

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Allendale County

D. Craig Brown, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

ERIC HEMINGWAY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001465

APPENDIX

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STATE OF SOUTH CAROLINA)

COUNTY OF ALLENDALE)

) COURT OF GENERAL SESSIONS
) IND. NO.: 2005-GS-03-00139
2005-GS-03-00142
2005-GS-03-00143

STATE OF SOUTH CAROLINA,)

v.)

ERIC P. HEMINGWAY,)

Defendant.)

April 23-26, 2007

Allendale, South Carolina

B E F O R E:

THE HONORABLE J. MICHELLE CHILDS, JUDGE.

A P P E A R A N C E S:

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Attorney for the State of South Carolina

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P.O. Box 2082
Walterboro, SC 29488

JURY STRIKE SHEET

State of South Carolina v. Eric P. Hemingway

Date of Trial: April 23-26, 2007

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No.	JUROR NAME	RACE	SEX	STRIKES		JURY
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39	Vernia T. Gadson	B	F		1	
25	Jody R. Crim	W	F		2	
62	Edward L. Johnson	B	M			1
53	Benjamin Holmes	B	M			2
44	McCorskey Graham	B	M			3
105	Willie J. Rouse	B	M	~~excuse for cause~~		
22	Mia M. Corell	W	F		3	
135	Latonya C. Williams	B	F	1		
71	Marie N. Brant	B	F			4
7	Carolyn Bradley	B	F		4	
60	Roselyn E. Jenkins	B	F			5
101	Yawanda L. Rice	B	F			6
37	Cynthia Y. Flowers	B	F			7
102	Eulilee Riddle	B	M			8
132	Glenda S. Williams	B	F		5	
79	Rosanne M. McPherson	W	F			9
57	Clarence B. Housey, Jr	B	M			10
137	Latisha M. Youmans	B	F			11
108	Carolyn P. Sauls	W	F		6	
35	James R. Everett	W	M		7	
92	James E. Preacher	B	M			12
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1 **THE COURT:** Okay, ladies and gentlemen of the jury,
2 we are now about to begin the case of the State of South
3 Carolina versus Eric P. Hemingway, the defendant.

4 I'm just going to ask that you swear the jury for
5 these particular questions.

6 (WHEREUPON, THE JURY PANEL WAS DULY SWORN.)

7 **THE COURT:** All right, the State, Ms. Legette?

8 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.
9 May it please the Court?

10 Your Honor, the State is ready to proceed with
11 Indictment Number 05-GS-03-143 against Mr. Eric Hemingway
12 for the offense of criminal sexual conduct first degree.
13 The State is also ready to proceed in 05-GS-03-142 for the
14 offense of burglary first degree. The State is also ready
15 to proceed in Indictment Number 05-GS-03-139 against
16 Mr. Eric Hemingway for the offense of murder.

17 Your honor, Mr. Hemingway has pled not guilty. This
18 is a trial.

19 **MR. PLEXICO:** May we approached Your Honor?

20 **THE COURT:** Yes, you may.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
22 RECORD OUT OF THE HEARING OF THE JURY PANEL. THEREAFTER,
23 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
24 HEARING OF THE JURY PANEL:)

25 **THE COURT:** All right, ladies and gentlemen of the

1 jury, um I'm going to have to send you on another break,
2 because I need to take up some legal matters with counsel.
3 So I apologize for having to do that, but um we need to
4 make sure that everything is done properly and in
5 accordance with our Rules of Procedure with respect to how
6 we handle the trial. So I'm going to have y'all excused,
7 and then I'm going to direct the bailiff to let you know
8 when you can return, but it should not be long.

9 (APRIL 23, 2007, 3:52 P.M., THE JURY EXITED THE
10 COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE
11 RECORD OUT OF THEIR PRESENCE:)

12 THE COURT: Are the parties ready to proceed?

13 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

14 THE COURT: Mr. Plexico?

15 MR. PLEXICO: Yes, Your Honor. Um, Your Honor, my
16 client is indicted in 05-GS-03-139 for murder, Your Honor.
17 Um it does not state, and I would bring the Court's
18 attention to 17-19-30, it states that every indictment for
19 murder shall be deemed and adjudged sufficient and good in
20 law which, in addition to setting forth the time and
21 place, and then it goes on, Your Honor.

22 Here, time is a special word, Your Honor. Time is
23 different from date.

24 Date delineates the day. Time delineates the
25 particular time of death.

1 Here, in this indictment, this time, there is no
2 attempt to allege the time. We have to give words their
3 plain meaning, unless there is a specific um legal
4 significance to that word, Your Honor, of its own
5 well-known meaning, Judge.

6 Um and what the legislature has done is they -- they
7 must set forth the time and place, Your Honor. And they
8 do not do that.

9 Here, they set forth the place, but they do not set
10 forth the time, therefore, there's a defect in the
11 document under South Carolina law, and I would move to
12 quash that indictment, Your Honor, on those grounds.

13 **THE COURT:** And you're specifically referring to just
14 the time, not the place.

15 **MR. PLEXICO:** That's right, Your Honor. Yes, Your
16 Honor.

17 **THE COURT:** Okay.

18 **MR. PLEXICO:** Yes, Your Honor.

19 **THE COURT:** All right, Ms. Legette?

20 **ASSISTANT SOLICITOR LEGETTE:** Um, Your Honor, I have
21 read Section 17-19-30, and I have read the time and place
22 annotation, Your Honor, and based on what I have read,
23 under I believe it is -- I believe this is State versus
24 Richter, it does not necessarily say the time, Your Honor.
25 It does not say specifically it has to be 8:00 p.m. on a

1 Friday evening in Allendale County, Your Honor.

2 I believe that -- that -- it's the State's position,
3 Your Honor, that the time and place in this particular
4 matter refers to time and place, time as in date, and date
5 is in the indictment as being March -- on or about March
6 24th, 2005, place being Allendale County, Your Honor.

7 Your Honor, I do not read in the annotations where
8 the actual time itself, as 8:00 p.m. or 11:30 p.m., has to
9 be alleged, Your Honor, especially if there is no -- if
10 there are no eyewitnesses to a crime, Your Honor, how
11 could that eyewitness then, the victim himself, come back
12 and ask -- and tell the Court that at 11:30 p.m. on such
13 and such date this person did kill me in Allendale County,
14 Your Honor?

15 I believe what the time and date, time and place
16 refers to, Your Honor, in this particular matter is
17 actually time as being the date of the actual death of the
18 victim being killed by the person and dying in Allendale
19 County, Your Honor.

20 **THE COURT:** And am I understanding, Mr. Plexico, that
21 you're only challenging it as to the murder indictment?

22 **MR. PLEXICO:** Um, yes, Your Honor. The 17-19-30,
23 yes, Your Honor.

24 Allegations sufficient for indictment for murder are
25 specifically set by the legislature by the statute, Your

1 Honor. And apparently, the purpose of this is to aid the
2 defendant in this very serious matter in their defense,
3 Your Honor.

4 And um, Your Honor, I believe that -- and obviously,
5 time and date, it does not set forth the date and place.
6 It says set forth the time and place.

7 The legislature chose a specific word, and they must
8 at least allege, attempt to allege, a timeframe, Your
9 Honor. Here, they fail to allege or attempt to allege a
10 time, Your Honor.

11 THE COURT: All right, and let me try to pull up the
12 statute so I can look at it.

13 Ms. Legette, what case are you referring to, State v.
14 Richter?

15 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor, State
16 v. Richter.

17 THE COURT: I've got it at um ---

18 ASSISTANT SOLICITOR LEGETTE: The cite of that is ---

19 THE COURT: I've got it up here. Let me look at um a
20 case that I see is a later case as well.

21 All right. I'm going to rely on Wynn v. State of
22 South Carolina. The holding by the Supreme Court um held
23 that indictment was not defective for failure to state the
24 time and place of the victim's death. And let me just
25 look a little further, because that's the holding.

1 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, what's that
2 case?

3 **THE COURT:** I'm sorry. Um it is Wynn v. State of
4 South Carolina, 611 S.E.2d 901.

5 **ASSISTANT SOLICITOR LEGETTE:** Thank you.

6 **THE COURT:** All right, specifically, this case seems
7 to indicate, essentially when you're looking at any
8 indictment that um -- and even especially an indictment
9 for murder is sufficient if the offense that is alleged
10 basically gives the defendant notice so that you know what
11 are the allegations, what judgment for the Court to
12 pronounce, what the defendant is called upon to answer, um
13 and how the defendant may plea, you know, with respect to
14 a particular crime.

15 And the Court's in all of the indictments, in terms
16 of looking at sufficiency, needs to just look at it with a
17 practical eye. So, I believe that if you're looking at
18 the indictment, it is very clear to me what the State is
19 bringing the defendant on charges, with respect to the
20 murder, particularly, by indicating in Allendale County on
21 or about March 24th, 2005, whom the defendant killed, the
22 means by which um the defendant um did such act, and that
23 the fact that the victim died in Allendale County as a
24 proximate result of that particular act. So, I believe
25 that um provides sufficiency upon which the defendant can

1 know why he's brought to trial for this particular
2 indictment. So, that motion is denied.

3 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

4 THE COURT: Anything further on that issue, or any
5 other motions that need to be taken up outside the
6 presence of the jury?

7 MR. PLEXICO: Um, not at this time, Your Honor.

8 THE COURT: Okay. Are we sure?

9 MR. PLEXICO: Your Honor, well, I'm going to need --
10 she just gave me a witness list of forty-three potential
11 witnesses, Your Honor, and except for the law enforcement
12 on here, I'd like to get a criminal record of the
13 remainder of them. Most of these, are law enforcement,
14 Judge, the vast majority.

15 THE COURT: Okay.

16 MR. PLEXICO: I would move that you order them to
17 produce the criminal history on the potential witnesses,
18 Your Honor.

19 THE COURT: All right, any problem with that, Ms.
20 Legette?

21 ASSISTANT SOLICITOR LEGETTE: No, Your Honor.

22 THE COURT: Okay. Is there somebody that you can
23 order it from so that um the defense counsel can
24 adequately prepare for trial so that they can start
25 getting this information?

1 **ASSISTANT SOLICITOR LEGETTE:** We'll get it, Your
2 Honor.

3 **THE COURT:** Okay. Okay.
4 All right, anything further?

5 **MR. PLEXICO:** No, Your Honor.

6 **THE COURT:** Okay. All right, we're ready for the
7 jurors. Thank you.

8 I'm very um -- um concerned about the jurors' time,
9 so defense, as well as the State, if you all communicate a
10 little better, because I'm very concerned about their
11 time, and I have to look out for them as well. I hate to
12 have to send them out and then come back in.

13 (4:04 P.M., APRIL 23, 2007, THE JURY PANEL ENTERED
14 THE COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HELD ON
15 THE RECORD IN THEIR PRESENCE:)

16 **THE COURT:** Okay, ladies and gentlemen of the jury,
17 we're now ready to ask you some specific questions
18 regarding this particular trial, and because of the
19 interruption, Ms. Legette, if you could please call the
20 State's case again, and then we will proceed.

21 **ASSISTANT SOLICITOR LEGETTE:** May it please the
22 Court?

23 Your Honor, the State is ready to proceed in the
24 following indictments: 05-GS-03-142 against Eric
25 Hemingway for the offense of burglary first degree. The

1 State's also ready to proceed in 05-GS-03-143 against Eric
2 Hemingway for the offense of criminal sexual conduct first
3 degree. The State is also ready to proceed in
4 05-GS-03-139 against Eric Hemingway for the offense of
5 murder.

6 Mr. Hemingway has pled not guilty, Your Honor. This
7 is going to be a trial.

8 **THE COURT:** Okay. All right.

9 Ladies and gentlemen of the jury, I'm going to need
10 you to do the same thing as we did earlier during your
11 qualifications: Please listen very carefully to the
12 questions that I'll ask you. If anybody needs to approach
13 the Court, I'm happy to hear from you in the privacy up
14 here next to the court reporter, away from the members of
15 the jury panel.

16 Obviously, any case that we do is very serious, but
17 we need to make sure that I have full information from
18 you. Otherwise, if you're comfortable in answering your
19 questions from the gallery, stand up and state your juror
20 name and number.

21 Is any member of the jury panel related by blood or
22 marriage to the Solicitor, Ms. Tameaka Legette?

23 And, Ms. Legette, if you'll just stand and face the
24 jurors again?

25 And I'll ask right now whether or not you all have

1 had any dealings with the Solicitor's Office as well by
2 family members, in terms of them assisting you in
3 prosecution of a case?

4 (NO RESPONSE.)

5 THE COURT: Okay. And then representing the
6 defendant is Mr. Steven Plexico.

7 MR. PLEXICO: Good afternoon.

8 THE COURT: He is the Public Defender in this area.
9 And I want to make sure that no one is related to him by
10 blood or marriage or have a close social or personal
11 relationship with him or has been represented by him, you
12 or any close or immediate family members.

13 (NO RESPONSE.)

14 THE COURT: Okay. Now, let's go to the witness list
15 for the State, and then we'll proceed with the witness
16 list for the defendant. Listen very carefully. Witnesses
17 that may be potentially called to trial for the State are
18 Sheriff Tom Carter, Allendale County Sheriff's Office;
19 Becky Rowell, a registered nurse at Allendale/Fairfax
20 Hospital; Investigator James D. Hutto, Allendale County
21 Sheriff's Office; James P. Black, South Carolina Law
22 Enforcement Division, or otherwise known as S.L.E.D.;
23 Carol Brooks, Evidence Technician, S.L.E.D.; the Honorable
24 John A. Chaney, Allendale County Summary Court, who is
25 also the former Chief of Police of Allendale Police

1 Department; Colonel Laquinton -- excuse me, Corporal
2 Laquinton Davis, Allendale County Sheriff's Office;
3 Special Agent Shawn Harley, S.L.E.D.; Special Agent George
4 Darnel, S.L.E.D.; Senior Agent Steven Lambert, S.L.E.D.;
5 A. Dwayne Winston, Associate Technical Director, LabCorp;
6 Shawn M. Weiss, or Weiss, Associate Technical Director,
7 LabCorp; Special Agent Patty Ruff, S.L.E.D.; Special Agent
8 John Bishop, S.L.E.D.; Special Agent Laurie Cauldwell,
9 S.L.E.D.; Officer Troy Dingle, Jr., Columbia Police
10 Department; Officer Dawan "Pookie" Smith, State Transport
11 Police; Special Agent Stephanie Stutts, S.L.E.D.; Special
12 Agent Laura Corley, S.L.E.D.; Special Agent Emily Norris,
13 S.L.E.D.; Carol Brooks, formerly of S.L.E.D.; Special
14 Agent Sherry Brown, or Sherry Brown, S.L.E.D.; Special
15 Agent Nicole Perry, S.L.E.D.; Patrick Washington; Cleo
16 Sanders; Kimberly Poston, formerly -- former Deputy
17 Coroner; Officer David Cook, Hampton Police Department;
18 John Lawson, Allendale County E.M.S.; Vonda Priester,
19 Allendale County Coroner's Office; Rashad E. Monroe;
20 Marilyn Monroe; Michael Williams; Sheila Jones; Erica
21 Jones; Michael Cave, Cave Funeral Home; William Roger
22 Mobley; Kimberly Mobley; Katrina A. Goodwin; Marsha
23 Singleton; Michael Mooney, LabCorp; Matt Hill, LabCorp;
24 Dr. Cynthia A. Schandl, Medical University of South
25 Carolina; and Special Agent Steve Derrick, S.L.E.D. Those

1 are the witnesses indicated by the State at this time.

2 (NO RESPONSE.)

3 THE COURT: Now, with the witnesses for the defense,
4 if we could have the defendant stand up, Mr. Eric
5 Hemingway? Does anyone have any relationship by special
6 -- by blood, marriage, close social, personal relationship
7 with the defendant, Mr. Eric Hemingway?

8 (NO RESPONSE.)

9 THE COURT: All right, sir, you can sit down. Thank
10 you.

11 Other witnesses by the defense would be Vonda
12 Priester; Gordon Rhoden; Patrick Washington; John Lawson;
13 David Cook; Kim Conners Still.

14 (NO RESPONSE.)

15 THE COURT: Okay. Has any member of the jury panel
16 formed an express -- formed or expressed an opinion about
17 any of the issues in this case?

18 You can come forward.

19 (WHEREUPON, A BENCH CONFERENCE WAS HELD ON THE RECORD
20 OUT OF THE HEARING OF THE OTHER MEMBERS OF THE JURY PANEL
21 AS FOLLOWS:)

22 JUROR: One was -- one of his counts was criminal
23 sexual conduct, and my daughter was assaulted by someone.

24 THE COURT: State your juror number.

25 JUROR: One-forty-four.

1 THE COURT: Okay. Your name?

2 JUROR: Patricia Wood.

3 THE COURT: Okay.

4 JUROR: I've got a daughter that was sexually
5 assaulted, so I know I wouldn't be a good witness, I mean
6 a juror, for this case.

7 THE COURT: Okay.

8 JUROR: And I just don't want to be in a criminal
9 case where I have to judge someone.

10 THE COURT: All right. You don't feel like you could
11 be unbiased? In other words, let the State present their
12 case, let the defense ---

13 JUROR: Not when it comes to the sexual part, no.

14 THE COURT: Okay. Thank you. I'm going to excuse
15 you.

16 JUROR: Okay.

17 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
18 THE RECORD IN THE PRESENCE AND HEARING OF THE MEMBERS OF
19 THE JURY PANEL:)

20 THE COURT: Juror Number One-Forty-Four is excused
21 from the trial of this case.

22 Is any member of the jury panel aware of any
23 prejudice or bias towards either the State or the
24 defendant in this case in terms of whether you've
25 expressed any opinion or formed any opinions as of today

1 with respect to the case?

2 Yes, ma'am? You can come forward.

3 (WHEREUPON, A BENCH CONFERENCE WAS HELD ON THE RECORD
4 OUT OF THE HEARING OF THE OTHER MEMBERS OF THE JURY PANEL
5 AS FOLLOWS:)

6 THE COURT: What is your juror number?

7 JUROR: Seventy-eight, Kadie McMillan. Her son is my
8 grandson.

9 THE COURT: Oh, he is? Okay. So, okay. All right.
10 You obviously have a relationship, then, with the victim.

11 JUROR: Uh-huh.

12 THE COURT: All right. Thank you.

13 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
14 THE RECORD IN THE PRESENCE AND HEARING OF THE MEMBERS OF
15 THE JURY PANEL:)

16 THE COURT: Juror Number Seventy-eight is excused
17 from the trial of this case.

18 Is there any member of the jury panel -- yes, sir?
19 Please come forward.

20 (WHEREUPON, A BENCH CONFERENCE WAS HELD ON THE RECORD
21 OUT OF THE HEARING OF THE OTHER MEMBERS OF THE JURY PANEL
22 AS FOLLOWS:)

23 THE COURT: Your juror number?

24 JUROR: I don't know. My name is Eric Johnson.

25 THE COURT: Okay.

1 **JUROR:** I'm related to -- I'm related to the people
2 on this side.

3 **THE COURT:** On the State's side?

4 **JUROR:** Uh-huh.

5 **THE COURT:** Who?

6 **JUROR:** Some of the witnesses, family members.
7 Harriett is my cousin.

8 **THE COURT:** Okay. Okay. She's your cousin. Okay.
9 I'm going to excuse you from the trial of this case.
10 Thank you, sir.

11 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
12 THE RECORD IN THE PRESENCE AND HEARING OF THE MEMBERS OF
13 THE JURY PANEL:)

14 **THE COURT:** Juror Number Sixty-three is excused from
15 the trial of this case.

16 Is there any member of the jury panel who is a member
17 of or contributor to any group which has as its primary
18 concern law enforcement? And that could be Mothers
19 Against Drunk Drivers, um Citizens Against Violent Crime,
20 anything that's related to strick law enforcement.

21 (NO RESPONSE.)

22 **THE COURT:** Okay. And to the other end, is there any
23 member of the jury panel who spends any time, whether it
24 be through fundraising, through volunteer work, um for
25 victims' rights in any area, whether it be specifically

1 with any of the charges in the indictments that we have
2 before us today or just generally?

3 (NO RESPONSE.)

4 **THE COURT:** Does any member of the jury panel know of
5 any reason whatsoever that they could not serve this week
6 with respect to the particular charges in this particular
7 case, not just the general um -- um reasons for your
8 inability to serve for medical appointments, or otherwise
9 as indicated earlier to the Court, but anything that might
10 prohibit them from serving and being fair and impartial in
11 this case?

12 (NO RESPONSE.)

13 **THE COURT:** Does any member of the jury panel know of
14 any reason whatsoever as to why they could not give the
15 State a fair opportunity to present all testimony and
16 evidence on behalf of the State and the victims and also
17 to give the defendant a chance to present through
18 cross-examination of the State's witnesses or any of their
19 own testimony or allowing the defendant to testify, if he
20 shall so choose, and make up your mind at the conclusion
21 of the case? Any member of the jury believe that they
22 could not proceed in that role?

23 (NO RESPONSE.)

24 **THE COURT:** Does counsel have any additional
25 questions?

1 **ASSISTANT SOLICITOR LEGETTE:** Not from the State,
2 Your Honor.

3 **MR. PLEXICO:** No, Your Honor.

4 **THE COURT:** Okay.

5 All right, Madam Clerk, we're ready to proceed with
6 selection for this particular case.

7 **CLERK:** When I call your name, would you please come
8 to the front?

9 Juror Number Thirty-nine, Ms. Vernia T. Gadson.

10 Ms. Gadson, stand right here. You can turn around.

11 What says the State?

12 **ASSISTANT SOLICITOR LEGETTE:** Please present the
13 juror.

14 **THE COURT:** What says the defense?

15 **MR. PLEXICO:** Excuse the juror from the trial of this
16 case.

17 **CLERK:** Juror Number Twenty-five, Jody Crim.

18 What says the State?

19 **ASSISTANT SOLICITOR LEGETTE:** Please present the
20 juror.

21 **CLERK:** What says the defense?

22 **MR. PLEXICO:** Excuse the juror from the trial of this
23 case.

24 **CLERK:** Juror Number Sixty-two, Mr. Edward Johnson.

25 What says the State?

1 **ASSISTANT SOLICITOR LEGETTE:** Please present the
2 juror.

3 **CLERK:** What says the defense?

4 **MR. PLEXICO:** Swear the juror.

5 **CLERK:** Mr. Johnson, would you have a seat in the
6 jury box?

7 Juror Number Fifty-three, Mr. Benjamin Holmes.

8 What says the State?

9 **ASSISTANT SOLICITOR LEGETTE:** Please present the
10 juror.

11 **CLERK:** What says the defense?

12 **MR. PLEXICO:** Swear the juror.

13 **CLERK:** Mr. Holmes, would you have a seat in the jury
14 box for me, please?

15 Juror Number Forty-four, McCorskey Graham.

16 What says the State?

17 **ASSISTANT SOLICITOR LEGETTE:** Please present the
18 juror.

19 **CLERK:** What says the defense?

20 **MR. PLEXICO:** Please swear the juror.

21 **CLERK:** Juror Number One Hundred Five, Mr. Willie J.
22 Rouse.

23 **MR. PLEXICO:** May we approach, Your Honor?

24 **THE COURT:** Yes, you may.

25 (WHEREUPON, A BENCH CONFERENCE WAS HELD ON THE RECORD

1 IN THE PRESENCE OF THE JURY PANEL, BUT OUT OF THE HEARING
2 OF THE JURY PANEL, AS FOLLOWS:)

3 MR. PLEXICO: Your Honor, I'd bring your attention to
4 the jury list. I believe this is Number Thirty-five on
5 the witness list, Michael Cave, he is the owner. He is a
6 potential witness, and this is his employee.

7 He, I believe owns Cave Funeral Home. He's a
8 witness.

9 ASSISTANT SOLICITOR LEGETTE: He's the funeral
10 director.

11 MR. PLEXICO: I'd move to strike for cause, because
12 he obviously couldn't disagree with his boss when he
13 testifies. His boss is a witness. He's on the witness
14 list.

15 THE COURT: So you're saying Juror Number One Hundred
16 Five we just called ---

17 MR. PLEXICO: Cave Funeral Home, the director of Cave
18 Funeral Home, is his boss, her witness.

19 THE COURT: Okay. And I apologize, I probably would
20 have ---

21 ASSISTANT SOLICITOR LEGETTE: Can we call him to the
22 podium to see if he can be impartial?

23 THE COURT: I'll poll him as to whether or not
24 there's any issue with that. I'll bring him forward.

25 Juror Number One Hundred Five, if you could step up

1 front, please?

2 All right. I did not ask this of the jury, but do
3 you work for Cave Funeral Home?

4 JUROR: Yes.

5 THE COURT: Okay. And so Mr. Michael Cave who might
6 be a witness in this case is actually your boss?

7 JUROR: Huh?

8 THE COURT: Is Mr. Michael Cave, who I called out on
9 the witness list, is actually your boss?

10 JUROR: Mr. Cave is dead. His dad.

11 THE COURT: Okay. But you know Mr. Cave?

12 JUROR: Uh-huh.

13 THE COURT: You all work together?

14 JUROR: Yeah.

15 THE COURT: How long have you been working together?

16 JUROR: Ten years.

17 THE COURT: Ten years, you say?

18 JUROR: Yeah.

19 THE COURT: So if you know they're involved at all in
20 the funeral arrangements, would you be able to be fair and
21 impartial to the State?

22 JUROR: Yeah.

23 THE COURT: Okay. Would you be able to be fair to
24 the defense then, too?

25 JUROR: Yes.

1 THE COURT: Did you actually have anything to do with
2 the body ---

3 JUROR: No.

4 THE COURT: --- at issue here?

5 JUROR: No, huh-uh.

6 THE COURT: What's your job over there?

7 JUROR: Um I do the burial.

8 THE COURT: You do the burials?

9 JUROR: Yeah.

10 THE COURT: You don't remember the particular
11 circumstances?

12 JUROR: No.

13 THE COURT: Let me just ask you, do you know or did
14 you have anything to do with Harriett, Ms. Harriett
15 Washington?

16 JUROR: No.

17 THE COURT: You don't know who she is?

18 JUROR: I knew her, but I don't know about that. I
19 mean, I wasn't there at that time.

20 THE COURT: You weren't there at what time?

21 JUROR: At the funeral home.

22 THE COURT: On that particular day?

23 JUROR: Yeah. Uh-huh.

24 THE COURT: Okay. You don't work there everyday?

25 JUROR: Most of the time I be there.

1 THE COURT: Do you have a job, in addition to this
2 job?

3 JUROR: I do construction work also.

4 THE COURT: At Cave?

5 JUROR: Yeah.

6 THE COURT: So is all of your employment with Cave
7 Funeral Home?

8 JUROR: Yeah.

9 THE COURT: Okay. So you don't have any employment
10 outside of that?

11 JUROR: No.

12 THE COURT: Okay. Um but you deal with the burial
13 and you deal with construction work.

14 JUROR: That's it.

15 THE COURT: Does Michael Cave give you any orders?

16 JUROR: Sometimes.

17 THE COURT: Okay. That's the son, the owner?

18 JUROR: Yeah.

19 THE COURT: Okay. Who is your direct supervisor.

20 JUROR: Cave.

21 THE COURT: What's his name?

22 JUROR: Garrett Cave.

23 THE COURT: Garrett Cave?

24 JUROR: Yeah.

25 THE COURT: And Michael is his son?

1 JUROR: Yeah.

2 THE COURT: But Michael gives you orders, as well as
3 Mr. Garrett?

4 JUROR: Yeah.

5 THE COURT: Okay. I'm going to ask you again. What
6 I'm asking you when I say can you be fair and impartial,
7 would you be able to allow the State to present their
8 case, including using Michael Cave as one of their
9 witnesses in this case, before passing judgment and allow
10 the defense to present their case before you pass
11 judgment? In other words, give both sides a fair
12 opportunity to present their case?

13 JUROR: Yes, ma'am.

14 THE COURT: Before you pass judgment?

15 JUROR: (NODDED AFFIRMATIVELY.)

16 THE COURT: Given the fact that one of the witnesses
17 is a person you work for?

18 JUROR: Yes.

19 THE COURT: Okay. And you understand ---

20 JUROR: Yeah.

21 THE COURT: --- how important it is.

22 JUROR: Uh-huh.

23 THE COURT: Do you feel like in any way if you, given
24 that your boss is a witness, that that would have any
25 bearing on your employment?

1 JUROR: No, huh-uh.

2 THE COURT: And you um -- do you work there at night
3 at all?

4 JUROR: At night?

5 THE COURT: Yeah.

6 JUROR: Sometimes.

7 THE COURT: You understand all jurors would not be
8 able to talk to anyone about anything.

9 JUROR: Yeah.

10 THE COURT: Do you think you could hold that roll up
11 and not speak to anybody about the case, knowing he's
12 going to be a witness?

13 JUROR: Yes, ma'am.

14 THE COURT: You feel comfortable in that? You're
15 sure?

16 JUROR: Yes, ma'am.

17 THE COURT: Okay. All right. You can step aside.
18 Anything further?

19 Go back to where you were standing.

20 MR. PLEXICO: My motion is to excuse him for cause.
21 I believe that's just too close a relationship, without
22 disagreeing with the boss. And um I believe it would
23 compromise my defense, because they prep'd the body. The
24 body was embalmed, went through the complete burial
25 procedure before they got samplings, which taking out the

1 blood, cleaning out the internal organs.

2 ASSISTANT SOLICITOR LEGETTE: I'm opposed to that
3 motion.

4 THE COURT: Okay.

5 I'm going to go ahead and grant your motion to excuse
6 because of him having a little more information,
7 particularly about how this funeral home does things that
8 a common juror wouldn't know. If it was just a generic
9 funeral home or something, that would be one thing, but he
10 would have more information. And if it came out in the
11 jury room that he actually works for that particular
12 funeral home, they might target him for further
13 information.

14 (WHEREUPON, THE FOLLOWING PROCEEDINGS WERE HELD ON
15 THE RECORD IN THE PRESENCE AND HEARING OF THE JURY PANEL:)

16 THE COURT: Juror Number One Hundred Five, I'm going
17 to excuse you from the trial of this case. Thank you,
18 sir.

19 CLERK: Juror Number Twenty-two, Mia Corell.

20 What says the State?

21 ASSISTANT SOLICITOR LEGETTE: Please present the
22 juror.

23 CLERK: What says the defense?

24 MR. PLEXICO: Excuse the juror from the trial of this
25 case.

1 CLERK: Juror Number One-thirty-five, Latonya
2 Williams.

3 What says the State?

4 ASSISTANT SOLICITOR LEGETTE: Please excuse the juror
5 for the trial of this case.

6 CLERK: Juror Number Seventy-one, Marie Brant.

7 What says the State?

8 ASSISTANT SOLICITOR LEGETTE: Please present the
9 juror.

10 CLERK: What says the defense?

11 MR. PLEXICO: Please swear the juror.

12 CLERK: Juror Number Seven, Carolyn Bradley.

13 What says the State?

14 ASSISTANT SOLICITOR LEGETTE: Please present the
15 juror.

16 CLERK: What says the defense?

17 MR. PLEXICO: Excuse the juror from the trial of this
18 case.

19 CLERK: Juror Number Sixty, Roselyn Jenkins.

20 What says the State?

21 ASSISTANT SOLICITOR LEGETTE: Please present the
22 juror.

23 CLERK: What says the defense?

24 MR. PLEXICO: Swear the juror.

25 CLERK: Juror Number One Hundred One, Ms. Yawanda

1 Rice.

2 What says the State?

3 ASSISTANT SOLICITOR LEGETTE: Please present the
4 juror.

5 CLERK: What says the defense?

6 MR. PLEXICO: Swear the juror.

7 CLERK: Juror Number Thirty-seven, Cynthia Flowers.
8 What says the State?

9 ASSISTANT SOLICITOR LEGETTE: Please swear the juror.

10 CLERK: What says the defense?

11 MR. PLEXICO: Swear the juror.

12 CLERK: Juror Number One Hundred Two, Eulilee Riddle.
13 What says the defense -- I'm sorry, what says the
14 State?

15 ASSISTANT SOLICITOR LEGETTE: Please present the
16 juror.

17 CLERK: What says the defense?

18 MR. PLEXICO: Please swear the juror.

19 CLERK: Juror Number One Hundred Thirty-two, Glenda
20 Williams.

21 THE COURT: Yes, and um, if it's all right with the
22 attorneys, I've indicated that I would like to have two
23 alternates, given the length of the witnesses in the
24 trial. Okay. Thank you.

25 CLERK: What says the State?

1 **ASSISTANT SOLICITOR LEGETTE:** Please present the
2 juror.

3 **CLERK:** What says the defense?

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

6 **CLERK:** Juror Number Seventy-nine, Rosanne McPherson.
7 What says the State?

8 **ASSISTANT SOLICITOR LEGETTE:** Please present the
9 juror.

10 **CLERK:** What says the defense?

11 **MR. PLEXICO:** Swear the juror.

12 **CLERK:** Juror Number Fifty-seven, Clarence Housey.
13 What says the State?

14 **ASSISTANT SOLICITOR LEGETTE:** Please present the
15 juror.

16 **CLERK:** What says the defense?

17 **MR. PLEXICO:** Swear the juror.

18 **CLERK:** Juror Number One Hundred Thirty-seven,
19 Latisha Youmans.

20 What says the State?

21 **ASSISTANT SOLICITOR LEGETTE:** Please present the
22 juror.

23 **CLERK:** What says the defense?

24 **MR. PLEXICO:** Swear the juror.

25 **CLERK:** Juror Number One Hundred Eight, Carolyn P.

1 Sauls.

2 What says the State?

3 **ASSISTANT SOLICITOR LEGETTE:** Please present the
4 juror.

5 **CLERK:** What says the defense?

6 **MR. PLEXICO:** Excuse the juror from the trial of this
7 case.

8 **CLERK:** Juror Number Thirty-five, James Everett.

9 What says the State?

10 **ASSISTANT SOLICITOR LEGETTE:** Please present the
11 juror.

12 **CLERK:** What says the defense?

13 **MR. PLEXICO:** Excuse the witness -- excuse me, excuse
14 the juror from the trial of this case, please.

15 **CLERK:** Juror Number Ninety-two, James Preacher.

16 What says the State?

17 **ASSISTANT SOLICITOR LEGETTE:** Please present the
18 juror.

19 **CLERK:** What says the defense?

20 **MR. PLEXICO:** Please swear the juror.

21 **CLERK:** Mr. Preacher, please have a seat in the jury
22 box.

23 Juror Number One Hundred Three, Marcus Roberts.

24 What says the State?

25 **ASSISTANT SOLICITOR LEGETTE:** Please excuse the juror

1 for the trial of this case.

2 CLERK: Juror Number Forty-five, Bernice Graves.

3 What says the State?

4 ASSISTANT SOLICITOR LEGETTE: Please present the
5 juror.

6 CLERK: What says the defense?

7 MR. PLEXICO: Please swear the juror.

8 CLERK: Juror Number Ninety-four, Carrie Priester.

9 What says the State?

10 ASSISTANT SOLICITOR LEGETTE: Please excuse the juror
11 from the trial of this case.

12 CLERK: Juror Number Thirty, Roteika Devoe.

13 What says the State?

14 ASSISTANT SOLICITOR LEGETTE: Your Honor, may we
15 approach?

16 THE COURT: Yes.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
18 RECORD, OUT OF THE HEARING OF THE JURY PANEL. THEREAFTER,
19 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
20 HEARING OF THE JURY PANEL:)

21 ASSISTANT SOLICITOR LEGETTE: Please present the
22 juror.

23 CLERK: What says the defense?

24 MR. PLEXICO: Um swear the juror.

25 THE COURT: All right, then that would give us our

1 twelve jurors, plus the two alternates.

2 All right, anything from counsel at this point in
3 time?

4 ASSISTANT SOLICITOR LEGETTE: Not from the State,
5 Your Honor.

6 MR. PLEXICO: Nothing from the defense, Your Honor.

7 THE COURT: Okay. Thank you.

8 (WHEREUPON, REMAINING JURY PANEL WAS RELEASED.)

9 THE COURT: Okay, ladies and gentlemen of the jury,
10 thank you for your patience throughout the afternoon. It,
11 you know, takes a lot of time to actually qualify a jury
12 and then, of course, specifically select for that
13 particular case.

14 As I indicated to you earlier, I'm going to do my
15 best to accommodate you all. I'm going to release you
16 now, but I'm going to advise you not to speak about this
17 case at all in any shape, form, or fashion to anyone.

18 You are not to mention the charges that are at issue
19 here or anything of that nature, and the reason I say that
20 is because people tend to invite their opinion on you, and
21 I want you all to make and form your opinions and
22 conclusions based on the facts, testimony, and evidence as
23 presented in this courtroom, not anything that you've
24 heard anywhere, not anything that you've heard on TV or,
25 you know, any of the various "Law and Order" or crime

1 related shows, but what is going on in this particular
2 courtroom. You were chosen, knowing that you would carry
3 that role very seriously, and I'm going to respectfully
4 ask that you do that beginning even now.

5 You all will report to your jury room at 9:30 in the
6 morning, and we should be ready to begin promptly with the
7 case. I'm going to work with the lawyers tonight to deal
8 with any motions or issues, because I don't like you all
9 to show up and then I have to make you wait. I will do my
10 best to not allow that to happen, but every once in a
11 while, you know, we'll have those moments, and I'll talk
12 to you a little more um -- um further about that.

13 Counsel, if you all would approach quickly?

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
15 RECORD OUT OF THE HEARING OF THE JURY, AND THEREAFTER, THE
16 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THEIR
17 PRESENCE AND HEARING:)

18 THE COURT: And, Madam Clerk, I'm going to go ahead
19 and ask that you swear the jurors in now for the trial of
20 this particular case.

21 (4:55 P.M., APRIL 23, 2007, WHEREUPON, JURY WAS DULY
22 SWORN.)

23 THE COURT: Okay, ladies and gentlemen, I'll explain
24 this to you all a little further tomorrow, but those of
25 you who were selected as alternates, we expect that you

1 would listen and abide by all the same rules as all the
2 other jurors. I have had several trials where, for
3 whatever reason, sometimes I've had to excuse a juror or
4 something has happened and the alternate would step in.
5 We hope nothing happens in that regard, and I'm not giving
6 you all that as an option, because I make the final call
7 on that, so don't even think that I'm hinting toward any
8 of that, but I just need for them to understand that they
9 will be with us throughout the trial, and they will be
10 given the same rules and regulations as all the other
11 jurors.

12 You have a question, ma'am?

13 JUROR: Two questions. Number one, where is the jury
14 room that we're supposed to meet at in the morning, and
15 number two, which jurors are the alternates, the last two?

16 THE COURT: The last two are the alternates. Thank
17 you.

18 JUROR: And the jury room where we're to meet?

19 THE COURT: Okay. If you can point that out, because
20 I'm not from here.

21 BAILIFF: I'll show them.

22 THE COURT: Tell them where they should meet in the
23 morning. Okay.

24 All right. You all are released. Have a good
25 evening. Be careful and safe.

1 (4:57 P.M., APRIL 23, 2007, WHEREUPON THE JURY EXITED
2 THE COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HELD ON
3 THE RECORD OUT OF THE PRESENCE OF THE JURY:)

4 **THE COURT:** Okay. All right, Counsel, are there any
5 matters that the Court can deal with now?

6 **MR. PLEXICO:** Um, Your Honor, I really don't have
7 anything. I mean, I don't know what's going to come up
8 with forty-three witnesses. So um ---

9 **THE COURT:** Okay.

10 **MR. PLEXICO:** But I don't have anything laid out. I
11 -- you know, she's an experienced prosecutor, and she
12 knows the rules, Judge, I would hope.

13 **THE COURT:** Okay. And you all have worked well, you
14 know, from my seeing you in the past, and so I'm sure that
15 the trial itself will be -- go well. I always like
16 everybody to have the opportunity to be as prepared as
17 they can, but I also like to run the trial pretty
18 methodically and very succinct and really be thinking
19 about the jurors, you know, in terms of the time
20 commitment that they give us as well. So we will try to,
21 at the appropriate time, bring up any issues with respect
22 to motions. Even in civil cases, I've been known to take
23 witnesses out of turn and take your motions out of turn
24 just so that we can keep the flow of the trial going, but
25 in that regard, just let me know.

1 Ms. Legette, have you presented -- made arrangements
2 to present him with the RAP sheets of the witnesses?

3 **ASSISTANT SOLICITOR LEGETTE:** We have, Your Honor.
4 We're working on that now.

5 **THE COURT:** Okay. Good enough. Okay.

6 **ASSISTANT SOLICITOR LEGETTE:** Yes, Your Honor.

7 I do have a motion.

8 **THE COURT:** Sure.

9 **ASSISTANT SOLICITOR LEGETTE:** To sequester witnesses.
10 I know there are lots of them, and um ---

11 **THE COURT:** Okay. And who would the State like at
12 their table?

13 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I'd like to
14 keep um, well, Investigator Donnie Hutto and let's see,
15 the victim's family, Ms. Richardeen -- well, Ms. Marylin
16 Monroe. And really, um -- that should be all.

17 **THE COURT:** Okay. Any objection, Mr. Plexico?

18 **MR. PLEXICO:** Yes, Your Honor. To keep the victim's
19 family here, I mean, -- I mean, -- are they listed as
20 witnesses, Judge, the victim's family?

21 **ASSISTANT SOLICITOR LEGETTE:** Just one of them.

22 **MR. PLEXICO:** I know Patrick Washington is..

23 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, he is a
24 child. He will be coming and going. He will not be
25 staying.

1 **THE COURT:** Okay.

2 **ASSISTANT SOLICITOR LEGETTE:** Other than that, I'm
3 only asking for Number Thirty-one, Marilyn Monroe, and
4 Donnie Hutto, who is not here right now.

5 **MR. PLEXICO:** Now that I know that Patrick won't be
6 in here, Your Honor, I would certainly have no objection
7 to the family being here or Officer Hutto, Judge. He's
8 the lead officer, as I understand.

9 **THE COURT:** Okay. So all the ones that she's
10 requested, you're fine with?

11 **MR. PLEXICO:** Um, yes, Your Honor.

12 **THE COURT:** Okay. And that will be respective
13 motions granted.

14 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.

15 **THE COURT:** For either side. Okay.

16 Anything further?

17 And I assume that you have a lot of chain of custody
18 witnesses, so is there any issues there that you all
19 anticipate?

20 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, there may
21 be. Um we have some witnesses in the chain that could not
22 be here physically, but we expect to have to argue that
23 with the Court, and we're prepared to go forward now, if
24 the Court would like to hear it now?

25 **THE COURT:** Yeah. I mean, if there's anything that

1 we can deal with now, that would be good so that we can
2 start promptly at 9:30 with your opening statements.

3 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, with
4 regards to the chain of custody, there are Agent um --
5 let's see, Special Agent John Black, who is listed as
6 Number Four. He is out of the state this week and cannot
7 be here. He was the evidence technician, or evidence
8 custodian, from MUSC, the pathologist, to S.L.E.D.

9 And, Your Honor, based on State versus Taylor, which
10 we will cite to Your Honor, in regards to the chain of
11 custody that was decided by the Honorable Judge Few -- and
12 I do have a copy, Your Honor, and he merely handled the
13 evidence, brought it in from MUSC and turned it over to
14 S.L.E.D., logged it in to S.L.E.D., and his name is
15 mentioned in the chain of custody, Your Honor. State
16 versus Taylor, indicates -- State versus Taylor, Your
17 Honor, discusses -- I have it right here, Your Honor.
18 I'll pass it up to the Court.

19 Your Honor, State versus Taylor -- State versus
20 Taylor talks about identity of a person handling the
21 evidence -- held it's admissible; however, with regards to
22 this evidence to establish the identity of those who
23 handled the evidence in the manner it was handled, um
24 there's just a weakness in the chain of custody. It
25 raises a question of credibility, not admissibility, Your

1 Honor.

2 And with regards to Special Agent John Black, who
3 will not testify, his name -- he is known in the chain of
4 custody. He will be um -- he will be discussed by those
5 who actually turned evidence over to him and who the
6 evidence was turned over to by him, Your Honor.

7 And we believe that that is not -- that it does not
8 go to the weight of the admissibility. It goes merely to
9 the weight of credibility, Your Honor, and it becomes a
10 jury question for the jury to decide whenever they receive
11 the particular evidence in question, Your Honor.

12 In addition, on my witness list, let's see, Number
13 Twenty, she's also in the chain of custody. She's also a
14 person who was at S.L.E.D., and she will not testify.

15 Her identity, Your Honor, is also known, and her
16 manner of handling this evidence will also be brought
17 forth through testimony, Your Honor, and I would cite
18 again to State versus Taylor located at 360 S.C. 18, where
19 it talks about the evidence to establish the identity of
20 those who handled the evidence and the manner in which it
21 was handled. There is just a weakness in chain of
22 custody. It merely goes to the weight or credibility of
23 the evidence and not to admissibility, Your Honor.

24 Additionally, Your Honor, with regards to the
25 evidence itself was sent from S.L.E.D. to LabCorp, and I

1 anticipate there being some motion by Mr. Plexico on this.
2 The evidence is sent from S.L.E.D. by Steven Lambert. It
3 was sent through -- um I believe it was FedEx'd to
4 LabCorp, which is located in Virginia. And the FedEx was
5 the custodian of that evidence, and it was delivered
6 intact and without having been tampered with in any way to
7 LabCorp.

8 And we would present witnesses from LabCorp who will
9 be able to attest to the evidence and its state of being
10 once it arrived at LabCorp. Your Honor, I anticipate
11 there being some motion with regards to that evidence,
12 Your Honor, however, we would submit again that the
13 evidence to establish the identity will be testified to by
14 witnesses at the trial, Your Honor, who handled the
15 evidence in the chain of custody and the manner in which
16 it was handled.

17 And we believe that this is just a weakness in our
18 chain of custody. It does not go to its admissibility but
19 simply to the weight of credibility that's to be given to
20 it with regards to our jury, Your Honor.

21 **THE COURT:** Okay. On that particular issue dealing
22 with chain of custody, Mr. Plexico, in response?

23 **MR. PLEXICO:** Yes, Your Honor. Let me -- I think
24 it's best to deal with this request by the prosecution by
25 beginning at the end, Judge.

1 This is the worst DNA evidence I've ever heard of,
2 I've ever heard of. So if the result comes in and is
3 admitted, the lack of these witnesses is only going to
4 compound what I believe would be obvious, Judge. It is
5 the weakest DNA evidence I've ever seen, and it probably
6 should not even come in.

7 So I -- I mean, I certainly object. I'm not sure ---

8 **THE COURT:** And what do you mean by that?

9 **MR. PLEXICO:** Your Honor, my client would be one,
10 according to my math, one in twenty thousand, at least
11 twenty thousand, possible suspects. Their final lab
12 report to me says that my client -- merely says my client
13 could not be excluded as a possible suspect, if we include
14 everybody they didn't test, which was half of the human --
15 half of the population in America, except for those who
16 were tested. So, I mean, it's -- it's weak, and I just
17 don't believe that -- I don't know -- and it could have
18 been corrupted, Judge.

19 And um -- and I don't know, I thought that he was at
20 -- I thought James Black was at MUSC while -- I thought he
21 was there while they were getting these samples, and he
22 would have -- he accompanied the body, so I thought he
23 would be -- maybe I'm wrong, but I thought he would be an
24 extremely important witness, Judge. If he accompanied the
25 body from the funeral home to MUSC and then took those

1 samples to S.L.E.D., I would think he'd be a critical part
2 of the chain, not just somebody who was just standing in
3 line passing it along, Judge.

4 I mean, the opportunity for corruption and not, you
5 know, not in a criminal sense, but having the evidence
6 compromised, or tainted, Your Honor. He was there for a
7 long time with that evidence, and it would be an injustice
8 to um not have the defense be able to cross-examine him
9 regarding his evidence -- his handling of the evidence,
10 Judge.

11 And I'm not sure what Emily Norris had to do with the
12 evidence, either. This evidence, this DNA has been passed
13 around to about everybody. You can look at the witness
14 list here, Judge, and the opportunity for contamination is
15 just prejudicial.

16 THE COURT: Okay.

17 Um right now, you're just asking with respect to
18 James Black and then Emily Norris, in terms of them not
19 testifying?

20 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor. I was
21 um -- just putting before the Court that the chain of
22 custody does have a weakness in it, Your Honor, and I was
23 citing to State versus Taylor.

24 THE COURT: Right.

25 ASSISTANT SOLICITOR LEGETTE: Based on what's already

1 been set forth in precedence, Your Honor, in caselaw, and
2 we weren't asking the Court necessarily to rule, however,
3 that issue will come up at some point, I do believe. And,
4 Your Honor, if the Court is so inclined to look at that
5 matter, we would certainly appreciate a ruling at this
6 point, Your Honor.

7 THE COURT: Okay.

8 ASSISTANT SOLICITOR LEGETTE: That would save us some
9 money, if you would be so inclined.

10 THE COURT: Okay.

11 MR. PLEXICO: Your Honor, with this case, this
12 evidence was in a bag that could not be -- could not be
13 opened. This is different from Officer -- S.L.E.D.
14 Officer Black, in that he was present during -- he was
15 with the body, and then he brought the body there to have
16 the evidence collected from the body, and then he
17 escorted, as I understand it, and they're not disagreeing,
18 Judge, he -- he escorted the evidence to Columbia.

19 I'd like to have testimony and build a record, Judge,
20 um on, you know, what all his involvement was. Of course,
21 I mean, he's not here, so I don't know.

22 But it's their job to prove my client guilty with
23 competent evidence, and that would be -- that would be --
24 I think it would be a due process violation for us not to
25 be able -- I think in this instance, because of everything

1 about this DNA, Judge, um I just don't -- I think this
2 case is great for what it says, Judge, but this evidence
3 couldn't have been messed with, because it couldn't -- it
4 could not be opened without tearing it.

5 This, we're talking about actually taking the
6 evidence. Maybe somebody placed it there. I don't know,
7 but I mean, we need to have a right to cross-examine the
8 witnesses, which is a right to due process, to
9 cross-examine the witnesses.

10 They want to eventually say the DNA must be my
11 client's, but they don't want us to be able to question
12 how they went about getting that evidence. They want to
13 present the evidence and skirt the issue of
14 cross-examination, Judge, which I don't believe is fair.
15 It's a constitutional right of my client. Thank you,
16 Judge.

17 THE COURT: And you're not challenging, then, Ms.
18 Emily Norris, then?

19 MR. PLEXICO: Yes, Your Honor. I have no idea what
20 she could have done. The same goes for her, Judge.

21 I haven't seen her name in a single report that I've
22 -- that I've read, so this is -- now, I assume they've
23 complied with discovery in -- in my Brady Motion, Judge,
24 in all our motions. So, I mean, that's going to be news
25 to me, Judge.

1 THE COURT: Okay.

2 MR. PLEXICO: I mean, I haven't seen this list before
3 to research it to see what they've done.

4 THE COURT: Explain a little more clearly, because of
5 course, you all have been living with this case, and then
6 you just kind of blurt out some facts. And then as the
7 trial goes on, I'll know more. But, Mr. Black, explain a
8 little more clearly as to how his role was in the DNA
9 chain of custody.

10 ASSISTANT SOLICITOR LEGETTE: Your Honor, he did not
11 accompany the body to MUSC. He was present at the --
12 there was -- there was a first autopsy, and then there was
13 a second, not autopsy, but a rape kit collection by the
14 pathologist, Dr. Cynthia A. Schandl, who will testify that
15 she then collected evidence of this body, Harriett
16 Washington, which was not transported by Agent John Black.
17 Um she then turned the evidence over to S.L.E.D. Agent
18 John Black.

19 He then returned this evidence to S.L.E.D. and logged
20 it in at the S.L.E.D. DNA lab when he arrived there, and
21 that was -- that was the limit of his involvement in
22 regards to the DNA, Your Honor. He merely was the
23 transport officer who transported it from one point to a
24 second point.

25 And he will be identified in the chain, which is what

1 State versus Taylor um discusses in its language in
2 identifying um the handler of the evidence, as well as the
3 way it was handled. And we believe we can demonstrate
4 through our witnesses how that evidence was received at
5 S.L.E.D. and how Dr. Schandl actually turned it over to
6 Agent Black at the time she delivered it to him at MUSC.

7 **THE COURT:** He was at MUSC and then he took it
8 specifically where?

9 **ASSISTANT SOLICITOR LEGETTE:** To S.L.E.D.

10 **THE COURT:** To ---

11 **ASSISTANT SOLICITOR LEGETTE:** Yes, Your Honor.

12 **THE COURT:** Oh, okay. He just happened to be at
13 MUSC?

14 **ASSISTANT SOLICITOR LEGETTE:** He went down to MUSC.
15 The pathologist called him. He went to MUSC. He
16 collected the evidence.

17 After she collected the evidence, she turned it over
18 to him. He then delivered it to S.L.E.D. and logged it
19 in.

20 **THE COURT:** Okay. But she got, meaning the doctor,
21 got the evidence directly from the body?

22 **ASSISTANT SOLICITOR LEGETTE:** That's correct.

23 **THE COURT:** Okay. At the first autopsy.

24 **ASSISTANT SOLICITOR LEGETTE:** At -- at the second
25 autopsy.

1 THE COURT: At the second autopsy.

2 ASSISTANT SOLICITOR LEGETTE: Well, it wasn't an
3 autopsy, it was -- Your Honor, this is a case that has
4 lots of information, and um the pathologist saw the body
5 twice.

6 THE COURT: Uh-huh. Okay.

7 ASSISTANT SOLICITOR LEGETTE: And so the second time
8 of her viewing the body and dealing with the body, she
9 collected evidence at that time.

10 THE COURT: Okay.

11 All right, and then, Mr. Plexico, do you have any
12 challenges with respect to the caselaw or anything else to
13 offer?

14 MR. PLEXICO: Um, Your Honor, not about the caselaw.
15 I think while it's a great case for what it says, Your
16 Honor, I mean, you know, this evidence could not be,
17 essentially, could not be tampered with. And since, you
18 know, ---

19 THE COURT: Meaning the evidence in the case she's
20 presented?

21 MR. PLEXICO: Yes.

22 THE COURT: Okay.

23 MR. PLEXICO: The case of State versus Taylor says
24 that the bag could not be opened without tearing it, Your
25 Honor. And, you know, I can understand that we don't know

1 that at this point, Judge. So, she's the one that brought
2 the motion up, and I just -- as I understand -- and I just
3 want to make clear on the record that he is not the one
4 that accompanied the body from Allendale to -- on the
5 second trip to MUSC? Is that what I'm being told?

6 I mean, I don't know, Judge. I thought from my
7 reading of it, he had accompanied the body from Allendale
8 County to MUSC and that was -- he was present.

9 ASSISTANT SOLICITOR LEGETTE: Your Honor, the body
10 was taken to the funeral -- the body was funeralized and
11 taken to MUSC, and it was not taken by Agent Black.

12 MR. PLEXICO: I just think he's necessary, Your
13 Honor.

14 THE COURT: Okay. Well, she's indicating that he was
15 at -- went to MUSC; is that correct?

16 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

17 THE COURT: And then took it from MUSC to S.L.E.D.

18 ASSISTANT SOLICITOR LEGETTE: Yes.

19 THE COURT: Okay. In light of trying to make the
20 ruling, though, um I would have to agree with Mr. Plexico,
21 just that I would need to hear more about, you know, what
22 the sample contained, the ability for it to be tampered
23 with, you know, just some of those issues, so um
24 preliminarily, I would not rule, just because I would need
25 some more evidence on that.

1 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.

2 **THE COURT:** Okay. Anything further from counsel that
3 y'all anticipate?

4 **ASSISTANT SOLICITOR LEGETTE:** Not from the State,
5 Your Honor.

6 **THE COURT:** Okay.

7 **MR. PLEXICO:** Not from the defense, Your Honor, at
8 this time.

9 **THE COURT:** Okay. And then I will be here early in
10 the morning. I'm going to try to get here probably by a
11 quarter of 9:00.

12 So, I'll just be back here and available to you all,
13 and please, if there's something that you all think of,
14 I'll be ready to proceed, because I really would like to
15 start the trial at 9:30. It's going to be lengthy, and
16 you want to hold your jurors' um -- um attention as well.
17 So you all think about that, too.

18 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.

19 **THE COURT:** Okay.

20 **MR. PLEXICO:** I don't anticipate anything. I think
21 we can take care of it as we go along and keep from doing
22 it twice, as a matter of fact, Judge, since we've got all
23 these witnesses.

24 **THE COURT:** Okay. Okay.

25 All right, well, court is in recess, and y'all are

1 excused for the evening.

2 (5:16 P.M., APRIL 23, 2007, WHEREUPON CASE WAS
3 RECESSED FOR THE DAY. AT 9:34 A.M., APRIL 24, 2007, THE
4 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD, OUT OF THE
5 PRESENCE OF THE JURY:)

6 THE COURT: Are the attorneys ready to proceed?

7 ASSISTANT SOLICITOR LEGETTE: One moment, Your Honor.

8 THE COURT: Okay.

9 MR. PLEXICO: The State just gave me a handful of
10 photographs I've never seen before, Judge. May I have
11 time to go over these?

12 THE COURT: Okay. Are these going to be in the first
13 witness or so?

14 ASSISTANT SOLICITOR LEGETTE: No, Your Honor.

15 THE COURT: Okay, because I, obviously, have to give
16 the um jurors my preliminary charge, and then you all
17 would do your opening statements.

18 ASSISTANT SOLICITOR LEGETTE: Yes.

19 THE COURT: And I just wondered, you know, if there's
20 some time um so that we can go ahead and proceed?

21 MR. PLEXICO: Sure.

22 THE COURT: And then ---

23 MR. PLEXICO: I can do them while you're -- look at
24 them while you're doing your preliminary instructions.

25 THE COURT: Okay. Good enough. Okay. Because we've

1 got a lot to do, so I want to keep us moving.

2 Okay. I'm ready for the jurors, then.

3 (APRIL 24, 2007, 9:40 A.M., WHEREUPON, THE JURY
4 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
5 WERE HELD IN THEIR PRESENCE.)

6 THE COURT: Good morning, ladies and gentlemen of the
7 jury. I hope you all had a restful evening. We had quite
8 a long day yesterday, but we're ready to proceed with the
9 trial of this matter..

10 Um I'm going to give you some preliminary
11 instructions before we begin the trial of this case.
12 First of all, I want to thank you so much for your jury
13 service. Thank you. We certainly appreciate it.

14 Um as you heard yesterday, the items for which you
15 will be discussing and deliberating are quite serious in
16 terms of the nature of the case, but we want you to be
17 fair to both sides. Listen to the State, but also listen
18 to the defense as they cross-examine witnesses and then
19 have the opportunity to present their case as well. You
20 have been chosen, because we believe that you are fair
21 minded.

22 Now, while we begin the trial of this case, I'm sure
23 many of you have watched television and seen the various
24 law and order shows and crime scenes and all of that.
25 Well, this trial will be educational and informative, but

1 it's not for your entertainment. Don't be looking for
2 some smoking guns or some theatrics or things like that.

3 We want you to just pay attention to what goes on
4 here, take it all in, listen carefully, and think about it
5 as we proceed through the trial. The courtroom is a place
6 of honor, and it's dedicated to citizens having the
7 ability to resolve their disputes, whether we're in civil
8 court or criminal court, as we are in this case.

9 The State in this case is actually bringing the
10 charges in our case, the State versus Eric Hemingway. So,
11 they will proceed first, because they have the burden of
12 proof. They will do so by first having opening statements
13 by the State and then the defense has the ability to have
14 opening statements as well.

15 In the opening statements, this is just them giving
16 you an idea of what this case will be about before we
17 proceed through testimony and evidence. It is not
18 evidence. Evidence will be presented through testimony or
19 various documents, which you will have the ability to look
20 at at some point in the trial.

21 Um I always tell people the juries are the most
22 important people in the room, and let me tell you why.
23 Not just because, of course, we respect you and again
24 dedicate -- your dedication and your service, but because
25 you are the sole judge and exclusive finders of the fact.

1 And what do I mean by that? People will be
2 testifying, but as we know, how people hear testimony and
3 how they exercise, you know, those thoughts in their mind,
4 and then you'll have different versions of a story based
5 on how a person did on the direct examination versus the
6 cross-examination, and then there will be people who will
7 testify that will challenge testimony that another witness
8 has testified to. So, at the end of the day, you have to
9 sort it all out, and whatever you perceive or believe it
10 to be, then that's up to you.

11 You will hear me say at the end of the case as well,
12 it's up to you to determine the credibility of any
13 witness. You can believe one witness over several
14 witnesses, or part of a witness's testimony, or no part of
15 a witness's testimony, and then you know, reject some,
16 keep some. It's all up to you.

17 You're the sole judges of the fact. You pick and
18 choose how you want to proceed in the case.

19 At some point during the trial, you might hear
20 attorneys objecting. So, I just want to let you know what
21 that means. We are not trying in any way to keep anything
22 from you, it's just that these attorneys, as well as
23 myself, we go to law school and we have these big books
24 and we've got Rules of Procedure, Rules of Evidence, you
25 know, courtroom, you know, decorum and etiquette, and we

1 have to abide by those to make sure everything is fair by
2 everybody.

3 So, to the extent you hear a witness testify and one
4 party or the other objects, if I say the objection is
5 overruled, that means that I'm allowing the witness to
6 proceed with that testimony. If I say the objection is
7 sustained, then that means that that party, I agree, has a
8 legal ground for not allowing that particular statement to
9 come in. So, you would disregard that particular portion
10 of the testimony. And you might hear that with respect to
11 documents as well.

12 At the end of the case, then I am the judge of the
13 law. And I'll tell you from the beginning, the law is not
14 what you perceive it to be in terms of TV or what your
15 friend told you it was or street law, you know, just all
16 those things. It's the law as I tell it to you at the end
17 of the case from this courtroom.

18 And you have to accept that law. It can't be what
19 you think it should be. You have to accept that law,
20 apply your exclusive judge of the fact scenario to
21 whatever law I give you, and then you come up with the
22 outcome of the case.

23 At the conclusion of all testimony, then the parties
24 will have the opportunity for closing arguments, and at
25 that time, they can give you their version of the

1 testimony as they saw it over these few days and give you
2 any reasonable inferences from the testimony that they
3 would like you to draw so that they can assist you in your
4 deliberations at the end of the case.

5 With respect to the alternates, you know, welcome to
6 the jury panel as well. And as I indicated yesterday, we
7 want you to pay just as much attention, in the event that
8 you might need to step in. So, um we want you to be just
9 as mindful of the facts.

10 At no point can you discuss the case with anyone.
11 That means bailiffs. That means if you're going to lunch,
12 any other person, and not even amongst yourselves.

13 The attorneys know that they can't discuss it with
14 you, so don't think that they're being rude if they see
15 you in the hall and they walk past you. They know they
16 cannot discuss anything with you, nor be perceived that
17 you have made eye contact or anything so that we don't
18 have a mistrial, you know, so that anybody kind of judges
19 whether or not there were some inferences or innuendos
20 going on there. So just understand that right from the
21 beginning.

22 But we want you to listen throughout the trial and
23 then you will have at some point particularly um this case
24 may be handed to you. We really appreciate your service,
25 and now I'm going to turn it over to the lawyers.

1 Um before I do that, for this particular trial, I'm
2 going to ask that no one take notes. All right? And that
3 means -- because I would have to let everybody take notes,
4 or no one take notes. And I just think that factually for
5 this particular type of case, we'd rather you just pay
6 attention to everything that's going on here, and then
7 collectively, you all recall from your memory what you
8 believe has occurred in this case.

9 All right. Thank you. Let's proceed.

10 Ms. Legette, we'll be happy to hear from you.

11 **ASSISTANT SOLICITOR LEGETTE:** May it please the
12 Court? Mr. Plexico?

13 Ladies and gentlemen, good morning.

14 **JURY:** Good morning.

15 **ASSISTANT SOLICITOR LEGETTE:** This is a case about
16 safety, safety of the home, and specifically, that home
17 was Harriett Washington's home, a home located in the Town
18 of Allendale.

19 Harriett Washington was a woman from Allendale
20 County. She lived in the Town of Allendale, and on March
21 24th, 2005, the safety of her home was shattered, and it
22 was shattered by a man named Eric Hemingway.

23 On March 24th, 2005, Eric Hemingway went to the home
24 of Harriett Washington, knocked on the door. When she
25 opened that door, he hit her, bum-rushing her, raped her,

1 and then choked her to death. That happened on March
2 24th, 2005.

3 And, ladies and gentlemen, you might not even be here
4 today but for Mr. Hemingway. When he left Ms.
5 Washington's home that night, he didn't go straight back
6 home. He went to a friend's house, and he told that
7 friend what he did. He told him in some detail about what
8 he did.

9 Ladies and gentlemen, for the crimes that Mr.
10 Hemingway committed in the Town of Allendale on March
11 24th, 2005, he is charged with murder of Harriett
12 Washington; he is charged with burglary first of Harriett
13 Washington's house in the Town of Allendale; and he is
14 charged with criminal sexual conduct in the first degree,
15 raping Harriett Washington.

16 Now, ladies and gentlemen, you will hear lots of
17 testimony here today, and you can take that testimony as
18 you see it. As my mother and my father often say, it is
19 what it is.

20 You are the judges of the facts. That's what you
21 are.

22 The State has the burden of proof in this case and
23 when all the evidence is in, we'll come back before you.
24 I'm going to ask you to find Eric Hemingway guilty of
25 murder, and guilty of burglary first, and guilty of

1 criminal sexual conduct in the first degree.

2 The witnesses you hear, you may not necessarily think
3 they did all they could do, but as I said, ladies and
4 gentlemen, it is what it is. Thank you.

5 MR. PLEXICO: May it please the Court? Madam
6 Solicitor?

7 THE COURT: Mr. Plexico.

8 MR. PLEXICO: Ladies and gentlemen of the jury, I'm
9 Steve Plexico. I've been the Public Defender down here
10 since 1990. I'm going on my seventeenth or eighteenth
11 year. It's always been a pleasure to address a jury here
12 in Allendale. I'm sorry, I'll try to talk loud enough so
13 y'all can hear me.

14 Um you're here today for the trial of Eric Hemingway.
15 This is his only trial. He doesn't get another trial.

16 Let me explain some rules of the court to you. Y'all
17 are the triers of the facts, once y'all decide what a fact
18 is. Um say of somebody sitting in that chair five minutes
19 ago or not, you'll hear witnesses take the stand and say,
20 well, you know, that puts him in the chair at the relevant
21 time, or you might have somebody who says -- somebody else
22 says, two people say, "I was in the courtroom the whole
23 time and nobody was there." Well, who do you believe?

