15 A. Yes, ma'am. It is not.

16 Q. And explain that to us. What would make a fingerprint
17 not suitable for comparison?

18 A. Say that it's a -- say that the latent print, the one
19 that we're looking at, just looks like a big blob of black
20 ink, there's no minutia points that I can see or maybe
21 there may be one or two, something like this, that's not
22 suitable for comparison. We look at it and it's just looks
23 like a big streak across there. It's just something that
24 we cannot see.

25 Q. Would this include like smudged prints as well?

1 A. A smudge print, a print put down too hard, a print
2 that's like real greasy, you put it down in grease, and it
3 just blends together.

4 Q. Now we heard from Richard Freeman that he lifted a
5 latent print in this particular case. Did you review that
6 latent print?

7 A. Yes, ma'am.

8 Q. Did you compare it to a known standard?

9 A. Yes, ma'am.

10 Q. Okay. Who was that known standard of?

11 A. It was of Thomas Eric McDowell.

12 MS. ABEE: Your Honor, I'm showing opposing counsel
13 what's been premarked as State's Exhibit Number 40.4.

14 BY MS. ABEE:

15 Q. Mr. Hickman, I'm handing you what's been premarked
16 as State's Exhibit Number 40. Is that the comparison that
17 you used to -- or the standard that you used to compare
18 Mr. McDowell's fingerprint?

19 A. Yes, ma'am.

20 Q. Okay. And is this a fair and accurate representation
21 of what you actually used?

22 A. Yes, ma'am.

23 MS. ABEE: Your Honor, the State moves State's
24 Exhibit 40 into evidence.

25 THE COURT: Any objection?

1 MR. MAULDIN: No, Your Honor.

2 THE COURT: It's admitted.

3 (State's Exhibit Number 40, latent print card, was
4 admitted into evidence.)

5 MS. ABEE: Permission to publish?

6 THE COURT: Yes, ma'am.

7 BY MS. ABEE:

8 Q. I'm gonna show you State's Exhibit Number 40. Is this
9 what you used to compare the latent print of Mr. Freeman?

10 A. Yes, ma'am.

11 Q. Okay. And when was this card received or when were
12 these prints taken?

13 A. It was taken at the Lexington County Sheriff's
14 Department.

15 Q. Okay. Do you know the date?

16 A. The date should be right there and I think it says
17 what 1-2-75.

18 Q. Okay. I'm gonna approach you with it so you can look
19 at it.

20 A. Please.

21 Q. I'm sorry about that.

22 A. 01-02-79.

23 Q. Okay. '79. And who was this of?

24 A. This was of Thomas Eric McDowell and it was taken --
25 the man that took it is Robert Johnson.

1 Q. And were of you able to review the date of birth and
2 the Social Security number on this latent print card to
3 compare it to that of Mr. Thomas McDowell?

4 A. Yes, ma'am.

5 Q. Okay. And did they match?

6 A. Yes, ma'am.

7 Q. Okay. So then you used this as your known standard
8 and then I'm gonna put back up what was entered into
9 evidence as State's Exhibit Number 25. Now Mr. Freeman
10 just told us that he lifted this print off the window. Is
11 this what you used to compare?

12 A. Yes, ma'am.

13 Q. Okay. And were you able to actually compare this
14 lifted latent print with that fingerprint card of
15 Mr. McDowell?

16 A. Yes, ma'am.

17 Q. Okay. And did you prepare a report in that case?

18 A. Yes, ma'am.

19 Q. Okay. And did you prepare a slideshow kind of showing
20 us these minutia points that connect -- connected?

21 A. Yes, ma'am.

22 MS. ABEE: And, Your Honor, I'm showing opposing
23 counsel what's been premarked State's Exhibit Number 31
24 and 32.

25 BY MS. ABEE:

1 Q. Mr. Hickman, I'm showing you what's been marked as
2 State's Exhibit Number 31 and 32. Let's start with Number
3 31. What's contained on the disk in 31?

4 A. This is a CD with my slide presentation on it.

5 Q. Okay. And how do you know that's what's on that disk?

6 A. It's my initials here and I reviewed it.

7 Q. You reviewed it and that's what's contained on here?

8 A. Yes, ma'am.

9 Q. All right. And then Number 32. Tell us what 32 is.

10 A. This is my latent print examination report stating
11 what I found, it's got my signature on it here, and it's
12 dated 1-30-24.

13 Q. All right. And are these fair and accurate depictions
14 of what it is that you reviewed and created in this case?

15 A. Yes, ma'am.

16 MS. ABEE: Your Honor, the State moves State's 31
17 and 32 into evidence.

18 THE COURT: Any objection?

19 MS. MAULDIN: No objection.

20 THE COURT: Okay. It's admitted.

21 (State's Exhibit Number 31, a latent print analysis
22 presentation, and State's Exhibit Number 32, a latent
23 print examination, were admitted into evidence.)

24 MS. ABEE: Permission to publish?

25 THE COURT: Yes, ma'am.

1 MS. ABEE: I beg the Court's indulgence. The
2 software isn't on there.

3 BY MS. ABEE:

4 Q. While we're getting this set up, Mr. Hickman, I'm
5 gonna go ahead and publish State's Exhibit Number 32, the
6 actual report in this case. Were you able to make a match
7 on that latent print lifted from Mr. Freeman?

8 A. Yes, ma'am.

9 Q. Okay. And who were you able to match that to?

10 A. I matched it up to the -- Thomas Eric McDowell. It
11 was his right -- excuse me, it was his left middle finger.

12 Q. Okay. So the left middle finger of Thomas Eric
13 McDowell matched the latent print lifted by Mr. Freeman?

14 A. Yes, ma'am.

15 Q. Okay. And I'll have you walk us through that here in
16 just a second, okay?

17 A. Okay.

18 (State's Exhibit Number 31 was shown.)

19 Q. All right. So, if you could, kind of walk us through
20 what's on this front screen here.

21 A. This is just like a cover sheet on the report. It's
22 just our badge, latent examination. The case number is
23 86-14106. The date of the crime, which was July 14, 1986,
24 and that's to me, when I left here, I was the senior crime
25 scene officer, now I'm just a latent examiner, in Lexington

1 County Sheriff's Department.

2 Q. Okay. And Mr. Hickman, I see that this states
3 July the 14th, 1986. Everything we've been referencing
4 says June the 6th of 1996. Is there a possibility that
5 that was a typo up there for you?

6 A. Yes, ma'am.

7 Q. Okay. And I'm gonna, again, hand you State's
8 Exhibit 25. Do you see a date on the bottom of that card
9 for the latent print?

10 A. Yes, ma'am.

11 Q. Okay. And what was the date listed here, I'll flip
12 it over for you, on that card?

13 A. 6-6-86.

14 Q. Okay. And are you sure and accurate that even though
15 that says July the 14th of 1986, this is the latent print
16 that you examined?

17 A. Yes, ma'am.

18 Q. Okay. Now I'm gonna have you walk us through this
19 latent print comparison.

20 A. Okay.

21 Q. And I believe you've got a laser pointer up there. Do
22 you see it?

23 A. Yeah.

24 Q. All right. And, if you could, kind of tell us what
25 we're looking at over here.

1 A. Okay. If you'll look at it, this is the latent print
2 which I've identified as an unknown here. This is the
3 known print of Mr. McDowell. So if you'll look at it as
4 the way I did, you'll look at it and you'll see these
5 ridges that curve here and if you'll look right in here
6 you'll see the same ridges, they're curving in the same
7 direction, so we can start it. Right in this area here,
8 you'll see a ridge ending. It is also located on this part
9 right in here. If you'll go up from that ridge -- can
10 you --

11 Q. I can. Absolutely. You tell me when to click.

12 A. Push the button. All right. This one I classified
13 as number one. Push it again. It goes straight to it and
14 then you can do -- it will go straight over to the other
15 side showing that, and that's now the first one. Now if
16 you start here and go up one ridge, you'll find another
17 ridge ending right there and you'll see the same one in
18 this location over here, and then you'll go up again one
19 ridge and then up to the left to number three and then over
20 two ridges, which is a ridge ending. And, again, the same
21 location, same thing in the unknown. Then from there we'll
22 go to the right four ridges and you'll find a ridge ending,
23 which is number four. Again, the same location over here.
24 Then from number four we go up one ridge and then up the
25 ridge to a ridge ending, in other words, we just follow the

1 ridge on up to a ridge ending. Again, you'll find the same
2 thing over here, which is number five, over on this side.
3 Then we'll go up one ridge and then up a ridge -- go to
4 number five, hit another button. Oh, it's over here.
5 Excuse me. I'm looking on the wrong side. Okay. It's
6 there. And then from that ridge we go to the left two
7 ridges to a bifurcation, which is over this direction,
8 which will be six. And, again, it's in the same location
9 over here. And then from there we'll go up that ridge to
10 we come to bifurcation. Remember a bifurcation is a
11 forking of the ridges. We'll find an bifurcation there and
12 then, again, on this side on the unknown it's in the same
13 location again. Then we'll go to the left six ridges from
14 this location and we'll find number eight, and it is a
15 bifurcation also. Then we'll go over to the unknown and
16 you'll find this same thing in the same location again.

17 Q. All right. Now, Mr. Hickman, I know you've done this
18 a little bit more than I have, all right? I'm seeing that
19 these arrows are pointing in different places. Explain to
20 us how that's the same then.

21 A. It's a little bit difficult to get the arrow to point
22 in the exact location, so I just usually point it somewhere
23 in the general location.

24 Q. All right. And when we're talking about these
25 fingerprints that you're comparing, are we necessarily

1 comparing them side by side as if they were left in the
2 same exact mode, manner and method, as is up is up and down
3 is down? So, for instance, you know, you're pointing it
4 over here to the right-hand side on number one, but we see
5 on number one it's kind of more in the middle over here.
6 Do you see what I'm saying? Kind of explain that why
7 that's there.

8 A. Yes, ma'am. It's -- the known print is the entire
9 print. The latent print is just partial, it's just part
10 of the print. Sometimes it's the whole print, which I'm
11 thrilled to death when I get one like that, but most of the
12 time it's just partial. You'll see -- look at the latent,
13 right -- this area right here is all that we're seeing.
14 It's just this area on this side of the known. We have all
15 this other here that we're not even looking at, so it's
16 just partial.

17 Q. Right. So what's left here on the unknown is only a
18 portion of what we see on the known?

19 A. Yes, ma'am.

20 Q. Okay. And is that why things appear to us to kind of
21 be in different places?

22 A. Yes, ma'am.

23 Q. All right. But in your expert opinion, are they in
24 different places?

25 A. No, ma'am. They're in the correct same place on each

1 one of them.

2 Q. Okay. And in your expert opinion is the unknown print
3 that was lifted by Richard Freeman found on the window of
4 that trailer, did that match Thomas Eric McDowell?

5 A. Yes, ma'am.

6 Q. Okay. And was that conclusion and analysis peer
7 reviewed?

8 A. Yes, ma'am.

9 Q. Okay. And it was the same thing?

10 A. Yes, ma'am.

11 MS. ABEE: I beg the Court's indulgence, Your Honor.

12 THE COURT: Take your time.

13 MS. ABEE: Your Honor, I have no further questions
14 for this witness at this time.

15 THE COURT: Okay. Ms. Mauldin.

16 MS. MAULDIN: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. MAULDIN:

19 Q. Good morning, Mr. Hickman.

20 A. Good morning.

21 Q. You talked some about your qualifications. I'd like
22 to ask you some questions about that.

23 A. Yes, ma'am.

24 Q. When was the time that you most recently received
25 training in fingerprint analysis?

- 1 A. The most recent one?
- 2 Q. Yes.
- 3 A. It's been a while. I don't remember exactly when, but
- 4 it's been four or five years.
- 5 Q. Okay. And which one was that?
- 6 A. The advanced latent print with the FBI was received
- 7 the last -- before I retired in 2009. Actually I think it
- 8 was in 2009.
- 9 Q. All right. These other classes that you mentioned,
- 10 for example, the fingerprint recognition, how long ago did
- 11 you receive that training?
- 12 A. The basic fingerprint class was when I was in
- 13 Orangeburg, which was '71 through '84, somewhere like that,
- 14 and the advanced latent print at the academy was sometime
- 15 in the nineties and, of course, the advanced and criminal
- 16 identification I completed that in -- I think in the
- 17 eighties, and I may -- may be incorrect on that. That's
- 18 just off the top of my head.
- 19 Q. Okay. But some of this training was received decades
- 20 ago?
- 21 A. Yes, ma'am.
- 22 Q. Okay. You also talked about the being certified by
- 23 SLED, but that was in being an AFIS operator?
- 24 A. Yes, ma'am.
- 25 Q. And that's the machine that checks prints?

1 A. It's a computer.

2 Q. Okay. The computer.

3 A. Yes, ma'am.

4 Q. And so what you did was not run through a computer,
5 this was your own opinion of the print, right?

6 A. Yes, ma'am.

7 Q. Okay. And are you certified by SLED in any sort of
8 fingerprint analysis, too, or just the AFIS?

9 A. Just the AFIS. They don't -- as far as I know, they
10 don't do a certification in fingerprint.

11 Q. Okay. And are you certified by any agency?

12 A. Just the Lexington County Sheriff. At one time I was
13 certified by the International Association for
14 Identification, which I'm not anymore.

15 Q. How long ago was that?

16 A. That's ten, fifteen years ago.

17 Q. Okay. So now the -- the certification you have is
18 through the sheriff's department?

19 A. Yes, ma'am.

20 Q. And that's the same agency that brought this case?

21 A. Yes, ma'am.

22 Q. Okay. And when was the last time you were tested on
23 your fingerprint abilities?

24 A. There's no test on it.

25 Q. Okay. Are you aware that the sheriff's department has

1 had Mr. McDowell's fingerprints for decades?

2 A. I think the one I used was -- is the only one I know
3 that we've got, but, yes, ma'am.

4 Q. Okay. So this is not a situation where law
5 enforcement has just gotten a print from Mr. McDowell?

6 A. Right.

7 Q. And your report -- and let me clarify. You have had
8 that fingerprint card of Mr. McDowell for decades?

9 A. I have not, no, but it's been in the case file since
10 the -- it came back from the FBI.

11 Q. And you know that because you've worked on this case,
12 you were aware of the case for years?

13 A. Yes, ma'am. I'm aware -- I have been aware of the
14 case since the original -- it started, but special
15 individual things I have not been aware of.

16 Q. Okay. And my point is just that it's not like the
17 police just got a known print of Mr. McDowell for you to
18 evaluate?

