

VOLUME II OF III

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Lexington County

Honorable Daniel McLeod Coble, Circuit Court Judge

PETER L. COFFEY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002129

APPENDIX

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CROSS-EXAMINATION OF ASHLEY DIXON BY MR. STITELY

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1 MR. GRAHAM: No, Your Honor, other than we're
2 working on revising that summary and Dr. Amick will
3 be the next witness. I'm hoping to have it done
4 before, but I might need a moment right there to get
5 it printed out and verified.

6 THE COURT: Anything additional, Mr. Stitely?

7 MR. STITELY: No, Your Honor.

8 (The jury enters the courtroom at 11:32 AM.)

9 THE COURT: All right. Our jury is back.

10 Please continue to give the parties your
11 complete and undivided attention.

12 Mr. Stitely?

13 MR. STITELY: May it please the Court.

14 CROSS-EXAMINATION

15 BY MR. STITELY:

16 Q. Is it Ms. Phipps, Officer -- or Dixon. I'm
17 sorry.

18 A. Serologist Dixon.

19 Q. I'm going to go with Ms. Dixon, if that's okay.

20 A. That's fine.

21 Q. Ms. Dixon, you don't actually have anything to
22 do with the collection of crime scene evidence or
23 anything like that, correct?

24 A. No, sir.

25 Q. You work the lab at SLED -- or at Richland

1 County Sheriff's Office?

2 A. Yes, sir.

3 Q. Testing items that come to you?

4 A. Yes, sir.

5 Q. Who decides what you're going to test?

6 A. Well, for the sheriff's department, our
7 investigators send in requests and they ask us which
8 items to test.

9 Q. The sheriff's department being Richland?

10 A. Yes, sir.

11 Q. How about in a case like this one out of
12 Lexington? Who told you what to test?

13 A. The analyst on the case.

14 Q. Who was the analyst on this case?

15 A. Dr. Gray Amick.

16 Q. And I guess I'll ask him. So there's no
17 contact with you with law enforcement from Lexington
18 County?

19 A. No, sir.

20 Q. When you get evidence like the bag, the purse,
21 what is your assumption as far as the maintenance of
22 that exhibit?

23 A. Can you say that in a different way?

24 Q. When you get the purse, it comes to you, you
25 call it secured?

1 A. Yes, sir.

2 Q. How would you anticipate seeing it? Would it
3 be the condition it was collected in or would you
4 expect other people to have gone through and
5 manipulated it before it gets to you?

6 A. I would receive it the way it was collected in.

7 Q. So we saw pictures earlier, and I'll show you
8 some pictures. While I'm looking, you didn't take a
9 bunch of items out of the purse and take a picture
10 of it, did you?

11 A. No, sir.

12 Q. State's 41, you didn't do that?

13 A. No, sir.

14 Q. Were you made aware that items were taken out
15 of the purse before it went to you?

16 A. No, sir.

17 Q. Could that potentially change your opinion as
18 to what he said needed to be tested?

19 A. No, sir.

20 Q. You just test what's given to you?

21 A. Yes, sir.

22 Q. I'll show you a couple other pictures and ask
23 if they were items that made it into your lab. Did
24 you ever see the big black garbage can, trash can,
25 bucket?

1 A. No, sir.

2 Q. Did you ever contain a set of sandals?

3 A. No, sir.

4 Q. How many pairs of socks did you receive?

5 A. I didn't receive any socks.

6 Q. So item 10 that says white socks, that wouldn't
7 have been anything you touched?

8 A. No, sir.

9 Q. I guess for clarification, what numbers were
10 you as far as the Richland County items --

11 THE COURT: When you say item 10, what are you
12 referring to?

13 MR. STITELY: I'm sorry, Judge.

14 BY MR. STITELY:

15 Q. Richland County Sheriff's Department ultimately
16 did testing on a number of items. You talked about
17 the cucumber being number 13, the shower curtain was
18 number 20 -- or number 21, and the purse was number
19 20. Which items -- or what numbers did you
20 associate with items that you tested?

21 A. So I tested items 14, 15, 18, 19, 20, 21, and
22 13.

23 Q. So the other items -- and you're looking at a
24 prior report too. The other items would have been
25 Dr. Amick and not you?

1 A. Yes, sir.

2 Q. So you would have had nothing to do with the
3 development of DNA or any evidence off of those?

4 A. No, sir.

5 Q. One other question while I'm saying that word
6 DNA. You said that you developed the DNA. Do you
7 actually ensure that DNA is found or you just
8 collect the substance to go to the doctor or the
9 analyst of whether or not DNA is present?

10 A. I just collect.

11 Q. So you're aren't a party to saying there is DNA
12 or there's not DNA, you just collect the sample?

13 A. Yes, sir.

14 Q. On Item No. 77, which is the shower curtain,
15 you indicated there was positives in nine places and
16 you only collected four.

17 A. Yes, sir.

18 Q. What is the scientific mathematical reason for
19 doing that?

20 A. I just did what Dr. -- I just took cuttings of
21 the areas Dr. Amick asked me to.

22 Q. Is there any reason we didn't test the other
23 five areas?

24 A. No, sir.

25 Q. You did a swab on one cell phone; is that

1 correct? That would have been number 14?

2 A. A swab came in from the phone.

3 Q. Sorry. So you never actually physically had
4 the phone?

5 A. No, sir.

6 Q. Okay. Thank you. Did you pull any prints off
7 of any items?

8 A. No, sir.

9 Q. Are you able to do that?

10 A. No, sir.

11 Q. Okay. Number 13, which was the cucumber and
12 the hairs, those aren't your hairs, are they?

13 A. I can't answer that question. I didn't do the
14 DNA analysis on it.

15 Q. You wouldn't typically add any of your personal
16 DNA to things if possible, correct?

17 A. No, sir.

18 Q. Why is that?

19 A. I don't want to have to go to court on it.

20 Q. Fair enough. It does talk about on your list
21 number -- I apologize, 16 was not you. Sorry.

22 The boxers, number 19 on your list, you
23 indicated to the jury a number of different
24 reddish-brown stains that were positive when you did
25 the -- what do you call that test? I'm sorry.

1 A. The phenolphthalein test.

2 Q. And it's called presumptive test?

3 A. Yes.

4 Q. You were very detailed on the shower curtain,
5 marking all ten, nine positives and one negative.

6 How many cuttings did you take of the boxers?

7 A. Just one.

8 Q. Is there any particular reason why you didn't
9 test all the different stains?

10 A. I did test all the stains, but just took one
11 cutting.

12 Q. Is there any particular reason why?

13 A. Because Dr. Amick told me to take one cutting.

14 MR. STITELY: Thank you, ma'am. That's all I
15 have.

16 THE COURT: Redirect, Solicitor?

17 MR. GRAHAM: No, Your Honor.

18 Thank you, Ms. Dixon.

19 THE COURT: Thank you very much, Serologist
20 Dixon.

21 MR. GRAHAM: Your Honor, I apologize. We can
22 go one of two ways. There is an exhibit that I
23 would like to use with the next witness. We can
24 either take a break and get it finalized now with
25 changes that were requested or we can go through and

1 stop during his testimony. However Your Honor wants
2 to proceed.

3 MR. STITELY: I can look at it during the
4 qualifications, Judge.

5 THE COURT: Dr. Amick is the next witness?

6 MR. GRAHAM: Yes, sir.

7 THE COURT: Thank you again, Serologist.

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. We'll press on,
10 Solicitor. You may call your next witness.

11 MR. GRAHAM: The State calls Dr. Gray Amick.

12 THE COURT: Yes, sir, if you would come around.

13 MR. GRAHAM: Your Honor, if I may approach, I
14 will give you a copy of the exhibit.

15 GRAY AMICK

16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE CLERK: Have a seat, sir. Once you're
19 seated, state your full name, spelling your last,
20 please.

21 THE WITNESS: My name is Gray Amick, A-M-I-C-K.

22 DIRECT EXAMINATION

23 BY MR. GRAHAM:

24 Q. Dr. Amick, can you tell me where you're
25 currently employed?

1 A. At the Richland County Sheriff's Department.

2 Q. And how long have you been with the Richland
3 County Sheriff's Department?

4 A. Since 2004.

5 Q. What position have you held with the Richland
6 County Sheriff's Department?

7 A. In 2004, I was hired with John Barron to start
8 up the DNA lab, and my title was DNA technical
9 leader. So I was a DNA technical leader for 12
10 years until 2016, at which point I became the lab
11 director, and that's the title I hold now.

12 Q. As a lab director, tell me what your duties
13 are.

14 A. Well, as lab director, I'm over the entire lab,
15 which includes the DNA section, the crime scene
16 latent prints, the firearms section, drug ID
17 section. So I'm supervisor of all those sections.
18 I also maintain my DNA proficiency, so I still do
19 DNA casework as well.

20 Q. Prior to coming to Richland County in 2004,
21 what were you doing?

22 A. Prior to that, I worked at the State Law
23 Enforcement Division, SLED. I worked there from
24 1993 till 2004, for 11 years.

25 Q. In the 11 years you were with SLED, what did

1 you do?

2 A. First five years, I was in toxicology. And the
3 second six years, I was in DNA as a DNA analyst at
4 SLED.

5 Q. Briefly can you tell the jury about your
6 educational background?

7 A. Yes. I got a BS in biology in '89 and a Ph.D.
8 in biochemistry in 1993 from USC. Like I said, I
9 was hired at SLED in 1993, was trained by
10 court-qualified experts in the field at that point
11 in toxicology and DNA. I've attended continuing
12 education each year in each of those fields that I
13 was proficient in up until this point and continue
14 to maintain my DNA proficiency at this point.

15 Q. How many DNA tests do you think you've
16 conducted over your 26-plus years?

17 A. How many tests? So about 24 years -- oh, man,
18 I don't know. We probably averaged at SLED maybe
19 50, 60 cases a year, and at the county we probably
20 do more per year per analyst. So, you know, a whole
21 lot. I don't keep those numbers.

22 Q. A whole lot?

23 A. Thousands would probably be safe to say.

24 Q. Have you ever been qualified as an expert in
25 the field of DNA and serology?

1 A. I have.

2 Q. What is DNA?

3 A. Well, DNA is a molecule, and every nucleic cell
4 in your body has, basically, a blueprint that makes
5 you human.

6 Q. How about serology? When we talk about that,
7 what does that mean?

8 A. Serology is identification of body fluids.
9 Serology used to be its own department in forensics,
10 blood typing and -- is it blood, is it semen, is it
11 saliva? Now it's more for us as a screening tool.
12 We use serology, basically, to determine if
13 something is blood or semen.

14 Q. How many times have you been qualified as an
15 expert in DNA and/or serology?

16 A. Approximately 95 times.

17 Q. Those were all in the state of South Carolina?

18 A. A couple in North Carolina, I think.

19 MR. GRAHAM: Your Honor, we would offer
20 Dr. Amick as an expert in the field of DNA and
21 serology.

22 MR. STITELY: Judge, we'll stipulate.

23 THE COURT: All right. Again, ladies and
24 gentlemen, you've heard my charge about expert
25 witnesses. This witness, Dr. Gray Amick, is

1 qualified to testify based on his training and
2 experience, background, history in the field of DNA,
3 DNA analysis and --

4 Serology, Solicitor, did you say?

5 MR. GRAHAM: Yes, Your Honor.

6 THE COURT: And serology. He may give his
7 opinions in those areas and may give the bases for
8 those opinions. The credibility of any witness,
9 including expert witnesses, is solely up to the jury
10 to determine. And you will give this testimony
11 whatever weight and value you deem fit and
12 appropriate.

13 Thank you very much, Solicitor, Mr. Stitely.

14 You may proceed.

15 BY MR. GRAHAM:

16 Q. As far as labs and the services they provide
17 and to who, what's the difference between the State
18 Law Enforcement Division and the Richland County
19 Sheriff's Department lab?

20 A. State Law Enforcement Division, up until 2004,
21 as far as DNA goes, did all the DNA analysis for
22 every county in the state. So they assist the other
23 law enforcement agencies in services that they don't
24 have, like forensics or crime scene or dog team or
25 SWAT team, those kind of things.

1 In 2004, when the Richland County Sheriff's
2 Department started their DNA lab, at that point SLED
3 no longer did the DNA for Richland County, the
4 Richland County lab did the DNA for Richland County.
5 So we are a local lab in that respect.

6 Since then, there's been three other DNA labs
7 in the state that have come into existence: One in
8 Beaufort, Greenville, and York County. So there's
9 four other forensic labs that do DNA in the state,
10 and then there's SLED. And SLED continues to
11 service the rest of the counties in the state.

12 Q. So if I understand you right, SLED is available
13 to any county or agency in the state and then
14 Richland County and three other labs under sheriff's
15 departments have created labs initially for their
16 own agency; is that correct?

17 A. That's correct.

18 Q. Has that changed -- although you were recruited
19 initially to do DNA for the Richland County
20 Sheriff's Department, do you also do it for other
21 agencies?

22 A. Yes.

23 Q. Do you do it for free?

24 A. No, we do not.

25 Q. So in this case, Richland County Sheriff's

1 Department lab, you, as the director, you and some
2 of your people, did DNA and serology work at the
3 request of the Lexington County Sheriff's
4 Department?

5 A. That's correct. We do it under what we call
6 assisting other agencies. And it was an agreement
7 that the sheriff had with the lab that we could do
8 this type of analysis if requested, but we would
9 have to, obviously, charge a fee to cover any
10 overtime or consumables because those agencies --
11 the taxpayers of Richland County are paying for the
12 Richland County service, whereas if it's a different
13 county, it needs to be reimbursed. So that's for
14 the charge.

15 Q. And, actually, you're being paid for being here
16 today as well?

17 A. That's correct. I have to take personal time
18 away from my current job, and I'll be compensated
19 for that.

20 Q. So is the money going to you today or is it
21 going to Richland County?

22 A. It goes to both. So it goes to me for
23 overtime, and then a portion of that goes to the
24 County to support the lab as well.

25 Q. The processing of the items themselves, the

1 work that Ms. Dixon did, John Barron in your office,
2 I believe, and yourself, approximately, up to this
3 point, how much money is the Sheriff's Department
4 spending?

5 A. I think the initial invoice was around \$8,000
6 and the second invoice was around \$3,000. We charge
7 \$350 per item for DNA analysis. And then there may
8 be some additional charges just for screening and
9 stuff, but that's the base fee.

10 Q. Let's go -- you were in the courtroom when
11 Ms. Dixon testified; is that correct?

12 A. I was.

13 Q. So when she was talking about taking certain
14 items, taking swabs or cutting swabs and putting it
15 in tubes and preparing it for extraction, can you
16 explain that process to the jury?

17 A. Sure. Let me explain a little bit more as well
18 because the initial -- this initial submission, she
19 wasn't involved in. So when these
20 assisting-other-agency cases come to us, it's
21 assigned to an analyst on a rotational basis, based
22 on if they have the ability and the time to do it
23 since it's overtime work.

24 So I was up next for this case and I did the
25 initial submission of this case, the initial items.

1 And she did -- I requested her help for the second
2 round of evidence that was done.

3 So the initial items, I think items, basically
4 1 through 12, I handled and made the cuttings and
5 did the processing as she described for the ones
6 that she did. So same process: open the items and
7 make observations, make cuttings when needed,
8 extract the DNA and proceed to the -- trying to
9 develop a DNA profile.

10 Q. So let's go through the items that -- in the
11 initial submission that you personally handled. The
12 first item, according to your report, is a sexual
13 assault kit from JT [REDACTED] containing four
14 things: a buccal swab, a vaginal swab and slides,
15 oral swabs and slides, and rectal swabs and slides.
16 Can you describe what those things are?

17 A. Yes. So the sexual assault kit is a kit that's
18 collected either at autopsy or at emergency room
19 when a sexual assault is believed to have taken
20 place. It's usually in the form of a box that has
21 the swabs that prompt what's being collected, but it
22 can also be just swabs, like from an autopsy,
23 collected in the same way, using a standard from the
24 victim in the form of a buccal swab or a swab from
25 their mouth, and then in this case, vaginal, oral,

1 and rectal swabs as well.

2 Q. I just put up in front of you item -- what's in
3 evidence as 4A. Do you recognize that as being the
4 sexual assault kit for JT

5 A. I do. And it bears my initials when I resealed
6 it.

7 Q. Okay. So going through the particular items in
8 there, in 4A, the first one is a buccal swab. What
9 is a buccal swab taken from JT at autopsy?
10 What is it, what's the purpose of it, and what do
11 you do with it?

12 A. So that's a swab taken from one's mouth. It's
13 used as an elimination standard or a standard. We
14 attempt to try to get the DNA profile from that so
15 we'll have a known DNA profile from that individual.
16 I would have taken that, made a cutting, extracted
17 the DNA, and developed a DNA profile.

18 Q. The second item that was in there is vaginal
19 swabs and slides. So what, if anything, did you do
20 with those?

21 A. Same process, I inventoried what was there. On
22 that type of item, I would have -- since it's a
23 suspected sexual assault, I would test for semen, I
24 would do some serology. And then if there was semen
25 present in the vaginal, oral, or rectal swabs, I

1 would do the same thing: make the cutting, extract
2 the DNA, and try to get a DNA profile from it.

3 Q. So can you explain to the jury and myself the
4 difference in -- the serology in a rape kit, you'd
5 be looking for seminal fluid, you said; is that
6 correct?

7 A. Most of the time, yes.

8 Q. And also maybe sperm itself?

9 A. Correct. We would also look at actual
10 microscope slide for the sperm itself.

11 Q. Can you tell the jury the difference -- what
12 those two fluids are and the difference?

13 A. Yes. We have a chemical test for seminal
14 fluid. It tests for protein in seminal fluid. So
15 when we find the presence of that protein, we can
16 report the presence of seminal fluid. It's not
17 until we actually see the sperm cell that we can say
18 semen is present. So it's kind of semantics, a
19 little difference there. So one's a buccal test and
20 one's actually looking in a microscope looking for
21 the sperm cell.

22 Q. The oral swab that's in that kit, would you
23 have done the same thing serology-wise looking for
24 seminal fluid and sperm?

25 A. Yes.

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1 Q. The rectal and slides, the same as well?

2 A. That's correct.

3 Q. The next item that -- and, I don't know, I
4 think it's actually in State's 76. There were a
5 couple of buccal swabs that were submitted for the
6 defendant. I think what I just handed you is
7 State's No. 76. Do you see that as containing your
8 Richland County Item 2 number, a buccal swab for the
9 defendant?

10 A. Yep.

11 Q. Okay. Your 3 is pieces of hair. Looking at
12 State's 76, do you see the pieces of hair that were
13 received at the Richland -- or a container that
14 should have contained the pieces of hair that were
15 sent to you?

16 A. Yes, sir, I do.

17 Q. Item 4, 5, and 6, do you also recognize those
18 as being the swabs labeled as A, B, and C from the
19 shower wall also contained in that same item that's
20 currently in evidence?

21 A. Yes, I do.

22 Q. Your item 7 is labeled as Timberland boots, I
23 believe; is that correct?

24 A. Yes.

25 Q. Let me show you State's 119 and ask if you

1 recognize those as being the Timberland boots that
2 you would have processed as well? If you need to
3 open it, please feel free and --

4 A. I do recognize the initials on the packages as
5 being my initials and the item number and our
6 number, pair of boots on the outside of the package.

7 Q. The next item on the Richland County report is
8 number 8, and that was described as Hanes boxers.
9 Looks like there was three cuttings taken from the
10 boxers; is that correct?

11 A. That's correct.

12 Q. Let me show you State's 118 and ask you if you
13 recognize those as being the Hanes boxers.

14 A. There's lots of writing on here. Appears to be
15 my initials here. Hanes boxers with red-brown
16 stains.

17 Q. Number 9 on the Richland County report is tan
18 shorts. Let me show you what's in evidence as 117
19 and ask if you recognize those as being the tan
20 shorts.

21 A. Again, it's labeled tan shorts. If I can open
22 it and have a look. It's quite --

23 Q. Feel free to open it. I was going to ask you
24 to wait for the jury, but --

25 A. Looks like it's been sealed and resealed

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1 several times, so it's difficult to see. Let's see.
2 These gloves are a little bit small.

3 Thank you.

4 Yes. So here's my initials here. And these
5 shorts are the ones -- I actually have the pictures
6 of them as well, so I do recognize them.

7 Q. Speaking of pictures of shorts, let me show you
8 two photographs and ask if you recognize those.

9 A. Yeah. These are the ones I was referring to.
10 So these are the photographs I took of those shorts.
11 That should be Item No. 9.

12 MR. GRAHAM: Your Honor, the State would offer
13 these two photographs into evidence.

14 MR. STITELY: No objection.

15 (State's Exhibit Nos. 134 and 135 admitted into
16 evidence.)

17 BY MR. GRAHAM:

18 Q. Dr. Amick, State's 134 and 135, the front and
19 back of the shorts, what was the purpose of taking
20 these photographs?

21 A. Just general documentation of the evidence.

22 Q. If I can ask you to step down.

23 THE COURT: 134 and 135 is without objection,
24 right?

25 MR. STITELY: Yes, sir.

1 BY MR. GRAHAM:

2 Q. Doctor, if you can, put the gloves back on and
3 bring the pants down. And let's display those for
4 the jury, please. With the Court's permission.

5 A. It just feels weird handling evidence in court.
6 I'm sorry. Right by the water jug too. Do you want
7 me to pick them up?

8 Q. Pick them up. Showing those to the jury, can
9 you describe when you did your photography and
10 visual inspections --

11 A. What's the question?

12 Q. What you saw, what you observed. And there's
13 writing and cutting on here. Can you explain to the
14 jury what that's about?

15 A. So it's similar to when Ashley was testifying.
16 Going to do a visual of these. When I'm looking at
17 these, I may or may not know whose they are. And
18 that may be one of the questions, ownership. So I
19 may scrape the waistband to try determine who was
20 wearing them. And then if I see any stains, I'm
21 going to test those for whatever I think it might
22 be.

23 In this case, it looks like blood. There's a
24 marking here, 9.5, 9.2. So those are my -- that's
25 my writing, 9.1, 9.3. So I visually see these

1 stains, mark them. And then on my worksheet, I'm
2 going to have any serology I'm going to do, plus
3 positive or negative for presumptive for blood.

4 Q. So Ms. Dixon wrote, like, an equal sign to be
5 negative or a plus sign on things that she did. You
6 noted yours down in your report, not necessarily on
7 the item itself?

8 A. That's correct.

9 Q. But the numbers indicate where on the item it
10 came from?

11 A. That's right.

12 Q. And that's also reflected in the photographs
13 that you took?

14 A. Right.

15 Q. Now, every place that you thought you saw
16 blood, did you take a cutting?

17 A. No. This is going to be a representative
18 sample on this type of item. For example, there's
19 stains here that I probably could have tested. So,
20 I mean, that's a good question. When we have an
21 item like this, we're going to -- especially in an
22 assisting-other-agencies case, we're going to take a
23 representative sample based on what we've been told
24 about the case and consult with them as far as what
25 testing they want done.

1 So, in this case, to answer your question,
2 there are other stains on here that were not cut
3 that could possibly also have genetic material on
4 them.

5 Q. So on visible examination, you saw other things
6 that looked to be blood, but you only took -- in
7 this case, I'm not sure whether there's four or
8 five, but you took a representative sample?

9 A. That's correct.

10 Q. Because it's \$350 for each one?

11 A. Well, that's why we consult with whoever is
12 requesting the testing. Correct.

13 Q. So on these pants, before we move on, the ones
14 that you took samples of, how many are on the front
15 and how many on the back and are there any inside?

16 A. So there's two here from the main ones. And
17 you don't have to be an expert to see the stain on
18 her. Everybody has seen what blood looks like, so
19 it's not anything -- everybody can look at that and
20 say, that looks like blood. So that's what we do
21 initially.

22 So there's two stains here, one there, there's
23 one there, there's one on the inside, this pocket
24 here, this one there. And then there's one there
25 and one there that I took a cutting from.

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1 Q. Thank you, Doctor.

2 A. Uh-huh.

3 Q. So, Dr. Amick, those were 9.1, 2, 3, 4, and 5
4 that we just talked about, right?

5 A. One, 2, 3, 4, 5, and 6, as I've indicated, is a
6 scraping from the inside waistband for ownership.

7 Q. When you say scraping on the inside of a
8 waistband for ownership, can you tell the jury what
9 that means and what you're trying to find?

10 A. The difference in that and a swab is I actually
11 take a clean sterile scalpel blade and scrape the
12 waistband of whatever garment we're talking about to
13 try to free up any cells. So there's no liquid
14 stain that was deposited there, like blood, so we're
15 just looking for really, like, sweat or something
16 that somebody has left there that had worn them. So
17 I take that scalpel and I swab that scalpel and use
18 that as the material to try to get a DNA profile.

19 Q. Dr. Amick, I apologize. Let's go back to 118,
20 which you've already identified as the Hanes boxers.
21 Can you open that up as well and explain to the jury
22 what you visually observed and what cuttings or
23 swabs you created from that?

24 A. So, again, my initials are here. Probably hold
25 them over this paper. What's the question?

1 Q. Again, your visual examination, what you saw
2 and what cuttings or swabs you created from here.

3 A. Again, same method here. I'm looking visually
4 for blood stain or any kind of stain, at which point
5 I'll make that cutting. Looks like there was two
6 cuttings here. And then I will notate that in the
7 notes and do any chemical test for presumptive blood
8 in whatever we're looking at.

9 Q. Your report indicates that there was an 8.1,
10 cutting from front; 8.2, cutting from back; and 8.3,
11 scraping from waistband?

12 A. So the front cutting appears to be here. It's
13 hard to see, but we have a silver Sharpie, so you
14 can barely see the circle there and the number.
15 This one actually does have positive PH, like Ashley
16 did. And then, likewise, the rear cutting is here.
17 Again, that circle. And then the waistband would
18 have been as I described before.

19 Q. The brand of these boxers are what?

20 A. Hanes.

21 Q. And are you able to tell a size from the tag
22 there?

23 A. It's kind of faded out. I really can't.

24 Q. Okay. Thank you. The pair of white socks is
25 your Item No. 10 at the Richland County lab. Let me

1 show you State's 120. Does that appear to be the
2 number 10, the white socks?

3 A. My initials are here on the outside and on this
4 packaging here. And so, yes, it appears to be the
5 ones that I described and took a photograph of.

6 Q. And then it appears that you created two
7 cuttings from that, an item 10.1 and a 10.2; is that
8 correct?

9 A. That's correct.

10 Q. Item No. 11, that came to the Richland County
11 as what?

12 A. Blue, patterned fitted sheet.

13 Q. Let me try again. Item No. 11 with the
14 Richland County Sheriff's Department was a blue,
15 patterned fitted sheet; is that correct?

16 A. That's correct.

17 Q. Looking at State's No. 84, do you recognize
18 that as being the container that housed the sheet
19 that you analyzed?

20 A. Yes. It appears to have my initials on it.

21 Q. And from that item, it appears that you took
22 item 11.1 and 11.2 as cuttings; is that correct?

23 A. Correct.

24 Q. And then finally, the last item that you
25 yourself processed in the first batch that came

1 through is your item 12, the sledgehammer; is that
2 correct?

3 A. That's correct.

4 Q. Let me show you State's 83 and ask if you
5 recognize that as being the hammer that you
6 analyzed?

7 A. I do see my initials here. Let me just crack
8 it open and have a look without cutting myself. So,
9 yeah, this appears to be the Item No. 12 that I
10 processed and took photographs of. It's in my case
11 jacket as well.

12 Q. When you're handling all these items -- you
13 have gloves on now. When you were processing these
14 items to either look for serology or to collect DNA
15 yourself or -- were you wearing gloves?

16 A. Yes.

17 Q. What's the purpose of that?

18 A. Twofold; to protect me from anything that's on
19 the items and to keep my DNA off the items.

20 Q. So the hammer in front of you, item 12, is the
21 hammer that you processed for this case?

22 A. Yes, it is.

23 Q. And it appears that you collected three swabs.
24 12.1 was the swab of what?

25 A. 12.1, swab from the head of the hammer on the

1 side.

2 Q. Can you show the jury on the hammer itself
3 where you're talking about? And if you could, step
4 down, please.

5 A. So the head of the hammer would be here, on the
6 side would be here.

7 Q. Step down here.

8 A. This is the head and this is the sides.

9 Q. 12.2, you created a swab from the handle. So
10 where would that be?

11 A. That would be this part here, the handle of the
12 hammer.

13 Q. And 12.3 was a swab from the head of hammer on
14 face?

15 A. Would be here and here.

16 Q. Thank you, Doctor.

17 Now, those are the items you initially
18 received. You were in the courtroom when Ms. Dixon,
19 who works for you, was present as well, correct?

20 A. That's right.

21 Q. All the items that she talked about processing
22 and preparing for you, those went into your report
23 as well?

24 A. That's correct.

25 Q. Did you ask us to prepare a summary chart to

1 explain your findings regarding this evidence?

2 A. I did suggest that, yes.

3 Q. Let me show you an item and ask if you
4 recognize that and whether that's accurate to your
5 results.

6 A. This looks like it is an accurate
7 representation of a summary chart that you created,
8 sent to me, and I checked it over before court given
9 nothing has changed materially here. I can go
10 through each one and check it or we can just go
11 across the results, either way.

12 Q. I have a blown-up chart, so I was going to let
13 the jury see it and allow you to -- I'm actually
14 going to enter that into evidence, so I need you to
15 be able to tell me if it's accurate.

16 A. Let me just quickly go through it. This is not
17 the exact one that I looked at when I was checking
18 it, so I need to make sure. It's going to take me a
19 while to do it if you want to do it that way.

20 MR. GRAHAM: Your Honor, this is -- I don't
21 know whether you want to -- I don't know how long
22 it's going to take, but this is what we were
23 discussing earlier.

24 THE WITNESS: I mean, it's going to take me a
25 good ten minutes because there's five columns for

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1 each item.

2 THE COURT: Why don't we take about ten minutes
3 rather than -- and we'll be back on track.

4 Step to your jury room. Do not discuss the
5 case during this brief recess.

6 (The jury exits the courtroom at 12:16 PM.)

7 (Short break.)

8 THE COURT: Are you ready, Solicitor?

9 MR. GRAHAM: Yes, sir.

10 THE COURT: Mr. Stitely?

11 MR. STITELY: Yes, sir.

12 (The jury enters the courtroom at 12:27 PM.)

13 THE COURT: All right. Solicitor, you may
14 proceed.

15 MR. GRAHAM: Thank you.

16 BY MR. GRAHAM:

17 Q. Dr. Amick, have you had a chance to review the
18 summary in front of you?

19 A. I have.

20 Q. Does that fairly and accurately represent your
21 findings from the Richland County Sheriff's lab
22 regarding the evidence that we've discussed in this
23 case?

24 A. It appears to be, yes.

25 Q. Would it assist you in explaining to the jury

1 what your findings were?

2 A. It can, yes.

3 MR. GRAHAM: Your Honor, the State would offer
4 that into evidence at this time.

5 MR. STITELY: No objection, Judge.

6 THE COURT: All right. This would be --

7 THE COURT REPORTER: 136.

8 THE COURT: 136. Thank you.

9 (State's Exhibit No. 136 admitted into
10 evidence.)

11 MR. GRAHAM: For demonstrative purposes, Your
12 Honor, we have taken that report and blown it up so
13 the jury can see it at the same time.

14 THE COURT: All right.

15 BY MR. GRAHAM:

16 Q. Dr. Amick, let's walk through here, and if you
17 could, help explain what we're seeing. When we
18 start with Item No. 1, the sexual assault kit, the
19 first item is the buccal swab. Again, that would be
20 to develop the known standard in this case, JT

21

22 A. That's correct.

23 Q. Were you able to develop a known standard?

24 A. Yes, I was.

25 Q. The vaginal swabs and slides that were taken as

1 part of the sexual assault kit, can you describe the
2 serology part of the testing for seminal fluid and
3 sperm?

4 A. Yes. The vaginal swabs were positive for
5 seminal fluid and the slides, there were no sperm
6 cells found; the oral swabs were negative for
7 seminal fluid, no sperm cell founds; and the rectal
8 swabs were positive for seminal fluid and the
9 slides, there were no sperm cells found.

10 Q. Moving down below, number 2 is a buccal swab
11 for Peter Coffey. And there was also -- I believe
12 item 18 was also a buccal swab for Peter Coffey as
13 well. Were you able to develop a full DNA profile
14 for Peter Coffey?

15 A. Yes, I was.

16 Q. So using those two, if we back up to the
17 vaginal swabs and the slides, you said seminal fluid
18 was present in the vaginal swab. As far as DNA, you
19 have two categories. One is called a Y-STR loci,
20 the first one. What does that mean?

21 A. Those two columns are describing two different
22 DNA tests. The one that has Y-STR is a test that
23 looks specifically at male DNA. It ignores any DNA
24 from a female. And the column on the far right, it
25 would be your basic classical DNA testing, it's

1 called STR. And I do see an arrow that says STC; it
2 should be STR. But that's your basic DNA test.

3 Q. Where it says STC on the last column, it should
4 be STR?

5 A. That's correct.

6 Q. So there's two tests. The STR is to develop a
7 profile. How many different spots on the DNA chain
8 is it that you're looking for in that test?

9 A. On the regular DNA test on the far right, we
10 look at 24 different locations on the DNA molecule.

11 Q. On the Y-STR, which -- if I remember right,
12 women are XX and men are XY?

13 A. That's correct.

14 Q. So on the Y-STR, how many different places on
15 the DNA chain are you looking for?

16 A. There's 16 locations on the Y chromosome
17 itself. So that's the reason it only comes from the
18 male because males are the only ones with Y
19 chromosomes.

20 Q. So as far as vaginal swabs, seminal fluid was
21 found. As far as your findings as to the Y-STR or
22 the regular STR, what were your findings?

23 A. So the vaginal swabs, we had no Y-STR profile
24 was obtained. And on the regular DNA test, no DNA
25 profile unlike that of the victim was obtained. So

1 all we got was her DNA profile on that item.

2 Q. So as an expert, how would you explain seminal
3 fluid was there but you don't find any male DNA
4 there?

5 A. Could be a couple different reasons: One,
6 there's just not enough male DNA there to develop a
7 profile, is the simplest reason. Could be
8 degradation; could have been there and could have
9 been degraded, could have not been there at all. It
10 could be that -- that's two different tests. The
11 seminal fluid test for a protein and the DNA test is
12 a -- the DNA is a different molecule than a protein.

13 So you're testing for presence of something
14 assuming something else is going to be there. So
15 that could explain -- the simplest explanation would
16 be there wasn't enough male component there to get a
17 DNA profile.

18 Q. As to the oral swab, your serology is no and
19 no, and there are blanks for the Y-STR and STR
20 testing. Why is that?

21 A. Once we get nothing found serology-wise on that
22 type of item, we stop at that point.

23 Q. The rectal swab and slides shows a yes, again,
24 in seminal fluid, and no in sperm. Can you tell me
25 about the DNA Y-STR and DNA STR that you found in

1 your analysis?

2 A. Yeah. So the regular DNA attempt to get a
3 profile, we got, again, no DNA unlike that of the
4 victim. And when we ran the Y test, the Y
5 chromosome DNA result from the rectal swab matched
6 the Y chromosome from DNA profile obtained from the
7 known sample of Peter Coffey.

8 Q. Now, the numbers here, it says upper 95
9 percentile confidence is 1 in 379 individuals. What
10 does that mean?

11 A. So it's two different statements there. One's
12 the match statement, so, basically, the evidence --
13 the profile we got from the evidence in this test
14 matched the standard from Peter Coffey. And then
15 there's a statistical statement that describes the
16 weight of the match.

17 So when it says upper 95 percent, it's just a
18 mathematical calculation that gives you a confidence
19 interval for that particular statistic. So 1 in 379
20 is the frequency that that particular Y-STR profile
21 is found in the database.

22 Q. That number seems low. When you talk about
23 DNA, you talk about billions and quadrillions. Why
24 is that number low?

25 A. It's low because of the nature of this Y test.

1 So this Y test, you're only dealing with half the
2 amount of genetic material, only one chromosome of
3 the pairs that you have. So the sex type
4 chromosomes, there's an X and a Y or an X and an X.
5 You're only dealing with one of those, so it's half
6 the amount.

7 And they're all on the same chromosome, so you
8 can't use -- the normal mathematics and statistics
9 you use when you get those huge numbers that are in
10 the rest of the report that are used in the
11 classical test because they're all linked on that
12 one chromosome, so that precludes you from using the
13 math used to get those high stats. So it's a matter
14 of how many times does this profile show up in this
15 database you're using.

16 Q. So for Y-STR testing, is that a low number or
17 how would you describe that number for Y testing?

18 A. It's -- let me add this as well: The test
19 itself is not as discriminating because you -- you
20 would share that Y-STR profile with any paternal
21 relative. So your dad would have that exact same
22 profile. Your -- any son would have the exact same
23 profile. Anybody in paternal lineage would have
24 that same profile, so it's not as discriminating.
25 So you would expect a lower number. And that's why

1 you have that lower number.

2 I don't like to answer that "is it a big or a
3 low number." We don't qualify those numbers in that
4 way. So I'll just leave it as 1 in 379 individuals
5 as the frequency for this match.

6 Q. The second one that we talked before, 2 and 18,
7 were swabs from the defendant. 3 is pieces of hair
8 that was in the shower. It says no analysis, so
9 does that mean you didn't do analysis on that?

10 A. Correct.

11 Q. Was there a particular reason why you didn't
12 analyze that?

13 A. It would have been, you know, in consultation
14 with whoever is requesting it as far as whether it's
15 probative or whether we wanted -- they wanted to do
16 that analysis on that piece of evidence.

17 Q. Item No. 4 is a swab described as swab A from
18 shower wall. Were you able to do -- as far as
19 serology, did you do a test to determine the
20 presence of blood?

21 A. Yes. That was presumptive for blood.

22 Q. And were you able to develop a DNA profile from
23 that swab?

24 A. Yes, I was.

25 Q. And whose DNA is that?

1 A. So that item 4, as well as several others, they
2 all matched JT

3 Q. The number here is 1 in 641 octillion. Now
4 we're using the full STR number places on the DNA
5 chain, correct?

6 A. Yes.

7 Q. How much is an octillion?

8 A. An octillion is, let's see, about 28 zeros. So
9 it's -- whereas a million would be six zeros, a
10 billion would be nine zeros. So million, billion,
11 trillion, quadrillion, quintillion, sextillion,
12 septillion, octillion.

13 Q. Do you know the rough population of the world?

14 A. Yes. I think my estimate is around 4 billion
15 now.

16 Q. This is way larger than that?

17 A. It is way larger than that.

18 Q. So 4, 5, and 6 were swabs A, B, and C that were
19 all described as swabs from the shower wall. Your
20 findings from serology were that they were all
21 positive for blood and that that is the blood of

22 JT is that correct?

23 A. That's correct.

24 Q. Moving on to 7, which were a pair of Timberland
25 boots, 7.1 was the left boot, 7.2 was the right

1 boot. What were the serology results of that?

2 A. 7.1, which is the left boot, it was negative
3 for blood; 7.2, blood was found, positive for blood.

4 Q. The DNA results, obviously, 7.1, there was no
5 blood and, I guess, no DNA; is that correct?

6 A. We stopped right there, so we didn't go further
7 to test the DNA. Actually, let me correct that. I
8 think we did go ahead and do that and got no DNA.
9 Let me just double-check. I thought that's what I
10 saw in my notes. Yeah, that was negative for blood
11 on that item.

12 Q. And was DNA -- did you stop at that point or
13 did you actually do DNA testing?

14 A. I stopped at that point for 7.1.

15 Q. Okay. 7.2, it said positive for the
16 presumptive blood test. As far as DNA, can you tell
17 me what the results were?

18 A. 7.2. DNA result from 7.2 does not match Peter
19 Coffey and the result was inconclusive with regards
20 to JT [REDACTED]

21 Q. So when we say does not match Peter Coffey,
22 you're saying it was not his blood?

23 A. That's correct.

24 Q. When you say it's inconclusive as to JT [REDACTED]
25 [REDACTED] what does that mean?

1 A. That means I couldn't tell if it was hers.

2 Q. Why are you unable to tell?

3 A. Let me look at the profile and I might be able
4 to give you a better answer. Basically, it's --
5 there is a very weak profile, so the material that
6 showed up, I couldn't -- I couldn't accurately say
7 whether it was hers or not. So it's, again, based
8 on quantity, wasn't enough material there for me to
9 say conclusively it was hers or not.

10 Q. So, conclusively, we know it's not Peter
11 Coffey's blood. Conclusively, we know that it may
12 or may not be JT blood; is that correct?

13 A. That's correct. On a weak profile, it just
14 depends on what does show up as to whether you can
15 include or exclude somebody.

16 Q. Number 8 were the Hanes boxer shorts. And
17 there were two cuttings and a scraping. 8.1 was a
18 cutting from the front that you showed the jury.
19 Your finding as to serology on that was what?

20 A. 8.1, there was blood detected.

21 Q. As far as DNA, what were you able to tell?

22 A. 8.1 was a mixture and the major contributor was
23 the victim, JT and the minor contributor
24 was too weak for match purposes. Again, based on
25 quantity, not enough material there to say if

1 somebody was included or excluded with that minor
2 contributor.

3 Q. So you could not say one way or the other
4 whether it was Peter Coffey or not because your
5 finding for the mixture of the minor contributor was
6 too weak?

7 A. Too weak, correct.

8 Q. 8.2, the cutting from the back of the Hanes
9 boxer shorts. Serology came up with the presence of
10 blood?

11 A. There was blood detected.

12 Q. And DNA findings for that?

13 A. DNA finding was that the major contributor
14 matched JT [REDACTED] and that the minor contributor
15 was too weak.

16 Q. 8.3 is a scraping of the waistband. Sometimes
17 I think that's used to talk about ownership, I
18 believe; is that correct?

19 A. That's correct.

20 Q. Was there any serology testing done on that
21 scraping?

22 A. No, it was just scraped for ownership.

23 Q. So when you're scraping as opposed to doing
24 serology testing, what may you see?

25 A. You may see, like, white dandruff-looking

1 material that you would scrape off the brim of a hat
2 or the collar of a shirt. But there's no visible
3 stain that you're swabbing.

4 Q. So you were trying to avoid visible stains you
5 could see?

6 A. Correct. I'm checking for, like I said,
7 ownership for somebody who might have worn that
8 item.

9 Q. What did you find?

10 A. 8.3 was a mixture. Matched between a
11 contributor to 8.3 and Peter Coffey is an average of
12 approximately 276 trillion times more probable than
13 a coincidental match. And the other contributor was
14 2.3 quadrillion times more probable that it matched
15 JT [REDACTED] than a coincidental match.

16 Q. So is it fair to say the scrapings of the
17 waistband showed a mixture of Mr. Coffey and the
18 decedent?

19 A. That's correct.

20 Q. Item No. 9 were the tan shorts that we
21 displayed to the jury earlier. 9.1 was described as
22 a cutting from front lower left, serology-wise --
23 actually, for all of these, I guess, 9.1, 2, 3, and
24 4, all of those cuttings, serology-wise, what were
25 your findings?

1 A. All of those, there was blood detected.

2 Q. As far as DNA, were you able to determine whose
3 DNA it was on the swabs from the tan shorts?

4 A. Yes. All of those matched JT

5 Q. 9.5, the cutting from the inside right back
6 pocket, serology-wise, what about the presence of
7 blood?

8 A. 9.5, blood was detected.

9 Q. And then as far as DNA results, what did you
10 find?

11 A. That it matched -- it was a mixture and the
12 major contributor matched JT

13 Q. 9.6, the scraping of the waistband of the tan
14 shorts, what did you find?

15 A. 9.6 was a mixture. The major contributor
16 matched Peter Coffey. The minor contributor was too
17 weak to determine -- to match Peter Coffey or JT

18

19 Q. Item 10, the white socks, serology-wise, what
20 did you find?

21 A. There was no blood detected on 10.1 or 10.2,
22 the two cuttings from the socks.

23 Q. And that stopped your analysis at that time?

24 A. That's correct.

25 Q. Item 11, which is the blue patterned fitted

1 sheet, do you remember looking at that?

2 A. Let me look at the picture and see. Yes, I
3 remember looking at that.

4 Q. There were only two cuttings, but as far as
5 your observations, what did you see when you looked
6 at that?

7 A. What did I see?

8 Q. Yes, observation-wise.

9 A. It was a dark item, which is -- I guess I saw
10 at least two spots that I felt were stains and cut
11 those. Beyond that, not too much that I could say
12 is remarkable.

13 Q. Serology-wise, on 11.1, the cutting from the
14 stain that you observed, as far as the presence of
15 seminal fluid, did you find anything?

16 A. Yes. So as I flip through these pictures, I'm
17 reminded I used an alternate light source on this
18 item, being a sheet. So not only looking for blood
19 in this case, but possible semen as well. And so I
20 made a cutting based on that observation and tested
21 it for seminal fluid, which was 11.1, but found it
22 was negative for seminal fluid.

23 Q. 11.2, serology-wise, what were you looking for?

24 A. That appears to have been a cutting that I made
25 that looked like blood; tested it for blood, and it

1 was positive for blood.

2 Q. And the results of the DNA test itself?

3 A. 11.2 matched JT [REDACTED]

4 Q. The sledgehammer, you created three swabs, I
5 believe, you discussed with the jury, 12.1, the head
6 of the hammer and the side; 12.2, the handle; 12.3,
7 the face of the hammer. Serology-wise, what were
8 your findings?

9 A. Serology for the side of the hammer and the
10 head of the hammer, 12.1 and 12.3, they were both
11 positive for blood.

12 Q. DNA results. What were the DNA results for
13 those three swabs?

14 A. I did no serology on 12.2, there's no apparent
15 stain. 12.1, 2, and 3 were all -- DNA was JT [REDACTED]

16 [REDACTED]

17 Q. Is it fair to say that that's JT [REDACTED] blood?

18 A. Items 12.1 and 12.3 -- I mean, 12.1 and 12.3
19 were; 12.2, again, I didn't test for blood.

20 Q. Item 13 would be the cucumber that was taken
21 from the autopsy, put in the bag, and brought to
22 you. Ashley Dixon testified previously about that
23 and stated that she had taken a swab from 13.1 -- or
24 created 13.1, the swab of the cucumber itself that
25 was taken from the abdominal cavity, and prepared it

1 for DNA for you. When you analyzed it, what, if
2 anything, did you find?

3 A. 13.1, DNA was a mixture. Peter Coffey and
4 JT [REDACTED] could not be excluded in that mixture.
5 And based on the population data available at the
6 time, a match between the DNA result and Peter
7 Coffey was approximately 227 quadrillion times more
8 likely than a coincidence to an unrelated person and
9 approximately 8 million times more likely JT [REDACTED]
10 [REDACTED] than a coincidence for an unrelated person.

11 Q. 13.2 was -- if I understood correctly, there
12 were three hairs that were found in the bag with the
13 cucumber or on the cucumber. One of those hairs had
14 a hair follicle and she prepared a DNA extraction
15 for that; is that correct?

16 A. That's correct.

17 Q. What were your findings as far as DNA
18 extraction of the follicle for those hairs?

19 A. 13.2, there was no human DNA found. So it was
20 cut for DNA, as she described, we attempted to
21 extract it, but stuff falls short of getting a
22 profile tells us how much DNA is there. And we got
23 no DNA from that item, so we stopped at that point.

24 Q. Let me show you a photograph that Ms. Dixon
25 testified that she put into evidence, which was

1 State's 133. Are you familiar with that photograph
2 and its contents?

3 A. I am.

4 Q. And do those reflect the three hairs that was
5 found by your lab with the cucumber in the bag?

6 A. Yes.

7 Q. Do you remember which hair had the follicle on
8 it?

9 A. No.

10 Q. The next item that you note in your report that
11 Ms. Dixon found an unknown substance on a hair, do
12 you remember looking at that unknown substance on
13 the hair?

14 A. I do.

15 Q. Are you able to tell on State's 133 which hair
16 it was on?

17 A. No. It's not on any of those hairs.

18 Q. Prior to -- it's been removed -- as Ms. Dixon
19 said, it's actually been removed. Do you know from
20 which one of the unknown mixture it came from of
21 these three hairs?

22 A. No.

23 Q. Do you remember -- did you look at the unknown
24 mixture before it was analyzed?

25 A. I did.

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1 Q. How would you describe it?

2 A. It was a longer hair and it was -- I described
3 it as -- well, we thought it was tissue. She called
4 me in the lab to have a look at it. I looked at it.
5 We thought it might be tissue. It came from an item
6 that came from the autopsy from a body cavity, so we
7 were thinking maybe it's tissue from that event.

8 But when I looked at it, it didn't really look
9 like tissue and didn't look like blood, didn't look
10 like semen, so we did not sacrifice it for serology;
11 meaning, an item sample like that, we're not going
12 to sacrifice the sample to figure out what the body
13 fluid is, we're just going to try to figure out
14 whose DNA is it.

15 So that's why we swabbed the hair -- I
16 instructed her, let's just swab the hair and we'll
17 see if it's DNA. And that's what we did. But it
18 looked like -- I described it as kind of a -- when
19 you spill, like, Coca-Cola, a drop of gooey -- of
20 Coke, almost, on a hair, a little tiny drop of,
21 like, caramelized Coca-Cola on the hair, that's what
22 it looked like.

23 Q. Let me show you State's 44 and 45 and direct
24 your attention to the hair that's on there and the
25 substance that appears to be on there. Do you see

1 those that I'm referring to?

2 A. Yes.

3 Q. How does that compare to what you saw on the
4 hair of your -- the mixture we're talking about here
5 in 13.3?

6 A. That is exactly what I remember seeing when we
7 had this hair in the lab, like a drop of some kind
8 of something on the hair.

9 MR. GRAHAM: Your Honor, very briefly, if I
10 could ask him to step down and show the jury?

11 THE COURT: Yes, sir.

12 You may step down.

13 BY MR. GRAHAM:

14 Q. In previous testimony, Dr. Amick, 44 was taken
15 at the autopsy of the cucumber and 45 is the
16 blow-up. So we'll do it in two places. Would you
17 describe to the jury what you're talking about?

18 A. So it's this little area right here, this
19 photograph right there. So this would be the hair,
20 this is the sheet, and that little area substance
21 we're talking about, likewise. So here's the hair
22 in this photo and right there. So it's this right
23 here.

24 Q. You can have a seat, Doctor.

25 THE COURT: Would you hand those to him so he

DIRECT EXAMINATION OF GRAY AMICK BY MR. GRAHAM

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1 can show that to me?

2 MR. GRAHAM: Yes, Your Honor. I apologize.

3 THE COURT: Thank you.

4 THE WITNESS: So there's the hair and this is
5 the blow-up of the hair. So it's this little
6 substance.

7 THE COURT: Thank you, Doctor.

8 BY MR. GRAHAM:

9 Q. So DNA testing was done on that. But you said
10 no serology was done, correct?

11 A. That's correct.

12 Q. It did not appear to be -- you thought it might
13 be DNA, but you have no idea what kind of DNA it is;
14 is that fair to say?

15 A. We thought it might be tissue, so we thought we
16 would test it to see if there's DNA there.

17 Q. What were the results of the DNA testing on
18 that substance on the hair?

19 A. We did Y-STR testing and regular DNA testing.
20 So this chart, it's all in one column, but it's
21 actually both tests. So the result from 13.3 -- I'm
22 sorry, 13 -- yeah, 13.3 was a mixture. JT [REDACTED]
23 is excluded from that mixture, and Y testing 13.3,
24 Peter Coffey was excluded from the mixture.

25 Q. So earlier when we were talking about Y-STR

1 testing and when it had Peter Coffey 1 in 379 number
2 here, you were actually able to definitively say
3 that that mixture was neither JT nor Peter
4 Coffey; is that correct?

5 A. That's correct. It's a mixture of a female and
6 at least one male, neither of which are JT
7 or Peter Coffey.

8 Q. How many -- have you ever run into this before
9 in your career of this kind of matter coming from an
10 object from an autopsy?

11 A. I can't recall if I have. I've definitely run
12 into a situation where an unknown contributor is on
13 a piece of evidence, but not this specific scenario.

14 Q. If the unknown hair -- hypothetically, if the
15 unknown hair was on the cucumber and came from
16 inside the body cavity of the victim, JT
17 what, if any, expectations would you have as an
18 expert as to the presence of her DNA on that hair or
19 that matter?

20 A. So if the hair was on the cucumber in the body
21 cavity?

22 Q. Yes.

23 A. I would expect to find her DNA on that hair.

24 Q. But we didn't, correct?

25 A. We did not.

1 Q. Number 14, the swab from the LG phone found at
2 the victim's house, serology-wise, what did you
3 find?

4 A. Blood was detected on that item.

5 Q. And the DNA results of that?

6 A. The DNA was a mixture. The major contributor
7 matched JT [REDACTED] the minor was too weak.

8 Q. So the numbers were too low to include or
9 exclude anybody; is that fair to say?

10 A. The profile was too weak to include or exclude,
11 correct.

12 Q. So, for instance, you couldn't even attempt to
13 compare that to Mr. Coffey?

14 A. That's correct.

15 Q. So it may or may not be Mr. Coffey or it may or
16 may not be somebody else; is that fair to say?

17 A. That's correct. It's too weak to make an
18 interpretation.

19 Q. On the remote control itself, serology testing
20 was done with what results?

21 A. Blood was detected on item 15, the remote
22 control.

23 Q. And whose blood was that determined to be?

24 A. It matched JT [REDACTED]

25 Q. 16 and 17 are described as swab from Jergen's

1 bottle and swab from the Gatorade. Again, no
2 analysis was performed; is that correct?

3 A. That's correct.

4 Q. Item 18, again, is similar to item 2, which is
5 where we -- you developed the DNA profile for
6 Mr. Coffey; is that right?

7 A. That's correct.

8 Q. Item 19 was the other pair of boxer shorts that
9 Ms. Dixon processed. Serology-wise, what did you
10 find?

11 A. There was blood detected there.

12 Q. And whose DNA was developed?

13 A. It matched JT [REDACTED]

14 Q. Item 20, the purse with contents. There were
15 three areas of stains that were collected by
16 Ms. Dixon: 20.1, stain on a green book; 20.2, stain
17 on receipt; and 20.3, stain on an envelope.
18 Serology-wise, what did you find?

19 A. All of those, there was blood detected.

20 Q. As to 20.1 and 20.2, whose blood did you
21 determine it was?

22 A. Those both matched JT [REDACTED]

23 Q. As to the 20.3, the stain on the envelope, what
24 did you find when you did the DNA analysis?

25 A. It was a mixture; major contributor matched

1 JT [REDACTED] and the minor was too weak.

2 Q. And then finally moving to the shower curtain,
3 there were multiple stains, according to Ms. Dixon,
4 that tested positive presumptively for blood. But
5 she developed four swabs that were submitted to you
6 for further analysis: 20.1, 20.2, 20.6 and 20.8.
7 For those four stains, serology-wise, what did you
8 determine?

9 A. All of those were positive for blood.

10 Q. 20.1, 20.6 and 20- -- well, let's just do them
11 one by one. 20.1, whose blood was it?

12 A. That matched JT [REDACTED]

13 Q. 21.8, whose blood was that?

14 A. That matched JT [REDACTED]

15 Q. 21.6, whose blood was that?

16 A. That was a mixture; the major contributor
17 matching JT [REDACTED] and the minor was too weak for
18 match purposes.

19 Q. 21.2, whose blood was that?

20 A. That one matched Peter Coffey.

21 Q. The number you have down here is 49 octillion
22 times more likely. What does that mean?

23 A. That means that that was -- in my opinion,
24 that's -- he's the source of that blood on that
25 stain 21.2.

1 Q. Thank you, Dr. Amick. Please answer any
2 questions the Defense may have.

3 MR. STITELY: Judge, this is going to take --

4 THE COURT: Just a moment.

5 All right. Ladies and gentlemen, I understand
6 your lunch is here, so we're going to take a recess
7 at this time. Let's take a recess for about an
8 hour. If you're not ready in an hour, that's fine,
9 we're not going anywhere anyway. But if you get
10 back by 2:00.

11 Do not discuss the case. You're welcome to
12 take a walk about. Let's say be back at 2:00. Just
13 knock on the jury room door. Okay? Thank you very
14 much. You may now go to your jury room.

15 (Jury exits the courtroom at 1:04 PM.)

16 THE COURT: Doctor, you may certainly step down
17 and refresh yourself. You may not discuss your
18 testimony with anyone.

19 Anything further from the State?

20 MR. GRAHAM: No, Your Honor.

21 THE COURT: Defense?

22 MR. STITELY: No, sir.

23 THE COURT: We'll say 2:00, 2:05.

24 MR. STITELY: Thank you, Judge.

25 THE COURT: Thank you.

CROSS-EXAMINATION OF GRAY AMICK BY MR. STITELY

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1 (Luncheon recess 1:04 PM - 2:00 PM.)

2 THE COURT: Anything further before we bring in
3 our jury, Solicitor?

4 MR. GRAHAM: No, sir.

5 MR. STITELY: We're ready too, Judge.

6 (The jury enters the courtroom at 2:02 PM.)

7 THE COURT: All right. Welcome back, ladies
8 and gentlemen. I hope y'all had a pleasant lunch.
9 We're continuing the trial of the case with the
10 cross-examination of Dr. Amick by Mr. Stitely. If
11 you will please continue to give the parties your
12 complete and undivided attention.

13 Mr. Stitely.

14 MR. STITELY: Thank you, Judge.

15 CROSS-EXAMINATION

16 BY MR. STITELY:

17 Q. Dr. Amick, how are you this afternoon?

18 A. Good.

19 Q. Got a couple just general background questions
20 first, if you don't mind, and then I'll get into the
21 questions about the DNA stuff.

22 You said you work for Richland County; is that
23 correct?

24 A. That's correct.

25 Q. And you explained that SLED is the state law

1 enforcement laboratory for the entire state of South
2 Carolina, correct?

3 A. Correct.

4 Q. And then you said four counties have gone out
5 and created their own DNA labs?

6 A. That is one service, yes, they have created.

7 Q. Like, in Lexington, I know we can now test some
8 drugs. But we don't do DNA in Lexington?

9 A. That's correct.

10 Q. So as far as being -- I guess I'm kind of
11 talking across that thing. So as far as being, I
12 guess -- I don't want to call you an expert for
13 hire. But your department can be hired as needs
14 require, correct?

15 A. That's correct.

16 Q. You said there's, obviously, a fee for the
17 services?

18 A. That's right.

19 Q. Because it would be unfair for Richland County
20 residents to pay for Lexington County work?

21 A. Exactly.

22 Q. Who pays for SLED if SLED was doing the
23 investigation?

24 A. SLED is paid by, I guess, state taxes.

25 Q. So if Lexington County was to submit their

1 evidence to SLED, is there the same surcharge as
2 there would be to your agency, or do you know?

3 A. No. The services that SLED would provide their
4 customers would be free, just like Richland County
5 lab provides Richland County customers their service
6 for free.

7 Q. I'm not trying to toot your own horn, but is
8 your lab better than SLED's or are they all
9 accredited the same way or...

10 A. We both hold the international accreditation.

11 Q. Pretty much what that means is someone has to
12 come in and make sure you guys are doing the job
13 right?

14 A. In a nutshell, pretty much.

15 Q. Same agency would do the same for SLED for each
16 of the four counties that do DNA testing?

17 A. Now, that has been consolidated. There are
18 different accrediting bodies, but it's pretty much
19 the same now.

20 Q. Where is your lab located?

21 A. It's on Two Notch Road.

22 Q. Like an annex to the sheriff's department?

23 A. No. It's at headquarters, 5623 Two Notch Road,
24 the headquarters where the sheriff's office is. And
25 investigations is there as well.

1 Q. So are you a branch of the sheriff's department
2 but separate, or is it one entity?

3 A. No. We -- actually, in the organizational
4 tree, we are considered to be part of
5 investigations.

6 Q. Okay. And so this case in particular, do you
7 know why your lab was selected?

8 A. No. We just -- we just get -- I have an idea
9 because we've been told why people want to use us.
10 But when we get a case, we don't usually know why.

11 Q. You kind of went into it. And you said each
12 item takes a lot of work for you to develop,
13 correct?

14 A. Each item, yeah. I mean, the process, I think,
15 we've been over. But it's not an overnight process
16 usually.

17 Q. So it makes sense at times not to test a
18 thousand different things in a case, but only
19 certain evidence.

20 A. We base what we test on experience, I guess,
21 and consultation with the investigators.

22 Q. You said that in direct. Who is the
23 investigator that you would have consulted with in
24 this case? Do your notes indicate that?

25 A. The primary investigator is R. Lint, so he

1 would have probably submitted the evidence. He
2 actually may just be an evidence clerk. I don't
3 even know. But his name is on the report, so I
4 talked to him. I have phone records talking to Mr.
5 Novak. And then I've also, obviously, talked to
6 solicitors in preparation for the trial.

7 Q. Okay. And as far as evidence that makes it to
8 your lab, you don't have a say as to what pieces are
9 collected from the crime scene and are sent to you,
10 is that fair?

11 A. No. It's already been collected by the time we
12 are contacted, for the most part.

13 Q. Not a situation where you would go out to the
14 crime scene and say, I want that, that, that, that,
15 and that?

16 A. Not usually in outside-agency cases. We are
17 available for Richland County if they have a big
18 scene and they need help deciding what to collect.
19 It doesn't happen so much anymore because they have
20 their own experience and we helped them with
21 training. But we are available to respond to crime
22 scenes, yes.

23 Q. Would that be an ideal situation if you were at
24 the crime scene deciding on what evidence you want
25 to collect?

1 A. That would be ideal for me. At this point,
2 like I said, those guys have so much experience that
3 I'm not needed at a crime scene. They know what to
4 collect, they know how to collect it and preserve it
5 and package it.

