

RECEIVED

Jun 27 2025

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Richland County

Honorable George M. McFaddin, Circuit Court Judge

JOSHUA WILLIAM PORCH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000058

APPENDIX

LARA M. CAUDY
Senior Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

D. RUSSELL BARLOW
Senior Assistant Deputy Attorney General
P.O. Box 11549
Columbia, SC 29211-1549
(803) 734-3727

ATTORNEY FOR PETITIONER

BYRON E. GIPSON
Solicitor, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29201
(803) 576-1800

ATTORNEYS FOR RESPONDENT

VOLUME III OF V
PAGES 1001-1500

INDEX

INDEX	i
PRE-TRIAL TRANSCRIPT DATED OCTOBER 14, 2013	1
PRE-TRIAL TRANSCRIPT DATED NOVEMBER 12, 2013.....	19
TRIAL TRANSCRIPT DATED NOVEMBER 18, 2013	116
TRIAL TRANSCRIPT DATED NOVEMBER 19, 2013	317
TRIAL TRANSCRIPT DATED NOVEMBER 20, 2013	601
TRIAL TRANSCRIPT DATED NOVEMBER 21, 2013	912
TRIAL TRANSCRIPT DATED NOVEMBER 22, 2013	1230
TRIAL TRANSCRIPT DATED NOVEMBER 25, 2013	1597
INITIAL BRIEF OF APPELLANT.....	1954
INITIAL BRIEF OF RESPONDENT	1980
INITIAL REPLY BRIEF OF APPELLANT	2028
<u>THE STATE V. JOSHUA WILLIAM PORCH</u> , OP. NO. 5435 (S.C. CT. APP. FILED AUGUST 3, 2016)	2043
PETITION FOR REHEARING.....	2052
ORDER DENYING REHEARING.....	2059
PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	2061
RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	2081
REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS	2110
ORDER GRANTING CERTIORARI	2119
BRIEF OF PETITIONER.....	2121

BRIEF OF RESPONDENT	2154
REPLY BRIEF OF PETITIONER	2215
<u>THE STATE V. JOSHUA WILLIAM PORCH</u> , OP. NO. 27809 (S.C. CT. APP. FILED MAY 30, 2018)	2235
REMITTITUR	2237
APPLICATION FOR POST-CONVICTION RELIEF	2238
RETURN.....	2246
MOTION TO AMEND APPLICATION FOR POST-CONVICTION RELIEF	2253
AMENDED POST-CONVICTION RELIEF APPLICATION.....	2256
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED MAY 27, 2022.....	2263
ORDER OF DISMISSAL	2401
INDICTMENT.....	2506
SENTENCE SHEET.....	2508

1 stand, please.

2 State your name for the record.

3 THE WITNESS: Bradley J. Marcus, M-A-R-C-U-S.

4 THE COURT: Yes, sir.

5 DIRECT EXAMINATION BY MR. UNDERWOOD:

6 Q. Good morning, Dr. Marcus.

7 Would you please tell the jury what it is that you do
8 for a living?

9 A. I am a -- I'm a medical doctor. I am a forensic
10 pathologist by definition, so I'm actually a pathologist.
11 Also I'm a forensic pathologist. I have specialty training
12 doing autopsies.

13 Q. Okay. And, if you could, please summarize your
14 education and training that allows you to be able to perform
15 autopsies.

16 A. Sure. I went to college.

17 After that I went to medical school and got an M.D.
18 Degree.

19 From there I went to the Medical University of South
20 Carolina in Charleston. I spent six years there, studying
21 pathology in general. And in addition to that, I did
22 another year of forensic pathology training. So there I
23 learned how to do autopsies and determine cause and manner
24 of deaths on people that suddenly and unexpectedly die.

25 From that point onward I was able to pass my boards.

1 So I'm board certified in anatomic pathology, clinical
2 pathology, forensic pathology, and cytopathology. Now,
3 cytopathology is something like pap smears. People get pap
4 smears. I'm the guy that looks at all the pap smears also.

5 In addition to that, I have done approximately 2,000
6 autopsies.

7 I have an unrestricted medical license here in South
8 Carolina, North Carolina, and Georgia.

9 I also work as the chief medical examiner for the
10 Richland County coroner's office here in this county.

11 Q. And, Dr. Marcus, have you ever been qualified as an
12 expert in court before?

13 A. Yes, I have.

14 Q. In what field?

15 A. In forensic pathology.

16 Q. And on how many occasions?

17 A. Approximately twenty to twenty-five.

18 MR. UNDERWOOD: Your Honor, at this time the State
19 offers Dr. Marcus as an expert witness in forensic
20 pathology.

21 THE COURT: Any voir dire?

22 MR. BRIAN SHEALEY: Your Honor, no voir dire, no
23 objection.

24 THE COURT: And I'll find him so qualified as a
25 forensic pathologist.

1 BY MR. UNDERWOOD:

2 Q. Dr. Marcus, did you have an opportunity to review the
3 autopsy of Nakia Mallory?

4 A. I did.

5 Q. How did you get involved with that?

6 A. I was asked to review the autopsy on Nakia Mallory, a
7 autopsy that was performed in May of 2006, before I was even
8 working in my current position. At that moment I was still
9 at MUSC, but I was asked to review this approximately in
10 2012. And I reviewed the autopsy due to the fact that the
11 original pathologist has passed away since.

12 Q. Now, when we say you reviewed the autopsy, what
13 materials have you had opportunity to examine?

14 A. I reviewed the autopsy report that Dr. Stanton Kessler
15 wrote back in May of 2006.

16 I reviewed the autopsy photos.

17 In addition to that I have reviewed -- I was given
18 courtroom testimony, which I read that.

19 And also from the photos I was able to make diagrams.
20 Dr. Kessler, he was -- he just didn't make diagrams in this
21 case, so from the photos I made diagrams. I like to use
22 diagrams.

23 Q. Okay.

24 MR. UNDERWOOD: May I approach the witness, Your
25 Honor?

1 THE COURT: Yes, sir.

2 BY MR. UNDERWOOD:

3 Q. Dr. Marcus, I'm handing you what's been marked as
4 State's Exhibit 42 and 43. Can you review those, please,
5 and identify them?

6 A. Yes. These are the diagrams that I made from the
7 photos taken during the autopsy. I made these diagrams on
8 April 3rd, 2013.

9 And then the one other diagram I made on April 2nd,
10 2013.

11 Q. Can you generally describe what each diagram is of,
12 starting with Exhibit 42?

13 A. Exhibit 42, this is a diagram -- can I show the jury?

14 Q. Not yet. Just what went into the diagram?

15 A. This is a diagram of areas of hemorrhage that was found
16 on Ms. Mallory's skull and on her scalp, areas of where
17 there was bruising, like a contusion, a bruise, like a black
18 and blue mark. If you see it in the skin, it looks like
19 that color. Here is this areas of bruising on her scalp.

20 Q. And Exhibit 43?

21 A. This here -- this here is a full body diagram of
22 showing where Ms. Mallory had several injuries that were
23 photographed during the autopsy on her body.

24 MR. UNDERWOOD: Your Honor, at this time the State
25 moves for Exhibit 42 and 43 to be admitted.

1 THE COURT: Any objection?

2 MR. BRIAN SHEALEY: No objection.

3 THE COURT: Without objection, they are admitted.

4 (Whereupon, State's Exhibit No. 42 was entered
5 into the record as evidence)

6 (Whereupon, State's Exhibit No. 43 was entered
7 into the record as evidence)

8 BY MR. UNDERWOOD:

9 Q. Dr. Marcus, did you also have an opportunity to create
10 your own report?

11 A. What I did was -- yes, I put something in writing. I
12 made a new autopsy number and I called it a forensic
13 consult. I labeled it as FC12-122 as a forensic consult.
14 So I was able to then get -- put my findings in the report,
15 and then attached onto it Dr. Kessler's autopsy findings.

16 Q. Okay.

17 (Autopsy Report marked as State's Exhibit No. 44
18 for identification)

19 BY MR. UNDERWOOD:

20 Q. Now, I'm handing you what's been marked for
21 identification as State's Exhibit No. 44. Can you review
22 that document and identify it, please?

23 A. Yes, this is the forensic consult that I did on Nakia
24 Mallory, and attached to it is a copy of Dr. Kessler's
25 autopsy report.

1 MR. UNDERWOOD: Your Honor, at this time I would
2 ask for State's Exhibit 44 to be admitted into evidence.

3 THE COURT: Any objection?

4 MR. BRIAN SHEALEY: Without objection, judge.

5 THE COURT: It's admitted.

6 (Whereupon, State's Exhibit No. 44 was entered
7 into the record as evidence)

8 BY MR. UNDERWOOD:

9 Q. Dr. Marcus, I also want to hand you what's already been
10 entered into evidence as State's Exhibit 18, 19, 22, and 23.
11 Do you recognize those exhibits?

12 A. Yes, I do.

13 Q. And are those photographs that -- well, some of the
14 photographs that you reviewed as part of your consultation?

15 A. Yes, they are, sir.

16 Q. Now, Dr. Marcus, as a part of your review and
17 consultation of this case, were you able to draw your own
18 conclusions concerning the injuries and manner of death for
19 Nakia Mallory?

20 A. I did.

21 MR. UNDERWOOD: Your Honor, at this time I would
22 ask for Dr. Marcus to be allowed to step down to go through
23 some of these exhibits with the jury.

24 THE COURT: Yes, sir.

25 (Witness off the witness stand).

1 THE COURT: And I believe you talk loud enough,
2 but I'll just remind you to keep your voice up so that we
3 can make sure that we record your testimony.

4 THE WITNESS: No problem.

5 BY MR. UNDERWOOD:

6 Q. Dr. Marcus, if you could, using your diagram, Exhibit
7 42 and any pertinent photographs, can you explain to the
8 jury, using those exhibits, what injuries, as far as
9 contusions or abrasions that you found?

10 A. Yes.

11 This here is a diagram of the scalp, okay? So I want
12 you to try and visualize this. The way we have to do an
13 autopsy to preserve the face and everything like that, we
14 make an incision behind the ears and we go -- then from that
15 point then you try to get our hands up and we actually flip
16 the scalp over the face, okay? So that's what this here is.
17 Then we can take the skull cap off. Then we can put it all
18 back, cover it, and you can't tell that the head -- someone
19 went into the back of their head, because the body lies on
20 the pillow within the coffin. So this is the technique that
21 you have to use and it's the best way to preserve the face.

22 So in this case this is a diagram of that scalp kind of
23 pushed over the face there. I mean, that would just be bare
24 skull right there, and that's through the back. That's the
25 side's views. So when you do this, we do -- we actually

1 look for any types of hemorrhage where there was areas of
2 force put on the person's head at some point.

3 So in this case there was areas of hemorrhage along the
4 scalp here. So that's the scalp, and that's the underlying
5 skull. So those two would match up.

6 Here is another area of hemorrhage on the right side.

7 This is another area on the left side, and that
8 corresponds to the skull hemorrhage there.

9 And then she had several areas of hemorrhage on the
10 back.

11 So from these points, these are like blunt trauma to
12 the head. Blunt trauma caused these. You can kind of count
13 the number of impacts. This was one, two, three, four,
14 five, six. I would say at least six times she was struck by
15 something, either a blunt object, or something, this here.
16 That's what this depicts right here.

17 Q. Dr. Marcus, when you say blunt trauma, could those
18 injuries also be caused by someone's hands?

19 A. Possibly. The knuckles, possibly. Absolutely.

20 Q. Okay. What about with palm strikes?

21 MR. BRIAN SHEALEY: Objection to leading.

22 THE COURT: Sustained. Rephrase the question.

23 BY MR. UNDERWOOD:

24 Q. Dr. Marcus, is it possible for injuries like that to be
25 caused by palm strikes?

1 A. It's possible.

2 Q. Now, Dr. Marcus, in addition to those hemorrhages, were
3 there any other contusions or cuts that you observed?

4 A. Yes. On the other diagram, on diagram --

5 Q. State's Exhibit 43?

6 A. Yes, Exhibit 43, there is a small contusion right here
7 on the neck region, the left neck area.

8 Q. When you say a contusion, what exactly is a contusion?

9 A. Basically it's a bruise. If you think about a small
10 child when they are like a toddler and stuff, they get those
11 marks on the fronts of their feet, legs, because they are
12 trying to run around and they fall and so forth and they get
13 a black and blue mark a little bit afterwards, that's what a
14 contusion is. It's just from blunt trauma, basically. You
15 strike the skin and you have a little bit of hemorrhage that
16 occurs in the skin. And then over time it changes color and
17 then disappears, you know, a week, two weeks later. It
18 depends on the person. So it's from blunt trauma of some
19 sort.

20 Q. Now, Dr. Marcus, before we get to the cuts, the
21 injuries that you found on the head and the scalp and
22 contusion on the neck, were you able to determine how close
23 to the time of death those injuries occurred?

24 A. Yeah, they appeared fresh in the photos. So in my
25 opinion they occurred right about at the time of her death.

1 Q. Okay. Doctor, let's move on to the other injuries that
2 you observed.

3 A. Yes. And then there were two sharp-forced injuries to
4 Ms. Mallory. One was to the right side of her neck area and
5 one was also to her right eyebrow region, and those were
6 caused by some sort of sharp object.

7 Q. And, Dr. Marcus, could I refer you to Exhibit 19? If
8 you could demonstrate to the jury what injury that is a
9 photograph of?

10 A. This here -- this here is in her right eyebrow, and
11 this is a sharp-forced injury, like a stab wound, called a
12 stab wound to her right eye area -- or her right eyebrow
13 area.

14 Q. And from observing that wound, what conclusions can you
15 make?

16 A. Well, this wound -- this wound, something sharp touched
17 her in her eye there, okay? Not in her eye, in her eyebrow
18 region, okay, but it wasn't -- it wasn't very deep. It was
19 very superficial. It probably went, you know, down, cut the
20 skin and subcutaneous tissue underneath it and that's pretty
21 much it. It wasn't a fatal wound.

22 Q. Okay. Now, Dr. Marcus, I bring your attention to
23 State's Exhibit No. 18. Can you go through that exhibit and
24 what you learned from it, for the jury?

25 A. Yes, this here is a picture of the wound to the right

1 neck region. Now, this wound is different, because this is
2 actually a very -- it's a deep stab wound. And then any
3 time that you get a stab wound in the neck region, you got
4 to be worried about it hitting vessels, because your neck is
5 full of vessels. So in this case this wound struck some of
6 the vessels in there, and this wound is the fatal -- the
7 fatal injury that Ms. Mallory received, it struck and cut
8 the jugular vein in the neck and that caused her to bleed to
9 death.

10 Q. How fast would someone bleed to death with that kind of
11 an injury?

12 A. In my opinion, this is about five minutes, or so. Five
13 minutes, because there still would be a lot of blood coming
14 out of this wound.

15 Q. If someone were to receive a wound like that, would it
16 be quite obvious that that was a significant wound to any
17 onlookers?

18 MR. BRIAN SHEALEY: Your Honor, that's objecting
19 to the leading. Obviously --

20 MR. UNDERWOOD: He's an expert witness, Your
21 Honor. That's a medical question.

22 THE COURT: Repeat the question.

23 BY MR. UNDERWOOD:

24 Q. Dr. Marcus, if a person were to receive an injury, as
25 pictured in that photograph, would any onlookers be able to

1 obviously tell it was a significant injury?

2 THE COURT: You may answer the question.

3 A. In my opinion, yes, because it would be bleeding
4 profusely.

5 BY MR. UNDERWOOD:

6 Q. How bad? When you say profusely, will you describe
7 what kind of bleeding?

8 A. Well, yes, it would be -- it wouldn't be -- the injury
9 wouldn't -- because it's hitting an artery, it would be
10 squirting out blood. If it hit the carotid artery, every
11 time the heart beat, it would squirt blood out in a
12 trajectory path.

13 This here would probably just start, you know, oozing
14 blood at a significant amount down the neck and so forth
15 like that. On her face, possibly, depending on where her
16 body, what kind of motion her face was in.

17 Q. And, Dr. Marcus, did you say that that is the fatal
18 wound?

19 A. Yeah, this is the fatal wound. Unless you get surgical
20 therapy immediately, this is a fatal wound.

21 Q. Okay. Now, Dr. Marcus, did you -- if you need to refer
22 to your report, that's fine. Can you explain the angles and
23 depths of that injury?

24 A. The -- this was labeled as stab wound number A, again,
25 so the -- the depth of penetration Dr. Kessler wrote was 2.5

1 to 3 inches. So, you know, probably about that much of the
2 knife, or whatever object that was used went into her, a
3 sharp instrument went into her.

4 And the direction of the stab wound is backwards, going
5 forward, downward and to the left. So it's going like this,
6 according to his report.

7 Q. Now, Dr. Marcus, if you make the demonstration, but
8 would that be consistent with a sharp object coming at an
9 angle like this? If you could use my pen as what --

10 A. It would be actually almost going like this. But,
11 again, I don't know what the position of her body was when
12 she was -- you know, when she was stabbed. She could have
13 been down like this, for all I know. She could have been
14 bent over and that could have made that possible, but the
15 sharp injury was going like this. Like this. It was going
16 forward, according to the report. But, again, I can't tell
17 you exactly, because I don't know the position of her body.

18 Q. Now, if I can ask you hypothetically speaking, if the
19 assailant were standing in front of the victim, how would
20 that injury occur, assuming that both individuals were
21 standing facing one another?

22 A. It either could occur like this, going like this; or
23 the left hand can go -- like coming at someone like that.
24 Do you understand? Like this. That would be the trajectory
25 it could be.

1 Q. Okay. And, Dr. Marcus, in your opinion, is this wound
2 consistent with a person standing -- a left-handed person
3 standing, in front the victim?

4 A. It could be, yes.

5 MR. UNDERWOOD: Court's indulgence.

6 (Off the record)

7 (Back on the record)

8 BY MR. UNDERWOOD:

9 Q. I think that's enough for our demonstrations, doctor.
10 If you want to go ahead and take your seat.

11 (Witness back on the witness stand)

12 BY MR. UNDERWOOD:

13 Q. Now, Dr. Marcus, could you explain to the jury what
14 effects, as far as the color and appearance of blood, once
15 it has left the body and it's been exposed to air? Can you
16 explain that?

17 A. Yeah, the blood -- blood is red. It's red in color.
18 You know, it's kind of almost like a -- it could be a
19 darkish red color appearing. Very -- you know, it's a
20 liquid, so it can go everywhere.

21 Q. Now, when blood leaves the body and it's in the air for
22 a time, how does the color of blood change?

23 A. My experience is it gets very, very dark, because you
24 have the serum, the plasma of your blood, kind of can
25 separate a bit and then all the red blood cells kind of go

1 together, so it becomes -- it does becomes darker.

2 (Off the record)

3 (Back on the record)

4 BY MR. UNDERWOOD:

5 Q. Dr. Marcus, after your examination of this autopsy and
6 all the materials that you were given, were you able to come
7 to any conclusions concerning the cause and manner of death
8 of Nakia Mallory?

9 A. Yes.

10 Q. And what were those?

11 A. Based on my review of everything, I concurred with Dr.
12 Kessler's report that she died of a stab wound to her neck
13 and she bled to death. Dr. Kessler put that into her --
14 into his report.

15 Q. Thank you. Please answer any questions that the
16 defense may have.

17 MR. BRIAN SHEALEY: May it please the court?

18 THE COURT: Yes, sir.

19 CROSS EXAMINATION BY MR. BRIAN SHEALEY:

20 Q. Thank you, doctor.

21 It's kind of an unusual situation reviewing an analysis
22 from a pathologist's report, correct?

23 A. It's the first time I have reviewed a deceased
24 pathologist's report. Yes, that's true.

25 Q. Okay. We appreciate you being here today.

1 Now, your report, which you come up with your
2 conclusions -- and you have a copy of your report,
3 obviously?

4 A. Yes.

5 Q. It says that you reviewed Dr. Kessler's, his own
6 report, as the person that performed the autopsy then and
7 there actually viewing the body, right?

8 A. That's correct.

9 Q. You reviewed his courtroom testimony as well, the
10 transcript?

11 A. That's correct.

12 Q. And you said that you basically concur with Dr.
13 Kessler's autopsy findings and that she died of just
14 basically blood loss from that stab wound to the right side
15 of her neck, right?

16 A. That's correct, sir.

17 Q. Okay. Now, reading the transcripts, I mean, your -- do
18 you know who Dr. Kessler was?

19 A. Oh, yes, I knew him. Yes, I have known him for many
20 years.

21 Q. I mean, he's kind of came before you and you would have
22 known who he is?

23 A. Yeah, I have seen him at many meetings around the
24 country. And then he's -- he actually was working my job.
25 I actually replaced him.

1 Q. Right.

2 And even though he passed away, he did have an
3 opportunity to testify previously right where you are on
4 this matter?

5 A. Yes, I -- I think so, yes.

6 Q. And reviewing the transcripts you reviewed -- you
7 already know his qualifications?

8 A. Right, yes, he's -- I know about his qualifications,
9 yes.

10 Q. And was working for Mass General for a time, and he
11 taught at Harvard and B.U.?

12 A. Oh, yes.

13 Q. He was well qualified. He was qualified in this court
14 and many others?

15 A. Yes.

16 Q. Now, I think you got down here and you were
17 demonstrating some things, and I think Mr. Underwood had you
18 demonstrate, you know, a stab wound and how it could have
19 occurred with that right side of the neck, and you first
20 kind of came in with your right hand, and then you
21 demonstrated how it could come in with your left hand. Do
22 you recall that?

23 A. Yes, sir.

24 Q. Okay. In reviewing Dr. Kessler's report, as well as
25 transcripts, there was really never any kind of

1 determination made about front or back, or even left or
2 right, because, you know, you can't really tell. All you
3 can really tell is the direction it actually enters the
4 body, right?

5 A. That's correct, sir.

6 Q. So when he says it's consistent, it could be consistent
7 with coming in from the left like this, you said, correct?

8 A. That's correct.

9 Q. The same way that you got to say it could be consistent
10 with coming in like this?

11 A. That's correct.

12 Q. You weren't there.

13 And the transcript testimony of Dr. Kessler also
14 testified that, you know, it could have been done from the
15 back; it could have been done from the front. There are
16 equal ways it could have occurred; front, back, left, or
17 right?

18 A. That's correct.

19 Q. And -- now, your job is difficult. I mean, you get
20 training in this regard to kind of assist as an expert and
21 assist jurors, but in this case it's really hard to tell
22 exactly how it occurred. All you know is the angle of the
23 stab wound and that that was the fatal wound?

24 A. That's correct.

25 Q. Okay. In this case Ms. Mallory unfortunately was

1 bleeding to death, and the technical term for that is?

2 A. Exsanguination.

3 Q. Right.

4 And she was also aspirating blood?

5 A. That's correct.

6 Q. Because this wound, you know, transected the vein, the
7 jugular?

8 A. Yes.

9 Q. And you testified that it would have started as an -- I
10 wrote exactly what you said. You said it wouldn't have been
11 squirting blood. It would have been more -- I believe you
12 said something synonymous with trickle -- it would start
13 oozing blood is what you said?

14 A. That's correct.

15 Q. Now, the carotid artery, that kind of artery, if that
16 had been cut, it would have been more squirting?

17 A. That's correct, sir. It would have literally squirted
18 out like a water pistol.

19 Q. Right.

20 And I think Dr. Kessler talks about that in his
21 testimony as well, but the vein that was cut here was more
22 oozing than squirting?

23 A. That's correct.

24 Q. And some of the blood on the crime scene that Dr.
25 Kessler testifies to is correlated more with aspiration and

1 coughing up of blood, you know, kind of the splattering and
2 that of thing, he testified as to that.

3 A. (Shaking head yes).

4 Q. So it's -- you know, the blood everywhere on the crime
5 scene is a massive loss of blood, correct?

6 A. That's correct.

7 Q. She dies of blood loss?

8 A. Correct.

9 Q. But some of this blood that is maybe visibly shooting
10 places, Dr. Kessler testified that was due to the
11 aspirating? She was suffocating? She's trying to cough it
12 up?

13 A. Can I review my report briefly?

14 Q. Sure.

15 A. Yes, she -- she -- she seemed to have aspirated the
16 blood. I agree with that. And -- but that could have come
17 down from her mouth, too. And, yeah, certainly she could
18 have coughed blood up. That's certainly possible.

19 Q. Now, again, you already testified that you reviewed the
20 testimony in this case by Dr. Kessler?

21 A. Yes, that's correct.

22 Q. Okay. And you agree with his conclusions regarding the
23 fatal wound, correct?

24 A. That's correct.

25 Q. Okay. She had some bruising to her neck?

1 A. That's correct.

2 Q. She had some bruising to the top of her head?

3 A. That's correct.

4 Q. Okay. Any kind of blunt object, including someone's
5 hand or something of substance, could have caused this
6 bruising, right?

7 A. That's correct.

8 Q. Okay. And there were no skull fractures or hematoma,
9 but it is bruising, right?

10 A. That's correct. There is no skull fractures, that's
11 correct.

12 Q. Okay. Now, I think you testified that, you know, with
13 this kind of blood loss in the way that it occurred, that
14 she wouldn't have survived more than five minutes, right?

15 A. That's my -- that's correct.

16 Q. And you have reviewed the transcripts and the testimony
17 from Dr. Kessler and he agrees with you, but his testimony
18 basically is that it wouldn't be more than ten to fifteen
19 minutes -- couldn't be any longer than that, but certainly
20 could be shorter. You reviewed that?

21 A. I did.

22 Q. Okay. So we are in a time from here where it can't be
23 more than fifteen minutes. And you reviewed Dr. Kessler's
24 testimony on that and you have indicated here maybe even
25 five minutes?

1 A. That's true. That's --

2 Q. We are not talking about an hour of trying to survive
3 this. It's relatively short?

4 A. In my opinion, yes.

5 Q. Now, I know Mr. Underwood had you talk to the jury
6 about these other nonfatal injuries; the cut to her eyebrow.
7 There is also a very faint marking on her cheek. A cut,
8 right?

9 Do you have that in your report? Do you have the
10 pictures with you, doctor?

11 A. I have got these four, yes.

12 Q. May I see those, please?

13 I would refer you to State's Exhibit 19, just for your
14 benefit, in case you don't see it in your report, but --
15 right there.

16 A. Yes, that's a small abrasion there on -- under her eye.

17 Q. And I think the testimony from Dr. Kessler and what you
18 have observed, that is consistent with a sharp object that
19 grazed the skin, without doing any kind of tissue damage, as
20 in the cut to the eyebrow? It's a grazing, basically?

21 A. It -- it could be. It could be.

22 To me from this angle that just looks like an abrasion.

23 Q. Okay.

24 MR. BRIAN SHEALEY: Beg the court's indulgence.

25 (Off the record)

1 (Back on the record)

2 BY MR. BRIAN SHEALEY:

3 Q. Thank you, doctor. I appreciate it.

4 THE COURT: Any redirect?

5 MR. UNDERWOOD: Very briefly, Your Honor.

6 REDIRECT EXAMINATION BY MR. UNDERWOOD:

7 Q. Dr. Marcus, is it your testimony that you agreed with
8 Dr. Kessler that Nakia Mallory could have lived anywhere
9 from five to fifteen minutes after being stabbed?

10 A. My opinion is I'm a little different with that. I
11 think she could have lived about five minutes with an injury
12 like that.

13 Q. Is it possible that she could have lived longer?

14 A. It's possible. It's possible. I don't know if she put
15 pressure on the area. I don't know that.

16 Q. Thank you.

17 MR. UNDERWOOD: No further questions, Your Honor.

18 THE COURT: You may step down. Thank you.

19 May this witness be excused?

20 MR. UNDERWOOD: Yes, Your Honor.

21 MR. BRIAN SHEALEY: Yes.

22 THE COURT: You may be excused. Thank you.

23 THE WITNESS: Thank you.

24 THE COURT: You may call your next witness.

25 MR. GOINGS: The State would call Investigator

1 Holdorf. Travis Holdorf.

2 INVESTIGATOR TRAVIS HOLDORF, having been first
3 duly sworn, testified as follows:

4 THE CLERK: Have a seat on the witness stand,
5 please.

6 State your name for the record.

7 THE WITNESS: Travis Holdorf, H-O-L-D-O-R-F.

8 DIRECT EXAMINATION BY MR. GOINGS:

9 Q. Good afternoon, Investigator Holdorf. How are you?

10 A. Well, sir.

11 Q. Would you please tell this jury where you are currently
12 employed?

13 A. I'm currently employed with the Richland County
14 Sheriff's Department. I'm in the Sex Crimes and Child Abuse
15 Division. I'm the seventh member of our team that goes on
16 call primarily for homicides.

17 Q. And how long have you been employed with the Richland
18 County Sheriff's Department?

19 A. Nineteen years.

20 Q. Okay. And let's go through your background a little
21 bit. How did you start with them?

22 A. After high school I did four years in the Air Force. I
23 decided I did not want to make that a career, so I joined
24 the sheriff's department. I started out on the road. I
25 stayed on the road for a little over three years. They had

1 an opening for investigators, gave a test and oral board. I
2 did well on both and became an investigator.

3 Q. And when was that?

4 A. The summer of '97.

5 Q. And that's what you have doing since then?

6 A. Yes, sir.

7 Q. Okay. And that was your role in 2006, was an
8 investigator with the Richland County sheriff's office?

9 A. Yes, sir.

10 Q. Okay. Were you assigned to this particular homicide?

11 A. Yes, sir.

12 Q. All right. Describe how you first got word of it, to
13 the jury.

14 A. I was first contacted by Sergeant Strange. Our shift
15 was on call. He would be the supervisor over our shift. I
16 responded out to the hospital, which was Providence
17 Northeast off Farrow Road.

18 Q. Why did you go to the hospital first?

19 A. That's where the victim was taken.

20 Q. All right. And what did you do when you got to the
21 hospital?

22 A. Once I was there I met with Justin Mallory and started
23 talking with Mr. Mallory.

24 Q. And after that conversation ended with Mr. Mallory,
25 what was your next course of action?

1 A. It pretty much continued throughout the day. I wanted
2 to get a written statement from him. That's something that
3 you want to try to do in as timely of a fashion as you can
4 and so we went to our headquarters and I took a written
5 statement from him.

6 Q. Okay. So you never went to the crime scene that night,
7 or that morning?

8 A. I want to say later that morning.

9 Q. After your discussion with Mr. Mallory?

10 A. I believe, sir. I would have to review my notes, but I
11 don't --

12 Q. Do you have a copy of your report with you?

13 A. Yes, sir.

14 Q. Okay. You can review it to refresh your memory.

15 A. I don't believe I went to the crime scene until later
16 that afternoon.

17 Q. Okay. So the first part of your investigation focused
18 on interviewing and getting a statement from Justin Mallory,
19 is that correct?

20 A. Yes, sir.

21 Q. And did you have that conversation at headquarters?

22 A. Yes, sir.

23 Q. And based on that conversation, what did you learn
24 about Mr. Mallory's whereabouts that night?

25 A. He had left his house, went out with a lady by the name

1 of Ricki Cook. He got -- I got the whereabouts where they
2 were. He dropped Ricki back off at her sister's house and
3 then he went home.

4 Q. And what did he tell you about -- well, basically, your
5 information what time he arrived home?

6 A. I want to say, according to him, he was saying it was
7 around 3:45, or so. That was according to him. That's what
8 we had that morning --

9 Q. What --

10 A. -- if I'm not mistaken. I haven't seen his statement.

11 Q. Okay. What did he find when he arrived at his house,
12 is my question?

13 A. Okay. When he arrived at his house he noticed that
14 there was a towel that they usually kept on the blinds.
15 It's a one story -- it's a two story apartment. Theirs is
16 on the first floor, so there is a porch area that you could
17 walk in from the outside.

18 The front door would be in the breezeway.

19 He stated the first thing that he noticed was that the
20 blanket they kept over the blinds was not there. He looked
21 in and he saw his wife bleeding. Then he went to get help.

22 Q. Do you know whether or not he took his wife to the
23 hospital that night?

24 A. He did.

25 Q. Now, when you were interviewing him, was he cooperating

1 at the time?

2 A. He was.

3 Q. Okay. Did he freely give this information to law
4 enforcement?

5 A. Yes, sir, he did.

6 Q. Did he actually -- well, did you ever ask him if you
7 could search his house?

8 A. Yes, sir.

9 Q. And what was his response to that?

10 A. He let us search his house, search his vehicles, signed
11 a consent to search for his person, for his DNA.

12 Q. So is it fair at the beginning of this investigation
13 Mr. Mallory was cooperative with law enforcement?

14 A. Yes, sir.

15 Q. And based on your knowledge of the investigation, from
16 the first time that you spoke with him until now, has Mr.
17 Mallory's statements ever changed about his whereabouts and
18 what he found when he got home that night?

19 A. It has not.

20 Q. And you again said that there was -- he consented to
21 searches, correct?

22 A. Yes, sir.

23 Q. A search of the home?

24 A. Yes, sir.

25 Q. His person?

1 A. Yes, sir.

2 Q. So you have been in law enforcement for awhile, is that
3 right?

4 A. Yes, sir.

5 Q. Even though a person gives a consent to search their
6 home, does law enforcement sometimes still go and get a
7 search warrant?

8 A. Yes, sir.

9 Q. And why is that?

10 A. The consent -- if you give a consent to look at your
11 house, you can say automatically "I don't want you looking
12 any more," and it would stop right then and there.

13 The search warrant is signed by a judge. It allows us
14 to look through the property. It's just a redundant, almost
15 like a backup.

16 Q. But your testimony here today is that Mr. Mallory gave
17 you consent to search?

18 A. He did, yes, sir.

19 Q. What about consent to search his van?

20 A. Yes, sir.

21 Q. And his person?

22 A. Yes, sir.

23 Q. And -- so you get a statement from Mr. Mallory. When
24 do you go to the crime scene?

25 A. It would have been later that afternoon.

1 My responsibility that morning was staying with Mr.
2 Mallory. You are getting a lot of information coming in
3 from other investigators they were out at the scene, and
4 it's just talking with Mr. Mallory.

5 Q. And as part of the investigation early on after you got
6 the information from Mr. Mallory, did you seek to
7 corroborate his account of where he was?

8 A. Yes, sir.

9 Q. And how did you go about doing that?

10 A. He actually showed us where he dropped Ricki Cook off
11 at. He pointed out her sister's house. I went there with
12 Sergeant Strange. Mr. Mallory was in my car and Sergeant
13 Strange spoke to Ms. Cook.

14 Q. Were you there when Ms. Cook was interviewed?

15 A. I was not. I was with Mr. Mallory.

16 I also asked him where he had been before the Exxon. I
17 think it was an Econo Lodge, and verified that information,
18 not that morning, but shortly thereafter.

19 Q. And how did you verify the information that he had
20 rented a room at the Economy Inn?

21 A. Went there.

22 Q. And was that, in fact, verified by you?

23 A. It was, yes, sir.

24 Q. Do you know what time that Mr. Mallory and Ms. Cook
25 checked into the Econo Lodge -- the Economy Inn that night?

1 A. I did. I'll look at my notes.

2 He would have checked in approximately at 1:37 in the
3 morning?

4 Q. 1:37 a.m.?

5 A. Yes, sir.

6 Q. Did you get a -- at any point in time, either your
7 search from the vehicle or from the motel, did you get a
8 receipt to verify that?

9 A. I went to the front desk and would have gotten that
10 information.

11 There were no video cameras. There is no way to tell
12 when checkout was, but he stated after he left the hotel, he
13 went to the Exxon, which was across the street.

14 Q. All right.

15 A. And I obtained a video and the cash register receipt
16 from the Exxon.

17 Q. All right. Let's stay with the hotel for a second.

18 I'm going to show you --

19 (Receipt marked as State's Exhibit No. 45 for
20 identification)

21 BY MR. GOINGS:

22 Q. I'm going to hand you what's been marked State's
23 Exhibit 45. Do you recognize that document?

24 A. Yes, sir.

25 Q. And what is that document?

1 A. It's a printout from the Economy Inn --

2 Q. And --

3 A. -- where Mr. Mallory checked in. It has his name, what
4 room number they were in, the time, the date.

5 Q. Now, it also has standard check-in and checkout times
6 on there at the bottom, is that correct?

7 A. Yes, sir.

8 Q. Eleven a.m. to four p.m.?

9 A. Yes, sir.

10 Q. Okay. But it was printed at what time?

11 A. Printed on the 14th at 1:37 a.m..

12 Q. So that's the receipt that Mr. Mallory received for his
13 room?

14 A. I'm not a hundred percent if that's his receipt or
15 something we received from the hotel, but I do believe
16 that's from the Economy -- from the hotel.

17 Q. Okay. And that's shows what time he checked in?

18 A. Yes, sir.

19 MR. GOINGS: Your Honor, at this time I would move
20 to introduce State's Exhibit 45.

21 THE COURT: Any objection?

22 MR. BRIAN SHEALEY: No objection, judge.

23 THE COURT: It's admitted.

24 (Whereupon, State's Exhibit No. 45 was entered
25 into the record as evidence)

1 BY MR. GOINGS:

2 Q. So at least at 1:37 in the morning, at that point in
3 time, you know Mr. Mallory is where?

4 MR. LUKE SHEALEY: Your Honor, I object to
5 leading.

6 BY MR. GOINGS:

7 Q. Where is Mr. Mallory at 1:37?

8 A. He's checking into the Economy Inn.

9 Q. With who?

10 A. Ms. Ricki Cook.

11 Q. Okay. And this is part of the timeline that you
12 started establishing early on in your investigation?

13 A. Yes, sir.

14 Q. And you said that afterwards, once they left the hotel
15 that morning, they went where?

16 A. From the hotel they go to the Exxon, which is across
17 the street.

18 Q. And you went to both these locations, the Economy Inn
19 and the hotel, correct?

20 A. That is correct, yes, sir.

21 Q. In relation to each other, where are they at?

22 A. One is across the street from the other on Broad River
23 Road right near I-20.

24 Q. Okay. And you went to the gas station. And tell the
25 jury what happens once you got there.

1 A. Once I got there, I looked on their surveillance video,
2 compared the time that was displayed on the surveillance
3 video with the time on my cell phone. It was twenty-one
4 minutes fast.

5 Q. Okay. Was Mr. Mallory actually seen on the video from
6 your review of the surveillance?

7 A. Yes, sir, he is.

8 Q. And do you recall looking at that video?

9 A. I do, yes, sir.

10 Q. I'm going to play for you -- it's already been
11 introduced into evidence as State's Exhibit 34 -- State's
12 Exhibit 30, I apologize.

13 THE COURT: I'm sorry, what was that?

14 MR. GOINGS: State's Exhibit 30, Your Honor.

15 BY MR. GOINGS:

16 Q. Which is the gas station video surveillance. I will
17 attempt to.

18 MR. GOINGS: Your Honor, if I could have them dim
19 the lights, if possible.

20 (Whereupon, State's Exhibit No. 30 was played to
21 the jury panel)

22 BY MR. GOINGS:

23 Q. Do you recognize these security footage?

24 A. Yes, sir.

25 Q. And what is that security footage of?

1 A. It would be of the Exxon Gas Station, both inside and
2 outside.

3 Q. Now, when you were reviewing it, did you look at all
4 eight camera angles, or did you just look at one
5 specifically?

6 A. We looked at all of them that were relevant where you
7 see Mr. Mallory, or Mr. Mallory's vehicle, or Ms. Cook.

8 Q. Do they have a camera angle right at the cash register?

9 A. I --

10 Q. You may have to refresh your memory.

11 A. I don't recall.

12 Q. What is that a camera angle of?

13 A. The cash register area going out.

14 Q. And did you review this one?

15 A. Yes, sir.

16 Q. And what did Mr. Mallory tell you he purchased at the
17 gas station?

18 A. A Yoohoo and a White Owl peach cigar.

19 Q. Who is that individual we are looking at there?

20 A. That's Mr. Mallory.

21 Q. What did he purchase?

22 A. The Yoohoo and the cigar.

23 Q. Now, Investigator Holdorf, you testified that when you
24 reviewed this camera footage, that you timed the periods of
25 the time on the closed caption, is that correct?

1 A. Yes, sir, I did.

2 Q. And that was the next day, or the day of, later on in
3 the afternoon?

4 A. It was done on the 19th.

5 Q. Okay. And basically -- describe to the jury what you
6 were doing when you are making the comparison from what was
7 shown on the security camera --

8 THE COURT: Mr. Goings, you need to turn around
9 so they can hear you.

10 MR. GOINGS: Sorry.

11 BY MR. GOINGS:

12 Q. What was the time difference between what was shown on
13 the security footage and your watch?

14 A. On the security footage it's twenty-one minutes fast.
15 It's not uncommon, if you are looking at someone's else's
16 video surveillance equipment for it to be off days, weeks,
17 hours, minutes, much like most people's home VCR's or
18 computer systems. I mean, it's -- unless there is a way to
19 manually or automatically update it, they tend to be off.
20 So I wanted to make sure that the time that we see that's
21 printed on the video itself is correct.

22 Q. And what was the difference that you found between the
23 two?

24 A. Twenty-one minutes.

25 Q. Twenty-one minutes?

1 A. It was twenty-one minutes fast, the time that's on the
2 video itself.

3 Q. Okay. And you just watched the video that Mr. Mallory
4 is seen. The time and date stamp on that was -- he was in
5 the store at three minutes -- or 3:20:02, is that correct?

6 A. Yes, sir.

7 Q. Okay. So based on your viewing later of the
8 differences in time, that puts him there at what time?

9 A. Right at three a.m..

10 Q. Does that match with the information that he had
11 previously given you?

12 A. It's going to be off a bit, but nothing more than I
13 would expect. Unless there was something significant about
14 that point in time where they say "well, I looked at my
15 watch," or, "I looked at something," and they had a
16 reference for that, as I recall that Mr. Mallory gave us it
17 was about this time.

18 Q. So he was estimating his time when he gave the
19 statement to you?

20 A. Yes, sir.

21 Q. And so did y'all time the route at all?

22 A. Yes, sir.

23 Q. And who timed the route?

24 A. Sergeant Strange timed the route. I timed the route.

25 Q. What route did you take?

1 A. From -- it was actually timed from leaving the
2 apartment complex that Ms. Cook was dropped off at to Mr.
3 Mallory's apartment. It's nineteen miles and it took
4 approximately fifteen minutes, if I'm not mistaken.

5 Q. What route did you take?

6 A. Straight down I-20.

7 The apartment complex is right off of Bush River Road
8 and I-20, so straight down I-20 to Two Notch Road. From Two
9 Notch Road I want to say it's Alpine, and then Alpine to
10 Pinelane.

11 Q. All right. Well, before we get back to that, let's
12 go -- Mr. Mallory told you -- where did he go after he left
13 the gas station?

14 A. He dropped Ms. Cook off.

15 Q. And the gas station is on what road?

16 A. It's at the corner of Broad River Road and I-20.

17 Q. Okay. And Ms. Cook's apartment is where?

18 A. The corner of Bush River Road and I-20, a little bit
19 back, but pretty close to it.

20 Q. Just so we can make sure the jury understands who may
21 not be familiar with this area, if you go from Broad River
22 to Bush River, are you going in the opposite, or are you
23 going towards the residence of the Mallorys?

24 A. You are heading away from Mallory's residence.

25 Q. Okay. Approximately how long -- how many miles is it

1 from Broad River to Bush River Road?

2 A. I don't recall. If I was going to speculate, three.

3 Q. Okay. Do you know how many exits are in between Broad
4 River and Bush River Road?

5 A. Three. Two for 26 and then Bush River Road itself.

6 Q. All right. So it would take him some time to get to
7 the apartment, is that correct?

8 A. Yes, sir.

9 Q. And did he ever indicate how long he was there in the
10 apartment complex with Ricki Cook?

11 A. As I recall, he said a few minutes.

12 Q. He never gave you anything more than a few minutes?

13 A. I don't have his statement in front of me. I have his
14 statement summarized in my notes, but I do not have his
15 statement in front of me.

16 Q. So he's not leaving --

17 Based on your investigation, you are trying to develop
18 the timeline, correct?

19 A. Yes, sir.

20 Q. He had to drop -- did he still have Ricki Cook when he
21 goes to the gas station?

22 A. Yes, sir, he does.

23 Q. So he has to go away from his residence to drop her
24 off?

25 A. Yes, sir.

1 Q. And that's after what time that we know of?

2 A. After three.

3 Q. Based on the gas station video?

4 A. Yes, sir.

5 Q. And you said you timed the route, correct?

6 A. Yes, sir.

7 Q. Why did you pick the route that you took?

8 A. If I'm not mistaken, that's the way he said he went.

9 It's the most obvious route --

10 Q. Okay. Well --

11 A. -- what I believed he would go.

12 Q. Is that what you told you?

13 A. I believe he told me, but it's also the most direct
14 route, if I'm not mistaken.

15 Q. Okay. Because why is it the most direct route? I
16 mean, you drove it, and you are familiar with this area,
17 right?

18 A. It's mostly interstate.

19 Q. And what's the speed limit on that interstate?

20 A. There's parts that 55.

21 Q. And what time of day did you drive the route?

22 A. I have driven it several times.

23 In trial prep it was eight that morning, so traffic was
24 considerably heavier than it would have been at three. I
25 have driven that road hundreds of times. It's how I get to

1 and from my house.

2 Q. And your testimony is that it took fifteen minutes from
3 Ricki Cook's apartment to the residence of the Mallorys?

4 A. Yes, sir.

5 Q. And I believe -- were you familiar with how long it
6 took Sergeant Strange when he drove that route?

7 A. It would have been fifteen minutes. It's nineteen
8 miles doing the speed limit. He stated he left at 7:57 a.m.
9 and would have gotten there at 8:16 a.m.. This was going
10 sixty-five on the highway.

11 Q. Are you positive Sergeant Strange didn't report to you
12 that it took him nineteen minutes?

13 A. I have a typo in my file that location was fifteen
14 miles and it took him almost nineteen miles (sic) doing the
15 speed limit, so that would be correct.

16 Q. Okay.

17 A. It would have been nineteen minutes, fifteen miles.

18 Q. Okay. And then -- and what else did you do as part of
19 your investigation to establish a timeline for Mr. Mallory?

20 A. I would have looked at phone records.

21 Q. Were you successfully able to get phone records for Mr.
22 Mallory?

23 A. Yes, sir, I was.

24 Q. And what did you determine from those phone records,
25 once you reviewed them?

1 A. The tower locations, you get the time of the call. It
2 would give you an approximate area where he was. From one
3 call to another call you could figure out a direction of
4 travel and it was consistent. I mean, the phone calls won't
5 tell you how fast someone was going or exactly where they
6 were, so you would try to mark right in the middle where the
7 tower would be.

8 Q. Based on your conversations with Mr. Mallory, after he
9 dropped Ms. Cook off, did he indicate that whether he called
10 anybody?

11 A. Yes, sir, he made several phone calls.

12 Q. Who did he call?

13 A. If I'm not mistaken, Standric Mickens, or -- I have to
14 go back and look at the notes one second.

15 Q. Please review your notes.

16 A. I believe -- I'm not seeing ti in my summary of this
17 statement. I believe It might be in the original statement,
18 or it would definitely be on the phone logs.

19 Q. I'm going to show you and I believe you prepared this.

20 Did you prepare that document during your
21 investigation?

22 A. Yes, sir.

23 Q. Does that help refresh your memory as to the phone
24 calls that you noted after reviewing the phone records of
25 Justin Mallory?

1 A. Yes, sir.

2 Q. All right. Let's go -- on his way -- or just go over
3 the phone calls after the three o'clock hour.

4 A. All right. After three o'clock the first call is
5 3:16:02. It lasted until 3:16:04, and that was to Norris.

6 At 3:18:42 to 3:21:58. That was to Rock.

7 You have a 3:22:56 to 3:22:59. It was to a Tangy.

8 A 3:23:58 to 3:24:29 to Joseph Robinson.

9 911 is called at 3:35.

10 Q. So your review of the phone records, did that
11 corroborate any of the information that Mr. Mallory was
12 giving you at the time?

13 A. Yes, sir.

14 Q. Okay. You can just hold that.

15 And what -- I am, did he indicate that he called
16 several people on the way home?

17 A. Yes, sir.

18 Q. Did he ever tell you why he was calling people?

19 A. I think he said he wanted to go out and party more or
20 hang out more.

21 Q. Okay. Were you able to identify those individuals and
22 who the numbers belonged to?

23 A. Yes, sir.

24 Q. Were they friends or male friends of Mr. Mallory?

25 A. Yes, sir.

1 Q. Okay. Now, the last call before the 911 was placed at
2 3:24, I believe you stated?

3 A. Yes, sir.

4 Q. And the 911 call by his phone records show a time of
5 3:35?

6 A. Yes, sir.

7 Q. Now, are you aware of what time the supposed incident
8 report from 911 shows that first 911 phone call was made?
9 It's in evidence.

10 A. I would have to see it.

11 Q. Okay.

12 A. Off the top of my head, 37.

13 Q. That's right.

14 So does it surprise you that -- does it surprise you
15 that those were two different times; one from the closed
16 incident report and one from Mr. Mallory's phone records?

17 A. No. Again, you are talking two different systems and
18 you are going to have times that are a little off.

19 Q. Okay. Now, even based on this tight window -- I mean,
20 you would agree that it's a tight window from the evidence
21 that you collected via phone records and the 911 call, Mr.
22 Mallory getting home to his residence, is that correct?

23 A. Yes, sir.

24 Q. Okay. Before his first phone call to 911?

25 A. Yes, sir.

1 Q. But your investigation still led you to being the
2 primary suspect of Mr. Mallory?

3 A. Yes, sir, at the time.

4 Q. Okay. Let's talk about the witnesses that were
5 interviewed, because that was, correct me if I'm wrong, also
6 part of the timeline that you developed?

7 A. Yes, sir.

8 Q. Okay. Did you interview Sherry Tribble?

9 A. Yes, sir.

10 Q. And I believe she informed you that -- well, basically
11 what did she tell you?

12 A. She had just gotten back into town and the last time
13 that she had looked at the clock it was around 2:18.

14 She estimated that it was about forty-five minutes
15 later that she heard a female's voice. She said the female
16 was hysterical, not finishing her statements. There was no
17 answer to the female's voice. She stated that it sounded
18 like a domestic.

19 A little later she heard a male's voice saying "look
20 what you made me do."

21 Q. And she provided that in a written form?

22 A. Yes, sir, she did.

23 Q. And I'm going to get back to that and I meant to ask
24 you this before we went to this.

25 Obviously you stated the route that you took was

1 straight up the interstate, correct, to Alpine Road?

2 A. Yes, sir.

3 Q. Can you get to the apartment complex by taking the Two
4 Notch Road exit?

5 A. I said the way I got there was by taking the Two Notch
6 Road exit to Alpine Road. You could also go down 20 to
7 where it hits Alpine, or you could go 77 and hit Alpine.

8 (Off the record)

9 (Back on the record)

10 BY MR. GOINGS:

11 Q. And let me ask you this. Are there any strip clubs on
12 Two Notch Road?

13 A. Yes, sir.

14 Q. Near this vicinity?

15 A. Which?

16 Q. From Two Notch Road near where Alpine and 77 and 20
17 come in conjunction with Two Notch Road, is there strip
18 clubs in that area?

19 A. I know there is some clubs. I'm not much of a club
20 person. I don't know.

21 Q. I just wonder if you knew, from your experience, just
22 being investigating crimes in Richland County if you knew?

23 A. I know there are a couple of kind of hip hop clubs. I
24 don't know what goes on in them.

25 Q. Okay.

1 A. There are a couple towards the sheriff's department
2 that are strip clubs, but not going outbound on Two Notch,
3 that I know of.

4 Q. Based on your investigation, how much time did you
5 determine that Mallory could have had at the residence
6 before calling 911?

7 A. Doing the speed limit and all, I had approximately five
8 minutes that was unaccountable for Mr. Mallory.

9 Q. And that's assuming that he stayed at the apartment of
10 Ricki Cook for how long? I mean, how much time did you give
11 Mr. Mallory from dropping off Ricki Cook in the timeline
12 that you developed?

13 A. Initially you really can't go too much off that. You
14 can theorize a couple minutes here or a couple minutes
15 there, but it really would have come from the cell phone
16 itself with the tower information and going halfway in
17 between the towers.

18 Q. All right. Go ahead, I'm sorry.

19 A. Both Ricki and Justin, when they were talked to or
20 interviewed, this was separately to try to determine how
21 long he was there for. We even talked to Ricki Cook's
22 sister to try to get what time did she walk in the door. We
23 were never really able to narrow down a specific time.

24 Q. What was that first phone call that you recorded or
25 reviewed from Justin Mallory's phone?

1 A. The one at 3:16 of Mr. Norris.

2 Q. And were you able to determine what cell tower that was
3 hitting off of?

4 A. Yes, sir, we did.

5 Q. What cell tower was that?

6 A. I don't recall right now, but at the time we did. I
7 believe there is one that's towards Bush River Road on the
8 Broad River side of the interstate. And then as he's -- as
9 time is going on, the cell towers that are picking up are
10 moving towards his house.

11 Q. All right. But do you recall if that was the first
12 tower that his phone pinged off of?

13 A. To be best of my knowledge, yes, sir.

14 Q. And you said the location of that was where?

15 A. It was in the Broad River Road area, if I'm not
16 mistaken. Maybe Montecello at the earliest.

17 Q. Okay. And that was at what time?

18 A. 3:16.

19 Q. So based on that, you added, based on the routes you
20 took, of fifteen minutes? Is that how you determined what
21 time he could have got home?

22 A. We would have timed it from the center of where the
23 last call was on that tower. Started dead even at the
24 center, not one side of the tower where it's supposed to
25 pick up or it's where it would be dropping off, and then

1 driving to the Porch -- to the, excuse me, Mallory
2 residence.

3 Q. So is it fair to say it could be a couple minutes off?

4 A. Yes, sir.

5 Q. So based on your investigation, he could have arrived a
6 couple minutes after 3:30, the time that you put him at and
7 testified to, correct?

8 A. Yes, sir.

9 Q. Okay. Or maybe even later?

10 A. Yes, sir.

11 Q. But we know he called 911 at what time?

12 A. 3:35.

13 Q. Did you review the 911 tapes?

14 A. Yes, sir, several times.

15 Q. And what is the demeanor of Mr. Porch (sic) like on
16 those 911 tapes -- I mean Mr. Mallory --

17 A. Mallory?

18 Q. -- like on those 911 tapes?

19 A. He's in a very excited state.

20 Q. Did you talk with any of the neighbors besides Sherry
21 Tribble?

22 A. Yes.

23 Q. Who did you talk to?

24 A. We talked to the Hargraves. We talked to all the
25 neighbors around the apartment itself.

1 Q. Okay. And would one of those individuals be Shaheed
2 Hargraves?

3 A. Yes, sir.

4 Q. And what did he indicate about what he knew about what
5 occurred that night?

6 A. That he heard banging. He answers the door and sees
7 Mr. Mallory. He follows Mr. Mallory into the apartment
8 complex -- or to the apartment itself. They're neighbors.
9 They're kind of catty-corner from one another. The
10 Hargraves apartment would be down and across the hall.
11 Maybe twenty feet down the hallway, if that.

12 Q. Did he describe to you at any point in time during your
13 investigation the demeanor of Mr. Mallory when he appeared
14 at his door?

15 A. He was excited.

16 Q. Now, there is no doubt, based on your investigation,
17 Investigator Holdorf, that Mr. Mallory took his wife to the
18 hospital, correct?

19 A. Yes, sir, he did.

20 Q. Were you all able to determine what time he arrived at
21 the hospital?

22 A. Yes, sir, we did.

23 Q. And what time was that?

24 A. Around 3:47.

25 Q. You don't remember looking at a camera angle that said

1 a different time?

2 A. I'm looking at my notes. I --

3 Q. And I understand you wasn't -- you have been
4 sequestered, correct?

5 A. Yes, sir, I have been.

6 Q. So you are not privy to the other testimony in here?

7 A. Nothing.

8 Q. So if someone else testified to 3:42, would you have
9 any disagreement with that?

10 A. I can only go off of my notes. If there is better
11 evidence, then that's what he would have to defer to.

12 Q. All right. And let's go to the actual crime scene,
13 okay? What time did you get out there?

14 A. I don't recall. I know it was that afternoon.

15 MR. GOINGS: Beg the court's indulgence.

16 (Off the record)

17 (Back on the record)

18 BY MR. GOINGS:

19 Q. Now, Investigator Holdorf, I asked you about the 911
20 call that was originally made to -- made from Mr. Mallory
21 when he arrived home, is that correct?

22 A. Yes, sir.

23 Q. And you put it at 3:35, according to his cell phone
24 records, correct?

25 A. Yes, sir.

1 Q. And you said that you reviewed the 911 tapes?

2 A. Yes, sir.

3 Q. Was there also another 911 call or recording that
4 captured Mr. Mallory, based on your review?

5 A. The 911 call itself from our dispatch.

6 Q. Maybe I didn't phrase my question appropriately.

7 He called 911 --

8 A. Yes.

9 Q. -- about his wife. They are disconnected. Did you
10 find that out in your investigation?

11 A. Yes, sir.

12 Q. Is the connection reestablished between 911 and Mr.
13 Mallory?

14 A. Yes, sir.

15 Q. Based on your investigation, where is Mr. Mallory at
16 this point in time?

17 A. He's on the road. His direct words, he was getting it
18 to get to the hospital.

19 Q. And how did he sound during that time when reporting?

20 A. In a hurry, panicky.

21 Q. And that was -- do you recall what time that phone call
22 or that recording took place?

23 A. I have it written down somewhere.

24 Q. That's fine.

25 But we know that it was made while he was en route?

1 A. Yes, sir.

2 Q. Okay. And what hospital did he take his wife to?

3 A. Providence Northeast.

4 I have got a time here when dispatch would have called
5 him back. You have got the 544-9005. It's a number for our
6 dispatch, and that dispatch time is 3:39.

7 Q. Again, this is while he's en route with his wife to the
8 hospital?

9 A. Yes, sir.

10 Q. Okay. And you said he took her to Providence
11 Northeast?

12 A. Yes, sir.

13 Q. Do you know what the distance between the Mallory
14 residence and Providence Northeast is, how long it would
15 take?

16 A. No, sir.

17 Q. Let's go to the crime scene. You said at some point in
18 time you got there, is that correct?

19 A. Yes, sir.

20 Q. Okay. Had CSI guys already came out and processed the
21 crime scene?

22 A. They were finishing up the processing.

23 Q. And at this point in time in your investigation you
24 knew how she died, correct?

25 A. Yes, sir.

1 Q. Was a murder weapon ever found?

2 A. No, sir.

3 Q. Was the murder weapon ever found in the van of Mr.
4 Mallory?

5 A. No.

6 Q. So no knife was found at the house?

7 A. There were knives that were found at the house, but
8 nothing that we believed to be the murder weapon, or proved
9 to be a murder weapon.

10 Q. And your investigation continued, is that correct?

11 A. Yes, sir.

12 Q. Did you speak with Dennis Tentyon?

13 A. Yes, sir.

14 Q. What information did you learn from Mr. Tentyon?

15 A. Mr. Tentyon and Sherry Tribble in a relationship. He
16 gives us a little better time frame, as far as when he hears
17 the events.

18 Q. All right. And both Sherry Tribble and Mr. Hargraves
19 were part of your investigation.

20 When was the first time that you were aware that DNA
21 was found at the scene that did not -- was foreign male DNA?

22 A. It would have been in trial prep meeting with Solicitor
23 Wagner at the time and Solicitor Meadors.

24 Q. Before we get there, Mr. Mallory was already charged at
25 that point in time, correct?

1 A. Yes, sir.

2 Q. How long after your interview with Mr. Mallory at
3 headquarters was he arrested?

4 A. The interview, after we get the written statement,
5 several hours later.

6 Q. And the arrest warrant was based on what?

7 A. The probable cause that we had at the time, what we
8 believed the facts to be.

9 Q. And tell the jury what the probable cause was that you
10 stated for the arrest warrant was.

11 A. Again, I haven't seen the arrest warrant in quite some
12 time. You had Mr. Mallory we believe put himself there at
13 the crime scene with Nakia right around the time of her
14 death.

15 You had the ear witness, Ms. Tribble, where she sees
16 the wife and actually sees the van at one point in time and
17 then a couple minutes later she sees that the van had been
18 moved.

19 You had what appeared to be a cleanup at the house.

20 There was no forced entry at the house.

21 According to Ms. Tribble, that the argument between the
22 male and the female, it sounded like a domestic.

23 Q. Is it fair to say that the probable cause that you
24 stated in the arrest warrant was based on Sherry Tribble's
25 account?

1 A. Among several other things, but, yes, sir, that was a
2 key factor.

3 Q. That was the primary one?

4 A. You have Ivan Neddo, the security at the hospital,
5 giving a different account of what Mr. Mallory told him on
6 getting into the apartment.

7 Again, no forced entry and nothing appeared to be
8 missing from the house.

9 There was -- there was not just one thing that led us
10 to the arrest of Mr. Mallory, but there were several in the
11 sequence.

12 Q. But a large part of it was Sherry Tribble?

13 A. Yes, sir.

14 Q. Whose -- based on the statement I believe you testified
15 to, she said that she last looked at the clock at 2:18 and
16 thirty or forty-five minutes later she heard the commotion?

17 A. Yes, sir.

18 Q. And -- well, let me ask you this. If Sherry Tribble's
19 statement was that the last time she looked at the clock was
20 2:18 and a few minutes later she heard a woman --

21 MR. BRIAN SHEALEY: Your Honor, I object to the
22 speculation at this point.

23 THE COURT: Let me finish hearing the question
24 first.

25 BY MR. GOINGS:

1 Q. How would that affect the ability for probable cause
2 back then?

3 A. There would have been none.

4 THE COURT: One moment. Hold on.

5 Do you still object to the question?

6 MR. LUKE SHEALEY: Yes, sir.

7 THE COURT: I'll overrule it.

8 You may answer.

9 BY MR. GOINGS:

10 Q. What was your answer?

11 A. Could you repeat the question? I'm sorry, there was a
12 lot of stuff in the middle.

13 Q. Okay. You have Sherry Tribble's statement was at
14 2:18 -- the last time she looked at the clock was 2:18. A
15 few minutes later she heard the woman's sound for the first
16 time. How would affect whether or not y'all had probable
17 cause?

18 A. If that was her statement, then that would -- probable
19 cause against Justin Mallory would be very problematic.
20 That would pretty much give you no probable cause against
21 Justin Mallory, because we know his whereabouts up until
22 right around 3:30.

23 Sherry Tribble is not good with time. Sherry Tribble
24 can give you about, an approximate, but her and Dennis,
25 their own intention was to have a romantic evening when this

1 was going on.

2 When you interview a witness, you try to get their
3 words. You try to get down approximates. They don't know
4 exact. So someone's estimate on relativity, it's just a
5 shot in the dark on that point in time. I mean, she could
6 say about, approximate, which is why we go to the stores or
7 try to pull phone records so we can get a closer time.
8 Abouts are pretty hard for someone to guess.

9 Q. So that account doesn't match security footage and the
10 hotel?

11 A. It does not. The better evidence would have been where
12 Mr. Mallory was at the time.

13 Q. Okay. Now, he was arrested a couple hours after he was
14 interviewed and even actually after Nakia Mallory died,
15 correct?

16 A. Yes, sir.

17 Q. We are not talking about days before he was arrested
18 and charged with murder?

19 A. No, sir.

20 Q. Your investigation was still going on, is that correct?

21 A. Yes, sir.

22 Q. And also was there one incident of a domestic problem
23 between the Mallorys that happened sometime prior that also
24 was found out during your investigation?

25 A. I'm not sure I understand the question.

1 In any homicide-type case you want to try to get a
2 background from friends and family to get an understanding
3 of what this relationship was like. I don't know if that
4 answers your question or not, sir.

5 Q. I'm just asking, are you aware of, or do you remember
6 that your investigation found one prior incident of a
7 domestic problem with Nakia Mallory and Justin Mallory?

8 A. As I recall from multiple witnesses, it seemed like
9 they had a rocky marriage.

10 Q. Okay. A specific -- I'll move on.

11 Now, let's go to the finding of the foreign DNA.

12 A. Yes.

13 Q. When did you first learn that DNA, or foreign male DNA,
14 was found in that residence?

15 A. It would have been on the trial prep at the solicitor's
16 office, or with the solicitor's office.

17 Q. And what was the course of action after the foreign
18 male DNA was found?

19 A. It was to identify who else may have been in the
20 apartment complex and try to get a standard from them, so we
21 could find out whose DNA this is.

22 Q. And what males -- do you recall what males were
23 identified as needing to have a sample received from?

24 A. If I'm not mistaken, the DNA profile was a male, as you
25 just stated, but it was anyone that would have been in the

1 house; Mr. Porch, the maintenance guy, Joshua's brothers,
2 Nakia's brothers.

