

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY S.C. Supreme Court
Court of Common Pleas
Post Conviction Relief

Edward W. Miller, Presiding Judge

Case No.: 09-CP-23-10561

David Andres Ortiz Molina #315546 Appellant,

vs.

State of South Carolina Respondent.

APPENDIX Volume I

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INDEX

Transcript of Record dated May 15, 2006	1
Trial Exhibits	723
Greenville County Court Records ..	757
South Carolina Department of Corrections Records	762
Court of Appeals Order	765
Final Brief of Respondent	767
Final Brief of Appellant	777
Court of Appeals Unpublished Opinion No. 2009-UP-073	789
Application for Post-Conviction Relief	791
Return	797
PCR Transcript	803
Order of Dismissal	889
Notice of Motion and motion to Alter or Amend	898
Return to Motion to Alter of Amen the Order of Dismissal	901
PCR Exhibits	905
Final Order of Dismissal	913
Notice of Appeal	915

1 STATE OF SOUTH CAROLINA } COURT OF GENERAL SESSIONS
2 COUNTY OF GREENVILLE }

3

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STATE OF SOUTH CAROLINA,
PLAINTIFF,
vs.
DAVID ANDRES ORTIZ MOLINA,
DEFENDANT.

TRANSCRIPT

OF

RECORD

05-GS-23-6796

May 15th, 2006
Greenville, South Carolina

B E F O R E:

THE HONORABLE D. GARRISON HILL, JUDGE; and a jury.

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

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Circuit Court Reporter

Transcribed by Pamela E. Green, Circuit Court Reporter

1	<u>I N D E X O F W I T N E S S E S</u>	
2	<u>WITNESSES</u>	
3		<u>PAGE</u>
4	Motions	11
5	Jury Selection	19
6		
7	TERREL STEELE	
8	Direct examination by Mr. Wilkes	31
9	RAN WERSNER	
10	Examination by The Court	40
11	Direct examination by Mr. Wilkes	41
12		
13	Opening by The Court	55
14	Opening by Solicitor Steinberg	65
15	Opening by Mr. Wilkes	68
16		
17	JOHN BENNICK	
18	Direct examination by Sol. Steinberg	70
19	Cross-examination by Mr. Wilkes	80
20	NICHELLE NICHOLS	
21	Direct examination by Sol. Steinberg	82
22	Cross-examination by Mr. Wilkes	147
23	Redirect examination by Sol. Steinberg	177
24	Recross examination by Mr. Wilkes	185
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2	Motion	188
3		
4	CAROLYN GRAHAM	
5	Direct examination by Sol. Steinberg	194
6	Cross-examination by Mr. Wilkes	199
7	Redirect examination by Sol. Steinberg	200
8	PAMELA MUCHA	
9	Direct examination by Sol. Steinberg	200
10	Cross-examination by Mr. Wilkes	214
11	Redirect examination by Sol. Steinberg	216
12	BRANDON BROWN	
13	Direct examination by Sol. Steinberg	218
14	Cross-examination by Mr. Wilkes	221
15	JOHN BOYD	
16	Direct examination by Sol. Steinberg	223
17	Cross-examination by Mr. Wilkes	235
18	Redirect examination by Sol. Steinberg	246
19	Recross examination by Mr. Wilkes	247
20	CONLEY JUMPER, JR.	
21	Direct examination by Sol. Steinberg	247
22	Cross-examination by Mr. Wilkes	267
23	Redirect examination by Sol. Steinberg	269
24	Direct examination by Sol. Steinberg	276
25	Cross-examination by Mr. Wilkes	289

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	RON LENDWAY	
4	Direct examination by Sol. Steinberg	325
5	Cross-examination by Mr. Wilkes	332
6	MISTY MATHIS	
7	Direct examination by Sol. Steinberg	337
8	Cross-examination by Mr. Wilkes	346
9	Redirect examination by Sol. Steinberg	349
10	JOHN MAZYCK	
11	Direct examination by Sol. Steinberg	351
12	Cross-examination by Mr. Wilkes	359
13	JAMES BRASWELL	
14	Direct examination by Sol. Steinberg	369
15	Cross-examination by Mr. Wilkes	394
16	Redirect examination by Sol. Steinberg	410
17	Recross examination by Mr. Wilkes	412
18	SARA LEE DRAWDY	
19	Direct examination by Sol. Steinberg	416
20	Cross-examination by Mr. Wilkes	422
21	Redirect examination by Sol. Steinberg	436
22	Recross examination by Mr. Wilkes	437
23		
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	ROGER WARICK	
4	Direct examination by Sol. Steinberg	439
5	Cross-examination by Mr. Wilkes	448
6	Redirect examination by Sol. Steinberg	497
7	Recross examination by Mr. Wilkes	500
8	WES SMITH	
9	Direct examination by Sol. Steinberg	501
10	Cross-examination by Mr. Wilkes	517
11	Redirect examination by Sol. Steinberg	530
12	Recross examination by Mr. Wilkes	532
13		
14	Motions	534
15		
16	DAVID MOLINA	
17	Direct examination by Mr. Wilkes	540
18	Cross-examination by Sol. Steinberg	592
19	Redirect examination by Mr. Wilkes	640
20	Recross examination by Sol. Steinberg	643
21		
22		
23		
24		
25		

1	<u>WITNESSES</u>	<u>PAGE</u>
2		
3	Motions	645
4	Closing by Solicitor Steinberg	649
5	Closing by Mr. Wilkes	651
6	Closing by Solicitor Steinberg	668
7	Charge by the Court	687
8	Question from the jury	709
9	Verdict	715
10	Motions	716
11	Sentencing	722
12	Certificate	723
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

1

E X H I B I T S

2

NO.DESCRIPTIONIDEV

3

State's Exhibits

4

5

S-1

Memorandum

11

6

S-2

Handwritten Document

11

7

S-3

Letter

100

101

8

S-4

Phone Records

108

490

9

S-5

Phone Records

108

490

10

S-6

9-1-1 Audiotape

118

11

S-7

Drawing

128

12

S-8

Photograph

139

144

13

S-9

Photograph

139

14

S-10

Photograph

139

144

15

S-11

Photograph

139

144

16

S-12

Photograph

139

144

17

S-13

Statement

178

18

S-14

Photographic Contact Sheet

182

19

S-15

Photograph that replaced
State's Exhibit No. 8

193

20

21

S-16

Aerial Photograph

276

288

22

S-17

Photograph

326

327

23

S-18

Photograph

326

328

24

S-19

Photograph

326

328

25

S-20

Time Card

343

344

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
S-21	Statement of Mr. Braswell	381	
S-22	Letter of Mr. Braswell	410	
S-23	Phone Records of Mr. Molina	505	505
S-24	Phone Records of Mr. Molina	505	505

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Defendant's Exhibits</u>		
3				
4	D-1	James Braswell Plea Summary Sheet	11	
5				
6	D-2	Property and Evidence Sheet		336
7	D-3	Redacted Contact Sheet		415
8	D-4	James Braswell Plea Summary Sheet		433
9				
10	D-5	Handwritten Notes		434
11	D-6	NCIC Report		458
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2		<u>Court's Exhibits</u>		
3				
4	C-1	Defendant's Motion for Continuance	19	
5				
6	C-2	Memorandum Opposing Continuance	19	
7				
8	C-3	Note from Jury	709	
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

1 P R O C E E D I N G S

2
3 (Whereupon, a plea summary for David Braswell was
4 marked as Defendant's Exhibit No. 1. A memorandum from the
5 State was marked as State's Exhibit No. 1. A handwritten
6 document was marked as State's Exhibit No. 2. All of the
7 above exhibits were for identification purposes only at this
8 time.)

9 THE COURT: All right. The jury should be on the way
10 up here so we can begin the jury selection, and there are
11 several motions I believe that have been made. Some by the
12 State and some by the defense.

13 So, I'll be glad to hear any argument on that at this
14 time.

15 SOLICITOR STEINBERG: Your Honor, the State's first
16 motion is limiting the photographs taken by David Molina of
17 Nichelle Nichols, the victim, the victim. The pictures are
18 in existence. They do show whole frontal nudity. We submit
19 they don't have any bearing on the case particularly when
20 she is going to admit the pictures were taken by David,
21 David Molina of her. She posed for them. They weren't
22 clandestine or anything.

23 The only dispute now is when the date was. These show
24 full frontal nudity of the young lady. Just don't think
25 that the admission is critical and it's going to simply harm

1 her particularly when she's going to admit the pictures were
2 taken. The only information that can come in is when the
3 photographs were taken, and she's going to testify to one
4 date, and I think that, that's as far as we go in the case,
5 the case.

6 MR. WILKES: Your Honor, on that issue, obviously the
7 photographs are going to be critical to our defense. They
8 will show not only that it is not just the fact that they
9 are of her, but it is the obvious conveyance of the
10 relationship and the intimacy of their relationship. And to
11 redact pictures or to bar their admissibility is going to
12 merely hamper our defense because we, we do challenge the
13 issue as to the timing and what their relationship was, and
14 the intimacy of their relationship at different times. And
15 I think that those pictures will convey that intimacy.

16 What we have suggested, and in trying to be as
17 sensitive to the victim as possible, is that we will proceed
18 to identify the pictures. There are dates on a contact
19 sheet as well that we may be able to establish as well
20 later.

21 What we would ask is for the Court to hold off in
22 ruling on how to handle those photographs until we get
23 toward a later point in the trial to, to better know where
24 we are. But we will cross-examine; we will identify them,
25 and we will hold off on either admitting them into evidence

1 or publishing them to the jury until such time as the Court
2 can fully apprise their value.

3 THE COURT: Okay. Well, we'll just have to rule on
4 that when it plays out during the trial. But I'm going to
5 be reluctant to have them go to the jury, of course. But
6 we'll have to just look at it from the standpoint of when it
7 arises during the trial.

8 What's the next motion?

9 SOLICITOR STEINBERG: Thank you, Your Honor.

10 The next motion is, is also a preemptive motion. The
11 document I handed up entitled State's motion to admit
12 evidence of obsession. I've handed both Your Honor and
13 opposing counsel a copy. I'm going to have the court
14 reporter have a copy. I'd ask that it be marked as State's
15 Exhibit.

16 THE COURT: Okay.

17 MR. WILKES: And the simple response to that, Your
18 Honor, obviously there's some prejudice to couching the
19 actions that they allege happened as obsession. That has a
20 very negative context to it.

21 There's a certain amount obviously of factual
22 background, res gestae, that's gonna be relevant. But we
23 believe that the State is gonna exceed that which is
24 necessary to the case and overflow into the stuff that is
25 just terribly prejudicial.

1 There's testimony or the State attempts to introduce
2 testimony as far as the reaction of the victim three days
3 afterwards when she came in contact with the defendant and
4 that she fell to the floor in fear. We think that that type
5 of reference is not probative, sufficiently probative to the
6 issue of what happened during the attack and any motive, any
7 identity. It's, it's simply going to be prejudicial and it
8 just does not have any value that makes it worth introducing
9 that sort of a thing, and it's also subsequent to the, to
10 the act. I mean this is three days later.

11 SOLICITOR STEINBERG: I can resolve this.

12 MR. WILKES: And, and we did talk about it. I just
13 want to make sure that I'm on the record with it.

14 SOLICITOR STEINBERG: I think we'll reach an agreement.
15 I'm gonna bring up my fact that my victim is gonna state she
16 was in fear. I've instructed both my victim and my other
17 witness not to say that she fell to the floor in fear. She
18 is gonna testify she was in fear. She was not expecting
19 him. My victim is present and I think we can go as far as
20 that.

21 MR. WILKES: And further indications as far as what
22 these witnesses, inmates, or prior inmates will testify as
23 to supposedly jailhouse confession, things that were
24 supposedly said as far as future acts and finishing whatever
25 business, it's our position that those are, are just overly

1 prejudicial as to what actually occurred and that they
2 should be excluded.

3 Now, there is an immense²⁵ amount of this case that is
4 gonna revolve around what the State believes is obsession
5 in, in lay terms and using the terms that they have put on
6 it. To the extent that much of this we find objectionable,
7 to preserve -- I'm gonna be in a, in a difficult position as
8 far as preserving my objections to all of this outside
9 information as far as obsessive behavior that's far removed
10 from the day of the crime.

11 What -- and I don't know how to handle it. But it's,
12 it's gonna put me in a position of almost objecting
13 repeatedly over and over and over. But I have no choice
14 under the rules on preservation of error until the Court
15 says it's enough.

16 So, I will assume that if I get on that line where I'm
17 objecting repeatedly, if the Court instructs me that, that
18 the issue on this point is preserved, I'll be able to, to
19 stop at that point unless there's something extraordinary.
20 But I just -- I don't want to be offensive in my repeated
21 objections, and I'm not intending to, to impede the progress
22 of their testimony. But I've got to preserve errors. So,
23 I'm gonna be in a bit of a spot with, with how to deal with
24 that.

25 But most importantly, on the prejudicial side of some

1 of their testimony, most prejudicial are the things that are
2 subsequent to the offense, and they're, they're relying on
3 State v. Sweat or other cases. But I think the majority of
4 the case law deals with offenses or acts or prior bad acts
5 that occur before an event.

6 So, this, this is completely different in that respect.
7 So, we will probably be making that objection again and I'm,
8 I'll go into as much as you'll allow me at that time.

9 SOLICITOR STEINBERG: Okay. The reason I did this four
10 or five page memo is so that Your Honor would have all this
11 information ahead of time to block that repeated objections
12 except where necessary to preserve the record.

13 As far as these subsequent statements made by
14 Mr. Molina, these statements are so out, utterly intertwined
15 with the crime itself that sometimes it's the exact same
16 sentence. If she doesn't -- I'm going to hurt her if she
17 doesn't come back to me. I'm going to finish what I
18 started.

19 Well, the I am going to finish it is, of course, what
20 is being objected to goes to the future. But when he says
21 what I started or I'm gonna finish the business that I
22 began, words along those lines, there's really no way to
23 redact that. The sentence would simply fall apart.

24 Its probative nature is, is overwhelming. I can not
25 think of too much more likely, more indicative of guilt

1 other than what I finish what I started. And I think that
2 with the other statements made by Mr. Braswell and Mr.
3 Warick, the two jailhouse inmates, that there should not be
4 too much damage to the defendant. They're going to say he
5 specifically admitted this crime or he admitted the facts
6 indicating he committed the crime. I just don't think the
7 entirety and the totality of this case that those
8 statements, standing alone, would be prejudicial.

9 MR. WILKES: There is one motion that I have made, Your
10 Honor.

11 THE COURT: Okay.

12 MR. WILKES: I had made the motion on the continuance
13 based on my duty and obligation to follow through with the
14 potential promises made by the State to the defendant. We
15 had discussed this and the availability of the transcript.
16 And for the record, I'd move for a continuance because of my
17 duty to continue to investigate that as far as my ability to
18 cross-examine on bias and prejudice or motive before, before
19 their key witnesses testify.

20 It's my understanding that we may be able to get that
21 transcript by tomorrow afternoon. That may remove my
22 objection if nothing else presents any further
23 investigation. mm

24 THE COURT: Okay.

25 MR. WILKES: But that's, that's where I am on that,

1 sir.

2 THE COURT: All right.

3 MR. WILKES: I made that motion and I have filed the
4 motion and I think it's in the Court's file. If I need to
5 hand one -- I guess, to be on the safe side, I'll hand one
6 up just to make sure. I would like to make sure it's marked
7 because sometimes they don't make it to the Court's file.

8 Well, I'll find, I'll find one and get it to, in your
9 hands. If we can just identify this as maybe Court's
10 Exhibits so that it will be in the record.

11 THE COURT: Okay. That's fine.

12 SOLICITOR STEINBERG: And Your Honor, the State's going
13 to hand up the one that we were presented with earlier.

14 THE COURT: And if you'll just provide Mrs. Koffskey
15 the date of the plea, person who pled, full name.

16 MR. WILKES: I believe that that is in -- make sure --
17 I'm pretty sure it's in an e-mail. It is. It's actually
18 the information---

19 THE COURT: Okay.

20 MR. WILKES: ---I sent out.

21 THE COURT: Well, she can, as I understand it, pull up
22 the tape and have it available for you to listen in the
23 morning.

24 MR. WILKES: Thank you.

25 THE COURT: Okay. Anything further at this time before

1 we bring the jury?

2 SOLICITOR STEINBERG: No, sir, Your Honor.

3 MR. WILKES: No, sir.

4 THE COURT: All right. Okay. You can bring the jury
5 on in.

6 (Whereupon, the motion for continuance and the
7 memorandum opposing the motion for continuance were marked
8 as Court's Exhibit Nos. 1 and 2 for identification purposes
9 only at this time.)

10 (The following takes place within the presence of the
11 jury panel.)

12 THE COURT: Okay. Good morning, ladies and gentlemen.
13 My name is Gary Hill. I'm one of the circuit judges here in
14 Greenville, and I'm glad to be serving with you this week.

15 This is a criminal case we're about to begin, and it is
16 entitled the State versus David Andres Ortiz Molina, and I'm
17 going to read to you a copy of the indictment which contains
18 allegations against Mr. Molina.

19 But before I do that, I want to tell you this
20 indictment is nothing but a piece of paper. It's not
21 evidence of guilt. It's not a presumption of guilt. It is
22 simply the ticket by which the State can get into the door
23 of the courthouse and start this case and it lets
24 Mr. Molina, like anyone who's been charged with a crime,
25 know what they're charged with. It doesn't constitute proof

1 of anything and doesn't even raise a suspicion of guilt.

2 Mr. Molina has pled not guilty to this indictment, and,
3 therefore, like anyone charged with a crime, he is entitled
4 at this stage to be presumed innocent and this presumption
5 of innocence will remain with him throughout this case and
6 can only be removed if the jury determines that the State
7 has proven each and every element of this offense beyond a
8 reasonable doubt.

9 The State has the burden of proof. Mr. Molina doesn't
10 have to prove anything. He doesn't have to, doesn't have to
11 offer any explanation or evidence whatsoever, and he can
12 only be found guilty if the State proves each and every
13 element of this crime beyond a reasonable doubt, and the
14 jury unanimously agrees the State has done so. And your
15 job, ladies and gentlemen, if you are selected to be on the
16 jury for Mr. Molina's case will be to determine whether the
17 State has met that burden of proof.

18 The indictment alleges that on or about the 9th day of
19 February, 2005, Mr. Molina did, in this county, willfully,
20 unlawfully, and with malice aforethought, either express or
21 implied, commit an assault and battery with intent to kill
22 upon Nichelle Nichols in violation of Section 16-3-620 of
23 the South Carolina Code of Laws.

24 That's what the indictment says. And again, it doesn't
25 create any kind of inference of guilt or presumption of

1 guilt or suspicion of guilt.

2 Now, what I'm going to do is ask you certain questions
3 to ensure that we can have a jury in this case who can be
4 fair and impartial to both the State and to Mr. Molina.

5 And the first thing I need to know is any member of the
6 jury panel is related by blood or marriage to either
7 Mr. Molina or to Nichelle Nichols, who is the victim in the
8 case, if so, please stand.

9 (No response.)

10 THE COURT: Does anyone have a personal or social or
11 business relationship with either Ms. Nichols or Mr. Molina,
12 if so, please stand.

13 (No response.)

14 THE COURT: I'm going to read to you a list of people
15 who may or may not testify in this case. And listen
16 carefully to these names because I'm gonna ask you if you
17 know these people or related to them.

18 The people who may testify include Pamela Mucha, and
19 that's M-U-C-H-A.

20 Carolyn Graham.

21 Nichelle Nichols.

22 Marty Mucha.

23 John Boyd.

24 Sara Drawdy.

25 Lucio Molina.

1 Conley Jumper.
2 Brandon Brown.
3 John Bennick.
4 Wes Smith.
5 Jim Perry.
6 Ron Lendway.
7 John Mazyck. M-A-Z-Y-C-K.
8 Misty Mathis.
9 James Dwayne Braswell.
10 Roger Warick.
11 Tina Bamberg.
12 And Barbara Pressley.

13 Is anyone related by blood or marriage to any of these
14 potential witnesses or you have any business or social or
15 personal relationship with any of the people I just listed,
16 if so, please stand.

17 (Juror responds.)

18 THE COURT: Yes, sir, what's your name?

19 JUROR: George Whiten.

20 THE COURT: Okay. Yes, sir.

21 JUROR: I work at county records division and I know
22 Wes Smith from that area.

23 THE COURT: Okay. Where's your office, sir?

24 JUROR: It's where the Sheriff's Department---

25 THE COURT: Okay.

1 JUROR: ---place.

2 THE COURT: All right. Now, the fact that you know
3 Mr. Smith -- is that the only witness you know or do you
4 know some of the others?

5 JUROR: That's the only name I recognize.

6 THE COURT: All right.

7 JUROR: And it's also possible some time in the past
8 that I did see the incident report.

9 THE COURT: Okay.

10 JUROR: I, I, I can't recall. But I, I do see
11 Sheriff's Department and police department incident reports.

12 THE COURT: And now you don't recall anything specific
13 about this incident?

14 JUROR: No, I don't.

15 THE COURT: All right. Do you have any general memory
16 about it?

17 JUROR: No, I don't.

18 THE COURT: Okay. Just possibly you could of seen it?

19 JUROR: It's possible that I could have.

20 THE COURT: But you didn't retain any knowledge of it?

21 JUROR: No.

22 THE COURT: All right. Would your position and the
23 fact that you I suppose have interaction with Mr. Smith and
24 there may be other witnesses from the Sheriff's Office, do
25 you think that would present any problem being fair and

1 impartial to either the State or the defendant in this case?

2 JUROR: No, sir.

3 THE COURT: You could put your job responsibilities
4 aside and decide this case solely on the evidence and the
5 law?

6 JUROR: Yes, sir.

7 THE COURT: All right. Is there any further voir dire,
8 gentlemen?

9 SOLICITOR STEINBERG: No, sir, Your Honor.

10 MR. WILKES: Your Honor, I would only ask that it's my
11 understanding he does work for the county in the law
12 enforcement center.

13 THE COURT: Okay.

14 MR. WILKES: If that's, if that's the case, it would
15 just give me---

16 THE COURT: All right. I think---

17 MR. WILKES: ---pause.

18 THE COURT: I'm just gonna excuse you from this case,
19 sir.

20 All right. Thank you very much. You can go on back
21 downstairs.

22 (Pause.)

23 JUROR: Your Honor, Terry Steele.

24 THE COURT: Mr. Steele.

25 JUROR: I do not know any of these individuals by name.

1 However, when I was in line coming in for jury duty, I was
2 behind one of the witnesses who had small contact---

3 THE COURT: Okay. Hold on. Wait a minutes. Hold on.
4 Just stop talking real quick.

5 Why don't you come down here and we'll talk to you a
6 little more?

7 (Whereupon, the following takes place outside the
8 hearing of the entire jury panel.)

9 THE COURT: I didn't want them to overhear what you
10 say.

11 MR. WILKES: All right. Yes, sir, is it possible we
12 can, move to strike for cause if he's heard anything from a
13 witness?

14 That's scary.

15 SOLICITOR STEINBERG: I want to hear what he said.

16 THE COURT: What did you hear?

17 JUROR: I was behind a lady with a scar on the side of
18 her face saying she was attacked in her home. That was
19 basically all. I said did they catch the guy. She said
20 yes.

21 THE COURT: Okay. All right. Well, go ahead, ask what
22 you want to.

23 MR. WILKES: Did you have this, relate any of this
24 conversation to any other juror when you were in the jury
25 room?

1 Does anybody else know about this?

2 JUROR: Yeah, I was behind a witness and something came
3 up, yes. The individual -- but he does not know who the
4 individual is. I didn't mention any names. I don't know
5 the names.

6 MR. WILKES: I've got to make a motion outside the
7 presence, obviously.

8 THE COURT: Just hold on now.

9 You said you mentioned this to who?

10 JUROR: A fellow named Bryan Wersner.

11 THE COURT: Fellow juror?

12 JUROR: Yes.

13 THE COURT: That's the only person you mentioned it to?

14 JUROR: Yes, all I mentioned was I was in line behind a
15 witness and that a woman had been attacked. Just basically
16 what I just told you.

17 THE COURT: Anybody else hear?

18 JUROR: Not to my knowledge, no.

19 THE COURT: Where were you located when you had that
20 conversation with the other juror?

21 JUROR: Back left, back left of the jury room or the
22 pool room.

23 THE COURT: Okay. Was any other juror around?

24 JUROR: Not to my knowledge. People scattered. But
25 not within ear shot.

1 THE COURT: Okay.

2 MR. WILKES: I'm compelled to make a motion outside the
3 presence on the record.

4 THE COURT: Okay. All right. I tell you what, I'm
5 going to excuse you from this case.

6 Mr. Steele, you can go on back downstairs and thank
7 you.

8 (Whereupon, the following takes place outside the
9 hearing of Juror Steele and the remaining jurors.)

10 THE COURT: Go ahead and make your motion.

11 MR. WILKES: They're going to hear me. I've got to
12 take a second--

13 THE COURT: Whose going to hear you?

14 MR. WILKES: The jury pool, I think.

15 THE COURT: Why can't you whisper?

16 I don't understand why you can't do it right here.

17 MR. WILKES: I think I've got to move for a mistrial.
18 What he just said was that inside the jury pool room there
19 was mention to another jury person that he was behind a
20 victim in this case. He asked if they had caught the guy.
21 They said they did. He told another jury person, and he
22 said, to his knowledge, nobody else heard it. But there's
23 no way in the world to know that without asking, which is
24 just going to prejudice my case to ask the members of the
25 jury that.

1 THE COURT: That's asking every instance does anybody
2 have any---

3 MR. WILKES: If that man had not stood up -- it's just
4 I've got to move for a mistrial.

5 SOLICITOR STEINBERG: Judge, what was said is
6 essentially the same thing testified to. I have no problem
7 with removing Mr. Steele. But the statement is coming in
8 regardless. I just don't see how any other jurors could be
9 affected by that.

10 THE COURT: Okay.

11 MR. WILKES: The only thing that I can do to protect my
12 client is to have a special -- I don't know if it's special
13 interrogatories. But I think that I would be able to
14 cross-examine him under oath and to cross-examine the other
15 gentleman and to find out what was said, the possibility of
16 other people hearing it.

17 But I've never had anything like this happen before.
18 But I've got to move for a mistrial.

19 SOLICITOR STEINBERG: It could be resolved by asking
20 the jury, some type of examination or cross-examination,
21 asking the jurors are you aware, have you been privy to any
22 conversations. You may of already done that. But if we do
23 it again, I think it would solve all of these problems.

24 MR. WILKES: I've got to be on record. I don't think
25 that's going to cure the potential for unintended

1 impropriety that's going to taint my jury, and I just, I
2 think I've got to cross-examine him, the other juror, to
3 find out the details or the possibilities that other people
4 could have heard it and have been influenced by this at this
5 point.

6 But I can't say that that's the crowd of people out
7 there that heard that. There's no telling what other people
8 heard. I know things happen. But this is creating an issue
9 right off the bat. This is just opening up for appeal or
10 PCR. I've got to protect my---

11 SOLICITOR STEINBERG: I don't want to try the case
12 again if it comes back. If you deem it proper -- I don't
13 think it's proper, but if you deem it proper, that should
14 resolve the issue.

15 MR. WILKES: I've got an additional problem that we're
16 now creating a problem with the jury's assumption that
17 there's something wrong, and there is something wrong. I'm
18 just afraid that---

19 SOLICITOR STEINBERG: I don't see where it goes back to
20 your client.

21 THE COURT: I understand the motion. I don't think
22 there's any ground for it at this point. You heard what the
23 gentleman said. I can ask a voir dire question that will
24 inquire as to whether anyone's heard anything about the case
25 before they reached this point.

1 MR. WILKES: Do we know if the other gentleman is here?

2 THE COURT: I don't know.

3 MR. WILKES: I don't know either.

4 THE COURT: What did he say his name was?

5 Do you want me to bring Mr. Steele back up here?

6 MR. WILKES: Mr. Steele is still in the courtroom if
7 you want to still ask him.

8 THE COURT: Let's tell these jurors to go out and then
9 we'll get Mr. Steele to come out and let you ask him
10 questions.

11 MR. WILKES: Thank you, judge.

12 (Whereupon, the following take place within the hearing
13 of the entire jury panel.)

14 THE COURT: Okay. Ladies and gentlemen, what I'm going
15 to do is just ask y'all to step out in the hall one quick
16 minute. We've got something we have to take up. And if you
17 would, just go out in the hall and we'll be right back with
18 you shortly.

19 Thank you very much.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Okay. We -- none of the other members of
23 the venire are present in the courtroom.

24 We had a bench conference on the record with Mr.
25 Steele.

Terrel Steele - Direct examination
by Mr. Wilkes

1 And Mr. Steele, I'm gonna ask you to just come up here,
2 sir. We'll get you sworn in and allow either one of the
3 attorneys to ask you any questions or the Court ask you any
4 questions.

5 Okay.

6 TERREL STEELE, being first duly
7 sworn, testified as follows:

8 THE COURT: Okay. Any questions from the State?

9 MR. WILKES: Yes, sir.

10 THE COURT: I mean from the defense actually.

11 MR. WILKES: I'm sorry, judge.

12 THE COURT: That's all right.

13 Anything from the State?

14 SOLICITOR STEINBERG: I have no further questions.

15 THE COURT: Okay.

16 DIRECT EXAMINATION

17 BY MR. WILKES:

18 Q Tell me your, your---

19 A I'm sorry.

20 Q ---your jury number.

21 A 154.

22 Q 154.

23 And your name is?

24 A Terry Steele.

25 Q Mr. Steele, you had -- and, and no one's indicating any

1 improprieties on your part. It's just a -- it's a concern
2 in the case and we want to ask you some questions about it.

3 You had indicated when you were downstairs coming into
4 the courthouse I believe --

5 A Yes.

6 Q -- there was a bunch of people?

7 A lot of people?

8 A Correct. There's a line waiting to get through
9 security.

10 Q And you happened to be standing behind a person you
11 know now to be the victim possibly in this case?

12 A She indicated she was a witness in this case.

13 Q Okay. And would you describe what you noticed about
14 her?

15 How would you -- how did you describe her earlier?

16 A She pointed out that she had been attacked and she
17 showed a scar on the side of her face.

18 Q Okay. And then you had indicated that you had asked
19 did they get the guy and she said yes?

20 A Yes.

21 Q Okay. What else did you say to her or did she say to
22 you?

23 A She had been attacked in her home.

24 Q Okay. With -- were there other people around you at
25 that time?

Terrel Steele - Direct examination
by Mr. Wilkes

1 A The security line, yes. There were several people
2 there.

3 Q Okay. Was it in the morning when there was a bunch of
4 people?

5 A Correct.

6 Q Everyone -- okay. And when you went into the jury room
7 and you had a conversation with another gentleman that was
8 in the jury pool?

9 A Correct.

10 Q And you mentioned this to him just in passing?

11 A Pieces of, pieces of it, yes.

12 Q Okay. And at that time there were -- do you remember
13 what time that was this morning?

14 A It was during one of the breaks.

15 Q Okay.

16 A The---

17 Q All the jury people were in there at the time?

18 There were a lot of other jury people in there?

19 A There were a few in there, yes.

20 Q Okay. When you say a few, would you say two or
21 possibly 20 cause we're talking hundreds maybe of the pool?

22 A It -- I don't, I don't recall how many people were
23 there. There were, there were very few in the general
24 vicinity of where we were. There was nobody in front,
25 behind, or immediately to either side of us.

Terrel Steele - Direct examination
by Mr. Wilkes

1 Q Okay. Were other jury people around?

2 A Yes.

3 Q Okay. Now, you didn't whisper this to them?

4 This was something y'all were just talking about?

5 A It was not whispered. It was normal conversation.

6 Q Okay. Okay. And from the conversation that you had
7 with the, the girl that you talked to, I believe is the
8 victim in this case, did you get an impression from her that
9 they had, as you say, caught the guy?

10 A Yes, that's what she said.

11 Q And from that, would you imply that the guy they caught
12 would be here?

13 A Well, now that -- where I'm sitting here, yeah.

14 Q All right, sir.

15 A Sure.

16 Q Very well.

17 And is it possible that the other juror or any other
18 jurors might of overheard who could of had the same thought,
19 made the same conclusion?

20 A I don't know. I would guess not based on what was
21 said.

22 Q Why is that?

23 A Because what I had mentioned to him was that I was in
24 line and I asked if, if you were on jury duty as well. She
25 said no, I'm a witness in a case, and she had mentioned that

1 she had been attacked in her home, and she showed me a scar
2 and that was all that was said.

3 MR. WILKES: Okay. Judge, I have to make a motion for
4 a mistrial. I believe that -- and I have never had a case
5 where just inadvertently something like this is come up.
6 So, we got a taint in the jury pool. There's no way for me
7 to protect my client to know which juror could of overheard
8 it, who's gonna be brave enough to say they did it now that
9 it, it I'm sure looks to the jury people like there's a big
10 problem about it.

11 I, I appreciate the candor that this jury person has
12 given us. But I can't -- once that information about a case
13 has gone into that jury pool room, I can't, I can't protect
14 my client. That is tainting, potentially tainting. That is
15 unwarranted and it's just not necessary because we can, we
16 can pick another jury from another jury pool.

17 I know that there's issues about one person from
18 Florida. But they have the power under interstate compact
19 to subpoena that person and, and compel him to be here.

20 I have people that, that are potential witnesses that
21 are here from Colombia South America that I may or may not
22 be able to get. But my job is to protect him and have a
23 completely untainted jury that I've lost that already. I
24 can not guarantee that for him. There's no way that he will
25 ever believe that comments made by the victim outside in

1 public or around other people weren't overheard by numerous
2 people, that she was milling about with all the jurors, and,
3 and chatting about the facts of this case.

4 And, and it, frankly, I'm afraid, and that's what I was
5 saying earlier, is that just by asking this nice gentleman
6 to come and relate what's happened, there, there's a whole
7 bunch of jurors that now think there's a big problem that,
8 that's going on and I'm not sure that if somebody did see
9 it, they're gonna be afraid to say anything.

10 And there's, there's no way in this world that I will
11 ever be able to rightly convince my client that he has a
12 fair and impartial jury because the pool has been tainted,
13 and, and, and it's difficult -- the State would have the
14 burden put on me to prove which juror might of heard it, is
15 there someone else. Unless I'm allowed the right to
16 cross-examine people, I can't protect my client and I, I
17 just -- I don't think this, at this point and just for the
18 record, I think that when we asked -- do you remember the
19 name of the gentleman you had that conversation with?

20 WITNESS: Yes.

21 MR. WILKES: What was his last name?

22 WITNESS: Weisner.

23 MR. WILKES: Weisner.

24 And as, I think the coincidence, he is, he is in our
25 pool out of how many ever people are in there, 100 hundred

1 or 200 people, it's a coincidence that he has been selected
2 for this jury. The, the odds of that are pretty phenomenal
3 and I, I hate to think that there are other people that
4 might of been influenced by what's going, gone on today that
5 rob me of the only thing that we're suppose to be
6 guaranteeing is a fair and impartial jury. And I will never
7 convince -- and, and I, I do have oddly enough, his mother
8 is here from Colombia. I think she's an attorney from
9 Colombia, and we've talked about how fair the American
10 system is.

11 And there's no way that I can explain to her the
12 fairness in the American system when jury members in the
13 jury pool have discussed the facts of this case in any way,
14 shape, or form from the victim standing in the front talking
15 openly. And, and it's just a fundamental breach of what I
16 think that our protection for this man is.

17 So, we, we have to move for a mistrial, and a, and a
18 fair trial with the jury from an untainted pool.

19 SOLICITOR STEINBERG: Your Honor, the State would
20 object. The evidence you've heard is very limited. It's
21 two jurors were discussing a case. Mr. Steele has been very
22 forthcoming. I have no reason to think other jurors would
23 not be forthcoming.

24 We had two individuals in a jury pool area downstairs.
25 That's very limited. It doesn't impact any of the jurors.

1 But there was a comment about how the jury would
2 misinterpret things. The law is clear we have to rely on
3 the jurors to follow the law, to follow your instructions,
4 to answer your questions honestly.

5 This witness -- these jurors said they either know us
6 or do not know us. They either have a connection or doesn't
7 have. There's no reason to lie about this other stuff.
8 There's no reason for them to lie and I understand there's
9 no reason to believe that we should assume they would lie.

10 I would say that Mr. Steele is a member of the jury
11 pool and we can examine Mr. Weisner, and I, I will not
12 object if he wants to have him removed as well. We can
13 resolve this, those two be removed.

14 When Your Honor does the questioning of the rest of the
15 jurors, I think that would resolve any other issues that
16 were raised by defense counsel.

17 THE COURT: Any response?

18 MR. WILKES: If I'm not mistaken, Mr. Weisner was in
19 this courtroom. The questions that were asked caused this
20 gentleman to come forward. Mr. Weisner I don't think -- was
21 Mr. Weisner in this courtroom today with us?

22 WITNESS: Yes.

23 MR. WILKES: Did he stand up when you stood up?

24 WITNESS: No.

25 MR. WILKES: Okay. Your Honor, I rest with that.

1 Mr. Weisner was not compelled to indicate he had possibly
2 heard anything of this case. He was asked. And, and what
3 they're doing is putting some burden on me to, to show a
4 prejudice that should be presumed.

5 THE COURT: Well---

6 MR. WILKES: No more fundamental protection is there
7 than an untainted jury pool, and for the record, that man
8 did not stand up. This gentleman stood up and said wait a
9 minute, Your Honor, I think there could be an issue, and
10 that man never stood up and said judge, I think there might
11 be a possible issue.

12 When he stood up, Mr. Weisner did not stand up and say
13 yes, sir, that's, I did speak with him, and, and therein
14 lies the problem. Had he done that, the State's argument
15 might of made more sense, but he did not.

16 THE COURT: Well, your argument might make more sense
17 if the question had been to the jury does anyone know
18 anything about the case. The question to the jury was does
19 anyone have any personal, social, or business relationship
20 with any of the witnesses, which Mr. Steele volunteered the
21 incident. So, Mr. Weisner had no reason to respond, and
22 we'll bring him in here and examine him.

23 Any more questions of Mr. Steele at this time?

24 MR. WILKES: No, sir, Your Honor.

25 THE COURT: All right. Thank you, sir. Then you can

Ryan Weisner - Examination
By The Court

1 just go on downstairs, sir. I appreciate your cooperation
2 with us.

3 WITNESS: Thank you.

4 THE COURT: Then Mrs. Sims, just ask Mr. Weisner to
5 come in if you will.

6 (Juror Weisner comes into the courtroom at this time.)

7 THE COURT: Yes, sir, just come on up and we're going
8 to get you sworn in.

9 RYAN WEISNER, being first duly
10 sworn, testified as follows:

11 CLERK: Please be seated.

12 THE COURT: All right. Mr. Weisner, have you had any
13 conversations with Mr. Terrel Steele about this case before
14 you were brought up here for this selection process?

15 WITNESS: He had mentioned on the way in that he had
16 met someone I think as he was checking in the security line
17 this morning that was involved in the case. It's gonna be a
18 witness or something. But that was the extent of my
19 conversations.

20 THE COURT: That was the full conversation?

21 WITNESS: Actually we never finished the conversation.

22 THE COURT: Why not?

23 WITNESS: He -- someone that he is a client of his, the
24 bank where he works, came in and sat down on the opposite
25 side of him, and he began to have a conversation with her

Ryan Weisner - Examination
By The Court

1 and he never finished our conversation.

2 THE COURT: Okay. Was anyone within ear shot of your
3 conversation with Mr. Steele?

4 WITNESS: Not that I'm aware of cause we were one of
5 the first ones in the room this morning.

6 THE COURT: Okay. So, this happened at the very
7 beginning?

8 WITNESS: Very beginning.

9 THE COURT: And have you heard anything else about this
10 case before you came up here before the jury selection?

11 WITNESS: No, I've not.

12 THE COURT: Okay. Now, any further questions from
13 either the State or the defense?

14 SOLICITOR STEINBERG: None from the State, Your Honor.

15 MR. WILKES: Yes, sir.

16 THE COURT: All right.

17 DIRECT EXAMINATION

18 BY MR. WILKES:

19 Q Can you please tell me exactly what he said?

20 A He said that he had met someone this morning in line.
21 He said just -- I think he asked he, if they were here for
22 jury duty and they said no, they're a witness, and he said
23 something about she had a scar or something. And that was
24 about the extent of the conversation.

25 Q Did, did he mention to you that he said they did catch

1 the guy?

2 A No, there's no conversation that she said that. He
3 just said that she said she was going to be a witness here
4 today.

5 Q Was there any -- and you say that somebody came up and
6 sat right beside him while y'all were having the
7 conversation?

8 A Yes, an older lady came in, sat basically to the right
9 of him.

10 Q And that, that stop y'all's conversation?

11 A Correct, he stopped to speak to her and we never
12 finished the conversation.

13 Q Do you now how long she was waiting to come in and sit
14 with him to talk to him?

15 A No, she just walked in. They just saw that they knew
16 each other and started the conversation.

17 Q Okay. How many people were in that room when you had
18 this conversation?

19 A I would say approximately 20. But there were few in
20 the proximity we were in.

21 Q Okay. Was this conversation at a normal tone?

22 A Yes.

23 Q Okay. Has there been any conversation about, with the
24 selected or potential jurors right now since everybody has
25 been outside about what's going on in here?

Ryan Weisner - Direct examination
by Mr. Wilkes

1 A No, nothing.

2 Q Nothing?

3 A I've heard nothing.

4 Q Okay. Is there any conversation about why he was being
5 called up there to testify?

6 A No.

7 Q All right. Did this happen at the beginning before the
8 jury process began, the qualifications, or did it happen on
9 break?

10 A This happened before the thing began cause we got here
11 approximately 8:30 when they unlocked the door this morning.

12 Q Okay.

13 A So, I was in before him. He came in shortly
14 afterwards.

15 Q Okay. And you agree there was other people around at
16 the time?

17 A There were other people around, yes.

18 MR. WILKES: Thank you, Your Honor.

19 THE COURT: All right. Thank you very much.

20 Any more, any further questions?

21 SOLICITOR STEINBERG: No, sir, Your Honor.

22 THE COURT: Okay. All right. Well, I tell you what,
23 I'm going to excuse you from this jury.

24 WITNESS: Okay.

25 THE COURT: And I appreciate your conversation. Just

1 go on downstairs and don't talk to anybody about what's
2 happening in here, and they'll tell you what to do from that
3 point on.

4 Thank you, Mr. Weisner.

5 (Whereupon, the following takes place outside the
6 presence of the juror.)

7 THE COURT: Okay. Anything further?

8 MR. WILKES: Just that we have moved for a mistrial---

9 THE COURT: Okay.

10 MR. WILKES: ---to have a jury from an untainted pool
11 and we---

12 THE COURT: Okay.

13 MR. WILKES: On this basis, we do not believe that we
14 can proceed without taint from our juror pool.

15 THE COURT: Okay. All right. Well, unless anything
16 further comes out, I'll respectfully deny your motion.
17 There's no evidence and it's just speculation that there was
18 any taint, and I believe they're -- the two people who were
19 exposed to any statement by the victim have been removed
20 from the pool. But if that proves to be not the case, we'll
21 certainly take steps to remedy that.

22 But I'll inquire of the jury and I'll be welcome to
23 submit any voir dire in addition to what I ask of them about
24 whether they have formed or expressed an opinion or if they
25 have any knowledge about anything related to this case. If

1 there's any additional voir dire that, that either side
2 wishes to propose, I'll be glad to consider that.

3 Anything further before we bring the venire back in?

4 SOLICITOR STEINBERG: Nothing from the State, Your
5 Honor.

6 MR. WILKES: Nothing other than to specifically ask if
7 they have overheard the conversation between these two
8 gentlemen. I think that would be---

9 THE COURT: Okay. I'll ask them if they heard any
10 conversations about this case while in the courthouse today
11 other than what they've heard in here.

12 MR. WILKES: And including from anyone outside at all
13 so that other people might of overheard the victim making
14 those statements. They will be asked direct questions at
15 this time to stand up.

16 THE COURT: I don't follow that.

17 MR. WILKES: I just want to make sure that we're not --
18 I want to know specifically if they overheard those two
19 gentlemen talk. But I want to cover the fact that somebody
20 else could of been standing listening to the conversation
21 that he had with the victim outdoors or in the security
22 line.

23 THE COURT: Well, while we're asking them if they've
24 heard any conversation about this case while inside the
25 courthouse, not cover either one of those situations?

1 MR. WILKES: I think it will. But I'd like
2 specifically between the two jurors as well. Just as it's
3 been stated.

4 THE COURT: Okay. Well, I'll decline to do that.
5 All right. Bring them on in.

6 (Whereupon, the following takes place within the
7 presence of the entire jury panel.)

8 THE COURT: Okay. Ladies and gentlemen, appreciate
9 your patience with us.

10 Does anyone else need to respond to the question about
11 whether they have any social or business or personal
12 relationship with any of the witnesses who were mentioned or
13 if there, if you're related by blood or marriage to any of
14 those witnesses that I listed?

15 Does anyone else need to respond to that?

16 (Juror responds.)

17 THE COURT: Okay, ma'am. What's your name?

18 JUROR: Marian Ruser.

19 THE COURT: All right. Yes, ma'am.

20 JUROR: You had listed one of the witnesses as John
21 Boyd. I use to work with John Boyd. I don't know.

22 THE COURT: I believe this gentleman works for the
23 Sheriff's Department.

24 SOLICITOR STEINBERG: Your Honor, John Boyd is present.
25 He can stand up.

1 (Witness Boyd stands at this time.)

2 JUROR: I do not know him.

3 THE COURT: Okay. All right. Thank you.

4 All right. I'm going to ask the attorneys who are
5 going to be trying this case to stand up and introduce
6 themselves and the people at their table.

7 Yes, sir, Mr. Steinberg.

8 SOLICITOR STEINBERG: I'm Howard Steinberg. I'm with
9 the Solicitor's Office. Also present is Calvin Sims and
10 Investigator Wes Smith. Mr. Smith will be testifying. Mr.
11 Sims will not testify.

12 THE COURT: Yes, sir, Mr. Wilkes.

13 MR. WILKES: I'm Jeff Wilkes. I'm an attorney in town
14 and this is David Molina, my client.

15 THE COURT: All right. Thank you, gentlemen.

16 Has anyone, has anyone been represented by either Mr.
17 Steinberg or the 13th Circuit Solicitor's Office or Mr.
18 Wilkes or has anyone been involved in a dispute where the
19 other side was represented by either Mr. Wilkes or Mr.
20 Steinberg, if so, please stand.

21 (No response.)

22 THE COURT: Does anyone have any personal or social or
23 business relationship with either Mr. Wilkes or Mr.
24 Steinberg, if so, please stand.

25 (No response.)

1 THE COURT: Does anyone have any personal or social or
2 business relationship with Mr. Sims, if so, please stand.

3 (No response.)

4 THE COURT: Is anyone related by blood or marriage or
5 kin to, in any way, any of the people who were just
6 introduced, if so, please stand.

7 (No response.)

8 THE COURT: Does anyone have any knowledge about any of
9 the events that were alleged in the indictment that I read,
10 if so, please stand.

11 (No response.)

12 THE COURT: Has anyone heard anything about this case
13 before coming into the courthouse today for jury duty, if
14 so, please stand.

15 (No response.)

16 THE COURT: Has anyone overheard any conversations or
17 been involved in any conversations about this case while
18 here at the courthouse today, if so, please stand.

19 (No response.)

20 THE COURT: Do you know of anything about this case,
21 other than what you've heard since you've been called up
22 here to this courtroom for jury selection, if so, please
23 stand.

24 (No response.)

25 THE COURT: Has anyone formed or expressed an opinion

1 about this case, if so, please stand.

2 (No response.)

3 THE COURT: Now, this case, as I mentioned to you,
4 involves a claim of assault and battery with intent to kill,
5 and I need to know if any of you have ever been a victim of
6 or charged with this particular type of crime before?

7 And I'd also need to know if anyone has had a member of
8 their immediate family who has been a victim of or charged
9 with this type of crime or any other violent crime.

10 So, if anyone needs to respond to those questions, I
11 can talk to you down here in a little more private setting.
12 But if that question pertains to you, you need to respond at
13 this time.

14 (Jurors respond.)

15 THE COURT: Okay. You can just, just -- how about form
16 a line down here and I'll be glad to talk to anyone.

17 Let me just repeat and clarify. The question is has
18 anyone been a victim of a violent crime, charged with a
19 violent crime, or has any member of their immediate family
20 been a victim of a violent crime or charged with committing
21 a violent crime, if so, you need to come down and up front
22 and we'll talk with you with the court reporter.

23 (Whereupon, the following takes place outside the
24 hearing of the remaining jurors.)

25 THE COURT: Y'all step back behind the bar.

1 You can come on.

2 Mr. Pollard, make sure Mrs. Koffskey can hear you.

3 JUROR: In 2001, I was charged with assault and battery
4 high and aggravated nature. I got PTI for that and went
5 through the program. And so, I was never convicted. But I
6 was charged.

7 THE COURT: Does that experience prevent you from
8 giving either the State or Mr. Molina a fair trial?

9 JUROR: I don't believe so.

10 THE COURT: You can put your experiences aside and
11 decide the case on the evidence and base it on the evidence
12 and the law?

13 JUROR: Yes, sir.

14 THE COURT: Any further voir dire?

15 SOLICITOR STEINBERG: No, sir.

16 MR. WILKES: No, sir.

17 THE COURT: Thank you for coming forward.

18 JUROR: My brother's wife was charged with assault in
19 Spartanburg County. Shirley Ables.

20 THE COURT: Is it a conviction?

21 JUROR: No, they dropped it, but it's dismissed or been
22 dismissed.

23 THE COURT: It's your sister-in-law?

24 JUROR: My brother's wife.

25 THE COURT: Given that experience to your

1 sister-in-law, could you put that aside and decide this case
2 solely on the evidence and the law heard?

3 JUROR: (Witness nods affirmatively.)

4 THE COURT: Say yes, sir or no, sir.

5 JUROR: Yes, sir.

6 THE COURT: Your previous experience, you can still be
7 fair and impartial to both sides?

8 JUROR: Yes, sir.

9 THE COURT: Anything further?

10 SOLICITOR STEINBERG: No, sir.

11 MR. WILKES: No, sir.

12 THE COURT: Mrs. Schmaltz, is that right?

13 JUROR: Yes.

14 THE COURT: She's got to be able to hear what you say.

15 JUROR: My brother poured a beer on a referee at the
16 Growl game and he was an off-duty policeman. I believe he
17 was charged with assault.

18 THE COURT: It's just immediate family.

19 Could you -- is that still pending?

20 JUROR: No, it was years ago. He got community
21 service.

22 THE COURT: Could you put that experience aside with
23 your brother and decide this case solely on the evidence
24 involved?

25 JUROR: Yes, sir.

1 THE COURT: You could be fair and impartial based on
2 that experience?

3 JUROR: Yes, sir.

4 THE COURT: Anything further?

5 SOLICITOR STEINBERG: No, sir.

6 MR. WILKES: No, sir.

7 THE COURT: Thank you, ma'am.

8 (Whereupon, the following takes place within the
9 hearing of the entire jury panel.)

10 THE COURT: Is there any member of the jury panel
11 whose, who contributes to, whether it's your time or your
12 money, to any group or organization whose primary concern is
13 victims rights or motion of law enforcement, if so, please
14 stand.

15 (No response.)

16 THE COURT: Does anyone know of any reason whatsoever
17 you could not serve in this case and be fair and impartial
18 to both the State and to Mr. Molina, if so, please stand.

19 (No response.)

20 THE COURT: All right. Is there any further voir dire
21 from the State?

22 SOLICITOR STEINBERG: No, sir, Your Honor.

23 THE COURT: From the defense?

24 MR. WILKES: No, sir.

25 THE COURT: All right. Okay. You gentlemen ready to

1 strike the jury?

2 SOLICITOR STEINBERG: Yes, sir.

3 MR. WILKES: Yes, sir.

4 THE COURT: Ladies and gentlemen, we're going to begin
5 the jury selection process at this time. When your name is
6 called, if you'll just stand where you are. You don't need
7 to come forward. Each side gets a certain number of what
8 are called strikes, and we will select a jury at this time.

9 Yes, ma'am, Mrs. Brown.

10 (Whereupon, a jury panel was selected at this time.)

11 THE COURT: Okay. We'll have one alternate and the
12 strikes are one and two.

13 (Whereupon, an alternate juror was selected at this
14 time.)

15 THE COURT: Okay. Any matters related to the selection
16 process or the composition of the jury from the State?

17 SOLICITOR STEINBERG: No, sir, Your Honor.

18 THE COURT: From the defense?

19 MR. WILKES: I simply renew my earlier motion.

20 Thank you, Your Honor.

21 THE COURT: Okay. All right. Okay. Well, I find the
22 selection complied with the statutory requirements in Batson
23 versus Kentucky and Jay versus Alabama.

24 Ladies and gentlemen, you've been selected to be the
25 jury in this case, and I'm going to ask you at this time

1 just to remain right where you are.

2 (Pause.)

3 THE COURT: Okay. Ladies and gentlemen, what we're
4 going to do at this time, we're going to take a lunch break
5 and just going to ask you to be back at your jury room at
6 two o'clock. Mrs. Sims is going to show you where that jury
7 room is. And please don't discuss this case with anyone or
8 talk about it amongst yourselves or with any other person
9 cause you haven't heard any of the evidence yet obviously.

10 So, if you would just do that, and we will see you back
11 here at two o'clock.

12 Thank you very much.

13 (Whereupon, the following takes place outside the
14 presence of the jury.)

15 THE COURT: Okay. Anything further?

16 SOLICITOR STEINBERG: No, sir, Your Honor.

17 MR. WILKES: No, sir, Your Honor.

18 THE COURT: All right. We'll see you back at two
19 o'clock. Thank you very much.

20 (Whereupon, Court was in recess for the lunch hour.)

21 THE COURT: Anything before we bring the jury in, from
22 the State?

23 SOLICITOR STEINBERG: Nothing.

24 THE COURT: All right.

25 MR. WILKES: Just on the motion to sequester, the

1 solicitor is just trying to get his witnesses and explain it
2 to them. So --

3 THE COURT: Okay.

4 MR. WILKES: -- everybody's outside.

5 THE COURT: All right. Thank you, sir.

6 Okay. You can bring the jury on in.

7 (Whereupon, the following takes place within the
8 presence of the jury.)

9 THE COURT: Okay. Good afternoon, ladies and
10 gentlemen.

11 We're about to begin the trial of the case versus, the
12 State, excuse me, versus David Andres Ortiz Molina, and let
13 me give you a few brief preliminary instructions before we
14 get started with the opening statements, and hopefully I'll
15 demystify some of these surroundings for you, and inform you
16 of what we're going to be doing here.

17 How many of you have served on a jury before in a
18 criminal case?

19 (Whereupon, jurors raise their hands at this time.)

20 THE COURT: Okay. And you sir, ma'am, as a jury, juror
21 know the kind of case, is that right?

22 JUROR: Yes, sir.

23 THE COURT: Well, I'm gonna explain to you what your
24 job is gonna be. And before I do that though I want to tell
25 you what some of the other people who are in the courtroom

1 who you have not met yet what their jobs are and what their
2 roles are.

3 And first of all, I'll introduce to you the court
4 reporter in this case, Mrs. Dawn Koffskey, who's standing
5 right below me, actually seated right down below me. And
6 she's taking down every word that's said cause this a court
7 of record. And she's making a record of this trial.

8 And then to her right is Sharon Brown who's with the
9 Clerk's Office and she keeps track of the paperwork related
10 to this case and exhibits and so forth.

11 And then the bailiffs who are in this case, you've
12 already met I think Mrs. Sims and Mr. Thompson who's back
13 there in the rear. And they're here for your aid and
14 comfort and to assist you in any need you may have as this
15 trial progresses.

16 And I've already introduced myself to you, and I'll
17 tell you a little bit about what I do in just a minute.

18 But everybody I've introduced to you has taken an oath
19 to do their job, and you're gonna have to take an oath too
20 to do your job in this trial. And I'm going to ask
21 Mrs. Brown to give you that oath and she'll do that and
22 listen very carefully to it because it's a time honored
23 oath. It'll tell you what you need to know about being a
24 juror.

25 Yes, ma'am.

1 (Whereupon, the jury was placed under oath at this
2 time.)

3 THE COURT: All right. Thank you, Mrs. Brown.

4 And thank you, ladies and gentlemen. We appreciate
5 your service this week. And I know you've, by being here,
6 understand that our system of justice guarantees the right
7 to a jury trial by any party. And you make the exercise of
8 that right possible. And the right to a jury trial, a jury
9 of one's peers and fellow citizens is a valuable important
10 right and it's guaranteed by the Constitution.

11 And you probably understand, you were called here this
12 week and you got the invitation to join us this week because
13 you either have a driver's license or you have an
14 identification card issued by the Highway Department or
15 you're registered to vote. You may be wondering how you
16 were chosen to be on this particular jury, and I'm going to
17 tell you why.

18 You were chosen because both sides, that is the State
19 and Mr. Molina, believe you can be fair and impartial and
20 that you can decide this case without any bias or prejudice
21 or any preconceived idea whatsoever. And that you could
22 decide the case solely on the evidence and the law, which is
23 what you just swore to do when you took that oath.

24 So, that's why you were chosen. And as you know, this
25 is a criminal case and I will tell you that it is one of the

1 cornerstones of our law that anyone charged with a crime is
2 presumed to be innocent of that charge, and a person who is
3 charged with committing a criminal offense is never required
4 to prove himself innocent or offer any evidence or
5 explanation whatsoever.

6 No matter what the charge is the person will always be
7 presumed innocent of the charge. And as I mentioned to you
8 earlier, that presumption of innocence can only be removed
9 if and only if the State proves each element of the crime
10 beyond a reasonable doubt.

11 Now, as I told you, this case involved a charge of
12 assault and battery with intent to kill. I read you the
13 indictment. I explained to you this indictment is nothing
14 but a piece of paper. It's not evidence of anything. It's
15 not proof of anything. It doesn't even carry a suspicion of
16 guilt, and by pleading not guilty, Mr. Molina, like any
17 person charged with a crime, is put the burden of proof on
18 the State, and he can only be convicted if all of you, all
19 twelve of you, determine unanimously the State is proven
20 each and every element of the charge against him. But at
21 this stage and throughout the trial he'll be presumed
22 innocent of that charge.

23 And part of your job, and the most important part of
24 your job, is to determine whether the State has met its
25 burden of proof. And again, Mr. Molina doesn't have to

1 prove anything to you or offer any explanation or evidence
2 whatsoever.

3 Now, my job in this case as the judge is essentially
4 three fold. The first thing I'm suppose to do is to try to
5 make things run as sufficiently as possible and make things
6 run on time. I know you will appreciate that this is not a
7 business. Our system of justice is not a private business.
8 It's a system that has inherent inefficiencies built into
9 it.

10 So, they're gonna be delays because we want to make
11 sure we do things right because this is an important case to
12 Mr. Molina. It's an important case to the State. I know
13 it's an important task that you're about to embark on.

14 So, we're going to take our time and make sure things
15 are done right. I know you, I know you will understand
16 that.

17 The second thing I will do is determine whether
18 evidence is admissible. If someone objects to evidence in
19 this case, I will determine whether you can consider it.

20 And then the third thing I do is, at the end of the
21 case, I instruct you on the law that you must apply in
22 determining the verdict in this case.

23 Those are my three main jobs. I have a fairly easy job
24 compared to you because your job requires you to be a judge
25 as well. And in fact, when, when it comes to determining

1 what the facts are in this case, you and you alone are to
2 determine what those facts are. And your badge may as well
3 say judge instead of juror because when it comes to
4 determining what the facts are, under our system of justice,
5 you are the exclusive judges of the facts.

6 I can't have an opinion on what the facts are. I'm not
7 entitled to. And even if I did, I couldn't share it with
8 you because it's the jury's question or call as to what the
9 facts are and we have a dispute about what the facts are and
10 that's why we need a jury to resolve it, and you have to
11 determine the facts from the evidence in this case.

12 Now, let me tell you what evidence is and what it is
13 not. The evidence will consist primarily of two forms
14 during this trial. First is the one you're probably most
15 familiar with and this is the testimony of a witness. I
16 anticipate we'll have people who come in and testify under
17 oath from this chair right here and tell you about things
18 they have seen or observed or somehow relevant to this case.
19 So, the sworn testimony of a witness is evidence that you
20 can consider in determining what the true facts are in this
21 case.

22 The second source of evidence is by way of an exhibit.
23 An exhibit is simply a piece of paper or some physical
24 object or some tangible things, and you'll know it's an
25 exhibit and you'll know that it's evidence that you can

1 determine the facts on because you'll have it back in the
2 jury room with you, and it will have a little sticker on it
3 that says exhibit number so and so.