6 Q. And when you're talking generally about
7 collecting specimens, you're the doctor that
8 analyzes the DNA, correct?

9 A. That's correct.

10 Q. But you also said in this case you actually did
11 some of the prep work as well?

12 A. That's correct.

13 Q. You have other people, of course, in your
14 office, like Ms. Dixon, who aren't DNA analysts but
15 collect -- prepare the evidence for you to examine?

16 A. They process it, correct.

17 Q. Have you always done both parts of it?

18 A. Yeah. When we first started out, we didn't
19 have a technician, so myself and John Barron, who
20 started the lab, we did, basically, what I did in
21 this case, everything from the beginning to the end.
22 Since we've grown, we've added people to help the
23 process.

24 Q. In this case, are there any items that came to
25 you that don't appear on the exhibit, the 21

1 numbered items that appeared on the exhibit chart
2 you have?

3 A. I don't think so. When I reviewed the chart,
4 all the items that I show as received are on the
5 chart.

6 Q. So if you attempted to pull DNA off of
7 something and were unsuccessful, you would still
8 mark that as tested, no results?

9 A. That's correct.

10 Q. It wouldn't be that it just wouldn't show up in
11 your report because you didn't find it useful?

12 A. If I tested it, it should show up in my report.

13 Q. You didn't get a black trash can in this case,
14 did you?

15 A. I do not think I saw a black trash can, no.

16 Q. Several pairs of bloody shoes, sandals?

17 A. I only had a set of Timberland boots, as far as
18 shoes, and some socks.

19 Q. Doctor, do you ever, well, in this case
20 specifically, get a picture of the crime scene?
21 Like, do you receive the photographs that were
22 taken?

23 A. We can. I didn't get one in this case, no.

24 Q. I guess to put, like, where this item was
25 found, is that sometimes helpful for you to say,

1 well, this piece of evidence was found in this
2 location?

3 A. That only is helpful -- that's irrelevant to us
4 during the testing. We simply ask the question --
5 or attempt to develop a DNA profile off the
6 evidence. The only time that's important for us is
7 when we're writing the report.

8 And the reason that is, is when we're trying to
9 make interpretations about, say, the ownership of
10 clothing, whether it's privative or not. So is it
11 important to know that piece of clothing came from
12 this individual? That's going to affect how I write
13 the interpretative statement.

14 So that's the only time it's important or
15 needed in the analysis to, basically, fashion the
16 conclusions. I don't need to know that stuff
17 necessarily -- I don't need to know it at the
18 beginning of the analysis. Sometimes it's helpful.
19 But it is helpful when I write the report.

20 Q. But as far as a case like this, your job is to
21 say what DNA, blood, or other bodily fluids were
22 located on these items, who they belong to, that's
23 kind of it? You're not investigating the case,
24 you're just saying, this is what was provided to me?

25 A. That's ultimately what we provide in our

1 report. Now, when we talk to the investigators and
2 the solicitors, they may ask us, you know, what do
3 you think about this item, et cetera, et cetera, so
4 we may discuss those things. But, ultimately, our
5 report includes the stuff that we have been
6 submitted and the results that we concluded, that we
7 draw.

8 Q. So if other items were collected at the scene
9 but not brought to your lab, you couldn't speak as
10 to whose blood, DNA, or anything like that?

11 A. No.

12 Q. One thing you talked about in your
13 qualifications was you said you used to do
14 toxicology; is that correct?

15 A. That's correct.

16 Q. Is your background in that similar along the
17 line of background in your other professional
18 qualifications?

19 A. I was a qualified expert in that field,
20 correct.

21 Q. Okay. And you've been qualified as an expert
22 in toxicology in the past?

23 A. Yes.

24 Q. In courtrooms in South Carolina?

25 A. Yes.

1 MR. STITELY: Judge, we'd ask that they qualify
2 him as an expert in toxicology as well as the other
3 items.

4 THE COURT: Any objection?

5 MR. GRAHAM: Just a question or two very
6 briefly, Your Honor.

7 THE COURT: Yes, sir.

8 VOIR DIRE EXAMINATION

9 BY MR. GRAHAM:

10 Q. When is the last time you've done -- do you
11 stay current on toxicology?

12 A. No.

13 Q. When is the last time you've done anything
14 relating to toxicology?

15 A. Would have been 1998. I'm no longer qualified
16 as a toxicologist.

17 Q. So your knowledge would be current as to 1998?

18 A. That's accurate, yes.

19 MR. GRAHAM: I guess with that limitation, Your
20 Honor, we would agree he's an expert.

21 CONTINUED CROSS-EXAMINATION

22 BY MR. STITELY:

23 Q. Doctor, are you familiar with the toxicology
24 reports generated by SLED dealing with substance
25 found in someone's blood as far as alcohol, drugs,

1 anything else?

2 A. I used to be, yes.

3 Q. You've done tests like that in the past as
4 well, correct?

5 A. I have. That's what I did.

6 Q. Is it standard in a case when you have a
7 decedent or a victim to generally draw their blood
8 to test them?

9 A. Those samples are taken at autopsy or by the
10 coroner's office and submitted to the lab for
11 testing.

12 MR. STITELY: May I approach?

13 THE COURT: Yes, sir.

14 BY MR. STITELY:

15 Q. I'm just going to show you something. There's
16 a relatively standard form that's issued by SLED's
17 toxicology lab, is that accurate?

18 A. It looks different than when I did it, but this
19 looks like a SLED toxicology report.

20 Q. Would you have anything to do with the
21 toxicology in this case?

22 A. No.

23 Q. Why would they not ask you to deal with the
24 toxicology in a case like this?

25 A. Because we don't offer that service at our

1 laboratory.

2 Q. Limited only through SLED?

3 A. SLED is the only lab in the state that does
4 toxicology.

5 Q. Thank you.

6 I guess now I want to go into specifically what
7 you were able to test in this case. I'll kind of go
8 in order. I guess a couple of the questions -- do
9 you have your sheet in front of you, Doctor?

10 A. Which sheet?

11 Q. The exhibit that had the -- your reports. I
12 guess you have the report as well too. I guess you
13 prefer to refer to that.

14 A. Yes.

15 Q. The first item that was tested by Richland
16 County, which was Richland County Item No. 1, if you
17 don't mind, I'm going to refer to them by your
18 number rather than the exhibit number because it
19 would get really confusing if I did that, if that's
20 okay with you?

21 A. That's good.

22 Q. Number 1, which was the sexual assault kit,
23 probably called a rape kit before, you described
24 that as swabs taken from the decedent in this case;
25 is that correct?

1 A. That's correct.

2 Q. Specifically it would have been four different
3 swabs; one of the buccal swab, one from the mouth,
4 one you called a vaginal swab, and one you called a
5 rectal swab. Is that correct?

6 A. That's correct. Vaginal, oral, rectal, and
7 also a buccal swab from the mouth.

8 Q. How is that different, just wondering, from a
9 mouth swab?

10 A. It's not. It's no different. They used to
11 collect what's called an oral standard, that you
12 would bite down on a piece of filter paper in the
13 serology days and they would collect blood as a
14 standard. But now that we can use a mouth swab or
15 buccal swab as a standard, it's the same thing.

16 Q. Okay. I kind of guessed that, but I just
17 wanted to ask to make sure. So let me ask you
18 specifically, when you're looking at that item on
19 your chart all the way across it, they talk about
20 seminal fluid, spermatozoa -- did I say that right?

21 A. Spermatozoa.

22 Q. Spermatozoa and blood. Those are kind of the
23 three things as far as serology that you're looking
24 at; is that correct?

25 A. That's correct.

1 Q. What about saliva, sweat, anything else? How
2 would you qualify those when you're talking about
3 serology samples?

4 A. We do not do a serology test for saliva and
5 there is not one for sweat, so the only two serology
6 tests we do are for semen and blood.

7 Q. As far as DNA -- and I guess it's on the chart,
8 but I'm just asking more background questions -- is
9 one better than the other for collecting it as far
10 as a source; for example, skin cells, blood cells,
11 seminal fluid? DNA is DNA. Is there a better
12 source for you to collect it from?

13 A. I wouldn't use the word better. Some sources
14 contain more DNA than others.

15 Q. More concentrated or more DNA?

16 A. Well, to me it's the same thing. There's more
17 DNA there. If all of those -- all of those samples
18 are from the same individual, it's the same DNA
19 profile. There's more DNA in, say, blood and semen
20 than there would be in a touch sample that may
21 contain skin cells.

22 Q. And I guess just for ultimate sake of clarity,
23 when you say more DNA, the DNA you would recover
24 from my saliva, touch DNA, blood, it's all the same
25 DNA, just how easy it would be for you to pull it

1 out, I guess, or to profile it?

2 A. Yeah, that's somewhat accurate.

3 Q. Okay. We have the chart and we talk about
4 seminal fluid versus -- say it one more time.

5 A. Spermatozoa.

6 Q. Spermatozoa?

7 A. Sperm cells.

8 Q. Sperm cells. What is seminal fluid?

9 A. Seminal fluid is the fluid that the sperm cells
10 are in the ejaculate. So say some individual had a
11 vasectomy, well, they're still going to produce
12 seminal fluid, but it will not have any sperm cells
13 in it, a sperm cell, spermatozoa. So the
14 spermatozoa have the DNA in them, where the seminal
15 fluid has other proteins and stuff.

16 Q. And that's what you were talking about,
17 16-point test for the Y chromosome?

18 A. That test, it's not specific for seminal fluid
19 at all, it's just specific for a male. It could be
20 a male's blood, it could be a male's semen, it could
21 be a male's saliva. It's specific for the male.

22 Q. That's because a male can provide the X
23 chromosome to a child or a Y chromosome?

24 A. That's correct.

25 Q. A female child or male child?

1 A. Well, that's not the reason. That's a true
2 statement, but it's because the male has a Y
3 chromosome that test works.

4 Q. In this case though, you found no sperm cells?

5 A. Which item are we speaking of?

6 Q. Number 1, sorry. I think that's the only one
7 you tested for sperm cells, number 1, all three
8 points?

9 A. That's correct. There were no spermatozoa
10 found.

11 Q. Let me just ask you, generally speaking, how
12 long could seminal fluid exist in a place and you
13 still be able to pull a sample from it?

14 A. That's quite a wide open question. It could
15 exist in somebody's refrigerator for a very long
16 time. So it depends on the storage condition. It's
17 going to exist a much shorter time out in somebody's
18 car in the woods in the summertime. So I guess need
19 more specifics.

20 Q. A day, a couple days -- like, on a body,
21 particularly, could it last for a week, could it
22 last for a few days? Is that hard to say?

23 A. Again, depends on where it the body is. If
24 it's in the morgue cooler, it's going to last
25 longer; if it's in somebody's trunk or in the woods

1 or in a house, it's going to last a shorter amount
2 of time.

3 Q. In this case specifically, is there any way for
4 you to timeline how long any of these fluids would
5 have been in the collection points from the rape
6 kit?

7 A. Any of the fluids or we still talking just
8 about semen?

9 Q. The semen. You didn't indicate blood on any
10 of --

11 A. Not on these items. I didn't know if you were
12 talking about --

13 Q. No, sorry, just number 1. I apologize.

14 A. So ask the question again.

15 Q. Is there any timeline you can put onto when
16 those items would have made it to that point where
17 they would be picked up by the Item No. 1 kit?

18 A. Any -- I'm having trouble understanding the
19 question.

20 Q. I guess I'm saying if someone -- hypothetically
21 speaking, if someone had a sexual relationship and a
22 sexual encounter a week earlier, is it possible you
23 could have found DNA from that person at a spot that
24 would have been consistent with the rape kit?

25 A. I would not expect to see somebody's semen from

1 a sexual encounter a week previous to the kit being
2 collected, no. The kit, generally, has a 72-hour
3 cutoff. And that is when an individual goes to the
4 hospital for a criminal sexual conduct kit, the
5 nurses there who do the kit have a 72-hour window.
6 So that's a pretty good guideline, not to say that
7 semen couldn't beyond that window, but that's the
8 window for the best collection of that type of
9 evidence in that type of case.

10 Q. Does it guarantee that the individuals -- in
11 your expert opinion, do people have to have sex for
12 seminal fluid to be located at one of these contact
13 points?

14 A. Would the person have to have sex for seminal
15 fluid to be there?

16 THE COURT: I take it, the person is female?

17 BY MR. STITELY:

18 Q. Well, either the female or the male. Again, it
19 has to come from the male, I assume, obviously?

20 A. Correct.

21 MR. GRAHAM: I'm going to object. And by his
22 hesitation, I'm thinking we're going outside -- I
23 don't know that he's ever collected one, so to ask
24 him a question about, really, how they're collected,
25 I think is -- what I'm hearing is outside his

1 expertise.

2 THE COURT: Rephrase your question. I wasn't
3 tracking either. And I'm not overruling it, but I
4 wasn't quite tracking.

5 MR. STITELY: Yes, sir. It's probably a bad
6 question.

7 BY MR. STITELY:

8 Q. Does a person -- I'm going to go A and B. Does
9 A have to have sex with B to put seminal fluid on B?

10 A. I guess you'd have to define what sex is.

11 Q. Is it possible that -- say someone put on my
12 undergarments that I had, at some point, gotten
13 seminal fluid on, is it possible it could have got
14 onto that person?

15 A. I think I see what you're asking now. You're
16 asking could it be transferred?

17 Q. Transferred.

18 A. Okay. So could you have seminal fluid on
19 somebody from a transfer event?

20 Q. Yes. Towel, undergarments, anything like that?

21 A. That is possible, yes.

22 Q. This test -- you're not the one collecting the
23 samples, you're just testing them as they came in?

24 A. That's correct.

25 Q. So you can't speak as to the nature of the

1 collection area or anything like that?

2 A. That's correct.

3 Q. As far as your upper 95-percent confidence
4 limit, he kind of got into that. And you said you
5 test for 24 loci, is what your standard is on the
6 normal DNA, and 16 on the protein for the Y,
7 correct?

8 A. Sixteen for the DNA on the Y.

9 Q. And you said that test fewer, 16 from 24, so
10 your numbers don't generate those astronomical
11 numbers we see on the other parts of the chart?

12 A. That's not the reason.

13 Q. Okay.

14 A. The reason is the system. That Y system itself
15 is different. We test a fewer number of loci
16 because that's the kit we have online right now.
17 There are kits that have more Y-STR loci in them as
18 the technology evolves. And, in fact, our old DNA
19 kit used to have 16 as well. So that kit has been
20 updated in our lab to 24.

21 We still use a 16 locus kit, but that has
22 nothing to do with what you just said. It's the
23 nature of that test that it all being on the Y
24 chromosome that causes the numbers to be less
25 because they're linked.

1 Q. That makes sense. And these other tests, you
2 didn't write it on that, but you kind of wrote it
3 on -- I'm just using -- where is the first one? No.

4 8.2, just as a quick example, you wrote more
5 probable than a coincidental match of an unrelated
6 Caucasian person. What about family, like a brother
7 or a father or someone along those lines? Would
8 that throw that number into skew?

9 A. So you're talking about item 8.2 now?

10 Q. I'm sorry. I was just using the language from
11 8.2 because I want the jury to see too.

12 A. Okay.

13 Q. But as far as any of them, any of these tests,
14 either the DNA frequency or the Y-STR loci test, if
15 you have a family member, a male family member,
16 would that throw your test numbers a little bit off?

17 A. I think I know what you're asking. So on the Y
18 test specifically, if you have a male family member,
19 a male relative to the person you're testing,
20 they're going to have the same Y-STR profile.

21 And that's what's -- that's why it's stated in
22 here that it's X times more likely to occur if Peter
23 Coffey or a paternal relative is the contributor.
24 So you can't exclude any paternal relative. So what
25 we're saying, this individual or any of his paternal

1 relatives could have contributed this stain.

2 Q. Were you here when Deputy Sprinkle testified,
3 one of the CSIs from Lexington?

4 A. No, I don't think so.

5 Q. He was the one who collected samples from
6 Mr. Coffey's house. You weren't here for that
7 testimony?

8 A. No. Huh-uh.

9 Q. He said that Mr. Coffey had a brother and he
10 said they probably switched shorts and socks. Would
11 that potentially be an interesting thing for you to
12 consider when you're running your DNA test, if two
13 people wore the same thing who are brothers?

14 MR. GRAHAM: Objection, Your Honor.

15 THE COURT: Sir?

16 MR. GRAHAM: If we can approach, I have an
17 objection.

18 THE COURT: Yes, sir.

19 (Sidebar conference.)

20 THE COURT: Step to your jury room, please,
21 ladies and gentlemen. Do not discuss the case.

22 (The jury exits the courtroom at 2:29 PM.)

23 THE COURT: All right. Solicitor?

24 MR. GRAHAM: Yes, Your Honor. My objection
25 would be -- is we're getting ready to go into the

1 area of third-party guilt. My belief would be that
2 at this point the defense attorney has asked
3 properly, I guess, under Y-STR testing, that in
4 addition to Mr. Coffey, Mr. Coffey's father or
5 brother or anybody in the direct male lineage would
6 have the same Y-STR profile.

7 The two items that have Y-STR are the rectal
8 swab, which was a match to Peter Coffey under Y-STR,
9 and then item 13.3 is an unknown male, which would
10 exclude Peter Coffey or any of his male lineage. So
11 going down the male lineage route, the only thing at
12 this time would be to go back to talking about the
13 rectal swab.

14 And I believe that Mr. Stitely is now beginning
15 to say couldn't that be -- because it was also
16 seminal fluid, couldn't it have been the seminal
17 fluid of Peter Coffey's brothers. And I believe
18 that goes into third-party guilt.

19 THE COURT: Could what be? The rectal swab and
20 the slides?

21 MR. GRAHAM: Yes, Your Honor.

22 THE COURT: But -- and this is where I wasn't
23 tracking right. I understand the doctor tested --
24 the other one you just related to me was 13.3?

25 MR. GRAHAM: Correct, Your Honor.

1 Apparently -- and we can --

2 THE COURT: 13.3 excluded Mr. Coffey and
3 excluded JT [REDACTED]

4 MR. GRAHAM: Correct.

5 THE COURT: So there's no Y there --

6 MR. GRAHAM: And I think if I understood what
7 Dr. Amick was saying is, although the results in
8 that box are all correct, the part where it talks
9 about -- it's a mixture of two DNA profiles; he was
10 able to develop a profile for an unknown female, so
11 he excluded JT [REDACTED] from that, and through
12 Y-STR, he developed a Y-STR profile and was able to
13 exclude Mr. Peter Coffey.

14 THE COURT: So you're telling me that 13.3
15 excludes JT [REDACTED] -- JT [REDACTED] and Mr. Coffey
16 from DNA, but there was a Y that is not listed under
17 Y-STR that would be consistent or not consistent
18 with the findings on the rectal swabs and slides?
19 There's no number. There's no math. Is that what
20 you're telling me the testimony was though?

21 MR. GRAHAM: His testimony was that they
22 develop -- on that mixture, on 13.3, it was a
23 mixture of two people. The major contributor was a
24 female, which they developed a profile for which
25 they were able to exclude under regular STR testing

1 JT

2 The strength of the mixture was so strong that
3 the only Y profile that could be developed was
4 through Y-STR testing, which developed a Y-STR
5 profile, which excluded Mr. Coffey.

6 THE COURT: So the Y-STR on 13.3 excluded
7 Mr. Coffey?

8 MR. GRAHAM: Correct.

9 THE COURT: So why am I talking about 13.3?
10 Why am I not just talking about rectal swabs and
11 slides as far as Y-STR is concerned? That's what
12 I'm not tracking.

13 MR. STITELY: May I ask him a couple questions
14 just to show you exactly where I was going with
15 this?

16 THE COURT: Sure, of course.

17 IN-CAMERA EXAMINATION

18 BY MR. STITELY:

19 Q. Doctor, I was just talking about number 1 with
20 you at the time. But let's just jump to number,
21 say, 8.3. Do you have 8.3 in front of you?

22 A. Yes.

23 Q. And here you say that 8.3 would have contained
24 DNA consistent with Peter Coffey 276 trillion times
25 more probable than a coincidental match with an

1 unrelated Caucasian person, correct?

2 A. That's correct.

3 Q. If I said he had a brother that might have worn
4 those shorts, would that throw that number off?

5 A. That number would be different.

6 MR. STITELY: That's what I intend to ask.

7 THE COURT: Did you do 8.3 -- you did a Y-STR?

8 THE WITNESS: No.

9 THE COURT: Why would the 276 trillion be
10 different?

11 THE WITNESS: Because that statistic is based
12 on unrelated individuals. So if you say there is --
13 compare a related individual, that number is going
14 to be different.

15 THE COURT: Okay.

16 All right. Solicitor?

17 MR. GRAHAM: No. If that's -- I thought we
18 were going into the rectal swab and you were trying
19 to say that that was from the brother. That was my
20 objection.

21 MR. STITELY: My intent was --

22 THE COURT: The doctor has already testified --
23 excuse me for talking over you. The doctor has
24 already testified that all the paternal relatives
25 and -- whether it's Mr. Coffey or Mr. Graham or

1 Mr. Stitely or whatever, or me, we got all the same
2 Y chromosomes DNA in our paternal -- going up to our
3 daddies and granddaddies and all that. So he's
4 already said that.

5 With that being said, there could be an
6 inference that -- as far as the rectal swab and all,
7 that could be one of Mr. Coffey's paternal
8 relatives' Y-STR DNA. I mean, that inference is
9 there as far as science -- as far as the science.

10 MR. GRAHAM: Correct. I guess --

11 THE COURT: There may not be any evidence,
12 direct or circumstantial or otherwise, that one of
13 his paternal relatives was at the scene. But as far
14 as science, the doctor has already told us that,
15 correct?

16 MR. GRAHAM: Correct, Your Honor. And I agree
17 with that. I just don't believe any further
18 questioning along the lines of his brother could
19 have been the one that had sex with her. I don't
20 believe that would be appropriate.

21 MR. STITELY: I don't intend to ask that
22 question, Judge.

23 THE COURT: I don't think that -- well, I'm not
24 going to tell you what I think is appropriate or
25 inappropriate. But as far as 8.3, this is just the

1 cross-examination of the doctor concerning his --
2 the report in regards to the unrelated Caucasian
3 male.

4 MR. GRAHAM: Understood. And I don't have an
5 objection to that.

6 THE COURT: Thank you.

7 MR. STITELY: Thank you, Your Honor.

8 THE COURT: I'm with you. I'm tracking, I
9 think.

10 (Jury enters the courtroom at 2:38 PM.)

11 THE COURT: Thank you, Solicitor.

12 Thank you, Mr. Stitely. You may continue.

13 CONTINUED CROSS-EXAMINATION

14 BY MR. STITELY:

15 Q. And again, Doctor, if I ever ask a question
16 that doesn't make sense, please let me know.

17 A. I will.

18 Q. Because it's not my expertise.

19 So just finishing up on Item No. 1, you also
20 said something about degradation when you were
21 speaking to the solicitor in direct examination as
22 to be a reason why you didn't get the best possible
23 DNA sample. I think that's the word that you
24 actually used. Yeah, you said degradation. What
25 did you mean by degradation?

1 A. I gave that as a possible reason why I would
2 have a positive P30 and not get a male DNA profile.
3 Degradation is simply the breakdown of DNA no matter
4 where it is on whatever substance.

5 Q. In your expertise, could that, hypothetically,
6 be that time situation I was asking you, the older
7 it got, it might have degraded?

8 A. Yes.

9 Q. So if there was a sample but it was old, you
10 might find pieces, but not nearly what you'd like to
11 find?

12 A. That's accurate, yes.

13 Q. Moving on to number 2, number 2 is just the
14 buccal swab. That's the base, like our standard for
15 Mr. Coffey?

16 A. That's Peter Coffey's standard, correct.

17 Q. And that's like our old science experiments,
18 you need something to compare to, correct?

19 A. That is his standard DNA profile for
20 comparison, correct.

21 Q. Number 3, pieces of hair from the victim's
22 shower. It says no analysis. Does that mean you
23 didn't test them at all?

24 A. That's correct. No analysis performed.

25 Q. Would that have been on the call of

1 Investigator Lint. Do you know why you didn't test
2 that?

3 A. I don't have any notes as to why, so I don't
4 know why.

5 Q. Swab Nos. 4, 5, and 6, which are shower wall
6 swabs, you matched to Ms. JT [REDACTED]

7 A. Yes.

8 Q. Let me ask you a question. On your chart it
9 says you found blood on those, correct?

10 A. That's correct.

11 Q. When it says here the DNA match, is there an
12 exact -- I guess I have to ask it in a hypothetical
13 question so you can understand my question.

14 If there was blood on this board and then I
15 pushed my finger over top of it, could you tell
16 whether or not the DNA you pulled was the blood's
17 DNA or the touch DNA that I put on top of it?

18 A. Whose blood was it?

19 Q. Say it was mine, say I bled on it and then I
20 pushed on it and got skin cells.

21 A. It's going to be the same DNA profile.

22 Q. But can you tell me whether it was the blood
23 that you actually would end up testing or the skin
24 cells? Would this board indicate that?

25 A. Not in that scenario.

1 Q. In this case's scenario, can you definitively
2 say whether or not the DNA points came from the
3 blood that was found or any other kind of DNA that
4 might have been with the blood?

5 A. In my opinion, based on the quantity of DNA
6 there, that profile is from the blood.

7 Q. Okay. But it is possible it could be another
8 source. But you believe because of the good quality
9 of DNA, it was the blood?

10 A. Correct.

11 Q. Number 7. You weren't there when he testified,
12 but the officer testified that the boots tested
13 negative at the scene for blood. However, you did
14 find blood on 7.2; is that correct?

15 A. 7.2, yeah. Blood was detected on 7.2.

16 Q. He couldn't really explain it, maybe you could.
17 Why would the phenolphthalein test negative for him
18 yet you be able to discover blood?

19 A. Well, I don't know what spots he tested, if
20 it's tested a different spot. Maybe he didn't see
21 the spot that I tested, so that would probably be
22 the simplest explanation.

23 Q. What if he tested the same spot? Is there any
24 time the presumptive test is wrong?

25 A. Well, you could have -- I don't know the QC,

1 the quality control, of the reagents -- his reagents
2 could have been bad. That test -- you can get false
3 positives and false negatives based on the item
4 you're testing and what else could be on that item.

5 It's not uncommon in the field. We'll get a
6 serology result that's negative or positive and we
7 redo it in the lab and get a different result.
8 That's why we redo it in the lab, for one thing. So
9 I don't know the conditions that he was operating in
10 and his reagents and all that to really know why.

11 Q. But there also could be false positives and
12 false negatives?

13 A. There are false positives and false negatives
14 for that test. They're very uncommon. We're more
15 worried about a false positive. Being, like, if you
16 swab rust or something, sometimes you may get a
17 false positive, but if you continue that test,
18 you're not going to get a DNA profile anyway, it
19 being a false positive.

20 So, like I said, it's very -- I haven't seen --
21 I can't think of a scenario where I've seen on a
22 false positive on a phenolphthalein that I've done.
23 And I've actually tried at the scene to make that
24 happen to see it myself, and I've never been able to
25 do it.

1 Q. The solicitor asked you -- and, obviously, in
2 7.2, you said that DNA was developed and it did not
3 match Mr. Coffey. You didn't put a number, but if
4 you say do not match, that's a relative certainty as
5 far as you're concerned?

6 A. That's right. He was excluded.

7 Q. And then you said inconclusive as to
8 JT [REDACTED] correct?

9 A. That's correct.

10 Q. The solicitor phrased that as you couldn't say
11 whether or not it was JT [REDACTED]

12 A. I couldn't include her or exclude her. I
13 couldn't make a conclusion when it comes to her.

14 Q. Can we put any more weight to that, whether or
15 not you could have included or excluded any female
16 in this courtroom?

17 A. I would have to see their profile to be able to
18 say I could include or exclude or it's inconclusive.
19 It would be that way for anybody.

20 Q. So any other human being?

21 A. Correct.

22 Q. Number 8 is the boxer shorts that were tested.
23 I actually want to direct your attention to 8.3. We
24 talked about it just a second ago. Number 8.3 was
25 the scrapings of the inside waistband, correct?

1 A. That's right.

2 Q. And I won't make you do it again, but you
3 described that as you take a sterile blade and you
4 rub it across the back to try to grab cells that
5 aren't necessarily fluids?

6 A. Cells that are --

7 Q. You're not trying to get blood, you're trying
8 to get, like, skin cells --

9 A. Right.

10 Q. -- or whatever?

11 A. Not a stain that I'm looking at, per se.

12 Q. And you call those what you like to refer to as
13 identifiers for possession?

14 A. We're checking for ownership, correct.

15 Q. For ownership?

16 A. Right.

17 Q. Hypothetically speaking, if you're doing the
18 scraping on the inside of a waistband, if more than
19 one person had wore those, what would you expect to
20 find?

21 A. You could find a mixture of two individuals or
22 three or however many have worn it. We've seen that
23 in ball caps. You can find more than one individual
24 when you check for who's wearing it.

25 Q. Like, if my wife put on one of my T-shirts to

1 go to bed, chances are you'd pull both of our DNA
2 off of it?

3 A. It's possible. Right.

4 Q. And number 8.3, you found both Mr. Coffey and
5 JT [REDACTED] DNA in your scraping, correct?

6 A. That's correct.

7 Q. What would that indicate to you as far as
8 ownership?

9 A. Ownership -- I mean, we use that term, I guess,
10 in a different sense. I don't really know who owns
11 this piece of clothing. We're really trying to see
12 who may have been wearing it. All that tells me is
13 that both of their DNA was on that band, that
14 waistband. That's all it tells me.

15 Q. Would it be a major leap to say there's a
16 chance that both of them wore those underwear at
17 some point, those boxers?

18 A. That's a possible scenario, yes.

19 Q. I asked you briefly when we were talking about
20 the DNA and the Y sequences up in number 1. I'm
21 going to ask you now as we get to 8.3. You said
22 that Mr. Coffey was 276 trillion times more capable
23 of producing a coincidental match to an unrelated
24 Caucasian person. Pretty much, that means you're
25 saying an unrelated male relative, it's him?

1 A. My opinion, yes. He is a source of one of
2 those individuals on that waistband.

3 Q. If he had a related male relative from his
4 father's line, would that change that accuracy
5 number?

6 A. Well, it would change -- it's not an accuracy
7 number, so I don't like to use that term.

8 Q. Sorry. How would you phrase it?

9 A. It would change the number. And that's why we
10 put that in the statement. I could estimate -- we
11 used to use what we called the power of ten rule,
12 and that is we take the frequency we receive and we
13 decrease it by a power of ten and that would account
14 for any relatedness, any populous substructure, any
15 inbreeding, any of the things that may affect that
16 number.

17 So if you did that to this number, instead of 1
18 in 276 trillion or 276 trillion times more probable,
19 it would be 27 trillion times more probable. So
20 it's a number that -- it's a factor that you can
21 use, and some labs still use, to just be the most
22 conservative and take out any of those possibilities
23 for that statistic.

24 Q. But that rule is different when you're talking
25 specifically about the Y-STR test that you had in

1 number 1?

2 A. That doesn't have anything to do with Y-STRs.

3 Q. All right. Let's go to the next page.

4 Number 9 was a pair of tan shorts. Did you --
5 you obviously did. You handled those shorts,
6 correct?

7 A. That's correct.

8 Q. Visual inspection. How would you define the
9 condition of those shorts as you got them?
10 Well-used? Well-worn? Old? New?

11 A. They had lots of stains on them. They didn't
12 appear new, I guess I would say that.

13 Q. Lots of stains layered on top of stains, all
14 kinds of stuff?

15 A. They had a lot of stains on it, yes.

16 Q. Let me just ask you as we're getting into it.
17 If you don't know, please tell me. We're talking
18 about blood that you located on those shorts is what
19 you ended up testing, correct?

20 A. That's correct.

21 Q. We've all seen movies and they've gone to clean
22 up a crime scene and there's blood and they use
23 bleach everywhere to get rid of the DNA. How hard
24 is it to get rid of blood as far as you being able
25 to test it?

1 A. How hard is it to get rid of?

2 Q. If I was to take some water and I had bled on
3 this desk and I just wiped it off with a paper
4 towel, am I going to eliminate all my blood DNA,
5 most likely?

6 A. It's possible. Yes.

7 Q. Is it also possible that it could withstand
8 being wiped off?

9 A. It's possible.

10 Q. Can you age a DNA sample based on the blood
11 that you have?

12 A. No. You cannot tell when that stain was
13 deposited.

14 Q. So if I had a -- hypothetically, if I bled on
15 this shirt a month ago and it hadn't been chemically
16 cleaned, it's possible you could have found the
17 blood?

18 A. No matter when you bled on that shirt, I could
19 possibly get a DNA profile. But I wouldn't be able
20 to tell you when you bled on that shirt.

21 Q. If it's in the right conditions, it can last
22 how long?

23 A. Indefinitely.

24 Q. As far as layering -- I don't think the
25 solicitor brought it up to you. If you have layered

1 samples, is there any way to say at what point the
2 blood was placed on the object, like, what -- how
3 the order of the DNA placement went?

4 A. No, there's no way to tell that.

5 Q. I guess what I'm saying, like I talked about
6 earlier, if I had blood and then I skin-celled it
7 and then I spermatozoa fluid, you wouldn't be able
8 to tell which one came in which order; is that
9 correct?

10 A. That's correct.

11 Q. And you're going on to number 9.6, what you
12 called a mixture. And the solicitor asked you
13 specifically -- the minor contributor is too weak.
14 And he asked you about JT [REDACTED] Is there any way
15 to exclude any general person or are you just saying
16 you couldn't develop anyone on that?

17 A. 9.6?

18 Q. 9.6, yes, sir.

19 A. Yeah, 9.6 matched Peter Coffey. The minor
20 contributor is too weak for match purposes. So it
21 doesn't -- I couldn't include or exclude her. And
22 the way that statement is written, you probably
23 can't do that for anybody.

24 Q. So it's not specific to JT [REDACTED] it's pretty
25 much anybody?

1 A. That's correct.

2 Q. It's not on this board, but I'm guessing your
3 answer would have been the same for 9.5 because it
4 does say mixture, but the result for minor doesn't
5 show up?

6 A. That's correct.

7 Q. But the same thing, you couldn't exclude any
8 particular person?

9 A. That's correct.

10 Q. Or include any particular person?

11 A. I included JT [REDACTED] but minor, no.

12 Q. Number 10, there was nothing of interest?

13 A. The result from number 10, is that what you're
14 asking?

15 Q. Yes.

16 A. There was no blood detected on 10.1 or 10.2.

17 Q. And you said that you didn't do anything
18 further with those?

19 A. At that point, there's no further analysis.

20 Correct.

21 Q. The sheet, you actually said that you -- that's
22 number 11, specifically 11.1. You did a -- you
23 called it a light testing to look for what you were
24 thinking might have been seminal fluid. Why did you
25 do that?

1 A. Because --

2 Q. What was identifiable about that stain that
3 made you want to do that?

4 A. I did it because it was a criminal sexual
5 conduct kit involved. So I'm assuming they thought,
6 possibly, there was criminal sexual conduct, and
7 it's a bedsheet. So in that type of piece of
8 evidence, we will look for semen.

9 Q. And the short answer is, you didn't find any
10 semen on the bedsheet?

11 A. That's correct.

12 Q. And the only DNA that you profiled off of the
13 bedsheet belonged to JT [REDACTED]

14 A. That's correct. 11.1 and 11.2 both matched
15 JT [REDACTED]

16 Q. Okay. Number 12, which was the hammer, you did
17 three different locations; two on the head and one
18 on the handle. Is that correct?

19 A. That's correct.

20 Q. You indicated there was blood on the first
21 two -- I'm sorry, I guess they're out of order, but
22 on the two on the head, but not on the one on the
23 handle; is that correct?

24 A. That's right.

25 Q. Can you tell me what kind of DNA it was that

1 you found of JT [REDACTED] on the handle or just
2 there's no way of saying that?

3 A. It's her DNA, but I don't know what body fluid
4 it is. It didn't appear to be blood, so I did not
5 test it for blood.

6 Q. And there was no one else's DNA located on that
7 hammer where you tested it?

8 A. I believe that's what my report said. 12.1, 2,
9 and 3, they are a single source, basically, and they
10 matched JT [REDACTED]

11 Q. Okay. I'm going to skip number 13 and come
12 back to that in a second.

13 Let's go on to number 14, the swab from the LG
14 phone. You were able to match JT [REDACTED] You
15 don't have a number, but I'm guessing that it was
16 high.

17 A. The way I've written that item up is there's an
18 asterisk there on my report and that -- that means I
19 had some information, whether it's accurate or not,
20 that it's a nonprobative sample. Like, say an
21 individual -- say my cell phone -- if I've got my
22 DNA on my cell phone, I would expect to find that,
23 so I'm not going to attach a probability to it. So
24 that's what I've indicated, the way I've written it.
25 So I didn't create a stat for that. I could look at

1 it and probably -- if it has all the characteristics
2 of these other ones, it's going to be this octillion
3 number. But that's why I didn't do it on that item.

4 Q. It was clear to you it was JT [REDACTED] DNA?

5 A. I must have had some information to indicate
6 that.

7 Q. Okay. On that one, the minor contributor is
8 too weak. Once again, that's not specifically
9 talking about Mr. Coffey. That's any contributor
10 would have been too weak to profile; is that
11 correct?

12 A. Which item is this?

13 Q. 14. Sorry.

14 A. Yes, that's correct.

15 Q. When you say minor contributor, just wondering,
16 does it mean that that's a male or a female or you
17 can't necessarily say that if it just says minor
18 contributor?

19 A. It's just the minor contributor, don't know.

20 Q. 15, only JT [REDACTED]

21 A. Correct.

22 Q. Number 16, swab from a Jergen's bottle. Do you
23 have the pictures that you took, by chance?

24 A. I don't think I got that item, I think I just
25 got those swabs. Let me double-check. Yeah. That

1 was one that Ashley did, 16. And it says swab from
2 Jergen's bottle. So that would have been submitted
3 to us as a swab from that note.

4 Q. I guess my comments go to 16 and 17. And they
5 just say swabs from razor handle?

6 A. Right.

7 Q. And it says no analysis. If that Jergen's
8 bottle was found in a bloody trash can, why was it
9 not analyzed?

10 A. I don't know why. I don't know why it was not
11 requested to be analyzed and I don't know where it
12 was found.

13 Q. Sure. But if they had said test it, you would
14 have done it?

15 A. Yes.

16 Q. And same thing for the razor?

17 A. For any item that was submitted, yes.

18 Q. You didn't unlikely say, well, I'm not going to
19 test that because I don't want to bother?

20 A. I did not say that.

21 Q. Number 18 is, once again, just the standard for
22 Mr. Coffey?

23 A. Yes.

24 Q. Number 19 was a different pair of boxers. You
25 didn't have any -- Ms. Dixon said that she prepared

1 that. So you didn't actually touch that item, you
2 just did the testing on what came off?

3 A. That's correct.

4 Q. So you can't even tell me where that sample
5 that she cut from on the boxers or anything like
6 that?

7 A. No, not without looking at her notes or
8 pictures.

9 Q. Is there anything to indicate to you that we
10 did that same waistband scraping on those boxers, by
11 chance?

12 A. I don't think so. From our notes, several
13 spots tested and one cutting made, positive phenol
14 reddish-brown stains.

15 Q. That was limited to JT [REDACTED]

16 A. The result of 19?

17 Q. Yes.

18 A. Yes. That matched JT [REDACTED]

19 Q. And number 20, there was three items out of a
20 purse. You said there was blood, all belonging to
21 JT [REDACTED] is that correct?

22 A. That's correct.

23 Q. And, once again, we find that minor
24 contributor, but can't say who that is?

25 A. That's correct.

1 Q. On the shower curtain, 21.1, you matched

2 JT [REDACTED]

3 A. Correct.

4 Q. 21.2, you said was Mr. Coffey or an unrelated
5 person, correct?

6 A. 21.2 matches Peter Coffey. I didn't say or an
7 unrelated person, no. It matches Peter Coffey.

8 Q. Because on the board, it says more likely to
9 match to an unrelated person. So, I apologize,
10 maybe that's not what your report says.

11 A. It should be 49 octillion times more likely
12 than a match to an unrelated person.

13 Q. Okay.

14 A. The word "a" is missing.

15 Q. Once again, can you say how old that stain
16 might have been?

17 A. I cannot.

18 Q. There were nine cuttings taken from the shower
19 curtain, or at least nine marks made. Do you have
20 anything in your notes dealing with that or was that
21 specifically a thing in Ms. Dixon's notes?

22 A. She did that. But she -- I'm aware of that,
23 because when she was doing it, she brought me in to
24 have a look at that item. Yes.

25 Q. We didn't run tests on the other five though?

1 A. Correct.

2 Q. There's nothing from your testing, because you
3 weren't at the crime scene, that could tell you how
4 items got to certain places? As far as spatter,
5 transfer, anything like that, you just tested the
6 sample that was brought in, correct?

7 A. I do not know how stains got on items, that is
8 correct.

9 Q. Okay. So if it was there from an act that
10 happened at that place or someone moving something,
11 anything like that, you can't speak to any of that?

12 A. That's correct.

13 Q. Okay. Let me go back to number 13. In 13.1,
14 that was a swab of the outside of the cucumber; is
15 that correct?

16 A. That's correct.

17 Q. And it indicated a match to, again, Mr. Coffey
18 and JT [REDACTED] and that same language about
19 unrelated persons, correct?

20 A. Correct.

21 Q. Now, this was an external swab; is that
22 correct?

23 A. A swab over the entire cucumber, correct.

24 Q. If it had come in contact with DNA elsewhere,
25 could that have transferred onto it?

1 A. That's possible. Yes.

2 Q. In your situation, hypothetically speaking, if
3 two individuals had had intercourse and an object
4 passed through the point of intercourse, is it
5 possible to pick up their DNA?

6 A. That's possible.

7 Q. Did you test it specifically to determine
8 whether the DNA contained seminal fluid or blood?

9 A. No. There was no visible blood and we did not
10 test it for seminal fluid.

11 Q. Okay. And item 3.2 [sic], it said no DNA
12 detected. That just means you couldn't collect
13 enough to make an assessment?

14 A. 13.2?

15 Q. 13.2. Sorry.

16 A. Correct. 13.2, no DNA was extracted from that
17 item. So that was the hair, I believe. So what we
18 did is cut the root part of the hair and try to
19 extract that for DNA. And then we got no DNA after
20 doing that, so that's why it reads that way.

21 Q. Does it mean there wasn't any DNA or you just
22 couldn't get enough of it to create a sample?

23 A. It could be either one of those.

24 Q. So it's possible DNA was there, but just was
25 too small or it wasn't any at all?

1 A. Correct. From the result I got, it's pretty
2 much no DNA there. Just because you have a hair
3 root doesn't mean you have DNA there. There's
4 certain stages of the hair root -- the closer it is
5 from when it fell out of your head or got plucked
6 out, the more DNA is going to be there. So a lot of
7 times we can do a hair root and get nothing, so it's
8 not unusual. My opinion would be there was no DNA
9 on that hair root.

10 Q. Okay. And in number 13.3, that was the unknown
11 substance on the hair. You said that the sample was
12 relatively small, correct?

13 A. That's correct.

14 Q. And you said that you didn't -- and I don't
15 want to put these words in your mouth. You didn't
16 want to waste the sample on testing it for blood or
17 seminal fluid; is that correct?

18 A. That's correct. Let me go back. I said it was
19 small. That feature was small. It did appear to be
20 a length of the hair that included that feature. So
21 that's why I had that discussion with Ashley to swab
22 the entire amount that looked like it contained.

23 Q. And part of the reason is when you do the
24 testing, you can harm the sample; is that fair?

25 A. It's not harming, it's sacrificed.

1 Q. Used up?

2 A. You use it up, correct.

3 Q. So if you had done some of those tests, you
4 might not have had enough DNA to pull the DNA?

5 A. You would not have enough sample left to do a
6 DNA test, correct.

7 Q. But you can't exclude blood or semen?

8 A. I cannot. I did not test for -- we did not
9 test for any body fluid on that item, so I can't
10 tell you whether that was blood or not.

11 Q. Or seminal fluid or not?

12 A. Correct.

13 Q. But you distinctively can say that at least two
14 other human people's DNA were on it?

15 A. That's correct.

16 Q. Is it possible there were more than two or just
17 two? It said major female, minor male.

18 A. There is definitely another female there and
19 another male and possibly another male. There's a
20 major male profile that I was using to exclude Peter
21 Coffey in this case. So there was at least one male
22 there. There was indication of another profile
23 there that I could not characterize very well.

24 Q. But you can definitively say it was not
25 Mr. Coffey?

REDIRECT EXAMINATION OF GRAY AMICK BY MR. GRAHAM

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1 A. Yes.

2 Q. And not JT [REDACTED]

3 A. Correct.

4 Q. Foreign entities from those two parties?

5 A. Other individuals. Correct.

6 MR. STITELY: May it please the Court one
7 second?

8 THE COURT: Yes, sir.

9 MR. STITELY: Thank you, Doctor.

10 THE COURT: Redirect?

11 MR. GRAHAM: Just a few questions.

12 REDIRECT EXAMINATION

13 BY MR. GRAHAM:

14 Q. One of the questions at the beginning was about
15 degradation with the CSC kit. When did you analyze
16 the CSC kit?

17 A. The kit was received and I broke it down August
18 12th, 2015.

19 Q. So if it was collected at the autopsy on August
20 10th, would you expect degradation two days later?

21 A. Not after collection. I don't know where --
22 how long the body -- how long the individual was
23 dead before the kit was collected. I don't know
24 that answer. But it being collected at autopsy
25 right before, that sounds good to me. But the

1 degradation could have happened before collection
2 also.

3 Q. Okay. Doctor, you were asked about 13.3 and
4 seminal fluid and sperm and blood. The unknown
5 substance that you described as like a syrupy Coke
6 bubble, that you said looked like what we're seeing
7 in State's 45, have you looked at that under a
8 microscope?

9 A. I did.

10 Q. Do you know what seminal fluid looks like under
11 a microscope?

12 A. I do.

13 Q. Did this look like seminal fluid?

14 A. It did not.

15 Q. Did it look like blood?

16 A. It did not.

17 Q. Did it look like sperm?

18 A. It did not.

19 Q. Did it look like some kind of tissue?

20 A. That's what we thought it could have been,
21 based on our experience -- my experience in looking
22 at this stuff. We didn't do serology for those
23 reasons I just answered, and we decided to just do
24 DNA because we thought it might be tissue.

25 Q. To be clear -- maybe so I'm clear, on 13.3, do

1 we have two columns, the Y-STR column and the STR
2 column? When it says it's a mixture of two DNA
3 profiles, did you just say that it's actually more
4 than two profiles?

5 A. It could be. Yes.

6 Q. Do you know how many profiles are in there?

7 A. Well, I say that because when I did the Y-STR,
8 I saw more than one individual. Okay? So I
9 don't -- I don't know how many, based on that. So
10 I -- I could definitely exclude Coffey from the Y
11 though.

12 Q. So the way the chart is written up right now,
13 it kind of shows that all the results are under the
14 STR, which is not -- well, the statements are true.
15 The depictions aren't true here?

16 A. Right.

17 Q. So under the STR testing, you developed a
18 mixture. There was one female. JT was
19 excluded?

20 A. That's correct.

21 Q. Then on the remaining part, because you saw the
22 presence of a Y but you couldn't get anything under
23 the STR, you did the Y-STR test?

24 A. That's correct.

25 Q. And you developed, I guess what I'm

1 understanding now is, two male profiles?

2 A. That's correct.

3 Q. Mr. Coffey is neither one of those two male
4 profiles?

5 A. That's correct. And that should be under the
6 column under Y.

7 Q. So where it says the minor contributor is an
8 unknown male, that really should be over in the
9 Y-STR column?

10 A. That's correct.

11 Q. CODIS. What is CODIS?

12 A. CODIS is the database that we use for DNA.
13 It's a DNA database. It stands for -- you want me
14 to tell you what it stands for?

15 Q. Sure.

16 A. Combined DNA Index System. It's the DNA we
17 contribute to -- every state contributes to it, so
18 you can search evidence locally, at a state level,
19 and on the national level.

20 Q. For the unknown mixture on 13.3, the unknown
21 female, and the unknown male under the Y-STR, did
22 you submit those to CODIS?

23 A. I did.

24 Q. Have you gotten any results?

25 A. I have not.

1 Q. So at this time we don't know who that belongs
2 to?

3 A. That's correct. That database will search
4 against any other evidence profile submitted and any
5 convicted offender that's in there as well. So I do
6 not have a match for either one of those.

7 Q. Thank you, Doctor.

8 THE COURT: Recross?

9 MR. STITELY: No, sir.

10 Thank you very much, Doctor.

11 THE COURT: Thank you.

12 Thank you, Doctor. Thank you for being here.

13 You may step down.

14 All right. Unless anyone needs a break right
15 now, we'll press on.

16 All right. Call your next witness, Solicitor.

17 MR. POGUE: Thank you, Your Honor. The State
18 calls John Barron.

19 THE COURT: Mr. Barron, come around and be
20 sworn for us, please.

21 JOHN BARRON

22 being first duly sworn, testified as follows:

23 THE WITNESS: Yes, I do.

24 THE CLERK: Have a seat, sir. Once you're
25 seated, state your full name, spelling your last.

1 THE WITNESS: John Barron, B-A-R-R-O-N.

2 DIRECT EXAMINATION

3 BY MR. POGUE:

4 Q. And, Mr. Barron, I apologize. What is your
5 official title? Are you -- are you a -- I guess I
6 should first ask you, where are you employed?

7 A. Presently at Richland County Sheriff's
8 Department in the DNA analysis laboratory.

9 Q. And do you have a title that comes along with
10 that?

11 A. I'm the senior forensics scientist at Richland
12 County. I'm also a DNA analyst, I'm also the CODIS
13 administrator.

14 Q. How long have you been employed there?

15 A. Since 2004 when Dr. Amick and I started the DNA
16 laboratory in Richland County.

17 Q. So you were one of the ones that started that
18 lab?

19 A. That's correct.

20 Q. When was that?

21 A. 2004. March of 2004, we came to Two Notch Road
22 and set up the laboratory, designed the laboratory,
23 and ordered the equipment and supplies, and began
24 testing about nine months later.

25 Q. Have you expanded at all since then?

DIRECT EXAMINATION OF JOHN BARRON BY MR. POGUE

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1 A. We have added two analysts and a serologist,
2 who was originally a technician and we trained her
3 to be a serologist.

4 Q. Prior to you starting the lab there at Richland
5 County, where did you work previous to that?

6 A. I also worked at South Carolina Law Enforcement
7 Division, otherwise known as SLED. And I'd worked
8 there since the late '70s.

9 Q. And in what capacity were you employed with
10 SLED?

11 A. In several capacities; initially as a
12 blood-alcohol examiner, and then I became a
13 serologist and a hair examiner, hair and fiber
14 examiner. And then in 2000, I became a DNA analyst.

15 Q. Currently in your role there at Richland
16 County, what are you certified to analyze?

17 A. Well, I'm a qualified DNA analyst. My
18 background involves examining hairs and fibers and
19 testing them to identify them, to identify their
20 characteristics. And we used to do what we call
21 microscopic comparisons comparing evidence to known
22 samples, like a known hair sample from an
23 individual.

24 But since the evident of DNA, that's kind of
25 gone by the wayside. It's basically used now as a

1 screening tool, is it worthy of DNA analysis or not,
2 and maybe in some situations, just describing what I
3 see.

4 Q. And I assume you've had training in regards to
5 forensic hair analysis?

6 A. I have. I've been trained by not only the
7 expert at the time when I started at SLED in hair
8 and fiber, but also FBI hair and fiber experts up
9 in -- under their tutelage as well. And since about
10 1980, I was qualified as a forensic hair examiner in
11 the State of South Carolina.

12 Probably for the next 20 years, I did cases and
13 testified to the results of that probably at least
14 150 times before DNA came along and then microscopic
15 hair comparisons became a screening tool for DNA.

16 Q. That was actually going to be my next question
17 to you. You said -- just so I understand what your
18 testimony is, you said you've been qualified as an
19 expert in the area of forensic hair examination and
20 comparison 150 times?

21 A. At least, over a 20-year period of time.
22 That's an estimate, because I did not keep a count.
23 But I did testify a lot on hair.

24 Q. Was that all or mostly in South Carolina?

25 A. That would be mostly in South Carolina, yes,

DIRECT EXAMINATION OF JOHN BARRON BY MR. POGUE

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1 with rare exceptions. In federal court, I've also
2 been to Georgia, I believe.

3 MR. POGUE: Your Honor, at this time the State
4 would move to offer Mr. Barron as an expert and have
5 him qualified as an expert in the field of forensic
6 hair examination and analysis.

7 MR. STITELY: We would stipulate to that,
8 Judge.

9 THE COURT: I have one question for you: Who
10 was the expert you studied under?

11 THE WITNESS: Earl Wells.

12 THE COURT: With that being said, this witness
13 is qualified, John Barron, as an expert in the field
14 of forensic hair examination and comparison based on
15 his training and experience and such, ladies and
16 gentlemen.

17 An expert witness' testimony is the same as any
18 other's, except he can give his opinions and the
19 basis for those opinions. And it's up to you, the
20 jury, to give it the weight and value you think it
21 deserves. Thank you. Thank you very much.

22 You may continue, Solicitor.

23 MR. POGUE: Thank you, Your Honor.

24 BY MR. POGUE:

25 Q. Mr. Barron, I'll get right to the point. Did

1 you examine any hair samples that were collected in
2 regard to this case that were submitted to Richland
3 County, either with another item or by themselves?

4 A. Yes.

5 Q. Which item did you analyze?

6 A. I was given some hair samples from Dr. Amick
7 and he asked me to determine whether they were human
8 or animal. And from listening to the testimony, I
9 believe they came from item 13, which is the hair
10 that was recovered along with this cucumber.

11 Q. And what were the results of your examination
12 and analysis of those hairs, your assessment of
13 those hairs?

14 A. Well, they were human, they weren't an animal.
15 I have expertise in identifying animal hair, like
16 dog, cat, deer, which is the most common animals
17 that we ran across in my experience of examining
18 hairs. But by far, of course, human was the
19 majority of the hairs we examined. They usually
20 revolved around murder, sexual assault cases, any
21 type of assault where hair would be involved or it
22 might be a struggle and hair might be exchanged.
23 They were human hair.

24 I also have the ability to determine the racial
25 origin. There are three basic racial origins of

1 hairs; that is from Asians and from Africans that
2 are black, or who originated from below the Sahara
3 Desert, and then there's a Caucasian, which is
4 European, eastern, western European, North American
5 individuals, most of us in this room. These were
6 Caucasian.

7 And I also have the ability to determine body
8 origin. And these were head hairs. And I can also
9 put them under a microscope and examine the
10 microscopic characteristics of them and determine,
11 for instance, the color. I can examine the tips,
12 the ends of hairs, to determine if they were
13 complete hairs or partial hairs, and maybe identify
14 any type of coloring, tinting, bleaching, dying, any
15 type of thing like that.

16 Q. And what were the results that you noticed in
17 the examination and analysis? What could you say
18 about these three hairs?

19 A. They were three hairs that were all three
20 Caucasian head hairs. The longest one had a -- what
21 is called a tapering complete tip; in other words,
22 it wasn't cut. So if you allow a hair to continue
23 to grow, it will grow to a fine tapered tip point,
24 if nothing happens to it like cutting or breaking or
25 anything like that.

1 So that is easily identified as the distal end
2 of the hair, the furthest away from the root where
3 it began to grow out of the head. That end of the
4 hair was complete. But as I examined back toward
5 the root end, it was either cut or broken at that
6 point, so it was not a complete hair.

7 I heard one of the hairs was cut for the root.
8 I'm not sure -- I heard that one of the hairs was
9 cut from the root. I don't know which one it was.
10 It could have been any of the three. But this
11 particular hair that I'm describing that had a
12 complete tip end, that end of the hair was somehow
13 tinted or died or bleached or somehow treated to be
14 a lighter color than the natural color of the hair.
15 So it was more blondish. And as you went back
16 towards the root end, it became a darker brown.

17 And the other two hairs were shorter, one much
18 shorter than the other. And they were brown
19 Caucasian head hairs that did not have a complete
20 root end that could have been cut by a sharp pair of
21 scissors because they had a nice sharp cut on one
22 end of the hair. But I can't tell for sure whether
23 a barber did that or a beautician did that or
24 whether it just happened to break that way. But
25 they were fragments. And one was, I would say, a

CROSS-EXAMINATION OF JOHN BARRON BY MR. STITELY

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1 medium brown and the other was a slightly lighter
2 brown.

3 MR. POGUE: Your Honor, no further questions.

4 THE COURT: Thank you, Solicitor.

5 Mr. Stitely?

6 CROSS-EXAMINATION

7 BY MR. STITELY:

8 Q. Mr. Barron, briefly -- is Mr. -- it's not
9 doctor?

10 A. Correct.

11 Q. Mr. Barron, can you tell me if the three hairs
12 belonged to the same person?

13 A. They could have belonged to the same person.
14 However, the one that had some sort of tinting done
15 to it could have come from another individual. But
16 the other two are similar enough to have come from
17 the same person.

18 Q. Could it have also been three different people,
19 potentially?

20 A. That's a speculative assumption. Without a
21 known sample to compare them to, then I couldn't
22 tell you.

23 Q. Is it possible that two of them came from two
24 different males and one from a different female?

25 A. Couldn't say.

1 Q. It's possible?

2 A. Well, you could say anything is possible with
3 three hairs that are incomplete.

4 Q. Thank you. Nothing further.

5 THE COURT: Redirect?

6 MR. POGUE: None, Your Honor.

7 THE COURT: Thank you. Thank you very much,
8 Mr. Barron. Thank you for being with us today.

9 How about your next witness, Solicitor?

10 MR. GRAHAM: We're ready to call our next
11 witness. There's probably a matter of law we need
12 to address regarding that witness before he
13 testifies.

14 THE COURT: Thank you.

15 Step into your jury room, please, ladies and
16 gentlemen. Do not discuss the case during this
17 brief recess.

18 (The jury exits the courtroom at 3:23 PM.)

19 MR. GRAHAM: The next witness, Your Honor, the
20 State intends to call Channen Johnson. He was a
21 friend of JT [REDACTED] He has also formerly been
22 represented by Mr. Williams. He has pending
23 charges. I don't believe he, at this time, has any
24 attorney, period.

25 THE COURT: You don't believe what?

1 MR. GRAHAM: He does not have an attorney
2 currently from charges that stem from Calhoun County
3 that are pending. I have no --

4 This is Mr. Johnson right here.

5 There have been rumors, allegations, or
6 whatever made to me that Mr. Johnson sells or sold
7 drugs. I have given him immunity as far as any use
8 or sale of drugs related to Mr. Coffey or Ms. White
9 in this case, and told him that discussing that in
10 court under oath would not be used against him ever
11 by my office or anybody's office.

12 I know from -- and I wanted to say that in
13 court so he heard me say that. I don't intend to
14 ask him about drug sales or drug use. I don't know
15 whether the Defense does. And this brings us into
16 the area of third-party-guilt-type situation where
17 there was a rumor about Ms. White owing drug dealers
18 money and maybe that's the person. So I didn't
19 know.

20 I wanted to bring it up before I put him up,
21 the situation that Mr. Williams had represented him
22 in the past, that he does have immunity to talk
23 about drugs relating to Mr. Coffey and Ms. White. I
24 don't plan going into it on direct. I'm not saying
25 what will open up on cross and I don't know whether

1 they're going into third-party guilt. I just wanted
2 to do that before calling him to the stand.

3 He does -- Mr. Stitely, Your Honor, is asking
4 me to publish to the Court the impeachable offenses
5 that he has. He has got a trafficking in cocaine
6 back in 2012, there are two counts of those; he has
7 a possession of meth or cocaine base from around the
8 same time period; and he has a failure to stop for a
9 blue light in 2015, I believe.

10 THE COURT: Are any of those charges the
11 charges that Mr. Williams represented him on? Or
12 all of them?

13 MR. WILLIAMS: I would say yes, Your Honor.

14 MR. STITELY: And I know I handled, at least,
15 one of these.

16 THE COURT: Okay. I'm just asking.

17 MR. GRAHAM: On direct, Your Honor, I will ask
18 those questions that way Mr. Williams doesn't have
19 to do it or Mr. Stitely.

20 THE COURT: Mr. Stitely?

21 MR. STITELY: I would intend to ask him
22 questions about any drug dealing with the decedent
23 in this case. I don't know that I intend to hit him
24 over the head with his prior record specifically, it
25 would be much more as related to this case, Judge.

1 THE COURT: First off, both of y'all tell me,
2 what is the relevancy of Mr. Johnson having dealings
3 with either JT [REDACTED] or Mr. Coffey as far as drugs
4 are concerned? I'm not tracking that.

5 MR. STITELY: I think it's a couple-fold,
6 Judge, to be honest. Once again, I'm not sure what
7 he's going to say. I can only rely on the
8 incident -- the reports from the officer as well as
9 the statements that were collected.

10 My argument, to an extent, would go -- we
11 haven't had that witness come up yet, but it did
12 come out through one of the -- through the coroner
13 that she tested positive for both cocaine and crack
14 and, actually, relatively high quantities. I'm
15 hoping I can ask Dr. Ross or whoever did that test
16 when it comes back. So, obviously, there was a
17 question about drugs.

18 There are a number of comments made throughout
19 this that Mr. Johnson was supposed to deal with the
20 dogs and he had long-term dealings with
21 JT [REDACTED] in a couple other ways --

22 THE COURT: That's fine if he deals with the
23 dogs. I'm talking about the drugs, with any
24 dealings, if any, that Mr. Johnson had with
25 JT [REDACTED] or Mr. Coffey.

