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ANDERS

VOLUME III OF III

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

No Respondent's Brief Filed
ANDERS RESPONSE BRIEF

THE STATE,

RESPONDENT,

V.

ORAN SMITH,

APPELLANT

RECORD ON APPEAL

JOSEPH L. SAVITZ, III
Senior Appellate Defender

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

Attorney for Appellant

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HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

DONALD J. ZELENKA
Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

SCARLETT ANNE WILSON
Solicitor, Ninth Judicial Circuit
101 Meeting St., Ste. 400
Charleston, SC 29401-2214
fax (843) 740-5858
(843) 958-1900

Attorneys for Respondent

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1 samples where we just don't have enough
2 information for you to make a call?

3 A. That's correct.

4 Q. And on some of these samples you did not
5 find enough DNA to render an analysis?

6 A. That's correct.

7 Q. On 2.4.1 and 2.4.2 you did come to a
8 conclusion.

9 A. Yes.

10 Q. Is Leonard Geddis excluded from 2.4.1 and
11 2.4.2?

12 A. Yes, he's excluded as being a possible
13 contributor to those items.

14 Q. So for the purposes of touch DNA, Leonard
15 Geddis is excluded?

16 A. Yes. His DNA profile is excluded.

17 Q. But there's a Y present, isn't there, in
18 both those samples?

19 A. Yes.

20 Q. So we have the presence of male DNA there?

21 A. That's correct.

22 Q. What was the conclusion that you came to in
23 your report concerning Oran Smith as a possible
24 contributor to the male DNA found on those two
25 items?

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1 A. Based on my analysis Oran Smith cannot be
2 excluded as the possible minor contributor to
3 these mixtures, meaning that items 2.4.1 and
4 2.4.2 are mixtures which included Cheryl Snow.
5 And Oran Smith could not be excluded as a
6 contributor.

7 Q. So there is nothing in Oran Smith's DNA
8 profile, no numerical values as expressed in
9 row two here, right under Cheryl Snow -- there
10 is nothing that excludes him from these bottom
11 two rows, the touch DNA two rows here at the
12 bottom?

13 A. That's correct.

14 Q. Because if we were just to go through this
15 chart, Oran Smith, in the first column, the
16 fourteen/sixteen -- at 2.4.1 we find a sixteen;
17 right?

18 A. Yes.

19 Q. And it's actually not in parentheses. But
20 in 2.4.2 as having been taken from the same
21 area, you find fourteen/sixteen. Is that
22 correct?

23 A. Yes.

24 Q. Now, Oran Smith is a 32.2 and a 34 in the
25 next column. You find a 34 in 2.4.1 and you

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1 find a 32.2 --

2 A. That's correct.

3 Q. -- in cutting 2.4.2. In the third column
4 Cheryl Snow is a ten. We expect to find a ten.
5 Oran is a ten and an eleven. So we expect to
6 find a ten either way. That doesn't mean
7 anything. But we do find elevens; right?

8 A. Yes.

9 Q. We talked about this fourth column. Cheryl
10 Snow and Oran Smith have the same -- the
11 numbers in the same place and the same number
12 of repetitions. So that's not going to be any
13 different. In the fifth column which is
14 E3F1358, they have a fifteen. Oran has a
15 fourteen. And you find a fourteen on both
16 samples; don't you?

17 A. That's correct.

18 Q. And I can go all the way across this chart,
19 and allele values that are the same as Oran
20 Smith's all the way across the chart; don't we?

21 A. Yes, we do.

22 Q. How come we can't say for certain that Oran
23 Smith is a contributor to that DNA?

24 A. It's because of the quantity of DNA that
25 was found there. His DNA profile is in the

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1 minor profile region. Based on the fact also
2 that Cheryl Snow has some of the allele values
3 the same as his, that's why we could not
4 separate them out as two separate individuals.
5 So that's why we say he's being a possible
6 contributor to the mixture.

7 Q. It is easier to get DNA from semen than it
8 is touch DNA, if you have a sufficient
9 quantity?

10 A. Normally there's more DNA when you have
11 semen. Obviously if it's there, coming from
12 the sperm cells, than you would have for touch.
13 But it all depends on how much -- how many
14 epithelial cells are shed off on a particular
15 item.

16 Q. Is there any allele value expressed in your
17 profile of Oran Smith -- I'm going to rephrase
18 that question. Is there any allele value that
19 you found in 2.4.1 and 2.4.2, in any of these
20 columns, that is inconsistent with the allele
21 values found in the profile for Oran Smith's
22 DNA?

23 A. No, there is not. If there were I would
24 have to say that he was excluded, like Leonard
25 Geddis is.

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1 Q. So Leonard Geddis is excluded because there
2 are things in Leonard Geddis's DNA that we
3 don't find here, and vice-versa.

4 A. That's correct.

5 Q. But for Oran Smith, we don't find enough of
6 his DNA down here for you to positively say
7 it's him. But there's nothing -- nothing that
8 would exclude him either.

9 A. That's correct.

10 MR. VOIGHT: One moment, Your Honor.

11 THE COURT: Certainly. Take your
12 time.

13 DIRECT EXAMINATION CONTINUED

14 BY MR. VOIGHT:

15 Q. Just one last question here. What we call
16 the semen, 2.5M?

17 A. Yes.

18 Q. That's definitely Oran Smith; right?

19 A. Yes, it is.

20 Q. In your scientific opinion?

21 A. Yes.

22 Q. Thank you.

23 MR. VOIGHT: Please answer any
24 questions that Ms. Taylor may have.

25 THE COURT: You may cross examine,

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1 Ms. Taylor.

2 CROSS EXAMINATION

3 BY MS. TAYLOR:

4 Q. I'll take these down for right now. I'll
5 ask you a couple of questions generally. We
6 heard from Ms. Bryson earlier who was the tech
7 who did the initial cuttings that you got. As
8 I understand it, you received what she cut and
9 sent to you. Did you have the full both sets
10 of pajama bottoms or just the cuttings?

11 A. Just the cuttings.

12 Q. So whatever she had cut and sent to you,
13 that's all that you tested?

14 A. That's all I tested.

15 Q. You did not take the entire piece of pajama
16 bottoms and test?

17 A. No, I did not.

18 Q. When you talk about the things that you
19 discussed with Mr. Voight, the semen and the
20 skin for touch, let me ask you first is there
21 any other touch DNA, other than skin cells from
22 a body? Are you referring to any other source
23 when you say "touch" from our bodies?

24 A. Yes.

25 Q. What would they be?

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1 A. Let's say for instance someone licks
2 someone with their tongue, that would be a
3 touch.

4 Q. So saliva?

5 A. Yes.

6 Q. Anything else?

7 A. No, I wouldn't say at the time.

8 Q. Obviously, much of our body is made out of
9 skin, and presumable skin cells make up that
10 skin. Am I right so far?

11 A. That's correct.

12 Q. Can you identify when you're looking and
13 see touch sources, where on or body the skin
14 comes from? If I touch you with my hand, can
15 you tell that or if I touch you with my elbow?
16 Or is it all the same cell material?

17 A. It's all the same cellular material.

18 Q. No part of my body could be identified as
19 which skin cell was found, where it might have
20 been found?

21 A. No, I did not test that.

22 Q. If someone wore gloves, would that have any
23 effect whatsoever on your ability to find
24 evidence of skin cells or touch DNA?

25 A. Yes, it would, simply because the gloves

1 are between whatever items that are touched and
2 that person.

3 Q. Would that same concept hold true for a
4 determination or finding of semen if an
5 individual had used a condom?

6 A. Yes.

7 Q. You talked about the minor versus major
8 contributor. From a non-scientificological
9 layperson, "major" means "significant" and
10 "minor" means "not so much." Is there a
11 different meaning in the way you use it from
12 that?

13 A. Not really. "Major" means more of that
14 person's DNA there than the other person who
15 is the minor contributor.

16 Q. And you've got a lot of numbers on the two
17 charts.

18 A. Yes.

19 Q. Running across the top and running down
20 each of these columns. I just want to talk to
21 you for a minute -- and what I'm referring to
22 is this same -- can you put it back up, please,
23 so that they can follow along with us? You
24 talked about you had three standards. If you
25 have been provided with other standards, you

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1 could compare whatever you're given to what you
2 have. Is that fair to say?

3 A. That's correct.

4 Q. And, obviously, we don't have any idea
5 about anything other than three that you were
6 given and you tested.

7 A. Yes, that's correct.

8 Q. And based on all the things that are on
9 here, the pajama bottoms -- and basically,
10 that's the primary piece of evidence. There
11 are different cuttings from the two sets of
12 pajama bottoms, but 2.1, 2.2, 2.3, 2.4.1, 2.4.2
13 and the 2.5s are all coming from those pajama
14 bottoms. Is that correct?

15 A. Yes.

16 Q. And the 2.5 is the semen which is taken
17 from the inside pajama bottoms.

18 A. That's correct.

19 Q. And that showed both Cheryl Snow and Oran
20 Smith.

21 A. Yes.

22 Q. Did you draw any other conclusions from
23 your testing, or you're looking at it and you
24 say this was found here and I can identify this
25 as people to put it there. That's who it

1 belongs to.

2 A. Yes. That's all I do is compare the DNA
3 profile that were from the evidence to the
4 standards that are given to me.

5 Q. Not how it got there, but that's what it
6 is.

7 A. That's correct.

8 Q. And then the other issue is the touch DNA
9 from the pajamas; right?

10 A. Yes.

11 Q. And it was identified solely by a skin
12 cell, or was there any other kind of touch DNA?

13 A. I did not test any other body fluids.

14 Q. So we're talking about just skin cells.

15 A. Yes. That's touch DNA.

16 Q. And what we know scientifically is that
17 Cheryl Snow's touch DNA was definitely there?

18 A. Yes, I was given information that those
19 pajama bottoms belonged to her. So you would
20 expect to find her DNA on the pajama bottoms.

21 Q. Because she touched them.

22 A. That's correct.

23 Q. And you did find it in those. The two
24 cuttings were tested by you, 2.4.1 and 2.4.2?

25 A. 2.4.1 and 2.4.2 are from the larger cutting

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1 that was given to me as 2.4.

2 Q. Right. And those were what you tested and
3 found Cheryl's skin cells?

4 A. Yes.

5 Q. And the three that are above that, the 2.1,
6 2.2 and 2.3 are from swabs. I'm assuming that
7 would be a cotton swab?

8 A. Yes, like a Q-tip.

9 Q. And that's what someone took and rubbed
10 somewhere on the pajama bottom and then sent
11 that to you to test?

12 A. Yes.

13 Q. The conclusions from those were what? I
14 see that if we go to the far end of the first
15 page you have the X chromosome. Does that
16 indicate that was all female?

17 A. Yes. On those particular items -- I
18 believe you're talking about 2.1, 2.2 and 2.3?

19 Q. Yes, ma'am.

20 A. On those particular items in the column
21 where you find the sex chromosome, it's an X
22 listed.

23 Q. So does that tell us that those three items
24 only contain Cheryl Snow's DNA?

25 A. Yes. Based on my report, the profiles

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1 developed from items 2.1, 2.2 and 2.3 are also
2 consistent with the DNA profile of Cheryl Snow.

3 Q. And so following the logic that you were
4 using with Mr. Voight, from those three items
5 is Mr. Smith excluded. Is that how it works?

6 A. Yes.

7 Q. And so the last two of the cuttings, where
8 we have the X indicating again that that would
9 be Cheryl Snow's DNA?

10 A. She is the major contributor in those two
11 items.

12 Q. And then the Y which is in parentheses is
13 the minor one?

14 A. From the minor contributor.

15 Q. And that tells us it's a male.

16 A. Yes.

17 Q. No question about that.

18 A. Yes, no question.

19 Q. And then, ultimately, your conclusion on
20 that is that Oran is not included for being
21 that male.

22 A. That's correct.

23 Q. So it's possible that Oran Smith had some
24 part of his body in contact with the pajama
25 bottoms that Cheryl Snow had presumably worn at

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1 some point in time on the lower part of her
2 body?

3 A. Based on the information I have, yes.

4 MS. TAYLOR: Court's indulgence.

5 THE COURT: Certainly. Take your
6 time.

7 MS. TAYLOR: Thank you, Ms. Gallman.
8 That's all I have.

9 THE COURT: Redirect?

10 MR. VOIGHT: There's no redirect,
11 Your Honor.

12 THE COURT: Thank you very much.
13 You may step down.

14 (WITNESS STEPS DOWN)

15 THE COURT: Do you wish Ms. Gallman
16 and Ms. Bryson to be excused?

17 MR. VOIGHT: I do.

18 THE COURT: Any objection?

19 MS. TAYLOR: None, Your Honor.

20 THE COURT: You all are also free to
21 leave. Call your next witness, please

22 MR. VOIGHT: May we approach?

23 THE COURT: Sure.

24 (BENCH CONFERENCE)

25 MR. VOIGHT: The State calls Shawn

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1 Patrick.

2 (WITNESS TAKES STAND)

3 SEAN PATRICK, being duly sworn to tell
4 the truth, the whole truth and nothing but the
5 truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MR. VOIGHT:

8 Q. Detective Patrick, where do you currently
9 work?

10 A. I'm currently assigned to the North
11 Charleston Police Department narcotics unit.

12 Q. In June of 2007, where were you assigned?

13 A. In June of 2007, I was assigned to the
14 North Charleston Police Department First
15 Response Unit.

16 Q. And how were you with the North Charleston
17 First Responders?

18 A. At that point, five years.

19 Q. And how long total did you spend there?

20 A. Seven years.

21 Q. Did you have the occasion on June 4th, 2007
22 to respond to a call at 1253 Sumner Avenue,
23 Apartment 102?

24 A. Yes, I did.

25 Q. And what was the purpose of you responding

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1 to that call?

2 A. I responded to a suspicious death that
3 eventually turned into a homicide.

4 Q. Did you then become the lead detective on
5 this particular homicide investigation?

6 A. Yes, I was assigned by my supervisor as
7 lead detective.

8 Q. And what's the role of the lead detective?

9 A. We pretty much collect paperwork and have
10 somewhat of a hand in directing others and
11 asking them what to do and when to do it, as
12 well as taking directions from supervisors.

13 Q. Do you do everything yourself?

14 A. No, I do not.

15 Q. Do you task other people to do certain
16 parts of the investigation?

17 A. Some parts, yes.

18 Q. When you first got to the scene, what did
19 you see?

20 A. When I first got to the scene I observed
21 Officer Hille and another officer with the
22 crime scene log. The scene was cordoned off
23 with yellow crime scene tape. I spoke with
24 Officer Hille and he gave me a briefing on what
25 was inside, what he observed inside. Then from

1 that point I walked and canvassed the community
2 in speaking with other witnesses, trying to
3 find other witnesses.

4 Q. Were you able to go into the crime scene
5 right away?

6 A. No.

7 Q. And why was that?

8 A. Because crime scene wasn't finished
9 processing the scene yet. I didn't want to
10 contaminate the scene. I wanted to wait for
11 crime scene to finish processing, then
12 we're allowed to go in -- with the supervisor.

13 Q. And you were able to then use your time
14 to walk around the apartment complex?

15 A. (Affirmative nod).

16 Q. Did you find anybody who had any knowledge
17 of the incident?

18 A. No. I spoke to Phil Ackerman who had a
19 little knowledge. I also met with Clayton
20 Thackston (phonetic) who had no knowledge and
21 also an elderly female who lived directly
22 behind Ms. Snow who didn't hear anything. She
23 did not know Ms. Snow very well.

24 Q. Did you ever talk with Thomas Fender?

25 A. Thomas Fender, (affirmative nod), briefly.

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1 I believe Detective Hille spoke with Mr. Fender
2 and took a statement.

3 Q. What kind of assisted living facility was
4 this, if you know?

5 A. It's for mental health issues as well as
6 drug rehab, like a halfway house place. It's
7 run by volunteers, medical staff, maintenance
8 people, upkeep and stuff like that.

9 Q. Is it safe to assume that some of these
10 people had either chemical issues and that some
11 of them may have also had mental issues as
12 well?

13 A. That's correct.

14 Q. Was that borne out in your talking to
15 people as you canvassed the area?

16 A. Yes.

17 Q. When were you finally allowed into the
18 crime scene?

19 A. Hours later, after they had completed
20 processing of the scene. We walked in one-by-
21 one with the supervisor. The officer left the
22 crime scene photos on the counter and they
23 showed us the direction of the body where the
24 body was located and pieces of the evidence
25 that they had found. He explained prints.

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1 Q. When was a name of a possible suspect or
2 person of interest first associated with this
3 investigation?

4 A. Once some latent prints were removed from
5 the crime scene they were given to, I believe,
6 Sergeant Garrison who, in turn, went to the
7 police department. He examined the latent
8 prints and came back with the name of Oran
9 Smith. I believe that was the first name that
10 was named.

11 Q. What did a print of Oran Smith tell you
12 initially, if anything?

13 A. That he was inside the residence at one
14 point.

15 Q. Did you come to any conclusions based on
16 just that limited amount of information that
17 you had from the fingerprint?

18 A. No, I did not.

19 Q. What did you do with that information?

20 A. What we did with that information was
21 initially tried to find Oran Smith by
22 canvassing the surrounding neighborhood and
23 the Charleston Farms neighborhood to see what
24 information, if any, he could provide or any
25 background information on the victim.

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1 Q. Did you interview other people in the
2 meantime, before you ran into Oran Smith, who
3 told you what they may have known about Cheryl
4 Snow?

5 A. Yes, in canvassing the area of Charleston
6 Farms and the Remount Road area we also met
7 with several prostitutes, people walking around
8 in the middle of the night, stopped and asked
9 everybody if they had any information about
10 what may have happened.

11 Q. None of the information that you learned --
12 was that helpful in any way?

13 A. No.

14 Q. Did you ever talk to Richard Luster?

15 A. Yes.

16 Q. And why did you talk to Richard Luster?

17 A. To get a little background on Ms. Snow.
18 Mr. Luster and Ms. Snow, they were both good
19 friends, long-time friends. And he hung out
20 with her when she was level-headed, clean, so
21 to speak, and had no idea of who she was
22 hanging out with, who her friends were, close
23 friends, other than her family.

24 Q. That was about it?

25 A. Right.

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1 Q. When did you first come into contact with
2 Oran Smith?

3 A. The first initial contact with Oran Smith
4 was at the station, police department, when he
5 and his mother and I believe his father also
6 accompanied him.

7 Q. The first time that he came down to the
8 station, what day was that? Do you recall?

9 A. I don't recall the date.

10 Q. Would it refresh your recollection to take
11 a look at the supplement report that you
12 prepared in this matter?

13 A. Sure.

14 Q. Did you bring your own?

15 A. Yes.

16 Q. Is that the case file?

17 A. Yes.

18 Q. And that's the case file that you prepared
19 in this case?

20 A. Yes.

21 Q. Would it refresh your recollection to
22 review that file?

23 A. Yes. (Upon review) -- it was on the 5th,
24 June 5th.

25 Q. Is that the day after Cheryl Snow's body

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1 was discovered?

2 A. Yes.

3 Q. If you know, where does Mr. Smith reside,
4 or where did he reside at that time?

5 A. He lives in Moncks Corner.

6 Q. Who was with him at the station when he
7 arrived?

8 A. His mother and father. I believe his
9 father was present. I know his mother was
10 there with him.

11 Q. At that time did he -- if you know -- did
12 he give a statement?

13 A. Yes.

14 Q. And who would have taken that statement
15 from him?

16 A. Detective Hille and Detective Elmore.

17 Q. Were you present when that statement was
18 taken?

19 A. No, I wasn't.

20 Q. Subsequently, in the course of your
21 investigation you came to learn what the
22 contents of that statement was?

23 A. Yes.

24 Q. Based on the contents of that statement,
25 did you prepare an arrest warrant to arrest him

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1 on June 5th?

2 A. No.

3 Q. On June 5th, you had his fingerprints, and
4 he had given a statement?

5 A. That's correct.

6 Q. Did you interview anyone else on June 5th?

7 A. Yes, I spoke with his mother.

8 Q. Do you recall approximately what time you
9 may have spoken with his mother?

10 A. Give me one minute. I believe it was about
11 7:00 o'clock. (Upon review) -- yes, at 7:15
12 p.m.

13 Q. Do you know how approximately how long the
14 Smiths had been at the North Charleston Police
15 headquarters before you took that statement?

16 A. No more than twenty or thirty minutes. I
17 had to speak with her first. Then once we
18 spoke, she gave me her statement.

19 Q. What was the purpose of speaking with Mr.
20 Smith's mother?

21 A. Just to get an idea of -- I guess Oran
22 explained that he was picked up that night by
23 his mother or left Sunday night by his mother.
24 And I wanted to speak with her to see if the
25 stories coincided, what time, what he was

1 wearing and things of that nature.

2 Q. Was there any particular reason why, as the
3 lead detective, you chose to talk to Mr.
4 Smith's mother as opposed to talking to Mr.
5 Smith?

6 A. No reason. We're all capable of speaking
7 to anybody that comes into the station.
8 Detective Hille and Detective Elmore were asked
9 to speak with Mr. Smith.

10 Q. Are they detectives of some experience?

11 A. Yes.

12 Q. And you trusted them to take that
13 statement?

14 A. Yes.

15 Q. Was that normal practice in North
16 Charleston's persons division at that time,
17 for that sort of division of labor?

18 A. Yes.

19 Q. When Mr. Smith gave that first statement
20 was he allowed to leave?

21 A. Yes.

22 Q. Do you know how long or can you remember
23 how long approximately the Smiths were at the
24 North Charleston Police Department judging by
25 when Mr. Smith's mom's statement was?

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1 A. The time of Mr. Smith's statement was 10:00
2 p.m.

3 Q. Would that have been 10:00 p.m. on the 5th,
4 or 10:00 p.m. on the 6th?

5 A. 6th. Came in on the 6th at around, I would
6 assume, 6:45. Her statement was taken at 7:15
7 and his statement was taken at 10:00 p.m.

8 Q. Are you sure it was the 6th?

9 A. That's what the writing on the statement
10 is, 6/6/07.

11 Q. So you're basing your recollection on what
12 was written on that particular form?

13 A. Correct.

14 Q. And that was not the one that was written
15 by you?

16 A. Correct.

17 Q. You have no personal knowledge, then, of
18 when Mr. Smith would have left there that day?

19 A. No.

20 Q. You weren't present?

21 A. No.

22 Q. But that's what the form does say?

23 A. Correct.

24 Q. How long do you think you spent with Mr.
25 Smith's mother talking to her about what she

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1 may have known?

2 A. Maybe an hour.

3 Q. Do you recall holding Mr. Smith's mother
4 there for twenty-hour hours or some length of
5 time like that, until the 6th?

6 A. No.

7 Q. Did you write a report that indicated on
8 what day Mr. Smith gave his statement?

9 A. In the narrative?

10 Q. In your narrative, yes.

11 A. In my notes I've got the 5th.

12 Q. What you place in your report and place in
13 your notes, would that have been the best
14 information available to you at the time?

15 A. That's correct.

16 Q. On June 5th, the Smiths left the North
17 Charleston Police Department. Is that correct?

18 A. Yes.

19 Q. You didn't arrest Oran that day or that
20 week, did you?

21 A. No.

22 Q. Did the investigation stop?

23 A. No.

24 Q. Did you keep looking for things?

25 A. Yes.

1 Q. Did you keep interviewing people?

2 A. Yes.

3 Q. Did you keep looking for leads in the death
4 of Cheryl Snow?

5 A. Yes, I did.

6 Q. Did you have more than one suspect in the
7 death of Cheryl Snow?

8 A. Yes.

9 Q. Are you charged with the task of
10 investigating those leads thoroughly?

11 A. Yes.

12 Q. Do you believe that you did so?

13 A. Yes, I did.

14 Q. At any time did you believe you had
15 probable cause to make the arrest of any other
16 person before ultimately you came to charge
17 Oran Smith?

18 A. No.

19 Q. Did you believe you had evidence that Leroy
20 McKelvey committed this murder?

21 A. His fingerprint was -- McKelvey, yes, his
22 fingerprint was also located in the residence,
23 as well as Herbert Geddis'.

24 Q. So Mr. Geddis' and Mr. McKelvey's
25 fingerprints were found?

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1 A. Yes.

2 Q. Was there anything else at this time -- did
3 you believe you investigated those individuals
4 thoroughly?

5 A. Yes.

6 Q. What changed the course of this investiga-
7 tion that led you back to Oran Smith?

8 A. We received information from SLED that
9 advised that the ligatures had a match of DNA
10 of touch epithelial cells on the ligature
11 itself.

12 Q. And you believed that there was a match of
13 Oran Smith's DNA on the ligature?

14 A. That's correct.

15 Q. Was that information you had the first time
16 you interviewed Oran Smith?

17 A. No.

18 Q. So you considered this new information?

19 A. Yes.

20 Q. What did you do with this new information?

21 A. Initially, we had a conference call with my
22 lieutenant, Detective Elmore, and another
23 detective and with the SLED agent who passed on
24 this information to make sure we weren't
25 reading it incorrectly; to make sure that

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1 speaking with her was correct. The following
2 morning myself and Detective Elmore returned to
3 Mr. Smith's residence and asked him to return
4 to the North Charleston Police Department with
5 us.

6 Q. So you drove out to Moncks Corner?

7 A. Yes.

8 Q. Who was with you?

9 A. Detective Elmore.

10 Q. Was it just the two of you?

11 A. Yes.

12 Q. Where did you go?

13 A. Went to his residence, a residence in
14 Moncks Corner.

15 Q. And did he agree to come back with you?

16 A. Yes.

17 Q. Did you place him in cuffs at that time?

18 A. No.

19 Q. Did you have with you a warrant for his
20 arrest?

21 A. No.

22 Q. Did you tell him why you wanted him to come
23 back and talk to you?

24 A. Yes.

25 Q. And what did you tell him?

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1 A. I believe Detective Elmore met him first
2 around the side of a building. Detective
3 Elmore stood at the corner of the house. I
4 stood at the door.

5 Q. At the front door?

6 A. Yes, the front door and asked -- I believe
7 it was his niece or sister -- I'm not sure who
8 it was. She said to hang on a second and she
9 went and got him for us.

10 Q. Did he come out of the front door?

11 A. No, he was at the back door and came around
12 the side, and that's when Detective Elmore saw
13 him and began to speak with him.

14 Q. It was the three of you on the drive from
15 Moncks Corner back to North Charleston?

16 A. Yes, sir.

17 Q. Who drove?

18 A. I did.

19 Q. Where was Mr. Smith in the car?

20 A. The front passenger seat.

21 Q. And where was Detective Elmore?

22 A. Behind him, in the rear passenger seat.

23 Q. At that point had you read him his
24 Constitutional rights?

25 A. No.

1 Q. Was he under arrest, or did you consider
2 him under arrest?

3 A. No.

4 Q. Did you have any conversation on the car
5 ride back from Moncks Corner to North
6 Charleston?

7 A. Yes, small talk. Small talk about family
8 members, and I believe Detective Elmore and
9 Detective Fason may have had family members
10 together in the same area.