24 It's about believability. Once y'all believe who to
25 believe and decide what the fact is, that will never

1 change.

2 If the Judge makes an error of the law, that can be
3 appealed, never, never a finding of the jury. People are
4 often confused about that. The finding of the jury at a
5 jury trial as to what the facts are, that always stands.

6 Um we have no burden here. My client today is, as
7 they say, is cloaked with a cloak of innocence. That's
8 one hundred percent, and it's up to the State to take away
9 that cloak of innocence, a thread at a time, a piece of
10 material at a time, until not a reasonable doubt remains
11 about their guilt.

12 Now, they have the burden. We have absolutely no
13 duty to put on any evidence at all whatsoever. I mean,
14 that wouldn't be right.

15 Why would it be right if we were forced to have to
16 put on evidence, if you were forced to have to prove
17 yourself innocent? Well, look at the taxing power of the
18 State of South Carolina. Look at all that money, all that
19 power, all those -- all those employees versus who? One
20 lone citizen. Okay?

21 In criminal court, you're talking about a lone
22 individual. You're not talking about a Microsoft
23 Corporation who -- who can match the power of all the
24 expertise and lawyers. You're talking about one man. You
25 have to remember that's why they have the burden, and

1 that's very important.

2 Look at the founding fathers. Now, if the British
3 caught George Washington and Thomas Jefferson, do you
4 think that they would have had to -- what kind of trial
5 would they have gotten? So when they came up with this
6 great Constitution, they were thinking about their own
7 necks. Okay?

8 Remember, the British came back in 1812, and that
9 wasn't so far after the Revolution either. Okay?

10 And they came up with you have a right to a jury
11 trial, nothing kept behind closed doors and in secret.
12 You have a right to a public jury trial and the State has
13 to prove you're guilty beyond a reasonable doubt. Okay?

14 You're entitled to counsel. Those things, you know,
15 cannot be denied, due process, lawyer, jury trial rights.
16 Think about them. All right? All of those things are
17 very important.

18 And why? They would have hung George Washington if
19 they would had caught him. They would have shot Thomas
20 Jefferson, James Madison, Monroe. You could go on and on.
21 Okay? These guys were serious about this.

22 Now, say you make a mistake. Can you call Elaine
23 next week and go, you know, "I want to change my vote"?
24 No.

25 Once you do what you do, that's it. So, it's very

1 important to listen to all the evidence.

2 Burglary, entry, means entry without consent. There
3 are some other factors, and listen for that evidence.

4 All evidence, before you believe it, has to be
5 credible. So, think about that credibility issue as you
6 listen to the evidence.

7 And I warn you now, sometimes what you hear isn't
8 what it seems. So, don't go in there and start making up
9 your mind until all the evidence is in.

10 Then, you have your input, the twelve of you. All we
11 want is for you to come to a true and just verdict. In
12 the end, we think the evidence is going to fail to show
13 that my client is guilty beyond a reasonable doubt. Thank
14 you very much.

15 THE COURT: Okay. The State may call its first case
16 -- witness. Excuse me.

17 ASSISTANT SOLICITOR LEGETTE: Thank you.

18 The State calls Patrick Washington.

19 BY ASSISTANT SOLICITOR LEGETTE

20 Q Good morning.

21 A Good morning.

22 Q I'll need you to speak up so the jury can hear you.
23 Okay?

24 A Okay.

25 Q Okay. I need you to speak into that microphone,

1 because this lady right here, she's writing everything,
2 taking everything down. Okay?

3 A All right.

4 Q Okay? Is the microphone on? State your full name
5 for the record.

6 A Patrick Shakir Washington.

7 Q Okay. And, Patrick, how old are you?

8 COURT REPORTER: Your Honor? I'm sorry, Your Honor,
9 he hasn't been sworn in.

10 THE COURT: Okay. Thank you. I'm sorry. I
11 appreciate it.

12 Madam Clerk, if you'll swear him in?

13 PATRICK WASHINGTON, after being duly sworn,
14 testified as follows:

15 DIRECT EXAMINATION

16 BY ASSISTANT SOLICITOR LEGETTE

17 Q State your full name, please.

18 A Patrick Shakir Washington.

19 Q How old are you, Patrick?

20 A Twelve.

21 THE COURT: Hold on. They still cannot hear you.
22 Can you pull his chair up?

23 Q I'm going to need you to speak up. Okay?

24 A All right.

25 Q Okay. Now, and how old are you, Patrick?

- 1 A Twelve.
- 2 Q Okay. And when is your birthday?
- 3 A .
- 4 Q May when?
- 5 A h.
- 6 Q Okay. Of what year?
- 7 A
- 8 Q Okay. Now, Patrick, where do you live?
- 9 A In Barnwell.
- 10 Q Okay. And who lives with you?
- 11 A My mom, my dad, and my brothers and sisters.
- 12 Q Okay. Now what grade are you in?
- 13 A Sixth grade.
- 14 Q Okay. And what's your favorite subject?
- 15 A Social Studies.
- 16 Q What school do you go to?
- 17 A Barnwell Elementary School.
- 18 Q Okay. What kind of grades do you get in school?
- 19 A Sometimes good grades.
- 20 Q Okay. Now, Patrick, let's talk about right and
- 21 wrong. Do you know the difference between right and
- 22 wrong?
- 23 A Yes, ma'am.
- 24 Q Okay. Do you know the difference between the truth
- 25 and a lie?

DIRECT EXAMINATION OF P. WASHINGTON BY ASST. SOL. LEGETTE

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1 A Yes, ma'am.

2 Q Tell me what the difference is.

3 A Um like -- like money on the table, if it wasn't
4 money on the table, that's a lie. And the truth, you got
5 like papers and stuff on the desk.

6 THE COURT: I still need you to speak up louder. I
7 know it's hard, but um if you can just pull yourself right
8 into the microphone.

9 ASSISTANT SOLICITOR LEGETTE: Can you move it closer?

10 (DEPUTY MOVES THE MICROPHONE CLOSER TO THE WITNESS.)

11 Q Okay. Tell us again?

12 A Like there's money on the table, and if it's not
13 money on the table, that's a lie. The truth is like
14 there's papers and stuff on the desk.

15 Q Okay. Like this desk?

16 A Yes, ma'am.

17 Q Okay. Now what happens to people who tell lies?

18 A They might go to jail.

19 Q Okay. Or they may get in trouble?

20 A Yes, ma'am.

21 Q And what happens when you tell the truth?

22 A You might get rewarded.

23 Q Okay. Now, Patrick, do you have any pets?

24 A No, ma'am.

25 Q Okay. Now, do you have any brothers and sisters?

- 1 A Yes, ma'am.
- 2 Q Okay. What do you have?
- 3 A I've got one brother that stay with his dad.
- 4 Q Okay. And what is his name?
- 5 A Trey Varner.
- 6 Q Okay. Now, Patrick, let's talk about your mom.
- 7 Okay? What was your mom's name?
- 8 A Harriett Washington.
- 9 Q And what happened to your mom?
- 10 A Well, she was ---
- 11 Q Do you still live with your mom?
- 12 A Yes -- no, ma'am.
- 13 Q Okay. What happened? Where is she?
- 14 A (NO RESPONSE.)
- 15 Q It's okay.
- 16 Is she still alive, Patrick?
- 17 A No, ma'am.
- 18 Q Okay. Do you remember when you lived with your
- 19 mother?
- 20 A Yes, ma'am.
- 21 Q Um who else lived there with you?
- 22 A My little brother.
- 23 Q Okay. So it was you and your mom and your little
- 24 brother?
- 25 A Yes, ma'am.

DIRECT EXAMINATION OF P. WASHINGTON BY ASST. SOL. LEGETTE

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- 1 Q And what county did you live in with your mother?
- 2 A (NO RESPONSE.)
- 3 Q What was your address? Do you remember?
- 4 A No, ma'am.
- 5 Q Okay. Do you remember what county it was?
- 6 A (NODDED AFFIRMATIVELY.)
- 7 Q What county was it?
- 8 A Allendale.
- 9 Q Okay. What school did you go to during that time?
- 10 A Um elementary school.
- 11 Q Okay. Was it Allendale Elementary School?
- 12 A Yes, ma'am.
- 13 Q Okay. Now, Patrick, do you remember the last time
- 14 you saw your mom?
- 15 A Yes, ma'am.
- 16 Q Can you describe what happened when you saw her?
- 17 A Well, I saw her on the floor, and then I woke my
- 18 little brother up, and I go to my neighbor house, and I
- 19 was crying, and then that's when he show up and put the
- 20 covers on me and make me warm, and that's when the
- 21 ambulance came.
- 22 Q Okay. Now, Patrick, let's talk about the night
- 23 before you found your mom. Did you hear anything the
- 24 night before that?
- 25 A Yes, ma'am.

1 Q Tell us what you heard.

2 A I heard the bed rumble, and I heard the door open and
3 close.

4 Q Okay. And did you -- did the door open and close
5 more than once?

6 A Yes, ma'am.

7 Q Okay. Did you hear any other noises?

8 A No, ma'am.

9 Q Okay. Did you get up when you heard these noises,
10 Patrick?

11 A No, ma'am.

12 Q Okay. And you said you went and got your neighbor?

13 A Yes, ma'am.

14 Q Did he come help you?

15 A Yes, ma'am.

16 Q Okay.

17 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
18 indulgence?

19 Q Um, Patrick?

20 A Ma'am?

21 Q That's all the questions that I have. Please answer
22 any questions Mr. Plexico may have. Okay?

23 A Okay.

24 CROSS-EXAMINATION

25 BY MR. PLEXICO

CROSS-EXAMINATION OF PATRICK WASHINGTON BY MR. PLEXICO

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1 Q Young man, good morning. The morning that -- that um
2 you went over and I think you got Mr. -- what was the
3 man's name, your neighbor, that you got to come over?

4 A Cleo. Cleo.

5 Q Cleo Sanders?

6 A I think so.

7 Q Okay. All right. And he's a friend of the family;
8 right?

9 A Yes, he was.

10 Q Okay. Um you talked to other people that morning,
11 too; didn't you?

12 A Yes, sir.

13 Q Okay. You talked with Vonda Priester. She was the
14 Coroner that came to the scene. Do you remember talking
15 to her?

16 A I don't remember.

17 Q Okay. Did you tell anybody that you heard -- that
18 you heard noises around 11:00 p.m.?

19 A I think so.

20 Q You thought you heard a thud about 11:00 p.m.; is
21 that right?

22 A I think so.

23 Q Okay. But you heard something at 11:00 p.m.; right?

24 A Yes, sir.

25 Q Okay. And you didn't hear anything after that; did

- 1 you?
- 2 A No, sir.
- 3 MR. PLEXICO: Court's indulgence?
- 4 Q And you did not go out of the room, right, when you
- 5 heard the thud; right?
- 6 A Yes, sir.
- 7 Q Correct?
- 8 A (NODDED AFFIRMATIVELY.)
- 9 Q All right. And you didn't hear anything after that;
- 10 right?
- 11 A No, sir.
- 12 Q Not a peep. Not a sound; right?
- 13 A No, sir.
- 14 Q Okay. Was your mom taking medicine?
- 15 A Yes, sir.
- 16 Q Did she have to take a lot of medicine sometimes?
- 17 A Yes, sir.
- 18 Q Did you see her take three, or four, or five pills?
- 19 A I think so.
- 20 Q Sir?
- 21 A I think so.
- 22 Q Okay. And she had bad migraines, too; didn't she?
- 23 Her head hurt is what I mean by a migraine.
- 24 A Yes, sir.
- 25 Q Do you know what a migraine is? I'm sorry.

DIRECT EXAMINATION OF CLEO SANDERS BY ASST. SOL. LEGETTE

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1 A Not that much.

2 Q It's like a bad, bad, bad headache. She had those;
3 didn't she?

4 A Yes, sir.

5 Q Okay. Um did she ever have a stroke before?

6 A No, sir.

7 Q Okay. All right. Thank you. I don't have anything
8 else. Thanks for coming, sir.

9 THE COURT: Okay.

10 ASSISTANT SOLICITOR LEGETTE: No further questions.
11 Your Honor, can he be excused?

12 THE COURT: Yes, you may. Sir, you can step down.
13 Thank you for coming.

14 ASSISTANT SOLICITOR LEGETTE: The State calls Cleo
15 Sanders.

16 CLERK: Raise your right hand. Left hand on the
17 Bible, and raise your right hand for me.

18 CLEO SANDERS, after being duly sworn, testified as
19 follows:

20 DIRECT EXAMINATION

21 BY ASSISTANT SOLICITOR LEGETTE

22 Q Good morning, sir.

23 A Good morning.

24 Q State your full name for the record, please.

25 A Cleo Sanders.

- 1 Q And, sir, where do you live?
- 2 A Barnwell, South Carolina.
- 3 Q And where do you work?
- 4 A I'm self-employed for myself.
- 5 Q Okay. And what do you do for yourself?
- 6 A Clean cars, like have a car wash.
- 7 Q And how long have you lived in Barnwell County?
- 8 A Um a year and a half.
- 9 Q And where else have you lived in the past?
- 10 A Allendale.
- 11 Q And how long did you live in Allendale County?
- 12 A Um thirty-one years.
- 13 Q Now, please tell us what years did you live in
- 14 Allendale County and when did you move to Barnwell?
- 15 A I moved to Allendale in '71.
- 16 Q Uh-huh. And when did you move away from Allendale
- 17 County?
- 18 A Um 2005.
- 19 Q Now, Mr. Sanders, were you living in Allendale County
- 20 in March 2005?
- 21 A Uh-huh.
- 22 Q Okay. And what was your address during that time?
- 23 A Um it was 204 Oakland Drive, but I changed it to 394
- 24 Oakland Drive.
- 25 Q And it's Oakland Drive?

DIRECT EXAMINATION OF CLEO SANDERS BY ASST. SOL. LEGETTE

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1 A Uh-huh.

2 Q Okay. And did you have any neighbors on Oakland
3 Drive?

4 A Uh-huh.

5 Q Okay. Could you tell us about some of your
6 neighbors, who they were?

7 A Who they were?

8 Q Yes, sir.

9 A Charlie Anderson.

10 Q Uh-huh.

11 A He's self-employed, brick mason.

12 Q And who else did you have as a neighbor?

13 A Leon Haygood.

14 Q Anyone else?

15 A He's a painter.

16 Q Okay.

17 A Yeah, Harriett Washington was one.

18 Q Okay. Let's talk about Harriett Washington. Did you
19 know your neighbor, Harriett Washington?

20 A Yes, ma'am.

21 Q Okay. And how did you know Harriett Washington?

22 A We was good friends.

23 Q Good friends. Okay. How long would you say you knew
24 Ms. Washington?

25 A Fifteen, twenty years.

1 Q Okay. And she's one of your neighbors.

2 A Yes, ma'am.

3 Q And did she live beside you or across the street from
4 you?

5 A Across the street from me.

6 Q Okay. Did you know her address?

7 A I think it was um 398, I believe, yeah, 398, if I'm
8 not mistaken on that.

9 Q Okay. Now, Mr. Sanders, turning your attention to
10 March 25th, 2005.

11 A Uh-huh.

12 Q Do you recall that day?

13 A Yes, ma'am.

14 Q And tell us what you remember about March 25th, 2005.

15 A Well, early one morning, that morning, I got up to go
16 to the car to get a telephone number out the car, and I
17 seen the little boy coming. And I wish that -- he always
18 come ask me to take him places, and I thought that what he
19 was coming for that morning, to ask me to maybe to take
20 him somewhere.

21 Earlier that evening before that, she told me she was
22 sick. She had a headache, and she went in the house. And
23 I was thinking that morning maybe she was still sick, you
24 know.

25 He said to me, "Mr. Cleo, I need help."

DIRECT EXAMINATION OF CLEO SANDERS BY ASST. SOL. LEGETTE

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1 And I said, "What's wrong?"

2 And he said, "My mother on the floor and can't get
3 up."

4 So we took off and ran over there, and I found her on
5 the floor.

6 Q Okay. And when you saw -- you said you saw a little
7 boy. What was his name?

8 A Um Patrick.

9 Q Okay. And when you saw him, what was his demeanor?

10 A He was very terrified. He had done cried so 'til his
11 eyes were swelled up. White stuff was all in his eyes.

12 Q Okay. Now you said Ms. Washington's address was 3 --
13 398.

14 A If I'm correct on that. I'm not sure.

15 Q Could it have been 399 Oakland Drive?

16 A Could be, yeah, uh-huh.

17 Q Now when you -- you said you saw Ms. Washington
18 laying on the floor.

19 A Uh-huh.

20 Q And please describe for us what she looked like.

21 A Well, I really can't describe it. It was terrible.
22 She was flat, and her body had done got stiff.

23 Q Okay. And how did her clothes appear?

24 A They was halfway. You know, she was -- her gown was
25 up over her.

1 Q What do you mean "up over her?"

2 A Up to her navel.

3 MR. PLEXICO: I'm sorry, I can't hear the questions.

4 Q I said how did her clothes appear?

5 A Up to her navel, right up her to across her waist.

6 Q Okay. So her gown was above her waist?

7 A She was laying flat on her -- on her stomach.

8 Q Okay. And so you were able to see her um
9 unmentionable?

10 A Yes, ma'am. I took the sheet off the thing to cover
11 her up.

12 Q Okay. Now, Mr. Sanders, did you call for help?

13 A Yes, ma'am.

14 Q Okay.

15 A I ran ---

16 Q I'm sorry. Go ahead.

17 A Well, I went back, once I found out she was dead, I
18 ran back outside, and Officer Pookie was out next door,
19 and I called for him, which we called 911 before that, I'm
20 sorry. I called for my daughter across the street to do
21 that.

22 Q Okay. All right.

23 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
24 indulgence?

25 Your Honor, may we approach?

CROSS-EXAMINATION OF CLEO SANDERS BY MR. PLEXICO

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1 THE COURT: Yes.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
3 RECORD AND OUT OF THE HEARING OF THE JURY, AND THEREAFTER,
4 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

5 Q Mr. Sanders, you said that Officer Pookie came over
6 and helped you?

7 A Yes, ma'am.

8 Q Okay. And what did you do after he arrived?

9 A I walked back outside. I stood on the outside.

10 Q All right. Mr. Sanders, I have no further questions.
11 Answer any questions of Mr. Plexico.

12 A Thank you.

13 CROSS-EXAMINATION

14 BY MR. PLEXICO

15 Q You said that when you got over there um -- you said
16 that -- that -- that you used to take the children places;
17 correct?

18 A Pardon me?

19 Q You took the children places sometimes; correct?

20 A Right. Uh-huh.

21 Q Okay. And she was -- she was sick a lot?

22 A Yes. She have headaches. She told me that evening
23 she had a terrible headache.

24 Q Okay. All right. And she went to see the doctor for
25 her medical problems?

1 A I don't know that she went to see a doctor or not. I
2 can't say.

3 Q Okay. All right. Um but she had medical problems;
4 correct?

5 ASSISTANT SOLICITOR LEGETTE: Objection, Your Honor.
6 There's no basis for him to know if she had medical
7 problems.

8 A I can't say.

9 THE COURT: Okay. If you can lay a foundation?
10 Sustained.

11 Q Um did you see anything -- you didn't report anything
12 amis, and you didn't see anything in disarray or anything
13 when you were over there; isn't that true?

14 A Repeat that question, please?

15 Q In her house, in her residence, you didn't see
16 anything in disarray; did you?

17 A I -- I didn't really look inside. It was so shocking
18 to me. No, I didn't see anything.

19 Q Okay. All right. Did you see -- was there -- you
20 said there was a problem with her eyes. What did you say
21 about her eyes?

22 A I didn't say anything about her eyes.

23 Q Um did you notice anything -- did you pull her -- did
24 you pull her gown down?

25 A Pardon me?

CROSS-EXAMINATION OF CLEO SANDERS BY MR. PLEXICO

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- 1 Q Did you pull her gown down?
- 2 A No, sir.
- 3 Q Okay. Did you notice anything unusual or amis, aside
- 4 from that her gown was up?
- 5 A Repeat that one, please?
- 6 Q Did you notice anything unusual about her body, aside
- 7 from that her gown was up?
- 8 A I didn't exam her body. Only thing I did was cover
- 9 her up.
- 10 Q But you -- did you notice anything unusual?
- 11 A I don't understand what you mean, unusual.
- 12 Q That's exactly what I mean. Did you notice anything
- 13 unusual about her body, aside -- aside from that her gown
- 14 was up?
- 15 A No, huh-uh.
- 16 Q Okay. Did she have on underwear?
- 17 A No.
- 18 Q Okay. All right. But she may -- you don't know how
- 19 -- whether she slept in underwear or not; right?
- 20 A No, that's not my place to know that, no.
- 21 Q Sir?
- 22 A No, I don't know what she slept in, no.
- 23 Q But she had her nightgown on; right?
- 24 A Yeah.
- 25 MR. PLEXICO: I don't have anything further, Judge.

1 THE COURT: Okay.

2 ASSISTANT SOLICITOR LEGETTE: No further questions of
3 this witness, Your Honor.. May he be excused?

4 THE COURT: He may. Okay. You may step down.

5 ASSISTANT SOLICITOR LEGETTE: The State calls Officer
6 Dawan "Pookie" Smith.

7 DAWAN "POOKIE" SMITH, after being duly sworn,
8 testified as follows:

9 DIRECT EXAMINATION

10 BY ASSISTANT SOLICITOR LEGETTE

11 Q Good morning.

12 A Good morning.

13 Q State your full name for the record, please.

14 A Dawan Edward Smith.

15 Q And, sir, where do you live?

16 A Here in Allendale,

17 Q Okay. And where do you work?

18 A South Carolina Department of Public Safety, State
19 Transport Police.

20 Q And how long have you been doing that?

21 A I've been working there close to eight years.

22 Q Okay. Do you have any other law enforcement
23 experience?

24 A Yes, I used to work at Allendale County Sheriff's
25 Department.

DIRECT EXAMINATION OF DAWAN SMITH BY ASST. SOL. LEGETTE

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1 Q And do you have any other jobs?

2 A Um, no, sir -- no, ma'am.

3 Q Okay. Now, as a State Transport Police Officer, what
4 are your duties?

5 A Um we enforce commercial motor vehicles' rules and
6 regulations, state and federal.

7 Q Okay. Now, Officer Smith, were you working as a
8 State Transport Police Officer on March 25th, 2005?

9 A I was employed by the State Transport Police, but I
10 was not working at that time.

11 Q So you were off-duty on that day?

12 A Yes, ma'am.

13 Q Okay. Did you have occasion to go to 399 Oakland
14 Drive in Allendale County?

15 A Yes, ma'am.

16 Q Okay. Where is 399 Oakland Drive located?

17 A Um it's right off of 125. You can go over 278. It's
18 back off of Perry Street, Perry and Oakland.

19 Q And why did you go there?

20 A I went there to pick up some keys from one of our
21 deacons at the church to um -- we was doing some work at
22 the church, and I went and picked up the keys to the
23 church.

24 Q Okay. Now, specifically, what house did you go to on
25 Oakland Drive?

- 1 A Um Deacon Eddie Lee Moore.
- 2 Q Okay. Do you know his address?
- 3 A No, ma'am. I think it's like two or three houses
- 4 down from that -- that particular address there.
- 5 Q Okay. Now, let's talk about -- did you know Harriett
- 6 Washington?
- 7 A Yes, ma'am.
- 8 Q And how did you know Ms. Washington?
- 9 A Um from when I was in school and also knowing her in
- 10 the community as working at the Sheriff Department, and
- 11 you know.
- 12 Q So did y'all go to school together?
- 13 A Um she -- she -- she graduated a little bit before I
- 14 did.
- 15 Q Okay. And how old are you?
- 16 A Thirty-seven.
- 17 Q Okay. How long would you say before you graduated
- 18 did she graduate?
- 19 A I think it was like five or six years before.
- 20 Q Okay.
- 21 A Five or six years.
- 22 Q Okay. So you say you knew Ms. Washington?
- 23 A Yes, ma'am.
- 24 Q Did you happen to go to her house on March 25th, '05?
- 25 A Yes, ma'am.

DIRECT EXAMINATION OF DAWAN SMITH BY ASST. SOL. LEGETTE

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1 Q Please tell us, why did you go there?

2 A Um I was at Deacon Eddie Lee Moore's house, and as I
3 was coming out the door, there was Cleo Sanders and a
4 little boy. They was running towards me, and they said
5 that they think that the little boy's mother is deceased,
6 and they wanted me to come by there.

7 So, I went by there, and she was laying there on the
8 floor, and I looked at her and checked to see if she had a
9 pulse. And she was, at that time, she was deceased, yes.

10 Q Okay. Now, did you leave when you found out she was
11 deceased?

12 A At that time, as I was walking out the door, that's
13 when the ambulance pulled up, um rescue squad pulled up,
14 um and I went out there, and I told her what was going on,
15 and she went inside and um she um ---

16 Q And who is she?

17 A Um Poston. I think her name was Poston.

18 Q Okay. I think she was the acting Coroner at the
19 time, and um she went inside, and as I went outside, I
20 talked with Mr. Sanders and the little boy, and the little
21 boy was stating that um ---

22 MR. PLEXICO: Your Honor, I object.

23 ASSISTANT SOLICITOR LEGETTE: Don't tell me what he
24 said.

25 MR. PLEXICO: I object to hearsay.

1 A Okay.

2 Q So you went outside and then the little boy and you
3 talked for a moment.

4 A Yes.

5 Q And then what happened?

6 A At that time, um I told the Coroner, I stated her
7 that -- that um I was told ---

8 Q Don't tell me what you were told, but just ---

9 A Okay.

10 Q What did you tell ---

11 A I just told the officer ---

12 MR. PLEXICO: Your Honor, hearsay is hearsay. If you
13 say it in your own words, it's still hearsay, and I would
14 object, Your Honor.

15 THE COURT: Okay. And that's sustained, but Ms.
16 Legette did rephrase the question to ask what he told the
17 person.

18 A I told Ms. Poston that she needed to call law
19 enforcement.

20 Q Okay. And at that time what happened?

21 A At that time, there was a police car that pulled up.
22 I thought it was the City of Allendale Police Department.

23 Um it wasn't the City of Allendale. It was the Town
24 of Yemassee Police, Officer Cook, and I guess he worked at
25 the paramedics -- with the paramedics, too. And they

DIRECT EXAMINATION OF DAWAN SMITH BY ASST. SOL. LEGETTE

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1 started talking. So they went inside. Um I don't know
2 what they done in there.

3 So when I came back, um the body was turned over. Um
4 I guess they had the EKG thing on her, and um that was
5 basically it.

6 Q Now you said that you went inside, and you saw her
7 turned over.

8 A Yes.

9 Q But you went inside before and checked her pulse.

10 A Yes.

11 Q And how did she appear then?

12 A Um she was laying face down. Um there was a like a
13 little tiger or something right beside her. Um the um --
14 she was laying up there by where the curtains at, um in a
15 position like that. Um like I say, I checked her pulse,
16 and that was it.

17 Q And did she have anything over her body, or how was
18 she?

19 A She had on a little nightgown. She didn't have on
20 any underwear, because you could see. She just had on a
21 little, thin nightgown.

22 Q Okay. And how was the nightgown on her?

23 A Um it was just on her, and it didn't cover her whole
24 body at the time.

25 Q All right. You said that you told Ms. Poston to call

1 the police.

2 A Yes.

3 Q While you were there, were the police called?

4 A No, ma'am.

5 Q Okay. And how long did you stay?

6 A I stayed probably about fifteen minutes.

7 Q Okay.

8 A Because I was talking to some of the family members
9 that were coming up.

10 Q Okay. And people were coming up. How many people
11 would you say came up?

12 A When I was there, probably about fifteen. There was
13 fifteen or twenty people. They started coming up from all
14 over the place.

15 Q Okay. And what did these people do? Did they go
16 inside the house?

17 A No, ma'am, not as long as I was there, they didn't go
18 inside the house.

19 Q Okay. What time of day was this would you say?

20 A It was that morning. Um I can't recall what time of
21 day. It was that morning, because like I say, I was going
22 there to try to get the church done before -- before we
23 have anything come up at the church.

24 Q Now would you say it was early morning?

25 A Yes.

CROSS-EXAMINATION OF DAWAN SMITH BY MR. PLEXICO

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1 Q And this all happened in what county?

2 A Allendale County.

3 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
4 indulgence?

5 Q Officer Smith, I have no further questions. Answer
6 any questions Mr. Plexico may have.

7 CROSS-EXAMINATION

8 BY MR. PLEXICO

9 Q Did you call the funeral home?

10 A Say again?

11 Q Did you -- did you call the funeral home?

12 A No, I didn't. I spoke with Michael Cave in reference
13 to finding out who her immediate family were.

14 Q Okay. All right. Um but you called him to talk with
15 him; right?

16 A Yes, I did.

17 Q Okay. Um you said she had on a thin, little, short
18 nightgown?

19 A It was a thin, -- I mean it was a thin nightgown.
20 The way that she was laying, pulled up her gown, the way
21 that she was laying.

22 Q Okay. All right. I don't have anything else.

23 ASSISTANT SOLICITOR LEGETTE: No further questions,
24 Your Honor.

25 THE COURT: Okay. You can step down.

1 ASSISTANT SOLICITOR LEGETTE: May he be excused?

2 THE COURT: Yes. Thank you, sir.

3 ASSISTANT SOLICITOR LEGETTE: At this time, Your
4 Honor, at this time the State calls Mr. John Chaney.

5 JOHN ALONSO CHANEY, after being duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY ASSISTANT SOLICITOR LEGETTE

9 Q Good morning.

10 A Good morning.

11 Q State your full name for the record, sir.

12 A John Alonso Chaney.

13 Q And, sir, where do you work?

14 A At the Allendale County Summary Court.

15 Q And what is your position there?

16 A I'm a Magistrate.

17 Q Okay. And as a Magistrate, what are your current
18 duties?

19 A Well, we over -- um listen to cases, sign warrants,
20 do bond hearings, just a variety of things we do down
21 there.

22 Q Okay. And where do you live?

23 A I live in Fairfax.

24 Q Okay. Now, Mr. Chaney, have you ever had any other
25 occupations before you became Magistrate?

DIRECT EXAMINATION OF JOHN CHANEY BY ASST. SOL. LEGETTE

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- 1 A Yes, ma'am.
- 2 Q What else did you do?
- 3 A I was a State Trooper and the Chief of Police of
- 4 Allendale.
- 5 Q Okay. And how long were you a State Trooper?
- 6 A Sixteen years.
- 7 Q And was that with the South Carolina Highway Patrol?
- 8 A Yes, ma'am.
- 9 Q Okay. And when were you Chief of Police?
- 10 A Um October of 2004 to March 2006.
- 11 Q Okay. And as Chief of Police, what were your duties?
- 12 A I was the chief administrative officer of the police
- 13 department. I made schedules, assigned duties, um I just
- 14 basically ran the department.
- 15 Q Okay. And what department was it?
- 16 A Allendale Police Department.
- 17 Q And how many officers did you have under your
- 18 authority?
- 19 A Eight.
- 20 Q Now, Chief -- well, Mr. Chaney, turning your
- 21 attention to March 25th, 2005, do you recall that day?
- 22 A Yes, ma'am.
- 23 Q Were you Chief of Police of Allendale Police
- 24 Department on that day?
- 25 A Yes, ma'am, I was.

1 Q Okay. Did you have occasion to respond to a house in
2 Allendale in the Town of Allendale?

3 A Yes, ma'am.

4 Q And what was that address?

5 A I don't remember the exact address, but I know it was
6 on Oakland Drive.

7 Q Okay. Did anyone respond with you?

8 A Yes, ma'am.

9 Q Who responded with you?

10 A Investigator Laquinton Davis.

11 Q Okay. Now, Mr. Chaney, tell us why did you respond
12 to Oakland Drive?

13 A Got a call from dispatch to go around there for crowd
14 control.

15 Q Okay. So what did you do when you got there?

16 A When we got there, me and um my Investigator Davis,
17 we arrived together. As we got there, we saw a lot of
18 people coming in and out of the house, and when we walked
19 up, we did meet the um -- I guess she was the acting
20 Coroner, or the Coroner at the time, her coming out. And
21 -- and I asked her what was going on, and she said that
22 ---

23 Q Don't tell me what she said, but ---

24 A And we observed her coming out with a body on a
25 stretcher, and she said she needed help, because a lot of

DIRECT EXAMINATION OF JOHN CHANEY BY ASST. SOL. LEGETTE

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1 people was coming in and out of the house and stuff like
2 that, and that's basically why we was there.

3 Q Okay. So did you go in the house?

4 MR. PLEXICO: Your Honor, I didn't understand. He
5 said she -- I didn't catch who he was talking to. I'm so
6 sorry.

7 Q Who was that? What was that person's name you were
8 talking with?

9 A It was the Coroner. I guess she was the Coroner at
10 the time, Kimberly Poston. I think her first name is
11 Kimberly.

12 Q Okay. And you talked with her.

13 A Yes, ma'am.

14 Q And is she the person that had the body on the
15 stretcher?

16 A Yes, ma'am.

17 Q Okay. And you said people were coming in and out of
18 the house.

19 A Yes, ma'am.

20 Q Was it the same house that she took the body out of?

21 A Yes, ma'am.

22 Q Okay. How many people would you say were coming in
23 and out of the house?

24 A Um maybe ten. I mean there was, you know, some was
25 going in. Some was coming out. So, basically about ten

1 was coming in and out, not all at one time, but you know
2 was basically coming in and out, and she said she wanted
3 us to get everybody out of the house, so that's exactly
4 what we did.

5 Q Okay. Now, was anyone in the yard?

6 A Yes, ma'am, it was, but I can't recall who all was in
7 the yard.

8 Q Okay. Did you do anything that day besides crowd
9 control?

10 A Well, I went inside the house, and once we got
11 everybody out, we noticed um people had already cleaned
12 up. Furniture was back in place and everything, but other
13 than that ---

14 MR. PLEXICO: Your Honor, I object. I object.
15 There's no foundation for that. I would move to strike,
16 Your Honor, and it would have to be hearsay, Your Honor.
17 Somebody had to tell him that.

18 There's just no foundation for that statement, Judge.
19 I'd move to strike that and ask for a curative instruction
20 to the jury.

21 THE COURT: Okay. With respect to the question
22 itself, listen carefully to what she's asking you, because
23 her question was: Did you do anything else?

24 WITNESS: Yes, ma'am.

25 THE COURT: So the jury is to strike his last answer,

1 and if you would re-ask your question, and then be
2 responsive to that question.

3 Q Did you do anything?

4 MR. PLEXICO: Your Honor, I would ask you direct the
5 jury to ignore the response he made to that, Your Honor.

6 THE COURT: Okay. They are -- we're striking his
7 answer. You'll ignore that response. She's going to
8 re-ask the question. Thank you.

9 Q Did you do anything, Mr. Chaney?

10 A No, ma'am.

11 Q Okay. Did you -- what did you see when you went
12 inside the house? Did you see anyone in the house when
13 you went in?

14 A There were still people in the residence.

15 Q What were they doing in the residence?

16 A Some of them were sitting down on the couch, and some
17 was coming from down the hallway with um -- some of them
18 had some clothes and stuff, and some of them was just
19 sitting around the living room, moving things around.

20 Q Okay. They were moving things around?

21 A Yes, ma'am.

22 Q Was anyone cleaning?

23 A Someone was cleaning, but I couldn't tell you who it
24 was.

25 Q Okay. Now, during this period of time, did you,

1 besides getting people out of the house, do anything else?

2 A No, ma'am.

3 Q Did you conduct an investigation at this time?

4 A I didn't conduct an investigation. No, ma'am, I
5 didn't.

6 Q Okay.

7 MR. PLEXICO: I did not hear his response. I'm so
8 sorry.

9 A No, I didn't conduct an investigation.

10 Q And, Mr. Chaney, why didn't you conduct an
11 investigation, not telling me what anyone told you, why
12 didn't you conduct an investigation?

13 A We didn't even know um -- well, the call we received
14 was just for crowd control, so we didn't know we had to
15 investigate anything.

16 Q Now at any time, was an investigation conducted in
17 regards to Ms. Washington?

18 A Yes, ma'am.

19 Q Okay. Who began that investigation?

20 A I made the phone call to um S.L.E.D., and they made
21 an investigation.

22 Q Why did you make a phone call? Without telling me
23 what someone told you, why did you make a phone call?

24 A Because a death had occurred at that residence, and
25 we wasn't sure if it was natural or not.

DIRECT EXAMINATION OF JOHN CHANEY BY ASST. SOL. LEGETTE

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1 Q Now, Mr. Chaney, how long would you say that you and
2 your officer, Mr. Davis, were present at 399 Oakland Drive
3 on that day?

4 A It was some hours, but I couldn't tell you how many
5 hours we was there, but it was some hours we was there.

6 Q Okay. And after you saw the body on the stretcher
7 and you were there, what happened while you were there?

8 A Um she just load the body up, and we got everybody
9 out of the residence, and we secured it.

10 Q Okay.

11 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
12 indulgence?

13 Q Now, Mr. Chaney, you said that you went into the
14 residence.

15 A Yes, ma'am.

16 Q At 399 Oakland Drive?

17 A Yes, ma'am.

18 Q And are you familiar with that residence?

19 A Yes, ma'am.

20 Q Are you familiar with how it looked on the outside?

21 A Yes, ma'am.

22 Q And are you familiar with the surrounding areas ---

23 A Yes, ma'am.

24 Q --- of that residence?

25 A Yes, ma'am.

1 (WHEREUPON, State's Exhibit No. 1 was marked for
2 identification only.)

3 (WHEREUPON, State's Exhibit No. 2 was marked for
4 identification only.)

5 Q Now, Officer Chaney, -- well, I'm sorry, Mr. Chaney,
6 I hand you now what has been marked for identification as
7 State's Exhibit Number One and Two. Take a moment and
8 tell me if you recognize these?

9 A This is the residence on Oakland Drive.

10 Q Okay. And what does State's Number Two show?

11 A I didn't hear you. Say that again?

12 Q What does State's Exhibit Number Two show?

13 A The front of the residence with the door open and
14 police tape around the house.

15 Q Okay. And is State's Exhibit Number Two a fair and
16 accurate representation of the residence you went to at
17 399 Oakland Drive?

18 A Yes, ma'am.

19 Q Okay.

20 ASSISTANT SOLICITOR LEGETTE: Your Honor, I would ask
21 that State's Exhibit Number Two be offered for admission
22 into evidence.

23 THE COURT: Any objection?

24 MR. PLEXICO: I would object, Your Honor. Your
25 Honor, I'm not quite sure which one Number Two is. Could

DIRECT EXAMINATION OF JOHN CHANEY BY ASST. SOL. LEGETTE

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1 I see Number Two?

2 THE COURT: Okay.

3 MR. PLEXICO: May we approach, Your Honor?

4 THE COURT: You may.

5 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
6 RECORD OUT OF THE HEARING OF THE JURY. THEREAFTER, THE
7 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
8 HEARING OF THE JURY:)

9 Q Mr. Chaney, you said that you called S.L.E.D. When
10 did you call S.L.E.D.?

11 A I think it was like four or five days later.

12 Q Okay. And you called them down to do what?

13 A I called them down?

14 Q You called them down for what purpose?

15 A To do an investigation.

16 Q Okay. And did someone rope off the house?

17 A Yes, ma'am.

18 Q And was that done by you?

19 A Me and another officer, yes, ma'am.

20 Q Okay.

21 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
22 time I would offer Exhibit Number Two for admission into
23 evidence.

24 MR. PLEXICO: Your Honor, I'm going to object on the
25 basis that I think it's -- I think I already said it up

DIRECT EXAMINATION OF JOHN CHANEY BY ASST. SOL. LEGETTE

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1 there, but I think it would be a 40 -- it would be a 402
2 violation, Judge. I'm not quite sure he -- I don't think
3 he said it's the way he left it that day. This may be on
4 another day, Your Honor. I would object.

5 THE COURT: When you say the day, are you -- what day
6 are you referring to?

7 MR. PLEXICO: The -- the 3/21 -- the morning of 3/25
8 when they left.

9 THE COURT: Okay, but that's not what he's indicated,
10 because um -- anyway, you can go ahead and clear that up.

11 Q Officer Chaney -- Mr. Chaney, is this a fair and
12 accurate representation of the way Harriett Washington's
13 house looked?

14 A Yes, ma'am.

15 Q And is this the way it looked on the day you did your
16 -- well, S.L.E.D. did an investigation?

17 A Yes, ma'am.

18 Q Is this the way it looked on the day of March 25th,
19 2005?

20 A Yes, ma'am, it is.

21 Q And is that after you cleared everybody out?

22 A That's correct.

23 Q On March 25th, 2005?

24 A Yes, ma'am.

25 THE COURT: Okay. And we're going to the other

DIRECT EXAMINATION OF JOHN CHANEY BY ASST. SOL. LEGETTE

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1 issue, not the house itself, the other issue we discussed
2 at sidebar.

3 ASSISTANT SOLICITOR LEGETTE: Yes, ma'am. Yes, Your
4 Honor.

5 Q And who roped this house off?

6 A Me and another officer did.

7 Q So you roped the house off yourself.

8 A Yes, ma'am.

9 Q With what kind of tape?

10 A Police tape.

11 Q And is that tape shown in this photograph?

12 A Yes, ma'am, it is.

13 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
14 time I'd offer State's Exhibit Number Two for admission
15 into evidence.

16 THE COURT: And if you can clarify just the
17 timeframe. That's what we're really getting to.

18 Q And what is the timeframe on this tape that you roped
19 it off?

20 A You mean what day ---

21 Q When did you rope it off, Mr. Chaney?

22 A March the 25th.

23 Q Okay. So you roped the house off on March 25th.

24 A Before we left, we roped it off. Yes, ma'am.

25 Q Okay. So is this an accurate representation, fair

1 and accurate representation, of the way the house looked
2 on March 25th, 2005?

3 A Yes, ma'am.

4 Q And is it also a fair and accurate representation of
5 the way the house looked on March 30th, 2005?

6 A That's correct.

7 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
8 time, I'd offer State's Exhibit Number Two for admission
9 into evidence.

10 THE COURT: Any objection now, Mr. Plexico?

11 MR. PLEXICO: Um, Your Honor, I have no objection.

12 THE COURT: Okay. Thank you.

13 It's admitted.

14 (WHEREUPON, State's Exhibit No. 2 was admitted into
15 evidence.)

16 Q Now, Mr. Chaney, I also gave you State's Exhibit
17 Number One.

18 A Yes, ma'am.

19 Q What does that exhibit show?

20 A This is a view of the house from down the road.

21 Q Okay. And what is depicted in that picture?

22 A Um you have some people standing in the road and
23 police vehicles in the yard.

24 Q And what is in the background?

25 A On which side of the background?

DIRECT EXAMINATION OF JOHN CHANEY BY ASST. SOL. LEGETTE

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1 Q Please tell us what's in the picture. Tell -- tell
2 us what's in the picture.

3 A I see S.L.E.D. agents in the road, um the
4 investigator had his truck in the road, and a picture of
5 Harriett Washington's residence.

6 Q Okay. And is there anything else in that photograph?

7 A A picture of her car, and what I can see, that's
8 basically all I can see on it.

9 Q Now, Mr. Chaney, is State's Exhibit Number One a fair
10 and accurate representation of Harriett Washington's
11 residence and the surrounding area?

12 A Yes, ma'am, it is.

13 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
14 time I would officer State's Exhibit Number One for
15 admission into evidence.

16 MR. PLEXICO: May I see it, please?

17 THE COURT: And I believe, Ms. Legette, you shared
18 the photos with him, but um just to the particular one you
19 want to introduce, just make sure he understands which
20 one.

21 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

22 MR. PLEXICO: Your Honor, I would object on the basis
23 he's not the one that took that. Your Honor, I don't
24 believe he took it.

25 THE COURT: Okay, but he's indicated it's a fair and

1 accurate representation, so objection overruled.

2 You can have it admitted.

3 (WHEREUPON, State's Exhibit No. 1 was admitted into
4 evidence.)

5 Q Thank you, Mr. Chaney.

6 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
7 indulgence?

8 Q Thank you, Mr. Chaney. I have no further questions.
9 Answer any questions of Mr. Plexico.

10 CROSS-EXAMINATION

11 BY MR. PLEXICO

12 Q Thank you for being here today, sir. When you got
13 there, was -- may I see those photographs?

14 I see -- is this a storm window in this photograph?
15 Storm door?

16 A The front door?

17 Q Yes.

18 A In the screen door?

19 Q Yes, sir.

20 A Yes, sir.

21 Q Okay. And when you got there, that was intact. It
22 wasn't broken; correct?

23 A It was just like it is on the photograph.

24 Q Okay. And how is it in the -- it's not broken;
25 correct?

CROSS-EXAMINATION OF JOHN CHANEY BY MR. PLEXICO

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1 A No, it's not broken on that. No, sir, it's not.

2 Q Okay. All right. Now, was the front door kicked in?

3 A I don't think. I don't remember. I don't recall. I
4 don't think it was.

5 Q You wouldn't -- you're a -- how long were you in law
6 enforcement?

7 A At that time? Going on seventeen years.

8 Q And you would go into a residence where they're
9 taking a -- a -- a body out on a stretcher, and you
10 wouldn't notice whether or not the front door was kicked
11 in?

12 A Well, the call was for crowd control, so.

13 Q So, you just didn't do any looking around or
14 anything; right?

15 A No, sir. I just went there for crowd control.

16 Q Okay. And people were hauling -- were they hauling
17 -- they had an arm load of clothes, you said?

18 A I wouldn't say -- I didn't say an arm load, but they
19 were moving things out. I wouldn't say an arm load of
20 clothes.

21 Q Okay. So people were pilfering the house? Was that
22 part of the problem?

23 A I wouldn't say people, family members. Family
24 members were there. I didn't say people were pilfering
25 the house, because I don't recall who all was in the

1 house.

2 Q But people were carrying stuff out; right?

3 A Yes, sir. They were carrying some stuff out.

4 Q All right. Doesn't probate usually handle that, the
5 distribution of things?

6 A I didn't hear you.

7 Q Doesn't -- doesn't Probate Court usually handle the
8 distribution of things, in case there's a death?

9 A Um, probably is. Probably do.

10 Q All right. So there's no way to do a -- you couldn't
11 go back four or five days later and do a criminal
12 investigation when you've had people in and out of there
13 hauling things and moving things all around and -- and
14 there's no way to do a -- the crime scene is polluted;
15 isn't it?

16 A Um, I don't know, Mr. Plexico. I didn't do it, so I
17 couldn't really answer that question.

18 Q But if people come to a crime scene, and you've got
19 ten or twelve different people there and they're moving
20 things back and forth and they're taking things out of the
21 house, doesn't that contaminate the crime scene?

22 A Probably. Possibility it could, yes, sir.

23 Q And when you were doing crowd control and you were
24 inside the house; right?

25 A I did went inside, yes, sir.

CROSS-EXAMINATION OF JOHN CHANEY BY MR. PLEXICO

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1 Q And -- and -- and you didn't -- one reason you didn't
2 notice anything was out of place is because you didn't
3 have any reason to suspect there was anything wrong aside
4 from a natural death there; correct?

5 A That's correct.

6 Q I don't have anything further.

7 ASSISTANT SOLICITOR LEGETTE: Your Honor, I have no
8 further questions of this witness. May he be excused?

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

10 And this would be a great time to take a short break
11 um for the jurors. We'll let you be at recess about ten
12 or fifteen minutes to have a comfort break at this time,
13 and I just remind you not to discuss the case in any form,
14 shape, or fashion and with anyone. Thank you.

15 (APRIL 24, 2007, 10:45 A.M., WHEREUPON, THE JURY
16 RETIRES FROM THE COURTROOM AND A BREAK WAS TAKEN.
17 THEREAFTER, AT 11:14 A.M., THE FOLLOWING PROCEEDINGS
18 WERE HELD ON THE RECORD OUT OF THE PRESENCE OF THE
19 JURY:)

20 THE COURT: Are counsel ready to proceed?

21 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

22 THE COURT: Mr. Plexico?

23 MR. PLEXICO: We're ready, Your Honor.

24 THE COURT: Okay. Get the jurors, please.
25

DIRECT EXAMINATION OF L. DAVIS BY ASST. SOL. LEGETTE

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1 (APRIL 24, 2007, 11:14 A.M., WHEREUPON, THE JURY
2 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
3 WERE HELD IN THEIR PRESENCE.)

4 THE COURT: Thank you, ladies and gentlemen of the
5 jury. I hope you had your good comfort break, and we'll
6 proceed with the trial.

7 State can call their next witness.

8 ASSISTANT SOLICITOR LEGETTE: The State calls
9 Corporal Laquinton Davis.

10 LAQUINTON DAVIS, after being duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY ASSISTANT SOLICITOR LEGETTE

14 Q Good morning, sir.

15 A How you doing?

16 Q I'm fine. How are you?

17 A I'm okay.

18 Q What's your full name for the record, please?

19 A Laquinton Antron Davis.

20 Q And, sir, where do you live?

21 A I live in Sycamore.

22 Q And what county is that in?

23 A Allendale.

24 Q Okay. Where are you employed, sir?

25 A Allendale County Sheriff's Department.

DIRECT EXAMINATION OF L. DAVIS BY ASST. SOL. LEGETTE

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1 Q What are your current duties?

2 A Um I'm the school resource officer at the high
3 school.

4 Q Okay. Have you ever had any law enforcement
5 experience before?

6 A Yes, ma'am.

7 Q And where was that, sir?

8 A Um I worked in Allendale Correctional Institution for
9 two years and the Allendale City Police Department for two
10 years.

11 Q Okay. And you said you worked for the Allendale City
12 Police Department.

13 A Yes, ma'am.

14 Q Sir, how long were you there?

15 A Um probably a little over two years.

16 Q Two years. And what timeframe was that?

17 A Um between um -- I'd say between 2003 and 2005. It
18 was a little more than that, though.

19 Q Okay. So were you working at the Allendale Police
20 Department in March of 2005?

21 A Yes, ma'am.

22 Q Okay. What were your duties then, sir?

23 A Um I was a Sergeant there.

24 Q Okay. And as Sergeant, what kind of duties did you
25 perform?

1 A Um I was the supervisor, shift supervisor and um also
2 worked dayshift.

3 Q Okay. Now, Mr. Davis, well, Officer Davis, turning
4 your attention to March 25th, 2005, do you recall that
5 day?

6 A Yes, ma'am.

7 Q Okay. Did you have occasion to go out with the City
8 on that day?

9 A Yes, ma'am.

10 Q Okay. Did you go to a residence in the city that
11 day?

12 A Yes, ma'am.

13 Q Okay. Where did you go?

14 A I went to a residence on Oakland Drive. I don't know
15 the address.

16 Q Okay. Would it be safe to say it was 399 Oakland
17 Drive?

18 A I believe it was.

19 Q And who lived at that residence?

20 A Um it was a woman by the name of Harriett Washington.

21 Q Okay. Now, why did you go to Oakland Drive?

22 A Um I received a call from the -- our dispatcher ---

23 Q Uh-huh.

24 A --- at the time to go there in reference to -- to see
25 what they had.

DIRECT EXAMINATION OF L. DAVIS BY ASST. SOL. LEGETTE

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1 Q Okay. And did you go there?

2 A Yes, I did.

3 Q What did you find when you got there?

4 A Um upon arrival, it was a street full of cars and a
5 lot of people, and um after I got out my unit, you know, I
6 went to the residence, and the EMS um -- um girl, I can't
7 call her name, I don't know her name, um she informed me
8 that the reason why they called us is for crowd control.

9 Q Okay. So did you take care of the crowd?

10 A Um, yes, ma'am.

11 Q And who else went there with you?

12 A Um the Chief at that time was John Chaney.

13 Q Okay.

14 A Um he rode with me.

15 Q Now, you say you were there for crowd control. There
16 were a lot of cars there?

17 A Yes, ma'am.

18 Q How many people would you say approximately were
19 there?

20 A Mmm, it was close to about forty, forty people.
21 There was a lot of people there.

22 MR. PLEXICO: I couldn't hear his answer, Judge.

23 A I said it's close to about forty, estimate. At least
24 about forty people.

25 Q But you didn't actually count them.

1 A I didn't.

2 Q Okay. Did you see any people in the yard?

3 A Yes, ma'am.

4 Q How about the house?

5 A The house was -- yes, ma'am.

6 Q Did you ever go into the house?

7 A Um I went to the door part, um, yes, ma'am, the front

8 door part of the house.

9 Q Okay. And at the door, what did you do?

10 A Um only spoke with the EMS um worker that worked at

11 EMS at that time.

12 Q Okay. And what did you tell her?

13 A Um I asked her what the problem was, and she

14 explained to me that um ---

15 Q Don't tell me what she said. What did you do?

16 A Okay. Um she told me ---

17 Q Don't tell me what she said. What did you say?

18 A The only thing I said, okay. I just went on and take

19 care of the crowd. That was it.

20 Q Okay. Did you look into the house?

21 A Um, no, ma'am.

22 Q Okay. Now, Officer Davis, how long were you at this

23 house?

24 A Only probably for a few minutes. It wasn't long,

25 probably for a few minutes. I give it at least three

CROSS-EXAMINATION OF LAQUINTON DAVIS BY MR. PLEXICO

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1 minutes, three to five minutes.

2 Q Okay. So did the crowd disburse during that time?

3 A Yes, ma'am. During that time, it started dying down.
4 People started leaving, hugging, and you know, on their
5 way home.

6 Q Now, Officer Davis, while you were there, did you do
7 any type of investigation?

8 A No, ma'am.

9 Q Okay. Officer Davis, I have no further questions.
10 Answer any questions of Mr. Plexico, please.

11 A Okay.

12 CROSS-EXAMINATION

13 BY MR. PLEXICO

14 Q Okay, Officer Davis, you did no type of
15 investigation, because there was nothing there to
16 investigate; isn't that true?

17 A Um ---

18 ASSISTANT SOLICITOR LEGETTE: Objection, Your Honor,
19 calls for a conclusion.

20 MR. PLEXICO: Of course it would, Judge.

21 THE COURT: Well, he would know on his personal
22 observation. Overruled.

23 Go ahead.

24 A Um the reason why I didn't do an investigation
25 because at that time, I wasn't informed that it was a

1 crime scene.

2 Q Okay. All right. And nobody was, that you're aware
3 of; correct?

4 A Correct.

5 Q There was no report of that; correct?

6 A Correct.

7 Q And that was just a natural death; correct?

8 A That -- that was told to me. That's what it was told
9 to me.

10 Q That's what it was told to you, that it was a natural
11 death.

12 A Yes, sir.

13 Q Okay. And you didn't have any -- you didn't see
14 anything there, while you were there, that would lead you
15 to believe it was anything aside from a natural death;
16 correct?

17 A Yes, sir.

18 Q And the person had health problems who had passed
19 away.

20 ASSISTANT SOLICITOR LEGETTE: Objection, Your Honor.
21 There's no basis for him to know about health problems.

22 THE COURT: Sustained.

23 Q Do you know anything about her health?

24 A Sir?

25 Q Do you know anything about her health?

REDIRECT EXAMINATION OF L. DAVIS BY ASST. SOL. LEGETTE

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1 A I don't.

2 MR. PLEXICO: I have no further questions, Your
3 Honor.

4 THE COURT: Ms. Legette?

5 ASSISTANT SOLICITOR LEGETTE: One question, Your
6 Honor.

7 REDIRECT EXAMINATION

8 BY ASSISTANT SOLICITOR LEGETTE

9 Q You said that you were told it was a natural death?

10 A It was told to me.

11 Q And who told you that?

12 A The EMS. Um ---

13 Q Do you know her name?

14 A I can't think of her name. I can describe her, but I
15 can't think of her name.

16 Q Well, describe her.

17 A Um heavy-set, um about my height, um blue eyes. Um
18 only -- only thing I know is that she worked for EMS and
19 also a Coroner for Allendale County.

20 Q Was her name Poston?

21 A Poston. That's it.

22 Q Nothing further.

23 THE COURT: Okay.

24 WITNESS: Thank you.

25 THE COURT: You may step down.

1 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, the State
2 would call Ms. Kimberly Poston, please.

3 KIMBERLY POSTON STILL, after being duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY ASSISTANT SOLICITOR LEGETTE

7 Q Good morning.

8 A Good morning.

9 Q State your name for the record, please.

10 A Kimberly Poston Still.

11 Q Okay. And you've gotten married recently?

12 A Yes.

13 Q Okay. Where do you live, Mrs. Still?

14 A I currently reside in Varnville.

15 Q Okay. All right. Now, what do you do for a living?

16 A Um right now, I am an operations manager with a part
17 um personal care service um, ambulance service, ---

18 Q Okay.

19 A --- and I'm also an intermediate with Hampton County
20 EMS.

21 Q Okay. Now, have you ever had any other positions in
22 the past?

23 A Um I was the acting Coroner for Allendale County.

24 Q And when did you hold that position?

25 A Um from about August 2004 until this past December

DIRECT EXAMINATION OF KIMBERLY STILL BY ASST. SOL. LEGETTE

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1 31st.

2 Q Okay. So were you the acting Coroner in March 2005?

3 A Yes, ma'am.

4 Q Okay. And were you also an EMT?

5 A Yes, ma'am.

6 Q During that time?

7 A Yes, ma'am.

8 Q And what is an EMT? What does that mean?

9 A Emergency Medical Technician. I am -- work on an
10 ambulance. I care for sick and injured patients um, that
11 kind of thing.

12 Q Okay. Now, Mrs. Poston, did you go to a residence in
13 Allendale -- well, in the Town of Allendale on March 25th,
14 2005?

15 A Yes, ma'am.

16 Q Okay. Now, what did you do in the residence?

17 A Um my partner and I responded to a call.

18 Q Uh-huh.

19 A Um ---

20 Q Did you find someone there?

21 A We found um a patient laying on the floor in her
22 residence.

23 Q Okay. And was she dead at the time?

24 A Yes, ma'am. There were no signs of life.

25 Q Okay. Um did you tell someone that her death was

1 natural?

2 A Um everything appeared in the house at that time, and
3 with the statements that we received from the neighbor and
4 the son, everything seemed natural.

5 Q Okay.

6 A There was no evidence of anything foul play.

7 Q Okay. So you told someone that she died a natural
8 death.

9 A Yes, that was our decision at the time.

10 Q Okay. All right. And was that patient's name
11 Harriett Washington?

12 A Yes, ma'am.

13 Q Okay. All right, Mrs. Poston, or, Mrs. Still, ---

14 A That's all right.

15 Q --- I have no further questions. Answer any
16 questions of Mr. Plexico.

17 CROSS-EXAMINATION

18 BY MR. PLEXICO

19 Q Um, did y'all -- did y'all attempt any um
20 resuscitation?

21 A No, sir. We put her on the cardiac monitor, and she
22 had no signs. She was an asystole.

23 Q Okay. All right. Now, you said there was um --
24 there was no signs, there was not anything except a
25 natural death; correct?

CROSS-EXAMINATION OF KIMBERLY STILL BY MR. PLEXICO

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1 A Correct.

2 Q Um did you notice -- did you notice any bruising on
3 her?

4 A She had no outward signs of trauma.

5 Q And what do you mean by "outward signs of trauma?"

6 A There were no visible signs of bruising on her skin.

7 Q Now, what -- what kind of monitor was it you put on
8 her?

9 A A cardiac monitor.

10 Q Okay. Um how do you go about putting a cardiac
11 monitor on someone?

12 A A cardiac monitor involves three leads. It's placed
13 to assess any cardiac activity.

14 Q Where would you place those leads at?

15 A Um one is on the left side, one on the right side,
16 and one on the lower extremity.

17 Q Lower extremity? Like a hand?

18 A A leg. A lower extremity.

19 Q All right. So, they're called "leads?"

20 A Yes, three leads.

21 Q Okay. Um did -- do you um -- do you pull the
22 clothing up when you do that, or do you put it on top of
23 the clothing?

24 A No, it goes on the skin.

25 Q It goes on the skin.

1 A Yes, sir.

2 Q So you'd have to pull up the nightgown in this case?

3 A Um we didn't have to pull it up. It could be moved
4 over.

5 Q Moved over. Okay.

6 A Yes.

7 Q Now, when you moved that, and the reason I'm asking,
8 obviously, when you move the nightgown over to put it
9 here, that gave you the opportunity to look at her
10 closely.

11 A Yes. Yes.

12 Q You were right down, you were right there, right ---

13 A At the patient's ---

14 Q --- close to the patient.

15 A Uh-huh.

16 Q So there wouldn't be any reason you would miss any
17 bruising or anything ---

18 A No.

19 Q --- like that; correct?

20 A No.

21 Q Now, um there were people milling around in and out
22 of the house as y'all were trying to work; correct?

23 A Um, no, sir. The only thing we had was um when we
24 responded to the scene, there were a good bit of people in
25 the yard. There was a um -- a lady there standing at the

CROSS-EXAMINATION OF KIMBERLY STILL BY MR. PLEXICO

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1 door. I do not recall her name. She was requesting shoes
2 for the children.

3 Q Um do you have a call number?

4 A A call number? As to what do you mean?

5 Q Is it Echo-Twenty-one?

6 A It was at the time.

7 Q So you're Echo-Twenty-one; correct?

8 A Yes. I also had a paramedic on the truck with me.

9 Q Excuse me?

10 A I also had a paramedic on the truck with me.

11 Q Okay. And you talked with the child, and you talked
12 with the neighbor; correct?

13 A Uh-huh.

14 Q And you said that you didn't see anything out of the
15 ordinary; is that correct?

16 A That's correct.

17 Q And your attention was devoted to the patient;
18 correct?

19 A Yes.

20 Q And there was no broken door? You went through the
21 front door?

22 A Through the front door.

23 Q Was the door broken in?

24 A No.

25 Q Was the screen door broken in any way?

- 1 A No.
- 2 Q Did you notice any broken windows in the house?
- 3 A No.
- 4 Q Notice any glass laying around from broken windows?
- 5 A Uh-huh.
- 6 Q Was the furniture -- no furniture was overturned?
- 7 A No.
- 8 Q Front room was neat?
- 9 A Uh-huh.
- 10 Q Did you notice any signs of any kind of sexual trauma
- 11 on the body?
- 12 A No, sir.
- 13 Q Um did you notice any signs where the body was
- 14 beaten?
- 15 A No, sir.
- 16 Q Did you notice any signs where the body was choked?
- 17 A I -- I couldn't see any from ---
- 18 Q You were right there; correct?
- 19 A Right, but that would have to be determined from a
- 20 medical -- an autopsy.
- 21 Q Okay. If I choke you to death, I'm going to leave
- 22 some bruises.
- 23 A But there were no outward signs of bruising.
- 24 Q So that's why you didn't suspect anything.
- 25 A Right.

CROSS-EXAMINATION OF KIMBERLY STILL BY MR. PLEXICO

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1 Q Because if you had seen bruises on the neck, ---

2 A Uh-huh.

3 Q --- you know, boy, that would have been different;
4 wouldn't it?

5 A Yes, sir.

6 Q So, therefore, it was a natural death; correct?

7 A As far as we were concerned at the time.

8 Q And she took medications; correct?

9 A Yes.

10 Q And um I believe your notes depict um Accupril and
11 Norvasc?

12 A Yes, sir.

13 Q And those are vascular expanders; correct?

14 A Right. They're for hypertension.

15 Q Okay. But they're vascular expanders.

16 A I think so.

17 Q Right?

18 A I think so.

19 Q I mean, would you know -- could you answer -- let me
20 put it this way, if you can't answer it, then you can't,
21 if you were taking more than you should be taking of
22 those, could those vascular expanders cause an aneurysm or
23 a stroke?

24 A Yes, sir.

25 Q They could?

1 A Uh-huh.

2 Q You can answer that for sure; right?

3 A Yes, sir.

4 Q Okay. I don't have anything else.

5 REDIRECT EXAMINATION

6 BY ASSISTANT SOLICITOR LEGETTE

7 Q Um, Mrs. Poston, ---

8 A Uh-huh?

9 Q --- you testified earlier about some things have to
10 be determined by medical autopsy.

11 A Yes, sir -- yes, ma'am.

12 Q Okay. Um do you do medical autopsies?

13 A No, ma'am.

14 Q Okay. Who does medical autopsies?

15 A Um Charleston does at MUSC.

16 Q Okay. And what is that person called?

17 A A Medical Examiner.

18 Q A Pathologist?

19 A A Pathologist.

20 Q Okay. And you're not a Pathologist.

21 A No.

22 Q Okay. And you're not trained in Pathology?

23 A No.

24 Q And you're not -- you don't do autopsies.

25 A No.

RECROSS EXAMINATION OF KIMBERLY STILL BY MR. PLEXICO

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1 Q Okay.

2 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
3 indulgence?

4 Q Mrs. Poston, you didn't do a crime scene
5 investigation in this case; did you?

6 A Um that would be -- we did -- what we -- what I
7 always do at any scene, you look for evidence of some type
8 of um altercation, if something was unnatural, if
9 something appears out of the ordinary, um if there are any
10 eyewitnesses there, anybody you ask questions to gather
11 information to help you decide what is going on at that
12 particular scene.

13 Q Okay. But you don't do medical autopsies.

14 A I do not do medical autopsies.

15 Q Okay. Thank you. No further questions.

16 MR. PLEXICO: Recross?

17 THE COURT: Yes. Yes.

18 RECROSS-EXAMINATION

19 BY MR. PLEXICO

20 Q So, as Coroner, you had responsibilities; correct?

21 A Yes, sir.

22 Q Okay. So you go there, and you have a protocol, so
23 to speak; correct?

24 A Right.

25 Q And you followed the protocol that day.

- 1 A Yes.
- 2 Q And the protocol is you look for signs of an
3 altercation; correct?
- 4 A Uh-huh.
- 5 Q You look for something amis, something out of the
6 ordinary; correct?
- 7 A Uh-huh.
- 8 Q And you didn't see anything; correct?
- 9 A No, sir.
- 10 Q Is that correct?
- 11 A That's correct.
- 12 Q Okay. Then you -- then you interviewed the little
13 boy who was there; correct?
- 14 A Right.
- 15 Q You interviewed the neighbor; correct?
- 16 A Right.
- 17 Q Was there anything else that you possibly could have
18 done?
- 19 A No, sir.
- 20 Q Okay. Based on talking to the little boy, based on
21 what you learned from the neighbor, and your observations,
22 your immediate observations, ---
- 23 A Right.
- 24 Q --- did you see anything like -- like I've already
25 asked, like things turned over or anything like that?