4 Those are the two primary sources of evidence, the
5 sworn testimony of a witness, and an exhibit.

6 And they're certain things that aren't evidence and you
7 can not consider in determining what the facts are.
8 Anything that is said or anything you hear outside of Court
9 when Court is not in session is not evidence and you can't
10 consider it. And likewise, anything the lawyers state is
11 not evidence because they are not witnesses and what they
12 say is designed to help you and aid you in determining what
13 the facts are. But it does not, in itself, constitute
14 evidence.

15 Now, let me impress upon you one thing. It is very
16 important that you perform your duty of determining the
17 facts conscientiously and diligently, because under our
18 system of justice, if I make a mistake as to what the law
19 is, it can easily be corrected on appeal. But if you, the
20 jury, make a mistake as to what the facts are, it can almost
21 never be corrected because a jury's determination of the
22 facts is almost always final and conclusive under our
23 system.

24 Now, in that regard I would ask that you pay attention
25 closely during this case. I know that you will. I don't

1 know how long this case is gonna take. It will take several
2 days and I know it's hard to sit there and listen for long
3 periods of time. We're gonna try to take a break about
4 every hour and a half to two hours and I'm not going to push
5 you too hard. But please try to pay attention to everything
6 that is said closely because it's usually right when you
7 stop paying attention that something important is said or
8 something important happens.

9 Now, in determining what the facts are, you will have
10 to necessarily determine the credibility of every witness
11 who testifies and the credibility of each exhibit that is
12 entered into evidence. And all credibility means is
13 believable, whether you believe that witness or whether you
14 believe that exhibit, and whether it carries the ring of
15 truth.

16 Now, how you, how you determine whether someone is
17 credible or some piece of evidence, evidence is believable,
18 you can use many things to determine that. You can
19 determine whether a witness is hesitant and forthright on
20 the stand, whether their demeanor is such and it's worthy of
21 belief, and whether they have the opportunity to see or hear
22 or somehow sense the things they're here to testify about.

23 You can also consider whether they have any, any
24 interest in the outcome of this case, whether they're biased
25 or prejudiced towards either side, and you can consider

1 whether their testimony is supported or contradicted by
2 other evidence in the case. You can also consider anything
3 you use in your day-to-day life that you use to gauge
4 someone's believability because you certainly don't check
5 your common sense when you report for jury duty at the
6 courthouse.

7 Now, let me tell you again that, as I told you, part of
8 my job is determine whether evidence is admissible if
9 someone objects to it. But if it is evidence that you can
10 consider, what you do with it is entirely up to you because
11 you and you alone determine the credibility of the evidence
12 you hear.

13 Now, ladies and gentlemen, let me tell you that, that a
14 criminal case has certain structure to it, and let me tell
15 you what that structure is so you know what to expect. In
16 just a few minutes you're going to hear the opening
17 statement of the State. As I told you, the State has the
18 burden of proof. Mr. Steinberg, in just a few moments, is
19 going to stand up and give you his opening statement and
20 it's not an argument. It's simply a blueprint or a road map
21 of what he thinks the evidence is going to show and what he
22 thinks the issues may be.

23 Now, after he finishes, at that time, Mr. Molina's
24 attorney, Mr. Wilkes, will have the opportunity, but not the
25 obligation to give an opening statement as well. And I say

1 he has the opportunity but not the obligation because, as
2 I've told you, Mr. Molina doesn't have to prove anything in
3 this case. Doesn't have to say a word. But he certainly
4 has the right to if he wants to. And after we have the
5 opening statements, the State will present any evidence they
6 choose to.

7 After the State completes its presentation of evidence,
8 again, Mr. Molina will have the opportunity, but not the
9 obligation to present any evidence he wishes. And after
10 you've heard all the evidence, the attorneys will have the
11 opportunity to give you their closing statements and then I
12 will give you the instruction on what the law is you are to
13 apply to the facts as you find them. And the case will be
14 in your hands for a decision and for a verdict.

15 So, that's the structure of a trial, and we have
16 excellent attorneys here today. So we're fortunate in that
17 regard. But those attorneys are advocates and they are
18 going to strenuously and conscientiously do their jobs.

19 And you and I, ladies and gentlemen, are not advocates.
20 We don't have any friends to reward or enemies to punish in
21 this case and we're to remain neutral.

22 Let me just mention a few things in closing. As I told
23 you before, don't discuss the case before you've heard all
24 the evidence and the closing arguments and you have the law
25 that you need to use because then and only then will you

1 have the tools you need to do your job and keep an open mind
2 throughout this case.

3 A trial is often like a puzzle and the lawyers have to
4 present it one piece at a time. And if you begin discussing
5 the case before you've heard all the evidence and heard the
6 closing arguments and heard what the law is that you're to
7 use, you would inherently begin starting to make up your
8 mind because you may hear from a witness this afternoon
9 whose says something, and if you went back in the jury room
10 during the break and started talking about what that witness
11 said or didn't say or should of said, you're starting to
12 draw conclusions about the case. You're starting to make up
13 your mind, and you may hear a witness tomorrow who says
14 something completely different.

15 So, remember to keep an open mind. Don't discuss this
16 case. If anyone asked you tonight what the case is about,
17 just say you're on jury duty and you can't talk about it
18 because you're not to begin deliberating until you can do so
19 collectively at the end of the case. And don't do any kind
20 of outside investigation. And remember this case is
21 important to both sides. And this is their day in Court.

22 So, I appreciate the attention you've given me.

23 And with that, Mr. Steinberg, yes, sir.

24 SOLICITOR STEINBERG: Thank you, Your Honor.

25 May it please the Court?

1 THE COURT: Yes, sir.

2 SOLICITOR STEINBERG: Morning, ladies and gentlemen, or
3 good afternoon, ladies and gentlemen.

4 I'm an assistant solicitor. The solicitor is the same
5 thing as a district attorney in other states. We prosecute
6 cases on behalf of people.

7 This case concerns the violent nighttime attack on
8 Nichelle Nichols, the young lady with the dark hair and the
9 white shirt over there. She was an unsuspecting victim
10 standing in front of her own home at night on
11 February 9th, 2005. An attacker came up behind her, hid
12 his identity with a ski mask.

13 During the course of this trial, we're going to rip off
14 that ski mask. We're going to show you that David Molina is
15 the individual that committed this crime. David Molina has
16 told big falsehoods and little falsehoods, has told bizarre
17 stories, bizarre predictions. Keep in mind these
18 predictions. Predictions of harm, harm to Nichelle Nichols.

19 Also he's created a false claim, false claim of an
20 attack, attack against her that he foiled. One of my first
21 witnesses will discuss that and you'll learn very early on
22 that that is a false attack. Answer for yourself why would
23 someone create this false attack.

24 One of the very first witnesses is going to be the
25 victim. You'll hear about the relationship she had. She

1 dated David Molina. She will tell you about how their
2 relationship started, what occurred, his nature during their
3 relationship, and when she broke it up, and what happened
4 after that.

5 She'll also discuss his obsessive nature with her, his
6 refusal to accept she had broken up with him. You'll also
7 hear about his trying to play the hero, his insistence that
8 he must protect her.

9 Later you'll hear how the attack happened. You'll hear
10 a description of this masked man. You'll also hear how
11 Mr. Molina showed up uninvited at her home in Greenville
12 when he was still suppose to be at work in Spartanburg.
13 We'll present evidence concerning this false alibi, an
14 unbelievable and impossible alibi.

15 That will let you know who committed this crime, who
16 else would of had this false alibi.

17 I've attempted to limit the numbers of witnesses to
18 keep the marginal and the repetitive witnesses down to a
19 minimum. They're a lot of officers out there at the crime
20 scene this night and I will not call all of them. I will
21 try to call the most relevant though.

22 I urge you to listen closely in this case. This is not
23 a DNA case. This is not a caught on videotape case. This
24 is not a fingerprint case. This is not something off of
25 CSI. This is essentially a testimony case.

1 I'm going to ask you to consider the witness'
2 testimony. Consider a very critical time line. Consider
3 the demonstratively false alibi, the evidence that was
4 presented that this defendant and only this defendant was
5 obsessed and wanted to commit this attack. Consider his
6 motive. Consider some very specific statements. Listen
7 closely to the words that came out of the defendant's mouth
8 as related by my witnesses.

9 Carefully consider this attack. It was an attack on a
10 young lady with no known enemies. It was not a rape. It
11 was not a robbery. It was a targeted attack against an
12 individual.

13 This ski mask will be ripped off this attacker during
14 the course of this trial and you'll see the face of Nichelle
15 Nichols attacker, the gentleman sitting at the defendant's
16 table.

17 Thank you.

18 THE COURT: All right. Thank you, Mr. Steinberg.

19 Yes, sir, Mr. Wilkes.

20 MR. WILKES: Your Honor, please the Court.

21 Ladies and gentlemen, the solicitor says that he will
22 not be bringing witnesses in and he may not, in their
23 opinion, would be relevant. He says this is not a DNA case
24 or a fingerprint case and she has no known enemies.

25 The key in what the judge explained to you in evidence

1 comes from two places. It comes from the witness stand.
2 There's testimony and there could be evidence introduced
3 that you can look at.

4 But the most important thing from the witness stand can
5 be the lack of evidence because the lack of evidence
6 connects to the presumption of innocence and it is the
7 burden of the State to produce the evidence.

8 They don't bring in DNA evidence because they don't
9 think it's a DNA case. That's their burden. They failed to
10 prove. If they don't bring in fingerprint evidence when
11 there's a fingerprint there to be brought in, it's their
12 burden to do that. They have the resources to do that, and
13 they must do that. It's their duty.

14 If they fail in that, then you must acquit the
15 defendant. When you don't do that, then you are not
16 honoring the presumption of innocence.

17 We believe this case will show you that there are
18 inconsistencies and incomplete police investigation. Nobody
19 is intentionally trying to frame Mr. Molina. But once the
20 investigation turned on him, somebody became convinced it
21 was him, everything else became excluded. Everything else
22 that might show other people were at suspect or suspect is
23 excluded, is overlooked, becomes irrelevant and the same is
24 true with their failing to bring in witnesses in this case.

25 If they fail to bring in evidence, if they fail to

1 prove something that should be proven, whether it's DNA,
2 fingerprints, or other information, ladies and gentlemen,
3 you must protect a man that is been accused and is presumed
4 innocent.

5 There is no question that the young lady was attacked
6 and it was a terrible thing. It's a very bad thing. That
7 is not a question to be defined.

8 The factual question becomes the identity and who is
9 it. The State wants to rip off a ski mask that the State is
10 not going to bring fingerprints and DNA or evidence that
11 might be there to show the identity. The State is not gonna
12 follow through and bring in evidence to show a complete
13 investigation, and that's gonna leave a question. And if it
14 does, you must protect a man that is accused if the State
15 fails to prove beyond a reasonable doubt his guilt.

16 THE COURT: Thank you, Mr. Wilkes.

17 Yes, sir, Mr. Steinberg, you can call your first
18 witness.

19 SOLICITOR STEINBERG: Thank you, Your Honor.

20 The State would call Deputy Bennick.

21 JOHN BENNICK, being first duly
22 sworn, testified as follows:

23 CLERK: State your name for the record.

24 WITNESS: John Bennick.

25 DIRECT EXAMINATION

John Bennick - Direct examination
by Solicitor Steinberg

1 BY SOLICITOR STEINBERG:

2 Q Good afternoon, Deputy Bennick.

3 How are you today?

4 A Good afternoon.

5 How are you?

6 Q I'm fine.

7 A I'm fine.

8 Q How many years do you have in law enforcement total?

9 A Thirty-two.

10 Q And who are you currently employed by?

11 A Greenville County Sheriff's Office.

12 Q And how long have you been with them?

13 A Two years.

14 Q What division in the Sheriff's Office did you work in
15 January of last year?

16 A Uniform patrol.

17 Q And what division are you in now?

18 A K-9 services.

19 Q Okay. Am I correct that you're going down to Florida
20 after this trial?

21 A Yes, sir.

22 Q Okay. Why are you going down there?

23 A To pick up dogs.

24 Q Okay. I want to bring you to the day of January 9th,
25 2005.

John Bennick - Direct examination
by Solicitor Steinberg

- 1 Do you remember that date or this incident?
- 2 A Yes, sir.
- 3 Q What did you do around 10:00 p.m. of that night?
- 4 A Around 10:00 or it was about 8:30---
- 5 Q Okay.
- 6 A ---that reference this incident. It was about 8:30.
- 7 Q Okay. And what time -- what did you do when you got
- 8 there?
- 9 A When I arrived, I spoke to a Mr. Molina and
- 10 Ms. Nichelle Nichols and a Melissa Lynn Brownstein.
- 11 Q And, and what location did you respond to?
- 12 A 212 Riverside Court.
- 13 Q What kind of business?
- 14 A Number A
- 15 Q What kind of, what kind of business was that?
- 16 A A Dogs Day Out. It's a boarding.
- 17 Q When you arrived there, what did you, what did -- well,
- 18 who did you speak to, with when you first got there?
- 19 A Mr. Molina.
- 20 Q What, if anything, did Mr. Molina tell you?
- 21 A That he had been stabbed in the chest and then after a
- 22 confrontation with two subjects.
- 23 Q Okay. Did he tell you the chronology or how this
- 24 attack went, went down?
- 25 A Yes, sir.

John Bennick - Direct examination
by Solicitor Steinberg

1 Q Okay. Please tell the jury what his version of this
2 event was.

3 A He stated that he was there visiting the two employees,
4 which would of been Nichelle Nichols and Melissa Brownstein.

5 Q Okay.

6 A He said that all three were in the, one of the back
7 bays playing with some, some dogs. Mr. Molina stated that
8 he observed somebody lurking along the side of the building.
9 So, he went out to investigate. And as he left the back of
10 the store, went to the front of the store, he saw somebody
11 approaching the front door. When they saw him, the
12 gentleman ran, as you entered the door, to the right towards
13 the rear of the parking lot. And he pursued them down the
14 parking lot.

15 Q Okay. And did he say what his intention was when he
16 found the individuals?

17 A I'm sorry?

18 I'm sorry?

19 Q Did Mr. Molina say what his intentions were when he
20 followed the people outside?

21 A Find out what they were, what they were doing.

22 Q Did he say whether he actually made contact with any of
23 these individuals?

24 A Yes, he did.

25 Q And please tell us about that, what his story was

1 concerning that.

2 A He said he saw the one person run down the parking lot
3 down the -- it was a couple of vans parked at the end of the
4 parking lot. He saw the gentleman, the person that he saw
5 leaving the store at, at that area. He went down in-between
6 a couple of vans that were parked there.

7 As he got down there, that subject that he saw ran
8 toward then the rear of the building, which would of been to
9 the right of these vans. Mr. Molina followed. As he passed
10 by the vans, a second subject jumped out of, came from
11 behind a van, grabbed him from behind, tried to stab him in
12 the chest.

13 Q Did he say, did he discuss with you the trouble that
14 he, that ensued?

15 A Yes, sir.

16 Q Please tell the jury what he said after that.

17 A He stated he was grabbed from behind with a man with a
18 knife. He described the knife as a kind of a paring knife,
19 kitchen paring knife with about a 3-inch blade and a black
20 handle. He said he struggled with the, that individual. He
21 identified him as a black male. They struggled on the
22 ground. He eventually overpowered that subject and threw
23 him down a ravine at that location.

24 The white male that he had originally seen in, at first
25 started to approach him. He had moved toward him

1 aggressively and that subject ran down the hill. By that
2 time, the third, the black male had come back again. They
3 got in another confrontation. He eventually threw him up
4 against the, this truck and down the hill again.

5 Q Did he say which of the individuals stabbed him?

6 A The black male.

7 Q And did he give a description that he reported to you?

8 A Yes, sir.

9 Q Did he give you a description as to what they were
10 wearing on their heads, if anything?

11 A The white male was described as being about 19 and 20
12 years old, about 5'9", 150 pounds. He had blond hair. He
13 was wearing a black T-shirt, blue jeans, and a black
14 bandanna over his face. The black male was about 19 to 20
15 years old. He was about 5'10", 200 pounds with black hair,
16 and he had a white T-shirt on and white pants on.

17 Q Did David Molina ever tell you what kind of damage or
18 harm he did to the individual he threw down the hill?

19 A He said something about hurting his arm. He thought he
20 hurt his arm.

21 Q Did David Molina say what he did with the knife or how
22 he got the knife?

23 A He said he dropped it there. He had taken it away from
24 the subject and he dropped it on the scene there.

25 Q He said he dropped it or that the suspect dropped it?

John Bennick - Direct examination
by Solicitor Steinberg

1 A No, he dropped it.

2 Q Okay. And where was Nichelle Nichols during all this
3 time or where did David Molina say she was?

4 A I thought she was outside.

5 Q When you spoke to David Molina, what were the condition
6 of his clothing?

7 A He had a white -- well, he had a shirt, a shirt on and
8 there was a small cut in his shirt and he had a small wound
9 on the right hand, I believe it was on the right hand side
10 of his chest.

11 Q When you say small wound, just in layman's terms, how
12 deep or big was this cut?

13 A A scratch about a quarter inch maybe---

14 Q Okay. And you---

15 A ---in length. And under the skin it was bleeding. But
16 it wasn't bleeding. It wasn't a, a bad wound I didn't, I
17 didn't feel.

18 Q Did he have any injuries other than that?

19 Any cuts to his body?

20 A Not that I can recall.

21 Q Any, any damage to his clothes, to his arms, his
22 elbows, his legs?

23 A Not that I can recall.

24 Q Okay. Was he limping?

25 A No, sir.

John Bennick - Direct examination
by Solicitor Steinberg

1 Q Did he say what the intention of the attackers were?

2 A I believe he said that they, he was, they were there to
3 rape these girls there. He, he believed they, that they had
4 intended to rape the two girls.

5 Q Okay. The word rape, do you remember him using that
6 word?

7 A Yes, sir.

8 Q I think we've already covered this, but as far as the
9 black male, you said he didn't give any description covering
10 a mask or face covering?

11 A That's correct.

12 Q And just to go over this, for the white male, you said
13 he wore a black bandanna and had blond hair?

14 A Yes, sir.

15 Q If David Molina had mentioned the ski mask, would you
16 have put down, that down in your report?

17 A Yes, sir.

18 Q If David Molina had said he pulled a ski mask off the
19 alleged attacker, would you have put that in your report?

20 A Yes, sir.

21 Q Did you look outside the location when you first
22 responded?

23 A Yes, sir.

24 Q Did you see anything consistent with a fight?

25 A No, sir.

1 Q Tell us about the ground conditions where this fight
2 occurred.

3 A It's at the end of a parking lot. It goes into a
4 wooded area. Where Mr. Molina described this fight would of
5 been at the end of these trucks. That is a, a lot of trees,
6 the leaves, the leaves all over the ground probably ankle
7 deep.

8 Nothing, nothing at all was disturbed. I could find no
9 marks of anybody rubbing up against or moving up against
10 these two vans that were parked there. I couldn't find a
11 knife in the area and there was no ground disturbance in the
12 area at all. Even where the two gentlemen supposedly went
13 down this hill into this, into a ravine, absolutely nothing
14 to indicate that any, anything had, had happened.

15 Q Okay. And was David Molina with you when you were
16 looking there?

17 A Not the first time, but the second time after he got
18 released from the hospital we went back there and walked
19 around that whole area and saying we couldn't find, we
20 couldn't find anything.

21 Q Now, is that -- was, was he released during that same
22 day?

23 A Yes, sir.

24 Q Okay. About how many hours after your first look?

25 A About, about another two hours possibly.

John Bennick - Direct examination
by Solicitor Steinberg

1 Q Okay. Did you ever contact David Molina after this
2 date?

3 A Yes, sir.

4 Q What was your reason for contacting after this date?

5 A Just to see if he had any further information or
6 anything that he could try to contribute to, you know, us as
7 finding who may of done this.

8 Q Did you give him any information about this case?

9 A No, sir, I had no information to give him.

10 Q Did you discuss with him photographs or possible
11 suspects?

12 A No, sir.

13 Q Did you ever tell him that you had a suspect in mind?

14 A No, sir.

15 Q Absent David Molina's testimony to you or statement to
16 you, did you find any evidence of an assault?

17 A No, sir, and I spoke to both the girls on the scene.
18 They didn't -- they never saw any assault. They never saw
19 any other subjects in the area.

20 Q Did you talk to anybody else in that area?

21 MR. WILKES: I'm gonna object to the hearsay.

22 SOLICITOR STEINBERG: I'm not gonna ask what was said.

23 So, you---

24 MR. WILKES: It's still gonna be hearsay, Your Honor.

25 THE COURT: I don't know what his question is.

John Bennick - Direct examination
by Solicitor Steinberg

1 Q My question is simply during the course of your
2 investigation did you speak to any other witnesses, or
3 pardon me, individuals in that area?

4 A Yes, sir.

5 Q Okay. Don't, don't tell me what anybody else said, but
6 who were you speaking with in general terms?

7 A People that, people two doors down from Dogs Day, A
8 Dogs Day Out.

9 Q All right. Thank you, sir. Please answer any
10 questions that opposing counsel may have.

11 A Yes, sir.

12 THE COURT: Cross-examination, Mr. Wilkes.

13 MR. WILKES: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. WILKES:

16 Q When you walked in, you gave the solicitor a document.

17 A Yes, sir.

18 Q What was that document?

19 A Briefly the questions that were just asked.

20 Q And would those questions contain answers on that
21 document or summaries of what you were gonna testify to?

22 A Some of them, yes. I believe some of them did.

23 Q Okay. So, where did you get those questions and
24 answers for your testimony today?

25 A Off of the incident report.

John Bennick - Cross-examination
by Mr. Wilkes

1 Q Where did you get that document that you gave the
2 solicitor?

3 A Oh, from the solicitor.

4 Q Okay. All right. When you got to the scene and you --
5 did you believe Mr. Molina had been injured at that time?

6 A Yes, sir.

7 Q And you say that you're now a K-9 unit?

8 A Yes, sir.

9 Q And you have an attack where you see an injury, but you
10 see no suspects, did you call a K-9 unit that night?

11 A No, sir it was not available that night.

12 Q There's no K-9 dog available on that night?

13 A That's correct, sir.

14 Q Did you call a K-9 unit?

15 A No, sir.

16 Q How do you know he wasn't available?

17 A Because as a member of patrol at that time, as a member
18 of, as a member of the patrol unit at that time, that is not
19 our policy or procedure to use the K-9 units. They were
20 assigned to a specialized unit, DPU.

21 Q So, you had a missing suspect that you couldn't find
22 and you didn't call a K-9 unit?

23 A Yes. Yes, sir, that's correct.

24 Q And you're saying that there were K-9 units in
25 Greenville County at the time?

John Bennick - Cross-examination
by Mr. Wilkes

1 A Not accessible to uniform patrol.

2 Q You're saying that you could not call a supervisor and
3 say I need a K-9 unit or a tracking dog to come out on an
4 assault case?

5 A That's -- to the best of my knowledge, that's correct.

6 Q Okay. That's all I have. Thank you.

7 SOLICITOR STEINBERG: Nothing further from the State,
8 Your Honor.

9 THE COURT: All right. Thank you. You may step down.

10 SOLICITOR STEINBERG: Your Honor, we ask that Deputy
11 Bennick be released.

12 THE COURT: Any objection?

13 MR. WILKES: No objection.

14 THE COURT: All right. Yes, sir. Thank you very much.

15 WITNESS: Thank you, Your Honor.

16 SOLICITOR STEINBERG: Your Honor, the State's next
17 witness is Nichelle Nichols.

18 NICHELLE NICHOLS, being first duly
19 sworn, testified as follows:

20 CLERK: State your name for the record.

21 WITNESS: Nichelle Nichols.

22 DIRECT EXAMINATION

23 BY SOLICITOR STEINBERG:

24 Q Ms. Nichols, where do you live?

25 A Off of Roper Mountain in Greenville.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Q And who do you live with?

2 A My grandmother.

3 Q And in what county is this in?

4 A Greenville.

5 Q How long have you lived with your grandmother?

6 A My grandfather passed away and I moved in six years,
7 almost seven maybe.

8 Q And who did you live with in February of 2005?

9 A Grandma.

10 Q Tell us a little bit about you.

11 Where do you currently work?

12 A I just finished school. But I am a full-time student
13 and two jobs. Now I have a full-time job and a part-time
14 job.

15 Q And where did you go to school?

16 A USC-Upstate.

17 Q Okay. And did you grow up here in Greenville?

18 A Yes.

19 Q Which high school did you go to?

20 A Graduated from Eastside. But I grew up at Bob Jones
21 and went one year at Bob Jones.

22 Q How do you know David Molina?

23 A I work in a cell phone store and he came in to purchase
24 a cell phone. He didn't have any credit established. So, I
25 sold him a prepaid phone, and, of course, I had his phone

1 number and I said -- he said that he was new to Greenville,
2 and I told him I -- he seemed like an interesting person,
3 and we had a long wait to activate his phone. So, we talked
4 about some stuff and I told him to, you know, give me a call
5 if he wanted to go downtown or something like that.

6 Q When did you first meet him?

7 I don't need an exact date. Just give us a general
8 time.

9 A August, late August, September, beginning of September.

10 Q And did you start dating him after that?

11 A Yes, I somewhat pursued the relationship. I called him
12 and said you know, you know, let's go downtown, get
13 something to eat or whatever, and we started dating soon
14 after that. It was a little different -- well, yes, soon
15 after that.

16 Q And how long did you date him for?

17 A Three months on and off.

18 Q Okay. And did you and he ever broke, break up?

19 A Yes, we broke up about once every week. The arguments
20 would get so bad that it was to the point where I couldn't
21 take it anymore. So, that would be about ten to twelve
22 times in three, three and a half months.

23 Q And who would do the breaking up?

24 A I would break up with him.

25 Q How would he respond whenever you broke up with him?

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 A He was very emotional, very adamant about the way he
2 felt. There was no finding a solution to the problem.
3 There was nothing I could do or say to help the situation go
4 in a positive direction.

5 Q When was the last time you broke up with him?

6 A The day after Thanksgiving because I remember because I
7 allowed him to come to Thanksgiving with our family.

8 Q And this last time when you broke up, who did the
9 breaking up?

10 A I did.

11 Q And how did he accept this final breakup?

12 A He didn't believe me. He thought it was gonna be like
13 all the other times. But I was really serious and I was
14 tired of crying and being upset. So, he tried to come over.
15 There was one incident in December, I think the very
16 beginning of December, he came over and, you know, tried to
17 get back with me and brought me to the point where I was
18 crying and grandma woke up and -- but no, it was final.

19 Q Did he ever discuss a future with you or where the two
20 of you were headed?

21 A Yes, we were destined to be together and me believing
22 that there are, what's that word, someone meant for you out
23 there. I kind of fell into it. He said I was special. I
24 was somebody that needed to be protected, that, that we
25 could do great things because we were different from other

1 people.

2 Q Okay. I'm going to ask you a question.

3 You used the word destined, is that -- are those his
4 words or yours?

5 A His.

6 Q Okay. And you used the word protected, is that a word
7 he would use or is that a word you're, you're using?

8 A Yes, he, he does martial arts. He won the state trophy
9 and he does Kaparo. It's, it's a type of style that came
10 from Brazil or something like that.

11 Q After this breakup in the end of November, did you
12 still keep contact with David?

13 A I wanted to be friends with him. So, it -- sometimes
14 through phone calls I would talk to him. But right after we
15 broke up I did not want to talk to him. Over Christmas
16 break, he -- well, pretty much all the time he would call my
17 phone and it wasn't just once or twice. He would call
18 nonstop. So, pretty much over Christmas break I had to turn
19 my phone off every single night to stop, making it stop
20 ringing.

21 Does that answer your question?

22 Q Yes, ma'am.

23 Did he ever bring you any gifts or any mementos or
24 anything of this nature?

25 A Yeah, when we were dating, we used, he use to come over

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 to my house and make rice pudding and you know cook and
2 stuff like that. And when we broke up or when we didn't
3 have time to spend together, he would make rice pudding at
4 his house and leave me some on my car.

5 He also left notes, letters that I gave you. He left
6 it on my car and flowers, they're roses, and some other kind
7 of flower.

8 Q And how did you know the desserts came from him?

9 A Well, he made those specific desserts with that
10 specific flavor at my house, and I would say thanks for
11 leaving the dessert and he would said yeah, no problem.

12 Q Okay. Let me ask you a question.

13 Where is David from?

14 A He's from Colombia, South America.

15 Q And what kind of desserts were these?

16 A Colombian desserts. They made rice pudding and flan is
17 like, like custard, but caramel flavored.

18 Q And after you broke up, did he still continue to leave
19 these items?

20 A Yes, increasingly towards my attack. Not so enough in
21 January. But maybe towards the end of January. Not so much
22 while I was on Christmas break. But yes.

23 Q Where would he leave these gifts?

24 A On my walkway to my door or on my car depending on if
25 my car was there.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Q Do you know what time of day or night he would leave
2 these?

3 A He had the night shift, which was from 6:00 p.m. to
4 6:00 a.m., and he would leave then either on his midnight
5 break or sometime when I wasn't there or sometimes when I
6 was there and asleep.

7 Q After you broke up, did you see him socially?

8 A There were a few times that me met socially. After the
9 January 9th -- well, there was several different times.

10 Q Let me try to do this chronologically.

11 A Okay.

12 Q Did you see him in December outside of the one incident
13 you talked about?

14 A No.

15 Q Did he ask to come see you in December?

16 A Yes, he didn't have family in the area and he asked
17 repeatedly to come spend Christmas with us and you know all
18 the time.

19 Q Did you---

20 A He would hang out with grandma if he could.

21 Q Did you allow him to do that?

22 A No.

23 Q Did you ever go to Atlanta with him?

24 A Yes, I had a, a friend that came in from Alaska and she
25 needed a ride to go to the airport in Atlanta, and it was

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 the first time that I had let David come hang out with me
2 first, in person. Before we had talked on the phone and he
3 told me that he went to a party over on New Years and so I
4 thought that he was getting involved in something else other
5 than me and so I said yes, he could come.

6 Q And do you remember what date that was?

7 A I think January 5th.

8 Q Okay. And who was in the car with you on the way down
9 there?

10 A Jean Maloney.

11 Q And who was there with you on the way back?

12 A Just me and him.

13 Q While on the trip coming back from Atlanta, did he make
14 any unusual statements to you?

15 A Yes.

16 Q Please tell the jury---

17 A He told me that he had a dream and that he communicates
18 with his Shershi, which is a person who taught him how to
19 fight I think, and they communicate telepathically. And the
20 dream or meeting that he had with his Shershi was three
21 dragons. There was a large black dragon, which kind of
22 goes -- it's an Asian thing kind of. A large black dragon
23 and two other dragons. I think one was purple, one was red,
24 I'm not sure. Anyway, they were smaller dragons and one was
25 me and one was David.

1 He said the black dragon attacked me and I was bleeding
2 everywhere and that he couldn't come and help me.

3 Q Did he interpret that dream for you?

4 A He said he -- I wanted to know more, but at the same
5 time it sounded kind of strange. So, I didn't really ask
6 too much. He said he knew when, but he didn't know -- no,
7 he knew how, but he didn't know when something like this was
8 going to occur to me and that I needed his protection.

9 Q All right. Now, he doesn't know how, but he doesn't
10 know when is what he said?

11 A Yeah, he doesn't -- no, he knows how, but he doesn't
12 know when.

13 Q Did he give any indication about where this could
14 occur?

15 A He had one -- and later earlier he had come by my house
16 I guess to pick us up or something like that, and I have a
17 hat that I always wear to the dog place that's covered with
18 dog hair, and it was on, sitting on my stairs, and he
19 touched it when he was coming down the stairs, and he made a
20 motion like oh, you know, like this, and I said what, what
21 is it, and he said that he had a vision about me being
22 attacked at the dog place.

23 Q Did that seem unusual to you?

24 A Yes. Well, yes and no. I think that, you know, it was
25 only girls that worked there and we have to come with the

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 dogs out late at night. But at the same time we have a lot
2 of really big dogs with us, and normally dogs can sense a
3 lot of, you know, danger nearby, that kind of thing.

4 Q After that, did you happen to see him at his apartment?

5 A Yes, after January -- well, can I explain some more
6 about the incident on January?

7 Q Yes, ma'am.

8 A Okay. What happened with the officer said, we were
9 sitting in the dog place, standing in the dog place, we have
10 a monitor, but it doesn't record---

11 Q Actually, ma'am, let me, let me get back to that. Let
12 me get back to that---

13 A Okay.

14 Q ---go back to that.

15 A Okay. Well, yes, I did see him some other time.

16 Q Would you agree this, this next meeting was a, physical
17 or intimate?

18 A Yes, it was. I didn't like it and I didn't want it to
19 be. But yes, it was.

20 Q Okay. Just to be clear and be fair to the defendant,
21 you're not accusing him of doing anything unlawful, are you?

22 A No, not---

23 Q I just wanted to clarify that.

24 During that meeting, did he attempt to reinitiate your
25 relationship?

1 A Yes, over Christmas break I was dating someone. And,
2 and after that, I broke up with him, I think the day before
3 Christmas, I broke up with him and I obviously had already
4 you know, you know, looked for another relationship. I went
5 over to his apartment actually, I think while, right after
6 that happened. And I -- he tried to kiss me and he said you
7 don't feel anything, and I said, of course, I feel
8 something, but, you know, it's just not where I want to go,
9 and, and I'm not gonna get back together with him.

10 After that, there was another incident after the dog
11 place where I went over to his apartment and I was -- I
12 didn't feel very strong and I feel like I was pushed into
13 being physical with him, yes.

14 Q Okay. Were photographs taken at either of the, this
15 first incident or the second incident?

16 A Photographs?

17 Q (Solicitor nods affirmatively.)

18 A Oh, yes, I think, when I was at his apartment after we
19 had been physical, he did take some pictures cause we were
20 talking about artifacts and there's this one Indian -- I
21 study art. And there's this one Indian statute that's
22 pretty famous. She's standing in kind of like this weird
23 position. And so, I was trying to do that, but, you know, I
24 was just like wobbling all over the place cause it's like
25 really hard to stand like that.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Q Okay. And would you agree these photographs are you ,
2 are you unclothed?

3 A Yes, I am.

4 Q Let's talk about what happened on January 9th.
5 Where did you work on January 9th of 2005?

6 A A Dogs Day Out.

7 Q And what kind of business is this?

8 A It's a dog day care, dog boarding.

9 Q And who else was there with you?

10 A Melissa.

11 Q And how long did she work there?

12 A It was my last day and her first day.

13 Q Okay. Have you spoken to Melissa since then?

14 MR. WILKES: I object, Your Honor.

15 A Yes.

16 SOLICITOR STEINBERG: I am not going to elicit -- go
17 on.

18 MR. WILKES: It's going to be hearsay.

19 Q Do you know, of your own knowledge, where she lives?

20 MR. WILKES: I---

21 SOLICITOR STEINBERG: I'm asking simply if this witness
22 knows where she lives.

23 MR. WILKES: I object to the relevance of it.

24 THE COURT: Well---

25 SOLICITOR STEINBERG: Your Honor, counsel has brought

1 up questions about a number of witnesses based on I'll
2 ask -- this is a very short answer.

3 THE COURT: Okay. Why don't y'all come up here real
4 quick?

5 (Whereupon, a bench conference was held out of the
6 hearing of the jury at this time.)

7 Q Did anyone else come over to that location you were
8 working?

9 A Me and David had planned to meet then. He bought some
10 Starbucks coffee. It was cold.

11 Q Prior to him coming over, had you spoken to him on the
12 phone?

13 A Yes.

14 Q What did you tell him on the telephone?

15 A This was after the incident where we were physical and
16 I didn't want it to be, and I told him that I did not like
17 it and that obviously we could not be friends and I wanted
18 to stop all communication for a year at least.

19 Q Okay. You use the term a year, did you communicate the
20 actual one year to David?

21 A Yes.

22 Q And how did he respond?

23 A He didn't say much. He just said, you know, well, can
24 I bring you coffee at work. I said yeah. We were gonna
25 meet one last time.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Q When he arrived, did you have a discussion with him?

2 A No, I was in the back cleaning and working with the
3 dogs.

4 Q Once David got there, did you have a chance to speak
5 with him once he, once you got back out of the back room?

6 A No, we didn't have a chance to speak about what he had
7 came there to discuss.

8 Q What did David do next?

9 A We were in the back. He was petting some of the dogs I
10 think while we were cleaning. And he said that he saw
11 something on the monitor. We didn't see anything. We
12 weren't looking at the monitor, and he said he was gonna go
13 check it out and he told us to lock the door.

14 Q Did he come back?

15 A No, after about I guess a minute or two maybe, I, I was
16 cleaning. The faster I finished cleaning, I went out the
17 front to look out the window and he was coming back from his
18 car, truck.

19 Q How did he act or how did he appear?

20 A You know, he wasn't -- he didn't say much. He
21 didn't -- well, he didn't say anything and he came in and he
22 had his hand over his chest like this, and I said what, what
23 happened, who, who was out there, you know, a whole bunch of
24 questions, and he still didn't say anything and I moved his
25 hand and I saw just a small cut. I said did you get shot,

1 you know. So, he said yeah, he thought so, he saw somebody
2 out there. And he said, no, I think I got stabbed.

3 And then he -- I told him well, sit down. I called
4 9-1-1. And he said, you know, oh, I think it's bleeding
5 internally and you know I feel like I'm gonna faint while I
6 was on the phone with 9-1-1.

7 Q Did he say who had attacked him?

8 A He told us, cause we, she came up there in the front
9 and she was asking, you know, what happened and everything.
10 And he said that there was a white guy and a black guy. The
11 white guy was standing by the door ready to get one of us
12 when he walked out cause we have to walk the dogs and, and
13 the black guy was behind these trucks.

14 The white guy had blonde hair and he told me he had a
15 red bandanna and he went like this when he said bandanna.
16 So, I'm assuming that it was covering his nose down.

17 Q Did, did he say what the black male was wearing?

18 A A white T-shirt. But I don't know about the pants.

19 Q Okay. Did he mention a ski mask at that time?

20 A No.

21 Q Did he say what, if anything, he did to the alleged
22 attackers?

23 A Since he's a martial artist and he can protect me, he
24 ran them off. He went after them, but he only thought it
25 was one person. So, he didn't see the black guy standing

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 behind the truck that attacked him. But he did say that,
2 you know, he beat both of them up and he broke the shoulder
3 of the black guy.

4 Q Did he ever tell you what he believed the intention was
5 of this attacker?

6 A Yes, he said that I should be grateful for my life. He
7 saved my life and that they were going, they were coming
8 there to rape us, and that Melissa would have lived because
9 she wouldn't have fought back. But because I would have
10 fought and struggled with them, they would have killed me.

11 Q Okay. Let me ask you this question.

12 You used the term rape, are those your words or his
13 words?

14 A Those are his words.

15 Q Did he say how he knew this?

16 A I'm guessing his vision. He didn't specifically said.
17 But he said he knew.

18 Q Okay. Is there a video monitor in this location?

19 A Yes, but it doesn't record video.

20 Q Okay. Does it show live?

21 A Yeah.

22 Q And did you see anything in the outside camera?

23 A No.

24 Q So, there's no recording device?

25 A No.

1 Q Is there?

2 Okay. When David returned, did he make any mention of
3 your safety?

4 A Yes. Well, when he went to the hospital, he called me,
5 you know, while I was trying to finish the report with the
6 police, he called me half a dozen times, dozen times, you
7 know, and was I trying to call my mom telling her what
8 happened. The police were still asking me questions about
9 the incident. I had to wait there to fill out the report.

10 When I had finally got a chance to leave the dog place,
11 Melissa stayed there for a few more minutes. But then she
12 offered to drive his, me drive his car because his car was
13 at the dog place and her drive my car to the hospital. So,
14 while we were doing that, as soon as -- I was on the phone
15 with my mom explaining to her what happened while he kept
16 calling me.

17 We pulled into the hospital. And he -- I guess he
18 called his friend Rodrigo or somebody, and they were in the
19 car beside us. I thought he was still in the hospital and I
20 thought it would of taken longer. Anyway, he was very upset
21 with me because he had bled for me and he had saved my life
22 and I didn't appreciate it enough.

23 Q Again, let me ask you another question.

24 Are those his words, bled for me?

25 A Yes.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Q Where was he when he made that statement?

2 A At the hospital on the phone with his---

3 Q Okay.

4 A I think there was a few times he said it.

5 Q Did he make any reference to his prior prediction?

6 A Yes, he said see, bad things can happen to you at the
7 dog place and implied that I needed his protection.

8 Q And how old were you when this happened?

9 A Twenty-one.

10 Q Had you had any enemies in your personal life at that
11 point in time?

12 A No.

13 Q Anybody else ever attacked you or tried to rape you?

14 A No.

15 Q How about at the business, you have any enemies in your
16 business life there at the pet grooming location?

17 A No.

18 Q After this incident, did you receive a letter from
19 David Molina?

20 A Yes.

21 Q Please tell the jury where this letter was left.

22 A On my car hood underneath my windshield wipers.

23 Q Call you to the screen for me please.

24 Thank you, sir.

25 I think I looked over you by accident.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 You said the picture, the letter was left there?

2 A I think underneath my car wind, windshield wiper.

3 SOLICITOR STEINBERG: Madam Court Reporter, I'd like
4 that marked as State's Exhibit for introduction.

5 (Whereupon, the letter was marked as State's Exhibit
6 No. 3 for identification purposes only at this time.)

7 Q I'm gonna show you a document marked as State's Exhibit
8 No. 3.

9 Where did you receive that letter?

10 A My car hood.

11 Q Is this the letter that you're referring to a second
12 ago?

13 A Yes.

14 Q Are you familiar with David Molina's handwriting?

15 A Yes.

16 Q Where would you have seen David Molina's handwriting in
17 the past?

18 A He's left me notes before and he made me a little book
19 with poems in it.

20 Q Okay. And is this his handwriting?

21 A Yes.

22 Q And towards the bottom, the name there, what name is
23 this?

24 A Trista.

25 Q T-R-I-S-T-A?

1 A Yes.

2 Q And did he ever refer to you as Trista?

3 A Yes, I told him that when I was in elementary school,
4 there was a girl in my class, first grade, that her name was
5 Tristina and I really liked it, and my name was weird and
6 that I wanted to change it to Trista when I was little.

7 Q But did he know that you had a nickname of Trista or a
8 pet name as Trista?

9 A He made it a pet name Trista.

10 Q Where did you -- where did Mr. Molina work at the time?

11 A At a plastic refinery.

12 SOLICITOR STEINBERG: Your Honor, I move to introduce
13 this letter.

14 MR. WILKES: No objection.

15 THE COURT: All right. It's in evidence.

16 (Whereupon, State's Exhibit No. 3 was received into
17 evidence at this time.)

18 Q Ms. Nichols, I'm going to go over some of the language
19 in this letter with you. I want you to explain if there's
20 something that I have trouble with.

21 Ms. Nichols, is this how the letter started?

22 A Yes.

23 Q Okay. And this letter was left where on your property?

24 A On my windshield door.

25 Q And at, and at what time?

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 A I guess overnight. I was sleeping.

2 SOLICITOR STEINBERG: Your Honor, I'm going to publish
3 it while I ask questions.

4 Q I felt it long ago, but the biggest flash came when I
5 took the hat that I gave you. We were going downstairs and
6 I dropped back and asked me what was wrong.

7 Was it only dog hair?

8 Remember?

9 That's when I saw it and felt your pain. But I didn't
10 know when. That's why I told you in Atlanta it's not about
11 how, but when.

12 What was that in reference to?

13 A That was in reference to his vision or flash that he
14 got from my hat with the dog hair.

15 Q And this letter, it's not about how but when, when you
16 had conversations with him, when would he make statements
17 like that?

18 A When he was seeing I guess what would be the future.

19 Q I hope you understand now why I called you, I believe
20 that's 100,000 times.

21 A We can't see that.

22 Q I'm not getting this focused correctly. I apologize.
23 Did David Molina call you repeatedly?

24 A Yes. Yes.

25 Q It continues, I'm not dangerous or a psychopath. I

1 just knew that something was really wrong and I needed to
2 know if you were okay. I'm not the monster you think I am.
3 I know my attitude of obsessive and crazy made you think
4 those things. I don't blame you.

5 After all, how, how could you know?

6 Did you ever have conversations with him concerning the
7 word obsessive or his behavior?

8 A I asked him several times not to call, that I use my
9 cell phone often and that when I see one missed call I call
10 the person back if I want to talk to them right then. He
11 doesn't need to call ten, fifteen times.

12 Q It continues on, you have to get -- even everybody felt
13 something was wrong at the dog place. But you blocked
14 yourself. That's why you couldn't see it. I did not tell
15 you either because first you would think I'm crazy or that
16 was something to get you back.

17 Did you and he ever have conversations after this
18 concerning you going back to him following this?

19 A Yes, he -- I needed his protection. He was the only
20 person for me that he, that I was suppose to be with.

21 Q I'm sorry. That -- can you say that again?

22 A I was the only person he was suppose -- that I was --
23 we were suppose to be together. We were destined.

24 Q Okay. You think I'm crazy or something, it happened to
25 get you back, and second, cause what happened had to happen.

1 I hope you understand now that I was just trying to protect
2 you. I don't know if your life changed. I hope you value
3 yourself more than ever. I don't know if you'll ever value
4 what I did. You acted like you did not care. And when I
5 called you from the hospital, you put the busy tone. As
6 always, that's why I call Rodrigo. I thought you were at
7 their apartment.

8 Did he have any concerns about you being at someone
9 else's apartment?

10 A Yes, over our Christmas break, I hung out with my
11 cousin a lot. Her boyfriend's apartment was where we hung
12 out. We made dinner, watched TV together, went bowling, you
13 know, every -- we did pretty much every night over there.
14 That's also where I was dating Matt Ford.

15 Q Okay. And was -- David Molina ever express his opinion
16 as to you dating someone else?

17 A He didn't really speak about it much. But obviously he
18 wanted to be back together and he didn't like it.

19 Q I continue on. I really needed you, but felt so alone.
20 Nobody held my hand. Things would have been different and
21 if I was really badly wounded. I'm not afraid of dying.
22 I'm afraid of dying alone. That is why I refused to spend
23 the night in the hospital and left weak and sick. Rodrigo
24 took me to the lake and left me there. But I asked him to.
25 Then I was so lonely I called you. But your bowling was

1 more important. You didn't have to answer. After all we
2 were not and he has a period period period.

3 At that, at that time, were you dating him?

4 A No.

5 Q Did he express to you that he wanted to date you at
6 that time?

7 A Yes.

8 Q I don't even know what we are now. I don't know how
9 you see me. I just wanted to keep you safe and my heart got
10 involved to make things worse. I don't know if our circle
11 will reopen. But if it does, it will be in totally
12 different circumstances.

13 I'm not mad and I hope you are not either. I'm just
14 impaired. Nobody held my hand. Anyway, that's how I feel.
15 Don't be afraid of me. I'm not a monster. Writing is
16 easier.

17 I want you to know that there's a special feeling
18 linked between us. I hope you see it. I hope you don't
19 want me to be your angel or guardian -- I know you don't
20 want me to be your angel or guardian. But I'm there to hold
21 your hand if you need me.

22 Has he ever used this language before in your
23 conversations, angel, guardian, protector?

24 A Yes, our relationship was different because it was
25 somewhat spiritual. We would talk about the realms that you

1 can't see.

2 Q But I'm there to hold your hand if you need it. By the
3 way, they found a black man with a broken shoulder and
4 descriptive clothes in a hospital in Greer.

5 Did he ever tell you orally whether he had, they had
6 found suspects or located possible individuals?

7 A Yes, he was adamant about trying to find out who had
8 hurt, hurt or who had wanted to hurt us. He said the police
9 didn't, that they contacted him, but he wanted to check in
10 on it because he didn't think they cared. And he said that
11 he called his friend, Diana, who lives in Salt Lake City I
12 think. They speak a different language. So, I can't really
13 understand when they're on the phone. And that she knew how
14 to hack into the computers and she was looking in the
15 hospitals around Greenville.

16 Q Did he ever say whether law enforcement had contacted
17 him on this case with possible suspects?

18 A Yes, he said they had asked him to come in and showed
19 him several pictures of black suspects and asked him to, if
20 he recognized any of them.

21 Q The end of the statement says kiss the sky, you are
22 blessed, Trista.

23 Turn the lights on please.

24 (Pause.)

25 Q Let's move along to the day in question, February 8th

1 where it turned into February 9th.

2 What were you doing towards the end of the evening on
3 February 8th?

4 A I was at my boyfriend's house. I had broken up with
5 Matt Ford over, the day before Christmas, and I was starting
6 to see someone else. Chris, I was over at his house.

7 Q Okay. When you left Chris' house, what did you do?

8 A I had told David earlier that I would call him possibly
9 on his break at midnight. He has a break at midnight and I
10 told him I might call him.

11 Q And had he called you earlier that night?

12 A Yes.

13 Q Did you speak to him?

14 A Yes, I told him to stop calling and that I would call
15 him on his break.

16 Q And why didn't you want to speak to him then?

17 A I was at my boyfriend's house.

18 Q And did you tell David you were at your boyfriend's
19 house?

20 A Yes, I said it was very awkward. He had called the
21 night before also repeatedly to the point where I had to
22 turn my phone off, and we could never get past this point of
23 please don't call me anymore.

24 Q You remember what time you called David Molina back?

25 A I left his house probably right at midnight. So, you

1 know, 12:05, something like that, maybe 12:11.

2 Q Ms. Nichols, I'm going to show you a document -- let me
3 get this marked as -- one is an original and one will be a
4 copy, but one for each actually.

5 (Whereupon, two sets of phone records were marked as
6 State's Exhibit Nos. 4 and 5 for identification purposes
7 only at this time.)

8 Q When you called him up on your way home, did you speak
9 with him?

10 A No, it was very unusual. I got his voice message,
11 which I hardly ever get.

12 Q Did you invite him over?

13 A No.

14 Q Did you leave any message that could be interpreted as
15 inviting someone over?

16 A No.

17 Q Did he have a standing invitation to come to your
18 house?

19 A No.

20 Q Were you in the type of relationship with him at the
21 time where him coming over at that time was appropriate?

22 A No.

23 Q Did you expect him to come over?

24 A No.

25 Q When was the last time that he came over to your house

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 by way of invitation?

2 A December. There was once that he came over after the
3 January incident. There was once in December. After the
4 January incident, he came over to my mom's house after
5 church.

6 Q When was the last time he'd come over to your house
7 though?

8 A Probably December I guess.

9 Q When you arrived home, what did you do?

10 A I locked my car and I started to walk to my front door.
11 There's a light post on the edge of my house, I guess
12 between there, the house and the neighbor. But you can't
13 really see it. It's a yellow light, and I couldn't see
14 which key. So, I paused for a minute and held my keys up to
15 look for which key it was to the house, and I saw somebody
16 out of the corner of my eye.

17 Q Okay. How well lit is that area?

18 A Not very well. I mean it has a light. But I don't see
19 how it does any good.

20 Q What did this person -- what did you see from the
21 corner of your eye?

22 A I didn't tell the police this at first, but I thought
23 it was David coming from work. And it wasn't until the
24 person started running toward me very quickly that I knew
25 something was horrible was about to happen. I had parked my

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 car pretty close to the garage. Grandma parks in the
2 garage. But -- and, and the person ran around the side of
3 my house wasn't prepared for my car, had to jump over my car
4 and run, ran towards me. I froze. I screamed and I started
5 to run towards my house.

6 Q What did this person look like?

7 A They were tall. They wore a big black jacket with lots
8 of pockets. But their mask -- and black pants. The mask
9 was very distinct. It had green and gray and they were kind
10 of lighter colors. I'm not sure how they were since it was
11 kind of dark. But you could tell it was green and gray with
12 burgundy around the stitching, burgundy around the eyes, and
13 a burgundy stripe on the top.

14 Q I think you said on this upper torso he was wearing a
15 jacket.

16 A Yes.

17 Q What kind of jacket was that?

18 A Black with lots of pockets. It was kind of big, but it
19 wasn't a marshmallow jacket.

20 Q Okay. What was this attacker wearing on his legs?

21 A Wind pants.

22 Q You remember what color wind pants?

23 A Dark navy blue, dark gray, black.

24 Q Was it unusual for David to wear wind pants?

25 A No, that's what he wears all the time.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Q Was this attacker wearing anything on his hands?

2 A When -- right after it happened, when the police just
3 arrived, they asked me several times was he wearing gloves,
4 was he not wearing gloves, was he wearing gloves, and
5 several times I said I don't know. Until I thought about
6 it, and when you get attacked, it comes in flashes like
7 little pieces and you can't really see the whole connected
8 picture until later. And I saw a outline of, contrast of a
9 hand on a car. And so, I thought he was not wearing gloves.

10 Q Shortly after the assault did you tell officers that
11 you do not believe he was wearing gloves?

12 A That's -- when I had to make that decision quickly.

13 Q And what was your reason for thinking that he was bare
14 handed?

15 A Because of the contrast on my car. But my, but my car
16 is cream colored. So, it doesn't really make any sense when
17 you think about it, you know, later.

18 Q Later on when you thought about this case, did you come
19 to any different conclusions?

20 A Yes, after about a thousand times playing in my head,
21 you can slow the picture frame down, and when -- well, the
22 incident, I ran to my door, he came behind me, and I did not
23 know he was a knife -- I did not know he had a knife the
24 whole time I was there. He came behind me and I was -- kind
25 of went to go to the door, and he -- I thought -- I was

1 screaming the whole time. I thought he was covering my
2 mouth, but he was holding my chin still.

3 And I'm guessing his other arm, you know, came around
4 here because it was -- you know, I'm like this and it came
5 around. When I was trying to figure out what was going on,
6 I knocked his hands off and going like this. I pushed him
7 back against -- cause it's kind of like a little cubby hole
8 against my door. I pushed him back against the, the wall
9 and fell to the ground at the same time cause I think I
10 stepped on his shoe.

11 And when I fell down to the ground, I looked up and
12 then I attempted to kick him although I wasn't in a very
13 good position to kick him. But I still kicked him I guess
14 pretty hard hopefully. And he paused. And with the light
15 color of the ski mask, he put his hand up like this and it
16 was definitely thick, you know, like winter ski gloves,
17 black.

18 Q Did you attempt to fight back?

19 A As much as I could being on the ground. After I kicked
20 him, I was still trying to figure out what was going on, he
21 didn't move. I was waiting for him to try to grab me and,
22 you know, make a defensive move I guess. After I kicked
23 him, I was just -- he stood there for a moment in kind of
24 strange, and, of course, it's only a few seconds and ran,
25 and then decided to run off.

1 That's when I started to get up. I was banging on the
2 door. Grandma, while he was running off, he probably just
3 passed around the corner of my house when grandma opened the
4 door.

5 I figured out that I was cut. I went up to feel my
6 face and my finger went inside my skin and blood was
7 dropping everywhere. I ran inside. Grandma, of course, was
8 in shock, called 9-1-1 on the house phone, and it didn't
9 seem to pick up. I heard no ringing sound.

10 Q Wait a minute. Let me cut you off real quick.

11 A Okay.

12 Q Ask you some further questions.

13 Was this individual holding a weapon?

14 A I did not see a knife. But obviously he was holding
15 some kind of weapon to cut my face.

16 Q How large was this attacker?

17 A Tall. But I mean when I pushed him up against the
18 wall, I had a better understanding of his body. Shoulders,
19 you know, were higher, but square. This person was in very
20 good shape. They didn't have a belly. But they, at the
21 same time, they were strong and swift. They weren't lanky.

22 Does that answer your question?

23 Q Yes, ma'am.

24 I think -- correct me if I'm wrong, I think you said
25 earlier that you thought it was David coming from work?

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 A Yes, when the person---

2 Q Tell us why.

3 A David works in the, the plastic factory and the
4 buildings are large and kind of. -- they open them, you know,
5 for the docks and he gets very cold. I gave him some pocket
6 warmers before and he wears, you know, kind of bundles up
7 and stuff like that. So, I thought maybe he had gotten cold
8 with the face mask.

9 Q Okay.

10 A I had never seen it before though.

11 Q Okay. Did, did the description fit David's---

12 A Yes.

13 Q ---physique?

14 A Yes, it did.

15 Q And---

16 A And specifically the way he ran.

17 Q Okay.

18 A He runs a very specific way.

19 Q Was the attacker the same size as Mr. Molina?

20 A Yes.

21 Q The same height as Mr. Molina?

22 A Yes.

23 Q You said he had the same was it run or walk?

24 A Run.

25 Q Okay. Please tell the jury why you think his run is

1 distinctive.

2 A Well, it's kind of hard to explain. But he runs on his
3 tiptoes and it's very swift. Not really a military run.
4 But kind of like that, you know, where you keep your upper
5 torso straight, your arms -- you know, not jogger's pose.
6 It's a kind of -- I don't know how to explain it. Straight.

7 Q Okay.

8 A Arms stiff.

9 Q Had you had an opportunity to see David running or
10 doing any sports or activities?

11 A Yes.

12 Q Give us some examples of that.

13 A We went to Cleveland Park. I think we had kicked the
14 soccer ball around the, together. He showed me some of his
15 karate moves. I mean I make him do his jump flip thingy to
16 my friends often.

17 Q And did this -- did you see this person that attacked
18 you, did you see him well enough to notice his run?

19 A Yes, when he was running towards me, definitely.

20 Q Did this attacker speak to you at all?

21 A Not a word.

22 Q If this attacker had spoken, would you have recognized
23 David Molina's voice?

24 A Yes.

25 MR. WILKES: Objection to that.

1 THE COURT: Sustained.

2 Q Does David Molina have an accent?

3 A It's more of a European French accent than a Spanish
4 accent.

5 Q Did this attacker reach for your purse?

6 A No.

7 Q Did this attacker reach for any jewelry or any other
8 items?

9 A No.

10 Q Did this attacker reach for your clothes?

11 A No.

12 Q Did this attacker reach and grab you in a sexual
13 manner?

14 A No.

15 Q What finally caused your attacker to stop?

16 A I guess when I went down to the ground, I was looking
17 up at his face. Maybe I could recognize him more easily if
18 he had looked down.

19 Q After the attack happened or ended, how did you get
20 inside the house?

21 A Grandma let me in.

22 Q How long before, between the end of the attack and you
23 getting inside the house?

24 A A few seconds.

25 Q And what did you do once you got inside the house?

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 A Run to the phone.

2 Q And just give us an approximation, about how long did
3 it take for you to get inside the house to, to the phone?

4 A Probably less than ten seconds.

5 Q Okay. And on which one did you dial?

6 A I tried the house phone. When I didn't hear a dialing,
7 then I hung up and tried my cell phone and I had dialing
8 immediately.

9 Q Okay. And what number were you dialing?

10 A 9-1-1.

11 Q Did you call David Molina that night or after the
12 attack?

13 A No, while I was talking on 9-1-1 he called me.

14 Q Okay. And you're confident you did not call him, he
15 called you?

16 A Yes.

17 Q When he called you, what did you do?

18 A I picked up on -- I told the operator, I said I have an
19 important call and I picked -- she said okay, just don't
20 hang up on me, and I said okay. But I accidentally did when
21 I pressed accept, and I said David, I've been attacked. He
22 said okay I'm coming over.

23 Q At that time, did he tell you where he was?

24 A No.

25 Q Did he tell you that he was already in route?

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 A No.

2 Q Did you expect him to be over?

3 A No.

4 Q And how long were you on the phone with David Molina?

5 A Five seconds, ten seconds. I don't know.

6 Q And what did you do once you got off the phone with
7 David Molina?

8 A I called 9-1-1 right back cause I didn't mean to hang
9 up on them.

10 Q Ms. Nichols, I'm going to show you this tape.

11 Have you listened to this tape ending in 22042 case
12 number?

13 A Yes.

14 Q Does this tape accurately reflect the conversation you
15 had with 9-1-1?

16 A Yes.

17 SOLICITOR STEINBERG: Your Honor, I'd move this tape
18 into evidence. I'd like to publish it for the jury.

19 MR. WILKES: Without objection.

20 (Whereupon, the audiotape was marked as State's Exhibit
21 No. 6 and received into evidence at this time.)

22 THE COURT: It's No. 4?

23 COURT REPORTER: Six.

24 THE COURT: Six.

25 All right. Thank you.

1 (Whereupon, State's Exhibit No. 6 was played for the
2 jury at this time with the witness making the following
3 response during the playing of the 9-1-1 tape.)

4 A That's David's voice.

5 (Whereupon, the remainder of the audiotape was played
6 for the jury at this time.)

7 Q Ms. Nichols, the person that called you that you
8 interrupted, who is that?

9 A That was David.

10 Q And how long did you speak with him on the phone?

11 A Less than seven seconds, ten seconds.

12 Q And---

13 A The reason why I wanted to pick up his call and thought
14 that it was important because that is exactly what he said
15 was going to happen in the dream.

16 Q I'm sorry.

17 Now, you said the reason you, you picked, you picked up
18 his call, his phone call was what?

19 A I thought it was important because that's exactly what
20 he had said was going to happen in the dream or vision.

21 Q Well, what did he say was going to happen in the dream?

22 A About the dragons and me being cut and him not being
23 able to protect me. And the first thing, you know, he done
24 when he came in, well, he went hysterical and he said I'm
25 sorry I wasn't here to protect you, and he went to see if

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 there was any other cuts, and that's when I -- you heard me
2 say there wasn't any other cuts, but he found another one on
3 my leg.