3 Q. Okay. And where did you develop the name of Joshua
4 Porch from?

5 A. The morning of, in talking with Mr. Mallory, a standard
6 question would be "who else would have done this?"

7 Q. And did he identify Joshua Porch at that time?

8 A. He gave us this name, yes, sir.

9 Q. Did he identify another individual as well?

10 A. He also gave the maintenance guy, having been --
11 recently been in the apartment complex -- or in their
12 apartment to fix a refrigerator.

13 Q. Did you, as the lead investigator, have someone to go
14 interview Joshua Porch after his name was mentioned by
15 Justin Mallory?

16 A. Yes, sir, Sergeant Strange went and spoke to Mr. Porch
17 and Persia Porch at their residence.

18 Q. And what, based on your investigation and your
19 knowledge, did Mr. Porch tell Sergeant Strange?

20 A. He wasn't there, didn't know anything about the murder.
21 Nakia -- or excuse me, not Nakia, but Persia Porch
22 corroborated that he was with her that night.

23 Q. All right. Is that the only time that Mr. Porch was
24 talked to until we know in June of 2007?

25 A. I'm not specific on the date, but, yes, sir, there

1 were -- to my knowledge, no one else had talked to Mr. Porch
2 related to this case.

3 Q. So there was no followup interview after Sergeant
4 Strange went to Joshua Porch until the DNA problem came up,
5 right?

6 A. To the best of my knowledge, that's correct.

7 Q. Okay. But the DNA problem did come up and Mr. Porch
8 was approached again?

9 A. Yes, sir.

10 Q. How long before trial was the DNA or did the DNA become
11 a problem?

12 A. The DNA came up, I'm not sure exactly how long, but it
13 was close.

14 Q. When you say close, are we talking a couple weeks,
15 months?

16 A. I would say within two months down to a few weeks.

17 Q. All right. Who went and talked with Mr. Porch once the
18 DNA issue was there?

19 A. The first person to make contact with Mr. Porch would
20 have been Major Smith, who spoke to Mr. Porch at his
21 residence.

22 Q. And was a DNA sample collected?

23 A. He did give -- Mr. Porch did give a DNA sample.

24 Q. And was it determined that Mr. Porch's DNA was, in
25 fact, at the crime scene?

1 A. Yes, sir.

2 Q. Based on that information, what, you as the lead
3 investigator, want to happen at that point in time?

4 A. I wanted to test Mr. Porch's statement. I wanted to
5 see if I could make sure it would stand up.

6 Q. In fact, when Major Smith -- I know you wasn't present,
7 as an investigator you were privy to all this information,
8 correct, about statements that Major Smith took from Mr.
9 Porch when he approached him about the DNA?

10 A. Yes, sir.

11 Q. All right. And you know from his statement that Mr.
12 Porch gave during the two trials, correct?

13 A. Yes, sir.

14 Q. Change it. The last statement he gave to Major Smith
15 and then that was his testimony at the two trials, correct?

16 A. Yes, sir.

17 Q. Okay. The two statements; the first statement he gave
18 to Major Smith and the second statement, were they
19 consistent?

20 A. They were not.

21 Q. What did he describe in his first statement to Major
22 Smith?

23 A. The first statement to Major Smith -- not his first
24 statement, but it's actually his second statement, would
25 have been that he was there that afternoon with his daughter

1 and would have cut his hand cutting an apple for her and he
2 cleaned up some of the blood. He also said that he had told
3 Sergeant Strange about this.

4 We asked Sergeant Strange if he recalled any of this
5 information and he had not, so then we had to go in a little
6 bit further.

7 Ideally when you are interviewing someone, I don't want
8 to talk at your house. I would rather have you at my
9 office, for several reasons. One, it makes that other
10 person a little bit uncomfortable, so you can pick up other
11 indicators. It also is an area where I have got my computer
12 system. I don't have great handwriting and it's a place
13 where you can sit down and talk. There is not going to be a
14 whole lot of distractions. Your home phone is not going to
15 be ringing or anything like that.

16 So after that came up, we tried to test Mr. Porch's
17 second statement and that's when the third statement was
18 taken from him.

19 Q. And in that third statement he indicates what?

20 A. The third statement comes out after Mr. Porch was
21 interviewed for a good bit of time. I don't know exactly
22 how long, but it was hours, and it was trying to see whether
23 or not we could find any reason for Mr. Porch to have killed
24 Nakia Mallory. You are looking at everything that's going
25 on. We were able to develop additional DNA between the

1 first trial and the second trial. The second statement --
2 or, excuse me, the third statement that he gives is what he
3 testified to and that it was he and Nakia were in a romantic
4 relationship and that Justin comes home and sees them.

5 Q. So at this point in time Joshua Porch has lied to law
6 enforcement how many times?

7 A. Three.

8 Q. Okay.

9 A. At the time, if I may, the third statement we did not
10 know was a lie until a fourth statement was taken later on.

11 Q. Okay. But that's why I asked. At that time when he
12 gave that second or that last statement before trial, how
13 many times had he lied to law enforcement?

14 A. Three.

15 Q. And he was used as a witness, correct?

16 A. Yes, sir.

17 Q. So he went from no involvement now to a potential key
18 witness for the prosecution?

19 A. Yes, sir.

20 Q. I mean, he basically is an eyewitness to the murder,
21 correct?

22 A. Yes, sir.

23 Q. And whose decision is it to continue prosecution, once
24 the case has been -- an arrest has been made? I mean, who
25 decides whether to go to trial or not?

1 A. It's the solicitor's office or the prosecuting agency
2 is the one that called the case to trial. After an arrest
3 has been made, I can have a say or an input, but I don't --
4 it's not my case any more.

5 Q. And who was the solicitor in charge of this case when
6 Mr. Mallory was prosecuted?

7 A. It was Mr. Meadors and Todd Wagner.

8 Q. And you testified at Mr. Mallory's trial as well, is
9 that correct?

10 A. Both trials, yes, sir.

11 Q. And you testified about exactly what you told this jury
12 here today?

13 A. Yes, sir.

14 (Off the record)

15 (Back on the record)

16 BY MR. GOINGS:

17 Q. What was the result of the first trial of Mr. Mallory?

18 A. The first trial was a hung jury.

19 Q. And that was on July 13th, 2007, that week?

20 A. I remember it was 2007, yes, sir --

21 Q. Okay.

22 A. -- around that time frame.

23 Q. Okay. Were there any investigations done between the
24 hung jury in the first trial and the second trial of Mr.
25 Mallory in 2008?

1 A. If I'm not mistaken, they were able to identify the DNA
2 on the fingernails. The first trial, if I'm not mistaken,
3 that was too weak to interpret, and they were saying that --
4 our DNA lab had said that there was just no way they could
5 say who it was. And the second one, it was a little more
6 positive, if I'm not mistaken.

7 Q. But other than that -- I mean, y'all didn't use that
8 additional information at the second trial, did you?

9 A. Anything that we had was turned over to the defense,
10 any additional reports.

11 Q. In fact, you are aware of the investigation now that --
12 or the DNA reports, are you not?

13 A. I have seen them, but it's been a while, sir.

14 Q. We will leave John Barron for that, okay?

15 A. Yes, sir.

16 Q. He's the DNA guy, correct?

17 A. Yes, sir.

18 Q. Let me ask you, but other than that, no investigations,
19 no additional information was developed from July of 2007
20 until December of 2008, or the latter part of 2008, when Mr.
21 Mallory was tried again?

22 A. Not that I recall, sir.

23 Q. Again, Mr. Porch was put on the stand to give his
24 latest version?

25 A. Yes, sir.

1 Q. Okay. Now, what was the result of the second trial?

2 A. The second trial was a bench trial, which means there
3 was no jury. The defendant waived his right to have a jury
4 trial, so it was heard just in a front of judge and he was
5 found not guilty.

6 Q. After he was found not guilty, whose case -- who looked
7 back at the case and determined where y'all were going to go
8 from there?

9 A. After he was found not guilty, Mr. Mallory started
10 contacting the sheriff's department insisting that he had
11 nothing to do with his wife's death. He actually met with
12 me and Major Wilson, who is over the entire investigative
13 division. We had a sit-down meeting at Major Wilson's
14 office and he asked us to reopen the case and to look at Mr.
15 Porch.

16 Q. So Mr. Mallory still wanted y'all to continue the
17 investigation?

18 A. He did.

19 Q. And what was the reason he gave you?

20 A. He says he had nothing to do with Nakia's death and
21 that Mr. Porch was the one who did it.

22 Q. And was an investigation at that point performed? I
23 believe it was headed up by Sergeant McDaniels and Sergeant
24 Godfrey?

25 A. Yes, sir.

1 Q. But you helped out with that part of the investigation
2 as well, correct?

3 A. Correct.

4 Q. You went out and interviewed some more people?
5 Re-interviewed Persia Porch, is that correct?

6 A. Yes, sir.

7 Q. And what did Ms. Porch tell you?

8 MR. BRIAN SHEALEY: Your Honor, objection.
9 Hearsay. I mean, he's trying to bolster. He's already
10 testified.

11 MR. GOINGS: I'll withdraw the question, Your
12 Honor.

13 BY MR. GOINGS:

14 Q. But eventually what happened as a result of the second
15 investigation?

16 A. We re-looked through the evidence we had at the time
17 with our lab people and it was decided to try to re-test
18 certain pieces of evidence to see if we found anyone else's
19 DNA, which Mr. Porch's DNA was found on a shirt that Nakia
20 was wearing.

21 We also were able to locate the Porch's vehicle that
22 they had at the time. That was tested.

23 And based upon those two factors, Major Smith -- or,
24 excuse me, major -- Chief Wilson decided to get a warrant
25 for Mr. Porch.

1 Q. Okay. And that's when Investigator McDaniels and
2 Investigator Godfrey went to California?

3 A. Yes, sir.

4 MR. GOINGS: Beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 MR. GOINGS: That's all the questions that I have.

8 THE COURT: At this time, ladies and gentlemen, we
9 are going to take a lunch break.

10 I just need to remind you of the instructions I
11 have given to you; that is, not to begin to discuss this
12 matter among yourselves, as you have not heard all the
13 evidence that has to be presented in this matter.

14 As you understand, lunch has been ordered for you.
15 It has arrived. We will take about a forty-five minute
16 break. If after lunch you would like to go out and get some
17 fresh air, then if you will just let the deputies know that
18 so that we can accommodate you in that regard.

19 To the remaining members in the courtroom, we will
20 break until two o'clock. We will come back at two.

21 Have a good lunch.

22 (The following takes place outside the presence of
23 the jury panel)

24 THE COURT: Officer, hold on a second.

25 THE WITNESS: Yes, ma'am.

1 THE COURT: During this break you may not discuss
2 your testimony with anyone. You have not concluded your
3 testimony, so it would be inappropriate to discuss it with
4 anyone, including the attorneys, but you may step down and
5 we will see you back at two o'clock.

6 THE WITNESS: Thank you, ma'am.

7 THE COURT: Anything else we need to take up at
8 this time?

9 MR. LUKE SHEALEY: No, ma'am.

10 THE COURT: We will see you back at two.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 (Photograph marked as Defendant's Exhibit No. 10
14 for identification)

15 THE COURT: Is there anything we need to take up
16 before we bring the jury in?

17 MR. LUKE SHEALEY: Not from the defense.

18 MR. GOINGS: Nothing from the State, Your Honor.

19 THE COURT: You may ask the jury to come in.

20 THE BAILIFF: The jury is seated, Your Honor.

21 (The following takes place in the presence of the
22 jury panel)

23 THE COURT: You may proceed.

24 MR. BRIAN SHEALEY: Thank you, Your Honor.

25 May it please the court?

1 THE COURT: Yes, sir.

2 CROSS EXAMINATION BY MR. BRIAN SHEALEY:

3 Q. Good afternoon, investigator.

4 A. Good afternoon, sir.

5 Q. Investigator, what's your rank?

6 A. I'm a senior investigator.

7 Q. Okay. I presume there is junior investigators then?

8 A. Just regular investigators and then senior
9 investigators.

10 Q. Okay, I understand.

11 And I know you told us a little bit already, but you
12 have been working at Richland County for awhile now?

13 A. Yes, sir.

14 Q. Nineteen years you said?

15 A. Yes, sir.

16 Q. Where are you from?

17 A. I was born in Spirit Lake, Iowa. My father was in the
18 military. I grew up here in South Carolina.

19 Q. And I think you said that you joined the Air Force?

20 A. Yes.

21 Q. Okay. And that equates to that you wanted to
22 experience law enforcement?

23 A. No, sir, I had a small child when I was in the Air
24 Force and it was either stay in the Air Force and go
25 overseas at a remote for a year at a time or get out and do

1 something else. Law enforcement was just something I tried
2 to see if it was something I could do.

3 Q. Okay. So you didn't want to maybe be deployed with a
4 young child and that kind of thing?

5 A. No, sir.

6 Q. Okay. How many children do you have?

7 A. I have two boys.

8 Q. Okay. How old are they?

9 A. Twenty and seventeen.

10 Q. Okay. So about as much experience you have with
11 Richland County, your boy, your oldest boy is about that
12 mark, right?

13 A. Yes sir.

14 Q. Okay. Now, when you first stated, where did you start?
15 I think you testified maybe on the road? That's kind of
16 where people start?

17 A. Yes, sir.

18 Q. And you testified that there was an opportunity to take
19 the investigator exam and you took that and did well enough
20 to be an investigator?

21 A. Yes, sir.

22 Q. How long were you on the road before that?

23 A. October of '94 was my hire date, and I went to
24 investigations in the summer of '97. About three years.

25 Q. All right. And what rank were you when you were made

1 an investigator?

2 A. There was just one rank at the time. It was just
3 deputy.

4 Q. What rank are you now?

5 A. Senior investigator.

6 Q. Senior?

7 A. Yes.

8 Q. Okay. Now, I think you testified that you have done
9 homicides, and also I believe you testified to CSC, which is
10 criminal sexual conduct type cases and former cases for
11 Richland County?

12 A. Yes, sir, and also child abuse cases.

13 Q. Child abuse cases, right.

14 Is that your current job as an investigator, those are
15 the types of cases that you are involved with?

16 A. Yes.

17 Q. Okay. And at the time of this investigation back in
18 2006, you had done a number of homicide investigations at
19 that point?

20 A. Yes, sir.

21 Q. Okay. Now, you, you know, are trained to be an
22 investigator. You don't just get to be an investigator and
23 you pass a test and there you go. I think there has been
24 some testimony on this issue, but you have to do continuing
25 training to be an investigator?

1 A. Yes.

2 Q. And talk about that kind of training.

3 A. I have been through a number of classes; evidence
4 collection, preservation, courtroom testimony, interview
5 classes. The sheriff's department is pretty big about
6 continuing education. I did arson investigation for awhile,
7 so I have had quite a bit of training in that.

8 Q. So in those classes you learn techniques to talk to
9 folks?

10 A. Yes, sir.

11 Q. And these are potentially witnesses in cases?

12 A. Yes, sir.

13 Q. But you also have your own life experiences. How old
14 are you?

15 A. Forty-two.

16 Q. Okay. And, again, you have done numerous homicide
17 investigations, right?

18 A. Yes, sir.

19 Q. And probably -- I don't want to put words in your
20 mouth, but in the course of your career you have spoken to
21 at least thousands of witnesses probably, right?

22 A. Yes, sir.

23 Q. Okay. Considering that each case has a number of
24 witnesses?

25 A. Yes, sir.

1 Q. Okay. And you were the lead on this case from ground
2 one, from day one, right?

3 A. Yes, sir.

4 Q. You had a team of investigators that were assisting
5 you?

6 A. Yes, sir.

7 Q. Investigator Strange?

8 A. Yes, sir.

9 Q. Rownd?

10 A. Yes, sir.

11 Q. Okay. At some point Major Smith comes in, becomes
12 involved?

13 A. Yes, sir.

14 Q. Okay. And you are not investigating by yourself here.
15 You are constantly communicating with your team?

16 A. Yes.

17 Q. Okay. Communicating with the solicitor's office?

18 A. Yes, sir.

19 Q. All right. You are not keeping things to yourself.
20 You are telling people what they should be doing and
21 probably getting advice about, you know, information that
22 they are receiving, right?

23 A. Every so often we will have meetings where there is
24 updates. We see what else needs to be done and just to look
25 at the case.

1 Q. Right.

2 And you have got a work phone, don't you?

3 A. Yes, sir.

4 Q. Okay. And probably all get a lot of minutes on that
5 phone?

6 A. Yes, sir.

7 Q. You are not paying for that yourself, right?

8 A. No, sir.

9 Q. Because at Richland County as an investigator you got
10 to communicate?

11 A. Yes, sir.

12 Q. And you were communicating on the day of this murder
13 with a lot of your investigators about what they should be
14 doing and who they should be talking to, right?

15 A. No, if I can, you have a sergeant who is going to be
16 over the shift and he is ultimately the one who is
17 responsible for everything that goes on.

18 As a primary, it might be your case, but it's a team
19 approach.

20 Q. Yes, sir.

21 A. If I'm talking to a person, it's -- unless I'm taking a
22 break or stepping away, you try to limit the amount of
23 information that's coming into that person that's doing the
24 interview --

25 Q. Sure.

1 A. -- so they can concentrate on the interview. But
2 during breaks, took several smoke breaks, got something to
3 eat. I mean, there is lot of information coming in, yes,
4 sir.

5 Q. I understand. I'm not necessarily talking about, you
6 know, not the first couple of hours of your investigation,
7 but let's say the first weeks you are in constant
8 communication with your team about what they are learning
9 and you are sharing information that you have discovered?

10 A. Yes, sir.

11 Q. Okay. And you are doing that on the phone and you are
12 doing it in person?

13 A. Yes, sir.

14 Q. Okay. Now, you testified in the first prosecution of
15 Justin Mallory?

16 A. Yes, sir.

17 Q. And that was based off of a warrant that you swore out
18 before a magistrate for probable cause for that?

19 A. Yes, sir.

20 Q. Okay. And that went to trial, right?

21 A. Yes, sir.

22 Q. It survived various motions and then the jury hung?

23 A. Yes, sir.

24 Q. Okay. And then you were part of the prosecution of the
25 second trial? You testified in the second trial?

1 A. Yes.

2 Q. I have got the transcript and you testified, right?

3 A. Yes, sir.

4 Q. Okay. You testified in the first and you testified in
5 the second, right?

6 A. Yes, sir.

7 Q. Based on your warrant that you swore out that that was
8 the information that you had and that was the truth at the
9 time as you knew it, right?

10 A. Yes.

11 Q. Before a judge?

12 A. Yes, sir.

13 Q. The same way you swore on that Bible today?

14 A. Yes, sir.

15 Q. That those facts contained in that warrant were your
16 facts and they were what you knew?

17 A. At the time, yes, sir.

18 Q. Sure.

19 There was also a civil suit where you have sworn in a
20 deposition?

21 A. Yes, sir.

22 Q. Okay. I'm going to be going through a bunch of stuff.
23 I know that you have gotten your reports, but you probably
24 don't have your trial transcripts or your deposition or
25 anything like that, do you?

1 A. I do not.

2 Q. Okay. Well, that may be of assistance to you, but we
3 will get to that in a second.

4 Now, your case that you swore out before a magistrate
5 was based on probable cause, correct?

6 A. Yes, sir.

7 Q. And pretty from the beginning your probable cause was
8 based on a number of things, right, that you can qualify and
9 quantify, right?

10 A. Yes, sir.

11 Q. Like ears and eyes we are talking about?

12 A. Yes, sir.

13 Q. Sherry Tribble?

14 A. Yes, sir.

15 Q. I think you testified that maybe you are not convinced
16 her times were so great, but she -- sequentially she knows
17 what she saw when she saw it, right?

18 A. Yes, sir.

19 Q. No one was -- it's rare in your field of investigation
20 that people are looking at their watch when things are going
21 on, right?

22 A. That is correct.

23 Q. Okay. It's more accurate that they more recall what
24 they saw and heard and in what order it happened as opposed
25 to exactly what time it happened?

1 A. Yes.

2 Q. That's why it's the importance of things that could
3 help gauge time, like video?

4 A. Yes.

5 Q. If something -- if somebody has been involved in a
6 situation that allows a time stamp, cell phone records have
7 been helpful in this case?

8 A. Yes, sir.

9 Q. Kind of narrow a time frame and also help narrowing the
10 direction that someone were to travel?

11 A. Yes, sir.

12 Q. Okay. So that way you wouldn't necessarily rely on the
13 lay witnesses account of the last time they looked at a
14 clock, right?

15 A. Correct.

16 Q. Now, this case was all along a domestic dispute, right?
17 That's what the information that you had?

18 A. Yes, sir.

19 Q. All right. In your experience it's fair that domestic
20 disputes can sometimes erupt very quickly and very
21 violently?

22 A. Yes, sir.

23 Q. Are you aware of the kind of statistics we have with
24 domestic violence, as far as prosecuting? Any homicides
25 come across your desk that are quick and violent like that

1 from domestic scenarios?

2 A. Yes, sir.

3 Q. Okay. And you had learned about an eyewitness -- I
4 don't care if it's just generally, and we will get into more
5 detail that, it was ears and eyes on the ground seeing a
6 white van at the time of what we now know is Nakia Mallory
7 saying -- making some noises of "how could you," that kind
8 of thing? There was a domestic spat, right?

9 A. Yes, sir.

10 Q. That was the information that you had that assisted you
11 in swearing out your warrant?

12 A. Yes, sir.

13 Q. Okay. And the sequences of her then are that she
14 looked out the window and heard this thing, saw the van.
15 And later she testified in two trials that -- especially the
16 second trial that she saw Mr. Mallory there under a lamp
17 post and he was saying "look at what you made me do?"

18 A. I'm not so sure I can recall it like that. That was
19 part of the testimony, but when she sees Mr. Mallory, he's
20 getting into the van after having put Nakia in the van, if
21 I'm not mistaken.

22 Q. Sure.

23 And you recall her pointing him out in court at the
24 last trial?

25 A. Yes, sir.

1 Q. And that's information that you had as you were
2 collecting evidence kind of early on in this case, from the
3 first days, I would suggest, right?

4 A. That was part of it, yes, sir.

5 Q. About her eyewitness testimony?

6 A. She doesn't identify -- no one had asked her in the
7 first trial or when talking to her.

8 She knew of the Mallorys, but didn't actually know
9 them. Just a neighbor who was across the parking lot. It
10 wasn't until the second trial that someone asked her the
11 question, "is Justin Mallory the person that you saw?"

12 We felt very comfortable it was Mr. Mallory, based upon
13 the testimony of the white van. There was no other white
14 vans parked in that area, but it wasn't until the second
15 trial that she comes with the courtroom testimony.

16 Q. So that's part of your ears and eyes on the ground and
17 that can be -- that's powerful for you when you are thinking
18 about probable cause, right?

19 A. Yes, sir.

20 Q. Okay. And you're trained on some of these issues
21 and -- I mean, you have to swear out lots of warrants before
22 a magistrate and you are trained to know what's good
23 evidence and what's bad evidence, right?

24 A. Yes, sir.

25 Q. I don't want to cut you off there, because when you

1 swear out something like this, an important document before
2 a judge, you are bound to tell the truth? That's part of
3 the process?

4 A. Yes, sir.

5 Q. Okay. And as you were going through this process and
6 you were learning more about the sequence of events, you
7 learned about Mr. Mallory taking his wife to the hospital --

8 A. Yes.

9 Q. -- correct?

10 You discussed -- Ivan Neddo appeared on direct
11 examination. You learned about inconsistencies from what
12 he's telling you versus what Justin was telling you, as far
13 as entering his apartment and that kind of thing?

14 A. Yes, sir.

15 Q. You learned about -- I mean, Justin is telling you that
16 he went in the front door and it was unlocked?

17 A. Yes, sir.

18 Q. And you learned that another witness, Mr. Neddo, that
19 it was locked?

20 A. That's what Mr. Neddo said he heard, yes, sir.

21 Q. And Mr. Neddo was called as a State witness in the
22 first two trials?

23 A. Yes, sir.

24 Q. Okay. And those first two trials, you are sitting
25 where Mr. McDaniels and Mr. Godfrey are sitting?

1 A. I don't recall exactly where I was sitting, but I was
2 on that side, yes, sir.

3 Q. Okay. And as a lead investigator, you have got the
4 opportunity to sit through the trials and see everything?

5 A. Yes, sir.

6 Q. You are sitting right beside the lawyers?

7 A. Yes, sir.

8 Q. Okay. And I believe Mr. Neddo was concerned. He
9 called 911 a couple of times. Well, you are familiar with
10 that in your report and your information about this case?

11 A. Yes, sir.

12 Q. Let's just be clear. You were the lead investigator on
13 this case?

14 A. It was assigned to me, yes, sir.

15 Q. All right. You are the lead, and so as the case lead
16 officer, people reporting to you and you have access to all
17 their information, right?

18 A. Yes, sir.

19 Q. They are -- it's effect for them to be your eyes and
20 ears to report back to you?

21 A. Yes, sir.

22 Q. That's kind of how it works? They are the visual aid
23 and that kind of thing, right?

24 A. Yes, sir.

25 Q. Okay. And you shouldn't have any information from any

1 other investigators not to be told to you, right? I mean,
2 you know everything on this case?

3 A. No, sir, it's impossible to know everything. You are
4 getting briefed on information.

5 Everyone that's involved in this case is a human. You
6 are going to see certain things. Maybe they are talking to
7 one person, they might place an emphasis on something that's
8 important to them that it may not be important later on.
9 There is a lot of information coming on. I mean, to say I
10 know everything, I still can't say that, sir.

11 Q. Sure. But the team effort, the idea is it for you to
12 be relayed information from your other investigators?

13 A. Yes, sir.

14 Q. Okay. And you learned from Mr. Neddo about something
15 being concealed from Mr. Mallory's van, removed from it at
16 the hospital?

17 A. I don't realize that or hear that until actually O
18 interview Mr. Neddo.

19 Q. Okay. But you are --

20 A. If I'm not mistaken, yes, sir.

21 Q. You are aware of that?

22 A. Yes.

23 Q. And it's in your report as well about a cell phone
24 being smashed?

25 A. Yes.

1 Q. His cell phone being smashed?

2 A. Yes, sir.

3 Q. Now, cell phones are a great way, as you testified, of
4 helping to determine someone's moving about where they are
5 going?

6 A. Yes, sir.

7 Q. Okay. But you were, in fact, able to do that in this
8 case by pulling cell phone records?

9 A. Yes, sir.

10 Q. Okay. And that was information that you had as you
11 continued to develop this investigation, right?

12 A. Yes, sir.

13 Q. I mean, you might not have it on day one, but you have
14 to actually get a subpoena for that, right?

15 A. Yes, sir.

16 Q. You are able to get that and it helped -- it actually
17 helps to corroborate the eyewitness account on this case?
18 It kind of shows Mr. Mallory going to the house from the
19 apartment?

20 A. Yes.

21 Q. Within a certain time frame, correct?

22 A. Yes, sir.

23 Q. Okay. Now, when this happened, things are normally
24 hectic on an investigation, right?

25 A. Yes.

1 Q. They can be?

2 A. They can be.

3 Q. You have people trying to go to the crime scene and you
4 were directing people to go there?

5 A. We have a pretty decent policy. It's a large
6 department. It's pretty well understood the only people
7 that can go to the crime scene, once it's been safe and
8 secure, are the people who need to be there, so your crime
9 scene investigators to process it and to collect evidence.

10 Q. But you would have had people go there to look at this
11 crime scene, right?

12 A. Yes, sir.

13 Q. And they would have reported back to you?

14 A. Eventually, yes, sir.

15 Q. Sure.

16 But -- and you were busy yourself actually talking to
17 Mr. Mallory, right?

18 A. Yes, sir.

19 Q. Okay. And the context of the information that you are
20 getting is this is a domestic situation?

21 A. That's what it sounded like, yes, sir.

22 Q. And that was one good reason why you wanted to talk to
23 Mr. Mallory?

24 A. Yes, sir.

25 Q. Okay. Because you already had information in your

1 discussions with him and things that you were learning later
2 that he was out on a date that night with someone that
3 wasn't his wife, right?

4 A. Yes, sir.

5 Q. You testified to some of those events, the sequence of
6 events, that he lied to his wife while going and hanging out
7 with a guy named Mr. Jacobs, John Jacobs?

8 A. Yes, sir.

9 Q. Okay. And that he really was going to go out and meet
10 with this woman Ricki Cook?

11 A. Yes, sir.

12 Q. And they went to an Applebee's and went to a hotel,
13 correct?

14 A. Yes, sir.

15 Q. To the Economy Inn, Economy Lodge, somewhere like that?

16 A. Yes, sir.

17 Q. And in your report I think it's noted that he still --
18 he even had the key in his pocket still?

19 A. Yes, sir.

20 Q. Okay. Hadn't quite checked out yet or something? They
21 were going to go back, who knows, but he did have that key
22 in his pocket, right?

23 A. Yes, sir.

24 Q. Okay. And your experience, nineteen years, we have
25 already discussed this, but domestic situations can be

1 quick, right?

2 A. They can be, yes, sir.

3 Q. They can be violent?

4 A. Yes, sir.

5 Q. And that was part of your consideration in this
6 timeline and also when you swore before that magistrate for
7 the warrant?

8 A. Yes, sir.

9 Q. Okay. Now, this house had no visible signs of forced
10 entry, right?

11 A. That is correct, sir.

12 Q. That also corroborated potentially a domestic situation
13 versus a random home invasion or a burglary that went wrong,
14 or something like that, in your mind, didn't it?

15 A. Yes, sir.

16 Q. Okay. And when you are investigating a domestic
17 situation, you are also wanting to speak to people that knew
18 the victim, family members, friends, and either you or
19 investigators of your team did that in this case?

20 A. Yes, sir.

21 Q. Okay. I think, you know, when you were speaking to Mr.
22 Mallory initially in your office, which is somewhat like a
23 cubicle, right?

24 A. Yes, sir.

25 Q. He was telling you about this perfect marriage, right?

1 A. He said they had a good marriage, yes, sir.

2 Q. Do you need to look at his statement?

3 A. I haven't seen his statement since --

4 Q. Okay.

5 A. It's been years.

6 Q. Would you disagree with me if I said he said it was a
7 perfect marriage?

8 A. I would not.

9 Q. Okay. But you found out that that was a lie, right? I
10 mean, it was an obvious lie. He was out cheating, right?

11 A. Yes, sir.

12 Q. You testified -- maybe you know, you learned they had a
13 rocky marriage?

14 A. Yes, sir.

15 Q. Okay. And that corroborated his version you had about
16 the domestic situation, the lack of forced entry, the odd
17 things going on at the hospital when you were swearing out
18 your warrant? That didn't diminish your theory of this case
19 at that point? That corroborated it?

20 A. Yes, sir.

21 Q. Okay. Now, you are talking to him. He's not, let's
22 say, handcuffed or anything at this point? He's in your
23 cubical?

24 A. Yes, sir.

25 Q. He's in a chair right beside you, right?

1 A. Yes, sir.

2 Q. He was free to go?

3 A. Yes, sir.

4 Q. And he's talking to you about what he did that night
5 and the various things and you are doing your best to take
6 it down on your computer, right?

7 A. Yes, sir.

8 Q. So he is told to sign the statement.

9 Now, you -- you did call Investigator Strange to go
10 look at this route and also speak to Ricki Cook, right?
11 Tried to track her down?

12 A. Yes, sir.

13 Q. And there has been, you know, some discussions about
14 this route. I think you testified on direct here that you
15 actually drove a route as well that seemed the most obvious
16 to you, the quickest one, the most direct, right?

17 A. Yes.

18 Q. And the cell phone records that you had that you used
19 in this case, you testified in the first two trials, they
20 all led back to the apartment, back to Mr. Mallory's
21 apartment?

22 A. They were moving in that direction, yes, sir.

23 Q. Sure.

24 And I think you testified on direct that, you know, you
25 probably drove the route that he told you about, right?

1 A. Yes, sir.

2 Q. The most logical to you at that time. All this time,
3 you know, six, seven years ago?

4 A. Yes, sir.

5 Q. 2006.

6 And I don't see anything in your report about him
7 telling you about some other route that you should have been
8 testing or anything like that. That's not in your report.

9 A. No, sir.

10 Q. Now, there is some information on direct about his
11 demeanor and that kind of thing. And you testified at the
12 first two trials, and you have the transcripts that would
13 have been recorded by someone just like the gentlemen beside
14 you, right?

15 A. Yes, sir.

16 Q. It's important testimony that needs to be taken down.
17 Do you agree with that?

18 A. I agree.

19 Q. Okay. And would you disagree with your first
20 testimony --

21 Let's do it like this. Would you disagree with the
22 statement that in prior testimony you described the 911 call
23 as fake?

24 A. Am I being asked for my opinion?

25 Q. No, sir, I'm asking -- and I can show it to you, but

1 would you disagree with the fact that you have testified
2 previously about the 911 call, that it was fake, it sounded
3 fake to you?

4 A. That was my testimony, yes, sir.

5 Q. Okay. I think today you might have testified that it
6 was excited, right?

7 A. Yes, sir.

8 Q. You testified previously that it was fake to you?

9 A. Yes, sir.

10 Q. Okay. Now, again, people like Sherry Tribble, you
11 spoke to her, you know her -- excuse me, you don't know her,
12 but you interviewed her?

13 A. Yes, sir.

14 Q. And your conclusion was that she doesn't have any dog
15 in this fight. I know that phrase has been used a couple of
16 times, but she doesn't know anybody involved in this case?

17 A. She does not.

18 Q. She knows her boyfriend, right?

19 A. Yes, sir.

20 Q. And she tells you that she knows what she saw, right,
21 but she doesn't has no motive or bias or any reason to
22 misrepresent anything in this courtroom?

23 A. None that I know of, sir.

24 Q. Not in the first two trials and not in this trial?

25 A. None that I know of, sir.

1 Q. Okay. Now, Ivan Neddo, who was a state witness in the
2 first two trials, when you were sitting over there, as far
3 as you know he's got no reason to misrepresent anything he
4 heard or saw?

5 A. Not that I know of, sir.

6 Q. Okay. And that corroborated -- the ears and eyes in
7 this case corroborated this domestic situation, in your
8 mind, as you progressed throughout this case, right?

9 A. It was information that was coming in, yes, sir, that
10 you are taking what someone may have verbally told another
11 investigator and you are documenting it in a statement.

12 Q. Sure.

13 And that's part of your job to investigate is to
14 inquire, right?

15 A. Yes, sir.

16 Q. Kind of inherit -- the definition of an investigator is
17 to inquire into facts or circumstances, right?

18 A. Yes, sir.

19 Q. And those two eyes and ears were your inquiry into the
20 matter, right?

21 A. Yes, sir.

22 Q. That led you to the conclusion of this domestic
23 situation?

24 A. Yes, sir.

25 Q. That, in combination with what Mr. Mallory was telling

1 you at the time about going out and cheating, right?

2 A. Yes, sir.

3 Q. And, again, you testified already, but, you know, in
4 your experience with homicides and serious crimes, domestic
5 situations kick off fast?

6 A. Yes, sir.

7 Q. So we talk a lot about a time frame and a timeline, but
8 you don't need much, do you?

9 A. You do not.

10 Q. Okay. This is never going to be a case investigated
11 about someone waiting to rob someone or waiting in the
12 bushes? This was a case where there was a knife used,
13 right? Potentially --

14 A. It was a sharp pointed --

15 Q. Sure.

16 A. -- instrument.

17 Q. And a close quarters weapon? An intimate object,
18 right? Something that could have easily come from a home?

19 A. Yes, sir.

20 Q. It's not something extraneous that would take a lot of
21 prior thought, necessarily? It's not a booby trap or
22 something like that?

23 A. No, sir.

24 Q. Okay. And, you know, things like "bitch bled all over
25 my Play Station," and comments like that, in combination

1 with cheating and that kind of thing led you to your
2 conclusion in this case?

3 A. There were a number of factors that led us to the
4 conclusion for the first two trials, yes, sir.

5 Q. Right.

6 And I think you testified previously that that
7 statement that was relayed to you was an angry statement?
8 It seemed to you like an angry statement, right? You felt
9 those actions were not sincere at that time, right?

10 A. I'm not sure what exactly we are talking about, sir.

11 Q. Talking about your prior statements.

12 Would you disagree with me if you described the
13 statements that you learned from the hospital as being angry
14 statements that you testified to them being?

15 A. That would be my -- yes, sir.

16 Q. And not sincere, not sincere emotion, right? You
17 testified --

18 A. Not that I felt at the time, no, sir.

19 Q. Right.

20 And you had information back at the hospital about a
21 refusal to sign the treatment form, right? You knew about
22 that from your investigation?

23 A. Yes, sir.

24 You also have to look at the totality. Unfortunately
25 we get to deal -- we, law enforcement, we get to deal with

1 people on very -- some the worst days of their life. To say
2 there is one way that one person is going to react, you
3 really can't say that. So there is a wide variety, but,
4 yes, sir, that was noted.

5 Q. Okay. Now, he also mentioned that she was raped. He
6 was telling you that, the first person from law enforcement,
7 Mr. Mallory was talking to you about his wife being raped,
8 right?

9 A. That's what he thought, yes, sir.

10 Q. And you didn't have any information in this case
11 indicating that she had had any kind of sexual assault,
12 right?

13 A. There was nothing I had at the time, no, sir.

14 Q. Sure.

15 But you would have followed up with your pathologist
16 and people at the hospital to verify that, right?

17 A. Yes, sir.

18 Q. You did that?

19 A. Yes, sir.

20 Q. Now, one of your reasons that you swore out that
21 warrant and then you corroborated this domestic situation,
22 one of that had to do with this timeline, right?

23 A. Again, sir, there are a number of factors when you are
24 looking at something like this. You also have to look at
25 the time itself, the public safety angle.

1 When you decide to take someone into custody to arrest
2 them, take them off the streets, so to speak, it's not just
3 any one factor. You have to look at the public safety. You
4 have to look at if you really believe this is the person who
5 is responsible for a crime, then destroying evidence that
6 you don't know of or aren't aware of their location yet.

7 So the threshold to arrest someone is what's called
8 probable cause. Quite typically on serious cases, once we
9 are able to establish probable cause, it's a consideration
10 to arrest them.

11 Q. Sure.

12 A. Probable cause we felt was achieved fairly early in the
13 case. That does not mean that the case is not investigated
14 further, and that doesn't mean that, well, this is the only
15 direction that you go. You try to follow the evidence.

16 Q. Sure. Sure.

17 And you did continue with the direction and you
18 followed the evidence and you established a timeline on this
19 case?

20 A. Yes, sir.

21 Q. And that was part of your first trial testimony, as
22 well as your second trial testimony, as well as the
23 testimony in your deposition?

24 A. Yes, sir.

25 MR. BRIAN SHEALEY: Permission to approach the

1 witness, Your Honor?

2 THE COURT: Yes, sir.

3 BY MR. BRIAN SHEALEY:

4 Q. Investigator, do you recognize this as being from your
5 agency, right?

6 A. Is this a 911, or dispatch?

7 Q. Sure.

8 Do you see right there where it says Richland County?

9 A. Yes, sir.

10 Q. Okay. Do you see that address? What does that address
11 say?

12 A. It's [REDACTED] Pinelane Road.

13 Q. Sure.

14 And what does it say on the back of it?

15 A. State's Exhibit No. 6.

16 Q. Okay. And do you recognize that as the closed incident
17 report in this case?

18 A. That's not something I have seen before, no, sir.

19 Q. Okay.

20 A. It looks like it's more along the line of a dispatch
21 form. I can't say I haven't seen this. This case has a lot
22 of paperwork.

23 Q. Sure.

24 Would you agree with me that on direct that Mr. Goings
25 showed this to you and noted the time up here for the 911

1 call?

2 A. No, sir, he -- I don't believe he ever showed me this.

3 Q. Okay.

4 A. The 11:37, if I'm not mistaken, is what I got from my
5 notes.

6 Q. Okay. What does this say? What does that date right
7 there say?

8 A. It's May 14th, 2006, and the time on it is 3:37:32.

9 Q. Okay. And the call is about the address that's in
10 question, right?

11 A. Correct.

12 Q. And this is a closed incident report, right?

13 A. Again, I'm not sure. It looks like a dispatch log. I
14 don't work with dispatch.

15 We use their information. We ask to get the dispatch
16 records, but you have this language down here -- well, it
17 says incident report. It's not a Richland County Sheriff's
18 Department incident report.

19 Q. Okay. Well, just follow me for a second. This says
20 date and time received, right?

21 A. Yes, sir.

22 Q. For a particular call, the first call, the 911 call,
23 which is often what happens -- this is the kind of report
24 you get from a 911 call, correct, in your experience at
25 Richland County?

1 A. That's what it looks like, yes.

2 Q. This is the subject address in question here that we
3 have been talking about for awhile, right?

4 A. Yes, sir.

5 Q. And that the time generated right there is 3:37, right?

6 A. It is.

7 Q. Okay. But you are not sure if this is what Mr. Goings
8 showed you?

9 A. No, sir, I do not believe that is.

10 Q. Okay. But from your investigative report and your
11 investigation of this timeline, you know that a 911 was
12 placed?

13 A. Yes, sir.

14 Q. I think in your report you might mention 3:35, but I
15 just showed you something indicating 3:37, didn't I?

16 A. I believe the 3:35 is from Mr. Mallory's phone records.

17 Q. Sure.

18 And this says 3:37 from 911, right?

19 A. Again, two different systems. Obviously it's the same
20 time, but one is saying A and one is saying B.

21 Q. But you do understand that and you recognize that's
22 what this is about right here?

23 A. That's what that piece of paper says, yes, sir.

24 Q. And closed incident reports are generated to document
25 911 calls, right?

1 A. I don't know what dispatch does with them. I asked our
2 dispatch for a copy of the dispatch log and also a copy of
3 the 911 tape.

4 Q. Sure.

5 A. I don't know how they come about their information.

6 Q. But, Investigator Holdorf, you are a senior
7 investigator.

8 A. That doesn't mean I know everything, sir.

9 Q. Right.

10 A. I know a lot, but not everything.

11 Q. This says -- you know what this form is used for in
12 your department, right? To chronicle 911 calls, right?

13 You see the context down here? These are about 911
14 calls, right, and what's happening; comments?

15 A. Yes, sir.

16 Q. You don't disagree with that?

17 A. I do not.

18 Q. Okay. Now, if you would refer to your report, and I'll
19 try refer to it as well.

20 The first page. You got it?

21 A. Got it.

22 Q. You are speaking to Justin and you note that he has
23 blue-type sweatpants and a blue shirt that's covered in
24 blood, right? Do you see that on that third paragraph down?

25 Is that --

1 A. Mine third paragraph down is I first meet him at the
2 hospital. You can point on yours.

3 Q. Okay.

4 A. It depends on what format yours was printed out.

5 Q. Okay. Right there. There it is.

6 A. Okay.

7 Q. Do you see that?

8 A. Okay.

9 Q. And this one you are first speaking to Justin and you
10 collect his clothes and placed them into evidence, right?

11 A. Yes, sir.

12 Q. Okay. You got Sergeant Strange tracking down Ms. Cook.

13 And I am going to go to the third page, and I'll just
14 direct you, because it may be easier --

15 A. Okay.

16 Q. -- but starting right there, Strange advised that Ricki
17 told him that she got home at three a.m., or very shortly
18 after. That's when she was dropped off by Justin Mallory,
19 right?

20 A. Yes, sir.

21 Q. This --

22 A. According to her estimate of time.

23 Q. Sure. Sure. Exactly.

24 But as part of what you do, you learned about these
25 various locations, the Economy Lodge, which we got a

1 receipt. You learned about the Exxon. And you start --
2 that's your first real attempt at trying to develop time
3 frames is with the Exxon, right, as far as the kind of time
4 stamp situation? You actually look at your own cell phone
5 and look at what time is recording, and you are able to
6 basically determine is it twenty-one minutes fast, that
7 video, as far as the time stamp, correct?

8 A. Yes, sir.

9 Q. And you just watched a replay of the video, right?

10 A. Yes, sir.

11 Q. That's in evidence.

12 A. Yes.

13 Q. And you authenticated that video -- or you didn't have
14 to authenticate it, but you understood that that was the
15 video that you recognized Mr. Mallory to be in, in that
16 Exxon, right?

17 A. Yes, sir.

18 Q. And, again, you have already testified that that video
19 was twenty-one minutes fast. So any kind of time stamp on
20 that is going to be twenty-one minutes fast, right?

21 A. It should be, approximately, yes, sir.

22 Q. And your report in your investigation you determine,
23 based on finding Mr. Mallory on that video, that he roughly
24 left the Exxon with his Yoohoo and his cigar at three, or a
25 little bit before three a.m.?

1 A. Yes, sir.

2 Q. Based on your detective work, twenty-one minutes fast,
3 finding him on that video and doing the math, right?

4 A. Yes, sir.

5 Q. Okay. Now, I'm going to show you what's been premarked
6 as Defendant's 10. Do you recognize that?

7 A. Yes, sir.

8 Q. Does that look familiar from what we just observed on
9 the video, what's already in evidence, as the Exxon?

10 A. Yes, sir.

11 Q. And you recognize that to be Justin Mallory?

12 A. Yes, sir.

13 Q. All right. And he's buying his Yoohoo?

14 A. Yes, sir.

15 Q. And that's part of the footage that you collected?

16 A. It's on the disc, yes, sir.

17 Q. Okay.

18 A. I mean, I believe it to be. I don't have any reason
19 not to say.

20 Q. I understand.

21 So you recognize this to be that, basically, right?

22 A. That's what it appears to be, yes, sir.

23 MR. BRIAN SHEALEY: Your Honor, at this time I
24 would move this in as Defense 10.

25 THE COURT: Any objection?

1 MR. GOINGS: No, ma'am.

2 THE COURT: It's admitted.

3 (Whereupon, Defendant's Exhibit No. 10 was entered
4 into the record as evidence)

5 BY MR. BRIAN SHEALEY:

6 Q. Now, you recognize in this that Mr. Mallory has got a
7 white hat on him, right? It's pretty clear from this
8 picture?

9 A. Yes, sir.

10 MR. BRIAN SHEALEY: Permission to publish, Your
11 Honor?

12 THE COURT: Yes, sir.

13 BY MR. BRIAN SHEALEY:

14 Q. But based on a three o'clock departure from that Exxon,
15 you then determined that he's dropping Ricki off, based on
16 Investigator Strange's conversation with Ricki?

17 A. Yes, sir.

18 Q. As well as his own conversation with you, right?

19 A. Yes, sir.

20 Q. And, again, no one is looking at their clocks, but he
21 told you initially that he thought he got home around 3:45,
22 right?

23 A. That's what he estimated, yes, sir.

24 Q. But you later determined that to be incorrect?

25 A. Most estimates of time are.

1 Q. Right.

2 Time, let's go over the timeline in a little bit more
3 detail here.

4 Now, a lot of this is based off your first trial
5 testimony, but it should be also covered in your report, but
6 you did all the timeline understanding that Mr. Mallory left
7 Exxon at or about three o'clock, right?

8 A. Yes, sir.

9 Q. And you pulled his cell phone records, right?

10 A. Yes, sir.

11 Q. Now, his cell phone is smashed, but that didn't affect
12 your ability to go to Suncom and actually get the records,
13 right?

14 A. It did not.

15 Q. And by doing that, the search warrant, again, you are
16 swearing before a judge about why you need this, these cell
17 phone records, right?

18 A. Yes, sir.

19 Q. And this was at a later time, right?

20 A. Yes, sir.

21 Q. And your testimony would have been what we have already
22 covered in great detail today; the eyes and the ears and all
23 the other circumstances surrounding this domestic dispute at
24 that time, right?

25 A. Yes, sir.

1 Q. And you swore again before a judge and got a search
2 warrant?

3 A. Yes, sir.

4 Q. And based on that search warrant, you were able to
5 ascertain this timeline where you have got a number of calls
6 being placed in the early morning hours leading up to a call
7 to 911, right?

8 A. Yes, sir.

9 Q. Okay. Now, as you have testified in the previous
10 trials, these calls are all going towards the direction of
11 the Mallory apartment?

12 A. Yes, sir.

13 Q. And not going off in some other direction towards some
14 unknown strip club, but they are going back to the house,
15 right?

16 A. Based upon the sequence of the towers where the calls
17 were hitting, again, they were moving towards the Mallory
18 residence.

19 Q. Okay. And do you recognize and recall from your
20 investigation in this case, importantly, that the last phone
21 call was placed to a Joseph Robertson -- Robinson at roughly
22 3:24. It ends at 3:24, correct?

23 A. Yes, sir.

24 Q. Okay. And you were able to get a hit off a cell phone
25 tower. And I know you are not an expert, but generally you

1 are able to understand that the phone is constantly seeking
2 different towers as you are, let's say, in a car and you are
3 traveling in a certain direction, it moves from tower to
4 tower to tower?

5 A. Yes, sir.

6 Q. It can gave you a rough general idea of what direction
7 you are going?

8 A. Yes, sir.

9 Q. And your first and second trial testimony is you went
10 into pretty great detail over the various towers, because he
11 makes a lot of phone calls and the various towers that's
12 taken in and kind of gauge his path, right?

13 A. Yes, sir.

14 Q. Okay. And you knew pretty much that these cell phone
15 towers are kind of within a two mile radius, basically?
16 They are going to hit within a realm of two miles. If you
17 are within two miles, you are going to be locating off that
18 cell phone tower. And then if you get outside of that two
19 mile radius, you are probably picking up a new cell phone
20 tower, if you are on the phone?

21 A. When I talked to the cell phone experts, I was told
22 that they would -- there was a two mile radius on the cell
23 tower. I can't tell you whether each tower is two miles
24 between each other or not, but I was told basically there
25 was an average range of two miles.

1 Q. Sure.

2 And based on that information, you actually go to the
3 heart of the last cell phone tower, which is heading in the
4 direction of the Mallory's house, and you drive that route
5 kind of based off the heart of that two mile radius. Do you
6 remember that?

7 A. Yes, sir.

8 Q. Okay. And that last phone call that initiates at 3:23
9 and ends at 3:24, and you drive that route and you
10 understand that takes about six and a half miles to drive to
11 get there. So 3; 23, and then you are adding six and a
12 half, minutes to that. Do you recall all that?

13 A. I think it was about there. I don't recall it. It's
14 been several years, sir.

15 Q. Sure.

16 I can show you the transcript, but that does sound
17 familiar to you, right?

18 A. Yes, sir.

19 Q. And you are driving from the Exxon and you are not
20 driving from Ricki's house. You are basically going down to
21 the last cell phone tower before the apartment and then you
22 are driving that route?

23 A. Yes, sir.

24 Q. Okay. And knowing that the phone call was made at 3:24
25 and ending at -- excuse me, it was initiated at 3:23 and

1 ended at 3:24 to Mr. Joseph Robinson, you then drive it and
2 you are looking at six and a half minutes for your rough
3 estimate?

4 A. If that's what the transcript says, yes, sir. I --

5 Q. Sure, but that's fair. You recall that from being the
6 investigator in this case?

7 A. Again, if -- I don't recall the exact, but I remember
8 it was about that time, yes, sir.

9 Q. Okay. And when you drove it, it wasn't at 3:30 in the
10 morning. It was later on, daylight hours, right?

11 A. Yes, sir.

12 Q. Okay. And things are moving a little bit more slower
13 during the day than they are at night, right?

14 A. Yes, sir.

15 Q. It was less traffic at night?

16 A. Yes, sir.

17 Q. That's not any kind of far stretch of the imagination
18 there, is it?

19 A. It is not.

20 Q. Okay. So 3:23 and 3:24 was your time for the last
21 call. We just talked about that. And you drove it in six
22 and a half minutes. And that's where you come to this
23 estimate that you testified to in the first two trials about
24 3:30 that he would have gotten home to his apartment. We
25 are talking about Mr. Mallory?

1 A. Yes, sir.

2 Q. And I think -- and you also testified -- and this was
3 elicited by Mr. Meadors, but if he was a little bit closer
4 to the outside of that two mile radius, he would have gotten
5 there a little sooner. If he was a little bit more inside
6 of it, he would have gotten there a little bit later, but
7 roughly 3:30?

8 A. Yes, sir.

9 Q. Okay. And I showed you this closed incident report
10 already?

11 A. The dispatch log, yes, sir.

12 Q. Sure.

13 So if you are basing this dispatch log and your
14 physical driving estimate based on the cell phone towers and
15 that technology, you are looking at roughly seven minutes to
16 get home and then call 911?

17 A. You are going have a fluctuation on time, again,
18 because you are dealing with two different systems. We did
19 our best to try to be fair to all sides when you are
20 measuring distance, you are doing the speed limit, you are
21 starting in the center and not one side or the other.

22 I can't tell you exactly what time the call took place.
23 You have one source that says one thing and another source
24 that says another. I can tell you what the distance we did
25 and it's trying to be fair to all parties involved. I have

1 got nothing against or for side or the other.

2 Q. You are just doing your job? You are just following
3 every bit of evidence in your case? That's why you --
4 right?

5 A. Trying to, yes, sir.

6 Q. You are not trying to be biased towards anybody?

7 A. No, sir.

8 Q. It's not your job as an investigator. It's not your
9 job?

10 A. It is not.

11 Q. Your job is to make inquiries, as we talked about, talk
12 to witnesses, right?

13 A. Yes, sir.

14 Q. To develop evidence in the case?

15 A. Yes, sir.

16 Q. In this case it's a domestic dispute with all the
17 evidence that we had, and it's corroborated by everything
18 else that was coming to you at that time, including the
19 timeline?

20 A. Yes, sir.

21 Q. And you testified that domestic killings can kick off
22 quickly?

23 A. Yes, sir.

24 Q. In seven minutes, or five minutes, plenty of time to do
25 something like that --

1 A. Yes, sir.

2 Q. -- in your experience.

3 And that's fair?

4 A. Yes, sir.

5 Q. Just bear with me and I appreciate your time.

6 (Off the record)

7 (Back on the record)

8 BY MR. BRIAN SHEALEY:

9 Q. Now, Sherry Tribble testified in the trials about
10 observing Mr. Mallory, pick him out in the courtroom and
11 identifying him from this domestic disturbance. That was a
12 big deal for you, right, as the lead investigator in this
13 case?

14 A. Yes, sir.

15 Q. Okay. And specifically she discusses a hat -- I'm
16 going to show it to you. It's with the jury now, but a hat,
17 right?

18 A. Yes, sir.

19 Q. She also testified about some kind of dark jacket,
20 right?

21 A. I believe I recall that, yes, sir.

22 Q. Now, you know what kind of evidence was in this case,
23 what evidence was collected from the crime scenes, that was
24 in the van, and everything else?

25 A. It's logged into evidence, so there would be a record

1 of it.

2 Q. Well, it would stand out in your mind if a hat was in
3 your evidence room?

4 A. I do not recall a hat being in our evidence room, no,
5 sir.

6 Q. You know a hat is not in the evidence room in this
7 case, right?

8 A. I do not recall -- I do not believe there is one, no,
9 sir.

10 Q. In fact, you talked about that before, and that kind of
11 bugs you that you are unable to find that hat? That's fair,
12 right?

13 A. As an investigator you try to get all the angles and
14 all the possibilities.

15 Q. But that still bothers you that no hat was found in
16 this case?

17 A. Yes, sir.

18 Q. And that no jacket was found in this case?

19 A. No, sir.

20 Q. Because when Mr. Mallory is talking to you, and
21 arguably you are one of the first law enforcement personnel
22 to talk to him, he doesn't have a hat, he's not wearing a
23 jacket?

24 A. Not that I recall, no, sir.

25 Q. And your understanding from this investigation is that

1 Ms. Mallory is really bloody, right?

2 A. She is.

3 Q. And potentially if you have got outside layers of
4 clothing, they are going to have blood on them?

5 A. He had blood on him.

6 Q. Sure.

7 I mean, there is video from the hospital with him
8 carrying her body in, so you knew about that blood?

9 A. Yes, sir.

10 Q. But your crime scene personnel went to that scene and
11 looked. I think we had -- you are familiar with Zane
12 Padgett?

13 A. Yes, sir.

14 Q. He's a pretty meticulous guy, right?

15 A. Yes, sir.

16 Q. A good investigator?

17 A. Yes, sir.

18 Q. Did he ever give you any information about a hat being
19 discovered anywhere?

20 A. No, sir.

21 Q. Nor a jacket?

22 A. No, sir.

23 Q. Okay. Bear with me, investigator. I appreciate your
24 patience.

25 (Off the record)

1 (Back on the record)

2 BY MR. BRIAN SHEALEY:

3 Q. I'm going to talk about Mr. Porch for a little bit.

4 You testified regarding some of his prior statements
5 that were changing; you know, that you wanted to test his
6 statement and wanted to make sure that it could stand up,
7 right?

8 A. Yes, sir.

9 Q. That's what you testified to in the first two trials
10 when y'all had his testimony in evidence. You were sitting
11 back there with the investigators, sitting right behind the
12 lawyers, right?

13 A. Yes, sir.

14 Q. Okay. And you testified about your training and
15 experience, your interview, continuing educational
16 requirements. You know how to talk to folks?

17 A. Yes, sir.

18 Q. You even testified about you liked to interview people
19 in the cubical in your office, basically, so you can kind of
20 maybe gauge their responses to see if they are nervous or
21 anything like that. You like to do that?

22 A. It's the way I prefer to do it, yes, sir.

23 Q. Sure.

24 You wouldn't want to be putting someone up on the stand
25 that you think is lying. You would not suborn perjury? You

1 would not?

2 A. No, sir.

3 Q. And the entire trial you are sitting within earshot of
4 your prosecutors that you are assisting, right?

5 A. Yes, sir.

6 Q. And you testified that you wanted to make sure that you
7 could test this statement and you wanted to make sure that
8 it could stand up?

9 A. Yes, sir.

10 Q. And I know there has been a lot of testimony, you know,
11 about the solicitor makes the call, the solicitor decides to
12 prosecute, but there is a reason that the investigators sit
13 back there behind the lawyers, right?

14 A. Yes, sir.

15 Q. Because they are building their case and bringing the
16 evidence to the lawyers. That's why they sit there, right?

17 A. Also to make sure that nothing is missed, or try not to
18 miss anything.

19 MR. BRIAN SHEALEY: Beg the court's indulgence.

20 (Off the record)

21 (Back on the record)

22 BY MR. BRIAN SHEALEY:

23 Q. Thank you, sir.

24 THE COURT: Any redirect?

25 MR. GOINGS: Yes, ma'am.

1 REDIRECT EXAMINATION BY MR. GOINGS:

2 Q. You were asked, and I only have a very few questions
3 for you, Investigator Holdorf, about Sherry Tribble and her
4 identification of Justin Mallory, is that right?

5 A. Yes, sir.

6 Q. When did she -- when is the only time Ms. Tribble sees
7 Justin Mallory?

8 A. Is there a way to rephrase the question? I think I
9 understand what you mean, but I'm not sure.

10 Q. Where does she -- where does she observe the person
11 that she saw that night? Do you recall from her statement?

12 A. She sees him by the van.

13 Q. All right.

14 A. Going into the van after loading up Nakia is when she
15 actually sees him.

16 Q. Okay. So the only time she actually sees and
17 identifies Justin Mallory is when he's loading Nakia Mallory
18 into his van to take her to the hospital?

19 A. Yes, sir, that is my understanding.

20 Q. Okay. And you were also asked about your interview
21 with Justin Mallory, correct?

22 A. Yes, sir.

23 Q. And you said you did it in the cubical, he wasn't
24 handcuffed and he was free to go?

25 A. Yes, sir.

1 Q. All right. Did he want to go anywhere?

2 A. No, sir, he cooperated with us.

3 Q. And, again, he gave you consent after consent where you
4 wanted to search?

5 A. Yes, sir, told us wherever to look, where he had been.

6 Q. And gave you his statement about where he had been and
7 what he done and what he found when he got home?

8 A. Yes, sir.

9 Q. And that statement hasn't changed from day one?

10 A. It has not.

11 Q. And have y'all -- keep going.

12 Now, you were also asked about your testimony that he
13 felt that the 911 phone call, the emotions shown by Justin
14 Mallory was fake, is that correct?

15 A. That is what I testified to, yes, sir.

16 Q. That's just your opinion, isn't it?

17 A. Yes, sir.

18 Q. Your opinion at the time?

19 A. Yes, sir.

20 Q. Okay. You were also asked about the way the
21 investigation focused after he was arrested, correct?

22 A. Yes, sir.

23 Q. And I believe you testified or he was asking you and
24 you answered in the affirmative that after he was arrested,
25 it continued in the direction as a domestic dispute?

1 A. You follow the evidence, and that's what we continued
2 to do, and try to continue to do, sir. Trying to talk to
3 people who knew the Mallorys, who were present or had some
4 sort of involvement during that day. Just trying to
5 document whatever we can.

6 Q. As a domestic dispute, though, per your testimony,
7 correct?

8 A. That's what we believed it to be at the time, yes, sir.

9 Q. But there was no followup with the interview on Joshua
10 Porch after he initially said he didn't know of anything,
11 correct, until June, when the DNA is found?

12 A. Mr. Porch had lied to us and then had his wife
13 basically cover with his lie. At that time it seemed pretty
14 strong.

15 Q. But my question, there was no followup with Mr. Porch
16 until his DNA was found, or a foreign DNA specimen was
17 found?

18 A. That is correct, sir, yes, sir.

19 Q. Now, let's talk about this timeline, and I have only
20 got a couple of questions. You were asked about the closed
21 incident report saying 3:37?

22 A. Yes, sir.

23 Q. All right. And you testified that what your review of
24 the phone records from Justin Mallory indicated what time
25 did he call 911?

1 A. 3:35.

2 Q. All right. And you explained that it's not uncommon
3 for two different systems to have two different times,
4 correct?

5 A. Yes, sir, that is correct.

6 Q. But your testimony at the first trial and during your
7 investigation, your timeline is based on the phone records
8 of Justin Mallory, are they not?

9 A. That's what I had to work with, yes, sir.

10 Q. All right. So the last phone call that you had ends at
11 3:24, is what you testified to?

12 A. Yes, sir.

13 Q. All right. And you said from -- your testimony on
14 cross was from the heart of that cell tower that that phone
15 call hit off of was six and a half minutes it took you from
16 getting from that location to the Mallory residence?

17 A. If that's what I testified to, yes, sir. I mean, I
18 remember going where the heart of the cell phone was was
19 right at an overpass of the interstate and then drove that
20 route.

21 Q. So you had six and a half to 3:24, the earliest time --
22 well, I'm not going to say the earliest time.

23 A. You are looking right at 3:30.

24 Q. Right at 3:30, if he was at the heart of that cell
25 tower?

1 A. Yes, sir.

2 Q. Like Mr. Shealey had asked you, if he is closer to the
3 house, even though he's in that cell tower range, it would
4 take him less time?

5 A. If he's going slower than I. There is a number of
6 variables. I'm doing the speed limit and I'm going right in
7 the middle.

8 Q. And I'm going to get to that.

9 Just based on your route that you took, he could get
10 there in less than six and a half minutes?

11 A. He could. He could also get there -- he could go
12 slower or faster.

13 Q. And you don't know how fast Justin Mallory was going
14 that night?

15 A. No, sir, I do not.

16 Q. Do you know how many stop light he may have gotten
17 stopped by?

18 A. I tried to pull an average when I was doing it in the
19 daytime, to be fair to all parties involved. And if I'm
20 testifying to it, I want it to be true and accurate to the
21 best of my ability.

22 Q. But even an average, you would agree, wouldn't be an
23 exact?

24 A. There is no way to know exactly, no, sir.

25 Q. So based on your 3:30 timeline, it could be a couple

1 minutes off, or more?

2 A. Very easily, yes, sir.

3 Q. Okay. And if we have it a couple -- but we know, in
4 fact, that he's at least at home at what time, based on his
5 cell phone records?

6 A. You've got the 3:35 is when he calls 911 --

7 Q. 3:35?

8 A. -- and you can hear Mr. Hargraves in the background in
9 the 911 tape.

10 Q. That's the only concrete evidence that you had at that
11 time to show Mr. Mallory was at his residence?

12 A. Yes, sir.

13 MR. GOINGS: Beg the court's indulgence.

14 (Off the record)

15 (Back on the record)

16 BY MR. GOINGS:

17 Q. I'm going to ask you a couple more questions about
18 Sherry Tribble. You took her statement and she identified
19 seeing a van when she looked out the window, correct?

20 A. Yes, sir.

21 Q. And then she looked out later and saw the van had been
22 moved?

23 A. Yes, sir.

24 Q. Do you remember the -- and you were asked several
25 questions on cross-examination about this. Do you remember

1 my question on direct if Sherry's statement -- or, I mean,
2 Sherry Tribble's recollection of what occurred, if the
3 so-called domestic dispute that she heard occurred shortly
4 after 2:18, could Justin Mallory have been at that house?