RE CROSS EXAMINATION OF KIMBERLY STILL BY MR. PLEXICO

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- 1 A No, sir.
- 2 Q Okay. So everything looked normal.
- 3 A Yes, sir.
- 4 Q A well-kept room.
- 5 A Yes, sir.
- 6 Q And no bruising on the neck.
- 7 A I saw no bruises.
- 8 Q No signs of trauma.
- 9 A No signs of trauma.
- 10 Q And choking would certainly be trauma; wouldn't it?
- 11 A Yes.
- 12 Q And that would cause bruising; wouldn't it?
- 13 A Yes.
- 14 Q And that's part of your training; right?
- 15 A Yes.
- 16 Q To notice.
- 17 A Yes.
- 18 Q Okay. And even though you don't do crime scene
- 19 investigations, per se, you're certainly the person who
- 20 would demand one if you thought circumstances warranted.
- 21 A Yes, sir.
- 22 Q And during these almost two years you were Coroner,
- 23 um you made these decisions on a regular basis whenever
- 24 you went to a -- to -- to see a death; correct?
- 25 A Correct.

FURTHER REDIRECT EXAMINATION OF KIMBERLY STILL
BY ASST. SOL. LEGETTE

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1 Q All right. And some may warrant it, and some may
2 not; correct?

3 A Correct.

4 Q And the police were on the scene when you arrived?

5 A Yes.

6 Q And nobody told you it was a crime scene; correct?

7 A They -- they went right along with us.

8 Q They were right along with you, you say?

9 A Uh-huh.

10 Q They believed it was a natural death, too; correct?

11 A Correct.

12 Q Okay. I don't have anything further.

13 FURTHER REDIRECT EXAMINATION

14 BY ASSISTANT SOLICITOR LEGETTE

15 Q But, ultimately, Mrs. Poston, the medical autopsy,
16 the pathologist made the final ruling on death.

17 A They are an extra tool to help me decide what is
18 going on. Their decision ---

19 Q They are the final opinion; isn't that correct?

20 A They're what now?

21 Q They render the final opinion; isn't that correct?

22 A They give me an opinion. I make the final decision.

23 Q No, the pathologist ---

24 MR. PLEXICO: That was asked and answered, Judge.

25 Q --- makes the final decision.

FURTHER REDIRECT EXAMINATION OF KIMBERLY STILL
BY ASST. SOL. LEGETTE

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1 A No, they make a -- they give me their opinion as to
2 how they believe this person expired. I make the final
3 decision on whether -- my opinion of what happened.

4 Q So your opinion, you have an opinion?

5 A Yes, I have -- my name goes on the death certificate.
6 I'm the one who signs ---

7 Q Speaking of death certificate ---

8 MR. PLEXICO: Your Honor -- I would object, Your
9 Honor, she was not allowed to answer the question.

10 THE COURT: Let her finish the question.

11 ASSISTANT SOLICITOR LEGETTE: I'm sorry, go right
12 ahead.

13 THE COURT: Answer. Excuse me.

14 A I'm the one who makes the final decision that signs
15 the death certificate.

16 Q And speaking of death certificates, you didn't issue
17 one in this case; did you?

18 A I issue a death certificate for every death ---

19 Q In this case, you have not.

20 A This one is pending.

21 Q So you have not made an opinion at this point; is
22 that correct?

23 A I have not made a final ruling on this one.

24 Q You have not made a final ruling on this case.

25 A No.

FURTHER RECROSS-EXAMINATION OF KIMBERLY STILL
BY MR. PLEXICO

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1 Q Thank you. No further questions.

2 MR. PLEXICO: Your Honor, may I?

3 THE COURT: Yes.

4 FURTHER RECROSS-EXAMINATION

5 BY MR. PLEXICO

6 Q All right. Now, pending the funeral that was I
7 believe five days later ---

8 A That's correct.

9 Q Okay. But pending the funeral, all right, that --
10 you were going to rule it was a -- a -- a natural death.

11 A We were -- we were waiting on toxicology.

12 Q Okay. The toxicology where she was -- she would have
13 -- she had taken more vascular expanders than -- than she
14 was supposed to take; correct, four times as much?

15 A I'm unsure as to what -- what the level was.

16 Q But it was high.

17 A I'm -- okay. I don't know.

18 Q Okay.

19 MR. PLEXICO: Just a moment. May I approach, Your
20 Honor, to hand her this?

21 THE COURT: Yes.

22 Q The um Amlodipine, that is the vascular, one of the
23 vascular expanders, she was on; correct?

24 A Correct.

25 Q And normal level was three to eleven?

FURTHER RECROSS-EXAMINATION OF KIMBERLY STILL
BY MR. PLEXICO

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1 A Yes.

2 Q And she had a forty?

3 A Yes.

4 Q That could be thirteen times to four times higher
5 than what is normal.

6 A Correct.

7 Q Okay. If you turn the page, she had had alcohol at
8 some point the evening before; correct?

9 A Correct.

10 Q And marijuana at some point; correct?

11 A Correct.

12 Q Okay. And do people self-medicate if they have
13 migraines with marijuana sometimes?

14 A I'm unsure about that.

15 Q Okay. Um and you said that that's pending.

16 A Uh-huh.

17 Q So you still don't know that it wasn't a natural
18 death; correct?

19 A I do not know.

20 Q And you get an opinion from -- from whoever -- from
21 the doctor whoever performs the autopsy.

22 A They are -- they are a tool that I use.

23 Q And you can -- you could have a Coroner's Inquest, if
24 you wanted?

25 A Yes, I can.

DIRECT EXAMINATION OF JOHN LAWSON, III,
BY ASST. SOL. LEGETTE

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1 Q Correct? But you have not called one in this case.

2 A No.

3 Q Is that because you don't feel there's enough
4 evidence to show that it was a homicide, as opposed to a
5 natural death?

6 A I don't know.

7 Q Okay. So you have serious doubts.

8 A Uh-huh.

9 Q Thank you. I don't have anything further.

10 ASSISTANT SOLICITOR LEGETTE: No further questions,
11 Your Honor.

12 THE COURT: Okay. You can step down.

13 WITNESS: Thank you.

14 THE COURT: Thank you.

15 ASSISTANT SOLICITOR LEGETTE: The State calls John
16 Lawson.

17 JOHN M. LAWSON, III, after being duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY ASSISTANT SOLICITOR LEGETTE

21 Q Good morning.

22 A Good morning.

23 Q State your full name for the record, please.

24 A John M. Lawson, III.

25 Q Okay, sir. And where do you live?

DIRECT EXAMINATION OF JOHN LAWSON, III,
BY ASST. SOL. LEGETTE

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1 A In Brunson, South Carolina.

2 Q Okay. And where do you work?

3 A Allendale County EMS.

4 Q And what position do you hold at Allendale County
5 EMS?

6 A Director.

7 Q And what are your duties there as Director of
8 Allendale County EMS?

9 A To manage, oversee, um the entire organization and
10 all the personnel that work there.

11 Q Okay. And how long have you been at Allendale County
12 EMS?

13 A In this capacity as Director for three years, a total
14 of seventeen years.

15 Q Okay. And so do you have any other medical
16 experience -- I'm sorry, experience in the medical field?

17 A Uh, well, I'm trained as a paramedic and a critical
18 care paramedic. Um I've been a medic since 1995, critical
19 care medic um for four years now.

20 Q Okay. Now, Mr. Lawson, turning your attention to
21 March 25th, 2005, do you recall that date?

22 A Vaguely. I do have an incident report that supports
23 that day and time, yes.

24 Q Okay. And do you remember anything about that day at
25 all?

DIRECT EXAMINATION OF JOHN LAWSON, III,
BY ASST. SOL. LEGETTE

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1 A Um I remember very early that morning we um,
2 somewhere around 7:00 o'clock that morning, we received a
3 call to a residence on Oakland Drive in Allendale. Um I
4 did not respond initially with the ambulance but came into
5 the call shortly after arrival of the ambulance to find
6 the crew there with um -- with a young lady found deceased
7 at the residence. Um upon my arrival, the um -- the crew
8 had made the phone calls to the Coroner's Office to get
9 someone from the Coroner's Office enroute to the
10 residence.

11 Um as far as details of the incident or the incident
12 scene, there were, in my opinion, it didn't appear that
13 there was anything disturbed, broken, torn up, forced
14 entry, any of these other things, but there was a young
15 lady lying on the floor in the living room just inside the
16 front door of the residence and over to the right. Um I
17 do remember seeing a sofa bed that was there that appeared
18 someone may have slept in it the night before and a small
19 figurine of some animal statue lying on the floor in the
20 living room.

21 Um the um crew that was on the scene reported to me
22 that the um Coroner's Office had been notified, that they
23 felt like um the time of death had occurred some time
24 several hours prior to our arrival, because there was
25 rigormortis and the body was cold. And um the Coroner's

DIRECT EXAMINATION OF JOHN LAWSON, III,
BY ASST. SOL. LEGETTE

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1 Office was notified, and the Deputy Coroner arrived on the
2 scene.

3 Um the body was then turned over -- the body was
4 transported by our agency, at the request of the Coroner,
5 to the EMS station, where it was then transferred to the
6 care of the Deputy Coroner for transport to MUSC for an
7 autopsy.

8 Q And who was that Deputy Coroner?

9 A Um Ms. Vonda Priester.

10 Q And she was the person who transported the body to
11 MUSC?

12 A She's the person that left our parking lot in the um
13 -- in the funeral services van enroute to Charleston, yes.

14 Q Okay. Was law enforcement ever called?

15 A Yes. Law enforcement was notified.

16 Um when we arrived on the scene, the crew initially
17 told me that Officer Dawan Smith had been there and had
18 given them some information prior to our arrival. Um law
19 enforcement was actually notified, and they were notified
20 because there were some minor children involved. They
21 were also notified to properly secure the children and the
22 residence once the body was removed, um but they were on
23 scene.

24 Um there were two -- there were two Allendale police
25 officers that I recall. The main person that I had a

1 conversation with was Officer Laquinton Davis, who was
2 with the Allendale Police Department at that time.

3 Q Okay. Thank you. I have no further questions.

4 Answer any questions of Mr. Plexico.

5 CROSS-EXAMINATION

6 BY MR. PLEXICO

7 Q And -- and you looked over your paperwork; correct,
8 before you came?

9 A Yes, sir, I have. I have it here.

10 Q Okay. Thank you. And y'all -- y'all -- y'all noted
11 no obvious signs of trauma to the body; correct?

12 A No, sir. No, sir. Um and ---

13 Q No, sir, I'm wrong, or yes, sir, I'm right?

14 A No, sir, we did not note anything on initial
15 examination of the body that would indicate to us, and
16 what I mean by that is any external bruising, lacerations,
17 or anything that would appear that it was some trauma or
18 some type of assault involved in what went on prior to our
19 arrival.

20 Q So you -- did you or did you not see any signs of
21 trauma or assault or bruising on the body?

22 A No, sir. Not that I recall and not that was reported
23 to me by the crew that was there.

24 Q So it's true that you didn't see any; correct?

25 A Yes, sir.

CROSS-EXAMINATION OF JOHN LAWSON, III, BY MR. PLEXICO

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1 Q Okay. And in your report, did you note there was no
2 information provided by the child that would cause
3 suspicion of anything other than a natural death?

4 A Could you repeat that again, sir?

5 Q Do you remember this letter?

6 A Yes.

7 Q And did you note that there was no information
8 provided by the child that would cause suspicion of
9 anything other than a natural death?

10 A That is correct.

11 Q Okay. No visible evidence noted that indicated foul
12 play, either; correct?

13 A Not on -- no, sir.

14 Q I'm sorry?

15 A That is correct.

16 Q Okay. I don't have anything further. Thank you.

17 ASSISTANT SOLICITOR LEGETTE: No further questions of
18 this witness, Your Honor.

19 THE COURT: Okay. You can step down.

20 ASSISTANT SOLICITOR LEGETTE: May he be excused?

21 THE COURT: Yes. Thank you, sir.

22 ASSISTANT SOLICITOR LEGETTE: The State calls Vonda
23 Priester.

24 VONDA R. PRIESTER, after being duly sworn,
25 testified as follows:

DIRECT EXAMINATION

BY ASSISTANT SOLICITOR LEGETTE

Q Good morning.

A Good morning.

Q State your full name for the record, please.

A Vonda Rashell Priester.

Q You can turn that microphone, if you want to. Okay.

Vonda Priester?

A Vonda Rashell Priester.

Q Thank you. And, ma'am, where do you live?

A Fairfax.

Q And what is your current occupation?

A Mortician.

Q Okay. And where are you a mortician?

A Hampton County.

Q Okay. And, specifically, what funeral home do you work for?

A Riley's Funeral Home, Hampton Chapel, Incorporated.

MR. PLEXICO: I didn't hear her. Whose funeral home?

WITNESS: Riley's Funeral Home, Hampton Chapel, Incorporated.

Q Okay. Now, Ms. Priester, have you ever had any other jobs in the past?

A Just working with the Coroner's Officer.

Q Okay. And what was your position at the Coroner's

DIRECT EXAMINATION OF VONDA PRIESTER BY ASST. SOL. LEGETTE

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1 Office?

2 A Deputy Coroner.

3 Q And what Coroner's Office was that?

4 A Allendale County.

5 Q Okay. Now, Ms. Priester, when were you working for
6 Allendale County Coroner's Office?

7 A When did I begin?

8 Q Yes.

9 A February '05.

10 Q Okay. And how long ---

11 A I'm sorry, let me correct that. February '04.

12 Q And how long did you work for the Coroner's Office,
13 ma'am?

14 A It wasn't quite a year and a month.

15 Q So you were working at the Coroner's Office in March
16 2005?

17 A Correct.

18 Q Now, as the Deputy Coroner, what were your duties?

19 A To investigate the scene, to ask questions, and to
20 come up with a decision to decide if a death was natural
21 or unnatural.

22 Q Okay. And if a death was natural or -- I'm sorry, if
23 it was unnatural, what would you do?

24 A We would have other tools that we would use. We
25 would call in other resources to assist us.

1 Q Okay. And what tools were those?

2 A You would have S.L.E.D. You have your detectives and
3 your local agencies also.

4 Q Would you send for an autopsy?

5 A In this case?

6 Q I'm sorry, if the -- if a death was unnatural ---

7 A Yes.

8 Q --- you'd send for an autopsy?

9 A Yes, ma'am.

10 Q Okay. Now, Ms. Priester, turning your attention to
11 March 25th, 2005, do you recall that day?

12 A Yes.

13 Q Okay. Did you transport a body to MUSC on that day?

14 A That's correct.

15 Q Did you arrive at a house on Oakland Drive on March
16 25th, 2005?

17 A Correct.

18 Q What house did you go to?

19 A The residence of Ms. Harriett Washington.

20 Q Did you know Ms. Washington?

21 A Yes, I did.

22 Q And how did you know Ms. Washington?

23 A Um she was in high school. She was a little older
24 than I was, but I remember her from those days.

25 Q Okay. So you went to that house.

DIRECT EXAMINATION OF VONDA PRIESTER BY ASST. SOL. LEGETTE
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1 A Yes.

2 Q Okay. And what did you find when you arrived at
3 Harriett Washington's house?

4 A At the scene there was the Coroner, um Ms. Poston.
5 Um there was um the EMS, Mr. um -- um Cook.

6 And there was the body when I walked into the room.
7 She was lying down on the floor. Um she was partially
8 covered.

9 So, pretty much -- do you want to know the scene
10 itself?

11 Q Well, tell me what you did when you got there.

12 A Well, my purpose for being there that particular day
13 was to provide her, Ms. Poston, with a BRT and also to
14 pronounce Ms. Washington.

15 Q Okay. And what is a BRT?

16 A A BRT is a Burial Transit Removal Permit.

17 Q Okay. You have to have that to remove the body?

18 A Yes, ma'am.

19 Q Okay.

20 A And on that it has the name of the deceased, the
21 date, um the hour of also.

22 Q Okay. So are you the person that pronounces the
23 person dead?

24 A This particular day, I did.

25 Q Okay. And so she was, in fact, dead.

1 A Yes, ma'am.

2 Q Okay. And after you pronounced her dead, what did
3 you do?

4 A Well, pretty much, Kim and I, we were waiting to
5 receive the body bag to remove her. Um once we did that,
6 um Kim transferred her to the EMS unit, and then the body
7 was transferred from the EMS unit to the rescue shed. Um
8 from the rescue shed, then the body was transported to
9 Charleston.

10 Q And who transported that body to Charleston?

11 A I did.

12 Q Okay. And you transported the body to Charleston for
13 what purpose?

14 A Autopsy.

15 Q Autopsy.

16 A Yes.

17 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
18 indulgence?

19 Q I have no further questions, Ms. Priester. Answer
20 any questions from Mr. Plexico, please.

21 A Sure.

22 CROSS-EXAMINATION

23 BY MR. PLEXICO

24 Q Did you review your notes before you came to the
25 stand?

CROSS-EXAMINATION OF VONDA PRIESTER BY MR. PLEXICO

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1 A Yes, sir. I'm -- I'm familiar with what happened
2 that day.

3 Q Okay. All right. Um you had no sign of foul play;
4 is that correct?

5 A Those notes are not mine. Those notes are Coroner
6 Poston's notes.

7 Q So it is true there was no sign of foul play?

8 A Yes, sir.

9 Q Is it true there was no disarray in the house?

10 A No disarray, sir.

11 Q In other words, things were not overturned, nothing
12 unusual.

13 A No, sir.

14 Q Okay. And the trunk was still warm?

15 A Excuse me?

16 Q The body, the trunk, was still warm?

17 A Rigormortis had set in.

18 Q But the trunk was still warm.

19 A Uh-huh. Still warm, yes, sir.

20 Q Okay. Um and if you don't know how they died, you
21 take them for an autopsy for that; correct?

22 A That's -- that's correct.

23 Q And at the scene, was it a suspected cardiovascular
24 aneurysm?

25 A You're saying my statement is that, sir?

1 Q At the scene, was there not a POSS., possible, CVA,
2 cardiovascular aneurysm?

3 A Those notes are Ms. Poston's.

4 Q Were you working with Ms. Poston?

5 A Sir, yes, sir. I came off of another scene when she
6 called me there.

7 Q Okay.

8 A So I was working another case.

9 Q So, what ---

10 A Excuse me?

11 Q That's fine. I -- I -- these aren't your notes?

12 A No, sir. Those are Ms. Poston's notes.

13 Q Okay. Do you have any notes?

14 A Yes, sir. I do have my notes, but I don't have them
15 with me today.

16 Q Okay.

17 MR. PLEXICO: Court's indulgence, please, Your Honor?

18 Q I have no further questions.

19 THE COURT: Anything further?

20 ASSISTANT SOLICITOR LEGETTE: Nothing further, Your
21 Honor. May she be excused?

22 THE COURT: You can. Thank you.

23 ASSISTANT SOLICITOR LEGETTE: At this time the State
24 calls Ms. Marilyn Monroe.

25 MARILYN MONROE, after being duly sworn,

DIRECT EXAMINATION OF MARILYN MONROE BY ASST. SOL. LEGETTE

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY ASSISTANT SOLICITOR LEGETTE

4 Q Can we get a mike check?

5 A Hello.

6 Q Okay. Thank you. State your name for the record,
7 please.

8 A Marilyn Monroe.

9 Q Okay. And talk into that mike so everybody can hear
10 you, please.

11 Okay. And, Ms. Monroe, where do you live?

12 A Um Fairfax, South Carolina.

13 Q And where do you work?

14 A At Mohawk.

15 Q And how long have you worked at Mohawk?

16 A About seventeen years.

17 Q Seventeen years?

18 A Uh-huh.

19 Q Okay. All right. And where are you from? Are you
20 from Fairfax?

21 A No. Allendale.

22 Q Okay. You're from Allendale. Okay.

23 Now, Ms. Monroe, did you know Harriett Washington?

24 A Yes, I did.

25 Q Okay. Tell me, how did you know Harriett Washington?

1 A Um she's my cousin.

2 Q Okay. So you've known her all your life?

3 A All my life, yeah.

4 Q Now, Ms. Monroe, turning your attention to March
5 25th, 2005, do you remember that day?

6 A Yes, I do.

7 Q Okay. Did you go to Harriett's house that day?

8 A Yes, that morning.

9 Q Okay. Tell me what you remember about the morning
10 you went there on March 25th.

11 A Well, when I went there, me and my mother, and um
12 there was a lot of people outside and the doors was open,
13 and I went in the house, and Harriett was laying on the
14 floor by the window to the right. And I stood up and I
15 looked at her, and her face was kind of um puffy looking,
16 and her eyes and stuff, her eyes was open. And um people
17 was in the kitchen, and um that's about it.

18 Q Was um anyone else there, like EMS personnel?

19 A Yes, they was there.

20 Q And what were they doing?

21 A Um they were just um sitting over, you know, looking
22 at the body.

23 Q Okay. Okay. Now, you said people were inside the
24 house. What were the people inside the house doing?

25 A Well, some of them was just -- they was just walking

1 around in the house.

2 Q Okay. Now, how long were you at Ms. Washington's
3 house that day?

4 A Mmm, about four or five hours or more.

5 Q Okay. And you said your mom was there with you?

6 A Yes.

7 Q Okay. And what did y'all do?

8 A Well, after um Mr. Davis told us that we could get
9 the house, we started cleaning it up.

10 Q Okay. So you began cleaning the house.

11 A Yeah. We began cleaning.

12 Q Okay. And what did you clean with?

13 A Clorox and Pinesol.

14 Q Okay. Now, was Ms. Washington's body still there at
15 this time?

16 A Well, no, they had done took the body out the house.

17 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
18 indulgence?

19 Q Okay, Ms. Monroe, I have no further questions.
20 Answer any questions from Mr. Plexico, please.

21 MR. PLEXICO: I have no questions for this witness,
22 Judge.

23 THE COURT: Okay. You may step down and be excused.

24 ASSISTANT SOLICITOR LEGETTE: The State calls Mr.
25 Michael Cave, please.

1 MICHAEL GARRETT CAVE, after being duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY ASSISTANT SOLICITOR LEGETTE

5 Q Good morning, sir.

6 A Good morning.

7 Q State your full name for the record, please.

8 A Michael Garrett Cave.

9 Q Okay. And, Mr. Cave, where do you live?

10 A I live at , Allendale.

11 Q Okay. And, Mr. Cave, where do you work?

12 A Cave Funeral Service.

13 Q And what do you do at Cave Funeral Service?

14 A Funeral Director and Manager of that funeral home.

15 Q Okay. And how long have you done this?

16 A I've been licensed since '83.

17 Q So you're a Funeral Director. You're a licensed
18 Funeral Director?

19 A Yes, I am.

20 Q Okay. And as a Funeral Director, what are your
21 duties?

22 A Um to prepare human remains for burial.

23 Q Okay. Now, Mr. Cave, in your line of work, what is
24 done to prepare bodies for burial?

25 A Um in a normal case, and when I say "normal," that

DIRECT EXAMINATION OF MICHAEL CAVE BY ASST. SOL. LEGETTE

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1 would be um without an autopsy or anything of that nature,
2 we would bring the remains in. Um we usually inspect the
3 remains, um just from an overview of looking at different
4 parts of the bodies, just to make sure everything's intact
5 and nothing unusual.

6 Um then we would prepare the remains for a cleansing,
7 um which we would use water and maybe some type of
8 cleansing solution, basic solution. And then we would
9 have the -- I would then notify the embalmer that he can
10 come and do the embalming process.

11 After that point, um it would be my responsibility to
12 get the remains dressed properly, um and then placed into
13 a casket or unit, plan the funeral prior to that. And
14 it's my responsibility to bury the human remains in a
15 cemetery that is designated by the family.

16 Q Okay. Now, you said in a normal case without an
17 autopsy.

18 A Right.

19 Q So what happens when a body has been autopsied?

20 A Well, an autopsy is a little different. Um I would
21 -- would say some type -- it looks like a butchering, as
22 far as I'm concerned. I don't -- I don't recommend an
23 autopsy for anyone.

24 Um, of course, all of the body parts are removed. Um
25 the rib cage is cracked. Um there are -- we are given the

1 intestines back from ---

2 MR. PLEXICO: Your Honor, I -- I -- you know, I
3 object. This isn't -- what's the purpose in this, I mean,
4 aside from the emotions and inflame the passion of the
5 jury?

6 ASSISTANT SOLICITOR LEGETTE: Your Honor, we can move
7 on to what he does.

8 THE COURT: Okay.

9 ASSISTANT SOLICITOR LEGETTE: Your Honor, the
10 question ---

11 Q Mr. Cave, please ---

12 THE COURT: That's fine. Sustained.

13 Q Instead of talking about the autopsy, tell us what
14 you do.

15 A Right. When the body comes back, it's open.

16 Q Uh-huh.

17 A So, and they um have the deposit of the intestines.
18 As I said, everything else is removed. It is then that we
19 have to sew the remains back up before it can be properly
20 embalmed.

21 Q Okay. And so once you sew it up, what do you do to
22 it?

23 A We put it in a plastic pouch.

24 Q Okay. So do you wash the body then?

25 A No, it's not necessary then, because the body's

DIRECT EXAMINATION OF MICHAEL CAVE BY ASST. SOL. LEGETTE

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1 already opened, and when we close it, we don't want to
2 secrete any other extra fluids other than the embalming
3 material. And after that's done and prepared, then we put
4 the body in a plastic cover to secure it from any other
5 extremities.

6 Q Okay. Now, did you prepare Ms. Washington -- did you
7 know Harriett Washington?

8 A Yes.

9 Q Okay. And did you ever have a chance to receive her
10 body?

11 A I did once I was called to go to Charleston to pick
12 her up.

13 Q Okay. And you got her from where in Charleston, Mr.
14 Cave?

15 A MUSC.

16 Q Okay. And how did you prepare her body for burial?

17 A Um we did as I aforesaid. Once we got her back in,
18 we observed the body. We did the embalming. The embalmer
19 did the process that I just fore-stated, and then she was
20 placed in a plastic suit.

21 Q Okay.

22 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
23 indulgence?

24 Q Mr. Cave, I have no further questions. Answer any
25 questions of Mr. Plexico.

CROSS-EXAMINATION

1
2 BY MR. PLEXICO

3 Q Mr. Cave, now tell me, um when y'all do the
4 embalming, y'all remove the blood and fluids; is that
5 correct?

6 A It was pretty much already gone with the autopsy,
7 sir.

8 Q Okay. Y'all go ahead and do that, though.

9 A That's the normal process, yes, sir.

10 Q Okay. Now, do y'all -- do y'all also -- now the --
11 the ---

12 MR. PLEXICO: Court's indulgence, please?

13 Q Now, what's a trochar?

14 A It's an instrument used in removing um solution from
15 the stomach.

16 Q Okay. And do you use it for the solution from the
17 other organs, too?

18 A Excuse me?

19 Q Don't y'all use the trochar, which is a device about
20 that long?

21 A That's correct.

22 Q All right, and you would insert that into the body?

23 A That's right.

24 Q And y'all clean out any residual fluids, for
25 instance, in the heart?

CROSS-EXAMINATION OF MICHAEL CAVE BY MR. PLEXICO

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1 A Not in the heart, sir. From the stomach area, so
2 that whatever the contents were from the stomach, that
3 that doesn't create an odor after embalming is done.

4 Q Okay. And you go down to the intestines and clean
5 out the intestines and all; correct?

6 A Well, basically, it's the stomach area, basically.

7 Q Well, the stomach area is going to include the
8 intestines.

9 A Yes, sir. Well, not necessarily going down that far,
10 sir.

11 Q Okay. How many gallons of the solution do you use to
12 clean that out?

13 A You would have to ask my embalmer, sir. I am a
14 licensed funeral director and not the embalmer.

15 Q Okay. And you have been in business for twenty-four
16 years?

17 A I have. I've been in it a lifetime. My parents are
18 the founders, and we've been open since 1960.

19 Q Okay. Have you ever observed an embalming process?

20 A Yes, sir, I have.

21 Q Okay. And did you see them put fluid in the machine?

22 A Yes, sir. They would take and put in embalming
23 fluid. That's the process of embalming.

24 Q How much embalming fluid do they put in the machine?

25 A I can't answer that, because I do not know the

1 precise amount. That's not my job.

2 Q Do you have a general knowledge ---

3 A Excuse me?

4 ASSISTANT SOLICITOR LEGETTE: Your Honor, he's
5 already answered that ---

6 A I've already stated to you I do not know. I don't
7 know what you want me to say.

8 THE COURT: Sustained.

9 A I don't know.

10 THE COURT: Sustained.

11 A That's not my job.

12 THE COURT: Okay. Sustained.

13 Q All right. Now, but y'all cleaned the body. What
14 fluid do you use to clean the body?

15 A Basically, water.

16 Q Okay. And you hose the body down?

17 A Excuse me?

18 Q You hose the body down?

19 A Yes, basically.

20 Q Basically? Well, what else do you do?

21 A According to what's needed, sir.

22 Q Okay.

23 A Some people come straight out of a hospital, and
24 there's no need to do a lot of cleaning, as far as the
25 exterior is concerned.

CROSS-EXAMINATION OF MICHAEL CAVE BY MR. PLEXICO

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1 Q So they're already cleaned coming back from MUSC.

2 A Some of them are, to a certain extent, but we do
3 always clean them with water, whether we use a cleaning
4 solution or not. Water is always used.

5 Q Was the body -- had the body -- had this body, then,
6 of Harriett Washington been cleaned by MUSC?

7 A I can't answer that.

8 Q Okay. Did it appear clean?

9 A I can't answer that either.

10 Q Did you even see the body?

11 A I did see the body. I had to remove her out of the
12 bag once I got her back to the funeral home, but I can't
13 answer what you just asked me, because I was not there.

14 Q Okay. Did the body, when you got back at the funeral
15 home, did it appear clean?

16 A No.

17 ASSISTANT SOLICITOR LEGETTE: Objection, Your Honor.
18 It's asked and answered. I believe this witness already
19 -- that question, he already asked him.

20 MR. PLEXICO: He just answered it.

21 THE COURT: You need to establish the time period.

22 MR. PLEXICO: I -- I -- I thought I did with the last
23 question.

24 THE COURT: Okay. As to when he saw it. Okay.

25 Thank you.

1 Q With this body of Harriett Washington, what cleaning
2 fluids did you use to clean the body of Harriett
3 Washington?

4 A Basically, water to remove blood that was on the
5 exterior of her body.

6 Q Okay. And that was from the autopsy of Harriett
7 Washington?

8 A That's correct.

9 Q Okay. Did you use any other solution?

10 A Not to my knowledge.

11 Q All right. Okay. I have no further questions.
12 No further questions for the witness, Your Honor.
13 May he be excused?

14 THE COURT: Yes.

15 ASSISTANT SOLICITOR LEGETTE: May we approach, Your
16 Honor?

17 THE COURT: Yes.

18 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
19 RECORD IN THE PRESENCE OF THE JURY, BUT OUT OF THE HEARING
20 OF THE JURY. THEREAFTER, THE FOLLOWING PROCEEDINGS WERE
21 HELD ON THE RECORD IN THE PRESENCE AND HEARING OF THE
22 JURY:)

23 THE COURT: All right, ladies and gentlemen, this
24 will be a good time for our lunch break, and I'm going to
25 ask that you all report back to your jury room at 1:20,

1 and then um I'll remind you not to discuss the case in any
2 form, fashion, shape. Thank you so much.

3 (APRIL 24, 2007, 12:11 P.M., WHEREUPON, THE JURY
4 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
5 PROCEEDINGS WERE HELD ON THE RECORD OUT OF THEIR
6 PRESENCE.)

7 THE COURT: Okay. Court will be in recess until
8 1:20.

9 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.
10 (WHEREUPON, A LUNCH BREAK WAS TAKEN. APRIL 24, 2007,
11 1:24 P.M., THE FOLLOWING PROCEEDINGS WERE HELD ON THE
12 RECORD, OUT OF THE PRESENCE OF THE JURY:)

13 THE COURT: Are the attorneys ready to proceed? Any
14 issue for the Court at this time?

15 ASSISTANT SOLICITOR LEGETTE: Your Honor, we do have
16 a matter. Mr. Plexico and I discussed a stipulation that
17 the victim, Ms. Harriett Washington, actually was dead.

18 THE COURT: Okay.

19 ASSISTANT SOLICITOR LEGETTE: To avoid submission of
20 the photographs.

21 THE COURT: Excuse me?

22 ASSISTANT SOLICITOR LEGETTE: So as to avoid showing
23 photographs of the victim to the jury.

24 THE COURT: Right.

25 ASSISTANT SOLICITOR LEGETTE: And he has agreed to

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BY ASST. SOL. LEGETTE

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1 stipulate to that, Your Honor.

2 THE COURT: Okay.

3 MR. PLEXICO: Yes, Your Honor.

4 THE COURT: Okay. That will be admitted. Okay.

5 All right, other than that, are we ready to proceed?

6 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

7 MR. PLEXICO: Defense is ready, Your Honor.

8 THE COURT: Okay. We're ready for the jurors. Thank
9 you.

10 (APRIL 24, 2007, 1:26 P.M., WHEREUPON, THE JURY
11 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
12 WERE HELD IN THEIR PRESENCE:)

13 THE COURT: Okay, ladies and gentlemen, thank you all
14 for coming back on time, and we will continue to proceed
15 with the trial.

16 ASSISTANT SOLICITOR LEGETTE: At this time, Your
17 Honor, the State calls Dr. Cynthia Schandl.

18 THE COURT: Okay.

19 DR. CYNTHIA A. SCHANDL, after being duly sworn,
20 testified as follows:

21 DIRECT EXAMINATION

22 BY ASSISTANT SOLICITOR LEGETTE

23 Q Good afternoon.

24 A Hi.

25 Q State your name, your full name, for the record,

DIRECT EXAMINATION OF DR. CYNTHIA SCHANDL
BY ASST. SOL. LEGETTE

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1 please.

2 A Cynthia Anna Schandl, S-C-H-A-N-D-L.

3 Q And, Ms. Schandl, where do you live?

4 A I live in Charleston, South Carolina.

5 Q And what is your occupation?

6 A I'm a Forensic Pathologist.

7 Q Okay. And as a Forensic Pathologist, where do you
8 work?

9 A I work at the Medical University of South Carolina.

10 Q And are you a duly licensed physician and surgeon?

11 A Yes, that's correct.

12 Q Okay. So your title is doctor.

13 A That's correct.

14 Q Okay. So, Dr. Schandl, where are you licensed, in
15 what state?

16 A I'm licensed in the State of South Carolina, as well
17 as Florida.

18 Q Okay. And, Dr. Schandl, how long have you been
19 licensed to practice medicine?

20 A Since 1999.

21 Q Okay. And, Dr. Schandl, do you presently practice in
22 your profession?

23 A Yes. Yes, ma'am.

24 Q Okay. Now, Dr. Schandl, do you have any training in
25 pathology?

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BY ASST. SOL. LEGETTE

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1 A Yes. Um do you want me to go through the training,
2 the whole thing, what I do?

3 Q Well, certainly.

4 A I can go through that, if you'd like. In order to
5 become a doctor, first you have to go through four years
6 of college.

7 MR. PLEXICO: Your Honor, to save the trouble, she's
8 testified many times, and we recognize her in her field of
9 expertise.

10 THE COURT: Okay. And were you getting ready to
11 qualify her as an expert?

12 ASSISTANT SOLICITOR LEGETTE: I was, Your Honor.

13 THE COURT: Okay. Just define specifically what
14 field.

15 ASSISTANT SOLICITOR LEGETTE: Okay.

16 Q And, Dr. Schandl, are you currently an expert in
17 pathology?

18 A Yes, ma'am.

19 Q Okay. And just for a little background, will you
20 give us some information about what you do as a
21 pathologist?

22 A Yes.

23 THE COURT: Okay. Just so that I'm clear, is she
24 going to be qualified as a pathologist or forensic
25 pathologist?

DIRECT EXAMINATION OF DR. CYNTHIA SCHANDL
BY ASST. SOL. LEGETTE

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1 ASSISTANT SOLICITOR LEGETTE: I'm sorry. Forensic
2 pathologist.

3 THE COURT: Okay. And is that admitted?

4 MR. PLEXICO: We have no objection to that, Your
5 Honor.

6 THE COURT: Okay. Thank you. All right.

7 Q So, Dr. Schandl, are you an expert in forensic
8 pathology?

9 A Yes, ma'am.

10 Q Okay. And just tell us a little bit about your
11 education.

12 A Absolutely. Um so, again, in order to get to become
13 a forensic pathologist, first you go through college, and
14 then you go through medical school. So that's another
15 four years.

16 And then after you're a doctor, after medical school,
17 then what you do is a residency program. And so the
18 residency program that I chose was in Anatomic and
19 Clinical Pathology. So that's another four years of
20 training.

21 And then after that, in order to um do -- to become a
22 forensic pathologist, you then need to do an additional
23 year specifically in the field of forensic pathology. And
24 um in order to practice in the field, many offices will
25 require that you are also board certified in those fields,

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BY ASST. SOL. LEGETTE

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1 and there's a national certification that covers everybody
2 in the country, and that's through the American Board of
3 Pathology.

4 And so in order to be a forensic pathologist, first
5 you have to become board certified in Anatomic Pathology,
6 and then once you take those examinations and become board
7 certified in Anatomic Pathology and have done all the
8 fellowships that I described, then you can take a second
9 examination specifically in Forensic Pathology and also
10 become board certified in Forensic Pathology. So I'm
11 board certified in Anatomic Pathology, Clinical Pathology,
12 and Forensic Pathology.

13 Q We've heard the word "pathology" quite a bit. What
14 is pathology?

15 A Pathology very basically is the study, the study is
16 the "ology" part, of disease. "Patho" is the study of
17 disease.

18 Q Now, Dr. Schandl, what are the duties of
19 pathologists?

20 A They do vary, depending upon your specialty. Um so
21 in forensic pathology, specifically, um we do quite a
22 number of autopsies. Um and forensics is um -- the -- the
23 usual goal of a forensic autopsy is to determine what the
24 cause of death is and what the manner of death is. So
25 that's our main goal. And the kinds of cases that we get

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BY ASST. SOL. LEGETTE

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1 are those that are not classified as obviously natural.

2 So, for example, we might not get a case where an
3 individual has had heart disease for many years and
4 they've been in the hospital and everybody knows, you
5 know, what's going on, and the death is consistent with
6 that disease. We might not get that case.

7 However, the case we would get is somebody um perhaps
8 somebody in their thirties who's found dead at home, has
9 absolutely no history of illness. In that case, we would
10 get it. And, of course, we get cases that are homicides,
11 accidents, um suicides.

12 Q Okay. Now, Dr. Schandl, during your experience as a
13 forensic pathologist at MUSC, how many autopsies have you
14 performed?

15 A Um I personally have been involved in over a thousand
16 autopsies.

17 Q Now, Dr. Schandl, have you, during your years of
18 experience at MUSC as a forensic pathologist, have you
19 ever had any occasions to observe any occasions where the
20 cause of death was asphyxia?

21 A Yes, quite a few.

22 Q Okay.

23 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
24 time, we do offer her as a forensic pathologist expert in
25 the field of pathology.

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BY ASST. SOL. LEGETTE

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1 THE COURT: Okay. There's been no objection.

2 MR. PLEXICO: I'll be glad to stipulate to that, Your
3 Honor.

4 THE COURT: Okay.

5 ASSISTANT SOLICITOR LEGETTE: Thank you.

6 Q No, Dr. Schandl, turning your attention to March of
7 2005.

8 A Yes, ma'am.

9 Q Were you employed at MUSC as a forensic pathologist
10 during that time?

11 A Yes, that's correct. I was.

12 Q Did you perform autopsies during that month?

13 A Yes, ma'am.

14 Q Okay. And do you recall specifically March 25th,
15 2005?

16 A That date, no.

17 Q Okay. Well, let's see, have you performed an autopsy
18 in the past on a Harriett Washington in the past?

19 A Yes, ma'am, I have.

20 Q Okay. Was that during the March -- during the month
21 of March 2005?

22 A Yes, and I do -- I do -- if I may refer to um -- this
23 is my um file on that case, if I may refer to it for the
24 dates and other specific information?

25 Q Certainly.

DIRECT EXAMINATION OF DR. CYNTHIA SCHANDL
BY ASST. SOL. LEGETTE

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1 A I apologize for my heavy breathing.

2 I see in referring to my paperwork um Ms. Harriett
3 Washington, her autopsy was on March 25th, 2005.

4 Q Okay. When was the first time you saw Ms.
5 Washington?

6 A Also on that date.

7 Q Okay. How long did the autopsy last?

8 A Um I can't tell you that specifically. Each one
9 takes a different amount of time. We do record when we
10 start, but we don't record when we finish.

11 Um in this case we started the case at about 2:30 in
12 the afternoon. They generally take two or three hours.

13 Q Okay. And where did this autopsy take place?

14 A At the Medical University of South Carolina.

15 Q Now, Dr. Schandl, based on that particular autopsy,
16 within the bounds of reasonable medical certainty, did you
17 form an opinion, expert opinion, concerning the death of
18 Harriett Washington?

19 A Yes, I did.

20 Q And what is that opinion?

21 A Um my opinion, her cause of death is asphyxia by
22 strangulation.

23 Q Now, Dr. Schandl, how did you reach that conclusion,

24 ---

25 A Well, um ---

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BY ASST. SOL. LEGETTE

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1 Q --- that opinion?

2 A Absolutely. The -- the autopsy, um the findings,
3 what we call the gross findings, which is what you see
4 when you're actually doing the first part of the autopsy,
5 which is the physical examination of the body, which
6 includes the external examination, as well as an internal
7 examination, um put several um findings on the table. Um
8 those included bruises about the neck, um bruises about
9 the head, um and bruises about the arms and shoulders.

10 Now, that's um -- so that's what we found at the --
11 on that date. Um after you do those studies, you also
12 take tissues, and you look at them under the microscope.
13 So um -- and that takes a couple of weeks to get those
14 slides back to look at.

15 So, in association with the injuries that we saw, we
16 also saw water in the lungs, pulmonary edema, which is
17 consistent with strangulation, and verified the fact that
18 these -- this red discoloration in the muscles of the
19 neck, not just superficial, but deep to the skin, into the
20 muscles of the neck, this red discoloration was, indeed,
21 hemorrhage or bleeding into those muscles.

22 In addition, a complete autopsy includes an
23 examination of every organ of the body. So we were able
24 to exclude many different things as being contributory
25 causes of death.

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1 For example, she had no coronary artery disease. And
2 -- and, you know, we just go through ever single organ to
3 say: It wasn't that. It wasn't that. It wasn't that.

4 Um so with that combination of findings, specific
5 hemorrhage to the muscles of the neck, the pulmonary
6 edema, as well as bruising about the body, I was able to
7 come to that conclusion that she was strangled. And
8 strangulation causes asphyxia, so my cause of death is
9 asphyxia by strangulation.

10 Q Dr. Schandl, were you able to diagram the victim's
11 injuries?

12 A Yes, ma'am.

13 Q And could you diagram those injuries for the jury?
14 Would it help?

15 A I can. I can, if I may bring my notes with me.

16 Q Okay.

17 ASSISTANT SOLICITOR LEGETTE: Your Honor, may she
18 step down?

19 THE COURT: Yes.

20 MR. PLEXICO: Your Honor, I would move the Court to
21 have her do this in a position so we can observe it, too,
22 Your Honor.

23 THE COURT: Okay.

24 MR. PLEXICO: If she could.

25 THE COURT: Well, if you want to come around?

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1 Meaning, oh, you and your client. Um ---

2 MR. PLEXICO: We can stand here in the corner.

3 THE COURT: Okay. That's fine.

4 Give them a moment so they can get over there.

5 A Okay. Basically what I'm going to do is transfer the
6 injuries that I've already drawn from the autopsy so that
7 you can see. I'll get on this side. I'll start with
8 the -- am I in anybody's way? I'll start with the body
9 diagram, and um so here is a contusion, which is a bruise.

10 THE COURT: And just one moment, can the court
11 reporter hear sufficiently?

12 COURT REPORTER: If she could speak up, please?

13 THE COURT: Okay. Would it be easier if they brought
14 it back a little bit?

15 COURT REPORTER: Yes, ma'am.

16 THE COURT: Okay. Why don't you bring it back so
17 she'll be at least a little closer to the court reporter.

18 A Okay. So there's a bruise or contusion that's right
19 here on her shoulder. Um and it's -- I also have the
20 dimensions. It's point-eight by point-four inch. Okay.
21 And that's on the right shoulder.

22 There's another bruise, which we call contusion, here
23 over the clavicle, the collar bone, and it is three by
24 one-point-eight inches.

25 Another area here in the region of the right under

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1 arm, another area of bruising, or contusions. And that
2 one is three-point-eight by two-and-a-half inches.

3 And on the forearm here, so right in this region,
4 there are three contusions, bruises, in this
5 configuration. And each of these are about point-four by
6 point-four inch, a little less than half an inch. Okay?

7 On the back of that same arm, the right arm, so here,
8 there are two additional bruises or contusions. This one,
9 the top one, point-four by point-three inch. And the
10 bottom one, one-point-two inches.

11 And, incidentally, there was a healing abrasion, some
12 little scrapes that were already healing in that same
13 area. It was about point-two inch.

14 There's also an abrasion here to the back of the
15 right thigh. It's about point-four inch. Okay?

16 Going down to the face, she has an abrasion here,
17 right there in the middle of her face, zero-point-three by
18 zero-point-three inch.

19 There was an abrasion to the side of the nose, about
20 the same size. An abrasion, these are scrapes, an
21 abrasion is a scrape, here to the lips and an abrasion
22 here to the chin. The one on the chin, zero-point-three
23 inch. The one on the lip, point-seven by point-two inch.

24 Now the other thing that you see, and I don't have a
25 good diagram for that, but the other thing that we saw

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1 that um -- that made us suspicious at the outset that
2 something was going on, something around the neck, some
3 kind of strangulation, um was blood in her eyes.

4 Let me use this one. We didn't use this one yet.

5 So, what we saw was hemorrhage -- you sort of have
6 that covering over your eye. We call it the sclera that a
7 contact lense would sit on. There's blood right
8 underneath that, and underneath -- and um -- give me one
9 second.

10 And also on her left side, and associated with that,
11 we look at the inside of the upper and lower eyelid,
12 because it's a lighter color than the outside, so
13 sometimes you can see those kinds of hemorrhages, because
14 just because it's a lighter color, so you can see little
15 red spots in here. And so if you can imagine, if the
16 eyelid was flipped back, there were many little
17 hemorrhages there. And again, all of those findings are
18 consistent with -- with um changes in blood flow to the
19 head. Okay?

20 And then finally, every exam is done much the same,
21 and that would include an examination of the brain. So,
22 in getting to the brain, we would flex the scalp forward.
23 So, basically, this is the scalp was from here, and now
24 it's forward. Okay?

25 And there's hemorrhage or bleeding here, which

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1 there's a muscle here called the temporalis muscle, which
2 is right in this region. There's actually hemorrhage into
3 that muscle, and that's on the right side of the head.

4 And then on the left side of the head, and these
5 are -- basically this is over that. You can imagine that
6 with the back over. So there's hemorrhage into the scalp
7 here, and it's over the skull here. Okay?

8 So that was the extent of the injuries that we found
9 at the time of autopsy, plus hemorrhage into the neck
10 muscle. I mentioned earlier, there was some to the left
11 side and there was some to the right side. So bleeding
12 was to both sides. All right?

13 Q Okay. And, Doctor, that bleeding to the neck, what
14 is that consistent with?

15 A Well, that's consistent with trauma to the neck.
16 Okay? Um it's in this area where you also have the
17 findings in the eyes, um it suggests -- it suggests
18 strangulation. So force to the neck in this case, to both
19 sides of the neck.

20 Q Okay. If you would, take the witness stand.

21 (WHEREUPON, State's Exhibit No. 3 was marked for
22 identification only.)

23 (WHEREUPON, State's Exhibit No. 4 was marked for
24 identification only.)

25

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1 (WHEREUPON, State's Exhibit No. 5 was marked for
2 identification only.)

3 Q Dr. Schandl, I hand you now what has been previously
4 marked for identification as State's Exhibits Three, Four,
5 and Five.

6 A Yes, ma'am.

7 Q Do you recognize these?

8 A Yes. These are the diagrams that I just drew.

9 Q And are those diagrams, State's Exhibit Three, Four,
10 and Five, fair and accurate representations of the
11 injuries that you found on Harriett Washington's body when
12 you autopsied her?

13 A Yes, ma'am.

14 ASSISTANT SOLICITOR LEGETTE: At this time, Your
15 Honor, the State would offer State's Three, Four, and Five
16 into evidence for admission.

17 THE COURT: Any objection?

18 MR. PLEXICO: I have no objection, Your Honor.

19 THE COURT: Okay. They're admitted.

20 (WHEREUPON, State's Exhibit No. 3 was admitted into
21 evidence.)

22 (WHEREUPON, State's Exhibit No. 4 was admitted into
23 evidence.)

24 (WHEREUPON, State's Exhibit No. 5 was admitted into
25 evidence.)

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1 **ASSISTANT SOLICITOR LEGETTE:** Begging the Court's
2 indulgence?

3 **Q** Now, Dr. Schandl, after you saw Ms. Washington's body
4 on March 25th, 2005, and you did your autopsy, what was
5 done with the body?

6 **A** The body was returned to the funeral home.

7 **Q** Okay.

8 **A** As far as -- I can double check.

9 **Q** But it was -- it left MUSC.

10 **A** That's correct.

11 **Q** At any point in time, did it return? Did Harriett
12 Washington's body return to MUSC?

13 **A** Yes, ma'am, it did return. Um the body returned, let
14 me see, pardon me, on the 30th of March.

15 **Q** And what was the reason for the body being returned
16 to MUSC?

17 **A** The reason that the body was returned, after ---

18 **MR. PLEXICO:** Your Honor, I would object. That would
19 be hearsay, Your Honor. She wouldn't know, unless
20 somebody told her. That would be hearsay, Judge.

21 **THE COURT:** Sustained.

22 **Q** What -- what was the reason why you saw the body
23 again?

24 **A** I saw the body again in order to collect any
25 additional trace evidence that might still be on the body.

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1 Q And was the body that you saw the body of Harriett
2 Washington?

3 A Yes, ma'am, it was.

4 Q And did you collect any trace evidence at that time?

5 A Yes. Um, yes, ma'am. I did what we call a rape kit,
6 at that time.

7 Q Okay. Did you do a rape kit when you originally
8 autopsied the body on March 25th, 2005.

9 A No, ma'am. I -- I did not.

10 Q Okay. And why didn't you do that?

11 A At that time, um the history that I received, or the
12 hearsay that I received at that time was that the home in
13 which Ms. Washington found -- was found, was secure, and
14 that the only individuals in that home were her children.

15 Q Okay. But on March 30th, 2005, you performed a rape
16 kit?

17 A Yes, ma'am.

18 Q Okay. And what did that rape kit consist of?

19 A The rape kit consists of fingernail clippings, um
20 combed pubic hair, pulled pubic hair, pulled head hair,
21 pulled toenail clippings, and then we also do swabs,
22 cavity swabs, so swabs of the oral cavity, the vaginal
23 cavity, and the anal/rectal cavity.

24 Q Okay. And, Dr. Schandl, when you collected this
25 evidence, did you at any point examine it?

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1 A Um the part that I examined, other than just looking
2 at it while I'm collecting it, um are the smears of the
3 swabs that we get. So, after we get those swabs of the
4 different cavities, we smear it onto a glass slide. Then
5 that glass slide, um and the contents on the glass slide
6 are stained so that we can look at the cells that we've
7 swabbed, so that we can look at those under the microscope
8 and see what's there.

9 Q Okay. And upon examining these swabs, smears, did
10 you find anything?

11 A Yes, ma'am. Um as you would expect in any kind of
12 smear of a cavity, you find um what we call epithelial
13 cells, which is just the cells from the surface of any of
14 those cavities. Um we find lots of bacteria, but what
15 we're really looking for um when we're doing a rape kit
16 are sperm or -- or portions of sperm.

17 So um in this case, I did identify under the
18 microscope those cellular elements, sperm heads, part of
19 the sperm itself, in um the swabs that were taken from the
20 anal/rectal smears.

21 Q Okay. And, Dr. Schandl, where did you collect this
22 evidence?

23 A Um at the Medical University of South Carolina.
24 She -- she -- her body did come back to us, physically,
25 and we collected the evidence at that time.

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1 Q Okay. And what did you do with this evidence once
2 you collected it -- collected it and examined it?

3 A The evidence um was sealed in -- well, each -- each
4 component of the evidence is sealed, and then all of the
5 components, so the clippings and the swabs and so forth,
6 then go into a bag, and we make a list of each of them,
7 and then they are transferred to whoever is investigating
8 the case. So, in this case, they were transferred to
9 South Carolina Law Enforcement Division Investigator, and
10 his name was John Black, I believe.

11 Q Okay. And, Dr. Schandl, once you transferred --
12 before you transferred this evidence to S.L.E.D. Agent
13 John Black, did the evidence remain under your complete
14 custody and control?

15 A Yes, ma'am, it did, in my locked office.

16 Q Okay. And you said you placed it into separate bags,
17 the evidence itself?

18 A Each um -- it depends on exactly what we're talking
19 about, but each, for example, the left fingernail
20 clippings will go into an envelope. That individual
21 envelope is sealed with a label.

22 The right fingernail clippings go into an envelope.
23 That envelope is sealed.

24 The swabs from each area go into separate envelopes,
25 once they're dry, and that is sealed with a label. So

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1 each one was individually sealed.

2 Q Okay. And are these tamper evident little bags with
3 seals on them?

4 A Yes. You can't open the envelope, because these are
5 paper envelopes, without breaking the seal.

6 Q Okay. And you say once you sealed these envelopes,
7 you transferred them to S.L.E.D. Agent John Black.

8 A Yes, ma'am, that's correct.

9 Q Okay. And what was the condition of the packages
10 when you transferred them to S.L.E.D. Agent John Black?

11 A They were intact.

12 Q Okay.

13 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
14 indulgence?

15 Q Dr. Schandl, did you do a toxicology on Ms.
16 Washington's body?

17 A Yes, ma'am. Every case that we do does get
18 toxicology.

19 Q Were there any significant findings in her
20 toxicology?

21 A Um, well, depending on how you look at it, all
22 findings are significant. What we found -- um we -- we
23 send it out to a reference lab, so we don't perform the
24 toxicologic testing in-house.

25 What they found and what I report is um the presence

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1 of a blood pressure medicine, um which she was prescribed,
2 called Norvasc, or Amlodipine, and the presence of um
3 Delta Nine THC, which is the active ingredient in
4 marijuana, and the presence of ethanol, which is alcohol.
5 Um the alcohol was at -- if -- if I may continue?

6 Q Yes.

7 A The alcohol was at a very low level, thirteen
8 milligrams per deciliter, which is the same thing as
9 point-zero-one-three percent. So, for example, the legal
10 driving limit is point-zero-eight percent ---

11 MR. PLEXICO: Your Honor, I would object. Not only
12 is she not an expert in a matter of law, in addition to
13 that, it is inaccurate, and I would move that you have it
14 stricken from the record and request a curative
15 instruction.

16 THE COURT: Okay. The jury will disregard the remark
17 about what the legal limits are with respect to alcohol,
18 legal limits of alcohol, but you can just report your
19 findings, ma'am, Doctor.

20 WITNESS: Very good.

21 THE COURT: Okay.

22 A Um so that was the level of alcohol. And the level
23 of um Delta Nine THC, which is the active ingredient in
24 marijuana, was five-point-seven nanograms per mil, which
25 was considered to be a low level by the toxicologist who

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1 reviewed the toxicology results. There was also the,
2 presence of a metabolite of marijuana, which is inactive.

3 And the blood pressure medicine, which is the
4 Amlodipine, was at a level of forty nanograms per
5 milliliter. And um the documented therapeutic range for
6 that medication, um depending upon your dose, and I don't
7 know what dose she was on, is from three to eleven. And
8 so hers is forty. So hers is higher than that level.

9 Q And, Dr. Schandl, were any of these levels of
10 medication, were they fatal?

11 A No, ma'am.

12 Q Dr. Schandl, during that -- did you ever collect any
13 blood evidence from the body of Harriett Washington?

14 A Yes, ma'am, both for toxicology, as well as for
15 potential DNA, and we also saved some, in case other
16 studies needed to be done later.

17 Q Okay. And did you turn any of that blood evidence
18 over to S.L.E.D. Agent John Black?

19 A Um, yes, ma'am. Generally when we are turning
20 evidence over in a case, we do also include some blood
21 evidence so that they can have a sample that they know is
22 the decedent's blood, so that they can compare that to the
23 other samples and make sure they know who was who.

24 Q And how was that blood evidence packaged?

25 A Um the blood evidence was packaged with the rest of

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1 the evidence, um inside the bag with the rest of the
2 evidence.

3 Q Okay. So was that blood evidence placed into it's
4 own sealed package?

5 A Um it was within the plastic bag in which the rest of
6 the evidence was contained.

7 Q Okay. So was it in a separate container?

8 A The blood itself is within a um -- a blood tube, in
9 particular, a purple top tube that has a specific um
10 ingredient in it that's the best ingredient for testing
11 for DNA.

12 Q And was that blood tube labeled in any way?

13 A Yes, ma'am. Um each of the um samples is labeled
14 with the case information, including the case number and
15 the decedent's name.

16 Q And was that blood tube sealed once it was labeled?

17 A The -- yes. The -- the blood tubes themselves are um
18 vacuum -- have a vacuum. So, basically, it draws the
19 blood in. So they're always sealed.

20 Q And the condition of that blood tube when you placed
21 it in the bag was in a sealed condition?

22 A Sealed, intact, yes.

23 Q And you then turned it over to whom?

24 A Um that -- that went also to um the investigator with
25 the South Carolina Law Enforcement Division.

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1 Q Thank you, Doctor. I have no further questions.

2 Answer any questions Mr. Plexico might have.

3 A Thank you, ma'am.

4 CROSS-EXAMINATION

5 BY MR. PLEXICO

6 Q Do you have -- I believe you have some notes that are
7 similar to these? I may have an exact copy of yours?

8 A Yes, I sure do.

9 Q Okay. All right. And you drew some things on here.
10 And could I ask in reference to -- there were other, and
11 take a look at this, there were other marks on her body;
12 correct, that you did not note on that.

13 A Yes, I -- I -- I was not noting such things as scars
14 and those sorts of things. I was trying to note just the
15 injuries.

16 Q Okay. All right. And -- but -- I see where there's
17 an abrasion on the lower part of the nose, and it says:
18 Drying. Healing.

19 Isn't that an injury? That's on your original notes,
20 not the ones you drew for the jury.

21 A Um that's a healing injury. Correct.

22 Q But that would be there, too; right? That would be
23 an injury.

24 A It's a healing injury, yeah. It depends on how
25 you're defining it. I'm not sure what you're asking me.

1 Q Okay. All right. There are signs of other injuries
2 on the body that are healing; correct? And now I'm going
3 over each one of them.

4 A Let me refer to my original notes. Um, if -- if
5 you'd like, I can go through each of the healing injuries
6 as well.

7 Q Okay. Well, let -- let me, because I want to make
8 sure they're not missed.

9 There's one on the face that's point-three by
10 point-three? It's an abrasion on the bridge of the nose
11 that's drying or healing?

12 A Correct. And that one is on the diagram.

13 Q Okay. All right. And that's in your original
14 diagram; right?

15 A Yes, sir.

16 Q And then there's another one that's larger that's
17 point-seven by point-two that says "healing" versus
18 "dried" on the upper lip; right?

19 A That's correct.

20 Q Okay. So, ---

21 A And that one is also on the one I drew for the jury.

22 Q So one of these, you drew one of those.

23 A That's correct. They're both on there.

24 Q Okay. May I see?

25 Okay. And could you circle the ones that are

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1 healing, that were healing or dried?

2 A Healing or drying. Sure.

3 Q Whatever marker you have, that will be fine. You can
4 use my pen.

5 ASSISTANT SOLICITOR LEGETTE: Um, Your Honor, if Mr.
6 Plexico wants to introduce this as an exhibit, this
7 diagram that she already did in the past, the State has no
8 objection to that, Your Honor.

9 MR. PLEXICO: Well, I want to thank the Prosecution,
10 but I'll decline at this time.

11 THE COURT: Okay.

12 Q Um, now, on the back side of the upper arm, there was
13 also one you left out, too, wasn't it? Isn't there a
14 healing abrasion?

15 A Um, no, sir. I -- I did indicate that to the jury.

16 Q Okay. So one of those is healing, and one of those
17 is not.

18 A Um, no, sir. These two are contusions, and this
19 zero-point-three inch mark here was the healing abrasion,
20 which I explained to them was a healing wound.

21 Q Okay. So -- now, apparently, in those areas of her
22 body, she's had recent injuries before that weren't
23 significant; correct?

24 A Yes. Those are scrapes; correct.

25 Q Okay. So whatever -- okay. Um, now, when you did

1 this -- y'all did the autopsy on 3/25; correct?

2 A Yes, sir.

3 Q And what time on -- what day was that? Do you
4 remember?

5 A I believe that was a Friday, if my recollection is
6 correct.

7 Q You started at about 11:00, you said?

8 A Um I have it started at 2:30 on my front page. Let
9 me double check in my summary.

10 Q All right. Now, well, I'll withdraw the question,
11 since you can't find it.

12 A Yes, sir.

13 Q The um -- the funeral home came and picked up the
14 body that day; correct?

15 A Um I don't have the record of when the body was
16 signed out, but yes, I assume so.

17 Q All right. Okay. And you hadn't thought anything
18 more about this until you got a phonecall from the
19 Solicitor's Office on March 30th; correct?

20 A I wouldn't say I hadn't thought about it. At the
21 time, um on that date, I was not able to determine a cause
22 of death, so I had the case pending. So, cases that are
23 pending do tend to stick in your head.

24 Q Okay. All right. Well, did you pick up the phone
25 and call the Solicitor's Office Friday afternoon or Monday

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1 morning and share your suspicions with them and suggest a
2 police investigation?

3 A No, sir.

4 Q Okay. And this could very well have just been a
5 natural death, couldn't it?

6 A That -- that is possible. At that point, I was not
7 sure. That's why I called it pending.

8 Q Okay. Now, and apparently, you put a lot of weight,
9 as you testified to, on who was present in the house and
10 what the -- the history is of the body that comes to you
11 from the people who were surrounding her.

12 For instance, if EMS says, "I got this body out of a
13 bent up car that's overturned on the highway." Or "I got
14 this body out of a house that was on the living room
15 floor. The house was secured. There was a ten year old
16 in the house," you put a lot of weight on that; don't you?

17 A Um it depends what you mean by that. The history of
18 the case is very important um at the outset when you have
19 no other information. It can lead you to um certain
20 conclusions, sometimes incorrect conclusions. Um so
21 certainly, we try to work together with law enforcement
22 and first responders and the Coroner's Office to try to
23 put the whole picture together. Absolutely.

24 Q Okay. Well, isn't it -- aren't these your notes from
25 3/30/05 and then you typed up something similar to that?

1 A Yes. These are my notes. Uh-huh.

2 Q Okay. All right. Now, isn't it after you were
3 contacted by the Solicitor's Office, okay, that you
4 started looking into this again, and thought, "Oh, my
5 goodness. There might be a homicide."

6 A Well, I hadn't come to any conclusions prior to this.

7 Q And you hadn't thought enough about your findings,
8 those bruises and everything else did not look significant
9 to you, as if there was a homicide, meaning an unnatural
10 death. You hadn't called anybody. You hadn't called the
11 first person. True, Doctor?

12 A I had not called anyone, but I did have suspicions at
13 that point.

14 Q But they weren't significant enough to pick up a
15 telephone; were they?

16 A I could not prove at that point that it was
17 hemorrhage in the neck and not just um engorged vessels.

18 Q So, and you didn't over-do this autopsy in response
19 to find something that nobody else that looked at that
20 body saw?

21 A I'm not sure -- please repeat that.

22 Q Let me rephrase the question. I'll withdraw that
23 question.

24 All right. Now, when you look at -- when you look at
25 the cardiovascular findings in regards to this, I mean,

1 didn't she have a lot of problems in her cardiovascular
2 system?

3 A I'm not sure exactly what you're asking me.

4 Q Well, I mean, she was on over thirteen times the
5 normal amount of hypertension medicine, the vascular
6 extenders; wasn't she?

7 A Not to my knowledge.

8 Q Okay. The medicine she was on, isn't that a vascular
9 expander?

10 A No, sir. It's a vaso-dilator.

11 Q Okay. What's the difference between a -- "vaso" is
12 what, your vessels?

13 A Yes, sir.

14 Q And "dilate" is to make bigger?

15 A That's correct.

16 Q And to expand is to make bigger.

17 A Well, they have different implications medically.

18 Q Okay. All right. And the normal dose is around
19 three, and she's on forty. That's thirteen times as much;
20 right?

21 A I do not know what dose she was on.

22 Q But it could be thirteen times as much, in your
23 professional opinion; couldn't it?

24 A I do not know what dose she was on.

25 Q The report does say it found a level of forty, and

1 three to eleven is normal; isn't that what your report
2 says?

3 A That's the blood level, not her dosage, sir.

4 Q All right. Now, isn't there such a thing as your
5 heart just stopping. Don't they call that sudden heart
6 death?

7 A Um, generally speaking, no. I don't use that term.

8 Q But that's what the common person would understand it
9 as. Your heart just stops.

10 A Absolutely.

11 Q Okay. Now, you did -- there's nothing in this report
12 where you examined the body that showed any kind of sexual
13 trauma; was there?

14 A Sexual trauma, sir?

15 Q That's what I'm asking.

16 A What do you mean by sexual trauma?

17 Q Well, what would a forensic -- what would a
18 professional forensic person say sexual trauma was? Do
19 you know?

20 A It depends what you're asking me, sir. If you're
21 asking about indications of rape, I can certainly provide
22 you with an answer. If you're asking me if she had
23 contusions or tears of her vaginal ---

24 Q You've already gone over all the contusions and
25 placed them into evidence; haven't you?

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BY ASST. SOL. LEGETTE

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1 A Yes, sir.

2 Q Okay. Well, then, I don't have anything else. Thank
3 you, Doctor.

4 A You're welcome.

5 ASSISTANT SOLICITOR LEGETTE: No further questions,
6 Your Honor. May she be excused?

7 THE COURT: You may be excused. Thank you for
8 coming.

9 WITNESS: Thank you, ma'am.

10 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
11 time we'd call Michael Williams.