11 Q. Who is Detective Fason?

12 A. Detective Fason is another detective that I
13 worked with in crime scene.

14 Q. Did he have any direct involvement in the
15 investigation of this case?

16 A. No.

17 Q. But during the course of that conversation
18 did you learn that he was somehow connected to
19 Oran Smith?

20 A. Yes.

21 Q. Approximately how long was that car ride
22 back to North Charleston?

23 A. I'm guessing thirty minutes, twenty or
24 thirty minutes.

25 Q. Where did you go at the police station when

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1 you brought Mr. Smith in?

2 A. Upstairs to the third floor and placed him
3 in an interview room where we all sat down and
4 talked.

5 Q. Describe the interview room for the jury.
6 It's a smaller room than this courtroom?

7 A. Probably six-by-eight maybe with a small
8 table and a couple of chairs.

9 Q. At what point did you read Mr. Smith his
10 rights?

11 A. Prior to talking to him about the homicide.

12 Q. So you engaged in some small talk before
13 that. Did you talk about anything about Cheryl
14 Snow, anything about the homicide?

15 A. No.

16 Q. Anything about the last time he came and
17 talked to you?

18 A. No.

19 Q. During the time out of Moncks Corner at
20 Mr. Smith's residence, in the car and during
21 the time you spent in the interview room did
22 Mr. Smith appear to understand your questions?

23 A. Yes.

24 Q. Did he appear to be able to engage in
25 intelligent conversation with you about the

1 things that you were talking about?

2 A. Yes, he did.

3 Q. Be they about his family or be they this
4 case?

5 A. That's right.

6 Q. Did he appear to have any hallucinations,
7 auditory or visual hallucinations, or any other
8 sort of mental disease or defect that hindered
9 him from communicating with you?

10 A. No.

11 Q. He seemed to get it?

12 A. Yes.

13 Q. I'm going to show you what's been marked as
14 State's 1 and 2 and ask you if you can identify
15 those?

16 A. Exhibit 1 is North Charleston Police
17 Department's advice of Constitutional rights
18 form.

19 Q. Is that the form that you used to read Oran
20 Smith his rights?

21 A. That's correct.

22 Q. How do we know that's the form you used to
23 read Oran Smith his rights?

24 A. Oran's name is at the top, his signature,
25 as well as mine and Detective Elmore's as well

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1 Oran Smith again at the bottom, as well as mine
2 and Detective Elmore's again at the bottom.

3 MR. VOIGHT: I would offer, file and
4 introduce State's Exhibit 1.

5 MS. TAYLOR: Objection from prior
6 trial, Your Honor.

7 THE COURT: The objections
8 previously made on the record of this case are
9 basically contained now in this objection and
10 the rulings previously given by the Court. I
11 would overrule those objections. You may
12 present it as an Exhibit. State's Exhibit 1 is
13 admitted subject to those objections.

14 (SO ENTERED AS STATE'S EXHIBIT 1)

15 DIRECT EXAMINATION CONTINUED

16 BY MR. VOIGHT:

17 Q. Is that the standard advice of rights form
18 that you use in talking to persons whom you
19 suspect may have committed a crime?

20 A. Yes.

21 Q. So is it fair to say that when you read
22 Oran Smith those rights, you suspected him of
23 killing Cheryl Snow.

24 A. That's correct.

25 Q. Who read the rights? Was that you or

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1 Detective Elmore?

2 A. Detective Elmore.

3 Q. Were you present when he read him the
4 rights?

5 A. I may have read him the rights. Hang on
6 one second, let me make sure. (Upon review)
7 -- this was read by Detective Elmore.

8 Q. Were you present when Detective Elmore read
9 him those rights?

10 A. Yes, I was.

11 Q. And what rights did Detective Elmore read
12 to Oran Smith?

13 A. Do you want me to read it?

14 Q. Yes.

15 A. (Reading): "I have the absolute right to
16 remain silent. I do not have to answer any
17 questions or give a statement and that not be
18 used against me. If I do answer questions or
19 give a statement, anything I say can and will
20 be used against me in a court of law. I have
21 the right to consult with a lawyer and not to
22 answer questions or give a statement, and also
23 have him present when I'm being questioned. If
24 I wish to talk to a lawyer or have him present
25 and I am unable to hire a lawyer, one will be

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1 appointed to represent me free of charge. If I
2 decide to answer questions or give a statement
3 without having a lawyer present or presenting
4 one, I have the absolute right during this
5 interview to stop answering questions and to
6 remain silent."

7 Q. At the end of each one of those five
8 specific rights is there any notation?

9 A. Yes. There's a line drawn and Oran Smith's
10 initials. He initialed at the end of each line
11 basically.

12 Q. Did Oran Smith appear to understand each of
13 those right that Detective Elmore read to him?

14 A. Yes, he did.

15 Q. And did he indicate his understanding of
16 those rights by affixing his initials to that
17 form?

18 A. Yes, as well as the signature that's below
19 that, that says I full understand each of these
20 rights explained to me. And it's signed by
21 him, myself, Detective Elmore and it's also
22 dated and timed.

23 Q. So what time is that dated?

24 A. The date is 7/18/07 and the time is 11:38
25 a.m.

1 Q. And that advisement of rights form has a
2 further paragraph, does it not?

3 A. Yes.

4 Q. Below that paragraph is again Oran Smith's
5 signature and the date and time as well as your
6 signature and Detective Elmore's. Is that
7 correct?

8 A. Yes.

9 Q. And what is the purpose of that paragraph?

10 A. I'll read this paragraph as well,
11 (reading): "I wish to waive these rights and
12 answer questions concerning the charge of
13 murder. No threats, coercion or promise of any
14 kind has been made to me by anyone in order to
15 waive these rights and/or answer questions."

16 Again, it's signed by Mr. Smith, myself,
17 Detective Elmore, and dated and timed.

18 Q. When Mr. Smith signed that was he in
19 handcuffs?

20 A. No.

21 Q. Did you or Detective Elmore in your
22 presence threaten Mr. Smith with any sort of
23 physical violence or any other harm to get him
24 to give a statement?

25 A. No.

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1 Q. Did you promise him anything?

2 A. No.

3 Q. Any rewards for talking?

4 A. No.

5 Q. Was he allowed bathroom breaks if he needed
6 them?

7 A. Yes.

8 Q. If he was thirsty or hungry was good or
9 drink brought to him?

10 A. Yes.

11 Q. Was that actually done in this case?

12 A. I don't recall. Usually I save receipts
13 and I don't think I have any receipts for this.
14 We weren't there for very long. I know we went
15 down and smoked a cigarette together. We
16 offered him bathroom breaks and things of that
17 nature. But I don't believe we purchased any
18 food.

19 Q. Who did the interrogation? Who asked the
20 questions?

21 A. Detective Elmore.

22 Q. And what was your role in the interview
23 room?

24 A. My role was I pretty much stood back and
25 listened to what he was saying and to jot down

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1 anything that may have been different from his
2 first/initial statement.

3 Q. Take a look at State's Exhibit 2 for me.

4 Do you recognize that document?

5 A. Yes, I do.

6 Q. And what is that document?

7 A. This is a North Charleston Police
8 Department defendant's statement for Oran Lamar
9 Smith.

10 Q. Is that the statement that Oran gave to you
11 and Detective Elmore after you had read him his
12 rights contained in State's Exhibit 1?

13 A. That's correct.

14 Q. And whose writing is that in the statement
15 part itself?

16 A. My writing.

17 Q. You wrote that out?

18 A. Yes.

19 Q. Is there any particular reason why you
20 wrote that out?

21 A. No particular reason. A lot of times I'll
22 write the statements for clarification
23 purposes. For instance:

24 I went to the mall.

25 What store did you go to in the mall?

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1 What did you buy when you went to that store?

2 Those type of things. The affiants usually
3 do their own statements, so I'll do a question
4 and answer afterwards. But in this case and in
5 most cases like this, I write my own
6 statements.

7 Q. After you addressed ---

8 MR. VOIGHT: I would offer, file and
9 introduce State's Exhibit 2, subject to
10 Defendant's ongoing objection.

11 MS. TAYLOR: Same objection, Your
12 Honor.

13 THE COURT: Very well. The
14 arguments previously made and the rulings
15 previously made are incorporated in my ruling,
16 and I will overrule the objections and
17 therefore State's Exhibit 2 is admitted subject
18 to all previous objections and the objection
19 raised here.

20 MR. VOIGHT: Thank you.

21 (SO ENTERED AS STATE'S EXHIBIT 2)

22 DIRECT EXAMINATION CONTINUED

23 BY MR. VOIGHT:

24 Q. Did you commit that statement, what Oran
25 told you in the interview room, to writing

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1 immediately after you had read him his rights,
2 or was there some time ---

3 A. There was a little bit of time involved to
4 get clarification. I believe we also took
5 another bathroom break and came back to
6 conclude the statement.

7 Q. Was Oran Smith given the opportunity to
8 read that statement and correct any errors that
9 may have been in there?

10 A. Yes, I actually read it back to him, and he
11 did have an opportunity to correct any errors
12 there may have been, or any grammatical errors
13 that I may have scratched through. And I had
14 him initial those errors.

15 Q. He seemed to understand those instructions?

16 A. Yes.

17 Q. And he seemed to cooperate with your
18 instructions?

19 A. Yes.

20 Q. And did he sign his name at the end of that
21 statement indicating that that was, in fact,
22 his statement?

23 A. That's correct. He signed the first page
24 as well as the second page.

25 Q. So those things that were written in that

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1 statement by you, was that information that
2 came from Oran Smith?

3 A. Yes.

4 Q. Was that information that you supplied to
5 Oran Smith?

6 A. I'm sorry.

7 Q. Did you supply any of those facts to Oran?

8 A. No.

9 Q. Did he appear nervous?

10 A. No.

11 Q. Did he appear to understand the situation
12 and the gravity of the situation?

13 A. Yes.

14 Q. How long did you and Detective Elmore talk
15 to Oran before you committed that to writing?

16 A. We read him his rights before we started
17 speaking and asking him about the case timed at
18 11:05 a.m. The start of this statement is
19 timed at 12:35.

20 Q. Did Oran initially admit his culpability in
21 the matter of Cheryl Smith?

22 A. Not initially.

23 Q. Did either you or Detective Elmore threaten
24 him or promise him anything or coerce him in
25 any way to get him to come off that story?

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1 A. No.

2 Q. What sort of information did you tell Oran
3 that you had on him that would indicate his
4 guilt?

5 A. Of course, his fingerprints in the
6 residence and the DNA on the ligature.

7 Q. At what point did Mr. Smith change his
8 story?

9 A. Once he heard about the DNA on the
10 ligature.

11 Q. What did he say?

12 A. I don't recall exactly what he said. I
13 know he felt relieved, seemed relieved as soon
14 as he told us, you know, what he told us. He
15 started getting into the story.

16 Q. What did Mr. Smith tell you happened at
17 that apartment on Sumner Avenue?

18 A. Initially, he said there was violence and
19 then he said "I just split." Detective Elmore
20 said, "What do you mean, I just split?" And
21 that's when I picked up on it and started
22 paying more attention. And he said then
23 everything in his first statement was true and
24 correct, only that when he come back from the
25 gas station that he started hearing voices.

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1 The voices told him to kill Cheryl, so he goes
2 back to her apartment and goes inside and gets
3 on her bed. Cheryl was in her bedroom, I guess
4 with her back turned to him, or something to
5 that effect. He grabs her around the throat
6 with his arm. They end up on the floor and
7 then the voice told him to let her go. So he
8 pulled his arm off, stands there and then he
9 says that she wasn't saying anything or making
10 noises, but her arms were moving slightly by
11 her side. He thought to himself that if she
12 lived, the police would be called and she would
13 turn him in and he'd get in trouble for it. So
14 he grabbed the pajama bottoms that were on top
15 of the dresser and tied them around her neck
16 and held her down. He also explained that her
17 neck was by the closet door and her feet were
18 by the bedroom door, which is where the body
19 was located.

20 Q. I'm showing you what's been previously
21 marked as State's 23. That's a picture of Ms.
22 Smith. Did you show Oran that picture before
23 he told you how the body was located?

24 A. No.

25 Q. Did you show Oran pictures like that or

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1 some other sort of picture?

2 A. No, we didn't show him any pictures.

3 Q. Did you show him any newspaper clippings or
4 anything that would have indicated how the body
5 was located?

6 A. I did not.

7 Q. Is what Mr. Smith told you consistent with
8 what the crime scene investigators found when
9 the initially found Ms. Snow?

10 A. That's correct.

11 Q. He told you he was hearing voices. Did he
12 complain to you at all during the time that you
13 spent with him either at Moncks Corner or the
14 ride down or during that interview room that he
15 was hearing voices at all?

16 A. No, he did not.

17 Q. After Mr. Smith gave you the statement
18 admitting strangling Cheryl Snow, did you allow
19 him to make any phone calls?

20 A. Yes.

21 Q. Do you know who he called?

22 A. I believe it was a girlfriend. The area
23 code was a Louisiana area code, a friend of a
24 girl or a girlfriend. I'm not sure.

25 Q. Were you able to overhear any part of those

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1. conversations that Mr. Smith had?

2. A. Yes, initially when whoever it was on the
3. other line answered, he said "they got me" and
4. something to the effect of "keep in touch with
5. my mom."

6. Q. Did you purposely position yourself to try
7. to overhear the conversation?

8. A. No, I was standing out of my cubicle, in
9. the next cubicle, waiting for him to get off
10. the phone and I heard part of the conversation.

11. Q. Who is the person that prepared the arrest
12. warrant for Oran Smith?

13. A. I believe I may have. I'm not sure who
14. actually typed the warrant.

15. Q. Was that warrant typed after Mr. Smith gave
16. his second statement?

17. A. Yes.

18. Q. Was he subsequently arrested pursuant to
19. that warrant?

20. A. Yes, sir.

21. Q. Was that all done on the 18th or thereabouts
22. when he was in custody?

23. A. Yes.

24. Q. Was he placed in custody immediately after
25. giving the statement?

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1 A. No. Actually, we went down and smoked
2 another cigarette, if I'm not mistaken, and
3 then waited for a transport unit to come back
4 and pick him up from upstairs. So there would
5 have been some time between -- because, I mean,
6 he was actually okay. He wasn't upset and he
7 wasn't disgruntled or aggravated or anything
8 like that; just more or less relieved.

9 Q. Could I have those two items, please.

10 A. (Tendering).

11 Q. Please answer any questions that Ms. Taylor
12 may have for you.

13 THE COURT: Cross examine, Ms.
14 Taylor.

15 MS. TAYLOR: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MS. TAYLOR:

18 Q. Good afternoon, Detective Patrick.

19 A. Good afternoon.

20 Q. When you were talking to Mr. Voight I
21 believe you were reviewing some documents.
22 Is that right?

23 A. Yes, ma'am.

24 Q. That's the statement written by Detective
25 Elmore, taken with you present on July 18th.

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1 A. That's correct.

2 Q. And then you were also referring -- and I
3 couldn't see if it was the incident report or
4 your notes. Do you recall when you were
5 answering the questions what you were looking
6 at, or was it both?

7 A. Both.

8 Q. You've got the formal incident report and
9 then you've got the handwritten notes that you
10 took over the course of your investigation?

11 A. Actually, all my notes are transformed into
12 the computer system. So everything I've got is
13 typed.

14 Q. At some point someone typed the notes
15 written in a little notepad in handwriting?

16 A. Yes.

17 Q. I want to go back to a couple of things
18 that you talked about with Mr. Voight. He
19 asked you what started this whole investigative
20 process as far as it pertained to Oran Smith.
21 I believe you said it was when the fingerprints
22 off the beer can or the cigarette pack -- one
23 of those items --

24 A. I'm sorry. Go ahead.

25 Q. -- identified him as having been present in

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1 the apartment.

2 A. That's correct.

3 Q. Now, those were not the only fingerprints
4 of men in that apartment that led to names that
5 led to your investigation?

6 A. That's correct.

7 Q. And we heard talk of a couple of them by
8 the government, Leonard McKelvey?

9 A. Leroy McKelvey and Leonard Geddis.

10 Q. Leonard Geddis. Did you speak with those
11 gentlemen as well?

12 A. Yes, we did.

13 Q. And I believe that Mr. Voight, but you tell
14 me if I'm wrong, that Mr. McKelvey when
15 interviewed admitted that he had been with Ms.
16 Snow at some point that weekend.

17 A. Yes, that Friday.

18 Q. And so we can get the dates straight, this
19 was 2007. Her body was found on a Monday, June
20 4th. Is that correct?

21 A. Yes, ma'am.

22 Q. And Sunday would have been the 3rd?

23 A. Right.

24 Q. Saturday was the 2nd?

25 A. Right.

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1 Q. And Friday was the 1st?

2 A. Right.

3 Q. Moving in that direction. So Mr. McKelvey
4 told you he had been with her on Friday?

5 A. Yes.

6 Q. Obviously, in her apartment?

7 A. Right.

8 Q. And they had spent some time together?

9 A. Right.

10 Q. Did you speak to Mr. Geddis as well?

11 A. Yes, we did.

12 Q. And did he admit to you that he even knew
13 Cheryl Snow?

14 A. No.

15 Q. Are you the individual that actually
16 recovered her number from his cell phone?

17 A. Yes.

18 Q. And did you at some point confront him with
19 the fact that you had found his fingerprints in
20 her apartment?

21 A. Yes.

22 Q. So at some point down the line he admitted
23 that he had also been there?

24 A. Yes.

25 Q. And when did he tell you he had been with

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1 Cheryl?

2 A. Can I review his statement real quick just
3 to be sure?

4 Q. Yes.

5 A. (Upon review) -- Friday morning about 2:30
6 a.m.

7 Q. That's Mr. Geddis?

8 A. Yes, ma'am. Leonard Geddis.

9 Q. And what time did he indicate that he left?

10 A. 5:30, 5:45 a.m. is when he left.

11 Q. That would be Friday morning?

12 A. Yes, ma'am.

13 Q. No indication that those two gentlemen, Mr.
14 Geddis and Mr. McKelvey, were there at the same
15 time, just both on Friday?

16 A. Both on Friday.

17 Q. You talked about on July 18th that you
18 interviewed Oran's mother?

19 A. Yes, ma'am.

20 Q. And you talked to Ms. Boyd about how long
21 she was with Mr. Smith.

22 A. Right.

23 Q. Do you know whether Janet and Harry, Oran's
24 parents came at the same time to the police
25 station that Oran was brought there?

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1 A. I don't recall. I know it was shortly
2 thereafter.

3 Q. I'm sorry. I said July 18th, but we're
4 actually talking about June 5th or 4th, depending
5 on which one is right.

6 A. Right.

7 Q. Is that right? You talked to Janet
8 yourself in early June while Detectives Elmore
9 and Hille were talking to Oran.

10 A. That's correct.

11 Q. Sorry about that. Do you know whether his
12 parents came with him or later, or do you have
13 any idea?

14 A. I believe Officer Mastantuno, a county
15 deputy, and Officer Kruger went to the house
16 once we were able to pull an old report and
17 find an accurate address. They went and asked
18 if he was residing there. And they asked him
19 to come back and transported him back to the
20 station. I'm guessing his parents followed or
21 came shortly thereafter.

22 Q. But do you know?

23 A. I don't recall.

24 Q. Do you have the time Oran was picked up and
25 transported by Detective Elmore?

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1 A. I don't have the time.

2 Q. And is that the same home that you went to
3 yourself with Detective Elmore in July?

4 A. Yes.

5 Q. I heard you talking a little bit about
6 that, when you said that you'all pulled up and
7 Oran came out the back door?

8 A. Yes.

9 Q. And came around the side of the house to
10 the front?

11 A. That's correct.

12 Q. He didn't try to run away?

13 A. No.

14 Q. He was completely cooperative?

15 A. Yes.

16 Q. Had not moved from where he was when the
17 other guys from your unit went to talk to him
18 in June?

19 A. That's correct.

20 Q. And he was found on that occasion and he
21 was found on this occasion?

22 A. Yes.

23 Q. You also obviously were at the scene?

24 A. Yes.

25 Q. In any of your notes or do you remember

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1 looking at the foot door? Did you see the
2 crime scene video? I don't remember if you
3 were in the courtroom when we were playing
4 that or not. But the door was open.

5 A. Yes.

6 Q. Do you remember anything about there being
7 any pry marks on the door?

8 A. I remember talk of pry marks. They were
9 not pry marks but maybe dents around the handle
10 of the door. But it appeared they had already
11 been painted over, which tells me that it was
12 older -- as well as when you kick a door in,
13 there's wood debris from the door jamb
14 everywhere. There's also a little hole where
15 the deadbolt or the lock on the door makes as
16 it goes through the wood into the house. Or in
17 some cases it knocks the entire door jamb out.
18 So it didn't appear to be to be any forced
19 entry of that form.

20 Q. Do you recall making a note in your wire
21 notebook that there were pry marks on the door?

22 A. Yes.

23 Q. Is that what you're referring to now on the
24 stand?

25 A. Yes. That's what I was told and talking to

1 other officers that were there at the scene.

2 Conceivably another officer told me that or may

3 have said that there may be pry marks on the

4 door. I don't know. I try to jot down every

5 little thing I can. Sometimes I miss things.

6 Q. Do you take a fair amount of notes when

7 you're investigating a scene?

8 A. I try to, yes.

9 Q. I want to talk to you now about the

10 statements that you talked about. You talked

11 with Mr. Voight and basically gave an account

12 of what was the contents of the statement that

13 you participated in taking on the 18th of July.

14 Is that right?

15 A. Yes.

16 Q. You didn't read that whole statement to the

17 jury; did you?

18 A. I'm sorry?

19 Q. You didn't read that statement to the jury;

20 did you?

21 A. Which statement are you talking about? Mr.

22 Smith's statement?

23 Q. July 18th.

24 A. Let me find it.

25 Q. I understand you may have read it before.

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1 But when you were talking to the jury about it
2 and recounting ---

3 A. No, I didn't read it all.

4 Q. It didn't look like you were reading to me.

5 A. No. It was from what I remember reading
6 this statement and what I explained.

7 Q. We obviously have that written statement?

8 A. Yes.

9 Q. And you, as the case agent, looked at the
10 prior statement, the one that was taken in
11 early June?

12 A. Yes.

13 Q. Do you have a copy of that?

14 A. Yes, I do.

15 Q. Can you pull that out for me?

16 A. Yes.

17 Q. You had read that prior to being present in
18 the interview room on July 18th?

19 A. Yes.

20 Q. I want to back up one second and ask you
21 can you give us an idea while you're sitting
22 there the size of this interview room where
23 these things are conducted?

24 A. I'd say it's probably about a room this
25 size, with a table, maybe two-and-a-half feet

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1 by two-and-a-half feet. We put two or three
2 chairs, depending on how many people we're
3 going to interview.

4 Q. And where would the door be?

5 A. The door?

6 Q. Yes.

7 A. Table is here (gesturing), you have a
8 mirrored window here. The door's right there.

9 Q. Can you describe for us using this layout
10 where the three of you'all were sitting in
11 relation to each other?

12 A. In the second interview or the first
13 interview?

14 Q. You weren't at the first one; right?

15 A. No. The second interview, he was sitting
16 here. Detective Elmore sat right there at the
17 table and I was seated here.

18 Q. So Oran was, to me, what would be front
19 corner.

20 A. Yeah, he would have the portion of the
21 table here. He'd be sitting here. Detective
22 Elmore would be sitting here talking to him.
23 And I would be sitting here talking to him.

24 Q. Was he facing you guys, or was he sitting
25 at the table turned like this, with the side of

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1 his head to you, if you recall?

2 A. I don't recall. Maybe both. People sit
3 various ways.

4 Q. And you'all went over the rights form. Mr.
5 Voight asked you about that, and asked you if
6 he appeared to understand that.

7 A. Yes.

8 Q. At the time of the interview were you aware
9 of Oran's prior head injury?

10 A. Yes. I believe in the conversation that at
11 one point or another he said that he was shot.

12 Q. And that was many years ago?

13 A. Yes.

14 Q. And, obviously, you can see he has an eye
15 patch?

16 A. Yes.

17 Q. Were you aware that he was missing and does
18 not have a right eye?

19 A. That's correct.

20 Q. And would be blind in that eye. And were
21 you also aware that he lost hearing in one of
22 his ears as a result of that as well?

23 A. No.

24 Q. Didn't know that?

25 A. No.

1 Q. Did you ask him how far he had gone in
2 school?

3 A. Yes.

4 Q. And how far had he gone?

5 A. I believe it was eighth grade.

6 Q. Ninth on the report.

7 A. Ninth grade?

8 Q. Maybe eighth completed?

9 A. Okay.

10 Q. Did you talk about with him that while he
11 was in school he was in special ed classes?

12 A. No, we didn't talk with him about that.

13 Q. Did you talk to him about the fact that he
14 was at that time unemployed and not able to
15 work?

16 A. No.

17 Q. Had you known any of those things would you
18 have done anything differently with this
19 procedure, to make sure that he really did
20 understand the rights that you were going over
21 and that Detective Elmore was going over with
22 him?

23 A. No, I wouldn't have done anything
24 different. I would still obtain his statement.

25 Q. North Charleston doesn't have any different

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1 protocol for people who might have any sort of
2 disabilities as opposed to the average person?

3 A. They may have if they encountered anyone
4 with a severe disability that's noticeable. I
5 noticed the physical disabilities. As far as
6 mental disability, eye contact was straight.
7 He answered intelligently, quickly. There were
8 no signs, mental sign at all telling me that he
9 was disturbed at all. If that was the case, he
10 could have brought that to my attention then.

11 Q. But he didn't.

12 A. By questioning him it seemed that he had
13 intelligence enough to say listen, either you
14 can't pick up on it, but let me tell you, I've
15 got a problem. And that never happened.

16 Q. And as you'all were talking were you taking
17 any notes? You indicated that you were the
18 listener?

19 A. I usually sit back and listen. I jot down
20 anything -- if anything out of his original
21 statement is amiss, sometimes I'll go back and
22 jot that down. But initially when I come into
23 the interview room, I write on a standard
24 statement form. I state the time that he was
25 in the interview room with me, whether it be

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- 1 Detective Elmore or Detective Hille or Mr.
2 Smith at the time; whoever it might be. And
3 it has no significance after that. It's
4 discarded.
- 5 Q. Did you in this period of time that we're
6 talking about discuss the prior statement that
7 Oran had given?
- 8 A. I don't remember discussing the prior
9 statement. I believe that he stuck to that
10 initial statement when we first started talking
11 about it until Detective Elmore let him know
12 about the DNA evidence we obtained was.
- 13 Q. So you're saying you didn't give him the
14 first statement to show him and say was this
15 really what happened or is it different? He
16 just recounted that same information to you'all
17 initially?
- 18 A. Yes. As far as I remember, yes.
- 19 Q. So he admitted in July, as he had in June,
20 that he knew Cheryl Smith?
- 21 A. Yes.
- 22 Q. He'd known her for some time. They'd had
23 some physical relationship. He was with her
24 that weekend.
- 25 A. Yes.

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1 Q. Can you tell us what you recall, just like
2 the July statement?