5 A. Not at 2:18, sir.

6 (Off the record)

7 (Back on the record)

8 MR. GOINGS: I have nothing further, Your Honor.

9 MR. BRIAN SHEALEY: Just briefly, judge.

10 THE COURT: Yes, sir.

11 RECROSS EXAMINATION BY MR. BRIAN SHEALEY:

12 Q. Now, you testified that Sherry is not too great at
13 timelines, not like what you develop, correct?

14 A. No, sir, she's not good with times.

15 Q. But she's one of these witnesses, in your experience,
16 and knows what she saw and the sequence that she saw it,
17 right?

18 A. Correct.

19 Q. And the statement is in evidence, so I'm not going to
20 necessarily ask every detail of it, but in the course of
21 your investigation Sherry sees a van out there when the
22 argument is happening?

23 A. Yes, sir.

24 Q. And you know that she picked out Justin Mallory when
25 this dispute is occurring as being out there in the parking

1 lot?

2 A. When she looks out the window and sees Justin Mallory
3 getting into the van, which is his van.

4 Q. Thank you.

5 THE COURT: You may step down.

6 May this witness be excused?

7 MR. GOINGS: From the State's subpoena, Your
8 Honor.

9 MR. LUKE SHEALEY: As well as from ours.

10 THE COURT: You may be excused. Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: You may call your next witness.

13 MR. UNDERWOOD: Thank you, Your Honor.

14 At this time the State calls Chief David Wilson.

15 CHIEF DAVID WILSON, having been first duly sworn,
16 testified as follows:

17 THE CLERK: Have a seat on the witness stand,
18 please.

19 THE CLERK: State your name for the record.

20 THE WITNESS: David Wilson.

21 DIRECT EXAMINATION BY MR. UNDERWOOD:

22 Q. Good afternoon, Chief Wilson.

23 Would you please tell the jury where you are employed
24 and what your job is?

25 A. I'm a deputy chief with the Richland County Sheriff's

1 Department. I'm over the Investigative Unit, which
2 encompasses all the investigators, our forensic labs, our
3 crime scene people, our narcotics unit.

4 Q. How long have you worked in that capacity?

5 A. For the last sixteen years.

6 Q. How long have you been in law enforcement?

7 A. Thirty-five.

8 Q. And you worked your way up to where you are now?

9 A. That's correct.

10 Q. Sixteen years?

11 A. That's correct.

12 Q. As head over all the investigations units, what is your
13 day-to-day involvement with cases?

14 A. My day-to-day involvement is minimal. It's more
15 administrative at this point.

16 Q. And can you elaborate a little bit on that, as far as
17 what your administrative duties are, as far as supervising
18 that unit?

19 A. I move a lot of paper from one side of the desk to the
20 other, basically.

21 Q. So do you have much involvement on particular cases?

22 A. Not usually. There are times if we are short handed or
23 something, I'll pitch in and help, or take somebody's
24 statement, or, you know, maybe even go out and interview
25 some witnesses, depending on what's needed.

1 Q. Were you involved with the investigation of the Nakia
2 Mallory murder, which led to the prosecution of Justin
3 Mallory?

4 A. No.

5 Q. When did you become involved with this investigation?

6 A. I was aware of the investigation. Major Smith led that
7 investigation.

8 I actually became involved in the actual investigation
9 itself after Justin Mallory's trial.

10 Q. After the second trial?

11 A. That is correct.

12 Q. When he was found not guilty?

13 A. That is correct.

14 Q. How did you become involved?

15 A. At some point he had contacted Sheriff Lott. Sheriff
16 Lott asked me to personally look at this case, and so I
17 pulled all the case files and forensic files together and
18 looked at them.

19 Q. And when you say he contacted Sheriff Lott, are you
20 talking about Justin Mallory?

21 A. That is correct.

22 Q. And what was the purpose of your review?

23 A. To make sure that we had done the right thing.

24 Q. And did you go ahead and review the case?

25 A. I did.

1 Q. What were the results of your review? What did you
2 determine?

3 A. There were several things that kind of jumped out at me
4 about the initial investigation.

5 The fact that Justin Mallory had been implicated by a
6 witness, a female witness that had heard an argument in the
7 apartment and had looked out and seen his van in the parking
8 lot and then later had seen him actually carrying his wife
9 to the van. That, and his demeanor at the hospital later on
10 seemed to implicate at that time that he was probably guilty
11 of the murder of Nakia Mallory.

12 Q. And upon your review of the case, did you find any
13 problems with the investigation or with the prosecution?

14 A. There were some things that stuck out to me. The fact
15 that the defendant in this case had changed his story so
16 many times.

17 Q. And by the defendant in this case, are you referring to
18 Joshua Porch?

19 A. I am. To me that was troublesome. When people tell
20 the truth, it usually doesn't change.

21 That in one of the reports from the original
22 investigation I saw that the defendant in this case was
23 left-handed and I believe that Justin Mallory was
24 right-handed and that became significant with the location
25 of the wounds on the victim. The victim's wounds were all

1 on the right side, which led me to believe that it was more
2 consistent with a left-handed assailant. And it certainly
3 could have been a right-handed assailant, depending on the
4 position of the body and stuff like that, but to me it was
5 more consistent with a left-handed assailant. So that got
6 my attention.

7 And then later on I met with Mr. Mallory in my office
8 and actually had him write his name several times on a piece
9 of paper and he wrote it right-handed. And then I compared
10 that with his signature on his statement from the original
11 case and it was very consistent. And then I questioned him
12 about being right-handed. So that confirmed that he was
13 right-handed, so that kind of led me down that path.

14 That, and the inconsistent statements. And I later met
15 with one of our DNA analysts, John Barron, and we went over
16 the case and the forensics of the case. The victim's shirt
17 had been very bloody and it had spots of blood on it. And I
18 requested John Barron to run additional testing on the
19 shirt, and he did. He run quite a few samples of that shirt
20 over a period of time and we were able to find the
21 defendant's DNA on the lower part of the victim's shirt on
22 the right-hand side. Oftentimes --

23 Q. Again, by the defendant, are you talking about Joshua
24 Porch?

25 A. I'm talking about Joshua Porch.

1 Often when we have stabbings, the defendant cuts
2 themselves because of the brute force that is being used to
3 do the stabbing. Their hand slides and they end up cutting
4 themselves, and I felt that was consistent with everything I
5 was seeing in this case.

6 Q. Were there any other problems at that point that you
7 had identified?

8 A. Not that I remember at this point.

9 Q. So after identifying those potential problems, what did
10 you do?

11 A. Well, several things. We -- I talked with the
12 prosecutor of the previous case. I talked with Major Smith.
13 We had -- Major Smith, myself, and several other experts met
14 and went back over the scene, the crime scene photographs,
15 ordered more DNA testing to try to determine what the actual
16 weapon was that killed Nakia. We tested some broken beer
17 bottles that we assumed had been broken during the fight or
18 the struggle. There were some scissors that had been
19 located on the scene. We tested all those for potential
20 DNA, thinking they might have made the wounds, but nothing
21 significant came out of any of the further testing.

22 Q. Were you ever able to ever identify the murder weapon?

23 A. Not through DNA testing, no.

24 Q. Were you ever able to identify the murder weapon?

25 A. No, we have never recovered the actual weapon. We

1 believe at this point we know what it is, but we have never
2 recovered it.

3 Q. After requesting that further DNA analysis, what was
4 the next step?

5 A. After we had requested all those analysis and had the
6 benefit of those analysis that they didn't have in the first
7 trial, I met with Sergeant McDaniels, asked him for a second
8 set of eyes on this to make sure that I was looking at it in
9 the right way. We listened to the 911 tapes and interviewed
10 some various witnesses and stuff, just to try to back up our
11 theory about what happened.

12 Q. And after reviewing those items, what determinations
13 did you make?

14 A. At that point Joshua Porch had moved to California.
15 And we located an address for him in California and did some
16 background on him.

17 I asked Sergeant McDaniels to contact the people in
18 California, another police agency, that could assist us, and
19 I made a determination to go to a judge for an arrest
20 warrant for Joshua Porch.

21 Q. In instructing them to go to California, what was the
22 primary purpose for their trip to California?

23 A. The primary purpose was to interview Joshua Porch.

24 Q. But did they also have a warrant for his arrest as
25 well?

1 A. There was a warrant for his arrest and that warrant had
2 been entered into a national database computer called NCIC,
3 the National Crime Index Computer, which allows us -- like
4 if we stop you on a traffic stop and we run you through NCIC
5 and you come up as wanted, we can arrest you and detain you
6 for that other jurisdiction.

7 Q. Who obtained that warrant?

8 A. I did.

9 Q. And what was the probable cause that you thought met
10 the burden to get that warrant?

11 A. Well, from his previous statements he puts himself at
12 the scene when Nakia Mallory is killed.

13 I had the benefit of the additional DNA testings that
14 also puts him there, puts him in close proximity to the
15 victim, because his blood is on her shirt.

16 I thought that was plenty of probable cause to obtain
17 an arrest warrant.

18 Q. Okay. Now, after your investigators had gone to
19 California, what happened, to your knowledge?

20 A. After they had been there for a short period of time,
21 they called me with an update.

22 Q. And what was the result of that update?

23 A. The update was is they had located Joshua Porch and
24 with the assistance of a security guard and some local
25 police had arrested Joshua Porch and then interviewed him.

1 Q. And do you know the results of their interview?

2 A. Yes.

3 MR. AIKEN: Your Honor, I object. I object to our
4 arguments from pretrial.

5 THE COURT: Subject to the arguments when?

6 MR. AIKEN: From pretrial.

7 THE COURT: Counsel, approach.

8 (Whereupon, the lawyers approached the bench for
9 an off-the-record discussion)

10 THE COURT: Subject to our earlier pretrial
11 hearings regarding the statements, I will allow the
12 statements to be discussed.

13 BY MR. UNDERWOOD:

14 Q. Chief Wilson, what was the result of the first
15 interview in California of Joshua Porch?

16 A. Joshua Porch had changed his statement yet once again;
17 had eliminated Mallory from being at the scene when Nakia
18 had been stabbed.

19 Q. So did this new statement from Joshua Porch exonerate
20 Justin Mallory?

21 A. Yes, it did.

22 Q. To your knowledge, were there any further interviews
23 with Joshua Porch in California?

24 A. In my opinion, the first statement in California was
25 very self-serving, so I asked them to re-interview him the

1 next day, and they did.

2 Q. Okay.

3 (Off the record)

4 (Back on the record)

5 BY MR. UNDERWOOD:

6 Q. As a result of the further statements by Joshua Porch,
7 did those also exonerate Justin Mallory?

8 A. They do.

9 (Off the record)

10 (Back on the record)

11 BY MR. UNDERWOOD:

12 Q. Thank you, chief. Please answer any questions that the
13 defense may have.

14 THE COURT: Any cross?

15 MR. LUKE SHEALEY: Yes, ma'am.

16 May it please the court?

17 THE COURT: Yes, sir.

18 CROSS EXAMINATION BY MR. LUKE SHEALEY:

19 Q. All right. I believe you said on direct that you were
20 instructed by Sheriff Lott to review this case after the
21 acquittal, correct?

22 A. That's correct.

23 Q. And you had access to the entire case file?

24 A. Yes.

25 Q. So just for the jury's clarification, that would

1 include all the witness statements in the case?

2 A. That's correct.

3 Q. That would include all the investigative reports in the
4 case, correct?

5 A. Yes.

6 Q. Reports by Major Smith?

7 A. Correct.

8 Q. Reports by Holdorf?

9 A. Yes.

10 Q. Reports by Strange and Rownd?

11 A. Yes.

12 Q. Correct.

13 You would have had access to the timeline and all that
14 information that went into that, correct?

15 A. Correct.

16 Q. Okay. You would have access to the Exxon video,
17 correct?

18 A. To the what?

19 Q. The Exxon video that showed Mr. Mallory on the video?

20 A. I don't recall the video.

21 Q. Okay. You had the entire file, to your knowledge?

22 A. To my knowledge.

23 Q. Okay. Access to DNA reports, to crime scene pictures,
24 to crime scene analysis reports, correct?

25 A. That is correct.

1 Q. Okay. And you have told me -- do you remember
2 testifying at a prior hearing about this case with me?

3 A. Yes.

4 Q. Okay. And I think the words, and you disagree if you
5 want to and correct me if I'm wrong, but the words that you
6 used to describe what you were asked to do was armchair
7 quarterbacking?

8 A. That could be one term to use, yes.

9 Q. Okay. You don't disagree with that?

10 A. I don't disagree with it.

11 Q. And that's basically questioning the plays that another
12 person is calling, right?

13 A. In a football game, yes.

14 In this instance I had the benefit of the trial
15 transcripts from two trials and all the information, yes.

16 Q. You had the benefit of all that information, but --

17 A. True.

18 Q. -- you weren't there on the scene?

19 A. No.

20 Q. You didn't interview Sherry Tribble?

21 A. No, I did not.

22 Q. You didn't interview Joshua Porch?

23 A. No.

24 Q. You didn't take pictures of the crime scene?

25 A. No.

1 Q. You weren't at the crime scene?

2 A. No.

3 Q. You never went to the crime scene?

4 A. That is correct.

5 Q. Okay. And I think you described to Mr. Underwood your
6 duties as moving papers from one side of the desk to
7 another?

8 A. Primarily, yes.

9 Q. You were rarely at this point the hands-on
10 investigator, except for special occasions, correct?

11 A. That is correct.

12 Q. Okay. Let's talk about what you were aware of from
13 looking at the entire case file.

14 You were aware of who Sherry Tribble is, correct?

15 A. I am.

16 Q. She was the eyewitness at the time of this incident,
17 correct?

18 A. She was.

19 Q. Okay. Your understanding from all these reports and
20 things that you reviewed was that she was looking out her
21 window from her boyfriend's apartment and saw a white van?

22 A. I believe that is correct, yes.

23 Q. You are aware from looking at these reports that this
24 white van was identified as Justin Mallory's?

25 A. That is correct.

1 Q. And at the time she sees this white van and the reason
2 she is looking out the window is because she hears a
3 domestic-type argument, correct?

4 A. Yes.

5 Q. She hears a female's voice coming from the Mallory's
6 apartment saying "how could you," correct?

7 A. Correct.

8 Q. She then sees a man who she later identifies as Mallory
9 outside at his van, which is subsequently moved closer?

10 A. I don't recall it necessarily being moved closer, but
11 it's possible.

12 Q. You would have reviewed in the trial transcripts that
13 she actually identifies that man as Mallory, correct?

14 A. She did identify him in carrying Nakia to the van.

15 Q. Carrying his wife to the van?

16 A. That's correct.

17 Q. Just after he said "look what you made me do?"

18 A. That is correct.

19 Q. Okay. So you had that information when you started
20 assessing this case at the request of the sheriff?

21 A. That is correct.

22 Q. You also had the information that at the hospital there
23 were several things that, I think you just testified, caused
24 some suspicions for Mr. Mallory?

25 A. That is correct.

1 Q. You were aware that he said things like "bitch bled all
2 over my TV," correct?

3 A. That is correct.

4 Q. And from your knowledge of reviewing the crime scene
5 photos, you, in fact, did see blood on the TV?

6 A. I don't specifically recall that, but it's highly
7 possible. It was a very bloody scene.

8 Q. Okay. You are aware that this other suspicious
9 activity was, from the file, him removing something --
10 having something removed from his white van?

11 A. I actually don't recall that.

12 Q. You don't recall that?

13 A. No.

14 Q. You don't remember the hospital security guard?

15 A. I do remember him. There was a hospital security guard
16 that gave a statement.

17 Q. And you would have reviewed his statement?

18 A. I would have at that time --

19 Q. Okay.

20 A. -- but that was four years ago.

21 Q. You didn't review all this stuff at all for testimony
22 today?

23 A. Not all of it, no.

24 Q. You reviewed your report for testimony today?

25 A. That is correct.

1 Q. Okay. So you don't remember his testimony and his
2 report that he saw something removed from that white van?

3 A. That is possible, I just don't remember that.

4 Q. Do you remember that he broke his -- Mr. Mallory broke
5 his cell phone at the hospital?

6 A. No, I don't remember that.

7 Q. But you had access to this entire file?

8 A. I did.

9 Q. You do certainly remember then that he refused to sign
10 the treatment form for his wife?

11 A. No, actually I don't remember that.

12 Q. You don't remember that?

13 A. It's possible, though.

14 Q. Okay. Do you remember that he was out cheating that
15 night, right?

16 A. That I do remember.

17 Q. Okay. That was what initially got investigators hot on
18 his trail, correct?

19 A. I think the thing that got investigators hot on his
20 trail was Sherry Tribble.

21 Q. Right, among other things?

22 A. But, I mean, that was exposed during the initial
23 investigation, yes.

24 Q. And what Sherry Tribble described was an argument about
25 cheating?

1 A. That is correct.

2 Q. And he was actually out cheating, correct?

3 MR. UNDERWOOD: Your Honor, I'm going to object at
4 this point. At this point we are going well into hearsay,
5 Your Honor.

6 THE COURT: I think he can testify as to what he
7 reviewed and what information would have been among the
8 information that he reviewed.

9 I'll overrule the objection.

10 BY MR. LUKE SHEALEY:

11 Q. Okay. So to rephrase, you are aware that the
12 eyewitness described this as an argument about cheating?

13 A. I remember the statement --

14 MR. UNDERWOOD: Your Honor?

15 A. -- "how could you?"

16 MR. UNDERWOOD: May we approach, Your Honor?

17 THE COURT: Yes, sir.

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 BY MR. LUKE SHEALEY:

21 Q. I don't want to get into semantics here, but you are
22 aware from your review of the reports, the statements in
23 this case, and talking to the investigators, that the
24 eyewitness' account was that this fight was domestic in
25 nature?

1 A. Domestic in nature.

2 Q. Okay.

3 A. I would agree with that.

4 Q. And that Mr. Mallory was actually married at that time?

5 A. Yes.

6 Q. It was Mother's Day?

7 A. I don't recall that, but it could be, yes.

8 Q. Do you recall this as being the incident happened on
9 May 14th, 2006?

10 A. Yes.

11 Q. That's Mother's Day, right?

12 A. I don't recall that.

13 Q. Okay.

14 A. It could be. I'm not arguing with you on that.

15 Q. And he was cheating on his wife on Mother's Day. Do
16 you recall that?

17 A. That is very possible.

18 Q. Okay.

19 A. He was cheating that night.

20 Q. Okay. And that did corroborate the eyewitness' account
21 that this was domestic, right?

22 A. I remember the statement from her. And if you want to
23 pass me her statement, I will be happy to read that and
24 publish whatever you want me to, but I remember "how could
25 you" out of that statement.

1 Q. Right.

2 A. But I don't know that I could say that was because he
3 was cheating, or somebody was cheating.

4 Q. Okay.

5 A. That could mean a lot of things.

6 Q. Okay. We have already established that the eyewitness
7 recalled this being a domestic, was her testimony in her
8 statement, and per your investigators reports, a domestic
9 case?

10 A. I don't recall exactly how she phrased that.

11 Q. You reviewed Holdorf's report?

12 A. I did.

13 Q. It described this as a domestic case?

14 A. I don't recall that, but it possibly could have.

15 Q. You reviewed Stan Smith's report?

16 A. Absolutely.

17 Q. It described this as a domestic case?

18 A. Possibly, yes. I mean, I -- you are talking about
19 something that I read four years ago.

20 Q. Okay. And the point of it was he was out cheating that
21 night, was he not?

22 A. He was.

23 Q. Okay. And Holdorf primarily helped create a timeline
24 in this case. Do you agree with that?

25 A. Possibly, yes.

1 Q. He didn't want to just take one person's word for
2 something, right?

3 A. Right.

4 Q. That's good police investigative work?

5 A. Sure.

6 Q. And your report says that you also tried to go over
7 that and recreate a timeline?

8 A. That's correct.

9 Q. Okay. And your report says that per your investigative
10 experience and training, armchair quarterbacking on their
11 investigative experience and training, that you established
12 a ten minute time frame from when this could have occurred?

13 A. That's approximate, yes.

14 Q. Okay. You have been an investigator for a long time.
15 You can have a knife fight in thirty seconds, can you not?

16 A. You can.

17 Q. You can have a domestic argument in one minute, can you
18 not?

19 A. They usually lasts longer, yes.

20 Q. Okay. And when you are fighting somebody and you have
21 a fight, one minute seems like a lifetime?

22 A. It can, absolutely.

23 Q. Okay. So these are some of the things that you knew as
24 you were armchair quarterbacking this case --

25 A. Absolutely.

1 Q. -- to use your own words, right?

2 You also -- let's get to Mr. Porch's statements, and
3 you brought those up as being inconsistent and something
4 that you focused on, correct?

5 A. Yes, sir.

6 Q. Before the first trials and -- during the first two
7 trials, right?

8 A. That is correct.

9 Q. But you are aware that Investigator Holdorf, who was
10 the lead on this case, was aware of these statements?

11 A. That is correct.

12 Q. And Major Smith, who was the head of the Major Crimes
13 Unit at that point, was aware of these statements?

14 A. That is correct.

15 Q. In fact, he took the final statement, correct?

16 A. I believe so.

17 Q. And that was the statement and that was the account
18 that was used in these two trials?

19 A. That is correct.

20 Q. You are familiar, very familiar, with deputy -- former
21 Deputy John Meadors here?

22 A. I am.

23 Q. Prosecutor for a long time?

24 A. That is correct.

25 Q. And you are -- what your knowledge is from looking at

1 this entire file is that he was aware of those statements
2 and satisfied with those statements?

3 A. He was.

4 Q. He is a good lawyer?

5 A. Absolutely.

6 Q. Okay. He would not suborn perjury?

7 A. Absolutely not.

8 Q. Okay. So you knew -- and you knew that the final
9 statement was that Mr. Porch was over at the Mallory's house
10 that night?

11 A. That is correct.

12 Q. That Justin was out, and as you testified, he was on a
13 date, correct?

14 A. That is correct.

15 Q. That Mr. Porch and Ms. Mallory had a few drinks, right?

16 A. Yes.

17 Q. That they somehow became -- started kissing on each
18 other, becoming intimate?

19 A. That is Porch's statement.

20 Q. And this is the statement that was put up by the man
21 who would not suborn perjury for two trials, correct?

22 A. That is correct.

23 Q. John Meadors put Mr. Porch under subpoena, per your
24 knowledge?

25 A. I assume he did, yes.

1 Q. Okay. And --

2 A. He testified in both.

3 Q. And the rest of that statement is that at some point
4 they stopped, but Justin comes in, correct?

5 A. That is correct.

6 Q. That he's upset, and Nakia is wondering -- she's upset
7 with him about where he's been, and a violent domestic
8 argument ensues, correct?

9 A. Correct.

10 Q. That Mr. Porch observes the fight go in the kitchen,
11 correct?

12 A. I don't recall them moving to the kitchen, but that's
13 possible.

14 Q. He observes Mr. Mallory with an object, something that
15 could be a knife?

16 A. Correct.

17 Q. That he observes the words "how could you," or "why"
18 coming from Nakia, correct? Do you remember that from the
19 statement that you would have, must have reviewed for this
20 case?

21 A. Yes.

22 Q. And you also remember from your investigation of this
23 case and that statement that Mr. Mallory is stabbing at
24 Nakia with this object, correct?

25 A. According to Justin -- to Porch, yes.

1 Q. That Joshua Porch jumps in between to try to do
2 something about it and gets cut?

3 A. That is correct.

4 Q. Okay. And he is between them, correct?

5 A. Correct.

6 Q. He does get cut. He runs to the kitchen to get a paper
7 towel to attend to that cut, correct? That's in that
8 statement?

9 A. Correct.

10 Q. He comes out, the fight has died down, Nakia is on the
11 couch?

12 A. I think he describes her as being on the couch.

13 If I remember correctly, and I'm going strictly by
14 memory, he goes -- Porch says after he gets cut on the left
15 hand, which is a change from his earlier statement where
16 he's cut on the right hand, that he goes in, grabs the paper
17 towel, he cleans up and leaves, and Justin is gone to the
18 back of the apartment.

19 Q. Right.

20 The fight has died down and Mr. Porch gets out of
21 there --

22 A. Correct.

23 Q. -- correct?

24 A. After cleaning up.

25 Q. Right.

1 He says he's scared in that statement of his wife
2 finding out and that's why he didn't come forward
3 originally?

4 A. That may be in the statement. I don't recall that.

5 Q. You don't recall it? You reviewed this case and all
6 this information. Do you disagree with that?

7 A. No, I don't disagree with it.

8 Q. Okay. And he was scared of getting implicated in this
9 crime itself, correct?

10 A. I'm sure.

11 Q. Okay. Now, that's -- that's pretty much a good account
12 of what you had when you saw this file, right?

13 A. Right.

14 Q. So you looked back over everything and you have been
15 asked to do a job by a sheriff, right?

16 A. Correct.

17 Q. He's met with the Mallorys already, right?

18 A. I think he's talked to him. I don't know that he
19 actually met him.

20 Q. Okay. And you start looking at it and one thing that
21 jumps out to you, based on looking at it --

22 Let's say this right now. You are not a forensic
23 pathologist?

24 A. No.

25 Q. You are not trained in medicine and how necessarily a

1 wound might be created from any certain angle. That's not
2 your thing?

3 A. No, I'm going off of purely thirty-five years of
4 experience.

5 Q. Right. But you are not a medical doctor?

6 A. No.

7 Q. And, in your opinion, you started looking at this and
8 the statements and the wound to the right side of the neck
9 and you thought it was more consistent with a left-handed
10 assailant, correct?

11 A. That is correct.

12 Q. Okay. The point you were making in your report, that's
13 noted in your report, you would agree with that --

14 A. I do.

15 Q. -- that Joshua Porch is noted to be left-handed, right?

16 A. That's correct.

17 Q. And that Justin Mallory is noted to be right-handed?

18 A. Correct.

19 Q. Okay. But you also note in your report that you can't
20 rule out a right-handed assailant? You can't rule it out?

21 A. Absolutely not.

22 Q. And when making this conclusion, you don't know
23 anywhere on your report that you talked to Dr. Bradley
24 Marcus, or any forensic pathologist?

25 A. No.

1 Q. Okay. Now, the other thing that you testified that
2 jumped out at you is the blood that you had tested is going
3 to be Mr. Porch's on the right front part of Ms. Mallory's
4 shirt, correct?

5 A. Correct.

6 Q. Okay. Now, it's fair to say this is the only new piece
7 of physical evidence you had whatsoever, correct?

8 A. Physical evidence, yes.

9 Q. Okay. And this evidence -- and I wanted to say this
10 exactly, and I wrote down what you said, what you said on
11 direct. You said that "they didn't have the benefit of DNA
12 analysis on Nakia's shirt," meaning the first investigators,
13 right?

14 A. That's right.

15 Q. Okay. Just so we are clear, they had access to a DNA
16 lab, right?

17 A. Absolutely.

18 Q. They tested numerous items for DNA in this case, right?

19 A. Sure, absolutely.

20 Q. So the point you are making is they just -- they didn't
21 test it, right?

22 A. That's correct.

23 Q. They didn't find it relevant, right?

24 A. That's correct.

25 Q. Okay. But you tested it, discovered it, but you found

1 it relevant, right?

2 A. I found it relevant and had it tested, yes.

3 Q. And you have already stated that you're armchair
4 quarterbacking this thing?

5 A. That's correct.

6 Q. All right. Mr. Meadors didn't find it relevant?

7 A. I'm not sure he was aware of it. I don't know what he
8 found relevant or what he didn't.

9 Q. Let me ask you this.

10 A. I think he would have found it relevant if had he known
11 that Joshua Porch's DNA was on her shirt.

12 Q. Okay. But he could have found that out if he chose to
13 test it? He never chose to test it?

14 A. If he would have requested it, we would have tested it.

15 Q. Okay. Stan Smith never requested to test that shirt,
16 right?

17 A. That's correct.

18 Q. Because the statement that they put through Joshua
19 Porch's testimony, right, which you agreed no one is going
20 to suborn perjury, right --

21 A. No.

22 Q. -- describes him trying to break up a fight between a
23 married couple trying to kill each other, right?

24 A. That's correct.

25 Q. Okay. So they didn't find it relevant, because it

1 makes sense. If he got cut, it's possible that her clothes
2 might have some of his blood on her. That's why they didn't
3 test it, right?

4 A. I can't tell you why they didn't test it.

5 Q. Okay. Does that make sense to you?

6 A. No, it doesn't.

7 Q. Okay. Now, let's talk about this fight. We have got
8 Justin Mallory, per Joshua Porch's account, in front, right?

9 A. That's correct.

10 Q. You have got Nakia Mallory, per Mr. Porch's account, in
11 back. They are trying to kill each other, right?

12 A. That's correct.

13 Q. This is a domestic argument, correct?

14 A. That's correct.

15 Q. Joshua Porch jumps in to try to break it up and gets
16 cut on his left hand, is his final statement?

17 A. That is his final statement.

18 Q. Okay. Now, we had a pretrial hearing that you and I
19 discussed this concept a little bit, right? You remember
20 that?

21 A. That's right.

22 Q. Now, you agree that it's possible that even though it's
23 on his left hand, that through the movement and the going
24 back and forth in a non-static situation, that blood could
25 conceivably get on the right side of her shirt?

1 A. It is possible, but I find it improbable.

2 Q. These are not two statues facing off on each other, are
3 there?

4 A. No.

5 Q. There is movement, correct?

6 A. I assume there is. This is your client's statement.

7 Q. This is John Meadors evidence from the first trials, is
8 it not?

9 A. It was introduced, yes.

10 Q. He was a lawyer for the government, is he not?

11 A. That's correct.

12 Q. This was Stan Smith's witness who took that statement
13 from him from 2006?

14 A. That is correct.

15 Q. This is Investigator Holdorf's case, correct?

16 A. It is.

17 Q. These are all government employees, good investigators
18 with your office?

19 A. Absolutely.

20 Q. Okay. So this is investigative evidence that came out
21 of the prosecution of Mr. Mallory, correct?

22 A. That's correct.

23 Q. Okay. But if I'm in a fight with somebody and my hand
24 goes this way, blood could go that way, if I'm cut, could it
25 not?

1 A. It's possible.

2 Q. And, again, you are not a forensic pathologist, but
3 that's your experience, right?

4 A. That's it.

5 Q. Okay. So that's the only new evidence you had in this
6 case?

7 A. That, and we had the witness that Mallory went to and
8 who was next door tell us that there was -- he didn't have
9 any blood on him at that time.

10 Q. Okay.

11 A. He went for help next door for somebody to stay with
12 his children while he took his wife to the hospital.

13 Q. And that witness is Shaheed Hargraves, correct?

14 A. That's correct.

15 Q. He testified in the first trials, correct?

16 A. As far as I know, yes.

17 Q. So that's not new evidence, right?

18 A. I don't know that he testified to the fact that he did
19 not have blood on him. I don't know if that was testified
20 to in the first and second trial. I don't know.

21 Q. You said that you reviewed the transcript?

22 A. I do. I did.

23 Q. Okay. So based on this one piece of new DNA that your
24 colleagues didn't find probative, you decided that you
25 wanted to get an arrest warrant?

1 A. Based on that and the totality of the circumstances
2 with the changing of the statements, the new DNA, the
3 witness that says Mallory did not have any blood on him.
4 You had an obviously bloody scene.

5 Q. Now, you testified in the first trial two trials and
6 you can't even remember what he said. You just told me
7 that, right?

8 A. To what who said?

9 Q. Shaheed Hargraves.

10 A. Yes.

11 Q. So that's not new evidence, correct?

12 A. I don't know if it is or not. I mean, that's what I --
13 you asked me what I based my decision to get an arrest
14 warrant on. That's what I based it on.

15 Q. Okay. So -- and you wanted that warrant, and what
16 you -- here is what I quote, "for your primary purpose was
17 to interview Joshua Porch." That's what you said on direct.
18 Do you recall that?

19 A. The primary purpose for sending investigators to
20 California was to interview Joshua Porch.

21 Q. Okay. And other than this luggage, what did the
22 investigators take with them to California?

23 A. I'm not sure what all they took with them. I'm
24 assuming -- I know they took a copy of the case file.

25 Q. And they took a murder warrant?

1 A. They took -- yeah, a copy of it.

2 Q. Okay. So let's be real with this jury. You didn't
3 want to interview Porch. You wanted to arrest Porch, right?

4 A. Oh, absolutely.

5 Q. Okay.

6 A. But our primary purpose was to go out there and
7 interview him.

8 Q. Regardless of what happened, if they had gone out there
9 and arrested him and he hadn't said a word, he was coming --
10 he's back to South Carolina to stand trial for this,
11 correct?

12 A. That is correct.

13 Q. All right. Do you have a copy of the warrant that you
14 prepared with you, the arrest warrant?

15 A. I do.

16 Q. Okay. Do you mind taking a look at it?

17 A. Okay.

18 Q. Now, this is what you prepared when you're submitting
19 an affidavit to a judge to get a probable cause, right?

20 A. Right.

21 Q. Okay. And in it it has your name as an affiant, David
22 Wilson, correct?

23 A. That's correct.

24 Q. And in it there is about a five line paragraph where
25 you describe why you had probable cause, right?

1 A. That's correct.

2 Q. And you swear to tell the truth and you take an oath
3 when you testify to that judge?

4 A. That's correct.

5 Q. And in this case the judge was Judge Phillip Newsome,
6 right?

7 A. That's correct.

8 Q. And you also swore to tell the truth when you came in
9 here today?

10 A. That's correct.

11 Q. And you are used to doing this, right?

12 A. Yes.

13 Q. Okay. I want to read this warrant to you. It says,
14 and correct me if I'm wrong, that "on May 14th, 2006, while
15 at [REDACTED] Pinelane Road, Apartment [REDACTED], in the municipal
16 magistrate district of Richland County, one Joshua Porch did
17 commit the crime of murder; that he did it with malice and
18 aforethought assault and stab Nakia Mallory in the neck
19 which resulted in the death of Nakia Mallory," right?

20 That's the first line?

21 A. That's correct.

22 Q. And that's kind of boilerplate stuff that you have to
23 get out, right? You have to say it's a murder charge and
24 with malice and aforethought, right?

25 A. That's correct.

1 Q. Okay. Now, let's get to the meat of it.

2 The next line says -- and this is July 7th of 2009,
3 correct, the time that you swore this out?

4 A. That's correct.

5 Q. The first thing before the judge. McDaniels and
6 Godfrey had not jumped on that plane yet, because they don't
7 have a warrant yet, right?

8 A. They have not jumped on that plane yet, no.

9 Q. This is where you are asking a judge to give the
10 warrant, right?

11 A. That is correct.

12 Q. And judges don't always give warrants to you, do they?

13 A. That is correct.

14 Q. It's their job to say "huh, do I have enough evidence
15 or do I not have enough evidence," right?

16 A. Absolutely.

17 Q. Okay. And this describes what you told the judge, so
18 let's read the first sentence. "The defendant has admitted
19 to being on the scene of the crime during the assault and
20 stabbing."

21 Now, let's take that and break that down.

22 He's your eyewitness for Richland County Sheriff's
23 Department and John Meadors for two trials. He said he saw
24 Justin Mallory do the stabbing, right?

25 A. That's correct.

1 Q. Okay. So when you are saying that to a judge under
2 oath that "the defendant has admitted to being on the scene
3 of the crime during the assault and stabbing," is that fair
4 to tell that judge that without anything?

5 A. I think it's very pertinent that he admits to being on
6 the scene of the crime.

7 Q. And seeing somebody as an eyewitness kill their wife?
8 You know that's what he admitted to?

9 A. I know that's what he had said.

10 Q. But that's not what that statement says, is it?

11 A. No.

12 Q. Okay. The next line says "and has been further
13 implicated in the crime by DNA testing of blood found at the
14 scene that puts the defendant at the scene."

15 This is what John Meadors and Stan Smith and
16 Investigator Holdorf already had, correct?

17 A. No, I was referring to the DNA on the --

18 Q. We are going to get to that. We are going to talk
19 about that. I think --

20 A. Well, you are asking me the question now.

21 Q. Okay, I'll let you answer that. Go ahead.

22 A. I was referring to the fact that we got the additional
23 DNA.

24 Q. Okay. "Has been further implicated in the crime by DNA
25 testing of blood found at the scene that puts him at the

1 scene." Okay.

2 Now, his statement and the testimony of him from the
3 first two trials says he was an eyewitness and got cut
4 trying to break up a deadly fight between a man and wife,
5 right?

6 A. That's correct.

7 Q. Okay. That's the evidence that you had at the time
8 that you swore an oath to a judge of DNA putting him at the
9 scene, is it not?

10 A. Ask that again.

11 Q. Okay. John Meadors, Stan Smith already had his DNA on
12 the scene in an explainable way that they put forth from
13 this witness stand in the prosecution of Justin Mallory?

14 A. They had DNA in the kitchen where his blood had
15 dropped. They did not have the DNA on her shirt.

16 Q. We will talk about that.

17 The kitchen is the scene?

18 A. That's part of the scene, yes.

19 Q. It puts him in that apartment, right?

20 A. It certainly does.

21 Q. And he testified as an eyewitness to that killing from
22 this stand where you are sitting right now, right?

23 A. I don't know if he -- from this stand, I don't know --

24 Q. Okay.

25 A. -- but he did testify.

1 Q. The next statement about DNA, "and implicates the
2 defendant in the assault at the time of the murder." And I
3 think this is what you are getting to. Implicating someone
4 in an assault, meaning that little -- that spec of blood on
5 the front part of her shirt, right? Is that what you are
6 talking about? That's what you mean when you say that?

7 A. Absolutely I think it implicates him.

8 Q. Okay. But that sentence is what was related to that
9 new evidence, that new evidence that you had found, right?

10 A. I think that all the mention of DNA relates to that new
11 evidence.

12 Q. Okay. So that new evidence, that one thing that you
13 found, that you agreed with me could have come from being
14 cut on your left hand, can't rule that out, you swore to a
15 judge to get an arrest warrant for a murder, correct?

16 A. Based on the totality of the circumstances; looking at
17 the whole file; the multiple changes in his statement; the
18 fact that Mallory didn't have any blood on him; the fact
19 that we had new DNA evidence; yes, I went in front of the
20 judge and swore out an arrest warrant.

21 Q. Okay. And you mentioned Mallory didn't have any blood
22 on him. And you reviewed Sherry Tribble's statement?

23 A. I'm sure I did.

24 Q. Okay. And the witness recalls him wearing a white hat
25 and a dark jacket. Do you recall that?

1 A. No, I don't.

2 Q. You don't recall that?

3 A. No.

4 Q. Okay. You didn't review any trial transcripts? You
5 didn't review her statement?

6 A. I'm sure I did, but I don't recall it after four years.

7 Q. Okay.

8 A. And I didn't review it prior to this trial.

9 Q. Okay. You talked to Investigator Smith and you talked
10 to John Meadors as part of what you did here in this?

11 A. As part of my investigation, I did.

12 Q. Okay. And as part -- and what you learned from that
13 was that they think that Mallory did it and Porch is
14 innocent?

15 A. They did at that time.

16 MR. UNDERWOOD: Objection, Your Honor.

17 (Off the record)

18 (Back on the record)

19 MR. LUKE SHEALEY: I don't have anything further
20 at this time, judge.

21 THE COURT: Any redirect?

22 MR. UNDERWOOD: Briefly, Your Honor.

23 REDIRECT EXAMINATION BY MR. UNDERWOOD:

24 Q. Chief Wilson, the blood evidence that was found in the
25 kitchen that later tested positive for Joshua Porch, was

1 that DNA evidence sufficient to place him at the scene for
2 probable cause?

3 A. Absolutely.

4 Q. Despite the fact that there was an explanation provided
5 at the first two trials?

6 A. Yes, that certainly places him at the scene during the
7 assault.

8 Q. At the time that you reviewed the file, was there
9 probable cause that Joshua Porch was involved with the
10 murder of Nakia Mallory?

11 A. No.

12 Q. At what point did you determine there was probable
13 cause that Joshua Porch was involved with the murder of
14 Nakia Mallory?

15 A. When we received the new DNA evidence.

16 Q. At the time that Justin Mallory was arrested for the
17 murder, did the investigators know all the information that
18 you know now?

19 A. No, they did not.

20 Q. At the time that Justin Mallory was put on trial twice,
21 did the prosecution know all the information that you know
22 now?

23 A. No, they did not.

24 Q. Okay. When Joshua Porch testified in those two trials,
25 did John Meadors, the deputy solicitor, know that Joshua

1 Porch's version of events was a lie?

2 A. I don't believe he did, no.

3 Q. Based on what you know now, was Joshua Porch's
4 testimony in those two trials a lie?

5 A. Absolutely.

6 Q. Thank you.

7 MR. UNDERWOOD: No further questions, Your Honor.

8 MR. LUKE SHEALEY: I don't have anything further
9 for this witness.

10 THE COURT: You may step down.

11 Is this witness excused?

12 MR. LUKE SHEALEY: Yes, ma'am.

13 THE COURT: You may be excused. Thank you.

14 THE WITNESS: Thank you, ma'am.

15 THE COURT: Ladies and gentlemen, this is a good
16 time to take an afternoon break.

17 I'm going to remind you of the instructions I have
18 given to you; that is, not to begin to discuss this matter
19 among yourselves, as you still have not heard all the
20 evidence.

21 Let's take an afternoon break and then we will
22 come back.

23 (The following takes place outside the presence of
24 the jury panel)

25 THE COURT: Is there anything we need to take up

1 before we take a break?

2 MR. GOINGS: Nothing from the State, Your Honor.

3 MR. LUKE SHEALEY: Nothing from defense.

4 THE COURT: And would you please make sure that
5 State's Exhibit No. 30 has been removed from the computer?

6 MR. GOINGS: I did that when we got it.

7 THE COURT: Thank you.

8 We will take a break and come back.

9 (Whereupon, proceedings were recessed)

10 (Whereupon, proceedings were reconvened)

11 THE COURT: Okay. We are back on the record.

12 We have got some issues?

13 MR. LUKE SHEALEY: Yes, ma'am.

14 Just sitting here discussing the scheduling and
15 the potential evidence that's going to come in concerning
16 the video, I just -- and it's the first time that I noticed
17 this, the video that's proposed to introduced into evidence
18 of the one hour interrogation by Godfrey and McDaniels, we
19 all know there is post-polygraph and that's something that's
20 not going to be discussed in front of the jury. My concern
21 is that, in my opinion, yes, I have seen polygraph machines
22 and I happen to know you sit in the same chair. There is
23 enough of the machine, enough of the blood pressure cup,
24 enough of the chair where someone, if they have any
25 background knowledge of that at all, or even watches Law &

1 Order, maybe, will say, "oh, is that a polygraph machine?
2 What is that?" So I just want to note for the record my
3 objection to the video, again, based on that basis being
4 admissible.

5 MR. GOINGS: Your Honor, the State's position
6 is -- I have looked at the video, although I'm familiar with
7 polygraph equipment as well. I don't think a lay person
8 would have any knowledge and would be able to determine what
9 that machine is. And even with my knowledge of what they
10 look like, you couldn't specifically tell that that was a
11 polygraph, part of a polygraph machine, Your Honor. All you
12 see is really clearly is a computer and then another object
13 beside it. It could be a telephone, or any other object,
14 and I don't think it's prejudicial to the defendant, Your
15 Honor.

16 THE COURT: And we just briefly looked at the
17 video. It's obviously a computer, and then there is another
18 machine. You know, whether -- I don't know that someone who
19 is not in law enforcement would know exactly what it is. It
20 could look like it's a computer or some other dictaphone or
21 something else.

22 The important thing is that there is nothing
23 attached to them and he's not hooked up to anything. So
24 even if it's there, you know, there is not -- he's not
25 attached to any machine. There is nothing to show that he's

1 under any examination by way of any type of machine, whether
2 it is a blood pressure cup, or, you know, pulse, or anything
3 else. There is nothing wrapped around his chest that we can
4 see, so it's noted for the record.

5 MR. LUKE SHEALEY: Yes, ma'am.

6 THE COURT: Anything else we need to take up?

7 Oh, we did discuss the potential scheduling issue.
8 I know the next witness is McDaniels. We discussed the
9 defense's issue with their expert, who has got a flight
10 leaving town tomorrow afternoon, and taking her out of
11 order, and there didn't appear to be any objection by the
12 State, after McDaniels has concluded his testimony.

13 MR. GOINGS: That's correct, Your Honor.

14 I just conferred with my co-counsel, we would have
15 no objection to taking the defense expert after McDaniels
16 finished testifying and then putting Godfrey back on the
17 stand after she's done.

18 THE COURT: All right. Then with that, let's
19 bring the jury in.

20 MR. LUKE SHEALEY: Thank you, Your Honor.

21 (The following takes place in the presence of the
22 jury panel).

23 THE BAILIFF: The jury is seated, Your Honor.

24 THE COURT: You may call your next witness.

25 Oh, I'm sorry, before you do that.

1 Ladies and gentlemen, I just want to make sure
2 that -- there was a -- there was a note about scheduling,
3 the weekend schedule. We will not work on Saturday or
4 Sunday. However, we may run later than expected this
5 evening, and perhaps tomorrow evening. In all likelihood we
6 will need to come back on Monday.

7 You may call your next witness.

8 MR. PAULING: Thank you, Your Honor.

9 The State would call Sergeant McDaniels.

10 SERGEANT SHAWN MCDANIELS, having been first duly
11 sworn, testified as follows:

12 THE CLERK: State your name for the record.

13 THE WITNESS: Walter Shawn McDaniels.

14 THE COURT: Would you spell your full name,
15 please?

16 THE WITNESS: You said my full name?

17 THE COURT: Your middle name.

18 THE WITNESS: Middle name, S-H-A-W-N.

19 THE COURT: Thank you.

20 DIRECT EXAMINATION BY MR. PAULING:

21 Q. Sergeant McDaniels, how are you doing, sir?

22 A. I'm doing okay.

23 Q. Okay. Please tell this jury where you are currently
24 employed.

25 A. I'm currently employed with the Richland County

1 Sheriff's Department.

2 Q. And how long have you been with the sheriff's
3 department?

4 A. With the sheriff's department, since 1997 -- 1999,
5 excuse me.

6 Q. Have you been with any other law enforcement agencies
7 prior to that?

8 A. Sure. I actually -- I have been in law enforcement for
9 eighteen years.

10 Q. Okay.

11 A. I was previously with the South Carolina Department of
12 Juvenile Justice.

13 Q. And currently the sheriff's department, what capacity
14 do you work there?

15 A. Currently I am the -- I'm a sergeant within the
16 Criminal Investigation Division and I am over what I would
17 like to call the new major crime, and that's white collar
18 crime. Underneath that fraud, forgery, embezzlement.

19 Q. Okay. Now, back in May of 2006, what division were you
20 in the sheriff's department?

21 A. I was sergeant over cold case homicide.

22 Q. Now, in May of 2006, during that time frame, did you
23 have anything to do with or take part in the investigation
24 of the Nakia Mallory murder?

25 A. Not at all.

1 Q. Okay. Were you familiar with the case at all?

2 A. No, not -- not at all. At the time I was working on
3 solving another unsolved homicide that we were having some
4 success right around that time, so I wasn't focused on this
5 particular case.

6 Q. At that time you said that you were in the Cold Case
7 Unit, so what does your job duties entail at that particular
8 time?

9 A. I actually supervise a team of five investigators, most
10 of them retired police offices, and our job was to focus on
11 those crimes that were unsolved; more specifically unsolved
12 murders. And at this particular time we were investigating
13 an unsolved murder and we had some success in that, so we
14 were ripping and running on our end.

15 Q. Okay. At some point, Sergeant McDaniels, did you
16 become involved with reviewing the investigation of the
17 Nakia Mallory murder?

18 A. Yes, on June 30th Chief Wilson, Chief David Wilson,
19 made his way to my office and asked me. He did it
20 like this, which is what he normally does, and he never
21 tells me what he really wants until you get in his office,
22 so I sat down and he said "I want you to take a look at this
23 file." He said -- his exact words were "I need a fresh pair
24 of eyes on it."

25 Q. Okay. I know you said June 30th, but which year was

1 that, sir?

2 A. That was in 2009.

3 Q. Okay. And he needed a fresh set of eyes to look at
4 that particular case?

5 A. That is correct.

6 Q. And so what did you do at that point?

7 A. He just dropped that seed and we didn't meet until July
8 1st of 2009. At that time inside of his office we both --
9 we actually listened to the 911 recording. I reviewed
10 several of the statements briefly. And, you know, during
11 the initial review we talked about certain observations.

12 Q. Now, was anyone else, at least at that time, working
13 with you and Chief Wilson at that point, or was it just
14 reviewing this file on your own with Chief Wilson?

15 A. I recall Investigator Godfrey being involved as well.
16 He had been approached by Chief Wilson as well.

17 Q. Okay. Now, at some point did your agency obtain a
18 murder warrant for Joshua Porch?

19 A. Chief Wilson did.

20 Q. Okay. When was that, do you recall?

21 A. Actually, if I'm not mistaken, he -- on July 7th --

22 Q. Okay.

23 A. -- I believe.

24 Q. 2009?

25 A. That is correct.

1 Q. At that point what were you tasked with doing after
2 that murder warrant was obtained?

3 A. He asked me to make contact with the Long Beach Police
4 Department in California to make arrangements on receiving
5 us; make sure we had an opportunity to have an interview
6 room available, if we were successful and meeting up with
7 Joshua Porch, and so I did that, as well as solidify flight
8 plans, hotel plans, and transportation.

9 Q. You said California. Did you attempt to locate Joshua
10 Porch here in South Carolina?

11 A. Did I attempt to locate him in South Carolina?

12 Q. Yes.

13 A. No, I did not.

14 Q. Okay.

15 A. There were several things that we did prior to going to
16 California. Like we went to Persia Porch's house, which is
17 Mr. Joshua Porch's old residence. We did go down there and
18 make an attempt to speak with her. She wasn't home at the
19 time.

20 Q. And did you and Investigator Godfrey then travel to
21 California?

22 A. Yes, we did. During -- that was on July 8th, 2009.

23 During the flight, you know, we then reviewed the case
24 and, you know, noticed, you know, some pretty interesting
25 things while we were reviewing it in detail.

1 Q. When you say pretty interesting things, can you tell
2 the jury -- what are you referring to?

3 A. Well, one of the first things that I noticed after
4 reviewing all the statements is that I noticed that there
5 was some consistency in Justin Mallory's version of what
6 happened that night. His story never changed.

7 And I also noticed that Joshua Porch, even before the
8 first trial, that he had changed his statement multiple
9 times. And it just -- you know, just based on my experience
10 in working homicides, you know, that's -- you know, that was
11 a little bit unusual for a witness to change their story so
12 many times.

13 Also -- you know, I also noticed that something that I
14 felt was pretty interesting was that Joshua places Justin at
15 the scene, but Justin never said that Joshua was present
16 there. That stood out to me, that if, in fact -- that was a
17 little bit unusual, that you have one person saying this is
18 the person that did it and he was there and so was I, but
19 this guy -- he never mentioned Joshua.

20 Q. Okay.

21 A. In addition to the new evidence with the DNA. That
22 also solidified.

23 Q. And had that information been discussed prior too with
24 Chief Wilson?

25 A. Yes, the DNA information was. Yeah, we went over that.

1 Q. Okay. Now, once you arrived in California, what did
2 you and Agent Godfrey set out to do?

3 A. If I may refer to my notes?

4 Q. Yes.

5 A. We -- we arrived in California at approximately three
6 o'clock that afternoon Pacific Time and we got settled in at
7 the hotel, and then we went out to get something to eat
8 approximately around eight p.m.. It was at that time that
9 we were planning our collaboration with Long Beach Police
10 Department. And right in the middle of dinner my partner,
11 Investigator Godfrey at the time, now Sergeant Godfrey, he
12 got sick and so -- he said his stomach hurt. And, of
13 course, you know, I gave him a hard time about that, because
14 we had plans that night to at least go and try to look at
15 Joshua Porch's residence to see what we could pass on to
16 Long Beach Police Department before we went to go try to
17 make contact with him, and so Godfrey had to go back to the
18 hotel.

19 At that time I then -- I then actually went out on my
20 own to conduct surveillance on Joshua Porch's residence with
21 no intentions of running into him. I had flip flops on, a
22 pair of shorts, and an 8 X 8 T-shirt.

23 Q. And at some point that particular evening did you make
24 contact or were you aware of where Joshua Porch was? Did
25 you make contact with him?

1 A. I pulled up in front of Joshua Porch's house at
2 approximately 10:45 p.m. that night and I sat in the car. I
3 noticed that there was a gated entrance, that in venue at
4 least, that would lead to the apartment doors, but in front
5 was a ranch style, western style type apartment complex,
6 where the entire complex was gated in. You walk into the
7 front gate and then you have like rows of apartments.

8 I noticed that apartment number two was directly to the
9 right, so I waited for someone else to walk in. I walked in
10 behind them. Apparently it was a locked gate. And then I
11 noticed that the apartment on the right-hand side, the door
12 was open.

13 I then went back and sat back in the car. I took a
14 look at the photo of Joshua Porch. I noticed that he had a
15 distinctive hairline, in terms of him being very young
16 looking, but yet his -- he had a receding hairline that was
17 a bit distinctive, to say the least. And so as I'm sitting
18 there I see three people walking up the street towards the
19 apartment complex and I noticed the receding hairline and
20 they went inside -- and he fit the description of Joshua
21 Porch. They went inside. They then came back outside and
22 walked right by my car. And so at that point I just decided
23 to follow them.

24 I got on the phone trying to call my contact with Long
25 Beach Police Department. His voicemail answered rather than

1 him answering, and so I then went to follow them into
2 Walgreen's. Went inside Walgreen's and noticed that there
3 was a security guard present in the front. Joshua Porch,
4 along with two other individuals, were by the drink section.
5 I walked by the drink section, said "what's up" to all of
6 them. And just to make sure that I had the right
7 individual, walked to the back, back to the front, contacted
8 the security guard, explained to the security guard that I
9 was a law enforcement officer from out of South Carolina and
10 that I needed for him to call the Long Beach Police
11 Department ASAP. He did that.

12 As I was standing there at the front entrance, Joshua
13 Porch, along with the two other individuals, walked up. It
14 was at that time that I showed my badge and I identified
15 myself to him, told him that he was being currently
16 detained, that I had a warrant for his arrest from South
17 Carolina. And at that time I whispered to him "you almost
18 got away with it," and that was it.

19 We waited for the Long Beach Police Department to show
20 up. The other two individuals that were with him, you know,
21 respectfully they backed away, and he was detained at
22 Walgreen's and subsequently arrested by the Long Beach
23 Police Department, once they confirmed the warrant that was
24 in the NCIC database.

25 Q. Okay. Sergeant McDaniels, as far as going out to

1 California, what was your -- was your purpose just to go out
2 and arrest Mr. Porch? What was your purpose for going out
3 there?

4 A. Our goal was to interview Mr. Porch, as well as we were
5 armed with a warrant. So, you know, we were going to place
6 Mr. Porch under arrest with a hope of interviewing him.

7 Q. And at some point did you have an opportunity to
8 interview Mr. Porch?

9 A. Yes, we did.

10 Q. Okay. And when you said we, was Investigator Godfrey
11 with you at that time?

12 A. No, he wasn't. Actually when we -- again, I turned him
13 over to Long Beach Police Department -- turned Mr. Porch
14 over to the Long Beach Police Department. I then had no
15 more contact with him on the scene.

16 I arrived at the Long Beach Police Department prior to
17 Joshua Porch getting there, and I think that happened
18 because they had to confirm the warrant. Well, when I got
19 there, they then brought Joshua Porch upstairs, and I
20 recalling them actually handcuffing him to a table inside of
21 the interview room. And so that's not something that we
22 normally do at the sheriff's department, but when you are
23 visiting other agencies, you have to play ball by their
24 rules.

25 So when I first made contact with Joshua Porch at Long

1 Beach Police Department approximately midnight, about 12:30
2 Pacific Time, I asked him if he was thirsty. I asked him if
3 he wanted to use the bathroom. He said he was fine, that he
4 wasn't thirsty or hungry.

5 At that time I then wanted to wait on Investigator
6 Godfrey, because trying to communication with him, our
7 whereabouts, again, we just got there that day, and to
8 instruct him on catching a cab.

9 And I then went to speak with Long Beach Police
10 Department to ask, to inquire about their policy in leaving
11 someone handcuffed while in the interview room. They --
12 they basically left it up to me and we made arrangements for
13 him to be un-handcuffed.

14 Q. At some point did Investigator Godfrey meet up with you
15 at the Long Beach Police Department?

16 A. Yes, he did.

17 Q. Approximately what time was that?

18 A. He got there somewhere between 12:50 to 12:55, one
19 o'clock, something like that.

20 Q. And did you proceed, you and Investigator Godfrey,
21 proceed to interview Mr. Porch?

22 A. Yes, we did. He was advised of his Miranda Rights
23 upon our contact, and, you know, we began asking questions.
24 And initially he --

25 Q. Well, let me ask you this before you get to asking

1 questions. How did you advise him of his rights?

2 A. We did it in written form. And, although, you know, we
3 were at another police department, you know, we used our own
4 written form, which is a template that we use. It's
5 Richland County Sheriff's Department interrogation advise of
6 rights form. Up top there is my name, the person who is
7 actually advising the individual of their rights. You have
8 the name of the individual who is being advised of their
9 rights. The place that they are being -- the location.
10 Date and time.

11 On there also is the -- we break the advise of rights
12 up into sections, where it's my practice when I'm reading
13 someone their rights that, you know, I ask them "before we
14 ask any questions, you must understand your rights."

15 I then pause and ask them if they understand that. I
16 would wait for them to answer. Gesturing an answer is not
17 enough for me. Shaking your head is not enough for me. I
18 tell them "I need for you to answer yes or no," or, "if you
19 have any questions, you can ask," but basically he was read
20 his rights in this manner.

21 "Before we ask any questions, you must understand your
22 rights. Do you understand that?"

23 He said "yes." I then checked it off.

24 I went to the next line where it says "you have the
25 right to remain silent. Do you understand that?"

1 He stated "yes. I then checked that box off.

2 Actually I have a copy of that.

3 MR. PAULING: Beg the court's indulgence.

4 A. Sure.

5 (Advise of Rights Form marked as State's Exhibit
6 No. 46 for identification)

7 MR. PAULING: Approach the witness, Your Honor?

8 THE COURT: Yes, sir.

9 BY MR. PAULING:

10 Q. Sergeant McDaniels, I'm going to show you what's been
11 marked for ID purposes as State's 46 and ask if you
12 recognize that document, sir?

13 A. I do, yes, sir.

14 Q. And what is that?

15 A. This is the advise of rights form that was read and
16 went over with -- as it pertains to what I was just speaking
17 on the advise of rights that I was giving.

18 And basically where I left off was, again, these are --
19 there is boxes on the left-hand side that I check off prior
20 to going to the next section.

21 And basically I asked him, again, "before we ask you
22 any questions, you must understand your rights. Do you
23 understand that."

24 He indicated "yes." The box is checked.

25 "You have the right to remain silent." The same

1 procedure. The box is checked.

2 "Anything you say can be used against you in court." I
3 asked him again "do you understand that?"

4 The answer was "yes." I checked the box.

5 "You have the right to talk to a lawyer for advice
6 before we ask you any questions and to have a lawyer with
7 you during any questioning." I asked him the question "do
8 you understand?"

9 He said "yes." The box was checked.

10 "If you cannot afford a lawyer, one would be appointed
11 for you before any questioning, if you wish." The same
12 procedure. I asked the question "do you understand it?"

13 He stated "yes." The box was checked.

14 "If you decide to answer questions now without a lawyer
15 present, you still have the right to stop answering at any
16 time. You also have the right to stop answering at any time
17 until you talk to a lawyer." I asked him that question.

18 Again, he responded by stating yes, he understood that.
19 The box was checked, and then he signified that he
20 understood what I just read to him by signing the first
21 section indicating that he understood that.

22 I then moved on to the waiver of rights, which is
23 located at the bottom section, and it states, "I have read
24 the statement of my rights and understand what my rights
25 are. I am willing to talk and answer questions. I

1 understand and know what I am doing. No promises have been
2 made to me and no pressure or coercion of any kind has been
3 used against me."

4 I asked him if he understood. He indicated "yes." I
5 checked the box.

6 And then he indicated that he also understood and that
7 he agreed to talk to me by signing the bottom portion of
8 this sheet, and it was witnessed by myself and now Sergeant
9 Godfrey.

10 Q. Thank you, Sergeant McDaniels.

11 As far as when that waiver was given, what time was
12 that that you went through those rights? What time is noted
13 there?

14 A. It was on July 9th of 2009, at 1:12 in the morning
15 Pacific Time. That would be 0412 in the morning our time.

16 Q. Okay.

17 A. And I indicated both Eastern and Pacific times on the
18 advise of rights.

19 Q. Okay. Now, Sergeant McDaniels, at that particular
20 time -- and I understand that Mr. Porch signed off on it.
21 Did he appear to understand his rights when you were talking
22 to him?

23 A. Yes, he did.

24 Q. Did he appear to be under the influence of drugs or
25 alcohol at the time?

1 A. Not at all.

2 Q. Okay. Did he appear to have any type of physical
3 condition that would cause him not to understand what was
4 going on?

5 A. No, sir.

6 Q. What was his demeanor? Did he appear tired or anything
7 to you?

8 A. No, he did not. He did not appear tired.

9 Q. Now, during this process did you threaten him, coerce
10 him at all to sign that waiver?

11 A. I did not.

12 Q. Okay. Did you threaten his friends or family members?

13 A. I did not.

14 Q. And when I say threaten him, did you make any
15 suggestion that there would be some issue for them if he
16 didn't speak with you?

17 A. I did not.

18 Q. Okay.

19 MR. PAULING: Your Honor, at this time I would
20 offer State's 46 into evidence.

21 MR. AIKEN: Your Honor, subject to our pretrial
22 objections.

23 THE COURT: And subject to that that was ruled on,
24 it's would admitted for the record.

25 (Whereupon, State's Exhibit No. 46 was entered

1 into the record as evidence)

2 BY MR. PAULING:

3 Q. Now, after you have gone through the waiver of rights
4 and he waived his rights, do you proceed to interview him?

5 A. Yes, we did.

6 Q. Okay. And could you just explain that process? How
7 did that go about?

8 A. We began to ask him questions. Once he signed the
9 waiver of rights we then asked him questions about the Nakia
10 Mallory homicide.

11 Initially when we first started asking him questions,
12 you know, we then -- you know, he stuck to the original
13 story, that his last story was that he was present during
14 the domestic. And at that time I noticed that, you know,
15 when we -- you know, it was -- he stared almost through you,
16 you know.

17 And what I failed to mention was the -- if I may, when
18 he was -- when he was first approached in Walgreen's and I
19 identified who I was and what state I was from, I remember
20 him just putting his head down. And I mention that only now
21 also because when we started questioning him at Long Beach
22 Police Department, you know, he had this same look that he
23 had almost in the Walgreen's. I remember it was almost
24 emotionless, so to speak. It was like while we were talking
25 to him, it was almost as if like he -- like he was just

1 looking right through us. And so except when I would --
2 when I made this an attempt to narrow the scope of the
3 questioning and that was strictly to this one question,
4 basically "did you lie about Justin Mallory being there when
5 Nakia was stabbed?" That was the only time that -- that was
6 the first time that he had a -- he had a response, so to
7 speak, you know, through facial expressions, and, you know,
8 that stood out to me. He looked up and he said he was not
9 there.

10 Q. Now, as far as this interview that took place,
11 approximately how long did it take?

12 A. From start to finish?

13 Q. Yes.

14 Well, let me ask you this. Was the statement reduced
15 to writing?

16 A. It was. The initial part of the questioning started at
17 approximately one o'clock, and we started memorializing it
18 in a written statement.

19 Q. Just to clarify, Sergeant McDaniels, when you said the
20 initial part of the statement began at one o'clock, the
21 statement began after you had mirandized him with his
22 rights?

23 A. Advised him of his rights, and the exact time was 1:12
24 p.m..

25 Q. Okay.

1 A. Yes. 1:12 a.m., excuse me.

2 Q. Okay.

3 A. So, of course, we started questioning him having a
4 verbal conversation, and then it was eventually memorialized
5 to a written statement.

6 Q. Okay.

7 A. Also after he said he was not there, you know -- you
8 know, so many different things ran through my mind. You
9 know, because truly, you know, I'm thinking. You know, I
10 didn't know, to be honest with you, one of the few times
11 that I was somewhat stuck for words, because that was
12 confirmation for me, that he, in fact, stood trial twice and
13 identified this man in the courtroom as the person who
14 killed his wife.

15 And the only -- the only other question I could
16 actually come up with was basically, "well, why did you
17 stand up in court and lie?"

18 And without -- without showing any sign of remorse --
19 that was the next question that he was asked. And his
20 response was "because Justin -- excuse my French, "because
21 Justin was a dick, and plus the investigators had already
22 told me that they had enough to convict Justin anyway."