12 CLERK: Please raise your right hand, and place your
13 left hand on the Bible.

14 MICHAEL WILLIAMS, after being duly sworn,
15 testified as follows:

DIRECT EXAMINATION

16 BY ASSISTANT SOLICITOR LEGETTE

17 Q Hello.

18 A Hey.

19 Q I need you to speak up, now, into the microphone.

20 A Okay.

21 Q Okay? What is your name?

22 A Michael Williams.

23 Q And, Mr. Williams, where do you live?

24 A

25 Q What is that address?

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BY ASST. SOL. LEGETTE

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1 A

2 Q Okay. And who lives you -- who lives with you there?

3 A My mother and grandmother.

4 Q Now, how long have you lived at ?

5 A Mmm, basically all my life.

6 Q All your life? Okay. All right. And what school
7 did you go to, Michael?

8 A Allendale-Fairfax High.

9 Q Okay. Michael, do you work?

10 A No, ma'am.

11 Q Okay. And do you have any children?

12 A Yes.

13 Q Okay. And how old are you, Mr. Williams?

14 A Twenty-four.

15 Q Now, Mr. Williams, do you know Eric Hemingway?

16 A Yes, ma'am.

17 Q Okay. How do you know Eric Hemingway?

18 A We was going with two sisters.

19 Q Okay. And who are those two sisters?

20 A Erica Jones and Sheila Jones.

21 Q Okay. And which one was your girlfriend?

22 A Sheila.

23 Q Okay. And which one was Eric's girlfriend?

24 A Erica.

25 Q So how long did you know Eric Hemingway?

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BY ASST. SOL. LEGETTE

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1 A 'Bout two, maybe two-and-a-half years.

2 Q Okay. And did you meet him with ---

3 A Through Erica.

4 Q Through Erica. Okay. Now, Michael, did you and Eric
5 ever hang out together?

6 A Yes.

7 Q Okay. Now, Michael, do you, or did you, know
8 Harriett Washington?

9 A Yes, ma'am.

10 Q Okay. And how did you know Harriett Washington?

11 A Um, her and my mother were raised up together. They
12 was good friends.

13 Q Okay. Now, Michael, I want you to tell me what you
14 remember about March 25th, ---

15 A Okay.

16 Q --- 2005.

17 A Me and Eric was walking one day, and we passed by
18 Harriett. She was in the yard cleaning her yard. She had
19 on some um tight shorts, and Eric was like ---

20 Q I'm sorry, say that again.

21 COURT REPORTER: Your Honor, can he back up just a
22 little bit away from the mike?

23 THE COURT: Okay. Back up a little bit away from the
24 microphone. I didn't know if it was him in it or the
25 system.

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BY ASST. SOL. LEGETTE

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1 Q Just back up some from the microphone.

2 DEPUTY: Just back up a little bit. Right there.

3 See how it sounds.

4 A She was cleaning her yard. She had on some tight
5 shorts.

6 He was like, "She fine. Make me want to rape her."

7 So, we went on home.

8 Q Now, who said that?

9 A Eric.

10 Q Now, say -- what did he say?

11 A "Make me want to rape her."

12 Q Okay.

13 A And um ---

14 Q And who was he talking about?

15 A Harriett.

16 Q Okay.

17 A So, we went to his house and had a couple of beers
18 and got high. Um went back to my aunt house, and she
19 brung us home 'round about 10:30/11:00 o'clock.

20 So, 'bout 2:00 that morning, 1:00 or 2:00 o'clock
21 that morning, Eric came beating on the door. So I opened
22 the door, and he was like, "Look. Look what this bitch
23 did to me."

24 Excuse me, but that's how he said it. He was pop --
25 sweat was popping out his head. He showed me -- out his

CROSS-EXAMINATION OF MICHAEL WILLIAMS BY MR. PLEXICO

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1 head. He showed me some scratches that she scratched him
2 on his chest and neck.

3 And he said when he knocked on the door, she came to
4 the door. He knocked her down, and he was choking her and
5 raping her, and her little son came out the room, and he
6 was like, "Everything all right. Go back to bed."

7 And so that next morning, he came back to the house
8 and told me that she was dead and that he had done killed
9 her.

10 Q Okay. Now, ---

11 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
12 indulgence?

13 Q Um, Mr. Williams, were you asked to give a blood
14 sample in this case?

15 A Yes.

16 Q And did you give one?

17 A Yes.

18 Q Thank you. No further questions. Answer any
19 questions of Mr. Plexico.

20 CROSS-EXAMINATION

21 BY MR. PLEXICO

22 Q Mr. Williams, you remember giving two different
23 statements? Do you remember giving some statements in
24 this case?

25 A Yes, sir.

1 Q And you gave a statement around April 4th, 2005;
2 correct?

3 A Yes.

4 Q Then you gave another one on February 15th, 2006;
5 correct?

6 A Yes.

7 Q Okay. Those are two different statements; aren't
8 they?

9 A All of them was the same.

10 Q They were?

11 A Yes.

12 Q Okay. Now, doesn't the second statement push the
13 timeline over to 1:00 o'clock to 2:00 o'clock?

14 A It was in that ---

15 Q In the morning?

16 A It was in that timeframe that he came there in the
17 morning, that morning.

18 Q Well, this first statement -- and you remember better
19 something that happened last week than something that
20 happened last week -- last year; don't you?

21 A I ---

22 Q You remember better what happened last week than what
23 happened last year; correct?

24 A Yes.

25 Q Okay. The first statement says that you were with

CROSS-EXAMINATION OF MICHAEL WILLIAMS BY MR. PLEXICO

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1 Eric until about 12:30. Is that true?

2 A Yes. My aunt dropped us off home, and he -- he went
3 home. I went home. He came back to my house bamming on
4 the door. That's when I opened it, and that's when he
5 showed me the scratches and he was washed down in sweat.

6 Q That was between 1:00 and 2:00; right?

7 A Yes.

8 Q So you were with Eric up until 12:30; right?

9 A Yes, and we both went home.

10 Q Okay. Were you over at -- well, did Harriett owe you
11 any money for drugs, Michael?

12 A No, she don't owe me nothin'.

13 Q Were you upset with Harriett?

14 A No.

15 Q But she didn't owe you -- you sure she didn't owe you
16 any money?

17 A She don't owe me nothin'.

18 Q But you were over there that night; weren't you?

19 A I wasn't.

20 Q Well, ---

21 A I never went there. I passed by her house. I never
22 even been in her house, never been in her yard.

23 Q But you were definitely with Eric, you're saying,
24 until 12:30; right?

25 A Yes.

1 Q Did you put your hands around Harriett's neck?

2 A No.

3 Q Did you choke Harriett?

4 A No.

5 Q Harriett -- Harriett was an attractive woman; wasn't
6 she?

7 A She was an attractive woman. I never did anything to
8 her.

9 Q But you got drunk then that night.

10 A Yes.

11 Q You got high that night.

12 A Yes.

13 MR. PLEXICO: Court's indulgence?

14 Q And you were never far from Harriett's house that
15 night; right?

16 A Could you repeat the question?

17 Q You were never far from Harriett's house that night;
18 were you?

19 A I lived down the road from Harriett.

20 Q And if somebody came to Harriett's house late,
21 Harriett would probably let somebody she knows in;
22 wouldn't she?

23 A I don't know nothin' about that.

24 Q Harriett would let a stranger in or you?

25 A Could ---

CROSS-EXAMINATION OF MICHAEL WILLIAMS BY MR. PLEXICO

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1 Q Who would she let in?

2 A Could you repeat -- could you repeat the question?

3 Q Would Harriett let you in or a stranger in at night
4 quicker?

5 A I never tried to go to her house. I never stepped
6 foot in her yard.

7 Q Now, you testified he came to your house at 1:00
8 a.m.; correct?

9 A Between 1:00 and ---

10 Q You said Mr. Hemingway came between 1:00 and 2:00 ---

11 A Yes.

12 Q --- and told you that.

13 A Yes. And showed me the scratches where she scratched
14 him on the neck and in his chest.

15 Q So, you put on your shoes, and you went down ---

16 A No.

17 Q --- there and checked on Harriett; right?

18 A I didn't. No, I didn't. He went home, and I went
19 back to bed.

20 Q You didn't care about Harriett; did you?

21 A Yes, but he came the next day and told me that she
22 was dead, and I told my mother about it.

23 Q So then you went down to see the police station --
24 you went down to the police station. What's that, about a
25 mile from your house?

1 A Yeah, it's about a mile.

2 Q About what, a ten/fifteen minute walk?

3 A Mmm, 'bout twenty, but I didn't walk there. My
4 mother ---

5 Q But that morning, the next morning, you went down to
6 the police station, beat on the door and you said, "Ms.
7 Harriett's been killed."

8 A No, sir. No, sir.

9 Q "She's been murdered."

10 A No, sir, I didn't. No, I didn't.

11 Q You couldn't turn yourself in; could you, Michael?

12 A I didn't have no reason to turn myself in, because I
13 didn't do anything.

14 Q You felt guilty about it, and you told your momma?

15 A Yes.

16 Q Now, you gave that second statement to try to get
17 yourself out of it; didn't you?

18 A No. I didn't have anything to get out of, because I
19 didn't do anything.

20 Q So, Monday you -- so, Monday did you call?

21 A My mother ---

22 Q Or Tuesday?

23 A The paper came ---

24 Q Did you call ---

25 ASSISTANT SOLICITOR LEGETTE: Objection, Your Honor.

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1 Let him answer the question, please.

2 THE COURT: Sustained.

3 Q Did you call Monday? Did you call the police Monday?

4 A No.

5 Q Did you call the police Tuesday?

6 A No. The paper came out that it was an aneurysm. I
7 told my mother, no, it wasn't, because I know he -- he
8 killed Harriett, and I told her. Then she took me to the
9 police department.

10 Q So, you didn't tell anybody until the paper came out

11 ---

12 A Yes.

13 Q --- on Wednesday. On Wednesday or Thursday? When
14 does the paper come out, Michael?

15 A Whenever it came out.

16 Q Wednesday or Thursday?

17 A The following week for the paper, whenever they put
18 it in there.

19 Q So, you kept that hid and secret.

20 A Yes.

21 Q Until all next week; right, Michael?

22 A Yes.

23 Q And then you told your momma.

24 A Yes.

25 Q 'Cause you felt guilty; didn't you?

1 **A** Not about doing anything, about um holding it in.

2 **Q** And you're not in any trouble now; are you?

3 **A** No, I'm not in ---

4 **Q** You're going to get out of this; aren't you?

5 **A** I never did anything to be in trouble.

6 **Q** But you were with him, you say, until 12:30 after
7 midnight; right?

8 **A** Yes.

9 **MR. PLEXICO:** I don't have anything further, Judge.

10 **THE COURT:** Okay.

11 **ASSISTANT SOLICITOR LEGETTE:** Begging the Court's
12 indulgence, Judge?

13 Your Honor, at this time, the State has no further
14 questions of this witness.

15 **THE COURT:** Okay. You can step down.

16 **ASSISTANT SOLICITOR LEGETTE:** May he be excused, Your
17 Honor?

18 **THE COURT:** Yes. You may step down, and you may
19 leave.

20 **WITNESS:** Okay.

21 **THE COURT:** Thank you for coming.

22 **WITNESS:** Okay.

23 **ASSISTANT SOLICITOR LEGETTE:** Begging the Court's
24 indulgence?

25 **MR. PLEXICO:** May we approach, Judge?

1 **THE COURT:** Yes.

2 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
3 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
4 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
5 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
6 AND HEARING OF THE JURY:)

7 **THE COURT:** All right, ladies and gentlemen, we're
8 going to take a break at this time. We're going to have
9 our comfort break.

10 And I'll just remind you not to discuss the case with
11 anyone in any form, shape, or fashion. Thank you.

12 (APRIL 24, 2007, 2:29 P.M., WHEREUPON, THE JURY
13 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
14 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

15 **THE COURT:** Okay. Court will be in recess about
16 fifteen minutes.

17 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.

18 (WHEREUPON, A BREAK WAS TAKEN, AND THEREAFTER, THE
19 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD, OUT OF
20 THE PRESENCE OF THE JURY:)

21 **THE COURT:** What is the status of the State's case?

22 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, at this
23 time, the State is going to ask for a recess and ask to
24 begin again in the morning.

25 **THE COURT:** Okay. All right. That will be fine. I

1 mean, is 9:30 fine? We'll just start at that time?

2 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

3 That's fine.

4 THE COURT: Okay. Okay. All right. And no other
5 issues before the Court at this time that we need to
6 address between now and then, because I'd like to start
7 promptly at that time?

8 MR. PLEXICO: Nothing from defense, Your Honor.

9 ASSISTANT SOLICITOR LEGETTE: Nor from the State,
10 Your Honor.

11 THE COURT: Okay. Thank you.

12 Bring the jurors in.

13 (APRIL 24, 2007, 2:55 P.M., WHEREUPON, THE JURY
14 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
15 WERE HELD IN THEIR PRESENCE.)

16 THE COURT: Thank you, ladies and gentlemen of the
17 jury. You have listened so patiently and everything
18 today, and we got through a lot of witnesses and a lot of
19 work, so we're going to recess until the morning. I'm
20 going to ask you to report back here at 9:30.

21 I would like for you all, as I told you all, not to
22 discuss the case with anybody in any shape, form, or
23 fashion. You probably repeat everything I say at this
24 point on that issue, but to take it a step further, I
25 would not -- I would want you all to not read the

1 newspaper, not listen to the radio, not watch television
2 for the rest of the week, and the reason I indicate that
3 is because -- I mean throughout the course of this trial,
4 the reason that I indicate that is because we are in a
5 small town, and, you know, things of this nature do tend
6 to get media coverage, and I just want to make sure that,
7 again, all facts as you are the sole finders of the fact,
8 you receive all of your information only in this
9 courtroom, and all of your decisions will be based on
10 whatever goes on in this courtroom, and that includes any
11 radio talk shows, just anything. I just want to make sure
12 I'm covering all media outlets, written, um anything oral,
13 verbal, you know, everything. Make sure you're not
14 exposed to anything.

15 So, if you all would so -- do so for the Court, we
16 would appreciate that. You all have a good evening, and
17 we'll see you here promptly at 9:30.

18 (APRIL 24, 2007, 2:57 P.M., WHEREUPON, THE JURY
19 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
20 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

21 **THE COURT:** Okay. The parties for this case have
22 indicated no other business with the Court at this time?

23 **ASSISTANT SOLICITOR LEGETTE:** That's correct, Your
24 Honor.

25 (WHEREUPON, THIS CASE WAS RECESSED FOR THE DAY.

1 APRIL 25, 2007, 9:33 A.M., THE FOLLOWING PROCEEDINGS WERE
2 HELD ON THE RECORD, OUT OF THE PRESENCE OF THE JURY:)

3 THE COURT: All right, are the attorneys ready to
4 proceed?

5 MR. PLEXICO: Defense is ready, Your Honor.

6 ASSISTANT SOLICITOR LEGETTE: Your Honor, may I have
7 a moment?

8 THE COURT: Okay.

9 ASSISTANT SOLICITOR LEGETTE: Thank you.
10 Your Honor, the State is ready to proceed.

11 THE COURT: Okay.
12 All right, you can get the jurors.

13 BAILIFF: Good morning, Judge.

14 THE COURT: Good morning.

15 BAILIFF: We're still missing two jurors.

16 THE COURT: Oh, okay. That's fine. Just let us
17 know. Thank you.

18 (WHEREUPON, A SHORT BREAK WAS TAKEN. THEREAFTER, THE
19 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF
20 THE PRESENCE OF THE JURY:)

21 BAILIFF: Your Honor, the jurors are all present.

22 THE COURT: All right, you can bring them in.

23 (APRIL 25, 2007, 9:37 A.M., WHEREUPON, THE JURY
24 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
25 WERE HELD IN THEIR PRESENCE.)

DIRECT EXAMINATION OF SHEILA JONES BY ASST. SOL. LEGETTE

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1 THE COURT: All right, good morning, ladies and
2 gentlemen of the jury. I hope y'all enjoyed your extended
3 break yesterday, and um we're ready to proceed freshly
4 this morning.

5 Is the State ready to continue it's case?

6 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

7 THE COURT: Okay. You may proceed.

8 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

9 May it please the Court? The State calls Sheila Jones.

10 SHEILA ANNE JONES, after being duly sworn,
11 testified as follows:

12 DIRECT EXAMINATION

13 BY ASSISTANT SOLICITOR LEGETTE

14 Q Good morning.

15 A Good morning.

16 Q Okay. Can we have a microphone check to make sure
17 that microphone is working.

18 Okay. State your full name, please.

19 A Sheila Anne Jones.

20 Q And, Ms. Jones, where do you live?

21 A Um , Allendale, South Carolina.

22 Q Okay. And, Ms. Jones, do you work?

23 A Um, no, I'm unemployed at the time.

24 Q Okay. Have you ever worked in the past?

25 A Yes, ma'am.

- 1 Q Where have you worked?
- 2 A Um Taco Bell and KFC in Hampton, South Carolina.
- 3 Q Okay. Now, Ms. Jones, you say you live at Mill
- 4 Street in Hampton, I'm sorry, in Allendale, South
- 5 Carolina?
- 6 A Yes.
- 7 Q Okay. And who lives with you?
- 8 A Um me and four kids.
- 9 Q Okay. And they're your kids?
- 10 A Yes.
- 11 Q Okay. Now, Ms. Jones, do you know Michael Williams?
- 12 A Yes, I do.
- 13 Q How do you know Michael Williams?
- 14 A That's my kids' father.
- 15 Q Okay. So have you ever dated Michael Williams?
- 16 A Yes, for six years.
- 17 Q Six years. Okay.
- 18 A Uh-huh.
- 19 Q And when you were dating, did you ever live with
- 20 Michael Williams?
- 21 A Yes.
- 22 Q Where did y'all live?
- 23 A Um Apartments.
- 24 Q Okay. That's on Oakland Drive?
- 25 A Uh-huh.

DIRECT EXAMINATION OF SHEILA JONES BY ASST. SOL. LEGETTE

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1 Q Now, Ms. Jones, how long did you live at
2 Apartments with Michael Williams?

3 A Um about four years.

4 Q Four years?

5 A Uh-huh.

6 Q Okay. And when did you start living there with Mr.
7 Williams?

8 A Um that maybe was in June of 2002.

9 Q Okay. So were you living with Michael Williams at
10 Oakland Drive Apartments on March 25, 2005?

11 A Yes.

12 Q Okay. Ms. Jones, do you know Eric Hemingway?

13 A Yes, I do.

14 Q How do you know Eric Hemingway?

15 A Uh he and my sister was dating.

16 Q Okay. And your sister, what's your sister's name?

17 A Erica Jones.

18 Q Okay. Now, is Eric Hemingway present in court today?

19 A Yes.

20 Q Would you point him out for the jury, please?

21 A He's sitting right there.

22 ASSISTANT SOLICITOR LEGETTE: Let the record reflect
23 she has indicated the defendant, Mr. Eric Hemingway.

24 Q Now, Ms. Jones, how long did you know Eric Hemingway?

25 A Uh it was maybe about four months or so.

1 Q Okay. Ms. Jones, did you know Harriett Washington?

2 A I didn't really know her, but I seen her before, yes.

3 Q You'd seen her before?

4 A Uh-huh.

5 Q So you were familiar with how she looked?

6 A Yes.

7 Q Okay. Did you know where she lived?

8 A Yes.

9 Q And what street did she live on?

10 A Uh, Oakland Drive.

11 Q Okay. Now, in relationship to where the Oakland
12 Drive Apartments are where you lived with Michael, where
13 did Ms. Washington live?

14 A Uh, it was um maybe a half a mile like down the road,
15 not even a half a mile.

16 Q And how long of a walk would this be?

17 A Maybe two minutes or so.

18 Q Okay.

19 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
20 indulgence?

21 Q Ms. Jones, I'm going to hand you now what's
22 previously been marked for identification, I'm sorry,
23 entered into evidence, as State's Exhibit One. Take a
24 moment and tell me if you recognize that?

25 A Uh, this is Harriett Washington's house, and down the

DIRECT EXAMINATION OF SHEILA JONES BY ASST. SOL. LEGETTE

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1 road, I see the Oakland Drive Apartments.

2 Q Okay. So you can see Harriett's house from where you
3 lived?

4 A Yes. Yes, ma'am.

5 Q Okay. Thank you. And you said it was two minutes
6 away from where you lived?

7 A Yeah, like as a walk, yeah.

8 Q Two minute walk.

9 Now, Ms. Jones, you said that um you knew Eric
10 Hemingway through your sister, Erica Jones.

11 A Uh-huh.

12 Q Okay. And how -- well, describe their relationship.

13 A Uh, well, at first ---

14 Q No, no, no. Tell me what they were to each other.

15 A Oh, boyfriend and girlfriend, whatever -- however you
16 want to say it.

17 Q They were boyfriend and girlfriend?

18 A Uh-huh.

19 Q Okay. And where did your sister, Sheila Jones, live?

20 A Erica.

21 Q I'm sorry, Erica Jones, live?

22 A Uh, she stayed in the same complex but in the Number
23 825, right around the corner.

24 Q Okay. So she lived in the Oakland Drive Apartments,
25 too.

1 A Yes.

2 Q Did anybody live with her?

3 A Um at that time, Eric Hemingway was staying with her.

4 Q Okay. So, your sister and Eric Hemingway lived at
5 the same apartment complex that you and Michael lived at.

6 A Uh-huh. Yes.

7 Q Okay. Now, Ms. Jones, I want to turn your attention
8 to the night of March 24th and the early morning hours of
9 March 25th, 2005. Do you recall that period of time?

10 A Uh, yes.

11 Q Okay. Please tell us what you remember about the
12 night of, late, late night of March 24th, 2005, early
13 morning of March 25th, 2005.

14 A Uh, well, in between that night, like around 12:00
15 o'clock, the first thing I can remember is Mr. Hemingway
16 coming to my backdoor knocking. And Michael Williams
17 asked who it was. He said his name. He said, "Eric."
18 So, Michael Williams went downstairs to my backdoor, and
19 he proceeded to open the door.

20 MR. PLEXICO: Your Honor, I would object to that,
21 because that would be hearsay, from what she said. I
22 don't think she even knows who it was, Judge. She's
23 making an assumption.

24 Q Ms. Jones, could you hear ---

25 THE COURT: Okay. Rephrase. Thank you.

DIRECT EXAMINATION OF SHEILA JONES BY ASST. SOL. LEGETTE

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1 Q --- the person speaking?

2 A Yes. I could hear him.

3 Like I said, from upstairs in those apartments, you
4 can hear if you speak loud enough, saying, "Who is it?"
5 And the person speaks loud enough so you can hear them at
6 the room, downstairs, it was right above the backdoor, if
7 you speak loud enough, you can hear the person state their
8 name.

9 Q Could you hear anyone state their name?

10 A Yes.

11 Q And what did that person say?

12 A Eric.

13 Q Okay. Did you recognize the voice to be that of Eric
14 Hemingway?

15 A Yes.

16 Q Okay. And you are familiar with his voice in the
17 past?

18 A Yeah. Yes.

19 Q You had seen him before?

20 A Uh-huh.

21 Q You had talked with him before?

22 A Uh-huh.

23 Q Have you heard his voice before?

24 A Yes.

25 Q So when he said "Eric," you knew it was Eric.

1 Hemingway?

2 A Yes, ma'am.

3 Q Now, Ms. Jones, you said that you heard Eric say his
4 name outside the window. Was Michael Williams home with
5 you at this period of time?

6 A Yes, ma'am.

7 Q Okay. And how long had he been home with you,
8 approximately?

9 A Um maybe I'd say an hour.

10 Q Okay. So, around 11:00 o'clock he came in?

11 A Yes.

12 Q Okay.

13 MR. PLEXICO: That's leading, Your Honor. I object.

14 THE COURT: Sustained.

15 Q What time did Michael come in?

16 A Um he came in like 11:00 o'clock.

17 Q Okay. Now, turning your attention, Ms. Jones, to the
18 morning of March 25th, 2005, do you recall that morning?

19 A Uh, yes.

20 Q Okay. Please tell us what you recall about the
21 morning of March 25th, 2005?

22 A On March 25th, 2005, um around 8:00 o'clock that
23 morning, I was up, getting ready to send my oldest child
24 to school. There was some other people out there getting
25 ready to send their kids to school also.

DIRECT EXAMINATION OF SHEILA JONES BY ASST. SOL. LEGETTE

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1 Q Now, when you say "out there," where is out there?

2 A Outside.

3 Q Okay.

4 A On the outside, on the sidewalk on my side of the
5 apartments.

6 Q Okay.

7 A We were kind of wondering what was going on down the
8 road, and then ---

9 Q Why were you wondering what was going on down the
10 road?

11 A Because we saw the ambulance and the police cars.

12 Q Okay.

13 A After that, um the word came back up the street what
14 was actually going on, which was that they found Ms.
15 Washington in her house dead.

16 We all walked around on the other side of the
17 apartments, which my sister stayed on, where we could see
18 Ms. Washington's house from there. Um that morning, after
19 I heard what happened, I went and I knocked on my sister's
20 door and I proceeded to tell her what was going on. She
21 went upstairs in her house, after I went into her house,
22 and after she did that, um Mr. Hemingway came from
23 upstairs, which my sister didn't come with him. He came
24 from upstairs, and he was wearing what they call a white
25 wife-beater tee-shirt.

1 Q A what? Wife-beater tee-shirt?

2 A I white wife-beater tee-shirt.

3 Q A tee-shirt, tank-top type?

4 A Uh-huh.

5 Q Okay.

6 MR. PLEXICO: Your Honor, I object.

7 THE COURT: You can rephrase.

8 A Um, when Mr. Hemingway ---

9 THE COURT: Hold on. Hold on. Hold on. Back up.

10 Q Repeat that part.

11 A When Mr. Hemingway came from upstairs, he had on a
12 white, tank-top, tee-shirt.

13 Q Okay.

14 A And I was sitting where I could see him when he came
15 from upstairs, and I noticed that he had like some
16 scratches, like that was freshly wounded scratches, in his
17 chest area. And I looked at him as if him and my sister
18 was fighting. I did not know.

19 So, after I guess he made notice that I saw the
20 scratches, he went back upstairs, and he proceeded to put
21 another tee-shirt on top of that tee-shirt, which was a
22 whole tee-shirt, not a tank-top. And after that, he left
23 out of my sister house, which I never left right then.

24 And he came back maybe after another ten minutes back
25 into her house and went back upstairs. And about two or

DIRECT EXAMINATION OF SHEILA JONES BY ASST. SOL. LEGETTE

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1 three hours later, all I know ---

2 Q I'm sorry, say that again.

3 A About two or three hours later, his mother and some
4 other women, I don't know who, came and pick him up, and
5 they was saying he was getting ready to go to Orangeburg,
6 and I haven't seen him since the day that they brought him
7 to court on Monday.

8 Q Okay. Now, talk to us about these scratches you say
9 you saw. Describe them for us, please.

10 A Well, the scratches were, it looked to me as, I mean,
11 just did, like freshly wounded scratches, and they were
12 long scratches, and it was about five of them, four or
13 five of them in his chest area.

14 Q Uh-huh.

15 A And they were like still open. You can tell a
16 scratch that has been done a long time ago.

17 Q Okay.

18 A I mean, they was fresh scratches.

19 Q So, they were fresh scratches.

20 A Yes.

21 Q Were they a bright color?

22 A Uh, like, you know, reddish on the inside, as if
23 blood was still on the inside of them.

24 Q Okay. Now, describe -- you said he came downstairs,
25 and how long was he downstairs when you saw these

1 scratches?

2 A Uh, it was maybe like two, three minutes, then he
3 went right back upstairs and put another tee-shirt on top
4 of it, which was an actual whole tee-shirt, as I said.
5 And he proceeded back downstairs after he put that
6 tee-shirt on, and he left out of the house.

7 Q Okay. Now, did anything appear unusual about his
8 actions?

9 A Uh, he was looking in a frightening way to me. His
10 face was like, as calm as he is today, that's not his face
11 that he had on him that day that I saw his face. He
12 looked as if he was scared about something.

13 Q Okay.

14 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
15 indulgence?

16 Q Ms. Jones, I have no further questions. Answer any
17 questions of Mr. Plexico, please.

18 CROSS-EXAMINATION

19 BY MR. PLEXICO

20 Q Do you love Michael?

21 A Do I love Michael?

22 Q Right.

23 A I have no love for Michael as I had before, because
24 we're not dating no longer.

25 Q You're not dating any longer.

CROSS-EXAMINATION OF SHEILA JONES BY MR. PLEXICO

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- 1 A My kids got love for Michael.
- 2 Q When did you stop dating Michael?
- 3 A Uh, that was in the year of 2004.
- 4 Q He's your baby's father; right?
- 5 A Yeah. At the end of 2004, we stopped dating.
- 6 Q You started dating in 2004?
- 7 A Stopped.
- 8 Q Stopped. After all this; right?
- 9 A Yeah, but we still talk, I mean, a lot, a whole lot.
- 10 We got three kids together. Yeah.
- 11 Q And he gives you money; right?
- 12 A No.
- 13 Q He gets a check, but he doesn't give you any money?
- 14 A No.
- 15 Q He doesn't do anything for you?
- 16 A Uh, when he can.
- 17 Q So he does give you money sometimes and does do
- 18 things for you.
- 19 A If he can.
- 20 Q If he can.
- 21 A Yeah, but it's not on a regular basis.
- 22 Q Now, do you recall giving a statement to the police?
- 23 A Yes.
- 24 Q All right. Have you read that statement?
- 25 A Uh, I have looked over it.

1 Q Okay. So you're familiar with that statement?

2 A Yeah. I looked over it. Yeah.

3 Q Okay. Why is your testimony different today from
4 what you said it was?

5 A It shouldn't be much different.

6 MR. PLEXICO: May I approach, Your Honor?

7 THE COURT: You may.

8 Q Is this your statement with your signature on it?

9 A Uh-huh. This my statement.

10 Q Okay. And this was certainly earlier than today, so
11 you'd have a better recollection earlier than you would
12 later about something; correct?

13 A I could.

14 Q Right?

15 A Correct.

16 Q Okay. So this says that Michael Williams came into
17 my house at about 12:00 a.m.

18 A Uh-huh.

19 Q Right?

20 A Uh-huh.

21 Q But you just testified it was 11:00 o'clock.

22 A I mean, by not having a clock directly in front of
23 you, you can, I mean, state a certain time, if you think
24 it is.

25 Q But you did say this. Look at the bottom. Doesn't

CROSS-EXAMINATION OF SHEILA JONES BY MR. PLEXICO

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1 this say that I certify the facts contained hereon are
2 true and correct?

3 A That's true.

4 Q Okay. Now, you also -- you just testified that
5 Michael had been home about an hour; right?

6 A Yeah, he was home about an hour. That's not a lie.

7 He was home about an hour, but maybe the frame of the
8 time is different, but the length of time of being home is
9 not different. I'm not going to change my answer on that.

10 Q So you said he came -- you said Eric came over, the
11 voice you recognized as Eric came over at 2:00 a.m.

12 A And I'm not going to change that, yes.

13 Q Right?

14 A Yes.

15 Q 2:00 a.m.; right?

16 A Yes.

17 Q So that means that Michael got home about 1:00 a.m.,
18 actually; right?

19 A No. He didn't -- not -- not really.

20 Q You don't know, because you don't know the time; do
21 you?

22 A Not if you ain't got a clock right in front of you.

23 Q You don't really know the time; do you?

24 A No.

25 Q Who gave you the idea about that time?

1 A Uh, in my head, if I'm looking at the outside of the
2 darkness, I mean, I give myself that time.

3 Q Did the S.L.E.D. agents give it to you, or did
4 Michael give you the idea of the time?

5 A No, I gave myself the idea.

6 Q Well, if you mention the scratches in the statement,
7 didn't you put down, "I noticed he had scratches?"

8 A Uh-huh. And I did.

9 Q "That were very fresh."

10 A Yes.

11 Q "After a while, he put on a shirt."

12 A Uh-huh.

13 Q "Over the tank-top."

14 A Uh-huh.

15 Q So your testimony went "from after a while" to ten
16 minutes, at the beginning of your testimony, ---

17 A No, I never said ten minutes.

18 Q You said ten minutes earlier in your testimony.

19 A I never said ten minutes. I said it was about five
20 minutes before he went upstairs. I never said two -- as a
21 matter of fact, I said two to three minutes, actually.
22 Never said ten.

23 Q Well, ---

24 A Never said ten.

25 Q You know if you go to a small amount of time, that

CROSS-EXAMINATION OF SHEILA JONES BY MR. PLEXICO

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1 makes him look guilty; right?

2 A Who? Who looks guilty?

3 Q Eric Hemingway. That's what you're trying to do here
4 is to make Eric look guilty and help Michael.

5 A No, I'm trying to tell what I know and what I only
6 know and what I saw out my own eyes. I can not determine
7 whether he's guilty or not.

8 I can only tell you what I know and what I saw out of
9 my own eyes. That's the only thing I can tell you or
10 anybody else in the courtroom.

11 Q But if Michael had been home an hour, that meant that
12 Michael was out until 1:00 a.m.

13 A No.

14 Q When Eric came over; isn't it?

15 A Not necessarily.

16 Q You just -- you don't see any circumstances where
17 your babies -- where all three of your babies are going to
18 lose their daddy; do you?

19 A And at that time, I only had two kids by him.

20 Q Answer my question.

21 A No, it really didn't matter, because he had been in
22 jail before several times, so I was used to it.

23 Q But he's never been to jail for murder; has he?

24 A No.

25 Q Okay.

1 MR. PLEXICO: Court's indulgence?

2 I don't have anything further.

3 THE COURT: Okay.

4 ASSISTANT SOLICITOR LEGETTE: Your Honor, no further
5 questions for this witness. May she be excused?

6 THE COURT: Yes, she may. Thank you for coming.

7 WITNESS: Uh-huh.

8 MR. PLEXICO: Your Honor, does she -- may I inquire
9 if the Solicitor told her not to discuss her testimony
10 with anybody else?

11 THE COURT: Okay.

12 ASSISTANT SOLICITOR LEGETTE: I haven't talked to
13 anybody else about not discussing testimony.

14 THE COURT: They're all sequestered.

15 MR. PLEXICO: Thank you, Judge.

16 THE COURT: Thank you.

17 ASSISTANT SOLICITOR LEGETTE: At this time, Your
18 Honor, the State calls Erica Jones.

19 Please come around and be sworn, Ms. Jones.

20 ERICA JONES, after being duly sworn, testified
21 as follows:

22 DIRECT EXAMINATION

23 BY ASSISTANT SOLICITOR LEGETTE

24 Q Good morning.

25 A Good morning.

DIRECT EXAMINATION OF ERICA JONES BY ASST. SOL. LEGETTE

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1 Q I need you to speak into the microphone so everybody
2 can hear you, especially this lady right here. She's
3 taking everything down. Okay?

4 Good morning.

5 A Good morning.

6 Q And what is your name, please?

7 A Erica Jones.

8 Q Okay. And, Ms. Jones, where are you from?

9 A Allendale.

10 Q And where do you live now?

11 A Aiken.

12 Q I'm sorry, where?

13 A Aiken.

14 Q Okay. How long have you lived in Aiken?

15 A Three months.

16 Q Okay. And what high school did you go to?

17 A Allendale-Fairfax High School.

18 Q And, Ms. Jones, do you work?

19 A Yes.

20 Q Where do you work?

21 A Burger King.

22 Q Okay. And how long have you worked at Burger King?

23 A Like two weeks.

24 Q Okay. Ms. Jones, how old are you?

25 A Twenty-one.

- 1 Q Okay. Do you have any children?
- 2 A Yes.
- 3 Q Okay. How many children do you have?
- 4 A Two boys.
- 5 Q Okay. And how old are your boys?
- 6 A One and five.
- 7 Q Okay. Ms. Jones, do you know Eric Hemingway?
- 8 A Yes.
- 9 Q How do you know Eric Hemingway?
- 10 A That's my boyfriend and my baby's father.
- 11 Q So he is your boyfriend, or he was?
- 12 A He was.
- 13 Q Okay. And he's your son's father?
- 14 A Uh-huh.
- 15 Q And which son is that?
- 16 A One year old.
- 17 Q Okay. Now, Ms. Jones, how long have you known Eric
- 18 Hemingway?
- 19 A Like two years.
- 20 Q Okay. How did you meet Mr. Hemingway?
- 21 A At school. In college.
- 22 Q Okay. What college was that?
- 23 A Denmark Tech.
- 24 Q All right. And you were a student there?
- 25 A Uh-huh.

DIRECT EXAMINATION OF ERICA JONES BY ASST. SOL. LEGETTE

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1 Q Was he a student also?

2 A Uh-huh.

3 Q Did you ever find out where Mr. Hemingway is from?

4 A Um ---

5 MR. PLEXICO: Your Honor, I object. That has
6 absolutely no relevance or no bearing, Your Honor.

7 THE COURT: Okay.

8 ASSISTANT SOLICITOR LEGETTE: Your Honor, I believe
9 it is relevant.

10 MR. PLEXICO: Your Honor, she's just trying to
11 prejudice and make my client appear to be some outsider,
12 if in fact he is.

13 THE COURT: You all approach, please.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
15 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
16 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
17 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
18 AND HEARING OF THE JURY:)

19 THE COURT: All right. Objection overruled. Just
20 rephrase your question, please.

21 Q Ms. Jones, where is Eric Hemingway from?

22 A New York. He lived in Columbia, but when I met him,
23 he lived in Orangeburg.

24 Q Okay. And Denmark Tech is in Denmark?

25 A Uh-huh.

- 1 Q Now, Ms. Jones, you said you dated Mr. Hemingway?
- 2 A Uh-huh.
- 3 Q How long did you and he date?
- 4 A Like eight months before he got locked up.
- 5 Q Okay. Now, when you were dating, where did you --
- 6 where did he live?
- 7 A Um on campus for a while, then he moved with me.
- 8 Q He moved where?
- 9 A With me.
- 10 Q Okay. And where did you live?
- 11 A Oakland Drive Apartments.
- 12 Q Okay. And where is Oakland Drive Apartments?
- 13 A Ma'am?
- 14 Q I'm sorry. What town is Oakland Drive Apartments in?
- 15 A Oh, Allendale.
- 16 Q Okay. And that's in Allendale County?
- 17 A Uh-huh.
- 18 Q Now, did anyone that you knew live -- did anyone that
- 19 you knew live by you or near you?
- 20 A My sister.
- 21 Q Okay. Now, who lived with your sister?
- 22 A Her boyfriend.
- 23 Q Okay. And her boyfriend's name was what?
- 24 A Michael Williams.
- 25 Q Okay. To your knowledge, or did Mr. Hemingway and

DIRECT EXAMINATION OF ERICA JONES BY ASST. SOL. LEGETTE

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1 Michael Williams ever hang out?

2 A Uh-huh.

3 Q I'm sorry, say yes or no.

4 A Yes. Yes.

5 Q So they knew each other.

6 A Yes.

7 Q Now, Ms. Jones, turning your attention to March 24th,
8 2005, do you recall that day or that evening?

9 A That night, yeah.

10 Q You do recall that night?

11 A Uh-huh.

12 Q Okay. Did you see Mr. Hemingway that night?

13 A Later that night.

14 Q Okay. Tell us what happened when you saw Mr.
15 Hemingway.

16 A He came and talked to me. He was just coming back
17 from chillin' with um Michael Williams, and he talked to
18 me and asked me to um sleep with him. I was like ---

19 Q I'm sorry. Say that again, please?

20 A Uh, he talked to me and asked me to sleep with him.
21 I was like, no. So, he left.

22 Q Okay. So you mean sleep with him, as in -- what does
23 sleep with him mean?

24 A Have sex.

25 Q Okay. And what was your response?

- 1 A No.
- 2 Q And after you said no, what happened?
- 3 A He left.
- 4 Q Okay. So, did he ever return?
- 5 A Later that night, I guess. I don't know actually
- 6 what time it was, but he did come back.
- 7 Q Okay. So you did see him.
- 8 A Uh-huh.
- 9 Q Okay. Tell us what happened when you saw him. What
- 10 did you notice?
- 11 A He was asleep with all his clothes on, like shoes,
- 12 clothes, everything. He was asleep.
- 13 Q Okay. I'm sorry. I couldn't quite hear that.
- 14 I need you to speak up. The air conditioning unit is
- 15 on, and I can't hear you.
- 16 A Um he was asleep beside me with his clothes on,
- 17 shoes, everything, in the bed.
- 18 Q So he had on his shoes?
- 19 A Uh-huh.
- 20 Q And what else did he have on?
- 21 A Shirt and shorts.
- 22 Q Okay. And his shoes were tied?
- 23 A I don't ---
- 24 Q But his shoes were on.
- 25 A Yes.

DIRECT EXAMINATION OF ERICA JONES BY ASST. SOL. LEGETTE

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1 Q Now, is that normal behavior for him?

2 A Mmm, on a probably like a drunk night or something,
3 yeah. He's done it before.

4 Q Okay.

5 A Yeah.

6 Q Now, you had told me -- have you and I spoken about
7 this before?

8 A Uh-huh.

9 Q And what was your response to me then when I asked
10 you that question?

11 MR. PLEXICO: Your Honor, I don't know what question
12 she asked.

13 Q The question I asked about it being normal for him to
14 leave his shoes on, what was your response?

15 A Not his shoes. I'm saying, all his clothes, not his
16 shoes.

17 Q But his shoes ---

18 A Yeah.

19 Q --- he'd never slept in shoes before?

20 A No.

21 Q Okay. Okay. So turning your attention now to the
22 next morning, March 25th, 2005, do you recall that
23 morning?

24 A Uh-huh.

25 Q Please tell us what you recall about March 25th,

1 2005.

2 A Um that morning, I woke up. My sister came and told
3 me that the um ---

4 Q Don't tell us what she told you. What happened?

5 A Well, I found out that the lady down the street,
6 Harriett Washington, died. Um I went upstairs. I let him
7 know, 'cause ---

8 Q You let him know what?

9 A That she had -- that somebody had killed her, because
10 that's what everybody was saying.

11 Q So, who was "him"?

12 A Eric Hemingway.

13 Q Okay. So you went upstairs and you told Mr.
14 Hemingway what?

15 A That somebody killed the lady down the street, which
16 we saw her before, so I was thinking he knew her. That's
17 the only reason why I brought it up.

18 Q Okay. Okay. So what happened once you told him
19 this?

20 A Um he went downstairs. Um what he did downstairs, I
21 don't know, because I was upstairs, and then he came back
22 up.

23 We talked. He went back to sleep. It wasn't a
24 conversation about that too much.

25 Q Okay.

DIRECT EXAMINATION OF ERICA JONES BY ASST. SOL. LEGETTE

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1 A That was really it.

2 Q Okay. So what happened later on in the day, March
3 25th?

4 A He called his mom. He told me he was going to his
5 mom's house for the weekend, so he called. She came and
6 picked him up probably like two or three hours later.

7 Q Okay. So did you ever see him after his mom came and
8 picked him up?

9 A I saw him like probably two/three weeks later.

10 Q Okay. And what were the circumstances when you saw
11 him then?

12 A Um we was going to Virginia.

13 Q Okay. Tell us about the trip to Virginia.

14 A My cousin lives in Virginia, so she was down here
15 that week.

16 Q What week?

17 A The week that all of this, Harriett Washington died,
18 all this occurred.

19 Q Okay.

20 A She was down here, so she gave me the opportunity to
21 go stay with her, if I wanted to, like for a few weeks.
22 And I talked to him and let him know I was going.

23 He asked me to come with me. I let him go.

24 So, being that it was just a hearsay right then about
25 him supposedly killing her, I let him go. And after a

1 while, he came back, because he was like the police was
2 harassing his family about something he didn't do. So he
3 was going to turn hisself in.

4 Q Okay.

5 A And that was it.

6 Q Okay.

7 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
8 indulgence?

9 Q Ms. Jones, I have no further questions. Answer any
10 questions from Mr. Plexico, please.

11 CROSS-EXAMINATION

12 BY MR. PLEXICO

13 MR. PLEXICO: May I approach, please?

14 THE COURT: Yes.

15 Q Is this your statement that has your signature down
16 here, Erica Jones?

17 A Uh-huh.

18 Q Is that your statement?

19 A Uh-huh.

20 Q And starting on the second line, do you see where the
21 word "Eric" is? That sentence starting there, does it
22 say, "Eric was with my sister's boyfriend, Mike, all day.
23 I went to sleep kind of early that night, and about 2:00
24 or 2:30, I woke up?"

25 A Yes, sir.

CROSS-EXAMINATION OF ERICA JONES BY MR. PLEXICO

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- 1 Q That's 2:00 or 2:30 a.m.?
- 2 A Yes, sir.
- 3 Q "Eric was in bed with me when I woke up."
- 4 Is that the next line?
- 5 A Yes, sir.
- 6 Q Next morning, he got up. Okay?
- 7 A Uh-huh.
- 8 Q Now, that's the truth; right?
- 9 A Yes.
- 10 Q That's what you told them is the truth; right?
- 11 A (NODDED AFFIRMATIVELY.)
- 12 Q And that's the statement that you gave a lot earlier
- 13 than the testimony you're giving today; correct?
- 14 A Correct.
- 15 Q As a matter of fact, right above your name, doesn't
- 16 it say, "I certify that the facts contained herein are
- 17 true and correct?"
- 18 A Correct.
- 19 Q Right?
- 20 A (NODDED AFFIRMATIVELY.)
- 21 Q So that's the truth?
- 22 A Yes.
- 23 Q And that's the complete truth is what you told them?
- 24 A Yes.
- 25 Q Right?

1 A (NODDED AFFIRMATIVELY.)

2 COURT REPORTER: I'm sorry, Your Honor, could the
3 witness respond verbally?

4 A Yes.

5 Q So, basically, y'all went to Virginia to start over;
6 isn't that what you said?

7 A Sir?

8 Q Isn't that what you testified to? Y'all went to --
9 y'all were going to go to Virginia basically to maybe
10 start over?

11 A Yes.

12 Q Okay. More opportunity there; right?

13 A Yes.

14 Q And Eric turned himself in, because the police were
15 harassing him, he told you, for something that he didn't
16 do.

17 A Yes.

18 Q Correct? And he turned himself in; right?

19 A Yes.

20 Q Okay.

21 MR. PLEXICO: Court's indulgence?

22 Q And, as a matter of fact, Eric and Michael spent part
23 of that night drinking; right?

24 A Yes.

25 Q So he came in drunk and fell in bed, essentially.

1 A I assume.

2 Q So it wouldn't be anything unusual about not taking
3 his shoes off, really; would it?

4 A Exactly.

5 Q Okay.

6 MR. PLEXICO: Court's indulgence?

7 Q There wasn't anything y'all were running from.

8 A No.

9 Q Y'all were just going to start over.

10 A Yes.

11 Q Okay. I don't have anything else.

12 ASSISTANT SOLICITOR LEGETTE: No further questions,
13 Your Honor. May she be excused?

14 THE COURT: Yes. Thank you for coming.

15 ASSISTANT SOLICITOR LEGETTE: At this time, Your
16 Honor, the State calls Investigator Donnie Hutto.

17 JAMES DONNIE DEAN HUTTO, JR., after being duly
18 sworn, testified as follows:

19 ASSISTANT SOLICITOR LEGETTE: Your Honor, may we
20 approach?

21 THE COURT: Yes.

22 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
23 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
24 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
25 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 AND HEARING OF THE JURY:)

2 DIRECT EXAMINATION

3 BY ASSISTANT SOLICITOR LEGETTE

4 Q Good morning, sir.

5 A Good morning.

6 Q State your full name for the record, please.

7 A James Donnie Dean Hutto, Jr.

8 Q Okay. And what is your title?

9 A I'm an Investigator.

10 Q And where are you an Investigator?

11 A Allendale County Sheriff's Office.

12 Q Okay. And where do you live?

13 A Allendale County.

14 Q So, Investigator Hutto, what are your duties as the
15 Investigator for the Sheriff's Office?

16 A Uh, process uh different uh crime scenes, uh assist
17 with other agencies when they need some help, and work
18 criminal and narcotic investigations.

19 Q Do you have any other law enforcement experience?

20 A Uh, yes, I do. I was in the uh -- I was a Federal
21 Boarding Officer in the United State's Coast Guard from
22 '91 to '97.

23 Q Okay. Now, Investigator Hutto, turning your
24 attention to this case involving Mr. Eric Hemingway, did
25 you have occasion to become involved in an investigation

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 in this case?

2 A To a certain extent. I assisted with most of -- some
3 of the investigation from Allendale Police Department.

4 Q Okay. Now, what was your level of investigation in
5 this case?

6 A Actually, what I did was I transported the blood that
7 was taken from Eric Hemingway uh from the hospital, when
8 they obtained the blood, to S.L.E.D. Forensic's Lab in
9 Columbia, and I also transported the blood from Michael
10 Williams from the hospital to S.L.E.D. Forensic Lab.

11 Q Okay. Now, Investigator Hutto, before we get to your
12 transporting of blood evidence from the hospital to
13 S.L.E.D. of Michael Williams and Eric Hemingway, at any
14 point in this particular investigation that you assisted
15 in, was Mr. Eric Hemingway arrested?

16 A Yes, he was.

17 Q Okay. And did you help to effect that arrest?

18 A I picked him up from Virginia. I went with S.L.E.D.
19 Agent -- Special Agent Shawn Harley with the South
20 Carolina Law Enforcement Division.

21 Q Okay.

22 A Road to Roanoke, Virginia, and picked him up and
23 brought him back to Allendale County.

24 Q Okay. And during that period of time, did he say
25 anything to you or Agent Harley?

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 MR. PLEXICO: Your Honor, I have a matter of law we
2 need to bring up outside the presence of the jury, Your
3 Honor.

4 THE COURT: Okay.

5 All right, ladies and gentlemen of the jury, I need
6 to take up a legal issue with them, and I'll have you go
7 to your jury room. I'll remind you not to discuss the
8 case, but during this particular break, which is a good
9 time, I need you all to go ahead and select a foreperson.
10 Um this person gets paid no more money, but um -- um I
11 need it to be a person whose essential responsibilities
12 would be that when the case comes to the jury that you
13 would be the one who would fill out the jury form. And
14 then you can continue to contact and communicate with the
15 Bailiff, if there's any needs of the um jurors, you know,
16 with respect to various things.

17 So this is a good time for you all to go and do that
18 process as well. Thank you. And, of course, the
19 foreperson cannot be selected out of the alternates.

20 JURY: What was that?

21 THE COURT: The foreperson cannot be selected from
22 the alternates.

23 (APRIL 25, 2007, 10:15 A.M., WHEREUPON, THE JURY
24 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
25 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 THE COURT: Okay, Mr. Plexico?

2 MR. PLEXICO: I believe they were about to elicit a
3 statement that would prejudice my client, after they told
4 him his rights, because he certainly wrote on his Miranda
5 Form, "I want to talk to my lawyer."

6 So, I mean, she's saying what statements did my
7 client make, and I haven't been informed of any. And I'd
8 like to show this to the Solicitor to pass this up.

9 ASSISTANT SOLICITOR LEGETTE: Your Honor, he did not
10 make any statements. He merely was giving the Miranda
11 Warnings.

12 MR. PLEXICO: So what she was trying to do then is
13 bring out that he had a ---

14 THE COURT: Wait a minute. When you're saying "he,"
15 you're still referring to ---

16 ASSISTANT SOLICITOR LEGETTE: Mr. Hemingway didn't
17 make any statements, Your Honor.

18 THE COURT: Okay.

19 ASSISTANT SOLICITOR LEGETTE: He -- he was told that
20 he'd be given his Miranda Warnings when he got in South
21 Carolina.

22 THE COURT: Okay. Because your question to him is
23 essentially, "Did he say anything?"

24 ASSISTANT SOLICITOR LEGETTE: And he was going to
25 answer negatively.

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 WITNESS: He -- right.

2 THE COURT: Okay.

3 WITNESS: He didn't say anything.

4 MR. PLEXICO: That would make an additional
5 objection, commenting on his silence, Judge. You can't --
6 he has a right to remain silent, and they're bringing out
7 that he remained silent, which is a comment on his
8 silence, which is -- affects his constitutional right to
9 remain silent.

10 THE COURT: Okay.

11 MR. PLEXICO: They're trying to use that against him.

12 ASSISTANT SOLICITOR LEGETTE: Your Honor, he ---

13 THE COURT: They won't, but the -- I mean, I won't go
14 so far as to say trying to use it against him, but the
15 implication would be that the jury could believe that. I
16 gotcha. Okay.

17 MR. PLEXICO: Yes. Much better way to put it.

18 ASSISTANT SOLICITOR LEGETTE: Your Honor, we would
19 withdraw the question.

20 THE COURT: Okay.

21 ASSISTANT SOLICITOR LEGETTE: However, he did -- he
22 did sign a Miranda Warning. He was read his rights.

23 THE COURT: Okay. But you can just ask the officer
24 did he state anything to get that information out, in
25 other words, without suggesting that he didn't -- the

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 defendant didn't say anything.

2 MR. PLEXICO: Yes, Your Honor.

3 ASSISTANT SOLICITOR LEGETTE: Yes.

4 THE COURT: Yes. Okay. Not -- we -- I understand
5 there is no statement or confession, oral or written; is
6 that correct?

7 ASSISTANT SOLICITOR LEGETTE: That is correct, Your
8 Honor.

9 THE COURT: Okay. All right.

10 And um, Mr. Plexico, then she um intends to just
11 proceed along the lines that he was read his Miranda
12 Rights.

13 MR. PLEXICO: Well, and -- and -- I -- but not to
14 belabor the point, Your Honor ---

15 THE COURT: Yes?

16 MR. PLEXICO: --- that there is no point in bringing
17 in the fact that he was given his Miranda Warnings, if
18 there's not a subsequent statement to give, which is also
19 part of the Miranda Warnings are you have the right to
20 remain silent.

21 THE COURT: Right.

22 MR. PLEXICO: So she wants to still point out his
23 silence.

24 THE COURT: Okay. Let me ask you this. Was there
25 ever a statement? There wasn't one right then.

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 ASSISTANT SOLICITOR LEGETTE: There was no statement
2 made, Your Honor.

3 THE COURT: There isn't one even subsequent to that?

4 ASSISTANT SOLICITOR LEGETTE: No, ma'am.

5 THE COURT: Okay.

6 ASSISTANT SOLICITOR LEGETTE: And, Your Honor, I'm
7 just trying to anticipate the jury's questions, because I
8 have had in the past juries ask the question, well, he
9 wasn't read his Miranda Rights, so for some reason then,
10 his arrest was illegal. I've heard -- I've heard that
11 comment made before about the arrest being illegal,
12 because they see it on television.

13 Your Honor, we're trying to foresee what the jury may
14 see, giving them the answer to the question they may ask
15 when they get in the deliberation room. Your Honor, if it
16 does come up, they would know that they have done properly
17 the procedure, Your Honor, in this matter, that Mr.
18 Hemingway was not arrested illegally, that his rights were
19 not abridged.

20 So they'll know that he actually was arrested
21 properly and that the officers did follow the proper
22 procedure, like they witness all the time on shows such as
23 CSI, Your Honor.

24 THE COURT: Okay.

25 MR. PLEXICO: Your Honor, ---

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 THE COURT: And let me ask you, Mr. Plexico, what --
2 what are you considering the harm if she has to indicate
3 all of the rights, the right to remain silent, your right
4 to have an attorney, you know, your right to do those
5 things, without having a subsequent question that
6 indicates: And then did he say anything?

7 We already know the answer is no, so I wouldn't let
8 her go that far.

9 MR. PLEXICO: The implication, Your Honor, is that he
10 did not make -- he did not make a statement. Therefore,
11 the only point in bringing out he has a right to remain
12 silent is -- is -- is to point out that they told him
13 that.

14 We aren't on TV. This is the rules of law.

15 THE COURT: Right.

16 MR. PLEXICO: I think it's a reversible error to
17 bring that out, because the only implication of bringing
18 the Miranda Warnings in is that he wouldn't talk.

19 ASSISTANT SOLICITOR LEGETTE: Your Honor, I would ---

20 MR. PLEXICO: That's a comment on ---

21 THE COURT: Okay.

22 MR. PLEXICO: That's negative comment on his right to
23 remain silent.

24 THE COURT: Okay. But let me back up, because I'm
25 not quite understanding your argument. What she is trying

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 to indicate -- remember the question is withdrawn.

2 Um the officer, Investigator, excuse me, does not get
3 to indicate at all whether or not the defendant made a
4 statement, because we already know the answer. The answer
5 is no, not then. The answer is no, not later. Is that
6 correct?

7 ASSISTANT SOLICITOR LEGETTE: That's correct, Your
8 Honor. Only I -- I was only asking if he was read his
9 Miranda Warnings. I was not going to go into the actual
10 body of the Miranda Warnings itself.

11 THE COURT: Okay.

12 MR. PLEXICO: There's no caselaw that supports her
13 point. I think it's reversible error to put in you have
14 -- when you had -- when you told him you had a right to
15 remain silent. The only thing they could be doing it for
16 is to use the silence against him.

17 THE COURT: Well, she's -- she's indicated she won't
18 even use those words. She'll just say: Did you give him
19 his Miranda Warnings?

20 Is that sufficient?

21 She just wants to show that he got picked up. He was
22 read his Miranda Warnings.

23 And then you're moving on; is that what I understand?

24 (NO RESPONSE.)

25 THE COURT: Because I understand there is no

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 statement ever, so we're definitely not going along that
2 line. I'm not going to let her imply one way or the
3 other, because I do think that that's dangerous.

4 ASSISTANT SOLICITOR LEGETTE: I'm sorry, Your Honor?

5 THE COURT: I understand there was no statement,
6 ever.

7 ASSISTANT SOLICITOR LEGETTE: That's correct, Your
8 Honor. There's no statement, Your Honor.

9 THE COURT: So I definitely -- I definitely agree
10 that it would be improper to ask whether he made one or
11 not, because that would then put the jury on, you know,
12 whether he should have or didn't or, you know, those kind
13 of issues. So we're clear on that part.

14 But if all she wants to indicate that um the officer,
15 upon arrest, did you read him his um Miranda Warnings, and
16 not mention his right to remain silent -- are you just
17 stating Miranda Warnings?

18 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor,
19 Miranda Warnings.

20 THE COURT: Okay. Is that sufficient?

21 MR. PLEXICO: I understand, Judge. I understand.

22 THE COURT: Okay. You're okay with that?

23 MR. PLEXICO: I'm okay with that.

24 ASSISTANT SOLICITOR LEGETTE: Your Honor, I'd ask
25 that the record be stricken with regard to the question I

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 asked.

2 THE COURT: Right. I will do that. I will do that.

3 Okay. And then limited to: Were you read your
4 Miranda -- did he ---

5 ASSISTANT SOLICITOR LEGETTE: Yes.

6 THE COURT: --- insofar as the procedures were
7 concerned, were you read your Miranda Warnings? Do you
8 ---

9 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

10 THE COURT: Okay.

11 MR. PLEXICO: I have no problem with that, Judge.

12 THE COURT: That's okay. And then you move on.

13 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

14 THE COURT: Okay. Fair enough.

15 Okay. All right. You all take a brief ten minute
16 recess for yourselves as well. Okay.

17 (WHEREUPON, A SHORT BREAK WAS TAKEN, AND THEREAFTER,
18 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT
19 OF THE PRESENCE OF THE JURY:)

20 THE COURT: Okay, are Counsel ready to proceed?

21 ASSISTANT SOLICITOR LEGETTE: The State is, Your
22 Honor.

23 THE COURT: Mr. Plexico, are you ready to proceed?

24 MR. PLEXICO: Yes, Your Honor.

25 THE COURT: Okay. You can get the jurors, please.

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BY ASST. SOL. LEGETTE

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1 (APRIL 25, 2007, 10:40 A.M., WHEREUPON, THE JURY
2 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
3 WERE HELD IN THEIR PRESENCE.)

4 THE COURT: All right, um it's my understanding that
5 Rose Anne McPherson, Juror Number Seventy-Nine, has agreed
6 to be the foreperson?

7 JUROR: Yes.

8 THE COURT: Okay. Thank you.

9 If you can take this end seat right here? Yeah,
10 because the alternates still need to sit there.

11 JUROR: Here or there?

12 THE COURT: Here. Yes. Thank you.

13 That's okay. Okay.

14 And to the jurors, you are always welcome to sit in
15 the seat you've always been in, but you don't have to.
16 The foreperson is the one who has to, as well as the
17 alternates.

18 I saw y'all doing your little musical chairs earlier,
19 so I just wanted to let you know um what our guidelines
20 are on that. Thank you for your service as well.

21 Um before the State proceeds with their case, I'm
22 striking from the record the last question that was asked
23 of the investigator about did the defendant make any
24 statements. That is um -- the question is stricken, and
25 he never gave an answer yet, but that's all stricken, and

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 then we'll proceed.

2 Is that okay, both parties?

3 MR. PLEXICO: Yes, Your Honor. No objections to your
4 curative instruction.

5 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

6 THE COURT: Okay. All right.

7 BY ASSISTANT SOLICITOR LEGETTE

8 Q Investigator Hutto, did you read Mr. Hemingway his
9 Miranda Warnings?

10 A Yes, I did.

11 Q When was that done?

12 A Um 4/20 of '05.

13 Q Okay. And in what state was it done?

14 A South Carolina.

15 Q Okay. Now, Investigator Hutto, let's turn your
16 attention back to what you said earlier about you
17 transporting evidence in this particular case. What kind
18 of evidence did you receive in this case?

19 A A blood sample from Eric Hemingway, as well as one
20 from Michael Williams.

21 Q Okay. Now let's talk about Mr. Hemingway's blood
22 sample first. When did you receive Mr. Hemingway's blood
23 sample?

24 A I'd like to refer to my notes. I don't remember the
25 exact date.

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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- 1 Q If it would help you to refresh, yes.
- 2 A I received Eric Hemingway's on 7/8 of '05.
- 3 Q That would be July 8th, 2005?.
- 4 A That's correct.
- 5 Q Okay. And where was this blood sample taken?
- 6 A At Allendale County Hospital.
- 7 Q Okay. And from whom did you receive this blood
- 8 sample?
- 9 A Uh Rebecca Rowell.
- 10 Q Okay. And does she have a nickname?
- 11 A Becky.
- 12 Q Okay. And where was this blood sample received?
- 13 Where did you receive the blood sample?
- 14 A At Allendale County Hospital.
- 15 Q Okay. Now, were you present when the blood was being
- 16 drawn?
- 17 A Yes, I was.
- 18 Q Okay. And who drew the blood?
- 19 A Becky Rowell.
- 20 Q Okay. And you received the blood sample from Ms.
- 21 Rowell?
- 22 A That's correct.
- 23 Q Okay. And what was the condition of the blood sample
- 24 taken from Mr. Hemingway when you received it from Becky
- 25 Rowell?

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 A It was in -- it was several tubes, and they were
2 handed to me in a plastic bag.

3 Q Okay. Were they sealed?

4 A Yes.

5 Q Had they been labeled?

6 A Yes.

7 Q Okay. Now, had the -- you said there were several
8 tubes that had been sealed.

9 A Yes.

10 Q Were they tampered with in any way?

11 A No.

12 Q Now, once you received Mr. Hemingway's blood sample
13 from Ms. Rowell at the Allendale County Hospital, what did
14 you do with it?

15 A I left there and took it to um State Law Enforcement
16 Division, turned it in to their evidence room in Columbia.

17 Q Okay. And that State Law Enforcement Division is
18 what, S.L.E.D.?

19 A S.L.E.D., as it's referred.

20 Q Now, did Mr. Hemingway's blood sample that you
21 received from Ms. Rowell remain under your complete
22 custody and control during the time you had it in your
23 possession?

24 A Yes, it did.

25 Q Okay. And did it remain under your complete custody

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 and control until you delivered it to the S.L.E.D.
2 drop-box?

3 A That's correct. Yes.

4 Q Now, when you arrived with the sample of Mr.
5 Hemingway's blood at S.L.E.D., did you do anything to
6 verify its being dropped off?

7 A Uh, yes. We -- we um turn everything over to an
8 evidence technician. It's um -- they have one central
9 area right as you go in to collect evidence from officers.
10 It was taken in by an evidence technician.

11 Q Okay. Now, you put it in the drop-box. Did you do
12 anything else with it?

13 A It was sealed with a S.L.E.D. laboratory bag. I
14 initialed the seal, and I put it into a uh refrigerator
15 for DNA compartment.

16 Q Okay. And what was the condition of this blood
17 sample when you turned it over to the S.L.E.D. drop-box?

18 A Everything was still sealed in the original plastic
19 that I got it in the hospital in.

20 Q Had it been tampered with in any way?

21 A No, it had not.

22 Q Okay. Now, who was the person that you turned that
23 -- who was the technician, who was that person that you
24 turned it over to?

25 A Uh, if I could refer to my notes?

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 Uh the -- the form that I received from there has
2 received by um Number Sixteen DNA Box on 7/8 of '05. It
3 has the initials of CB.

4 Q Okay. So you turned it over to the DNA box.

5 A That's correct.

6 Q Okay. Now, with regards to Michael Williams' blood
7 sample, when did you receive this blood sample?

8 A I received um Michael Williams' on 8/29 of '06.

9 Q Okay. And when did you receive Michael Williams'
10 blood sample?

11 A When?

12 Q Yes. When?

13 I'm sorry. You said you received it when.

14 Where was the blood sample taken?

15 A Allendale County Hospital.

16 Q And from whom did you receive this blood sample?

17 A Um Rebecca Rowell.

18 Q Okay. And where did you receive this blood sample?

19 A Allendale County Hospital.

20 Q Okay. Now, were you present when Michael Williams'
21 blood sample was being drawn?

22 A Yes, I was.

23 Q And you received the blood sample from Ms. Rowell?

24 A That's correct.

25 Q What was the condition of Mr. Williams' blood sample

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 when you received it from Ms. Rowell?

2 A Um tubes sealed into a plastic bag from the hospital.

3 Q Okay. And was it labeled?

4 A Yes, it was.

5 Q Okay. Had these um tubes of blood been tampered with
6 in any way?

7 A No, they hadn't.

8 Q Were you present when this blood was being drawn?

9 A Yes, I was.

10 Q What did you do with Michael Williams' blood sample
11 once it was turned over to you from Ms. Becky Rowell?

12 A Um same thing I did before. I transported it from
13 Allendale County Hospital straight to S.L.E.D. laboratory
14 in Columbia, the evidence processing.

15 Q Okay. And once you arrived there, what did you do
16 with it?

17 A Uh it was turned over to um forensic technician,
18 Nikki Perry.

19 Q Okay. Now, when you turned over Eric -- I'm sorry,
20 Michael Williams' blood sample to Nikki Perry at S.L.E.D.,
21 what was the condition of Michael Williams' blood sample?

22 A It was sealed in an evidence envelope.

23 Q So, had it been tampered with in any way?

24 A No.

25 Q Was it in a sealed condition?

DIRECT EXAMINATION OF JAMES HUTTO, JR.,
BY ASST. SOL. LEGETTE

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1 **A** That's right.