3 A. About?

4 Q. About the first statement. What he had
5 said?

6 A. What he had said in that initial statement?
7 He said that he had been over there. They had
8 had sex a couple of times. She went to make
9 brownies. He began to feel bad. She was sort
10 of acting weird with him. She asked him to
11 call his mother to come pick him up. And in
12 that, she received a phone call from someone
13 that he didn't know. Maybe he did. I don't
14 know if he did or not. And she asked him
15 whether or not he had heard a knock at the
16 door. And he said no. They were in a room
17 playing music. It later turns out that I
18 believe it was Leroy McKelvey that came over
19 and knocked on the door and that she answered.
20 Because he told us that he had called later and
21 spoke with her. And I believe that's what Mr.
22 Smith said, that Ms. Snow received that call.
23 Q. In that statement did he indicate when he
24 came to see Cheryl?

25 A. Oran's statement?

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1 Q. Yes.

2 A. Let me review it and see. (Upon review) --
3 Saturday, June 2nd, 2007. I believe that's the
4 date that he shows up at Ms. Snow's house.

5 Q. Does it indicate in that statement that he
6 spent the night with her Saturday night?

7 A. Uh-huh, (affirmative). Let me read and
8 make sure. Just one minute, please.

9 Q. Sure.

10 MS. TAYLOR: While he's reading that,
11 Judge, may we approach for a moment?

12 THE COURT: Sure.

13 (BENCH CONFERENCE)

14 THE WITNESS: Yes, it says that he
15 stayed the night.

16 CROSS EXAMINATION CONTINUED

17 BY MS. TAYLOR:

18 Q. And does it say what time he says he left
19 on Sunday?

20 A. I believe 2:00 p.m. Roughly 2:00 p.m.

21 Q. On Sunday afternoon.

22 A. Yes.

23 Q. As part of your investigation did you
24 secure phone records from Ms. Snow's apartment?

25 A. Yes.

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1 Q. Can you put your hands on that for me?

2 A. Yes.

3 Q. What I'm going to be asking you is what is
4 indicated as the last phone call received to
5 her home phone number?

6 A. I believe that was Sunday at 6:45 or 6:15.

7 Q. If you don't find it, I do have a copy of
8 that and can let you see it, if that will help
9 you.

10 MS. TAYLOR: May I approach the
11 witness, Your Honor?

12 THE COURT: You may.

13 CROSS EXAMINATION CONTINUED

14 BY MS. TAYLOR:

15 Q. Here is my copy. So, again, if you could
16 just tell what is indicated as the date and
17 time of the last telephone call received or
18 made, whichever it indicates there.

19 A. The calling number which would be her
20 residence number was 6/3/07 in the evening --
21 6:45.

22 Q. 6:45 from the phone records?

23 A. Yes, ma'am.

24 Q. And after that there's no other calls made
25 or received; is that right?

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1 A. That's correct.

2 Q. You talked about -- getting back to the
3 statement on the 18th -- Oran's demeanor at that
4 time. He seemed relieved. What made you think
5 that? What are you talking about?

6 A. He seemed somewhat nervous and uptight
7 initially when we talked to him. Then once he
8 let it go, so to speak, he just sat back in his
9 chair; he seemed to act differently, like he
10 was more relaxed once he told his piece, so to
11 speak. I believe he even shed a tear at one
12 point. I don't know that it was 'happiness'
13 but -- I don't know what exactly that came
14 from. He just seemed to be really relieved,
15 and after talking with his mother and I think
16 one more phone call.

17 Q. The other phone call, you indicated that
18 there was a comment he made, "they got me."

19 A. Yes.

20 Q. Did you talk to the girl on the other end
21 of the phone?

22 A. I tried. I called four days to a week
23 later, and the phone had been disconnected.

24 Q. So that evening you did not place a phone
25 call and talk to her?

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- 1 A. No.
- 2 Q. And at that point in time is it fair to say
3 that you were going to arrest Oran?
- 4 A. At that point in time?
- 5 Q. Yes.
- 6 A. Yes.
- 7 Q. And you had him, didn't you?
- 8 A. Yes.
- 9 Q. And he wasn't going home that time?
- 10 A. No.
- 11 Q. In these conversations that occurred before
12 the written statement was taken, did you have
13 any conversations that you can recall, either
14 you or Detective Elmore, where comments were
15 made to Oran about you're not going to serve
16 much time. You just tell us what we want to
17 know and you'll do this much time or that much
18 time, or anything like that?
- 19 A. No, I don't recall saying that. In my
20 notes I've got something to the effect of 'we
21 just want to help you get it off your chest,
22 let it go, tell the truth and tell us what
23 happened.'
- 24 Q. So the only thing that was said was that we
25 want to help you?

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1 A. Exactly.

2 Q. And then Mr. Voight asked you, and I want
3 to talk to you about for a few minutes as well,
4 back in June, early June, when the homicide
5 occurred, you talked to some people during your
6 investigation. Had any new, for lack of a
7 better term, suspects been developed in the
8 period of time between finding Ms. Snow's body
9 and the middle of July?

10 A. I believe that -- but I believe that a
11 gentleman by the name of Cody Creech, somebody
12 called in and said that they had had a
13 relationship at one point. But it never panned
14 out. I was able to locate Mr. Creech and
15 talked to him and his wife. When I spoke to
16 him, he said that they'd had a professional
17 relationship through the AA meetings.

18 Another gentleman that I spoke with said
19 that a prostitute had information, that she had
20 told him some things and had good information.
21 So I went to try to find her. That never
22 panned out. Several different.

23 Q. Did anything pan out differently to
24 indicate any other suspects?

25 A. Not to my knowledge, no.

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1 Q. So the only fellow that you were looking at
2 at that point was this still small set of
3 people that you knew had been with Cheryl that
4 weekend?

5 A. Yes.

6 Q. Some other names and things had popped up
7 for different folks, but nothing led to any
8 meat?

9 A. Correct.

10 Q. Now, is there any standard of anticipated
11 time within which to solve a homicide case? Is
12 there any rules that apply, that if you don't
13 reach a conclusion or solve it fairly quickly,
14 that the likelihood decreases, as times goes
15 on, that you will be able to solve it?

16 A. Yes. Forty-eight hours is when your
17 evidence and things start -- people see things
18 and two days later they're less likely to talk
19 to you about it, that type of thing. You get
20 it when it's fresh in people's memories, if you
21 can.

22 Q. And clearly by July 18th, that forty-eight
23 hour window had substantially passed.

24 A. Yes, ma'am.

25 Q. And as I understand it, the only thing that

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1 changed that led you to go back to Oran's home,
2 being him in, have him in the police station is
3 the conversation that took place between the
4 SLED personnel and you and some other law
5 enforcement people.

6 A. Yes.

7 Q. The report that you referred to as the
8 touch DNA or skin cells, or whatever it was?

9 A. Yes, ma'am.

10 Q. We've all been in here, and I don't know if
11 you were in here or not, for the SLED -- what
12 we were told is that there was semen found.

13 A. Uh-huh, (affirmative nod).

14 Q. Would that surprise you, since Oran told
15 you that he was with Ms. Snow for a day and a
16 half and that they had sex on more than one
17 occasion?

18 A. I'm not sure who that semen came back to,
19 so I don't know. Yes, they were together and
20 had sex.

21 Q. If I were to tell you it was Oran's semen,
22 you ---

23 A. Yes, if it was positive.

24 Q. The skin cells -- was it your understanding
25 again that the testimony was and what was

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1 offered to you by the SLED personnel is that
2 there was a match?

3 A. Yes, that he could not be eliminated which
4 tells me that there was a match. That he can't
5 be eliminated. There's something there from
6 the DNA which points to you. I was eliminated.
7 Anybody in here could be eliminated, but, to
8 me, that gives me enough to go back without an
9 arrest warrant -- but to go back and enough to
10 pick him up and take him back to the station
11 and talk.

12 Q. So you consider it a primary conclusion
13 that an individual on committee could not be
14 excluded to be the same as a match?

15 A. Yes, that's what I -- I mean, I'm not a
16 SLED agent. I'm not a DNA analyst either.

17 Q. Fair enough. And based on that, you'all
18 had this subsequent interview.

19 A. Yes, ma'am.

20 Q. Is there any physical evidence, other than
21 anything we've talked about -- we know that
22 Oran was with her that weekend, and he doesn't
23 dispute that; correct?

24 A. Correct.

25 Q. As far as the killing of Cheryl Snow, do

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1 you know when -- do you have any evidence that
2 convinces you, either through witness testimony
3 or anything else, as to when she actually died?

4 A. The phone records give me an idea, seeing
5 as how she was found in her residence. The
6 phone records actually give me an idea of what
7 may be the time frame in which she may have
8 been deceased.

9 Q. So from sometime around 6:00 o'clock Sunday
10 p.m., or at least prior to that, I guess by the
11 backward inference, you would assume she had
12 not been killed.

13 A. Right.

14 Q. Sometime after that, and obviously, since
15 she was found Monday?

16 A. Yes.

17 MS. TAYLOR: The Court's indulgence
18 for just one moment.

19 THE COURT: Certainly. Take your
20 time.

21 CROSS EXAMINATION CONTINUED

22 BY MS. TAYLOR:

23 Q. I have just one more little area to talk to
24 you about. What happened in the interview
25 room, you'all talked about a Detective Fason?

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1 A. Yes.

2 Q. You said that there was some relation with
3 him, or some connection?

4 A. Yes, it could have been family members.

5 I'm not sure if it was Detective Elmore that
6 had family or Detective Fason that had family
7 together.

8 Q. So you remember that the connection was
9 that Detective Fason had known Oran Smith when
10 they were back in high school?

11 A. Middle school or high school, yes.

12 Q. Sometime back in school?

13 A. Yes.

14 Q. And something happened between them; right?

15 A. Yes.

16 Q. What happened?

17 A. I believe Mr. Fason and Mr. Smith got into
18 an altercation where Detective Fason -- well,
19 at the time, as high school student Fason
20 punched Mr. Smith in the face over whatever
21 reason. I'm not sure what the reason was.

22 Q. What does Detective Fason look like?

23 A. He's about five-foot-seven. Now he's about
24 300 pounds. I'm not sure what he was back in
25 high school. Short and fat.

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1 Q. He's a big guy?

2 A. Yes.

3 Q. Do you'all have the ability to tape record
4 or videotape the interviews when you're
5 interviewing people? It's fine for us to talk
6 about right now what was said and done and how
7 everybody behaved and looked and demeanor and
8 what it was like. Do you have an objective
9 account of that; the ability to record this
10 process, either video or audio?

11 A. We've got the ability. We've got video
12 cameras and things of that nature in crime
13 scene support. But it's like pulling teeth to
14 get any equipment from them. In that time, we
15 didn't have a policy in place and set for video
16 or audio interviews.

17 Q. So that was not done?

18 A. No, not in this case.

19 Q. We don't have that information.

20 A. No.

21 Q. Thank you. That's all.

22 A. Thank you.

23 THE COURT: Redirect, Mr. Voight?

24 MR. VOIGHT: Just a few.

25 THE COURT: Yes, sir.

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REDIRECT EXAMINATION

1

2 BY MR. VOIGHT:

3

4 Q. Detective, you talked a little bit about
5 the phone records. Can you turn to those phone
6 records for Cheryl Snow's home phone? Maybe
7 you can answer this question while you're
8 looking. Those were phone records that you
9 obtained by the police force?

10 A. That's correct.

11 Q. What was the purpose for obtaining those
12 records?

13 A. Just one second; let me make sure I've got
14 them. To see who called her last. To also,
15 like I said earlier -- to give me an idea of
16 when her phone stopped being answered and she
17 stopped making phone calls. Seeing that she
18 was at the residence, that gives me an idea of
19 when she was killed, for the most part.

20 Q. Do the records indicate the last telephone
21 call out from Cheryl Snow's phone?

22 A. Yes, I'm trying to find that. Hold on one
23 second -- (reviewing file). The last call
24 number out, yes, sir.

25 Q. What was the last time anybody picked up
the phone in Cheryl Snow's apartment and dialed

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1 out?

2 A. It appears to be 6/3/07 at 18:18, which is
3 6:18. But there's no call duration, so nobody
4 picked the phone up. There's no dialed number
5 listed here under called number. Just above
6 that, with a call duration of two minutes and
7 eighteen seconds, that was made at 17:45.

8 Q. So at 5:45 a telephone call was placed to
9 Cheryl Snow's phone and somebody answered it?

10 A. Yes.

11 Q. And did you try to find out who that call
12 was placed to?

13 A. Yes, it came back to an address on
14 Fairchild Street. 185 Fairchild Street in
15 Charleston is a T-Mobile store, I believe.

16 Q. Were you able to determine when the last
17 time somebody called Cheryl Snow's home phone
18 and somebody picked up?

19 A. Yes.

20 Q. Was that a call out or a call in?

21 A. That was a call in.

22 Q. When was the last time there was a call
23 out?

24 A. I'm not sure exactly. It says calling
25 number and called number.

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1 Q. Would the calling number be her number?

2 A. The calling number, obviously, I assume so.

3 That would be at 6/3/07 at 11:00 -- calling

4 number out would be her phone number.

5 Q. So based on your review of those records,

6 is it safe to say that there's no call in or

7 out where there's a connection -- in other

8 words, where both parties are on the line,

9 after 6/3?

10 A. That's correct.

11 Q. So the last time anybody spoke to anybody

12 on that home phone, without even knowing who

13 spoke to whom, it would be 6/3?

14 A. That's correct.

15 Q. You talked a little bit about the first

16 forty-eight hours of a homicide investigation.

17 Do you watch that TV show?

18 A. I've seen it before.

19 Q. The fingerprint of Oran Smith, was that

20 found within the first forty-eight hours of

21 this particular investigation?

22 A. Yes.

23 Q. The ligature that contains the DNA of Oran

24 Smith, was that found in the first forty-eight

25 hours of this investigation?

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- 1 A. Yes, it was.
- 2 Q. And Oran Smith was interviewed within the
3 first forty-eight hours of this particular
4 investigation, was he not?
- 5 A. That's correct.
- 6 Q. I think I already covered this the first
7 time, but was it your understanding of the DNA
8 evidence on the ligature that Oran Smith's
9 profile -- that there was some evidence of Oran
10 Smith's DNA on the ligature?
- 11 A. Yes.
- 12 Q. Did you talk to anybody from SLED
13 personally about the quantity of DNA or quality
14 of DNA?
- 15 A. No.
- 16 Q. Were you able to review the SLED report
17 that Lilly Gallman prepared in anticipation of
18 going out and talking to Oran Smith?
- 19 A. No.
- 20 Q. As a matter of fact, did you have any
21 conversation whatsoever with anybody from SLED
22 concerning that?
- 23 A. Other than the conference call the prior
24 evening.
- 25 Q. Did you go to Oran Smith's house armed with

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1 an arrest warrant for murder based on that
2 conference call?

3 A. No.

4 MR. VOIGHT: No further questions,
5 Your Honor.

6 THE COURT: Recross?

7 MS. TAYLOR: Very briefly.

8 THE COURT: Certainly.

9 RECROSS EXAMINATION

10 BY MS. TAYLOR:

11 Q. Mr. Voight asked you about the forty-eight
12 hour period of time and things that you knew in
13 forty-eight hours. You knew that Oran had been
14 with Cheryl?

15 A. Yes.

16 Q. He told you that?

17 A. Yes.

18 Q. You knew that he had had sex with her,
19 because he told you that?

20 A. That's correct.

21 Q. You knew that he had been at her apartment,
22 because he told you that?

23 A. That's correct.

24 Q. On July 18th, over a month and a week later,
25 there had not been any arrest by that time?

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1 A. That is correct.

2 Q. Thank you.

3 THE COURT: Thank you very much.

4 You may come down, sir.

5 (WITNESS STEPS DOWN)

6 THE COURT: Ladies and Gentlemen, at
7 this point we'll take our recess. While you're
8 out please remember that you're not to talk
9 among yourselves about this case, and certainly
10 do not permit anyone to talk about it in your
11 presence. Don't begin any deliberations in any
12 fashion.

13 I ask that you please return to your
14 jury room by 2:30. We'll be with you as
15 quickly as we can. I've scheduled some matters
16 at 2:00 o'clock in a totally unrelated matter.
17 I think I'll be finished in about thirty
18 minutes, but if I don't bring you in right at
19 2:30, it won't be much longer than that. Have
20 a good lunch.

21 (JURY OUT @ 1:02 P.M.)

22 THE COURT: Anything from the State
23 before recessing?

24 MR. VOIGHT: No, Your Honor.

25 THE COURT: Anything from the

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1 defendant?

2 MS. TAYLOR: No, Your Honor.

3 THE COURT: Thank you very much.

4 We'll be at ease until 2:30.

5 (LUNCH RECESS)

6 (DEFENDANT PRESENT)

7 THE COURT: The defendant is ready
8 to proceed?

9 MS. TAYLOR: Yes, Your Honor.

10 THE COURT: The State's ready to
11 proceed?

12 MR. VOIGHT: Yes, Your Honor.

13 THE COURT: Invite the jury to
14 return please.

15 (JURY IN @ 2:39 P.M.)

16 THE COURT: Thank you very much,
17 Ladies and Gentlemen. Thank you for your
18 patience. I finished my -- there was one
19 other thing that took a little longer, and I
20 apologize. We're ready to continue.

21 Solicitor, thank you very much, and you may
22 call your next witness.

23 MR. VOIGHT: The State calls
24 Detective Keith Elmore.

25 (WITNESS TAKES STAND)

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1 KEITH ELMORE, being duly sworn to tell
2 the truth, the whole truth and nothing but the
3 truth, testified, as follows:

4 DIRECT EXAMINATION

5 BY MR. VOIGHT:

6 Q. Detective Elmore, could you tell the jury
7 how you're currently assigned?

8 A. I'm currently assigned to the narcotics
9 unit at the North Charleston Police Department.

10 Q. In June of 2007, where were you assigned?

11 A. To the homicide division of the persons
12 crime division.

13 Q. And how long were you with the persons
14 crime division of the North Charleston Police
15 Department?

16 A. Five years exactly.

17 Q. And how long have you been with the North
18 Charleston Police Department?

19 A. Nine years this month.

20 Q. On June 4th, 2007, did you have the occasion
21 to become involved in the investigation of the
22 homicide of Cheryl Snow?

23 A. Yes, I did.

24 Q. Initially, what was your role in the
25 investigation?

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1 A. I was the assistant detective. Detective
2 Patrick was the lead, and I was assisting him.

3 Q. Were there other detectives who assisted
4 Detective Patrick as well?

5 A. Yes, there was.

6 Q. Is that division of labor normal within the
7 North Charleston Police Department?

8 A. Yes, it is.

9 Q. So there was nothing unusual about you
10 assisting doing various things in the
11 investigation?

12 A. No, there's not.

13 Q. Detective, when did you have the first
14 occasion to meet Oran Smith?

15 A. The first time was in the late morning of
16 the day that we found the victim's body, which
17 would be late in the morning, after 12:00
18 midnight that following day.

19 Q. Do you recall where Mr. Smith was when you
20 first came in contact with him?

21 A. When I came in contact with him he was at
22 the North Charleston Police Department
23 Detective Division.

24 Q. And on that day did you have the occasion
25 to take a statement from Mr. Smith?

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1 A. Yes, I did.

2 Q. Did anybody assist you?

3 A. Detective Hille was in the room.

4 Q. I'm going to show you what's been marked as
5 State's Exhibit 3 and ask if you can identify
6 this document?

7 A. This is a North Charleston Police
8 Department advisement of Constitutional rights
9 form.

10 Q. Was Oran Smith advised of his rights on
11 that form?

12 A. Yes, he was.

13 Q. And were you present when his rights were
14 advised to him?

15 A. Yes, I was.

16 Q. At the time that Mr. Smith was read his
17 rights -- and what's the date of that
18 advisement of rights form, if you know?

19 A. It's dated June 5th of '07.

20 Q. So that's the day after Cheryl Snow's body
21 was found, as you recall?

22 A. Yes.

23 Q. Did Mr. Smith appear to understand what was
24 going on with his surroundings?

25 A. Yes, sir.

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1 Q. Did he appear to understand all the
2 questions and the rights that were read to him?

3 A. He did.

4 Q. Did he indicate that he did understand
5 those rights?

6 A. Yes, he did.

7 Q. Did he also indicate that he wished to
8 waive those rights?

9 A. Yes, he did.

10 Q. And is his signature found on that form in
11 two places?

12 A. Yes, it is.

13 Q. Does the first signature involve the read-
14 ing of the rights?

15 A. Yes.

16 Q. And does the second signature involve the
17 waiver of those rights that had just been read
18 to him?

19 A. That's correct.

20 MR. VOIGHT: At this time the State
21 would offer, file and introduce as an exhibit,
22 subject to the objections.

23 THE COURT: Any objection?

24 MS. TAYLOR: No, Your Honor.

25 THE COURT: No objection. Very

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1 well. State's Exhibit 3 is admitted without
2 objection.

3 (SO ENTERED AS STATE'S EXHIBIT 3)

4 MR. VOIGHT: Thank you, Your Honor.

5 DIRECT EXAMINATION CONTINUED

6 BY MR. VOIGHT:

7 Q. Who interviewed Mr. Smith on June 5th?

8 A. I did.

9 Q. Was there ultimately a statement reduced
10 to writing of that conversation that you had
11 with Mr. Smith?

12 A. Yes, there was.

13 Q. I'm going to show you what's been
14 previously marked as State's Exhibit 4 and
15 ask you if you can identify that document.

16 A. This is a North Charleston Police Depart-
17 ment witness statement form.

18 Q. Does that form, State's Exhibit 4, does
19 that contain Mr. Smith's statement as it was
20 given on June 5th, 2007?

21 A. Yes, it does.

22 Q. Who wrote that statement?

23 A. I wrote that statement.

24 Q. Is there any particular reason why you
25 would have written the statement and not have

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1 Mr. Smith write it in his own hand?

2 A. It's normal practice for our department.
3 We write statements. We do give the witness or
4 defendant, whichever the case may be, we ask if
5 they are comfortable with writing their own
6 statement. It's up to them if they do or
7 don't. He stated that he would be more
8 comfortable that I write it.

9 And in that I am writing it, (reading):
10 "This statement is being written by Detective
11 Elmore with my permission."

12 And this is down where he signed it
13 indicating it's the statement I took in his
14 words.

15 MR. VOIGHT: At this time the State
16 would offer, file and introduce State's 4.

17 THE COURT: Any objection?

18 MS. TAYLOR: None.

19 THE COURT: Without objection,
20 State's Exhibit 4 is admitted.

21 (SO ENTERED AS STATE'S EXHIBIT 4)

22 MR. VOIGHT: Thank you, Your Honor.

23 DIRECT EXAMINATION CONTINUED

24 BY MR. VOIGHT:

25 Q. Before you committed that to writing, did

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1 you spend some time talking to Mr. Smith about
2 Ms. Snow and his relationship with her?

3 A. Yes, we did.

4 Q. Do you know how long approximately that
5 conversation took place before you wrote this
6 down?

7 A. Maybe an hour or more.

8 Q. Do you know approximately how much time you
9 spent in the room with Mr. Smith?

10 A. From start to finish, probably, I would say
11 approximately two hours.

12 Q. At any time did you threaten Mr. Smith with
13 anything?

14 A. No, I did not.

15 Q. At any time did you promise Mr. Smith
16 anything?

17 A. No, I did not.

18 Q. In his first statement, did Mr. Smith admit
19 to knowing Cheryl Snow?

20 A. Yes, he said he knows her.

21 Q. Does he admit to having been at her apart-
22 ment the weekend before the body was found?

23 A. Yes, he did.

24 Q. Does he admit to having had casual
25 relationships with Ms. Snow?

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1 A. Yes, he did.

2 Q. During the time that you're getting this
3 information from Mr. Smith did he appear to
4 suffer from any delusions or infirmities in any
5 way that made it difficult to communicate with
6 him?

7 A. No, he did not.

8 Q. Did Mr. Smith in the time that you spent
9 with him have any obvious cognitive
10 difficulties or mental difficulties that made
11 it difficult to communicate with him or get
12 information from him?

13 A. No, he was fine.

14 Q. Did he appear nervous when he was talking
15 to you?

16 A. Not to me, no.

17 Q. And in this statement did Mr. Smith admit
18 to doing anything to Ms. Snow?

19 A. No, he did not.

20 Q. At the end of this statement did you let
21 Mr. Smith go?

22 A. Yes, I did.

23 Q. After June 5th, after Mr. Smith -- did he
24 leave by himself? Did he have family there?
25 Do you recall?

1 A. His family was present.

2 Q. Do you know if he went home with them?

3 A. Yes, he did.

4 Q. In the month or five or six weeks until Mr.

5 Smith's second statement, did you have any

6 contact with Mr. Smith at all?

7 A. No, I did not.

8 Q. And during that time, did you assist

9 Detective Patrick in various aspects of the
10 investigation regarding Cheryl Snow?

11 A. Yes, I did.

12 Q. Ultimately, on July 18th, did there come a
13 come when you again came into contact with Mr.
14 Smith?

15 A. Yes, sir, we did.

16 Q. Where was that?

17 A. That would have been at his residence.

18 Q. And who did you go there with?

19 A. Detective Patrick and myself.

20 Q. And what prompted the second visit to Mr.
21 Smith's residence?

22 A. We received DNA evidence that Oran Smith
23 was involved in the murder of Cheryl Snow.

24 Q. When you went out to the Smith residence in
25 Moncks Corner did either you or Detective

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1 Patrick have an arrest warrant for Oran
2 Smith's arrest with you?

3 A. No, we did not.

4 Q. How did you approach Mr. Smith at his
5 residence? Where did you go?

6 A. Detective Patrick and I both went to the
7 front door of the residence and knocked on the
8 door. His sister answered. She came to the
9 door and we asked if Oran was present. She
10 stated that yeah, he was and that he was in the
11 back of the residence. We asked if we could
12 speak to him. She advised us to give her a
13 second and she would go get him.

14 Just from us being police officers, we know
15 normally if someone is accused or whatever they
16 may hit the back door and run. So I got off
17 the porch and kind of went to the back of the
18 residence in case he ran or for whatever
19 reason. Detective Patrick stayed on the front
20 porch. At that time Oran came from the back of
21 the residence and he walked up and saw me, I
22 saw him, we greeted each other. And I asked
23 would he come back to the office and talk with
24 us about this case. And he said he would.

25 At that point when he was coming to me, he

1 stopped and he said, "Am I going to jail?" I
2 said, "Well, we need to go back and talk about
3 this situation and we'll discuss that later."
4 He said, "Okay." And he made a motion to go
5 back inside, to the back of the residence. I
6 think he said he wanted to go tell his sister
7 that he was going or leaving so that she could
8 tell his mom. I told him just to come stay
9 with us and that Detective Patrick would inform
10 his sister, which he did. She came back to the
11 front door and he informed that he was going
12 back to the station with us.

13 Q. He didn't run. He didn't try to escape or
14 anything, did he?

15 A. No, he did not.

16 Q. He cooperated with you?

17 A. Yes, he did.

18 Q. On the ride back from Moncks Corner to
19 North Charleston did you'all talk about the
20 homicide of Cheryl Snow at all?

21 A. No, we did not.

22 Q. Did you'all talk about anything?

23 A. Yeah, we talked about something.

24 Q. At any time from the time you encountered
25 Mr. Smith on the 18th until you brought him back

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1 to the station did Mr. Smith appear to be
2 suffering from any delusions or hallucinations
3 or any other mental defect?