1 MR. STITELY: There's two statements that are
2 made by other witnesses who haven't been called yet,
3 that the word was she got killed by her drug dealer
4 to whom she owed money. That's one of the
5 interviewees the police interviewed.

6 THE COURT: This is not Mr. Johnson, the
7 Court's not saying that, but this is another --

8 MR. STITELY: Different witness. Different
9 witness. There were other statements that are
10 outside the purview with previous dealings with
11 other witnesses that kind of deal with the rape
12 shield stuff, which we're not going anywhere near.

13 But mainly it's they had dealings. I think
14 through another witness it was mentioned that there
15 were two people that knew JT [REDACTED] would get her
16 drugs from, a guy they called C.J., and that's
17 indicated in her phone logs, a number of phone calls
18 from both his number and a blocked number, as well
19 as Mr. Coleman. That was pretty much the word, and
20 it comes throughout the police's notes.

21 And there was, at least, one person who said he
22 had heard that she was killed by a drug dealer who
23 she owed money. And Mr. Johnson's statement is that
24 he heard it was a stabbing, which is interesting in
25 its own right.

1 THE COURT: So the dots, if there are dots to
2 connect, are that --

3 MR. STITELY: That night she tested very
4 positive for drugs, Judge.

5 THE COURT: Well, at autopsy and what we know
6 right now, she tested -- and I'll take it as the way
7 you would sell it to me as an officer of the court,
8 is she tested very positive for drugs, and that in
9 the past -- I take it in the past, unless it's going
10 to be some kind of closely related and not remote
11 that Mr. Johnson -- I tell you what I'm going to do.
12 I'm going to send the jury home and I'm going listen
13 to his testimony. All right?

14 Bring us the jury, please.

15 (The jury enters the courtroom at 3:31 PM.)

16 THE COURT: Ladies and gentlemen, I have a
17 matter to take up outside of your presence. It may
18 take the remainder of the afternoon. I'm not going
19 to sit out here and take it up and take an hour,
20 hour and 15 minutes or longer and hold you captive
21 for that period of time, so I'm going to release you
22 for the remainder of the day and advise you, of
23 course, as you already know, do not discuss the case
24 with anyone.

25 Do not read, watch, listen to any news accounts

1 about the case, do not do any independent
2 investigation or any investigation on the internet,
3 as y'all can probably repeat that back to me now
4 word for word.

5 With that being said, I ask you to be back
6 promptly at 9:30 in the morning. Thank you very
7 much for your patience with the Court.

8 (The jury exits the courtroom at 3:33 PM.)

9 THE COURT: All right. Solicitor, call your
10 witness, please.

11 MR. GRAHAM: The State would call Channen
12 Johnson to the stand.

13 THE COURT: Come around, please, Mr. Johnson,
14 and be sworn.

15 CHANNEN JOHNSON

16 being first duly sworn, testified as follows:

17 THE WITNESS: I do.

18 THE CLERK: Have a seat right up there, sir.
19 Once you're seated, state your name, spelling your
20 last on the record, please.

21 THE WITNESS: My name is Channen Johnson, last
22 name J-O-H-N-S-O-N.

23 IN-CAMERA EXAMINATION

24 BY MR. GRAHAM:

25 Q. Mr. Johnson, did you know JT

1 A. Yes, sir.

2 Q. How long did you know her?

3 A. Over ten years.

4 Q. Were you friends with her?

5 A. Yes.

6 Q. How often did you see her or talk to her?

7 A. It would be few times a month, maybe, if I seen

8 her.

9 Q. Peter Coffey. Did you know Peter Coffey?

10 A. Yeah, a little bit.

11 Q. How do you know him?

12 A. Through, like, seeing him at her house every

13 now and then.

14 Q. Do you know what their relationship was?

15 A. No, sir.

16 Q. Do you know if they were intimate?

17 A. No, sir.

18 Q. When was the last time that you saw JT [REDACTED]

19 A. I think earlier that week.

20 Q. Friday -- let me ask this: Do you recognize --

21 do you remember her number?

22 A. Somewhat.

23 Q. Let me ask if you recognize this number:

24 (803) 521-0371.

25 A. Sounds like that. I remember the 521 part.

1 Q. Do you remember -- if I said another number,
2 (803) 406-8561, do you recognize that number?

3 A. Yes.

4 Q. Whose number is that?

5 A. Used to be mine.

6 Q. That used to be your number back in this time?

7 A. Yes, sir.

8 Q. 2015? Did you call and trade phone calls with
9 **JT** on Friday, August the 7th?

10 A. Yes, sir.

11 Q. The night of August 7th?

12 A. Yes, sir.

13 Q. If I said around 10:00, does that sound right?

14 A. Somewhere in that area, yeah.

15 Q. Based on your conversations with her -- she was
16 alive? You spoke with her?

17 A. For a few seconds, yes.

18 Q. Did you hear anybody in the background on the
19 phone?

20 A. No, sir.

21 Q. Do you know where she was?

22 A. No, sir.

23 Q. Based on your conversation with her, what were
24 your plans as far as when you were going to see her
25 again and what you were going to do?

1 A. My plan was just to, like, take her dog to the
2 rabies, like, to get the vet, checked out or
3 whatever.

4 Q. You were going to help her with her dogs and
5 get them to have rabies shots?

6 A. Yes, sir. Yes, sir.

7 Q. Do you know how many dogs she had at the time?

8 A. Like, three.

9 Q. Were you familiar with the dogs?

10 A. Somewhat.

11 Q. Were they okay with you?

12 A. If she was around. Like, one of them was
13 really aggressive.

14 Q. How about did you ever see the dogs around
15 Mr. Coffey?

16 A. No, sir.

17 Q. Did you have a key to her house?

18 A. No, sir.

19 Q. Do you know whether anybody else had a key to
20 her house?

21 A. No, sir.

22 Q. Was she the kind of person -- from you knowing
23 her for ten years, would you expect her to give keys
24 out to other people or you just don't know?

25 A. No, sir, she wouldn't. I don't think so.

1 Q. What about if somebody showed up at her house
2 after dark, would she let strangers in her house?

3 A. No, sir.

4 Q. You have previously been convicted of two
5 counts of trafficking cocaine back in 2012; isn't
6 that correct?

7 A. That's what it says, sir.

8 Q. You also had a possession of less than a gram
9 of meth or cocaine back around that same time. Does
10 that sound right?

11 A. Somewhat.

12 Q. And you had a failure to stop for a blue light
13 conviction around 2015?

14 A. Yes, sir.

15 MR. GRAHAM: That would be what the State would
16 intend to offer, Your Honor.

17 THE COURT: All right. Thank you, Solicitor.

18 Mr. Stitely?

19

20

21 IN-CAMERA EXAMINATION

22 BY MR. STITELY:

23 Q. Mr. Johnson, did you know JT [REDACTED] to use
24 drugs?

25 A. Huh?

1 Q. Did JT use drugs?

2 A. I'm unaware of that.

3 Q. You weren't aware of her ever using drugs?

4 A. No, sir. Dealt with her with the dogs only.

5 Q. Dogs only?

6 A. Yeah. I breed dogs.

7 Q. Okay. And you said you talked to her August

8 7th at 10:00 PM?

9 A. Give or take, little after or little before.

10 Q. You didn't speak to her again the next day or

11 anything like that?

12 A. No, sir.

13 Q. Do you know who Carl Coleman is?

14 A. Somewhat, yeah.

15 Q. Do you know what his relationship is to

16 Ms. JT

17 A. No, sir.

18 Q. What was the exact plan for taking care of the

19 dogs the next day? What was your plan?

20 A. To assist her in getting their shots. In case

21 one of them get loose, you got to have them tagged

22 in case you get fined.

23 Q. What were you going to do to assist her, I

24 guess would be the way I'm saying that?

25 A. I mean, she's an older lady. One of the dogs

1 really big. Like, help her out, that's all.

2 Q. Like, were you going to go over there and pick
3 them up?

4 A. No. I might would have rode with her.

5 Q. Okay. You didn't go over to the house that day
6 though?

7 A. No, sir.

8 MR. STITELY: That's all the questions I would
9 have for him, Judge.

10 THE COURT: All right. Solicitor?

11 MR. GRAHAM: No, Your Honor. The reason I
12 brought it to the Court's attention was because of
13 the comments about the rumor of -- about drug
14 dealers and owing money, and I wanted to clarify
15 what we were going to do to see whether -- to get
16 Your Honor to rule on third-party guilt. If they're
17 not going to ask, that would save some of the
18 questions.

19 MR. STITELY: If that's his answer, Judge, I
20 don't think he presented a question I should have
21 asked contrary to that.

22 THE COURT: Well, I -- I'm about like one of
23 them dogs, I'm kind of hard to handle. I wasn't
24 tracking either. I figured it would be much more
25 involved than this. If that's what's going to be

1 asked, you have no objection?

2 MR. STITELY: No objection to anything he had
3 to say, Judge.

4 THE COURT: You have no objections to
5 cross-examination?

6 MR. GRAHAM: No, Your Honor.

7 THE COURT: So the purpose is the presentation
8 in court only? Immunity is not an issue for
9 purposes of presentation in court only? That's not
10 going to be addressed in court in front of the jury?

11 MR. GRAHAM: Correct. That was only if they
12 were going to ask him questions. I wanted him to
13 have immunity so he could answer truthfully. So the
14 jury would not need to know that, Your Honor,
15 correct.

16 THE COURT: Well, I find that this does not
17 touch third-party guilt and it does not touch the
18 other areas y'all would touch on.

19 Anything further?

20 MR. GRAHAM: No, not for Mr. Johnson, Your
21 Honor. I do have another third-party guilt about
22 another witness.

23 THE COURT: Anything further for Mr. Johnson?

24 MR. STITELY: Judge, like I said, if that's the
25 way the question-and-answer goes down, I don't think

1 I have any -- we won't have the exact same
2 questions, but I --

3 THE COURT: If it changes any, you know how to
4 say you have a matter of law.

5 MR. STITELY: Yes, sir.

6 THE COURT: Thank you, Mr. Johnson.

7 THE WITNESS: I appreciate it.

8 THE COURT: You want me to hear the other third
9 party while I'm still here?

10 MR. GRAHAM: I know another obvious possibility
11 would be Carl Coleman.

12 THE COURT: Carl who?

13 MR. GRAHAM: Coleman.

14 THE COURT: Oh, yes. Mr. Stitely just asked
15 Mr. Johnson about him.

16 MR. GRAHAM: Correct. Mr. Coleman would
17 testify, basically, that he knew Mr. Coffey for
18 probably 20-plus years, his brother had gone to
19 school with him. He had known him --

20 THE COURT: His brother? Mr. Coleman's
21 brother?

22 MR. GRAHAM: Correct, Your Honor. I'm sorry.
23 Mr. Coleman's brother -- no. Mr. Coleman had gone
24 to school with Mr. Coffey's brother.

25 THE COURT: All right. I'm tracking.

1 MR. GRAHAM: But he had known Peter Coffey for
2 20-plus years. He would come over to his house
3 multiple times weekly. He would -- I have no --

4 THE COURT: Coleman would go to Mr. Coffey's
5 house?

6 MR. GRAHAM: Mr. Coffey would go to
7 Mr. Coleman's house. Sorry, Your Honor.

8 THE COURT: That's all right.

9 MR. GRAHAM: I have no intention of asking, but
10 the relationship between them was that Mr. Coleman
11 would say that he would front Mr. Coffey \$200 worth
12 of crack a week, and then on payday Mr. Coffey would
13 pay him back. He talked about selling crack to
14 Mr. Coffey that day, that Friday, about \$50 worth,
15 which I have no intention of going into either in
16 the case in chief. He also said he had previously
17 sold to JT [REDACTED] I think it was a couple
18 days before. I don't know any exact time. It was
19 not that Friday.

20 Now, there's other -- he's a fact witness
21 because he spent Friday night in the company of
22 Mr. Coffey. He's going to talk about how Mr. Coffey
23 behaved, where he dropped him off; he's going to
24 testify that Mr. Coffey called him at 1:59 AM on
25 JT [REDACTED] phone and spoke to him --

1 THE COURT: On the 8th?

2 MR. GRAHAM: Saturday, the 8th.

3 THE COURT: 1:59 AM?

4 MR. GRAHAM: Yes, sir. And then at 8:42,
5 8:43 AM, there were calls back and forth again
6 between JT [REDACTED] the victim's cell phone, that LG cell
7 phone, and Carl Coleman. And he would say that it
8 was Mr. Coffey asking to have Mr. Coleman come pick
9 him up from JT [REDACTED] White's house.

10 The plan was that JT [REDACTED] White or Mr. Coffey
11 were supposed to -- one or both of them were
12 supposed to cut Mr. Coleman's grass. And so that's
13 why he was trying to get them together. He will say
14 that he never -- he tried to contact JT [REDACTED] on
15 her own phone later, texted her, never heard back
16 from her again; he noticed a cut on Mr. Coffey's
17 hand that was not there Friday that was there on
18 Saturday that he asked him about.

19 But the State -- in general terms, that's what
20 he's going to say. I have no intention of going
21 into drug selling with him either. He is also --

22 THE COURT: Either as to Mr. Coffey or

23 JT [REDACTED]

24 MR. GRAHAM: Yes, Your Honor. I have no
25 intention of going in either, but depending on where

1 they go, obviously that might change.

2 THE COURT: Mr. Stitely?

3 MR. STITELY: I do intend to ask him about
4 selling drugs to JT [REDACTED]

5 THE COURT: What's the relevance?

6 MR. STITELY: Well, I think it's, once again,
7 couple-fold, Judge. Well, I guess there's a number
8 of different options. One is if his testimony is
9 that you didn't give her any crack that day. She
10 tested very positive for crack.

11 I'm going to ask if he knew if there was anyone
12 else that she purchased crack if it wasn't him that
13 day, quantities he provided to her, if she owed him
14 any money.

15 THE COURT: Let me ask you, is the crack coming
16 in? Toxicology coming in?

17 MR. GRAHAM: He brought the toxicology in.

18 THE COURT: Is it coming in?

19 MR. GRAHAM: I mean, it's already in.

20 THE COURT: You didn't object to it?

21 MR. GRAHAM: I didn't object to it, no, Your
22 Honor.

23 THE COURT: You don't object to it? I don't
24 care if you do or not, I'm just asking a question.

25 MR. GRAHAM: I haven't objected to this point.

1 And the jury's already heard it, so my argument, I
2 guess, is -- and the discovery is not replete with
3 references to this drug dealer killing her. The
4 only place it shows up in all the discovery is when
5 we talked to Mr. Coffey's boss, who works
6 construction, construction with this framing crew,
7 when we spoke with him a couple weeks ago or last
8 week, whenever it was. He said that he had heard
9 there was a rumor --

10 THE COURT: He, the boss?

11 MR. GRAHAM: He, the boss, had heard the rumor.
12 He had no direct knowledge of it. There was a rumor
13 going around that she was killed by her drug dealer,
14 who she owed money to. That's the only evidence of
15 that existing --

16 THE COURT: Where did that rumor come from?

17 MR. GRAHAM: He don't know. He couldn't --

18 THE COURT: Nobody ever knows the origin of
19 rumors, do they? All you can do is spread them.
20 What else you going to do with them?

21 MR. GRAHAM: Right. So to me, that's -- to me,
22 that's third-party guilt, that's why it's not
23 allowed. I mean, somebody having a motive or
24 opportunity or some known person doesn't go to
25 anything to prove he's not guilty. And I don't

1 think it's an appropriate line of questioning based
2 on a rumor to talk about drug sales.

3 THE COURT: Is there circumstantial evidence
4 that if a person that sold drugs to an individual on
5 Friday night, correct, 8/7, or the morning of 8/8?

6 MR. GRAHAM: I don't know whether she bought
7 them or when she had them. We know that she
8 probably took them prior to her death sometime.

9 THE COURT: I thought I heard that a minute
10 ago. I didn't hear that? I thought I heard you
11 testify that --

12 MR. STITELY: He's going to say a few days
13 prior. He doesn't know exactly what day.

14 MR. GRAHAM: Correct. I mean, it's possible, I
15 guess, he sold it to her a few days before and she
16 held onto it and then used it later. It's also
17 possible that the crack that he sold Mr. Coffey,
18 Mr. Coffey took over to her and that's the crack she
19 used.

20 So I -- if that's the line of questioning we're
21 going to go down, then that's the question I'd want
22 to ask, is that he sold Peter Coffey crack that
23 night, that Friday. He doesn't know whether Peter
24 consumed it.

25 THE COURT: Let me hear it all. Can I hear the

1 testimony?

2 MR. GRAHAM: Yes, sir. Do you want me to go
3 through roughly what I would ask him at trial or do
4 you just want to --

5 THE COURT: Can't he lead the factual part?

6 MR. STITELY: Yeah. Yeah, we can just go
7 straight to the --

8 THE COURT: I mean, if you want to cut to the
9 chase, that's fine with me. Because the other part,
10 the phone calls and all, you don't object to any of
11 that, cutting the grass and all.

12 MR. GRAHAM: I was not going to ask him
13 anything on direct about drug selling to anybody.
14 So any cross --

15 MR. STITELY: Any cross --

16 THE COURT: Well, then you make the proffer.

17 MR. STITELY: Yes, sir.

18 THE COURT: It's your record, you protect it.
19 One of my favorite, one of nine justices of the
20 United States Supreme Court, Justice Sotomayor,
21 says -- she's in my top nine -- lawyers make the
22 record, judges just rule on the record. So you make
23 the record.

24 MR. STITELY: Yes, sir. Thank you.

25 THE COURT: Come right around here,

IN-CAMERA EXAMINATION OF CARL COLEMAN BY MR. STITELY

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1 Mr. Coleman, and be sworn in for us, please.

2 CARL COLEMAN

3 being first duly sworn, testified as follows:

4 THE CLERK: Have a seat, sir. Once you're
5 seated, state your full name, spelling your last.

6 THE WITNESS: Good morning. My name is Carl
7 Coleman. Coleman, C-O-L-E-M-A-N.

8 MR. GRAHAM: The only thing, I'm sorry, Your
9 Honor, to put on the record for Mr. Coleman's
10 benefit is that he has been promised immunity by the
11 State as far as if he is asked questions and Your
12 Honor directs him to answer them about drug use or
13 drug sales to people involved in this case,
14 Mr. Coffey, and Ms. JT

15 THE COURT: You understand that, Mr. Coleman?

16 THE WITNESS: Yes.

17 THE COURT: You got any questions you want to
18 ask me about that?

19 THE WITNESS: No. I understand.

20 THE COURT: All right. Mr. Stitely?

21 MR. STITELY: May it please the Court.

22 IN-CAMERA EXAMINATION

23 BY MR. STITELY:

24 Q. Mr. Coleman, how long have you known

25 JT -- or how long did you know JT

- 1 A. Probably about six months.
- 2 Q. Six months prior to August of 2015?
- 3 A. Yeah.
- 4 Q. What was your relationship with JT [REDACTED]
- 5 A. Just a friend.
- 6 Q. Did you know JT [REDACTED] to use drugs?
- 7 A. Yeah, occasionally.
- 8 Q. What kind of drug was her drug of choice?
- 9 A. Whatever she wanted. Crack, I guess.
- 10 Q. You say whatever she wanted. What does that
- 11 mean to you?
- 12 A. She used drugs. I don't know what all drugs
- 13 she used.
- 14 Q. Did she ever get those drugs from you?
- 15 A. Sometimes.
- 16 Q. Did she get them from other people?
- 17 A. That's none of my business.
- 18 Q. None that you knew of?
- 19 A. No.
- 20 Q. When was the last time that you had provided
- 21 drugs to Ms. JT [REDACTED]
- 22 A. Probably about two days prior to what happened.
- 23 Q. What kind of quantity was that?
- 24 A. About \$20.
- 25 Q. What does that mean to me who might not know,

- 1 like, as far as how much drugs that is?
- 2 A. \$20.
- 3 Q. Is that a one-time use or --
- 4 A. Yeah, just once.
- 5 Q. All right. How often would you provide
- 6 Ms. JT with drugs?
- 7 A. Probably about once a week, if she stopped by.
- 8 It was occasionally, it ain't no everyday thing.
- 9 Q. Had you ever been to her house?
- 10 A. Probably about two or three times.
- 11 Q. Two or three times. Would you bring them to
- 12 her or would she come to you?
- 13 A. Sometimes I was going over there to pick up
- 14 tools. It wasn't always drugs. It was like tools,
- 15 things she was giving us, clothes, things for the
- 16 yard, and stuff like that.
- 17 Q. So you had an additional relationship with her?
- 18 A. Yeah. Yeah.
- 19 Q. What was your phone number back at that time?
- 20 A. I know the last was 5246. I done had three
- 21 numbers since then.
- 22 Q. Did your number ever show up as private when
- 23 you called people?
- 24 A. No.
- 25 Q. 608-5246?

1 A. Yeah.

2 Q. When is the last time you had seen JT [REDACTED]

3 A. I think that Thursday or that Friday. She was
4 supposed to come and cut my grass the next morning
5 but never showed up.

6 Q. So would you have seen her the day before she
7 was supposed to cut it?

8 A. If I'm remembering, yes.

9 Q. So that would have been Friday if she was
10 supposed to cut it on Saturday?

11 A. Like, Friday, like, 3:00, something like that.
12 Either Friday or Thursday, 3:00. She was supposed
13 to come and cut my grass with a push lawnmower.

14 Q. Okay. When was the last time you spoke to her?
15 Did you speak to her on the phone at all?

16 A. Nope.

17 Q. Do you recognize the number of 754-5291?

18 A. No. I don't recognize the number because I
19 have her name in there. So the only way I would
20 know her number, is her name.

21 Q. Okay. 406-8561?

22 A. Got to be her name in it. If you say a name,
23 that's the only way it's in the phone.

24 Q. Did the police collect your phone in this case?

25 A. No. He took the last couple calls after that

1 night and what time it was and what time -- last
2 time I called her and a number came from her phone.
3 Q. You said you had been to the house a few times,
4 correct?
5 A. Yes.
6 Q. Did anything strike you about the way you get
7 in or out of her house?
8 A. Talking about going in?
9 Q. Yeah. Like the doors, was there anything
10 interesting about the doors?
11 A. You always go to the back door, that's it. You
12 don't never go to the front door or side door.
13 Q. Why is that?
14 A. Because she was fixing the porch on the side at
15 the front door and nobody ever go to the front door.
16 It was always the back.
17 Q. How about her windows? Anything distinctive
18 about her windows?
19 A. Nothing but the dog sitting in the window when
20 you come in. That's it. Every time you go there,
21 the dog in the window.
22 Q. Is that the big dog we've heard talk about?
23 A. There's about two or three of them, I think.
24 There was a little one too.
25 Q. How many big dogs?

1 A. It was, like, one big one outside and there was
2 a little one -- two inside, a little small one and a
3 middle size one.

4 Q. And you didn't go over there the night of
5 August 7th or August 8th?

6 A. No.

7 Q. Did you ever talk to her about any of her
8 neighbors?

9 A. No.

10 MR. STITELY: I think that's probably all my
11 questions I'm going to have for him as far as that
12 type. I have a bunch of questions about the context
13 earlier, but as far as that stuff, Judge -- okay,
14 sorry, one other.

15 BY MR. STITELY:

16 Q. Did she owe you money for anything?

17 A. No.

18 Q. How did she keep current on her payments with
19 you as far as --

20 A. She paid. Every time she came, she paid cash.

21 Q. Okay.

22 MR. STITELY: Judge, I think I have questions
23 about the phone and the timeline, but that's all
24 that relates to those kind of issues.

25 THE COURT: Any questions, Solicitor?

1 MR. GRAHAM: No, Your Honor.

2 THE COURT: Thank you, Mr. Coleman. You may
3 step down.

4 Do you have any objection, Solicitor?

5 MR. GRAHAM: I'm not sure of the relevance of
6 questions related to drug sales if they're not
7 trying to get in the third-party guilt, which I
8 don't think they are now. But I'm not sure of the
9 relevance of it.

10 THE COURT: So you're objecting under 401, it's
11 not relevant?

12 MR. GRAHAM: Yes, sir.

13 THE COURT: Isn't that 401? I don't know.

14 He says it's not relevant, Mr. Stitely.

15 MR. STITELY: Judge, I think it is relevant.
16 As you've heard, we've got toxicology. He's going
17 to admit that he sold her drugs. He doesn't
18 remember if it was a day or two before, but he did
19 so routinely and also gives a couple reasons why he
20 would have come to and from the house.

21 Pretty much, he's admitted to being one of her
22 suppliers. And I think the way he said it was kind
23 of interesting, anything she could get ahold of.

24 THE COURT: Well, interesting don't mean
25 relevant.

1 MR. STITELY: Well, I think it is relevant,
2 Judge, because, as you heard, he was definitely one
3 of her suppliers and she was positive for drugs that
4 night. And I think they are reasonable questions to
5 get into.

6 THE COURT: Solicitor?

7 MR. STITELY: I intend to infer, Judge, and
8 I'll say it. I intend to infer that some of these
9 late night phone calls between him and her phone at
10 2:00 in the morning had to do with drugs.

11 MR. GRAHAM: I guess I'm not sure of the
12 purpose for the jury in deciding the guilt or
13 innocence of the defendant of whether Ms. Coleman
14 sold drugs to her two days before.

15 MR. STITELY: He's calling her phone at 2:00 in
16 the morning, Judge.

17 THE COURT: Relevant evidence means evidence
18 having any tendency to make the existence of any
19 facts that is a consequence to the determination of
20 the action more probable or less probable than it
21 would be without the evidence.

22 So you've got the toxicology report, and it's
23 probably coming in, either the report itself or the
24 results, I'm just branching, then you've got an
25 individual that says, I sold her \$20 worth of drugs,

1 as he put it, two or three -- last time about two
2 days prior to when that happened. I don't know what
3 that reference is to, when that happened, I guess
4 either the 8th or the 9th or the 10th. I don't
5 know.

6 And then y'all have both told me that you got
7 phone calls between his friend and JT [REDACTED] the
8 morning of the 8th, you got calls from JT [REDACTED]
9 phone to Mr. Coleman, those calls being made by
10 Mr. Coffey.

11 MR. GRAHAM: To clarify for the Court, my
12 understanding is that at 1:59 AM, Carl Coleman's
13 phone rings and he sees JT [REDACTED] name pop up;
14 he answers it expecting it to be JT [REDACTED] and it's
15 Peter Coffey calling Carl Coleman at 1:59 AM.

16 THE COURT: So you're going to put that up?

17 MR. GRAHAM: Correct. At 8:41 in the morning
18 and 8:42, there was a missed call in one direction
19 and a call back in the other direction. And I don't
20 want to misstate to the Court which way that goes
21 because I'm unsure at this moment, but I believe
22 there is a call from Mr. Coleman to JT [REDACTED]
23 phone which I think he would say he's calling to ask
24 her about cutting the yard. And then there's a
25 call --

1 THE COURT: But he never gets in touch with
2 her?

3 MR. GRAHAM: Not on the call, but immediately,
4 like a minute -- within a minute --

5 THE COURT: Mr. Coffey calls back.

6 MR. GRAHAM: That would be his testimony. And
7 I believe two to three days before, if I understand
8 correctly, was he saw her Friday afternoon on the
9 7th, but the two or three days before would have
10 been from that 7th date when he sold her the drugs.

11 THE COURT: So really, if I focus on it, what
12 you're wanting to present -- well, number one, I
13 don't think you can present she's a habitual drug
14 user. I think that's too remote. And I don't know
15 what a habitual drug user means, if it means daily,
16 monthly, what have you. Everybody's habits are a
17 relative thing. I guess it boils down to is it
18 relevant -- the individual is going to testify
19 anyway.

20 To Mr. Coleman, is it relevant to put up where
21 she bought \$20 worth of cocaine two or three days
22 before the 7 February? What fact in issue does that
23 make more or less probable?

24 Well, we already know she's using cocaine. We
25 know that. It doesn't matter the origin of the

1 cocaine. We don't know where it started from, we
2 may, but we know where it ended up, if it's the same
3 cocaine. How is that relevant?

4 And the fact that Mr. Coleman, a drug dealer,
5 what type of drugs she used. And you quoted him,
6 she would use drugs, she would do cocaine, crack
7 cocaine, use drugs. How is that relevant?

8 MR. STITELY: Judge, I intend to -- we didn't
9 have direct, so I couldn't get into it. But it's my
10 intent to ask him about that 2:00 AM call to his
11 phone, which seems a little bit strange if he's just
12 a casual acquaintance.

13 I've been doing this a minute, as of you
14 calling your drug dealer at 2:00 in the morning to
15 get more drugs is very likely a plausible scenario.

16 THE COURT: That's speculation.

17 MR. STITELY: Yes, sir.

18 THE COURT: That's speculation. And they
19 can't -- the jury can't go down a trail and be known
20 to speculate. They can determine his credibility or
21 his bias or his prejudice, but they can't speculate
22 on it.

23 MR. STITELY: Well, I think if we can establish
24 that he was at least one of her drug suppliers, he
25 obviously has a potential link to her for

1 criminality. And I'm not saying that he caused the
2 murder because I don't believe in a million years
3 that this man -- and I don't think the record
4 indicates that, but he definitely was a drug
5 supplier.

6 There are some really weird call logs. It's
7 not just him. And they haven't provided me who they
8 are yet. There's a dozen other phone calls in her
9 phone. And I haven't had the opportunity to
10 cross-examine any witnesses from blocked numbers,
11 other TracFones, other numbers that we can't
12 identify during this same time period.

13 THE COURT: I mean, I -- what's before the
14 Court right now is not relevant as far as the drugs
15 on the 7th, not relevant. The timing may be, all
16 that timing may be. And it may become relevant. As
17 Judge Timmerman says, you can't prove everything on
18 a pencil point.

19 I think I'm tracking the timing of the phone
20 calls and the conversations of the phone calls. I
21 don't think it's -- makes a fact in issue more or
22 less probable, quite frankly, what's before the
23 Court right now, whether or not Mr. Coleman or, for
24 example, some other individual, Mr. Johnson or
25 whoever, sold her the drugs. It may become

1 relevant. I don't know. I don't think it's
2 relevant at this time.

3 And there's no third party. Do you agree with
4 that?

5 MR. STITELY: Not through this witness
6 directly, Judge.

7 THE COURT: You got other third parties that
8 you know of?

9 MR. GRAHAM: Not that would come up.

10 THE COURT: You made one comment, Mr. Stitely,
11 about other numbers that they hadn't provided yet.
12 What's going on with that?

13 MR. STITELY: I mean, I don't know, Judge.
14 They haven't brought up the person, I guess, who
15 did -- Mr. Phipps has been sitting here the whole
16 time, so I'm guessing they're going to call him back
17 at some point to talk about these phone numbers.
18 Your Honor hadn't seen it, so I guess it's kind of
19 unfair that we talk about it.

20 THE COURT: You didn't say a discovery issue
21 and all?

22 MR. STITELY: No. No, Judge. I --

23 THE COURT: I didn't mean it like that, but
24 what --

25 MR. STITELY: Well, none of the witnesses'

1 presented names have matched the phone numbers in
2 her phone yet, Judge, so we haven't had a chance
3 to find out if they're going to call them.

4 Mr. Johnson testified his number was the 8561.
5 There are a number of calls that night from him, to
6 and from. Carl's phone number does appear a couple
7 times that morning. There are a series of other
8 calls to --

9 THE COURT: Well, y'all work that out, if
10 there's an issue that's going to slow us down.
11 That's all I'm saying.

12 MR. GRAHAM: Actually, I think I can clarify
13 it.

14 THE COURT: Well, y'all can clarify it. I
15 mean, y'all clarify it. Mr. Coleman's got more
16 phone calls than I've had cars -- or more phones
17 than I've had cars, and that's saying a lot right
18 there, saying a lot. If I worked at Verizon, I'd
19 want him as a customer. I bet they're not Verizon
20 phones.

21 All right. Anything further?

22 MR. STITELY: No, Judge.

23 THE COURT: Solicitor, anything further?

24 MR. GRAHAM: I do have some autopsy pictures I
25 was going to look at. I can show it to them --

1 THE COURT: I usually wait on -- you can show
2 it to them, but -- what's the testimony of Dr. Ross
3 going to be? Is it going to be consistent with
4 Collins?

5 MR. GRAHAM: Blunt force trauma, 22 blows, and
6 then the rape.

7 THE COURT: New case out today too, by the way.
8 Hawks killed the professor over at the University,
9 Wilson. Fascinating.

10 You got any objections?

11 MR. STITELY: Yeah, Judge. I'm going to have
12 to go over some of these with him.

13 THE COURT: I'll do it at 9:00 in the morning.

14 MR. GRAHAM: Thank you, Judge.

15 THE COURT: Thank you very much.

16 (Trial in recess for the evening at 4:10 PM.)

17 (The following proceedings were held March 15,
18 2018.)

19 THE COURT: Solicitor, do you have the
20 photographs marked?

21 MR. GRAHAM: I do, Your Honor. I have
22 photographs I intend to introduce with Dr. Ross
23 during the autopsy. They have been shown to defense
24 counsel. It's my understanding numbers 137 through
25 143, I won't necessarily say it's by consent, but

1 they don't believe they have an objection that the
2 Court would hold these out.

3 They do have on 144 and 145, which is a -- 144
4 is black-and-white photograph, 145 is the color
5 photograph of the same one. And it's the photograph
6 of the skull after the skin has been reflected back
7 so you can see the amount of force and damage done
8 to the skull plate itself and the broken bones and
9 fragments. I'll pass those up to Your Honor.

10 THE COURT: Thank you, Solicitor. So as to,
11 Mr. Stitely, 137 through 143, you have no objection?

12 MR. STITELY: Judge, I read that Hawes case
13 too, talking about the standard. It says the State
14 has the right to put in pictures that explain the
15 nature of the actual manifestation of death.

16 It does talk about in autopsy photos that you
17 can't go just to overly gruesome if they're not
18 specifically probative into the cause of death. I
19 think the pictures they have in the stack that we
20 don't object to sufficiently allow Dr. Ross to
21 testify to the manner and the cause of death and
22 they show the actual manifestation of the injuries
23 apparent at the crime scene and to the examiner.

24 I think the other two that we object to are
25 after she's removed all of the skin and overly

1 prejudicial just in the manner in which they're
2 presented. If the Court were to disagree, we'd ask
3 that you only put in the black-and-white one. But
4 we would say that both of them are unnecessary and
5 that the other pictures are sufficient to
6 demonstrate --

7 THE COURT: Excuse me.

8 Go right ahead.

9 MR. STITELY: The other pictures they have are
10 sufficient to allow Dr. Ross -- if Dr. Ross, I
11 guess, were to testify that she can't explain enough
12 on those, we can take it up further.

13 THE COURT: All right. As to 144 and 145, I
14 will mark those for identification purposes only at
15 this time.

16 (State's Exhibit Nos. 137 through 145 marked
17 for identification.)

18 THE COURT: All right. Anything further before
19 we bring in our jury?

20 MR. GRAHAM: The only other -- we had e-mailed
21 a summary chart with -- that we intend to introduce
22 with Mike Phipps to the Defense. I don't know
23 whether they've had an opportunity to look at that
24 and whether they have any objections or anything
25 like that.

1 MR. STITELY: Judge, this is a phone call log,
2 and it does appear to accurately reflect the picture
3 of the phone in one chart. I don't think we're
4 going to have an objection to it. Once again, as
5 long as he testifies to how he put it together, I
6 don't see where it's going to be a problem.

7 THE COURT: All right. Mr. Stitely, would you
8 have your client come around, please?

9 MR. STITELY: Yes, sir.
10 Would you raise your right hand, please?

11 PETER COFFEY
12 being first duly sworn, testified as follows:

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Thank you. I have to
15 go over certain matters with you, Mr. Coffey. I do
16 this with everyone who is on trial. And I always
17 require their responses to be under oath, that's why
18 I placed you under oath. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Tell me your full name.

21 THE DEFENDANT: Peter Lynn Coffey.

22 THE COURT: And how old are you, Mr. Coffey?

23 THE DEFENDANT: Forty-four.

24 THE COURT: What type of education do you have?
25 How far did you go in school?

1 THE DEFENDANT: I graduated from Sullivan North
2 High School.

3 THE COURT: From what high school?

4 THE DEFENDANT: Sullivan North in Kingsport,
5 Tennessee.

6 THE COURT: When we reach the stage of the
7 trial where the State has rested and after I rule on
8 certain motions, depending on how my ruling may be,
9 your side, the defense, would have the opportunity
10 to present evidence for the jury to consider. Do
11 you understand that?

12 THE DEFENDANT: I think so.

13 THE COURT: Sir?

14 THE DEFENDANT: I think so.

15 THE COURT: All right. The State rests, they
16 present all the evidence and testimony they're going
17 to present in their case in chief. Once they rest,
18 after I hear certain motions by your lawyers,
19 depending on how I rule on their motions, your side
20 would have the opportunity to present evidence and
21 testimony on your behalf. You understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And any time you have any questions
24 you need to ask me or any time you want to talk to
25 your lawyer while we're going through this

1 questioning, you let me know and I'll allow you to
2 talk to your lawyer and you can ask me any questions
3 you want. You understand?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: In regard to your defense, you may,
6 through your attorneys, call witnesses. And if you
7 choose to testify yourself, you may do so. Do you
8 understand?

9 THE DEFENDANT: Yes.

10 THE COURT: No one can force you to testify.
11 You have an absolute right to remain silent. And if
12 you choose not to testify, I will tell this jury
13 that they cannot hold your silence against you in
14 any way. I will tell them that they're not to even
15 discuss that fact in the jury room. Do you
16 understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Stitely, does Mr. Coffey have
19 any prior criminal history that would subject him to
20 impeachment under Rule 609?

21 MR. STITELY: We believe he has one charge.
22 Mr. Graham can tell you.

23 MR. GRAHAM: The only charge I believe that
24 would be admissible to cross-examine him on would be
25 a shoplifting conviction out of the town of Gaston

1 from 2011. So it would fall under 609(a)(2), a
2 crime involving dishonesty or a false statement,
3 regardless of the punishment.

4 MR. STITELY: And we wouldn't object to them
5 being able to use that.

6 THE COURT: So if you were to testify, the
7 solicitor could ask you on cross-examination have
8 you been convicted of a shoplifting offense in 2011.
9 Do you understand?

10 THE DEFENDANT: Yes. But I -- was it 2011?

11 MR. STITELY: That's when you were convicted of
12 it.

13 THE DEFENDANT: Oh, okay.

14 THE COURT: I would -- the solicitor can't go
15 into any details about the shoplifting conviction,
16 but they can ask you about it. And if that happens,
17 I would tell the jury that they cannot consider that
18 evidence against you, if they consider it at all
19 against you, only on the issue of whether your
20 testimony is believable or not and for no other
21 purpose. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, Mr. Coffey, the decision about
24 whether you testify or not is your decision to make
25 and yours alone. I expect that you have conferred

1 with your attorneys or with others, perhaps, whose
2 opinions you value on life's very important
3 decisions. But the ultimate decision about whether
4 you testify or not is your call to make, your
5 decision. Do you understand?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Has anyone exercised any undue
8 influence or coercion over you to get you to choose
9 to testify or not testify?

10 THE DEFENDANT: That all depends.

11 THE COURT: Sir?

12 MR. STITELY: He's asking if anyone has forced
13 you to make this decision at this point, as far as
14 coercion, or threatened you to say you have to
15 testify or not testify. He's not asking right now
16 if you intend to or not.

17 (Defendant confers with attorney.)

18 MR. STITELY: You can tell him.

19 THE COURT: Yes, sir.

20 THE DEFENDANT: Okay. When I came back from
21 here yesterday, I was brought back up to the second
22 floor. My tray was in the room and everything. I
23 ate that and I fell asleep. Our rec began at 8:30.
24 We have an hour rec. I went out on rec.

25 I took a shower because I knew with our -- the

1 shift that's on right now, they wouldn't allow me to
2 take a shower in the morning, so I took one last
3 night. I went back to sleep about 9:30, 10:00.
4 Well, at 1:30 this morning, I smelled smoke and I
5 woke up. They were beating on the door, the Bloods.
6 There's three Bloods gang members, known gang
7 members, in Room 4.

8 Now, they've been on the phone all night since
9 I came back, you know, ruckusing, just calling
10 different numbers. One was on house visit from his
11 phone talking junk and stuff in the hallway. I'm
12 not saying that -- they were saying my name, you
13 know. They were saying my name, Coffey. You know
14 this can happen to you, this can happen to you,
15 Coffey, you know. And I smelled smoke. The
16 sergeant came up, Sergeant York came up, checked our
17 rooms. Smoke was coming from Room 4. They checked
18 the room, didn't find anything.

19 All I'm saying is back in the '90s whenever a
20 friend of mine, Larry McGyver, testified against
21 them, a known drug dealer, his house did get burned
22 down. And I don't want that to happen to my mom.

23 THE COURT: Maybe I'm not tracking, Mr. Coffey.

24 THE DEFENDANT: They're threatening -- that's a
25 threatening towards me. I live in Gaston. I've

1 been working all my life. You know, I've framed
2 houses. I should have went to school when I had my
3 scholarship, but I chose -- my dad died and I chose
4 to -- I had a job. I had a car and a truck. I had
5 a house I lived in. I had a girlfriend -- a
6 girlfriend, you know, who was not working.

7 I felt I had sufficient enough stuff to proceed
8 in my life. I was general manager at the stock
9 market and everything. I was doing good in life.
10 Well, I lost all that stuff. And because of that, I
11 didn't go on to schooling and further my education.
12 So I had to go back to framing houses, you know, and
13 start all over again.

14 All I'm trying to say is that I've learned
15 through the streets and knowledge of the streets how
16 people conduct and what they can do to people. I'm
17 not saying taxpayers aren't going to do that kind of
18 stuff, you know. I work under the table. I work
19 out there framing houses with my hands all day
20 building houses for people.

21 You know, I'm not out there stealing and
22 robbing from people, but there are people that do
23 that. And those people that I know, you know, they
24 break the law, they don't care about the law, you
25 know, and they will do whatever they can so they can

1 survive. A lot of these people and these drug
2 dealers, they don't work. All they do is sell
3 drugs. They kick people's doors in. That's all
4 they do for a living. They don't want to work. You
5 know, they're young, still in their 20s, and they
6 don't care about the law or none of that. And they
7 will do whatever they can so they can stay alive.

8 And I'm feeling like from what -- people that I
9 know that already been died, got killed, got houses
10 burned down, girlfriends that already told -- like
11 Christy King, they killed her in a -- last year.
12 They gave her some bad dope, gave her what's called
13 a hot shot because she testified in 2000 -- when
14 they got arrested in 2015 in Swansea, the feds came
15 in and busted Swansea wide open. 250 people got
16 arrested in those two days.

17 When Bill King and all them got released,
18 everybody thought that she told. So when she got
19 released from Lexington County and she was -- she
20 was strung out. She was doing heroin and all kind
21 of stuff. She went to her supplier, they gave her a
22 bad drug that night, she OD'd and died because of
23 the bad drug because they thought that she was the
24 one that told, the reason everything went down like
25 that.

1 All I'm saying is that there's some bad people
2 out there. And from what I heard last night, I
3 don't want that to happen to my family, you know.

4 THE COURT: Well, I don't want that to happen
5 to your family either, nor does anyone in this
6 courtroom. And perhaps my question was imprecise.
7 And let me see if I can get myself focused.

8 We're talking about your right to testify, your
9 right to take the witness stand in this case and
10 testify in your own defense, or your right to choose
11 not to testify. That's our focus --

12 THE DEFENDANT: Yes, sir.

13 THE COURT: -- right now.

14 But as far as these other matters you've told
15 me, have you reported that to the authorities at the
16 detention center?

17 MR. STITELY: Did you tell the sergeant last
18 night about that?

19 THE COURT: Have you told the sergeant?

20 THE DEFENDANT: You have to go to the chain of
21 command to talk to the sergeant. You can't just
22 talk to the sergeant. You have to go to the chain
23 of --

24 THE COURT: Well, I can talk to the sergeant.
25 I'm familiar with that chain of command.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And I'll certainly see that that's
3 reported.

4 THE DEFENDANT: Okay.

5 THE COURT: Would you like for me to do that?

6 THE DEFENDANT: I don't want any more --

7 THE COURT: I'm not incarcerated.

8 THE DEFENDANT: I don't want any more trouble
9 brought on me in the county jail. I'm trying -- I'm
10 going day by day through this hearing. I don't want
11 to be put in protective custody and they say even
12 worse stuff about me, you know.

13 THE COURT: And those alleged threats that you
14 learned either from the situation last night or from
15 the streets, they didn't have anything to do with
16 coercing you into testifying or not testifying on
17 your own behalf?

18 THE DEFENDANT: Sir, the two gentlemen that
19 testified that y'all talked to yesterday, Coleman
20 and Johnson --

21 THE COURT: Yes, sir.

22 THE DEFENDANT: -- those two men are part of
23 the gangs, affiliated with the gangs.

24 THE COURT: Yes, sir. But they weren't in the
25 detention center.

1 THE DEFENDANT: But they have homeboys they
2 talk to every day. Their cousin is in Room 1, their
3 other boy is in A wing. Their family's in there.
4 They're all family and they all talk on the phone
5 every day.

6 THE COURT: Has Mr. Johnson or Mr. --

7 THE DEFENDANT: No, sir. I haven't talked
8 to --

9 THE COURT: Mr. Johnson or Mr. Coleman
10 threatened you to testify?

11 THE DEFENDANT: No, sir.

12 THE COURT: Has he threatened you not to
13 testify?

14 THE DEFENDANT: No, sir. I haven't spoken to
15 any of them.

16 THE COURT: And nobody has threatened you in
17 saying, Coffey, you better testify --

18 THE DEFENDANT: Or, Coffey, you better not
19 testify.

20 THE COURT: Exactly. Nobody has threatened you
21 in that regard?

22 THE DEFENDANT: Or, Coffey, this can happen to
23 you. They did said that.

24 THE COURT: But has anybody said --

25 THE DEFENDANT: No, sir, they have not.

1 THE COURT: -- are you going to testify or
2 you're not going to testify? Nobody has threatened
3 you as to that right that you have?

4 THE DEFENDANT: No, sir, they have not.

5 THE COURT: All right. Today are you under the
6 influence of any medications, drugs, or alcohol, or
7 anything that negatively affects your thinking
8 ability?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you suffer any from physical,
11 emotional, or mental problem that affects your
12 thinking today?

13 THE DEFENDANT: Not thinking, no, sir.

14 THE COURT: Sir?

15 THE DEFENDANT: No, sir. I'm capable of
16 thinking.

17 THE COURT: All right. Well, I wanted to
18 advise you of your rights and I will revisit this at
19 a later time today and give you an opportunity to,
20 perhaps, speak with your attorneys again before I
21 ask you if you've made a decision and what your
22 decision is.

23 THE DEFENDANT: Gotcha, sir.

24 THE COURT: Do you have any questions you would
25 like to ask me about your right to testify or not to

1 testify at this time?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right. Thank you. Thank you,
4 Mr. Coffey.

5 Thank you, Mr. Stitely.

6 MR. STITELY: Yes, sir.

7 THE COURT: All right. Anything before we
8 bring in our jury from the State, Solicitor?

9 MR. GRAHAM: No, Your Honor.

10 THE COURT: From the Defense?

11 MR. STITELY: No, sir.

12 MR. GRAHAM: Your Honor, could we have a
13 minute? I'm sorry. None of our witnesses are here.
14 Supposedly they're at the courthouse, but they
15 haven't come up the stairs yet.

16 THE COURT: All right. Just let me know. I'm
17 going to step out for a minute.

18 (Short break.)

19 THE COURT: Anything before we bring in the
20 jury, Solicitor?

21 MR. GRAHAM: No, Your Honor. We've got four
22 lay witnesses. Two of them aren't here at the
23 moment.

24 THE COURT: All right.

25 MR. GRAHAM: But we're ready to proceed, Your

DIRECT EXAMINATION OF CARL COLEMAN BY MR. GRAHAM

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1 Honor.

2 THE COURT: Anything from the Defense?

3 MR. STITELY: We're ready, Judge.

4 (The jury enters the courtroom at 9:48 AM.)

5 THE COURT: Welcome back, ladies and gentlemen.

6 I hope y'all had a pleasant evening. Of course we
7 are continuing the trial of the case by the
8 presentation of evidence and testimony by the State
9 in its case in chief. Please continue to give all
10 the parties your complete and undivided attention as
11 you have done throughout the trial of this case.

12 Solicitor, you may call your next witness.

13 MR. GRAHAM: Thank you, Your Honor. The State
14 would call Carl Coleman to the stand.

15 THE COURT: All right. Mr. Coleman, if you
16 would come around and join us, please.

17 CARL COLEMAN

18 being first duly sworn, testified as follows:

19 THE WITNESS: Yes, ma'am.

20 THE CLERK: Have a seat, please, sir. Once
21 you're seated, state your full name, spelling your
22 last, please.

23 THE WITNESS: My name is Carl Coleman. Last
24 name Coleman, C-O-L-E-M-A-N.

25 DIRECT EXAMINATION

1 BY MR. GRAHAM:

2 Q. Mr. Coleman, do you know Peter Coffey?

3 A. Yes.

4 Q. Do you see him in the courtroom?

5 A. Yes, I do.

6 Q. Where is he?

7 A. Sitting right there.

8 Q. You're pointing to the man the farthest away
9 from the jury?

10 A. Yeah.

11 MR. GRAHAM: Your Honor, let the record reflect
12 that that's the Defendant.

13 THE COURT: So reflected.

14 BY MR. GRAHAM:

15 Q. Carl, how long have you known Peter Coffey?

16 A. About 20 years or more.

17 Q. And how have you known him for so long?

18 A. He lived down the street from me when I was
19 young.

20 Q. And have you continued to stay in touch with
21 him through those 20 years?

22 A. Uh-huh.

23 THE COURT: Say yes or no for me, please,
24 Mr. Coleman.

25 THE WITNESS: Yes.

1 THE COURT: Thank you.

2 Q. How often -- let's say back in 2015, 2014, '13,
3 how often would you see him?

4 A. Just about every day.

5 Q. How about JT JT

6 Did you know JoJo?

7 A. About six months.

8 Q. And how did you meet her?

9 A. Through Pete.

10 Q. Through Pete. And how often -- during the six
11 months prior to her death, how often did you see
12 her?

13 A. Probably once or twice a week.

14 Q. What was the relationship from your
15 observations between Peter Coffey and JT

16 A. They was, like, real good friends.

17 Q. Did Peter Coffey ever tell you that JT was
18 his girlfriend?

19 A. No.

20 Q. Did he ever tell you that they'd been sexually
21 intimate before?

22 A. No.

23 Q. You just knew them as good friends?

24 A. Yeah.

25 Q. The last time you saw JT do you remember

- 1 when that was?
- 2 A. It was, like, either that Thursday or Friday.
- 3 Q. So August 6th or August 7th of 2015?
- 4 A. Yeah.
- 5 Q. Did you talk to her about doing anything for
- 6 you?
- 7 A. Yeah, coming and cutting my lawn.
- 8 Q. Okay. Tell the jury about your conversation
- 9 with her and what you asked her to do.
- 10 A. During that day she said she was going to go
- 11 put the lawnmower in the truck, she'd be back in the
- 12 morning to cut my lawn. But never showed up. I
- 13 called her, but she never answered her phone.
- 14 Q. So she was supposed to bring a --
- 15 A. A lawnmower.
- 16 Q. A lawnmower, come over to your house. Do you
- 17 remember what day of the week she was supposed to
- 18 come over?
- 19 A. Saturday morning.
- 20 Q. She was supposed to come on Saturday and cut
- 21 your grass?
- 22 A. Yes.
- 23 Q. You said she never showed; is that right?
- 24 A. Yes.
- 25 Q. That Friday, August 7th, did you see Peter

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- 1 Coffey?
- 2 A. Yes.
- 3 Q. Where did you see him at?
- 4 A. He was with me at my house.
- 5 Q. And at that time, where was your house at?
- 6 What was the address?
- 7 A. 29 State Pond Road.
- 8 Q. All right. Do you remember your phone number
- 9 from the time?
- 10 A. Not really.
- 11 Q. Let me ask you if you recognize this number:
- 12 (803) 608-5246.
- 13 A. Yes, that's the number.
- 14 Q. That was your number back then?
- 15 A. Yes.
- 16 Q. Do you remember what time Mr. Coffey came to
- 17 your house on Friday, August the 7th?
- 18 A. Probably about 5:00 -- about 5:30 or 6:00.
- 19 Q. Do you know how he got there?
- 20 A. His bossman.
- 21 Q. Okay. Was Mr. Coffey driving a car at that
- 22 time?
- 23 A. No.
- 24 Q. Do you know what he did for a living?
- 25 A. Construction.

1 Q. Who else -- so Mr. Coffey was at your house.
2 Who else was at your house Friday night?
3 A. Me, my wife, a few friends. I can't name
4 everybody that was there.
5 Q. Your wife's name is?
6 A. Tammy Coleman.
7 Q. Tammy. So Tammy was there?
8 A. Uh-huh.
9 Q. How about your cousin, Moosey?
10 A. Yes, he was there. But I can't really
11 recollect what time he was there, but he was there.
12 Q. And I call him Moosey because that's his
13 nickname. What's his real name?
14 A. Johnny.
15 Q. Johnny. He's a Coleman too, right?
16 A. Yeah.
17 Q. All right. At some point did you-all, being
18 you, your cousin, Johnny, and Peter Coffey, leave
19 your house and go somewhere else?
20 A. Yeah, late that night.
21 Q. Okay. Do you remember what time it was when
22 you left?
23 A. Like, probably about 10:30, 11:00, something
24 like that.
25 Q. Where did you three go?

- 1 A. Little Rock.
- 2 Q. Okay. Little Rock is what?
- 3 A. A club in Swansea.
- 4 Q. How far away from your home is that?
- 5 A. About seven miles.
- 6 Q. All right. How did you-all get there?
- 7 A. Rode with Moosey -- Johnny.
- 8 Q. So your cousin Moosey drove?
- 9 A. Uh-huh.
- 10 Q. And you and Mr. Coffey were in the car with
- 11 him?
- 12 A. Yes.
- 13 Q. Was anybody else in the car with y'all?
- 14 A. No.
- 15 Q. Do you remember where everybody was sitting?
- 16 A. Yeah. Pete was in the back, I was in the
- 17 front.
- 18 Q. How was Peter Coffey acting that night?
- 19 A. Just horse playing, having a good time, going
- 20 to the club. That's it.
- 21 Q. How long did you-all stay at the club?
- 22 A. Probably about an hour, hour and a half.
- 23 Q. Did anybody get into any fights at the club?
- 24 A. No. Just horse playing, no fights.
- 25 Q. Okay. Did you notice any injuries on

- 1 Mr. Coffey's hands on Friday?
- 2 A. No.
- 3 Q. All right. Did you notice the clothes he was
- 4 wearing?
- 5 A. A little, not a lot.
- 6 Q. What do you remember about his clothes?
- 7 A. I know he had shorts on, boots, and -- you
- 8 know, khaki shorts, boots, and a T-shirt.
- 9 Q. Do you remember the color of the -- the boots?
- 10 What do you know about the boots?
- 11 A. They were mine. I gave them to him.
- 12 Q. When did you give him those boots?
- 13 A. Probably about a month or two months prior to
- 14 that.
- 15 Q. Do you remember what kind of boots they were?
- 16 A. Timberlands.
- 17 Q. Do you remember the color?
- 18 A. Brown.
- 19 Q. How about the shorts he was wearing? Do you
- 20 remember what kind of shorts they were?
- 21 A. Brown khakis.
- 22 Q. Anything unusual stand out to you the way they
- 23 looked on Friday night?
- 24 A. No, not really.
- 25 Q. After you all-left for Little Rock, you said

1 your cousin Moosey, Johnny, drove. Did all three of
2 you leave Little Rock?

3 A. Yeah.

4 Q. When you're coming back from Swansea and you're
5 coming -- I guess that's north on 321; is that
6 right?

7 A. Yes.

8 Q. Coming back into the Gaston area, what, if
9 anything, happened next?

10 A. You know, we was out in the club, he was like,
11 take me home. You know, he was out there horse
12 playing too much. Then he got in the car arguing
13 with Johnny, I'm going to beat you, I'm going to
14 kick your butt. He was like, oh, you ain't going to
15 do nothing. So I'm like, y'all stop, Pete, I'm
16 going to drop you off, go home and I'll see you
17 tomorrow, go home. And he was like, I don't want to
18 go off. Dropped him off at the store and he
19 continued to walk home.

20 Q. When you say you dropped him off at the store,
21 you dropped who off at the store?

22 A. Pete.

23 Q. When you say store, what store are we talking
24 about?

25 A. Food Lion.

- 1 Q. And that's the Food Lion in Gaston?
- 2 A. Yes.
- 3 Q. On the corner of 321 and Wood Trail?
- 4 A. Wood Trail.
- 5 Q. Let me show you State's No. 1, which is a map.
- 6 Do you see where the Food Lion is on there?
- 7 A. Uh-huh.
- 8 Q. Is that accurate?
- 9 A. Yeah.
- 10 Q. And you know JT [REDACTED] where did she live? Do
- 11 you remember?
- 12 A. Back up in this area right here.
- 13 Q. And Mr. Coffey, do you know where he lived? If
- 14 you don't know, it's okay to say you don't know.
- 15 A. Yeah, I know.
- 16 Q. Do you recognize that as being where he lives?
- 17 A. Not on that map.
- 18 Q. Okay. But that's the Food Lion where you-all
- 19 dropped him off at?
- 20 A. Yeah.
- 21 Q. What time do you think that was?
- 22 A. Probably 12:00, 1:00.
- 23 Q. Let me show you a document and ask if you
- 24 recognize this.
- 25 A. Yeah.

1 Q. Is that the written statement that you gave to
2 law enforcement back in August, I think, 10th, I
3 think, of 2015?

4 A. Yes.

5 Q. And would reading that refresh your memory?

6 A. Yeah, a little.

7 Q. If you would, take a look at that. And I'm
8 asking -- the specific that I'm asking for is about
9 the time when you and your cousin dropped Mr. Coffey
10 off.

11 After reading that, does it help you remember
12 what time you and your cousin last saw Peter Coffey
13 at the Food Lion?

14 A. Yes, a little bit.

15 Q. What time would that be?

16 A. I said 2:00, 2:20. But looking at my phone
17 record, it wasn't that time.

18 Q. Because the police actually asked you to pull
19 out your phone at the time, right?

20 A. Yeah.

21 MR. STITELY: I'm going to object to leading on
22 that.

23 THE COURT: You can rephrase your question.
24 But I think that's harmless as far as leading.

25 BY MR. GRAHAM:

1 Q. What, if anything, after looking at your phone,
2 did you determine about the last approximate time
3 that you saw Peter Coffey when you and your cousin
4 dropped him off?

5 A. That wasn't long after 2:00.

6 Q. And you actually gave the police a different
7 time after looking at your phone, didn't you?

8 A. Yeah.

9 Q. And looking at your statement, what time did
10 you tell the police?

11 A. 1:30.

12 Q. So that would be 1:30 on the morning of that
13 Saturday, right?

14 A. Yes.

15 Q. And after you dropped -- after you and Johnny
16 drop off Peter Coffey, where did you-all go? Where
17 did you and Johnny go?

18 A. I went home.

19 Q. So Johnny drove. So he dropped you off?

20 A. Yeah.

21 Q. Where did Johnny go?

22 A. I don't know, probably home.

23 Q. About 1:59 AM. So about 29 minutes or so after
24 dropping off Mr. Coffey at the Food Lion, what
25 happened?

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1 A. He called my phone from JT phone.

2 Q. So let me show you a photograph and ask if you
3 recognize this. This is State's 146.

4 A. Yeah.

5 Q. Do you recognize that as being a photograph of
6 your cell phone showing your call log of that 1:59
7 call that we're talking about?

8 A. Yeah.

9 MR. GRAHAM: State would offer this into
10 evidence.

11 MR. STITELY: No objection, Judge.

12 THE COURT: 146 in evidence without objection.

13 (State's Exhibit No. 146 admitted into
14 evidence.)

15 BY MR. GRAHAM:

16 Q. So can you see the overhead, Mr. Coleman?

17 A. Yes.

18 Q. So when you're talking about that 1:59 AM call
19 from JT is that where my finger is?

20 A. Yes.

21 Q. So that shows you had her as a contact. And
22 the telephone number is (803) 521-0371, right?

23 A. Yes.

24 Q. And that's JT number?

25 A. Yes.

1 Q. Did JT normally let people use her phone?

2 A. No.

3 Q. So when that came in, did you answer it?

4 A. Yes.

5 Q. Who were you expecting to talk to?

6 A. JT

7 Q. But who actually did you talk to?

8 A. Pete.

9 Q. Mr. Coffey?

10 A. Yeah.

11 Q. Do you remember why he was calling you or what

12 he said?

13 A. I think he was calling to say he was over there

14 and she was in the shower. And I hung the phone up.

15 Q. Did you have a long conversation with him?

16 A. No.

17 Q. And after that call, what did you do?

18 A. I went to sleep, woke up the next morning. I

19 think he called me from her phone that morning --

20 no, I called, then he called me back. Because I was

21 like, get her to drop you off and bring the

22 lawnmower. He said she wouldn't bring him, so I

23 said, start walking and I'll pick you up.

24 Q. Let me stop a little bit and let's back up. So

25 you got a phone call in the morning again from

1 JT [REDACTED] phone?

2 A. Uh-huh.

3 Q. The same number we're seeing right there?

4 A. Yes.

5 Q. Did you answer that call?

6 A. Yeah.

7 Q. Or did you call back or do you remember?

8 A. I think I called and he called back.

9 Q. Let me show you another exhibit, which is
10 State's 147, and ask if you recognize that as being
11 another screen shot of your phone showing the calls
12 in and out on the morning of August the 8th, 2015?