2 **ASSISTANT SOLICITOR LEGETTE:** Begging the Court's
3 indulgence?

4 Your Honor -- well, I'm sorry.

5 **Q** Mr. Hutto, subject to being recalled, we have no
6 further questions at this time. Answer any questions from
7 Mr. Plexico.

8 **MR. PLEXICO:** I would move that she finish her
9 direct, Your Honor, if she has anymore. I mean, is she
10 continuing her direct? I don't understand.

11 **THE COURT:** Ms. Legette, when you say "subject to
12 being recalled," you're just talking about in the State's
13 case in rebuttal?

14 **ASSISTANT SOLICITOR LEGETTE:** Yes.

15 **THE COURT:** Okay.

16 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, and
17 additionally, if we have to add anymore questions, um I
18 think the rule does allow for the recall of witnesses with
19 rebuttal. It's in the judge's discretion, Your Honor.

20 **THE COURT:** Right. Right. But you're finished with
21 him on your direct as of now?

22 **ASSISTANT SOLICITOR LEGETTE:** I'm finished with him
23 right now, Your Honor.

24 **THE COURT:** Right. Okay.

25 CROSS-EXAMINATION

CROSS-EXAMINATION OF DONNIE HUTTO, JR., BY MR. PLEXICO

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1 BY MR. PLEXICO

2 Q All right. So, in my cross, I want to ask you, all
3 right -- all right, did -- so you handled the blood
4 samples to Columbia; correct?

5 A I transported them from the hospital to Columbia.

6 Q Okay.

7 A Yes.

8 Q All right. And you transported, you and S.L.E.D.
9 Agent Shawn Harley, was it, transported my client from
10 Virginia to South Carolina?

11 A That's correct. Yes.

12 Q In a vehicle.

13 A I'm sorry?

14 Q In a car?

15 A In a marked patrol vehicle.

16 Q Okay.

17 A Yes, sir.

18 Q All right. I don't have anything further.

19 ASSISTANT SOLICITOR LEGETTE: Can he step down, Your
20 Honor?

21 THE COURT: Okay. You can step down. Thank you.

22 ASSISTANT SOLICITOR LEGETTE: At this time the State
23 calls Sheriff Tom Carter.

24 THE COURT: Okay. Counsel, approach real quick while
25 the witness is coming up.

DIRECT EXAMINATION OF TOM CARTER, JR.,
BY ASST. SOL. LEGETTE

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1 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
2 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
3 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
4 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
5 AND HEARING OF THE JURY:)

6 TOM CARTER, JR., after being duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY ASSISTANT SOLICITOR LEGETTE

10 Q Good morning, sir.

11 A Good morning.

12 Q State your full name for the record, please.

13 A Tom Carter, Jr.

14 Q And, sir, where do you live?

15 A In Allendale.

16 Q And what is your occupation?

17 A I'm the Sheriff of Allendale County.

18 Q And as Sheriff of Allendale County, what are your
19 duties?

20 A Um crime prevention, um drugs, you name it.

21 Q Okay. Now, Sheriff, how long have you been Sheriff
22 of Allendale County?

23 A Uh this is my second term.

24 Q Now, Sheriff, do you have any other law enforcement
25 experience in the past?

DIRECT EXAMINATION OF TOM CARTER, JR.,
BY ASST. SOL. LEGETTE

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1 A Yes, ma'am. Um I was with the um Fairfax Police
2 Department for four-and-a-half years, and then I went to
3 the Sheriff's Office in 1990, and was there ever since.

4 Q Now, Sheriff, turning your attention to the case
5 pending against Mr. Eric Hemingway, did you have occasion
6 to become involved in the investigation in this case?

7 A Yes, I did.

8 Q Okay. Without telling us what anyone told you,
9 please tell us how you became involved.

10 A Well, at first, the day when Ms. Washington was
11 found, I got a call from some of the family members. Um
12 they said that ---

13 Q No, don't tell me what anyone said.

14 A Okay.

15 Q Without telling me what anyone said, how did you get
16 involved?

17 A Okay. Um I -- I came across some evidence that there
18 was possibly um some foul play in the death.

19 MR. PLEXICO: Your Honor, this is just a recap of
20 what -- this -- I object, because this is a recap of
21 hearsay that somebody else has told him.

22 ASSISTANT SOLICITOR LEGETTE: Your Honor, he is ---

23 MR. PLEXICO: This is just hearsay in different
24 words.

25 THE COURT: Okay.

DIRECT EXAMINATION OF TOM CARTER, JR.,
BY ASST. SOL. LEGETTE

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1 MR. PLEXICO: This is just a summary, and it's still
2 hearsay.

3 THE COURT: Okay.

4 MR. PLEXICO: So I object.

5 THE COURT: Okay. You cannot state anything that
6 someone else told. Um there's exceptions to the hearsay
7 rule, but this wouldn't be one.

8 But, Ms. Legette, is the point that he got a call
9 from family members?

10 Q You became involved with the investigation; correct?

11 A Correct.

12 Q Okay. Tell us -- tell us what you did to investigate
13 this case.

14 A Um let's see. Give me a second. Let me see if I can
15 get it in the right terms.

16 Q What did you do?

17 A I called the pathologist, for one thing.

18 Q Okay.

19 A To find out what was the cause of death, because at
20 the time, we didn't know. And um we had a conversation
21 over the phone, which you was involved, and she told me
22 that ---

23 Q Don't tell me what she told you.

24 MR. PLEXICO: Your Honor, I object.

25 THE COURT: Okay.

DIRECT EXAMINATION OF TOM CARTER, JR.,
BY ASST. SOL. LEGETTE

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1 Q Don't tell us what anyone told you. What did you do
2 to investigate this case, Sheriff?

3 A Okay.

4 Q What did you do?

5 A I called -- I called the pathologist, and um I asked
6 her what was the cause of death.

7 Q What else did you do, besides call the pathologist?

8 A (NO RESPONSE.)

9 Q Did you call anyone else?

10 A I called S.L.E.D.

11 Q Okay. And did S.L.E.D. come -- what did you ask
12 S.L.E.D. to do?

13 A I asked S.L.E.D. to interview some people.

14 Q Okay. Did S.L.E.D. come down and do an
15 investigation?

16 A Yes, they did.

17 Q Okay. And, Sheriff, was that the extent of your
18 involvement?

19 A Um, pretty much.

20 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
21 indulgence?

22 Q No further questions, Sheriff. Answer any questions
23 from Mr. Plexico.

24 CROSS-EXAMINATION

25 BY MR. PLEXICO

CROSS-EXAMINATION OF TOM CARTER, JR., BY MR. PLEXICO
DIRECT EXAMINATION OF S. HARLEY BY ASST. SOL. LEGETTE²⁶⁴

1 Q The decedent is not related -- related to you; is
2 she?

3 A Pardon?

4 Q Is the decedent related to you distantly?

5 A No.

6 Q I don't have any other questions.

7 MR. PLEXICO: I have no further questions, Your
8 Honor.

9 ASSISTANT SOLICITOR LEGETTE: No further questions,
10 Your Honor.

11 THE COURT: Okay. All right. You can step down.
12 Thank you.

13 ASSISTANT SOLICITOR LEGETTE: The State calls Special
14 Agent Shawn Harley.

15 SHAWN HARLEY, after being duly sworn, testified
16 as follows:

17 DIRECT EXAMINATION

18 BY ASSISTANT SOLICITOR LEGETTE

19 Q Good morning.

20 A How are you doing?

21 Q Fine. How are you, sir?

22 A Pretty good.

23 Q Good. Sir, where do you work?

24 A South Carolina Law Enforcement Division.

25 Q And what is another name for that agency?

DIRECT EXAMINATION OF SHAWN HARLEY BY ASST. SOL. LEGETTE

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1 A Um better known as S.L.E.D.

2 Q Okay. And what is your title?

3 A I'm a Special Agent. I'm a Criminal Investigator
4 with the lowcountry um office. I work out of the
5 Charleston Office, which we work twelve counties, which
6 Allendale is part of that county.

7 Q Okay. And how long have you been with S.L.E.D.?

8 A Um approximately four years now.

9 Q And your duties include what?

10 A Um it ranges from police involved shootings,
11 shootings, to murders, to white-collar crime, stealing,
12 embezzlement, stuff like that.

13 Q And, Agent Harley, do you have any other law
14 enforcement experience, besides S.L.E.D.?

15 A Yes, ma'am. I worked -- I started off with Beaufort
16 City Police Department in 1993 and went up the rank to as
17 a Sergeant over the patrol and then left Beaufort City in
18 2002 to come on with S.L.E.D.

19 Q Okay. And, sir, are you married?

20 A Yes, ma'am.

21 Q And do you have any children?

22 A Yes, ma'am, three kids.

23 Q Okay. Now, Agent Harley, turning your attention to
24 the death of Harriett Washington and Mr. Eric Hemingway,
25 did you have a chance to investigate this case?

1 A Yes, ma'am, I did.

2 Q Please tell us what you did to investigate.

3 A Um on April the 11th, as I recall, I think um we were
4 requested by the um Sheriff Tom Carter to come in and
5 assist with the investigation. Per his request, he only
6 wanted us to do interviews, um due to one of the witnesses
7 was believed to be living in Orangeburg, which was the
8 subject's mother, Mr. Hemingway's mother. And due to she
9 lived in Orangeburg and that was our jurisdiction,
10 statewide jurisdiction, so he contacted us to do the
11 interviews. And that's how I was involved in it.

12 Q Okay. Did you do any other interviews?

13 A Yes, ma'am, I did.

14 Q Okay. What -- what other interviews did you do?

15 A After interviewing Ms. um Goodwin, Katrina Goodwin,
16 the mother -- the subject's mother, Mr. Hemingway's
17 mother, I'm sorry, we went on and interviewed his aunt --
18 his aunt, which is Ms. Marsha Singleton. And after we
19 conducted those interviews, um later on down the road, we
20 were then requested by the Sheriff to re-interview several
21 other witnesses that they had interviewed previously.

22 Q Okay. And who -- who were the other witnesses you
23 interviewed?

24 A Um if you don't mind, I'll look through my notes.

25 Q You can refresh your recollection.

DIRECT EXAMINATION OF SHAWN HARLEY BY ASST. SOL. LEGETTE

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1 A Um those witnesses were um Michael Williams, um Ms.
2 Richardeen Williams, Ms. Erica Jones, Ms. Sheila Jones,
3 and also re-interview Ms. Singleton again.

4 Q Okay. Now, Agent Harley, did you assist with the
5 arrest of Mr. Eric Hemingway?

6 MR. PLEXICO: Your Honor, I'm sorry, I did not hear
7 the last person he said he interviewed.

8 Q Could you repeat the last person you interviewed?

9 A Ms. Marsha Singleton.

10 Q Now, Agent Harley, did you assist with the arrest of
11 Mr. Eric Hemingway?

12 A Um how the arrest came was um we were provided a
13 phone number for Mr. Hemingway where he ---

14 MR. PLEXICO: Your Honor, I'm going to object to any
15 hearsay, Your Honor.

16 THE COURT: Answer the question: Did you assist with
17 the arrest?

18 Q Did you assist with the arrest?

19 THE COURT: You can answer that yes or no, and then
20 you can explain.

21 A Yes, I did, but -- but he was arrested in Virginia.

22 THE COURT: Okay.

23 Q Okay. And did you help transport him?

24 A Yes, ma'am, I did.

25 Q Okay. All right, and you were in the car when he was

1 transported from Virginia to South Carolina?

2 A Yes, ma'am, I was.

3 Q Okay. At any point, did you read him his Miranda
4 Rights?

5 A Yes, ma'am.

6 MR. PLEXICO: Your Honor -- Your Honor, I have -- I
7 have an objection I need to make, Your Honor.

8 THE COURT: Okay. Is it something that needs to be
9 taken up outside the presence of the jury?

10 MR. PLEXICO: Out of the presence of the jury,
11 preferably, Your Honor.

12 THE COURT: Okay. If you all will approach first?

13 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
14 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
15 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
16 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
17 AND HEARING OF THE JURY:)

18 THE COURT: Um as to the issue we just discussed at
19 the sidebar, I believe it relates to the same previous
20 issue and then the same ruling there.

21 Q And you said -- what was your answer to that
22 question, Mr. Harley?

23 A Yes, we did advise him of his Miranda Rights.

24 Q Okay. And where was that?

25 A At the Allendale County Detention Center.

DIRECT EXAMINATION OF REBECCA ROWELL BY ASST. SOL. LEGETTE

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1 Q Okay.

2 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
3 indulgence?

4 Q Agent Harley, I have no further questions. Answer
5 any questions from Mr. Plexico, please.

6 A Yes, ma'am.

7 MR. PLEXICO: I have no questions, Your Honor.

8 THE COURT: Okay. You can step down. Thank you.

9 WITNESS: Thank you, ma'am. Appreciate it.

10 ASSISTANT SOLICITOR LEGETTE: May he be excused, Your
11 Honor?

12 THE COURT: You may be excused.

13 MR. PLEXICO: Without objection, Your Honor.

14 THE COURT: Okay.

15 ASSISTANT SOLICITOR LEGETTE: The State calls Ms.
16 Becky Rowell.

17 REBECCA ANNETTE ROWELL, after being duly sworn,
18 testified as follows:

19 DIRECT EXAMINATION

20 BY ASSISTANT SOLICITOR LEGETTE

21 Q Good morning.

22 A Good morning.

23 Q State your full name for the record, please.

24 A Rebecca Annette Rowell.

25 Q Thank you. And, Ms. Rowell, where do you work?

1 A Allendale County Hospital.

2 Q Okay. And where do you live?

3 A Here in Fairfax.

4 Q And at the Allendale County Hospital, what is your
5 title?

6 A I'm a Registered Nurse and the DON, Director of
7 Nursing Services.

8 Q Okay. Now, how long have you worked at the Allendale
9 County Hospital?

10 A Approximately eleven-and-a-half years.

11 Q And as a Registered Nurse, what are your duties?

12 A Um as a Registered Nurse, I tend to patients, patient
13 care needs. Um I assess patients. I provide medical
14 care. I start IV's, draw blood, um includes several
15 different duties.

16 Q Okay. And as the Director of Nursing, what are your
17 duties?

18 A I oversee a nursing staff of fifty-two nursing staff
19 members. Um I do policy and procedures, to a staffing and
20 scheduling and coordinating with the Administrator.

21 Q Now, Ms. Rowell, tell us about your educational
22 background.

23 A Um I started out at Orangeburg Technical College to
24 pursue a Licensed Practical Nursing Degree, transferred to
25 Beaufort Tech, where I graduated as a Licensed Practical

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1 Nurse. Um I served the State of South Carolina as a
2 Licensed Practical Nurse for approximately seven or eight
3 years. Went back to Beaufort Tech College, took the
4 Advance Placement test, and went into the Registered Nurse
5 Program and graduated with an Associate Degree in Nursing.

6 Q And is there other training involved in becoming a
7 Registered Nurse?

8 A We have to take clinicals. We go to different
9 clinical rotation sites at different types of medical
10 facilities to enhance our background with nursing and to
11 do technical skills.

12 Q Now, Ms. Rowell, as an RN, Registered Nurse, are you
13 trained to draw people's blood?

14 A Yes, ma'am.

15 Q Okay. And are you authorized to draw blood as a
16 Registered Nurse?

17 A Yes, ma'am.

18 Q Okay. Now, have you ever drawn blood in the past?

19 A Yes, ma'am.

20 Q How many times would you say you've drawn blood?

21 A It's -- I've drawn blood so many times, I couldn't
22 give you an exact number. I've done it several times.

23 Q Okay. And under what conditions is blood drawn?

24 A Um you always have to use a sterile technique. You
25 always have to explain the procedure to the patient, make

1 sure that they fully understand and that they give consent
2 to do so. Um you have to make them as comfortable as
3 possible, and just make sure you explain everything and
4 keep a sterile technique.

5 Q And the environment is sterile?

6 A Yes, ma'am.

7 Q Okay. Does the hospital, Allendale County Hospital,
8 have any written protocol for blood drawing?

9 A Yes, ma'am, we do. We have a policy and procedure
10 for that.

11 Q Okay. And could you give us just an overview of that
12 policy and procedure?

13 A Um basically what we just stated then. You have to
14 make sure that you make the patient comfortable; that you
15 provide a secure, sterile environment; that you draw the
16 patient's blood under a sterile technique; that you get
17 permission to do so, to make sure that the patient
18 understands and explains the procedure; and to make sure
19 that all the instruments and materials that you use are
20 under sterile procedure also.

21 Q And what is done with the blood once it is drawn,
22 most of the time?

23 A Um if it's an inpatient or an emergency room patient,
24 we have an in-house lab where we can run various tests
25 that need to be run in an in-house type setting.

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1 Q Okay.

2 A We do have a LabCorp service that we can send some
3 labs out, some blood draw out.

4 Q Okay. Now, turning your attention to this particular
5 case, did you have an opportunity to draw blood from a
6 young man named Eric Hemingway?

7 A Yes, ma'am.

8 Q Okay. When did you do this?

9 A Um the exact date that I drew Mr. Eric Hemingway's
10 blood was on July 8th of 2005.

11 Q Okay. And where was this done?

12 A Um his blood was drawn in the emergency room in ER
13 Number Four, so that I could have a place for comfort for
14 him so that he could lie and relax.

15 Q At the Allendale County Hospital?

16 A Yes, ma'am.

17 Q Okay. And under what conditions did you draw Mr.
18 Hemingway's blood?

19 A Um we had a subpoena for collection of blood, for
20 collection of blood sample. So we used that as our order
21 for the subpoena, and we drew it underneath the sterile
22 technique, same thing that we do in the policy and
23 procedure for collection of blood samples.

24 Q Was it a subpoena, or was it an order?

25 MR. PLEXICO: Your Honor, Your Honor, Your Honor?

1 A It was an order.

2 THE COURT: Hold on.

3 MR. PLEXICO: I have an objection, out of the
4 presence of the jury, Your Honor.

5 THE COURT: Okay.

6 All right, ladies and gentlemen, I explained to you
7 earlier that there's sometimes legal matters we'll need to
8 take up, because we have to abide by procedures and
9 evidence, so just please understand and don't take
10 anything against either party when these matters come up.

11 Um we'll be right back with you shortly. I'll just
12 remind you not to discuss the case in any shape, form, or
13 fashion.

14 (APRIL 25, 2007, 11:00 A.M., WHEREUPON, THE JURY
15 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
16 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

17 THE COURT: All right, Mr. Plexico?

18 MR. PLEXICO: Your Honor, after a proper hearing, I
19 believe in front of the Honorable Perry Buckner, she had
20 made a Schmerber motion, and the judge issued an order for
21 the collection of blood.

22 I don't know what form that order actually got to the
23 witness, Ms. Rowell, Your Honor. However, the procedure
24 we go through in the courtroom on the Schmerber motion is
25 not a proper matter for testimony.

1 It is an indirect reference to my client's right not
2 to incriminate himself. It is constitutional in nature,
3 and I would -- and a violation in nature, and I would --
4 that he had to be ordered is the implication from her
5 question, which is the only proper -- the only reasonable
6 implication, Judge, and I would move for a mistrial on
7 this and ask for -- that's it, Judge. We move for a
8 mistrial based on that, Judge. She has no business in the
9 courtroom for -- for discussions of prior hearings during
10 the trial of the case, Your Honor.

11 **THE COURT:** Okay.

12 Ms. Legette?

13 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I don't
14 believe we discussed a prior hearing. I believe the
15 witness testified she had a subpoena. I merely was trying
16 to clarify that there was an order. In fact, she will
17 testify there was another order for the other witness.

18 Um, Your Honor, we don't believe that the motion is
19 called for at this particular moment, Your Honor, because
20 no prejudice has come to the defendant. All she's
21 indicated when I asked her the simple question is: Under
22 what conditions did you draw his blood?

23 And she merely indicated that she had some method by
24 which she could draw his blood. She -- he didn't just
25 come in to actually give blood, Your Honor. We weren't

1 trying to imply that he did.

2 We were just merely trying to get to the chain of
3 custody. She's a chain of custody witness, Your Honor,
4 and that's what she's here to testify to. She merely came
5 to say that she's in the chain of custody.

6 She drew blood under certain conditions, Your Honor.
7 She's already testified as to what conditions blood is
8 actually drawn, Your Honor, and at this point, we don't
9 believe a motion for a mistrial is warranted, Your Honor.
10 We would oppose a motion such as that, Your Honor, because
11 Mr. Hemingway has not been prejudiced, and I believe if
12 the Court believes he has in some minor way been
13 prejudiced, Your Honor, the Court could issue a curative
14 instruction at this particular point.

15 MR. PLEXICO: And, Your Honor, it is an indirect
16 reference, again, to his right to remain silent. It keeps
17 cropping up at trial, and now it's so cumulative, I
18 believe it's denied him a fair trial, Your Honor.

19 THE COURT: Okay. But ---

20 MR. PLEXICO: He doesn't have to convict himself. He
21 doesn't have to go get evidence to convict himself.

22 ASSISTANT SOLICITOR LEGETTE: Your Honor, if the
23 Court would be so inclined, we would intend to elicit the
24 same information from her with regards to Michael
25 Williams, who is not on trial here, Your Honor, and I

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1 believe she will testify as to the same exact thing about
2 the condition of the blood being drawn, how she got -- how
3 she got the opportunity to draw that blood, Your Honor,
4 nothing about him coming in voluntarily. There was an
5 order in that particular case also that she will testify
6 to as well, Your Honor. So there is no prejudice here.

7 MR. PLEXICO: That's what an order means, you're not
8 doing it voluntarily. In other words, they're trying to
9 make my client look uncooperative, because he's not
10 providing evidence against himself, and that's why it's
11 unconstitutional. It's a due process violation.

12 THE COURT: Okay. But let me ask you this, earlier
13 the testimony also was that the client was picked up in
14 Virginia, and so -- which went against earlier testimony
15 by his girlfriend um in terms of the voluntariness of him
16 turning himself in. And I think what the State is just
17 doing is going along their procedure and how they were
18 able to get the blood drawn, that he did not just show up
19 at the hospital in terms of giving the blood, and that the
20 nurse cannot just take blood from anybody without there
21 being either a consent form or there being some other form
22 to do so.

23 MR. PLEXICO: She's already said she thought she had
24 a subpoena, and that obviously would be inadequate.
25 Obviously, he's in jail. He's in custody.

1 WITNESS: Judge?

2 MR. PLEXICO: There's no reason, Judge, that ---

3 WITNESS: May I say something?

4 MR. PLEXICO: --- there's no -- her purpose is to
5 establish a chain of custody. Obviously that's been done.

6 Then, for her to have this line of questioning, there
7 would have to be another purpose. My question is -- my
8 answer to that question, what is the other purpose?

9 Since she's already established the chain of custody
10 in regards to taking blood from my client, the other
11 purpose in asking this question is to indirectly comment
12 on his right to remain silent. It's a due process
13 violation, his right against self-incrimination, and it
14 denies him a fair trial.

15 ASSISTANT SOLICITOR LEGETTE: Your Honor, ---

16 MR. PLEXICO: And that's my basis for my ---

17 ASSISTANT SOLICITOR LEGETTE: --- if I may -- if I
18 may address that, Your Honor?

19 THE COURT: Yes.

20 ASSISTANT SOLICITOR LEGETTE: The question that I
21 asked was -- my question Number Seventeen, which I had
22 already asked Number Twelve: Under what conditions is the
23 blood drawn?

24 I then further clarified as to Mr. Hemingway's blood:
25 Under what condition did you draw Mr. Hemingway's blood?

1 The jury, it's our belief, Your Honor, is the jury
2 needs to understand that Mr. Hemingway was not treated as
3 some person who is less than a first class citizen. All
4 we're trying to do is establish that the blood was drawn
5 under certain conditions and that the chain of custody is
6 not contaminated, that our blood that we got from him is
7 not contaminated, Your Honor.

8 I believe that's argument on Mr. Plexico's side that
9 he's trying to say our blood is somehow contaminated.
10 We're just trying to establish, Your Honor, that our blood
11 is not contaminated.

12 We have done this under procedures that are duly
13 called for under protocol. This woman is a professional,
14 and she's come here today as a professional to tell this
15 jury that she drew this blood under conditions that were
16 called for and required by her hospital. And that's all
17 we're trying to elicit, Your Honor. We're not trying to
18 elicit any information about him and his right to testify
19 or his right to silence, Your Honor. She knows nothing of
20 that.

21 She did not get involved in the investigation here.
22 She merely was an evidence custodian. She took blood from
23 one point and gave it to another point, Your Honor.

24 MR. PLEXICO: Your Honor, nowhere in the world is
25 whether or not the patient is there under court order part

1 of medical protocol. There's -- is she talking about
2 medical protocol? Why would she point out only this
3 minute Michael Williams had a court order, versus the
4 other thousands of people she's obviously drawn blood from
5 through her ten year career? Why is it important, unless
6 it's an impermissible comment that he had to be ordered to
7 do it, because he had something to hide?

8 ASSISTANT SOLICITOR LEGETTE: Your Honor, ---

9 MR. PLEXICO: That's my objection.

10 THE COURT: Okay.

11 ASSISTANT SOLICITOR LEGETTE: Your Honor, if it will
12 speed things along, I have witnesses -- it will speed
13 things along, I have witnesses we're having to pay who are
14 waiting to testify today.

15 THE COURT: If you what?

16 ASSISTANT SOLICITOR LEGETTE: If it will speed things
17 along, ---

18 THE COURT: Right.

19 ASSISTANT SOLICITOR LEGETTE: --- I will go ahead and
20 I will ask the Court to strike the part where she said
21 subpoena or order, and ask her not to mention that part
22 about Mr. Williams, that she just took the blood under
23 certain conditions, Your Honor, if it will speed things
24 along.

25 THE COURT: Are you challenging this witness with

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1 respect to any chain of custody issues as to how she
2 actually got the sample?

3 MR. PLEXICO: I don't have a problem with how she got
4 the sample. I don't have any question he was there, that
5 that was the lady who took it. As a matter of fact, I
6 don't know if I'd have any questions at all.

7 I -- I'd ask for a curative instruction not to
8 mention -- she mentioned a subpoena. She's already said
9 that. I didn't have an objection to that.

10 THE COURT: Right.

11 MR. PLEXICO: Just -- just have them withdraw the
12 last question, Judge, and I think -- I think the damage is
13 done, and I don't think a curative instruction could --
14 could cure the damage and the cumulative damage at this
15 point.

16 THE COURT: Well, and the other concern I have is
17 even if it's done by subpoena, a subpoena is a form of
18 directive, regardless, so whether you say subpoena or
19 order, it is still something that is a court document
20 ordering something to be done, whether you're ordered to
21 appear in court, ordered to appear at a certain place and
22 time. It's still a form of an order.

23 MR. PLEXICO: I understand your ruling, Judge.

24 THE COURT: Okay. Thank you.

25 I will do a curative instruction and deny the motion

1 for mistrial.

2 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

3 THE COURT: All right. Anything further?

4 ASSISTANT SOLICITOR LEGETTE: Not from the State.

5 THE COURT: Okay. The jurors can come in, please.

6 (APRIL 25, 2007, 11:16 A.M., WHEREUPON, THE JURY
7 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
8 WERE HELD IN THEIR PRESENCE.)

9 THE COURT: Okay. Ladies and gentlemen of the jury,
10 with respect to the witness's last answer regarding
11 whether she was ordered to take blood from the defendant,
12 um you are to disregard that testimony entirely. It is
13 not to be considered at all by you for any purpose. Thank
14 you.

15 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

16 MR. PLEXICO: Your Honor, I would renew my prior
17 motion. I don't have any additions to that, but I would
18 renew my prior motion, Judge.

19 THE COURT: One moment.

20 MR. PLEXICO: Just for the record, I want to by law,
21 I just want to renew that motion.

22 THE COURT: Oh. Okay. The one that we just talked
23 about out of their presence?

24 MR. PLEXICO: Yes, ma'am.

25 THE COURT: Okay. And that one, we've dealt with on

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1 that ruling. Okay.

2 And then, Ms. Legette, you're instructed not to go
3 along that line as to any other matters.

4 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor. Thank
5 you.

6 BY ASSISTANT SOLICITOR LEGETTE

7 Q And you testified earlier, Ms. Rowell, the conditions
8 under which you drew Mr. Hemingway's blood met hospital
9 procedures.

10 A Yes, ma'am. They did meet hospital procedures, to
11 include that he was asked to sign a consent for laboratory
12 procedures, which includes um when we draw blood samples
13 for different types of tests.

14 Q Okay.

15 A He did sign that consent, which is in our policy and
16 procedure.

17 Q Okay. Now, Ms. Rowell, once the blood was drawn,
18 what did you do with it?

19 A When I drew the blood, um I explained the procedure
20 to him, talked with Mr. Hemingway the entire time. Um
21 upon taking the needle from drawing the blood out of his
22 arm, I took the tubes to the counter, stood to the side so
23 Mr. Hemingway could view me. I dated the tubes, put his
24 date of birth on them and his name. I placed them in a
25 biohazard bag, sealed the bag, and I turned the collection

1 tubes in the bag over to Mr. Donnie Hutto, Officer Hutto.

2 Q And did the vials of blood remain in your complete
3 custody and control until you turned them over to Mr.
4 Hutto?

5 A Yes, ma'am.

6 Q Okay. And it's in a sealed container; correct?

7 A Um I placed it in a sealed biohazard bag.

8 Q Okay. And what was the condition of the evidence
9 collected from Mr. Hemingway when you turned it over to
10 Mr. Hutto?

11 A Um the blood tubes were in sealed vacutainer sample
12 collection tubes with his name and date of birth, and I
13 handed the bag over to Mr. Hutto.

14 Q And they had not been tampered with?

15 A No, ma'am, not at all. They went from my hands
16 directly to Officer Hutto.

17 Q Okay. Now, Ms. Rowell, turning your attention to
18 Michael Williams.

19 A Yes, ma'am.

20 Q At any point, did you have the opportunity to draw
21 blood from Michael Williams in this case?

22 A Yes, ma'am, I did.

23 Q Okay. And when did you do this?

24 A I drew Mr. Michael Williams' blood on August 29th of
25 2006.

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1 Q And where was this done?

2 A This was done at the Allendale County Hospital in
3 Emergency Room Number Four.

4 Q Okay. And under what conditions was Mr. Williams'
5 blood drawn? Did it meet hospital ---

6 A Um hospital protocol, sterile um procedure to draw
7 it. I did the policy and procedure.

8 Q Okay. And what was done with this blood once you
9 drew it?

10 A Um same. I dated the tubes with his date of birth
11 and his name, um stood to the side so that he could see me
12 label the tubes, placed them in the biohazard bag, sealed
13 the biohazard bag, and placed them immediately in Officer
14 Hutto's hands.

15 Q And did these bags containing Mr. Williams' blood
16 remain under your complete custody and control until you
17 turned them over to Mr. Hutto?

18 A Yes, ma'am.

19 Q And what was the condition of the bags when you gave
20 them to Officer Hutto?

21 A They were intact and un-tampered with.

22 Q Okay.

23 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
24 indulgence?

25 Q Ms. Rowell, I have no further questions. Answer any

1 questions of Mr. Plexico, please.

2 A Thank you.

3 MR. PLEXICO: I don't have any questions, Your Honor.

4 THE COURT: Okay. You can step down. Thank you.

5 WITNESS: Thank you.

6 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
7 indulgence?

8 Your Honor, may we approach?

9 THE COURT: Yes.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
11 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
12 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
13 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
14 AND HEARING OF THE JURY:)

15 THE COURT: All right, ladies and gentlemen of the
16 jury, I'm sorry, I'm going to have to send you to your
17 jury room, not for any legal matters, but we need to call
18 a couple of witnesses who were supposed to be here. And
19 they may be in the courtroom, but we just need to make
20 sure um that they're -- they're actually here.

21 So, I'm just going to give y'all a short break so we
22 can make sure that several witnesses -- the trial has been
23 moving a lot faster. And you all can have a comfort
24 break. You may um not discuss the case in any shape,
25 form, or fashion, but go ahead and take a comfort break,

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1 whatever that means to you, legally, of course.

2 (APRIL 25, 2007, 11:22 A.M., WHEREUPON, THE JURY
3 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
4 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

5 THE COURT: Court will be in recess for about ten or
6 fifteen minutes.

7 (WHEREUPON, A SHORT BREAK WAS TAKEN, AND THEREAFTER,
8 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD,
9 OUT OF THE PRESENCE OF THE JURY:)

10 THE COURT: All right, counsel ready to proceed?

11 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. PLEXICO: Defense is ready, Your Honor.

14 THE COURT: Okay. Thank you.

15 (APRIL 25, 2007, 11:42 A.M., WHEREUPON, THE JURY
16 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
17 WERE HELD IN THEIR PRESENCE.)

18 THE COURT: Okay. Thank you. The State can proceed.

19 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

20 The State calls Ms. Nicole Perry.

21 NICOLE PERRY, after being duly sworn, testified
22 as follows:

23 DIRECT EXAMINATION

24 BY ASSISTANT SOLICITOR LEGETTE

25 Q Good morning.

1 A Good morning.

2 Q State your full name for the record, please.

3 A Nicole Perry.

4 Q Okay. And, Ms. Perry, where do you work?

5 A I work for the South Carolina Law Enforcement
6 Division, otherwise known as S.L.E.D.

7 Q Okay. And how long have you worked there, Ms. Perry?

8 A About ten months.

9 Q And what are your duties at S.L.E.D.?

10 A Um I package and seal evidence that is brought in by
11 agencies across the State of South Carolina. Um I log it
12 in to our computer system, where I give it a S.L.E.D. item
13 number, and I place it in the intake storage bin within
14 our evidence room.

15 Q Thank you. Turning your attention to this case, did
16 you receive samples in this case? This is the case of
17 Eric Hemingway.

18 A Okay. Um, according to my paperwork, I did receive
19 samples.

20 Q And when did you receive those samples?

21 A According to our chain of custody, I received them on
22 August 29th of 2006.

23 Q And what kind of sample did you receive?

24 A Again, according to my paperwork, I received blood
25 samples from Michael Williams.

DIRECT EXAMINATION OF NICOLE PERRY BY ASST. SOL. LEGETTE

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1 Q And where did you receive these samples?

2 A Where did I receive?

3 Q Yes, ma'am. Where did you receive these samples?

4 A Um in the log in area in Evidence Control at S.L.E.D.

5 Q Okay. Whom did you receive those samples from?

6 A Um, according to our chain of custody, I received
7 them from James Hutto from the Allendale County Sheriff's
8 Department.

9 Q And, Ms. Perry, what was the condition of the sample
10 when you received it?

11 A I don't recall.

12 Q Okay. Does your paperwork indicate what the
13 condition of the sample was?

14 A No, ma'am.

15 Q It does not? Was the sample marked or sealed in any
16 way?

17 A Um I don't recall.

18 Q Okay.

19 (WHEREUPON, State's Exhibit No. 6 was marked for
20 identification only.)

21 Q I'm going to hand you now what has been previously
22 marked -- I'm going to hand you now what has been
23 previously marked for identification as State's Exhibit
24 Number Six.

25 A Okay.

1 Q Would you take a moment and tell me if you recognize
2 this?

3 A Certainly. I do recognize our S.L.E.D. lab number
4 stickers, as well as our packaging. And that is Item
5 Seventeen, which I logged in. Yes, ma'am.

6 Q You did log this? You logged this in?

7 A I logged in Item Number Seventeen on this case. Yes,
8 ma'am.

9 Q Okay. And what item is this?

10 A This is Item Number Seventeen.

11 Q Okay. Now, once you logged in Item Seventeen, did
12 you have anything else to do with Item Number Seventeen?

13 A Once I logged it in?

14 Q Yes.

15 A I -- I place it in this packaging, and I seal it, and
16 I have the officer initial and date the packaging. Um I
17 log it into the computer, and then I place it into our DNA
18 intake storage bin.

19 Q So you put ---

20 A Within our evidence room. I'm sorry.

21 Q I'm sorry. So did you place that bag around that
22 piece of evidence? Did you seal that bag?

23 A I did the original seal on this bag.

24 Q Okay. And how can you tell?

25 A Um because this is the officer's initial and date.

DIRECT EXAMINATION OF NICOLE PERRY BY ASST. SOL. LEGETTE

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1 Q Okay.

2 A And I have the officer initial and date when he
3 brings it into our room.

4 Q Okay. And does State's Exhibit Number Six, which is
5 your Item Number Seventeen, is it any different today than
6 when the officer logged it in with you?

7 A I don't recall.

8 Q Okay. Now once you logged it in, what did you do
9 with it? What did you do with that particular piece of
10 evidence once you logged it in?

11 A I placed it into our intake bin in our evidence room.

12 Q Okay. And what kind of condition is it in once you
13 place it into the evidence bin?

14 A It is in this condition. It is sealed in this bag in
15 a heat-sealed pouch, and then it's placed in our evidence
16 room.

17 Q Okay. And according to your records, who received
18 this piece of evidence once you placed it into the
19 evidence bin?

20 A Um according to our chain of custody, Sherry Brown
21 received the evidence.

22 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
23 indulgence?

24 Q Ms. Perry, what do your records reflect was in this
25 piece of evidence when you received it? What do your

1 records reflect that this evidence was when you received
2 it?

3 A Um our records state that it was blood samples from
4 Michael Williams.

5 Q Okay. And if it had been tampered with, would your
6 records reflect that also?

7 A Yes, ma'am.

8 Q Okay. And do your records ---

9 A I -- I feel that it would. I would not accept
10 evidence if I felt that it had been tampered with,
11 according to our policies and procedures.

12 Q And you did accept this evidence; correct?

13 A Yes, ma'am.

14 Q Okay. So it was not tampered with when you received
15 it.

16 A Not to my knowledge.

17 Q Okay.

18 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
19 indulgence?

20 Q I have no further questions. Answer any questions of
21 Mr. Plexico, please.

22 MR. PLEXICO: I don't have any questions for this
23 witness, Your Honor.

24 THE COURT: Okay. Thank you. You can step down.

25 WITNESS: Thank you, Your Honor.

DIRECT EXAMINATION OF SHERRY BROWN BY ASST. SOL. LEGETTE

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1 **ASSISTANT SOLICITOR LEGETTE:** The State calls Sherry
2 Brown.

3 **MR. PLEXICO:** Your Honor, I think we need a clerk to
4 swear them in, don't we?

5 **THE COURT:** No, the officer has been swearing them
6 in.

7 Yes. Thank you. Go ahead.

8 SHERRY BROWN, after being duly sworn, testified
9 as follows:

10 DIRECT EXAMINATION

11 BY ASSISTANT SOLICITOR LEGETTE

12 Q Good morning.

13 A Good morning.

14 Q State your full name for the record, please.

15 A Sherry Brown.

16 Q And, Ms. Brown, where do you work?

17 A Um South Carolina Law Enforcement Division, also
18 known as S.L.E.D.

19 Q And what are your duties at S.L.E.D.?

20 A I'm a Forensic DNA Technician.

21 Q And how long have you done that job?

22 A Um the current job, ten years.

23 Q And have you ever had any other jobs at S.L.E.D.
24 before?

25 A Yes, I have. I worked three years prior -- three

1 years prior in the Toxicology Department as DNA -- I mean
2 as Forensic Technician in Toxicology.

3 Q Okay. Ms. Brown, turning your attention to this
4 case, did you receive any samples in the case of State
5 versus Eric Hemingway?

6 A Yes, I did.

7 Q And what kind of samples did you receive, according
8 to your records?

9 A According to my records, it was Item Seventeen.

10 Q Okay. And what was Item Seventeen?

11 A Blood standard described as Michael Williams'.

12 Q Okay. And when did you receive this sample?

13 A I took um -- on August the 29th of 2006.

14 Q And where did you receive this sample?

15 A In our Evidence Log-in Department.

16 Q Okay. And who had put that -- who had put it in the
17 Evidence Log-in Department?

18 A Um Forensic Technician uh Nicole Perry.

19 Q Okay. And what was the condition of that sample when
20 you received it?

21 A Um it was in a heat-seal pouch.

22 Q Had it been tampered with, to your knowledge?

23 A It had not been tampered with.

24 Q And was it marked in any way?

25 A It -- the heat-seal had the sealing officer's initial

DIRECT EXAMINATION OF SHERRY BROWN BY ASST. SOL. LEGETTE

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1 and the date that it was submitted.

2 Q Okay. Ms. Brown, I hand you now what has been
3 previously marked for identification as State's Exhibit
4 Number Six. Take a moment and tell me if you recognize
5 that?

6 A Yes. The numbers are the same as my chain of
7 custody.

8 Q Okay. And does State's Exhibit Number Six, your
9 Exhibit Number Seventeen, appear to be in essentially the
10 same condition today as when you received it from the
11 evidence bin?

12 A Yes.

13 Q Is there anything different about it?

14 A Other than it's been opened up.

15 Q Now, Ms. Brown, once you received that sample, what
16 did you do with it?

17 A I um -- it was in my custody, and I just physically
18 moved it from one area to another area, secure area, and
19 transferred it into a computer system to reflect the
20 actual physical position.

21 Q And once you took custody of it, did it remain under
22 your complete custody and control during that period of
23 time?

24 A Yes.

25 Q Okay. And did you ever turn it over to anyone else?

1 **A** Yes.

2 **Q** And who was that person?

3 **A** Uh Criminalist -- or DNA Analyst, Steve Lambert.

4 **Q** Okay. And it remained under your complete custody
5 and control until you turned it over to Steve Lambert?

6 **A** To his secure box.

7 **Q** And what was the condition of that sample when you
8 turned it over to Steve Lambert's secure box?

9 **A** It remained in a heat-sealed pouch, this particular
10 heat-sealed pouch.

11 **Q** Okay.

12 **ASSISTANT SOLICITOR LEGETTE:** Begging the Court's
13 indulgence?

14 **Q** Ms. Brown, I have no further questions. Answer any
15 questions of Mr. Plexico, please.

16 **MR. PLEXICO:** I have no questions for this witness,
17 Your Honor.

18 **THE COURT:** All right. You can step down. Thank
19 you, ma'am, for coming.

20 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, may she be
21 excused?

22 **THE COURT:** Yes.

23 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, at this
24 time the State calls Ms. Laura Corley.

25 **LAURA CORLEY,** after being duly sworn, testified

DIRECT EXAMINATION OF LAURA CORLEY BY ASST. SOL. LEGETTE

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1 as follows:

2 DIRECT EXAMINATION

3 BY ASSISTANT SOLICITOR LEGETTE

4 Q Good morning.

5 A Good morning.

6 Q State your full name for the record.

7 A Laura Corley.

8 Q And, Ms. Corley, where do you work?

9 A South Carolina Law Enforcement Division.

10 Q And what is another name for that agency, please?

11 A S.L.E.D.

12 Q And how long have you worked for S.L.E.D.?

13 A Um almost seven years.

14 Q And what are your duties?

15 A Right now I work in Forensic Administration in the IT
16 Department.

17 Q Have you ever had any other duties at S.L.E.D.?

18 A Yes. Before that, I worked in the Evidence Intake
19 Department.

20 Q And how long were you in the Evidence Intake
21 Department?

22 A For six years.

23 Q Okay. Now, Ms. Corley, turning your attention to
24 this case, State versus Eric Hemingway, did you receive
25 some samples in this case in 2005, or at any time?

1 A Yes.

2 Q And what did you receive?

3 A Items One through Fifteen.

4 Q Okay. And specifically, what are Items One through
5 Fifteen, according to your records?

6 A Um two rolls of color film; um purple fitted sheet;
7 swab, let's see, one, two, three swabs; fingernail
8 clippings; toenail clippings; more swabs; and hair; and
9 blood.

10 Q Turning your attention specifically to the swabs and
11 all the other evidence as well, when did you receive these
12 samples?

13 A They were brought into log-in on 3/31 of 2005.

14 Q And who brought those samples in to log-in?

15 A John Black.

16 Q And is log-in a place at S.L.E.D.?

17 A Yes.

18 Q Okay. And did you receive samples from him at that
19 time?

20 A I logged them into the computer.

21 Q And what were the condition of the samples when you
22 received them, when you logged them into the computer from
23 Agent Black?

24 A Um I don't recall.

25 Q Were they -- were they -- would they have been -- if

DIRECT EXAMINATION OF LAURA CORLEY BY ASST. SOL. LEGETTE

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1 they had been tampered with, would you have accepted them?

2 MR. PLEXICO: Your Honor? Your Honor? Never mind.

3 I'll withdraw the objection.

4 A I'm sorry?

5 Q If they had been tampered with, would you have
6 accepted those samples?

7 A I wouldn't have known if they had been tampered with.

8 MR. PLEXICO: Your Honor, I would object. I'd ask
9 the Court to rephrase.

10 THE COURT: Okay. Please rephrase.

11 Q What kind of packaging were the samples in when you
12 received them?

13 A Um I -- I wouldn't recall what they would be in. I
14 could tell you what they would normally be in, but I don't
15 recall in this specific case.

16 Q What was the extent of your -- your part of handling
17 these samples?

18 A I just simply logged the information into the
19 computer.

20 Q And was anyone there logging it in with you?

21 A The officer that brought it in.

22 Q Okay. That would be Agent Black?

23 A Yes.

24 Q Okay. So did you ever take custody of these samples?

25 A No.

DIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

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1 Q Okay.

2 A The only thing I took custody of was a purple fitted
3 sheet.

4 Q Okay.

5 A Which would be Item Number Two.

6 Q Okay.

7 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
8 indulgence?

9 Q Ms. Corley I have -- I'm sorry, Ms. Corley, I have no
10 further questions. Answer any questions of Mr. Plexico,
11 please.

12 MR. PLEXICO: I have no questions of this particular
13 witness. Thank you, Judge.

14 THE COURT: Okay. Thank you. You can step down.

15 WITNESS: Thank you.

16 ASSISTANT SOLICITOR LEGETTE: May she be excused?

17 THE COURT: Yes.

18 ASSISTANT SOLICITOR LEGETTE: State calls Stephanie
19 Stutts.

20 STEPHANIE STUTTS, after being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY ASSISTANT SOLICITOR LEGETTE

24 Q Good afternoon.

25 A Good afternoon.

DIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

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- 1 Q State your name, please.
- 2 A My name is Stephanie Stutts.
- 3 Q And ---
- 4 A That's S-T-U-T-T-S.
- 5 Q Thank you. And where do you work, Ms. Stutts?
- 6 A I'm employed by the South Carolina Law Enforcement
- 7 Division, which is commonly referred to as S.L.E.D.
- 8 Q And what are your duties at S.L.E.D.?
- 9 A At the time of this case, I was a Forensic Technician
- 10 assigned to the DNA Department, and we're responsible for
- 11 transferring evidence throughout the department and
- 12 preserving blood standards.
- 13 Q And how long have you been at S.L.E.D.?
- 14 A Since February of 2005.
- 15 Q Okay. Now, you say at the time of this case you were
- 16 working in the DNA Department transferring evidence. Did
- 17 you receive samples in this particular case?
- 18 A I did.
- 19 Q Okay. And when did you receive those samples?
- 20 A Can I refer to my chain of custody?
- 21 Q Certainly. Please.
- 22 A I received samples on April 1st of 2005.
- 23 Q And from whom did you receive those samples?
- 24 A I received the samples from a location known as the
- 25 DNA box, which is a secure refrigerator within our

DIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

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1 Evidence Log-in Department.

2 Q And who would have put those samples there?

3 A Um usually it's done by the law enforcement agency
4 who submits the evidence.

5 Q And what was the condition of these samples when you
6 received them?

7 A When I receive the evidence, it is in a heat-sealed
8 pouch that is sealed.

9 Q And was this sample sealed when you received it?

10 A To my knowledge, yes.

11 Q Okay. Where was it sealed?

12 A It usually is sealed across the top of the evidence.
13 I'd have to look at the particular pouch to remember.

14 Q Did it appear to be tampered with in any way when you
15 received it?

16 A Not that I remember.

17 Q I'm going to ---

18 (WHEREUPON, State's Exhibit No. 7 was marked for
19 identification only.)

20 Q Ms. Stutts, I'm going to hand you now what's been
21 previously marked as State's Exhibit Number Seven.

22 A Okay.

23 Q I want you to take a moment and tell me if you
24 recognize this?

25 A I do not, because when I received it, it would have

DIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

303

1 been in a heat-sealed pouch.

2 Q Okay. And what kind of samples did you receive in
3 this case, exactly?

4 A Um can I refer to my notes?

5 Q Yes, please.

6 A I received Items Three through Fifteen. I received
7 S.L.E.D. Items Three through Fifteen.

8 Q And what were those items, specifically?

9 A Um each one individually, Item Three, um I believe is
10 a swab, just going off my chain of custody.

11 Q Uh-huh.

12 A Four is also a swab. Item Five is right fingernail
13 clippings. Item Six, left fingernail clippings. Seven,
14 right toenail clippings. Eight, left toenail clippings.
15 Nine is the rectal swabs. Ten, oral swabs. Eleven were
16 vaginal swabs. Twelve is identified as pulled head hair.
17 Thirteen, pulled pubic hair. Fourteen was pubic hair
18 combings. And Item Fifteen was blood from Harriett
19 Washington.

20 Q Now, Ms. Stutts, once you received these samples,
21 what did you do with them?

22 A On Items Three through Fourteen, I transferred the
23 samples from the DNA box to DNA Third, which is a secure
24 refrigerator located within our DNA Department.

25 Q And the other items, what did you do with those?

DIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

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1 A Item Fifteen was the blood standard. I received the
2 blood standard from the DNA box and also transferred it to
3 DNA Third.

4 From DNA Third, I transferred it into my custody, and
5 performed a procedure that we call preserving the blood
6 standard, which simply means I take it from a liquid form
7 and dry it on a piece of absorbent paper.

8 Q And once you did this, did you seal the standard?

9 A I did. It was labeled and sealed and packaged in the
10 same heat-sealed pouch.

11 Q And after you sealed and labeled it, what did you do
12 with it next?

13 A I transferred that item to DNA F-6, which is a secure
14 freezer within the DNA Department.

15 Q And according to your chain of custody, who would
16 have picked it up next?

17 A According to my chain of custody, Forensic Technician
18 Emily Norris picked it up and transferred it to the DNA
19 refrigerator on the fourth floor, which is also a secure
20 location.

21 Q Now, according to your -- let's go back a moment.

22 A Uh-huh.

23 Q According to your chain of custody, who would have
24 put the evidence in the DNA bin originally when you
25 received it?

DIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

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1 A The DNA box?

2 Q Well, the DNA we're talking about now ---

3 A Uh-huh.

4 Q --- according to your chain of custody, who would
5 have put it there?

6 A Before I received it?

7 Q Yes. According to your chain of custody.

8 A Um it should have been put there by whoever -- the
9 log-in person logs it in, and then the submitting officer
10 puts it into the DNA box.

11 Q Now, once the -- what was the condition of the
12 standards when you transferred them to DNA Third?

13 A It was sealed in a heat-sealed pouch.

14 Q Now was this blood standard, as prepared by you, Item
15 Fifteen from Harriett Washington, under your complete
16 custody and control until you turned it over to the
17 analyst?

18 A Yes.

19 Q Now, and if I have already asked you this question, I
20 apologize, but turning your attention back to the DNA
21 samples, the rectal swabs and the other swabs, ---

22 A Uh-huh.

23 Q --- what did you do with those samples after you
24 brought them upstairs to DNA?

25 A After I brought them upstairs from the DNA box, they

DIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

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1 were transferred to DNA Third, which is again a secure
2 location in the DNA Department. From DNA Third, I
3 transferred them to the DNA F-6, which is a secure freezer
4 located within the DNA Department.

5 Q And according to your chain of custody, who would
6 have picked them up?

7 A According to my chain of custody, Forensic Technician
8 Emily Norris would have picked them up from DNA F-6 and
9 transferred them to the DNA refrigerator on the fourth
10 floor, which is secure.

11 Q And were these oral swabs, or swabs, as you
12 transferred to DNA F-6 and originally -- and I'm sorry,
13 taken by Emily Norris, were they under your complete
14 custody and control during this period of time when you
15 transferred them?

16 A When I transferred them, they were.

17 Q And what was their condition when you transferred
18 them upstairs?

19 A They were sealed in a heat-sealed pouch.

20 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
21 indulgence?

22 Q All right, Ms. Brown(sic.) do you ever assign, or are
23 numbers ever assigned to samples when they come to
24 S.L.E.D. so you can identify them?

25 A Yes. When samples are logged in, they're given an

DIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

307

1 item number.

2 Q Okay. And that's how you're able to identify the
3 samples themselves?

4 A Yes.

5 Q Okay.

6 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
7 indulgence?

8 THE COURT: Uh-huh.

9 ASSISTANT SOLICITOR LEGETTE: Let the record reflect
10 I am now opening a sealed evidence package.

11 Q Now, Ms. Stutts?

12 A Yes?

13 Q I'm going to hand you what has come out of a package
14 known as State's Exhibit Number Seven, previously sealed
15 and previously ID'd, marked for identification.

16 Ms. Brown, when you receive several items in a case,
17 would they all be assigned a number?

18 A Yes.

19 Q What kind of number would they be assigned?

20 A When samples are logged in, they're -- they go
21 through our Log-in Department, and they should be given an
22 item number at that time, just to go along with the case,
23 and that item number is carried through forward.

24 Q And are there any other numbers to differentiate a
25 case?

DIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

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1 A Um samples are also given a case number or a lab
2 number.

3 Q Okay. And what is the lab number in this particular
4 case?

5 A Can I refer?

6 Q Yes.

7 A It is L053677.

8 Q And, Ms. Stutts, I hand you now what has come out of
9 State's Exhibit Number Seven, previously marked for
10 identification and sealed when it arrived here. Please
11 take a moment and tell me if you recognize these?

12 A No, I do not. This is the correct lab number, but
13 this is Item Sixteen, and I didn't handle Item Number
14 Sixteen.

15 This one is Item Nine, but this is not the original
16 heat-sealed pouch that I saw it in.

17 Q Okay. So, you did log in Item Nine.

18 A I didn't log in any item.

19 Q You did transfer Item Nine.

20 A I transferred Item Nine.

21 Q Okay.

22 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
23 indulgence?

24 THE COURT: Uh-huh.

25 Q Ms. Stutts, I have no further questions. Answer any

CROSS-EXAMINATION OF STEPHANIE STUTTS BY MR. PLEXICO

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1 questions of Mr. Plexico, please.

2 CROSS-EXAMINATION

3 BY MR. PLEXICO

4 Q Do you have the samples, ma'am?

5 A No, I do not.

6 Q This isn't your bag; right?

7 A No.

8 Q That's not your bag inside; right?

9 A No. I did not put that ---

10 Q You said you couldn't identify that.

11 A Um Item Nine should have been in the other
12 heat-sealed pouch that I had.

13 Q But it's not; is it?

14 A No. It probably was containerized later, but I can't
15 say.

16 Q All right. So, it's been contaminated, as far as you
17 know.

18 A No, I don't know.

19 Q All right. You don't know. You can't say it hasn't
20 been; can you?

21 A I don't recognize that one.

22 Q Okay. All right. And you don't have anything to do
23 with this blood sample from -- from the rectal swabs in it
24 and this -- this Item Sixteen from Eric Hemingway, you
25 don't have anything to do with that; right?

1 A I only handled Three through Fifteen.

2 Q You don't know who slipped that in there; do you, in
3 this bag, do you?

4 A I don't know who put it in that container.

5 Q And you don't have anything to do with it; correct?

6 A No.

7 Q All right. And if you did something, you make a note
8 of it; don't you?

9 A Yes.

10 Q That's what you're trained to do.

11 A Yes. If I -- I should have been able to recognize my
12 initials on the package.

13 Q So there's a breakdown in the control and the process
14 and procedure of S.L.E.D.; correct, if something's in
15 there that shouldn't be?

16 A No. I don't think so. I don't know where that
17 package came from.

18 Q Okay. But aren't you supposed to -- aren't you
19 supposed to handle evidence in a manner to where you know
20 where you get it from and where it goes? It just
21 shouldn't wind up in another bag somewhere; should it?

22 A When I handle evidence, it could be re-containerized
23 later by the case-working analyst. That analyst may have
24 sent it out for further testing, or he may have felt a
25 need to take it away from the original package and put it

REDIRECT EXAMINATION OF STEPHANIE STUTTS
BY ASST. SOL. LEGETTE

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1 into a new one. That could be a new package.

2 Q But that's speculation.

3 A I don't know what happened.

4 Q Speculation. You were asked to explain it by the
5 prosecution, and you can't. You were asked to explain it
6 by the defendant, and you can't; correct?

7 A I don't know where those came from.

8 Q You don't know. Thank you.

9 REDIRECT EXAMINATION

10 BY ASSISTANT SOLICITOR LEGETTE

11 Q Ms. Stutts, once you transfer evidence and put it in
12 a sealed container, do you do anything else with it if
13 it's sent out for some other testing?

14 A No.

15 Q Thank you. No further questions.

16 THE COURT: Okay. She can be excused. Thank you.

17 WITNESS: Okay.

18 ASSISTANT SOLICITOR LEGETTE: State calls Steven
19 Lambert.

20 STEVEN J. LAMBERT, after being duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY ASSISTANT SOLICITOR LEGETTE

24 Q Good afternoon.

25 A Good afternoon.

1 Q State your full name for the record, please.

2 A Steven Jeffery Lambert, L-A-M-B-E-R-T.

3 Q And, Mr. -- Agent Lambert, where are you employed?

4 A South Carolina Law Enforcement Division, also known
5 as S.L.E.D.

6 Q And in what capacity are you employed there?

7 A At S.L.E.D., I am the Lieutenant over the DNA
8 Laboratory. I supervise the casework in the laboratory.
9 I'm also a DNA Analyst in the lab.

10 Q And how long have you been employed by S.L.E.D.?

11 A Uh for seventeen years.

12 Q And what services does S.L.E.D. provide?

13 A At S.L.E.D., we have a laboratory that has numerous
14 laboratories that service the forensic community for law
15 enforcement agencies.

16 Specifically, I'm in the DNA Lab. We do DNA and
17 serology. Serology is the study of body fluids, and what
18 we do is we identify body fluid as either semen or saliva
19 or blood, and then we do DNA testing on it to determine
20 who that it came from.

21 Q Please describe your educational background.

22 A Okay. I've got a Bachelor's Degree in Chemistry from
23 Mars Hill College in 1983. I've got a Doctorate in
24 Bio-Chemistry from the University of South Carolina in
25 1990.

1 Q Okay. And what schools have you attended?

2 A Um in addition to those schools, I've attended um the
3 FBI Academy in Quantico, Virginia. I took their DNA
4 Typing class in 1990, and I received credit from the
5 University of Virginia for that class.

6 I also have attended the Criminal Justice Academy in
7 South Carolina and received police officer training there.
8 I've been a visiting scientist at the FBI Academy in
9 Quantico doing research on their DNA typing to assist them
10 in their laboratory. And I've been to numerous symposia
11 and meetings over the seventeen years I've been at
12 S.L.E.D.

13 Q Now, Agent Lambert, have you ever testified in court
14 before as an expert in DNA analysis?

15 A Yes, ma'am.

16 Q And in forensic DNA analysis?

17 A Yes.

18 Q Okay. How many times?

19 A Um approximately eighty times.

20 Q And in what states?

21 A Uh just South Carolina.

22 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, at this
23 time we would submit Mr. Steven Lambert, S.L.E.D. Agent,
24 that he be declared as an expert in the field of DNA and
25 Forensic Science.

1 THE COURT: Any objection?

2 MR. PLEXICO: Uh, I have no -- I have no objection,
3 Your Honor.

4 THE COURT: You what? I didn't hear you.

5 MR. PLEXICO: (NO RESPONSE.)

6 THE COURT: Mr. Plexico, I'm sorry, I didn't hear
7 you.

8 MR. PLEXICO: Oh, I'm sorry. Your Honor, I don't
9 have any objection to his qualifications.

10 THE COURT: Okay. Thank you.

11 Okay. You're so qualified. Thank you.

12 WITNESS: Thank you, Your Honor.

13 Q Agent Lambert, what is DNA?

14 A DNA stands for Deoxyribonucleic acid. It's a
15 chemical. It's in virtually every single cell in your
16 body.

17 We're made up of cells, and with each one of those
18 cells is the -- this chemical that serves as the
19 instruction for how to take you from a single cell when
20 you're conceived up to a fully developed human being. All
21 that information is um contained in your DNA.

22 You get half of it from your mom. You get half of it
23 from your dad, the moment you're conceived, and from
24 there, it gives you the instructions to take you on up to
25 a fully developed human being.

1 And um the only two individuals that would have the
2 same DNA would be identical twins. Everybody else, even
3 your full siblings, you'll have different DNA from them.

4 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, may we
5 approach?

6 **THE COURT:** Sure.

7 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
8 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
9 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
10 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
11 AND HEARING OF THE JURY:)

12 **THE COURT:** Ladies and gentlemen of the jury, just so
13 you'll know, we had an expert qualified yesterday, as well
14 as we have an expert qualified today. And essentially
15 what that means is that they have the, by training,
16 experience, education, or other matters, have indicated
17 that they have specialized knowledge, and they are
18 testifying as an expert to assist you with these opinions.

19 You will um hear me state at the end of the case that
20 you are to accept or reject any of the testimony as you
21 would any other witness, but just that the expert witness
22 has the ability to actually render an opinion by virtue of
23 that specialized training, education, or experience.

24 **WITNESS:** Thank you.

25 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.

1 Q Agent Lambert, what is a forensic DNA test?

2 A With a forensic DNA test, what we do is we look at
3 DNA that's collected from crime scenes. That means that
4 during the commission of a crime, somebody left part of
5 themself there.

6 Either their semen was left there, their saliva,
7 their blood. Maybe some of their hair was left at the
8 scene.

9 Uh and we want to determine who left that material
10 there, or who took material with them. Sometimes during
11 the commission of a crime, they're going to get the
12 victim's blood on their clothes. So we want to determine
13 who left that material. So that's an unknown.

14 Um we test that and we develop what's called a DNA
15 profile from the unknown, and then we compare it back to
16 known samples. We're going to get the blood from the
17 victim, um suspects, um maybe consensual partners, and
18 we'll develop DNA profiles from their known blood, blood
19 that came out of their arm or -- or a swab from their
20 mouth, and we'll compare the known prints to the unknown
21 prints and see who could have left that sample there.

22 Q And did you receive samples in this case?

23 A Yes, I did.

24 Q What was the condition of those samples when you
25 received them?

DIRECT EXAMINATION OF STEVEN LAMBERT BY ASST. SOL. LEGETTE

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1 A Um they were in heat-sealed pouches. They were
2 sealed, and the seals were initialed and dated, uh so that
3 they were secure. And um once we determine that they're
4 secure, we can go ahead and process them for analysis.

5 Q Okay. Agent Lambert, what samples did you receive in
6 this case?

7 A I received numerous samples from autopsy of Ms.
8 Washington. The um -- I received some fingernail
9 clippings. I received some clippings from her toes. I
10 received a rectal swab that was collected at autopsy, oral
11 swabs, a vaginal swab.

12 I received some um hair, both pulled from her as a
13 known standard, and also combed pubic hair. I received
14 her -- a blood standard from her.

15 I also received a couple of samples from the living
16 room, a swab from the living room floor of her house, and
17 a swab from a recliner in that living room.

18 And in addition to that, I received a known blood
19 standard from Eric Hemingway and also a known blood
20 standard from Michael Williams.

21 Q Agent Lambert, -- Agent Lambert, I hand you now
22 what's been previously marked for identification as
23 State's Exhibit Number Six. Take a moment and tell me if
24 you recognize this, please?

25 A Okay. This is the blood standard from Michael

1 Williams. I can recognize it. I've got my initials and
2 the date on that heat-seal pouch.

3 Q And from whom did you receive that sample?

4 A That sample I received from the evidence -- my
5 evidence area in the DNA Lab. It's a secure area where
6 the um techs place the evidence once they receive it in
7 the lab. It was placed there, according to our chain of
8 custody, by Sherry Brown would have placed that in that uh
9 area.

10 Q Okay. And what was the condition of the sample when
11 you received it?

12 A It was a um purple top blood tube, um just like you
13 get drawn at the hospital um that they draw out of your
14 arm. I took that blood tube. You see now it's in a coin
15 envelope..

16 What we do is we place that blood on filter paper,
17 because it's a lot more stable as a dried blood sample
18 than it would be as a liquid. If it's liquid, it would go
19 bad, but if we dry it off -- dry it down, it will store
20 for a lot longer. So it's more stable.

21 Q All right. And did that sample appear to have been
22 tampered with when you received it?

23 A No, ma'am.

24 Q Now once you received the sample, did it remain under
25 your complete custody and control?

DIRECT EXAMINATION OF STEVEN LAMBERT BY ASST. SOL. LEGETTE
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1 A It did until I tested it, and I brought it with me to
2 court today.

3 Q Okay. And you did test that sample?

4 A Yes, ma'am.

5 Q And what were your results in that sample?

6 A The reason we tested that sample was to compare it to
7 other unknown samples that we developed from the crime
8 scene. The result of that was um Michael Williams did not
9 match any of the unknown samples that were present at the
10 crime scene.

11 Q Now, Agent Lambert, did you receive a sample of blood
12 from Harriett Washington?

13 A Yes, I did.

14 Q Okay. And along with that sample, you received other
15 items; correct?

16 A From her autopsy. That's correct.

17 Q Okay. And from whom did you receive those samples?

18 A Those samples, I again, received from my area in the
19 lab that those are placed in a secure refrigerator. In
20 particular, the samples from the swab of blood from the
21 living room floor was placed there by Stephanie Stutts,
22 and I picked that up.

23 Well, let me restate that. Emily Norris placed that,
24 according to my chain of custody, she placed that in the
25 DNA refrigerator. She did not open it. She didn't have

1 anything to do with it, other than she brought it up and
2 placed it in the um -- in my evidence receiving area, and
3 I picked it up from there and proceeded to test it.

4 Q And with regards to the other evidence, specifically
5 the rectal swabs you spoke of, this Item Seventeen ---

6 A It's -- it's my Item Number Nine.

7 Q Item Number Nine.

8 A That's correct.

9 Q From whom did you receive that sample?

10 A I received it from the DNA refrigerator, that secure
11 refrigerator. It was placed there by Emily Norris.

12 Um Stephanie Stutts had brought it upstairs to the
13 DNA freezer. It was removed from the DNA freezer and
14 placed in my refrigerator by Emily Norris.