4 A. No, he did not.

5 Q. If you asked him a question was he able to
6 understand the question and answer the question
7 back?

8 A. Yes.

9 Q. I'm talking about just in regular
10 conversation, the kind of conversation you were
11 having in the car, did he seem to be able to
12 follow the conversation?

13 A. Yes, we had several conversations and he
14 was fine.

15 Q. Did he appear nervous?

16 A. No, he did not.

17 Q. I'm showing you what's been previously
18 entered as State's Exhibit 1. Do you recognize
19 that document?

20 A. This is also a North Charleston Police
21 Department advisement of Constitutional rights
22 form.

23 Q. Did you read Mr. Smith his rights before
24 you talked to him about the murder of Cheryl
25 Snow?

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1 A. Yes, I did advise him of his rights.

2 Q. And those are the rights that are contained
3 there on that advisement of rights form?

4 A. Yes, sir.

5 Q. As the previous time, did he indicate that
6 he understood those rights?

7 A. Yes, he did.

8 Q. And did he affix his signature on the
9 relevant line with that understanding?

10 A. Yes, he did.

11 Q. And did he again acknowledge, as he had
12 previously, that he wished to waive those
13 rights and talk to you about the Snow murder?

14 A. Yes, he did.

15 Q. And did he do so by signing that form, the
16 acceptance form?

17 A. Yes. He signed his signature at the top
18 stating that he was advised of his
19 Constitutional rights. Here at the bottom he
20 signed where he waived his rights and wanted to
21 discuss the case of murder with me and
22 Detective Patrick and that these are the rights
23 that I read to him. And I asked him if he
24 understood each time I read -- he initialed
25 this himself each time, in addition to signing.

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1 Q. Did he seem to be following everything you
2 were talking to him about?

3 A. Yes, he did.

4 Q. Did he seem to have any difficulty? Did he
5 seem slow?

6 A. No, he did not.

7 Q. Before you took the second statement did
8 you again have a conversation about what
9 happened in the Snow residence that weekend?

10 A. Yes, I did.

11 Q. Was you the person who was leading these
12 conversations?

13 A. Yes, I was.

14 Q. The interrogations?

15 A. Right

16 Q. You were asking Oran Smith questions and he
17 was answering your questions?

18 A. A little of both. I mean, I asked him
19 whenever something I knew to ask him. But for
20 he most part I asked Oran to explain to me what
21 happened the night he was last with Ms. Snow.
22 And in his words he explained to me in detail.
23 And if there was anything I wanted to know
24 specifically I would ask him a question.

25 Q. Did you threaten him?

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1 A. No, sir, I did not.

2 Q. You're kind of a big guy. Did you like
3 pull your chair up real close to him and lean
4 on him to make a statement about this murder?

5 A. No, I did not.

6 Q. Did you promise him anything, like maybe he
7 gets to go home or that you'd go light on him
8 if he'd tell you what happened?

9 A. No, I did not.

10 Q. How many interviews have you done in your
11 police career?

12 A. Hundreds. At least hundreds. Lots.

13 Q. Is it something you feel comfortable doing?

14 A. Very comfortable.

15 Q. In the conversation that you had before the
16 statement was written down, did you confront
17 Oran and tell him that you didn't think he was
18 telling you the truth?

19 A. Yes, I did.

20 Q. And how did you do that?

21 A. Explained his side of the story, and I
22 explained to him that we had additional
23 evidence proving that he was involved in Ms.
24 Snow's murder. He became more defensive, as
25 trying to evade the question or something like

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1 that. And it got to the point where I said it
2 was enough, you know; 'I know that you did it.
3 Detective Patrick knows that you did it. Just
4 tell us why you did it.' And from that point
5 he then explained that he snapped, then he went
6 into further detail as to how he did it.

7 Q. Did he explain to you what he meant when he
8 "snapped", what happened?

9 A. He said he just lost it.

10 Q. The statement that ultimately came from
11 that -- I'm going to show you what has been
12 marked as State's Exhibit 2 -- is that the
13 statement that ultimately Oran signed as being
14 his statement?

15 A. Yes, this is Oran's second statement.

16 Q. Did Detective Patrick actually write that?

17 A. Yes, Detective Patrick wrote the statement.

18 Q. Do you recall how Oran said that he killed
19 Cheryl?

20 A. Okay, he stated that he was there for -- it
21 got to the point to where he -- would you like
22 for me to just read the statement, or just --

23 Q. The jury's going to get to read the
24 statement. If you have any memory of what
25 happened, I'd appreciate you sharing that with

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1 the jury.

2 A. He basically stated that while he was there
3 at the residence he, like I stated, he lost it
4 and he choked her. She was to the point of
5 unconsciousness and he left her there. At that
6 point she started to come to, awakened. He
7 didn't kill her at first, she was just
8 unconscious, passed out. At that point he
9 decided that he needed to finish what he
10 started and that's when he stated that he then
11 grabbed her pajama bottoms, tied them around
12 her neck and he strangled her until she wasn't
13 moving any more.

14 Once he did that, I asked him,
15 'Well, why did you feel you needed to do that?'
16 He stated that he knew that if he were to let
17 Cheryl live, that she would have went to the
18 police and would have told that he did this to
19 her, choked her the first time, and that he
20 would have went to jail for that incident. So
21 he just finished it. And after that he said
22 that he left the residence and went to the gas
23 station and called -- I believe it was his
24 mother or a family member to come pick him up,
25 and he went back to Moncks Corner.

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1 Q. Did Mr. Smith's demeanor change at all
2 after he related to you what happened?

3 A. He was emotional. He cried. And it was
4 more of -- he kind of gave a sigh and kind of
5 like got it off his chest as more a relief, not
6 having to lie any more. But he did cry.

7 Q. At any time during this interview did
8 Detective Fason enter the interview room?

9 A. After the statement was given and written,
10 Detective Fason came into the room.

11 Q. Was that someone that you knew Oran to be
12 familiar with?

13 A. Yes.

14 Q. Is that from the previous incident, back in
15 either middle school or high school?

16 A. They are from the same area, went to high
17 school together. I don't know if they went to
18 the same grade school or not.

19 Q. Did Officer Fason threaten or bully or do
20 anything to Oran Smith?

21 A. No, he did not.

22 Q. What was the nature of the conversation
23 that they had between them?

24 A. After the second statement and the
25 confession was given, Detective Fason came in

1 and was kind of like, 'Hey, how you doing? You
2 all right? You need anything?' Kind of like
3 more of a comfort. Oran was still crying.
4 They shook hands and Oran said he was fine and
5 everything. Kind of just talked to him and
6 kind of consoled him a little bit. And they
7 kind of talked about old times, just basically
8 was there -- a familiar face.

9 Q. Did Mr. Smith tell you or make any comments
10 relating to any TV shows?

11 A. Yes. While we were inside the interview
12 room --

13 MS. TAYLOR: Objection, Your Honor,
14 to the relevance of the TV show comment.

15 THE COURT: It's attributed to Mr.
16 Smith. Overruled.

17 MS. TAYLOR: Thank you, Your Honor.

18 THE WITNESS: While Detective Fason
19 and I were in the room with Oran, Oran was
20 talking directly to me. He was saying "you
21 remind me of Shakira." I said, 'Who is that?'
22 He said, 'You know, Shakira on TV.' I was
23 like, 'I don't know who you're talking about.'
24 And Detective Fason started laughing. I asked
25 him what is he talking about. And he said it's

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1 a C.S.I. *Miami* show. I said I've never seen
2 that show. He said Oran just stated it's a guy
3 who's good at getting confessions out of people
4 -- he said "You remind me of that guy because
5 you got me to confess to all of my shit" --
6 meaning all of the stuff that he admitted to in
7 the murder of Cheryl Snow.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. VOIGHT:

10 Q. Detective, please answer any questions that
11 Ms. Taylor may have for you.

12 A. Yes, sir.

13 THE COURT: Cross examine.

14 MS. TAYLOR: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MS. TAYLOR:

17 Q. Detective Elmore?

18 A. Yes, ma'am.

19 Q. Something about what you just told us about
20 essentially leading up with Oran's statement?

21 A. Yes, ma'am.

22 Q. The first was in June, shortly after Cheryl
23 Snow's body was found. Is that right?

24 A. That's correct.

25 Q. Do you have the two statements there with

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1 you?

2 A. Yes, ma'am.

3 Q. First, if you would look at the first
4 statement. And on that occasion I believe you
5 told Mr. Voight that you met Oran in the police
6 station. He was already there, right?

7 A. I was at the police station and Oran was
8 brought to the police station.

9 Q. You did not go to his home and pick him up
10 on June 5th or 6th, whichever it was?

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

12 Q. Is that the statement where the rights form
13 is signed on June 6th?

14 A. Yes, ma'am.

15 Q. At what time?

16 A. It has 9:34 a.m. I imagine it's a.m. It
17 doesn't say "a.m." on it, but I imagine it is.
18 9:34.

19 Q. I'm sorry. I couldn't catch that.

20 A. It says 9:34. It doesn't say "a.m." or
21 "p.m." on it.

22 Q. And you're assuming it's a.m.?

23 A. Yes, ma'am.

24 Q. And the next set of pages -- and that's the
25 advice of Constitutional rights.

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1 A. The form we just talked about?

2 Q. Uh-huh, (affirmative nod). And the next
3 form, what is that?

4 A. The next form would be the North Charleston
5 Police Department witness statement form.

6 Q. And what time does that indicate the
7 statement was taken?

8 A. It was taken -- dated 6/6/07 at 10:00 p.m.

9 Q. So is that the next day at 10:00 p.m., or
10 is that an error?

11 A. It would possibly be an error.

12 Q. I'm sorry. Possibly be an error?

13 A. Yes, ma'am.

14 Q. What is your recollection? I know it's
15 been a couple of years. Did you make any
16 reports or take any notes about this?

17 A. No, I did not.

18 Q. What's the purpose of filling out these
19 forms with dates and times?

20 A. To have the date and time on it.

21 Q. Accuracy might be appropriate?

22 A. Yes.

23 Q. What is your recollection of how long you
24 spent in the police department with Oran back
25 in June?

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1 A. Two hours.

2 Q. And you're testifying that he was brought
3 to you, and you were already there? Or was he
4 already at the police station when you got
5 there?

6 A. I was already at the police station.

7 Q. Who brought him to you?

8 A. Detective -- at the time Officer Mastantuno
9 had him in the office.

10 Q. So a North Charleston police officer?

11 A. Yes.

12 Q. Did you get information or a report from
13 him about how they got him?

14 A. They probably did something with him
15 themselves and forwarded to Detective Patrick.
16 That's probably what they would have done.

17 Q. Did you know whether they picked him up at
18 his home?

19 A. Yes, they went to his residence and got
20 him.

21 Q. And he came along with them?

22 A. To my knowledge, yes.

23 Q. He did not ask for a lawyer or have a
24 lawyer with him. Is that correct?

25 A. That's correct.

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1 Q. These rights that you go over -- first of
2 all, tell us what the room looked like that you
3 were sitting in.

4 A. It's a -- I would consider it a small room,
5 big enough for a table, probably about half the
6 size of this area where myself and the court
7 reporter are. About half this area -- the same
8 width.

9 Q. And if we're using that little area where
10 you are, show us where -- is there furniture,
11 three chairs and three people who would have
12 been there, where that would have been.

13 A. Say if this is a wall and this is a door,
14 I was normally sitting here. This is a one-way
15 mirror on this wall. There is another wall
16 here, and there is a table almost the length of
17 that wall with just enough space for a person
18 to sit in the chair. There's a chair in that
19 corner. And then there's another chair over on
20 the opposite side of the door, and that would
21 be it. And the space in between myself and the
22 table and then there's a little small area
23 right here.

24 Q. Based on the way you just described it, are
25 you sitting where you're sitting?

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1 A. Yes, ma'am.

2 Q. And the area that would be to your left
3 would have been where Oran would have been?

4 A. Detective Patrick would have been sitting
5 to my left, or either here -- whichever was in
6 the room. Well, at that first initial
7 interview, Detective Hille was sitting over to
8 the left, and Oran would have been sitting over
9 in this corner, facing the ---

10 Q. And the door would have been behind -- by
11 Detective Hille?

12 A. Right.

13 Q. Is Detective Hille still with the North
14 Charleston Police Department?

15 A. Yes, ma'am.

16 Q. Was he with homicide at that time?

17 A. Yes, he was an investigator then.

18 Q. Is he still with homicide now, or do you
19 know?

20 A. He's in -- I believe he's with the ATF Task
21 Force now, still in our department.

22 Q. And so when you're going over these rights
23 with Oran -- well, let me back up. Did you
24 know Oran before you met him that first time,
25 in June?

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1 A. I'd never met him that I recall.

2 Q. Did you talk to him at all about his
3 current employment or whether he was employed?

4 A. Yes. He was not employed. I did ask him
5 that.

6 Q. Did you ask him what his source of income
7 was?

8 A. He said he gets disability.

9 Q. Did you ask him what the nature of his
10 disability was?

11 A. He told us that he suffered a gunshot
12 injury.

13 Q. And lost an eye and had trouble hearing?

14 A. Yes, ma'am.

15 Q. Did you ask him about his education even
16 prior to that brain-damage injury?

17 A. Yes, we did.

18 Q. And what was his education?

19 A. Oran stated that he completed the ninth
20 grade.

21 Q. And did you know that while he was in
22 school that he was in specialized classes?

23 A. I think he might have mentioned that.

24 Q. He might have mentioned that?

25 A. Yes.

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1 Q. Is there any difference, knowing all those
2 things that we just talked about when you
3 interview someone -- is there any different
4 protocol that you follow when you've got an
5 individual with that background and status, as
6 opposed to someone who works for living, isn't
7 disabled, doesn't have any sort of physical or
8 any other disability and has a high school
9 education?

10 A. No, there's no different sort of protocol.

11 Q. Describe for us -- you talked with Mr.
12 Voight about how this is unfolding as it is
13 occurring. We're in June now, the first time.
14 There's been a homicide a day or two before.
15 Is that right?

16 A. Correct.

17 Q. And you were, I think you said, assisting
18 Detective Patrick?

19 A. Correct.

20 Q. So at that point had you conducted any
21 interviews or done anything in the course of
22 the actual investigation? Did you know what
23 you were looking for at that point?

24 A. At the point of arriving on the scene, is
25 the question?

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1 Q. As you are sitting in the interview room,
2 preparing to discuss this situation with Oran?

3 A. Yes, I do know the situation.

4 Q. What did you know at that time?

5 A. I knew at that point that Oran's finger-
6 prints had came back from some of the evidence
7 located inside the residence, and he was a
8 person of interest that we needed to speak to.

9 Q. Did you know whether there were other
10 people of interest as well?

11 A. Yes, there were.

12 Q. And when you talked with Oran that first
13 time, when during the course of the
14 interrogation did you tell him that Ms. Snow
15 was dead?

16 A. During the second interview?

17 Q. During the first?

18 A. During the first interview, I asked him the
19 last time he saw her and, you know, he told us
20 what-not and the situation and that probably
21 she would say what he said.

22 Q. And when you said you asked him when the
23 last time ~~he~~ saw her, he answered you, didn't
24 he?

25 A. I'm sorry, I didn't get that.

1 Q. When you said when's the last time you saw
2 Cheryl?

3 A. Right.

4 Q. He told you, didn't he?

5 A. Yes.

6 Q. He told you he had seen her that weekend.

7 A. Correct.

8 Q. And did you ask him what they had done
9 together or any of those details?

10 A. Yes, we did.

11 Q. And do you recall him telling you
12 essentially what's in that written statement,
13 that she called him, that he went to the
14 apartment. He had a beer. She had a beer.
15 Smoked cigarettes, listened to music. They had
16 sex a couple of times and he left on Sunday
17 afternoon?

18 A. That's correct.

19 Q. And do you remember what he said to you
20 when you looked at him and said, 'Are you sure
21 about that? If we get her on the phone is she
22 going to tell us that same thing?'

23 A. Right.

24 Q. What did he say?

25 A. He said yeah, she probably would.

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1 Q. Did you try to get her on the phone,
2 Detective Elmore?

3 A. I said we don't need to get her on the
4 phone, she was dead.

5 Q. How long did you talk with him about these
6 circumstances before you'all shared that
7 information with him?

8 A. Probably a few hours.

9 Q. Did you tell me that you did make a report
10 or you did not?

11 A. I not keep any notes or anything.

12 Q. At any point related to this homicide
13 investigation.

14 A. No, I did not, other than the statements
15 taken.

16 Q. Right. No supplements or no notes or
17 anything like that?

18 A. No.

19 Q. Was there any mention at all during that
20 first interview -- did it come up at all
21 anything about Detective Fason that you talked
22 about?

23 A. During the first interview?

24 Q. Yes.

25 A. The only thing I asked about is when he

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1 came he said that he knew a big guy named
2 Detective Fason. Did he still work with us? I
3 told him yeah, he worked there. And he told us
4 the situation that they had years ago, probably
5 twenty years ago, in high school or whatever
6 grade school. I don't know.

7 Q. Then the second time when Oran had been
8 brought into the police station to be inter-
9 viewed, do you recall prior to the taking of
10 the actual written statement at some point the
11 door being opened and Detective Fason being
12 outside and -- I think you call them the bull
13 pen. But there's an area where there's desks
14 right outside the interview room -- is that
15 accurate?

16 A. Well, to get to our interview room, our
17 interview room was in the back of the detective
18 division. So if this front door was the front
19 door to the room, this area would be the
20 detective base where our desks which we sit at.
21 So you have to actually walk past our desks to
22 get to the back of the department, to get to
23 the interview room. So in that, yeah, they did
24 see each other and they waved and acknowledged
25 each other, and then Oran went into the

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1 interview room.

2 Q. I'm talking about when you would have been
3 in the interview room already?

4 A. Not to my knowledge, no.

5 Q. So what you recall is that happened prior
6 to getting -- on the way to the interview room?

7 A. That's correct. I was at my desk and
8 Detective Fason was at his, and Oran was
9 brought into the interview room. And I saw
10 Detective Fason wave, and I saw Oran wave.
11 And they -- I don't know if he came around
12 after that.

13 Q. So then you get into the interview room,
14 and I'm assuming Detective Hill was already
15 there?

16 A. Yes, he is.

17 Q. And you'all go through the five rights that
18 we've all heard on TV?

19 A. Yes.

20 Q. And was there any conversation about them?
21 Give us an idea of how that happened.

22 A. About how the advisement of rights form was
23 given?

24 Q. Yes, sir.

25 A. You want to know about this particular one,

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1 or how I do mine?

2 Q. I'm assuming it ~~would~~ be the same in this
3 case.

4 A. Well, Detective Hille is the one advising
5 him of his rights the first time, because we
6 have him where it's checked off. And Detective
7 Hille is the person that's on there, so he
8 would have been the one advising him, filled
9 out the information and checked it off.

10 And you can see on the second one where I
11 did it. I do the same thing, I read it to
12 defendants and ask them if they understand what
13 I'm reading. I then ask them to initial each
14 right.

15 Q. Other than the initialing versus the check,
16 was there any substantial difference between
17 the way that Detective Hille presented the
18 rights and the way that you did it in July?

19 A. No, we just questioned him, you know,
20 advised him of his rights first, then ask "Do
21 you understand what I just read?" They would
22 usually state 'yes' or give a head nod, meaning
23 yes, or either no.

24 And you would go to the next question and
25 do the same. Asking the defendant, 'Do you

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1 understand the right that I just read to you?'
2 State either yes or no.

3 And then after the last one, 'Do you
4 understand the rights that I've just advised
5 you?' -- it states right here -- there's a
6 question we ask, it says "I fully understand
7 each of the rights", which we ask them, 'Do
8 you understand each of these rights that we've
9 explained to you?' And then if they state
10 'yes' we would have them sign it.

11 Q. And one of these rights -- well, let me
12 just read that first one, (reading):

13 "I have the absolute right to remain
14 silent and do not have to answer any questions
15 or give a statement and this fact cannot be
16 used against me."

17 Is that basically how you presented it to
18 Oran, read it just like that?

19 A. Yes, ma'am.

20 Q. There was no discussion about if, after
21 that, you know, whether -- an explanation of
22 anything?

23 A. Not if he states that he understands it,
24 we'll go to the next question.

25 Q. So if you or Detective Hille would have

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1 read that and the response from Oran was yes,
2 then that's the end of it?

3 A. Right. We'd ask him that question -- we'd
4 read the question, then ask 'Do you understand
5 that right?' He'd say yes, and then we'd go to
6 the next question.

7 Q. And then that's how it goes all the way
8 down the list?

9 A. Yes, ma'am.

10 Q. Do you recall from just your memory whether
11 there was, specifically on the June advisement,
12 any conversation of anything other than what we
13 just went through? Or was it just a reading
14 and a yes and the check?

15 A. To my recollection, we would read it and he
16 would state he understands and then we would
17 check off that one and go to the next subject.

18 Q. When you say "he would read it," you're
19 referring to Detective Hille?

20 A. Yes.

21 Q. How about on the July 18th occasion, where
22 you actually were reading the rights? Did it
23 go just like we talked about, or was there
24 actual conversation at any point about any of
25 them?

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1 A. Yes, it went pretty much the same way.

2 We read the rights. We asked did he understand
3 and he acknowledged that he understood every-
4 thing that I read to him.

5 Q. And moving to the -- let me back up. After
6 the June interview when the statement was
7 taken, was Oran taken back home by the police,
8 or do you know?

9 A. Back in June?

10 Q. The first interview.

11 A. The first interview, his parents took him
12 home. They were there.

13 Q. The parents came to the police station and
14 took him back home?

15 A. Yes, ma'am.

16 Q. Moving to the -- let me ask you, were you
17 part of the conversation with Detective Patrick
18 and one of you'all's superiors and the SLED
19 agent or technician when they talked to you'all
20 about the touch DNA conclusions they had
21 reached?

22 A. No, I wasn't. There was another officer
23 with Detective Patrick at that point.

24 Q. Did you and Inspector Patrick have
25 conversations prior to going to Oran's house to

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- 1 pick him up on July 18th about what the plan was
2 or what you'all were going to do at that point?
3 A. Yes, we did.
4 Q. And what were those conversations?
5 A. Detective Patrick received a letter back
6 from the SLED agent stating that Oran Smith's
7 DNA came back to the pajama bottoms of Cheryl
8 Snow. He advised me of this. I said, 'Well,
9 great. We'll go get him. And he said 'Well,
10 we'll go pick him up probably tomorrow.' He
11 was going to go and talk with the Lieutenant,
12 our superiors, and see what they've got to say.
13 And after he did he came back and he said,
14 'We'll go get him first thing in the morning.'
15 That's when we did the second interview with
16 him.
17 Q. So no conclusions had been reached whether
18 to charge him at that point or what?
19 A. No, he was not being charged at that point.
20 Q. What would you have needed in order to
21 charge him?
22 A. What we would have needed to charge him?
23 Q. Yes.
24 A. We would have liked a confession.
25 Q. Which you got, didn't you?

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1 A. Yes, we did.

2 Q. And then you charged him?

3 A. Yes.

4 Q. On that date, July 18th, you did the reading
5 of the rights?

6 A. Yes, ma'am.

7 Q. Is there any difference in the -- I'm
8 sorry, I don't remember what the exhibit
9 numbers are. But the first one on June --
10 Exhibit 1 and State's Exhibit 3. Is there
11 difference in the forms that were used?

12 A. Your question is was there a difference in
13 the forms, meaning these two forms?

14 Q. Yes, sir. Not in the advisement forms, but
15 in the statement forms.

16 A. The one in June was -- the one on the 18th
17 would have been a defendant's statement form,
18 North Charleston Police Department defendant's
19 statement form. And then one was a witness
20 statement form, back in June. The first one we
21 took was a witness statement.

22 Q. We're not talking about the content. But
23 other than that, the forms would essentially be
24 the same?

25 A. Yes, ma'am.

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1 Q. If I understood you when you were talking
2 with Mr. Voight, did you say that Oran --
3 let's start at the house. He came with you
4 voluntarily?

5 A. Yes, he did.

6 Q. And you made some comments about being
7 police officer and sometimes people try to run.

8 A. Sometimes.

9 Q. He didn't do that, did he?

10 A. No, he did not.

11 Q. He came out of the back door of his home.
12 He came around the side of the house and he was
13 walking right to you, wasn't he?

14 A. Yes, he did.

15 Q. And he went downtown with you'all in the
16 car?

17 A. Yes, he did.

18 Q. Didn't ask for a lawyer that time either,
19 did he?

20 A. No, he did not.

21 Q. And when he got downtown and you were
22 talking with him in that room, he didn't ask
23 for a lawyer then either, did he?

24 A. He did not.

25 Q. And you talked to him for awhile, and

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1 ultimately -- well, describe for me again,
2 was he nervous at any point during the drive
3 downtown?

4 A. No, he was very calm.

5 Q. Was he nervous at any point in the
6 interview room?

7 A. Toward the end, right prior to his
8 confession.

9 Q. And after the confession that was given,
10 your position is that he was relieved?

11 A. Yes, he seemed to be relieved.

12 Q. Mr. Voight asked you whether you threatened
13 or intimidated him in any way. I think your
14 answer was no.

15 A. That's correct.

16 Q. Do you ever do that?

17 A. Do I ever threaten or intimidate people?

18 Q. Yes.

19 A. I don't know if I intimidate, but I don't
20 threaten.

21 Q. So in all your years as a law enforcement
22 officer conducting many investigations and
23 interrogations, you've never raised your voice
24 at anyone?

25 A. Yes, I have.

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1 Q. Any other way that you may have threatened
2 someone?

3 MR. VOIGHT: Your Honor, objection to
4 the form of the question.

5 THE COURT: Sustained. Rephrase
6 your question.

7 CROSS EXAMINATION CONTINUED

8 BY MS. TAYLOR:

9 Q. Do you do anything other than raise your
10 voice during interrogations when you are
11 attempting to get confessions from folks?

12 A. No, ma'am.

13 Q. At some point after this process, where
14 you and -- this would be Detective Patrick,
15 correct, in July?

16 A. July 18th?

17 Q. Yes, sir.

18 A. Yes.

19 Q. You go through this process of asking and
20 getting things answered and talking about the
21 homicide. And there's this emotional break
22 through, according to you, where Oran is crying
23 and relieved. And then somehow it turns into a
24 scene of talking about TV shows and chatting
25 with Detective Fason?

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1 A. Do you want me to explain that?

2 Q. Is that what happened?

3 A. Yes.

4 THE COURT: You may explain your
5 answer.

6 THE WITNESS: In talking with Oran,
7 like I stated before, we gave him an
8 opportunity -- I asked him, 'Oran, explain to
9 me again what happened the night you left
10 Cheryl Snow.' And he gave me the same
11 statement from June, which is the first
12 statement. And he stated, you know, that he
13 left and everything was hunky-dory. He walked
14 to the gas station and called someone in his
15 family to come pick him up.

16 At that point I advised him that we have
17 evidence showing that he was more involved in
18 the murder, and that we can prove that he was
19 the person who murdered Cheryl Snow.

20 I gave him an opportunity to explain or to
21 come clean without me having to tell him what
22 we had. That didn't work. So then I gave him
23 a little bit of what we have. I said that the
24 DNA evidence came back with the strangulation
25 device that was found around Cheryl Snow's

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1 neck. I said, 'Can you explain that?' And he
2 came up with some story. I don't know what it
3 was. He was helping her fold clothes, maybe
4 was one of the things that he came up with.