4 Q You said he found it?

5 A Yes.

6 Q From the time he called till the time he showed up, how
7 long do you think it was?

8 A He got there before the police got there. He got there
9 before my mom got there, who lives a mile and a half away,
10 and obviously grandma was calling my mom at the same time I
11 was on the phone with 9-1-1.

12 Q And was this the male voice that we heard in the
13 background?

14 A Yes.

15 Q In your estimation, approximately how many minutes did
16 it take for him to get there after your phone call with him?

17 A Three minutes, maybe four maximum.

18 Q I'm going to show you State's Exhibit No. 4 and 5.
19 Have you seen this document before?

20 A Yes.

21 Q Does this accurately, accurately reflect your phone
22 calls on this date?

23 A Yes.

24 Q Okay. What phone call -- what, what number are you,
25 are you calling from?

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 What is your cell phone number?

2 A 201-8304.

3 Q Let's see. 8304 would be your phone number?

4 A Uh-huh. (Affirmative).

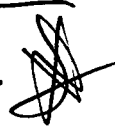
5 Q When did you dial 9-1-1?

6 A As soon as I came in the house.

7 Q Okay. At what time is that?

8 A That is 12:12 a.m.

9 Q And when did you receive a phone call?

10 A David called me at 12:17. 

11 Q Okay.

12 A I guess that's five minutes.

13 Q And when did you call 9-1-1 again?

14 A Right after I got off the phone at 12:18 I called
15 9-1-1.

16 Q Okay. Just keep these two documents clear, is State's
17 Exhibit No. 4 identical to State's Exhibit No. 5?

18 A Yes.

19 Q I'd like you to draw on State's Exhibit No. 5. Just
20 put in say this box right here which is the David's phone
21 call to you, whichever number that is.

22 This is just for identification.

23 A (Witness complies.)

24 Q After this attack, did you call David Molina?

25 A No.

1 Q Did you inform David Molina over the telephone of this
2 attack?

3 A In-between the 9-1-1 calls.

4 Q And did you initiate that phone call or did he initiate
5 that phone call?

6 A He initiated that phone call.

7 Q Where did you expect David Molina to be at this time?

8 A At work. That plastic company is at the BMW exit.

9 Q And had you ever driven to David's workplace before?

10 A Yes.

11 Q And how long did it take you to get there?

12 A Twenty, twenty-five minutes.

13 Q And was traffic particularly bad when you had gone out
14 that there?

15 A No.

16 Q Twenty, twenty-five minutes?

17 A Uh-huh. (Affirmative).

18 Q When you went to the hospital, did you talk to the
19 deputies about this case?

20 A Yes, they kept saying that it was somewhat of a
21 personal case and that I probably knew the person since they
22 didn't speak, and that I had to think harder about who it
23 could be.

24 Q Okay. Did you tell them about any prior incident?

25 A I told them that we were attacked at the dog place, but

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 not really attacked, on January 8th, 9th.

2 Q Okay. Who is Matt Ford?

3 A Matt Ford was my ex-boyfriend that I broke up with on
4 Christmas, the day before Christmas.

5 Q Compare the height of the attacker with Matt Ford.

6 A David Ford might, I mean Matt Ford might be an inch
7 shorter than me or my same height. He's stocky. I think he
8 works out a lot. He's short and not at all like the
9 attacker.

10 Q You said about your height or shorter.

11 How tall are you?

12 A I'm 5'3", 5'4".

13 Q Okay. Compare the build or the size of the attacker to
14 Matt Ford.

15 A He's stocky, kind of looks like a, you know, Bulldog
16 kind of arms.

17 Q Okay. Why did you bring up the name Matt Ford?

18 A They asked me about my ex-boyfriends, and he was my
19 last ex-boyfriend. But we -- I mean we had, had argued.
20 But not, you know, violently or in the nature that would
21 want him to hurt me.

22 Q Did David, David ever speak about Matt Ford or about
23 seeing Matt Ford?

24 A Yes, he said that Matt Ford followed him. Matt Ford
25 has a blue truck. He said, David said it was a Toyota. But

1 he has a Chevrolet. He said that it was a blue truck and
2 that there were two people in the car.

3 Now, at the apartment that I always hang out at, at my
4 cousin's boyfriend's apartment and the apartment of Matt
5 Ford, there's three people that live there. Two of them are
6 tall and lanky and then there's Matt, which is short and
7 stocky.

8 I don't think he knew Matt Ford was. He said that two
9 guys were following him in that blue truck and that one was
10 tall and lanky and the other up, one was a little shorter,
11 but lanky, still tall, and they followed him to his
12 apartment. They went to see which apartment he got into.
13 And he said, you know, he acted like he was going in the
14 door, but he didn't. And he followed them and that's how he
15 saw what kind of truck it was even though it was the wrong
16 kind.

17 Q And how long before this attack on you did David bring
18 up Matt Ford?

19 A Some time in December.

20 Q Okay. Have you seen Matt Ford since this time?

21 A Yes.

22 Q What type of meeting was that?

23 A We saw each other at a restaurant. We were like oh,
24 hey, how you doing. He's moving to California. His family
25 lives out there. His dad does and he's getting a job out

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 there and he was just with some friends. We didn't talk
2 very long, but it was pleasant.

3 Q When you and Mr. Ford stopped seeing each other, was it
4 on hostile terms?

5 A No, he thought that he shouldn't be, shouldn't date
6 anybody because he was still somewhat I guess in love with
7 this girl that he dated before me, which I was really upset
8 cause I guess I don't take rejection well.

9 Q Well -- but did he have any hostility towards you or
10 express any hostility towards you?

11 A No, it was -- I guess he could -- no, it was calmly.
12 We talked about it.

13 Q Okay. After leaving the hospital, did you see David
14 Molina again after that?

15 A After I left the hospital?

16 Q Yes.

17 A Yes, like I said, he came over to my house before, well
18 during, right after the attack and was hysterical and he
19 went to the hospital with us. And after the hospital he
20 came back over to my house and said that he should stay to
21 protect us.

22 Q Did you invite him over?

23 A No.

24 Q Do you remember what day of the week this was?

25 A Wednesday.

1 Q Okay. And did he spend the night?

2 A Yes.

3 Q Did you ask him to spend the night?

4 A He insisted that he spend the night, and we said we,
5 you can sleep on the couch.

6 Q And where did you sleep?

7 A Slept upstairs in my room with my mom.

8 Q When did David Molina leave your house?

9 A Thursday. I think he had to go back to work at six
10 o'clock.

11 Q And was your boyfriend at the time present?

12 A No. Well, Thursday before he left, probably like four
13 o'clock or so, my boyfriend came over. The guy that I just
14 started to see.

15 Q Okay. What, if anything, did David say about the
16 assault?

17 A He said that he was taking this personally as his
18 mission to find out who did this to me, and that his
19 friends, the girl in Salt Lake City and his Shershi in China
20 were going to send him a special package so that he could
21 find them. He said that he went around to the neighbors and
22 asked if they had seen anything, which we found out he
23 didn't. And he said that he found a boot print in the
24 grass, which I don't know how he found the boot print in the
25 grass.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Q Okay.

2 A But he showed us where the person was hiding behind the
3 air conditioner unit.

4 Q And did you see this boot print?

5 A No.

6 Q What, if anything, did he say about your safety?

7 A Again, he said I wasn't safe unless you know he was
8 there to protect me, and that he didn't so much say that we
9 should be together because he knew that it was unacceptable,
10 but that, you know, he needed to be there to protect me and
11 he's very worried about me.

12 Q Did he have a key to your house?

13 A No, he insisted on having one. He asked my grandma
14 several times, my mom several times, and me several times.
15 And of course, I was on Lortab or something by that time,
16 and I told him to ask my mom. And they said you know why is
17 he, why you need a key. You know, we're gonna be here
18 whenever you need to protect us.

19 Q Okay. He said he needed to protect you?

20 A Yeah. Well, that was his, his reason for having the
21 key. That way he could, you know, be there and protect the
22 house. He said that sometimes, you know, people, the
23 criminals come back to the place where they committed the
24 crime.

25 Q All right. Were those his words?

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 A Yes.

2 Q Criminals come back to the place they committed the
3 crime?

4 A Uh-huh. (Affirmative).

5 Q On Thursday of that week did you make a drawing?

6 A Yes, I was getting bored. I had slept about, you know,
7 a day and a half and I tried eating something, and I was
8 wanting to get out of the house because I didn't feel
9 comfortable in the house. And my mom said well, we couldn't
10 really go anywhere. I think she was cleaning up the
11 kitchen.

12 She said, you know, why don't you draw a picture
13 because you're gonna go see the investigator tomorrow and
14 you can give him a description, you know, by drawing. Like
15 I said, I do art. Maybe it can be a better description.
16 This is not my best art.

17 Q Ms. Nichols, I'm going to show you a document in a
18 second. Let me get this marked for identification.

19 (Whereupon, the drawing was marked as State's Exhibit
20 No. 7 for identification purposes only at this time.)

21 Q Is this the drawing you drew?

22 A Yes.

23 Q And just briefly for identification, did you draw this
24 mask right here?

25 A Yes.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Q Did you draw this figure over here?

2 A Yes.

3 Q And there's a figure on the back side, did you draw
4 that?

5 A Yeah, that was me kicking him.

6 Q Okay. I'm gonna show this picture.

7 Like to introduce this picture and then I'm going to
8 publish it to the jury.

9 MR. WILKES: No objection.

10 (Whereupon, State's Exhibit No. 7 was received into
11 evidence at this time.)

12 Q Ms. Nichols, who was present when you had, when you
13 drew this?

14 A My mom was in the kitchen cleaning dishes, which is
15 like, you know, three feet away, and David was sitting right
16 beside me.

17 Q How close was David to you?

18 A Right beside me.

19 Q Was he close enough he could touch you if he wanted?

20 A Yes.

21 Q When you drew this ski mask on this part of the
22 drawing, what was your reason for drawing that?

23 A Because if they -- I told them if they can find the ski
24 mask they can find the person who attacked me.

25 Q Okay. And while you're drawing it, did David Molina

1 say or do anything?

2 A Yes, right above the burgundy stripe, I left that
3 blank.

4 Q Let me stop you.

5 Where I'm putting my hand right now, is that the
6 burgundy stripe?

7 A Yeah, that's the burgundy stripe.

8 Q Okay. Please continue.

9 A Well, above that I left blank, and I, I think I started
10 with the ski mask and I went over to the person running.
11 And I left it blank because I didn't know what color it was
12 and David said are you gonna finish coloring the ski mask
13 and I said I don't know what color it is. He said I thought
14 you said hunter green, and I said no, I never said that,
15 how---

16 Q Let me ask you this.

17 A Yeah.

18 Q He said it was hunter green?

19 A Yeah.

20 MR. WILKES: Your Honor, I'm gonna have to object.
21 Every time she testifies to something counsel has asked
22 repeatedly did you say, she did say. We all heard it. It's
23 a pattern.

24 SOLICITOR STEINBERG: The pattern was going to be
25 appropriate as far as this examination concerning this, Your

1 Honor.

2 THE COURT: Well, I would have to sustain the objection
3 on the question that was just asked.

4 All right. Go ahead.

5 Q Ms. Nichols, when I ask a question, try to answer the
6 exact question. Don't move on until I ask the next question
7 just to keep me in order if you would, please.

8 A Okay.

9 Q Ms. Nichols, what color did he say it was?

10 A Hunter green.

11 Q And what did you then next say?

12 A I said I didn't know what color it was, how did he know
13 what color it was.

14 Q How did he respond?

15 A I thought you said it was hunter green.

16 Q And how did you respond?

17 A I thought it was very awkward and I said no, I never
18 said it was hunter green.

19 Q What did he say next?

20 A He squirmed around, he looked up and down, right and
21 left. And after, you know, about a few seconds, he said
22 that's the same face mask the guy was wearing that attacked
23 us at the dog place.

24 Q What did you say to him, if anything?

25 A I said I thought that person was wearing a bandanna and

1 he said no, he was wearing a mask. And I said but you told
2 me that he had blonde hair. How did you know that he had
3 blonde hair. And he said oh, while I was fighting with him
4 I pulled off the face mask.

5 Q What did he say happened when he pulled the face mask
6 off?

7 A That he saw -- I said well, if you pulled the face mask
8 off, then you saw who the person was and I said all this
9 time you've been holding it back. I mentioned in his
10 presence several times the description of the face mask.
11 It's unique. You would have recognized it.

12 Q Did David Molina describe the attacker's face?

13 A He said that he looks like me, but he has blonde tips
14 on his hair.

15 Q When he says looks like me, was he referring to David?

16 A Yes.

17 Q What are blonde tips?

18 A Highlights. He never said it was -- blonde tips, they
19 just highlight the tip.

20 Q Now, going back to the incident at the dog grooming
21 place, did he say anything about a ski mask to you?

22 A No. And he also said that people at the dog place
23 probably didn't know me. And you know him trying to figure
24 out the whole thing that happened to me at my house, he
25 said, previously had said that it was somebody that I knew

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 and that I needed to think harder about who it was. And
2 after this he said oh, it's because he broke the black guy's
3 arm, the white guy was after me.

4 Q What did you say after this?

5 A I said if you know what that person looks like, then
6 when I go to the invest, investigator tomorrow I'll set up a
7 time where you can go to see a sketch artist and draw a
8 picture of the person and had he ever saw them before. I
9 mean, you know, that he could tell me what they look like or
10 somebody that I knew.

11 Q How did he respond?

12 A He, he was focused on he couldn't believe that I
13 thought he would do something like this because when he told
14 me about this I became very suspicious. I mean that was --
15 for me, that was a very key point. I said did you know when
16 that person, when the attacker ran around the side of the
17 house that I thought it was you at first and he said no. He
18 couldn't believe that I thought he would do this to me over
19 and over again and started crying and walked around the
20 house.

21 Q How soon after that did he leave your house?

22 A I think that was around 3:00 or 4:00. He had to be at
23 work at 6:00.

24 Q When did you see him again?

25 A The next morning -- of course, I knew he had the shift

1 to 6:00 to 6:00. Then he went to sleep I guess. The next
2 morning I went to the investigator I think at nine o'clock,
3 and he said that he had some more evidence and the first
4 thing I---

5 MR. WILKES: Objection.

6 Q Yes, let me -- don't repeat anything that Mr. Smith
7 told you, please.

8 A Got you. Okay.

9 Q All right.

10 A When I walked in, the first thing I told him was that I
11 wanted, you know, I had a friend who said that he saw the
12 person who attacked me and that it was connected to the dog
13 place and that he needs to come and draw him as soon as
14 possible so I can ID him.

15 Q When did you next see David Molina?

16 A I even recommended, can I say that?

17 Q Well, no, just -- did you have a conversation with
18 David Molina?

19 A I -- the next day or later that day on Friday he called
20 my cell phone and I told him that we couldn't speak any more
21 and that I didn't want him to contact me any more.

22 Q Do you believe that you were clear in relaying that to
23 David?

24 A Yes.

25 Q Did David make any statements agreeing or disagreeing

1 with that?

2 A He said what did you tell the police because he knew I
3 had an appointment, and he said should I be expecting them
4 on my door step.

5 Q When do you next see David Molina?

6 A That night, I don't know, maybe 8:00, it was dark
7 outside and we were watching TV over at my mom's because I
8 didn't feel safe at me and grandma's house, and we went to
9 the kitchen I think to get something to drink and he was
10 looking in the window.

11 Q Did you find that unusual?

12 A I found it terrifying.

13 Q To get to that part of the window, do you have to walk
14 past the door?

15 A Yes, it's -- we have like a long porch that has one
16 staircase and the window is over here and the door's right
17 here.

18 Q Did you have to walk past the doorbell?

19 A Yes.

20 Q Did you invite him over?

21 A No.

22 Q You said earlier that you told him not to, not to call
23 or come over.

24 After that time, did you ever invite him over?

25 A No.

Nichelle Nichols - Direct examination -
by Solicitor Steinberg

1 Q Were you expecting to see him over?

2 A No.

3 Q What time of day or night was this?

4 A Late night. I think we were going to go home or figure
5 out what to go to bed. We had just turned off the TV I
6 think.

7 Q And tell us how you first saw him.

8 A What do you mean?

9 Looking through the window.

10 Q Okay. And how did you feel?

11 A Terrified.

12 Q Okay. Let me show you one or more pictures on this
13 document.

14 Did you draw this from the same episode as when you
15 drew the ski mask?

16 A Yes.

17 Q And you have on this, it's not clear, it says running
18 on tiptoes.

19 A I was, I was clear about that part, running on tiptoes.
20 It was very fast, you know like I said, straight run,
21 determined. On the other side I was trying to figure out
22 maybe some possibilities for, you know, things that might of
23 occurred. I thought they were right-handed since they go
24 like this.

25 Q Okay.

1 A I had put one long fingernail because I had, I had just
2 one cut underneath my arm like right on my wrist underneath
3 my arm, and I thought it was, you know, maybe somebody has,
4 you know, one long fingernail. But I think it was the other
5 side of the blade because I mean it was, you know, it healed
6 pretty quickly and it was just one scratch. You know, not,
7 not wider than a pencil head.

8 Q And why did you say dark gloves?

9 A That was again because I had told the police that
10 before because of the contrast on the car.

11 Q Okay. And what's this mean right here, scratch this
12 one line?

13 A That, that's again where the the long fingernail
14 thing. I couldn't figure out that it was the back of the
15 blade I'm guessing.

16 Q I'm gonna show you a couple of photographs.

17 THE COURT: Tell you what, we're gonna, we're gonna
18 take a recess now, about fifteen minutes.

19 And ladies and gentlemen, don't discuss the case. Keep
20 an open mind. We'll be back with you in about fifteen
21 minutes.

22 Thank you very much.

23 (Whereupon, the following takes place outside the
24 presence of the jury.)

25 THE COURT: You can step down.

1 SOLICITOR STEINBERG: Your Honor, will you instruct
2 Ms. Nichols she can, she can leave the bench, but she can't
3 speak to anybody, is that correct?

4 THE COURT: That's right.

5 SOLICITOR STEINBERG: Okay.

6 THE COURT: Okay. Don't talk to anybody about your
7 testimony.

8 All right?

9 WITNESS: Is it okay if I sit right here?

10 THE COURT: Ma'am?

11 WITNESS: Is it okay if I sit right here?

12 THE COURT: You want to stay right there?

13 WITNESS: Yeah.

14 THE COURT: You can if you want to. You don't have to.

15 WITNESS: Can I have some water?

16 THE COURT: Yeah.

17 (Whereupon, a short recess was taken at this time.)

18 SOLICITOR STEINBERG: Judge, we're marking the
19 pictures. I do want to present to you the black and white
20 copy so you can see the difference of them. I've made a
21 copy. I just can't say that they accurately convey both the
22 depth. There's another problem I'll bring up with the judge
23 once it's marked.

24 MR. WILKES: Judge, I've looked at the black and
25 whites, and I can say that the copy that we've tried to make

1 on this little copy machine here is not quality that, that
2 they're seeking. I think that with the right, a real copy
3 machine we can probably get a suitable black and white copy,
4 which I think will reduce the prejudice.

5 (Whereupon, five photographs were marked as State's
6 Exhibit Nos. 8 through 12 for identification purposes only
7 at this time.)

8 SOLICITOR STEINBERG: Judge, I'm going to present to
9 you State's Exhibit No. 8 for ID and 9 for ID. This is the
10 same photograph, both black and white. The black and white,
11 in the State's opinion, does not adequately, adequately
12 reflect the depth of this. It also has a problem that you
13 can't see where the, what it is.

14 When you look at the black and white, it just looks
15 like there's blood dripping from there. It's clearly not
16 the image you get from the, from the color photo. The color
17 photo you actually see the, the gap in the skin. You see
18 how deep this wound is, how wide it is, but the black and
19 white, all you see is a black spot. It doesn't convey that
20 it's an actual entire cut. It's not just a cut with blood
21 covering it.

22 MR. WILKES: Judge, like I said, I agree that the
23 quality of the black and white is not the quality that we
24 need to show what they intend to show. The question is not
25 the color, but the contrast and the quality of the pictures,

1 and I think if we just take it over to the Solicitor's
2 Office file, of course, I don't care, but if we have a
3 quality copy machine, I think that we can do much better
4 than that machine, and I don't think we should consider
5 introducing the graphic color photos if we can obtain the,
6 the sufficient clarity to show what they intend to show.

7 I just -- I don't think that saying that that machine
8 can't do it is, is -- certainly can do it and prejudice of
9 the, the color is just overwhelming and it's unnecessary to
10 show these injuries.

11 And as a suggestion, the simple suggestion would be she
12 can identify what has been offered for identification and we
13 can attempt, over the evening, to do better with the
14 duplication. If we could do that, the Court will better be
15 able to evaluate the quality of the photos and just not
16 publish it to the jury until in the morning.

17 THE COURT: Well, I would grant the motion to exclude
18 the color photograph at this time under Rule 403. The
19 probative value of it is not, from what I have been told,
20 furthered by whether it's color or black and white.
21 Certainly a witness can explain the photograph to the
22 specificities desirable.

23 But I don't really see how it's advancing any probative
24 matter in the case to have that graphic of a picture put in
25 evidence because it, the issue is not the extent of the

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 injuries so much as the identity of the attacker as I
2 understood it.

3 Is that not the State's---

4 SOLICITOR STEINBERG: I still think we have to
5 consider -- and although it's not the critical issue, I
6 still think we have to put in the type of attack and it's
7 one of the factors a jury can consider---

8 THE COURT: Right.

9 SOLICITOR STEINBERG: ---in that case.

10 THE COURT: Well, and that's already been in evidence
11 and I'm sure they'll be other evidence and other photographs
12 that would relate to that. So, I grant the motion.

13 SOLICITOR STEINBERG: Thank you.

14 THE COURT: I mean if you want overnight to try and
15 find a black and white copy that's more ---

16 SOLICITOR STEINBERG: Judge, I'll have, I'll just use
17 these documents and I'll have the witness explain the
18 lines---

19 THE COURT: Okay.

20 SOLICITOR STEINBERG: ---of this--

21 THE COURT: All right.

22 SOLICITOR STEINBERG: ---up there---

23 THE COURT: Thank you.

24 SOLICITOR STEINBERG: ---so we don't have to have that
25 picked up.

1 THE COURT: All right. Y'all ready for the jury?

2 SOLICITOR STEINBERG: Yes, sir, Your Honor.

3 MR. WILKES: Yes, sir.

4 THE COURT: All right.

5 MR. WILKES: So, judge, just for clarification, that
6 should apply to all of the pictures, should it not?

7 THE COURT: No, I just thought that one---

8 SOLICITOR STEINBERG: Yes, sir.

9 THE COURT: ---picture on the, of the wound on the
10 cheek area was---

11 MR. WILKES: Well, our, our objection obviously would
12 extend to all of them because it's---

13 THE COURT: Okay.

14 MR. WILKES: ---just the graphic nature of it.

15 THE COURT: Yes, sir, I understand your objection and
16 appreciate you clarifying it. But I would deny your motion
17 except as to that photograph, which I think has been marked
18 as Exhibit 8 and 9. No. 9 is the actual color photograph.

19 (Whereupon, the following takes place within the
20 presence of the jury.)

21 THE COURT: Okay. Yes, sir, Mr. Steinberg, you can
22 resume your questioning.

23 SOLICITOR STEINBERG: Thank you, Your Honor.

24 CONTINUED DIRECT EXAMINATION

25 BY SOLICITOR STEINBERG:

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Q Ms. Nichols, I'm going to show you State's Exhibit No.
2 10, 11, 12, and 8.

3 Please take a look at them.

4 A (Witness complies.)

5 Q What do those pictures show?

6 A My cuts, injuries.

7 Q And do you know approximately when they were taken?

8 A When I got to the emergency room, I had to wait about
9 an hour and a half for the forensic person, photographer to
10 come by and then two, a total of two and a half hours before
11 the doctor saw me.

12 Q Okay. And were these pictures taken in the hospital?

13 A Yes.

14 SOLICITOR STEINBERG: Okay. Your Honor, I move to
15 introduce State's Exhibits 8, 10, 11, and 12 into evidence.
16 I intend to publish to the jury.

17 MR. WILKES: Two things, Your Honor, one, my, my
18 objection previously stated.

19 THE COURT: Yes, sir.

20 MR. WILKES: Do I need to state it in detail?

21 THE COURT: No, sir, you, you -- I'll just incorporate.

22 MR. WILKES: I have one more objection on those is that
23 I think we're going to put them up on the viewing screen,
24 and make them eight feet tall and I think that that is
25 overly prejudicial. I think that if the Court is going to

1 admit them, I think that the individual photos can be shown
2 to the jury and published so that obviously my objection,
3 but that that would reduce any overly inflammatory affect.

4 THE COURT: Okay.

5 MR. WILKES: Just, just for the record, the screen is
6 approximately four, five, feet tall illuminated and
7 projected, and I just think that that is again grossly
8 overdoing the evidence.

9 THE COURT: All right. I'm going to overrule the
10 objection.

11 (Whereupon, State's Exhibit Nos. 8 and 10 through 12
12 were received into evidence at this time.)

13 THE COURT: Go ahead.

14 SOLICITOR STEINBERG: Thank you, Your Honor.

15 Q Ms. Nichols, I'm going to show you State's Exhibit No.
16 10.

17 Lights please, Mrs. Sims.

18 Where on your body were you cut?

19 A On my eyelid coming down to the side and right here in
20 my mouth.

21 Q Okay. And so, is that it -- blood that we see there,
22 is that from a cut or is that dripping down from some place
23 else?

24 A Dripping down, wiped, wiped off.

25 Q Okay. And did you actually receive a cut -- was -- the

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 cut that's on your mouth, what part of your mouth -- is it
2 on the mouth, or lips, or where was it?

3 A I actually had stitches on the inside of my mouth and
4 the outside.

5 Q Okay.

6 A It kind of cut through I think.

7 Q And as to this cut from when -- how, how long is that
8 cut?

9 A Inch and a half.

10 Q I'm going to show you State's Exhibit No. 11. I'm
11 going to point midway down.

12 What is that, ma'am?

13 A That's the cut on my leg that David found.

14 Q And on State's Exhibit No. 12, what is that?

15 A That's the cut larger.

16 Q That's the cut what?

17 A That's the cut, but closer up.

18 Q Okay. Do you know if the photograph or if there is a
19 treatment for this cut or scratch on your arm?

20 Was that treated?

21 A Yeah, it was, it was too small for stitches.

22 Q Okay.

23 A That's why I thought it was the back, the back of the
24 blade.

25 Q Okay. I'm going to show you State's Exhibit No. 8.

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 Please tell the jury -- the, the black part to your
2 ear, how far up did this cut go into you ear?

3 A It cut through the top of my ear and all the way down.

4 Q I'm gonna see if this laser pointer will work.

5 A My whole finger could fit in the cut. I know my, my
6 fingers aren't in there.

7 Q I'm gonna---

8 A I had -- there was some -- I -- my fingers were sliced
9 up pretty good bad too.

10 Q If you could stand over here, I'd like for you to use a
11 laser pointer. You have to press down on this red---

12 A Okay.

13 Q Show me where the wound on the top of your ear went up
14 to.

15 A Right here. I think my hair is in front of it.

16 Q Okay.

17 A But it's right at the top and it sliced the center
18 little part that comes down and all the way down.

19 Q Okay. That area you just pointed to right in the
20 middle---

21 A Uh-huh. (Affirmative).

22 Q ---tell us about that injury.

23 A They had to do stitches on the inside of my face and on
24 the outside.

25 Q Okay. The -- where the dark stops here and here --

Nichelle Nichols - Direct examination
by Solicitor Steinberg

1 A Uh-huh. (Affirmative).

2 Q -- was that area closed or was that area opened up?

3 A It was open. I had -- I was holding my face up and I
4 asked them, you know, if I could hold it up in the picture
5 because when I let it down it felt like my face was falling
6 off.

7 Q And how many doctors treated you at the hospital?

8 A Two. One of the nurses recommended that we call an
9 on-staff -- I mean not -- on-call plastic surgeon for my
10 face.

11 Q Thank you, Ms. Nichols.

12 You can turn the lights on please.

13 That's all the questions I have for you. Please answer
14 any questions that opposing counsel might have for you.

15 MR. WILKES: May it please the Court?

16 THE COURT: Yes, sir.

17 MR. WILKES: Thank you, Your Honor.

18 THE COURT: Mr. Wilkes.

19 CROSS-EXAMINATION

20 BY MR. WILKES:

21 Q Ms. Nichols, you indicated that you were asked about
22 any other enemies

23 A Yes.

24 Q And you indicated that you had none that you were aware
25 of.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 A Yes.

2 Q You were also asked even I believe by 9-1-1 had you,
3 did you have any ex-boyfriends?

4 A Yes.

5 Q Okay. And when you spoke initially with Deputy Boyd,
6 you indicated---

7 A Who is that?

8 Q I'm sorry.

9 A Is that the guy that was in my kitchen?

10 Q One, one of the first guys that was there---

11 A Okay.

12 Q ---that asked you about anybody that could of done
13 this, did you mention Matthew Ford's name?

14 A No.

15 Q You never mentioned Matthew Ford?

16 A No, it wasn't until the hospital.

17 Q The hospital?

18 A Somebody else asked me I think.

19 Q Okay. But you did tell somebody Matthew Ford?

20 A Well, it wasn't because we had argued. It was because
21 he was my ex-boyfriend.

22 Q Okay. Did you have any other ex-boyfriends?

23 A Yes.

24 Q Recently?

25 MR. WILKES: Your Honor, I have to object on the

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 grounds of third party guilt.

2 THE COURT: All right. Overruled.

3 Go ahead.

4 Q Who would those ex-boyfriends within the last year or
5 two be?

6 A David.

7 Q And who else?

8 A Matt.

9 I mean how long before then?

10 You want me to list from eighth grade?

11 Q Who is John Hojas?

12 A Okay. That is an ex-boyfriend of mine.

13 Q Did you forget about him?

14 A No, I have several.

15 Q Okay. Tell me about John Hojas.

16 A Okay. He was also Colombian. He was the first Spanish
17 person that I dated.

18 SOLICITOR STEINBERG: Your Honor, I have to object.

19 We ask to approach.

20 THE COURT: All right. Yes, sir.

21 SOLICITOR STEINBERG: I apologize for interrupting.

22 (Whereupon, a bench conference was held out of the
23 hearing of the jury at this time.)

24 Q Ms. Nichols, when did you see Mr. Hojas last?

25 A Year and a half, two years maybe.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 Q Okay. Did you ever discuss Mr. Hojas or who he was
2 with David Molina?

3 A Yes.

4 Q He knew who he was.

5 Did y'all talk about Mr. Hojas between you and
6 Mr. Molina?

7 A Yes.

8 Q Did Mr. Molina express concern for you because of Mr.
9 Hojas?

10 A No.

11 Q Where is Mr. Hojas?

12 A He's in jail, prison.

13 Q For what?

14 A I'm not really sure of the details. It was from
15 something that happened before we started dating.

16 Q Could he be in jail for drug offenses?

17 A Possibly.

18 Q And is he Colombian as far as you know?

19 A Yes.

20 Q Do you know who his children are?

21 A Yes.

22 Q How do you know who his children are?

23 A I take care of them sometimes.

24 Q And you dated Mr. Hojas?

25 A Yes.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 Q And you take care of his children after he's in prison?

2 A I loved his children whether I loved him or not.

3 Q And have you been with his children in the presence of
4 Mr. Molina?

5 A Yes.

6 Q Have you and Mr. Molina taken his children to the zoo?

7 A I'm not sure about the zoo. - But yes, we have taken
8 them places.

9 Q Does Mr. Hojas appreciate the fact that you and a
10 boyfriend are taking his children around because you're
11 close to his children?

12 A Well, he doesn't really have a say in it. He's in
13 prison.

14 Q And how would that make a man in prison feel?

15 Would -- if he were mad at you, is that any reason---

16 A No, he's just---

17 Q ---to hurt you?

18 A He's just glad that I spend time with his kids.

19 Q Okay. Does he know of Mr. Molina?

20 A Yes.

21 Q Have you mentioned that to him?

22 A Yes.

23 Q So, you told him you had a boyfriend at the time that
24 was Mr. Molina?

25 A He's not the first boyfriend I had while he was in

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 prison.

2 Q Okay. Do you take other boyfriends with Mr. Hojas'
3 children and go places with them?

4 A No, I hadn't really done that in the past. I thought
5 David was, you know, capable of, you know, helping me. Most
6 of the, you know --.

7 Q So, you would agree that you are taking the children
8 with David of the man that might be a Columbia drug dealer
9 or in jail for drugs and he knows about it?

10 He knows about David and you're doing this?

11 A Well, I don't know how to answer your question because
12 I've already told you I'm not sure about his case.

13 Q And David's never told you before that a person that
14 deals drugs from Colombia could be dangerous?

15 He's never expressed that to you ever?

16 A He's told me that a lot of people are dangerous in
17 Colombia.

18 Q Has he ever told you Mr. Hojas could be dangerous?

19 A No.

20 Q When you first called 9-1-1 and they asked you who
21 could this be, you didn't say it was David at that time?

22 You didn't believe it was David, did you?

23 A Well, I had suspicions that I wanted to find out about.

24 Q Okay. You didn't tell them right then?

25 A No.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 Q Okay. The police came and there were police officers
2 everywhere, and you didn't say I think it might be him?

3 A I considered David part of my family and until I
4 confronted him personally, no, I didn't.

5 Q Okay. Now, the day that you went to see Detective
6 Smith, do you remember that?

7 A Yes.

8 Q Did Detective Smith not tell you that he had evidence?

9 A No, he had some questions for me.

10 Q He did?

11 A Uh-huh. (Affirmative).

12 Q What questions did he have?

13 A I'm not certain. But you know, like, you know, who was
14 the first person to arrive there, how did they get there so
15 fast, do you not think that that's suspicious.

16 Q Really.

17 A Possibly. I don't remember the exact phrase used.

18 Q So, Mr. Smith suggested to you that it was very
19 suspicious that David was there first?

20 A No, actually the conversation started when I came in
21 and I told him that David, I wanted to set up a time for
22 David to come draw. And then, as the first thing that I
23 mentioned David, he had some questions about David.

24 Q Okay. Didn't you just say that Detective Smith said
25 isn't that suspicious?

Nichelle Nichols - Cross-examination
by Mr. Wilkes

- 1 A No, I don't remember the exact phrasing.
- 2 Q Did you just say that on the witness stand?
- 3 A I said possibly he said---
- 4 Q Okay.
- 5 A ---something like that.
- 6 Q All right. Now, let me ask you this.
- 7 Do you have or, or did you have a sheet of answers and
- 8 questions from Solicitor Steinberg to what you're testifying
- 9 to today?
- 10 Did you have a list of questions?
- 11 A Was that ever gone over, a list of questions?
- 12 Q Yes.
- 13 A Yes.
- 14 Q Did it have on it what the answers and responses that
- 15 you've given were?
- 16 A We met several times to go over the questions and when
- 17 I gave him the answers he typed them.
- 18 Q And did you get those back and have you looked at that
- 19 sheet?
- 20 A Some of them have the answers.
- 21 Q Okay. Now, initially you did not tell the police you
- 22 believed it was him, that's, that much we---
- 23 A I was unsure. Of course, I was in shock.
- 24 Q Uh-huh. (Affirmative).
- 25 A And I didn't have the complete puzzle fit together in

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 my head, no.

2 Q And Detective Smith helped you put the puzzle together
3 so that you then believed it was David?

4 A He gave me the answers to some of my questions, yes.

5 Q Okay. Did you tell anybody about Mr. Hojas?

6 Did you tell Detective Smith about Hojas?

7 A No, but I told Steinberg.

8 Q You, you told the solicitor about John Hojas?

9 A I had mentioned him.

10 Q Did you tell the solicitor he was in prison or
11 something?

12 A No, it was more that sometimes me and David argued
13 about it and so that was one of the reasons---

14 Q Argued, argued about John Hojas?

15 A Correct.

16 Q Okay. Now, give me just a second and let me look at
17 something.

18 A Okay.

19 (Pause.)

20 Q You say that you broke up with David when, when?

21 Do you remember?

22 A The day after Thanksgiving.

23 Q But you said that you -- you, you used the term
24 physical.

25 Did that mean intimate?

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 A Yes.

2 Q You said you were intimate with him after that point?

3 A One time in January, yes.

4 Q And you, you, you said that it was almost pressed upon
5 you or you didn't want that and it was -- how did you
6 characterize that?

7 A I felt -- well, I think that I was emotionally drained
8 at that point. I was, you know, had been crying over
9 breaking up with Matt, and I went over to David's house, and
10 I asked him -- we were just gonna -- I think he went to go
11 get a jacket or something, and I sat on his bed for a second
12 cause -- and it's just like the rest of the house is kind of
13 his roommates.

14 Anyway, and he started to come on to me, yes, and I, I
15 felt very stiff. Like I did not move. I didn't take my
16 clothing off. I mean it was taken off of me, and I, it was
17 not something that I wanted to happen. But I don't think it
18 was rape either.

19 Q And it was very uncomfortable you said?

20 A Yes.

21 Q And afterwards, he took pictures?

22 A Yes.

23 Q And would you agree that the pictures then would show
24 you in a very uncomfortable, unhappy state?

25 A No.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 Q They wouldn't, would they?

2 A No.

3 Q The pictures, in fact, wouldn't be anything like that,
4 would they?

5 A I was trying to stand like that statute and I was
6 laughing because I was falling over.

7 Q How many pictures were there?

8 A I don't know. I didn't take the camera.

9 Q Were these pictures taken and you had no clue they were
10 being taken?

11 A No, I knew they were being taken.

12 Q Okay. Were there pictures of you and he embracing
13 or---

14 A He -- I think there was one he showed me where he had
15 his arm around me like this.

16 Q Was that taken the same day or before?

17 A That was the same day.

18 Q Okay. And this would be some time in---

19 A That would be---

20 Q ---January?

21 A It was right after we went to Atlanta and before I
22 stopped communication with him on the 9th.

23 Q Of?

24 A Of January.

25 Q Of January.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 So, some time in January these pictures would be taken?

2 A Yes.

3 Q Okay. Now, I'm gonna ask you to look at them and tell
4 me if these are the pictures that were taken at that time.

5 Okay.

6 May I approach, Your Honor?

7 THE COURT: Sure.

8 MR. WILKES: Okay. Thank you.

9 Q Ms. Nichols, will you please take a look at this sheet
10 here and tell me are those you?

11 A Yes.

12 Q Are some of those David?

13 A Yes.

14 Q And you characterize those as having been taken after
15 just almost not quite rape but just being forced upon?

16 Is that, is that right?

17 A Yes, he was still a friend.

18 Q Okay. So, if the jury were to observe those, they
19 would be able to see that, what?

20 A I felt so uncomfortable about this one day that the
21 next day I called him and said we were gonna stop
22 communicating for a year. So, however you think that is.

23 Q Okay. So, those, those pictures portray you being just
24 terribly uncomfortable?

25 A No, I don't actually always look the way I feel.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 Q Okay. But -- and so, you would agree that those
2 pictures don't show you looking uncomfortable like you just
3 said?

4 A Um.

5 Q They're masking your true feelings?

6 A Well, some of them are me on the phone. I think I got
7 a phone call, which is why I don't have my clothes on,
8 and---

9 Q Wait a minute.

10 You, you don't have your clothes on because you got a
11 phone call?

12 A No, otherwise I would of put my clothes on before he
13 took pictures. I got a phone call. That was the reason why
14 he had a chance to grab his camera, that kind of thing.

15 Q Okay. And, and---

16 A I'm on, I'm on the phone in all of these except these
17 last ones where I'm posing as a statute.

18 Q Okay. But you would agree with me that you're
19 obviously masking your inner feelings very well in January
20 when those pictures were taken?

21 A Yes.

22 Q Okay. Very good.

23 Your Honor, we would offer these into evidence at this
24 time. I, I would ask -- they are on a contact sheet and
25 they're very small. The only alternative that I have is to

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 use larger pictures and blowups and I, I think we could wait
2 to publish them until tomorrow. We might be able to -- this
3 might be more appropriate.

4 A What about black and white?

5 THE COURT: Okay. Right. Hold on just a second.

6 MR. WILKES: Or in black and white if she would prefer
7 that.

8 THE COURT: Just -- yeah. All right. Y'all come up
9 here a second.

10 (Whereupon, a bench conference was held out of the
11 hearing of the jury at this time.)

12 Q Now, Nichelle, you had said -- Ms. Nichols, you had
13 said that at, at the time that you gave the deputy a
14 statement about there being a long fingernail, no gloves,
15 you remember that?

16 A (Witness nods affirmatively.)

17 Q And you testified that that because of the contrast
18 against your car.

19 Your car is cream colored?

20 A So naturally it will probably be a black glove.

21 Q So, you're saying now that you are confused why?

22 A Maybe because I was just attacked.

23 Q I understand that.

24 My question is you had testified that after a thousand
25 times you went over it in your head and you decided that it

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 was thick gloves.

2 A Well, I didn't decide that. That was how I saw it when
3 I looked up and he touched his mouth with his hand, which is
4 like that. He was looking this way. Black gloves, gray,
5 light colored.

6 Q How did you decide that though -- at what point did you
7 decide that, that there were gloves?

8 A It 'takes such a long time to piece that, something like
9 that together. I mean every -- let me just explain
10 something. After you get attacked, everyday, whether you
11 want to think about it or not, you experience it all the
12 time.

13 Q Okay.

14 A And it's not until you can slow it down and look at it
15 piece by piece and figure out what happened.

16 Q Okay. When you were slowing it down and looking at it
17 a thousand times and you realized it was thick gloves, had
18 that been before or after Detective Smith had told you it
19 was very suspicious that Mr. Molina showed up?

20 A It was after gloves. But that had nothing to do with
21 David. The attacker was wearing gloves.

22 Q Did you hit the attacker?

23 A Even if David hadn't been wearing gloves, even if the
24 attacker hadn't been wearing gloves, his prints would be
25 everywhere.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 Q Did you decide that he had gloves after talking to
2 Detective Smith?

3 A Yes.

4 Q Thank you.

5 Now, did you say you had, when you had fallen back,
6 you, you kicked the attacker?

7 Did you -- you had said that I think in a report or
8 told somebody you kicked him in the face or head or the face
9 and you said that they reached up to their face.

10 So, it's possible that your kick had stunned them?

11 A It's possible. But unlikely.

12 Q It either did or it didn't.

13 A Well, cause I was in a very awkward position.

14 Q Okay. Did you kick him in the face?

15 A Yes, barely.

16 Q Okay. Okay. When you gave a statement before, you
17 indicated that you did kick him in the face?

18 A When I drew that picture, if you want to look on the
19 back of it---

20 Q Wait, wait, wait.

21 A I have---

22 Q Did you tell somebody before you had kicked him in the
23 face?

24 A Yes.

25 Q Okay. Now, in -- and you also said that the attacker,

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 and, and tell me if I'm wrong, but did you tell Deputy Boyd
2 or one of the first detectives or Wes Smith or somebody, in
3 a statement, that the attacker was, was weak?

4 Did you use that term?

5 A No.

6 Q You sure?

7 Absolutely sure?

8 A Yeah.

9 Q Okay. Now, are you sure that, going over a thousand
10 times, that somehow listening to what Detective Smith and
11 these other officers are saying isn't changing your memory?

12 A No, the person -- like I said before, they were in
13 shape. They didn't have a belly gut, and they didn't have,
14 you know, huge arms. You know, but, yeah, they were strong.
15 I mean I pushed them over only because that, they fell out
16 of balance.

17 Q Okay. So, you testified today and you said again just
18 now they were strong and you never told anybody they were
19 weak.

20 A Not that I remember.

21 Q Okay. And is it possible you might of told the deputy
22 that on the night, the first officer that got there?

23 A No, I don't think so. Somebody who just attacked me I
24 wouldn't call weak.

25 Q Okay. Okay. When did you call David on the telephone?

Nichelle Nichols - Cross-examination
by Mr. Wilkes

- 1 A I didn't call David.
- 2 Q Didn't you call David on the telephone that night?
- 3 A Yeah, I called him earlier before the attack.
- 4 Q That would be that night.
- 5 A Okay. I didn't -- I thought you were talking about
- 6 afterwards.
- 7 Q No. No, ma'am, any time that night you called him.
- 8 A Yes, once.
- 9 Q When did you, when did you call him?
- 10 A I think it was 12:11 according to my records.
- 11 Q That's just based on the stuff you've seen?
- 12 A Those are my, my cell phone records.
- 13 Q Okay. And 12:11 you call him.
- 14 And how long did you talk to him?
- 15 A I left a message.
- 16 Q What did the message say?
- 17 A Call me back, it's Nichelle.
- 18 Q Okay. That was all you said?
- 19 A Yeah.
- 20 Q You sure?
- 21 A Yeah.
- 22 Q How long did it take to say that?
- 23 A A few seconds.
- 24 Q Look at your cell phone record.
- 25 Do we have them in evidence already?

Nichelle Nichols - Cross-examination
by Mr. Wilkes

- 1 SOLICITOR STEINBERG: They should be in evidence.
- 2 Q Well, let's look at them.
- 3 A Okay.
- 4 Q You wrote on them.
- 5 A All right.
- 6 Q Let's look at them.
- 7 A I just want---
- 8 Q Let's see a few seconds if we may.
- 9 A Okay. It also records his message. So, you'd have to
- 10 have the length of his message---
- 11 Q Okay.
- 12 A ---minus what I said.
- 13 Q What was the length of his message?
- 14 A It was pretty long. He talked in Spanish. I think he
- 15 said -- I don't know what he said. I'm not fluent in
- 16 Spanish, and, and he laughed and then he said leave a
- 17 message.
- 18 Q Can you tell me which call you made to him to say hi,
- 19 this is Nichelle or call me back or whatever you just said?
- 20 A It was 12:07 and it went from 12:07 to 12:09.
- 21 Q Okay. Now, you just testified that he's unwanted, not
- 22 suppose to be around, and yet you said hi, this is Nichelle,
- 23 call me back, right?
- 24 A Yes, I don't know if you know anything about cell phone
- 25 companies, but I happen to work for one. So, I know this.

1 That whether you leave -- at anytime you connect, it charges
2 you for two minutes. Now, I don't know how their computers
3 are set up. But it charges you---

4 Q Well, let's look at that.

5 A ---for two minutes.

6 Q Let's look at that for a minute. Look at those, if you
7 will, just go down your calls, if you will, on either one of
8 them. Look at his two.

9 You're both with Sprint is it or---

10 A No, Suncom.

11 Q What was that?

12 A Suncom.

13 Q Suncom.

14 Look at that and tell me how many of those records show
15 less than two minutes.

16 A No. Yeah, there is one. Our phone call while I was on
17 the phone with 9-1-1. It was 12:17:10 to 12:17:46.

18 Q All right. And there's calls on there for less than
19 two minutes, right, and it shows less than two minutes.

20 So --.

21 A Two minutes.

22 Q It's not just showing two minutes for every call as a
23 minimum, is it?

24 A All of the other one are two minutes or more except for
25 that one in-between that call.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 Q Okay. But there is one?

2 A Yes, there's one.

3 Q So, it does not -- okay. Look on the other one and
4 tell me if it shows calls less than two minutes.

5 A This is the same thing.

6 Q Oh, my. Good answer. Let's see if we can find -- I'm
7 sorry. Oh, you wrote on one and there was two. Let's see.

8 Okay. So, they're -- you haven't introduced the other
9 one. Not yet.

10 Okay. All right. Let me find one more. Do I need to
11 ask further -- will you agree with me that---

12 A Yeah, I agree with you.

13 Q ---that they don't necessarily---

14 A Yeah, they count---

15 Q Yeah. Okay.

16 A ---for seconds.

17 Q That's all I wanted.

18 So, you have said that he's unwanted, you don't want to
19 talk to him, he said stuff like that at the, at this time
20 and that you didn't expect him to come over, anything like
21 that. But your message is hi, call me back, right?

22 And in fact, y'all had an on again off again
23 relationship, true, and you say I'm---

24 A There was no period where we were really off.

25 Q Right.

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 But, but there's, but there's, throughout the
2 relationship, I mean there's times that you say okay, I
3 don't want to talk to you and, and he's persistent and calls
4 you and y'all talk again?

5 A I'm talking about within a weekend.

6 Q Okay. But I'm just saying that, from his standpoint, I
7 mean call me back---

8 A Sure. Sure.

9 Q Okay.

10 A I guess from his standpoint.

11 Q Okay. Okay. Now, do you recall when you met with
12 Detective Smith?

13 Was it a couple of days afterwards?

14 A Yes.

15 Q Not too long?

16 A It was after I confronted David about the mask.

17 Q Okay. When, when you met with him, did you fill out a
18 statement?

19 A Yes.

20 Q You gave him a statement?

21 A Wes Smith, yes.

22 Q Yes.

23 And in that -- did you then give a statement after
24 meeting with him that you believed it was David?

25 Is that what that implied?

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 A I thought that definitely and I wrote in the statement
2 that he ran like David for sure. I would, still had some
3 more questions that and time that, to remember everything
4 that I still wanted --.

5 Q Okay. Now, you said that the big thing that made you
6 suspicious was your drawing a picture and you drew a picture
7 of a ski mask and there was some colors, right, and you were
8 coloring it and David had said we, that's, that was green,
9 hunter green, and you said I didn't tell you that, right?

10 A (Witness nods affirmatively.)

11 Q But before that, and didn't you testify, that you had
12 spent a day or two on Lortab?

13 I mean you were taking Lortab, correct, and you---

14 A (Witness nods affirmatively.)

15 Q And you've already said that you were -- is that
16 correct?

17 A Yeah, I was.

18 Q And you, you've already said that somehow your memory
19 is, is growing or coming back and over and over and a little
20 bit.

21 You, you said that?

22 A (Witness nods affirmatively.)

23 Q Okay. And is it possible that, during that day or two,
24 taking Lortab, and all the things that transpired, is it
25 possible that you told David it was hunter green?

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 A No.

2 Q Not you -- but you remember you did not?

3 You can say that for sure?

4 A The mask had a lighter green. It was more of an olive
5 green and yes, I would of been specific.

6 Q I'm asking you is it any possibility.

7 A No, there's no possibility---

8 Q No possibility?

9 A ---I would of told hunter green.

10 Q You can remember?

11 A Yes, I can remember that part. I can remember some of
12 the stuff that I said. But not -- I don't have all the
13 pictures and the flashes. It's different. I know what I
14 said.

15 Q Any of those pictures or flashes have been suggested by
16 Detective Smith or the law enforcement officers?

17 A No, I mean some of those flashes were from a month
18 after the attack. Not, not their influence. I only met
19 with Wes Smith once.

20 Q So---

21 A The -- I went to a psychologist a few times, and she
22 didn't help me remember. She wasn't -- she had never
23 treated a patient like in my situation ever. But she said
24 she went to a conference and they told her that sometimes
25 touching the wounds or remembering how you feel about the

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 wounds or certain sounds, you know, that I would remember so
2 slowly.

3 Q Okay.

4 A Yes.

5 Q And would you agree with me that if you have a bunch of
6 police officers that are clearly indicating to you that they
7 think it's suspicious, they think it's David, that that
8 might somehow also influence you?

9 A I don't think they cared about the glove either way.

10 Q No, that's not my question. I'm not saying you lied.

11 Okay. I'm just asking you is it possible that somehow,
12 and these officers have, have become convinced it's him, and
13 they show that to you in their questions, in their meetings
14 with you telling you things and asking you specific
15 questions, it is possible that that's somehow influences you
16 in some way even small?

17 A Like I said, I confronted him before and I was pretty
18 sure about it.

19 Q I understand. You had suspicion.

20 He showed up right away?

21 A Well---

22 Q Well, wait, let me ask a question.

23 A Well, what if I said I think it's David, what do you
24 have?

25 Q Well---

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 A You know what I mean?

2 Q And they, they say here, we're, we're and they tell you
3 something and you believe it, do you think that could
4 influence you?

5 A Yeah.

6 Q Did they tell you that they found a knife on a, on a,
7 blood on a knife?

8 A Um.

9 Q Did they tell you that?

10 A They said it was very small.

11 Q But they said they found blood on a knife?

12 A They said---

13 Q Have they told you that that's true?

14 SOLICITOR STEINBERG: Objection. I'd like the witness
15 to be able to answer that question if she has an answer.

16 THE COURT: Yes, sir.

17 Q Did they tell you that?

18 A Yes, they said they were sending it to forensics, but
19 that it was very small and they might not be able to test
20 it, and that it might of already had chemicals on it.

21 Q What if they tested it and it came back and said that
22 it's not blood, would that surprise you?

23 A No, because I think David's smart and he would of
24 washed it off.

25 Q But they told you they found blood. So now that

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 doesn't surprise you at all. They told you they did.

2 You asked questions, correct?

3 A It would, it would have been a real bonus had they
4 found my blood on that, that knife. But they didn't and I
5 wasn't expecting that.

6 Q It would be a bonus because you believe, after talking
7 to them---

8 A No.

9 Q ---that, that---

10 A I believe on my own.

11 Q ---he did?

12 A I believe---

13 Q Not John Hojas or anybody related to John Hojas, right?

14 A Correct.

15 Q You're, you're convinced. All right.

16 A Yeah, and nobody has bothered me or tried to attack me
17 since then or sent me threatening letters or called my phone
18 50,000 times. No, I've had no such, anything like what
19 happened with David.

20 Q Ms. Nichols, if he called you a lot, if he calls you
21 and you call him back and leave a message that says hi, it's
22 me, call me back, what is he suppose to think?

23 A That kind of infers once, you know what I mean. Not
24 50,000 times.

25 Q Oh, okay. But that's what you said. You didn't say

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 you call me 50,000 times?

2 A Well, actually we don't have the message and I don't
3 particularly know exactly what I said.

4 So, how can we---

5 Q Would you like to change it?

6 Would you like to now change it to---

7 A No, I wouldn't like to---

8 Q ---that you told him something else?

9 A ---change it because I have a good feeling that's what
10 I said.

11 Q Okay.

12 A But I'm still saying you don't have the tape that's
13 recording on it. So, we can't be for sure.

14 Q Well, I'm gonna go with what you say---

15 A Okay.

16 Q ---if you believe it's correct and that's what you told
17 me.

18 Is that fair enough?

19 A That's fair.

20 Q Okay. So, if your on again off again relationship,
21 would you agree that you, in part, might of encouraged it by
22 continually getting back with him and, and having more
23 contact with him?

24 A No way.

25 Q No?

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 A No way.

2 Q Okay.

3 A I was dating somebody else. I was past David. He
4 didn't like that.

5 Q Okay.

6 A I mean---

7 Q Anymore than John Hojas would like him and you taking
8 his children---

9 A I don't---

10 Q ---around?

11 SOLICITOR STEINBERG: Objection. Speculation.

12 A I can't answer that---

13 THE COURT: Sustained.

14 A ---for John Hojas.

15 THE COURT: Sustained.

16 MR. WILKES: If I can have just a minute, Your Honor?

17 THE COURT: Yes, sir.

18 (Pause.)

19 Q Ms. Nichols, did you visit Mr. Hojas in prison about
20 two weeks before this attack?

21 A Yeah, in January, that's right. Did -- wait. I know I
22 visited my friend in North Carolina. No, I didn't visit
23 him. It was my friend.

24 Q Well, you're a bit confused there.

25 How can you be confused about going to a penitentiary

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 to see an old boyfriend and visit a friend?

2 A Well, it was a long time ago.

3 Q When did you last go visit John Hojas, John Hojas in
4 prison?

5 A I want to say -- wait a minute. I don't know.

6 Maybe -- I, I don't think I visited him over Christmas
7 break. David didn't want me to see him. So, I might of
8 visited him in December or before me and David's
9 relationship.

10 Q So, as late as December, a month or so or two before
11 the attack?

12 A I really don't think I did. I think that it had been
13 before David and the only reason why I went there to see him
14 was to take his kids to see him.

15 Q Where did you go to visit when you took his kids to
16 visit him?

17 A I think he was stationed in North Carolina.

18 Q Federal prison or state prison?

19 A Federal I think.

20 Q Do you remember the town or the part of the state?

21 Was it maybe -- do you remember how far away it was?

22 Are you talking Asheville or---

23 A No.

24 Q ---or further?

25 A I think it was further. Some exit, 144, 196. I don't

Nichelle Nichols - Cross-examination
by Mr. Wilkes

1 know. Something like that.

2 Q On what highway?

3 A I have no idea.

4 Q I have no further questions for this young lady.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY SOLICITOR STEINBERG:

8 Q When you left the voice mail and said David, you can
9 call me back, was that an invitation for him to come over?

10 A No.

11 Q Approximately when was this phone call made?

12 A It was at 12:11.

13 Q I'm going to---

14 A 12:07.

15 Q Did Wes Smith, this investigator, ever ask you to
16 change your testimony or lie?

17 A No.

18 Q Have I or anybody else in law enforcement ever asked
19 you to testify, to testify falsely?

20 A No.

21 Q Do you consider yourself a strong person?

22 A Yes.

23 Q If anyone had told you to testify incorrectly or to
24 make up information, would you have done that?

25 A No.

Nichelle Nichols - Redirect examination
by Solicitor Steinberg

1 Q Let me show you a statement that's used at this point
2 for identification only.

3 (Whereupon, the statement was marked as State's Exhibit
4 No. 13 for identification purposes only at this time.)

5 Q It's a two page statement.

6 Please tell me what is this statement of.

7 Don't read it out loud. Just read it to yourself and
8 just tell me the date it was made.

9 A (Witness complies.)

10 Q Have you had an opportunity to review that statement?

11 A Yes.

12 Q Okay. And is that your statement?

13 A Yes.

14 Q And when is it dated?

15 A February 11th.

16 Q And by that time how many meetings had you had with Wes
17 Smith?

18 A That was the only one.

19 Q That was the only one.

20 Had you ever met me by that time?

21 A No.

22 Q Had you ever met any other detectives in this case?

23 A No.

24 Q Okay. You were questioned earlier as to identities.

25 Please read this language here starting with I thought

Nichelle Nichols - Redirect examination
by Solicitor Steinberg

1 it was and just read that one sentence.

2 MR. WILKES: Your Honor, I'm going to object to one
3 sentence. If he wants to put the whole thing in he can.

4 A I can---

5 SOLICITOR STEINBERG: I---

6 MR. WILKES: Read the whole thing.

7 A I can read it.

8 SOLICITOR STEINBERG: I, I have no problem. I just
9 want to isolate this. If counsel wishes the entire
10 document, I'll introduce it.

11 THE COURT: Okay.

12 A I thought it was David at first because he was running
13 on his tiptoes, a square build like David, and he was
14 wearing wind pants like David does.

15 Q Okay. Did Wes Smith tell you to say that?

16 A No.

17 Q Is that your signature at the bottom?

18 A Yes.

19 Q Would you have signed that if that was untrue?

20 A No.

21 SOLICITOR STEINBERG: If counsel has no objection, then
22 I will go ahead and introduce this statement.

23 MR. WILKES: I have no objection to that.

24 THE COURT: All right. It's in evidence.

25 (Whereupon, State's Exhibit No. 13 was received into

1 evidence at this time.)

2 Q This drawing is particularly concerning the, the ski
3 mask.

4 What different versions did David Molina give
5 concerning how he knew what the color was?

6 A He thought that's what I said and he had seen the ski
7 mask before the second time I asked him.

8 Q Did he change his story the second time you asked him?

9 A Yes.

10 Q And what story did he give that time?

11 A It was a ski mask that the guy was wearing at the dog
12 place.

13 Q When you were under the influence of Lortab, did you
14 tell him anything about the dog grooming place?

15 MR. WILKES: Your Honor, I'm gonna object to the
16 prosecutor parading around in front of the jury. If he can
17 just return to kind of, return to neutral ground where we
18 all---

19 THE COURT: I don't know of any rule of evidence that
20 would require that.

21 MR. WILKES: I---

22 THE COURT: Overruled.

23 Go ahead.

24 SOLICITOR STEINBERG: Thank you, Your Honor.

25 Q Ma'am, the question is, and I apologize if I'm blocking

1 any of the, the jurors, what reason did he give for giving
2 these two different stories?

3 A That he had seen the ski mask before?

4 Q Right.

5 A Well, if he had seen the ski mask before, then that
6 would have been linked to the other one. I don't understand
7 your question.

8 Q I'm sorry.

9 Did you -- you were brought the question that you were
10 under the influence of Lortab and may of spoken to him about
11 the ski mask.

12 Did you bring up the ski mask at all from the first
13 case, from the case at the dog grooming location?

14 A I, I asked him because he said bandanna.

15 Q Okay.

16 A He didn't say anything about a ski mask, and I had
17 given several, you know, descriptions of the ski mask.

18 Q Okay. Take both of these away real quick.

19 You -- just to clarify one thing, you said that you
20 were kicking in an awkward position when the attack was
21 ending.