15 Q And what was the condition of that sample when you
16 received it?

17 A It was sealed. All the seals were in place and
18 intact and initialed.

19 Q Did that sample appear to have been tampered with in
20 any way?

21 A No, ma'am.

22 Q Now, Agent Lambert, did that particular sample, your
23 Item Number Nine, known as rectal swab, did it remain
24 under your complete custody and control?

25 A It did until I sent it out for outside testing.

1 Q Okay. Now, did you conduct any DNA testing on that
2 particular sample?

3 A Yes, ma'am.

4 Q Okay. And what were your results on that particular
5 sample?

6 A On that particular sample, first of all, I tested it
7 for the presence of semen. Um it's my understanding that
8 this sample was collected after the victim had been
9 embalmed.

10 Um the -- it's possible, plus that from being in the
11 rectal area, that it interfered with the test that we
12 normally perform to identify semen, so I wasn't able to
13 identify semen present on that swab. However, when I did
14 the DNA test, there was male DNA that was present in the
15 part of the test that normally would be associated with
16 semen.

17 So there was a tiny amount of male DNA that was
18 present. Eric Hemingway could not be excluded as a
19 possible contributor ---

20 MR. PLEXICO: Your Honor?

21 THE COURT: Yes?

22 MR. PLEXICO: I -- I would object, Your Honor,
23 because it's an improper -- well, there's an improper --
24 there isn't a proper foundation for that, Your Honor,
25 because he's never said he tested any blood from Eric

1 Hemingway.

2 THE COURT: Okay. If you'll just lay a foundation?

3 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

4 THE COURT: Okay.

5 Q Agent Lambert, going back to another sample you
6 received in this particular case, did you receive a sample
7 from -- a blood sample from Eric Hemingway?

8 A Yes, I did.

9 Q Okay. And what item is that?

10 A That's my Item Number Sixteen.

11 Q And from whom did you receive this sample?

12 A That sample was, again, placed in my DNA refrigerator
13 by um Emily Norris. She took it upstairs from the
14 submission in the log-in area. Um she didn't open it.
15 The seals were intact, and I received it from the DNA
16 refrigerator.

17 Q Okay. Did this sample appear to have been tampered
18 with in any way?

19 A No, ma'am.

20 Q Okay. Once you received this sample of -- the sample
21 -- your Item Number Sixteen, this sample of blood from Mr.
22 Hemingway, did it remain under your complete custody and
23 control?

24 A It did until I sent it out for further testing in
25 another laboratory.

DIRECT EXAMINATION OF STEVEN LAMBERT BY ASST. SOL. LEGETTE
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1 Q Okay. Did you conduct any DNA testing on this
2 particular sample?

3 A Uh, yes, I did.

4 Q And what were your results?

5 A I developed a full DNA profile from the blood sample
6 from Eric Hemingway, and it was that sample that I used to
7 compare to the um rectal swab taken from Ms. Washington.

8 Q And once you compared those two, what did you find?

9 A Again, as I was speaking about before, from the
10 rectal swab from the DNA that was collected from that,
11 first of all, when you collect a swab from an orifice like
12 that, you're going to get some of the victim's DNA. If
13 it's a vaginal swab, you're going to see some of the
14 victim's DNA, because some of her cells are going to be on
15 the swab.

16 Same thing for a rectal swab. Um there may be
17 additional cells that came from another person in a sexual
18 assault that we'd be able to test for.

19 In this particular case, there were so few of those
20 additional cells that we weren't able to make a complete
21 determination as to who they came from, but there was male
22 DNA there, and the little bit of the DNA profile that was
23 developed, Hemingway could not be excluded as a possible
24 contributor to that.

25 Q Now ---

1 **ASSISTANT SOLICITOR LEGETTE:** Begging the Court's
2 indulgence?

3 **Q** Agent Lambert, with regards to Exhibit Number Six,
4 may I have that back, please?

5 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I would at
6 this time submit State's Exhibit Number Six for admission
7 into evidence.

8 **THE COURT:** Any objection?

9 **MR. PLEXICO:** I would have an objection to that, Your
10 Honor. We've already discussed this in chambers, Your
11 Honor. We object to that based on what we talked about in
12 chambers.

13 **ASSISTANT SOLICITOR LEGETTE:** I believe we have a
14 matter of law, Your Honor.

15 **THE COURT:** Yes. Okay. If counsel would approach
16 just so I can deal with some scheduling issues, then?

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
18 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
19 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
20 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
21 AND HEARING OF THE JURY:)

22 **THE COURT:** Counsel, we'll take up that matter later
23 so that we can go forward with this witness.

24 **MR. PLEXICO:** I understand, Your Honor.

25 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.

1 Q Agent Lambert, I'm going to hand you now what has
2 been previously marked as State's Exhibit Number Seven,
3 which arrived here in a sealed condition, which the State
4 then cut open. Please take a moment and tell me if you
5 recognize this?

6 A Yes, ma'am, I do.

7 Q And what do you recognize those to be?

8 A These are the standards of -- first of all, it's the
9 standard of Eric Hemingway that I sent off for testing at
10 LabCorp in Research Triangle Park in North Carolina, and
11 also the rectal swabs, Item Number -- my Item Number Nine,
12 taken from Ms. Washington at autopsy.

13 MR. PLEXICO: This is Item Seven he's talking about
14 she asked about?

15 ASSISTANT SOLICITOR LEGETTE: Item Number Nine and
16 Item Number ---

17 MR. PLEXICO: I thought she had asked about Item
18 Seven.

19 ASSISTANT SOLICITOR LEGETTE: It's Exhibit Number
20 Seven.

21 MR. PLEXICO: Exhibit Seven.

22 Q And those were items that you -- where did you send
23 those items?

24 A Um they went to LabCorp, which is a DNA testing
25 company in Research Triangle Park, North Carolina, outside

1 of Raleigh.

2 Q And, Agent Lambert, did that evidence that you sent
3 to LabCorp remain under your complete custody and control
4 until it was sent to LabCorp?

5 A Yes, ma'am.

6 Q Okay. And how was it submitted to LabCorp?

7 A What I did was I took each one of these items and put
8 it in a separate heat-sealed pouch and sealed it myself,
9 um sent it -- placed it again inside a second pouch here
10 and put evidence tape on it and placed it in a FedEx
11 packaging, and I FedEx'd it to their laboratory, which is
12 the standard procedure that we use for them.

13 Q And what was the condition of both the FedEx package
14 and the internal packaging when you submitted it to
15 LabCorp?

16 A It was intact.

17 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
18 indulgence?

19 Q Agent Lambert?

20 A Yes, ma'am?

21 Q Going back to Michael Williams, what does it mean
22 about Michael Williams being excluded as a contributor in
23 this case?

24 A We had um several -- first, we had the DNA profile
25 from the rectal swab. It was a weak male DNA profile.

1 We compared his, Michael Williams', profile to the
2 rectal swab, and he was excluded from being a contributor
3 to that male profile.

4 There was also a um -- um a swab from a recliner in
5 the living room. He was excluded from being a donor to
6 the semen on that recliner.

7 Q So, in regular people's terms, what does that mean?

8 A Um he didn't leave that sample there.

9 Q Okay. So he didn't leave the rectal sample?

10 A The semen on the rectal swab and the semen on the
11 recliner did not match him.

12 Q Okay. And did you create a report of your findings?

13 A Yes, I did..

14 Q Okay. Is it customary in your profession to create a
15 report?

16 A Yes, ma'am.

17 Q Is that report here with you today?

18 A Yes..

19 Q May I have that report?

20 A I've actually prepared three reports in association
21 with this case. Would you like the most recent one?

22 Q Yes, please.

23 A This one's dated March 30th, 2007. It contains the
24 findings from Harriett Washington, Eric Hemingway, and
25 Michael Williams, compared to the evidence submitted in

1 this case.

2 Q Yes, please.

3 (WHEREUPON, State's Exhibit No. 8 was marked for
4 identification only.)

5 Agent Lambert, I hand you now what's been previously
6 marked as State's Exhibit Number Eight. Take a moment and
7 tell me if you recognize this?

8 A Yes, ma'am. This is a copy of my report that I
9 prepared for my findings and results in this case.

10 Q And is your signature on that report?

11 A Yes, ma'am, it is.

12 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
13 time, I would offer State's Exhibit Number Eight for
14 admission into evidence.

15 MR. PLEXICO: I would object to that on the same
16 grounds, that we don't think the chain of custody is
17 proper, Your Honor, and what we talked about at the bench.

18 THE COURT: Okay. And we'll hold that um ruling
19 until later. Thank you.

20 We'll take up that matter outside the presence of the
21 jury.

22 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

23 Q Agent Lambert, just in case some of us are confused,
24 because I -- this is a little bit over my head, um let's
25 talk about this. You said you found semen on an

1 arm-chair?

2 A That's correct.

3 Q Okay. A sample came in.

4 A Yes, ma'am.

5 Q Okay. Did that -- did that particular semen match
6 Mr. Williams in this case?

7 A No, it did not.

8 Q Okay. Did it match anyone in this particular case?

9 A It didn't match Mr. Hemingway. There was um -- Ms.
10 Washington was also present in that sample. When a semen
11 sample is deposited on an item, um through sexual contact,
12 her DNA could also be in that, and it was present.

13 Q Okay. How long can semen live outside the human body
14 on a piece of fabric like that?

15 A Well, as far as living, the -- the -- the cells
16 themselves are going to die; however, the DNA is going to
17 stay there, even after the cell's dead, and it could be
18 there for years, and we could still find it.

19 Q Okay. So that semen could have been there for years?

20 A Could have been.

21 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
22 indulgence?

23 Q Agent Lambert, what does it mean that Eric Hemingway
24 could not be excluded in your results?

25 A There was a few portions of the DNA profile that

1 showed up on that um -- you're referring to the rectal
2 swab?

3 Q Yes, that's correct.

4 A On the rectal swab, there was just a few portions of
5 a DNA profile, very weak. Um they showed up, and they
6 were below our level that we needed to actually call it a
7 match. Usually what we do is we say: This matches this
8 person, or they're completely excluded.

9 In this case, the little bit of the DNA profile that
10 showed up um was consistent with coming from Eric
11 Hemingway, but we couldn't conclusively say that it came
12 from him, and that's why we sent it off for some
13 additional testing.

14 There's a test that you can perform that specifically
15 looks at male DNA. The test that we use looks at male DNA
16 and female DNA, and if it's a mixture, the female DNA
17 sometimes will obscure the male DNA to where you can't see
18 that print.

19 What we did was we sent it off to the LabCorp
20 laboratory that I mentioned previously. They do a test
21 that specifically looks for male DNA, and you won't be
22 able to see the female DNA, and that way you can determine
23 where that semen came from.

24 Q Okay. Thank you, Agent Lambert.

25 I have no further questions. Answer any questions of

CROSS-EXAMINATION OF STEVEN LAMBERT BY MR. PLEXICO

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1 Mr. Plexico, please.

2 CROSS-EXAMINATION

3 BY MR. PLEXICO

4 Q Okay. I want to make sure I understand, now. In
5 Item Four, there was a -- a swab that was taken, according
6 to your records, from a chair; correct?

7 A That's correct.

8 Q And that definitely, you have no problems saying that
9 does not match Eric Hemingway; correct?

10 A That's correct.

11 Q It doesn't match Michael Washington; correct?

12 A Michael Williams.

13 Q Michael Williams.

14 A Yes, sir.

15 Q Okay. All right. Now, and that's the only two
16 people that you tested; correct?

17 A That's correct.

18 Q All right. Now you said you had a very -- you had a
19 very -- you had a few portions, and it was a very weak
20 sample; correct?

21 A On the rectal swab, the male portion was very weak.
22 That's correct.

23 Q Okay. All right. And um so you can't do an accurate
24 test.

25 A Um, no, we didn't say whether there was a match or

1 not. We couldn't exclude him as being a possible
2 contributor.

3 We were able to exclude Michael Williams from being a
4 contributor, but we can't say that it matches him. Um we
5 just can't exclude him, so that's why we sent it out for
6 additional testing.

7 Q How many people are in America?

8 A Um ---

9 Q Three hundred million?

10 A Three hundred million.

11 Q Okay. So you excluded one. That leaves two hundred
12 and ninety-nine million, nine hundred and ninety-nine
13 thousand, nine hundred and ninety-nine that you have not
14 excluded; correct?

15 A I only had two males that were submitted. Now if
16 you're talking about females, half of that three hundred
17 million are going to be females. They don't produce
18 semen, so they'd be excluded.

19 Q So let's cut that in half. So say if there was a
20 hundred fifty million males, that would be a hundred and
21 forty-nine million males, nine hundred and ninety-nine
22 thousand, nine hundred and ninety-nine people that you
23 have not excluded.

24 A That's correct. I only -- I only received two males
25 for comparison in this case.

CROSS-EXAMINATION OF STEVEN LAMBERT BY MR. PLEXICO

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1 Q So my client is one of a hundred and forty-nine
2 million possible suspects at this point then.

3 A Um, as far as DNA is concerned, I can't exclude him.
4 I didn't exam anyone else, other than Williams.

5 Q And you can only exclude the people that you test;
6 right?

7 A That's correct.

8 Q So you have all those other possible suspects.

9 A That's correct.

10 Q So this test is worthless; isn't it.

11 A Um that's why we sent it out for additional testing.

12 Q And they do a more detailed test; correct?

13 A They're going to test just the male DNA.

14 Q So this really doesn't mean anything.

15 A Uh ---

16 Q Does it?

17 A No ---

18 Q Scientifically.

19 A It's uh -- it's not a match.

20 Q Thank you. I have no further questions.

21 Oh, I do have another question. You don't know what
22 happened to these samples. All you know is you got them
23 out of the refrigerator; correct?

24 A That's -- I received them from my evidence area in
25 the refrigerator, that's correct.

REDIRECT EXAMINATION OF STEVEN LAMBERT
BY ASST. SOL. LEGETTE

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1 Q Okay. And you don't know what happened to them
2 before then, because you weren't involved with them;
3 correct?

4 A Personal knowledge, no. I know what the protocol of
5 the lab is, and I know that I have a chain of custody that
6 tracks each spot for that particular sample. I didn't put
7 my hands on it until the day that I received it from that
8 refrigerator.

9 Q Only when you had contact, and that's when you're
10 responsible for it, and you -- you feel you followed
11 protocol; correct?

12 A That's correct.

13 Q Okay. And you can only for sure say what you did.

14 A That's correct.

15 MR. PLEXICO: Um Court's indulgence?

16 I don't have anything further, Judge.

17 ASSISTANT SOLICITOR LEGETTE: Briefly?

18 THE COURT: Sure.

19 REDIRECT EXAMINATION

20 BY ASSISTANT SOLICITOR LEGETTE

21 Q Um, Agent Lambert, the items you received, the
22 samples you received, they were in -- what was their
23 condition when you received them?

24 A Um, again, the evidence that's passed through our
25 laboratory comes in heat-sealed pouches. You've -- you've

RECROSS AND FURTHER REDIRECT OF LAMBERT
BY LEGETTE AND PLEXICO

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1 seen a couple of those submitted into evidence.

2 Um those heat-sealed pouches, S.L.E.D. protocol says
3 that you are to seal them, and when you seal them, you are
4 to sign the seal and date it. And all of those seals were
5 intact.

6 All of them were signed and dated, so I could proceed
7 with the testing. If that wasn't signed and dated, I'd
8 have to stop at that point and figure out what had
9 happened to that evidence prior to me, but since they were
10 all signed and dated and sealed, I was confident that they
11 were intact and um they were suitable for testing.

12 Q And one more thing, Michael Williams was excluded as
13 a donor of this -- the -- well, the semen in this case.

14 A On the rectal swab and also on the recliner.

15 Q Thank you. Nothing further.

16 RECROSS-EXAMINATION

17 BY MR. PLEXICO

18 Q So there's another man's DNA there, and we don't know
19 who that third man is; right?

20 A That's correct.

21 MR. PLEXICO: I don't have anything further, Judge.

22 FURTHER REDIRECT EXAMINATION

23 BY ASSISTANT SOLICITOR LEGETTE

24 Q Agent Lambert, was there another man in the rectal
25 swab?

1 A No, sir -- um; no, ma'am. On the um -- on the
2 recliner.

3 Q So there's only one man in the rectal swab.

4 A It's difficult to tell, because it's such a small
5 amount of DNA, but the indications are there was only
6 another one male donor in the rectal swab, but I can't say
7 for sure, but on the recliner, there was a third
8 individual who has not been identified.

9 Q Thank you.

10 MR. PLEXICO: May I please question him in that
11 regard?

12 THE COURT: Yes.

13 FURTHER RECROSS-EXAMINATION

14 BY MR. PLEXICO

15 Q All right, but they could be the same person, but we
16 just don't know, because the sample is so crummy; right?

17 A Between the recliner and the rectal swab, it's a
18 different individual.

19 Q You believe it is.

20 A Yes, sir.

21 Q I don't have anything further.

22 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
23 time, subject to recall of this witness, I have no
24 questions for him, depending on the ruling of the Court.

25 THE COURT: Right. Okay.

1 Anything further, then, Mr. Plexico?

2 MR. PLEXICO: I don't have anything for this witness,
3 Your Honor.

4 THE COURT: Okay. We're going to go ahead and take
5 our recess for lunch at this time.

6 Um and I will have you all report back to your jury
7 room let's say 2:15, and remind you not to discuss the
8 case in any shape, form or fashion. Enjoy your lunch.

9 And then I will advise, Mr. Lambert, that you're not
10 to discuss your testimony with anybody.

11 WITNESS: Thank you.

12 (APRIL 25, 2007, 12:54 P.M., WHEREUPON, THE JURY
13 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
14 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

15 THE COURT: All right, are the parties ready to take
16 up um your motions? Mr. Plexico?

17 MR. PLEXICO: Yes, Judge?

18 THE COURT: Yes, I'm sorry. We're ready to go ahead
19 and take up the motions?

20 COURT REPORTER: Your Honor, I'm sorry, I can't hear.

21 THE COURT: All right. We'll wait just a minute.

22 All right. Thank you all.

23 Mr. Plexico, and we're starting out with the State's
24 request to have Exhibit Number Six entered. And, Ms.
25 Legette, if you'll identify that for the record?

1 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, State's
2 Exhibit Six is the blood sample of Michael Williams.

3 **THE COURT:** Okay.

4 **MR. PLEXICO:** First, specifically on this, Your
5 Honor, apparently they, you know, I believe the procedure
6 from the totality of the testimony is so sloppy at the
7 S.L.E.D. Lab, Your Honor, it would lead one to reasonably
8 doubt the authenticity of any test that -- that -- that um
9 resulted from evidence of the standard in such a
10 procedure, Judge. And I think the procedure that's on the
11 record speaks for itself.

12 And I noticed you were paying attention, and that's
13 the basis for my ruling. I believe that um it -- it
14 doesn't go to the weight of the evidence.

15 I just don't think from the evidence that you can say
16 that there is any reliable evidence that was not only --
17 that would only -- whatever evidence it amounts to at this
18 point, Judge, it would only confuse the jury.

19 **THE COURT:** Okay.

20 **MR. PLEXICO:** I would ask that it be excluded on that
21 basis.

22 **THE COURT:** But what, specifically, since we're
23 talking about the procedure, are you talking about in
24 terms of the testing or the chain of custody, or?

25 **MR. PLEXICO:** The chain -- the chain of custody

1 affects the custody in that we don't know how it was --
2 where and how it was actually preserved, Your Honor.

3 THE COURT: Okay. Thank you.

4 Ms. Legette?

5 ASSISTANT SOLICITOR LEGETTE: Your Honor, sloppy
6 work, although I disagree vehemently with Mr. Plexico's
7 characterization of the way they have analyzed this DNA,
8 Your Honor, that does not go to admissibility. That goes
9 simply to the weight. I believe it's a jury issue, and
10 Mr. Plexico could argue to the jury that the procedure was
11 sloppy, Your Honor.

12 We've identified each and every person in the chain
13 of custody. In the State's Exhibit Number Six, Your
14 Honor, that person we've identified was Becky Rowell,
15 Donnie Hutto at the drop-box, Nicole Perry, Sherry Brown,
16 along to Agent Lambert, who just testified, Your Honor,
17 and brought it in to us today when it arrived here, Your
18 Honor. So the chain of custody was complete with regard
19 to State's Exhibit Number Six, which I believe is Item
20 Number Seventeen on the S.L.E.D. Report.

21 And we would submit to the Court that the work that
22 was done at S.L.E.D. with regard to analysis is an
23 argument that Mr. Plexico can make to the jury. It does
24 not affect the admissibility of this particular sample,
25 Your Honor. It goes simply to its weight, credibility,

1 and for the Court to rule otherwise, respectfully, I
2 submit would be an abuse of discretion, Your Honor. Thank
3 you.

4 THE COURT: Thank you. Okay.

5 And um indicating as to the chain of custody issues
6 and this protocol just generally, having researched this
7 issue from the first day that we spoke about it on that
8 Monday, when you're dealing with establishing a chain of
9 custody, the caselaw indicates that the chain does not
10 have to be perfect, but it is to be established as far as
11 practicable. And you have to show that there is actually
12 a complete link from the beginning to the end.

13 I don't believe that we have any missing links um or
14 we had any links that were not identified with respect to
15 persons who actually drew samples um or handled um
16 information.

17 We also have um the State indicating that they have
18 identified those persons who have actually handled these
19 matters, and so with the State having properly established
20 that chain, I believe that this evidence would be
21 admissible. Now any arguments that Mr. Plexico on behalf
22 of his client would have would go to the credibility or
23 the weight of the evidence, because the defense would need
24 to, for me to suppress any such evidence or either not let
25 it in, would need to show that he can prove tampering or

1 prove some ill-motive or some kind of bad faith with
2 respect to that, and I just don't see that the evidence
3 leads me to believe that. So that's my ruling with
4 Exhibit Number Six.

5 (WHEREUPON, State's Exhibit No. 6 was admitted into
6 evidence.)

7 Would your arguments be the same with Exhibit Number
8 Seven?

9 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

10 THE COURT: Mr. Plexico?

11 MR. PLEXICO: No, it's going to be much more
12 elaborate on that. I believe she identifies ---

13 THE COURT: We only had -- we only had argument on
14 Number Six so far, but then Number Seven, we didn't allow
15 that one in as well, but if you'll identify that one for
16 the record as well, too?

17 ASSISTANT SOLICITOR LEGETTE: Your Honor, I believe
18 Item Number Seven is the envelope that contained the um
19 DNA, and at this point, we have not offered that into
20 admission, Your Honor.

21 THE COURT: Okay.

22 ASSISTANT SOLICITOR LEGETTE: Because the chain, we
23 have other witnesses who can ---

24 THE COURT: Okay.

25 ASSISTANT SOLICITOR LEGETTE: --- who need to come in

1 on that chain, Your Honor. So at this point, we're not
2 even offering it into evidence for admission, Judge. The
3 other witnesses we have have not yet testified with regard
4 to Item Number Seven, which is in a brown envelope, Your
5 Honor.

6 There are two items taken out of that bag when I cut
7 it open, and we have not yet established the chain;
8 however, we intend to establish that chain, Your Honor.
9 At the appropriate time, we will be ready to argue that
10 motion at that time, Your Honor, but right now, we can't.

11 **THE COURT:** Okay. That's fine.

12 So right now with respect to coming back from the
13 lunch hour, the last witness would be the one you're going
14 to admit State's Exhibit Number Six through?

15 **ASSISTANT SOLICITOR LEGETTE:** And Number Eight, there
16 was also argument. That was the report.

17 **THE COURT:** Oh, the report. The report, does it
18 contain any of the other items that you're trying to get
19 in later, because if that's the case, then that one needs
20 to be held, you know, in abeyance until we get to you
21 actually entering into evidence those items that are
22 identified in that report.

23 **ASSISTANT SOLICITOR LEGETTE:** Well, Your Honor, it
24 does reference items, and we can wait on that as well.

25 **THE COURT:** Okay. I think that would be more

1 appropriate at that time. Okay.

2 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

3 THE COURT: All right, anything further by the
4 parties at this time?

5 ASSISTANT SOLICITOR LEGETTE: Not from the State,
6 Your Honor.

7 MR. PLEXICO: Nothing from defense.

8 THE COURT: All right, court is in recess. Y'all
9 enjoy your lunch.

10 (WHEREUPON, A LUNCH BREAK WAS TAKEN. ON APRIL 25,
11 2007, AT 2:17 P.M., THE FOLLOWING PROCEEDINGS WERE
12 HELD ON THE RECORD OUT OF THE PRESENCE OF THE JURY:)

13 THE COURT: All right. You ready, Ms. Legette?

14 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

15 THE COURT: Okay.

16 And, Mr. Plexico, as well?

17 MR. PLEXICO: We're ready, Your Honor.

18 THE COURT: All right. Thank you.

19 All right, the jurors, please?

20 (APRIL 25, 2007, 2:20 P.M., WHEREUPON, THE JURY
21 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
22 WERE HELD IN THEIR PRESENCE.)

23 THE COURT: All right, thank you ladies and gentlemen
24 of the jury. We're ready to proceed.

25 Ms. Legette?

1 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

2 THE COURT: Okay.

3 ASSISTANT SOLICITOR LEGETTE: The State calls Mr.
4 Michael Mooney.

5 MICHAEL D. MOONEY, after being duly sworn,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY ASSISTANT SOLICITOR LEGETTE

9 Q Good afternoon.

10 A Good afternoon.

11 Q State your full name for the record, please.

12 A Michael David Mooney.

13 Q And, Mr. Mooney, where do you work?

14 A I work at LabCorp.

15 Q And where is LabCorp located?

16 A It's in uh Raleigh, North Carolina.

17 Q And what do you do at LabCorp?

18 A I am a Senior Technologist in the Forensic DNA Lab.

19 Q And as a Senior Technologist in the Forensic DNA Lab,
20 what are your duties?

21 A My duties are to inventory forensic evidence and
22 process it for DNA analysis.

23 Q Turning your attention to the case at bar, State
24 versus Eric Hemingway, did you receive any samples in this
25 particular case?

1 A Yes, I did.

2 Q And what kind of samples did you receive?

3 A Um we received some rectal swabs and a blood
4 standard.

5 Q And when did you receive this sample, or these
6 samples?

7 A Um I need to refer to my case file for the exact
8 date.

9 Q That's certainly fine.

10 A If that's okay?

11 Q You can refresh, yes.

12 A We received them on May 2nd of 2006.

13 Q And where did you receive these samples?

14 A Uh we received them in our building, at our
15 laboratory.

16 Q At your laboratory?

17 A At LabCorp.

18 Q And from whom did you receive these samples?

19 A From Federal Express.

20 Q And what was the condition of the samples when you
21 received them?

22 A What I received was a what we refer to as a
23 diagnostic specimen envelope, which is a Federal Express
24 envelope that was sealed.

25 Q Had it been tampered with in any way?

1 A No, it had not.

2 Q And what was inside that FedEx package?

3 A Inside the diagnostic specimen envelope was a manila
4 envelope that was sealed with evidence tape. Inside of
5 that envelope were two heat-sealed plastic bags, and
6 inside each of the two heat-sealed plastic bags were
7 additional items of evidence.

8 Q And when you received these items of evidence, had
9 any of the packages been tampered with?

10 A No, they had not.

11 Q Now once you received these packages, what did you do
12 with them, or these samples, what did you do with the
13 samples?

14 A I inventoried the conditions of all the packaging and
15 what items were contained within them. I made cuttings
16 from the samples and began the process of DNA extraction
17 and moved them through the remainder of the DNA process.

18 Q And while you were running DNA tests on these
19 samples, did they remain under your complete custody and
20 control during this time?

21 A They did. After I had made my cuttings, the
22 envelope, the packages, were sealed back up and placed
23 into a storage locker in our prep lab.

24 Q Now, once you made your cuttings of these samples,
25 did you do anything else with them, besides putting them

1 in the DNA box?

2 A I did not.

3 Q And what was the condition of the samples when you
4 placed them back into the sealed evidence locker room?

5 A Um they were -- I had taken the cuttings that I
6 needed for processing, and the samples were returned to
7 their original packaging and taped back up and stored in
8 the locker.

9 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
10 indulgence?

11 Begging the Court's indulgence?

12 Q Now, Mr. Mooney, sir, I'm going to hand you now
13 what's been previously marked for identification as
14 State's Exhibit Seven, which contained two packages, which
15 I'm now placing back into the State's Exhibit Number Seven
16 marked for identification. Please take a moment and tell
17 me if you recognize this?

18 A Yes. I -- the outer packaging has our LabCorp
19 forensic identity evidence tape with um a co-worker of
20 mine's initials and date on it.

21 Um the piece of evidence labeled as Item Nine, I
22 recognize as it has the sticker from our laboratory with
23 my initials on it. And the item labeled Item Sixteen, as
24 well, has the sticker from my laboratory with my initials
25 on it as well.

1 Q Thank you.

2 Now, Mr. Mooney, you testified that you made an
3 analysis in this case. After you made your analysis, what
4 did you do?

5 A Once I had finished the -- the lab work in this case,
6 I passed the raw data on to my supervisor for um -- for
7 the um ---

8 MR. PLEXICO: He's not qualified as an expert in
9 anything. I don't see what he's testifying to.

10 ASSISTANT SOLICITOR LEGETTE: Your Honor, he's not
11 giving an opinion.

12 THE COURT: Okay.

13 ASSISTANT SOLICITOR LEGETTE: He's not giving an
14 opinion, Your Honor.

15 THE COURT: Okay.

16 ASSISTANT SOLICITOR LEGETTE: I'm just asking him
17 what did he do next.

18 THE COURT: Okay. All right.

19 Q So you passed it on to your supervisor?

20 A Yes. I passed it on to my supervisor for analysis of
21 the information.

22 Q And that person's name is?

23 A Shawn Weiss.

24 Q Thank you, Mr. Mooney. I have no further questions.

25 Answer any questions of Mr. Plexico, please.

CROSS-EXAMINATION OF MICHAEL MOONEY BY MR. PLEXICO

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CROSS-EXAMINATION

1
2 BY MR. PLEXICO

3 Q You passed what on to your supervisor?

4 A I passed the data on from the process.

5 Q So you passed the data on from the process.

6 A Correct.

7 Q Now, so you're the one actually coming up with
8 whatever -- whoever your supervisor is, you come up and
9 you put it in front of him, and then he reads and
10 interprets it.

11 A Correct. I print the data off from the
12 instrumentation, and I pass it on at that point for
13 interpretation.

14 Q But you're not an expert; are you?

15 A My expertise is in the DNA extraction process and
16 amplification and the use of the instrumentation in the
17 laboratory.

18 Q You're a lab tech.

19 A Correct.

20 Q Now if someone took a touch of that blood and put a
21 speck of that blood onto the rectal swab, that would
22 invalidate any results you were getting out of your
23 machine; correct?

24 A If someone came along and place a speck of blood onto
25 the swabs?

REDIRECT EXAMINATION OF MICHAEL MOONEY
BY ASST. SOL. LEGETTE

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1 Q You had two things you were running a test on, a
2 blood standard. If someone had placed a speck of that
3 blood on the rectal swab, that would have invalidated the
4 results from whatever your machine said; right?

5 A Yes, it would.

6 Q All right. And you don't know what happened to the
7 evidence, the samples you were given to test, before you
8 got them out of the mail; right?

9 A That is correct.

10 Q I don't have anything else.

11 REDIRECT EXAMINATION

12 BY ASSISTANT SOLICITOR LEGETTE

13 Q Mr. Mooney, very quickly, were those samples in a
14 sealed, individual sealed, package when you received them?

15 A Yes, they were.

16 Q Were they in separate packages when you received
17 them?

18 A Yes, they were.

19 Q Were they in a sealed FedEx package around those
20 packages when you received them?

21 A Yes.

22 Q And that package was sealed itself?

23 A Yes.

24 Q Thank you.

25 ASSISTANT SOLICITOR LEGETTE: I have no further

RE CROSS-EXAMINATION OF MICHAEL MOONEY BY MR. PLEXICO

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1 questions, Your Honor.

2 MR. PLEXICO: May I?

3 THE COURT: Yes.

4 RE CROSS-EXAMINATION

5 BY MR. PLEXICO

6 Q Does LabCorp have a habit of not being able to
7 account for where evidence is and who's got it?

8 A No, we do not.

9 Q Would you call that unprofessional? If -- if the lab
10 could not account for where they had evidence, ---

11 ASSISTANT SOLICITOR LEGETTE: I object, Your Honor.
12 I think that calls for a conclusion, as far as ---

13 MR. PLEXICO: I'm asking the standards. He says that
14 he works there and he's the one that runs it. He's the
15 senior technician. I think he's qualified to answer that
16 question.

17 ASSISTANT SOLICITOR LEGETTE: He's not asking about
18 professionalism, Your Honor. He's asking for a
19 conclusion.

20 THE COURT: Yes. Not as an expert. You can only ask
21 him what's within his protocol.

22 Q Would that be tolerated -- would it be tolerated, the
23 loss of evidence, and someone being unable to account for
24 who had the evidence at any particular time? Would that
25 be tolerated in your lab?

1 A No. Our lab procedure is to document where evidence
2 has gone and who has handled it at all times.

3 Q Thank you.

4 ASSISTANT SOLICITOR LEGETTE: Mr. ---

5 MR. PLEXICO: Oh, Your Honor, I do -- I do have
6 something else, Your Honor.

7 THE COURT: Okay.

8 Q You run the machine; correct?

9 A Correct.

10 Q Who manufactures the machine?

11 A Well, there's -- there's multiple machines,
12 instruments throughout the process that are manufactured
13 by different people.

14 ASSISTANT SOLICITOR LEGETTE: Your Honor, I object as
15 to relevance to this particular line of questioning.

16 THE COURT: What is the relevance?

17 MR. PLEXICO: I'm getting there, Judge. Well, Your
18 Honor, he's running a test where he's relying -- he's
19 relying on machines. I want to know, it's like a DUI
20 machine, is it accurate?

21 THE COURT: Is it what?

22 MR. PLEXICO: Is it accurate? Is it maintained? Is
23 it accurate?

24 THE COURT: Oh. Go -- go forward.

25 Q How old are these machines?

FURTHER REDIRECT EXAMINATION OF MICHAEL MOONEY
BY ASST. SOL. LEGETTE

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1 A Uh, they vary in age.

2 Q Who maintains them?

3 A Uh the technologists in the lab do, as well as uh
4 service engineers from the vendors.

5 Q From the vendors?

6 A Vendors, the manufacturers.

7 Q And who are they?

8 A Uh, well, like I said, they vary. We have
9 instrumentation made by different vendors, manufactures,
10 and field service engineers from those companies provide
11 some of the maintenance.

12 Q Do you have a log of regular maintenance that's been
13 kept on any of those machines with you?

14 A No, I do not.

15 Q I don't have anything further.

16 FURTHER REDIRECT EXAMINATION

17 BY ASSISTANT SOLICITOR LEGETTE

18 Q Mr. Mooney, very briefly, was there any indication,
19 sir, that any of your machines were not functioning
20 properly?

21 A No, there were not.

22 Q Okay. Thank you.

23 MR. PLEXICO: May I on that, Judge?

24 THE COURT: Okay.

25 FURTHER RECROSS-EXAMINATION

FURTHER RECROSS-EXAMINATION OF MICHAEL MOONEY
BY MR. PLEXICO

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1 BY MR. PLEXICO

2 Q I mean, you shouldn't be able to notice it, because
3 it's so minute, you wouldn't notice; would you?

4 A I'm not aware of any problems with the
5 instrumentation.

6 Q But if there were, since you're talking about a micro
7 -- a sub-microscopic data that you're analyzing, you
8 wouldn't necessarily notice that you had a problem; would
9 you?

10 A Well, there's controls throughout the process that
11 monitor things like that.

12 Q DNA has thousands and thousands of individual genes
13 ---

14 ASSISTANT SOLICITOR LEGETTE: Objection, Your Honor.
15 That was not subject of the recross, and he is not ---

16 THE COURT: I'll agree, because the last indications
17 of this re-re-direct and re-re-cross are dealing with the
18 machine.

19 MR. PLEXICO: Can he answer the question, Judge?

20 THE COURT: No, because it was beyond the scope. So
21 the objection is sustained.

22 MR. PLEXICO: I have no further questions.

23 ASSISTANT SOLICITOR LEGETTE: No further questions
24 from the State, Your Honor.

25 THE COURT: Anything further, Mr. Plexico?

DIRECT EXAMINATION OF SHAWN WEISS BY ASST. SOL. LEGETTE

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1 MR. PLEXICO: I don't have anything further, Judge.

2 THE COURT: Okay. You can step down, sir. Thank
3 you.

4 ASSISTANT SOLICITOR LEGETTE: Your Honor, may he be
5 excused?

6 THE COURT: Yes.

7 ASSISTANT SOLICITOR LEGETTE: The State calls Mr.
8 Shawn Weiss. Shawn Weiss.

9 SHAWN WEISS, after being duly sworn, testified
10 as follows:

11 DIRECT EXAMINATION

12 BY ASSISTANT SOLICITOR LEGETTE

13 Q Good afternoon, sir.

14 A Good afternoon.

15 Q State your full name for the record, please.

16 A Shawn, S-H-A-W-N, Weiss, W-E-I-S-S.

17 Q Thank you. And, sir, where are you employed?

18 A Um Laboratory Corporation of America. The trademark
19 name of the company is LabCorp.

20 Q And what capacity are you employed at LabCorp?

21 A I'm Associate Technical Director of the Forensic
22 Identity Department.

23 Q And what are your responsibilities?

24 A Uh main duty is to direct and participate in analysis
25 of samples submitted for DNA testing. This includes

1 interpreting results, writing reports, and testifying to
2 those results.

3 Q Sir, tell us about your educational background,
4 please.

5 A I have a Bachelor of Science in Bio-Chemistry from
6 North Carolina State.

7 Q And what is your previous work experience?

8 A I've been with the same company for seventeen years
9 doing DNA testing.

10 Q Do you belong to any professional organizations?

11 A Um, yes. Southern Association of Forensic Scientists
12 and American Academy of Forensic Sciences.

13 Q Have you testified in court before as an expert
14 regarding DNA analysis?

15 A Yes.

16 Q How many time?

17 A A hundred-and-two.

18 Q And in what states?

19 A Uh, twenty-three states.

20 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
21 time I would offer Mr. Shawn Weiss as an expert in DNA
22 analysis.

23 THE COURT: Any objection?

24 MR. PLEXICO: Uh, I would object, in that he's not a
25 doctor. He's not a Ph.D. He only has a Bachelor's

DIRECT EXAMINATION OF SHAWN WEISS BY ASST. SOL. LEGETTE

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1 Degree, Your Honor.

2 THE COURT: Okay. But I'll tender him as an expert
3 and let you -- allow that to go to the weight of the
4 testimony.

5 Go ahead.

6 ASSISTANT SOLICITOR LEGETTE: Thank you.

7 Q Now, Mr. Weiss, what is DNA?

8 A Um DNA is the blueprint of life. We get half our DNA
9 -- it's a chemical that's found um in our body, in our
10 cells.

11 Um we get half our DNA from our mother and half from
12 our father. DNA codes um for who we are and controls
13 chemical processes in our body.

14 DNA determines whether we're male or female. DNA
15 determines what our hair color is, our eyes, whether we
16 grow tall or grow short.

17 Um in ninety-nine-point-nine percent of our DNA is
18 exactly the same in humans. Um scientists have found
19 areas in DNA where we differ, and they found this as a
20 useful tool for forensics.

21 Q Now, how is DNA used in forensic cases?

22 A Um if a crime is committed and some biological
23 evidence is left, um this could be blood, saliva, semen,
24 skin cells, hair, um we're able to develop a DNA profile
25 from these items left at a crime scene. Um once a DNA

1 profile is made, um developed, we can compare it to
2 reference samples. A reference sample would be from a
3 victim or suspect in the case, and we can determine
4 whether that individual left that biological evidence at
5 the crime scene or not.

6 Q Okay. Now, is LabCorp an accredited laboratory?

7 A Uh, yes. We're accredited by two different agencies.
8 Um one is College of American Pathologists. The other is
9 A.S.C.L.D.L.A.B., and that is American Society of Crime
10 Laboratory Directors Laboratory Accreditation Board.

11 Q Okay. Now, how does a company become accredited like
12 LabCorp?

13 A Um you have to apply for an application. Um once
14 your application is accepted, the outside agency comes in
15 and inspects your laboratory to make sure that you're
16 following the standards that have been set for DNA
17 laboratories. Um some of the things include how we store
18 evidence, how we -- our protocols, whether all the
19 analysts, everyone, meets the qualification to do DNA
20 testing.

21 Q Turning your attention to this case, did LabCorp
22 receive evidence in this particular case?

23 A Yes.

24 Q Please describe how the evidence was received into
25 your laboratory.

DIRECT EXAMINATION OF SHAWN WEISS BY ASST. SOL. LEGETTE

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1 A Um evidence comes in through our warehouse. The
2 majority of our evidence comes in through Federal Express.
3 Um it's placed into a locker, stored locker in our
4 evidence prep room. Um the majority of our cases come
5 from prosecution, um defense attorneys, and um police
6 agencies.

7 Q Now what kind of testing or analysis was performed in
8 this case?

9 A Um we did a type of DNA testing called YSTR's. STR
10 stands for short tandem repeats.

11 Q Now would you tell us briefly how this analysis was
12 done?

13 A Um we use a methodology called PCR, or Polymerase
14 Chain Reaction. Um this is a new methodology that came
15 out in the last ten years, that we're able to xerox or
16 replicate the DNA of the areas where we know individuals
17 differ.

18 Once we do the xeroxing, we're able to develop a
19 picture of this DNA and compare it to samples. So we're
20 able to develop a profile.

21 Um with YSTR's we're looking at twelve different
22 genetic markers on the Y chromosome. Um the Y chromosome
23 is specific for males. Females do not have a Y
24 chromosome.

25 Q Okay. So now, would you mind telling us a little bit

1 about the quality control measures that are used at
2 LabCorp to ensure results?

3 A Um during our testing, um we use um positive and
4 negative controls through the testing. A positive control
5 is run through the entire process to show that we get
6 expected results. We also run negative controls to show
7 that there's no contamination in any of our agents or in
8 the testing.

9 Q And did your laboratory receive -- well, were you
10 able to obtain a result in this particular case?

11 A Yes.

12 Q And what was the result?

13 A I'm going to refer to my notes.

14 Q Yes, please, if they'll refresh you.

15 A Um we received rectal swabs in this case, and we were
16 able to develop a DNA Y chromosome DNA profile at eight of
17 the twelve markers. Um four of the markers, we weren't
18 able to get any results.

19 Um we also received a known blood standard from Eric
20 Hemingway. We were able to develop a Y chromosome profile
21 from his blood standard.

22 And we were able to develop or make a comparison.
23 The rectal swabs had the same profile as Eric Hemingway.

24 Um when we make -- when a match occurs with a Y
25 chromosome, our conclusion is stated that Eric Hemingway

DIRECT EXAMINATION OF SHAWN WEISS BY ASST. SOL. LEGETTE

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1 and his paternal relatives can not be excluded as a source
2 of the male DNA in this sample. And the reason we say his
3 paternal relatives is the Y chromosome is passed on down
4 the paternal link.

5 A father will pass a Y chromosome to his son. The
6 son will pass it on to his son.

7 It doesn't change, as compared to the nuclear DNA
8 profile, um where that is unique to an individual and it
9 changes from each time a person has a sibling. The Y
10 chromosome profile will stay the same.

11 Q Now, once a match is obtained, what is done?

12 A Um we search it through um a Y chromosome database.
13 Um this database had four-thousand-four individuals and of
14 various ethnic backgrounds, and we call this the counting
15 method. We -- we state how many times it's been seen,
16 this profile has been seen, in the database. And in this
17 case, the profile that was developed um revealed two
18 matches in the African American population.

19 Q Now, what is done with the evidence upon completion
20 of the testing?

21 A Um once the testing is done, it's sealed up and sent
22 back to the submitting agency. In this case it was the
23 South Carolina Law Enforcement Division.

24 Q Now, did you return that evidence to S.L.E.D.?

25 A Yes.

1 **ASSISTANT SOLICITOR LEGETTE:** Begging the Court's
2 indulgence?

3 **Q** Mr. Weiss, I hand you now what's previously marked
4 for purposes of identification as State's Exhibit Number
5 Seven, which was opened in this courtroom by myself.
6 Please take a moment and tell me if you recognize that?

7 **A** Um the outer package was sealed by LabCorp evidence
8 tape, and that's my initials, and it's dated May 22nd,
9 2006. Um the inner packages, um the coin envelopes are
10 all sealed um with um LabCorp evidence tape, and again
11 with my date and initials.

12 And I also recognize it, because when we open the
13 evidence, we actually put on LabCorp um we call them
14 accessioning stickers. We're just giving, assigning,
15 LabCorp item numbers to each one of these samples.

16 **Q** Now, before you sent that sample back to S.L.E.D.,
17 from where did you receive it at LabCorp?

18 **A** Well, we received it from Steve Lambert from S.L.E.D.

19 **Q** And before you returned it, where did you -- how did
20 you -- how were you able to return it back to S.L.E.D.?

21 **A** Um it was in um our -- our storage lockers, um went
22 and retrieved the evidence, sealed it up, and sent it back
23 to S.L.E.D.

24 **Q** Okay. Had the evidence been tampered with before --
25 during the time it was in that sealed evidence locker?

1 A No.

2 Q Let's see. Now, Mr. Weiss, is it customary in your
3 profession to make a report once PCR testing is complete?

4 A Um, yes, unless we're requested not to develop um --
5 we do testing for defense, and sometimes they don't want
6 reports written.

7 Q Was a report done in this case?

8 A Yes.

9 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
10 indulgence?

11 (WHEREUPON, State's Exhibit No. 9 was marked for
12 identification only.)

13 Q Mr. Weiss, I hand you now what has been previously
14 marked for identification as State's Exhibit Number Nine.
15 Please take a moment and tell me if you recognize that?

16 A Um, yes. This is the original Certificate Analysis
17 dated May 19th, 2006.

18 Um it contains the items that were received in our
19 laboratory. Um it contains the Y chromosome profiles
20 obtained from the rectal swabs and Mr. Hemingway, our
21 conclusions, and it's signed by myself and my co-worker,
22 Dwayne Winston.

23 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
24 time I would offer State's Exhibit Number Nine into
25 evidence.

1 MR. PLEXICO: Your Honor, I haven't had a chance to
2 cross-examine him, Your Honor. I believe -- I don't -- I
3 do have an objection. We should do it outside the
4 presence of the jury, Your Honor.

5 THE COURT: Okay.

6 ASSISTANT SOLICITOR LEGETTE: I have another report
7 also. I have another also.

8 THE COURT: Okay. Okay.

9 Q Now, Mr. Weiss, ---

10 THE COURT: So we'll just deal with that issue later.
11 That's fine.

12 Q Mr. Weiss, did you also create a report for your
13 statistical calculations in this case?

14 A Um, yes. The original report had what we call the
15 counting method. Um the second report was a letter
16 calculating what we call a Ninety-five Percent Confidence
17 Interval um for searching that database.

18 (WHEREUPON, State's Exhibit No. 10 was marked for
19 identification only.)

20 Q Mr. Weiss, I hand you now what's previously been
21 marked for identification as State's Exhibit Number Ten.
22 Tell me if you recognize that.

23 A Um, yes. This is the original letter um dated July
24 5th, 2006, signed by myself and my co-worker, Dwayne
25 Winston.

CROSS-EXAMINATION OF SHAWN WEISS BY MR. PLEXICO

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1 And this is um again, this contains the ninety-five
2 percent confidence limit. Um this is the frequency, given
3 the size of the database, that we would expect this Y
4 chromosome profile to occur in the population.

5 Q Thank you.

6 ASSISTANT SOLICITOR LEGETTE: Your Honor, at this
7 time I would offer State's Exhibit Number Ten into
8 evidence.

9 THE COURT: Any objection?

10 MR. PLEXICO: Your Honor, I would also object. I
11 object to that. I need to do that out of the presence of
12 the jury.

13 THE COURT: Okay. We'll take up those matters later.
14 Thank you.

15 Q Thank you, Mr. Weiss. I have no further questions.
16 Answer any questions of Mr. Plexico, please.

17 CROSS-EXAMINATION

18 BY MR. PLEXICO

19 Q Thank you for coming, sir. Now, as with all
20 laboratories, trash in equals trash out. Isn't that the
21 old saying?

22 A I never heard that.

23 Q Okay. Well, if you use contaminated samples, you
24 would not come out with a result that was trustworthy,
25 would you?

1 A Um these samples that we tested showed no signs of
2 contaminations.

3 Q That you could see.

4 A That's correct.

5 Q And you don't know what anybody else had done;
6 correct?

7 You know what you got out of the mail; isn't that
8 true?

9 A That's correct. We had no control over the items
10 before they were sent to our laboratory.

11 Q Okay. Now, you have four-thousand-four-hundred --
12 excuse me, four-thousand-four individuals in your
13 database; correct?

14 A Um, yes. Um that database is a Promega Database, a
15 company by Promega.

16 Q Okay. And how many people from Allendale are in that
17 database?

18 A I have no idea.

19 Q Or is anybody from Allendale on that database?

20 A I would have no way of knowing that.

21 Q Is anybody from South Carolina in that database?

22 A Again, I do not know where um all these samples came
23 from. They were chosen at random throughout the U.S.

24 Q Were any from Georgia?

25 A I have no idea.

1 Q Okay. Now, you said you had two matches; correct?

2 A Yes.

3 Q Okay. Now, but -- but if you extrapolate that,
4 extend that to the population, how many people are in
5 America? Three hundred million?

6 A Yes.

7 Q How many black people are in America?

8 A I -- seventy-five. I don't know.

9 Q Seventy-five million?

10 A I don't know the exact number.

11 Q Okay. I mean, I'm not asking you that.

12 A Yeah.

13 Q I mean, just say, to make the math here, seventy-five
14 million?

15 A That's fine.

16 Q Okay. So, if out of every four-thousand-four there
17 were two, and you multiply that up to seventy-five
18 million, how many suspects would that be? Five hundred
19 thousand? Six hundred thousand possible suspects?

20 A I can do it with my other report with the ninety-five
21 percent confidence, the frequency of this profile
22 occurring in the population would be point-one-percent.

23 Um ---

24 Q So ---

25 A If -- if you put that in, do the inverse of that, it

1 would be one in about a thousand male individuals could
2 have that profile.

3 Q So if I had seventy-five million, is that
4 seventy-five million?

5 A Yes.

6 Q And I divided that by a thousand, you just take off
7 the last three zeros. So, to match that profile in the
8 black population, it's seventy-five thousand black men;
9 right?

10 A That's a possibility, yes.

11 Q I mean ---

12 A These -- with ninety-five percent confidence, I'm not
13 saying a hundred percent confidence. The database -- it's
14 all dependent on the size of the database, which is just a
15 sampling of the population. Um, yes, that's possible.
16 These are only estimations.

17 Q Could be more.

18 A Yes, it could.

19 Q Could be less.

20 A Correct.

21 Q Could be a hundred thousand black men; right?

22 A That's correct.

23 Q So, you would have a hundred thousand possible
24 suspects if we were using that for evidence in a criminal
25 case; right?

1 A Yes, it's possible.

2 Q So it's virtually meaningless in an individual trial.

3 A Um that's not true, because Y chromosome is used more
4 as an exclusionary test, and we could not exclude this
5 individual as being a possible contributor to um the DNA
6 profile, the Y chromosome profile, from the rectal swabs.

7 Q Well, you haven't excluded the other
8 seventy-five/hundred thousand other unknown individuals
9 either.

10 A That's correct.

11 Q So my client is one of maybe a hundred thousand
12 suspects.

13 A That's a possibility.

14 Q So when you present the evidence as
15 ninety-nine-point-ninety-nine percent, isn't that
16 misleading?

17 A Um, no, because it's an estimation, and we're saying
18 it as ninety-five-percent confidence, and we're actually
19 reporting the upper bound estimation of frequency, which
20 makes it more common in the population versus the lower
21 frequency.

22 Q But it still -- you still have a hundred thousand
23 suspects.

24 A That's a possibility.

25 Q I mean, were y'all asked to test Michael Williams'

1 blood standard?

2 A Um, no.

3 Q Y'all have exactly what standard, blood test, DNA
4 test -- let me rephrase that all together. I don't want
5 to be confusing.

6 Y'all have a much more exacting DNA test than
7 S.L.E.D. has; correct, the South Carolina Law Enforcement
8 Division lab has?

9 A This test, the Y chromosome, I would not say is --
10 it's more um the test that's used when you have a mixture
11 of male and female samples. Um it's able to pull out the
12 male profile.

13 Q It's beyond ---

14 A But the best testing to use is the nuclear DNA
15 testing, which would generate a profile that's unique to
16 that individual.

17 Q Okay. Now, all right, the South Carolina Law
18 Enforcement Division lab didn't have the ability to do
19 this test in South Carolina.

20 A The Y chromosome test.

21 Q The South Carolina lab did not have the ability to do
22 this test, that's why they sent it to LabCorp; correct?

23 A For the Y chromosome test, yes.

24 MR. PLEXICO: Court's indulgence?

25 Q And you only tested my client's standard there at

REDIRECT AND RECROSS-EXAMINATION OF SHAWN WEISS
BY ASST. SOL. LEGETTE AND MR. PLEXICO

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1 LabCorp. You did not test Michael Williams'; correct?

2 A That's correct. That's the only sample that we were
3 sent.

4 Q Thank you. I don't have anything else.

5 REDIRECT EXAMINATION

6 BY ASSISTANT SOLICITOR LEGETTE

7 Q Mr. Weiss, if Michael Williams had been excluded
8 already, would there be any reason for you to test his
9 sample?

10 A Um if it was done, the nuclear DNA testing, and it
11 was excluded, yeah, there's no reason to run the
12 additional testing.

13 Q Thank you. No further questions.

14 MR. PLEXICO: Just -- may I?

15 RECROSS-EXAMINATION

16 BY MR. PLEXICO

17 Q You don't know anything about Michael Williams,
18 because you didn't test him; correct?

19 A That's correct.

20 Q All right.

21 THE COURT: Okay. Is that it?

22 ASSISTANT SOLICITOR LEGETTE: No further questions,
23 Your Honor.

24 THE COURT: Okay. All right.

25 ASSISTANT SOLICITOR LEGETTE: May he be excused?

1 THE COURT: Um with the exception of the matters that
2 we need to take up outside the presence of the jury.

3 ASSISTANT SOLICITOR LEGETTE: Yes.

4 THE COURT: So, sir, you can step down, but remain
5 with us for a little while longer.

6 WITNESS: Okay.

7 THE COURT: Thank you.

8 ASSISTANT SOLICITOR LEGETTE: May we approach, Your
9 Honor?

10 THE COURT: Yes.

11 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
12 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
13 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
14 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
15 AND HEARING OF THE JURY:)

16 THE COURT: All right, ladies and gentlemen of the
17 jury, I'm going to send you to your jury room so that I
18 can just go ahead and deal with these legal matters,
19 because these persons obviously came from out-of-state,
20 and that way I don't have to hold them.

21 So, I remind you not to discuss the case in any
22 shape, form, or fashion, and yes, you may have your
23 comfort break. Go ahead.

24 (APRIL 25, 2007, 3:00 P.M., WHEREUPON, THE JURY
25 RETIRES FROM THE COURTROOM, AND THE FOLLOWING

1 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

2 THE COURT: All right, Mr. Plexico, I'm happy to hear
3 from you.

4 MR. PLEXICO: Thank you, Your Honor. Your Honor,
5 starting with my client's blood standard, Item Sixteen,
6 when Investigator Hutto took it from the hospital and took
7 it to S.L.E.D., then it was completely unknown, Your
8 Honor, through all the testimony, Judge, until Mr.
9 Lambert, I believe, um I believe testified. Um and -- but
10 it's completely unknown if it was contaminated and where
11 it was in the lab, where it was at S.L.E.D.

12 They had asked -- they had asked Stephanie Stutts, I
13 believe it was, Judge, and she denied having anything to
14 do with Item Sixteen. And she was, quite frankly,
15 surprised when they opened the bag up, Judge.

16 Um and since this was a lost standard, it was their
17 responsibility to show with credible evidence, Your Honor,
18 that it had not been contaminated. This is just like a --
19 a -- a sample for blood for a DUI, Your Honor.

20 Um since they did not do that, it's completely
21 unknown to them, the results of the tests from S.L.E.D.
22 and the results of the tests from LabCorp are absolutely
23 meaningless, Your Honor, in regards to Item 16, which is
24 the blood from Eric Hemingway. And I would ask that you
25 suppress any tests, any evidence, they seek to put into

1 the record in regard to that matter.

2 And as a matter of fact, to -- to -- since we're at
3 this point, Judge, and they haven't cured the problem, um
4 which is within their power to do, if they could, but um
5 I'd move to ask the Judge to strike the testimony and
6 instruct the jury to ignore all the evidence that they
7 have heard from any S.L.E.D. employee, Judge, with the
8 exception of the investigator, and all employees of
9 LabCorp. Thank you, Judge.

10 THE COURT: All right, Ms. Legette?

11 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor. I
12 would cite again to State versus Taylor with regards to
13 persons in the chain of custody. I would specifically
14 tell the Court that the evidence to establish the identity
15 of those who handled the evidence and the manner in which
16 it was handled merely goes to the weakness in the chain of
17 custody and not to the admissibility of the evidence.

18 And, Your Honor, in this particular case, we believe
19 we have demonstrated that with regards to Item Number
20 Sixteen, which is what Mr. Plexico is alleging at this
21 moment that we have not proved chain of custody on, Your
22 Honor. We have demonstrated, in my opinion, it would be
23 the State's position is we have demonstrated, Your Honor,
24 that the blood was taken from Mr. Hemingway by Ms. Becky
25 Rowell. It was turned over to Investigator Hutto, who

1 then delivered it to the S.L.E.D. drop-box, and Agent
2 Lambert, who was the DNA analyst in this particular
3 matter, testified he received it from Emily Norris, who
4 had gotten it from the DNA drop-box, Your Honor.

5 And though Ms. Norris did not testify, she was
6 identified in our chain of custody, Your Honor. And the
7 manner of handling it is also demonstrated by the --
8 evidenced by the fact that Mr. Lambert testified that when
9 he received it, it was in an intact condition. It had not
10 been tampered with in any way, um that it was in a sealed
11 condition, Your Honor.

12 And so we submit at this point, Your Honor, that
13 though we have persons in the chain of custody who have
14 not testified, that we have identified those handlers,
15 Your Honor. We have identified how they have handled that
16 particular piece of evidence.

17 Additionally, Your Honor, caselaw speaks to the
18 identifying the chain through persons in the chain of
19 custody as far as is practicable, Your Honor. And without
20 Mr. Plexico being able to demonstrate some ill motive or
21 some tampering or bad-faith on the part of the State of
22 South Carolina, Your Honor, we believe that our evidence
23 of Mr. Hemingway's blood is admissible, Your Honor.

24 If there is a weakness in the chain of custody, that
25 is a jury question for the jury to decide whenever this

1 case goes to the jury, Your Honor. Thank you.

2 THE COURT: Anything further?

3 MR. PLEXICO: Your Honor, just one statement. In
4 this case, it was obvious from the testimony, the evidence
5 was lost. The evidence was lost. They asked -- they
6 asked one person who didn't know anything about it. They
7 are not confident in their own records.

8 ASSISTANT SOLICITOR LEGETTE: Your Honor, if Mr.
9 Plexico is speaking to Item Number Sixteen, which
10 Stephanie Stutts testified to when I handed her that
11 package, the item in there that -- she testified that she
12 had certain items in her possession. She did not receive
13 Item Number Sixteen. She indicated she received the oral
14 swabs, to include Item Number Nine, which was also in that
15 package I handed her.

16 I will admit that on the part of the State of South
17 Carolina, I did hand her the wrong package, Your Honor;
18 however, that does not go to the fact that she -- the
19 evidence got lost. I merely handed her the wrong package,
20 which she had never seen before, Your Honor.

21 So, with regards to Item Number Sixteen, Your Honor,
22 no, she did not have that particular item, and it had been
23 testified to where it was, how it got there, and where it
24 went, and who handled that particular piece of evidence,
25 Your Honor.

1 MR. PLEXICO: In a case they haven't even proved
2 corpus delicti yet, you know, to let this in, I think it
3 only compounds -- I don't think you can let it in, Judge.

4 THE COURT: Okay.

5 MR. PLEXICO: And can I please add one more thing?

6 THE COURT: Yes.

7 MR. PLEXICO: S.L.E.D. said their results were
8 meaningless, and I would submit that to let it in, to let
9 in meaningless evidence, is a violation -- would -- excuse
10 me, um would be inadmissible evidence under Rule 403, Your
11 Honor, because of the probative value is -- is
12 substantially outweighed by the danger of unfair
13 prejudice, Judge.

14 THE COURT: If I ---

15 MR. PLEXICO: To let in meaningless evidence. Their
16 own expert said the evidence was meaningless.

17 THE COURT: Okay.

18 MR. PLEXICO: Their own expert.

19 THE COURT: Go ahead. I'm not going to speak for
20 you. Go ahead.

21 ASSISTANT SOLICITOR LEGETTE: Do you wish to hear
22 from the State, Your Honor?

23 THE COURT: Yes. That's fine. Yes.

24 ASSISTANT SOLICITOR LEGETTE: Your Honor, if I may
25 address the matter of corpus delicti first? Mr. Plexico

1 has stipulated the body of Harriett Washington was dead at
2 autopsy.

3 Your Honor, um with regards to the ---

4 **MR. PLEXICO:** Your Honor, I object. Just because --
5 I think this is out of place right now, because we have --
6 I haven't made a motion to dismiss on that. So, she's not
7 done with the State's case.

8 That's okay. I mean, if she wants to argue that ---

9 **THE COURT:** Okay. You're using that in the um
10 argument. She's just trying to clear up that there's a
11 stipulation that Ms. Washington is deceased.

12 **MR. PLEXICO:** We agree that she is deceased.

13 **THE COURT:** Okay.

14 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, with
15 regards to the meaninglessness of our evidence, Your
16 Honor, alleged meaninglessness, um I believe the testimony
17 was something to the effect of he needed to send it out to
18 have more testing done, because they did not do YSTR
19 testing at S.L.E.D. I don't believe he said the evidence
20 was actually meaningless, Your Honor, and the evidence we
21 have just heard from Mr. Shawn Weiss, he indicated
22 something totally different, that Mr. Hemingway could not
23 be excluded, he and his paternal relatives, Your Honor.

24 So I would submit the evidence is not meaningless,
25 Your Honor, and it is relevant. And we submit to the

1 Court that Mr. Plexico's motion to have the evidence not
2 admitted -- not admitted into evidence, Your Honor, is --
3 should be denied. Thank you, Your Honor.

4 THE COURT: Okay. All right, as to the um issue with
5 regard to S.L.E.D., they indicated that they were limited
6 in their capacity as to what they were actually testing,
7 and so when they sent it off to LabCorp, LabCorp has more
8 refined and um -- um significant testing. They're just
9 much more um on the cutting edge of technology in that
10 regard.

11 So I didn't take that particular statement to mean
12 that, but of course, that's a jury argument as to whether
13 or not when you exclude, just as you've done effectively
14 on cross-examination, have you only excluded, for example,
15 Michael Williams, or have you excluded the rest of the
16 population, or are you only dealing with what has been
17 presented to you. So that, you all can argue with that.

18 Insofar as we're talking about in the chain, you know
19 as I've indicated earlier, right now, it still appears to
20 the Court that the State has met their burden with respect
21 to everything that has gone on from the beginning of the
22 chain and all the intervening links. Um necessarily, the
23 persons who she um, you know, the State would have
24 testifying at any given time, when items were brought to
25 them, it is reasonable to expect that they don't know what

1 happened to it before it got to them, but they can only
2 testify to how they received it and whether or not that
3 they believe that there was actually any tampering or any
4 contamination based on their expertise for their
5 individual reasons for why they're testing it or why
6 they're handling it at that particular time.

7 Um looking at the um case of State versus Taylor,
8 which factually indicated that a police evidence custodian
9 didn't testify in that case, however, a successor
10 custodian did testify, and the identity of each person and
11 the manner of how things were handled along the way were
12 allowed in, and because the identity of each person is
13 known in the chain as to who handled the evidence at any
14 given time, the Court allowed it in um as a reasonable
15 demonstration of the chain of custody and specifically
16 indicated that the Court should try not to suppress such
17 evidence, unless there is some proof of actual tampering,
18 bad-faith, or ill-motive, not what we're getting on
19 cross-examination in the sense of going to the weight,
20 like, you know, they're going to put some speculation or
21 suspicion in the jurors' mind, which of course, the
22 defense has that ability to do so. But right now, I don't
23 -- the Court does not rule that the defendant has made
24 some offer of proof of such tamperings or contaminations.
25 So I stand by my prior ruling.

1 Anything further?

2 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, at this
3 time, I would seek to move into evidence the items that we
4 have submitted to the Court. I believe it was Item Nine,
5 Item Ten, um, Item Six, um Exhibit Eight, Your Honor.

6 **THE COURT:** Okay. And what I do want to know with
7 respect to the reports themselves, other than those items
8 that are identified within the report, did the defense
9 have any objections as to the report, because we didn't
10 get that far, because we said we had to wait until the
11 chain of custody arguments. As to what's in the report,
12 was there anything else indicated?

13 **MR. PLEXICO:** May I please know what are the specific
14 ones she's going to put in?

15 **THE COURT:** Sure.

16 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I'm not
17 sure of the exact number.

18 **THE COURT:** Right. But I do know that we stopped the
19 questioning, because we were trying to deal with the chain
20 of custody issues, but I don't know if he has some other
21 objections.

22 **ASSISTANT SOLICITOR LEGETTE:** I believe it was Item
23 Seven, Your Honor, or Exhibit Number Seven, Exhibit Number
24 Eight, Exhibit Number Ten, Exhibit Number Nine, we were
25 trying to -- we were offering for admission into evidence,

1 Your Honor. That's Seven, Eight, Nine, and Ten, Your
2 Honor.

3 MR. PLEXICO: Your Honor, I don't have any additional
4 objections um to what's in there, Your Honor.

5 THE COURT: Okay.

6 MR. PLEXICO: To the specific reports that she has.
7 I think it's Eight, Nine, and Ten.

8 THE COURT: Okay. And is there any reason to call
9 back those witnesses to get those offered in, or is it
10 okay for, subject to defense counsel's objections, and
11 then me having indicated my ruling, just to let the jury
12 know that it's been admitted into evidence?

13 MR. PLEXICO: That would be okay with me, Your Honor.

14 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor. Let
15 them know that they've been admitted into evidence, Your
16 Honor.