5 He was kind of getting more nervous at that
6 point. And I explained him, I said, 'Look,
7 this was your DNA evidence and not no one
8 else's. Yours. No one else has this but you.'
9 That's when he started fidgeting and doing this
10 with his hands, dropping his head, looking
11 down, kind of thinking, like he was in deep
12 thought, kind of getting quiet. I was giving
13 him a minute to think for himself.

14 And things got to a point, you know,
15 sometime in there I got to the point where I
16 said, 'Look, you know, you killed Cheryl Snow.
17 I know. Detective Patrick knows it. You know
18 it. Don't even tell me how you did it or
19 anything. I just want to know why you did it,
20 because we know you did it.'

21 He got quiet for a second and he just
22 dropped his head and a teardrop came out of his
23 eye and he said, "I snapped. I just snapped."

24 I said, Okay, now you've admitted it. I
25 know you're emotional', and I gave him a minute

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1 to get himself together. I said, 'Okay, now
2 can you tell me why and how, you know? You'll
3 probably feel a lot better once you get it off
4 your chest.'

5 He went 'Whew!', then he went forward
6 saying that he snapped, for whatever reason.
7 He snapped. He choked her. She passed out.
8 He got up to leave and she started coming to.
9 He saw her moving. And he said, "I knew I had
10 to finish it or she was going to call the
11 police and I was going to go to jail for
12 hurting her." And he said, "I got her pajama
13 bottoms, I grabbed it and I tied it around her
14 neck and I choked her." And then he said he
15 left, walked down to the Kangaroo gas station
16 and called a family member and told them to
17 come pick him up, like he normally does.

18 CROSS EXAMINATION CONTINUED

19 BY MS. TAYLOR:

20 Q. Is that it?

21 A. Oh, you want me to go further? After that,
22 Detective Patrick got up and left out of the
23 room. I think I was still in there with him by
24 myself. I asked him if he needed a drink or
25 water or anything, needed to use the bathroom?

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1 He said no, he was fine. He kind of got
2 himself together and wiped his face and sat
3 there.

4 Detective Patrick came back in the room and
5 we explained to him we wanted to get the
6 witness statement, which is this statement
7 right here. Detective Patrick wrote it. And
8 then he went over it with him. And then he
9 said again in his words. Detective Patrick
10 wrote down what he stated. I stayed in the
11 room, of course, and I witnessed it.

12 After that, Detective Patrick walked out of
13 the room to do some more paperwork or to do
14 whatever it is he needed to do. I stayed in
15 the room with Oran. Some time probably went
16 by.

17 Detective Fason then came in and sat down
18 and we all three started talking, kind of
19 laughing and joking. And that when he into the
20 thing about I reminded him of Shakira. And he
21 explained to me who Shakira was and that stuff.
22 That was pretty much it.

23 Q. And that's your explanation of how he went
24 from this emotional break-through to relief to
25 joking and chatting about TV shows and how good

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1 you are at making people confess?

2 A. That's it.

3 MS. TAYLOR: The Court's indulgence
4 for one moment.

5 THE COURT: Certainly.

6 CROSS EXAMINATION CONTINUED

7 BY MS. TAYLOR:

8 Q. One more thing, Detective Elmore. Do you
9 remember how long you'all were in the room,
10 timeframe, as best you can, before you began
11 letting him resist the statement he had given
12 you on the 18th, which was the same he had given
13 you in early June, and began the litany of 'I
14 know you're lying. We know you did it. Tell
15 us.' How long had gone between or before that
16 began?

17 A. The advisement of rights was taken at
18 11:03. This was what we had when we advised
19 him of his rights. We started at 11:03. At
20 12:00 p.m. is when this statement was taken.
21 So possibly an hour and a half, I would assume.

22 Q. You said a couple of times when we were
23 talking that you said to him -- and he kept
24 denying that he had done this to Cheryl -- we
25 can prove it. I know you did it. We've got

1 evidence. Is that what you said to him?

2 A. Yes, ma'am.

3 Q. And then you used the term "DNA."

4 A. Yes.

5 Q. Did you'all talk about what that was?

6 A. I said Detective Patrick had feedback from
7 the SLED investigator of Oran's DNA.

8 Q. Did you explain what DNA means to Oran?

9 A. I didn't have to explain it. He knew what
10 it was, evidently, from his knowledge of
11 watching C.S.I. He knew what DNA evidence was.
12 I didn't have to do much explaining, but I did
13 explain to him my knowledge, my level of
14 explaining. I did say, "This is your DNA, not
15 mine, not Detective Patrick's or any other
16 black man in this world. It's yours." That's
17 what I told him. I said, "Can you explain why
18 this evidence of yours and nobody else who
19 could possibly have it is around her neck?"

20 Q. And what was your understanding at that
21 point in time as to what the DNA evidence was?

22 A. My only understanding about DNA evidence is
23 that it's one person only, and that the person
24 at SLED had sent information to Detective
25 Patrick and to us that it was Oran Smith's DNA

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1 that was on the weapon used to strangle Cheryl
2 Snow.

3 Q. And you don't know what type of DNA they
4 were talking about?

5 A. All I know is that it was said to me it was
6 Oran Smith's DNA that was skin grafts. I do
7 know it was stated as being skin grafts.

8 Q. And it was your understanding that it was
9 definitely, no question about it, Oran's?

10 A. That was my understanding and Detective
11 Patrick's understanding. And that's why we
12 went and got Oran for a second interview.

13 Q. And is that still your understanding?

14 A. As far as I'm concerned, yes, ma'am, it is.

15 Q. For all this time?

16 A. Certainly.

17 Q. That's all. Thank you.

18 THE COURT: Redirect?

19 MR. VOIGHT: No redirect, Your Honor.

20 THE COURT: You may come down.

21 Thank you very much.

22 (WITNESS EXCUSED)

23 THE COURT: Any additional
24 witnesses?

25 MR. VOIGHT: No additional witnesses,

1 Your Honor. At this time the State would rest.

2 THE COURT: Very well. Ladies and
3 Gentlemen, there are certain matters of law
4 that I now must take up out of your presence.
5 I'll need for you to go to your jury room.
6 We'll be with you as quickly as we can. Do not
7 begin your deliberations.

8 (JURY OUT AT 3:35 P.M.)

9 THE COURT: Any matters or Motions
10 from the State at this point?

11 MR. VOIGHT: No, sir.

12 THE COURT: From the defendant?

13 MS. TAYLOR: Yes, sir, Your Honor.
14 Mr. Nixon will do those.

15 THE COURT: I'll be happy to hear
16 from you, Mr. Nixon.

17 MR. NIXON: Thank you, Your Honor.
18 May it please the Court. We'd just like to
19 first renew all Motions and objections that
20 we've previously made that have been ruled upon
21 by the Court.

22 A couple in particular -- we've
23 renewed the Motion to exclude the second
24 statement, the second written statement, which
25 is the one that was taken, I believe, around

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1 July 18th of 2007.

2 We renew our objection to not having
3 a *Jackson v. Denno* hearing to address the
4 admissibility of the statement pre-trial.
5 Specifically, as to that, the testimony of
6 Detective Elmore, I don't know that it's a
7 discovery issue because, to be frank with the
8 Court, there were things that came out in his
9 testimony last time, at the last trial, that
10 was things we had not heard before and that was
11 not in the statement.

12 But I just put that on the record and
13 advise Your Honor that there were statements
14 such as, "Am I going to jail?", "I just lost
15 it", "I snapped." All those things are
16 statements that were attributed to Mr. Smith
17 that previously had not been turned over to the
18 defense in any kind of discovery, any kind of
19 statements, anything like that. And we would
20 renew our objection to that.

21 Your Honor, also going to the admissi-
22 bility of the statement itself, I mean, the
23 whole issue, obviously, is the totality of the
24 circumstances and whether or not it was a
25 freely and voluntarily-given statement and

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1 you've heard the testimony of the officers
2 talking about that. In particular, one,
3 obviously, Detective Hille was not here on the
4 first statement. I guess that's not really
5 relevant, because we're talking, primarily,
6 about the second. But as just ended in that
7 testimony right there from Detective Elmore,
8 clearly his perception and his understanding of
9 what he was telling or said that he was telling
10 Mr. Smith at the time of that second statement
11 was 'we know you're lying, we've got you, we
12 have your DNA evidence.' I think it was his
13 testimony that his perception was that was the
14 case. But yet he testified prior or
15 previously, I think in direct, that when they
16 went up there to pick him up the second time,
17 it was only to get a second statement or to
18 interview him some more. It was not to try and
19 arrest him because they didn't think they had
20 enough evidence at that point to arrest him and
21 charge him with anything.

22 I just submit that to the Court to
23 consider the totality of the circumstances of
24 the freeness and voluntariness of the
25 statement. There's a suggestion there that

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1 there was a determine that they were, in fact,
2 going up there to arrest him, and they, in
3 fact, had the evidence that they needed. And
4 they failed to tell him that, failed to say
5 anything about that, got him back under some
6 sort of circumstances that it was just like it
7 was the first time, 'we're going to question
8 you, you're a person of interest, there's
9 nothing else here that we have that suggests
10 you had anything to do with this, we just need
11 to talk to you some more.' When the reality of
12 the situation, again, if we assume what he's
13 saying is accurate, that at the time he
14 believed that DNA evidence was there and
15 absolutely, without a doubt, pointed him to
16 that person, which I also think is not
17 consistent with what the DNA expert and the
18 previous testimony from today said. That that
19 is not two consistent things. I think it goes
20 to the freeness and voluntariness of the
21 statement.

22 Another point, Your Honor, between the
23 two detectives who testified, clearly there was
24 some discussion about the status or the state
25 of Mr. Smith, the special education classes,

1 the prior head injury, the deafness in the ear,
2 the prior brain injury or a discussion about a
3 brain injury. All these things -- the level of
4 education. All these things, as you know the
5 case law talks about something for the Court to
6 consider in the totality of the circumstances.
7 Obviously, it's not you or I that was in there,
8 it was somebody that's different than that, and
9 whether or not there should be any kind of
10 different approach taken to that. I mean, the
11 law contemplates that it should be done
12 differently, because all those things are taken
13 into consideration. So the law and the
14 totality of the circumstances, and they're
15 analyzing that, and the case law analyzes that.
16 Those factors are relevant.

17 Well, you heard the officers testify
18 that to them the factors aren't relevant. It
19 doesn't matter to them. They don't do anything
20 different when they have somebody in that
21 situation. And I think it's something to
22 consider for the Court that if the law is
23 saying that those things are issues that should
24 be considered, it should have been considered
25 by them, and it wasn't. It goes to whether

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1 that statement was freely and voluntarily
2 given, Your Honor.

3 The second issue, obviously, is the
4 Motion for a directed verdict based upon Rule
5 19 and the case law that there is not enough or
6 that there is not any evidence that suggests
7 that this case should go to the jury, based
8 upon if the statement was not admitted, if the
9 statement was not free and voluntary, what you
10 have is two or three or four individuals who
11 have either fingerprints or semen. Both of
12 those things are clearly explained as to why
13 they would have been in the presence of the
14 victim at the time or in that house. It
15 doesn't do anything to tie this defendant to
16 that crime.

17 And if the statement's not freely and
18 voluntarily given, and you look at the evidence
19 that is out there, there's the fact that
20 there's nothing there to tie him to that crime.
21 So based upon that, we make a Motion for a
22 directed verdict, Your Honor. Thank you.

23 THE COURT: Thank you, sir. I
24 appreciate it. The rulings previously made by
25 this judge, I stand by those rulings for the

1 purpose of review. Concerning the prior
2 objection to a *Jackson v. Denno* hearing, quite
3 frankly, after hearing it, I understand why it
4 would really impractical and impossible for
5 another circuit judge to hear this and have a
6 ruling that would be inconsistent. You
7 couldn't do that. It wouldn't make any sense
8 for purposes of review. You had a hearing,
9 that's what it was, it was a *Jackson v. Denno*
10 hearing, and that judge ruled.

11 Given the testimony I've heard today,
12 it doesn't affect it. If it's wrong, it's
13 wrong. But I would have done the same thing,
14 by the preponderance of the evidence. I don't
15 know of any case law that requires someone who
16 says that they have some special needs, that
17 they have to stop. I mean, we could make it
18 that way if we wanted to, but it's not there.
19 It's a judgment call.

20 We spend our life -- I represented
21 the School District for about eighteen years.
22 And we spend our life working to mainstream,
23 as well we should, people with needs. I think
24 that's what we're called upon to do in
25 education. From everything that we've heard --

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1 I haven't heard from Mr. Smith, nor does he
2 have to say anything. But from what I've heard
3 about him, he functions fairly well. So
4 there's no reason for me to conclude that this
5 person is in some dire need and straits.

6 And something else, too -- even if he
7 didn't understand -- if you can understand one
8 day and then not understand the next -- when
9 you -- I really put some weight on this, when
10 you didn't object to the first statement --
11 clearly if it didn't understand what he was
12 doing and it applies to the second one, then it
13 would have applied to the first one. It seems
14 to me, to be consistent, that objection should
15 be running throughout. If this problem exists,
16 it exists all the time. one. So I think
17 there's something to be gleaned from that.
18 And I understand the strategy behind that, and
19 I don't fault you for that. I was a lawyer,
20 too. It's very a obvious strategy and purpose
21 for that.

22 But given the totality, you are
23 absolutely correct and that was a wonderful
24 closing argument to a jury. And that's
25 precisely who will have to ultimately make the

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1 call. Because your assessment -- in fact, we
2 were talking about it at lunch, to be honest
3 with you. Without the statement -- we probably
4 aren't trying the case without the statement,
5 to be honest with you, I don't think. But
6 without the statement, if we are, I can tell
7 you what this judge would have done. It would
8 have directed a verdict. It's not there.
9 It's just not overwhelming. There's some
10 circumstantial evidence, but it's not
11 substantial.

12 There's no question the statement is
13 a critical factor. But just because the state-
14 ment is a critical factor, they proved the
15 corpus of the crime. They proved he was there.
16 They proved that his semen was there.

17 I agree with you. I don't know
18 whether that was a misstatement of what they
19 said. But it certainly wasn't fraud. I think
20 she explained it, 'We could exclude other
21 people, but we couldn't exclude him.' There
22 wasn't enough to conclusively determine it, but
23 he couldn't be excluded.

24 I think that coupled with all the
25 circumstances here certainly supports well the

1 State's case. And it gives them reason to
2 question him. I haven't heard anything that
3 doesn't take place in probably just about every
4 interrogation that occurs. Mr. Smith had a
5 right to say no. He had a right to say, 'I'm
6 not talking any more.' And given the
7 description, it seems to me he made have even
8 pondered that. I don't know. But he certainly
9 paused. I don't think that Officer Elmore did
10 anything -- he certainly didn't browbeat him.
11 He didn't threaten him. Maybe Mr. Smith,
12 assuming for the purposes of this, and I do
13 assume his statement to be accurate. It's
14 probably a good compliment to Mr. Elmore, that
15 he's an effective detective with interrogating,
16 did a good job. It's does surprise me,
17 probably why he's been where he is for as long
18 as he's been.

19 So having said all that, I agree with
20 you that it's a jury issue as to whether or
21 not. If the jury chooses not to believe the
22 statement was freely and voluntarily given,
23 that certain would support a verdict of not
24 guilty. There's certainly an abundance of
25 doubt by the number of persons, that there's

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1 a logical explanation, that was stated in the
2 first statement, for why his DNA would be
3 present. But when you couple all of that with
4 the statement, and by the preponderance of the
5 evidence I think the statement was properly
6 admitted by the prior trial judge. I think
7 your Motion has to be denied.

8 Concerning the -- when was the first
9 -- the previous trial, when was that?

10 MS. TAYLOR: June.

11 THE COURT: So about six months from
12 that disclosure.

13 MS. TAYLOR: Yes, sir.

14 THE COURT: As I understood your
15 argument, that was revealed during that trial,
16 what you attribute as being discrepancies and
17 not being given to you?

18 MR. NIXON: Yes, sir.

19 THE COURT: But it was given to you
20 after that trial, so you've had it. It was
21 given to you through the trial.

22 MR. NIXON: I was given to us from
23 the stand.

24 THE COURT: That's fine. You know,
25 one of the things that -- maybe I'm wrong. As

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1 I stated when I qualified the jury, in February
2 or March when I started -- I was elected in
3 February -- it'll be sixteen years. Twenty-one
4 years of practicing law, you learn a lot. But
5 you forget a lot when you don't do it anymore.
6 And I confess that. But the last I checked,
7 the law enforcement -- even those persons that
8 call themselves crime specialists or crime
9 scene specialists, I don't think they come
10 under the category and protection of expert
11 witnesses. They're fact witnesses. They're
12 free -- you're free to talk to them. You don't
13 have to have the Solicitor present. They don't
14 have to talk to you. But you're free to talk
15 to them. And, quite honestly, Motions that
16 I've heard -- not many -- but I've heard some
17 that said, 'I don't want to talk to you.'
18 It's been brought to my attention, and I
19 suggested it might be a good idea for them to
20 talk to them without the Solicitor present.
21 Because it certainly gives rise, and I'm
22 certainly going to allow that kind of cross
23 examination. So you kind of set up -- it's
24 really a win-win proposition.

25 So, you know, once you had that,

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1 Detective Elmore was available to talk about it
2 all day long. From my observations, I'm sure
3 he probably could have handled any interview
4 you wanted to give him. I don't know that he'd
5 refuse it.

6 So I don't find there's any prejudice
7 in that. Certainly, if it was, it's been
8 resolved by the fact that we had six months
9 removed from last time, and you were able to
10 do whatever you felt necessary to work that
11 situation. And from my observation, you've
12 done a good job with that.

13 But thank you, Mr. Nixon, for your
14 very thorough Motion, but I, with all due
15 respect, I respectfully deny it.

16 MR. NIXON: Thank you, Your Honor.

17 THE COURT: All right. And as I
18 understand, in our conversations previously,
19 you have had, Ms. Taylor, conversations with
20 Mr. Smith concerning his right to testify and
21 not to testify. Is that correct?

22 MS. TAYLOR: I have, Your Honor.

23 THE COURT: He has indicated to you
24 a response to your inquiry.

25 MS. TAYLOR: He has.

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1 THE COURT: And what is that?

2 MS. TAYLOR: Consistently, he has
3 informed me that he does not wish to testify,
4 but I would ask that you inquire of him as
5 well.

6 THE COURT: I am going to do that.
7 Thank you. Good afternoon, Mr. Smith. You may
8 remain seated, sir. Thank you very much.

9 I learned something -- I learn
10 something every day. But my former colleague,
11 now sort of my -- not my boss -- my boss is the
12 Chief Justice. But he works directly with the
13 Chief, Costa Pleconis -- in reading a
14 transcript of a trial that he had in a murder
15 case in Calhoun. And he was going to do what
16 I'm doing. And the defendant, it's recited,
17 apparently stood. And he said 'Sir, you don't
18 have to stand. Your lawyer does, but you
19 don't. Your lawyer has to stand, because
20 they've taken an oath and they're officers of
21 this court. But you're not, and you don't have
22 to.' If you to stand, that's your right. But
23 you don't have to. That's fine. And I'm not
24 offended in the slightest by your remaining
25 seated. I think it's probably more comfortable

1 sitting down. I would be. But whichever suits
2 you best. You do what you want to do.

3 You've had a chance, Mr. Smith, to
4 talk with your lawyers about this matter?

5 MR. SMITH: Yes, sir.

6 THE COURT: And you've had a chance
7 to ask them questions, too, about all sort of
8 trial strategy, specifically, your right to
9 testify and not to testify. Is that correct,
10 sir?

11 MR. SMITH: Yes, sir.

12 THE COURT: And you understand their
13 responses?

14 MR. SMITH: Yes, sir.

15 THE COURT: Are you today under the
16 influence of any alcohol or any type of
17 medication that would affect your ability to
18 understand my questions, sir?

19 MR. SMITH: No, sir.

20 THE COURT: If at any point, Mr.
21 Smith, you don't understand my question, you
22 just stop me and say 'Judge, you've got to
23 restate that or talk with my lawyers.' I will
24 stop and let you do that. But if you answer my
25 questions, Mr. Smith, I'm going to assume that

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1 you understood that question and that you're
2 giving me a truthful and a complete answer. Is
3 that fair?

4 MR. SMITH: Yes, sir.

5 THE COURT: And you will do that;
6 is that correct?

7 MR. SMITH: Yes, sir.

8 THE COURT: Your lawyers explained
9 to you that, as I told the jury -- you heard me
10 when I started, I even said 'you don't even
11 look to this table to prove or disprove
12 anything, because they don't have any
13 obligation to do anything at all.' And I said
14 you don't the obligation to present evidence,
15 nor did you have to testify. Do you remember
16 me telling the jury that?

17 MR. SMITH: Yes, sir.

18 THE COURT: Well, that I believe to
19 be a correct statement of the law and certainly
20 a correct statement of your Constitutional
21 right to remain silent. Do you understand that
22 right, sir?

23 MR. SMITH: Yes, sir.

24 THE COURT: Do you realize that if
25 you choose not to testify, your lawyers have

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1 explained to you that I will further instruct
2 that jury that they cannot consider that
3 against you in any fashion. Do you understand
4 that?

5 MR. SMITH: Yes, sir.

6 THE COURT: But you understand, and
7 your lawyers have explained to you, that while
8 you have the right to remain silent it is your
9 right to take that stand and testify if you
10 wanted to. Do you understand that?

11 MR. SMITH: Yes, sir.

12 THE COURT: You've had sufficient
13 time to think about what you wanted to do or
14 not do. Is that correct?

15 MR. SMITH: Yes, sir.

16 THE COURT: And what is it, sir?
17 Do you wish to testify or not testify?

18 MR. SMITH: Not testify.

19 THE COURT: And are you comfortable
20 with your decision, sir?

21 MR. SMITH: Yes, sir.

22 THE COURT: And are you satisfied
23 with your lawyers and the way they've advised
24 you on this issue and the way they've handled
25 your case thus far?

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1 MR. SMITH: Yes, sir.

2 THE COURT: Mr. Smith, in just a
3 moment, I'm going to bring the jury in and I'm
4 going to turn to Ms. Taylor, and what I have
5 started doing now which is, I think, kind of
6 consistent with what I told the jury when I
7 start, I'm going to ask Ms. Taylor if she
8 wishes -- if you wish to present -- if the
9 defendant wishes to present any evidence or any
10 testimony at this time. And she's going to say
11 no. Defense rests.

12 If at any point before she tells me
13 defense rests you change your mind, you just
14 punch Ms. Taylor or you tap your lawyer and
15 say, 'Whoa, wait a minute. I want to talk some
16 more.' I will excuse the jury and we'll talk
17 some more. But if I don't hear from you, I'm
18 going to assume that your decision is not to
19 testify in this dispute. Okay?

20 MR. SMITH: Yes, sir.

21 THE COURT: And if you change your
22 mind you'll let them know. Is that right?

23 MR. SMITH: Yes, sir.

24 THE COURT: Anything further, Ms.
25 Taylor, at this point?

1 MS. TAYLOR: The only thing is give
2 him one minute to check with his family.

3 THE COURT: Absolutely.

4 MS. TAYLOR: To make sure that no one
5 has changed their mind.

6 THE COURT: Take your time.

7 MS. TAYLOR: (Confers with family).
8 We're good, Judge.

9 THE COURT: You're good with that.
10 Thank you very much.

11 All right. And let me also take this
12 opportunity as well to comment on something.
13 Because sometimes it's not always this way. I
14 realize that there are persons present on both
15 sides. This has to be very unpleasant for both
16 sides and I want to commend everyone here for
17 the decorum and how much you've shown to this
18 Court in this proceeding, you've dignified by
19 it your conduct and how you've conducted
20 yourself throughout the trial. Thank you for
21 that. I appreciate that very much. And
22 certainly my heart goes out to each one of you.
23 It's a tough time for all of you..

24 All right. Assuming, Ms. Taylor, that
25 Mr. Smith continues with his decision, once you

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1 rest, as I mentioned, it's almost 4:00 o'clock.
2 I do not wish to have this jury deliberating
3 late into the evening. I think that's really
4 unfair to both sides, because it would be after
5 5:00 o'clock now before they could possibly get
6 the case. I think the better thing to do is to
7 adjourn for the evening and come back tomorrow.
8 I'm going to have them return probably at -- I
9 said 1:00. Out of an abundance of caution --
10 I don't know how long these things are going to
11 take in the morning, but we'll probably say
12 1:30. I think that still gives us plenty of
13 time to get the case to the jury at a
14 reasonable time.

15 So that being the case, that would be the
16 approach. Of course, is there any objection
17 from the State?

18 MR. VOIGHT: No objection.

19 THE COURT: Any objection from the
20 defendant?

21 MS. TAYLOR: None, Your Honor.

22 THE COURT: Thank you very much.

23 Let's bring in our jury, please, sir.

24 (JURY IN @ 3:58 P.M.)

25 THE COURT: Thank you, Ladies and

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1 Gentlemen. Before the recess, the State had
2 rested. Ms. Taylor, does Mr. Smith wish to
3 present any additional testimony?

4 MS. TAYLOR: He does not, Your Honor.
5 The defense rests.

6 THE COURT: Thank you very much.
7 Ladies and Gentlemen, at this point there are a
8 couple of matters that I need to resolve, but
9 it's 4:00 o'clock. There still remains the
10 closing arguments and the charge.

11 Given the hour, it would probably be
12 after 5:00 o'clock before you could begin the
13 process of considering this case. That's not a
14 prudent thing to do, to put you all in that
15 situation where you have to start, and who
16 knows how long that would take. The better
17 thing to do is to have us adjourn for the
18 evening. You'll get a little bit earlier break
19 tonight.

20 And tomorrow you're going to get a
21 little bit -- you're going to have some freedom
22 in the morning, because I scheduled -- not
23 related to this case -- some matters that are
24 going to take pretty much the morning. So
25 you're free until 1:30. I would ask that you

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1 return to your jury room by 1:30, and at that
2 time we will resume the trial. Please go ahead
3 and take care of your lunch plans before
4 coming. We will probably -- I would think you
5 will get the case by between 2:30 and 3:00, I'm
6 thinking. And then you'll have the better part
7 of the afternoon to discuss this case.

8 Please understand something. While
9 you will not hear any additional evidence, now
10 in the two remaining portions, because as you
11 recall my remarks are certainly not evidence,
12 and the attorneys' remarks are not evidence.
13 Notwithstanding you won't hear any evidence,
14 it still would be highly improper for you to
15 begin your deliberations, collectively or
16 individually. Also, it would be improper for
17 you to change your open mind. Remember I said
18 that's one of the critical characteristics of a
19 good juror; that is, you haven't decided
20 anything. And, quite frankly, the reason for
21 it is the closing arguments are very important
22 and will be very helpful to you when you
23 analyze this case.

24 And then secondly, and probably
25 equally important, you took an oath to decide

1 this case consistent with the evidence and the
2 law. Part of the law is the last instruction
3 that I'll give you is when you may start
4 deliberating. So if you start before I give
5 you that instruction to tell you to start, then
6 you have violated the law as it pertains to
7 deciding this case. So don't do that.