22 A Yes.

23 Q What do you mean by an awkward position?

24 A On the back of that drawing, I tried to draw it, I went
25 on and pushed him up against the wall. I was, I was kicking

Nichelle Nichols - Redirect examination
by Solicitor Steinberg

1 backwards above my head, over my head, and I could only bend
2 back so far. So, I, I mean I can't do a split. So, I
3 couldn't have that much power, you know, hitting him, I mean
4 kicking him.

5 Q These photographs that were shown to you a few minutes
6 ago, I'm going to just show -- have these been marked for
7 evidence?

8 Have they been marked, judge?

9 MR. WILKES: I think we did. I think we have or should
10 have.

11 SOLICITOR STEINBERG: I'd like these marked for
12 identification at this point.

13 You can just mark it for identification.

14 (Whereupon, the photo cover sheet was marked as State's
15 Exhibit No. 14 for identification purposes only at this
16 time.)

17 Q Let me show you these photographs.

18 Is this the same, both State's Exhibit No. 14, are
19 these the same photographs you were shown a little while
20 ago?

21 A Yes.

22 Q Look closely, do you have different neck, necklaces on
23 in these two pictures, in these pictures?

24 A Yes.

25 Q And are your hair styles the same in these two

Nichelle Nichols - Redirect examination
by Solicitor Steinberg

1 pictures?

2 A Somewhat.

3 Q Okay. Do you know if these pictures are taken during
4 the same, same event or same day?

5 A No, I think they were two different dates.

6 Q Okay. Would you agree that, in some of these pictures,
7 that you are, you are actually smiling?

8 A Yes.

9 Q Do you think that's smiling?

10 A No, I -- some -- see this one I was smiling because
11 I -- some of them I didn't want to take a picture, but I was
12 on the phone.

13 Q Okay.

14 A So, I was kind of laughing at that.

15 Q Okay.

16 A There's no excuse for those pictures.

17 Q Mr. Hojas, had he ever threatened you?

18 A No, he hasn't.

19 Q Has Mr. Hojas contacted you in I'll say a negative or a
20 hostile manner since this incident occurred?

21 A No.

22 Q If he had, would you of remembered?

23 A Yes.

24 Q Did you find it suspicious that David had gotten there
25 so, so quickly?

Nichelle Nichols - Redirect examination
by Solicitor Steinberg

1 A Absolutely.

2 Q How quickly had he gotten there from the time you spoke
3 to him?

4 A Probably, like I said, maybe four or five minutes. He
5 got there before my mom, like I said, who lives a mile and a
6 half away, and as soon as we called her on the phone, jumped
7 in the car.

8 Q Was Mr. Hojas -- did Mr. Hojas ever make any negative
9 statements concerning Mr. Molina?

10 A Mr. Molina demanded that I cease all contact with most
11 guys and definitely all boyfriends that I had had.

12 Q Okay. That was Mr. Molina?

13 A Yes.

14 Q Okay. And Mr. -- did he give any instructions or, or
15 requests for things for you to do?

16 A I had a journal and he read my journal and we had
17 several arguments about it. There was no solution to the
18 problem. I thought burning the journal would help. I
19 burned the journal and gave it to him and didn't help find a
20 solution to the argument.

21 Q Okay. I think, I think I misspoke.

22 I asked earlier did Mr. Hojas ever make any negative
23 comments about Mr. Molina?

24 A He thought it wasn't wise, you know, for David to be so
25 jealous because there was no reason to be. But I mean he

Nichelle Nichols - Redirect examination
by Solicitor Steinberg

1 didn't know David. So --.

2 Q Do you have any reason to fear John Hojas?

3 A No.

4 Q You were asked a couple of questions about whether
5 someone got you to change your testimony.

6 When you and I reviewed this case or you and
7 Investigator Smith reviewed this case, did either of us tell
8 you to testify falsely?

9 A No.

10 Q If we had, would you have corrected us?

11 A Yes.

12 Q Do you think you're strong enough to correct us if you
13 had?

14 A Yes.

15 SOLICITOR STEINBERG: Beg the Court's indulgence.

16 (Pause.)

17 SOLICITOR STEINBERG: I have no further questions.

18 Please answer any of opposing counsel's questions.

19 MR. WILKES: Please the Court.

20 THE COURT: Yes, sir, Mr. Wilkes.

21 MR. WILKES: Thank you, Your Honor.

22 RECROSS EXAMINATION

23 BY MR. WILKES:

24 Q Are you strong enough to stick with the same testimony
25 throughout this whole nightmare?

Nichelle Nichols - Recross examination
by Mr. Wilkes

1 A Hope so.

2 Q Okay. Did you say a minute ago you had never said that
3 this person wasn't strong?

4 A I don't think that I would of said that.

5 Q Okay. Look at the statement.

6 Do you have the statement that we just talked about
7 with Detective Smith?

8 Does that statement say anything about the person being
9 strong like you said a minute ago two or three times?

10 A A sentence -- is it okay if I start a sentence before
11 that?

12 Q Anywhere you want.

13 A Okay. He caught me from behind and I put my hands up
14 and started sinking to the ground. It was very unusual
15 because he -- didn't seem he was very strong or he wasn't
16 trying to, very hard to hurt me. He wasn't trying very hard
17 to hurt me.

18 Q You say he wasn't very strong?

19 A But I don't think I meant it in the sense of strength.

20 Q Okay.

21 A When the person -- I mean when I fell to the ground, I
22 think the person might of had a greater advantage over me
23 had they wanted to kill me or hurt me severely. But they
24 didn't. They ran.

25 Q Look at the statement again.

Nichelle Nichols - Recross examination
by Mr. Wilkes

1 What did you tell Detective Smith?

2 Did you tell Detective Smith -- read the part about
3 what happened, why the person ran away.

4 Read, read, read what is written there, please.

5 A I said when I sank to the ground; he was behind me and
6 I managed to kick him in the head and he ran away.

7 Q But you didn't mean it in that way?

8 A No, it's---

9 Q Is that what you're saying now?

10 A No, it's a separate sentence and he ran away.

11 Q All right. Okay. You kicked him in the head?

12 A Yes.

13 Q You had said that Mr. Hojas didn't feel that it was
14 appropriate for David to feel the way he did about you?

15 A No.

16 Q Right?

17 A Jealous. Not the way I feel.

18 Q Okay. So, you had a conversation -- Mr. Hojas is fully
19 aware of David's relationship with you, right?

20 A Yes.

21 Q Okay. Thank you. That's all I have.

22 THE COURT: All right.

23 SOLICITOR STEINBERG: Have no further questions.

24 THE COURT: Thank you, ma'am. You can step down.

25 WITNESS: Thanks.

1 All right. Ladies and gentlemen, we're going to go
2 ahead and recess for the evening. I'm just gonna ask that
3 you be back in the jury room at 9:15 in the morning. We'll
4 try to get started promptly at that time.

5 And remember, keep an open mind. Don't discuss the
6 case with anyone. Don't do any kind of outside
7 investigation and have a good evening.

8 Thank you very much.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 MR. WILKES: I have a motion when you---

12 THE COURT: Okay. Yes, sir.

13 Go ahead.

14 MR. WILKES: Please the Court.

15 Information on John Hojas I believe might be relevant
16 to further my case. At least the information on his
17 identity and whereabouts.

18 If he is in prison presently, I can't determine that.
19 I think the solicitor may have that information or may have
20 certain through NCIC the ability to get that information,
21 and I'll -- I would make a motion at this time to, for the
22 discovery of any information in their possession or that
23 they're able to get through means which I, I could not do
24 cause I have no, no ability to do that.

25 We would ask the Court to at least order that they

1 disclose that information.

2 THE COURT: What, what's, what's the relevance of the
3 information?

4 MR. WILKES: I, I believe that the testimony so far
5 that there is a John Hojas, there is an ex-boyfriend, that
6 the issue that is arisen has been the, the motive or the
7 people that may have an issue with her for any reason.
8 There is, by her own testimony, it changed a lot, but
9 reluctantly testifying that there is an ex-boyfriend Hojas
10 who is from Colombia and may have drug charges.

11 He has knowledge of my client, knowledge of her. He
12 has as much reason for jealousy as anyone else. I kind of
13 think that I'm entitled to at least be able to determine his
14 whereabouts.

15 Now---

16 THE COURT: You want to see if he broke out of
17 prison---

18 MR. WILKES: Maybe.

19 THE COURT: ---on the, on the day of the accident?

20 MR. WILKES: Maybe. I mean I just -- I don't have the
21 possibility -- I don't have the ability with NCIC that they
22 do. I mean they just---

23 THE COURT: Well, I don't understand the dispute. She
24 said that she visited someone in prison.

25 MR. WILKES: She -- I know. She couldn't identify

1 where he was. I would at least like any information that
2 the solicitor has or has available, and they may not have
3 any. But I certainly want to make the motion that if they
4 do and haven't disclosed it that I would certainly like to
5 have it.

6 THE COURT: Okay.

7 SOLICITOR STEINBERG: Your Honor, I would object to
8 that. I'm actually, at this point, move to strike all this
9 information concerning John Hojas.

10 Your Honor gave counsel a great deal of lead way to
11 find information to bring up John Hojas, to bring up jail,
12 prison, Colombian drug dealers. This is been nothing but an
13 attempt to, to smear an ex-boyfriend that has nothing to do
14 with this case.

15 It's out there, but I would ask for, in fact, a motion
16 to move to strike this testimony as being irrelevant, as
17 being a violation of third party guilt. And I understand
18 Your Honor has ruled against me already. But, however,
19 after having heard all this, this is nothing at all except
20 for a bringing up, dirty laundry that has nothing to do with
21 this case. This is designed only to mislead a juror, and I
22 would say under third party guilt and under relevance, this
23 should be stricken from the record.

24 He's had his chance to develop this theory. It has
25 been unsuccessful.

1 THE COURT: Well, as I understood, his latest motion is
2 to require you to turn over information about Mr. Hojas.

3 SOLICITOR STEINBERG: Yes, sir, we have nothing. The
4 police file had nothing about Mr. Hojas. My questioning was
5 Ms. Nichols, go over your past boyfriends and any of them
6 cause any problems. She never had. And Mr. Hojas is one of
7 the, the boyfriends she must of brought up.

8 I turned the information, the name over to Mr. Wilkes.
9 We have no information. I have nothing on him except to say
10 Ms. Nichols told me he is in jail. That's what I gave him
11 or prison. That's all the information we have.

12 THE COURT: All right. Well, I deny your motion, Mr.
13 Wilkes.

14 And as far as your motion, Mr. Steinberg, I'll have to
15 think about that. I have allowed him to cross-examine
16 related to Mr. Hojas. But I don't know how much farther I
17 would let it go. I just have to determine that later if it
18 comes up.

19 Anything further?

20 MR. WILKES: If I may respond because that, that's new.
21 I haven't responded to that motion he just made on this
22 latest issue.

23 THE COURT: Oh sure. Yes, sir.

24 MR. WILKES: Your Honor, I think in opening argument
25 they brought up ex-boyfriends. I think it was in their case

1 that they brought up ex-boyfriends and allowed a witness to
2 rule out ex-boyfriends, and then for me to be excluded on
3 cross-examination robs me of, of the right to challenge the
4 evidence. So, I; I think that clearly we've been within the
5 scope of cross-examination because they brought it up.

6 They brought up ex-boyfriends. I didn't bring that up.
7 I'm cross-examining that. So, that -- I think we're well
8 within our scope of proper cross at this time.

9 SOLICITOR STEINBERG: I have no further argument. I
10 just want to point out that I think my questions were
11 dealing with enemies. No known enemies. Ex-boyfriends I
12 think was something asked on a 9-1-1 tape. That doesn't
13 mean that we raised it up. We raised no known enemies of
14 any type.

15 THE COURT: Well, I don't know. I hadn't -- I haven't
16 excluded anything yet, and I can't rule in a vacuum. So, I
17 don't know. I might try it sometime. But I never have.

18 Anything further?

19 SOLICITOR STEINBERG: Nothing from the State, Your
20 Honor.

21 THE COURT: All right. I'll see you in the morning.
22 Thank you.

23 MR. WILKES: Thank you, Your Honor.

24

25 (Whereupon, Court was in recess for the evening.)

1 Tuesday, May 16th, 2006

2
3 SOLICITOR STEINBERG: Judge, we do have a motion.

4 THE COURT: Okay.

5 SOLICITOR STEINBERG: It's actually a stipulation. I
6 have a photograph I'd like to show, mark and shown.

7 (Whereupon, the photograph was marked as State's
8 Exhibit No. 15 and received into evidence at this time.)

9 MR. WILKES: We're gonna substitute this one as a
10 resolution on that copy.

11 THE COURT: Okay.

12 MR. WILKES: It wasn't fair.

13 SOLICITOR STEINBERG: This is State's Exhibit 15. We
14 will, I guess, remove that, give that back to the jury, the
15 photograph that it is a duplicate of.

16 THE COURT: Okay. Thank you.

17 MR. WILKES: Just for the record, I had held off on
18 admitting the contact sheet with the photos because of the
19 privacy issue. We were gonna try to redact those in some
20 way. I think we're gonna resolve that today.

21 THE COURT: Okay.

22 MR. WILKES: We're gonna have to take it to a copy
23 machine, copy them, and redact and stuff. So, I'm going to
24 hold off on that if that's okay.

25 THE COURT: All right, sir. And let's see, we already

1 had the issue that was part of the motion for a continuance
2 related to the guilty plea transcript for Mr. Braswell.

3 SOLICITOR STEINBERG: Yes, sir.

4 MR. WILKES: Yes, sir. The tape was provided. We've
5 reviewed the tape. I believe the contents of the tape are
6 going to be admissible and we're probably going to have that
7 portion of the tape admitted and played for the jury
8 relevant to Mr. Braswell's, Braswell's testimony, testifying

9 THE COURT: Okay. All right. Anything else before we
10 bring the jury in?

11 SOLICITOR STEINBERG: No, sir, Your Honor.

12 THE COURT: Okay. Bring them on in.

13 (Whereupon, the following takes place within the
14 presence of the jury.)

15 THE COURT: Okay. Good morning, ladies and gentlemen.

16 Yes, sir, Mr. Steinberg, you can call your next
17 witness.

18 SOLICITOR STEINBERG: Thank you, Your Honor.

19 The State would call Carolyn Graham.

20 CAROLYN GRAHAM, being first duly
21 sworn, testified as follows:

22 CLERK: State your name for the record.

23 WITNESS: Carolyn Graham.

24 DIRECT EXAMINATION

25 BY SOLICITOR STEINBERG:

Carolyn Graham - Direct examination
by Solicitor Steinberg

1 Q Morning, Mrs. Graham.

2 How are you today?

3 A Okay.

4 Q Please tell us where you live.

5 If you need some water, let us know.

6 A I'll be all right. I live on 12 Cantera Circle in
7 Greenville.

8 Q And who do you live with?

9 A My granddaughter, Nichelle, stays with me. My husband
10 passed away. So, I didn't want to be alone.

11 Q Yes, ma'am.

12 And where, where are you employed?

13 A Action Pest Control. I'm part owner.

14 Q Do you recall a time period when your granddaughter was
15 dating or seeing David Molina?

16 A Yes, sir.

17 Q Do you remember when they broke up or stopped seeing
18 each other?

19 A I don't remember the exact date. But she was crying a
20 lot and I told her I felt like something needed stopped. I
21 mean there's too much -- she was crying too much.

22 Q Did you ever see any gifts or flowers or anything of
23 this nature?

24 A He would put flowers on her car. I would wake up in
25 the morning and look out and I would go -- I said you've got

1 something on your car. I believe it's flowers.

2 Q Okay. I'm gonna bring you to the night of this
3 incident that we're all here for, ma'am.

4 What were you doing around midnight on
5 February 8th or February 9th?

6 A I had gone to bed.

7 Q Did you wake up?

8 A I heard someone screaming and it was an odd scream.
9 But I thought maybe it was a neighbor. So, I run to the
10 door. When I opened the door, she was standing there with
11 her hands like this and blood was just a running down her
12 hands. It -- I just -- I thought I would faint and I said
13 Nichelle, I said you better call 9-1-1 cause I couldn't.
14 She told me she felt like she was going to faint too.

15 So then I ran and called her mother. I came back to
16 the front door. I was looking out and I wondered why was
17 her shoes in my walkway. And I asked her, I said, Nichelle,
18 what happened and she said during the attack I dropped.
19 Well then they cut her leg. She had a big old gap in her
20 shirt where it had been cut.

21 And I was standing there. And a few minutes David came
22 running to the door and said oh, I'm sorry I wasn't here to
23 protect her. I couldn't believe he -- and I thought how did
24 you know. I mean why are you here so quick. The police
25 hadn't even got there.

1 And about that time then the police came.

2 Q How soon after Nichelle got in the house was she on the
3 telephone?

4 A Well, she, she called. I started calling 9-1-1. When
5 I seen how she was bleeding, she called them and said she
6 was about to faint. So, she went and sit on my kitchen
7 floor. And when the police got there, she was sitting in
8 the floor.

9 Q And approximately how long after Nichelle got into the
10 house did David Molina show up?

11 A It was kind of quick cause I wondered how did he know.

12 Q Did that surprise you?

13 A Yes.

14 Q Did you expect to see him over there that night?

15 A No, sir.

16 Q Had you invited him over there that night?

17 A No, sir.

18 Q This statement that you said he made, where did he make
19 the statement?

20 Where were, where were you standing when he, he made
21 the statement to you?

22 A In, in the middle of my -- I had opened the door and I
23 was standing in the middle of an opened door, and he came
24 running across the front lawn.

25 Q I want to bring you to Friday of that week.

1 Did you go to your daughter's home?

2 A We were told to.

3 Q Okay. Don't, don't -- let me ask you to do me a favor?

4 A Yes, sir.

5 Q I don't want you to say anything that someone told you.

6 Okay. I'm gonna ask you questions only that, that you know
7 of your own knowledge that you heard or you saw.

8 A Yes, sir, we went to my daughter's house.

9 Q Thank you, ma'am, and I don't mean to be rude by that.

10 How far away is your daughter's home?

11 A Probably a mile and a half.

12 Q What time of day or night was this?

13 A Well, I had got home from work. So, it was -- I expect
14 we got to her about maybe 5:00 or 6:00.

15 Q Did you see David Molina show up at that location?

16 A I was standing at her kitchen sink and I looked out the
17 window and there he stood.

18 Q Did you see your, wait a second, your son-in-law go out
19 and speak with David Molina?

20 A Well, when I said, my daughter said what's wrong, and I
21 said look at the window. Nichelle fainted immediately.

22 Q Just wait.

23 A So, that's when he went, my son-in-law went out.

24 Q Okay. And how long do you think your son-in-law was
25 out there with David Molina?

Carolyn Graham - Direct examination
by Solicitor Steinberg

1 A Maybe five, ten minutes.

2 Q Thank you, ma'am. Please answer any of opposing
3 counsel's questions.

4 A Okay.

5 THE COURT: Yes, sir, Mr. Wilkes.

6 MR. WILKES: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. WILKES:

9 Q Do you recall the deputy that first arrived and spoke
10 with you?

11 A Yes, sir.

12 Q Do you recall the deputy asking you about any possible
13 suspects?

14 A No, sir. Well, they did ask me if I seen anybody. But
15 I haven't, I hadn't.

16 Q Did you tell the deputies any suspicions about anybody
17 at that time?

18 A They wanted to know where she was and I told them.

19 Q Let me ask you a question one more time and listen
20 carefully.

21 Did you tell the deputies about any suspicions you had
22 that night?

23 A No, sir, I don't think so.

24 Q Thank you, ma'am. No further questions.

25 SOLICITOR STEINBERG: One more, follow-up question.

1 REDIRECT EXAMINATION

2 BY SOLICITOR STEINBERG:

3 Q You said you didn't tell the deputies about any
4 suspicious person.

5 Was David already in the house when the police officers
6 got there?

7 A (Witness nods affirmatively.)

8 Q Thank you, ma'am.

9 A Yes, sir.

10 THE COURT: All right. Mrs. Graham, thank you very
11 much, ma'am.

12 WITNESS: Yes, sir.

13 SOLICITOR STEINBERG: Your Honor, the State's next
14 witness will be Mrs. Pamela Mucha.

15 The State would call Pamela Mucha.

16 PAMELA MUCHA, being first duly
17 sworn, testified as follows:

18 CLERK: State your name for the record.

19 WITNESS: Pamela Mucha.

20 DIRECT EXAMINATION

21 BY SOLICITOR STEINBERG:

22 Q Morning, Mrs. Mucha.

23 How are you today?

24 A Good.

25 Q And what is your relation to Nichelle Nichols?

1 A She's my daughter.

2 Q And what is your relation to Carolyn Graham?

3 A She's my mother.

4 Q And do you know David Molina?

5 A Yes, I do.

6 Q Were you familiar with who your daughter was dating in
7 the time period around November of 2004?

8 A Yes.

9 Q And who was that?

10 A David Molina.

11 Q Do you know if your daughter and David ever broke up?

12 A Yes, they did. Several times.

13 Q Did David ever ask to come over to your house?

14 A Yes.

15 Q And please tell us when that would happen and how that
16 would happen.

17 A Are you talking about after they broke up?

18 Q Yes, ma'am, after they broke up.

19 A Okay. Christmas Eve, he called my home and he wanted
20 to know if he could come over for dinner on Christmas Day as
21 we always do with the family. He was down at Lake Hartwell.
22 He said he was camping and he didn't have any family, didn't
23 have any friends to go visit. And since they had already
24 broken up, I had said, you know, no, I didn't think it would
25 be appropriate.

1 He also called me on Christmas Day to say Merry
2 Christmas, and then on New Years Eve he had called again
3 asking if he could come over, and I had told him, in respect
4 to my, with respect to my daughter, I would, it would not be
5 a good idea for him to come over. They had broken up and he
6 was having a difficult time realizing that and he wasn't to
7 be at our house.

8 Q Do you recall an incident involving your daughter at
9 her place of business, the pet, the dog groomers place?

10 A The dog grooming, yes.

11 MR. WILKES: I'm gonna object unless she was there, has
12 personal knowledge of that.

13 SOLICITOR STEINBERG: I'm going to get to that very
14 quickly.

15 Q Did you have any discussions with David Molina
16 concerning this?

17 A After the fact, yes.

18 Q Okay. Do you remember approximately when you had this
19 conversation?

20 A It was about a week afterwards when he came over to our
21 house on Sunday after church. We had gone to, to church
22 with my daughter, called her up, and asked if he could go,
23 and he came over to her house and---

24 Q Ma'am, if you'd speak up louder.

25 A He had came over to our house the Sunday afterwards and

1 he had said that he had gotten attacked and he had a cut. I
2 did not see the cut. He told us that, at the dog grooming
3 place, that it was good he was there to protect Nichelle
4 because there's a, as he described him, a white male with
5 blonde hair and a large black man was hanging around the
6 outside of the pet grooming place because it was a late
7 evening time, and he had gone there to take my daughter
8 coffee.

9 And he said he saw a white guy standing on the outside.
10 And he said I told Nichelle and the, and the other girl to
11 stay inside the building, and he was gonna go check it out.
12 And he said I went running after the guy. He said when I
13 came back it was a truck, a large vehicle, or something, he
14 said the guy came out and stabbed him and he said he, he
15 said I know I broke his arm or his shoulder he said when he
16 hit him.

17 And I said well, I'm, I'm sorry you got attacked or
18 hurt, and then he said well, the police came out, but they
19 couldn't find anything. That was all he told me at that
20 time.

21 Later on, he did tell us something else.

22 Q When, when was that that he told you something else?

23 A It was at my mother's house. It was -- I think it was
24 right after the attack. Maybe a day or two and the family
25 was there to support Nichelle.

1 David -- it's so unbelievable. David had said that he
2 went down to the law enforcement center and met with some
3 policemen and looked through a photo array book and he had
4 picked out a guy and that they had found the guy at the
5 hospital in Greer with a broken clavicle. I was like woah,
6 wow.

7 Q What was that word, ma'am?

8 A I said -- I was surprised, shocked.

9 Q No, I'm sorry.

10 What was that word you used?

11 A He had a broken clavicle.

12 Q Okay.

13 A I'm like woah. He also said that the police had
14 arrested the black man and that they had told him they could
15 not follow through with action against him because it was
16 his word against the guy's word, which I mean even at the,
17 at our home we were like well, that sounds unusual. Usually
18 when someone attacks you it's not your word against their
19 word.

20 Q Did he say anything else about the dog grooming
21 location?

22 A Just that the dog grooming location was at the end of a
23 cul-de-sac and a dark area and they were there letting the
24 dogs out when most of the other businesses were closed. He
25 did say that he thought that they were hanging around to

1 possibly attack and rape my daughter and the other girl.

2 Q Okay. Let me bring you to the night of this incident
3 occurring at your daughter's house.

4 When were you notified of the assault?

5 A It was a little after midnight. My mother called me.
6 She was hysterical, crying, saying that Nichelle had been
7 attacked, attacked, but she was alive, and I said I'll be
8 right there.

9 Q How long did it take you to get there?

10 A Less than five minutes. I take back roads all the way
11 to my mom's. It's, it's like maybe a couple of miles from
12 my house to my mother's house.

13 Q And---

14 A And I left as soon as I got off the phone. I went in
15 my pajamas.

16 Q When you got there to Nichelle's home, her
17 grandmother's home, who did you see there?

18 A When I pulled up in, in front of the house, there was a
19 policeman putting a yellow tape around the front of the yard
20 saying that this is a crime scene, I couldn't come in. I
21 said that's my daughter. When I walked into the home, David
22 Molina was there, the policeman was there, my-daughter was
23 on the kitchen floor, and my mother was there.

24 Q What, if anything, did David Molina say?

25 A I'm so sorry I was not here to protect your daughter,

1 so sorry that -- he must of said that three or four times.
2 I'm so sorry I was not here to protect your daughter. But
3 he was already there.

4 Q To your knowledge, was he dating your daughter at the
5 time?

6 A No, he was not.

7 Q Did he give any information on any potential attackers
8 to you?

9 A Yes, he did.

10 Q Please tell us what he said.

11 A He had said that it may be one of the, one of her
12 previous boyfriends and he listed the name of a Matt Ford.
13 He, he also -- since the detectives had told us that any
14 attack where they cut your face---

15 MR. WILKES: I object.

16 Q Yes, I---

17 THE COURT: Sustained.

18 Q Let me just ask you what David Molina says as opposed
19 to what the police officers say. I apologize.

20 A Okay. David said that the attacker may come back. He
21 had said that he needed to be there to protect Nichelle. He
22 had, he had referred that maybe it was the guys that had
23 attacked him in January at the dog grooming place.

24 Q Okay. Did David explain why he had gotten there so
25 fast?

Pamela Mucha - Direct examination
by Solicitor Steinberg

1 A He told---

2 Q Let me -- I'm sorry. Do you have an answer for that?

3 A No, go ahead.

4 Q Let me rephrase that.

5 Did he explain where he was when he was notified?

6 A Well, he told a policeman and I---

7 MR. WILKES: Objection.

8 THE COURT: Sustained.

9 A Well, he told me.

10 Q What did he tell you or what did you hear come out of
11 his mouth?

12 A He said that he always comes over to her home late at
13 night between 11:30 and 12:30 and that he was already on his
14 way over there and that Nichelle had invited him. That's
15 what he said.

16 Q Do you recall what David was wearing that night in your
17 daughter's home?

18 A He was wearing light green wind pants, a T-shirt, and
19 tennis shoes.

20 Q Okay. Was it unusual for him to wear wind pants?

21 A No, that's all I saw him in other than I think he had a
22 pair of dress pants one Sunday.

23 Q After your daughter left your house, where did she go,
24 I'm sorry, left her house, where did she go?

25 A She went to the hospital to the emergency room.

Pamela Mucha - Direct examination
by Solicitor Steinberg

1 Q And did you go?

2 A Yes, I did.

3 Q Did you see David Molina there?

4 A Yes, I did.

5 Q What was Mr. Molina doing?

6 A He was crying and he was saying he was so sorry, he was
7 so sorry, he was so sorry that he wasn't there to protect
8 her.

9 Q After your daughter left the hospital, where did y'all
10 go or where did the family go?

11 A After we left the hospital at 7:00 a.m. we came back to
12 my mother's house and Nichelle's house.

13 Q And who was over at that, that time?

14 A My mother, my daughter, me, and David.

15 Q Did you invite David over?

16 A No, he had been at the hospital all evening.

17 Q While in Nichelle and her grandmother's house, did
18 David Molina make any statements concerning Nichelle?

19 A Yes.

20 Q What did he say?

21 A One of the first things he said when we got Nichelle up
22 to her room was that he wanted a key to our house. He kept
23 pressuring saying he needed a key to the house, he needed
24 the keys so that he would be here to protect, and I told him
25 he did not need a key. That if we were here, then someone

Pamela Mucha - Direct examination
by Solicitor Steinberg

1 would be here to let him in. If we were not here, he did
2 not need to be at our home.

3 Q How did he respond to that?

4 A He didn't like it at all.

5 Q How long did David Molina stay on this day?

6 I think this would of been you say the same day as when
7 your daughter was released?

8 A Yes.

9 Q And she was released the same day at her attack?

10 A Yes, she was attacked a little after midnight. She was
11 released from the hospital at 7:00 a.m. We came home.

12 David stayed at our house that Wednesday all day. Nichelle
13 wanted to get some rest. I stayed with Nichelle up in her
14 bedroom and David stayed downstairs. He kept telling us
15 that a man needed to be there to protect us.

16 Q Did David make any offers to you?

17 Let me ask you. Where did David sleep?

18 A He stayed downstairs on the couch.

19 Q Okay. Did David ever ask to sleep any place else?

20 A Yeah, he wanted to sleep in Nichelle's room or at the
21 door.

22 Q Did you allow that to---

23 A No.

24 Q ---happen in that regard?

25 A No, we did not.

1 Q The -- on this Thursday of that week, did you speak to
2 David again that day?

3 A Yes, David stayed Wednesday night at our house on the
4 sofa. Thursday he was, he left and then came back. He was
5 at our house Thursday afternoon, and my daughter hadn't
6 slept well. She was terrified.

7 So, I told her to maybe draw a picture cause she can
8 draw quite well, and David was there with us at the time,
9 and my daughter was sitting in the dining room table with
10 her sketch pad. David was standing in the dining room, and
11 I was standing probably two or three foot from him, and
12 Nichelle was drawing the outline of the attacker.

13 The mask, she said the mask was so different and the
14 shoulders and the -- she knew the wind pants and she had
15 said the jacket with the pockets. They were details that
16 she knew. So, she started sketching them and then she
17 started coloring them with a color pencil. Anything to help
18 the detectives find what was going on.

19 And the mask had a distinctive gray, excuse me, a
20 distinctive burgundy stripe across the top. And she said it
21 had stitching like this, but she said it was dark on top.
22 But she couldn't -- she wasn't sure what color it was. And
23 while she was coloring the burgundy, David said well, are
24 you gonna color the top of that. She's like well yeah. He
25 said well, it's hunter green. And she kind of picked up a

1 hunter green pencil and she looked at him and she goes how
2 did you know it was hunter green. It was odd.

3 And he said well, didn't you say that and she said no,
4 I didn't say that because I didn't know it was hunter green.
5 And, and he hemmed and hawed and got antsy. And he said no,
6 it was, it was hunter green. He said because that looks
7 just like the mask of the guy that attacked me in January at
8 the dog place.

9 And I was standing there going what. And Nichelle,
10 Nichelle said I thought they were wearing red bandannas at
11 the dog place. And he goes no, that's, that's the mask,
12 that's, that's what it looked like, and it's just like the
13 guy. And Nichelle was like how would you know that, and
14 then David got very angry. He was like what are you
15 accusing me, what do you, how do you think, do you think I
16 would do something like that to you and he got very angry.

17 There was a time where it was just better for them to
18 separate. He kind of went off to the bathroom. She sat at
19 the table. Then he came back and he was like I can't, I
20 can't believe you would think I would do something like that
21 to you. She was like but how did you know that was hunter
22 green. That's, that was the --.

23 Q How long did he stay at your house after that?

24 A He left that afternoon.

25 Q I'm gonna bring you to the Friday night of that week.

1 Do you recall what occurred that evening?

2 A Friday night?

3 Q Yes, ma'am.

4 A Um.

5 Q Let me ask you, do you remember if your daughter and
6 your mother came over, came over to your house?

7 A Yes.

8 Q Okay. What day of the week was that?

9 A That was Friday morning after we spoke with Wes.

10 Q Okay.

11 A We came back to my house not wanting to go back to
12 their house for fear. My daughter laid down to take a nap.
13 Her phone continuously rang. I was sitting with her on the
14 bed. I said if you want me to, we can just cut it off. She
15 said it's David, he just keeps calling, keeps calling, keeps
16 calling.

17 She answered the phone while I was sitting right there,
18 and she told him she did not want to see him, talk to him,
19 have any contact with him and he needed to leave her alone
20 and she hung up. She was crying.

21 Q Did you see David that night?

22 A This happened -- all that happened around 5:00, 5:30.
23 Later that evening we were all in a den, kitchen area, like
24 an open room. I looked out the front picture window and
25 there was David's face looking in the window.

1 Q Have you heard---

2 A Um.

3 Q I'm sorry. I cut you off.

4 A No, we were all in fear.

5 Q Did you hear a doorbell ring?

6 A No, the doorbell never rang.

7 Q Did you hear anybody knock on the door?

8 A No, they did not knock.

9 Q Can you get to that window without walking past the
10 doorbell?

11 A No, you can not. You have to go up steps, past our
12 front door, over probably a good six foot to peer in the
13 window.

14 Q And what did your husband do?

15 A We were all afraid and asked him to tell him to leave.
16 I followed my husband to the wall. There's a wall like
17 this. The door's right here. I followed my husband to the
18 wall, we peered around. My husband opened the door and
19 told, told David to leave.

20 MR. WILKES: Objection.

21 THE COURT: All right. Sustained.

22 Q Following your -- without saying what, did you hear a
23 conversation?

24 A Yes, I did.

25 Q Following this conversation, how long did David Molina

1 stay?

2 A He left immediately.

3 Q Okay. Did he ever come by again after that?

4 A No.

5 Q How long was the conversation that your husband had
6 with David Molina?

7 A Approximately five minutes.

8 Q Thank you, Mrs. Mucha.

9 A Um.

10 Q I'm sorry.

11 Are you all done now?

12 A He did not come over after that. But he did call
13 Saturday morning.

14 Q Okay. Thank you, ma'am. Please answer any of opposing
15 counsel's questions.

16 A Oh.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 BY MR. WILKES:

20 Q You say you were familiar with Nichelle's boyfriend?

21 A Yes.

22 Q Over the past say six months from the time that she was
23 dating Mr. Molina, how many other boyfriends was she dating?

24 A Six months -- I'm sorry.

25 From the time she was dating him?

Pamela Mucha - Cross-examination
by Mr. Wilkes

1 Q Yeah, from this incident, six months earlier -- say a
2 year before that, how many boyfriends were you familiar
3 with?

4 A Boyfriends before -- I'm sorry.

5 Are you asking me before she met David or after she met
6 David?

7 Q Name the last five boyfriends Nichelle had, how about
8 that, including David.

9 A There was a Chris that she dated. There was a Matt
10 that she dated shortly. David. There was a Jackson and a
11 John.

12 Q Okay. Do you know John's last name?

13 A Hojas.

14 Q Now, did John Hojas come over to the house?

15 A Yes, years ago.

16 Q Okay. So, he knows where y'all live?

17 A Yes.

18 Q Okay. As well as the other boyfriends had all been
19 over to the house too I assume?

20 A To my home. John Hojas has never been to Nichelle and
21 my mother's home.

22 Q Why not?

23 A Excuse me?

24 Q Why not?

25 A Because they moved.

Pamela Mucha - Cross-examination
by Mr. Wilkes

1 Q But you met him and the other ones?

2 A Yes.

3 Q Now, you remember the time that the deputy arrived?

4 A Are you talking about---

5 Q The time of the incident.

6 A ---February the 9th?

7 Yes.

8 Q You were there before or after the first deputy?

9 A I was there after.

10 Q And do you remember the deputy speaking to you and
11 asking you if there were any potential suspects?

12 Do you remember that?

13 A Yes.

14 Q Did you give him a potential suspect?

15 A No.

16 Q Thank you.

17 SOLICITOR STEINBERG: Very briefly.

18 REDIRECT EXAMINATION

19 BY SOLICITOR STEINBERG:

20 Q You said one of her boyfriends was Chris?

21 A Yes.

22 Q Well, who was Nichelle dating at the time of this
23 attack?

24 A Chris.

25 Q Were Chris and David ever at the house together after

Pamela Mucha - Redirect examination
by Solicitor Steinberg

1 the attack?

2 A Yes.

3 Q Did, did David say why he stayed there when the
4 boyfriend was there?

5 A David wanted Nichelle back and he wanted to be there
6 and Nichelle had to tell him to leave.

7 MR. WILKES: I will, I will object unless she's going
8 to answer the question directly.

9 Q Yes.

10 If you can recall any reason David gave why he was
11 present when the boyfriend was presented. If not, I don't
12 need an answer.

13 Do you recall anything he had to say?

14 A He wanted to protect her.

15 SOLICITOR STEINBERG: Okay. Beg the Court's
16 indulgence.

17 THE COURT: Yes, sir.

18 (Pause.)

19 Q When you were speaking with officers at the time at the
20 crime scene, how close was David to you physically like feet
21 distance?

22 A Within a foot and a half.

23 Q Okay. Thank you.

24 THE COURT: Thank you, ma'am.

25 WITNESS: Oh, thank you.

Brandon Brown - Direct examination
by Solicitor Steinberg

1 SOLICITOR STEINBERG: State's next witness will be
2 Deputy Brown.

3 BRANDON BROWN, being first duly
4 sworn, testified as follows:

5 CLERK: State your name for the record.

6 WITNESS: Brandon Brown.

7 DIRECT EXAMINATION

8 BY SOLICITOR STEINBERG:

9 Q Deputy Brown, who are you employed by?

10 A Greenville County Sheriff's Office.

11 Q And how long have you been with the Sheriff's Office?

12 A Almost four years.

13 Q And what is your current rank?

14 A My current rank is deputy two.

15 Q What did you do prior to joining the Sheriff's Office?

16 A I was in the United States Military.

17 Q And what did you do in the military?

18 A I was in the United States Navy in the SEALs Team.

19 Q What division are you currently in in the Sheriff's
20 Office?

21 A Currently I'm in youth services working as an SRO at
22 Eastside High School.

23 Q And is that SRO school resource officer?

24 A Yes, sir.

25 Q All right. Where were you working in February of 2005?

Brandon Brown - Direct examination
by Solicitor Steinberg

1 A I was working in uniform patrol, beat area three, which
2 covered the Woodruff Road, Pelham Road area.

3 Q Were you called out to Cantera Circle on
4 February 9th?

5 A Yes, I was.

6 Q How soon after you received the call did you respond?

7 A From the time we received the call, we were on a road
8 that's pretty much across the street from Woodruff Road from
9 Cantera Circle. Max, max time between getting the call and
10 arriving, possibly three minutes.

11 Q When you arrived, who was present?

12 A When I arrived, I arrived directly behind John Boyd,
13 who was the primary deputy on call. As he arrived and I
14 arrived, there was already a vehicle present out, out front
15 as well as the suspect or, excuse me, the victim vehicle in
16 the driveway.

17 Q Did you see any other cars other than police vehicles
18 driving up to this location?

19 A No, sir, at that time of night in that area of town
20 it's very dead during the week. We didn't pass or see even
21 so much as taillights going from where we were to the
22 incident location.

23 Q The individual seated at the defense table, did you see
24 him there that night?

25 A Yes, sir, I did.

Brandon Brown - Direct examination
by Solicitor Steinberg

1 Q How did he identify himself?

2 A When I first, when we first got to the scene, he didn't
3 identify himself to, to me. I was basically in charge of
4 securing the outside perimeter and setting up crime scene
5 tape. Later in the day, as he was leaving the incident
6 location, he referred to himself as the victim's boyfriend.

7 Q When you first arrived there, where was he and what was
8 he doing?

9 A He was sitting in the kitchen, kitchen area with his
10 back facing the refrigerator with the victim in his arms
11 basically holding her, comforting her I guess.

12 Q Did you speak to anyone in the neighborhood?

13 Don't say what they said, but just inform me if you did
14 speak to someone in the neighborhood.

15 A Yes, I did.

16 Q And who was that person you spoke with?

17 A I'm not familiar with names. I just spoke with the
18 direct neighbors to, if you're facing the victim's
19 residence, residence to the left and directly across the
20 street.

21 Q What was your purpose for interviewing that individual?

22 Don't say what he said. Just tell us your purpose.

23 A Basically just trying to obtain any possible
24 information as to the incident.

25 Q Did David Molina inform you why he was at this house at

Brandon Brown - Direct examination
by Solicitor Steinberg

1 this time of night?

2 A He stated to me, as he was leaving the incident
3 location, that he was on his way over to see his girlfriend
4 when she called and stated that she had been injured.

5 Q Did he tell you where he had left from?

6 A No, sir, he did not.

7 Q Did David Molina offer up any possible suspects in this
8 case?

9 A He mentioned, very, very briefly to me, of possibly a
10 couple people that he was involved in the incident with
11 prior to. But he didn't go very much into detail. He was
12 trying to go to the hospital.

13 Q Okay. I have no further questions, questions. Please
14 answer any of Mr. Wilkes questions.

15 A Thank you, sir.

16 CROSS-EXAMINATION

17 BY MR. WILKES:

18 Q Deputy Brown, you said that the, that -- you, you used
19 the term suspect vehicle was outside.

20 Is that what you said?

21 A No, sir, I did -- that was an error on my part. I
22 meant to say the victim's vehicle.

23 Q Okay. Was there any other vehicles parked out front
24 that you recall?

25 A There was another vehicle that I later found out was

Brandon Brown - Cross-examination
by Mr. Wilkes

1 Mr. Molina's.

2 Q Okay. Where was that car parked?

3 A If I'm not mistaken it was in the roadway.

4 Q Okay. In front of the house?

5 A I believe so, yes, sir.

6 Q Okay. Did you look in that vehicle?

7 A No, sir, I did not.

8 Q Okay. Why not?

9 A Other than just to make sure there was no individual in
10 there, no, sir, I did not.

11 Q But you looked in it enough you didn't see anything
12 suspicious in that vehicle?

13 A In passing, yes, sir.

14 Q Okay.

15 A Our primary concern was the victim at that time.

16 Q Nothing further. Thank you.

17 SOLICITOR STEINBERG: Nothing from the State, Your
18 Honor.

19 THE COURT: All right. Thank you, sir. You can step
20 down.

21 WITNESS: Thank you, sir.

22 SOLICITOR STEINBERG: State would call Deputy John
23 Boyd.

24 Your Honor be so kind as to---

25 THE COURT: Okay. Can he---

1 SOLICITOR STEINBERG: Your Honor, can we excuse Deputy
2 Brown?

3 I believe he has an out of town engagement.

4 MR. WILKES: Okay.

5 THE COURT: Yes, sir, thank you. You are released from
6 any subpoena.

7 WITNESS: Thank you, sir.

8 JOHN BOYD, being first duly sworn,
9 testified as follows:

10 CLERK: State your name for the record.

11 WITNESS: John Boyd.

12 DIRECT EXAMINATION

13 BY SOLICITOR STEINBERG:

14 Q Deputy Boyd, who are you currently employed by?

15 A Greenville County Sheriff's Office.

16 Q And how long you been with that agency?

17 A Almost 12 years.

18 Q And what did you do prior to the Sheriff's Office?

19 A United States Coast Guard, law enforcement.

20 Q What division are you in?

21 A Uniform patrol.

22 Q Were you called out to Cantera Circle on February 9th
23 of 2005?

24 A Yes, sir.

25 Q Do you remember what time you were notified?

1 A The call was dispatched to me at approximately fifteen
2 minutes after midnight.

3 Q And what time did you arrive?

4 A Eighteen minutes after midnight.

5 Q And how soon after you received the call did you
6 arrive?

7 A It was within a three minute period.

8 Q How close are you to this, this residence?

9 A Probably within a mile and a half.

10 Q When you arrived, who was present in the home?

11 A It was the, the victim, Ms. Nichols, the defendant, Mr.
12 Molina, and her grandmother.

13 Q When you arrived, did you see any other cars other than
14 a police car driving up to this residence?

15 A No, sir.

16 Q What time of night was this?

17 A It was shortly after midnight.

18 Q Did you see any car lights or headlights?

19 A No, sir.

20 Q When you arrived at the residence, what did you see?

21 A As I entered the neighborhood I saw a red car parked
22 almost directly in front of the incident location and there
23 was no one in or around that vehicle. No other cars on the
24 street.

25 Q Did you approach the house?

1 A Yes, sir.

2 Q What did you see when you approached the house?

3 A As I walked up the driveway, I approached the sidewalk
4 and I could see blood stains on the sidewalk. There was a
5 shoe with some blood on it, some car keys. As I continued
6 up the sidewalk to the front door, there was blood on the
7 front door step, the mat. There was blood on the door
8 itself. Rang the doorbell, knocked on the door, and was
9 eventually let inside.

10 Q Were you able to find the victim while inside that
11 home?

12 A Yes, sir.

13 Q How were you able to -- excuse me.

14 How were you able to find the victim?

15 A The victim's grandmother, Ms. Nichols' grandmother,
16 opened the door to allow us entry and I could see blood
17 stains on the floors, on the walls, on the light switches.
18 There was a trail of blood that led from the front door
19 directly into the kitchen where she was seated.

20 Q Did you see David Molina?

21 A Yes, sir.

22 Q What was he doing at the time?

23 A He was sitting on the floor consoling Ms. Nichols. He
24 was holding her in an embrace.

25 Q What was Nichelle Nichols' demeanor at the time?

1 A She was very frantic, very upset, very excited, crying.

2 Q After you arrived, who else arrived at this location?

3 A Deputy Brown had responded to the call with me. So, we
4 arrived simultaneously. Given the nature of the call, there
5 were quite a few additional units that were responding to
6 the area for support. There were two sergeants that were in
7 route to the scene, Sergeant Bolt, Sergeant Waters.

8 In addition, they had requested a K-9 tracking unit.
9 Master Deputy Jumper was a part of that team. He
10 coordinated the tracking units.

11 Additionally, EMS paramedics were, also responded.
12 Plus there were several other area units that responded to
13 the area in the event that we could set up a perimeter in an
14 effort to locate the suspect on foot.

15 Q Did you see the victim's mother at this location?

16 A After we arrived to begin our investigation, a short
17 while later Ms. Nichols mother arrived on the scene. She
18 was allowed into the home, but not into the area where I was
19 conducting my interviews with Ms. Nichols. She was detained
20 in the living room till I had a chance to talk to her.

21 Q How soon after you arrived did she arrive?

22 A It was within minutes.

23 Q Did you speak to David Molina at the crime scene?

24 A Yes, sir, I did.

25 Q What did David Molina say?

John Boyd - Direct examination
by Solicitor Steinberg

1 A I asked him what his, why he was there. He indicated
2 that initially that he was her boyfriend. He later recanted
3 and said he was actually the ex-boyfriend. He further went
4 on to explain that he and she have a relationship that
5 continues as friends.

6 He was already on his way to visit her, he was driving
7 along Interstate 85 when he got a telephone call from her
8 that indicated she had been assaulted at which time he
9 rushed to the scene to comfort her.

10 Q After the victim was transported to the hospital, where
11 did you go?

12 A I remained on the scene momentarily after she was
13 transported. Mr. Molina had asked that he be allowed to go
14 to the hospital in his own vehicle. So, he was allowed to
15 leave the scene. It was at that time when I interviewed
16 Ms. Nichols mother and grandmother, asked them if they had
17 any information about what had happened, and any possible
18 suspect information, anyone who might of had a motive. They
19 indicated that they did not.

20 So shortly thereafter I left the scene with Deputy
21 Brown and Sergeant Waters and Deputy Jumper. I left there
22 and went to the hospital and conducted the follow-up to my
23 investigation at the hospital.

24 Q Did you ask Nichelle for any possible suspects?

25 A I did. I asked her to describe the suspect. At the

1 hospital she gave me a little bit further information. She
2 believed that it was a white male dressed in dark clothing.
3 But she could not be more specific.

4 Q Did she give any possible enemies or motives or
5 anything like that?

6 A I asked her for a motive or anyone who would of had a
7 motive to assault her in such a way. She recanted a couple
8 of stories to me or explained a couple of stories to me.
9 One, which was quite interesting, was an incident that she
10 explained at her previous employment.

11 She worked at a, a dog care, pet center, and she
12 explained that, at that point, Mr. Molina had come by to
13 visit her.

14 MR. WILKES: I'm gonna object at this point. He hasn't
15 answered the question directly whether or not she supplied
16 with, him with an identity. Not his interpretation of some
17 story.

18 Q If you can just tell me what Ms., Ms. Nichols said.

19 MR. WILKES: He hasn't answered the question directly.

20 THE COURT: Okay. Just let me hear an objection to the
21 basis under the rules.

22 MR. WILKES: The objection is he has not answered the
23 question either yes or no. He has not answered directly.
24 He asked him a simple question. As I believe he asked was
25 did Ms. Nichols give you the identity of any suspect.

1 WITNESS: Could you reask the question?

2 THE COURT: Yeah, just rephrase the question.

3 SOLICITOR STEINBERG: Yes, sir, Your Honor.

4 Q Did Ms. Nichols give you the name or any information on
5 any potential attackers?

6 A That night she did not give me a name or any specific
7 information regarding the attacker.

8 Q Did she give you any prior history?

9 A That indeed she did.

10 Q Tell us, tell us what the prior history was.

11 A The prior history that she explained to me was in
12 response to my question to her, who would have motive to
13 attack you. It is at that point when she went back and told
14 me a story where she was nearly attacked at her previous
15 employment, and it was that situation that I was getting
16 ready to explain.

17 Q Okay. Just very briefly, what did Nichelle say
18 occurred?

19 A She indicated that while she was at work at the dog
20 center, Mr. Molina had come to visit her. She and another
21 employee were inside the business, which has a video
22 surveillance system. She indicated that Mr. Molina had
23 observed some subjects on the video system. He indicated
24 that she should stay inside. He was going out to check.
25 She stated that he had gone outside and, and engaged in

1 a confrontation with two subjects, a white male and a black
2 male. One was armed with a knife. She indicated that
3 Mr. Molina told her that he attacked these individuals and
4 sustained an injury during the attack, but he had chased
5 them off. He said that they returned, he returned into the
6 business. He had a wound to his shoulder. They requested
7 the Sheriff's Office, investigation was conducted for that
8 incident. That was one scenario.

9 She also provided another scenario again involving
10 Mr. Molina where he had indicated that, while driving in
11 Greenville, another ex-boyfriend of Ms. Nichols had
12 allegedly followed Mr. Molina through Greenville in some
13 type of high speed vehicle chase that terminated at his
14 apartment complex. He identified the person who had chased
15 him as Mr. Ford, Matthew Ford I believe.

16 When I asked her to expand on that part of the story,
17 she indicated that Matthew Ford wasn't an ex-boyfriend.
18 However, that he had terminated the relationship and there
19 was no animosity between them and that she did not feel that
20 he would of had motive to conduct any type of assault
21 against her and they had remained friends.

22 She also indicated that, given the stature of the
23 suspect, the attacker the night of the incident where she
24 was assaulted, this person was a larger frame in stature,
25 more stronger, more physically fit than Mr. Ford. She did

1 not believe that he was a likely suspect based on his
2 physical characteristics.

3 Q Did you have an opportunity, in the hospital, to look
4 at Ms. Nichols wounds?

5 A Indeed I did.

6 Q And did you record those in your report?

7 A Yes, sir, I did.

8 Q All right. If you please tell us the descriptions you
9 give of the wounds.

10 A All right. For the purposes of description, I'm going
11 to refer to my report. As I was concluding my investigation
12 in the hospital, it was necessary for me to provide Ms.
13 Nichols with some forms for victims rights notification. At
14 that time she was undergoing stitches. So, I took note of
15 the injuries that she had received which consisted of a
16 three inch laceration on her right cheek from her ear to her
17 chin, a one and a half inch laceration on her lower right
18 lip, a one and a half inch laceration to her right eyelid,
19 two lacerations to her right hand ring finger and little
20 finger about one-half inch each, and a four inch laceration
21 to her right thigh all which required sutures.

22 Q At the hospital, did you see David Molina?

23 A Indeed.

24 Q What was he doing there?

25 A He was awaiting the opportunity to be let into the

1 hospital room to talk with Ms. Nichols.

2 Q Did you discuss this case with him at all?

3 A Yes, sir, I did.

4 Q First of all, what did he say about his relationship
5 with Ms. Nichols?

6 A Well, as I approached him, he was waiting in the
7 waiting area of the hospital. At this point, it was my
8 belief that he was just a nervous boyfriend who wanted to
9 see that she was okay. I had no understanding or no belief,
10 no reason to believe that he was a suspect. So, he was at
11 this point just being questioned, and I questioned him from
12 the point of view of could he help me determine who the
13 suspect might be.

14 He then related to me the story about the pet care
15 center where he had the confrontation with these two
16 individuals and he showed me the scar that he had received
17 as a result of that confrontation. He then reiterated the
18 story about Mr. Ford chasing him through Greenville and the
19 apartment complex, and then he continued to explain that he
20 had no information to provide me that would assist in
21 locating a suspect and added or reiterated that he was good
22 friends with the victim and that he was on his way to come
23 visit her at the time when the incident occurred. So, he
24 was coming to see her.

25 Q You say he showed you a scar?

John Boyd - Direct examination
by Solicitor Steinberg

1 A Yes, sir.

2 Q Where was the scar located and how big was the scar?

3 A It was a small scar on his chest area. Maybe inch,
4 half inch.

5 Q Did Mr. Molina say where he was during this assault?

6 A He said that he was on Interstate 85 on his lunch break
7 coming to visit Ms. Nichols.

8 Q Did he say why he was coming over there at this time of
9 night?

10 A Said that he routinely would come and visit her, bring
11 her lunch, or visit with her while he had his lunch break,
12 and it was one of those occasions he just happened to be in
13 the area.

14 Q Did he say where he was on I-85?

15 A I believe that, I believe that the way I document, the
16 way I recall the conversation, he just merely indicated he
17 was driving along Interstate 85.

18 Q Did he say how he learned of the attack?

19 A He indicated that she had called him, that Ms. Nichols
20 had called him and said that she had been attacked, and
21 that's what caused him to respond to her.

22 Q You said earlier that you did not see any brake lights.
23 I forgot to ask a question.

24 Did you see anybody running into Nichelle's house when
25 you pulled up in front of her house?

John Boyd - Direct examination
by Solicitor Steinberg

1 A No, sir, I did not.

2 Q Was it bright enough that you would of seen somebody if
3 they had of gone by?

4 A Yes, sir, with the headlights of my patrol car, my
5 spotlight which was trying to locate the address, as well as
6 the neighborhood has street lights along the street side,
7 there was plenty of light. I would of seen someone
8 approaching the house from my vantage point.

9 Q You said that David Molina showed you a scar.

10 Did he say how he received this scar?

11 A Yes, sir, he did. He indicated that during his attack,
12 during his confrontation with the gentlemen at the pet day
13 care center, he was confronted with a subject with a knife.
14 When he tried to disarm that subject, the subject had
15 stabbed him in the chest with the knife.

16 Q Did he describe what that subject looked like?

17 A He described a black male and a white male that were
18 wearing bandannas over their faces. No further
19 descriptions.

20 Q Did he say what they intended to do?

21 A He believed that their intent was to rob the store.

22 Q And did he describe -- I say he, I'm referring to
23 Mr. Molina.

24 Did Mr. Molina describe his role in this case?

25 A He, he merely recounted himself as being a hero who

1 saved the day and prevented the, Ms. Nichols from being the
2 victim of an assault.

3 Q Thank you, Deputy Boyd. Please answer any of opposing
4 counsel's questions.

5 A Certainly.

6 CROSS-EXAMINATION

7 BY MR. WILKES:

8 Q Deputy Boyd, may I see the notes that you're referring
9 to?

10 A Yes, sir.

11 Q Is this your report?

12 A Yes, sir.

13 Q You believe your report is accurate?

14 A Pardon?

15 Q Do you believe your report is accurate?

16 A Yes, sir.

17 Q You have underlined specific portions of this report.

18 A Yes, sir.

19 Q What is the purpose of that?

20 A They're certain information in the report that I feel
21 is imperative that I want to be sure and cover. So, in
22 preparation for Court testimony, I reviewed my report
23 thoroughly and highlighted or underlined the information
24 that I wanted to retain for the purpose of recounting to the
25 Court.

John Boyd - Cross-examination
by Mr. Wilkes

1 Q In doing that, have you removed, did you review any
2 other documents?

3 A I'm not sure.

4 Q Have you looked at any other paperwork in reviewing for
5 your testimony?

6 A No, sir, the only information that I have is the report
7 in front of me. Previously while I was standing here in the
8 courtroom before trial began, I did view that your report
9 was laying there and it was a copy of my report.

10 Q That's okay.

11 Did you have any questions and answers provided to you?

12 A There was some review with, with the attorney to make
13 sure that the information was covered.

14 Q I understand that.

15 Is there any written questions and answers provided to
16 you?

17 A No, sir.

18 Q Just what you have on that report?

19 A Absolutely.

20 Q Okay. Now, you said that report should be accurate?

21 A Yes, sir.

22 Q When you responded, you asked both mother and
23 grandmother if they had any suspects?

24 A Yes, sir.

25 Q At that time, how many officers were in that house?

1 A At the time when I was interviewing the grandmother
2 initially, it was Deputy Brown and myself. Deputy Brown
3 then excused himself. Sergeant Waters arrived on scene, but
4 did not enter the house. Later when Ms. Nichols mother came
5 to the house, it was she and I.

6 Q Okay. Was there officers outside?

7 A Yes, sir, there was.

8 Q Where were you when Mr. Molina left the house and went
9 to the hospital?

10 A Ms. Nichols was being transported out to the ambulance
11 and Mr. Molina had followed her out to the ambulance and at
12 that time had been requested to be allowed to leave the
13 scene. I was standing at the ambulance while she was being
14 loaded up and subsequently he got into his vehicle and left
15 from the scene following the ambulance.

16 Q Okay. Was mother and grandmother still at the house
17 while y'all were there?

18 A Yes, they were.

19 Q Okay. So, there were deputies there.

20 If they had been suspicious at that time, they could of
21 said, by the way, we're suspicion of Mr. Molina?

22 There was nothing stopping them from doing that at that
23 time?

24 A Not that I'm aware of.

25 Q Okay. Now, tell me who arrived next on the scene. You

1 were there, the one that just testified --

2 A Uh-huh. (Affirmative).

3 Q -- he was right behind you?

4 A Correct.

5 Q And then what happened?

6 What did you call?

7 Who did you call?

8 A As indicated earlier, my dispatcher had already
9 requested a paramedic unit. There were also two sergeants
10 that were in route to the call.

11 Q Okay.

12 A As well as the K-9 unit. As far as the actual arrival
13 times of each individual unit, I do not have that
14 information.

15 Q Okay. Let me ask you this, how did the K-9 unit get
16 involved in this?

17 A Our -- well, because of the nature of this, of the
18 call, the call was given out as an assault with a -- I'm
19 sorry. The report indicates assault and battery with intent
20 to kill. However, the call that was received to dispatch
21 was an armed robbery to an individual.

22 Q Okay.

23 A Given the nature of an armed robbery call, we generally
24 will respond a K-9 tracking unit, if available, in the event
25 there's a track that can be followed with a suspect leaving

John Boyd - Cross-examination
by Mr. Wilkes

1 the scene. So, our sergeant had requested the K-9 unit be
2 in route to that call---

3 Q Okay.

4 A ---specifically for that purpose.

5 Q And is the sergeant part of the patrol services?

6 A Yes, sir.

7 Q So, patrol services has the ability to call a K-9
8 tracking unit?

9 A In specific cases, yes.

10 Q Specific cases.

11 Is there any general order or specific order that says
12 you can't call the K-9 unit from the patrol services?

13 A Not that I'm aware of. But our policies have changed
14 within the last few months, and there may be some changes
15 that I'm not familiar with.

16 Q Were they the same policies in effect at the time of
17 the incident at the dog grooming place and the month later
18 with the incident at Cantera Drive?

19 A I'm not sure what the situation was regarding the dog
20 grooming incident because I was not working on that shift.
21 And the supervisor who, uniform patrol supervisors in charge
22 that day are not the same supervisors that I work for.