17 THE COURT: Okay. And I just want to make sure that
18 as to either side, you don't have any further questioning
19 that you need of those witnesses, because we did make you
20 stop, you know, short of admitting. So I don't know, once
21 admitted, did you intend to go down, you know, ask more
22 questions of the witness once the evidence was in?

23 ASSISTANT SOLICITOR LEGETTE: I do not, Your Honor.

24 THE COURT: Okay. Same thing for defense?

25 MR. PLEXICO: I have no intentions of calling either

1 LabCorp employees back, Your Honor.

2 THE COURT: Okay -- excuse me?

3 MR. PLEXICO: I have no intention of calling them
4 back, Your Honor.

5 THE COURT: Okay. And that would include S.L.E.D.
6 witnesses as well?

7 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

8 THE COURT: I just want to make sure that once
9 evidence is in, that's when sometimes you have additional
10 questions. It wasn't in until this point, and so I just
11 want to make sure that we're not releasing these witnesses
12 if you all have some other information you want to gather
13 from them.

14 MR. PLEXICO: Thank you, Your Honor. I don't have
15 anything further.

16 THE COURT: Okay. All right.

17 ASSISTANT SOLICITOR LEGETTE: I don't have anything
18 further, Your Honor.

19 THE COURT: Okay.

20 ASSISTANT SOLICITOR LEGETTE: May we go excuse our
21 witnesses?

22 THE COURT: Yes. Yes. Yes. That's why I wanted to
23 make sure that we dealt with all of that.

24 ASSISTANT SOLICITOR LEGETTE: Your Honor, I need a
25 brief, like five minute, recess to take care of some

1 coordination with the clerk's office, please?

2 THE COURT: Okay. That's fine. Court will just be
3 in recess for five minutes or so.

4 (WHEREUPON, A SHORT BREAK WAS TAKEN; THEREAFTER, THE
5 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT OF
6 THE PRESENCE OF THE JURY:)

7 THE COURT: Okay. Everybody ready to proceed?

8 ASSISTANT SOLICITOR LEGETTE: Your Honor, the State's
9 ready.

10 MR. PLEXICO: Your Honor, I understand the State
11 intends to call Katrina Goodwin to the stand, Your Honor.

12 THE COURT: Uh-huh.

13 MR. PLEXICO: Um I would move at this time to
14 suppress -- she has a statement, Your Honor, that I
15 believe confuses the matters in that statement and which
16 would not serve the interest of justice. I would move to
17 um suppress this statement, Your Honor.

18 THE COURT: Can you give me a little more
19 information?

20 MR. PLEXICO: It says, for instance, um -- it says my
21 client, quoting my client, he said he was -- "He said he
22 was in a fight," Your Honor. This is not um -- it doesn't
23 state who he was in a fight with or anything with regards
24 to that.

25 That would be a prior bad act. My client has not yet

1 testified, Your Honor, and I would move to um -- to
2 suppress the statement on that ground.

3 Further, it says um he thought he had hurt someone.
4 Well, you know, I might have -- since these kids were
5 planning on going to Virginia and starting a new life, he
6 might have broken up with yet another girlfriend. These
7 are young men. That's what they do these days.

8 He might have not -- he might not have -- he might
9 have slammed the door at the grocery store on a little old
10 lady in his haste to get out with his loaf of bread. It
11 would only be speculative at best, Your Honor, that it has
12 anything to do with this case.

13 Furthermore, they're trying through the mother to
14 introduce prior bad acts. The things are so questionable
15 that -- that it just makes him look bad, Your Honor. And
16 um I just don't see, and I've got -- let me get -- I've
17 got my formal objection here.

18 THE COURT: And you said whose mother?

19 MR. PLEXICO: That's my client's mother, Your Honor.

20 THE COURT: Okay.

21 MR. PLEXICO: Um, Your Honor, under Rule 402, I
22 believe the -- the -- the um prejudice, Your Honor, is
23 substantial, and the danger of unfair prejudice, the
24 danger of misleading the jury, because we wouldn't know
25 what acts that he was referring to when he said that to

1 his mother, Your Honor.

2 It's also inadmissible under 404(b), evidence of
3 other crimes, um wrongs, and acts, it's not admissible to
4 prove the character of a person in order to show action
5 and conformity thereof. And here they want to show that
6 he might have hurt somebody else, therefore, he hurt the
7 decedent, Your Honor. And that would clearly be
8 inadmissible under Rule 404(b), Your Honor.

9 And his character is not an issue. He has not
10 testified, Your Honor. And it's tantamount to putting in
11 a record without -- a record to say a bad thing, without
12 the client testifying. And there's no allowable exception
13 that can be alleged here. There's absolutely no basis to
14 um -- to -- to admit this statement, Your Honor.

15 THE COURT: Okay.

16 MR. PLEXICO: Or have any testimony regarding this
17 matter brought out in front of the jury. And that's my
18 motion to suppress any mention of those matters in any
19 manner, Your Honor.

20 THE COURT: Okay. Um starting with Katrina Goodwin,
21 um defense counsel is indicating that the statement
22 indicates that defendant had a fight, but you're saying
23 it's not specific as to who or any name or anything like
24 that.

25 MR. PLEXICO: Correct, Your Honor.

1 **THE COURT:** Okay. And then um that's the same
2 indication with respect to an alleged statement about um
3 thought he had hurt someone?

4 **MR. PLEXICO:** Yes, Your Honor. Just like you
5 couldn't -- you couldn't introduce an assault and battery,
6 prior assault and battery, especially in a crime that --
7 that specifically alleges assault.

8 **THE COURT:** Okay. Um when was the statement taken?

9 **MR. PLEXICO:** This was April 13th, 2005, it appears,
10 Judge.

11 **THE COURT:** Okay. And is there any name in there,
12 other than the defendant? I mean, just referencing
13 anything that would make you, as someone not being part of
14 the case, so to speak, would anybody be able to know um,
15 you know, make any indications from that statement?

16 **MR. PLEXICO:** Um I -- I wouldn't have -- um -- um --
17 I wouldn't have any other objections. She notes that
18 there were some scratches, but that's just her physical
19 observations, Judge.

20 **THE COURT:** Okay, which that you would agree she
21 could just -- if she saw him, she could just describe
22 that.

23 **MR. PLEXICO:** I -- I -- unfortunately, I agree.

24 **THE COURT:** Okay, but you're just saying not as to a
25 statement, what that meant. Okay.

1 **MR. PLEXICO:** But it's prior acts that are tantamount
2 to allowing crimes in on the basis of Federal 402 and 404,
3 Judge.

4 **THE COURT:** Okay. Does he indicate from the um -- I
5 mean Ms. Goodwin indicate from the statement when this
6 alleged event even happened?

7 **MR. PLEXICO:** Well, she doesn't know when it
8 happened, Judge.

9 **THE COURT:** No, no, no, I'm talking about in the
10 statement, does she say he told me on such-and-such a
11 date? Does she put a place and time?

12 **MR. PLEXICO:** Um she says that this is the day that
13 she picked him up, Judge.

14 **THE COURT:** That she picked him up?

15 **MR. PLEXICO:** May I approach?

16 Madam Clerk, would you hand this up to the Judge?

17 **THE COURT:** Thank you.

18 Okay. Oh, she is the mother. I thought you were
19 talking about two separate persons. Okay.

20 **MR. PLEXICO:** I'd also move to mark out -- to have no
21 reference to the sentence of "I told him that he should
22 turn himself in."

23 **THE COURT:** I was going to ask you about that.

24 **MR. PLEXICO:** I just think it's unduly prejudicial
25 and has no -- it substantially prejudices -- the probative

1 value, Judge, is substantially outweighed by the danger of
2 unfair prejudice in misleading the jury. We have no idea
3 what he was talking about.

4 **THE COURT:** And let me ask the State, are you um
5 having um -- was it your intention to have Ms. Goodwin
6 testify beyond what's in this statement? In other words,
7 right now the statement does not indicate who he was in
8 the fight with, that she thought it was with his
9 girlfriend, Erica Jones, and says he should turn himself
10 in.

11 And I would state that that latter statement makes it
12 sound more clear, as if there were other conversations
13 that are not indicated here. In other words, there's no
14 identity of a particular person that's in the fight, and
15 why would someone turn themselves in on a fight,
16 necessarily?

17 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, this um --
18 the statement itself was taken in April; however, she
19 talks about having picked him up on March 25th.

20 **THE COURT:** Oh, and I agree with that.

21 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, and we
22 believe that this goes to what happened with regards to
23 Harriett Washington. And pursuant to Federal Rule -- I'm
24 sorry, South Carolina Rules of Evidence, 801(d)(2), this
25 is an admission by a party opponent, and I believe Mr.

1 Plexico's argument is completely irrelevant. I mean, he
2 made an admission, a party opponent. Michael Williams, he
3 made an admission to Michael Williams. He made an
4 admission to his mother, Your Honor, and we are ---

5 **THE COURT:** Well, the distinction with Michael
6 Williams, at least, and I'm not telling you how I'm
7 ruling, but so that you can be prepared to respond to the
8 Court, is that the testimony was specific as to an
9 individual, whereas here, I don't think the defense is
10 objecting that she can indicate that she picked the
11 defendant up, indicate the date, you know, where/when,
12 indicate what she observed on the way home, and then the
13 gap comes in when you're discussing the fight and her
14 thinking that it was his girlfriend, Erica Jones, but then
15 there's no indication that he told her differently. You
16 understand what I'm saying?

17 And then the next sentence goes to: Well, I told him
18 he should turn himself in.

19 But the -- there's no statement in here that he
20 corrected her when um -- or anything to indicate it was
21 anybody other than Ms. Jones, unless I'm missing
22 something.

23 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, in viewing
24 the statement, it says then later he said he thought he
25 had hurt someone. Your Honor, we believe that this is ---

1 **THE COURT:** And that's -- that's not a problem, but
2 what I'm saying is that if she thought he was in a fight
3 with Erica Jones, it could be that he hurt her. You see
4 what I'm saying?

5 There's no indication, other than um, unlike Mr.
6 Williams, where he specifically, the um defendant
7 specifically um supposedly told him about um the decedent.
8 And I guess what I'm saying, in the context of the mother,
9 the way the statement reads, she thinks the fight was with
10 Ms. Erica Jones.

11 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, ---

12 **THE COURT:** Even if he had hurt somebody, that it was
13 with her, because I don't see where she's indicating that
14 he said differently.

15 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, ---

16 **THE COURT:** If that's what her thoughts are.

17 **ASSISTANT SOLICITOR LEGETTE:** I'm sorry. Go ahead.

18 **THE COURT:** That's okay. I'm just telling you the
19 context in which it could be viewed in a different way, if
20 you -- if you can respond, you know, to that way, too.

21 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, I think
22 that's a compelling argument, and I believe Mr. Plexico
23 probably could flesh that out on cross-examination.

24 Your Honor, further, the rule Mr. Plexico cites with
25 regard to it being unduly prejudicial, the standard I

1 believe is not that it's prejudicial, that it -- the
2 prejudicial affect is substantially outweighs the
3 probative value, and the probative value here could not be
4 denied, Your Honor. The prejudicial affect, Your Honor,
5 obviously, all the evidence we have is prejudicial, but
6 that is not the standard. The standard is substantially
7 outweighs its probative value, Your Honor.

8 And we submit to the Court that this statement is
9 obviously relevant. It will not waste the jury's time,
10 and it will not confuse the issues, Your Honor.

11 And if Mr. Plexico believes that somehow it would be
12 confusing here, he can have Ms. Goodwin explain the
13 statement. Obviously, ---

14 THE COURT: I guess this will help me. Is Ms.
15 Goodwin going to come today to indicate that at any point
16 the defendant corrected her thought that it was not his
17 girlfriend, Ms. Erica Jones, in which he had a fight um or
18 which he might have um -- which she might have thought he
19 received the scratches from that fight, to indicate that,
20 no, it was um the decedent?

21 ASSISTANT SOLICITOR LEGETTE: Harriett Washington.
22 Your Honor, um ---

23 THE COURT: Because I think that's where we're having
24 the rub here.

25 ASSISTANT SOLICITOR LEGETTE: Well, Your Honor, I --

1 I don't know that she's going to come here and say that,
2 "My son killed Harriett Washington."

3 THE COURT: No, no, no. I'm not asking that.

4 The statements about the scratches, when she says she
5 picked him up and she notices them, ---

6 ASSISTANT SOLICITOR LEGETTE: Uh-huh.

7 THE COURT: --- in the statement it says, "I thought
8 he was in a fight with his girlfriend, Erica Jones. Then
9 later he said he had hurt someone."

10 ASSISTANT SOLICITOR LEGETTE: Uh-huh.

11 THE COURT: I don't see any indication that her mind
12 was changed, and so I guess what I'm asking is even though
13 you see the next statement, no other woman is identified.
14 So, is she going to testify today that somehow she
15 perceived it was really the decedent? Because it's not in
16 the statement. That's what the defense is ultimately
17 going to.

18 ASSISTANT SOLICITOR LEGETTE: Your Honor, I -- to be
19 frank with the Court, I don't know what she's going to
20 say. I have a statement here made by the defendant's
21 mother. I don't know what she's going to say. She
22 refused to talk to me, um so I don't know what she's going
23 to say, Your Honor.

24 THE COURT: Okay.

25 ASSISTANT SOLICITOR LEGETTE: In fact, if the Court

1 is so inclined, we can redact the part about "I thought it
2 was a fight with his girlfriend, Erica Jones," and
3 question her about the rest of it, Your Honor. Um,
4 because ---

5 THE COURT: Except he wants that in there. I -- I
6 can't, you know, take that out.

7 ASSISTANT SOLICITOR LEGETTE: Well, that's fine. I
8 -- I can -- I have the whole thing here, Your Honor. I
9 would like to question her about the entire thing, and I
10 don't believe it is um unduly prejudicial. I don't
11 believe that it would -- I don't believe it's going to,
12 you know, confuse the jury or confuse the issues, Your
13 Honor. I believe it's relevant.

14 I believe under 801(d)(2), it is an admission by a
15 party opponent, a defendant to his mother, regarding
16 something that may have happened in the recent past when
17 he made the statement to her. And for that reason, we
18 would respectfully ask the Court to deny Mr. Plexico's
19 motion to suppress this statement.

20 THE COURT: Um ---

21 MR. PLEXICO: Judge ---

22 THE COURT: Go ahead.

23 MR. PLEXICO: Judge, which goes to my point. We
24 don't, Your Honor, it just goes to my point that to bring
25 in another -- to bring in a different matter, an assault,

1 Your Honor, there's no relationship to this case.

2 THE COURT: But -- well, when you're looking at that
3 rule about other crimes or wrongs, that is going to
4 something that is perceived to be a fact that, you know,
5 something actually happened, there was another crime or
6 there was another wrong or there was another bad act. Um
7 they could not then bring in any extrinsic evidence to
8 prove it, if there's a statement to the contrary, you
9 know, once you're asking a witness about that, but the way
10 I read it is the mother noticed some scratches on his
11 neck.

12 Then, the next sentence says, "He said he was in a
13 fight," as if there was a conversation of, you know, um
14 directed toward the defendant that he -- she noticed that,
15 and that ---

16 MR. PLEXICO: I agree.

17 THE COURT: --- he said it was a fight as in response
18 to her mentioning the scratches. And if that's the case,
19 then that's going to what occurred somewhere between, you
20 know, that day before or up until the time she picked him
21 up. So that, to me, does not indicate a whole other
22 matter. It's in response to an observation by his mother.

23 MR. PLEXICO: Your Honor, the other thing, he doesn't
24 say, you know, not to belabor it, I think it brings in a
25 separate matter, Your Honor.

1 **THE COURT:** But what is the separate matter, I guess
2 is what I'm saying, because ---

3 **MR. PLEXICO:** Another fight. There's no indication
4 that's it's related to Harriett Washington.

5 He made no indication that the crime -- he made no
6 indication those scratches came from Harriett Washington
7 when he said that.

8 **THE COURT:** Well, then if that's the case, that's
9 what she can say. You understand what I'm saying?

10 Where are you -- where are you going? When you --
11 when you talk about crimes, bad acts, and all that stuff,
12 that is suggesting that there was some prior incident, you
13 know, like, you know, there's a um -- something other than
14 this is read in the context of I noticed something and
15 this is the response to that, um something that I noticed,
16 which -- which has apparently occurred in some twenty-four
17 hour period, as opposed to a separate incident?

18 **MR. PLEXICO:** I'm saying, if somebody was in a
19 fight -- fight on Friday, uh -- Friday, Saturday, and
20 Sunday, and somebody died on Sunday, would they be able to
21 bring in the fights on Friday and Saturday? My answer
22 would be no.

23 **THE COURT:** I would agree with that.

24 **MR. PLEXICO:** Because there's no indication this is
25 not the same. This is exactly the same, and that's why

1 I'm moving to suppress it, Judge, because it wouldn't be
2 admissible, and if he ---

3 THE COURT: Are you trying to indicate that she
4 cannot say she noticed some scratches when she picked him
5 up?

6 MR. PLEXICO: That, I don't have any problems with.

7 THE COURT: Okay.

8 MR. PLEXICO: That's a physical observation. If she
9 says that, that's fine, Judge.

10 This stuff about getting in a fight and he ought to
11 turn himself in and he thought he had hurt someone,
12 there's no indication that's related to Harriett
13 Washington. That's what I'm trying to keep out. She saw
14 the scratches, that's -- that's what she saw.

15 THE COURT: Because we don't have any indication as
16 to whether the mother will actually say um the defendant
17 ever said to her the who.

18 ASSISTANT SOLICITOR THORNTON: May I be heard, Judge?

19 THE COURT: Yes.

20 ASSISTANT SOLICITOR THORNTON: I realize it may be
21 unusual since Ms. Legette is handling this case, but if
22 it's all right with the Court, I'd like to respond?

23 THE COURT: Okay.

24 ASSISTANT SOLICITOR THORNTON: Judge, based on Mr.
25 Plexico's logic, if um his client had been charged with

1 bank robbery, let's just say it's a bank robbery of
2 Wachovia.

3 THE COURT: Uh-huh.

4 ASSISTANT SOLICITOR THORNTON: And he made a
5 statement to somebody the day after, or in this case two
6 days after, the alleged incident, he said, "Yeah, I just
7 robbed a bank," there's no requirement, any rule, or any
8 cases in South Carolina that I'm aware of that if he
9 doesn't mention Wachovia or which bank he robbed, and that
10 is basically Mr. Plexico's argument. He didn't say it was
11 Harriett.

12 THE COURT: Uh-huh.

13 ASSISTANT SOLICITOR THORNTON: And the jury could
14 interpret it. And his mother, and I don't mean to remove
15 it as to redact it, but if you for a moment take out the
16 fact that his mother makes an interpretation, ---

17 THE COURT: Right.

18 ASSISTANT SOLICITOR THORNTON: --- the statement is
19 clearly admissible, and he's free to talk to her about
20 that interpretation.

21 THE COURT: Uh-huh.

22 ASSISTANT SOLICITOR THORNTON: The State has not
23 alleged that he ever assaulted his girlfriend. There is
24 no other matter that we've attempted to bring in.

25 Based on Mr. Plexico's argument, if a defendant

1 doesn't specify what he did with which person or what --
2 then no statement ever made by a defendant would be
3 admissible. What you have in this case is somebody that
4 says, mother, his mother say, what -- "What happened?"
5 because she noticed the scratches.

6 And he says, "I hurt someone."

7 And it is simply her interpretation, which it, you
8 know, it would actually help Mr. Plexico. He probably
9 wants that in there, if the statement is admitted, but
10 regardless, that's just her interpretation. That's the
11 witness's interpretation.

12 The statements that he makes are clearly admissible,
13 because they're admissions by a party opponent. And I
14 strongly disagree with Mr. Plexico that it -- it -- that
15 it brings up another matter or does anything else, because
16 what it in essence is, is somebody that says, "I got in a
17 fight," and then later says, "I may have hurt someone."
18 That's clear admissible, and if he disagrees or agrees
19 with the mother's interpretation of what she heard, that's
20 -- I mean, that's another matter that he can flesh out.
21 But I don't think it has anything to do with whether
22 statements by a defendant are admissible or not.

23 MR. PLEXICO: Your Honor?

24 ASSISTANT SOLICITOR THORNTON: Thank you, Judge.

25 THE COURT: Thank you.

1 MR. PLEXICO: I think, clearly, relevant evidence is
2 -- is admissible.

3 THE COURT: Right.

4 MR. PLEXICO: This clearly has no basis or relevance
5 to whatever happened to Harriett Washington. In and of
6 itself, all it mentions is a possible crime, which puts
7 his character into reference, and there's no reference at
8 all to Harriett Washington. It's not relevant to this
9 case.

10 THE COURT: Why do you say not relevant to what
11 happened to her when we've already had some testimony
12 indicating um a witness made observations of scratches on
13 the defendant?

14 MR. PLEXICO: On my client.

15 THE COURT: Right.

16 MR. PLEXICO: Your Honor, and I was not opposed to
17 Ms. Goodwin, his momma, Ms. Goodwin saying, "I also saw
18 scratches."

19 THE COURT: Right.

20 MR. PLEXICO: But this conversation is beyond that.
21 The conversations -- the conversation is what's not
22 relevant. Her observation is relevant.

23 THE COURT: You're talking about the, "He said he was
24 in a fight."

25 MR. PLEXICO: Correct.

1 **THE COURT:** In response to that.

2 **MR. PLEXICO:** Yes, Your Honor.

3 **THE COURT:** Except that if I look at the totality of
4 the circumstances and where the trial is leaning, or you
5 know, every -- the witness who testified about seeing the
6 scratches saw them on the same day. So we're still
7 talking, supposedly, about the same scratches.

8 **MR. PLEXICO:** Your Honor, we would not have any
9 problem with her mentioning she saw the scratches. I have
10 no problem with that. That's what she observed.

11 **THE COURT:** We also have another witness who early
12 evening, meaning Mr. Williams, mentions statements by the
13 defendant about, you know, what happened allegedly at that
14 time, too, which indicates some type of um physical
15 involvement between um the decedent and the defense, and
16 so ---

17 **ASSISTANT SOLICITOR THORNTON:** And, Judge, it all
18 references, all this is started by the scratches, which is
19 something fresh right then. I don't see how you can -- I
20 don't see how you can ---

21 **THE COURT:** And I ---

22 **ASSISTANT SOLICITOR THORNTON:** --- legitimately argue
23 it's not relevant when it all happens within a day and a
24 half to two days from the date of the incident.

25 **THE COURT:** Well, my problem with it, um as I'm

1 looking at it again, how it's written, um this is
2 different to me than when we're talking about Lyle and
3 prior bad acts. You know, when we say prior bad acts, we
4 usually have something specifically in mind that we're
5 trying to keep out, ie., um you know, defendant when
6 you're talking about your bank robbery situation, did one
7 two years ago or something.

8 ASSISTANT SOLICITOR THORNTON: Yes, ma'am, but even
9 -- even in that case, if a defendant -- if a defendant
10 makes a voluntary statement that, "Yeah, I robbed this
11 one, just like I robbed those ten other ones," this is --
12 this is, I mean, it's still admissible, because it's the
13 defendant's statement.

14 MR. PLEXICO: That's not this case.

15 THE COURT: Right.

16 MR. PLEXICO: He's not saying, "I beat up somebody
17 else the same way I beat Ms. Harriett Washington." Then I
18 wouldn't have any grounds, but clearly, I think the
19 argument's clear, Your Honor.

20 THE COURT: Okay. So that's as to the statement on
21 the fight. What was the other part that you were
22 indicating, and I'll come back and give you my ruling?

23 MR. PLEXICO: Um -- um what -- what I wanted to have
24 out that um ---

25 THE COURT: Because obviously, ---

1 MR. PLEXICO: --- he said -- he said -- the part
2 where he said, "He said he was in a fight," to where she
3 told him to turn himself in, Your Honor, to be sure, to
4 delete that part, Your Honor.

5 THE COURT: And let me ask the State about that one,
6 because that was my earlier comments about there's no
7 indication that when the mother indicates she thought he
8 was in a fight with the girlfriend that we ever switched
9 persons, who she thinks ---

10 ASSISTANT SOLICITOR THORNTON: And -- and -- and I
11 don't know that -- you know, Judge, that's something Mr.
12 Plexico can say, "So when you told him to turn himself in,
13 did you still think he had gotten in a fight with Erica?"

14 You know, her, whether -- what -- you know, what her
15 interpretation was is something he can flesh out. I, you
16 know, we're -- we're using it as he said this, you know,
17 he said these two things, and then she told him to do
18 that.

19 If Mr. Plexico wants to say, "Ma'am," because we
20 don't know what she's going to say, Judge, because she
21 won't talk to Tameaka.

22 THE COURT: Okay. Okay.

23 ASSISTANT SOLICITOR THORNTON: But, you know, that's
24 something that he can ask her about her interpretation,
25 just like we can. Those are the facts of what happened.

1 **THE COURT:** Okay.

2 **ASSISTANT SOLICITOR THORNTON:** He said this, and she
3 responded.

4 **THE COURT:** Well, my indication feels at least
5 better, because I wanted to make sure that the State, in
6 terms of what the mother was going to say was um she was
7 not a voluntary witness on behalf of the State such that
8 you are aware that she's going to say something else
9 that's not in this statement. If you're representing to
10 the Court ---

11 **ASSISTANT SOLICITOR THORNTON:** The only thing I'm
12 aware of, Judge -- I'm sorry, Judge, I didn't mean to
13 interrupt.

14 **THE COURT:** No, I'm just saying ---

15 **ASSISTANT SOLICITOR THORNTON:** The only thing I'm
16 aware of is that, as usual, with a witness who gives a
17 statement and then later feels bad about giving it, ---

18 **THE COURT:** Right.

19 **ASSISTANT SOLICITOR THORNTON:** --- a relative of the
20 defendant, she may get up and deny making the statement.
21 So I can't -- I can not stand here, and I don't think Ms.
22 Legette can stand here, and say she's going to testify
23 exactly as the statement.

24 **THE COURT:** Oh, that's not what I'm saying.

25 **ASSISTANT SOLICITOR THORNTON:** But if she doesn't,

1 we're going to use the statement to impeach her, and the
2 information in the statement is all we're wanting to get
3 into, ---

4 THE COURT: Okay, but -- but ---

5 ASSISTANT SOLICITOR THORNTON: --- and if Mr. Plexico
6 wants to get into interpretation, he can.

7 THE COURT: But as we stand and sit here today, she
8 has not told you anything inconsistent or told you
9 something different from this statement.

10 ASSISTANT SOLICITOR LEGETTE: She's told me nothing,
11 Your Honor.

12 THE COURT: Nothing. Okay. Okay. Because I can see
13 definitely ---

14 ASSISTANT SOLICITOR LEGETTE: I change that. She
15 told me, "I'm not going to talk to you."

16 THE COURT: Okay.

17 ASSISTANT SOLICITOR LEGETTE: Okay.

18 THE COURT: Okay. I can definitely see where um
19 defense would have a problem with the name change and all
20 of a sudden something different that's not written.

21 ASSISTANT SOLICITOR THORNTON: I think I understand
22 what you're saying, Judge. Yeah, we're not aware that she
23 would get up and say, "Yeah, he had another conversation
24 with me that I didn't talk about where he said, 'No, it
25 was Harriett, it wasn't Erika.'"

1 **THE COURT:** Right.

2 **ASSISTANT SOLICITOR THORNTON:** We're not aware of
3 anything like that, Judge. The only thing we're aware of
4 is what's in the statement.

5 **THE COURT:** Okay.

6 **MR. PLEXICO:** Your Honor, I think the statement
7 speaks for itself. I don't think it's relevant.

8 Of course they want it in, because it makes my client
9 look like a mean, violent guy, and they say I can fix it
10 once they get in the inadmissible evidence, Your Honor.
11 It comes down to I believe it's inadmissible under Rule
12 404(b) and Rule 402, Judge.

13 **THE COURT:** All right. Um in terms of the
14 admissibility, in my opinion, I do not believe that 404(b)
15 when it deals with other crimes, wrongs, or acts, is um
16 applicable here, because we don't have any specific
17 identification that this is something that has occurred
18 outside of some other time period or with some other
19 specific individual. The mother clearly indicates she
20 thought -- or what her thoughts were. She has not
21 specifically indicated that that was the case, or any
22 statement by the defendant on that one, so that would be
23 um -- um the rule on which I would base that opinion here.

24 Okay. All right. And having given due consideration
25 to it, based on other testimony and evidence that's in the

1 record now that seems to support um this -- in other
2 words, I'm not looking at this statement in isolation.
3 I'm considering all testimony and evidence. I'm going to
4 allow it in.

5 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

6 THE COURT: All right. Ready?

7 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor. We're
8 ready.

9 THE COURT: Okay. Jurors? Somebody? Madam Clerk?
10 Okay.

11 ASSISTANT SOLICITOR LEGETTE: Your Honor, may we
12 approach?

13 THE COURT: Yes.

14 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
15 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
16 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
17 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
18 AND HEARING OF THE JURY:)

19 (APRIL 25, 2007, 3:48 P.M., WHEREUPON, THE JURY
20 ENTERS THE COURTROOM, AND THE FOLLOWING PROCEEDINGS
21 WERE HELD IN THEIR PRESENCE.)

22 THE COURT: All right, ladies and gentlemen of the
23 jury, I've dealt with several legal matters so that we can
24 proceed on. With respect to the State's request for the
25 admission of certain evidence, my ruling is in favor of

1 the admissibility.

2 So, Ms. Legette, if you would specifically identify
3 those items that you're trying to enter into evidence so
4 it'll be clear for the record.

5 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.
6 At this time, the State offers for admission into evidence
7 State's Exhibit Number Seven, State's Exhibit Number
8 Eight -- State's Exhibit Number Eight, State's Exhibit
9 Number Nine, and State's Exhibit Number Ten, Your Honor,
10 for admission into evidence.

11 **THE COURT:** Okay. All right. Subject to defense
12 counsel's objection, that's fine.

13 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.
14 (WHEREUPON, State's Exhibit No. 7 was admitted into
15 evidence.)

16 (WHEREUPON, State's Exhibit No. 8 was admitted into
17 evidence.)

18 (WHEREUPON, State's Exhibit No. 9 was admitted into
19 evidence.)

20 (WHEREUPON, State's Exhibit No. 10 was admitted into
21 evidence.)

22 **THE COURT:** All right. You can proceed.

23 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.
24 At this time, the State calls Katrina Goodwin.

25 **KATRINA GOODWIN,** after being duly sworn,

DIRECT EXAMINATION OF KATRINA GOODWIN
BY ASST. SOL. LEGETTE

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1 testified as follows:

2 DIRECT EXAMINATION

3 BY ASSISTANT SOLICITOR LEGETTE

4 Q Hello.

5 A Hi.

6 Q Ma'am, what's your name?

7 A Katrina Annette Goodwin.

8 Q And do you know Eric Hemingway?

9 A Yes, I do.

10 Q And how do you know him?

11 A He's my son.

12 Q Okay. Ma'am, did you pick him up from Allendale on
13 March 25th, 2005?

14 A Yes, I did.

15 Q Okay. Did you see him on March 26th, 2005?

16 A Yes, I did.

17 Q Did you notice anything unusual about him on March
18 26th, 2005?

19 A Not really.

20 Q Okay. Well, ma'am, did you make a statement telling
21 S.L.E.D. Agent Shawn Harley on April 13th, 2005, at about
22 5:23 p.m., at your own home in Orangeburg that you noticed
23 he was very quiet and that you saw some scratches on his
24 neck and that he thought he hurt someone?

25 MR. PLEXICO: Your Honor, I object, Your Honor. I

DIRECT EXAMINATION OF KATRINA GOODWIN
BY ASST. SOL. LEGETTE

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1 object to the admission of that. It has no relevance to
2 this case at all.

3 THE COURT: Okay. Same grounds as before?

4 MR. PLEXICO: Yes, Your Honor.

5 THE COURT: Okay. Overruled. Go ahead.

6 Q Did you make that statement, Ms. Goodwin?

7 A I don't remember.

8 Q Okay.

9 ASSISTANT SOLICITOR LEGETTE: Begging the Court's
10 indulgence?

11 THE COURT: Counsel, approach, please.

12 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
13 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
14 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
15 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
16 AND HEARING OF THE JURY:)

17 Q Ms. Goodwin, did you see any scratches?

18 A Not that I recall.

19 Q Ma'am?

20 A Not that I recall.

21 Q Ma'am, did you give a statement to S.L.E.D. Agent
22 Shawn Harley on April 13th, 2005, at 5:23 p.m., at your
23 house in Orangeburg telling him that you saw scratches on
24 Eric?

25 A I don't remember. I really don't remember.

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1 MR. PLEXICO: Your Honor, she has to show her the
2 statement first. I object, Your Honor.

3 THE COURT: Right. She's shown it to you first,
4 which she should properly do. Okay. Go ahead.

5 (WHEREUPON, State's Exhibit No. 11 was marked for
6 identification only.)

7 Q Ms. Goodwin, I'm going to hand you now what has been
8 previously marked as State's Exhibit Number Eleven for
9 identification. Do you recognize that?

10 A It kind of looks like my handwriting, but not really.

11 Q Is that your signature?

12 A I really can't. I cannot remember.

13 Q Well, is that your signature on the bottom of that
14 sheet, statement, ma'am?

15 A It looks like it, but I really don't remember. I
16 don't.

17 Q Okay.

18 ASSISTANT SOLICITOR LEGETTE: Your Honor, may we
19 approach?

20 THE COURT: Yes.

21 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
22 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
23 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
24 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
25 AND HEARING OF THE JURY:)

DIRECT EXAMINATION OF KATRINA GOODWIN
BY ASST. SOL. LEGETTE

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1 Q Ms. Goodwin, let's -- let's -- let's try this again,
2 because sometimes memory fails.

3 A No, I'm serious. I do have a memory failure.

4 Q Yes, ma'am. Yes, ma'am. But do you ever remember
5 talking with S.L.E.D. Agent Shawn Harley?

6 A Yes, I do remember him coming, you know, to my home.

7 Q He came to your house.

8 A Yes, he did.

9 Q Okay. Yes, ma'am. And he's a little, short, black
10 guy, isn't he, kind of, kind of short?

11 A I guess.

12 Q Okay.

13 A Yeah.

14 Q All right. And he came to your house probably some
15 time in April; right, April 13th?

16 A I guess it was. I can't remember that, but I
17 remember him coming to talk to me. I don't remember what
18 date it was, but I remember him coming and talking to me.

19 Q Was it like in the afternoon around 5:30, 5:23?
20 Could have been? After you got off work?

21 A It could have been. I don't know what time. I don't
22 know what time, but I know he came.

23 Q Okay. So it could have been in the afternoon.

24 A Yeah.

25 Q And he did come to your house.

DIRECT EXAMINATION OF KATRINA GOODWIN
BY ASST. SOL. LEGETTE

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- 1 A Yes, he did.
- 2 Q Did he take any notes?
- 3 A I guess he did.
- 4 Q Okay. Did you write anything down?
- 5 A Yes, of some stuff I heard.
- 6 Q Okay. So you wrote some stuff down.
- 7 Okay. Did you write something on a statement, on
- 8 some paper?
- 9 A He asked me to write down what I heard.
- 10 Q Okay. So you wrote down some stuff that you heard.
- 11 A Heard. That I heard, yes. That I heard.
- 12 Q Okay.
- 13 A Through other people.
- 14 Q Okay. So did -- is this right here, Number --
- 15 State's Exhibit Number Eleven, is that what you wrote
- 16 down?
- 17 A I can't see that.
- 18 Q You can't see? You want me to read it to you?
- 19 A You can read it, because I cannot see it.
- 20 ASSISTANT SOLICITOR LEGETTE: May I publish it?
- 21 THE COURT: Are you saying you can't see it?
- 22 WITNESS: I can't. The little -- the writing is too
- 23 small. My glasses are not that strong.
- 24 THE COURT: Okay.
- 25 WITNESS: Oh, I can read, now, but I can't read, you

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BY ASST. SOL. LEGETTE

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1 know, the little writing.

2 THE COURT: Oh, okay.

3 ASSISTANT SOLICITOR LEGETTE: Your Honor, can I
4 publish the statement?

5 MR. PLEXICO: Your Honor, she -- I don't think she
6 can publish it. She can look at it and read it, Your
7 Honor. I don't think she can publish it.

8 THE COURT: She -- hand it to her, because right now
9 she's not got it in front of her.

10 A Okay. It's in my face, but I couldn't tell you
11 what's on here, because I can't see the little writing.

12 Q So, is that your handwriting?

13 A I -- I -- I'm serious, I can't see it, because I
14 can't see it. I wear double lense glasses, but I can't
15 see this.

16 Q Okay. And you can't tell ---

17 A I can see that it look like my name up here, but I
18 can't tell you what this says.

19 Q Okay. And is that your signature on the bottom of
20 that statement?

21 A Okay. Yeah, that's my signature. That's my name.

22 Q That's your signature.

23 A That's my name.

24 Q Okay. That's your signature?

25 A Yeah.

DIRECT EXAMINATION OF KATRINA GOODWIN
BY ASST. SOL. LEGETTE

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1 Q You wrote that. You wrote that signature.

2 A Yeah.

3 Q Okay.

4 A But I can't read and tell you what this says.

5 Q Okay.

6 A No, I cannot. I mean, I cannot see it.

7 Q Okay. So you can't read what's in that statement.

8 A No, I cannot. I mean, you think I'm telling you
9 that, but I really can't see this.

10 Q Okay. But that is your signature on the bottom.

11 A That looks like my signature down to the bottom. It
12 looks like it.

13 Q And that's your handwriting.

14 A It looks like it.

15 Q Yes, ma'am. Okay.

16 ASSISTANT SOLICITOR LEGETTE: At this time, Your
17 Honor, I would offer State Exhibit Eleven into evidence
18 for admission into evidence.

19 THE COURT: Okay, subject to the defense's earlier
20 objection?

21 MR. PLEXICO: Yes, Your Honor.

22 THE COURT: Anything additional?

23 MR. PLEXICO: Um she has not verified the existence
24 of what's in it, Your Honor. She doesn't know what's in
25 it.

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BY ASST. SOL. LEGETTE

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1 **THE COURT:** Whether what?

2 **MR. PLEXICO:** She identified her signature -- she
3 appears to identify her signature, but not the substance,
4 and the substance I believe is what matters, Your Honor.

5 **THE COURT:** Okay. Um right now you're having it
6 marked for identification, but you also have another
7 witness who could um indicate ---

8 **ASSISTANT SOLICITOR LEGETTE:** Yes.

9 **THE COURT:** --- whether the statement was made to
10 him?

11 **ASSISTANT SOLICITOR LEGETTE:** Yes.

12 **THE COURT:** Okay. And I think um -- um right now
13 it's going to be conditionally admitted, based on rulings
14 that we had outside the presence of the jury, but in terms
15 of actually getting it in based on this testimony, I would
16 prefer that we wait.

17 **ASSISTANT SOLICITOR LEGETTE:** Okay.

18 **THE COURT:** Okay.

19 **ASSISTANT SOLICITOR LEGETTE:** Begging the Court's
20 indulgence?

21 **THE COURT:** And, Counsel, what I mean by that is in
22 terms of you publishing it verbatim without it being
23 admitted. It does not mean that you could not ask her
24 about the questions or the subject matter of the
25 statement, because that's -- that is different from, you

DIRECT EXAMINATION OF KATRINA GOODWIN
BY ASST. SOL. LEGETTE

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1 know, her ability to read it or not.

2 Q Ms. Goodwin, let me -- let me ask you again.

3 A Okay.

4 Q Do you remember making a statement to Agent Harley,
5 writing a statement for Agent Harley?

6 A Yes, I remember.

7 Q Okay. And what did you tell him?

8 A That I heard -- somebody called me and told me that
9 my son had killed somebody. This what I heard.

10 Q Uh-huh.

11 A You know. And um he told me the same thing that he
12 heard that my son had murdered somebody.

13 Q Uh-huh.

14 A And that he was on the run, which I didn't know
15 anything about him being on the run. I knew that him and
16 his girlfriend moved to start a new life. I do know that.

17 Q Uh-huh. Yes, ma'am.

18 And did you write that in a statement?

19 A I could have.

20 Q Okay. Did you write anything else in a statement?

21 A I don't remember.

22 Q Okay.

23 A Because it's been a while. I don't remember.

24 Q Okay. Okay.

25 Now, Ms. Goodwin, ---

DIRECT EXAMINATION OF KATRINA GOODWIN
BY ASST. SOL. LEGETTE

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1 A Uh-huh?

2 Q --- let me look at this again. Did you -- now you
3 can't read this, but let me ask you, did you tell Agent
4 Harley that you went and picked up your son on March 25th,
5 2005?

6 A I did, for a birthday party.

7 Q Okay. Um and did you also tell him that on the way
8 home he was very quiet?

9 A Yes, he was very quiet.

10 Q Okay. Did you then tell Agent Harley in this same
11 statement that you wrote at your house on April 20 --
12 April 13th, 2005, at 5:23 p.m., that you saw scratches on
13 Eric Hemingway's neck?

14 A I don't remember saying that.

15 Q Well, how about ---

16 A What I -- no, I don't -- I don't remember saying
17 that.

18 Q Okay. Let's talk about this. Do you also remember
19 telling him, maybe you don't, that -- I'm sorry, that he
20 told you he was in a fight.

21 A With his girlfriend. Yeah, I remember telling him --
22 him telling that him and his girlfriend was in a fight.

23 Q Okay. Now, did he also -- do you also remember him
24 telling you that he said he thought he hurt somebody in
25 Allendale?

CROSS-EXAMINATION OF KATRINA GOODWIN BY MR. PLEXICO

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- 1 A His girlfriend.
- 2 Q Okay. And do you also remember telling him that he
- 3 should turn himself in?
- 4 A No, no, no, no.
- 5 Q Okay.
- 6 A After Mr. -- the police came and he talked to me.
- 7 Q Uh-huh.
- 8 A And he asked me and my sister did we know where Eric
- 9 was and for us to talk to him and tell him if he was
- 10 innocent, turn hisself in.
- 11 Q Okay.
- 12 Now, Ms. Goodwin, you are Eric's mother; correct?
- 13 A Yes.
- 14 Q Okay.
- 15 And, Ms. Goodwin -- thank you. I have no further
- 16 questions.

CROSS-EXAMINATION

- 17
- 18 BY MR. PLEXICO
- 19 Q Ms. Goodwin, thanks for being here today. Have you
- 20 had several strokes and heart attacks lately?
- 21 A Yes, I have.
- 22 Q Okay. So your health is poor?
- 23 A Yes, it is.
- 24 Q It affects your memory?
- 25 A Yes, sir.

1 Q You can't drive anymore; can you?

2 A I don't drive.

3 Q Okay. And that's because of your -- as a result of
4 your heart attacks and strokes?

5 A And my stroke, yes, I don't drive.

6 Q Okay. Um so he was taking a break from Erica and
7 going to a birthday party.

8 A Yeah, one of my friend's little boy had a birthday
9 party.

10 Q Okay. All right.

11 And if he had been out drinking, he'd be quiet the
12 next day, generally, wouldn't he?

13 A Yeah.

14 Q Okay.

15 A Yeah, he would be quiet.

16 Q He'd be hung-over, nothing much to say. Nothing
17 unusual about him.

18 A No.

19 Q Is what you're saying, aside from the scratches that
20 you saw.

21 A I still don't remember the scratches, but I know him
22 and Erica had a fight, which they always did.

23 Q Thank you. I have no further questions.

24 ASSISTANT SOLICITOR LEGETTE: No questions, Your
25 Honor.

(RECALL) DIRECT EXAMINATION OF SHAWN HARLEY
BY ASST. SOL. LEGETTE

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1 THE COURT: Okay. You can step down. Thank you,
2 ma'am, for coming.

3 WITNESS: Thank you.

4 ASSISTANT SOLICITOR LEGETTE: At this time, the State
5 calls Agent Shawn Harley.

6 CLERK: Would you come around and be sworn?

7 ASSISTANT SOLICITOR LEGETTE: He was sworn earlier,
8 Your Honor. He is still under oath.

9 THE COURT: Okay.

10 SHAWN HARLEY, after being previously duly sworn,
11 testified as follows:

12 (RECALL) DIRECT EXAMINATION

13 BY ASSISTANT SOLICITOR LEGETTE

14 Q You are Agent Harley, Shawn Harley?

15 A Yes, ma'am.

16 Q Okay. And, Agent Harley, did you become involved in
17 an investigation in Allendale County ---

18 A Yes, ma'am.

19 Q --- regarding Eric Hemingway?

20 A Yes, ma'am.

21 Q Okay. Did you take any statements from any
22 witnesses?

23 A Yes, ma'am.

24 Q And what witnesses did you take statements from?

25 A Um statements that were taken, or people interviewed

(RECALL) DIRECT EXAMINATION OF SHAWN HARLEY
BY ASST. SOL. LEGETTE

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1 and statements taken, were a statement of Ms. Katrina
2 Goodwin, ---

3 Q Thank you.

4 A Ms. ---

5 Q Mr. -- Mr. Harley, I hand you now what has been
6 previously marked as State's Exhibit Number Eleven. Take
7 a moment and tell me if you recognize this?

8 A This is Katrina Goodwin's statement.

9 Q And is your signature on that statement, your
10 signature?

11 A Yes, sir, and also um Senior Agent George Darnell
12 with S.L.E.D. who was a notary, he also signed off -- off
13 on it also.

14 Q Did you take that statement?

15 A Yes. Yes, ma'am.

16 Q Has it been altered in any way?

17 A No, ma'am, because due to -- we have her to put her
18 initials at the beginning and at the end and also where
19 she crossed out for mistakes, we had her also put her
20 initials by each cross-out mark.

21 Q Is that a fair and accurate representation of the
22 statement she made to you on April 13th, 2005?

23 A Yes, ma'am.

24 ASSISTANT SOLICITOR LEGETTE: At this time, Your
25 Honor, I would offer State's Exhibit Number Eleven for

(RECALL) DIRECT EXAMINATION OF SHAWN HARLEY
BY ASST. SOL. LEGETTE

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1 admission into evidence.

2 THE COURT: Okay.

3 MR. PLEXICO: Your Honor, we have a matter of law in
4 regards to that, in regard to that admission, Your Honor.

5 THE COURT: Okay. Is there anything, other than what
6 we've talked about?

7 MR. PLEXICO: No, Your Honor, but I believe -- may we
8 approach, Your Honor?

9 THE COURT: Sure.

10 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
11 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
12 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
13 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
14 AND HEARING OF THE JURY:)

15 THE COURT: For the State's purposes at this time,
16 I'm going to allow the statement, but we will deal with um
17 how the statement would be tendered for the jury's
18 consideration, outside the presence of the jury, but the
19 State can continue to proceed with the case right now.

20 (WHEREUPON, State's Exhibit No. 11 was admitted into
21 evidence.)

22 ASSISTANT SOLICITOR LEGETTE: Okay.

23 Q I have no further questions, Mr. Harley. Answer any
24 questions of Mr. Plexico.

25 MR. PLEXICO: I have no questions, sir.

1 **THE COURT:** Okay. Now he's excused?

2 **ASSISTANT SOLICITOR LEGETTE:** He's excused, Your
3 Honor.

4 **THE COURT:** Okay. You're done. Thank you very much.

5 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, at this
6 time, the State rests.

7 **THE COURT:** Okay.

8 Ladies and gentlemen of the jury, this is the time at
9 which the State has concluded their portion of the case.
10 Um this is the time at which I would take up any legal
11 matters regarding their portion of the case before we
12 proceed on with the defense counsel, but give me one
13 moment and let counsel approach so I can just deal with
14 scheduling issues.

15 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
16 RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE
17 HEARING OF THE JURY; THEREAFTER, THE FOLLOWING
18 PROCEEDINGS WERE HELD ON THE RECORD IN THE PRESENCE
19 AND HEARING OF THE JURY:)

20 **THE COURT:** All right, ladies and gentlemen of the
21 jury, I am going to release you for the evening, and I
22 will deal with all the legal matters that I need to deal
23 with counsel, um also things that I'm already anticipating
24 that we need to do. So we're going to stay here and work,
25 you know, for um a while so I can make sure that we're

1 getting done what we need to get done.

2 Um and so I'm going to excuse you for the evening. I
3 am going to put in effect the same instruction to you, in
4 addition to not discussing the case with anybody in any
5 shape, form, or fashion, I want to remind you that um --
6 not to pay attention to any media outlets, radio,
7 television, um radio talk shows, newspapers and all of
8 that. But we believe that this case will conclude
9 tomorrow, so if you can just accommodate us again for this
10 evening with respect to the trial, then you can get back
11 to your lives.

12 Thank you so much for your cooperation and patience
13 throughout the trial of the case. You all have a good
14 evening.

15 JURY: 9:30 tomorrow?

16 THE COURT: 9:30. Thank you very much.

17 (APRIL 25, 2007, 4:14 P.M., WHEREUPON, THE JURY
18 RETIRES FROM THE COURTROOM, AND THE FOLLOWING
19 PROCEEDINGS WERE HELD OUT OF THEIR PRESENCE.)

20 THE COURT: Okay. We're ready to hear any motions at
21 this time or any matters -- legal matters the Court can
22 take up. Let's first deal with the statement.

23 MR. PLEXICO: In regards to the statement, Your
24 Honor, I would ask that Your Honor only admit the part
25 that said, "I noticed some scratches on his neck." Um I

1 would object to the rest, Your Honor, because that's the
2 only thing she didn't testify to.

3 THE COURT: And if I can see the statement again? I
4 know we went round and about, but I was trying to look at
5 it at that time in the context of being fair to both
6 sides.

7 Well, I think there's a little more that was in this
8 statement, which goes back to the same issues that we
9 discussed earlier. What I see that she has not admitted
10 on the stand were that she noticed some scratches, the
11 statement about he said he was in a fight, um and that --
12 well, he said he was in a fight with the girlfriend, so I
13 take that back. Because even she says, "I thought he was
14 in a fight with the girlfriend." So I take that back. I
15 apologize.

16 And that um then later he said he thought he had hurt
17 someone. Um she does already admit that she told him to
18 turn himself in, if he thought he was innocent. So,
19 there's an admission -- she's already indicated that in
20 her testimony.

21 MR. PLEXICO: I think -- I think ---

22 THE COURT: She was not asked about the last
23 statement about the last time she saw him was on the
24 3/28/05 at the time of this statement and had not heard
25 from him since then. Okay.

1 ASSISTANT SOLICITOR THORNTON: May I say something?

2 THE COURT: Sure. Sure.

3 ASSISTANT SOLICITOR THORNTON: Two things. One, as
4 Your Honor pointed out, she did not admit anything about
5 scratches. Number two, and just as important, in my
6 opinion, is she talked about other things that aren't in
7 the statement that she wrote down other things or gave him
8 information that's not contained in her statement about
9 somebody told her that he did this and somebody heard that
10 somebody did this.

11 None of that was in her statement, and I apologize,
12 Judge, I do not have this cite. I can show it to Your
13 Honor in the rule book. I think it came out, the book
14 came out right after this case, but it's State v Blalock.
15 It's a Court of Appeals case, 2003. Basically in that
16 case, Judge, it's the same thing. The witness admitted
17 some of it, but said, "Well, I think the officer
18 paraphrased, because there was other things in there," and
19 they said that extrinsic evidence is allowed, unless the
20 witness makes a -- I think it's an exact is what the word
21 is, but it is um -- it's unequivocal, did not clearly and
22 unequivocally admit making a prior inconsistent statement.

23 And this is not a clear and unequivocal admission,
24 because she's, you know, we've already talked about
25 there's no scratches, and she's also talked about the fact

1 that there was other information that she provided, and
2 that's not in that statement. So that's not a clear and
3 unequivocal admission of the statement, and I think the
4 rule allows for the admission of the inconsistency, Judge.

5 MR. PLEXICO: And, Judge, I have the 2006 rule book,
6 and it's not in there. This is 2006, and there's nothing
7 in there about it, Judge.

8 THE COURT: And I'm going to look it up.

9 ASSISTANT SOLICITOR THORNTON: Okay. I understand.

10 THE COURT: Okay.

11 ASSISTANT SOLICITOR THORNTON: Your Honor, all I can
12 tell you -- if I can approach, I'll ---

13 THE COURT: Okay. I was going to ask you to spell
14 Blalock.

15 ASSISTANT SOLICITOR THORNTON: Yes, ma'am. It's
16 right there, Judge.

17 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
18 RECORD OUT OF THE PRESENCE OF THE JURY; THEREAFTER,
19 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD:)

20 ASSISTANT SOLICITOR THORNTON: Judge, I hope I didn't
21 make this up. I mean, does it exist?

22 THE COURT: No, no, no. It does exist.

23 Ms. Richardson graciously assisted me in another
24 trial, and she remembered this case, and when I looked at
25 it, I remember that we were using this in another,

1 actually a medical malpractice case that I was involved
2 in.

3 ASSISTANT SOLICITOR THORNTON: Thank you, Judge. I
4 just wanted to make sure. I was pretty sure that that
5 book was accurate.

6 THE COURT: That's why I was, yeah, looking at her to
7 say, "Oh, yes, I remember this case."

8 MR. PLEXICO: Your Honor, can I have the advantage of
9 the case, if they're going to cite that, because
10 apparently I don't have it, Judge.

11 ASSISTANT SOLICITOR LEGETTE: The cite was not in the
12 book.

13 THE COURT: Yeah.

14 ASSISTANT SOLICITOR THORNTON: Judge, I don't know
15 what the cite is.

16 THE COURT: That's okay. 591 S.E.2d 632, Court of
17 Appeals, 2003.

18 MR. PLEXICO: 632, Judge?

19 THE COURT: Yes.

20 ASSISTANT SOLICITOR THORNTON: Thank you, Judge.

21 ASSISTANT SOLICITOR LEGETTE: Thank you, Your Honor.

22 MR. PLEXICO: Your Honor, the only thing that she's
23 unequivocally denied are the scratches. I think it goes
24 back to what I was saying, Judge.

25 THE COURT: Let me ask counsel about this, and I'm

1 referring to the State. My concern for this is that some
2 of the portions of the statement, um Ms. Goodwin was not
3 asked about certain things. For example, the question
4 about, as I indicated earlier, the last time I saw him was
5 on such-and-such date. She was not asked about that, so
6 there was no contradiction in statement.

7 ASSISTANT SOLICITOR THORNTON: I -- I understand,
8 Judge, but our position is that pursuant to Blalock that
9 if she doesn't admit everything about the statement, in
10 other words, if there's one piece that she doesn't admit,
11 the statement is admissible.

12 THE COURT: Well, ---

13 ASSISTANT SOLICITOR THORNTON: So I don't think it's
14 required to go through everything of what she does and
15 doesn't admit. Once she -- once she doesn't make an
16 admission, "Yes, I said that in that statement," I think
17 that the entire statement can come in at that point, and
18 what she -- I'm sorry. Go ahead, Judge.

19 THE COURT: No, what I'm saying is that when you use
20 any document, for example, even if it was a deposition, to
21 impeach somebody, you're giving them the time, date,
22 place, substance of the conversation, which Rule 613(b)
23 requires, because you're allowing the witness to be
24 familiar with when they gave it.

25 I think once Ms. Legette told her about um did you

1 have a conversation with the police, then she started
2 recalling certain things she said, but I think the rule is
3 intended, because it says extrinsic evidence is not
4 admissible if the witness does admit certain things. In
5 other words, the statement doesn't come in if she admits
6 something. If ---

7 ASSISTANT SOLICITOR THORNTON: But what --
8 Absolutely, Judge.

9 THE COURT: Well, how can you admit something that
10 you're not asked about is my question?

11 ASSISTANT SOLICITOR LEGETTE: Your Honor, she -- she
12 was asked about it. She said she could not see it,
13 couldn't read it, the entire statement.

14 THE COURT: Right. You're right. I agree, but I'm
15 saying specifically those instances, if she had read it
16 and saw it and then you asked her the questions and she
17 admits these things, then we couldn't have the statement
18 in; correct?

19 ASSISTANT SOLICITOR THORNTON: Absolutely, Judge.

20 THE COURT: Okay.

21 ASSISTANT SOLICITOR THORNTON: If she had read the
22 entire thing -- the State's position is, Judge, that once
23 Ms. Legette -- it's our position that Ms. Legette wouldn't
24 have even had to go as far as she did once she said, "Did
25 you tell him that -- did you write the statement that he

1 had scratches?"

2 Once she says, "No," or "I don't remember," then
3 that's not an explicit admission of the statement, and the
4 statement comes in.

5 Even without -- whether she admits the rest of it or
6 not, she's not admitting part of the statement, and the
7 rule requires her to admit all of the statement. She
8 didn't do that.

9 Even without getting to that last sentence, she
10 specifically said, "No, I don't remember telling him
11 anything about scratches," so that, in and of itself,
12 would be enough to introduce the statement, because it's
13 not an explicit admission of the statement.

14 MR. PLEXICO: Your Honor, it's not -- that's the
15 broadest possible reading of what the rules could give to
16 the prosecution. It's the broadest possible reading, and
17 that's not a fair reading.

18 THE COURT: Well, let me ask you this. In looking at
19 it from a different standpoint, my concern with your
20 argument would be -- you have not done this, because
21 you've already indicated on the record that she would not
22 talk to you, and you know, explicitly said she was not
23 going to talk to you. So that's a different situation.
24 But my concern would be that when you do something like
25 that, if a person who is questioning a witness

1 intentionally or mistakenly, which ever, leaves out a
2 portion of the statement that they want in but never asked
3 that person to admit it, then it gets to come in, and it
4 gets to come in in the version that they want it in? Do
5 you know what I'm saying?

6 ASSISTANT SOLICITOR THORNTON: Judge, I absolutely
7 understand.

8 THE COURT: Okay.

9 ASSISTANT SOLICITOR THORNTON: But based on my
10 reading of Blalock, I think that unless -- I understand
11 what the Court is saying, hindsight, you know, it would be
12 nice maybe -- but the problem then you get into, you don't
13 want to publish the entire statement without trying to
14 admit it first. But I think it's clear, and I understand
15 Mr. Plexico's point ---

16 THE COURT: But you're never publishing until you ask
17 to get ---

18 ASSISTANT SOLICITOR THORNTON: I understand, Judge,
19 but once you start asking that, in essence you're
20 publishing what it says to the jury.

21 And I understand Mr. Plexico stating that that's a
22 broad interpretation, but that's the interpretation of the
23 Court of Appeals in 2003. I was quoting I think directly
24 from Blalock, but -- and forgive me, I don't have it in
25 front of me now, but I think they say unequivocal um

1 admission, and unequivocal means they admit everything.
2 So, if she doesn't admit everything, I think the statement
3 comes in. And she didn't admit everything.

4 There was specifically a piece that she said she
5 didn't say, and then she added things that are not in the
6 statement. So I don't think that that could be construed
7 in anyway, whether we asked her that final piece or not.

8 That's an unequivocal admission of the statement.
9 It's either unequivocal or it isn't.

10 And as soon as she says something that either she
11 says it's in there and it isn't, or she denies something
12 that's in there that is, then the statement comes in, I
13 think under Blalock. And that would be our position. But
14 I do understand the danger you might get into.

15 THE COURT: Yeah, well, and the other part of it is
16 that, clearly in this case, the person read the statement,
17 and she has um indicated she couldn't see it. So she
18 doesn't know ---

19 ASSISTANT SOLICITOR THORNTON: Understood, Judge, but
20 Ms. Legette did specifically ask her, "Do you remember
21 seeing any scratches?"

22 And she said, "No."

23 And at that point, I would say, Judge, it would be
24 our position the entire statement comes in, because she
25 has denied something in the statement that is clearly

1 there. She was given the opportunity. She says, "No,
2 that's not in there."

3 I think the statement comes in, because she's not
4 making an admission.

5 THE COURT: But you see there's a distinction in my
6 mind of when you read something and then you're asked
7 about it and then you say something inconsistent with the
8 statement, because you see it in writing.

9 ASSISTANT SOLICITOR THORNTON: I understand, Judge.
10 Judge, I understand that distinction, but I don't think
11 the rule makes that distinction. I think you've got to
12 ---

13 THE COURT: Well, what I'm saying is that the person
14 who reads it can see that it's there.

15 ASSISTANT SOLICITOR THORNTON: Yes, ma'am.

16 THE COURT: When she makes a denial of a certain
17 issue in there, she doesn't know that the rest of it's in
18 there, because she can't see it.

19 ASSISTANT SOLICITOR THORNTON: Absolutely, Judge.
20 Let me -- the only thing I can do, Judge, and I apologize
21 for belaboring the point, but ---

22 THE COURT: No, that's okay.

23 ASSISTANT SOLICITOR THORNTON: --- but in a recent
24 murder case, this exact situation came up, and what
25 happened in that case, though, was it was an audio

1 recording. There was no written statement. The person
2 was recorded by audio.

3 THE COURT: Okay.

4 ASSISTANT SOLICITOR THORNTON: And I got up and I
5 asked, "Did you make a statement to this officer?"

6 They were saying, "I don't remember ---"

7 MR. PLEXICO: Your Honor, I object.

8 ASSISTANT SOLICITOR THORNTON: I'm sorry, Mr.
9 Plexico, can I finish before you interrupt?

10 MR. PLEXICO: I was going to object to it, because I
11 don't think what you did in a trial last week is really
12 the way to argue a point of law, Judge.

13 ASSISTANT SOLICITOR THORNTON: Judge, I don't think
14 an objection -- there's no jury present. I think Your
15 Honor is perfectly capable of deciding whether it's
16 applicable or not.

17 THE COURT: Okay. You're just giving an example. Go
18 ahead.

19 ASSISTANT SOLICITOR THORNTON: Thank you, Judge.

20 Um you done, Mr. Plexico?

21 MR. PLEXICO: Please go ahead.

22 ASSISTANT SOLICITOR THORNTON: Thank you so much.

23 Um, Judge, what I would -- what I would say is that
24 when they denied the statement, then at that point, I
25 played the recording.

1 In other words, I understand what you're saying, that
2 it would be best case scenario, let her be able to read
3 the statement, but this rule deals with other things,
4 other than just written statements. It deals with, you
5 know, audio statements, and in that case, they wouldn't be
6 able to, you know, hear it or read it ahead of time. You
7 would just play it.

8 So that would be my position for the Court, Judge,
9 that once she denied -- once Ms. Legette said what was in
10 it and she denied it, then the statement comes in.

11 **THE COURT:** Well, and the difference, again there,
12 unless you can indicate that person can't hear, I would
13 assume that they then played their statement prior to
14 court.

15 **ASSISTANT SOLICITOR THORNTON:** No, Judge.

16 **THE COURT:** -- Okay.

17 **ASSISTANT SOLICITOR THORNTON:** No, I played it right
18 then. I played it right then.

19 **THE COURT:** But were they aware that there was a
20 recording?

21 **ASSISTANT SOLICITOR THORNTON:** Ma'am?

22 **THE COURT:** But the person was aware that there's a
23 recording.

24 **ASSISTANT SOLICITOR THORNTON:** Um, no, ma'am, they
25 were not aware there was a recording.

1 THE COURT: Okay.

2 ASSISTANT SOLICITOR THORNTON: Thank you, Judge.

3 THE COURT: Okay.

4 MR. PLEXICO: May I, Judge?

5 THE COURT: Sure.

6 MR. PLEXICO: That case will probably be back for
7 PCR.

8 Aside from that -- aside from that, Your Honor, if
9 there was a twenty page statement or a five hour
10 deposition that was reduced to a writing, ---

11 THE COURT: Uh-huh.

12 MR. PLEXICO: --- you know, according to the State's
13 interpretation here, if they denied one statement, they
14 could put the entire deposition in or they could put in
15 the entire twenty page statement? No. That's not right.

16 It's the statement that was denied, not everything
17 else around it. It's the statement that was denied that
18 gets to come in.

19 We don't -- I understand, you know, "I noticed some
20 scratches," I have no problem with that coming in, because
21 we believe that is the accurate law, Judge, but not
22 everything else, because it was admitted.

23 It's not a statement that was denied. It does not
24 fall under the rules, Judge. Thank you, Judge.

25 THE COURT: Okay. Anything further on that issue?

1 **ASSISTANT SOLICITOR THORNTON:** Judge, I -- I would
2 agree with what Mr. Plexico just said on one part, which
3 is rare for me, but I will agree that, yes, ma'am, if
4 there's a twenty page deposition, and there's a million
5 things in it, and I realize that's an extreme example, but
6 under that rule and under Blalock, I think if you deny one
7 piece of it, then the statement comes in. I think that's
8 what Blalock says, that you're allowed to prove it with
9 extrinsic evidence if they don't make an unequivocal
10 admission.

11 And, again, I realize that's extreme, but in this
12 case, you're talking about four or five things. We didn't
13 ask -- Ms. Legette didn't ask about one piece.

14 **THE COURT:** Right.

15 **ASSISTANT SOLICITOR THORNTON:** She asked about
16 everything else. Not only did she deny the scratches, she
17 said, you know, I told him all these other things in my
18 statement, and it's not in there.

19 **THE COURT:** Okay. Okay. And -- and you're
20 distinguishing when you're talking about a twenty page
21 statement or deposition, when somebody is asked something,
22 you -- in terms of what we're going on here, is the
23 unequivocal denial of the statement.

24 **ASSISTANT SOLICITOR THORNTON:** Yes, ma'am.

25 **THE COURT:** As opposed to you're talking about the

1 statement, but then you explain it first.

2 ASSISTANT SOLICITOR THORNTON: Yes, ma'am. To me
3 it's like, Judge, it's like the mirror image rule. Either
4 it is or it isn't.

5 Either she unequivocally says, "Yes, I did," or "No,
6 I didn't." And if there's any discrepancies, then I think
7 the extrinsic statement, the extrinsic evidence in the
8 statement then comes in.

9 THE COURT: Uh-huh.

10 MR. PLEXICO: Your Honor, she also said they had a
11 conversation. He just didn't come in and say, "Here's a
12 piece of paper. Start writing. Good-bye. Thank you.
13 Good-bye."

14 THE COURT: Uh-huh.

15 MR. PLEXICO: And Shawn Harley writes this stuff
16 down. They had a conversation. They talked about it.

17 She testifies. She testified about the encounter
18 with Shawn Harley.

19 THE COURT: Uh-huh.

20 MR. PLEXICO: This is a woman -- she's a woman who
21 has had strokes and heart attacks who can't drive anymore,
22 Judge. I mean, you know?

23 THE COURT: Okay. We're going to deal with this
24 issue.

25 You all let me -- I beg your indulgence for one

1 second. I've got um a criminal trial coming up in a
2 couple of weeks in Charleston, and we've been trying to
3 get these lawyers on conference call, and the trial has
4 not quite met with the schedule, but they did tell me 4:30
5 was good for them. So if you all will let me step out,
6 and then we'll come back and deal with this. We'll deal
7 with your motions, and then we'll go to jury charges.