13 A. Yes, I see that.

14 MR. GRAHAM: Your Honor, the State would offer
15 147 into evidence.

16 MR. STITELY: No objection.

17 THE COURT: State's 147 in evidence without
18 objection.

19 (State's Exhibit No. 147 admitted into
20 evidence.)

21 THE COURT: Thank you, Solicitor.

22 BY MR. GRAHAM:

23 Q. So up here again, do you see where my finger is
24 at?

25 A. Yes.

1 Q. Is that the calls that you're referring to
2 Saturday morning?

3 A. Yes.

4 Q. Again, that's from JT phone, correct?

5 A. Yes.

6 Q. Who were you expecting to talk to when you
7 called and -- when you called or when that number
8 called you back, who were you expecting to talk to?

9 A. JT

10 Q. And you wanted to talk to JT about what?

11 A. To see if her people was coming to the house to
12 do the lawn.

13 Q. Instead of talking to JT who did you talk
14 to?

15 A. Pete answered the phone.

16 Q. The defendant, Mr. Coffey?

17 A. Yes.

18 Q. And what did Mr. Coffey say to you on Saturday
19 morning?

20 A. Is you ready? I was like, yeah. Well, get
21 JT to come bring you to the house. She's sleep,
22 she don't want to bring me. Start walking, I'll
23 come pick you up halfway.

24 Q. So he told you that JT was sleeping, she
25 didn't want to come?

- 1 A. Drop him off.
- 2 Q. She didn't want to give him a ride?
- 3 A. Yeah.
- 4 Q. And you said, I'll come pick you up, start
- 5 walking?
- 6 A. Yeah.
- 7 Q. How did you know where to pick him up?
- 8 A. He called from JT [REDACTED] phone.
- 9 Q. So did you drive over and pick him up?
- 10 A. Yes.
- 11 Q. Where did you pick him up at?
- 12 A. Probably about quarter mile from the house,
- 13 like, coming out the neighborhood.
- 14 Q. Quarter mile from JT [REDACTED] house?
- 15 A. Yeah, coming out the neighborhood.
- 16 Q. Coming out of her neighborhood. Was Pete --
- 17 how were -- the clothes that he was wearing Saturday
- 18 morning when you picked him up coming out of JT [REDACTED]
- 19 neighborhood -- well, after these calls, how long
- 20 was it before you went to pick him up?
- 21 A. Ten minutes.
- 22 Q. The clothes he was wearing, how did those
- 23 compare to the clothes he was wearing the night
- 24 before?
- 25 A. They didn't look no different to me.

- 1 Q. Okay. Did you ever -- did you try to get in
2 touch with JT again?
- 3 A. Yes.
- 4 Q. Did you try to call her on her phone?
- 5 A. Yes.
- 6 Q. And did Pete have her phone that day?
- 7 A. No, not when I called.
- 8 Q. Later in the day when he was with you on
9 Saturday?
- 10 A. Yeah, probably about an hour, hour and a half.
- 11 Q. Okay. But you never got JT back on the
12 phone again?
- 13 A. No.
- 14 Q. In fact, did you actually text her?
- 15 A. Yeah.
- 16 Q. Do you remember what you texted her?
- 17 A. You see me calling you.
- 18 Q. You see me calling you? You never saw JT
19 alive again?
- 20 A. Nope.
- 21 Q. How long was Pete with you on Saturday?
- 22 A. Till about 4:00 or 5:00.
- 23 Q. Till about 4:00 or 5:00 that Saturday night?
- 24 A. Yeah.
- 25 Q. What did you and Pete do on Saturday?

1 A. Wait for the people to call for the
2 refrigerator. I think I left and he was in the
3 house and went to sleep and woke up we went and got
4 the refrigerator.

5 Q. How long was he asleep?

6 A. Probably about an hour, two hours.

7 Q. Did you notice any injuries on Mr. Coffey's
8 hands Saturday that you did not see on Friday?

9 A. Yes.

10 Q. Can you tell the jury what you remember seeing?

11 A. I just seen a little cut on his hand. I was
12 like, what happened? And he never said nothing.

13 Q. So you saw a cut on his hand and you asked him
14 what happened?

15 A. I thought it happened at the club, horse
16 playing, so I just brushed it off.

17 Q. But he never told you what happened?

18 A. No.

19 Q. Thank you, Carl. Please answer any questions
20 the Defense has for you.

21 THE COURT: Thank you, Solicitor.

22 Mr. Stitely?

23 MR. STITELY: Thank you, Judge.

24 CROSS-EXAMINATION

25 BY MR. STITELY:

- 1 Q. Hey, Mr. Coleman. How are you today?
- 2 A. All right.
- 3 Q. Could you describe the nature of your
- 4 relationship with Ms. -- you called her JoJo?
- 5 A. My relationship with her?
- 6 Q. Yeah, the nature of your relationship.
- 7 A. A real close friend.
- 8 Q. You said you've known her about six months?
- 9 A. Six months, yeah.
- 10 Q. Saw her a couple times a week. One to two is
- 11 what you said?
- 12 A. Yeah.
- 13 Q. You said that on Saturday about coming to mow
- 14 your lawn?
- 15 A. Yeah.
- 16 Q. Is she a relatively hearty person, able to pick
- 17 up a lawnmower, put it in a truck, and mow your
- 18 yard?
- 19 A. Oh, yeah.
- 20 Q. Strong?
- 21 A. Yeah.
- 22 Q. Good shape?
- 23 A. Yeah.
- 24 Q. Do you know what she did for a living?
- 25 A. Nothing.

1 Q. What do you mean nothing?

2 A. She didn't have a job. She was, like, 67 years
3 old.

4 Q. How old?

5 A. About 67 or 76, something like that.

6 THE COURT: She didn't have a job?

7 THE WITNESS: No. She normally do odds and
8 ends.

9 BY MR. STITELY:

10 Q. You thought she was either 67 or 76?

11 A. Yeah. I know she was old.

12 Q. I'll show you a couple pictures real quick.
13 And you said you knew Pete for 20 years, give or
14 take?

15 A. Yeah.

16 Q. What kind of work did Pete do?

17 A. Construction.

18 Q. Like a day laborer?

19 A. Carpenter.

20 Q. Okay. What was Pete's typical uniform for
21 work?

22 A. Khaki shorts, tennis shoes, and a T-shirt.

23 Q. Pretty much every day in khaki shorts?

24 A. Just about.

25 Q. How many pairs of khaki shorts do you think

- 1 Pete had?
- 2 A. Probably about two or three.
- 3 Q. Nothing distinct about the ones he was wearing
- 4 that Friday night though, in your mind?
- 5 A. No.
- 6 Q. Just another pair of shorts?
- 7 A. Yeah.
- 8 Q. You said he was hanging out with you and your
- 9 cousin at your house on Friday night?
- 10 A. Yeah.
- 11 Q. And y'all went out to Little Rock?
- 12 A. Yeah.
- 13 Q. Is Little Rock a family-friendly establishment
- 14 or relatively rough place?
- 15 A. It's family-friendly. Everybody know
- 16 everybody.
- 17 Q. Cool. And you said Pete was horse playing?
- 18 A. Yes, he was.
- 19 Q. Do you remember the guys he was horse playing
- 20 with?
- 21 A. Yes.
- 22 Q. Who were they?
- 23 A. A guy named Tracey Rawl.
- 24 Q. All right. I may ask you a couple names, if
- 25 you know any of these folks. Do you know a Philip

CROSS-EXAMINATION OF CARL COLEMAN BY MR. STITELY

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- 1 Robinson?
- 2 A. Nope.
- 3 Q. Channen Johnson?
- 4 A. Yes.
- 5 Q. How do you know Mr. Johnson?
- 6 A. From the same town I live in.
- 7 Q. What's your relationship with Mr. Johnson?
- 8 A. Grew up with him when I was young, stayed down
- 9 the street from him when I was young.
- 10 Q. Do you know what he does for a living?
- 11 A. Nope.
- 12 Q. Do you know a William White?
- 13 A. No.
- 14 Q. How about a Roger White?
- 15 A. Nope.
- 16 Q. How about a Kay Thompson?
- 17 A. Nope.
- 18 Q. Mariana Gonzalez?
- 19 A. Nope.
- 20 Q. Emilo Martinez?
- 21 A. Nope.
- 22 Q. David Fosse?
- 23 A. Nope.
- 24 Q. John Raulerson?
- 25 A. Nope.

1 Q. Let me ask you just a couple more questions, if
2 you don't mind. When you were first interviewed
3 with law enforcement, you remember talking to them,
4 correct?

5 A. Yes.

6 Q. And you wrote a statement?

7 A. Yes.

8 Q. That's the one the solicitor showed you
9 earlier?

10 A. Yes.

11 Q. You said at 2:20 AM you dropped Peter off at
12 the Food Lion?

13 A. Yes.

14 Q. And then got a call from JT [REDACTED] phone about
15 3:00 AM?

16 A. Yes.

17 Q. That was your recollection that next -- on
18 whatever day you wrote that statement, two and a
19 half years ago?

20 A. Yes.

21 Q. You didn't change that until they showed you
22 something to tell you to change it, correct?

23 A. No. I changed it when he told me to look at my
24 phone and be specific what time. So I looked at my
25 phone and I said, well, I was wrong.

- 1 Q. But it was law enforcement who directed you to
2 make sure that you had it right?
- 3 A. Yeah.
- 4 Q. And you said after you talked on that call at
5 1:59, you went to bed?
- 6 A. Yeah.
- 7 Q. Let's look at number 146. Who is Clo 2?
- 8 A. C-Lo 2.
- 9 Q. Oh, C-Lo. Who is C-Lo?
- 10 A. One of my friends.
- 11 Q. You were talking to him about 30 minutes later;
12 is that correct?
- 13 A. I didn't talk to him. I answered and I told
14 him I was asleep. I hung up.
- 15 Q. What's that number 2 by it mean? Was that one
16 call or two calls?
- 17 A. My name is C-Lo 2. I just call him -- I'm C-Lo
18 1, he's C-Lo 2.
- 19 Q. Okay. I'm sorry. Maybe I'm being imprecise.
20 Right there, do you know that means on your phone?
- 21 A. How many times he called.
- 22 Q. Okay. Did you talk to him twice or do you
23 remember?
- 24 A. Don't remember.
- 25 Q. Okay. Whose number is this 360-1685 number?

1 A. I don't know. I didn't even answer it.

2 Q. You called it back, it looks like, right there?

3 A. Didn't answer. Then they called back, no
4 answer.

5 Q. You don't know who that is?

6 A. Not that I remember.

7 Q. What about this number here, this 730-0803
8 number?

9 A. I can't really see it.

10 MR. STITELY: May I approach the witness,
11 Judge?

12 THE COURT: Yes.

13 BY MR. STITELY:

14 Q. It's the very top. It's kind of cut off, but
15 it says 703-0803.

16 A. I know the number, I just can't remember right
17 now whose number it is. I know the number.

18 Q. It's in here. Oh, here, it's better in this
19 one, Boogie Man.

20 A. Oh.

21 Q. Who is Boogie Man?

22 A. That's my cousin.

23 Q. What cousin?

24 A. My cousin Boogie Man.

25 Q. Is that Jonathan Coleman?

- 1 A. No.
- 2 Q. What's your cousin's lawful name, his given
3 name?
- 4 A. Thaddeus.
- 5 Q. Thaddeus, okay. And this is the other call you
6 were talking about?
- 7 A. Yes.
- 8 Q. State's No. 1, was this the map that the
9 solicitor showed you earlier?
- 10 A. Yes.
- 11 Q. Okay. And you weren't exactly sure of where
12 Pete's house was on this map, correct?
- 13 A. Yes.
- 14 Q. Okay. And were you sure of where JoJo's house
15 was on this map?
- 16 A. Yes.
- 17 Q. Okay. How far apart do you recall Pete and
18 JoJo living? Do you know?
- 19 A. About a mile away.
- 20 Q. Pretty close?
- 21 A. Yeah.
- 22 Q. Okay. Within walking distance?
- 23 A. Yeah.
- 24 Q. And where, generally, would you pick Pete up?
25 At that Food Lion?

- 1 A. No.
- 2 Q. On that main road that comes out that way
3 though?
- 4 A. No.
- 5 Q. Where would you pick him up?
- 6 A. On his road from his mama house.
- 7 Q. Talk to me a little bit about Ms. -- you called
8 her JoJo, so that's we'll use. JT [REDACTED] --
9 Ms. JoJo's neighborhood, how would you describe her
10 neighborhood?
- 11 A. One way in and one way out.
- 12 Q. Okay. Big one-acre lots with single homes?
13 Lot of houses on smaller lots? Trailers? How would
14 you describe it?
- 15 A. Single trailers on big lots.
- 16 Q. Okay. On her property -- was there anyone else
17 living on her property?
- 18 A. No.
- 19 Q. Did she have any other places you could stay on
20 her property?
- 21 A. I think it was an old trailer she had, a mobile
22 home.
- 23 Q. Do you know if anyone stayed in it?
- 24 A. No. She was trying to sell it.
- 25 Q. She was trying to sell that. Do you know of

- 1 anyone who lived right behind her?
- 2 A. No. Nobody lived behind her.
- 3 Q. Do you know any of her neighbors?
- 4 A. I think I knew the one that stay across the
- 5 street named Mike. That's it.
- 6 Q. Mike what?
- 7 A. I don't know his last name.
- 8 Q. Could you describe Mike?
- 9 A. All I know, he had one leg.
- 10 Q. One leg? What color was his hair?
- 11 A. I don't know the color of his hair.
- 12 Q. Was he young? Old? White? Black?
- 13 A. Middle-aged.
- 14 Q. White or black?
- 15 A. White.
- 16 Q. Okay. You said you were fairly good friends
- 17 with JT [REDACTED]
- 18 A. Yeah.
- 19 Q. Was there anything distinctive about her doors
- 20 or her windows that you recall?
- 21 A. She don't never use the front door, the side
- 22 door, the deck was about to get finished. And
- 23 everybody come to the back door.
- 24 Q. Anything distinctive about her windows?
- 25 A. The dog always in her window.

1 Q. Okay.

2 A. Looking out.

3 Q. Did ever go in her house?

4 A. No.

5 Q. Never went inside of her house?

6 A. No.

7 Q. Did you notice any boarding-up over her
8 windows?

9 A. No.

10 Q. Okay. One second, please.

11 Thank you, Mr. Coleman. That's all the
12 questions I have.

13 THE COURT: Redirect, Solicitor?

14 MR. GRAHAM: No, Your Honor. Thank you.

15 THE COURT: Thank you. Thank you very much,
16 Mr. Coleman.

17 All right. You may call your next witness.

18 MR. POGUE: Thank you, Your Honor. The State
19 calls Tammy Coleman.

20 THE COURT: All right. If you will come around
21 and be sworn for us, please.

22 TAMMY COLEMAN

23 being first duly sworn, testified as follows:

24 THE WITNESS: Yes.

25 THE CLERK: Have a seat, please, ma'am. Once

DIRECT EXAMINATION OF TAMMY COLEMAN BY MR. POGUE

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1 you're seated, state your full name, spelling your
2 last, please.

3 THE WITNESS: My name is Tammy Jean Coleman.
4 My last name is spelled C-O-L-E-M-A-N.

5 DIRECT EXAMINATION

6 BY MR. POGUE:

7 Q. Good morning, Ms. Tammy.

8 A. Good morning.

9 Q. Where do you live?

10 A. State Pond Road --

11 Q. Who do you live --

12 A. -- in Gaston.

13 Q. I'm sorry. You said in Gaston?

14 A. Yes, sir.

15 Q. Who do you live with?

16 A. My husband and my children.

17 Q. And what's your husband's name?

18 A. Carl Coleman.

19 Q. Was that the gentleman who just testified
20 before you?

21 A. Yes, sir.

22 Q. And did you live with Carl back in 2015, August
23 of 2015?

24 A. Yes, sir.

25 Q. Still at State Pond Road?

1 A. Yes.

2 Q. Okay. Do you know Peter Coffey?

3 A. Yes.

4 Q. Can you please point him out to the Court?

5 A. That's him over there.

6 Q. The last gentleman on the far right?

7 A. Yes.

8 MR. POGUE: Your Honor, please let the record
9 reflect the witness has identified the defendant.

10 THE COURT: So reflected.

11 BY MR. POGUE:

12 Q. Ms. Tammy, how long had you known Pete in
13 August of 2015?

14 A. I've known Pete over a year.

15 Q. Okay. Did you also know Ms. JT

16 A. Yes.

17 Q. Okay. How long had you known JT

18 A. About the same time, a little over a year, a
19 year.

20 Q. Okay. What was your observation the nature of
21 the relationship between Pete and JT Were they
22 friends? Was it intimate?

23 A. They say good friends.

24 Q. Did you ever have any inclination or did Pete
25 ever say that they were intimate at all?

- 1 A. No, sir.
- 2 Q. Did he ever call JT his girlfriend?
- 3 A. No, sir.
- 4 Q. Let's go to the evening -- or afternoon/evening
5 of Friday, August 7th, 2015. Did anybody come over
6 to your home -- or first I should ask you, were you
7 home that evening?
- 8 A. Yes, sir, I was.
- 9 Q. Did anybody come over to your home that
10 evening?
- 11 A. Yes.
- 12 Q. Who came over to your house?
- 13 A. Pete, Johnny. That's about it.
- 14 Q. Okay. Johnny, what's his nickname?
- 15 A. Moosey. I call him Moosey.
- 16 Q. Is that Johnny Coleman?
- 17 A. Yes, sir.
- 18 Q. Carl's cousin?
- 19 A. Yes.
- 20 Q. And how long did they stay at your house?
21 Anybody ever leave?
- 22 A. They stayed there for a good while before they
23 left to go out.
- 24 Q. Okay. Who's they? Who left?
- 25 A. My husband, Pete, and Moosey.

1 Q. Okay. Do you know whose car they left in?

2 A. They left in Moosey car, Johnny's.

3 Q. And this was roughly what time in the evening,
4 would you estimate?

5 A. It was about 8:00. It could have been a little
6 after 8:00. I know it was after 8:00.

7 Q. It was sometime after 8:00?

8 A. Yes, sir.

9 Q. What time did -- or did anybody ever return to
10 your house that evening or early morning Saturday?

11 A. I don't know the exact time, but I know it was
12 after midnight when Carl came in.

13 Q. Okay. So Carl -- and it was just Carl that
14 came back?

15 A. Yes, sir.

16 Q. And what did Carl do when he got back?

17 A. He got in the bed. He was going to sleep.

18 Q. Okay. When Pete was over at your house on
19 Friday, did you ever notice any wounds on his hands
20 or anything like that?

21 A. No. He ain't have no wounds.

22 Q. Okay. On Saturday morning, did anybody come
23 over to your house on Saturday morning?

24 A. Yes.

25 Q. Did Carl ever leave Saturday morning after he

1 woke up?

2 A. Yes.

3 Q. Okay. Where did he go?

4 A. Went to pick up Pete.

5 Q. Okay. Did he bring Pete back to your house?

6 A. Yes.

7 Q. What time was this?

8 A. I'm not for sure about the time. I don't want

9 to say a time because I wasn't looking.

10 Q. That's okay. It was before noon?

11 A. Yes.

12 Q. Okay.

13 A. Yeah.

14 Q. Did you notice anything about Pete at this time

15 that stood out to you at all?

16 A. Yes.

17 Q. When he got to your house, what did you notice

18 about Pete?

19 A. He was tired, fidgety. I noticed the wounds on

20 his hand because he asked for some water.

21 Q. When you said you noticed some wounds on his

22 hands, what did his hands look like?

23 A. Bloody and red.

24 Q. Did you ask him about it?

25 A. Yes.

1 Q. How did he say it happened?

2 A. He never told me. I said, oh, Pete, you hurt
3 your hand. He didn't say nothing. I just passed
4 him a glass of water and I went on doing things in
5 the kitchen.

6 Q. Had you ever been over to JT [REDACTED] house before?

7 A. Yes.

8 Q. Okay. And you said you knew JT [REDACTED] for about a
9 year?

10 A. Yes.

11 Q. From your knowledge of JT [REDACTED] was she the type
12 of person that you could just show up to her house
13 late at night and she'd let you in?

14 A. No, sir.

15 MR. POGUE: No further questions, Your Honor.

16 THE COURT: Thank you, Solicitor.

17 Mr. Stitely?

18 CROSS-EXAMINATION

19 BY MR. STITELY:

20 Q. Hey, Ms. Coleman.

21 A. Hello.

22 Q. Just a couple questions I didn't ask. What
23 does your husband do for a living?

24 A. My husband, at that time?

25 Q. Yes.

- 1 A. He was a carpenter.
- 2 Q. Did you know about Ms. JT coming over to mow
- 3 the yard?
- 4 A. Yes.
- 5 Q. How much was he going to pay her to do that?
- 6 A. \$40. Her and Pete, actually.
- 7 Q. You said when you saw Pete on Friday, he was
- 8 fine as far as his hands?
- 9 A. As far as his hands.
- 10 Q. You didn't notice anything?
- 11 A. Huh-uh.
- 12 Q. Were you out at the club that night with Carl,
- 13 Johnny, and Pete?
- 14 A. No. I didn't go to the club.
- 15 Q. Did you see any of that horse play your husband
- 16 described?
- 17 A. I wasn't at the club at all.
- 18 Q. So you don't know anything about what went down
- 19 at the club that night?
- 20 A. No, sir.
- 21 Q. You said when Carl came home, it was only Carl?
- 22 A. Yes.
- 23 Q. Where does Johnny live?
- 24 A. Johnny live in -- going towards -- what's the
- 25 name of that town? Past North and all of that. I

1 forgot how you pronounce it. He don't live right
2 there by us.

3 Q. Neeses?

4 A. No, it's not Neeses.

5 Q. How far is it from your house down to Johnny's
6 house?

7 A. It's a little ride.

8 Q. It's a ride?

9 A. Uh-huh.

10 Q. So if Johnny and Carl and Pete were out that
11 night and only Carl came home, you're pretty sure
12 about that?

13 A. I'm positive.

14 Q. Thank you, ma'am. That's all the questions I
15 have.

16 THE COURT: Redirect?

17 MR. POGUE: No questions, Your Honor.

18 THE COURT: Thank you very much, ma'am. Thank
19 you for being with us today.

20 All right. Solicitor, you may call your next
21 witness.

22 MR. POGUE: Thank you, Your Honor. The State
23 calls Johnny Coleman.

24 THE COURT: All right. Come around and join
25 us, please.

DIRECT EXAMINATION OF JOHNNY COLEMAN BY MR. POGUE

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1 JOHNNY COLEMAN

2 being first duly sworn, testified as follows:

3 THE WITNESS: Yes, ma'am.

4 THE CLERK: Have a seat, sir. Once you're
5 seated, state your full name, spelling your last
6 name.

7 THE WITNESS: Johnny Antonio Coleman,
8 C-O-L-E-M-A-N.

9 DIRECT EXAMINATION

10 BY MR. POGUE:

11 Q. Good morning, Johnny.

12 A. Good morning.

13 Q. Do you know Peter Coffey?

14 A. No, not that good.

15 Q. I'm saying, you know who he is?

16 A. Yeah.

17 Q. Can you point him out in the courtroom?

18 A. Right there. He look different.

19 Q. Last guy on the right?

20 A. Uh-huh.

21 MR. POGUE: Your Honor, we'd like the record to
22 reflect the witness has identified the defendant,
23 Peter Coffey.

24 THE COURT: So reflected.

25 BY MR. POGUE:

1 Q. Johnny, do you recall the evening of August
2 7th, 2015?

3 A. Yeah.

4 Q. Okay. Where were you working in August of
5 2015?

6 A. Newman & Son Construction.

7 Q. What time do you get off, roughly?

8 A. Probably about 6:00 or after the sun get on
9 down.

10 Q. Were you working that day?

11 A. Yeah.

12 Q. What did you do after you got off work?

13 A. Got me something to eat and I got by my cousin
14 house, Carl.

15 Q. Where does Carl live?

16 A. That was on State Pond Road.

17 Q. Is that in Gaston?

18 A. Yeah.

19 Q. All right. So what did you do when you got
20 over to your cousin's house? Carl?

21 A. Yeah.

22 Q. What did y'all do when you went over there?

23 A. Sat around and talking. And I was drinking a
24 couple beers.

25 Q. Who else was over there?

1 A. Pete was over there.

2 Q. Peter Coffey?

3 A. Yeah.

4 Q. Carl was there?

5 A. Yeah.

6 Q. All right. Did y'all -- did you stay there the

7 entire evening? Did you do anything later in the

8 evening? Did y'all ever leave?

9 A. Yeah. We left, what, about 9:30, 10:00.

10 Q. Okay. And where did y'all go?

11 A. To the Little Rock in Swansea.

12 Q. Okay. When y'all left to go down to the Little

13 Rock in Swansea, you say -- what time -- was this --

14 you said 9:00 or 10:00?

15 A. At night.

16 Q. Are you sure about that? Could it have been

17 later?

18 A. Yeah, could have been. Yeah, about 10:00 or

19 11:00, something like that. I knew it was kind of

20 late.

21 Q. All right. Who all went to the Little Rock

22 with you?

23 A. Me, Carl, and Pete.

24 Q. You, Carl, and Pete. All right. Were you

25 driving?

1 A. Yeah.

2 Q. Who was sitting in the front seat?

3 A. Carl.

4 Q. Pete sitting in the back?

5 A. Yeah.

6 Q. Did Pete ever ask you to use your phone that

7 evening?

8 A. Earlier. But I ain't never got around to

9 letting him use it.

10 Q. Why did he want to use your phone?

11 A. To call JT

12 Q. Said he wanted to use your phone to call JT

13 A. Yeah.

14 Q. Did he have a phone? Did you ever see him have

15 a phone?

16 A. No.

17 Q. Did you ever let him use your phone?

18 A. No.

19 Q. All right. So y'all went down to Little Rock.

20 How long -- did y'all ever leave Little Rock? Did

21 y'all stay there the entire evening?

22 A. Stayed there probably about an hour, hour and a

23 half.

24 Q. When y'all left the Little Rock, okay, did Pete

25 have any injuries on his hands that you noticed?

1 A. No. Huh-uh.

2 Q. Did anybody get in a fight at the Little

3 Rock --

4 A. No.

5 Q. -- that you recall?

6 A. No.

7 Q. Okay.

8 A. But it come close to it.

9 Q. Okay. All right. So when y'all left the

10 Little Rock, what did y'all do after that?

11 A. We went on back up and I put him out at the

12 Food Lion in Gaston.

13 Q. Who is we? Who was in the car?

14 A. Me and Carl and Pete.

15 Q. And you said you dropped Pete off?

16 A. Yeah, I put him out.

17 Q. Why did you put him out?

18 A. Because he was talking trash to me, acting like

19 he wanted to fight me, saying all kind of stuff.

20 Q. All right.

21 MR. POGUE: I beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 MR. POGUE: Permission to approach, Your Honor?

24 THE COURT: Yes, sir.

25 BY MR. POGUE:

1 Q. Johnny, I'm going to show you a map. Do you
2 recognize where the Food Lion is on that map?

3 A. Uh-huh.

4 Q. And this -- and I'm going to put it up on the
5 big screen.

6 A. Okay.

7 Q. The Food Lion you're talking about, is that the
8 Food Lion on this map right here off of 321?

9 A. Uh-huh. I put him out right there across from
10 the dog food place.

11 Q. And what time did you drop Pete off -- did you
12 make him get out?

13 A. About one-something.

14 Q. Okay. Did you give a statement to the police
15 regarding that evening?

16 A. No. I ain't talk to no police that evening.

17 Q. Not that evening. I'm saying did you give a
18 statement, a written statement? Do you recall
19 giving a written statement to police officers about
20 that evening?

21 A. Yeah.

22 Q. Okay. All right. Does that appear to be the
23 statement that you gave officers about the events
24 that took place that evening?

25 A. Uh-huh.

1 Q. And your first question there, do you recall
2 the answer that you gave to the police in your
3 written statement about what time you dropped Peter
4 Coffey off at the Food Lion?

5 A. Yeah.

6 Q. What time did you indicate?

7 A. 1:30.

8 Q. Would you say your recollection as to what time
9 you dropped Pete off at the Food Lion was better at
10 this time or it's better today?

11 A. It was about the same, same thing.

12 Q. All right. So you still remember 1:30. And it
13 was 1:30 then, that's what you're saying?

14 A. Uh-huh.

15 Q. What did you do after you dropped Pete off?

16 A. I went and dropped my cousin off and then I
17 went home.

18 Q. You cousin named Carl?

19 A. Yeah.

20 Q. You dropped him off at his house?

21 A. Uh-huh.

22 Q. Where -- and that's on State Pond?

23 A. Yeah.

24 Q. And you went home. Where did you live at the
25 time?

1 A. Wagener.

2 Q. How far is Wagener from Gaston, roughly?

3 A. Probably about 20 miles, little bit more.

4 Q. Okay. What did you do the next day?

5 A. I got up and me and my family ride up to my

6 cousin house.

7 Q. Cousin being Carl?

8 A. Yeah.

9 Q. Back on State Pond?

10 A. Uh-huh.

11 Q. Was anybody with you when you drove back to

12 Carl's?

13 A. Yeah, me and my kids and my wife.

14 Q. What time did you get to Carl's? Was it in the

15 morning?

16 A. Yeah.

17 Q. Can you give a rough estimate as to what time

18 you think it was?

19 A. Probably about 9:00 or 10:00, something like

20 that.

21 Q. Okay. Who was at your cousin Carl's house when

22 you got there?

23 A. Pete.

24 Q. Pete. Did you notice anything about Pete that

25 stood out to you that morning?

1 A. Yeah. He was quiet. He was walking around the
2 yard.

3 Q. Okay. Did you notice any injuries on Pete's
4 hands?

5 A. I think I did see a cut. Yeah.

6 Q. Did you ask him about it?

7 A. No.

8 Q. Do you recall the shorts that Pete was wearing
9 when you dropped him off the evening of Friday,
10 August 7th, at Food Lion?

11 A. Yeah.

12 Q. Do you remember the police showing you some
13 photos of a pair of shorts a couple days after this
14 incident?

15 A. Uh-huh.

16 MR. POGUE: Permission to approach, Your Honor?

17 THE COURT: Yes, sir.

18 Q. Okay. Do these appear to be the two photos --

19 A. Yeah.

20 Q. I'm handing you State's Exhibit 89 and State's
21 Exhibit 91. Do you recognize those two photos?

22 A. Yeah.

23 Q. What are those photos of?

24 A. The shorts he had on.

25 Q. Those are the shorts you believe Peter Coffey

1 was wearing on the evening of?

2 A. Uh-huh.

3 Q. They appear similar?

4 A. Yeah.

5 Q. Did you tell police that those were the shorts
6 that he was wearing?

7 A. Yeah.

8 Q. No further questions. Thank you.

9 THE COURT: Thank you, Solicitor.

10 Mr. Stitely?

11 MR. STITELY: May I approach, Your Honor?

12 THE COURT: Yes, sir.

13 CROSS-EXAMINATION

14 BY MR. STITELY:

15 Q. How long had you known Mr. Coffey?

16 A. I didn't really know him. I probably met him a
17 couple occasions. I didn't really know him.

18 Q. Would you say that you are close friends?

19 A. No.

20 Q. Able to describe his character routinely?

21 A. No.

22 Q. Able to speak about his moods or attitudes or
23 anything like that routinely?

24 A. No.

25 Q. What type of work did Pete do?

- 1 A. I don't know. I hear him say carpenter.
- 2 Q. How was he dressed routinely when you saw him?
- 3 A. I didn't pay no attention to him. I know he
- 4 used to wear a lot of shorts because it was
- 5 summertime.
- 6 Q. Khaki short?
- 7 A. Jean shorts, all kind of shorts.
- 8 Q. Carpenter-type shorts?
- 9 A. I don't know. Like I said, I didn't see him
- 10 that much.
- 11 Q. Anything particular jump out about the shorts
- 12 or they were just brown shorts?
- 13 A. Yeah, they had paint on them.
- 14 Q. Had paint on them?
- 15 A. Yeah.
- 16 Q. What color was his shirt?
- 17 A. I can't remember the shirt, but I know what
- 18 shorts he had on.
- 19 Q. How about his shoes? Was he wearing his shoes?
- 20 A. No, I wasn't looking at his shoes.
- 21 Q. What color was his hair? You said he looked
- 22 different.
- 23 A. I don't know. I say he look different because
- 24 he usually wears glasses.
- 25 Q. Wears glasses. Okay. How tall is Pete?

1 A. I don't know.

2 Q. Is he tall or short, would you say?

3 A. Short.

4 Q. How much you think he weighs?

5 A. I don't know. About 100 pounds.

6 Q. No further questions?

7 THE COURT: Redirect.

8 MR. POGUE: Just briefly.

9 REDIRECT EXAMINATION

10 BY MR. POGUE:

11 Q. Mr. Coleman, I'm showing you, again, State's
12 Exhibit 89 and 91. What does that substance right
13 there appear to be on his shorts?

14 A. That's paint right there.

15 Q. That's the paint you remember being on his
16 shorts on that night?

17 A. Uh-huh. And a day or two earlier.

18 Q. Mr. Stitely was asking you about Carl's moods
19 and demeanors. Do you recall what his mood and
20 demeanor was on the morning of Saturday, August 8th?

21 A. You talking about Pete?

22 Q. Yeah.

23 A. Yeah. He was just walking around the yard
24 quiet. I asked him, anything wrong? And he said,
25 nothing.

DIRECT EXAMINATION OF CHANNEN JOHNSON BY MR. GRAHAM

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1 Q. Did you ask him anything else?

2 A. Yeah. I said, you need whatever you had last
3 night, you need some more of that.

4 Q. That, being a drink?

5 A. Yeah.

6 Q. Alcoholic beverage?

7 A. Or whatever he had.

8 Q. No further questions.

9 THE COURT: Recross?

10 MR. STITELY: Nothing further, Judge.

11 THE COURT: Thank you for being with us today.
12 You may call your next witness, please.

13 MR. GRAHAM: State calls Channen Johnson.

14 THE COURT: Would you come around and join us,
15 please, Mr. Johnson.

16 CHANNEN JOHNSON

17 being first duly sworn, testified as follows:

18 THE WITNESS: I do.

19 THE CLERK: Have a seat, sir. Once you're
20 seated, state your full name, spelling your last.

21 THE WITNESS: My name is Channen J. Johnson,
22 last name J-O-H-N-S-O-N.

23 DIRECT EXAMINATION

24 BY MR. GRAHAM:

25 Q. Channen, you really don't want to be here

1 today, do you?

2 A. No, sir.

3 Q. But you were given a subpoena and you're here,
4 right?

5 A. Had no other choice.

6 Q. Very briefly, you were convicted of two counts
7 of trafficking in cocaine back in 2012, right?

8 A. That's what the papers say.

9 Q. You were also convicted of possession of less
10 than a gram of meth or cocaine base about the same
11 time?

12 A. That's what it says.

13 Q. Failure to stop for a blue light?

14 A. That's what it says.

15 THE COURT: Is that a yes or a no?

16 THE WITNESS: Yes, sir.

17 THE COURT: The question is not that's what it
18 says.

19 THE WITNESS: Yes, sir.

20 THE COURT: Okay. Thank you, Mr. Johnson.

21 THE WITNESS: Appreciate it.

22 THE COURT: Yes, sir. I appreciate it too.

23 BY MR. GRAHAM:

24 Q. That's not why you were subpoenaed to be here
25 today. You were subpoenaed to be here because you

- 1 knew JoJo, right?
- 2 A. Yes, sir.
- 3 Q. How long have you known her?
- 4 A. Over ten years.
- 5 Q. How would you describe her to the jury?
- 6 A. Just a nice older lady.
- 7 Q. How often did you see her or talk to her?
- 8 A. A few times a month, or if I seen her at the
- 9 grocery store or anything or in town or something,
- 10 gas station or something like that.
- 11 Q. What, if anything, did you do to help the nice
- 12 old lady out?
- 13 A. Groceries, help her with her dogs, little small
- 14 stuff like that.
- 15 Q. Back in that time, do you remember her phone
- 16 number, what it was then?
- 17 A. Not sure the entire number, but I know it
- 18 started with 521.
- 19 Q. How about your number at the time? Do you
- 20 remember what it was?
- 21 A. I think 406-8561, something like that.
- 22 Q. (803) 406-8561?
- 23 A. Yes, sir.
- 24 Q. And that was the number that you had back in
- 25 August of 2015?

1 A. Yes, sir.

2 Q. How long had you known JT you said?

3 A. Said a little over ten years.

4 Q. But last time you saw her was when?

5 A. I think it was Tuesday or Wednesday of that

6 week.

7 Q. Did you have a key to her house?

8 A. No, sir.

9 Q. Do you know if anybody had a key to her house?

10 A. No. Nobody had a key to her house.

11 Q. Nobody had a key to her house?

12 A. Not that I knew of. No, sir.

13 Q. How was she about her protection and locking

14 her doors?

15 A. Always locked.

16 Q. You've been to that house, right?

17 A. Yes, sir.

18 Q. Okay. You knew her well?

19 A. Yes, sir.

20 Q. If a stranger came to her door late at night or

21 early in the morning while it was dark, would she

22 let a stranger in?

23 A. No, sir, not at no time, morning or at night.

24 Q. The last time you talked to her, do you

25 remember when it was?

1 A. It was Friday night a little after 10:00.

2 Q. You traded phone calls with her that night?

3 A. I was playing cards at the time. I really
4 didn't get to talk to her much, couple seconds.

5 Q. But you talked to her for a second?

6 A. Yeah, a few seconds. Yes, sir.

7 Q. What was the plan of you-all talking? What
8 were you going to do?

9 A. I was going to ride with her to get her dogs
10 shots, the rabies shots and stuff, because one of
11 them got loose and you get fined for that.

12 Q. So you were trying to help her out with the
13 dogs --

14 A. Yes, sir.

15 Q. -- getting rabies shots?

16 A. Yes, sir.

17 Q. Did you ever talk to her again?

18 A. No, sir.

19 Q. Thank you, Mr. Johnson. Please answer any
20 questions they have for you.

21 THE COURT: Thank you, Solicitor.

22 Mr. Stitely?

23 MR. STITELY: May it please the Court.

24 CROSS-EXAMINATION

25 BY MR. STITELY:

1 Q. Mr. Johnson, you said you've been over to her
2 house before?

3 A. Yes, sir.

4 Q. Could you describe it for me?

5 A. It was like a trailer.

6 Q. Had you ever been inside it?

7 A. Yes, sir.

8 Q. Can you tell me about the doors on it?

9 A. The front door is, like, nailed shut, like,
10 bolted. You got to go through the back.

11 Q. What about her windows?

12 A. Can't really recall about the windows.

13 Q. Do you know why she kept it nailed shut?

14 A. I guess she didn't want nobody to go through
15 the front. Not sure.

16 Q. Did you ever talk to her about her neighbors?

17 A. She did -- recall saying something about she
18 got into it with her neighbors, they were arguing
19 about something. Not sure.

20 Q. Do you know when that was?

21 A. It was recent, like a couple weeks before,
22 something like that.

23 Q. Back in August of 2015?

24 A. Yes, sir.

25 Q. Close in proximity to the last time you spoke

1 to her?

2 A. Yes, sir.

3 Q. I'll ask you a couple names, if you know them,

4 if you don't mind. Do you know a Philip Robinson?

5 A. Yes, sir. He stayed next door, I think to the

6 left.

7 Q. Next door to you or next door to --

8 A. Next door to JT

9 Q. Do you know what his relationship with her was?

10 A. They didn't really have no relationship. I

11 guess just a neighbor.

12 Q. Okay. Do you know a Roger White?

13 A. No, sir.

14 Q. A Kay Thompson?

15 A. I think I heard the name before. I think, but

16 I don't know.

17 Q. How about a William White?

18 A. No, sir.

19 Q. Mariana Gonzalez?

20 A. No, sir.

21 Q. Emilo Martinez?

22 A. No, sir.

23 Q. David Fosse?

24 A. No, sir.

25 Q. A Mr. Scarborough?

1 A. No, sir.

2 Q. And a John Raulerson?

3 A. No, sir.

4 Q. Did you know Carl Coleman?

5 A. Yes, sir.

6 Q. How do you know Carl Coleman?

7 A. Just from being around, from the same

8 neighborhood, stuff like that.

9 Q. Do you know his cousin, Johnny?

10 A. Not really at all.

11 Q. And your conversations, you said, were

12 literally a couple seconds on that Friday night?

13 A. Yeah. I was gambling at the time.

14 Q. To your knowledge, no one else had a key to

15 that house?

16 A. No, sir.

17 Q. Do you know how many dogs she had?

18 A. Three.

19 Q. Thank you. Those are all the questions I have.

20 THE COURT: Redirect?

21 MR. GRAHAM: No, Your Honor.

22 THE COURT: Thank you, Mr. Coleman. Thank you

23 for being with us today.

24 How long is your next witness, Solicitor?

25 MR. GRAHAM: Probably 25, 30 minutes.

1 THE COURT: Why don't we take a recess right
2 now?

3 Let's take our morning recess, ladies and
4 gentlemen. We'll take about 20 minutes. Do not
5 discuss the case during this brief recess.

6 (The jury exits the courtroom at 10:48 AM.)

7 THE COURT: All right. Anything, Solicitor?

8 MR. GRAHAM: No, sir.

9 THE COURT: Court will be in recess 20 minutes.

10 (Short break.)

11 (The jury enters the courtroom at 11:07 AM.)

12 THE COURT: All right. Solicitor, you may call
13 your next witness.

14 MR. GRAHAM: Thank you, Your Honor. The State
15 calls Mike Phipps, Your Honor.

16 MICHAEL PHIPPS

17 having been previously sworn, testified as follows:

18 THE WITNESS: I do.

19 THE CLERK: Have a seat, sir. Once you're
20 seated, state your name on the record, please.

21 THE WITNESS: Michael Stuart Phipps,
22 P-H-I-P-P-S.

23 FURTHER REDIRECT EXAMINATION

24 BY MR. GRAHAM:

25 Q. Mr. Phipps, where are you employed?

1 A. With the Lexington County Sheriff's Department.

2 Q. How long have you been in law enforcement?

3 A. Twenty years.

4 Q. Currently what do you do with the sheriff's
5 department?

6 A. I'm an examiner that exams digital evidence.

7 Q. When you say examiner examining digital
8 evidence, can you give the jury an example of what
9 you're talking about?

10 A. Looking, most commonly, cell phones and
11 computers, trying to evidence certain information
12 off of those devices.

13 Q. And what kind of education or specialized
14 training have you had in that matter?

15 A. About the last 12 years, I've had various
16 courses that total over 500 hours of instruction.

17 Q. And in addition to -- you're actually employed
18 by the sheriff's department, but you also have other
19 responsibilities in law enforcement as well?

20 A. Most recently at the beginning of this year, I
21 was tasked over to the Secret Service task force
22 that they have for South Carolina, electronic crimes
23 task force.

24 Q. So you still work for the sheriff, you're
25 employed and paid for by the sheriff, still work for

1 the sheriff's department?

2 A. That is correct.

3 Q. But you're involved with the task force as
4 well?

5 A. That's correct.

6 Q. Now, task force deals specifically with what?

7 A. Digital evidence and investigating crimes that
8 involve or have a nexus with some type of digital
9 device.

10 Q. You've previously testified twice, once as a
11 crime scene when you were taking photographs and
12 helping collect the swabs from the bathroom of
13 Ms. JT [REDACTED] house back in August of 2015, correct?

14 A. Yes, sir.

15 Q. Additionally, the LG cell phone that was found
16 in the house that was powered on, you created a swab
17 of that that was sent to Richland County?

18 A. Yes, sir.

19 Q. Let me ask you about some other things. There
20 were some phone records that were collected in the
21 course of the investigation by the sheriff's
22 department, correct?

23 A. Yes, sir.

24 MR. GRAHAM: And, Your Honor, the Defense has
25 stipulated to the admission and the use of

1 information from those records without the necessity
2 of a records custodian as well.

3 MR. STITELY: That's correct, Judge.

4 THE COURT: Thank you, Solicitor.

5 Thank you, Mr. Stitely.

6 BY MR. GRAHAM:

7 Q. Mr. Phipps, specifically I'm referring to AT&T
8 records for a landline. Are you familiar with
9 those?

10 A. Yes, sir, I am.

11 Q. What is the phone number that's associated with
12 that landline?

13 A. Landline is (803) 754-5291.

14 Q. And who was the accountholder for that
15 landline?

16 A. Dorothy N. White.

17 Q. Additionally, when you took the swab -- the two
18 cell phones that were found in JT [REDACTED] house, which
19 is State's 79 and State's 80, you would have been
20 present when Investigator Derrick collected those,
21 correct?

22 A. Yes, I was.

23 Q. And you're familiar with those, too?

24 A. Yes, sir, I am.

25 Q. State's Exhibit 79, what kind of phone is that?

1 A. State's 79 is an LG cell phone, sort of a
2 flip-phone design.

3 Q. And that's the phone that was actually powered
4 on at the time, correct?

5 A. Yes, sir.

6 Q. And that's the phone that you created this swab
7 for, for analysis later?

8 A. I did.

9 Q. State's Exhibit 80, what kind of phone is that?

10 A. State's 80 is an Alcatel flip-style phone as
11 well.

12 Q. And the condition of that one when you found it
13 was what? Was that powered on or off?

14 A. To my recollection, it was powered off.

15 Q. Did you have a chance to examine both of those
16 phones?

17 A. I did.

18 Q. Regarding the examination of the phone or
19 records associated with State's 80, which is the
20 TracFone that was powered off, what, if anything,
21 did you find out about the terms of service for that
22 phone?

23 A. One of the things we do, of course, is once we
24 power on the phone, we attempt to acquire the data
25 off it using automated tools. Sometimes those tools

1 don't work. So in this case, we had to manually go
2 through and photograph the screens. And during the
3 course of that, there's a specific screen that shows
4 you the status of the phone. And that screen was
5 showing a service end date of January 29th, 2015.

6 Q. And you said you examined the phone and took
7 screen shots. What kind of information from the
8 screen -- just in general, the types of information
9 do you see when you examine a phone like that?

10 A. Usually with phones like these, most commonly
11 we're only going to see call logs, text messaging,
12 possibly some photos if it was a camera-capable
13 phone.

14 Q. State's 79, which is the LG we've been talking
15 about, did you also do an examination of that phone?

16 A. Yes, sir.

17 Q. And in part of that did you compare the
18 contacts between the old Alcatel phone and the
19 powered-on LG phone?

20 A. I did. It had overlapping names, abbreviations
21 for names, and matching phone numbers.

22 Q. When you examined State's Exhibit 79, the
23 powered-on LG phone, what was the phone number that
24 you identified as being associated with that phone?

25 A. The LG is a TracFone having a phone number

1 (803) 521-0371.

2 Q. Let me show you a disc and ask if you recognize
3 this disc.

4 A. Yes, sir, I do. It has my initials.

5 Q. And does that contain the photographs that you
6 took of all the screen shots you could observe on
7 State's 79, the powered-on LG phone?

8 A. Yes, sir, it does.

9 MR. GRAHAM: Your Honor, the State would offer
10 this as a Court's Exhibit.

11 THE COURT: Any objection?

12 MR. STITELY: He's offering it as a Court's
13 Exhibit, Judge.

14 THE COURT: Any objection?

15 MR. STITELY: No.

16 THE COURT: That's Court's Exhibit number what?

17 THE COURT REPORTER: That will be number 4,
18 Judge.

19 (Court's Exhibit No. 4 marked for
20 identification.)

21 BY MR. GRAHAM:

22 Q. In analyzing that phone, were you able -- or
23 analyzing either phone, were you able to find a
24 contact associated with the name Pete and a cell
25 phone number -- or a telephone number?

1 A. Yes, sir, I did.

2 Q. Do you remember which phone it came off of?

3 A. It was visible on both. This particular
4 example here that's printed is from the LG phone.

5 Q. And this is a photograph showing that contact
6 and the associated number?

7 A. Yes, sir.

8 MR. GRAHAM: Your Honor, the State would offer
9 this into evidence.

10 MR. STITELY: No objection.

11 THE COURT: What number is that, Madam Court
12 Reporter?

13 THE COURT REPORTER: 148.

14 THE COURT: State's 148 in evidence without
15 objection.

16 (State's Exhibit No. 148 admitted into
17 evidence.)

18 BY MR. GRAHAM:

19 Q. Investigator Phipps, just for the record, could
20 you publish for the jury what the number is
21 associated with the contact name of Pete?

22 A. Area code (803) 629-2011.

23 Q. As part of the investigation, was there also a
24 search warrant and records obtained for that cell
25 phone number?

- 1 A. They were.
- 2 Q. And do you have those with you at this time?
- 3 A. Yes, sir, I do.
- 4 Q. What phone company held the records or provided
5 service for that phone?
- 6 A. That was an AT&T subscriber.
- 7 Q. From the subscriber information provided by
8 AT&T, does it list the name of the person who owned
9 that account?
- 10 A. It's listed under a generic name of prepaid
11 customer.
- 12 Q. Is that the default?
- 13 A. Correct. Whenever you purchase a prepaid phone
14 and if you don't specifically go out and register it
15 with them under your name, it remains in their
16 system as just a generic prepaid customer.
- 17 Q. As far as when that account was established,
18 does it give you information about that?
- 19 A. I'm sorry. Say that again.
- 20 Q. When the account was established or how long
21 he'd been a customer or whoever --
- 22 A. The records indicate a service start date of
23 February 17th, 2012.
- 24 Q. As far as contact names or a contact name
25 associated with it? And I'm just stepping through

1 the subscriber page.

2 A. Right. Everything here is listing as far as a
3 name is prepaid customer.

4 Q. Further down, about five lines, does it give
5 information as far as a date of birth?

6 A. There's an empty field for date of birth.
7 There is no information in it.

8 Q. And then across from the date of birth, is
9 there any information supplied for the social
10 security number?

11 A. It's an empty field.

12 Q. Contact name below there?

13 A. Again, an empty field.

14 Q. For the contact home number or the contact work
15 number, what numbers are in those fields?

16 A. It's a generic. It's all nines; area code and
17 the phone number, all nines.

18 Q. And below that, it says contact home e-mail.
19 Can you tell the jury what you see there where
20 records indicate contact home e-mail?

21 A. It lists PC@yahoo.com. Again, it's a generic
22 reply when that information isn't given by the
23 customer that ultimately receives the phone.

24 Q. The account status down in the next part, what
25 is it listed for?

1 A. Account status is showing, as of the time the
2 records were produced, lost equipment with a change
3 date of August 3rd, 2015.

4 Q. So the status of that account was lost
5 equipment with a date of August 3rd of 2015?

6 A. Yes, sir.

7 Q. There are different numbers and different
8 things on phones. As an expert in this field or
9 with all of your education and experience, can you
10 tell the jury the differences between a serial
11 number and an IMEI number and an IMSI number?

12 A. When you look at the back of the phone, take
13 the battery out, usually there's a little placard
14 that the manufacturer puts in there that lists the
15 serial number. Serial number is just a number
16 that's pertinent to that manufacturer so that they
17 can track the device in the manufacturing process
18 should recalls or something come about.

19 The IMEI is the mobile -- International Mobile
20 Equipment number. And it's, basically, a digital
21 serial number as well, but that number is actually
22 transmitted to the service provider when the phone
23 is in use, so if you can identify the phone on the
24 network that the service provider uses.

25 Q. And how about the IMSI number?

1 A. The IMSI, it's another International Mobile
2 Subscriber Identity number. And it's just another
3 version of a combination of numbers that the phone
4 company uses to track the phone.

5 Q. You were aware that when CSI, then, Sprinkle
6 conducted a search warrant at Mr. Coffey's house
7 that he recovered four phones, correct?

8 A. Yes, sir, I am.

9 Q. And is it your understanding that those phones
10 should be in the custody of the sheriff's department
11 but they're not able to be located?

12 A. That's correct.

13 Q. Have you had an opportunity to look at the
14 photographs that Investigator Sprinkle took at the
15 time of the recovery from Mr. Coffey's house?

16 A. I have, yes, sir.

17 Q. Looking at State's 98, 99, 100, 101, 102, 103,
18 104, and 105, have you looked at those?

19 A. Yes, sir, I have.

20 Q. And do those -- are you able to tell from the
21 condition that Investigator Sprinkler said that they
22 were found, without batteries, and he photographed
23 the front and the back, correct?

24 A. Yes. You're able to read the
25 manufacturer-supplied label.

1 Q. What can you tell me about those four phones?

2 A. In general, they're all what we consider
3 feature phones. We kind of categorize phones into
4 three levels: Just your basic cell phone, feature
5 phone, and then a smart phone. They appear to be,
6 based on the models, all feature phones, most of
7 them prepaid phones. One phone was identified in
8 particular, Item No. 7, that had a match back to
9 some other information we had.

10 Q. So Item No. 7, that's the one that's shown on
11 State's 102; is that correct?

12 A. Yes, sir.

13 Q. So if we look at the -- are you able to see
14 that from there?

15 A. Yes, sir.

16 Q. And you've looked at these before as well,
17 correct?

18 A. Yes, sir.

19 Q. When we look at the IMEI number and then also
20 up here, the model numbers, are you able to
21 associate this with the records that we've been
22 discussing so far?

23 A. Yes, sir. The records provided by AT&T for the
24 mobile number of (803) 629-2011, within those
25 records, they also specifically reference that

1 specific IMEI number in the matching model number
2 that's presented on that label.

3 Q. Okay. So that phone that Investigator Sprinkle
4 photographed in the house that the sheriff's
5 department now can't find that's shown on 102,
6 that's the phone that goes with that account?

7 A. Yes, sir, it is.

8 Q. And the status of that phone was listed as lost
9 equipment on August the 3rd of 2015?

10 A. Yes, sir.

11 Q. Now, the records themselves, do they indicate
12 when that phone was used?

13 A. Yes. There's entries within what we call a
14 call detail record that shows incoming and outgoing
15 phone calls and text messages.

16 Q. As far as incoming or outgoing, what's the
17 earliest time on those records?

18 A. August 1st, 2015.

19 Q. As far as the last time there's an entry, when
20 is that?

21 A. August 11th, 2015.

22 Q. Now, when a -- at what point would this phone
23 keep track of the location through, say, the cell
24 tower that was used? How does that happen? Can you
25 explain that to the jury?

1 A. The -- typically service providers, for billing
2 purposes, track your calls and the duration. And
3 they also log the particular tower that the phone is
4 making contact with. Based on that, they can,
5 through various methods, give a GPS or latitude and
6 longitude coordinates for either the tower itself or
7 where the phone is in approximation to that tower.

8 Q. From these phone records, when is the last time
9 it's recorded that there is a location associated
10 with a particular event occurring on that phone?

11 A. The last entry that actually has a location
12 information associated with it is August 2nd, 2015,
13 at 5:55 UTC time, which you'd have to subtract four
14 hours for Eastern Daylight Time.

15 Q. So the last time was the --

16 A. Would have been 1:55 on August 2nd, 2015.

17 Q. After that time, there are additional entries
18 in the record; is that correct?

19 A. Yes, showing attempted missed calls, that type
20 of thing.

21 Q. Are there any outgoing calls showed?

22 A. No, sir.

23 Q. So everything is attempted incoming calls?

24 A. Yes.

25 Q. And there's no location associated with that?

1 A. That is correct.

2 Q. And why would there not be tower information?

3 A. When the -- of course the phone, when you
4 initiate a call, it's making contact with a tower.
5 So either an incoming call that's answered or an
6 outgoing call is going to trigger that record within
7 the service provider. A phone just being off and
8 someone trying to call is not going to locate the
9 phone.

10 Q. Did you have an opportunity when you went
11 through the contacts of the two phones, the
12 powered-on LG and the powered-off Alcatel, to look
13 at contacts to re-create a timeline from the screen
14 shots that you observed of the powered-on LG to give
15 the jury an indication of the phone calls, text
16 messages, and things like that that the phone that
17 was powered on would have received and made?

18 A. Yes, sir. A summary table was produced that
19 just shows incoming, outgoing phone calls and text
20 messages.

21 Q. And combining the contacts you saw and the
22 telephone numbers that witnesses have provided in
23 court, have you been able to prepare a summary that
24 shows the information you found on the screen shots
25 starting on August 7th -- Friday, August 7th, 2015,

1 at 7:55 PM and going all the way until August 9th,
2 2015, at 10:12 PM?

3 A. Yes, sir.

4 Q. And do you have that with you?

5 A. I do.

6 Q. And that's prepared from the screen shots and
7 your examination of the phone, correct?

8 A. Yes.

9 MR. GRAHAM: Your Honor, the State would offer
10 this into evidence.

11 MR. STITELY: No objection, Judge.

12 THE COURT: State's 149 in evidence without
13 objection.

14 (State's Exhibit No. 149 admitted into
15 evidence.)

16 BY MR. GRAHAM:

17 Q. Mr. Phipps, while we were standing there, I saw
18 you make a handwritten change on that. Was that
19 something you were correcting or what were you
20 doing?

21 A. No. I thought this was my reference one. I
22 was making a note on it. So if you got a clean
23 copy --

24 MR. GRAHAM: Your Honor, if I can, he made a
25 notation. I don't think it matters, but if we can

1 switch the exhibit number to a totally clean copy.

2 And that's your copy, Your Honor.

3 THE COURT: All right.

4 MR. STITELY: We have no objection to that.

5 THE COURT: Thank you, Mr. Stitely.

6 MR. GRAHAM: Permission to publish this, Your
7 Honor?

8 THE COURT: Yes, sir, you may publish it.

9 MR. GRAHAM: Your Honor, could I have
10 Mr. Phipps step down?

11 THE COURT: Yes, sir, you may step down.
12 Please keep your voice up when you're away from the
13 microphone.

14 BY MR. GRAHAM:

15 Q. So, Mr. Phipps, as you went through the phone,
16 what kind of things did you find?

17 A. Mostly incoming, outgoing phone calls. There
18 was just a couple text messages. We had to
19 photograph each screen. So it's difficult to get a
20 sense of the timeline based on just digital photos,
21 so we created a table with the information from each
22 of those screen shots in a table form.

23 Q. As far as -- you talked about text messages,
24 correct?

25 A. Yes.

1 Q. During this timeframe, there were two incoming
2 text messages, correct?

3 A. Correct.

4 Q. On the phone itself, were you able to find
5 outgoing text messages?

6 A. There were none.

7 Q. What does that mean?

8 A. Being that that holder within the phone was
9 zero, you would assume that those were deleted at
10 some point in time.

11 Q. So either she never used it or they were
12 deleted at some point?

13 A. Correct.

14 Q. So from the information that you were able to
15 find, if you will step through for the jury starting
16 August 7th, 2015. Now, you have military time, so
17 the first one says 1955. What does that mean?

18 A. That would be 7:55 in the evening.

19 Q. So how do you convert from military time to
20 normal time?

21 A. It's a 24-hour clock. So if you count up from
22 noon at 12, 1:00 is 13 and you just keep counting
23 around to 24 being midnight.

24 Q. So the categories are the date, the time, which
25 we just talked about. What is the call type?

1 A. Call type is whether it's a phone call, text
2 message; whether it's incoming, outgoing; whether
3 it's a missed call, status of the phone.

4 Q. The number, that category, what is that
5 referring to?

6 A. In reference to the number that that phone is
7 making contact with, whether it's an outgoing call
8 and show the number that's being called, or if it's
9 an incoming phone call or text, it will show who is
10 sending that or dialing the phone.

11 Q. Some of the categories I see on the first page,
12 maybe the fourth one, says private number. What
13 does that mean?

14 A. Obviously, with caller ID, some people can have
15 the ability to block your number so it's not shown
16 on the caller ID and it comes across as private.

17 Q. That is not a contact listed in her phone
18 though, correct?

19 A. It is not.

20 Q. The next column is person. Some of those are
21 blank and some of them are filled in with names.
22 Some just have a name, like Dorothy White. That
23 would have come from the records we just talked
24 about for that landline number, correct?

25 A. Correct. Anywhere there's a name that says

1 contacts, it was a number derived from this phone or
2 the other Alcatel phone matching the name and the
3 number together.

4 Q. And then also witnesses that provided numbers
5 as well?

6 A. Yes.

7 Q. So where possible, in the column of person, you
8 have identified those people?

9 A. We have.

10 Q. The duration, some of them have numbers with
11 minutes and seconds, some of blank, some say zero
12 seconds. Can you tell the jury what those numbers
13 mean?

14 A. When the phone call, either outgoing or
15 incoming, actually connects, there's usually a
16 duration associated with it. Obviously a missed
17 call doesn't have a duration. Where there's like
18 zero seconds, it may have been a situation where the
19 phone recognized the call, but it hung up before
20 someone picked the phone up and spoke.

21 Q. Looking through August 7th, the night near the
22 10:00 PM timeframe, would you point out to the jury
23 phone calls and explain how they went, whether they
24 were dialed or received, to the individual that's
25 been identified as either C.J. in the contacts or

1 Channen Johnson through testimony? That would be
2 the August 7th, 2015, starting at 9:53 PM.

3 A. Starting on the 7th?

4 Q. Yes. 9:53 PM.

5 A. So right here at 2153, it was a dialed call,
6 meaning an outgoing call from this phone to the
7 phone number of (803) 406-8561, and that number was
8 identified as a C.J. in the phone. So if a call had
9 come in, you would have seen C.J. on the screen.
10 And that was subsequently associated with the
11 Johnson individual.

12 Q. Starting from that call, would you step through
13 the next three calls which are actually calls
14 between the LG phone found at JT [REDACTED] house and
15 Channen Johnson or C.J. individual?