23 Q But you---

24 A With respect to my situation, my supervisor felt it was
25 necessary to request a K-9 unit and therefore he did.

John Boyd - Cross-examination
by Mr. Wilkes

1 Q But they had K-9 units a month before this incident?

2 A I would assume they did.

3 Q Okay. Now, at the time -- you spoke with Ms. Nichols?

4 When you came in the door, you spoke with Ms. Nichols?

5 A Yes, sir.

6 Q When you did, Ms. Nichols, did she give you the name of
7 suspects?

8 Who did she indicate she thought did this?

9 A At the scene she did not give me a name or indicate who
10 she thought did it.

11 Q Okay. Now, you said later that you asked more about
12 who would have a motive.

13 A Exactly.

14 Q Did she tell you I believe David Molina did because of
15 these other incidents?

16 Is that what she said?

17 A Certainly no.

18 Q No, she didn't believe David did it.

19 She related the, prior to his---

20 SOLICITOR STEINBERG: It's not what Ms. Nichols
21 believes.

22 Q Did she indicate that she believed he did it at that
23 time?

24 A She actually indicated she wasn't sure who had done it
25 because the suspect was masked.

John Boyd - Cross-examination
by Mr. Wilkes

1 Q Okay.

2 A And wearing dark clothing.

3 Q And when she related this incident about the dog
4 grooming and the fact that he had, she said he indicated he
5 thought a boyfriend had followed them around --

6 A Uh-huh. (Affirmative).

7 Q -- you said that was interesting.

8 A Uh-huh. (Affirmative).

9 Q You used that term on the witness stand, that was
10 interesting.

11 A Right.

12 Q Did you tell her that was interesting, let's talk more
13 about that?

14 A I thought it was interesting in that the time when I
15 asked her for persons of interest or persons who may have
16 possible motive to attack her, those stories were, were
17 quite interesting to me because of the, the unlikeliness of
18 their, of their realistically happening.

19 Q So, in other words, you didn't believe those could of
20 happened and therefore it's possible you conveyed that
21 information or that impression to her?

22 A No, sir, it would not have been professional to give
23 her doubt in what she was relaying to me. I took the notes
24 and wrote the information down in the report and reported
25 the same.

John Boyd - Cross-examination
by Mr. Wilkes

1 Q And you don't believe there's any possibility that she
2 could have perceived that you were doubtful that those
3 incidents occurred?

4 A It would be beyond me to determine what she was able to
5 perceive.

6 Q Thank you.

7 Now, at the scene, you said Mr. Molina is inside and he
8 later, at the time that Ms. Nichols goes outside to the
9 ambulance, he went outside?

10 A That's my recollection that he left.

11 Q Okay. Who was there at the time that he left officer
12 wise?

13 A Detective Brown was still on scene. Deputy Jumper was
14 involved in K-9 operations. Sergeant Waters was on the
15 scene. Sergeant Bolt was coordinating the perimeter units,
16 which were setting up in the area. So, I, I would recall
17 that it was Brown, Jumper, and Sergeant Waters.

18 Q Okay. And I believe Sergeant Bolt had some contact
19 with Mr. Molina?

20 A He did.

21 Q And did he detain Mr. Molina?

22 Did he arrest him?

23 Did he -- what did he do?

24 A He did detain him for a short period. Shortly after,
25 shortly after the ambulance left the scene with Ms. Nichols,

John Boyd - Cross-examination
by Mr. Wilkes

1 Mr. Molina left following the ambulance in his personal
2 vehicle. Sergeant Bolt was on the perimeter and he observed
3 Mr. Molina's vehicle traveling towards his position at a
4 high rate of speed. So, he stopped that vehicle to
5 determine if it was a possible suspect.

6 At that point he radioed the description and the
7 driver's name, which I intercepted the transmission and
8 explained to him that Mr. Molina had been cleared to leave
9 the scene, at that point he was not considered a suspect,
10 and therefore he was allowed to continue on his way to the
11 hospital. Sergeant Bolt released him and there was no
12 further action.

13 Q Okay. How long do you believe Sergeant Bolt had him
14 detained?

15 A Now that I'm not aware of. That radio traffic was
16 not---

17 Q Were you aware of whether or not Sergeant Bolt had an
18 opportunity to look into the vehicle?

19 A Again, I was on the scene. I was not with Sergeant
20 Bolt. I'm not sure what he did at the scene.

21 Q All right. You said Sergeant, Sergeant Bolt stopped
22 him as a potential suspect, and during that time would it be
23 reasonable to believe that he might have searched through
24 the car?

25 A It would be reasonable to believe that that was the

John Boyd - Cross-examination
by Mr. Wilkes

1 case. However, once he indicated the description and the
2 reason he had stopped him, it was a vehicle travelling at a
3 high rate of speed, and the vehicle description that was
4 given and its occupant, it was immediately relayed that that
5 was Mr. Molina. He was cleared and I believe that he
6 immediately released him from the scene.

7 Q You believe it?

8 A I believe..

9 Q But you have no way of knowing for sure?

10 A No, sir, it's not on record and it was not related to
11 me if he detained him.

12 Q Sergeant Bolt still works at the Sheriff's Department?

13 A Yes, sir, he does.

14 MR. WILKES: Okay. May I have just a moment, Your
15 Honor?

16 THE COURT: Yes, sir, take your time.

17 (Pause.)

18 Q Deputy Boyd, at the time of the incident, what did the,
19 what did Ms. Nichols tell you she did as far as telephone
20 calls?

21 And you can review your report if it helps refresh your
22 memory.

23 A Can you, can you rephrase your question?

24 Q Yes, sir, you were there and you had talked to her
25 initially and you had documented in your report what she

1 said. Did you -- and you can look and see. It may be
2 underlined in red.

3 She had been out this evening with some friends and
4 that she had come home around 00:12 hours.

5 A Uh-huh. (Affirmative).

6 Q She said that she parked the car in the driveway, then
7 began to walk up the sidewalk to her front door. She did
8 say she observed a subject dressed in all black clothing
9 running toward her. She tried to run for the door, fumbled
10 for her keys when she reached the door.

11 And that's what she told you?

12 A Correct.

13 Q Okay. She indicated to you that she fell to the
14 ground, she kicked at the suspect, and after that -- all
15 right. About half way down the page, do you see on your
16 report she -- then the victim said she made her way into the
17 house and collapsed on the kitchen floor. She then called
18 her ex-boyfriend Molina and asked him to come over and told
19 him that she had just been attacked. Then the victim called
20 9-1-1 and requested help.

21 Is that what your report says?

22 A That's correct.

23 Q Did you underline that in red?

24 A Actually that is on the first page of the initial
25 report and part of it is highlighted and the highlighted

1 part that I've indicated that she then called her
2 ex-boyfriend Molina and asked him to come over, told him
3 that she had just been attacked.

4 Q Is that highlighted on your report?

5 A That is indeed highlighted.

6 Q That is, therefore, an important fact, is it not?

7 A Yes, sir.

8 Q Thank you.

9 That's all I'd have.

10 SOLICITOR STEINBERG: Very briefly.

11 THE COURT: All right.

12 REDIRECT EXAMINATION

13 BY SOLICITOR STEINBERG:

14 Q How quickly did you realize that the person Sergeant
15 Bolt had radioed in was David Molina?

16 A Almost immediately. As soon as he indicated his radio
17 traffic that he had stopped a red vehicle and that the
18 occupant was Molina, he inquired is this person okay, and I
19 indicated yes, he was.

20 Q And you said -- well, how quickly did you do that?

21 How quickly did you respond?

22 A Within a matter of seconds.

23 Q Thank you. No further questions.

24 MR. WILKES: One more, Your Honor.

25 THE COURT: Yes, sir.

1 RECROSS EXAMINATION

2 BY MR. WILKES:

3 Q You said you quickly responded to it?

4 A Right.

5 Q What was the exact time that he pulled that car over
6 from there until the time that he radioed?

7 A I wouldn't have any way to know that.

8 Q Thank you.

9 THE COURT: All right. Thank you, Mr. Boyd. Step
10 down, sir.

11 SOLICITOR STEINBERG: State calls Deputy Conley Jumper.

12 CONLEY JUMPER, being first duly
13 sworn, testified as follows:

14 CLERK: State your name for the record.

15 WITNESS: My name is Master Deputy William Conley,
16 C-O-N-L-E-Y, Jumper, J-U-M-P-E-R, and I'm a Junior.

17 DIRECT EXAMINATION

18 BY SOLICITOR STEINBERG:

19 Q Deputy Jumper, what division in the Sheriff's Office
20 are you in?

21 A At this point in time I'm in a division that's called
22 K-9 Services Unit. It's a newly created division by our
23 sheriff, Sheriff Steve Loftis, at the beginning of this year.

24 Q Why, why is it newly created?

25 A At this point in time the sheriff has implemented a

Conley Jumper - Direct examination
by Solicitor Steinberg

1 program to supply the county with K-9's twenty-four hours a
2 day, seven days a week, 364 days a year. At this point in
3 time we have ten multipurpose K-9's and two interdiction
4 narcotics K-9's, and we're providing that service at this
5 point in time starting this year to the Sheriff's Office and
6 all to adjoining counties and also to the various cities.

7 Q Does the Sheriff's Office hired more dog handlers or
8 more, obtain more dogs?

9 A We have obtained dogs from various kennels, North
10 Carolina, also Florida. The Sheriff's Office personnel has
11 just been rerouted within the department. We have pulled
12 officers from the traffic unit, which I was assigned to as a
13 master deputy. Also pulled officers from uniform patrol
14 that has reached the qualifications of our unit.

15 Q I want to bring you to the night of February 9th,
16 2005, February 8th, February 9th.

17 Were you called out to Cantera Circle on that date?

18 A Yes, I was. I was requested on that night to respond
19 to the incident location of Number 12 Cantera Circle around
20 00:35 hours, which in, which will be around 12:30.

21 Q And who did you arrive with?

22 A I arrived on the scene by myself. Shortly after
23 Sergeant Kellet, which is over traffic unit and also one of
24 the sergeants over the K-9 Services Unit within the
25 Sheriff's Office. Also my support personnel arrived, which

Conley Jumper - Direct examination
by Solicitor Steinberg

1 is Master Deputy Woolcraft and also Deputy Johnson, A.J.
2 Johnson, which is no longer with the Sheriff's Office. He
3 is gone, moved to Florida, and is working down there as a
4 deputy. And also Deputy Lewis is my cover officers.

5 Q What is a cover officer?

6 A Basically the cover officers on our team respond to
7 various traffic situations in which we may encounter armed
8 suspects just to basically be able to cover our backs. When
9 we go out and do tracks, we basically have a dog and the
10 handler itself. We have a cover officer for the handler
11 because when basically you go out and do tracking
12 situations, you always watch your dog. You don't watch the
13 area around you.

14 So, our cover officers do that. We usually run a cover
15 officer behind the handler, cover officer on the left and
16 right to secure the left and right side of the perimeter.
17 Also a rear guard.

18 Q What is your dog's name?

19 A My dog's name is Don Juan Vito. Vito, V-I-T-O, is what
20 he goes by.

21 Q And what type of dog is he and how old is he?

22 A He's a Belgium Malanese. Some people pronounce them
23 Malawa. But it's a Malanese. He is a ten year old
24 Malanese. He's been in service for the Sheriff's Office the
25 longest K-9 that we have. He's seven and a half years.

Conley Jumper - Direct examination
by Solicitor Steinberg

1 Q And what are some of his duties?

2 A Some of the duties of my K-9, he has a vast variety of
3 duties. One of them is article search, which would look for
4 articles that's been disregarded. Basically thrown out or
5 lost items in an area. He finds those items. By looking
6 for those items, he looks for the taste of human odor, the
7 fingerprint is what we call it. Article search is one of
8 them.

9 He does area searches in which we believe a suspect --
10 say he's inside of this room. He's hidden inside this room.
11 We do area searches, which is a combination of building
12 searches. We do it outside the buildings. Also in a area
13 like a field or a grove of trees or stuff like that.

14 He's also certified in tracking, is certified in
15 narcotics detection. He does basic four. We also do number
16 four, which is Ectasy, but it contains, contains also meth.
17 But the four narcotics is also crack cocaine, cocaine,
18 marijuana, and heroin.

19 Vito is also certified in apprehension, in handler
20 protection. Say if we have an arm suspect or suspect that
21 needs to be apprehended for whatever criminal charge that's
22 available, we use him and basically we send him out based
23 upon our verbal commands, which he has. My dog, Vito, is in
24 German even though he's a Dutch dog. His commands are in
25 German. We give him the command to go out and apprehend an

1 individual, which the dog obtains a body scent on that
2 individual.

3 And I believe I said building searches too.

4 Q Have you ever been through tracking schools?

5 A Yes, sir, I've been through various tracking schools.

6 The school started out through the various local agencies
7 here. We've had in-house tracking schools. We've had

8 tracking schools in North Carolina through the bloodhound

9 association. All through the North Carolina K-9

10 Association, through the various counties up there.

11 We have schools we put on ourself of a man tracking
12 skills. We've been to Pisgah National Forest to track with
13 the forest rangers up there. We work some with search and
14 rescue even though it's totally different.

15 Various K-9 Schools through Intelaco, National Nap
16 Water, National Association, Law Enforcement Police Dog
17 Association. Numerous schools.

18 Q Okay.

19 A It's -- they're listed.

20 Q Okay. Have you ever been certified as an expert
21 witness involving tracking?

22 A Yes, sir, I'm not sure on what date it was. We had a
23 case in here with Napoleon Mansell in which I was assigned
24 at that time, I mean the tracking team. I had a red bone
25 hound. Beautiful dog. He's deceased at this point in time.

1 But I used him. I was his handler. I was his sole
2 handler. And at that point in time, in this court, I can
3 not remember which judge it was who certified me as an
4 expert in tracking with that dog.

5 Q How long have you been a member of the tracking team?

6 A I think we end up going back to 1998 I've been a member
7 of the team. First I started out as a support personnel,
8 which basically I was, I worked as perimeter unit. Also
9 watched other handlers. Basically I was assigned at that
10 point in time to N4 Long Gun 223. Then I moved up to, as a
11 handler for another hound, bloodhound. Her name was Sara.
12 Little, little hound.

13 And then at that point in time we ended up getting Law
14 from Rock Hill Police Department. Due to his size and his
15 aggressive nature, they assigned him to me, and I've worked
16 with him until he became deceased through heart failure.
17 And then I was assigned K-9 Vito, which is a multipurpose
18 patrol dog, and we received our certification through the
19 Sheriff's Office through a 400 hour training course and also
20 the various national certifications.

21 Q Okay.

22 A So, we are a team.

23 SOLICITOR STEINBERG: Your Honor, I move Deputy Jumper
24 as an expert witness in K-9 tracking procedures.

25 MR. WILKES: May I be heard outside the presence of the

Conley Jumper - Direct examination
by Solicitor Steinberg

1 jury?

2 THE COURT: All right. This is a good time for a
3 break.

4 We'll just -- ladies and gentlemen, if you would, just
5 go back to your jury room. Don't discuss the case.
6 Continue to keep an open mind. If you would, select someone
7 to be the foreperson of the jury and write that person's
8 name on a piece of paper and give it to one of the bailiffs,
9 and we'll probably take about a fifteen or twenty minute
10 break.

11 All right. Thank you.

12 (Whereupon, the following takes place outside the
13 presence of the jury.)

14 THE COURT: Yes, sir.

15 MR. WILKES: Judge, I would object to the qualification
16 of Mr. Jumper as an expert. I can't deny his obvious
17 experience with the dog, and I think that goes to his
18 credibility with the jury. But this would be no different
19 than having each investigator in this case qualified as an
20 expert in investigation, expert in anything. I think that
21 that unduly weights his testimony beyond that that he's
22 reached.

23 So, I would object to it.

24 SOLICITOR STEINBERG: Your Honor, I have a case of
25 State versus Keith Childs, 299 S.C. 471. I apologize. I've

Conley Jumper - Direct examination
by Solicitor Steinberg

1 not given a copy to opposing counsel although I did inform
2 him of that during a prior meeting. I would like to hand it
3 up to the Court.

4 I think that case goes along with the fact that Deputy
5 Jumper has already been admitted in one other General
6 Sessions charge. I'm not gonna make any further arguments.
7 That case actually makes my argument better than I could.

8 MR. WILKES: And Your Honor, I, I hate to be bound by
9 what happened in another case. I, I just go by this case.
10 This case needs to stand-alone and the determination here is
11 relevant in this case.

12 THE COURT: Well, what is his opinion gonna be?

13 I don't---

14 SOLICITOR STEINBERG: Your Honor, it's actually very
15 limited. It's gonna be that he searched for other random
16 trails in the area. There were no other trails and that the
17 trail ended at the road, and his conclusion, from having the
18 trail ending at the road, even after he goes past, that
19 conclusion would be that a vehicle either picked him up or
20 was parked there and drove away.

21 We have a map here and he's gonna show on the map.
22 It's not a long distance, but relatively short distance, the
23 trail that the, the defendant, the suspect took.

24 (Pause.)

25 MR. WILKES: I have one further comment.

1 THE COURT: Yes, sir.

2 MR. WILKES: I would distinguish this that Mr., that
3 Deputy Jumper is a fact witness in this case. This is not a
4 case of, that has to be of an expert witness being required
5 to aid the jury in determining how they, complicated
6 scientific facts. This is a question of Deputy Jumper's
7 actions in a factual about what he did. If he becomes an
8 expert witness in this case, it is, it is unduly weighting
9 his testimony as a fact witness just as much as if
10 Investigator, Lead Investigator Smith were to be qualified
11 as an expert investigator.

12 The, the question which I defer to his vast amount of
13 knowledge and, and experience, but still, in this Court for
14 the jury's purposes, making Deputy Jumper a fact witness as
15 an expert is, is unduly weighting that. If they wish to
16 bring an independent expert that can testify, look at the
17 facts independently, and offer an opinion as an expert, that
18 would, I think, be different than the fact witness
19 testifying to what he did and being an expert in drawing
20 conclusions from that.

21 Those are the conclusion that the jury must reach and
22 they do not need the aid of an expert witness.

23 SOLICITOR STEINBERG: If I can just address the issue
24 of having a separate individual.

25 What better way to have an expert than just to have the

1 expert out there at the scene?

2 You know how cross-examination of expert witnesses go.

3 Were you out there that night?

4 How do you know?

5 Are you getting your information secondhand?

6 Here we are Deputy Jumper. He is the firsthand
7 information.

8 THE COURT: Well, I mean it's common for fingerprint
9 and other forensic investigators to be on the scene and
10 they're often qualified as experts.

11 How would this be any different from that?

12 MR. WILKES: That is a forensic evaluation that is
13 conducted in the laboratory, which involves very
14 complicated, very detailed analysis between DNA, fingerprint
15 analysis, and how all that is done.

16 THE COURT: Well---

17 MR. WILKES: This is dog tracking. This is what did
18 the dog do.

19 At some point if he becomes an expert, what is he an
20 expert in?

21 What is the scope of his expertise?

22 Is it to say that this is what happened?

23 These are the facts of the case in my expert opinion.
24 I think that is the jury's determination.

25 THE COURT: Well---

1 MR. WILKES: The expert is only appropriate for that
2 specific fact that requires such knowledge and expertise for
3 the jury to understand that, and I'm not sure what they're
4 offering his expert testimony on.

5 THE COURT: Well, I agree. I'm not, I'm not -- I'm
6 still unclear on that too.

7 I don't -- what are you gonna -- you're attempting to
8 qualify him as an expert in what?

9 SOLICITOR STEINBERG: In the field of K-9 tracking
10 procedures, judge.

11 THE COURT: And he's gonna say that, while on scene,
12 he, he---

13 SOLICITOR STEINBERG: He went to the front door, and
14 from there started to track, and talk about where the track
15 led. It led to a certain location. That the track did not
16 go up left or right, it was a direct track, and that the,
17 the track ended and he's gonna make a conclusion --
18 basically the why. I want Deputy Jumper to testify to why
19 he gave this conclusion.

20 I think he's being qualified as an expert witness to do
21 the, do the trick because the trail stops at the road. It
22 does not get picked up on the road, does not get picked up
23 across the road. From there he has informed me that he can
24 conclude that there was a car that came by and picked him up
25 or a car was already out there.

1 This is not a roaming assailant. This was not just
2 somebody out there. This was somebody that was nearby.
3 Also that this was a directed attack. This went from one
4 location directly to Nichelle's house.

5 THE COURT: Well, I -- everybody needs to take a break
6 I know. But when we come back, I'd like to hear some
7 argument about how that would satisfy Rule 702 and State
8 versus Counsel.

9 Okay?

10 SOLICITOR STEINBERG: Yes, sir.

11 THE COURT: Thank you.

12 (Whereupon, a short recess was taken at this time.)

13 THE COURT: Yes, sir, Mr. Steinberg.

14 SOLICITOR STEINBERG: Thank you, Your Honor.

15 You asked us to address both 702 and State versus
16 Counsel. Counsel, at least the part I've read so far,
17 appears to be dealing with the type of expert and sufficient
18 qualification. I have some more questions I can ask. But
19 it sounds like the objection is to having anybody in this
20 field address it and the fact that he's both combination
21 fact and an expert witness.

22 So, I would say that he be qualified under Counsel. I
23 can ask more questions. But I think he's, he's gone far
24 enough to determine his qualifications in detecting dog
25 scents or dog trails or scents that dogs would pick up.

1 You've asked about 702. I guess the question would be
2 how is a jury to recognize where a track ends. What is
3 gonna be very obvious to the dog handler might not be
4 obvious to somebody who's unfamiliar with dogs where you
5 shouldn't assume that the jurors are familiar with dogs. We
6 need to know why tracks end, where would they end, what
7 would cause them to end, do they start back up, what is the
8 affect of a roadway on the trail.

9 I would say for those reasons the jury should hear, you
10 know, why they stopped at a certain location, why they, how
11 he knows the dog stopped, and what conclusion can be
12 reached. And again we're looking for the fact there's a
13 vehicle out there, and we're looking that there was not a
14 random roving attacker. This was a directed attack.

15 THE COURT: All right. Yes, sir, Mr. Wilkes.

16 MR. WILKES: Thank you, Your Honor.

17 In counsel reviewing the DNA and the technical or
18 difficulties in understanding DNA analysis, the first and
19 foremost rule of expert testimony is that there must be some
20 scientific evidence that, that's reliable. In this case, I
21 guess the question is what is the scientific evidence that
22 we need an expert or for the jury to understand his
23 testimony.

24 There is no scientific nature of this. He can testify
25 to his experience, his training, and, and what he has

Conley Jumper - Direct examination
by Solicitor Steinberg

1 encountered in the past as far as the dog's behavior. But
2 as an expert, there is nothing that I can see that, that
3 requires some expert testimony for the jury to understand
4 technical complex scientific evidence.

5 To be an expert witness, to bolster your credibility as
6 to what you saw and how your dog did, then I don't think
7 that's appropriate in this case. And I, I just -- I would
8 move or I would argue against expert testimony as opposed to
9 simply a factual testimony in his experience and his
10 observations.

11 SOLICITOR STEINBERG: Judge, I'd just simply ask Your
12 Honor to read the entirety of that first sentence where it
13 says, where it says not just scientific, but also technical,
14 and in this case, specialized information.

15 (Pause.)

16 THE COURT: All right. Mr. Steinberg, you said you had
17 some more questions you wanted to ask this witness?

18 SOLICITOR STEINBERG: Yes, sir.

19 Actually all the questions would be, unless counsel
20 objects, to the qualification of the dogs in general, but to
21 particularly Deputy Jumper's qualifications. He's been
22 given a copy of his, essentially his resume at this point.
23 I could ask more questions on this unless counsel -- well, I
24 think counsel has any questions he would concerning the
25 qualifications by the particular witness.

Conley Jumper - Direct examination
by Solicitor Steinberg

1 MR. WILKES: Your Honor, I don't think I need to
2 question him. I think they have to establish the
3 qualification in the scope of what this expert testimony is
4 gonna be on and what they've offered so far that it's, that
5 I can't even respond other than to say it's not sufficiently
6 identified as to what he's an expert in and how that's gonna
7 impact his factual observations.

8 CONTINUED DIRECT EXAMINATION

9 BY SOLICITOR STEINBERG:

10 Q Officer, Deputy Jumper, how does a dog track or a dog
11 pick up a scent?

12 A Basically, the -- it goes back to this. Basically
13 anytime you have a crime scene or any, any place in which an
14 individual is been, they leave evidence. As with anything,
15 they leave something there. We look at -- any time you
16 touch a surface or any time you walk on a surface, you leave
17 a fingerprint is what we kind of call it. You leave some
18 type of disturbance. You disturb that area. You leave a
19 odor.

20 Basically, on tracking situations, our dogs, in a lot
21 of ways, do scent discrimination and a lot of ways they
22 track ground disturbance, fresh disturbed vegetation.

23 On situations like this, we basically take our dog into
24 a scene. Say we had a gentleman, he fled from law
25 enforcement in that direction. We get a point of direction

1 in which an individual fled.

2 The first thing we do is take our dogs in. We give
3 them a verbal command for them to search, which is Suchen
4 for my dog. We get his nose on the ground. We give him the
5 suggestion, put his nose on the ground. The dog, at that
6 point in time, ends up circling the area. He'll end up
7 finding the odor that he recognizes as a human odor or as
8 freshly broken vegetation.

9 As with freshly broken, broken vegetation, as you walk
10 on grass or any type of milk weeds or anything like that,
11 molecules are released. As with grass from the human body,
12 individual ends up walking from Point A to Point B, he
13 leaves skin cells. He leaves scent.

14 Also we look at situations involving what type of crime
15 it was, was the individual in fear for his safety, was he
16 angry, was the individual running. So, you end up looking
17 at the amount of sweat, the amount of perspiration that is
18 released out of an individual's body.

19 Q What is sweat or perspiration indicate or help, help
20 you?

21 A Basically increases. Every individual, as you, as a
22 defense attorney, as myself, as a judge, has a certain odor,
23 has a certain scent odor. And so, the dog is able to
24 recognize that certain scent odor from another odor that he
25 is tracking on.

1 It's, it's, it's a lot of ways. It's very scientific.
2 It's a specialized field. A lot of ways it's a lot of
3 common sense.

4 As with anything, even when you're going across
5 pavement or asphalt, you leave a scent on that, that area.

6 Q What type of training, say real world training and
7 examples, do you use in preparing your dog for tracking?

8 A As with anything, it all dates back -- I mean you can
9 go back on history. Anybody that reads any type of K-9 or
10 any type of working relationship with dogs, there's a lot of
11 research, a lot of theories back in Holland, over the
12 European nations and stuff like that. But we pretty much
13 begin in the 70's and 80's working with K-9's.

14 So, basically we, we're working on theories, scientific
15 conclusion in a specialized field. We're working with K-9's
16 is we observe the dog's behavior. We watch the dog. We
17 train the dog on human odor. A lot of times we start a dog
18 off on training with small steps, work the dog on crushed
19 vegetation, fresh crushed vegetation. Then we increase a
20 dog's field up to using human odor. A lot of times we use
21 human by-products like urine. We can use it because a lot
22 of times when you're fleeing from individuals, naturally you
23 get adrenaline rush and stuff like that. A lot of
24 individuals has to urinate, increase sweat glands, and
25 stuff.

1 So, we train our dogs pretty much on what we look for
2 if that's answering your questions.

3 Q Yes.

4 Give us, give us an example of a typical training
5 exercise you might do with these dogs.

6 A Typical training exercise with Vito, basically what we
7 do, we take a member of the tracking team. Believe it or
8 not we've taken members of our own team. We like to use
9 them. We don't like to use them. We like to take people
10 directly off the street. Once in a while we get some people
11 that's on community service to run our tracks for us.

12 But when it's just involving a tracking individual and
13 then locating, we use other people besides team members.
14 But when we obtain a bite at the end of a track we use a
15 specialized, another handler, or a, specialized individual's
16 been doing decoy work.

17 Basically what we do, we start out. Say we're gonna
18 track an individual across the parking lot, beside a
19 building, into the woods, across another road, what we
20 basically do is we look at different temperature. We look
21 at ground temperature. We look at the temperature in the
22 air. We look at wind direction. We will look at whether
23 it's cloudy. We take all these different environmental
24 variables into play because naturally when you have a hot
25 surface, naturally the, the molecules that are released by

1 an individual end up dissipating quicker than molecules that
2 have been put on the ground by an individual whether it's a
3 warm or a cool day or whether the ground is dry or whether
4 the ground is moist.

5 If the ground is moist, as anything, it, it increases
6 the amount of molecules. It allows them to live longer than
7 to dissipate as if you have a hotter day.

8 So, we look, we looked at a lot of environmental
9 factors. Okay. I mean I'm just trying to sum it up real
10 quick.

11 What we do is we get the individual to lay a track. We
12 pretty much ask him to lay certain degrees, 90-degree
13 45-degree tracks, through the vegetation, through the woods,
14 across the road, and stuff like that. At that point in time
15 we ask him to end up laying down, sitting down in a row of
16 trees, or get up in a tree. It depends on what kind of
17 scenario we're working.

18 Then at that point in time we allow them to cook.
19 Sometimes we allow our tracks to cook from five to ten
20 minutes. Depends on what we're looking for like quick
21 bail-outs or we allow it to age for like 20, 30, up to an
22 hour long.

23 As with our K-9's, we take them out, we break them, we
24 allow our dog to relax a little bit. As with my dog, he's
25 been doing it so long, soon as I get a harness out, he knows

1 he's going to be tracking and his, he starts having an
2 adrenaline rush. He knows what I want him to do.

3 At that point in time I take him to the general area.
4 Then I give him the verbal command basically to track. At
5 that point in time he locates the track. And like I said,
6 there's very different variables that the dog is alerting
7 also on crushed vegetation. Also on human scent itself.
8 And the dog will end up tracking.

9 Well, we continue to track across different surfaces
10 and at that point in time we find an individual. The
11 majority of the time when my dog is tracking on my dog,
12 Vito, I look for behavior changes. You look for head turns.
13 Head turns, in our, in our world, is basically we all just
14 watch the dog's head. When he's tracking, whether he's on
15 it foot for foot or off of it by five or six feet left or
16 right, that's to be expected because you got to consider the
17 ground temperature, the wind blowing, whether the wind's
18 blowing up against the side of the building blowing the
19 scent from the track itself up against the side of a
20 building or down into a grove.

21 Scent has a tendency to follow cooler temperatures.
22 So, if you're tracking close to a small creek or whatever
23 like that and it's flowing downhill, the dog has a tendency
24 to track more to the left if it's going downhill than up to
25 the right because of the scent flow.

1 You got to keep in mind, whenever you're tracking,
2 wind. Wind is the key thing. The dog has to be able to
3 absorb and to be able to gather up the scent that is left
4 behind. We would continue to track.

5 When Vito gets in the general area, what he will do is
6 if an individual has been sitting for say like an hour, he
7 creates a scent pool. As with anyone that sits in a
8 specific area for a period of time, he creates a scent, a
9 scent pool. The odor of the individual, whether he's been
10 sweating or he's breathing or his heart races and stuff like
11 that would increase the amount of scent that is in that
12 area.

13 Then they go into a, a, a funnel cone is what we kind
14 of call it. It's basically the dog is able to pick up the
15 human scent. He'll start picking his head up, raising his
16 head up, and start air scenting. And you can hear this in
17 the various different breathing changes. And at that point
18 in time he's able to smell the individual. Not see. But
19 smell.

20 That's the key thing about these patrol dogs is smell.
21 They don't use their sight. They use smell and then we send
22 the dog in for the apprehension of the bite.

23 Q All right. Thank you, sir. Please answer any
24 questions defense counsel may have.

25 CROSS-EXAMINATION

1 BY MR. WILKES:

2 Q Deputy Jumper, what are you gonna offer an expert
3 opinion on?

4 A Offer an expert opinion on my dog's behavior, the way
5 he reacts. I've been working with him. It's a specialized
6 field as with my K-9.

7 For us to become qualified to become a handler, I mean
8 excuse me, become a team, become a unit, we had to qualify
9 these certain conditions through NAP and LACO and stuff.

10 So, basically I will testify to my dog's ability, to my
11 ability as a handler, and to the basic knowledge that I have
12 obtained as a handler through the various dogs I have used
13 in the past. And based upon able to recognize, through the
14 various literature, various schools, how to interpret the
15 dog's behavior and interpret the environment to be able to
16 complete a sensible track if that answers your question.

17 It's a difficult field. It's a lot of theories, a lot
18 of scientific conclusions for tracking.

19 Q Thank you.

20 Your Honor, I'll renew my objection. There's no
21 question as to he is very qualified as a tracker. But the
22 question under the rules is whether or not an expert witness
23 is necessary to testify and there's no specific conclusion
24 or opinion that they're offering and it's just broad and
25 unspecific and it's inappropriate to qualify him broadly as

Conley Jumper - Cross-examination
by Mr. Wilkes

1 any expert at something. I'm not sure at what. Expert at
2 dogs.

3 SOLICITOR STEINBERG: And the conclusion is going to be
4 that a car was involved. He's gonna talk about the roadways
5 talk. He's gonna talk about there was no---

6 THE COURT: Well, yeah.

7 How do we get to a car?

8 I'm interested in if that's gonna be his opinion.

9 REDIRECT EXAMINATION

10 BY SOLICITOR STEINBERG:

11 Q Did -- Deputy Jumper, did you, when you left the house,
12 where did you go to?

13 Where did the trail eventually stop at?

14 A Can I -- be easier if I show it or --?

15 Q Just show it.

16 A Okay. Basically we started tracking at the, basically
17 this is Number 8, 10, and 12. I was brought in per uniform
18 officer to conduct a track to locate the scent of an
19 individual that's involved in this incident. We started
20 off, just to sum up real quickly, between 10 and 11, brought
21 to the back of the house at a 45-degree angle between 14,
22 let me explain, excuse me, between 12 and 14 out to Rocky
23 Chase and Tucker Road.

24 At that point in time, my patrol dog, which is Vito,
25 brought me out here on a solid track and out to this

Conley Jumper - Redirect examination
by Solicitor Steinberg

1 incident location. At that point in time, Vito began air
2 scenting, picking up his head and circling the general area.
3 At that point in time I knew that the individual was in this
4 general area or had left this area.

5 By doing this, we take our dogs across the roadway to
6 make sure we don't pick up any type of other scent or other
7 ground disturbance on the other side of the roadways or
8 Rocky Chase, Tucker, or Bagwell.

9 At that point in time we were unable and we did not
10 pick up any type of scent of an individual on this area. We
11 came out here. It was based upon my conclusion and my
12 experience that the individual came out this direction, end
13 up getting in a vehicle that was either here, or someone
14 ended up picking him up there because the track itself
15 stopped at this intersection right here.

16 Q You said the word solid track, what is a solid track?

17 A Basically, on solid tracks, with my K-9, is I observed
18 his behavior. If he's got his head and he's pulling solid
19 and hard on the ground with his head down, I know that he's
20 on a good solid track, and---

21 Q All right.

22 A ---it's been proven in the past, based upon my
23 successful tracks, either my apprehensions or the perimeter
24 apprehensions, unfortunately we don't keep a ratio on our
25 tracking or on our apprehension. Only on our narcotics.

Conley Jumper - Redirect examination
by Solicitor Steinberg

1 Q Thank you, sir.

2 A That's the only way we---

3 Q Thank you, sir.

4 THE COURT: Okay. Bear with me just one second. I
5 didn't realize we were going to be addressing this issue
6 today.

7 (Pause.)

8 THE COURT: All right. I appreciate your patience.

9 And under Rule 702, I have to determine whether the
10 evidence will assist the jury, whether the witness is
11 qualified, and whether the underlying science is reliable.
12 And in looking at those factors, I find the evidence would
13 assist the jury because it would tend to prove or not prove
14 the location of the physical items related to the crime.

15 And as to the qualifications, I find that Mr. Jumper,
16 based on his experience and training and education, is
17 qualified.

18 And the third, the third thing I have to do is
19 determine whether the underlying science is reliable. Now
20 here there's an issue about whether this is actually science
21 although the word has been used in testimony. Rule 702
22 states "if scientific technical or other specialized
23 knowledge will assist the trier of fact to understand the
24 evidence or determine a fact in issue, a witness qualified
25 as an expert by knowledge, skill, experience, training, or

1 education may testify thereto in the form of an opinion or
2 otherwise."

3 Assuming this is scientific evidence, that is the
4 interpretation of the behavior of a K-9 to detect articles
5 of clothing or physical objects related to a crime, I have
6 to determine whether it's a, reliable based on the factors
7 that were laid out in State versus Childs case where the
8 Supreme Court held that a bloodhound handler was qualified
9 under the law of this state to testify and his opinion was
10 adequate, an adequate foundation was laid in that case.

11 And here there was testimony from the witness that the
12 bloodhounds have been successful in other or the K-9, excuse
13 me, in this case had been successful in other cases. There
14 was national certification, local certification, 400 hours
15 of training, other quality control procedures that a history
16 of this field and it's been used and applied in many cases
17 including obviously the Childs case.

18 And the evidence, therefore, meets the threshold of
19 reliability assuming it is scientific evidence. If it's not
20 scientific evidence, it's just specialized knowledge, the
21 result would be the same because, as we know, we have a
22 relatively low standard for expert testimony in this state
23 when it's non-scientific evidence, and, therefore, I rule
24 it's admissible under Rule 702.

25 Next thing I have to do is determine whether the

Conley Jumper - Redirect examination
by Solicitor Steinberg

1 probative value of the evidence is outweighed by its
2 prejudicial affect, and here I would find that the probative
3 value is not outweighed by any prejudice to the defendant.

4 And finally, as to the car, the opinion as to the car,
5 I wouldn't, I don't believe that would be within the scope
6 of what Mr. Jumper is qualified to testify to. Of course,
7 he can give an opinion under Rule 701 about that. But it
8 wouldn't be a expert opinion and I base that on The State
9 versus Ellis decision, which is 2001 Supreme Court case that
10 discusses when an officer is qualified in crime scene
11 processing and fingerprinting, he could not give an opinion
12 on, as an expert in testifying that the victim had been
13 riding a bike when he was shot because he had not, had been
14 qualified in scene reconstruction.

15 So, that's my ruling.

16 And does anybody need any clarification on that?

17 SOLICITOR STEINBERG: No, sir.

18 THE COURT: All right. Thank you very much.

19 Bring the jury on back in.

20 Thank you.

21 SOLICITOR STEINBERG: May we approach just briefly?

22 I should of taken you up on your offer to clarify
23 earlier.

24 THE COURT: All right.

25 (Whereupon, a bench conference was held at this time.)

1 THE COURT: And let me say further, I -- obviously no
2 South Carolina case law and the Childs case address this
3 issue, and Childs was before the Counsel case. But Counsel
4 was about DNA. Mr. Wilkes is exactly right about that.

5 But the Jones case, which Counsel was based on, was
6 about a bite mark, which although it was perhaps more
7 forensic than this, it's closer and the only case I could
8 find in my limited time I had to look at it was the case out
9 of the Ninth Circuit, which upheld the foundation of a K-9
10 tracking evidence basically the same way the Childs Court
11 did, but Dobert or, issue was not really addressed or raised
12 properly.

13 But at any rate, I think we're ready for the jury.

14 Thank you.

15 (Whereupon, the following takes place within the
16 presence of the jury.)

17 THE COURT: Okay. Ladies and gentlemen, first of all,
18 let me apologize for the delay in getting you back out here.
19 We had an issue come up we had to address. We've been out
20 here working on that. Hopefully it will make things go a
21 little faster.

22 And sorry about the delay out there in the hall. But I
23 didn't want y'all to spend your time here this week without
24 enjoying the beautiful hallways County Council provides.
25 And that's sometimes overlooked.

Conley Jumper - Redirect examination
by Solicitor Steinberg

1 But anyway, Mr. Fanning, you've been selected to be the
2 foreperson, sir, and congratulations. And you don't get
3 paid any more than anybody else does. Your vote doesn't
4 count more than anyone else's. But you'll just be the
5 liaison between the court and the jury and preside over the
6 deliberations.

7 And if you need to contact me or anyone on the jury
8 needs to contact me, I can only talk to you through a note,
9 a written note, or on the record out here in Court. Can't
10 talk to you any other way. So, I know you appreciate that.

11 And with that, yes, sir, Mr. Steinberg.

12 SOLICITOR STEINBERG: Thank you, Your Honor.

13 At this point, Your Honor, I again request that Deputy
14 Jumper be declared as an expert witness in the field of K-9
15 tracking.

16 THE COURT: Okay. Mr. Wilkes, anything other than what
17 you've already---

18 MR. WILKES: I just renew my earlier objection.

19 THE COURT: Okay. Your arguments are incorporated,
20 sir.

21 MR. WILKES: Thank you.

22 THE COURT: All right. I find that he's qualified.

23 Ladies and gentlemen, typically people who come in to
24 testify have to testify about things they have observed or
25 observed through their senses. There is an exception under

Conley Jumper - Redirect examination
by Solicitor Steinberg

1 the law that allows a person who is been qualified as an
2 expert witness by reason of their education, training, or
3 experience. Those witnesses can testify in the form of an
4 opinion, and they can give their opinion about certain
5 things.

6 But expert witnesses are just like any other witnesses
7 in one important respect. And that is that you, the jury,
8 determine the credibility of all witnesses, expert
9 witnesses, and non-expert witnesses. And you certainly
10 don't have to accept an expert's opinion. And you can
11 accept it in part and reject it in part. You can accept all
12 of it or reject all of it because the believability of any
13 witness is entirely up to you.

14 With that, yes, sir, Mr. Steinberg.

15 SOLICITOR STEINBERG: Thank you, Your Honor.

16 Madam Court Reporter, I'd like this right here marked
17 for identification at this time.

18 (Whereupon, the diagram was marked as State's Exhibit
19 No. 16 for identification purposes only at this time.)

20 CONTINUED DIRECT EXAMINATION

21 BY SOLICITOR STEINBERG:

22 Q Deputy Jumper, I'd like to have you step down.

23 A Yes, sir.

24 Q Make it easier for the jury to see.

25 A (Witness comes down from the stand.)

1 Q State's Exhibit No. 16 for identification, you ever
2 seen this photograph before, deputy?

3 A Yes, I have.

4 Q And did you examine it just a few minutes ago with the
5 defense attorney and myself?

6 A Yes, sir, I did.

7 Q What area does this photograph represent?

8 A This area represents the various streets and the land
9 step that was being graded for the subdivision that the
10 victim lives in.

11 Q Now, what is different about this photograph than from
12 the night you were there?

13 A Basically the night in which I was there there was
14 residents at this location. This is basically the beginning
15 of this subdivision being graded.

16 Q Are you able to tell where the victim lived from her, I
17 mean your records or from your recollection?

18 A From my recollection and also my records, which is
19 detailed in my incident report that I write after the, after
20 I conduct an investigation or work with my K-9 at the
21 location, I determined at this point in time the residence
22 is Number 12 and this is Number 10 right here.

23 Q Okay.

24 A Right side as being even, left side being odd as you
25 come in.

1 SOLICITOR STEINBERG: I would move this document into
2 evidence and I will continue publishing it.

3 MR. WILKES: Your Honor, for demonstrative purposes I
4 have no, no problem with this at this point. But it's not
5 representative of the current situation, and I don't know if
6 we're going to draw on it or write on it or do something
7 else to it.

8 So, I'm going to object to it at this time absent a
9 little more clarification.

10 Q Does this map accurately reflect how the landscape
11 looked if not the residence?

12 A Yes, it did. Basically the landscape itself is still
13 very flat. At the back of the residence itself was a slight
14 embankment at a 45-degree angle. Pretty much the same
15 amount of trees that are there now is there. The area is
16 still opened. Only thing that you're missing are the houses
17 and the AC units and a fence on the back side.

18 Q Let me ask you---

19 A And driveway.

20 Q Let me ask you, was Cantera Circle, this road here,
21 there at the time?

22 A Yes, sir, at the entrance, it was marked as Cantera
23 Circle. Also Vista Road and Bagwell Road is marked. Rocky
24 Chase and Tucker Road are marked by secondary street signs
25 which are put up by the county itself and those would be the

1 green signs.

2 Q And were those roads in existence when you arrived?

3 A Yes, they were and they still are to this day.

4 SOLICITOR STEINBERG: Your Honor, again I move to
5 introduce this. We are planning on writing on it very
6 briefly to talk about where the trail went.

7 MR. WILKES: I would, I would object to it coming in at
8 this time. I certainly don't know what's gonna be written
9 on it, and I'm gonna, of course, ask that if they mark it
10 where the houses are and give the jury a little clearer
11 picture of what it would be like today. There's no houses
12 on there except the, maybe the first one in the subdivision.

13 So, right now, I would, I would object to it cause
14 it's, it's not an accurate depiction and we haven't
15 identified where those houses are yet. I'd like to have her
16 house marked and the other house that's testified to. And
17 at that point I have objection to it going in. But I at
18 least want to see that on there.

19 SOLICITOR STEINBERG: Thank you, Your Honor. I would
20 do that. My concern, of course, I don't want to publish it
21 to the jury yet.

22 But I'll ask Deputy Jumper to take this red marker and
23 put just a square where the victim's home was.

24 A (Witness complies.)

25 Q And what address was that?

Conley Jumper - Direct examination
by Solicitor Steinberg

1 A This is Number 12.

2 Q Okay. And did you follow a trail, and if so, where did
3 the trail start and where did it end?

4 A Okay. Can I back up a little bit?

5 Q Yes, sir.

6 A Can I give a little history on it?

7 Okay. At that point in time I was advised by dispatch
8 to respond to this incident location, which is marked Number
9 12 Cantera Circle. At that point in time I arrived on the
10 scene. Uniform patrol officers, which were already there,
11 advised me that the victim was confronted by the individual
12 at the front door step of her residence. There is a
13 driveway that was here and is still here. Inside the
14 driveway itself or on the driveway itself was a vehicle that
15 was parked. You have the front door.

16 When I refer to things involving this residence, I
17 referred to it as the direction in which I'm pointing or
18 looking directly at the residence. So, if we consider this
19 as the left side and this as the right side.

20 Basically I arrived on the scene. I located where the
21 incident occurred, which there was various blood on the door
22 step to the residence itself. I took my patrol K-9 out of
23 my vehicle. I basically allowed him to break on the
24 opposite location about two houses below here. When I allow
25 him to break, basically allow him to get use to the area

1 itself, getting out of the patrol vehicle, stretch his legs,
2 go ahead and go to the bathroom. Take a little potty break
3 if you want to call it.

4 At that point in time we're in the back of my patrol
5 vehicle. I put him on a 15-foot lead is the way I work my
6 dog on tracking, and I put a harness on him. He has a
7 four-point harness that I put on him.

8 And as with anything, due to our training, our
9 extensive training and the various history that I have with
10 him about the tracks I have done he knows we're out to work.
11 He gets into that mode of working.

12 I take him up to the residence. I was advised that all
13 the personnel, including law enforcement, EMS personnel, and
14 various family members, victim itself, was at the front door
15 of the residence around the driveway area. I was informed
16 that no occupant of the, involved in the investigation went
17 to the right of the residence or to the left of the
18 residence.

19 As with anyone involving situations like this when K-9
20 handlers respond, we advise and we have various roll call
21 training. We also have inservice training for our uniform
22 patrol officers. Also for our investigations. Various
23 emergency personnel not to contaminate the scene. We advise
24 them just to work in the area in which they need to work in.

25 When they do that, we arrived on scene to confirm that

1 the area in which they were at was the area which they were
2 at, that we had no one wondering off or done anything like
3 that.

4 After the information is confirmed, we get information
5 of the possible suspect description and details about the
6 individual itself.

7 At that point in time we started to track. I put Vito
8 into the, the inside of the crime scene area. At that point
9 in time, my patrol K-9 went off to the left side of the
10 residence. At that point in time then he came back across
11 the residence back to the right, back to the blood. He put
12 his nose into that area. He then tracked off to the right
13 side of the residence. Directly across there was a little
14 bit of vegetation here, hedges, and some stuff like that.
15 Vito tracked off of that. He pulled between the houses,
16 which is Number 10 and Number 12.

17 At that, at that time, Vito, he came off the side of
18 the house, went at a 45-degree angle to the back of the
19 house toward between Number 12 and Number 14. Number 14
20 right here has a white picket fence.

21 At that point in time Vito went to the back side of the
22 residence. He pulled up a slight embankment, which is about
23 a 45-degree embankment behind the residence itself. Also
24 there was very scattered trees in this area, and also
25 vegetation like leaves and stuff.

1 At that point in time Vito kept his nose to the ground,
2 pulled hard to the area, he came up the embankment, across
3 this vegetation area, out to the roadway itself. At that
4 point in time, when Vito come out to the roadway, he began
5 picking his head up checking the area. When he checked the
6 area, he started circling the area coming back over here
7 around Rocky Chase Drive and Tucker Road.

8 At that point in time I brought Vito to the other sides
9 of the roadway to see if Vito would end up picking up any
10 type of ground disturbance or tracks on the other side down
11 with the human odor. Vito did not at this Rocky Chase Drive
12 and Tucker Road in this area at all corners right here.

13 At that point in time it was determined, based upon my
14 dog's behavior, that in that incident location, in my
15 opinion, that a vehicle was used by the individual, that it
16 was not a random attack, that it was directed toward---

17 MR. WILKES: I object to that, Your Honor, as far as
18 that's---

19 THE COURT: Sustained.

20 MR. WILKES: ---the officer's---

21 THE COURT: Sustained.

22 A That the vehicle was in the area and that he either,
23 someone picked the individual up or the vehicle was used.

24 If I can clarify a few things. As with anybody, we
25 clarify that when y'all were out that our dogs---

1 Q Let me cut you off if I, if I may.

2 A Okay.

3 Q You, you used, as a square foot -- you put a triangle
4 at the location where the trail ended. This---

5 A This is the area right here at the intersection of
6 Rocky Chase Drive and Tucker Road.

7 Q And did the trail end on pavement or on dirt vegetation
8 or ground?

9 A It, it ended on -- this is black top asphalt. It ended
10 on the black top asphalt.

11 Q And what was your conclusion concerning the vehicle?

12 A It was my conclusion, based upon my experience and also
13 based upon my dog's behavior, that a vehicle was used at
14 that point in time, whether a vehicle picked the individual
15 up or a vehicle was there at the time.

16 Q Did you take your dog across the street on to really I
17 guess all three of those separate intersection points?

18 A Right. What we do is, at that point in time, I bring
19 my patrol K-9 over. We checked it, various areas on the
20 corners, up and down the roadway, on all corners to make
21 sure we had no other disturbance, no other odor of the
22 individual.

23 Q And did Vito have the opportunity to pick up any
24 scents?

25 Did you give him the opportunity, with a leash line or

Conley Jumper - Direct examination
by Solicitor Steinberg

1 whatever, to find other scents in the front yard or the
2 backyard of the victim's residence?

3 A Yes, these areas were checked. I brought Vito back
4 into the area itself. At that point in time, Vito went to
5 the white fenced in area between Number 12 and 14. He
6 worked in this area and then he came down 14 over to 16. He
7 came back to the front road, front of the house or the front
8 road, row is where Number 14 is at. When we went out to the
9 road across the driveway back to Number 12 right back to the
10 front door.

11 Q Do y'all have any term you use when a trail ends, any
12 technical terms, or police jargon used when a trail ends?

13 A No, we just -- I advised my support personnel and also
14 on scene investigator or at that time, I believe it's a
15 sergeant, that the, the track is ended. We basically muster
16 back up with the personnel that's on my support team, and I
17 advised the investigator at the time of what we had and
18 based, and my dog's behavior.

19 Q Were there other dogs out there?

20 A I had a second dog unit respond, which was Deputy
21 Wannamaker, and his K-9, Roscoe, which is a five year old
22 black German Shepard, I had him to respond and conduct an
23 area search for any type of evidence. What I'm talking
24 about evidence such as in an area search for articles is to
25 make sure the, no items were disregarded, you know,

Conley Jumper - Direct examination
by Solicitor Steinberg

1 basically thrown to the side by the suspect, whether it was
2 a knife or clothing or anything like that.

3 He came in, conducted a article search in the area in
4 which I advised him to conduct that search. Then I can upon
5 his behalf because I'm his superior in this matter. I
6 instructed him to search from Number 12 all the way over to
7 Number 16, this, this vegetation, these woods right here,
8 out to the roadway. He found nothing.

9 Q Okay. Had the trail not ended where you have the red
10 diamond, what would you have done or what would you have
11 advised?

12 A At that point in time, if the trail had not ended at
13 that location, my K-9 would end up, continue with the track
14 itself, and I would advise the perimeter units to expand
15 their perimeter, that an individual is possibly still on the
16 ground in the area. When I say perimeter units, what we
17 have, we have various uniform patrol officers respond to the
18 area and canvas the area, give us a, pretty much a complete
19 360-degree confined controlled area, and we would continue
20 that track.

21 At that point in time there was no need for that
22 because the track ended from the house itself right to the
23 mid intersection of this. And it was determined that there
24 was no other tracks beyond that.

25 Q Deputy Jumper, use this black marker, if you would, and

1 switch with me with the red one, and made a, use a dotted
2 trail to show the trail you took from the front of the house
3 to the ending mark of the trail.

4 A Okay. Basically -- not much of a house. I would of
5 drawn a good house here. But basically he was to the left
6 of the house. He came around the house, the front door,
7 came down between the houses, went over. Naturally this is
8 not drawn to scale. Right over to the intersection of that,
9 Rocky Chase and Tucker Road.

10 Q Let me ask you this question.

11 You used a term earlier I think either pulling hard or
12 pulling strong.

13 What does that indicate to you?

14 A Basically my K-9 and from my experience, Vito gets on a
15 track, he puts his nose on the ground. That's the, that's
16 his primary source of the detection is his nose. As with
17 y'all, it's your eyes. With a K-9, it's his nose. That's
18 the way they find out.

19 When I, I kind of let people understand this is just
20 like y'all smell pizza, what do you smell?

21 You smell pizza.

22 As with the dog itself, it smells the different
23 ingredients in pizza. As with a dog that's born as a puppy,
24 he doesn't find his mother's milk by eyes. He finds it by
25 his nose.

1 As with this, I refer to it as he put his nose on the
2 disturbance itself, a fingerprint is what we call it, and
3 begun to track. That's when he keeps his head on the ground
4 and he tracks around staying on the disturbed, ground
5 disturbance itself.

6 Q Deputy Jumper, on that trail, the dotted line, did your
7 K-9, Vito, pick up any other trails outside of this area?

8 A No, he did not. His focus, his single focus was on
9 that track itself.

10 Q Okay.

11 A He did not break or anything like that. He just, he
12 stayed on it.

13 Q Thank you, deputy.

14 Your Honor, the State would move that exhibit there,
15 that photograph there into evidence at this time.

16 MR. WILKES: I have no objection to this.

17 THE COURT: Okay. It's in evidence.

18 (Whereupon, State's Exhibit No. 16 was received into
19 evidence at this time.)

20 Q I have no further questions.

21 Do you need the---

22 MR. WILKES: Yeah.

23 Q Please answer any of opposing counsel's questions.

24 MR. WILKES: May I approach the---

25 THE COURT: Yeah, why don't you have a seat, sir?

1 We'll just move that so that the jury can see you.

2 WITNESS: Where do you want to put it?

3 THE COURT: You can put it right over there. Just as
4 long as everybody can see you from the jury it will be
5 great.

6 Thank you.

7 A (Witness returns to the stand.)

8 CROSS-EXAMINATION

9 BY MR. WILKES:

10 Q Deputy Jumper, you said that the house is not exactly
11 drawn to scale?

12 A No, sir, I just put a square there.

13 Q All right. Will you indicate with -- can you mark on
14 there where you say -- are you saying that he obtained the
15 scent again after losing it momentarily on the asphalt?

16 A I don't think I said it like that.

17 Q Or I---

18 A Or---

19 Q Tell, tell me what happened.

20 A Are you talking about the front of the residence?

21 Is that what you're asking---

22 Q Or---

23 A ---or are you talking about out here on this?

24 Q Well, just start at the front. Give, give me -- you go
25 to the front and you put in at this point here.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 A Okay.

2 (Witness comes down from the stand.)

3 Q And he goes this way.

4 A Right.

5 What we do is, I can clarify this, the house is right
6 here. In front of the house you have the carport and also
7 the driveway. In the driveway itself was a car.

8 I was advised that, by the uniform patrol, that the
9 victim advised him that the suspect came from the left side
10 of the residence. Okay. And I, and I basically stated that
11 we're looking at the house from the roadway.

12 At that point in time I put my dog on the lead and cut
13 the area. When I refer to cutting the area, I give him a
14 broad range to pick up the scent itself. I brought him in,
15 he cut the area in which the, what, what I was told, the
16 area in which the suspect came in, Vito, at that point in
17 time, came across the front of the house to the right side
18 of the house toward number ten.

19 Am I clarifying?

20 Q I believe so.

21 A Is that a little bit better?

22 Q Were you, just so I'll know, you said you stopped and
23 put him out first on the other side of the road?

24 A Right. Whenever---

25 Q Okay.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 A Okay.

2 Q Can you, just so the jury can understand that cause
3 there's not a lot of landmarks on there---

4 A No.

5 Q ---can you draw on there where you parked and the, and
6 the car that you're talking about?

7 No, no, that's not---

8 A You got your highlighter?

9 Q Marker.

10 A I got one.

11 Q Got one. Okay.

12 A Based on what I come in and seen, this, this is what I
13 do. This is how I do it. I do not pull on top of the scene
14 itself. I park away from it.

15 Without drawing to scale and everything like that, I
16 know it was two houses below the incident location because
17 up here you had other emergency personnel up here.
18 Estimated I was parked -- my patrol vehicle was down here.
19 What I do is I take my patrol dog out of the vehicle and
20 allow him to go to the bathroom and get familiar with the
21 area and stretch his legs.

22 So, I was probably a good estimated two houses away
23 from the incident location.

24 Q Okay.

25 A This is Number 12.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 Q So, when you, you came in, there's another car you said
2 that was the one that they, the assailant jumped between or
3 something?

4 A Oh, you're talking -- there was a -- all I know is
5 there was patrol vehicles in, out here on the curb itself.

6 Q Okay.

7 A In the driveway itself at the time was a vehicle. I
8 don't know if it was the victim's vehicle or---

9 Q What color was that?

10 A ---some other vehicle or anything. I do not know.

11 Q Well---

12 A I couldn't tell you. All I know is I remember there
13 was a car in the driveway.

14 Q Were there any other cars in the area other than patrol
15 vehicles?

16 A I know there was, I know there was another car out
17 here, which was a patrol vehicle. To my knowledge, there
18 was not a civilian vehicle in the vicinity.

19 Q Okay. When did you arrive at the scene?

20 A If I can refer back to my incident, my supplemental I
21 wrote, time requested per dispatch was 00:30 hours, which is
22 around 12:30. I wasn't too far down at the time. I was
23 assigned to traffic. We was actually down working below
24 around 385 and I responded. I got there within five
25 minutes, which is 12:35.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 Q And you, you can sit down for a second.

2 A Okay.

3 Q It will be a minute before I get back to that.

4 Deputy Jumper, did you arrive before or after EMS?

5 A At the time I arrived the victim was not on the scene.

6 I don't know if there was other EMS vehicles there at the
7 time. I can not be for sure.

8 Q Are you saying---

9 A I know the victim was not on the scene at the time.

10 Q You're saying that you were on the scene at 00:30, is
11 that right, or---

12 A No, time requested.

13 Q Okay.

14 A By dispatch.

15 Q What time were you on scene?

16 A Five minutes after that. 12:35.

17 Q 12:35 you're on the scene.

18 Would you agree or disagree with EMS was there till 39,
19 12:39?

20 A Obviously I can not because times may vary between
21 dispatchers. To my knowledge, based upon what I observed, I
22 don't remember the victim being there or EMS units being
23 there. The one knowledge I can, I can recollect is that
24 there were other patrol vehicles there and the crime scene
25 tape had been put out.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 Q Okay.

2 A Also, if I can refer back to a little bit of history,
3 at the time in which I was arriving at the location on
4 Feaster Road, a vehicle at a high rate of speed left that
5 area from that, excuse me, from that roadway, I can't say
6 the address, from the roadway and was stopped by a uniform
7 patrol officer, which I believe was Sergeant Bold at the
8 time, and it turned out to be the defendant.

9 Q Okay. So, by the time you got there, the ambulance had
10 apparently left and Mr. Molina---

11 A That's what I'm drawing from. I can't tell whether
12 it's a second one there or not.

13 Q Okay. Will you explain to the jury a little bit about
14 the different methods in which a tracking dog can track?

15 You've indicated there's two primary methods, disturbed
16 ground and the fingerprint method---

17 A Okay.

18 Q ---where they follow a specific scent, is that correct?

19 A Right. You can get into this -- you talk for this for
20 days and weeks on end. It's a unique -- in the United
21 States, it's really been introduced in the last since 1970's
22 and 80's. As in Holland, in the various, Germany and stuff
23 like that, they been working with K-9's since the early
24 1800's. They really made advancements through the 1930's
25 through the 60's. So, this is a new science to the United

Conley Jumper - Cross-examination
by Mr. Wilkes

1 States itself.

2 As with our patrol dogs, what we basically do is our
3 dogs are trained on two different things, scent
4 discrimination and also ground disturbance. We will -- when
5 I basically state about ground disturbance is our dogs --
6 ground disturbance itself is like if you run through a field
7 over grass or whatever like that, you break the grass or you
8 break milk weeds or ivy or whatever like that. Soon as you
9 break that vegetation, that vegetation releases a odor,
10 molecules, from that.