23 Q. Did you say excuse your French, but were those your
24 word or his words?

25 A. No, no, those -- excuse what I was getting ready to

1 tell you, he is -- basically reciting what he stated,
2 "because Justin was a dick."

3 When I asked him "well, why did you stand up in court
4 and lie without showing any sign of remorse?"

5 His answer was "because Justin was a dick, and plus the
6 investigators had already told me that they had enough to
7 convict Justin anyway."

8 Q. Did you know what he was referring to when he said
9 that, as far as the investigators had already told him?

10 A. I knew based on reviewing the file on the flight over
11 there that he had, in fact, been contacted by Sergeant
12 Strange the very next morning and that there was some
13 dialogue as it pertains to Justin Mallory already being
14 arrested for the crime.

15 Q. And then how did the interview continue?

16 A. I asked him, I said --

17 All right, after collecting my thoughts, mind you,
18 because I'm thinking about a number of different people.
19 I'm thinking about where I work at, the people I work with,
20 and how difficult that call was going to have to be. I'm
21 thinking about the family of the victim. I'm thinking about
22 the fact -- it took me a second to get my thoughts together.

23 So I asked him, I said "be honest. Since we now know
24 that Justin was not there, tell me now what happened."

25 And so he then went to tell us his version, his first

1 version of what had happened, now since we have removed
2 Justin Mallory from the equation.

3 Q. Just to be clear, when you say his first version, is
4 this his first version, or his first version to you?

5 A. It would be his first version to me in California and
6 to Sergeant Godfrey.

7 Q. And, again, was that statement reduced to writing?

8 A. Yes, it was.

9 Q. Okay. How did that process take place?

10 A. Actually I -- again, I -- it's a Q and A process where
11 we ask the questions. It's our job to make sure that we
12 write down the exact answer to the exact response of the
13 person that we are questioning. That would include
14 profanity, slang words, missed -- you know -- you know, the
15 way they actually flow with the -- everyone talks
16 differently, so it's our job to write it down exactly how
17 they said it, and that was what was done, and it was a ten
18 page statement, initially.

19 Q. And how would that process go? Did he tell you
20 everything and then you just went from memory and wrote
21 everything down, or how did that process go, as far as
22 reducing it to writing?

23 A. As I stated, we started at approximately one o'clock in
24 the morning. We talked up until approximately three o'clock
25 in the morning. And then at approximately three a.m. we

1 began to memorialize his version on a written statement.

2 Again, I would ask the questions and solicit an answer from
3 him and write down exactly what he would say.

4 Q. During this process, sometime after one until about --
5 you said three is when you started with the written portion
6 of it?

7 A. That is correct, Pacific Time.

8 Q. Now, during that time, at any point did Mr. Porch
9 invoke his right to silence?

10 A. No, sir.

11 Q. Did he ask for an attorney?

12 A. He did not.

13 Q. Okay. Had he done those things, what would you have
14 done?

15 A. We would be back on the plane. We would have stopped
16 the interview.

17 Q. Now, as far as this length of time is concerned, was
18 there -- did he have an opportunity to take a bathroom break
19 or any of those things?

20 A. Yes, he was offered that several times throughout the
21 interview.

22 Q. Okay. And you stated you went through this process of
23 getting the statement from him. After you actually got the
24 statement, the written statement, was he allowed to review
25 that statement?

1 A. Yes, he was.

2 Q. Was he allowed to make any additions, corrections,
3 deletions that he found necessary?

4 A. Yes, he was. As a matter of fact, the -- it's my
5 practice to end all of my written statements the same way,
6 by asking basically "is there anything that you would like
7 to add or subtract from this statement?"

8 Q. Now, as far as that statement, his review of the
9 statement, did you read it back to him, or was he given an
10 opportunity to actually read it himself?

11 A. Well, we did both. I read it back to him and then I
12 handed it to him and instructed him to read it.

13 Q. During this time span, I had asked you earlier if he
14 was tired. What was his demeanor during the interview?

15 A. He was cooperative. He was -- you know, again, he was
16 answering our questions at that time. You know, he, you
17 know, didn't appear to have that same deer in the headlight
18 look. That appeared to be gone. And I also recall him
19 saying that he had -- it felt like he had a weight off his
20 shoulders.

21 Q. Okay.

22 (Written Statement of Joshua Porch, Dated July 9,
23 2009, was marked as State's Exhibit No. 47 for
24 identification)

25 MR. PAULING: May I approach the witness, Your

1 Honor?

2 THE COURT: Yes, sir.

3 BY MR. PAULING:

4 Q. Sergeant McDaniels, I'll show you what's been marked
5 for ID purposes as State's 47, sir, and ask you if you
6 recognize that particular document?

7 A. This is the ten page written statement that we took in
8 California on July 9th, at approximately three a.m. Pacific
9 Time.

10 Q. Does your name or your signature appear on that
11 document?

12 A. It does. Actually I notarized it.

13 Q. As far as Joshua Porch, is his name, signature appear
14 on that document?

15 A. It is. Actually it's on here twice per page. He,
16 again, indicating that he understood what was in here. He
17 signed it a total of twenty times in this first statement,
18 twice on each sheet.

19 Q. And you explained the first signature block. What was
20 the second signature block for?

21 A. The second signature block is for "this here is to
22 certify that I have read or have read to me the foregoing
23 statement consisting of ten pages and a true copy has been
24 given to me this 9th day of July, 2009.

25 "Sworn to and subscribed before."

1 That was -- again, I notarized it and it was witnessed
2 by Investigator Godfrey.

3 MR. PAULING: Your Honor, at this time I would
4 offer State's 47 into evidence.

5 MR. AIKEN: Your Honor, subject to our pretrial
6 objections.

7 THE COURT: Yes, sir, for the reasons given in
8 that hearing, it's admitted.

9 (Whereupon, State's Exhibit No. 47 was entered
10 into the record as evidence)

11 MR. PAULING: Your Honor, may Sergeant McDaniels
12 publish it to the jury?

13 THE COURT: Yes, sir.

14 BY MR. PAULING:

15 Q. Sergeant McDaniels, what was substance of that
16 statement?

17 A. Here you have question, answer. Question, Shawn
18 McDaniels. Answer, Joshua William Porch.

19 I even put his date of birth indicating that he were
20 dealing with the same individual.

21 Up top you have the date, the time, who was present.

22 Also you have another advise of rights. "I, Joshua
23 Porch, understand that I have the right to remain silent.
24 Anything that I say can be used against me in court. I have
25 the right to talk to a lawyer for advice before you ask me

1 any questions and to have a lawyer with me during any
2 questioning. If I cannot afford a lawyer, one will be
3 appointed for me before any questioning, if I wish. If I
4 decide to answer questions now, without a lawyer present, I
5 still have the right to stop answering at any time. I also
6 have the right to stop answering at any time until I talk to
7 a lawyer."

8 And, again, I proceeded to ask him the first question,
9 which was:

10 "Q. What can you tell me about the incident that took
11 place at [REDACTED] Pinelane Road, Apartment [REDACTED], on May 14th,
12 2006?

13 "A. Persia wasn't lying when she said that she thought
14 I was home. I usually come home and stay up for a while and
15 make myself something to eat. I did go home and just sat in
16 the car. I turned the headlights off and just wasn't ready
17 to go home. After that I left and went to Justin and
18 Nakia's apartment. Once I got there I knocked on the door
19 and Nakia was there and she answered. She let me inside and
20 told me that Justin wasn't home. After that I asked when or
21 if she thought he would be home soon, and then she said 'I
22 think he should be home soon.' I said 'alright. Is it okay
23 if I sit here and wait?' She said 'yeah.' We were just
24 sitting there talking and she offered me a drink. We were
25 drinking and talking for a while. It was late. The more we

1 are sitting there talking she started moving closer. She
2 wasn't trying to rape me or nothing. She was more like
3 leaning in for a kiss. I backed away from her and basically
4 told her no. After that she got upset, went into the
5 kitchen and grabbed a knife. Like I said, I do not think
6 that she was trying to kill me or nothing. When she had the
7 knife she came walking toward me. I was sitting on the
8 couch in the living room. I was closer to the TV when she
9 first came in the living room. I stood up when she was
10 walking towards me with the knife. She was real upset and
11 she was kind of swinging the knife. And as I walked towards
12 her I was just trying to get her to calm down or put the
13 knife down, and that is when I came up to her and got nicked
14 on my hand. It was a cut on my left hand. I don't think
15 that she realized that she cut me and I didn't realize it
16 either, not at first. That is when I grabbed her and tried
17 to get the knife from her to kind of stop her from swinging.
18 Once I grabbed her, we ended up losing our balance and fell
19 over onto the couch. After we fell over she wasn't yelling.
20 I don't think she was saying anything at all. I got up and
21 that is when I went to the kitchen. I noticed my hand. I
22 started rinsing it off in the sink. Then after that I
23 noticed that she wasn't on the couch. She was on the floor.
24 She looked as if she was trying to get up. Then I walked
25 out the door and went to my car and went home.

1 "Q. Where is the knife that was used to cut Nakia?

2 "A. I have no idea.

3 "Q. Describe the knife to me.

4 "A. It was a regular size knife with a blank handle.

5 "Q. How long was the blade?

6 "A. About four to five inches.

7 "Q. Why didn't you call 911?

8 "A. I didn't think that she was dying.

9 "Q. Did you believe that she was coming after you with
10 a knife?

11 "A. No. I think that it was more of her trying to
12 scare me. That is what I think, looking back on it.

13 "Q. At what point did you try to clean up the kitchen
14 and why?

15 "A. I don't remember trying to clean up the kitchen.
16 I remember I dropped a couple of drops of my blood on the
17 floor, because when I was in there to rinse my hand off I
18 had also gotten some paper towels. When I saw the couple of
19 drops I wiped it up and put the paper towels on my hand.

20 "Q. Did you hear Nakia say anything after she was
21 stabbed?

22 "A. No.

23 "Q. Tell me again how Nakia ended up being stabbed and
24 where was she stabbed at?

25 "A. I was grabbing her to stop her from swinging the

1 knife and we ended up losing our balance. I fell on top of
2 her and she was stabbed I think in the neck.

3 "Q. Did you have your hand on the knife?

4 "A. No, I grabbed her arm and I was just trying to
5 make her stop swinging the knife.

6 "Q. Tell me the truth as it pertains to why you would
7 lie to the investigators that interviewed you before today.

8 "A. The very first time that they came over there they
9 already said that they had more than enough evidence to
10 convict Justin. When they brought me in to give a statement
11 they would ask me questions or sometimes give a certain
12 scenario, kind of like this could have happened this way
13 or --

14 "Q. Why didn't you do the right thing and correct
15 them?

16 "A. I really didn't want to get involved. I was
17 scared.

18 "Q. Why did you lie on Justin Mallory?

19 "A. Because the police already had him in jail, plus
20 they had already told me that they had enough evidence to
21 convict him. This was the day after the incident with
22 Nakia. I don't know the detective's name, but he was
23 shorter than me, Caucasian, with brown hair, sort of on the
24 thick side. It was only one.

25 "Q. Was Justin Mallory present when Nakia was stabbed?

1 "A. No.

2 "Q. Did you ever see Justin before, during, or after
3 the stabbing incident?

4 "A. Before, earlier that day when I went there with my
5 daughter, him and Nakia were there.

6 "Q. Did you see him after that on May 14th, 2006?

7 "A. No.

8 "Q. Outside of trial have you seen him since May 14th,
9 2006?

10 "A. No.

11 "Q. Have you ever told anyone the truth about the
12 stabbing incident and if so, who?

13 "A. No.

14 "Q. Did you have any blood on you after you left
15 Nakia's house on May 14th, 2006?

16 "A. From my hand. I believe it was just mine.

17 "Q. Did you ever discuss cleaning your car because
18 there may have been blood inside or on it?

19 "A. No.

20 "Q. Is there anything that you would like to add or
21 subtract from this statement?

22 "A. I would like to add something. I want to
23 apologize to Nakia's family. I'm sorry that they lost their
24 loved one and also that I never told the truth before, and
25 that they had to wait all this time to find out what really

1 happened. Also I need to apologize to Justin Mallory for
2 lying on him and taking away a chunk of his life from him.
3 I also want to apologize to the officers involved in this
4 case. They shouldn't have to suffer because of my
5 cowardice. That's all.

6 "Q. In retrospect is there anything that you would
7 have done differently on May 14th, 2006?

8 "A. I would have never went over there. None of this
9 would have happened. If I did go over there, knowing now
10 how badly injured she was I would have called the police and
11 told the truth in the beginning."

12 The last question. "Is this statement the whole truth?

13 "A. Yes."

14 Q. Sergeant McDaniels, based on the information that you
15 previously had, was that significant -- was that statement
16 significant to you?

17 A. Very.

18 Q. And why is that, sir?

19 A. Because it basically confirmed that Justin Mallory had
20 been arrested, in spite of the fact that he didn't do it.
21 That we had arrested the wrong person.

22 Q. Now, after speaking with Mr. Porch at that particular
23 time, what did you and Investigator Godfrey do at that
24 point?

25 A. If I may refer to my notes?

1 After his statement was signed, we then made
2 arrangements for him to be booked into the Long Beach Police
3 Department. It had been a long day and we wanted to go back
4 to the hotel.

5 We made contact with Chief Wilson. I called him on his
6 cell phone and advised him of what we just learned.

7 Q. Now, did you and Investigator Godfrey have another
8 opportunity to speak with Mr. Porch?

9 A. We did, the very next day, prior to, you know, leaving
10 the Long Beach Police Department.

11 Q. And just to -- let's back up for a minute, Sergeant
12 McDaniels. That interview, that statement that you just
13 read, what date did that occur on?

14 A. That occurred on July 9th.

15 Q. That's the early morning hours of July 9th?

16 A. The early morning hours of July 9th.

17 As I stated earlier, we had gotten there July 8th, a
18 little bit of jet lag and made contact with him before
19 midnight on July 8th. He was transported to the Long Beach
20 Police Department. I got there a little bit earlier than he
21 did. He got there approximately 12:30 in the morning. I
22 waited for Investigator Godfrey to show up, and made sure
23 that, you know, he didn't need anything to drink and if he
24 had to use the bathroom, and I went to go try to remedy that
25 situation with the handcuffs.

1 Q. Okay. And I just want to make certain. You said -- I
2 asked about the second statement. What day did that occur
3 on?

4 A. That occurred on July 10th. On July 10th, prior to --
5 prior to dismissing Mr. Porch --

6 Q. Let me ask you this. Did you have an opportunity to
7 speak with Mr. Porch several hours later that same day --

8 A. Yes, we did.

9 Q. -- July 9th?

10 A. Yes, we did.

11 Q. And approximately when was that?

12 A. That was in the afternoon on July 10th.

13 Q. Well, let me ask you this before we get there. Why did
14 you feel the need to speak with him again?

15 A. Because, according to his first statement, it was an
16 accident. And myself and Sergeant Godfrey wanted to go back
17 and take a look at the case file.

18 At this particular point, you know, we didn't want to
19 make any mistakes, so we went back to look -- to look at the
20 photographs and to see if the photographs and the other
21 evidence supported what Mr. Joshua Porch was indicating that
22 it was, in fact, an accident.

23 Q. So you wanted to speak with him about that?

24 A. That is correct. You know, we told him that if it was
25 an accident, then we would do everything that we could to

1 support that.

2 Q. And did you both, both you and Investigator Godfrey, go
3 to speak with him again?

4 A. Yes, we did.

5 Q. Okay. And before speaking with him did you advise him
6 of his rights?

7 A. Yes, he was advised of his rights.

8 Q. And how did you do that this particular instance?

9 A. That was also on the same template, just a different
10 form, different date, but it has his signatures on there as
11 well.

12 Q. Okay.

13 MR. PAULING: Court's indulgence.

14 THE COURT: Yes, sir.

15 (Advise of Rights Form marked as State's Exhibit
16 No. 48 for identification)

17 (Typed Statement, Dated July 9, 2009, of Joshua
18 Porch was marked as State's Exhibit No. 49 for
19 identification)

20 MR. PAULING: Court's indulgence.

21 THE COURT: Yes, sir.

22 MR. PAULING: Approach the witness, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. PAULING:

25 Q. Sergeant McDaniels, I'll show you what's been marked

1 for ID purposes as State's 48, sir. I'm going to ask you if
2 you recognize that document?

3 A. Yes. This is the advise of rights form that was read
4 to him this time by Investigator/Sergeant Godfrey and it was
5 witnessed by myself and signed by Joshua Porch two times.

6 Q. And did you go through the process that you testified
7 to earlier, as far as advising him of his rights?

8 A. That is correct. I was present when Sergeant Godfrey
9 advised him of his Miranda Rights.

10 Q. And what date was this? What's the date on this
11 particular Waiver of Rights Form?

12 A. This is also July 9th, 2009.

13 Q. Okay.

14 A. It was the same day, just in the afternoon.

15 Q. And what time in the afternoon?

16 A. That would be 2:19 p.m., Pacific Time.

17 Q. And just so I understand, when you concluded that first
18 interview with Joshua Porch, approximately what time was
19 that that morning?

20 A. That was anywhere between five or six a.m., as you --
21 as I indicated. I handwrote it.

22 Q. Okay. And at this time, what would have been at this
23 time, Pacific Time, when you were giving him this advise of
24 rights, what time was it then?

25 A. 2:19 p.m.. So approximately six to seven hours later.

1 Q. Okay. Did he appear to understand his rights?

2 A. Yes, he did.

3 Q. And did he -- again, did you promise him anything,
4 threaten him in any way to get him to talk with you?

5 A. Not at all.

6 Q. Okay. And did he seem to be tired or sleepy or
7 anything?

8 A. He did not. He did not.

9 Q. Okay. And I understand that he's been at the detention
10 center during that time, right, during that period of time
11 when you were with him?

12 A. That is correct. As a matter of fact, prior to him
13 going with Long Beach Police Department, I remember asking
14 Long Beach Police Department what time did they actually --
15 were they serving food, and so just to make sure that he had
16 something to eat. He then again turned around and said that
17 he wasn't hungry. That was at the end of our statement.

18 Q. Okay. He didn't appear to be under the influence of
19 alcohol, or drugs, or anything --

20 A. Not at all.

21 Q. -- during this time?

22 A. No, sir.

23 Q. Okay.

24 MR. PAULING: Your Honor, at this time I would
25 offer State's 48 into evidence.

1 THE COURT: Any objection?

2 MR. AIKEN: Subject to our pretrial objections.

3 THE COURT: Based upon the pretrial hearing, I
4 will admit it.

5 MR. PAULING: Thank you, Your Honor.

6 (Whereupon, State's Exhibit No 48 was entered into
7 the record as evidence)

8 BY MR. PAULING:

9 Q. Now, Sergeant McDaniels, what were the things that you
10 said that you wanted to kind of clear up with this second
11 interview?

12 A. He indicated in his first statement that this was an
13 accident.

14 Once we got past the fact that Justin Mallory was never
15 present during the stabbing, he stated that he was involved
16 and it was an accident, and that, you know, there was no
17 intent to stab her, and that there was an altercation as a
18 result of her trying to come on to him and he rejected her
19 and then she went to the kitchen and got a knife, because
20 she was rejected, and so I needed to clear that up.

21 You know, myself and Sergeant Godfrey went back and
22 reviewed the case file. We reviewed some of the photos and
23 we -- you know, we -- you know, in all fairness to him, you
24 know, we -- you know, we weren't trying to hold onto
25 information. We went back and said "look, this is what

1 doesn't make sense. This is where we are having a problem
2 as it pertains to the accident that took place," and asked
3 him, you know, to explain some of the questions that we had
4 as it pertains to what the evidence said and this alleged
5 accident.

6 Q. And did he provide you a statement?

7 A. Yes, he did.

8 Q. And how long did this particular process take? Was
9 this statement reduced to writing?

10 A. It was -- it was.

11 He was advised of his Miranda Rights at 2:19 p.m., and
12 we began to memorialize the statement in written form at
13 3:40 p.m..

14 Q. Okay. Now, was this done the same way as before? When
15 I same the same way before, did you hand write this, or what
16 happened at this particular time?

17 A. This time, you know, everyone else was at Long Beach
18 Police Department now, so it's -- it's in the afternoon. We
19 had access to a computer. And someone there that kind of
20 really tried to truly help us, and so Sergeant Godfrey had
21 the luxury of using a computer. But the same Q and A
22 format. Sergeant Godfrey was the one actually typing the
23 questions on this particular. I was present and assisting
24 with the questioning as well.

25 Q. And you may have just stated this, but, again, how long

1 did this interview last?

2 A. Actually I didn't say. Let's see if it indicates how
3 long. Give me one moment and see if it's in my file.

4 That ended approximately 5:15. In my followup I have
5 at 5:18 I then called Deputy Chief Wilson and gave him an
6 update.

7 Q. And, Sergeant McDaniels, during that time, during that
8 interview, did you and Sergeant Godfrey give Mr. Porch an
9 opportunity to take a break at any time, if he wanted one?

10 A. Yes, we did.

11 Q. Did you offer him any food or drink during that time?

12 A. Yes, we did.

13 Q. Okay. During that period of time did he ever ask to
14 stop the interview?

15 A. Not once.

16 Q. Did he ask for an attorney?

17 A. Never.

18 Q. And now during this it was about a three hour period
19 how did he appear to you? What was his voice and demeanor
20 during this interview?

21 A. He was cooperative. He -- you know, and very monotone
22 with respect to his inflection. So he was -- he was
23 answering the questions. He was, you know, responding
24 properly. And, you know, he -- yeah, he was -- he was
25 cooperative. That's the best I can describe him.

1 Q. After you obtained this statement, did he have an
2 opportunity to review it?

3 A. Yes, he did.

4 Q. Was it in the same manner as you testified to before?

5 A. That is correct. It was read back to him and then
6 given to him prior to signing it and he was instructed to
7 make sure that he read it.

8 Q. Did he have any problem understanding what was read to
9 him, or did he appear to have any problem reading the
10 statement? This was a typed statement, is that correct?

11 A. This was.

12 Q. Did he have any problem reading the statement that was
13 given to him to review?

14 A. He did not. He did not.

15 Q. And did he have the opportunity to make any changes,
16 additions, or deletions to that statement?

17 A. Yes, he did. There was -- again, this statement here
18 ended as well with "is there anything that you would like to
19 add to this statement?"

20 Q. Okay.

21 MR. PAULING: Approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 BY MR. PAULING:

24 Q. I'll show you what's been marked for ID purposes
25 State's 49 and ask you if you recognize that, sir?

1 A. This is the original statement. The second statement
2 that he gave us in -- the second written statement that he
3 gave us in California.

4 MR. PAULING: Your Honor, at this time I would
5 offer State's I believe it's 49.

6 MR. AIKEN: Subject to our pretrial objections,
7 Your Honor.

8 THE COURT: Yes, sir, based upon the ruling at
9 that particular hearing, I admit the statement for the
10 reasons stated in the hearing.

11 (Whereupon, State's Exhibit No. 49 was entered
12 into the record asd evidence)

13 MR. PAULING: Your Honor, may Sergeant McDaniels
14 publish that statement to the jury?

15 THE COURT: Yes, sir.

16 BY MR. PAULING:

17 Q. Sergeant McDaniels.

18 A. Yes, sir.

19 Here at the top it says statement of Joshua William
20 Porch. His address, [REDACTED] Elm Avenue, Apartment [REDACTED], Long
21 Beach, California. And the number that he had at the time,
22 phone number.

23 It's also the -- indicated at the top is the date; the
24 time, which is 1539 Pacific, which would be 3:39 p.m..

25 Also Sergeant Godfrey indicated the Eastern Time as

1 well, which would have been 6:39 our time here.

2 "In the presence of Investigator Brian Godfrey and
3 Sergeant McDaniels.

4 "I, Joshua William Porch, understand that I have the
5 right to remain silent. Anything that I say can be used
6 against me in court. I have the right to talk to a lawyer
7 for advice before you ask me any questions, and to have a
8 lawyer with me during any questioning. If I cannot afford a
9 lawyer, one will be appointed for me before any questioning,
10 if I wish. If I decide to answer questions now, without a
11 lawyer present, I still have the right to stop answering at
12 any time. I also have the right to stop answering at any
13 time until I talk to a lawyer."

14 It basically says "do make the following statement.

15 "Q. Investigator Godfrey and McDaniels. Answer Joshua
16 William Porch.

17 First question.

18 "Q. Have you been advised of your rights?

19 "A. Yes.

20 "Q. Are there additional facts about the incident that
21 occurred on May 14th, 2006, during the altercation between
22 you and Nakia Mallory that you would like to add to your
23 statement?

24 "A. Yes.

25 "Q. Can you tell us once again what occurred during

1 the early morning hours on May 14th, 2006, at Nakia
2 Mallory's apartment?

3 "A. I came over to her apartment when it was late. I
4 can't give you an exact time. I came over there to see
5 Justin. I knocked on the door and Nakia answered. I asked
6 her if Justin was home and she said no. I asked her if she
7 knew when or if he would be home and she stated that he
8 would be home soon. I asked if it was okay if I stayed and
9 waited for Justin. She stated that I could. She invited me
10 in. We both sat down on the same couch. I sat closest to
11 the television and she sat closest to the door. There was
12 space between us. She sat on one end and I sat on the
13 other. She offered me a drink. She got me the drink and we
14 were both sitting on the couch drinking and talking. We
15 were just having small talk about our kids and work. As we
16 were talking she was gradually getting closer. I took that
17 as if she wanted something more sexually. We kissed.
18 Looking back I guess you could say that I initiated it. I
19 leaned in and kissed her. The initial kiss felt awkward and
20 I wasn't really sure if she was okay with me kissing her.
21 She put her hand on my side and I attempted to touch her
22 breast and she stopped me. She stopped me by moving her
23 hand from my side to against the front of me. She never
24 said stop. It was just understood by her motions that she
25 wanted me to stop. I asked her why she wanted to stop. She

1 stated that she couldn't do this because she was married to
2 Justin and they had kids together. That is when I told her
3 that Justin was probably doing the exact thing right then
4 and that he does it all the time. I kept talking to her
5 telling her things like Justin didn't care about her or the
6 kids, but she was acting kind of stupid and that she was
7 acting like a bitch. She said 'excuse me' and I repeated
8 what I said. I asked her why would she even start if she
9 didn't want to finish, referring to the physical contact we
10 had just moments prior. Nakia got up and went to the
11 kitchen. I was still sitting on the couch. I didn't know
12 why she got up. I thought she got up to get another drink
13 or something. Nakia came out of the kitchen with a knife in
14 her hand and I got up and went towards her. Nakia was
15 saying something but I do not remember what she was saying.
16 I was more focused on the knife. She did say 'you don't
17 talk to me like that.' As she was coming in the living room
18 and I was coming towards her I struck her three times in the
19 forehead with my palms. Then I grabbed her arm in an
20 attempt to get her to stop swinging the knife and at some
21 point I got cut. I didn't have realize I was cut at the
22 time. I was able to grab her arm and was trying to get the
23 knife away from her and during that I struck her in the
24 right side of her head with my left elbow. And while we
25 were still struggling I was trying to position her arm and

1 the knife ended up slicing her on her eyebrow. We were
2 still struggling and we started falling over. I ended up
3 falling with her. We landed on the couch. I landed on top
4 of her. She was on her back and I was facing her on top.
5 She was still holding onto the knife and the knife stuck her
6 in the neck. She stopped struggling. Then I got up and
7 went into the kitchen. I rinsed my hand off in the sink and
8 was getting some paper towels. I noticed that there were a
9 couple of drops on the floor so I cleaned them up. Then I
10 wrapped up my hand with paper towels. As I was getting
11 ready to leave I noticed Nakia on the floor in the living
12 room in front of the couch. She appeared as if she was
13 trying to get up. I left.

14 "Q. After she was struck in her neck with the knife
15 did she say anything else to you?

16 "A. No.

17 "Q. Why didn't you tell us the truth about the reason
18 that the altercation occurred prior?

19 "A. I was just scared. This whole situation, not sure
20 what exactly is going to happen. Sometimes I just do not
21 know what to do.

22 "Q. Do you think that you were mistaken when assuming
23 that Nakia was making advances on you by moving closer to
24 you on the couch?

25 "A. Yes. It is possible for me to be mistaken.

1 "Q. Then Nakia's actions that night frustrates you?

2 "A. Do you mean when she wanted to stop?"

3 Investigator Godfrey then answered and said "yes,
4 that's what I meant." I put that in parenthesis.

5 His answer was "yeah, a little bit.

6 "Q. Describe the force behind the palm strikes that
7 you gave to Nakia's head.

8 "A. They were quick strikes with a lot of power behind
9 them.

10 "Q. Did you at any time conspire or consult with your
11 brother-in-law Robert Brown about this incident?

12 "A. No.

13 "Q. Does that include about cleaning up the vehicle
14 you were driving the night of the incident?

15 "A. Yes.

16 "Q. In fact, you stated that you never attempted to
17 clean up your vehicle?

18 "A. That's right.

19 "Q. What did you tell Persia occurred during this
20 incident?

21 "A. She thinks what occurred is the last statement
22 that I gave Captain Smith.

23 "Q. Is everything that you told me today the truth?

24 "A. Yes.

25 "Q. Is there anything that you would like to add to

1 this statement?

2 "A. No."

3 MR. PAULING: Beg the court's indulgence.

4 (Off the record)

5 (Back on the record)

6 BY MR. PAULING:

7 Q. Sergeant McDaniels, I just want to make sure you got it
8 right. There was a question --

9 (Cell phone going off in the courtroom)

10 THE COURT: Someone has got a phone?

11 (No response)

12 THE COURT: I'm sorry, go ahead.

13 BY MR. PAULING:

14 Q. The question -- Sergeant McDaniels, the question and
15 answer regarding the palm strikes, would you reread that?

16 A. Sure.

17 "Q. Describe the force behind the palm strikes that
18 you gave to Nakia's head.

19 "A. They were quick strikes without a lot of power
20 behind them."

21 Q. "Without a lot --

22 A. "Without a lot of power behind them." Excuse me.

23 Q. Thank you, sir.

24 A. Yes, sir.

25 Q. Now, when you got that second statement, would you tell

1 the jury how was that significant in relation to the
2 information that you had gotten previously from Mr. Porch?

3 A. Well, it was very significant as it pertains to the
4 evidence that we had from the case file. Of course, it
5 was -- you know, he added more to his statement in terms of
6 the interaction, the encounter. It started swaying away
7 from Nakia Mallory being the one to initiate and being the
8 one to kind of come on to him to, you know, that she
9 rejected him. He admitted to calling her a bitch. And he
10 then offered, you know, the explanation describing the
11 sequence of events; that she got upset and that she went to
12 the kitchen and got a knife, after saying "excuse me, you
13 don't talk to me like that."

14 And he also changed his statement at this particular
15 point from the first statement, you know, as it pertains to
16 the struggle itself. You know, he added this time that he
17 struck her a couple of times to the forehead area, which was
18 consistent with the evidence that we had. Right around, you
19 know, her head area there was some contusion, signs of
20 someone being struck.

21 He also explained in this particular statement the cut
22 above her eyebrow. When we first went to talk to him,
23 again, the accident version. They -- earlier that morning,
24 you know, we didn't hold anything back at this particular
25 point with respect to everything that this case has been

1 through. We -- "you know, your accident story does not add
2 up. We are not trying to hide anything from you. As a
3 matter of fact, this is why it doesn't add up," and so he
4 was shown the photos.

5 Q. Now, did you report your findings back to Chief Wilson?

6 A. I did.

7 Q. Okay. And after discussing it with him, were
8 arrangements made for a third interview?

9 A. Yes, subsequent interview.

10 Q. And what arrangements did you make for that particular
11 interview?

12 A. We made arrangements to meet with him again the next
13 day.

14 Q. Okay. And, now, approximately what time was that?

15 A. When we met back with him?

16 Q. Yes. You said the following day, which was July 10th
17 now?

18 A. It would be July 10th.

19 If I may refer to my notes.

20 Eleven o'clock a.m. Pacific Time on July 10th.

21 MR. PAULING: Beg the court's indulgence.

22 (Off the record)

23 (Back on the record)

24 BY MR. PAULING:

25 Q. Sergeant McDaniels, before we get there, just so we can

1 be completely clear, the first time that you had interviewed
2 Mr. Porch, after he had waived his rights, I guess it was
3 the early morning hours of July 9th, from that time to the
4 second interview when he was mirandized again --

5 A. Yes, sir.

6 Q. -- had he ever invoked his rights or asked for an
7 attorney?

8 A. He never did.

9 Q. Okay. And from the time of the interview, the second
10 interview took place, until you say eleven o'clock, or --
11 eleven o'clock on July 10th of 2009, is this when you meet
12 up had him again?

13 A. Eleven a.m. Pacific Time.

14 Q. Did he invoke his rights at that time or ask for an
15 attorney?

16 A. He did not.

17 Q. Did he ever say "I don't want to talk to you?"

18 A. He never did.

19 Q. Okay. You were saying that arrangements were made to
20 have a third interview, is that correct?

21 A. That is correct.

22 Q. Okay. Was this a videotaped interview?

23 A. Yes, it was.

24 Q. And can you tell the jury what was the process of this
25 particular interview?

1 A. Well, you know, we, again, made arrangements to have a
2 subsequent or third interview with him. At this time the --
3 you know, this was actually suggested by Chief Wilson.

4 Q. Okay.

5 A. And so we made arrangements with the Los Angeles County
6 Sheriff's Department and they were able to assist us in that
7 regard.

8 Q. Okay. And as far as -- who was present for that
9 particular interview?

10 A. Myself and Sergeant Godfrey. There was an individual
11 from Long Beach Police Department who was with us the entire
12 time. Detective Mendoza.

13 Q. Was there anyone else present?

14 A. Yes, there was also an investigator from Los Angeles
15 County.

16 Q. Okay. But you said Investigator Mendoza was there as
17 well?

18 A. Mendoza was present from Long Beach.

19 Q. All right. And as far as this interview was concerned,
20 how did this take place?

21 A. It took place in one of their interview rooms. It was
22 audio and videotaped at the L.A. County Sheriff's
23 Department.

24 (Off the record)

25 (Back on the record)

1 (DVD marked as State's Exhibit No. 50 for
2 identification)

3 BY MR. PAULING:

4 Q. Sergeant McDaniels, you and Investigator Godfrey
5 interviewed Mr. Porch -- it was a videotaped interview?

6 A. I'm sorry?

7 Q. You said you and Sergeant Godfrey interviewed Mr.
8 Porch?

9 A. That is correct.

10 Q. And it was a videotaped interview?

11 A. Yes, it was.

12 MR. PAULING: Approach the witness, Your Honor?

13 THE COURT: Yes, sir.

14 BY MR. PAULING:

15 Q. I show you what's been marked for ID purposes as
16 State's 50 and ask if you recognize that particular item?
17 Is that the video?

18 A. Yes, it is.

19 Q. Okay. And you have reviewed that particular video?

20 A. I have.

21 Q. Okay. And what's reflected on the video, does that
22 fairly and accurately depict the interview that occurred
23 back on July 10th of 2009?

24 A. It is fair and accurate.

25 Q. Okay.

1 MR. PAULING: Your Honor, at this time I would
2 offer State's 50.

3 MR. AIKEN: Subject to our pretrial objections,
4 Your Honor.

5 THE COURT: And based upon the discussions in the
6 hearing, I will admit Exhibit No. 50 for the reasons that
7 have been stated there.

8 (Whereupon, State's Exhibit No. 50 was entered
9 into the record as evidence)

10 MR. PAULING: Your Honor, I ask to publish it at
11 this time.

12 THE COURT: Yes, sir.

13 (Whereupon, State's Exhibit No. 50 was published
14 to the jury panel)

15 MR. PAULING: Thank you, Your Honor.

16 I have no further questions for this witness.

17 THE COURT: Ladies and gentlemen, at this time we
18 are going to break for the evening.

19 I'm going to remind you of the instructions that I
20 have given to you; that is, that you should not begin to
21 discuss this matter among yourselves, as you still have not
22 heard all the evidence that has to be presented.

23 Please remember as you come and go from the
24 courthouse not to listen to conversations that you may hear
25 in the hallways; again, for the reasons that you have to

1 make a decision based upon the evidence that's been
2 presented here in this courtroom.

3 Additionally, please do not let anyone approach
4 you to discuss this matter with you. If someone attempts to
5 do that, please tell them that you are a juror and you
6 cannot discuss it and please report it to us as soon as
7 possible.

8 Given the hour of the evening and the fact that
9 it's dark outside and the parking garage is across the
10 street, I ask if you will just go back to the jury room for
11 just a moment. Then I will have a deputy to escort you
12 across the street so we make sure that you get across the
13 street without any problems. So if you will all just step
14 back into the jury room.

15 Please remember also all the other instructions I
16 have given to you every night; that is, not to engage in any
17 independent research or investigation. Please do not
18 discuss the matter with your family and friends, again, for
19 all the reasons that I have given to you. Again, primarily
20 that you have to judge this case based upon the evidence
21 that you have heard throughout the course of this trial and
22 what you have heard and seen and observed. And until it's
23 time for you all to begin your deliberations, you should not
24 be influenced by any outside information or material,
25 whether it comes from research or whether it comes from

1 friends or family who are discussing the matter. I ask that
2 you not engage in that conduct. Again, that's not
3 acceptable and not allowed, and a violation of that rule
4 will be subject to contempt of court. So I ask that you
5 make sure that you follow these instructions.

6 If you will just step back into the jury room and
7 as soon as I have a deputy available, I will have them
8 escort you across the street. Thank you.

9 I'm going to tell you to report at nine o'clock
10 tomorrow morning. I would like to report later, but I think
11 we have got some conflicts with some testimony tomorrow. In
12 an effort to try to move this matter along, I'm going to ask
13 that you still report at nine o'clock tomorrow morning.
14 Thank you.

15 (The following takes place outside the presence of
16 the jury panel)

17 THE COURT: Officer McDaniels, you may step down.
18 I remind you that you should not discuss your testimony with
19 anyone overnight because you have not concluded your
20 testimony. It would be inappropriate for you to discuss it,
21 even with the attorneys. So you may step down at this time.

22 THE WITNESS: Thank you, ma'am.

23 THE COURT: Is there anything we need to take up
24 before we stop?

25 MR. LUKE SHEALEY: Yes, ma'am.

1 THE COURT: I'm sorry?

2 MR. LUKE SHEALEY: Yes, ma'am.

3 THE COURT: Yes.

4 MR. LUKE SHEALEY: And this is something that I
5 saw that didn't make my -- especially the law clerk, or the
6 transcript of this video, but, nevertheless, it's now into
7 evidence. The State never caught it either. At the end
8 right there in the last minute or two Investigator Godfrey
9 was asking Mr. Porch about drug use and using drugs and he's
10 talking about that and whether he did hard drugs, whether
11 Justin led him to that. That -- that part wasn't -- I mean,
12 I don't think I have ever seen. My law clerk was just
13 saying that wasn't a part of our tape. That is
14 unacceptable. That's impermissible.

15 I would cite the State v. Smith, which happened to
16 be a murder case where the female defendant was charged with
17 murdering her husband. There is evidence in that case that
18 actually someone else -- another witness said someone else
19 had killed the husband, ironically, and evidence of drug use
20 was admitted in that case. The drug use was not an issue in
21 the crime itself. It was found to be reversible error.
22 "The only function of the evidence concerning the
23 defendant's use of illegal drugs was to demonstrate the
24 defendant's bad character and social irresponsibility. The
25 admission of such evidence is legal error."

1 "Further, evidence of drug use is incompetent to
2 establish motive for a crime or the state of mind of the
3 defendant where the record does not support any relationship
4 between the crime and the drug use."

5 That wasn't in our video. We have never seen that
6 before, but the jury just heard about it.

7 That's State v. Smith, and I would cite 309 S.C.
8 442.

9 I would ask for a mistrial at this point.

10 THE COURT: What's the State's response?

11 MR. GOINGS: Your Honor, the State's position is
12 that the full video was turned over to defense counsel. I
13 even asked them to review it.

14 The video that we had from the Jackson v. Denno --
15 I mean the one I had that you have possession of from the
16 Jackson v. Denno hearing is the one I made a copy from to
17 give to them. It had contained video portions one and two.
18 I asked defense counsel yesterday, or the day before, I
19 can't remember when, but to review the second portion to
20 make sure there wasn't any objection to any of the material
21 in there.

22 I also leaned over to defense counsel during the
23 playing of the video saying that I would like to stop it
24 early, because there is a great portion at the end, as you
25 can tell, Your Honor, that wasn't really talking about any

1 more additional admissions. He again stated at that point
2 he wanted to play it all through.

3 The State didn't seek to introduce this evidence
4 to prejudice the defendant. I'm not going to plan on
5 arguing anything about drug use in closing or any other
6 offers or admission. I don't believe it's that prejudicial
7 to the defense to require a mistrial at this time.

8 MR. LUKE SHEALEY: And you are right, Mr. Goings
9 did ask me about thirty minutes into it whether we should
10 stop it, mentioning something about a portion where Godfrey
11 was talking about or McDaniels was talking about mother's
12 lover, there's no love like a mother's love.

13 I did want the jury to see the entire video. As
14 you know, this is a false confession case from the defense
15 perspective and I wanted them to sit through at least over
16 an hour of that type of persuasiveness and interrogation,
17 which is only a fraction of what Mr. Porch actually
18 experienced over the course of three days. So, however,
19 there is multiple angles, as we discussed with Your Honor,
20 of this video. And perhaps this -- the other angle that we
21 transcribed it.

22 The point of it is we weren't aware of it. They
23 should have been aware of it. The fact is that the jury is
24 aware of it now, this drug use comment, and it is reversible
25 error. It's completely prejudicial and it was found not to

1 be harmless, and I don't have any other choice to preserve
2 my client's right but to ask for a mistrial, and I'll pass
3 you a copy of the case, if you would like to read it.

4 THE COURT: I tell you what. Frankly I couldn't
5 understand what in the world he was saying at the end of the
6 video. I have copies that were provided to me, both before
7 the Jackson v. Denno Hearing, as well as the exhibit that
8 was presented during the Jackson v. Denno Hearing, and there
9 were two separate copies. I'll look at those and see if the
10 testimony that's disputed was on those videos. If they
11 were, then I think you have lost that opportunity, but I
12 will look at it, and then I'll read the case.

13 MR. GOINGS: And Your Honor, I would point out --

14 THE COURT: At this time -- I would say at this
15 time I didn't hear it. And like I said, I couldn't
16 understand half of what was being said by the time Godfrey
17 got to the door like he was on his way out and that
18 conversation, and so I'll listen to it again.

19 MR. GOINGS: And, Your Honor, the only thing that
20 I would point out to that end is they are right, it was two
21 camera angles. However, in discovery I gave them both the
22 CD that I had in my possession that contained the view that
23 we were looking at there and also a VHS tape that had the
24 camera angle looking down.

25 All I know is what I copied and gave to them. And

1 I was going off of -- the one I submitted in the Denno
2 Hearing that you have in your possession is from the -- it
3 was never from the VHS. It was always on the computer disc.
4 I don't know exactly what their disc, they are saying to
5 you, but it's my understanding that they may have
6 transcribed or put the VHS tape on the disc that you have in
7 your possession. When you compare the two, that might be
8 why there is a difference. I don't know. I haven't looked
9 at their disc that they submitted to the court. They didn't
10 submit -- they didn't give me a copy of it when they
11 submitted it to the court, so I don't know exactly what's on
12 their disc.

13 THE COURT: I have -- like I said, I have one copy
14 that was submitted to me by the defense before the Jackson
15 v. Denno, and then I have the Court's Exhibit 1 that was
16 submitted during the hearing, and I'll look at both of those
17 at the end and see what's on there and listen to what's on
18 there and we will go from there.

19 Anything else we need to take up?

20 MR. LUKE SHEALEY: No, ma'am.

21 THE COURT: We will see you all back at nine
22 o'clock in the morning then.

23 (Whereupon, Proceedings were adjourned to November
24 22, 2013)
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3
4 THE STATE)
5 -vs-) TRANSCRIPT OF RECORD
6 JOSHUA WILLIAM PORCH,) 2011-GS-40-03359
7 DEFENDANT.) NOVEMBER 22, 2013
COLUMBIA, SOUTH CAROLINA

8 (VOLUME V)
9

10 B E F O R E:

11 THE HONORABLE ALISON RENE LEE, JUDGE. ; And a Jury.
12

13
14 A P P E A R A N C E S:

15 CARY GOINGS, ASSISTANT ATTORNEY GENERAL
16 CURTIS PAULING, ASSISTANT ATTORNEY GENERAL
17 JOSHUA R. UNDERWOOD, ASSISTANT ATTORNEY GENERAL
ATTORNEYS FOR THE STATE

18 LUKE A. SHEALEY, ESQUIRE
19 BRIAN R. SHEALEY, ESQUIRE
ARTHUR AIKEN, ESQUIRE
20 ATTORNEYS FOR THE DEFENDANT

21 MICHAEL R. WATTS
22 CIRCUIT COURT REPORTER
23
24
25

INDEX

(NOVEMBER 18, 2013)

WITNESSES

PAGE

JURY VOIR DIRE -- PAGE 39

JURY SWORN -- PAGE 91

OPENING STATEMENT BY MR. UNDERWOOD -- PAGE 99

OPENING STATEMENT BY MR. BRIAN SHEALEY -- PAGE 102

JUSTIN MALLORY (SW)

DIRECT EXAMINATION BY MR. PAULING

125

1	INDEX	
2	(NOVEMBER 19, 2013)	
3	WITNESSES	PAGE
4	JUSTIN MALLORY (SW)	
5	CROSS EXAMINATION BY MR. LUKE SHEALEY	233
6	REDIRECT EXAMINATION BY MR. PAULING	302
7	JACQUELYN RICHBURG (SW)	
8	DIRECT EXAMINATION BY MR. GOINGS	319
9	CROSS EXAMINATION BY MR. AIKEN	328
10	REDIRECT EXAMINATION BY MR. GOINGS	330
11	RECROSS EXAMINATION BY MR. AIKEN	330
12	INVESTIGATOR ROBERT OATES (SW)	
13	DIRECT EXAMINATION BY MR. UNDERWOOD	331
14	CROSS EXAMINATION BY MR. AIKEN	366
15	MAJOR STAN SMITH (SW)	
16	DIRECT EXAMINATION BY MR. GOINGS	374
17	CROSS EXAMINATION BY MR. LUKE SHEALEY	381
18	MELANIE CARICO (SW)	
19	DIRECT EXAMINATION BY MR. GOINGS	382
20	(NO CROSS EXAMINATION)	
21	INVESTIGATOR ZANE PADGETT (SW)	
22	DIRECT EXAMINATION BY MR. GOINGS	388
23	CROSS EXAMINATION BY MR. AIKEN	414
24	REDIRECT EXAMINATION BY MR. GOINGS	420
25		

INDEX

(NOVEMBER 19, 2013)

WITNESSES PAGE

INVESTIGATOR BEVERLY CRANE (SW)

DIRECT EXAMINATION BY MR. GOINGS 425

(NO CROSS EXAMINATION)

TENA GOFF (SW)

DIRECT EXAMINATION BY MR. GOINGS 448

(NO CROSS EXAMINATION)

OFFICER WILLIAM CEDARSTAFF (SW)

DIRECT EXAMINATION BY MR. UNDERWOOD 460

(NO CROSS EXAMINATION)

OFFICER CHRISTINE BARRICKMAN (SW)

DIRECT EXAMINATION BY MR. GOINGS 468

(NO CROSS EXAMINATION)

INVESTIGATOR TRAVIS HOLDORF (SW)

DIRECT EXAMINATION BY MR. GOINGS 476

(NO CROSS EXAMINATION)

1	INDEX	
2	(NOVEMBER 20, 2013)	
3	WITNESSES	PAGE
4	OFFICER CURTIS BURNETT (SW)	
5	DIRECT EXAMINATION BY MR. GOINGS	504
6	(NO CROSS EXAMINATION)	
7	DEPUTY CORONER CHRISTINE BENSON (SW)	
8	DIRECT EXAMINATION BY MR. L GOINGS	508
9	(NO CROSS EXAMINATION)	
10	INVESTIGATOR JOHN BARRON (SW)	
11	DIRECT EXAMINATION BY MR. UNDERWOOD	512
12	CROSS EXAMINATION BY MR. AIKEN	545
13	REDIRECT EXAMINATION BY MR. UNDERWOOD	557
14	SHERRY TRIBBLE (SW)	
15	DIRECT EXAMINATION BY MR. GOINGS	561
16	CROSS EXAMINATION BY MR. LUKE SHEALEY	580
17	REDIRECT EXAMINATION BY MR. GOINGS	601
18	RECROSS EXAMINATION BY MR. LUKE SHEALEY	608
19	DENNIS TENTYON (SW)	
20	DIRECT EXAMINATION BY MR. PAULING	610
21	CROSS EXAMINATION BY MR. AIKEN	624
22	REDIRECT EXAMINATION BY MR. PAULING	625
23	SHAHEED HARGRAVES (SW)	
24	DIRECT EXAMINATION BY MR. GOINGS	627
25	CROSS EXAMINATION BY MR. AIKEN	635

INDEX

(NOVEMBER 20, 2013)

WITNESSES PAGE

PERSIA PORCH (PRETRIAL HEARING)

DIRECT EXAMINATION BY MR. GOINGS 645

(NO CROSS EXAMINATION)

PERSIA PORCH (JURY TRIAL)

DIRECT EXAMINATION BY MR. GOINGS 649

(NO CROSS EXAMINATION)

INVESTIGATOR RANDY STRANGE (SW)

DIRECT EXAMINATION BY MR. PAULING 667

CROSS EXAMINATION BY MR. BRIAN SHEALEY 680

REDIRECT EXAMINATION BY MR. PAULING 743

CAPTAIN JAMES WHITE (SW)

DIRECT EXAMINATION BY MR. PAULING 745

(NO CROSS EXAMINATION)

MAJOR STAN SMITH (SW)

DIRECT EXAMINATION BY MR. GOINGS 752

1	INDEX	
2	(NOVEMBER 21, 2013)	
3	WITNESSES	PAGE
4	MAJOR STAN SMITH (SW)	
5	CROSS EXAMINATION BY MR. LUKE SHEALEY	819
6	REDIRECT EXAMINATION BY MR. GOINGS	880
7	DR. BRADLEY MARCUS (SW)	
8	DIRECT EXAMINATION BY MR. UNDERWOOD	886
9	CROSS EXAMINATION BY MR. BRIAN SHEALEY	900
10	REDIRECT EXAMINATION BY MR. UNDERWOOD	908
11	INVESTIGATOR TRAVIS HOLDORF (SW)	
12	DIRECT EXAMINATION BY MR. GOINGS	909
13	CROSS EXAMINATION BY MR. BRIAN SHEALEY	956
14	REDIRECT EXAMINATION BY MR. GOINGS	1004
15	RECROSS EXAMINATION BY MR. BRIAN SHEALEY	1010
16	CHIEF DAVID WILSON (SW)	
17	DIRECT EXAMINATION BY MR. UNDERWOOD	1011
18	CROSS EXAMINATION BY MR. LUKE SHEALEY	1020
19	REDIRECT EXAMINATION BY MR. UNDERWOOD	1049
20	SERGEANT SHAWN MCDANIELS (SW)	
21	DIRECT EXAMINATION BY MR. PAULING	1055
22		
23		
24		
25		

INDEX

(NOVEMBER 22, 2013)

WITNESSES	PAGE
SERGEANT SHAWN MCDANIELS (SW)	
CROSS EXAMINATION BY MR. AIKEN	1134
REDIRECT EXAMINATION BY MR. PAULING	1187
DR. DEBORAH DAVIS (DW) (PRETRIAL HEARING)	
DIRECT EXAMINATION BY MR. LUKE SHEALEY	1220
(NO CROSS EXAMINATION)	
DR. DEBORAH DAVIS (DW) (JURY TRIAL)	
DIRECT EXAMINATION BY MR. LUKE SHEALEY	1243
CROSS EXAMINATION BY MR. GOINGS	1329
REDIRECT EXAMINATION BY MR. LUKE SHEALEY	1340
SERGEANT BRIAN GODFREY (SW)	
DIRECT EXAMINATION BY MR. GOINGS	1343
CROSS EXAMINATION BY MR. BRIAN SHEALEY	1377
REDIRECT EXAMINATION BY MR. GOINGS	1429
STATE RESTS -- PAGE 1431	
CHARLES IVAN NEDDO (DW)	
DIRECT EXAMINATION BY MR. AIKEN	1452
CROSS EXAMINATION BY MR. UNDERWOOD	1465

INDEX

(NOVEMBER 25, 2013)

WITNESSES PAGE

JOSHUA WILLIAM PORCH (DW)

DIRECT EXAMINATION BY MR. LUKE SHEALEY 1503

CROSS EXAMINATION BY MR. GOINGS 1556

REDIRECT EXAMINATION BY MR. LUKE SHEALEY 1625

DEFENSE RESTS -- PAGE 1626

CLOSING ARGUMENT BY MR. LUKE SHEALEY -- PAGE 1665

FINAL ARGUMENT BY MR. GOINGS -- PAGE 1711

JURY INSTRUCTIONS -- PAGE 1757

JURY VERDICT -- PAGE 1806

SENTENCING -- PAGE 1814

REPORTER'S CERTIFICATE -- PAGE 1835

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-1	PHOTOGRAPH		146
4	S-2	PHOTOGRAPH		146
5	S-3	PHOTOGRAPH		146
6	S-4	PHOTOGRAPH		146
7	S-5	DVD		
8	S-6	INCIDENT REPORT		326
9	S-7	DVD		327
10	S-8	EVIDENCE BAG		352
11	S-9	BOX OF CLOTHES		352
12	S-10	PHOTOGRAPH		405
13	S-11	PHOTOGRAPH		405
14	S-12	PHOTOGRAPH		401
15	S-13	PHOTOGRAPH		401
16	S-14	PHOTOGRAPH		414
17	S-15	PHOTOGRAPH		414
18	S-16	PHOTOGRAPH		414
19	S-17	PHOTOGRAPH		406
20	S-18	PHOTOGRAPH		365
21	S-19	PHOTOGRAPH		365
22	S-20	PHOTOGRAPH		406
23	S-21	PHOTOGRAPH	356	
24	S-22	PHOTOGRAPH		365
25	S-23	PHOTOGRAPH		365

1	EXHIBITS			
2	NO.	DESCRIPTION	ID.	EV.
3	S-24	PHOTOGRAPH		397
4	S-25	PHOTOGRAPH		397
5	S-26	PHOTOGRAPH	361	
6	S-27	PHOTOGRAPH	361	
7	S-28	CONSENT TO SEARCH		377
8	S-29	EVIDENCE BAG		380
9	S-30	DVD		387
10	S-31	EVIDENCE BAG		408
11	S-32	EVIDENCE BAG		410
12	S-33	PROPERTY REPORT		
13	S-34	CONSENT TO SEARCH	479	
14	S-35	EVIDENCE BAG		481
15	S-36	PHOTOGRAPH		541
16	S-37	EVIDENCE BAG		571
17	S-38	ADVISE OF RIGHTS		750
18	S-39	STATEMENT OF JOSHUA PORCH		762
19	S-40	STATEMENT OF JOSHUA PORCH		767
20	S-41	STATEMENT OF JOSHUA PORCH		774
21	S-42	DIAGRAM		890
22	S-43	DIAGRAM		890
23	S-44	AUTOPSY REPORT		891
24	S-45	RECEIPT		917
25	S-46	ADVISE OF RIGHTS		1070

		EXHIBITS		
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	S-47	STATEMENT OF JOSHUA PORCH		1079
4	S-48	ADVISE OF RIGHTS		1091
5	S-49	STATEMENT OF JOSHUA PORCH		1095
6	S-50	DVD		1107
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

		EXHIBITS		
	NO.	DESCRIPTION	ID.	EV.
1				
2				
3	D-1	STATEMENT	84	
4	D-2	RECEIPT	84	
5	D-3	PHOTOGRAPH		284
6	D-4	PHOTOGRAPH		284
7	D-5	PHOTOGRAPH		285
8	D-6	PHOTOGRAPH	84	
9	D-7	PHOTOGRAPH		279
10	D-8	PHOTOGRAPH		420
11	D-9	STATEMENT		586
12	D-10	PHOTOGRAPH		991

13

14

15

16

17

18

19

20

21

22

23

24

25

	EXHIBITS		
	NO.	DESCRIPTION	ID. EV.
1			
2			
3	CT-1	JURY NOTE	231
4	CT-2	STATEMENT	816
5	CT-3	STATEMENT	819
6	CT-4	DVD	1613
7	CT-5	DVD	1782
8	CT-6	JURY NOTE	1783
9	CT-7	JURY NOTE	1784
10	CT-8	JURY NOTE	1792
11	CT-9	JURY NOTE	1804

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (PROCEEDINGS, NOVEMBER 22, 2013)

2 THE COURT: The first matter we need to take up is
3 relating to the video and the motion for a mistrial that was
4 made yesterday.

5 I have reviewed a video that was provided to me by
6 the defense prior to our pretrial hearing back in March of
7 this year, and my law clerk reviewed Court's Exhibit 7 to
8 the Jackson v. Denno hearing that was conducted in March of
9 2013.

10 What I found on the video that I looked at was
11 that at one hour, eleven minutes and forty-five seconds the
12 question came up had he ever tried drugs, and there was a
13 conversation for about another minute, maybe two minutes, in
14 which he stated that he had tried drugs, that Justin was not
15 the one who introduced him to the drugs. He started using
16 drugs in the ninth grade when he was seventeen. He would
17 use it once or twice a day. Then -- once or twice in a
18 while. Then it -- it sounded like "when we moved to Canada"
19 he used it every day. It might have been Columbia. I
20 couldn't tell. He used every day. Then he stopped when he
21 met his wife. He stopped before that. And then when he met
22 his wife, his wife was against drug use, and so he
23 definitely had stopped at that particular point.

24 And my law clerk indicated in the video that she
25 viewed the same information was actually present on the

1 video.

2 So to the extent that it was admitted in court --
3 and I think it was admitted accidentally, but to the extent
4 that the videos were available to the defense and they had
5 the opportunity to look through all of it before it was
6 presented, there was no objection made, and that it appeared
7 that it was inadvertent, that there was a request to turn
8 off the video earlier, and so I think it was inadvertent and
9 it's not being used in the same manner in which the evidence
10 of cocaine use is being used in the State v. Rebecca Smith,
11 and so, therefore, I'll deny the request for a mistrial.

12 MR. LUKE SHEALEY: And I do want to just say at
13 that point it certainly wasn't inadvertent on the defense's
14 part and --

15 THE COURT: I think it was inadvertent on both the
16 parties part.

17 MR. LUKE SHEALEY: And -- but, nonetheless, it is
18 in evidence and that's a mistake. I take full ownership of
19 that, and if it's -- it's clearly to submit that type of
20 testimony is prejudicial, especially in the context of a
21 murder case, when credibility is on the line, so it is my
22 fault. I own up to it and it might be an issue down the
23 road against me.

24 THE COURT: And what I will say, that at least in
25 the Smith case, there was subsequent attempts by the State

1 to actually use that in connection with the charge in
2 prosecuting Smith and related to her conduct. And so far in
3 this case that has not occurred. And I think it was truly
4 inadvertent, it was accidental, and I don't expect that the
5 State will try to use any of that information in the course
6 at this point, even based upon what was heard for about a
7 minute, if that long. I don't even think it was played that
8 long in court, that there is to be no such further
9 discussion or introduction of that information in the course
10 of the trial.

11 I think calling attention to it by discussing it
12 with the jury or telling them to disregard it would just
13 highlight it, and so in the event that they need to hear the
14 video again, perhaps we can figure out a way to redact that
15 portion of it, as it's -- it's very near the end. I think
16 the tape ended at that one hour and eighteen minutes. So,
17 you know, there is further discussion afterwards that talked
18 about, you know, his children and, you know, keeping in
19 contact with his children and that kind of thing, but -- so
20 I think where it was stopped, anything after that could
21 probably be deleted, in the event the jury needs to hear it
22 again.

23 MR. LUKE SHEALEY: And while on that note, perhaps
24 we could do a remedy like we did with the statement
25 admission of polygraph, although it was in evidence, we kind

1 of stipulated to replace it with something, or cut and
2 paste. This will certainly be in evidence. For all I know,
3 they are going to listen to for ten hours, hour after hour
4 after hour, so perhaps we could, with all resources of the
5 State, cut that part off. And then by the time they get it,
6 it would be safe.

7 THE COURT: Well, how about over the weekend take
8 a stab at redacting that part and then --

9 MR. GOINGS: Yes, ma'am. The State has no
10 objection to redacting this part, and the State will go
11 ahead and put on the record that it has no intention of
12 questioning, if the defendant so chooses to get on the
13 stand, about any prior drug use or using any part of prior
14 drug use that may have been heard in that video in closing
15 argument.

16 THE COURT: Anything else we need to take up
17 before we bring the jury in?

18 MR. LUKE SHEALEY: No, ma'am, I don't believe so.

19 MR. GOINGS: I don't know if we are straight with
20 the schedule yet, Your Honor, or --

21 THE COURT: Yeah, I think we are straight. We are
22 going to try to finish up with McDaniels and then call the
23 defense's expert out of order.

24 MR. GOINGS: All right. Well, the only -- I have
25 a couple of motions as to the defense expert.

1 One, the State would the seek to exclude the
2 expert testimony.

3 THE COURT: How about we take it up when we finish
4 wish McDaniels?

5 MR. GOINGS: That's fine.

6 THE COURT: Let's go ahead and finish that and
7 then I -- Mr. Aiken says he's not going to be long, but I
8 would rather do that and keep it all together.

9 MR. GOINGS: Okay.

10 THE COURT: And then that way if we need to
11 proffer any of the testimony, we can do a proffer at that
12 time.

13 MR. GOINGS: Yes, ma'am.

14 THE COURT: Anything else we need to take up at
15 this point?

16 MR. GOINGS: Nothing from the State.

17 MR. AIKEN: Nothing from the defense.

18 THE COURT: You may ask the jury to come in,
19 please.

20 THE BAILIFF: Yes, ma'am.

21 THE COURT: And I will tell you I have ordered
22 lunch for the jury again today, so we are going to try to
23 move things along, like we did yesterday. Hopefully not as
24 late as yesterday.

25 Officer McDaniels, you may take the witness

1 stand).

2 (The following takes place in the presence of the
3 jury panel)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: Good morning, ladies and gentlemen.

6 JURY PANEL: Good morning.

7 THE COURT: We are now ready to continue on.

8 Any cross, Mr. Aiken?

9 MR. AIKEN: Yes, Your Honor.

10 May it please the court?

11 THE COURT: Yes, sir.

12 CROSS EXAMINATION BY MR. AIKEN:

13 Q. Good morning, Sergeant McDaniels.

14 A. Good morning, sir.

15 Q. I'm Art Aiken. I'm one of Joshua Porch's lawyers. I
16 just got a couple of questions that I want to maybe clear
17 some things up.

18 A. Sure.

19 Q. In his examination of you, I heard Mr. Pauling say, and
20 I stopped counting about twenty times, that what this was an
21 interview. This wasn't an interview, was it?

22 A. No, it wasn't. It was an interrogation.

23 Q. It was an interrogation?

24 A. Yes, it was.

25 Q. It was confrontational?

1 A. With the expectation of it being confrontational. The
2 interviews may be able to -- they may start off as
3 interviews and then evolve into an interrogation.

4 Oftentimes we may have a victim come in that started
5 off as an interview, but found out the victim was actually
6 involved in it and it evolves into an interrogation.

7 So they work -- they work hand in hand. One leads to
8 the other and sometimes you have to deescalate. You start
9 off interrogating and then you may end up interviewing.

10 So this was with the expectation of being an
11 interrogation, you know, because of the circumstances.

12 Q. You had an arrest warrant --

13 A. We did.

14 Q. -- so clearly it was going to be an interrogation from
15 the jump, right?

16 A. Not necessarily. Not necessarily. I mean, it's -- you
17 know, you want to jump to that extreme, because of the
18 warrant, but, you know, having the warrant in hand doesn't
19 actually mean that you start off interrogating. It starts
20 off as an interview. Depending on the circumstances, it may
21 be different.

22 If you are asking about this particular case in dealing
23 with Joshua Porch, the expectation of it eventually turned
24 into an interrogation was always present due to the
25 circumstances and the history behind this case. We

1 anticipated that it would evolve into an interrogation.

2 Q. Well, let me ask you this. You had an arrest warrant,
3 right?

4 A. We did.

5 Q. You were going to go out there and you were going to
6 arrest Joshua Porch, no matter what, right?

7 A. That is correct.

8 Q. And no matter what he said in any of these three
9 interrogations, you -- he was going back in chains with you
10 to South Carolina, wasn't he?

11 A. He was going to be arrested.

12 Q. It didn't make any difference whatsoever what he said
13 during these interrogations. You were taking him into
14 custody, putting him on a plane and taking him back to South
15 Carolina, isn't that right?