16 A. So at 10:53, you have another dialed call,
17 outgoing to Johnson, that lasted nine seconds. At
18 11:20, you have a dialed outgoing call that lasted
19 three seconds. And then the same time, within that
20 same time period, another outgoing call that lasted
21 zero seconds.

22 Q. And then, I think, the last one after that?

23 A. The 2220 hours, incoming call from Mr. Johnson,
24 lasting eight seconds.

25 Q. After that call, can you briefly step through

1 the next three calls and explain what happens?

2 A. The next three calls are all -- the next two
3 calls are missed calls at 2321 and 2322 from a
4 number identified as being from Dorothy White. And
5 then there was a received call at 2342 that lasted
6 six minutes and 16 seconds from Dorothy White.

7 Q. The next call after that at 1:59 AM on the
8 morning of August 8th, what kind of call was that?

9 A. It's an outgoing phone call from the LG phone
10 to Carl, listed as Carl in contacts, that lasted 31
11 seconds.

12 Q. The next call after that?

13 A. Two dialed phone calls, outgoing at 2:27 AM and
14 again at 2:30 AM, to Dorothy White, the first one
15 showing a zero-second duration, the second one eight
16 minutes and 18 seconds. Again, at 2:46 was an
17 incoming call back from Dorothy White to the LG
18 phone that lasted nine minutes and 14 seconds.

19 Q. After that, would you tell the jury about the
20 next two phone calls?

21 A. And incoming missed call at 8:47 AM from Carl,
22 then a dialed call going out to Carl at 8:48 AM that
23 lasted 36 seconds.

24 Q. Can you slide that up, please, so the jury can
25 see it? Point out on there the two phone calls or

1 the -- actually, the three phone calls that deal
2 with Carl.

3 A. After the private numbers?

4 Q. Yeah. Some of the jurors couldn't see because
5 it was low.

6 A. I'm sorry. Right here, the two, a missed call
7 at 8:47 and then a dialed call to Carl at 8:48.

8 Q. And again, a dialed call, so that would be from
9 that LG phone and out, correct?

10 A. That is correct.

11 Q. Now, after that time of the dialed call at
12 8:48 AM on Saturday, August 8th, 2015, are there any
13 more outgoing calls?

14 A. There are none.

15 Q. I'm sorry?

16 A. No outgoing calls.

17 Q. There are no more outgoing calls after 8:48 AM
18 on Saturday morning, August 8th?

19 A. Correct.

20 Q. And you testified that the text box or the --
21 what would contain outgoing texts was empty,
22 correct?

23 A. Yes.

24 Q. As far as incoming calls after that point, do
25 you detail that on the rest of your summary?

- 1 A. Yes, sir, there are incoming missed calls and
2 incoming text calls.
- 3 Q. There are two received texts, correct?
- 4 A. Yes, sir.
- 5 Q. And who are those texts -- according to the
6 contacts or testimony, who do those belong to?
- 7 A. The first one listed here on the 8th at
8 10:55 AM is an incoming text from Carl. And it
9 reads: You don't see me calling you?
- 10 Q. And the other text?
- 11 A. The other text messages recorded was on August
12 9th at 1943 hours, incoming text message from Kay --
13 listed as Kay in contacts. And it reads: Where are
14 you? Ain't heard from you in two days. Where are
15 you? Call me ASAP. If you don't, I'm coming and
16 I'm dialing 911. Call me.
- 17 Q. So your summary, I believe, is a four-page
18 summary, correct?
- 19 A. Yes, sir.
- 20 Q. The last outgoing call that you were able to
21 find was on the first page on Saturday, August 8th
22 at 8:48, correct?
- 23 A. Yes, sir.
- 24 Q. After that time, you have two incoming texts?
- 25 A. Yes, sir.

1 Q. And the rest of the first page, the second
2 page, the third page, and the fourth page are all
3 people trying to contact that phone without success?

4 A. That's correct.

5 MR. GRAHAM: Thank you, Mr. Phipps. Please
6 answer any questions the Defense may have.

7 THE COURT: All right. Mr. Stitely?

8 MR. STITELY: Thank you, Judge.

9 FURTHER RECROSS-EXAMINATION

10 BY MR. STITELY:

11 Q. Mr. Phipps, as Mr. Graham started with, you
12 were there collecting the evidence from the crime
13 scene that August 9th into 10th, correct?

14 A. Yes, sir.

15 Q. Taking pictures, correct?

16 A. That is correct.

17 Q. And working closely with Agent Derrick --
18 Officer Derrick as she was collecting her
19 information?

20 A. Yes.

21 Q. You saw the bloody sandals that we talked
22 about?

23 A. Yes, sir.

24 Q. Were they male or female?

25 A. Sandals. I don't recall if they had a color to

1 associate.

2 Q. Do you remember them being blue and yellow
3 polka-dotted?

4 MR. STITELY: May I approach, Your Honor?

5 THE COURT: Yes, sir.

6 THE WITNESS: That photo was taken in the lab
7 when they were removed from the container they were
8 in. We were just looking down through the container
9 at all the stuff. I didn't get a good look at them
10 at that point.

11 BY MR. STITELY:

12 Q. But you saw them later in the lab?

13 A. No, sir.

14 Q. So you only saw them at the scene, but you
15 didn't actually see them when they were taking this
16 picture?

17 A. Right. I wasn't there when they were
18 photographing them.

19 Q. But they were collected in evidence by the
20 sheriff's department?

21 A. Yes.

22 Q. Do you know if they were sent to Richland
23 County to be tested?

24 A. Not to my knowledge.

25 Q. What about the other pairs of sandals?

1 A. I wasn't involved in selecting items of
2 evidence to be processed.

3 Q. I know it sounds a little graphic, but did you
4 have an opportunity to examine the body at all when
5 it was at the scene?

6 A. From a distance. CSI Derrick was the one
7 primarily concerned with the bedroom area. I was
8 just assisting her and handing her packaging
9 material as she would bag the stuff up.

10 MR. STITELY: Beg the Court's indulgence for
11 half a second.

12 THE COURT: Yes, sir.

13 BY MR. STITELY:

14 Q. I'm going to show you number 26 that's in
15 evidence. Was that the decedent's foot, to your
16 recollection?

17 A. Yes, sir.

18 Q. Do you notice it covered with blood all over
19 it?

20 A. Yes, sir.

21 Q. There's blood all over her foot?

22 A. No. You said the cover?

23 Q. No. I'm sorry. Her foot. Is her foot covered
24 in blood?

25 A. No, sir.

1 Q. As far as the cell phone, the phones that we
2 saw, particularly the one that you talked about in
3 number 7, did it have a SIM card in it?

4 A. It did not.

5 Q. We're in a new age of technology now with the
6 SIM cards, fair?

7 A. Yes, sir.

8 Q. What kind of phone do you use, iPhone or Droid?

9 A. Droid.

10 Q. I have a Droid too. If you were to take your
11 SIM card out of your phone and place it in my phone
12 and dial a call, what would happen? What number
13 would show up?

14 A. It depends on the network that you're on. CMA
15 networks, such as Verizon, utilize a SIM card, but
16 it doesn't allow you to swap SIM cards between
17 phones.

18 Q. How about those pay-by-night companies, the
19 TracFones?

20 A. AT&T and T-mobile are on the GSN network.
21 Theirs, you can actually move a SIM card from one
22 device to the other. And as far as the network is
23 concerned, they don't care that you've done that.

24 Q. Right. So say we're both on that same AT&T
25 network and you put your SIM card in my phone and

1 dial the number. What number would show up on the
2 receiving person, your number from your SIM card or
3 the number that was originally on my card on my
4 phone?

5 A. It's the SIM card. It's registered to the SIM
6 card.

7 Q. So if you put someone else's SIM card in my
8 phone on one of those networks and made a call, the
9 SIM card number shows up, not my number, correct?

10 A. That is correct.

11 Q. What about, like, location data? Would it work
12 the same way?

13 A. I'm sorry. I'm not tracking now.

14 Q. The call being placed from a certain -- would
15 it apply to where the original phone was or the
16 phone using the SIM card is?

17 A. It's the physical location of the device. In
18 other words, if I remove a SIM card here and drive
19 across town and put it in another phone, it's not
20 going to come back to the phone here.

21 Q. It's going to come to the SIM card location?

22 A. Correct.

23 Q. And the SIM card was not located in the phone
24 of Mr. Coffey's, number 7?

25 A. It was not.

1 Q. Do you know where it went?

2 A. No, sir.

3 Q. Just briefly, in going through this call log,
4 and it's in evidence, you said that -- in direct
5 that no call connected after 8:48 AM; is that
6 correct?

7 A. You're speaking of the last time that there was
8 contact?

9 Q. Yes, sir.

10 A. I have to look at two points in this.

11 Q. Yes, sir. I'm referring to your summary chart,
12 the one in evidence as --

13 A. I don't have a copy of the chart.

14 THE COURT: How about point him in the
15 direction --

16 MR. STITELY: Sorry, Judge.

17 THE COURT: That's all right. That you're
18 referring to.

19 BY MR. STITELY:

20 Q. That's my copy I handed you. That should be
21 the same page you got from the Solicitor's Office.
22 I'm looking at page -- well, it starts at number
23 one. And you see a series of missed calls all
24 following 8:48, including that missed text that you
25 spoke at 10:55, correct?

1 A. Right.

2 Q. Missed calls. And you see the incoming texts
3 you talked about from Carl. But on page 2 there's
4 an abnormality or a difference, correct?

5 A. Yes, sir.

6 Q. It says incoming call?

7 A. Uh-huh.

8 Q. Right there, August 8th, 2015, incoming?

9 A. Correct.

10 Q. Where every other call says missed, all the way
11 down. That means the phone connected, doesn't it?

12 A. Again, just like you say, it's an abnormality.
13 Without testing the phone to see if it -- it
14 registers zero seconds duration. Don't know what
15 causes that to register within the phone itself.
16 You'd have to refer back to the call records from
17 the service provider probably to determine that.

18 Q. You have the phone and the call records. What
19 do they show?

20 A. That's to Kay. I don't have Kay's records.

21 Q. Okay. So you can't answer that one effectively
22 from what you have?

23 A. Correct.

24 Q. Actually, as we're looking at this page, Pete
25 tried to call her that day as well?

1 A. Correct.

2 MR. GRAHAM: Objection; would be speculation.

3 The contact shows what it shows, not who actually
4 called.

5 THE COURT: Rephrase the question. Restate it
6 for me.

7 BY MR. STITELY:

8 Q. The number listed in her phone for Pete called
9 a couple times during that day as well, correct?

10 A. Yes, sir.

11 Q. Just very -- just a couple more things.
12 Private number. Do you, at the sheriff's
13 department, have the ability to actually request the
14 provider records for this LG phone? For her phone
15 number, can you request provider records from
16 whoever the provider was?

17 A. Yes. I mean, we know the phone number and we
18 know that it was a TracFone.

19 Q. Were you able to make any headway into this
20 private number? Did you do any investigating on
21 that at all?

22 A. No, sir.

23 Q. How about this number that shows up a number of
24 other times as well, (803) 755-6570? Did you do any
25 investigation as to that number?

1 A. No, sir.

2 Q. Do you have the ability at the sheriff's
3 department to issue subpoenas to find out what a
4 phone number is?

5 A. Yes, sir.

6 Q. Did you do that on this one?

7 A. I wasn't part of the investigative force behind
8 researching phone records. I deal mainly with the
9 hardware side of the device.

10 Q. Do you know if anyone at the sheriff's
11 department just picked up their phone and dialed
12 that number to see who answers?

13 A. I don't know if they did.

14 Q. Because they called a number of times; is that
15 correct?

16 A. Yes, sir.

17 Q. How about this 238-9546 number? Any idea who
18 that is?

19 A. No, sir.

20 Q. Same question. Do you know if anyone called it
21 or researched it?

22 A. I don't.

23 Q. Thank you, Mr. Phipps. That's all the
24 questions I have.

25 THE COURT: Thank you, Mr. Stitely.

1 Redirect, Solicitor?

2 MR. GRAHAM: Yes, Your Honor, briefly.

3 FURTHER REDIRECT EXAMINATION

4 BY MR. GRAHAM:

5 Q. Mr. Stitely was asking you about a specific
6 call that was an abnormality Saturday, August 8th at
7 1943, or 7:43 PM, correct?

8 A. Correct.

9 Q. The number associated with that was what?

10 A. (803) 800-1094.

11 Q. And that was listed as who?

12 A. Kay.

13 Q. And there was a text from Kay as well, correct?

14 A. Yes.

15 Q. Would you republish that text that was sent by
16 Kay on August 9th -- on Sunday, August 9th at 7:43
17 PM?

18 A. Her text reads: Where are you? Ain't heard
19 from you in two days. Where are you? Call me ASAP.
20 If you don't, I'm coming and I'm dialing 911. Call
21 me.

22 Q. When you performed your analysis and looked at
23 State's 79, which is the LG cell phone, did it have
24 a SIM card in it? If you need to look, we can --

25 A. Let me refer to my notes.

1 Q. Do you need something to open it?

2 A. Yes, sir, it does have a SIM card.

3 Q. So, for instance, you don't know when that SIM
4 card was put in there or taken out. You know it was
5 there when you recovered it and you analyzed it,
6 correct?

7 A. Yes.

8 Q. How would that SIM card affect the summary of
9 the records?

10 A. It does not. The data remains on the phone.
11 If you take the SIM card out and put it on another
12 phone, it doesn't take all that data with it. It
13 resides on the device that the calls were placed.

14 Q. So what you saw were calls made to a -- is this
15 similar -- this SIM card -- if that SIM card was
16 moved to another phone, would the other phone answer
17 as well, kind of like what Mr. Stitely was asking
18 you?

19 A. Yes. If it's a CDMA network and you remove the
20 SIM card from this phone and place it in another
21 phone and someone tries to call that number, the
22 other phone does ring. The scenario we have with a
23 piece of hardware that was found with the Item No. 7
24 with the missing SIM card, that IMEI number
25 specifically relates back to the AT&T record.

1 So you can't -- you know, that missing SIM card
2 from Item No. 7, had it been placed in another phone
3 and a call placed to or from that phone, then the
4 records would reflect the new IMEI number.

5 So in this instance, the records are
6 specifically pointing to that specific piece of
7 hardware without any regard to the SIM card that was
8 or was not in it at the time.

9 Q. So let me ask you a couple of questions based
10 on that then. State's 102, the photograph, that's
11 the phone that you said was associated with the
12 records that show the account suspended on August
13 2nd, I think it was, with no further tower location,
14 correct, the number for the 629-2011?

15 A. Yes, August 2nd.

16 Q. The contact is Pete?

17 A. Yes.

18 Q. The SIM card is missing?

19 A. It is.

20 Q. If that SIM card had been removed and put into
21 that LG phone found at JT [REDACTED] house, where
22 would those calls be recorded? Would they be
23 recorded on the phone records that we discussed with
24 this?

25 A. Right. As far as the service provider is

1 concerned, when it appears -- the SIM card is keyed
2 to the service provider, so the SIM card removed
3 from that phone and placed in another phone, those
4 calls would still reflect on the original records
5 for the AT&T account, whatever.

6 Q. So whatever SIM card was in here, if it was put
7 in any phone after August 2nd of 2015 and calls were
8 made or received to that phone, it would have shown
9 in the records?

10 A. Either shown in the records or been blocked
11 based on the fact that they've already recorded it
12 in their system as lost hardware and turned it off
13 at that point.

14 Q. You don't see evidence from the phone records
15 of any outgoing calls from Mr. Coffey's SIM card?

16 A. That's correct.

17 Q. So if Mr. Coffey somehow came in possession of
18 that LG phone and, hypothetically, went to his own
19 house and put his own SIM card in and made a phone
20 call at 1:59 AM to Carl, if that happened and it
21 went through, it would be on those records that you
22 got that are related to the 629-2011 number?

23 A. Correct.

24 Q. And there are no calls reflecting that,
25 correct?

1 A. Correct.

2 Q. Or that the 8:47 or 8:48 AM call?

3 A. Correct.

4 Q. In fact, those phone calls occurred from the
5 SIM card that was in JT [REDACTED] phone, the LG
6 phone found at her house, correct?

7 A. Right.

8 Q. Otherwise, they would not have appeared on the
9 screen shots? They had to be made from that phone?

10 A. Correct.

11 Q. Thank you, Mr. Phipps?

12 THE COURT: Recross?

13 MR. STITELY: Nothing further.

14 THE COURT: Thank you very much, Detective
15 Phipps. You may step down.

16 Solicitor, you may call your next witness.

17 MR. GRAHAM: Thank you, Your Honor. The State
18 calls Dr. Janice Ross.

19 THE COURT: If you would come around and be
20 sworn for us, Doctor.

21 JANICE ROSS, M.D.

22 being first duly sworn, testified as follows:

23 THE WITNESS: I do.

24 THE CLERK: Have a seat, Doctor. Once you're
25 seated, state your full name, spelling your last.

1 THE WITNESS: Janice Edwards Ross, R-O-S-S.

2 DIRECT EXAMINATION

3 BY MR. GRAHAM:

4 Q. Dr. Ross, can you tell the jury a little bit
5 about your educational background?

6 A. Yes. I have a four-year degree in biology from
7 the University of South Carolina and I did four
8 years of medical school, getting my M.D. from
9 Upstate Medical Center in Syracuse, New York where I
10 did further training in pathology.

11 The field of pathology, as opposed to a
12 pediatrics or surgery, is a field where we learn how
13 to identify diseases by looking at tissue under the
14 microscope, by using laboratory work. And then
15 we're also trained on how to do an autopsy to find a
16 cause of death.

17 I did further training in the area of forensic
18 pathology, which trains us how to do a forensic
19 autopsy to find a cause of death and a manner of
20 death to identify injuries, patterns of injuries,
21 and to collect proper specimens for the court of
22 law.

23 Q. How many autopsies have you performed in your
24 career?

25 A. About 12,000.

1 Q. How many times have you been qualified as an
2 expert in court as a forensic pathologist?

3 A. At least 200 times in the state of South
4 Carolina.

5 MR. GRAHAM: Your Honor, the State would offer
6 Dr. Janice Ross as an expert in the field of
7 forensic pathology.

8 MR. STITELY: Without objection.

9 THE COURT: All right. Again, ladies and
10 gentlemen, you've heard my instruction concerning
11 expert witnesses, expert testimony.

12 Dr. Janice Ross is qualified as an expert in
13 the field of pathology and forensic pathology,
14 specifically, to give opinion testimony in that
15 regard and the bases for those opinions. You, being
16 the finders of the facts, credibility of the
17 witnesses, it is entirely up to you, whether expert
18 or nonexpert, you give it the weight and the value
19 you deem fit and appropriate.

20 Thank you, Mr. Stitely.

21 Thank you, Solicitor. You may continue.

22 MR. GRAHAM: Thank you, Your Honor.

23 BY MR. GRAHAM:

24 Q. Dr. Ross, did you have an opportunity to
25 perform an autopsy on an individual identified as

1 JT

2 A. Yes, I did.

3 Q. What was the date of your autopsy?

4 A. It was on August 10th, 2015.

5 Q. In general terms, can you provide the jury an
6 understanding of what you do at an autopsy, how it's
7 performed, and in what order it's performed?

8 A. Yes. We do autopsies for any coroner in the
9 state of South Carolina and they authorize and
10 schedule it with us. The patient is brought to us
11 in a body bag in the morgue at Newberry County
12 Memorial Hospital where we open bag -- we photograph
13 the bag, open the bag, photograph the external body
14 clothed and unclothed, take an inventory of the
15 clothing.

16 And depending on injuries, we will do further
17 studies, rape kits, fingernail clippings, whatever.
18 If there's a bullet involved, we'll do an x-ray
19 before -- as an external activity before we do the
20 internal examination of each organ.

21 Q. During the external examination of JT

22 what did you observe?

23 A. We saw multiple injuries to her head and injury
24 to her anus.

25 Q. When you did -- and you documented those

1 through photographs?

2 A. Yes.

3 MR. GRAHAM: Your Honor, I want to show
4 Dr. Ross photographs that have been premarked 137
5 through 143 and ask her if she recognizes those
6 photographs.

7 THE WITNESS: Yes, I do.

8 BY MR. GRAHAM:

9 Q. Are those photographs that were taken during
10 the autopsy of Ms. JT

11 A. Yes.

12 Q. And do they fairly and accurately depict what
13 you saw?

14 A. Yes.

15 Q. Would they help you to explain those injuries?

16 MR. GRAHAM: Your Honor, the State would offer
17 those into evidence.

18 MR. STITELY: Without objection.

19 THE COURT: State's 137 through 143 is in
20 evidence without objection.

21 (State's Exhibit Nos. 137 through 143 admitted
22 into evidence.)

23 MR. GRAHAM: Permission to publish, Your Honor?

24 THE COURT: You may publish.

25 BY MR. GRAHAM:

1 Q. Dr. Ross, 137, the photograph of JT would
2 you describe to the jury what clothing that you
3 found on her body when she was brought to the
4 autopsy?

5 A. That sleeveless shirt in the photograph is the
6 only thing that she had on. And it was pulled up
7 kind of over from the back, above her breasts. And
8 the photograph also shows injury to the face and
9 head.

10 Q. Did she have any other clothing on her?

11 A. No.

12 Q. One of the things that you look for in
13 autopsies are things called defensive wounds,
14 correct?

15 A. That's correct.

16 Q. What are defensive wounds?

17 A. Usually they're wounds, lacerations, or bruises
18 on your hands or forearms. And they're just what it
19 sounds like; in a move to defend yourself, you put
20 your hands and your arms up. But there were no
21 injuries.

22 Q. So you saw -- there were no defensive wounds
23 that you found on her body?

24 A. Correct.

25 Q. Indicating that she never had her hands up and

1 was struck with any kind of object or anything like
2 that?

3 A. Just shows there's no injury there.

4 Q. All right. Can you describe to the jury what
5 injuries were observed to her face on the
6 photograph?

7 A. These -- there are some bruises -- it's
8 difficult to see, but there's a little laceration
9 there. These are all lacerations and there were
10 some on the left ear and the back of left head.

11 A laceration is a splitting of the skin caused
12 by being hit by a blunt object as opposed to a sharp
13 implement, like a knife, which causes an incised
14 wound. But these are all blunt force injuries.
15 Some of them look fairly straight, some of them are
16 curved.

17 These up here on the midforehead or right
18 forehead are kind of -- there are several of them on
19 top of each other. It's difficult to identify
20 individually. But totally, we have about 21 or -2
21 injuries to the head.

22 Q. So 21 or 22 injuries to the head from not
23 lacerations, but blunt force trauma?

24 A. Correct. Well, they are lacerations from blunt
25 force trauma.

1 Q. Not from a knife?

2 A. Correct.

3 Q. State's 138. Are you able to tell what part of
4 the body that is and where?

5 A. This is the left eye. These are injuries on
6 the forehead. And this is what I call a compound
7 laceration. It looks like one continuous one, but
8 it -- and it could be one or it could be two
9 individual ones. That's why I say 21 or 22.

10 Q. State's 137. Can you orient the jury again?
11 And what are we looking at there?

12 A. That's a similar area with the -- that's the
13 more difficult. This is the -- these are the eyes
14 and the nose and this injury here above the right
15 eye.

16 Q. And those injuries are similar to the others
17 you described earlier?

18 A. Yes.

19 Q. State's 140.

20 A. This is in the left back of the head. And,
21 again, it looks like it's probably from three
22 different blows because there's injury -- there's a
23 linear here, linear laceration here, one here, and
24 one here.

25 Q. State's 141?

1 A. This is the left ear. There's a laceration
2 here that actually cut the ear in two, and there's
3 another laceration right in front of it.

4 Q. State's 143, what is it that you documented
5 there?

6 A. That is a photograph of the external anus,
7 which is right here. But this is all swelling and
8 some reddening from hemorrhage underneath the skin.

9 Q. Do those pictures we've looked at fairly
10 document the external injuries you observed?

11 A. Yes.

12 Q. What would be the next step in your autopsy at
13 this point?

14 A. We do an internal examination of each organ to
15 see if there's injuries to the organs and/or a
16 natural disease.

17 Q. At some point, a rape kit was collected; is
18 that correct?

19 A. Before we opened anything, we did a -- I do my
20 own rape kits, which means we do individual swabs of
21 the mouth, separate that, and then we do swabs of
22 the vagina, separate that, and then we do swabs of
23 the rectum, and separate that. Those are put
24 into -- because they can be a little bit wet, they
25 are put into paper envelopes. And those envelopes,

1 after they're dried, are put into a plastic
2 container, which is sealed and signed. All those
3 packages are individually signed by myself.

4 Q. Doctor, let me show you what's in evidence as
5 4A and ask if that reflects the rape kit that you
6 took from JT [REDACTED]

7 A. Yes.

8 Q. So you personally collected all of those
9 samples?

10 A. Yes.

11 Q. And I believe then you turned them over to
12 Coroner Fisher, correct?

13 A. Correct.

14 Q. So what's the purpose of collecting those
15 swabs?

16 A. The swabs are then submitted to SLED to look
17 for DNA and to look for any kind of sperm.

18 Q. So when you create the -- when you collect the
19 swabs -- and I'm not trying to -- I need you, in
20 detail, to tell me how you collect them.

21 Are you swabbing, for instance, the outside of
22 the vagina and the outside of the rectum or are you
23 swabbing the outside and how far inside?

24 A. Inside, we -- for the mouth, we go inside
25 underneath the inside of the lips and the tongue.

1 And for the vagina, we go up two or three inches and
2 swab around, twist the -- the swabs are kind of like
3 long Q-tips, so we can get a good collection by
4 twisting them, and then all the surface gets some
5 material on it.

6 Same thing with the rectum, we go up -- and
7 when we did the rectum, we saw some blood on the
8 swabs as well. So we go up maybe a couple of inches
9 into the rectum to swab that.

10 Q. On the vaginal and rectal swabs, why do you go
11 two to three inches inside as opposed to swabbing
12 the exterior of the vagina and the rectum?

13 A. Just to make sure we get a specimen that would
14 indicate penetration into the vagina and rectum.

15 Q. So, for instance, if somebody -- let's say
16 Ms. White wore a pair of shorts and somehow
17 inadvertently, without her knowledge, semen was put
18 on a pair of boxers and she wore those boxers.
19 Would you expect to find samples of that semen or
20 DNA two to three inches inside her vagina or two to
21 three inches inside the rectum that you're
22 collecting?

23 A. Well, first of all, if they are underpants on
24 her, on the victim, then we collect those separately
25 and submit those to SLED for same thing, DNA and

1 sperm analysis. But you have to think that,
2 perhaps, the underwear were put on after the fact.
3 So we would still do the same type of procedure,
4 even if there were underwear there.

5 Q. But I guess my question is, would you expect --
6 the reason you go two to three inches in as opposed
7 to external, you said, was to look for penetration,
8 correct?

9 A. Correct.

10 Q. That's why you're not collecting specimens from
11 the outside of the vagina or outside of the rectum?

12 A. Correct.

13 Q. After you collected the CSC kit, did you then
14 perform an internal examination?

15 A. Yes.

16 Q. On your internal examination, what, if
17 anything, did you find as far as evidence of rape or
18 trauma to her rectum?

19 A. When the abdomen was opened, there was a
20 free-lying large cucumber on top of the intestines?

21 Q. Let me show you State's 142 and ask if that's
22 what you're referring to.

23 A. It is, yes.

24 Q. So when you say free-lying, can you give the
25 jury an idea of how many inches from, let's say, the

1 external part of the rectum up inside her body that
2 cucumber was found?

3 A. You see, it's not -- it's outside of the
4 intestines, but inside the abdomen. The rectum, we
5 could see, was perforated about -- well, ten
6 centimeters above the anus. There's 2.2 centimeters
7 per inch, so it's a little over four inches we could
8 see a perforation of the rectum. And this was right
9 about there.

10 The very -- let me see. This is found towards
11 the rectum. This is the pubic area, up this way
12 would be the head. So the -- this was probably
13 right there, a couple of centimeters or an inch
14 above where the perforation was in the rectum.

15 Q. So in the process of the internal examination,
16 is it fair to say that the cucumber that you found
17 here that's shown was entirely out of the rectum?
18 It had gone through that perforation and none of it
19 was even left inside the rectum?

20 A. Correct, yes.

21 Q. What kind of force would be required to do
22 that?

23 A. It would be significant force. The rectum has
24 a muscular wall, and the first 20 centimeters or so,
25 the first -- be about the first six or eight inches,

1 is fixed, it's fixed to the wall of the internal
2 body. So it would take a significant force to get
3 that through the anus, which has a sphincter that's
4 solid muscle also, and then to go through the wall
5 of the rectum.

6 Q. So looking at 143, can you show -- why did you
7 take that photograph?

8 A. It's evidence of some injury to the anus and
9 had some swelling and some redness to it, which
10 is -- in other words, bruising.

11 Q. In your opinion, is that consistent or
12 inconsistent with the cucumber being put inside her?

13 A. It's consistent with, yes.

14 Q. Once the cucumber was identified and
15 photographed here, in your observations of the
16 cucumber at the time before the removal of the body,
17 did you notice any foreign substances, such as hair,
18 on the cucumber?

19 A. No, I did not.

20 Q. Would you expect -- and this is a question as
21 your opinion as an expert in the field. You were
22 just talking about the length the cucumber would
23 have to travel and the different muscles and the
24 type of muscles it would have to make it through and
25 through the intestines and the rectum itself to end

1 up here.

2 Do you have an opinion as to whether, if there
3 were hair on the cucumber prior to its insertion,
4 whether it would have survived that trip and be
5 found in the body cavity?

6 A. I would not think so.

7 Q. Now, after you and your staff photographed this
8 cucumber here, did you-all remove it from there?

9 A. Well, I removed it. And in order to get a
10 picture of it without a dirty outside, I put it on
11 the sheet, which was underneath the body and came
12 with the body, just to get a picture of the cucumber
13 by itself with a bland background.

14 Q. Let me show you State's 44. Is that what
15 you're referring to?

16 A. Yes.

17 Q. Now, at that time it was removed from that
18 sheet and then placed into a plastic bag?

19 A. Correct.

20 Q. And then it was taken into the custody of the
21 Sheriff's Department, I believe?

22 A. Yes, CSI Derrick.

23 Q. So any hair being observed in this photo, for
24 instance, there on the white sheet --

25 A. Yes.

1 Q. -- or in this location --

2 A. Yes.

3 Q. -- or this hair that appears to be between the
4 cucumber and her hand right there, you did not
5 observe any of those hairs when you removed it from
6 JT body?

7 A. No, I did not.

8 Q. Doctor, let me show you State's Exhibit 83,
9 which is a hammer. Have you had an opportunity --
10 or did you have an opportunity to actually look at
11 that hammer during autopsy?

12 A. Yes. That was brought to the morgue at the
13 time of the autopsy.

14 Q. The 21 or so blows that you discussed, do you
15 have an opinion as to whether this hammer could be
16 or is consistent with the injuries that you observed
17 on Ms. JT head?

18 A. Yes. That weapon is -- could have made those
19 injuries.

20 Q. As you continued your internal examination, is
21 part of that reflecting the scalp so you can
22 actually look at, in this case, the injuries on the
23 inside of the skull of Ms. JT

24 A. Yes.

25 Q. Let me show you a photograph and ask if you

1 recognize it.

2 A. Yes. That's the skull -- on top of the skull
3 of JT [REDACTED] at the time of the autopsy.

4 Q. And would -- this photograph, it's fair and
5 accurate when you or your staff took it, correct?

6 A. Yes.

7 Q. Would that help you explain to the jury the
8 injuries that you found on JT [REDACTED] skull?

9 A. Yes.

10 MR. GRAHAM: Your Honor, the State would offer
11 this into evidence at this time.

12 MR. STITELY: Judge, that's the picture we've
13 discussed previously. We would object to the
14 nature. It wasn't apparent directly as far as the
15 injuries and I don't think it's required to
16 establish the cause of death.

17 THE COURT: Step out, please, a moment, ladies
18 and gentlemen. Do not discuss the case during this
19 brief recess.

20 (The jury exits the courtroom at 12:25 PM.)

21 THE COURT: Doctor, I'm handing you State's
22 144. Can you explain to me what it shows?

23 THE WITNESS: It shows the fractures -- a
24 comminuted fracture, a fracture such that there's
25 pieces totally separated from this part of the bone.

1 So we can all -- but it shows multiple fractures and
2 brain tissue.

3 THE COURT: Would that -- if at all, is that
4 related to the degree of force?

5 THE WITNESS: Yes.

6 THE COURT: And when I say related, I take it
7 that would relate it to a greater or more
8 significant degree of force if you did not have
9 those injuries?

10 THE WITNESS: Correct.

11 THE COURT: All right. Thank you, Doctor.

12 Reviewing the photographs, I take it 144 and
13 145 are the -- 145, being a color photograph of the
14 same area of 144; is that correct, Doctor? This is
15 just color and black-and-white.

16 THE WITNESS: Yes.

17 THE COURT: The State has withdrawn 145 and is
18 offering 144, the black-and-white photograph of the
19 area in the brain after the reflection of the scalp.
20 Of course, y'all are all familiar with the standard
21 probative value balance and unfair prejudice. All
22 evidence should be prejudicial. It's only unfair
23 prejudice when that unfair prejudice outweighs the
24 probative value.

25 I think there is a high degree of probative

1 value for -- in this particular photograph for
2 several reasons; the doctor has testified that it
3 would assist her in her testimony and explanation to
4 the jury; further, that it would relate to the
5 degree, the significance of the force exerted to
6 cause that type of fracturing, and you would see
7 that down into the internal examination of the body
8 of the victim after the scalp has been reflected.

9 This is not -- expert testimony is also used to
10 explain testimony that is knowledge that is not
11 within the realm of the average juror. Here, we
12 have an expert that has performed over 12,000
13 autopsies, and to really explain that testimony to
14 the jury, I think the photographs are of a high
15 probative value.

16 I also think withdrawing -- I think neither of
17 these photographs are gruesome, quite frankly. I do
18 not. But that's in the eye of the beholder, of
19 course. But withdrawing the color photograph and
20 then offering only the black-and-white, I think --
21 as I say, I don't think either photograph are
22 gruesome or tend to suggest what verdict the jury
23 should find based on some type of appeal to the
24 motion. Circuit judges, trial judges, jurors, many
25 times, have to look at unpleasant and unappealing

1 photographs; however, they must do so
2 non-emotionally in that regard.

3 I further cite several cases for the
4 proposition that autopsy photographs have been
5 admitted in the past. Reflection of the skull
6 autopsy photographs have also been admitted. State
7 vs. Gray, 408 S.C. 601 was photographs taken at the
8 autopsy specifically in prosecutions, obviously, for
9 homicide. It is an autopsy. But that also goes to
10 the degree of malice, which is an essential element
11 that the State must prove in this regard.

12 Further, the State vs. Collins, the dog bite
13 case, State vs. Holder, which is autopsy case
14 photographs of a child, the photographs corroborated
15 the pathologist's testimony and aided the jury in
16 understanding the testimony. State vs. Edwards, 194
17 S.C. 410, holding in a murder prosecution, the trial
18 court did not abuse its discretion in admitting a
19 graphic photograph of the victim's decomposed body
20 where everything depicted in the photograph was
21 testified to in detail. There are many others,
22 going back to State vs. Franklin and the like.

23 So I would overrule the objection under 403,
24 find there's a high degree of probative value and
25 there is no undue prejudice in photograph, State's'

1 Exhibit 144.

2 MR. GRAHAM: Thank you, Judge.

3 (Court's Exhibit No. 5 marked for
4 identification.)

5 (The jury enters the courtroom at 12:33 PM.)

6 THE COURT: Thank you, Mr. Stitely.

7 Thank you, Solicitor. You may continue.

8 MR. GRAHAM: Thank you, Your Honor.

9 BY MR. GRAHAM:

10 Q. Dr. Ross, I showed you photograph 144 and I
11 asked you whether that would assist you in
12 explaining the internal injuries you found on
13 JT head and be able to explain the amount of
14 force used in the actual cause of her death; is that
15 correct?

16 A. Yes.

17 Q. Would that assist you in that?

18 A. Yes.

19 MR. GRAHAM: Your Honor, the State would offer
20 144 into evidence.

21 THE COURT: State's 144 is in evidence subject
22 to Defense objection.

23 (State's Exhibit No. 144 admitted into
24 evidence.)

25 BY MR. GRAHAM:

1 Q. Dr. Ross, when you performed the internal
2 examination of JT I talked about the reflection
3 of the scalp. What does that mean?

4 A. We cut the scalp behind the back of the head
5 and reflect it over so that we can see the top of
6 the skull and then we can remove the brain. In that
7 way, it preserves the possibility of viewing a body
8 in the funeral home, for instance.

9 Q. This is a black-and-white photo. Can you
10 orient the jury as to what we're seeing?

11 A. Yes. This would be the front -- this would be
12 towards the face, this is the back of the head.
13 This injury is a complete -- what I would call a
14 comminuted fracture, meaning that it is completely
15 separated from the rest of the bone, so you could
16 actually just pick it up as opposed to a linear
17 fracture.

18 This bone, underneath here is brain tissue,
19 which has been cut in two because of the pressure of
20 the injuries that press the bone down into the
21 brain. This right here is a normal suture. When
22 you're born, you're -- there are several different
23 bones in the skull that -- that become cemented in.
24 First, they're loose, but then they grow together,
25 and that reflects a suture. But these are all

1 fractures. This is another piece of bone, so
2 they're comminuted fractures. And that takes
3 significant force to do that.

4 Q. That's the type of force that would be
5 consistent with hammer blows to the head?

6 A. Yes, especially with something heavy like that,
7 yes.

8 Q. How many different breaks or fragments of bone
9 did you actually observe? Do you remember?

10 A. I don't recall. At least two. I think there
11 was one that fell out that we took a separate
12 picture of.

13 Q. The injuries -- earlier we were showing the
14 external part, now we're looking at the internal.
15 On her head, where did those blows occur?

16 A. Mostly the front, the forehead, and the front
17 of the frontal hairline, as well as the left side of
18 the head and the left back of the head.

19 Q. So the front left side and left behind the ear?

20 A. Correct.

21 Q. None on the top of the head?

22 A. No.

23 Q. And none in the direct back or on the right
24 side of the back?

25 A. There's a bruise on the right cheek, but not

1 the laceration.

2 Q. Are you able to tell whether the sexual assault
3 occurred first or whether the blows to the head or
4 the order of those events?

5 A. It's difficult. It's going to be close because
6 there is -- when you have circulation, that's when
7 you have -- meaning your heart is beating still and
8 you have blood circulating, that's when you get
9 bruises. So there was bruising and swelling of the
10 anus, but internally there was no hemorrhage around
11 the area of the rupture. So it's probably just
12 before death or right at the time of death.

13 Q. So the insertion of the cucumber was -- if I
14 understand right, the inflammation on the outside
15 indicates that blood is circulating and she's still
16 alive?

17 A. Correct.

18 Q. She could be in the process of dying, but she's
19 still alive?

20 A. Correct.

21 Q. And I may not have heard you correctly. So as
22 the cucumber is inserted and starts to perforate the
23 rectum, there was or was not evidence of
24 hemorrhaging?

25 A. There's no hemorrhage inside the abdomen, no.

1 Q. There was no hemorrhage in the abdomen?

2 A. No.

3 Q. So by the time the cucumber made its way
4 entirely up the rectum, tore the rectum, and came
5 out, she's not alive anymore; is that correct?

6 A. Right. It may indicate that there was some
7 rough sex beforehand, before the cucumber, or it
8 could be just right at the time of death.

9 Q. You're not able to say how long it took to have
10 her receive the 22 wounds, is that fair to say?

11 A. Correct.

12 Q. What would those wounds have done to her? As
13 she began to be hit by a hammer, what would happen
14 to her consciousness and what would happen to her
15 body?

16 A. She would be unconscious pretty much
17 immediately and take a few minutes to die.

18 Q. So if she was hit one time with the hammer that
19 you're seeing and the blows you saw and the external
20 examination as reflected on this broken scalp, you
21 would expect any one of those 21 to knock her out?

22 A. Yes.

23 Q. So after the first blow -- there are no
24 defensive wounds, so she did not have any injuries
25 of trying to block that blow; is that correct?

1 A. Correct.

2 Q. After the first blow, she's unconscious?

3 A. Correct.

4 Q. For the next 20 blows, she's not moving; is
5 that correct?

6 A. Correct.

7 Q. Thank you, Dr. Ross.

8 THE COURT: Thank you, Solicitor.

9 Mr. Stitely?

10 MR. STITELY: Yes, sir, just briefly, Your
11 Honor.

12 CROSS-EXAMINATION

13 BY MR. STITELY:

14 Q. Dr. Ross, did you do any fingernail scrapings
15 in this case?

16 A. I did. Let me make sure I have that on the
17 evidence form. I guess I did not, no.

18 Q. Why do we do fingernail scrapings at autopsy?
19 Could you explain to the jury what those are?

20 A. We take the whole tips of the fingernails, if
21 there are fingernails there, to look for DNA again.

22 Q. And when we were talking earlier -- so if
23 someone was to scratch someone across the back, what
24 you're looking for is the DNA that would be lodged
25 under their nails, correct?

1 A. Correct.

2 Q. So in a situation where you have a potential
3 defendant with scratch wounds, you would look to the
4 DNA under the victim's fingers to match it, correct?

5 A. That's correct.

6 Q. And that wasn't done in this case, is that what
7 you're saying?

8 A. That's correct. But I'm looking at a
9 photograph of the fingers and there's not really
10 much of a fingernail there. It's down to the quick,
11 so to speak.

12 Q. But you still didn't do any testing on her as
13 to her fingers?

14 A. Correct.

15 Q. Is that also one of those defensive wounds that
16 you talk about typically, look at their hands?

17 A. Yes.

18 Q. As far as a rape kit, consensual sex obviously
19 leaves the same indicators as far as seminal fluid
20 or DNA as nonconsensual sex, correct?

21 A. Correct.

22 Q. And you actually said rough sex could end up in
23 hemorrhaging, potentially, consensual or not,
24 correct?

25 A. Correct.

1 Q. So you can't make that finding from what you
2 observed in this case?

3 A. That's correct.

4 Q. Thank you, Dr. Ross. That's all I have.

5 THE COURT: Redirect, Solicitor?

6 MR. GRAHAM: No, Your Honor. Thank you.

7 THE COURT: Thank you, Solicitor.

8 Thank you, Dr. Ross, for being with us today.

9 You may step down and be excused.

10 Next witness, how long you think he or she will
11 be?

12 MR. GRAHAM: That was the State's last witness,
13 Your Honor, and the State would rest.

14 THE COURT: The State rests?

15 MR. GRAHAM: Yes, Your Honor.

16 THE COURT: Thank you very much, Solicitor.

17 Ladies and gentlemen, I think we'll take our
18 midday recess. We'll take our midday break. We
19 brought in lunch. You may certainly take a
20 walkabout if you'd like. You don't have to be held
21 captive in there. We'll say 2:00, 1400 hours. Do
22 not discuss the case during this brief recess.
23 Thank you very much. You may now go with the
24 bailiff.

25 (The jury exits the courtroom at 12:44 PM.)

1 THE COURT: Motions, Mr. Stitely?

2 MR. STITELY: Yes, sir.

3 At this time the Defendant would make a motion
4 for directed verdict as the evidence present is
5 insufficient at this point to go forward to the
6 jury.

7 THE COURT: Solicitor?

8 MR. GRAHAM: Your Honor, taking the evidence in
9 the light most favorable to the State, I think
10 there's a jury question of whether Mr. Coffey is
11 responsible. The witnesses have put him there using
12 her phone at 1:59 and 8:48 AM. She's known to be
13 alive, according to witnesses, at 10-something in
14 the evening, and she is never heard or seen from
15 again until her body is found. Her phone records
16 show there's nothing but missed calls. After that
17 8:48 phone call, there's no outgoing calls.

18 The physical evidence on scene, you have the
19 defendant's blood in the victim's house on the
20 shower curtain. You also have the victim's -- of
21 the defendant's blood, Your Honor. You also have
22 the victim's blood found on shorts that are found in
23 the defendant's house in the washing machine that
24 also contained the defendant's DNA on it. You also
25 have seminal fluid from a rectal swab. I believe

1 that matches to the extent a Y-STR can to the
2 defendant.

3 I think, Your Honor, in the light most
4 favorable to the State, that presents a jury
5 question of whether or not Mr. Coffey is guilty of
6 these crimes.

7 THE COURT: Thank you.

8 Do you have the indictments, Madam Clerk?

9 THE CLERK: Yes, sir.

10 MR. GRAHAM: I'm sorry, Your Honor. I did
11 neglect to say that on the swab of the DNA itself,
12 that Mr. Coffey's DNA was found on there as well.
13 So that would go to the rape charge itself and the
14 insertion of the foreign object into her. And then
15 the seminal fluid is found would go to any type of
16 intercourse.

17 THE COURT: Anything in response, Mr. Stitely?

18 MR. STITELY: Just briefly to the last point,
19 Judge. And I guess it would be a separate directed
20 verdict motion as to the CSC. I think through the
21 doctor's testimony she indicated that the actual
22 sexual trauma would have been post-death, so I don't
23 know if that would apply to criminal sexual conduct
24 in the first degree.

25 THE COURT: Although -- although she didn't use

1 this term -- well, let me start from the beginning.

2 As far as the standard I apply to the directed
3 verdict motion, looking in the light most favorable
4 to the State, the State being the nonmoving party,
5 to determine if there is sufficient evidence for the
6 offenses charged in the indictment to go forward to
7 the jury, as to the homicide, taking into account
8 both the timeline, based on witness testimony, and
9 phone records, that's both direct and circumstantial
10 evidence, the forensic examinations as to the
11 presence of blood and the presence of DNA of both
12 the victim and the defendant, mixtures of DNA of
13 both the victim and the defendant, also the presence
14 of forensic findings on the clothing that
15 circumstantially is the defendant's, both from
16 ownership examination by Dr. Amick and the findings
17 otherwise of blood, and the other findings as far as
18 the seminal fluid and such, the indictment
19 alleges -- I'll deny the motion for directed verdict
20 as to the murder charge. There's a -- that's based
21 on the injuries and the testimony of Dr. Ross and
22 the significant degree of force, the number of
23 wounds, the location of the wounds and such.

24 As to the criminal sexual conduct in the first
25 degree, I would note in the indictment there's

1 both -- indicates use of physical force or physical
2 violence of a high and aggravated nature to overcome
3 the victim, the defendant did commit sexual
4 intercourse and insert a foreign object into her
5 rectum. I would respectfully deny the motion for
6 directed verdict as to criminal sexual conduct in
7 the first degree, again, based on many of those
8 similar findings that I cited as to the murder.

9 But, additionally, if -- and as I say, the
10 doctor didn't use these terms. There's pre-death,
11 post-death, post-mortem, and perimortem. That would
12 be the issue of -- I guess, we're all in the process
13 of dying. She was much closer, ultimately, to post
14 and would had to be in perimortem for the foreign
15 object to penetrate the anus.

16 It would not have to -- there's an old case
17 that Judge Baggot tried up in Pickens about
18 penetration. It doesn't have to penetrate fully and
19 completely, it's however slight. And then, of
20 course, DNA findings as to -- circumstantially as to
21 sexual intercourse and the method in which the
22 doctor has described the manner in which she
23 collected the rape kit.

24 So I would respectfully deny the motion for
25 directed verdict both as to murder and criminal

1 sexual conduct in the second degree based on both
2 sufficient direct and substantial circumstantial
3 evidence.

4 Any other motions before we take our recess?

5 MR. STITELY: No other motions, Judge. We're
6 going to discuss testimony with our client over
7 lunch. We would also potentially request Officer
8 Derrick be available after lunch potentially.

9 THE COURT: Officer Derrick. Can you make that
10 happen, Solicitor?

11 MR. STITELY: At least have her on call,
12 standby close by.

13 MR. GRAHAM: I'm sorry. Do they want her here?

14 MR. STITELY: As long as we can get ahold of
15 her relatively quickly.

16 MR. GRAHAM: She works up in Chapin.

17 MR. STITELY: Okay. We'll let her know in
18 time.

19 THE COURT: Request to charge, specific request
20 to charge, y'all talk about it.

21 MR. STITELY: We will, Judge.

22 THE COURT: Just let me know pretty quick. I
23 don't know what's coming next. Thank you very much.
24 Court is in recess until 2:00.

25 (Luncheon recess 12:52 PM - 2:05 PM.)

1 MR. STITELY: The charges that we submit, I
2 guess, for murder and CSC first; is that correct?

3 THE COURT: Yes, sir. It's my understanding
4 murder and criminal sexual conduct first degree.

5 MR. STITELY: And, Judge, we'll just probably
6 rest on the record. Do you want me to go ahead and
7 do the motions at this point, assuming that's what
8 we intend to do, so we don't have to send them back
9 out?

10 THE COURT: Yes, sir.

11 MR. STITELY: Your Honor, we intend to rest on
12 the record. And that being said, after that, with
13 all of the evidence now in the record, we would make
14 a motion for directed verdict on both stating the
15 same things for the previous one, but now the entire
16 case is complete.

17 THE COURT: Based on the standard I must apply
18 at this stage of the proceeding, I would
19 respectfully deny the directed verdict both as to
20 murder and as to criminal sexual conduct in the
21 first degree.

22 Anything before I bring in the jury, Solicitor?

23 MR. GRAHAM: No, Your Honor.

24 THE COURT: Mr. Stitely?

25 MR. STITELY: No, sir.

1 (The jury enters the courtroom at 2:06 PM.)

2 THE COURT: All right. Welcome back, ladies
3 and gentlemen. I hope y'all had a pleasant recess.
4 As you heard before the break, the State has rested.

5 The Defendant now can present evidence and
6 testimony by way of defense if the Defendant chooses
7 to do so. A criminal defendant in South Carolina is
8 never required to prove himself or herself innocent.
9 A criminal defendant is always presumed to be
10 innocent, and the State always bears the burden of
11 proving its case beyond a reasonable doubt. As I
12 said, a criminal defendant may present evidence and
13 testimony if the defendant chooses to do so.

14 With that being said, we turn our attention now
15 to Mr. Stitely and Mr. Williams and ask, does the
16 Defense intend to present any evidence and
17 testimony?

18 MR. STITELY: The Defendant will rest.

19 THE COURT: All right. The Defendant rests.
20 You've now heard all of the evidence and all of the
21 testimony you're going to hear in the trial of this
22 case.

23 The procedure we follow now is the closing
24 arguments by the attorneys. The flow of those
25 closing arguments: The State goes first, being the

1 party bearing the burden of proving its case beyond
2 a reasonable doubt, and closes in full, followed by
3 the Defense closes in full. The State, under our
4 law, has the right for a brief reply closing
5 argument to any new matter that may be brought up by
6 the Defense in their closing arguments.

7 Please remember, again, closing arguments are
8 not evidence. The attorneys may comment on the
9 facts as they see them to be, the law, and how you
10 apply those facts to the law of the case.
11 Ultimately, you are the finders of the facts in the
12 case. It is the facts as you, the jury, find them
13 to be, and taking those facts -- the jury's
14 factfinding and comparing it to the law as I tell
15 you what the law is in making your decision of
16 whether or not the State has met its burden.

17 I can't tell you, I can't guesstimate the time
18 of how long the closing arguments will be. If
19 between the arguments, I would like to say, you want
20 a break, just let me know. Typically, I flow right
21 on. After the closing arguments, I may take a brief
22 break, depending on how long they go, and then I'll
23 see what the time is, because after the closing
24 arguments, I will instruct you on the law.
25 Depending on where we're at in the day, we'll either

1 press on today or we'll make other arrangements. So
2 please, please give the parties your complete and
3 undivided attention as you have done throughout the
4 trial of the case.

5 With that being said, Solicitor, you may
6 address the jury.

7 MR. GRAHAM: Thank you, Your Honor. May it
8 please the Court.

9 THE COURT: Yes, sir.

10 MR. GRAHAM: Force, fury, anger, rage, murder.
11 But that wasn't enough, was it? There was
12 humiliation. Why is there humiliation in this case?
13 Look at the way JT was left, naked out on her
14 bed, legs spread, tank top over her head, but a
15 pillow covering her face, and a cucumber shoved
16 inside her so far that it perforated her rectum and
17 ended up in her abdominal cavity. Humiliation.

18 Strangers don't come in the house though; you
19 heard several witnesses say that. What motive would
20 they have to lie? She'd only let people in that she
21 knew. There was a dead bolt keyed on both sides
22 when the police had to force their entry. Somebody
23 she knew killed her in rage. Somebody she knew
24 humiliated her with the way her body was left and by
25 shoving a cucumber inside her as she was dying.

1 That person is Peter Coffey; somebody she knew,
2 somebody she had a relationship with, not a
3 stranger. Pillow over her face --

4 THE COURT: Solicitor, I apologize.

5 Y'all step up here for a minute.

6 (Sidebar conference.)

7 THE COURT: Thank you, Solicitor.

8 Thank you, Mr. Stitely.

9 Y'all step out for a moment, please, ladies and
10 gentlemen. Do not discuss the case during this
11 brief recess.

12 (The jury exits the courtroom at 2:13 PM.)

13 THE COURT: Step around to the podium for me,
14 Mr. Coffey.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Place Mr. Coffey under oath,
17 please.

18 PETER COFFEY

19 being first duly sworn, testified as follows:

20 THE DEFENDANT: I do.

21 THE COURT: Mr. Coffey, you recall we had a
22 conversation on the record before our luncheon
23 recess about your right to testify or not testify.
24 You recall that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And I gave you the opportunity over
2 the lunch hour to think about that and to discuss
3 that issue with your attorneys. Do you recall that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Did you talk with your attorneys
6 during the lunch hour?

7 THE DEFENDANT: Yes, we talked.

8 THE COURT: Have you made your decision as to
9 your right to testify or not testify?

10 THE DEFENDANT: Yes, I have.

11 THE COURT: Is it your decision?

12 THE DEFENDANT: Yes, sir, it is.

13 THE COURT: Made of your own free will and
14 accord?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And you understand your right to
17 testify or not testify; is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: What is your decision?

20 THE DEFENDANT: I choose not to testify.

21 THE COURT: Thank you very much, Mr. Coffey.
22 You may return to your chair.

23 And I apologize, Solicitor. We discussed it at
24 the bench and then it got out of my vision. And I
25 apologize. I wanted to ask Mr. Coffey on the

1 record.

2 (The jury enters the courtroom at 2:16 PM.)

3 THE COURT: Thank you very much, ladies and
4 gentlemen.

5 Solicitor, you may proceed.

6 Thank you, Solicitor and Mr. Stitely.

7 MR. GRAHAM: Not a stranger, somebody she knew,
8 opened the door and let him in. She let in somebody
9 she thought was a friend. She wouldn't let in a
10 stranger. She wouldn't have let in somebody she was
11 afraid of. Somebody that she knew, that she had a
12 relationship with. But she opened the door to a
13 killer and a rapist and she didn't know that. She
14 didn't have any defensive wounds. You heard Dr.
15 Ross talk about that. Never had a chance to defend
16 herself, didn't see it coming.

17 You have to find him guilty beyond a reasonable
18 doubt. All the evidence came in from the stand.
19 Witnesses, you look at their motive to lie and their
20 motive to tell the truth. Did any of the people who
21 you heard a single time question their motive to
22 tell the truth? Did any of them get shown to have a
23 bias, a bias of why they would lie? I didn't hear
24 it. You rely on what you heard. That goes for the
25 police and that goes for JT friends. Why would

1 they lie? They weren't even accused of lying.

2 That's the evidence you have.

3 Reasonable doubt. So you're going to look at
4 this, every piece of evidence, the physical
5 evidence, the testimony and what you heard, and
6 decide whether there's reasonable doubt.

7 Mr. Stitely or Mr. Williams get to come up after me
8 and they're going to talk to you about reasonable
9 doubt.

10 What reasonable doubt are they going to talk
11 about? They're going to talk about semen somehow
12 ending up maybe in shorts, maybe shorts that the
13 victim wore and somehow that's how semen got in
14 **JT** Dr. Ross told you that they took the samples
15 from three inches inside to avoid that kind of
16 transfer.

17 So how did the semen get inside? How does DNA
18 get inside? Because there was sex. Every person
19 who testified though -- Kay said she was like a son.
20 There's a 20-year difference between these two, like
21 a son. She had lost her own sons and she treated
22 him like a son. Do you think it was consensual sex?
23 Do you think it was a stranger who come in after the
24 fact of them having consensual sex? Does that give
25 you reasonable doubt?

1 They're going to talk about unknown mixtures of
2 DNA on hair. Cucumber had three hairs on it.
3 Dr. Amick said that that bubble looked like it did,
4 from what they saw it was a mixture of at least
5 three people, the major contributor was an unknown
6 female, entered in CODIS. We don't know who it is.
7 There was a mixture of two males, at least one he
8 was able to develop a Y-STR profile, that was
9 entered into CODIS. Don't know who it is. If you
10 think this was present on the cucumber when it was
11 forcefully shoved inside of her so hard it ended up
12 in her abdominal cavity and you think that's
13 reasonable doubt, you're going to find him not
14 guilty and you're going to say he didn't do the
15 rape.

16 Both experts -- Dr. Amick said he would have
17 expected to find her DNA on that hair, JT [REDACTED] if
18 it had been in her abdominal cavity. If it had been
19 shoved up inside of her upper rectum, through her
20 rectum and into her abdomen, her DNA should be all
21 over that. It wasn't. He told you he would expect
22 it to be.

23 Dr. Ross told you that she would not have
24 expected anything on the cucumber to survive the
25 muscular -- the muscles of her rectum and her

1 intestines and the force required to cause it to
2 burst through her rectum into her abdomen. Should
3 they have taken the cucumber out and put it in a
4 bag? They should have. They didn't. Does that
5 give you reasonable doubt? If it does, then he's
6 not guilty of the rape. Maybe it makes him not
7 guilty of the murder. You look at the pictures of
8 where the cucumber is at and you'll see there's hair
9 all over the place.

10 John Barron was the expert talking about the
11 hair. And I think he said it was a brown hair, five
12 or six inches long, the other pieces looked the
13 same, but that it had been tinted or dyed,
14 highlighted, some kind of change. Maybe the hair
15 came on from the grocery store, maybe the hair came
16 off the floor, maybe it came from that table. Is
17 that reasonable doubt? That's for you to decide.
18 But look at all the other evidence and let's talk
19 about it.

20 A 20-year relationship, that's what Kay said.
21 That's her friend, her best friend, she knew her for
22 20 years. She knew her well. She loved her so much
23 and cared for her so much that she's taking care of
24 her mother, Dorothy, right now. She said they were
25 like a son -- not girlfriend-boyfriend, not

1 intimate, but like a son. Do you think, is it
2 reasonable, she would voluntarily have sex with
3 somebody she considered a son?

4 You have Carl Coleman, you have Tammy Coleman,
5 and you have Channen Johnson. Channen was the one
6 that was going to help her with the dogs, known her
7 for ten-plus years; a nice lady who he helped out.
8 He was going to get those dogs rabies shots. He
9 talked to her at 10:00, 10:20. You'll see on the
10 phone records. He was going to take those dogs. He
11 didn't know about any relationship between them, not
12 anything more than just friends.

13 Carl and Tammy had known her for about six
14 months. Carl had known the defendant for 20 years.
15 They said they were just friends. Never a reference
16 to boyfriend and girlfriend, never a reference to
17 intimate.

18 So is it reasonable to think that a female with
19 dyed or tinted hair and two males came in and
20 somehow got mixtures of DNA on a hair and killed her
21 and raped her? That's what you're going to be left
22 with if that gives you reasonable doubt. And if it
23 does, say he's not guilty.

24 Let's talk about Channen Johnson. Channen says
25 he talked to her at 10:20 on August 7th on Friday

1 night; she was alive, called her on her phone. The
2 records show that. He gave you his number, you saw
3 the records, and you can go through it. He talked
4 to her, she's alive.

5 Carl Coleman and Johnny Coleman, they're at
6 Carl's house on State Pond Road and they both say
7 Friday night that Pete Coffey came over. According
8 to Carl, I think Pete was over there three or four
9 times a week, known him for 20 years. Tammy had
10 known him for a good long time as well.

11 And what did they tell you about Friday night?
12 Friday night, Peter Coffey comes over. And I think
13 between Johnny and all of them, he works
14 construction and he wears tan pants. Nobody saw a
15 cut on his hand on Friday night. Nobody said, yep,
16 I remember he was injured. What all of them said is
17 I don't remember him having an injury.

18 They talked about Johnny and Carl and Pete
19 Coffey going to Little Rock bar in Swansea. And
20 they come back, and I want to say that Johnny,
21 Moosey, maybe it was Carl, was saying Pete Coffey
22 was giving them a hard time and they put him out at
23 the Food Lion around 1:30.

24 At 1:59, there's a phone call. The records
25 show, Carl said it, his phone said it, the summary

1 from JT [REDACTED] phone said it. He thinks JT [REDACTED] is
2 calling him 1:59 AM, and he answers the phone, but
3 it's Peter Coffey. Peter Coffey is in JT [REDACTED]
4 house. He's the person that she knows, a friend,
5 somebody she let in. Somebody she would take her
6 key on that inside door and unlock it. And she
7 opened the door to her death.

8 Between 1:59 and 8:48, we don't know what
9 happened, JT [REDACTED] is not here to tell you. We know at
10 8:47, 8:48, whatever the records show and
11 photographs from Carl's phone show, JT [REDACTED] phone
12 called him again. He was calling JT [REDACTED] because
13 JT [REDACTED] was supposed to cut his grass. There wasn't
14 an answer. JT [REDACTED] phone called back, per the
15 records, and who does Carl say it was? Peter
16 Coffey, at her house from, at least, 1:59 and again
17 till 8:48.