8 Have a good evening. Again, if
9 someone is at home, tell them you'll be
10 finished tomorrow, I'm sure, and you can talk
11 about it tomorrow night if you want to. But
12 talk about something else, and I look forward
13 to seeing you at 1:30. Have a good evening.
14 Don't call the number, because that message
15 will not apply to you.

16 (JURY OUT @ 4:05 P.M.)

17 THE COURT: Anything from the State
18 in this case further?

19 MR. VOIGHT: No, Your Honor.

20 THE COURT: Anything from the
21 defendant in this case?

22 MS. TAYLOR: No, sir.

23 THE COURT: I'll hear from you on
24 your Motions now. Mr. Nixon, I assume you
25 renew your Motions and arguments previously

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1 given?

2 MR. NIXON: Yes, Your Honor, I
3 would.

4 THE COURT: And the rulings
5 previously given would stand, and therefore you
6 have protected the record and your Motions are
7 duly made, noted and denied.

8 Let me just tell you in requests to
9 charge, I'll be happy to entertain any that
10 you want to give me. You can give them to me
11 as late as tomorrow. But I don't think this
12 case is one -- I will certainly charge about
13 the confession, as I mentioned, and that they
14 have to ultimately conclude that it was his
15 confession and that is was freely and
16 voluntarily given, and those factors that we've
17 talked about for years, that they have to
18 consider days and situations, basically all
19 those things that you just stated in your
20 argument.

21 I don't think there's any evidence --
22 we were talking -- I was thinking before I
23 heard anything about the statement, that there
24 was some something that was intended that was
25 statement of how she died. But given the

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1 statement and given the circumstances, it's
2 either murder or not. Either he did it or he
3 didn't. So I don't think there's any lesser-
4 included offense.

5 I'm not going to -- you're not going
6 to argue that pajamas are a deadly weapon, I
7 hope. I'm not going to give that as an
8 inference of malice. I don't think that would
9 warrant it in this case.

10 I think the nature of the crime,
11 obviously, would give rise to the malice, the
12 maliciousness standard, and the statement, if
13 they believe it. So I don't think that would
14 be proper, to charge any inference.

15 So other than that, I don't know of
16 any other issues that have to be addressed.

17 MR. VOIGHT: Does your standard
18 charge include a sympathy charge, that the jury
19 shall not be swayed ---

20 THE COURT: I talk about that. Kind
21 of my ending statement, my closing argument,
22 that "You don't have any friends to reward or
23 enemies to punish. Your decision can't be
24 motivated by any human emotion at all."

25 MR. VOIGHT: As long as you cover

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1 that, Judge.

2 THE COURT: I cover that at the
3 conclusion and tell them that it has to be --
4 you have a duty to set aside all human emotions
5 and sit back and objectively review the
6 evidence and decide what you believe to be the
7 truth and then take that as well without any
8 human emotion, apply the law and reach a
9 decision. That's basically what I tell them.
10 So hopefully that will address that. Anything
11 else from the State?

12 MR. VOIGHT: Nothing else from the
13 State, Your Honor.

14 THE COURT: Ms. Taylor?

15 MS. TAYLOR: Your Honor, if it would
16 be possible and not too inconvenient, could we
17 have a copy of the voluntariness charge and
18 reasonable doubt?

19 THE COURT: My reasonable doubt --
20 you can read it -- you can go online and read
21 it. It's the one basically there. It's
22 basically the one that I think Judge Cottingham
23 was affirmed by using it. I don't remember the
24 case name, I just remember I think he was the
25 trial judge. But it's a -- I don't use a doubt

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1 for which you can give a reason. I don't use
2 that part. I use -- I've already told them
3 part, hesitate to act -- basically, I use the
4 one, and there was some discussion and argument
5 about whether or not that shifted the burden.
6 I think that case said it didn't. But it says
7 that if you're firmly convinced that he's
8 guilty, then you return a verdict of guilty.
9 But if you think there's a reason that he's not
10 -- I'll tell you specifically, if you want to
11 know. If you give me your e-mail, I'll be
12 happy to forward it to you.

13 MS. TAYLOR: That would be wonderful.
14 I'll write it down for you.

15 THE COURT: How about both of you do
16 it, and I'll send it to you.

17 MS. TAYLOR: Thank you.

18 THE COURT: But basically, it's
19 online. You can get it there.

20 MS. TAYLOR: I didn't realize in
21 State Court that we had them online.

22 THE COURT: I think the Bar has it
23 online now. We wanted to try to give you
24 access to basically our charge books. Because
25 we have a charge book. Judge Floyd and Judge

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1 Clary did the criminal ones. And Judge Brogden
2 and I did the civil one. Our name was attached
3 to it, but it was really the Supreme Court law
4 clerks that did it. I give them the credit.

5 MS. TAYLOR: Here's the addresses.

6 THE COURT: We didn't do anything,
7 but before the green -- everybody going green,
8 we were green. Because the notebooks that we
9 used to give the new judges were like three of
10 them, and they sat about like that (indicating
11 approximately fourteen inches tall). After we
12 condensed it, we gave them one about like that.
13 So we're saving trees. Thank you very much.

14 MS. TAYLOR: Thank you, Judge. And
15 you want us at 1:30?

16 THE COURT: Yeah, 1:15 will be good.

17 MS. TAYLOR: Thank you very much.

18 (COURT IN RECESS)

19 (TRANSCRIPT CONTINUED NEXT PAGE)

20

21

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23

24

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1:30 P.m.

2

3

(DEFENDANT PRESENT)

4

5

6

7

THE COURT: Good morning, please let
the record reflect that the Defendant is
present. We are ready to continue. The
defendant is ready to proceed?

8

MS. TAYLOR: Yes, Your Honor.

9

10

THE COURT: The State's ready to
proceed?

11

MR. VOIGHT: Yes, Your Honor.

12

13

THE COURT: Thank you all. You all
received a copy of the charge?

14

MS. TAYLOR: We did, Your Honor.

15

16

17

THE COURT: And, Mr. Nixon, I had
trouble from the vast mailing that went out,
and I didn't include you Mr. Nixon.

18

19

MR. NIXON: That's alright. I got
it.

20

21

22

23

THE COURT: Let the record reflect
that Mr. Smith is present and we are ready to
continue. Would you ask the jury to please
join us. Thank you.

24

(JURY IN @ 1:45 P.M.)

25

THE COURT: Thank you very much,

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1 Ladies and Gentlemen. Good afternoon to you.
2 I hope you had a good morning. Thank you for
3 allowing us to resolve those matters that were
4 unrelated to this, and I appreciate your
5 patience with the Court.

6 We are now ready to resume the matter
7 that we recessed yesterday afternoon. And if
8 you recall, we had completed the evidentiary
9 portion of this proceeding. There still
10 remains, of course, the closing arguments, and
11 then following the closing arguments I will
12 give the instruction on the law. Both of these
13 part of this dispute resolution are very
14 important to the process. Certainly I know you
15 will give us your attention.

16 But I would remind you that while
17 extremely important and very helpful, they're
18 not evidence in any way. The evidence that you
19 will analyze very shortly, when you begin your
20 deliberations in this case, and that came
21 through the testimony of the witnesses.

22 I thank you for your attention
23 throughout the trial to this point and ask you
24 now to give that same attention to the
25 attorneys.

1 MR. VOIGHT: Thank you, Judge.
2 We're about to enter in to probably the least
3 important part of the trial. That's what I
4 say, where I sum things up. You've already
5 been through the most important part, and you
6 paid very close attention and I thank you for
7 that.

8 The next most important part is the
9 law. And it is that combination of what you
10 heard as evidence and the law, that's going to
11 get us to the result. That will be justice.

12 Lawyers like to think that they're
13 very important and like to think that we can
14 sway you, but this isn't about us and it's not
15 about what we say. It's about the evidence
16 that you heard from the witness stand. It's
17 about the evidence that you saw or will be able
18 to see. It's about what happened, not what
19 was talked about that may have happened -- what
20 actually happened.

21 At the very beginning Ms. Taylor told
22 you this was a mystery, and throughout the
23 questioning of witnesses you've heard reference
24 to TV shows. This is neither a mystery nor a
25 TV shows. Hercule Poirot will not exercise his

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1 gray matter to solve this. Sherlock Holmes
2 will not deduce from the way that someone
3 drinks their tear that he is the murderer.

4 This is quite different. It is not a
5 fictionalized account of the end of this
6 woman's life. Of the hundreds, perhaps,
7 pictures that were taken, there are some here
8 that have been entered into evidence. These
9 are the most graphic displays that I can give
10 you of this woman's life.

11 You've heard evidence in the form of
12 testimony from Dr. Presnell about physically
13 what happens to an individual when they are
14 extinguished by strangulation. Bones are
15 broken that you didn't even know you have in
16 your neck. Arteries and veins are collapsed.
17 Blood rushes into your head. The force of that
18 blood actually pops blood vessels on your face,
19 your face turns purple. Your brain does not
20 stop working, but you die. It is not painless.
21 It is not pretty.

22 It's not the telltale signs of
23 poisoning that tastes distinctly like almonds
24 and is in the almond cookies. It's nothing
25 like that. It's brutal. This happened during

1 a very short period of time in an apartment on
2 Sumner Avenue in North Charleston. A woman's
3 life was extinguished forever, a woman you
4 don't get to know. We know very little about
5 the details and last days of her life. We
6 don't know anything about her. We don't know
7 the good. We don't know the bad. Because it's
8 not about her, it's about the acts that
9 occurred to her and who did it.

10 You've heard testimony from the police
11 officers about how they solved this murder.
12 And, really, the solving of this murder didn't
13 take forty-eight hours, like on the TV show.
14 It wasn't solved by a guy who takes his glasses
15 off every time he sits down, or something
16 dramatic like that on C.S.I. It was solved by
17 physical evidence left at the scene, by taking
18 to people who left that evidence at the scene
19 and not taking the first story that was
20 offered.

21 Human beings lie, they deceive, they
22 shade, they do not own up to things that they
23 do. Sometimes the only time that they do that
24 is when they're confronted by evidence, the
25 evidence that was left by the person who

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1 murdered Cheryl Snow.

2 The first bit of evidence -- the
3 fingerprints. This is really almost a kind of
4 cone of importance of relevance. Fingerprints
5 are just the widest bit of evidence. All we
6 know is that Oran Smith was there. That's all
7 that we know from the fingerprints, and we're
8 not trying to make it seem more important than
9 it is. Fingerprints at the scene. They're
10 evidence, fingerprint evidence has been around
11 for over a hundred years, we know each one is
12 distinct.

13 We know Oran was there. But we also
14 know two other individuals were there as well.
15 Mr. McKelvey and Mr. Geddis, their finger-
16 prints, as well as Cheryl Snow's fingerprints
17 appear throughout the apartment.

18 So what do we do with that informa-
19 tion? They went and talked to all of them.
20 They went and checked out all of their stories.

21 And you've got Oran Smith's first
22 statement. You'll read it -- if you like, and
23 I encourage you to. This is evidence in the
24 case, I want you to take it with you. Does his
25 statement admit that he was there? He admits a

1 relationship with Ms. Snow. But he didn't tell
2 everything, and that's human nature. That's
3 not unexpected. But let's look at what we have
4 on June 5th. They know he's there. He admits
5 he's there, and he tells them the story about
6 going and leaving and when he left and what he
7 saw and what he did. And they really don't
8 have anything behind that. That's all they
9 have.

10 They've sent the ligature, the pajama
11 bottoms, to SLED in Columbia. It takes weeks
12 for that kind of analysis to be done. That's
13 the next piece of the puzzle.

14 Both detective testified that they
15 thought that the SLED results indicated that
16 Oran Smith's DNA was on the ligature. And
17 that's true as to the semen stains. That's
18 true as to 2.5, the large sample there in the
19 bag. Okay?

20 DNA evidence is a little bit less
21 clear when it comes to the epithelial cells.
22 And we heard testimony from Janet Bryson and
23 testimony from Scott Wyant about how they try
24 to, in an imperfect way -- there's no
25 scientific way of figuring out where someone's

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1 grabbing a ligature -- to try to see where it
2 was twisted, where it was pulled, where the
3 most likely place for the murderer's hands
4 would have been and that's where Jan took her
5 cut.

6 We'll send those (charts) back with
7 you if you want to get that detailed. But
8 you'll be able to see where 2.5 and 2.4 were
9 cut out. And I'll try to do my best without
10 belaboring the point, but the pajamas here in
11 this bag have that. And Jan's testified those
12 were her markings. She wrote in ink where
13 those cuttings were taken.

14 2.4 was where she thought the best --
15 the most likely candidate for epithelial cells
16 would have been. And she also testified that
17 she took swabs, which were cotton with a
18 solution, where she had wiped certain areas,
19 2.1, 2.2, 2.3. You can see the swabs left
20 blanks, the swabs couldn't really accomplish
21 the purpose of finding out who the offender
22 was. There's a couple, and she made it very
23 clear that what little is there is Cheryl
24 Snow's DNA.

25 For this particular column Cheryl's

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1 has 9.3 and 7, and the swabs seem to indicate
2 that as well. So what little trace of DNA is
3 on the swabs from the pant's leg would
4 translate to being from Cheryl Snow.

5 But 2.4.1 and 2.4.2 are slightly
6 different. There are places here where Cheryl
7 and Oran have the same DNA matches. I'm
8 surprised they wouldn't have showed up there as
9 well. And that's a part of what Ms. Gallman
10 told you, was the difficulty in teasing out --
11 because they match in so many places -- we have
12 a twelve here and we have a thirteen here
13 (indicating on chart) -- that she could not
14 conclusively say that the alleles that were in
15 these two samples were Oran's. That she
16 couldn't exclude him like she could Leonard
17 Geddis.

18 Leonard Geddis -- I know you've heard
19 his name mentioned, but there was not much more
20 about him. One thing we do know. He's not on
21 the ligature. All right? Leonard Geddis is
22 not her murderer. (Indicating): 15, 16, 34.4,
23 32.2, 32, 14 and 14, 11, 11, 11, 22, 17.
24 Cheryl Snow does not have those in that column.

25 But, lo and behold, in both places we

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1 have a 17 and 24. Sixteen (16) and 17 -- we
2 have 17. We have a 16 and a 17.

3 Cheryl Snow does not have a nine, yet
4 in this sample there are nines.

5 Cheryl Snow does not have this 13, yet
6 in both these samples there are thirteens.

7 Cheryl Snow does not have an 11.

8 Here it is (indicating column for Oran
9 Smith).

10 She doesn't have a 12. Here it is.

11 Where does this 22 come from? Cheryl
12 Snow doesn't have a 22.

13 We'll give you this evidence when you
14 go back to your jury room.

15 That gave them a reason to go back and
16 talk to him. That's good police work. They
17 didn't go back with a search warrant in hand.
18 They weren't going to browbeat him, and they
19 certainly didn't. They confronted him with the
20 unpleasant truth about what he left behind at
21 the murder scene. They confronted him. They
22 didn't take the first story that they heard.
23 They probed farther. They just didn't let
24 somebody blow smoke at them.

25 You have to consider the evidence of

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1 the confession that I gave you. I have to
2 prove a lot of things to each of you. I have
3 to prove the elements of the crime. What I
4 also have to prove -- and the judge is going
5 to tell you -- that I have to prove to you that
6 when Oran Smith said "I snapped," that that was
7 voluntary. It wasn't because they bribed him
8 or because they coerced him. It wasn't because
9 of some undue influence that they used on him
10 that those words were spoken. I have to prove
11 that to you. The only way I can do that is
12 through the testimony of the two officers who
13 were there.

14 You got to hear from Detective
15 Patrick. You got to hear from Detective
16 Elmore. You get to weigh their credibility
17 about the confession.

18 There was some talk in cross
19 examination about how people can go from being
20 emotional and teary to being able to talk about
21 a TV show fifteen minutes later. You don't
22 check your common sense at the door when you
23 come in. I believe you've all had experiences
24 where something emotional has happened and yet
25 when the clouds have cleared where you can have

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1 a conversation about something trivial -- the
2 weather, the garden.

3 Oran Smith carried in his mind the
4 burden of knowing that he had killed Cheryl
5 Snow. And on the 18th of July, he had to chat
6 with people who he didn't necessarily know,
7 necessarily like or necessarily trust, people
8 whose interests were perhaps not completely in
9 alignment with his. That's their job. Their
10 job is to figure out how to get Oran off his
11 story, if it's not the truth. I think by the
12 time they get this DNA evidence, they now know
13 that Oran's lying, at least about the extent of
14 what happened. So Oran has that moment where
15 he is able to clear the air and tell the truth.

16 Now, it doesn't mean that we don't
17 have to go through this. It doesn't mean he
18 doesn't get a day in court. He does. He is
19 here. He has capable counsel. She gets to
20 address you when I am done and if I have any
21 mistakes in what I've told you or if she
22 doesn't agree with what I've told you that she
23 will tell you what I've missed.

24 But Oran Smith sat in a room with two
25 police officers and ultimately got that burden

1 off of his chest. One thing I do want you to
2 think about, and I kind of harp on that what I
3 say isn't evidence, that what Ms. Taylor says
4 isn't evidence, and you've heard it twice now
5 and you'll probably hear it one more time. But
6 you really need to think about what you heard
7 from the witnesses, from Detective Patrick,
8 from Detective Elmore, and what you didn't hear
9 from the witness stand is the opposing
10 question. Remember, I've been doing this a
11 long time, and I can make a fact into a
12 question. But remember, it comes from me.
13 It doesn't come from the evidence. It's not
14 evidence.

15 For example, do we know that Oran
16 Smith was in special ed? No, we don't. You
17 don't and I don't. Because the only person
18 to mention that was Ms. Taylor, and you can't
19 consider what she says as testimony. So think
20 back on other testimony that you heard and the
21 notes you may have taken, impressions you may
22 have of Ms. Snow or Oran Smith and take away
23 everything the lawyers put in there. It
24 clutters it. It's noise. It's not evidence.
25 All right?

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1 Now, when you're thinking about the
2 voluntariness of the statement, the Court is
3 going to instruct you that there's law about
4 that. You have to consider what kind of person
5 he is, what kind of education he may have had,
6 what kind of -- the law is very clear you do
7 get to consider that. But when you're
8 considering that, remember you're not
9 considering what I say or what Ms. Taylor said,
10 just what the witnesses may have told you.

11 He understood the questions. He
12 responded appropriately. There was no lag
13 time. In other words, he didn't do things
14 slowly. He understood everything. He joked
15 where it was appropriate, got teary where it
16 was appropriate, understood his rights, under-
17 stood the gravity of the situation and the
18 penalties of that, and ultimately told the
19 police officers what he had done. And that's
20 evidence and that's what you heard from the
21 witness stand.

22 The judge will also tell you at the
23 very end -- it will be one of the last things
24 he will say -- not that I have a special window
25 into the law, but I've been provided the law

1 and I've tried a number of cases with him.
2 But he will tell you that you don't have any
3 enemies to punish or friends to reward. And
4 that's a way of saying, I believe, that the
5 emotions that a case like this may bring
6 forward in you, as a juror, that those emotions
7 must be kept in check. This is a vicious,
8 cruel crime. Punishment is not what you ought
9 to think about. You're concerned about did I
10 prove that Mr. Smith did it. Okay?

11 Friends to reward. As Ms. Taylor has
12 been an effective advocate for her client, you
13 should as a human being naturally show natural
14 sympathy for her client. You should feel
15 sympathy for this family who has stood by him
16 as anybody should. That's completely natural.
17 You should have that same sympathy for Cheryl
18 Snow and for her family, as a result of what
19 you've heard in this case. But that sympathy
20 has no place in your ultimate decision. How
21 bad this makes you feel as a human being -- and
22 it should make you feel real bad -- it has no
23 place.

24 In a way this is a cold, analytical
25 process, or we ask it to be. We ask you to be

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1 cold and analytical.

2 The law requires that I prove malice.

3 It requires that I prove a killing of another

4 with malice aforethought. Malice can either

5 be express or implied. Malice is an evil

6 heart, ill will. It is an old-fashioned-

7 sounding word, but it's very real in society

8 and relevant to the things we encounter in this

9 case.

10 Express malice is actually somewhat

11 rare, at least rare in cases that I've

12 encountered. I can't give you a really good

13 example of it except 'I'm going to kill you',

14 and then I do kill you. But it didn't happen

15 that way.

16 So the malice that I'm asking you to

17 consider is the implied type, implied from the

18 actions and the circumstances. For reason that

19 I don't know and I cannot discern, Oran Smith

20 sat on the bed of a woman who he was friends

21 with, who he had had sex with in the week past.

22 And for reasons that I don't know and I cannot

23 discern, put his arm around that woman's neck

24 and choked her until was unconscious. Think

25 about physically how that has to be done, the

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1 power that that requires. Now, she's
2 unconscious, she's on the floor and her arms
3 are flat -- at least that's what he said.
4 She's moving and he realizes 'I have to finish
5 her or she's going to tell and I'm going to get
6 in trouble.' This is where my malice comes
7 from.

8 This is my malice, in this bag.
9 Pajama bottoms. This isn't a murder mystery
10 where there's piano wire and so forth and so
11 on, or a spy thriller or something like that.
12 This is a woman's pajama bottoms that tied so
13 tightly around her neck that blood cannot flow
14 to and from her brain and she dies. A very
15 simple overhand knot pulled as tightly as
16 humanly possible to kill her. It's not an
17 accident. It's not a mistake. It's very much
18 malice. So tight that they had to cut it off.
19 So tight that the skin on her neck is so
20 deprived of blood it is blanched. That is the
21 evidence that you heard.

22 In a way, this trial has given you a
23 sanitized version of what the end of a human
24 being's life can be when they are strangled.
25 It was not sanitary. It was not clean. It was

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1 not efficient. It was not pretty. It was
2 vicious. It was ugly. Oran Smith murdered
3 Cheryl Snow. Thank you very much.

4 THE COURT: Ms. Taylor.

5 MS. TAYLOR: May it please Your
6 Honor?

7 THE COURT: Yes.

8 MS. TAYLOR: Good afternoon. I'll
9 try to keep this as brief as I can because
10 you'all have been here with us now for three
11 days. Personally, I just want to thank you for
12 being here and being shut up with us. I
13 appreciate that, the Court appreciates that.
14 I'm sure the Solicitor does, too. And, most
15 importantly, Oran Smith and his parents and
16 other family friends that are here, over here,
17 appreciate that. But it is a sacrifice.
18 You've had to put aside your life, your work,
19 your families and make adjustments in order to
20 be here with us here now for three days.

21 Your focus is, ultimately -- and I
22 won't spend a lot of time talking about the
23 law. The judge is in charge of that area, and
24 he's much more capable of telling you what the
25 law is and how you are to apply it. I'm going

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1 to leave that up to him.

2 I'm going to ask you to consider the
3 evidence and it is absolutely correct that the
4 evidence comes from that witness chair. One
5 thing I want to tell you is that something that
6 can play into your deliberations is the lack of
7 evidence as well.

8 So what do we know in this case?

9 We know that in early June of 2007,
10 Cheryl Smith was killed. No question about
11 that. None at all. No one suggests that it in
12 any way that this was an accident or some
13 mistake that resulted in her death. There's no
14 dispute about that at all.

15 We know some things about Ms. Snow.
16 We know that she was a person who was liked.
17 She lived in a bad neighborhood, in a complex
18 with which the police were familiar that housed
19 folks in transition of some sort, suffering
20 from mental illness, substance abuse and things
21 of that sort.

22 Does any of that mean that her life
23 carried no value? Absolutely not. There is
24 no question and no disagreement at all that
25 whatever she chose to live her life or the way

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1 that she lived it, for whatever reason, she did
2 not deserve what happened to her in her
3 apartment that night, day, evening, whatever it
4 was.

5 But what it does mean is there were
6 people in her life and in that apartment, many
7 more than simply Oran Smith.

8 So look at what evidence we have, the
9 actual evidence. We know that when the police
10 got there, there was some issue about the door.
11 We know that one of her neighbors tried to get
12 her at her apartment and couldn't get her,
13 contacted another neighbor. That neighbor went
14 to the apartment and apparently went into the
15 apartment. We don't know the details of that,
16 the condition in which they found the door or
17 what they found if they did, in fact, go into
18 the apartment. We didn't hear from them. They
19 weren't here.

20 We know that Detective or Officer
21 Hille was the first law enforcement agent on
22 the scene. And he wasn't abundantly clear
23 about what he found. He wasn't sure about the
24 door or the condition of it, or if it was
25 locked. It was open, he said, at least a

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1 little, because he just pushed it and it
2 opened.

3 You'll remember perhaps that I talked
4 to every police officer who was there about the
5 door and the condition it was it, about was it
6 locked, was it open, unlocked? Were there pry
7 marks? Detective Patrick who was the lead
8 agent on the case -- he admitted that, yes, at
9 one point in his notes he had written pry mark
10 on door. But that he then went on to say that
11 they told him about that, and he thinks that
12 when he went back and checked that they were
13 some old pry marks that had been painted over,
14 from a long time ago.

15 One unequivocal piece of evidence that
16 we have in this case, completely objective
17 evidence, is that crime scene video. That's
18 the beauty that technology can bring to these
19 kinds of processes. That video -- and you will
20 be free to look at it again, if you need to,
21 but you saw it already. You look at that door.
22 I could be wrong. I looked at it a few times
23 myself. But it appeared to me not only just
24 pry marks, but what looks like a crowbar
25 indentation in the door, very clearly to the

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1 right and the bottom. I don't see paint on it.
2 But, again, you all have the opportunity to
3 look at that and draw whatever conclusion from
4 it you want, or none at all. Because that,
5 ultimately, is both your duty and your job.
6 Again, what I feel is irrelevant. That is what
7 you were sworn to do and that's all we're
8 asking you all to do.

9 Once we get into the apartment we
10 heard from a series of forensics folks, most
11 of whom were long-term police officers, very
12 specifically dedicated to the things they do,
13 which is dust for prints, compare prints, look
14 at a scene and try to figure out what's
15 important and what's not important. And if
16 they think something's important then they take
17 it into custody and hold it and test it as they
18 need to as evidence. Some of that is here with
19 us today.

20 Now, we know there were at least, that
21 we know of, three men who were with Ms. Snow
22 that weekend. Oran Smith was one of them,
23 Leroy McKelvey was one, and Leonard Geddis was
24 one. The police talked to all three of them at
25 least one time. Oran they talked to twice.

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1 Leroy McKelvey admitted that he knew Ms.
2 Snow and that he was there. He also admitted I
3 think he was there at some point on Friday. He
4 also admitted that he had attempted to contact
5 her and see her again on Sunday. He had gone
6 to her apartment, had knocked on her apartment
7 door. She did not answer, and then he had
8 called her later.

9 And you will see when you read Oran's
10 statement in June, when he first met with the
11 police that he told the police about that, too.
12 He said something about the guy calling her and
13 'she asked me if I heard someone knocking on
14 the door, and I said no.' And then he then
15 says later on that she wanted me to leave, and
16 he thinks it was because she had another guy
17 coming over.

18 Leonard Geddis is a little bit more
19 complicated. He denied -- you heard Detective
20 Patrick and they cross examined him about did
21 he know Cheryl Snow? Were you with Cheryl
22 Snow? He said 'No, I don't even know her.'
23 Then Detective Patrick pulls out his cell phone
24 and shows him that Cheryl Snow's number's in
25 there. And then they tell him what all they

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1 know. If you weren't there, why are your
2 fingerprints on these objects found in her
3 home? Ultimately, he said, 'Okay, I was
4 there.'