16 A. That's -- that's not how that process goes.

17 I would like to explain it to you, if you want me to.

18 We have to go through -- there's a process in order to
19 move someone from one state to the next state.

20 So, no, in answering your question, he was not going to
21 get back on the plane with me in chains, no matter what he
22 said.

23 Q. But no matter what he said, he was going back to South
24 Carolina, wasn't he --

25 A. Not necessarily.

1 Q. -- to face these charges?

2 A. Listen, not necessarily so. You know, we -- we went
3 down there not knowing exactly what he was going to say. We
4 had an arrest warrant.

5 Plenty of times we will have an arrest warrant and we
6 may not make an arrest, depending on the circumstances,
7 depending on the facts, but he -- we had an arrest warrant
8 for him.

9 The likelihood of him being arrested was, you know,
10 probable, but not necessarily automatic.

11 Q. But it didn't make any difference what he said in these
12 interrogations, he was going to be arrested, wasn't he?

13 A. That is -- that is -- I'm sorry, sir, not necessarily
14 so. The probability of him being arrested was pretty high,
15 because of the circumstances and the fact that, you know,
16 the history, as well as the arrest warrant in place, but not
17 necessarily. The way you are putting it, no, sir.

18 Q. Once you have an arrest warrant, that's an order of the
19 court to pick him up, right?

20 A. That is correct.

21 Q. And you were under orders of the court in South
22 Carolina to pick up Joshua Porch, to arrest Joshua Porch,
23 weren't you?

24 A. Law enforcement has a responsibility to make sure that
25 we got our facts. We are continuously gathering facts

1 throughout the investigation. And in many cases we may have
2 an arrest warrant on order, as you would put it, to make an
3 arrest, but once law enforcement learns of additional
4 information, we bare an obligation, not just a legal
5 obligation, but a moral obligation to make sure that we make
6 a sound decision.

7 So in answering your question, just because we have a
8 warrant doesn't mean that they must go to jail. That's
9 improper.

10 Q. Well, let's -- let's talk about this case.

11 A. Sure.

12 Q. You had an arrest warrant. You got on the plane. You
13 flew all the way out to California --

14 A. That is correct.

15 Q. -- because you had an arrest warrant for Joshua Porch,
16 right?

17 A. That is correct.

18 Q. And the intention when you got there in Los Angeles was
19 to arrest Joshua Porch, wasn't it?

20 A. One of the intentions, yes, sir.

21 Q. And, now, I think there were three interrogations,
22 right?

23 A. Yes, sir.

24 Q. And the third one was recorded. We watched the video
25 yesterday, right?

1 A. You did.

2 Q. The first two, they were not recorded, were they?

3 A. They were not.

4 Q. Now, you have a cell phone, don't you?

5 A. I do.

6 Q. It records, doesn't it?

7 A. I do.

8 Q. You could have just turned that cell phone on and
9 recorded those two interrogations, couldn't you?

10 A. With the Richland County Sheriff's Department we don't
11 record our interviews or our -- whether it's a witness or a
12 victim.

13 And as I stated yesterday, I was at the Long Beach
14 Police Department. They don't record. They didn't have the
15 access to the -- to the equipment. And so, of course,
16 when -- when I stated yesterday that, you know, when you are
17 in Rome, you deal with the Romans. And so I kind of like --
18 even with the handcuffing, to see if it was okay for us to
19 handcuff the guy while we interviewed him. So we --

20 In answering your question, no, I didn't use a cell
21 phone. No -- although I had one, it's not our common
22 practice. We didn't have it available at the time that we
23 were interviewing.

24 So in answering your question, no, I did not.

25 Q. And it's a fact, is it not, that the Richland County

1 Sheriff's Department has a policy against recording
2 interrogations, isn't that true?

3 A. Against?

4 Q. Against it, yes. That's not your policy to do it, is
5 it?

6 A. The word against is a bit extreme. We don't have a
7 policy against it. We actually record some -- our polygraph
8 room is recorded, so it's not -- we are not -- we don't have
9 a policy against it, sir, but, you know, we -- we don't
10 commonly record all of our statements.

11 Q. You had a case involving one of your friends, didn't
12 you?

13 A. I did.

14 Q. And in that case you recorded your friend's
15 interrogation, didn't you?

16 A. That -- that is correct. That was a sting operation
17 where a church member of mine was involved -- since you
18 brought it up, a church member of mine was involved in a
19 carjacking -- I'm sorry, a home invasion that resulted in a
20 homicide. I did not believe that my friend and my church
21 member was involved in that, and so, of course, the
22 investigation must go on. I asked my supervisors to let me
23 talk to him, to make sure that we can at least gather some
24 of the truth. I wore a wire. Very, very emotional
25 circumstance for me. I watched this man be baptized, and I

1 wore a wire, and he confessed to me that he was the driver
2 in that situation. He is in jail, in prison, for seventeen
3 years.

4 So in answering your question, it doesn't matter
5 whether you're someone that I love, someone that I don't
6 know, if you are wrong, you do have to pay. You must, you
7 must be responsible and held fully accountable, you know.

8 And I -- I anticipated that question, but I can tell
9 you that in spite of the fact of how much it hurt to wear
10 that wire, he was responsible. Someone died and he's doing
11 seventeen years.

12 Q. During these interrogations did you take notes?

13 A. During the interrogation?

14 Q. Did you take notes?

15 A. All of my notes have been memorialized into my
16 followup.

17 Q. So you have no record of any of the interrogation by
18 way of notes, other than what's reflected in your followup
19 investigation?

20 A. All of my notes are in my followup. And if you have
21 read it, then you will know that things that I surmised from
22 the conversation, they are in the followup. And some of the
23 things that I felt were pertinent as it pertains to quoting,
24 they are also in my followup.

25 And if you -- if you would allow me to finish answering

1 the question to include when I first made contact with
2 Joshua Porch and those questions that I planned out
3 yesterday when he said "no one did it, it was an accident."
4 And when he said he was not there, and when he said that
5 Joshua was a dick, those were quoted in my followup, because
6 I felt those were quite pertinent, and anything else in my
7 followup is a synopsis of what was discussed.

8 Q. Did you keep your notes?

9 A. They are -- they are memorialized in my followup.

10 Q. Well, did you have handwritten notes that you used to
11 make your followup, or did you just do your followup?

12 A. I made -- I wrote bullet points down and then
13 memorialized it in more detail in my followup.

14 Q. Do you still have the notes?

15 A. Not the bullet points, no.

16 Q. Where are they?

17 A. There was no need for the bullet points.

18 Q. Well, where are they? You had them. Where are they
19 now?

20 A. I have discarded them.

21 Q. So you have destroyed them?

22 A. Okay. The bullet points were what they were. My
23 followup is more detailed as it pertains to those bullet
24 points.

25 Q. But the fact remains that your bullet points are now

1 gone, you no longer have them?

2 A. That is -- they did not have merely as much information
3 as my followup does as it pertains to the bullet point.

4 When you are engaged in an interview and interrogation
5 of such a level as this, you know, it's -- you have to try
6 to pay as much attention as possible. You don't just sit
7 there -- you just can't keep writing while the person is
8 talking to you.

9 Q. Now, you have had some training in interrogation
10 techniques, haven't you?

11 A. Yes.

12 Q. And you have had some training on the law concerning
13 interrogations, haven't you?

14 A. I couldn't -- I didn't hear that last part.

15 Q. You have some training in the law concerning
16 interrogations, don't you?

17 A. I do.

18 Q. And you are aware that the results of an interrogation
19 may not be admissible if it's considered involuntary, isn't
20 that right?

21 A. That is correct.

22 Q. And one of the -- a couple of things that could
23 undermine the voluntariness of an interrogation; number one,
24 promises of leniency is one, isn't that right? If there is
25 a promise of leniency, it may be considered an involuntary

1 confession, isn't that right?

2 A. Not exactly so.

3 Q. All right. Well, let's talk about threats against
4 one's family members. That can undermine the voluntariness
5 of a statement, 'can't it?

6 A. It could contribute to that, yes.

7 Q. And it would be important to have a recording of the
8 interrogation to determine whether any of those improper
9 techniques were used, isn't that right?

10 A. It would be important?

11 Q. Yes.

12 A. It's important to be honest. That's the important
13 aspect of any interview. It's not necessarily important
14 that it's recorded. I mean, our leading agency within this
15 nation doesn't record their interviews. The FBI, they don't
16 record their interviews, so it's not necessarily important
17 that we record.

18 What's important is that we are honest, we are
19 thorough, and that we follow the facts of the case. That's
20 what's important.

21 Q. And you need to follow the law too, don't you?

22 A. Of course we do.

23 Q. All right. And wouldn't it be helpful to ensure if you
24 see a recording of this -- of these two interrogations that
25 you did not record to determine whether you used any of

1 these improper techniques, isn't that right? That would be
2 the best evidence of that, wouldn't it?

3 A. I wouldn't say necessarily the best, but in answering
4 your initial part of that question, would it be helpful?
5 Just -- no differently than seeing this last video was
6 helpful.

7 Q. Now, the first interview, Mr. Porch was in custody,
8 wasn't he?

9 A. The first interview, yes, he was.

10 Q. Or the first interrogation?

11 A. Talking about in -- in the -- in California?

12 Q. The first -- the first interrogation in California,
13 right?

14 A. Okay. All right.

15 Q. Isn't that right?

16 A. The first interview in California was, in fact -- he
17 was, in fact, in custody. He was handcuffed to the table.
18 And as I stated before, generally we don't -- I don't like
19 to talk with someone handcuffed, and I tried to, you know,
20 get that straightened out with the Long Beach Police
21 Department.

22 Q. Now, when you went out to California, you obviously had
23 a warrant, right?

24 A. Yes, sir.

25 Q. And that gave you the immediate ability, with the

1 assistance of Long Beach Police Department, to arrest Mr.
2 Porch on sight, right?

3 A. That is correct.

4 Q. Okay. And you arrived in Los Angeles at three o'clock
5 P.M. Pacific time, isn't that right?

6 A. That is correct.

7 Q. And that would have been on July the 8th of 2009,
8 right?

9 A. That is correct.

10 Q. And then I think later in the day, at eight o'clock,
11 you met with Investigator Godfrey?

12 A. I did.

13 Q. And I think y'all -- you testified earlier y'all had
14 dinner?

15 A. Yes, he had a tummy ache.

16 Q. And y'all talked about surveilling Mr. Porch?

17 A. Yes.

18 Q. Surveilling his house?

19 A. We did.

20 Q. And you began your surveillance, I believe, at 10:45?

21 A. I arrived at Mr. Porch's residence.

22 Q. And then ultimately you ended up arresting him at about
23 11:15 or 11:30 at the Walgreen's?

24 A. It was sometime after that. The next time that I have
25 noted in my followup is when Mr. Porch arrived at Long

1 Beach, which was 12:30. So in between 10:45 p.m. and 12:30
2 he was apprehended. They had to confirm the warrant in the
3 NCIC.

4 Once Long Beach Police Department arrived on the scene,
5 I then went and headed towards Long Beach Police Department
6 and tried to help Godfrey to the department himself.

7 Q. And then you next had contact with Mr. Porch about
8 12:30 a.m. at the Long Beach Police Department. That would
9 be Pacific Time, correct?

10 A. That would be -- the contact that I had with him was
11 when they put him in the interview room for me and that's
12 when I noticed that he had the handcuffs on.

13 Q. And he was in an interview room, right?

14 A. He was. He was asked if he wanted something to drink,
15 and the response was the same response that he had on the
16 video. He said "I'm not hungry."

17 Q. And --

18 A. And he was asked if he wanted to use the bathroom.

19 Q. You waited until Godfrey got there before you started
20 interrogating, right?

21 A. That is correct.

22 Q. And that was at about five after one, or so?

23 A. That's when he was -- that's when -- yeah, when we
24 first walked in.

25 He was advised of his rights at 1:12 a.m.. We walked

1 in there about 1:05, and then from there read him his
2 Miranda Rights in the manner that I indicated yesterday.

3 Q. And -- let me ask you a couple other questions.

4 When you have studied up on interrogations, have you
5 learned anything about interrogation techniques?

6 A. Yes, of course, I did.

7 Q. All right. And is there any particular technique that
8 you use?

9 A. Yeah. I use the kinesic. Some people pronounce it
10 kinesic. Basically you are taught to listen with your eyes,
11 not just with your ears. And there are certain things that
12 the -- that the body -- you know, the average individual,
13 unless you know what you are doing, you can't really control
14 it when you are getting ready to be creative, or, you know,
15 if you are trying to pull from memory.

16 And so depending on the individual, you know, you have
17 to do what is called norming them. And when he norm
18 someone, you ask them something basically that you know they
19 will tell the truth about; an example being "where are you
20 from? What high school did you go to?" You know, "how long
21 did you stay at that high school?" And generally that will
22 allow them to give you an opportunity to see what side they
23 reach from by way of, you know, eye movement, by way of hand
24 movement, leg movement. It's almost -- it's -- it's -- it's
25 you know, not one hundred percent, but, you know, you can

1 kind of depend on it.

2 And, you know, so in answering your question, yes, Mr.
3 Joshua Porch was normed with respect to what side he pulls
4 from memory as opposed to creativity. Creativity is
5 generally not the truth.

6 Q. So you -- you ascribe to the notion that there is
7 significant psychology behind this whole interview or
8 interrogation process?

9 A. I wouldn't necessary say that that's strictly
10 psychology. I would -- I would say that that's a
11 combination of it being physiological. You know, just --
12 it's obviously physical, but I wouldn't necessarily say that
13 it's strictly psychology.

14 Q. Do you think that you can tell somebody is lying to you
15 just you talking to you?

16 A. Not every time. Not every time. I have to be honest
17 with you. You know, there are some people that are good.

18 And, you know, clearly in this case, you know, I happen
19 to think that, you know, Major Smith, Travis Holdorf, you
20 know, they are -- they are strong interviewers, you know,
21 but in interviewing every now and then you run across
22 someone who gives you nothing. And as I stated earlier
23 yesterday, you know, it's very difficult, you know, to --
24 you know, he looks through you, Mr. Joshua Porch,
25 emotionless, and that's very difficult to read someone. So

1 I can kind of see how four statements were given previously.

2 You know, I think showing up in California saying that
3 I'm from South Carolina, it was a shock that he wasn't
4 expecting, and whispering to him that he almost got away
5 with this was something that he wasn't expecting.

6 And so we run into people who oftentimes give you just
7 enough to shut you up. As in this case, his blood being on
8 the crime scene. "Well, this is what happened. I cut
9 myself on the apple." Okay. Well, that, uhh, you know,
10 we -- you need a little more explanation behind that.
11 "Well, I tell you what. I was there."

12 And so then we get to California and, you know, when we
13 show him the photos, it's "well, this is what happened, and
14 this is what happened."

15 You know, there are four different types of people that
16 give you a confession. The first one is the one that will
17 give it to you voluntarily. They're ashamed. They don't
18 want to be there. They are not -- this is new to them,
19 okay?

20 And the second one is the individual who will come in
21 just to see what you know. They don't want to give you
22 anything, but just to see what you know.

23 The third type of individual will come in with the
24 intent of not telling you anything. They don't even care
25 what you know. "I don't want to talk."

1 And then there is this individual that will come in,
2 and this characteristic fits Joshua Porch, that will tell
3 you what you ask them. They will give you the answers to
4 what you ask them, only if you can -- if they could see what
5 you have. So they will explain away, basically, anything
6 that you present in front of them. They will explain it
7 away. You know, they only give you piece by piece. And so
8 that's what you heard in the interview about the twenty
9 pieces.

10 Normally in a normal investigation my piece example
11 doesn't go any further than five, because people always want
12 to give you just shy of what they think would get them in
13 the most trouble. But in this particular case we are
14 talking about since 2006. We are talking about two trials,
15 and we are talking about this individual standing in court
16 and identifying the wrong man twice; talking about someone
17 that used to this system. So twenty pieces was the mark.
18 And as in the interview, sir, you heard me say "you're at
19 nineteen. You're at nineteen," because what he offered, it
20 matched the evidence in this case from the bruises --

21 Q. Are you done?

22 A. The -- stabbings.

23 I'm not done, sir.

24 Q. Okay, continue, please. I would love to hear your
25 little soliloquy.

1 A. Yes, sir.

2 As you heard in the third interview, he was fed, a
3 sandwich was bought for him. She was stabbed while they
4 were standing up now, struggling. He acknowledged that they
5 never fell -- that he never fell on her. He acknowledged
6 that we were respectful towards him. He acknowledged that
7 he wished he met myself and Godfrey under some other
8 circumstances. He was concerned about himself and his
9 family. He picked up the knife and threw it away. He now
10 picked up the knife and threw it away. He washed his
11 clothes and took a shower.

12 He confirms the original position of Chief Wilson that
13 the assailant had to have been left-handed. You heard
14 yesterday as well that's what really sparked it, and now
15 that has been confirmed.

16 He wanted to offer what he thought. "Well, I think,"
17 and I say that "I can't use what you think."

18 And he admitted to wiping the steering wheel, as well
19 as his driver's door.

20 It matches -- his story matched up to what we had, as
21 far as the evidence is concerned.

22 Q. Are you done?

23 A. Yes, I am.

24 Q. Thank you very much for that. I appreciate it.

25 A. You are welcome.

1 Q. I appreciate your explaining all that to me. That was
2 very nice.

3 A. You are welcome.

4 Q. Now, the interrogation began at 1:05 a.m. on July the
5 9th of 2009. That was Pacific Time, correct?

6 A. That is correct.

7 Q. Now, you have him in custody. You have him in an
8 interview at 12:30 a.m.. You could have just said "have a
9 nice evening. Get some rest. We will interrogate you in
10 the morning," couldn't you?

11 A. Why would I say that and we had just made contact with
12 him?

13 Q. Well, it's 12:30 in the morning. You have got a guy
14 arrested for murder. You are getting ready to interrogate
15 him. Don't you think it's a good idea to say "hey, this guy
16 might need some rest before we go through this strenuous
17 process." Wouldn't you think that? Wouldn't you as a
18 person, as a nice guy, as Mr. Morality, wouldn't you think
19 that?

20 A. I'm not really sure why you are yelling, but I -- we
21 just made contact with him in between 10:45 and 12:30. You
22 know, we -- he was under arrest. You know, I -- I did not
23 know how long he stayed up. I don't know if he just woke up
24 from a nap. I don't know that. I don't think there is -- I
25 don't think anyone knew that.

1 Q. Well, you didn't ask them that, did you? You didn't
2 say "hey, have you got some rest? Are you tired? Maybe you
3 want to take a little nap before we do this interrogation."
4 You didn't ask him that, did you?

5 A. I don't know any investigator that would ask a suspect
6 "would you like to take a nap before we talk to you?" I
7 don't -- I don't know anyone that would do that. I mean,
8 I'm not sure where you are going with that. I'm sorry.

9 Q. Well, you know, it's 12:30 a.m. his time. Isn't it --
10 isn't it possible that he's a little on the tired side?

11 A. I think that's a stretch. I don't -- I don't -- I
12 couldn't answer that.

13 Q. Do you typically stay up until six a.m. in the morning,
14 if you are not working nights?

15 A. If you knew what I do, that's not uncommon for me.

16 Q. Okay. So you do that, but the average person doesn't
17 do that, do they?

18 A. I -- I can't answer that, sir.

19 Q. You don't know what the average person does? You don't
20 know that the average person gets --

21 MR. PAULING: Your Honor, I would object --

22 Q. -- eight hours of sleep at night?

23 MR. PAULING: His answer -- it calls for
24 speculation. He just answered he didn't know.

25 THE COURT: You need to first of all ask him one

1 question at a time and let him answer the question.

2 BY MR. AIKEN:

3 Q. All right. Well, let me ask you this.

4 A. Sure.

5 Q. Don't you understand that typically in the normal
6 process of somebody's day they get eight hours sleep over
7 the nighttime? Isn't that right? Isn't that normal?

8 A. Typically.

9 Q. That's typical?

10 A. That is correct.

11 Q. So you got him at 12:30, okay, made contact with him.
12 You wait thirty-five minutes for Godfrey to get there,
13 right?

14 A. We got him earlier than that. He arrived at 12:30.

15 Q. Yeah, but what I'm saying is you first made contact
16 after the arrest with Mr. Porch at 12:30 at Long Beach?

17 A. That is correct.

18 Q. Okay. And then you waited thirty minutes for Godfrey
19 to get there?

20 A. That is correct.

21 Q. And then you started the interrogation at 1:05?

22 A. That is correct.

23 Q. And y'all end up wrapping up that whole process about
24 six in the morning?

25 A. That is correct.

1 Q. All right. All right.

2 So you started at 1:05 and you keep him up until six.
3 So you got him up for about -- during the interrogation
4 process for about five hours, between one a.m. Pacific Time
5 and about six Pacific Time, right?

6 A. Yeah, that is correct.

7 You have to understand that the topic of discussion is
8 murder. He's not up just hanging out talking about, you
9 know, what club he's going to.

10 And he was walking throughout that neighborhood when I
11 saw him. I saw him walk up the street, go into his house.
12 It didn't appear that he wanted to take a nap then. He then
13 walked out of his house and then walked to Walgreen's.

14 But the topic of discussion is murder; more importantly
15 a murder that occurred in 2006, where he was a witness. I
16 guarantee you sleep would not be on the average individual's
17 mind, sir. Murder is very heavy. It's a very heavy topic
18 to discuss.

19 Q. You want to put him under stress, don't you?

20 A. No, sir.

21 Q. You don't want to put him under any stress? You want
22 to keep him up for five hours, between one a.m. and six
23 a.m., but you don't want to put him under stress?

24 A. Is that a question, or are you testifying?

25 Q. I'm -- I'm asking you a question. You wanted to put

1 him under stress?

2 A. I do not, sir.

3 Q. Okay.

4 A. I do not, sir.

5 Q. Okay.

6 A. And if you -- and if -- if you knew me as a person, you
7 would know that that's not my character.

8 Q. So it was irrelevant to you the fact that you were
9 going to start interrogating this man at one a.m. and you
10 weren't going to stop until six a.m.? That was irrelevant?
11 That didn't give you an advantage, did it?

12 A. I don't know exactly what kind of advantage you are
13 trying to stress. I don't -- we made contact with him in
14 between 10:45 and 12:30. The topic was murder; a murder
15 that he was quite familiar with; a murder that in his head
16 was over, but it wasn't, and it's not today.

17 Q. Now, the first interrogation, did it go similar to the
18 one we saw on the video, where you asked questions and then
19 you have commentary, and then you cajole him, and you -- and
20 you come up with scenarios, and you lie to him? Was it like
21 number three?

22 A. Cajole and lie are your words.

23 I told you that at this particular juncture in this
24 case he knew everything. He sat through two trials, sir.
25 He knew what we -- what the State had and what the State

1 didn't have, but what he didn't know was about that extra
2 evidence, that DNA evidence on the Nakia's shirt. He did
3 not know about that when we first got down there.

4 So I could tell you this, that we told him -- we didn't
5 hold back anything. I'm like what you see in the movies.
6 This -- "listen, this is your life. This is what we have.
7 This is what doesn't make sense. You are telling me that
8 it's an accident now, but it doesn't make sense to what we
9 know."

10 Q. But you -- you challenged him. You challenged him at
11 every time about what he said, didn't you?

12 A. I wouldn't -- challenge is again your word. You know,
13 we questioned him.

14 Q. Yeah, but it wasn't just questions, was it? It was
15 things like, "oh, Nakia Mallory's children no longer have a
16 mother," all kind of talks of motherhood, twenty pieces, all
17 kinds of other hokum. It wasn't just asking question,
18 wasn't it?

19 A. Are you -- are you still focused on the first two, or
20 are we skipping to the third one?

21 Q. The first and the second.

22 A. Because you mentioned some things from the third one.

23 Q. Yeah.

24 A. But in talking to him during the first two statements,
25 you know, there are -- those words that you used just now,

1 they were not used. You know, they --

2 You know, I was so flabbergasted by the fact that he
3 stated Justin Mallory was not there, because I know of the
4 domino effect of that. I knew that this day would have to
5 come and we would have to have strong investigators that
6 have trained me stand up here and tell this court that we
7 made a mistake, but the important fact is that we are here
8 to correct that. We are here to correct that.

9 Q. But he initially denied any involvement as a
10 perpetrator, didn't he?

11 A. He did in the first interview --

12 Q. And you didn't accept that?

13 A. -- for the first few minutes.

14 Q. And you didn't accept that, and you challenged him,
15 right?

16 A. I told you -- I stated yesterday. I didn't tell you,
17 excuse me, that he was emotionless during the interview, and
18 it was almost as if like pulling from someone -- it was like
19 pulling from this wall, you know, and it's -- the eyes --
20 the eyes tell it all. And he was -- he was -- he was
21 looking through us as he was talking.

22 And when I did narrow the scope of the questioning,
23 "let's get over this hump. Did you lie about Justin even
24 being present?" And that's when he stated he was not there.

25 Q. But if he -- if he gave answers to questions that you

1 didn't accept, you challenged him, didn't you?

2 A. It would lead to other questions.

3 Challenge, again, is your adjective. It would lead --
4 it's questions.

5 Q. But it's not just questions. It's commentary, like it
6 was on the video of interrogation number three. It's not
7 just statements. It's a lot of commentary, too, isn't it?
8 It's a lot of you using your skills as an interrogator to
9 insinuate yourself into his mind, isn't that right?

10 A. To insinuate myself into his mind?

11 Q. Correct.

12 A. Any interview or interrogation may include additional
13 commentary, but the other description of what he is
14 implying, that's not true.

15 Q. Okay. Well, let me challenge you. You just -- you
16 just inadvertently referred to this as an interview. It
17 wasn't an interview. It wasn't no job interview, "hey, I'm
18 a -- "hey, where do you live? How long have you been
19 working in this industry," that kind of thing. It wasn't an
20 interview, was it?

21 A. The topic of discussion was murder. And as I stated
22 earlier, an interview leads to an interrogation. An
23 interrogation can lead to an interview. Sometimes, you
24 know, if -- they are -- it's a combination of both,
25 depending on the question, depending on the topic.

1 And if you are leading to this, did this ultimately
2 lead into an interrogation? Yes, it did. Did we
3 interrogate him in California? Yes, we did. Yes, we did.

4 Q. But the fact remains the interrogation that you
5 conducted, the first interrogation, was similar in format to
6 the interrogation we saw for interrogation number three,
7 isn't that right?

8 A. Similar, yes.

9 Q. Okay. Now, you took a statement, is that right?

10 A. We did.

11 Q. And that was handwritten?

12 A. That was handwritten by myself.

13 Q. And you wrote it out, right?

14 A. I did. I did.

15 As I stated --

16 Q. Okay.

17 A. As I stated as yesterday, questions were wrote out by
18 me and the answers were given by Joshua Porch, and the exact
19 answer was to the letter was written -- read back to him,
20 given to him so that he could read. He then signed twice on
21 each sheet. And then for the first statement, which was a
22 total of twenty times, indicating that this was his
23 statement and that these were his words.

24 And, as a matter of fact, when asked the question "if
25 you would like to add or subtract anything from the

1 statement," we then went back to page six of ten where he
2 made a correction. We both initialed the correction and
3 moved on and he signed it a total of twenty times.

4 Q. All right.

5 Let's count the number of questions that we have on
6 this on this --

7 A. Sure.

8 Q. -- on this statement.

9 On page one, I have got one, two, three, four, through
10 page four.

11 A. Let me catch up with you.

12 Q. Okay. There is four through page four, I believe.

13 A. Four.

14 Q. Okay. Then five, six, seven on page five.

15 Eight, nine, ten, eleven, through page six.

16 Twelve, thirteen, fourteen, fifteen, through page
17 seven.

18 Sixteen, seventeen, eighteen, nineteen, twenty,
19 twenty-one, through page eight.

20 Twenty-two on page nine.

21 And twenty-three on page ten.

22 Now, during this interrogation there were a whole lot
23 more questions than that, weren't there?

24 A. There was dialogue. There was commentary. There
25 was -- you know, and that's indicated in my followup. I can

1 read through that, if you would like.

2 Q. That's not necessary.

3 Now, did you ever at any time tell Mr. Porch that he
4 had the opportunity to keep his wife and his brother-in-law
5 out of trouble if he told the truth?

6 A. I don't recall that.

7 Q. Okay. So you don't remember whether that happened?

8 A. I don't recall if I had a conversation with him about
9 his wife or -- and I do know that we -- his brother-in-law
10 was mentioned as we were getting additional information as
11 pertains to the car, but in terms of, you know, keeping them
12 out of trouble, and, you know --

13 I remember actually stating in this particular instance
14 now that he told us all that he told us in this up to this
15 point, I do recall actually letting him know that we were
16 going to have to follow that up. And I thank Godfrey
17 supported that. Since we went to his house after the -- he,
18 you know, he killed Nakia, then, of course, we would have to
19 go talk to her, which we did subsequently. We went and we
20 did a search warrant at the house in search of the clothes
21 that you heard him mention he had on during the stabbing on
22 the video. We went to go look for those clothes now.

23 So I did mention to him that we would have to make
24 contact with them, and that ultimately, like in any case,
25 any time an individual does something wrong and they come to

1 your house, they include you in that situation, and that's
2 unfortunate sometimes.

3 Q. But you -- but you don't -- you don't remember
4 specifically whether you made this reference keeping Mr.
5 Porch's wife Persia out of trouble and his brother-in-law
6 out of trouble? You don't remember that specifically, do
7 you?

8 A. I remember it at the end of the third interview
9 basically letting him know that we would have to follow up
10 his story in terms of where he went that night and
11 interviewing Persia Porch again, since he said he took -- he
12 washed clothes and took a shower. And, of course, in
13 interviewing her and subsequently after that she
14 corroborated that she heard him in the shower at an unusual
15 time that morning.

16 So, you know, I told him that we would have to -- like
17 any investigation, we would have to follow it up, but that
18 wasn't until after the third interview.

19 Q. But you don't remember whether you told Mr. Porch
20 specifically that he had the opportunity to keep his wife
21 and his brother-in-law out of trouble if he told the truth?
22 You don't remember specifically whether you said that, do
23 you?

24 MR. PAULING: Objection, Your Honor. I believe
25 he's asked and answered the question.

1 MR. AIKEN: He hasn't answered the question,
2 judge.

3 THE COURT: I'll allow the question. Overrule the
4 objection.

5 BY MR. AIKEN:

6 Q. But you don't remember that specifically, do you?

7 A. I don't recall saying that prior to the third
8 interview. I don't recall saying that when I first made
9 contact with Mr. Porch. I don't recall saying that when he
10 got to Long Beach Police Department.

11 I do know that after getting all the additional
12 information that he provided for us, marrying up to the
13 evidence, that, I did tell him that we were going to have to
14 follow up with it, and I believe that was corroborated also
15 by Godfrey. In the video he said "you know we are going to
16 look this up. We are going to have to follow up your story
17 in terms of the car," where he supposedly cleaned it with
18 bleach, as well as his contact with his wife the same night
19 of the murder -- the same morning of the murder.

20 Q. But the fact remains you don't remember whether you
21 made that statement to Mr. Porch, do you?

22 A. I don't recall making it before the third interview.

23 Q. What about the first interview?

24 A. In the third -- I don't recall --

25 Q. Do you recall making it in the first interview?

1 A. I don't recall making it in any interview prior to the
2 third interview.

3 Q. So --

4 A. I think -- and I believe that if -- you know, when you
5 watch the video, it's clear that we are telling him that we
6 are going to follow up with any -- any and everybody that he
7 may have had contact with, which is normal in any
8 investigation, after he does something so egregious as
9 taking someone's life.

10 Q. Well, if you don't recall that, wouldn't it be an easy
11 way to figure out whether it happened, if we had a
12 recording?

13 A. As I stated, sir, I don't recall whether I had a
14 conversation in general about his wife prior to the third
15 interview, a general conversation, but I do know that there
16 were no threats made. I did not say anything that would
17 threaten --

18 Q. But you said -- you just said you didn't recall whether
19 you made the threat.

20 A. I do know -- no, no, I -- I said I don't recall if I
21 had a general conversation about family "where you from?"

22 I do -- as I told you, we have to norm someone, so I'll
23 ask general conversations, so I don't recall whether that
24 came up, but I do know that there were no threats made.

25 There were no promises made to this individual. And I knew

1 that we were dealing with a very unique situation, someone
2 that knew facts about the case, and probably knew more facts
3 about the case than I did, because he was involved in the
4 first two trials and I wasn't.

5 Q. All right. Do you remember you were called as a
6 witness at a pretrial hearing in this case?

7 A. Yes.

8 Q. Do you remember you were placed under oath?

9 A. Yes.

10 Q. You were sworn to tell the truth on the Bible, just
11 like you were today?

12 A. Yes, sir.

13 Q. Isn't that right?

14 A. That is right.

15 Q. Mr. Jay Cooper, God rest his soul, was the man who
16 examined you, and his question was "okay. Do you recall
17 telling Mr. Porch that he had the opportunity to keep Persia
18 and Robert out of jail if he cooperated with you?" And he's
19 talking about the first statement.

20 And your -- your answer was very simple. It was "I
21 don't recall. I don't recall that." Isn't that right?

22 A. That is correct.

23 Q. That was your sworn testimony?

24 A. That is my testimony.

25 Q. Which is it, the long little soliloquy you gave, or is

1 it "I don't recall that?" Which one is it? Which one is
2 the truth, investigator?

3 A. I would love to answer. I'm sorry.

4 MR. PAULING: Objection, argumentative, Your
5 Honor. If he would let him answer the question and give him
6 space.

7 THE WITNESS: Thank you.

8 THE COURT: Sustain that objection.

9 A. As I stated, I don't recall holding a general
10 conversation with Mr. Porch about his family prior to the
11 third interview. That's the same thing that I stated in
12 pretrial. It's the same thing that I'm stating now, but
13 after the third interview, after we got additional
14 information from Mr. Porch, all those additional facts that
15 I mentioned, in addition to the two written statements, is
16 at that time we told him that we would have to follow up
17 with Persia Porch, his wife, as well as his brother-in-law,
18 as it pertains to cleaning that vehicle, the blood out of
19 that vehicle, based on his own admission --

20 BY MR. AIKEN:

21 Q. Okay.

22 A. -- after three statements.

23 So in answer to your question about the first
24 interview, sir, I don't recall holding a general
25 conversation about his family, but I do know that no

1 promises were made to him. No threats were conveyed to him.

2 Q. Now, investigator, could you get out the first
3 statement of Mr. Porch?

4 A. I have it.

5 Q. All right. And on the first page the question is "what
6 can you tell me about the incident that took place at [REDACTED]
7 Pinelane Road, Apartment [REDACTED] on 5-14-06," right?

8 A. Right.

9 Q. And the answer that Mr. Porch gave, the first sentence
10 is, "Persia wasn't lying when she said that she thought I
11 was home." That's the first thing he says --

12 A. That is correct.

13 Q. -- in the answer, isn't that right?

14 A. That is correct.

15 But the first question was "what can you tell me about
16 the incident?"

17 You know, and as I stated earlier, you know, he
18 constantly, constantly -- you know, he knew all the facts of
19 this case. So him referring to part of one individual's
20 story from the previous two trials, or previously when he
21 was -- when Persia was spoken to, because Persia gave
22 several statements.

23 She gave one statement stating that her husband was
24 home that night, which is what thwarted that aspect of the
25 initial investigation.

1 Then she gave a second statement when she found out
2 that his statement changed.

3 MR. AIKEN: Your Honor, I object. He's talking
4 about hearsay, somebody else's statement. I mean, it's
5 nonresponsive to the question to begin with, so I move to
6 strike those references from Persia -- from Persia Porch's
7 statement.

8 MR. PAULING: Your Honor, I think he was -- he was
9 simply explaining his answer. He asked him a question.

10 THE COURT: He may have been answering the
11 question, but I think he answered beyond what was asked of
12 him.

13 BY MR. AIKEN:

14 Q. Let's talk about the second statement.

15 It looks to me like Miranda was given at 2:19 Pacific
16 Time in the afternoon, is that right?

17 A. That's correct.

18 Q. And I think you said the statement began at 3:39 p.m.
19 and ended at five p.m., is that right?

20 A. My notes have the written statement beginning at 3:39
21 p.m., and the next time noted within my followup after the
22 second statement is 17:18 Pacific Time, which would be 5:18,
23 8:18 here. I made a phone call to Chief Wilson and advised
24 him of what we just found out, the additional information we
25 found out.

1 Q. All right. In the second statement --

2 A. Yes, sir.

3 Q. -- there is reported by you, or maybe it was -- maybe
4 it was Godfrey that did this, but -- who typed this up?

5 A. Sergeant Godfrey did.

6 Q. All right.

7 A. I was present during the questioning, during the entire
8 interview.

9 Q. And one of the questions on page three is, "did you at
10 any time conspire or consult with your brother-in-law Robert
11 Brown about this incident," right?

12 A. Page three?

13 Q. Yes, about the middle.

14 A. That is correct.

15 Q. And then there is also a question further down, "what
16 did you tell Persia occurred during this incident," right?

17 A. That is correct.

18 But if you -- if you notice, the -- that is correct.
19 Those are on there.

20 If you notice in the first statement, you know, the
21 only person that actually makes --

22 I beg your indulgence for just one moment.

23 -- that makes a reference to Persia or the
24 brother-in-law was, in fact, Joshua. And so that interview
25 in between the first statement, the time frame that we spoke

1 with him, in between two o'clock and 15:39, again, we had
2 some dialogue with him, and we are on the second now.
3 Between two o'clock and 3:39, during that time frame, you
4 know, that led to that question.

5 So in answering your question about anything that may
6 have been said prior to making contact with him at 12:30
7 midnight prior to the first statement, you know, that, he
8 came out with Persia in the first statement.

9 And -- you know, unless I'm wrong, I believe that we
10 didn't ask him any questions about Persia in the first
11 statement. We didn't ask him any questions about the
12 brother-in-law in the first statement. It wasn't until
13 after we were on our second interview with him and in our
14 second statement.

15 Q. Yeah, yeah, and that's what you recorded of the
16 interview, right? That's not what actually happened with
17 the recording, so that the jury can verify what actually
18 happened during that interview or during that interrogation?

19 A. I would like to --

20 Q. You just don't have any record of that, do you?

21 MR. PAULING: Objection, Your Honor.

22 THE COURT: You all cannot talk all over each
23 other. So if you ask a question --

24 MR. AIKEN: Well, if he would answer the question.

25 THE COURT: If you ask the question, you need to

1 wait for an answer.

2 And you need to answer the question that's asked.

3 THE WITNESS: Yes, ma'am.

4 A. I wrote the statement. The questions were written by
5 me. The answers were given by him. It was read to him. It
6 was given to him for him to read. He read it. He signed
7 the first statement a total of twenty times indicating that
8 this was, in fact, his statement; that, in fact, these were
9 his words.

10 BY MR. AIKEN:

11 Q. But the only record you have of it is what you wrote
12 down, right; statement number one?

13 A. Corroborated by his signatures.

14 Q. I said the statement number one is all you have that
15 you wrote down concerning what happened --

16 A. And I have my followup, which I will be glad to read.

17 Q. You felt like you had a good rapport with Joshua Porch,
18 didn't you?

19 A. Eventually. Not initially.

20 Q. Okay. But eventually you got to the point where you
21 felt like he didn't feel like that you were a threat to him
22 or anything?

23 A. By the third interview, and I think on the video he
24 said that, you know, he -- that there was some level of
25 affinity, you know, in terms of, you know, he liked us. You

1 know, we kept telling him and I ended it "this wasn't
2 personal." It's never personal.

3 Q. Which is kind of ironic, because you are trying to
4 collect evidence to put him in prison, right?

5 A. We are trying to collect evidence to bring closure to
6 the family.

7 Q. But ultimately that means putting him in prison, right?

8 A. He needs to pay for what he did.

9 Q. Now, let's -- let's talk for a minute about the third
10 interview.

11 A. Yes, sir.

12 Q. Now, during that interview you said to Mr. Porch, "what
13 did I tell you about things that you do when you lie?
14 Didn't I tell you that? You don't want to help yourself,"
15 right? Didn't you say that?

16 A. I did. That was in reference to me reading him the
17 kinesics again. And as soon as I saw one of those signs, I
18 said "no, not that one. What did I tell you about things
19 that you do when you lie," yes, sir.

20 Q. So, in other words --

21 A. In the twenty pieces. He was at nineteen.

22 Q. Right.

23 A. Correct.

24 Q. So what was the twentieth piece? "You had the knife in
25 your hand, Mr. Porch?"

1 A. We were trying -- at that particular point, since he
2 had placed himself on the scene, since he stated he was
3 involved in the struggle and that it was not a -- that he
4 didn't fall on top of her and that he was actually standing
5 up when -- and saw the knife go into her neck, and that --
6 you know, at that particular point, again, the more we get
7 from him, we --

8 You know, I wanted to know if he had something against
9 Nakia and that it wasn't just, you know, the fact that it
10 was an altercation. So I wanted to know if he had -- if he
11 actually, in fact, went in there and stabbed her, you know.
12 I mean, it's not uncommon for us to try to -- to try to see
13 if there is -- if there is additional that he's leaving out.

14 Q. Ultimately in the third interview Godfrey asked him
15 that question directly, right?

16 A. He did, I believe.

17 Q. And I think Joshua Porch said no, didn't he?

18 A. He did, but, that -- that -- you know, the question
19 about his sexual preference was actually asked, because I
20 wanted to see if maybe he was attracted to Justin and had a
21 problem with Nakia, you know, and that -- you know, and did
22 that cause the altercation.

23 And so at that particular point -- in the interrogation
24 at that point, at that particular point we were still trying
25 to see what the motive was. "We know -- "you put yourself

1 there. You are involved in the struggle. You witness --
2 "you know, you witnessed her get stabbed in the neck. You
3 admit to striking her multiple times." All that has changed
4 from when Randy Strange, in 2006, "I wasn't there." So now
5 we are reaching for more to see if there is more. That's
6 not uncommon during any interrogation.

7 Q. But what you are telling him is "tell me the truth.
8 Help yourself," right?

9 A. "Tell us the truth."

10 Q. "And help yourself"?

11 A. Morally he would be helping himself.

12 Q. Now, ultimately you get to the point where you are
13 talking about the car, the --

14 A. The --

15 Q. -- vehicle of Mr. Porch?

16 A. The car?

17 Q. Which I believe was a jeep, right?

18 A. I believe it was.

19 Q. Okay. And you said, "so you would indulge me for a
20 moment, because the next thing that comes out of your mouth
21 I would like to know the truth, and it needs to marry up
22 with what we found in your car," right? You said that?

23 A. Right, what -- if I can have what you are reading off
24 of, I might --

25 Q. Sure. It's a transcript of the tape.

1 A. Thank you.

2 Q. I'm not trying to crowd you here. I" m --

3 A. Oh, no, you are fine.

4 Q. Right here.

5 "So if you would indulge me for a moment, because the
6 next thing that comes out of your mouth I would like to know
7 the truth and it needs to marry up with what we found in
8 your car," right?

9 A. That is correct.

10 Q. And you found nothing in his car, didn't you?

11 A. He admitted to cleaning his car.

12 Q. But the fact remains you told him about evidence -- you
13 alluded to evidence from his car, and there was no evidence
14 from his car?

15 A. During the time of that questioning we were, in fact,
16 trying to run down, to re-test his car. Investigator
17 Godfrey, as well as Chief Wilson, who were in contact with
18 South Carolina at the time, because, again, he was giving us
19 additional information in between the first time we made
20 contact with him up and to this particular third interview
21 and we were trying to run down that, you know, if there was
22 any possible way that we can re-test that car, now that we
23 have information from him that he cleaned it with bleach.

24 Q. So -- but it says "it needs to marry up with what we
25 found in your car." At that point you had no evidence from

1 his car, did you?

2 A. At that point, no, we didn't.

3 Q. So you lied to him?

4 A. Yes, that was a stretch.

5 Q. That was a straight-up lie?

6 A. That's -- that was.

7 Q. That's real moral of you, investigator, isn't it, to
8 lie to the guy?

9 A. It's not unlawful to do that. You know, we -- you
10 know, we are dealing --

11 Q. So we are talking about morality, aren't we?

12 A. We --

13 Q. You were talking about morality.

14 A. I was. I was. I did tell him that it needs to marry
15 up with what we have in his car, with the hope of him
16 actually telling us that -- okay, additional information.
17 That's what we are looking for.

18 Again, we are dealing with someone that sat through two
19 trials, you know --

20 Q. All right.

21 A. -- and knew what we had and what we didn't have.

22 Q. You also said this. "Describe the bleeding for me.
23 Did it come out slow? What did you see? It was an artery.
24 Do you understand that? What did you see?"

25 A. If I may take a look?

1 Q. Sure, be happy to.

2 Right here.

3 "Describe the bleeding for me. Did it come out slow?
4 What did you see? It was an artery. Do you understand
5 that? What did you see?"

6 "It did."

7 A. Right.

8 Q. Now, you knew at that time it wasn't an artery, didn't
9 you?

10 A. I did not know.

11 Q. You did not know? You didn't review the case file
12 closely enough to determine that the wound was actually to a
13 vein?

14 A. I did not know. I actually made an assumption that
15 because of all the blood that was on the scene, that it
16 was -- you know, I'm not a doctor. I just made an
17 assumption that that's what it was. It was a lot of blood.

18 I did -- just based on my experience and working
19 homicides, you know, I did make what I would like to be a
20 safe assumption that there was some blood that got on the --
21 on Joshua Porch, and that's what I was trying to gather.

22 "Did blood get on you during the stabbing? And if so,
23 what side of you did it get on?"

24 And I think in the video he indicates that it was on
25 the left side of him, and that --

1 You know, I even said that it came out slow. So
2 clearly I don't know. If -- and I asked him to describe it,
3 you know, asking for his description of how the blood came
4 out, and he admitted to seeing it go in and he --

5 I think if you read on in what you are referring to, he
6 gives a description as it pertains to what he saw, and he
7 describes how it came out. It fell on his shirt, what he
8 did with his shirt and thereafter.

9 Q. And then the discussions of Persia and Robert Brown,
10 the brother-in-law. "You are telling me exactly what
11 happened with your brother-in-law or your wife does not
12 necessarily mean they will have to pay for what you involved
13 them in, but you do realize at some point a lot of that is
14 going to come into place," correct?

15 A. Again, I explained to him that "we were going to have
16 to follow up with this information you have given us now as
17 to where you went right after; who did you ask to help you
18 with the bleach or to get bleach from to clean the car. We
19 have to follow that stuff up, because we know that
20 eventually this day will come."

21 Q. And you also said "and you know we talked to your
22 brother-in-law. Didn't we tell you that? Isn't that
23 right?"

24 A. I'm sorry?

25 Q. Okay. I will be happy to come back up.

1 A. Thank you.

2 Q. It says "and you know we talked to your brother-in-law.
3 Didn't we tell you that? Isn't that right?" You said that?

4 A. Was that from me?

5 Q. Yes.

6 A. Okay. I just want to make sure.

7 Q. It says McDaniels, okay?

8 A. I'm sorry.

9 Q. Go ahead.

10 A. I said "and it's important for you to be honest now."
11 His answer was "yes, I cleaned the car."

12 Q. Right.

13 But when you said you had talked to Joshua Porch's
14 brother-in-law, that wasn't true, was it?

15 A. We were in the process of trying to make contact with
16 anyone and everyone that could help us out with who he asked
17 for assistance in cleaning that car.

18 Q. All right. But --

19 A. We were -- we were all working it from South Carolina
20 to California.

21 Q. Well, I understand, but at the point that you had this
22 interrogation with Joshua Porch, it was not, in fact, true
23 that you had spoken to his brother-in-law, was it?

24 A. I didn't speak to his brother-in-law, no.

25 Q. All right. But -- so it wasn't true?

1 A. No, that -- I didn't speak to him.

2 Q. That was a lie?

3 A. I didn't speak to his brother-in-law, no.

4 Q. So that was a lie?

5 A. I didn't speak to his brother-in-law.

6 Q. Have you ever spoken to his brother-in-law?

7 A. I never spoke to his brother-in-law, no, sir.

8 Q. So it was a lie?

9 A. (No response).

10 Q. That's a question.

11 A. I didn't speak to his brother-in-law, but I was under

12 the impression that we, as in law enforcement, were in the

13 process of speaking to him.

14 Q. And then I believe --

15 A. Or making an effort to do so.

16 Q. And I believe below that you say "all right. Well, we

17 got him too," referring to --

18 A. I did say that.

19 Q. Okay. And then Mr. Porch says "you arrested him?"

20 That was his question, right?

21 A. And my answer was "no".

22 Q. And you said "no, no, but you cannot tell half the

23 truth. Your story doesn't match his. Do you understand

24 that?

25 "Now, as far as your brother-in-law is concerned, I'm

1 trying to prove his story as well. What did you discuss
2 with him?"

3 A. I wanted him to believe that we were giving additional
4 information and that -- in an effort to get information from
5 him. I did want him to believe that, that we were getting
6 everything together and that what he thought was hidden in
7 the first two trials was now out and that, you know, we
8 needed him to be honest now.

9 Q. But you were telling him the brother-in-law was in
10 trouble, right?

11 A. I told him that we had talked to the -- if I may?

12 Q. Yeah.

13 A. "And you know we talked to your brother-in-law. Didn't
14 we tell you that?"

15 His answer was "no".

16 "All right. Well, we got him too.

17 "You arrested him?

18 "No, no, but you cannot tell half the truth. Your
19 story doesn't match his. Do you understand that?

20 "Now, as far as your brother-in-law is concerned, I'm
21 trying to prove his story as well. What did you discuss
22 with him."

23 Yes, that was said in an effort to get him to give us
24 information as it pertains to the car.

25 Q. So Mr. -- when you were discussing things with Mr.

1 Porch, you represented to him that you were trying to prove
2 his story, right?

3 A. During the third interview, that's -- that's -- oh,
4 yes, definitely. And we were trying to prove Joshua Porch's
5 story about the accident, is why after the first interview
6 and the first statement we went back to him and asked him
7 questions; "okay, you know, how did these bruises happen?
8 You know, your story isn't marrying up."

9 And in the third interview you will hear me say that "I
10 went on a mission for you." He asked us to prove that it
11 was an accident. I told him that I would. That if it was,
12 in fact, an accident, I don't want that on my conscious.
13 It's already on my conscience that Justin Mallory went to
14 jail and I had nothing to do with that. But to be brought
15 into this by Chief Wilson, you know, we had a job to do, and
16 that was to find out the truth. It's not personal. He
17 wasn't threatened. It was our job to just find out the
18 truth.

19 Q. Okay.

20 MR. AIKEN: If I could have just a moment, Your
21 Honor?

22 (Off the record)

23 (Back on the record)

24 BY MR. AIKEN:

25 Q. Now, you, as the lead investigator, have been allowed

1 to sit through the whole trial, right?

2 A. That is correct.

3 Q. But the other witnesses have been sequestered, correct?

4 A. They were.

5 Q. Okay. Now, if Mr. Porch was a witness at the first two
6 trials, he would have been sequestered as well, correct?

7 A. I -- I can't make that assumption. I don't know if he
8 was sequestered, or if he would have been sequestered. I
9 don't know that answer.

10 Q. Okay. Now, in the second statement when you were
11 talking about the injuries to Ms. Mallory, you actually
12 brought pictures with you, didn't you?

13 A. We did.

14 Q. And you showed those to Mr. Porch during the
15 interrogation?

16 A. That is correct.

17 Q. So he knew full well exactly what the wounds were,
18 right?

19 A. He knew from the first two trials.

20 Q. Well, you just said you didn't know whether he was
21 sequestered or not.

22 A. I don't know, but I mean --

23 Q. So you don't really know if he sat through the trials,
24 do you?

25 A. I'm quite sure he was prepared.

1 Q. But you don't know that?

2 A. I don't know.

3 Q. You don't -- you just don't know? You have a hard time
4 saying "I don't know," don't you?

5 A. You are asking me a question?

6 Q. Yes.

7 A. I don't have a hard time saying "I don't know." If I
8 don't know, then I don't know.

9 MR. AIKEN: Could I have a moment, please, our
10 Honor?

11 A. Sure.

12 (Off the record)

13 (Back on the record)

14 BY MR. AIKEN:

15 Q. Now, the third interrogation actually started about
16 11:00, 11:30 a.m. on the 10th of July, right?

17 A. If I may refer to my notes?

18 About eleven.

19 Q. All right. And when did -- when did your interrogation
20 on the videotape start?

21 A. On the videotape?

22 Q. Yes. Yours on the videotape, when did that start?

23 A. Approximately six hours later.

24 Q. About six hours later?

25 A. Yes, sir.

1 Q. Thank you very much.

2 A. You are welcome.

3 Q. I appreciate your help.

4 A. Yes, sir.

5 THE COURT: Any redirect?

6 MR. PAULING: Just briefly, Your Honor.

7 REDIRECT EXAMINATION BY MR. PAULING:

8 Q. Sergeant McDaniels, you were asked about whether or not
9 that first interview was recorded. Where did that take
10 place?

11 A. Long Beach Police Department.

12 Q. Did they have video recording ability at that point?

13 A. They expressed to me that it wasn't -- if they did have
14 it, it wasn't available me at that hour and at that night,
15 so I don't -- we couldn't use it.

16 Again, I had to check with them for a little bit of,
17 you know, housekeeping rules in terms of the handcuffing and
18 things of that nature.

19 Q. But it wasn't available?

20 A. It wasn't available to us.

21 Q. And, in fact, that first statement was written, isn't
22 that correct?

23 A. That is correct.

24 Q. Why was that?

25 A. We didn't have access to a computer. You know, as I

1 stated, Investigator Mendoza initially did not, you know,
2 answer my phone call when I first made contact with Mr.
3 Joshua Porch, and so we were working with the Uniform
4 Division and they had no real idea as to the case.

5 Q. And that's -- but is that -- well, you just didn't have
6 a computer?

7 A. No, they didn't have access to the computer, the
8 passwords to the computer.

9 Q. Okay. And the second statement, was that typed?

10 A. That was.

11 Q. And why were you able to type it at that point?

12 A. At that time investigators were -- from Long Beach
13 Police Department were there to assist us and we were able
14 to have access to a computer.

15 Q. Okay. And, again, was video recording equipment
16 available at that place at that particular time?

17 A. It wasn't available to us then either.

18 Q. Where did this third interview take place?

19 A. Los Angeles County Sheriff's Department.

20 Q. And, now, was it at that particular location that the
21 video equipment was available?

22 A. That is correct.

23 Q. And so you were able to video this particular
24 interview, is that correct?

25 A. That is correct.

1 Q. Okay. Now, Sergeant McDaniels, let me ask you, is it
2 your common practice when interviewing or interrogating
3 someone to threaten them, or threaten their family members,
4 or friends, or anyone concerned with them?

5 A. No, sir, in all honesty I find that that's -- you
6 respect people.

7 Q. Is that one of your techniques, to threaten them?

8 A. No, sir. No, sir.

9 Q. And did you do that in this particular case? Did you
10 at any point threaten any family member of Mr. Porch?

11 A. Not at all.

12 Q. And there was a question about these notes, these
13 bullet points. The notes that you referred to, were they
14 merged into your followup?

15 A. They were and in more detail. They were what they
16 were. They were bullet points.

17 Q. And so while those bullet points notes have been
18 discarded, they are still in your followup --

19 A. They are.

20 Q. -- is that correct?

21 A. That is correct.

22 Q. And just so I understand, there was some questions
23 about the length of these particular interviews. During the
24 interviews, is the process question and answering for five
25 straight hours?

1 A. No, sir. We -- there are breaks, you know, bathroom
2 breaks, food breaks, water breaks. We are constantly, you
3 know, offering, you know, those opportunities.

4 Q. And is it a situation where you asked a question and
5 there is an immediate answer; asked another question and an
6 immediate answer?

7 A. No, sir.

8 Q. I mean, does the answer come at a varied rate? I guess
9 what I'm saying is if you asked a question in ten seconds,
10 does the answer come back in another ten seconds? Was it
11 that type of situation?

12 A. It depended on the question. You know, some of the
13 questions, you know, the response may have been short. It
14 may have been a brief period of no response.

15 As I stated to you earlier, he -- he had a very distant
16 look on his face, and -- you know, so there -- it's not as
17 repetitious as one may think in terms of question, answer,
18 question, answer, question, answer.

19 MR. PAULING: Beg the court's indulgence.

20 (Off the record)

21 (Back on the record)

22 A. There is often sometimes dialogue as well and some
23 commentary. Some examples given, you know.

24 BY MR. PAULING:

25 Q. Well, let me ask you this, Sergeant McDaniels. We are

1 talking about three different interviews. During any of
2 those interviews did Mr. Porch indicate to you, or
3 Investigator Godfrey at any point, that he was tired, tired
4 of talking to you at all?

5 A. No, sir, not at any given point.

6 Q. That he was physically tired?

7 A. No, sir.

8 Q. Okay. And that he just needed to get some rest? Did
9 he tell that you at any point?

10 A. No, sir.

11 Q. Did he ask you just to flat out "listen, let's stop
12 this interview?"

13 A. He did not, no, sir.

14 Q. But had he done that, what would you would have done?

15 A. We would have stopped the interview.

16 MR. PAULING: Your Honor, may we approach?

17 THE COURT: Yes, sir.

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 THE COURT: Ladies and gentlemen, we have a matter
21 which we need to take up outside of your presence. I'm
22 going to ask that you retire to the jury room and not to
23 discuss the matter further, as you certainly have not heard
24 any -- you have not heard all the evidence that has to be
25 presented. As soon as we finish with this legal issue we

1 will bring you back into court. Thank you.

2 (The following takes place outside the presence of
3 the jury panel).

4 THE COURT: Mr. Pauling, do you want to place on
5 the record what your concern is?

6 MR. PAULING: Your Honor, the State's concern is
7 for the last question that Art Aiken asked Sergeant
8 McDaniels on cross-exam about the timeline, as far as when
9 his interview started and when Mr. Porch had arrived at the
10 police department.

11 The issue we have is, Your Honor, in pretrial
12 rulings we are not allowed -- there is not to be any mention
13 of Roberta Cohen, or the fact that Mr. Porch submitted to a
14 polygraph which was in this -- it's a five or six hour
15 window that's been referred to.

16 The State's position that in asking that question
17 defense has opened the door for us to at least discuss the
18 fact that he was interviewed by another individual with the
19 L.A. County Sheriff's Office during that time period.

20 The issue we have, though, is that it was the
21 actual polygraph exam. We think we should be able to go
22 into the fact that even during that period of time there was
23 no, I guess, change from his previous statements -- there
24 were the two statements that were given pre-polygraph and
25 then the final statement, the video statement that was shown

1 yesterday to the jury. For us not to be able to explain
2 that, that time period, for the jury it looks like that, or
3 it could look like to the jury, that this other individual
4 spoke to Joshua Porch for this period of time, not knowing
5 what was stated, what was the nature of the conversations,
6 and that's what led to this last statement taken by Sergeant
7 McDaniels and Investigator Godfrey.

8 It's our understanding that there would be -- you
9 know, we wouldn't go into -- there wasn't to be any mention
10 of a polygraph at all. Obviously Sergeant McDaniels and
11 Officer Godfrey were not involved -- and obviously we are
12 not even talking about a time frame where they assisted her
13 during the polygraph. You know, the question was "well,
14 when did your interview -- "when did you get -- "when did
15 you interview start", and there is this five or six hour gap
16 in time. To the jury it looks like, well, Investigator
17 Godfrey and Sergeant McDaniels, you know, on their own were
18 speaking with Mr. Porch for this entire period of time and
19 then all we have is this video portion, which was shown to
20 the jury. So there is that big question mark for the jury
21 as to what happened during that time period. It's the
22 State's position we should be able to explore that. I mean,
23 they have opened the door to that, Your Honor.

24 THE COURT: Yes, sir, Mr. Shealey.

25 MR. LUKE SHEALEY: Your Honor, the parameters of

1 this discussion or this video has now been admitted into
2 evidence. Originally in pretrial was that the State never
3 sought to admit any portion of Cohen's testimony. They knew
4 they had a problem. She's not here.

5 They sought to admit the final hour interview with
6 Godfrey and McDaniels, and the whole discussion and the
7 objection from the defense was, well, can you do this
8 without Cohen, number one? Is there a Crawford violation.

9 You have a hearsay issue with the actual advise of
10 rights that we thought they were going to introduce from the
11 Cohen testimony, which they have subsequently, based on your
12 ruling, decided to introduce the first interview's advise of
13 rights to get around that issue, but it was never a question
14 of them seeking to introduce Cohen, which we thought was
15 very appropriate on their part, so we didn't take that up.
16 But never in any of your rulings was it my understanding
17 that because a government witness -- now, whether she's
18 under their control or not, yes, she's not from South
19 Carolina. She's not a resident. She fought her subpoena
20 and successfully won, but she is a government witness who
21 interrogated our client for six and a half hours, in
22 addition to doing a polygraph, which is -- it's a test, but
23 it's also interrogation, and then she admitted that on the
24 witness stand in pretrial. For us to not be able to explain
25 that he was left with her on July 10th for six and a half

1 hours -- and we don't plan to go into all the details. We
2 don't think that's appropriate, but for us to not explain
3 that he was questioned by an officer for that long prior to
4 giving this final somewhat over an hour long video recorded
5 statement to Godfrey and McDaniels completely allows us
6 to -- or does not allow us to tell a complete and full
7 defense, when this is clearly one of false confession from
8 the defense standpoint. The timeline of interrogation is a
9 huge factor as a risk assessment for false confession.
10 So -- and I just didn't bring it up, because I thought --
11 maybe I misunderstood Your Honor, because I thought it was
12 clear that although she wouldn't testify, they weren't
13 seeking to introduce her evidence, clearly we have all
14 stipulated polygraph talk cannot come into play here as to
15 whether he's given a polygraph, whether Mr. Mallory was
16 given a polygraph, but to say that we are not allowed to
17 discuss this huge chunk of the largest interrogation, it
18 would be fundamentally unfair, violate his due process
19 rights to a fair trial.

20 So what I think we should do, and if we can
21 fashion this, and I'm sure we can, is to simply say -- and
22 if he wants to get it out through McDaniels here on
23 redirect, "you know, look, you weren't the only person
24 talking that day. This was the Los Angeles Sheriff's
25 Department where this was recorded. You know, he was

1 interviewed," if they want to use that word, you may use the
2 word interrogate, "by a detective with that department prior
3 to your interview?

4 "Yes.

5 "And that interview, approximately how long did
6 that last?"

7 "Typical," he can testify to that, but they have
8 to know. This is --

9 THE COURT: Well, this is -- this is -- and, of
10 course, you know, at the time that we did the pretrial, I
11 mean, it was fully anticipated that Roberta Cohen would be
12 present for trial and that she would be able to testify, not
13 to the polygraph, but at least to whatever conversations,
14 interrogation, or interview that she had with the defendant
15 before the polygraph. And based upon her testimony at that
16 particular time those statements would have been allowed
17 into court.

18 Because she's not present, and she's not present
19 because the California court ordered that she not be
20 present, I agree that the six hour, or six and a half hour
21 time period is relevant for purposes of the defense. But I
22 think you also have to balance that with what prejudice it
23 may have to the State as well.

24 If, in fact -- and I presume that it's supported
25 based upon what I saw in the video when Cohen testified,

1 that neither Godfrey nor McDaniels were present in the room
2 at the time that she interviewed him. I have no problem
3 with there being the testimony that he was interviewed by
4 someone in the Los Angeles Sheriff's Department for a period
5 of time outside the presence of these two gentlemen, who
6 would, therefore, be unable to testify what we went on.

7 Additionally, to answer the question of well, why
8 isn't she here, I think it's appropriate to at least
9 instruct the jury or have more testimony to the fact that
10 she's outside South Carolina, that a subpoena was sent to
11 her and that a California court determined that she did not
12 have to appear at trial --

13 MR. LUKE SHEALEY: Yes, ma'am, I have no problem
14 with that.

15 THE COURT: -- to give live testimony.

16 And that way, if, in fact, there is no discussion
17 about his statements to her and whether or not they were
18 consistent or inconsistent, I'm not so sure that you really
19 have to explain the fact that any statements that he made to
20 her were either consistent or inconsistent with later
21 statements.

22 MR. GOINGS: And, Your Honor, I guess the only
23 problem we have with that is there is -- if that's the
24 ruling, there is no provision that defense in the closing
25 to, as part of their false confession strategy, is to go "we

1 don't know what happened during that six and a half hours"
2 to the jury. "He could have been threatened. They didn't
3 bring them here to testify and let us know what happened."

4 THE COURT: They are not going to be able to make
5 those arguments. They are not going to be able to make the
6 arguments that he was threatened by her, that he was
7 promised or offered anything, or -- because there is
8 absolutely no testimony as to what occurred.