19 A. Yes, ma'am. No, it's not like that.

20 Q. You-all had it?

21 A. It's -- it's about -- I was just asked to do it this
22 time. I don't do anything unless I'm requested to do it
23 and I was just requested to do this on that date, which
24 way, I think, was last week.

25 Q. Certainly. And it wasn't -- this case was already set

1 for trial before that, right?

2 A. Yes, ma'am.

3 Q. Okay. So it wasn't like you just made this thing and
4 that's why we're here today?

5 A. No, ma'am.

6 Q. Okay. And you mentioned this, but you're aware that
7 this print has been examined in the past?

8 A. Yes, ma'am.

9 Q. The latent print has been examined in the past?

10 A. Yes, ma'am.

11 Q. And by the FBI and then also by another officer with
12 the sheriff's department?

13 A. Yes, ma'am.

14 Q. And that first one was back in 1986. Are you aware
15 that it was back then?

16 A. The one with the FBI it was whenever we sent the
17 information up there and I'm not sure about what the date
18 was. The one here was 10-22-08.

19 Q. Okay.

20 A. That was by Duane Johnson.

21 Q. And even though you don't know the exact date, that
22 FBI identification was back in the beginning of the
23 prosecution of the case?

24 A. Yes, ma'am.

25 Q. All right. And the chemical makeup of a fingerprint

1 is different from person to person, right?

2 A. I wouldn't say the chemical makeup, but, yes,
3 fingerprints are different from person to person.

4 Q. Okay. And the -- the oils or whatever on the finger
5 are going to vary --

6 A. Yes, ma'am.

7 Q. -- from each person?

8 And so there is no scientific way to date a
9 fingerprint, right?

10 A. No, there's no scientific way, but there are ways to
11 identify fingerprints. Like, say, you have a robbery at a
12 jewelry store and the night before the cleaning lady came
13 in and cleaned all the counters off and then the next
14 morning you find fingerprints, yes, you can date it that
15 way, but as far as looking at a print and say, okay, that
16 was committed on this particular day, no.

17 Q. Okay. But in the situation you gave, you'd have to
18 take the cleaning lady's word for it, right?

19 A. Yes, ma'am.

20 Q. Okay. So you can't look at a print and tell whether
21 it was left in June, you can't tell whether it was left in
22 October, you can't whether it was left in August, right?

23 A. No, ma'am.

24 Q. Okay. And you -- before you did your fingerprint
25 work with the -- or let me back up. While you've been a

1 fingerprint analyst, you've also worked in crime scene for
2 the sheriff's department, right?

3 A. Yes, ma'am.

4 Q. And so you're aware of evidence collection techniques
5 and the technology available to the sheriff's department?

6 A. Yes, ma'am.

7 Q. And you're aware of even what they had back then in
8 1986, too?

9 A. Yes, ma'am.

10 Q. Okay. And so back then they had access it film
11 cameras, right?

12 A. Yes, ma'am.

13 Q. And they had access to film for the cameras?

14 A. Yes, ma'am.

15 Q. They had statements forms where they could ask
16 somebody to write down what happened?

17 A. Yes, ma'am.

18 Q. And clearly they had a videocamera where they could
19 record something on videotape?

20 A. Yes, ma'am.

21 Q. And they had tape measurers so that if they needed to
22 photograph something they could lay a tape measurer down
23 and give the height or distance in a photograph?

24 A. Yes, ma'am.

25 Q. And that's a very common thing to do if you want to

1 demonstrate the size of an object. When you're taking a
2 photograph, you put a tape measurer down and take a
3 photograph with the tape measurer and that shows the size
4 of the item, right?

5 A. Generally speaking, yes, but it's a little more steps
6 to it than that, than just taking a photograph of it.
7 There's other things you'd have to -- I refer to it as an
8 examination quality photograph and say this latent print
9 has to be at a certain angle, a 90-degree angle, there has
10 to be other information in there. So generally speaking
11 what you said is correct.

12 Q. Okay. And to give you an example, if there -- if law
13 enforcement wanted to document the size of a window, they
14 could put a tape measurer beside a pane of glass and take a
15 photograph and that would preserve the size of the window?

16 A. Yes, ma'am.

17 Q. Okay. Do you know the error rate for fingerprint
18 analysis?

19 A. The what? Excuse me.

20 Q. Do you know the error rate for fingerprint analysis?

21 A. As far as making a -- a comparison?

22 Q. Yes.

23 A. Zero. There's no --

24 Q. Nobody ever makes an error or there's no error rate?

25 A. There's no error rate. It's either an identification

1 or a non-identification.

2 Q. But it's possible for somebody to be wrong?

3 A. It's always possible for anybody to be wrong.

4 Q. Okay. When you examined the prints in this case, did
5 you examine the latent print first and make notes on that
6 or did you compare them together?

7 A. I usually look at the latent print first and determine
8 what it looks like and if it's part of it, you know, if
9 it's identifiable, yes, ma'am. I look at the latent first.

10 Q. And in this case when you looked at this print, you
11 had knowledge of this case. This was not something where
12 you were like a blind expert looking at a print from a case
13 you had no information about, right?

14 A. Yes, ma'am.

15 Q. Are you aware that recently there has come some
16 scrutiny on the word "identification" or "match" due to
17 the inability to give a 100 percent identification of a
18 fingerprint?

19 A. I don't quite understand what you're saying.

20 Q. Are you aware that recently other experts in the field
21 have questioned the use of the word "identification" as to
22 whether a print is accurate or not?

23 A. I haven't read anything about that. No, ma'am. I'm
24 not.

25 Q. Okay. Who was the person that verified the work that

1 you did on the case?

2 A. Sergeant Prince.

3 Q. And when -- does that person do a separate analysis
4 or do they only review your work and see what you've
5 identified?

6 A. There's two different ways to do the verification.
7 One is called a blind verification where I do my
8 examination and then I just give the latent and the known
9 prints for another examination and they do another
10 comparison and then there's another one where we just --
11 the one print, whatever I say that goes, that's all
12 examined. In our case, that's what we do is I give her
13 the latent, give her my reports, what I found, and she
14 goes back and verifies that particular one.

15 Q. Okay. So that's not a totally independent or totally
16 blind analysis to use your word?

17 A. It's independent. As far as blind now, I don't know
18 exactly what you're talking about blind, but it's -- she
19 knows what my identification is.

20 Q. Okay. And just so that we're clear, I want to make
21 sure when we see the known and the latent together on your
22 slide, that doesn't tell you anything about which way the
23 hand was when the print was left by that person?

24 A. No, ma'am. It's extremely hard to determine which way
25 the hand is located by just one latent print. Sometimes

1 with the description of it, sometimes if they draw a little
2 diagram of it, yes, I can tell pretty -- sometimes how the
3 hand was, but in this case, no.

4 Q. Or if the person collecting the fingerprint had taken
5 a picture of the print on a window, that would tell you the
6 same thing?

7 A. Yes, ma'am.

8 Q. Okay. Are you aware that Mr. McDowell was not
9 arrested until January 6th or 7th of 2022?

10 A. No, ma'am.

11 Q. Okay. And then do you know anything about his arrest
12 date?

13 A. No, ma'am.

14 Q. You weren't part of that?

15 A. No.

16 Q. All right. And since you worked on the case back
17 then, are you aware of any searches that law enforcement
18 did on the Bray ball field or the pond or any other areas
19 back in the eighties?

20 A. It seemed like there was some searches done back in
21 that area, but I'm not too familiar with what it was. I
22 think it was the trash dump and the area where Bray Park is
23 at.

24 Q. I'm gonna show you a document and ask you if you -- if
25 this refreshes your recollection?

1 A. Yes, ma'am. It's a -- it's a diagram showing the --
2 they call it the ball field on here, but that's more than
3 likely Bray Park and an area which is -- I believe from
4 this diagram here was part of the trash dump with a circle
5 around it. Yeah, it says back side of Cayce dump.

6 Q. Okay. And looking at this time --

7 A. That was 2-19-87. Oh, yeah. That's my name there.
8 Okay.

9 Q. And so can you tell us what you did with this
10 document? What this -- what you made this document to
11 reflect?

12 A. The area that was searched.

13 Q. Okay. So this document shows that you are noting
14 that that area near the landfill had been search by law
15 enforcement?

16 A. Yes, ma'am.

17 Q. And -- and when was that search done?

18 A. 2-19-87.

19 Q. Okay.

20 MS. MAULDIN: No further questions, Your Honor.

21 MS. ABEE: Your Honor may we approach?

22 THE COURT: You may.

23 (Proceedings held at the bench; not reported.)

24 REDIRECT EXAMINATION

25 BY MS. ABEE:

1 Q. Mr. Hickman, there was some reference to other
2 fingerprint analysis in this case, so other reviews of this
3 particular fingerprint. I think you mentioned it going to
4 the FBI and then you said the name Duane Johnson.

5 A. Yes, ma'am.

6 Q. Okay. Are you familiar with the results of those
7 latent print examinations?

8 A. Yes, ma'am.

9 Q. Okay. And tell us were -- those two other analysis,
10 did they conclude that that fingerprint matched Tommy
11 McDowell or Thomas Eric McDowell?

12 A. Yes, ma'am. Both of them did.

13 MS. ABEE: Thank you.

14 Your Honor, no further questions.

15 THE COURT: Any redirect?

16 MS. MAULDIN: None, Your Honor.

17 THE COURT: Okay. May I excuse Agent Hickman?

18 MS. ABEE: Please, Your Honor.

19 THE COURT: Agent, thank you. You're excused.

20 (Witness excused.)

21 THE COURT: All right. We need to take a break.

22 Is the jury ready for a break?

23 FOREPERSON: Yes, ma'am.

24 THE COURT: Let's take about a 15-minute break and
25 then we'll come back. I'm gonna -- I'm gonna tell the

1 jury, I'm gonna remind you every chance I get, there is
2 no talking about this case even in the jury room amongst
3 yourselves. It is not time to talk about this case, okay?

4 Thank you.

5 (Whereupon, the jury retires to the jury room at
6 10:47 AM.)

7 THE COURT: All right. Let's take a 15-minute break.

8 MS. ABEE: Thank you, Your Honor.

9 (Recess taken at 10:48 AM.)

10 (Back on the record at 11:03 AM.)

11 THE COURT: Okay. Are you-all ready to -- let's get
12 started. It's 11:00.

13 MS. ABEE: Ready, Your Honor.

14 MR. MAULDIN: One thing before we start, Your Honor.

15 THE COURT: Yes.

16 MR. MAULDIN: During Mr. Hickman's testimony I
17 believe we had two sidebars regarding evidence that were
18 not on the record. The first was the evidence form that
19 was admitted during his testimony and we had objected
20 because it said from Bartlett to Hickman as Bartlett
21 appeared to be the one that obtained the evidence and
22 transferred it to Hickman. We objected to that for
23 hearsay to Bartlett and obviously our pretrial motion
24 about the search warrant, anything being taken from the
25 vehicle, and that Your Honor allowed it. That was

1 what that --

2 THE COURT: I already ruled on the search warrant
3 for the vehicle.

4 MR. MAULDIN: Right, but we're renewing again.

5 THE COURT: Right. Okay. Well, for the record,
6 it's renewed.

7 But let me hear about this hearsay and the evidence
8 form that we -- that was introduced that I looked at.

9 MS. ABEE: Yes, Your Honor.

10 The State's attempt to show that this car was taken
11 into custody and when. We showed that it was received by
12 Jim Hickman, it has his signature on there. On it, it
13 does say received from Robert Bartlett or Investigator
14 Bartlett, but when you look at the top half of that form
15 it says received from Gardner's, which is a towing service
16 via Bob Bartlett, and Mr. Hickman's testified that the car
17 was received in and he signed for it when it was towed to
18 Lexington. So it's the State's duty to establish chain
19 as much as practicable and with Mr. Bartlett being dead I
20 believe --

21 THE COURT: Well, would you consider this to be a
22 fungible or non-fungible item?

23 MS. ABEE: We'd consider it to be a non-fungible
24 item, Your Honor.

25 THE COURT: Thank you.

1 MR. MAULDIN: It's our understanding they tested
2 the carpet from the car and there you're talking about
3 blood on the carpet and blood is a fungible item.

4 MS. WEISS: Your Honor, he's correct, they did, but
5 that is not -- that is not the testimony that we've
6 elicited at this point. And we understand --

7 THE COURT: In fact, I understand where you're
8 coming from, Mr. Mauldin, I do, but I don't think we've
9 gotten that far. What I was shown during this last
10 testimony was for the car. I don't think that I need a
11 chain of custody for a non-fungible item.

12 MR. MAULDIN: We are laying the groundwork for the
13 future, Your Honor.

14 THE COURT: I got you.

15 Okay. Well, it's denied.

16 MR. MAULDIN: Thank you, Your Honor.

17 MS. WEISS: Your Honor, may I approach?

18 Oh, you've not one more. I'm sorry.

19 MR. MAULDIN: Thank you, Your Honor.

20 And our second sidebar was for the State's redirect.
21 During cross Ms. Mauldin had elicited testimony that the
22 unknown fingerprint had been examined twice before and
23 the State requested that Your Honor allow them to go
24 into the results of those prior examinations. We objected
25 as far as hearsay. The fact that they've been examined

1 before is not a -- it's, you know, an out of court
2 statement to prove the matter asserted. The fact that the
3 fingerprints were a match is an out of court statement to
4 prove the matter asserted and we said that if open, we open
5 the door for them to bring in the other fingerprint experts
6 to testify about the results and Your Honor overruled our
7 objection and allowed the statements in.

8 THE COURT: I did.

9 Ms. Abee, I'll be glad to hear you.

10 MS. ABEE: Thank you, Your Honor. Throughout the
11 State's direct questioning of Mr. Hickman, the State
12 didn't in any way reference prior examinations by the
13 FBI conducted in '86, nor the one in the 2000's by Duane
14 Johnson. It wasn't until cross-examination when counsel
15 specifically asked about, you know, this wasn't new, it
16 had been examined before, however, chose not to go into
17 the results of that. At that point in time, that cast a
18 sense of impropriety on Mr. Hickman that he somehow was
19 the only person to make this match. He was qualified as
20 an expert, Your Honor. Under Rule 703 he is allowed to
21 depend on hearsay or outside knowledge that is reasonably
22 relied upon in the field. Your Honor, these are prior
23 fingerprint examinations that he was aware of and was aware
24 of the actual match, Your Honor, so we contend that defense
25 counsel opened the door by asking about those examinations

1 them self and that that testimony was then appropriate and
2 proper under Rule 703 considering he was entered as an
3 expert.