11 When we start training with our dogs, hopefully I don't
12 confuse y'all, we start our dogs working on small baby steps
13 when it comes to tracking. We start our dogs off and we
14 basically take small baby steps like 50 to 100 yards or
15 straight-line. We get our dog's attention on that area,
16 introduce multiple vegetation, and give him the command for
17 that and naturally he ends up staying on that track with his
18 nose down to the ground. And at the end he gets a reward.

19 A reward for our dogs is basically a tug or a calm or a
20 piece of rubber pipe. And that's what he loves to play
21 with. That's what he's looking at the end. He's looking to
22 get his reward. He says golly, I look, I smell this, I
23 follow this, and I get a reward. It's conditional. It's
24 conditional response for these dogs.

25 And basically that's how we start our dogs off. Then

1 we start our tracks off with humans too, human odor. We
2 also start the tracks off on pavement as which you have
3 disturbances just like you have on the ground itself or
4 vegetation.

5 You always, no matter where you go, you leave a
6 fingerprint. You leave some type of disturbance. I touched
7 this, I leave my, I leave a disturbance there. I leave
8 human odor there.

9 As with that is we basically associate human odor,
10 ground disturbance into a tracking situation and we allow
11 our dogs to track that. And at the end they get their
12 reward. As with anything and I explained it before y'all
13 were in here, we have to look at other things like
14 environmental conditions. We have to look at the weather
15 itself, whether it's warm or hot, whether it's cold, ground
16 is very dry, damp, dusty, whether it's, it's damp on the
17 ground, and that's the key thing that keeps us. At night,
18 cool temperatures with dew or a light rain, those are ideal
19 perfect tracking conditions.

20 As with this, I mean you got to understand, when you're
21 tracking, everything leaves something. You always leave a
22 trail. With our K'9's when you're walking, and you're just
23 walking through this room, you leave skin cells, you leave
24 scent where you have walked from whether you got tennis
25 shoes on or you're walking bare socks. You have a, a

Conley Jumper - Cross-examination
by Mr. Wilkes

1 personal scent.

2 Each one of y'all in this jury panel has a distinct
3 odor just like you have distinct DNA traits. Everybody has
4 a distinct odor and that's what the dogs pick up, and that's
5 where you start coming into scent discrimination.

6 If there's someone at the end of the track, the dog
7 itself will be able to determine, one out of five, one out
8 of ten, whatever like that, who actually laid this track.
9 He started it. It's called scent discrimination.

10 And that is a key thing in identified individuals when
11 you come in contact with them. If they're the one that
12 committed the crime, you don't have a witness to identify
13 them. That's a whole different other science there.

14 Basically to sum it up, when you walk, you leave skin
15 cells, which catches the dog's mucus membrane. There's over
16 five, 500 million mucus membranes in a dog's nose that's
17 able to pick up the scent itself compared to us, which we
18 have an average 250 million.

19 They're able to distinguish different molecules from
20 other molecules. It's just like I was saying, when you
21 smell pizza, they, you just smell pizza. They can actually
22 determine whether it's a, a cheese, pepperoni, hamburger,
23 and stuff like that. They're able to break it down.

24 And over time, it consisted of conditional training and
25 that's, that's how we develop our dogs, and it takes time to

1 train these dogs. And fortunately I got one that's been
2 working for seven and a half years and he's narcotics. So,
3 he's able to detect narcotics and the different smells,
4 methamphetamines, heroine, stuff like that. It's just
5 conditioned response, continuous training, and education.

6 Q Now, let me ask you this specifically.

7 Does -- is disturbance tracking, in other words
8 tracking where there's been a disturbance in a trail,
9 leaves, grass, whatever, is that a sub-heading of scent
10 discrimination?

11 Are they still on scent at that point?

12 A When you describe the word scent, you kind of have to
13 be careful on that. A lot of different authors refer to it
14 differently.

15 Basically the scent itself you have fresh crushed
16 vegetation. That is a scent in, in itself.

17 Q I understand.

18 A Okay. Human odor, in combination with the crushed
19 vegetation, is a scent in itself and that will be a second
20 scent.

21 Q Okay.

22 A It's just like you have a third person involved, it
23 will be a third one.

24 Q Okay. And let me ask you this, how do you determine if
25 a, a dog, Vito in this case, how do you know if Vito is

Conley Jumper - Cross-examination
by Mr. Wilkes

1 scenting from a disturbance such as crushed milk weed all
2 the way through the track --

3 A Uh-huh. (Affirmative).

4 Q -- or he is on a specific fingerprint scent of the
5 person?

6 A That is the, that is the theory right there. That is
7 the key thing you have to look at.

8 Q All right. You're an expert it in, so, tell me can you
9 tell the difference?

10 A Basically, on that situation, you can not tell the
11 difference between whether he's on crushed vegetation or
12 whether he's on a human individual.

13 Q Okay.

14 A Okay. He---

15 Q Well, let me, let me ask this, this and I understand.
16 Let me ask this.

17 Is it helpful for you, when, when he crosses something
18 like this let's say the asphalt, when he reached the end of
19 that leg of trail, was, did you, do you have an opinion as
20 to whether he was scent, on a fingerprint scent at that
21 point or was he tracking simply some disturbance in, in the
22 grass?

23 A Basically if he was -- at that point in time, it was
24 undetermined whether he was tracking on scent, I mean
25 crushed vegetation or human odor.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 Q Okay.

2 A When he got to the roadway, he began checking the area.
3 Now, if it was human odor that went across the roadway on to
4 the other side of the roadway, he would of picked it up.

5 Q Okay. So---

6 A All right.

7 Q Is it possible that he's not following a specific scent
8 when you're tracking him in this case?

9 A In this case, he's, he's following a specific odor at
10 that time.

11 Q Okay.

12 A The crushed vegetation and the possibility of human
13 odor. If I would of been able to conclude that it was human
14 odor if the track went on the other side of the roadway
15 itself.

16 Q Okay.

17 A But it had ended there. So, to my determination,
18 crushed vegetation and human odor, in my theory and my
19 experience, ended in the roadway itself because the human
20 odor itself would of continued across the asphalt on to the
21 other side of the roadway.

22 Q Well, if the person had been picked up by a car or
23 gotten into a car that had been waiting there, wouldn't that
24 be the same?

25 A Correct. The scent would of ended there. The trail

Conley Jumper - Cross-examination
by Mr. Wilkes

1 itself would of been cut off and there would of been no
2 other signs of evidence --

3 Q Okay.

4 A -- continuing from there.

5 Q Okay.

6 A If that makes sense.

7 Q It does.

8 Can you, for me, and, and just so the jury will
9 understand, can we maybe take down that for a second?

10 Can you draw on the chalk board kind of diagram exactly
11 where the house was and how he, where you put him and where
12 he went and can you give us---

13 A I'm not the best drawer in the world.

14 Q You don't have to be great if the jury could
15 understand.

16 A Okay.

17 Q Do we have chalk?

18 We might not have chalk. We might have to do it on
19 paper.

20 A No, we don't have chalk.

21 Q Well, that figures.

22 A Oh, excuse me. We do.

23 Q You found one.

24 Okay. Can we -- here I'll hold this. Get it out of
25 the way for a second.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 If you can give me about a shoe box size kind of
2 diagram of a house and where you were going, the direction
3 you came, and where the track went.

4 A Okay. Bear with me on my drawing and stuff like that.
5 I don't have one to refer to when it comes to the dimensions
6 of the house or the scale of the driveway.

7 Q Would you like to see a picture of the house?

8 A That will be fine. I know it's a pretty much a box
9 framed house. Nothing spectacular. It's probably a---

10 Q If you'd like to just refer to it. Matter of fact, if
11 you like to, you can even---

12 A Yeah. I'll say this is already been entered, entered
13 in.

14 Q No, but you can use that if it helps you.

15 A Okay. All right. The house itself, I'd say this is
16 the car parked. I see the driveway coming out this
17 direction.

18 Okay. I got it flipped around. But --.

19 Okay. Basically at that point in time I was up in this
20 area. I brought my K-9 down to the area here. This is the
21 front door where the incident occurred. I cut the area and
22 went to the left itself. He came back, came back across the
23 house through the front of the driveway, across the car,
24 back down between 10 and 12, back on the corner of the house
25 which is pretty much a spec home itself at a 45-degree

Conley Jumper - Cross-examination
by Mr. Wilkes

1 angle. Back here was a little back-door. Back here was the
2 embankment itself with vegetation. Over here was where the
3 roadway run off and then you got the road itself coming down
4 through here.

5 We came off, went through the vegetation up the
6 embankment, out to that intersection, which is -- we can
7 view right here on the roadway. At the back side of this
8 house, Number 14, there was a white picket fence back here.
9 That's when I brought Vito back on the picket fence right
10 here. Vito came in and came back out and went between 14
11 and 16.

12 But that's a pretty sorry drawing. But --.

13 Q No, that's, that's -- you're indicating that the
14 driveway is where?

15 Back up at the top of this?

16 A Well, it's not kind of backwards around now. The
17 driveway is up here at the top.

18 Q Okay. Can you put the, just put the car that was there
19 closer.

20 A Right here was the car.

21 Q Okay. Now, that's good.

22 You want me to give that back to you?

23 A Yeah.

24 Q Thank you.

25 All right. So, as I understand -- and you can sit

Conley Jumper - Cross-examination
by Mr. Wilkes

1 down.

2 A Okay.

3 Q I'm sorry to keep you standing.

4 A No problem with me.

5 (Witness returns to the stand.)

6 Q As I understand, you, you did cross over the concrete.

7 Would that help you -- it -- was he -- was your dog --
8 was Vito, at that time, very determined in his track across
9 the concrete to give you any indication on whether he was
10 still on track?

11 A On the track across the concrete, concrete is, was the
12 very beginning of the area in which he was cutting.

13 Q Right.

14 A Because she stated or the uniform officer advised me
15 that the assailant approached from the left side.

16 Q Okay.

17 A From the carport across the front of that car, the
18 area. So, I took Vito back across to that area in which he
19 was right there at the front of the car on the concrete
20 toward the left side of the house.

21 Q Uh-huh. (Affirmative).

22 A At that point in time, Vito came back across and went
23 back to the area in which the stabbing took place.

24 Q Okay.

25 A And then Vito immediately went off to the right of the

Conley Jumper - Cross-examination
by Mr. Wilkes

1 house cutting the corner between 10 and 12.

2 Q Okay. And that being across the concrete?

3 A Correct.

4 Q So, Vito apparently -- you didn't, you didn't drag him
5 over there to that side and start him there?

6 He, he headed that way?

7 A Right, we give him---

8 Q All right.

9 A We basically give them a free head on a 15-foot line.

10 Q Okay.

11 A As with anything, that night itself it was damp,
12 whether it was a light rain or dampness, which is ideal.
13 Cool temperatures and stuff like that. Human odor itself
14 stays on that concrete and it's, it's an ideal setting at
15 that point.

16 Q Okay. So, it would -- and your, your opinion would be
17 that he actually had a scent going across that concrete?

18 A Yes, sir.

19 Q Okay. And you, you said that scents are like
20 fingerprints?

21 A Yes, sir.

22 Q Okay. Now, there was another dog, Roscoe, was there as
23 well?

24 A Right, Roscoe, he was not there at the time in which
25 all this was taking place.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 Q Okay.

2 A He was in route. When he arrived on the scene---

3 Q Okay.

4 A ---I advised him to stay with his dog inside of his
5 patrol vehicle and roam the perimeter area.

6 Q And he didn't find anything?

7 A No, sir, his primary duty at that time was to look for
8 article search, and when we do article searching, we put our
9 dog on twenty-five foot lead.

10 Q Right.

11 A And a wide collar, which is a three inch wide collar,
12 and we give them the command to locate items.

13 Q And they know the difference?

14 A Believe it or not, it's like when you put on a jacket
15 coming to court, then put on a sports jacket and go hunting.

16 Q All right.

17 A You know the difference.

18 Q I, I do.

19 The -- so the jury will understand and, and maybe I'll
20 understand as well, you have -- I don't know if the jury
21 heard, but you watched the dog very carefully for
22 indications?

23 A Right.

24 Q Can you explain that?

25 A Indications, and I referred to my K-9 and my other, I

Conley Jumper - Cross-examination
by Mr. Wilkes

1 won't refer to my other previous K-9, Vito itself is a
2 unique dog. He puts his nose on the ground and you can see
3 his head movements and also his tail itself. When Vito is
4 tracking, and this is based upon past experience and
5 experiences with him, is he keeps his tail midway up. Kind
6 of at a half moon.

7 He keeps his nose to the ground and you can almost hear
8 him blowing out, blowing in. It's like, it's like (witness
9 makes a panting sound) and that's the way he tracks. He's
10 trying to pick, pick up or continue with a scent that he is
11 obtained.

12 And that's what he was doing at the time. The lead
13 itself was tight. Usually I take it a foot. So, he was
14 sitting about fourteen foot and he was on a tracking harness.
15 Tracking harness is on the mid-section of his back so it
16 does not interfere with his breathing or with his behavior
17 changes, his head turns, or anything to that effect.

18 Q And so, being an expert, you are at all times on track
19 observing him very carefully?

20 A Yes, that's the reason why support personnel comes into
21 play. Our support personnel looks for our cover.

22 As with any tracking situations, the handler and the
23 dog most likely will be the ones that will be killed in an
24 incident involving like, incident like this because we're
25 watching the dog. We can not see a suspect out in front of

Conley Jumper - Cross-examination
by Mr. Wilkes

1 us. We watch the dog's behavior. And that's what we do.

2 And our cover officer behind us watches for the suspect.

3 We look for ground disturbance, any evidence, and the
4 dog's behavior.

5 Q Okay. Now, can you, you -- you did not indicate on the
6 drawing where Vito, where you went after running into the
7 asphalt in the back.

8 What happened after that?

9 A Okay. Basically we got out to the roadway itself on
10 Bagwell and what was the road escaped my mind. Right there
11 at Bagwell and Rocky Chase. At that point in time, Vito
12 being circling the area, picked his head up. We checked the
13 other side of the roadway.

14 At that point in time I took Vito back to the back of
15 the residence. Vito went from the back of the residence at
16 Number 12, over to the white picket fence, which is at the
17 back side of Number 14. Vito continued that direction and
18 we ended up going between 14 and 16 back to the incident
19 location, which is Number 12. We cut right in front of
20 Number 14 back over to Number 12 right straight down the
21 driveways.

22 And we ended back up -- the houses itself, without
23 being drawn to scale or knowing the dimensions, is probably
24 less than ten to twelve feet apart. Between the houses are
25 AC units, which are probably mid-section of the residence

Conley Jumper - Cross-examination
by Mr. Wilkes

1 itself.

2 So -- and then we basically went across the driveway in
3 front of the car that was parked in the driveway right to
4 the back of the, I mean excuse me, excuse me, to the front
5 door where the blood was.

6 Q Now, can you draw me just that return path so all the
7 jury members will understand that?

8 A Yes.

9 Q I'm sorry for getting up and down.

10 A I hate it for them cause I can't draw.

11 Q No, it's -- you're doing fine.

12 A (Witness comes down from the stand.)

13 Let me re-do, re-do this real quick. We have a neat
14 mapping system we could of done this on the computer. We
15 just developed that program.

16 Now, let's mark this Number 12.

17 Q Deputy Jumper, would you like to use -- I think you can
18 use the -- you can draw on that one if you'd like.

19 Why don't we continue it---

20 A Okay.

21 Q ---on the paper.

22 A Okay.

23 Q And you just, just draw a house on the other house---

24 A Okay.

25 Q ---so the jury will understand.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 A Okay. This is Number 12. I'm gonna mark, I'm gonna
2 mark right here just Number 10, 12, 14, 16. Okay. There is
3 a house here, Number 14. Pretty much they're all spec
4 homes. They pretty much have the same driveways coming
5 straight in. There was no custom homes built there. So,
6 the driveways come straight into the inside carport or
7 inside drive, garages.

8 The only thing unique about Number 14 was the back side
9 of the residence extended on out where the white picket
10 fence in-between the residence, which is very sparse.
11 There's AC units.

12 So, basically at that point in time, after this area
13 was confirmed that it wouldn't any, did not go anywhere
14 else, I took Vito back to the house itself, Number 12. We,
15 we searched the area. We went this direction, went along
16 the white picket fence down between 14 and 16. And when we
17 went down between 14 and 16, we went across the driveway and
18 straight back over to the car itself that's parked in the
19 driveway of Number 12 back to the front of the residence.

20 Q Okay. Now, I think you can sit down.

21 A Okay.

22 Q But as soon as you do I'll ask you another question and
23 make you get right back up.

24 A I can stand and let you know.

25 Q No, you can sit down.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 A Okay.

2 (Witness returns to the stand.)

3 Q Now, when you went back, you say that you lost the
4 scent back here and I'm gonna walk -- is it okay if I walk
5 up, judge?

6 THE COURT: Sure.

7 Q And so, you can see. Now you will stand up.

8 A I pretty much know what you're gonna ask now.

9 Q Okay. Well, but I'm just saying that you, you lost---

10 A I know---

11 Q ---the scent here?

12 A Right.

13 Q I say lost the scent, but he, this here---

14 A Tracking.

15 Q Okay.

16 A The scent ended.

17 Q The track ended.

18 Now, you returned to -- this is 14 to the back of 14?

19 A Right, 14 to 16.

20 Q And he went between 14 and 16 and you went back over?

21 A Right.

22 Why?

23 Q Now, I'm figuring it makes sense. I just want to ask
24 do you believe, based on your observations of him at that
25 time, was he on the finger, same fingerprint scent?

Conley Jumper - Cross-examination
by Mr. Wilkes

1 Can you tell the jury?

2 A No, at that point in time Vito itself, he did not have
3 his nose to the ground.

4 Q Okay.

5 A He was not tracking. He was -- basically he was area
6 scenting.

7 Q Okay.

8 A Basically looking around.

9 Q Okay.

10 A Looking for any type of evidence. And he happened, why
11 he happened to go through 14 and 16 is a good question. But
12 you also got to consider it's a funnel between two houses.

13 A lot of times if scent is in the area, you're having two
14 houses close together, it creates like a funnel, a draft, in
15 which the scent itself could be flowing over there not
16 necessarily on the ground. But in the air itself.

17 Q Okay.

18 A So, basically we went between the house and Vito went
19 across the front of Number 14, right drafted back to the
20 door step itself to the point in which he started.

21 Q Okay. Now, Vito is smart enough to know where he
22 started. So---

23 A Oh, he's there.

24 Q I bet he is.

25 But I'm asking -- the question I want to ask is did,

Conley Jumper - Cross-examination
by Mr. Wilkes

1 when he cut back in front, your observation, was he on that
2 fingerprint scent?

3 Was he scenting that same scent that you believed he
4 followed out to that road?

5 Can you say that for sure?

6 A Going back to the residence itself---

7 Q Yes, sir.

8 A ---from the location?

9 No, no, it's not.

10 Q Okay. So, you, you can't say for sure that there's
11 anything more than a single route out?

12 A Right, based upon that was a single route coming from
13 that residence out through the house itself to my knowledge.
14 Whether there was a second route or not, it might of been in
15 my error that I did not check a different route area.

16 Q Uh-huh. (Affirmative).

17 A But based upon that, that is the route out.

18 Q Okay. And would you believe -- is there any way for
19 you to tell whether Vito was tracking a route out or a route
20 in?

21 You believe there was a route out?

22 A It was -- based upon his actions and how strong he was
23 pulling and his nature, I believe it was a route, that's my
24 opinion, my experience, is a route out. A route going in, I
25 can not precisely tell you the route going in if there was a

Conley Jumper - Cross-examination
by Mr. Wilkes

1 route going in.

2 Q Okay. Now, let me ask you this.

3 Now, will Vito be able to track a person that is
4 wearing say clothing?

5 A Oh, yes.

6 Q Will he be able to track somebody that is wearing the
7 clothing described by Ms. Nichols at the time?

8 In other words, wind pants.

9 Aren't they somewhat---

10 A No, he's not gonna track a specific clothing or a
11 specific---

12 Q Right.

13 A ---design of clothing. He's gonna track the individual
14 itself. As with anything, it's kind of hard to explain to
15 you. But he'll end up tracking the individual.

16 Q Okay.

17 A Because if he's tracking and if you got a lot of Downy,
18 he's able to discern the, the smell on your clothing,
19 whether you washed in Tide, not necessarily Tide, but the
20 different molecules, the different smells.

21 Q Right.

22 A So, he can --.

23 Q He's, he's not easily fooled.

24 A No, no.

25 Q Okay. Now, how does he, when you determine, for

Conley Jumper - Cross-examination
by Mr. Wilkes

1 instance, track out, track in, if he's on a fingerprint type
2 scent where he's specifically identifying the person's scent
3 coming out to that roadway where it ends---

4 A Uh-huh. (Affirmative).

5 Q ---how did, does he, would he remember that scent when
6 you take him off of it, he loses it, and you find it and
7 pick it up somewhere else?

8 A Yeah, after a period of time, especially on -- if I can
9 refer back to this, there's been very, various documentation
10 on it, if you're tracking on a hot day and stuff like that,
11 after a period of time, and it's specified between thirty to
12 an hour, to an hour and a half, it's good to, to reintroduce
13 that odor in which he was tracking. Allow your dog to come
14 off the odor, rest, and reintroduce that odor to him.

15 Q Okay.

16 A On a day like that, on a short track like that, no, I
17 mean, if it was more than two or three miles long, went
18 through various subdivisions, vary environmental changes and
19 stuff, I would of reintroduced an odor to him.

20 Q Okay. But you -- but in that short period of time---

21 A Right.

22 Q --- you said that conditions were pretty much ideal for
23 tracking?

24 A Correct.

25 Q And he would be able to reacquire a scent if he came

1 across it?

2 A Right, it's just like if you, if he lost the scent
3 itself, hypothetically speaking, not referring to this
4 incident, and we cut the area and he's able to pick the
5 scent back up. We do that in training.

6 We'll, we'll break an area. We actually will break an
7 area and then put another, put the guy back out and allow
8 the area to be sterile.

9 Q Uh-huh. (Affirmative).

10 A And then take him above that area and cut him in, and
11 confirm that yes, he picked up that same odor in which he
12 just came off of.

13 Q Okay. So---

14 A I wish I had my training records. I could bring you
15 documentation that thick on all this stuff.

16 Q So, you're confident, as an expert, he can reacquire?

17 A Yes, sir.

18 Q After that road if the trail went back, he, he would
19 reacquire?

20 A Yes, sir.

21 Q Okay. Now, timing wise, is there any difference
22 between say fifteen, twenty minutes?

23 A No, not a short time like that.

24 Q Wait.

25 How does Vito know when you take him off track?

Conley Jumper - Cross-examination
by Mr. Wilkes

1 A Basically you see his behavior change.

2 Q When did his behavior change?

3 A He got in the area, he picked his head up, he began
4 circling the area. And you can tell that it's almost in
5 wonder like did he, did he, you know, something happened
6 here, he's no longer here.

7 Q Right.

8 A He's not over here.

9 Q Right.

10 A He was right here and they kind of circle that area.

11 Q Right.

12 A And they kind of give you that look like---

13 Q I'm, I'm -- when did he come off of track?

14 A When did he come to the end of the track itself, not
15 necessarily off the track, is when he came off to the
16 asphalt. He began circling the areas on the asphalt itself
17 continuously in that area.

18 Q But he was still scenting?

19 A Yes.

20 Q He was still working?

21 A He was there scenting in that area---

22 Q Right.

23 A ---trying to pick up an odor---

24 Q Right.

25 A ---from what he was tracking before.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 Q And he -- when did you take him out of commission and
2 put him in the car?

3 When, when was he off-duty so to speak?

4 A Basically after we arrived back at the, the front door
5 of Number 12.

6 Q Okay.

7 A I advised, I think it's Sergeant Kellet, at that time
8 that we had ended the track. We can release the perimeter
9 units that were roaming and basically took Vito back down to
10 my patrol vehicle that was still stationery at that point
11 and put him in the back.

12 Q All right.

13 A I think I gave him water.

14 Q All right. He tracked -- are you saying he tracked
15 back or y'all came back to the front of the house?

16 A We came back to the front of the house. I won't
17 necessarily say we, we tracked back because he was on a
18 loose lead at that time on my left-hand side. But he did go
19 back to the beginning of the residence and where we---

20 Q Where you---

21 A ---where it started because, you know, a lot of times
22 they do it.

23 Q Okay. If -- and you believe that if you had circled
24 that, he'd of scented, picked up that same fingerprint scent
25 of the person that, assailant that left and went back to

Conley Jumper - Cross-examination
by Mr. Wilkes

1 that roadway?

2 He would not -- he would take up the, the lead?

3 You would know it?

4 A If you're saying if he had, if this---

5 Q He would signal you that he was---

6 A That's right.

7 Q ---on the scent again?

8 A Right, basically---

9 Q Okay.

10 A ---what we observed with the behavior, he would of
11 dropped his head.

12 Q Okay. And he, did he drop his head or twitch or do any
13 of the things that indicates to you that he had gone back on
14 scent?

15 A No, not from that point we was out there in the road
16 way.

17 Q Okay. So, would you agree with me that you have made a
18 complete circle of this house or I'm sorry this house?

19 Vito is circled the perimeter of the house and you can
20 say for sure that that fingerprint he did not, that
21 assailant was not hiding anywhere around that house at the
22 time?

23 A Right, we didn't circle the whole -- we didn't circle
24 Number 12 completely, 360-degree.

25 Q Why not?

Conley Jumper - Cross-examination
by Mr. Wilkes

- 1 A The house itself, we incorporated 14 into it.
- 2 Q Did anyone---
- 3 A Is that what you're asking?
- 4 Q Yeah.
- 5 A Okay.
- 6 Q Did anyone look around the house?
- 7 A Of that house itself, yeah, because when you -- yes,
- 8 sir, when you come out between 14 and 12---
- 9 Q Yes, sir.
- 10 A ---all you got is the AC units right down through
- 11 there, sir.
- 12 Q Okay.
- 13 A And then you can see the white picket fence on the
- 14 left-hand side.
- 15 Q Okay. All right. Let me ask you this type of
- 16 question.
- 17 A If that's what I'm---
- 18 Q Yes, sir.
- 19 A ---what you're getting to.
- 20 Q Say for instance if this square represents the house,
- 21 okay, Vito's been around this house. He started, went
- 22 around this way to the -- is it Bagwell Road or whatever?
- 23 A Yes, Bagwell Road out there toward---
- 24 Q He loses the track back here.
- 25 A Uh-huh. (Affirmative).

Conley Jumper - Cross-examination
by Mr. Wilkes

1 Q He then comes back, you bring him back this way, and he
2 returns to the starting point again.

3 And you can not conclusively say he is on track?

4 A Right.

5 Q But he -- is -- but he could of been?

6 If he had found a scent here going this way, you
7 believe he would of recognized that fingerprint?

8 A If he had located any scent going out---

9 Q Okay.

10 A ---from there, and he was in the mode of tracking, yes,
11 he would of located and went outwards.

12 Q And this fingerprint is absolutely specific?

13 A On---

14 SOLICITOR STEINBERG: Objection. Asked and answered.

15 THE COURT: Overruled.

16 Q Thank you.

17 Is it specific?

18 A The specific question is, the thing about it is he was
19 tracking on a scent itself. I can't determine whose scent
20 it was.

21 Q Uh-huh. (Affirmative).

22 A Okay. That's what you're asking.

23 Q Okay. So, we don't know that this is even the person
24 that did the attack?

25 We don't -- you don't even -- you can't give me an

Conley Jumper - Cross-examination
by Mr. Wilkes

1 opinion as to do you believe this was -- do you believe this
2 trail, from everything you've seen, indicates the person is
3 the assailant?

4 A I can indicate, based upon my track itself, there was
5 an individual there at the door step and that went to the
6 back of the residence---

7 Q How?

8 A ---out to the roadway. Was an individual. I can't say
9 whether it was the---

10 Q Okay. And---

11 A ---the defendant or---

12 Q Well, follow-up me with this.

13 Did Vito -- Vito is picking up the scent here on the
14 concrete?

15 A Uh-huh. (Affirmative).

16 Q He's traveling over concrete?

17 A Right.

18 Q So, we, we can -- you would indicate or would that
19 indicate that that specific fingerprint is most likely the
20 person that committed the crime?

21 A If it's---

22 Q Is that reasonable?

23 A Are you talking about going this direction?

24 Q Yes.

25 A Yes.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 Q Okay.

2 A Whoever left the front of the residence---

3 Q Okay.

4 A ---and went to the corner of the house, to my knowledge
5 based upon experience, that was the individual that was at
6 the front of the residence---

7 Q Very good.

8 A ---and to the back and out to the roadway.

9 Q Let me ask you this.

10 Now, let's assume Mr. Molina was inside. Mr. Molina
11 later comes out to go to the hospital and get into his car.

12 Why does Vito not ever pick up his scent and follow?

13 A That's something I can't answer.

14 Q I can't either.

15 That's all I have, Your Honor.

16 SOLICITOR STEINBERG: Objection. Move to strike that
17 last statement.

18 THE COURT: All right. Ladies and gentlemen, we're
19 going to take a recess at this and be back in your jury room
20 at 2:15 and we'll resume the case at that time.

21 Thank you very much

22 WITNESS: Thank you.

23 Am I excused or---

24 THE COURT: Well, I don't know if he's got any more
25 questions for you or not.

Conley Jumper - Cross-examination
by Mr. Wilkes

1 SOLICITOR STEINBERG: No, sir.

2 THE COURT: Okay. All right. You are.

3 WITNESS: Yes, sir.

4 THE COURT: Thank you.

5 SOLICITOR STEINBERG: Your Honor, I'd move to excuse
6 Deputy Jumper.

7 THE COURT: Okay.

8 (Whereupon, Court was in recess for the lunch hour.)

9 SOLICITOR STEINBERG: Excuse me, judge.

10 May we approach very briefly?

11 THE COURT: Yeah.

12 (Whereupon, a bench conference was held at this time.)

13 THE COURT: Okay. Y'all can -- go ahead and bring them
14 on in.

15 (Whereupon, the following takes place within the
16 presence of the jury.)

17 THE COURT: How y'all doing on the temperature?

18 Is it too cold or too hot in here?

19 JURORS: Cold.

20 THE COURT: Cold.

21 Okay. You want us to try to bump it up a little bit?

22 (Jurors nod affirmatively.)

23 THE COURT: All right. Well, we'll, we'll see how it
24 goes. We'll see if they -- maybe during the next break they
25 can come in and bump it up if it doesn't cool or warm up.

Ron Lendway - Direct examination
by Solicitor Steinberg

1 All right. Yes, sir, Mr. Steinberg.

2 SOLICITOR STEINBERG: Thank you, Your Honor.

3 The State's next witness is Forensic Technician Ron
4 Lendway.

5 RON LENDWAY, being first duly
6 sworn, testified as follows:

7 CLERK: State your name for the record.

8 WITNESS: Ronald David Lendway.

9 DIRECT EXAMINATION

10 BY SOLICITOR STEINBERG:

11 Q Mr. Lendway, who are you employed by?

12 A Greenville County Department of Public Safety Forensics
13 Division.

14 Q And how long have you been employed in the forensics
15 division?

16 A Approximately five years.

17 Q And how many years total do you have in law
18 enforcement?

19 A Thirteen.

20 Q Did you ever take any classes on crime scene
21 processing?

22 A Yes.

23 Q You ever take any classes on general criminalistics and
24 that sort?

25 A Yes.

1 Q And what is your highest level of education?

2 A Associates Degree.

3 Q Did you respond to the crime scene at Cantera Circle on
4 February 9th of 2005?

5 A Yes, sir.

6 Q And what was your role at that time?

7 A Prior to that I did, I did go to the St. Francis
8 Woman's Hospital or do you want me to---

9 Q We'll get there. We'll get there.

10 A Okay.

11 Q Did you respond to Cantera Circle?

12 A Yes, sir.

13 Q And what did you do when you got there?

14 A When I got there, I talked to Deputy Brown, who was
15 there, and the crime scene tape had already been put up
16 prior to my arrival. While I was speaking to Deputy Brown,
17 he advised that the victim had been attacked near the front
18 doorway, the front walkway to the residence and the suspect
19 fled. He had attacked the victim, cut the victim, and then
20 fled the scene on foot.

21 Q Did you take any photographs of the crime scene?

22 A Yes.

23 (Whereupon, three photographs were marked as State's
24 Exhibit Nos. 17 through 19 for identification purposes only
25 at this time.)

1 Q Let me let you take a look at State's Exhibit for
2 identification No. 17, 18, and 19.

3 Are those the photographs you took?

4 A Yes, they are.

5 Q Do they accurately reflect how that scene looked when
6 you arrived?

7 A Yes.

8 Q Please tell the jury what photograph State's Exhibit
9 No. 17 shows.

10 What does that show?

11 Just tell us.

12 A Okay. It shows the portion of the driveway with the
13 vehicle in the driveway near the garage door to the
14 residence. To the left of that you have the little alley
15 between the two houses and then you have the front door
16 which is over to the right of the garage door.

17 Q I move to introduce and briefly publish this to the
18 jury.

19 MR. WILKES: No objection.

20 THE COURT: All right. It's in evidence.

21 (Whereupon, State's Exhibit No. 17 was received into
22 evidence at this time.)

23 Q All right. Do the same thing with State's Exhibit No.
24 18.

25 A This photograph here is at a side angle to the front of

Ron Lendway - Direct examination
by Solicitor Steinberg

1 the residence where you can see the side of the vehicle.
2 Also the portion of the garage. If you're looking at the
3 front of the house, it would be over to the left side of the
4 house.

5 SOLICITOR STEINBERG: Move to introduce State's Exhibit
6 No. 18.

7 MR. WILKES: No objection.

8 THE COURT: It's in evidence.

9 (Whereupon, State's Exhibit No. 18 was received into
10 evidence at this time.)

11 Q Was that car that's in that picture, was that there
12 when you arrived?

13 A Yes.

14 Q Please look at State's Exhibit No. 19.

15 What is that?

16 A This is the front, front door or the front entrance to
17 the residence and on the ground there's some keys and also
18 some suspected blood on the walkway and on the, by the front
19 door mat.

20 Q What are those items right there?

21 A These here are keys and there's a Sponge Bob toy there
22 beside it.

23 SOLICITOR STEINBERG: Okay. Move to introduce State's
24 Exhibit No. 19.

25 MR. WILKES: No objection.

1 THE COURT: It's in evidence.

2 (Whereupon, State's Exhibit No. 19 was received into
3 evidence at this time.)

4 Q Did you seize any evidence from this crime scene?

5 A Yes, sir.

6 Q And what did you seize or otherwise take?

7 A After the initial photographs of the scene, I then
8 placed two evidence placards next to two areas of what
9 appeared to be dripping, dripped blood on the front walkway
10 and beside the front door mat. The evidence markers, one
11 was marked A and the other one was marked B.

12 Once I placed the placards down after the first initial
13 photographs, I took additional photographs of showing where
14 the placards were next to those items and then after that I
15 collected a swab of suspected blood near Item A and a swab
16 of suspected blood near Item B.

17 Q This vehicle in State's Exhibit No. 18, did you examine
18 this vehicle?

19 A Yes.

20 Q And what parts of the vehicle did you examine?

21 A I walked all the way around, around the vehicle.

22 Q What were you attempting to find, if anything?

23 A All I knew at the time was the suspect apparently fled
24 towards, after the incident near of the front of the, front
25 door area, the suspect reportedly fled to the left and when

1 you go around to the left, there's the vehicle in the
2 driveway. And if somebody was going that way, you'd either
3 go in front of the vehicle, between the garage door and the
4 front of the vehicle, or around to the rear of the vehicle.

5 And when I walked up to the vehicle, I took a look at
6 the vehicle to see if I could see any disturbances on the
7 vehicle, on the ground, on the garage door, anything that
8 looked out of, out of the ordinary.

9 Q What technique did you use?

10 A When I looked at the vehicle, I used what we call
11 oblique lighting, which is nothing more than having a mag
12 light flashlight and just putting side light across the
13 surface to see if you can see any disturbances.

14 Q Did you see any disturbances?

15 A No.

16 Q What are some of the reasons that I'll say impressions
17 or fingerprints either one would or would not be on an item?

18 A It would depend on different factors. When I looked at
19 the vehicle, the vehicle did have some moisture on it like
20 a, a dew on the vehicle like around the hood of the vehicle,
21 which if somebody was going towards between the front of the
22 vehicle and the garage door, maybe a likely point, if they
23 had stumbled, they may of touched that surface. And on, in
24 that dew, there was no disturbances.

25 Q Was the dew on the car?

1 Is that what you're referring to?

2 A Yes.

3 Q Okay.

4 A And the ground was also wet in part of the walkway.

5 Q Did you search the area close to the home, close to
6 this residence?

7 A Yes.

8 Q What were you searching for?

9 A I was searching for anything, any possible evidence,
10 evidentiary items, possible weapon, clothing, anything I, I
11 thought may of been significant.

12 Q Where on this property did you search?

13 A I searched the front yard. I searched the driveway
14 area where the vehicle was. Also along the left side of the
15 residence between the two houses. Also in the back yard up
16 into the street that's in the backyard and went all the way
17 around the backyard, the rear door area to the residence,
18 and then also along the right side of the residence coming
19 back into the front yard.

20 Q Did you locate anything of useful value?

21 A No.

22 Q You said earlier you went to the hospital.

23 What did you do when you went to the hospital?

24 A When I went to the hospital, I was asked to take some
25 photographs of the victim. I met with Deputy Boyd who was

1 standing by with the victim, and the victim had some
2 lacerations and I secured some photographs of her.

3 Q Thank you, sir. Please answer any of opposing
4 counsel's questions.

5 THE COURT: Cross-examination.

6 MR. WILKES: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. WILKES:

9 Q Officer Lendway, there's blood in two places on the
10 front porch, is that correct?

11 A It appeared, it appeared to be blood, yes.

12 Q Or at least two groups.

13 Why did you take two samples of blood that was on the
14 ground?

15 A In a case like this, this is what we would normally do.
16 We don't know who the blood belongs to and---

17 Q How many samples does it take to tell who the blood
18 belongs to?

19 A How many samples?

20 Q Right.

21 A Which, which portion of the blood are you referring to?

22 Q Any of them.

23 Isn't it all just one group of -- are you saying that
24 it could of come from two people?

25 A Right, there was two separate groups.

Ron Lendway - Cross-examination
by Mr. Wilkes

1 Q So, to rule that out, you take blood in, in different
2 groups if there appears to be two different---

3 A I, I do.

4 Q ---possibilities.

5 And what is the purpose for taking the blood?

6 What testing would you intend to use it for?

7 A What I would do is package it and put it into evidence,
8 and were called to assist the Sheriff's Office, and if they
9 deem it necessary, they could have the swab analyzed.

10 Q And would that be for DNA testing?

11 A Possibly, yes.

12 Q Do you recall what time you arrived?

13 A Arrived at the hospital or at the residence?

14 Q At, at the scene when you took the, observed this scene
15 of the---

16 A Yes, I arrived at the scene approximately 1:42 in the
17 morning.

18 Q And the blood that you took, tell me what you did as
19 far as I guess -- just explain what chain of custody is and
20 what you did in regards to chain of custody of the blood.

21 A Okay. The chain of custody, when I, when I take a
22 blood sample, we have a sterile cotton swab and I would pull
23 it out of the package, out of the sealed package. I wet the
24 tip with distilled water to get it moist, and then I'll take
25 a sample of the blood. Then we have a, a, a tube that's

1 attached to the swab stick, and we put the top back on
2 there, and then we have evidence boxes which are
3 specifically for the swabs and we seal that up.

4 Once we have that sealed, then we fill out a sheet like
5 this as a property and evidence sheet, which has the date,
6 and the time that, that I collected it, where it is, the
7 case number, the type of case, and the evidence items. And
8 in this area right here, for Placard A what I do is I use my
9 first two initials, which is R.L. So, I'll put a R.L. dash
10 A, which is for the placard A, and I'll put, I'll write down
11 what the item is and where I got the item from. And the
12 same thing for R.L.B., which would be Placard B in the
13 photograph and I'll do the same thing.

14 Once we have that typed out, we sign it right here and
15 when we bring it down to the property and evidence section,
16 they sign this sheet for it saying that they're receiving
17 this from me and they gave me this copy here.

18 Q And that copy is what you normally referred to as your
19 portion of the chain of custody or represents part of the
20 proof that that blood is not been contaminated and it's been
21 cared for properly?

22 A Right. This is the first stages of the collection and
23 this is a copy that I received the, the day that I put it
24 into the property and evidence, and there's several copies
25 of this form. And so I received the first copy because I

Ron Lendway - Cross-examination
by Mr. Wilkes

1 turned it in first.

2 Now, there's several copies left down in property and
3 evidence with the evidence and so other people could sign
4 out, sign the evidence out after me, which would not be on
5 this. But this would be the first copy.

6 Q If -- I'm sorry. Officer Lendway, that document to you
7 indicates that your care and custody in getting that blood,
8 both those blood samples is complete and proper?

9 A Right.

10 Q Okay. So that it can then be tested for DNA or
11 whatever they want to test it for?

12 A Correct.

13 Q Okay. Is this the same document or copy of it -- may I
14 approach?

15 THE COURT: Sure.

16 Q Is this green document the same that would continue to
17 follow that, those two blood samples through testing?

18 A This wouldn't be the same one because when I turned the
19 items in, they took a copy out to give to me. And as I just
20 explained, they're several copies left with the items.

21 Q Okay.

22 A So, other people could sign underneath where I did---

23 Q Okay.

24 A ---where the, where the property and evidence person
25 signed for it. There could be additional signatures that

1 are not on there, but are with the items.

2 Q And this is the beginning stage?

3 A Correct.

4 MR. WILKES: Your Honor, we would offer this as the
5 defense exhibit and I don't know what number we're on. But
6 we would offer this into evidence at this time.

7 SOLICITOR STEINBERG: Can I take a look at that please?

8 MR. WILKES: Certainly.

9 (Pause.)

10 SOLICITOR STEINBERG: No objection.

11 THE COURT: Okay.

12 (Whereupon, the property and evidence sheet was marked
13 as Defendant's Exhibit No. 2 and received into evidence at
14 this time.)

15 Q Now, if you need it, if that's your only copy, I think
16 the court reporter will make you a copy of that so you can
17 take one back with your records.

18 Officer Lendway, that document, if an expert witness
19 comes to Court to testify as to DNA or any other testing
20 done on that blood, they will bring another copy or the
21 continuation of that form?

22 A Right.

23 Q And it would show your signature on the top of it, a
24 copy or a carbon, right?

25 A Right.

Ron Lendway - Cross-examination
by Mr. Wilkes

1 Q So, if we see any, any testing results, we will see
2 that document again, but with more names on it from either
3 SLED or the county or whoever does testing?

4 A Right, whoever signed it out after me.

5 Q Okay. No further questions.

6 THE COURT: Any redirect?

7 SOLICITOR STEINBERG: No, sir. Thank you very much.

8 THE COURT: All right.

9 SOLICITOR STEINBERG: Your Honor, we'd ask that Officer
10 Lendway be excused. I think he's currently on duty.

11 THE COURT: All right. Officer Lendway, you, you --
12 any objection?

13 MR. WILKES: No objection.

14 THE COURT: Okay. You're released, sir. Thank you for
15 coming.

16 SOLICITOR STEINBERG: State's next witness will be
17 Misty Mathis.

18 MISTY MATHIS, being first duly
19 sworn, testified as follows:

20 CLERK: State your name for the record.

21 WITNESS: Misty Mathis.

22 DIRECT EXAMINATION

23 BY SOLICITOR STEINBERG:

24 Q Mrs. Mathis, where do you live just in general part of
25 South Carolina?

Misty Mathis - Direct examination
by Solicitor Steinberg

1 A Greenville, South Carolina.

2 Q And where do you work?

3 A Industrial Recovery and Recycling.

4 Q And what does the company go by, it's acronym?

5 A IRR.

6 Q How long have you worked there?

7 A Eleven years.

8 Q What is your role or your job over at IRR?

9 A Office manager, which includes human resources among
10 other duties.

11 Q Do you know David Molina?

12 A I do.

13 Q And approximately how long have, did you know him when
14 you worked at IRR?

15 A His hire date was 9/21/04. So, he worked for us
16 approximately 90 days temporary prior to that. So, we knew
17 him probably for a year.

18 Q Did you ever have discussions with him?

19 A Yes, on many occasions.

20 Q Did you consider him a talkative individual?

21 A Yes, very friendly, talkative.

22 Q Did he ever discuss with you an incident that involved
23 his former girlfriend, Nichelle Nichols?

24 A Yes.

25 Q Do you remember approximately when he had that

Misty Mathis - Direct examination
by Solicitor Steinberg

1 discussion with you?

2 A The incident I believe to have occurred on February the
3 8th.

4 Q Yes, ma'am.

5 A The first time that I saw him after the 8th would of
6 been on the 9th when he came to my office.

7 Q What did he come to your office for?

8 MR. WILKES: Your Honor, I'm gonna object if she's
9 gonna read from something. I notice she's got notes in
10 front of her, and it's imperative that he ask direct,
11 refresh. But first she needs to testify from her own
12 recollection if she can.

13 A I don't, I don't have notes.

14 Q You have no notes there, ma'am?

15 A They're no notes.

16 Q Okay. What did you have a discussion with Mr. Molina
17 about?

18 A When he came to my office on the 9th he brought a paper
19 with him, which I believe was the, a sheet from the victims
20 advocate that had been given to Ms. Nichols and that sheet
21 was in his possession. So, he turned that in to me to show
22 me that there had been some incident the night before that
23 had some involvement with him and he explained to me that
24 there had been an attack on his girlfriend, and that he
25 needed to be with his girlfriend and that he would not be

Misty Mathis - Direct examination
by Solicitor Steinberg

1 coming to work that night on the 9th.

2 Q Thank you, ma'am.

3 When he returned to work, did you discuss with him his
4 absence from IRR?

5 A I did.

6 Q And did he give an explanation of why he was not there?

7 A Yes, on the 8th, I -- he generally would take a 30 to
8 45 minute lunch break and at midnight -- he, he works the
9 night shift. So, at midnight, his time card on the
10 8th reflected that he had only taken a ten minute lunch
11 break, and then it did not reflect that he had left at all.
12 At 6:00 a.m. that morning there was no punch out at all.

13 Q Is there suppose, is there suppose to be a punch out
14 when someone leaves?

15 A Yes, it should of reflected on 8th that he worked an
16 entire twelve hours, which it did not.

17 Q Did he say where he went to or where he left IRR?

18 A Yes, I asked him why he only had a ten minute break
19 versus the 30 to 45 minute break which he always has. And
20 he said that he had -- he didn't explain why he only took
21 ten minutes. He didn't answer that question. But he said
22 that afterwards he ran up the street and he pointed in the
23 direction of the Spinx Station that is closest to our
24 facility, and said that he went to get a cup of coffee. And
25 that he expected that he would come right back.

Misty Mathis - Direct examination
by Solicitor Steinberg

1 Q Was, was it appropriate for someone to leave IRR after
2 they clocked back in?

3 A Absolutely not.

4 Q You said he went to a -- you said a Spinx?

5 A Yes.

6 Q All right. Where is your location?

7 Where is the building?

8 A In relation to the Spinx?

9 Q In relation to the Spinx or give us another landmark.

10 A We're located just off Highway 101, and the Spinx is
11 located on Highway 101.

12 Q And where are you in relation to, for example, the BMW
13 plant?

14 A It would be technically kind of across the street.

15 Q Okay. About how far up a drive?

16 A I would say one minute.

17 Q Okay. And are you more closer towards Spartanburg or
18 more closer to Greenville from there?

19 A We're in Spartanburg County.

20 Q Yes.

21 Would you be working for Spartanburg center or which
22 side of, which side of the BMW plant are you on?

23 A The Greer side.

24 Q Okay.

25 A Which would be Greenville County side.

1 Q All right. Now what did he say he was doing at the
2 Spinx Station?

3 A He said he just ran real quick to get a cup of coffee.

4 Q And did he say if anything occurred while he was there?

5 A He said while he was there he received a telephone call
6 from Ms. Nichols.

7 Q Did he say what that conversation consisted of?

8 A He said that she told him she had been attacked and
9 that right away he knew he needed to go to her assistance.
10 So, he told me that he telephoned one of my other employees
11 and he gave me the name of the employee and he said that he
12 told my employee that he would not be returning back to, to
13 the, our facility. And he said he told my employee what
14 happened and why he wasn't coming back. And he said he
15 immediately left the Spinx and went to her aid.

16 Q How far is the Spinx Station from your office, from
17 your business?

18 A I can get to the Spinx in about a minute and a half.

19 Q What did you tell him concerning him leaving for the
20 gas station after he clocked back in?

21 A I had recently reprimanded him on some other issues and
22 I told him, you know, you know that you're already on a
23 probationary period here, and you are aware that you are not
24 to be leaving the plant especially when you're suppose to be
25 clocked in. You, you had already had a break. You weren't

Misty Mathis - Direct examination
by Solicitor Steinberg

1 suppose to be leaving, you know. You knew that you
2 shouldn't have done that.

3 Q How did he respond to that?

4 A He just said, you know, I know Missy. Missy is my
5 nickname, which is what all my employees call me. That's
6 what they refer to me as. And he said I know Missy, I'm
7 very sorry. I know I shouldn't have left. But I did and I
8 only thought I would be gone for just a few minutes and I'm
9 sorry.

10 Q Did you provide any work records or time cards,
11 photocopies to Investigator Smith?

12 A I did.

13 Q Did you have the copy for the date of February 8th,
14 February 9th with you?

15 A I do.

16 Q Would you please present that?

17 A (Witness complies.)

18 Q I'm going to have this marked for identification
19 please.

20 (Whereupon, the time card was marked as State's Exhibit
21 No. 20 for identification purposes only at this time.)

22 Q Mrs. Mathis, I'm gonna show you this card. Please tell
23 the jury whose card it is and what that, what times it
24 provides.

25 A This card belongs to David Molina. It shows the entire

Misty Mathis - Direct examination
by Solicitor Steinberg

1 week of the 8th. It shows the night of the 8th where he
2 punched in approximately ten minutes till.

3 Q Let me, let me show the stuff on the card to you.

4 A Okay.

5 SOLICITOR STEINBERG: Your Honor, I'm gonna move to
6 introduce this as State's evidence and publish it.

7 MR. WILKES: No objection.

8 SOLICITOR STEINBERG: State's Exhibit No. 20.

9 (Whereupon, State's Exhibit No. 20 was received into
10 evidence at this time.)

11 Q Mrs. Mathis, this is David Molina's card?

12 A Uh-huh. (Affirmative).

13 Q I show you what that is.

14 A Okay.

15 Q What does this line here indicate?

16 A Those are the days of the week.

17 Q Okay. And this is for the February, month of February?

18 A That's correct.

19 Q That's Tuesday, February 8th?

20 A Correct.

21 Q And you used the military time?

22 A Correct.

23 Q What time did David Molina check in on Tuesday the 8th?

24 A That, that would be approximately ten minutes till

25 6:00 p.m.

Misty Mathis - Direct examination
by Solicitor Steinberg

1 Q And what time did he check out?

2 A That would be 23:30, which would be almost -- I think
3 12:30 there, 11:30. 11:30.

4 Q You say it's 11:30?

5 A Yes.

6 Q Was this time clock accurate at that time?

7 A At the time I believe it was about seven minutes slow.

8 Q After he clocked back out on, you said it was 11:30,
9 what does that indicate?

10 A He punched back in. He took approximately a ten minute
11 break.

12 Q And---

13 A He punched back in at about 20 till 12:00.

14 Q If he had come back to work, would he have to check
15 out?

16 A Yes, he should of checked out if he went---

17 Q Where would he, where would he have checked out?

18 A In the column that you see is blank underneath where it
19 says 23:30.

20 Q Okay. Is that the area you're referring to right
21 there?

22 A Yes, where your pen is, is.

23 Q Is there any reason that someone would check out at
24 11:40 or seven minutes prior to 11:40 and then leave the
25 location?

Misty Mathis - Direct examination
by Solicitor Steinberg

1 A No, there should not be any reason.

2 Q Did he admit signing back in and then leaving this
3 location?

4 A Yes.

5 Q Thank you, Mrs. Mathis. I have no further questions.
6 Please answer any of opposing counsel's questions.

7 CROSS-EXAMINATION

8 BY MR. WILKES:

9 Q Mrs. Mathis, has he ever done this before, punched out
10 and gone somewhere?

11 A To my recollection at this time, no.

12 Q Okay. So this would be the first time that you're
13 aware of and you have access to all these cards that are in
14 evidence in your records?

15 A Yes.

16 Q Okay. So, would you know if he had done this before?
17 Let me ask you that first.

18 Would you have an idea if he had?

19 A Possibly, yes.

20 Q Okay. And if he had been doing this before Mr. John
21 Mazyck --

22 A Correct.

23 Q -- Mr. Mazyck would probably be aware of that as well,
24 wouldn't he?

25 A He would be the person to ask, yes.

Misty Mathis - Cross-examination
by Mr. Wilkes

1 Q And has he informed you of any prior instances of
2 Mr. Molina leaving during his time at work?

3 A No, not in -- not punching out, no.

4 Q Okay. So, this does not appear to you to be part of a
5 plan?

6 It hadn't been done before?

7 This is just the first time you've seen this?

8 A Yes.

9 Q Okay. Now, you said the clocks weren't accurate?

10 A Correct.

11 Q That is intentional, correct?

12 A Correct.

13 Q Y'all set them off a bit?

14 A Sometimes, yes.

15 Q Okay. But they're approximately correct?

16 A Yes.

17 Q All right. What would have been the best thing for him
18 to say if he wanted to stretch his break, sneak out, and
19 take his girlfriend a plant or whatever, card for the car or
20 something?

21 What would be the correct thing for him to do to be
22 able to do that?

23 A I'm not -- I don't understand your question.

24 Q If he had a girlfriend say that lives six, seven, eight
25 however many miles away?

Misty Mathis - Cross-examination
by Mr. Wilkes

1 A Correct.

2 Q And he wants to -- and I'm not saying that -- I'm just
3 saying it's that or however far.

4 A Uh-huh. (Affirmative).

5 Q He wants to go over there on his break.

6 A Correct.

7 Q Okay. What does he tell you to be able to take his
8 break, get in the car, take off, and go drop something off
9 and come back?

10 What does he tell you to be able to do this for?

11 A Most of the time they're generally pretty honest about
12 it. The supervisor generally would, would allow them and on
13 a frequent basis we are aware that he did go to her house
14 or, or to see her on his lunch break.

15 Q Okay. So, he did do that and y'all were aware of that?

16 A Yes.

17 Q Now, did he get in trouble at times for doing that and
18 it taking more than his lunch break?

19 A I, I believe the supervisor did reprimand him at times.

20 Q So, if he could eat his lunch, go to the bathroom,
21 clock back in, and then take his break, even if it took a
22 few more minutes, it's not gonna show up on the clock, is
23 it?

24 A I mean it would if he punched it like he's suppose to.

25 Q Right. Exactly.

Misty Mathis - Cross-examination
by Mr. Wilkes

1 But if, if he wanted to eat lunch, go to the bathroom,
2 and he clocked out before he did that, and he clocked back
3 in, and he gets in the car, and he goes to his girlfriend's,
4 drops something off, or whatever he intends to do, comes
5 back, and it takes him a little bit longer---

6 A Right.

7 Q ---it's gonna show up on the time card?

8 A I understand.

9 Q He's already on, in trouble for time cards things,
10 right?

11 A Correct.

12 Q And Mr. Mazyck is his direct supervisor.

13 A Correct.

14 Q And then he's here today?

15 A Correct.

16 Q Okay. Nothing further.

17 SOLICITOR STEINBERG: Briefly.

18 REDIRECT EXAMINATION

19 BY SOLICITOR STEINBERG:

20 Q Did David tell you this was his girlfriend?

21 A Yes.

22 Q Did he actually use the term girlfriend?

23 A Yes.

24 Q Thank you.

25 Do you know if he was actually visiting her or visiting

Misty Mathis - Redirect examination
by Solicitor Steinberg

1 the home to your own knowledge?

2 A At which time?

3 Q These nights -- you made reference earlier to that he
4 had been out in the past to go visit her.

5 Do you, of your own knowledge, know whether he was
6 visiting her at this house or whether he was simply going by
7 the house?

8 A I do not know.

9 Q Okay. What did David tell you?

10 A Up until this happened we had many conversations about
11 his girlfriend and the conversations were he was very happy
12 with her. I was under the impression he was happily dating
13 and there were no problems.

14 Q Did he give you any indication during this time period
15 that he was not dating her?

16 A No.

17 Q That she did not want to see him?

18 A No.

19 Q We talked a little bit about the clocking out.

20 If someone wanted to, for example, take a longer break,
21 more than a 30 minute break, would they be allowed to take a
22 longer break before and check in?

23 A Yes.

24 Q Okay. By that -- if he wanted to do that, would he
25 have had to, in this final box where it says 11:40, would he

Misty Mathis - Redirect examination
by Solicitor Steinberg

1 have checked back in if that was what he intended to do?

2 A Yes.

3 Q And when would he have signed back in for good?

4 A He would just clock back in when he came back and then,
5 if they wouldn't be this, this punch here, this 23:40, it
6 wouldn't be there.

7 Q Thank you, ma'am. No further questions.

8 MR. WILKES: None from me.

9 THE COURT: All right. Thank you, ma'am. You can step
10 down.

11 SOLICITOR STEINBERG: Your Honor, ask that Mrs. Mathis
12 be excused.

13 MR. WILKES: No objection.

14 THE COURT: Okay. Yes, ma'am, you're released from the
15 subpoena. Thank you.

16 SOLICITOR STEINBERG: State calls Mr. John Mazyck.

17 JOHN MAZYCK, being first duly
18 sworn, testified as follows:

19 CLERK: State your name for the record.

20 WITNESS: John Mazyck.

21 DIRECT EXAMINATION

22 BY SOLICITOR STEINBERG:

23 Q Good afternoon, Mr. Mazyck.

24 Tell us where you're employed.

25 A Industrial Recovery and Recycling.

John Mazyck - Direct examination
by Solicitor Steinberg

1 Q And how long have you been there?

2 A About 14 years.

3 Q And in what county is this business located?

4 A Spartanburg County.

5 Q And where is it in relation to the BMW Plant?

6 Say north, south, east, or west?

7 A I'd say I guess it would be north of the BMW.

8 Q Do you know David Molina?

9 A Yes, sir.

10 Q I'm going to refer you to the night of February 8th,
11 Tuesday, February 8th.

12 Do you remember when David came to work that day?

13 A He clocked in, he, about six o'clock.

14 Q And did you see David at work that day?

15 A Yes.

16 Q Did you see David leave work that day?

17 A Yes.

18 Q Did you see him return back to work that night?

19 A No.

20 Q Have you reviewed this time card?

21 I'm going to show you the State's Exhibit, State's
22 Exhibit No. 20.

23 A Okay. The 8th was on a Tuesday, yes, I've seen it.

24 Q When David checked out, did you actually observe him
25 leave?

John Mazyck - Direct examination
by Solicitor Steinberg

1 A I did.

2 Q And did he walk past you when he left?

3 A Yes, he did.

4 Q How did he appear?

5 A He wasn't the jovial one that he usually is. Usually
6 David is kind of jovial, joking, and then he passed me going
7 out the building. He just kind of had his head down, kind
8 of walked away, didn't really say anything.

9 Q Did he make eye contact with you?

10 A Not that I can remember.

11 Q Did he talk to you?

12 A No.

13 Q Was that unusual for David?

14 A Yeah, David's kind of a smiley, joking type person when
15 he --.

16 Q Did you see David again that night?

17 A I did not.

18 Q When someone checks back into work, are they allowed to
19 check -- are they allowed to leave after that?

20 A No.

21 Q I'm going to bring you to the Friday of that week.

22 Did you speak to David about this matter involving his
23 former girlfriend?

24 A That was the Friday he came back to work. I think he
25 was like out, out Wednesday. He came back in on a Friday

John Mazyck - Direct examination
by Solicitor Steinberg

1 night, and yes, he told me that he needed to get off from
2 work to go, had an appointment to talk to a detective on
3 this matter. And then after he came back from that, then he
4 had conversation with me.

5 Q He told you Friday night he had a meeting with a
6 detective?

7 A When he came to work, I think it was Friday night, he
8 said he needed to, that he had an appointment to see a
9 detective at 7:30 I believe it was. Somewhere around that
10 time.

11 Q About 7:30 at night or in the morning?

12 A Yeah, at night. He works night shift.

13 Q Did he return?

14 A Yeah, he was gone maybe about an hour, hour and a half.

15 Q How, how did he appear when he returned?

16 A Upset. He was crying.

17 Q Did he say what was on his mind?

18 A Yes, he said that they had, that -- I think that the
19 police---

20 MR. WILKES: I object.

21 A ---the police, the police---

22 Q I'm asking what the defendant said.

23 THE COURT: That's what I understood it to be.

24 MR. WILKES: All right.

25 THE COURT: Go ahead.

1 A And that he had -- when he came back, he was, like I
2 say, he was crying and upset and he says they, they think I
3 did it and I said did, did what. He said they think that I
4 did it to her.