18 He says that at 1:59, Pete said I believe she
19 was in the shower because he was expecting to talk
20 to his friend, JT [REDACTED] At 8:48, when he calls back,
21 he was calling to talk with JT [REDACTED] to talk to her
22 about bringing her lawnmower and cutting his yard.
23 But Peter Coffey answered the phone and said, nope,
24 she's asleep. She's not coming. She's not going to
25 give me a ride over there, I need a ride.

1 She's never heard from or seen again since
2 before Peter Coffey was on her phone. All the
3 missed calls after, people looking for her. She's
4 dead, that's why that phone is never answered. It's
5 powered on, but it's not answered.

6 Carl says he picks Peter Coffey up walking from
7 **JT** neighborhood coming from her house; not
8 coming from Boy Scout Road, not coming from his
9 mama's house, but coming from **JT** house where
10 she lies dead naked on the bed. Carl says that
11 Peter Coffey was with him Saturday until, I think he
12 said, 5:00 or 6:00.

13 Carl says, I noticed a cut on his hand. Carl
14 said, I asked him about the cut. What happened?
15 What happened to your hand? Peter Coffey didn't
16 answer. He didn't explain it. Why not tell your
17 friend of 20 years what you did, unless you're
18 hiding something?

19 It didn't happen at the bar Little Rock, both
20 Carl and Johnny told you that. They didn't see it
21 Friday night. He wasn't in a fight at the bar.
22 Maybe some horse play, not a fight. If there had
23 been a fight at the bar, if Carl didn't know about
24 it when he asked him what happened to your hand,
25 Peter Coffey would say, don't you remember I cut my

1 hand in that fight? Friend of 20 years, why would
2 he lie? Because nothing he says helps Peter Coffey.
3 Everything he says damns him as a murderer and a
4 rapist. No motive to lie. If he was going to lie,
5 he'd lie in his favor.

6 Carl Coleman told the truth. He said that
7 Peter Coffey was tired and that he slept for an hour
8 or more at the house. Why would he be tired? Why
9 would he need to sleep in the middle of the day?
10 Maybe because he was committing evil in the darkness
11 and early morning hours at JT [REDACTED] house. Doesn't
12 that make sense?

13 Tammy Coleman said both Pete and Jo were
14 supposed to cut the yard for \$40. Jo never showed,
15 Pete didn't cut the grass. She said she saw the cut
16 on his hand. I don't think she saw it on Friday.
17 Y'all go with your memory if I'm wrong. She sure
18 saw it on Saturday. She said she was handing him a
19 drink, a glass of water, I think. She asked him
20 about the cut on the hand, he didn't answer. If it
21 was innocent, you answer. You're quiet to protect
22 yourself.

23 Johnny, Moose y, he said that Peter Coffey
24 asked to use his phone to call JT [REDACTED] [REDACTED] was on
25 his mind on Friday. He wanted to talk to her. He

1 didn't give him his phone though. Peter Coffey
2 didn't have a phone. And that's another road where
3 maybe the Defense is going to talk about.

4 Were there lost phones by the sheriff's
5 department? There were. It's inexcusable. Does it
6 really matter to this case? It doesn't. What we
7 got is Peter Coffey doesn't have a phone. He's
8 asking Johnny to use his. They find phones.

9 You can see by the pictures and you heard
10 Detective Phipps talk about those numbers and how
11 those numbers matched up; the one without a SIM card
12 matched up to the records they had that showed no
13 outgoing activity, no cellular tower activity, and
14 reported lost -- or the account was lost on August
15 2nd, days before JT [REDACTED] was killed.

16 Johnny said he noticed no cut on Friday and a
17 cut on Saturday. He said Pete Coffey was acting
18 quiet, but he was pacing, pacing so much that Johnny
19 said you need another drink. Why was he pacing if
20 he hadn't done anything wrong? Why did he look like
21 he needed a drink? Because he had killed her and he
22 raped her.

23 It's undisputed that he was in the house from
24 1:59 to 8:48. He was picked up coming from her
25 house. The evidence shows no phone activity after

1 that. People were looking for her, friends were
2 calling for her, Kay was looking for her. Carl was
3 sending her calls and texts, he wanted his yard cut.
4 No response. And everybody told you that was out of
5 character for her. All of them were saying they
6 were friends. Kay said she talked of him like a
7 son.

8 So what's the physical evidence at the house
9 show? The pictures show you that there's blood
10 everywhere. Some of them are going to show you
11 blood on the walls, blood on the bed. Another
12 picture is going to show you what looks like a swipe
13 of a bloody head up on the wall and the hammer is
14 found right below there. The TV is on with no
15 signal. The remote control has blood on it. How
16 did that happen?

17 You know that after JT [REDACTED] gets hit one
18 time, she's unconscious. She is not moving around
19 in that house. She's dead where she lay. There's
20 no evidence of drops or bloody footprints going
21 through the house or her body being moved or her
22 taking a shower.

23 The phone that belongs to JT [REDACTED] the one
24 that all those calls were recorded on, pictures
25 taken from it, the one that Carl Coleman says Peter

1 Coffey used, what's the DNA say about the phone?
2 Item 14, swab from LG phone, blood, JT
3 blood, and a mixture of somebody else that we don't
4 know who it is. It was too weak to see.

5 If the killer wasn't Peter Coffey, why is her
6 blood on this phone? Or was it because at 1:59 when
7 JT wasn't on the phone or because of 8:48 in the
8 morning, Peter Coffey had JT blood on
9 him and used the phone? Otherwise, why is there
10 blood on his phone?

11 He looked through her purse and its contents.
12 The purse is found on the bed, on the corner of the
13 bed. It's not where JT would sleep. Maybe she
14 would put her purse on the corner of the bed. When
15 you go through it, there's blood all over inside
16 documents in her purse. There was a green book,
17 there was an envelope, there was a receipt.

18 Why was somebody rummaging through her purse?
19 Maybe it was to answer a phone call at 8:47 in the
20 morning. Maybe that's why her phones and her
21 glasses and her keys, maybe they were in her purse,
22 maybe that's how they ended up on the floor when
23 Peter Coffey was going through it to answer that
24 phone call and to get that phone to call Carl. Why
25 is JT blood on the phone?

1 There's signs of a struggle a little bit. You
2 can see things knocked over. Part of a table was
3 knocked over here coming into her bedroom. You see
4 a gate down, glass circular table on the floor.
5 Maybe those were the dogs. Why is there blood on
6 there? Somebody was going through there. Maybe
7 it's looking for keys to get out. Maybe Peter
8 Coffey had a key. We don't know. But the killer
9 locked the door.

10 Johnny also told you it was the same pants, the
11 same pants that he saw Peter Coffey wear on Friday
12 and that he saw on Saturday. He even talked about
13 paint that was on there.

14 So going back to what does DNA tell us? It is
15 what it is. The rape kit, vaginal swab, seminal
16 fluid present inside her vagina, two to three inches
17 inside is where it's collected from, but no DNA
18 other than JT [REDACTED] was found. The oral swabs
19 contain nothing. The rectal swabs, seminal fluid,
20 yes, in her vagina and in her in rectum. Somebody
21 is having sex with her.

22 The rectal swab shows the DNA frequency on the
23 Y-STR of Peter Coffey, 1 in 379. And he said the
24 numbers were different because when you do the Y
25 test on men alone, you're using about half the

1 numbers. But it matches Peter Coffey, matches his
2 Y-STR. And if you want to believe it came from
3 transfer of semen on shorts that nobody's testified
4 about and you think that's reasonable doubt, then
5 find him not guilty.

6 Dr. Ross said that's why we take it from the
7 inside, that's why we go two to three inches inside.
8 Peter Coffey had sex with her that night. He got
9 her blood on the shower, A, B, and C on the shower
10 wall. Why is her blood on the shower? She was
11 struck one time and unconscious. She did not move,
12 so where did her blood come from? Why is it in the
13 shower? It came because Peter Coffey needed to get
14 all that blood off of him, all of JT blood
15 before he was seen. JT blood, JT blood,
16 JT blood.

17 The shower curtain in the bathroom. Blood,
18 blood, blood, blood. Four were analyzed. I think
19 they said they found nine different places. JT
20 blood -- a mixture of JT blood and somebody
21 else, we can't tell who. JT blood. Peter
22 Coffey. The cut from his hand that wasn't there
23 Friday that was there Saturday, why is Peter
24 Coffey's blood found on that shower curtain?
25 Because it happened during the attack. It happened

1 during the rape. 49 octillion. And if you want to
2 talk about him having a brother, I think you move it
3 over one decimal. 4.9 octillion times more likely.
4 Blood doesn't lie.

5 They go to Peter Coffey's house the same night
6 and early morning hours that JT [REDACTED] is found. What
7 do they find in the washing machine? A pair of
8 boxers, a mixture from the front. Was it blood?
9 Yes. JT [REDACTED] blood and somebody else, too
10 weak to tell. From the back of the boxers, blood,
11 JT [REDACTED] and somebody, too weak to tell. Whose
12 boxers are they? What DNA are we looking for?

13 Scraping in the back, Peter Coffey and JT [REDACTED]
14 [REDACTED] The boxers that Peter Coffey wore when he
15 killed her and he raped her. Why else would her
16 blood be on his boxers in his washing machine?
17 Should he have washed them? Oh, yeah, he should
18 have washed them, but he didn't.

19 The tan shorts that Johnny Coleman talked
20 about, cutting from the left front, yes, cutting
21 from near the zipper blood, yes, cutting from the
22 back left, yes, cutting from lower back left, yes.
23 And you're going to have those items back there to
24 look at them if you want to see where they tested
25 positive for blood. You've got pictures that show

1 it as well. JT blood, JT blood, JT
2 blood, JT blood, what you'd expect to see in a
3 violent, hammer-welding, bludgeoning death, blood
4 everywhere.

5 Scrape the inside. Whose is it? Peter Coffey,
6 her killer. The white socks are nothing. From her
7 sheet in her room, they were looking for what they
8 thought might be semen, seminal fluid. They didn't
9 find anything. They didn't find her DNA. Why
10 between her legs is there a piece of sheet missing?
11 Did somebody cut it to take it away because maybe
12 that's where the semen was? It's got her blood.

13 The hammer. Dr. Ross said that's probable
14 that's the kind of weapon that would be used to
15 cause those kind of injuries that she described.
16 They tried to get a fingerprint. They can't get a
17 fingerprint. They tried. They're doing the best
18 they can. Sometimes things aren't there. Maybe it
19 was wiped off, maybe it was there and it's just not
20 good enough to tell, but they tried.

21 They also swabbed it for DNA. Swab from the
22 handle, all they found was JT on there. The swab
23 from the head of the hammer on the sides and on the
24 head of the hammer face, JT blood. And
25 you can see the pictures. Her blood is on that

1 hammer. That's what Peter Coffey used in a rage to
2 kill her.

3 The cucumber. Nothing but humiliation. Being
4 dead wasn't enough for Peter Coffey, wasn't enough.
5 Raping her wasn't enough, he had to shove that
6 inside her so far that it ended up in her abdominal
7 cavity perforating her rectum continuing up and out.

8 What do we see on that though? What do we see
9 on the cucumber from DNA-wise? Peter Coffey on a
10 swab from the cucumber itself. You see JT [REDACTED]
11 as well. They looked for the hair follicle to try
12 to identify it. They couldn't. They talk about the
13 unknown matter. Doesn't even have JT [REDACTED] on a
14 hair.

15 We talked about the swab from the phone and
16 blood and Peter Coffey using that phone and why
17 there's blood. The remote control, her blood. The
18 boxers, these are the boxers found in her house out
19 of place up on the other side of the room on the bed
20 by the vacuum cleaner. The crotch was ripped and
21 torn out. Why would JT [REDACTED] keep a pair of
22 boxers with the crotch ripped out with her blood on
23 it? She wouldn't choose to keep that. The killer
24 left it there. Peter Coffey left it there.

25 Why would he rip that off? She wouldn't have

1 worn that to bed. Why would it have the blood on it
2 if it wasn't what she was wearing when she was
3 attacked? So if she was wearing those and attacked
4 and the crotch is ripped out and it's moved
5 somewhere else, does that speak to you-all of
6 consensual sex or does it speak to you of rape?

7 Does it speak to you of somebody who wanted
8 sex, but was turned down? Does it speak to you as
9 somebody who may treat you like a son? Or does it
10 speak of consensual sex? It speaks of rape. JT
11 thought he was a friend, he was not. He was a
12 rapist and a murderer, her murderer.

13 The stain on the contents of the purse, blood,
14 blood, blood, somebody rifling through her purse,
15 maybe looking for her phone. The shower curtain,
16 we've talked about. Peter Coffey goes to take a
17 shower. His blood is on that curtain. Not some
18 stranger, not somebody unknown, put Peter Coffey.
19 Blood doesn't lie.

20 If you think maybe it's consensual sex, Kay
21 says no, like a son. Everybody says no boyfriend or
22 girlfriend. How do you go from that to what the
23 world sees to consensual vaginal sex, consensual
24 anal sex, and insertion of a cucumber inside you?
25 How does that happen if it's consensual? It's not

1 consensual.

2 The cucumber was at or near the time of death.
3 There's bruising on the outside of her anus, which
4 you saw from the photographs, but there's not blood
5 inside. So that's happening as she's dying. The
6 boxers torn and thrown over with her blood, the way
7 she's left naked after being unconscious from one
8 blow of a hammer, the tank top pulled from the back
9 of her head over her front, does that sound like
10 consensual sex or does it sound like rape?

11 Does it sound like maybe Peter Coffey wanted to
12 have consensual sex with her and she said no? What
13 happens when somebody is turned down? Some people
14 walk away, some people apologize and say I'm sorry.
15 Peter Coffey didn't do that. He reacted with rage.

16 JT [REDACTED] was remodeling her house, tools and tool
17 boxes are in the picture. What does Peter Coffey
18 do? What does JT [REDACTED] killer do? He picks
19 up a hammer and hits her, and she's unconscious; 20
20 more times, he hits her in the head. Force, fury,
21 rage, anger, malice, that's what happened that night
22 to JT [REDACTED] and the person who did it is Peter Coffey.
23 21 to 22 times to the head, she's unconscious after
24 the first time. Hit so hard it fractures her skull.

25 And you saw those injuries, they're brutal.

1 Significant force used to insert the cucumber to
2 humiliate her, leave her naked to be found, 20 blows
3 continued after she lost consciousness. The
4 evidence proves that Peter Coffey was there;
5 undisputed that he used her phone at 1:59 AM and at
6 8:48 AM, and the records show she's never heard of
7 or seen alive again.

8 Peter Coffey's blood in the house, her blood on
9 his shorts. Probably for the first time in your
10 life, ladies and gentlemen, you're in the presence
11 of someone who's evil, who's a killer, who's a
12 murderer, who's a rapist, and that's Peter Coffey.
13 Thank you.

14 THE COURT: Thank you, Solicitor.

15 Mr. Stitely?

16 MR. STITELY: Thank you, Judge.

17 May it please the Court.

18 THE COURT: Yes, sir.

19 MR. STITELY: Once again, thank y'all for
20 listening. You've been here all week and you've
21 been paying close attention. I always think it's
22 interesting when you compare the way lawyers do
23 things. Some lawyers yell and scream, some talk
24 quietly, some bang their hands on things, some
25 point.

1 Your job as a juror is to sit there and not
2 listen to us and how dramatic we are, how emphatic
3 we are, how believable we are. You have to remember
4 what you heard, what you saw, what you learned
5 during the trial from the witnesses; you have to
6 look for what you heard, what you didn't hear, what
7 was missing, and then you, at the end of this trial
8 this afternoon, are going to sit there in the back
9 room talking about what you think is important.

10 In a criminal trial we talk about reasonable
11 doubt. And I'm just going to define it really
12 quickly because the Judge will in great detail in a
13 minute. Reasonable doubt is the kind of doubt that
14 makes a reasonable person hesitate to act when
15 making an important decision. And, believe me, this
16 is an important decision. I can't imagine sitting
17 in the jury box making this kind of decision. I
18 guarantee none of you never have before. And I hope
19 you will take that very seriously, you will think
20 about everything, because at the end of the day, it
21 falls in the jury's hands.

22 The solicitor, in his closing argument, got up
23 here and he said it's about rage, it's about hate,
24 it's about humiliation. Why? Where is the motive?
25 You've sat here all week. Let's take what his

1 witnesses said. They were good friends for 20
2 years, Pete and Ms. JT Why? Why in the world
3 would he have this fit of rage and do such a
4 horrible thing to someone who he saw every day, by
5 accounts of the witnesses, who was at her house
6 daily? Why?

7 The solicitor says there's no way they're
8 having consensual sex, not possible, 20 years older,
9 outside the realm of possible. Her friends got up
10 here and testified. Did they tell you about the
11 fact that she had two kinds of cocaine in her system
12 the night she died? People have private lives.

13 It's impossible to think anyone would ever have
14 anal sex, that's horrible. People have private
15 lives. I'm not judging them. It's not your job to
16 judge them. Your job is to consider the facts, and
17 if they prove that Peter Coffey committed this
18 horrible, horrible murder -- and it was horrible,
19 I'm not denying that fact. But why would someone of
20 a 20-year friendship do that to their friend in such
21 an awful way? Has the State proven that?

22 The question is where is the investigation?
23 You've sat here all week. Where is a single
24 witness? Where are all the neighbors who would have
25 heard this horrible attack? Where's the officer who

1 went up to the next door neighbor and said, hey, did
2 you hear anything that night? Went to the person
3 behind her, hey, did you hear anything that night?
4 Went to the person on the other side, did you hear
5 anything that night? Did you hear the dogs barking?
6 Where was the officers on the ground who did all
7 that? They weren't here to testify.

8 The State's job is to carry the burden. They
9 didn't ask a single person who might have been there
10 that night to come forward and testify if they heard
11 anything. And as the solicitor slamming that hammer
12 on the table, that was loud, that was loud, I heard
13 it. People describe these as very protective dogs.
14 One was a big old Pit Bull that was mean to people
15 and it sat quietly during that?

16 It's kind of interesting when you think about
17 the situation. Her friends do a lot of things, but
18 they didn't know everything. Her one friend, Kay,
19 who I genuinely -- you saw her, she was genuinely
20 upset about her friend. And she said that her
21 friend was so afraid of her neighbors she nailed her
22 windows and doors shut. Did the police go ask those
23 neighbors? We don't know. You have a right as a
24 jury to wonder why. She was so afraid of her
25 neighbors, she nailed her windows shut, made it so

1 you couldn't get in or out.

2 You heard about the dogs. They were there
3 all -- the State argues that it happened between the
4 hours of 1:59 and 8:41 that Saturday. No one shows
5 up for, at least, a day and a half. And, say,
6 there's no bloody footprints. Where were the dogs?
7 Anyone who has dogs -- if I leave my house for an
8 hour, my dogs get into everything.

9 The dogs were in the house, this horrible
10 scene, obviously there's blood, and you can look at
11 the pictures, and there's not a single bloody paw
12 print? Not a single thing moved? No food and water
13 for the dogs, but one of the witnesses said somebody
14 put the dogs' food and water out.

15 We heard about somebody who was coming over the
16 next day to let the dogs out. Maybe they came over
17 to let the dogs out, maybe they had a key to get in.
18 Why didn't the police follow up on that? It's their
19 job to prove this case.

20 Solicitor told you I'm going to be obsessed
21 about tiny pieces of DNA and this fragment and that.
22 It's not about one tiny thing, it's about the bigger
23 picture and asking what's reasonable and what makes
24 sense and why does it make sense. The solicitor
25 said the boxers down -- the spot that would have

1 been down in her private area was cut out and the
2 sheet was meticulously cut out, obviously, to hide
3 blood and semen. Very thorough. Very thorough.

4 They used the same phone to call somebody, but
5 there were no fingerprints on the phone. They
6 didn't even bother checking. They didn't check the
7 remote for fingerprints. This person, who he wants
8 to argue was so meticulous about making sure he cut
9 out spots in the bed, doesn't bother to wash his
10 shorts three days later. That's what the State is
11 telling you to believe.

12 He's so perfect in the way he commits this
13 crime, makes sure he cleans up after himself, take
14 all the evidence with him, but doesn't bother to
15 start the washing machine. He would have burned the
16 shorts if they were a problem for him when he got
17 rid of all the evidence. That's what a reasonable
18 killer would have done. They searched his house
19 tooth and nail.

20 Mr. Sprinkle sat up there, he was the officer
21 with the tie, and he took hundreds, thousands of
22 pictures. He went into his drawers and took
23 pictures of his toothbrushes. You know what there
24 wasn't? A key to JT [REDACTED] house. Pete didn't
25 have a key. The door was locked from the outside.

1 Someone coming to take care of the dogs might have
2 had a key.

3 The solicitor in the beginning, Mr. Pogue, kept
4 talking about blood don't lie. And we had an
5 opportunity to hear from Dr. Amick from Richland
6 County. It's interesting that they used Richland
7 County. Dr. Amick was very clear from the stand and
8 he answered all the questions and he's obviously
9 well-qualified. He's also paid.

10 And one of the things he said in particular I
11 found very interesting was he said I talked to a Mr.
12 Lint -- who I'm guessing is a sheriff's deputy, we
13 don't know, he never got called as a witness -- and
14 he told me don't bother testing that stuff. Why?
15 Why don't we test the bloody shoes? Why don't we
16 test the Jergen's bottle with foreign matter on it?
17 Why not test the hair? He told me don't bother,
18 we'll keep it on the cheap.

19 We're here on a murder trial and they didn't
20 want to pay the money to test the evidence. That's
21 awful. And you, the jury, can consider that. Why
22 didn't they use SLED? It's a free lab, they'll test
23 everything. They wanted a paid expert. They wanted
24 someone who would do what they asked and present
25 that because it was easy. It's easy. And if we're

1 going to convict an individual beyond a reasonable
2 doubt because it's easy, it's a hard decision. I
3 mean, it's easy. That's not the standard.

4 One interesting thing I will say, and they
5 talked about the -- the solicitor talked about the
6 fact that there was seminal fluid. And one little
7 small interesting thing I thought we heard from
8 Dr. Amick was, so that means that person would have
9 had a vasectomy or else there would have been
10 spermatozoa. Spermatozoa, I can't get that word
11 right.

12 They did all these other search warrants and
13 subpoenas. Did they do a search warrant or subpoena
14 to find out if he ever had a vasectomy? That would
15 have been compelling evidence. The doctor said that
16 means that person would have had a vasectomy because
17 there was no sperm present. That seems like a
18 pretty easy one.

19 MR. GRAHAM: Objection, Your Honor, that's a
20 misstatement of the testimony.

21 THE COURT: Ladies and gentlemen, you are the
22 finders of the facts in the case. You will remember
23 the testimony as you remember it to be. As I said
24 before, attorneys are not witnesses in the case.
25 What they say is not evidence. It's your memory and

1 your determination of the facts.

2 Thank you, Solicitor. Thank you, Mr. Stitely.

3 MR. STITELY: And, of course, you heard him, so
4 you trust what you heard from Dr. Amick.

5 It's not about the big things in this case or
6 the tiny minutia that I'm trying to point out, but
7 it gives you pause. And what we're talking about
8 when we're talking about reasonable doubt is those
9 little things.

10 The State was obsessed with the cut on Peter
11 Coffey's hands. And a couple people said they
12 didn't see it Friday, but they saw it Saturday. And
13 the last thing -- and if your recollection is
14 different, Mr. Coleman said when Mr. Graham asked
15 him about it, Mr. Coleman said, well, I thought Pete
16 got it from that horse play the night before. Well,
17 there you go, out of their witness' mouth. Y'all
18 remember what you heard them say. He said he
19 thought it was from the night before.

20 And they relied on, I guess, Johnny Coleman,
21 also to be their star witness, and say those were
22 the shorts, although he said Pete was always wearing
23 tan shorts. He was so specific that those were the
24 shorts as he was looking at the picture, but he
25 couldn't recall what shirt he was wearing, what

1 shoes he was wearing, how tall he was, how heavy he
2 was, what color his hair was, or how long his hair
3 was, but those must have been the shorts. He said
4 he was 100 pounds.

5 As a jury, it's not your job to decide what
6 happened that night. This isn't let's find the
7 killer. That's not your job either. You don't have
8 to answer that question. What you have to decide
9 is, beyond a reasonable doubt, did Peter Coffey do
10 those horrible things to JT [REDACTED]

11 Malice aforethought, that's what murder is, the
12 Judge will tell you it. Killing one with ultimate
13 malice, blackened heart. They were friends. I
14 think it indicates that they may have been more than
15 friends. She definitely had a private life. She
16 had people she was afraid of. She had a locked
17 door. She had someone to come and take her dogs
18 out.

19 And the situation with the dogs, didn't touch
20 anything for two days? And as whoever did the
21 killing walked out, they grabbed that doorknob,
22 closed the door behind them. Did the Sheriff's
23 Department bother to print it? No. Check the DNA?
24 No. Because it was easier not to.

25 John Barron, I guess he was the hair expert.

1 He wasn't a doctor. I said, is it possible that
2 those three hairs were two unidentified males and an
3 unidentified female? He said, anything's possible.
4 That was his line. You don't say anything's
5 possible. This is a horrible case.

6 And I apologize if at times I have to seem like
7 I'm making it light, because it was awful. And I
8 can't imagine that happening. But at the same time,
9 I can't imagine someone saying, I have a doubt in my
10 mind, but I'm still going to find someone guilty
11 because that's worse.

12 Our system of justice is based on the very
13 important fact that we have the 12 of you in that
14 box making that decision. Not me, not Mr. Graham,
15 not Mr. Williams, not Mr. Pogue, not the judge, but
16 you individuals. And if you believe the State has
17 proven beyond a reasonable doubt that for some
18 reason unknown to us that Peter Coffey committed
19 this awful crime, you have to find him guilty and
20 you have to make sure you have beyond all reasonable
21 doubts.

22 But if you think it's possible there is a real
23 possibility that maybe something else went on that
24 night, that something different happened, that I
25 haven't seen enough or you wonder why they didn't

1 bring a single witness who was anywhere near that
2 scene that day to this courtroom to testify, that's
3 reasonable doubt.

4 If you didn't hear from a single officer who
5 had feet on the ground except for the first one who
6 said he secured the scene into what investigation
7 they did, that's reasonable doubt. It's not my job
8 to bring it to the table. We have nothing to prove
9 in this case. I don't have to prove Pete's
10 innocence.

11 Once again, you don't have to find the killer.
12 You just have to prove beyond a reasonable doubt
13 whether or not you think he did it. The evidence
14 does not support it, and I'd ask you to find him not
15 guilty.

16 THE COURT: Thank you, Mr. Stitely.
17 Solicitor?

18 MR. GRAHAM: We'd all like to know why. Why
19 did Peter Coffey kill her that night? I want to
20 know why. You want to know why. Mr. Stitely says
21 he doesn't know why. But we don't have to prove
22 that. We would if we could, but the law does not
23 require us to prove why something happened, just
24 that it did happen. And that's what the Judge will
25 tell you.

1 THE COURT: Ladies and gentlemen of the jury,
2 if you will please give me now your complete and
3 undivided attention. I'm going to instruct you on
4 the law that you must follow and apply the facts as
5 you find them to be to reach your verdicts in this
6 case.

7 The way I instruct the jury in a case like
8 this, I -- in all criminal cases I charge the
9 general criminal law that applies to all criminal
10 cases of South Carolina. Thereafter, I will charge
11 the specific offenses in the indictment.
12 Thereafter, I will charge the form of the verdict.
13 Generally when I change from one subject matter to
14 the next, I will give you an outline of what I'm
15 fixing to cover in that section throughout the
16 course of my instructions to you.

17 Charge, arrest, indictment, not evidence. The
18 indictments charge the defendant with murder and
19 criminal sexual conduct first degree. I remind you
20 again that the fact that the defendant was arrested,
21 charged, and indicted in this case is not evidence
22 and cannot be considered by you as evidence of guilt
23 in this case, nor does the fact that the defendant
24 has been indicted, arrested, charged create any
25 presumption or inference of guilt. These documents

1 are simply the formal written instruments which
2 contain the charges made against the defendant.
3 They are the formal charges by which the defendant
4 is brought before the Court.

5 Presumption of innocence. The defendant has
6 pled not guilty to these indictments, and that plea
7 puts the burden on the State to prove the defendant
8 guilty. A person charged with committing a criminal
9 offense in South Carolina is never required to prove
10 himself or herself innocent.

11 I charge you that it is an important rule of
12 the law that the defendant in a criminal trial, no
13 matter the seriousness of the charge or charges may
14 be, will always be presumed to be innocent of the
15 crime for which the indictments were issued, unless
16 guilt has been proven by evidence satisfying you of
17 that guilt beyond a reasonable doubt.

18 This presumption of innocence does not end when
19 you begin your deliberations, but it accompanies the
20 defendant throughout the trial until you reach a
21 verdict or verdicts of guilt based on evidence
22 satisfying you of that guilt beyond a reasonable
23 doubt.

24 The presumption of innocence has been said to
25 be like a robe of righteousness placed about the

1 shoulders of the defendant which remains with the
2 defendant until it has been stripped from the
3 defendant by evidence satisfying you of the
4 defendant's guilt beyond a reasonable doubt.

5 The presumption of innocence is not a mere
6 legal theory, it is not just a legal phrase, it is a
7 substantial right to which every defendant is
8 entitled unless you, the jury, are satisfied from
9 the evidence of the defendant's guilt beyond a
10 reasonable doubt.

11 Please sit down. Y'all know I don't allow
12 that. I apologize, I didn't announce that
13 previously.

14 What is a reasonable doubt in the law? A
15 reasonable doubt in the law is the kind of doubt
16 that would cause a reasonable person to act. The
17 State has the burden of proving the defendant guilty
18 beyond a reasonable doubt. Some of you may have
19 served as jurors in the past in civil cases where
20 you were told that it is only necessary to prove
21 that a fact is more likely true than not true, such
22 as by the greater weight or the preponderance of the
23 evidence.

24 In criminal cases, the State's proof must be
25 more powerful than that. It must be beyond a

1 reasonable doubt. Proof beyond a reasonable doubt
2 is the kind of doubt that would cause a reasonable
3 person to hesitate to act. Proof beyond a
4 reasonable doubt is proof that leaves you firmly
5 convinced of the defendant's guilt.

6 Now, there are very few things in this world
7 that we know with absolute certainty. And in
8 criminal cases, the law does not require proof that
9 overcomes every possible doubt. If, based on your
10 consideration of the evidence, you are firmly
11 convinced that the defendant is guilty of the crime
12 or crimes charged, you must find the defendant
13 guilty. If, on the other hand, you think there is a
14 real possibility that the defendant is not guilty,
15 you must give the defendant the benefit of that
16 doubt and find him not guilty.

17 Duties of jury and trial judge. I remind you
18 that during the trial of this case, you and I have
19 certain distinct duties to perform. As the trial
20 judge, it is my responsibility to preside over the
21 trial of this case and I also have the duty to rule
22 on the admissibility of evidence offered during the
23 trial. You are to consider only the competent
24 evidence before you.

25 If there was any testimony ordered stricken

1 from the record in this case during the trial, you
2 must disregard that testimony. You are to consider
3 only the testimony which has been presented from
4 this witness stand, any exhibits which have been
5 made part of the record in this case, and any
6 stipulations of counsel.

7 I have the additional duty to instruct you on
8 the law applicable to this case. As the presiding
9 judge, I am the sole judge of the law of this case
10 and it is your duty as jurors to apply the law as I
11 now state it to you. If you already have any idea
12 as to what the law is or what the law ought to be
13 and it does not agree with what I now tell you the
14 law is, you must set aside, you must abandon your
15 idea, because you are sworn to accept the law and
16 apply the law exactly as I state it to you.

17 In every case tried in this court before a
18 jury, the jury becomes the sole and the exclusive
19 judge of the facts in a case. A trial judge cannot
20 intimate, state, comment on, or make any statement
21 to a trial jury about the facts in a case. Since
22 you, the jury, are the sole judge of the facts in
23 this case, you are not to infer from what I have
24 said during the progress of this trial in ruling
25 upon the admissibility of evidence or otherwise or

1 anything that I say now during the course of this
2 instruction to you that I have any opinion about the
3 facts in this case.

4 The law does not allow me to have an opinion
5 about the facts in this case. That is a matter
6 solely for you, the jury, to determine. As jurors,
7 it is your duty to determine the effect, the weight,
8 the value, the truth of the evidence which has been
9 presented during this trial.

10 Direct and circumstantial evidence. There are
11 two types of evidence which are generally presented
12 during a trial, direct evidence and circumstantial
13 evidence. Direct evidence is the testimony of a
14 person who claims to have actual knowledge of a
15 fact, such as an eyewitness or an ear witness; it is
16 evidence which immediately establishes the main fact
17 to be proved.

18 Circumstantial evidence is proof of a chain of
19 facts and circumstances indicating the existence of
20 a fact; it is evidence which immediately establishes
21 collateral facts from which the main fact may be
22 inferred. Circumstantial evidence is based on
23 inference and not on personal knowledge or
24 observation.

25 The law, our law, makes absolutely no

1 distinction between the weight or the value to be
2 given to either direct or circumstantial evidence,
3 nor is there a greater degree of certainty required
4 of circumstantial evidence than of direct evidence.
5 You should weigh all of the evidence in the case.

6 After weighing all of the evidence, if you're
7 not convinced of the guilt of the defendant beyond a
8 reasonable doubt, you must find the defendant not
9 guilty. If, after weighing all of the evidence, you
10 are convinced of the guilt of the defendant beyond a
11 reasonable doubt, you must find the defendant
12 guilty.

13 Credibility of witnesses. Necessarily, you
14 must determine the credibility of the witnesses who
15 have testified in this case. Credibility, ladies
16 and gentlemen, as you all know, simply means
17 believability. It becomes your duty as jurors to
18 analyze and to evaluate the evidence and the
19 testimony and determine which evidence convinces you
20 of its truth.

21 In determining the believability of the
22 witnesses who have testified in this case, you may
23 believe one witness over several or several over
24 one. You may believe part of the testimony of a
25 witness and reject the remaining part of the

1 testimony of that same witness. You may believe the
2 testimony of a witness in its entirety or reject the
3 testimony of a witness in its entirety. You may
4 consider whether any witness has exhibited to you
5 any interest, bias, prejudice or other motive in
6 this case.

7 You may also consider the appearance and the
8 manner of the witness while on the witness stand.
9 You may consider whether a witness' statement was
10 corroborated by another witness, whether it was an
11 inconsistent statement, or consistent within itself.
12 You may consider if it was made weaker by another
13 witness. You may consider anything that is in this
14 record from the background of your individual and
15 collective good judgment and common sense in
16 determining the credibility, the believability of
17 the witnesses who have testified in this case.

18 Expert witnesses. And you've heard this
19 several times: Ordinarily our rules of evidence do
20 not permit witnesses to testify to opinions or
21 conclusions. An exemption to this rule exists for
22 witnesses we call expert witnesses. A witness who,
23 by education or experience or training, has become
24 an expert in some art, science, profession, calling,
25 craft, may state an opinion as to relevant and

1 material matter in which the witness claims to be an
2 expert and may also state the reasons for holding
3 those opinions.

4 You should consider any expert opinion received
5 in evidence in this case and, like any other
6 evidence, give it the weight you think it deserves.
7 If you decide the opinion of an expert witness is
8 not based on sufficient education or experience or
9 if you conclude that the reasons given in support of
10 the opinions are not sound or that the opinion is
11 outweighed by other evidence, you may disregard the
12 opinion in its entirety.

13 An expert witness' testimony is to be given no
14 greater weight than that of other witnesses simply
15 because the witness is an expert. Further, you are
16 not required to accept a witness expert opinion even
17 though it is not contradicted. You give it the
18 weight and the value you deem appropriate, just as
19 you do with other witnesses.

20 I instruct you and emphasize that the fact that
21 the defendant did not testify is not a factor to be
22 considered by you in any way in your deliberation
23 and in your consideration on the question of the
24 guilt or innocence of the defendant. It must not be
25 considered by you in any manner whatsoever. A

1 defendant has the constitutional right to remain
2 silent and the assertion of this right must not be
3 considered by you in your deliberations.

4 I repeat, under your oath, you are to draw no
5 conclusion whatsoever from the fact that the
6 defendant in this case did not testify. The fact
7 that this defendant did not testify should not even
8 be discussed in the jury room. The burden of proof,
9 as I have stated throughout to you, is on the State.
10 The defendant is not required to prove his
11 innocence. The burden of proof remains on the State
12 to prove guilt beyond a reasonable doubt.

13 Intent -- and if y'all will please continue to
14 give me your complete and undivided attention as you
15 have done throughout my instructions to you, I
16 assure you the end of my instruction is in sight.

17 Intent. In order to establish criminal
18 liability, criminal intent is required. For
19 example, the mental state required to be proven by
20 the State for a particular crime might be purpose,
21 intent, knowledge, recklessness or criminal
22 negligence. Criminal intent must be proven by the
23 State beyond a reasonable doubt. Criminal intent is
24 always a matter that must be determined by the jury
25 from the circumstances surrounding the situation.

1 There is no way to prove intent to a
2 mathematical certainty. There's no way medical
3 science can dissect a person's brain and determine
4 what the person had in mind, so the law says that
5 criminal intent may be inferred from the
6 circumstances shown to have existed. This is how
7 you make a determination as to whether or not the
8 element requiring intent was present.

9 It is not necessary to establish intent by
10 direct and positive evidence, but intent may be
11 established by inference in the same way as any
12 other fact by taking into consideration the acts of
13 the parties and all the facts and the circumstances
14 of the case.

15 Criminal intent is a mental state, a conscious
16 wrongdoing. It is up to you to determine what the
17 defendant intended to do based on the circumstances
18 shown to have existed. Criminal intent can arise
19 from action or a failure to act. It can arise from
20 recklessness, negligence, or an indifference to duty
21 or to consequences that is considered by the law to
22 be the equivalent of criminal intent.

23 Ladies and gentlemen, that is the general
24 criminal law instructions to you. Again, I covered
25 charge, arrest, indictment not evidence; presumption

1 of innocence; reasonable doubt; duties of a jury and
2 trial judge; direct and circumstantial evidence;
3 credibility of witnesses; expert witnesses;
4 defendant's constitutional right to remain silent;
5 and criminal intent. I now will charge you on the
6 two offenses in the indictments.

7 First, on the indictment for murder.
8 Indictment 2018-GS-32-00943, the defendant is
9 charged with murder. The State must prove beyond a
10 reasonable doubt that the defendant killed another
11 person with malice aforethought. Malice is hatred,
12 ill-will or hostility towards another person. It is
13 the intentional doing of a wrongful act without just
14 cause or excuse and with the intent to inflict an
15 injury or under circumstances that the law will
16 infer an evil intent.

17 Malice aforethought does not require that
18 malice exists for any particular time before the act
19 is committed, but malice must exist in the mind of
20 the defendant just before and at the time of the --
21 that the act is committed; therefore, there must be
22 a combination of the previous evil intent and the
23 act.

24 Malice aforethought may be expressed malice or
25 inferred malice. These terms expressed and inferred

1 do not mean different kinds of malice, but merely
2 the manner in which malice may be shown to exist;
3 that is, either by direct evidence or by inference
4 from the facts and circumstances which are proved.

5 Expressed malice is shown when a person speaks
6 words which express hatred or ill-will for another
7 or when the person prepared beforehand to do the act
8 which was later accomplished. For example,
9 expressed malice, lying in wait for a person or any
10 other acts of preparation going to show that the
11 deed was within the defendant's mind would be
12 expressed malice.

13 Malice may be inferred from conduct showing a
14 total disregard for human life. Inferred malice may
15 also arise when the deed is done with a deadly
16 weapon. A deadly weapon is an article, instrument,
17 or substance which is likely to cause death or great
18 bodily harm. Whether an instrument has been used as
19 a deadly weapon depends on the facts and
20 circumstances of each case. Ordinary objects may
21 become deadly weapons when the facts show that they
22 have been used to inflict serious bodily harm or
23 death. The State is not required to prove motive as
24 an element of the offense of murder.

25 The next indictment, criminal sexual conduct,

1 that is a statute in South Carolina, first degree,
2 16-3-652. The defendant is charged with criminal
3 sexual conduct in the first degree. The first
4 element which the State must prove beyond a
5 reasonable doubt is that the defendant engaged in a
6 sexual battery with the victim.

7 A sexual battery is also defined in our code.
8 It is defined as sexual intercourse or cunnilingus
9 or fellatio or anal intercourse or any intrusion,
10 however slight, of any part of a person's body or
11 any object into the genital or anal opening of
12 another person's body, except when the intrusion is
13 accomplished for medically recognized treatment or
14 diagnostic purposes. That is the definition of a
15 sexual battery in South Carolina.

16 If you find that the State has not shown beyond
17 a reasonable doubt that a sexual battery has
18 occurred, you would stop your deliberations and your
19 verdict would have to be not guilty. If you find
20 that a sexual battery did occur, you must then
21 decide whether the State has proven beyond a
22 reasonable doubt that the defendant used aggravated
23 force to accomplish the sexual battery.

24 Aggravated force, as defined by our code, means
25 the use of physical force or physical violence of a

1 high and aggravated nature to overcome the victim.
2 So it's engaging in a sexual battery by the use of
3 aggravated force, meaning the use of physical force
4 or physical violence of a high and aggravated nature
5 to overcome the victim, including the threat of the
6 use of a deadly weapon.

7 Finally, ladies and gentlemen, there are two
8 possible verdicts you may reach as to each
9 indictment. There are two indictments; they must be
10 considered separately and distinct, one from the
11 other. You will have in the jury room, of course,
12 all the evidence.

13 But also, Madam Forelady, you will have what is
14 typed up as a verdict form. It's a document you may
15 follow. It's a simple document. The way I say the
16 verdicts you may reach, the order in which I say
17 them, the order in which they're written on the
18 verdict form, has no significance whatsoever. One
19 must be stated, one must be typed -- well, I guess
20 we don't type anymore. One must be prepared before
21 the other. That's all that is.

22 If after your determination of the facts in the
23 case as to the charge of murder you take the facts
24 as you find them to be, apply them to the law as
25 I've explained the law to you, you find the State

1 has met its burden of proving its case as to murder
2 beyond a reasonable doubt, that is the number one on
3 this form, as to the charge of murder, we, the jury,
4 unanimously find the defendant guilty of murder.

5 If that's your finding and it is unanimous, I
6 would ask you, Madam Forelady, to check to the left
7 guilty of murder and circle both your checkmark and
8 the three words "guilty of murder".

9 If after your determination of the facts in the
10 case as you find them to be you find that the State
11 has failed to meet its burden of proving its case
12 beyond a reasonable doubt and that verdict is
13 unanimous, I would ask you, Madam Forelady, to
14 please check to the left of the two words "not
15 guilty," circle your checkmark and the two words
16 "not guilty."

17 And that's the same as to number 2, criminal
18 sexual conduct in the first degree. Depending on
19 your finding of the facts, guilty or not guilty.
20 Those -- as I say, those are considered separately
21 and distinctly. The defendant could be found guilty
22 of murder or not guilty of murder or guilty of
23 criminal sexual conduct or not guilty or any
24 combination thereof, guilty of one, not guilty of
25 the other, separately and distinct ly. Ladies and

1 gentlemen, your verdicts must be unanimous, all 12
2 of you must agree.

3 If after the finding of your verdicts, Madam
4 Forelady, if you would, please sign the document at
5 the lower left as our presiding juror and date it.
6 Once you have written your verdict and found those
7 verdicts, if you would then knock on the jury room
8 door, inform the bailiff that you have reached your
9 verdicts, and we will receive you back in the
10 courtroom.

11 If at any time during the course of your
12 deliberations you have any questions whatsoever,
13 Madam Forelady or any member of the jury, if you
14 would please just write me out a note, knock on the
15 jury room door, and the bailiff will bring it to me
16 and I will try to respond in a timely manner, either
17 by bringing you back in the courtroom or just
18 writing out the response to the question you may
19 have.

20 I'm going to ask you to please go with your
21 bailiff to the jury room momentarily. The law
22 requires I meet with the attorneys one final time
23 outside of your presence to determine if I need to
24 give you further instructions, so do not begin your
25 deliberations. You can take your notes with you

1 now.

2 What will happen is if I do not have to bring
3 you back out -- everybody looks great today, so
4 we'll bring out our two alternates, they would be
5 excused, and evidence will come to you and then you
6 will be instructed to begin your deliberations.

7 All right. Thank you. Thank you very much for
8 your focus and attention during these instructions.
9 Thank you very much.

10 (The jury exits the courtroom at 3:40 PM.)

11 THE COURT: Solicitor?

12 MR. GRAHAM: No exceptions, Your Honor.

13 MR. STITELY: Nothing from the Defense.

14 THE COURT: All right. If y'all will marshal
15 the evidence, please. Here's the form of the
16 verdict.

17 MR. GRAHAM: Your Honor, it appears that one of
18 the jurors left their notepad out here.

19 THE COURT: Just hand it to my clerk and she
20 can handle it.

21 Thank y'all. Thank y'all very much.

22 And I didn't mean to bark at that young lady.
23 What happens is when something catches my eye in my
24 peripheral vision, I kind of bark louder. And I
25 didn't take into account that sometimes people have

1 what may be emergent. So I apologize to you. But
2 typically, I tell folks don't get up and go out
3 while I'm addressing the jury or while the attorneys
4 are, but please forgive me in that regard. Thank
5 you. Thank you very much.

6 Y'all check the evidence?

7 MR. POGUE: Yes, sir, Your Honor.

8 THE COURT: You check the evidence,
9 Mr. Williams?

10 MR. WILLIAMS: Yes, sir.

11 THE COURT: It's all good to go?

12 MR. STITELY: Yes, sir.

13 THE COURT: There you go. All right. Let's
14 get it to the jury.

15 (The jury begins deliberations at 3:56 PM.)

16 THE COURT: Anything before we bring in the
17 jury from the State?

18 MR. GRAHAM: No, sir.

19 THE COURT: Defense?

20 MR. STITELY: No, sir.

21 (The jury enters the courtroom at 5:26 PM.)

22 THE COURT: All right. Madam Clerk?

23 THE CLERK: Madam Forelady, have you reached
24 your verdicts?

25 THE FOREWOMAN: Yes, ma'am, we have.

1 THE CLERK: Please pass them up by the bailiff.

2 THE COURT: All right. Madam Clerk, the
3 verdict appears to be properly signed and dated.
4 Would you please publish our verdicts?

5 THE CLERK: Yes, sir, Your Honor.

6 Indictment 2018-GS-32-00943, The State vs.
7 Peter Lynn Coffey, as to the charge of murder, we
8 the jury unanimously find the defendant guilty of
9 murder.

10 Indictment 2018-GS-32-00944, The State vs.
11 Peter Lynn Coffey, as to charge of criminal sexual
12 conduct in the first degree, we the jury unanimously
13 find the defendant guilty of criminal sexual conduct
14 in the first degree. It is so signed, Barbara
15 Coker, Forelady, March 15th, 2018.

16 Madam Forelady, ladies and gentlemen of the
17 jury, if these are your verdicts, please indicate,
18 each of you, by raising your right hand.

19 All hands raised, Your Honor.

20 THE COURT: All right. Thank you, Madam Clerk.
21 Anything for the jury from the State?

22 MR. GRAHAM: No, Your Honor.

23 THE COURT: From the Defense?

24 MR. STITELY: The Defense would request
25 individual polling, Judge.

1 THE COURT: Madam Clerk, would you explain that
2 procedure to the jury and conduct it thereafter?

3 THE CLERK: Yes, sir, Your Honor. As I call
4 your juror number, hold up your hand where I can
5 recognize you. I will ask you: As to the verdicts,
6 were these your verdicts and are they still your
7 verdicts? And at that time, give me your response,
8 please.

9 Juror 33, as to the verdicts, were these your
10 verdicts and are they still your verdicts?

11 THE JUROR: Yes, they were and yes, they still
12 are.

13 THE CLERK: Juror 86, as to the verdicts, were
14 these your verdicts and are they still your
15 verdicts?

16 THE JUROR: Yes, ma'am.

17 THE CLERK: Juror 143, as to the verdicts, were
18 these your verdicts and are they still your
19 verdicts?

20 THE JUROR: Yes, ma'am.

21 THE CLERK: Juror 192, as to the verdicts, were
22 these your verdicts and are they still your
23 verdicts?

24 THE JUROR: Yes, ma'am.

25 THE CLERK: Juror 130, as to the verdicts, were

1 these your verdicts and are they still your
2 verdicts?

3 THE JUROR: Yes, ma'am.

4 THE CLERK: Juror 75, as to the verdicts, were
5 these your verdicts and are they still your
6 verdicts?

7 THE JUROR: Yes, ma'am.

8 THE CLERK: Juror 62, as to the verdicts, were
9 these your verdicts and are they still your
10 verdicts?

11 THE JUROR: Yes, ma'am.

12 THE CLERK: Juror 193, as to the verdicts, were
13 these your verdicts and are they still your
14 verdicts?

15 THE JUROR: Yes, ma'am.

16 THE CLERK: Juror 7, as to the verdicts, were
17 these your verdicts and are they still your
18 verdicts?

19 THE JUROR: Yes, ma'am.

20 THE CLERK: Juror 111, as to the verdicts, were
21 these your verdicts and are they still your
22 verdicts?

23 THE JUROR: Yes, ma'am.

24 THE CLERK: Juror 116, as to the verdicts, were
25 these your verdicts and are they still your

1 verdicts?

2 THE JUROR: Yes, ma'am.

3 THE CLERK: Juror 20, as to the verdicts, were
4 these your verdicts and are they still your
5 verdicts?

6 THE JUROR: Yes, ma'am.

7 THE CLERK: Jurors polled, Your Honor.

8 THE COURT: Thank you, Madam Clerk.

9 Anything further for the jury from the Defense?

10 MR. STITELY: No, sir.

11 THE COURT: All right. Thank you. Thank you
12 very much.

13 Madam Forelady, ladies and gentlemen of the
14 jury panel, momentarily I'm going to dismiss you
15 from your jury service for, obviously, the remainder
16 of the day and the remainder of the week. You do
17 not have to call back, do not have to come back. I
18 thank you very much for your service during this
19 term of court.

20 We, the players, so to speak, within the
21 judicial system, would not be able to administer
22 your and our criminal nor civil justice system
23 without your participation. I think my court
24 reporter said the other day there were 220 terms of
25 court each and every week in South Carolina. I

1 think each circuit judge has about mid-40s as far as
2 terms of court per year. Now, that's all brands of
3 court, civil, criminal, family, and the like. And I
4 know it puts a burden on your and other jurors'
5 personal and professional lives. And I thank you
6 very much for being here.

7 With that being said, you are now excused from
8 your jury service with my thanks. And, Madam
9 Forelady, if you would meet with the Clerk just for
10 a moment in the hallway in the back. Thank you very
11 much. You're now excused.

12 (The jury exits the courtroom at 5:34 PM.)

13 THE COURT: All right. Any motions,
14 Mr. Stitely?

15 MR. STITELY: Yes. At this time the defendant
16 would make a motion to set aside the verdict of the
17 jury and order a new trial on the basis of the
18 evidence presented, any other matters that were
19 previously brought up. I would also renew all
20 previous motions brought up in this case.

21 THE COURT: As to all previous motions, I would
22 reaffirm all my previous rulings, both in-camera,
23 all my directed verdict motions; further, I would
24 reaffirm all my evidentiary rulings.

25 As to motion for new trial, I would

1 respectfully deny that motion. I think there's
2 sufficient evidence from which a reasonable jury
3 could reach the conclusion. Not only sufficient, I
4 personally think it would be overwhelming evidence
5 from which a jury could reach the verdicts that they
6 did in both the murder and the criminal sexual
7 conduct first degree.

8 Any other motions, Mr. Stitely?

9 MR. STITELY: Not at this time, Judge.

10 THE COURT: All right. Is there any reason
11 sentence cannot be imposed at this time?

12 MR. STITELY: I don't believe we have a reason,
13 Judge. I don't know if the State does.

14 MR. GRAHAM: The State is ready to go forward,
15 Your Honor.

16 THE COURT: All right. If you'd come around,
17 please, Mr. Coffey.

18 Anything additionally from the State?

19 MR. GRAHAM: A few things, Your Honor. She is
20 survived by several family members, but directly,
21 her mother and her brother. And on behalf of the
22 family, they have asked me to express to the Court
23 their desire that you sentence Mr. Coffey to life.

24 His prior record, Your Honor: Back in 1995,
25 use of vehicle without owner's permission; he was

1 convicted of criminal sexual conduct in the third
2 degree --

3 THE COURT: What degree?

4 MR. GRAHAM: Third degree.

5 THE COURT: And tell me again what year that
6 was.

7 MR. GRAHAM: The Court date on that was 1995.

8 THE COURT: And what type of sentence did he
9 receive at that time?

10 MR. GRAHAM: Ten years suspended upon the -- it
11 says ten years suspended on one year service, the
12 balance suspended to five years probation.

13 THE COURT: All right. Yes, sir.

14 MR. GRAHAM: And then he had a public
15 disorderly conduct in 1997. He had a failure to
16 register as a sex offender in 2000, a shoplifting in
17 1999, another resisting arrest in 1999; in 2000 he
18 was convicted of strong arm robbery. And then I
19 believe there was a parole revocation on the
20 criminal sexual conduct at that time.

21 He had use of vehicle without owner's
22 permission in 2002, a public disorderly conduct in
23 2002, malicious injury to real property less than
24 \$2,000 in 2015, along with a petit larceny; in 2007,
25 unlawful possession of drug paraphernalia, another

1 public disorderly conduct in 2007, a shoplifting in
2 2011. And there were numerous other charges for
3 arrests, but not convictions, Your Honor.

4 THE COURT: You question any of those or does
5 Mr. Coffey question any of those prior convictions?

6 MR. STITELY: Judge, he's not sure about the
7 malicious injury to personal property charge, that
8 misdemeanor from 2015. And there's a little bit of
9 clarification on what happened with the probation
10 parole element of the one from 25 years ago.

11 THE COURT: When was the parole revocation?

12 MR. STITELY: He said he finished everything
13 back in 2001, Judge, to his recollection. He says
14 November 16th, 2001, to his recollection.

15 THE COURT: And he was on parole for criminal
16 sexual conduct in the third degree?

17 MR. STITELY: Conviction from when he was 18,
18 Judge.

19 THE COURT: Well, you're telling me yea and
20 he's indicating --

21 THE DEFENDANT: I was not on parole, sir.

22 MR. STITELY: Probation. I was on the
23 probation for five years. I violated when I went to
24 rehab when I worked with George French. His son
25 just came from Morris Village, Eddie French. And

1 Eddie said, it really helped me some, Pete. He
2 said, why don't you try to quit drinking and go to
3 rehab?

4 And when I went to rehab in Faith Home in
5 Greenwood, those six days I was there, I did not
6 report to my probation. And when I got released,
7 they had a warrant for me and they violated me and
8 it gave me all my five years back. I to do four of
9 them.

10 THE COURT: So you did four years from about
11 '01 to about '05?

12 THE DEFENDANT: No, sir. It was '99 I went in.

13 THE COURT: '99 to about '03?

14 THE DEFENDANT: No, sir. I maxed out in 2001.

15 MR. STITELY: He did, I guess, the 51 percent
16 of it, Judge.

17 THE DEFENDANT: I worked. During the
18 summertime I was in the yard cutting the grass and
19 in the winter months, six months of winter months,
20 they had me in the kitchen. And from 1:00 to 4:00
21 each day, I had vocational carpentry. I had
22 carpentry 1, 2, and 3, and that brought my sentence
23 down to 51 percent. And I had no write-ups or
24 anything like that, sir.

25 THE COURT: Why did you -- well, I won't ask

1 those questions.

2 Anything else?

3 MR. STITELY: No, Judge. Like I said, he
4 wasn't sure about that 2015. He's --

5 THE COURT: I won't take that into account.

6 Anything further, Solicitor?

7 MR. GRAHAM: No, Your Honor.

8 THE COURT: All right. Thank you.

9 Mr. Stitely, I'll be glad to hear from you.

10 MR. STITELY: Judge, if it pleases the Court,
11 I've known Pete for a couple years. We worked on
12 this case over the past few years. We're, of
13 course, not happy with the outcome, but it is what
14 it is. He's always been polite, helpful,
15 respectful.

16 You've been able to talk to him on a couple
17 occasions. That's kind of how he is, Judge. He's
18 very particular about his dates and times and all
19 that happened when he was very young. His
20 conviction got him in trouble back when he was 18,
21 and he's been running from that. It's hard to
22 recover from something like that.

23 He'd actually been doing really well, as you
24 heard, Judge, aside from, I think they said, three
25 misdemeanor charges. Since he got out in 2001,

1 he -- until this incident, he had nothing going on.
2 It's, of course, day for day. We'd ask you to give
3 him the 30-year minimum.

4 He's got a mother and a brother on the outside.
5 His mother has been here on and off all week. She
6 couldn't handle sitting here.

7 THE COURT: Was his brother here some this
8 week, that other gentleman I noticed?

9 MR. STITELY: He was just a citizen observing,
10 Judge.

11 THE COURT: All right.

12 MR. STITELY: But his mom, like I said, she has
13 been calling us every morning, talking to the
14 Solicitor's Office. She couldn't handle sitting
15 here any more.

16 THE COURT: Thank you, Mr. Stitely.

17 Anything you'd like to say, Mr. Williams?

18 MR. WILLIAMS: Your Honor, I probably have
19 known Peter longer than Ben has. And Ben is right
20 about this about his mother. He has a lovely
21 mother, her name is Carolyn Coffey, the little short
22 lady with gray hair. She's very -- the speech
23 patterns of Peter and his mother are somewhat
24 similar because they tend to talk about points and
25 stuff like that. But if you ever want to know

1 anything from Pete, he will tell you exactly from A
2 to Z.

3 But I have never known Pete to be angry.
4 Obviously, based on the charges, that would indicate
5 a very angry person, Your Honor, did that. But if
6 indeed he is the one -- and I think the jury has
7 determined he is the one who did this, I'm sure Pete
8 is very remorseful, because he really liked JT
9 And we all feel sorry for the Taylor family.

10 THE COURT: Anything you'd like to say,
11 Mr. Coffey?

12 THE DEFENDANT: I'm sorry for all this that
13 happened to JT I wish I knew who did it. It
14 wasn't me, sir. I'm sorry I had to get pulled into
15 court for all this. I run around with the wrong
16 people. That's all I know, sir. I'm sorry all this
17 happened. Please have mercy on me.

18 THE COURT: Thank you, Mr. Coffey.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: I certainly respect your right to
21 say whatever you'd like, Mr. Coffey; however, my
22 observation is that is inconsistent with the
23 evidence. And just because I may disagree with you
24 does not mean I don't respect your right to say
25 that.

1 I also will tell you, I have the highest regard
2 for your lawyers. I have known Mr. Williams
3 personally and professionally for a very long time.
4 And, as he phrased it, I understand exactly what
5 he's saying concerning remorse. I've seen no
6 remorse. I've seen no remorse.

7 People -- the folks that are usually in this
8 courtroom, they've heard me say this before, and
9 it's times like this that I do say it: I think
10 there's more than adequate, if not overwhelming,
11 evidence. And I've tried to ponder in my mind how
12 the blood got in the shower; not so much how, but
13 when. It would have had to have been a blood source
14 in the shower.

15 In my simple mind, it may not have been
16 JT [REDACTED] because if she was bleeding actively in
17 that shower with the blood that I observed, there
18 would be, in my mind -- and I'm not a blood spatter
19 expert, I've heard more than I can count testify.
20 It would appear there would be a different pattern
21 in that shower.

22 And that indicates to me, in looking at the
23 evidence, that that would have been transferred
24 blood from her body to her killer to that shower, to
25 me. And there may be many experts, because I'm not

1 one, that would totally disagree with that. But
2 that image in my mind of you taking a shower to wash
3 off the blood of your victim is just indelible in my
4 mind.

5 I think the worst crime that can be committed
6 is stealing. I think stealing is the foundation of
7 all crime. You steal somebody's property, you deny
8 them of their property. I think you have a
9 conviction in the past for unlawful use of motor
10 vehicle, depriving them of their automobile.

11 Criminal sexual conduct, you deprive someone of
12 their body, their dignity; murder, you steal
13 somebody's life, somebody's mother, sister, friend,
14 and neither you, nor I, nor anybody in this
15 courtroom has a right to do any of those things.
16 And that foundation goes back to stealing, that's
17 what it goes back to.

18 I think people ought to be able to live
19 securely and safely in their homes; not only in
20 their homes, but on their property. Children ought
21 to be able to walk, if they wanted to, from Gaston
22 to Swansea with no fear whatsoever; not have to have
23 armed security in our schools.

24 And I think one of the most dangerous persons
25 is one that goes in someone's house, whether they

1 break in or they go in by ruse, they're invited in,
2 is a friend, a trusted friend with multiyear
3 relationship, friendship, is inexcusable. I try to
4 do what I think is right when I sentence people.
5 And I'll serve you with the same measure of justice
6 that you served JT and she didn't have a jury
7 trial or good lawyers, any lawyer.

8 2018-GS-32-000943, Peter Lynn Coffey, having
9 been convicted by a jury of the offense of murder,
10 the defendant is committed to the state department
11 of corrections for a sentence of life without
12 parole.

13 2018-GS-32-00944, Peter Lynn Coffey, criminal
14 sexual conduct in the first degree, the defendant is
15 committed to the state department of corrections for
16 a determinate term of 30 years. Those are
17 consecutive.

18 Thank you. Thank you very much. Thank you,
19 Mr. Stitely and Mr. Williams. Good luck to you,
20 Mr. Coffey. Thank you, Solicitor. Anything further
21 for the Court?