4 THE COURT: Okay. And this Court agreed and stated
5 so at the sidebar, but your objection is noted for the
6 record.

7 Can I bring the jury in?

8 MS. WEISS: Your Honor, if I -- if we may approach?

9 THE COURT: Sure.

10 (Proceedings held at the bench; not reported.)

11 THE COURT: I'll be back in just a moment.

12 Let me see the lawyers in the hall.

13 (Recess taken at 11:08 AM.)

14 (Back on the record at 11:11 AM.)

15 THE COURT: Let me -- we're gonna take a quick
16 little break because I'm gonna tell you it's come to the
17 Court's attention that there might be some outside
18 recordings going on.

19 Let me tell you what, that's not allowed in this
20 courtroom. I know that I have the press here. They're
21 allowed. I'm not talking to the press. I'm talking to
22 the people in the gallery. So, therefore, I am asking
23 if you are not a law enforcement officer, if you are not
24 an attorney associated with this case, then your cell
25 phones need to go to your car and they're not gonna be

1 allowed in this courtroom. So I would ask that you-
2 all do that now.

3 BAILIFF: If you're staying in this courtroom, your
4 phones go in your car.

5 THE COURT: Let me speak to the lawyers for a
6 moment. I hope that takes care of the problem. I try
7 to accommodate, but it seems like I always have this
8 come up in major trials and it's just gonna be the
9 easiest way for me to try to eliminate it, so no more
10 cell phones in the courtroom for this trial.

11 MR. MAULDIN: Thank you, Your Honor.

12 MS. WEISS: Yes. Your Honor.

13 THE COURT: Okay. Now can I bring the jury in,
14 please?

15 MS. ABEE: Yes, Your Honor.

16 THE COURT: Okay. Let's bring the jury in.

17 BAILIFF: Yes, ma'am.

18 (Whereupon, the jury return to the courtroom at
19 11:15 AM.)

20 THE COURT: All right. Madam Forelady, the jury
21 ready?

22 FOREPERSON: Yes, ma'am.

23 THE COURT: Please be seated.

24 All right. Call your next witness.

25 MS. ABEE: The State calls Brenda Snelgrove.

1 (Whereupon, Brenda Snelgrove was duly sworn by the
2 Clerk of Court.)

3 THE CLERK: State your full name and spell your last
4 for the record.

5 THE WITNESS: My name is Brenda Snelgrove.
6 S-N-E-L-G-R-O-V-E.

7 BRENDA SNELGROVE,
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. ABEE:

11 Q. And go ahead and tell us where you're currently
12 employed?

13 A. I am employed with Lexington County Sheriff's
14 Department.

15 Q. What's your current position there?

16 A. I am currently the sergeant over crime scene unit.

17 Q. How long have you been in law enforcement?

18 A. I've been in law enforcement for twelve -- a little
19 over twelve years.

20 Q. And how many of those have you been with the Lexington
21 County Sheriff's Department?

22 A. This summer it will be nine years I've been with
23 Lexington County Sheriff's Department. That also including
24 in the crime scene unit.

25 Q. Okay. So you've spent nine years in the crime scene

1 unit?

2 A. About to be nine years. Yes, ma'am.

3 Q. Okay. Good. And go ahead and tell us a little bit
4 about what it means to be the sergeant over the crime scene
5 unit, what you do.

6 A. So I'm what's considered working sergeant, so I'm not
7 just, you know, making sure my people are doing what they
8 need to be. I am also going out to crime scenes and
9 documenting scenes and processing. We also do lab work,
10 which would be process evidence for latent prints or
11 collect DNA from those items of evidence. We do digital
12 device extractions amongst other things and for me one of
13 my specialties is prints and using AFIS.

14 Q. Okay. And you said you've been in law enforcement
15 about twelve years. So is it fair to say you weren't
16 involved in this case back in 1986?

17 A. No. I wasn't even alive.

18 Q. All right. So I'm gonna talk to you -- previously we
19 had a Richard Freeman testify and he had collected some
20 items at the scene. That's what's been entered as State's
21 Exhibit Number 34, which is a piece of wood used to prop
22 open a window, and then we've got 36, which were some -- a
23 cigarette butt, and then we have State's Exhibit Number 35,
24 which is an empty Vantage Ultra Light cigarette package.

25 Are you familiar with those items?

1 A. I am with the wood and the package -- empty package of
2 cigarettes.

3 Q. Okay. And Mr. Freeman told us that he lifted a latent
4 print from a window, okay? Were you asked to process any
5 of these items for latent prints, either 35 or 34?

6 A. I was asked to process the cigarette pack.

7 Q. Okay. And were you able to locate or find a
8 fingerprint on State's Exhibit 35, the cigarette pack?

9 A. No, ma'am. I was not.

10 Q. Okay. So there wasn't a fingerprint there to be
11 lifted?

12 A. No, ma'am.

13 Q. Okay. And then you said you were familiar with the
14 piece of wood. Did you end up processing that piece of
15 wood for a latent print?

16 A. No, ma'am. I did not.

17 Q. Okay. And why not?

18 A. We -- it was determined that the best course of action
19 was to send it to the State Law Enforcement Division and
20 have it processed for DNA.

21 Q. Okay. And when something is processed for DNA, can
22 that interfere with a print that could be potentially left
23 on it?

24 A. That is correct.

25 Q. Okay. And then finally, Sergeant Snelgrove,

1 previously we heard from Jim Hickman who stated that he
2 made a fingerprint analysis report and it was confirmed or
3 checked by a Sergeant Brenda. Are you Sergeant Brenda?

4 A. Yes, ma'am. I am.

5 Q. Okay. And so did you perform the confirmation on
6 Mr. Hickman's fingerprint analysis?

7 A. Yes, ma'am. I did the verification on it.

8 Q. Okay. And if the verification -- if you did not
9 verify that fingerprint, would you have told them?

10 A. Yes.

11 Q. Okay. Did you verify that fingerprint?

12 A. I did verify it.

13 MS. ABEE: Your Honor, no further questions for this
14 witness.

15 THE COURT: Ms. Mauldin. Mr. Mauldin.

16 CROSS-EXAMINATION

17 BY MR. MAULDIN:

18 Q. Do you know whether that piece of wood had been
19 processed for fingerprints before?

20 A. I do not believe it was, but I don't know for certain.

21 Q. How about the cigarette package? Do you know if that
22 has been processed for prints before?

23 A. The one that I processed it was not processed
24 previously.

25 Q. Okay. And it had been sitting in the evidence room

1 how long?

2 A. Since it was collected.

3 Q. Okay. In an envelope?

4 A. It was not in an envelope.

5 Q. It was not in an envelope? What was it in?

6 A. It was in a bag.

7 Q. Okay. And when you did the confirmation, did you know
8 that Hickman had said it was a match before you looked at
9 it?

10 A. I knew that other -- that it had been looked out
11 previously and it was a match, but I had to look at it
12 myself to determine it was a match.

13 Q. So you didn't go in blind?

14 A. No, I did not.

15 Q. You didn't go in blind with no prior --

16 A. No, except that I didn't know -- I didn't realize how
17 hard it was.

18 MR. MAULDIN: All right. No further questions.

19 THE COURT: Any redirect?

20 MS. ABEE: Nothing, Your Honor. We just ask this
21 witness be excused.

22 THE COURT: Thank you.

23 Any objection to her being excused?

24 MR. MAULDIN: No, Your Honor.

25 THE WITNESS: Thank you, Judge.

1 (Witness excused.)

2 Your Honor, the State calls Robert Thomas.

3 (Whereupon, Robert Thomas was duly sworn by the
4 Clerk of Court.)

5 THE CLERK: Would you, please, have a seat in the
6 witness box. State your full name and spell your last
7 for the record.

8 THE WITNESS: My name is Robert Thomas. T-H-O-M-A-S.

9 ROBERT THOMAS,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MS. ABEE:

13 Q. Thank you. Mr. Thomas, are you currently employed?

14 A. I am.

15 Q. Where at?

16 A. The FBI. Quantico, Virginia.

17 Q. And tell us what you do for the FBI.

18 A. I'm a visual information specialist. The primary
19 responsibility for our particular group is to document
20 crime scenes and produce demonstrative evidence for
21 courtrooms.

22 Q. And tell us -- you said for your particular group.
23 What group is that with the FBI?

24 A. Well, we have a unit, it's called the operational
25 projects unit, and it's comprised of several groups.

1 There's a photographic group, there's an inhouse
2 photographic group, which takes care of internal
3 photography, mostly evidence, and there's a graphics
4 group, which generates graphics usually for courtrooms,
5 and then there's my group, which does physical stuff.
6 Plus we also are on a response basis where if there's a
7 crime scene that needs documented, we respond to it as
8 first responders.

9 Q. And you if you could, tell us a little bit about your
10 educational background and your work history that's led you
11 to this position with the FBI.

12 A. Okay. Out of high school I spent three years at
13 Youngstown State University in the engineering department.
14 I got disillusioned with that because I was young and I
15 went and I worked in the steel mills for about five years,
16 then I got smart and went back to school and I found a
17 college not far away that was accredited for engineering
18 modeling and I'd never heard of that before, so I
19 investigated it and I attended there where I got an
20 associate's degree in engineering modeling with a minor in
21 mechanical and civil engineering. From there after doing a
22 few odd jobs for about a year, I found out that the FBI was
23 looking for -- no, I'm sorry. Let me back up. There was
24 an engineering firm in Bloomingburg, Ohio, and they were a
25 forensic engineering firm. They were primarily the defense

1 witnesses for whomever hired them in lawsuits. They hired
2 me to run their model shop so I could produce physical
3 models for courtroom demonstration. A lot of the big
4 clients would be Ford, American Motors, Chrysler. We did a
5 lot of their cases as independent expert witnesses. After
6 seventeen years, almost eighteen years, I found out the FBI
7 was looking for basically the same thing, but instead of
8 doing a lot of automobile accident reconstruction and arson
9 cases, they were doing crime scenes, but basically the job
10 was the same, was to recreate crime scenes for
11 presentations so that people that needed to testify or to
12 witness could better understand what the crime scene looked
13 like.

14 Q. And so how many years have you spent working in this
15 kind of model recreation, scaling, things like that?

16 A. I've been doing it for about sixty years personally.
17 I've been doing it professionally for forty.

18 Q. And do you present any trainings or anything on this
19 topic?

20 A. I have and I'm also the mentor for new employees to
21 the unit.

22 Q. Okay. And when you do these trainings, what is it
23 that you're teaching? Like what do you train on?

24 A. Basically to be able to visualize in three dimensions,
25 which is tough for a lot of people. Also scaling,

1 proportions, comparing one thing to another to try and
2 visualize -- try to visualize what you're looking at.

3 Q. And what is scaling and proportion? So when you build
4 these models, do you just build them to kind of look like a
5 picture or do you try to make the scaling correct?

6 A. Try to make it as accurate as possible because we
7 want to fairly and accurately represent what the crime
8 scene looks like.

9 Q. And how do you determine that? How do you scale an
10 item?

11 A. Well, you try and find an item -- usually if we're
12 using photographs in this particular case, you find
13 something in the photograph that you can determine what the
14 actual size would be. From there you could do a ratio, you
15 start using your high school math, and you compare one to
16 the other. So if you know, for instance, that -- if you
17 measure in a photograph and the measurement is epic and you
18 know that that item that you're measuring is a foot long in
19 real life, you can compare this dimension that you've taken
20 with the actual dimension, which would be 12 inches, and
21 you can get a ratio of how much bigger the real life one is
22 over what you are measuring in the photograph.

23 Q. And so throughout your career you've been asked to
24 determine the size of things based off how they look in a
25 photo; is that fair?

1 A. Yes.

2 Q. Okay. And approximately --

3 A. If you can document what you're looking at.

4 Q. And approximately how many times do you think you've

5 done that in your career?

6 A. Almost every project I've worked on, so I'm gonna say

7 maybe a couple of hundred.

8 Q. Okay. And once you determine that, is your process

9 with the FBI peer reviewed?

10 A. I have peer reviewed other folks' cases.

11 Q. Is your work peer reviewed as well?

12 A. Yes, it is.

13 Q. Have you ever testified in court before?

14 A. I have.

15 Q. Have you ever been qualified as an expert before?

16 A. I have.

17 Q. Okay. Approximately how many times?

18 A. Twice.

19 MS. ABEE: Your Honor, at this point the State

20 moves Robert Thomas as an expert in demonstrative

21 construction and scaling.

22 THE COURT: Any objection?

23 MR. MAULDIN: No, Your Honor.

24 THE COURT: All right. Again, I'm gonna tell the

25 jury that this witness is gonna be an expert because of

1 his experience and education. You give his testimony the
2 weight you think it deserves.

3 MS. ABEE: Thank you, Your Honor.

4 BY MS. ABEE:

5 Q. Now, Mr. Thomas, did you rely upon any images or
6 anything when determining the size of something for this
7 case?

8 A. Yes.

9 Q. Okay. What were you asked to determine the size of or
10 approximate size of?

11 A. There was a window on the side of a motor -- a mobile
12 home that they wanted me to try and ascertain what the
13 dimensions were.

14 Q. And I'm gonna approach you what's already been entered
15 into evidence as State's Exhibit Number 20, 24 and 27. Do
16 you recognize these?

17 A. Yes.

18 Q. Okay. And are these photos that you've relied upon
19 when term determining the size of this window?

20 A. Yes.

21 Q. Okay. And if it's okay with you, Mr. Thomas, I'm
22 gonna pop up State's Exhibit Number 20.

23 All right. Now we've heard a lot of testimony
24 throughout this week regarding this window right over here.
25 Is this the window that you were asked to determine the

1 size of?

2 A. It is.

3 Q. All right. And if you could, Mr. Thomas, just kind of
4 walk us through how you determined the size of this window
5 and what you relied upon? And if I need to put up other
6 photos, just let me know, okay?

7 A. Okay. First of all, they asked me to determine that
8 without any dimensions. I had nothing to start with. So
9 the first thing I did -- they did tell me what the make
10 and model of the trailer was, and I used that. I went
11 online and tried to find floor plans or get ahold of the
12 manufacturer so that I can determine what was the standard
13 window size or the door size that they used in these
14 particular mobile homes. I was fairly unsuccessful there,
15 so then I went to the standards catalog. There's a
16 standards book, architectural standards, and they give
17 standards for all kind of building materials, and I
18 specifically looked up mobile home doors and the standard
19 width of door in a mobile home was 32 inches and the
20 standard height for mobile home doors was either 72 inches
21 or 76 inches tall. So I had a variable there with the
22 height, but the standard width was predominately 32 inches.