5 Q How did you -- what did you say that after?

6 A I said well, David, he was still kind of sobbing a
7 little bit. I said did you do it and he said no, and I said
8 then why should you have anything to worry about.

9 Q Did he make any comments about his presence at work
10 that night?

11 A About his previous---

12 Q No. Well, on the night of the occurrence.

13 A I'm not sure what you're---

14 Q Did he make any references to time cards?

15 A Oh, yeah, when he said something about -- yeah, he did.
16 He said they think that I did it. And after I said that to
17 him, he said but, you know, he said I was here. He said I
18 was clocked in. He said -- I said no, David, I said you
19 didn't come back last night remember. I said you was, I
20 said you didn't come back to work that night.

21 Q And did he come back after 11:40?

22 A On the 8th?

23 Q Yes, sir.

24 A He did not.

25 Q Okay. After you told him that no, David, you were not

1 here, how did he respond?

2 A I told him I wasn't gonna lie for him. I said you
3 knew -- I, I said you know that you weren't here.

4 Q How did he react to that?

5 A I don't really think he had a reaction.

6 Q Did you have another conversation with him that same
7 night?

8 A Gosh.

9 Q Did you ever have a conversation with him and he try
10 to -- did you ever have a conversation with him about where
11 he was?

12 MR. WILKES: Your Honor, I'm gonna object at this point
13 if he's starting to lead his own witness.

14 THE COURT: All right. Well, sustained.

15 Q Did you have any other conversations with him going to
16 the, the time frame?

17 Closer towards midnight, did you have any more
18 conversations with him?

19 A I don't -- I probably did. But I don't remember
20 exactly what it was about.

21 Q Did you---

22 A I can't -- I mean I did fill out -- my mind was fresh
23 when I filled out the, the, talking to the officers a little
24 earlier and they took my deposition down. My mind was a
25 little like -- but I don't.

John Mazyck - Direct examination
by Solicitor Steinberg

1 Q As part of your job, do you have any requirements for
2 knowing where your employees are?

3 A Oh, yes, I know where they are most of the time and
4 what they're doing.

5 Q And, and if a witness, pardon me, is an employee is not
6 present, do you have to find out where they are?

7 A Yes.

8 Q Okay. Did you have any conversations with David Molina
9 about his whereabouts?

10 A On which night?

11 Q On -- well, after he left at 11:40.

12 A I didn't see David any more that night.

13 Q I know. But on the Friday of---

14 A On the Friday?

15 Q ---did you have a conversation about where he had gone
16 to?

17 A Oh, yeah, he had told me that he, he had went that --
18 he said he had went -- he was trying to tell me about what
19 he had did that, on the 8th, that he had left work and that
20 he had went to the, went to the Spinx Station and there, I
21 don't know whether he was getting gas or whatever, cause
22 most of the time David would go down and get coffee and
23 bring it back. When he came back to work, he always had a
24 cup of coffee in his hand and it had come from the Spinx,
25 and he said he went down to the Spinx.

1 And while he was there, he was, his girlfriend was
2 trying to get in touch with him by the cell phone and he had
3 left the cell phone in his car. So, he didn't really -- and
4 when he got back in his car, he called her and she was
5 trying to get in touch with him to tell her that she had
6 been assaulted in some way. And then he, he, like I say, he
7 never came back to work. But that's what he was telling me
8 that, that happened that night.

9 Q Did he ever explain why he checked back into work prior
10 to that time?

11 A Do what?

12 Q Did he ever explain to you why he had checked back into
13 work?

14 Instead of checking out of work to go to the store, did
15 he ever explain why he checked back into work?

16 A No, he didn't. He, he had clocked out and I didn't,
17 know that he had clocked back in until I, until probably
18 Friday or no, excuse me, later on that night when he didn't
19 come back, then I went and checked his time card and it
20 showed that he was back in. Because when I talked to him
21 Friday night, and he told me that look, you know, I was
22 here, my time card, I checked my time card and I was here,
23 and I said but you wasn't here.

24 Q Let me back up.

25 You said that he checked his time card, was that after

John Mazyck - Direct examination
by Solicitor Steinberg

1 or before, after he said that statement you know I was here
2 when you said---

3 A No, that was before. That was on the, the 8th. Well,
4 it was probably within morning of the 9th because when he
5 didn't come back in I went and checked his time card, and I
6 noticed that he had clocked back in. But he wasn't there
7 on-the-job.

8 Q Okay. And was it unusual for someone to be clocked out
9 and then leaving?

10 A No.

11 Q Okay.

12 A It's -- that's against the policy. If you're gonna --
13 if you leave the building, you're suppose to be off the
14 clock.

15 Q Okay. Thank you, sir. Please answer any of opposing
16 counsel's questions.

17 CROSS-EXAMINATION

18 BY MR. WILKES:

19 Q Mr. Mazyck?

20 A Yes, sir.

21 Q Where were you in the plant at the time that he clocked
22 out or did whatever he was doing, clocked back in?

23 Where were you?

24 A When he left the building or just at the time clock?

25 Q When he first got, that first -- if you look on that --

John Mazyck - Cross-examination
by Mr. Wilkes

1 do you still have that or do you need to look at it?

2 Look at, look at that time clock.

3 If I may, Your Honor?

4 THE COURT: Sure.

5 A Yeah.

6 Q This record---

7 A I can---

8 Q Okay. When he came -- what, what time did he clock out
9 or what -- do y'all call it lunch or dinner or is it---

10 A I call it lunch, you know. It's lunch to me.

11 Q Okay. It's always lunch if you work late shift?

12 A Yeah.

13 Q So, he clocked out for lunch at what time?

14 A He clocked out at 23, 23:30.

15 Q Which is roughly what time?

16 A I say 11:30.

17 Q Okay. And did you see him clock out?

18 A No, I did not see him clock out.

19 Q Okay.

20 A Because the time clock's outside from where I was at.

21 Q Did you see him when he clocked back in---

22 A No, I didn't.

23 Q ---later?

24 And where were you?

25 A I was at the, I was at the door area of where he go,

John Mazyck - Cross-examination
by Mr. Wilkes

1 where most of the employees, including his self, go out to
2 get to their automobiles.

3 Q Okay.

4 A And they -- at that particular door---

5 Q Uh-huh. (Affirmative).

6 A That's where one of our machines are and I was at that
7 machine cause I was having to work on that machine.

8 Q Okay. Is that near his station?

9 A No, that's half way from his station.

10 Q Okay. But you're at the door that---

11 A I was at the door area.

12 Q Okay. How big is this plant?

13 A I'd say maybe about a football field and a half.

14 Q Okay. So, it's a big place?

15 A Yes.

16 Q And you said the time clock was out of sight?

17 A Yeah, it's about halfway of the building.

18 Q All right. From the point that the time clock is, how
19 far is it -- well, if it's halfway across the building, then
20 you've got to go over halfway across the building to get to
21 his station I assume?

22 Is his station near the end of the building?

23 A No.

24 Q Where is it?

25 A His station would be directly across. Not length wise,

1 but width wise, okay, which would probably be, walking, he
2 could probably walk it in fifteen seconds.

3 Q Fifteen seconds?

4 A Somewhere like the width of it. Yeah, the width of it
5 is not -- you know, I could be off a little bit. I would
6 say the -- it's probably -- from where he's working at,
7 probably be about maybe four or five times this building,
8 this, this room.

9 Q Okay. Now, where's the area for eating lunch or
10 whatever you call it?

11 A Eating lunch, it's directly maybe about fifty, twenty,
12 twenty feet from where he worked at cause he worked right
13 at -- he wasn't but about twenty feet away from the lunch
14 room where they go upstairs and work.

15 Q So---

16 A And eat.

17 Q He goes upstairs to eat you said?

18 A Normally he does. But most of the time he leaves the
19 building.

20 Q Okay. And is he suppose to leave the building?

21 A If he's clocked out.

22 Q Has he been getting in trouble for being clocked out
23 too long?

24 A Honestly I don't really pay it, pay a whole lot of
25 attention to that unless they're really really late, you

John Mazyck - Cross-examination
by Mr. Wilkes

1 know what I'm saying.

2 Q I know what you're saying.

3 A I go by and I say if they're ten minutes late I'll
4 check them. But normally he got back in his 45 minute
5 period.

6 Q Okay. And he can squeeze it a little bit, but not a
7 lot?

8 Stretch it a little bit, but not a lot?

9 A No, I pretty much know. I can, I can look around and
10 see the machines running and I know if they're back or not.

11 Q Okay. Well, how do you know it was David leaving?

12 A Cause I saw him leave.

13 Q He walked right by you?

14 A He walked right by me.

15 Q Okay. And you say that he kind of had his head down.
16 Would you characterize it as kind of looking dejected
17 maybe?

18 A I don't---

19 Q Somber?

20 A Somber, yeah, kind of---

21 Q Kind of like he had---

22 A Like he had something on his mind. It was---

23 Q Could it be like a guy that's having a lot of troubles
24 with his girlfriend?

25 A I didn't get involved with his girlfriend problems.

John Mazyck - Cross-examination
by Mr. Wilkes

1 Q Yes, sir, I'm just asking you.

2 A I don't know. All I know is when he walked by me he
3 kind of had his head in a downward position and he was
4 walking toward the door. I glanced over. My peripheral
5 vision said somebody was walking by, and I looked over and
6 David's walking by and out the door.

7 Q Okay. What was he wearing?

8 A I don't know. I didn't pay any attention to his
9 clothing.

10 Q Okay. You were standing over by the door?

11 A Out by the door.

12 Q Well, by the machine by the door?

13 A Yeah, probably about the same distance from you to that
14 door over there --

15 Q Okay.

16 A -- when he came by.

17 Q So, if he was trying to hide from you, he wasn't doing
18 a very good job, was he?

19 A No.

20 Q He looked like he wasn't trying to hide?

21 A He was going to lunch.

22 Q Okay. Very good. And you would agree with me if you
23 saw him leave, you would know, you would probably see him
24 when he came back, wouldn't you?

25 A Sometimes I do and sometimes I don't. But normally I

John Mazyck - Cross-examination
by Mr. Wilkes

1 see him when they come back.

2 Q They were---

3 A I mean I'm usually in the area for lunchtime.

4 Q And that evening -- is there any consistency with the
5 times that they're allowed to go to lunch?

6 In other words, is his -- what time was his lunch
7 break?

8 A His, his lunch, on that particular machine, usually
9 started about 11:00 cause I usually break them -- like
10 everybody can't go to lunch at the same time and take 45
11 minutes. Usually his lunch was in -- lunchtime for
12 everybody is eleven o'clock and usually he might go at
13 11:00, he might go at ten after. It's just whenever he
14 decides to shut his machine down and take off.

15 Q Okay.

16 A But it was just an understanding that he went to lunch
17 at that time.

18 Q At---

19 A At around 11:00. Between 11:00 -- that's what time it
20 started. That doesn't mean when he left.

21 Q Okay.

22 A That means that lunch had started then. Not everybody
23 goes on time.

24 Q Okay. But you have to stagger it?

25 A I have to stagger it, yeah.

1 Q Okay. Now, that evening, did you indicate that it was
2 okay to go to lunch or do they just all choose?

3 A No, that's -- yeah, that's, that was left up to them---

4 Q Okay.

5 A ---for that area.

6 Q So, they have to kind of time it when---

7 A Yeah.

8 Q ---some people are there and they have to time that?

9 A Sometimes he might leave at quarter after.

10 Q All right.

11 A If he had his -- he knew what his 45 minutes was.

12 Sometimes he'd leave right on the money. You know, it's

13 just when he decided to, he wanted to go in the hour, in

14 that time zone.

15 Q Okay. And was this within the normal time?

16 A Yeah.

17 Q That evening?

18 A Yeah, that was the normal time.

19 Q All right. Now -- and you say that he had been, over
20 the past, any period of time you can remember, month or two,
21 had he been coming in late from lunch or you say he comes
22 back?

23 You see him come with coffee?

24 You see him come back with coffee regularly?

25 A Yeah, he usually came back with coffee. Sometimes I --

John Mazyck - Cross-examination
by Mr. Wilkes

1 sometimes he'd bring other people coffee.

2 Q Okay. And would you agree that if, over the month say
3 before this, if this had been happening repeatedly you would
4 of been aware that he was taking excessive time?

5 A I would of been aware of it, yes. But normally I'm
6 not -- I don't look at people's time cards unless I see that
7 they are fudging a little bit. Then I kind of check on
8 them.

9 Q But you're the guy on the floor and you would, got eyes
10 on them a lot?

11 A Constantly.

12 Q Okay. And can you tell me is this, is his -- was it a
13 repeated pattern of him being gone excessively during lunch?

14 A No.

15 Q No?

16 A He normally made it. He made it, that---

17 Q And that would be within his 40, 45 minutes?

18 A Yeah.

19 Q And it's not always 45 minutes, is it?

20 Sometime it's less?

21 A Sometimes it's a couple minutes or more. But you know,
22 nothing for me to say anything about.

23 Q Okay.

24 A Sometimes it's less.

25 Q Okay. And you don't recall what he was wearing?

John Mazyck - Cross-examination
by Mr. Wilkes

1 A Hu huh. (Negative).

2 MR. WILKES: If I can have just a moment?

3 THE COURT: Yes, sir. Take your time.

4 (Pause.)

5 MR. WILKES: I have nothing further from him. Thank
6 you.

7 SOLICITOR STEINBERG: Nothing else from this witness,
8 Your Honor.

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

11 SOLICITOR STEINBERG: I ask that Mr. Mazyck be excused
12 to go back to Spartanburg.

13 MR. WILKES: Without objection.

14 THE COURT: All right. Thank you, sir. Thank you.

15 WITNESS: Is that all?

16 THE COURT: Yes, sir, you're released.

17 SOLICITOR STEINBERG: Your Honor, could we approach?

18 THE COURT: Sure.

19 SOLICITOR STEINBERG: I apologize.

20 (Whereupon, a bench conference was held at this time.)

21 THE COURT: Okay. Ladies and gentlemen, we're going to
22 take a recess and everybody start back in the courtroom
23 about 20 till 4:00.

24 Thank you very much.

25 Don't talk about the case. Continue to keep an open

James Braswell - Direct examination
by Solicitor Steinberg

1 mind.

2 (Whereupon, a short recess was taken at this time.)

3 THE COURT: All right.

4 MR. WILKES: We'll get the defendant, Your Honor.

5 THE COURT: Oh, that might help. Sorry about that.

6 (Whereupon, the defendant comes into the courtroom at
7 this time.)

8 THE COURT: Okay. Yes, sir, Mr. Steinberg.

9 SOLICITOR STEINBERG: Thank you, Your Honor.

10 State would call James Braswell.

11 Mr. Braswell, if you could take the stand over there
12 and put your hand on the Bible.

13 JAMES BRASWELL, being first duly
14 sworn, testified as follows:

15 CLERK: State your name for the record.

16 WITNESS: James Dwayne Braswell.

17 DIRECT EXAMINATION

18 BY SOLICITOR STEINBERG:

19 Q Mr. Braswell, where are you currently incarcerated?

20 A Pickens County Prison in Pickens County.

21 Q And where have you been for the last two days, today
22 and yesterday?

23 A Downstairs with these handcuffs on me in that holding
24 cell down there. I made, I made custody where I'm at. I go
25 out and cut trees everyday and work, you know, out on the

1 road everyday. I been locked up in down here I mean for --
2 and I hadn't done anything wrong.

3 Q And I apologize for any discomfort.

4 But let me ask you a couple questions.

5 You're in say Pickens County?

6 A Yes, sir.

7 Q In their jail or in the Department of Corrections
8 stockade?

9 A I'm in the Department of Corrections. It's a county
10 facility. But they have a contract with the State
11 Department of Corrections to have county inmates there to
12 work.

13 Q Before you were incarcerated, what kind of job did you
14 have?

15 A Mobile home mover. I worked for about a year with
16 FEMA, the federal government mobile home, moving mobile
17 homes for storm recovery.

18 Q And what was your role in the, in the, moving mobile
19 homes?

20 A I moved them, set them up, you know, and--

21 Q Were you a supervisor or were you just supervised?

22 A Supervisor, yes. Yes, sir, I was a supervisor.

23 Q Okay. And how many years did you do that?

24 A Probably fifteen, twenty years.

25 Q Okay.

James Braswell - Direct examination
by Solicitor Steinberg

1 A Fifteen, twenty.

2 Q I'm gonna ask you a couple questions, sir. I'm not
3 tending to embarrass you or anything. But let me ask you a
4 couple questions.

5 A Right.

6 Q Were you convicted of burglary second in the Year 1993?

7 A Yes, sir.

8 Q Were you convicted of a string, I, I think, think nine
9 counts?

10 A Yes, sir.

11 Q And were you convicted in 1998 of forgery five counts?

12 A Yes, sir.

13 Q And were you convicted in the Year 2005 of resisting
14 arrest with assault?

15 A Yes, sir.

16 Q And the charge of failure to stop for blue light?

17 A Yes, sir.

18 Q Were those two incidents one incident or were they two
19 separate incidents?

20 A One, one incident.

21 Q One incident.

22 And how about the charge of auto breaking and grand
23 larceny, two counts each?

24 A Yes, sir.

25 Q Were those one incident or---

James Braswell - Direct examination
by Solicitor Steinberg

1 A One incident.

2 Q Okay. And how long is your current prison sentence?

3 A Four years. I have 90, I mean I have nine months left
4 to serve.

5 Q All right.

6 A To max out.

7 Q Okay. And what kind of plea offer did you receive from
8 the state?

9 A Cap of five years. But it had nothing to do with this.

10 Q Just to be clear, was I the prosecutor on this case
11 with you?

12 A No, sir.

13 Q Just give us approximate time, how long ago was those
14 last time, the first time you ever saw me?

15 I don't mean exact date. Just the---

16 A Couple months.

17 Q Okay. And when were you sentenced?

18 A In August of last year, August 1st.

19 Q Have you ever made any deals to testify on behalf of
20 the state in the past?

21 A Never.

22 Q You ever been convicted of crimes against women in the
23 past?

24 A Never.

25 Q Where were you incarcerated in the May, June, July time

James Braswell - Direct examination
by Solicitor Steinberg

1 period of 2005?

2 A Greenville Detention Center.

3 Q And were you facing any charges in Pickens County?

4 A Parole violation.

5 Q Okay. When you were in jail, did you know David
6 Molina?

7 A Yes, sir.

8 Q Is that the gentleman sitting over here in the---

9 A Yes, sir.

10 Q ---jacket?

11 How often would you speak to Mr. Molina?

12 A Every day.

13 Q Did you consider him a talkative person?

14 A Yes, sir.

15 Q What type of conversations would y'all have?

16 A He was, was teaching me a little Spanish and we would
17 talk about his case and just all, you know, just everything
18 pertaining to being locked up and---

19 Q You said something, you said you talked about his case,
20 how often would he talk about it?

21 A Oh everyday. Two or three -- I mean a lot, a good bit
22 everyday.

23 Q You said everyday he'd speak about it?

24 A Uh-huh. (Affirmative).

25 Q Was it two or three, two or three times a day?

James Braswell - Direct examination
by Solicitor Steinberg

1 A Oh yeah.

2 Q Or two or three days?

3 A Two or three times a day.

4 Q Okay. Did he ever talk about his girlfriend?

5 A Yeah. Yes, sir.

6 Q Did he ever talk about his girlfriend's new boyfriend?

7 A Yes, sir.

8 Q What kind of conversation would he have concerning
9 that?

10 A Just that he thought that she was doing things with
11 that guy, with her new, new boyfriend sexual wise and they
12 were doing little drugs and stuff like that together, and
13 that she, she -- he didn't, he didn't like her boyfriend. I
14 mean he, he got kind of --.

15 Q Did he ever discuss what kind of vehicle this new
16 boyfriend drove?

17 A I'm pretty sure it was a red pick-up truck. I'm kind
18 of nervous right now I mean.

19 Q I understand. If you need to get a glass of water,
20 there's water right next to you, sir.

21 A All right.

22 Q Did he ever discuss where this new boyfriend lived?

23 A Off of Pelham Road in some apartments. I'm not sure of
24 the name. But it was talked about a few times there was
25 some apartments off Pelham Road I think it was like a gated

1 community or something where you had to go in through --
2 thank you. To, you know, to get into the apartments, it was
3 like a gated type community thing or something.

4 Q When he would talk about this new boyfriend, how was
5 his demeanor?

6 A Pretty violent. I mean, you know, he got pretty angry
7 about it.

8 Q Did he ever show you any legal documents, any police
9 reports?

10 A He showed me a few things after -- this was like in,
11 probably in July when he got his, the whatever you call that
12 thing, motion to discovery or whatever it was. He showed,
13 he showed me -- yeah, he showed me a few things then.

14 Q Did he ever show you any photographs?

15 A After -- yeah, he showed me a few things before that.
16 But it was just little stuff. But then he got that in like
17 July, the, the main motion. He had some paperwork before,
18 but it wasn't really -- I think it was some statements from
19 people and stuff.

20 Q What kind of photographs did he show you?

21 A Pictures of the girl and pictures of the house and
22 pictures where the car was parked.

23 Q Let me ask you a question.

24 Did he show you pictures of the girl after she had been
25 attacked?

1 A Yes, sir.

2 Q What did he say about those pictures?

3 A He was -- he didn't -- I mean he just kind of -- I
4 don't know exactly what he said about the pictures. I mean
5 he didn't really -- he, he kind of, he kind of -- when he
6 looked at the pictures, he kind of got angry. But I, you
7 know---

8 Q Did he ever, did he ever say why he was showing you the
9 photographs?

10 A He just kept saying look what happened. That's what he
11 said or look, look at this that happened. I mean it's kind
12 of hard for me. But he just -- no, he never said why he was
13 showing them to me or nothing.

14 Q You said -- let me ask you a question about his
15 demeanor towards the new boyfriend.

16 What is his demeanor towards his former girlfriend?

17 A He -- every time he talks about her he gets angry and
18 violent tempered.

19 Q In your own words, how did he appear concerning her?

20 A Well, to me, he seemed violent in my -- you know, I
21 mean he was angry about -- for some reason or another he was
22 angry at her.

23 Q Did he ever discuss a future or what his future was
24 with her?

25 A The only thing he said about that was that he was going

1 to go to a bank and open a checking account and get the
2 number on the check that's in the corner to be a high number
3 because the number meant that -- the higher the number on
4 the check meant the better your credit was, and that he was
5 going to go and get that, get the number high and then go
6 get checks cashed from I guess check cashing places and
7 things like Wal-Mart and stuff like that. And if he got out
8 of all this that he would get her and take her to Colombia
9 with him.

10 Q Did he ever discuss how the attack on his girlfriend
11 occurred, his former girlfriend occurred?

12 A Yes, sir, he said that he was kind of watching and he
13 wanted to confront her boyfriend, her, the new boyfriend.
14 And he thought that he was there and he was going to
15 confront him. But he didn't happen to be there at the time
16 that the incident happened.

17 Q Did he say where he parked his car?

18 A Behind the house on a road that you have to come
19 through the woods. I don't know the name of the road or
20 anything like that. But it was -- I do know it was back
21 behind.

22 Q Did he say what occurred once he got there?

23 A I can't say that -- he, he just said that -- he just
24 kept saying he didn't mean to, he didn't mean to hurt her.
25 He didn't actually say -- you know, he said I didn't mean to

James Braswell - Direct examination
by Solicitor Steinberg

1 hurt her, I didn't mean to hurt her. He said that he had a
2 knife and that he did not mean to hurt her. He was going
3 for some, you know, to, to confront her boyfriend and he
4 didn't really actually mean to hurt her.

5 Q Who is Roger Warick?

6 A There was a guy -- he was a diabetic guy that was in
7 the same cell block that we were in.

8 Q Who was closer to Mr. Molina, you or Roger Warick?

9 I say closer, I'm talking about friendlier.

10 A I was.

11 Q You were?

12 A Yes, sir.

13 Q What kind of conversations would you ever have when
14 Mr. Molina and Mr. Warick would both be present?

15 A We, we didn't talk about the, the case or anything that
16 much very much when he was present, you know, because he
17 wasn't as close, you know what I mean. But we did talk
18 about it some because it was -- I mean we were in close
19 quarters. It's probably -- the cell is not much bigger than
20 that area. It's a little bigger than that. Maybe twice as
21 big as that area right there, and it's close quarters and he
22 slept over across, right across the bedroom.

23 Q You remember any particular conversations when Mr.
24 Warick was present?

25 A A little bit.

1 Q Concerning the attack. Concerning the attack.

2 A Right.

3 Q I mean concerning the attack.

4 A Right, a little bit. I mean it's not real clear. But
5 I -- yeah, I remember a couple times when we had talked
6 about it, yeah.

7 Q Okay. What, while Mr. Warick was present, did David
8 Molina say?

9 A The only thing -- he, he never actually admitted to
10 doing anything in front of him. The only thing that I can
11 remember is that there was one time that he said that he put
12 his hand on the car and the garage door to get through
13 because it was, the car was parked real close to the garage
14 door, and in order to get through, you had to kind of step
15 over and jump between it. So -- and that there was, that
16 that's the only thing that I actually remember that was said
17 about that.

18 Q What did Warick say after that?

19 A He kind of looked at me.

20 MR. WILKES: I object.

21 SOLICITOR STEINBERG: I want to get to the response of
22 Mr. Molina. The, the question itself should not matter.

23 MR. WILKES: It, it does matter, Your Honor.

24 THE COURT: All right. I sustain the objection.

25 Q Did Mr. Molina, this defendant, make any statements

1 after that concerning, concerning the, that knowledge that
2 had just come out?

3 A Not that I remember.

4 Q Did Mr. Molina's statement about the car surprise you,
5 about jumping over the car?

6 A I think it was -- I already knew, but I think it was
7 more of an accident that slipped up at the time.

8 Q Did Mr. Molina say anything to either you or Mr. Warick
9 at that, at that time?

10 A Not that I can remember. I can't say that, you know,
11 unless I know it for sure I can't say it.

12 Q I understand.

13 Did you and David Molina ever have a falling out while
14 you were in jail?

15 A No, sir.

16 Q Did you ever have a discussion with him about, about
17 his girlfriend, about your suggestions concerning his
18 girlfriend?

19 A Well, I just told him that I think that sometimes it's
20 better to leave them, you know. I know that love is a
21 strong thing. But it's better to leave a woman alone and
22 let her go than to, you know, to keep confronting things, to
23 making things worse cause I been in situations. That's the
24 reason we talked about that was because I had been in
25 situations with women myself and had problems between us and

James Braswell - Direct examination
by Solicitor Steinberg

1 I said sometimes it's better just to let it go like that.

2 Q Okay. How did he respond to that?

3 A Just kind of saying that he cared about her, you know,
4 and it's hard to do that.

5 Q Did you ever come forward and admit to Mr.,
6 Investigator Wes Smith with any information?

7 A Yes, sir.

8 Q And what was your reason for doing that?

9 A Well, to be honest with you, they gave me a bond in
10 Greenville. They let me sign part of it. But they was a
11 \$6,000 bond they wouldn't let me sign. So, all I was
12 wanting to do is go to Pickens to work because they
13 wouldn't -- I wanted to get all my charges took care of at
14 one time is all I wanted.

15 I mean I knew I was gonna get some time. I wasn't
16 asking for any kind of leniency on time. I just wanted to
17 get my charges to where I could get it on down the road and
18 do my time and get out and go on with my life.

19 Q Did you wind up giving a statement to Investigator
20 Smith?

21 A Yes, sir.

22 Q I show you an item.

23 (Whereupon, the statement was marked as State's Exhibit
24 No. 21 for identification purposes only at this time.)

25 Q Thank you. Today is May 16th.

James Braswell - Direct examination
by Solicitor Steinberg

1 Can you tell us what day this statement is written?

2 A June 3rd, 2005.

3 Q Okay. And how soon after you spoke with Investigator
4 Smith did you write this statement?

5 A The same day I'm sure. Yeah, it was the---

6 Q Were you still living with David Molina at the time you
7 wrote this statement?

8 A Yes, sir.

9 Q Asked you a few minutes ago about questions concerning
10 how the attack went on. I'm gonna ask you to read---

11 MR. WILKES: Judge, I'm gonna object I think, and I am
12 objecting cause the witness is testified several things. He
13 did not recall or they did not happen, and I don't know if
14 this is a way to somehow impeach his own witness.

15 SOLICITOR STEINBERG: No, I'm asking to refresh his
16 memory.

17 MR. WILKES: He can not impeach his own witness.

18 SOLICITOR STEINBERG: It would be improper at this
19 stage. I'm going to ask him to refresh his memory.

20 THE COURT: Are you seeking to admit---

21 MR. WILKES: Your Honor, there's a difference between
22 refreshing his recollection and impeaching and having him
23 change his testimony.

24 SOLICITOR STEINBERG: No, sir.

25 MR. WILKES: I believe he's changing his---

1 THE COURT: Okay. Just a minute. I don't get to say
2 much. But when I do get to talk, I want to be heard.

3 SOLICITOR STEINBERG: Yes, sir.

4 THE COURT: All right. Are you trying to admit that
5 statement?

6 SOLICITOR STEINBERG: No, sir.

7 THE COURT: Okay.

8 SOLICITOR STEINBERG: At this stage I have no authority
9 to admit it. I want to have him identify it, read it,
10 refresh his memory.

11 THE COURT: All right. And you've had it marked?

12 SOLICITOR STEINBERG: Yes, sir.

13 THE COURT: Okay. All right. Well, you can proceed.
14 Go ahead.

15 SOLICITOR STEINBERG: Thank you, Your Honor.

16 Q Mr. Braswell, I'd like you to read from -- I ask you to
17 start reading of, from, for opposing counsel's
18 identification, Page 2 of 3. Probably about the third line
19 down.

20 Read through concerning my question earlier about the
21 attack. Like you to read, read that and refresh your
22 memory.

23 A The night that the incident---

24 Q No, sir, please read it to yourself.

25 A Oh.

James Braswell - Direct examination
by Solicitor Steinberg

1 Q And then---

2 A I'm sorry.

3 Q ---once you're done, if it's helped your memory, I will
4 ask you some questions.

5 (Pause.)

6 Q You through?

7 A Yes, sir.

8 Q Did the, reading that statement refresh your memory?

9 A Yes, sir.

10 Q And please tell the jury if you better recollect what
11 David Molina said about this, this assault.

12 A He said that there was -- I still -- I can't say
13 exactly what that said, but he said that he -- once -- he
14 came up, he actually thought two people were in the car at
15 the time, and he came to confront the boyfriend. Well, he
16 was not there.

17 So, the girl started -- I can't -- Nichelle started
18 screaming and he was trying to grab her to get her to be
19 quiet and that's when he had to use the force to get here to
20 shut up to keep from the noise being, you know, her
21 screaming and everything in the neighborhood, waking
22 somebody up, or whatever. So, that's, that's how the
23 incident -- that's what I could say about that.

24 Q Did he say to you how he was able to get over there in
25 the middle of the night?

James Braswell - Direct examination
by Solicitor Steinberg

1 A Yes, he said they had a friend that could work that, at
2 the plastic company where he worked at and that he would
3 sometimes punch his time card for him and --.

4 Q What did he say about the injuries to his former
5 girlfriend?

6 A He said they were awful. He said that you could see
7 inside of her mouth from the side and just said that I
8 mean---

9 Q Let me ask you this.
10 Did he say where he went after the assault?

11 A I can't recall that.

12 Q I'm going to show you the same document again. Please
13 look on Page 2 of 3.

14 MR. WILKES: Your Honor, I'm gonna object to
15 continually refreshing his recollection at the same time.

16 THE COURT: Well, he---

17 MR. WILKES: He either remembers or he doesn't.

18 SOLICITOR STEINBERG: Your Honor, there's a reason for
19 this rule.

20 THE COURT: Well, you're right. But you've got to lay
21 a little more foundation for that then what you're doing
22 right now. So --.

23 SOLICITOR STEINBERG: Thank you, Your Honor.

24 THE COURT: Okay.

25 Q Mr. Braswell, what day did you write this statement?

1 A June the 3rd of 2005, which is almost a year ago I
2 guess.

3 Q And since that time, has this been on your mind?

4 A No.

5 Q Everyday?

6 A Hu huh. (Negative).

7 No, no, I mean I've thought about it some. But not no.
8 I mean I work and I, I cut trees in a bucket truck 65-foot
9 in the air everyday. You know, I mean I cut trees on the
10 side of the roads in Pickens County, and I can't keep -- you
11 know, I got to know what I'm doing to being up there 65-foot
12 in the air, you know what I'm saying. So, I can't just keep
13 continually thinking on it, no.

14 Q Did you read that statement before you signed it and,
15 on June 3rd of last year?

16 A Yes, sir. Yes, sir.

17 Q And did it accurately reflect your recollection at that
18 time?

19 A Yes, sir. Yes, sir.

20 Q And how long before that statement was given had you
21 learned of this information?

22 A Well, I, I went in that cell probably in March. I
23 probably say probably at least a month before that or maybe
24 half, maybe fifteen to twenty days pretty much.

25 Q During the time period of that statement was written,

1 were you still talking to David Molina?

2 A Yes, uh-huh. (Affirmative).

3 Q Were you still talking about this case?

4 A Yes, sir.

5 Q And does reading that better recall your, your
6 understanding of this case?

7 A Yes, sir, because at the time I mean, you know, I knew
8 right then -- I mean it was refreshed in my mind then. But
9 now, like I say, I mean I cut trees. I can't keep dwelling
10 on stuff. I got to keep my mind clear in order to do my
11 job.

12 MR. WILKES: Thank you, Your Honor. I ask that the
13 witness be allowed to read the statement again or parts of
14 it.

15 MR. WILKES: Oh, I renew my objection, Your Honor. I
16 think every question he gets to refresh his recollection, I
17 don't think that's refreshing his recollection. I think
18 that's creating a recollection.

19 SOLICITOR STEINBERG: Well, Your Honor, if the
20 recollection was created, he has a right to look at his own.
21 It's not somebody else's document.

22 THE COURT: Well, he has a right to look at the
23 document and then you can ask him the questions.

24 SOLICITOR STEINBERG: Thank you, Your Honor.

25 THE COURT: Okay. But he can't read it.

1 Q I don't want you to read from the statement. I want
2 you to just read it to yourself and I'm gonna ask you a
3 couple more questions.

4 I'd like you to read from about the middle part down---

5 A I remember---

6 Q ---towards -- read from the middle part down towards
7 the end.

8 A (Witness complies.)

9 Oh, yeah.

10 Q Okay. You said oh yeah?

11 A Yeah, I, I -- yeah.

12 Q Does that help you remember?

13 A Uh-huh. (Affirmative).

14 Q Thank you, sir. I'm gonna ask you that same question.

15 Do you recall what he said about where he went

16 following the assault?

17 A He said that he, he left and then she called, said that
18 she called him before, actually called him before she called
19 the police, and asked him to come there to back -- he went
20 back to the house or he went to her house.

21 Q Did he say why he went to her house?

22 A He said that -- pretty sure he -- I mean he said that
23 she had called him before she even had called the police to
24 ask him to come there.

25 Q Did he say where he was when he received this telephone

1 call?

2 A He said he got there in like five minutes or something.
3 I, I -- that's all I can remember. I can't, I can't say
4 that -- you know, I could say that it was within five
5 minutes cause it wasn't long after, you know, he got there
6 within five minutes because he beat -- I'm pretty sure --
7 I'm sure he said he got there before the police did. So,
8 it's pretty, had to be pretty close by.

9 Q I asked you earlier if David said anything about his
10 future with Nichelle.

11 A Right.

12 Q And, and you answered, but I'm going to ask you to look
13 only at Page 3, 3.

14 MR. WILKES: Your Honor, again, I'm gonna object. He's
15 got to ask the question---

16 THE COURT: I agree.

17 MR. WILKES: ---and give the witness---

18 THE COURT: Sustained.

19 Q Mr. Warick, Mr. Braswell, do you remember any other
20 statements or predictions that Mr. Molina said was going to
21 happen involving his former girlfriend, his intentions for
22 her, his desires for her?

23 A He said that -- he, he did say that he would get her
24 for what she, she had done to him, that how could she do
25 this to him meaning being with the other guy. She said how

1 could he do this to me. I mean how could she do this to me,
2 I loved her, and he said I'll get her.

3 I remember that much. I can't say what I don't
4 remember and I won't -- you know, I can't -- that's what I
5 remember.

6 Q You said the words he said he'd get her.

7 Do you remember his words or are those his words or are
8 those your words?

9 A As far I remember, it's, those were his words.

10 Q When you spoke with Investigator Smith, how did you
11 know to get into contact with Investigator Smith of all of
12 the officers?

13 A Because he had worked a case that I -- some -- the
14 burglaries that he had mentioned before, he had worked that
15 case, and Molina told me that he was prejudiced, that he
16 would, that he thought all Mexicans or Spanish people, in
17 other words, were bad, and that, that he was a sorry piece
18 of, you know what I mean. You know, he was not a good
19 person. That he would even actually told me that he would
20 deal---

21 MR. WILKES: I object.

22 Q Yes, that's not at all my question.

23 My question is did Molina, David Molina ever mention
24 Wes Smith's name?

25 A Yeah, uh-huh. (Affirmative).

James Braswell - Direct examination
by Solicitor Steinberg

1 Q Okay.

2 A Right.

3 Q Okay. Up to this point of June 3rd, had you ever
4 spoken to Wes Smith concerning David Molina?

5 A No, I think that was the first time.

6 Q And how did you make contact with Investigator Smith?

7 A I had written him a letter.

8 Q Did you give a statement, the statement you gave to
9 Investigator Smith, was this in part of a promise or an
10 agreement?

11 A No, I just told him that, you know, I thought what
12 happened to the girl was very bad, that I didn't like that,
13 and that's the reason I was, you know -- I, I don't like --
14 I mean I've got two daughters of my own, and if somebody did
15 that to my daughters, I'd want something done to them and
16 actually I'd probably do something to them, to them myself,
17 you know. But I'm just saying, you know, I don't think it's
18 right for somebody to be treated that way. Especially a
19 woman or a child.

20 Q Did Officer, Investigator Smith offer you any money?

21 A No, sir.

22 Q Did he offer to take care of any charges for you?

23 A No, sir.

24 Q What, if anything, did he attempt to do for you?

25 A He tried to get my, the, my parole officer to put the

1 charges in, you know, get my charges up here where I could
2 get it took care of. You know that's all I wanted to do. I
3 knew I was going to get time, you know. He tried to get her
4 to do that, but they wouldn't do that.

5 The parole is actually still on me right now. It's
6 never been taken care of yet. So, it was nothing -- I mean
7 that was not promised to me. I mean that's all he tried to
8 do, but he couldn't, in other words.

9 Q Okay.

10 A It was a different county. And, you know, they
11 wouldn't do it. They would not do it.

12 Q In the end, did you get a benefit from your meeting
13 with Investigator Smith?

14 A I ain't got nothing but bad times out of it to be
15 honest with you. I mean I been stuck up here for two days
16 in that cell downstairs with these shackles on, and I've
17 worked hard to get to where I'm at in the A custody camp to
18 do that. And it ain't done nothing but caused me heartache
19 to having be up here and it's been rough.

20 Q Are you receiving any benefit from testifying here?

21 A Not a thing.

22 Q Are you receiving any benefit for your two, for your
23 two days here?

24 Not for testimony. But being here two days.

25 A No, sir, not a thing.

James Braswell - Direct examination
by Solicitor Steinberg

1 Q After your meeting with Investigator Smith, where were
2 you brought back to?

3 A To Greenville, to the -- oh, to the Greenville
4 Detention Center, yeah.

5 Q Did you have another meeting with Investigator Smith?

6 A Yes, sir.

7 Q During that meeting, were you given any promises or
8 offers?

9 A No, he just, he said that he was seeing what he could
10 do about that parole thing. But it didn't get done, you
11 know what I'm saying.

12 Q After you were brought back to the detention center
13 following that meeting, what happened?

14 A I went to court.

15 Q No, I'm talking about the second meeting.

16 A Where you -- oh, I was moved. I was moved to yellow
17 pod.

18 Q Okay. And how soon after you were brought back to the
19 detention center were you moved?

20 A Within twenty minutes I'd say I mean cause it was
21 pretty soon.

22 Q Who brought you back to the detention center?

23 A Mr. Smith.

24 Q You pled guilty in August 2005?

25 A Yes, sir, August 3rd.

1 Q In preparation for this trial, have you been promised
2 anything by law enforcement?

3 A No, sir.

4 Q Why are you testifying today?

5 A Because of that girl that got hurt.

6 MR. WILKES: I object, Your Honor. I---

7 SOLICITOR STEINBERG: He misunderstood me.

8 THE COURT: Sustained.

9 Q Thank you, sir. Please answer any of opposing
10 counsel's questions.

11 THE COURT: Cross-examination, Mr. Wilkes.

12 MR. WILKES: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. WILKES:

15 Q You indicated in your testimony that you used the
16 phrase to me it seemed violent, he was being violent.

17 You're a good judge of violent?

18 A That kind of violence, yes.

19 Q Okay. How would you characterize your assault on the
20 police officer?

21 Do you characterize that as being violent?

22 A Well, it may have been, but it happened -- I was
23 running away from the officer and my arm hit the officer. I
24 didn't forcefully attack him.

25 Q Okay. Did you plead guilty to that?

James Braswell - Cross-examination
by Mr. Wilkes

1 A Yes, sir, I did.

2 Q And you say it was violent or wasn't violent?

3 A Was not violent.

4 Q You said it was not violent that you pled guilty to?

5 A Right.

6 Q Okay. And you were running away from the officer?

7 A Right.

8 Q Is that what you said at your guilty plea?

9 A Yes, sir, sure did.

10 Q Okay. And you claim that that was not violent?

11 A I didn't say -- no, I didn't say anything about it
12 being violent. But I knew the charge was not violent.

13 Q If we play that, would you like to hear yourself
14 telling the judge that assaulting the police officer wasn't
15 violent?

16 Would, would you -- could I recollect, refresh your
17 memory---

18 A Yes, sir.

19 Q ---with that?

20 A If you want to, yeah.

21 MR. WILKES: Your Honor, can we play that tape from his
22 plea where he tells the Court that assaulting the officer
23 was not violent?

24 SOLICITOR STEINBERG: I don't, I don't think he's
25 denied---

James Braswell - Cross-examination
by Mr. Wilkes

1 A I can, I can give you -- I can answer that without you
2 having to do that I mean if that's what, if that's what I --
3 okay.

4 Q You would like to change your testimony?

5 A Well, yeah, I say what---

6 Q You did tell the judge it was violent?

7 A I did not remember that. But now that you, you
8 refreshed my memory on it, and what I -- actually what, I
9 don't think I actually said it's not violent. I actually
10 said---

11 Q Do you want to---

12 A ---I did not mean to -- I was not fighting him.

13 MR. WILKES: Your Honor, I'd like to listen to that
14 tape.

15 SOLICITOR STEINBERG: No objection.

16 MR. WILKES: If we can play that portion of the tape,
17 Madam Court Reporter, briefly.

18 (Whereupon, a portion of the guilty plea of Mr.
19 Braswell was played for the jury at this time.)

20 Q Do you remember or not?

21 A Yes, sir, I do.

22 Q And what did you tell the judge?

23 A I told him that I didn't think it was violent.

24 Q You did not think it violent.

25 Okay. You pled guilty to that, is that right?

James Braswell - Cross-examination
by Mr. Wilkes

1 A Yes.

2 Q All right. Do you have -- when was the last time you
3 saw a copy of the letters that you sent Wes Smith?

4 A I, I have -- I mean I don't have one now. I have one I
5 think -- no, I didn't never had -- I've never had a copy of
6 it. I haven't---

7 Q When was the last time you saw a copy of the letter you
8 sent to Wes Smith?

9 A Probably when I wrote it.

10 Q Okay. You haven't been over that, talked about that
11 since?

12 A No.

13 Q Okay. So, do you recall what's in that letter?

14 A No.

15 Q Would you need that to refresh your recollection?

16 A Sure.

17 Q If I asked you by chance did you write him and say I
18 need help with some charges, would you think that's
19 possible?

20 A Oh, yeah. Yeah, I know, I knowed what that said.

21 Q Okay.

22 A I don't need it.

23 Q Didn't you just testify a minute ago you didn't ask for
24 anything?

25 A Well, I asked -- no, actually I did testify that I

1 asked him to get the charges together and everything and all
2 that. I think I did say that.

3 Q And you said get your charges together.

4 Did you -- you said, didn't you, you just, you weren't
5 pleading guilty, you were going to trial, right?

6 Did you tell Wes Smith that in the letter?

7 A Yeah, but what I asked for was the parole, the parole.
8 See that's not -- it's no trial to that. I can't take that
9 to trial.

10 Q But did you tell Wes Smith you needed some sort of
11 help, and you wanted to get to Pickens, you wanted to go to
12 trial on some charges?

13 A Oh, yeah.

14 Q Did you say -- did you go to trial on those charges?

15 A No.

16 Q You pled guilty?

17 A Yeah, cause my lawyer told me that would be the best in
18 my interest.

19 Q If you get a deal, it would be really good, wouldn't
20 it?

21 A Right.

22 Q Good.

23 And you got a deal, didn't you?

24 A Well, actually it was suppose to have been a deal. I
25 was suppose to got a five year cap, but I actually got four

James Braswell - Cross-examination
by Mr. Wilkes

1 years plus three years probation. So, that's actually seven
2 years.

3 Q So, you got a deal the way---

4 A Either way -- so, that's not the deal that -- no, I
5 didn't get the deal that --.

6 Q You didn't get the deal you were suppose to get, did
7 you?

8 A That my lawyer had set up, no.

9 Q Okay.

10 A No, I didn't.

11 Q Exactly.

12 And all of this started with you writing Wes Smith that
13 letter and saying I need some help, right?

14 A No, because that's not the help I asked for in that
15 letter. That's -- the help I asked for was totally
16 different from that.

17 Q You wanted something to do with Pickens probation?

18 A Yeah, cause I couldn't get these two -- I couldn't
19 get -- I knew I was going to go down the road on a parole
20 violation. It was parole. I wanted to get it done and over
21 with. They would not do that for him.

22 That's what I wanted. That's the only thing I asked
23 him for. That's the only thing I wanted is, is that.

24 Q Okay. Well, what is the solicitor here have to do with
25 Pickens County charges or parole?

1 A I mean they have nothing to do with it because they
2 could---

3 Q Well, why did Wes Smith call the solicitor here and
4 talk about anything with your charges with the solicitor?

5 A I don't know. I mean I---

6 Q Why would the solicitor recommend a cap of five years
7 on your charges?

8 Was that the deal that your attorney had worked out?

9 A Yeah, uh-huh. (Affirmative).

10 Q Okay. Now, you know the solicitor was aware that you
11 were a witness in some sort of assault case, correct?

12 A It was a female solicitor. I don't -- no, I don't
13 know. I'm not -- no, I wasn't aware of that, no.

14 Q You'd be surprised if Wes Smith, Wes Smith over here
15 had talked to her, wouldn't you?

16 A Well, it would surprise me that he could get anything
17 done cause what I asked him to do he couldn't get it done.

18 Q But if he did get something done that would be a good
19 thing?

20 A I mean really, just being honest with you, you know it
21 would really surprise me that he could do anything that I
22 asked him cause he didn't do what I asked him to do for me.

23 Q But it didn't work out that bad, did it?

24 A Well, actually it did, yeah, because I wanted the time
25 and no probation.

James Braswell - Cross-examination
by Mr. Wilkes

1 Q Oh, okay.

2 A But I ended up getting seven years out of a five year
3 cap. So, that's not a deal to me.

4 Q Okay.

5 A Seven years out of a five year cap, that's seven years
6 all together.

7 Q You got seven years on the charges here?

8 A I got four years and three years probation. While
9 you're on probation, that's the same thing as, you know, I
10 mean you're still actually under those charges.

11 Q Yeah.

12 A If I violate anything on those charges, they go back
13 and give me the whole thing of time to do if I was to
14 violate that probation, yeah.

15 Q What were all, what were all those charges you pled
16 guilty to here?

17 A Two breaking into a motor vehicles, two grand
18 larcenies, failure to stop for a blue light, and assault on
19 an officer while resisting arrest.

20 Q And do you remember what the total amount of years you
21 faced was?

22 A No, not exactly.

23 Q It was a lot, wasn't it?

24 A Probably was, yes, sir.

25 Q What's the difference between consecutive time and

James Braswell - Cross-examination
by Mr. Wilkes

1 concurrent time?

2 A Consecutive means it's -- you do one sentence and then
3 you have to start on the next sentence.

4 Q And concurrent would be --?

5 A Concurrent means everything's running together.

6 Q Okay. And you know these things because you have had
7 sentences before?

8 A Right.

9 Q You have a pretty lengthy record, don't you?

10 A Oh, yeah.

11 Q And you know that that has a big affect on what a judge
12 might do in a case in sentencing?

13 You agree with that?

14 A That the---

15 Q Do you think that your nine prior burglary seconds
16 might have had something to do with sentencing?

17 Could be?

18 A Oh, yeah, sure.

19 Q Was not a good situation for you, was it?

20 A Oh, I could of beat those charges if I wanted to. I
21 just didn't go, didn't take them to trial because I mean if
22 I went to court and I didn't win, for some reason that I
23 didn't win, I'd get the whole thing.

24 So, why take a chance?

25 I, I was facing 155 years on them parole, on them

1 burglaries charges. I pled guilty to five years probation.

2 Q That's a deal.

3 A And you're facing all that time. And they didn't have,
4 didn't none of them help me then.

5 Q Okay.

6 A I mean they was -- you know, you see where I'm coming
7 from?

8 It's all basing down on them helping me. Didn't none
9 of them help me then that I got five years probation out of
10 155 years.

11 See what I'm -- do you see where I'm coming from?

12 Q I do absolutely see where you're coming from.

13 Let me ask you this.

14 You said Mr. Molina talked about his case?

15 A Oh, yeah.

16 Q Everybody talked about their case, didn't they?

17 A Oh, yeah, I did too, yeah.

18 Q Everybody did that?

19 A Sure.

20 Q Now, let me ask you a question.

21 If you're incarcerated, you're in kind of a jam facing
22 a whole bunch of years, 150 years or whatever, what you got
23 to bargain with?

24 A I didn't bargain with nothing on that 100 years.

25 Q You don't have anything to bargain with, do you?

James Braswell - Cross-examination
by Mr. Wilkes

1 A Hu huh. (Negative).

2 Q Now, let's say this, let's say there's a case, tough
3 case because it's just not that evidence there, let's say
4 that---

5 SOLICITOR STEINBERG: Objection to that.

6 THE COURT: Sustained.

7 Q Okay. You have nothing to bargain with in jail with
8 the police on your case, do you, other than you could of
9 beat them?

10 But other than that, if you were gonna plead guilty,
11 did you have any bargaining room?

12 A Actually I could have, yeah.

13 Q Okay.

14 A Because the, the person that the stuff was said to
15 belong to---

16 Q Uh-huh. (Affirmative).

17 A ---had, he had been caught for running a chop shop and
18 they were a bunch of stolen goods at his house too. So,
19 yeah, actually I could of, I could of bargained if I wanted,
20 you know, if I wanted to do that to somebody. But if that
21 man stole something, in my eyes if somebody steals
22 something, it's no where near as bad as hurting a person,
23 hurting a human being and---

24 Q Like a police officer?

25 A ---and messing them up for life.

James Braswell - Cross-examination
by Mr. Wilkes

1 Q Like a police officer?

2 A Well, I mean I can't---

3 Q Like a police officer?

4 A I mean what I did was wrong, you're right, you know,
5 and I got time for it, you know.

6 Q Right.

7 A I admit what I did was wrong.

8 Q Now, if -- and, and you said he, you talked to
9 Mr. Molina about the case?

10 A Oh, yeah.

11 Q You read some of the documents, right?

12 A (Witness nods affirmatively.)

13 Q If Mr. Molina had told you about the case or you had
14 read some documents about the case, would you be able to
15 take and call a detective, write the detective, and just say
16 he admitted to it?

17 A Yes, if, if he admitted to it to me, yeah.

18 Q And if he didn't admit to it, would you be able to call
19 and say he admitted to it?

20 A No.

21 Q Why not?

22 A Because why would I, why would I want to do that?

23 Q That's a good question for a man that's facing 150
24 years.

25 A I wasn't facing 150 years on those charges.

James Braswell - Cross-examination
by Mr. Wilkes

1 Q You were facing a lot of years.

2 A Well, I mean three years on the failure to stop first
3 offense. I think up to ten on the assault. Ten, ten, maybe
4 55---

5 Q Okay.

6 A ---or around in the area.

7 Q Okay. That makes a difference.

8 A But that's not why I done it. He can say all he wants
9 to do. That's not why I done it. That ain't why I called.

10 Q Did you call or did you write a letter?

11 A I wrote a letter.

12 Q Now, everything in your statement, all this details,
13 things that you say he told you or might some of those be
14 from what was in other people's statements that you read?

15 A I never read nobody, anybody else's statement.

16 Q I thought you said you read some statements.

17 Didn't you say that just a minute ago?

18 A I never said I read them. I said I saw them. I
19 didn't---

20 Q Saw them.

21 A Yeah.

22 Q Oh, okay.

23 And you never read any of the discovery?

24 A Well, I mean I read a few things, yeah. But this was,
25 this statement that I gave was before this, the discovery

James Braswell - Cross-examination
by Mr. Wilkes

1 even got there. The statements that I gave was before he
2 received the discovery.

3 Q Where are those three letters?

4 You sent three letters, didn't you?

5 A I think so.

6 Q Okay. So, at the time you sent the letter and in that
7 letter you, you needed help, you made that clear to him, and
8 then you meet with him after that, he meets with you, right,
9 to give a statement?

10 You write him another letter saying I need more help or
11 does---

12 A No, I -- what's going on was actually what I wanted to
13 know was about the parole. What was going on -- I mean I
14 hadn't heard anything and --.

15 Q All right. And Deputy Smith is, of course, a parole
16 officer?

17 A No.

18 Q No.

19 Why isn't he?

20 A He -- I mean I just needed help to get the parole done,
21 you know. But I didn't. It didn't help me. It still
22 didn't help me. I'm here now. I never got the help. Never
23 got any help whatsoever from it.

24 Q You had got a---

25 A A try.

James Braswell - Cross-examination
by Mr. Wilkes

1 Q ---a recommendation---

2 A A try.

3 Q You got a recommendation of a cap?

4 A No, I didn't get that. As far as I know in my, and I
5 put my hand on that Bible and I'm gonna tell you the truth,
6 as far as I know I never got any help from any of those
7 people sitting right there in front of me. My lawyer told
8 me that he---

9 MR. WILKES: I object.

10 A ---got that done.

11 MR. WILKES: Your Honor?

12 A But I'm just saying, you know, that's the way it---

13 Q So, you didn't get any help?

14 A Hu huh. (Negative).

15 Q Didn't look for any or you did look for it, but you
16 didn't get it?

17 A I looked for help on the parole, yeah, I sure did.

18 Q Did you -- eventually you're getting something done.

19 Why did you write him the third letter?

20 A To find out if he, if they was gonna do anything or
21 not, if they was going to or not. And he said he had
22 contacted them and they couldn't do that because it was
23 parole and it was in Pickens County and they couldn't put it
24 together with the Greenville County stuff. I wanted to get
25 it all together. They couldn't do that.

James Braswell - Cross-examination
by Mr. Wilkes

1 It's a different court system. You don't go to court
2 for parole violation.

3 Q Okay. The bottom line is you've got nine burglary
4 first from before on your record among other charges, five
5 forgeries, you plead guilty, how long ago was that?

6 Did you -- well, how long was that?

7 A August 1st.

8 When I pled guilty---

9 Q Yeah?

10 A ---on these charges here?

11 Q Uh-huh. (Affirmative).

12 A August 1st of last year.

13 Q Would that be within days after the second or third
14 time that you met with Detective Smith?

15 A Yeah.

16 Q And why did you get moved out of Mr. Molina's cell?

17 Why did you get moved out of the cell that you were in?

18 A Because Mr. Smith thought it would be best for me to
19 get moved out of there because, you know, endangering
20 myself.

21 Q Cause he was done with you?

22 A Well, if he was -- what would that, what would that
23 have to do with it?

24 Q Well, I mean---

25 A I mean I was still in the jail. I went to a different

James Braswell - Redirect examination
by Solicitor Steinberg

1 pod, a different place. Yeah, a different cell block.

2 Q I have nothing further. Thank you.

3 SOLICITOR STEINBERG: Very brief questions.

4 THE COURT: All right.

5 REDIRECT EXAMINATION

6 BY SOLICITOR STEINBERG:

7 SOLICITOR STEINBERG: Let me have this marked, Madam
8 Court Reporter.

9 (Whereupon, a letter was marked as State's Exhibit No.
10 22 for identification purposes only at this time.)

11 Q Mr. Braswell, I want to show you this letter.

12 A Yes, sir.

13 Q Please identify it as State's Exhibit No. 22 for
14 identification.

15 You said -- is that -- did you write that letter?

16 A Yes, sir.

17 Q You said you wrote three letters?

18 A Yes, sir.

19 Q Which one of those letters is that in order if you can
20 tell?

21 A I'm pretty sure this is the first letter.

22 Q Okay. And how long is it?

23 A Maybe nine or ten lines.

24 Q In that letter, do you remember where you sent it?

25 Is there an address on that, either that or on the

James Braswell - Redirect examination
by Solicitor Steinberg

1 envelope?

2 A May the 31st looks like.

3 Q Okay.

4 A On the envelope it looks like May the 31st postmark.

5 Q Okay. And in that letter, did you ask for any

6 favors---

7 A No, sir.

8 Q ---from Investigator Smith?

9 A Not, not one. Not whatsoever, no.

10 Q In your heart, did you want him to do something for you
11 though?

12 A No, I just -- at the time when I wrote that letter, he
13 was -- I mean I just felt -- I just felt bad about what had
14 happened.

15 Q Okay. When you actually met him, how many days after
16 that did you meet Investigator Smith?

17 A I'm not sure. But it was probably a few days, a couple
18 days. I'm not exactly sure. At least three I think.

19 Q When you actually met him, at that time did you ask him
20 about help with your parole charges?

21 A I think I did.

22 Q In a later letter after that meeting did you request
23 additional help?

24 A I think so.

25 Q Okay. You had a deal to enter a, a guilty plea to get

James Braswell - Redirect examination
by Solicitor Steinberg

1 a cap of five years, the cap?

2 A Yes, sir.

3 Q And was that any part of this---

4 A No.

5 Q ---testimony?

6 A As far as I know, no, it was not. I mean---

7 Q Do you remember, during your guilty plea, making any
8 mention of this testimony or assisting the State?

9 A No, sir.

10 Q Do you have -- do you feel any obligation to testify
11 for the State in this case?

12 A No, sir.

13 Q Do you have any particular loyalty to either myself or
14 to Investigator Smith?

15 A No, sir.

16 Q Is you, are you, is you testifying today going to help
17 you with any legal problems or charges that you---

18 A No, sir, I---

19 Q ---still have?

20 A No, sir.

21 Q Thank you, sir.

22 RECROSS EXAMINATION

23 BY MR. WILKES:

24 Q Did you say that the second letter you asked for no
25 help of any kind?

James Braswell - Recross examination
by Mr. Wilkes

1 A The first letter.

2 Q The first letter you didn't.

3 The second letter you did.

4 A Right, that -- I had already talked to him then and
5 yes, yes, I did. I did.

6 Q Okay. So, the third letter, did you ask for---

7 A Yes, I think the third letter was wondering why I
8 didn't get any help actually, yeah. I'm sure I, I'm sure I
9 did. But I still didn't get any help.

10 Q Now, the solicitor hasn't shown you this second or
11 third letter, has he?

12 A No, but I know what it says. I mean I know I did ask
13 for -- yes, I did ask for help.

14 Q Thank you. Nothing further.

15 THE COURT: All right. You can step down, Mr.
16 Braswell.

17 Okay. Let me see the lawyers up here real quick if we
18 could please?

19 SOLICITOR STEINBERG: Thank you, Your Honor.

20 (Whereupon, a bench conference was held at this time.)

21 THE COURT: All right. Ladies and gentlemen, we're
22 gonna break now for the day. And remember, don't discuss
23 the case with anyone. Don't do any outside investigation
24 and continue to keep an open mind. You haven't heard all
25 the evidence yet.

1 So, thank you for your patience and cooperation.
2 Have a good evening.
3 Nine o'clock tomorrow morning.
4 Thank you.

5
6 (Whereupon, Court was in recess for the evening.)
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1 Wednesday, May 17th, 2006

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3 THE COURT: Okay. Are y'all ready for the jury?

4 MR. WILKES: Yes, sir, I have just one housekeeping
5 matter.

6 THE COURT: Okay.

7 MR. WILKES: I have a -- the, the photographs that we
8 were holding off until we could redact them appropriately.

9 THE COURT: Right.

10 MR. WILKES: We've done that and I believe we've agreed
11 on the admission of them as they are in their redacted
12 state.