22 MR. STITELY: Nothing from the Defense.

23 THE COURT: Thank you very much.

24 -- END OF TRANSCRIPT OF RECORD --

25

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 12th, 13th, 14th, and 15th days of March, 2018.

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

July 9, 2018

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

WITNESSES

Lexington County Sheriffs Department

B Booth

Law Enforcement Case #: 15015093

DSG**ARREST WARRANT NUMBER**

2015A3210201402

ACTION OF GRAND JURY**TRUE BILL**

Duff B. Goff 3-12-18
Foreperson of Grand Jury
Date:**VERDICT***Guilty*

Bar A Coker
Foreperson of Petit Jury
Date: 3-15-18**DOCKET NO. 2018GS3200943****The State of South Carolina**
County of Lexington

COURT OF GENERAL SESSIONS**MARCH TERM 2018**

THE STATE
vs.**Peter Lynn Coffey**

CDR #: 0116**Indictment for****Murder****§ 16-03-0010**

S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Murder

§ 16-03-0010

At a Court of General Sessions, convened on March 2018, the Grand Jurors of Lexington County present upon their oath:

That **Peter Lynn Coffey** did in Lexington County on or about August 8, 2015, willfully, feloniously and with malice aforethought kill one **JT [REDACTED]** by means of beating the victim about her head and face fracturing her skull, and that the victim, **JT [REDACTED]** died as a proximate result thereof, in violation of § 16-3-10, Code of Laws of South Carolina, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



DEPUTY SOLICITOR

WITNESSES

Lexington County Sheriffs Department

B Booth

Law Enforcement Case #: 15015093

DSG

ARREST WARRANT NUMBER

2015A3210201401

ACTION OF GRAND JURY**TRUE BILL**

Duff B. Goff 3-12-18
Foreperson of Grand Jury
Date:

VERDICT*Guilty*

*Ben A. Coker*Foreperson of Petit Jury
Date: 3-15-18

DOCKET NO. 2018GS3200944**The State of South Carolina**
County of Lexington

COURT OF GENERAL SESSIONS**MARCH TERM 2018**

THE STATE**vs.****Peter Lynn Coffey**

CDR #: 0160

Indictment for**Sex / Criminal Sexual Conduct First
Degree****§ 16-03-0652**

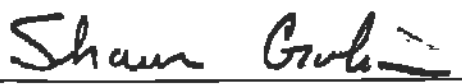
S.R. Hubbard III, SOLICITOR

STATE OF SOUTH CAROLINA	)	INDICTMENT FOR
	)	Sex / Criminal Sexual Conduct First Degree
COUNTY OF LEXINGTON	)	
	)	§ 16-03-0652

At a Court of General Sessions, convened on March 2018, the Grand Jurors of Lexington County present upon their oath:

That **Peter Lynn Coffey**, did in Lexington County, South Carolina on or about August 8, 2015, commit a sexual battery upon the victim, **JT [REDACTED]** without her consent, by the use of aggravated force to accomplish the battery, to wit: the defendant did by using physical force or physical violence of a high and aggravated nature to overcome the victim did commit sexual intercourse and inserted a foreign object into her rectum, all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
 STATE VS.
Peter Lynn Coffey

AKA:

Race: Sex: M Age: 44DOB: [REDACTED] SS#: [REDACTED]Address: 645 Boy Scout RdCity, State, Zip: Gaston, SC 29053-9062DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS3200943A/W#: 2015A3210201402Date of Offense: 8/7/2015S.C. Code § : 16-03-0010CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSIn violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-43
 (CSC w/minor 1st or Lewd Act)

 The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
 Solicitor102096
 SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of LWOP days/months/years or ☐ under the Youthful Offender Act not to exceed years
 and/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
 Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

Obtain GED ☐☐ Set by SCDPPPSAttend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ beginning \$ paid to Public Defender FundOther:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100 -§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 61.6 (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25 -§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ TOTAL \$ 125 -Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA217 (07/2016)

☐ Appointed PD or appointed other counsel,
 §Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.
Presiding Judge [Signature]Judge Code: 2145Sentence Date: 15 March 2018

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Lexington

VS.

Peter Lynn Coffey

AKA:

Race: Sex: M Age: 44

DOB: SS#: [REDACTED]

Address: 645 Boy Scout Rd

City, State, Zip: Gaston, SC 29053-9062

DI#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazardous Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Sex / Criminal sexual conduct - First degree

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018GS3200944

A/W#: 2015A3210201401

Date of Offense: 8/7/2015

S.C. Code §: 16-03-0652

CDR Code #: 0160

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSIn violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] Solicitor SC Bar# 102096 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation formonths/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State
Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Referral ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ plus 20% fee: \$
Payment Terms:
☐ Set by SCDPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (Mif Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 56-21-114 (DUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/rea
3% to County (if paid in installments)	\$

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (07/2016)

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$
\$ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ Proviso 61.6 requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code:

Sentence Date:

[Signature]

2145

13 March 2018

STATE OF SOUTH CAROLINA

County of Lexington

Peter Lynn Coffey #226897
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2020CP3203992

APPLICATION FOR

POST-CONVICTION RELIEF

FILED

DEC-2 AM 11:05

A.M. COMER
CLERK OF COURT
LEXINGTON SC

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lee Correctional Institution
990 W. Sack Highway, Bishopville, SC 29010
2. Name and location of Court which imposed sentence Court of General
Sessions, Lexington County, South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2018-GS-32-000943 §16-03-0010
 (b) 2018-GS-32-00944 §16-03-0652

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- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 3-15-18; life without Parole
- (b) 3-15-18; thirty years
- (c) Those are consecutive
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty March 12-15, 2018
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. State of S.C. Court of Appeals
- ii. State of S.C. Supreme Court
- iii. Lower court; S.C. Court of Appeals
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. Dismissed
- iii. _____
- (c) the date of each such result:
- i. June 17, 2020 September 16, 2020
- ii. October 20, 2020
- iii. November 10, 2020
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Appellate Case No. 2018-000491
- ii. Appellate Case No. 2020-001376
- iii. Unpublished Opinion No. 2020-up-186
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

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Question 11

- Defense council failed to get indictments swashed
- Defense council failed to investigate facts of case
- Defense council failed to provide expert examiners
- Defense council failed to request DNA Analyzation on contents found on evidence
- Defense council failed to show Alibi defense
- Defense council failed to bring defensive witnesses
- Defense council failed to develop or present viable defenses to the charges against Applicant prior to and during trial
- Defense counsel failed to object to Prosecutors Rebuttal statement in closing argument.
- Defense counsel failed to examine contents of phone records of 629-2011. (3 folders + Draft)
- Defense counsel failed to strike jurors

FILED
2020 DEC -2 AM 11:05
LISA M. COMER
CLERK OF COURT
LEXINGTON SC

No. 201 Joshua Bailey & No. 210 Brandon Trotter

A TRUE COPY

Lisa M. Comer
Lex. Co. C.C.P., G.S. & F.C.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Trial Counsel
- (b) Violation of rights pursuant to VI & XIV Amendments
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Trial counsel failed to adequately investigate
- (b) Trial counsel failed to adequately present witness at trial.
- (c) Trial counsel failed to challenge indictments
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? ~~no~~ yes
- (d) any other petitions, motions or applications in this or any other Court? yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Anders Brief / Pro se response brief
- ii. Motion for rehearing
- iii. Motion to Amend petition for Rehearing
- iv. Writ of Certiorari to the S.C. Supreme Court
- (b) the name and location of the Court in which each was filed:
- i. S.C. Court of Appeals ; Columbia, S.C.
- ii. S.C. Court of Appeals ; Columbia, S.C.
- iii. S.C. Court of Appeals ; Columbia, S.C.
- iv. S.C. Supreme Court ; Columbia, S.C.

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(c) the disposition thereof:

- i. Appeal dismissed ; Counsel's motion to be relieved is granted
- ii. the petition for rehearing is denied
- iii. denied

iv. dismissed
~~appealed dismissed-Remittitur~~

(d) the date of each such disposition:

- i. Submitted June 1, 2020 - Filed June 17, 2020
- ii. Filed Sept. 16, 2020
- iii. October 20, 2020
- iv. Remittitur - November 10, 2020

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. Unpublished Opinion No. 2020-UP-186
- ii. - ORDER - Appellate Case No. 2018-000491
- iii. - ORDER - Appellate Case No. 2020-001376
- iv. - Remittitur - Lower Court Case No. 2018GS3200943; 2018GS3200944

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) First appropriate opportunity to address an Application
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? yes
 (c) your sentencing? yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Robert T. Williams, Sr., Esquire.
Lexington, S.C. 29071
 ii. S.C. Commission on Indigent Defense DAVID Alexander
P.O. Box 11589, Columbia, SC, 29211 Appellate Defender
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. _____
 ii. _____
 iii. _____

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Lex. Co. C.C.C.P., G.S. & F.C.

19. State clearly the relief you seek in filing this application:

Vacate Conviction

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)

County of Lexington)

VERIFICATION

I, Peter Lynn Coffey, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Peter Lynn Coffey

SWORN to and subscribed before me this 24
day of Nov, 2020.

Debra Eastridge (L.S.)
Notary Public

My Commission Expires: 3/3/2026

FILED

2020 DEC -2 AM 11:05

LISA M. COOPER
CLERK OF COURT
LEXINGTON SC

A TRUE COPY

Lex. Co. C.C.P., G.S. & F.C.

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Peter Lynn Coffey, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Peter Lynn Coffey
Applicant

SWORN or affirmed to and subscribed before me this

24 day of Nov., 2020.

Debra Eastman
Notary Public

My Commission Expires: 3/3/2024

FILED

2020 DEC -2 AM 11:05

LISA M. COVER
CLERK OF COURT
LEXINGTON 26

A TRUE COPY

C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

Peter Lynn Coffey # 226897

Defendant(s)

2020 CP 3203992

Submitted By:

Address: Lee Correctional InstitutionFB-2253990 Wisacky HwyBishopville, S.C. 29010

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts**
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
 Previous Notice of Intent Case #
 20 -NI-
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399)

- Real Property**
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- Inmate Petitions**
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- Administrative Law/Relief**
☐ Reinstatement License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- Judgments/Settlements**
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799)

- Appeals**
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)

Submitting Party Signature:

Peter L. CoffeyNovember 23, 2020

Date:

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

2021 JUN 31 AM 9:59

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Peter Lynn Coffey, SCDC #226897,

Case No. 2020-CP-32-3992

Applicant,

v.

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT
(Counsel Appointed)**

State of South Carolina,

Respondent.

In response to the post-conviction relief (PCR) action commenced by Peter Lynn Coffey (Applicant) on December 2, 2020, the State makes this return:

I. FACTS & PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on August 19, 2015, after breaking into the victim's home, sexually assaulting her, inserting a foreign object into her rectum, and ultimately beating her to death. During its March 2018 term, the Lexington County Grand Jury indicted Applicant for murder (2018-GS-32-0943) and first-degree criminal sexual conduct (CSC) (2018-GS-32-0944).

On March 12, 2018, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Benjamin A. Stitely, Esquire and Robert T. Williams, Sr., Esquire (collectively, Counsels) represented Applicant. Deputy Solicitor D. Shawn Graham and Assistant Solicitor Bradley Pogue of the Eleventh Circuit Solicitor's Office prosecuted the case.

At the conclusion of the multi-day trial, the jury convicted Applicant as indicted on March 15, 2018. Judge McMahon sentenced Applicant to consecutive terms of life imprisonment without

the possibility of parole (LWOP) for murder and thirty years for first-degree CSC.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander perfected Applicant's appeal by filing an *Anders*¹ brief with the Court of Appeals on the following issues:

Whether the trial judge erred in refusing to allow appellant to cross-examine the victim's drug dealer about supplying her with crack two days before her body was found, where she had high levels of cocaine in her system and DNA evidence showed that other unknown persons might have committed this murder?

Applicant filed a *pro se* brief in response. On June 17, 2020, the Court issued an unpublished *per curiam* opinion dismissing the appeal and granting appellate counsel's request to be relieved. *State v. Coffey*, 2020-UP-186 (S.C. Ct. App. filed June 17, 2020). The case was remitted back to the circuit court on November 10, 2020.

II. CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):

1. "Ineffective assistance of trial counsel"
 - a. "Defense counsel failed to get indictments swashed[sic]"
 - b. "Defense counsel failed to investigate facts of case"
 - c. "Defense counsel failed to provide expert examiners"
 - d. "Defense counsel failed to request DNA analyzation on contents found on evidence"
 - e. "Defense counsel failed to show alibi defense"
 - f. "Defense counsel failed to bring defensive witnesses"
 - g. "Defense counsel failed to develop or present viable defenses to the charges against Applicant prior to and during trial"
 - h. "Defense counsel failed to object to prosecutors rebuttal statement in closing argument"
 - i. "Defense counsel failed to examine contents of phone records of 629-2011 (3 folders and draft)"
 - j. "Defense counsel failed to strike jurors No. 9 Joshua Bailey and No. 210 Brandon Trotter"
2. "Violation of rights pursuant to VI and XIV Amendments"

¹ *Anders v. California*, 386 U.S. 738 (1967).

Applicant requests relief as follows:

“vacate conviction”

Attached to this return and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions; Applicant’s records from the South Carolina Department of Corrections; a full and complete record of Applicant’s direct appeal, including the trial transcript; and the records of the current PCR action. The State reserves the right to amend this return upon receipt of any relevant materials.

III. RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

A. Ineffective Assistance of Trial Counsel, Generally

Applicant’s claims of ineffective assistance of counsel are without merit. The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687.

To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is “necessarily linked to the practice and expectations of the legal community.” *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” *Strickland*, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance” demanded of attorneys in criminal cases. *Id.* Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

“When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in

determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Review of counsel’s actions is hallmarked by deference, as “it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” *Strickland*, 466 U.S. at 689. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688–89; *see id.* at 691 (“Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. *Id.* at 689. The ultimate question is not whether counsel’s actions were reasonable, but whether there is any reasonable argument counsel satisfied *Strickland*’s deferential standard.

The second, or “prejudice” prong of *Strickland* is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. *Id.* at 691–92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694; *see id.* at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. *Id.* at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial*." *Id.* at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Id.* at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-690. Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the

proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Id.* at 686; *see Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”); *cf. United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) (“[T]he threshold issue is not whether [the applicant’s] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.”).

B. Failure to Quash Indictments

Applicant first contends Counsels were ineffective for failing to move to quash the indictments. The record indicates Applicant was originally indicted for these offenses in May 2017, under indictment numbers 2017-GS-32-0993 and -0994. (R. 16). The solicitor explained at the outset of the trial that the original indictments contained two scrivener’s errors. (R. 16). First, the victim’s full name was spelled incorrectly. (R. 16). Second, the State determined the sexual assault and murder likely occurred during the early morning hours of August 8th rather than the late evening hours of August 7th. (R. 16). Out of an abundance of caution, however, the solicitor sent two new indictments to the grand jury the morning of trial to address these errors. (R. 16). The new indictments were true-billed by the grand jury on March 12, 2018. (R. 16–17). The 2017 indictments were admitted as Court’s exhibits. (R. 16–17). Judge McMahon read the changes into the record, and found each new indictment to be sufficient in form and consistent with section 17-19-20 and corresponding case law. (R. 18–19). Defense counsels had no objection. (R. 18).

As an initial matter, an indictment is a mere notice document which “passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood.” *State v. Tumbleston*, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007); *accord.* S.C. Code Ann. § 17-19-20.

Here, Applicant's indictments were certainly sufficient to give Applicant notice of the charges against him. *See State v. Gentry*, 363 S.C. 93, 102, 610 S.E.2d 494, 499 (2005) (explaining that an indictment is a mere notice document, which need only state the offense of murder with sufficient certainty and particularity such that a defendant knows what he is being called upon to answer). Each indictment states all the necessary elements of the crime, the date of the offense, and the name of the accused. *Costello v. United States*, 350 U.S. 359, 363 (1956).

As noted by Judge McMahon, the statutory language contained in the new indictments is identical to the 2017 indictments. (R. 19). Applicant therefore cannot show he was prejudiced by the correction of mere scrivener's errors. Applicant offers no additional grounds on which Counsels could have successfully challenged the indictments. A review of the four corners of each indictment reflects valid and sufficient notice of the charge alleged and clearly indicates the statute violated. Therefore, Applicant's allegations pertaining to the indictments are therefore without merit.

C. Failure to Investigate, Prepare Defense, and Present Witness Testimony

Applicant contends Counsels were ineffective for failing to sufficiently investigate the facts and circumstances of the case; failing to present certain defenses and witnesses; and failing to "provide expert examiners." Specifically, Applicant contends Counsels should have examined the contents of certain phone records; hired an independent expert to examine the DNA evidence; and presented an alibi defense. The State submits these claims are without merit.

"A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends on a number of issues,

at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses “when it is reasonable to do so.” *Edwards v. State*, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. *Harris v. State*, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing *Jackson v. State*, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Harris*, 377 S.C. at 75–76, 659 S.E.2d at 145–46. Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“this duty is limited to a reasonable investigation”). Reviewing courts “should keep in mind that counsel’s function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case.” *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a

particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

D. Failure to Object to Closing Argument

Applicant further contends Counsels were ineffective for failing to object to some unspecified comment the solicitor made in his closing argument. As discussed below, the State is presently without sufficient information to fully respond to this claim because Applicant does not specify the comment he alleges Counsels should have objected to or provided a basis upon which Counsels could have objected. The State nonetheless submits this claim is without merit.

The solicitor's closing argument "must be carefully tailored so as not to appeal to the personal bias of the juror nor calculated to arouse his passion or prejudice." *State v. Linder*, 276 S.C. 304, 278 S.E.2d 335, 339 (1981). "The solicitor may not rely on statements not in evidence during closing argument." *State v. Huggins*, 325 S.C. 103, 107, 481 S.E.2d 114, 116 (1997). However, [t]he solicitor has the right to give his version of the testimony and to comment on the weight to be given to the testimony of the defense witnesses." *State v. Raffaldt*, 318 S.C. 110, 115, 456 S.E.2d 390, 393 (1995). "[C]onsiderable latitude is generally allowed in matters of drawing and arguing inferences and deductions from evidence." *Johnson v. Life Ins. Co. of Ga.*, 227 S.C. 351, 369, 88 S.E.2d 260, 269 (1955).

To prevail on a claim that trial counsel was ineffective for failing to object to a solicitor's purportedly improper comment during closing argument, the PCR applicant "bears the burden of demonstrating the improper comment deprived him of a fair trial." *Johnson v. State*, 325 S.C. 182, 187, 480 S.E.2d 733, 735 (1997). "Improper comments do not require reversal if they are not prejudicial . . . , and the [applicant] has the burden of proving he did not receive a fair trial because of the alleged improper argument." *Randall v. State*, 356 S.C. 639, 642, 591 S.E.2d 608, 610

(2004). In other words, the applicant must demonstrate that, had counsel objected, there is a “reasonable probability . . . that the [jury] would have had reasonable doubt respecting guilt.” *Strickland*, 466 U.S. at 695. “A new trial will not be granted unless the prosecutor’s comments so infected the trial with unfairness as to make the resulting conviction a denial of due process.” *Huggins*, 325 S.C. at 107, 481 S.E.2d at 116.

E. Failure to Strike Jurors

Finally, Applicant contends Counsels were ineffective for failing to strike Jurors Bailey and Trotter. As an initial matter, “a criminal defendant has no right to a trial by any particular jury, but only a right to a trial by a competent and impartial jury.” *Palacio v. State*, 333 S.C. 506, 517, 511 S.E.2d 62, 68 (1999) (citing *State v. Patterson*, 324 S.C. 5, 482 S.E.2d 760 (1997)). “The fact that an accused does not personally select the jury is not a deprivation” of the right to a fair jury trial. *Id.* (quoting *Commonwealth v. Sanders*, 299 Pa. Super. 410, 445 A.2d 820 (1982)) (emphasis omitted).

Rather, “jury selection is a process that inherently falls within the expertise of counsel,” and trial counsel is not ineffective for failing to exercise peremptory strike as instructed by the defendant. *Id.* at 516, 511 S.E.2d at 67; *see id.* (“The selection of a jury is inevitably a call upon experience and intuition. The *trial lawyer* must draw upon his own insights and empathetic abilities.” (quoting *Romero v. Lynaugh*, 884 F.2d 871, 878 (5th Cir. 1989))). A PCR applicant can only prevail on this claim if he “provide[s] credible evidence that the trial attorney’s refusal to strike a juror prejudiced the defense.” *Id.*; *see id.* at 516–17, 511 S.E.2d 68 (reversing the PCR court’s grant of relief where the PCR court found jury selection ‘is a defendant’s right and not trial strategy left to counsel’ because under such analysis, ‘a criminal defendant could demand that his attorney strike a juror, and if the attorney refused, the defendant could insure that any conviction

would automatically be reversed' on PCR").

Because Applicant has failed to indicate why Counsels should have struck Jurors Bailey and Trotter or how he was prejudiced as a result, the State submits this allegation is without merit.

F. Conclusion and Action Requested

For the above-reasons, Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

IV. MOTION FOR A MORE DEFINITE STATEMENT

The State submits Applicant's claims of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to these allegations because Applicant has failed to set forth facts to "support each ground" or to explain with specificity the facts upon which his claims are based.

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide specific claims and facts to support these vague allegations pursuant to Rule 12(e), SCRCP and the Post-Conviction Procedure Act. *See* S.C. Code Ann. § 17-27-50 (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a prima facie showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCP (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule

71.1(d), SCRCP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

V. ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP; *see also* Rules 15(a)-(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and

oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

VI. GENERAL DENIAL

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV, and thereafter convene an evidentiary hearing on the allegation of ineffective assistance of counsel.

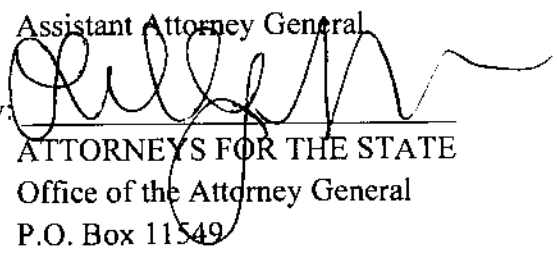
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LILLIAN L. MEADOWS
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

June 28, 2021

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
 PETER L. COFFEY,	)	CASE NO.: 2020-CP-32-3992
	)	
Applicant,	)	
	)	
v.	)	AMENDMENT TO APPLICATION
	)	FOR POST CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

Applicant, by and through his undersigned attorney, hereby amends his application for Post-Conviction Relief. This amended application adopts and includes all grounds in the original application filed December 2nd, 2020 by Applicant. Applicant further alleges as additional grounds regarding his claim of ineffective assistance of counsel as to Benjamin A. Stitely and Robert T. Williams as follows:

1. Applicant's counsel, Benjamin A. Stitely and Robert T. Williams, failed to properly investigate the case against the applicant.

2. Applicant's counsel, Benjamin A. Stitely and Robert T. Williams, failed to meet with the applicant a sufficient number of times to prepare for trial.
3. Applicant's counsel Benjamin A. Stitely and Robert T. Williams failed to object to buccal swab DNA evidence collected from the applicant (p.403-404).
4. Applicant's counsel Benjamin A. Stitely and Robert T. Williams failed to object to the jury charge regarding inferred malice and the use of a deadly weapon (p849, line 14-16).
5. Applicant's counsel Benjamin A. Stitely and Robert T. Williams failed to object to the statements by the solicitor that introduced improper character evidence (p. 825, lines 8-12).
6. Applicant's counsel Benjamin A. Stitely and Robert T. Williams failed to object to testimony regarding applicants DNA on item 8.3 from the waistband on a pair of shorts, p. 543 and on item 13.1 taken from a cucumber recovered from the autopsy of the victim on p. 546-547.
7. Applicant's counsel Benjamin A. Stitely and Robert T. Williams failed to object to the states evidence EX 136, p. 532, an enlarged report regarding DNA testing.
8. Applicant's counsel Benjamin A. Stitely and Robert T. Williams failed to properly cross examine the states witnesses regarding the DNA evidence and to address this evidence sufficiently at trial.
9. Furthermore, the Applicant requests that he be permitted to Amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed

issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d (2006).

Respectfully submitted,



OLA JOHNSON

Attorney for Applicant

P.O. Box 549

Lexington, SC 29071

803-360-8692 Phone

olajohnsonlaw@gmail.com

This 12 day of August, 2024.

STATE OF SOUTH CAROLINA)
)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF LEXINGTON)
) ELEVENTH JUDICIAL CIRCUIT

PETER L. COFFEY,) **CASE NO.: 2020-CP-32-3992**
)

Applicant,)
)

v.)
)

CERTIFICATE OF SERVICE

STATE OF SOUTH CAROLINA,)
)

Respondent.)
)

I, Ola Johnson, hereby certify on that on August 12, 2024, I served a copy of the
 AMENDMENT TO APPLICATION FOR POST CONVICTION RELIEF on Donald J. Zelenka,
 Dep. Attorney General by Email and U.S. Mail to the following address:

Donald J. Zelenka, Dep. Attorney General

SC Attorney General's Office

P.O. Box 11549
 Columbia, S.C. 29211

8-12-24

Date


 OLA JOHNSON

1 State of South Carolina) Court of Common Pleas
2 County of Lexington) Eleventh Judicial Circuit
3
4 Peter Lynn Coffey,) Transcript of Record
5 Applicant,) 2020-CP-32-03992
6 vs.)
7 State of South Carolina,)
8 Respondent.)

9
10 March 3, 2025
Lexington, South Carolina

11 B E F O R E:

12 The Honorable Daniel Coble, Judge

13
14 A P P E A R A N C E S:

15 Ola A. Johnson, Esquire
On behalf of the Applicant

16 D. Russell Barlow, II, Senior Assistant Attorney General
On behalf of the State of South Carolina

17

18

19

20 Reported by: Stacy S. Johnson, RPR
Circuit Court Reporter

21

22

23

24

25

I N D E X

WITNESSPAGE

Peter Lynn Coffey

Direct Examination by Mr. Johnson

10

Cross-Examination by Mr. Barlow

34

Benjamin Stitely

Direct Examination by Mr. Barlow

40

Cross-Examination by Mr. Johnson

53

David Shawn Graham

Direct Examination by Mr. Barlow

58

Cross-Examination by Mr. Johnson

68

Certificate of Reporter

71

1	E X H I B I T S			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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4	**NO EXHIBITS WERE INTRODUCED**			
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1 (The following proceedings were held March 3,
2 2025, beginning at 11:47 AM.)

3 THE COURT: All right. Mr. Zelenka, I believe
4 our next case is Mr. Coffey; is that correct?

5 MR. BARLOW: Yes, Your Honor.

6 THE COURT: All right. We'll -- let's start that
7 one and see how far we get. We might finish it this
8 afternoon, so let's go ahead and get started with
9 Mr. Peter Coffey.

10 Yes, sir, Mr. Barlow.

11 MR. BARLOW: Thank you, Your Honor. May it
12 please the Court? Russ Barlow on behalf of the State
13 of South Carolina. This is the post-conviction relief
14 matter of Peter Lynn Coffey versus the State, Case
15 Number 2020-CP-32-03992, out of Lexington County.

16 During its March 2018 term, the Lexington County
17 Grand Jury indicted Applicant for murder in
18 2018-GS-32-0943 and first degree criminal sexual
19 conduct, 2018-GS-32-0944.

20 On March 12, 2018, Applicant proceeded to a
21 jury trial before the Honorable R. Knox McMahon, and
22 Benjamin A. Stitely and Robert T. Williams, Sr.,
23 represented Applicant, and Deputy Solicitor Shawn
24 Graham and Assistant Solicitor Bradley Pogue of the
25 Eleventh Circuit Solicitor's Office prosecuted the

1 case. At the conclusion of a multiday trial, the jury
2 convicted Applicant as indicted on March 15, 2018, and
3 Judge McMahon sentenced Applicant to consecutive terms
4 of life imprisonment without the possibility of parole
5 for murder and thirty years for first degree CSC.

6 Applicant filed a timely notice of appeal
7 and appellate defender David Alexander perfected
8 Applicant's appeal by filing an Anders brief with the
9 Court of Appeals and Applicant also filed a pro se
10 brief in response to the Anders brief, and on June 17,
11 2020, the Court issued an unpublished per curium
12 opinion dismissing the appeal and granting Appellate
13 counsel's request to be relieved. That was State v.
14 Coffey, 2020-UP-186, South Carolina Court of Appeals,
15 filed June 17, 2020, and the remittitur was returned on
16 November 10, 2020.

17 Applicant timely commenced this action on June 4,
18 2020, in which he alleged eleven allegations, and on
19 August 12, 2024, Applicant amended his application to
20 include seven more allegations.

21 And, Your Honor, before this Court are the
22 Lexington County Clerk of Court records, Applicant's
23 records from the South Carolina Department of
24 Corrections, Applicant's appellate records to include
25 the entire trial transcript and the records of this PCR

1 action, and at this time we would just ask Mr. Johnson
2 to state for the record which allegations he intends to
3 move forward on.

4 MR. JOHNSON: Your Honor, I'll just -- or I'll
5 start with the original application. This was listed
6 on -- under page titled Question 11, something that was
7 tacked onto the original application. It starts out
8 addressing -- it says defense counsel failed to get
9 indictments -- I believe it's trying to say quashed,
10 basically challenging the indictments, and we're moving
11 forward and asking questions about that.

12 The second one, defense counsel failed to
13 investigate facts of the case. That's repeated in the
14 amended application, so we are -- I'm just putting that
15 on the record that obviously that's just one that's
16 been repeated.

17 The next one, defense counsel failed to provide
18 expert examiners. The next one, defense counsel failed
19 to request DNA analysis on contents found in evidence.
20 The next one, defense failed to show alibi witness and
21 then after that defense counsel failed to bring defense
22 witnesses, after that defense counsel failed to --

23 THE COURT REPORTER: Mr. Johnson, could you
24 please either slow down or speak up or both?

25 MR. JOHNSON: I'm sorry.

1 THE COURT REPORTER: Thank you.

2 MR. JOHNSON: Defense failed to bring defense
3 witnesses --

4 THE COURT: Speak up a little bit.

5 MR. JOHNSON: I'm sorry. Defense counsel failed
6 to develop or present viable defenses to the charges
7 against Applicant prior to and during trial. Defense
8 counsel failed to object to prosecutor's rebuttal
9 statement in closing argument and defense counsel
10 failed to examine contents of phone records. It says
11 629-2011, three folders, draft, and then the next one
12 says defense counsel failed to strike jurors Joshua
13 Bailey and Number 210, Brandon Trotter.

14 And in addition to that, that was -- we've got
15 specific page numbers we can reference on that during
16 direct examination, but in the amended application
17 we have eight allegations.

18 Number 1, this was filed August 14, 2024,
19 indicating ineffective assistance of counsel by Ben
20 Stitely and Robert "Theo" Williams. Number one,
21 counsel failed to properly investigate the case. That
22 was, of course, repeated from the original application.
23 Number 2, counsel Ben Stitely and Robert Williams
24 failed to meet with Applicant sufficient number of
25 times to prepare for trial. Number 3, Ben Stitely and

1 Theo Williams failed to object to buccal swab DNA
2 evidence collected from Applicant, Page 403-404.
3 Number 4, Applicant's counsel Stitely and Theo Williams
4 failed to object to the jury charge regarding inferred
5 malice and use of deadly weapon, page 849, Line 14-16.
6 Number 5, Applicant's counsel Ben Stitely and Robert
7 "Theo" Williams failed to object to the statement by
8 the solicitor that introduced improper character
9 evidence, page 825, Lines 8 through 12. Number 6,
10 Applicant's counsel Stitely and Theo Williams failed
11 to object to testimony regarding Applicant's DNA on
12 Item 8.3 from the waistband on a pair of shots, page
13 543, and on Item 13.01 taken from pubic hair recovered
14 from autopsy of victim on page 546-547. Number 7,
15 Applicant's counsel Ben Stitely and Theo Williams
16 failed to object to State's evidence, Exhibit 136,
17 page 532, an enlarged report regarding testing. And
18 Number 8, Applicant's counsel Ben Stitely and Theo
19 Williams failed to properly cross-examine State's
20 witnesses regarding DNA evidence and to address this
21 evidence sufficiently at trial.

22 Those would be the allegations we're going
23 forward on, Your Honor.

24 THE COURT: All right. You can call your first
25 witness.

1 MR. JOHNSON: We call Mr. Coffey, Your Honor.

2 THE COURT: All right. Come on up and be sworn.

3 (Whereupon, Peter Lynn Coffey was duly sworn by
4 the Clerk of Court.)

5 THE CLERK: Thank you. Please be seated in the
6 witness stand and watch your step when you -- right up
7 here.

8 THE DEPUTY: Right up here, sir.

9 THE APPLICANT: Can I get my papers?

10 THE CLERK: Yeah.

11 THE COURT: Your attorney will bring them to you,
12 okay?

13 THE APPLICANT: Can I get the notebook and my
14 papers?

15 THE DEPUTY: You want all these papers?

16 MR. JOHNSON: Your Honor, can he carry them up
17 there with him? He's got a lot of papers. I'm not
18 even sure --

19 THE COURT: You want all of it?

20 THE APPLICANT: Yes, sir.

21 THE COURT: All right. Sure. You can go grab
22 them.

23 And, Mr. Johnson, if you could speak into this
24 microphone right here.

25 MR. JOHNSON: Yes, sir.

Peter Lynn Coffey - Direct by Mr. Johnson

1 PETER LYNN COFFEY,
2 having been duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. JOHNSON:

5 Q. All right. Mr. Coffey, did you have a trial in this
6 case or a plea?

7 A. A trial.

8 Q. Okay. Who represented you at that trial?

9 A. Theo Williams and Benjamin Stitely.

10 Q. Okay. Were they retained by your family?

11 A. Yes.

12 Q. They were hired?

13 A. Yes.

14 Q. Okay. And who actually worked with you at trial,
15 which attorney? Was it both of them or --

16 A. They both talked during the trial.

17 Q. Okay. And when you made an -- this initial allegation
18 referring to the indictments, wanting to challenge
19 indictments, and I'll refer you to a discussion in the
20 transcript, page 16, was there some sort of addressing
21 of indictments that you felt like should have drawn an
22 objection from defense?

23 A. I -- the grand jury wasn't in session that day.

24 They said they were going to review the -- change the

25 indictment, but the grand jury wasn't in -- in session that

1 day. They were on the first -- one Monday of the month,
2 but it wasn't that Monday. They were on the 5th.

3 Q. Okay. Was there an issue about the name of the victim
4 on there that was being changed?

5 A. It wasn't the name. I don't know. They changed it.

6 Q. Would you like to review the transcript?

7 A. The solicitor didn't -- he added the name to it and he
8 had changed the date.

9 Q. Okay.

10 MR. JOHNSON: And, Judge, just for reference,
11 that was page 16 in the transcript.

12 BY MR. JOHNSON:

13 Q. And the -- you felt that should have drawn an
14 objection from your counsel?

15 A. Sir?

16 Q. You feel like counsel should have objected to that,
17 the changing on the transcript -- or the changing of the
18 indictment? Excuse me.

19 A. Well, the warrant says on the 7th and they're saying
20 they -- he changed it to the 8th.

21 Q. Okay. And the amendment regarding the name on the
22 indictment, you felt like defense counsel should have
23 objected to that?

24 A. He could have gotten a continuance or something, you
25 know, or get something done.

1 Q. Okay. And the allegation, defense counsel failed to
2 investigate facts of the case, can you tell me what he did
3 and how he failed to investigate the facts of the case?

4 A. A lot of things were not -- they were collected, but
5 they were not tested. There were a lot of things left out
6 that should have been -- that should have been handled
7 differently. I've never been in trial before, but I feel
8 like it should have been investigated more thoroughly.

9 Q. Okay. Is there anything else you'd like to say about
10 that, about his failure to investigate the case?

11 A. That sounds like pretty much it right there on that
12 question right there.

13 Q. Okay. Your next allegation, failure to provide expert
14 examiners, what should he have done?

15 A. I feel like they could have used SLED. SLED would
16 have investigated everything, tested everything, all
17 thirty-three items, not just picked and chose that Robby
18 -- that the detective did. Robby Lint, he just picked
19 four out of them and sent to the -- two independent
20 pathologists, the doctors in Richland County. They didn't
21 use SLED for -- like Lexington County, we pay taxes in
22 Lexington County for SLED. They used Richland County, you
23 know.

24 Q. Are you referring to DNA evidence?

25 A. That's where they tested it. They sent everything to

1 Richland County. They didn't use SLED at all, sir.

2 Q. Okay. Is there anything else he should have done
3 regarding expert testimony?

4 A. They could have -- I feel like they could have
5 investigated -- investigated a little further, you know.
6 They could have dug a little deeper in there and got to the
7 bottom of things.

8 Q. Okay. Moving onto your next allegation, failure to
9 request DNA analysis on contents found in evidence. Tell
10 me about that.

11 A. They -- the doctor said that DNA was found -- that
12 spermatitis was found and that they could have tested me
13 for that right there. I had children. You know, I've got
14 kids. I've got children out there, they're grown and
15 everything, but whoever had -- whoever had this it showed
16 seminal fluid, but whoever -- they're saying -- the doctor
17 said that it would have been -- how did the doctor say
18 this? The doctor said there's no spermatitis found. I
19 mean, no sperm cells. When someone has a vasectomy, there
20 will be semen fluid, but no sperm cells, and that's what
21 they found.

22 Q. So they used DNA to link you to the crime scene?

23 A. They had -- the doctor here says that there was other
24 DNA -- human people's DNA on it, you know, there was other
25 DNA in the case, and they put it in a database and -- two

1 Caucasian males and a female, but they put it in a database
2 and I guess they never had any trouble or never got in
3 trouble, so they don't know who it is.

4 Q. Okay. But --

5 A. But there was human -- other human DNA in there, you
6 know.

7 Q. Okay. In your next allegation, you say defense
8 counsel failed to show an alibi witness, alibi defense.
9 Can you tell us about that?

10 A. Well, we went over that. I told them I was there. I
11 used -- finally told them where I was at and everything
12 like that. I -- I admit I was there, but I left the next
13 morning. She was fine when I left. You know, I really
14 don't -- I wasn't nowhere else but there for those few
15 hours, and I went to go cut grass and -- I didn't kill this
16 woman. I didn't do none of this stuff to her. She was
17 fine when I left, you know.

18 Q. Okay. Do you have anything else you want to add to
19 that?

20 A. No, sir.

21 Q. Okay. Your next allegation, defense counsel failed to
22 bring defense witnesses. Which witnesses are you referring
23 to?

24 A. The neighbors, man.

25 Q. Okay.

1 A. I think they could have brought the neighbor that's
2 been -- borrowed the lawnmower, she knows him. That's more
3 of a character based -- character bias. I believe could
4 talked to them people, you know.

5 Q. Okay. Do you have any names?

6 A. No, sir. I never -- I forget her name.

7 Q. Okay. The next allegation, defense counsel failed to
8 develop or present viable defenses to the charges against
9 Applicant prior to the jury trial. Tell me about that.

10 A. Could you read that again, sir?

11 Q. Defense counsel failed to develop or present viable
12 defenses. Was there something you feel like your attorney
13 Mr. Stitely could have done or should have done? Or
14 Mr. Theo Williams could have done?

15 A. I'm not sure, sir.

16 Q. Did they discuss any defense strategy with you?

17 A. No, sir. They told me everything would be fine, I'm
18 going home Friday. Sent my mom home Tuesday during trial.
19 She -- she was feeling sick, sent her home; don't worry,
20 Ms. Coffey, your son will be calling you Friday to come and
21 get him. Everything will be fine. We know you didn't do
22 this. Everything will be fine. We had an understanding
23 that everything would be fine. Everybody knows I didn't do
24 this. Everything's gonna be okay.

25 Q. Do you feel like they should have discussed the

1 strategy with you?

2 A. Strategy?

3 Q. A defense strategy.

4 A. There was no defense strategy, sir. I didn't do
5 this. It was nothing to do with that. Even the doctor
6 said that -- it's in the case right here, man, the
7 transcript. There's all kinds of stuff that's being left
8 out. They didn't -- they didn't -- the best way to put it,
9 they left a lot of stuff out that -- that was found there
10 at the house, at the scene right here. They didn't test
11 it, man. The bucket, the flip-flops, all kind of stuff,
12 man, that was there, they didn't analyze it, they didn't
13 send it off to get tested. They just picked and chose and
14 they just went with that. All of them just went with these
15 four items right there and they pinned it on me. They put
16 a third-party guilt. Look nowhere else but Mr. Coffey
17 right here. That's -- that's how we get him, man. Open
18 and closed case right there, and that's wrong. I feel like
19 it should have been investigated more thoroughly and looked
20 into this right here, man.

21 Q. Okay.

22 A. A lot of Brady violations that -- I just -- I just
23 don't understand. I don't know much about the law. You're
24 a lawyer, I'm not, but what I've read the past couple of
25 years it just don't seem right, man. It just don't.

1 Q. Okay. You put in here your next allegation was
2 defense counsel failed to object to prosecutor's rebuttal
3 statement in closing argument. Tell me about that.

4 A. On page -- you're talking the rebuttal? The rebuttal
5 on closing argument from the solicitor?

6 Q. That's what -- that's what you listed. What are you
7 referring to?

8 A. On page 836? That's what you're talking about, right?

9 Q. Do you have a copy of the transcript?

10 A. Yes, sir, I do.

11 Q. Okay.

12 A. After Mr. Stitely had his closing argument right
13 there, the solicitor jumps in and he says we'd all like to
14 know why -- why Peter Coffey killed her that night. I want
15 to know why, you want to know why. Mr. Stitely says he
16 doesn't know why, but we don't have to prove that. We
17 would if we could. The law doesn't require us to prove why
18 something happened, just that it happened, and that's why
19 -- what the judge will tell you here, and the judge went on
20 to carry out the instruction right here.

21 Well, I didn't get on the stand. I didn't
22 testify. I didn't -- didn't have nothing to do with
23 this right here. It was supposed to be open and close.
24 What I understand with Beaty -- State versus Beaty, the
25 Supreme Court, Beaty, what they said, if there's no

1 evidence brought forth from the defense, you open and
2 close the case right there, but this guy here, he's
3 kept beating on there, scaring the jurors, speaks about
4 this right here. I thought the courts was different
5 though. I thought the court system was different than
6 what it is -- what I -- what it tells it to be right
7 here. I didn't know nothing like this, man. I just --
8 I'm baffled on this right here.

9 Q. Okay. Your next allegation regarding phone records
10 and failure by defense counsel to examine those, tell me
11 about that.

12 A. They took my phone -- my phones that night on
13 August 10th. They -- I had four cell phones and my AT&T
14 phone, they -- they took that, took all four phones right
15 there, and they put them in an evidential place right
16 there, the janitorial closet in Lexington County, and they
17 put a search warrant out and they came up with three
18 folders and a draft and on -- on September 17th, they sent
19 it out and returned back on -- September 23rd they got a
20 return back on it of what it said right here, but when I
21 went to trial my phones disappeared. No phones was
22 presented. They don't know where my phones at, they don't
23 know anything. They said my phones were cut off, that
24 there was no service and all that, but all of that was
25 untrue, man. Everything -- they just kept manipulating

1 stuff I feel like to use it for his own benefit right
2 there. My phones worked, man, you know. I did -- one of
3 my phones did lose -- I did lose it, and I reported it
4 lost, you know, but I still had phones right there, but the
5 way they -- the way he says it, you know, there's no sense
6 even looking at the phones because they wouldn't have
7 worked anyways, you know.

8 Q. Okay. On your next allegation you said defense
9 counsel was ineffective for failing to strike jurors Joshua
10 Bailey -- and, Judge, I'm just going to point out that is
11 on page 33 to the top of -- bottom of 33 to the top of
12 page 34, and for that there was -- tell me about that.
13 What kind of relationship did that juror have with law
14 enforcement or anything you felt like should have justified
15 them challenging that?

16 A. Page 34 you said?

17 Q. The bottom of 33, Joshua --

18 A. Joshua Bailey. He knew the sheriff. He knew the --
19 Ben Treaster. He went to school with him right there. I
20 feel like that was more of a -- I know they -- with the
21 lady that I knew when I worked at the deer processing
22 place, she knew me from there. They struck her because
23 she knew me. Well, he knows Ben Treaster, part of the
24 sheriff's department right there. I feel like that was
25 kind of overwhelming right there.

1 Q. Okay. You feel that defense counsel should have
2 raised an objection to that?

3 A. I think they should have struck him. They shouldn't
4 have ever let him get on the stand -- they shouldn't have
5 let him get in the box right there.

6 Q. Okay. And the other juror listed in the allegation
7 -- and, Judge, I'm referencing page 37. This would be
8 Brandon Trotter at the top of 37 in the transcript. Is
9 that another case where you felt like that person should
10 have been struck and challenged by defense counsel?

11 A. I do. I feel that way since they struck the lady
12 that knew me, he knew -- he knew the brother, he knew the
13 victim's brother that worked at the fire department right
14 there, you know --

15 Q. Okay.

16 A. -- and it was kind of like prejudice to me. I feel
17 like it is.

18 Q. All right.

19 MR. JOHNSON: Your Honor, we'll go into the
20 amended application that I filed starting with
21 Number 1. This repeats that allegation about failure
22 to properly investigate the case as ineffective by
23 Mr. Stitely and Mr. Theo Williams. We touched upon
24 that earlier.

25 BY MR. JOHNSON:

1 Q. Is there anything else -- and specifically can I ask
2 you did they retain a private investigator in your case?

3 A. No, sir. I -- I didn't speak to an investigator.

4 Q. Okay. To your knowledge they didn't retain one?

5 A. To my knowledge, no, sir.

6 Q. Okay. And Allegation Number 2 in the amended
7 application said Mr. Stitely and Mr. Williams failed to
8 meet with Applicant sufficient number of times to prepare
9 for trial. How many times did they meet with you to
10 prepare?

11 A. Maybe three times. They came to see me whenever I was
12 arraigned and then the first -- when I first got arrested
13 and then Ben came saw me in 2017, like December 8th. I
14 remember it was my mother's birthday and he told me they
15 needed my DNA swab again and that it was okay since they
16 already had it. Then I saw Theo and Ben on March 9, 2018.
17 They visited me for a little over an hour and told me we
18 had trial on Monday.

19 Q. Okay.

20 A. I felt like if we put more, like I said, defense up,
21 they -- I feel like they could have came and seen me more
22 often, you know.

23 Q. Okay. To your knowledge, did they ever interview
24 those neighbors you were talking about?

25 A. You finally got the investigator after nine years.

1 They found a few people, you know, but...

2 Q. All right. And Number 3, Applicant's counsel Ben
3 Stitely and Robert "Theo" Williams failed to object to
4 buccal swab DNA evidence collected from Applicant. This
5 is referencing page 403 and 404 of the transcript. Can
6 you tell me about that, Mr. Coffey?

7 A. I feel like they should have objected to the DNA swab
8 they collected from me because the lady, Johnson, they said
9 it was gonna be used for -- that they used up all my swabs
10 they needed for more testing, but a lady brought it in on
11 an envelope in her pocket and put it into evidence during
12 trial that day, so it never went to Richland County. It
13 stayed with her the whole time. It was still sealed up
14 and everything like that, so what was the purpose of even
15 having it to go get tested like they said it was used for
16 when it wasn't used for nothing, but just put in the
17 evidence thing. That's what I did understand. Why would
18 they even need to do that, man?

19 Q. And do you have anything else you want to add to that?
20 Is that it?

21 A. Yeah.

22 Q. Okay. Moving onto Number 4, Applicant's counsel Ben
23 Stitely and Robert Williams failed to object to the jury
24 charge regarding inferred malice and use of a deadly
25 weapon. This is referenced on page 849, lines 14 through

1 16. Could you tell me about that, Mr. Coffey?

2 A. Yes, sir.

3 Q. Did they explain that to you or discuss why they
4 failed to do that -- failed to object to that?

5 A. I read -- a PCR issue, I read it on State versus
6 Belcher, 2009, and State versus Cottrell, that inferred
7 malice may also arise when a deed is done with a deadly
8 weapon. That is against the constitutional -- Sixth
9 Amendment right there, Sixth and Fourteenth I think is
10 what it is, and I'm not familiar with the law, but the way
11 the judge put malice inferred with murder right here, you
12 know, just don't seem -- don't seem correct, you know.

13 Q. Okay. You felt they should have challenged that?

14 A. Yes, sir. I feel they should have challenged it, yes,
15 sir.

16 Q. Okay. And moving onto Number 5, Applicant's counsel
17 Ben Stitely and Robert "Theo" Williams failed to object to
18 statements by the solicitor to introduce improper character
19 evidence, page 825, lines 8 through 12. Can you tell me
20 about that?

21 A. Yeah, the solicitor in his closing argument right here
22 he said -- I think it's prosecutor misconduct. He said
23 Peter Coffey's blood's in the house, her blood on his
24 shorts. Probably the first time in your life, ladies and
25 gentlemen, you're in the presence of someone who's evil,

1 who's a killer, a murderer, a rapist, and that's Peter
2 Coffey. That defied my character right there, man. I
3 didn't get on the stand, I didn't put in my character out
4 there in no way like this, but it frames me right there I
5 feel, you know. He bashes me right there for no reason,
6 you know. That's what I feel like that.

7 Q. You felt that should have drawn an objection?

8 A. They should put an objection right there, yes, sir.

9 Q. And to your knowledge they didn't object and they
10 didn't discuss that with you?

11 A. No, sir. That's part of the trial right there. No,
12 sir. Just carried onto the opening -- the closing
13 statements, man.

14 Q. Okay. And your next allegation, Number 6 on the
15 amended application, you said Applicant's counsel, Ben
16 Stitely and Robert Williams, failed to object to testimony
17 regarding Applicant's DNA on Item 8.3 from the waistband
18 on a pair of shorts, referencing page 543.

19 A. Yeah, that's about the ownership.

20 Q. Item 13.1 taken from cucumber removed from autopsy of
21 victim on page 546 and 547, can you tell me about that?

22 A. Yes, sir. Yeah, these -- it's ownership I was
23 speaking about. It contained both of our DNA's. She gave
24 me these shorts, these boxers when I met her in 2011, they
25 had her DNA on them, too. She wore them long-johns --

1 khaki shorts, she gave me three pairs of those, and the
2 doctor said both of our DNA's on there. The boxers
3 actually belonged to her son, her deceased son, and the
4 jacket, but that never was brought forth, but they didn't
5 investigate it, man. They didn't look to see where it came
6 from. They just plainly said that right there, man.

7 If I can find my paper right here. They found
8 both of our -- Mr. Coffey and decedent's DNA in
9 scrapings that said ownership.

10 We had a relationship. I stayed there many
11 times, you know. My -- I wore them, she wore them, you
12 know. I don't see where it's a big deal about it.
13 They act like me and her, we never -- I didn't know her
14 and all that. They was like -- they made me out to be
15 somebody that I wasn't. You know, I was there to help
16 these people. They told me that this is a good person.
17 We got along good, you know. I was introduced to her
18 family and all that. We all liked each other, man.
19 When her son got killed -- her son got killed, in 2009,
20 they found his body, and the next year in 2008 -- in
21 2009 they kicked Bobby's door in and shot and killed
22 him. They caught them people. They caught the second
23 time, the second son, they caught them, and come 2015
24 in June when the one that was an accomplice that had
25 15 years, he was going for parole, I told her -- I said

1 don't go. They sent her a thing in the mail, a victim,
2 witness to go for a parole hearing and all that. She's
3 been moving around a lot and everything like that. Her
4 father had this place for her in Deer Crossing right
5 there. She was settled right there. She liked it and
6 everything. It was back there in the cove right there.
7 I told her not to go. When they found out -- when she
8 went, they found her address and everything, the car
9 searched, she's out there in the driveway, she had
10 nailed her windows shut, I went out there and as soon
11 as I got about from here to the officer right here,
12 about right here, the car backs up and just takes off.
13 It was late at night. It takes off and everything. I
14 run back out and tell her oh, my gosh, I told you not
15 to go, let SCDC worry about this right here. I said
16 there's nothing you can do about this right here.
17 Well, that's whenever --

18 MR. BARLOW: Your Honor, I'm gonna object to the
19 relevance of the testimony.

20 THE WITNESS: This --

21 MR. BARLOW: What does this have to do with his
22 attorney?

23 THE COURT: Hold on. Hold on. Let's -- the
24 question was answered, so let's move onto the next
25 question.

1 MR. JOHNSON: Thank you.

2 THE WITNESS: But a lot of things haven't been
3 answered though, but --

4 THE COURT: Your attorney's gonna give you a
5 chance, okay?

6 BY MR. JOHNSON:

7 Q. Mr. Coffey, I'm just gonna kind of refocus on this
8 allegation regarding DNA. You talked about the first
9 one, there was a sample taken from your underwear, but
10 referencing the second DNA sampling, there was no objection
11 to that coming in from defense counsel Stitely, page 546,
12 547, the cucumber. That's actually DNA taken from autopsy
13 from within the victim, so you felt like that should have
14 drawn an objection from defense counsel?

15 A. Yeah, John Barron testified they found the hairs there
16 on the cucumber and nobody objected to cross-examination,
17 nobody testified, nothing like that. They just let it go.

18 Q. Did Mr. Stitely explain to you why they didn't object
19 to that coming in?

20 A. No, sir. I just -- no explanation. Nothing.

21 Q. Okay.

22 MR. JOHNSON: And that, Judge, was page 546, 547,
23 the second DNA sample referenced in that allegation.

24 BY MR. JOHNSON:

25 Q. Allegation Number 7, counsel Stitely and Robert

1 Williams failed to object to State's evidence 136, page
2 532 in the transcript, an enlarged report regarding DNA
3 testing. Did they explain why they failed to object to
4 that?

5 A. The -- the enlargement didn't have everything --
6 everything on it that was needed. It wasn't a full -- a
7 full-scale -- what do you call it? That report that they
8 were using didn't have everything that was -- that was
9 needed to be on there. It had stuff on there that wasn't
10 tested, you know, that should have been tested. It wasn't
11 on this. He was just using -- what he pinpointed on there,
12 the prosecutor, it didn't have a thorough a chart right
13 there, you know? It didn't have a thorough chart that they
14 were using. They should have -- they should have objected
15 to it, yes, sir.

16 Q. Okay. And still touching on the DNA, the last
17 allegation there, Number 8 on the amended application,
18 Applicant's counsel Benjamin Stitely and Robert Williams
19 failed to properly cross-examine the State's witnesses
20 regarding DNA evidence and to address this evidence
21 sufficiently in trial. Tell me about what they -- what
22 they failed to do or what you feel they should have done.

23 A. The judge wouldn't allow it. The judge said it was
24 irrelevant, man. The judge didn't let them cross-examine
25 them. There was nothing they could do about it. The judge

1 -- the judge didn't allow it.

2 Q. So they attempted some type of cross-examination that
3 was not allowed?

4 A. Yes, sir.

5 Q. Okay.

6 A. That's what my understanding of it is, yeah.

7 Q. Okay. Is there anything else Mr. Stitely or
8 Mr. Williams could have done in that situation?

9 A. I don't know, man. I feel like they could have did
10 a little more. I feel like they could have.

11 Q. Is there anything else related to these allegations,
12 any other details you'd like to tell the Court about?

13 A. There's -- the first thing the guy said about -- the
14 prosecutor said my blood was there, blood don't lie, but it
15 goes on and says on page 594 in the transcript, it says --
16 they asked can you age a DNA sample based on the blood that
17 you have. The answer is no, you cannot tell when that
18 stain was deposited. They were work shorts. He's -- just
19 plain and simple right there. Those were work shorts.
20 They were her work shorts. Her blood was in the back
21 pocket. When I first met her, she was wearing these
22 shorts. She was cutting sheet rock, that's how her blood
23 got there. But they're saying these were my shorts, but
24 she gave me these shorts. These were her work shorts for
25 all these years and that's how her blood got on there. And

1 the crotch right there in her -- in her private area,
2 that's where her blood soaked through right there, from her
3 menstruation cycle right there, but they're -- they're
4 saying all of this came from a murder, man. That this was
5 a murder scene. I've seen pictures. That was awful. It
6 was an awful scene, man. I never seen anything like it.
7 It was like hardcore pictures though, man. Blood was
8 everywhere, man. If there was that much blood, all my
9 clothes would have been bloody like that from what I seen.
10 In my -- what I seen in movies, blood would have been
11 everywhere, man. My shoes would have had blood on it.
12 Socks and everything would have blood on it. None of that
13 did. When I left, everything was fine, man. She was fine.
14 She was fixed up. Her hair nice and fixed up. She didn't
15 want to go out there in the heat. It was the middle of
16 August, a hundred degrees outside. I told Carl, I said I'm
17 gonna go and cut cross. He said I've got a lawnmower. I
18 got over there and the lawnmower was piece of crap. It had
19 been sitting out in the rain and everything. I got it
20 cranked up, I got a lap and a half around there, it cuts
21 off. It was more -- I don't understand what happened. She
22 was a good woman, man. I'm sorry this happened to her. I
23 wish they'd find justice on who did this here, but...
24 Q. Do you feel like a more extensive cross-examination
25 regarding the shorts would have been more effective from

1 Mr. Stitely to explain or to defend against that evidence?

2 A. There was three pair of shorts. They had pictures of
3 them. They picked out one pair of shorts, man. The other
4 shorts had paint on them. Everything had paint on it.

5 They were work shorts. These guys, they been in the house
6 -- they didn't receive a warrant until 7:30 that morning.

7 When I called the house when I got to work, I called my mom
8 and my mom said I'm glad you called, they just finally gave
9 me the warrant, I finally got a warrant here. She said
10 they were roughing the house all up right here. They said
11 no cell phones in the house, was in my bedroom. Everybody
12 had cell phones.

13 Q. Well, let's just stick to --

14 A. But it's just --

15 Q. Is there anything Mr. Stitely or Mr. Williams could
16 have done at trial differently?

17 A. I think they could have investigated the case and got
18 some investigators to look into it and SLED should have
19 been involved more, not just these independents they pay
20 these guys to test this stuff. They didn't test
21 everything, you know. They had -- they had a pocketbook.
22 She had a pocketbook she took back to the sheriff's
23 department. Everything was bloody wet still after -- I
24 hadn't seen her in 48 hours. She takes it back, shoves it
25 in -- takes it back to the sheriff's department and had to

1 dry it out, there's her identification card, there's the
2 key and everything like that in her pocketbook, but they
3 put a warrant -- a search warrant to come look in our house
4 for this stuff right here and there it is in her pocketbook
5 the whole time. They were just looking at somebody to
6 point this at.

7 You know, there was -- I investigated this and I
8 looked at this. In 2015 in the month of August, there
9 were 88 murders, homicides, in Lexington County. In
10 Richland County, there was 102, and that was a month
11 alone, dude.

12 Q. Let's just -- let's just do this.

13 A. It's not about incident review. It's not incident
14 review, it's about conviction rate here, man.

15 THE COURT: All right. Mr. Coffey --

16 THE WITNESS: It ain't about incident review,
17 you-all.

18 THE COURT: Mr. Coffey, all right. That's
19 enough. You're gonna answer the questions and stick to
20 the questions, okay?

21 THE WITNESS: Yes, sir. Yes, sir. It's been
22 ten years, but --

23 THE COURT: All right. We can't hear you if you
24 are interrupting, okay?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right. Any other questions?

2 MR. JOHNSON: I have no further questions, Your
3 Honor.

4 THE COURT: All right. We're gonna recess for
5 lunch.

6 During lunch, Mr. Coffey, do not discuss your
7 testimony with anybody.

8 We'll start back at 2:00.

9 THE WITNESS: Yes, sir.

10 (Whereupon, a luncheon recess was taken at
11 12:28 PM.)

12 (Back on the record at 2:06 PM.)

13 BAILIFF: Court is now in session. The Honorable
14 Judge Daniel Coble presiding.

15 THE COURT: All right. You may be seated.

16 All right. We'll bring in Mr. Coffey.

17 (Whereupon, the Applicant returns to the
18 courtroom.)

19 THE COURT: All right. We are back on the record
20 of Mr. Peter Coffey's PCR. We finished direct
21 examination and now we're beginning cross-examination
22 by Mr. Barlow.

23 Yes, sir.

24 MR. BARLOW: Thank you, Your Honor. May it
25 please the Court?

1 THE COURT: Yes, sir.

2 CROSS-EXAMINATION

3 BY MR. BARLOW:

4 Q. Mr. Coffey, in your direct testimony you testified
5 that your counsel failed to quash your indictments and you
6 could have gotten a continuance, correct?

7 A. Yes, sir. I said that.

8 Q. And what would a continuance have done for you?

9 A. It would have gave more of -- more time to get the
10 case investigated with going over the details of the case
11 and everything.

12 Q. And how long did you -- how long were your attorneys
13 on your case to begin with?

14 A. August -- August 2015 until March 16th -- March 15th
15 of 2018.

16 Q. Would you agree with me that that's almost three
17 years?

18 A. Yes, sir. Almost -- almost three years, I believe.

19 Q. So -- so your testimony is that a continuance was
20 necessary so they could do further investigations?

21 A. Sir?

22 Q. A continuance would have been necessary for them to
23 further investigate your case?

24 A. Yes, sir.

25 Q. More so than what they did in the almost three years?

1 A. Yeah, they would have had more time to come see me and
2 talk to me about it.

3 Q. Okay. And one of your allegations is failure to
4 investigate the facts. Let me ask you, did you -- was an
5 investigator hired for your PCR?

6 A. I wasn't aware of it. No, sir.

7 Q. Okay. Another one was failure to call experts. Were
8 any experts hired to review your case?

9 A. Not that I'm aware of, sir.

10 Q. Okay. Failure to have DNA tested. Did you have DNA
11 tested for your PCR case?

12 A. No, sir. Not for my PCR case. No, sir. Because
13 I'm not -- if I'm being truthful on that, I'm not -- they
14 never took another sample from me since I've been in the
15 institution.