9 And so they may be able to discuss the time period
10 and the fact -- if, in fact, the false confession testimony
11 is that the length of the interrogation is a factor, then
12 that may be a factor, but they will not be able to make any
13 assertions or make any inferences as to what took place at
14 all with any interview with Roberta Cohen, and that means if
15 the defendant decides to testify in this particular case, he
16 would not be able to discuss that either.

17 MR. LUKE SHEALEY: We wouldn't seek to make any
18 inferences from a witness who hasn't testified. That
19 doesn't happen.

20 THE COURT: I'm just saying, you know -- you know,
21 get worked up and they say things sometimes that can be
22 construed differently.

23 MR. GOINGS: I beg the court's indulgence.

24 (Off the record)

25 (Back on the record)

1 MR. GOINGS: Your Honor, the only thing that we
2 are debating over here is -- I understand the ruling that
3 it's relevant as to the length of the interrogation process
4 before McDaniels and Godfrey came back in the room, which
5 goes to the false confession.

6 I guess the only problem we are having
7 reservations with right now is the fact that there would be
8 no testimony as to the -- from what I gather, that we are
9 not allowed to ask him about was he given breaks during that
10 six and a half hour interview, or question about that, or --

11 THE COURT: I think -- I mean to the extent that
12 they escorted him out for a cigarette break, or they
13 escorted him to the restroom, or -- you know, I think -- I
14 think that's okay, because they were present when that
15 occurred. You know, to the extent that, you know, that they
16 participated in ordering food, or whatever, I think that
17 that's fair.

18 (Off the record)

19 (Back on the record)

20 MR. GOINGS: Thank you, Your Honor.

21 MR. LUKE SHEALEY: I'm going to the next issue,
22 judge, and --

23 THE COURT: Wait a minute before we get there.

24 MR. LUKE SHEALEY: I thought they were done.

25 MR. PAULING: Yes, sir.

1 MR. LUKE SHEALEY: Your Honor, this is not a false
2 confession issue. This is -- again, I objected to the video
3 aspect, which I sought to be redacted before we admitted to
4 talking about questions about Mr. Porch's sexual preference,
5 questions about him being a child molester, whether he
6 thinks like that, whether he struggles with that. And,
7 again, Sergeant McDaniels being nonresponsive to Art Aiken's
8 questions began talking about his sexual preference and went
9 on for a little bit there about whatever it was he was
10 talking about, but --

11 THE COURT: I think he indicated why he asked one
12 particular question and the relevance that he thought that
13 it brought with respect to the interrogation, and I'm
14 presuming -- and I'm ordering that to be the end of it.

15 MR. LUKE SHEALEY: Well, what I'm going to -- and
16 so I'm just going to put this for the record. I don't
17 imagine you are going to grant my request, but it has no
18 place in this trial. It's not an issue. It doesn't go to
19 the truthfulness. It has nothing to do with motive. It
20 all -- it is not relevant under 401. It's more unduly
21 prejudicial under 403. It's bad character under 404, and I
22 ask for a mistrial.

23 THE COURT: And I would disagree as a potential
24 for motive, because the way -- the way it was explained by
25 the witness on the witness stand was, "you know, I asked the

1 question to determine whether or not there was any interests
2 to see whether -- to see if, in fact, there were something
3 against Nakia Mallory in some -- harboring some ill will
4 against her, because it could have been some attraction to
5 Mr. Mallory. And I think that's the only way it's relevant
6 and that's the only way it's allowed in. Otherwise, it's
7 not relevant, and it shouldn't -- otherwise it's not to be
8 dwelled upon. I think it is relevant in that context and it
9 is appropriate in that context and that was it.

10 If it happens again, we can talk about it again.

11 MR. LUKE SHEALEY: Thank you, Your Honor.

12 THE COURT: While we have got the jury out, let's
13 go ahead and take a break.

14 Sergeant McDaniels, again, you may not discuss
15 your testimony with anyone as you have not concluded it, so
16 it would be inappropriate for you to discuss it during the
17 break.

18 THE WITNESS: Yes, ma'am.

19 MR. LUKE SHEALEY: Your Honor, in terms of
20 scheduling, I don't know if there is a whole lot longer with
21 Sergeant McDaniels, but in terms of the next witness, I
22 imagine we are going to have -- Mr. Goings is going to
23 challenge the testimony of false confessions, generally, and
24 we will have a little discussion about that, but I guess
25 that's to be outside the presence of the jury, obviously,

1 but should you allow it in, which I would be asking you to
2 do, we are going to need a second for her to come in and set
3 up. She has a Power Point that aids her testimony, so it
4 would be fine, since we are already on a break anyway, but I
5 just wanted to give the court notice of that.

6 THE COURT: Well, when we come back from break we
7 will talk about what the objection is, because I'll have to
8 hear it to determine whether or not we need to take
9 in-camera testimony.

10 MR. LUKE SHEALEY: Yes, ma'am.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: While we're waiting for them to come
14 in on this one, I'll just share with you a note that I have
15 gotten from a juror. I have gotten this note earlier, and,
16 you know, we were able to kind of work things out. It's
17 juror number 248. He works evenings from four to ten, or
18 four to eleven. He was off -- he's off Thursday and Friday.
19 He works the weekend. And, you know, when he first sent me
20 the note, I told him I would try to work with him, but I
21 couldn't earlier in the week. So he's just sent me a note
22 reminding me about the fact that he's the sole breadwinner
23 in his family and he's got a seven month old child. His
24 girlfriend is unemployed. And that because of the schedule
25 this week he missed some hours at work. And he works -- he

1 will work Monday and Tuesday from four to ten, or four to
2 eleven, but he's got to be at work between three and four,
3 or before four o'clock at the latest. And so I told him that
4 I appreciated him, you know, working with us this week. His
5 employer knew he was on jury duty and that he's on the jury
6 and that I would accommodate his schedule for Monday and
7 Tuesday. So I'm anticipating that by Monday, if nothing
8 else, we may be close to getting this to the jury and I'll
9 keep his schedule in mind, you know, for that. So I just
10 wanted y'all to be aware of that.

11 Let me hear briefly about the objections relating
12 to the testimony of the defense expert.

13 MR. GOINGS: Thank you, Your Honor.

14 If it pleases the court, the State's first
15 objection is we would seek to exclude any testimony on false
16 confession.

17 THE COURT: You got to speak up. I can't hear
18 you.

19 MR. GOINGS: Oh, I'm sorry.

20 Based on the fact that it doesn't rise to the
21 level of Daubert, is not scientifically -- it can't be -- no
22 statistics are with for false confessions.

23 The only thing in my brief, or limited
24 understanding of false confession testimony, they testify
25 about known cases of wrongful convictions and sentences of

1 false confessions contained within those and that's where
2 they base their science or scientific off of, but there is
3 no statistics out there of any cases or dealing with in
4 cases in general about the --

5 I beg your indulgence.

6 (Off the record)

7 (Back on the record)

8 MR. GOINGS: Sorry, Your Honor.

9 But there is no way we can regularly study and get
10 a reliable basis for the testimony, because there is no
11 scientific studies that show that, you know, this certain
12 percentage in cases have false confessions in them. So we
13 don't believe it rises to the level of Daubert.

14 I know South Carolina cases, including State v.
15 Cope I believe was the last one, and State v. Myers also
16 dealt with whether or not -- or discussed false confession
17 testimony, but it was never on that issue, from what I could
18 see. It was all -- it was all, to my knowledge, or in the
19 cases all focused on the fact of whether or not that
20 particular expert could relate specific cases of false
21 confessions that they reviewed and related to the case they
22 were to testify about. Our grounds is that it doesn't reach
23 the level required by Daubert for scientific testimony, and
24 therefore, should be excluded for trial.

25 And we have -- I believe other cases -- other

1 states have said in State v. Davis, 32 S.W. 3d 603, that's a
2 Missouri case where they excluded it saying that it did not
3 reach the level necessary to -- that it would show that it
4 was scientifically reliable and, therefore, excluded it.

5 Dennis v. State, 67 P3d 661, it's an Alaska case,
6 holding pretty much the exact same conclusion.

7 And other various jurisdictions have held that it
8 doesn't reach the level required by Daubert.

9 THE COURT: Have you looked at State v. White and
10 some of its cases relating to nonscientific evidence?

11 And I still think the analysis is still under 702
12 as it relates to expert testimony. So you are just -- you
13 are just challenging the reliability of it, or you are not
14 challenging her qualifications?

15 MR. GOINGS: I'm -- that's my first objection is
16 just the scientific reliability of it under Daubert, Your
17 Honor.

18 MR. LUKE SHEALEY: May I approach and just pass up
19 here CV while we are getting into this conversation, judge?

20 And, Your Honor, I would argue -- and I have got
21 actually a transcript from the State v. Andrea Person, which
22 is a homicide by child abuse case which you presided over,
23 which was prosecuted by John Meadors, and this challenge was
24 made by John Meadors. And I have been reading over it as
25 kind of an illustration and education on the analysis on

1 this type of situation. And reading what you said in that
2 case, you found that it did not need to be pigeonholed into
3 the Council Jones factors. Those are more seen as dealing
4 with so-called hard sciences, biological sciences, physical
5 sciences, and more in keeping with the White case, which
6 concerned a social science, which was dog tracking, that I
7 think that was more what false confession was.

8 In that case you had extensive testimony by Saul
9 Kassin, who is the preeminent highly recognized expert on
10 false confessions in the nation. My doctor, Dr. Deborah
11 Davis, she is a colleague of his and has vast experience in
12 the same area.

13 And after listening to Dr. Kassin, in general,
14 about the field of false confession, you made a very lengthy
15 ruling stating that it was reliable, because it had a
16 methodology; it was peer reviewed; there were statistics
17 involved in it; it was grounded in psychology; and that you
18 thought that under 702 that it would assist the trier of
19 fact in that case.

20 I would argue that it would certainly assist the
21 trier of fact in this case, given that we have such
22 alternative theories here, where clearly our defense all
23 along has been that Mr. Porch so-called confessed, and it
24 was falsely. And I think that -- I would argue that, just
25 like you ruled then, that it was a reliable science and

1 should be admitted in this state, and certainly in your
2 court, and I would ask that the same be done today in this
3 court. And then certainly I should be happy to do some voir
4 dire as to her qualifications as necessary, as she always
5 does when she testifies.

6 THE COURT: And I don't know whether you shared
7 that with Mr. Goings?

8 MR. LUKE SHEALEY: The transcript?

9 THE COURT: Yes.

10 MR. LUKE SHEALEY: No, ma'am, I had no idea he was
11 going to object to it. He was usually pretty up front with
12 everything that we have been doing in the case, so I really
13 thought that he kind of saw it my way, that it was perfectly
14 reliable.

15 THE COURT: I don't know why you would think that.

16 MR. LUKE SHEALEY: Well, he's not -- he's not your
17 usual prosecutor, but he -- so I have not shared it in
18 advance with him. I can run off a copy of it. It's -- I
19 was hoping to share it with you, your own opinions from --

20 THE COURT: Oh, I -- and I -- and I -- since they
21 were my opinions, I did review them. I mean -- I am
22 somewhat familiar with false confession testimony and --

23 Would you like an extra copy so you can take a
24 look at it? It's about thirteen pages -- twelve or thirteen
25 pages of my ruling as it relates to the testimony that was

1 presented in that particular case and it goes to the
2 analysis. I'm not -- I'm not going to require that you read
3 it and digest it right this minute.

4 I will say in terms of whether or not the
5 testimony would be admissible in this court, I would still
6 need to hear at least some testimony from the witness about
7 the testimony. You know, what comes out of every case is
8 different and what you have and what I have is only my
9 ruling, and so it doesn't -- it doesn't show me what
10 specific evidence was testified in that particular case.
11 I'm generally familiar with it, but as I understand White
12 and as I understand --

13 There is a case, State v. Tapp, which is 398 S.C.
14 376. It's a June of 2012 case, in which the Supreme Court
15 kind of clarifies the Court of Appeals application of the
16 White case. I think it supports exactly what I did in the
17 Person's case, but that there are separate factors to
18 consider.

19 One is whether or not it would aid the trier of
20 fact, the testimony would aid the trier of fact.

21 Secondly, whether or not the person who is
22 actually testifying is an expert.

23 And then after those two questions are answered,
24 then as to the reliability of the science. And as the
25 gatekeeper, I still have to determine the reliability, and

1 that would be based upon the testimony that's offered in the
2 case. And then I have to make all those determinations
3 before it's presented to the jury.

4 So even -- even once we finish with this witness,
5 I think it would still be a requirement to have some
6 testimony from her about the science generally.

7 And when I talk about in the analysis is that
8 psychology is a science. It is a social science. It's not
9 a biological science, and some of the criteria may be
10 somewhat different, but there still is required to be an
11 analysis to determine its reliability. And I think I set
12 forth in the Person's case, in that transcript, why I
13 believed it was reliable at the time. I didn't cite the
14 specific examples that the expert testified to, and I would
15 have to hear those in this case to determine whether or not
16 those factors are still present. At least she will have
17 something to consider in terms of what the thought process
18 was and why I came to the conclusion.

19 MR. LUKE SHEALEY: And, Your Honor, I also note,
20 and this might answer some more questions down the road,
21 should you allow it in, I haven't asked her to -- or not
22 planning on asking her to say, "based on everything that you
23 have reviewed in this case, can you tell me if Mr. Porch's
24 confessions are a false confession?" I'm not asking that
25 question.

1 Her testimony is strictly one for education to the
2 jury to explain factors that can lead to false confessions,
3 but I haven't asked her to apply it in this case, to render
4 that opinion, the ultimate question. So I don't know if
5 that was going to be some kind of objection, but that's -- I
6 haven't asked her to do that. I wasn't planning on asking
7 her to do that.

8 MR. GOINGS: That was -- I would have a couple
9 more objections, Your Honor, and that would be -- one of
10 them if you do allow the testimony.

11 Second is I guess we will get through it with some
12 of her proffered testimony as to whether or not she actually
13 had a chance to interview and have a meeting and meet with
14 the defendant in this particular case.

15 I believe there is case law, and I'll provide the
16 facts, Your Honor, that if a material witness is put on the
17 stand that hasn't had an opportunity to examine the
18 defendant and determine whether or not he's susceptible to
19 false confessions, then the testimony would not be relevant,
20 would not help the trier of fact in this situation and
21 should be excluded.

22 I haven't seen a report from defense that she
23 performed a psychological evaluation on the defendant. I'm
24 assuming -- I'm assuming she has and then just didn't do a
25 report, because it would be required to be disclosed to the

1 prosecution, but that would be one objection.

2 THE COURT: So if I understand you correctly, you
3 would object if she is not prepared to give an opinion as to
4 whether or not Mr. Porch in this case was susceptible to
5 false confession, and, in fact, give a false confession?

6 MR. GOINGS: Yeah, because I believe that goes to
7 a large part of the studies that she's performed and a large
8 part of the studies performed by experts in false
9 confessions in general is that you have these numbers of
10 false confessions, and they are higher for people who were
11 susceptible to coercion, bullying, or those things of that
12 nature during the interrogation process that results in the
13 false confessions and the number that they have seen in
14 their studies. If she hasn't interviewed him or met with
15 him or performed an evaluation to determine that, then I
16 don't know what the relevance of her testimony is.

17 THE COURT: And so you would -- so you don't think
18 that there is any relevance then if she were able to testify
19 as to what factors would play into a false confession and
20 having the jury make the decision as to whether or not in
21 this particular case either those factors were present or
22 the factors for someone who may be susceptible and determine
23 in this case whether Mr. Porch has those factors?

24 MR. GOINGS: No. I believe it's just muddying the
25 issues and it's interfering with what the jury is here to

1 determine; whether or not, in fact, Mr. Porch's confession
2 was voluntarily made and not a false confession.

3 I mean, I don't see any part of her testimony, if
4 she hasn't done the independent psychological evaluation of
5 him, would help the trier of fact or help with their
6 decision on whether or not law enforcement acted appropriate
7 or Mr. Porch's confession was -- could be a false
8 confession.

9 THE COURT: And I will tell you that in the Andrea
10 Person case there was not testimony as to the ultimate
11 conclusion as to whether or not she gave a false confession.
12 The testimony was simply allowed for the purposes of
13 allowing the jury to hear information about how false
14 confessions can occur and discussing what's revealed in the
15 science about what factors generally play into a false
16 confession. And then ultimately it would have been up to
17 the jury to make that ultimate determination in judging the
18 voluntariness of the statements, in addition to those
19 requirements under Miranda, the jury would have to make that
20 ultimate decision.

21 So I will have to hear her testimony and what it
22 is and determine whether or not at that time, based upon
23 what she says, you know, I think it would be of benefit and
24 would aid the trier of fact, which is the jury. I'll have
25 to take a look at it.

1 MR. LUKE SHEALEY: Yes, judge. I guess just to
2 touch on what he's saying if I need to, but I don't know if
3 I need to, but --

4 I mean, it would be one thing for some expert to
5 try to come to court and give an opinion as to this case and
6 whether this man gave a false confession without doing a
7 comprehensive exam. But here, like in Andrea Person, she is
8 being asked -- I'm not asking for her opinion on this case.
9 I'm asking her to educate a suspect's personal
10 vulnerabilities, or just one of a myriad of factors that can
11 lead to a false confession. So that's -- that's kind of --
12 it didn't really apply here. That's not what I'm asking her
13 to do. I'm asking her to educate about factors, so I
14 don't -- I don't think Mr. Goings objection has any real
15 bearing on this situation, but I can --

16 I guess we are going to finish with Mr. McDaniels.
17 Should I go tell her that she's going to need to be
18 questioned her a little bit about her qualifications, or --
19 is her qualifications, or just her knowledge of the --

20 THE COURT: It's both.

21 MR. LUKE SHEALEY: Both. Okay. Sure.

22 THE COURT: All right.

23 MR. GOINGS: Sorry, Your Honor, I keep going back,
24 but I just want to go ahead and make all these objections
25 now, so we will be hearing her testimony.

1 You know, obviously, like I said before, I would
2 be objecting to any specific cases that she may talk to --
3 talk about and relating to this case.

4 If you allow the testimony, it should be just on
5 her general expertise and the factors commonly associated
6 with false confessions, not specifics of any case that she's
7 actually evaluated and how it relates to this case or in
8 comparison. I think that's what State v. Myers and State v.
9 Cope suggests from the Supreme Court.

10 MR. LUKE SHEALEY: She's not going to be asked to
11 relate her studies to this case. She's just going to be
12 discussing her studies and the general body of work and
13 studies. So I think that's -- that was what was allowed in
14 Person. I think that's certainly appropriate here, but
15 she's never going to be asked to relate that to this case.

16 MR. GOINGS: I think the last issue I have, Your
17 Honor, is the foundation. I understand we are taking this
18 witness out of order.

19 You know, the only thing I have heard so far from
20 defense counsel in questioning or cross-examining
21 Investigator McDaniels is the interrogation that they used.
22 There has been no evidence in the record alleging a false
23 confession.

24 I'm assuming -- I would think to do so they would
25 have to put the defendant up to actually say this is a -- "I

1 didn't make this statement or it's not true. They tricked
2 me into saying this," but without that foundation I don't
3 believe her testimony is relevant at this point.

4 THE COURT: Well -- go ahead.

5 MR. GOINGS: I think it requires the defense --
6 I'm not --

7 THE COURT: Well, you understand the circumstances
8 under which we are --

9 MR. GOINGS: I understand that, and I guess I'm
10 just asking that are they saying that the defendant is going
11 to get up on the stand and testify that this was a false
12 confession, because normally it would -- false confession
13 testimony would come after the defendant got up and said
14 "no, that wasn't the truth what I told them."

15 MR. LUKE SHEALEY: Under 401, relevant evidence
16 means evidence having any tendency to make the existence of
17 any fact that is of consequence to the determination of the
18 action more probable or less probable."

19 The fact that's in contention here is whether his
20 last statement to Stan Smith is the truth, or whether these
21 three or four statements in California are true. So
22 certainly false confession testimony is relevant.

23 You may -- I don't know whether he's going to
24 testify or not. This case may not get past directed
25 verdict, so I don't think that's an appropriate question

1 right now either, and it doesn't have much bearing on
2 whether our expert testifies out of order.

3 THE COURT: All right, I have noted your
4 objections.

5 Let's bring the jury in and finish with this
6 particular witness and then we will go from there.

7 Which court citation do you have for --

8 MR. GOINGS: 385 S.C. 274.

9 THE COURT: 385?

10 MR. GOINGS: Yes, ma'am.

11 THE COURT: S.C.?

12 MR. GOINGS: 274.

13 THE COURT: 274.

14 MR. GOINGS: Yes.

15 THE COURT: Court of Appeals?

16 MR. GOINGS: I don't have the case in front of me,
17 Your Honor.

18 (The following takes place in the presence of the
19 jury panel)

20 THE CLERK: The jury is here, Your Honor.

21 THE COURT: Yes, sir.

22 MR. PAULING: Thank you, Your Honor.

23 BY MR. PAULING:

24 Q. Sergeant McDaniels --

25 A. Yes, sir.

1 Q. -- you were asked on cross about that third statement
2 or the time difference regarding that third statement.
3 Prior to you and Investigator Godfrey getting that third
4 statement from Mr. Porch, was he interviewed by a member of
5 the Los Angeles Sheriff's Department?

6 A. Yes, he was.

7 Q. Okay. And was it during that particular time frame
8 that he was interviewed by that individual?

9 A. The six hours prior, yes.

10 Q. Okay. And it was after that that you got that third
11 statement, is that correct?

12 A. That is correct. He was also offered throughout the
13 six hours the opportunity to go to the bathroom, get
14 something to drink. And also we purchased a sandwich from a
15 local sandwich shop in Los Angeles.

16 Q. Did you -- did you assist with that?

17 A. Yes, we did.

18 Q. Okay. Thank you.

19 MR. PAULING: No further questions, Your Honor.

20 MR. AIKEN: No recross, Your Honor.

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

22 And, counsel, as I understand it, there are some
23 scheduling issues that will require to take a witness out of
24 order?

25 MR. LUKE SHEALEY: Yes, Your Honor.

1 THE COURT: Counsel, approach.

2 (Whereupon, the lawyers approached the bench for
3 an off-the-record discussion)

4 THE COURT: Ladies and gentlemen, I'm going to ask
5 that you again retire to the jury room. I know it seems
6 nonsensical, but I wanted to conclude the witness that we
7 had on the witness stand before we took up the issues with
8 this particular witness.

9 This is a witness by the defense who is being
10 called out of order because of scheduling issues, and so in
11 order to accommodate hearing the testimony, we need to take
12 up a few matters regarding the testimony before that person
13 actually is able to testify. So I'm going to ask that you
14 again retire to the jury room and not to engage in any
15 discussions and then I'll bring you back as soon as
16 possible.

17 (The following takes place outside the presence of
18 the jury panel)

19 THE COURT: You may call your witness, Mr.
20 Shealey.

21 MR. LUKE SHEALEY: She actually stepped to the
22 bathroom. I told her we were about to go through the whole
23 process, so I think she will be back very shortly. I
24 apologize, Your Honor.

25 THE COURT: You said she had equipment that needed

1 to be set up?

2 MR. LUKE SHEALEY: Well, she -- she has -- yes,
3 she has a Power Point presentation to aid her testimony that
4 does go through her qualifications and then it starts going
5 through the false confession stuff. We can do that now with
6 you or we can just talk about it. I think she would like to
7 use the Power Point because it gives lots of specific
8 examples, but -- we can certainly do that right now. That
9 way it won't --

10 THE COURT: If you want to go ahead and set it
11 up --

12 MR. LUKE SHEALEY: Yes, ma'am.

13 THE COURT: -- and then in the event we need it,
14 maybe you can use it. If not --

15 (Off the record)

16 (Back on the record)

17 THE COURT: What we can do is go ahead and get
18 started and discuss the qualifications.

19 If you would swear the witness, please.

20 DR. DEBORAH DAVIS, having been first duly sworn,
21 testified as follows:

22 THE CLERK: Thank you.

23 Would you state your name for the record, please?

24 THE WITNESS: Deborah Davis, D-E-B-O-R-A-H
25 D-A-V-I-S.

1 MR. LUKE SHEALEY: Do you want me to do the
2 inquiry, or Your Honor?

3 THE COURT: No, you do it.

4 MR. LUKE SHEALEY: Okay.

5 DIRECT EXAMINATION BY MR. LUKE SHEALEY:

6 Q. Dr. Davis, tell us where you are from and something
7 about your training, educational background, experience.

8 A. Well, right now I'm Professor of Psychology at the
9 University of Nevada, in Reno.

10 I have a B.A. in Psychology from the University of
11 Texas and a Ph.D. in Psychology from Ohio State University.

12 Then after that I had a couple of years of post-doc in
13 psychology.

14 And since then I have been teaching. I have taught at
15 Southern Illinois University for a couple of years; Georgia
16 State for a year; and then the University of Nevada since
17 1978.

18 Q. So right now is where your current position is the
19 University of Nevada?

20 A. Right.

21 Q. That's been since 1978?

22 A. Right.

23 Q. Okay. Tell us something about -- specifically we need
24 your training, or education, or further experience,
25 specifically in the area of false confessions or

1 interrogation tactics.

2 A. Okay. Well, actually that's part of the area of study
3 in my area of psychology, which is social psychology.

4 Largely what social psychology concerns is the
5 principles of social influence and persuasion, and
6 specifically there is a lot of emphasis on psychology and
7 law within my area.

8 And it's been natural for social psychologists to study
9 police interrogation and confession, because basically
10 interrogation strategy as it's taught to police entail most
11 of the basically very supported, empirically supported,
12 scientific principles of social influence brought to bear on
13 the suspect.

14 So, you know, but specifically I have been studying
15 that myself since -- other than just what was out there in
16 our general literature, but writing about it since about
17 2002. And since that time I have a little over twenty
18 publications on interrogations and confessions.

19 I have taken the basic John Reid & Associates
20 Interrogation and Training, both basic and advanced, and a
21 Wicklander-Zulawski Interrogation, training, both basic and
22 advanced.

23 Currently I have a grant from the FBI to study
24 interrogation techniques to develop non-coercive techniques,
25 and have given a number of CLE seminars on that topic and a

1 number of presentations at conventions, etcetera.

2 Q. Okay. You mentioned a Reid and I think you said
3 Zulawski. Are those specifically law enforcement
4 interrogation techniques, or classes, or --

5 A. Well, the Reid Method is the method of interrogation in
6 America. It's been taught since the thirties. And the Reid
7 organization is where the people that founded the Zulawski
8 organization came from. So those two organizations do most
9 of their -- I mean, almost all of their professional
10 interrogation training in the country, other than, you know,
11 sometimes police departments have their own training
12 seminars.

13 The FBI also trains state police and so on, but the FBI
14 trains the Reid Method. Everybody trains the Reid Method.

15 Q. Okay. Do you have specific training experience
16 regarding scientific research methods?

17 A. Sure. I mean, that's required to get a Ph.D. in
18 Psychology. I had probably in the course of my career at
19 least ten different specific research methods classes.

20 I also minored in statistics and had about, you know,
21 nine or ten stat classes as well.

22 And then since that time I have taught both graduate
23 and undergraduate research methods, as well as statistics.

24 Q. You mentioned previously being published, but do you
25 also -- have you ever reviewed any journals or publications?

1 A. Yes, I have been on the editorial board of I think
2 about four different journals. Currently I'm on two, and I
3 have also reviewed for book publishers and granting
4 organizations, such as the National Science Foundation or
5 National Institutes of Health.

6 Q. Okay. And what kind of criteria does that scientific
7 world use when they are selecting someone to review on a
8 journal?

9 A. Well, typically it's someone who is published in that
10 area, or is, you know, thought to have special knowledge of
11 that topic, but usually that boils down to having published
12 in that area before.

13 Q. Okay. You did mention being on editorial boards,
14 correct?

15 A. Right.

16 Q. Okay. When you talk about being on reviews, what are
17 ad hoc reviews, journals? Can you describe that?

18 A. Well, you know, if you are not on the board, probably
19 the largest number of reviews are done by ad hoc reviewers,
20 which means that they simply contact you for a particular
21 paper because they think you have a particular expertise in
22 that area, but you are not obligated to review for them on a
23 regular basis, like you are if you are on a board.

24 Q. Okay. But you have been contacted about being an ad
25 hoc reviewer numerous times?

1 A. Oh, sure, yeah.

2 Q. You mentioned your research grant by the Department of
3 Justice. How much was that for?

4 A. 175,000.

5 Q. Okay. You mentioned you got your certificate from John
6 E. Reid and Associates, correct?

7 A. Right.

8 Q. And the Wicklander-Zulawski and Associates, correct?

9 A. Right.

10 Q. How many, if you can remember, publications have you
11 published concerning interrogations and false confessions?

12 A. Right around twenty, I think.

13 Q. And would you agree that Saul Kassin and other people
14 like Richard Leo are prominent members in this field?

15 A. Yes.

16 Q. And you have worked with them?

17 A. Yes.

18 Q. Okay. Let's see. Have you ever published papers, as
19 well as, you know, discuss other things other than these
20 false confessions?

21 A. Yes.

22 Q. Okay. Is that more just general psychology research
23 and other papers like that?

24 A. Well, somewhat around twenty more, or so, has to do
25 specifically with eyewitness accuracy, and then the rest are

1 on various different topics.

2 Q. Have you ever been --

3 A. No, I think it's somewhere around a hundred or so
4 altogether.

5 Q. Okay. Have you ever been asked to present on
6 confessions at scientific conferences?

7 A. Yes.

8 Q. Have you ever published in the area of social influence
9 and decision making?

10 A. Yes. And as I mentioned, that's a kind of a primary
11 area of concern for social psychology, so, you know, I have
12 done some social influence research myself and also taught
13 courses on social influence. Every few years I teach a
14 graduate class on social influence at the University of
15 Nevada that's required for several of the graduate programs.

16 Q. And your studies and experience, does social influence
17 affect any kind of effect in the field of false confessions?

18 A. Well, absolutely, yes. As I mentioned, interrogation
19 techniques is fundamentally based on the principles of
20 social influence that have been developed and scientifically
21 tested in psychology.

22 Q. Okay. Have you ever been called to come to court in a
23 hearing such as this and testimony such as this?

24 A. Yes.

25 Q. Okay. What states have you testified in, number one,

1 in a Daubert Frye Hearing? Can you name some off the top of
2 your head?

3 A. Yeah, I had them listed where I could see them, but New
4 York, Utah, Alaska, Michigan, Illinois. I don't -- oh, New
5 Mexico. Those are some of them. I'm not sure if that's all
6 of them or not.

7 Q. Have you ever been called to testify in suppression
8 hearings regarding interrogations and confessions?

9 A. Yes, New York and California, quite a number of them.
10 Nevada, Washington. I'm not positive, but those are some of
11 them.

12 Q. And have you been qualified in court as an expert in
13 this, in the field of false confessions, before?

14 A. Sure.

15 Q. Okay. Have you been qualified in court as an expert in
16 the field of interrogation tactics before?

17 A. Yes.

18 Q. Can you estimate how many times?

19 A. At least twenty-five. Maybe more.

20 Q. Okay. Do you remember testifying at trial on those
21 things?

22 A. Sure.

23 Q. Do you remember which states those might be?

24 A. California, Mississippi, Colorado, Nevada, Washington
25 State. I can't remember others right now.

1 Q. Okay.

2 MR. LUKE SHEALEY: Your Honor, I think that's all
3 I have as to her specific qualifications as an expert in
4 this field.

5 THE COURT: Any voir dire?

6 MR. GOINGS: No voir dire on her education and her
7 experience, Your Honor.

8 We will get to my other objections later, I guess,
9 unless we hear a little bit of her testimony.

10 THE COURT: Based upon the information provided as
11 to her training and education and her publications and
12 seminars and prior testimony in other matters in other
13 state's courts, I'll find that she is qualified as an expert
14 in the area of false confessions and interrogation tactics,
15 is that right?

16 MR. LUKE SHEALEY: Yes, ma'am.

17 THE COURT: Yes.

18 MR. LUKE SHEALEY: Would you like me to go into
19 the idea of generally the reliability of the science in the
20 field?

21 THE COURT: Yes, sir, you would have to do that
22 too.

23 MR. LUKE SHEALEY: Yes, ma'am.

24 BY MR. LUKE SHEALEY:

25 Q. Dr. Davis, can you talk to me about, number one,

1 generally is the topic or field of false confessions
2 something that's contained within psychology?

3 A. Yes.

4 Q. Okay. And psychology is science?

5 A. Yes.

6 Q. Okay. And your experience in this science has been
7 since, is it fair to say, since the seventies, or --

8 A. Well, I would say really starting in '68.

9 Q. Okay. '68.

10 But like psychology and false confessions, does a
11 science like this have to be peer reviewed?

12 A. Well, I mean, to be science it doesn't have to be, but
13 peer review is something that really sort of gives the
14 signature of approval that if it is claiming to be science,
15 it was done correctly, that the methods of the research were
16 valid, and that conclusions that are drawn based on that
17 research are appropriate and so on. So peer review insures
18 its quality control.

19 Q. Okay. So you mentioned methods, but false confessions
20 being a field of psychology generally, is there a
21 methodology to the work?

22 A. Yes, I think that it's important to say that, you know,
23 there is lot of relevant science when it comes to
24 understanding why a person might falsely confess, and a lot
25 of that is just the fundamental principles, core principles

1 of psychology that have been established, you know, since
2 the 1800's, such as, you know, the basis that people use for
3 behaving, that they respond to reinforcements in their
4 environment. They respond to what they think is going to be
5 the outcomes of their behavior. So if they expect that the
6 things to happen, they are more likely to do something than
7 if they expect bad things.

8 There is the social influence principles that, you
9 know, all the scientific knowledge that tells us how to
10 influence other people to get them to do what you are asking
11 them to do. All of that is relevant, and much more. And
12 decision making science, all of that tells how people decide
13 what to do when they are faced with a dilemma.

14 And then on top of all that core psychological science
15 is just the psychology of human behavior, then we have the
16 specific science about interrogations and confessions, or
17 false confessions.

18 And so we have all of that within psychology that helps
19 to tell us why a person would do something like confess
20 falsely under the circumstances that they are placed in.

21 Q. And when you come to what experts in this field have
22 come to know, and they know now over the years, are those
23 conclusions and those opinions based on research?

24 A. Yes, various kinds of research.

25 Q. And would those be including controlled experiments,

1 things like that, that are typical with psychology in that
2 science?

3 A. Yes. I mean, there are many levels of research. And
4 the top of the pyramid of research, of course, and the
5 most -- the one that's most able to tell you about what
6 causes what is a controlled laboratory experiment, but the
7 science of false confession ranges from case studies, which
8 is legitimate notes itself. You document case studies where
9 you can prove that somebody falsely confessed and at least
10 prove the existence of the phenomenon.

11 If you want to now understand the conditions under
12 which it's more likely to occur, you can still use actual
13 cases out there to try to establish associations between
14 things that happen in interrogation or things that are
15 characteristic of the person and whether they falsely
16 confess.

17 And so we have lots of case studies, compilations of
18 case studies, analyses of existing false confessions and
19 interrogations, and that some of which can correlate the
20 kinds of tactics with the likelihood of getting the
21 confession.

22 And then we have all the way up into the laboratory,
23 where we falsely accuse people of things as serious things
24 as we can. The most serious that I know of so far has been
25 academic cheating and then interrogate them and test

1 different tactics to see which gets the greatest likelihood
2 of a true and a false confession.

3 So many different levels of science that go into our
4 understanding of this topic.

5 Q. Okay. And you mentioned having background in
6 statistical research method. Do all these outcomes and test
7 results have any underpinning in statistics?

8 A. Well, some of them do, but if it's just a case study,
9 no.

10 Q. Okay.

11 A. But, you know, when you get to the laboratory studies,
12 then, of course, you have statistical techniques that are
13 appropriate for analyzing the designs that you have used.

14 And even in the field, if you are looking at the
15 association between the use of different interrogation
16 techniques, or the strength of evidence, or something like
17 that, and the likelihood of getting a confession, then you
18 use correlational techniques, and you can use very advanced
19 correlational techniques to try to establish links between a
20 particular use of the tactic and the likelihood of
21 confession immediately after that.

22 So for most of the things that we do, yes, there are
23 statistics, and not for all of them.

24 Q. Okay. And has this science ever been used nationally
25 in court, or other arenas, you know, such as like The

1 Innocence Project and has anybody ever been exonerated
2 through this type of stuff? Can you explain that type of
3 work?

4 A. Yeah, that's more what you would call a compilation of
5 case studies, and The Innocence Project, as probably
6 everyone here knows, is, you know, one organization that's
7 worked to free people that they believe have been wrongfully
8 convicted, and they have exonerated a number of people,
9 largely by DNA.

10 But, you know, then they look to see for each one of
11 these people that was wrongfully convicted and later
12 exonerated what kinds of evidence were presented against
13 them in trial that presumably played a role in getting them
14 convicted. And there they found that for roughly
15 twenty-five percent of those people that have been
16 established to be wrongfully convicted, false confession
17 played a role, and sixteen percent of them have falsely
18 confessed themselves. Some have pled guilty, which is
19 another form in a way of false confession, and then others
20 have been convicted, in part, by false confessions of
21 others. So that's how that works.

22 Q. In your opinion, is the field of false confession and
23 interrogation tactics widely accepted within the scientific
24 community?

25 A. Yes. It doesn't have to be my opinion. The American

1 Psychological Association, which is one of two major
2 organizations for psychologists, has provided Amicus Briefs
3 in several different cases in which they specifically stated
4 that this field is more than sufficiently developed to
5 provide an adequate scientific basis for testimony in this
6 area.

7 Also the American Psychological Association, Division
8 41, which is the American Psychology Law Society, published
9 a white paper in its flagship journal, which was endorsed by
10 the American Psychology Law Society stating their position
11 on this topic.

12 And so the conclusions of that paper and the things
13 that are in that paper are specifically endorsed by the
14 American Psychology Law Society, which is under the auspices
15 of the American Psychological Society.

16 Q. Okay. And then, again, in journal, the case studies
17 and the statistics that go into this field, are they
18 reliable, subject to peer review?

19 A. If they are published in journals, they, by definition,
20 are peer reviewed. Not necessarily the Law Review articles.
21 I mean, if you know how that works, but if they are in
22 psychology journals, they typically are peer reviewed.

23 Once in a while the editors of a journal will invite
24 somebody to publish an article in that journal, but then it
25 typically is peer reviewed anyway before it's finally

1 published.

2 MR. LUKE SHEALEY: Your Honor, I think that's all
3 I have, unless you want to inquire more generally about the
4 field of false confessions, interrogation tactics.

5 I think she's explained adequately regarding the
6 methodologies used to create the research that goes into it;
7 the case studies; the fact that it's peer reviewed; the fact
8 that it has its scientific underpinnings in psychology.
9 She's already been established and qualified, but I think
10 per your ruling in Andrea Person's case, I think it's
11 reliable for our case law. I think it fits perfectly within
12 the White standard as a social science. It doesn't need to
13 be shoehorned as the Council Jones factors, and I think it
14 would survive that hearing. It's appropriate under Daubert
15 and I think should be admissible in this case in any South
16 Carolina court.

17 MR. GOINGS: And, Your Honor, while she was
18 testifying, I was able to look through -- I forgot what case
19 this was.

20 MR. LUKE SHEALEY: Andrea Person.

21 MR. GOINGS: Andrea Person's case, your findings
22 in that, what was discussed direct examination of her.

23 The State's position --

24 I don't have any other questions for her on this
25 particular issue.

1 The State's position is it still is not allowed as
2 a science, as required under case law, but we understand
3 your ruling.

4 THE COURT: Let me just say that based upon what's
5 been testified in this particular case, there is questions
6 that have to be answered as in connection with my function
7 as the gatekeeper.

8 The first question is whether or not expert
9 testimony in this particular matter would be -- would assist
10 the trier of fact. And as we have all discussed throughout
11 a lot of pretrial, one of the issues, apparently one of the
12 defenses, is that in this particular case the defendant
13 confessed falsely during interrogations that occurred
14 primarily after his arrest, as I understand it.

15 And as I understand the defense, as it's been
16 presented, the defense is that these statements that were
17 given in the two trials against Justin Miller were, in fact,
18 the true and correct statements of what occurred on the
19 night of May the 14th of 2006.

20 And if I understand the defense's position is that
21 anything that occurred after his arrest, and including the
22 interrogations that took place over the course of July the
23 9th and July the 10th, that those statements were false
24 confessions and that his will was overborne by the
25 interrogation tactics that were utilized in the course of

1 those interviews and interrogation sessions, and that's
2 their argument to the jury. They have presented some of
3 that in opening statements as to what their theory of the
4 case is, and so the question is is whether or not there
5 is -- whether or not the testimony of this particular
6 witness would be able to aid the jury in determining whether
7 or not Mr. Porch falsely confessed. And I'm talking about
8 standards outside the legal standards requiring that the
9 statements be free and voluntary, based upon understanding
10 and acknowledgement of his Miranda Rights and that he was
11 not threatened, or coerced, or promised anything during the
12 course of those interrogations. And so I think that the
13 testimony would be able to assist the jury in reaching a
14 conclusion, whether in light of the fact that he has
15 acknowledged that he understands his rights and he decides
16 to talk and to be interviewed, whether or not the tactics
17 that were used during the course of those interrogations
18 were such that yielded false confessions, and I think that
19 the testimony would aid the jury in being able to make their
20 determination.

21 Secondly, I have already established that I
22 believe that this particular witness is sufficiently
23 qualified in this area to be able to render an opinion,
24 based upon her education, training, her teaching, the fact
25 that she's been involved with publication of studies, that

1 she has participated in studies; that she's also been
2 trained and is aware of the interrogation tactics and
3 techniques; that she's taken appropriate classes and she's
4 taught the appropriate classes as well; and that she is
5 aware of the methodology that would be required in any
6 studies that would be conducted in any publications in the
7 subject matter.

8 And while -- and I think then that I have to look
9 at some of the factors that may have existed in Jones and
10 Council and State v. White that establish that the science
11 is reliable. And while it is not a physical science, as a
12 biological-type science, it is a science, because it is a
13 social science, and we are all aware of the fact that we
14 take social sciences when we go to school, and certainly
15 social sciences are recognized fields of science.

16 Apparently in this particular case there is
17 adequate information that the subject of false confessions
18 has been studied. It has been the subject of publications
19 and peer review. There are applications of the science of
20 psychology to false confessions has been studied over the
21 course of several years. It has been evaluated through case
22 studies, through controlled laboratory studies. There seems
23 to be a body of information that has generally been accepted
24 by the appropriate councils and -- associations and
25 organizations dedicated to the social science of psychology.

1 They have been presented and accepted in courts in this
2 state, as well as throughout the country.

3 In particular, what I find interesting is the fact
4 that there have been Amicus Briefs that have been submitted
5 to courts by the American Psychological Association. In at
6 least in one other occasion before me, if not several other
7 cases established by the case law, the idea of false
8 confession has been presented in court and has been adopted
9 and accepted by the courts in this particular state.

10 In particular, I look at the case of State v.
11 Cope, in which false confession testimony was, in fact,
12 allowed, and it has been ruled upon by both the Court of
13 Appeals and the Supreme Court.

14 And in my own experience in previous trials
15 involving homicide, particularly homicide by child abuse in
16 the Andrea Person's case, that also involved allegations of
17 false confessions and testimony was allowed in that case.

18 So I find that there is -- it's a consistent
19 method that's been recognized and it's appropriate under the
20 circumstances, and so I will allow the testimony.

21 Having said that, I still think that there are
22 some questions as to the type of information that is
23 presented to the court. And specifically I note that in
24 State v. Cope that the evidence was excluded about specific
25 case studies and -- and so -- and the details of specific

1 case studies. So I think that certainly she can testify as
2 to what false confessions makes up part of that, that subset
3 within the science, and I think she can talk about as a
4 result of the research and the case studies and the
5 controlled laboratory studies that have been done, the
6 factors that can lead to a false confession, but I don't
7 think that she can provide specific examples of what
8 happened in this case here, or that case over here, as to
9 those specifics, if I'm making myself clear.

10 In other words, she can't talk about, for example,
11 in case X, Y, Z, that these were the facts of this case and
12 that this is -- this is what the -- this is what happened
13 and in reviewing we found that these specific factors led to
14 false confessions, in the context of the specific facts of
15 the case.

16 In other words, what's prohibited is a recitation
17 of all those details about specific facts.

18 MR. LUKE SHEALEY: Facts of a criminal case; the
19 murder and how it occurred?

20 THE COURT: Exactly. She can talk -- I mean,
21 certainly she can talk about --

22 MR. LUKE SHEALEY: Sure.

23 THE COURT: -- that in several cases we have found
24 these types of factors exists in false confessions, and
25 discuss what those factors are, and things along those

1 lines.

2 MR. LUKE SHEALEY: And then just for example, you
3 know, I know that -- can she talk about, for instance, Saul
4 Kassin does an experiment where his students, you know, a
5 certain number are told their computer has crashed, and
6 certain of them are, and based on that that, some of them
7 actually thought their computer crashed. You know, that --
8 you are talking about specifics of criminal cases?

9 THE COURT: I'm talking about specifics of
10 criminal cases.

11 MR. LUKE SHEALEY: Okay.

12 THE WITNESS: Could I ask a question just to make
13 sure I don't do anything wrong?

14 THE COURT: Sure.

15 THE WITNESS: But is it okay to say, you know,
16 like there is a study that compiled 125 cases and X
17 percentage of them falsely confessed to murder, or whatever?

18 THE COURT: Yeah, I think that's appropriate.

19 THE WITNESS: Okay.

20 THE COURT: I'm just looking -- I'm just talking
21 about the specific details of a particular case. And,
22 particularly, if those -- involving criminal cases, and
23 particularly if they are cases which involve gory details,
24 or whatever, any details which would really go to do nothing
25 other than inflame the jury. So --

1 MR. LUKE SHEALEY: Yes, ma'am.

2 Do you understand?

3 My I.T. guy is here, so if you could give us a
4 couple moments to figure out why? The stuff was plugged in
5 the wrong hole? That would be probably help.

6 THE COURT: Okay.

7 (Off the record)

8 (Back on the record)

9 MR. GOINGS: I want to be clear in your ruling. I
10 understand there can't be any testimony like "well, we found
11 in case A this defendant was interrogated for ten hours.
12 These are the conditions present and we know him to be a --
13 known it to be a false confession." I mean, that's
14 precluded as well, correct?

15 THE COURT: I think that those are the kinds of
16 examples, yes.

17 MR. GOINGS: Okay.

18 THE COURT: I don't have a problem with the, you
19 know, example of -- you know, as an illustration of -- I
20 don't -- I don't have a problem as an example of an
21 illustration that they talk about, you know, the cheating
22 incident, or they talk about, you know, controlled lab
23 experiments.

24 (Off the record)

25 (Back on the record)

1 The COURT: The 403 analysis, the probative value
2 is outweighed by its prejudicial effect. And given the fact
3 is helpful and relevant to the jury, I don't think that
4 there is prejudice to the State, for that prejudice would
5 outweigh any probative value that it would provide to the
6 jury in being able to analyze whether, in fact, the
7 statements that were made by Mr. Porch during the course of
8 these interrogations would have been falsely made under the
9 circumstances. And so I find that the testimony and the
10 evidence is still admissible.

11 MR. LUKE SHEALEY: All right. Should I have her
12 step down and get this show on the road and call her, or --

13 THE COURT: You can ask the jury to come in.

14 MR. LUKE SHEALEY: I mean, sorry to sound --
15 should I have her come down already, though, to recall her?

16 THE COURT: We will ask you to retake the oath.

17 (The following takes place in the presence of the
18 jury panel)

19 THE BAILIFF: The jury is seated, Your Honor.

20 THE COURT: Ladies and gentlemen, you are about to
21 hear the testimony of a witness that's being called by the
22 defense, even though the State has not concluded its case.
23 And as I indicated to you, it was because of some scheduling
24 issues that we needed to take her testimony at this
25 particular time. So even though her testimony is being

1 considered at this particular point, it is part of the
2 defense in this particular matter.

3 Yes, sir, Mr. Shealey, you may call your witness.

4 MR. LUKE SHEALEY: Thank you, Your Honor.

5 May it please the court.

6 MR. LUKE SHEALEY: Dr. Davis, please tell us a
7 little bit about where you are from, your educational --

8 THE COURT: Before we get to that point, let us
9 swear her.

10 MR. LUKE SHEALEY: Oh, I thought we -- sorry.

11 DR. DEBORAH DAVIS, having been first duly sworn,
12 testified as follows:

13 THE CLERK: Would you state your name for the
14 record, please?

15 THE WITNESS: Deborah Davis.

16 THE COURT: Yes, sir.

17 MR. LUKE SHEALEY: Thank you, judge.

18 DIRECT EXAMINATION BY MR. LUKE SHEALEY:

19 Q. Again, Dr. Davis, tell the jury where you are from and
20 a little bit about your educational background and training
21 and experience.

22 A. Okay. Well, I grew up in Texas.

23 I went to school at the University of Texas, in Austin.
24 I got a B.A. in Psychology there.

25 And then I went to graduate school at the Ohio State

1 University, in Ohio, and I got a Ph.D. in Psychology there,
2 with a Major in what's called Social Psychology and Minor in
3 Statistics and Experimental Psychology.

4 And then after that I spent a couple of years of
5 post-doc at Ohio State before taking my first job at the
6 Southern Illinois University. I stayed there for a couple
7 of years and then taught at Georgia State, in Atlanta, for a
8 year.

9 And then in 1978 I went to the University of Nevada,
10 where I have been since that time. Currently I'm a Full
11 Professor of Psychology there. So that's my current
12 employment.

13 Q. So you come to us from the Nevada today?

14 A. Yes.

15 Q. Reno?

16 A. Yes.

17 Q. Okay. And you are still teaching there at the
18 University of Nevada, in Reno?

19 A. Yes.

20 Q. Okay. Talk to us some about the courses that you have
21 taught that are relevant to interrogations and confessions.

22 A. Okay. Well, I -- for years I taught psychology and
23 law, which has a segment that covers the issue of
24 interrogations and confessions.

25 And then I also covered that in social psychologies

1 and some other classes.

2 Memory on Trial, I cover it because in some cases
3 people can be led to develop false memories that they
4 committed a crime that they didn't.

5 And then social influence is another very relevant
6 area, because interrogation is social influence. It's a
7 highly scripted, highly developed, scientifically-based
8 technique for getting a person to do what you want them to
9 do; in that particular case, to confess. So the principles
10 of social influence are incorporated into interrogation.

11 So those are some of the other things that I taught
12 where interrogation was covered.

13 Q. Dr. Davis, have you ever taught in what we call CLE's,
14 which are continuing legal education courses?

15 A. Yeah, I have taught a number of those.

16 On this slide, the ones that I taught are listed and
17 the ones in yellow are ones that are strictly defense, but
18 included prosecutors, or judges, or both.

19 And so, you know, one of the places that I have taught
20 is the National Judicial College. For example, I'm --
21 actually I'm currently on the faculty of the National
22 Judicial College as well.

23 Q. That was one of my questions. You don't just teach to
24 necessarily defense lawyers, the defense bar, but you also
25 teach it to judges and prosecutors?

1 A. Right.

2 Q. Okay. Have you ever turned down an opportunity to
3 speak to any prosecutorial organization or law enforcement
4 organization?

5 A. No, I have actually taken -- every time I have been
6 invited to speak so far, I have, except once when it
7 conflicted with another one.

8 Q. Okay. Tell us something about your training and
9 teaching experience regarding scientific research methods.

10 A. Well, that is part and parcel of getting a Ph.D.. We
11 are required to take a number of scientific research methods
12 classes and statistics. So I have had right around ten
13 different classes on scientific research methods and about
14 the same number in statistical analysis techniques. And
15 then since that time I have taught those things at the
16 undergraduate and graduate level myself.

17 Q. Okay. Have you ever reviewed articles for journals or
18 any other organizations?

19 A. Yes, I have done that for a number of different kind of
20 organizations where the task is to review whatever you are
21 given, whether it's a book, or it's a journal article that's
22 been submitted, or a grant proposal, and consider whether
23 it's making new contribution to the field, or whether it's
24 written well, whether the research methods that have been
25 done, or that are proposed, if it's a grant proposal, are

1 appropriate and valid, and whether the data analyses are
2 appropriate and valid, and whether the conclusions drawn are
3 appropriate, based on whenever the data was, and then make a
4 recommendation to whether it should be published or funded.

5 Q. Okay. Tell the jury, if you would, about what criteria
6 are looked at when selecting someone to review a journal or
7 a publication.

8 A. Criteria for the reviewers, or for --

9 Q. For the reviewer, yes, ma'am.

10 A. Oh, the reviewer.

11 Typically it's ask somebody who usually is published in
12 the area that the thing that's been submitted, so that they
13 have some reason to think that you are an expert in that
14 area.

15 If it's a book publisher, sometimes it's just if you
16 teach a particular psychology course, they want you to
17 review that book, because, you know, you might want to use
18 it, but basically scientific articles and grant proposals is
19 just based on your expertise in your area.

20 Q. And what role does the actual reviewer play?

21 A. Well, to review those things that I mentioned earlier
22 and make a recommendation for whether it should be published
23 or not and then -- even if maybe it should be revised in
24 certain ways, so you make recommendations about how it
25 should be revised before it's published.

1 Q. Okay. Let me ask you this. Have you ever been on the
2 editorial board for any major journals or publications?

3 A. Yes, I have been on these editorial boards. I have
4 served for five different journals. Currently I'm on one
5 for personal relationships, and the last one a long, long
6 title. So those are the ones that I have been on in the
7 past.

8 Q. Okay. Have you ever served as an ad hoc reviewer for
9 any journals? And, also, if you have, explain what ad hoc
10 means.

11 A. Yes, I have. And what that means is that you are not
12 on the board, which if you are on the board, you have to
13 review a certain numbers of articles a year for that
14 journal. But an ad hoc reviewer, you are not obligated to
15 review for that journal, but they ask you if would be
16 willing to for a particular article that they think that you
17 have some particular expertise as well in.

18 Q. Have you ever done any ad hoc reviews for book
19 publishers?

20 A. Yes, a number of book publishers.

21 And then also the last thing, granting agencies. And
22 the National Science Foundation and the National Institutes
23 of Health are the two major government granting agencies for
24 psychology as a whole in the United States. And the Israel
25 Science Foundation and the Canadian Research Council and

1 Belgium Science Policy are all equivalent granting
2 organizations in their countries, and I have reviewed for
3 those.

4 Q. Okay. And have you ever received any funding to do
5 research, and, if so, who is giving you funding?

6 A. Well, right now I have a grant from the Department of
7 Justice, or under that the FBI, to study interrogation
8 techniques, or try to develop techniques that are not
9 coercive, that will get true information without getting
10 false information.

11 Q. Okay. Have you ever attended any police interrogating
12 training seminars?

13 A. Yes, from two different organizations. John Reid is
14 the main interrogation training organization in America.
15 They claim to have trained over a half a million law
16 enforcement officers at all levels in the United States,
17 including the FBI, the local police, and so on. So I took
18 their basic training and their advanced training.

19 And then Wicklander & Zulawski is basically an offshoot
20 of Reid, but they also do a lot of interrogation training in
21 America, and I took their basic and advanced corporate
22 interrogation training seminars. So --

23 Q. All right. Have you ever published any papers that are
24 relevant to interrogations and confessions?

25 A. Yes, I have published a number of them, starting in

1 about 2004. And since that time published probably I think
2 it's right around twenty of them that have come out, and
3 then a few more that are in press and on their way out
4 sometime this year.

5 Q. All right. Have you ever spoken at any conferences,
6 scientific conferences, about these topics?

7 A. Yes, I have given a number of those presentations on
8 confessions, particularly different conferences across the
9 country --

10 Q. All right.

11 A. -- doing that.

12 Q. Have you ever published anything where interrogation
13 and confessions are covered, but they are not necessarily
14 the main topic?

15 A. Yes, several more of those, I guess.

16 Q. Okay. Have you ever been published regarding social
17 influence and decision making?

18 A. Yeah, these are some that concern that that don't
19 really focus on confessions, but that do concern social
20 influence.

21 Q. All right. Let's talk about your experience in court.
22 Have you ever testified in court before?

23 A. Yes.

24 Q. Have you ever testified to what we call a Daubert Frye
25 Hearing?

1 A. Yes, in a few different states.

2 Q. Okay. How about suppression hearings where evidence
3 was sought to be suppressed?

4 A. Yes.

5 Q. And specifically regarding interrogations and
6 confessions?

7 A. Right, yeah.

8 Q. And have you ever testified in court in the actual
9 trial regarding interrogations and confessions?

10 A. Yes.

11 Q. Those are the states?

12 A. Yes.

13 Q. You know approximately how many times that you have
14 testified to those areas?

15 A. Like all of those things together, or --

16 Q. Like numerically in trial, just for example.

17 How many times have you been qualified as an expert and
18 testified in confessions and interrogation?

19 A. In trials?

20 Q. Yes, ma'am.

21 A. Maybe fifteen, twenty. I'm not sure.

22 Q. Okay.

23 MR. LUKE SHEALEY: Your Honor, at this time I
24 would seek to admit Dr. Davis as an expert, specifically in
25 the field of false confessions and police interrogation

1 tactics.

2 THE COURT: Any voir dire?

3 MR. GOINGS: Nothing from the State, Your Honor.

4 THE COURT: Then I'll find that based upon the
5 testimony of Dr. Davis is qualified as an expert in false
6 confessions and police interrogation tactics.

7 BY MR. LUKE SHEALEY:

8 Q. Dr. Davis, how do we know that false confessions are a
9 problem?

10 A. Well, we have a number of different ways to know that.

11 One way is if there have been a number of individual
12 cases that have been identified over the years where
13 somebody had falsely confessed and then they were later
14 proven in one way or another to be innocent, and these may
15 include just single individuals who falsely confess. There
16 is a number of cases where multiple individuals falsely
17 confessed to the same crime. And then there is also a
18 number of -- a lesser number of cases where different
19 individuals falsely confessed to different crimes, all of
20 which had been committed by a particular one person. So we
21 have a lot of those individual case histories.

22 Then we also have various kinds of studies where there
23 have been compilations of cases or sets of cases identified
24 where people have falsely confessed.

25 The Innocence Project is one that's done that over a

1 long period of time. If they endeavor to free people that
2 they believe have been wrongfully convicted, and at this
3 point I think they have freed somewhere over 300 different
4 people who have been wrongfully convicted, and they keep a
5 record for each one of those cases.

6 What were the kinds of evidence that were presented
7 against the person who was wrongfully convicted? Well, the
8 most frequent form of evidence that's misleading is
9 eyewitness errors that were present in, you know, most of
10 those cases, by far the majority of those cases, but false
11 confessions have played a role in at least 25 percent of
12 those cases, on the average. 16 percent of them falsely
13 confessed themselves and for some of the others, they have
14 pled guilty, or other people falsely confessed and helped to
15 get that person convicted. So that's the second way we
16 know.

17 And then this had been done, not only just by the
18 Innocence Project, but there have been a number of different
19 studies over the years that have tried to collect cases of
20 wrongful conviction and see what percentage of those cases
21 involved a false confession. So the percentage has varied
22 somewhat, but, you know, somewhere between 14 percent.
23 There's one that happened in Illinois that I didn't list
24 here that was over 63 percent, so it varies somewhat,
25 depending on what set of false wrongful convictions you look

1 at, but false confessions have always played a role in
2 wrongful convictions.

3 And --

4 Q. Is it fair to say that they play a prominent role in
5 wrongful convictions?

6 A. Yes, if you look at all the different kinds of
7 misleading evidence that is presented, and, of course, like
8 I said, eyewitness error is the primary one, but you got
9 false confessions in the top four forms of evidence that
10 occur in these cases involving conviction.

11 Q. Was there another way to know?

12 A. Yes, the kinds of compilations I just mentioned were
13 taking a set of wrongfully convicted people and looking at
14 what percent of them have falsely confessed.

15 This other way that's projected up there now, there has
16 been a few attempts to just identify as many false
17 confessions as one can find and then look to see what are
18 they confessing to, and, you know, what are some of the
19 conditions under which their confessions happened.

20 So this example, Dresden and Leo in 2004, they found
21 125 cases of false confessions, and they were proven false
22 in one of four different ways.

23 Some of them were DNA exonerations, where the person's
24 DNA was proven to not be the one of the perpetrator; or
25 their true perpetrator was identified by some mechanism and

1 maybe confessed, or was proven guilty.

2 Some cases it was proven that they couldn't have
3 committed the crime.

4 And then sometimes the crime didn't happen, where
5 somebody turned up alive after they had been the suspect,
6 they falsely confessed.

7 Then they asked what were those crimes that they were
8 falsely confessing to? And what you can see is that these
9 are very serious crimes, that most of those false
10 confessions were to murder, but others to rape, and robbery,
11 and so on. In part this is because, you know, police try to
12 solve those cases more and interrogate more strongly, but it
13 just indicates it's not true that people only false confess
14 to trivial things.

15 They also looked at the average length of
16 interrogation, and, you know, how these -- how long various
17 ones were. You can see that 16 percent were less than six
18 hours; 34 percent, six to twelve hours; and so on. So a lot
19 of them were very long interrogations. Some of them were
20 short interrogations.

21 False confessions have been documented in cases where
22 the interrogation was less than an hour, so it doesn't take
23 a hugely long interrogation, but the longer you interrogate,
24 the more you risk that. Most interrogations are not very
25 long. Some of the studies of looking at just random sample

1 of interrogations, you can see that the average length is
2 two hours. Most of them are done within less than an hour,
3 95 percent within an hour. So it's unusual to have
4 exceedingly long interrogations.

5 Then they also looked at the age of the people
6 involved, and what it illustrates is that you can find false
7 confessions in pretty much any age range. Teenagers are
8 more vulnerable. Really young people are more vulnerable,
9 but there is no limit on who falsely confesses and who
10 doesn't.

11 Q. Have you ever seen a situation where multiple people
12 falsely confess to the same crime?

13 A. Yes, it's actually relatively -- well, it's much more
14 common than you might expect. In this Dresden and Leo study
15 they identified 38 out of their 125 where there were
16 multiple people who falsely confessed to the same crime.

17 It may sound a little strange, but if you realize that
18 those people were all subjected to the same kind of
19 interrogation, if you put a lot of people on the same
20 situation, especially if it's a very powerful situation, a
21 lot of them will do the same thing. And so you see a lot of
22 cases where there are multiple false confessions to the same
23 crime; in part because they are in the same situation, and
24 in part because interrogation techniques play people off
25 against each other effectively. So that's a common thing.

1 And then the last thing that you notice about that
2 study is that of all the people who did falsely confess and
3 their cases went to trial, 81 percent were convicted. So
4 people are not recognizing false confessions very easily
5 when they occur.

6 Q. Is there any other way we know about false confessions?

7 A. Three more ways.

8 Geislinger Johnson, who is a European interrogation
9 scholar, and several people over here have done a number of
10 surveys of various populations, including college students,
11 the general populations of a number of different countries
12 in Europe and in the United States and incarcerated
13 prisoners and they asked these people "have you ever been
14 interrogated? And if you have ever been interrogated, did
15 you ever confess? Did you ever falsely confess?"

16 And some proportion of all of those populations say
17 that "yes, we did falsely confess." This is self-reported
18 data and it doesn't look at anything about the
19 interrogation. But no matter what population you ask, a
20 certain percentage of them are going to say, "yes, I have
21 falsely confessed to the police."

22 So it's not a large percentage, but as I said, it
23 doesn't talk about what happened in the interrogation. It's
24 just "any interrogation did you falsely confess."

25 Q. Is there other ways to know that false confessions do

1 exists?

2 A. Yes, one way -- this is a large scale survey that was
3 done of police officers in various jurisdictions in the
4 United States. And they asked these police officers a lot
5 of questions about how they interrogated and what techniques
6 they used, but one of the questions they asked was, "what
7 percent of the confessions that you get do you think are
8 false?"

9 And police said, you know, on the average said, "I
10 think about five percent." Exactly 4.78 was the average we
11 got across all the different police officers. They said
12 that "roughly five percent of the confessions that I get are
13 false." That's one out of twenty, essentially, that the
14 police believe are false.

15 Q. Let me ask you this. Are there any lab studies that
16 show that people can be led to falsely confess?

17 A. Yes, there is actually a large number of them.

18 At first in the -- in the lab, we falsely accused
19 people of something relatively trivial, such as crashing
20 their computer, to see if we can get them to falsely confess
21 to that.

22 Now, most studies actually, if it's in the lab and you
23 are trying to study false confession, accuse people falsely
24 of active in their cheating, which is something that our
25 most college campuses can get you expelled, or in quite of

1 bit of trouble. And then interrogate them and test to see
2 what kind of tactics will get the highest rate on both true
3 confession to cheating and false confession to cheating.