13 THE COURT: Okay.

14 (Whereupon, the contact sheet was marked as Defendant's
15 Exhibit No. 3 and received into evidence at this time.)

16 MR. WILKES: I'm not sure what number that will be.

17 (Pause.)

18 THE COURT: Okay. You can bring them on in.

19 (Whereupon, the following takes place within the
20 presence of the jury.)

21 THE COURT: Okay. Good morning, ladies and gentlemen.
22 We're going to resume the testimony in just a minute. But I
23 just want to let you know we're gonna break from about 11:00
24 to 1:00 and the reason for that is I've got to go to the
25 doctor. I've got some kind of sinus issue going on. That's

Sara Lee Drawdy - Direct examination
by Solicitor Steinberg

1 the time he could see me. So, I apologize for that awkward
2 lunch break.

3 But with that, go ahead, Mr. Steinberg.

4 SOLICITOR STEINBERG: Thank you, Your Honor.

5 State's first witness will be Sara Lee Drawdy.

6 SARA LEE DRAWDY, being first duly
7 sworn, testified as follows:

8 CLERK: State your name for the record.

9 WITNESS: Sara Lee Drawdy.

10 DIRECT EXAMINATION

11 BY SOLICITOR STEINBERG:

12 Q Morning, Ms. Drawdy.

13 How are you today?

14 A Fine. Thank you.

15 Q Can you please tell the jury what your occupation is?

16 A I'm an assistant solicitor here in the 13th circuit.

17 Bob Aerial's office.

18 Q And am I also in that office?

19 A Yes, you are.

20 Q What division or section do you work in that office?

21 A I head up the traffic unit. We prosecute primarily
22 DUI's, driving under suspension, Felony DUI, reckless
23 homicide.

24 Q Okay. Just to give the jury some information, are
25 either myself or Investigator Smith either in your chain of

Sara Lee Drawdy - Direct examination
by Solicitor Steinberg

1 command above or below?

2 A No.

3 Q Did you handle any cases involving James David
4 Braswell?

5 A Yes, I did.

6 Q And was one of these charges a traffic charge?

7 A Yes, it was.

8 Q Did you ever make any phone calls on his behalf?

9 A No, I did not.

10 Q And were you ever asked to make any phone calls on his
11 behalf?

12 A No, I was not.

13 Q And did you ever give him any benefits as far as the
14 guilty plea?

15 A No, I did not.

16 Would you like some explanation of how I arrived at
17 what I offered?

18 Q Yes, ma'am. Wait one second.

19 A All right.

20 Q I'll get to that. I don't want to confuse myself.

21 A Okay.

22 Q When -- did you speak to Investigator Wes Smith about
23 this matter?

24 A Yes, I did. He contacted me probably a month or two
25 before the plea actually occurred.

1 Q Okay. And following that conversation, did you do
2 anything to assist the defendant in any way?

3 A The only assistance I got was to have him transported
4 to the courthouse for his plea. I knew that he was on
5 probation because Mr. Smith told me and that he wanted to
6 plead.

7 He had an issue with his probation in Pickens County.
8 He wanted to dispose of the charges that I had on him so he
9 could be released from our custody in Greenville County to
10 go to court to handle that charge. So, in that sense, it
11 was assistance, but it's something I would of done anyway to
12 dispose of the charges I had against him.

13 Q Let me ask a question.

14 When you say dispose of charges, do you have a lot of
15 cases?

16 A I carry approximately 300 cases continuously throughout
17 the year. I have new ones coming in as the others one go
18 out.

19 Q Is there any benefit to you when inmates plead?

20 A Yes, it is. I have, I have time limitations on when I'm
21 suppose to handle the pleas or the trials. I attempt to get
22 a guilty plea if at all possible because I usually dispose
23 of about 300 cases a year. There's no way I can try 300
24 cases in a year. So, most of them, the great majority are
25 guilty pleas.

1 Q Did you make any offers to Mr. Braswell concerning your
2 charges?

3 A Not to him directly. I did it through his attorney,
4 Chris Posey.

5 Q Okay.

6 A I never actually spoke with Mr. Braswell, but I did
7 make an offer on the day of the plea.

8 Q What was the offer that you made?

9 A If I could look at my summary sheet so I would be
10 accurate I'd appreciate it.

11 (Pause.)

12 A I made a recommendation to the Court, which is only a
13 recommendation. It's not binding on the Court. A cap of
14 five years concurrent and restitution to the victims.

15 Q What is a cap?

16 A A cap is simply, simply that we're recommending he give
17 him no more than five years.

18 Q What were your considerations when you made your plea
19 agreement, the offer?

20 A What I do is I consider what I determined from my
21 knowledge of the judge, the type of sentences that he gives,
22 what is traditional or common in that type of case given the
23 defendant's record, and I recommend what I feel the Court
24 would give the defendant any way on a straight up plea. A
25 straight up plea is a plea without recommendation.

1 I also took into account that I wanted that restitution
2 to be paid to the victims. If the sentence is too long or
3 too draconian, typically the victims are left out in the
4 cold and restitution is not ordered.

5 Q One of the charges -- well, was one of the charges
6 resisting arrest with assault?

7 A Yes, it was.

8 Q As part of the Solicitor's Office policy, do you have
9 to notify officers for charges?

10 A Notify --?

11 Q Of, of pending charges that you might have against a
12 defendant.

13 A The officer of --?

14 Q The officer who makes the charge.

15 A Oh, you mean that we are going to court?

16 Q Going to Court or for a plea.

17 When you first get a case, do you notify the officer or
18 ask for his input?

19 A Oh, yes, we took -- we send a form to the officer and
20 ask -- it's a standard form with check offs, and an
21 opportunity for them to give a narrative response if they
22 want to give more details, and then they give us their
23 feelings about the case.

24 Q Without saying what was said, did the officer on the
25 resisting arrest respond to you?

1 A Yes, he did.

2 Q You factored that into your guilty plea?

3 A Yes, I did.

4 Q When was the first time you realized that you were
5 going to be called as a witness in this case?

6 A I think I realized it some time last week. I knew that
7 it might be a potential a few weeks before that when you
8 contacted me to ask me if I recalled anything about this
9 case. But I didn't actually know that I, it was a real
10 potential until late last week.

11 Q Did you speak to counsel, Mr. Wilkes, about this case?

12 A Yes, I did.

13 Q Okay. And have you reviewed your file recently?

14 A Yes, I have.

15 Q Is there any indication that you made a plea offer
16 having reviewed, outside of what you've already said, having
17 reviewed your file?

18 A No, there's not.

19 Q If someone was going to testify in the future, would
20 you have, have them plead guilty to all their charges?

21 A Typically what is done in that situation, if there's
22 some kind of discussion in a case that I have and this was
23 your case, so you didn't ask me to do anything, but what I
24 would do is have them plead guilty, explain to them that the
25 sentence, sentencing would be deferred after they pled

1 guilty, and we would inform the Court at the time of
2 sentencing that they had been cooperative and that they had
3 given truthful testimony.

4 We're not interested in untruthful testimony. We're
5 interested in talking with the defendant, pardon me, well
6 they are defendants in another case typically, but talking
7 with a witness, potential witness, finding out what they
8 will testify to. And then once we know that, we say if
9 you -- we want you to testify truthfully. And if you come
10 to court and do so and don't change what you've told us, we
11 will tell the Court at the time of sentencing that you were
12 cooperative and you gave truthful testimony in one of our
13 cases.

14 Q Did you have any charges hanging over Mr. Braswell's
15 head after he pled guilty?

16 A No, I did not.

17 Q Did you make any plea offer in your case regarding him
18 testifying in this case today?

19 A No, I did not.

20 Q Thank you, ma'am. Please answer any of opposing
21 counsel's questions.

22 THE COURT: Cross-examination, Mr. Wilkes.

23 MR. WILKES: Okay.

24 CROSS-EXAMINATION

25 BY MR. WILKES:

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 Q Did you just say if you don't -- if you tell a
2 defendant, if he doesn't change or you said, as a rule, if
3 you, if the defendant doesn't change his testimony, then
4 you're gonna go to court and tell the judge he's been
5 truthful so that will help him?

6 A We interview him---

7 Q Wait.

8 First, did you say that?

9 A Something to that effect. I don't know if that's exact
10 words. But yes.

11 Q Okay. So, you would agree that you have a pretty large
12 impact on what might happen in a guilty plea as far as
13 sentencing?

14 A If I've waited to have him sentenced, yes.

15 Q Do you think that what the solicitor says during a
16 guilty plea can influence a judge's decision?

17 A Certainly.

18 Q Okay. Is that not the purpose of the solicitor
19 presenting certain facts background?

20 A Yes.

21 Q Does the Court have any other way to know anything
22 about a case other than the facts that the defendant, that,
23 that are presented by the prosecution at, absent the
24 defendant getting to say something as well?

25 In other words, the, the judge, the Court, at a guilty

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 plea, hears what the solicitor says are the facts?

2 A You've asked me a lot of questions in one question.

3 Let me answer each one.

4 Q Okay. Okay.

5 A Yes, there are several courses. One is what the
6 defendant or his counsel tells. What is the original
7 presentation at the guilty plea. The -- what the solicitor
8 presents at the beginning of the plea. The Court also
9 occasionally asked additional questions that the solicitor
10 may answer.

11 Q And have you ever, in a serious case or a case that you
12 thought was serious or warranted it, have you ever told a
13 judge that you think that a person should not get probation
14 or should not get a life sentence?

15 A I do that in my initial recommendation.

16 Q Okay. Now, you would agree with me you have a, a sheet
17 that was used at the time of the plea in your file?

18 A Yes.

19 Q And you have with that a handwritten note that
20 indicates Wes Smith called you, is that true?

21 A That is also in my file. It's not associated with the
22 guilty plea summary.

23 Q Did it, did he contact you before or after the guilty
24 plea?

25 A A couple months before to let me know the defendant

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 wanted to plead guilty.

2 Q Okay. Would you be surprised if the defendant, and
3 we're talking about Mr. Braswell, Mr. Braswell had been
4 writing Wes Smith letters saying I want you to help me, I'm
5 not pleading guilty, I'm going to trial, but I need your
6 help for some things?

7 Would that surprise you?

8 A I, I don't have any basis to be surprised or not be
9 surprised by that.

10 Q Did you know -- do you believe -- do you know if there
11 are two other letters, maybe three letters, some of which
12 may say I'm not pleading guilty, I want to go to a jury
13 trial?

14 A I have no knowledge of that.

15 Q Okay. So, as far as you know, you were told he wanted
16 to plead guilty?

17 So, something -- if he wanted to plead guilty when Wes
18 Smith told you that, something must of changed?

19 A I believe the exact words that Mr. Smith used today
20 were he wants to handle his charges. To that, to me that
21 means he wants to plead guilty.

22 Q Okay. And how often do you have an investigator call
23 you on a case to give you some input?

24 A The investigator on the case?

25 Q Yes.

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 A That I'm prosecuting?

2 Q Yes.

3 A It's not real common.

4 Q So, it's not real common for the investigator that's
5 prosecuting that case, Mr. Braswell, to necessarily even
6 call you and give you input out of the blue?

7 A I've never had one call me out of the blue.

8 Q Well, what did Wes Smith do?

9 Wes Smith called you and you said hi, Wes, I know
10 you're calling about Mr. Braswell?

11 A Oh, no.

12 Q Okay.

13 A No.

14 Q That was out of the blue, wasn't it?

15 Was there any connection you were aware of between Wes
16 Smith and Braswell?

17 A Oh, certainly not.

18 Q Other than he knew him before.

19 Did you know that?

20 A No.

21 Q Wes Smith didn't tell you that?

22 A I don't -- if he did, it wasn't important enough that I
23 would remember it.

24 Q How long have you been a prosecutor?

25 A Thirteen years almost.

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 Q And when you started, do you remember Wes Smith?

2 He was there at the Sheriff's Office when you were
3 there?

4 You remember that?

5 A When I was at the---

6 Q When you started as a prosecutor, Wes Smith was already
7 an investigator.

8 A He may well have been.

9 Q Been around a while, hadn't he?

10 A I think probably so.

11 Q And so you get a call from a senior investigator from
12 the Sheriff's Office who wants to, out of the blue, no
13 connection to your case, says I got a fellow that needs to,
14 needs, wants to take care of some charges, is that right?

15 A That's correct.

16 Q Okay. Now, Mr. Braswell, and I'm not sure if his
17 estimation is correct, but is it fair to say that he was
18 facing 55 years total possible on these charges?

19 A I'd have to look at them to tell you what that's --.

20 Q Is it reasonable for him to have that impression?

21 There were a lot of charges?

22 A The charges that I had on him, one carried a potential
23 of ten years.

24 Q What was---

25 A The other---

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 Q What was that charge?

2 A That was the assaulting an officer.

3 Q Okay. Now---

4 A The other two carried five years each and there was one
5 that carried ninety days to three years.

6 Q Okay. So, if, if he estimates 55 years, he would be a
7 little overestimating?

8 A Yes.

9 Q Okay. But he had probation revocations and other
10 things pending?

11 A I believe he did. I'm not familiar with the details of
12 that.

13 Q Okay.

14 A But --.

15 Q So, he's facing -- you told me and I've already
16 forgotten, twenty, thirty years?

17 A If the sentences are run consecutively, yes.

18 Q Well, a potential max.

19 A potential max is not likely in any, any---

20 A Particularly in a guilty plea.

21 Q Okay. In any case.

22 But, but the -- to leave the sentence, is that affected
23 by the prior record of a defendant?

24 A It can be if the judge considers it a factor.

25 Q Okay. And just out of curiosity, he had nine burglary

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 Q What was that charge?

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10 things pending?

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12 that.

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16 forgotten, twenty, thirty years?

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23 by the prior record of a defendant?

24 A It can be if the judge considers it a factor.

25 Q Okay. And just out of curiosity, he had nine burglary

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 summary sheet exist in my file is we prepare the details, we
2 show the recommendation, and then those two attorneys, in
3 order to free up the other 28 attorneys in our office,
4 actually handle court while we are having pretrials and
5 doing the other things that we have to do to continue to
6 move our cases.

7 Q And do you have that guilty plea summary sheet in your
8 file?

9 A Yes, I do.

10 Q Is it accurate and in the same state that it was in at
11 the time of the guilty plea?

12 A At the conclusion of the guilty plea because the, the
13 attorney who handle the plea puts notes as to what the
14 actual sentence was so that I'll know the disposition, and
15 then I can pass that along to the officers, officers on the
16 case.

17 Q Okay. Afterwards, did you pass it along to Wes Smith?

18 A No, he was not the officer on my cases.

19 Q Then why do you call him?

20 A He called because he told me that this particular
21 defendant was a potential witness in a case that Mr.
22 Steinberg had.

23 Q Okay.

24 A And that he had been talking with him and he wanted to
25 go ahead and handle his charges.

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 Q Thank you.

2 Your Honor, we would offer the guilty plea summary, as
3 was used at the guilty plea with it's recommendation and
4 information on it, and we would offer that as our exhibit.
5 I don't know what number we're on. But we would offer that
6 at this time.

7 SOLICITOR STEINBERG: I'd like to take a look at that
8 if I may.

9 WITNESS: They're two pages, Your Honor.

10 And for clarification this is a microfish copy. After
11 our cases are handled we send them to be microfished and
12 then the originals are destroyed to save on storage costs.
13 That is something that I got last Thursday or Friday. In
14 preparation for today, I asked our clerk to print off
15 everything from our file that had been microfished.

16 SOLICITOR STEINBERG: Your Honor, may I approach?

17 THE COURT: Sure.

18 (Whereupon, a bench conference was held out of the
19 hearing of the jury at this time.)

20 Q Ms. Drawdy, you've indicated that those are accurate
21 records from your office.

22 You have testified, have you not, that they are stored
23 on microfish, is that true?

24 A It may not be microfish. I think the technology --
25 that dates me. It's -- they were scanned---

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 Q Scanned?

2 A ---into -- yes.

3 Q Old term knowledge, but same concept.

4 They are protected, stored so they can be produced
5 later?

6 A Yes.

7 Q And you've reviewed them and you wrote them?

8 You wrote it, did you not?

9 A Yes.

10 Q And it is substantially in the same form and content as
11 when you wrote it?

12 A Yes.

13 Q All right. And are those the records that are kept as
14 a normal part of your office's business?

15 A Yes.

16 Q And do you believe that those records are correct?

17 Are they accurate?

18 A They're accurate in terms of that's what I wrote.

19 Q Okay.

20 A Did I make a mistake, I don't know what you're
21 indicating. I could of been misinformed. But this is, this
22 is definitely my handwriting. It's something that I did in
23 the course of preparing this guilty plea.

24 MR. WILKES: Okay. Your Honor, we would move those
25 into evidence being the official business records of the

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 Office of the Solicitor as an exception to the normal
2 hearsay rule. They've been testified to as accurate,
3 exactly what was written, and they are out of the
4 solicitor's own file.

5 THE COURT: All right. Yes, sir, Mr. Steinberg.

6 SOLICITOR STEINBERG: Your Honor, I object on the
7 grounds of both relevance and this was improper hearsay at
8 the time. It doesn't get better just because there's a
9 business records exception. I have no objection to the
10 recommendation portion coming in. It's all the other detail
11 on there that I think is otherwise inadmissible.

12 THE COURT: Well, I'll let it in for -- go ahead.

13 MR. WILKES: We ask that it be marked at this time.

14 (Whereupon, the plea sheet was marked as Defendant's
15 Exhibit No. 4 and received into evidence at this time.)

16 Q Mrs. Drawdy, do you also have, as part of your records,
17 your handwritten notes showing your phone conversation or
18 the results of your phone conversation contact with
19 Detective Smith?

20 A Yes.

21 Q And without going into too much detail, do they, does
22 that also appear to be what you wrote at that time?

23 A Yes.

24 Q And does it appear to be from your official records
25 kept in microfish since whenever you created it?

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 A Yes.

2 MR. WILKES: Your Honor, we would move to have that
3 document introduced as our next exhibit.

4 SOLICITOR STEINBERG: No objection.

5 THE COURT: All right. It's in evidence.

6 MR. WILKES: Thank you, Your Honor.

7 (Whereupon, the notes of Ms. Drawdy were marked as
8 Defendant's Exhibit No. 5 and received into evidence at this
9 time.)

10 MR. WILKES: Thank you, ma'am.

11 Q Ms. Drawdy, have you ever, at your time in the
12 Solicitor's Office in a case that you believed you needed
13 to, have you ever indicated whether the defendant had prior
14 violent offenses?

15 Have you ever pointed that out to the Court?

16 A Specifically included this as a violent offense?

17 Q Have you ever made mention of the violent nature of
18 prior offenses?

19 A No.

20 Q Never?

21 A No.

22 Q Is burglary second an offense that could be either
23 violent or nonviolent?

24 A I believe so. I don't prosecute those routinely. But
25 I believe you're correct.

Sara Lee Drawdy - Cross-examination
by Mr. Wilkes

1 Q If the burglary seconds in particular happened to all
2 be violent offenses, is that something that the solicitor
3 could point out to the judge?

4 A Yes.

5 Q To your knowledge, based on your file, is there any
6 indication as to whether they were violent offenses or
7 whether or not it was pointed out to a judge as to the
8 nature of those prior offenses?

9 A Are you speaking about---

10 Q Those prior---

11 A ---the priors that are listed on my guilty plea
12 summary?

13 Q Yes, ma'am, the nine prior burglaries.

14 Do you recall?

15 A They were not indicated one way or the other on the
16 summary.

17 Q All right. And do you think that there could be a
18 difference in sentencing Mr. Braswell in the way that
19 information is available to the solicitor was presented?

20 In other words, did you -- did that presentation have
21 an impact -- could it have an impact on the Court?

22 A As in -- yes. Yes.

23 MR. WILKES: If I may have just a second, Your Honor?

24 (Pause.)

25 MR. WILKES: I have nothing further of Ms. Drawdy.

Sara Lee Drawdy - Redirect examination
by Solicitor Steinberg

1 Thank you, ma'am.

2 SOLICITOR STEINBERG: Very briefly.

3 REDIRECT EXAMINATION

4 BY SOLICITOR STEINBERG:

5 Q Ms. Drawdy, the burglary second, the violent
6 subsection, does that necessarily imply violence to another
7 human being?

8 A No, it does not. It's, it's more of a -- it's one of
9 those many things that we have in the criminal code that the
10 traditional understanding of violent. It's more of a -- it
11 has more of an impact on a sentence for that particular case
12 and how it's treated in the SCDC. It doesn't involve
13 violence.

14 Q Okay.

15 A It's just a classification and I know that seems silly.
16 But that's the way it is.

17 Q You were asked questions about who else gets to speak
18 at a, at a guilty plea.

19 Does a police officer get to speak at a guilty plea if
20 he's involved in the case?

21 A He may.

22 Q And how about victims, are they entitled to speak?

23 A Yes, they are.

24 Q You were asked concerning whether a defendant, whether
25 you'd seen letters.

1 Do inmates ever change their mind as to guilty pleas or
2 they want to plead guilty?

3 A All the time.

4 Q Do you appreciate either the officer or the attorneys
5 contact you and say Inmate A, B, C wishes to plead guilty?

6 A Oh, I love it because it helps me move a case easily.
7 I know that we both have the same end in mind, and it's --
8 it helps me move a case quickly.

9 Q Thank you, ma'am.

10 MR. WILKES: Maybe one follow-up.

11 RECROSS EXAMINATION

12 BY MR. WILKES:

13 Q You indicated that every, well not everybody, but
14 victims get an opportunity to be present?

15 A Yes.

16 Q And in this case, did you indicate, does it show
17 whether or not the victims of any of those nine burglaries
18 were present for those pleas?

19 A Those victims would not have had a right to be present
20 at this plea. It did not involve their burglaries.

21 Q Did any of the victims appear for the plea from the
22 charges he's pleading to?

23 A No, Mr. Nix was given an opportunity, it, was notified
24 that the plea was happening and given an opportunity to
25 appear. He decided not to appear.

1 Q All right. Anyone else?

2 A The officer on the assault also did not have an
3 interest in appearing.

4 Q Anyone else?

5 A Those are the only victims that I personally contacted.
6 My victim advocate would of contacted everyone else, and
7 had,, and would of notified me if they had wanted to appear.
8 I don't have personal direct knowledge.

9 Q Okay. And your victim advocate wouldn't know to notify
10 Wes Smith to come to court, would they?

11 A Wes Smith was not involved in this.

12 Q Then why is there a note that he called you?

13 A He called me because he had had contact with the
14 defendant and the defendant indicated to him that he wanted
15 these charges, wanted to come to court on these charges.

16 Q Thank you.

17 THE COURT: All right. Thank you, Ms. Drawdy.

18 WITNESS: Thank you.

19 SOLICITOR STEINBERG: State's next witness is Roger
20 Warick.

21 MR. WILKES: Your Honor, please the Court, I have one
22 matter that I'd like to take up when the solicitor comes
23 back.

24 (Pause.)

25 SOLICITOR STEINBERG: Your Honor, I beg the Court's

1 indulgence.

2 I had sent Mr. Warick out during the testimony for, of
3 sequestration rules. They're going to get him.

4 THE COURT: Okay. You say you need to take something
5 up, Mr. Wilkes?

6 MR. WILKES: Yes, sir, if I can approach at this time?

7 THE COURT: Okay. All right.

8 (Whereupon, a bench conference was held out of the
9 hearing of the jury at this time.)

10 SOLICITOR STEINBERG: Your Honor, the State's next
11 witness is Roger Warick.

12 ROGER WARICK, being first duly
13 sworn, testified as follows:

14 CLERK: State your name for the record.

15 WITNESS: Roger Warick.

16 DIRECT EXAMINATION

17 BY SOLICITOR STEINBERG:

18 Q Mr. Warick, could you please tell us where you live?

19 A Tampa, Florida.

20 Q And where did you grow up?

21 A Jacksonville, Florida.

22 Q And did you ever live in the Greenville, South Carolina
23 area?

24 A Yes, sir, for about a year and a half.

25 Q And, and what brought you to Greenville?

1 A My parents, my sister, family.

2 Q Tell us briefly what type of jobs you held or what type
3 of career you're in.

4 A The service industry, hospitality.

5 Q Is that the restaurant business?

6 A Yes, sir, it is.

7 Q Have you ever made any deals to testify on behalf of
8 the State in the past?

9 A No, sir.

10 Q Have you ever been convicted of any crimes against
11 women?

12 A No.

13 Q Were you serving a sentence in the Greenville Detention
14 Center in May, June, July periods of last year?

15 A Yes, I was.

16 Q What was that, what was that, was -- what was that
17 sentence for?

18 A It was a civil suit, child support.

19 Q But in jail, did you meet David Molina?

20 A Yes, sir.

21 Q How often would you speak to him?

22 A Daily.

23 Q Would you consider him to be talkative?

24 A Very.

25 Q Tell us what type of relationship you and Mr. Molina

Roger Warick - Direct examination
by Solicitor Steinberg

1 had.

2 A It was just a, a -- casual. We talked, play cards.

3 That was pretty much it.

4 Q Did you discuss, did you discuss his case while you
5 were in jail?

6 A Constantly.

7 Q And when you say constantly, who would bring the
8 subject matter up?

9 A He would.

10 Q And how often would he speak about it?

11 A As often and -- as soon as he could find someone to
12 listen.

13 Q Did he ever discuss his girlfriend?

14 A Yes.

15 Q What -- how did he describe his girlfriend and what
16 would the conversations involve?

17 A At times it was how much he was in love with her, still
18 obsessed, and at other times how much he hated her, and how
19 not good of a person she was to put it nicely.

20 Q You used the word obsessed, I'd like you to explain how
21 you arrived at that.

22 A The case, her. He, he constantly talked about it.
23 It's like he was trying to bounce it off and let it come
24 back to him kind of a, to see what it was, sounded like.

25 But he---

Roger Warick - Direct examination
by Solicitor Steinberg

1 Q Did he -- I'm sorry.

2 A He was totally obsessed.

3 Q Did he ever discuss her new boyfriend?

4 A Yes.

5 Q And what would he say when discussing the new
6 boyfriend?

7 A Nothing good. He was, did not like him and he said
8 when he got out he would deal with the new boyfriend.

9 Q Did he ever discuss the type of car that the new
10 boyfriend drove?

11 A He talked about it.

12 Q How about the home or type of place the new boyfriend
13 lived?

14 A He had mentioned it.

15 Q Do you remember what type of home or what kind of home?

16 A I don't recall. I mean he talked about it so much.
17 It's just sometimes you had to black him out.

18 Q Did he ever say how he knew about this car and about
19 this home?

20 A He had followed him, her new boyfriend.

21 Q How did that, how did the fact that he had a new, that
22 Ms., Nichelle had a new boyfriend, how did that seem to
23 affect him?

24 A That was kind of putting him out of the picture and
25 he -- I don't know. I guess we've all been heartbroken.

1 But he was, he was obsessed with it.

2 Q Did he ever show you any paperwork or photographs?

3 A Yes, almost daily.

4 Q Please give us a description.

5 What did these photographs look like?

6 A They were part of his motion of discovery I think is
7 what he called it, and they had pictures of his, his
8 girlfriend or ex-girlfriend with a slit from like here all
9 the way down to here where you could actually see the jaw
10 bone and the, and the teeth and then on her legs where it
11 was gashed I guess.

12 Q Did he ever discuss how this attack occurred?

13 A Yes.

14 Q Please tell the jury what he said.

15 A He said that the, started -- the person that attacked
16 her came up on the right hand side of the house, attacked
17 her at the doorway, and then exited towards the left-hand
18 side of the house. And one day it was myself and him and
19 Choo Choo, Mr. Braswell, that he said that he had jumped
20 over the car and went around the side of the house and he
21 kind of stopped and looked at us and we all kind of laughed
22 about it, and he said this between us, I don't want it to go
23 any further. But --.

24 Q How well do you recall that conversation?

25 A Very well. It, it took me a second.

1 Q Do you remember, I'm trying to pick your brain if I
2 can, do you remember exactly what he said that he did?

3 A He said that he was, that he jumped over the car and
4 that they never found any fingerprints and ran around the
5 side of the building, and that's when he caught himself that
6 he put himself, instead of the third party, being the person
7 that did it, that jumped over the car, and then he explained
8 there wasn't enough room in-between the car and the garage
9 doors. There wasn't any way to jump over it.

10 Q And did he say where he went afterwards?

11 A Drove away until he got a phone call and he went
12 immediately back.

13 Q Did he say where he was parked?

14 A The car was parked behind the house on the next street
15 I believe.

16 Q Did he ever discuss why he was there at that time of
17 night?

18 A No.

19 Q Did he ever discuss where he was suppose to be at that
20 time of night?

21 A He -- just suppose to be at work.

22 Q Did he ever discuss his work or leaving his work at
23 that time?

24 A Later on when we were talking, he explained that there
25 was something with the time clock to his advantage that gave

1 him the time frame that, that was needed.

2 Q Did David Molina ever discuss his future with Nichelle
3 Nichols?

4 A When he beat this case, he was going to try to talk to
5 her. He figures if he had five minutes with her, that she
6 would understand that it wasn't him or try to convince her
7 that it wasn't him. And if she didn't comply, that he would
8 probably finish what was started.

9 Q That term finish what was started, are those your words
10 or are those his words?

11 A Those were his. He was gonna finish what was started.

12 Q The statement he made concerning but we don't want
13 anybody to know that, did anybody have any conversation with
14 him afterwards?

15 A We, we constantly talked about it.

16 Q Let me stop you. I'm not going to ask you any
17 conversations you had with Mr. Braswell.

18 A Yeah.

19 Q I want to ask you questions.

20 After he made that statement, did he make any further
21 statements if you recall?

22 A He just went into his paperwork and was showing more
23 about the motion for discovery and just a, more dribble as I
24 call it.

25 Q What term did, did David Molina use to describe Mr.

1 Braswell?

2 A Choo Choo.

3 Q Did you and David Molina ever have a falling out?

4 A No.

5 Q How did you feel about David Molina's, and your word
6 was obsession?

7 Did you ever confront him with that?

8 A Not really. He, he's very calm and cool. But he --
9 you could tell if he ever lost his cool he's capable of
10 hurting you. He always did karate and all that stuff, and I
11 pretty much tried to keep my distance or not upset him.

12 Q Did David Molina need any prompting to discuss either
13 his girlfriend or this assault?

14 A Not at all.

15 Q Were you ever present when David Molina was told to
16 leave his girlfriend alone or to just give it up?

17 A Yeah, and he, he said that he couldn't, that it wasn't
18 finished yet or he wasn't finished yet.

19 Q Did you know either David Braswell or, pardon me, James
20 Braswell or David Molina before you were incarcerated?

21 A No, sir.

22 Q Did you know them or keep in touch with them after you
23 were incarcerated?

24 A No, sir.

25 Q When did you arrive in South Carolina for this, for

Roger Warick - Direct examination
by Solicitor Steinberg

1 this trip?

2 A Monday morning.

3 Q And how did you get up here from South Carolina, from
4 Florida?

5 A I drove.

6 Q Have you asked for anything with regards to your
7 testimony here today?

8 A No, sir.

9 Q Did you meet with Investigator Smith and myself?

10 A Back in March I believe.

11 Q And where did we meet?

12 A At my mother's house.

13 Q Did you invite the investigator and myself in?

14 A Yes.

15 Q Did you hesitate at all in speaking with us?

16 A Not at all.

17 Q Do you have any pending charges that our office, my
18 office is involved with, with you?

19 A None at all.

20 Q And have you been promised anything for your testimony
21 today?

22 A No.

23 Q Have you provided my office with your mileage from
24 Florida to South Carolina?

25 A Yes, sir.

Roger Warick - Direct examination
by Solicitor Steinberg

1 Q Do you expect or hope to be provided with reimbursement
2 for this mileage?

3 A Yes, sir.

4 Q Have you been provided with that amount yet?

5 A No, sir.

6 Q Do you know how much it will be at this point?

7 A No, sir.

8 Q Where do you work now?

9 A I'm currently with Bob Evans in Brandon Florida.

10 Q Are you taking time off of work to testify in this
11 case?

12 A Yes, sir.

13 Q Please tell the jury why you're up here testifying in
14 this case.

15 A When this was all happening, I didn't realize that it,
16 it was, mattered all that much. But when I spoke with you,
17 maybe that time that I did in jail was, was not wasted and
18 maybe some good can come out of it. And I have a sister,
19 two little sisters and I couldn't imagine something like
20 that happening to them.

21 Q Thank you, Mr. Warick. Please answer any of opposing
22 counsel's questions.

23 A Thank you.

24 THE COURT: Cross-examination.

25 CROSS-EXAMINATION

Roger Warick - Direct examination
by Solicitor Steinberg

1 BY MR. WILKES:

2 Q Mr. Warick?

3 A Yes, sir.

4 Q You say you've taken time off cause it's a good thing?

5 A Yes, sir.

6 Q When you came up here Monday, where did you go?

7 SOLICITOR STEINBERG: Your Honor?

8 A I went to the Family Court house.

9 Q To testify in this case?

10 A No, sir.

11 SOLICITOR STEINBERG: Your Honor, we ask to approach.

12 THE COURT: Okay.

13 (Whereupon, a bench conference was held out of the
14 hearing of the jury at this time.)

15 THE COURT: Okay. Ladies and gentlemen, I'm gonna ask
16 you just to go back to your jury room for just a few minutes
17 and we'll take up a matter out here.

18 Don't discuss the case and continue to keep an open
19 mind.

20 (Whereupon, the following takes place outside the
21 presence of the jury.)

22 THE COURT: Okay. We just had a bench conference
23 related to the objection the solicitor made as to why
24 Mr. Warick was up here on Monday and what he did.

25 What's your objection, Mr. Steinberg?

1 SOLICITOR STEINBERG: Thank you, Your Honor.

2 These are well outside of the range for impeachment.

3 They are irrelevant. All they would do is paint unfairly

4 Mr. Warick in a bad light.

5 He's up here, for example, on a bench warrant. He came

6 up here and he served, got served with a bench warrant. He

7 came up here for the State's case. The fact that he has a

8 bench warrant out of Florida, which is where his charge is

9 from, should not come in.

10 All that can do is simply add an improper factor here

11 for the jury to consider. He risked being arrested coming

12 up to South Carolina. Nobody comes up to, to South Carolina

13 from Florida to turn themselves in on an otherwise Florida

14 charge.

15 As far as the prostitution, that charge, I think, I

16 don't have it in front of me, I believe is from 1988 or '89.

17 It is a, not a crime against women, and that's also well

18 outside the range.

19 WITNESS: It had nothing to do with women.

20 MR. WILKES: May I respond?

21 THE COURT: Sure.

22 MR. WILKES: May it please the Court.

23 Your Honor, when the State asked the question why did

24 you come up here, when did you come up here, why did you

25 come up here, and he sat there and gave us this wonderful

1 story about how it was such a terrible thing, that's why he
2 came when, in fact, he had to come up here because he had to
3 be served with a bench warrant to get that taken care of.

4 That is absolutely critical to the picture that the
5 State just painted as to him coming up here for no other
6 reason, no other business with this state. And that's
7 clearly not an accurate representation of the relevant facts
8 that deal with his being here. I mean no, no better way to
9 come and have that bench warrant served than to be able to
10 say, by the way, I'm a key witness in the prosecution's case
11 and I need to get this taken care of.

12 So, I think that that is absolutely critical to my
13 cross-examination.

14 The other thing that the State said was the reason,
15 which obviously if there's crimes and offenses that I could
16 not use to impeach him, the State need not bring up
17 anything. But they have brought up the fact that he has no
18 crimes or offenses. He has not been convicted of specific
19 crimes, crimes against women.

20 I think that a crime of soliciting prostitution is very
21 likely a crime against women. It is, from my standpoint, I
22 would argue that that is a crime against women.

23 I would also argue that there are, on his record,
24 assaults and I believe some of those may be convictions.
25 There are crimes that he has opened the door to making them

1 relevant because he is put this man's character at issue.
2 He has brought up to the jury the absence of a record. He
3 has brought up to the jury the absence of specific crimes
4 against women, and I think, in this case, when he starts
5 putting that at issue that I must, to be effective in my
6 assistance, be able to cross-examine him on those things
7 that might otherwise be limited for impeachment purposes.
8 But the State is chosen to bring those at issue, and I would
9 like to have that record marked for identification for later
10 purposes.

11 SOLICITOR STEINBERG: Your Honor, the State believes,
12 counsel believes we're opening fictional doors. If counsel
13 wishes to bring up any of those charges, instead of sending
14 the jury out, I would like opposing counsel to tell us which
15 crimes he intends to bring up now so we can resolve this
16 now. I don't want to have to deal with any of these things
17 that we have to unring the bell.

18 MR. WILKES: I would like to bring up all of those
19 crimes that may be relevant in their consideration of the
20 issue the solicitor has just raised, and that is his
21 character, his prior offenses, his prior criminal record.
22 And for the record, and I know we'll mark that as an
23 exhibit, but that is an NCIC rap sheet that I have just been
24 given right now, and have not had in discovery, as far as I
25 know, I don't think it's been disclosed. If it has, the

Roger Warick - Direct examination
by Solicitor Steinberg

1 solicitor will correct me. And I've just been handed that
2 and that is one thick rap sheet with aliases, Florida
3 record, South Carolina record.

4 And I didn't bring it up. He brought up the absence of
5 record. He brought that up.

6 And at this point, I submit that every single thing
7 that is a conviction is subject to his cross-examination. I
8 didn't cause this. I have to respond to it.

9 SOLICITOR STEINBERG: Your Honor, I have the Florida
10 statutes that I think are referenced up there if the Court
11 needs to take a look at them on the most recent charges.

12 MR. WILKES: And Your Honor, again, I'm gonna place
13 another objection on the record. I'll, I'll ask the
14 solicitor -- he's certainly got an opportunity to rebut me
15 and indicate that he has. I do not want to misstate it. I
16 know he's given me a lot of discovery information. He's
17 done very well with that. But this man's out-of-state
18 record is just been handed to me.

19 It shows convictions. He's researched the law on
20 Florida statutes. I haven't had that opportunity.

21 Now, if it's my error in not realizing that I have
22 received this discovery, this NCIC rap sheet, that's
23 different. But it's still, I'm still in the same position.
24 But I think it's worse that I have just been handed that.
25 If this is the first time, it makes, it makes it even more

1 difficult for me to respond. Then I would ask for a time
2 to, to obviously do what is necessary if I'm placed in a
3 position of having to validate those convictions.

4 SOLICITOR STEINBERG: I'll just make the record clear,
5 the State does not turn over potential witness rap sheets, I
6 never turn over potential witness rap sheets until they're
7 gonna be actually called in the case. These are actually
8 privacy issues. I don't even have NCIC authority to get the
9 documents. I have to request it from another party.

10 I have yet to hear how counsel gets around the ten year
11 rule. By opening the door was to crimes against women.
12 Very narrow questioning, have you been convicted of crimes
13 against women. Then if there's reason, not to go into his
14 character, to go into motive, motive for testifying in this
15 case.

16 And again, counsel just wants to take what he thinks is
17 a, a small opening in a door, which doesn't exist, and drive
18 a bulldozer through it.

19 THE COURT: All right. Well, I'm still a little
20 unclear on the bench warrant issue.

21 SOLICITOR STEINBERG: Thank you.

22 Mr. Warick or actually his mother called me up and said
23 that he is going, he has a potential bench warrant. I
24 called and checked and the next time I found out, I found
25 out he did have a bench warrant. All I know is the word

1 bench warrant, visiting judge. That's all I know about it.

2 The defendant and I next speak and he says he does have
3 a bench warrant. He has Florida charges that are being
4 enforced in South Carolina. He and child are both and
5 mother are all in Florida. He is coming up here.

6 I said you're gonna have to face your, your, the
7 warrant. If you come up to South Carolina, I don't want to
8 surprise you. You will be faced with the possibility of
9 being arrested. They're been no promises. I obviously just
10 can't make any promises on Family Court. I mean they're
11 mother and father involved in that in Family Courts.

12 He risked being arrested to come up to South Carolina.
13 It's not even a South Carolina case.

14 THE COURT: Well, why wouldn't Mr. Wilkes be entitled
15 to go into that?

16 SOLICITOR STEINBERG: I just don't see the relevance.
17 The fact that he is up here on, testifying in this case, I
18 just don't see how turning himself in on, a child support
19 can affect that at all.

20 THE COURT: Yeah, I'll, I'll have to allow him to go
21 into that. I think that goes to his credibility.

22 As to the rap sheet, I don't, I don't know. You, you
23 said something about Florida statutes. That would be the
24 maximum sentence for each of these offenses.

25 Is that what you're telling me?

1 SOLICITOR STEINBERG: Yes, sir.

2 MR. WILKES: And if I may respond, again the issue
3 is -- well, it has been addressed. This is just been
4 delivered to me now, and, and I am not the most
5 articulate -- I'm far from the most articulate and learned
6 lawyer in this town, and I'm at a extreme disadvantage to be
7 able to eloquently articulate my legal basis. But I can
8 tell the Court that, that my rights here to protect this man
9 is, his constitutional right to cross-examination and due
10 process, discovery, and Brady have all been violated if I
11 can not go into that.

12 I did not bring up any mention of his prior offenses.
13 It's one thing to let him testify, and me, under the rules
14 of evidence, be limited to cross-examination or impeachment.
15 But it does not -- it's different and it does not apply when
16 the State brings it up and brings up good character and
17 brings up the fact that this man has no prior crimes and
18 offenses against women or, and, and he may of actually, I'm
19 not sure, but he may of actually gone further than that and
20 implied other crimes as well.

21 And that is unfair. And one thing for me to be limited
22 under the rule. And I can't get into it. But that does not
23 consider he's gonna be able to bring it up and he knows that
24 those records are there and he knows those convictions are
25 there.

Roger Warick, - Direct examination
by Solicitor Steinberg

1 He didn't say within the last ten years has he been
2 convicted of assault or in the last whatever. And the jury
3 now believes that this man is just pristine, no record, and
4 has only been in jail on this little civil matter, and that
5 is -- I lost any ability to effectively cross-examine him
6 without being able to go into his prior record.

7 SOLICITOR STEINBERG: Judge, I will fully concede, if I
8 had said these words, do you have any record, have you ever
9 been arrested, I carefully tailored my questions to one
10 issue, his motive. I brought it up at the beginning and at
11 the end of his testimony.

12 There's a reason he wants to testify in a case
13 involving this violence against Ms. Nichols. He has no
14 crimes against women. To say that his charges, solicitation
15 or attempting to get a prostitute, that is not a crime
16 against women. That is just a total misreading of, of the,
17 of the law.

18 These charges are old. The charges that are on
19 there -- I said you ever been convicted of simple assault in
20 the State of Florida and he said no, certainly counsel could
21 walk straight through and bring all that up. That's not
22 what I asked.

23 MR. WILKES: Your Honor, may I proffer a little
24 testimony from him on some of this?

25 THE COURT: Sure.

1 MR. WILKES: May I borrow that for just one second and
2 then I'll return it?

3 THE COURT: I think it's yours anyway.

4 MR. WILKES: I didn't want to take it if it's yours.

5 THE COURT: Excuse me. I'm sorry.

6 MR. WILKES: Okay. May we mark this for
7 identification?

8 And I will, if I can, proffer this as an exhibit for
9 Court purposes.

10 (Whereupon, the NCIC rap sheet was marked as
11 Defendant's Exhibit No. 6 for identification purposes at
12 this time.)

13 MR. WILKES: Will the Court accept this as a proffer?

14 THE COURT: Yes, sir, absolutely.

15 CONTINUED CROSS-EXAMINATION

16 BY MR. WILKES:

17 Q Mr. Warick?

18 A Yes, sir.

19 Q Do you have any additional, additional names or aliases
20 that you've ever gone by?

21 A Christopher Crawford.

22 Q How is Christopher Crawford related to Roger Darryl
23 Warick?

24 A They're not.

25 Q Okay. What was the purpose of going by that name?

Roger Warick - Direct examination
by Solicitor Steinberg

1 A To hide from a warrant.

2 Q Okay. Now, you have been convicted of a number of
3 crimes from Florida?

4 A Yes, sir.

5 Q Okay. Do you recall the conviction for offer of
6 prostitution, lewdness?

7 A Yes.

8 Q Can you explain what that was?

9 A It had nothing to do with any woman.

10 Q Can you explain what that was?

11 A Yes.

12 Q Please do.

13 A I was selling myself. I wasn't buying someone.

14 Q To whom?

15 A To other people.

16 Q Women or men?

17 A Men.

18 Q Now, let me ask you this.

19 Is that the only time you've had a conviction for that?

20 A No, sir.

21 Q How many have you had?

22 A Four or five.

23 Q And are these all in the State of Florida?

24 A Yes, sir.

25 Q What are the sentences that you have received for those

1 offenses?

2 A Thirty days, thirty-five days.

3 Q Were you in prison?

4 A No, sir.

5 Q Have you also been involved in other offenses?

6 A Yes, sir.

7 Q What was the latest date of one of those prostitution
8 charges?

9 A It's been over probably fifteen years ago.

10 Q Have you been convicted of assault?

11 A Simple battery, misdemeanor.

12 Q Battery means contact with somebody, correct?

13 A Yes, sir.

14 Q Who was the victim of that crime?

15 A He was a gentleman that was trespassed off our gated
16 community. He tried to enter my home and yes, I did assault
17 him.

18 Q Was this over some sort of personal relation?

19 A No, sir.

20 Q Excuse me?

21 A No, sir.

22 Q You -- why?

23 What was your contact with this person?

24 A He was trying to enter my house.

25 Q Why?

Roger Warick - Direct examination
by Solicitor Steinberg

1 A I don't know.

2 Q Did you know the person?

3 A I had seen him around. I know that he wasn't -- he was
4 trespassed off the property by the Sheriff's Department.

5 Q Why did you plead guilty to an offense involving that?

6 A It was in my best interest.

7 Q Why?

8 A Because that's what the lawyer told me. It was my best
9 interest.

10 Q You were guilty?

11 A Yes, sir, I did touch him.

12 Q What other offenses have you been convicted of?

13 A Grand larceny, and other misdemeanors, shoplifting.

14 Q When was this?

15 A Shoplifting was probably eight, nine years ago.

16 Q Okay. And you were convicted of that?

17 A Yes.

18 Q Did you tell the solicitor that?

19 A No.

20 Q Shoplifting would be stealing?

21 A Yes, sir, on two accounts.

22 Q Two counts?

23 A Yes, sir.

24 Q You have any other offenses you've been convicted of?

25 A Not that I can recall, no, sir.

1 Q If you will, take a minute and try. Make sure
2 you're---

3 A Not that---

4 Q ---you're recounting.

5 A Not that I can recall, no, sir.

6 Q What other jurisdictions have you been arrested in?

7 A Kanaw County, Florida, and South Carolina. That's it.

8 MR. WILKES: Your Honor, Defendant's Exhibit No. 6 for
9 identification purposes, which has been proffered for the
10 record, shows an extensive criminal record of this man.
11 There are offenses which would constitute some sort of
12 offense, prostitution, things that might involve, I would
13 say, sexual relationships.

14 The fact that the State is somehow claiming that he has
15 no crimes against women is very carefully craftily worded.
16 But the man has a significant prior record. Apparently he
17 had theft charges convictions within the past ten years.

18 I have just learned of this. I submit that this is a
19 Brady violation. I submit that it has robbed me of a
20 decent, even reasonable chance, to be effective in the
21 cross-examination of this witness, the preparation for this
22 witness, and I am not sure that there is anything I can do
23 to be effective in it.

24 I don't know what else is gonna come out about this
25 witness, his background, how he may be impeachable, what his

Roger Warick - Direct examination
by Solicitor Steinberg

1 motives are. And Your Honor, I frankly don't know what was
2 said down in Family Court, whether he had mentioned to the
3 people in Family Court that the solicitor needs him up here.

4 There are issues that I have to research. I would ask
5 the Court for a mistrial. I would ask the Court for a
6 continuance for me to properly prepare and defend this case.

7 This case is rank, rank with preparation of witnesses
8 by the State, with coached testimony, the impeachment of
9 every witness at this point has rendered significant benefit
10 and this witness brought in at the last minute that has
11 convictions that almost didn't come out.

12 It is absolutely evident that my ability to protect my
13 client's Constitutional rights are impaired and I can not
14 protect him. I would ask for a mistrial to be allowed to
15 investigate further regarding this witness. He is a key
16 witness. He is presented as a saint by the State, and he is
17 anything but that.

18 And I would move for both a mistrial, in the
19 alternative, continuance for another time to complete
20 investigating, obtain copies from Florida, to do the things
21 that I need to protect my client.

22 SOLICITOR STEINBERG: Your Honor, if I may respond?

23 THE COURT: All right.

24 SOLICITOR STEINBERG: This is both exaggeration and
25 theatrics. We have done what we do in every case and what

1 every prosecutor does in every case. When the witness takes
2 the stand, I'm not even required to turn it over until after
3 I've done my examination. I turned it over before I started
4 my examination. I have not hid anything and this is the
5 first I've heard that the prostitution charge involved a
6 male.

7 Let's talk about the specifics. Not just in general I
8 am prohibited from defending my client. We have a defendant
9 who, I think 15 years ago, was convicted of prostitution or
10 engaging in prostitution with another man. To say that is
11 inflammatory and prejudicial does not give it it's due. It
12 has no admissibility. It is well over ten years old. It is
13 a relatively minor charge, and it should never be heard by
14 this jury. This jury will frankly hold it against him
15 unfairly and has no bearing on his testimony.

16 The testimony concerning his giving any nickname or a
17 false name or an alibi or an alias, best find out when that
18 was made. If it's, if it's over ten years ago, that
19 shouldn't come in.

20 The other charges---

21 THE COURT: Was he actually charged with that?

22 MR. WILKES: Oh, no, sir, I, I have no other ability
23 other than to try to do my examination of him here to show
24 Your Honor there's so much that I may not be aware of. The,
25 the reason for asking that is if the Court will look at his

1 transcript, he's got aliases on there, and I, I would---

2 THE COURT: Well, that's what I thought. I didn't
3 know. I didn't know.

4 MR. WILKES: It was not an offense. But I was trying
5 to determine what else is out there. This is where the
6 thefts within ten years is come up. The solicitor I think
7 represented that there weren't any impeachable offenses. I
8 don't know, and there may be. And that's why I'm doing the
9 best I can, and, you know, in the last minute to try to
10 protect my client and I can't do it.

11 SOLICITOR STEINBERG: The only offenses that I have
12 seen on the record in my review are a battery, which
13 carries, does not exceed one year. The other charges were
14 simply past the ten year time limit. I'd like to get some
15 questioning as to if he remembers actually when this larceny
16 charge occurred because if it occurred before ten years,
17 again, it would still be inadmissible.

18 MR. WILKES: Your Honor, he just testified that it was
19 eight or so years ago. And now if the solicitor is gonna
20 indicate that he needs to change it to fifteen years ago, I
21 can't defend against that. This is just been disclosed to
22 me.

23 I can't prove otherwise. He can deny anything he
24 wants. I can't otherwise impeach him with certified copies.
25 I don't have certified copies of the man's record. We're

1 just finding out the solicitor doesn't even have this
2 information or he says he doesn't have this information.

3 He's testifying to it. He's got theft charges within
4 eight years.

5 THE COURT: Well---

6 MR. WILKES: Well -- I'm sorry, judge.

7 THE COURT: Doesn't it, doesn't it all come down to
8 whether they're admissible under Rule 609 because doesn't
9 that control the admissibility of prior convictions of a
10 witness for attacking their credibility?

11 MR. WILKES: No, sir.

12 THE COURT: Why not?

13 MR. WILKES: Not at the point -- he has placed prior
14 convictions---

15 THE COURT: Well, tell me some authority that Rule 609
16 wouldn't be the exclusive---

17 MR. WILKES: Well, how can I do that?

18 THE COURT: I'm sorry. I thought I was speaking.

19 MR. WILKES: I'm sorry, Judge Hill.

20 THE COURT: Cite me some authority that says Rule 609
21 is not the exclusive controlling authority for introducing
22 convictions to attack the credibility of a witness.

23 MR. WILKES: May it please the Court?

24 In respect, the Court has access to obviously the
25 computer.

1 THE COURT: I didn't -- I'm asking you.

2 MR. WILKES: I understand that, judge. Well, the, the
3 State has put me in a position where I am not anticipating
4 this argument and I can't brief it and, and---

5 THE COURT: Well, you've been arguing for twenty
6 minutes, Mr. Wilkes, and you haven't cited any authority.

7 MR. WILKES: Judge, under the rules---

8 THE COURT: That's what I'm talking about, the rules.

9 MR. WILKES: If he brings up the fact and makes a
10 factual representation that there's no convictions, Rule 609
11 or impeachment is not the issue. We, we then turned it into
12 a question of fact. The solicitor is taking it out of
13 impeachment. It is become a question of fact that I must
14 now prove to the jury it, it's an impeachment issue, but
15 it's something that I, under the Rules, 609 would limit me
16 from making the initial attack of his witness.

17 That does not limit me from responding when he implies
18 that there is no record. He brought up specific offenses.

19 Do you have any convictions against women?

20 Do you have prior convictions is, is different -- he
21 didn't ask the question within ten years.

22 Do you have any prior impeachable offenses?

23 He's presented to the jury that the man has no
24 convictions. That's improper.

25 THE COURT: Well---

1 MR. WILKES: And I -- and my, my right to
2 cross-examine -- I'm sorry, Your Honor.

3 THE COURT: Go ahead.

4 MR. WILKES: Would be founded in the right to
5 confrontation. If I can not confront him on that, we're
6 talking about something the solicitor's been allowed to
7 present and use the rule to shield him from my response.
8 The rule is intended from my initiating impeachment. But
9 not from responding.

10 Now, he -- we're going to break at 11:00. If Your
11 Honor will, will break early and, and give us a little
12 additional time, I'll do my very best to try to come up with
13 some authority. But I can not. I did not anticipate this.
14 And going past the Sixth Amendment and just knowing that
15 it's fundamentally wrong to allow the State to bring
16 something up, imply it as a fact to the jury, and then use a
17 rule of procedure not intended to block in that situation,
18 to actually bar me from confronting him, and I, I will do my
19 best if you give me time. But I, I can't articulate better
20 than that off the top of my head.

21 THE COURT: All right. Thank you, sir. I -- and we
22 can listen to the tape, but I thought the question was,
23 number one, do you have any pending charges here to which he
24 responded no. The second question was do you have any
25 convictions against women or something like that and he said

1 no to that.

2 And then for whatever reason, you're provided with the
3 rap sheet at the eleventh hour, which may comply with the
4 letter of the discovery rules, but it's certainly just
5 doesn't comply with the spirit of them, and it puts
6 everybody in an awkward position, and certainly something
7 he's entitled to under Giglio and other cases.

8 But what I'm trying to figure out is, in spite of the
9 questions the solicitor asked, and given the rap sheet, what
10 could you ask him that wouldn't be controlled by 609?

11 If he says I didn't have any convictions against women,
12 and you're saying that that implies that he doesn't have a
13 verdict at all, because perhaps his record, the specifics of
14 it don't meet the criteria of Rule 609, then you're not,
15 you're not allowed to tell the jury that he does, in fact,
16 have a record.

17 Is that what your argument is?

18 MR. WILKES: Yes, sir, if -- in part, in part that is.
19 Because what the solicitor has now presented is clearly to
20 the jury this man is a saint. I mean he's, he's said that
21 in essence. He is here for some altruistic reasons, and he
22 is indicated that he has no crimes against women.

23 And the crimes against women, I'm not sure, but the
24 solicitor says that somehow bears on his motive to come and
25 testify. I, I don't -- and, and from my standpoint, on

1 defense, to fairly defend my client, how is that motive to
2 testify from crimes against women any different than crimes
3 against men and prostituting and, and sexually motivated
4 offenses of that nature just because it's a man versus a
5 woman?

6 And that type of he's such a good person is, is
7 certainly subject to my attack and to find out that he's had
8 five or six sexually related crimes, and, and prostitution
9 is a sexual nature, and whether or not we consider
10 prostitution as an offense against the other people, there's
11 been, I believe literature on that, that that, that is a
12 crime against women. That is a, that is an act that is
13 actually degrading and offensive to those people. It's
14 sexual in nature.

15 And these, these things that he is said that are in his
16 past now become relevant. They would not have been I think
17 if the solicitor had not brought this motive issue up. And
18 now motive is an issue. And there would be other testimony
19 about Mr. Warick's personal behavior as well, and it would
20 be relevant in more ways.

21 But for the present moment, absolutely I have to get
22 into those things, and I, I think the testimony so far is
23 that there are offenses within ten years. So, I don't even
24 know where we stand right now with that, judge.

25 THE COURT: Well, that's a good point, and I think your

1 suggestion that we go ahead and take a break is probably
2 well taken. So, that's what we're going to do so y'all can
3 clarify his record, which should of been done before the
4 trial started quite frankly. And perhaps I was remiss in
5 not asking if anyone's record needed to be settled before we
6 started the case.

7 But at any rate --

8 MR. WILKES: I will say this, Your Honor, and, and I'm
9 sure Mr. Steinberg made every effort to find out, but I can
10 tell the Court that it was represented to me that he did not
11 have any impeachable offenses and that the only thing we
12 have to argue is this bench warrant issue. And I'm not
13 saying Mr. Steinberg is trying to hide anything. But I will
14 say that I am in a difficult issue and I'm doing the best I
15 can to give the Court valid argument.

16 THE COURT: All right. Well---

17 SOLICITOR STEINBERG: Your Honor, if I can just address
18 this so briefly so Your Honor understands my candor with the
19 Court and opposing counsel. I did tell counsel that. I
20 also told him I was showing the document. At that time and
21 to this day I don't think he has any impeachable offenses.

22 I do want to tell the Court that I did turn over James
23 Braswell's information to opposing counsel during the
24 meeting that we had about two weeks ago. He actually wrote
25 down all the warrant numbers. I knew that was going to be

1 an issue. I want to stop ahead of time, address it ahead of
2 time.

3 I have reviewed that. I do not think and I still don't
4 believe there's anything on there. That's why I told
5 counsel what I did. I did tell him I would give him this
6 report in the way we do it for every other attorney.

7 THE COURT: All right. Well, well, during the break,
8 and we're going to reconvene at one o'clock, we just need to
9 have a listing of all the convictions and the dates and what
10 everybody's position is on whether they are admissible or
11 not admissible under 609. I understand what the State's
12 position is. But it's unclear to me and it's hard to make
13 sense of it, make sense of the rap sheet on the spur of the
14 moment.

15 And as I said, I would allow him to go into why he's
16 here in related to the bench warrant, in relation to the
17 bench warrant, excuse me. However, under State versus
18 Joseph, you wouldn't be allowed to elicit from him the
19 details of any of these offenses.

20 So, we're not going to get into that.

21 All right. Okay. We'll see you back at one o'clock.

22 SOLICITOR STEINBERG: Thank you, Your Honor.

23 THE COURT: Bring the jury in.

24 (Whereupon, the following takes place within the
25 presence of the jury.)

1 THE COURT: All right. Ladies and gentlemen, we had a
2 legal issue that came up. It took longer than we expected
3 and it's gonna take us a little bit longer to do it. So,
4 what we're going to do is go ahead and break now. Just come
5 back at one o'clock. Don't discuss the case with anyone.
6 Continue to keep an open mind.

7 Okay. See you back at one o'clock.

8 Thank you very much.

9 (Whereupon, the following takes place outside the
10 presence of the jury.)

11 THE COURT: Okay. We'll see you back at 1:00.

12 Thank you.

13 (Whereupon, Court was in recess for the lunch hour.)

14 THE COURT: Okay. What y'all figure out on---

15 MR. WILKES: First off, Your Honor, I would like to
16 clarify something.

17 THE COURT: Yes, sir.

18 MR. WILKES: I told Mr. Steinberg about -- I stated or
19 implied that he told me there was no record for Warick.
20 That would not be correct. He indicated it was so fairly
21 benign were the words.

22 THE COURT: Okay.

23 MR. WILKES: So, I don't want to misstate anything that
24 I was told. The discovery issue is, is I think resolved by
25 allowing me to ask a few questions to clarify some of these

1 offenses and their admissibility and I think that will be
2 helpful for the Court to make a ruling on what's admissible
3 and what's not admissible, and then I, I can go from there
4 if that's okay. I think we've resolved a number of them.

5 THE COURT: Okay. All right. You want to have the
6 witness get back on the stand?

7 MR. WILKES: Please.

8 THE COURT: Okay. Sir, you're still under oath.

9 CONTINUED CROSS-EXAMINATION

10 BY MR. WILKES:

11 Q Mr. Warick, you had said that South Carolina and
12 Florida were the only places you had a record?

13 A No, I also said Kanaw County.

14 Q I'm sorry?

15 A I also said Kanaw County.

16 Q What state is that in?

17 A West Virginia.

18 Q Okay. What is your record from West Virginia?

19 A That was the two shoplifting charges about eight years
20 ago.

21 Q Okay. Okay. Now, you were convicted of an assault in
22 2002?

23 A Simple battery, yes, sir.

24 Q Okay. And that was the one we talked about before?

25 A Yes, sir.