23 So I used that as my given and since in the
24 photographs I could see the door -- now it's important to
25 remember that when you're trying to compare something in

1 photographs that you're looking square on to the image,
2 meaning that everything you're trying to determine in the
3 image is about the same distance from the lens of the
4 camera. So in this case I could see that yes, that
5 pertains to be true. So I could -- this photo because
6 it's projected doesn't show it as clearly as a photograph
7 itself, but in the photograph that I had I could determine
8 -- I could see how wide that door was. I could also
9 see how wide the window was, so I decided that I could
10 probably compare the window with the door and using the
11 architectural standards for how wide the door was I would
12 use that as my basis.

13 So then I started doing some comparisons, started
14 making some ratios, so I'd go in with my dividers and on
15 the photograph I would get a dimension on how wide the door
16 was in the photograph. So I knew that dimension, but I
17 also knew that in real life that was 32 inches wide. So
18 I was able to make a ratio of whatever that distance was
19 compared to the 32 inches and that gave me a fraction of a
20 number. Now I could use that number and go in anywhere in
21 this photograph because now I have established the scale of
22 the photograph. Each photograph has a scale. I can't take
23 the scale from this photograph and use it for another one
24 because the camera might be in a different location, but in
25 this particular photograph I can grab both images and do

1 some measuring and some comparisons.

2 So -- I'm sorry.

3 Q. No, go ahead. Keep going.

4 A. So I had established that whatever dimension this
5 was using my dividers and the photographs it was gonna be
6 32 inches, so I could go over to the window and start
7 making some ratios. Okay. If the window was a little
8 wider than what I had mentioned, so I took a dimension
9 of the width of the window and I took that number
10 compared to what I measured for the door, which I knew
11 was 32 inches, made another ratio, and doing a little bit
12 of cross-multiplication I could figure out how wide the
13 window was, then I could do the same thing for the height
14 of the window.

15 Q. And, Mr. Thomas, is it fair to say that if for some
16 reason that door wasn't 32 inches, right, it was something
17 unique or special, if it was something different than your
18 measurements, the outcome would be different; is that fair?

19 A. They would be different.

20 Q. Okay. Was there anything that you were provided to
21 show that this door was different or special or anything
22 like that?

23 A. No.

24 Q. Okay. So I'm gonna pop up now State's Exhibit
25 Number 27 and you said tat you were able to use kind of

1 the dimensions and the scaling that you used on the door
2 to then determine the size of the window, and so in your
3 expert opinion were you able to determine -- or provide an
4 expert opinion regarding the overall size of this window
5 seen here in State's Exhibit 27?

6 A. Yes.

7 Q. Okay. And, if you could, share with us what the size
8 of that window was in your expert opinion?

9 A. I gave it as a range of -- may I look at my notes?

10 Q. That's fine.

11 A. I came up with a range because of the variable in the
12 standards for the size of the door. So the range I gave
13 considering a 72-inch high door, the window was calculated
14 as 34 inches tall.

15 Q. Okay.

16 A. Now that is from glass to glass. That is the actual
17 opening of the window not including the surrounding frame.

18 Q. And, Mr. Thomas, I believe there's a laser pointer up
19 there. It looks like this. It's got a button down at the
20 bottom.

21 A. Okay.

22 Q. When you say that that is glass to glass, can you show
23 us on State's Exhibit 27 what you're talking about?

24 A. My dimension would be from -- excuse the shaking --
25 from here to here, not including this area down here or

1 this area up here, which would be part of the frame.

2 Q. Okay. And so what was that number again?

3 A. I had a range of 34 inches approximately.

4 Q. Okay. And you said a range. Is that --

5 A. I'm sorry. Because I did it with both dimensions of
6 the door using a 72-inch height and then I did all the
7 dimensions again using the 76-inch in height, which was
8 another standard available, and I came up with a total
9 range of that particular window as being between 34 and
10 36 inches high.

11 Q. Okay. So between 34 and 36 inches high. So you told
12 us that that is from top pane here down to bottom pane
13 here. Were you able to determine the left to right size
14 of these panes here in Exhibit 27?

15 A. Yes, I did come up with a number of that as well, and
16 I determined that was approximately 40 and one-half inches
17 wide.

18 Q. So 40 and one-half inches. And, again, is that glass
19 to glass or does it include these shutters over here?

20 A. Glass to glass.

21 Q. All right. So can you use your laser pointer and show
22 us on Exhibit 27 where you determined the length of it or
23 the width of it? Point out for us.

24 A. From there to there.

25 Q. Okay. And now we've heard about how this window is

1 not like a window we see nowadays where it's one pane of
2 glass that goes all the way up, that it's three separate
3 panes of glass that fold out like we see here in State's
4 Exhibit Number 24.

5 A. They call that a triple awning.

6 Q. Okay. A triple awning. Thank you for telling me the
7 name of that. So were you able to determine the space
8 between each of these slats or openings in this triple
9 awning window?

10 A. Well, very simply what I did is I took the overall
11 dimension, either the 34 or the 36 inches, there's three
12 openings, divide it by three and came up with each spacing.

13 Q. Okay. So then in your expert opinion, what is the
14 overall size of the opening of this bottom area here in
15 State's Exhibit Number 24?

16 A. That particular window, if I use the smaller of the
17 doors as my base, would be 40 and a half by -- I'm sorry.
18 I'm half blind.

19 THE COURT: I've got a magnifying glass.

20 THE WITNESS: I don't need that, but thank you.

21 THE COURT: We've had to use it.

22 THE WITNESS: I just can't read my own notes here.

23 Okay. So using the smaller of the doors, that
24 opening that you have outlined would be 40 and a quarter
25 inch wide side to side by 33 and three-quarter inch -- I'm

1 sorry. That's not right. 13 and three-quarter -- that's
2 not right either. 11 and a quarter inches tall.

3 BY MS. ABEE:

4 Q. Okay. So 11 and a quarter inches tall, and that's
5 using the smaller of the doors for the scaling; is that
6 fair?

7 A. That is correct.

8 Q. Okay.

9 MS. ABEE: Thank you, Mr. Thomas. I have no
10 further questions.

11 THE COURT: Mr. Mauldin.

12 MR. MAULDIN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. MAULDIN:

15 Q. Is it Agent Thomas or Mr. Thomas?

16 A. Pardon?

17 Q. Are you Agent Thomas?

18 A. I am not.

19 Q. Oh, you're Mr. Thomas.

20 A. Visual information specialist.

21 Q. Okay. VIS Thomas.

22 A. That's correct.

23 Q. All right. So if you were to do measurements and make
24 a model, the best way is if you went out and measured it
25 yourself; is that right?

1 A. That is ideal.

2 Q. And then the next best would be if somebody else had
3 measured it exactly and then provided you with those
4 measurements to make your calculations; is that right?

5 A. That would not be next best.

6 Q. All right. What would next best be?

7 A. Next best if somebody from my team went out and
8 documented the scene using one of several different
9 methods. One is to use the old-fashioned tape measurer,
10 another is to use surveying equipment or a third is to use
11 laser scanning, which is predominantly what we do now.

12 Q. Okay. So estimating these measurements based on a
13 photograph not taken by a member of your team would kind of
14 be low on the totem pole as an optimal situation for you to
15 make your measurements; is that right?

16 A. It would be the least of my preferences, but still
17 useable.

18 Q. Okay. And you said that you obtained the -- the
19 manufacturer and model of the mobile home; is that right?

20 A. That was given to me in the electronic communication
21 from the Bureau.

22 Q. Okay. And so that information was provided to you to
23 use in your analysis; is that right?

24 A. That's right.

25 Q. And if that information was wrong, then if you had

1 actually found the make and model, then that information
2 was wrong, right? Like you didn't find the manufacturer
3 -- you didn't find the specs of this mobile home on your
4 search; is that correct?

5 A. On this particular one, no.

6 Q. Okay. So if you had been provided with wrong
7 information about the manufacturer and model of the home
8 and actually found something in your research, that would
9 affect your results, wouldn't it? Or the validity of your
10 results.

11 A. If they differed.

12 Q. Yes, sir. And you talked about in looking at these
13 photos, I'm putting up here State's 20, and you talked
14 about being square on with the camera. What does that
15 mean, square on?

16 A. That means that what I am looking at, each of the
17 items in this particular case was the door and the window
18 because I was gonna compare those two items --

19 Q. Yes, sir.

20 A. -- they were equidistant from the camera itself. So
21 that it wasn't like on a skew which would throw off the
22 dimensions one way or the other. Everything looked pretty
23 much -- I'll call it dead on.

24 Q. Okay. So whether or not the person taking the photo
25 was on level ground when they were taking the photo, that

1 wouldn't factor in your calculations?

2 A. No.

3 Q. So if he was at the bottom of a hill and taking a
4 photo up the hill since both the window and the door were
5 in that position, you could make a calculation based on
6 that?

7 A. Would you restate that, please?

8 Q. If it wasn't level ground, if he was on a hill and
9 taking a picture up the hill or down the hill, you're just
10 saying as long as the camera is pointed at something like
11 the door and the window in that same direction, either
12 uphill or downhill, you would be able to make your
13 calculations?

14 A. Not as accurately, no.

15 Q. Okay. And do you know if this is uphill or downhill
16 from the trailer?

17 A. I do not.

18 Q. Okay. And so you went to find a standards catalog for
19 mobile homes manufactured during the period -- was it '71
20 to 73?

21 A. Yes, sir.

22 Q. And that's because you were told that that's when this
23 mobile home was manufactured; is that correct?

24 A. Yes, sir.

25 Q. Okay.

- 1 A. '71 -- '71 or '73 was the information I was given.
- 2 Q. So either one?
- 3 A. Yes, sir.
- 4 Q. And based on your research you discovered that the
- 5 doors could either be 72 inches tall or 76 inches tall; is
- 6 that correct?
- 7 A. Correct.
- 8 Q. But the same width, 32 inches?
- 9 A. Yes.
- 10 Q. So there's a --
- 11 A. There were other -- other sizes available, but this
- 12 was by far the most standard one.
- 13 Q. Right. So there were some that were smaller than
- 14 72 inches and some that are larger than 76? Is that what
- 15 you're saying, the door size?
- 16 A. Door height?
- 17 Q. Yes, sir.
- 18 A. Yes.
- 19 Q. But those were the standards?
- 20 A. The most common.
- 21 Q. Okay. And you don't know whether this trailer was
- 22 within those standards or outside of those standards?
- 23 A. I do not.
- 24 Q. Okay. And that would affect your measurements; is
- 25 that correct?

1 A. They would be different.

2 Q. All right. Did you do any estimates of how high the
3 bottom of the window is from the ground?

4 A. I did not.

5 Q. Okay. And you didn't -- did you do any estimates of
6 how high the bottom of the window is from porch level?

7 A. I did not.

8 Q. Okay. And so based on the information that you had in
9 your calculations, you came up with two different window
10 sizes; is that correct?

11 A. Two possibilities.

12 Q. Two possibilities. And two possible sizes for the
13 slats of the window or each individual pane; is that
14 correct?

15 A. Yes.

16 Q. But the same width?

17 A. Same width.

18 Q. Just different heights. One would be narrower --

19 A. No, the width would change as well.

20 Q. Height I said. Different heights.

21 A. The height would be different and the width would be
22 different.

23 Q. Okay. Did you perform any calculations of how far the
24 porch extended into the width of the window?

25 A. I did not.

1 MR. MAULDIN: No further questions.

2 THE COURT: Any redirect?

3 MS. ABEE: No, Your Honor.

4 THE COURT: May I excuse this witness?

5 MS. ABEE: Yes. That this witness be excused,
6 please, Your Honor.

7 THE COURT: You're excused. Thank you.

8 (Witness excused.)

9 MS. ABEE: Your Honor, the State calls Michael
10 Martin.

11 (Whereupon, Michael Martin was duly sworn by the
12 Clerk of Court.)

13 THE CLERK: Would you please have a seat in the
14 witness box. State your full name and spell your last
15 for the record.

16 THE WITNESS: My name is Michael Martin. Last name
17 M-A-R-T-I-N.

18 MICHAEL MARTIN,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. ABEE:

22 Q. And, if you could, go ahead and tell us where you're
23 currently employed.

24 A. I work for the Federal Bureau of Investigation.

25 Q. Where at?

1 A. Up in Quantico, Virginia.

2 Q. And tell us what you do for the FBI.

3 A. I'm a visual information specialist.

4 Q. And what is a visual information specialist?

5 A. So pretty much an interesting way of saying a graphic
6 designer or one who works with art. I take information and
7 make it visual for comprehension, such as trial exhibits
8 and diagrams.

9 Q. And, Mr. Martin, I'm gonna ask you to pull that
10 microphone just a little bit closer to your mouth so we can
11 hear you, okay?

12 A. Yes, ma'am.

13 Q. All right. Well, tell us a little bit about your
14 educational background and your training that's led to this
15 job with the FBI.

16 A. So my educational background, I attended Liberty
17 University where I received a bachelor's degree in visual
18 communication arts with an emphasis in graphic design.
19 Having joined the Bureau I've also received training in
20 3D modeling, animating and other various fields with the
21 job.

22 Q. And how long have you worked with the FBI?

23 A. Nearly five years.

24 Q. Okay. And throughout these five years, have you
25 ever been tasked with creating visual models or visual

1 representations of things?

2 A. Yes, I have.

3 Q. Okay. And walk us through that process of how you --
4 you do something like that.

5 A. Well, as far as creating a model and/or animation,
6 we gather the data that's provided to us from the
7 investigation team or whoever the client is. We structure
8 the scene based on those parameters and then if we're
9 talking animation, once the scene is established then the
10 object that is being moved in that scene will then be set
11 in motion and saved on what's called key frames. So
12 essentially if I have a 3D scene and I have a sphere and I
13 want to move that sphere from point A to point B, I will
14 take the sphere and I will adjust its position and then I
15 will set a key frame, which is simply just a saved point in
16 time, so if I scrub up the timeline back it goes to the
17 original position and to next, and I will do that for each
18 position of that object until that animation is finished.

19 Q. And is this stuff that -- the process that you use
20 something that you continue to be trained on with the FBI?

21 A. Yes.

22 Q. Okay. And the work and the work product that you
23 created, is that peer reviewed?

24 A. It is.

25 Q. Okay. And when somebody is peer reviewing your work,

1 what are they looking for?

2 A. So all of our products that we put out are peer
3 reviewed, it is a standard policy for us, and essentially
4 the peer review process is simply making sure that whatever
5 the product is that there's no issues or errors that are
6 glaring to the product and that all of the parameters of
7 the request have been made for that product.

8 Q. And so if there was something inaccurate in the work
9 product that you were creating, is that what the peer
10 review process is there to catch?