4 So this is just an example. The computer crash study
5 looking at what percent of people really get to falsely
6 confess, depending on a couple of things. One is if you
7 presented a false witness against them and said "yeah, I saw
8 you do it," what kind of difference does that make?

9 And the other is whether -- how sure they could be of
10 whether they actually did it or not, because they have to go
11 so fast that they might have hit the wrong key to make it
12 crash.

13 But the main thing for now is just to say that you have
14 got more than zero falsely confessing, and one of the
15 conditions, which you can see over here, if they were going
16 so fast, they couldn't be sure what they did and there was a
17 false witness against them, a 100 percent of them falsely
18 and said "yes, I did that."

19 And these other lines are whether they seemed to
20 believe that they actually did it and whether they seemed to
21 develop false memories of it, and all of those things
22 happened in that study.

23 Q. What can you tell us from the study, though?

24 A. Well, basically that you can get false confessions,
25 even in laboratory studies. Like I say, there are better

1 ones where we falsely accuse them of cheating and I'll show
2 some of those later on.

3 And, secondly, that the strength of the evidence that
4 people feel there is against them is one of the main reasons
5 that this happens. And their ability to know and be able to
6 establish their own innocence when that's not very strong,
7 then they are more likely to falsely confess.

8 Q. Has this type of study ever been criticized?

9 A. Sure, yes.

10 Q. Okay.

11 A. For, like I said, meaning that too trivial of an
12 offense. That's why we escalated the accusing them of
13 cheating, that's something that they really would suffer
14 some consequences for.

15 Q. Right.

16 Dr. Davis, can you summarize the issues that you are
17 going to address with us and try to help us understand why
18 false confessions do occur and how can you recognize a false
19 confession?

20 A. Yeah, these are the five issues that covers it.

21 Why does it seem so unlikely that a person would
22 falsely confess, particularly to something very serious,
23 like murder, and why do they do it? Because we do know for
24 sure that people do falsely confess to everything; murdering
25 their own relatives, their own mother, their own children,

1 raping their own children, conspiring to have other people
2 rape their own children. There is no limit to the
3 heinousness of things that people have falsely confessed to.
4 So we know they do it. Why does that happen?

5 How are interrogations designed and conducted and why
6 does that make people falsely confess?

7 What kind of person is most vulnerable to false
8 confession?

9 And some of the rules of thumb to keep in mind when up
10 try to distinguish whether a particular confession was false
11 or not.

12 Q. Okay. So despite knowing that this evidence does
13 occur, can you explain to us, because it's kind of
14 counter-intuitive. Most people, you know, don't understand
15 how this is conceivable. Can you explain this a little bit
16 for us?

17 A. Yeah. You know, we know that it's counter-intuitive.
18 There is a lot of surveys that show that people generally
19 underestimate really the likelihood that something like this
20 could happen. You know, it should be obvious that it's not
21 a good idea to falsely confess, and so why would a person do
22 something that crazy?

23 You know, it seems like, okay, an innocent person has
24 no reason to falsely confess. Why should they? Because
25 they didn't do it. And if they didn't do it, the evidence

1 is certainly not going to prove that they did it. There
2 shouldn't be evidence that they did. And if there is, it
3 shouldn't be very compelling evidence. There should -- you
4 know, a real investigation should show that they are not
5 guilty. So why would a person have any reason at all to
6 falsely confess?

7 And then, secondly, it seems like there is a lot of
8 reason not to, because if you confess, and surely you will
9 be charged with a crime, probably convicted, and then you
10 will be put in jail. You will lose your job, your family.
11 Your reputation will be gone. People will think that you
12 are a murderer, or a child molester, or whatever you falsely
13 confess to. That there is a lot of these terrible
14 consequences that would happen if you were to falsely
15 confess. So it seems to make absolutely no sense for a
16 person to do that.

17 But the thing is that what a person is thinking at the
18 time that they falsely confess is quite different than that.
19 That, you know, what will happen?

20 If you have somebody who is highly trained to use the
21 most powerful weapons of social influence that have been
22 known to man, that have been scientifically developed over
23 many years and tested, the same ones that are used every day
24 to get you to buy a condo you don't want, or a vacuum
25 cleaner you don't want, or a car that's different than the

1 one you want, or a con man to get money out of you, these
2 are all the same principles of influence. They are all put
3 together in a scripted manner so that interrogation
4 technique, every word, every sentence has a particular
5 purpose. It's based on these scientific principals of
6 influence, all of them directed toward one thing.

7 This is from the interrogation manual, and you can see
8 that the interrogators themselves, the police interrogator
9 that developed this technique are saying for a suspect to
10 acknowledge a criminal act involving negative consequences
11 requires that the suspect believe a confession is in his
12 best interest. And it goes from there to tell you how to
13 convince them that it's in their best interest.

14 So at the time a person confesses, whether they confess
15 truly or confess falsely, they are not sitting there
16 thinking "I don't have to do it, because there is no
17 evidence against me and nobody would ever believe I did it.
18 I'm going to get in all this trouble." They are thinking
19 the opposite. They are thinking that there is plenty of
20 evidence that's going to make it look like they did it and
21 that they are not going to be in that much trouble.

22 So the interrogation techniques targets all these
23 things, tries to sweep away the resistance that you would
24 naturally have, based on the fact that you actually didn't
25 do it, and that, you know, you think you are going to get in

1 terrible trouble if you do falsely confess, because you are
2 saying, "why should I confess? I didn't do it," but the
3 interrogation technique could say "well, actually, yes, you
4 did. We have absolutely definitive evidence that you did it
5 and here is what some of it is. And, you know, we have got
6 witnesses against you, or we have got, you know, your
7 fingerprints, or we have got this or that."

8 And even if you are innocent and you know you didn't do
9 it, then maybe you think, "well, somebody made a mistakes
10 and testified against me, or this evidence is misleading,
11 but, wow, it makes me look like I'm totally guilty. I'll
12 never convince anybody that I didn't do this."

13 So "we know you are guilty and this is your chance,
14 your only chance, to tell your side of the story and how and
15 why this happened."

16 And then if they think "but I'm going to be charged
17 with a serious crime."

18 No, not necessarily. Interrogation technique is
19 designed to give you the illusion, and it is an illusion,
20 because it's not a good idea to confess, falsely or truly.
21 If you don't have an explicit end writing deal, but it's
22 designed to give you the illusion that you may not be
23 charged at all, that maybe you will get counseling instead
24 of having to, you know, go to jail; that if you do get
25 charged, you are going to get less serious charges than if

1 you don't confess. And it's very good at doing that. We
2 know it's very highly scripted techniques to make a person
3 believe that they are going to be in less trouble if they
4 confessed.

5 But, you know, "so I'll be convicted and go to jail for
6 a long time."

7 And so if you are convicted, or even if you are
8 charged, or anything else, that everyone is going to look at
9 you better. They are all going to think more highly of you
10 if you admit what you did, tell exactly what happened,
11 rather than leave them -- to leave everyone to assume that
12 it was done however other people are saying it was done; or,
13 assume the worst, tell your story, explain how and why this
14 happened and you are going to look much better. You are
15 going to stand up like a man, take responsibility for what
16 you did. That's going to look much better to everybody than
17 if you just deny it and you look like a liar. And this,
18 again, creates the illusion that it's better to tell a story
19 about how and why this happened than to be called a lying,
20 remorseless criminal that won't take responsibility for
21 anything. And then, you know, while everything -- my
22 reputation is going to be ruined and everybody will think
23 badly of it.

24 Another thing that interrogation is designed to do is
25 to say -- make you describe this, whatever happened, in

1 understandable terms. Make it seem like "yeah, it's
2 perfectly understandable that this happened. That could
3 have happened to anybody. Other people in your situation
4 would have done the same thing. You didn't go there
5 intending to do something terrible. You just got in a
6 situation, things got out of hand. It was an accident."
7 All of these things that make it look like it's not so
8 serious, either legally or personally.

9 So all those things contribute to this illusion that
10 confession really is in your best interests.

11 And then in addition to that, one more thing can happen
12 with innocent people.

13 Q. Let me ask you this, Dr. Davis. Do innocent people
14 actually sometimes worry less than guilty people about the
15 consequence of a confession?

16 A. Yes, they do. They -- this is -- it's been established
17 by talking to a lot of innocent people about what they were
18 thinking when they falsely confessed, as well as some of the
19 things that we possibly get in laboratory studies is that
20 the innocent people think, "you know, it's a pain being
21 here, you know. It's been hours. I'm tired of it. It's
22 not really going to matter if I falsely confess, because as
23 soon as they get out of here and they investigate, they will
24 find out that I didn't do it."

25 So like the cop may say "well, we have this blood and

1 it's going to be your DNA and that's going to get you
2 convicted." An innocent person says that they -- "sweet,
3 they have got DNA. As soon as they test it they will find
4 out it's not mine," so they don't worry about it, or they
5 think their lawyer will straighten it out, and that
6 generally their innocence will be established and the whole
7 thing will go away.

8 Q. Are there any other misunderstandings that most people
9 have that make false confessions seem unlikely?

10 A. Yes. Another one that's actually quite widespread
11 misunderstanding is that something has to be wrong with you
12 for you to falsely confess, typically that you are mentally
13 ill, or that you are retarded, or something like that, that
14 no sane normal person would possibly ever be misled in this
15 this way or think that false confession was a good idea.
16 But the reality is that among all the false confessors who
17 have been identified, the majority of them are normal. They
18 are normal like you and normal mental health.

19 It is true that if you are in an interrogation room and
20 you are retarded or you are mentally ill, you are more
21 vulnerable to false confession, but that doesn't mean that
22 most people who falsely confess are mentally deficient in a
23 way. In fact, you know, it is absolutely not true. The
24 majority of them are normal. And there are some geniuses
25 who have falsely confessed. There is one person in

1 particular whose IQ is higher than Einstein's and he falsely
2 confessed.

3 Q. Any other common misconceptions about it?

4 A. Yes, I think we -- there is this tendency that we have
5 to judge other people based on what we think we would do.
6 We think "I would never do that in that situation. I can
7 hold out, no matter how long it was, because it's so
8 important. I would never do it, and no person in their
9 right mind would do it, and, so, therefore, this person
10 didn't do it."

11 But the thing is that probably none of us have been in
12 this situation and don't know what it's like. You don't
13 really understand the techniques that are used on people or
14 what it's like to be there for hours and hours at a time or
15 be accused of things that you didn't do, and it's very
16 difficult for people to understand and predict how others
17 are going to behave in situations they have never been in
18 themselves. We are good at understanding how people behave
19 in situations we have been in. We are just very bad at it
20 in understanding the things that we have never been in, and
21 particularly when they are very powerful situations.

22 Q. Dr. Davis, tell us a little bit -- let's get right down
23 to the bottom of it, to the root causes. Describe some of
24 the root causes of false confessions.

25 A. Well, of course, the main one is if you interrogate the

1 wrong person. That is the main thing, because you are not
2 going to get a false confession if you got the right guy.

3 But if you look at it from the point of view of the
4 suspect, what are the main reasons that they falsely
5 confess, one of them I heard covered, and that is that they
6 have been led to believe that confession is a good idea, or
7 that have been misled to believe that confession is a good
8 idea.

9 But the second thing that is at least as important,
10 sometimes more important, is this one, that some people
11 falsely confess or truly confess because they just can't
12 stand to be there any longer. They get so stressed out that
13 they will literally say whatever they think it takes to get
14 away. And, you know, that we can understand, believe me, if
15 somebody is being really physically tortured. You
16 understand people will say anything to get out of there.
17 But short of being tortured with, you know, violence, people
18 get very, very distressed by having to sit in the same room
19 for a long period of time. Maybe they go in there when they
20 are already very, very tired or very, very stressed out, or
21 hungry, or something, and then they have to stay there for
22 hours and hours with one or more people right in their face
23 arguing with them and accusing them. It gets very, very
24 aversive and some people just confess to get out of that
25 room. And when people have been interviewed about why they

1 falsely confessed, the most common reasons that they give
2 are, "I did it to get away; I did it to protect someone
3 else; or, I thought he was my friend and he was trying to
4 help me. It was a good idea."

5 Q. Okay.

6 A. But in addition to that, there are some people that are
7 just crazy and do it, because, you know, they are -- they
8 don't know what they are saying. Others might want to be
9 notorious and things like that, but for the normal person
10 these are the three reasons at the top; to get away, because
11 you have been convinced it's a good idea, or to protect
12 somebody else.

13 Q. And the idea to get away or the idea that you be
14 convinced it's a good idea, do those -- are those at odds
15 with each other? Can you explain that?

16 A. No, they actually work -- interrogation technique works
17 on both of these things, that you will see if you read the
18 manual, it talks about anxiety facilitating confessions.
19 The person becomes more and more anxious and makes them more
20 likely to confess.

21 But, another, if you distress somebody sufficiently,
22 that they will want to get away and they might go along with
23 what you are asking them. But at the same time, if people
24 get more and more stressed out, they think less and less
25 clearly and it becomes more easy to convince them of things

1 that don't really make sense when their mind is not working
2 as well. You need your mind to work really well to evaluate
3 what you are being told, to see the flaws in it, to remember
4 all the evidence that might exonerate you, if you are
5 innocent. And when you get more and more stressed, that
6 happens less and less, so it becomes easier to convince a
7 person of something that's not true the stressed out they
8 are.

9 And these are the same things that you deal with in
10 everyday life. You know, you either convince somebody it's
11 a good idea, or make it so obnoxious for them that they will
12 do anything to get you to stop bothering them, or both.

13 Q. So just to reiterate, the idea to escape or something
14 in their good best interests are things that we deal with in
15 everyday life?

16 A. Right.

17 Q. Okay. Is there any evidence that people can be less
18 engaged in extreme behavior as against self-interests, but
19 not just false confessions?

20 A. There is a lot of such evidence. You could talk about
21 it for weeks, but, you know, people are led every day to do
22 things that are against their financial self-interests, but
23 some of the things that are like false confession, in that
24 they seem really insane, is that, you know, cult leaders,
25 for example, you know, get people to give up everything that

1 they own to the cult. Some cult leaders, one of them, for
2 example, got up one morning and told all of his members that
3 all the marriages were dissolved and here is a list of your
4 new partners and those people all went along with it.

5 People have been led to commit suicide by others and by
6 social influence principles.

7 Strip search scam is one where somebody is pretending
8 to be a police officer led a number of people, more than
9 seventy across the United States of managers to strip search
10 one of their employees and, you know, for obviously no good
11 reason.

12 So social influence, and extreme social influence, is
13 just absolutely commonplace.

14 In the laboratory we have even got people to do things
15 that they thought wasn't true, that they thought might be
16 killing another person and left, just because an authority
17 figure told them to do it. So you can get people to do a
18 lot of things.

19 Q. Okay. Talk more about how people sometimes just
20 confess to get away from interrogation.

21 A. All right. Well, interrogation can be and often is a
22 highly stressful situation, and particularly for some kinds
23 of people. I mean, you don't have to be mentally ill or
24 retarded to be sort of vulnerable, that you personally can't
25 stand threats. You know, there are a lot of individual

1 differences in how much people can tolerate before they get
2 stressed out to the point where they can't tolerate any
3 more, and people can often view confession as the only way
4 to get out. I mean, technically they should be able to say
5 "I don't want to talk to you any more," but most people
6 never do that and they stay as long as the police want to
7 talk to them. And the police, as long as they are not
8 satisfied and they keep asking you questions and trying to
9 get them to tell more, they may tentatively "the only way
10 I'm going to get out of here is just tell them whatever they
11 want to hear." And you can see that actually in a number of
12 recordings of interrogations. A suspect might say
13 something, "well, let me just tell you what you want to hear
14 so I can get out of here." And that -- you know, that
15 thinking is not all that uncommon.

16 And in those studies that, you know, I mentioned before
17 we asked people why you falsely confessed, that 40 percent
18 of false confessors and 42 percent of true confessors said
19 "to get away," as they did to get out of the interrogation
20 room are expecting that they are going to be let go
21 completely, because the interrogation was so good, giving
22 the illusion that nothing is going to happen to you.

23 And then also you notice of protecting someone else,
24 one of the most common reasons, and just the peer pressure
25 of the interrogation, so it is a very stressful kind of

1 circumstance.

2 Q. So -- so correct me if I'm wrong, so stress is used,
3 but is there also the persuasive strategy that's used and
4 involved in these tactics?

5 A. Right, essentially what we are talking about, the
6 persuasive strategy is exactly the opposite of the Miranda
7 Warnings that you hear, that everything you say can and will
8 be used against you. The entire rest of the interrogation,
9 everything else the police say is giving you the message
10 that everything you say will work to your benefit. You will
11 be explaining yourself, and, you know, make yourself look
12 better than if you just deny this, and it's going to work to
13 your benefit, but if you continue to lie to us and deny
14 things, it's all going to work against you, that you are
15 going to be thought very badly of, because you are just a
16 liar and won't take responsibility for what you have done.

17 Q. Okay. Talk to the jury a little bit about how the
18 interrogation actually gets conducted.

19 A. Okay. Well, recall this is the goal, to convincing the
20 person that it's in their best interests to confess.

21 The secondary goal, to increase anxiety as much as
22 possible so that you will facilitate being able to convince
23 them that it's a good idea.

24 And as I have mentioned that, you know, people -- the
25 interrogators use these widely applicable, very tested

1 principles of influence, and they acknowledge that they are
2 doing it. You can see that -- this is again from the
3 interrogation manual saying the "interrogator's product is
4 the truth and a successful interrogator sells it in quite
5 the same way that his boys were taught to sell newspapers."
6 These are some of the common techniques of influence taught
7 in all the introductory books. I'll talk about each one of
8 them a little later on, but if you notice liking,
9 consistency, scarcity, reciprocity, social proof or social
10 validation, authority.

11 Here is an interrogation manual. This is just one
12 example. You see that same kind of list and they are
13 teaching that to the interrogators as how to use these
14 principles of influence.

15 So they are all put into practice, and the details are
16 taught in this Reid Nine Step Method of Interrogation. So I
17 mentioned, the John Reid and Associates are the premier
18 interrogation trainers in America and they have this nine
19 step method that was developed in the late twenties and
20 thirties and perfected or honed since then.

21 Q. Could you talk some more about this method that you
22 described?

23 A. Yeah, it takes place in some broad stages.

24 The first stage is called is you set the stage. In any
25 kind of persuasion, if you want to get anybody to do

1 anything, it's most effective if you set the stage in a way
2 that facilitates that persuasion. So what you are trying to
3 do when you set a stage effectively is try as much as
4 possible to sweep away normal sources of resistance that you
5 would encounter in that situation.

6 So in the interrogation situation, you want to
7 undermine tolerance for distress, because to keep from
8 confessing, the person has to be able to tolerate possibly a
9 long interrogation, an obnoxious interrogation, obnoxious
10 interrogators, you know, being tired and everything else,
11 and keep tolerating that as long as it takes without
12 confessing. So if you undermine the stress tolerance, it
13 helps you get a confession.

14 Undermine the idea of a confession is incredibly bad
15 thing to do, like we talked about, like making them able to
16 think less clearly, by making them think that they are not
17 going to be able to convince anybody that they are innocent,
18 because that's a normal source of resistance, and taking
19 away their fear of the consequences and so on.

20 And then another thing, the third thing on there,
21 undermine resistance to the interrogator, because if you
22 have a suspect going into an interrogation, their natural
23 assumption is "this guy is not my friend. He's like an
24 enemy. He wants to get me convicted." And so what the
25 interrogation technique is designed to do is totally turn

1 that around and make the suspect think the interrogator is
2 someone who is very sympathetic to them, likes them, wants
3 to help them, and is trying to give them the advice that's
4 going to get them the best outcome. So instead of all this
5 resistance in someone who thinks they are the enemy, you
6 turn around and make them very open to somebody that they
7 think is their friend and their advocate.

8 Q. So, now, understanding -- I think you explained how
9 people are wanting to do almost anything to get away from a
10 stressful situation, but are there other reasons why
11 stressful interrogation might lead someone to falsely
12 confess?

13 A. Yes. Stress, basically, and all kinds of tiredness and
14 things like that undermine our ability to self-regulate, and
15 self-regulate just means to control ourselves. And in this
16 particular instance, in interrogation, you need to control
17 your emotions, because you can't get really angry and act
18 out. You can't get really afraid. If you do, that might
19 lead you to do something stupid. And if you can't control
20 your emotions, you definitely can't think as clearly.
21 Emotions really do impair rational thinking.

22 And then the third thing, you got to control your
23 behavior. You got to put up with this however long it takes
24 without confessing. So you have to control everything.
25 And, you know, as I said, interrogators do try to undermine

1 that.

2 This is the Supreme Court and Miranda, the case that
3 established our Miranda Rights, says that this is the thrust
4 of police interrogation is to put the defendant in such an
5 emotional state as to impair capacity for rational
6 judgments. So it impairs that and also impairs your impulse
7 control and your ability to suppress your need to do
8 anything to get out of there.

9 So interrogations do this in a couple of ways. One is
10 that people are often interrogated when they are already in
11 a terrible kind of physical and mental state. Maybe that
12 their interrogation starts after they have been up for a
13 day, or right after somebody is dead and they are mostly
14 stressed out. So if they are already in poor physical or
15 emotional condition, it's just that much easier to put them
16 in sufficiently the stressed condition to confess to escape
17 or to not be able to think clearly.

18 And then the interrogation itself is stressful in a lot
19 of ways. You are confined. You are taken away from your
20 sources of social support. The interrogation rooms are by
21 designed uncomfortable. Their manuals say make it
22 uncomfortable; make it wooden chairs; you know, nothing that
23 would make it easy for the suspect.

24 And then the interrogation tactics themselves are
25 very -- you know, you are accusing a person of lying, of

1 being a criminal, and they are very difficult, and people
2 are ashamed and afraid and so on. So it's stressful by
3 design.

4 Q. Okay. Talk about how the stage is set to minimize the
5 suspect's resistance of self-regulation.

6 A. Well, first of all, to human time and place. So you
7 want them at the police station away from any sort of
8 support they may have and in their comfort zone. And, then,
9 of course, away from the attorney.

10 And then interrogate under pretty much any kinds of
11 conditions. You know, you don't wait until the suspect
12 feels good to start an interrogation.

13 Then third, the interrogation manual says you don't
14 want the person to be reminded of the idea that they might
15 go to prison, you know, spend the rest of their life in
16 prison. You want to have the situation that will facilitate
17 this illusion that even if they confess, that nothing that
18 bad is going to happen.

19 So here is some scam from the interrogation manual,
20 minimize reminders of consequences. You are never supposed
21 to let them see pictures of handcuffs, or jails, or
22 anything. Yet, remember that I said that interrogation is
23 highly scripted, write down individual sentences and words.

24 You are not supposed to name this crime. You shouldn't
25 say murder, or sex abuse, or anything lake that. You say

1 "this thing or this situation."

2 And you refer to what you are doing as "straightening
3 this out," or "clearing it up," because those give the
4 illusion it's over, once the interrogation is over.

5 So, you know, keep their mind off the fact that they
6 might go to jail, and always facilitate the illusion that
7 the consequences may be minimal or not.

8 And then -- then you undermine resistance to the
9 interrogator. Interrogators are trained not to be
10 confronted and nasty, like you often see on TV. They are
11 trained to be very sweet and make that person think that
12 they are their best friend. They chat them up before they
13 start the accusatory part of the interrogation. They talk
14 about their families and try to establish how similar they
15 are to the suspect.

16 One of my friends is the master interrogator for the
17 Air Force, and, as he puts it, "I am whoever I have to be.
18 If they have children, I have children. If they like to
19 fish, I like to fish." You know, whatever that suspect
20 tells them, he is like a chameleon who changes himself to
21 establish rapport and similarity and so on with the suspect
22 and make himself likeable, which is one of the best ways to
23 influence somebody and make them like you and they will give
24 you the world.

25 Q. So that works pretty well?

1 A. It works -- it's a -- generally it works really, really
2 well. It's like con men and car salesmen and everybody else
3 do this same kind of thing.

4 So then -- that's one aspect is the friendly and chatty
5 part of it, but set-up question, the first two is something
6 that gives, again, the illusion that there may be not very
7 many consequences. Say something like "now tell me, Jack,
8 what do you think should happen to a person who did this?
9 Should they just go to jail, or do you think maybe there is
10 some circumstances when they should be let go and given a
11 second chance? Maybe go to counseling instead of jail?
12 What do you think?"

13 Why is that said. It's just this sentence or two, but
14 it gives, again, the illusion that maybe jail is not an
15 unavoidable consequence on this, or maybe alternatives, like
16 a traffic cop who can give you a ticket or doesn't give you
17 a ticket. It helps to give this illusion, and also to make
18 you think that the interrogator will have something to say
19 about it.

20 It says the next thing, the sympathetic detective with
21 the time limited offer says -- the detective will say
22 something like, "you know, I think you are really a nice
23 guy. You are not really a, you know, predator or a monster.
24 You're just a regular guy that got caught in a bad
25 situation. I'd really like to help." That's a sympathetic

1 detective, wants to help you, "but I can only do that if you
2 tell me the truth. And basically I can only do it if you
3 tell me the truth right now. Once you leave the
4 interrogation room I can't help you any more." So the
5 sympathetic detective with the time limited offer.

6 Then he says "I'm not here -- "I don't need a
7 confession, you know, basically. We have everything we
8 need. We know you did it. We have all this evidence. We
9 are not here to establish whether you did it. We are here
10 to find out why this happened and what kind of person you
11 are. Sometimes that's more important to know."

12 And all these things go into creating this illusion
13 that the detective likes him, wants to help him, can help
14 him, but it's only going to do that if the confession occurs
15 right now in this time frame.

16 Q. Okay. And you said that's an effective strategy,
17 right?

18 A. Sorry?

19 Q. You said that's an effective strategy, right?

20 A. Very effective. I mean, you know, there is lots
21 written about the likability principle, books written about
22 it, you know, how effective it is to make somebody like you
23 before you try to persuade them of anything, so much so that
24 one of our most famous influence experts calls "liking your
25 friendly thief."

1 Q. Okay. Well, what's the next way that they set the
2 stage?

3 A. Okay. Establish authority. The authority principle is
4 one of the main principles of influence, that we are more
5 affected by, more persuaded by those that we think are
6 authorities. Either they are in charge or they have
7 reason -- they -- you think they know more than the average
8 person about something. And, again, this is from the
9 interrogation manual, relying on the authority principle,
10 they realize that too.

11 Here the interrogator needs to establish the idea in
12 the suspect's mind that the interrogator has some control
13 over what happens to the suspect, much like the traffic cop,
14 as I mentioned. That interrogator, you want them to have
15 the illusion that the interrogator has some influence over
16 what charges are filed, or whether charges are filed.
17 Typically -- I actually don't know about South Carolina, but
18 in my state they don't. If somebody confesses, it's up to
19 the DA at that point, but you give the illusion, you cast
20 the interrogation is basically no negotiation between the
21 suspect and the interrogator that's going to help determine
22 what charges, if any, are filed.

23 And some of this I mentioned already. I mentioned that
24 what the setup question is about giving them that maybe
25 there is a way to get out of it.

1 The sympathetic detective with the time-limited offer
2 as part of establishing authority, making -- if you say "I
3 would like to help you," it implies that you can help the
4 person. All right. So you are not going to say if --
5 explicitly you should not say "I will help you get a better
6 outcome." You just say "I would like to help you, but I
7 can't do it, unless you tell the truth." All of that
8 implies that you can help, that you have some kind of
9 authority.

10 It's also, you know, making yourself likable and plays
11 a lot of principles of persuasion; "I would like to help
12 you," but there is a reciprocity principle that says if you
13 help somebody else, then they are going to feel pressure
14 that they need to do something to help you back. And so "if
15 I'm trying to help you, then you need to help me by telling
16 me what I want to know," some things like that. And, again,
17 these are fundamental principles of influence.

18 The deadline technique or the scarcity principle refers
19 to the fact that if we think that we can only get something
20 in a time-limited frame, we are more likely to go for it.
21 That's why sales, one-day sales and time-limited offers of
22 all kinds work, because it focuses the person's attention on
23 not losing that opportunity, rather than whether they would
24 want that opportunity, instead of other things that they
25 could be doing and saving their money on. So the scarcity

1 principle, as you can see down there at the bottom,
2 something that the interrogators are aware of and use as the
3 time-limited offer.

4 And it works. Research has shown that when the
5 sympathetic detective tactic is used in an interrogation,
6 that it leads people to believe that that detective actually
7 does like that suspect more, that they actually do want to
8 help them more, and that the detective really isn't
9 convinced that the person is guilty and they're less likely
10 they want to just see them get convicted. So it's very
11 effective in conveying the messages that the interrogators
12 wanted to convey that this person actually is a benevolent
13 allie, instead of somebody who is trying to trick you into
14 getting yourself incarcerated for the rest of your life.

15 Q. Does this sympathetic detective approach have both the
16 positive and a negative aspect?

17 A. Yes, and typically it does this, you know, that it has
18 implied or specific threats about what will happen if you
19 don't take advantage of this. And you see this kind of
20 language; "you have got to tell your side of the story
21 before it's too late." And it's not really too late,
22 because, you know, of course, the person leaves the
23 interrogation room, their lawyer can help them tell their
24 side of the story, or they can tell it in court, but
25 constantly detectives are saying that "nobody is going to

1 care any more once you leave here. We are just going to go
2 with what we got. Whatever the evidence seems to tell us or
3 whatever people are telling us, and nobody is going to be
4 interested in hearing what you have to say any more."

5 So, you know, this whole interrogation is, and the idea
6 of confession is a way to help yourself out by telling your
7 side of the story, instead of hurting yourself by ensuring
8 your conviction.

9 Q. Do the police ever go against their own self-interests?

10 A. Yes. You don't want that -- I mean, naturally if
11 people are resistant to you, if they think that you are
12 trying to convince -- if they think you are trying to
13 convince them of something for your interests instead of
14 theirs. So like if we are at a car salesman's place, if
15 it's a Toyota dealer and the salesman is telling us
16 everything that's wonderful about a Toyota, we are
17 suspicious, because it's in that salesman's own
18 self-interests to convince us that that Toyota is great.

19 But the same thing, if the detective -- if the suspect
20 thinks that a detective just wants a confession for his own
21 reason, etcetera, he's going to be more resistant. So the
22 detective says, "you know, I'm not here to find out whether
23 you did it. We know you did it. We got enough to convict
24 you already. We are here to give you a chance to explain
25 yourself, to put your side of the story on the table. I

1 don't need to be here. I can go home and be with my wife or
2 my children. And if you don't cooperate, then I will go
3 home and, you know, just turn over to the DA." So it's this
4 threat that, you know, "I'm going to help you. I'm here to
5 help you, but if you don't cooperate, then I'll just turn
6 you over to someone else and go home."

7 Q. This is based on common social influence strategy?

8 A. Yes. Again, reciprocity. "I'm here. I'm spending my
9 time that I don't have to to try to help you," so that puts
10 the pressure on doing what he wants.

11 Q. And --

12 THE COURT: Mr. Shealey, before you go on, I think
13 this would be a good time to take a lunch break.

14 I'm going to remind you of the instructions,
15 ladies and gentlemen, I have given to you; that is, you
16 should not begin to discuss this matter among yourselves, as
17 you still have not heard all the evidence.

18 Our lunch has arrived for you. We are going to
19 take a break. We are going to take about a half hour break
20 for lunch. Once you have finished lunch, if you would like
21 to go and take a walk outside and get some fresh air, please
22 let the bailiffs know and we will accommodate you in that
23 regard.

24 So I ask that you retire to the jury room at this
25 time.

1 (The following takes place outside the presence of
2 the jury panel)

3 THE COURT: Dr. Davis, at this time we are going
4 to take a lunch break for about thirty minutes. You may
5 step down from the witness stand.

6 You have not concluded your testimony, so it would
7 be inappropriate for you to discuss it with anyone,
8 including the attorneys in this matter during this break.

9 And then, of course, once we finish with the lunch
10 break, then we will resume your testimony at that particular
11 time.

12 MR. LUKE SHEALEY: Your Honor, may I talk to her
13 only to discuss the possibility of changing her flight,
14 since she might be missing her flight?

15 THE COURT: Yes, and only for that purpose.

16 MR. LUKE SHEALEY: Thank you.

17 (Whereupon, proceedings were recessed)

18 (Whereupon, proceedings were reconvened)

19 THE COURT: Is there anything that we need to take
20 up before we bring the jury in?

21 MR. LUKE SHEALEY: I don't believe so.

22 MR. GOINGS: No, sir, nothing from the State, Your
23 Honor.

24 THE COURT: Let me ask the jury to come in,
25 please.

1 THE BAILIFF: Yes, ma'am.

2 (The following takes place in the presence of the
3 jury panel)

4 THE BAILIFF: The jury is seated, Your Honor.

5 THE COURT: You may continue.

6 MR. LUKE SHEALEY: Thank you, Your Honor.

7 May it please the court?

8 BY MR. LUKE SHEALEY:

9 Q. Dr. Davis, you have been going over some of the tactics
10 and techniques used inside the interrogation room. I want
11 to pick up with that again.

12 Can you tell us some of the things that an interrogator
13 will do to make a suspect believe there is no hope that they
14 will be believed about innocence?

15 A. Okay. Well, this is step one of the nine step method
16 that I mentioned. The Reid Nine Step Method is the method
17 taught in America.

18 So step one is called positive confrontation. I always
19 call it a board maneuver because I'm a Treky, but the idea
20 that resistance is futile. And step one you confront the
21 person very competently with the idea that "we know you did
22 it. There is no doubt about it." And then you may mention
23 various forms of evidence that you have that the person did
24 do it. There is no restriction on whether that has to be
25 the truth or not, so the police may tell the person about

1 some real evidence there is against them, or may simply
2 pretend that there is evidence that there isn't. And, you
3 know, it may be any number of different things. It may be
4 an eyewitness that they don't really have, or one that they
5 do. They may just imply evidence. There are any reason we
6 are going to find your fingerprints at the scene, or we
7 would have found your fingerprints at the scene.

8 So this is talked about the -- you know, give the
9 person the idea that there is so much evidence that may be
10 misleading, but, nevertheless, it looks so incriminating
11 that there is no way that they are ever going to be able to
12 convince anyone that they are innocent.

13 Police don't deliberately, of course, interrogate
14 anybody who is innocent. They believe that the person is
15 guilty. So, you know, they are not really trying to mislead
16 an innocent person into thinking this, but if they happen to
17 have an innocent person, then they, you know, lie about
18 evidence. For example, lying about evidence is one of the
19 main things that has caused false confessions in the past,
20 because it makes the person feel very, very hopeless.

21 Q. Okay. So this strategy is specifically in these
22 interrogation manuals?

23 A. Oh, yeah, absolutely.

24 Q. Okay.

25 A. And, you know, it starts with step one, and then

1 throughout the interrogation your -- the interrogator is
2 instructed to never give the person the slightest hint of
3 any hope that you are going to believe anything they say
4 about their innocence. That if they bring up arguments, you
5 have to refute those arguments.

6 They specifically say don't even let them get a claim
7 of innocence out of their mouth, if you can. Just interrupt
8 them, and, you know, talk over them with claims about guilt.
9 But if they do get it out of their mouth, then you have to
10 refute it and bring up more evidence of guilt, so -- but the
11 intent is don't let them have any hope whatsoever that
12 anyone is going to believe they didn't do this.

13 Q. Okay. Can you talk some more about the effects of
14 these confrontational types of behaviors have on a suspect?

15 A. Yeah. Well, as I just flipped through the little
16 summary that they publish with their manual. But, anyway,
17 as I said, the intent is to make them feel hopeless, that,
18 you know, whether they -- if they did do it, you know, that
19 hopeless that anyone will find them -- believe them
20 innocent, but for an innocent person, you know, if you
21 confront them with enough of this and they can become
22 hopeless too and think that "even if I didn't do it, it
23 looks so bad for me, that nobody is ever going to believe
24 me."

25 But the intent is to shift the person's attention from

1 trying to convince anybody they are innocent to how to
2 minimize the consequences of being found guilty. So instead
3 of having their mind on, you know, "well, I didn't do this,
4 I'm going to convince them that I didn't and everything will
5 be fine," you say "no, that's not going to happen" and make
6 them start thinking about "geeze, you know, it's clear that
7 people are going to think I did it, whether I did or didn't,
8 so I better think about how to get in the least trouble over
9 it," and that's -- that's what this is intended to do.

10 Then the rest of the interrogation techniques are
11 designed to convince the person that the way to get in the
12 least trouble is through confessing and telling their side
13 of the story.

14 So it's a very effective thing. We know that this --
15 if you want to predict who is going to confess and who is
16 not going to confess, you could predict that based, in part,
17 on knowing how strong they feel like the evidence looks
18 against them; that the more strong they think the evidence
19 looks to be against them, the more likely they are going to
20 confess. And there is field studies showing that with real
21 police interrogations and real suspects.

22 There is also laboratory studies showing that if you,
23 you know, test to see what the effect of the apparent
24 strength of evidence is, that the more strong the evidence
25 is, the more confessions you get. I showed you this graph

1 earlier that shows that, but we have a lot of other studies
2 showing the same thing now, that for innocent people you
3 present what they think to be strong evidence against them
4 and it makes them more likely to falsely confess, just like
5 it makes guilty people more likely to truly confess.

6 Q. Okay. So tell the jury what kind of false evidence is
7 likely to be presented to a suspect who is being
8 interrogated.

9 A. It depends, of course, on the type of crime that is at
10 issue. A common one is claims that other people are
11 testifying against them. So, you know, they may say
12 "everybody is pointing their finger at you. We have X
13 number of witnesses." They may be real witnesses. If there
14 aren't, they may say there are anyway, or show them things
15 that look like somebody has identified them when they
16 haven't.

17 Witnesses also can be wrong, you know, so it might not
18 necessarily be false evidence. This might be incorrect
19 evidence.

20 Fingerprints are a second one that they talk about a
21 lot. And, of course, a person's fingerprints can be at the
22 crime scene, even if they didn't do the crime for various
23 reasons.

24 Claims that cold perpetrators or someone else that
25 might have been involved in it is going to implicate them.

1 That's one of the reasons you get a number of multiple false
2 confessions to the same crime is if they played the
3 different suspects off against each other telling the other
4 ones, each one, that the other ones are saying they did it.
5 So that's another one.

6 Polygraph results. Sometimes the police say that you
7 failed the polygraph, and you didn't, and that's, you know,
8 used against you. "Well, you failed the polygraph. Of
9 course, you did this," and you may not even realize that you
10 did it, but the polygraph doesn't lie." And, in fact, you
11 know, you may or may not even be telling them what the
12 polygraph said.

13 And so that's just some of the kinds of evidence, but,
14 you know, throughout the interrogation, no matter what the
15 suspect says, you have to either re-confront them with the
16 same kind of evidence, or come up with other kinds of things
17 and arguments against the idea that they could possibly be
18 innocent.

19 Q. Does this positive confrontation, does it stop with the
20 first step, or does it continue?

21 A. No, it never stops until the interrogation is over. As
22 long as the -- as long as the suspect is claiming at all
23 that they are innocent, then you keep up with that.

24 Q. All right. What's the effect of this confrontation and
25 presentation of evidence that they allegedly have on the

1 suspect?

2 A. Well, the one that is intended to create the most is
3 the sense of hopelessness, but it's also very stressful.
4 You know, when somebody across the period of however how
5 long the interrogation is, which could be hours or days,
6 constantly accuses you of lying and doesn't believe anything
7 that you say, that's a very stressful situation. And then,
8 you know, so it can convince people that they probably would
9 be convicted, no matter what, and, as I said, shift their
10 attention to "okay, how am I going to get the least serious
11 consequences of this," instead of, "how am I going to get
12 out of it completely."

13 Q. Talk to us about some of basically the pretext that are
14 used for continuing the investigation or interrogation.

15 A. This is something that the interrogators manual says,
16 well, if you convince a suspect that you have all the
17 evidence that you ever would need to convict them, then that
18 suspect might naturally wonder, well, what are we still
19 doing here? Why do you need to question me any more, if you
20 got everything that you need. And so, in fact, you don't.
21 That's why you are there. So you have to convince them that
22 there is a good reason that you are still there.

23 These are some examples from the interrogation manual
24 itself about the kind of things you are supposed to say, but
25 basically it boils down to, "you know, we know you did it.

1 We got all the evidence we need, and we have already told
2 them about it. We are not here to find out whether you did
3 it not. We are here to find out why you did it and what
4 kind of person you are. That's important to know."

5 And, again, that's part of giving the illusion that the
6 kind of explanation that the suspect might give for why did
7 this happened, etcetera, is very important to know, because
8 it might affect what you are charged with or whether you are
9 charged. It's kind of like, again, if the traffic cop was
10 going to let you go, or if he's going to give you a ticket.
11 So --

12 But notice here, it says that "the reason why somebody
13 did something is often much more important than what he
14 did," not true, but gives that illusion that telling your
15 story about why it happened can help you out. "And there is
16 no doubt that you did this. What I need to establish with
17 you right now is what kind of person you are," because,
18 again, the illusion that that can matter, instead of just
19 the facts of what you did. So that is the pretext.

20 And once you do that, then you start trying to get them
21 to tell their story about why it happened. Well, of course,
22 the why it happened implies that it did, you know.

23 Q. Okay. Explain a little bit about how these tactics
24 will help push the message that the person will actually
25 benefit from the confession.

1 A. Okay. Well, there is two components. One is that
2 confessing is not going to hurt you; and, two, is that it's
3 going to help you.

4 So there is -- step two of the Reid Method is called
5 theme development. And during the theme development, that's
6 meant to tell a version of the crime that won't seem as
7 serious or maybe not even seem like a crime at all. So it's
8 designed to give the person the illusion that even if you
9 did do this, the reason that it happened and the way it
10 happened would suggests it is not a big deal. And, in fact,
11 you see language that's no big deal throughout
12 interrogations all the time. So the theme development is a
13 way of helping the subject tell their story, but it starts
14 out with the interrogator suggesting ways that they think
15 that it happened.

16 So the point of it, according to the manual, that you
17 want to help the person make it easier for them to admit
18 that they did it by coming up with an explanation that would
19 save face and not make it so humiliating for them and not
20 make them think they are going to be in so much trouble. So
21 you are supposed to develop a story that plays on what
22 people's natural justifications would be for that kind of
23 behavior that would make it seem not so serious. This is,
24 again, you know, like I said step two.

25 And essentially you might say something like, "you

1 know, this isn't something -- clearly it's something that
2 you didn't intend. You know, you just went over there and
3 you are thinking you are going to have a good time. You
4 didn't intend to get into any trouble, and then things
5 happened. They got out of hand. And maybe another person
6 started something and provoked you. And then, you know, you
7 had to defend yourself, or it was an accident," things like
8 that, all to make it seem like it's not as serious.

9 So if you mentioned self-defense, for example, it
10 sounds like it's not a crime at all. If you mentioned
11 accident, it sounds like it's not nearly as serious as if
12 you deliberately tried to do something bad.

13 So the problem is that it does give people the illusion
14 that they are going to be in not so much trouble if they
15 admit to such a version of the crime, and the interrogator
16 will say "well, I think this is why it's happened" and try
17 to get them to admit to that what we call minimized version
18 that doesn't sound so serious. And then they go from there
19 to build and build and make that what they admit to more and
20 more serious over time. So --

21 Q. That's the problem with that strategy?

22 A. Yeah, the problem is that it does convey essentially
23 the idea that you are not going to be in that much trouble;
24 a promise of leniency implied rather than explicitly stated.

25 Q. Okay. Describe some of these main types of themes.

1 A. Well, they actually -- interrogators have whole books
2 with different themes that you can try, or scenarios is
3 another way to put it; here is a scenario that explains how
4 and why this happened. You know, as I said, there is whole
5 books of themes that you are suggested for different kind of
6 crimes. They are organized by what the crime is, and so you
7 have different themes that are suggested for murder, versus
8 child molesting, versus theft, or arson, or -- you know,
9 every single crime.

10 But there are some common kinds of elements to that.
11 One is this. "You know, what you did is not so -- stranger,
12 it's not so difficult to understand. Lots of people would
13 do the same thing in that situation and have done the same
14 thing in that situation." And, you know, the interrogator
15 may say they have done something similar before, or have
16 friends that did, that minimize the moral seriousness by the
17 interrogator saying, "you know, I had somebody in here just
18 last week. Now, that person was truly a monster, or truly a
19 predator, or molester, but, you know, you're not a monster,
20 and you're not a predator. You are just a person who got in
21 a bad situation. What you did is nothing compared to that
22 situation." So by contrast it makes it look like the
23 suspect's behavior is not that serious.

24 And then suggesting a different kind of motive, like
25 these -- this list is often -- it makes it sound like you

1 had a good reason for it. You know, either it was and
2 accident; or, if you stole something, it was because "I
3 think you did this because you had to feed your kids. You
4 couldn't let your kids go hungry," instead of, "you are not
5 one of those people that just goes out and steals money
6 because you are greedy. You know, you had to do it to
7 support your family," or, "you were drunk and you didn't
8 really know what you were doing," etcetera. So it's some
9 version of it that minimizes the person's responsibility for
10 the act in question or how bad it was.

11 The common one, for example, sexual assault; "you were
12 asleep and you didn't realize that it was the kid. You
13 thought it was your wife, and you were touching them, and as
14 soon as you realized it wasn't your wife, you quit." So
15 that's an intentional version of that crime.

16 A murder case, self-defense comes up a lot, or "the
17 other guy started it" comes up a lot.

18 Then another thing they use in contrast, try to say
19 "well, if it wasn't this minimized version, it had to be a
20 worse version." So statutory rape is, you know, having sex
21 with somebody under age. The interrogator may say, "well,
22 you know, this person is claiming that, you know, you did
23 that, you forced her," and, you know, maybe you raised that
24 specter of forcible rape versus just a statutory rape to
25 scare them into admitting to the statutory rape.

1 And then blaming others is a very common theme. You
2 know, I mentioned that somewhat in the self-defense motive,
3 but, you know, blame the victim.

4 If it's a lot of sexual crimes, there is whole sections
5 of themes that are oriented toward trying to blame the
6 victim to make the suspect think, "well, they didn't do
7 anything wrong, it was the other person's fault," stuff like
8 that, find someone else to blame besides and suspect
9 themselves.

10 You know, self-defense; "these other guys started it"
11 theme from a murder case.

12 And then if you think that the person is a totally
13 unemotional, or, you know, psychopathic type that doesn't
14 respond to plays on guilt or their emotions, then they
15 suggests ways of dealing with that primarily that focus on
16 evidence pretty much on the kind of continual confrontation
17 idea and suggesting unintentional kinds of noncriminal
18 sounding things so they will just conclude they won't be in
19 as much trouble as they probably really will.

20 And, you know, like I mentioned, these things are
21 highly developed testing things that are published in
22 interrogation manuals with the theme for it pretty much any
23 occasion.

24 Q. Okay. Do we also have evidence of why a suspect might
25 falsely confess?

1 A. Why they might falsely confess?

2 Q. Uh-huh.

3 A. You mean related to themes, or what?

4 Q. Yes.

5 A. Yeah. Essentially it's because they conclude that
6 based on these themes it makes it sound like they are not
7 going to get in trouble, and that part of it is lowering the
8 perceived costs.

9 So, remember, I said the things that would stop you in
10 the first place are "I didn't do it. There is no need to
11 falsely confess, there is no evidence; and, "a lot of bad
12 things will happen to me if I do falsely confess."

13 The theme development helps take away that idea that
14 these bad things are going to happen if you confess, because
15 it makes it sound like what you are confessing to is not all
16 that bad.

17 Q. Have there been any studies on these themes?

18 A. There is actually a number of studies on it and how
19 they work.

20 This is just one example of the study from using the
21 cheating method that I mentioned to you earlier where
22 students are falsely accused of cheating. And here they had
23 people that actually did have some that did cheat and then
24 some that didn't cheat and they are falsely accused. And
25 they tested the effectiveness of this minimization, you

1 know, kind of theme versus explicitly telling somebody "if
2 you confess, then, you know, just sign this paper and then
3 this will be over with and nothing will happen to you." And
4 what you can see is that if you make an explicit like deal
5 like that, it ups the rate of true confession. And it also
6 ups the rate of false confession here. But if you just give
7 them that theme, here it almost doubles the rate of true
8 confession and triples the rate of false confession. If you
9 do both, it increases the rate of confession even more. But
10 that's a simple theme in that case carried out in a couple
11 of sentences tripled the rate of false confession. So
12 that's just one kind of evidence.

13 We have other studies in the lab, but also the accounts
14 of real life false confessors, they thought they were going
15 to be let go. I mean, you know, sometimes I have seen them
16 burst into tears because "I thought you were trying to help
17 me. I thought you said it was no big deal. Why am I going
18 to jail?" Because after hearing these kind ever minimizing
19 themes and the words "it's no big deal; I can understand
20 that; we can work with that," etcetera, they have no idea
21 that they are still in trouble.

22 Q. Okay. Other than the theme development, what else do
23 police use to help influence the suspect's account of what
24 happened?

25 A. Well, one of the things you have to understand is that

1 interrogation is completely suggestive by nature, because it
2 starts out -- I mean, you are not supposed to let the
3 suspect talk very much at all until they are ready to
4 confess. So right after positive confrontation, where you
5 tell them about all the evidence you have against them, the
6 first thing that you do is tell them how you think it
7 happened or you tell them one of these scenarios. You know,
8 remember, "I don't think you're a monster. I don't think
9 you intended this. You just got in a bad situation. I
10 think it happened this way. Is that right?" And you do
11 that because you know it's going to be easier to first get
12 them to admit to something that doesn't seem very serious.

13 After that happens, if when it gets to the point where
14 the subjects say, "okay, you know, this happened," and
15 basically agrees with whatever the interrogator has
16 suggested, then the interrogator might go away for a minute
17 or something and come back and say, "well, you know, the
18 evidence just doesn't quite line up with that. You know, it
19 looks like, let's say, you did know, or you had a fight
20 after all and, you know, maybe it happened a little
21 differently," and then they suggests another version.

22 But the interrogator will continue to suggests more and
23 more serious versions to try to get the suspect to agree to
24 until they get it close to what they think actually
25 happened, but it never starts out with what they really

1 think happened. It's the process they use to first break
2 down the person's resistance, get them to admit to
3 something, and then build from there to the most serious
4 thing that they actually think happened.

5 So direct suggestion is one thing using leading
6 questions, arguing with people. And you can say "well, we
7 know it didn't happen that way," and then maybe you showed
8 them pictures of the crime scene and say, "look, you know,
9 here, we have got this here, and whatever the crime scene
10 shows, you must have done this."

11 And so, you know, the person -- really the suspect is
12 on the receiving end of a huge amount of information about
13 what the detective thinks probably happened before they give
14 their final story. And, you know, the detective, until he
15 gets to that final story that he believes is true, is going
16 to argue with your version, interrupt you, present evidence
17 against whatever you are saying, selectively praise when you
18 start to tell him things he thinks are true, and call you a
19 liar and then interrupt you when he thinks you are telling
20 him things that are not true, and so on. So all of that --

21 It's like, you know, if you continually get slapped
22 every time you say something, in effect, although not
23 physically, you might start to change your story and change
24 your story until you don't get slapped any more.

25 Q. So in addition to the minimization theme that you have

1 been talking about, do interrogators also communicate other
2 ways that the person might not be charged?

3 A. Yeah. They will imply this kind of thing, or state it
4 directly, and this is an example where they are trying to
5 get this guy, the defendant, to confess. He said -- the
6 defendant said, "but, you know, if you fight your case, nay
7 even be free, maybe, but maybe not. If you didn't do
8 anything wrong, you were just in the wrong place at the
9 wrong time, what is it you going to fight? There is nothing
10 there. And my innocence."

11 And he says "well, innocence from what? Being at the
12 wrong place at the wrong time? You know, etcetera.

13 So it's basically saying "fighting with someone who's
14 fighting with you is not a crime," and on like that. "So
15 that if you don't talk, you are just going to make people
16 more suspicious of you," and that's the common method that's
17 communicated, is that refusal to talk or refusal -- well,
18 especially if you refuse to talk at all, or you demand a
19 lawyer, or something like that, then that's going to make
20 people suspicious of you, because what have you got to hide,
21 so that's one way to do it.

22 The alternative question is a highly scripted way of
23 doing things, and again, you have whole manuals full of
24 alternative questions. And what this means is that when a
25 contrast of very serious version is something with a less

1 serious version and say "which is true?" And notice that
2 that binds the person to agreeing that they did something,
3 but it's a question of what. So here is an example from the
4 Reid manual is talking, it's the alternative questioning
5 used in a murder case. It says "you went over to her
6 apartment with the intention of just talking to her about
7 the marriage, separation, and money settlement, like normal
8 human beings, but she probably started an argument with you
9 and she got so mad and unreasonable that she eventually
10 backed you up to the kitchen table. Now, if you were backed
11 up to the kitchen table and she was raising complete hell
12 with you and your hand rested on a knife and you used it
13 without thinking," which implies less than first degree --

14 MR. GOINGS: Your Honor --

15 A. -- murder.

16 MR. GOINGS: Can we approach?

17 THE COURT: Yes.

18 (Whereupon, the lawyers approached the bench for
19 an off-the-record discussion)

20 BY MR. LUKE SHEALEY:

21 Q. Dr. Davis, let's pick up for a second and talk about if
22 you can explain how this progression might rely on common
23 influence techniques. Talk about that, if you wouldn't
24 mind.

25 A. So, this -- you mean the progression from the first

1 story right on through?

2 Q. Yes, ma'am.

3 A. Well, the commitment principle in psychology refers to
4 the fact that once you start down a path, it's easier to
5 keep going down that path and it's harder to turn around and
6 go the other way. So once you made an admission at all, it
7 becomes more likely that you will make the next admission.
8 And that's what actually we call the Foot in the Door
9 Technique, that if you can get somebody to agree to anything
10 the first time, they are more likely to agree to the next
11 request from the same person, and so on.

12 So, you know, getting them -- inducing them by using
13 theme development and then the alternative question to
14 contrast the more serious with the less serious version, you
15 get to them -- helps to get them to admit to the less
16 serious version, because you have contrasted it, something
17 way more serious, because it doesn't look so bad. They
18 admit to that and now and it makes it easier for you to
19 shake them up to make them admit to something more and more
20 serious as you go on.

21 It's also a variation of the Low Ball Technique,
22 which -- for example, a car sales, or some kind of sales,
23 they advertise something that looks like an incredibly good
24 deal, or they get you to sit down at the table telling you
25 you are going to get the car for a certain amount. Then

1 they talk to their manager and say "well, my manager won't
2 agree to that, but for \$300 more we might agree to it." So
3 you agreed to one thing that was not seemed like it's going
4 to cost you as much, and then all of the sudden it does.
5 But if you can get people to agree to that first thing, they
6 are more likely to agree to that higher price than if you
7 just started with that higher price, and that's the
8 principle here.

9 Q. And how do we know that these strategies are effective?
10 Is there any scientific literature?

11 A. Lots of it where, you know, you test these influence
12 techniques. I mean, it's -- again, it's one of the commonly
13 recognized techniques, but it's been tested in all kinds of
14 settings. We are trying to get people to do different kinds
15 of things, whether it's, you know, agree to things to buy,
16 or it's agree to things to do, such as putting political
17 signs in your front yard, and etcetera. I mean, there is so
18 many way it's been tested.

19 Q. Would you characterize interrogation as highly
20 suggestive?

21 A. Yes. Fundamentally, as I mentioned, the interrogator
22 tells you essentially what he thinks happened, tries to get
23 you to agree to it and then shakes it up some more from
24 there, so yes.

25 Q. Okay. Is there any evidence that suggestiveness in

1 these types of questions can elicit a false answer?

2 A. Yes. In the broader psychology we've studied this
3 whole issue of suggestion a great deal. Partly it's been
4 studied a great deal is just so that we can find ways to ask
5 people things that are not suggestive that are likely to get
6 correct answers, but in the laboratory we can get people to
7 agree to all kinds of things that are false, and in the
8 field as well, and sometimes really amazing things that you
9 can get them to agree to false things about their
10 autobiography, as well as all kinds of things; their
11 attitudes, etcetera.

12 Q. Is being suggestive necessarily obvious?

13 A. No, not at all. This is some data from an incredibly
14 famous study that one of the earliest ones on suggestion and
15 questioning witnesses. It just looked at the difference in
16 one word out of a sentence. So they have people look at a
17 scene of a crash, an automobile crash, and then afterwards
18 ask them how fast were the cars going when they X'd into
19 each other, and they use the words smashed, hit, or
20 contacted, and you can see that you get different speed
21 estimates, depending on that word. You know, if you say
22 contacted 30 miles an hour, 31 miles an hour. If you say
23 smashed, 40 miles an hour.

24 And then, furthermore, if you do that, it tends to
25 affect people's memory. So, for example, here -- it doesn't

1 have every word here, but if you ask how fast they were
2 going when they hit one another, and then one week later you
3 ask if they saw any broken glass, 14 percent of them say
4 "yes, I saw broken glass," and there was none, so that's a
5 false memory.

6 But if you ask them "how fast were they going when they
7 smashed into each other", a week later 32 percent of them
8 say they saw broken glass.

9 So that one word not only shapes the answer that you
10 get at the time, but it's also shaping your memory that you
11 have later, because the words imply what was likely to have
12 been the case.

13 But even less than that, this is a study where you see
14 a scene of a car driving in the countryside and in reality
15 you saw either a stop sign or a yield sign. Half of the
16 people saw it as a stop sign, the other half as a yield
17 sign. But later if you ask them -- let's say they actually
18 saw a yield sign, but you said "did you see the stop sign?"
19 More of them will say yes. Then if you say "did you see a
20 stop sign," because asking them "did you see the stop sign"
21 implies that the stop sign was definitely there. Asking
22 them "did you see a stop sign" implies it may or may not
23 have been there, and you get significantly different
24 responses, just based on "the" versus "a". So it doesn't
25 take much to be suggestive and to alter the kind of

1 information you get back from someone.

2 Q. Are there any known procedures that help you avoid
3 eliciting a false response?

4 A. Yes, there are a lot of them. And interrogation,
5 simply the basically the opposite, partly because the
6 interrogator's goal is to persuade a person to say a
7 particular thing; in this case to admit that they did it and
8 provide a full account of it.

9 An interviewer's goal, too, is trained to avoid
10 suggestion. It's just to find out what the truth is without
11 influencing themselves in any way.

12 So providing suggestion, you know, when you say "I
13 think this is the way it happened," or you say, "isn't it
14 true that this is what happened," that's a leading question.
15 "Other people are telling us this," which is providing
16 suggestive information.

17 An interviewer that's trained to avoid suggestion will
18 not do any of those things. He will just say "what
19 happened? Can you tell me what happened," not, "I think
20 this is what happened; other people told me this is what
21 happened; this is what the evidence says." None of that.
22 You just elicit their account without saying anything that
23 would give them an idea about what you think is the correct
24 answer.

25 So -- and the other thing is you don't want to signal

1 what you think, either nonverbally, or any other ways. You
2 don't want to smile at them when they give you one kind of
3 account and frown at them or call them names or a liar when
4 they give you a different kind of account.

5 So you don't want to give -- if you want to get
6 completely unbiased account, you don't give any hint of what
7 you think, and certainly don't use leading questions,
8 because as I showed you, just a little detail in the way
9 that you word things can make a difference in the answers
10 that you get.

11 So you also don't demand to be told certain things if
12 you are trying to be as unbiased as possible, or threaten
13 anybody, or promise them anything, or imply good or bad
14 outcomes based on what they say.

15 And then you don't selectively punish things or
16 selectively reward certain kinds of information. If you
17 wanted to get the best account without being suggestive, you
18 just try to behave in a usual encouraging manner, no matter
19 what. So, you know, don't selectively apply these kinds of
20 reinforcers based on what you hear.

21 Now, of course, it's not realistic to interrogate a
22 reluctant person with these totally un-biasing ways of doing
23 things. You know, when you have a very reluctant target, it
24 implies that you have to behave differently, but the problem
25 is if you use these techniques that are very suggestive on

1 somebody, even if they are innocent, you can still end up
2 shaking their account, so you can get a completely false
3 account, or you can just get a lot of incorrect details.

4 Q. Do interrogation tactics also communicate threats?

5 A. Yes. They are not supposed to do it. You are not
6 supposed to explicitly say "if you don't confess, you are
7 going to get the death penalty," or, "if you don't confess,
8 you are going to go to jail for much longer." It's -- the
9 interrogation techniques are designed to imply such things,
10 rather than directly say them. So -- but, you know,
11 sometimes people cross the line and they don't do what they
12 were supposed to.

13 But generally threats that are communicated in
14 interrogation are basically "I'm not going to help you any
15 more if you don't tell me the truth. If you don't tell the
16 truth, people are going to think really badly of you and
17 they are going to think you are just remorsefulness and
18 heartless and a monster and a predator," and etcetera. "And
19 if you don't stand up and take responsibility and admit that
20 you are sorry," etcetera, so they tend to be very general
21 referring to the kinds of reactions that you are going to
22 get out of the judge or the jury, you know, based on, you
23 know, whether you admit or continue to deny.

24 There are various examples in here, but that's what
25 they are all about, that, you know, you are -- "people are

1 going to think better of you," and, therefore, the
2 implication being not charge you with something as serious
3 or convict you or sentence as harshly; or, "I'm not going to
4 help you. I'm going to go home, you know. Since I'm going
5 to leave, I'm going to call the detectives and tell them I'm
6 done and they will just go with what they have got. You
7 know, I can't help somebody if they are not being completely
8 honest, and I can't do it if you are lying to me," etcetera.
9 So those are the kinds of threats that you can --

10 Q. All right. Let's about the final principle of
11 influence, persistence. Explain to the jury how that works.

12 A. Just nagging somebody is another -- one way to put it.
13 You know, you nag them until they give in and do what you
14 want, essentially.

15 So, you know, police will interrogate as long as the
16 suspect will let them, or up until the suspect makes an
17 admission, and they may, you know, take turns. When they
18 get tired, send another detective in there, but keep it up,
19 because they know that, you know, a longer a person is in
20 there, the more likely they are to give in.

21 Q. All right. Dr. Davis, just explain kind of in summary
22 how these methods combined with each other to help evidence
23 of how someone might falsely confess.

24 A. It's just simple things that we have already talked
25 about, to create or capitalize on the kind of distress and

1 fatigue and so on that the suspect can feel.

2 And then, you know, when they are compromised and their
3 ability to endure this and think clearly is compromised by
4 the interrogation, then you use all these tactics that we
5 have discussed to try to convince them that confession is
6 the best option that they have, given that they have been so
7 strongly implicated in the crime.

8 Q. Here is a question I have. Are some people more
9 vulnerable than others to falsely confess?

10 A. Yes, they are. To understand who is going to be
11 vulnerable, you think about who is -- what do you need to
12 not confess? And, you know, that's kind of a no brainer.
13 You need the ability to resist and the motivation to resist.

14 So, one, you just need endurance. You need endurance
15 that will allow you to put up with whatever is brought to
16 bear by the interrogator until they give up or they believe
17 you, but you put up with it indefinitely and don't confess.
18 So you need a lot of self-control and endurance.

19 And then, secondly, if you resist what their message
20 is, that confession is a good idea, you have to know a lot
21 of things that would tell you, no, there is no way that
22 that's a good idea.

23 You need to remember those things on the spot, like you
24 may remember all the evidence that might prove you innocent,
25 and remember your rights and remember what your rights are

1 for. And, you know, you need to take in everything that
2 they are telling you and be able to analyze that and think
3 is that true or not true, based on everything that you
4 already know, that you are able to dredge out a memory and
5 think about in the moment and use that to make an
6 intelligent decision about whether to confess or not.

7 So you got to focus on the goal of not confessing and
8 maintaining your long-term outcomes in the best way and
9 avoid being drawn into what they are doing, because
10 interrogators are taught to command your attention and they
11 get physically close to you, don't let you quit looking at
12 them. They talk over you and make sure that you are paying
13 attention to them. That's a lot of their training is
14 command the suspect's attention. Don't let them think about
15 anything else or do anything else. And so if you are really
16 going to resist, you got to actually think about something
17 other than what that detective is telling you, because they
18 are not telling you correct information. So a lot of
19 cognitive resources are needed.

20 And, you know, I mentioned some of this. You also --
21 to use your cognitive resources, you need to be able to
22 control your emotions, because emotions will mess up your
23 rational thinking.

24 And legally, specifically, it would help you to know
25 more about what your rights really are and what the real

1 consequences of confession might be. Most people don't know
2 that and so they don't really have what they need to know to
3 tell them that they are being lied to.

4 And also you need motivation to resist. And the
5 tireder you get and the more stressed out you get, the less
6 you have motivation to do anything, except get out of there.
7 And part of motivation to resist is you have to think,
8 "well, there is something else that I could do instead. I
9 could resist this, because I don't have to do this. There
10 is these other options," but you have to be able to think of
11 those options and recognize them as real in the moment in
12 order to be motivated while you are in that interrogation
13 room.