5 Now, the other thing evidentiary-wise
6 that we keep in focus is this DNA. I'm not
7 going to spend a lot of time of that. Maybe
8 one of you'all is a biologist or a scientist or
9 has some better understanding of what they're
10 trying to prove with that than I do. I don't
11 understand much about it. Mr. Voight got up
12 and circled a series of numbers. I could get
13 up and circle another series of numbers and a
14 number of us could get up and circle some
15 numbers.

16 The only thing that I will remind you
17 about those numbers is that people share them.
18 We don't share our DNA, that's true. That's
19 why when it is correctly applied and protocols
20 of science are followed, it's fairly critical.
21 And that's why when a witness says 'I
22 conclusively can tell you that this belongs to
23 this person. This person was here because
24 their DNA is this number, some number in some
25 quadrillion of a number, we're not likely to

1 ever see it anywhere else.' That is what a DNA
2 match is.

3 When someone does that line of work
4 and they come into the courtroom and they show
5 the pictures or the numbers and they end up
6 saying 'it's not a match, we couldn't exclude
7 them', what can you say? You can't say it's
8 positive. Not excluding is not including, and
9 it's not a match. I don't care how they want
10 to dress it up and how many times they want to
11 say it wasn't. Words mean the same thing. I
12 asked both of the SLED folks if there were
13 different meanings to these common English
14 words, "minor", "major", "exclude", "match."
15 No. It means what you think it means.

16 So you do with as you wish the DNA
17 evidence. But I ask you to consider this, even
18 if you give any credence whatsoever to those
19 findings, what does it tell us? Now, they've
20 got their story. No question about it. Both
21 the SLED agents and the police officers who
22 drove this train -- and that was Detective
23 Patrick and Detective Elmore -- believe -- I
24 think they sincerely believe that they got
25 their guy when they had a conversation with the

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1 SLED folks and thought that they were told
2 there was a match, that they believed that that
3 meant that the only result from the murderer
4 using those pajamas in a certain way and
5 leaving a trace of himself, was 'Bingo, we got
6 out guy.' I think that they believe that.
7 There's only really two options here. They
8 believed it, or they simply went with it to use
9 it, which would mean that I don't have much
10 doubt about what's critical in the testimony.
11 But the officers -- and we've talked and the
12 judge will talk with you about bias and
13 prejudice.

14 And that's one of the common ways you
15 weigh things when you hear people tell you
16 something, and you believe whether it's
17 credible or reliable or not -- whether those
18 two detectives had any bias at all. And I just
19 ask you to consider this, what they do for a
20 living -- and it's a hard thing to do -- is
21 solve cases.

22 We weren't talking about a TV show
23 when I was asking Detective Patrick about
24 statistical law enforcement truths of when he
25 knows and times in which you have a likelihood

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1 of solving cases. He told you that. And it
2 wasn't a TV show when he talked about that
3 forty-eight hours. We're talking about again a
4 physical truth in law enforcement. If you have
5 a homicide and you don't have someone arrested
6 within forty-eight hours of that homicide, it's
7 not that it'll never be solved but the
8 likelihood diminishes every day thereafter
9 because the case gets colder.

10 More than four days after this
11 homicide they still had not made an arrest,
12 even if they wanted to. I know they wanted to.
13 They told you they wanted to.

14 They also both told you in sort of
15 different ways, but essentially the same thing,
16 that they knew all this information that this
17 DNA and Oran told them when he talked to them
18 in June, all of which did confirm, by the way,
19 what he told them. 'Yes, I was there. Yes, I
20 had a beer. Yes, I had sex.' All of which was
21 borne out by the beer can left on the shelf,
22 the cigarette pack left on the bed. He's not
23 trying to deny it.

24 Part of the interesting thing about
25 this case is that he tried to understand what

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1 happened. What they want you to believe is
2 that Oran Smith is so calculating, so clever
3 that he committed this homicide, or apparently,
4 if you believe that second statement, because
5 he was psychotic, because he heard voices that
6 told him to kill Cheryl Snow. But that he was
7 then clever enough and sane enough to turn up
8 the thermostat to hide the time of death, to
9 rip a phone out of the wall so that -- I don't
10 know why -- if there was trouble beforehand or
11 if someone came in it would delay, who knows?
12 But the phone is on the video, and you can look
13 at it. But he didn't think to hide the
14 evidence that he was there? He didn't try to
15 hide when the police came to talk to him
16 either.

17 These are the facts upon which they
18 base their case. The only critical piece of
19 evidence that is in any way potentially
20 remotely probative of Oran having killed Cheryl
21 Snow is that second statement that they call a
22 confession. And we're going to talk about that
23 because we have -- and I'm sure every single
24 one of you have heard about the Fifth
25 Amendment. It's very important in this

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1 country. A lot of places don't have it. And
2 it says you don't have to incriminate yourself.
3 You don't have to tell the police everything.
4 You don't have to talk at all. And that's on
5 that form that you'll see which was signed by
6 Oran before -- each time he went into the
7 interview room with these officers.

8 He didn't exercise any of those
9 rights. He talked. He went. He sat. He was
10 there. And they told you, the officers who
11 were there the second time told you that it
12 wasn't immediate. They're a little unclear on
13 exactly how much time it lasted. It wasn't
14 like they went in and sat down, read him his
15 *Miranda* rights and he told this moment of
16 confession, as Mr. Voight wants you to believe.
17 They said they talked to him a good bit.

18 And I also want you to remember
19 something, jumping back just a bit, about the
20 first statement. Now, we only heard Detective
21 Elmore's version. Detective Hille, who was the
22 second officer there wasn't here. But
23 Detective Elmore and he said that they were in
24 there talking to him for a while. I asked him,
25 'Do you remember talking to him, saying what he

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1 told you what he'd done, accounted for that he
2 had been there and all that he did.' Do you
3 remember him looking at him and saying if we
4 get Cheryl on the phone right now is she going
5 to tell us the same thing? Do you remember
6 what Oran did? He looked right back at him and
7 said, 'Yes. Probably.' He didn't know Cheryl
8 Snow was dead on June the 5th or 6th, which date
9 is right on the statement. He told them what
10 he knew and what he had done.

11 And forty-four days later, when they
12 came back with no other leads and no other path
13 to follow, he then went with them voluntarily.
14 He again sat in this room, a room slightly
15 larger than that little area, in a corner with
16 those two detectives between him and the door
17 until he signed a confession.

18 Now, I wish that we had the technology
19 that they could have used, but chose not to, to
20 show us what really happened in that room.
21 Because then we wouldn't be having this
22 argument or this discussion or this dispute
23 that needs resolving. Because we would know.
24 We would all know what happened, and how that
25 piece of paper came to be. But we don't.

1 What we have is Detective Patrick who
2 told us one series of events, and Detective
3 Elmore who told us one series of events.
4 Believable or not? That confession, as they
5 call it, is critical to their case. And they
6 both told you that. They admitted that when
7 they went back to Oran's house on July 18th,
8 they knew they did not have a case unless they
9 got a confession -- it was what they wanted,
10 what they needed and what they got. Whether
11 it's accurate and truthful, that's the only
12 call.

13 There's a lot that was Mr. Voight said
14 that I don't agree with. But there's one thing
15 that he said that I do agree with. We are all
16 here, all of you, all of them, all of us and
17 Judge Dennis for one reason, and that's
18 justice. It's not the same for the different
19 parties, necessarily. But that's what we want.
20 And the only thing that I ask you to remember
21 when you look at this evidence -- and I hope
22 you do. I hope you weigh it very carefully --
23 is that justice is only justice if it's right.
24 Thank you.

25 THE COURT: Thank you, Ms. Taylor.

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1 Ladies and Gentlemen, if I could have your
2 attention, it now becomes my responsibility as
3 the trial judge to give you the law which you,
4 of course, have committed by your oath to
5 accept and apply fairly and impartially to the
6 facts as you will ultimately determine very
7 shortly when you commence your deliberations.

8 Both the State and Mr. Smith expect
9 that you will have to be and are instructed to
10 commence your deliberations, evaluate the
11 evidence, decide by your common sense, your
12 sense of logic and reason, fairly and
13 impartially decide what you believe to be the
14 true facts, and once deciding that, take this
15 law and apply it fairly and impartially and
16 resolve this dispute. When you've done that
17 you will have honored the commitment that you
18 made, and both the State and Mr. Smith will
19 have obtained a fair and impartial determina-
20 tion in this proceeding.

21 During this instruction, Ladies and
22 Gentlemen, you may hear me use from time to
23 time -- and you've heard it during the trial --
24 me refer to Mr. Smith or his side as defendant
25 or defense. "Defendant" is simply a term that

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1 we use in these types of proceedings to
2 identify the party against whom a claim is
3 made. That's the sole significance of the
4 term. It means nothing else. It's just a
5 means of identifying Mr. Smith. So if you
6 hear that term, please understand I'm just --
7 it's just another way of referring to him.

8 As I mentioned to you when we started
9 this process, he has been accused by this
10 document that I hold in my hand that's called
11 an indictment. It will not accompany you to
12 your jury room, because it is not evidence.
13 It merely contains the accusations rendered
14 against him by the State. And to that
15 indictment Mr. Smith has entered a plea of not
16 guilty, which then places upon the State a
17 burden of proofing his guilt beyond a
18 reasonable doubt.

19 As I stated when we were qualifying
20 you, persons, such as Mr. Smith, who are
21 accused of committing criminal offenses in this
22 state and, as far as I know, every person so
23 accused in this country, is presumed innocent.
24 And that's an active presumption. It's not
25 just a statement. It means that you, as the

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1 judge of the facts, have to actively presume
2 that he is innocent of these charges.

3 That presumption of innocence can only
4 be removed when you, after analyzing the
5 evidence, are convinced that the State has
6 established each element of the crime charged.
7 And then, and only then, may it be removed.

8 If, at the end, you're not firmly convinced
9 of that position, then you must -- the
10 presumption of innocence, as I stated, would
11 carry the day and you must return a verdict of
12 not guilty, solely on that presumption and
13 nothing else.

14 Because persons accused of committing
15 criminal offenses have no responsibility to
16 prove or disprove anything. They don't have to
17 explain anything. They don't have to justify
18 anything, and they certainly do not have to
19 prove their innocence. The law says the State
20 makes the charge, and the State has to prove a
21 person's guilty beyond a reasonable doubt. So
22 it would be quite obvious, Ladies and
23 Gentlemen, that persons accused of committing
24 criminal offenses don't have to prove anything,
25 and the law further states they don't have to

1 say anything. They have the absolute right not
2 to say anything. And the assertion of that
3 Constitutional right can never be used by a
4 jury empaneled to decide a case, use it in any
5 way to assist in resolving the case.

6 So following that, Ladies and
7 Gentlemen, the fact that Mr. Smith has asserted
8 his Constitutional right to remain silent and
9 has not testified, cannot and must not be
10 considered by you in any fashion. If you do,
11 if it's even discussed in the jury room, you
12 will have violated the commitment that you made
13 and violated your oath in this matter.

14 No, the burden, as I stated, rests
15 solely on the State, and you will look to the
16 State. And the State has the burden of proving
17 his guilt beyond a reasonable doubt. What is a
18 reasonable doubt? A reasonable doubt is a
19 doubt that would made an honest, sincere,
20 conscientious juror who is searching for the
21 truth in a case, to hesitate to act. Truth
22 beyond a reasonable doubt is proof that leaves
23 you firmly convinced of the defendant's guilt.

24 Now, there are very few things in this
25 life and this world that we know with absolute

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1 certainty. And in criminal disputes such as
2 this, our law does not require proof that
3 overcomes every possible doubt.

4 If, based on your consideration of the
5 evidence, you are firmly convinced that the
6 defendant is guilty of the crime charged, then
7 you must return a verdict of guilty.

8 If, on the other hand, you think that
9 there is a real possibility that he's not
10 guilty, then you must give him the benefit of
11 that doubt and return a verdict of not guilty.

12 A reasonable doubt, Ladies and
13 Gentlemen, may arise from the evidence which is
14 in the case or from the lack or absence of
15 evidence in the case. And I charge you, Ladies
16 and Gentlemen, that Mr. Smith is entitled to
17 every reasonable doubt arising in the whole
18 case. By this I mean simply if, upon any issue
19 of fact which essential for you to return a
20 verdict of guilty, that is, a conviction, you
21 should have a reasonable doubt as to how that
22 issue should be resolved, I charge you that it
23 is your duty to resolve it in favor of Mr.
24 Smith.

25 Now, the evidence that you must

1 consider and are to consider consists solely of
2 the testimony of the witnesses and the exhibits
3 that were introduced through their testimony,
4 nothing else. My statements, my charge on the
5 law, my rulings on objections that were heard
6 or made in your presence should not be
7 considered by you in any fashion whatsoever.
8 The statements and arguments of the attorneys
9 are not evidence.

10 In fact, I would instruct you, Ladies
11 and Gentlemen, if, in your deliberations, you
12 have a collective recollection that differs
13 from a statement made by one of the attorneys
14 in either the opening statement or closing
15 argument, you must disregard that statement.
16 Because you, and you alone, are the sole judges
17 of the facts in this case.

18 Likewise, if a statement of the
19 attorneys, either in opening statements or
20 closing arguments, should differ from any
21 aspect of the law or principle of law which I
22 have stated to you, either in my opening
23 remarks or now in this closing charge, you must
24 disregard the statement of the attorneys and
25 take my statements as the law. Because for

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1 purposes of this proceeding, I am the sole
2 judge of the law.

3 Now, evidence, Ladies and Gentlemen,
4 in these types of disputes are generally two
5 types, direct evidence and circumstantial
6 evidence. Quite honestly, it's not uncommon to
7 have both. Sometimes you have only one. But
8 either are used and quite often both are used.

9 Direct evidence is testimony of a
10 person who claims to have some actual knowledge
11 of a fact. And if you, after hearing that
12 testimony, are firmly convinced of the
13 truthfulness of that testimony, then that would
14 establish that particular fact. Generally, it
15 deals with one sensory perception. I saw
16 something. I heard something. I felt
17 something, and the like. That's what we talk
18 about when we speak of direct evidence.

19 Circumstantial evidence is proof of a
20 chain of facts and circumstances indicating the
21 existence of another fact or conclusion. It is
22 evidence which immediately establishes
23 collateral facts from which the main fact may
24 be inferred. Circumstantial evidence is based
25 on inference and not necessarily on personal

1 knowledge or observation.

2 Now, our law makes absolutely no
3 distinction between the weight or the value
4 to be given to either direct or circumstantial
5 evidence. Nor is a greater degree of certainty
6 required of circumstantial evidence than it is
7 of direct evidence. You're instructed to weigh
8 all of the evidence in this case and decide
9 what you find to be credible and believable.

10 I would instruct you, however,
11 concerning any conclusion that the mere fact
12 that the circumstances brought out in a case
13 are strongly suspicious of guilt, or that the
14 circumstances are such that the defendant's
15 guilt is probable, that that alone would not be
16 enough to sustain or establish a conviction.
17 Because the proof offered by the State has to
18 be more than suspicion. It has to be more than
19 somebody being probably guilty. It has to be
20 proof that satisfies you beyond a reasonable
21 doubt.

22 Now, how do you make these decisions?
23 As I stated to you when we qualified you, there
24 was no one more qualified than you are to
25 perform this task. And I reiterate that today.

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1 You have done this throughout your life. Most
2 of the time we do it really subconsciously.
3 We hear something and we process it. We decide
4 whether we believe it or not. Or you read
5 something and, again, you process it and you
6 either, 'applying my life's experience or my
7 knowledge, I don't think that's true.' Or
8 'I believe it pretty strongly.' And then it
9 becomes a matter of how strongly do you believe
10 it? But that's a process that we all go
11 through pretty quickly most of the time in our
12 lives.

13 You do the same thing when you analyze
14 evidence. And there are many, many factors and
15 many methods and techniques that we use to
16 assist us in making these types of decisions.
17 I want to discuss with you some of the factors
18 that you may want to consider. But I will
19 admit that the list is not all conclusive.
20 If I don't mention a method or a factor that
21 you've used in your life, and you've found it
22 to be of great assistance to you in making
23 those decisions, when you begin your
24 deliberations please use it and please employ
25 it. Because, again, it's applying your common

1 sense, your sense of logic and reason.

2 Some of the factors, though, that you may want
3 to consider would be the appearance of the
4 witness.

5 How did they appear to you,
6 straightforward or hesitant in answering
7 questions?

8 Was the testimony of a witness
9 consistent or was it inconsistent?

10 Was it strengthened or weakened by
11 other evidence in the case?

12 How did the witness come to know the
13 facts that he or she testified to, and what was
14 the ability of that witness to know those
15 particular facts and circumstances?

16 Is there a reason for a witness to
17 give testimony which may be of some benefit to
18 someone on one side, or maybe a detriment or
19 damaging testimony to one side or the other?

20 In other words, was a witness biased
21 or prejudiced in any fashion?

22 In making the decisions on what you
23 find to be credible and believable, the law
24 gives you very broad discretion, Ladies and
25 Gentlemen. You have the right to believe many

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1 witnesses against one, one witness against
2 many. You have the right to believe all of
3 a witness's testimony, parts of a witness's
4 testimony or none of a witness' testimony.
5 I would hasten to add while you have this
6 prerogative or right, you don't make this
7 decision arbitrarily. But if there's a reason
8 in the record of this case, that is the
9 evidence of this case, for taking that
10 position, you have that right. Because your
11 determination is to determine what you believe
12 to be the true facts in this dispute.

13 A statement, and part of the evidence
14 that you've heard, Ladies and Gentlemen, is a
15 statement which is alleged to have been made by
16 the defendant and has been admitted into
17 evidence in this case. While I have determined
18 that the statement is admissible, I instruct
19 you that you, and you alone, must make the
20 ultimate decision of whether or not the
21 defendant made the statement. If the defendant
22 did make the statement, you must further
23 determine whether the statement was made by the
24 defendant voluntarily and of his own free will.
25 This means that the statement was not caused by

1 pressure, force, fear, threats, coercion or
2 intimidation or by a promise of leniency or
3 reward of any kind. In determining whether the
4 statement was voluntary you should consider
5 both the characteristics of the defendant and
6 the details of the questioning.

7 Some of the facts that you must
8 consider are the age of the defendant, the
9 defendant's education or lack of education,
10 the defendant's mental ability or capacity,
11 the defendant's I.Q. or his intelligence, the
12 defendant's background and environment, the
13 place and the length of detention, the nature
14 of the questioning and the advice or lack
15 thereof to the defendant of his Constitutional
16 rights, including but not limited to, the right
17 to remain silent, and that any statement could
18 be used against him in a court of law, the
19 right to have a lawyer present, and that he
20 could not afford a lawyer, that a lawyer would
21 be appointed to represent him without any cost,
22 and that he could stop making a statement at
23 any time. You must carefully consider all of
24 the surrounding circumstances before you give
25 any weight to the alleged statement.

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1 The State, I would instruct you,
2 Ladies and Gentlemen, has the burden of proving
3 beyond a reasonable doubt that the alleged
4 statement was voluntary. If you determine it
5 was, then you may give the statement any
6 further consideration that you deem proper.
7 You must decide what weight, if any, should be
8 given to the alleged statement.

9 If you determine the alleged statement
10 was not the free and voluntary statement of the
11 defendant, then you should not consider the
12 statement at all.

13 Now, while you are given very wide
14 latitude in determining what you find to be
15 credible and believable, please remember that
16 you do not enjoy the same when it comes to the
17 law. That separation, the two judges working
18 together -- you are expected to and have
19 promised that you will take the law and apply
20 that law fairly and impartially to the facts,
21 notwithstanding your personal opinions of what
22 you think or thought the law was or should be,
23 and even if, during this instruction, you have
24 heard a principle of law with which you differ,
25 I certainly respect your right to feel that

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1 way, and certainly in this country you have
2 that right. But for purposes of this
3 proceeding, you have promised both the State,
4 Mr. Smith and this Court that you will set
5 aside those feelings and apply the law fairly
6 and impartially. And I'm confident that each
7 of you will do that.

8 Let's talk now for a few moments about
9 the charge contained in the indictment. As I
10 mentioned to you, Mr. Smith has been accused of
11 the offense of murder in that it alleges that
12 on or about June the 3rd, with malice
13 aforethought, he did kill and murder Cheryl
14 Snow by means of strangling her and that she
15 did die. Section 16-310 of our Code of Laws
16 defines murder as the killing of any person
17 with malice aforethought either expressed or
18 implied. The State must therefore prove beyond
19 a reasonable doubt that Mr. Smith killed Ms.
20 Snow with malice aforethought.

21 "Malice" is defined as hatred, ill
22 will or hostility towards another person. It
23 is the intentional doing of a wrongful act
24 without just cause or excuse and with an intent
25 to inflict an injury or under circumstances

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1 that the law would infer an evil intent.
2 Malice indicates a formed purpose and a design
3 to do a wrongful act under the circumstances
4 that exclude any legal right to do it.
5 Further, there must be malice aforethought,
6 which means that the malice
7 must have been conceived in the mind of the
8 defendant prior to the act producing the fatal
9 result.

10 The word "aforethought" is usually
11 understood to refer to the time when the evil
12 is conceived. The law does not require that
13 the malice must exist for any appreciable
14 length of time before the commission of the
15 act. It may be conceived at the very moment
16 that the action is taken which results in the
17 death of another.

18 Therefore, there must be a combination
19 of the previous evil intent and the act.
20 Malice aforethought may be expressed or
21 inferred.

22 These terms do not mean different
23 kinds of malice, but merely the manner in which
24 malice may be shown to exist. That is either
25 by direct evidence or by inference from the

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1 facts and circumstances which are proved.

2 Express malice is shown when a person
3 speaks words which express hatred or ill will
4 toward another, and when the person prepared
5 beforehand to do the act which was later
6 accomplished. Malice may be inferred from
7 conduct showing a full disregard for human
8 life.

9 If facts are proved beyond a reason-
10 able doubt sufficient to raise an inference of
11 malice to your satisfaction, this inference
12 would be simply an evidentiary fact to be taken
13 into consideration by you as a jury along with
14 all other evidence in the case, and you may
15 give it such weight as you find it should
16 receive. You, as the judges of the facts in
17 this case, are free to accept or reject events
18 of inference, depending on your view of the
19 facts.

20 If malice is present in the mind of
21 the one doing the killing any length of time
22 before the act, then its presence would be
23 sufficient to render the killing murder.

24 Criminal intent, Ladies and Gentlemen,
25 is also a necessary element of the crime of

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1 murder, and that must be likewise established
2 by the State beyond a reasonable doubt.
3 Criminal intent is always a matter that must be
4 determined by the judges of the fact, that is
5 you, the jury, from the circumstances surround
6 the situation. So the law states that criminal
7 intent may be inferred from the circumstances
8 shown to have existed.

9 The State is not required to prove
10 motive, although the presence or absence of
11 this evidence of motive may be considered in
12 making your determination in this case.

13 Criminal intent is a state of mind
14 that operates jointly with an act and the
15 commission of a crime. Intent includes that
16 consequences which represent the very purpose
17 for which an act is done or are known to be
18 substantially certain to result, regardless of
19 one's desire. Criminal intent is a mental
20 state of conscious wrongdoing.

21 So it's up to you to determine what
22 has been established by the evidence and what
23 the defendant intended to do, based on the
24 circumstances shown to have existed at the
25 time. And I would further reiterate that the

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1 State must prove that criminal intent beyond a
2 reasonable doubt.

3 Throughout this entire matter, Ladies
4 and Gentlemen, from the point that we started
5 the selection process until now and when you go
6 to your jury room to decide this case, you
7 aren't partisans or advocates for either side.
8 You don't have any friends in this process to
9 reward, nor do you have any enemies to punish.

10 You were selected because of your
11 answers to questions, because you went through
12 this process and they evaluated you and felt
13 that you would be a conscientious, fair and
14 impartial judge. Therefore, they selected you
15 to be a judge with me. We both made one major
16 commitment every time we become judges, I do
17 and you do. One thing about judging, there is
18 no place for human emotion. We're humans.

19 This morning I even made the statement (in
20 unrelated case) when I heard the facts that
21 they upset me. In fact, they angered me. But
22 I acknowledged that on the record, and I said I
23 have to acknowledge they exist and then say I
24 have to consciously set that aside, because
25 anger has no place in what I have to do.

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1 You, too, have to do that. You, too,
2 have made a promise that you will set aside all
3 human emotion and sit and apply your common
4 sense very shortly in that jury room, analyze
5 the evidence, decide what you believe to be the
6 truth. And once you make that decision you
7 take the law as I've given it to you and apply
8 that fairly and impartially to those facts.
9 And when you've done that, you've done exactly
10 what everyone expects and what everyone
11 anticipates when they come to have a dispute
12 resolved in a courtroom such as this. And you
13 have honored in every respect the oath that you
14 took. And I'm confident that each one of you
15 will do that.

16 Presiding Juror, to assist you in
17 reporting your verdict, I have prepared a
18 verdict form which I will be sending back with
19 the exhibits. I'd like to discuss that verdict
20 form now with you and the other jurors.

21 You will note, Ladies and Gentlemen,
22 the caption. That's just to facilitate the
23 filing of the document. It means nothing else
24 to you.

25 There are two choices. The order in

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1 which they appear means nothing, I had to put
2 them in some order in order to discuss the
3 choices with you. But it says "We, the jury,
4 by unanimous consent, find the defendant" --
5 the first choice is guilty of murder; second
6 choice, not guilty. You will note that there's
7 a line that precedes the choice. Whichever the
8 choice of you and the other jurors, I would ask
9 that you place a check on the line that
10 precedes it and circle that decision.

11 Once you've done that if you will sign
12 where it says "presiding juror (foreman)" you
13 will have completed the verdict form properly.

14 What does "unanimous consent" mean?
15 As you would expect, it means all of you must
16 agree. Twelve to zero has to be the vote.
17 Ten-to-two or eleven-to-one -- that won't work.
18 All of you must be in accord and agreement with
19 the verdict.

20 What will you be saying if your choice
21 is guilty of murder? You'll be saying in
22 analyzing the evidence you are firmly convinced
23 of each of the elements, that is, Mr. Smith
24 killed Ms. Snow with malice aforethought.
25 You're firmly convinced of that from the

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1 evidence, and that is your decision.

2 Not guilty means you're not convinced.

3 The State has failed on one or more elements.

4 Because if the State fails on one, then you
5 must return a verdict of not guilty.

6 Guilty means you're firmly convinced
7 of each of those elements that we talked about.

8 Of the first twelve of you that were
9 selected, do any of you feel that you will not
10 be able to continue in the final deliberation?
11 If you feel you cannot go any further, raise
12 your right hand. (No response). Mr. Ellis, it
13 appears at this point that the first twelve are
14 able to continue.

15 In just a moment, I'm going to excuse
16 you and the other jurors. I have to discuss my
17 charge with the attorneys to see if there's any
18 additional instruction that needs to be given
19 or any clarification. If there is, then we
20 will bring you all back in and give you that
21 additional instruction.