11 A. Yes, ma'am.

12 Q. Okay. And where do you get the underlying data that
13 you rely upon when you creating, say, animations?

14 A. All of the underlying data that I rely upon is that
15 which is provided to me in case files. Such as for this
16 case I was provided crime scene photos, a crime scene
17 video, a sketch, a lab report indicating possible position
18 of fingerprints, as well as the measurements that my
19 colleague had provided earlier in the case regarding the
20 window.

21 Q. And throughout your time with the FBI, have you
22 created animations before?

23 A. I have.

24 Q. Approximately how many times have you created those?

25 A. I've created at least two.

1 Q. Okay. And were those two peer reviewed?

2 A. Yes.

3 Q. And did you create an animation in this particular
4 case?

5 A. I did.

6 Q. And was that peer reviewed?

7 A. Yes.

8 MS. ABEE: Your Honor, at this time the State
9 moves Michael Martin in as an expert in 3D modeling
10 and animation.

11 THE COURT: Any objection?

12 MR. MAULDIN: No objection, Your Honor.

13 THE COURT: I'm gonna tell the jury again this
14 witness is gonna be an expert and he's gonna be entitled
15 to give his opinion. You give his testimony the weight
16 you think it deserves.

17 Go ahead.

18 MS. ABEE: Thank you, Your Honor.

19 BY MS. ABEE:

20 Q. Now you said that you had received some information
21 from your colleague. Is that Robert Thomas?

22 A. Yes, ma'am.

23 Q. Okay. And what information did Robert Thomas provide
24 to you?

25 A. I did not receive it directly from him, but the

1 product that he provided was simply a measurement of the
2 window and it was that information that I had then received
3 along with the other case materials, such as the photos of
4 the scene, the video.

5 Q. And were you asked to create something regarding the
6 size of the window in this case?

7 A. Yes. So I was asked to create two products for this
8 case. The first product that I created was a diagram,
9 simply a flat image that had the window in relation to a
10 silhouette of the suspect at a given weight and height in
11 relation to each other. The second product that I was then
12 asked to create after that was an animation.

13 Q. Okay.

14 MS. ABEE: Your Honor, I'm showing opposing counsel
15 what's been premarked as State's Exhibit 37, 38 and 39.

16 BY MS. ABEE:

17 Q. Mr. Martin, I'm approaching you with State's Exhibit
18 37, 38 and 39 that have been premarked for identification
19 purposes. Do you recognize -- let's start with 37 and 38.
20 Do you recognize these?

21 A. Yes, I do.

22 Q. And are those the diagrams you created in this case?

23 A. Yes, they are.

24 Q. And are they a fair and accurate depiction of the
25 information you received and the diagram you created?

1 A. Yes, they are.

2 Q. And then, again, on State's Exhibit Number 39, what's
3 contained on that disk?

4 A. So this disk contains the final animation files.

5 Q. And how do you know that's what's on that disk?

6 A. I have reviewed them and signed off.

7 Q. And are they a fair and accurate copy of the
8 animations you made?

9 A. Yes, they are.

10 Q. Okay.

11 MS. ABEE: And, Your Honor, the State moves State's
12 Exhibit 37, 38 and 39 into evidence.

13 THE COURT: Any objection?

14 MR. MAULDIN: No objection, Your Honor.

15 THE COURT: They're admitted.

16 MS. ABEE: Thank you.

17 (State's Exhibit Number 37, a diagram, State's
18 Exhibit Number 38, a diagram, and State's Exhibit
19 Number 39, an animation, were admitted into evidence.)

20 MS. ABEE: Permission to publish, Your Honor?

21 THE COURT: Yes, ma'am.

22 BY MS. ABEE:

23 Q. Now we've heard from Mr. Thomas about the size range
24 of the window, but you also were asked to place a suspect
25 here in this diagram. Was the determined size of the

1 suspect in that diagram?

2 A. The diagram depicts the suspect at 5-11.

3 Q. Okay. And what about weight?

4 A. Approximately 150 pounds.

5 Q. Okay. Did you receive that information as it pertains
6 to Mr. McDowell?

7 A. Yes.

8 Q. Okay. And were you able to review and receive
9 information that that's the approximate height and weight
10 of Mr. McDowell at that time?

11 A. No, I did not have any photo references of the
12 individual.

13 Q. Okay. Have you reviewed anything that showed what his
14 height and weight was at the time?

15 A. There was a Polk County police report I think that
16 another -- Jackie had referenced that I got from her about
17 the height.

18 Q. And is Jackie another FBI agent?

19 A. Yes.

20 Q. Okay. So I'm gonna first put up State's Exhibit
21 Number 37. Tell us what you created here.

22 A. So this was the diagram that I created first. So my
23 colleague at some point was asked to provide the specs for
24 the window and simply what you see here on screen is just
25 a relation between the suspect and the window in question.

1 So page 1 here is just depicting the window in a closed
2 position.

3 Q. Okay. And then I'm gonna put up State's Exhibit
4 Number 38.

5 A. This is the exact same position; however, the window
6 is slightly opened.

7 Q. And then so you created these two documents?

8 A. Yes, I did.

9 Q. All right. Did you also create the animation showing
10 whether or not someone of the size could have entered
11 through that window slat?

12 A. Yes, I did.

13 Q. And when you do this, do you do this from one point of
14 view or more than point of view?

15 A. Multiple points.

16 Q. And why do you do that?

17 A. To make sure that there's no visual overlapping or
18 issues onscreen with the objects going -- interacting
19 around the other objects.

20 Q. And walk us through the process. I know you talked
21 generally about how you create these animations, but in
22 this particular case walk us through what you did here.

23 A. So animations can vary depending on the case needs,
24 but the general process that I used here was I established
25 the scene and within the 3D space admittedly you can do

1 things on a computer that are not physically possible in
2 real life. So, for example, if I take my right hand, I
3 cannot physically push it through my left hand. They are
4 both solid objects and they cannot pass through each other;
5 however, if both of my hands were 3D models I could
6 intersect them and over-sect them in ways that would not
7 physically be possible and it would be visually showing.
8 So in this instance with this animation I took the window
9 spec and created the scene based off the measurements that
10 I had -- that I had been given, as well as taking a figure
11 model of just a generic human model, I scaled it to the
12 appropriate size and height of the individual with the
13 weight being an estimate, and then from there as I said
14 previously with creating an animation I had the figure
15 standing outside and then depicted moment by moment that
16 figure going through that window.

17 In the 3D software I'm simply not clicking a button
18 and making it happen. Every position I am manually pushing
19 -- positioning the figure at. And I can zoom in, I can pan
20 around, I can revolve around the object and look at it from
21 multiple given angles, and as such each position was placed
22 with this -- with the human figure model going through the
23 window simply to show a possibility of point of entry.

24 Q. Okay. And so just to be clear, these animations
25 aren't videos from the night of or anything like that,

1 right?

2 A. No, they are not.

3 Q. Okay. And they're not made to represent Mr. McDowell
4 himself or how you think it happened; is that fair?

5 A. That is fair.

6 Q. Okay. These are merely being able to show that
7 somebody of this purported height and weight could have
8 fit through the purported slats, right, of the window?

9 A. Correct.

10 Q. Okay. And is it fair to say that if the underlying
11 information or data that you received, such as the size of
12 the window or the size of Mr. McDowell was different, that
13 your results would be different?

14 A. Correct.

15 Q. Okay. And you talked about how kind of in this, you
16 know, virtual type role, you know, I think you used the
17 reference of your hand going through your hand, right, that
18 we're able to manipulate that when we use the software?

19 A. Yes.

20 Q. So at any point in time when creating this, did you
21 have to physically manipulate the suspect figure to fit
22 through that window in a way that we couldn't do standing
23 out here in the real world?

24 A. No, I did not. Each position -- once the figure was
25 set to the height and estimated weight, it remained at

1 that.

2 Q. Okay. And at this point I'm gonna publish the four
3 views, okay?

4 A. Perfect.

5 (State's Exhibit Number 39 was played.)

6 Q. All right. Now, Mr. Martin, at any point in time did
7 you allow those windows to open greater than what it was
8 that you demonstrated they could open?

9 A. No.

10 Q. Okay. And at any point in time did you have to expand
11 that window bigger or that opening greater in order to get
12 that figure through it?

13 A. No, I did not.

14 Q. Okay. And based on all of your expertise, is there
15 anything in your creation of this animation that would
16 demonstrate to you that someone of Mr. McDowell's stature
17 couldn't fit through the openings that you put in there?

18 A. No.

19 MS. ABEE: Your Honor, I have no further questions.

20 THE COURT: Thank you.

21 Mr. Mauldin.

22 CROSS-EXAMINATION

23 BY MR. MAULDIN:

24 Q. Mr. Martin, when did you create the diagram that they
25 showed? The paper diagram, not the video, when did you

1 create that?

2 A. Either late 2021 or early 2022.

3 Q. Okay. And after you created that diagram, it was
4 decided by the team that you wouldn't start on the 3D model
5 until charges had been filed; is that right?

6 A. I'm aware, yes.

7 Q. Okay. So when did you start the 3D model?

8 A. It would have been 2022.

9 Q. Okay. So that would have been after the charges were
10 filed; is that right?

11 A. Yes.

12 Q. Now did you extrapolate any measurements yourself or
13 were all the measurements you used in your diagram and your
14 video received from Mr. Thomas or VIS Thomas?

15 A. Those were received.

16 Q. Okay. And looking at State's 37 here, so you're
17 saying that Mr. Thomas gave you the distance from -- the
18 distance of the porch from the ground, this 2.6 inches?

19 A. So I believe that might have been a measurement that
20 -- that I used off of the window height that was given to
21 me.

22 Q. Okay. So you extrapolate -- so you -- you did that
23 measurement yourself?

24 A. Correct.

25 Q. You did some measurements yourself. You're not basing

1 it entirely off of what Mr. Thomas did; is that correct?

2 A. Correction. As far as the porch goes, correct.

3 Q. Okay. And you're estimating that off of the
4 estimations Mr. Thomas gave you of the window height; is
5 that correct?

6 A. That's correct.

7 Q. Now isn't it true that Mr. Thomas made two estimations
8 of the height of the window?

9 A. I'm unsure of that.

10 Q. I see -- isn't it -- you're unsure whether he said the
11 window could be anywhere from 34 to 36 inches tall?

12 A. On one of the images that I referenced, it showed
13 40 and a half inches by 36 inches and that was the image
14 that I used.

15 Q. Okay. So obviously 36 is greater than 34; is that
16 correct?

17 A. It would be, yes.

18 Q. Okay. And that's the -- the scale you used in your
19 video as well?

20 A. Yes.

21 Q. Okay. So if the actual window range was from 34 to
22 36 inches tall --

23 A. Uh-huh.

24 Q. -- 36 would be the higher of those numbers?

25 A. It would be.

1 Q. And the area between these panes would be less if you
2 used the lower number; is that correct?

3 A. That would be correct.

4 Q. And it would be thinner?

5 A. It would be.

6 Q. And possibly more difficult for somebody to get
7 through?

8 A. Possibly.

9 Q. Depending on their height and weight?

10 A. Correct.

11 Q. And I noticed on State's 38 you -- you had the window
12 opening at a 45-degree angle. Is that the angle you used
13 in the video?

14 A. No, that was just to show the motion of the louver
15 window.

16 Q. What was the angle you used in the video?

17 A. It did not exceed 90, but I don't know the exact.

18 Q. Do you know for certain how far the window could open?

19 A. I do not, no.

20 Q. So if the window couldn't open beyond a certain
21 degree, that would be important to know in your recreation;
22 would it not?

23 A. It would be.

24 Q. Because that would affect the size of the opening that
25 somebody could possibly get through?

1 A. This is true.

2 Q. How did you extrapolate or how did you get to the
3 point where you decided where the porch ended within the
4 width of the window?

5 A. So those would be visual references based on the crime
6 scene photos. Really those were the primary source that I
7 had for any visual estimation, so the slots on the wall are
8 roughly what I used to align.

9 Q. Okay. And -- because it looked to me in one of those
10 videos --

11 MR. MAULDIN: No, that's fine. I'm fine. Sorry.

12 MS. ABEE: Glad to help.

13 BY MR. MAULDIN:

14 Q. That it looked like the porch extended almost the
15 entire width of the window.

16 A. Sure.

17 Q. But that -- looking at the photos that would not be
18 the case. It looks like the porch extends to barely half
19 the width of the window; isn't that correct?

20 A. I don't have the photo in front of me, so I don't
21 know.

22 Q. Okay. Well, you used them in your recreation, didn't
23 you?

24 A. I did as far as the animation goes and in reference
25 to creating that. At that point it was simply a diagram

1 depicting the window.

2 Q. All right. I notices in one of the animations you had
3 a table there and possibly a couch on the interior. Did
4 you extrapolate measurements on that or how did you come to
5 put those in there?

6 A. Again, those were visually constructed based off the
7 photos.

8 Q. Okay. And -- well, were they done with help -- I
9 mean, was it mathematically done or did you guess or how
10 did you do that?

11 A. They're simply a visual reference.

12 Q. Oh, so they're not -- they're not to scale?

13 A. They matched the scale visually of the scene.

14 Q. Okay. So you eyeballed it visually?

15 A. In laymen's terms.

16 Q. Okay.

17 A. I made a visual calculation to reference.

18 Q. What about the doodads on top of the table? Did
19 you put that in there if there were any doodads or
20 knickknacks?

21 A. I did not have anything on the table. If we're
22 talking about the table inside --

23 Q. Uh-huh.

24 A. -- I simply believe I just have the light, which was
25 also visible in the scene photo.

1 Q. And obviously you received information from Mr. Thomas
2 and you received some information regarding I guess the
3 booking of Mr. McDowell, him being 5-10, 150 around that
4 time. Of course, you know, your recreations can only be
5 as good as the information you get being accurate; is that
6 correct?

7 A. That is correct.

8 Q. The common term is garbage in, garbage out?

9 A. That's correct.

10 Q. So if you get wrong information in, you're gonna
11 produce wrong information?

12 A. Sure.

13 Q. So you're relying on these other people to give you
14 accurate information?

15 A. Correct.

16 Q. All right. Now let's just start with 5-11 -- 5-11,
17 150. Looking at State's 38, is it the measurement between
18 the ground and the porch 5-11 or 6 foot or do you know what
19 -- what the measurement between the ground and the porch
20 would be?

21 A. I -- I don't have that actual -- that measurement, no.

22 Q. Okay. And how about from the porch floor to the
23 bottom of the window, do you have that measurement?

24 A. I do not have that measurement. Those were based on
25 the slots located there on the side of the wall, the

1 paneling. They were visually referenced.