8 ASSISTANT SOLICITOR THORNTON: Thank you, Judge.

9 THE COURT: We'll be in recess probably about fifteen
10 minutes or so.

11 (WHEREUPON, AT 4:35 P.M., A BREAK WAS TAKEN;
12 THEREAFTER, AT 5:46 P.M., THE FOLLOWING PROCEEDINGS
13 WERE HELD ON THE RECORD OUT OF THE PRESENCE OF THE
14 JURY:)

15 THE COURT: Thank you so much for your patience. I
16 was on a conference call in another criminal case that I'm
17 going to have in a couple of weeks in Charleston that has
18 some extremely um fascinating, but difficult, legal
19 issues, and so I was trying to get the attorneys rounded
20 up so we could deal with those issues. So I appreciate
21 that. It just took a little longer than I expected.

22 On the statement issue, let me just read that case
23 and look at the issues. I'll let you all know that in the
24 morning. I don't think it has anything to do with your
25 motions; correct?

1 **ASSISTANT SOLICITOR THORNTON:** Thank you, Judge.

2 **THE COURT:** Okay.

3 **ASSISTANT SOLICITOR THORNTON:** The State -- if you
4 had come back and said, "Is there anything else?"

5 I would have said, "No, from the State."

6 **THE COURT:** Right. Right.

7 **ASSISTANT SOLICITOR THORNTON:** So we'll stand on
8 whatever your decision is, Judge. Thank you.

9 **THE COURT:** That's fine.

10 **MR. PLEXICO:** I haven't had a chance to read the
11 case. I'll read the case tonight.

12 **THE COURT:** Yeah, absolutely. Right. In fairness to
13 you, since you just got it yourself. So we can um deal
14 with that in the morning.

15 We now want to -- is there any other issues, and then
16 we're going to move to defense motions then?

17 **MR. PLEXICO:** Yes, Judge.

18 **THE COURT:** Okay.

19 **MR. PLEXICO:** I have some motions, unless she has
20 something further.

21 **ASSISTANT SOLICITOR LEGETTE:** Not from the State,
22 Your Honor.

23 **THE COURT:** Okay. All right. And then um we'll rule
24 on that, and then that will be the only thing left for the
25 State; correct?

1 **ASSISTANT SOLICITOR LEGETTE:** Yes, Your Honor.

2 **THE COURT:** Okay. Let's deal with the motions, and
3 then the defense will be able to proceed.

4 **MR. PLEXICO:** Yes, Your Honor.

5 Ms. Tameaka, for the record, has rested, Your Honor.
6 I would move for a directed verdict, Your Honor, on the,
7 to start with, on the criminal sexual conduct on the
8 grounds that they have failed to show the corpus delicti
9 of the crime. If we take out the statement of Michael
10 Williams where my client confesses to this crime, you have
11 no CSC.

12 He's charged with CSC first, Your Honor. First,
13 there has to be evidence of a sexual battery, Your Honor.

14 Here, there is no evidence of a sexual battery, given
15 that the presence of sperm means sex. It does not mean
16 forceful sex, therefore, Your Honor, they haven't shown a
17 sexual battery.

18 Furthermore, they have not in the um -- I mean,
19 there's no tearing of clothing. There's no wounds
20 alleged. We have diagrams of that in the record, um
21 wounds to the um -- um -- um sexual regions of the body,
22 Judge.

23 There is um absolutely no evidence at all whatsoever
24 that, aside from Michael Williams' statement of quoting my
25 client, supposedly, there's no evidence in the record at

1 all that criminal sexual conduct even occurred, Judge.
2 And I would move, again, and particular, there's no
3 evidence of -- of aggravated -- um aggravated force, which
4 if you look at 16-3-652, Judge, could only be conjecture
5 that there was -- that -- that there was any aggravated
6 force.

7 And furthermore, there's no timeline on -- on this
8 sperm, Your Honor, as far as they can take DNA from dead
9 material, how long that sperm had been there that they
10 recovered. Maybe it was two weeks old. It had nothing to
11 do with the time -- the timeframe of March 24th. So I
12 believe they've -- they've totally failed to show corpus
13 delicti, Your Honor, of a criminal sexual conduct first
14 degree, Your Honor, in regards to that matter.

15 I would, in the alternative -- let me give them all
16 to you.

17 THE COURT: Yeah ---

18 MR. PLEXICO: So this is just on the CSC.

19 THE COURT: Right.

20 MR. PLEXICO: Secondly, Your Honor, since they failed
21 to show sexual battery, I also think they failed to show a
22 burglary, because that would be an extenuating
23 circumstance to make the CSC second or third a first
24 offense. There's no -- no windows broken. There's no
25 evidence of forced entry, Your Honor.

1 Um there was no testimony from the little child,
2 Patrick, where Mom was saying, "Get out of the house," or
3 "Don't come in," or anything like that.

4 There is no evidence of anything that was in -- that
5 anybody was in that house that night, aside from a
6 consensual encounter where she opened the door.
7 Therefore, there would be no entry without consent, which
8 is required by law, Judge.

9 Furthermore, um, Your Honor, um I would ask that --
10 that if you do allow the CSC to go, Judge, which I do not
11 think that they've shown corpus delicti for any CSC, but,
12 Your Honor, that there -- there is um aggravated coercion
13 in the second degree. I don't think that that's present
14 either.

15 On third degree, it's just to use force or coercion
16 to accomplish sexual battery in the absence of aggravating
17 circumstances. And here, if you did find that they proved
18 the corpus delicti of a -- of a sexual battery, of a CSC,
19 ie., a sexual battery, since there will be no aggravating
20 circumstances, I don't feel it should go to the jury as
21 more than a CSC third.

22 Of course, I don't think they've shown corpus delicti
23 for anything. That's my motion for directed verdict in
24 regards to the CSC matter, Judge.

25 **THE COURT:** Okay. Let's take them one at a time so

1 the State can respond now on this.

2 ASSISTANT SOLICITOR LEGETTE: Okay. Your Honor, with
3 regards to the CSC, taking the evidence in the light most
4 favorable to the State, as the Trial Court is to do in
5 these directed verdict matters, Your Honor, the Trial
6 Court is also concerned with the existence of evidence and
7 not the weight of the evidence, Your Honor.

8 In this particular case, there's testimony and
9 evidence that Mr. Hemingway told Michael Williams that he
10 raped Harriett Washington. He indicated on that same day
11 that he saw her in her yard that um, "She's fine. Makes
12 me want to rape her."

13 He then is -- comes -- comes back to Michael
14 Williams' house and tells him that he did rape her. He
15 then shows Michael Williams, "Look at what she has done to
16 my chest."

17 We also had testimony about scratches from Michael
18 Williams. We had testimony about scratches from um Sheila
19 Jones. There was testimony about scratches from even Mr.
20 Hemingway's mother, who noticed scratches on his neck.

21 Additionally, Your Honor, she is found with her
22 nightgown hoisted up around her waist. Um also, she had
23 injuries that are consistent with choking, Your Honor,
24 which is testified to by the pathologist.

25 Additionally, there's the existence of sperm, and

1 that sperm then was, or that spermatozoa, that smear, was
2 then sent away for testing, and Mr. Hemingway could not be
3 excluded as a contributor to that particular sample.

4 Your Honor, we submit, therefore, that therewith,
5 that the charge of CSC first degree has been proven, Your
6 Honor. As I stated before, the Court is concerned with
7 the existence of evidence and not its weight, Your Honor.
8 The weight is an issue for the jury. Thank you.

9 MR. PLEXICO: May I respond briefly on that, Judge?

10 THE COURT: Yes.

11 MR. PLEXICO: Your Honor, the motion to dismiss for
12 the State failing to establish the corpus delicti, which
13 is the body of the crime, that must be done by the State
14 without reference to any statements by the -- by the
15 defendant. So we can't start examining whether or not the
16 State has established corpus delicti by saying he made
17 statements to somebody he did it, because that's not --
18 the law requires that the evidence of the crime
19 independent of a confession or statement by the defendant.

20 Therefore, my motion is based on there just is no
21 evidence, that semen does not mean a forcible sexual act.
22 There's just no evidence that there was a forcible CSC.

23 The semen could have come from anyone. She could
24 have been strangled without a sexual act taking place, if
25 she in fact was, and I haven't addressed that yet, and by

1 someone she allowed into her residence. It would be
2 complete conjecture if allowed to go to the jury, because
3 they have no evidence that there was actually a crime,
4 aside from that -- that -- that.

5 Of course corpus -- as far as corpus delicti goes,
6 Judge, they just haven't shown the crime. Your Honor, I
7 would move to dismiss on those grounds for the CSC, Judge.

8 THE COURT: Okay. And if you'll respond to -- um
9 with respect to his comments about um making your case
10 independent of a confession, so to speak, because you're
11 trying to have evidence of the crime itself, as opposed to
12 just relying on somebody said they did something.

13 ASSISTANT SOLICITOR LEGETTE: Your Honor, I would --
14 Your Honor, I would cite to the State versus Russell,
15 which is located at 345 SC 128, which discusses that the
16 corroboration rule is met if the State supplies sufficient
17 independent evidence that serves to corroborate the
18 defendant's statement and together with such statements
19 permits a reasonable belief that the crime occurred. It
20 is not taken independently. They are taken together, Your
21 Honor.

22 We have -- I'd submit to the Court that we have
23 submitted independent evidence here in the form of her
24 injuries that were consistent with choking, in the form of
25 spermatozoa that was found on the smears that were sent

1 for testing, both at S.L.E.D. and blood at LabCorp, which
2 has been entered into evidence, Your Honor. And that
3 particular analysis came back indicating that Mr.
4 Hemingway could not be excluded as a contributor.

5 So we have submitted independent evidence here, which
6 taken together with the statement of Mr. Hemingway, would
7 prove the CSC first degree in this particular matter, Your
8 Honor.

9 MR. PLEXICO: Your Honor, I would like to see that
10 case, one. And, two, that -- she just overturned the rule
11 of corpus delicti for a crime, Judge, and that just hasn't
12 been done by the Supreme Court.

13 You still have to establish corpus delicti of a
14 crime, Your Honor, before you -- you can admit the
15 statement in, you know. But State v Williams says, Judge,
16 there's no particular order. They can bring in the
17 statement and then establish corpus delicti of the crime
18 later in the testimony.

19 Now the State has rested. The evidence is all in,
20 Judge, on the State's part. If you take out that
21 statement, they haven't established the corpus delicti.

22 THE COURT: And what ---

23 MR. PLEXICO: There's been no ruling overturning that
24 by the Supreme Court.

25 THE COURT: Okay. What you're indicating is that you

1 believe that there needed to have been a witness to
2 indicate um something with respect to the sexual battery

3 ---

4 MR. PLEXICO: Yes, Your Honor.

5 THE COURT: --- in terms of what happened, you know,
6 in the area of the vagina or otherwise?

7 MR. PLEXICO: Something, Judge. It just didn't --
8 they haven't -- they just didn't have the evidence, or
9 they would have brought it out. Semen is not sex, is not
10 forcible sex. It's an indication of sex, but not forcible
11 sex.

12 ASSISTANT SOLICITOR LEGETTE: Your Honor, I would
13 also cite to Osborne, as well as State versus Williams,
14 which says that if the sole evidence is the confession of
15 the defendant, then, of course, a directed verdict is
16 proper; however, we do not have here just a sole -- solely
17 a confession, Your Honor.

18 I will stand by my previous argument, Your Honor,
19 citing State versus Russell, citing Osborne, and citing
20 State versus Russell -- State versus Williams.

21 THE COURT: In the um -- um statute, you know, in
22 terms of an element to prove with respect to first degree
23 criminal sexual conduct, one of the elements would be to
24 prove that the defendant used aggravated force to
25 accomplish the sexual battery as well. And then I know

1 you're indicating the bruises and all of that from that
2 top area, but you're saying just the nature of -- that's
3 -- that's what you're using to support that, the
4 pathologist's report about the bruising.

5 ASSISTANT SOLICITOR LEGETTE: Your Honor, he did say
6 he -- in the statement that Mr. Williams came in and gave
7 this Court was that he said he choked her and raped her.

8 THE COURT: Uh-huh.

9 ASSISTANT SOLICITOR LEGETTE: He said he hit her,
10 knocked her down, choked her and raped her. And she is
11 dead, Your Honor, and he did have scratches on his -- on
12 his chest.

13 THE COURT: Uh-huh.

14 ASSISTANT SOLICITOR LEGETTE: So we have um ---

15 THE COURT: Well, I understand ---

16 ASSISTANT SOLICITOR LEGETTE: Yes.

17 THE COURT: --- deceased, but you also have a murder
18 charge, too.

19 ASSISTANT SOLICITOR LEGETTE: Yes.

20 THE COURT: I'm trying to, ---

21 ASSISTANT SOLICITOR LEGETTE: Yes.

22 THE COURT: --- you know, ---

23 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

24 THE COURT: --- separate out the various crimes for
25 which the State is here about, you know.

1 **ASSISTANT SOLICITOR LEGETTE:** Yes.

2 **THE COURT:** Okay. All right.

3 All right, anything further on that issue?

4 **MR. PLEXICO:** Um, no, Your Honor.

5 **ASSISTANT SOLICITOR LEGETTE:** No, Your Honor.

6 **THE COURT:** Okay. And I'm going to just look at
7 those cases myself as well.

8 Okay. Let's move to first degree burglary.

9 **MR. PLEXICO:** Yes, Your Honor. Judge, burglary first
10 degree without consent with the intent to commit a crime
11 therein, Your Honor, in order to be first degree. Your
12 Honor, there would be um -- um here they're alleging in
13 the indictment that he caused physical injury to a person
14 who is not a participant in the crime, Your Honor.

15 Um here, you still have to show -- you have to have
16 some -- some -- some showing, Your Honor, that they
17 entered the dwelling without consent. And there is no
18 sign of a broken window, a jimmied door, a broken door, a
19 broken screen, a cut screen, or damaged screen, any kind
20 of entry, aside from a consensual entry; therefore, they
21 haven't shown any evidence at all to the -- to the Court,
22 Your Honor, where there's -- where there's corpus delicti
23 of a burglary, Judge.

24 I mean, just her being -- you have to assume that
25 whoever went in there, if you find there's enough evidence

1 for either of the two crimes, that -- that -- that it
2 didn't just happen while they were in there, and that's --
3 and that's what you don't want a jury to do is just assume
4 that there's evidence that merely because a crime
5 happened, that means they must have forced their way in.

6 I don't see where there's any evidence that -- that
7 they -- they entered that home through any other way,
8 aside from with consent, Your Honor. I mean, there's just
9 -- there's no damage to the door. There's no evidence
10 they forced their way in, Judge.

11 There's just no evidence in the record to support a
12 burglary charge, and I'd move to dismiss because they've
13 failed to establish the corpus delicti of a burglary,
14 Judge, in evidence.

15 If you do find they have put evidence, what evidence
16 they do have does not um rise to the level, Your Honor,
17 where it should go to a jury, because all you're allowing
18 them to do is truly speculate. Who's going to think with
19 not a torn window screen, not a -- not a bent door? There
20 is no evidence of a burglary at all. There's nothing
21 alleged missing from the house.

22 There's just nothing there, Judge. There's no
23 burglary.

24 THE COURT: Okay.

25 State?

1 **ASSISTANT SOLICITOR LEGETTE:** Thank you, Your Honor.
2 In ruling on matters of directed verdict, the standard of
3 proof is that taking the light -- taking the evidence in
4 the light most favorable to the State, Your Honor, and the
5 Trial Court is concerned with the existence of evidence
6 and not its weight.

7 In this particular case, Your Honor, we have evidence
8 that Michael -- Michael Williams came to this court and
9 told the Court that Eric Hemingway came to him and told
10 him that he knocked on the door. She came to the door.
11 He knocked her down, and he was choking her and raping
12 her.

13 She came to the door, Your Honor. There was no
14 testimony that she allowed him in, that she consented for
15 him to come in.

16 She came to the door. She merely came to the door,
17 Your Honor. He then knocked her down, and he raped her,
18 Your Honor.

19 That is not consent, to actually have a person come
20 into your house, Your Honor. And with her being found
21 dead, that is sufficient injury with regards to the other
22 element of the indictment with regards to hurting a
23 participant who is not -- hurting someone who is not a
24 participant in the crime, Your Honor.

25 **MR. PLEXICO:** Your Honor, briefly? We appear to

1 actually agree that the only evidence of a burglary is in
2 the statement of what he said; therefore, Your Honor, they
3 haven't proven corpus delicti, because their only evidence
4 is that he said he forced his way in, and if he hadn't
5 said that, what do we have? We have nothing.

6 ASSISTANT SOLICITOR LEGETTE: Your Honor, again, with
7 regards to corpus delicti, I would cite to State versus
8 Russell. We have corroborating evidence here, and with
9 the corroborating evidence, her being found dead, her
10 being found dead with injuries consistent with choking,
11 Your Honor, that is evidence that we can take with regard
12 -- and the statement together, those two taken together,
13 the statement, as well as her being found dead, Your
14 Honor, those are -- that's the corroborating element right
15 there with regards to corpus delicti.

16 MR. PLEXICO: They are still using the statement,
17 Your Honor, to get there. They just don't have corpus
18 delicti for burglary.

19 THE COURT: Okay. And your um, the State -- I don't
20 have the indictment in front of me, but you're indicating
21 that entered the dwelling without consent and then causing
22 physical injury to someone; that's the portion?

23 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

24 THE COURT: That's what you're using. Okay. Thanks.
25 Okay. Anything else?

1 MR. PLEXICO: Um not in regards to that.

2 THE COURT: Okay.

3 MR. PLEXICO: I just don't feel like there's any
4 evidence at all that he entered without consent, aside
5 from his statement.

6 THE COURT: Okay.

7 MR. PLEXICO: That's all I have on the burglary
8 first, Judge.

9 THE COURT: Okay.
10 Murder?

11 MR. PLEXICO: All right, murder, Your Honor, um I
12 would move for a directed verdict on murder, Your Honor,
13 in that murder is the unlawful killing of another with
14 malice aforethought, Judge, with malice aforethought. And
15 aside from his statement, Judge, I just don't believe that
16 there's anything here to -- to um support that, aside from
17 the fact that she's dead.

18 And the testimony, taken in the best light from the
19 Coroner, she has -- she still hasn't formed an opinion
20 yet, either, as to the cause of death, nor the forensic
21 pathologist did not feel -- said it could have been a
22 sudden heart attack. So we -- she said that to the jury.
23 It was presented in the presence of the jury. If the jury
24 decided to believe the portions of the forensic
25 pathologist's testimony about well, was it a sudden heart

1 attack, or was it -- was it murder? So, with their own
2 testimony, it doesn't prove anything, aside from confuse
3 the jury.

4 I'd move that you dismiss -- grant a directed verdict
5 in regards to the murder also, Judge, because that's
6 probably the most dangerous speculation. Their best
7 evidence, from their best witness, Judge, said it might
8 not have been, it might have been something else.

9 And um if they don't have the proof of it, Judge, it
10 should not be allowed to go to the jury for them to merely
11 speculate on, Judge. And I believe on -- and without
12 substantial evidence, as a matter of fact, putting this to
13 the other two, too, Judge, without substantial evidence to
14 go to the jury, they're just speculating, Judge. I
15 believe it would be a failure of due process violation,
16 Your Honor, and would be unfair to my client, Your Honor.
17 And I think that's all I have to say as regards to murder.
18 Thank you, Judge.

19 **THE COURT:** Okay. Well, and then the standard on
20 that, obviously, for a directed verdict, and I'm talking
21 about generally as to all the crimes, if there's any
22 direct or circumstantial evidence from which guilt may be
23 reasonably or logically or fairly educed, then, you know,
24 that's the issue there. When I don't um -- if the Court
25 were to grant directed verdict, that's when the evidence

1 is sufficient to only raise a mere suspicion of it. And
2 so I'm just saying that in response to um you saying
3 without substantial evidence -- without substantial
4 evidence. It has to be direct or substantial
5 circumstantial evidence, as opposed to a mere suspicion of
6 guilt.

7 MR. PLEXICO: Um, yes. I believe that's the federal
8 standard for -- for a directed verdict, Judge,
9 substantial. I think it's the federal standard. It's not
10 the state standard. It's the federal. It's a line of
11 cases that say that, something recent, as a matter of
12 fact.

13 THE COURT: Wait a minute. Say that again? We're
14 talking about direct or substantial circumstantial
15 evidence.

16 MR. PLEXICO: Substantial -- yes. Yes. Yes, Your
17 Honor. Yes, ma'am.

18 THE COURT: Okay.

19 MR. PLEXICO: Yes, ma'am.

20 THE COURT: Okay. All right. Okay. And then right
21 now -- and then, obviously, there's a different standard
22 if it was based purely on circumstantial evidence. Then,
23 of course, that then indicates a higher burden for the
24 State, which means that then you need to make sure that
25 there's substantial evidence. I just want to make sure

1 we're all talking about the same issues.

2 But the State would indicate it's not a purely
3 circumstantial case, but go ahead.

4 ASSISTANT SOLICITOR LEGETTE: Your Honor, we would
5 indicate that it's not merely a circumstantial case, Your
6 Honor. And furthermore, I think Mr. Plexico misstates
7 what the pathologist said. Her testimony, as I recall,
8 was that the cause of death was um strangulation due to --
9 asphyxiation due to strangulation, Your Honor, and that's
10 her testimony as I recall it.

11 Further, Your Honor, we do believe that we have
12 proven here the actual murder in this particular case,
13 Your Honor, with regards to -- I'm afraid I have somehow
14 in all the affray forgotten what Mr. Plexico tried to
15 argue, but I believe the State has proven this case with
16 regards to the murder, Your Honor.

17 We have a dead body. We have a pathologist who was
18 admitted as an expert who testified to her cause of death
19 and the manner of death, Your Honor, which is consistent
20 with the defendant's statement, Your Honor.

21 And we stand by our previous arguments with regard to
22 corpus delicti in this particular case and this particular
23 charge, Your Honor.

24 THE COURT: Okay. Anything else at this time?

25 MR. PLEXICO: I -- it think that's -- that sums up

1 everything that I wanted to say on the directed verdict
2 issues, Your Honor.

3 THE COURT: Okay. All right. I want to look at
4 those cases, so I'm just going to, because of the lateness
5 of the hour, I'm just going to tell you all first thing in
6 the morning.

7 Um can we just go ahead and discuss charges? Have
8 you all had a chance to look at that, or do you want to
9 meet here at 9:00 and deal with that, or earlier?

10 ASSISTANT SOLICITOR LEGETTE: Your Honor, I have -- I
11 haven't actually written anything but I have um seen some
12 stuff.

13 THE COURT: Okay.

14 ASSISTANT SOLICITOR LEGETTE: And, Your Honor, I
15 think your standard charges would be fine. The State
16 would, however, ask for a reasonable doubt charge. We'd
17 ask for a circumstantial evidence charge. And you have an
18 expert witness charge, Your Honor?

19 THE COURT: Right.

20 ASSISTANT SOLICITOR LEGETTE: The standard stuff,
21 Your Honor. I have no objection to your standard charge.

22 THE COURT: All right, in terms of the defense,
23 according, you know, obviously not um -- I'll give y'all
24 the rulings in the morning, but let's just deal with any
25 lesser included offenses as well. Are you only talking

1 about on the CSC first?

2 MR. PLEXICO: Um I would ask for CSC first, CSC
3 second, and C -- well, of course, you're going to give CSC
4 first, but I would also ask for CSC second and CSC third,
5 Your Honor. I'm sorry. It's getting late.

6 THE COURT: You can't get third, I think under the
7 new caselaw.

8 MR. PLEXICO: I think third would be appropriate,
9 Your Honor.

10 THE COURT: You can't give third, because it has a
11 difference between -- let me look at that.

12 MR. PLEXICO: Well, I know you can't do it -- it says
13 the actor uses force or coercion to accomplish a sexual
14 battery in the absence of aggravating circumstances. And
15 it says the first, for instance, is used with aggravated
16 force. Well, if you just use force, that would come under
17 CSC third, Judge, if you use force to accomplish --
18 accomplish sexual battery in the absence of aggravating
19 circumstances.

20 If they find him not guilty of the other two and they
21 find him guilty of CSC and they don't have any aggravating
22 circumstances, and they don't find he used aggravated
23 force, because there's no injuries to the sexual areas of
24 the body, then -- or that he's not responsible for the
25 other stuff, then it would just be a CSC third, Judge.

1 **THE COURT:** Okay. And I'm sorry. I was looking at
2 if you've got the varying subparagraphs of CSC first, I
3 mean, third, which would be the (1)(a)(b) or (2), and I
4 was looking at the (1)(b), when I looked at that, mainly
5 that portion where it says you have reason to know that
6 the um -- um victim is mentally defective or incapacitated
7 and all of that, which is a different standard. That
8 makes it not a lesser included offense, apparently, of CSC
9 first, under State versus McFadden.

10 **MR. PLEXICO:** Well, I would argue, Your Honor, that
11 (1)(a) is independent, is -- I think a literally reading
12 of it, I don't think that's wrong, but you may want to
13 revisit that, and I want to preserve the issue.

14 **THE COURT:** Certainly.

15 **MR. PLEXICO:** That CSC third I think is obviously --
16 because we're not alleging that she's mentally defective
17 ---

18 **THE COURT:** Right.

19 **MR. PLEXICO:** --- or incapacitated, Judge.

20 **THE COURT:** Yes?

21 **ASSISTANT SOLICITOR LEGETTE:** Your Honor, the State
22 would oppose vehemently. We're respectfully opposed to
23 any charge going to the jury other than the CSC first.
24 Either he did or he did not commit CSC first.

25 Either he's guilty or he's not guilty of CSC first

1 degree, Your Honor. There's no middle ground here, and I
2 would ask the Court not to send a charge back CSC second
3 or CSC third.

4 MR. PLEXICO: Well, I've already addressed the issue,
5 Judge.

6 THE COURT: Okay. Good enough.

7 Any other lesser included offenses?

8 MR. PLEXICO: Um, yes, Your Honor. I'd ask um -- I
9 would ask for manslaughter, Judge, and while I'm at it, I
10 would ask for involuntary manslaughter, too, Judge. I've
11 got a client to defend here. And since there were voices
12 that were heard, there was arguing, we could surmise that
13 there was an argument and something happened, Judge, and
14 there were noises and a thud heard, and they could surmise
15 there was sufficient legal provocation, Your Honor, and
16 convict my client only on manslaughter.

17 THE COURT: Okay.

18 ASSISTANT SOLICITOR THORNTON: Judge, I don't recall
19 any such testimony about hearing angry voices or arguing.
20 Um I have repeatedly heard Mr. Plexico talk about stuff
21 that either he's in a different case or I am, because it
22 didn't happen.

23 Number two, there has been literally no evidence in
24 this case of heat of passion or anything that would be
25 required for involuntary -- uh for voluntary manslaughter.

1 And there has been no evidence of any criminal negligence
2 by his client that would justify an involuntary
3 manslaughter charge. I mean there's been nothing
4 presented.

5 Now, Mr -- I don't know what Mr. Plexico's defense is
6 going to be, if he's going to put the defendant up or what
7 the defendant might say. Now if the defendant wants to
8 take the stand and say that, you know, it was involuntary,
9 now that's different, but as of right now, there has been
10 zero evidence introduced that would justify either an
11 involuntary or a voluntary manslaughter charge.

12 MR. PLEXICO: I didn't even know Mr. Thornton was
13 here until today, Judge.

14 THE COURT: Okay. Okay.

15 ASSISTANT SOLICITOR LEGETTE: Your Honor, whatever
16 Mr. Thornton said, I adopt as my own personal beliefs.

17 THE COURT: Okay.

18 ASSISTANT SOLICITOR LEGETTE: And my statements to
19 this Court, Your Honor.

20 THE COURT: Okay.

21 MR. PLEXICO: Your Honor, there -- I believe there
22 may be room for a burglary second degree, Your Honor, if
23 you find that he did commit burglary and there was no CSC
24 or murder, Your Honor. So then if it's only presented as
25 a first, then their own aggravating circumstance in

1 regards to the burglary first, which is causing injury to
2 a person who is not a participant in a crime, there would
3 be no injury that he caused, if he's not guilty of the
4 murder or the CSC. Therefore, Your Honor, I think a
5 burglary second degree, Your Honor, would be proper in
6 regards to this matter, Your Honor.

7 THE COURT: Okay.

8 ASSISTANT SOLICITOR THORNTON: Frankly, Judge, I'm
9 kind of lost, but I'll try to muddle through it. But um
10 if there's evidence that he choked her, that's evidence of
11 aggravation, that he hurt somebody in the burglary first.
12 Um we don't have to charge him with simple assault and
13 battery and ABHAN and every other thing that he might have
14 done.

15 If there's evidence that he -- that he committed
16 anything with an aggravating circumstance, and as the
17 Court I'm sure is well aware, a male choking a female, in
18 and of itself, is enough for an ABHAN, if the Court -- if
19 that's the evidence. I mean there is evidence. He's
20 male. She's female.

21 He's testified he choked her. The pathologist
22 testified there were marks consistent with that.

23 Now we didn't charge him also with ABHAN, because
24 that was in connection with the CSC first and the burglary
25 first, but I just -- I don't understand what Mr. Plexico's

1 argument is, but we do disagree with it, Judge.

2 MR. PLEXICO: Your Honor, obviously, they may not
3 find that he committed murder, but they may be convinced
4 that he threatened her or he did something else, based on
5 the testimony that's clear in the record that's, you know,
6 that -- that -- about the argument. So, you know,
7 burglary second degree is reasonable.

8 I mean an assault where violent injury occurred,
9 causes physical injury is what -- that's what they're
10 relying on. If they found he didn't do that, that he did
11 a burglary, then what type of burglary is it? We can't be
12 just stuck with burglary first. They have to have another
13 opportunity. I believe burglary second would be the best
14 charge. Thank you.

15 THE COURT: Uh-huh.

16 ASSISTANT SOLICITOR THORNTON: Judge, I'll keep this
17 brief. Now I -- I'm sorry. I did not understand.

18 Now I understand what he's saying, and the State,
19 Judge. Either the jury believes he choked her when he
20 walked in, that's the evidence that we have. The
21 independent evidence that we have is that, you know, he
22 choked her when he walked in. If he didn't choke her and
23 knock her down and cause her injury, then he didn't commit
24 a burglary.

25 So, again, Judge, it's not just what Mr. Plexico

1 thinks the jury might surmise. It's what the evidence is
2 in the record.

3 The only -- the evidence of the burglary is that when
4 he -- when she answers the door, he knocked her down and
5 choked her and he raped her, which is corroborated by her
6 body being on the floor, the choke marks on her neck, and
7 semen that was recovered um -- um in -- in her anal
8 cavity, Judge, in the swab. So either he -- either he did
9 it or he didn't do it, Judge.

10 There's no evidence in the record to support a
11 burglary second. Thank you, Judge.

12 MR. PLEXICO: I disagree, obviously.

13 THE COURT: Okay. Anything further?

14 ASSISTANT SOLICITOR THORNTON: Nothing further from
15 the State, Judge.

16 THE COURT: Okay. Um ---

17 MR. PLEXICO: I don't have any lesser included
18 offenses to add at this time, Judge.

19 THE COURT: Okay. Okay.

20 The defense, at most, would have four witnesses? Is
21 that what you're indicating?

22 MR. PLEXICO: Yes, Your Honor. I'll be out at the
23 jail talking to my client this evening.

24 THE COURT: Certainly.

25 How long do you all anticipate on your closing

1 arguments? I'm just trying to think about scheduling and
2 what time we'll meet here and all that.

3 ASSISTANT SOLICITOR LEGETTE: Your Honor, it's hard
4 to tell at this point, based on um the three charges that
5 might go, might not go. I'm just not sure, Your Honor.

6 THE COURT: Uh-huh.

7 ASSISTANT SOLICITOR LEGETTE: I estimate if there's
8 all three, forty-five minutes, somewhere in that area, but
9 it could be a little bit longer than that. Your Honor, at
10 this time I really cannot say.

11 THE COURT: Okay. Okay.

12 And defense?

13 MR. PLEXICO: Your Honor, I could read all the
14 evidence in the record against my client in well less than
15 an hour, Judge. I don't think I'll be long. I don't
16 think I'll be an hour, Judge. I think the jury should
17 have it by -- I should be done by noon or so, Judge, at
18 the latest.

19 THE COURT: Uh-huh.

20 MR. PLEXICO: At the very latest.

21 THE COURT: Okay.

22 MR. PLEXICO: And, you know, we could argue, probably
23 have a late lunch.

24 THE COURT: Okay. Well, we'll meet, you know,
25 somewhere between 9:00 and 9:15 and just deal with the

1 directed verdict motions.

2 That would then um -- um and the statement, and then
3 that would then go with the um -- with what's obviously
4 going to be jury charges, and I'll have a chance for the
5 law clerk to then clean it up so that we can have
6 something to actually hand you, and you all will be able
7 to um have your closing and all that.

8 I apologize, I'm just exhausted right now with how
9 we've all been through trial, and I just want everybody to
10 be fresh and, you know, look at it and all. So I'll look
11 at this tonight and be fair to both of you, because you
12 all, you know, you made your good arguments, and um it's a
13 good case. You know, I can, you know, it's a good case,
14 and you've both done extremely well in the presentation of
15 your case. So. Okay.

16 ASSISTANT SOLICITOR THORNTON: Thank you, Judge.

17 MR. PLEXICO: Your Honor, before we go, I'm going to
18 have some other things, as far as reasonable doubt charges
19 and circumstantial evidence charges, and I think I've
20 given you most of these, but they're a little mixed up,
21 because I didn't know how the case was going to go, and
22 I'm still not sure yet, Judge.

23 THE COURT: Okay.

24 MR. PLEXICO: So I wasn't trying to confuse you.

25 THE COURT: Right.

1 **MR. PLEXICO:** But I'll go through these this evening
2 and get them to you tomorrow. Your law clerk can ignore
3 these and save you a lot of work.

4 **THE COURT:** Okay. Very good.

5 (APRIL 25, 2007, 6:40 P.M., WHEREUPON, THIS CASE WAS
6 RECESSED FOR THE DAY. ON APRIL 26, 2007, 10:03 A.M,
7 THE FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD OUT
8 OF THE PRESENCE OF THE JURY:)

9 **THE COURT:** Good morning everyone. There were issues
10 that we left unresolved last night, and the Court is
11 prepared to deal with those. Do the parties have anything
12 else the Court needs to, you know, deal with first before
13 we proceed with those matters?

14 **ASSISTANT SOLICITOR THORNTON:** I do, Your Honor. I
15 need to put something on the record that was brought to my
16 attention this morning.

17 **THE COURT:** Okay.

18 **ASSISTANT SOLICITOR THORNTON:** Judge, through an
19 unrelated phone call with my investigator, Bruce Davis,
20 who is the investigator for our office in three different
21 counties of the circuit, it has come to our attention and
22 has been confirmed by Mr. Davis this morning, that Juror
23 Number Forty-four, McCorskey Graham, apparently kept the
24 children of the decedent, the victim in this case, for a
25 period of time. I think it was a short period of time,

1 but some two or three days um after her death.

2 At this time, Judge, I wanted to let the Court know
3 that. I've already let Mr. Plexico know that.

4 He may have a motion, but I think the proper
5 procedure from the State's prospective, Judge, would be to
6 bring that juror out and um ask that juror if this is the
7 case, and if it is the case, Judge, the State's position
8 would be to have that juror just removed, and that's why
9 we have alternates, have one of the alternates put on the
10 jury and to proceed. But I did want to put that on the
11 record first thing this morning, Judge.

12 Um but we probably do need to have that juror come in
13 and be questioned by the Court just to make sure. But the
14 information that's been provided to my office is that that
15 is the case.

16 THE COURT: Okay.

17 ASSISTANT SOLICITOR THORNTON: Thank you, Your Honor.

18 THE COURT: And, Mr. Plexico, that's the procedure
19 indicated by the State, or suggested. Do you have
20 anything else you'd like to add with regard to my inquiry
21 of that juror?

22 MR. PLEXICO: Um, yes, Your Honor. We would.

23 I would ask that you make an inquiry of the juror if
24 he's discussed anything about his relationship or anything
25 else about her, since he obviously knows her, Judge, and

1 knows her well enough to keep her children, with the other
2 jury members, if you find that to be proper, Your Honor.
3 And if he's done so, we would move for a mistrial. Thank
4 you, Your Honor.

5 THE COURT: Okay.

6 And does the State have anything else to add?

7 ASSISTANT SOLICITOR THORNTON: Judge, I -- I
8 understand Mr. Plexico's reason he wants that question
9 asked, and frankly, I'm glad you're wearing the robe today
10 and not me. I don't, you know, because you could open up
11 a can of worms, but then if you don't ask him that
12 question, you, you know, so I'll leave that to your
13 discretion.

14 But um -- but we would oppose at this time any
15 mistrial, unless Mr. Plexico has um -- or can at any time
16 show, I believe the standard, Judge, if I'm not mistaken,
17 is manifest necessity. That is the only time a mistrial
18 should be granted. I believe that's what the caselaw
19 indicates. So, unless and until such time as manifest
20 necessity is shown, the State would oppose a mistrial.

21 THE COURT: Okay.

22 ASSISTANT SOLICITOR THORNTON: Thank you, Judge.

23 THE COURT: And I understand that on your standard
24 for mistrial, but um if you could respond about
25 questioning the particular juror about any contact with

1 other jurors on that particular issue, because obviously,
2 my admonitions to the jurors every single time on recesses
3 is to not discuss the case with anybody in any shape,
4 form, or fashion. And um in some ways, that might not um
5 come to the mind of the juror specifically as to that
6 being discussing the case, but I would assume that they
7 shouldn't be talking about the name of the victim, I mean,
8 shouldn't be mentioning anything. So, to me, that is an
9 element of discussion of the case.

10 ASSISTANT SOLICITOR THORNTON: That's correct, Judge.
11 You've admonished the jury, as I recall, pretty much
12 every -- every morning and certainly before they left
13 everyday not to do that, and the State feels that that's
14 probably sufficient, but we, you know, just to bring the
15 juror in and ask if um -- if this information that's been
16 provided is correct, and if it is, just remove him, put an
17 alternate on. There's been no other indication of any
18 discussion by any of the jurors. None of the jurors have,
19 to my knowledge, of course I wouldn't know, but I'm sure
20 the Court would have let me know if anything had been
21 brought to the Court's attention about the jury discussing
22 anything improper. So, since there's been no other
23 complaints by jury members of anything being discussed,
24 Judge, and you've admonished them everyday not to discuss
25 the case, the State would feel like that, in itself, is

1 sufficient.

2 **THE COURT:** Okay. And then just to add to that, my
3 concern on that question, too, um or line of questions,
4 Mr. Plexico, would be the fact that short of this
5 particular instance coming to my attention, there would be
6 no reason for me to inquire of any of the jurors whether
7 or not they discussed the case. Um at every possible
8 break and every possible instance, I continually inform
9 them that they are not supposed to. So I would have no
10 reason to ask that question of them, short of this
11 instance coming to me, and the removal of this particular
12 juror would go on the basis of having some relationship of
13 some sort with the deceased, such that he would have a
14 relationship enough with her to have kept her children for
15 a while, and that would be the basis of the removal in
16 this case.

17 So, um that having been said, I'm going to have the
18 juror brought out, and we'll see how the questioning goes,
19 and I'll determine if I need to do anything further.

20 **BAILIFF:** Bring him in?

21 **THE COURT:** Yes, thank you.

22 **BAILIFF:** Which one?

23 **ASSISTANT SOLICITOR THORNTON:** Juror Number
24 Forty-four, McCorskey Graham.

25 **THE COURT:** And um looking to Mr. Bruce Davis, the

1 investigator, um do you all feel any need to -- is that
2 the representation that you have with him? I mean, that's
3 the representation given to you by Investigator Davis?

4 ASSISTANT SOLICITOR THORNTON: Yes, Judge. That was
5 the information provided to me by Mr. Davis this morning.
6 I asked him to confirm it. Um without, of course, talking
7 with the juror, he's been able to independently do so.

8 THE COURT: Okay. Okay.

9 (WHEREUPON, JUROR NUMBER FORTY-FOUR ENTERED THE
10 COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE
11 RECORD:)

12 THE COURT: Yes, just come over here. Um, sir, you
13 are Mr. McCorskey Graham; is that correct?

14 JUROR: Yes, ma'am.

15 THE COURT: Okay. Some information has come to my
16 attention that you might have known Ms. Harriett
17 Washington?

18 JUROR: I have.

19 THE COURT: And some other further information
20 indicates that you actually kept her children for some
21 time after her death?

22 JUROR: I have not. My wife had kept them.

23 THE COURT: Your wife did?

24 JUROR: Yeah.

25 THE COURT: Are you still with your wife?

1 JUROR: Yeah.

2 THE COURT: Okay. So what I mean by that is they
3 were in your household?

4 JUROR: Right.

5 THE COURT: Okay. Um but you'd not indicated that to
6 us at any time during the proceedings; is that correct?

7 JUROR: Right.

8 THE COURT: Okay. Um and I would feel that that
9 would be some pertinent information that both counsel, the
10 State as well as the defense, would have needed to know,
11 you know, with respect to these proceedings, because we
12 want to make sure that no one is related by blood,
13 marriage, or close personal, or social relationship to any
14 of the parties, you know, the victim, um dealings with the
15 State, dealings with the Public Defender's Office as well.

16 JUROR: Right.

17 THE COURT: But um tell me about the time period that
18 this occurred.

19 JUROR: I can't really say when this occurred. It
20 was after all this happened.

21 THE COURT: Okay. Is there any reason why you didn't
22 bring that to the Court's attention?

23 JUROR: I just didn't. I mean, it's -- it's really
24 nothing that I really know them. It's just that my wife
25 had the kids.

1 THE COURT: Okay. But um, obviously, if she had the
2 children, she had some kind of personal relationship with
3 Ms. Washington?

4 JUROR: They just was uh high school friends is all
5 it was.

6 THE COURT: Okay. How did those kids come into your
7 household? Do you know the circumstances?

8 JUROR: Well, they came as they didn't have anywhere
9 to go is what happened.

10 THE COURT: Okay. But did your wife go to get them
11 or did family members of Ms. Washington call y'all to get
12 them?

13 JUROR: They was -- they was brought to her.

14 THE COURT: They were brought to you.

15 JUROR: Yeah.

16 THE COURT: By who?

17 JUROR: By her -- I don't know who brought them. I
18 was at work when all this happened.

19 THE COURT: Okay. All right, but we're not talking
20 about they were in the custody of the State or something.

21 JUROR: No. No.

22 THE COURT: Or um -- okay. Um and how long did you
23 keep them?

24 JUROR: They might have stayed probably a couple
25 days.

1 **THE COURT:** Okay. All right. Um you, as jurors,
2 have been told not to discuss this case in any shape,
3 form, or fashion; is that correct?

4 **JUROR:** Right.

5 **THE COURT:** Have you relayed that information to any
6 other juror?

7 **JUROR:** No, ma'am.

8 **THE COURT:** Okay. Okay.

9 Counsel, if you all ---

10 **ASSISTANT SOLICITOR THORNTON:** May we approach,
11 Judge?

12 **THE COURT:** Yes. Thank you.

13 One moment, sir. If you'll just step over by the
14 bailiff.

15 (WHEREUPON, A BENCH CONFERENCE WAS HELD OFF THE
16 RECORD IN THE PRESENCE OF JUROR NUMBER FORTY-FOUR,
17 BUT OUT OF THE HEARING OF THE JUROR; THEREAFTER, THE
18 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD IN THE
19 PRESENCE AND HEARING OF JUROR NUMBER FORTY-FOUR:)

20 **THE COURT:** All right, sir, I'm going to have you
21 come up here to the juror -- I mean, excuse me, to the
22 witness stand.

23 And, Madam Clerk, if you would swear Mr. Graham in?

24 **JUROR NUMBER FORTY-FOUR,** after being
25 duly sworn, testified as follows:

1 **THE COURT:** Mr. Graham, I just had a lengthy
2 discussion with you about certain issues related to your
3 knowledge of Ms. Washington, and what you just indicated
4 to me was that you and your wife, for some period after
5 the time of Ms. Washington's untimely death, had the
6 children in your possession, her children?

7 **JUROR:** Right.

8 **THE COURT:** Okay. And all the answers and all the --
9 to my questions that you've just given me, have those been
10 truthful?

11 **JUROR:** Yes, ma'am.

12 **THE COURT:** And have those been to the best of your
13 knowledge?

14 **JUROR:** Yes, ma'am.

15 **THE COURT:** And do you still stand by those answers,
16 having been under oath?

17 **JUROR:** Yes, ma'am.

18 **THE COURT:** All right. Anything further from the
19 parties?

20 **ASSISTANT SOLICITOR THORNTON:** The State is satisfied
21 at this point, Judge. Thank you.

22 **MR. PLEXICO:** Um I understand his answers, Your
23 Honor, and I don't have any further inquiries for the
24 Court pertaining to this juror.

25 **THE COURT:** Thank you, sir, if you would step back to

1 the jury room.

2 ASSISTANT SOLICITOR THORNTON: Judge, should he go
3 back in?

4 THE COURT: Just grab him from going in the room,
5 because I was ---

6 ASSISTANT SOLICITOR THORNTON: Thank you, Judge.

7 THE COURT: --- just going to deal with this motion.
8 At this point in time, he's not indicated he's shared any
9 information, and so I just want to take up the motion at
10 this time.

11 ASSISTANT SOLICITOR THORNTON: Yes, ma'am.

12 THE COURT: Okay. The State has requested that this
13 particular juror be removed and that an alternate be in
14 his place, and that is my inclination.

15 Do you have anything, Mr. Plexico, in that regard?

16 MR. PLEXICO: Um, I -- no, I don't, Your Honor. I'm
17 concerned about the first alternate. It's the lady
18 sitting with the pillow on her back.

19 THE COURT: Uh-huh.

20 MR. PLEXICO: I don't know if she's physically able
21 -- if she's going to be physically able to continue with
22 the trial. She hasn't complained to the Court yet.
23 That's something she brought up to you in voir dire.

24 THE COURT: Okay. And I expect that the trial um
25 potentially will be concluded today, and I've had no

1 indications of that. She did make counsel aware of that
2 during the general jury qualifications as well, and that
3 was an opportunity for counsel to use a strike if they
4 felt like that was going to be a concern. So ---

5 **ASSISTANT SOLICITOR THORNTON:** Judge, that would be
6 the State's position, Judge. If she made it this far, I
7 think she can make it the rest of the way.

8 **THE COURT:** Right. And I'm willing, as always, with
9 all jurors to accommodate them and have indicated so,
10 whether it be the need to take medication, comfort breaks,
11 or what have you, and they've been duly letting the Court
12 know when they've felt like the need has risen, prior to
13 me actually giving them that opportunity.

14 So with respect to the State's motion on removing
15 Juror Number Forty-four from the trial of this case, that
16 motion is granted. Madam Clerk, if you will substitute in
17 the first alternate, and then we will proceed with the
18 trial in that regard.

19 As to the defense motion to -- for a mistrial on this
20 issue, then that motion is denied. I don't believe that
21 it has risen to that level.

22 **ASSISTANT SOLICITOR THORNTON:** Thank you, Judge.

23 **MR. PLEXICO:** Can I have about two-and-a-half
24 minutes, Judge?

25 **THE COURT:** Yes.

1 **ASSISTANT SOLICITOR THORNTON:** Your Honor, before Mr.
2 Plexico steps out, are we going to go ahead ---

3 **THE COURT:** You can bring that juror in to let him
4 know that I'm going to remove him. One moment.

5 All right, if the bailiff would bring back in Juror
6 Number Forty-four, please?

7 (WHEREUPON, JUROR NUMBER FORTY-FOUR ENTERED THE
8 COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE
9 RECORD:)

10 **THE COURT:** Okay, Mr. Graham, I've made the decision
11 to remove you from the trial of the case.

12 **JUROR:** Okay.

13 **THE COURT:** Um just because of the information that
14 we discussed previously.

15 **JUROR:** Okay.

16 **THE COURT:** I do thank you for your service and your
17 willingness to serve on jury duty. One other thing, I do
18 not want you to discuss this case in any shape, form, or
19 fashion, because the jurors still have the opportunity to
20 deliberate on this matter.

21 **JUROR:** Okay.

22 **THE COURT:** At the conclusion of the trial, I would
23 inform the jurors that they have the ability to discuss or
24 not discuss the case with anyone, if they shall so choose,
25 and that they can -- if anyone approaches them about that

1 discussion, they can stop discussing at any moment if they
2 want to. I don't anticipate that anybody would harass
3 you, but if so, you would inform the Clerk of Court.

4 JUROR: Okay.

5 THE COURT: But I don't want you to speak with
6 anybody, because we don't want any thinking of your mind
7 in terms of what you've been taking in so far, in terms of
8 the testimony and the evidence, to in any way influence
9 any of the opinions so far. This case has to be for the
10 province of the jury. Okay?

11 JUROR: Okay.

12 THE COURT: And I'll respectfully ask that you uphold
13 that request.

14 JUROR: I will.

15 THE COURT: Thank you.

16 JUROR: Yes, ma'am.

17 THE COURT: He's dismissed.

18 (JUROR NUMBER FORTY-FOUR EXITS THE COURTROOM AND IS
19 DISMISSED.)

20 THE COURT: What's the juror's number and name again,
21 the alternate? Bernice Graves is the alternate?

22 CLERK: Yes, ma'am.

23 THE COURT: And her number?

24 CLERK: Forty-five.

25 THE COURT: One-forty-five?

1 CLERK: Forty-five.

2 THE COURT: Forty-five. Okay. Just bring the
3 alternate in.

4 ASSISTANT SOLICITOR THORNTON: Forty-five?

5 THE COURT: Yes. Bernice Graves.

6 (WHEREUPON, JUROR NUMBER FORTY-FIVE ENTERED THE
7 COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE
8 RECORD:)

9 THE COURT: Ms. Graves, good morning. How are you?
10 Just come before the Court.

11 JUROR: Hi. How are you?

12 THE COURT: I just wanted to let you know that I've
13 just excused one of your fellow jurors, so you're going to
14 be stepping in to the jury panel. Okay?

15 JUROR: Okay.

16 THE COURT: Okay. And we appreciate your service.
17 You've been here and listening all week, and so um you
18 will participate and move over into one of the other
19 seats, as opposed to the alternate seat. Okay?

20 JUROR: Okay.

21 THE COURT: And we'll be with you all shortly. Thank
22 you.

23 (WHEREUPON, JUROR NUMBER FORTY-FIVE EXITS THE
24 COURTROOM, AND THE FOLLOWING PROCEEDINGS WERE HELD ON THE
25 RECORD, OUT OF THE PRESENCE OF THE JURY:)

1 THE COURT: Okay. Before we proceed with, you know,
2 the continuation of last night's business, anything
3 further from the parties?

4 ASSISTANT SOLICITOR THORNTON: Judge, nothing further
5 from the State. The only thing, and this is a very minor
6 thing, Judge.

7 THE COURT: Sure. Sure.

8 ASSISTANT SOLICITOR THORNTON: But um the alternate,
9 her request through the Clerk, we actually put that chair,
10 which is a softer chair with pillows ---

11 THE COURT: Okay.

12 ASSISTANT SOLICITOR THORNTON: --- so if she can keep
13 that seat? I didn't want to say anything until she was
14 gone.

15 THE COURT: Okay. Oh, that's okay. That's fine.
16 Okay.

17 ASSISTANT SOLICITOR THORNTON: Other than that,
18 Judge, no further ---

19 THE COURT: Right.

20 ASSISTANT SOLICITOR THORNTON: --- no further matters
21 on behalf of the State.

22 THE COURT: That's okay, and I do note that it is a
23 different chair.

24 ASSISTANT SOLICITOR THORNTON: Yes, ma'am.

25 THE COURT: That's fine.

1 **ASSISTANT SOLICITOR THORNTON:** Thank you.

2 **THE COURT:** I want her to be comfortable. Okay.

3 Let's um move on to our continuation of last night's
4 discussion. The issues that the Court still had
5 outstanding were the admission of the statement of Ms.
6 Katrina Goodwin. I've had an opportunity to research some
7 further law and review all the cases indicated to counsel,
8 as I said I would, given the lateness of the hour.

9 Um with respect to the statement, since Ms. Goodwin
10 did not admit all portions of the statement, particularly
11 the scratches on her son, and then also indicate that she
12 did not recall giving the statement, but did on the stand
13 indicate that these were her signatures, that she just
14 could not see, you know, the wording, but certainly
15 recalled talking to the police and things of that nature,
16 the purpose of impeachment at any time is just so that the
17 jury has an opportunity to determine the credibility of
18 any witness, um and so in fairness for this trial, the
19 jury gets to consider her trial testimony, but I'm also
20 going to allow the admission of this statement. So um ---

21 **ASSISTANT SOLICITOR THORNTON:** Thank you, Your Honor.

22 **THE COURT:** --- at the appropriate time, the State
23 will need to move the admission of that statement.

24 With respect to the actual um indictments in this
25 case for murder, criminal sexual conduct first, and then

1 burglary first, as to murder, defendant's motion for
2 directed verdict is denied.

3 As to criminal sexual conduct of the first degree,
4 defendant's motion for directed verdict is denied.

5 And then as to burglary first, um I would state that
6 one of the concerns I had was looking at the first element
7 of the crime of the "without consent" portion, but I did
8 have an opportunity to review the testimony that the State
9 was relying on with respect to Mr. Michael Williams in
10 which the State indicated that um Mr. Williams' testimony
11 was that the defendant came to him later on in the night,
12 said that when the victim opened the door, then he knocked
13 her down. So that, in conjunction with other evidence and
14 testimony that's been throughout the case, defendant's
15 motion for directed verdict on that issue, as well, will
16 be denied.

17 Um as to the defendant's request for lesser included
18 offense, we can take that up at the time for jury charges,
19 because I need to know what the rest of the case will be
20 about.

21 Okay. Anything further at this time?

22 **ASSISTANT SOLICITOR THORNTON:** Thank you, Judge.
23 Judge, nothing -- nothing further from the State, except
24 as a procedural matter, because as I've already discussed
25 with the Court, I have some matters I need to take up, I

1 just wanted to know once -- if it was okay with the Court
2 once we find out what Mr. Plexico's plan is for the rest
3 of the day, I may be leaving at this point, and I just
4 wanted to make sure that was okay with the Court.

5 THE COURT: Okay.

6 ASSISTANT SOLICITOR THORNTON: I've got some reports
7 to get to Judge King at some time today, Judge.

8 THE COURT: Okay.

9 ASSISTANT SOLICITOR THORNTON: But if he's going to
10 be putting up evidence, I probably will stay for some
11 time. If not, I'll leave it in the capable hands of Ms.
12 Legette, as long as the Court has no problem with me
13 leaving, Judge.

14 THE COURT: Not at all. And Ms. Legette has carried
15 the day, you know, for the State in terms of her doing all
16 the questioning of the witnesses, so that will be fine.

17 Okay. At this time, the State has rested, with the
18 exception of now having the statement of Ms. Katrina
19 Goodwin tendered to the jury.

20 Defense?

21 MR. PLEXICO: Um, yes, I think for the record, I need
22 to say that I -- I -- I would object to -- is that just
23 going to be put into evidence, and they have rested?

24 ASSISTANT SOLICITOR THORNTON: I think so, Judge,
25 because if I remember how it happened yesterday, Ms.

1 Legette moved for the admission of it.

2 THE COURT: Right.

3 ASSISTANT SOLICITOR THORNTON: You said you would
4 hold your ruling, so I would think the only thing you
5 would have to do, and you could even do it at the
6 conclusion of it, either before he started or at the
7 conclusion of his case, just say, "This has been admitted
8 into evidence, like we did the others," but we have
9 rested. So I don't see that there's any need for Ms.
10 Legette or I, either one, to get back up.

11 THE COURT: All right.

12 MR. PLEXICO: All right. I probably don't need to do
13 it, but just to be sure, Judge, I'll object to the
14 admission of that statement.

15 THE COURT: Right. And as to all of the Court's
16 rulings, your objections and arguments are duly noted for
17 the record, respectfully.

18 MR. PLEXICO: Thank you, Your Honor.

19 THE COURT: Okay. We are ready to proceed to the
20 defense's case. Would the defense like to indicate their
21 intentions at this time?

22 MR. PLEXICO: Yes, Your Honor. My client, Mr. Eric
23 Hemingway, wishes not to take the stand, Your Honor, and
24 when the jury comes out, we'll rest and proceed with
25 closing arguments.

1 THE COURT: Okay.

2 MR. PLEXICO: Would you like to examine him in
3 regards to his rights to testify?

4 THE COURT: Absolutely.

5 Mr. Hemingway, if you'll come this way?

6 ERIC HEMINGWAY, after being duly
7 sworn, testified as follows:

8 (WHEREUPON, DEFENDANT PROCEEDED TOWARD THE WITNESS
9 STAND.)

10 MR. PLEXICO: Um, Eric, you didn't want to testify;
11 correct?

12 DEFENDANT, MR. HEMINGWAY: Right.

13 MR. PLEXICO: Stand right here.

14 THE COURT: You said what?

15 MR. PLEXICO: Eric did not want to testify. He's
16 just up here -- he thinks -- do you want him in the
17 witness stand to answer your questions?

18 THE COURT: Well, I was going to -- I thought you
19 wanted me to explain to him his right ---

20 MR. PLEXICO: Yes.

21 THE COURT: --- to testify ---

22 MR. PLEXICO: Yes.

23 THE COURT: --- or not to testify.

24 MR. PLEXICO: Yes, ma'am.

25 THE COURT: On the record.

1 MR. PLEXICO: Yes, ma'am.

2 THE COURT: Okay.

3 MR. PLEXICO: Did you want him on the witness stand?

4 THE COURT: Yes, that's fine.

5 MR. PLEXICO: Okay. Go ahead.

6 THE COURT: Okay. Because I would need to have him
7 placed under oath, because I have to ask him certain
8 questions. Okay.

9 All right, um -- okay. Mr. Hemingway, at this time,
10 I'm going to explain to you certain of your rights.

11 DEFENDANT, MR. HEMINGWAY: Yes.

12 THE COURT: You understand that the State has brought
13 their case, and they've rested. So at this point, it's up
14 to your -- you and your counsel to present whatever case
15 that you'd like to have at this point. Do you understand
16 that?

17 DEFENDANT, MR. HEMINGWAY: Yes.

18 THE COURT: Now, mind you, that your counsel has been
19 cross-examining witnesses of the State, challenging their
20 evidence and everything, so that is considered, you know,
21 testimony and evidence that the jury could construe in
22 your favor as well, but you also have the ability to
23 testify, as well as put up witnesses or other evidence on
24 your own behalf. Do you understand that?

25 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

1 **THE COURT:** And has your client, excuse me, your
2 attorney explained to you that you have the right to
3 testify, if you want to, but also the right not to
4 testify?

5 **DEFENDANT, MR. HEMINGWAY:** Yes, ma'am.

6 **THE COURT:** You have the ability to not testify and
7 claim the protections of the Fifth Amendment, which
8 indicates that no person shall be compelled in any
9 criminal case to be a witness against himself. You
10 understand that?

11 **DEFENDANT, MR. HEMINGWAY:** Yes, ma'am.

12 **THE COURT:** This means you cannot be required to
13 testify in this case, and in fact, your failure to
14 testify, I would have to indicate that to the jury that
15 you have no burden of proof in this case, and that they
16 could not construe your failure to testify in any way in
17 their deliberations. You understand that?

18 **DEFENDANT, MR. HEMINGWAY:** Yes, ma'am.

19 **THE COURT:** So I would um do that in protecting you
20 from your ability to not have to testify, but I also need
21 to let you know that you could, if you want to, and that
22 you need to exercise that right willingly, knowingly, and
23 intelligently. Do you understand that?

24 **DEFENDANT, MR. HEMINGWAY:** Yes, ma'am.

25 **THE COURT:** So do you -- um are you representing to

1 this Court that you've had extensive discussions, sir,
2 with your attorney about this particular issue?

3 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

4 THE COURT: Okay. And that you have elected to not
5 testify?

6 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

7 THE COURT: And that you have elected to um uphold
8 your um Fifth Amendment protections; is that correct?

9 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

10 THE COURT: Okay. In making that decision, I just
11 want to make sure that you also understood that if you had
12 decided to testify, you would be treated like any other
13 witness, as you saw on the stand. And what I mean by that
14 is that the State would have the opportunity to
15 cross-examine you, and that if there were any other um --
16 um impeaching evidence or documents or if you had a prior
17 record of any crimes or bad acts, you know, just various
18 things, there are things that they could um try to
19 cross-examine you on. You understand that?

20 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

21 THE COURT: So you would be subjected to the same
22 type of cross-examination as you've seen for all the other
23 witnesses throughout the trial. You understand that?

24 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

25 THE COURT: Okay. Having known that, is it your

1 decision on your part that you are fully aware of your
2 rights to testify or not testify?

3 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

4 THE COURT: And you're making this decision
5 intelligently with um counsel, your attorney, and he's
6 indicated these same rights to you?

7 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

8 THE COURT: And do you understand these rights again
9 as the Court has indicated them to you?

10 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

11 THE COURT: Okay. So what's your final decision?

12 DEFENDANT, MR. HEMINGWAY: No.

13 THE COURT: To not testify?

14 DEFENDANT, MR. HEMINGWAY: Yes, ma'am.

15 THE COURT: Okay. Thank you.

16 Counsel, need anything further?

17 MR. PLEXICO: No, Your Honor.

18 THE COURT: Okay. Thank you. You can step down.

19 DEFENDANT, MR. HEMINGWAY: Thank you.

20 ASSISTANT SOLICITOR THORNTON: Before the jury comes
21 in, Judge, since Mr. Plexico has indicated he's going to
22 rest, I'll be taking my leave. May I approach?

23 THE COURT: Okay. Yes.

24 ASSISTANT SOLICITOR LEGETTE: May I have a moment,
25 Your Honor?

1 **THE COURT:** Yes, and I need to talk to you all
2 anyway. Come on up.

3 (WHEREUPON, A BREAK WAS TAKEN, AND THEREAFTER, THE
4 FOLLOWING PROCEEDINGS WERE HELD ON THE RECORD, OUT OF
5 THE PRESENCE OF THE JURY:)

6 **THE COURT:** All right, since the defense counsel has
7 indicated on behalf of the defendant that they intend to
8 rest, instead of bringing the jurors in at this moment
9 only to send them back out and deal with the charge
10 conference, let's go ahead and discuss jury charges.
11 Since the entire matters will go to the jury, and then the
12 defense has indicated that they'd also like some lesser
13 included charges in there, and that way, you all could
14 prepare in your closing arguments to know all issues that
15 will be before the jury so you can adequately have some
16 time to incorporate that into your arguments.

17 Let's start um first with both counsel having been
18 given a copy of the Court's proposed charges, and which
19 we'll make a Court's Exhibit as well, but this will be the
20 time for us to all review them for what is in the case
21 now, and then we can deal with any additional charges
22 requested by defense counsel.

23 **THE COURT:** And so the parties will note, as I'm
24 reading through these as well, I notice that the defense's
25 proposed lesser included offenses are in here, but the

1 Court has not made a ruling on those. This is just for
2 the purpose of having them in front of you before we make
3 those decisions.

4 All right, are the parties ready to start discussing
5 these?

6 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

7 THE COURT: Let's refer to them on the record with
8 respect to the charge number here so that the record will
9 be clear, and let's deal with the charges that are the
10 pack that the Court has given, and then we'll talk about
11 adding other things.

12 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

13 THE COURT: Okay. Is everyone okay with the General
14 Charge Number One?

15 ASSISTANT SOLICITOR LEGETTE: The State has no
16 objection to Number One, Your Honor.

17 THE COURT: Okay. And then Number Two?

18 MR. PLEXICO: I have no objection to Number One or
19 Number Two, Judge.

20 THE COURT: Okay. Number Three?

21 ASSISTANT SOLICITOR LEGETTE: I have no objection to
22 Number Three, Your Honor.

23 MR. PLEXICO: Your Honor, with Number Three, I would
24 like to request that the Court um ---

25 THE COURT: And this is the murder one. Okay?

1 **MR. PLEXICO:** This is on murder. Instead of
2 "inferred" -- there are a line of cases on inferences,
3 Judge. Some of these are older jurors that may have been
4 in the courtroom in similar trials years ago that have
5 forgotten about it. Who knows, Judge?

6 **THE COURT:** Uh-huh.

7 **MR. PLEXICO:** And there are a line of cases on
8 inference and switching burdens of proof, Judge, I would
9 ask that the word "implied" in the fourth paragraph,
10 "malice aforethought may be express or inferred," I would
11 ask that it be "express or implied."

12 **THE COURT:** Okay.

13 **MR. PLEXICO:** And down where it says either by
14 "direct evidence or by inference," I'd just ask that it be
15 implication, and I apologize if I appear picky, but it's
16 -- I think it's a valid point, Your Honor.

17 **THE COURT:** So, in other words, where we keep
18 indicating the word "inferred," substitute the word
19 "implied?"

20 **MR. PLEXICO:** Yes, Your Honor.

21 **THE COURT:** Okay. Any problem with that, Ms.
22 Legette?

23 **ASSISTANT SOLICITOR LEGETTE:** No, Your Honor. The
24 State has no problem with that.

25 **THE COURT:** Okay. All right. The Court will accept

1 that revision.

2 MR. PLEXICO: Your Honor, on the second page of
3 Number Three, where it's in italics about "a hand or a
4 fist is not normally considered a deadly weapon; however,
5 under some circumstances," I would ask that you strike
6 that out. I think that could be construed as a comment on
7 the facts, Your Honor.

8 THE COURT: Right. And I took out fists. Do you
9 want -- but hand can be in there; is that correct?

10 ASSISTANT SOLICITOR LEGETTE: Yes, Your Honor.

11 THE COURT: Because the issue is the pathologist's
12 report.

13 ASSISTANT SOLICITOR LEGETTE: Yes.

14 THE COURT: I just anticipate what the State's going
15 to say.

16 MR. PLEXICO: I didn't think the pathologist report
17 said there was evidence of a handprint.

18 THE COURT: Well, not a handprint, but that she had
19 bruising and hemorrhaging, and then the issue of the
20 statement dealing with choking.

21 MR. PLEXICO: I -- I -- I'm going to object to the
22 whole thing.

23 THE COURT: Okay.

24 MR. PLEXICO: And I understand your ruling to be ---

25 THE COURT: I'm not ruling. I'm just saying that