16 Q. Okay. Another one is failure to show alibi defense.
17 Do you have any of witnesses here today to substantiate
18 your alibi defense?

19 A. I told them that I went to her house. An alibi
20 defense would be if I were somewhere else, you know, and
21 they're saying this murder happened between the -- those
22 three days, the 7th to the 9th. Well, I was with her on
23 the 8th for a few hours and I left and -- I was there a
24 couple of hours, you know. That's -- that's all I know.

25 Q. Yes, but it's failure to show an alibi defense. Do

1 you have any witnesses here to substantiate your alibi
2 defense?

3 A. Alibi meaning was I somewhere else?

4 Q. Correct. Someone to say that you were somewhere else
5 instead of at the murder.

6 A. Well, the lady, she said they never really put a date
7 on the murder. You know, whenever Shelby Derrick, when
8 they collected the evidence, the blood was still wet. On
9 August 10th when they was collecting the samples and all
10 that, everything was still wet, the blood was still wet
11 there. The way I read it on the EMS reports and all that,
12 the time calls and all that, they're saying it was -- the
13 murder just happened, the homicide just happened and they
14 needed to respond to Deer Crossing, you know.

15 Q. Okay. Your next one was failure to call defense
16 witnesses. Do you have any witnesses here today to present
17 testimony to this Court?

18 A. I have the -- what the officers had them sign, the
19 statements they signed, I have that there.

20 Q. Yes, sir. I'm asking do you have any witnesses here
21 today that your lawyer should have called at your trial?

22 A. No, sir. I don't have any one of those.

23 THE COURT: If you could speak up just a little
24 bit.

25 THE WITNESS: No, sir. No, sir, I don't.

1 THE COURT: Thank you.

2 BY MR. BARLOW:

3 Q. I believe you said on direct that your attorneys were
4 telling you that you were going home Friday and not to
5 worry about anything; is that correct?

6 A. Yes. Yes, sir.

7 Q. Another allegation was failure to examine contents of
8 the phone. Do you have the phone and has it been examined
9 for this Court to review?

10 A. I have the evidence voucher of it. I have the
11 evidence voucher where they collected my phone and they
12 put it in this locker bag right here, but they sent it to
13 Richland County and when it came back they -- my phones
14 were gone. They never -- never analyzed my phones. I have
15 the paper right here with my voucher where the phones were
16 at, where they took my phones.

17 Q. Well, I hope you understand on direct you testified
18 that your phones were -- did you testify that your phone
19 was broken?

20 A. I had four phones. I had four of them. The
21 prosecutor said that my phone was called in, said it was
22 lost, and he -- the way he explained it he said the AT&T
23 service said that my phone is not in service, but it was a
24 prepaid phone. My phones were prepaid. I had an Obama
25 phone, I had an Assurance phone, I had an AT&T phone and I

1 had the -- all of them were Samsung right here. I had four
2 Samsung phones. They were all active phones, you know. I
3 lost -- I called in because my SIM card was lost, one of my
4 SIM cards was lost, and I reported it stolen -- reported it
5 lost or stolen, and the last time it happened -- I had my
6 phones since 2011, these phones, and the last time I did
7 that they sent me another SIM card in the mail. That's
8 what they did last time. That was my work phone right
9 there. 629-2011, that was my AT&T work phone. I used it
10 Monday through Friday for my work. It was only \$1.99 a
11 day, I could talk and text all day long, and that was my
12 work phone. My boss called me in the morning, I'm about to
13 pull up, are you ready, yeah, I'm walking out, you know.
14 Or I called my mom on it during the day, mom, you need
15 anything from the store, I'm about to go by Food Lion, you
16 need anything. Or I used my track phone. I had my
17 TracFone. It was a little different for those purposes.
18 Q. Well, let me ask you this. If you had four phones,
19 there's testimony in the record that you used the victim's
20 telephone. Would you carry four phones in your pocket?
21 A. No, sir.
22 Q. Okay.
23 A. No, I didn't have my phones on me that day. I was --
24 just got off work, I was at Carl's house, she called and
25 said what you doing, are you ready to leave. She usually

1 comes and picks me up and I said no, they want me to go to
2 Little Rock with them. She said well, when you're done
3 with Little Rock call me or come on by the house. I said
4 all right. So when I got to the house, I said I ain't got
5 my phone, she said that's okay. She said here -- I said I
6 need to call Carl and let them know where I'm at so she
7 don't call my mom and wants to cut the grass. He paid --
8 it says right here he gave me \$50 right here to cut the
9 grass. She said okay. So I called Carl to let him know
10 where I was at and hung up, hung the phone up.

11 Q. Okay. Let me ask you this. You have an allegation of
12 failure to object to the buccal swab DNA evidence collected
13 from you. Do you recall signing a consent form?

14 A. No.

15 Q. Okay. How many times did your attorneys meet with you
16 over the almost three years that they represented you?

17 A. Probably like three times. I remember three times,
18 you know. Theo was always in court. He had Federal court
19 Ben would say or I remember seeing Ben in 2017 when he told
20 me that they had to get the swab and all that and then I
21 seen them -- they both came in March. March 9th they came
22 on a Friday and said we're going to court on Monday, trial
23 on Monday, but that's the only time that I seen them.
24 That's -- that's what I remember, so.

25 MR. BARLOW: Your Honor, I have no further

Benjamin Stitely - Direct by Mr. Barlow

1 questions.

2 THE COURT: All right. Any redirect?

3 MR. JOHNSON: No redirect.

4 THE COURT: All right. Thank you, sir. You can
5 step down.

6 (Witness excused.)

7 THE COURT: Yes, sir, Mr. Johnson.

8 MR. JOHNSON: No more witnesses, Your Honor.

9 THE COURT: Anything from the Respondent?

10 MR. BARLOW: Yes, Your Honor.

11 We would call Benjamin Stitely.

12 (Whereupon, Benjamin Stitely was duly sworn by
13 the Clerk of Court.)

14 THE CLERK: Thank you. Please be seated in the
15 witness stand and once you're seated please state your
16 name, spelling your last name for the record.

17 THE WITNESS: It's Benjamin Stitely.

18 S-T-I-T-E-L-Y.

19 THE COURT: Yes, sir.

20 MR. BARLOW: Thank you. May it please the Court?

21 BENJAMIN STITELY,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. BARLOW:

25 Q. Mr. Stitely, how long have you been practicing law?

1 A. Since -- in South Carolina since 2006, one year in
2 Virginia under a practice certificate.

3 Q. And how much of that has been criminal law?

4 A. All of it.

5 Q. And were you here for Mr. Coffey's testimony?

6 A. I think I -- oh, yeah. For this? Yes.

7 Q. Okay. And I believe in his testimony he stated that
8 you were retained?

9 A. We were.

10 Q. Okay. And who were you retained by?

11 A. His mom.

12 Q. And roughly how long before trial were you retained?

13 A. I just saw the contract. He's right. It was in 2015
14 and it appears September 1, 2015, is when she came to see
15 us. I can't guarantee that was the day we were hired, but
16 I guess around September of 2015.

17 Q. Okay. And during that time did you receive discovery?

18 A. Yes, sir.

19 Q. And were there any issues with discovery?

20 A. I mean, there are lots of issues with a murder case,
21 but nothing that was missing specifically blatantly that
22 you could see that was missing.

23 Q. Okay. And did you review that discovery with
24 Mr. Coffey?

25 A. Yes. And we would have sent him a copy. Our policy

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1 is whatever we get they get a copy of. Except for maybe
2 autopsy pictures. We don't always send those out.

3 Q. And if you could, give us a brief overview of your
4 understanding of the State's evidence in this case.

5 A. Well, the case was kind of an awkward one. They had
6 a causal link between Pete and the victim because --
7 boyfriend/girlfriend probably wouldn't sum it up right so
8 much as acquaintances with relationships over a long period
9 of time. Not to knock him, Pete was a known quantity to
10 law enforcement due to some prior cases and there was
11 definitely evidence that they were together at least the
12 weekend timeframe when this happened. There was evidence
13 later found at his house, blood on some shorts, maybe on
14 two pairs of items that were found in his washing machine
15 that hadn't been run yet. There was DNA found all over the
16 place, including on items found inside the decedent, and
17 there was no one else that they talked to who had seen her
18 anywhere other than last in his company.

19 Q. So based off of that, what was your defense strategy
20 in this?

21 A. Well, I mean, obviously they had a relationship. We
22 had pretty good answers for that. They found like semen
23 and -- I guess not sperm, but they found things that he
24 admitted to having sexual relations with her, so we -- we
25 said that's all well and good. They worked together. I

1 think there was some information, they'd done a job, like
2 a trash pickup, cleanup job together, which would explain
3 why his DNA was everywhere at the house. He admitted to
4 being there. The clothing, I want to say we had some
5 kind of -- they said it was a red shirt, and he was a big
6 Gamecocks fan, I think half of his shirts matched exactly
7 what they were looking for, so that didn't make a ton of
8 sense. And he had a relatively decent justification for
9 why clothes could have been bloody. He could have been
10 doing -- like he had cuts on his hands, all kinds of stuff.
11 Obviously they had been working outside doing whatever.
12 And there was no direct evidence that -- no one said I saw
13 Pete do this. They have a body, they have him as a likely
14 person, but they had no one saying this was him for sure.
15 No one saw him, no one was there, there was no eyewitnesses
16 or anything like that.

17 Q. Do you recall the issue with the indictments --

18 A. No.

19 Q. -- or being -- the indictment for murder?

20 A. Not specifically. I think we were just kind of
21 sitting there trying to figure it out. Maybe they just
22 had like one date and they changed it to a two date range,
23 something. I don't recall it off the top of my head.

24 MR. BARLOW: May I approach, Your Honor?

25 THE COURT: You may.

1 BY MR. BARLOW:

2 Q. Take a look at that and see if it refreshes your
3 memory.

4 A. I honestly couldn't tell you. I mean, we knew why we
5 were going to trial. Obviously we knew what he was accused
6 of. I don't remember what changes they made, but if it was
7 just to change to add a date or to add a name or modify a
8 name, I probably would not have objected to that.

9 Q. Okay.

10 A. My take on indictments, they're notice documents.
11 We've tried to quash them before I've never gotten anywhere
12 doing that.

13 Q. Got you. Let me ask you did you do an independent
14 investigation into this case?

15 A. I mean, every case you do you look at the evidence,
16 you talk to your client, you ask what they have. If your
17 question is did we hire outside investigation, we did not.
18 I don't know if that would be particularly helpful in this
19 case. But, of course, you look at everything. You look
20 at the DNA, you look at the discovery, you look at the
21 statements, you talk to your client. So I guess you would
22 call that independent investigation.

23 Q. And another allegation he has is that -- in his
24 testimony was that you failed to call experts and
25 specifically pointed to SLED versus Richland County.

1 A. Yeah, I heard him talking about that. I was looking
2 at my notes. They used the Richland lab. I actually --
3 it looks like I even questioned why did you do that during
4 the trial and they said that SLED -- maybe SLED had a
5 backlog, I mean, whatever reason they just used a different
6 lab that was available. But, no, we did not hire a
7 different expert. There wasn't -- I wouldn't have argued
8 there wasn't conflicting DNA that would have made it
9 particularly valuable. I mean, the question was, was his
10 DNA there and it was. Much more of our defense, of course,
11 his DNA was present. He was admittedly there all the time.

12 Q. You've gone into some testimony already about the
13 failure to have the DNA tested. Did Mr. Coffey ever
14 provide you with an alibi defense?

15 A. I think his defense would have been I was home. And
16 so, no, there was no independent corroboration that we
17 could have utilized. There was no other individual we
18 could have called. I think the natural saying I didn't do
19 it, I wasn't there was kind of built in, but there was no
20 additional alibi witnesses we could have utilized that I
21 was made aware of.

22 Q. And failure to call some defense witnesses and
23 specifically the testimony was that you didn't call some
24 neighbors. He could not recall the name, but do you recall
25 that?

1 A. I think he wanted, and if I remember right, he just
2 wanted him to maybe have a neighbor say that he was friends
3 with the victim. I don't remember. But, once again, it
4 had nothing to do with the night in question, so it
5 wouldn't have been necessarily relevant. Night or day,
6 whatever time, there was no one else we could have utilized
7 to say where Pete was or where Pete wasn't specific to this
8 case.

9 Q. And were you present for his testimony when he said
10 that -- or Mr. Coffey testified that he was going home
11 Friday and that everything is fine.

12 A. Yes, I think that was his story from the beginning.
13 He said that everything was fine when he left and he knew
14 nothing else.

15 Q. Okay. Let me ask you this specifically. Did you ever
16 tell him that at trial, that he was going home Friday and
17 that everything was fine?

18 A. Sorry. I thought you were talking about the actual
19 fact pattern of the case. He said when he left her at
20 her house she was fine. I don't think I would have said
21 you're going home Friday, everything is fine. That's not
22 my typical comment when it comes to a trial. I don't --
23 I wouldn't say that to someone.

24 MR. BARLOW: I'm gonna hand up a copy of the
25 transcript, Your Honor.

1 THE WITNESS: I have one.

2 BY MR. BARLOW:

3 Q. Oh, you have one?

4 A. Yes.

5 Q. Well, it's not marked, so I'm just gonna point you to
6 a couple of places.

7 A. Okay.

8 Q. One of the allegations, it's on page 836.

9 A. Okay.

10 Q. And it's failure to object to the solicitor's rebuttal
11 statements and I believe that's lines 18 and 19.

12 A. Okay. I don't know on what basis I would have been
13 able to object to it.

14 Q. Okay.

15 A. The State has the right to put forward their testimony
16 or their argument.

17 Q. Mr. Coffey testified to some cell phones that he had.
18 He testified he had four cell phones and that they went
19 missing; is that correct?

20 A. So I -- again, looking at my notes because this is a
21 decade ago, I don't really recall. I was looking at my
22 trial notes. It actually looks like -- I must have either
23 asked the question or at least we brought it up in trial,
24 where are Pete's phones, why are they missing? Because I
25 have it circled on my notes, so we must have discussed. So

1 I at least went through it at the trial time. I never knew
2 where they were. I want to say that a person got up and
3 said we no longer have them in evidence, we're not sure
4 where they are, and I said you don't have them, and he said
5 no.

6 Q. Okay.

7 A. It's in my notes that we talked about the cell phones
8 during the trial.

9 Q. Okay. If you would, I'll direct you to page 33 and 34
10 of the trial transcript, and it's regarding Juror Bailey
11 and the allegation is you failed to strike that juror.

12 A. Okay. I mean, it said he met the guy in high school.
13 I'm guessing that was probably sometime separate and I
14 think the judge went along and said will that give you any
15 bias and he said no, and I did not -- I did not strike him.

16 Q. And then how about page 37? That's gonna be -- I
17 believe it's Juror Trotter. The same allegation.

18 A. Hang on. I'm trying to find that one. So the first
19 one, to clarify, that juror said he knew one of the police
20 officers. I'm not even sure what the involvement of
21 that particular officer was. I think he was on like the
22 number of like eighty possible witnesses. It wasn't a
23 relationship to the decedent or anything like that.

24 Trotter you're saying on 37?

25 Q. Yeah.

1 A. There it is. Yeah, the juror said I think I know who
2 he is, but I'm not sure if he's the same one or not, so
3 obviously I didn't find that he had a particularly close
4 tie to that individual because I don't even know if it was
5 the same one.

6 Q. Okay. Moving onto the next one, there was an
7 allegation that you failed to meet with him a sufficient
8 number of times. Do you recall how many times you met with
9 him?

10 A. No, and unfortunately this is outside the scope of
11 our current software program, so I can't tell you exactly.
12 I'm sure if he had gotten the jail records they could have
13 pulled it up because they log us in, but I -- I know I went
14 and saw Pete a number of times, talked to him on the phone.
15 I've got dozens of letters back and forth, too.

16 Q. Okay. The buccal swab that was collected on
17 Mr. Coffey, were you aware that he had signed a consent
18 form?

19 A. I'm sure we probably would have consented to it.
20 Again, there was never any theory that Pete wasn't gonna
21 have DNA at the scene of the crime. I mean, they had been
22 intimate partners. He had said that night before that they
23 were together. He was already in the database as well, so
24 I don't know that we would have had a very good reason to
25 object to a swab even if we didn't consent to it. Because,

1 once again, nothing in his case said I was never there, we
2 never had a relationship, my DNA wouldn't be present. It
3 was more justifying why would he do it and obviously they
4 were friends, you know, and more.

5 Q. Okay. And on the next one is there any reason why you
6 did not object to the jury charge on inferred malice?

7 A. It was probably before they change the inferred malice
8 case law and I'm not quite the trailblazer to have made
9 that objection ahead of time I suppose.

10 Q. And I'll direct you now to page 825, lines 8 through
11 12, and is there any reason why you did not object?

12 A. I'm sorry, 825, 8 through 12?

13 Q. Yes.

14 A. I'm sure that Mr. Graham was being very dramatic
15 there, but I don't see where I could have specifically
16 objected to that. I don't know that it crosses a line.
17 Those were the accusations. Those were what he was
18 convicted of.

19 Q. And I'm going to -- I'm not being repetitive, but this
20 is an allegation here and it's on two items of DNA.

21 A. Okay.

22 Q. And it's the -- you did not object to the waistband
23 DNA or the DNA taken from the -- I believe it's a cucumber.

24 A. Uh-huh.

25 Q. Is there any reason -- I can point you to the record

1 if you need to look, but is there any reason why you did
2 not object to that?

3 A. There wouldn't have been a legal basis to object
4 specifically outside the -- there was actually -- this case
5 actually had some pretty weird -- it's just kind of a funny
6 thing. So the blanket that was used to collect the body
7 had all kinds of other DNA on it. Like it was -- and I
8 think I actually went after the coroner and the coroner's
9 people about how poorly they did preserving the DNA, but
10 the DNA from his shorts and the DNA from the decedent's
11 body was going to come in, so I don't know how we would
12 have objected to that.

13 Q. And did you -- another allegation is that you failed
14 to object to the DNA chart not being thorough enough.

15 A. If I didn't, I didn't. I mean, I'm pretty sure I
16 looked back at it. It's just the standard DNA report, the
17 one you see in every DNA case.

18 Q. And there is an allegation of failure to properly
19 cross-examine the State's witnesses regarding DNA evidence
20 and I believe this goes to the -- I believe it was
21 in-camera with a person that sold drugs I believe. Do you
22 recall that?

23 A. No. Sorry.

24 Q. Okay.

25 A. If you could point me to it, I'll read it, but I don't

1 off the top of my head remember.

2 Q. Sure.

3 MR. BARLOW: I beg the Court's indulgence.

4 THE WITNESS: 431 is an in-camera --

5 MR. BARLOW: I apologize, Your Honor.

6 THE WITNESS: 581 in-camera. It's probably on
7 page 581. There's an in-camera with the DNA expert on
8 581 where I am asking about Item 8.3, talking about the
9 percentages and what one -- or 276 trillion would be
10 different if it was a brother or father?

11 MR. BARLOW: I believe so.

12 BY MR. BARLOW:

13 Q. In your review of this though on your cross of this,
14 the allegation is that you did not properly cross-examine
15 this witness.

16 A. I'm sure I did the best I could and if the Court says
17 I wasn't good enough, I guess I wasn't.

18 Q. All right.

19 A. It looks like we had a pretty good argument going.
20 I think at that point just judging by -- one of my favorite
21 things to do with DNA is they always say an unrelated
22 male, so I try to get the expert to say what if they were
23 related, what if they were cousins, how many people in
24 South Carolina are related, does that change the number,
25 and the expert usually says well, I can't guess to that

1 and I'm like exactly you can't.

2 MR. BARLOW: All right. Thank you, Mr. Stitely.

3 Nothing further, Your Honor.

4 THE COURT: Mr. Johnson.

5 MR. JOHNSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JOHNSON:

8 Q. Mr. Stitely, related to the investigation of the case,
9 did you have an investigator on this case?

10 A. No, sir.

11 Q. You did not?

12 A. No, sir.

13 Q. When it comes to the testimony about possibly
14 interviewing neighbors, you said that -- I think you said
15 you felt like there wasn't anything relevant to that?

16 A. I'm sure I would have said Pete, can they say where
17 you were at these times and he said no, so I don't know
18 what relevance they would have provided specific to the
19 events in question in this case.

20 Q. Is it possible that if you interviewed neighbors that
21 placed another individual at the house at the time of the
22 murder that could create some reasonable doubt for the jury
23 if that person could be identified?

24 A. Sure.

25 Q. Okay. And if that person also left DNA and they were

1 questioned and their DNA was located, that would strengthen
2 this theory of third-party guilt in that situation, right?

3 A. Potentially.

4 Q. Right. And the -- regarding alibi witnesses, you
5 were not given any specific information by the defendant
6 about an alibi?

7 A. If I remember right, Pete's comment was they had done
8 whatever that day. I think he actually said they'd ben
9 intimate the night before, then they worked together, he
10 went home and that was the last he saw of her, but there
11 nothing more than he went home. And even if we were to
12 argue that, I don't know that the State ever put an exact
13 time on the homicide, so that it still would have been he
14 was the last one to see her, so. And there were no other
15 witnesses that he could provide that would have put him
16 somewhere else during the entire period of time.

17 Q. But in reference to expert testimony and DNA, you
18 could have hired a DNA specialist to come in and test
19 items that had not been tested, correct?

20 A. Sure.

21 Q. And based on that may or may not have been useful in
22 defense?

23 A. It's possible.

24 Q. Regarding the number of times you met with the
25 defendant -- or the Applicant, his answer I believe was

1 three. Is it possible that is true?

2 A. I would assume it was more than that because I think
3 we had bond hearings, we had all kinds of stuff. I would
4 have seen him a bunch of times and I would have had to go
5 and talk to him about the trial, we would have went through
6 the discovery at least a few times. I mean, he even said
7 he told me about some neighbors, so obviously we were
8 having conversations. And like I said, I've got -- even
9 if I didn't see him at the jail, I've got our back and
10 forth correspondence, Theo writing, too. And his mom came
11 in a number of times. His mom was kind of like a conduit.
12 I think I actually met with his brother a couple of times
13 as well.

14 Q. As it relates to the buccal swab from the Applicant
15 and the ultimate exhibits, the DNA exhibits that were
16 listed, if you objected to those obviously those were key
17 to the State's case, his DNA at the scene?

18 A. Yes.

19 Q. If those were suppressed by your motion, that would
20 have been pretty fatal to their case?

21 A. Sure.

22 Q. Okay. Regarding statements by the solicitor referring
23 to Applicant, talking about evil, isn't there case law
24 that allows for a mistrial in certain situations where a
25 solicitor insults a defendant and calls him names?

1 A. I'm sure if they went over the line I think you can
2 potentially ask for a mistrial. In reading that, I think
3 the allegations were murderer and rapist, that's what he
4 was charged with on both accounts, and those were the exact
5 words he used.

6 Q. Did you hire any other experts at all or anyone else
7 to assist in the case?

8 A. No, sir.

9 Q. Did you have any additional testing done of any type
10 from the scene?

11 A. No, sir.

12 Q. Did you consult with a -- possibly a crime scene
13 analyst of your own?

14 A. No.

15 Q. Okay. Regarding cell phones, you said that you did
16 not test cell phones. You did not have access to cell
17 phones?

18 A. They were lost.

19 Q. They were lost.

20 A. That's what we were told.

21 Q. Okay. Did you reference any -- go after any records
22 with law enforcement regarding the status the cell phones?

23 A. No, not beyond what was discussed when we were in
24 front of the judge.

25 Q. If ultimately you had them, cell phones could

1 potentially have recorded material showing the location
2 of the phones at particular times, correct?

3 A. Sure. Possibly.

4 Q. By pinging off the towers?

5 A. Possibly.

6 Q. Okay.

7 MR. JOHNSON: No more questions, Your Honor.

8 MR. BARLOW: Nothing further from this witness.

9 THE COURT: All right. Thank you. You may step
10 down.

11 THE WITNESS: Thank you.

12 (Witness excused.)

13 MR. BARLOW: Your Honor, we would call Shawn
14 Graham.

15 (Whereupon, David Shawn Graham was duly sworn by
16 the Clerk of Court.)

17 THE CLERK: Thank you. Please be seated in the
18 witness stand and once you are seated, please state
19 your name, spelling your last name for the record,
20 please.

21 THE WITNESS: My full name is David Shawn Graham.
22 Last name is G-R-A-H-A-M.

23 MR. BARLOW: May it please the Court?

24 DAVID SHAWN GRAHAM,

25 having been duly sworn, testified as follows:

1 DIRECT EXAMINATION

2 BY MR. BARLOW:

3 Q. All right, Mr. Graham. Do you have a copy of the
4 transcript?

5 A. I do not.

6 Q. Okay. I'm gonna hand up a copy of the transcript and
7 a copy of the indictment.

8 A. Okay.

9 Q. Do you recall amending the indictment or reindicting?

10 A. I didn't until I looked at the transcript and
11 refreshed my memory and saw that I did.

12 Q. And what do you recall?

13 A. I believe that her name was incorrect, so there was
14 a scrivener's error on her name, and I believe that -- so
15 the warrant, I don't know about -- did you give me the
16 other indictment as well or just the one was the trial of
17 the case? The warrant says that the -- that on or about
18 August 7th through August 9th and I believe that in
19 addition to correcting her name that after investigating
20 the case we changed it and I believe the indictment that he
21 was tried on actually reflected that the murder occurred on
22 August 8th, and that's what -- that's what our belief was.
23 So we actually narrowed the timeframe down from the 7th
24 through the 9th to the 8th.

25 Q. And --

1 A. And that would have been the -- so the indictment, I
2 know I was present in the courtroom. The grand jury -- it
3 went to the grand jury that Monday morning. We would have
4 e-mailed a copy of the indictment that we were presenting
5 to defense counsel before that so they would have known
6 what changes were coming on that, but it actually went to
7 the grand jury the morning the trial started and they true
8 billed it and then we would have brought it over. They
9 would have waived service on it and we would have gone
10 forward on the case.

11 Q. And were you here for the testimony of Mr. Coffey?

12 A. I was.

13 Q. Okay. Do you recall anything about SLED versus
14 Richland County?

15 A. So my understanding is that Richland County as far
16 as DNA evidence were the ones who performed it and from
17 working -- I worked at the solicitor's office here in
18 Lexington for, I think, twenty-three and a half years.
19 During that time normally the sheriff's department would
20 send their stuff to SLED. At times when they wanted a
21 faster turnaround, they would on their decision take stuff
22 to Richland County because Richland County had set up a
23 private DNA lab, you know, for -- for them, but they were
24 also willing to do it for other people for money. So the
25 sheriff's department could send it to SLED for free and

1 wait or if they wanted to pay for a quicker turnaround,
2 they could send it to Richland County, and I believe that's
3 what happened in this case, that they were trying to get a
4 quick turnaround on the DNA evidence. And then once it's
5 -- SLED's policy at the time, and I can't speak for it
6 now, but their policy at the time was that once Richland
7 County touched a case SLED would not touch it. So you
8 were -- if you decide that the sheriff's department --
9 Lexington County Sheriff's Department decides that they
10 were gonna take something to Richland County to get a quick
11 turnaround, then anything else as far as DNA had to be done
12 at Richland County.

13 Q. Okay. And if you could turn to page 836 of the
14 record. It will be in the second volume.

15 A. Okay.

16 Q. And if you'll do me a favor and -- it's lines -- I
17 believe it's 18 and 13 -- or 18 and 19 rather.

18 A. We'd all like to know why, why did Peter Coffey kill
19 her that night. I want to know why, you want to know why,
20 Mr. Stitely says he doesn't know why.

21 Do you want me to keep reading?

22 Q. Well, the question would be is -- is there any
23 objectionable basis to that statement?

24 A. I don't believe so. Ben or Theo were pretty good
25 about objecting. If there was something to object to, they

1 would have objected to it. I think that that was my quick
2 rebuttal based on something that I guess Mr. Stitely said
3 in closing.

4 Q. And if you'll turn to page 825 for me.

5 A. Okay.

6 Q. And it's gonna be lines 8 through 12 and if you could
7 review that and then tell me is there any -- anything
8 inappropriate in that?

9 A. So 8 through 12, on page 825, is defense's closing.
10 Peter Coffey's blood in the house. No -- or is this my
11 closing?

12 Q. Your closing.

13 A. My closing. Thank you. Peter Coffey's blood in the
14 house, the blood on the shorts, her blood on the shorts,
15 probably for the first time in your life, ladies and
16 gentlemen, you are in the presence of someone who's evil,
17 who's a killer, who's a murderer, who's a rapist, and
18 that's Peter Coffey, and that was the very end of my
19 closing.

20 Q. And did you -- is there any reason to think that that
21 statement is inappropriate?

22 A. I wouldn't have said it if I thought it was. I know
23 that -- you know, I was also the prosecutor on Hart, which
24 was earlier today as well. I think in that case I used
25 "evil" six times.

1 Q. And how many times did you use it here?

2 A. Once, the very next to the last sentence I think I
3 said. I think what I would say is that the State has the
4 burden of proving malice and, you know, with -- at the time
5 when we got the inferred charge of use of a deadly weapon,
6 you can have express malice, implied malice and all that,
7 but the definition of the malice if you go look at some of
8 the old jury charges they talked about, you know, not just
9 the express malice, I hate you, but there was the hatred,
10 the ill-will, depraved spirit, murderous heart, evil. I
11 mean, evil is in there in the old jury charges for what
12 was malice and so that was my -- my belief of why I used
13 malice. You know, the jury had to find beyond a reasonable
14 doubt that he was guilty of this. Once they do that, that
15 they have to find that there was malice.

16 It was a heinous crime. I mean, she was -- she
17 was brutally bludgeoned to death. I think the
18 pathologist testified that the first blow to her head
19 probably would have knocked her unconscious. I believe
20 there were twenty to thirty blows to her head. There
21 was a hammer that was found that was consistent with
22 the wounds. It had been wiped clean. I can't remember
23 whether her blood was on it, but there was no other DNA
24 on it. I think there was no DNA at all which made me
25 think that it had been wiped and it probably was the

1 murder weapon, it was consistent. But she was struck
2 in the head multiple times, way more than she needed
3 to, it was an overkill situation, and then not only was
4 she raped both vaginally and anally, but a cucumber was
5 shoved up inside her rectum so hard that it -- it
6 pierced into her stomach. So it came out of the rectum
7 and up into her bowels. So all of that in my belief
8 was going to show that that crime, those actions -- so
9 did Mr. Coffey do it, I had to prove that, and I also
10 had to prove for a murder conviction that there was
11 malice involved. So that goes in my opinion for why I
12 called what -- he and his behavior evil.

13 Q. And since you brought it up, tell me what was found
14 on the cucumber.

15 A. So -- and if I say something wrong, please correct me
16 because it has been years and I did not read the whole
17 transcript. So she was found to have his DNA, semen, in
18 her vagina and rectum and the cucumber would have been --
19 I think from bleeding and stuff it would have been one of
20 the last things that happened to her. I think she was
21 dying or dead and blood flow stopped about that time when
22 it happened. If I remember right, there was -- in one
23 photograph somewhere there was -- well, I guess maybe the
24 DNA people found it, but there was a hair on the cucumber,
25 so the question was, was whose hair was it. If my memory

1 serves me correctly, if you look at the autopsy photos when
2 it was collected, on the -- sitting on the table I believe
3 next to her body there's no hairs that are shown. So it
4 was my belief that that was a contaminated issue and
5 somehow it picked up from somewhere another hair. Where
6 that came from, I don't know, but I don't believe that it
7 was relevant to this case at all.

8 His semen matching him to the quadrillions or
9 whatever the numbers were, were in her vagina
10 recovered. Like I think the samples were taken like
11 three inches inside her rectum. It was recovered from
12 her rectum I think, so you have his DNA on her and then
13 the DNA -- there was blood all over the house. They're
14 paying -- I guess the sheriff's department is paying to
15 see how many -- how many swabs get analyzed. They
16 don't get to have an unlimited number of swabs.
17 They're paying, I assume, by the swab. They picked
18 what they thought were the most important and most
19 relevant ones, but there was blood on a TV remote
20 control, there was blood on walls, there was blood on
21 the victim's cell phone showing that in my opinion both
22 the -- both of those items were used after her -- after
23 her assault and when she's bleeding.

24 I mean, he ended up having -- so her blood was in
25 the shower, so my theory was, is that the killer,

1 Mr. Coffey, took a shower to wipe -- you know, get
2 blood off of him, her blood off, so her blood is all
3 over the shower. There's no evidence of trails of
4 blood for her moving, so once she was hit she stayed
5 where she was at when this -- when this assault
6 occurred. If I remember correctly, her -- the sheets
7 on the bed were cut away from her as if somebody was
8 trying to hide or collect DNA evidence from her. Her
9 panties were off. She had no -- she was left naked
10 from the waist down. Her shirt was over her face, I
11 believe, and a pillow was over her face. He used -- we
12 had witnesses that showed him answering and being on
13 her phone, and I'm gonna get the time wrong, but in the
14 1:00 AM timeframe on the 8th, the morning of the 8th,
15 and we also had him on the phone at 8:00, on her phone,
16 so this is the phone that had what appeared to be blood
17 or I believe it was tested for blood. I just don't
18 know that they did the DNA on it, and if I'm wrong,
19 correct me on that, but people said that he used her
20 phone. He made a call and he answered a call and he
21 was seen walking away in the area of her house by the
22 person giving him a ride. The victim was never seen or
23 heard of alive after that. Nobody answered that phone
24 and said it's me, I'm alive. That was -- so before
25 1:00 when he saw her was the last time that she was

1 known to be alive other than from anything he says.

2 The search warrant was done on his residence. So
3 he -- he left that morning. He gets a ride with
4 somebody. I believe the person he talked to on the
5 phone. He goes and hangs out with people all day.
6 Witnesses testified that they had seen him the day
7 before, he had no cuts on him, and that that day, that
8 morning, he had cuts on him. So I think there were at
9 least two witnesses who talked about cuts on him. They
10 both asked him what happened to him and he gave no
11 response for why he would have cut marks on him. That
12 was drawn out in testimony.

13 Search warrants at his house, they went into the
14 washing machine. They recovered clothes and I know
15 that on, I believe, clothes and underwear her blood was
16 found on those clothes, and then there was testimony
17 about scrapings. The scrapings were for ownership
18 showing that he wore them. So there was -- his DNA was
19 found on the waistband of one of the two, if I remember
20 right. Her blood is found on the pants and the -- the
21 underwear itself. I believe both, not just the pants.
22 I know that he -- Mr. Coffey testified about the blood
23 being from menstrual. I can't imagine that he's
24 wearing her bloody underwear or bloody clothes. And
25 regardless, I think she was sixty years old. I think

1 the odds of her having a menstrual cycle at sixty and
2 bleeding into her pants are probably low, but that
3 was not something that was brought out in trial for
4 us to comment on or to bring evidence on. I'm just
5 commenting on what I heard Mr. Coffey say while he was
6 out here.

7 Q. Just a couple more things. Do you recall there being
8 any Brady violations or any issues with discovery?

9 A. No. I tried -- you know, I was always -- I never
10 wanted to be accused of prosecutorial misconduct. I always
11 -- in my career I always wanted to, you know, win on the
12 merits. The facts are the facts and the law's the law and
13 if I couldn't convince myself beyond a reasonable doubt
14 that somebody was guilty, then I didn't -- then we didn't
15 go forward on that case. But, no, there was -- I don't
16 remember any Brady violations being done or any accusations
17 of Brady violations on this case.

18 Q. And my last question for you is was Mr. Coffey's DNA
19 found on the cucumber?

20 A. I don't remember off the top of my head. I think that
21 it was because if he had had sex -- I mean, his DNA was in
22 her vagina and then the cucumber shoved through the vagina,
23 up in -- or, excuse me, the rectum. It was in the rectum.
24 The DNA was found in the rectum and then it was shoved --
25 so either -- either her DNA is on -- his DNA is on there

1 potentially from touching it, but it could also be from his
2 sperm as the cucumber is shoved up inside of her, but I
3 don't know -- without you showing me I can't say for sure
4 off the top of my head.

5 MR. BARLOW: Thank you, sir.

6 Nothing further, Your Honor.

7 THE COURT: Yes, sir, Mr. Johnson.

8 MR. JOHNSON: Just briefly, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. JOHNSON:

11 Q. The testing of DNA could have led to -- the samples
12 being taken that could have potentially identified other
13 people at the scene, correct?

14 A. We don't -- yeah, for all the -- I mean -- and I
15 don't remember how many swabs were taken, but, sure, we
16 don't know what those would have shown because they weren't
17 tested.

18 Q. Right. And interviewing witnesses like the neighbors
19 regarding who was present since -- obviously is an
20 important factor saying the State's theory was that my
21 client was there and so since his DNA was there and he
22 was there, if there was a witness, a neighbor or someone
23 that could have placed another person there, that would
24 have been important, something maybe the State could have
25 argued about directing towards third-party guilt, sometimes

1 that comes up, and that would be important to the defense
2 to the State's case, correct?

3 A. It would be, but I don't think there were any
4 identified either in the police investigation, our
5 investigation or defenses's investigation.

6 Q. Do you remember if any of the neighbors were
7 interviewed?

8 A. If I'm not mistaken, I could have my cases confused,
9 I want to say that they tried to find a neighbor across
10 the street, but I think he was maybe in the Charleston
11 Detention Center. I may have my cases confused --

12 Q. Okay.

13 A. -- but I don't think -- they would have -- I mean, I
14 would imagine -- I don't remember. I would imagine that
15 law enforcement canvassed the area, but they didn't find
16 anybody who was going to become a witness that I'm aware
17 of.

18 Q. Okay.

19 MR. JOHNSON: Thank you. No more questions,
20 Judge.

21 MR. BARLOW: Nothing further, Your Honor.

22 THE COURT: All right. Thank you. You may step
23 down.

24 (Witness excused.)

25 MR. BARLOW: And, Your Honor, I don't have any

1 further witnesses.

2 THE COURT: All right. Anything else from
3 Applicant before I take this under advisement?

4 MR. JOHNSON: Nothing further, Your Honor.

5 THE COURT: Anything from the Respondent?

6 MR. BARLOW: Nothing, Your Honor.

7 THE COURT: All right. I'm gonna take this under
8 advisement. I want to review everything before I make
9 my decision. I'll have something to you shortly.

10 Thank you for being here, Mr. Coffey.

11 (Whereupon, the proceedings were concluded for
12 March 3, 2025, at 3:00 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on the 3rd day of March, 2025.

This transcript may contain quoted material.
Such material is reproduced as read by the speaker.

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

July 29, 2025

/s/ Stacy S. Johnson
STACY S. JOHNSON, RPR
CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
	)	
Peter L. Coffey, #226897,	)	CASE No. 2020–CP–32–03992
	)	
Applicant,	)	
	)	
v.	)	ORDER OF DISMISSAL
	)	WITH PREJUDICE
State of South Carolina,	)	
	)	
Respondent.	)	

Presiding Judge:	Hon. Daniel M. Coble
Applicant's Attorney:	Ola A. Johnson, Esq.
Respondent's Attorney:	D. Russell Barlow, II, Esq.
Trial Counsel:	Benjamin A. Stitely, Esq.
Date of Hearing:	March 3, 2025
Court Reporter:	Stacey S. Johnson

2025 OCT 7 11:35

FILED

This matter comes before the Court by way of Peter L. Coffey's (Applicant) application for post-conviction relief (PCR) filed on December 2, 2020. Respondent, the State of South Carolina, submitted its Return and Motion for a More Definite Statement on July 1, 2021, requesting an evidentiary hearing to resolve the claims outlined in the application. On August 14, 2024, Applicant amended his application through PCR Counsel Ola A. Johnson.

On March 3, 2025, an evidentiary hearing was held at the Lexington County Courthouse before the Honorable Daniel M. Coble. Applicant was present and represented by Ola A. Johnson, Esquire (PCR Counsel). Senior Assistant Deputy Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded forward on the claims set forth in his original and amended applications. In support of these claims, Applicant testified on his behalf, and Respondent presented testimony from Benjamin A. Stitely, Esquire (Trial Counsel), and David Shawn Graham, Esquire (Dep. Sol. Graham).

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections. During its March 2018 term, the Lexington County Grand Jury indicted Applicant for murder (2018-GS-32-0943) and first-degree criminal sexual conduct (CSC) (2018-GS-32-0944). Trial Counsel and Robert T. Williams, Sr., Esquire, represented Applicant. Dep. Sol. Graham and Assistant Solicitor Bradley Pogue of the Eleventh Circuit Solicitor's Office prosecuted the case.

Applicant's case proceeded to a jury trial March 12–15, 2018, before the Honorable R. Knox McMahon. Judge McMahon sentenced Applicant to consecutive terms of life imprisonment without the possibility of parole (LWOP) for murder and thirty years for first-degree CSC.

Applicant filed a timely notice of appeal. Appellate Defender David Alexander perfected Applicant's appeal by filing an Anders¹ brief with the Court of Appeals on the following issue:

Whether the trial judge erred in refusing to allow appellant to cross-examine the victim's drug dealer about supplying her with crack two days before her body was found, where she had high levels of cocaine in her system and DNA evidence showed that other unknown persons might have committed this murder?

Applicant filed a *pro se* brief in response. On June 17, 2020, the Court issued an unpublished *per curiam* opinion dismissing the appeal and granting appellate counsel's request to

¹ Anders v. California, 386 U.S. 738 (1967).

be relieved. State v. Coffey, 2020-UP-186 (S.C. Ct. App. filed June 17, 2020). The Remittitur was returned to the circuit court on November 10, 2020.

CURRENT ACTION BEFORE THIS COURT

In his *pro se* PCR application, Applicant alleges he is being detained unlawfully for the following (excerpted verbatim):

1. "Ineffective assistance of trial counsel"
 - a. "Defense counsel failed to get indictments swashed[sic]"
 - b. "Defense counsel failed to investigate facts of case"
 - c. "Defense counsel failed to provide expert examiners"
 - d. "Defense counsel failed to request DNA analyzation on contents found on evidence"
 - e. "Defense counsel failed to show alibi defense"
 - f. "Defense counsel failed to bring defensive witnesses:"
 - g. "Defense counsel failed to develop or present viable defenses to the charges against Applicant prior to and during trial"
 - h. "Defense counsel failed to object to prosecutors rebuttal statement in closing argument"
 - i. "Defense counsel failed to examine contents of phone records of 629-2011 (3 folders and draft)"
 - j. "Defense counsel failed to strike jurors No. 9 Joshua Bailey and No. 210 Brandon Trotter"
2. "Violation of rights pursuant to VI and XIV Amendments"

Applicant requests relief as follows:

"vacate conviction"

In Applicant's amended application, he asserted the following allegations:

1. Ineffective Assistance of Counsel
 - k. Failed to properly investigate the case against the applicant.
 - l. Failed to meet with the applicant a sufficient number of times to prepare for trial.
 - m. Failed to object to buccal swab DNA evidence collected from the applicant (p.403-404).
 - n. Failed to object to the jury charge regarding inferred malice and the use of a deadly weapon (p. 849, line 14-16).
 - o. Failed to object to the statements by the solicitor that introduced improper character evidence (p. 825, lines 12).

- p. Failed to object to testimony regarding applicants DNA on item 8.3 from the waistband on a pair of shorts. p. 543 and on item 13.1 taken from a cucumber recovered from the autopsy of the victim on p. 546-547.
- q. Failed to object to the state's evidence EX 136, p. 532, an enlarged report regarding DNA testing.
- r. Failed to properly cross-examine the state's witnesses regarding the DNA evidence and to address this evidence sufficiently at trial.

Before this Court are the Lexington County Clerk of Court records regarding the Applicant's convictions and sentences, Applicant's SCDC records, Applicant's appellate records, and the records of this PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013).

² S.C. Code Ann. §§ 17-27-10 to -160.

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided

adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625; see Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial

counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary

hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCF (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of fact and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

This Court finds applicable the strong presumption that at all stages of Trial Counsel's representation of Applicant he rendered adequate assistance and exercised reasonable professional judgment in her representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be

made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation 1a: Failure to move to quash indictments.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to move to quash the indictments. Specifically, Applicant contends the ^{Leigh Anne} ~~Richland County~~ Grand Jury was not in session the day his indictments were issued. This Court finds these allegations to be without merit.

The indictment is a notice document, and any challenges to its sufficiency "shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards." S.C. Code Ann. § 17-19-90 (2010); State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005). The sufficiency of the indictment is determined by whether (1) the offense is stated with sufficient certainty and particularity to enable the court to know what judgment to pronounce, and the defendant to know what he is called upon to answer and whether he may plead an acquittal or conviction thereon, and (2) whether it apprises defendant of elements of the offense that is intended to be charged. Gentry, 363 S.C. at 101–02, 610 S.E.2d at 499 (citing State v. Wilkes, 353 S.C. 462, 465, 578 S.E.2d 717, 719 (2003)).

An indictment that cites the applicable general criminal statute is sufficient to fulfill the required notice and jurisdictional functions, where the body of the indictment indicates the particular crime of which the defendant is accused. See Carter v. State, 329 S.C. 355, 495 S.E.2d 773 (1998). When the defendant timely objects to the sufficiency of the indictment, before the jury is sworn, a ruling that an indictment is not sufficient will result in the quashing of the

indictment unless the defendant waives presentment to the grand jury and pleads guilty. State v. Means, 367 S.C. 374, 626 S.E.2d 348 (2006), overruled on other grounds by Gentry, 363 S.C. 93, 610 S.E.2d 494.

Non-jurisdictional defects apparent on the face of the indictment must be timely raised as required by S.C. Code Ann. § 17-19-90, or they are waived. Hooks v. State, 353 S.C. 48, 577 S.E.2d 211 (2003), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005); State v. Young, 243 S.C. 187, 133 S.E.2d 210 (1963). While the failure to allege certain circumstances of the crime may be grounds to quash an indictment for insufficient notice, such a defect does not necessarily implicate the court's subject matter jurisdiction, which is satisfied so long as the elements of the offense are sufficiently stated. Names of victims or co-defendants are classified as non-jurisdictional defects. Thompson v. State, 357 S.C. 192, 593 S.E.2d 139 (2004), overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

Trial

At the beginning of trial, Asst. Sol. Graham and Trial Counsel addressed the trial court with the following:

MR. GRAHAM: Thank you, Your Honor. Originally this case would have been called under Indictments 2017-GS-32-00993, which was an indictment for murder, and 2017-GS-32-00994. Upon review of the indictments yesterday, there were two errors or scriveners' errors that we noticed. The first was that the victim's name was [REDACTED]. Her full name is [REDACTED]. And then the day, on or about August 7th, 2015, it's the State's belief through the evidence that will be offered it will actually be the assault, the sexual assault, and death occurred most probably on August 8th, in the early morning hours of August 8th. In an abundance of caution, we have sent two new indictments to the grand jury this morning to address those problems. They have been true-billed, and that is 2018-GS-32-00944. So it changed from 2017 to 2018, an indictment for criminal sexual conduct, and 2018-GS-32-00943, an indictment for murder. Both of those were true-

billed. Certified true copies of both of the 2018 indictments have been given to Mr. Williams and Mr. Stitely, who are Mr. Coffey's attorneys, in the courtroom. Additionally, Your Honor, I'd like to make the 2017 indictments a Court exhibit for this trial, and that would be Indictment 2017-993 and 994, Your Honor.

....

MR. STITELY: Judge, I think Mr. Graham stated it accurately. We've reviewed the new indictments. Aside from the adding the new last name properly, the shift to one day is substantially similar. I think under the statute we could potentially make an argument for continuance, but we don't believe one is necessary at this time.

THE COURT: All right. Thank you very much. And I'd note, from reviewing the indictments, both the 2018-GS-32-00944, which is the criminal sexual conduct indictment, and 2018-GS-32-00943, which is the murder indictment, in comparing them to 2017-GS-32-00993, murder, and 2017-GS-32-00994, it does not change the wording of these indictments whatsoever. It is sufficient as an indictment for murder and criminal sexual conduct, both, all four. Further, the only change is in the murder indictment, and that is the word [REDACTED] is the name is added to [REDACTED]. It's [REDACTED]. And on or about August 7th, 2015 is changed to on or about August 8th of 2015. There was no reciprocal Rule 1 Rule 5 filed in the case. And, therefore, I would grant the motion and find the indictment is sufficient in form and consistent with the statutory law and the case law of State vs. Pierce, State vs. Hamm, and 17-19-20. All right. Anything further before we take our recess, Solicitor or Mr. Stitely?

MR. GRAHAM: Nothing from the State, Your Honor.

MR. STITELY: Nothing from the defendant, Your Honor.

(ROA p. 17-19).

PCR Evidentiary Hearing

On direct examination, Applicant testified that the Richland County Grand Jury was not in session on the date the indictments were issued. (PCR Tr. pp. 10-11). Applicant testified that the State changed the date and name on the indictment, and Trial Counsel should have objected or moved for a continuance. (PCR Tr. p. 11).

On cross-examination, Applicant testified that had they gotten a continuance, Trial Counsel could have investigated his case more than they did. (PCR Tr. p. 34).

On direct examination, Trial Counsel could not readily recall the issues with the indictments, but he testified that they knew what they were going to trial for, and if it were a date change or modification to the name, he would not have objected. (PCR Tr. pp. 43–44). Trial Counsel testified that he has never successfully gotten anywhere with a motion to quash an indictment because they are just notice documents. (PCR Tr. p. 44).

On direct examination, Dep. Sol. Graham testified to the following regarding the indictments:

- Q. Do you recall amending the indictment or reindicting?
- A. I didn't until I looked at the transcript and refreshed my memory and saw that I did.
- Q. And what do you recall?
- A. I believe that her name was incorrect, so there was a scrivener's error on her name, and I believe that -- so the warrant, I don't know about -- did you give me the other indictment as well or just the one was the trial of the case? The warrant says that the -- that on or about August 7th through August 9th and I believe that in addition to correcting her name that after investigating the case we changed it and I believe the indictment that he was tried on actually reflected that the murder occurred on August 8th, and that's what -- that's what our belief was. So we actually narrowed the timeframe down from the 7th through the 9th to the 8th.
- A. And that would have been the -- so the indictment, I know I was present in the courtroom. The grand jury -- it went to the grand jury that Monday morning. We would have e-mailed a copy of the indictment that we were presenting to defense counsel before that so they would have known what changes were coming on that, but it actually went to the grand jury the morning the trial started and they true billed it and then we would have brought it over. They would have waived service on it and we would have gone forward on the case.

(PCR Tr. pp. 58–59).

Findings

In this case, despite Applicant's allegations against the indictments, the record reflects that the ~~Richland County~~ ^{Lexington} Grand Jury validly indicted Applicant. These indictments contain all the necessary elements of the offenses and further cite the applicable statute. Further, "[a]n indictment is merely a notice document." State v. Baker, 390 S.C. 56, 62, 700 S.E.2d 440, 442 (Ct. App. 2010) (citing State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005)). A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. See, e.g., Tate v. State, 345 S.C. 577, 549 S.E.2d 601 (2001); Pringle v. State, 287 S.C. 409, 339 S.E.2d 127 (1986). Here, Applicant failed to show any irregularity because the indictments in question are sufficient on their face.

Moreover, "an indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." Id. at 63, 700 S.E.2d at 443 (citing State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007)). Significantly, in order to challenge the sufficiency of an indictment, an objection must be made before the jury is sworn in. S.C. Code Ann. §17-19-90 (2003).

Additionally, A grand jury may meet at any time ordered by a circuit judge. See S.C. Code Ann. §§ 14-5-910 to -940 (allowing for terms of court not provided for by law). Accordingly, a grand jury is not unlawfully impaneled simply because it does not meet in a term of court as provided for in S.C. Code Ann. §§ 14-5-620 to -820. See State v. Jeffcoat, 26 S.C. 114, 1 S.E. 440, 441 (1887) ("[M]erely changing the time for holding the court did not make the grand jury illegal."). Furthermore, a presumption of regularity is attached to proceedings in the Court of General Sessions. Pringle v. State, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986). Absent

evidence to the contrary, the court must presume that a properly returned indictment is valid. State v. James, 321 S.C. 75, 472 S.E.2d 38, 40 (Ct. App. 1996) (citing Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995)); State v. Thompson, 305 S.C. 496, 409 S.E.2d 420 (Ct. App. 1991). Applicant's indictments are valid on their face because they state all the necessary elements of the crime, the date of the offense, and the name of the accused. Id. at 75, 472 S.E.2d at 40.

Turning to Applicant's claim that Trial Counsel should have sought a continuance, this Court concludes that the Applicant has not provided any credible evidence to suggest that such a motion would have been granted. The testimony of Trial Counsel, coupled with the existing record, clearly indicates that he made a strategic decision to proceed, having identified no shortcomings in the indictments.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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Allegation 1b: Failure to investigate facts of the case.
Allegation 1d: Failure to request DNA analysis of the contents found on the evidence.
Allegation 1k: Failure to properly investigate the case against the Applicant.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to properly investigate the case against Applicant and for failing to request DNA analysis of the contents found on the evidence. This Court finds these allegations to be without merit.

A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues, at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case." Ard v. Catoe, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007) (internal quotation marks omitted) (emphasis omitted). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011). "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland, 466 U.S. at 691.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75–76, 659 S.E.2d 140, 145–46 (2008) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998)), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The applicant must further present evidence

demonstrating how the discoverable matters or defenses would have resulted in a different outcome. *Id.* Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. *Id.* at 75, 659 S.E.2d at 145 (citing *Glover v. State*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel's duty to investigate. *Ard*, 372 S.C. at 331, 642 S.E.2d at 597 ("this duty is limited to [a] reasonable investigation"). The United States Supreme Court also instructed reviewing courts to "keep in mind that counsel's function, as elaborated in prevailing professional norms, is to make the adversarial testing process work in the particular case." *Strickland*, 466 U.S. at 690. Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel's decision not to undertake a particular investigation must be evaluated with heavy deference to counsel's judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

PCR Evidentiary Hearing

On direct examination, Applicant testified that certain items were not tested, and Trial Counsel should have investigated more. (PCR Tr. p. 12). Applicant testified that seminal fluid was found without sperm cells, which was indicative of someone who had a vasectomy. (PCR Tr. p. 13). Applicant testified that the DNA evidence showed two Caucasian males and one female, but they did not know who they were. (PCR Tr. pp. 13–14). Applicant testified that Trial Counsel did not hire a private investigator. (PCR Tr. p. 21).

On cross-examination, Applicant testified that had they gotten a continuance, they could have had more time to review and investigate the case. (PCR Tr. pp. 34–35). Applicant testified that there was no DNA analysis done for the purpose of his PCR action. (PCR Tr. p. 35).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant failed to present competent evidence of what could have been discovered or what other defenses he could have requested had Trial Counsel spent more time investigating that would have changed the outcome of his trial. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (finding respondent failed to show how his counsel's lack of preparation prejudiced him given respondent did not "present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial"); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (holding record did not support PCR judge's conclusion that counsel's deficient performance was prejudicial to respondent given respondent did not show how additional preparation would have resulted in a different outcome); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to post-conviction relief where there was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial). Thus, Applicant has failed to show that Trial Counsel's representation was deficient and failed to show any resulting prejudice flowing from the alleged deficiency.

Turning to failure to have the DNA analyzed on the contents found at the scene, this Court finds Applicant has failed in his burden of proving Trial Counsel's representation was deficient and any resulting prejudice from the alleged deficiency. Applicant failed to present any competent

evidence of any DNA analysis performed on the matters he contends should have been tested, and thus cannot meet his burden.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, these allegations must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1c: Failure to provide expert examiners.
Allegation 1f: Failure to call defense witnesses.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to provide expert examiners. Applicant also alleges that Trial Counsel failed to call defense witnesses. This Court finds these allegations to be without merit.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant and make an independent investigation of the facts and circumstances of the case. Edwards, 392 S.C. at 456, 710 S.E.2d at 64; Walker v. State, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. Glover, 318 S.C. at 498-99, 458 S.E.2d at 540. The applicant's mere speculation about what the witnesses' testimony cannot, by itself, satisfy the applicant's burden of showing prejudice. Id.

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel should have had the DNA tested through SLED and not through Richland County. (PCR Tr. p. 12). Applicant testified that Trial Counsel could have called or talked to the "neighbor's man," but he did not know the neighbor's name or the man's name. (PCR Tr. pp. 14–15).

On cross-examination, Applicant testified that he did not have any witnesses to present to the PCR court. (PCR Tr. p. 36).

On direct examination, Trial Counsel testified that he questioned why SLED was not used for the DNA analysis, and it was because they had a backlog. (PCR Tr. p. 45). Trial Counsel testified that calling the neighbor would not have been relevant to establish anything in Applicant's defense. (PCR Tr. p. 46).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard v. Catoe, supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. *See Butler, supra*. Applicant failed to provide any witnesses, expert or otherwise, at the evidentiary hearing, nor did Applicant provide any competent evidence to support his claims. Thus, Applicant failed in his burden of proving deficiency or prejudice. *See Glover, supra*.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has

failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1e: Failure to raise alibi defense.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to raise an alibi defense. This Court finds this allegation to be without merit.

Through an alibi, an accused attempts "to show that because he was not at the scene of the crime at the time of its commission, having been at another place at the time, he could not have committed the crime." State v. Robbins, 275 S.C. 373, 375, 271 S.E.2d 319, 320 (1980) (quoting 21 Am. Jur. 2d Criminal Law § 136). To do so, the accused must show "he was at a place so distant that his participation in the crime was impossible." Id. Furthermore, the alibi must account for the entire time during which these crimes were committed. Id. "[S]ince an alibi derives its potency as a defense from the fact that it involves the physical impossibility of the accused's guilt, a purported alibi which leaves it possible for the accused to be the guilty person is no alibi at all." State v. Glover, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (citing Robbins, 275 S.C. 373, 271 S.E.2d 319).

PCR Evidentiary Hearing

On direct examination, Applicant testified that he informed Trial Counsel that he was at the scene, but left the next morning, and the Victim was still alive. (PCR Tr. p. 14).

On cross-examination, Applicant testified that he was with the Victim for a few hours, and he left. (PCR Tr. p. 35). Applicant testified that they could not specify the date the Victim was murdered. (PCR Tr. p. 36).

On direct examination, Trial Counsel testified that there was no way to corroborate any alibi defense for Applicant. (PCR Tr. p. 45).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, *supra*. Applicant failed to provide any alibi witnesses or any competent evidence to carry his burden at the evidentiary hearing. Thus, Applicant failed in his burden of proving deficiency or prejudice. See Glover, *supra*.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1g: Failure to develop or present viable defenses to the charges against Applicant prior to and during trial.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to develop or present viable defenses to the charges against Applicant prior to and during trial. This Court finds this allegation to be without merit.

A strategic or tactical decision does not have to be articulated by counsel on the record before the Court may acknowledge it, nor does counsel have to personally identify his or her thinking. It is enough that the record reflects strategic design, such that the Court may reasonably infer from the record what the strategy was, even if trial counsel cannot or will not subsequently articulate it. See Wood v. Allen, 558 U.S. 290 (2010) (finding the PCR court was reasonable in inferring from evidence in the record that trial counsel's failure to pursue or present evidence of defendant's mental deficiencies was a strategic decision); Koon v. Rushton, 364 Fed.Appx. 22, 29 (4th Cir. 2010) (upholding PCR court finding that applicant failed to carry his burden where trial counsel had an articulable strategy behind his method of impeaching a witness); Geralds v. State, 111 So.3d 778, 794 (Fl. 2010) (finding trial strategy from the record where trial counsel was deceased, and therefore not able to testify).

PCR Evidentiary Hearing

On direct examination, Applicant testified that there was no defense strategy and Trial Counsel never discussed any strategy with him. (PCR Tr. pp. 15–16).

Findings

This Court finds that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was

deficient and any resulting prejudice from that alleged deficiency. See Butler, supra. This Court finds that the record provides that Trial Counsel was prepared and presented an array of several inconsistencies in the investigation conducted by law enforcement such as: 1) the Victim's fear of her neighbors was so great that she nailed her windows down and these individuals were not interviewed by law enforcement; 2) the dogs had been present in the home for a day and a half prior to the Victim's discovery, yet no paw prints were found at the crime scene; 3) the lack of checking for fingerprints on items within the crime scene; 4) the failure of law enforcement to locate a key to the Victim's home in the possession of Applicant where it was established that the door had been locked from the outside; 5) the failure of law enforcement fingerprinting the door handle.³ Where Applicant's defense was that he was not the murderer, these investigative inconsistencies were crucial in attempting to create reasonable doubt.

Moreover, Applicant failed to present any competent evidence of what viable defenses Trial Counsel could have developed that would have changed the result of his trial. See Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (finding respondent failed to show how his counsel's lack of preparation prejudiced him given respondent did not "present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial"); Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997) (holding record did not support PCR judge's conclusion that counsel's deficient performance was prejudicial to respondent given respondent did not show how additional preparation would have resulted in a different outcome); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997) (finding applicant was not entitled to post-conviction relief where there

³ The Court notes that this is not an exhaustive list, instead just some of the key items Trial Counsel used to Applicant's advantage and defense.

was no evidence presented at the PCR hearing to show how additional preparation would have had any possible effect on the result of the trial). Thus, Applicant failed in his burden of proving deficiency or prejudice. See Glover, *supra*.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED with PREJUDICE**.

Allegation 1h: Failure to object to the prosecutor's rebuttal statement in closing.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the prosecutor's rebuttal statement in closing (p. 836). This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." *Id.*; see Vieux v. Pepe, 184 F.3d 59, 64 (1st Cir. 1999) (finding "counsel's performance was not deficient if he declined to pursue a futile tactic.") (applying Strickland, 466 U.S. at 688, 694 (explaining that, in