2 Q. Okay. Now people come with different builds, don't
3 they?

4 A. Yes, sir.

5 Q. Okay. You know, they've got different circumference
6 or the distance around their chest and they've got
7 different waist sizes and some people may have a longer
8 torso and shorter legs or, vice versa, longer legs and a
9 short torso; is that right?

10 A. As far as I'm aware, yes.

11 Q. Okay. And also some people have bigger heads than
12 others, don't they?

13 A. Yes.

14 Q. So, you know, they have a bigger circumference or the
15 difference around their head; is that right?

16 A. From what I observe, yes.

17 Q. Okay. And did you have any kind of that information
18 from Mr. McDowell when you made your recreation?

19 A. No, the -- I did not have any proportion reference.

20 Q. You're just using an average, I guess?

21 A. An estimate.

22 Q. An estimate. Okay. And some folks may not be as
23 limber as other folks or as flexible; is that right?

24 A. That's true.

25 Q. Did you do any research of any kind of medical

1 conditions Mr. McDowell might have had?

2 A. I did not.

3 Q. All right. Did they ask you to do any recreations to
4 see if a 5 foot 2, size 14 woman could get through that
5 window?

6 A. No, they did not.

7 MR. MAULDIN: All right. No further questions.

8 THE COURT: Any redirect?

9 MS. ABEE: No, Your Honor. We just ask that the
10 witness be excused.

11 THE COURT: Yes, you can be excused. Thank you
12 for coming.

13 (Witness excused.)

14 THE COURT: Madam Forelady, the jury okay?

15 FOREPERSON: Yes, ma'am.

16 THE COURT: You can call your next witness.

17 MS. WEISS: Thank you, Your Honor.

18 I'm sorry. I had to correct one thing during the
19 last break. If I can go across the hall?

20 THE COURT: Go ahead.

21 (Pause in proceedings.)

22 MS. WEISS: Thank you, Your Honor.

23 The State calls Steve Brakefield.

24 (Whereupon, Steven Keith Brakefield was duly sworn
25 by the Clerk of Court.)

1 THE CLERK: Would you, please, have a seat in the
2 witness box. State your full name and spell your last
3 for the record.

4 THE WITNESS: Steven Keith Brakefield.
5 B-R-A-K-E-F-I-E-L-D.

6 STEVEN KEITH BRAKEFIELD,
7 having been duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MS. WEISS:

10 Q. Good afternoon, Mr. Brakefield. How are you this
11 morning?

12 A. Doing well. Thank you.

13 Q. Can you, please, introduce yourself to the jury. Tell
14 them where you grew up.

15 A. I grew up in Cayce. I moved -- I took a job and left
16 in about '86. I was with Circuit City. I was with them
17 for twenty-three years, they went out of business, I came
18 back. I've been married for -- I've been with my wife --
19 current wife for thirty-three years. I have two adult
20 children and I've been blessed with four beautiful
21 grandchildren.

22 Q. And are you currently working?

23 A. Yes.

24 Q. Where do you work now?

25 A. Department of Transportation.

1 Q. And how long have you been there?

2 A. I've been there a little over four years.

3 Q. What did you do for the Department of Transportation?

4 A. I'm a mechanic for highway patrol.

5 Q. I want to ask you a little bit about your -- you were
6 telling us about your wife and your children -- a little
7 bit about your family growing up. Tell us -- who were you
8 mom and dad?

9 A. William Brakefield and Linda Brakefield.

10 Q. Did you have a sister?

11 A. Yes, Gina Brakefield.

12 Q. Is she younger or older?

13 A. She's younger.

14 Q. How much younger than you?

15 A. Three years.

16 Q. Okay. Mr. Brakefield, I'm gonna take you back to --
17 back a few years to the mid eighties if you would go back
18 with me to that, and we're talking '80, '82, in that -- in
19 that time period, did you know the McDowell family?

20 A. Yes, I did.

21 Q. And how did you know the McDowell family?

22 A. Shirley McDowell was my aunt because -- my father's
23 sister --

24 Q. Okay.

25 A. -- and their children obviously were my cousins.

1 Q. And did they live in Cayce near you most of the time
2 you were young?

3 A. Not when I was young, but later, you know, I don't
4 know exactly when, but maybe around high school years.

5 Q. Okay. And so about -- about what year would that
6 be ball parking? About what year would that be that the
7 McDowells, Shirley and her family, moved to Columbia or
8 moved to Cayce?

9 A. I don't know exactly.

10 Q. What year did you graduate high school?

11 A. I graduated '82, so it was -- you know, it was while I
12 was in -- sometime in high school, I believe.

13 Q. Okay. So it was in that -- the early eighties --

14 A. Yes.

15 Q. -- around that time? And where were they living
16 before that?

17 A. They lived -- they lived in Pompano Beach -- they
18 lived in York, South Carolina, when all the -- all my
19 cousins were young. They relocated to Pompano Beach,
20 Florida, and then over time when my Aunt Shirley and her
21 husband Charles divorced, that's when they -- around the
22 time when -- when they lived close to me and my parents.

23 Q. Okay. And when they finally divorced and Shirley and
24 the children moved to Cayce, where did they live when they
25 first moved here?

1 A. Shirley -- I believe the whole family lived in a
2 neighborhood called Belle Meade. It's out Charleston
3 Highway as you get towards Swansea.

4 Q. And is that near where you lived?

5 A. Yeah, it's not -- it's not far from where I lived at.

6 Q. Was there a point where you started spending more time
7 with your Aunt Shirley and her children?

8 A. Yes. When -- again, around -- around the eighties
9 when I was in high school, they were -- we were together
10 quite a bit.

11 Q. Okay.

12 A. Shirley would come over quite a bit.

13 Q. Would her children come over as well?

14 A. Yes.

15 Q. And anybody in particular?

16 A. Teresa, Kathy, my cousins, Tommy, Shirley.

17 Q. And of those you mentioned Teresa and Kathy, Tommy,
18 was there one that you were kind of closer to or hung out
19 more with?

20 A. After high school Tommy -- Tommy I believe is
21 four years older than I am, so as we were growing up, we
22 were cousins, we knew each other, you know, we'd do things
23 together, but after I graduated from high school -- I
24 graduated in '82, so in '83 we -- we became closer and we
25 spent more time together.

1 Q. Okay. Where were you working in 1983?

2 A. In 1983, I worked at Manhattan Shirt Company.

3 Q. Okay. And where was that located?

4 A. In Winnsboro, South Carolina.

5 Q. And who were your social circle? Were they friends
6 from work?

7 A. Yeah, mostly -- Winnsboro's about forty-five minutes
8 from Columbia and my dad was a plant manager at JPM in
9 Winnsboro, I worked for Manhattan Shirt Company, so I rode
10 to and from work with my dad. My dad sometimes would get
11 off later than I would, so me and all my buddies from work
12 would go to a place called Grady's and we'd shoot pool
13 until it was time -- you know, until my dad got off work
14 and we'd ride together.

15 Q. And when you say Tommy, is that Tommy McDowell? When
16 you're talking about Tommy -- I'm sorry. I'm jumping back
17 a little bit. Is that Tommy McDowell that you're talking
18 about?

19 A. Yes.

20 Q. Okay. And he was -- he's your cousin?

21 A. Yes.

22 Q. Could you, please, describe for the jury if you were
23 looking at Tommy McDowell now -- I mean, looking at Tommy
24 McDowell in 1983, 1984, when you were actually spending
25 time with him, can you describe what he looked like to you?

1 A. I would describe it as the Urban Cowboy look. You
2 know, Tommy was very -- he was very particular about the
3 way he dressed and about his appearance. He had -- always
4 had his hat on, had a little bit longer hair, a beard,
5 jeans, boots. I think, you know, most of the time it was a
6 flannel shirt, maybe when it was cold a jean jacket, but he
7 was -- he had the cowboy look.

8 Q. Okay. And would you say that he was larger in size or
9 smaller in size?

10 A. He was slim.

11 Q. He was slim.

12 (State's Exhibit Number 41 was marked for
13 identification.)

14 BY MS. WEISS:

15 Q. Mr. Brakefield, I'm gonna show you what's been marked
16 as State's Exhibit 41 for identification. Do you recognize
17 the person in that photo?

18 A. Yes, ma'am.

19 Q. And who is that person?

20 A. That's Tommy McDowell.

21 Q. And does this accurately reflect the way Tommy looked
22 sometime around the early eighties, generally the way you
23 remembered him?

24 A. Yes. Yes.

25 MS. WEISS: Your Honor, at this time I'd ask to

1 admit State's Exhibit 41 into evidence.

2 THE COURT: Any objection?

3 MS. MAULDIN: No, Your Honor.

4 THE COURT: It's admitted.

5 (State's Exhibit Number 41, a photograph, was
6 admitted into evidence.)

7 MS. WEISS: Your Honor, request to publish?

8 THE COURT: You may.

9 BY MS. WEISS:

10 Q. I'm showing you State's Exhibit 41 and,
11 Mr. Brakefield, do you have any independent memory of
12 being present when this picture was taken? I mean, would
13 you have been?

14 A. It appears -- to me, it looks like my parents' living
15 room. I mean, but I -- it may not be.

16 Q. Okay. And what stands out to you in this picture that
17 you can say yes, this is what -- this was Tommy McDowell
18 back in the early eighties?

19 A. The -- the beard, the hair, definitely the hat. And
20 as I said, you know, back then Tommy was slim, so was I at
21 the time, but those are the things that stand out.

22 Q. Okay. Now starting around -- you said around '83 you
23 were working at Manhattan Shirt. Did you spend time with
24 Tommy socially around that time?

25 A. Yes.

1 Q. About how often?

2 A. I would stop by his house, you know, maybe weekly when
3 I -- my friends that lived in Winnsboro, on the weekends
4 they would come down to Columbia and we'd -- we had a
5 bowling league, so we all liked to bowl and we all liked
6 to play pool, and on occasion Tommy would go with me and
7 hang out with my friends at the bowling alley, the pool
8 hall, whatever.

9 Q. Okay. And each of those times he was hanging out with
10 your friends, do you remember if he had on that -- had on a
11 cowboy hat?

12 A. Yes, because Tommy always had his hat on.

13 Q. Okay. And do you ever remember him switching hats?

14 A. Yeah, I remember him buying a new hat. I never --
15 I've never worn a hat, but I do remember that it was a
16 Stetson and I learned at the time that that was a pretty
17 popular brand name in hats, and since then I know that
18 it's a popular brand name, but that was my -- that was my
19 first mention -- that's the first time I'd ever heard the
20 brand Stetson, and he was pretty proud of the hat.

21 Q. And do you remember generally what that hat looked
22 like?

23 A. It was -- to me, it looked very similar to his other
24 hat. It was -- but it was a lighter color, you know, maybe
25 a light brown to tan and it had, you know, a band around it

1 just as in the picture that you showed me.

2 Q. Now just to kind of set times, what year did you get
3 married?

4 A. I got married in '84. In July of '84.

5 Q. And when you got married, did you stop doing as many
6 things socially with your friends?

7 A. Yeah. I mean, they -- yeah, I mean -- yeah, my wife
8 was pregnant and my oldest son, he was born in December, so
9 that -- that kind of slowed down the, you know, going out
10 and doing different things.

11 Q. Did you continue to see Tommy on a regular basis?

12 A. I still continued to still Tommy. I mean, maybe not
13 as much as I did before, but, yes, I did spend time with
14 Tommy.

15 Q. Okay. And did that continue on as your child was
16 young?

17 A. Yes.

18 Q. Okay. In fact, did Tommy baby-sit for you once or
19 twice?

20 A. Yes, he did. Tommy would -- he would -- I don't want
21 to change the subject, but he would come over and we would,
22 you know, watch -- back then VCR's had just came out, so he
23 would come by and spend time with me and my wife and my --
24 my son, and he did baby-sit my son.

25 Q. You said that was like once or twice?

1 A. Yeah, a couple of times.

2 Q. And throughout that time still the same look?

3 A. Yes.

4 Q. Now I want to take you back a little ways. Do you
5 remember your dad purchasing a car in 1975?

6 A. Yes.

7 Q. Okay. And why do you remember that car in particular?

8 A. A couple of reasons. It was the first -- our first
9 brand new car that we purchased and it was -- it was a cool
10 car. I mean, it was, you know, a brand new Ford -- it was
11 a Ford Elite -- Grand Torino Elite, which was loaded. It
12 was white on white. It was a beautiful car.

13 Q. And was your dad pretty particular about his car?

14 A. Oh, yeah.

15 Q. How would he -- how would he keep it up?

16 A. He made -- he and I, we made any mechanical work that
17 needed to be done to the car, oil changes, even other
18 repairs, starters. Anything that we could fix my dad would
19 -- we would repair it together. Basically I would hold
20 something and he would -- you know, he would do the repair
21 work while I was holding up the starter or whatever it was,
22 but, yeah, he was -- he was particular about maintaining
23 the car, but also about the appearance of the car. My job
24 was to keep the white wall tires clean, but, yeah, he -- he
25 was very -- all of his vehicles he ever had he was proud of

1 them, he took care of them, but especially that one because
2 it was his first new car.

3 Q. Was he particular about American made cars?

4 A. We never had a -- a foreign car, but, I mean, I
5 don't -- you know, I mean, we've had Camaros. Mostly Fords
6 and Chevys is what we had.

7 Q. Okay. And you said he was very particular because he
8 bought this car new and he kept it up. Would he have ever
9 put Toyota floor mats in the car?

10 A. No.

11 Q. Did you ever know Tommy McDowell to drive that car?

12 A. Yes.

13 Q. When was that?

14 A. I believe it was -- I believe it was sold to Tommy. I
15 don't know if it was sold or if Tommy did -- Tommy would a
16 lot of times help me dad do work around the house, so I
17 don't know if they negotiated a trade, you know, work for
18 the car or if he paid for it, but it was -- I believe it
19 was 1984.

20 Q. Okay. And I'm gonna show you what's already been
21 entered as State's Exhibit 6 and 7. Do you recognize this
22 car?