14 So some of the things that undermine this is not
15 knowing what you need to know about the legal system,
16 impaired cognitive abilities in the moment, and impaired
17 emotion regulation in the moment, and self-control, and so
18 on.

19 Lacking self-confidence that you have, what it takes to
20 resist to establish your innocence, and so on. And then
21 just misunderstanding impairs your need to resist.

22 Some people are also very highly affected by social
23 concerns. One of the reasons why retarded people are
24 vulnerable, because they have learned to go along to get
25 along, and so highly conflict avoidant. But other people

1 can also be highly conflict avoidant, too. They can't stand
2 having to disagree with somebody or argue with them or
3 resist them, and so they might defer just because they can't
4 stand the argument. So those are some of the things that
5 you need in your corner to help you resist.

6 So who doesn't have it? Well, there are some of the
7 things that we know that statistically makes people more
8 vulnerable. You know, younger people, people with problems
9 of intelligence or mental illness, but one of the things
10 that you can see in the second column over there are
11 difficult life histories. There is more and more studies
12 coming to light in the last, I don't know, ten years, but
13 especially a lot of them in the last five years showing that
14 people that have had difficult life histories are more prone
15 to falsely confess. And that means things like living with
16 alcoholic parents, living with separated parents, living
17 with abusive parents, having been molested or physically
18 abused as a kid. You know, experiencing juvenile
19 delinquency, being verbally abused, living in foster care.
20 Various things like that where you don't have a coherent
21 stable home environment as a child, so that makes you more
22 vulnerable.

23 Then aside from what's true of you all the time, there
24 is things that are true of you some of the time. So if you
25 are particularly fatigued or sleep deprived when you go into

1 an interrogation, that's bad, and particularly the longer
2 the interrogation lasts, the worst those kind of things get
3 and the more impairs your ability to resist becomes. So
4 anything that's compromises your physical condition makes it
5 more difficult to tolerate the distress and avoid confessing
6 to get away.

7 And then also things that include some mental distress
8 also make it less likely to resist or be able to resist more
9 stress intolerance. And so, you know, if you are already
10 distressed before you go in, it's easier to stress someone
11 out enough to make them falsely confess, or to re-confess.

12 Q. Dr. Davis, let's talk about the confession itself. Are
13 false confessions difficult to recognize?

14 A. Well, they are. If you recall, I told you about one
15 study earlier that showed that among people who were known
16 to have falsely confessed, those whose cases went to trial,
17 in that particular earlier study, 81 percent of them were
18 convicted anyway. Another study before that 73 percent of
19 them were convicted. The majority of false confessors who
20 go to trial are convicted.

21 And if you include those that pled guilty among the --
22 except that we all know falsely confessed, then those
23 numbers go up to 78 and 85 percent that are either falsely
24 pleading guilty or being convicted. So it is difficult to
25 recognize false confessions when you see them.

1 Q. Does that have anything to do with our general
2 difficulty distinguishing the truth from lies?

3 A. In part it does, because people believe that they can
4 watch somebody and telling the story and tell whether it's
5 the truth or not. And scientific research has shown us that
6 we are just not as good at it as we think we are, but just
7 watching somebody, that we do around 50/50, that we might as
8 well flip a coin and say yes, they are telling the truth,
9 or, no, they are not.

10 And as it, you know, indicated, here there was Paul
11 Egman, who has spent his career studying deception, he's the
12 scientist that the show Lie To Me was based on. He tested
13 3,000 people and found 15 of them that can do as well as 85
14 percent accuracy in distinguishing between who is telling
15 the truth and who is not. So it's actually it's a much more
16 difficult task just from looking. And one of the reasons is
17 that we use the wrong cues.

18 In this table, it's looking at -- this is vocal
19 indicators of deception, and so this is what's actually the
20 truth. Same means that there is no differenced between
21 truth tellers and lie tellers on this thing over here. It
22 is in this column. And more means that the liars are doing
23 it more. And less means the liars are doing it less.

24 You can see -- now, this is what is really the facts.
25 This is what people believe. When you do wide surveys of

1 what people believe indicates deception. Now, notice that
2 the ones there in red are the only two out of this list
3 where what's actually the case and what people believe about
4 how that relates to deception or the same thing. In every
5 other case they disagreed. The real case is the same, but
6 people think more, you know. Or the real case is more, but
7 people don't believe that that reflects anything about
8 lying.

9 And then here we have visual ones. You have got the
10 same thing. You have a list of things here that we know how
11 they relate to deception, but only two of them are things
12 where what's really the case is the same thing that what
13 people believe to be the case. The rest of them people are
14 believing the wrong thing.

15 And here is the one with verbal cues. And, again, you
16 see the minority of them in which people are correctly aware
17 of what indicates deception and what doesn't.

18 So, I mean, the import of this is that when we try to
19 decide who we think is lying, we use the wrong cues,
20 generally. That's why we don't do better than 50/50.

21 Q. All right. Is there any specific research on ability
22 to distinguish a true from a false confession?

23 A. Yeah, there is a few studies on that, and this is just
24 an example here, one that Saul Kassin did where he had
25 either trained police investigators, students that had been

1 trained with the Reid Method for lie detection, or students
2 that hadn't been trained at all. And this is, you know, how
3 well people do. And you can see that whereas the students
4 that are not trained actually do better than the trained
5 students or the police investigators than -- the police
6 investigators are more competent than even the trained or
7 the untrained students. So this kind of training impairs
8 accuracy.

9 If you look at can you detect true and false
10 confessions, per say, this is another study where you got
11 students versus investigators. And now we have three ways
12 of doing it. One, where you just have the videotape without
13 the audiotape; or you have the audiotape without the
14 videotape; or you have both. Okay. So video, audio, or
15 both. For students, the video, audio, or both for
16 investigators, and you look at how well people are doing in
17 deciding whether that confession was true or false and you
18 see, again, not too different than chance, or 50/50, but the
19 investigators are doing worse than the students. So
20 investigators with videotapes are about 11 percent less good
21 than the students; for audio tapes, about 10 percent; and
22 for both, again, about -- now about five percent. But the
23 investigators are more competent.

24 But either way people are not doing well at being able
25 to detect whether a confession is true or false. That's

1 just listening to the person confess. This is not talking
2 about along with all the other evidence or anything, but
3 just looking at it, you know, there is this study and a few
4 more now that say that people are not distinguishing well
5 between true and false confessions.

6 Q. Okay. Let me ask you this. Do confessions tend to be
7 very persuasive for the people who are trying to actually
8 assess them?

9 A. They do, yes. One reflection of that, of course, is
10 the fact that false confessors get convicted so much of the
11 time, but also it's a deliberate strategy that a lot of
12 interrogation training concerns how to take the confession
13 to make it very persuasive. I mean, the intent is to make
14 that confession just so compelling that people will not be
15 able to even contemplate that it might be false. And part
16 of what you do is by what the content of what you are get in
17 that confession. And so the interrogators are trained to
18 make sure that as much as possible that the conversations
19 includes things that make it a very coherent story. So it
20 means a coherent, believable story line. Remember, they say
21 "we are here to find out why this happened, or what kind of
22 person you are," so you got to tell a story that includes
23 motives and explanations, and, you know, everything about
24 why it happened and how it happened. You want it to include
25 things that are incriminating in the sense that it appears

1 that there is no other that person could have known that
2 information if they didn't do it.

3 And that very often you see the interrogators try to
4 get them to apologize. Why? Not because they think that
5 the victim needs to hear the apology, but because they think
6 if the person apologizes, then the judge and the jury and
7 everybody else knows "well, of course, they did it. Why
8 would they be apologizing, if they didn't do it."

9 And then, you know, to say "we didn't coerce you, did
10 we? We didn't offer you anything, or, you know, threaten
11 you in any way, did we," so that it will seem that it was
12 totally voluntary.

13 Q. Tell me what makes the confession so persuasive. It's
14 not necessarily a deliberate strategy, is it?

15 A. No.

16 Q. By police?

17 A. Yeah.

18 Q. Well --

19 A. I mean, as I said, this is in the interrogation manual.
20 It's how to make it look.

21 There are many other things in there. Like they say
22 have a woman in a room when you are taking a confession,
23 because that makes it less likely that he will think you are
24 beating the suspect.

25 If you have them write it down, you know, or if you

1 write it down, make errors so they will have to correct it
2 in their own handwriting, and, you know, things like that.

3 So, yeah, it is a very deliberate strategy. They are
4 trained how to get the confession, what to get in there so
5 that it will appear unassailable evidence of guilt.

6 Q. Can you talk about what misleading specialized
7 knowledge is?

8 A. Yeah. That is the stuff that I referred to where it's
9 get them to say things that they should not know if they
10 didn't do it, and preferably things that the police didn't
11 know. The best thing would be if you get them to say
12 something in their confession that will lead the police to
13 new evidence. That's particularly desirable, because it
14 makes them seem very guilty.

15 The problem is that a lot of things end up in
16 confessions that look like they would not possibly have been
17 able to know that if they didn't do it, that had they gotten
18 from another place. So the reason you call it misleading
19 specialized knowledge is because it makes it look like they
20 had to have been there and to be able to know that, whereas
21 they may have gotten it. As for an example, the police may
22 have said to them well, so and so told us this; or, they may
23 show them the crime scene photographs, so they know what the
24 murder weapon is or where the wounds are on the victim or
25 something.

1 They may hear it in the news before they are
2 interrogated, especially if it's a long time between the
3 crime and when this person is interrogated.

4 They may have been to the crime scene before. So, you
5 know, maybe someone you know gets murdered and you have been
6 to their house many times, so you know where everything is,
7 but not because you were doing that crime, but just because
8 you have been there many times.

9 And also there are cases of known false confessions
10 that put things in their confession, partly because based on
11 the things that the police say that do say to them, they
12 guess something accurately and then it gets in their
13 confession.

14 So you have to be very careful when you look and think
15 about is this a true confession or a false confession, to
16 look to see if there is what seems like incriminating
17 knowledge. Is there somewhere else they could have learned
18 that besides if they were the perpetrator, or could they
19 only really and truly have found out from being the
20 perpetrator.

21 Q. All right. Talk to us a little bit about assessing the
22 authenticity of a confession.

23 A. Okay. So keeping in mind that a lot of the things that
24 are in a confession are in there by strategy, that one of
25 the things that you want to do is compare the details of

1 what the suspect says to the actual facts of the crime.

2 And a lot of times if a person didn't do something and
3 they really don't know what they are talking about, when
4 they start telling the story they are going to make mistakes
5 that don't fit the evidence. So that's likely to be true,
6 unless they have been fed a tremendous amount of information
7 or have exposure to it in other ways. And then you have to
8 ask that question that I just mentioned to you, where could
9 they have learned this information.

10 It's not necessarily true that just because there is
11 all this information in there that appears like they
12 couldn't know it, that means that they are really guilty.
13 For most of the people who have been exonerated, there is a
14 study of people who have been exonerated and that have
15 falsely confessed. Every one of them had that kind of
16 misleading specialized knowledge in their confessions.
17 Every one of them. But why did they have it there? You
18 know, because it was -- they got shown photographs of the
19 crime scene. Sometimes they were taken to the crime scene.
20 They were told things during the course of their
21 interrogation. So you have to be very careful to find out
22 where that knowledge came from, and then, you know, just try
23 to fit it altogether with the evidence and say does this
24 make sense.

25 Q. All right. Thank you, Dr. Davis. Please answer any

1 questions that Mr. Goings may have for you.

2 MR. GOINGS: If it please the court?

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION BY MR. GOINGS:

5 Q. Good afternoon, Dr. Davis. How are you?

6 A. Okay. How are you?

7 Q. I'm doing pretty good.

8 And that was pretty lengthy, but I only have a very few
9 questions for you, okay?

10 You testified at the beginning, I believe, that you
11 have testified in between fifteen or twenty trials, is that
12 correct?

13 A. Something like that.

14 Q. And what was the basis of your testimony? Just on
15 false confessions, or police interrogation techniques, or
16 other things?

17 A. Oh, just that.

18 Q. Okay. Have you ever testified as a defense expert on
19 other issues, such as -- I believe you said you have done
20 papers on witness identification as well?

21 A. Yes.

22 Q. Have you ever testified for defense counsel in any
23 trials within the United States based on that?

24 A. Yes.

25 Q. How many times?

1 A. This is a guess, but that probably closer to fifty
2 times.

3 Q. Okay. Fifty times for that, and maybe twenty times as
4 a defense expert in investigative techniques and false
5 confessions?

6 A. Right.

7 Q. All right. Any other time that you have testified as a
8 defense expert on any other issues?

9 A. Either once or twice.

10 Q. So you have approximately testified maybe seventy times
11 for defense as a defense expert, correct?

12 A. Something like that.

13 Q. Correct?

14 A. Something like that.

15 Q. Okay. And how many times have you testified for the
16 prosecution?

17 A. I have consulted with prosecutors, but I haven't
18 testified for them.

19 Q. Okay. And now these seventy times that you have
20 testified as a defense expert, whether it be for problems
21 with witness identification, or your testimony on false
22 confessions here today, you said those were trial
23 testimonies, correct, or was that including here?

24 A. With the witness -- eyewitness testimony, that is
25 pretty much everything, because there are not usually that

1 many hearings. There might have been one or two hearings on
2 top of that for eyewitness stuff. For confessions, there
3 are some type of hearings, suppression hearings, and so on
4 where I don't end up testifying before the jury.

5 Q. Can you approximate how many of those there were?

6 A. Ten, or less.

7 Q. But none of them for the prosecution?

8 A. Not with the testimony.

9 Q. And obviously you were paid for your attendance here
10 today, correct?

11 A. I will be, I hope.

12 Q. Okay. You hope.

13 How much do you charge per hour for your testimony?

14 A. 250 an hour, or 2,500 a day on site.

15 Q. So that is \$250 an hour, or \$2,500 a day on site?

16 A. Well, 250 an hour for preparation. Once I'm on site,
17 2,500 a day.

18 Q. Okay. Okay. Let me backtrack.

19 So you get -- obviously when the defense counsel
20 contacts you, you like the look at the case, correct?

21 A. I look at the case?

22 Q. Do you review -- I mean, you said that you get \$250 for
23 out-of-court review. What is that about?

24 A. Yeah, it's reviewing any documents that people send me
25 and then talking to them --

1 Q. Okay.

2 A. -- in advance.

3 Q. And then as -- today, coming here from Nevada down to
4 Columbia to testify before this jury, you are getting paid
5 \$2,500? Is that --

6 A. For today?

7 Q. Yes.

8 A. Yeah.

9 Q. All right. And you didn't have to pay for your flights
10 or anything, did you? I mean, that's all covered, right?

11 A. Yes.

12 Q. Okay. Your hotel is covered and your meals are
13 covered, or I'm assuming your meals may be in the \$2,500 a
14 day?

15 A. I haven't even charged for my meals, but the hotel,
16 yeah.

17 Q. And these seventy plus times that you have testified
18 for defense on whether it be the fifteen or twenty on false
19 confession cases, or the fifty that you testified on
20 problems with witness identification, all for the defense,
21 and you were paid for that testimony in probably each one,
22 right?

23 A. Not every one of them, no.

24 Q. The majority?

25 A. The majority, yes.

1 Q. So you make a good living off of testifying for the
2 defense as a defense expert?

3 A. Well, I mean, I make some extra money that way for
4 sure.

5 Q. \$2,500 a day is a lot.

6 A. Well, yeah, but it depends how many days you do that,
7 though.

8 Q. Okay. Now -- and I got just a couple more questions
9 and then I'm done.

10 It's not your testimony here today that the
11 interrogation techniques that you described in your Power
12 Point presentation, that they are not -- that they always
13 produce a false confession, is it?

14 A. No.

15 Q. All right. As a matter of fact, let's talk about the
16 number of confessions in general. Wouldn't you agree that a
17 large amount of prosecutions involved some type of
18 confession?

19 A. That's presented as evidence you mean?

20 Q. Yes.

21 A. Yes.

22 Q. Or used to make -- or for a person to plead guilty.
23 That means -- most criminal cases, and correct me if I'm
24 wrong, and if you don't agree, you don't degree, involve a
25 confession of some sort?

1 A. There is some data that say at least, you know,
2 confessions are relied upon a great deal for successful
3 prosecution, and people have different estimates about what
4 percentage of people confess when they are interrogated and
5 all of that, so --

6 Q. When we are still talking about --

7 A. A lot of people, yes.

8 Q. We are talking about a large number of cases that in
9 every state of the United States, correct? I mean --

10 A. That have involved a confession?

11 Q. Yeah.

12 A. Yes.

13 Q. Okay. And I believe you put up some Power Point slides
14 that --

15 Let me say -- let me ask you this. You are not here
16 testifying that the majority of those confessions were
17 false?

18 A. The majority of what confessions?

19 Q. Of the confessions in general are false.

20 A. No.

21 Q. Okay. And specifically, I mean, you testified about
22 the Reid Strategy and Technique, correct?

23 A. Right.

24 Q. You are not here testifying that every time the Reid
25 Strategy or Technique is used that the confession is false?

1 A. No.

2 Q. And, in fact, you are not even testifying that the
3 majority of the time, based on your research, that the Reid
4 Strategy or Techniques are used that the confession is
5 false?

6 A. It really depends on the percentage of people that are
7 interrogated that are guilty versus the percent that are
8 innocent to start with.

9 Q. And I believe your first slide showed that of the known
10 wrongful convictions that y'all have looked at, and I have
11 forgotten the number, it's been so long ago, that only in 16
12 percent of those cases did the person falsely confess?

13 A. Only 16 percent?

14 Q. Yes.

15 A. Well --

16 Q. I mean, it's still not the majority of the wrongful
17 convictions that you found, isn't it? 16 percent is not the
18 majority, is it?

19 A. No, but that doesn't include pleading guilty falsely as
20 well. So, yeah, but, you know, still that's about one and a
21 half out of the every ten people.

22 Q. Still not the majority?

23 A. No.

24 Q. Now, you also testified that -- and, again, I missed
25 your slide, but the age of the defendant and whether his

1 mental incapacities could affect or make them more
2 vulnerable to possible false confessions, is that correct?

3 A. The young teenagers are more vulnerable, and people
4 with low IQ's or mental illness, yes.

5 Q. And I tried to do some quick math on those ones that
6 you cited. It looked like -- I don't know what the total
7 was 125, but if the individual was under 25, that accounted
8 for more than half of the false confession cases that y'all
9 found in y'all's studies, didn't it?

10 A. Well, in that particular study, yes. That doesn't mean
11 that that's all that's out there, but there were able to
12 locate.

13 Q. That was the study that you put before this jury?

14 A. But the other half were older, so --

15 Q. Well, I said more than half. Isn't it more than half
16 were younger than aged 25?

17 A. Well, we can go back and look to be sure, because --

18 Q. That's at the very beginning.

19 A. I know it's way back there.

20 Q. So if you had two, five to seven, twenty-two --

21 A. It's easier to add up the ones over 25 or 30.

22 Q. You are correct, 40 -- 42, correct?

23 A. What are we doing now?

24 Q. Over the age of -- over the age of 25, 42 out of the
25 ones that y'all cited involved false confessions?

1 A. It was 37 percent. Roughly a little bit more than a
2 third.

3 Q. Okay. So the majority, like I said in my question,
4 were younger than the age of 25, correct?

5 A. In the study, yeah.

6 Q. And that's not including any numbers -- well, you don't
7 have any statistics up there about the number of individuals
8 in this study that suffered from some mental incapacity that
9 would make them more vulnerable, do you?

10 A. Right, but remember, I did have statistics that say the
11 majority of false confessions are normal.

12 Q. In this study that you are showing this graphic for --
13 but you also testified -- strike that question.

14 You just testified that that is a factor that could
15 lead to false confessions, is it not?

16 A. Right, if you look at all the people that are suspects,
17 right, then the young and the mentally ill are -- compared
18 to what percentage of them are out there, that there is a
19 higher percentage among false confessions than you would
20 expect, just based on how much of the population they
21 represent.

22 But if you look at all the false confessions, there is
23 still the minority of false confessions.

24 Q. Does the statistics used in this or the study here
25 indicate at any point in time how many of these individuals

1 suffered from mental incapacity?

2 A. Not the ones that are on this slide, no.

3 Q. And --

4 MR. GOING: I beg the court's indulgence.

5 (Off the record)

6 (Back on the record)

7 BY MR. GOINGS:

8 Q. And I didn't see anything up there, and if I did, I
9 missed it and I apologize, but you have actually written
10 papers on how to -- or recommendations to law enforcement on
11 how to cut down on the possibility of a false confession,
12 correct?

13 A. Yes.

14 Q. And, in fact, one of the papers that I read, and I
15 don't know -- I think you either wrote it in 2006, or 2009,
16 I can't remember, the first thing that you suggests to cut
17 down on supposed false confessions was to only interrogate
18 those the police had probable cause for, correct?

19 A. Well, that's a widespread recommendation among
20 interrogation scholars, yeah.

21 Q. So you are not denying writing that article? I mean,
22 you will agree with that principle, don't you?

23 A. Sure, yeah.

24 Q. So if the person has probable cause, a false confession
25 would be less -- I'm trying to think of the word.

1 It would be less possible to get a false confession
2 from someone the police had actual probable cause on,
3 correct?

4 A. Well, let's say the best way to not get a false
5 confession is to not interrogate an innocent person. So the
6 more evidence you have that they are guilty before you
7 interrogate them, the less likely you would have an innocent
8 person in the interrogation room.

9 Q. And the less likely you would have for a false
10 confession?

11 A. If you get one, yeah.

12 Q. Okay. And I believe you even went further to testify
13 in your direct examination at the very beginning that
14 wrongful confessions don't happen when you got the right
15 guy, is that correct?

16 A. Well, fully false confession -- you can get a lot of
17 false details and stuff like that, but just saying that they
18 did it is not likely to be false. If there are the right
19 guy, by definition it's not false, but it doesn't mean you
20 can't get a lot of false details about how or why or by what
21 mechanism, etcetera.

22 MR. GOINGS: Beg the court's indulgence.

23 (Off the record)

24 (Back on the record)

25 MR. GOINGS: No further questions, Your Honor.

1 MR. LUKE SHEALEY: Brief redirect?

2 THE COURT: Yes, sir.

3 REDIRECT EXAMINATION BY MR. SHEALEY:

4 Q. Dr. Davis, just a couple quick points.

5 Mr. Goings is talking a little bit about how much you
6 testified for defense versus how much you have testified for
7 the prosecution.

8 Now, you did -- when we qualified you, you talked about
9 how you taught at law enforcement seminars, correct?

10 A. Yes.

11 Q. And you have, in fact, a grant for \$175,000 from the
12 FBI, right?

13 A. Right.

14 Q. And that's the Federal Bureau of Investigation, right?

15 A. Yes.

16 Q. Okay. That's law enforcement, right?

17 A. Yes.

18 Q. Now, he talked about how much money you are making
19 today. You haven't gotten any money from me yet, have you?

20 A. It's kind of scary that you'd bring it up in that way,
21 but no.

22 Q. Okay. But your main job is to be a professor in Nevada
23 at the Reno campus, correct?

24 A. Yes.

25 Q. Okay. And you mentioned --

1 And, again, as to why you haven't been asked to come to
2 South Carolina to perhaps testify for a prosecutor, is it
3 because most prosecutors don't want you coming to court and
4 saying that their defendant has falsely confessed?

5 A. Well, I wouldn't do that anyway, but the thing that --
6 I think the basic answer is that I would have to say the
7 same kind of thing, no matter who I'm testifying for.

8 And so no prosecutor has ever asked me to testify,
9 although they have asked me to consult with them and I have.

10 Q. Okay. This lastly Mr. Goings was talking to you about
11 something to the effect of well, it's only 16 percent of
12 false confessions among innocent people. Is that 16 percent
13 too much?

14 A. I guess everybody can make that judgment, but that's
15 16 -- I mean, that's not 16 percent of everybody who is ever
16 interrogated. That's 16 percent of the people who were
17 wrongfully convicted did falsely confess. So all of those
18 people were too much, because they were all wrongfully
19 convicted. So -- but what's too much or too little is up to
20 everybody to decide.

21 Q. Right. Thank you.

22 THE COURT: You may step down. Thank you.

23 And you may be excused.

24 Ladies and gentlemen, this would be a good time
25 for a brief afternoon break.

1 I'll remind you of the instructions I have given
2 to you not to begin to discuss this matter among yourselves,
3 because you still have not heard all the evidence that has
4 to be presented.

5 Let's take a brief break and then we will come
6 back.

7 (Whereupon, the following takes place outside the
8 presence of the jury panel)

9 THE COURT: Let's take a break and we will come
10 back. Thank you.

11 (Whereupon, proceedings were recessed)

12 (Whereupon, proceedings were reconvened)

13 THE COURT: Is there anything we need to take up
14 before we bring the jury in?

15 MR. GOINGS: Nothing from the State, Your Honor.

16 MR. LUKE SHEALEY: Nothing from the defense,
17 judge.

18 THE COURT: All right. You may ask the jury to
19 come in, please.

20 (The following takes place in the presence of the
21 jury panel)

22 THE BAILIFF: The jury is present, Your Honor.

23 THE COURT: You may call your next witness.

24 MR. GOINGS: Thank you.

25 May it please the court, Your Honor, the State

1 would call Brian Godfrey.

2 SERGEANT BRIAN GODFREY, having been first duly
3 sworn, testified as follows:

4 THE CLERK: Thank you. Have seat on the witness
5 stand, please.

6 State your name for the record.

7 THE WITNESS: Brian Godfrey, G-O-D-F-R-E-Y. It's
8 B-R-I-A-N.

9 DIRECT EXAMINATION BY MR. GOINGS:

10 Q. Good afternoon.

11 Sergeant Godfrey, how are you?

12 A. Great, sir.

13 Q. Would you please tell the jury where you are currently
14 employed?

15 A. The Richland County Sheriff's Department.

16 Q. And how long have you been employed there?

17 A. I'm in my sixteenth year.

18 Q. And when you joined the Richland County Sheriff's
19 Department, what was your position or your rank?

20 A. When I first joined?

21 Q. Yes.

22 A. I was a judicial service officer. I actually worked
23 here in the courthouse and operated the paddy wagon.

24 Q. And at some point in time did you become an
25 investigator with the Richland County Sheriff's Department?

- 1 A. Yes, sir.
- 2 Q. When was that?
- 3 A. 2000.
- 4 Q. You took the exam?
- 5 A. Yes, sir.
- 6 Q. Received training?
- 7 A. Yes, sir.
- 8 Q. In investigations?
- 9 A. Yes, sir.
- 10 Q. Did that include conducting interviews and
- 11 interrogation of suspects?
- 12 A. Yes, sir.
- 13 Q. And we will get more into that in a little bit, but you
- 14 became sergeant when?
- 15 A. May of 2012, I believe.
- 16 Q. Okay. So in 2006, you were just an investigator with
- 17 the -- or 2009, you were just an investigator with the
- 18 Richland County Sheriff's Department?
- 19 A. Yes, sir.
- 20 Q. And you have been doing that for approximately how
- 21 long? Seven years -- or nine years?
- 22 A. About six years. About six years -- nine years at that
- 23 time, yes.
- 24 Q. Okay.
- 25 A. In 2009, yes, sir.

1 Q. You had a chance to participate in many investigations,
2 I'm assuming?

3 A. Yes.

4 Q. You had a chance to interview and interrogate numerous
5 suspects --

6 A. Yes, sir.

7 Q. -- over that time?

8 A. Yes, sir.

9 Q. And when did you become involved with the investigation
10 into Mr. Porch with regards to the Nakia Mallory homicide?

11 A. July 3rd of 2009.

12 Q. Tell the jury about how you became involved.

13 A. I was advised by Chief Wilson to assist in the review
14 of this case, and that's what I did.

15 Q. Was there any other agents that were also assigned to
16 review?

17 A. Sergeant McDaniels as well.

18 Q. Okay. And what did you do as the first part of your
19 investigation?

20 A. We conducted a case review on the case just to kind of
21 familiarize -- I didn't have anything to do with the initial
22 case, so I just kind of familiarized myself with the facts
23 and the reports and the statements that had been taken
24 prior.

25 THE COURT: I'm sorry, I can barely hear you. You

1 need to speak up a little bit, please.

2 THE WITNESS: I apologize.

3 THE COURT: Thank you.

4 BY MR. GOINGS:

5 Q. So back in 2006, when the homicide was -- when the
6 death took place of Nakia Mallory, you were not involved in
7 the investigation?

8 A. No, sir, I was not.

9 Q. Did you have any hand in the investigation?

10 A. No, sir.

11 Q. Did you have any role in the two trials against Justin
12 Miller?

13 A. I did not.

14 Q. So the first time that you -- did you even know about
15 the case at that time?

16 A. Yes, sir, I was familiar with what -- that a homicide,
17 or an alleged homicide had occurred, yes, sir.

18 Q. But you didn't have any active role in investigating
19 it?

20 A. I did not.

21 Q. Not until 2009?

22 A. That's correct.

23 Q. And you said that you reviewed the case file. What
24 parts did y'all review?

25 A. Just the transcript, the statements that were taken, a

1 lot of these photos, the reports that were generated as a
2 result of the first investigation of the case.

3 Q. And your involvement, did it come after or before the
4 new DNA testing -- or the DNA testing performed on the
5 clothing?

6 A. After.

7 Q. After?

8 A. Yes.

9 Q. So you had already had that information?

10 A. I did.

11 Q. Was the arrest warrant already secured by Chief Wilson
12 by the time you became involved?

13 A. No, sir, I don't believe so. I don't believe so. I
14 believe it was after.

15 Q. Okay. So you reviewed all the prior statements of Mr.
16 Porch?

17 A. Yes, sir.

18 Q. Including his trial transcript?

19 A. Yes, sir.

20 Q. And all the evidence that was uncovered by the
21 investigation of Holdorf and Strange?

22 MR. BRIAN SHEALEY: Objection to the leading, Your
23 Honor.

24 THE COURT: Sustained. Rephrase the question.

25 MR. GOINGS: Yes, ma'am.

1 BY MR. GOINGS:

2 Q. This would include the prior investigations, correct?

3 A. That's correct.

4 Q. Now, did you have -- what was your concerns after
5 reviewing the file?

6 A. The fact that Mr. Mallory's story had remained
7 consistent, never changed. And the fact that Mr. Porch's
8 story had changed several times.

9 The injury was significant for me as well, because it
10 was on her right side versus her left side.

11 The version that Porch gave would have been he would
12 have been between Mallory, which was said Mallory was facing
13 Ms. Mallory. Mr. Mallory was right handed. All the
14 injuries were on her right side. That would have been
15 inconsistent. The fact he was cut on his left hand is
16 significant, in that a lot of times in incidents such as
17 this where a knife is used, an individual will cut their
18 hand during the course of the assault.

19 Q. Describe that to the jury what you mean by that.

20 A. Probably one of the first things we will do when we
21 check somebody out on a particular homicide that's involving
22 with a knife, where we know some type of sharp instrument is
23 used, we will check their hand just to see if they have any
24 lacerations or anything. Sometimes they will stab in
25 portions. Maybe they will hit something, like the palm. If

1 there is nothing blocking, like a lot of knives will have
2 that little knob on it where it will stop you, but if it's
3 something normal, like a kitchen knife, or something like
4 that that's not going to have that, and when it hits
5 something that, the bones, their hand will actually go down
6 onto the blade and they will get that cut on their hand, so
7 we will look for things like that.

8 Q. Based on your knowledge of the investigations, how many
9 injuries were sustained by Joshua Porch?

10 A. He had been cut on his left hand.

11 Q. Based on your knowledge of the investigation and your
12 review of the file, how many injuries did Justin Mallory
13 have?

14 A. Zero.

15 Q. Based on your review of the file and your knowledge and
16 investigation, how many injuries did Nakia Mallory have?

17 A. Several. Quite a bit.

18 Q. What were they?

19 A. A wound to her neck, a wound to her eyebrow, and
20 several bruises about the head, the side of her head area,
21 if I remember from the pictures.

22 Q. So multiple injuries on Nakia Mallory?

23 A. Yes, sir.

24 Q. Now, you get the new DNA evidence. The arrest warrant
25 is secured. What's the next plan in the course of the

1 investigation?

2 A. We made our preparations to go to California.

3 Q. And when did y'all fly out there?

4 A. July 8th, 2009. We actually arrived in California at
5 three in the afternoon their time.

6 Q. Now, did y'all attempt to locate Mr. Porch in South
7 Carolina first?

8 A. I did not. There were measures. I know there was a
9 better -- I played no role in attempting to locate Mr. Porch
10 prior to. It was my understanding that he was in
11 California.

12 Q. Okay. And what happens once y'all get there?

13 A. We obviously got to get our living arrangements and our
14 rental car at some point during that night. I got ill.
15 There is some speculation whether or not it was jet lag or
16 McDaniels driving, but I did get ill during our dinner, so I
17 went back to the room and tried to sleep it off.

18 Q. What time did y'all arrive in California?

19 A. About three in the afternoon their time.

20 Q. What time did you get back to the hotel?

21 A. Right around dinnertime. I don't remember the exact
22 time. I was right in the middle of my dinner, actually, and
23 just got up and walked away.

24 Q. What was your understanding of what McDaniels was going
25 to do at that time?

1 A. He was just going to go conduct surveillance. We
2 weren't familiar with the area. He was going to familiarize
3 himself with where we needed to be the next day.

4 Q. And you had already made contact with local authorities
5 there?

6 A. That's correct. McDaniels was handling most of that.

7 Q. Okay. So you were -- is it your testimony you never
8 personally discussed the logistics for any of the --

9 A. I did not.

10 Q. That was all McDaniels?

11 A. Yes, sir.

12 Q. But you were aware that you had cooperation with the
13 Los Angeles County Sheriff's Department?

14 A. Long Beach Police Department.

15 Q. The Long Beach Police Department?

16 A. Yes, sir.

17 Q. And when was the next time that you are -- or you
18 gained information about the whereabouts of Mr. Porch?

19 A. I was contacted by Sergeant McDaniels via Nextel while
20 I was at the hotel room.

21 Q. Does your report indicate what time that you were
22 contacted?

23 A. It doesn't on mine. I can tell you that as soon as he
24 contacted me I had to wait for a cab, and then the cab took
25 me to the Long Beach Police Department, and I got there

1 about 12:55 in the morning.

2 Q. 12:55 in the morning?

3 A. Yes, sir.

4 Q. What did you observe once you got to the Long Beach
5 Police Department?

6 A. Once I got there I made contact with Sergeant
7 McDaniels. He was talking to some of the officers there.
8 They were just waiting for me.

9 Q. All right. Was Porch in the vicinity or he was secured
10 somewhere else?

11 A. He was not in the vicinity. He was secured in the
12 interview room that they had already placed him in.

13 Q. And what happened next?

14 A. Myself and Sergeant McDaniels went to talk to Mr. Porch
15 in the interview room.

16 Q. Now, describe his appearance. And when I say his, Mr.
17 Porch's appearance, on your first introduction to him.

18 A. All right. He was not handcuffed -- there was a ring
19 there to handcuff him to the table. He was not handcuffed.
20 Those had been removed.

21 We introduced ourselves, advised him of his rights. He
22 was cooperative.

23 Q. Did he appear tired, sleepy, or groggy in any way?

24 A. Not at all.

25 Q. Did he appear to be under the influence of any alcohol

1 or medication?

2 A. No, sir.

3 Q. Did he ever -- where is your understanding of where he
4 was located by Sergeant McDaniels prior to being transported
5 to the Long Beach Police Department?

6 A. At the Walgreen's.

7 Q. And do you know what time that was that he was located?

8 A. I do not. I mean, I heard. I don't have it in my
9 followup what time he was located.

10 Q. You said he did testify -- or you testified that he
11 didn't appear groggy or sleepy or under the influence of
12 anything, is that correct?

13 A. That's correct.

14 Q. And you said the advise of rights was given at what
15 time?

16 A. I have it at 01:12 their time, Pacific Time.

17 Q. I'm going to show you what's been admitted into
18 evidence as State's Exhibit 46. Do you recognize that?

19 A. Yes, sir.

20 Q. What is that?

21 A. That's the Richland County Sheriff's Department advise
22 of rights form that we used that evening.

23 Q. Were you present when that advise of rights form was
24 gone over with the defendant?

25 A. Yes, sir. I signified that by my witness signature on

1 both locations.

2 Q. Did he appear to understand his rights as y'all read
3 them to him?

4 A. Absolutely.

5 Q. Did he indicate whether he wanted to invoke any of
6 those rights as you read them to him?

7 A. He did not.

8 Q. At any point in time during the interview that took
9 place on the early morning hours of July 9th, 2009, did he
10 ever invoke his rights?

11 A. He did not.

12 Q. Did he ever fall asleep during the interview?

13 A. No, sir.

14 Q. Describe how the interview process went. I mean, what
15 occurred?

16 A. It was -- we introduced ourselves. We told him why we
17 were there. We asked him about his involvement in that.
18 Very shortly thereafter we asked him to confirm whether or
19 not Mr. Mallory was present and he stated that he was not.

20 And then shortly after that we asked him "well, since
21 Mr. Mallory was not present, what occurred in the
22 residence," and he gave his version of events, the newest
23 version of events of what occurred in the residence.

24 Q. And how long did the interview last?

25 A. Because this was reduced to writing, it lasted a lot

1 longer. It's ten pages. It took awhile. We were there
2 maybe four hours total, but most -- not all of that. There
3 was different restroom breaks, or water, or -- the actual
4 writing of the statement, so not all of it was interview and
5 interrogation.

6 Q. When the defendant is writing a statement out -- and
7 this is a pretty lengthy statement, is it not?

8 A. Yes, sir.

9 Q. Approximately how many pages?

10 A. On the first one there was ten handwritten pages.

11 Q. When you are doing the questions and the answers and
12 writing the statement out, I mean, this is just a
13 memorialization of what y'all had already covered in the
14 first part of the interview --

15 A. Yes, sir.

16 Q. -- or interrogation?

17 A. Yes, sir.

18 Q. And what time did the statement begin to be
19 memorialized?

20 A. 03:00, or three a.m. their time.

21 Q. Three a.m..

22 So advise of rights signed at 1:12, correct?

23 A. Yes, sir.

24 Q. The written statement started at three a.m.?

25 A. Yes, sir.

1 Q. So how long did the actual interrogation or interview
2 portion last, have lasted?

3 A. So from 1:15 until maybe about an hour and forty-five
4 minutes.

5 Q. And once the statement is started to begin
6 memorialized, that's what takes the remaining time?

7 A. Yes, sir.

8 Q. So from three a.m. until you indicated -- what time was
9 the interview over?

10 A. The -- I believe it was -- I think we were there
11 probably about four hours, so one to five.

12 And some of that time we also had to take and get him
13 processed and get coordination with Long Beach. So -- I
14 mean, there is a lot of other stuff that goes into it, other
15 than just sitting in a room talking to him.

16 When he got booked in, he went to a totally separate
17 part of where we were at, so all of that time frame there
18 was a lot of things that went into that, not just sitting in
19 a room and talking to him.

20 Q. Are you talking about from the 1:12 to the five clock
21 time frame?

22 A. Yes, sir.

23 Q. And at any point in time during this interrogation, or
24 any time when he was writing down the statement, he never
25 invoked his right?

1 A. No.

2 Q. Did you offer him bathroom breaks?

3 A. Yes, sir.

4 Q. Cigarette breaks?

5 A. I don't know if there were cigarette breaks that first
6 night. I don't think we had any. We don't carry them.
7 Neither one of us smoke. I know there was cigarette breaks
8 during the third statement.

9 Q. Okay. Now, did you offer him any water or food if he
10 was hungry or thirsty?

11 A. Yes, sir.

12 Q. Did he indicate whether he needed water or food?

13 A. No, sir.

14 Q. And the --

15 Well, let me ask you this before we get to actually
16 what he told in his statement. When you arrested -- and he
17 was under arrest, correct?

18 A. He was.

19 Q. Okay. And there may be some mention about interview
20 versus interrogation?

21 A. Yes, sir.

22 Q. Correct?

23 A. Yes, sir.

24 Q. I mean, was this an interview or was it an
25 interrogation?

1 A. I would say part of it was an interview and part of it
2 was an interrogation.

3 Q. But it's not uncommon to -- especially when you take
4 people into custody and having an interrogation of a
5 suspect, correct?

6 A. Oh, no, sir.

7 Q. And was he in custody?

8 A. He was.

9 Q. I mean --

10 And my question was going to be, when you are
11 investigating the case, when you make an arrest that late at
12 night, is it -- is it more common to go right in to talk
13 with the suspect, if he's willing, or do you want to wait
14 until the morning?

15 MR. BRIAN SHEALEY: Objection, leading.

16 THE COURT: Rephrase.

17 BY MR. GOINGS:

18 Q. What's the more uncommon? I mean, what are you going
19 to do when you make an arrest, even if it's that late at
20 night?

21 A. I'm going to interview and interrogate him.

22 Q. Okay. So you are not going to wait until the morning
23 time?

24 A. No, sir.

25 Q. Okay. And it's not like that was something special

1 about this case?

2 A. No, sir. In fact, it was our intention to do
3 everything in the morning. It just so happened it worked
4 out that way.

5 Q. Okay. Because McDaniels was able to identify him?

6 A. Yes, sir.

7 Q. The night before?

8 A. Yes, sir.

9 Q. I said the night before. At 10:30?

10 A. Yes, sir.

11 Q. That -- was that planned?

12 A. No, sir.

13 Q. And let's go into the statement. I know it's already
14 been published to the jury.

15 Just in your own words, what did the defendant tell you
16 in that first meeting on July 9th, 2009?

17 A. The first thing he did was he took Mallory out of the
18 equation, which was significant, because he had already
19 testified it was him, Mallory, or Justin Mallory and Ms.
20 Mallory that were involved in this altercation. So he took
21 Mr. Mallory out of the equation.

22 Now he was to provide for what occurred, since it was
23 just you and Mrs. Mallory. And then he provided the version
24 of events that was read by Investigator McDaniels, which was
25 essentially -- I could read this entire thing or kind of

1 give a brief synopsis.

2 Q. Just a brief synopsis of what you recall him saying.

3 A. Along the lines of he went over there to see Mr.

4 Mallory. Mr. Mallory wasn't home. Ms. Mallory invited him
5 in. During the course of that she made advances on him, or
6 what he considered advances, and he shunned her. She got
7 upset about that and essentially went and got the knife,
8 came in the room, and then she was accidentally stabbed in
9 the neck during the course of that altercation.

10 Q. Now, based on your training and expertise in law
11 enforcement -- you have been doing it a long time by this
12 point in time, correct?

13 A. Yes, sir.

14 Q. Tell the jury about, is it common or uncommon --

15 Let me ask it this way. Do most defendants come out
16 and tell you the full story the first time?

17 A. I have worked a lot of murders. I have worked a lot of
18 murders and every murder that I have worked and the suspect
19 that I have interviewed and interrogated, I have never had
20 one that I asked "did you kill this person" and they said
21 "yeah, I stabbed them just to see them die." I have never
22 had anybody to do that, to just come in and say it.

23 Q. Okay. And you know in this case you have had multiple
24 statements from the defendant, correct?

25 A. Yes, I do.

1 Q. Is that uncommon in investigations?

2 A. No, sir.

3 Q. And did Joshua Porch sign the written statement that
4 was memorialized?

5 A. No, sir.

6 Q. What was the attitude like in the room? I mean, was it
7 argumentative, or just --

8 A. Actually it was pretty cordial. Not very
9 argumentative. It was just having a conversation. It
10 wasn't even really that intense, to be honest with you.

11 Q. And you had training in interrogations and interviews,
12 correct?

13 A. Yes, sir.

14 Q. What is the goal, as you know it, as you have been
15 trained, when you are going into that room?

16 A. The primary goal that I have always learned in every
17 course that I have took is to obtain the truth. And I have
18 went in and interviewed and interrogated a number of people
19 and exonerated them, as well as include them, based off the
20 results of that interview and interrogation.

21 Q. So the main goal is not to get a confession, is it?

22 A. It's to get the truth.

23 Q. Now, during the first interview was Mr. Porch ever
24 threatened in any way?

25 A. Absolutely not.

1 Q. I'm not just talking physically. I'm talking about
2 what types of criminal prosecution may be brought against
3 him, any prosecution against family members. Was that
4 threat ever made?

5 A. No, sir.

6 Q. Was a promise of leniency for Mr. Porch, or any of his
7 family members, ever made by you or Investigator McDaniels?

8 A. No, sir.

9 Q. And you were there the whole entire time?

10 A. Yes, sir.

11 Q. Once you arrived?

12 A. Once I arrived at the Long Beach Police Department.

13 Q. Okay. And what's y'all's training tell you about doing
14 such acts? I mean, are y'all trained to make promises or
15 threats?

16 A. Oh, no, sir.

17 Q. In fact, do y'all even have the capability of making or
18 following through with promises --

19 A. No, sir.

20 Q. -- if they were made?

21 A. No, sir.

22 Q. Because whose determination is it to whether or not to
23 prosecute somebody or not?

24 A. That would be the solicitor's office.

25 Q. Now, let's move on to the second statement you received

1 from Mr. Porch.

2 A. He was advised of his rights at 2:19 their time, in the
3 afternoon on July 9th, 2009?

4 Q. So the first interview started -- or interrogation,
5 however you want to phrase it, stops five o'clock in the
6 morning?

7 A. Yes, sir.

8 Q. Approximately at five o'clock?

9 A. And that was including walking him to the detention
10 center, getting him booked in. It was a lot of stuff that
11 was involved in that.

12 Q. And then the next one didn't start until your advise of
13 rights says 2:19?

14 A. Yes, sir.

15 Q. So how long was the break in between the two?

16 A. Five -- well, so about nine hours and fifteen minutes.
17 Nine hours, somewhere around there.

18 Q. Okay. And what was the purpose -- I mean, what was the
19 purpose of the statement?

20 A. To -- we had actually talked to him prior to leaving.
21 We asked him if we could come back the next day. We were
22 going to check on some of the forensics and see if they
23 lined up with what he said and talk to some -- you know,
24 clarify some of the things that he had mentioned to us
25 during the course of that first statement. And we actually

1 asked him if it was okay if we could come back and see him,
2 and he was fine with it. So we came back. We told him we
3 were coming back. So the second time we come back was to
4 clear up some of the issues.

5 Q. And we are still at the Long Beach Police Department?

6 A. Yes, sir.

7 Q. And when you got back to the Long Beach Police
8 Department what happened?

9 A. He was -- obviously we are communicating with them, so
10 we are relying on them to go obtain Mr. Porch and bring him
11 to us.

12 We went back to the same interview room that we were at
13 prior. The same circumstances. He wasn't handcuffed in the
14 course of that particular interview either as well, and we
15 advised him of his rights again, just like we did prior.

16 Q. What was his demeanor in meeting him in the afternoon
17 of July 9th, 2009?

18 A. He was fine. It was somewhat of a cordial environment
19 as well. We were there. We just talked about what was said
20 the day prior, or that -- earlier that morning.

21 Q. Are you aware or not if he had been fed and --

22 A. We made sure that we didn't go there until after a
23 certain period of time. We knew he would have to eat. We
24 did ask him if he was thirsty, or hungry, or restroom breaks
25 several times during the course of the entire time that we

1 were there.

2 Q. Did he ever indicate at any point in time that he was
3 thirsty or hungry?

4 A. No. I mean, we got him -- I know he was drinking at
5 some point.

6 Q. Now, did he look sleepy, tired?

7 A. Oh, no, he was fine. He appeared fine to me.

8 Q. Did he appear to understand all the questions that
9 y'all were asking on this occasion?

10 A. Absolutely.

11 Q. And obviously since he was detained at law enforcement,
12 I'm assuming that he wasn't under the influence of anything?

13 A. He did not appear to be.

14 Q. And approximately how long was this interview or
15 interrogation?

16 A. Let's see, I typed this statement. We were there
17 from -- for approximately three hours, from about two to
18 five.

19 Q. Two to five?

20 A. Yes, sir.

21 Q. And describe the format of this particular meeting.

22 A. The format of this particular meeting?

23 Q. Yeah. I mean, how did this -- how was the
24 interrogation taking place? I mean, what was going on? Was
25 it argumentative at this point? I mean --

1 A. No, sir, it was very --

2 Q. Describe it to the jury.

3 A. We were trying to clarify his story he had told us.

4 And told him what the inconsistencies we thought were there,
5 what we thought didn't make sense, and could he explain it.

6 Q. Okay. And did he provide another written statement?

7 A. Yes, sir, he did.

8 Q. You actually said this one was typed out. What time
9 was this statement begun?

10 A. 15:39, which is 3:39 their time in the afternoon.

11 Q. Is this similar to the first one where y'all had some
12 exchange of information, question and answer, and then --

13 A. Yes, sir.

14 Q. -- memorialized it in writing?

15 A. Yes, sir. So we talked from 2:19 until 3:29 -- or
16 3:39, and then we were just -- what we talked about in that
17 period of time.

18 Q. An hour and twenty minutes of back and forth, and then
19 how long did it take to get this statement typed out?

20 A. I type relatively fast, but it was -- I have to -- I'm
21 not as fast as he speaks, so I typed and he would -- it kind
22 of broke. He would say something and I would type it, type,
23 type, type.

24 Q. Now, did you give him an opportunity to review the
25 statement?

1 A. Yes, sir, he was.

2 Q. Did he change it, if he wanted to?

3 A. Absolutely.

4 Q. Did he make any changes as we see the statement today?

5 A. No, sir.

6 Q. Did you witness his signature on it?

7 A. I did.

8 Q. And, again, y'all give him a separate advise of rights
9 for this statement before any conversations took place, is
10 that correct?

11 A. That's correct.

12 Q. Did you see him sign that advise of rights form?

13 A. Yes, sir, I did.

14 Q. Did he understand his rights as y'all went over them?

15 A. Yes, sir.

16 Q. Did he appear to be confused about anything?

17 A. No, sir.

18 Q. At any point in time during this second meeting with
19 Mr. Porch, did he invoke his right to anything?

20 A. No, sir.

21 Q. Right to counsel or right to remain silent?

22 A. No, sir.

23 Q. And let's talk about the location again. You said
24 these were both conducted at the Long Beach Police
25 Department, correct?

1 A. Yes, sir.

2 Q. Is it your policy to record interviews or
3 interrogations?

4 A. At the Richland County Sheriff's Department?

5 Q. Yes.

6 A. No, sir. The only -- the only interview or
7 interrogations that are recorded are in the polygraph room.

8 Q. And this -- these first two meetings were not
9 videotaped or audio taped, is that correct?

10 A. That's correct.

11 Q. Do you know if the capabilities were available?

12 A. I did not see any available in that room.

13 I know there has been mention of a recorder on the
14 phone. I have never used a phone to record. I'm not even
15 sure my phone will record that long. It may or may not, I
16 have never tried it.

17 But, no, sir, I didn't see any capabilities to record
18 at that department, in the room that we were in.

19 Q. And the third statement --

20 Well, before we get there, during the second one, was
21 he threatened --

22 A. No, sir.

23 Q. -- in any way?

24 A. No, sir.

25 Q. And I'm not talking about physically or anything. I'm

1 talking about was he threatened for criminal -- threat of
2 criminal prosecution, or anything of that nature?

3 A. Absolutely not.

4 Q. Was any of his family members threatened in any way?

5 A. Absolutely not.

6 Q. Was there any promise of leniency for him if he
7 cooperated with the investigation and answered the questions
8 you told him the way y'all wanted him to?

9 A. No, sir.

10 Q. Was there any promise of leniency for his family
11 members, including Persia and Robert Brown, who I believe is
12 his brother-in-law?

13 A. No, sir.

14 Q. And you were there the whole time with Investigator
15 Godfrey -- I mean Investigator McDaniels, I apologize?

16 A. Yes, sir, I was.

17 Q. And he made -- did you ever hear him make any threats?

18 A. No, sir.

19 Q. Promises?

20 A. No, sir.

21 Q. Anything of that nature?

22 A. No.

23 Q. Let's go to the third statement.

24 This actually occurred at a different location, is that
25 correct?

1 A. That's correct.

2 Q. And that was at the Los Angeles County Sheriff's
3 Department?

4 A. One of their field offices, yes, sir.

5 Q. But this room was equipped with videotape?

6 A. That's correct.

7 Q. At a different location?

8 A. Yes, sir.

9 Q. So was that common, or -- I mean, is that strange that
10 this facility would have videotape versus another one that
11 doesn't?

12 A. No, sir.

13 Q. And you had a chance to meet with him a third time, you
14 and Investigator McDaniels?

15 A. Yes, sir.

16 Q. What time did this interaction take place on July 10th,
17 2009?

18 A. We actually made contact at eleven o'clock that morning
19 on the 10th. The time that me and Sergeant McDaniels
20 actually talked to him was sometime later. I don't remember
21 the exact time.

22 Q. And he was actually interviewed by a Los Angeles County
23 Sheriff's Department deputy while there, is that correct?

24 A. That's correct.

25 Q. That's the length of time before y'all actually get

1 into the interview room?

2 A. Yes, sir.

3 Q. And you were here in court yesterday, correct?

4 A. I was.

5 Q. You saw the video, y'all's meeting with Mr. Porch on
6 July 10th, 2009?

7 A. I did.

8 Q. And before we get to what he discussed, what was his
9 demeanor like on this particular occasion?

10 A. Pretty consistent with before. He was very
11 cooperative. We had a pretty good rapport, relationship, I
12 would say.

13 Q. And did he appear sleepy or tired even when y'all got
14 in there?

15 A. Absolutely not.

16 Q. And you testified that it was eleven, but y'all didn't
17 meet with him until what time?

18 A. Sometime later. Maybe -- I would be guesstimating.
19 Maybe six or seven. Maybe not that long.

20 Q. So it was awhile later when y'all arrived at the Los
21 Angeles County Sheriff's Department?

22 A. Yes, sir.

23 Q. But still did he appear tired in any way?

24 A. No, sir.

25 Q. When he was meeting with the Los Angeles County

1 Sheriff's Department was he given smoke breaks, bathroom
2 breaks?

3 A. Smoke breaks, bathroom breaks, drink, food.

4 Q. And we saw on the video, he wasn't handcuffed at any
5 point in time during that interview with you, was he?

6 A. No, sir.

7 Q. And y'all try to make individuals as comfortable as
8 possible, correct?

9 A. Yes, sir.

10 Q. And at any point in time from the first statement that
11 was given until July 10th, 2009, did the defendant invoke
12 his rights under Miranda?

13 A. No, sir.

14 Q. Did he ever tell you that "hey, I don't want to talk to
15 y'all any more"?

16 A. No, sir.

17 Q. And if he did, what would have happened?

18 A. We would have walked away.

19 Q. Okay. And anytime from the second waiver of rights
20 that was signed on July 9th, in the afternoon hours, until
21 July 10th, did he ever invoke his rights?

22 A. No, sir.

23 Q. Did he ever say "hey, I'm done with y'all"?

24 A. No, sir.

25 Q. And let's discuss that third statement. I'll get a

1 little closer to the jury yesterday, but based on your
2 recollection, what did Mr. Porch indicate at this point in
3 time?

4 A. He had some details.

5 Q. Such as?

6 A. Taking the knife from the scene and throwing it in a
7 dumpster.

8 The fact that she was standing up versus lying down
9 when she actually got stabbed during the course of the
10 struggle.

11 That he had never fell on top of her.

12 His clothing description that day.

13 We talked about the cleaning of the car, and those type
14 of different details. We shored up some different details.

15 Q. And the information that was contained in the video,
16 y'all also indicated he handled it about Robert Brown.

17 A. Yes, sir.

18 Q. Do you know who Robert Brown is?

19 A. I think it's his brother.

20 Q. And y'all on the video indicate that y'all wanted his
21 story to match the information that y'all were getting from
22 the jeep that y'all had located?

23 A. Yes, sir.

24 Q. Y'all hadn't, in fact, located the jeep at that point
25 in time, did you?

1 A. Not to my knowledge, no.

2 Q. So that was a lie?

3 A. Yes, sir.

4 Q. Y'all make a lie to individuals in custody?

5 A. Yes, sir.

6 Q. Okay. Is it uncommon?

7 A. Oh, uncommon, no, sir.

8 Q. Okay. And that's a perfectly acceptable way when you
9 are interrogating a suspect?

10 MR. BRIAN SHEALEY: Your Honor, I'm going to
11 object to the leading.

12 THE COURT: Sustained.

13 MR. GOINGS: I'll rephrase, Your Honor.

14 BY MR. GOINGS:

15 Q. Is that inappropriate?

16 A. No, we are able to do things like ask questions like
17 the life wood, somebody will say such and such, such and
18 such, or is there any reason such and such, with the
19 insinuation that maybe something is there to see if what a
20 response is. But to lie is normal. That's not uncommon.

21 Q. When y'all first approached him with the first
22 statement, at any point in time during this interview, while
23 y'all are -- from what we couldn't see on video prior to or
24 before, were any threats made to Mr. Porch about any type of
25 prosecutions that would come down from this?

1 A. Absolutely not.

2 Q. Or any promises of leniency to any type of criminal
3 prosecution, or any other things promised to Mr. Porch, that
4 was not contained in that video?

5 A. No, sir.

6 Q. Were there any threats made against his family,
7 including Persia or Robert Brown, by you or Investigator
8 McDaniels?

9 A. No, sir.

10 Q. Were there offers of leniency for them or thinking that
11 they wouldn't be prosecuted?

12 A. No, sir.

13 Q. At no point in time was that information ever discussed
14 with Mr. Porch?

15 A. No, sir.

16 Q. But y'all did discuss Persia --

17 MR. BRIAN SHEALEY: Objection to leading.

18 BY MR. GOINGS:

19 Q. Did y'all discuss Persia and Robert Brown?

20 A. Yes, sir.

21 Q. In what context?

22 A. We were trying to identify what their involvement may
23 have been in this particular incident, if any at all.

24 Q. Why was that important, at least to Persia? I mean --

25 A. She had provided a statement that he had never left the

1 house. She had provided statements about --

2 For all we know, he may have went and told her
3 everything after it happened. We don't really know what he
4 told her.

5 I have worked plenty of cases where people told their
6 spouse what occurred at a particular incident. We just
7 wanted to see what he had told us that they knew.

8 Q. And with regards to Robert Brown, what kinds of
9 statements did that come out?

10 A. The cleaning of the vehicle, whether or not he went to
11 Mr. Brown for supplies, and whether or not he may have told
12 Mr. Brown what occurred.

13 Q. Did he ever make any admissions as to whether or not he
14 cleaned his vehicle?

15 A. He said he did clean his vehicle up, yes, sir.

16 Q. And the story -- based on these three statements you
17 got from the defendant, did it match the evidence that y'all
18 had?

19 A. It's consistent with the evidence that we had, yes,
20 sir.

21 MR. GOINGS: Beg the court's indulgence.

22 (Off the record)

23 (Back on the record)

24 MR. GOINGS: That's all the questions that I have
25 at this time, Your Honor.

1 THE COURT: Any cross?

2 MR. BRIAN SHEALEY: May it please the court?

3 THE COURT: Yes, sir.

4 CROSS EXAMINATION BY MR. BRIAN SHEALEY:

5 Q. Let's be clear. There was some questioning about
6 interview versus interrogation?

7 A. Yes, sir.

8 Q. Okay. This was an interrogation?

9 A. Every interrogation, in my opinion, begins with an
10 interview. Maybe ask them about life.

11 I do a lot of interrogations and I can't think of one
12 in the last years that I have ever started without
13 interviewing first, so during the course of this there was
14 an interrogation, I agree.

15 Q. Okay. This is a copy of your pretrial transcript.

16 A. Uh-huh.

17 Q. And you were asked specifically "let's be clear. This
18 was not an interview was it?

19 "No, this was an interrogation."

20 A. Yeah, it was an interrogation. I agree.

21 Q. Okay. Now, you got vast experience and vast training
22 to help you do what you do, right?

23 A. Yes, sir.

24 Q. And you have been an investigator for a long time,
25 since 2000, I think you testified to?

1 A. Yes, sir.

2 Q. Okay. Currently you're in cold case files. That's
3 what you investigate, amongst others things?

4 A. Yes, sir. I'm the sergeant over that unit, yes, sir.

5 Q. And back when you were interrogating Mr. Porch, cold
6 case again, right?

7 A. No, sir.

8 Q. You weren't?

9 A. Sergeant McDaniels was over cold case, I believe.

10 Q. You weren't working in cold case then?

11 A. No, sir, I don't believe I started -- I came after
12 McDaniels on that.

13 Q. And would it be true that you were working cold case at
14 the time, roughly?

15 A. Roughly right around that time. I can't remember when
16 the transition was, but I replaced Sergeant McDaniels.

17 Q. Okay. And he is doing white collar crime now?

18 A. Currently, yes, sir.

19 Q. Now, you have heard of the Navy, right?

20 A. Sir?

21 Q. You have heard of the Navy?

22 A. Have I heard of the Navy?

23 Q. Yes.

24 A. The military branch of the service?

25 Q. Yes, sir.

1 A. I was in the Marine Corps, yes, sir.

2 Q. Okay. You have heard of the Navy Seals?

3 A. I have heard of them, yes, sir.

4 Q. Okay. I would like to make that parallel, because they

5 just don't let anybody be in cold case files, do they?

6 A. They don't let anybody just be in cold case files?

7 Q. They don't let a road deputy lead cold case files?

8 A. No, sir.

9 Q. He hasn't had his service skills yet?

10 A. I have near seen a road deputy lead cold case, no, sir.

11 Q. You have to be skilled at what you do, right?

12 A. Yes, sir.

13 Q. Somewhat selective?

14 A. Yes, sir.

15 Q. Okay. And it's hard. You probably have had some

16 success with your investigations to get to that point, is

17 that fair?

18 A. I would agree with that.

19 Q. Okay. And you wouldn't disagree with me to say that

20 you are an absolute skilled interrogator?

21 A. Probably depends on the day.

22 Q. Okay.

23 A. I think sometimes I suck. Sometimes I'm pretty good.

24 Q. Probably?

25 A. Uh-huh.

1 Q. But you are in cold case?

2 A. I am, yes, sir.

3 Q. Now, we were talking about your partner here. He
4 called you his partner, Investigator McDaniels.

5 Y'all had a murder warrant for Mr. Porch when you went
6 out to California?

7 A. Yes, sir.

8 Q. And if you had made contact with him, which you did,
9 regardless of what happened, he was coming back to South
10 Carolina. Not necessarily you, but he was coming back.

11 A. There is a -- there is a process in place dealing with
12 extradition, so it would be -- at that point it would be
13 premature for me to say that I knew that he was coming back
14 at that time.

15 Q. That was your intent?

16 A. The likelihood was he was going to come back.

17 Q. And the whole point of extraditing is to bring him
18 back?

19 A. Yes, sir.

20 Q. Okay. Now, Mr. -- or Investigator McDaniels discussed
21 this case, where he -- even though it's not a policy of
22 Richland County, but he did record a friend that was charged
23 with murder that he believed was innocent. He talked about
24 that. You were here.

25 A. I'm the one who arrested the friend, yes, sir.

1 Q. Right.

2 A. I was down the street.

3 Q. And you have been here throughout this trial?

4 A. Yes, sir.

5 Q. And he did talk about the use of a recording device at
6 that point?

7 A. He wore a body mike at Polo Park off of Polo Road. He
8 went in the office. He was recorded. I was down the street
9 listening, yes, sir.

10 Q. Right.

11 But that's not your policy?

12 A. To wear --

13 Q. To record confessions or interrogations. That's not
14 generally your policy, or Richland County's?

15 A. The -- in that particular instance, anytime we do -- we
16 have undercover who would be wearing mikes all the time,
17 going into residences, locations.

18 It is not our -- on that particular incident I think
19 it's, number one, feasible, because I needed to hear what
20 was going on down the street, but I also think that whenever
21 we send an undercover into a residence, per say, they are
22 wearing some type of recording devise.

23 It is not our policy to record individuals, you are
24 correct.

25 Q. Right.

1 Generally you testified that's not Richland County's
2 policy, and you don't do it.

3 A. That's -- that's not the same scenario that we were in,
4 but I believe it was feasible in that particular scenario.

5 Q. But it's testified to that that's not your policy --

6 A. I agree.

7 Q. -- in Richland County.

8 A. I agree.

9 Q. It certainly wasn't done on this occasion.

10 A. It was not.

11 Q. Okay.

12 A. On the first two, that's correct.

13 Q. But you did make good preparations to go to California,
14 right?

15 A. Yes, sir.

16 Q. But you just -- you weren't going to bring one of
17 these, right?

18 A. I did not bring one of those.

19 Q. And you would agree with me that while that may be
20 tedious, if that thing was running from every point of
21 contact that you had with Mr. Porch, we would have a lot to
22 talk about, right?

23 A. I think we talked about the same thing that's put in
24 those statements.

25 Q. Okay. But you would agree that the things that were