22 But if there aren't, then we will
23 gather the exhibits and deliver them to you,
24 Mr. Presiding Juror. When you receive those
25 exhibits, then you may begin your

1 deliberations.

2 Once the deliberations commence,
3 Ladies and Gentlemen, the only restriction that
4 I place on the deliberations is this: if any
5 juror has to leave the table for any reason,
6 you must stop deliberating until all twelve of
7 you are together. Other than that, you can
8 proceed as you deem fit and proper.

9 When the jury retires, Ms. Ellis, they
10 will take you to another room. I would ask
11 that you not rejoin them in the jury room. And
12 I'll be in very shortly to discuss with you how
13 much longer I need for you to remain with us.

14 Ladies and Gentlemen, thank you so
15 much for your attention. Oh, let me talk about
16 a couple of things, too, Mr. Presiding Juror,
17 Ladies and Gentlemen. We'll send it all back.
18 Obviously, you've observed how they handled
19 some exhibits, and the obvious ones are any
20 that would possibly contain any body fluids.
21 We'll also send some gloves back. If it
22 becomes necessary, please use the gloves before
23 you handle them. I'll leave it to your
24 discretion as to whether or not you need to
25 handle any of them. I'm not suggesting you do

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1 or you don't. I just would urge you to please
2 use the gloves if that becomes necessary.

3 Likewise, the video that we showed of
4 the crime scene, that will not be sent back.
5 That will remain here. But if, at any time,
6 you need to revisit that or need to view that
7 video again, just let us know. We'll bring you
8 into the courtroom and play it for you.

9 Other than that, I think you'll have
10 all the other exhibits in the jury room. Thank
11 you. Please retire to your jury room and wait
12 for the exhibits before commencing your
13 deliberations.

14 (JURY OUT @ 2:57 P.M.)

15 THE COURT: Exceptions or additions
16 from the State?

17 MR. VOIGHT: None from the State,
18 Your Honor.

19 THE COURT: Exceptions or additions
20 from Mr. Smith?

21 MS. TAYLOR: The only concern I have,
22 Judge, was right near the end when you were
23 talking about ten to two won't work or eleven
24 to one won't work.

25 THE COURT: Well, as I said, they

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1 all have to agree.

2 MS. TAYLOR: Right, and I did hear
3 that. But I don't remember whether you had
4 part of the charge about no one -- you know,
5 that doesn't mean that you give up before --

6 THE COURT: Oh, no, I don't give --
7 that's the Allen charge.

8 MS. TAYLOR: That was my only
9 concern.

10 THE COURT: I don't charge that
11 until we get to that point.

12 MS. TAYLOR: Okay.

13 THE COURT: Hopefully, I won't have
14 to cross that river.

15 MS. TAYLOR: Otherwise, no further
16 concerns.

17 THE COURT: Thank you very much. I
18 will certainly entertain that. In fact, if
19 that becomes necessary -- I hope it doesn't --
20 but if that becomes necessary, then I will
21 explain that part. Thank you so much.

22 MS. TAYLOR: Thank you.

23 THE COURT: Other than that, no
24 other exceptions?

25 MS. TAYLOR: No, Your Honor.

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1 THE COURT: Thank you very much.
2 Thank you all for handling this matter in the
3 fashion that you did. We will be at-ease. I
4 would ask -- you don't have to stay here. But
5 if you decide to go -- given what we seem to
6 have, we seem to have questions come more often
7 than not. So it's helpful if you're here, if
8 you could.

9 Thank you very much. We'll be at ease.

10 (JURY IN DELIBERATIONS @ 3:08 P.M.)

11 (NOTIFIED OF VERDICT AT 4:28 P.M.)

12 (DEFENDANT PRESENT)

13 THE COURT: Let the record reflect
14 that Mr. Smith is present. I'm advised the
15 jury has reached a verdict. Is the defendant
16 ready to receive the verdict?

17 MS. TAYLOR: We are, Your Honor.

18 THE COURT: Is the State ready to
19 receive the verdict, Mr. Voight?

20 MR. VOIGHT: Yes, Your Honor.

21 THE COURT: Ladies and Gentlemen,
22 again, thank you again for your proper decorum
23 and your respect for this process. I mean that
24 sincerely. The jury has been deliberating now
25 since about 3:15. They've completed their

1 task. I believe firmly in this process of
2 dispute resolution, and it works. As I have
3 said, obviously, a verdict has been rendered.
4 That means one side is not going to be happy,
5 and I understand that.

6 The one thing, though, that I think we have
7 to do is we have to honor the process. And so
8 as a result, out of respect for their efforts
9 and what goes on here, I'm going to ask that
10 there not be any reaction to the jury verdict.
11 And I would understand that it's an emotional
12 time for both sides. So if someone feels that
13 they will have difficulty doing that, I
14 appreciate that and would just ask that you
15 just remove yourself from the courtroom at this
16 point. Because if you remain, I will assume
17 that everyone will follow that instruction.

18 And I thank you for that in advance. I
19 appreciate, again, how much you've dignified
20 this process by your presence and the manner in
21 which you've conducted yourselves.

22 Let's bring in our jury, please, sir.

23 (JURY IN @ 4:40 P.M.)

24 THE COURT: Thank you, Ladies and
25 Gentlemen. As I understand, the jury has

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1 reached a verdict, sir. If you would pass the
2 verdict form, please.

3 PRESIDING JUROR: (Complies)

4 THE COURT: Thank you. The verdict
5 form has been properly completed. Mr. Wilson,
6 if you will please assist the Court in
7 publishing the verdict, please.

8 CLERK WILSON: Yes, Your Honor.

9 In the matter of The State of South Carolina
10 versus Oran Lamar Smith, as to indictment
11 number 2007-GS-10-1372, "We the jury, by
12 unanimous consent, find the defendant guilty of
13 murder." Signed by the foreperson, dated
14 December the 9th, 2009.

15 Ladies and Gentlemen of the jury, if
16 this is your verdict, please reply by raising
17 your right hands.

18 (UNANIMOUS AFFIRMATIVE RESPONSE BY JURORS)

19 MR. WILSON: You may put your hands
20 down. Let the record reflect, Your Honor, that
21 all twelve jurors have raised their right
22 hands.

23 THE COURT: It should reflect that,
24 and that is correct. Thank you very much. And
25 thank you, Mr. Smith, you may be seated.

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1 Thank you, Ladies and Gentlemen, for
2 assisting the Court and serving as a judge with
3 me in this case. It has truly been an honor to
4 serve with each one of you, and I mean that
5 sincerely. And I appreciate the manner in
6 which you've conducted yourselves as jurors in
7 this case.

8 I'm pleased to inform you that -- did
9 we find out whether the jury panel has been
10 excused for the week or not? It's your option.
11 The panel may still be on call or on hold. But
12 since you have served now for three days, I
13 leave that to you. If you want to say 'Thank
14 you, judge, I appreciate it. I think I'll
15 conclude my services now this week with this
16 case, that works for me.' If you want to be
17 subject to call, if you will let -- just call
18 the number after 6:00 and follow that
19 instruction. You need to know -- if you are
20 going to stay, if you will make that known to
21 the bailiffs when you leave in just a moment,
22 they can make us aware of that. But if I don't
23 hear from you, I'm going to assume that you've
24 accepted the Court's offer of by saying, 'Thank
25 you, but I will affirm my exemption and take

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1 you up on that, Judge, and I'll go to work
2 tomorrow and do whatever I normally would do.'

3 But I thank you again. It's a process
4 that -- when I was jokingly talking with you
5 when I qualified you about compensating you, I
6 can truthfully say to you there really is no
7 way to compensate you for what you do and the
8 service that you render in resolving disputes.
9 It's just amazing and it's something that I'm
10 proud of, as a person that has some role in it.
11 I hope that you are -- that we live in a
12 country where we do this and make that
13 sacrifice that you've made to make this process
14 work. Thank you for that.

15 I wish you a wonderful holiday season.
16 As I stated, I hope that it will be one that
17 you will remember in a good way for months to
18 come. Good luck to each one of you. If you
19 have any questions or concerns, if you will let
20 the bailiffs know and you would like to address
21 those, I will be happy to talk with you.
22 Otherwise, have a great day, and you are free
23 to leave. Thank you.

24 (JURY EXCUSED)

25 THE COURT: Anything from the State?

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1 MR. VOIGHT: No, Your Honor.

2 THE COURT: Ms. Taylor.

3 MS. TAYLOR: Thank you, Your Honor.

4 We would, at this time, renew all Motions and
5 objections previously made.

6 THE COURT: Thank you very much.

7 And I think you really put it in a nutshell in
8 your Motions of a very sustainable position,
9 that certainly the jury could have easily
10 concluded. But I think it was a jury issue.

11 It really came down to the -- I
12 thought the argument was very appropriate,
13 because it really did focus and ultimately
14 bottomed on whether or not you believed the
15 statement. And I hate to say it was a simple
16 thing, but it really, in some ways -- as you
17 said, there's no argument that this lady died
18 when she shouldn't have died. She was
19 murdered. There's no question about that.
20 The only question was whether Mr. Smith did it.
21 And there was some evidence, and then the
22 statement was strong evidence, if the jury
23 believed it.

24 But thank you very much. I must
25 respectfully deny your motions. Thank you.

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1 Do we have a sentencing sheet?

2 MR. VOIGHT: We do, Your Honor. May
3 I approach?

4 THE COURT: Yes, you may.

5 MS. TAYLOR: Could I just have a
6 moment to speak with the family?

7 THE COURT: Oh, absolutely. You
8 want to take ten or fifteen minutes? How long?
9 It's up to you.

10 MS. TAYLOR: About eight minutes.

11 THE COURT: That'll be fine. We'll
12 be at ease. Thank you.

13 (BRIEF RECESS)

14 (DEFENDANT PRESENT)

15 THE COURT: Mr. Voight, anything?

16 MR. VOIGHT: Thank you very much,
17 Your Honor. I'm going to hand to Ms. Taylor,
18 and if I may approach the Court, Your Honor?

19 THE COURT: Yes, you may.

20 MR. VOIGHT: There are three letters
21 from family members.

22 THE COURT: Very well.

23 MR. VOIGHT: Ms. Tabitha Lockey, the
24 daughter of Ms. Snow, would like to address the
25 Court, Your Honor.

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1 THE COURT: I'll be delighted to
2 hear from her. And you take your time, ma'am.
3 If you could give me her full name, please.

4 MS. LOCKEY: I'm Cheryl Snow's only
5 child. My husband and I have four children who
6 initially planned on standing with me as I read
7 this, but after many conversation and a lot of
8 thought about what was the right thing to do,
9 my husband and I realized it wasn't in their
10 best interest.

11 I stand in front of you as a family in
12 an attempt to express what we have lost and the
13 pain we live with every day. It's hard enough,
14 and they've been through so much already, to
15 sum up my mother's life, who she was and our
16 relationship and the impact this will have on
17 my children and I -- it is one of the many
18 difficult things I have struggled with from the
19 beginning.

20 To express on paper and put in words
21 to the people who never know what mattered,
22 never truly understand, never truly feel who
23 she was and what this has done to us is
24 impossible. I have spent many hours and prayed
25 many prayers trying to find the strength and

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1 the words to write this so it will be complete
2 and express what I feel better.

3 From the moment my mother's body was
4 found until now, everyone involved in any way
5 has only heard about her as an addict because
6 her addiction is what led her to him. But that
7 was just part of who she was. It was the part
8 of herself that she hated more than anyone else
9 ever could.

10 Her addiction was ugly, and she
11 struggled with hers for years. Over the years
12 there would be a few months here and there that
13 she wasn't in our lives because of it. But as
14 frustrating and scary as those times were, we
15 knew, God willing, that she would be back. As
16 strong as her addiction was, her love for my
17 children and I was stronger and the reason she
18 continued to fight to stay clean, to fight to
19 be completely who she truly was: fun, funny,
20 friendly, very outgoing, compassionate,
21 intelligent, full of life and very loving.

22 I was born seven days after my father
23 was murdered, leaving my mother an 18-year-old
24 widow and single parent. It was very important
25 to her, and a big part of our lives, that

1 although I grew up with both sides, day to day
2 it was always just her and I. I guess you
3 could say we grew up together. As we got older
4 there were times when the roles were switched,
5 with me the mother and her the daughter. Other
6 times we were just friends. I may not have had
7 a typical relationship with my mother or a
8 typical childhood, but what I had was much
9 more.

10 I've been married for nineteen years
11 and my husband and I have four children. Tory
12 is 19, David is 17, Vincent is 16 and Lydia is
13 13. She was not only at the birth of all four
14 of them, but lived with us for the majority of
15 all their lives. They were her pride and joy
16 and her heart. When you walked into the room
17 where she lived with us or in the apartment she
18 was living in when this happened, every wall
19 and countertop was filled with pictures,
20 artwork or craft of some kind from the moment
21 they were born until her last day. My family's
22 success and happiness was her success and
23 happiness, just as her failures and sadness
24 were our failures and sadness.

25 Just as she was never a typical

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1 mother, she was never a typical grandmother.
2 She didn't just attend school and sports
3 events, she volunteered for them. She got them
4 all their first library cards and took them
5 weekly to help them learn to Story Time and
6 helped them learn to read before they even
7 started school. When they were older she would
8 study their books for hours just to be able to
9 help them prep for a test or just to do their
10 homework.

11 Any time any of them were hurt or
12 sick, I would end up driving around three or
13 four stores just to make sure they had their
14 favorite food and drink, a fun activity and
15 maybe a new book or movie to make however they
16 were feeling just a little bit better.

17 To say she spoiled them was as
18 complete understatement.

19 She was like a big kid and loved to do
20 every craft imaginable with them from glitter
21 pine cones, spatter paint pajamas to a
22 gingerbread house that she would take hours to
23 get the walls standing close to straight,
24 leaving the kitchen covered in boiled icing,
25 kind of like the mess she would leave after she

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1 showed them how to cook something.

2 She would spend day at the beaches
3 falling down in the water or boogie-boarding
4 with them, and always going to the Fair and
5 riding all the rides.

6 She always made sure she spent one-to-
7 one time with each of them, whether playing
8 some sort of game or just talking with them or
9 snuggling or loving them while they watched TV.

10 For me, it was like having a second
11 set of hands, eyes and ears. When anything
12 happened, from something small to something
13 great, that would either tickle me or tick me
14 off, something that basically came with age,
15 she was the first person and the only person I
16 went to who could deal with them like I do.

17 When she didn't live with us, her and
18 I would talk on the phone at least three or
19 four times a day. She was my physical and
20 emotional backup, my sounding board, my
21 support.

22 Day to day there is more to life than
23 you don't think about. The holiday traditions
24 you make, the things you do with the changing
25 of seasons, the day-to-day life of who you are

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1 and how things are. She was always a major
2 part of every area of our lives.

3 Now for us there is no such thing as
4 normal anymore, just an overwhelming loneli-
5 ness.

6 There are family members in Miami, New
7 York and Massachusetts who couldn't be here,
8 and her best friend will remain in our lives as
9 family. My only wish is that she could be here
10 today, to help all of you understand who she
11 was. How much she still had to give. How she
12 was important to everyone in her life.

13 Every type of loss produces emotional
14 loss and difficulties, whether it is natural,
15 accidental or suicide. Had she passed away
16 otherwise, our grief would still be as strong
17 for all of us. But she didn't "pass away".
18 She was taken away, leaving us with a grief
19 that has impacted every aspect of our lives in
20 so many ways, a grief that doesn't lessen with
21 time and has no peace or closure.

22 The reality of what happened to her is
23 surreal, overwhelming and devastating. As a
24 mother, I know until I am able to find some
25 sort of closure and peace I will never be able

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1 to help my children do so. But I know that
2 every day and every moment that she would have
3 been a part of since she was taken, and every
4 moment she will miss in the future, that we
5 have the unhappy memories of her always leading
6 back to the same thing. Back to him. All we
7 have left of her are memories and the painful
8 reality of what he did to her.

9 In therapy I have been diagnosed with
10 severe post-traumatic stress disorder. Every
11 day is a struggle. I struggle through panic
12 attacks when my children don't check in and
13 later I hear sirens; anxiety attacks when I
14 leave the house and I don't know who I am going
15 to see or hear, seemingly random things bring
16 painful thoughts and memories of what happened
17 to her and brings me in time right back,
18 physically and emotionally, to when she was
19 found -- when I found out how. It is one of
20 the most things I've had to hear and see and
21 deal with.

22 There are no words to express to tell
23 your children that your grandmother is dead. I
24 have -- (emotional) -- I have flashbacks of the
25 scene that overtake me and paralyze me,

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1 memories, images and thoughts, questions and
2 words that I can't physically or emotional get
3 out. I have nightmares and wake up with tears
4 streaming down my face, gasping for air.

5 My sense of security and self-confidence
6 are gone, all the while watching my children
7 struggle to understand and deal with the anger
8 and the nightmares, knowing that I can't take
9 that away from them. And there are days that I
10 am so emotionally and physically drained that
11 there is nothing left for them. He not took
12 their grandmother from them, he took part of me
13 from them as well.

14 As for how my children, my husband and
15 I feel about him, we are filled with a combina-
16 tion of confusion, anger, disgust and a deep
17 sorrow. She befriended him and looked past his
18 injury and problems. She took care of him when
19 he was sick, defended him and told him that the
20 relationship wasn't a healthy one and protected
21 him when she should have called the police. He
22 repaid her in a brutal and horrific way,
23 leaving her there to be found like she was
24 nothing.

25 But for us there is no desire for

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1 revenge, only desire for justice. And the only
2 thing close to true justice for us is life in
3 prison without the possibility of parole.
4 I ask you for the maximum.

5 I know I am not including the pain of
6 his family and for that I am sorry. Before
7 there was even an arrest I knew that when one
8 was made a whole other family was going to be
9 devastated. My mother spoke very highly of
10 both his mother and his uncle, and I can only
11 imagine the pain his family and friends must be
12 going through, and my hearts aches for his
13 mother. But he's not the victim, and they
14 still have him. He may not have the life or
15 the future they hoped for him, but he's alive.

16 No matter how difficult a life
17 sentence may be for him and his family, for my
18 mother and all who loved her, a life without
19 her is far worse. We ask you to give him life
20 because my mother deserved so much more and he
21 deserves nothing less.

22 THE COURT: Thank you. I appreciate
23 it.

24 MR. VOIGHT: Your Honor, Mr. Smith
25 has a 1997 conviction for carrying a concealed

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1 weapon and also a 2005 conviction for
2 possession of cocaine.

3 THE COURT: Thank you, Mr. Voight.
4 Mr. Voight, thank you also from the letters
5 that you have submitted as further support from
6 the State. Do you have a copy of those, Ms.
7 Taylor?

8 MS. TAYLOR: I do.

9 THE COURT: I'm going to make them
10 collectively Court's Exhibit 1 for purposes of
11 sentencing. Thank you very much.

12 (SO ENTERED AS COURT'S EXHIBIT 1)

13 THE COURT: Ms. Taylor, I'll be
14 delighted to hear from you.

15 MS. TAYLOR: Obviously, his parents
16 are in the courtroom. His sister was here
17 earlier, and I think her husband is here. He
18 has one other sister who is, ironically, about
19 to give birth, so she is not here with us.

20 He grew up in Moncks Corner. His
21 record -- the concealed weapon was a magistrate
22 level pocket knife, and he had a cocaine
23 conviction.

24 He lived basically his entire life
25 with his parents. He was mentally-challenged,

1 was in special ed throughout the eighth grade.
2 He got out of school in the ninth grade. He
3 essentially did work for about a year with the
4 North Charleston Sewer Department and then he
5 suffered a head injury from a gunshot wound to
6 his head. And he's blind in one eye, deaf in
7 one ear. He also has been diagnosed with
8 mental illness and is on medication for that,
9 as well.

10 At time, like Ms. Snow, he has
11 suffered from a drug addiction as well and also
12 other mental health issues. That's how they
13 met, at Palmetto/Charter, and had a relation-
14 ship and had an association for about three
15 years. She knew the family from the past, and
16 she visited with them frequently. Of course,
17 his family was devastated by her loss. We are
18 profoundly sorry to the family for their loss.

19 All I can say is that in the two-plus
20 years that I have been involved with the case
21 myself, I certainly can concur that everything
22 that I've heard or knew about Ms. Snow was that
23 she was a very sweet woman, very kind, and very
24 forgiving of people, very personable with
25 people.

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1 So all that we can present to the
2 Court at this time, in light of where we are,
3 is to point out that -- Oran's parents, they
4 are not really able to talk and they've asked
5 me to communicate to you, as they have
6 communicated to me, that he was never a violent
7 or problem child. Growing up he was a
8 submissive child. He was frequently taunted
9 himself. He was compliant to the point of --
10 there's not a word that I can think of. He
11 pretty much always lived with them. He would,
12 as he got older, go out on the weekends to
13 different places, but would always return back
14 to their home basically and stayed in their
15 home. They fostered several children. I'm not
16 sure how many. But he grew up in a very
17 loving, supportive family. Obviously, they've
18 continued that support for him.

19 In light of Oran's personal physical
20 and mental situation, I would simply offer to
21 the Court that even the minimum sentence on
22 this charge would, in effect, be a life
23 sentence for Oran. We would simply ask the
24 Court to take into consideration whether the
25 Court can grant him whatever mercy is

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1 available.

2 THE COURT: Thank you very much.

3 As I understand, Mr. Smith does not desire to
4 speak today?

5 MS. TAYLOR: That's correct, Your
6 Honor. None of his family, including him.

7 THE COURT: Thank you. And I thank
8 the family for being present as well as it does
9 to the family of Ms. Snow. As I stated
10 earlier, there's nothing good about this
11 proceeding at all.

12 Mr. Smith, I thank Ms. Lockey for
13 telling me a little bit about this lady that I
14 didn't get to see or know and her sort of very
15 horrible life. And quite frankly, she's going
16 to -- she didn't know it, but she's going to
17 help me fashion a sentence for this gentleman.
18 Because, obviously, she saw something in this
19 gentleman that reflected what the family has
20 represented to you and through you. Even
21 against the wishes of others, and probably good
22 advice, obviously, but she saw him in a light,
23 I don't know, that maybe none of us could.

24 I do believe that, while I think he
25 knew exactly what he was doing, and I think his

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1 statement is true, and frankly the description
2 from Mr. Patrick and Mr. Elmore of what
3 happened after he disclosed it, I think is
4 helpful also to the Court. Because it was
5 though the man knew he'd done something
6 terribly wrong, yet I think it was a good way
7 to describe it. It was a release for him to
8 have it out, to say, 'God, now I don't have the
9 weight of all this weight. I knew that was
10 wrong.' I think he flipped. I think it's just
11 what he said. I don't think he -- you don't
12 have a pattern of violence in this case, and
13 that's the one thing I look for.

14 I do think, though, Ms. Lockey, that
15 \a sentence of thirty years is basically a life
16 sentence to this man, given his health and
17 given his situation. And it may be an
18 appropriate sentence, because I think he's
19 going to wrestle with what he did too. And
20 quite honestly, if he lives long enough -- he
21 is thirty-three today, is that correct?

22 MS. TAYLOR: Yes, sir.

23 THE COURT: Then he would be sixty-
24 three -- if he lives that long. I hope you
25 (speaking to Defendant's parents) are there,

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1 I don't know whether we will be. But I hope
2 you do have a chance, and maybe the person that
3 you raised will come out of prison and you can
4 have some time; which is a lot more than these
5 people are going to have, a lot, lot more.

6 As I said earlier today, nothing that
7 I do can ever restore or replace what you've
8 (addressing Ms. Lockey) lost. There's no way.
9 I can understand your feelings and your wish.
10 I certainly respect you for that. But I just
11 believe, this time, can't agree with it, but I
12 don't fault you for it. I understand that, and
13 thank you for it. And I certainly wish you
14 peace. I really do. And thank God you've got
15 the people that you've had around you, and that
16 may help. I hope that it does.

17 Mr. Smith, the sentence of the Court
18 in Indictment 2007-13172 is that you be
19 committed to the Department of Corrections for
20 a term of thirty (3) years.

21 He's been in jail since when?

22 MS. TAYLOR: Since his arrest, Your
23 Honor, on July 18th, 2007.

24 THE COURT: Credit for time served
25 since July 18th, 2007.

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1 MS. TAYLOR: Yes, sir.

2 THE COURT: Thank you. Good luck to
3 you, sir.

4 (END OF PROCEEDINGS)

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CERTIFICATE OF REPORTER

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I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the jury
trial held before The Honorable R. Markley
Dennis, Jr., on December 7-9, 2009;

I further certify that I am neither kin nor
counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison
Circuit Court Reporter
9th Judicial Circuit

Charleston, South Carolina

April 22, 2010

SAW20070708844

DOCKET NO. 2007GS1013172

WITNESSES

Shawn Patrick
North Charleston Police Department

AGENCY CASE NUMBER

2007023465

ARREST WARRANT NUMBER

K258337

DATE OF ARREST

July 18, 2007

ACTION OF GRAND JURY

TRUE BILL

NOV 06 2007

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November 2007 Term

THE STATE

vs.

ORAN LAMAR SMITH

DOB: 1976-01-15

B/M

Indictment for

MURDER

FILED

2007 NOV 13 AM 9:02

JULIE J. ARMSTRONG
CLERK OF COURT

07-4504(1)

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By: *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on November 5, 2007 the Grand Jurors of Charleston County present upon their oath:

MURDER

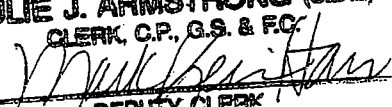
That in Charleston County on or about June 3, 2007, with malice aforethought, **Oran Lamar Smith** did kill and murder Cheryl Snow by means of strangling her, and that Cheryl Snow did die in Charleston County as a proximate result thereof on June 3, 2007; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



SCARLETT A. WILSON
SOLICITOR

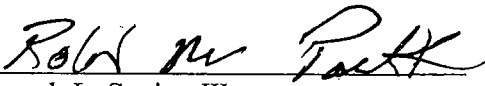
ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.

By: 
DEPUTY CLERK

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 12th, 2011

for 
Joseph L. Savitz, III
Senior Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

RECEIVED
JAN 12 2011
SC Court of Appeals

THE STATE,

RESPONDENT,

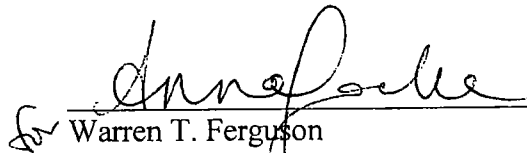
V.

ORAN SMITH,

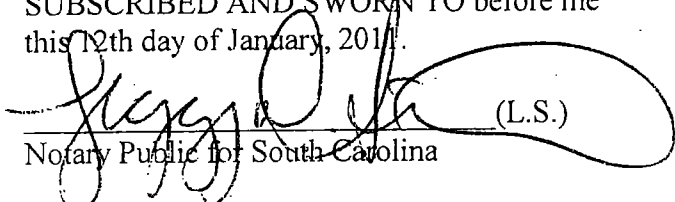
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, Room 519, 1000 Assembly Street, Columbia, SC 29201, this 12th day of January, 2011.


Warren T. Ferguson
Administrative Assistant

SUBSCRIBED AND SWORN TO before me
this 12th day of January, 2011.


(L.S.)
Notary Public for South Carolina

My Commission Expires: December 4, 2017.