23 A. Yes. Yes.

24 Q. Okay. And what do you recognize this car to be?

25 A. It looks like a '75 Ford Grand Torino Elite.

1 Q. And from the inside what was special about your dad's
2 Ford Grand Torino?

3 A. The white on white. White letter with the white door
4 panels and white exterior and the white walls.

5 Q. And the white walls?

6 A. Yes.

7 Q. Do you know Debbie Gutierrez?

8 A. Yes.

9 Q. Okay. And, if you would, tell the jury how you know
10 Debbie Gutierrez.

11 A. She's my second cousin.

12 Q. Okay. Now Shirley McDowell is your dad's sister,
13 Debbie Gutierrez is your second cousin on which side?

14 A. On my mother's side.

15 Q. Okay. And did you know Debbie Gutierrez as well as
16 you knew Tommy McDowell?

17 A. Well, I mean, I had spent time with both families my
18 entire life. When I was younger since Debbie's family,
19 they lived in South Congaree, which is not far from here,
20 and we would go -- go visit and I'd -- you know, I was one
21 of the kids, we'd all play in the yard, we had go-carts.
22 So growing up I did spend probably more time there because
23 they were closer, but, you know, there was a -- Debbie was
24 a little bit older than I was, Tommy was a little bit older
25 than I was, so, I mean, you know, Debbie was always -- I

1 had a good relationship with her, we were always close, but
2 I -- I really started to get -- you know, get to know them
3 as I grew up.

4 Q. Okay. And your mom, she's -- you said it was your
5 second cousin and she was close as well with Debbie's
6 sister?

7 A. Jeannie.

8 Q. Jeannie?

9 A. Yes.

10 Q. You say she was pretty close to Jeannie?

11 A. Very close.

12 Q. Very close to Jeannie. Did you ever spend much time
13 around Debbie with her children?

14 A. No.

15 Q. Okay. I'm gonna jump forward now to the summer of
16 1986. Did something happen with Debbie's family that
17 sticks out to you?

18 A. Yes.

19 Q. And what was that?

20 A. I was at the beach with my wife, my son -- me and my
21 wife and my son and my parents, at Myrtle Beach. Back then
22 they didn't have cell phones obviously and when we returned
23 from our vacation, as soon as we arrived to my parents'
24 house we got the call that -- that Jesse had been taken or
25 kidnapped and she was missing and no one knew where she was

1 at and it was a -- pretty much the family was in a panic.

2 Q. And as far as you know, do you know if Tommy McDowell
3 knew Debbie Gutierrez?

4 A. I believe they were dating, but I didn't while they
5 were dating.

6 Q. At some point?

7 A. Yeah. I mean, I don't know if I -- you know, I was --
8 I don't think I was around them at that time. I may have
9 seen Tommy, but I don't think I ever went to Debbie's house
10 during that time.

11 Q. Okay. And did you have the opportunity to see Tommy
12 again after you came back from the beach?

13 A. Yes.

14 Q. Okay. And, if you would, please tell the jury about
15 that. Where was it and what sticks out to you about it?

16 A. It was -- it was within, you know, probably a -- maybe
17 a week or so of us returning from the beach and when --
18 when I first seen Tommy he had -- he didn't have a hat, he
19 didn't have a beard. He was pretty much clean shaven,
20 shaved his head.

21 Q. When you say shaved his head, what do you mean?

22 A. Like shaved it shaved it. I mean, real short. You
23 know, maybe -- maybe a little hair, but it was -- he didn't
24 -- he looked a lot younger and a lot different.

25 Q. And why does this stand out to you?

1 A. Well, when -- when I -- due to the fact that I know
2 how -- I knew how important Tommy's -- his look was and the
3 fact that he was dating Debbie, in my mind he was changing
4 his appearance.

5 Q. Did you ever hang out with Tommy McDowell after that?

6 A. No.

7 Q. Have you spoken to Tommy or seen him since?

8 A. No.

9 Q. Thank you.

10 MS. WEISS: Thank you, Mr. Brakefield.

11 I have no further questions for this witness.

12 Please answer any questions the defense may have.

13 THE COURT: Ms. Mauldin.

14 MS. MAULDIN: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MS. MAULDIN:

17 Q. Hello, Mr. Brakefield.

18 A. Hello.

19 Q. You have talked with the Solicitor's -- or, excuse
20 me, the Attorney General's Office and FBI agents about the
21 case?

22 A. Yes.

23 Q. And when an investigator from my office, Mr. Kneece,
24 came and asked you to talk, you didn't want to talk to him,
25 right?

1 A. Oh, okay. The -- correct.

2 Q. Okay. Back when this all happened and you mentioned
3 coming back from the beach and it being sort of a panic,
4 this was something everybody knew about, right?

5 A. I -- I do not know. I don't know who knew about it.
6 My -- my immediate family knew about it.

7 Q. Do you remember it being in the news?

8 A. Actually I believe it was. I mean, it was a long time
9 ago. I'm sure it was in the news.

10 Q. Well, at the beginning stages people were -- there was
11 maybe more urgency to look for and find Jessica, right?

12 A. I would agree with that.

13 Q. And so there was sort of a lot of effort to get the
14 word out about this child, has anybody seen her, you know,
15 we're looking for this child, you know, that sort of thing,
16 right?

17 A. I'm sure, yes.

18 Q. Okay. Are you aware that this car didn't belong to
19 Tommy, but belonged to his mother Shirley?

20 A. I was under the impression that it was -- it was
21 either -- like I said earlier, it was either sold to Tommy
22 or given to him in trade for doing --

23 Q. So you don't the specifics of any deal?

24 A. No, I do not know specifics of the deal. I just know
25 that Tommy -- it was his primary car. Now Shirley did

1 drive -- drive the car.

2 Q. But you don't know who the actual owner of the car
3 was?

4 A. No. I mean, I -- Tommy had -- it was my dad's car,
5 Tommy and Shirley was driving it. I assumed that it was
6 Tommy's car, but, you know, if you say it was Shirley's
7 car, then I -- I agree.

8 Q. Okay. And so his mother was Shirley and she's no
9 longer with us.

10 A. (Nods head.)

11 Q. Do you know which year she passed?

12 A. I don't know.

13 Q. Okay. And his father's no longer alive either?

14 A. Correct.

15 Q. Do you know when he passed?

16 A. Yes.

17 Q. When was that?

18 A. 2008.

19 Q. Okay. And the Attorney General showed you the
20 photograph. Do you know what year this was?

21 A. No.

22 Q. And it looks like it's Christmastime, so it's likely
23 -- or unlikely that it was from June of '86, right?

24 A. Correct.

25 Q. Do you remember when you and your friends were at the

1 bowling alley with Tommy?

2 A. I mean, I do remember that we went to the bowling
3 alley, but not specifically.

4 Q. You can't even narrow it down to a month or a year,
5 right?

6 A. No. Like I said, we were -- we were on a bowling
7 team, so a lot of times we would -- we had -- we would have
8 a match once a week, but we'd also go -- we would practice,
9 you know, when we could, and this went on -- you know, we
10 played -- we bowled -- bowling was like a big thing to us
11 for a long period of time, but we did -- Tommy was invited.
12 He was with us on occasion.

13 Q. And you testified about seeing him after Jessica
14 disappeared and where was that?

15 A. At my parents' house.

16 Q. But isn't it true that by then he was avoiding you?

17 A. I don't think so.

18 Q. And that was because he didn't like some of the
19 choices you were making?

20 A. I don't know what you're talking about.

21 Q. You don't remember him being upset that you were not
22 being faithful to your wife?

23 A. No, I don't.

24 Q. And you don't know -- you don't remember that he
25 was --

1 MS. WEISS: Objection, Your Honor.

2 THE COURT: Basis for it?

3 MS. WEISS: He said he doesn't remember. She's
4 asked the question about whether he remembered Tommy
5 avoiding him, he said he doesn't remember. She's gone
6 a little bit and now she's just --

7 THE COURT: I don't know what her next question's
8 gonna be yet. She hasn't asked it yet.

9 MS. MAULDIN: Judge, I'd like to ask him about a
10 separate episode.

11 THE COURT: Okay. I'm gonna allow it. Go ahead.

12 BY MS. MAULDIN:

13 Q. And do you remember that Tommy was upset when your
14 father wouldn't lend him \$50 so that he could replace his
15 refrigerator after he punctured his freezer coil in his?

16 A. I'm not aware of that.

17 Q. Okay.

18 MS. MAULDIN: No further questions, Your Honor.

19 THE COURT: Any redirect?

20 MS. WEISS: No, Your Honor.

21 THE COURT: Can I excuse this witness?

22 MS. WEISS: Please, Your Honor.

23 MS. MAULDIN: Without objection.

24 THE COURT: You can be excused.

25 THE WITNESS: Thank you.

1 (Witness excused.)

2 THE COURT: Can I see the lawyers just for a moment?

3 (Proceedings held at the bench; not reported.)

4 THE COURT: All right. Madam Forelady, you-all's
5 lunch is here. Like I told you, we're having a working
6 lunch today. I'm not rushing you. Take your time.
7 We've got your lunch. I'm gonna let you go back to the
8 jury room.

9 Again, I'm gonna tell you do not discuss this case
10 even amongst yourselves while you're in the jury room.

11 You understand?

12 All right. You-all have a good lunch.

13 (Whereupon, the jury was excused for lunch at
14 12:44 PM.)

15 THE COURT: All right. We're gonna be in recess.

16 Like I said, this is a working lunch. I'm gonna
17 wait for them to knock on the door. If I had to guess,
18 we're gonna start back at 1:30. That's probably what
19 it's gonna take them by the time they get their lunch.

20 So as soon as they knock on the door, I'm starting
21 back up. I'll find the lawyers.

22 MS. MAULDIN: Thank you, Judge.

23 MS. WEISS: Thank you, Judge.

24 THE COURT: I know where to find you.

25 (Whereupon, a luncheon recess was taken at 12:45 PM.)

1 (Back on the record at 1:51 PM.)

2 THE COURT: All right. The State, ready? I
3 apologize for the delay.

4 MS. ABEE: If we can just file everyone in, Your
5 Honor. They're waiting right outside.

6 THE COURT: Okay. Defense ready?

7 MS. MAULDIN: Mr. McDowell.

8 THE COURT: All right. Let me make sure before
9 we get started that there's not anyone in the gallery
10 who has a cell phone. The only people who can have a
11 cell phone are if you're law enforcement, an attorney,
12 you're associated with this case or you are a member of
13 the press. Other than that, you need to get up and take
14 your cell phone back to your car.

15 Thank you.

16 (Whereupon, the jury return to the courtroom at
17 1:54 PM.)

18 THE COURT: All right. Madam Forelady, the jury
19 ready?

20 FOREPERSON: Yes, Your Honor.

21 THE COURT: I apologize for the delay you-all please
22 be seated. I had to take up another quick matter that I
23 didn't expect, but we'll get started now.

24 Call your next witness, please.

25 MS. WEISS: Thank you, Your Honor.

1 The State calls Teresa Rabon.

2 THE CLERK: Would you, please, raise your right hand
3 and place your left hand on the Bible.

4 (Whereupon, Teresa Rabon was duly sworn by the Clerk
5 of Court.)

6 THE CLERK: Would you, please, have a seat in the
7 witness box. State your full name and spell your last
8 for the record.

9 THE WITNESS: It's Teresa Rabon.

10 THE COURT: You might want to pull that mic up a
11 little closer to you. There you go.

12 TERESA RABON,

13 having been duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MS. WEISS:

16 Q. Good afternoon, Ms. Rabon.

17 A. Hi.

18 Q. First of all, to be clear, do you want to be here
19 today?

20 A. No.

21 Q. And you're here because you're under subpoena to be
22 here?

23 A. (Nods head.)

24 Q. Please answer yes or no just because she's got to take
25 it down.

1 A. Yes.

2 Q. Okay. If you would, tell the jury a little bit about
3 yourself, where you grew up.

4 A. In South Carolina.

5 Q. Okay. And tell me a little bit about your family
6 growing up. What was your mother's name?

7 A. Shirley McDowell.

8 Q. And your father's name?

9 A. Charles McDowell.

10 Q. And there were six children in your family, right?

11 A. Right.

12 Q. Can you tell me the names of all of them in the order
13 of oldest to youngest?

14 A. Are you talking about the kids?

15 Q. Yeah, all of you-all.

16 A. Eddie, Ronnie, me, Tommy, Kathy and Melinda.

17 Q. And when you say Tommy, is that Tommy McDowell?

18 A. Tommy, yes.

19 Q. Tommy McDowell?

20 A. Yes.

21 Q. And he's your brother?

22 A. Yes.

23 Q. Now Melinda was youngest. Did she pass away at a
24 young age?

25 A. Yes.

- 1 Q. How old was she?
- 2 A. She was -- I think she was five.
- 3 Q. Now I'm gonna take you back to the mid eighties. Were
- 4 you married at that point?
- 5 A. Yes. Yes.
- 6 Q. And what was your husband's name at that time?
- 7 A. Gary Fyall.
- 8 Q. Who all was living -- so your family was living -- you
- 9 and your siblings were living -- I mean, your mom and your
- 10 siblings, you-all were living in South Carolina at this
- 11 point, right?
- 12 A. Yes.
- 13 Q. In the Cayce, Gaston area?
- 14 A. Yes.
- 15 Q. West Columbia area?
- 16 A. (Nods head.)
- 17 Q. Okay. If you remember, who all was living at home
- 18 with your mom at that point?
- 19 A. I really don't know.
- 20 Q. Okay. Well, you weren't. You were living with your
- 21 husband most of the time?
- 22 A. Right. In and out, yeah. In and out, yeah.
- 23 Q. And do you know if Tommy was living with your mom?
- 24 A. I really don't know for sure.
- 25 Q. Okay. Spring of 1986 you were working for your dad

- 1 York, South Carolina?
- 2 A. I think so.
- 3 Q. Okay. And how did you get to work?
- 4 A. Tommy's car.
- 5 Q. Okay. And so Tommy was working for your dad -- was
- 6 working with you for your dad in York?
- 7 A. Yes, somewhere.
- 8 Q. And what type of work would you do?
- 9 A. Me?
- 10 Q. Uh-huh.
- 11 A. We done shingles, sheetrock, panelling, staircases.
- 12 Q. Okay. Little bit of everything?
- 13 A. Yeah.
- 14 Q. So tell me about your brother Tommy at that time when
- 15 you-all were travelling together to work. Just if you
- 16 were to describe him to somebody back then, how would you
- 17 describe him?
- 18 A. My brother.
- 19 Q. Yeah.
- 20 A. I mean, my brother.
- 21 Q. How did he look physically? Was he thin? Was he fat?
- 22 A. I think he was thin.
- 23 Q. Okay. And do you remember if he had facial hair?
- 24 A. No, ma'am. I don't remember.
- 25 Q. Do you remember how long his hair was?

1 A. No, ma'am.

2 Q. Okay. Do you remember if there was anything he liked
3 to wear regularly?

4 A. He had a hat.

5 Q. Okay. Do you remember what the hat looked like?

6 A. White.

7 Q. Was it a certain style?

8 A. I just know it was a cowboy hat.

9 Q. And what car did you ride in with Tommy to work?

10 A. Only thing I know it was white. I'm not good with
11 makes and models and all that.

12 Q. Okay. I'm gonna show you what's already been entered
13 as State's Exhibit 6 and 7. Do you recognize this car?

14 A. It looks like it might be the car.

15 Q. Okay.

16 A. I'm not -- I can't say yes or no.

17 Q. Okay. Did you ever drive or was it always Tommy?

18 A. Tommy.

19 Q. Okay. Did you know of Debbie Gutierrez?

20 A. I didn't personally know her, no.

21 Q. Okay. So you didn't personally know her. How did you
22 know her?

23 A. That she liked Tommy.

24 Q. Okay. At some point did you hear about something
25 happening with one of her children?

- 1 A. Yes.
- 2 Q. And what was that?
- 3 A. That -- that she'd gone missing.
- 4 Q. Okay. And how did you hear about it; do you remember?
- 5 A. I don't remember that either.
- 6 Q. And in the summer of '86, you were still married to
- 7 Gary, right?
- 8 A. Yes.
- 9 Q. And where were you and Gary living; do you remember?
- 10 A. In West Columbia.
- 11 Q. Okay. And was this the time you were living in the
- 12 home that belonged to Gary's parents?
- 13 A. Right.
- 14 Q. And so they had moved somewhere else for a little
- 15 while and you were living there?
- 16 A. (Nods head.)
- 17 Q. Do you remember a time when Tommy called you about
- 18 coming over with his car?
- 19 A. I don't remember if he called or not.
- 20 Q. Okay. Well, tell me what you do remember.
- 21 A. That he wanted to know if he could wash his car and
- 22 he washed his car.
- 23 Q. Okay. And the car that you-all would ride in to work?
- 24 A. I think so, yes.
- 25 Q. And did -- did he wash it at your house?

- 1 A. At -- yeah, at --
- 2 Q. Or where were you living?
- 3 A. Yeah.
- 4 Q. Okay. Do you remember how long he was out there
- 5 washing it?
- 6 A. No, ma'am.
- 7 Q. Was it a long time or a short time?
- 8 A. I don't -- I just know he washed his car.
- 9 Q. And was there any particular part of the car that he
- 10 seemed to focus on?
- 11 A. I didn't -- I mean, I just -- he washed his car.
- 12 That's all I know.
- 13 Q. Do you remember if he vacuumed it?
- 14 A. I think so, yes.
- 15 Q. Did he use your vacuum?
- 16 A. I don't know if he did or not. I don't know if it was
- 17 his or what. I just know he vacuumed it, yes.
- 18 Q. Okay. And had he ever come over to your house to wash
- 19 his car before?
- 20 A. That I cannot tell you.
- 21 Q. Okay. And did he ever come by after that to wash his
- 22 car?
- 23 A. I don't think -- I don't know. I just know that one
- 24 time. Just that one time.
- 25 Q. Okay. And how long has it been since you talked to

1 your brother?

2 A. It's a long time.

3 Q. Okay. At some point later that year Tom -- you and
4 Tommy stopped working for your dad, stopped travelling to
5 work for your dad, right?

6 A. (Nods head.)

7 Q. And after that --

8 A. Yes.

9 Q. -- is that about the time you stopped talking to
10 Tommy?

11 A. I believe so.

12 Q. Okay.

13 MS. WEISS: Thank you. I have no further questions.
14 Thank you, Ms. Rabon. Please answer any questions
15 the defense may have.

16 MS. MAULDIN: I beg the Court's indulgence, Your
17 Honor.

18 THE COURT: Take your time.

19 CROSS-EXAMINATION

20 BY MS. MAULDIN:

21 Q. Good afternoon, Ms. Rabon.

22 A. Hey.

23 Q. Do you remember when your mother broke her left arm
24 pretty close to the shoulder?

25 A. (Shakes head.)

1 Q. No? Okay.

2 A. I -- I'm blank.

3 Q. All right. And do you remember Tommy also wearing
4 bandanas when he would work especially?

5 A. I can't say yes or no, ma'am. I don't remember.

6 Q. It's kind of tough to remember things that happened
7 back in 1986, right?

8 A. Yes, ma'am.

9 Q. Okay. And do you remember that when you-all were
10 driving back and forth to York that sometimes Tommy would
11 have a drink in the car and later would have to clean the
12 beer cans out?

13 A. I don't remember.

14 Q. Okay.

15 A. I don't remember.

16 Q. Too long. All right. Thank you. And do you remember
17 that for a while your mom worked at a grocery store that
18 was called Young's Foods?

19 A. Yes, ma'am.

20 Q. Okay. And so sometimes Tommy would go and pick her up
21 after work, right?

22 A. I think so.

23 Q. Okay. And do you remember that the car actually
24 belonged to your mother?

25 A. I don't know. I don't know.

1 Q. Okay. And that's fair. And the -- without asking
2 you any details about it, your family, you-all have gone
3 through some difficult times together and a lot of that's
4 related to your dad and that makes it pretty hard for
5 you-all to sort of communicate with each other now, right?

6 A. Yeah.

7 Q. Okay. And I won't go any further than that.

8 MS. MAULDIN: Your Honor, I beg the Court's
9 indulgence.

10 Nothing further, Your Honor.

11 THE COURT: Any redirect?

12 MS. WEISS: No, Your Honor. And we'd ask that this
13 witness be excused from your subpoena.

14 THE COURT: All right. You can be excused. Thank
15 you for coming.

16 THE WITNESS: Huh?

17 THE COURT: You can be excused.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 THE COURT: Call your next witness.

21 MS. WEISS: Thank you, Your Honor.

22 I'm checking to see if this witness is here.

23 The State calls Clarissa Boyd.

24 THE COURT: Well, I hope she's not in here.

25 MS. WEISS: Oh, no. She's not in here. They're

1 gonna go check. She's a records person.

2 All right. The State calls Gina Carnaggio.

3 THE CLERK: Can you, please, raise your right hand
4 and place your left on the Bible.

5 (Whereupon, Gina Brakefield Carnaggio was duly sworn
6 by the Clerk of Court.)

7 THE CLERK: Would you, please, have a seat in the
8 witness box. State your full name and spell your last
9 for the record.

10 Gina Carnaiggo. C-A-R-N-A-G-G-I-O.

11 GINA BRAKEFIELD CARNAGGIO,

12 having been duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MS. WEISS:

15 Q. Good afternoon, Ms. Carnaggio.

16 A. Hello.

17 Q. What was your maiden name?

18 A. Brakefield.

19 Q. So you're Gina Brakefield Carnaggio?

20 A. I am.

21 Q. If would you, please introduce yourself to the jury
22 and tell them where you grew up.

23 A. I grew up in Cayce. I was a river rat, went to BC.

24 I now live in Gilbert with -- me and my husband adopted
25 two children and my mom lives with us now, she has

1 Alzheimer's, and I have a three-year-old grand baby.

2 Q. Do you remember back in the seventies that your dad
3 had a white car?

4 A. Yes.

5 Q. Can you tell us about that white car?

6 A. It was a Ford Elite. I did not like it, but it was
7 given to me as my car whenever I got my driver's license
8 and I drove it. It was a big bomb car. I mean, it wasn't
9 a bomb, but it was a big, heavy car.

10 Q. Okay. And I'm gonna show you what's already been
11 entered as State's Exhibit 6. Do you -- do you recognize
12 that vehicle?

13 A. Yes.

14 Q. And what is that vehicle?

15 A. That was my dad's car, that was the car I was given,
16 and then he sold it to my aunt.

17 Q. And State's Exhibit 7, is that what the inside looked
18 like?

19 A. Yes.

20 Q. Was there anything special about that inside for your
21 dad?

22 A. Not that I -- I mean, it had to be clean. I mean --

23 Q. So he kept it clean?

24 A. It was clean, yes. It was very clean. If it wasn't
25 dirty, you cleaned it.

1 Q. Did he require the same of you when you were driving
2 it?

3 A. Yes.

4 Q. And I think -- did your dad ever put Toyota floor mats
5 in it?

6 A. No.

7 Q. And why not?

8 A. Because we had the mats that came with it and we took
9 them out and cleaned them and put them back.

10 Q. And you were telling the jury that they gave you that
11 car, so at what point did you start driving that car?

12 A. I was sixteen. I may have been able to drive when I
13 was fifteen I'm not sure, but I'm pretty sure by sixteen I
14 had my restricted and was driving it.

15 Q. Okay. And so what year would that be?

16 A. '80 -- so I graduated in '85. '83.

17 Q. Okay. And how long did you drive the car?

18 A. Until I graduated and married.

19 Q. Okay. And so what year?

20 A. '85. Sorry.

21 Q. '85. And you said you got married?

22 A. Yes.

23 Q. So when did you get married?

24 A. In March right after graduation. I was pregnant.

25 Q. So you got married in '86 right after graduation?

1 A. Yes.

2 Q. And do you remember what your dad did with the car
3 after you got married?

4 A. He sold it to my aunt for a dollar or five dollars.

5 Q. And I know you said you didn't need the car anymore.
6 Why was that?

7 A. Because I had a brand new car.

8 Q. Okay.

9 (State's Exhibit Number 42 and 43 were marked for
10 identification.)

11 BY MS. WEISS:

12 Q. I'm gonna show you what's been marked State's
13 Exhibit 42 and 43 for identification. Do you recognize
14 the name on this paper?

15 A. Yes, it's my dad's name.

16 Q. Okay. And do you recognize the handwriting on these
17 papers?

18 A. Yes, my dad's.

19 Q. Okay. And do you recognize --

20 A. Well, this is --

21 Q. This is your dad's?

22 A. Yes.

23 Q. Okay. And do you recognize the signature?

24 A. Yes, my dad's signature.

25 Q. Okay. And what -- can you tell me what the date was

1 on this paper?

2 A. December 6th of '85.

3 Q. Okay.

4 MS. WEISS: Your Honor, at this time I'd like to
5 admit State's Exhibit 42 into evidence.

6 THE COURT: Any objection?

7 MR. MAULDIN: Without objection, Your Honor.

8 THE COURT: It's admitted.

9 (State's Exhibit Number 42, vehicle sales receipt,
10 was admitted into evidence.)

11 BY MS. WEISS:

12 Q. Whose name is this right here?

13 A. That's my Aunt Shirley's name.

14 Q. Okay. And you said before that your dad sold the
15 vehicle to your Aunt Shirley?

16 A. Yes.

17 Q. Okay. State's Exhibit 42, William Brakefield, this
18 is your dad. Do you know that address?

19 A. Yes, that's where I grew up.

20 Q. Okay. And this is 6th of December and the year?

21 A. '85.

22 Q. Okay. And is this the same vehicle that you've been
23 describing?

24 A. Yes.

25 Q. And how do you know that?

- 1 A. That's my history. I mean, I know that he sold it to
2 her.
- 3 Q. Okay.
- 4 A. And '85 would have been -- my son was actually born
5 shortly after that, the 29th.
- 6 Q. Okay. And do you know who drove the car after he sold
7 it to your Aunt Shirley?
- 8 A. Shirley and Tommy.
- 9 Q. Okay. All right. You said that Shirley McDowell is
10 your aunt?
- 11 A. Yes.
- 12 Q. Or was your aunt?
- 13 A. Yes.
- 14 Q. Okay. Did you know Tommy McDowell?
- 15 A. Yes, he was my cousin.
- 16 Q. And did you know the family?
- 17 A. Yes.
- 18 Q. And how often would you see them?
- 19 A. All the time.
- 20 Q. Where would you see them?
- 21 A. We would see them at our house, we would go to
22 family's house. My dad was really about spending time
23 with his family.
- 24 Q. And Shirley was your dad's older or younger sister?
- 25 A. Older, I think. Yes, I'm pretty sure.

1 Q. Did you know Tommy McDowell?

2 A. Yes.

3 Q. Can you describe, if you were looking at Tommy back in
4 the mid eighties, how you would describe him?

5 A. Thin, long hair, beard, cowboy hat.

6 Q. Okay. I'm gonna show you State's Exhibit 41. Do you
7 recognize the person in that photo?

8 A. Yes.

9 Q. Who is that?

10 A. Tommy.

11 Q. And why do you recognize him?

12 A. That's him. I mean --

13 Q. What are the features that sounds out?

14 A. He's thin, the beard, the hair, the hat.

15 Q. And you don't know what year this picture was taken?

16 A. No.

17 Q. You said you saw him all the time. Did he change his
18 hair style or his beard or his hat very often?

19 A. No.

20 Q. Do you remember a time prior to 1986 when he would
21 have changed?

22 A. Yes.

23 Q. Prior to this. I mean, like over the early eighties
24 he generally looked like that?

25 A. Yes.

1 Q. And during those -- those times when you would go
2 over to the family's house or you-all would go to family's
3 house, did you see him without a cowboy hat on?

4 A. No. And during that time while I was in high school
5 they were in at our house more than -- just they lived
6 close, but my Aunt Shirley were always at our house, so her
7 kids were at our house a lot.

8 Q. Did you smoke when you were in high school?

9 A. I did.

10 Q. All right. Do you know what kind of cigarettes Tommy
11 smoked?

12 A. He smoked Vantage.

13 Q. And how do you know that?

14 A. Because of the cigarette. Well, I would bum
15 cigarettes even though I shouldn't be smoking and they --
16 Vantage was the cigarettes that had hole in the filter in
17 the bottom.

18 Q. And did Shirley or your mom smoke Vantage cigarettes?

19 A. No.

20 Q. Do you remember what they smoked?

21 A. My momma smoked Marlboro Lights, so I'd to take her,
22 and Shirley smoked Benson & Hedges menthol longs.

23 Q. Did you know Debbie Gutierrez?

24 A. Yes.

25 Q. And how did you know Debbie?

1 A. She is my cousin. She's my mom's cousin.

2 Q. And did you see Debbie very often?

3 A. Her and Jeannie would come to mom's a good bit.

4 Q. And when you say Jeannie, who is that?

5 A. I call her my Aunt Jeannie, but she's Debbie's sister.

6 Q. Okay. And your mom and Jeannie were pretty close?

7 A. Yes.

8 Q. And you said they would come over to your mom's. Was

9 there -- you said they came over all the time, but was

10 there a regular reason they'd come over?

11 A. I mean, they would just come over because they were

12 funny and they were just -- talk and when they started

13 talking, they didn't stop, but they also -- they played

14 poker.

15 Q. Okay. And did Shirley also play in poker group with

16 your mom?

17 A. Yes, there was -- and I want to -- there was two

18 different poker groups. They both -- both sides of the

19 family played poker.

20 Q. Okay. And sometimes would your mom host the poker

21 game?

22 A. Yes.

23 Q. And when she did that, would Debbie and Shirley be in

24 the same place together?

25 A. Yes. Yes.